

STATE OF SOUTH CAROLINA  
In the Supreme Court

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S.C. SUPREME COURT

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas  
The Honorable Clifton B. Newman, Circuit Court Judge

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Appellate Case No. 2023-001263

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RUSSELL L. BAUKNIGHT, as Trustee of The James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B.; Daryl J. Brown, individually and on behalf of his minor child, Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. And Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown

And

Tommie Rae Brown, individually and on behalf of her minor child, James B.; Daryl J. Brown, individually and on behalf of his minor child Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown, Plaintiffs,

Of whom RUSSELL L. BAUKNIGHT, as Trustee of The James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B. II; Daryl J. Brown, individually and on behalf of his minor child, Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. And Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown

And

Tommie Rae Brown, individually and on behalf of her minor child, James B. II; Daryl J. Brown, individually and on behalf of his minor child Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown, are Respondents.

Adele J. Pope, Appellant.

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STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, et. al.,

and

ALAN WILSON, et. al.

Plaintiffs,

v.

ADELE J. POPE,

Defendant.

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH CIRCUIT

CASE NO.: 2010-CP-40-4900

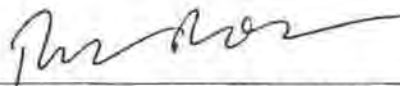
NOTICE OF APPEARANCE

2016 JUN 23 AM 10:51  
RICHLAND COUNTY  
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JEANETTE W. HEBRIDE  
Clerk of Court & S.S.

**TO: CLERK OF COURT AND ALL COUNSEL OF RECORD**

PLEASE TAKE NOTICE that Robert N. Rosen of the Rosen Law Firm, LLC hereby enters an appearance as personal counsel for Tommie Rae Brown for purpose of her deposition only in the above-captioned action.

Respectfully submitted,



Robert N. Rosen (Bar No. 4918)  
Rosen Law Firm, LLC  
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Charleston, South Carolina 29401  
843-377-1700 (office)

Charleston, SC  
June 10, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	
	)	Case No.: 2010-CP-40-4900
RUSSELL L. BAUKNIGHT, and others	)	
	)	<b>MEMORANDUM IN SUPPORT OF</b>
and	)	<b>DEPOSITION OF ATTORNEY</b>
	)	<b>GENERAL AND OPPOSING</b>
ALAN WILSON, in his capacity as Attorney	)	<b>PROTECTIVE ORDER</b>
General of the State of South Carolina and	)	
others,	)	
	)	
	)	
Plaintiffs.	)	
	)	
v.	)	
	)	
Adele J. Pope,	)	
	)	
Defendant.	)	

RICHLAND COUNTY  
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 C.P. & G.S.

**Summary of Relief Requested**

For five years and seven months Attorney General Alan Wilson has been the one person who could end this unprecedented litigation brought in 2010 to stop an appeal of a settlement reached by his predecessor which dismembered entertainer James Brown's "I Feel Good" Foundation and threatened its 900 copyrights.<sup>1</sup>

For two of those years Wilson claimed the right to control the James Brown assets solely because his office had entered the proceedings. For three he has praised Russell Bauknight as millions of dollars in legal fees were spent from funds Brown left his "I Feel Good" Charity<sup>2</sup> to carry out its proposed second dismembering announced to Judge Doyet A. Early, III in open court on May 29, 2013 by Louis Levenson, Esq., and counsel for the

<sup>1</sup> Defendant does not waive her position that this case, "Richland 4900", violates the U.S. and S.C. Constitutions because the Attorney General and private citizens share a single, private attorney.

<sup>2</sup> Since May 8, 2013, Bauknight has paid or incurred legal fees of his Nexsen Pruet ("NP") lawyers, Dave Sojourner, Jr., Esquire, and Sojourner's attorney of more than \$3.4 Million, paid from an estate he asserts is a \$5 Million estate.

Attorney General's Richland 4900 Co-Plaintiff Tommie Rae Brown.<sup>3</sup>

Now in August 2016, the Attorney General asserts that *United States v. Morgan*, 313 U.S. 409, 422 (1941) and its progeny shield Wilson from being deposed because he holds a high office; it will take time from his official duties; and the Defendant he has been suing for five years has not demonstrated that the information cannot be obtained from other sources.

This is not correct. A reading of *Morgan* and the subsequent cases, as well as South Carolina cases and the Rules of Civil Procedure, makes clear that the deposition of Wilson is appropriate under the extraordinary facts of this case. His testimony is essential in this case *which the State brought against Robert Buchanan, Jr. and Defendant*. The circumstances make clear that injustice will result if the deposition is not granted. This is not an examination of the policy of the Attorney General's office, but of Wilson's actions through his office, his Legacy Trust, and Bauknight to damage Defendant over five years.

Wilson is the only person who can give the necessary information.<sup>4</sup> Since he took over control of Richland 4900 in January 2011, the damage to Defendant and Buchanan, as well as the threat to Brown's Charity, has increased exponentially.

Some of the circumstances showing the deposition to be essential follow.

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3 The final decision in *Wilson v. Dallas* was rendered on May 8, 2013. By May 14, 2013 the Attorney General had actively worked with Levenson and Alan Medlin, Esq., counsel for Tommie Rae, to have Bauknight reappointed. Through the private law firm, Sweeny, Wingate and Barrow, P.C. ("Wingate"), they share, Tommie Rae, the Levenson Plaintiffs and Attorney General Wilson had also sought a stay of this case, Richland County Case 2010-CP-40-4900 ("Richland 4900.")

4 In considering the circumstances supporting a deposition, the Court is asked to take judicial notice under SCRE 201 of the entire participation of the Attorney General, the James Brown Legacy Trust, NP and Bauknight in all roles, in Aiken Cases 2007-CP-02-0122; 2008-CP-02-1647; 2013-CP-02-1337; the Tommie Rae Spousal and James B. Heirs proceedings; and appeals from all of these cases; the James Brown Estate file; all James Brown FOIA cases filed since August 3, 2011 and related appeals; and Richland 4900.

## **I. Background to Involvement of Attorney General Wilson in Richland 4900<sup>5</sup>**

### **a. The McMaster Settlement and Creation of the Legacy Trust**

On September 24, 2007 Attorney General Henry McMaster entered the James Brown proceedings. For the next five years McMaster and Wilson, his successor, asserted the Attorney General had the right to control the James Brown litigation.

In December 2007 Tommie Rae and Levenson's clients filed meritless suits to set aside Brown's estate plan. Most later admitted the suits had no merit.<sup>6</sup>

On January 8, 2008 Judge Early approved the Buchanan/Pope fee contract; praised their work; and found that their work commitment had more than doubled since they became PR/Trustees on November 20, 2007.

On April 8, 2008 Judge Early issued a comprehensive order examining the appointment and service of Buchanan and Pope as SAs and PR/Trustees. He found their appointment proper, and all of their service both ethical and appropriate.

On May 20, 2008 Buchanan and Pope served their First Semi-Annual Report as PR/Trustees to Devises, Beneficiaries and the Attorney General.<sup>7</sup>

On May 29, 2008, at the request of philanthropist John Rainey, McMaster met with

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<sup>5</sup> Defendant asks the Court to take mandatory judicial notice under Rule 201 SCRE of the entire record in *Wilson v. Dallas*, and of proceedings after the Administrative Orders of June 13, 2013, in which – at the request of Levenson, Tommie Rae and Bauknight – Judge Early excluded Buchanan and Defendant from all James Brown proceedings except their own claim cases.

<sup>6</sup> In the first filings in this case, all Richland 4900 Plaintiffs admitted that the creation of a Trust for the education of needy students was a long-held and often-stated desire of James Brown. In her October 31, 2008 deposition Levenson client Deanna Brown confirmed that the Will was valid. Plaintiffs Daryl and Terry Brown have openly urged the Attorney General to support Brown's estate plan.

<sup>7</sup> In his August 18, 2016 Deposition McMaster said he had never seen the Buchanan/Pope First Semi-Annual Report. Contemporaneous Records, however, show that it was served on the Attorney General and others on or about May 20, 2008, and that Buchanan & Pope hand-delivered it to McMaster in a meeting with McMaster, Jones, Jowers, Chief Deputy John McIntosh and others, on May 29, 2008.

Rainey, Pope and Buchanan.<sup>8</sup> The Semi-Annual Report was handed to McMaster.

According to Jones, Rainey admonished him for interfering with the operation of Brown's Foundation, and McMaster directed him to work with Buchanan and Pope.<sup>9</sup>

On July 14, 2008, at the request of Buchanan, Pope and McMaster, the S.C. Court of Appeals directed the Christie's sale to proceed on July 17.

In July 2008 McMaster nominated five persons from whom Buchanan and Pope would select a third Trustee for Brown's 2000 Trust, the bulk of which goes to the "I Feel Good" Charity.<sup>10</sup>

On July 30, 2008 McMaster approved Buchanan and Pope as permanent Trustees of Brown's 2000 Trust.

On August 10, 2008, McMaster brokered the settlement with Tommie Rae and some Levenson clients which dismembered the "I Feel Good" Charity and \$285,000 Education

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<sup>8</sup> Also present at the May 29 meeting were some of the employees of the Attorney General's office who have worked for both McMaster and Wilson on James Brown matters: Havird "Sonny" Jones; Mary Frances Jowers; and John McIntosh, who has served as Chief Deputy for both McMaster and Wilson. On August 27, 2016 *The State* announced the retirement of John McIntosh from the Office of Attorney General. In deposition in Aiken Case 2013-CP-02-1337 ("Aiken 1337"), in which the Attorney General has asserted the discovery is similar to Richland 4900, Jowers and Jones have refused to answer, or only partially answered, most questions. Directed by the Attorney General, Jowers and Jones assert that enjoy privilege under the Common Interest Doctrine with all of the parties to the McMaster Settlement Deal and their counsel from 2009 through May 8, 2013. In addition, Jones claims that he had has a privilege under the Common Interest Doctrine with Bauknight and his dozen NP attorneys since Bauknight was reappointed by Judge Early just after May 8, 2013.

<sup>9</sup> This testimony was given by Jones in his Aiken 1337 deposition. In his deposition in this Case, McMaster had little memory of the meeting. He did recall that Rainey was very supportive of Pope. Contrary to contemporaneous records, he claimed never to have seen the Semi- Annual Report. He also claimed to have very little knowledge or memory of the events from 2007 - 2011. The Court is asked to take judicial notice under Rule 201 SCRE of the McMaster WIS-TV video made a part of the Jones and Jowers depositions. In February 2007 McMaster spoke of the vast value of Brown's image and persona, as well as his copyrights.

<sup>10</sup> In 2008 the Attorney General nominated W. Steven Johnson, Esq.; Xavier Starks, Esq.; Russell Bauknight; David Sojourner, Jr.; and Tracey Greene, Esq. In 2009 Johnson presented an Affidavit/Opinion that the work of Buchanan and Pope met or exceeded the standard for fiduciaries. In his 2016 deposition in Aiken Case 2013-CP-02-1337 ("Aiken 1337") Johnson reiterated his position, and the documentation for it.

In his 2016 deposition in Aiken 1337 Sojourner, like Johnson, admitted that even today he had no expertise in matters related to Federal Copyright Act Termination Rights.

Trusts for certain grandchildren. It also threatened the Charity's 900 copyrights; created McMaster's James Brown Legacy Trust;<sup>11</sup> and provided that Buchanan and Pope would be replaced.<sup>12</sup>

Levenson and Tommie Rae's lawyers would reap about \$20 Million in legal fees for will challenges pending only seven months, and for which there had been no discovery.<sup>13</sup>

By September 2008 Medlin claimed he, Levenson and McMaster "spoke as one."

In September 2008 Brown's estate tax return, valuing the music empire and certain related assets at about \$84 Million, was filed.<sup>14</sup>

In January 2009, as Judge Early began hearings on the McMaster Settlement, Levenson called Buchanan to threaten Rule 11 sanctions and other problems if he and Pope did not resign, clearing the way for the settlement.

In March 2009, David Bell, Esquire, whose client had joined the McMaster Settlement, wrote Buchanan threatening a judicial grievance if Buchanan did not resign.<sup>15</sup>

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11 Although it bears Brown's name the Legacy Trust was actually created by McMaster. Until May 8, 2013 the Attorney General and Tommie Rae had more than 2/3 voting control of the Legacy Trust and the Attorney General the right to appoint and replace Trustees at will.

12 In his August 18, 2016 deposition McMaster claimed to have little memory of his 3-year involvement in James Brown matters; claimed he had not seen the May 20, 2010 report Buchanan and Pope had hand-delivered to him on May 29, 2008; did not recall ever reading Brown's Will; did not know what the Legacy Trust he created and controlled when he left office was. When asked by Wingate if the Legacy Trust had charitable beneficiaries, he did not know. Despite this vague memory, McMaster vigorously asserted that the McMaster Settlement Deal was a good idea, and that Supreme Court's *Wilson v. Dallas* decision finding that his settlement deal dismembered Brown's noble estate plan was wrong.

13 While Tommie Rae has still not been determined to be Brown's spouse, and some Levenson clients are still contesting Brown's estate plan, Tommie Rae and some children received about \$2 Million from a sale of "Please, Please, Please" and two other songs. The sale of just 3 of Brown's 900 songs, apparently condoned by AG Wilson, Bauknight and NP, is reputed to have been for \$6 Million. Jones and Jowers appeared not to know of the \$2 Million payment. Or, based on their claimed Joint Interest Doctrine privilege shared with Bauknight, they simply excluded it (as directed) from deposition responses.

14 The \$84 Million was consistent with a formula for valuation of the estate tax return presented to Judge Early by Buchanan & Pope as SAs on Nov. 15, 2007; with the \$42 Million value placed on about 850 of the copyrights by a 2006 Royal Bank of Scotland Appraisal; and the at-death balance of a TIAA debt, approximately \$15MM. SEE WIS-TV interview of McMaster of February 7, 2007, part of the Jones and Jowers Aiken 1337 deposition.

15 Bell, a Georgia lawyer closely aligned with the Cannon PR/Trustees, has been infamous for his

In March 2009, through James Gilreath, Esq., Levenson made a threat to Pope similar to that he had made to Buchanan in January. Levenson also told the media that anyone standing in the way of the settlement better get out of the way.

In May 2009 Judge Early approved the McMaster Settlement. Bauknight, already Trustee of the Legacy Trust, replaced Buchanan and Pope as PR/Trustee.<sup>16</sup>

On May 26, 2009 Buchanan was owed \$500,300 and Pope about \$1.4 Million under their contract with Plaintiff Estate/2000 Trust. Judge Early's compensation order provided for interest to accrue on both amounts until paid.<sup>17</sup>

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dirty tricks in James Brown matters since early 2008 when he filed multiple grievances against Levenson in two states. Bell claimed Levenson had forged his 2007 fee contract with Bell clients Terry, Forlando and Romunzo Brown, and others.[The three fired Levenson in 2007 and aligned themselves with Cannon & Dallas.] In January 2008 Bell and Atlanta Law Firm Powell Goldstein ("PG") filed a baseless federal lawsuit seeking to enjoin Brown's 2000 Trust until the Cannon Trustees were reinstated.

In 2007, as the \$17 Million Cannon took was being uncovered, PG sent documents to Cannon and Dallas to change the situs of Brown's 2000 Trust to Georgia. The documents were defective, and the plan aborted in August 2007, just before Cannon's resignation.

As set out below, Attorney General Wilson and Bauknight as trustee of the Attorney General's Legacy Trust secretly aligned themselves with Forlando in early 2011.

In 2015 Buchanan and Pope were unsuccessful in their effort to charge Forlando's interest in the Estate/2000 Trust with the costs of the 4-year frivolous suit. Bauknight, speaking for the 2000 Trust Forlando had worked 4 years to paralyze, claimed Forlando had done nothing wrong, and that Buchanan and Pope were the wrongdoers.

16 From 2009 until today, the Attorney General has had sole authority to remove and replace Bauknight as Trustee of the Legacy Trust.

17 The Court is asked to take judicial notice of the representations of Bauknight and NP lawyers in Aiken 1337 about the \$1.4 Million owed Defendant as of May 26, 2009.

In 2015 Bauknight/NP claimed that, even though the amount due Pope on that May 26, 2009 under her contract with Plaintiff Estate/2000 Trust and Judge Early's Order had been earning interest at more than \$120,000 a year for six years, it could not be paid because Richland 4900 was still pending. At the same time Bauknight/Wilson/Wingate were asking that Richland 4900 be stayed until all matters in Aiken County were concluded.

The Estate/2000 Trust also claimed the Grammy© withdrawal from the Christie's sale on July 17, 2008, also a subject of Richland 4900, prevented this payment.

The Grammy© withdrawal was entirely appropriate; without penalty; and made with Levenson present over the urging of Christie's counsel that it remain in the sale.

Christie's counsel advised that the Academy which produces Grammys© uses strongarm tactics to try to avoid sales of Grammys© such as James Brown's because there have no legal right to stop the sales. Media reports of two Grammy sales of the Stevie Wonder's Grammy© support Christie's position.

Because Cannon, Dallas, Forlando, PG and Levenson clients had all taken action to chill the July 17, 2008 Christie's sale, and the projected sale price of the Grammy© was small, Buchanan and Pope made the wise business decision not to incur the legal costs of defending the sale. The James Brown Grammy© was returned. With thousands of other James Brown items, it was placed by Buchanan and Pope in a museum for safekeeping pending

## **b. The Attorney General's Efforts to Stop Appeal of the McMaster Settlement**

On July 29, 2009, as Brown's documents required, Buchanan and Pope appealed the McMaster Settlement.

The Attorney General, now controlling a \$100 Million Foundation, wanted to stop the appeal. So did lawyers whose \$20 Million in contingency fees was threatened.

The Attorney General had the services of Bauknight, Trustee of his Legacy Trust. He also had the dozen NP lawyers who have represented the Legacy Trust – and been paid from funds Brown gave his "I Feel Good" Charity – for seven years.

In the summer of 2009 Bauknight and NP, joined by the Attorney General, began to assert that Buchanan and Pope had been replaced out of concerns for mismanagement.

The claim was false.<sup>18</sup> The Attorney General knew it was false.

Bauknight and NP, aided by the Attorney General, virtually ignored the \$17 Million Cannon had taken from funds Brown gave the Foundation. Instead they searched Brown's 150 + boxes of files for problems caused by Buchanan and Pope.<sup>19</sup>

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the outcome of the Will/2000 Trust challenges.

It is now known that the inaccurate Grammy © claim referenced by the Supreme Court in the *Wilson* decision was planted on the Kilpatrick Stockton ("KS") website in January 2011 when KS was working with Bell/Forlando, and Attorney General Wilson's office was secretly working with Forlando, and also working with James Trigg of KS.

Robert Potter, Esq., of KS, who was attributed with stopping the sale, informed Defendant that he had no knowledge of the post. [See Affidavit of E. Alexander, Aiken 1337.]

18 In addition to the direct involvement of Attorney General McMaster and Jones in numerous matters, including approving the Christie's sale, Jowers was invited to every PR/Trustee meeting held by Buchanan and Pope. Auditor Sandra Matthews examined the Estate/2000 Trust's monthly bank statements and whatever additional documents she requested to see. Jones, and then Robbie McNair, were assigned to the David Cannon criminal matter, which was handled by the Attorney General, and not the Barnwell solicitor. Chief Deputy John McIntosh and now-solicitor Robert Cook appeared on pleadings with the Attorney General. J.C. Nicholson II was involved in the Attorney General's rejection of the 2009 CORBIS/GreenLight Publicity Rights contract protected to bring in about \$2 Million per year for two years, in addition to the copyright royalties.

19 Documents obtained in a FOIA request made after the Cannon plea show that in 2009 NP lawyer Freddie Kingsmore, Esq. was interviewed by SLED, which was investigating takings from James Brown by Cannon. Kingsmore produced an Inventory of the many boxes made by Buchanan and Pope, and annotations compiled by NP with the assistance of Attorney General. Neither the Attorney General nor Kingsmore notified SLED of the \$5

In the fall of 2009 the Attorney General and others secured an order of Judge Early which prevented Buchanan and Pope from receiving even costs as they pursued the appeal of the McMaster Settlement. Bauknight and the NP lawyers, now poised to be paid from funds Brown gave his Private Foundation, became the spokesmen for the Attorney General and settling parties.

It was becoming clear that Buchanan and Pope, even without funds to do so, would carry out their duty to appeal the McMaster Settlement. The Attorney General, Medlin and Levenson needed to destroy their credibility. Medlin came up with an idea.

**c. Devaluing the James Brown Assets to Discredit Buchanan and Pope** In August 2009 Medlin suggested that a ruling related to the Estate of Harlan Howard could be used by the Settling Parties to discredit Buchanan and Pope.

Ignoring overwhelming evidence that Brown's assets had been properly valued at about \$100 Million less the \$15 Million TIAA debt, Medlin suggested that Brown's worldwide music empire should be valued at 6 - 8 times annual royalties<sup>20</sup>. He suggested Brown's Publicity Rights – the right to exploit his famous image and persona – should be valued at zero.

A year later, ignoring the *Gigniliatt* decision and the facts, Jones told the Court of

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Million "check to nobody" Cannon cashed in 1999.

In 2010 Cannon was charged with taking more than \$12 MM and a 2008 forgery. He was not charged with taking the \$5 Million "check to nobody." The Attorney General's office, not the local solicitor, handled the Cannon criminal matter until his October 2011 *Alford* Plea. He was designated as a witness against Buchanan and Pope in Richland 4900.

<sup>20</sup> Howard was a country music writer. His accountant valued Howard's copyrights on the estate tax return at 6-8 time annual revenues – the time each song was expected to last. The IRS accepted the appraisal. About 850 of Brown's 900 copyrights had been valued in 2006 by the Royal Bank of Scotland at \$42 million, about 14 times annual revenues. Professor Einhorn, with whom Buchanan consulted – but who had not been hired when the McMaster Settlement was reached – suggested that 15 - 20 x annual revenues was more appropriate for Brown.

Appeals in the *Wilson v. Dallas* appeal that Bauknight had reviewed a draft appraisal that would show that Brown's assets were worth less than \$12 Million when he died. He said that the final "appraisal" which would support this valuation would come within a few weeks.

The appraisal did come. It was even lower than Jones had predicted: \$4.7 Million. Supported by the Attorney General, NP lawyers Rick Reames, Esq., and Kingsmore, presented this startling devaluation to the IRS. They told the IRS that Tommie Rae was Brown's spouse. They told the IRS that James Brown's "I Feel Good" Charity was worth about \$3 Million when he died. They did not tell the IRS that \$2 Million of that \$3 Million would be taken out for private individuals.

In the fall of 2010 NP, Bauknight, the Attorney General and other Settling Parties decided to withhold the September 2010 "appraisal" and the claimed \$4.7 Million from the appellate court until all the briefs had been filed. Eight months would elapse between the arrival of the "appraisal" in September 2010 and its disclosure to the Supreme Court in May of 2011. By then Wilson would be Attorney General.

**d. Attempts by Buchanan and Pope to Stop Richland 4900**

In March 2010 Medlin threatened that Jones had already hired Wingate. He said Wingate was already working on the complaint that would become Richland 4900. He said Buchanan and Pope would be sued if they did not drop the appeal.<sup>21</sup>

A similar threat was made to Buchanan's and Pope's *pro bono publico* lead attorney,

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<sup>21</sup> The Medlin threat is documented in Buchanan's and Pope's records. It was made to Elizabeth Van Doren Gray, who represented Buchanan in the Forlando Federal Suit. Buchanan reported the threat to Pope the following day.

James B. Richardson, Jr., by Kingsmore.<sup>22</sup>

In response, Buchanan and Pope presented the Attorney General and Settling Parties with a detailed Agreement Among Successors to Decedent which gave the Attorney General everything he got in his settlement, with only two conditions:

1. GALs needed to be appointed for the minors whose \$285,000 Education Trusts were affected; and
2. The proposal had to be approved by the Appellate Court.

Despite repeated prompting of Kingsmore by Richardson, the Attorney General, and Settling Parties refused to respond to the proposal.

Instead, they sued.

**e. The Attorney General's Multiple Roles in Richland 4900**

Documents made public after 2013 show that between May 12 and May 19, 2010, Wingate, the Attorney General's staff, NP and other Settling Parties were deeply involved in revisions to the Richland 4900 complaint, as well as who would sign the complaint; and the form of the Wingate Litigation Agreement.

In the end, neither the AG nor most of the seventeen Plaintiffs signed the Wingate Litigation Agreement. It was, instead, signed by Bauknight, Levenson, Bell and Medlin.<sup>23</sup> McMaster signed a letter approving the suit.

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<sup>22</sup> By March 2010 NP and the Attorney General had tried to stop the McMaster Settlement appeal by securing a September 2009 Order from Judge Early preventing all payments to fiduciaries. Richardson, however, advised the Court in 2010 he would be serving *pro bono publico* as lead counsel. This reduced the cost of the 4-year appeal to about \$50,000.00.

<sup>23</sup> There is growing evidence that most Richland 4900 individual Plaintiff/CC Defendants were not even aware that Richland 4900 was filed until after it was filed. Wingate did not comply with the requirements for a contingency fee contract. And the Attorney General, for the first time in the history of the State – so far as Defendants could ascertain – became a Plaintiff in a tort lawsuit against a S.C. citizen in which he shares a private lawyer with nonresidents and in which he was not a signatory on the pleadings.

The Attorney General has multiple roles in Richland 4900, as does Bauknight.

The Attorney General is a named party. He also controls Bauknight through his power over the Legacy Trust. And Bauknight is also a named party "on behalf of" the Attorney General.

**f. The Status of Richland 4900 When McMaster Left Office<sup>24</sup>**

The negative impact on Buchanan and Pope of being sued by the Attorney General was immediate. Their professional negligence insurance – already strained from the Forlando Federal Suit – would be cancelled. They were sued by Cincinnati, which denied coverage.

Pope, in a position to serve as a consultant and expert, was rendered worthless to clients by a lawsuit by the Attorney General claiming she had breached her fiduciary duty and committed breaches of trust.

But Richland 4900 had defects.

Wingate had failed to timely respond to the counterclaims of Buchanan and Pope, and had filed a motion for relief from default.

Judge L. Casey Manning had denied Buchanan's and Pope's Motion to Dismiss, which was made on multiple and detailed (and correct) grounds, including Due Process and other grounds related to the Attorney General's using a private law firm with Tommie Rae and

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<sup>24</sup> In his 2016 deposition in Aiken 1337, Jones refused to (and was directed by Wilson's staff not to) answer questions about transactions and communications with Tomirae, the Levenson clients, Bauknight and their attorneys from 2008 to May 8, 2013. He based his refusal on the Joint Interest Doctrine the Attorney General's office claims with all Richland 4900 Plaintiff/CC Defendants and their counsel from the time they joined the McMaster Settlement Deal until it was finally overturned.

Jones further asserted that the Common Interest Doctrine shields transactions and communications with Bauknight and his dozen NP lawyers for the above period, and, in addition, since Judge Early reappointed Bauknight before the remittitur from *Wilson v. Dallas* was handed down.

In his August 2016 deposition in this case, McMaster testified he knows almost nothing about what happened during this period; relied on Jones; and did not authorize Sweeney, Wingate & Barrow, P.C. ("Wingate") to file Richland 4900 on behalf of the State/Attorney General.

others. But Buchanan and Pope would be seeking early appellate review in an effort to avoid the costs of litigation of a suit they believed to be improper.

McMaster had named indicted felon Cannon, Dallas and others as witnesses. The October 2010 Witness List produced by the Attorney General indicated there was no evidence to support Plaintiffs' claims.

The Attorney General's \$12 Million value claim made in the Appellate case, in addition to being incorrect, directly contrasted with the claim in Richland 4900 that Buchanan and Pope should have accepted a \$100 Million offer made for Brown's assets in 2007.<sup>25</sup>

Buchanan and Pope wanted to save the "I Feel Good" Trust. They wanted to be reinstated because they had become the only two people who fully understood the litigation and wanted to protect the "I Feel Good" Charity. They had made clear to the Attorney General that they wanted to stay only long enough to defend the estate plan; protect the "I Feel Good" Charity's copyrights; and set up a healthy board – hopefully with one of the three seats reserved for a descendant of James Brown.

With a new Attorney General, there seemed to be hope of resolution. It did not come.

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<sup>25</sup> The offer referenced in the Richland 4900 Complaint was made by TJBL, an entity to be formed, on October 12, 2007. At the time Dallas and Al Bradley were PR/Trustees. It was the first of three TJBL Letters of Intent proposing to purchase the Brown assets for between \$90 Million and \$100 million, the last being in March 2008. All required that the Estate/2000 Trust be able to give good title. Both the December 2007 Will/Trust challenges and the January 2, 2008 Forlando Federal Suit, were impediments to giving good title at the time.

Cannon and Dallas were pushing a sale because from a \$100 Million sale each had documented an expectation to receive more than \$5 Million and options or a "kickback" from the IPO to be floated.

It was later learned that on December 5, 2007 – less than a month before he sued to enjoin the 2000 Trust and reinstate the Cannon Trustees – Forlando was given a 39% stake in TJBL without making any contribution.

TJBL was represented by PG, which simultaneously represented Forlando, with Bell, in the Federal Suit.

## **II. Richland 4900 Under Attorney General Alan Wilson**

### **a. The Legacy Trust's Amendments and Wilson's Alliance With Forlando <sup>26</sup>**

Just before leaving office McMaster, with Terry Brown and others, secretly amended the Legacy Trust to allow Bell's client Terry Brown to begin due diligence on a sale of the James Brown assets under the rights of first refusal ("ROFR") McMaster had given him. Four days later, Terry assigned the ROFR to Forlando.

Within days Attorney General Wilson, through Jones, was distributing documents and arranging meetings with PG and others related to a sale. Forlando would later say that Bauknight showed no interest in a potential sale of as much as \$200 Million to agents of Oprah Winfrey. The Attorney General and Bauknight would tell the Courts the \$4.7 Million value was correct and there were never any offers. In 2013 Bauknight would even claim that the assets could not be sold.

### **b. Wilson Seeks Sanctions Against Buchanan/Pope for Cannon Brief**

In January 2011 one of Attorney General Wilson's first acts in James Brown was to seek sanctions against Buchanan and Pope for filing a brief that would have helped collect from Cannon for the benefit of Brown's Charity the approximately \$1.2 Million cost of the 2007 suit ("Case 122") which resulted in the resignations of the Cannon PR/Trustees.

The Appellate Court did not grant sanctions. But it did strike the brief. And NP

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<sup>26</sup> Forlando and Bell have been closely aligned with the Cannon Trustees and PG since 2007. In July 2007, just before Buchanan and Pope discovered the first \$900,000.00 of the approximately \$17 Million David Cannon took from James Brown, PG lawyer Wm. Shearer sent David Cannon and Buddy "Buddy" Dallas documents to change the situs of Brown's 2000 Trust to Georgia to escape increasing scrutiny by Judge Early and the SAs. The documents were defective, and the move aborted. Bell had been known since 2008 for his dirty tricks, including filing false affidavits and multiple grievances against Levenson. Bell accused Levenson of a forgery on Levenson's 2007 contract with Terry and Forlando Brown and others to be paid \$150,000 + a 30% contingency for what he could get the "family" from Brown's "I Feel Good" Charity.

lawyers, Bauknight and Tommie Rae were emboldened by the aggressive stance the new Attorney General took against Buchanan and Pope.

**c. Wilson's False Felony Claims Against Buchanan and Pope**

The devaluation of James Brown's music empire to less than 1/15 its real value would have had very little traction in the hands of disgruntled heirs and a claimed spouse. In the hands of Attorney General Wilson the claim that Buchanan and Pope had intentionally devalued Brown's music empire by \$79 Million on a sworn estate tax return for the improper purpose of securing a \$5 Million commission they did not deserve did not just damage their reputations and careers. It was a claim that they had committed a crime.

Anyone with doubt about the impact of a sworn false statement to the IRS which violates 18 U.S.C.A. 1001 need only read *In re Chaplin*, S.C. Supreme Court Op. 27658 (Decided August 24, 2016).

The Attorney General, NP and Bauknight began making the false felony claim in May of 2011. They continue to make it today. It has caused the damage which they were planning to inflict as the Attorney General, Medlin, NP and Bauknight structured Richland 4900.

The false devaluation claim also had the intended effect with the Courts. Buchanan and Pope were not reinstated. The Attorney General was happy with what Bauknight had done. As a result, Judge Early excluded Buchanan and Pope from James Brown proceedings. Wilson remained in control of the Legacy Trust.

**d. Attorney General Wilson and James Brown FOIA Requests**

Attorney General Wilson is charged with the enforcement of the South Carolina Freedom of Information Act. Since 2011 he has supported Bauknight's and Wingate's

attempts to enter three FOIA suits; have them transferred to Richland County; and have them subordinated to discovery in Richland 4900.

There is no person other than Attorney Wilson who can address these unprecedented acts.

**e. Attorney General's Suppression of the So-Called Hynie "Diary"**

In his August 2016 deposition McMaster, who had reviewed the so-called Hynie "diary" recalled that his office had concluded that Tommie Rae was not Brown's spouse. He was not the only one. The same conclusion has been reached by six other James Brown fiduciaries and at least eight of Brown's claimed children. The so-called Hynie "Diary" supports that conclusion.

The Hynie "Diary" was public from 2007 until 2008. It is public again. It shows that Tommie Rae was married and living in Texas before she met Brown. It shows that after Brown discovered she was married during their 2001 ceremony he refused to marry her, and she was upset.

Between 2011 and its release in 2015, Wilson worked with Tommie Rae and Bauknight – who is a fiduciary for Tommie Rae under the Legacy Trust – to conceal this important document. He even subpoenaed a reporter's notes and sources. Wingate withdrew the subpoena only after Wilson received harsh criticism from the national media.

In 2015 Attorney General Wilson advised Defendant he would not seek reconsideration of the Tommie Rae spousal decision.

The Attorney General remains a Co-Plaintiff in Richland 4900 with Tommie Rae. Questions about his relationship with her are not simply relevant. They are essential to this case. Only Wilson can answer these questions.

**f. False Representations About Federal Copyright Act Termination Rights**

In 2011 the Attorney General and Bauknight made representations to the Supreme Court about the Federal Copyright Act which are simply not correct.

In 2015, apparently as a result of the application of these incorrect principles, Tommie Rae and other Will/Trust contestants were paid \$2 Million on the sale of three of James Brown's Charity's 900 songs.

The information about the sale came from Tommie Rae. It is not privileged. It is essential. Only Wilson can answer about his actions.

**g. The \$700,000 Award to James B's GAL and the GAL's Attorney**

In 2007 Tommie Rae entered into a contingency fee contract with the lawyer who would become the lawyer for her son's GAL.<sup>27</sup> This relationship was not disclosed for eight years.

In 2013 the attorney for the GAL filed a Petition for Rehearing in *Wilson* detailing how Brown's assets were worth only \$5 Million at death. He explained in detail how the still-secret "appraisal" arrived at a \$4.7 Million value for Brown's worldwide music empire.

In 2013, after he had refused the \$300 DNA test for six years, James B. and Tommie Rae filed Termination Notices attempting to terminate royalties payable to Brown's "I Feel Good" Charity from about 90 songs over ten years.

In 2014 the GAL was allowed to enter his mother's spousal proceeding, even though

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<sup>27</sup> By 2016 Judge Early, in addition to the contingency fee Peter Shahid had contracted with Tommie Rae, awarded the GAL and Shahid approximately \$700,000.00 in fees for James B. from what James B., the Attorney General and Bauknight had told the Supreme Court was a \$5 Million estate. The award included \$5,000 for each of 40 depositions Shahid planned to take. Neither the Attorney General nor Bauknight challenged the \$700,000 award.

his potential interest in both Brown's Estate and Termination Rights (if he is a child) would be reduced by up to half if Tommie Rae is successful.

In 2015 the GAL and attorney asked Judge Early to approve a payment to them estimated to be about \$700,000.00. Even though he had refused a paid-for DNA test in 2008, and James B's maximum correct share of the Estate (if he succeeds in having his mother declared Brown's spouse) is 1/24 or less, the GAL said he and the attorney were entitled to \$500,000.00 for their work to date. And another \$5,000 for each of the 40 depositions they intended to take.

Judge Early granted the request. Bauknight, an agent for James B. in Richland 4900, did not complain. The Attorney General, who had not presented a scintilla of evidence of any loss caused by Buchanan and Pope, did not complain about this payment to his Co-Plaintiff.

An inquiry into the Attorney General's relationships with James B., his co-Plaintiff, and these expenses is essential to this case. Only Wilson can answer.

#### **h. Wilson Meets with Pope Between Wilson Decisions**

Wilson and Pope have unique and essential knowledge about her visit to him on March 6, 2013, between the two *Wilson* decisions. Pope requested the conference. She drove from Spartanburg where she was helping care for an ill daughter. She urged Wilson to save the "I Feel Good" Trust. She explained how crucial it was to correct the false IRS filings. She urged that Buchanan be replaced, only to resign with dignity after the meritless attacks. She asked only to stay to finish defending the estate plan.

Wilson excused himself to have lunch with someone from NP.

Wilson called Pope a few days later to say he would be seeking to get out of Richland

4900.

Years later the vitriolic attacks have continued. The false felony claim is still being lodged. Pope's career remains in shambles. She cannot obtain professional insurance.

Only Wilson can testify about this meeting; the call; and his continued, false attacks.

### **III. The Attorney General Must be Deposed to Prevent Injustice**

#### **a. The *Morgan* Rule is Inapplicable to Richland 4900**

The Attorney General asserts that *United States v. Morgan*, 313 U.S. 409, 422 (1941) and the cases which follow support the prohibition of his deposition. Neither *Morgan* nor its progeny lends support to the Attorney General's position under the extraordinary circumstances of this case.

*Morgan* involved an attempt to depose the U.S. Secretary of Agriculture to probe intra-governmental policies developed by the Department. The case stressed not only the fact that this high official was busy, but that allowing such depositions would impair the necessary free flow of information with the government in its communications related to the establishment of its policies.

Attorney General Wilson's deep involvement in this case in three capacities over five years simply has nothing to do with government policy. Particularly troublesome, and an essential subject of inquiry, is why the Attorney General has allowed Bauknight to continue to speak on his behalf long after he has claimed Bauknight has no authority to do so.

Also, since January 2011, Attorney General Wilson has had absolute authority under the Wingate Contract to bring this suit to an end by terminating Bauknight; properly dissolving the Legacy Trust; and correcting false IRS filings and criminal accusations against Buchanan and Pope. Attorney General Wilson's testimony is essential. It cannot

come from anyone else.

Attorney General Wilson asserts that *Carl Zeiss Stiftung v. V.E.B. Carl Zeiss, Jena*, 40 F.R.D. 318, 325-26 (D.D.C.1966), *aff'd*, 384 F.2d 979 (D.C.Cir.), cert. denied, 389 U.S. 952 (1967) suggests that he should be exempt from being deposed because he is a high ranking government official with greater constraints than other witnesses. He asserts the judiciary is not authorized "to probe the mental processes of an executive or administrative officer."

The proposed deposition is about the actions of Wilson as a party and in multiple roles.

In *Zeiss* the government was not a party. Here the Attorney General is a Plaintiff; a Trust he controls is a Co-Plaintiff; and the Trustee of that Trust has been allowed for years to claim he speaks "on behalf of" the Attorney General while also serving as fiduciary for Tommie Rae and Will contestants.

In *Zeiss*, after producing 4,500 documents in a case in which it was not a party, the government claimed executive privilege as to 49. The Attorney General provided an Affidavit stating that the information sought consisted of intra-departmental memoranda and inter-departmental documents. In the affidavit the Attorney General stated his conclusion that production of the 49 documents would be contrary to public policy.

The Attorney General is a party. He has produced no affidavit. The circumstances related to the deposition of Wilson in this case bear no relation to *Zeiss* Court, which stated:

Here, unlike the situation in some cases, no charge of governmental misconduct or perversion of governmental power is advanced. Since the Government is not a party to the New York action, no problem of an unfair litigating advantage is presented. All that is involved is a collision

between what the claimants feel they need to see and what the Government conceives is a must defend from outside scrutiny.

The problems cited by the *Zeiss* Court as missing from that case do exist in Richland 4900.

*In re United States* (Kessler), 985 F.2d 510, 512 (11th Cir.1993) (per curiam) (quoting *Simplex Time Recorder Co. v. Secretary of Labor*, 766 F.2d 575, 586 (D.C.Cir.1985)) stands, under its facts, for the proposition that if other persons can provide the information sought, discovery will not be permitted against such an official. *Id.* at 513; see also *In re FDIC*, 58 F.3d 1055, 1062 (5th Cir.1995). The March 6, 2013 interview with Wilson; his personal call; and his acts described above make clear that only he can give the essential testimony.

The Attorney General cites *In re U.S.*, 197 F.3d 310, 313-14 (8<sup>th</sup> Cir. 1999) for the proposition that "exceptional circumstances" must exist before the involuntary depositions of high agency officials are permitted. *In re Office of Inspector General*, 933 F.2d 276, 278 (5th Cir.1991) (per curiam) (citing *EEOC v. K-Mart*, 694 F.2d 1055, 1067-68 (6th Cir.1982)). For the proposition that "[h]igh ranking government officials have greater duties and time constraints than other witnesses" he cites *In re United States*, 985 F.2d 510, 512 (11th Cir.) (per curiam), cert. denied, 510 U.S. 989, 114 S.Ct. 545, 126 L.Ed.2d 447 (1993). The facts of Richland 4900; the false felony claim; the false claims to the Supreme Court about the Federal Copyright Act; and the unconstitutional nature of Richland 4900 are just some of the exceptional circumstances present here.

A review of the cases shows that the alliance of two Attorneys General with private individuals, many non-residents to destroy the careers and reputations of two attorneys is

more extraordinary than any of the circumstances of the cited cases. When added to the fact that the Attorney General has allowed his attack on these people to be paid for, in large part, by a charity he had a duty to protect, the facts are clearly both exceptional and compelling.

The entire record of Richland 4900; the false felony claim; the \$2 Million payment of Will contestants; and the FOIA interference to prevent release of public documents to prevent disclosure of the Hynie "diary" all make a clear showing that the deposition is needed to prevent injustice to the Defendant who is seeking the deposition. Discovery by interrogatory and requests for admissions are not an adequate means of discovery in this unprecedented case.

The Attorney General is suing in a representative capacity, but also through a Trust created by the use of public power and a citizen he has empowered to act "on his behalf."

This deposition does not involve annoyance, embarrassment, oppression, or undue burden. The opposite is true. It is the Attorney General who, for five and a half years, has used his high office to burden and oppress Defendant.<sup>28</sup>

Citing *United States v. Northside Realty Associates*, 324 F.Supp. 287 (N.D.Ga.1971), the Attorney General suggests the purpose of the deposition is to probe the mind of Wilson, "to determine why he exercised his discretion as he did in regard to a particular matter." The bulk of the Wilson deposition is expected to probe not his mind, but his actions. This testimony is necessary to prevent injustice to the Defendant. The trial court should

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<sup>28</sup> An egregious example to the harassment is the career-threatening claim Attorney General Wilson has lodged against Buchanan and Pope intentionally since 2011: that they overstated James Brown's assets on a sworn Estate Tax Return by \$7 Million to secure a \$5 Million commission. Just this week the Supreme Court has confirmed that such a claimed violation of 18 U.S.C. A § 1001 can destroy a legal career. See *In re Chaplin, supra*.

consider the SCRCF, to which the Attorney General subjected himself when he brought this case. It should consider those rules with other factors, including [1] the substantiality of the case in which the deposition is requested; [2] the degree to which the witness has first-hand knowledge or direct involvement; [3] the probable length of the deposition and the effect on government business if the official must attend the deposition; and [4] whether less onerous discovery procedures provide the information sought." *Id.* at 613-14, 563 A.2d at 632.

In that light it will be clear that Wilson should be deposed.

The depositions (in another case) of the two assistants who have worked on James Brown matters for nine years were lengthy only because deponents refused, were directed not answer; or were directed to limit their answers to most questions. The directions not to answer did not come only from Attorney General Wilson. They came from private NP lawyers who serve Tommie Rae and the Levenson clients.

It is patently in the public interest that the Attorney General who has *personally* worked for five years to destroy the only two persons who worked continuously for six years to save the James Brown "I Feel Good" Charity be deposed.

The Attorney General cites *Wirtz v. Local 30, International U. of Operating Engineers* (S.D.N.Y. 1963) 34 F.R.D. 13, 14, for the proposition that "... common sense suggests that a member of the Cabinet and the administrative head of a large executive department should not be called upon personally to give testimony by deposition ... unless a clear showing is made that such a proceeding is essential to prevent prejudice or injustice to the party who would require it." Common sense shows that a deposition is necessary here to prevent prejudice and injustice.

**b. The Attorney General's Action Makes His Deposition Essential**

The Attorney General's opposition to Defendant's Motion to Disqualify Wingate, a private lawyer, from being sole counsel to the Attorney General, Tommie Rae and others stated: "this is a tort action plain and simple." Attorney General Wilson said, quoting Judge Couch in his order in *Eli Lilly*:

if Defendant Pope still challenges the Attorney General's place in a private tort action against private, individual defendants, Plaintiffs will reiterate the law set forth by Judge Couch in his prior Order.

There are plain and simple rules applicable to the parties to a private tort action the Attorney General has chosen to bring against private citizens. He cannot ignore the Rules of Civil Procedure. The standard for taking a deposition or discovery in general is "reasonably calculated to lead the admissible evidence."

While Defendant does not waive her position that this suit is illegal and has been used to violate her Due Process, Equal Protection and First Amendment Rights, those matters have been temporarily decided in favor of the Attorney General. Now he must follow the rules. Defendant has found no other case in the State or nation where an Attorney General joins with non-residents of the State to bring a tort suit against his own citizens, using solely a private lawyer.

Our Supreme Court is clear when the Attorney General enters litigation he must play by the rules. As stated by the Court in *Ex Parte Condon*, 583 S.E.2d 430, 354 S.C. 634 (2003), "this Court has never held that the Attorney General's authority . . . [to protect the public interest] is unlimited or somehow uniquely exempts him from acting in accordance with the Rules of Civil Procedure" [citing *State v. Beach*, 271 S.C. 425, 248 S.E.2d 115

(1978)].

Defendant submits that barring the deposition of Attorney General Wilson would constitute reversible error in this case.

This Memorandum is based on the entire record of this case and the entire record in Aiken Case 2013-CP-02-1337, of which the Court is asked to take judicial notice.

#### **Conclusion**

For each of the reasons states herein the Protective Order of Attorney General Wilson should be denied.

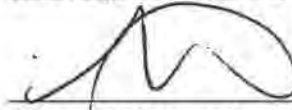
In view of the unprecedented circumstances of this Case, the deposition of Wilson is essential and must be taken to avoid further injustice to the Defendant. Only Wilson can give the required testimony. No substitute person or procedure is reasonable. Because these matters were known when he filed the motion, the Attorney General should pay Defendant's legal fees and costs for the defense of this matter.

**[SIGNATURE BLOCK APPEARS ON FOLLOWING PAGE]**

Respectfully submitted,

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August 29, 2016

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he has served a copy of the foregoing document on counsel for Movant and Plaintiff/CC Defendants on August 29, 2016, by emailing and depositing a copy of the same into the United States Mail, First-class postage prepaid, addressed as follows:

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JEANETTE W. MCBRIDE  
2016 AUG 29 AM 10:12  
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RICHLAND COUNTY



Adam T. Silvernail

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
Russell L. Bauknight, et al,	)	No. 2010-CP-40-4900
	)	
Plaintiffs,	)	
	)	
v.	)	<b>MEMORANDUM IN SUPPORT OF</b>
	)	<b>MOTION FOR PROTECTIVE ORDER</b>
Adele Pope,	)	<b>AS TO DEPOSITION OF</b>
	)	<b>HENRY MCMASTER</b>
Defendant,	)	
	)	

RICHLAND COUNTY  
 FILED  
 16 NOV 21 AM 11:28  
 CHARLETTE M. HERRIDGE  
 C.C.P. & G.S.

Pursuant to Rules 26(c) and 30(j)(3), SCRC, the objections made during the deposition of Henry McMaster on August 18, 2016, on the grounds of attorney –client or work product privileges should all be sustained. A list of the objections is attached along with the pertinent pages from the condensed transcript of the deposition.

**II**

**ATTORNEY- CLIENT PRIVILEGES APPLY TO QUESTIONS RELATED TO THE JAMES BROWN CASES**

“The attorney-client privilege protects against disclosure of confidential communications by a client to his attorney.” *State v. Owens*, 309 S.C. 402, 407, 424 S.E.2d 473, 476 (1992). “This privilege is based upon a wise policy that considers that the interests of society are best promoted by inviting the utmost confidence on the part of the client in disclosing his secrets to this professional advisor...” *Id.* In *State v. Doster*, this Court explained the attorney-client privilege as follows: “(1) Where legal advice of any kind is sought (2) from a professional legal adviser in his capacity as such, (3) the communications relating to that purpose (4) made in confidence (5) by the client, (6) are at his instance permanently protected (7) from disclosure by himself or by the legal adviser, (8) except the protection be waived.”

*Tobacoville USA, Inc. v. McMaster*, 692 S.E.2d 526, 529–30, 387 S.C. 287, 293 (2010).

Certainly, these privileges would apply to communications between the Attorney General and his

staff related to the James Brown cases. The breadth of the privilege is demonstrated by its application in *Tobaccoville* to consultation of the Attorney General with the National Association of Attorneys General. *Id.*

## II

### Work Product Privileges Apply Where Asserted

*In re Grand Jury Proceedings #5 Empanelled January 28, 2004*, 401 F.3d 247, 250 (4<sup>th</sup> Cir., 2005), sets forth standards for application of the doctrine as follows:

The work product privilege protects an attorney's work done in preparation for litigation. *In re Grand Jury Proceedings*, Thurs. Special Grand Jury Session Sept. Term, 1991, 33 F.3d 342, 348 (4th Cir.1994). It is premised on the idea that “[n]ot even the most liberal of discovery theories can justify unwarranted inquires into the files and the mental impressions of an attorney.” *Hickman v. Taylor*, 329 U.S. 495, 510 (1947). The privilege encompasses both “fact” work product and “opinion” work product. Fact work product, which consists of documents prepared by an attorney that do not contain the attorney's mental impressions, “can be discovered upon a showing of both a substantial need and an inability to secure the substantial equivalent of the materials by alternate means without undue hardship.” *In re Grand Jury Proceedings*, 33 F.3d at 348; *see also In re John Doe*, 662 F.2d 1073, 1076 (4th Cir.1981) (defining fact work product). Opinion work product, which does contain the fruit of an attorney's mental processes, is “more scrupulously protected as it represents the actual thoughts and impressions of the attorney.” *In re Grand Jury Proceedings*, 33 F.3d at 348. Because the work product privilege protects not just the attorney-client relationship but the interests of attorneys to their own work product, *Hickman*, 329 U.S. at 511, the attorney, as well as the client, hold the privilege. (emphasis added)

*Washington v. Follin*, 2016 WL 1614166, at \*15 (D.S.C., 2016) quoted as follows from

*Hickman v. Taylor*, 329 U.S. 495, 511 (U.S. 1947):

[I]t is essential that a lawyer work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel.... Were [the attorney's work product] open to opposing counsel on mere demand, much of what is now put down in writing would remain unwritten. An attorney's thoughts, heretofore inviolate, would not be his own. Inefficiency, unfairness and sharp practices would inevitably develop in the giving of legal advice and in the preparation of cases for trial. The effect on the legal profession would be demoralizing. And the interests of the clients and the cause of justice would be

poorly served.

This authority makes clear that inquiry into the thoughts and mental processes of the attorney is not permitted under the work product privilege. As noted below, some of the questions below intruded on the work product privilege.

### **III**

#### **THESE PRIVILEGES APPLIED TO QUESTIONS ASKED OF MR. MCMASTER**

The following objections were made on the ground of attorney-client or work product privileges:

##### **Deposition, p. 36**

Mr. McMaster was directed not to violate an attorney-client or work product privilege in response to the question: “and have you come to any independent – because you are a lawyer, any independent opinion, legal opinions about the [James Brown] will or the trust in the estate yourself?” Dep. p. 36, l. 23 – p. 37, l. 6. Most certainly this objection falls within the above authority in that it asks for his mental impressions about the will and trust.

##### **Deposition, pp. 50 and 51**

Work product and attorney client privilege objections were made to two similar questions about whether Mr. McMaster thought that if Sonny Jones had a disagreement with the First Report to Devisees, Beneficiaries and Attorney General, he had a duty to bring it to the attention of the Judge. Dep. p. 49, l. 24 – p. 51, l. 24. These questions ask for the mental impressions of the former Attorney General and would be covered by work product privileges.

##### **Deposition, p. 57**

Work product and attorney client privileges were asserted to a question about whether

Sonny Jones' "comments [were] general or did he sit down with you with very specific items of deficiency" in the performances of Ms. Pope and Mr. Buchannan. Dep. p. 57, ll. 16 – 25. Clearly, this question intruded on attorney client privilege and possibly also mental processes under work product privilege.

**Deposition, p. 59**

Work product and attorney client privileges were asserted to a question about whether Sonny Jones came to Mr. McMaster and "said generally Pope and Buchanan aren't doing their job, or did he come to you and say, they have not done A,B, C and D?" Dep. p. 59, l. 10 – p. 60, l. 3. Clearly, this question intruded on attorney client privilege. Later, in response to a different question about facts, Mr. McMaster testified that "[t]here was a number of conversations with Mr. Jones, as well as some other people, about the progress of the matter, and it was my conclusion from listening to those, that the Trustees, Administrators at the time were not doing the best job." Dep. p. 112, ll. 8 – 13. He testified that he could not give the deposing attorney "a single specific instance." Dep. p. 112, ll. 17 – 19.

**Deposition, p. 85**

Work product and attorney client privileges were asserted to a question about whether "anybody ever advise[d] [Mr. McMaster] . . . around 2008 that . . . the financial condition of the Estate and Trust was not good." Dep. p. 85, ll. 11 – 25. This question, too, would intrude on attorney client privilege.

**Deposition, p. 105**

Attorney client privilege was asserted and clearly applies as to a request that the witness "explain . . . the basis of the attorney-client relationship between you and [undersigned counsel for the deponent] as we sit here today." Dep. p. 105, l. 23 – p. 106, l. 7.

**Deposition, p. 113**

Work product and attorney client privileges were asserted to questions about whether Sonny Jones' reports to Mr. McMaster were in the context of an attorney client privilege, and "was he your lawyer, or was he giving you work product for work he was doing." Dep. p. 112, l. 25 – p. 114, l. 1. Clearly, such questioning was protected by both privileges as Mr. Jones was a lawyer on Mr. McMaster's staff at the time of the reports.

**Deposition, p. 136-37**

Attorney client and work product privileges were properly asserted as to whether, in bringing case 4900, Mr. McMaster was a "double plaintiff." Dep. p. 136, l. 22 – p. 137, l. 4.

**CONCLUSION**

For the foregoing reasons, the objections made for Mr. McMaster should be sustained and a protective order issue to bar further questioning of this witness about those matters.

Respectfully submitted,

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Attorney General

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BY: 

NOVEMBER 18, 2016

ATTORNEYS FOR HENRY MCMASTER

Deposition of Henry D. McMaster  
August 18, 2016

Page	Line	Objector	Reason
36	23	Smith	Form, privilege, work-product, legal opinions
37	5	Smith	Direct not to answer if it would reveal privileged matter
50	22	Smith	Form, direct not to answer if it would reveal privilege/work-product
51	21	Smith	Direct not to answer if it would reveal privilege/work-product,
57	23	Smith	Direct not to answer if it would reveal privilege/work-product
59	17	Smith	Direct not to answer if it would reveal attorney-client privileged information or work-product (contingent upon the nature of conversation at the time)
85	18	Smith	Form, direct not to answer if it would reveal privilege/work-product
106	2	Smith	Attorney-client privilege
106	6	Smith	Direct not to answer
113	4	Smith	Direct not to answer if it would reveal privilege/work-product
113	25	Smith	Direct not to answer if it would reveal privilege/work-product
135	24	Wingate	Privilege, direct not to answer
136	24	Wingate	Privilege, direct not to answer
137	2	Smith	Form, direct not to answer if it would reveal privilege/work-product
170	5	Wingate	Direct not to answer if it would reveal attorney-client privilege

IN THE COURT OF COMMON PLEAS  
FOR THE STATE OF SOUTH CAROLINA  
RICHLAND COUNTY

DEPOSITION OF HENRY DARGAN MCMASTER

RUSSELL L. BAUKNIGHT, et. al.

and

ALAN WILSON, et. al.

Plaintiff,

vs. CASE NO. 2010-CP-40-4900

ADELE J. POPE

Defendant.

---

DEPONENT: Henry Dargan McMaster

DATE: August 18, 2016

TIME: 10:10 a.m. - 2:37 p.m.

LOCATION: Law Office of Adam T. Silvermail, LLC  
1905 Marion Street  
Columbia, SC 29201

REPORTED BY: SARAH GACIOCH

1 you discuss the document?  
 2 **A. We didn't discuss the --**  
 3 **Q. Contents?**  
 4 **A. -- contents of the document.**  
 5 **Q. Okay. Fair enough.**  
 6 **A. Just the document.**  
 7 **Q. Okay. I'm sort of obligated to ask you that**  
 8 **question.**  
 9 **A. I understand.**  
 10 **Q. That's the way the system works.**  
 11 **A. You ask them, I'll answer them.**  
 12 **Q. Okay. Fair enough. Have you ever seen this**  
 13 **document?**  
 14 **A. I don't think so.**  
 15 **Q. Okay. How about reading through it?**  
 16 **A. Well, Mr. Bundy, it's a long document.**  
 17 **Q. I understand, Mr. McMaster, but this document**  
 18 **has a lot of information in it that I think may**  
 19 **refresh your recollection, may help us get through**  
 20 **this thing quicker, put things in time frame.**  
 21 **MR. WINGATE: Do you have an extra copy**  
 22 **of that, Bill?**  
 23 **MR. BUNDY: Sure. There you go.**  
 24 **A. I have looked at it, but there's a lot more**  
 25 **information in there than I remember --**

1 **Q. I understand. Well, let's look at --**  
 2 **A. -- being privy to.**  
 3 **Q. Certainly. Let's look at the title of the**  
 4 **document. It says, First Semi-Annual Report to**  
 5 **Devises, Beneficiaries, and Attorney General, and**  
 6 **it's for the period -- it's prepared -- it's**  
 7 **submitted by Robert L. Buchanan, Junior, and Adele**  
 8 **J. Pope. Personal Representative/Trustees, Estate**  
 9 **of James Brown, James Brown Irrevocable -- James**  
 10 **Brown 2000 Irrevocable Trust, November 20, '07**  
 11 **through May 2008. You were the Attorney General at**  
 12 **that time; is that correct?**  
 13 **A. That's correct.**  
 14 **Q. So this is a report to, among others to you,**  
 15 **correct?**  
 16 **MR. WINGATE: Object to the form of the**  
 17 **question.**  
 18 **BY THE WITNESS: Well, it says -- says**  
 19 **that on that. It says; devisees, beneficiaries, and**  
 20 **Attorney General.**  
 21 **BY MR. BUNDY:**  
 22 **Q. And the Attorney General at that time was Mr.**  
 23 **McMaster, you?**  
 24 **A. I never saw this document.**  
 25 **Q. You never saw this document?**

1 **A. No.**  
 2 **Q. Okay. Would anyone in the Attorney General's**  
 3 **office have seen it?**  
 4 **A. I would presume that Mr. Jones and others**  
 5 **would have.**  
 6 **Q. Well, do you know how it came to be that this**  
 7 **report was even going to the Attorney General, what**  
 8 **-- what set of circumstances occurred that it would**  
 9 **have required the Trustees and PRs to submit a**  
 10 **report to the Attorney General in this particular**  
 11 **matter, probate matter?**  
 12 **A. I know at some point the Attorney General's**  
 13 **office became concerned about the trust, the James**  
 14 **Brown "I Feel Good" Trust, I think is the name of**  
 15 **it, and we were -- we were contacted by one or more**  
 16 **people saying that things were not going well and**  
 17 **that under the law the Attorney General protects**  
 18 **charitable trusts. So that's when we began looking**  
 19 **into it, and I presume this is a part of that look**  
 20 **into it, but how this report came about, I do not**  
 21 **know.**  
 22 **Q. Is it fair to say that at least in all -- all**  
 23 **probate matters in South Carolina do not require**  
 24 **report to the Attorney General, do they?**  
 25 **A. Not to my knowledge.**

1 **Q. Okay. And under what -- do you have any idea**  
 2 **how many such reports in probate matters the**  
 3 **Attorney General would give on an annual basis?**  
 4 **A. No, I don't.**  
 5 **Q. Is there a particular office, member of your**  
 6 **staff that would be in charge or handle that type of**  
 7 **legal work?**  
 8 **A. I do not know the answer to that. Normally**  
 9 **it would go to, of course, the civil section if we**  
 10 **got a complaint or a question or a concern from the**  
 11 **public, which we get all the time about a lot of**  
 12 **things. Someone -- it would be channeled to**  
 13 **someone. It would have been someone in the civil**  
 14 **division, could have come into me, could have come**  
 15 **into one of the legal assistants, but it would've**  
 16 **ended up in the right place, and that would've been**  
 17 **someone in the civil division if it involved a**  
 18 **charitable trust.**  
 19 **Q. Do you have any knowledge, as you sit here**  
 20 **today, about who that person was or who ultimately**  
 21 **ended up handling that matter for the Attorney**  
 22 **General?**  
 23 **A. That was Sunny Jones.**  
 24 **Q. Sunny Jones?**  
 25 **A. Sunny Jones and J. R. Richardson, Nicholson,**

1 and some others were involved as well.  
 2 Q. What is Mr. Jones' position or job  
 3 description or title?  
 4 A. I think he was then and is -- still is a  
 5 Senior Assistant Attorney General.  
 6 Q. Are cases assigned to specific lawyers in the  
 7 office when you were the Attorney General?  
 8 A. It depends. If there were a lawyer who had a  
 9 particular skill that would be helpful in the case,  
 10 then they would -- whoever the supervisor is for  
 11 that section would normally ask them to handle it.  
 12 Q. And --  
 13 A. I think most of them just routinely went to  
 14 certain people, unless it developed there's somebody  
 15 else better to do it.  
 16 Q. And in this case --  
 17 A. Now, a death penalty appeal or something like  
 18 that --  
 19 Q. Sure.  
 20 A. -- naturally --  
 21 Q. Sure. Sure. Sure.  
 22 A. -- would go to Mr. Zelenka. All the criminal  
 23 things would --  
 24 Q. Sure.  
 25 A. -- go to criminal.

1 Q. Yeah. Let's just focus on this particular  
 2 probate matter. Is it -- is Sunny Jones the one  
 3 that this matter was handled by? Is he the one that  
 4 handled --  
 5 A. Yes.  
 6 Q. Okay.  
 7 A. He was the primary lawyer on this case.  
 8 Q. Okay. And who was the supervisor that  
 9 assigned it to him?  
 10 A. It would have flowed naturally to him.  
 11 Q. Okay. Just in the normal course of things?  
 12 A. Yes, or it could have been Mr. McIntosh, John  
 13 McIntosh.  
 14 Q. Okay. But without -- is it fair to say that  
 15 the custom and usage in your office would have been  
 16 at that time in the 2006, '07 time frame, that if  
 17 somebody complained about a charitable trust, this  
 18 kind of situation, that the natural person that  
 19 would have gone to in the office would have been  
 20 Sunny Jones?  
 21 A. I think that's reasonably accurate. He would  
 22 have -- I think that's reasonably accurate, yes.  
 23 Q. And in fact --  
 24 A. Because there's no iron-clad rule on these  
 25 things.

1 Q. I understand that, but -- and in fact, it  
 2 went to him?  
 3 A. No doubt about that.  
 4 Q. All right. All I'm trying -- all I'm trying  
 5 to understand is a little bit of the workings of the  
 6 office, and that this was not anything unusual or --  
 7 that y'all were doing unusual in terms of assigning  
 8 it to Mr. Jones and handling it in the matter in  
 9 which you did.  
 10 A. No. That would have been the normal thing --  
 11 Q. Okay.  
 12 A. Normal way for this case to -- this  
 13 complaint, this question to have --  
 14 Q. So at least initially, when you first -- when  
 15 your office first became aware of complaints,  
 16 wherever they came from, there was nothing  
 17 particularly unusual about this case from y'all's  
 18 standpoint?  
 19 A. Well, it involved James Brown.  
 20 Q. Okay.  
 21 A. I mean, he's a celebrated man.  
 22 Q. Did you know Mr. Brown?  
 23 A. Yes, sir.  
 24 Q. And how did you happen to know Mr. Brown?  
 25 A. I think the first time I met him, I was a

1 party chairman for the Republican party and may have  
 2 been when we had one of Strom Thurmond's birthday  
 3 parties.  
 4 Q. Okay.  
 5 A. We asked him to sing and he did or to appear,  
 6 and it was quite an event.  
 7 Q. And when was that?  
 8 A. That would have been probably in '93 or '94  
 9 or maybe sometime around then.  
 10 Q. So you met him at that event?  
 11 A. I met him -- I may have met him at that  
 12 event. It may have been at an earlier event in  
 13 Orangeburg. It was a political event. He was  
 14 there. He came to a number of political events  
 15 while I was chairman.  
 16 Q. Right.  
 17 A. But I may have met him before I was a  
 18 chairman in maybe as early as 1980.  
 19 Q. Okay. Other than these meetings, did you  
 20 have any social interaction with Mr. Brown?  
 21 A. Just at the airport every now and then I'd  
 22 bump into him.  
 23 Q. Right.  
 24 A. And we'd chat for a moment.  
 25 Q. Okay. But I mean, you never had a

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1 substantive conversations with him about his estate  
2 or his will or his plans –  
3 A. No, sir.  
4 Q. – for charitable contributions?  
5 A. No, sir.  
6 Q. Oh, okay. All right. Now, Mr. Brown died –  
7 do you know when Mr. Brown died? Let me ask you if  
8 you know.  
9 A. Yes. It was December 2006.  
10 Q. Christmas day, I believe; is that correct?  
11 A. May have been.  
12 Q. Okay. I think the record will reflect it's  
13 Christmas. You were right about December, it's just  
14 December 25th, 2006.  
15 A. I was at the beach with my family. If I  
16 hadn't have been there, I would have been at the  
17 funeral.  
18 Q. Now, this – this First Semi-Annual Report is  
19 for a time period November 20 through May 20 --  
20 November 20, 2007 through May 8, 2008. As of this  
21 time, as of the November date, Mr. Brown had been  
22 dead approximately 11 months, is that correct, from  
23 December 25th to November 20?  
24 A. I think your math is correct, yes, sir.  
25 Q. And since this report is – since the

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1 Attorney General's name is on the title of this  
2 report, is it fair to say that sometime prior to  
3 November 20, 2007 the Attorney General would have  
4 become involved, or is that accurate?  
5 A. No, that's accurate. Sometime before when?  
6 Q. November 20, 2007.  
7 A. Well, that's a good deduction there, but I  
8 would presume so, but I don't know.  
9 Q. Do you have any actual knowledge?  
10 A. Well, I think we may have gotten involved –  
11 we may have received information. It may have been  
12 as early as September.  
13 Q. September?  
14 A. September of 2007, maybe.  
15 Q. Okay. And that's – and what would your  
16 personal involvement have been initially?  
17 A. I don't remember what my involvement was at  
18 that time, but normally, something like this  
19 involving someone like James Brown, normally one of  
20 the attorneys would have said, we are looking at a  
21 particular case or a particular complaint.  
22 Q. Okay. Did Mr. Jones report directly to you  
23 on these matters?  
24 A. Sometimes he did. Sometimes he didn't. Very  
25 often I asked him questions. A lot of us in that

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1 office had been friends for a long time, and the  
2 chain-of command was fairly informal most of the  
3 time.  
4 Q. Did he have the authority to make decisions  
5 on behalf of the AG's office without consulting you?  
6 A. Depends on what the decision was.  
7 Q. And is there a procedural book that would let  
8 us know that?  
9 A. No, sir.  
10 Q. Just sort of an unspoken understanding  
11 between you and Mr. Jones?  
12 A. Well, and the other lawyers in the office as  
13 well, and the support people, just a working  
14 relationship developed.  
15 Q. As an example, this particular action against  
16 Ms. Pope now, would Mr. Jones have consulted you  
17 before filing this lawsuit?  
18 A. Yes.  
19 Q. And he would have had your approval?  
20 A. Yes.  
21 Q. And he wouldn't of been able to file it  
22 without your approval; is that correct? Well, he  
23 wouldn't of filed it without your approval, I'll put  
24 it to you that way?  
25 A. Well, it was Mr. Bauknight who filed the

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1 case.  
2 Q. Okay.  
3 A. And he did not need my approval. He may have  
4 wanted it, but he doesn't work for me.  
5 Q. Who's that?  
6 A. Mr. Bauknight.  
7 Q. So Mr. Bauknight didn't need your approval to  
8 bring this case the way it was captioned?  
9 A. As a technical matter, he did not need my  
10 approval. He wanted my approval, as I recall.  
11 Again, Mr. Jones would be the best – have the best  
12 memory of those points.  
13 Q. All right. Let's look at the – go back to  
14 Exhibit 2, please, Defendant's Exhibit 2. Under  
15 background it says, "The PR/Trustees were appointed  
16 to serve under the Will of James Brown, dated August  
17 1, 2000, and the James Brown 2000 Irrevocable Trust,  
18 dated August 1, 2000. These documents constitute  
19 the Estate Plan of James Brown." Is that your  
20 understanding that, that's an accurate statement?  
21 A. I don't know.  
22 Q. You don't know, okay. Pursuant to the Order  
23 appointment, they have all the authority and  
24 responsibility under the documents, other than the  
25 obligation to name a third-party Trustee; do you

(Pages 30 to 33)

1 have any knowledge of that?  
 2 A. No, sir.  
 3 Q. Okay. Prior Service as Special  
 4 Administrator: The PR/Trustees served as  
 5 non-fiduciary Special Administrators from March 7,  
 6 2007 until November 20, 2007. Their charge was to  
 7 oversee the actions of David Cannon, Albert Dallas,  
 8 and Alfred Bradley, who served as PR/Trustees until  
 9 their resignation; do you know whether that's an  
 10 accurate statement or not?  
 11 A. I do not.  
 12 Q. Okay. Do you know who David Cannon is?  
 13 A. I know the name.  
 14 Q. Okay. Tell me -- that's all you know?  
 15 A. Well, he was -- as it says here, he was  
 16 involved in the estate.  
 17 Q. Okay. Was he ever charged with any crimes  
 18 handled by the AG's office?  
 19 A. There was -- one of these men was charged,  
 20 but I don't think it's by the AG's office.  
 21 Q. Okay. And do you have -- do you know what he  
 22 was charged with?  
 23 A. I do not.  
 24 Q. Okay. How about -- have you ever met Mr.  
 25 Cannon?

1 A. I don't think so.  
 2 Q. Albert --  
 3 A. And when Mr. Brown traveled, he often had a  
 4 number of people with him. Now, some of these men  
 5 may have been with him.  
 6 Q. Okay.  
 7 A. Because I met some of the people that  
 8 traveled with him, but I don't know --  
 9 Q. Okay.  
 10 A. Don't remember who they were.  
 11 Q. That would have been during these events?  
 12 A. That's right.  
 13 Q. Okay. Did you have any substantive comment  
 14 -- conversations with any of these men about trusts,  
 15 estates, charitable, any of those kind of things?  
 16 A. No, sir, that would not normally have come up  
 17 in --  
 18 Q. Right. Exactly.  
 19 A. -- the type of events we were attending.  
 20 Q. Exactly. Albert Dallas, do you know who  
 21 Albert --  
 22 A. No, sir.  
 23 Q. -- Dallas is? Have you ever met him?  
 24 A. No. I don't -- again, same answer.  
 25 Q. Okay.

1 A. I don't know.  
 2 Q. Do you know whether he's ever been charged  
 3 with any criminal activity related to --  
 4 A. I don't know.  
 5 Q. -- this estate? Alfred Bradley, do you know  
 6 Mr. Bradley?  
 7 A. No, sir. Other than the name and from this  
 8 case.  
 9 Q. Okay.  
 10 A. There was one of the men that was a part-time  
 11 magistrate at one time.  
 12 Q. All right.  
 13 A. I met him several times.  
 14 Q. Okay. Do you know what his involvement was?  
 15 A. No, I don't.  
 16 Q. Do you recall ever reading the will of James  
 17 Brown? Have you ever read it?  
 18 A. I don't think so, no, sir.  
 19 Q. And have you come to any independent --  
 20 because you are a lawyer, any independent opinion,  
 21 legal opinions about the will or the trust in the  
 22 estate yourself?  
 23 MR. SMITH: I'm going to object to the  
 24 form of the question. I'm going object to the  
 25 question to the extent that it would violate

1 attorney-client privilege, work product privilege,  
 2 and that it asks for his -- about legal opinions.  
 3 MR. BUNDY: Okay. Are you directing him  
 4 not to answer?  
 5 MR. SMITH: I'm asking him not to  
 6 violate a privilege, yes.  
 7 BY MR. BUNDY:  
 8 Q. All right. Number 2, under -- I'm still on  
 9 Page 1. It says, the primarily challenges during  
 10 this period, and the period we're talking about now,  
 11 Mr. McMaster, above is March 7, 2007 through  
 12 November 20, 2007; do you see that?  
 13 A. Yes.  
 14 Q. Do you understand where we are and --  
 15 A. Yes.  
 16 Q. -- the time frame?  
 17 A. Yes. Bold print, I see it.  
 18 Q. What I really want to try to do here is  
 19 bracket a time period during which these Trustees  
 20 and PRs were working on the estate and also bracket  
 21 the time period during which you were the Attorney  
 22 General, because once you left that office, am I  
 23 correct that you've had very little, if anything, to  
 24 do with this matter?  
 25 A. That's correct.

1 longer acting as Personal Representatives or  
 2 Trustees?  
 3 A. Well, after they were – if they were not in  
 4 charge, there was no way to – no, the answer to  
 5 that is, as far as handling the estate, I think the  
 6 answer to that is, no.  
 7 Q. Okay.  
 8 A. But, again, Mr. Jones would be the one to  
 9 answer that question.  
 10 Q. Other than handling the estate, anything  
 11 else? Are there any other complaints, to your  
 12 knowledge, that you have about the conduct of Ms.  
 13 Pope or Mr. Buchanan which form the basis of this  
 14 lawsuit, which occurred after the settlement? And  
 15 by "the settlement," I mean, that which occurred in  
 16 2008.  
 17 MR. WINGATE: Object to the form. You  
 18 may go ahead and answer.  
 19 BY THE WITNESS: Well, they were not in  
 20 charge of the estate, so there's no –  
 21 BY MR. BUNDY:  
 22 Q. Right.  
 23 A. So there's nothing to complain about as far  
 24 as the handling of the estate.  
 25 Q. Okay. All right. Any other complaints?

1 A. Outside of handling the estate?  
 2 MR. SMITH: Object to the form.  
 3 BY MR. BUNDY:  
 4 Q. Yes. Outside of the handling – outside of  
 5 handling – outside of handling the estate, any  
 6 other complaints about their conduct?  
 7 MR. SMITH: Object to the form of the  
 8 question.  
 9 BY THE WITNESS: I think that Ms. Pope  
 10 is seeking a lot of money for work she did. I don't  
 11 think she's entitled to it.  
 12 BY MR. BUNDY:  
 13 Q. Okay. And how much money is she seeking?  
 14 A. I don't know. I think it's a lot though.  
 15 Q. Okay. And is she entitled to any money?  
 16 A. I don't know the answer to that.  
 17 Q. Okay. You just know it's a lot?  
 18 A. I think it's \$5 Million.  
 19 Q. And how much, if any, is she entitled to?  
 20 A. Not that, in my opinion.  
 21 Q. Is it zero?  
 22 A. I don't know.  
 23 Q. Okay. And your opinion is based on personal  
 24 knowledge or what you've been told by others?  
 25 A. Most of what I am telling you is based on

1 what I've been told by others of my staff –  
 2 Q. Okay.  
 3 A. – at the time.  
 4 Q. So is it correct in truth and in fact that  
 5 you really have no firsthand knowledge about this  
 6 situation?  
 7 A. Very little.  
 8 Q. Tell me what you know firsthand. If it's  
 9 very little, it shouldn't take long.  
 10 A. Well, I know that the people on the staff  
 11 would bring me information, all that is firsthand.  
 12 Q. Okay.  
 13 A. But as far as studying these documents and  
 14 being familiar with what these lawyers were  
 15 concerned about, I have no firsthand knowledge,  
 16 because I wasn't dealing with that.  
 17 Q. Okay.  
 18 A. I mean, I wasn't there.  
 19 Q. Okay. And in receiving this information, you  
 20 relied on the abilities and truthfulness of the  
 21 people that brought it to you, correct?  
 22 A. Yes, sir, that's correct.  
 23 Q. Number 3, discovery of \$900,000.00  
 24 misappropriation and other secret dealings of former  
 25 PR/Trustees, Cannon, Dallas, Bradley, with Hammond;

1 do you know who Hammond is?  
 2 A. I don't remember.  
 3 Q. P. Farr, do you know who that is?  
 4 A. No, sir.  
 5 Q. Powell Goldstein?  
 6 A. No, sir.  
 7 Q. Okay. Do you have any criticism of Ms. Pope  
 8 for discovering this \$900,000.00 misappropriation  
 9 and other secret dealings?  
 10 A. No.  
 11 Q. Okay.  
 12 A. I don't know that they existed.  
 13 Q. Right. Okay.  
 14 A. But if they did, I think that would be the  
 15 job of whoever's handling the estate.  
 16 Q. Now, you don't know that they existed, but  
 17 this report, since it's got the AG's name on it,  
 18 would have gone to at least Sunny Jones; don't you  
 19 think that's accurate?  
 20 A. Yes, I would. Of course, I would say we need  
 21 to look at the file to see that it's in there.  
 22 Q. Right.  
 23 A. But I presume it is.  
 24 Q. As the Attorney General of the State of South  
 25 Carolina at the time this document was produced,

1 when it says First Report to Devises,  
2 Beneficiaries, and Attorney General, would you be  
3 disappointed in Mr. Jones if he didn't get a copy of  
4 it and read it?

5 A. I'd be disappointed -

6 MR. WINGATE: Object to the form.

7 BY THE WITNESS: I would be disappointed  
8 in whoever was supposed to send it to him if he  
9 didn't get a copy.

10 BY MR. BUNDY:

11 Q. Assume for the sake of our discussion I can  
12 prove he got it, okay? Let's assume he got it,  
13 okay?

14 A. I have been assuming that he got it.

15 Q. Okay. Do you think he should have read it?

16 A. Yes.

17 Q. Okay. Should he have studied it?

18 A. I think he should have understood it.

19 Q. Okay. And do you think if he had a dispute  
20 or a disagreement with what was in it, it was his  
21 duty to bring it to the attention of the judge?

22 MR. SMITH: Object to the form of the  
23 question. I believe that treads on privilege and  
24 work product and would ask the witness not answer  
25 that question.

1 BY MR. BUNDY:

2 Q. Okay. Are the -- is the scope of the duties  
3 of Mr. Jones attorney-client privilege, in your  
4 opinion? In other words, does the Attorney  
5 General's office have a thing when you go to work  
6 for us, if you're the head so and so, and it's got a  
7 list of things you're supposed to do in order to get  
8 a paycheck, is that attorney-client privilege  
9 between you and that employee?

10 MR. SMITH: I'm sorry. Say -- would you  
11 mind -- excuse me, would you mind repeating the  
12 question, please?

13 MR. BUNDY: I'll withdrawal the  
14 question.

15 Q. What I'm trying to understand is, was it in  
16 the scope of Mr. Jones' job description and duty to  
17 you as the Attorney General, as you understood it,  
18 his boss, that if he didn't agree with what was in  
19 Exhibit 2, that he should have brought it to the  
20 attention of you and the judge?

21 MR. SMITH: Again, I believe that this  
22 treads on work product and attorney-client issues  
23 and would ask that the witness not answer that  
24 question.

25 MR. BUNDY: Okay, fair enough. And by

1 that I don't agree with you. I'm just  
2 acknowledging.

3 MR. SMITH: I understand. Thank you.

4 BY THE WITNESS: I'm sure you don't.

5 BY MR. BUNDY:

6 Q. I'm an agreeable guy. Four, failure of  
7 Dallas, Cannon, and Bradley to inventory or account  
8 for the assets of the Estate/Trust or properly  
9 administer the Estate or Trust; do you have any  
10 information regarding the accuracy of that statement  
11 at all?

12 A. No, I don't, except for the fact that my  
13 understanding was that the whole thing was in  
14 shambles when we were alerted to it.

15 Q. Okay.

16 A. That virtually nothing was going right.  
17 There were many questions.

18 Q. And the --

19 A. And the way -- that was the way I recall it.

20 Q. Okay. And the shambles that it was in at the  
21 time y'all were alerted, do you have any evidence  
22 that that was caused or any way the responsibility  
23 of Robert Buchanan or Adele Pope?

24 A. Yes.

25 Q. Okay. What is that?

1 A. My understanding was originally the three  
2 men, whom I presume were Cannon, Dallas and --  
3 Dallas and Bradley were not handling things right,  
4 and when Ms. Pope and Mr. Buchanan got involved to  
5 help to straighten things up, that they did not get  
6 straightened up appropriately.

7 Q. Okay. All right. Well, let's --

8 A. As to the time period, I don't --

9 Q. I understand.

10 A. I can't tell you a time period.

11 Q. Okay.

12 A. We went over that a few minute ago.

13 Q. Okay, but the initial "shambles" was not  
14 caused by Pope or Buchanan?

15 A. I really don't know the answer to that.

16 Q. Pope and Buchanan were not the original  
17 Trustees or PRs?

18 A. That's correct.

19 Q. They were not named?

20 A. No. It was these men.

21 Q. They were not named -- Pope and Buchanan were  
22 not named in the will --

23 A. I don't --

24 Q. -- as Trustees or PRs?

25 A. I don't think so.

1 Q. Okay. All right. Let's go to the next  
2 section, B, primary accomplishments for March 7 to  
3 November 20, 2007, and again, Mr. McMaster, we're in  
4 the Special Administrator period, okay, not the  
5 PR/Trustee period. With the help of many family --  
6 many members of the family of Brown the following  
7 things were accomplished between Mr. Brown's death  
8 and November 20, 2007. Central location of many  
9 Estate/Trust records. Do you have any -- assuming  
10 that's true, do you have any complaint about the  
11 Special Administrators doing that?

12 A. No.

13 Q. Okay.

14 A. But I know nothing about that.

15 Q. I understand that, and that's -- as you know,  
16 as a trial lawyer, Mr. McMaster, finding out a  
17 witness doesn't know anything sometimes is as  
18 important as that they do know something. I just --  
19 you know what I'm saying? You understand that,  
20 right?

21 A. Well, it seems you're asking me if the  
22 central location of many Estate/Trust records would  
23 be a good thing to have happened, and I presume,  
24 yes, that would be a good thing to have happened.

25 Q. Okay.

1 A. But I don't know if it happened or not.

2 Q. Right. For purposes of my questions, I want  
3 you to assume the accuracy of these statements in  
4 this document, okay? And if it turns out later they  
5 are inaccurate, then your answers won't apply, okay?

6 A. So this is somewhat of a hypo -- hypothetical  
7 question?

8 Q. Hypothetical to the extent that you don't  
9 have any personal knowledge, but non-hypothetical to  
10 the extent I've got a document here which says this  
11 is what happened, and I've got no document from the  
12 Attorney General's office during this time period  
13 that denies or refutes it in any way, okay?

14 A. I understand your question.

15 Q. The next thing is prevention of sale of  
16 Estate/Trust Assets with no study or analysis and  
17 for the primary benefit of Cannon, Dallas, Bradley,  
18 Copsidas, and Greenberg Traurig, under the October  
19 18/20 letter; would that be a good thing, preventing  
20 a sale with no study or analysis?

21 A. Seems to me that, that would be a good thing  
22 to have happened.

23 Q. Okay. The immediate and permanent  
24 resignation of Cannon, Dallas, and Bradley, would  
25 that be a good thing?

1 A. Presuming that they were the ones that were  
2 involved in messing it up, I would say, yes.

3 Q. And some of them went to jail, didn't they,  
4 or at least got indicted or charged with crimes?

5 A. I think that's the third time you've asked me  
6 that one and --

7 Q. Still don't know?

8 A. I -- one of those, I think it's one of those  
9 did get charged and convicted.

10 Q. Okay. Of stealing money from James Brown's  
11 Estate?

12 A. Or mishandling something with the estate.

13 Q. Okay. And the Attorney General wouldn't want  
14 somebody like that handling a charitable trust,  
15 would they?

16 A. No.

17 Q. Okay. The return of 350 of the \$900,000.00  
18 taken from the 2000 Trust in 2006; now, that would  
19 be a good thing, wouldn't it?

20 A. That would be a good thing.

21 Q. Okay. All right. So if you just assume this  
22 is what was done during March 7, 2007 through  
23 November 20, 2007 by Buchanan and Pope in their  
24 roles as Special Administrators, at least on the  
25 face of it, it looks like they were doing their job,

1 correct?

2 A. It look like they -- if they did or caused  
3 those things to have been done, then those were good  
4 things that they caused to be done.

5 Q. And you would have hoped, I think, that if  
6 your -- that if Sunny Jones, who worked for you,  
7 knew that any of these things were to be untrue, he  
8 would have brought them to your attention?

9 A. Well, yes.

10 MR. WINGATE: Object to the form of the  
11 question.

12 BY MR. BUNDY:

13 Q. All right.

14 A. At some -- at some point.

15 Q. Okay.

16 A. I might go on that, that may have been what  
17 he was talking about when he commented on the  
18 deficiencies of the performance of Ms. Pope and Mr.  
19 Buchanan.

20 Q. Were his comments general or did he sit down  
21 with you with very specific items of deficiency  
22 or --

23 MR. SMITH: Object to grounds of  
24 privilege, work product, attorney-client. Ask the  
25 witness not to answer.

1 BY MR. BUNDY:  
 2 Q. In 2000 – in the period March 7, 2007 and  
 3 November 20, 2007, what litigation against Ms. Pope  
 4 was ongoing between the Attorney General's office  
 5 and her?  
 6 A. I don't know.  
 7 Q. You don't know?  
 8 A. No clue.  
 9 Q. Well, if there was no litigation going on,  
 10 how is reporting conduct to you from a subordinate  
 11 privileged information from a legal attorney-client  
 12 privilege status? Can you explain that?  
 13 A. Ask that again, please.  
 14 Q. When Mr. Jones comes and reports to you on  
 15 any matter, okay, is everything that he says to you  
 16 attorney-client privilege, in your opinion,  
 17 regardless of the topic?  
 18 A. Don't know the answer to that.  
 19 Q. Okay.  
 20 A. I guess it would depend on what we're talking  
 21 about.  
 22 Q. Well, what we're talking about specifically  
 23 is the information that we just went over on Exhibit  
 24 2. When he comes to you and says specifically, Pope  
 25 and Buchanan are doing X, Y, and Z wrong, and at

1 MR. BUNDY: So you're directing him not  
 2 to answer?  
 3 MR. SMITH: Yes.  
 4 MR. BUNDY: Okay. Fair enough.  
 5 Q. All-right. Mr. McMaster, if you would, let's  
 6 go to service of PR/Trustees from November 20, 2007  
 7 through May 20, 2008; are you with me?  
 8 MR. WINGATE: Are you on Page 2?  
 9 MR. BUNDY: On Page 2 of Exhibit No. 2.  
 10 A. I don't see that.  
 11 Q. I think it's primary –  
 12 A. Oh, all right.  
 13 Q. Right up here.  
 14 A. I see it.  
 15 Q. Good?  
 16 A. Yes, sir.  
 17 Q. All right. Now, this is a period of  
 18 approximately, what, November to May, six months  
 19 roughly, seven months?  
 20 A. Seven.  
 21 Q. Okay. Primary challenges, since our  
 22 appointment as PR/Trustees on November 20, 2007 the  
 23 Estate Plan of James Brown has faced new and greater  
 24 challenges. The major new challenges to the  
 25 Estate/Trust are: One, defending contest of Will and

1 that point there's no litigation against them by the  
 2 Attorney General or anybody else, is it your  
 3 position, as a lawyer and then as the Attorney  
 4 General, that, that conversation is privileged, just  
 5 simply reporting to you about what's going on?  
 6 A. I don't think that a report like that would  
 7 be privileged, no.  
 8 Q. Okay.  
 9 A. I don't think so.  
 10 Q. So I'll ask you again, what specific – when  
 11 you sat down with Jones to talk about these things  
 12 that were messing up, I guess to use your words,  
 13 whatever words you use, can you tell me whether he  
 14 came to you and said, generally Pope and Buchanan  
 15 aren't doing their job, or did he come to you and  
 16 say, they have not done A, B, C, and D?  
 17 MR. SMITH: Object again on the basis of  
 18 work product and attorney-client privilege, and I  
 19 want to avoid – I don't want to make a speaking  
 20 objection here, but the objection would be governed  
 21 by case law and would depend on the nature of the  
 22 conversation at the time.  
 23 MR. BUNDY: Okay.  
 24 MR. SMITH: Based upon your question, I  
 25 believe I'm obligated to assert the privilege.

1 2000 Trust by five of Mr. Brown's six acknowledged  
 2 children and others further threatening the James  
 3 Brown "I Feel Good" Trust. Now, would the  
 4 PR/Trustees defending such a will contest be a good  
 5 thing or something that would be criticized by the  
 6 Attorney General?  
 7 A. Well, it would depend on the – it would  
 8 depend on the cases, but ordinarily, I would say  
 9 that we would have to defend them, so that would be  
 10 within the scope of what the lawyer ought to do.  
 11 Q. Okay. Are you aware that James Brown's will  
 12 specifically directed his Trustees/PRs to vigorously  
 13 defend all challenges to the will and trust?  
 14 A. I'm not aware of that. That has a familiar  
 15 ring to it, but no, I'm not – I can't say that I  
 16 know that.  
 17 Q. Did you ever draw wills when you were in  
 18 private practice? Did you ever do any of that kind  
 19 of work?  
 20 A. A few, yes, sir.  
 21 Q. Did you ever put that kind of language in a  
 22 will?  
 23 A. I don't remember.  
 24 MR. BUNDY: Okay. I think we need to  
 25 take a break, change the tapes.

1 the way it works.  
 2 **A. I think that's an accurate description. It**  
 3 **may have been more complicated than that, because it**  
 4 **was --**  
 5 Q. Well, I can see that wasn't very lawyerly --  
 6 very lawyerly presentation of it, but generally you  
 7 understand what I'm saying?  
 8 **A. Yeah. I mean, I read those -- I think I read**  
 9 **those cases when we were --**  
 10 MR. SMITH: Excuse me.  
 11 BY THE WITNESS: -- talking about this.  
 12 MR. SMITH: May we go off the record for  
 13 a second for a logistical question?  
 14 MR. BUNDY: Sure.  
 15 BY THE VIDEOGRAPHER: Off the record at  
 16 11:50 a.m.  
 17  
 18 (OFF THE RECORD DISCUSSION)  
 19  
 20 BY THE VIDEOGRAPHER: We're on the  
 21 record at 11:55 a.m.  
 22 BY MR. BUNDY:  
 23 Q. Mr. McMaster, we're on the bottom of Page 3  
 24 of Exhibit 2. The next paragraph, the PR/Trustees  
 25 have actively sought to coordinate the defense of

1 the Estate Plan and the Elective Share/Spousal  
 2 Claims with the Attorney General of South Carolina.  
 3 That would be a good thing, right?  
 4 **A. Yes.**  
 5 Q. Okay, and given your opinion about Tommie Rae  
 6 -- Tommie Rae Hynie not being the surviving spouse  
 7 of James Brown at this death, would that have been  
 8 the position of the -- your office at that time as  
 9 well?  
 10 **A. I think that's the position we took.**  
 11 Q. Okay.  
 12 **A. Whatever position it was, was based on the**  
 13 **cases --**  
 14 Q. Those cases.  
 15 **A. -- you're referring to that were kind of**  
 16 **tricky.**  
 17 Q. Okay.  
 18 **A. But I think that was our position.**  
 19 Q. The PR/Trustees would also like to join with  
 20 Forlando Brown in defense of Mr. Brown's Estate  
 21 Plan. His relationship with former PR/Trustees,  
 22 Dallas and Bradley, and his attempts to return them  
 23 as Trustees, however, make cooperation difficult at  
 24 this time. All right. E, Stabilizing Estate/Trust  
 25 Administration. Between November 20, 2007 and May

1 20, 2008 the PR/Trustees had taken a number of steps  
 2 to stabilize the administration of the Estate/Trust.  
 3 They include, one, filing of application for  
 4 recognition of James Brown "I Feel Good" Trust. On  
 5 December 6, 2007 the PR/Trustees apply for  
 6 recognition of the James Brown "I Feel Good" Trust.  
 7 The former PR/Trustees had failed to take this  
 8 action for more than 6 years. So that would be  
 9 something that the Attorney General would want to  
 10 have happened, right?  
 11 **A. Yes.**  
 12 Q. Okay. Two, paying overdue security,  
 13 insurance, appraisal, and storage fees not paid by  
 14 the former PR/Trustees, that would be also something  
 15 the Attorney General would want, right?  
 16 **A. Yes.**  
 17 Q. Terminating relationships with Intrigue Music  
 18 Management (Frank Copsidas) and others who worked  
 19 closely with former PR/Trustees, Dallas and Cannon.  
 20 Assuming that's correct, which we are, I understand  
 21 the objection, that would also be a good thing?  
 22 **A. Well, I'm presuming -- presuming that if**  
 23 **Intrigue Music Management worked with the**  
 24 **discredited previous people, that would be a good**  
 25 **thing.**

1 Q. Right.  
 2 **A. Yes.**  
 3 Q. Okay.  
 4 **A. But I don't know anything about it.**  
 5 Q. I understand that. I understand that. F,  
 6 continuing to work to prevent the return of Cannon,  
 7 Dallas, and Bradley, that's also a good thing?  
 8 **A. Yes, sir.**  
 9 Q. Protection of the tangible assets?  
 10 **A. Yes, sir.**  
 11 Q. Okay. On November 20, 2007, the tangible  
 12 personal property (TPP) located at Mr. Brown's home  
 13 estate was at great risk because of the  
 14 Estate/Trust's financial condition. Did anybody  
 15 ever advise you during this period of time, that is,  
 16 around May 2008, that the -- the financial condition  
 17 of the Estate and Trust was not good?  
 18 **MR. SMITH: Excuse me. Object to the**  
 19 **form of the question. Object to the -- to the**  
 20 **extent that it calls for privileged communication,**  
 21 **work product, and ask the witness not to answer to**  
 22 **that extent.**  
 23 **MR. BUNDY: So you're telling him not to**  
 24 **answer?**  
 25 **MR. SMITH: Yes.**

1 BY MR. BUNDY:  
 2 Q. Okay. One, during the last six months the  
 3 following has taken place. It says, January 2008,  
 4 approximately 70 boxes of Masters –  
 5 A. I'm sorry, where are we?  
 6 Q. We're right here. Since January 2008,  
 7 approximately 70 boxes of Masters, audiotapes, and  
 8 similar assets were shipped under secure condition  
 9 to an audio/film storage facility, that would be a  
 10 good thing?  
 11 A. Yes.  
 12 Q. Approximately 360 lots had been placed with  
 13 Christie's in New York for sale at auction, that  
 14 would be a good thing?  
 15 A. Yes.  
 16 Q. Pursuant to the request of PR/Trustees,  
 17 agreement of family members and the Court Order,  
 18 more than 3,000 items have been placed with the  
 19 South Carolina State University's I.P. Stanback  
 20 Museum and Planetarium, the South Carolina State  
 21 Museum, the Lucy Craft Laney Museum of Black  
 22 History, and the Augusta Museum of History. These  
 23 will be held for safekeeping on loan for up to 3  
 24 years while final disposition is being determined,  
 25 that would be a good thing?

1 A. It certainly seems like it to me. There may  
 2 have been better places. I don't know anything  
 3 about –  
 4 Q. Right.  
 5 A. – museums, but yes, that –  
 6 Q. Okay.  
 7 A. Same thing for Christie's, that seems like –  
 8 Q. Sure.  
 9 A. – a good thing to me.  
 10 Q. The PR/Trustees will seek Court approval on  
 11 June 6th to distribute or sell (as their ultimate  
 12 interests appear) much of the remaining tangible  
 13 personal property located at the home estate – home  
 14 estate to Mr. Brown's six acknowledged children,  
 15 James Brown, II, and Tommie Rae Hynie Brown. Is  
 16 that a good thing?  
 17 A. I think so, yes.  
 18 Q. The estate tax value of this distribution  
 19 sale is estimated to be less than \$250,000.00, but  
 20 the property is believed to be of great personal  
 21 value to his family. Do you have any problems with  
 22 that, assuming it's correct?  
 23 A. I don't know what the value of the property  
 24 would be.  
 25 Q. Five, Mr. Brown's capes and several other

1 tangible personal property remain unresolved. The  
 2 PR/Trustees will continue to investigate and seek  
 3 legal counsel when funds are received from  
 4 Christie's sale. Any problems with that on the face  
 5 of it?  
 6 A. No. I have seen those capes, as have  
 7 millions of others.  
 8 Q. Absolutely. With consent of all acknowledged  
 9 children of James Brown, and without objection of  
 10 the Attorney General, the PR/Trustees are quick  
 11 claiming the estate's interest in the home and  
 12 contents of Mr. Brown's father, Joseph Brown,  
 13 located in August – Augusta, Georgia for \$60,000.00,  
 14 taking 10 percent down and note with security deed  
 15 for the remainder. The sale is expected to close  
 16 within 10 days. Assuming it's correct that the  
 17 Attorney General did not object, would that be  
 18 satisfactory?  
 19 A. Yes. I presume if we'd objected, we would  
 20 have objected.  
 21 Q. Right.  
 22 A. If we had an objection, we would have voiced  
 23 it.  
 24 Q. Okay. And that's – that assumption would be  
 25 the same for everything in this document, would it

1 not, assuming the Attorney General had notice?  
 2 A. Assuming they had notice.  
 3 Q. And the person I need to talk to about –  
 4 A. Of course, again, it depends on the time  
 5 frame, but that would be Sunny – that'd be a Sunny  
 6 Jones –  
 7 Q. Sure.  
 8 A. – question.  
 9 Q. This is the time – but this establishes the  
 10 time frame. The time frame is between November 20,  
 11 2007 and May 20, 2008. The document gives us a time  
 12 frame.  
 13 A. Yes. I don't know when the objection – if  
 14 there were an objection, I don't know when it would  
 15 have been voiced.  
 16 Q. I gotcha. Home Estate, Beech Island. The  
 17 PR/Trustees have determine that retaining the Home  
 18 Estate is not consistent with the mission of the  
 19 James Brown "I Feel Good" Trust. Pursuant to Court  
 20 Order dated February 20, 2008, the PR/Trustees are  
 21 seeking a museum purchaser for this home. The  
 22 museum purchaser may either be for-profit or  
 23 not-for-profit. The PR/Trustees hope to be able to  
 24 retain a portion of the acreage for ultimate use of  
 25 the James Brown "I Feel Good" Trust in conjunction

1 aware of?  
 2 **A. Not that I recall one way or the other.**  
 3 Q: If they had –  
 4 **A. They may have.**  
 5 Q: If they had, they would be in the file?  
 6 **A. They would be in the file.**  
 7 Q: Because I think the Government Retention Act  
 8 requires those things to be maintained, do they not?  
 9 **A. I believe it does, but anything would be in**  
 10 **the file.**  
 11 Q: Okay. Now, do you have an opinion whether  
 12 those things, if they existed, would be subject to  
 13 FOIA?  
 14 **A. I don't know.**  
 15 MR. SMITH: Object to the form of the  
 16 question.  
 17 BY MR. BUNDY:  
 18 Q: Do you know what particular expertise, if  
 19 any, Mr. Sunny Jones has in evaluating royalties,  
 20 image, and persona?  
 21 **A. I do not know.**  
 22 Q: Okay. Do you have any knowledge of his  
 23 competence or expertise in copyright – Federal  
 24 Copyright Law?  
 25 **A. No.**

1 Q: Did your office, during the period of time  
 2 you were Attorney General, handle federal copyright  
 3 litigation?  
 4 **A. I don't believe so.**  
 5 Q: Okay. The former PR/Trustees entered into  
 6 only one substantial contract [James Brown - Boston  
 7 Project with David Leaf] between Mr. Brown's death  
 8 and November 20, 2007 (ab November 11.) The current  
 9 Trustees have entered into one substantial contract  
 10 with Music Television Tribune – Tribute to James  
 11 Brown, confidential details; do you have any  
 12 knowledge about that?  
 13 **A. Not as I sit here. I may have then, but I –**  
 14 Q: Okay.  
 15 **A. I don't recall anything about that.**  
 16 Q: All right. The PR/Trustees over the next six  
 17 months will explore with entertainment counsel  
 18 future enhancement of Brown's royalties, image, and  
 19 persona. Challenges to our authority as PR/Trustees  
 20 by the Attorney General (based on erroneous  
 21 information), former PR/Trustees, Cannon, Dallas,  
 22 Bradley, and Forlando Brown have slowed but not  
 23 defeated progress in these areas. The PR/Trustees  
 24 are hopeful these challenges will dissipate,  
 25 allowing the Estate/Trust to enhance its potential.

1 Okay. Do you have any recollection of what  
 2 challenges to the PR/Trustee's authority the  
 3 Attorney General had, as related in this paragraph?  
 4 **A. I think there was a question as to the**  
 5 **appointment, as having come from the Circuit Court**  
 6 **instead of the Probate Court on something like that.**  
 7 **There's a legal question.**  
 8 Q: A technical legal question?  
 9 **A. They all mostly are technical, yes.**  
 10 Q: Okay. Do you know if your office made any  
 11 motions or any attempts during this period of time  
 12 to have either Mr. Buchanan or Mr. Pope [sic]  
 13 removed?  
 14 **A. I do not remember.**  
 15 Q: Okay.  
 16 **A. But I do know that we wanted them removed.**  
 17 Q: Okay. And again, Mr. Jones would be the one  
 18 who could best explain that to me?  
 19 **A. He would be the starting point.**  
 20 Q: Okay.  
 21 **A. He would – he was – he is the one who has**  
 22 **the most information on that matter, I believe.**  
 23 Q: Other than Mr. Jones, it would be Mr.  
 24 Nicholson?  
 25 **A. Mr. Nicholson and perhaps – perhaps Mr.**

1 McIntosh, perhaps Mary Frances Jowers was in office,  
 2 J. William Smith who may have worked on this some.  
 3 He's a non-lawyer, but Sunny Jones would be the  
 4 place to – would have most of the information.  
 5 Q: Did Mr. Smith work on this job, on this  
 6 project?  
 7 **A. I don't know if he worked on this.**  
 8 Q: Okay.  
 9 **A. I don't know.**  
 10 Q: And he's with the AG; is that correct?  
 11 **A. Yes, sir.**  
 12 Q: Do you know what position he's in, or what  
 13 his –  
 14 **A. He's Assistant Attorney General, a very good**  
 15 **one, a very good one.**  
 16 MR. SMITH: Excuse me, which Mr. Smith  
 17 are you talking about?  
 18 MR. BUNDY: Emory Smith. I will  
 19 stipulate he's a good lawyer.  
 20 Q: Now, you're appearing here today as a private  
 21 citizen, correct?  
 22 **A. Correct.**  
 23 Q: Okay. And can you explain to me the attorney  
 24 – the attorney-client – the sort of the basis of  
 25 the attorney-client relationship between you and Mr.

1 Emory Smith, as we sit here today?  
 2 **MR. SMITH:** Object, attorney-client  
 3 privilege.  
 4 **BY MR. BUNDY:**  
 5 Q. Okay.  
 6 **MR. SMITH:** Ask the witness not to  
 7 answer.  
 8 **BY MR. BUNDY:**  
 9 Q. Is that part of the Attorney General's job,  
 10 to represent past Attorney General's in civil  
 11 litigation when they are a witness?  
 12 A. If -- if it involves something in office, I  
 13 would say, yes.  
 14 Q. Okay. Fair enough. Do you know who Sandra  
 15 Matthews is?  
 16 A. I don't think so.  
 17 Q. Okay.  
 18 A. If you give me a hint, I might tell you.  
 19 Q. I don't know who she is either. I was just  
 20 passed a note and asked to see if you knew.  
 21 A. Okay.  
 22 Q. We're trying to figure it out.  
 23 A. I don't recall that name.  
 24 Q. Okay. Request that Attorney General and  
 25 Family Explore Settlement. The PR/Trustees are

1 currently participating in at least nine lawsuits  
 2 for the benefit of the Estate/Trust, including:  
 3 Corbis Litigation, brought by Mr. Brown in the name  
 4 of the New James Brown Enterprises, et al, prior to  
 5 his death. Pullman Litigation, brought on behalf of  
 6 James Brown Enterprises by GT after the 2006  
 7 collapse of the Royal Bank of Scotland. Resulted in  
 8 \$8 Million counterclaim by Pullman, which our  
 9 counsel successfully defended as moot. Cannon suit  
 10 against the Estate on a claim for more than 6  
 11 Million. Dallas suit against the Estate on a claim  
 12 for more than 5.5 Million. Bradley suit against the  
 13 Estate on a claim believed to be more than 5  
 14 Million. The Estate/Trust arbitration against  
 15 Stanley Morgan. Estate/Trust suit against Cannon,  
 16 Bradley, Dallas, Enterprise, Farr, GT. Estate/Trust  
 17 suit to enjoin Hammond, Dallas, Bradley and Cannon  
 18 from interference. Defense of Will/Trust contest  
 19 (Will/Trust/Heirs proceeding.) And then finally,  
 20 defense of Elective Share/Spousal claims. If that  
 21 is accurate, is it fair to say that Ms. Pope and Mr.  
 22 Buchanan had their hands full?  
 23 A. Well, that -- I would put it this way, that  
 24 represents a lot of work.  
 25 Q. Right. It certainly does. None of which

1 they created; in other words, they didn't institute  
 2 -- they didn't cause any of these things to occur?  
 3 **MR. WINGATE:** Object to the form of the  
 4 question.  
 5 **BY THE WITNESS:** Well, I really don't  
 6 know the answer to that. I mean, these were all  
 7 brought by other people, if that's what you mean.  
 8 **BY MR. BUNDY:**  
 9 Q. Yes. The conversation we had earlier, they  
 10 got no way to keep people from instituting things,  
 11 they just defend it?  
 12 A. That's correct.  
 13 Q. And it represents a lot of work, a lot of  
 14 time?  
 15 A. I would think so, yes.  
 16 Q. Says, in addition, within the next few months  
 17 we will also be defending a number of claims the  
 18 PR/Trustees intend to disallow, including the \$31  
 19 Million claim of Pullman and claims of attorney and  
 20 accountants for Dallas, Cannon, and Bradley.  
 21 While the PR/Trustees are occupied with these  
 22 necessary suits in defense of Mr. Brown's Estate,  
 23 they urge family members and the Attorney General to  
 24 work toward a reasonable resolution of the issues in  
 25 the dispute. Well, that's a laudable goal; is it

1 not?  
 2 A. Yeah, but I'm not sure why it's in there.  
 3 Q. Okay. All right, sir. Do you -- who -- do  
 4 you remember Mr. John Rainey?  
 5 A. Yes.  
 6 Q. Okay. He's deceased now?  
 7 A. Yes.  
 8 Q. Okay. And just give me two minutes about Mr.  
 9 Rainey. Who was he? What did he do? That kind of  
 10 thing.  
 11 A. He's from Camden. He was quite a  
 12 public-spirited man, and he is Mary Belser brother.  
 13 She's married Clint Belser, and they lived in  
 14 Camden, and he was on the Board of Economic Advisors  
 15 several times, and is from Anderson and very public  
 16 spirited.  
 17 Q. Very well regarded South Carolinian?  
 18 A. Yeah. Highly regarded, tragic death.  
 19 Q. Did you ever have a meeting with Mr. Rainey?  
 20 A. I did.  
 21 Q. And Ms. Pope regarding this matter?  
 22 A. I had a meeting with Ms. Rainey -- with Mr.  
 23 Rainey. I don't remember if Ms. Pope was there or  
 24 not.  
 25 Q. And can you tell me what you recall about it?

1 A. He was -- he was -- no. I don't remember  
 2 what we discussed, other than Ms. Pope, whom he  
 3 recommended highly.  
 4 Q. Okay. Do you recall whether or not he went  
 5 over this document, Defendant's Exhibit 2, with you?  
 6 A. I don't remember.  
 7 Q. Could that be the case?  
 8 A. Could be, but I don't know. All I remember  
 9 is talking to him.  
 10 Q. And --  
 11 A. He's a friend.  
 12 Q. And he thought well of Ms. Pope?  
 13 A. Yes.  
 14 Q. Okay. And you thought well of him?  
 15 A. Yes.  
 16 Q. And, in fact, you think well of Ms. Pope?  
 17 A. Yes. Although I question some of the things  
 18 in this case.  
 19 Q. Right.  
 20 A. That's correct, and her husband.  
 21 Q. Can you specifically tell me what your  
 22 question in this case?  
 23 A. I don't -- I don't believe that the estate  
 24 was handled properly in that I don't believe that  
 25 the aggressive actions were taken to realize the

1 full potential of the estate, and I can't remember  
 2 all of the details about the -- what -- the  
 3 deficiencies in the handling.  
 4 Q. Okay.  
 5 A. But I remember that we talked about them in  
 6 the office on a number of occasions.  
 7 Q. Sure. Can you give me any details at all?  
 8 A. No.  
 9 Q. Okay. So basically what you have is a  
 10 feeling based upon --  
 11 MR. SMITH: Object to --  
 12 BY THE WITNESS: No.  
 13 MR. SMITH: -- the form of the question.  
 14 BY THE WITNESS: No. I have a  
 15 conclusion.  
 16 BY MR. BUNDY:  
 17 Q. Okay. What's the factual basis of that  
 18 conclusion?  
 19 A. I can't give you those facts, other than to  
 20 say that they were presented and laid out on a  
 21 number of occasions.  
 22 Q. Okay. So just to make sure I understand.  
 23 A. Sure.  
 24 Q. You have a conclusion based on a series of  
 25 facts that were presented, but you have no

1 independent recollection of any of the facts?  
 2 A. Any of the details, correct.  
 3 Q. Is details synonymous with fact?  
 4 A. Not exactly, no.  
 5 Q. Well, tell me then, if you don't have the  
 6 details what facts do you have? I'm trying to parse  
 7 it up. I need to understand.  
 8 A. You are indeed, and that's okay. There was a  
 9 number of conversations with Mr. Jones, as well as  
 10 some other people, about the progress of the matter,  
 11 and it was my conclusion from listening to those,  
 12 that the Trustees, Administrators at the time were  
 13 not doing the best job.  
 14 Q. Okay.  
 15 A. Were not doing a good job. It could be done  
 16 better.  
 17 Q. Right, but you can't give me a single  
 18 specific instance?  
 19 A. No, I can't.  
 20 Q. Now, were those --  
 21 A. Mr. Jones I'm sure can.  
 22 Q. I'm going to get to him, but right now you  
 23 and I are together.  
 24 A. I understand.  
 25 Q. Were those reports to you -- given to you in

1 the context of an attorney-client relationship? Was  
 2 Mr. Jones your lawyer when he presented that  
 3 information?  
 4 MR. SMITH: Object to -- object to --  
 5 object to the question on the basis of  
 6 attorney-client work product privilege. Ask the  
 7 witness not to answer.  
 8 BY MR. BUNDY:  
 9 Q. So is it correct then that if you knew any  
 10 facts, you wouldn't tell me anyway, because you're  
 11 protected by the attorney-client privilege?  
 12 A. Or the work product privilege is what Mr.  
 13 Smith is asserting.  
 14 Q. One or the other?  
 15 A. Probably work product, I would say.  
 16 Q. Okay.  
 17 A. But that's his job to know which one it is.  
 18 Q. I understand that, but you're a lawyer, and  
 19 you were the Attorney General; I think that's a  
 20 pretty fair question.  
 21 A. But I'm a witness, and he's my lawyer.  
 22 Q. I understand that, but lawyer to lawyer, when  
 23 he reported to you, was he your lawyer, or was he  
 24 giving you work product for work he was doing?  
 25 MR. SMITH: Object. Same grounds. Ask

1 **the witness not to answer.**  
 2 BY MR. BUNDY:  
 3 Q. Okay, fair enough. All right. We're done  
 4 with that, two down. Let's go to lunch. How about  
 5 that? Does that suit you?  
 6 A. What say you, gentlemen?  
 7 MR. SMITH: I'm fine, whatever the group  
 8 wants to do.  
 9 MR. BUNDY: If we go to lunch now, it  
 10 will give me a chance to go through my stuff, try to  
 11 weed some stuff out, and I might be able to finish  
 12 quicker.  
 13 MR. SMITH: As long as you weed and not  
 14 expand.  
 15 MR. BUNDY: I don't expand. I'm just  
 16 trying to get through it. I don't know where I'm  
 17 going, what I'm doing.  
 18 MR. SMITH: How long do y'all want to  
 19 take?  
 20 MR. BUNDY: Well, it's up to - 45  
 21 minutes, can y'all eat in 45 minutes, an hour? I  
 22 don't care.  
 23 MR. SMITH: Y'all decide. I can do  
 24 either.  
 25 MR. BUNDY: Let's do 45 minutes, and we

1 can get him out of here sooner. Is that all right  
 2 with you, Mr. McMaster?  
 3 BY THE WITNESS: Yes, sir.  
 4 BY THE VIDEOGRAPHER: This is the end of  
 5 tape No. 2 it in the deposition of Henry Dargan  
 6 McMaster. We're off the record at 12:29 p.m.  
 7  
 8 (OFF THE RECORD)  
 9  
 10 (DEFENDANT'S EXHIBIT NO. 3  
 11 WAS MARKED FOR IDENTIFICATION)  
 12  
 13 BY THE VIDEOGRAPHER: This is tape No. 3  
 14 in the deposition of Henry Dargan McMaster. We're  
 15 on the record at 1:27 p.m.  
 16 BY MR. BUNDY:  
 17 Q. Good afternoon, Mr. McMaster.  
 18 A. Good afternoon.  
 19 Q. I forgot to give you one of my standard  
 20 intros. I'm going to do it now. Is there any  
 21 reason why you can't have your deposition taken  
 22 today? Are you under any medication or anything  
 23 like that?  
 24 A. No, sir.  
 25 Q. Okay. Good. I just had to clear that up.

1 Thank you so much.  
 2 If you would, let's look at Defendant's  
 3 Exhibit 3, and I believe you all have a copy of  
 4 that.  
 5 MR. WINGATE: We do. Thank you.  
 6 BY MR. BUNDY:  
 7 Q. It's a July 30, 2008 letter to Adele Pope and  
 8 Robert L. Buchanan, and I believe that's your  
 9 signature on the second page?  
 10 A. It is.  
 11 Q. And you've had a chance to review the  
 12 document?  
 13 A. I looked at it briefly outside just a moment  
 14 ago.  
 15 Q. And you were the author of this document?  
 16 A. I signed it. I don't think I prepared the  
 17 letter.  
 18 Q. Okay. But you read it before you signed it,  
 19 I assume?  
 20 A. Yes.  
 21 Q. What was the purpose of writing this letter?  
 22 Why did you feel it necessary?  
 23 A. As I recall, this is a reflection of the  
 24 concern that we were having about Ms. Pope's  
 25 performance, and this was a way - I'm vague on

1 this, but I think the special Trustee appointment  
 2 would have made it easier for things to go forward.  
 3 That is, it would have been other Trustees. She  
 4 would have been a special Trustee, and that was -  
 5 that was the way we were seeking to remedy the  
 6 situation.  
 7 Q. All right.  
 8 A. But that's really about all I remember about  
 9 it.  
 10 Q. Okay. If you would, if you could look back  
 11 at Exhibit 2. Do you have that? Is that available  
 12 to you? Just to put this letter in a time frame,  
 13 Mr. McMaster, Exhibit 2 covers the time period, I  
 14 think, through May of 2008; is that correct?  
 15 A. That's right.  
 16 Q. And this letter is written July 30, 2008, so  
 17 roughly -  
 18 A. Two months.  
 19 Q. Two months later -  
 20 A. Plus.  
 21 Q. - you wrote the letter?  
 22 A. Right.  
 23 Q. Did something change or anything change in  
 24 between the May time period and this July time  
 25 period which caused you the concerns you just

1 **A. If I'm thinking of the right woman, she was**  
 2 **with Mr. Brown on numerous occasions.**  
 3 Q. Oh, okay. So you met her at these gatherings  
 4 at Strom Thurmond's --  
 5 **A. Yes.**  
 6 Q. -- and these other --  
 7 **A. Yes.**  
 8 Q. -- political events?  
 9 **A. Right.**  
 10 Q. Okay. Have you met her since the demise of  
 11 Mr. Brown or met with her?  
 12 **A. No, sir.**  
 13 Q. Okay. Do you recall whether or not during  
 14 those events he introduced her as his wife?  
 15 **A. I really don't remember, but I presume she**  
 16 **was.**  
 17 Q. Okay, so did he. And on behalf of her minor  
 18 child, James Brown, Daryl Brown, Individually, and  
 19 on behalf of his minor child, Janise Vanisha. Look  
 20 at the rest of these people, and tell me if you've  
 21 ever met or know any of the rest of the plaintiffs  
 22 above the and.  
 23 **A. I don't think so.**  
 24 Q. Okay. Now, then we've got an "and," and this  
 25 is an additional set of plaintiffs, correct?

1 **A. Correct.**  
 2 Q. Now, the second set of plaintiffs doesn't  
 3 refer to Russell Bauknight as being -- as bringing  
 4 this on behalf of you. This says and Henry Dargan  
 5 McMaster, in his capacity as Attorney General in the  
 6 State of South Carolina. There's not much question  
 7 there that you're a party, is there?  
 8 **A. No, sir.**  
 9 MR. SMITH: Object to the form of the  
 10 question.  
 11 BY THE WITNESS: It says -- it's got my  
 12 name on there.  
 13 BY MR. BUNDY:  
 14 Q. It doesn't say -- nobody's bringing it on  
 15 your behalf. Henry McMaster is bringing it?  
 16 **A. It's different language.**  
 17 Q. Right. And you're not bringing it as the  
 18 Henry Dargan McMaster I'm taking the deposition of  
 19 today, a private citizen of the State of South  
 20 Carolina, are you? When you brought this action,  
 21 you didn't bring it as a private individual citizen  
 22 of the State of South Carolina, did you?  
 23 **A. Well --**  
 24 **MR. WINGATE: I'm instructing the**  
 25 **witness not to answer that question on the basis of**

1 **of the attorney-client privilege.**  
 2 BY MR. BUNDY:  
 3 Q. Okay. All right. You were the Attorney  
 4 General of South Carolina when this complaint was  
 5 filed?  
 6 **A. Yes.**  
 7 Q. Okay. And it says, Henry Dargan McMaster in  
 8 his capacity as Attorney General?  
 9 **A. It does.**  
 10 Q. Okay. And there's probably hundreds of  
 11 pleadings on file in various counties and court  
 12 rooms throughout this state, which has that very  
 13 same language, isn't it, Henry Dargan McMaster, in  
 14 his capacity as Attorney General of South Carolina  
 15 is suing somebody?  
 16 **A. Yes.**  
 17 Q. Okay. And this is no different from any of  
 18 that?  
 19 **A. The caption?**  
 20 Q. Yes.  
 21 **A. I don't think so.**  
 22 Q. Okay. All right. So are you at this point  
 23 what I would call a double plaintiff?  
 24 **MR. WINGATE: Again, I would instruct**  
 25 **the witness not to answer the question on the basis**

1 **of the attorney-client privilege.**  
 2 **MR. SMITH: And work product to the**  
 3 **extent it would apply, and also to the form of the**  
 4 **question.**  
 5 BY MR. BUNDY:  
 6 Q. Okay. All right. That's all I have about  
 7 the caption.  
 8 **A. All right.**  
 9 Q. Let's turn to Page 2. You've drafted  
 10 complaints before, haven't you, Mr. McMaster?  
 11 **A. Yes, sir.**  
 12 Q. It's not like the old code pleadings days,  
 13 it's not nearly as difficult as it used to be, is  
 14 it?  
 15 **A. It's always difficult.**  
 16 Q. Let's go to paragraph 3 of the complaint,  
 17 Page 2, Exhibit 4.  
 18 MR. WINGATE: I'm sorry, you said which  
 19 paragraph?  
 20 MR. BUNDY: Let's start with paragraph  
 21 3.  
 22 Q. It says the following parties. Now, what  
 23 does "parties" mean?  
 24 **A. Party is the person -- a person or entity**  
 25 **interested in the action.**

1 Q. Right. It's either a plaintiff or a  
 2 defendant?  
 3 A. Yes.  
 4 Q. Okay. To this action by virtue of their  
 5 being beneficiaries of the Estate of James Brown,  
 6 let's start with that one. In Your capacity as the  
 7 Attorney General in the State of South Carolina at  
 8 this time, were you a beneficiary of the Estate of  
 9 James Brown?  
 10 A. I don't think so.  
 11 Q. Or the James Brown 2000 Irrevocable Trust,  
 12 were you in any capacity, personally or as the  
 13 Attorney General for the State of South Carolina, a  
 14 beneficiary for James Brown's 2000 Irrevocable  
 15 Trust?  
 16 A. I don't think so. I would say, the answer  
 17 is, no.  
 18 Q. Okay.  
 19 A. I don't think the office had any pecuniary  
 20 interest in the matter.  
 21 Q. Or were you -- were you or did you, as the  
 22 Attorney General of the State of South Carolina,  
 23 when this complaint was filed, have any interest in  
 24 the James Brown Legacy Trust?  
 25 A. Not to my knowledge, and I would say, no.

1 Q. Okay. So then -- and if you go to A the  
 2 plaintiff -- no, excuse me, let's finish 3. The  
 3 plaintiffs will hereinafter be referred to as  
 4 beneficiary plaintiffs; do you see that?  
 5 A. I do.  
 6 Q. And include Henry Dargan McMaster, in his  
 7 capacity as the Attorney General for the State of  
 8 South Carolina. Will you agree with me that you are  
 9 a party to this lawsuit, based on that allegation?  
 10 A. I don't believe that the Attorney General --  
 11 I, as Attorney General, or the office was a  
 12 beneficiary at all.  
 13 Q. Okay. So --  
 14 A. The premises of the paragraph seems erroneous  
 15 to me.  
 16 Q. So it is not correct -- paragraph -- the  
 17 first sentence of paragraph three of the complaint  
 18 is not true?  
 19 MR. SMITH: Object to the form of the  
 20 question.  
 21 BY THE WITNESS: I'd say, it's not  
 22 accurate. I mean, I don't know that -- I don't know  
 23 how the --  
 24 BY MR. BUNDY:  
 25 Q. In your mind, what's the difference between

1 something being inaccurate and being untrue?  
 2 A. Being inaccurate and untrue?  
 3 Q. And untrue, what's the difference?  
 4 A. Well, true may have an element of -- you're  
 5 getting kind of precise on the words, but truth may  
 6 have an element of knowing the truth, as opposed to  
 7 accurate is totally objective.  
 8 Q. Are you familiar with Rule 11 in the South  
 9 Carolina Rules of Civil Procedure?  
 10 A. I think so, but tell me what it says.  
 11 Q. It has to do with a lawyer's obligation when  
 12 he puts something in a pleading to make a reasonable  
 13 investigation before making an allegation.  
 14 A. That's right.  
 15 Q. Okay. And we have to go to law school and  
 16 get licenses and pass ethics test. There's a reason  
 17 why we have to go through what we go through in  
 18 order to be lawyers, right?  
 19 A. Yes, sir. Are you going to ask me a  
 20 question?  
 21 Q. Yes, sir.  
 22 A. I'm waiting.  
 23 Q. Okay. The question is, was it true that  
 24 Henry Dargan McMaster, in his capacity as the  
 25 Attorney General for the State of South Carolina,

1 was a beneficiary of the Estate of James Brown or  
 2 James Brown 2000 Irrevocable Trust or the James  
 3 Brown Legacy Trust?  
 4 A. I know of no way that could be an accurate or  
 5 a true statement, unless there's some provision in  
 6 the code for the Attorney General if he's involved  
 7 in the case to receive something from it.  
 8 Q. Okay.  
 9 A. But I know of no such --  
 10 Q. Okay, that's fair?  
 11 A. -- provision.  
 12 Q. That's fair enough, but it says, the  
 13 plaintiffs, and you and I both know, I think when  
 14 you draft a complaint and you're talking about a  
 15 bunch of people, sometimes you collectively call  
 16 them one thing or another so you don't have to  
 17 repeat --  
 18 A. Right.  
 19 Q. -- their name over and over again, okay, but  
 20 if you take out the hereinafter referred to, which  
 21 is just simply a way to combine parties, it reads,  
 22 the plaintiffs include, Henry Dargan McMaster. So  
 23 there's no doubt you're a plaintiff in this case, at  
 24 least based on the pleadings?  
 25 A. Based on the pleadings, the pleadings say so.

1 BY MR. BUNDY:  
 2 Q. All right. Mr. McMaster, Defendant's Exhibit  
 3 6; do you see it?  
 4 A. Yes, sir.  
 5 Q. Have you had a chance to look at it?  
 6 A. I have looked at it briefly when you handed  
 7 it to me.  
 8 Q. Okay.  
 9 A. Yes.  
 10 Q. If you would, let's turn back in the document  
 11 -- go to -- it's document E-20, it's a May 18, 2010  
 12 letter toward the back. You got it?  
 13 A. Yes.  
 14 Q. Office of the Attorney General --  
 15 A. Yes.  
 16 Q. -- Henry McMaster, May 18, 2010: You  
 17 recognize your signature, correct?  
 18 A. Yes.  
 19 Q. All right. And is this a -- this is a letter  
 20 that would have been drafted for you that you read  
 21 and signed?  
 22 A. Yes.  
 23 Q. Okay. Probably by Sunny Jones?  
 24 A. Probably.  
 25 Q. Okay. I'd like to read it to you. Dear Mr.

1 Bauknight -- now, Mr. Bauknight was the -- who was  
 2 he? Tell me who was Mr. Bauknight was as of --  
 3 A. He was an accountant.  
 4 Q. -- May --  
 5 A. He was a highly regarded -- very highly  
 6 regarded accountant in a firm.  
 7 Q. Okay. Had you known him before?  
 8 A. I think I met him. I don't really know him,  
 9 but I've met him.  
 10 Q. And what was his role in this James Brown  
 11 matter in or about May 18, 2010, if you recall?  
 12 A. Well, at some point he was -- he was the one  
 13 that, that we wanted, and that the judge appointed  
 14 to get involved in the case.  
 15 Q. Okay. Do you know whether he got involved by  
 16 virtue of the settlement agreement that was entered  
 17 into?  
 18 A. I think that's when he became Trustee or took  
 19 a -- took a formal role. I don't know what his role  
 20 -- I don't recall what his role was, if any, before  
 21 that.  
 22 Q. Okay.  
 23 A. He may have given advice, I don't know.  
 24 Q. Is it fair to say he was the Attorney  
 25 General's pick for Trustee? If y'all had a choice

1 to pick your person, it was Mr. Bauknight?  
 2 A. I would say, he was our recommendation.  
 3 Q. Okay, perfect.  
 4 A. We couldn't do the picking, that was up the  
 5 judge, as I recall.  
 6 Q. Well, the settlement -- the settlement wasn't  
 7 up to the judge. I think the settlement everybody  
 8 agreed --  
 9 A. The judge had to approve the settlement.  
 10 Q. Correct, he did.  
 11 A. Actually, I don't think the judge had to  
 12 approve the settlement, but we wanted the judge to  
 13 approve the settlement.  
 14 Q. I gotcha. But you didn't want the Supreme  
 15 Court to disprove it?  
 16 A. Nope, that's correct.  
 17 Q. And you didn't want Mr. Pope [sic] and Mr.  
 18 Buchanan to appeal, right?  
 19 A. I was out of the picture by that time.  
 20 Q. If they had not appealed, your settlement  
 21 would have gone through, right?  
 22 A. I presume so, yes. No. No. If they hadn't  
 23 appealed...  
 24 Q. If they hadn't appealed Judge Early's  
 25 order --

1 A. Oh, yes. If the Supreme Court --  
 2 Q. Had never gotten jurisdiction.  
 3 A. Never got jurisdiction, unless somebody else  
 4 brought it up some kind of way.  
 5 Q. Well, everybody else was in the settlement  
 6 agreement, right?  
 7 A. A lot of people involved in this.  
 8 Q. Who else appealed, besides --  
 9 A. I don't know.  
 10 Q. -- Adele Pope -- let's assume they were the  
 11 only appellants.  
 12 A. They're the only ones on the page.  
 13 Q. Right. So those are the only people that  
 14 actually filed an appeal?  
 15 A. To my knowledge.  
 16 Q. If they had not appealed, the settlement that  
 17 y'all entered into would have been -- that would  
 18 have been it. It would have taken care of it, and  
 19 everything that was in that settlement agreement  
 20 would have --  
 21 A. Unless it got sidetracked some other way.  
 22 Q. Okay. All right. Dear Mr. Bauknight, I have  
 23 met with Ken Wingate and Everett Kendall of Sweeney,  
 24 Wingate & Barrow of Columbia, South Carolina  
 25 regarding the action to be filed against Adele J.

1 Pope and Robert L. Buchanan, Jr., do you recall that  
 2 meeting?  
 3 A. I think I do.  
 4 Q. Okay. Tell me what you recall about it.  
 5 MR. WINGATE: And on the front of this,  
 6 I'm going to instruct the witness not to reveal any  
 7 attorney-client conversations or content in his  
 8 answer.  
 9 MR. BUNDY: Okay.  
 10 A. I think we met in my office, but I'm not  
 11 sure --  
 12 Q. Okay.  
 13 A. -- about that.  
 14 Q. Do you know how Mr. Wingate and his firm came  
 15 to be considered for this special counsel  
 16 appointment?  
 17 A. Somebody recommended him.  
 18 Q. Okay. Was it Mr. Bauknight?  
 19 A. I don't know.  
 20 Q. Okay, fair enough. I am writing to confirm  
 21 our understanding that you, and that's Bauknight,  
 22 will be retaining Mr. Wingate and Mr. Kendall to  
 23 file this action on behalf of the beneficiary of the  
 24 James Brown Estate and Trust, including the  
 25 charitable interest. As you know, by law this

1 office has a duty to protect charitable trusts.  
 2 Also, per your conversation with Senior Assistant  
 3 Attorney General C. H. Jones -- that's Sunny Jones,  
 4 right?  
 5 A. Correct.  
 6 Q. In connection with the charitable trusts  
 7 portions of this matter, you have agreed to use the  
 8 terms and conditions as outlined in the attached,  
 9 "Agreement for Legal Services," which references and  
 10 incorporates the Attorney General's standard  
 11 Litigation Retention Agreement. Of course, this  
 12 office has no authority over your agreement with  
 13 Messrs. Wingate and Kendall concerning the other  
 14 portions of this matter, and that's your signature,  
 15 correct?  
 16 A. Yes.  
 17 Q. All right. And the reason I'm going through  
 18 this is to -- is for this reason, Mr. McMaster, if  
 19 you will move one page over -- one page ahead in the  
 20 other direction.  
 21 MR. WINGATE: So are you going to E-19  
 22 or to E-21?  
 23 MR. BUNDY: Yes, to E-19.  
 24 Q. So what I would like you to do is to look at  
 25 two things for me at one time, go to E -- I guess,

1 it's E-8, Bauknight 129 confidential, up near the  
 2 front, yeah.  
 3 A. It's up near the front?  
 4 Q. Yes, sir. It's about three or four pages in.  
 5 It's right there.  
 6 A. You said E-28?  
 7 Q. E-8, I believe it is.  
 8 A. 8.  
 9 MR. WINGATE: The numbers are a little  
 10 fuzzy.  
 11 BY MR. BUNDY:  
 12 Q. Bauknight --  
 13 A. This is E-8, Exhibit A?  
 14 Q. Exhibit A, right.  
 15 A. Okay.  
 16 Q. Here's all I'm trying to do is this, Mr.  
 17 McMaster, Exhibit A is entitled Litigation Retention  
 18 Agreement for Special Counsel Appointed by the South  
 19 Carolina Attorney General?  
 20 A. Yes.  
 21 Q. That's y'all's standard agreement, right?  
 22 A. Yes.  
 23 Q. And if you go back to the end of the  
 24 document, E-19, there's a place for your signature?  
 25 A. Yes.

1 Q. And it is not signed by you?  
 2 A. Correct.  
 3 Q. But it's -- behind it is a letter with your  
 4 signature?  
 5 A. Yes.  
 6 Q. Which confirms that, in fact, you are  
 7 agreeing to retain them, according to the terms of  
 8 that document?  
 9 MR. SMITH: Object to the form of the  
 10 question.  
 11 BY THE WITNESS: The letter says that  
 12 Mr. Bauknight is retaining them.  
 13 BY MR. BUNDY:  
 14 Q. Well, per conversation charitable -- you  
 15 agreed to use the terms and conditions as outlined  
 16 in the Legal Services Agreement?  
 17 A. Correct.  
 18 Q. Okay. So basically, is it your position that  
 19 the Attorney General did not retain Wingate and  
 20 Barrow to do anything in this case?  
 21 A. That's correct.  
 22 Q. All right.  
 23 MR. BUNDY: He's got three minutes, so  
 24 why don't we take a break. It's a good place to  
 25 stop, and we're just about done.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 Adele J. Pope, )  
 )  
 Plaintiff )  
 )  
 v. )  
 )  
 Estate of James Brown and The )  
 James Brown 2000 Irrevocable )  
 Trust, )  
 )  
 Defendants. )  
 )

IN THE COURT OF COMMON PLEAS

DEPOSITION PRIVILEGE LOG

2017 FEB 20 PM 0:59

In Re:

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF AIKEN )  
 )  
 Adele J. Pope, )  
 )  
 Plaintiff )  
 )  
 v. )  
 )  
 Estate of James Brown and The )  
 James Brown 2000 Irrevocable )  
 Trust, )  
 )  
 Defendants. )  
 )

IN THE COURT OF COMMON PLEAS  
 CIVIL ACTION NO.: 2013-CP-02-1337

**DEPOSITION OF KENNETH WINGATE, ESQUIRE**

**PRIVILEGE LOG**

The following objections have been made pursuant to South Carolina Rules of Professional Conduct 1.6(a), 1.9(c)(1) – (2), the South Carolina Rules of Civil Procedure, and the South Carolina Rules of Evidence.

The Rules of Professional Conduct requires that every attorney owes to his clients and former clients an ethical duty of confidentiality, and requires an attorney to claim a

privilege where he is being compelled to reveal what he believes may be privileged information. See Rules 1.6(a), 1.9(c), SCRPC.

The attorney-client privilege is tailored to protect confidences disclosed within the attorney-client relationship. The courts recognize such a privilege where:

- (1) [ ] legal advice of any kind is sought (2) from a professional legal adviser in his capacity as such, (3) the communications relating to that purpose (4) made in confidence (5) by the client, (6) are at his instance permanently protected (7) from disclosure by himself or by the legal adviser, (8) except the protection be waived.

*State v. Doster*, 276 S.C. 647, 651 284 S.E.2d 218, 218-20 (S.C. 1981) (citation omitted). This privilege does not end when the attorney-client relationship ends, and a duty of confidentiality is owed to former clients. See *Spence v. Wingate*, 395 S.C. 148, 716, S.E.2d 920 (2011) (stating “fiduciary duties created by an attorney-client relationship may be breached even though the formal representation has ended”).

The attorney’s work-product privilege extends to documents created in preparation for litigation as well as the attorney’s impressions, conclusions, opinions, or legal research and theories. See *Hickman v. Taylor*, 329 U.S. 495, 511 (1947) (stating an attorney’s “interviews, statements, memoranda, correspondence, briefs, mental impressions, personal beliefs, and countless other tangible and intangible [work]” is protected as it relates to preparation of a client’s case).

Page/Line Numbers	Question/Response sought to be protected	Basis of Privilege Claim/Objection
22:16 – 025:16	Attorney Pope seeks attorney-client and work-product privileged information regarding “issues related to the statute of limitations.”	<p>Attorney-client privilege based on conversations between the clients and Mr. Wingate and associated attorneys regarding theories, strategy, and legal opinions.</p> <p>Work-product privilege based on mental impressions, beliefs, and legal research and theories of the attorney.</p> <p>Additionally, this question seeks information outside of the scope of Justice Toal’s March 1, 2017 Order limiting the deposition subject matter to Mr. Wingate’s “authorization to file and continue the law suit of the Attorney General and others against Robert Buchanan and Adele Pope, filed May 9,</p>

		2010 and continuing today.” See attached.
36:22 – 37:18	Attorney Pope seeks privileged attorney-client and work-product information regarding Mr. Wingate’s determinations related to the statute of limitations for this case.	<p>Attorney-client privilege based on conversations between the clients and Mr. Wingate and associated attorneys regarding theories, strategy, and legal opinions.</p> <p>Work-product privilege based on mental impressions, beliefs, and legal research and theories of the attorney.</p> <p>Additionally, this question seeks information outside of the scope of Justice Toal’s March 1, 2017 Order.</p>
37:25 – 38:11	Attorney Pope seeks information about Mr. Wingate’s awareness of personal biases between attorneys involved in the case.	<p>Attorney-client privilege based on conversations between the clients and Mr. Wingate and associated attorneys regarding facts, theories, strategy, and legal opinions.</p> <p>Work-product privilege based on mental impressions, beliefs, and theories of the attorney.</p> <p>Additionally, this question seeks information outside of the scope of Justice Toal’s March 1, 2017 Order.</p>
39:16 – 24	Attorney Pope seeks privileged work-product and attorney-client information regarding his investigation of the allegations.	<p>Attorney-client privilege based on conversations between the clients and Mr. Wingate and associated attorneys regarding facts, theories, strategy, and legal opinions.</p> <p>Work-product privilege based on mental impressions, beliefs, and theories of the attorney.</p> <p>Additionally, this question seeks information outside of the scope of Justice Toal’s March 1, 2017 Order.</p>
40:7 – 16	Attorney Pope seeks privileged work-product and attorney-client information regarding his knowledge of the value of the Estate.	Attorney-Client privilege based on conversations between the clients and Mr. Wingate and associated attorneys.

		<p>Work product containing documents and mental impressions, beliefs, and theories of Mr. Wingate and associated attorneys.</p> <p>Additionally, this question seeks information outside of the scope of Justice Toal's March 1, 2017 Order.</p>
43:12 – 44:4	<p>Attorney Pope seeks information regarding Mr. Wingate's knowledge of facts concerning Tommie Rae Hynie's marital status, pregnancy, and state of residence.</p>	<p>Attorney-Client privilege based on conversations between the clients and Mr. Wingate and associated attorneys.</p> <p>This question seeks information outside of the scope of Justice Toal's March 1, 2017 Order limiting the deposition subject matter to Mr. Wingate's "authorization to file and continue the law suit of the Attorney General and others against Robert Buchanan and Adele Pope, filed May 9, 2010 and continuing today."</p>
44:12 – 21	<p>Attorney Pope seeks attorney-client and work product privileged information regarding Mr. Wingate's beliefs and inquiries regarding the marital status of Tommie Rae Hynie.</p>	<p>Attorney-Client privilege based on conversations between the clients and Mr. Wingate and associated attorneys.</p> <p>Work product containing documents, mental impressions, opinions, theories, and strategy of Mr. Wingate and associated attorneys.</p> <p>Additionally, this question seeks information outside of the scope of Justice Toal's March 1, 2017 Order.</p>
44:22 – 45:1	<p>Attorney Pope seeks privileged information regarding whether Mr. Wingate investigated "conflict issues" related to Tommie Rae Hynie's marital status.</p>	<p>Attorney-Client privilege based on conversations between the clients and Mr. Wingate and associated attorneys.</p> <p>Work product containing documents, mental impressions, opinions, theories, and strategy of Mr. Wingate and associated attorneys.</p> <p>Additionally, this question seeks information outside of the scope of Justice Toal's March 1, 2017 Order.</p>

47:10 – 19	Attorney Pope seeks privileged information regarding Mr. Wingate's opinions on the importance of a determination of the statute of limitations issue.	Attorney-Client privilege based on conversations between the clients and Mr. Wingate and associated attorneys.  Work product containing documents, mental impressions, opinions, theories, and strategy of Mr. Wingate and associated attorneys.  Additionally, this question seeks information outside of the scope of Justice Toal's March 1, 2017 Order.
62:24 – 63:8	Attorney Pope seeks Mr. Wingate's opinions on the importance of knowing about what other attorneys "began telling the Appellate Courts" about the value of the Estate.	Work product containing documents, mental impressions, opinions, theories, and strategy of Mr. Wingate and associated attorneys.  Additionally, this question seeks information outside of the scope of Justice Toal's March 1, 2017 Order.
69:6 – 70:12	Attorney Pope seeks information regarding Mr. Wingate's desires to "be familiar" with claims regarding the value of the Estate heard before the Supreme Court.	This question seeks information outside of the scope of Justice Toal's March 1, 2017 Order limiting the deposition subject matter to Mr. Wingate's "authorization to file and continue the law suit of the Attorney General and others against Robert Buchanan and Adele Pope, filed May 9, 2010 and continuing today."
47:19 – 24	Attorney Pope seeks information regarding Mr. Kendall's awareness of the existence of Tommie Rae Hynie's handwritten notes, which is outside of the scope of Justice Toal's March 1, 2017 Order.	
48:14 – 49:1	Attorney Pope seeks information regarding Mr. Kendall's awareness of his firm's attempt to prevent the release of a diary, which is outside of the scope of Justice Toal's March 1, 2017 Order.	
49:2 – 9	Attorney Pope seeks information regarding Mr.	

	Kendall's awareness of his firm's efforts to prevent the release of documents requested under FOIA, which is outside of the scope of Justice Toal's March 1, 2017 Order.	
49:19 – 50:3	Attorney Pope again seeks information regarding Mr. Kendall's awareness of his firm's attempt to prevent the release of documents requested under FOIA, which is outside of the scope of Justice Toal's March 1, 2017 Order.	
50:17 - 23	Attorney Pope seeks information regarding Mr. Kendall's knowledge as to an email between Buchanan and Jones he previously testified he did not recognize, which is outside of the scope of Justice Toal's March 1, 2017 Order.	
55:8 – 56:1	Attorney Pope seeks information regarding Mr. Kendall's awareness another attorney's "improprieties" prior to this lawsuit, which is outside of the scope of Justice Toal's March 1, 2017 Order.	
56:3 – 57:1	Attorney Pope seeks information regarding Mr. Kendall's awareness of an amendment to the Legacy Trust, which is outside of the scope of Justice Toal's March 1, 2017 Order.	
57:2 – 15	Attorney Pope seeks information regarding Mr. Kendall's knowledge about "who speaks for [his] client, the Plaintiff Legacy Trust," which is outside of the scope of Justice Toal's March 1, 2017 Order.	

59:18 – 22	Attorney Pope seeks information regarding the identity of members of the Legacy Trust who have voted or authorized suit since 2011, which is outside of the scope of Justice Toal's March 1, 2017 Order.	
59:23 – 25	Attorney Pope seeks information regarding the identity of members of the Legacy Trust who have voted or authorized suit since May 2013, which is outside of the scope of Justice Toal's March 1, 2017 Order.	
60:10 - 16	Attorney Pope seeks information regarding Mr. Kendall's relationship status with Terry Brown in early 2011, which is outside of the scope of Justice Toal's March 1, 2017 Order.	
60:17 – 19	<p>Attorney-Client privilege based on conversations between a client and Mr. Kendall and associated attorneys. Work product containing documents affecting litigation between his client and Mr. Kendall and associated attorneys for Plaintiffs.</p> <p>Attorney Pope seeks attorney-client and work product privileged information regarding a letter from Mr. Kendall's client firing his firm in 2012, which is also outside of the scope of Justice Toal's March 1, 2017 Order.</p>	
60:20 – 23	Attorney-Client privilege based on conversations between a client and Mr.	

	<p>Kendall and associated attorneys.</p> <p>Attorney Pope seeks attorney-client privileged information regarding the firm reestablishing a relationship with Terry Brown, which is also outside of the scope of Justice Toal's March 1, 2017 Order.</p>	
60:25 – 61:8	<p>Attorney-Client privilege based on conversations between a client and Mr. Kendall and associated attorneys.</p> <p>Attorney Pope seeks information regarding Mr. Kendall's attorney-client privilege with certain clients after they terminated Louis Lavenson, which is outside of the scope of Justice Toal's March 1, 2017 Order.</p>	
61:9 – 23	<p>Attorney Pope seeks information about his firm's attorney-client relationship or joint defense privilege with David Sojourner, which is outside of the scope of Justice Toal's March 1, 2017 Order.</p>	
62:5 - 12	<p>Attorney Pope seeks information regarding Venisha Brown's incarceration and the effect it has on her representation, which is outside of the scope of Justice Toal's March 1, 2017 Order.</p>	
65:13 – 22	<p>Attorney Pope seeks information regarding Mr. Kendall's awareness of a motion filed by Defendants relating to valuation of the Brown estate, which is outside</p>	

	of the scope of Justice Toal's March 1, 2017 Order.	
62:23 – 63:4	Attorney Pope seeks information regarding Mr. Kendall's awareness of the Estate's inventory and appraisal, which is outside of the scope of Justice Toal's March 1, 2017 Order.	
63:5 – 14	Attorney Pope seeks information regarding Mr. Kendall's awareness of Orders executed by Judge Early approving the sale of an asset, which is outside of the scope of Justice Toal's March 1, 2017 Order.	
63:15 – 22	Attorney Pope seeks information regarding Mr. Kendall's awareness of appellate court filings made by Albert Dallas and an Order executed by Judge Cureton approving the sale of an asset, which is outside of the scope of Justice Toal's March 1, 2017 Order.	
63:23 – 65:3	Attorney Pope seeks information regarding Mr. Kendall's awareness of a Petition for Review of Compensation of the Defendants, which is outside of the scope of Justice Toal's March 1, 2017 Order.	
68:13 – 22	Attorney Pope seeks information regarding Mr. Kendall's involvement in "FOIA matters on behalf of parties to" this law suit, which is outside of the scope of Justice Toal's March 1, 2017 Order.	
73:4 – 13	Attorney Pope seeks information regarding communications with Mr.	

	Medlin regarding this case, which is outside of the scope of Justice Toal's March 1, 2017 Order.	
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Page 1

STATE OF SOUTH CAROLINA	COURT OF COMMON PLEAS
COUNTY OF AIKEN	C/A. No. 2013-CP-02-1337
Adele J. Pope,	)
	)
Plaintiff,	)
	)
vs.	)
	)
Estate of James Brown and	)
The James Brown 2008	)
Irrevocable Trust,	)
	)
Defendant.	)

DEPOSITION OF  
KENNETH B. WINGATE, ESQ.  
\*\*\*\*\*  
Monday, March 6, 2017  
2:08 p.m. - 3:51 p.m.

The deposition of KENNETH B. WINGATE, ESQ., was taken on behalf of the Plaintiff at the law offices of Gertz & Moore, LLP, 1416 Laurel Street, Columbia, South Carolina, on the 6th day of March, 2017 before Cassandra E. Vance, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition.

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EXHIBITS (Continued)

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1		
2	Plaintiff's Exhibit No. 8.....	45
	(Email dtd 12/6/07 frm Mr. Jones)	
3	Plaintiff's Exhibit No. 9.....	47
	(Ltr dtd 7/30/08 frm Mr. McMaster)	
4	Plaintiff's Exhibit No. 10.....	49
	(Partial transcript of Hearing dtd 8/30/10)	
5	Plaintiff's Exhibit No. 11.....	51
	(Partial transcript of Hearing dtd 8/30/10)	
6	Plaintiff's Exhibit No. 12.....	53
	(Agreement for Legal Services dtd 5/18/10)	
7	Plaintiff's Exhibit No. 13.....	61
	(Motion to Supplement Record, C/A No. 08-CP-2-1647)	
8	Plaintiff's Exhibit No. 14.....	63
	(Plaintiff's Motion to Dismiss Petition for Writ of Prohibition dtd 2/28/11)	
9	Plaintiff's Exhibit No. 15.....	65
	(Plaintiff's Motion to Strike Dft. Pope's Offers of Judgment)	
10	Plaintiff's Exhibit No. 16.....	68
	(Appendix to Record on Appeal, C/A No. 08-CP-2-1647)	
11	Plaintiff's Exhibit No. 17.....	70
	(Ltr dtd 6/20/08 frm Mr. Levenson)	
12		
13		
14		
15		
16	STIPULATIONS	
17	It is stipulated and agreed that this deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.	
18	It is stipulated by and between counsel and the witness that the reading and signing of the following deposition be, and the same are, hereby reserved.	
19		
20		
21		
22		
23		
24		
25		

Page 2

APPEARANCES:

1	Adele J. Pope, Esquire
2	Law Office of Adele J. Pope, P.C.
3	1228 Walnut Street
	Newberry, South Carolina 29108
4	Appearing Pro Se
5	William G. Newsome, III, Esquire
	Nexsen Pruet, LLC
6	1230 Main Street, Suite 700
	Post Office Drawer 2426
7	Columbia, South Carolina 29201
	Attorney for the Defendant
8	
9	R. Davis Howser, Esquire
	Howser, Newman & Besley, LLC
10	1508 Washington Street
	Columbia, South Carolina 29201
	Attorney for Mr. Wingate

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13	Direct Examination by Ms. Pope.....	5
	Cross-Examination by Mr. Howser.....	78
14	Stipulations.....	3
	Certificate.....	79
15	Verification of Deponent.....	80
	Errata Page.....	81

EXHIBITS

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17	Defendant's Exhibit No. 1.....	4
	(Return and Opposition to Motion)	
18	Plaintiff's Exhibit No. 1.....	6
	(Judge Toal's order dtd 3/1/17, Form 4)	
19	Plaintiff's Exhibit No. 2.....	6
	(Questions for Mr. Wingate and Mr. Kendall)	
20	Plaintiff's Exhibit No. 3.....	6
	(Summons, C/A No. 2D10-GC-4000073)	
21	Plaintiff's Exhibit No. 4.....	9
	(Partial transcript of Mr. Buchanan dtd 2/3/17)	
22	Plaintiff's Exhibit No. 5.....	37
	(Email dtd 7/31/08 frm Mr. Rosen)	
23	Plaintiff's Exhibit No. 6.....	40
	(Form 706)	
24	Plaintiff's Exhibit No. 7.....	42
	(Handwritten notes)	
25		

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1 MR. HOWSER: Before we begin, can I ask  
2 her just to mark the Order? You may be  
3 doing that, as well as the return?  
4 MS. POPE: I have marked the Order as  
5 Plaintiff's 1. Dave, if you want to mark  
6 the return as your 1 or however, that's  
7 fine.  
8 MR. HOWSER: (Tendering.)  
9 MS. POPE: Yeah. You want to mark that  
10 as Defendant's 1?  
11 MR. HOWSER: That's fine.  
12 MS. POPE: Yeah, sure.  
13 (Defendant's Exhibit No. 1 was marked  
14 for identification purposes.)  
15 MS. POPE: Are your affidavits  
16 attached, Dave?  
17 MR. HOWSER: That's your --  
18 MS. POPE: Oh.  
19 MR. HOWSER: -- return.  
20 MS. POPE: Oh, oh, I'm sorry, my  
21 return.  
22 MR. HOWSER: Yeah, because it relates  
23 to --  
24 MS. POPE: Oh, I gotcha.  
25 MR. HOWSER: -- the 30 questions, so.

Page 5

1 MS. POPE: Oh, I'm sorry. Okay.

2 MR. HONSER: That's why.

3 MS. POPE: Okay. That's fine. All

4 right. Thank you.

5 KENNETH B. WINGATE, ESQ., having been duly sworn,

6 deposes and testifies as follows:

7 DIRECT EXAMINATION

8 BY MS. POPE:

9 Q. All right. Now, Ken, I'm Adele Pope and I'm

10 the Pro Se Plaintiff in Aiken County Case

11 2013-CP-02-1337. If you don't mind, I'll refer

12 to that case in today's deposition as Aiken 1337.

13 A. Sure.

14 Q. Do you need me to explain the deposition

15 procedure to you?

16 A. No.

17 Q. Okay. Would you like to read and sign your

18 deposition?

19 A. Yes.

20 Q. Okay. Thank you. And, Ken, in order to

21 save us time, I have marked my first five

22 exhibits and I'm going to identify them for us.

23 And if I've said anything incorrectly, if you'll

24 correct me, and then I'll give you an opportunity

25 to talk to your lawyer about them, if you wish.

Page 6

1 (Plaintiff's Exhibit No. 1, as previously

2 marked, was presented for identification.)

3 The first is the Order of Acting Circuit

4 Judge Jean Toal dated March 1, 2017, related to

5 this deposition; is that correct?

6 A. Are you asking me if that's what that is?

7 Q. Yes.

8 A. Jean Toal, March 1: it looks like 2017, yes.

9 Q. Okay. And you're familiar with the Order?

10 A. Yes, I am.

11 (Plaintiff's Exhibit No. 2, as previously

12 marked, was presented for identification.)

13 Q. Okay. And now Plaintiff's 2 you will not be

14 familiar with because it is a list of questions

15 that I intend to ask you today and -- and -- but

16 I want -- if you'd like to have an opportunity to

17 discuss them with your lawyer so we could move

18 faster along in the deposition, I'll be glad for

19 us to after we identify those documents.

20 (Plaintiff's Exhibit No. 3, as previously

21 marked, was presented for identification.)

22 Then Plaintiff's 3 is the Summons of what is

23 now Aiken -- I'm sorry -- what is now Richland

24 County Case 2010-CP-40-4900, that I will refer to

25 today as the Wingate Suit, but some people refer

Page 7

1 to as Richland 4900. Is that -- is Plaintiff's 3

2 the caption to the Summons of that case?

3 A. I don't know. It doesn't have that civil

4 action number on it.

5 Q. Okay. Can you tell me if you know why it's

6 not that civil action number?

7 A. No, I have no idea.

8 Q. Did you file --

9 A. This says 2010-GC-4000073 and I don't know

10 what that is.

11 Q. Okay. Was the Wingate Suit filed in Probate

12 Court?

13 A. I don't recall.

14 Q. Okay. Can you look at Plaintiff's 3 and see

15 if the Plaintiff and the Defendants as named

16 therein are the original Plaintiffs and

17 Defendants in the Wingate Suit?

18 A. I don't recall.

19 Q. You don't recall who the Plaintiffs and

20 Defendants in the Wingate Suit were?

21 A. You would have to show me, Adele, the

22 Summons including its entirety in the 4900 case

23 to compare to this Document 3 that you've shown

24 me. It appears to relate to some of the same

25 parties, but without the 4900 caption, I do not

Page 8

1 know.

2 Q. Can you look at the filing date on that

3 Exhibit 3 and see where it was filed and when?

4 A. Filed May 19, 2010, Amy McCulloch, Probate

5 Judge, Richland County. So it looks like this

6 document was filed -- this Exhibit 3 was filed in

7 the Probate Court.

8 Q. And does that refresh your recollection that

9 the Wingate Suit was filed on May 19th, 2010, in

10 the Probate Court for Richland County?

11 A. I'm not denying that it was, but I am

12 confused by this Exhibit 3 with a different case

13 number than what you've been talking about.

14 Q. Is that a Probate Court case number on

15 Exhibit 3?

16 A. It appears to be.

17 Q. Okay. And is "GC" the indication normally

18 of litigation in the Probate Court?

19 A. I do not know how they caption it.

20 Q. Do you have any recollection that that case

21 was removed from the Probate Court to the Circuit

22 Court?

23 A. Not specifically.

24 Q. Okay.

25 A. I do not.

Page 9

1 (Plaintiff's Exhibit No. 4, as previously  
 2 marked, was presented for identification.)  
 3 Q. Okay. Let me show you Plaintiff's  
 4 Exhibit 4, which is the caption and a few pages  
 5 of the deposition of Robert Buchanan, Jr., taken  
 6 in February 27, 2017, in the Wingate Suit. Do  
 7 you recognize that?  
 8 A. I do not.  
 9 Q. Okay. Do you recognize the caption?  
 10 A. Again, I don't know all of the specific  
 11 individuals, all of their names, all of the  
 12 spellings of their names, any of that kind of  
 13 detail. This appears to be a caption certainly  
 14 involving case 4900 and Russell Bauknight, as  
 15 Trustee, and others, as Plaintiffs --  
 16 Q. Okay.  
 17 A. -- against you and Robert L. Buchanan, as  
 18 Defendants.  
 19 MS. POPE: Okay. All right.  
 20 Mr. Howser, would you like to discuss any of  
 21 these with your client before we proceed?  
 22 MR. HOWSER: I would discuss Exhibit  
 23 No. 2.  
 24 MS. POPE: Thank you. We'll go off the  
 25 record for a minute.

Page 10

1 (Off the record from 2:16 p.m. to 2:22 p.m.)  
 2 MR. HOWSER: We'll state for the record  
 3 that there are a number of questions or  
 4 subjects in Exhibit No. 2 that are clearly,  
 5 in our opinion, outside the scope of what  
 6 Acting Circuit Judge Toal has directed that  
 7 Mr. Wingate and Mr. Kendall answer, but I  
 8 guess we best take it up as each question is  
 9 asked.  
 10 BY MS. POPE:  
 11 Q. In response to your deposition subpoena,  
 12 Mr. Wingate, you filed an affidavit with the  
 13 Court saying that your knowledge about the  
 14 Wingate Suit was limited to matters that you  
 15 learned from clients and work product. Have I  
 16 said that correctly?  
 17 A. I don't know. If you'll show it to me.  
 18 Q. You don't know what you said to the Court in  
 19 your affidavit to try to prevent this deposition?  
 20 A. You're quoting a document. I'll be glad to  
 21 look at the document that you're quoting.  
 22 Q. But you don't remember?  
 23 A. I'll be glad to look at the document.  
 24 Q. Well, my question is: Do you remember what  
 25 you told the Court in order to avoid being

Page 11

1 deposed?  
 2 A. I did file an affidavit.  
 3 Q. Okay. What did that affidavit tell the  
 4 Court?  
 5 A. Put it in front of me and we'll discuss it.  
 6 Q. I don't want to have it in front of you. I  
 7 want to know what you recall about what you  
 8 represented to the Court last week about your  
 9 possible testimony.  
 10 A. You're going to make this a long, slow day,  
 11 Adele. Put the document in front of me. We'll  
 12 be glad to talk about it. I'm not going to be  
 13 reciting from memory so that then there's a  
 14 transcript to try to compare word for word. Put  
 15 the document in front of me. I'm delighted to  
 16 discuss it.  
 17 Q. I don't choose to put the document in front  
 18 of you. I want to know if you have any memory of  
 19 what representation you made to the Court about  
 20 why you should not be deposed today.  
 21 A. And I've already answered that question.  
 22 MR. HOWSER: I object to the question  
 23 on the basis it's been asked and answered a  
 24 number of times.  
 25 Q. Who are your clients in the Wingate Suit?

Page 12

1 A. The Plaintiffs.  
 2 Q. Is Russell Bauknight, as Trustee of the  
 3 James Brown 2000 Irrevocable Trust, your client?  
 4 A. Yes.  
 5 Q. Is Russell Bauknight, as Trustee of the  
 6 James Brown Legacy Trust, your client?  
 7 A. Yes.  
 8 Q. Is Russell Bauknight, acting on behalf of  
 9 Attorney General Alan Wilson, your client?  
 10 A. Yes.  
 11 Q. Is Russell Bauknight, acting on behalf of  
 12 Tommie Rae Bryant -- Brown, individually and on  
 13 behalf of her minor child, your client?  
 14 A. Yes.  
 15 Q. Is Deryl J. Brown your client?  
 16 A. Yes.  
 17 Q. Is Janise Vanisha Brown your client?  
 18 A. Yes.  
 19 Q. Do you know whether she's a minor or not?  
 20 A. I do not know her.  
 21 Q. Is Lindsey Delores Brown your client?  
 22 A. To save you reading all of these, I think  
 23 the answer to each one of these is going to be  
 24 "yes."  
 25 Q. Is Lindsey Delores Brown your client?

Page 13

1 A. Yes.

2 Q. Is Deanna J. Brown Thomas your client?

3 A. Yes.

4 Q. Is Jason Brown-Lewis your client?

5 A. Yes.

6 Q. Is Yamma N. Brown, individually and on

7 behalf of her minor children, Sydney Lumar and

8 Carrington Lumar, your client?

9 A. Yes.

10 Q. Is Tonya Brown your client?

11 A. Again, I think that the answer to all of

12 these is "yes" and let me explain myself.

13 I don't deal with these individuals

14 directly. As you'll learn through the course of

15 this deposition, I am the attorney through whom

16 this case was brought into our office.

17 I have not been the principal attorney

18 dealing with these matters, so I am testifying as

19 to the best of my knowledge in each of these

20 cases. And, again, I have said, to my knowledge,

21 yes, we represent all of these parties.

22 Q. That's not my question. Is Tonya Bryant --

23 Brown your client?

24 A. To my knowledge, yes.

25 Q. Is Vanisha Brown your client?

Page 14

1 A. To my knowledge, yes.

2 Q. Is Larry Brown your client?

3 A. To my knowledge, yes.

4 Q. Is Terry Brown your client?

5 A. To my knowledge, yes.

6 Q. Is Alan Wilson, in his capacity as Attorney

7 General of the State of South Carolina, your

8 client?

9 A. Yes.

10 Q. Is Tommie Rae Brown, individually and on

11 behalf of her minor child, your client?

12 A. Yes.

13 Q. Is Daryl J. Brown your client?

14 A. I'm going to give the same answer, again,

15 Adele, to the best of my knowledge, yes, yes,

16 yes, yes, yes.

17 Q. Is Janice Vanisha Brown your client?

18 A. Yes, to the best of my knowledge.

19 Q. Do you know whether she's a minor or an

20 adult?

21 A. I do not know.

22 Q. Is Lindsey Deloras Brown your client?

23 A. To my knowledge, yes.

24 Q. Is Deanna J. Brown Thomas your client?

25 A. To the best of my knowledge, yes.

Page 15

1 Q. Is Jason Brown-Lewis your client?

2 A. To the best of my knowledge, yes.

3 Q. Is Yamma N. Brown, individually and on

4 behalf of her minor children, Sydney Lumar and

5 Carrington Lumar, your client?

6 A. To the best of my knowledge, yes.

7 Q. Is Tonya Brown your client?

8 A. To the best of my knowledge, yes.

9 Q. And Vanisha Brown?

10 A. Same answer.

11 Q. Is Larry Brown your client?

12 A. Same answer.

13 Q. Is Terry Brown your client?

14 A. Same answer.

15 Q. Has there been any change in your clients

16 since the commencement of this Wingate Suit on

17 May 19th, 2010?

18 A. To my knowledge, no.

19 Q. Was there a change of Attorneys General?

20 A. Yes. Henry McMaster was the Attorney

21 General. Alan Wilson is now the Attorney

22 General.

23 Q. Do you believe that Henry McMaster

24 authorized you to bring the Wingate Suit?

25 A. Yes, I know that he did.

Page 16

1 Q. Okay. Tell me how that happened.

2 A. I had a couple of meetings with the Attorney

3 General at which this suit was discussed and he

4 authorized us, serving as his counsel, to file

5 the suit.

6 Q. Do you know when the meetings took place?

7 A. Just prior to; meaning within the week or

8 couple of weeks prior to the filing of the suit.

9 Q. Okay. Did you tell the Attorney General

10 that he would be named as a Plaintiff in the

11 Wingate lawsuit?

12 A. Yes.

13 Q. Personally?

14 A. Yes.

15 Q. Who was present when you told him?

16 A. Had a couple of different meetings with him.

17 There was a meeting that I had with him and with

18 Alan Medlin. There was a separate meeting that I

19 had with him and some of his staff in his office.

20 Q. Okay. I want to, as carefully as I can, go

21 through those two meetings, please.

22 A. Uh-huh (affirmative response).

23 Q. To the best of your recollection, when was

24 the first meeting?

25 A. Again, in a short period of time prior to/

1 meaning within a week or two prior to the filing  
 2 of the suit.  
 3 Q. Okay. So if the suit was filed on May  
 4 19th -- we agree that it was filed on May 19,  
 5 2010?  
 6 A. That sounds right.  
 7 Q. Okay. So this would have been after the  
 8 first of May of 2010?  
 9 A. Yes. I'd say early 2000 -- early May 2010.  
 10 Q. Now, had you been dealing with Alan Medlin  
 11 and Sonny Jones since March 2010 or earlier?  
 12 A. I don't recall the date when I was first  
 13 contacted by Alan and Sonny, but it would have  
 14 been in about the time frame that you're  
 15 describing.  
 16 Q. Okay.  
 17 A. So a month or two prior to the filing of the  
 18 suit.  
 19 Q. And is it fair to say that a month or two  
 20 prior to the filing of the suit, you had actually  
 21 begun to draft the complaint?  
 22 A. I don't recall.  
 23 Q. If Alan Medlin told someone that you had  
 24 already worked on the complaint from paragraph A  
 25 to paragraph double B, or something to that

1 effect, would you have any reason to think that  
 2 was an incorrect statement in March of 2013?  
 3 MR. NEWSOME: Object to the form of the  
 4 question.  
 5 MR. HOWSER: Object to the form; it's  
 6 pitting.  
 7 THE WITNESS: I'm sorry. Repeat the  
 8 question.  
 9 MS. POPE: Can you ...  
 10 THE COURT REPORTER: "If Alan Medlin  
 11 told someone that you had already worked on  
 12 the complaint from paragraph A to paragraph  
 13 double B, or something to that effect, would  
 14 you have any reason to think that was an  
 15 incorrect statement in March of 2013?"  
 16 MR. HOWSER: Same objection.  
 17 MR. NEWSOME: Same objection.  
 18 A. I have -- I have no specific recollection of  
 19 that time frame and I certainly have no idea what  
 20 Alan Medlin may have told somebody.  
 21 Q. Did you begin working on the complaint in  
 22 the Wingate Suit as early as March of 2013?  
 23 A. I do not recall.  
 24 Q. Did you begin working on the complaint in  
 25 the Wingate Suit before your first meeting with

1 Henry McMaster?  
 2 A. I do not recall.  
 3 Q. Okay. Who else was at the meeting with you  
 4 and Sonny Jones?  
 5 A. We were in the conference room in the AG's  
 6 office right outside of Henry's -- or right  
 7 adjoining Henry's personal office. And Henry sat  
 8 at the head of the table. I was seated to his  
 9 left. Rett Kendall was seated next to me on my  
 10 left. I believe that Alan Medlin was seated on  
 11 Rett's left.  
 12 On the other side of the table, as I recall,  
 13 was McIntosh, John McIntosh with the AG's office,  
 14 Sonny Jones with the AG's office, and Mary  
 15 Francis Jowers with the AG's office, as I recall.  
 16 Q. Now, Ken, I think you are speaking to me  
 17 about a meeting that took place in May of 2010;  
 18 is that correct?  
 19 A. That sounds right.  
 20 Q. Okay. I want to back up, if I could for a  
 21 moment, to your first meeting or meetings with  
 22 Sonny and Alan Medlin. When was your first  
 23 meeting or what can you remember at all, if  
 24 anything, about your first meeting with Alan  
 25 Medlin and Sonny Jones?

1 A. I don't recall specifics because there were  
 2 a number of such conversations or meetings.  
 3 Q. Okay. So before you met with the Attorney  
 4 General --  
 5 THE WITNESS: Let's pause one second.  
 6 (Off the Record)  
 7 MS. POPE: I'll just start over since  
 8 we had a little --  
 9 MR. HOWSER: Sorry about that.  
 10 MS. POPE: -- discussion. No, no,  
 11 that's fine.  
 12 BY MS. POPE:  
 13 Q. I want to go back and see what you can  
 14 remember of any of your meetings with Sonny Jones  
 15 and Alan Medlin before you met with Attorney  
 16 General McMaster.  
 17 A. Okay.  
 18 Q. Anything you can recall about any meetings,  
 19 any conversations with them?  
 20 A. Again, all I recall is that there were  
 21 several. I can recall at least one that took  
 22 place at my office with at least Alan and Sonny.  
 23 Don't remember if -- I think Mary Francis would  
 24 have been involved. And then several phone  
 25 conversations, as well.

Page 21

1 Q. Okay. Would those have been with Mary  
 2 Francis and Sonny or Sonny or Sonny and Alan or  
 3 do you recall?  
 4 A. I can't recall those details.  
 5 Q. Okay. Do you recall whether you had the  
 6 complaint drafted when you had the meeting, which  
 7 you've just described with the Attorney General,  
 8 your first meeting?  
 9 A. I do not recall.  
 10 Q. Okay. Do you recall showing him the  
 11 complaint?  
 12 A. I do not recall that.  
 13 Q. Okay. Now, there was a second meeting. Was  
 14 the second meeting closer to the time of the  
 15 filing of the complaint?  
 16 A. They were in close proximity to one another,  
 17 so I don't recall the specific date, time, place.  
 18 There were conversations and meetings going on.  
 19 Q. Okay. Did you have any conversation with  
 20 Henry McMaster other than the two meetings you've  
 21 described?  
 22 A. Not that I recall. Most of my communication  
 23 at that point in time was with the Deputy  
 24 Attorney General, Sonny Jones, and with Mary  
 25 Francis Jowers.

Page 22

1 Q. Okay.  
 2 A. Most of the communication.  
 3 Q. And did Sonny and Mary Francis approve the  
 4 complaint?  
 5 A. I don't know what you mean by "approve."  
 6 They were involved in the drafting of the  
 7 complaint.  
 8 Q. Sonny and Mary Francis were?  
 9 A. Yes.  
 10 Q. Was Alan Medlin involved in the drafting of  
 11 the complaint?  
 12 A. As I recall, he was.  
 13 Q. Okay. Do you recall who was concerned about  
 14 the one-year statute of limitations?  
 15 A. No, I do not.  
 16 Q. Okay. Do you recall any issues related to  
 17 the statute of limitations?  
 18 A. I do.  
 19 Q. Okay. Tell me what you recall, please.  
 20 A. Just that --  
 21 MR. NEWSOME: I'm going to object real  
 22 quick to the extent that you're seeking any  
 23 information that is protected by the  
 24 attorney/client privilege.  
 25 There's been a common interest

Page 23

1 privilege asserted in this case among the  
 2 parties and to the extent -- and I wasn't  
 3 present at the hearing that Judge Toal  
 4 handled and so I'm not -- other than  
 5 reviewing the Order, I don't know to what  
 6 extent you're allowed to go into privileged  
 7 matters.  
 8 But to the extent you're seeking  
 9 discussions among Mr. Wingate, Mr. Medlin,  
 10 the Attorney General's office that go beyond  
 11 the scope of the issue of whether he was  
 12 authorized to represent the Attorney  
 13 General's office, I want to object to --  
 14 MR. HOWSER: And I would object to  
 15 that.  
 16 MS. POPE: Mr. Newsome, are you  
 17 directing Mr. Wingate not to answer or to  
 18 limit his answer?  
 19 MR. NEWSOME: I am directing him not to  
 20 reveal any privileged information beyond the  
 21 scope of what Judge Toal has ordered him to  
 22 respond to.  
 23 MS. POPE: Have you read Judge Toal's  
 24 Order?  
 25 MR. NEWSOME: If you're -- well, you're

Page 24

1 referring to this right here?  
 2 MS. POPE: Let's go off the record a  
 3 minute.  
 4 (Off the record from 2:38 p.m. to 2:39 p.m.)  
 5 MS. POPE: I understand, Mr. Newsome,  
 6 you have an objection. The question is:  
 7 Are you directing Mr. Wingate not to answer?  
 8 MR. NEWSOME: I am directing --  
 9 MR. HOWSER: Mr. Newsome has asserted  
 10 that there's a privilege. Based on his  
 11 assertion, as attorney for Mr. Wingate, I'm  
 12 directing him not to answer and we'll file  
 13 the appropriate return.  
 14 MS. POPE: Okay. So let me understand.  
 15 Mr. Newsome in this case has asserted a  
 16 privilege.  
 17 MR. HOWSER: Correct.  
 18 MS. POPE: And he has asserted that  
 19 Jean Toal, in her capacity as a Circuit  
 20 Court Judge, has -- has issued some Order  
 21 related to a privilege, and based on his  
 22 representation, you are directing  
 23 Mr. Wingate to limit his answers?  
 24 MR. HOWSER: You are completely  
 25 misstating what his objection is. His

Page 25

1 objection is to disclosure of  
 2 attorney/client privileged matter related to  
 3 a joint defense agreement.  
 4 And he has also asserted that your  
 5 question goes beyond the Order of Judge Toal  
 6 and that Judge Toal has directed that  
 7 Mr. Wingate and Mr. Kendall answer questions  
 8 related to their authorization to represent  
 9 certain parties in the lawsuit they have  
 10 brought that has calendar number 1337.  
 11 MR. NEWSOME: That's correct. Thank  
 12 you.  
 13 MS. POPE: And based on that,  
 14 Mr. Howser, you are directing him to limit  
 15 his answers?  
 16 MR. HOWSER: I am.  
 17 MS. POPE: Okay.  
 18 BY MS. POPE:  
 19 Q. Do you share today a joint interest  
 20 privilege with Alan Medlin?  
 21 A. Don't know.  
 22 Q. You don't know? Okay. Do you share today a  
 23 joint interest privilege with Louis Levanson?  
 24 A. Don't know.  
 25 Q. Do you share today a joint interest

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1 privilege with the Attorney General of South  
 2 Carolina?  
 3 A. Those are issues you'll take up with the  
 4 attorney who's handling this litigation:  
 5 Mr. Kendall.  
 6 Q. Are you responsible for this litigation,  
 7 Mr. Wingate, the Wingate Suit? Are you  
 8 responsible for it?  
 9 A. What do you mean "responsible"?  
 10 Q. Are you -- are you the attorney who brought  
 11 the Wingate lawsuit to the firm and undertook the  
 12 representation of the Plaintiffs in the Wingate  
 13 Suit?  
 14 A. No, I'm not.  
 15 Q. Who is?  
 16 A. I've already described for you that I was  
 17 initially contacted about this representation and  
 18 Mr. Kendall has been the one handling the  
 19 litigation.  
 20 Q. Did you not, Mr. Wingate, attend the very  
 21 first hearing in this matter yourself?  
 22 A. I've attended a number of hearings. I don't  
 23 know what you're referring to as the very first  
 24 hearing. I have attended hearings.  
 25 Q. And at those hearings --

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1 A. Some hearings.  
 2 Q. And did you not accept responsibility for  
 3 the lawsuit when it was filed?  
 4 A. I don't know what you mean by "accepting  
 5 responsibility."  
 6 Q. Okay. All right. It is your -- it is your  
 7 representation that you today represent all the  
 8 Plaintiffs in the Wingate lawsuit?  
 9 A. To the best of my knowledge, yes.  
 10 Q. And that you began to represent Attorney  
 11 General Alan Wilson when he took office?  
 12 A. After Henry's term ended and Alan Wilson  
 13 became the Attorney General, yes.  
 14 Q. It is -- it is your representation that you  
 15 represent Russell Bauknight on behalf of the  
 16 Attorney General of South Carolina?  
 17 A. Yes.  
 18 Q. It is your representation that you were  
 19 authorized by Henry McMaster to represent Russell  
 20 Bauknight on behalf of the Attorney General of  
 21 South Carolina?  
 22 A. I'm telling you that I met with the Attorney  
 23 General, Henry McMaster, and he authorized this  
 24 lawsuit to go forward.  
 25 Q. Did he see the complaint to know who the

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1 Plaintiffs were?  
 2 A. He knew who the Plaintiffs were.  
 3 Q. Did he know Russell Bauknight was bringing  
 4 this lawsuit on behalf of the Attorney General of  
 5 South Carolina?  
 6 A. I discussed that with Henry McMaster, yes, I  
 7 did.  
 8 Q. Personally?  
 9 A. Yes, personally.  
 10 Q. Approximately when?  
 11 A. I've already said a couple of times, within  
 12 a few weeks prior to the filing of the lawsuit.  
 13 Q. Okay. Did Mr. McMaster sign the contract  
 14 with the Wingate law firm?  
 15 A. Henry McMaster signed a letter -- and if you  
 16 want to parse through it, let's put it in front  
 17 of us -- authorizing the suit to go forward.  
 18 Q. Did Henry McMaster sign the contract with  
 19 the Wingate law firm?  
 20 A. I've said, Henry signed a letter authorizing  
 21 the suit to go forward with our firm representing  
 22 the Plaintiffs.  
 23 Q. Mr. Wingate, did you at first draft a  
 24 contract for Mr. Wingate (sic) to sign as  
 25 Attorney General and he did not sign it?

1 MR. HOWSER: Wait a minute. You  
 2 misstated.  
 3 MS. POPE: I'm sorry. Thank you.  
 4 MR. HOWSER: You used --  
 5 MS. POPE: I'll restate it. Thank you.  
 6 MR. HOWSER: You used his name twice.  
 7 MS. POPE: I -- thank you.  
 8 BY MS. POPE:  
 9 Q. Did you at first draft a contract for Henry  
 10 McMaster to sign as Attorney General and he did  
 11 not sign it?  
 12 A. No, I did not draft such a document.  
 13 Q. Did you at first propose that Henry  
 14 McMaster, as Attorney General, would be a  
 15 signatory on the contract with your firm?  
 16 A. I did not propose that.  
 17 Q. Do you know if anyone else did?  
 18 A. No, I do not know if anyone else did.  
 19 Q. Okay. Do you know whether or not that  
 20 proposal was rejected?  
 21 A. No, I do not know.  
 22 Q. Okay. All right. Do you have a joint -- an  
 23 attorney/client relationship or a joint defense  
 24 privilege with David Bell, Esquire?  
 25 A. Those would be details that others in the

1 signature of Alan's.  
 2 Q. He actually verified Attorney General  
 3 McMaster's interrogatory answers, didn't he?  
 4 A. I don't know. I didn't handle that, I told  
 5 you.  
 6 Q. So you -- you've seen his signature. You  
 7 don't know the circumstances; is that correct?  
 8 A. Correct.  
 9 Q. Okay. All right. Let me ask you about your  
 10 client, the James Brown Legacy Trust. Does it  
 11 exist?  
 12 A. I'm not handling that part of the  
 13 litigation. I'm not going to parse with you the  
 14 kind of question you're angling toward. I have  
 15 no idea.  
 16 Q. Mr. Wingate, I'm here to get your answers,  
 17 not to parse with you. Do you know whether the  
 18 Wingate -- whether the James Brown Legacy Trust  
 19 exists at this time?  
 20 A. I'm not handling that part of the  
 21 litigation.  
 22 Q. You're not responding to my answer (sic).  
 23 MR. HOWSER: The answer is: He doesn't  
 24 know. Isn't that what you --  
 25 MS. POPE: Mr. Howser, this is ...

1 litigation in my firm have handled.  
 2 Q. Do you know?  
 3 A. I do not know.  
 4 Q. Do you know whether you've ever had a joint  
 5 privilege -- a joint interest agreement with  
 6 David Bell?  
 7 A. I do not know.  
 8 Q. Okay. Do you know whether any documents  
 9 exist which confirm or deny any joint interest  
 10 privilege --  
 11 A. I do not know.  
 12 Q. -- with any person?  
 13 A. I do not know.  
 14 Q. Okay. Do you have any documentation to  
 15 confirm that Attorney General Alan Wilson became  
 16 a client of the Wingate firm when he took office  
 17 in January 2011?  
 18 A. I do recall that after he became the  
 19 Attorney General, he signed a verification of the  
 20 complaint -- or of responses -- I don't know if  
 21 it was on discovery responses or on -- on the  
 22 pleadings, but he actually personally signed a  
 23 verification. And, again, I was not the one  
 24 directly involved in the discussions about it,  
 25 the preparation of it, but I have seen a

1 MR. HOWSER: Okay. Go ahead.  
 2 BY MS. POPE:  
 3 Q. Does the James -- to your knowledge, does  
 4 the James Brown Legacy Trust exist at this time?  
 5 A. I do not know.  
 6 Q. Okay. Do you know who the -- who the  
 7 principals of the James Brown Legacy Trust are?  
 8 A. Do not know.  
 9 Q. Do you know who the principals of the James  
 10 Brown Legacy Trust were when you brought the  
 11 Wingate Suit?  
 12 A. I do not know.  
 13 Q. Okay. Do you know whether Bob Buchanan and  
 14 Adele Pope ever owed any duty to the  
 15 Wingate -- to the James Brown Legacy Trust?  
 16 A. Again, those are things that I have not been  
 17 directly involved in, so my answer is: I do not  
 18 know.  
 19 Q. Did you have any changes in the  
 20 attorney/client relationship with Daryl Brown  
 21 after Daryl Brown fired Louis Levenson?  
 22 A. I do not know.  
 23 Q. Did you allow three lawyers to sign the  
 24 Wingate litigation agreement on behalf of  
 25 approximately a dozen clients whom you had never

Page 33

1 met?

2 A. I don't know what you're talking about.

3 Q. Do you know who signed the agreement to

4 engage your law firm to bring the Wingate

5 lawsuit?

6 A. Which agreement are you talking about?

7 Q. Your Wingate litigation fee agreement to

8 bring the Wingate Suit, which you filed on

9 May 19th of 2010. Do you know who filed the

10 contract with your law firm?

11 A. No, I do not know. Put a document in front

12 of me and we can talk about it.

13 Q. Today, you don't remember who signed that

14 agreement?

15 A. Put it in front of us and we'll talk about

16 it.

17 Q. Answer my question, please. Do you --

18 A. I said --

19 Q. -- recall today who signed that agreement?

20 A. I do not.

21 Q. Do you recall that more than a dozen of your

22 clients didn't sign the agreement?

23 A. I don't handle. I didn't handle. I haven't

24 handled. I don't know.

25 Q. We'll get to it in a minute. Do you know

Page 34

1 who Louis Levenson is?

2 A. He's an attorney.

3 Q. Is he a client of yours?

4 A. I do not know what the relationship is.

5 You're making this a lot more complicated,

6 Adele, than you need to. I have told you that I

7 received the phone call at the outset about this

8 matter. Others in the firm have been handling

9 it, so those details I do not know. I have met

10 Louis Levenson on a couple of occasions. I don't

11 deal with him. I don't know.

12 Q. Ken, is a suit against a lawyer for tens of

13 millions of dollars a "detail"?

14 A. You are putting words in -- you're

15 attempting to put words in my mouth. I never

16 said anything remotely like the question you've

17 just asked.

18 What I've said is, I have not handled this

19 litigation against you on a day-in and day-out

20 basis. Others have been involved in those

21 management of relationships.

22 Q. Tell me who all of the others, other than

23 you, who've been responsible for the conduct of

24 this suit filed against Bob Buchanan and Adele

25 Pope on May 19th, 2010.

Page 35

1 A. Those who have appeared at the hearings that

2 you have seen.

3 Q. No, no, I --

4 A. Rett Kendall and Mark Gende.

5 Q. So, in your opinion, the -- the conduct of

6 the Wingate Suit has been the responsibility of

7 Rett Kendall and Mark Gende?

8 A. Yes.

9 Q. You do not accept responsibility for the

10 conduct of the Wingate Suit?

11 A. I don't know what you mean by accepting

12 responsibility. I'm telling you, Rett Kendall

13 and Mark Gende are the attorneys in our firm who

14 take care of the day-to-day handling of all

15 aspects of this case.

16 Q. I'm not interested in the day-to-day. I'm

17 interested in who authorized it, who has

18 continued it, who thinks they're representing the

19 Attorney General, who -- who keeps making motions

20 for Summary Judgment. I want to know who is

21 responsible for this suit. I think you know what

22 that means as a lawyer.

23 A. And I have answered the question.

24 MR. NEWSOME: Object to the form of the

25 question.

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1 MR. HOWSER: Object to the form.

2 Q. Who is it?

3 A. I have answered the question.

4 Q. I'm going to ask it once more because I

5 didn't hear the answer.

6 MR. HOWSER: Well ...

7 MR. NEWSOME: Same objection.

8 A. It's a law firm.

9 Q. The law firm. Who are the principals in

10 your law firm?

11 A. Mark Barrow, Ken Wingate, Rett Kendall, Mark

12 Gende, and Martin Driggers.

13 Q. Okay. And the law firm is responsible for

14 the actions of its lawyers?

15 MR. HOWSER: Object to the form.

16 MR. NEWSOME: Same objection.

17 A. The law firm has handled this litigation.

18 Q. Did you prior to filing this lawsuit do

19 anything to determine whether the allegations

20 were true or false?

21 A. Yes.

22 Q. Did you do anything to determine whether

23 the -- many of the allegations had been made long

24 prior to the -- let me start over. Did you make

25 any effort to determine whether the statutes of

1 limitations had passed as to many of the  
 2 allegations in the complaint?  
 3 A. I think we're here today to talk about the  
 4 authorization to proceed with the lawsuit. I'm  
 5 not going to go into what did we think about and  
 6 how did we analyze all of the issues.  
 7 Q. Do you refuse to answer my question?  
 8 A. Repeat it.  
 9 Q. Were you aware that the statute of  
 10 limitations had passed as to many of the  
 11 allegations you made in your complaint?  
 12 A. I do not --  
 13 MR. NEWSOME: Object to the form.  
 14 A. I do not intend to answer that question.  
 15 That does not relate to the authorization to  
 16 proceed with this lawsuit.  
 17 Q. You refuse to answer that question?  
 18 A. Yes, I do.  
 19 Q. Okay. I'll expect you to file a motion.  
 20 (Plaintiff's Exhibit No. 5, as previously  
 21 marked, was presented for identification.)  
 22 Hand you Wingate 5 and ask you if you've  
 23 seen that before.  
 24 A. No, I've never seen this before.  
 25 Q. Were you aware prior to the commencement of

1 Q. Do you recall that one of the allegations of  
 2 the complaint was that Bob Buchanan and Adele  
 3 Pope should have accepted a  
 4 hundred-million-dollar offer made for James  
 5 Brown's assets in 2007?  
 6 A. Put the complaint in front of me and we'll  
 7 be glad to look at it paragraph by paragraph.  
 8 Q. Do you refuse to answer?  
 9 A. I'm saying I don't recall those details.  
 10 That's a lengthy document --  
 11 Q. Do you think --  
 12 A. -- from six years ago.  
 13 Q. It's a lengthy document in a pending  
 14 lawsuit, isn't it, Mr. Wingate?  
 15 A. I've already answered your question.  
 16 Q. Have you made any effort to determine  
 17 whether the allegation that Bob Buchanan and  
 18 Adele Pope should have accepted a  
 19 hundred-million-dollar offer was correct or  
 20 appropriate?  
 21 MR. HOWSER: I object and instruct him  
 22 not to answer; that goes beyond the Order of  
 23 Justice -- of Judge Toal.  
 24 MR. NEWSOME: Same objection.  
 25 BY MS. POPE:

1 this lawsuit that Sonny Jones had a substantial  
 2 personal bias against Bob Buchanan and Adele  
 3 Pope?  
 4 MR. NEWSOME: Object to the form.  
 5 MR. HOWSER: Object to the form.  
 6 A. I'm here to talk about the authorization to  
 7 proceed with the lawsuit.  
 8 Q. Do --  
 9 A. I do not know.  
 10 Q. Do you not know or do you refuse to answer?  
 11 A. Both.  
 12 Q. You do not know and you refuse to answer,  
 13 okay. Do you know who Dr. Terry Cox is?  
 14 A. Is that someone you're referencing on  
 15 Exhibit 5? I said I'm not -- I'm not familiar  
 16 with Exhibit 5.  
 17 Q. That's not the question. The question is:  
 18 Do you know who Dr. Terry Cox is?  
 19 A. Not that I recall.  
 20 Q. Do you recall seeing Bob Buchanan and Adele  
 21 Pope for not accepting a hundred-million-dollar  
 22 offer?  
 23 A. I remember filing a suit against you and Bob  
 24 Buchanan. The allegations of the complaint speak  
 25 for themselves.

1 Q. Do you know who Alan Madlin in Wingate 5 was  
 2 referring to by the name of "Adolph"?  
 3 A. No.  
 4 (Plaintiff's Exhibit No. 6 was marked for  
 5 identification purposes.)  
 6 Q. All right. Let me hand you Plaintiff's 6.  
 7 Did you know anything about the value of the  
 8 James Brown assets when you filed the Wingate  
 9 lawsuit?  
 10 A. Did I know anything about the assets of the  
 11 Estate?  
 12 Q. The value of the assets.  
 13 A. There were issues related to the assets of  
 14 the Estate --  
 15 Q. That's not my --  
 16 A. -- what they were, how they were valued.  
 17 Again, that's beyond the scope of were we  
 18 authorized to file this suit.  
 19 Q. Did you, in fact, allege that as a result of  
 20 Bob Buchanan and Adele's Pope (sic)  
 21 non-acceptance of a hundred-million-dollar offer  
 22 that at the time of the filing of the suit, the  
 23 assets were worth tens of millions of dollars  
 24 less?  
 25 MR. NEWSOME: Object --

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1 MR. HOWSER: Object --  
 2 MR. NEWSOME: -- to the form.  
 3 MR. HOWSER: So do I.  
 4 A. Again, put the complaint in front of me and  
 5 if it's within the scope of this deposition,  
 6 we'll talk about it.  
 7 Q. Do you refuse to answer without the  
 8 complaint?  
 9 A. Yes. I'm not going to let you just put  
 10 words in my mouth. If you've got a document,  
 11 let's -- put it in front of me and we'll talk  
 12 about it.  
 13 Q. Were you aware at the time that this  
 14 complaint was being prepared that Alan Medlin was  
 15 proposing a devaluation of James Brown's assets?  
 16 MR. NEWSOME: Object to the form.  
 17 A. I don't know what you're talking about.  
 18 Q. Okay. All right. Let's look at Wingate 6.  
 19 Do you recognize that form?  
 20 A. I recognize this as to the form being one  
 21 portion of a federal estate tax return, a Form  
 22 706.  
 23 Q. In what estate?  
 24 A. What this document says -- and I did not  
 25 prepare this document -- it says "Estate of James

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1 Brown,"  
 2 Q. All right. Okay. But you don't know any  
 3 more than that?  
 4 A. I -- correct. I do not know more than that.  
 5 Q. All right.  
 6 A. I did not generate this document.  
 7 (Plaintiff's Exhibit No. 7 was marked for  
 8 identification purposes.)  
 9 Q. Let's look at Wingate 7. Do you know  
 10 anything about Wingate 7?  
 11 A. Do not.  
 12 Q. Okay. Do you know what it is?  
 13 A. No, I do not.  
 14 Q. Okay. Do you know anything about the Hynie  
 15 notes, sometimes called the "Hynie diary"?  
 16 A. No, I do not.  
 17 Q. Do you know who Alan Wingate -- I'm sorry.  
 18 Do you know who Alan Medlin represented when this  
 19 lawsuit was filed?  
 20 A. My understanding is that he represented  
 21 Tommie Rae Hynie.  
 22 Q. Do you know who he represents today?  
 23 A. I do not.  
 24 Q. Do you know what the position of the Estate  
 25 speaking through Bob Buchanan and Adele Pope was

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1 with respect to the marital status of James Brown  
 2 and Tommie Rae Hynie?  
 3 A. I do not.  
 4 Q. Do you know what the position of the Estate  
 5 of James Brown with respect to the marital status  
 6 of Tommy Rae Hynie and James Brown is today?  
 7 A. I do not.  
 8 Q. Do you know that there are -- that that  
 9 issue is pending in the South Carolina Court of  
 10 Appeals?  
 11 A. I do not.  
 12 Q. Okay. Were you aware at the commencement of  
 13 this suit that by her own handwritten notes,  
 14 Tommie Rae had admitted that she was married and  
 15 living in Texas and might be pregnant before she  
 16 left? Her husband --  
 17 A. Is that a question?  
 18 Q. I'll finish in a minute -- before she left  
 19 her husband and took up with James Brown?  
 20 A. I don't understand --  
 21 MR. HOWSER: Object to -- object to the  
 22 form of the question, assuming it's a  
 23 question.  
 24 MR. NEWSOME: Same objection. And also  
 25 beyond --

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1 MR. HOWSER: And object to the  
 2 statement.  
 3 MR. NEWSOME: -- also beyond the scope  
 4 of this deposition.  
 5 BY MS. POPE:  
 6 Q. But you're not aware?  
 7 A. I don't know.  
 8 Q. Okay. Do you know anything about the  
 9 marital status of Tommie Rae Hynie and James  
 10 Brown?  
 11 A. I do not.  
 12 Q. Do you think that was an important inquiry  
 13 before you took her on as a client, along with  
 14 those who have said she's not the wife?  
 15 MR. HOWSER: I object to the question.  
 16 MR. NEWSOME: Same objection.  
 17 A. As it relates to the authorization to  
 18 proceed with this suit, I was contacted by the  
 19 Plaintiffs group, which included her counsel,  
 20 asking us to undertake the lawsuit against Adele  
 21 Pope and Bob Buchanan.  
 22 Q. Okay. And you -- you made no -- well, you  
 23 made no inquiry into the conflict issues related  
 24 to that?  
 25 A. I am not going to answer what inquiries I

1 made into those things.  
 2 Q. Okay. Well, didn't you, in fact, tell the  
 3 Court at some point before 2013 that if you could  
 4 not represent the Attorney General, you could not  
 5 represent anyone?  
 6 A. I don't know --  
 7 MR. NEWSOME: Object to the form.  
 8 A. -- what you're referring to.  
 9 Q. Did you -- did you make -- not make such a  
 10 representation to the Court?  
 11 A. Not that I'm aware of.  
 12 Q. Do you know whether --  
 13 A. I don't know what --  
 14 Q. -- your firm did?  
 15 A. -- you're referring to. I do not know.  
 16 Q. You don't know what representations your  
 17 firm made to the Court about its potential  
 18 conflicts?  
 19 A. If you've got a document, put it in front of  
 20 me and I'll be glad to answer questions or try  
 21 to.  
 22 Q. Okay. Well, I want to know what you know.  
 23 Today, I want to know what you know.  
 24 A. I've already answered the question.  
 25 (Plaintiff's Exhibit No. 8 was marked for

1 five percent of the gross profits offer to  
 2 purchase James Brown's assets. Do you know  
 3 anything about that?  
 4 A. This is two or three years prior to my  
 5 having any involvement. No, I know nothing about  
 6 this.  
 7 Q. Right. Do you know anything about the  
 8 October 18th letter that is referred to in --  
 9 A. I do not.  
 10 Q. -- in Mrs. Pope's handwriting? You do not.  
 11 Do you think that might have been important  
 12 to determine whether this case that you brought  
 13 would be barred by the statute of limitations?  
 14 MR. HOWSER: Object to the form.  
 15 MR. NEWSOME: Same objection.  
 16 A. And I'm not going to answer questions about  
 17 what was considered or what was reviewed. This  
 18 is a deposition about the authorization to  
 19 proceed with the litigation.  
 20 (Plaintiff's Exhibit No. 9 was marked for  
 21 identification purposes.)  
 22 Q. Let's look at Wingate No. 9.  
 23 A. Okay.  
 24 Q. Wingate No. 9 being a letter from Henry  
 25 McMaster to Adala Pope and Bob Buchanan dated

1 identification purposes.)  
 2 Q. All right. Let's look at -- let me get you  
 3 another one, Wingate 8.  
 4 A. That's No. 8, if that's what you're --  
 5 Q. Yes, uh-huh (affirmative response). Yeah, I  
 6 was just looking for copies. Thank you.  
 7 A. (Reading.) Do you have a better copy?  
 8 Q. I'm sorry, I don't. If I can help you with  
 9 the words, I'll be glad to.  
 10 A. I've scanned over it. I don't know what the  
 11 question is.  
 12 THE WITNESS: Have you got a copy of  
 13 it, Bill?  
 14 MR. NEWSOME: I do not.  
 15 MS. POPE: Just one second. I'm sorry.  
 16 (Tendering.)  
 17 MR. HOWSER: Thank you.  
 18 BY MS. POPE:  
 19 Q. Do you know anything about the subject of  
 20 Exhibit 8 which --  
 21 A. I do not.  
 22 Q. All right. I'm just going to make a little  
 23 bit of a record here. This is an email from  
 24 Sonny Jones to Bob Buchanan dated December 6,  
 25 2007, regarding a hundred-million-dollar plus

1 July 30th, 2008. Did Mr. Jones and Mr. Medlin  
 2 give you a copy of that letter before this  
 3 lawsuit was commenced?  
 4 A. I don't know.  
 5 Q. Do you know anything about the facts and  
 6 circumstances in the letter of Henry McMaster  
 7 dated July 30th, 2008?  
 8 A. I do not. Again, that's a couple years  
 9 before I became involved.  
 10 Q. Did Henry McMaster express to you his  
 11 extreme concern about bringing a lawsuit against  
 12 lawyers?  
 13 MR. HOWSER: Object to the form.  
 14 MR. NEWSOME: Same objection.  
 15 A. He did not.  
 16 Q. Did he seem willing and happy to bring a  
 17 lawsuit against Bob Buchanan and Adele Pope?  
 18 MR. HOWSER: Object to the form.  
 19 MR. NEWSOME: Same objection.  
 20 A. Henry authorized the filing of the suit  
 21 against you and Bob personally.  
 22 Q. In two meetings?  
 23 A. I had two meetings with him. I had quite a  
 24 number of meetings, as I told you earlier, in  
 25 that run-up to the filing; phone conversations

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1 and/or meetings with his staff attorneys.  
 2 Q. In which --  
 3 A. Two meetings with Henry.  
 4 Q. In which one did Henry authorize you to file  
 5 this lawsuit in his name as Attorney General?  
 6 A. The last of those meetings.  
 7 Q. Okay. And you --  
 8 A. Prior to the filing of the suit, of course.  
 9 Q. And you don't recall when it was?  
 10 A. It was within a week. I think I testified  
 11 earlier within a week prior to the filing of the  
 12 suit.  
 13 MS. POPE: Okay. Let's mark -- no,  
 14 actually -- yeah, let's mark this.  
 15 (Plaintiff's Exhibit No. 10 was marked  
 16 for identification purposes.)  
 17 BY MS. POPE:  
 18 Q. This is No. 10.  
 19 A. Is this two copies of the same thing, Adele?  
 20 Q. Oh, yeah.  
 21 A. Is that the one that he can look at?  
 22 Q. Yeah.  
 23 THE WITNESS: Do you have one?  
 24 MS. POPE: (Tendering.)  
 25 MR. NEWSOME: Thank you.

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1 BY MS. POPE:  
 2 Q. Okay. And Wingate 10 is a portion of a  
 3 transcript of record in the Wingate Suit,  
 4 August 30th, 2010. If you'll just glance at that  
 5 a minute.  
 6 A. I think you just said to me that this is a  
 7 portion of a transcript?  
 8 Q. It is.  
 9 A. Okay. I've glanced at it. I haven't read  
 10 it.  
 11 Q. Okay. Well, take the time you need, please.  
 12 A. (Reading.) Still reading. Just give me  
 13 another moment.  
 14 Q. Sure.  
 15 A. (Reading.) Okay. I've read it.  
 16 Q. Okay. Does this refresh your recollection  
 17 about your participation in the Wingate Suit?  
 18 A. No, it does not, really. I do remember that  
 19 I appeared at several hearings at different times  
 20 with either Rett Kendall, my partner, or Mark  
 21 Gende, and that there would be occasions, as  
 22 appears in this partial transcript that you've  
 23 given me, where I'm indicating to the Court that  
 24 we represent, among others in the court that day,  
 25 Sonny Jones, an attorney with the South Carolina

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1 Attorney General's office, who was one of our  
 2 clients.  
 3 Q. And Mr. Jones was there and allowed himself  
 4 to be introduced as your client?  
 5 A. That is correct.  
 6 Q. Okay. Now, do you recall from looking at  
 7 Exhibit 10 that that meeting had a short break  
 8 for lunch and then came back? Does that refresh  
 9 your memory about ...  
 10 A. It does not refresh my memory.  
 11 MS. POPE: Okay. Let's mark the next  
 12 one.  
 13 (Plaintiff's Exhibit No. 11 was marked  
 14 for identification purposes.)  
 15 BY MS. POPE:  
 16 Q. Okay. Let me hand you Plaintiff's Exhibit  
 17 11. I mean, I'm sorry, Wingate 11. And let's  
 18 see if that helps you remember what happened in  
 19 the afternoon.  
 20 A. (Reading.) Is this also a partial  
 21 transcript?  
 22 Q. Yes, it is. It's a partial transcript of  
 23 the same day.  
 24 MR. HOWSER: Somehow I wound up  
 25 with -- Adele, I wound up with something

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1 that says 7 in the ...  
 2 A. (Reading.) Okay. I've looked at the  
 3 partial transcript you've given me.  
 4 Q. Is it fair to say that you were responsible  
 5 for arguing to the Court that Judge Early should  
 6 not be responsible for this case, that it should  
 7 remain in Richland County?  
 8 A. The portion of the transcript that you've  
 9 given me from the August 30, 2010 hearing does  
 10 describe or discuss the question of venue.  
 11 Q. Okay. And you were responsible for the  
 12 argument that you were making to the Court that  
 13 day, were you not?  
 14 A. I was the person addressing the Court.  
 15 There are questions or statements by the Court,  
 16 which means Judge Manning, and there are  
 17 questions, arguments, what have you, made by me  
 18 according to this partial transcript. And there  
 19 were a lot of other people at the hearing that  
 20 day, too.  
 21 Q. Who do you recall?  
 22 A. Well, I've just -- reading the partial  
 23 transcript that you've given me, Adele, it says  
 24 that I'm introducing to the Court a group of my  
 25 clients, which included Sonny Jones of the South

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<p>1 Carolina Attorney General's Office -- which is</p> <p>2 why he was sitting behind the -- not at counsel</p> <p>3 table, but in the back of the courtroom -- along</p> <p>4 with some of the others that are referenced here.</p> <p>5 Q. Does anything in there refresh your</p> <p>6 recollection about your responsibility for the</p> <p>7 case?</p> <p>8 A. We can play this game all day long, Adele.</p> <p>9 You keep trying to put the word "responsibility"</p> <p>10 in my mouth. I was one of the attorneys of</p> <p>11 record representing the Plaintiffs who sued you.</p> <p>12 (Plaintiff's Exhibit No. 12 was marked for</p> <p>13 identification purposes.)</p> <p>14 Q. All right. Let's look at --</p> <p>15 A. With the direct and specific authorization</p> <p>16 of the South Carolina Attorney General, who was</p> <p>17 our client and remains our client.</p> <p>18 Q. Let's look at Wingate 13, is it?</p> <p>19 A. 12.</p> <p>20 Q. 12. Thank you. Let's look at Wingate 12.</p> <p>21 Is that your -- the Wingate Litigation Retention</p> <p>22 Agreement?</p> <p>23 A. I will say that I think that this is it.</p> <p>24 You'll notice, at least according to the copy I'm</p> <p>25 looking at, that it's signed on behalf of our</p>	<p>1 Estate of James Brown by -- that looks like</p> <p>2 Russell Bauknight's signature as PR, and the</p> <p>3 James Brown 2000 Irrevocable Trust. Again, it</p> <p>4 looks like it's signed by Russell Bauknight, as</p> <p>5 Trustee, and the James Brown Legacy Trust, again,</p> <p>6 looks like it's signed by Russell Bauknight, as</p> <p>7 its Trustee.</p> <p>8 Q. Did any of approximately a dozen of your</p> <p>9 clients sign the Wingate agreement?</p> <p>10 A. The agreement is the package that it appears</p> <p>11 you've put together here. It's got various parts</p> <p>12 and components.</p> <p>13 There's the initial three pages. There's</p> <p>14 the attachment, which is called Exhibit A.</p> <p>15 There's the letter of Attorney General Henry</p> <p>16 McMaster. And then there are separate</p> <p>17 confirmations, approvals, and acknowledgments all</p> <p>18 attached.</p> <p>19 Q. Well, what is -- what is the Wingate</p> <p>20 contract, Mr. Wingate?</p> <p>21 A. This packet.</p> <p>22 Q. Okay. So the entire packet is the Wingate</p> <p>23 contract?</p> <p>24 A. The Agreement for Legal Services is the</p> <p>25 first three pages and it incorporates, I believe</p>
<p>Page 54</p> <p>1 firm by Everett Kendall, who was and remains one</p> <p>2 of the partners in our firm, who was the</p> <p>3 principal litigation attorney. And he was the</p> <p>4 one who dealt with the drafting, the signing, the</p> <p>5 details regarding the retention.</p> <p>6 But this is an Agreement for Legal Services</p> <p>7 between our firm and, as it says on page one,</p> <p>8 Russell Bauknight in his various capacities.</p> <p>9 It also attaches and makes reference to the</p> <p>10 Exhibit A, which is the Litigation Retention</p> <p>11 Agreement for Special Counsel Appointed by the</p> <p>12 South Carolina Attorney General. And it also has</p> <p>13 an attachment of the letter signed by Henry</p> <p>14 McMaster as the Attorney General of South</p> <p>15 Carolina, among other signatories.</p> <p>16 Q. Okay. Well, the other signatories aren't</p> <p>17 actually the Plaintiffs, are they?</p> <p>18 A. I'm going to let you parse that with</p> <p>19 Mr. Kendall. I've already told you, I was not</p> <p>20 the person who was dealing with the Agreement for</p> <p>21 Legal Services.</p> <p>22 Q. That's not my question, Mr. Wingate. Are</p> <p>23 the Plaintiffs in the Wingate lawsuit signatories</p> <p>24 to this contract?</p> <p>25 A. On page three of the agreement, it says</p>	<p>Page 56</p> <p>1 by reference, the others. And, again,</p> <p>2 Mr. Kendall is the one who negotiated this, who</p> <p>3 handled this. I do not know.</p> <p>4 Q. Okay. So -- but I need to know what you</p> <p>5 know. I'm sorry. I don't want to take any more</p> <p>6 time than we need, but today's my day to find out</p> <p>7 what you know. So I need to know what you know</p> <p>8 about this contract.</p> <p>9 A. I'm not the one who negotiated it, so I</p> <p>10 don't know.</p> <p>11 Q. Okay. Well, I wouldn't -- wouldn't say that</p> <p>12 because someone didn't negotiate the contract</p> <p>13 they don't know. Because the contract was, in</p> <p>14 fact, with your law firm, wasn't it?</p> <p>15 MR. HOWSER: Object to the form.</p> <p>16 MR. NEWSOME: Same objection.</p> <p>17 A. It's not unusual, as you are aware, in a law</p> <p>18 firm with multiple attorneys for different people</p> <p>19 to handle different components of the</p> <p>20 representation.</p> <p>21 I've already told you twice that I was the</p> <p>22 relationship attorney through which this matter</p> <p>23 first came in or through whom this matter first</p> <p>24 came in. And that Rett Kendall is the person</p> <p>25 who, as the litigation attorney in the firm, is</p>

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1 handling and has handled things such as this  
 2 agreement.  
 3 Q. I understand.  
 4 A. And, no, I am -- I do not know all the  
 5 details of what all is in this packet that you're  
 6 calling Exhibit 12.  
 7 Q. Well, I want you to take all the time you  
 8 need because this is what we're here about,  
 9 Mr. Wingate. I want to know everything you know  
 10 and know. So all the time it takes you to  
 11 refresh your memory, please do --  
 12 A. And I've just answered the question.  
 13 Q. Well, I'm not through. So I want -- I want  
 14 you to take all the time to refresh your memory  
 15 about anything you can refresh your about,  
 16 because I have some questions about the contract.  
 17 A. I've already answered you that I'm not the  
 18 one who negotiated, so there's not a memory to be  
 19 refreshed. I don't understand why you have a  
 20 hard time understanding that answer.  
 21 Q. Okay. So you never understood the contract?  
 22 A. It's not what I said. I said I did not  
 23 negotiate the contract.  
 24 Q. Well, Mr. Wingate, I didn't actually get a  
 25 "yes" or "no" answer from you about that. You're

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1 often bound by a contract that you don't  
 2 negotiate, aren't -- aren't you?  
 3 MR. HOWSER: Object to the form.  
 4 MR. NEWSOME: Same objection.  
 5 A. The scope of this deposition is: Was this  
 6 law firm authorized to sue you? And I'm telling  
 7 you that I'm not the attorney within the firm who  
 8 dealt with these matters. I have no firsthand  
 9 knowledge to be refreshed.  
 10 Q. Do you know whether this is the Wingate  
 11 firm's contract with the Plaintiffs in the  
 12 Wingate lawsuit? Do you know that, "yes" or  
 13 "no"? And then any explanation you want to give.  
 14 A. I have already told you, I'm not the one who  
 15 negotiated all those details. I do not know.  
 16 Q. You do not know whether this is the  
 17 contract?  
 18 A. It's what I just said.  
 19 Q. Okay. Do you know from looking at this or  
 20 from any other source which of the Wingate Suit  
 21 clients filed -- executed the contract with the  
 22 Wingate firm?  
 23 A. I didn't handle those. No, I do not know.  
 24 Q. You do not know. Do you know whether the  
 25 Attorney General of South Carolina understood

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1 himself to be bound by this contract?  
 2 MR. HOWSER: Object to the form.  
 3 MR. NEWSOME: Same objection.  
 4 A. I know that Henry McMaster looked me in the  
 5 eye and said, "You're authorized to file this  
 6 suit against Adele Pope and Bob Buchanan."  
 7 Q. "In my name as Attorney General?"  
 8 MR. NEWSOME: Object to the form.  
 9 A. I don't recall the verbatim words. He  
 10 looked me in the eye -- the subject of the  
 11 meeting was: Is there going to be a suit and  
 12 would Sweeny, Wingate & Barrow, PA, be  
 13 representing the group of Plaintiffs?  
 14 As I just referenced in connection with the  
 15 Judge Manning argument, that a group of parties  
 16 had a global settlement. They collectively came  
 17 to us -- one of them was the Attorney General of  
 18 South Carolina -- and asked us to represent them  
 19 in suing Adele Pope and Bob Buchanan.  
 20 Q. Did you know he -- did he know he would be  
 21 named as a Plaintiff when he gave you that  
 22 authorization?  
 23 MR. HOWSER: Object to the form of the  
 24 question.  
 25 MR. NEWSOME: Same objection.

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1 A. His Deputy Attorney General, Sonny Jones,  
 2 who had been the first contact with me with Alan  
 3 Medlin, who also was in the meeting with me and  
 4 with the Attorney General, and who also was the  
 5 continuous go-between between their office and  
 6 mine, was present for those conversations, yes.  
 7 Q. Did -- did Mr. McMaster understand when he  
 8 authorized it that he was named as a Plaintiff?  
 9 A. I believe that he did, absolutely, yes.  
 10 Q. Okay. Good. Now ...  
 11 A. And on an ongoing basis, there would be  
 12 hearings, such as the one we just did before  
 13 Judge Manning in the transcript that we reviewed  
 14 a few moments ago, in which representatives --  
 15 usually Sonny Jones, sometimes Mary Francis  
 16 Jowers, sometimes Emory Smith -- would be present  
 17 and would sit in the back of the courtroom with  
 18 either Mr. Kendall or Mr. Gende, or occasionally  
 19 me in the early stage, representing the group of  
 20 the Plaintiffs, who had come to us with the  
 21 request.  
 22 Q. Well, now Mr. McMaster left office  
 23 approximately eight months after the lawsuit was  
 24 filed; isn't that right?  
 25 A. I think the election was in 2010, right. So

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1 if the suit was filed in May of 2010, the  
 2 election would have been in November of 2010 and  
 3 the new A.G., Alan Wilson, would have gone into  
 4 office in January of 2011.  
 5 Q. Right. So -- but, again, in January of  
 6 2011, you have no evidence that Alan Wilson  
 7 himself authorized the continuation of the suit  
 8 other than having seen his name on a verification  
 9 of a document; is that correct?  
 10 A. I'm not the one who was --  
 11 MR. NEWSOME: Object to the form.  
 12 A. -- dealing with all those things, so I do  
 13 not know.  
 14 Q. Okay. But you have no information?  
 15 A. I'm not saying I do or I don't. I said I do  
 16 not know.  
 17 Q. Well, wait a minute. Do you have any -- do  
 18 you know whether there is anything to confirm the  
 19 transition of the contract of the Attorney  
 20 General of South Carolina with your firm from  
 21 Henry McMaster to Alan Wilson?  
 22 A. I do not know. Rett Kendall was handling  
 23 that aspect of the litigation.  
 24 MS. POPE: Okay. Mark this one.  
 25 (Plaintiff's Exhibit No. 13 was marked

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1 for identification purposes.)  
 2 BY MS. POPE:  
 3 Q. Plaintiff's 13.  
 4 A. (Reading.) Okay.  
 5 Q. If you'll just take a moment to see if you  
 6 can familiarize yourself with Wingate 13.  
 7 A. I'm not familiar with this document.  
 8 Q. Okay. Well, if you can familiarize yourself  
 9 with the facts surrounding the document.  
 10 A. Are you saying you want me to read the  
 11 document?  
 12 Q. Yeah, please.  
 13 A. It's nine pages long.  
 14 MR. HONSER: Take your time.  
 15 A. (Reading.) I glanced over it.  
 16 Q. Do you know when Alan Medlin and Sonny Jones  
 17 and others began telling the Appellate Courts  
 18 that James Brown's music empire was worth only  
 19 \$4.7 million when he died?  
 20 A. I have no --  
 21 MR. NEWSOME: Object to the form of the  
 22 question.  
 23 A. I have no knowledge of that.  
 24 Q. Okay. Do you think it would have been  
 25 important to know when you were suing Bob

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1 Buchanan and Adale Pope for not accepting a  
 2 hundred-million-dollar offer?  
 3 MR. NEWSOME: Object to the form.  
 4 MR. HONSER: Object to the form.  
 5 That's beyond the scope.  
 6 A. And I'm not going to answer the question.  
 7 You're -- I'm here today regarding the  
 8 authorization to proceed with the lawsuit.  
 9 Q. You refuse to answer, okay.  
 10 (Plaintiff's Exhibit No. 14 was marked for  
 11 identification purposes.)  
 12 Q. Let's look at Plaintiff's 14, please.  
 13 A. (Reading.) I've been given pages -- well, a  
 14 cover letter and then it looks like one, two, and  
 15 eight. Is that the entire packet?  
 16 Q. That's the entire packet; that's Wingate 14.  
 17 A. Okay. I've looked at it.  
 18 Q. Okay. Are you familiar with your  
 19 representation to the Court that it was entirely  
 20 illegal -- I'm sorry, I'll start over.  
 21 Do you recall your representation to the  
 22 Court that it was entirely appropriate for a  
 23 private law firm to bring a tort suit against  
 24 Mr. Buchanan and Ms. Pope without the Attorney  
 25 General being an attorney of record?

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1 A. That's a long, contorted question and my  
 2 basic response is: If that question relates to  
 3 this partial document I've been given, then I'm  
 4 not the one who prepared or signed or filed this  
 5 document, so I have no idea how this document  
 6 relates to the question you've just asked.  
 7 Q. Well, maybe it would be easier to just let  
 8 me give you the question and then we'll talk  
 9 about the document.  
 10 A. Take a shot at it.  
 11 Q. Okay. Did you represent to the Court, the  
 12 lower court, you, that it was entirely  
 13 appropriate for the Wingate firm to be pursuing a  
 14 tort suit against Bob Buchanan and Adale Pope  
 15 without the Attorney -- in the name of the  
 16 Attorney General without the Attorney General  
 17 being an attorney of record?  
 18 MR. NEWSOME: Object to the form.  
 19 A. And I have no idea what you're talking  
 20 about, so my answer is: No, I do not recall  
 21 making that representation.  
 22 Q. Okay. And if the lower court ruled not to  
 23 dismiss the lawsuit for that purpose and an  
 24 appeal was taken with a Writ of Prohibition, do  
 25 you recall anything whatsoever about that issue?

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1 A. That has nothing to do with the  
 2 authorization to proceed with the lawsuit.  
 3 Q. I understand that, but that's not my  
 4 question, Mr. Wingate. Do you recall anything  
 5 about Bob Buchanan's and Adele Pope's seeking an  
 6 early answer from the Appellate Court about the  
 7 legality of the Wingate lawsuit?  
 8 A. I don't know what you're talking about.  
 9 (Plaintiff's Exhibit No. 15 was marked for  
 10 identification purposes.)  
 11 THE WITNESS: What was that? Is that  
 12 just some loose, extra copy of something?  
 13 BY MS. POPE:  
 14 Q. Before you look at the document, let me ask  
 15 you this. Do you remember ever the opportunity  
 16 for the Attorney General to be dismissed as a  
 17 party to the Wingate Suit?  
 18 A. I'm sorry, ask the question again.  
 19 Q. Yeah. Do you remember Adele Pope ever  
 20 giving the Attorney General an opportunity to be  
 21 dismissed as a party to the Wingate Suit?  
 22 A. I don't know what you're referring to.  
 23 Q. Okay. Now, take a look at Wingate --  
 24 A. 15?  
 25 Q. -- 15, please, and tell me if you know

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1 anything about that.  
 2 A. (Reading.) I do not.  
 3 Q. Okay. Well, look carefully. I want to see  
 4 if it refreshes your recollection about anything  
 5 related to this.  
 6 A. It does not.  
 7 Q. Do you know anything about the Wingate  
 8 firm's filing a Motion to Strike fifteen offers  
 9 of judgment from Adele Pope?  
 10 A. No, I do not.  
 11 Q. Okay. Have you forgotten or you never knew?  
 12 A. I -- I've already testified that I have no  
 13 recollection or knowledge of this, so I  
 14 don't -- I don't have any different answer to  
 15 that question.  
 16 Q. Who signed this document?  
 17 A. Are you looking at page three --  
 18 Q. Yes.  
 19 A. -- of Exhibit 15? That's an associate,  
 20 Aaron Hayes, who's named there under our byline.  
 21 Q. Okay. Do you supervise Aaron Hayes?  
 22 A. Mark Gende supervised Aaron Hayes in the  
 23 conduct of this portion of the litigation.  
 24 Q. Well, you didn't recall it, so you don't  
 25 really know who supervised him, do you?

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1 A. If you're trying to imply that he was not  
 2 supervised, you're putting words in my mouth.  
 3 What I said is, I have no knowledge of this  
 4 pleading.  
 5 Q. My question is: Who supervises Aaron Hayes?  
 6 Do you?  
 7 A. It depends on what given day and what given  
 8 matter. I think you're asking me who was  
 9 handling this aspect of this litigation against  
 10 you and my answer would be: Not Ken Wingate, so  
 11 it must be Mark Gende.  
 12 Q. Well, Ken, it might be better if you'll just  
 13 answer the question rather than trying to figure  
 14 out what I'm trying to ask you. Who supervises  
 15 Aaron Hayes?  
 16 A. I can play the same kind of games you can,  
 17 Adele. I've answered the question. It  
 18 depends -- we have a law firm with a lot of  
 19 lawyers. It depends on what day, what issues,  
 20 what cases.  
 21 I have no knowledge of this particular  
 22 pleading, so I am speculating for you that Mark  
 23 Gende, who worked closely with Aaron Hayes on the  
 24 lawsuit against you, is the one who supervised  
 25 it, but I do not know.

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1 Q. Thank you.  
 2 A. I have no knowledge of this document.  
 3 Q. Thank you. That helps. Okay.  
 4 (Plaintiff's Exhibit No. 16 was marked for  
 5 identification purposes.)  
 6 A. (Perusing.)  
 7 Q. And I'm sorry, I did not mark Wingate 16  
 8 along with Wingate 13, but I'm going to ask you  
 9 to just glance at Wingate 16 and Wingate 13  
 10 together --  
 11 A. Yes.  
 12 Q. -- and see if you have any knowledge,  
 13 memory, recollection of anything related to the  
 14 Motion to Supplement the Record filed in May of  
 15 2011.  
 16 A. No, I do not. And, again, would note that  
 17 these are -- Exhibit 16 is a selection of pages,  
 18 it appears, out of some document; page one of 15,  
 19 page four of 15 --  
 20 Q. Right.  
 21 A. -- page nine of 15, et cetera. But there's  
 22 nothing of the few pages that are included in  
 23 this exhibit that I recognize at all.  
 24 Q. Okay. Are you -- are you just generally  
 25 unfamiliar with the claim by all of the Wingate

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1 Suit Plaintiffs to the Supreme Court in 2011 that  
 2 James Brown's assets were worth less than  
 3 \$7 million and his music empire worth less than  
 4 \$5 million?  
 5 A. I'm not familiar with those things.  
 6 Q. Okay. And if you were suing someone for not  
 7 accepting a hundred-million-dollar offer, would  
 8 you have wanted to be familiar with those things?  
 9 MR. HOWSER: Object to the form of the  
 10 question.  
 11 MR. NEWSOME: Same objection. Also  
 12 beyond the scope of the deposition.  
 13 A. I was going to say, this is -- we're here  
 14 today to talk about the authorization to sue you  
 15 and all the nuances of what was done later and  
 16 who did what and who said what, et cetera, no, I  
 17 do not know.  
 18 Q. I don't know whether I got an answer for  
 19 that.  
 20 MS. POPE: Could you reread it?  
 21 THE COURT REPORTER: Which part?  
 22 MS. POPE: The question.  
 23 THE COURT REPORTER: "And if you were  
 24 suing someone for not accepting a  
 25 hundred-million-dollar offer, would you have

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1 wanted to be familiar with those things?"  
 2 MR. NEWSOME: Same objection.  
 3 MR. HOWSER: Same objection.  
 4 A. And my answer is: This is about the  
 5 authorization to proceed in the suit.  
 6 Q. So you refuse to answer?  
 7 A. I was authorized to proceed in filing a suit  
 8 against you and I'm not going to discuss the  
 9 nuances of different facts and who handled what  
 10 and who knew what when and how you can interpret  
 11 those things. That's not within the scope of  
 12 this; that's privileged information.  
 13 Q. So you have refused to answer, so I will  
 14 expect you to file a motion.  
 15 (Plaintiff's Exhibit No. 17 was marked for  
 16 identification purposes.)  
 17 Q. Are you familiar with what has generally  
 18 been called "dirty tricks" in which David Bell  
 19 has engaged over the course of the James Brown  
 20 litigation?  
 21 A. I've never heard that phrase "dirty tricks."  
 22 Q. Are you familiar with anything inappropriate  
 23 alleged by anyone that David Bell has done during  
 24 the course of the James Brown litigation?  
 25 A. I have no idea what you're talking about.

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1 Q. Do you know who David Bell is?  
 2 A. He's an attorney.  
 3 Q. Okay. Is he one of the signatories to the  
 4 Wingate contract?  
 5 A. I don't know.  
 6 Q. Well, let's look and see.  
 7 A. Show it to me.  
 8 Q. You have it.  
 9 A. (Tendering.) You have it.  
 10 Q. We're looking at Plaintiff's 12.  
 11 A. (Reading.) And the question is?  
 12 Q. Is David Bell a signatory to the Wingate  
 13 contract, Plaintiff Wingate 12?  
 14 A. In Exhibit 12, the third page from the end  
 15 is a document signed by David Bell that is titled  
 16 "Confirmation Approval and Acknowledgment."  
 17 Q. Did you consider that to be part of the  
 18 contract?  
 19 A. I've already answered the question  
 20 previously, that Rett Kendall and my firm was the  
 21 person dealing with these matters, these  
 22 attorneys, and this document. I do not know.  
 23 Q. You do not know whether David Bell's  
 24 signature was part of the contract?  
 25 A. I've already told you that the third from

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1 the last page of Exhibit 12 is a document signed  
 2 by David Bell -- well, it's a copy of one; I  
 3 assume he signed it -- that confirms, approves,  
 4 and acknowledges, and you have attached it to the  
 5 Agreement for Legal Services between my firm and  
 6 Russell Bauknight.  
 7 Q. Well, Mr. Wingate, when it was released by  
 8 Mr. Bauknight pursuant to federal court order,  
 9 this is what he released, isn't it?  
 10 A. Is that what you're representing to me?  
 11 Q. Today is your day to answer questions.  
 12 MR. HOWSER: That's right. And that  
 13 was a statement and I object to the  
 14 statement.  
 15 MS. POPE: Which was --  
 16 MR. NEWSOME: Same objection.  
 17 BY MS. POPE:  
 18 Q. Do you know what Mr. Bauknight presented to  
 19 the federal court when he was directed to release  
 20 the Wingate contract?  
 21 A. No, I do not.  
 22 Q. Okay. And -- okay. You don't know.  
 23 A. I do not know.  
 24 Q. Did you know that he was required by the  
 25 federal court to release the Wingate contract?

1 A. No.  
 2 Q. Okay. All right. Have you ever been aware  
 3 that David Bell filed five false grievances  
 4 against Louis Levenson?  
 5 MR. NEWSOME: Object to the form.  
 6 MR. HOWSER: Same objection.  
 7 A. I have no knowledge of what you're talking  
 8 about.  
 9 Q. Okay. So the answer is "no"?  
 10 A. I said I do not have any knowledge; that is  
 11 correct.  
 12 Q. Okay. Are you aware of how the Grammy claim  
 13 got planted with the Kilpatrick Stockton law  
 14 firm?  
 15 A. I don't know what you're talking about.  
 16 Q. Are you aware of a reference to the Grammy  
 17 sale in the Wilson versus Dallas decision?  
 18 A. I've heard that there was a Grammy involved  
 19 in this lawsuit. So the question you're asking  
 20 is what?  
 21 Q. Are you aware of how the Kilpatrick Stockton  
 22 website began to post the Grammy claim in January  
 23 of 2011?  
 24 A. No.  
 25 Q. Do you know the involvement of Mr. Bell

1 A. I do not know what you're talking about.  
 2 Q. Okay. Did you appear at a FOIA hearing  
 3 seeking to intervene in a FOIA suit?  
 4 A. I do not know.  
 5 Q. You don't know whether you attended a FOIA  
 6 hearing?  
 7 A. No, I don't know.  
 8 Q. Do you know anything about the efforts of  
 9 the Wingate Suit Plaintiffs to intervene in FOIA  
 10 lawsuits?  
 11 A. No, I was not handling those kinds of  
 12 things.  
 13 Q. I'm sorry, I don't mean to cut you off, but  
 14 I understand that you've said repeatedly that you  
 15 weren't handling those things, so we have that on  
 16 the record. I'm, again, trying to just make sure  
 17 that you're not the person to ask about certain  
 18 things, okay?  
 19 Do you know anything about the Wingate  
 20 Plaintiffs' attempts to intervene in Freedom of  
 21 Information Act lawsuits?  
 22 A. No.  
 23 Q. Okay. Did you ever attend, that you can  
 24 recall, a hearing related to the -- to the  
 25 attempts by Wingate Suit Plaintiffs to intervene

1 and/or any of his clients in that posting?  
 2 A. No.  
 3 Q. Thank you. Do you agree that Henry McMaster  
 4 has waived any attorney/client privilege as to  
 5 who authorized the bringing and the conduct of  
 6 the Wingate Suit in his name as A.G. or the  
 7 authorization for Russell Bauknight to act on  
 8 behalf of the A.G.?  
 9 A. What I know is that Judge Toal signed an  
 10 Order saying that we should talk about the  
 11 authorization to serve. I have no idea of the  
 12 scope of comments that Henry or any representing  
 13 him may have made.  
 14 Q. Okay. And let me be clear. You do not know  
 15 who made the decision for Wingate not to sign the  
 16 Litigation Retention Agreement?  
 17 A. Repeat that question.  
 18 Q. Do you know who made the decision for Henry  
 19 McMaster not to sign the Wingate Litigation  
 20 Retention Agreement?  
 21 A. I don't understand the question and, no, I  
 22 do not know.  
 23 Q. Okay. Do you know who made the decision for  
 24 most of the Wingate Suit Plaintiffs not to sue  
 25 the -- sign the Wingate Litigation Agreement?

1 in FOIA lawsuits?  
 2 A. I do not know.  
 3 Q. You don't know whether you attended one?  
 4 A. Huh-uh (negatively responds). I do not  
 5 know.  
 6 There would be hearings from time to time  
 7 involving multiple parties, multiple attorneys  
 8 for those parties, and multiple issues. I've  
 9 been to quite a number of hearings in this  
 10 collected set of suits and I cannot sit here  
 11 today and say I attended a certain hearing.  
 12 If you've got a transcript, I'd be delighted  
 13 to take a look at it and answer questions about  
 14 that.  
 15 Q. What did you mean when you said "this  
 16 collected set of lawsuits"?  
 17 A. There's 1337. There's 4900. You're talking  
 18 about the FOIA cases. There are quite a number  
 19 of cases and appeals that you've been involved in  
 20 involving the Estate of James Brown and the  
 21 Trusts of James Brown; that's what I'm referring  
 22 to.  
 23 Q. But sitting here today, you do not remember  
 24 any participation on behalf of the Attorney  
 25 General or in conjunction with the Attorney

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1 General in a FOIA lawsuit?

2 A. I'm neither denying it nor confirming it. I

3 do not have independent recollection of that.

4 Q. Do you have --

5 A. No, I do not.

6 Q. Do you have any recollection of the Attorney

7 General urging you or authorizing you to try to

8 participate in FOIA lawsuits?

9 A. I do not have specific recollection of that.

10 We had frequent and have had frequent interaction

11 with any number of people at the Attorney

12 General's Office and I've already named all those

13 people.

14 Q. Specifically now I want to talk only about

15 the Attorneys General and about FOIA suits. Have

16 you had interaction with the Attorney General to

17 participate in FOIA lawsuits?

18 A. I do not recall.

19 MS. POPE: I think that's all the

20 questions I have. Thank you, Ken.

21 THE WITNESS: You're quite welcome.

22 MR. NEWSOME: No questions for this

23 witness.

24 MR. HOWSER: We would just ask that

25 Defendant's Exhibit 1 be --

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1 CROSS-EXAMINATION

2 Q. Would you look at that and tell us what it

3 is? What is the caption on that?

4 A. Motion of Kenneth B. Wingate to Quash

5 Subpoena in the Court of Common Pleas, a Return

6 in Opposition to the Motion that was filed by

7 Adele Pope on February 23rd, 2017.

8 MR. HOWSER: We would ask that that be

9 marked as Exhibit No. 1. That's all we

10 have.

11 MS. POPE: Thank you.

12 [There being no further questions, the

13 deposition concluded at 3:51 p.m.]

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1 CERTIFICATE OF REPORTER

2 I, Cassandra E. Vance, Court Reporter

3 and Notary Public in and for the State of

4 South Carolina, do hereby certify that I

5 reported the deposition of KENNETH B.

6 WINGATE, ESQ. on the 6th day of March, 2017;

7 that the witness was first duly sworn by me,

8 and that the foregoing 78 pages constitute a

9 true and correct transcription of the said

10 deposition.

11 I further certify that I am neither

12 attorney nor counsel for, nor related to or

13 employed by, any of the parties connected

14 with this action, nor am I financially

15 interested in said cause.

16 I further certify that the original of

17 said transcript shall be hereafter sealed

18 and delivered to Adele J. Pope, Esq., Law

19 Office of Adele J. Pope, P.C., 1228 Walnut

20 Street, Newberry, South Carolina 29108.

21 This sealed original transcript shall be

22 retained by the above party, who shall be

23 responsible for filing same with the Court

24 prior to trial or any hearing which might

25 result in a final order on any issue.

IN WITNESS WHEREOF, I have hereunto set

my hand and seal this 13th day of March,

2017.

\_\_\_\_\_  
Cassandra E. Vance, Court Reporter  
Notary Public for South Carolina

My commission expires: 2-26-2018

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1 Verification of Deponent

2

3 I, KENNETH B. WINGATE, ESQ., have read

4 the foregoing deposition testimony, which

5 was reported by Cassandra E. Vance, Court

6 Reporter and Notary Public in and for the

7 State of South Carolina, on March 6, 2017.

8 I find the transcript of the deposition

9 to be a true and accurate transcript

10 according to my testimony on that date, with

11 the exception of \_\_\_\_\_ corrections as

12 listed on the attached errata page, which

13 was filled in by me.

14

15

16

17

18 KENNETH B. WINGATE, ESQ.

19

20 \_\_\_\_\_, 20\_\_.

21

22

23

24

25

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS

Adele J. Pope, )  
 )  
Plaintiff )

v. )

DEPOSITION PRIVILEGE LOG

Estate of James Brown and The )  
James Brown 2000 Irrevocable )  
Trust, )  
 )  
Defendants. )

2017 MAR 20 PM 9:00

In Re:

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF AIKEN )

IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO.: 2013-CP-02-1337

Adele J. Pope, )  
 )  
Plaintiff )

v. )

Estate of James Brown and The )  
James Brown 2000 Irrevocable )  
Trust, )  
 )  
Defendants. )

**DEPOSITION OF EVERETT A. KENDALL, ESQUIRE**

**PRIVILEGE LOG**

The following objections have been made pursuant to South Carolina Rules of Professional Conduct 1.6(a), 1.9(c)(1) – (2), the South Carolina Rules of Civil Procedure, and the South Carolina Rules of Evidence.

The Rules of Professional Conduct requires that every attorney owes to his client and former clients an ethical duty of confidentiality, and requires an attorney to claim a

privilege where he is being compelled to reveal what he believes may be privileged information. See Rules 1.6(a), 1.9(c), SCRPC.

The attorney-client privilege is tailored to protect confidences disclosed within the attorney-client relationship. The courts recognize such a privilege where:

- (1) [ ] legal advice of any kind is sought (2) from a professional legal adviser in his capacity as such, (3) the communications relating to that purpose (4) made in confidence (5) by the client, (6) are at his instance permanently protected (7) from disclosure by himself or by the legal adviser, (8) except the protection be waived.

*State v. Doster*, 276 S.C. 647, 651 284 S.E.2d 218, 218-20 (S.C. 1981). This privilege does not end when the attorney-client relationship ends, and a duty of confidentiality is owed to former clients. See *Spence v. Wingate*, 395 S.C. 148, 716, S.E.2d 920 (2011) (stating “fiduciary duties created by an attorney-client relationship may be breached even though the formal representation has ended”).

The attorney’s work-product privilege extends to documents created in preparation for litigation as well as the attorney’s impressions, conclusions, opinions, or legal research and theories. See *Hickman v. Taylor*, 329 U.S. 495, 511 (1947) (stating an attorney’s “interviews, statements, memoranda, correspondence, briefs, mental impressions, personal beliefs, and countless other tangible and intangible [work]” is protected as it relates to preparation of a client’s case).

<b>Page/Line Numbers</b>	<b>Question/Response sought to be protected</b>	<b>Basis of Privilege Claim</b>
15:25 – 16:15	Attorney Pope seeks privileged work-product information regarding what attorney at Sweeney, Wingate and Barrow was the “supervisory attorney” during a specified period of time.	Work-product related to preparation and handling of case.  Additionally, this question seeks information outside of the scope of Justice Toal’s March 1, 2017 Order limiting the deposition subject matter to Mr. Kendall’s “authorization to file and continue the law suit of the Attorney General and others against Robert Buchanan and Adele Pope, filed May 9, 2010 and continuing today.” See attached.
18:6 – 14	Attorney Pope seeks privileged work-product information regarding the firm’s process and procedures in handling a case.	Work-product related to preparation and handling of case.

		<p>Additionally, this question seeks information outside of the scope of Justice Toal's March 1, 2017 Order.</p>
18:25 – 19:5	<p>Attorney Pope seeks privileged work-product information regarding Mr. Kendall's procedures in the handling of pleadings.</p>	<p>Work-product related to preparation and handling of case.</p> <p>Additionally, this question seeks information outside of the scope of Justice Toal's March 1, 2017 Order.</p>
38:6 – 22	<p>Attorney Pope seeks privileged work-product and attorney-client information regarding his knowledge of an issue concerning the statute of limitations as it pertained to the filing of the subject law suit.</p>	<p>Attorney-client privilege based on conversations between the clients and Mr. Kendall and associated attorneys. Work product containing mental impressions, research, theories, and opinions of Mr. Kendall and associated attorneys for Plaintiffs.</p> <p>Additionally, this question seeks information outside of the scope of Justice Toal's March 1, 2017 Order.</p>
41:9 – 42:14	<p>Attorney Pope seeks privileged work-product and attorney-client information regarding his knowledge regarding parties involved with a previous settlement offer.</p>	<p>Attorney-Client privilege based on conversations between the clients and Mr. Kendall and associated attorneys.</p> <p>Work product containing documents and mental impressions of Mr. Kendall and associated attorneys for Plaintiffs.</p> <p>Additionally, this question seeks information outside of the scope of Justice Toal's March 1, 2017 Order.</p>
42:25 – 43:16	<p>Attorney Pope seeks information regarding whether investigations were conducted by Mr. Kendall prior to filing this law suit.</p>	<p>This question seeks information outside of the scope of Justice Toal's March 1, 2017 Order.</p>
44:11 – 15	<p>Attorney Pope seeks attorney-client and work product privileged information regarding Mr. Kendall's knowledge of the value of the James Brown estate assets.</p>	<p>Attorney-Client privilege based on conversations between the clients and Mr. Kendall and associated attorneys.</p> <p>Work product containing documents, theories, research, and mental impressions of Mr. Kendall and associated attorneys for Plaintiffs.</p>

		Additionally, this question seeks information outside of the scope of Justice Toal's March 1, 2017 Order.
45:16 – 46:2	Attorney Pope seeks information regarding Mr. Kendall's knowledge of representations made by others to the South Carolina Court of Appeals.	This question seeks information outside of the scope of Justice Toal's March 1, 2017 Order.
46:3 – 12	Attorney Pope seeks information concerning whether Mr. Kendall "would [ ] have wanted to know" certain information about the Defendants.	This question seeks information outside of the scope of Justice Toal's March 1, 2017 Order.
46:13 – 19	Attorney Pope seeks information regarding Mr. Kendall's awareness of the defendants' positions on Tommie Rae Hynie's (his client's) marital status.	This question seeks information outside of the scope of Justice Toal's March 1, 2017 Order.
46:20 – 47:1	Attorney Pope seeks information regarding Mr. Kendall's awareness of the Estate's position on Tommie Rae Hynie's (his client's) marital status	This question seeks information outside of the scope of Justice Toal's March 1, 2017 Order.
47:19 – 24	Attorney Pope seeks information regarding Mr. Kendall's awareness of the existence of Tommie Rae Hynie's (his client's) handwritten notes.	Attorney-Client privilege based on conversations between the clients and Mr. Kendall and associated attorneys.  This question seeks information outside of the scope of Justice Toal's March 1, 2017 Order.
48:14 – 49:1	Attorney Pope seeks information regarding Mr. Kendall's awareness of his firm's attempt to prevent the release of his client's diary.	Attorney-Client privilege based on conversations between the clients and Mr. Kendall and associated attorneys.  Work product containing documents, theories, strategies, and mental impressions of Mr. Kendall and associated attorneys for Plaintiffs.  Additionally, this question seeks information outside of the scope of Justice Toal's March 1, 2017 Order.

49:2 – 9	Attorney Pope seeks information regarding Mr. Kendall's awareness of his firm's efforts to prevent the release of documents requested under FOIA.	<p>Attorney-Client privilege based on conversations between the clients and Mr. Kendall and associated attorneys.</p> <p>Work product containing documents, theories, strategies, and mental impressions of Mr. Kendall and associated attorneys for Plaintiffs.</p> <p>Additionally, this question seeks information outside of the scope of Justice Toal's March 1, 2017 Order.</p>
49:19 – 50:3	Attorney Pope again seeks information regarding Mr. Kendall's awareness of his firm's attempt to prevent the release of documents requested under FOIA.	<p>Attorney-Client privilege based on conversations between the clients and Mr. Kendall and associated attorneys.</p> <p>Work product containing documents, theories, strategies, and mental impressions of Mr. Kendall and associated attorneys for Plaintiffs.</p> <p>Additionally, this question seeks information outside of the scope of Justice Toal's March 1, 2017 Order.</p>
50:17 - 23	Attorney Pope seeks information regarding Mr. Kendall's knowledge as to an email between Buchanan and Jones he previously testified he did not recognize.	This question is outside of the scope of Justice Toal's March 1, 2017 Order.
55:8 – 56:1	Attorney Pope seeks information regarding Mr. Kendall's awareness another attorney's "improprieties" prior to this lawsuit.	This question is outside of the scope of Justice Toal's March 1, 2017 Order.
56:3 – 57:1	Attorney Pope seeks information regarding Mr. Kendall's awareness of an amendment to the Legacy Trust (his client).	<p>Attorney-Client privilege based on conversations between the clients and Mr. Kendall and associated attorneys.</p> <p>This question is outside of the scope of Justice Toal's March 1, 2017 Order.</p>
57:2 – 15	Attorney Pope seeks information regarding Mr. Kendall's knowledge about "who speaks for [his] client, the Plaintiff Legacy Trust."	This question is outside of the scope of Justice Toal's March 1, 2017 Order.

59:18 – 22	Attorney Pope seeks information regarding the identity of members of the Legacy Trust who have voted or authorized suit since 2011.	Attorney-Client privilege based on conversations between the clients and Mr. Kendall and associated attorneys.  This question is outside of the scope of Justice Toal's March 1, 2017 Order.
59:23 – 25	Attorney Pope seeks information regarding the identity of members of the Legacy Trust who have voted or authorized suit since May 2013.	Attorney-Client privilege based on conversations between the clients and Mr. Kendall and associated attorneys.  This question is outside of the scope of Justice Toal's March 1, 2017 Order.
60:10 - 16	Attorney Pope seeks information regarding Mr. Kendall's affiliation with Terry Brown in early 2011.	This question is outside of the scope of Justice Toal's March 1, 2017 Order.
60:17 – 19	Attorney Pope seeks attorney-client and work product privileged information regarding a letter from Mr. Kendall's client firing his firm in 2012.	Attorney-Client privilege based on conversations between a client and Mr. Kendall and associated attorneys.  Work product containing documents affecting litigation between his client and Mr. Kendall and associated attorneys for Plaintiffs.  Additionally, this question seeks information outside of the scope of Justice Toal's March 1, 2017 Order.
60:20 – 23	Attorney Pope seeks attorney-client privileged information regarding the firm reestablishing connection with Terry Brown.	Attorney-Client privilege based on conversations between a client and Mr. Kendall and associated attorneys.  Additionally, this question seeks information outside of the scope of Justice Toal's March 1, 2017 Order.
60:25 – 61:8	Attorney Pope seeks information regarding Mr. Kendall's attorney-client privilege with certain clients after they terminated Louis Lavenson.	Attorney-Client privilege based on conversations between a client and Mr. Kendall and associated attorneys.  Additionally, this question seeks information outside of the scope of Justice Toal's March 1, 2017 Order.
61:9 – 23	Attorney Pope seeks information about his firm's attorney-client relationship or	This question seeks information outside of the scope of Justice Toal's March 1, 2017 Order.

	joint defense privilege with David Sojourner.	
62:5 - 12	Attorney Pope seeks information regarding his client, Venisha Brown's incarceration and the effect it has on her representation.	Attorney-Client privilege based on conversations between a client and Mr. Kendall and associated attorneys.  This question seeks information outside of the scope of Justice Toal's March 1, 2017 Order.
65:13 - 22	Attorney Pope seeks information regarding Mr. Kendall's awareness of a motion filed by Defendants relating to valuation of the Brown estate.	This question seeks information outside of the scope of Justice Toal's March 1, 2017 Order.
62:23 - 63:4	Attorney Pope seeks information regarding Mr. Kendall's awareness of the Estate's inventory and appraisal.	This question seeks information outside of the scope of Justice Toal's March 1, 2017 Order.
63:5 - 14	Attorney Pope seeks information regarding Mr. Kendall's awareness of Orders executed by Judge Early approving the sale of an asset from the Estate.	This question seeks information outside of the scope of Justice Toal's March 1, 2017 Order.
63:15 - 22	Attorney Pope seeks information regarding Mr. Kendall's awareness of appellate court filings made by Albert Dallas and an Order executed by Judge Cureton approving the sale of an asset from the Estate.	This question seeks information outside of the scope of Justice Toal's March 1, 2017 Order.
63:23 - 65:3	Attorney Pope seeks information regarding Mr. Kendall's awareness of a Petition for Review of Compensation of the Defendants.	This question seeks information outside of the scope of Justice Toal's March 1, 2017 Order.
68:13 - 22	Attorney Pope seeks information regarding Mr. Kendall's involvement in "FOIA matters on behalf of parties" to this law suit.	Attorney-Client privilege based on conversations between the clients and Mr. Kendall and associated attorneys.  Work product containing documents, theories, strategies, opinions, and

		<p>mental impressions of Mr. Kendall and associated attorneys for Plaintiffs.</p> <p>This question seeks information outside of the scope of Justice Toal's March 1, 2017 Order.</p>
73:4 – 13	<p>Attorney Pope seeks information regarding communications with Mr. Medlin regarding this case.</p>	<p>This question seeks information outside of the scope of Justice Toal's March 1, 2017 Order.</p>

Page 1

STATE OF SOUTH CAROLINA      COURT OF COMMON PLEAS  
COUNTY OF AIKEN              C/A. No. 2013-CP-02-1337

Adele J. Pope,                    )  
  )                    Plaintiff,  
  )                    )  
  )                    vs.                    )  
  )                    )  
Estate of James Brown and      )  
The James Brown 2000            )  
Irrevocable Trust,                )  
  )                    Defendant.            )

DEPOSITION OF  
EVERETT A. KENDALL, II, ESQ.  
\*\*\*\*\*  
Monday, March 6, 2017  
4:07 p.m. - 5:35 p.m.

The deposition of EVERETT A. KENDALL, II, ESQ., was taken on behalf of the Plaintiff at the law offices of Gertz & Moore, LLP, 1416 Laurel Street, Columbia, South Carolina, on the 6th day of March, 2017 before Cassandra E. Vance, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition.

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EXHIBITS (Continued)

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2	Plaintiff's Exhibit No. 8.....	50
	(Email dtd 12/6/07 frm Mr. Jones)	
3	Plaintiff's Exhibit No. 9.....	51
	(Ltr dtd 7/30/08 frm Mr. McMaster)	
4	Plaintiff's Exhibit No. 10.....	52
	(Partial transcript of Hearing dtd 8/30/10)	
5	Plaintiff's Exhibit No. 11.....	52
	(Partial transcript of Hearing dtd 8/30/10)	
6	Plaintiff's Exhibit No. 14.....	54
	(Plaintiff's Motion to Dismiss Petition for Write of Prohibition dtd 2/28/11)	
7	Plaintiff's Exhibit No. 17.....	55
	(Ltr dtd 6/20/08 frm Mr. Levenson)	
8	Plaintiff's Exhibit No. 2.....	58
	(Questions for Mr. Wingate and Mr. Kendall)	
9	Defendant's Exhibit No. 1.....	69
	(Return and Opposition to Motion)	
10		
11		
12		
	STIPULATIONS	
13		
14	It is stipulated and agreed that this deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.	
15		
16	It is stipulated by and between counsel and the witness that the reading and signing of the following deposition be, and the same are, hereby reserved.	
17		
18		
19		
20		
21		
22		
23		
24		
25		

Page 2

APPEARANCES:

1 Adele J. Pope, Esquire  
2 Law Office of Adele J. Pope, P.C.  
3 1228 Walnut Street  
4 Newberry, South Carolina 29108  
5 Appearing Pro Se  
6 William G. Newsome, III, Esquire  
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8 1230 Main Street, Suite 700  
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10 Columbia, South Carolina 25201  
11 Attorney for the Defendant

R. Davis Houser, Esquire  
Houser, Newman & Besley, LLC  
1508 Washington Street  
Columbia, South Carolina 29201  
Attorney for Mr. Kendall

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Plaintiff's Exhibit No. 3.....	13
(Summons, C/A No. 2010-GC-4000073)	
Plaintiff's Exhibit No. 12.....	22
(Agreement for Legal Services dtd 5/18/10)	
Plaintiff's Exhibit No. 5.....	39
(Email dtd 7/31/08 frm Mr. Rosen)	
Plaintiff's Exhibit No. 6.....	43
(Form 706)	
Plaintiff's Exhibit No. 13.....	44
(Motion to Supplement Record, C/A No. 08-CP-2-1647)	
Plaintiff's Exhibit No. 16.....	44
(Appendix to Record on Appeal, C/A No. 08-CP-2-1647)	
Plaintiff's Exhibit No. 7.....	47

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EVERETT A. KENDALL, ESQ., having been duly sworn, deposes and testifies as follows:

DIRECT EXAMINATION

BY MS. POPE:

Q. Mr. Kendall, will you state your full name for the record, please?

A. Everett Augustus Kendall, II.

Q. Okay. And you -- as I correct that you don't need the deposition process described to you by me?

A. No, I'm familiar with it.

Q. Okay. And we are here today in Case 2013-CP-02-1337, which I will sometimes refer to as Aiken 1337. You're familiar with what that case is?

A. Yes, generally speaking.

Q. Okay. Now, I'll also be referring to another case, which is Richland County Case 2010-CE-40-4900 and I will refer to it as Wingate Suit. I think some people refer to it as Richland 4900. You know about that case, too?

A. I do.

Q. And you are counsel -- you and your law firm, Sweeney, Wingate & Barrow, PA --

A. (Nods head affirmatively.)

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1 Q. -- are counsel for the Plaintiffs in that  
 2 lawsuit?  
 3 A. That's correct.  
 4 Q. Okay. Have --  
 5 MR. HOWSER: Let me just -- before I  
 6 forget. He'll reserve the right to read and  
 7 sign.  
 8 MS. POPE: Oh, absolutely. I  
 9 apologize. Yes.  
 10 BY MS. POPE:  
 11 Q. You would like to read and sign your  
 12 deposition?  
 13 A. Yes.  
 14 Q. Yes, okay. Now, are you familiar -- I'm  
 15 going to use for the most part the exhibits from  
 16 the Wingate deposition, which has just taken  
 17 place a couple of hours earlier. And so if I  
 18 forget and refer to them as Wingate 1, you'll  
 19 forgive me. We'll just -- but the numbers will  
 20 be the important thing, so,  
 21 (Off the Record)  
 22 (Plaintiff's Exhibit No. 1, as previously  
 23 marked, was presented for identification.)  
 24 Q. All right. Are you familiar with Exhibit  
 25 No. 1?

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1 A. I've seen Judge Toal's Order, yes.  
 2 Q. Okay. Are you -- do you recall the  
 3 affidavit that you filed in opposition to having  
 4 your deposition taken in Aiken 1337?  
 5 A. Yes.  
 6 Q. What was the gist of what you had to say in  
 7 your affidavit?  
 8 A. Well, the affidavit speaks for itself.  
 9 Generally describes the fact that I had no  
 10 knowledge of the James Brown Estate or its  
 11 administration prior to being retained or just  
 12 leading up to the formal retention. Everything I  
 13 know about the manner in which it was  
 14 administered and any of the history of it has  
 15 come as a result of that representation.  
 16 Q. Okay. Did you prior -- well, let me ask you  
 17 this. When did your representation in the  
 18 Wingate Suit from your perspective begin?  
 19 A. The beginning of May 2010.  
 20 Q. Okay. Prior to the beginning of May 2010,  
 21 had you had a number of meetings with Alan Medlin  
 22 and Sonny Jones?  
 23 A. No.  
 24 Q. You had not had any?  
 25 A. Not prior to May 2010.

Page 7

1 Q. Okay. So --  
 2 A. And not in regard to this. I know Alan  
 3 Medlin. He was a professor of mine. I met Sonny  
 4 Jones for the first time in conjunction with  
 5 this. But all of those meetings took place in  
 6 the early 2010, May 2010.  
 7 Q. Okay. So anything that went on in relation  
 8 to what became the Wingate Suit during the months  
 9 of March and April, you were not involved in?  
 10 A. I do not have any recollection of being  
 11 involved prior to early May.  
 12 Q. Okay.  
 13 A. If I had involvement prior to that, it could  
 14 have been incidental.  
 15 Q. Okay.  
 16 A. But I -- I don't recall anything other --  
 17 that occurred much before about two weeks before  
 18 the lawsuit was actually filed.  
 19 Q. Okay. I'm just -- just to either tweak your  
 20 memory or preclude your later memory, do you  
 21 recall any threat or warning made by Alan Medlin  
 22 to counsel for Bob Buchanan that a lawsuit would  
 23 be filed if the appeal, which became Wilson  
 24 versus Dallas were not dropped?  
 25 MR. HOWSER: Object to the form.

Page 8

1 MR. NEWSOME: Object to the form.  
 2 A. I'm going to ask you to repeat your  
 3 question, if you don't mind, or have it read  
 4 back.  
 5 THE COURT REPORTER: "Either to tweak  
 6 your memory or preclude your later memory,  
 7 do you recall any threat or warning made by  
 8 Alan Medlin to counsel for Bob Buchanan in a  
 9 lawsuit -- that a lawsuit would be filed if  
 10 the appeal, which became ..."  
 11 MS. POPE: Wilson versus Dallas.  
 12 THE COURT REPORTER: Okay. "Wilson  
 13 versus Dallas were not dropped?"  
 14 THE WITNESS: I have no personal  
 15 knowledge of that.  
 16 MR. NEWSOME: Same objection.  
 17 MR. HOWSER: Same objection.  
 18 BY MS. POPE:  
 19 Q. Do you recall that prior to the filing of  
 20 the Wingate Suit, a similar admonition was made  
 21 by Freddie Kingsmore of the Nexsen Pruet firm?  
 22 MR. HOWSER: Object to the form.  
 23 MR. NEWSOME: Object to the form.  
 24 A. I have no personal knowledge of that.  
 25 Q. Okay. Do you -- do you know whether any

Page 9	Page 11
1 Lawsuit had been authorized before you became	1 Q. When do you believe that they first acquired
2 involved?	2 that status?
3 A. You're going to need to rephrase that.	3 A. Which status?
4 Q. Okay.	4 Q. The status of having the same right to
5 A. I don't know what you mean by "any" and by	5 confidential communications as the clients they
6 "authorized."	6 represent.
7 Q. Okay. Thank you. Let me do better.	7 A. As to -- I don't know when their
8 Do you know whether the Wingate lawsuit had	8 attorney/client relationship with -- in other
9 been authorized or action on the Wingate Suit was	9 words, I don't know when Alan Medlin's
10 commenced prior to your becoming involved in May	10 attorney/client relationship began with
11 of 2010?	11 Ms. Brown.
12 A. I assisted in the drafting of the complaint,	12 My relationship started in early May and
13 so -- so by "authorization," if you mean was I	13 immediately -- because it was all associated with
14 authorized to assist in drafting the complaint,	14 representation, it immediately all took the
15 yes, I was.	15 character of attorney/client communications.
16 Q. When you began working on the complaint, was	16 Q. And do you today assert that your
17 it already in place?	17 communications with Alan Medlin have the
18 A. Had it been filed?	18 character of attorney/client communications?
19 Q. No, no. Was it in working form?	19 A. If they involve this matter, they do.
20 A. Do you mean was there a Word processing	20 Q. Okay. All right. Do you believe the same
21 document in existence?	21 is true of Louis Levenson?
22 Q. Yes.	22 A. Yes.
23 A. I don't recall whether I drafted the first	23 Q. Do you believe the same is true of David
24 draft or whether I was provided information by	24 Bell?
25 others. I don't recall.	25 A. Yes.
Page 10	Page 12
1 Q. Do you consider Alan Medlin a client?	1 Q. Do you believe the same is true of Sonny
2 A. No.	2 Jones?
3 Q. Have you ever considered Alan Medlin a	3 A. Yes.
4 client?	4 Q. Do you believe the same is true of Alan
5 A. No.	5 Wilson?
6 Q. Okay. Do you consider Louis Levenson a	6 A. Yes.
7 client?	7 Q. Do you believe the same is true of every
8 A. No.	8 other person in the Office of the Attorney
9 Q. Have you ever considered Louis Levenson a	9 General?
10 client?	10 A. Yes.
11 A. No.	11 Q. Do you believe the same is true of members
12 Q. Do you consider David Bell a client?	12 of the law firm of Parker Poe?
13 A. No.	13 A. I don't know their role in this matter.
14 Q. Have you ever considered David Bell a	14 Q. Do you believe the same is true of Scott
15 client?	15 Keniley?
16 A. No.	16 A. I don't know him.
17 Q. Do you believe that you share a common	17 Q. Okay. Do you believe the same is true of
18 interest privileges with any of those three	18 Matthew Bodman?
19 gentlemen?	19 A. If I recall, I've had very little
20 A. They are attorneys for clients that I	20 communication with Matthew Bodman and he was
21 represent in this matter and they have been	21 local counsel, I believe, for David Bell at the
22 involved in our conversations. So I believe that	22 time I have communicated with him. So to the
23 all of the communications with them are the same	23 extent that that's correct, yes.
24 as communications with my clients and the clients	24 Q. Who does David Bell speak for?
25 that they represent.	25 A. I don't have that chart in front of me, but

Page 13

1 he represented one of Mr. Brown's children and I  
 2 wanted to say -- if you have the list in front of  
 3 you, I have not memorized all of the  
 4 relationships.  
 5 Q. Okay. We'll speak more specifically about  
 6 it.  
 7 A. It's one of the children.  
 8 (Plaintiff's Exhibit No. 3, as previously  
 9 marked, was presented for identification.)  
 10 Q. Okay. All right. Let's look then at  
 11 Wingate No. 3. And I'd like to just -- I would  
 12 like for you to -- first, let's see if we can  
 13 figure out what Wingate No. 3 is.  
 14 A. It looks like it's the front page of the  
 15 Summons -- of a summons.  
 16 Q. Okay. Is it the -- can you tell from the  
 17 filing or other marks whether it is a copy of the  
 18 Summons in the Wingate Suit?  
 19 A. I have not -- I don't have anything to  
 20 compare it to.  
 21 Q. Okay.  
 22 A. From best I can tell, it has a file stamp  
 23 date that is similar in nature. It has the GC  
 24 number. I recall that it was initially filed in  
 25 the Probate Court, so I assume that is the GC

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1 number before it was moved up to the Circuit  
 2 Court, so.  
 3 Q. Now, I would like to you look at the parties  
 4 named as Plaintiffs. I want to ask you a few  
 5 questions about them. I'll try to be as  
 6 efficient as I can, but are you the lawyer -- I'm  
 7 sorry. Let's begin with the commencement of the  
 8 Wingate Suit. At the commencement of the Wingate  
 9 Suit, were you the attorney for all of the  
 10 Plaintiffs?  
 11 A. Yes.  
 12 Q. Okay. Are you today the attorney for all of  
 13 the Plaintiffs named there in Wingate 3?  
 14 A. I'm not aware that any of them have dropped  
 15 out, so my answer is "yes" subject to the fact  
 16 that I don't -- and I can explain. There's a gap  
 17 in the time of my involvement in this case and I  
 18 don't know all that's occurred there, but I'm not  
 19 aware that any of these Plaintiffs have  
 20 withdrawn.  
 21 Q. Let's talk about that gap so that when we --  
 22 A. Uh-huh (affirmatively responds).  
 23 Q. -- ask questions later, we'll know what it  
 24 was. Will you explain to me what you meant by  
 25 that?

Page 15

1 A. Yeah, sometime in late 2011, I got involved  
 2 in other things and took a -- I stepped out for  
 3 the most part of this case. In 20 -- in March of  
 4 2012, in fact, five years ago tomorrow, my  
 5 daughter was diagnosed with Leukemia and I spent  
 6 the next three years tending to her and only  
 7 recently have gotten back involved.  
 8 I did not make another appearance in this  
 9 matter until I believe it was sometime in  
 10 December; possibly it was late as January, but  
 11 December or so when we appeared in the -- in  
 12 Aiken County not too long ago.  
 13 Q. December 2016?  
 14 A. Yeah, that sounds correct.  
 15 MS. POPE: Can we go off the record a  
 16 minute?  
 17 (Off the Record)  
 18 BY MS. POPE:  
 19 Q. So you were not involved in the Wingate Suit  
 20 from late 2011 until late 2016. Did I hear that  
 21 correctly?  
 22 A. I was aware in broad strokes of ongoing  
 23 things. I made no court appearances. I did not  
 24 appear at depositions. I was not active.  
 25 Q. If there was such a role, who would you say

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1 was the supervisory attorney or the responsible  
 2 attorney within the firm during the period from  
 3 2011 until late 2016?  
 4 A. The minutiae of that is probably work  
 5 product; however, you'll see -- if you trace the  
 6 signatures on interrogatories, discovery, see  
 7 who's making appearances at court, I think it  
 8 will be self-evident. But I don't think I -- I  
 9 think it's work product to tell you what's  
 10 happening inside the doors of my office.  
 11 Q. So you decline to answer the question as  
 12 asked?  
 13 A. As asked. But I've tried to be helpful by  
 14 providing you the place -- the best place to look  
 15 that is not protected.  
 16 Q. Well, what part -- what principals within  
 17 your firm have appeared through their name  
 18 without with regard to their signature on this  
 19 matter?  
 20 A. I'm aware that Ken Wingate and Mark Gende  
 21 have made court appearances and deposition  
 22 appearances. There may have -- they are both  
 23 shareholders. There may have been associates who  
 24 have appeared. I'm just not aware of who that  
 25 might have been.

**STATE OF SOUTH CAROLINA**

**COUNTY OF RICHLAND**

RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James Brown II; Daryl J. Brown, individually and on behalf of his minor child Janise Vanisha Brown; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children Sydney Lumar and Carrington Lumar; Tonya Brown; Venisha Brown Larry Brown; and Terry Brown

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

Adele J. Pope,

Defendant

**IN THE COURT OF COMMON PLEAS**

**FOR THE FIFTH CIRCUIT**

Civil Action No. 2010-CP-40-4900

2011 JUN 20 PM 3:56

**MEMORANDUM IN SUPPORT OF  
MOTION FOR  
PROTECTIVE ORDER  
CONCERNING CERTAIN QUESTIONS  
POSED TO THE WITNESS DURING  
THE DEPOSITION OF DEANNA  
BROWN-THOMAS**

**PLEASE TAKE NOTICE THAT** pursuant to Rule 30(J)(3) SCRPC, the objections made during the deposition of Mrs. Deanna Brown-Thomas on March 1, 2017 on the grounds of attorney-client privilege should all be sustained. A list of the objections is included, along with the pertinent pages from the condensed transcript of the deposition (attached as "Exhibit 1").

**I.**

**ATTORNEY-CLIENT PRIVILEGE APPLIES TO QUESTIONS RELATED TO THE JAMES BROWN CASE**

"The attorney-client privilege protects against disclosure of confidential communications by a client to this attorney." State v. Owens, 309 S.C. 402, 407, 424 S.E.2d 473, 476 (1992). "This privilege is based upon a wise policy that considers that the interests of society are best promoted by inviting the utmost confidence on the part of the client in disclosing his secrets to this professional advisor . . ." Id. In State v. Doster, this Court explained the attorney-client privilege as follows: "(1) Where legal advice of any kind is sought (2) from a professional legal adviser in his capacity as such, (3) the communications relating to that purpose (4) made in confidence (5) by the client, (6) are at his instance permanently protected (7) from disclosure by himself or by the legal adviser (8) except the protection be waived." State v. Doster, 276 S.C. 647, 651, 284 S.E.2d 218, 219-20 (1981) (citing 8 Wigmore, Evidence § 2292 (McNaughton rev. 1961)).

Confidential communications between Mrs. Brown-Thomas and her attorney Mark Gende are clearly privileged when such communications pertain to legal services in this case.

**II.**

**THIS PRIVILEGE APPLIED TO QUESTIONS ASKED OF MRS. BROWN-THOMAS**

The following objections were made on the ground of the attorney-client privilege:

**Deposition, p. 22**

Mrs. Brown-Thomas was directed not to violate an attorney-client privilege in response to a question.

Question by Mr. Bundy: All right. I believe the question on the table was, what did you tell Mr. Bauknight at that meeting in 2009 your understanding of your father's wishes were as it relates to his will and trust.

Answer by Mr. Gendy: And I'm going to direct the client not to answer that question. We have had our conference outside to discuss whether or not she would assert a privilege here, and the discussion that you're referencing at Nexsen Pruet apparently was in the context of other pending litigation with lawyers and clients and involved matters dealing with that litigation. Based on that, I'm going to direct her not to answer. Brown-Thomas Dep. 22:4-16, Mar. 1, 2017.

This objection certainly falls within the above authority in that it asks questions relating to other pending litigation with lawyers and clients.

**Deposition, p. 85**

The attorney-client privilege was asserted to a question regarding Mrs. Brown-Thomas' knowledge of a settlement agreement.

Question by Mr. Bundy: Okay, Tell me about that.

Mr. Gende: Again, I would just caution the witness not to disclose any discussions with her counsel.

Answer by Mrs. Brown-Thomas: That -- all of that discussion I've had with my counsel on that.

Mr. Bundy: -- that you're involved in?

Answer by Mr. Gende: That topic itself might be her knowledge -- if that exists might be gained through discussion with counsel and therefore would be privileged. So if you want to preface it with another, I don't want to know anything you talked with your attorney about or heard from your attorney to that questions, then it's not objectionable, but otherwise, I would --  
Brown-Thomas Dep. 85:4-23 (Mar. 1, 2017).

This question asks for information that was gained through discussion with counsel, and would be covered by the attorney-client privilege.

**Deposition, pp. 86-87**

The attorney-client privilege was asserted to a question regarding Mrs. Brown-Thomas' knowledge of a settlement agreement.

Question by Mr. Bundy: All right. What are the terms of the settlement?

Answer by Mrs. Brown-Thomas: I discussed that with my attorney.

Question by Mr. Bundy: Did you tell her not to answer?

Mr. Gende: She just answered.

Mr. Bundy: But you're the lawyer. Are you telling her -- I mean, I want to know what the term -- the fact that she's discussed a settlement, a document with -- let's

suppose I get in an automobile accident, okay, and I got -- and I sign a settlement document with somebody for whatever it is, you telling me that's not -- I can't discuss that with that person because a lawyer drew it and talked to their client about it?

Mr. Gende: She's not going to disclose any information that she has learned from her attorney through a discussion with her attorney or discussions she has had with her attorney.

Mr. Bundy: All right. Okay.

Mr. Gende: I think you would agree that, that's pretty much black letter law on privilege. That's what we're --

Brown-Thomas Dep. 86:5-87:2 (Mar. 1, 2017).

This question asks for information that was gained through discussion with counsel, and would be covered by the attorney-client privilege.

#### **Deposition, p. 88**

The attorney-client privilege was asserted to a question regarding Mrs. Brown-Thomas' knowledge of a settlement agreement.

Question by Mr. Bundy: So your attorney has in his possession a signed settlement document regarding this?

Mr. Gende: Object to the form. That's -- we're going to have to decide whether she's going to assert a privilege or not here. All that she has stated to you is that she got an e-mail from her attorney. Now, do you need to ask more series of questions about this? If so, I would like to have our break so we can decide whether we're going to assert a privilege to discuss this singular topic.

Brown-Thomas Dep. 88:3-12 (Mar. 1, 2017).

This question asks for information that was gained through discussion with counsel, and would be covered by the attorney-client privilege.

#### **Deposition, p. 89**

The attorney-client privilege was asserted to a question regarding Mrs. Brown-Thomas' knowledge of a settlement agreement.

Question by Mr. Bundy: What does it relate to?

Mr. Gende: I'm going to object and direct the witness not to answer any of the questions related to an agreement, whether or not it exists. She's testified this is something she's learned of in the presence of her attorneys. It's the -- something

that she has discussed the contents with only in the presence of her attorneys and therefore it is privileged.

Brown-Thomas Dep. 89:4-12 (Mar. 1, 2017).

This question asks for information that was gained through discussion with counsel, and would be covered by the attorney-client privilege.

**Deposition, pp. 89-91**

The attorney-client privilege was asserted to questions regarding Mrs. Brown-Thomas' knowledge of a settlement agreement.

Question by Mr. Bundy: Have you or your attorneys advised the Court of Appeals or the Supreme Court that there is an underlying settlement of a case that's on appeal?

Mr. Gende: I direct you not to answer that question based on the attorney-client privilege.

Question by Mr. Bundy: Does that settlement agreement deal with termination rights or copyrights?

Mr. Gende: I direct you not to answer that question based on the attorney-client privilege.

Question by Mr. Bundy: What are the terms of the settlement?

Mr. Gende: I direct you not to answer that based on the attorney-client privilege.

Question by Mr. Bundy: Who are the parties to the settlement?

Mr. Gende: I direct you not to answer that question based on the attorney-client privilege.

Question by Mr. Bundy: When was the settlement entered into?

Mr. Gende: I direct you not to answer that based on the attorney-client privilege.

Question by Mr. Bundy: Has a settlement been reached?

Mr. Gende: I direct you not to answer that question based on the attorney-client privilege.

Question by Mr. Bundy: Did you give your consent to a settlement?

Mr. Gende: I direct you not to answer that questions based on the attorney-client privilege.

Brown-Thomas Dep. 89:23-91:7 (Mar. 1, 2017).

These questions ask for information that was gained through discussion with counsel, and would be covered by the attorney-client privilege.

**Deposition, p. 92**

The attorney-client privilege was asserted to questions regarding Mrs. Brown-Thomas' knowledge of a settlement agreement.

Question by Mr. Bundy: Does Mr. Levenson represent any of the other parties to this settlement?

Mr. Gende: I direct you not to answer that based on attorney-client privilege.

Question by Mr. Bundy: Who are the other parties to the settlement, which of your siblings?

Mr. Gende: I direct you not to answer that question based on the attorney-client privilege.

Brown-Thomas Dep. 92:1-10 (Mar. 1, 2017).

These questions ask for information that was gained through discussion with counsel, and would be covered by the attorney-client privilege.

**Deposition, p. 93**

The attorney-client privilege was asserted to a question regarding Mrs. Brown-Thomas' knowledge of a settlement agreement.

Question by Mr. Bundy: Does Mr. Toberoff – what other lawyers are involved, other than Mr. Toberoff, your attorney, that you're aware of?

Mr. Gende: I direct you not to answer that also based on the attorney-client privilege

Brown-Thomas Dep. 93:2-6 (Mar. 1, 2017).

This question asks for information that was gained through discussion with counsel, and would be covered by the attorney-client privilege.

**Deposition, p. 135**

The attorney-client privilege was asserted to a question requesting factual information communicated to Mrs. Brown-Thomas by her attorney concerning the basis for alleging that Ms. Pope failed to use due diligence in pursuing business opportunities for the estate and trust of James Brown.

Question by Mr. Bundy: Well, I'd like to know what it was factually your lawyer told you, factually. Not legal theory, none of that, just factually told you somebody else told him upon which you would be able to come into court and make an allegation that Ms. Pope failed to use due diligence in pursuing business opportunities for the estate and trust. What facts do you have?

Mr. Gende: Bill, that question is such a blatant violation of attorney-client privilege, I direct my client not to answer that.

Brown-Thomas Dep. 135:7-16, Mar. 1, 2017.

This question clearly violates the attorney-client privilege as it requests information from confidential communications between the attorney and client in the course of legal representation.

**Deposition, pp. 158-59**

The attorney-client privilege was asserted to a question regarding allegations against "Q" relating to misrepresenting or representing inaccurate statements under oath, in which requested information was learned by Mrs. Brown-Thomas from her attorney.

Question by Mr. Bundy: Well, these inaccurate statements under oath to the court I presume were in writing; is that correct?

Answer by Mrs. Brown-Thomas: I don't know.

Question by Mr. Bundy: You don't know?

Answer by Mrs. Brown-Thomas: Okay. If they were statements said or written.

Question by Mr. Bundy: Can you give me an example of one?

Mr. Gende: Again, she just listed that she learned these things from her attorney. So you're asking to give an example of what an attorney said, and that would be--

Mr. Bundy: Yes. I'm asking her --

Mr. Gende: -- a violation of attorney-client privilege

Mr. Bundy: -- to tell me what her attorney told me was a fact.

Mr. Gende: Okay. Well, if you're going to ask that question, I'll direct her not to answer it.

Mr. Bundy: Thank you. Perfect.

Brown-Thomas Dep. 158:12-159:7, Mar. 1, 2017.

This question clearly violates the attorney-client privilege as it requests information from confidential communications between the attorney and client in the course of legal representation.

**Deposition, p. 162**

The attorney-client privilege was asserted to a question regarding what was said at a beneficiary meeting.

Question by Mr. Bundy: I'm going to ask you again, what was said?  
Mr. Gende: I direct her not to answer, attorney-client privilege.  
Brown-Thomas Dep. 162:4-6, Mar. 1, 2017.

This question clearly violates the attorney-client privilege as it requests information from confidential communications between the attorney and client in the course of legal representation and in the presence of another represented party.

**Deposition, p. 165**

The attorney-client privilege was asserted to a question regarding whether Mrs. Brown-Thomas had ever discussed the value of the estate of James Brown with Mr. Bauknight (personal representative of the estate of James Brown) and what he told Mrs. Brown-Thomas.

Question by Mr. Bundy: No. The one you were just talking about. We were talking about – where were we? We were talking about I, artificially inflating the value of the estate, and we went through a series of questions where you said you didn't know, had no opinion about the value of the estate at any time, okay, and I asked you as a precursor to all of this whether you had ever discussed the value of the estate with Mr. Bauknight, and I believe you said, yes, we came to this meeting, and now I would like to know what he said.  
Mr. Gende: And I'm going to direct her not to answer that question --  
Mr. Bundy: Okay, fair enough.  
Mr. Gende: -- based on attorney-client privilege.  
Brown-Thomas Dep. 165:9-24, Mar. 1, 2017.

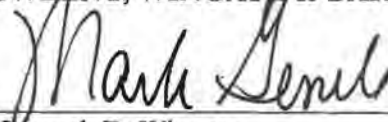
This question clearly violates the attorney-client privilege as it requests information from confidential communications between the attorney and client in the course of legal representation.

**CONCLUSION**

For the foregoing reasons, the objections made for Mrs. Brown-Thomas should be sustained and a protective order issued to bar further questioning of this witness about those matters.

Respectfully submitted,

**SWEENEY, WINGATE & BARROW, P.A.**



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**ATTORNEYS FOR PLAINTIFFS**

Columbia, South Carolina

June 13, 2017

Deanna J. Brown Thomas

<p>1 IN THE COURT OF COMMON PLEAS 2 FOR THE STATE OF SOUTH CAROLINA 3 RICHLAND COUNTY 4 DEPOSITION OF DEANNA J. BROWN THOMAS 5 RUSSELL L. BAUKNIGHT, ET. AL. 6 and 7 ALAN WILSON, ET. AL. 8 Plaintiffs, 9 vs. CASE NO. 2010-CP-40-4900 10 ADELE J. POPE, 11 Defendant.</p> <hr/> <p>12 DEPONENT: DEANNA J. BROWN THOMAS 13 DATE: March 1, 2017 14 TIME: 10:16 a.m. - 2:34 p.m. 15 LOCATION: South Carolina Bar Conference Center 16 1501 Park Street 17 Columbia, South Carolina 29201 18 REPORTED BY: SARAH GACIOCH</p>	<p>1 I N D E X 2 3 4 Witness Sworn 4 5 EXAMINATION BY: 6 WALTER H. BUNDY, JR. 4-181 7 Certificate of Reporter 182 8 Deponent Correction Sheet 183 9 10 11 12 13 E X H I B I T S 14 15 Defendant's Exhibit No. 1 Page 10 16 Defendant's Exhibit No. 2 26 17 Defendant's Exhibit No. 3 38 18 Defendant's Exhibit No. 4 45 19 Defendant's Exhibit No. 5 49 20 Defendant's Exhibit No. 6 58 21 Defendant's Exhibit No. 7 68 22 Defendant's Exhibit No. 8 74 23 Defendant's Exhibit No. 9 80 24 Defendant's Exhibit No. 10 97 25 Defendant's Exhibit No. 11 173</p>
<p>1 A P P E A R A N C E S 2 3 FOR THE PLAINTIFFS: 4 SWEENEY, WINGATE &amp; BARROW, P.A. 5 BY: MARK V. GENDE, ESQ. 6 1515 Lady Street (29201) 7 P.O. Box 12129 8 Columbia, SC 29211 9 (803)256-2233 10 MVG@SWBLAW.COM 11 12 FOR THE DEFENDANT: 13 BUNDY MCDONALD, LLC 14 BY: WALTER H. BUNDY, JR., ESQ. 15 1516 Old Trolley Road 16 Second Floor 17 Summerville, SC 29485 18 (888)552-1559 19 WALTER@BUNDYMCDONALD.COM 20 21 -and- 22 LAW OFFICE OF ADAM T. SILVERNAIL, LLC 23 BY: ADAM T. SILVERNAIL, ESQ. 24 1905 Marion Street (29201) 25 P.O. Box 7995 Columbia, SC 29202 (803)779-1770 ADAM@SILVERNAILLAWFIRM.COM</p> <p>Also Present: Adele Pope Doug White, Clearview Legal Video</p>	<p>1 BY THE VIDEOGRAPHER: The date today is 2 March 1st, 2017, and the time is 10:16. This is the 3 video deposition of Deanna J. Brown in the matter of 4 Russell L. Bauknight et. al. versus Adele J. Pope 5 being heard in the State of South Carolina, Court of 6 Common Pleas, County of Richland. Case number 7 2010-CP40-4900. 8 This deposition is being held at the 9 South Carolina Bar Conference Center, located at 10 1501 Park Street in Columbia, South Carolina. 11 Will counsel please identify themselves 12 for the record. 13 MR. BUNDY: Bill Bundy for the 14 Defendants. 15 MR. GENDE: Mark Gende for the 16 Plaintiffs. 17 MR. SILVERNAIL: Adam Silvernail for the 18 Defendant. 19 BY THE VIDEOGRAPHER: Please swear the 20 witness. 21 22 DEANNA J. BROWN THOMAS, having been 23 first duly sworn, testified as follows: 24 E X A M I N A T I O N 25 BY MR. BUNDY:</p>

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Page 21

1 MR. BUNDY: Well, it could have been  
 2 waived because Mr. Bauknight was there, who is not a  
 3 lawyer.  
 4 MR. GENDE: But Mr. Bauknight is a  
 5 co-party in this case.  
 6 MR. BUNDY: But he was not at the time.  
 7 MR. GENDE: So a joint defense --  
 8 MR. BUNDY: But he was not at the time.  
 9 MR. GENDE: I understand the point  
 10 you're making, but there is the question about  
 11 whether there is attorney-client privilege.  
 12 MR. BUNDY: Okay. I'm going to have to  
 13 leave that up to you, your call.  
 14 MR. GENDE: The rules allow me to have a  
 15 conversation with her outside of your presence --  
 16 MR. BUNDY: Oh, sure.  
 17 MR. GENDE: -- to decide whether we'll  
 18 assert a privilege or not, if we could do that.  
 19 MR. BUNDY: Have at it.  
 20 MR. GENDE: Okay, great. Thank you.  
 21 BY THE VIDEOGRAPHER: Off the record at  
 22 10:32.  
 23  
 24 (OFF THE RECORD DISCUSSION)  
 25

Page 22

1 BY THE VIDEOGRAPHER: On the record at  
 2 10:36.  
 3 BY MR. BUNDY:  
 4 Q. All right. I believe the question on the  
 5 table was, what did you tell Mr. Bauknight at that  
 6 meeting in 2009 your understanding of your father's  
 7 wishes were as it relates to his will and trust.  
 8 MR. GENDE: And I'm going to direct the  
 9 client not to answer that question. We have had our  
 10 conference outside to discuss whether or not she  
 11 would assert a privilege here, and the discussion  
 12 that you're referencing at Nexsen Pruet apparently  
 13 was in the context of other pending litigation with  
 14 lawyers and clients and involved matters dealing  
 15 with that litigation. Based on that, I'm going to  
 16 direct her not to answer.  
 17 MR. BUNDY: All right.  
 18 Q. If you look at the first paragraph on page 2.  
 19 A. Uh-huh.  
 20 Q. It says, Bauknight serves in these capacities  
 21 pursuant to a Settlement Agreement approved by the  
 22 order -- by Order of the Aiken County Circuit Court,  
 23 dated May 26, 2009. That's when he was appointed by  
 24 the judge. Did this conversation that occurred in  
 25 2009 occur prior to May or after May?

Page 23

1 A. I don't recall, but I -- I really don't  
 2 recall.  
 3 Q. You don't know, okay. All right. Putting  
 4 aside what you told Mr. Bauknight, I'd like to know,  
 5 as you sit here today, I mean, Mr. Balk -- as you  
 6 sit here today, what your understanding is about  
 7 what your father's wishes were as it relates to his  
 8 will and trust.  
 9 A. He wanted funds, of course, to help educate  
 10 poor children, those who would not be able to afford  
 11 to be able to go, and that's a child of any color,  
 12 of any race, in South Carolina or Georgia.  
 13 He -- there was also an education set aside  
 14 -- a fund set aside for his grandchildren that he  
 15 wanted his grandchildren to be able to be educated,  
 16 and he wanted to pay for that. He did not allow his  
 17 music to be sampled by anyone that would include  
 18 lyrics of profanity, that would call women out of  
 19 their name. He did not allow his music to be used  
 20 in any commercials that were degrading. He did not  
 21 want his music to be used in cigarette ads, alcohol  
 22 ads. He did not want his music to be used in any  
 23 forum that promoted violence, and again, any  
 24 degradation to women or racist. He did not want his  
 25 music connected to any of that.

Page 24

1 Q. Okay. As it relates though to the -- to the  
 2 will and trust, let's talk about the trust first.  
 3 Were you aware of the existence of the trust at or  
 4 about the time it was executed and entered into, in  
 5 2000?  
 6 A. After it was, yes.  
 7 Q. Okay. It's the Irrevocable 2000 --  
 8 A. Yes.  
 9 Q. -- trust. You know what I'm talking about,  
 10 right?  
 11 A. Yes.  
 12 Q. Okay, and you've read that instrument?  
 13 A. Yes.  
 14 Q. Okay. And when did you first become aware of  
 15 the existence of the 2000 Irrevocable Trust?  
 16 A. When my father told me I was a trustee.  
 17 Q. And can you give me an approximate date when  
 18 he told you, you were a trustee? Your father passed  
 19 --  
 20 A. No, I cannot.  
 21 Q. Pardon me?  
 22 A. I'm sorry. No, I cannot. I wanted to say  
 23 that.  
 24 Q. Okay, sure.  
 25 A. She's looking at me like...

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1 another compromise out there wherein she's included 2 in a settlement?	1 that, that's pretty much black letter law on 2 privilege. That's what we're --
3 A. Yes.	3 BY MR. BUNDY:
4 Q. Okay. Tell me about that.	4 Q. Is there a settlement document?
5 MR. GENDE: Again, I would just caution 6 the witness not to disclose any discussions with her 7 counsel.	5 A. I believe I answered that already.
8 BY THE WITNESS: That -- all of that 9 discussion I've had with my counsel on that.	6 Q. And there is?
10 BY MR. BUNDY:	7 MR. GENDE: Object to the form. Asked 8 and answered.
11 Q. But there is an agreement you have with an 12 opposition party about a settlement --	9 BY MR. BUNDY:
13 MR. GENDE: That --	10 Q. Well, I've forgotten the answer, would you 11 mind answering it again?
14 BY MR. BUNDY:	12 MR. GENDE: Object to the form.
15 Q. -- that you're involved in?	13 BY THE WITNESS: Yes.
16 MR. GENDE: That topic itself might be 17 her knowledge -- if that exists might be gained 18 through discussion with counsel and therefore would 19 be privileged. So if you want to preface it with 20 another, I don't want to know anything you talked 21 with your attorney about or heard from your attorney 22 to that question, then it's not objectionable, but 23 otherwise, I would --	14 MR. GENDE: Asked and answered.
24 BY MR. BUNDY:	15 MR. BUNDY: Let's go back and read it 16 back on the record again, what was the answer?
25 Q. Either a settlement agreement exists or it	17 18 (RECORD READ BACK BY THE REPORTER) 19
	20 Q. Is the document in writing?
	21 A. Well, if you e-mail it, that puts it in 22 writing, right? Yes.
	23 Q. So there's an e-mail?
	24 A. From my attorney.
	25 Q. Okay. Is it executed by anyone? Has anybody
Page 86	Page 88
1 doesn't. Does one exist or not?	1 executed a settlement document?
2 A. It does exist. Everything about that 3 settlement I have discussed with my attorney on that 4 settlement.	2 A. My attorney has handled it.
5 Q. All right. What are the terms of the 6 settlement?	3 Q. So your attorney has in his possession a 4 signed settlement document regarding this?
7 A. I discussed that with my attorney.	5 MR. GENDE: Object to the form. That's 6 -- we're going to have to decide whether she's going 7 to assert a privilege or not here. All that she has 8 stated to you is that she got an e-mail from her 9 attorney. Now, do you need to ask more series of 10 questions about this? If so, I would like to have 11 our break so we can decide whether we're going to 12 assert a privilege to discuss this singular topic.
8 MR. BUNDY: Did you tell her not to 9 answer?	13 MR. BUNDY: Sure, go ahead.
10 MR. GENDE: She just answered.	14 BY THE VIDEOGRAPHER: Off the record at 15 12:04.
11 MR. BUNDY: But you're the lawyer. Are 12 you telling her -- I mean, I want to know what the 13 term -- the fact that she's discussed a settlement, 14 a document with -- let's suppose I get in an 15 automobile accident, okay, and I got -- and I sign a 16 settlement document with somebody for whatever it 17 is, you telling me that's not -- I can't discuss 18 that with that person because a lawyer drew it and 19 talked to their client about it?	17 (OFF THE RECORD DISCUSSION) 18
20 MR. GENDE: She's not going to disclose 21 any information that she has learned from her 22 attorney through a discussion with her attorney or 23 discussions she has had with her attorney.	19 BY THE VIDEOGRAPHER: On the record at 20 12:06.
24 MR. BUNDY: All right. Okay.	21 BY MR. BUNDY:
25 MR. GENDE: I think you would agree	22 Q. All right. We were discussing the existence 23 of a settlement of the pending matter that you're 24 involved in related to, I believe, whether or not 25 Hynie is the wife, correct?

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1     **A. No.**  
 2             MR. GENDE: And --  
 3     BY MR. BUNDY:  
 4     Q. What does it relate to?  
 5             MR. GENDE: I'm going to object and  
 6     direct the witness not to answer any of the  
 7     questions related to an agreement, whether or not it  
 8     exists. She's testified this is something she's  
 9     learned of in the presence of her attorneys. It's  
 10    the -- something that she has discussed the contents  
 11    with only in the presence of her attorneys and  
 12    therefore it is privileged.  
 13             MR. BUNDY: I'm going to ask her a  
 14    series of questions.  
 15             MR. GENDE: Understood.  
 16             MR. BUNDY: And you can tell her not to  
 17    answer, but I'm going to ask the question; do you  
 18    understand?  
 19             MR. GENDE: Understood.  
 20             MR. BUNDY: Okay.  
 21             MR. GENDE: Go ahead.  
 22    BY MR. BUNDY:  
 23    Q. Have you or your attorneys advised the Court  
 24    of Appeals or the Supreme Court that there is an  
 25    underlying settlement of a case that's on appeal?

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1             MR. GENDE: I direct you not to answer  
 2    that question based on the attorney-client  
 3    privilege.  
 4    BY MR. BUNDY:  
 5    Q. Does that settlement agreement deal with  
 6    termination rights or copyrights?  
 7             MR. GENDE: I direct you not to answer  
 8    that question based on the attorney-client  
 9    privilege.  
 10   BY MR. BUNDY:  
 11   Q. What are the terms of the settlement?  
 12             MR. GENDE: I direct you not to answer  
 13   that based on the attorney-client privilege.  
 14   BY MR. BUNDY:  
 15   Q. Who are the parties to the settlement?  
 16             MR. GENDE: I direct you not to answer  
 17   that question based on the attorney-client  
 18   privilege.  
 19   BY MR. BUNDY:  
 20   Q. When was the settlement entered into?  
 21             MR. GENDE: I direct you not to answer  
 22   that based on the attorney-client privilege.  
 23   BY MR. BUNDY:  
 24   Q. Has a settlement been reached?  
 25             MR. GENDE: I direct you not to answer

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1   that question based on the attorney-client  
 2   privilege.  
 3   BY MR. BUNDY:  
 4   Q. Did you give your consent to a settlement?  
 5             MR. GENDE: I direct you not to answer  
 6   that question based on the attorney-client  
 7   privilege.  
 8   BY MR. BUNDY:  
 9   Q. Who was your attorney in that matter?  
 10            **A. Mark Toberoff.**  
 11   Q. Who?  
 12            **A. Mark Toberoff.**  
 13   Q. Mark Toberoff, and when did he become your  
 14   attorney?  
 15            **A. He's been my attorney for a couple years now.**  
 16   **What is it 2017? 2015, I think.**  
 17   Q. Okay. And who was your attorney prior to  
 18   Toberoff?  
 19            **A. Well, I had an attorney. I had two attorneys**  
 20   **at that time.**  
 21   Q. Okay. Who were they?  
 22            **A. Louis Levenson and Mark Toberoff.**  
 23   Q. But you have since -- you no longer engage  
 24   Mr. Levenson?  
 25            **A. Correct.**

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1   Q. Does Mr. Levenson represent any of the other  
 2   parties to this settlement?  
 3             MR. GENDE: I direct you not to answer  
 4   that based on attorney-client privilege.  
 5   BY MR. BUNDY:  
 6   Q. Who are the other parties to the settlement,  
 7   which of your siblings?  
 8             MR. GENDE: I direct you not to answer  
 9   that question based on the attorney-client  
 10   privilege.  
 11   BY MR. BUNDY:  
 12   Q. Have you talked to anybody else about this  
 13   settlement, outside the presence of your attorney?  
 14            **A. My mother.**  
 15   Q. Okay. And tell me what you told -- what  
 16   y'all talked about.  
 17            **A. That we are working to work it all out, mama.**  
 18   Q. Okay. Did you discuss the terms with her?  
 19            **A. I told her, we're working it all out, mama.**  
 20   Q. So you did not discuss any terms with her?  
 21            **A. I did not.**  
 22   Q. Have you discussed the terms of the  
 23   settlement with any of your brothers and sisters or  
 24   anyone else involved outside the presence of an  
 25   attorney?

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<p>1 A. No.</p> <p>2 Q. Does Mr. Toberoff -- what other lawyers are</p> <p>3 involved, other than Mr. Toberoff, your attorney,</p> <p>4 that you're aware of?</p> <p>5 MR. GENDE: I direct you not to answer</p> <p>6 that also based on the attorney-client privilege.</p> <p>7 BY MR. BUNDY:</p> <p>8 Q. Have you met with the attorneys for any of</p> <p>9 the other parties outside the presence of your</p> <p>10 attorney?</p> <p>11 A. No.</p> <p>12 Q. Okay. Are you represented by more than one</p> <p>13 attorney?</p> <p>14 A. Yes.</p> <p>15 Q. In the -- and who's the other one?</p> <p>16 A. Well, wait a minute. In what? In what case?</p> <p>17 Q. In this case --- in this case, this matter.</p> <p>18 A. What's "this case"? Tell me -- be specific.</p> <p>19 Q. Anything related to your father's will and</p> <p>20 trust.</p> <p>21 A. I have more than one -- will and trust? No.</p> <p>22 Q. Estate, will, trust.</p> <p>23 A. Estate, will, trust.</p> <p>24 MR. GENDE: Object to the form of the</p> <p>25 question.</p>	<p>1 MR. GENDE: Object to the form of the</p> <p>2 question.</p> <p>3 BY THE WITNESS: I've received some</p> <p>4 money for termination.</p> <p>5 BY MR. BUNDY:</p> <p>6 Q. How much?</p> <p>7 A. Oh, boy. It's been, golly, 60, 70,000,</p> <p>8 somewhere around there, maybe.</p> <p>9 Q. Who else received money for those --</p> <p>10 A. Every heir.</p> <p>11 Q. Every heir. Did the six of you?</p> <p>12 A. Every heir that has passed DNA received.</p> <p>13 Q. How about Ms. Hynie, did she receive any</p> <p>14 money?</p> <p>15 A. I don't know if she did or not. I believe</p> <p>16 she did.</p> <p>17 Q. Did you sign any settlement documents or any</p> <p>18 documents giving up your rights?</p> <p>19 A. No. I have not given up any right.</p> <p>20 Q. In return for the 60 or \$70,000.00, whatever</p> <p>21 --</p> <p>22 A. I have not given up any right.</p> <p>23 Q. In return for the 60 or 70 --</p> <p>24 A. I have not given up any right.</p> <p>25 MR. GENDE: Go ahead and let him --</p>
<p>Page 94</p> <p>1 BY THE WITNESS: These are my attorneys.</p> <p>2 BY MR. BUNDY:</p> <p>3 Q. I gotcha. How about termination rights, do</p> <p>4 you have any lawyers?</p> <p>5 A. Mark Toberoff --</p> <p>6 Q. Toberoff.</p> <p>7 A. -- I mentioned that earlier.</p> <p>8 Q. Okay. Okay. Have you received any money</p> <p>9 with regard to termination rights? Any settlement</p> <p>10 of termination rights?</p> <p>11 A. I've always received money for termination</p> <p>12 rights.</p> <p>13 Q. What do you mean by that?</p> <p>14 A. I've always received monies for termination</p> <p>15 rights.</p> <p>16 Q. All right. When did you first receive it?</p> <p>17 A. Well, not termination rights. Royalties.</p> <p>18 Royalties. I'm using the wrong words.</p> <p>19 Q. All right.</p> <p>20 A. I have always received royalties.</p> <p>21 Q. Okay, but I want to talk about termination.</p> <p>22 As a result of exercising termination rights, have</p> <p>23 you received any money?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. Tell me about that.</p>	<p>Page 96</p> <p>1 BY MR. BUNDY:</p> <p>2 Q. That's not my question.</p> <p>3 MR. GENDE: -- finish the question.</p> <p>4 BY MR. BUNDY:</p> <p>5 Q. That's not my question. In return for the 60</p> <p>6 or \$70,000.00, did you sign any documents?</p> <p>7 A. Yes. I did sign a document.</p> <p>8 Q. What was the nature of those documents? Were</p> <p>9 they settlement agreements? What was the nature of</p> <p>10 them?</p> <p>11 A. That was discussed with my attorney, Mr.</p> <p>12 Toberoff.</p> <p>13 Q. But there is a document somewhere that you</p> <p>14 signed prior to receiving the money?</p> <p>15 A. My attorney has that document.</p> <p>16 Q. Okay. But it's got your signature on it?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And is it fair to say that you would</p> <p>19 not have received the money, had you not signed the</p> <p>20 document?</p> <p>21 A. True.</p> <p>22 Q. Okay. Are you represented by Mr. Bauknight?</p> <p>23 A. He's not a lawyer, to my knowledge.</p> <p>24 Q. Okay.</p> <p>25 A. Is he?</p>

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1 A. -- how much could be lost.  
 2 Q. Okay. Would it -- okay. It could have been  
 3 none, right?  
 4 A. No.  
 5 MR. GENDE: Object to the form.  
 6 BY THE WITNESS: It could never be none.  
 7 BY MR. BUNDY:  
 8 Q. Okay. What's the most it could be?  
 9 A. I don't know what the most it could be, but  
 10 it's a very high number.  
 11 Q. How could we go about determining that  
 12 number?  
 13 A. I don't know.  
 14 Q. Okay. Okay. Before today, have you ever  
 15 given that any thought, how you would go about  
 16 determining that number and what the --  
 17 A. No, because she never tried to talk to me.  
 18 Q. Okay. I gotcha. C, failing to use due  
 19 diligence in pursuing business opportunities for the  
 20 estate and trust. All right. Same question, to  
 21 everything, factually, specifically, what did Ms.  
 22 Pope either do -- well, this is a failing thing, so  
 23 this is an omission, not a commission. What did Ms.  
 24 Pope fail to do that would have resulted in business  
 25 opportunities with the estate and trust?

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1 A. There were some issues that I spoke with my  
 2 attorney at the time about due diligence, and they  
 3 were legal.  
 4 Q. Was this --  
 5 A. Legal things, so...  
 6 Q. Was this you telling him or him telling you?  
 7 A. This was a discussion we were having  
 8 together, and he was giving me more information  
 9 about due diligence in terms of what a fiduciary is  
 10 supposed to do legally.  
 11 Q. Specific facts, were you given any specific  
 12 facts?  
 13 A. I don't recall specific facts.  
 14 Q. Okay. So is the answer to my question  
 15 regarding C, you don't know?  
 16 A. The answer is, I discussed it with my lawyer.  
 17 Q. Okay. So it's not only you don't know, but  
 18 you won't tell me?  
 19 A. The answer is, I discussed it with my lawyer.  
 20 He told me about due diligence in the legal fashion.  
 21 Q. Okay. So it's your understanding the way  
 22 this works is that you don't have to tell Ms. Pope  
 23 when you sue her what she did wrong as long as your  
 24 lawyer told you what it was?  
 25 MR. GENDE: Object to the form of the

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1 question. Argumentative. She stated she learned  
 2 some things in a conversation with a lawyer. That's  
 3 clearly protected. If you want to pursue the  
 4 question, I'll respond appropriately. If you want  
 5 to move on, that's fine.  
 6 BY MR. BUNDY:  
 7 Q. Well, I'd like to know what it was factually  
 8 your lawyer told you, factually. Not legal theory,  
 9 none of that, just factually told you somebody else  
 10 told him upon which you would be able to come into  
 11 court and make an allegation that Ms. Pope failed to  
 12 use due diligence in pursuing business opportunities  
 13 for the estate and trust. What facts do you have?  
 14 MR. GENDE: Bill, that question is such  
 15 a blatant violation of attorney-client privilege, I  
 16 direct my client not to answer that.

17 MR. BUNDY: Okay. Thank you.  
 18 Q. All right. Let's go to D. D is, failing to  
 19 use due diligence in determining the value of the  
 20 estate, thereby making the estate vulnerable to  
 21 millions of dollars in unnecessary and incorrect tax  
 22 liability. All right. What facts do you have to  
 23 back up that allegation?  
 24 A. Those tax issues we discussed with our lawyer  
 25 in terms of tax, legal, and stuff like that.

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1 Q. So if I ask you --  
 2 A. I'm not a lawyer, and I cannot give you  
 3 exactly what we discussed, and again --  
 4 Q. Okay.  
 5 A. -- he discussed that with us.  
 6 Q. Okay. So I'm going to try to make this move  
 7 along. If I went through and asked you all the same  
 8 questions all over again, the answers would be all  
 9 the same, right, that was discusses with my lawyer?  
 10 A. Yes.  
 11 Q. C, mishandling an auction of personal  
 12 property at great cost to the estate and trust, what  
 13 facts do you have regarding that?  
 14 A. I think I have already gave you that.  
 15 Q. Okay. All right. The only thing this has in  
 16 it the other one didn't, I think it says, because we  
 17 were talking before about managing the estate and  
 18 trust. This talks about at great cost, can you tell  
 19 me what that cost was?  
 20 A. I don't know the cost.  
 21 Q. Okay. Do you know if there was any cost?  
 22 A. That was lost, a cost? Oh, yes.  
 23 Q. By the -- that is --  
 24 A. By mishandling of the auction of the personal  
 25 property --

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1 MR. GENDE: Object to the form.  
 2 BY THE WITNESS: I don't know.  
 3 BY MR. BUNDY:  
 4 Q. Serving as both Personal Representative and  
 5 Trustees, while a significant issue in the  
 6 administration of the trust and estate was whether  
 7 the trust or estate owned certain assets; what facts  
 8 do you have?  
 9 A. That was, again, legal.  
 10 Q. A legal thing, okay.  
 11 A. Between the attorneys and her.  
 12 Q. Okay. Continuing to conduct a vicious attack  
 13 on a proposed settlement, can you tell me what --  
 14 give me some examples of what made this a vicious  
 15 attack?  
 16 A. The filings, the long filings, I think that  
 17 was lengthy motion opposing the settlement, just  
 18 wasting time and energy and money --  
 19 Q. Okay.  
 20 A. -- when she could of just -- her and Buchanan  
 21 could have just came and sat and talked with us.  
 22 Q. All right. Upon information and belief for  
 23 the purpose of padding their own fees which they  
 24 claimed to be \$5 million dollars, what evidence do  
 25 you have that they were -- that they engaged in this

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1 vicious attack for the purpose of padding their own  
 2 fees?  
 3 A. Discussions with my lawyer.  
 4 Q. Okay. Q, by misrepresenting or representing  
 5 inaccurate statements under oath to the court; what  
 6 information do you have on that?  
 7 A. Again, that was some information that I  
 8 learned from my attorney in terms of finances.  
 9 Q. Okay. This talks about --  
 10 A. Tax -- tax -- taxes and a wrong evaluation on  
 11 taxes and things like that.  
 12 Q. Well, these inaccurate statements under oath  
 13 to the court I presume were in writing; is that  
 14 correct?  
 15 A. I don't know.  
 16 Q. You don't know?  
 17 A. Okay. If they were statements said or  
 18 written.  
 19 Q. Can you give me an example of one?  
 20 MR. GENDE: Again, she's just listed  
 21 that she learned these things from her attorney. So  
 22 you're asking to give an example of what an attorney  
 23 said, and that would be --  
 24 MR. BUNDY: Yes. I'm asking her --  
 25 MR. GENDE: -- a violation of

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1 attorney-client privilege.  
 2 MR. BUNDY: -- to tell me what her  
 3 attorney told me was a fact.  
 4 MR. GENDE: Okay. Well, if you're going  
 5 to ask that question, I'll direct her not to answer  
 6 it.  
 7 MR. BUNDY: Thank you. Perfect.  
 8 Q. By allowing the statute of limitation --  
 9 excuse me. I missed one. R, by failing to file  
 10 appropriate tax returns; what information do you  
 11 have about that?  
 12 A. My attorney -- discussed that with us in  
 13 terms of filing and taxes.  
 14 Q. Okay. By allowing statute of limitations to  
 15 run, thereby preventing opportunities for the estate  
 16 and trust to receive reimbursements for music rights  
 17 misappropriated by others, all right, what  
 18 information do you have about that?  
 19 A. Again, that was information that my attorney  
 20 was able to retrieve from the documents.  
 21 Q. Okay. T, by failing to comply with  
 22 requirements of South Carolina Uniform Prudent  
 23 Investors Act, including, but not limited to,  
 24 failure to implement an investment policy for the  
 25 trust.

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1 A. I'm not a lawyer, so I would have to refer to  
 2 my lawyer in terms of the South Carolina Uniform  
 3 Prudent Investor Act.  
 4 Q. Okay. Artificially inflating the value --  
 5 the reported value of the estate, now, is it your --  
 6 what do you think the estate was worth at the time  
 7 your father passed?  
 8 A. I don't know.  
 9 MR. GENDE: Object to the form.  
 10 BY MR. BUNDY:  
 11 Q. Have you previously stated publically  
 12 something in the range of \$100 million?  
 13 A. No. I have stated what someone else said.  
 14 Q. I gotcha. What do you believe?  
 15 A. I don't know.  
 16 MR. GENDE: Object to the form.  
 17 BY MR. BUNDY:  
 18 Q. So as you sit here today, you don't have an  
 19 opinion about the value of your father's estate at  
 20 the -- on the date of death?  
 21 A. I don't know. I don't have a figure on the  
 22 day of death for his estate.  
 23 Q. Does \$4.5 million sound about right?  
 24 MR. GENDE: Object to the form.  
 25 BY THE WITNESS: I don't know.

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1 BY MR. BUNDY:  
 2 Q. You don't know, okay. Has Mr. Bauknight ever  
 3 told you what he thought it was worth?  
 4 A. We had a meeting, a beneficiary meeting with  
 5 our attorney and his attorney and him, and we had  
 6 discussions on the tax liabilities of the estate, at  
 7 Nexsen Pruet we had those meetings.  
 8 Q. What was said?  
 9 MR. GENDE: Object to the form of the  
 10 question. Again, you're asking for a confidential  
 11 communication with --  
 12 MR. BUNDY: Well, somebody else --  
 13 MR. GENDE: -- attorneys in a matter.  
 14 Another represented party was there she testified.  
 15 BY MR. BUNDY:  
 16 Q. Let me just, who was at the meeting?  
 17 A. Myself, my sister, my attorney, Louis  
 18 Levenson.  
 19 Q. Who represented your sister?  
 20 A. Louis Levenson. My -- the Trustee at the  
 21 time, Russell Bauknight, who you're asking about,  
 22 and his attorney, Freddy Kingsmore.  
 23 Q. His attorney who?  
 24 A. His attorney, Freddy Kingsmore.  
 25 Q. Kingsmore. Was Kingsmore representing you or

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1 your sister?  
 2 A. No. He was representing the estate. Well,  
 3 Russell Bauknight, the Trustee.  
 4 Q. I'm going to ask you again, what was said?  
 5 MR. GENDE: I direct her not to answer,  
 6 attorney-client privilege.  
 7 BY MR. BUNDY:  
 8 Q. All right. Do you know whether Mr. Kingsmore  
 9 and your lawyer had a joint defense agreement or  
 10 agreement of any kind where y'all were all mutually  
 11 represented by both of them?  
 12 MR. GENDE: Object to the form --  
 13 BY THE WITNESS: Repeat that.  
 14 MR. GENDE: -- of the question.  
 15 BY MR. BUNDY:  
 16 Q. Pardon me?  
 17 A. Repeat that.  
 18 Q. Sure. Mr. Kingsmore was representing Mr.  
 19 Bauknight?  
 20 A. Uh-huh.  
 21 Q. Did you understand he was also your attorney?  
 22 A. As the estate attorney, is that what you're  
 23 asking?  
 24 Q. No, ma'am. Your personal --  
 25 A. Was he the estate attorney?

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1 Q. No, ma'am. Your personal attorney. Was he  
 2 you our personal attorney?  
 3 A. No. I did not hire him.  
 4 Q. Mr. Levenson was your personal attorney,  
 5 correct?  
 6 A. Yes.  
 7 Q. And at the time you had this meeting, were  
 8 you a trustee?  
 9 A. No. Mr. Bauknight was the trustee.  
 10 Q. Okay. And at the time you had this meeting,  
 11 you were also contesting the will, correct?  
 12 A. Yes.  
 13 Q. Okay, and contesting the trust?  
 14 A. Yes. It was all in that same case.  
 15 Q. And Mr. Bauknight's job and Mr. Kingsmore's  
 16 job, they haven't agreed with you that neither the  
 17 trust or the will are valid, have they?  
 18 MR. GENDE: Object to the form of the  
 19 question.  
 20 BY THE WITNESS: We have a pending case.  
 21 BY MR. BUNDY:  
 22 Q. And they take the opposite position, do they  
 23 not?  
 24 MR. GENDE: Object to the form of the  
 25 question.

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1 BY THE WITNESS: We have a pending case  
 2 for settlement.  
 3 BY MR. BUNDY:  
 4 Q. Okay. But there was a case brought by you  
 5 and other people against -- that Mr. Bauknight is on  
 6 the other side of defending the estate and the will,  
 7 right -- the trust and the will, right?  
 8 A. He has to defend the trust.  
 9 Q. Okay.  
 10 A. He has to defend, yes.  
 11 Q. And he doesn't represent you. You're at a  
 12 meeting with your lawyer?  
 13 A. Yes.  
 14 Q. He's in a meeting with his lawyer?  
 15 A. Yes.  
 16 Q. Okay. You're not a trustee, and you're  
 17 contesting the will.  
 18 A. I'm a beneficiary.  
 19 Q. Okay. Well, you're a beneficiary whether  
 20 it's intestate or if the will --  
 21 A. I'm a beneficiary.  
 22 Q. Either way.  
 23 A. Either way.  
 24 Q. Either way. All right. I'm going to ask you  
 25 again, what was said in that meeting, in that

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1 discussion.

2 **A. Repeat the question.**

3 Q. Well, this meeting that we're talking about,

4 I want to know what Mr. Bauknight said to you, and I

5 want to know what you said to Mr. Bauknight. I want

6 to know what he told you at that meeting is what I

7 want to know.

8 **A. I had several meetings with him.**

9 Q. No. The one you were just talking about. We

10 were talking about -- where were we? We were

11 talking about I, artificially inflating the value of

12 the estate, and we went through a series of

13 questions where you said you didn't know, had no

14 opinion about the value of the estate at any time,

15 okay, and I asked you as a precursor to all of this

16 whether you had ever discussed the value of the

17 estate with Mr. Bauknight, and I believe you said,

18 yes, we came to this meeting, and now I would like

19 to know what he said.

20 MR. GENDE: And I'm going to direct her

21 not to answer that question --

22 MR. BUNDY: Okay, fair enough.

23 MR. GENDE: -- based on attorney-client

24 privilege.

25 BY MR. BUNDY:

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1 Q. Okay. Let's go back to, it says,

2 artificially inflating the reported value without

3 any substantiation, what evidence do you have that there

4 was no substantiation for the value reported by Ms. Pope

5 or Mr. Buchanan?

6 **A. That information was provided to me by Louis**

7 **Levenson.**

8 Q. Okay. And without any contingency, again,

9 was that provided by Levenson?

10 **A. Yes.**

11 Q. For the purpose of justifying their claim for

12 approximately \$5 million in legal fees, what

13 evidence do you have of that?

14 **A. I received information from the attorney --**

15 Q. Okay.

16 **A. -- that they requested these fees.**

17 Q. Despite the terms of the order of May 26,

18 2009, removing the defendant as PR's and Trustees,

19 Defendants have nevertheless continued to breach

20 their fiduciary duties to the effected parties by

21 continuing to take actions harmful to the estate and

22 trust in the interest of the effected parties,

23 including but not limited to, contesting the

24 settlement by filing multiple appeals. So are you

25 saying here that it was a breach of their fiduciary

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1 duty to file the appeal?

2 MR. GENDE: Object to the form of the

3 question.

4 BY THE WITNESS: To file multiple

5 appeals.

6 BY MR. BUNDY:

7 Q. Okay.

8 **A. There's a difference between filing an appeal**

9 **and multiple appeals.**

10 Q. Okay. Tell me which one they could have

11 filed and it would have been okay, and what it was

12 that may -- and where they crossed the line.

13 MR. GENDE: Object to the form of the

14 question.

15 BY THE WITNESS: I cannot give you a

16 specific answer, because my attorney would have

17 instructed me on those filings.

18 BY MR. BUNDY:

19 Q. All right. Number 20 talks about damages.

20 Can you tell me what the damages are you are seeking

21 in this case?

22 **A. I don't have a number.**

23 Q. You don't, okay.

24 **A. I personally don't have a number.**

25 Q. Can you give me a range?

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1 **A. That she does not get paid.**

2 Q. Okay. What else?

3 **A. That she does not get paid.**

4 Q. So it's not so much that you're looking for

5 money, you just don't want her to get any more?

6 MR. GENDE: Object to the form.

7 BY THE WITNESS: I don't believe she

8 should.

9 BY MR. BUNDY:

10 Q. Okay, but you're not looking for any

11 additional money, at least as you sit here today?

12 MR. GENDE: Object to the form.

13 BY THE WITNESS: I believe that she cost

14 the estate quite a bit.

15 BY MR. BUNDY:

16 Q. How much?

17 **A. I don't know. I don't have a figure.**

18 Q. Okay.

19 **A. But --**

20 Q. Who would know?

21 **A. More than enough.**

22 Q. More than enough. Who would know? Do you

23 have any -- do you have any --

24 **A. Well, of course, the trustee would know,**

25 **since he's handling the accounting. So he would --**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	
	)	Case No.: 2010-CP-40-4900
RUSSELL L. Bauknight, as Trustee,	)	
and others	)	
	)	
and	)	Opinion/Affidavit of William Jeffrey Smith
ALAN WILSON and others,	)	
	)	
Plaintiffs,	)	
v.	)	
	)	
Adele J. Pope,	)	
Defendant	)	

2010 JUL 14 PM 2:01  
 JENNIFER W. MCBRIDE  
 C.C.P. & G.S.  
 FILED

PERSONALLY APPEARED BEFORE ME, WILLIAM JEFFREY SMITH, who being duly sworn, deposes and says:

1. I am over twenty one years of age, and give the opinions stated herein based on personal information, and, within my area of expertise, to a reasonable degree of professional certainty.

2. I am a graduate of Georgetown University Law Center and a former patent examiner with the United States Patent and Trademark Office.

3. I was engaged in June 2008 by the Estate of James Brown and the James Brown 2000 Irrevocable Trust to explore issues related to the protection of James Brown's "I Feel Good" Charity from the premature and/or improper exercise by heirs and claimed heirs of Federal Copyright Act Termination Rights, which would begin to come into play in 2012.

4. Shortly after I was engaged Attorney General Henry McMaster brokered a

settlement deal which stopped the Estate's official DNA testing program; declared Tomirae, Brown's companion, would be stipulated to be his spouse; and declared that fewer than half of Brown's claimed children, along with Tomirae's son, would be Brown's heirs.

5. I did not continue to work after August 12, 2008, the day the McMaster settlement was announced, but I have remained interested in Brown's music and copyright issues related to his estate.

6. I was engaged by Defendant as an expert in this case and in Aiken County Case 2013-CP-02-1337 in 2016.

7. I have not been deposed in this case, but have been deposed in the Aiken Case, and incorporate herein in its entirety my opinions as stated in my deposition.

8. In addition, I have review the non confidential parts of many depositions of experts in this case, as well as the Aiken case, and attach parts of a number of those depositions to this Affidavit.

9. My review of these depositions, especially the depositions of Plaintiffs' Termination Rights experts Roger Miller and Jonas Herbsman, and the depositions of Russell Bauknight, provide further support for my opinion that the Attorney General's in action taking over James Brown's assets; terminating the heirs proceeding that Robert Buchanan, Jr. and Adele Pope were conducting for James Brown's estate; and then devaluating Brown's music empire to damage Mr. Buchanan and Mrs. Pope caused James Brown's "I Feel Good" Charity great damage, as it did Mr. Buchanan and Mrs. Pope.

10. I am informed and believe that the incorrect representation made to the

Supreme Court by the Attorney General and Tomirae to support their efforts to take over the assets James Brown gave his "I Feel Good" Charity damaged Mr. Buchanan and Mrs. Pope in their efforts to protect the "I Feel Good" Trust and its 900 copyrights for needy students. They said in part:

This IRS finding music empire] , based upon its own independent review and valuation, directly and incontrovertible refutes Appellants' contention that: (1) the Settlement Agreement will cause the Estate to lose the charitable deduction; (2) that the Settlement Agreement creates additional tax liability; and (3) that on the date of death the Estate was worth \$80 - \$120 Million dollars. Absent the inclusion of the Supplemental Inventory and Appraisal, the IRS Audit and the Closing Letter, the Court is left with a factual and legally inaccurate probate and circuit court record...

CONCLUSION ...Absent a complete record, this Court does not have an accurate picture of the underlying probate proceeding. As a result, Appellants may inequitably benefit through their own fiduciary inaction in failing to properly value the Estate and in turn claiming a right to receive a \$5 Million dollar commission.

...  
F4 Appellants are presently pursuing a \$5 Million dollar fee petition against the Estate and Trust based upon their incorrect representation that the Estate and Trust was worth approximately \$80 - \$120 Million. (Rpp.2879-80)

11. I am informed and believe that Attorney General's and Tomirae's inaccurate claims a few weeks later continued to damage Mr. Buchanan and Mrs. Pope in their efforts to protect the "I Feel Good" Charity and its copyrights. They said:

In fact, the IRS tax records reveal that the Settlement Agreement benefitted the Estate in that it no longer owes any federal estate taxes. Moreover, the IRS records show that the Estate/s charitable deduction was not impacted by the Settlement Agreement and further, that the Estate was able to favorably utilize the marital deduction because of the Settlement Agreement. All of this reveals that Appellants' assertions in their brief regarding the alleged negative tax consequences that would flow from the Settlement Agreement are patently incorrect. These official IRS documents are relevant to the current appeal, as they are records of the Estate that contradict Appellants' misleading valuation and tax assertions contained within their brief. [Emphasis supplied.]

...Appellants intimate the appraisal is not legitimate. . . the IRS has accepted the date of death valuation of the assets; it has the final word in this matter.

The Court should supplement the record on appeal to include the IRS tax records, and the Supplemental Inventory and Appraisalment...

... Not once did the circuit court order approving the Settlement Agreement address asset valuation... Appellants' myopic focus on asset valuation can only be explained, then, by one fact: their nary \$5 Million personal representative fee petition. R. Pp.3879-80) If the valuation of the assets asserted by the Appellants falls, then their fee petition and credibility falls with it. As explained below, the valuation asserted by the Appellants is based on pure speculation and unsupported by their own citations...

#### No One Ever Made an Offer

The [willing buyer/willing seller] argument is inapplicable here, however, because no one ever made an offer...Every valuation Appellants rely upon is nothing more than speculation.

Appellants have misrepresented to this Court the 'offers' were made to the Estate and Trust to buy its assets:

... At the date of James Brown's death, the intellectual property assets of his estate were worth roughly \$4.7 Million...

Appellants' opposition to the supplement is simply an attempt to appear credible regarding their fee petition. The basis for their valuation argument has been shown to be groundless....

12. After the *Wilson v. Dallas* decision the Attorney General continued his alliance with Tomirae and support of Mr. Bauknight and Mr. Bauknight continued to attack Mr. Buchanan and Mrs. Pope despite public documents which showed Mr. Bauknight had valued Brown's Right of Publicity at zero, and overstate Brown's deductions in the IRS estate tax proceed by \$5 Million. In a deposition given August 20, 2013 deposition in Case 3:08-cv-00014-WOB, Mr Bauknight, talking about the PBW \$4.7 Million "appraisal" said:

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2 Q: What information did you provide to Philpott

3 Ball for use in this evaluation?

4 A: Information I obtained from Ms. Pope and Mr.

5 Buchanan.

6 Q: Numbers?

7 A: Excuse me?

8 Q: That would be basically numbers?

9 A: That would be approximately 180 boxes of stuff

10 that I obtained from Pope and Buchanan....

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1 A: I don't know what a Bates stamp is, so ---

2 Q: The second paragraph on that page is a general

3 introduction to a list of what are called

4 general assumptions. The second sentence of

5 that paragraph reads, these general assumptions

6 have been made based on conversations with

7 persons familiar with the estate and the music

8 industry and a commonsense view of business and

9 popular culture. Do you see that sentence?

10 A: Yes.

11 Q: Who would the persons familiar with the estate

12 have been, to your knowledge?

13 A: At this point I can only assume me, possibly

14 Peter Afterman. I don't know who else. I

15 don't recall. It's been several years.

16 Q: I understand, but you're the only person I have

17 to ask.

18 A: I hear you.

19 Q: Do you know who the persons familiar with the

20 music industry would have been?

21 A: I don't know who they spoke with other than the

22 person I've just mentioned here.

23 Q: And the commonsense view of business and

24 popular culture would have been anyone other

25 than theirs, to your knowledge?

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1 A: No. These are the valuation experts. These

2 are actually the same experts Adele Pope has

3 used in the past. They're nationally known  
4 experts. How they -- you know, I'm not a  
5 valuation expert. I went out and hired the  
6 best I could find to do this valuation. But  
7 how they did their job I -- you know, I don't  
8 know. I'm not a valuation expert. The people  
9 they spoke with, I'm sure they, as part of  
10 their business, know who to talk to about  
11 different industries that they're valuing. But  
12 I don't know who they spoke with. I would just  
13 tell you I went out and hired competent highly  
14 respected professionals to do what Adele Pope  
15 and Bob Buchanan should have done the moment  
16 they were involved in this estate instead of  
17 guessing. Taking somebody's letter of interest  
18 and throwing \$100 million on a federal estate  
19 tax return and a probate form so that they can  
20 jack up their fees. They were self-serving in  
21 the number they chose. Had no basis  
22 whatsoever, in fact. And they didn't even  
23 bother to hire somebody to do a valuation. I  
24 went out and hired competent respected  
25 professionals. I would further say that my

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1 competent respected professionals then had to  
2 sit down with the highly respected well known  
3 valuation team from the Internal Revenue  
4 Service out of, I believe, Kansas City. People  
5 who value assets like this. Royalty streams.  
6 They brought their royalty stream experts in.  
7 Those people sat down with my experts and  
8 agreed. We put the right value on the 706, and  
9 Adele Pope's value was disregarded. So other  
10 than that, I don't know how else they did their  
11 job.

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17 Q: Have you ever seen any court documents from  
18 Aiken County regarding a formula to value the  
19 royalties of James Brown's works?

20 A: A formula?

21 Q: A formula approved by the court for ---

22 A: Approved by the court.

23 Q: Yes, sir.

24 A: I've heard discussion of people -- I want to

25 say Adele Pope had some kind of testimony

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1 somewhere, but I don't know where I've seen it,

2 where people were talking with -- talking about

3 some kind of formula for valuing royalties.

4 But approved by the court, I'm not familiar

5 with that. And frankly, that wouldn't matter

6 to the IRS anyway. The IRS is going to use the

7 values that they choose and can substantiate as

8 appropriate for their purposes.

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2 Q: Any other areas of criticism?

3 A: I couldn't begin to get into all of them...

8 ... They failed to even review the 706

9 that they filed, because they had testified in

10 court -- I believe Adele Pope testified in

11 court it contained some unknown person's

12 schedule of assets in the 706 that they filed

13 with the IRS and they didn't even know it. You

14 know, it seems to me if you file a tax return

15 and sign it, you ought to know what's in there...

Page 68-70

14 Q: Yes.

15 A: Well, let me just clearly say, the Terry Cox

16 letter of interest -- I have spoken with Terry

17 Cox about that supposed letter of interest.

18 Yes, I've seen that letter of interest. Terry

19 Cox laughs at that letter of interest and said

20 it was never intended to be an offer. Maybe

21 you all should follow up with Terry Cox on

22 this, because your client has made some just

23 fantasy statements by way of Sue Summer in the

24 Newberry paper about this \$100 million value...

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4 ... Well, if your clients are so naive  
5 and inexperienced as they are in this industry  
6 and trying to do this job that they believe  
7 that, they're foolish. And to this day she  
8 spouts that off like it's a fact. She's  
9 showing her total lack of business experience  
10 in dealing with a letter of interest. It's  
11 simply something designed to peak interest so  
12 you can get your foot in the door to look at  
13 documents to see what's really there. And  
14 that's all Terry Cox ever intended. And  
15 frankly, when he got in the door and he did see  
16 what was here, he agreed. There's no way to  
17 sell these assets. And frankly, your client  
18 doesn't even understand enough to know that  
19 there's no way to sell these assets...

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...

2 Q: That doesn't ring a bell to you?  
3 A: No. I wasn't aware that anybody else had ever  
4 offered to buy any assets, not that anybody has  
5 ever offered to buy assets. But the only one  
6 I've ever heard referred to by Pope is this  
7 supposed offer from Terry Cox which never was  
8 an offer. She put \$100 million out there so  
9 she could collect a \$5 million claim which  
10 she's filed. Purely self-serving. Purely self-  
11 serving. Selling assets of the estate to take  
12 money for herself and leave it insolvent.  
13 Purely self-serving. I'm sorry. I get carried  
14 away. I get passionate about something I'm  
15 working on when I see such wrong doing.

13. Mr. Bauknight and the Attorney General have continued to claim that James Brown's copyrights were worth only \$4.7 Million, and his Right of Publicity zero, when he died despite strong evidence to the contrary. In his January 31, 2013<sup>u/r</sup> deposition

Mr. Bauknight again attacked Mr. Buchanan and Mrs. Pope for what we know was a very conservative value of \$84 Million. Mr. Bauknight said:

10 RESUMING EXAMINATION

11 BY MS. POPE:

12 **Q. Is there any reason why you didn't designate**  
13 **anyone at Philpott Ball as an expert in this case?**

14 A. I designated experts based on advice of my  
15 attorneys.

16 **Q. So you don't know why someone in Philpott Ball was**  
17 **this not designated?**

18 A. I don't know.

19 **Q. And Philpott Ball is the firm that valued James**  
20 **Brown's music empire at less than 4.7 million as**  
21 **of the date of his death?**

22 A. I don't agree with your term "empire." I don't  
23 know where you came up with that, but the  
24 intellectual property of the estate and trust of  
25 James Brown was valued by Philpott Ball and

Page 38

1 Werner.

2 **Q. Well, actually, Mr. Bauknight, isn't the Schedule**  
3 **F not simply the intellectual property, but the**  
4 **entire music empire?**

5 A. I'm not sure what you're referring to at Schedule  
6 F and if you'd let me, please, before you  
7 interrupt, I'd like to finish my answers. You're  
8 starting to speak before I finish.

9 **Q. Oh, I certainly want you to finish. Please let's**  
10 **do not speak over each other. Do you believe that**  
11 **James Brown had a music empire?**

12 A. I believe James Brown had intellectual property.  
13 I don't understand what you mean by empire...

Page 57.

9 **Q. Now, am I correct that you valued Mr. Brown's**  
10 **intellectual property in filings with the IRS at**  
11 **less than 4.7 million as of his date of death?**

12 A. It was -- well, number one, I did not value it.

13 That was the investment banking firm of Philpott  
14 Ball and Werner that prepared the professional  
15 valuation of the IP of James Brown. I reported  
16 that value to the Internal Revenue Service. That  
17 value was examined by the service at the agent  
18 level, was reviewed by the agent's manager. That  
19 was forwarded to the national office of the  
20 Internal Revenue Service and the Internal Revenue  
21 Service national office brought in the royalty  
22 engineers, as they called them, which are the  
23 royalty experts, who spoke directly with my  
24 investment banking firm of Philpott Ball and  
25 Werner, and those royalty examiners for the

Page 58

1 service agreed with the valuation done by my  
2 experts. To my knowledge, that's the only  
3 valuation that has been done on Mr. Brown's IP...

14. Mr. Bauknight's Termination Rights expert in this case, however, who was disclosed last year, contradicted Mr. Bauknight and made the \$84 Million value Mr. Buchanan and Mrs. Pope put on Brown's assets appear conservative.

Under oath at his deposition on March 16, 2017 Mr. Miller said:

Q. Right, so but buy low is still essential to the concept, right?"

**A. [Miller] When possible.**

Q. Right.

**A. But, in my experience, if you want to buy this type of high quality content, you are often, more so than not, a price taker, not a price maker in the market.**

Q. So, you think James Brown's assets were very spectacular assets, don't you?

**A. Solid gold.**

Q. Solid gold, right, right. [Depos. Miller, 17, p. 10.]

And:

Q. And there is nothing second [sic.] secret about your opinion that James Brown's is a solid gold catalog?

**A. No. I think anybody would agree.**

Q. Okay.

**A. Who is familiar with the work.**

Q. Okay. And there is nothing secret about your opinion that 15 to 20 times multiples [ \$45 - \$60 Million ] would not be an unreasonable value for James Brown's catalog?

**A. No**

Q. Nor would it have been when he died?

[ Objection/response]

**A. When he died valuations were as frothy, if not more so. There was an initial, what I call influx of private equity in the space around 2004 and '5... But there was a time when 20 times multiples was a pretty common multiple of pay for very high quality assets like this.**

Q. Okay. And let me just ask you this, because you know all of this and I don't, but when there was the general downturn in 2008, is it fair to say that these kinds of assets held their value as well as anything else?

**A. It is.**

Q. Or even better?

**A. Yeah, I would say even better...**

15. In addition to the Attorney General's and Tomirae's own expert, many Plaintiffs have disagreed with the Attorney General and Mr. Bauknight about Mr. Bauknight's valuation; Tomirae's claim to be Brown's spouse; and other positions Tomirae, the Attorney General and Mr. Bauknight continue to take. Brown's grandson Jason Brown-Lewis has recently made statements under oath contrary to the Attorney General's and Bauknight's claims. Excerpts from his June 29, 2017 deposition in this case are set out below:

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )  
RUSSELL L. BAUKNIGHT, et al., )  
and ALAN WILSON, et al. )

Plaintiffs, )  
)  
VS. ) No. 2010-CP-40-4900  
)  
ADELE J. POPE, )  
)  
Defendant. )  
)

DEPOSITION OF JASON BROWN-LEWIS  
LOS ANGELES, CALIFORNIA  
THURSDAY, JUNE 29, 2017  
REPORTED BY:  
LINDA D. WHITE  
CSR NUMBER 12009

54...

14 Q. See if I can jog your memory. Do you know  
15 that one of the allegations in your Complaint is that  
16 Adele Pope and Bob Buchanan should have accepted  
17 \$100 million offer for James Brown's assets in 2007?

...

20 THE WITNESS: I do know of that Complaint, yes.

21 BY MR. SILVERNAIL:

22 Q. Were you aware of the \$100 million offer  
23 itself?

24 A. I wasn't aware of it being an offer. I was  
25 aware of it being an estimate of the value of the

55

1 Estate.

2 Q. And when did you become aware that that was an  
3 estimate of the value of the Estate?

4 A. About 2013, 2014. Something like that. 2012,  
5 2013.

6 Q. Did you know anything about the value of the  
7 Estate between Mr. Brown's passing and then?

8 A. No.

9 Q. Do you have any opinion today about what the

10 value of Mr. Brown's Estate is?

11 A. Yes.

12 Q. What you think?

13 A. My opinion is: If it's -- if somebody's

14 willing to pay \$100 million, or if it's being estimated

15 by an outside party as \$100 million, it's worth double

16 or triple that...

18 Q. Do you know who was?

19 A. No. Yes. Tommie Rae was involved selling

20 songs and her lawyers.

21 Q. Do you know who her lawyers are?

22 A. Yeah, Rose and [sic.] something. It's the guy with

23 the bow tie. Am I right?

24 MR. KENDALL: You're right.

25 MR. SILVERNAIL: That's a fair identification.

63

1 MR. KENDALL: We know who that is.

2 THE WITNESS: I think Peter Afterman.

...

19 Q. And do you remember that the Estate had set up

20 a D.N.A. protocol to test anybody who claimed to be an

21 heir?

22 A. Yes.

...

14 Q. Now, there were a couple of folks that you

15 listed as children of your grandfather earlier who you

16 didn't just mention in that list of people who took

17 D.N.A. tests. If I'm hearing correctly, I did not hear

18 Larry Brown or Daryl Brown, do you know whether they

19 took D.N.A. tests at all?

20 A. I know Daryl did. I know Larry refused.

21 Q. And?

22 A. Or I believe. This is what I have an

23 understanding of.

24 Q. And do you -- have you heard anything about

25 what the results of Daryl's test were?

67

1 A. That he's not my granddad's biological child.  
2 Q. Okay. To your knowledge, Larry has never, to  
3 date, taken a D.N.A. test?  
4 A. To my knowledge, no.  
5 Q. Okay. Now, some of the people who were  
6 identified as biological children of your grandfather  
7 were not mentioned in his Will or Trust, correct?  
8 A. Right.  
9 Q. But do you understand that all biological  
10 children have the same rights as one another under the  
11 copyright statutes?  
12 A. I do.  
13 Q. And do you believe that makes it important to  
14 determine who the biological heirs are?  
15 A. Yes.  
16 Q. Do you believe that process is complete?  
17 A. No.  
18 Q. And included in that process would be the  
19 determination of whether there was a spouse who survived  
20 Mr. Brown, correct?  
21 A. Yes.  
22 Q. And I think I heard you say earlier that that  
23 was up on appeal?  
24 A. Yes.  
25 Q. Do you think Tommie Rae and her son should get  
68  
1 more than half of your grandfather's copyright rights?  
2 MR. KENDALL: Objection.  
3 THE WITNESS: No.  
4 BY MR. SILVERNAIL:  
5 Q. Did you know that Mr. Buchanan and Ms. Pope  
6 worked from 2008 until 2013 to try to avoid that result?  
7 MR. KENDALL: Objection.  
8 THE WITNESS: No.  
9 BY MR. SILVERNAIL:  
10 Q. Do you have any opinion of what the value of  
11 your grandfather's Estate is generally?  
12 A. Yes.

13 Q. Tell me what that is.

14 A. At this point, I'm content -- well, I have the  
15 same opinion of it being \$100 million.

16 Q. You believe that is the value?

17 A. At this point, yes.

18 Q. And do you believe it's ever been less than  
19 \$100 million since he passed away?

20 A. No, it's only gone up since then.

21 Q. Now, are you aware that your grandfather had a  
22 Will and Trust from 1999?

23 A. Yes.

24 Q. Are you aware that they're generally similar  
25 to the last Will and last Trust he had from 2000?

69

1 A. Yes.

...

15 Q. Now, after your grandfather passed away, have  
16 you ever seen documents that are sometimes referred to  
17 as Tommie Rae's diaries?

18 A. I have not seen them.

19 Q. Are you aware of them?

20 A. I am....

25 And I know that there was also an issue

73

1 brought up about a reporter who got a hold of them and  
2 they went public. However, the courts tried to shut it  
3 down, but it became public again or something like that.  
4 So I know there was a fiddle around with the diary.

...

13 Q. Do you have any idea what your grandfather's  
14 personal property -- and personal property being  
15 furniture, collectables, photos, items around the house  
16 more or less, do you have any idea what his personal  
17 property would be worth?

18 A. Is this my opinion or is this factual?

19 Q. I'm asking you if you have any idea  
20 personally.

21 A. So you saying all the items in the house, the

22 house, the land, the things in the land?

23 Q. No, I'm not including the home itself, the  
24 buildings. I'm talking about the stuff that could be  
25 picked up and taken away.

84

1 A. Everything that was in that house I would  
2 probably estimate it, to give you my best opinion, I  
3 remember the Christie's sale didn't make anything near  
4 what we were expecting. But I would estimate all that  
5 stuff to be \$1 million to \$1.5 million.

6 Q. Did you attend the Christie's sale?

7 A. Not at all.

8 Q. Did your mom?

9 A. I think she did. If she didn't attend it  
10 physically, she attended it telephonically.

11 Q. Do you know whether any members of the family  
12 purchased items at the Christie sale?

13 A. My mother purchased an item.

...

1 Q. Now, do you remember what the Christie's sale  
2 brought in?

3 A. Was it \$800,000, something like that? How  
4 much was it?

14 Q. And do you recall whether you or any members  
15 of your family tried to stop the Christie's sale from  
16 occurring?

17 A. Yes.

18 Q. And was that you?

19 A. I believe I was a part of that on paper. I  
20 can't remember if I was of age then.

21 Q. It was held in July of 2008.

22 A. Then yes, I was a part of that.

23 Q. And was your mother a part of it?

24 A. Yes.

...

86

...

9 Q. Did you know that Judge Early, who was  
10 presiding over the Estate proceedings, had approved the  
11 Christie's sale and directed it to take place in two  
12 Orders?

13 MR. KENDALL: Object to the form.

14 THE WITNESS: I didn't know it was two. I thought  
15 it was just one, but I'm not surprised with two.

16 BY MR. SILVERNAIL:

17 Q. And have you ever seen the document Christie's  
18 produced? It was entitled "Selection for Sale"?

19 A. Is it the booklet with all the photos in it?

20 Q. Prior to that.

21 A. No.

22 Q. So you weren't aware that the exact items  
23 which Christie's would auction were presented to the  
24 Court and that that selection for sale was circulated to  
25 all the parties in that case?

87

1 A. No.

2 Q. And did you know that the judge had offered a  
3 process for family members to ask to withhold certain  
4 items?

5 A. No.

6 Q. So I can anticipate the answer, but just to be  
7 clear, were you aware that none of Mr. Levenson's  
8 clients made a request to withhold any item from the  
9 sale?

10 A. No.

11 Q. And did you personally communicate any  
12 requests to withhold any item from the sale to anybody  
13 other than your lawyer?

14 A. I didn't.

...

25 Q. You don't have any idea what your  
89

1 grandfather's music brings in in a year?

2 A. I have an idea.

3 Q. What's your idea?

4 A. \$2- to \$4 million a year.

5 Q. And did that change any after your  
6 grandfather's passing?

7 A. It fluctuated a bit higher and then lower.

8 And then when the movie came out, higher.

9 Q. Do you have any expectation that your  
10 grandfather's music will begin a general consistent  
11 decline anytime in the near future?

12 A. Yes, it would, just as everything fades away  
13 at some point.

14 Q. Do you think that -- do you expect that in the  
15 next four or five years or are we talking over decades?

16 A. We're talking over the next 30 to 40 years,  
17 maybe even longer till my granddad's music dies.

18 Q. Would you agree with me?

19 A. Actually, my granddad's music will never die.

20 He's the most sampled artist in the world. And he's  
21 also Michael Jackson's biggest idol. He will never die  
22 and neither will his music.

....

25 Q. And so you are aware that there's a pending  
93

1 dispute between the Michael Jackson's estate and the IRS  
2 about valuation of some aspects of his estate?

3 A. I'm somewhat aware, but I'm not fully  
4 knowledgeable.

5 Q. Were you aware that the dispute seems to be  
6 that the estate believes Michael Jackson's image and  
7 likeness was worth approximately \$2,100 and the IRS  
8 believes it was approximately \$430 million?

---

6 Q. Now, take a look back through. And I tell you  
7 what, we're short on copies of this one. I'm going to  
8 hand this back to you, turned over to Page 5. And the  
9 answers to Interrogatory Number 8 there, particularly  
10 8A, which I believe generally asks for identification of  
11 anybody to whom Tommie Rae Hynie had been married,

12 correct?

13 A. It does state that.

14 Q. And is it correct that the response provided  
15 in bold is that responding parties only know of a  
16 marriage to Javed Ahmed, possible past addresses in  
17 Texas; is that correct?

18 A. That's what it reads, yes.

19 Q. Okay. So as of March 4th, 2008, when this  
20 document is dated on Page 6, the members of your family  
21 represented by Louis Levenson were taking the position  
22 that Tommie Rae's only marriage had been to Javed Ahmed,  
23 correct?

24 MR. KENDALL: Object to the form.

25 THE WITNESS: Yes.

11 Q. Okay. Do you know who Ray Charles is?

12 A. Yes.

13 Q. Are you aware that he left behind a charitable  
14 foundation?

15 A. Yes.

16 Q. Have you heard anything about what the value  
17 of that foundation is?

18 A. No.

...

24 Were you aware that Ray Charles's foundation  
25 was approximately \$50 million?

110

1 A. No. This is his foundation, not his estate?

2 Q. Yes.

3 A. Okay.

4 Q. Do you think James Brown's foundation should  
5 be at least that much?

6 A. Well, to my knowledge, I don't know there  
7 being a James Brown foundation.

8 Q. I'm referring to the James Brown I Feel Good  
9 Trust.

10 A. It's -- I mean, not trying to sound arrogant  
11 here, but James Brown did more physically and during his

12 life. I would -- I would speculate that it would be  
13 worth a bit more than \$50 million, but it would be in  
14 the same ballpark.

3 Q. Now, earlier today I think you -- and correct  
4 me if I'm misremembering or misunderstood -- but I think  
5 you told me that you thought the things in your  
6 grandfather's house, exclusive of the house and the  
7 property itself might be worth \$1 million to a million  
8 and a half dollars?

9 A. On the low end, yes.

10 Q. Did you know Mr. Bauknight had valued that  
11 property at close to or maybe zero?

12 A. No.

13 Q. I think this is obvious. But just for the  
14 record, does that sound like a reasonable valuation to  
15 you?

16 A. No.

16. I was designated as a witness in this case more than six months ago, but Plaintiffs have not tried to depose me. If they did, my testimony would be similar to my opinions stated in the article I wrote with Mrs. Pope in 2011, *Private Foundations, Copyright Heirs and Musical Millionaires: why the James Brown "I Feel Good" Trust doesn't...*, and my sworn testimony given in Aiken Case No. 2013-CP-02-1337 on March 14, 2017. My opinions, given to a reasonable degree of certainty within my areas of expertise, are set out in part below:.

7 Q Okay. And then you've got a stack of  
8 something underneath that notebook. I don't know  
9 if I've seen that yet.

10 A Well, for instance, this is about what's  
11 going on in the Prince estate. And, of course,  
12 looking at the Prince estate, it's partly to see

13 the value of some of these musicians' estates when  
14 they die and how much money is involved with both  
15 Michael Jackson, Ray Charles, Prince, and the  
16 valuations of their estates and how it can run into  
17 the hundreds of millions of dollars, whether it's  
18 publicity rights, copyrights or different things  
19 like that, and some of the problems with  
20 determining heirs and how important it is to  
21 determine the heirs in these situations.

22 But, of course, but every -- each case is  
23 different. Prince estate, no will, but it's still  
24 very important, obviously, to find the heirs and  
25 determine who the heirs are because of copyright  
Page: 27

1 terminations.

2 MR. WILLIAMS: In case you didn't catch  
3 it, he's saying Prince's, as in the late --

4 THE WITNESS: Yeah...

...

19 Q Let me --

20 What was the artificial devaluation of  
21 Brown's assets described in paragraph 7?

22 A Well, I've seen the papers -- we've got a  
23 list of -- I might have to find that piece of  
24 paperwork later.

25 I guess it was basically the idea that we  
Page: 84

1 all know about the -- what the royalty interests  
2 were, but image and persona and the idea that --  
3 I've studied -- I know about the -- what's going on  
4 in the Ray Charles estate, the Prince estate,  
5 Michael Jackson estate, and the amount of money  
6 that's being talked about is anywhere from a  
7 hundred million to 250 million or more in some of  
8 those estates, and there's no reason why -- I don't  
9 see any reason why the James Brown estate wouldn't  
10 be in that same ballpark.

11 And it seems obvious that it was based on

12 the income at the time and all the publicity rights  
13 and all the different things that going -- the idea  
14 of going from, you know, 84 million to -- or in the  
15 realm of a hundred million down to 4.7 million just  
16 seems unbelievable. I mean, it's just -- you know,  
17 it's like a factor of 10. You know, if it was a  
18 small percentage ...

19 But to do something that's more than a  
20 factor of 10, that's -- to me, that's an artificial  
21 devaluation; I mean, that there's no -- there was  
22 no basis for that.

...

Page 85

16 Q How are the other what you called music  
17 empires similar to the estate of James Brown's?

18 A You say how are they similar? That's the  
19 question?

20 Q How do you compare them?

21 A Well, I compare them by time period,  
22 general popularity of the person, the known -- the  
23 worldwide recognition of the person, the popularity  
24 of their songs, the sampling, the publicity. Just  
25 the career.

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1 When somebody writes and performs  
2 songs -- I mean, not only just performs songs. I  
3 mean, there's obviously been a lot of performers  
4 over the years, but, I mean, somebody -- the people  
5 who actually writes songs -- see, you're back in  
6 the copyright area -- but performance and persona  
7 for decades, those estates know that they have  
8 ongoing values of hundreds of millions of dollars  
9 sometimes.

10 I mean, Elvis died 40 years ago, and a  
11 lot of people don't know anything about him but his  
12 estate is generating a tremendous amount of money  
13 now, and Michael Jackson and Prince are gonna be  
14 probably way beyond that, probably because they

15 wrote a lot more of their songs, they're just more  
16 well-known worldwide probably, and -- so that --  
17 And, once again, it's not the particular  
18 number as far as what you mentioned, the  
19 84 million, but the idea of saying something --  
20 4.7 million, given the amount of money that was  
21 coming in for all kinds of different situations per  
22 year, it just -- that seems very artificial to me.  
23 Seems very unreasonable.

....

11 Q Your opinions that you have given include  
12 the opinions stated in the article "Private  
13 Foundations, Copyright Heirs and Musical  
14 Millionaires"?

15 A Yes.

16 Q "Why the James Brown 'I Feel Good' Trust  
17 doesn't" ...

18 Is that correct?

19 A That's correct.

20 Q I'd like you to look at that article and  
21 see if there's a section in that article called  
22 "Almost nothing."

23 A Yes. I see it.

24 MS. POPE: Before we begin, let's mark  
25 that, please, as an exhibit.

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...

17 Q And does the article deal with a concern  
18 about a devaluation of James Brown's assets as well  
19 as other copyright concerns?

20 A Yes, it does.

21 Q And at that time, was the case now known  
22 as Wilson versus Dallas on appeal?

23 A Yes.

24 Q It was on appeal to set the scene from  
25 about May of 2009 until 2013?

Page: 125

1 A Yes. Of course, that's when the decision

2 came out, yes.

3 Q Okay. At that time, had Sonny Jones and  
4 others announced that an appraisal would be  
5 forthcoming that would show James Brown's assets to  
6 be less than \$12 million?

7 A Yes. That's right.

17. Nothing in the sworn deposition testimony of the Attorney General's and Tomirae's experts desingnated in this case, but deposed in other cases, persuades me to change my position that the Attorney General, Tomirae and Bauknight intentionally devalued James Brown's assets by tens of millions of dollars to damage Mr. Buchanan and Mrs. Pope in the eyes of the Supreme Court, but Attorney General's alliance with Tomirae and those false devaluation and filings, through Bauknight, also severely damaged The James Brown "I Feel Good" Charity and its 900 copyrights.

18. I do not find anything in the expert, party and lay witness depositions I have reviewed which refutes my opinions or provides any support for the Attorney General's and Bauknight's devaluation of James Brown assets to less than 1/10 of their real value in order to attempt to discredit Mr. Buchanan and Mrs. Pope.

19. The deposition of the Attorney General's and Tomirae's expert Jonas Herbsman, Esq., at his deposition on March 17, 2017 in Aiken County Case 2013-CP-02-1337 does not, in my opinion, provide any support for Mr. Bauknight's devaluation of James Brown's assets or the attacks on Mr. Buchanan and Mrs. Pope related to their protection of the copyrights James Brown gave his "I Feel Good" Charity. Parts of Mr. Herbsman's testimony are set out below:

IN THE COURT OF THE COMMON PLEAS  
SECOND JUDICIAL CIRCUIT  
STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

-----X

ADELE J. POPE,

PLAINTIFF, -against-

Case No.:2013-CP--02-1337

ESTATE OF JAMES BROWN and THE JAMES BROWN  
2000 IRREVOCABLE TRUST,  
DEFENDANTS.

-----X

DATE: March 16, 2017

TIME: 9:25 A.M.

CONFIDENTIAL EXAMINATION BEFORE TRIAL

of the Expert Witness, JONAS HERBSMAN,

ESQ., taken by the respective parties, under the South Carolina Rules of  
Civil Procedure, pursuant to a Court Order, held at the offices of Shukat  
Arrow Hafer Weber & Herbsman, LLP, 494 Eighth Avenue, 6th Floor, New  
York, New York 10001, before

Cleo Shenkin, a Notary Public of the State of New York

...

Q. Okay, do you recall who first  
engaged you?

A. Mark Gende.

Q. Okay. Now, let me talk just a  
few minutes about your qualifications.

You are a transactional lawyer;  
is that correct?

A. Correct.

Q. Okay. Do you do any litigation

A. No.

Q. Well, first of all, tell me, if you will, a little bit about termination rights under Section 203 and 304 of the Federal Copyright Act.

A. Okay, well, termination rights are a right for an author who when they created the work in question may not have had the negotiating power to negotiate a good deal, may have negotiated away their rights, and so the termination rights give the author an opportunity at a certain point in time to terminate the grant that was given and recapture those rights.

And depending on whether the author is still alive, you know, it's the author who exercises the rights or it's the author's widow and children who exercises the rights or it's the -- if there are no widow and children, there are next of kin provisions, all the way down to an executor, who might exercise those rights if there are no appropriate next of kin, widow, children.

And depending on which you are talking about, there is a 56-year termination right, there is a 35-year termination right. The 35 termination right, that is only available if you are -- if it was a grant that was made by the author directly, as opposed to the earlier termination right in copyright law, the 56-year termination right, which is a right that is just a general termination right, not specific to having been a grant by the author made after 1978.

Are we going further?

Q. Whatever you would like to say, I am interested.

A. I think that is good.

Q. Well, let me ask you, how do you determine heirs under the Federal Copyright Act?

A. Well, either someone has to be acknowledged by the creator of the work in their lifetime, so someone being acknowledged as a child, either their natural child, they could be adopted or they could be otherwise acknowledged as the, you know, as the heir or -- you know, as a child or as a spouse.

Q. Tell me what you mean by "otherwise acknowledged."

A. Well, if an individual during their lifetime acknowledges a child as their child and they can form the basis for the individual being acknowledged as an heir, despite the child not necessarily being officially adopted or a natural child. If an order affiliation is being issued, if someone has been recognized as the child.

Q. Are you aware of any litigation related to the determination of children under the Federal Copyright Act?

A. Yes.

Q. Okay. Tell me about those cases.

A. Well, I am not prepared to give full dissertations on the cases; that is not what I prepared for this morning.

Q. Well, I just want to know what you know sitting here today. I am not asking for a full dissertation, I just want to know your knowledge or understanding about any litigation you are aware of related to the determination of children

under the Federal Copyright Act termination rights provisions.

A. Hank Williams, there was a Hank Williams case with Hank Williams' daughter. And, again, I would have to go and do the -- you know, review again, to be able to have an appropriate conversation about it.

Q. Sure. Sure.

Do you recall whether the question was whether she was or was not the daughter?

A. I don't recall.

Q. Okay. Are you aware of any other Federal Copyright Act termination rights case involving the question of whether someone is a child that you are aware of?

A. Off the top of my head, no.

Q. Okay. Now, are you aware nationwide of any Federal Copyright Act termination rights litigation or case or article or study related to the determination of who is a spouse under the Federal Copyright Act?

A. To quote specific cases, no.

...

Q. Okay. All right, now, we will just short of go through it. You believe your first conversation was November 21, 2016 with whom?

A. Mark Gende.

Q. Okay. And is it correct that on November 21, 2016, Mark Gende wrote you and said "Jonas, attached are additional documents for your review and certain documents for your review"?

Q. Did he tell you that the personal representative had told the Internal Revenue Service that James Brown's assets were worth only about 6.5 million when he died?

A. No.

...

Q. Okay. And are you aware that the valuation of one's image and persona could be a substantial issue in the case of a celebrity?

A. Yes.

Q. Okay. Are you aware of the pending Michael Jackson litigation

A. I am.

Q. Okay. You are not a lawyer in the Michael Jackson --

A. I am not involved in the litigation.

Q. Okay, just tell me briefly what is going on with Michael Jackson.

A. A dispute has arisen as to the values of Michael Jackson's name and likeness on the date of his death.

Q. Okay.

A. And my understanding is that the difference in opinion is that Mr. Jackson's Estate tax return indicated a value of approximately \$6,000 and the IRS believes it is approximately \$1.3 billion.

Q. Well, have they reduced that to a \$150 million now?

A. I think they may have.

Q. Right. In other words, the issue of the value of a celebrity's image and persona at death is important?

A. It is.

Q. And James Brown is certainly a

personality who would fit into the category of persons whose image would be important?

A. Yes.

Q. Okay. Without divulging client secrets, would you have a way of comparing James Brown to Bob Marley?

A. From a name and likeness perspective?

Q. Yes.

A. Is that what we are talking about?

Q. For the moment.

A. Okay. Well, you would need to consider the image of each individual at the time of their death. So one would have to look at how the individual was positioned in the eye of the public at the time of their death to determine, you know, what the value would be of that name and likeness. So comparing two specific individuals is difficult because the market for each of them is generally going to be different.

...

Q. So sitting here today, you have no -- and I am not asking you to be an expert in an area that you are not an expert, but you have no idea of the comparable value of James Brown's image and persona at death to Bob Marley; is that correct?

A. I could not personally be the expert who would make that valuation.

Q. Well, do you just have a personal opinion, a nonexpert opinion?

A. I do.

Q. So tell me about it.

A. I think that James Brown was

one of the seminal musical figures of the 20th Century and that there would have been a substantial market for his name and likeness, if handled properly.

Q. And, again, the date-of-death value that one must put on an estate tax return must make some reasonable assumptions, correct?

A. Yes.

...

Do you know anything about the at-death value of James Brown's personal property?

A. I do not know what the value would have been of his personal property.

Q. Okay. Do you know anything about its value today?

A. I know some was auctioned via Christie's; I do not know what the ultimate total is that was recognized and I don't know what is left, so I don't know what the value would be.

...

Q. Okay. Have you seen a Barnebys [sic.] add for a pair of James Brown's shoes for \$1500 minimum?

A. I have not.

Q. Okay. Do you know what in fact was in the Christie's sale and what was left after the Christie's sale?

A. I do not.

Q. Are you aware of which of the thousands of items were placed in museums for safekeeping during the litigation?

A. No.

I just know that items were referred to in the papers I saw as having been -- potentially being place in museums.

Q. Okay. Right.

Did you see an order, in fact, dated February 20, 2008 that allowed the personal representatives to place items of tangible personal property in museums for safekeeping?

A. I did.

Q. Did you understand why that order was necessary?

A. My recollection was that items were being held in a house that had some structural issues.

Q. And did you understand that at least arguably from and after December 26th those five contesting children would have lost any special status with respect to the personal effects?

A. I only know that from what I read; I personally don't know whether that is correct or not.

Q. Okay. Have you dealt with in terrorem clauses before?

A. I have seen them, I have read them, I have not been a party to a litigation involving them.

Q. Okay. So were you aware that at the time of the order, the sixth child, who had not contested the will, was asserting that he owned all the personal and household effects?

A. I do recall reading that.

...

Q. Okay. So you don't have any knowledge that the larger body of personal tangible property had been valued at about \$2 million?

A. I recall seeing the number 2 million, but I don't know exactly what

items were specifically included with the valuation of that number.

Q. Okay. Did you know that Christie's had conducted an appraisal of the household items?

A. Yes.

Q. Okay. And did you see what value Christie's put on the items it a braced [sic.]?

A. I have not seen the Christie's appraisal.

...

Q. Do you know that Mr. Bauknight told the IRS that James Brown's image, persona, copyrights, claim against Greenberg Traurig, claim against former trustee David Cannon, claim against Morgan Stanley, claim against Phillip Farr, business tangible personal property and other assets had a value of only \$4.7 million at James Brown's death?

MR. WILLIAMS: Object to the form.

A. No.

Q. Would that surprise you?

MR. WILLIAMS: Object to the form.

A. I couldn't form an opinion on it without knowing the basis of how that value was derived.

Q. And none of your work has been related to the propriety of a proper valuation of James Brown's assets?

A. No.

Q. Okay. And none has been attempted?

A. No.

That is not my area.

...

Q. I think we were taking a break for you to secure the names of two lawyers you have spoken with about this matter since November 21, 2016; is that correct?

A. Correct.

Q. Who are they?

A. Rett Kendall.

Q. Okay.

A. And William Newsome.

Q. Okay. What do you know about Rett Kendall and William Newsome?

A. That they are attorneys representing the Estate of James Brown.

Q. Okay. Do you know who else Rett Kendall represents?

A. I do not.

Q. Do you know the name Tomi Rae Hynie?

A. I do.

...

Q. Did you do any research to determine who all the people were who were challenging Ms. Hynie's status as James Brown's spouse?

A. No.

That wasn't in the scope of what I was asked to do.

...

This is a document, Exhibit 2, Plaintiff's Exhibit 2 is a petition of respondent James B. for rehearing, received March 14, 2013 by the South Carolina Supreme Court in a case which became known as Wilson v. Dallas, case No. 2008-CP-02-1647.

Do you know anything about the Wilson versus Dallas decision?

A. No.

Q. Okay. In your preparation, did anyone talk to you about the subject of that appeal or the ruling of the court?

A. I don't recall a conversation on that.

...

Q. Right, but did you know at the time, which was more than six years after his death, whether James B. had been determined to be James Brown's child?

A. No.

Q. Do you know that, in fact, he had refused DNA testing?

A. I don't know one way or the other.

It's not relevant to what I was asked to examine.

Q. Do you know whether he was born of a marriage?

A. No.

Q. Do you know whether he was born of the marriage of Tomi Rae Hynie to Javed Ahmed?

A. No.

...

Q. Okay. Did Mr. Gende tell you that Ms. Hynie was one of his clients?

A. No.

...

Q. Okay. Do you know that in September of 2010 Mr. Bauknight and others received a document which they claim is a proper appraisal of Mr. Brown's intellectual property at less than \$4.7 million?

MR. WILLIAMS: Object to the form.

A. I haven't seen an appraisal.

Q. Okay. Did you know that that had happened in September of 2010?

A. I know that an appraisal was sought.

Q. Do you know when it was received?

A. I don't know the date it was received.

Q. If I tell you it was September 2010, do you have any information to the contrary?

A. I do not.

...

Q. Okay. Now, looking back at Plaintiff's Exhibit 2, would it be fair to say that James B. is discussing the results of that appraisal on page six and elsewhere?

A. (Witness perusing document.)

When you say James B. is discussing it, it's Peter Shahid.

Q. James B.'s lawyer?

A. James B.'s lawyer.

(Witness perusing document.)

There is a discussion of an appraisal submitted to the IRS, but I don't know if it is the appraisal that you are referring to or that Mr. Bauknight provided on the date that you are referring to.

Q. Okay. But on page six, Mr. Shahid refers to an appraisal, which he says "confirmed by the IRS on audit, which is for the date-of-death value, shows the royalty stream belonging to the Estate worth approximately \$4.7 million, which is the fair market value of the royalty stream less outside associated debt of

approximately \$19 million arising from bonds secured by the royalty stream"?

A. It does say that.

Q. Okay. Do you know anything about the debt he is talking about?

A. I would assume he is talking about the bonds that were held by TIAA-CREF issued by David Pullman.

Q. Yes.

Actually, everybody says TIAA-CREF, but it's really just TIAA, isn't it, the New York Teachers?

A. The Teachers Association, Association of Teachers.

Q. Right. People confuse it a lot, you see it in the documents. But what do you know about the TIAA debt?

A. That they are bonds issued and secured by publishing royalties and record royalties.

Q. Have you studied the Pullman or the TIAA bond in connection with your representation?

A. No. I have not seen it.

Q. All right. Do you know whether the date-of-death value of the TIAA bond was 19 million, as stated by James B., or actually about 16 million?

A. I have no knowledge of that.

Q. Okay. All right, do you know the difference between an IRS audit and a closing letter?

A. Yes.

...

All right, now, do you know that in early 2011, Mr. Buchanan and Mrs. Pope received notice that the value of

Mr. Brown's Schedule F assets in the Estate tax proceeding had been reduced from 84 million to 4.7 million?

A. Only to the extent that I saw reference to it in the documents I was provided.

Q. Okay. Did you know that both immediately took steps to make sure that their names weren't associated with that 79 million devaluation?

A. I am not aware of that.

Q. Okay. Did you know that later, Mr. Bauknight and others asserted that Bob Buchanan and Adele Pope had overstated the value of James Brown's assets by \$79 million for the improper purpose of obtaining a large commission?

MR. WILLIAMS: Object to the form.

A. I have seen documents that refer to that.

Q. Would that be a felony under the IRC?

MR. WILLIAMS: Object to the form.

A. I am unaware of what is or is not a felony.

Q. Okay. You wouldn't want to commit one, would you?

A. I wouldn't want to commit a felony, but I can't comment on what is or is not a felony, I am not familiar with those rules.

Q. Nor would you want to be accused of one, would you?

A. No.

Q. Okay. All right.

And do you know anything else

about the value of the James Brown assets on his date of death that you have not told me?

A. No.

Q. Okay. Do you know anything else about the value of the James Brown assets on November 20, 2007, when Adele Pope and Bob Buchanan took office?

A. No, I wasn't asked to assess valuation.

Q. Okay. Well, do you know anything else that you have learned from anyone?

A. No.

Q. Okay. Do you know anything else about the value of the James Brown assets when Bob Buchanan and Adele Pope surrendered those assets to Russell Bauknight on May 26, 2009?

A. No.

Q. Okay. So is it fair to say you have no information to suggest that the Estate and Trust decreased in value during that time?

A. No, I would say I was not asked to examine that issue.

Q. Okay. And you have no such knowledge?

A. No.

Q. Have you ever read an article written by Adele Pope and William Jeffrey Smith entitled, Private Foundations, Copyright Heirs and Musical Millionaires or Why the James Brown "I Feel Good" Trust Doesn't?

A. Yes.

...

Q. Was there anything in the

article that you found to be incorrect?

A. I didn't assess the article for whether it was correct or not.

Q. Okay. Why were you reading it?

A. It was provided to me with other documentation, so I read through it.

Q. Okay. Do you agree with the premise of Mr. Smith and Ms. Pope that the determination of heirs is critical to a charity for the protection of its copyrights?

A. I am not sure of the question -- I am not sure I am following the question.

Q. Well, I'm sorry, let's see if we can make a context here.

A. Sure.

Q. Are you aware that James Brown left the bulk of his assets to charity?

A. Yes.

Q. Okay. To the James Brown "I Feel Good" private foundation?

A. Yes.

Q. Okay. And you and I both know that a private foundation bears the name private, but is a charity in many respects?

A. Yes.

Q. Okay. And James Brown's will actually provided that the residue of his estate, except for \$2 million, went to the "I Feel Good" private foundation, correct?

A. That is what the will said, yes.

Q. Okay. And that the "I Feel Good" foundation was dedicated solely to the education of needy and deserving students in Georgia and South Carolina?

A. I have also read someplace else

that it was for students from anyplace, so I can't -- I haven't read the foundation documents, so I can't confirm or -- I know it's for the benefit of education for underprivileged, yes.

Q. Okay, right.

Did you know that he had done two estate plans a year apart, both leaving his residuary assets for the education of needy students?

A. I did read that in the documents.

Q. Okay, good.

All right, so would it be fair to say that the "I Feel Good" charity and any other charity holding copyrights would have a duty to protect those copyrights?

A. If a charity validly holds a copyright, they should protect it.

...

Q. Right, okay. Now, then, would it be fair to say that the "I Feel Good" Trust, if he owned those copyrights, like any other charity in America, would have a duty to protect the copyrights for the benefit of the charity?

A. I think that would depend on the specific state law applying to charities within the state, so I can't opine as to whether South Carolina law requires, you know, a charity to do or not do something.

Q. Okay. Well, I am not talking about maximize or such as that, I am just talking about a general fiduciary duty to protect your assets, trustees have that duty, don't they?

A. Yes.

Q. Okay. So if a trustee has a duty to protect its assets, then one method of protecting those assets is to protect it against incorrect or premature exercise by heirs of terminations rights; would you agree?

A. I would think that a charity should do what is most prudent to generate the best value from the assets which they have.

...

Q. Okay. So in your representation of the James Brown matter, your expertise, you never attempted to look at the issue of the likelihood that Ms. Hynie would have been determined to be the spouse?

A. I have accepted that Ms. Hynie would be determined to be the spouse.

...

Q. Okay. Do you know in fact that Ms. Hynie admitted in handwritten notes that she was married, living in Texas and thought she might be pregnant when she took up with James Brown, concealed her marriage and then later, in 2001, had a ceremony with Mr. Brown?

A. I am familiar with those statements, but I haven't seen the notes.

...

Q. Were you aware that despite the appeal by both the Estate and at least three of her co-plaintiffs in the Wingate suit, Ms. Hynie received \$1 million in 2015 or early 2016 in relation to a sale or transfer of "Please, Please, Please" and two other songs?

A. I am not aware of that.

Q. Okay. Were you aware that Ms. Hynie claimed in court filings that Brown's music empire, including all his Schedule F residuary assets, were worth only \$4.7 million when he died and that the total of all James Brown assets was only 6.5 million?

A. Only to the extent that I have read it in the documents that I have been provided.

Q. Were you aware that it was Tomi Rae's lawyer who proposed in 2009 to value Brown's copyrights like those of Harlan Howard and value Brown's publicity rights at zero?

A. No.

Q. Do you know who Harlan Howard is?

A. No.

Q. Okay.

A. A performer, I assume.

Q. Would you compare Harlan Howard in any way to James Brown?

A. I don't know who Harlan Howard was.

...

Q. Okay. Did you know that twice in the year 2016 Henry McMaster, who is now the governor South Carolina, has stated under oath that he did not authorize the Wingate suit to be filed in the name of the attorney general?

A. I don't think I am aware of that.

Q. Okay. Are you aware that Mr. McMaster, now Governor McMaster, said under oath in this case, just shortly before you were hired, that he never

authorized Mr. Bauknight to act on behalf of the attorney general in the Wingate suit?

A. I haven't seen any documents related to that.

Q. If it turned out that the Wingate suit was either unconstitutional or illegal or both, would that affect your opinion?

A. No.

Q. Okay. Do you know who Dr. Yamma Noyola Brown is?

A. I believe also a child of James Brown.

Q. Right. Do you know that she and Deanna and others are currently represented by Marc Toberoff?

A. No.

Q. Do you know who Marc Toberoff is?

A. Yes.

Q. If Marc Toberoff were trying to take away a charity's copyrights, the charity might want to protect itself, mightn't it?

A. I don't know that Marc Toberoff is trying to take away a charity's copyrights.

Q. Do you know anything about Marc Toberoff's actions in connection with James Brown?

A. No.

Q. Okay. Do you know anything about Marc Toberoff's actions with respect to heirs and other charities?

A. I know that Marc Toberoff represents individuals seeking to reclaim rights via termination filings.

Q. Okay. Are you aware of the Ray Charles litigation?

A. Yes.

Q. Okay. Is it fair to say that the heirs of Ray Charles are adverse to Ray Charles's charity?

A. I wouldn't know one way or the other; I am just aware of the fact that there is litigation with the heirs regarding terminations.

Q. Well, the litigation, wasn't the litigation the heirs trying to terminate the copyrights and saying that the charity had no business being there and the charity saying our royalties are affected, we have a right to be here?

A. I can't comment on that; I know that the litigation exists, but I haven't been involved in it and I haven't read any of the documentation.

Q. Okay. All right. Do you know anything about Larry Brown?

A. No.

Q. Okay. Have you ever seen the circumstance related to termination rights where a child is born of a marriage, acknowledged in a will, but may not be the DNA proven child; do you know anything about that?

A. No, I don't think that specific circumstance.

Q. All right. And then if you added, in addition, then challenged the will in which he was acknowledged, but still, that would be a complicated fact, wouldn't it?

A. Yes.

Q. And when you are dealing with termination rights, you have really got to look at the facts, don't you?

A. Yes.

Q. You wouldn't want to make any quick decisions without having an understanding of who the heirs were, right?

A. Correct.

19. Mr. Herbsman's testimony confirms my opinion that since the *Wilson v. Dallas* decision the alliance of the Attorney General, Tomirae and Bauknight has continued to damage Mrs. Pope and, where needed, Mr. Buchanan, and the millions of dollars the Attorney General has allowed Mr. Bauknight to spend from Brown's Charity for this purpose is unprecedented for a Constitutional Officer charged with the protection of a charity such as the James Brown "I Feel Good" Trust.

20. Portions of the deposition of Plaintiffs' CPA expert Ellison Thomas taken April 14, 2017 are set out below:

1           IN THE COURT OF COMMON PLEAS  
2           FOR THE STATE OF SOUTH CAROLINA  
3           AIKEN COUNTY

4           DEPOSITION OF WILLIAM ELLISON THOMAS

5 ADELE J. POPE,

6           Plaintiff,

7 vs.           CASE NO. 2013-CP-02-1337

8           ESTATE OF JAMES BROWN AND THE JAMES BROWN 2000  
9 IRREVOCABLE TRUST,

10           Defendants.

11

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12

13 DEPONENT: WILLIAM ELLISON THOMAS

14 DATE: April 14, 2017

15 TIME: 1:15 p.m. - 3:52 p.m.

16 LOCATION: Nexsen Pruet, LLC

205 King Street, Suite 400

17 Charleston, South Carolina, 29401

18

REPORTED BY: SARAH GACIOCH

...

18 Q. Well, I want you to recall all of the  
19 discussions that you can recall with Mr. Gende  
20 and/or Mr. Newsome or Mr. Bauknight about these two  
21 cases, okay? Because they are about the service of  
22 Bob Buchanan and Adele Pope. So I want you to  
23 recall anything that anybody has told you that I'm  
24 not going to find on this disc about the service of  
25 Bob Buchanan and Adele Pope.

1 A. And I'll answer you very generally, I'm not  
2 going to sit here and tell you that I can recall the  
3 details of conversations that I've had weeks ago,  
4 months ago.

5 Q. Okay.

6 A. I can tell you generally that we have talked  
7 about the facts in this case.

8 Q. Tell me what you mean by that.

9 A. We've talked about the probate accountings.  
10 We've talked about the documents that support the,  
11 you know, the notice of the creditor's claim or the  
12 allowance of the claim or we've talked about the  
13 706. We have talked about the documents in this  
14 case.

15 Q. When you have talked about the 706, did you  
16 also talk about the modifications to the estate tax  
17 proceeding by Mr. Bauknight?

18 A. No. We have talked about this 706.

19 Q. So you've made no attempt to look into how

20 Mr. Bauknight valued James Brown's Schedule F assets  
21 at \$4.7 million?

22 **A. I have not looked at anything, other than**  
23 **this 706.**

24 Q. Okay. Well, that was -- this is the 706 that  
25 was in that proceeding, isn't it?

1 **A. The 706 that I have was the one that was**  
2 **filed by you and Mr. Buchanan.**

3 Q. Well, it's the only one that's been filed,  
4 isn't it?

5 **A. That I don't know.**

6 Q. Okay. So you were not asked to look to how,  
7 for example, the Schedule F2 assets changed from 84  
8 million to 4.7 million?

9 **A. I have not been asked to do that.**

10 Q. Have you given any thought to that?

11 **A. I have given no thought to how they changed.**

...

14 Q. Okay.

15 **A. But the issue I'm tracking here is whether**  
16 **there was a tax liability.**

17 Q. Uh-huh. Okay. And did you reach a  
18 conclusion about that?

19 **A. On whether there was a tax liability?**

20 Q. An estate tax liability?

21 **A. I reached a conclusion on the issue with the**  
22 **Christie's money, and I followed it through to the**  
23 **tax return that was filed. So the first thing I**  
24 **looked at is what I just told you.**

25 Q. Uh-huh.

1 **A. The next thing is a cover letter from March**  
2 **24, 2008 from Sellers and Durant, and it is a -- it**  
3 **is a hardship request for an application for an**  
4 **extension of Form 4768. In Mr. Sellers' cover**  
5 **letter he says, attached is a letter prepared by the**  
6 **Estate Personal Representatives detailing the status**  
7 **of the estate and related entities.**

8 Q. And did you give the date of that extension

9 and letter so we'll have it on the record, please?

10 **A. It's March 24, 2008.**

11 Q. Okay.

12 **A. And, of course, any of these are signed under**  
13 **penalty of perjury.**

14 Q. And while you're looking at that extension  
15 request, what's the gross estate that's stated on  
16 that extension request on March 24, 2008?

17 **A. I don't see an amount.**

18 Q. I'm sorry, we'll just share that for a  
19 moment, if you don't mind.

20 **A. Sorry, just so we're clear, I don't see that**  
21 **amount on the Form 4768. Attached there is a**  
22 **Schedule -- a letter on page 4 that makes reference**  
23 **to a total net worth of \$62 million.**

24 Q. How about the gross?

25 **A. The gross value -- I'm sorry, that's the**  
1 **question, sorry -- was \$91,600,000.00.**

2 Q. Right.

3 **A. And then one of the last paragraphs on page 5**  
4 **of this letter says, the PR/Trustees intend to make**  
5 **a substantial deposit towards the estate taxes when**  
6 **the net proceeds of the Christie's sale are**  
7 **received. This is estimated to be in September or**  
8 **October of the Christie's sale proceeds according to**  
9 **the Court Order -- according to the Court Order**  
10 **schedule.**

...

16 Q. Now, would you agree that but for the \$2  
17 million and the tangible personal property, all  
18 money in James Brown's Estate under his estate plan  
19 was -- would have been considered, from a tax  
20 standpoint, as paid or permanently set aside to  
21 charity?

22 **A. I'm sorry, what was that?**

23 Q. Except for his personal and household effects  
24 and the \$2 million for education for the certain  
25 grandchildren, was all the rest of James Brown's

1 Empire paid or permanently set aside to a charity?

2 **A. Well, that's what the will and the trust say.**

3 Q. Right. Right.

4 **A. Yes.**

5 Q. Right. So when you're thinking about estate  
6 taxes, whether you get a charitable deduction or not  
7 is pretty huge, right?

8 **A. Well, yeah.**

25 Q. Do you know of any significant event between  
1 March 24, 2008 and the fall of 2008, when the  
2 Christie's money comes in?

3 **A. I mean, if you ask me about a specific event,  
4 I'll tell you if I know about it or not.**

5 Q. Do you know that the Attorney General of  
6 South Carolina had asserted he had the right to take  
7 over the operation of the James Brown assets, stop  
8 the action of the fiduciaries under James Brown's  
9 documents, designate the people he wanted to  
10 designate as heirs, and remove the Trustees and  
11 replace them with Trustees he selected; did you know  
12 all that?

13 **A. The way you asked the question I think would  
14 require a legal conclusion.**

15 Q. Okay.

16 **A. And I'm not a lawyer.**

17 Q. Sure. Sure.

18 **A. So if all that happened, that would be  
19 something that would be a legal issue.**

20 Q. Okay. Well, but let me ask you this. If  
21 among the things that happened on August 10, 2008 --

22 **A. Yes.**

23 Q. -- was that the Attorney General said, I'm  
24 giving half of this charity to private individuals,  
25 and I'm declaring Tommie Rae Hynie the wife, that  
1 makes it an accounting problem, doesn't it?

2 **A. No. I think you've again asked me something  
3 that would require a legal conclusion.**

4 Q. Well, let's just you and I assume that on  
5 August 10, 2008 the Attorney General said, I'm  
6 stipulating Tommie Rae Hynie is the wife, and I'm  
7 giving half of these assets to noncharities, just  
8 take my word that, that is what happened.

9 **A. Well, first of all, I think that the parties**  
10 **would -- I think that in a situation like this all**  
11 **the parties would have to agree. You said the**  
12 **Attorney General did something, and again, that's a**  
13 **legal question. So from the standpoint of what I**  
14 **know about settling estate matters, I think the**  
15 **parties have to agree.**

16 Q. I wish you had been there by my side, Mr.  
17 Thomas, in 2008, because that is what Mr. Buchanan  
18 and Ms. Pope thought, too. Nevertheless, that  
19 wasn't what happened. On August 10, 2008 the  
20 Attorney General stipulated that a person, not a  
21 charity, would get 25 percent of James Brown's  
22 assets, and that some other people would get another  
23 25 percent, and the Trustees did not agree that he  
24 had the authority to do that.

25 So would you agree that in terms of preparing  
1 an estate tax return, if you have an estate of a  
2 certain size, and you have somebody saying it goes  
3 to charity, and somebody saying it goes to private  
4 individuals, you have yourself a dilemma; would you  
5 agree with that?

6 **A. That would be a legal dilemma.**

7 Q. Yeah, but it would be an accounting dilemma  
8 also; wouldn't it be?

9 **A. It would be an accounting dilemma for someone**  
10 **that was charged with some accounting role in it,**  
11 **but the settlement would be -- would be a legal --**  
12 **would be decided by the parties and whatever --**  
13 **whatever legal, you know...**

14 Q. Let me just add this fact, if the Attorney  
15 General asserted on August 10, 2008 and James  
16 Brown's fiduciaries didn't agree with him, and the

17 Court did not determine until May 26, 2009 the  
18 answer to that, would that create a dilemma for  
19 people preparing an estate tax return, anybody,  
20 accountant, lawyer, anyone?

21 **A. I'm not sure "dilemma" is the right word. I**  
22 **mean, it would -- it would require, you know -- it**  
23 **would -- it would require something being done that**  
24 **I don't do on a daily basis, so I'm not the person**  
25 **that can tell you --**

1 Q. Right.

2 **A. -- what the -- what the issue would be there.**

3 Q. Well, it's a little bit of a hard issue,  
4 isn't it? If you go a whole year with a big estate  
5 with the fiduciary saying it all goes to charity and  
6 somebody else saying, no, it doesn't, half of it  
7 goes to private individuals, it's just a problem,  
8 wouldn't you say?

9 **A. Well, you keep framing questions where I'm --**  
10 **I'm getting lost, because on the one end you're**  
11 **saying the fiduciary does something, and those are**  
12 **all legal issues.**

13 Q. Right. Right.

14 **A. Those are not accounting issues.**

15 Q. Okay. So you don't have any opinions then  
16 about whether Bob Buchanan and Adele Pope or Bill  
17 Sellers, the accountant, faced a dilemma when that  
18 happened on August 10, 2008?

19 **A. When you say -- you'd have to ask me a**  
20 **specific dilemma that they faced.**

21 Q. All right. Well, I will. Okay. On August  
22 10, 2008, the Attorney General of South Carolina  
23 asserted the right to settle the James Brown Estate  
24 matter without James Brown's fiduciaries to declare  
25 that Tommie Rae Hynie would be treated as the spouse  
1 for all purposes, to give her 25 percent of the  
2 assets of the estate, and to give five claimed  
3 children of James Brown another 25 percent. The  
4 fiduciaries of James Brown's Estate did not agree

5 with the Attorney General's assertion that he had  
6 that authority.

7 **A. Okay.**

8 Q. Did that create a dilemma from August 10,  
9 2008 until May 26, 2009, when the Circuit Court  
10 agreed with the Attorney General?

11 **A. And, again, what you have described to me is**  
12 **that there was a -- August the 10th, for lack of,**  
13 **I'll use the word, agreement, that wasn't blessed**  
14 **until sometime in May 2009 by the Court.**

15 Q. Yes.

16 **A. So I would -- I would say that, yes, that's**  
17 **true. There was a period where if the Attorney**  
18 **General did that, then that's what happened, and**  
19 **then it wasn't blessed by the Court the way that I**  
20 **would think that the probate matter would flow, but,**  
21 **again, I'm an accountant who does work in estate**  
22 **matters -- does forensic accounting in estate**  
23 **matters.**

24 Q. Right.

25 **A. But would not be the person to say that**  
1 **there's a dilemma.**

2 Q. What about -- let me just take you all the  
3 way through the dilemma, and I know it feels  
4 confusing, because you're not the first person who's  
5 felt confused by it, but suppose then the Circuit  
6 Court agrees with the Attorney General on May 26,  
7 2009, and the Supreme Court on May 8th, 2013 doesn't  
8 agree with the Attorney General --

9 **A. Correct.**

10 Q. -- so don't you really have a dilemma that's  
11 lasted from August 10, 2008 until May 8th, 2013?

12 **A. But when you say "a dilemma," I'm not sure --**

13 Q. Well --

14 **A. What dilemma?**

15 Q. Can you take a marital deduction for someone  
16 who's not a wife?

17 **A. Well, the answer to that from the code would**

18 probably be, no, that you can't take a deduction,  
19 but if the -- if the -- I'll give you an example,  
20 okay, because I don't -- I'm not going to get  
21 wrapped around the axle on legal matters, okay? I  
22 was involved in a dispute recently that was an A, B  
23 Will. There was Will A, there was Will B. The  
24 settlement was a mixed bag.

25 Q. Sure...

19 Q. I don't want to cut you off. No. No. I  
20 agree with you.

21 A. But I'm sitting here as an accountant who  
22 works in these matters that says, I have seen things  
23 resolved that don't follow the documents. So if you  
24 asked me -- which your question was, can you take a  
25 marital deduction if you don't have a spouse? I  
1 would probably have to say, no, the code is pretty  
2 clear that you can't take a marital deduction if you  
3 don't have a spouse, but if you file an estate or a  
4 706 or whatever filings you filed and there was an  
5 agreement that there was one, does that become an  
6 invalid, false filing? I don't know. I wouldn't  
7 think so.

8 Q. I completely agree with everything you've  
9 said about all the other cases. Cases can and  
10 should be settled, we agree on that, when there is a  
11 reasonable settlement that everybody can live with,  
12 whether they like it or not; we agree on that, don't  
13 we? That's customary, isn't it?

14 A. Yes.

15 Q. But if you have an instance where the  
16 Attorney General has said, I get to say the way it  
17 is --

18 A. And Ms. Pope, at that point I'm an  
19 accountant.

20 Q. Okay, good.

21 A. The Attorney General is a lawyer. He's the  
22 chief law enforcement officer of South Carolina. So

23 I can't -- I can't --

24 Q. So you really can't speak to the dilemma, if  
25 there was one, of fiduciaries defending an estate  
1 plan that they don't believe the Attorney General  
2 has the right to dismember?

3 **A. That would be a legal issue. That would not**  
4 **be --**

5 Q. Right.

6 **A. -- in my opinion, an accounting issue.**

...

1 Q. Okay. What, if anything, do you know about  
2 the claimed overinflated, self-serving, valuation of  
3 James Brown's assets?

4 **A. I have looked at the probate -- I mean, I**  
5 **have looked at the 706, and I have looked at the**  
6 **valuation process, the road map to valuation, so to**  
7 **speak, for estate issues.**

8 Q. Have you read the opinion -- have you read  
9 the deposition of Roger Millot [SIC.], the Defendant's  
10 expert in this case?

11 **A. I don't recall if I have.**

12 Q. Do you recall -- do you recall being told his  
13 opinion that 15 to 20 times royalties would not be  
14 at all surprising for a gold-standard copyright  
15 package, such as James Brown's?

16 **A. Well, I may or may not have read that.**

17 Q. Okay. Do you know what the annual revenues  
18 for James Brown's copyrights were for the decade  
19 before his death?

20 **A. Roughly, yes.**

21 Q. What?

22 **A. Well, you said "the decade," I would look**  
23 **more at, like, 5 to 6 years, in round numbers is**  
24 **about \$3 million.**

25 Q. And though it was actually a little more  
1 coming in from sources that didn't make it to TIAA,  
2 didn't they?

3 **A. There were some, yes.**

4 Q. And what's 20 times \$3 million?

5 **A. I'm not here to do math.**

6 Q. You don't know what 20 times \$3 million is?

7 **A. I think it's 60 million. I hate to do math**  
8 **on a high wire.**

9 Q. Right.

10 **A. I have everything to lose and nothing to**  
11 **gain.**

12 Q. Well, let's keep going. What's 15 times 3  
13 million? You're doing very well. 45 to 60 million  
14 would be what Mr. Miller would say would have been  
15 within the range reasonable for the copyrights  
16 alone. Do you know what else made up the Schedule  
17 F2 assets of James Brown's Estate?

18 **A. When you say the "Schedule F2," which --**

19 Q. Well, was the music empire, the publicity  
20 rights, the 900 copyrights, the claim against Farr,  
21 the claim against Cannon, the claim against GT, the  
22 sampling revenue claims, the claim against Morgan  
23 Stanley, the business tangible personal property,  
24 that was the Schedule F2, and certain other assets  
25 was with the Schedule F2 residuary assets, 84  
1 million.

2 **A. You're talking about the 706 that you signed?**

3 Q. Yes.

4 **A. And what's the question, again?**

5 Q. Have you looked at the values of all of those  
6 components of the Schedule F2 music empire and  
7 residuary assets?

8 **A. I haven't done a valuation.**

...

2 Q. What if you had put 4.7 million and used that  
3 same description, do you think -- may I finish? Do  
4 you think it should have gotten past the IRS  
5 process?

6 **A. And, again, this is not about what the number**  
7 **is. This is about what you have to do to get to the**  
8 **number to put it on the 706, to take the documents**

**9 and file the 706 with the IRS.**

10 Q. Okay. Let's talk about that a little bit.

11 Do you know anything about the Estate of Herlen [sic.]

12 Howard?

**13 A. I remember reading something.**

14 Q. Was it the conclusion -- or, actually, a

15 fact, not a conclusion, in the Estate of Herlen

16 Howard that an accountant familiar with Herlen

17 Howard's copyrights was an appropriate person to

18 value his copyrights, even though he wasn't an

19 appraiser, and didn't have traditional expertise; do

20 you recall that?

**21 A. No, if you're telling me he was an accountant**

**22 who valued the copyrights on an estate return.**

23 Q. Yes.

**24 A. Okay.**

25 Q. So do you agree that copyrights and publicity

1 rights are unique assets and arguably hard to value?

**2 A. Are they unique assets and hard to value?**

3 Q. Yes.

**4 A. Which one? Copyrights and what else?**

5 Q. Publicity rights.

**6 A. Well, I don't know. When you say "unique,"**

**7 they would be unique to the person, but they**

**8 wouldn't be unique like one of a kind.**

21. I am informed and believe that the sworn Deposition of Mrs. Pope's Intellectual Property Litigation expert Wallace Lightsey, Jr., taken on April 10, 2017, portions of which are printed below, lends support to my opinion that the attacks by the Attorney General, Bauknight and the Wingate Firm on Mr. Buchanan and Mrs. Pope, were baseless because, as a team, they were wisely and appropriately protecting the "I Feel Good" Trust and its 900 copyrights generally, and specifically

protecting the copyrights from improper and/or premature Termination Rights elections

by claimed heirs:

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS  
COUNTY OF AIKEN

---

ADELE J. POPE, :

: Civil Action No.:

Plaintiff, :

: 2013-CP-02-1337

vs. :

:

ESTATE OF JAMES BROWN and THE :

JAMES BROWN 2000 IRREVOCABLE :

TRUST, :

:

Defendants. :

---

DEPOSITION OF WALLACE K. LIGHTSEY, ESQUIRE

---

DATE TAKEN: April 10, 2017

TIME BEGAN: 10:00 a.m.

TIME ADJOURNED: 10:50 a.m

LOCATION: Nexsen Pruet

55 E. Camperdown Way

Greenville, South Carolina

REPORTED BY: Tami I. Watters, RPR, CRR

EveryWord, Inc.

P.O. Box 1459

Columbia, South Carolina 29202

(803) 212-0012

....

14 Q Okay. The second sentence: "At that

15 time -- of the second paragraph -- Termination

16 Rights were described as a 'coming storm,' with the

17 first substantial impact expected in 2013."

18 What is that -- does that refer -- how --

19 Explain that to me, I should say.  
20 A Well, and that's not my phrase, the  
21 "coming storm," but I think it's a good description  
22 of the sense, again, among the sort of general IP  
23 lawyer community.

24 Again, there was an awareness of  
25 termination rights; that there was a provision for  
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1 it in the '76 Act, and to my awareness and what I  
2 was seeing from the groups that I belonged to,  
3 there was a growing sense that this was an issue  
4 that was gonna start coming up with more frequency.  
5 And for post-'78 grants, the 35-year window for  
6 termination would go into effect -- or would start  
7 in 2013, and then for the works from the late  
8 fifties through the sixties, which would be kind of  
9 the heyday, really, of the recording industry, the  
10 56-year window for those works would start coming  
11 up again around that same time.

12 Q Okay.

13 A And this was -- too, this was about when  
14 you started to see some significant case law  
15 developing on termination rights, particularly in  
16 the kind of situation that this case presents.

17 Q Okay. Is it your opinion that the  
18 absence of case law is somehow an excuse for not  
19 knowing about the operations of termination rights?

20 A I wouldn't call it an excuse. But,  
21 again, what I'm -- what I understand I'm being  
22 asked to talk about is the general awareness among  
23 the IP community.

24 Q So does the absence of case law, in your  
25 opinion, account for --

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1 What does case law -- or there being no  
2 case law, where does that fit in your mind?

3 A Well, I mean, that's how lawyers become  
4 aware of issues. You know, unless you are a

5 Hollywood entertainment lawyer and you're being  
6 asked to deal with these issues on a day-to-day  
7 basis, for somebody like me, how I would become  
8 aware of this would be through hearing about a  
9 case, like the Winnie the Pooh case or something  
10 like that, which is the first one I remember.

11 Q Okay. The next sentence says -- well,  
12 paragraph 3, sentence 1: "There are ways for  
13 charities to limit losses from the exercise by  
14 heirs of Termination Rights."

15 Where does that fit inside of your  
16 opinion? What does that sentence have to do with  
17 general awareness?

18 A Well, in connection with this matter,  
19 I've attempted to educate myself a little more on  
20 termination rights, so I have done some reading and  
21 some research on it to learn how these things work.

22 And like I said, I remember hearing about  
23 the Winnie the Pooh case. I remember hearing a  
24 little bit about the Marvel cases and the Superman  
25 case. So I had a vague notion that that -- those

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1 issues being out there.

2 When Adele asked me to get involved with  
3 this, I tried to learn a little bit more about it.

4 And, in the course of doing that, I feel very  
5 strongly that what that sentence says is correct.

6 Q Okay.

7 A But that's been a process of  
8 self-education for this case.

9 Q Okay. Do you know whether Mrs. Pope made  
10 any inquiry into how to find ways for charities to  
11 limit losses from the exercise by heirs of  
12 termination rights during her fiduciary service?

13 A I've read the article that she drafted  
14 with Jeff -- Smith? Is that right?

15 So I've got -- I've got that  
16 understanding of what she did.

17 Q Okay. Do you know whether or not that  
18 article was drafted during her fiduciary service?

19 A I'm not sure.

20 Q Okay. So beyond that article, do you  
21 know of any other instance in which Mrs. Pope made  
22 efforts to limit losses from the exercise by heirs  
23 of termination rights during her fiduciary service?

24 A Well, all my communications with Ms. Pope  
25 about this have been over the last year plus.

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1 But -- I mean, we did talk about it a little bit  
2 when we first talked about the case, and we had  
3 some follow-up conversations and we had some  
4 e-mails that I've produced.

5 So I've gotten some understanding of the  
6 facts from her perspective from those things.

7 Q Okay. Do you know that the -- the time  
8 brackets for Mrs. Pope's fiduciary service?

9 A I've read it. I think she was appointed  
10 in 2007. I'm not sure. And I can't remember  
11 exactly when she was replaced.

12 Q Okay.

13 A My understanding is that she continued to  
14 do some work during the appeal of the decision to  
15 replace her.

16 Q Okay. So --

17 A I kind of got a general time frame. It  
18 was either '07 or '09 through 2013.

19 Q Okay. So I think you have it in your  
20 head.

21 So it's November 2007 until May 26, 2009.

22 That's when the lower court issued a settlement  
23 agreement -- or order approving a settlement  
24 agreement.

25 Do you know of anything that Mrs. Pope

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1 did during that window to limit the losses from the  
2 exercise by heirs of termination rights?

3 A My understanding from her article was  
4 that during that time she and the other gentleman  
5 were working on cataloging the works that were  
6 bequeathed to the trust to get a handle on what  
7 kinds of contracts had been entered into with  
8 regard to those works to determine -- or at least  
9 start trying to determine who the heirs were, who  
10 could rightfully claim termination rights under the  
11 statute, as well as whether the alleged spouse had  
12 a right to claim termination rights under the  
13 statute.

14 Q Okay. And so then how -- in your  
15 opinion, how do you limit the losses? What do you  
16 do?

17 A Well, I think -- my opinion is, A: This  
18 is an incredibly complex set of legal processes;  
19 and B: There have been some decisions, notably the  
20 Milne case and the Steinbeck case, that have  
21 further complicated and created confusion around  
22 it.

23 So I think all of that together gives a  
24 trust like the "I Feel Good" Trust a good bit of  
25 bargaining power to work out something with the  
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1 music publishers, as well as the heirs, that would  
2 get a maximum amount of future income to the trust  
3 in the most efficient way possible.

4 Q Do you have any concrete examples of how  
5 that would work?

6 A Just, you know, the Milne case and the  
7 Steinbeck case both involved a situation like this  
8 where the authors' will left the rights to the  
9 works to an entity or an individual who was not the  
10 same as the statutory heirs to the termination  
11 rights.

12 And there, the publishers went and  
13 negotiated a deal, you know, with the -- I guess  
14 I'd call it legatees -- to get an increased royalty

15 rate and cut out the heirs altogether.

16 So those would be my particular examples.

17 Q Would it be reasonable or would it be  
18 prudent to try and make a deal with the heirs?

19 A You know, I think -- I thought about  
20 that. I think it depends on the circumstances; how  
21 many there are, what kind of attitude they have  
22 about respecting the wishes of the deceased author  
23 as expressed in the estate documents.

24 I certainly think that would be a  
25 strategy that could be used to see what --  
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1 And I think there, the objective would be  
2 to see what can be worked out to get the maximum  
3 amount of income for the trust in the most  
4 efficient way. You don't necessarily want to end  
5 up in litigation, because that can be expensive.

6 Q Uh-huh.

7 A So if something could be worked out with  
8 the publishers and with the heirs, that might be  
9 the best approach. But depending on the  
10 personalities of the people you're dealing with,  
11 that may not be the best approach.

12 Q Okay. Is it correct that if the heirs  
13 exercise their termination rights, then they can  
14 completely cut out the trust?

15 A For -- for works that are subject to the  
16 termination rights, yeah.

17 Q Is that -- that is correct?

18 A I think so, yeah. If they go through all  
19 the hoops to do that and if you get a majority  
20 interest to do it.

21 Q Right.

22 A But then again, I would say, you know,  
23 you've got the Milne case and the Steinbeck case  
24 that kind of created a blueprint for a way for  
25 publishers to go around that and do a deal with the

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1 legatee, if that's the right word, that cuts out  
2 the heirs.

3 Q Uh-huh. The next sentence you have here  
4 is paragraph 3: "The Ray Charles Foundation case  
5 makes clear that a charity owning copyrights has a  
6 right to be part of the Termination Rights process  
7 because its royalty stream is at stake."

8 Is that just a -- what are you trying to  
9 communicate with that sentence?

10 A Well, just that the Ninth Circuit in that  
11 case held that the foundation had standing to  
12 contest a notice of termination by the heirs.

13 Q Okay. Do you intend to offer any  
14 opinions besides what's written right here?

15 A I haven't been asked to, so ...

16 Q Okay. Can you generally tell me your  
17 opinion of what role your opinion has, if I can ask  
18 that question?

19 A I really don't know.

20 Q Okay.

21 A I'm not sure exactly how this fits into  
22 the whole broader issues in the case.

23 Q Okay. Do you have any -- do you know how  
24 much Mrs. Pope is asking the estate to pay for her  
25 work?

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1 A I've seen a figure of 1.4 million.

2 Q Okay.

3 A I don't know if that -- I'm thinking  
4 there may be something more.

5 Q Yes. Okay. So you generally would come  
6 to Aiken County and you would testify that  
7 termination rights were a new thing and IP  
8 lawyers -- even IP lawyers weren't fully familiar  
9 with the workings of it?

10 A Well, again, I'd -- you know, I can't say  
11 exactly what I'll be asked to testify to or what  
12 the judge might consider me an expert on or not an

13 expert. That's up to the court to decide.

14 Q Sure.

15 A As I've said, I do believe, within the  
16 general community of lawyers who practice  
17 intellectual property, which I do believe I'm  
18 representative of -- a good representative of, that  
19 there was only a vague awareness of termination  
20 rights up until, you know, starting maybe in the  
21 mid-2000s; 2006 and later --

22 Q Okay.

23 A -- when some of these cases started  
24 coming down and we started hearing more about this.

25 Q Okay. Would you agree that a fiduciary

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1 should seek entertainment counsel in trying to  
2 learn about these rights?

3 A I wouldn't have an opinion on that.

4 Q Okay. Those are all the questions I

5 have. I may want to make some copies of your file.

6 A Sure. Sure.

7 - - -

8 EXAMINATION

9 - - -

10 BY MS. POPE:

11 Q Mr. Lightsey, can you describe for me how  
12 thick your file is?

13 A It's, I guess, about 2 or 3 inches.

14 Q All right. So would you say there are at  
15 least a couple of hundred pages in there?

16 A Probably.

17 Q And is it fair to say you've done a good  
18 bit of thinking about this issue since we first  
19 talked?

20 A Yes.

21 Q Okay. You were asked about the knowledge  
22 of entertainment lawyers with respect to  
23 termination rights back in 2008 and today.

24 Do you know of any entertainment lawyers

25 within the state of South Carolina?

Page: 22

1 A No.

2 Q Okay. In researching termination rights,  
3 have you thought about whether, in certain  
4 instances, a knowledge of state probate law is as  
5 important as a knowledge of the copyright law?

6 A Yes. I think -- my understanding is  
7 that when there are questions about who is a child  
8 or who is a spouse for purposes of the termination  
9 rights, that that's determined by state law.

10 Q Certainly the spouse, if not the  
11 children?

12 A Uh-huh.

13 Q Is that correct?

14 A Yes.

15 Q So does that mean that if a foundation  
16 such as the "I Feel Good" Charity wanted to protect  
17 itself in the termination rights area, job one  
18 would be not to create a spouse if there isn't one?

19 A I think -- if there's a question about  
20 whether somebody who claims to be a spouse really  
21 is or really qualifies, I think that's an essential  
22 question, just because of this whole negotiation  
23 process I've touched on.

24 Under the termination provisions of the  
25 Copyright Act, if the person is -- does qualify as

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1 a spouse, they get -- and there are children, the  
2 spouse has a 50 percent vote on whether to  
3 terminate. And since a majority is required, if  
4 there is a spouse and children, then the spouse has  
5 to be part of that majority or you won't be able to  
6 get the necessary percentage to terminate.

7 So, yeah, I think that would be  
8 absolutely essential.

9 Q And in connection with the determination  
10 of heirs under the federal Copyright Act, is it

11 fair to say that even today there has been very  
12 little litigation over the issue of how to  
13 determine who are children?

14 A Yeah. I'm not aware of any, other than  
15 this litigation.

16 Q And if, for example, James Brown had a  
17 child who was acknowledged in his divorce but not a  
18 biological child, to date, do we have any guidance  
19 about whether that child would be considered an  
20 heir under the federal Copyright Act?

21 A None that I know of.

22 Q Okay. What if, for example, James Brown  
23 had a child who was not born of a marriage and  
24 acknowledged only in a will, which the child  
25 contested? Do we have any guidance that you're  
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1 aware of under the federal Copyright Act about that  
2 child's entitlement to termination rights?

3 A No.

4 Q What if James Brown, in his documents,  
5 intentionally disinherited any child who claimed --  
6 who challenged his estate plan? Do we have any  
7 court guidance on whether -- the impact of such a  
8 provision in the will might affect termination  
9 rights?

10 A None that I know of.

11 Q Okay. Now, at least during those early  
12 years after the death of a person who owns as many  
13 as 900 copyrights, could the probate process be  
14 even more important than the entertainment law  
15 process?

16 A You'll have to explain that one.

17 Q Well, during the early years after  
18 James Brown's death -- let's just use him as the  
19 example -- could the proper determination of heirs  
20 have been as important to termination rights  
21 protection as anything else?

22 A Yeah. I think that would be an essential

23 early step.

24 Q So if Mrs. Pope was replaced in 2009,  
25 would there be any reason to stop that process?

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1 A No. I mean, I think -- I think anybody  
2 who was trying to maximize the income for the trust  
3 would have to get to a firm conclusion as to who  
4 the people are who are entitled to exercise the  
5 termination rights so that you can then decide on  
6 the best strategy for dealing with that.

7 Q And so if on August 10, 2008 the attorney  
8 general agreed to stipulate that a claimed spouse  
9 would be treated as a spouse, despite overwhelming  
10 evidence to the contrary, would that be a wise  
11 method of protecting the copyrights?

12 A Based just on what you've said, I would  
13 say no.

14 I would acknowledge, I think you have to  
15 look at all the circumstances in the case,  
16 including, as I said, the personalities of the  
17 people involved.

18 Q Okay.

19 A You know, if -- for example, if the  
20 spouse were very supportive of the trust position  
21 and wanted to give full effect to the desires of  
22 Mr. Brown, in that circumstance, it might move the  
23 trust to try to work something out quickly with  
24 her. But I think it just depends on the whole  
25 situation.

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1 Q Well, that reminds me. Did the Smith and  
2 Pope article suggest a mechanism called splitting  
3 heirs?

4 A Yeah.

5 Q Can you explain how what you've just said  
6 relates to the term "splitting heirs"?

7 A Well, because the -- a termination has to  
8 be done by people who have a majority of the rights

9 to terminate.

10 If there are multiple heirs and the --

11 again, I'm not sure if I'm using the right word.

12 I'm not a probate lawyer. The legatee or devisee

13 or whoever -- the recipient under the will has the

14 opportunity to negotiate and try to get the best

15 deal it can for the trust. So if there are

16 multiple heirs, it's possible to split them up.

17 Some may be more cooperative, some may be less.

18 And if you can split them and get a majority and

19 work out a deal that's good for the trust, that's a

20 good strategy.

21 Q And -- back to the attorney general. If

22 on August 10, 2008 the attorney general stopped the

23 DNA testing process which had been in place since

24 shortly after James Brown's death, would that have

25 helped the protection of the "I Feel Good" Trust

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1 termination rights?

2 A I don't see how it could. Again, I

3 think -- I think a good strategy for the trust is

4 to try to work out something with the music

5 publishers initially and, if possible, with the

6 heirs.

7 But whatever -- whatever is done, I don't

8 think you'd want to have it subject to a later

9 attack on the grounds that somebody who was part of

10 that didn't really have a termination right.

11 Q You were asked what you knew about

12 Mr. Buchanan and Ms. Pope's service, and I will

13 tell you: It was from November 2007 until May 26,

14 2009 that they served as personal representatives.

15 Have you heard of or were you aware of

16 something known as the Peeples' DNA protocol?

17 A Yes.

18 Q Did you understand that it had been begun

19 by the original -- counsel for the original

20 personal representatives and continued by

21 Mr. Buchanan and Ms. Pope?

22 A I don't know the details of it.

23 Q Okay. Did you understand that it had  
24 been stopped on August 10, 2008 by the attorney  
25 general?

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1 A I understood that it was stopped.

2 Q Did you understand that when he did so,  
3 he declared that five -- I'm sorry -- six claimed  
4 children would be determined to be James Brown's  
5 heirs?

6 A Yeah. I'm sorry. I don't really  
7 remember the details.

8 Q Okay. You don't remember that it was  
9 fewer than -- half or fewer than the potential  
10 heirs?

11 A Yes. I knew it was not the whole group.

12 Q Okay. And did you know that at least  
13 three of those were not presumed heirs even under  
14 South Carolina law?

15 A I don't remember.

16 Q Okay. All right. Now, tell me just a  
17 little bit about the Ray Charles case.

18 A It was a similar situation with a great  
19 songwriter and recording artist. Ray Charles  
20 bequeathed his -- I guess the residuary of his  
21 estate to a foundation, a charitable foundation,  
22 like Mr. Brown did here, and then the statutory  
23 heirs under the termination provisions sent  
24 termination notices to the publishing companies,  
25 and the foundation brought a suit to declare those

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1 termination notices ineffective.

2 District court held that the foundation  
3 did not have standing to challenge the termination,  
4 and the Ninth Circuit reversed and held that it did  
5 have standing because of its interest in the  
6 royalty stream.

7 Q And that case was begun in about 2012?

8 A That sounds right.

9 Q And approximately when was it concluded?

10 A I think the Ninth Circuit decision was in  
11 2015.

12 Q Okay. Do you know what's happened since  
13 2015?

14 A No. I did check the district court  
15 docket on PACER, I don't know, a month or two ago,  
16 and I could not see anything that happened since  
17 the remand.

18 Q Do you know who represented the heirs in  
19 that matter?

20 A No.

21 Q I'm gonna hand you a document -- well,  
22 before that, let me ask you this: I would like, if  
23 we could, to mark your file as an exhibit, and then  
24 if Mr. Williams and I can agree to a CD of the file  
25 or something that would be smaller --

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1 A That's fine.

2 Q -- may I do that?

3 A Sure.

4 Q We'll mark that, then, as Plaintiff's  
5 Exhibit 1, your entire file.

6 - - -

7 (File marked Plaintiff's Exhibit  
8 Number 1, for identification.)

9 - - -

10 MS. POPE: I'd like to hand you  
11 Plaintiff's Exhibit 2.

12 - - -

13 (Value of Tomirae Federal Copyright Act  
14 Termination Rights at Death of James Brown  
15 marked Plaintiff's Exhibit Number 2, for  
16 identification.)

17 - - -

18 BY MS. POPE:

19 Q I'm gonna give you a moment to look at  
20 it, because I think we'll agree, you haven't seen  
21 it before today; is that correct?

22 A That's correct.

23 Q If you'll take a moment to glance at it.

24 And I'll represent that it is my work.

25 A Okay.

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1 Q When you're ready to chat about it, let  
2 me know.

3 A Okay. I'm ready.

4 Q I have attempted in this document to  
5 recreate the position of James Brown's estate and  
6 trust as it was on November 20th, 2007.

7 If the -- and I have concluded that the  
8 value of Tomi Rae's federal Copyright Act  
9 termination rights at the death of James Brown was  
10 negligible based on the facts that were available  
11 between the period 2007 and May 26, 2009.  
12 If these facts existed and there was fair  
13 proof of them on the part of the estate and trust,  
14 should they have taken advantage of those facts to  
15 protect the copyrights?

16 A I think certainly, in this type of  
17 situation, the trust should challenge -- what's  
18 Tomi Rae's last name?

19 Q Hynie-Brown.

20 A I would certainly think the trust would  
21 challenge her claim.

22 I don't know -- I don't claim to have any  
23 expertise on how you decide if someone was a spouse  
24 under state law. I know that the -- or it's my  
25 understanding the Copyright Act doesn't speak to

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1 that, but I certainly do think it would be  
2 appropriate to challenge the claim.

3 Q And before one would settle with or try  
4 to split Tomi Rae off from the other heirs to

5 protect the charity, would the estate and trust not  
6 need to evaluate the strength of her claim as a  
7 spouse?

8 A Say that again.

9 Q Okay. If the -- if the charity is  
10 looking to protect itself before it makes a deal  
11 with Tomi Rae, should it not evaluate the strength  
12 of her ability to be demonstrated to be the spouse?

13 A Yes. Absolutely.

14 Q Okay. Now, even if Tomi Ray had been  
15 determined absolutely to be the spouse on the date  
16 of James Brown's death, would there still have been  
17 impediments to her taking the royalties from the "I  
18 Feel Good" Charity?

19 A Well, at the most basic level, she still  
20 would have to get at least one of the other heirs  
21 to join with her.

22 Q Okay.

23 A And then, as I've said, I think the Milne  
24 and Steinbeck cases create a mechanism for someone  
25 in the position of the trust to do a deal with the

Page: 33

1 music publishers to cut her off.

2 Q And isn't it fair to say that when  
3 James Brown died, if his first famous work was in  
4 1956, there were about six years for the estate and  
5 trust to be planning to protect the "I Feel Good"  
6 Charity?

7 A Yes, if the copyright was secured in  
8 1956.

9 Q And, of course, anyone -- when the  
10 majority of heirs seeks to make an election, a  
11 majority is in fact needed; is that correct?

12 A Majority interest, right.

13 Q Or the spouse plus one.

14 A Right.

15 Q And only half of the heirs are needed to  
16 stop an election; is that correct?

17 A If they have 50 percent, correct.

18 Q And there's certain technical and complex  
19 election requirements, are there not?

20 A It's very complex.

21 Q And there must be at least a two-year  
22 period when the election is made before the  
23 termination can be effective; is that correct?

24 A That's right. The notice of termination  
25 has to be served at least two years before the  
Page: 34

1 effective date of termination.

2 Q And in the case of Tomi Rae, there might  
3 have been, to challenge any attempt at termination,  
4 a dozen or more children, the charity, and the  
5 charity itself; would that be -- would that fairly  
6 state the situation back in 2007?

7 A Yes.

8 Q Okay. And does everybody now kind of  
9 understand that termination elections apply only to  
10 American copyrights?

11 A Yes.

12 Q And James Brown, of course, had worldwide  
13 copyrights?

14 A That's right.

15 Q And they do not apply to derivative  
16 works?

17 A There's a derivative work exception for  
18 derivative works made before the termination.

19 Q Okay.

20 A So if you make a derivative work on the  
21 basis of an existing grant and then a termination  
22 comes in, you can continue to exploit that  
23 derivative work.

24 Q So if there's a derivative work of  
25 James Brown and American copyright is terminated,  
Page: 35

1 the foundation, his devisee, would continue to  
2 enjoy the royalties from the derivative work unless

3 and until it was terminated?

4 A That's correct.

5 Q Okay. Now, is it fair to say -- I don't  
6 want to spring too much on you -- but both  
7 samplings and joint ownerships create further  
8 complexity, do they not?

9 A Yes. That's true.

10 Q And is it fair to say that the  
11 sampling -- a sampling could actually be a small  
12 part of a subsequent copyright?

13 A Yes.

14 Q And so that that copyright might have a  
15 35-year life of its own?

16 A Yes.

17 Q And in that case, in a sampling of a  
18 James Brown work, the James Brown rift, let's say,  
19 might be a small part of that work?

20 A Correct.

21 Q So if James Brown had, for example, 210  
22 copyrights of which he had only a sampling part,  
23 would the "I Feel Good" Charity likely be able to  
24 have a major part in the termination rights of  
25 those works?

Page: 36

1 A Yes.

2 Q And then -- but those works might be --  
3 the termination rights issue could be delayed for  
4 many years; is that fair to say?

5 A Yes.

6 Q Okay.

7 A Depending on when the work was created.

8 Q Thank you. I'm gonna ask you to take a  
9 quick look at Plaintiff's --

10 MS. POPE: Just to be sure, the value of  
11 the termination rights was Exhibit 3?

12 THE WITNESS: I think it was

13 Plaintiff's 2.

14 - - -

15 (Value of Levenson 5 Clients' Federal  
16 Copyright Act Termination Rights at Death of  
17 James Brown marked Plaintiff's Exhibit  
18 Number 3 for identification.)

19 - - -

20 THE WITNESS: And before you move on,  
21 too, another thing I would say that's  
22 interesting, and another level of complexity  
23 with music in particular, is that sound  
24 recordings made before February of 1972 are  
25 not covered by federal copyright. They would  
Page: 37

1 be subject to common law-copyright. So they  
2 are not subject to the termination rights.

3 BY MS. POPE:

4 Q Okay. Well, let's talk a minute about  
5 sound recordings between '72 and '78.

6 If James Brown had a number of sound  
7 recordings during that time, those sound recordings  
8 are protected for 56 years, if he's properly  
9 renewed them; is that correct?

10 A I think it's -- well, it would be the --

11 I think it would be the life of the author plus 70  
12 years.

13 Q But -- but my question was -- I'm sorry.

14 I didn't say it correctly.

15 They would not be subject --

16 A Oh, to termination.

17 Q -- to termination --

18 A That's correct.

19 Q -- for more than 56 years.

20 And so it's fair to say that all the  
21 works between -- of the sound recordings between  
22 '72 and '78 could experience a 56-year life before  
23 termination?

24 A That's correct.

25 Q And do you know whether '72 to '78 was a

Page: 38

1 period during which James Brown had an important  
2 part in the musical genre?

3 A I can't say specifically, but I would  
4 think that's true.

5 Q He actually did for decades, didn't he?

6 A Yes.

7 Q Now, just looking at Plaintiff's 3.

8 Again, this is my work, and it is my evaluation  
9 that the termination rights of the five Levenson  
10 clients who reached the deal with the attorney  
11 general on August 10, 2008 had a value of less than  
12 5 percent of the value of James Brown's copyrights  
13 on that -- at that time, at James Brown's death.

14 And, again, my reasons that I have set  
15 out, you have no specific knowledge about that?

16 A Correct.

17 Q But those reasons were certainly within  
18 the purview of a probate lawyer, even if she wasn't  
19 an entertainment lawyer; would that be fair to say?

20 A I would think that anybody who is a  
21 trustee would want to consider these things.

22 Q Okay. And then again, even if all five  
23 of the Levenson clients had been determined to be  
24 heirs of James Brown, they would still face many of  
25 the same impediments that Tomi Rae would face; is  
Page: 39

1 that fair to say?

2 A In general terms?

3 Q Yes.

4 A Yes, as I've talked about.

5 Q And so they would have to meet the  
6 election requirements.

7 A Right.

8 Q And have the two-year delay.

9 A Right.

10 Q Even if they were a majority.

11 A Correct.

12 Q And if they weren't a majority, of course

13 they would have to find somebody to work with.

14 A Correct

22. In connection with the forming of my opinions, I have gleaned from the affidavit of Elizabeth Alexander that a story was placed on the Kilpatrick Stockton law firm website in which Robert Potter, Esq., was attributed with stopping the sale of the Grammy at the James Brown Christie's sale, but that Mr. Potter did not halt the sale, and was unaware of the post. I understand from other documents that the Grammy story was placed on the firm's website in January 2011, by David Bell, Esq., one of the lawyers who signed the contract to hire the Wingate law firm in this suit.

23. I have reviewed public documents which show that, while the Academy seeks to prevent Grammy sales, their legal position is questionable; Johnny Cash, Stevie Wonder and others have sold Grammys; and Toni Braxton's Grammy has been the subject of a possible sale by a Federal Bankruptcy Court..

24. In forming my opinions I have attended and read transcripts of a number of hearings since 2011, including those related to James Brown's Freedom of Information Act cases, where the Attorney General, the Wingate Firm and Mr. Bauknight joined Tomirae in harsh attacks on Mrs. Pope and a local journalist in an effort to prevent release of documents, including Tomirae's handwritten admissions that she was married when she had a ceremony with Brown; the documents to show how Mr. Bauknight could have valued James Brown's Right of Publicity and iconic personal property almost no value; and amendments to the Legacy Trust which is controlled by

the Attorney General, but Mr. Bauknight and the Attorney General claim is not subject to public disclosure. It have also reviewed many of the 100 James Brown articles the Wingate Firm filed in this case when they were seeking guidance as to pre-trial publicity.

25 I have also reviewed the deposition of R. B. Alexander, Defendant's valuation expert, with particular emphasis on his Right of Publicity experience. Portion of his deposition, taken March 27, 2017, are set out below:

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS  
COUNTY OF AIKEN

- - -

ADELE J. POPE, :  
: Civil Action No.:  
Plaintiff, :  
: 2013-CP-02-1337

vs. :

:

ESTATE OF JAMES BROWN and THE :  
JAMES BROWN 2000 IRREVOCABLE :  
TRUST, :

:

Defendants. :

---

DEPOSITION OF RICHARD BOATWRIGHT ALEXANDER

---

DATE TAKEN: March 27, 2017

TIME BEGAN: 10:40 a.m.

TIME ADJOURNED: 2:10 p.m.

...

page 23-33

20 Q Fair enough. Have you ever conducted a  
21 valuation analysis of copyrights?

22 A Yes. A little bit different context than  
23 this. We've evaluated copyrights for people who  
24 owned brand names that are copyrighted. We've --  
25 That's been primarily what we've

Page: 24

1 evaluated; what is a brand name worth, what is --  
2 and some of that, of course, is intangible.

3 Q Who all have you provided that valuation  
4 opinion to?

5 A Brown Shoe Company, the Brown Group,  
6 St. Louis. They've now changed their name.  
7 Nations Bank, at that time we were  
8 working with them, Pick N Pay stores, which was 13,  
9 1400 stores that declared bankruptcy. Nations Bank  
10 had the debt. We were working with them, what's  
11 the value of the name Pick N Pay, along with all  
12 their other real estate holdings and so forth.

13 Q Okay.

14 A So what's the name worth is really what  
15 it amounts to. In today's jargon, what's the brand  
16 worth.

17 Q Well, in analyzing the name, what -- what  
18 do you do to go about arriving at a value for it?

19 A Well, you go through a process. I look  
20 at -- in James Brown's case, this case we're  
21 talking about, you have his publicity rights, his  
22 persona, what are they worth.

23 So you can get a lot of that information  
24 or some broad outlines of information public  
25 knowledge. In other words, if you look at Forbes

Page: 25

1 or you look at the Internet, you then talk to  
2 people who market those rights, who sell those  
3 rights, who lease those rights. That can be  
4 attorneys, but usually it's what I'm gonna call  
5 entertainment companies that do that. So that's  
6 what I would --

7 I would also talk to people in that

8 business, which I also did, and what are they -- in  
9 other words, what do they think it's worth or what  
10 does -- what interest do they have.

11 And James Brown was number 11, I think,  
12 on the dead celebrity's list at Forbes. He was  
13 making pretty good money. Of course, he wasn't  
14 there to spend it either, but he was making pretty  
15 good money after he died, so ...

16 Q I think some of that's covered in here.

17 A Right.

18 Q We can go through it.

19 A One of the big things you look at is what  
20 is the estate or what are they throwing off; in  
21 other words, what is their cash flow.

22 Q Okay.

23 A Then you can use a cap rate; you know, a  
24 multiple on the cash flow is one method you could  
25 use.

Page: 26

1 Q Okay.

2 A Or should use.

3 Q You mentioned methods. What other  
4 methodology should you use in doing valuations?

5 A Well, cash, what does it throw off, is  
6 the main thing. Then what are the opportunities  
7 for the persona.

8 Advertising -- ads are a good source of  
9 revenue, you might say; unpublished songs. I mean,  
10 a person of James Brown's stature with 8 to 900  
11 copyrights, those have a tremendous value -- or  
12 could have a tremendous value for a person of  
13 Brown's stature.

14 There are other rights, termination  
15 rights, that could flow to the estate and what are  
16 they worth.

17 There are a lot of different avenues.

18 And if you, you know, look at the others that --  
19 you know, Bob Marley, Ray Charles, Elvis Presley.

20 There are many others.

21 Q Have you ever valued the estate of  
22 another entertainer?

23 A No.

24 Q Do you believe that you have valued this  
25 estate?

Page: 27

1 A Yes.

2 Q Okay. Tell me generally -- or even  
3 specifically -- what experience in life and work  
4 and education you have to value an entertainer's  
5 estate.

6 What qualifies you to provide that  
7 valuation?

8 A Just experience in having done other  
9 things. But I have never done an entertainer.

...

17 Q Okay.

18 A But, having said that, Mr. Williams, also  
19 in this situation, I talked to other people. One,  
20 Charlotte, a friend of mine, is Reggie Smith. He's  
21 Arthur Smith's son. James Brown recorded at Arthur  
22 Smith Studios. He also did the soundtrack to  
23 Deliverance, Dueling Banjos.

24 So Reggie took me through all the rights  
25 of those songs and what that was actually worth to

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1 the family.

2 So I was talking to people who had  
3 experience with that that I knew on a -- and talked  
4 with. So you're starting, you know, to get some --  
5 while certainly not an expert to value or say I've  
6 done 20 entertainers or 10 entertainers or 3  
7 entertainers, you're starting to get a feel by  
8 people you know of what they do or what is entailed  
9 with that....

Page: 29

2 Q Okay. What documents did you look at --

3 e. references documents related to royalties,  
4 publicity rights, assets, liabilities.

5 What documents specifically are you  
6 referring to?

7 A I have looked at so many documents that  
8 Ms. Pope and Mr. Buchanan had, as well as through  
9 what was available to the -- generally.

10 To tell you which ones I looked at, it  
11 would almost be which ones I didn't look at.

12 Q Okay. What documents do you recall that  
13 relate to publicity rights?

14 A We looked at several. One was -- was a  
15 gaming company. I think the one was \$400,000 a  
16 year. There was an offer on the table that they  
17 wanted to use a -- basically a slot machine  
18 company.

19 Q Okay.

20 A And they wanted the rights basically when  
21 somebody hit the number to say, oh, "I Feel Good,"  
22 and put it on the video screen.

23 So that was an example, I mean, of -- we  
24 looked at an offer for that. That was pretty good  
25 money.

Page: 30

1 Q Do you recall who made the offer and  
2 when?

3 A I think it was Global Gaming, but I  
4 don't -- but I could be wrong.

...  
10 Q Any other publicity rights documents?

11 A Looked at several -- when you're going  
12 through other stars, Bob Marley who, I would say,  
13 you know, is a lesser-known star than James Brown,  
14 and the different publicity rights that they  
15 engaged in, which is public record, what are they  
16 doing in that persona.

17 Of course, the biggest star of all is  
18 Elvis, Elvis Presley, and they use his persona. I

19 mean, they even have shows where they use him  
20 on-screen.

21 So there are a lot of personas -- of  
22 publicity rights in the use of the persona that the  
23 estate or the trust would own that generates  
24 income.

25 Q Did you undertake any inquiry to find out  
Page: 31

1 how much income that would be?

2 A Looking at the records that you have in  
3 Fortune Magazine, Forbes Magazine and different  
4 trade magazines, you assume they know a little bit  
5 about what they're talking about, but I didn't go  
6 back and say: Okay. Forbes Magazine said Elvis  
7 made 7 million in a quarter from these rights. Is  
8 that an accurate number or not?

9 Q Okay.

10 A But if you check with three or four  
11 different sources and the number is 6.9 million to  
12 7.3 million, you assume 7.3 from trade magazines,  
13 trade reporters, people in the -- would be an  
14 accurate number.

15 Q Okay.

16 A And they're also looking at tax returns,  
17 they're looking at financial statements, etc.

18 Q Okay. How do you extrapolate what, say,  
19 Elvis makes in a given year and turn that into a  
20 potential number for what Mr. Brown could make in a  
21 given year, persona and image?

22 A At that point you're basically using as  
23 much logic and as much as you can.

24 If you talk to the people in the  
25 industry, you say: What's the potential for  
Page: 32

1 this -- this star?

2 Elvis, of course, died in '77 and he's  
3 making more money today than he ever made when he  
4 was alive. Of course, you've got inflation and

5 everything else doing that.

6 While James Brown may not be Elvis, he's  
7 bigger in Asia, bigger in Africa, and he was a  
8 writer and a --

9 Elvis was an entertainer. James Brown  
10 was an entertainer, a writer, a dancer. He was in  
11 more areas music-wise than Elvis was.

12 Elvis never had the copyrights that  
13 James Brown has. He wasn't an author. He wasn't a  
14 writer.

15 Q So how do you bridge what Elvis brings in  
16 to what James Brown could bring in? How do you --

17 A I'm not sure you bridge it. You use all  
18 the stars, Ray Charles, all of them, as a potential  
19 guide, and then you try to evaluate each section of  
20 what they can do.

21 So I'm not sure you can take one law firm  
22 and bridge it into what another law firm could do.  
23 You just say: We're in the same line of work. You  
24 know, the potential is here, so ...

25 Q Okay. Tell me what -- so you -- tell me  
Page: 33

1 what your total valuation is. What's your opinion?

2 A Mine was -- when I got through, I thought  
3 Ms. Pope and Mr. Buchanan were about right. I  
4 thought at the time it was probably about  
5 90 million.

6 Q Okay. And --

7 A So I thought 85 was okay.

8 Q And at the time, what do you -- as in as  
9 of the date of his death? What are we saying?

10 A Yes, at the date of his death.

11 Q So it's your professional opinion that at  
12 the date of his death, Mr. Brown's estate was worth  
13 90 million?

14 A Thereabouts.

12 Q Okay. Do you ever value publicity  
13 rights?

14 A Have I ever valued them?

15 Q Yes.

16 A A little bit. We used to make shoes for  
17 NASCAR. We made them for Dale Earnhardt, Jr. with  
18 his logos and things on them.

19 So we were aware of royalty rights that  
20 went to Dale Earnhardt, Sr. as opposed to other  
21 drivers who got lesser, so -- and for publicity  
22 rights that Dale Earnhardt, Sr. --

23 So we worked in that venue. Also, we  
24 made products for schools; tennis shoes and novelty  
25 items for schools. So let's just say UCLA

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1 basketball, shoes drew a lot more money, so a lot  
2 bigger royalties going to the UCLA. University of  
3 South Carolina basketball in early nineties.

4 Q Okay. But have you ever independently  
5 undertaken a valuation of publicity rights to  
6 determine what they're worth?

7 A In connection with this and connection  
8 with others, yes, we were -- what the publicity  
9 rights were; and, again, some subjectiveness to  
10 that.

11 Q What were the publicity rights that you  
12 valued?

13 A Dale Earnhardt, Sr., NASCAR driver.

14 Q And who hired you to do that?

15 A NASCAR.

16 Q Okay. They hired your firm?

17 A Yes.

18 Q Said: We want you to value the publicity  
19 rights of Dale Earnhardt, Sr.?

20 A When he died, there was the firm that  
21 made his seatbelts and all the safety equipment  
22 that he used, and Carousel Capital in Charlotte  
23 owned that company and wanted to know what the

24 publicity rights were -- what they thought the  
25 publicity rights were for Dale Earnhardt, Sr., and  
Page: 89

1 we helped evaluate that along with several other  
2 people who did it, in-house people.

3 Q Who are the other people?

4 A Carousel Capital in-house people.

5 Q Let me ask this: What role did you have  
6 in the valuation?

7 A They called me, knew of Carousel Capital  
8 and asked me to take a look at the -- just do what  
9 Ms. Pope asked us to do in 2013 to see if we  
10 couldn't help with the value there. We looked at  
11 the publicity rights, which were big.

12 Q I mean, what did that look like? What's  
13 the analysis?

14 A How much money would a firm pay for the  
15 rights to use Dale Earnhardt's -- Sr.'s persona for  
16 a period of time.

17 Q Okay. What did you conclude?

18 A I concluded that was probably worth about  
19 \$25 million. I was a little low.

20 Q Okay. Do you -- any other publicity  
21 rights that you've valued?

22 A Probably been entailed in some of the  
23 stuff we do. But, no, not that I distinctly --

24 Q So the Dale Earnhardt one, you did this  
25 in conjunction with Carousel Capital?

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1 A They owned it. They owned Simpson Racing  
2 which made all the safety equipment.

3 When he died in the wreck in Daytona, it  
4 was safety equipment issues.

5 Q Right.

6 A And so the company that made all of Dale  
7 Earnhardt's safety equipment for his cars, suits,  
8 his helmets, everything, and sold them to tons of  
9 other drivers as well, were concerned about

10 exposure with the safety equipment company that  
11 they owned. Carousel Capital owned Simpson Racing.

12 Q So help me understand how that fits into  
13 the valuation of publicity rights.

14 A Let's just say that Simpson Racing had  
15 had a failure of their equipment that caused  
16 Mr. Earnhardt's death. His family or his heirs, or  
17 whoever had control of his estate, owned his  
18 estate -- in this case, Teresa Earnhardt and Dale  
19 Earnhardt, Jr. and a few others -- might come back  
20 and say: Okay, what are the -- we're entitled to  
21 compensation on the publicity rights that we would  
22 have had.

23 Q From?

24 A Dale Earnhardt, Sr., had he not succumbed  
25 to his injuries caused by your equipment. That was  
Page: 91

1 the factor at the time.

2 Q I'm not sure I follow.

3 A If -- if Dale Earnhardt had been earning  
4 \$25 million a year -- well, let's say a dollar a  
5 year to make the numbers work right -- earning a  
6 dollar a year from publicity rights prior to his  
7 death as a major star on the NASCAR circuit and he  
8 died because Simpson Racing furnished faulty  
9 equipment to him, one of the claims by the estate  
10 might be: We would have made \$12 over the next 12  
11 years from publicity rights of Mr. Earnhardt.  
12 Because of your failed equipment, we're not able to  
13 earn those. We have a claim against you for \$12  
14 or --

15 Q Okay.

16 A -- some number.

17 Q Okay.

18 A So Carousel Capital, which owned the firm  
19 that made all the safety equipment and which we had  
20 done some work for prior to looking at the shoes  
21 that they made that were fire retardant, we were

22 one of the ones asked to come in and help see what  
23 the exposure might be; what Dale Earnhardt, Sr.'s  
24 persona might be worth that his estate might come  
25 after them for.

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1 Q Okay. And that was the only time you've  
2 done a publicity rights analysis?

3 A Uh-huh -- well, probably been involved in  
4 several others, but that specific one, yes.

5 Q Okay. In doing that analysis, did you  
6 look at -- did you look at contracts? Did you look  
7 at a history of earnings? What did you do?

8 A Where are we now?

9 Q The publicity rights analysis for Dale  
10 Earnhardt.

11 A Yeah. You looked at what he -- yeah, but  
12 the current deals he had.

13 Q What else?

14 A The potential deals he could do. That  
15 almost changed yearly as things would happen in his  
16 sport.

...

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...

22 Q Have you seen -- I believe you testified  
23 previously that you've never seen the valuation  
24 that was used --

25 A I have not seen Mr. Bauknight or his

Page: 95

1 advisors' appraisal.

...

7 (Initial Designation of Experts and  
8 Disclosure of Opinions marked Defense Exhibit  
9 Number 2, for identification.)

10 - - -

11 BY MR. WILLIAMS:

12 Q Can you read that first paragraph?

13 A "Alexander is not aware of any facts

14 which could support a willing buyer and a willing  
15 seller, each with knowledge of the relevant facts  
16 and circumstances, placing a less-than \$4.7 million  
17 value on James Brown's music empire at his death."

18 Q Yes, sir. Is that your opinion?

19 A Yes.

...  
7 Q Okay. Did you look at any financial  
8 documents related to your valuation in preparation  
9 for your work on this case?

10 A I looked at the financial documents that  
11 were available that Bradley, Dallas, and Cannon had  
12 done back at the time.

13 Q And that was -- and in looking at those,  
14 that's how you arrived at Defense 1? Defense 1 is  
15 the affidavit.

16 A In part. Put it this way: I looked at  
17 everything that Ms. Pope and Mr. Buchanan furnished  
18 me. So I'm not sure, in retrospect, those were the  
19 only financial documents, but they were certainly  
20 documents I looked at.

21 Q Okay. Did you look at any financial  
22 documents in preparation for coming to this  
23 deposition?

24 A Yes. I looked at financial -- some  
25 financial documents -- well, key is financial

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1 documents.

2 I'm looking at -- when you ask that  
3 question, I'm looking at financial statements. I  
4 looked at reports, summations, but not what I would  
5 call a financial statement.

6 So, yeah, I looked at some documents that  
7 became finances. How about that?

8 Q Okay. How many times have you served as  
9 an expert witness in a case?

10 A Expert witness?

...

12 THE WITNESS: Let's see. You asked  
13 earlier about depositions. Expert witness, I  
14 think this would be the fourth or fifth time.  
15 Let's see. Eastern District of  
16 North Carolina, then there was Bill Belk is  
17 one, two, three -- four or -- this being the  
18 fourth or fifth.

19 BY MR. WILLIAMS:

20 Q Okay. Have you ever testified at trial  
21 as an expert witness?

22 A Yes.

23 Q Okay. Which ones are those?

24 A All the ones I mentioned.

25 Q So those all were --

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1 A Trials.

2 Q Okay.

3 A Landcraft Properties, Western District of  
4 North Carolina, Piedmont Venture Capital, Eastern  
5 District of North Carolina, Bill Belk and family,  
6 appropriate investment trial.

7 Q What was the Belk trial?

8 A Bill Belk had invested money out of his  
9 children's trusts in certain things which his wife,  
10 who they were going through a divorce, felt like he  
11 should put back in; they were not appropriate  
12 investments, so ...

13 Q Okay. Where was that?

14 A Charlotte.

15 Q What was your testimony or what was  
16 your --

17 A That since the money he'd invested from  
18 his children were less than 5 percent of their  
19 trust in an investment I considered risky, that I  
20 thought it was probably appropriate given the  
21 amount of money in the trust.

22 Q Okay. What was your -- what was the  
23 expert analysis or what was the area of expertise

24 you were qualified by the judge in?

25 A Was the -- was the amount of money that

Page: 99

1 Mr. Belk had invested on behalf of his children's

2 trusts appropriate -- an appropriate investment.

3 Q Okay.

4 A Asked to valuate his investment expertise

5 or his investment choices.

....  
26. In connection with my opinion that the joint action of the Attorney General, Mr. Bauknight and Tomirae, both before and since the decision in Wilson v. Dallas, has deprived The James Brown "I Feel Good" Charity of a strong, expert witness to what is necessary to protect the "I Feel Good" Charity, I have reviewed the testimony of a number of experts, including Thomas Pope. Mr. Pope, with Jay Bender, represented journalist Sue Summer in a James Brown Freedom of Information Act case. Some of his April 11, 2017 deposition testimony is set out below:

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS  
COUNTY OF AIKEN

- - -

ADELE J. POPE, :

: Civil Action No.:

Plaintiff, :

: 2013-CP-02-1337

vs. :

:

ESTATE OF JAMES BROWN and THE :

JAMES BROWN 2000 IRREVOCABLE :

TRUST, :

:

Defendants. :

---

DEPOSITION OF THOMAS H. POPE, III, ESQUIRE

---

DATE TAKEN: April 11, 2017

...

13 EXAMINATION

14 - - -

15 BY MR. WILLIAMS:

16 Q Good morning, Mr. Pope.

17 A Good morning.

18 Q My name is Burl Williams. I'm a lawyer  
19 in Greenville, Nexsen Pruet firm, and I represent  
20 the estate and trust in a lawsuit that Mrs. Pope  
21 brought against it for fiduciary fees.

22 A Right.

23 Q That is the case that we're appearing in  
24 this morning.

25 A Correct.

18 A Right. Well, I say where I fit -- of  
19 course, it's not my decision to say, but I would --  
20 you're asking me so I'll tell you.

21 I fit because I had -- I've seen all the  
22 work that Adele has done, but also I have  
23 represented a journalist in a FOIA case and I see  
24 how much difficulty is added by the attorney  
25 general being hardnose, unreasonable, aggressive.

Page 6

1 And so I think in this case, not only has  
2 she done lots of work for which she should be  
3 paid -- lots of very good work --

4 And I -- I've read her claim and all the  
5 documents with it and associated with it, and I've  
6 also read Steve Johnson's deposition, and I've been  
7 involved in a good bit of probate and fiduciary  
8 litigation. I don't do taxes and I don't hold  
9 myself out as an expert in estates, but I have seen  
10 fights between people over fiduciary duties and the  
11 like.

12 And so you ask where I fit. I'd say that

13 Adele and Bob discharged their duties beautifully  
14 at great cost, financial and otherwise.

15 The AG made that way more difficult than  
16 it had to be. The AG -- particularly Sonny Jones,  
17 but the whole thing.

18 You got the attorney general bringing a  
19 suit, signing a fee contract that had no party  
20 signing it, bringing suit on their behalf without  
21 their consent, in league with the estate, your  
22 client, and others taking unreasonable positions.  
23 The attorney general has already had his  
24 hand slapped -- and that would be a light way of  
25 putting it -- for trying to orchestrate a  
Page 7

1 settlement that completely dismembered  
2 James Brown's estate.

3 So I've read a lot of documents, but I  
4 think that's where I fit in. The AG made this even  
5 more difficult, and Adele and Bob served nobly and  
6 well at great cost.

21 Q Well, let's do fact first.

22 A Okay.

23 Q As a fact witness with personal knowledge  
24 of the rigors of doing the fiduciary work while  
25 being challenged by the AG --

Page 8

1 A Well --

2 Q Let's kind of reboot and you tell me kind  
3 of your fact witness position or fact witness  
4 thoughts.

5 A It's more expert. But as far as facts  
6 go, I'm aware of the work because I see it  
7 firsthand; the fact that there are over 120 boxes  
8 of documents, I think, and the fact that the  
9 difficulty --

10 Because I'm not a probate expert but I  
11 have done probate litigation, I am familiar with  
12 claims being filed, and there were numerous claims.

13 There was mishandling by the initial appointed PRs  
14 and trustees who acted horribly, and the estate  
15 files were in a mess.

16 And so I know that Adele and Bob  
17 straightened that out and got stability, as  
18 Steve Johnson said.

19 But I really rely on the facts as related  
20 by Steve Johnson more than what I've seen, but I  
21 have seen facts that support everything he says.

22 Q Okay. So then tell me what you would  
23 testify to as a fact witness.

24 A Well, it would depend on what the  
25 questions were. But I would say that I know

Page 9

1 personally that Adele and Bob worked extremely  
2 hard --

3 Q Okay.

4 A -- and that they were castigated at every  
5 turn by opposing counsel and claimants' counsel and  
6 everybody else.

7 And, you know, you've got one of the  
8 children of James Brown had a guardian ad litem who  
9 got \$700,000, and that's just a fraction of the  
10 participants in the case; not even a principal  
11 player and he got \$700,000. So I think her claim  
12 is reasonable.

13 Q Did he get 700,000 or did he make a claim  
14 for 700,000?

15 A The court approved it, as I understand  
16 it.

20 Is that what you think you will testify  
21 to as an expert in this case?

22 A And the fact that her job was made more  
23 difficult by the AG's office.

24 Q Okay. Tell me -- let's start with expert  
25 testimony.

Page 10

1 A Uh-huh.

2 Q Have you ever testified as an expert  
3 before?

4 A I have.

5 Q Okay. Will you tell us about that?

6 A I testified one time for Harold Jacobs  
7 with your firm on attorney's fees.

8 Q Okay.

9 A I testified in this class action case --  
10 this is a long time ago. It was about 2000 -- but  
11 Speights & Runyan. They had a plaintiffs' case  
12 that was -- as I recall, it was a hearing on the  
13 attorney's fees; the reasonableness of the  
14 settlement and the attorney's fees.

15 I think I testified for him twice. I'm  
16 not sure. I'm not a hundred percent sure.

17 Q Okay.

18 A I gave an affidavit one time for Pope  
19 Johnson in connection -- it wasn't really  
20 attorney's fees but it was related to attorney's  
21 fees. Went to the workers' comp statute, if you  
22 settle a workers' comp claim for X dollars and then  
23 you bring a third-party action after that and you  
24 settle the third-party action for really a fraction  
25 of what it really was worth but there wasn't enough  
Page: 11

1 insurance or whatever, then you reduce the lien of  
2 the comp carrier which creates more for the client  
3 and more for the attorney. So sort of collaterally  
4 related.

5 Q Okay.

6 A I've given an affidavit to a lawyer one  
7 time as an expert on his attorney's fees in a  
8 family court case.

9 I don't think there'd be any others. I  
10 think that's it.

11 Q Okay. I counted about six. Does that  
12 sound right?

13 A Five or six, yeah.

14 Q Okay. Have you ever testified in court  
15 as an expert?

16 A Yeah. I did federal court for

17 Mr. Jacobs.

18 Q Okay. That's the only time?

19 A I testified in court as a party once.

...

5 Q Okay.

6 A I've handled a good number of fiduciary  
7 cases, but I've never testified about the fees.

8 Q Okay. You were gonna also tell me about  
9 the difficulties of litigating when the attorney  
10 general opposes you.

11 A Uh-huh.

12 Q Okay.

13 A Well, is that -- yes.

14 Q Okay. Is that an expertise or --

15 A No. That's a fact-based scenario. I

16 don't say the attorney general is always impossible  
17 to deal with, but I've known of another case prior  
18 to this. But this is certainly a primo example.

19 And the supreme court basically approved  
20 that notion. They said the attorney general was  
21 way out of his -- out of line when they overturned  
22 the settlement in favor of Bob and Adele.

23 And as I understand it, Sonny Jones was  
24 defending the agreement, and a chief justice at the  
25 oral argument said: "Who did you talk to to

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1 determine that these people making undue influence  
2 claims had any basis in fact for the claims?"

3 He said he talked to the lawyers for one  
4 of the claimants.

5 Q Okay.

6 A Never talked to anybody that helped  
7 prepare the will or watched -- or witnessed the  
8 will being signed or anything along those lines.

9 And as I recall, the chief justice said

10 to Sonny Jones: "Well, you must not practice in  
11 this area much."

12 Q Okay.

13 A So the -- as I understand it, when --  
14 You know, Adele and Bob didn't ask for  
15 this job. They were asked by the court on a  
16 nomination by some of the parties -- I don't  
17 remember which one -- to do it because of her  
18 expertise and because of Bob's standing also as a  
19 fine lawyer with fine reputations.

20 And they undertook this without seeking  
21 it. And everybody wanted them, but, for some  
22 reason, the attorney general didn't.

23 Q Okay.

24 A And he has fought them every step of the  
25 way.

Page: 15

1 Q Okay.

2 A And I don't say it's Alan Wilson and  
3 Henry McMaster. I think it's more Sonny Jones.  
4 He's given too much power.

5 I'm aware of another estate he handled  
6 back in the 1990s that my father and brother  
7 handled where Sonny Jones was so difficult. The  
8 trust was gonna provide money -- it was a vague  
9 trust with three trustees. They had the discretion  
10 to decide who to give it to. They knew that the  
11 decedent, Buck Brown of Anderson County, loved  
12 Clemson. That wasn't the only school he loved, but  
13 he loved Clemson.

14 And Sonny was so difficult, that they  
15 made the decision to move the trust to Georgia and  
16 give the money to the University of Georgia.

17 That's -- my father, his eyes turned  
18 green or blue and black every time he thought of  
19 Sonny Jones --

...

3 Q Okay.

4 A I've seen the work. I've seen the order  
5 of January 2008 where the judge said they were to  
6 be paid hourly going forward. And nobody appealed  
7 that order on the other side.

8 Q Okay.

9 A It was just a mammoth amount of work. I  
10 made some notes going through it.

11 The first is this \$4.7 million estate.

12 When the year he died, the Royal Bank of Scotland  
13 valued the royalties only at \$42 million.

14 Cannon offered Yamma and Deanna  
15 \$5 million if he could get 5 percent of the estate.

16 Judge Peeples said that James Brown made a million  
17 dollars a week when he toured Europe.

18 Terry Cox had a letter of intent of

19 \$100 million for the estate. Corbis GreenLight was

20 a contract that Bob and Adele negotiated right

21 before they were dismissed whereby they would pay

22 \$2 million for publicity rights for two years only;

23 in other words, that was a cash infusion for two  
24 years while this appeal went on.

25 And, of course, the PR didn't agree with  
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1 that so it didn't happen.

2 Bill Sellars, a CPA, helped her prepare

3 the return, and they put a value of \$84 million.

4 Richard Alexander said it was worth more than that,

5 but it was a rumor that Forlando -- I don't know

6 where he was gonna come up with it -- wanted to pay

7 \$150 million for the estate.

8 And then we see recently Toberoff, the

9 leading publicity rights lawyer and copyright

10 lawyer in the entertainment world in the whole

11 country practically, one of the top five, is now in

12 this case filing briefs in the supreme court for a

13 couple of children talking about the proceeds from

14 the copyright termination rights being a very

15 valuable asset.

16 So she was fighting for the estate plan  
17 for a reason. She wanted a lot of money to go into  
18 the trust, the "I Feel Good" Trust, and Bob did,  
19 too.

20 And Bob had to get out because it was  
21 ruining his life. He was behind in his home  
22 payments. He was a sole practitioner. His wife  
23 didn't work. But Adele is not gonna do that, as  
24 you probably well know by now.

25 Q Well, I hear you on these -- these

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1 instances where you believe somebody has assigned a  
2 value to it.

3 A Uh-huh.

4 Q But what's that got to do with being  
5 convinced that the fiduciary fee is proper?

6 A Because she did lots of things -- she had  
7 to defeat claims, she had to -- Cannon and Dallas  
8 filed enormous claims, like 16 million. They stole  
9 money that she found out about. The judge praised  
10 her in his order of January 2008.

11 She got certification, whatever the word  
12 is, for the "I Feel Good" Trust, which hadn't  
13 happened -- it should have happened years before  
14 but it didn't -- to preserve the integrity of his  
15 charitable status.

16 She was the only person -- she and Bob  
17 were the only people that were looking at the  
18 estate plan and wanted to fulfill it to its  
19 maximum.

20 Q Right.

21 A Now if somebody can prove an undue  
22 influence claim, let them prove it. Don't get in  
23 league with them and try to defeat the estate plan.  
24 If somebody can prove they're the wife,  
25 which is now on appeal -- and it should be on

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1 appeal, even though nobody deposed this woman,

2 which is surprising. I don't expect you to, but I  
3 don't know why the limited special administrator  
4 didn't.

5 She has fought to preserve this estate  
6 plan, and she's done thousands of hours of work. I  
7 don't know how many hours. I would say over  
8 10,000, 15,000.

...

17 Q Okay.

18 A She also continued to work during the  
19 appeal after May 2009 until the supreme court  
20 affirmed her position. And she hired a lawyer  
21 who -- what was she gonna do? Say: "Here are 120  
22 boxes of documents. Go figure out what the appeal  
23 is about"? She worked with him.

24 Q Okay.

25 A And she didn't know until after a year  
Page: 20

1 after Jim Richardson took the case that he was  
2 gonna do it pro bono.

3 And, of course, David Black of your firm  
4 challenged his integrity in court and said he  
5 wasn't working pro bono, which was just -- make  
6 anybody's blood boil. Jim Richardson is  
7 Mr. Integrity.

8 And he won the case. And he did what  
9 great lawyers do: He synthesized it down to the  
10 important issues and he won. All caps, underlined,  
11 he won. And Adele won, and Bob won. So she'd been  
12 vindicated up to that point.

13 Now, after that -- after 2013 she hasn't  
14 done anything. I don't think she's seeking  
15 anything beyond that. But she was working during  
16 2009 to 2013 to preserve the estate plan by helping  
17 her lawyer on appeal.

...

4 Q Okay. You mentioned she got an IRS  
5 certification for the "I Feel Good" Trust. You

6 mentioned the January 2008 order.

7 Is there anything else that stands out in  
8 your mind of things done that convince you the  
9 fiduciary fee is reasonable?

10 A Well, she -- I mean, she hired  
11 Ray Gonzalez. She had to go to that house over  
12 there. It was -- it was -- the James Brown house.  
13 She had to preserve the security of it and found  
14 out there was a leak. She had to hire somebody to  
15 come take all these boxes full of recordings and  
16 take them to Nashville, Tennessee for safekeeping.  
17 She was faced with a totally mismanaged  
18 trust. So it wasn't like she was starting -- it  
19 wasn't like a banker died and had all his documents  
20 in neat order and you could go through it and work  
21 hard but still figure it out.

22 With James Brown she had to -- she  
23 couldn't even get cooperation from James Brown's  
24 accountant, let alone the former PRs who were  
25 fighting her tooth and nail and stealing money.

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1 And she caught them.

2 Q Uh-huh.

3 A And she was praised for catching them,  
4 and Cannon got prosecuted for it, although the AG  
5 surprisingly didn't bother to come to the  
6 sentencing hearing and ask for restitution. That  
7 seems bizarre to me. But that's another indication  
8 of strangeness.

9 So she did lots of things. The security  
10 of the house was a big thing; dealing with  
11 claimants. There was suits pending in three states  
12 when she took over. She had to hire counsel in  
13 other places to deal with them.

14 I mean, there's umpteen boxes of  
15 documents that support what she did, and it's set  
16 out in her claim.

17 I mean, I could get the document and

18 revive my memory, but her claim and her suit  
19 provide plenty of information sufficient to justify  
20 the amount she's seeking.

21 Q Okay. Let's look at what I'm gonna mark  
22 as Defense 1. And this is an expert witness  
23 disclosure.

24 A Okay.

3 Q Okay. Second paragraph talks about a  
4 public official taking control of assets.

5 Does that have anything to do with your  
6 opinion in this case?

7 A Yeah. He doesn't -- the attorney general  
8 doesn't have the authority to take control over the  
9 James Brown "I Feel Good" Foundation, but that's  
10 what he did.

11 He has authority to supervise it and make  
12 sure that the terms of the foundation are carried  
13 out. He doesn't have authority to control it. So,  
14 yeah, it does.

15 If he hadn't been in here -- the attorney  
16 general is the leading law enforcement official in  
17 the state. He has a status that is quite high in  
18 the eyes of the public.

19 And, honestly, I think that the people  
20 that colluded together on the settlement thought  
21 that that -- and maybe they were right for a  
22 while -- but having him put his imprimatur on this  
23 settlement was just gonna grease the wheels and  
24 make it slide on through.

25 So she was fighting the chief law

Page: 25

1 enforcement of the state and he did take control,  
2 and that's not appropriate. So I think the  
3 paragraph is correct.

4 Q Okay. So your opinion all ties into the  
5 presence of the attorney general in this  
6 litigation?

7 A That one does, yeah.

8 Q Okay. What does Case 4900 or Journalist  
9 Sue Summer have to do with this case?

10 A Well, my experience in the Sue Summer  
11 case was -- like, I met the same stone walls that  
12 Adele has. That's really basically it. Because we  
13 were requesting documents.

14 She's a journalist and, on her behalf, we  
15 made -- with Jay Bender's, co-counsel, help, we  
16 sought out the documents that were very important  
17 to the James Brown case and to the public, and  
18 those would be the fee agreement Sweeny Wingate had  
19 with the attorney general and all the parties,  
20 which we got.

21 It was actually produced in the federal  
22 case while our FOIA request was pending, but we got  
23 that. We asked for the Hynie diaries. They were  
24 produced by an unknown, anonymous third party while  
25 this was pending.

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1 But we prevailed and the judge awarded  
2 her attorney's fees in that. We did not get the  
3 \$4.7 million appraisal documents because the AG's  
4 office said they did not have that.

5 I mean, I'm not denying they did not have  
6 those documents, but after the final order was  
7 issued, we asked the judge to reconsider  
8 whether they -- if they had used those documents  
9 under FOIA, then they should still be protected and  
10 they should go get those documents from whoever had  
11 them and present them to us. And the judge  
12 declined to rule on that because the case was over,  
13 as he saw it, and he did not rule.

14 But we were successful in large part, and  
15 we got Ms. Summer's attorney's fees paid. So  
16 that's the relation.

17 I mean, it doesn't -- what it is, it is.

18 We got documents that related to 4900, but that  
19 wasn't the only purpose of it.

20 Q Okay. You mentioned the 4.7 million  
21 appraisal. Why did you want to see that?  
22 A Because it seems preposterous. I mean,  
23 she thought it did, I think it does. Anybody in  
24 the world thinks it does. You ask a guy on the  
25 street that ...

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1 Q Do you know -- have you ever seen it?

2 A No, I've never seen it.

3 Q You have never signed a confidentiality  
4 order and looked at it?

5 A I've never seen it, any part of it.

6 Q Okay.

7 A I mean, there are farmers in  
8 Newberry County that are worth more than that; I  
9 mean, honestly. It's ludicrous.

10 He had a \$3 million-plus stream of income  
11 every year before he died.

12 Q So you've never looked at it, but you  
13 just assume it's incorrect?

14 A I would bet my life on it being  
15 incorrect.

5 Q Okay.

6 A I'd say that James Brown is probably --  
7 in terms of his cultural popularity, he's probably  
8 right there with Elvis. He might be a step behind  
9 him, but not much.

10 Q How much in publicity rights did  
11 Mrs. Pope and Mr. Buchanan generate during their  
12 fiduciary service?

13 A I don't know. They tried to do one with  
14 Corbis.

15 Q Do you know the terms of that deal?

16 A I don't.

17 Q Okay. Beyond Corbis, do you know if they  
18 generated any other publicity rights?

19 A I don't know.

20 Q How about the prior fiduciaries?

21 A How about what?

22 Q The prior fiduciaries. Were they able to  
23 do it?

24 A No. I think they were so busy stealing,  
25 they never got around to it.

4 Q If you could just generally look through  
5 the -- page 20 of Defense 1.

6 A Right. Uh-huh.

7 Q I read most of this -- it leads with a  
8 number of paragraphs saying: "Journalists and  
9 citizens have a right to know" ...

10 Is most of this really focused towards  
11 something beyond the claims case? I mean, do  
12 you --

13 A A lot of this is focused on my attempts  
14 to -- under FOIA to get documents and information  
15 from the attorney general.

16 Q Okay. I mean, do you think that it would  
17 be proper to come down to the trial of this case  
18 and discuss all these matters?

19 I mean, do you think they're relevant to  
20 the claims case?

21 A I may not discuss them in exactly these  
22 words. I think it's relevant to know what the  
23 attorney general's bad influence was on this entire  
24 estate.

25 He put his imprimatur on things and took  
Page: 30

1 positions that were not related to fulfilling the  
2 estate plan of James Brown.

3 And to me -- and that's what a trustee  
4 and a PR's duty is, is to be single-mindedly  
5 focused on implementing the wishes of the decedent.  
6 Whether it's James Brown or Joe Smith, that's what  
7 you're supposed to do.

8 And the fact that a bunch of heirs want  
9 to change that or allege spouses want to change  
10 that, it's contrary to what role the PR and the

11 trustee should be playing.

12 Q Okay.

13 A So you would think the AG would want to  
14 implement the estate plan, but he was siding with  
15 contestants of the will; people who had been left  
16 out, omitted children, people who were not spouses.  
17 It's astounding, really.

18 Q Yes, sir. Tell me why this Toberoff --  
19 you brought this Toberoff printout.

20 Tell me why it's important to you. Why  
21 did you bring it here today?

22 A Well, on valuation, I mean, Toberoff is  
23 on a filing in the supreme -- in the court of  
24 appeals as of counsel on behalf of -- let's see --  
25 Deanna Brown, Yamma, and Venisha alleging how  
26 important -- that the proposed settlement may  
27 violate federal copyright laws and that the  
28 proposed settlement would create a conflict of  
29 interest for the PRs of the estate who may stand to  
30 recover significant fees from the recovery of  
31 proceeds from copyright termination rights.

32 I don't know whether that's true or not,  
33 but I just mean a guy from Malibu, California is  
Page: 34

35 weighing in on a \$4.7 million case on behalf of two  
36 heirs or three heirs out of 15 and saying it's  
37 significant?

38 So, I mean, it goes to valuation. If the  
39 biggest hotshot in publicity rights in America  
40 weighs in on behalf of two somewhat minor claimants  
41 in this whole estate, then he must think it's worth  
42 a lot of money.

...  
43 Q Okay.

44 A I know it relates only to 4900, but -- I  
45 mean, of course, she didn't have clients because  
46 she hadn't got any malpractice insurance because of  
47 these oppressive lawsuits against her; like

14 Forlando's and the one that Bauknight is -- 4900  
15 that he brought. And it was brought to run her  
16 off, to squash her like a bug to get her not to  
17 appeal, and that wasn't -- that was like pouring  
18 gasoline on a fire.

19 Q Have you ever seen a document that  
20 supports that sentence you just made, that the  
21 lawsuit was brought in order to run her off?

22 A They told her to -- if she appealed,  
23 they'd sue her.

....

11 Q Okay.

12 A I know she turned away clients to handle  
13 James Brown.

14 Q Okay.

15 A It was very busy. I mean, she was  
16 dealing with misappropriating funds from PRs, she  
17 was dealing with an incredible mess of documents  
18 that made no sense, which took just a -- just to  
19 get them together and put them in -- inventory them  
20 and get them in the right form, talking to a CPA  
21 that wasn't giving them information and hadn't  
22 filed tax returns.

23 I mean, at every turn, it was a difficult  
24 task. And when she got appointed as the PR, the  
25 task wasn't over. She kind of stopped the  
Page: 37

1 misappropriations and caught it and duly handled  
2 it, but she and Bob continued then to reconstruct  
3 what was there. Hired Bill Sellars and whatnot and  
4 consulted with Ray Gonzalez later, and --  
5 Very, very busy.

6 Q Okay.

7 A I can't give you each year -- what  
8 happened each year, but I know she was very, very  
9 busy.

....

14 Q Okay. To state the obvious, you're

15 married to Mrs. Pope?

16 A Correct.

17 Q You may have some -- a little bit of a  
18 bias?

19 A I would say, as a husband, I would have a  
20 bias, but I wouldn't testify if I didn't believe  
21 it.

11 Q Of course, if you come down to Aiken, we  
12 try this case, it's fair game to ask you: You do  
13 stand to benefit from recovery --

14 A We keep separate bank accounts --

15 Q Okay. Well, let's --

16 A -- so you could draw your own  
17 conclusions.

18 I don't stand to benefit. I think her  
19 intentions are to give a lot of this money to  
20 charity, whatever she gets, but that's her  
21 business.

22 Q Well, I never asked that question during  
23 the deposition, so perhaps you can amplify on it.  
24 Do you know what the intention is if a  
25 full fee recovery were provided?

Page: 42

1 A Well, A: I'd say that's nobody's  
2 business; but, B: She has said she intends to give  
3 a good bit of it to charity, and we are very  
4 charitable oriented.

5 That's one influence she's had over me.

6 I give as much as I can give to the charities that  
7 interest me, which are most of the Newberry Opera  
8 House, the Newberry YMCA, and my college.

22 BY MS. POPE:

23 Q I have just two questions: Could you  
24 briefly describe the documents that you brought and  
25 that you looked at in preparation for this

Page: 43

1 deposition?

2 A I looked at Steve Johnson's deposition, I  
3 looked at the claim you filed, plus all the  
4 supporting documents, which is about 4 inches  
5 thick -- yeah, 3, 4 inches thick.

6 I looked at your deposition, Alan  
7 Wilson's, the Forlando suit, bunches of court  
8 orders, the report of Jim Hardin. Complaint in  
9 4900 I did not look at, but I'm aware of the fact  
10 there are 130-plus boxes of documents that you  
11 dealt with.

12 But your supplemental affidavit in  
13 support of the claim furnishes a large portion of  
14 those documents.

15 Q Did you also look at your own files?

16 A Oh, yeah. I had my FOIA files for  
17 Sue Summer against the AG, which are four pleadings  
18 notebooks probably 4 or 5 inches high. Looked at  
19 those.


20 But -- of course, I was familiar with  
21 them, but I did glance at them.

27. I have reviewed documents which show that since the Wilson decision Mr. Sojourner was paid about \$1.5 Million; Mr. Bauknight's lawyers have been paid several millions; Tomirae's son's guardian ad litem and lawyer have been awarded about \$700,000; and other funds have been spent to help Tomirae and to continue to discredit Mr. Buchanan and Mrs. Pope.


28. The Attorney General and Mr. Bauknight have allowed Tomirae to be paid \$1 Million from 3 James Brown songs and, so far as I can see, have done nothing to challenge the termination rights Tomirae is attempting to exercise to take a portion of

the "I Feel Good" Charity's royalties to 90 or so of its 900 copyrights between now and 2023.

FURTHER DEPONENT SAYETH NOT.

  
William Jeffrey Smith

SWORN TO BEFORE ME this 14<sup>th</sup>  
Day of July, 2017

 (L.S.)  
Notary Public for South Carolina  
My commission expires: 9/27/2023

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James Brown II; Daryl J. Brown, individually and on behalf of his minor child Janise Vanisha Brown; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children Sydney Lumar and Carrington Lumar; Tonya Brown; Venisha Brown Larry Brown; and Terry Brown

and

TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

Adele J. Pope,

Defendant

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

JEANNETTE W. MCBRIDE  
C.C.P. & G.S.  
2017 JUN 30 PM 2:52  
RICHLAND COUNTY  
FILED

AMENDED MOTION FOR  
PROTECTIVE ORDER  
FOR JUNE 27, 2017  
DEPOSITION OF  
TIFFANY PROVENCE

**PLEASE TAKE NOTICE THAT** the undersigned, as attorneys for the Plaintiffs, will move before the presiding Judge of the Richland County Circuit Court, on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for a Protective Order pertaining to the deposition of Tiffany Provence. This is an Amendment to the Motion filed June 15, 2017.

The grounds for this Motion are that Tiffany Provence is unavailable on the appointed date due to long-scheduled vacation plans and defense counsel selected the date of this deposition without consent of Plaintiffs' counsel. As an additional grounds, Plaintiffs seek to continue the deposition of Ms. Provence until after the conclusion of the trial scheduled in the matter of Adele Pope v. Estate of James Brown, 2013-CP-02-1337. Plaintiffs' counsel sought to avoid a hearing but defendant's counsel would not agree to change the date or the further continuance.

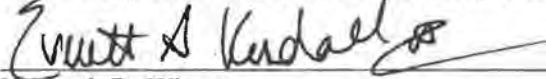
Therefore, Plaintiffs, and Tiffany Provence, seek a Protective Order from appearing at the June 27, 2017 deposition. Plaintiffs further seek a Protective Order staying this deposition until after the trial of Case 1337.

This Motion may be further supported and supplemented by a Memorandum of Law and/or affidavits.

The undersigned represents that he has made a good-faith effort to resolve these issues prior to the filing of this Motion and that further discussion is futile.

Respectfully submitted,

**SWEENEY, WINGATE & BARROW, P.A.**

A handwritten signature in black ink, appearing to read "Kenneth B. Wingate", written over a horizontal line.

Kenneth B. Wingate

Mark V. Gende

Everett A. Kendall, II

Sweeney, Wingate & Barrow, P.A.

Post Office Box 12129

Columbia, SC 29211

(803) 256-2233

**ATTORNEYS FOR PLAINTIFFS**

Columbia, South Carolina

June 28, 2017

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Russell L. Bauknight, et al.

and

Alan Wilson, as Attorney General et al  
Plaintiffs,

v.

Adele J. Pope

Defendant.

) IN THE COURT OF COMMON PLEAS

) Case No. 2010-CP-40-4900

) AFFIDAVIT OF HARLEY D. RUFF

2011 JUL 19 AM 10:52  
JEANNE DE W. MCBRIDE  
C. CLERK & G.S.

RICHLAND COUNTY  
FILED

PERSONALLY APPEARED BEFORE ME, HARLEY RUFF, who being duly sworn, deposes and says:

1. I am over 21 years of age.
2. I am a Certified Specialist in Estate Planning and Probate Law.
3. On April 6, 2009 I qualified without objection as an expert in Estate Planning and Probate law and related tax matters in the case related to a settlement brokered by former Attorney General Henry McMaster related to the estate and 2000 Trust of entertainer James Brown.
4. I was examined on direct examination by James Bailey, Esq., attorney for James Brown's Estate and 2000 Trust..
5. I was cross examined by Alan Medlin, Esq. and Louis Levenson, Esq., both of whom represented persons who had contested Brown's estate plan, and who were parties to the McMaster settlement which was being considered by Judge Doyet A. Early, III.

6. It was my opinion to a reasonable degree of professional certainty, based on James Brown's Will, 2000 Trust and the portion of James Brown's estate tax return that I considered, that the McMaster settlement would increase the Federal Estate Taxes payable by James Brown's estate by millions of dollars.

7. At that time James Brown's Estate claimed an Estate Tax Charitable Deduction of \$83, 419,981 for assets passing at James Brown's death to The James Brown "I Feel Good" Trust, Brown's charitable foundation to educate needy students.

8. Under the McMaster settlement nearly 25% would pass to Tommie Rae, whose status as Brown's claimed spouse was disputed, and just over 25% to various claimed children of James Brown.

9. It was, and is, my opinion to a reasonable degree of professional certainty within my areas of expertise that the McMaster settlement, based on the Estate Tax Return as filed, would cause Brown's estate to incur many millions of dollars in estate taxes.

10. Because of the structure of James Brown's estate plan and the McMaster settlement, with \$2 Million without taxes going to James Brown's education trust for certain grandchildren, the value of all property passing to Brown's claimed children attracted an Estate Tax, which would have been several millions of dollars.

11. If instead of the \$84,114, 529 value of Brown Schedule F assets as shown on the Estate Tax return, the Schedule F assets were \$ 4.7 Million, there would still be estate taxes due under the McMaster settlement.

12. With a gross estate of approximately \$6.5 Million, if the IRS accepted the claim that Tommie Rae was Brown's spouse and entitled to a marital deduction, AND

the Legacy Trust qualified for a charitable deduction, under the McMaster Settlement, about \$1.8 Million would be subject to estate taxes.

13. It was, and is, my opinion that there was substantial doubt as to whether the Legacy Trust created by Attorney General McMaster would qualify for a federal estate tax charitable deduction. It was also my opinion that the right of a family member to purchase the assets placed James Brown's charity in jeopardy of incurring excise tax as a result of self-dealing. Finally, it was my opinion that there was some doubt as to whether Tommie Rae would qualify for a marital deduction.

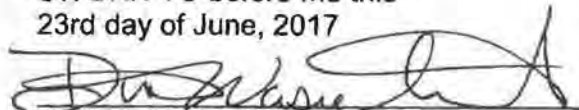
14. It was, and is, my opinion that seeking a private letter ruling from the IRS as to this complicated settlement proposal was appropriate.

15. The *Wilson v. Dallas* decision, by voiding the McMaster settlement, suspended some of the concerns I raised.

FURTHER DEPONENT SAYETH NOT.

  
HARLEY D. RUFF

SWORN TO before me this  
23rd day of June, 2017

 (L.S.)  
Notary Public for South Carolina  
My Commission expires: 11/28/2022



**STATE OF SOUTH CAROLINA  
In the Court of Appeals**

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**APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas  
The Honorable Doyet A. Early, III Circuit Court Judge  
The Honorable L. Casey Manning, Circuit Court Judge**

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**Case No. 2010-CP-40-4900**

**Appellant Case No.: 2017-001899**

---

RUSSELL L. BAUKNIGHT, as Trustee of The James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B.; Daryl J. Brown, individually and on behalf of his minor child, Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. And Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown

And

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B. II; Daryl J. Brown, individually and on behalf of his minor child Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown, Respondents.

v.

Adele J. Pope, Defendant,

Of whom Adele J. Pope is Appellant.

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**SUPPLEMENTAL MEMORANDUM IN SUPPORT OF  
LIFTING STAY**

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### **Summary of Status and New Matter Supporting Limited Lifting of Stay**

The events of 2018, including an Order of the Honorable Doyet A. Early, III (Judge Early), filed November 26, 2018, and the transcripts and depositions entered into the record at the trial of Aiken County Case 2013-CP-02-1337 (Aiken 1337) make clear that if the Supplemental Motion to Lift Stay for Limited Purposes is not granted, the Court will be in jeopardy of losing jurisdiction over this appeal and over the assets at least 9 individual Plaintiffs/Counterclaim Defendants/Respondents ("CC Defendants") placed under the jurisdiction of the Court in this case on May 19, 2010.

The stay imposed by this pre-trial appeal has been in effect since September 2017, and Judge Early declined to lift it approximately a year ago.

After the death of Venisha Brown in September 2018, and as a result of other events and public filings, Appellant moved on October 24, 2018 for a partial lifting of the stay to correct the parties; and require Russell Bauknight, who has not accounted since 2016, to account for tens of millions of dollars he advised a Federal Court in 2018 he had spent from funds James Brown devised to his "I Feel Good" education Charity.

The limited actions necessary to preserve the jurisdiction of the Court over the claims of Plaintiffs and counterclaims of Robert Buchanan, Jr. and Appellant which are the subject of this appeal, and the assets placed under the jurisdiction of this Court on May 19, 2010 include:

- 1. Identifying Successors in Interest to the James Brown Legacy Trust**  
Determining the Successors to CC Defendant James Brown Legacy Trust, which holds vested termination interests in U. S. royalties related to 246 James Brown copyrights under Sections 203 and 304 of the U.S. Copyright

Act ("Termination Rights")[ Exhibit C]; has not been legally dissolved; has been active in this case since 2010 and is party to a FOIA appeal now pending in the Court of Appeals since 2011; but now claims it does not exist.

## **2. Polling Former Minor Plaintiffs Who Had No GAL for 8 ½ Years**

Polling CC Defendants Lindsey Brown, Carrington Lumar and Sydney Lumar, who, with Bauknight acting on their behalf, filed this suit as Plaintiffs 8 ½ years ago; for whom Bauknight and counsel (SWB) objected, and the Circuit Court refused, to appoint guardians ad litem (GALs); for whom Bauknight and SWB rejected offers to get out of this case (Richland 4900); whose parents are now suing Bauknight and CC Defendants Tommie Rae and James B. over Termination Rights;

## **3. Appointment of a GAL for Minor James B. Who Has Moved to London**

To appoint a GAL and receiver for minor CC Defendant James B., to whom Buchanan and Appellant never owed a duty; who, with Bauknight as agent, has pursued this case without a GAL for 8 ½ years; who was paid \$70,000 in 2015 from Termination Rights he placed in CC Defendant James Brown Legacy Trust in 2009; whose GAL and attorney in *Wilson v. Dallas* were awarded a \$700,000.00 legal/GAL fee in 2016 even though James B. claims only a 1/20 interest in James Brown's estate which the GAL valued at \$5 million; and who now lived in London, UK;

## **4. Appointment of Impartial PR or Receiver for Venisha Brown's Estate**

From 2010 until her death in 2018 Bauknight and SWB objected, and the Circuit court declined, to appoint a GAL for CC Defendant Venisha Brown despite her being incarcerated or institutionalized for much of the 8 years years she pursued this suit before her death. In 2012, with no contact with Venisha, Bauknight and SWB rejected an offer that would have provided her steady income and treatment. A \$2.4 million default judgment was entered against her in 2014 which is enrolled in S.C. The Termination Rights she transferred to CC Defendants in 2009, which are the subject of Appellant's and Buchanan's 2010 counterclaims for damages and offset are now vested and belong to CC Defendant Legacy Trust; yet Bauknight, her trustee and agent, allowed Venisha to be paid \$70,000 in 2016;

## **5. Adding Forlando Brown as Real-Party-in-Interest Since 2011**

In December 2010, then-AG McMaster and CC Defendant Terry Brown, with others, amended CC Defendant James Brown Legacy Trust, and allowed CC Defendant Terry Brown to transfer his interest in the Legacy Trust to Forlando Brown, who has committed fraud on multiple Courts since 2009. A motion to add Forlando Brown as the real party in interest for Terry Brown has been pending for more than 5 years, but has not been heard.

## **6. Securing Assets of Daryl Brown & Those Outside Jurisdiction**

Within a year of suing Buchanan and Pope, CC Defendant Daryl Brown denounced the settlement he has been suing Buchanan and Appellant for 8 ½ years to enforce. By 2018, however, he was denounced as a non-heir of James Brown by other CC Defendants, but is now seeking to get from Bauknight, who is acting on his behalf and as his trustee in this case, a distribution from James Brown's estate which is the subject of Buchanan's and Pope's counterclaims and offset.

**7. 2012 Motion to Void Portions of Settlement, Reinstate Buchanan**

The Circuit Court has declined since 2012 to hear a pending motion and response which would allow Buchanan to retain the \$500,000.00 and other funds he earned from CC Defendants Estate/2000 Trust of James Brown, but void unconstitutional limitations set on the payment and reinstate him. This is consistent with Judge Early's October 2013 "double approval" of Buchanan's service; praise of his work; and leaving the door open for this possible re-entry into Richland 4900, as shown in the October 2013 transcript.

On or about November 26, 2018, without hearing the Supplemental Motion to Lift Stay for Limited Purposes, Judge Early issued an Order denying reconsideration of a 2017 Order granting summary judgment to all CC Defendants as to Buchanan's and Pope's counterclaims for damages and offset.

The November 2018 order, in addition to violating the stay, ignores the overwhelming evidence developed in the Aiken 1337 trial, some of which is demonstrated herein, as well as the other admissions by CC Defendants in 2018 that there was no basis for them to sue Buchanan and Pope and that there is no merit to any defense of the counterclaims of Buchanan and Pope, even if they are let out of default in the pending appeal.

This is the 4<sup>th</sup> pre-trial order issued by the Circuit Court which has forced an appeal prior to discovery. It directly helps the 9 individual CC Defendants who are trying to escape the jurisdiction of this Court by Federal Court filings, escaping the

jurisdiction, and obtaining from Bauknight, their trustee and agent, distributions which will render the issues in this case moot.

The Supplemental Motion to Lift Stay should be granted. The premature Circuit Court orders, and orders issued in violation of the stay, continue the 8 ½-year-pattern of depriving Buchanan and Appellant of their Due Process, Discovery and FOIA, and depriving this Court of jurisdiction over the parties and assets.

Appellant incorporates the full record before the Court of Appeals, including the Record on Appeal (ROA), the Final Brief of Appellant, Appellant's Reply Brief to Respondents, and Appellant's Reply Brief to Respondent Attorney General, as well as earlier filings related to both requests for orders lifting the stay. In addition, the Court is asked to take judicial notice under SCRE 201 of the public filings in the U.S. Copyright Office referenced herein and other public filings of CC Defendants since the imposition of the stay, including but not limited to the deposition testimony and exhibits of Governor Henry McMaster and all CC Defendants on file in this case; and the deposition testimony of Governor Henry McMaster, Attorney General Alan Wilson, Solicitor General Robert Cook, former Chief Deputy Attorney General John McIntosh, Sr. Assistant Attorney General Havird "Sonny" Jones, Senior Assistant Attorney General Creighton Waters, Assistant Attorney General Mary France Jowers, AG Auditor Sandra Matthews, David Sojourner, Esq., Wallace Lightsey, Esq., James B. Richardson, Esq., Graham Foundation Trustee Stephen Lambert, and Judge (Retired) Walter Williams filed in Aiken 1337 in 2018.

**New Matter Supporting Limited Lifting of Stay**

The counterclaims of Robert Buchanan, Jr. and Appellant for abuse of process; civil conspiracy; intentional interference with their payment contract approved by Judge Early in January 2008; violation of SCPC Section 62-1-106; and attorneys' fees, and for offset against the assets of the CC Defendants in the James Brown Legacy Trust and in CC Defendant Estate/2000 Trust have been pending since 2010. It applies to Termination Rights and proceeds under Sections 203 and 304 of the U.S. Copyright Act these CC Defendants placed in CC Defendant Legacy Trust in 2009.

In 2018 the testimony of Attorney General Wilson, Governor McMaster and Solicitor General Cook in Aiken 1337 and filings in the Federal Court and Court of Appeals and Supreme Court, make clear that Bauknight is using millions of dollars from James Brown's Charity to damage Appellant so CC Defendant James Brown Legacy Trust can carry out the May 29, 2013 announced intention to reinstate the 2008 settlement which gave Will/2000 Trust contestants more than half of Brown's assets.

In 2011 Appellant and Wm. Jeffrey Smith published *Private Foundations, Copyright Heirs and Musical Millionaires: why the James Brown "I Feel Good" Trust doesn't....* *Private Foundations* explained how the misunderstanding of, and misrepresentations about, Sections 203 and 304 of the Copyright Act and the unwarranted devaluation by Bauknight, under the Attorney General's settlement, would leave the "I Feel Good" Charity with almost nothing.

Appellant and Smith also proposed a mechanism for "splitting heirs" under which the "I Feel Good" Charity should align itself with the most cooperative half or

half + 1 of Brown's heirs as defined in the Copyright Act to protect the "I Feel Good" Trust's 900 copyrights. Instead of adopting the plan, Bauknight has spent millions of dollars on Peter Afterman and a dozen lawyers to discredit Buchanan and Appellant.

Bauknight has not abandoned the claims he made to the S.C. Supreme Court on November 1, 2013: that James Brown's Estate and 2000 Trust had no corpus to speak of; that CC Defendant Tommie Rae Brown's elective share claim was a "slam dunk"; and that because of Termination Rights there would be nothing in Brown's "I Feel Good" Charity in 2023 if the settlement which gave more than half of Brown's assets to Will/2000 Trust contestants were not approved.

Bauknight's representations ignored even the most obvious facts, including that Termination Rights apply only to U.S. Copyrights, which make up only about half of Brown's annual \$3 - \$4 Million royalty income stream.

On February 27, 2013 the first decision in *Wilson v. Dallas*, 743 S.E.2d 746 (2013) was issued, and on May 8, 2013 the second decision was issued. Between the decisions, Appellant and her counsel visited the Attorney General and his senior staff of the serious damage done to the "I Feel Good" Charity and serious tax problems caused by the Bauknight/Afterman \$79 million devaluation and failure to quietly correct the \$79 million understatement of Brown's assets made to the IRS in 2011.

On May 8, 2013 the final *Wilson v. Dallas* decision was reached, and by May 29 Bauknight, while continuing as trustee for CC Defendant Legacy Trust and agent for its beneficiaries Venisha Brown, Tommie Rae, Deanna Thomas, Yamma Brown,

Terry Brown, and Daryl Brown, was reinstated by Judge Early as the fiduciary for Brown's Estate and 2000 Trust.

On May 29, 2013 Tommie Rae, Deanna, Venisha and others announced to Judge Early in open court their intention to reinstate the 2008 settlement which gave them over half of Brown's assets in exchange for baseless challenges to Brown's Will and 2000 Trust and their Termination Rights related to only about half of the \$3 - \$4 million annual royalties. They asked Judge Early to ban Buchanan and Pope from participation in the Aiken proceeding, which he did.

In August 2013 Peter Afterman, while being paid by Bauknight, helped Tommie Rae and James B. file public Termination Notices with the U.S. Copyright Office seeking to terminate U.S. royalties to more than 90 copyrights between 2015 and 2023. Bauknight continued to consult daily with Afterman; did nothing to challenge the filings; and by 2015 Tommie Rae and James B. got, by her testimony "about a million dollars" while "children" got another million for a "sale" of the U.S. royalties to 3 or 5 of the 900 James Brown copyrights. And by 2016 Tommie Rae had moved to London and become a UK resident.

By September 2013 Will/Trust contestants Deanna, Yamma and Venisha had nominated Bauknight as PR/Trustee, and met with Peter Afterman to consider joining with Tommie Rae and James B. him in siphoning off the "I Feel Good" Trust's U.S. royalties.

In October 2013 Judge Early conducted a hearing on funds which had been paid to Buchanan, including his full Special Administrator fee and \$500,000.00 of the \$500,300 PR/Trustee commission he and his staff had earned by May 26, 2009

under agreement with CC Defendant Estate/2000 Trust, as approved by Judge Early in January 2008. Judge Early praised Buchanan's work

By 2015 David Sojourner and his former law partner had been paid nearly \$1.5 million; taken 1 deposition; and allowed Tommie Brown to be declared Brown's spouse under a stipulation of facts. In his 2016 deposition Sojourner asserted he knew nothing about the James Brown assets, and that protection of the copyrights from Termination Rights claims of Tommie Rae and James B. was beyond the scope of his appointment.

In 2015 Judge Early declared that James B. was James Brown's child because no evidence of Brown's vasectomy was produced. The original order was submitted to the Clerk for filing by James B's attorney in 2018.

In 2015 Judge Early and Judge Manning, *sua sponte*, ordered a joint mediation in this case and in Aiken County Case 2013-CP-02-1337 (Aiken 1337), even though there had already been a mediation in this case, and none of the 15 private Plaintiffs in Richland 4900 is a party to Aiken 1337.

In 2015 Judge Early declined to make the successors in interest to the James Brown Legacy Trust attend the mediation, even though the Legacy Trust claimed it no longer existed. Judge Manning exempted most individual CC Defendants from attendance.

By 2017 CC Defendants Jason Brown Lewis and others had been deposed. Most did not know they had moved to intervene in a FOIA case; did not know anything about Richland 4900; and did not know about either the 2012 or the 2015 mediation. None had received offers made by Appellant in 2012. Some, such as

Jason Brown Lewis, directly disagreed with positions which SWB and Bauknight continue to take for them, including that Brown's music empire was worth \$4.7 million at his death and that Tommie Rae Brown is James Brown's spouse.

In 2016 Judge Early awarded the GAL and attorney for James B., approximately \$700,000.00 in attorney and GAL fees, even though he had refused a \$300 paid-for DNA test in 2008 and 2009 and claimed only a 1/20 interest in an Estate he told the Supreme Court was worth only \$5 million; and, even if a child, was otherwise provided for by valuable Termination Rights and an \$80,000 fund Brown left him at his death. The award was \$500,000.00 in past fees, and \$5,000 each for an estimated 41 depositions James B. proposed to take.

The payment order which Bauknight approved was objected to by Sojourner in 2016, but his objection was apparently withdrawn. [See Sojourner deposition for a copy of the Order and discussion]

In 2016 Bauknight and the beneficiaries of CC Defendant Legacy Trust began seeking to consolidate discovery and expert discovery in Richland 4900 with Aiken 1337. While the cases were not consolidated, SWB counsel was allowed to attend the depositions of the Attorney General and his staff to protect the interest of CC Defendant Attorney General.

In 2016 CC Defendant Legacy Trust and its beneficiaries moved for summary judgment, while Appellant urged Judge Early to correct the parties; add Forlando Brown; and take the actions described above.

By the time Venisha died in September 2018 the various CC Defendants were continuing their litigation against each other, with some suing Bauknight and

Sojourner. What was certain, however, is that all were working together to deprive this Court of its jurisdiction over the parties and the now-vested interest in the U.S. royalties to 246 James Brown copyrights which were placed in CC Defendant James Brown Legacy Trust in 2009.

**Venisha Brown, her Estate, and Bauknight on her behalf:**

At her death, Venisha Brown had been incarcerated or claimed to be missing for most of the 8 years she has been suing Buchanan and Pope. While SWB and Bauknight claimed she could not be found to be deposed in this case, she and others, were securing a vested right in U.S. royalties to 246 copyrights.

**Tommie Rae Brown and Bauknight on her behalf:**

In the 2016 deposition Tommie Rae Brown admitted that she had been paid about \$1 million from a "sale" of royalties to 3 copyrights. She had put them in Plaintiff Legacy Trust in 2010.

**Tonya Brown, a/k/a Sarah LaTonya Fegan and Bauknight on her behalf:**

James Brown gave Tonya nothing and Buchanan and Pope never owed her a duty. Yet she has been suing them for 8 ½ years.

These are just three examples of the joint effort of Bauknight, the James Brown Legacy Trust and its beneficiaries to deprive this Court of jurisdiction and render the issues in the case moot. The November 2018 Order of Judge Early had aided them in their effort. The attachments provide an example of the documents which support Appellant's motion.

### Conclusion

For the reasons stated in the Supplemental Motion and all previous filings, this Court should lift the stay for the limited purposes set out in the motion.

Respectfully submitted,

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Columbia, South Carolina 29202  
Telephone (803) 799-1770  
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s/W.H. Bundy, Jr.  
W.H. Bundy, Jr.  
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Telephone (843) 492-4134  
Facsimile (843) 712-7318  
walter@bundymcdonald.com

Attorneys for Appellant

December 6, 2018

### List of Exhibits

- A. U.S. Copyright Office Termination Notice, Tommie Rae Brown & James B., I don't know and 93 other titles. Served 29 Aug 13, filed August 28, 2015.
- B. U.S. Copyright Office Termination Notice, Deanna Brown-Thomas, Venisha Brown, Terry Brown and others, I don't know & 18 other titles. Served 08 Dec. 14, filed October 1, 2016.
- C. U.S. Copyright Office Termination Notice, Deanna Brown-Thomas, Yamma Brown, Venisha Brown, and others, Baby cries over the ocean & 245 other titles. Served 1 Jun 2016, filed June 6, 2018.

- D. \$2,400,000 Judgment of Hope E. Campbell against Venisha A. Brown, dtd. 4/20/15, Richmond County, GA, filed Aiken County, 8/2/17, Case No. 2017-CP-02-01830.
- E. Excerpts, deposition of Attorney General Alan M. Wilson, March 21, 2017, Aiken 1337.
- F. Excerpts, deposition of Solicitor General Robert Cook, February 8, 2017, Aiken 1337.
- G. Brief of Respondent Legacy Trust (partial), S.C. Court of Appeals Case no. 2016-
- H. Petition for Writ of Certiorari (partial) filed November 9, 2018, former S.C. Court of Appeals Case No. 2015-002417.
- I. Petitioner's Motion to Accept Petition for Certiorari or for Extension related to death of Venisha Brown (partial), former S.C. Court of Appeals Case No. 2015-002417.

# Copyright

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Exhibit A

## Public Catalog

Copyright Catalog (1978 to present)

Search Request: Builder = (termination notice)[ in Keyword Anywhere ]AND(James Brown)  
[ in Keyword Anywhere ]

Search Results: Displaying 4 of 1 entries



*I don't know & 93 other titles.*

**Type of Work:** Recorded Document

**Document Number:** V3632D755

**Date of Recordation:** 2015-08-28

**Entire Copyright Document:** V3632 D755 P1-21

**Title:** I don't know & 93 other titles.

**Notes:** Notice of termination of grant under 17 USC Section 304(c); date and manner of service of the notice: 29Aug13, by certified mail, return receipt requested and regular mail.

**Party 1:** Tommie Rae Brown, Widow & James Brown II, child of deceased author James Brown.

**Party 2:** Carlin America, Inc. d.b.a. Fort Knox Music, Inc. d.b.a. Freddy Bienstock Music Company.

**Links:** [List of Titles](#)

**Names:** [Brown, Tommie Rae](#)

[Brown II, James](#)

[Brown, James](#)

[Carlin America, Inc.](#)

[Fort Knox Music, Inc.](#)

[Freddy Bienstock Music Company.](#)



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# Copyright

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Exhibit B

## Public Catalog

Copyright Catalog (1978 to present)

Search Request: Builder = (termination notice)[ in Keyword Anywhere ]AND(James Brown)  
[ in Keyword Anywhere ]

Search Results: Displaying 2 of 1 entries



*I don't know & 18 other titles;*

**Type of Work:** Recorded Document

**Document Number:** V9952D447

**Date of Recordation:** 2016-10-31

**Entire Copyright Document:** V9952 D447 P1-8

**Title:** I don't know & 18 other titles; musical compositions.

**Notes:** Notice of Termination of grant under 17 USC Section 304(c); date of manner of service of notice: 08Dec14, by First Class mail. C.O. correspond.

**Party 1:** Deanna Brown Thomas, Yamma Brown, Venisha Brown, Terry Brown, Michael D. Brown, Jeanette Mitchell Bellinger, & Nicole Parris, children & Ciarra Pettit, Cherquarius Williams & Sarah L. Fegan, grandchildren of deceased author James Brown.

**Party 2:** Unichappell Music, Inc., Fort Knox Music, Inc., TQ Music, Inc., d.b.a. Trio Music Company (New York) & TQ Music, Inc., d.b.a. Trio Music Company (Los Angeles, CA)

**Links:** [List of Titles](#)

**Names:** [Thomas, Deanna Brown](#)

[Brown, Yamma](#)

[Brown, Venisha](#)

[Brown, Terry](#)

[Brown, Michael D.](#)

[Bellinger, Jeanette Mitchell](#)

[Parris, Nicole](#)

[Pettit, Ciarra](#)

[Williams, Cherquarius](#)

[Fegan, Sarah L.](#)

[Brown, James](#)

[Unichappell Music, Inc.](#)

[Fort Knox Music, Inc.](#)

[TQ Music, Inc.](#)

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**Copyright**

United States Copyright Office

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## Public Catalog

Copyright Catalog (1978 to present)

Search Request: **Builder = (termination notice)[ in Keyword Anywhere ]AND(James Brown)**  
[ in Keyword Anywhere ]

Search Results: Displaying 1 of 1 entries

***Baby cries over the ocean & 245 other titles.*****Type of Work:** Recorded Document**Document Number:** V9955D041**Date of Recordation:** 2018-06-07**Entire Copyright Document:** V9955 D041 P1-49**Title:** Baby cries over the ocean & 245 other titles.**Notes:** Notice of termination of grant under 17 USC Section 304(c); date and manner of service of the notice: 1Jun16, by first class mail.**Party 1:** Deanna Brown Thomas, Yamma Brown, Venisha Brown, Michael D. Brown, Jeanette Mitchell Bellinger, Nicole Parris, children & Ciara Pettit, Cherquarius Williams, & Sarah L. Fegan, grandchildren of deceased author James Brown.**Party 2:** Warner-Tamerland Publishing Corporation, Unichappell Music, Inc., A/C Jadar Music Corporation, Unichappell Music, Inc., A/C Dynatone Publishing Co., Golo Publishing Company, Warner/Chappell Music, Inc., Carlin America, Inc., Fort Knox Music, Inc., Freddy Bienstock Music Company, Bro 'N' Sis Music, Inc., T/Q Music, Inc., Bug Music, d.b.a. T/Q Music, Inc., d.b.a. Trio Music Company, Toccoa Industries, Inc., Songs of Universal, Inc., EMI Longitude Music, Donna Dijon Music Publications, Irving Music, Inc., East Memphis Sp. Acct., Anthem Music, Media Fund, LLC, d.b.a. Figs D Music, A/C Sanga Music, Inc., Morris Music, Inc., Czedon Music, Wren Music Company, a division of MPL Music Publishing, Inc., & M Jones Publishing Company.**Links:** [List of Titles](#)**Names:** [Thomas, Deanna Brown](#)[Brown, Yamma](#)[Brown, Venisha](#)[Brown, Michael D.](#)[Bellinger, Jeanette Mitchell](#)[Parris, Nicole](#)[Pettit, Ciara](#)[Williams, Cherquarius](#)[Fegan, Sarah L.](#)[Brown, James](#)

- [Warner-Tamerland Publishing Corporation](#)
- [Unichappell Music, Inc.](#)
- [A/C Jadar Music Corporation](#)
- [Unichappell Music, Inc.](#)
- [A/C Dynatone Publishing Co.](#)
- [Golo Publishing Company](#)
- [Warner/Chappell Music, Inc.](#)
- [Carlin America, Inc.](#)
- [Fort Knox Music, Inc.](#)
- [Freddy Bienstock Music Company](#)
- [Bro 'N' Sis Music, Inc.](#)
- [T/Q Music, Inc.](#)
- [Bug Music](#)
- [T/Q Music, Inc.](#)
- [Trio Music Company](#)
- [Toccoa Industries, Inc.](#)
- [Songs of Universal, Inc.](#)
- [EMI Longitude Music](#)
- [Donna Dijon Music Publications](#)
- [Irving Music, Inc.](#)
- [East Memphis Sp. Acct.](#)
- [Anthem Music](#)
- [Media Fund, LLC](#)
- [Figs D Music](#)
- [A/C Sanga Music, Inc.](#)
- [Morris Music, Inc.](#)
- [Czedon Music](#)
- [Wren Music Company](#)
- [MPL Music Publishing, Inc.](#)
- [M Jones Publishing Company](#)



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Exhibit D

CLERK OF SUPERIOR STATE  
AND JUVENILE COURT  
FILED FOR RECORD

IN THE SUPERIOR COURT OF RICHMOND COUNTY

APR 21 AM 11:18

STATE OF GEORGIA

ELAINE C. JOHNSON, CLERK  
RICHMOND COUNTY, GA.

HOPE E CAMPBELL,

Plaintiff,

v.

VENISHA ARMAA BROWN,

Defendant.

CIVIL ACTION NO. 2014RCCV81

**DEFAULT JUDGMENT**

It appearing to the Court that a Complaint was filed by Plaintiff against Defendant in the above case and properly served upon Defendant on February 13, 2014; and this action having become in default on or before April 4, 2014 by failure of Venisha A. Brown, Defendant, to answer or otherwise file defensive pleadings in response to Plaintiff's Complaint, and fifteen (15) days having elapsed from the date of default, and the default not having been opened as a matter of right or by order of the Court;

And it further appearing that counsel has certified to the Court the type of service perfected and the lack of responsive pleadings in accordance with U.S.C.R. Rule 15, and counsel has supplied the Court with an Affidavit pursuant to the Servicemember's Civil Relief Act (50 U.S.C. App § 501, *et seq.*) certifying that Defendant is not active duty in any branch of the military or uniformed services per the Department of Defense Manpower Data Center;

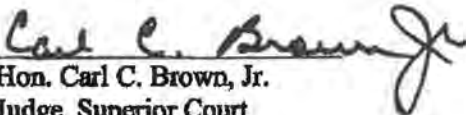
And the issue of damages having been tried before the Court without a jury, and after consideration of the evidence a decision having been rendered by the Court against Defendant and in favor of the Plaintiff Hope E. Campbell for an award of actual damages in the sum

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ELECTRONICALLY FILED - 2017 Aug 02 3:08 PM - AIKEN - COMMON PLEAS - CASE#2017CP0201830

of: **Two Million Four Hundred Thousand Dollars and no cents (\$2,400,000.00)**, and it appearing to the Court that there is no just reason for delaying entry of final judgment, the entry of which is hereby expressly directed pursuant to O.C.G.A. § 9-11-54;

NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that the Plaintiff Hope E. Campbell shall have and recover from Defendant Venisha A. Brown the sum of: **Two Million Four Hundred Thousand Dollars and no cents (\$2,400,000.00)**, together with costs of this action.

Judgement entered this 20th day of April, 2015.

  
Hon. Carl C. Brown, Jr.  
Judge, Superior Court  
Augusta Judicial Circuit

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**CERTIFICATE OF SERVICE**


I do hereby certify that on this day I served a copy of the within and foregoing ORDER upon the following:

Thomas R. Burnside, III  
Burnside Law Firm LLP  
P.O. Box 15636  
Augusta, GA 30919

Venisha A. Brown GDC# 000902393  
Pulaski State Prison  
373 Upper River Road  
Hawkinsville, GA 31036

by depositing a copy of the same in the United States Mail in a properly addressed envelope with adequate postage affixed thereon.

This 20<sup>th</sup> day of April, 2015.

  
Patrick L. Crawford  
Law Clerk to  
Hon. Carl C. Brown, Jr.  
Judge, Superior Court  
Augusta Judicial Circuit

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STATE OF GEORGIA  
RICHMOND COUNTY

SUPERIOR COURT

I, RUTH TEMPLES, Deputy Clerk of Superior Court of Richmond County, Georgia, hereby certify that the foregoing is a true copy of the original of file and of record in this office in Re:

2014RCCV00081

HOPE E CAMPBELL VS. VENISHA ARMAA BROWN

DEFAULT JUDGMENT SIGNED ON 4-20-15

Witness my signature and the seal of said court herefore affixed at  
Augusta, Georgia this 27<sup>TH</sup> day of MAY, 2015.



*Ruth Temple*

DEPUTY CLERK

**WRIT OF FIERI FACIAS  
IN THE SUPERIOR COURT OF RICHMOND COUNTY, GEORGIA**

Civil Action Number: 2014RCCV00081 HOPE E CAMPBELL

Judgment Date: 04/20/2015 \_\_\_\_\_  
Plaintiff(s)

Plaintiff's Attorney - Name, Address &  
Telephone Number

VS.

VENISHA A BROWN  
1426 TROUPE STREET  
AUGUSTA, GA 30901  
Defendant(s)

Name: THOMAS R. BURNSIDE JR  
 Address: P.O. BOX 15636  
AUGUSTA, GA 30913

Telephone & Area Code: (706) 832-4320

To all and singular the sheriffs of the State and their lawful deputies:

Fi.Fa. In  
Hands of: \_\_\_\_\_

In the above styled case, and on the judgment date set out, the plaintiff(s) named above recovered against the defendant(s) named above, judgment in the following sums:

Principal	<u>\$2,400,000.00</u>
Interest	_____
Interest - Other	_____
Attorney's Fees	_____
Fifa Cost	<u>\$5.00</u>
Court Costs	<u>\$205.00</u>
Total	<u>\$2,400,210.00</u>

**CANCELLATION**

The within and foregoing Fi.Fa having been paid in full the Clerk of Superior Court is hereby directed to cancel it of record this \_\_\_\_ day of \_\_\_\_\_.

NOTE: \_\_\_\_\_

with future interest upon said principal amount from the date of judgment at the legal rate.

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Therefore, **YOU ARE COMMANDED**, that of the goods and chattels, lands and tenements of said defendant(s), and **ESPECIALLY/ONLY** of the following described property, to wit:

YOU cause to be made the several sums set out in the foregoing recital of the judgment in this case and have the said several sums of money before the Superior Court of this County at the next term of court, with this Writ to render to said plaintiff(s) the principal, interest, attorney fees and costs aforesaid.

Witness the Honorable CARL C. BROWN JR. Judge  
of Said Court, this the 29th day of May, 2015

Elaine C. Johnson, CLERK

By: *Dara Killeanor*  
 Deputy Clerk



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 2015027987 08/10/2015 14:34:25.00  
 \$5.00 FIFa  
 2015027987 Augusta - Richmond County  
 Filed in this office:  
 Augusta - Richmond County  
 06/10/2015 14:34:25.00  
 Elaine C Johnson  
 Clerk of Superior Court

Exhibit E

1 State of South Carolina ) In the Court of Common Pleas  
 2 County of Aiken ) Case No: 2013-CP-02-1337  
 3 Adele J. Pope, )  
 4 Plaintiff(s), ) Deposition of  
 5 vs. ) Alan M. Wilson  
 6 ) March 21, 2017  
 7 The Estate of James Brown and The James Brown 2000)  
 8 Irrevocable Trust, )  
 9 Defendant(s). )  
 10 \_\_\_\_\_ )  
 11 )

12 Deposition of ALAN M. WILSON, taken before Frances  
 13 C. Gray, Verbatim Court Reporter and Notary Public  
 14 in and for the State of South Carolina, scheduled  
 15 for 10:00 a.m. and commencing at the hour of 10:15  
 16 a.m., Tuesday, March 21, 2017, at the Office of  
 17 the Attorney General, Rembert Dennis Building,  
 18 1000 Assembly Street, Columbia, South Carolina.

. . .  
 ALAN M. WILSON  
 803-256-4500  
 GARBER REPORTING SERVICE

Page 2  
 1 APPEARANCES

2  
 For the Pro Se Plaintiff(s):  
 3 ADELE J. POPE, Attorney/Esquire  
 LAW OFFICE OF ADELE J. POPE, PC  
 4 1228 Walnut Street  
 Newberry, South Carolina 29108  
 5 adele@popelawfirm.com

6 For the Defendant(s):  
 J. EMORY SMITH, JR., Attorney/Esquire  
 7 ROBERT D. COOK, Attorney/Esquire  
 OFFICE OF THE ATTORNEY GENERAL OF SOUTH CAROLINA  
 8 1000 Assembly Street  
 Columbia, South Carolina 29201  
 9 ESmith@scag.gov

(For the Office of the Attorney General)

10  
 J. DAVID BLACK, ESQUIRE  
 11 NEXSEN PRUET ADAMS KLEEMEIER, LLC  
 1441 Main Street, Suite 1500  
 12 Columbia, South Carolina 29201

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2 **Q. I'm sorry, that was my fault. Are you aware of**  
3 **any lawsuit being waged by the Attorney General of**  
4 **South Carolina in which the Attorney General is**  
5 **not a lawyer of record in the case?**

6 A. There was a case several years ago in which the  
7 former treasurer brought a suit against Bank of  
8 New York Mellon and the Attorney General was not  
9 originally a member, but that the treasurer and  
10 the attorney at that time had to sign a litigation  
11 retention agreement, but we weren't originally a  
12 party of that suit, but that is no longer ongoing.

13 **Q. Are you aware that you are a named party in the**  
14 **Wingate suit?**

15 A. Yes, ma'am.

16 **Q. Have you condoned the continuation of the Wingate**  
17 **suit since January 2011?**

20 A. I remember in that first year that I was in  
21 office -- as I stated earlier, I inherited several  
22 thousand -- more than several thousand cases, and  
23 as I was being briefed by senior staff and  
24 attorneys handling cases, this case was brought to  
25 my attention. And while I don't recall

Page 13

1 specifically what was mentioned in that meeting --  
2 those meetings at that time, I do know that I  
3 authorized the continuation of that suit in order  
4 to maintain the status quo of the office from the  
5 previous administration to mine.

. . .

Page 14

10 **Q. So have you heard that Henry McMaster has said he**  
11 **did not authorize the lawsuit to be brought in the**  
12 **name of the Attorney General?**

13 A. I have read Mr. McMaster's first deposition. I  
14 have not read his the second deposition. And in  
15 the first deposition -- I brought it with me and I  
16 haven't read the whole thing, but I did read -- it  
17 would be page 32 -- oh, and by the way, it was a  
18 deposition taken on August 18, 2016. And in that,  
19 Mr. McMaster was asked the question, as an  
20 example, this particular action against Ms. Pope  
21 now, would Mr. Jones have consulted you before  
22 filing this lawsuit? Mr. McMaster answers, yes.  
23 Next question, and he would've had your approval?

24 Mr. McMaster answered, yes. And then the next  
25 question, and he wouldn't have been able to file  
Page 15

1 it without your approval; is that correct? Well,  
2 he would've have or filed it without your  
3 approval, I'll put it to you that way.

4 Mr. McMaster answered, well, it Mr. Bauknight who  
5 filed the case. Okay. And then Mr. McMaster  
6 answered, and he did not need my approval. He may  
7 have wanted it, but he doesn't work for me.  
8 That was from Mr. McMaster's deposition in  
9 August. So I did not have any direct knowledge  
10 of Mr. McMaster's involvement prior to taking  
11 office and I only just recently read this  
12 deposition of his impressions last August. My  
13 understanding, when I took office in 2011, was  
14 that senior staff and members of my office  
15 staff downstairs brought the case before me. I  
16 was under the impression it was ongoing and  
17 that I needed to continue it in order to  
18 maintain the status quo.

19 **Q. In preparation for this deposition, did you not**  
20 **review the sworn testimony of Henry McMaster in**  
21 **this case made after the deposition which you just**  
22 **read?**

23 A. I have not.

24 **Q. Do you dispute that he said in that, that he did**  
25 **not authorize the lawsuit to be filed in the name**  
Page 16

1 **of the Attorney General?**

2 A. I can't dispute what he said because I haven't  
3 read it.

4 **Q. Do you dispute that he said he did not authorize**  
5 **Russell Bauknight to bring the Wingate lawsuit in**  
6 **the name of -- on behalf of the Attorney General**  
7 **of South Carolina?**

8 A. I would have no way to dispute it because I  
9 haven't read it.

10 **Q. Okay. Have you and Tommie Rae Hynie had**  
11 **75 percent control of the James Brown Legacy Trust**  
12 **since you took office?**

15 A. As I stated earlier, I can't answer specifics  
16 about the litigation because I'm personally not

17 aware.

18 **Q. You're unaware that you have had personal control**  
19 **of the James Brown Legacy Trust during your**  
20 **service as Attorney General?**

21 A. You say my personal control and I will go back to  
22 my preamble statement that I supervise probably  
23 close to 90 attorneys and over 200 personnel that  
24 handle between 7 and 8,000 cases at any given  
25 point in a year, and that number fluctuates

Page 17

1 constantly. I have to rely on what I am told by  
2 those attorneys in making decisions. So I don't  
3 know the specifics of every case, but when they  
4 are brought to my attention, I make decisions  
5 based on what I am told. I don't have that  
6 detailed a knowledge about what percentage of what  
7 -- I just can't answer because I don't have any  
8 personal knowledge.

9 **Q. Have you discussed the Wingate suit with Ken**  
10 **Wingate?**

11 A. No, ma'am.

12 **Q. Never?**

13 A. I've talked to Mr. Wingate a couple of years ago  
14 about this, but I don't recall specifically what  
15 we discussed. I haven't talked to him about this  
16 case in several years.

17 **Q. Have you ever reviewed a pleading filed by**  
18 **Mr. Wingate in the name of the state on your**  
19 **behalf?**

20 A. I don't recall reading any pleadings from several  
21 years ago. I may have; I may not have. I just  
22 don't recall.

. . .  
7 MR. BLACK: The Estate and Trust needs to  
8 put on the record, as well, several times  
9 you've discussed the Legacy Trust and, for the  
10 record, Judge Early has declared pursuant to an  
11 order that there is no Legacy Trust. So to the  
12 extent that you're referring to a Legacy Trust  
13 you or instructing the witness on the Legacy  
14 Trust, our objection is that there is no Legacy  
15 Trust pursuant to the court's order.

16 A. Specifically, to your question, I would have  
17 spoken to Bob Cook, possibly John McIntosh a good

18 **Charity --**

19 A. No.

20 **Q. Or its 900 copyrights?**

21 A. No.

22 **Q. In eight years, two attorneys general have been**  
23 **involved in the James Brown litigation. During**  
24 **that period, has any member of the AG's staff**  
25 **developed any expertise in, or understanding of,**

Page 24

1 **the Federal Copyright Act Termination Rights**  
2 **provisions?**

. . .

4 A. I would have no way to know that.

5 **Q. Who would know?**

6 A. I don't know.

7 **Q. Did you hear Russell Bauknight's Nexsen Pruet**  
8 **lawyer tell the South Carolina Supreme Court on**  
9 **November 1, 2013 that Copyright Termination Rights**  
10 **are all this estate is about?**

11 . . .

13 A. I don't remember hearing that. I may have, I just  
14 don't recall.

15 **Q. Were you present at the oral arguments --**

16 A. I believe -- I believe I was.

17 **Q. Do you believe that understanding Termination**  
18 **Rights is critical to the protection of James**  
19 **Brown's "I Feel Good" Charity and its 900**  
20 **copyrights?**

. . .

23 A. I have no way to know that.

24 **Q. Are you currently suing in a lawsuit where you**  
25 **accused Bob Buchanan and Adele Pope of not having**

Page 25

1 **adequate knowledge of Termination Rights?**

. . .

3 A. I am aware that we're in a lawsuit -- that we were  
4 in a lawsuit -- are in a lawsuit, excuse me, and  
5 that I -- a lawsuit that I authorized in 2011,  
6 that brought breach of trust -- breach of duty.

7 And as to the specifics in litigating the facts of  
8 that, I cannot answer directly.

9 **Q. Have you not reviewed the complaint in the Wingate**  
10 **suit in preparation for this deposition?**

11 A. I glanced at it.

12 **Q. In that lawsuit, do you accuse Bob Buchanan and**  
13 **Adele Pope of having breached their fiduciary duty**  
14 **by not having an understanding of Termination**  
15 **Rights?**

. . .  
17 A. All I can say is the complaint speaks for itself.  
18 I glanced at it prior to this. I did not read it  
19 fully.

20 **Q. Do you take no responsibility for a lawsuit that**  
21 **you have pursued for seven years against a South**  
22 **Carolina citizen -- six years against a South**  
23 **Carolina citizen?**

. . .  
Page 26

2 A. Ms. Pope, I will restate. I am responsible for  
3 8000 cases on average that this office brings  
4 criminally, civilly and otherwise, and I can't  
5 possibly be intimately involved in the details and  
6 allegations in every suit. I make majority of my  
7 decisions based on advice of senior attorneys and  
8 counsel in this office, but I just can't speak to  
9 every single detail and I can't personally  
10 litigate the case. It's impossible for one person  
11 to be the chokepoint for all litigation this  
12 office -- and understand everything. So I have to  
13 rely on people acting on behalf of the office.

14 **Q. Well, you have been the chokepoint for**  
15 **Mr. Buchanan and Ms. Pope for six years, haven't**  
16 **you?**

. . .  
18 A. I don't understand your question.

19 **Q. Did you hear Russell Bauknight's Nexsen Pruet**  
20 **lawyer tell the South Carolina Supreme Court on**  
21 **November 1, 2013, that Tommie Rae's elective share**  
22 **claim was a slamdunk?**

23 A. I don't recall.

24 **Q. Do you believe that Tommie Rae's elective share**  
25 **claim is a slamdunk?**

. . .  
Page 27

1 A. I have no way to answer that.

2 **Q. Do you agree with the finding of the South**  
3 **Carolina Supreme Court that you, as AG, maintained**  
4 **effective control over the James Brown assets from**

7 from the Wingate law suit?

. . .  
9 A. No.

10 Q. Does the contract that you entered into with the  
11 Wingate Firm provide that your office will be paid  
12 ten percent of Mr. Wingate's legal fee?

. . .  
14 A. I'm not aware of that.

15 Q. Should you be aware of that?

. . .  
17 A. I can't be aware of every single thing that  
18 happens in this office; it's impossible.

19 Q. Do you and Tommie Rae have the obligation, based  
20 on your 75 percent voting control, to assure that  
21 the Legacy Trust, which AG McMaster created, was  
22 terminated properly because it had charitable  
23 beneficiaries?

. . .  
25 A. I don't know.

Page 32

1 Q. Do you know whether anyone properly terminated  
2 that partially charitable trust in accordance with  
3 the law?

. . .  
5 A. And, again, you're going into a lot of detail that  
6 really I have no way to know.

7 Q. So the answer is, you do not know whether the  
8 Legacy Trust was properly terminated in accordance  
9 with law?

10 A. I don't know the answer to that.

11 Q. Do you agree that James Brown's fiduciaries have a  
12 duty to uphold his Will, which leaves the bulk of  
13 his fortune to the "I Feel Good" Charity to  
14 educate needy students?

. . .  
16 A. I have no way to answer that. May I ask what  
17 question you're at?

18 Q. Yes, 16. I'll state it again. Do you agree that  
19 James Brown's fiduciaries have a duty to uphold  
20 his Will, which leaves the bulk of his fortune to  
21 his "I Feel Good" Charity to educate needy  
22 students?

. . .  
Page 33

17 Q. As soon as I figure out where we are, I'll be glad  
18 to tell you. I kind of lost my track also.

19 A. Yes, ma'am. Yes, ma'am.

20 Q. Do you know that between the 2000 -- 30, please.

21 Do you know that between the 2004 settlement and  
22 Brown's death on December 25, 2006, Tommie Rae  
23 begged James Brown to marry her, but he refused?

Page 42

1 A. Thirty. Oh, I have no knowledge.

2 Q. Do you know that Brown's death certificate, with  
3 his daughter Dr. Yamma Brown as informant, lists  
4 Brown's last spouse as Adrienne Rodriguez?

5 A. I did not know.

6 Q. Do you know that in January 2007, Tommie Rae not  
7 only made a contract with her lawyer, Mr. Rosen,  
8 but also signed a contingency fee contract with  
9 attorney Peter Shahid, who would represent her  
10 son?

11 A. No.

12 Q. Do you know that since 2013 Mr. Shahid and the GAL  
13 he selected, Stephen Slotchiver, have awarded  
14 \$700,000 in legal fees, payable from James Brown's  
15 charity, in addition to Mr. Shahid's contingency  
16 fee contract with Tommie Rae?

17 A. No.

18 Q. Do you think you have a duty to investigate that?

19 A. No.

20 Q. Have you done anything since May 8, 2013 to  
21 investigate Mr. Shahid and Mr. Slotchiver and  
22 particularly why they asked for and received  
23 \$700,000 from funds James Brown gave his "I Feel  
24 Good" Charity when they claim that Brown's Estate  
25 was worth only \$5 million when he died?

Page 43

. . .  
3 A. Thirty-four. If the office has done anything, I'm  
4 not aware of it.

5 Q. Have you done -- do you realize that Peter  
6 Afterman, the person Russell Bauknight claims is  
7 the expert consulted by PWB when it valued James  
8 Brown's music empire at \$4.7 million, claimed in  
9 2014 -- '15 that he was hired by the State of  
10 South Carolina to manage James Brown's assets?

. . .

24 A. I will restate, I have no personal knowledge that  
25 I can recall.

Page 47

1 **Q. You have no personal knowledge of what?**

2 A. Of if there's been an investigation or review by  
3 this office. Again, I'm not involved in the  
4 day-to-day litigation of the case or any  
5 investigations coming out of it.

6 **Q. And you've never investigated, yourself,**  
7 **personally, or ordered an investigation of the**  
8 **devaluation of James Brown's assets from**  
9 **84 million -- his music empire and related assets**  
10 **from 84 million to 4.7 million?**

11 A. Personally, the only thing I've ever done is the  
12 authorization of the lawsuit when I came in, in  
13 order to maintain a status quo of the case, but  
14 beyond that, I don't get involved in the  
15 day-to-day specifics of the litigation.

16 **Q. Well, actually, didn't you meet with me on**  
17 **March 6, 2013, when I expressed grave concern**  
18 **about the damage this devaluation did to the James**  
19 **Brown "I Feel Good" Trust?**

20 A. I do remember meeting with you a few years ago. I  
21 don't remember when, but I remember we met.

22 **Q. And do you remember that one of the primary**  
23 **subjects was the damage caused by this devaluation**  
24 **of James Brown's assets?**

25 A. And, Ms. Pope, and I apologize to you, I really  
Page 48

1 remember meeting with you and I remember you  
2 raising a bunch of concerns, but I just don't  
3 remember all of the context of that meeting. It's  
4 been so long.

5 **Q. Certainly. Are you aware that Sonny Jones and**  
6 **Alan Medlin contacted Ken Wingate in about**  
7 **March 2010 to sue Bob Buchanan and Adele Pope if**  
8 **they they would not drop the appeal of the**  
9 **McMaster Settlement which became Wilson versus**  
10 **Dallas?**

11 A. I'm not aware of what they did before I was  
12 Attorney General.

13 **Q. Are you aware of emails that have been produced by**  
14 **your office and Mr. Bauknight which show how**  
15 **Freddie Kingmore, Sonny Jones and others planned**

11 **Buchanan and Adele Pope at any time between**  
12 **March 7, 2007 and May 26, 2009?**

13 A. Are you --

14 **Q. That's not a question. Just --**

15 A. Would you repeat so I can look at you.

16 **Q. Sure. Sorry. I didn't mean to trick you.**

17 A. Yes, ma'am.

18 **Q. Do you know anything sitting here today about the**  
19 **service of Bob Buchanan and Adele Pope to the**  
20 **Estate and Trust of James Brown between March 7,**  
21 **2007 and May 26, 2009.**

22 A. I know nothing firsthand. I know what I was  
23 briefed on in 2011 when I authorized the lawsuit.  
24 I -- also, but I will say this: I know that  
25 senior members of my staff hold you in the highest  
Page 51

1 regard and have spoke highly of you, but other  
2 than our meeting in 2013 and this meeting, I don't  
3 think you and I have ever had any interactions  
4 together. So I only know you by your good  
5 reputation with Mr. Cook and Mr. McIntosh who --  
6 who have known you much longer than me.

7 **Q. Thank you. Let's go back to what you were briefed**  
8 **by your staff in 2011, please.**

9 A. Okay.

. . .  
Page 52

9 **Q. I referred to myself as Ms. Service, I apologize.**  
10 **Subject to Mr. Smith's direction, can you tell me**  
11 **what you remember now what your staff briefed you**  
12 **on about Mr. Buchanan and Ms. Pope in 2011.**

13 A. Okay. That's what threw me off, when you said Ms.  
14 Service, and there was a new name I haven't heard  
15 before.

16 **Q. That would've thrown me off, too.**

17 A. No. We have informal conversations and I was  
18 telling you earlier that I only knew you by  
19 reputation and as an attorney in the bar in this  
20 community, and people that knew you, like Mr. Cook  
21 sitting here today, spoke very highly of you.  
22 Mr. McIntosh spoke very highly of your legal  
23 skills.

24 As it relates to me being briefed on the  
25 staff, I couldn't violate privilege right now

6 prior to me getting the office. I was not ever  
7 aware there was an issue until recently.  
15 (Whereupon, Motion to Supplement  
16 the Record was marked Exhibit  
17 No. 3 for identification.)  
18

19 **Q. I've marked as Wilson 3 a Motion to Supplement the**  
20 **Record. It was your staff that told -- was just**  
21 **the first page. It was your staff which told the**  
22 **Supreme Court that James Brown's music empire was**  
23 **worth less than 4.7 million, not the staff of**  
24 **Attorney General McMaster; isn't that correct?**

25 A. I don't know.

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1 MS. POPE: I thank you.

2 THE WITNESS: Thank you, Ms. Pope.

6 CROSS-EXAMINATION

7 BY MR. SMITH:

. . .  
17 **Q. Did you authorize the continuation of Case 4900**  
18 **with the Attorney General in the caption?**

19 A. I did.

23 REDIRECT EXAMINATION

24 BY MS. POPE:

25 **Q. Has no one told you about Governor McMaster's**

Page 84

1 **sworn statements in a deposition subsequent to**  
2 **that in which he specifically stated under oath**  
3 **that he did not sue Adele Pope and Bob Buchanan as**  
4 **Attorney General, that he did not authorize his**  
5 **name to be in the caption, that he did not**  
6 **authorize Russell Bauknight to be -- to bring the**  
7 **lawsuit on behalf of the Attorney General, and**  
8 **that he did not learn that he was in the caption**  
9 **until after he left office?**

. . .  
12 A. I was told that Mr. McMaster had two depositions.  
13 And I was told that -- I haven't read the second  
14 one so I can't speak specifically in an itemized  
15 way the way you did, so I don't know exactly what  
16 he said in a deposition, but I do have this  
17 deposition that I just read and that is the one

18 that I can speak firsthand knowledge of.

. . .

Page 85

. . .

12 **Q. The question is, did someone in your staff tell**  
13 **you that Henry McMaster was more definitive in his**  
14 **Wingate suit deposition than he was in his later**  
15 **deposition?**

16 A. Yes, ma'am.

17 **Q. Do you think you might need to check that for**  
18 **yourself?**

19 A. I'm more than happy to check it.

20 MS. POPE: Thank you.

25

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. . .

19 FURTHER DIRECT EXAMINATION

20 BY MS. POPE:

Page 87

3 **Q. Well, Mr. Smith just asked you prior to the first**  
4 **staff deposition what you knew, but you said you**  
5 **don't know when the first staff deposition was?**

6 A. I don't know the date.

. . .

Page 88

18 (Whereupon, the taking of this deposition was  
19 concluded at 12:09 p.m.)

Exhibit F

ELECTRONICALLY FILED - 2018 Dec 06 2:55 PM - RICHLAND - COMMON PLEAS - CASE#20110CP4004900

1 State of South Carolina ) In the Court of Common  
 ) Pleas  
 2 )  
 County of Aiken ) Case No: 2013-CP-02-1337  
 3 )  
 4 Adele J. Pope, )  
 )  
 5 Plaintiff(s), ) Deposition of  
 )  
 6 vs. ) ROBERT COOK  
 )  
 7 ) February 8, 2017  
 The Estate of James Brown and )  
 8 The James Brown 2000 )  
 Irrevocable Trust, )  
 9 )  
 )  
 10 Defendant(s). )  
 )

11  
12

13 Deposition of ROBERT COOK, taken before Frances C.  
14 Gray, Verbatim Court Reporter and Notary Public in  
15 and for the State of South Carolina, scheduled for  
16 10:00 a.m. and commencing at the hour of 10:25  
17 a.m., Wednesday, February 8, 2017, at the office  
18 of Office of the Attorney General, Rembert Dennis  
19 Building, 1000 Assembly Street, Columbia, South  
20 Carolina.

21  
22 Reported by:  
23 Frances C. Gray  
24  
25

Page 5

22 **Q. Would you state your full name.**  
23 A. Robert D. Cook.  
24 **Q. And you go by, "Bob"?**  
25 A. I do.

Page 6

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.

. . .

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.

. . .

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?**

. . .

25 A. I can tell you when I learned of the addition of  
Page 14

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?**

. . .

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**

Page 15

1 **is named as a plaintiff, but claims not to be a  
2 plaintiff?**

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 -**

. . .

18 **Q. -- with the Attorney General named as a plaintiff?**

. . .

22 A. No. I had no authority to approve of it. I  
23 learned of it in the twelfth hour.. .

16.

3 **Q. How do you know that the complaint was unique if**  
4 **you didn't review it?**

. . .

11 A. I read the pleadings at some point in time. Yes.

. . .

Page 17

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.

. . .

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.

Page 18

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?

. . .

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.

. . .

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?**

Page 19

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.

. . .

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**

Page 20

1 **rights were of great importance?**

6 A. Yes.

. . .

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?**

. . .

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

Page 21

1 cannot sit here today and honestly tell you I know  
2 every line, chapter and verse about those movie  
3 rights.

Page 22

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?**

. . .

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.

. . .

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.

Page 23

14 Q. Would it surprise you that Mr. McMaster said he  
15 didn't recall having read the will of James Brown?

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

Page 24

1 Wilson versus Dallas?

2 A. When you say I prepared it -

. . . .

6 A. When you say I prepared it, I -- I guess I did  
7 most of the writing on that.

Page 25

13 Q. Did you learn anything about Federal Copyright Act  
14 Termination Rights in your preparation of the  
15 petition for rehearing?

. . . .

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.

Page 26

12 Q. Do you know sitting here today whether Federal  
13 Copyright Act Termination Rights apply to  
14 publicity rights?

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?**

. . .

24 A. I don't recall.

Page 29

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?**

25 A. You said I participated. My name is on the

Page 30

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?**

11 A. That would have been Mr. Jones, who is answerable  
12 to Mr. McIntosh.

24 **Q. But your name appeared on the document?**

25 A. It is. I cannot deny that.

Page 31

1 **Q. Mr. Cook, did you and I have a discussion about**  
2 **this very problem in March of 2013?**

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?**

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?**

24 A. No, I did not.

25 **Q. Did I seem to sincerely want to save the James**

Page 32

1 **Brown "I Feel Good" Trust?**

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?**

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?**

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**

Page 33

1 **Brown gave the "I Feel Good" Trust?**

5 A. I believe you did. You were very concerned in  
6 that meeting. I remember that. You came to us to  
7 bring those matters to our attention and you did,  
8 generally. I can't remember each one, because as  
9 I told you, I'm not involved in all of this, but  
10 you did do that.

11 **Q. Do you know of any reason why, since 2013, there**  
12 **has been a rather vitriolic claim that Bob**  
13 **Buchanan and Adele Pope were merely greedy?**

17 A. No. I will tell you this, as I said in the  
18 petition for rehearing: You have a good  
19 reputation in the community and that -- and  
20 forgive me for saying this, I've never known a

21 Pope who isn't a good lawyer. I knew Mr. Pope way  
22 back. I know Margaret; I know you; I know Gary.  
23 They're all good lawyers. I cannot comment on  
24 4900 and its merits or not merits, but, as I said,  
25 you are a good lawyer. That's all I can say.

Page 34

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

Page 35

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.

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?**

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

Page 36

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.

Page 38

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?**

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

Page 39

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?**

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?**

21 A. Only generally, I say you always want to advise  
22 the court at the earliest possible moment.

Page 40

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?

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 -

24 A. Yes.

25 Q. And for a lawyer who cares about her reputation,

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1 such a claim is fairly serious, isn't it?

5 A. Yes.

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?

Page 43

3 A. What I'm looking at is a -

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?

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

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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 halting  
23 of the Greenburg Traurig attempt to sell James  
24 Brown's assets, would either those trigger any  
25 memories?

Page 45

1 A. No, ma'am.

2 Q. Do you know anything about the takings of James --  
3 from James Brown to David Cannon?

6 A. I know -- I know -

8 A. -- that Cannon was prosecuted, I believe, if I  
9 recall it correctly, but I don't have any details  
10 about that.

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.

Page 46

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?**

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?**

23 A. No.

Page 48

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?**

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.

Page 49

24 **Q. Were you aware of the fact that on July 30th,**  
25 **Mr. McMaster had approved Mr. Buchanan and**

Page 50

1 **Ms. Pope in -- as shown by Exhibit 12 as -**

14 A. I was not aware that Mr. McMaster had approved of  
15 Ms. Pope and Mr. Buchanan as -- as trustees.

Page 51

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?

21 A. I'm assuming 2009.

Page 53

14 Q. Do you know, sitting here today, who Mr. Medlin  
15 represented?

16 A. Good grief. All of that is so complicated it.

20 A. Hynie, I believe.

Page 55

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?

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.

Page 56

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?

16 A. Well, obviously I would want to have known that  
17 because I looked for it.

Page 57

12 **Q. Did you have anything to do with the settlement**  
13 **with Bob Buchanan that was reached in 2012?**

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.

Page 59

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.

Page 60

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.

Page 61

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?**

8 A. Not -- not really anything. I've heard those  
9 words. I don't remember precisely what that is.

Page 62

10 **Q. Do you recall that the stay as to the settlement**  
11 **had been lifted in September of 2009?**

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 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? Wingate suit?**

Page 63

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?**

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?**

21 A. Yes.

Page 64

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?**

16 A. No. I was not at the meeting. I heard about the  
17 meeting -

Page 65

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?**

21 A. Yes.

Page 68

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?**

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.

Page 70

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?**

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?**

24 A. I don't recall a million dollars, no.

25 **Q. Do you know anything about the circumstances of**

Page 71

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.

8 A. No, I don't.

Page 72

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?**

Page 73

3 A. I don't recall that.

15 **Q. Have you reviewed the circuit court order from**  
16 **Judge Griffith which is more recent?**

20 A. I have not.

Page 74

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**

Page 75

1 **copyrights James Brown gave the "I Feel Good"**  
2 **foundation over the next ten years?**

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?**

24 A. I'm not aware of Mr. Toberoff or anything about  
25 him.

Page 77

1 **Q. All right. Would you just identify Cook 8,**  
2 **please.**

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 --

Page 78

14 **Q. Have you ever seen an appraisal of the James Brown**  
15 **assets?**

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?**

25 A. I have heard people talking about it. I can't say

Page 79

1 whether they've seen it or not.

2 **Q. Who have you heard talking about it?**

3 A. Sonny.

Page 81

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.

Move to Admit Exhibit 2: Cook 1-10, premarked various  
documents

Exhibit G

STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge  
Case No. 2012-CP-40-350

Adele J. Pope,

Appellant,

v.

Alan Wilson, in his capacity as Attorney General of South Carolina, and James Brown Legacy  
Trust, by Russell L. Bauknight, its Trustee,

Respondents.

**BRIEF OF RESPONDENT**

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Keith M. Babcock, SC Bar No. 456  
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Legacy Trust

### COUNTER-STATEMENT OF THE FACTS

Singer and entertainer James Brown died in December 2006 and his will was contested. *Wilson*, 403 S.C. at 416-19, 743 S.E.2d at 749-51. The facts surrounding the will contest are discussed in detail in the South Carolina Supreme Court's opinion in *Wilson v. Dallas*. Pertinent to this appeal, the James Brown Legacy Trust ("Legacy Trust") was created as part of the will contest settlement agreement to "receive, hold, manage and be authorized to sell the James Brown Assets." *Id.* at 421, 743 S.E.2d at 752. The Attorney General became involved in the will contest and eventual compromise agreement because a portion of James Brown's estate was dedicated to funding a charitable trust, *Id.* at 417, 419, 743 S.E.2d at 750-51, and the Attorney General has a statutory duty to protect the public interest in the administration of charitable trusts, *see* S.C. Code Ann. § 62-7-405; *Wilson*, 403 S.C. at 431, 445, 743 S.E.2d at 757, 765. The Attorney General was permitted, without opposition, to intervene in the case to "represent and protect the interests of the beneficiaries of any charitable trust created by [Brown's 2000 will] and the [2000 Irrevocable Trust] or any other assets of the Estate of James Brown that may be impressed with a charitable trust . . . ." *Wilson*, 403 S.C. at 431, 743 S.E.2d at 757 n.13 (modifications in original).

In 2009, Russell Bauknight was appointed by the circuit court to serve as the Personal Representative and Trustee of the James Brown Estate and August 1, 2000 Irrevocable Trust Agreement. R.p. 494. Russell Bauknight also served as Trustee for the Legacy Trust. R.p. 412. As Trustee for the Legacy Trust, Bauknight's obligations extended to the beneficiaries of the Legacy Trust, not the Attorney General. R.p. 176.

The compromise agreement settling the will contest was approved the by the circuit court in 2009 and was appealed by Appellant to the South Carolina Supreme Court. *Wilson*, 403 S.C. at 422, 743 S.E.2d at 752. In 2013, the South Carolina Supreme Court overturned the circuit court's approval of the settlement agreement that created the Legacy Trust, finding that the

compromise agreement was not just and reasonable. *Wilson*, 403 S.C. at 450, 743 S.E.2d at 767-68. The Court ruled that the settlement agreement could not replace James Brown's estate plan and existing trusts by creating new trusts. *Id.* at 446, 743 S.E.2d at 765.

The Court invalidated the circuit court's approval of the compromise agreement creating the Legacy Trust. *Id.*; R.p. 495. Russell Bauknight, in his capacity as Trustee of the Legacy Trust, understood the Court's opinion in *Wilson v. Dallas* to have terminated any potential involvement of the Attorney General (though there had been none other than Attorney General's involvement in the settlement agreement) in the Legacy Trust. R.p. 495. Consistent with this understanding, the Attorney General has not had any involvement in the Legacy Trust since *Wilson v. Dallas*. R.p. 495. Russell Bauknight was appointed as the Trustee of the Legacy Trust near the time of its creation and has served continuously in this role, R.p. 412; R.p. 494, though as there is no longer a trust in existence, Bauknight has no duties to perform, R.p. 495-496.

Following the Court's opinion in *Wilson v. Dallas*, the Legacy Trust ceased to function as a court approved trust. R.p. 495-496. Had it survived appeal, the Legacy Trust was to be funded from the private property of James Brown. R.p. 413; R.p. 494. The Legacy Trust was never designed to be supported in whole or in part by public funds, to expend public funds, or to hold public assets. R.p. 413; R.p. 496. The Legacy Trust is not a custodian of public records. R.p. 413; R.p. 496.

Exhibit H

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

**RECEIVED**

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S.C. SUPREME COURT

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Trial Court Case Nos. 2013-CP-02-02849 and 2013-CP-02-02850  
Appellate Case No. 2015-002417

In Re: The Estate of James Brown a/k/a James Joseph Brown,

Tommie Rae Brown.....Respondent,

v.

David C. Sojourner, Jr., in his capacity as Limited  
Special Administrator and Limited Special Trustee,  
Deanna Brown-Thomas, Yamma Brown, Venisha Brown,  
Larry Brown, Terry Brown and Daryl Brown ..... Respondents below,

Of whom Deanna Brown-Thomas, Yamma Brown, and Venisha Brown  
are the ..... Petitioners.

**PETITION FOR WRIT OF CERTIORARI**

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## CERTIFICATION OF COUNSEL

Counsel for the petitioners, Deanna Brown-Thomas, Yamma Brown, and Venisha Brown<sup>1</sup> ("Petitioners"), hereby certify that a Petition for Rehearing and Suggestion for Rehearing *En Banc* was made to the Court of Appeals and was denied by Order dated October 10, 2018.

### QUESTIONS PRESENTED FOR REVIEW

- I. Whether Petitioners can be bound to factual findings contained in an annulment order to which they were not and could not be parties when well-settled law provides that factual findings and conclusions of law contained in an *in rem* annulment order are not binding upon non-parties to the annulment proceeding.
- II. Whether Petitioners can be collaterally estopped from litigating the issue of Respondent's status as surviving spouse when (a) they were not, and could not be, parties to Respondent's default annulment action, and (b) that issue was never actually litigated.
- III. Whether it was error to grant Respondent summary judgment and deny Petitioners summary judgment when the record contains admissible evidence that Respondent's first marriage was valid at the time she attempted her second marriage, and Respondent, bearing the burden of proof as to the alleged invalidity of her first marriage, presented no admissible evidence of her first husband's bigamy and stipulated she had none.
- IV. Whether summary judgment in favor of Respondent is appropriate when there are triable and genuine issues of material fact, and the trial court prohibited Petitioners from taking any discovery on those factual issues and sealed Respondent's diaries.
- V. Whether Respondent's concealment of and failure to terminate her first marriage before her second marriage renders her second marriage bigamous as a matter of law under S.C. Code Ann. § 20-1-80 and the holding in *Lukich v. Lukich*, 379 S.C. 589, 666 S.E.2d 906 (2008) that a *post-hoc* annulment, though declaring a first marriage void *ab initio*, does not relate back so as to retroactively validate a facially bigamous second marriage.

### STATEMENT OF THE CASE

#### I. FACTS OF THE CASE

Respondent Tommie Rae Hynie ("Respondent") and Javed Ahmed ("Husband 1"), after jointly applying for and securing a marriage license, participated in a marriage ceremony and

<sup>1</sup> Petitioner Venisha Brown died intestate on September 23, 2018, and Petitioner Deanna Brown-Thomas has filed an application and petition to be formally appointed as Personal Representative for Venisha Brown. A hearing has not yet been scheduled. A Motion to Accept Petition for Writ of Certiorari or, in the alternative, to Extend Time for Filing Petition for Writ of Certiorari as to Venisha Brown has been filed for this Court's consideration. To fully protect Venisha Brown's rights, undersigned counsel submit this Petition on her behalf to the extent appropriate.

**OF COUNSEL**

*Pro Hac Vice*

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were legally married in Harris County, Texas, on February 17, 1997 (“Marriage 1”).<sup>2</sup> To obtain the marriage license, both signed a sworn declaration that neither of them was currently married.<sup>3</sup>

Thereafter, on November 27, 2001, James Brown (“Brown”) and Respondent executed a Prenuptial Agreement, which Respondent acknowledged she entered into voluntarily on the advice of her own counsel.<sup>4</sup> Therein, she “agreed to waive any claim for an interest in Brown’s estate in the event of his death, including the rights to a statutory share of Brown’s estate or to any interest as an omitted spouse.”<sup>5</sup>

On December 10, 2001, Brown and Respondent obtained a marriage license in Aiken County, South Carolina.<sup>6</sup> Respondent concealed Marriage 1 from Brown, and falsely swore under oath to the Aiken County Probate Court that this was her first and only marriage.<sup>7</sup> On December 14, 2001, Brown and Respondent participated in a purported marriage ceremony in Aiken County, South Carolina (“Marriage 2”).<sup>8</sup> Respondent admits that her Marriage 1 was never dissolved prior to her putative Marriage 2.<sup>9</sup>

On December 15, 2003, Respondent filed an action in the Charleston County Family Court (the “Family Court”), seeking to annul Marriage 1 on many alleged grounds (the “Annulment Action”).<sup>10</sup> Husband 1 was never personally served, but was allegedly served by publication in the classifieds of *The Houston Chronicle*, and never appeared.<sup>11</sup> Thus, the only purported evidence presented in the action was Respondent’s unopposed self-serving testimony, and, as to alleged bigamy, just her hearsay that Husband 1 supposedly told her that he had three

<sup>2</sup> R. pp. 265-266, Hynie/Ahmed Marriage License, Exhibit 1 to Joint Stipulation.

<sup>3</sup> R. p. 526, Affidavit of Scott Kenily, Exhibit; R. p. 648, Application for Marriage License attached as Exh. 3 to Memorandum of Law Supporting Limited Special Administrator’s (LSA”) Motion for Summary Judgment and Opposing Tommie Rae Brown’s Motion for Partial Summary Judgment on the Issue of Surviving Spouse.

<sup>4</sup> *Wilson v. Dallas*, 403 S.C. 411, 418, 743 S.E.2d 750, 762 (2013).

<sup>5</sup> *Id.*

<sup>6</sup> R. pp. 269-270, Joint Stipulation, Exhibit 4.

<sup>7</sup> *Id.*; see also S.C. Code Ann. § 20-1-230(A)(4).

<sup>8</sup> R. p. 256, Joint Stipulation, ¶5.

<sup>9</sup> R. p. 256, Joint Stipulation, ¶6.

<sup>10</sup> R. pp. 271-273, Joint Stipulation, Exhibit 5.

<sup>11</sup> R. pp. 274-291, Joint Stipulation, Exhibits 6-10.

or more wives.<sup>12</sup> On April 15, 2004, the Family Court entered the order submitted by Respondent's counsel, annulling Marriage 1 on all her grounds, including bigamy (the "Annulment Order").<sup>13</sup>

After discovering Marriage 1, but prior to the Annulment Order, Brown brought his own annulment action on January 29, 2004, in Aiken County, South Carolina against Respondent for bigamy.<sup>14</sup> Respondent counterclaimed for a divorce, the ostensible reason she rushed to annul Marriage 1.<sup>15</sup> The parties settled and dismissed their respective suits in an August 16, 2004 consent order (the "Consent Order"), wherein Respondent expressly agreed even to "forever waive any claim of a common law marriage to [Brown], both now and in the future."<sup>16</sup>

Brown died on December 25, 2006, in Atlanta, Georgia.<sup>17</sup> His will devised his personal effects to six named children, including Petitioners, and the remainder of his estate to an irrevocable charitable trust.<sup>18</sup> After Brown's death, Respondent brought an action in probate court to set aside Brown's entire will, which named neither her nor her son as beneficiaries, claiming fraud and undue influence. She separately claimed an omitted spouse's share of Brown's estate. The probate court transferred her claims to the circuit court. In 2009, the trial court approved a Settlement Agreement that provided Respondent 23.75% of Brown's entire estate, but the settlement was sharply rejected by this Court in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013), and the case was remanded to the trial court.<sup>19</sup>

In October, 2013, the probate court and trial court appointed David C. Sojourner, Jr. to serve as Limited Special Administrator ("LSA") and Limited Special Trustee to defend the

<sup>12</sup> R. pp. 297-313, Joint Stipulation, Exhibit 13.

<sup>13</sup> R. pp. 293-296, Joint Stipulation, Exhibit 12.

<sup>14</sup> R. p. 258, Joint Stipulation, ¶ 19.

<sup>15</sup> R. pp. 336-346, Joint Stipulation, Exhibit 17.

<sup>16</sup> R. pp. 349-350, Joint Stipulation, Exhibit 19.

<sup>17</sup> R. p. 258, Joint Stipulation ¶ 20.

<sup>18</sup> See *Wilson v. Dallas*, 403 S.C. 411, 449, 743 S.E.2d 746, 767 (2013) (detailed description of case history).

<sup>19</sup> *Id.*

Estate and Trust against the will and trust challenges.<sup>20</sup> The present motions for summary judgment and orders on appeal arose as a result of the LSA's motion to modify protective orders the trial court had issued in 2008 sealing Respondent's diaries (the "Diaries"). During a hearing on the motion, Respondent's attorneys sought a stay of all discovery pending a summary judgment motion ("MSJ") they intended to file on the issue of whether Respondent is Brown's "surviving spouse."<sup>21</sup> The trial court stayed all discovery and allowed Respondent to file her MSJ,<sup>22</sup> which she filed on April 28, 2014.<sup>23</sup> On June 2, 2014, the LSA filed an MSJ, joined by the Petitioners, also limited to the question of whether Respondent is Brown's surviving spouse.<sup>24</sup> On September 5, 2014, the parties filed a Joint Stipulation of Facts with exhibits ("Joint Stipulation") that sets forth undisputed facts applicable to the parties' cross-MSJs.<sup>25</sup>

After hearings held November 24, 2014, and January 13, 2015, the trial court granted Respondent summary judgment ("MSJ Order"). The trial court ruled that Respondent's 2001 Marriage 2 (to Brown) was not bigamous because the court believed her 1997 Marriage 1 was bigamous, based solely on the *post-hoc* 2004 Annulment Order, which itself was based solely on Respondent's unopposed hearsay testimony at a short hearing in a default setting.<sup>26</sup> The parties (including Petitioners) were precluded from taking any discovery and had no opportunity to litigate the question of whether Respondent's Marriage 1 was, in fact, bigamous. The LSA and Petitioners filed motions to reconsider on January 26, 2015.<sup>27</sup> At the trial court's request, the parties filed supplemental briefing on the application of *Lukich v. Lukich*, 379 S.C. 589, 666

<sup>20</sup> R. p. 56, January 13, 2015 Order, p. 4.

<sup>21</sup> R. pp. 631-640, March 31, 2014 Hearing Transcript, 54:3-63:25, attached as Exhibit 1 to Memorandum of Law Supporting LSA's Motion for Summary Judgment and Opposing Tommie Rae Brown's Motion for Partial Summary Judgment on the Issue of Surviving Spouse, filed October 6, 2014 (the "LSA's Memo in Support").

<sup>22</sup> R. p. 637, *id.* at 60:19-21.

<sup>23</sup> R. pp. 231-249, Tommie Rae Brown's Notice of Motion and Motion for Summary Judgment.

<sup>24</sup> R. pp. 250-253, Limited Special Administrator's Motion for Summary Judgment.

<sup>25</sup> R. pp. 254-350, Joint Stipulation of Facts.

<sup>26</sup> R. pp. 69, 71, and 97, MSJ Order at pp. 17, 19, and 45.

<sup>27</sup> R. pp. 825-883, LSA Motion to Reconsider; R. pp. 884-887, Appellants' Motion to Reconsider.

S.E.2d 906 (2008).<sup>28</sup> On October 20, 2015, the court denied the motions to reconsider.<sup>29</sup>

Petitioners and the LSA filed Notices of Appeal of the above orders on November 20, 2015. Thereafter, before briefing ended, the LSA and Respondent filed a purported “settlement agreement” and the LSA was permitted to withdraw from this appeal. Subsequently, it appeared that Respondent, the LSA, and the Estate’s Personal Representative had failed to disclose the full terms of their settlement, namely, a side-agreement which they have steadfastly refused to disclose to any court or Petitioners.<sup>30</sup>

## II. THE COURT OF APPEALS OPINION

On July 25, 2018, a panel of the Court of Appeals published an opinion (the “Opinion”) affirming the trial court’s ruling that Respondent is Brown’s surviving spouse. The Opinion is based solely on the 2004 Annulment Order declaring Marriage 1 void *ab initio*, years after Marriage 2 (to Brown) and Respondent’s concealment of Marriage 1 from Brown and the State. *In re: The Estate of James Brown*, Op. No. 5578 (S.C. Ct. App. filed July 25, 2018) (Shearouse Adv. Sh. No. 30 at 19). In so doing, the panel made five erroneous rulings relevant to this Petition:

(i) The panel held that the factual finding in the 2004 Annulment Order that Marriage 1 was bigamous is binding on Petitioners in this action, when they were not, and could not have been, parties to the annulment action.<sup>31</sup> The Opinion thus misapplies or disregards well-settled law as to the limited preclusive effect of an *in rem* annulment order.

(ii) The panel held that Petitioners are barred by the collateral estoppel doctrine from litigating whether Marriage 1 was bigamous even though (1) neither Petitioners nor Brown were parties, or in privity with parties, to Respondent’s annulment action; (2) Husband 1 never appeared (and apparently had no actual notice), so the Annulment Order was entered by default

<sup>28</sup> R. pp. 1049-1063, Memorandum of Limited Special Administrator on Issue of Application of *Lukich v. Lukich*.

<sup>29</sup> R. pp. 103-121, Order Denying Reconsideration.

<sup>30</sup> *In re: The Estate of James Brown*, Appellate Case No. 2018-000104 (dismissed as interlocutory).

<sup>31</sup> Panel Op. at 10; Shearouse Adv. Sh. No. 30 at 28.

Exhibit I

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

**RECEIVED**

NOV 09 2018

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

Doyet A. Early, III, Circuit Court Judge

Trial Court Case Nos. 2013-CP-02-02849 and 2013-CP-02-02850  
Appellate Case No. 2015-002417

In Re: The Estate of James Brown a/k/a James Joseph Brown,

Tommie Rae Brown.....Respondent,

v.

David C. Sojourner, Jr., in his capacity as Limited  
Special Administrator and Limited Special Trustee,  
Deanna Brown-Thomas, Yamma Brown, Venisha Brown,  
Larry Brown, Terry Brown and Daryl Brown ..... Respondents below,

Of whom Deanna Brown-Thomas, Yamma Brown and Venisha Brown,  
are the..... Petitioners.

**PETITIONER'S MOTION TO ACCEPT PETITION FOR WRIT OF  
CERTIORARI OR, IN THE ALTERNATIVE, FOR EXTENSION OF TIME  
TO FILE PETITION FOR WRIT OF CERTIORARI**

Counsel for petitioner Venisha Brown ("Petitioner") hereby move the Court to accept the  
Petition for Writ of Certiorari filed on behalf of petitioner Venisha Brown or, in the alternative,  
for a twenty (20) day extension of time beyond the normal thirty (30) day time limit in Rule  
242(c), SCACR, to file and serve a Petition for Writ of Certiorari on her behalf due to the  
extraordinary circumstance of Petitioner's death. Counsel are informed and believe her Petition  
for Writ of Certiorari is currently due on November 9, 2018.

ELECTRONICALLY FILED - 2018 Dec 06 2:55 PM - RICHLAND - COMMON PLEAS - CASE#2010CP4004900

Venisha Brown died intestate September 23, 2018. Her sister and co-petitioner Deanna Brown-Thomas has filed an application and formal petition in Aiken County to be appointed as Personal Representative for the Estate of Venisha Brown. As of the date of this filing, no hearing date had yet been scheduled for the Aiken County Probate Court to consider and rule upon Deanna Brown-Thomas's application and petition.

Counsel has simultaneously filed and served a Petition of Writ of Certiorari on behalf of Venisha Brown as well as her sisters and co-petitioners Deanna Brown-Thomas and Yamma Brown, but files this motion to protect Petitioner's rights to the extent this Court believes it is necessary to have a Personal Representative appointed before a Petition for Writ of Certiorari may be filed. Petitioner Deanna Brown-Thomas is working expeditiously through her probate counsel to pursue appointment as Personal Representative, and counsel will update this Court if a hearing date is scheduled during the pendency of this Motion.

Counsel for Petitioner respectfully requests the Court accept the Petition for Writ of Certiorari filed on behalf of petitioner Venisha Brown or, in the alternative, for a twenty (20) day extension of time beyond the normal thirty (30) day time limit in Rule 242(c), SCACR, to file and serve a Petition for Writ of Certiorari on her behalf due to the extraordinary circumstance of the death of Petitioner.

Respectfully submitted,



---

Robert C. Byrd, SC Bar #1069  
*bobbybyrd@parkerpoe.com*  
A. Smith Podris, SC Bar #78051  
*smithpodris@parkerpoe.com*  
Parker Poe Adams & Bernstein LLP  
200 Meeting Street, Suite 301 (29401)  
Post Office Box 160  
Charleston, SC 29402  
Telephone: (843) 727-2650  
Facsimile: (843) 727-2680  
Attorneys for Petitioners  
Deanna Brown-Thomas, Dr. Yamma  
Brown, and Venisha Brown

November 9, 2018

OF COUNSEL  
*Pro Hac Vice*  
Marc Toberoff  
*mtoberoff@toberoffandassociates.com*  
Toberoff & Associates, P.C.  
23823 Pacific Coast Hwy, Suite 50-363  
Malibu, CA 90265  
Telephone: (310) 246-3333  
Facsimile: (310) 246-3101



ALAN WILSON  
ATTORNEY GENERAL

November 15, 2019

The Honorable Tonnya K. Kohn  
State Court Administrator  
South Carolina Court Administration  
Calhoun Building,  
1220 Senate Street, Suite 200  
HAND DELIVERED

Re: Pope v. Wilson App. Case No. 2016-001708;  
Common Pleas Docket No. 2010CP4004900

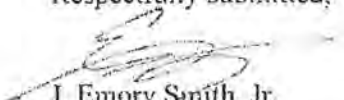
Dear Ms. Kohn:

I respectfully request that Court Administration assign a judge to hear this case now that it has been remanded. The Court of Appeals remanded this case for further proceedings consistent with its Opinion of June 19, 2019. *Pope v. Wilson*, 427 S.C. 377, 831 S.E.2d 442 (2019), reh. denied (August 27, 2019). The Court issued the remittitur in this appeal on Wednesday, and it was filed yesterday in the Richland County Court of Common Pleas. (copy attached).

By the Supreme Court's Order of March 24, 2016, Judge Early was "vested with exclusive jurisdiction to hear and dispose of" this case along with Common Pleas case 2012-CP40-00350. (copy attached). Therefore, we believe that Court Administration should determine which Judge should hear this case on remand.

Thank you for your consideration of this matter.

Respectfully submitted,

  
J. Emory Smith, Jr.  
Deputy Solicitor General

cc: Adam T. Silvernail, Esquire  
The Honorable Jocelyn Newman, Chief Administrative Judge for Common Pleas  
The Honorable DeAndrea G. Benjamin  
The Honorable Jeannette McBride, Richland County Clerk of Court

<b>STATE OF SOUTH CAROLINA</b>	)	<b>IN THE COURT OF COMMON PLEAS</b>
	)	
<b>COUNTY OF RICHLAND</b>	)	Civil Action No. 2010-CP-40-4900
	)	
Adele J. Pope,	)	
	)	PLAINTIFF'S BRIEF REGARDING
Plaintiff,	)	ISSUES ON REMAND
	)	
v.	)	
	)	
Alan Wilson, in his capacity as	)	
Attorney General of South Carolina,	)	
	)	
Defendant.	)	
_____	)	

Plaintiff Adele J. Pope ("Plaintiff") submits this brief setting out her position on the issues before this Court on remand from the Court of Appeals' decision in *Pope v. Wilson*, 427 S.C. 377, 831 S.E.2d 442 (Ct.App. 2019), attached as **Exhibit A**.

This action was brought under the South Carolina Freedom of Information Act ("FOIA") on August 10, 2011, after the South Carolina Attorney General ("AG") refused to make a substantive response to Plaintiff's request for public documents under FOIA. Based on its position that certain of the documents sought under FOIA were also the subject of discovery requests and motions in *Bauknight, et al, and Wilson, et al v. Pope*, Case No. 2010-CP-40-4900 ("Richland 4900"), the AG, without identifying any requested document as being exempt from FOIA, proposed to put Plaintiff's request on hold pending resolution of the Richland 4900 discovery matters.

In March 2013, the AG moved to amend his answer herein.<sup>1</sup> Although this motion has never been decided, the proposed amended answer did include attachments responsive to certain of Plaintiff's FOIA requests. It further asserts that the AG is not in possession of documents responsive to Plaintiff's request for any document authorizing Russell L.

<sup>1</sup> His motion and proposed amended answer are attached as **Exhibit B**.

Bauknight to speak for the AG in Richland 4900. The AG nonetheless continued to refuse to turn over the Wingate agreement based on his assertion that the document was subject to discovery motions in Richland 4900.

In 2016, on the AG's motion, the Honorable Doyet A. Early, III, dismissed this case because of the pending discovery motions in Richland 4900.<sup>2</sup> Plaintiff appealed, and the Court of Appeals reversed, finding that the Circuit Court had not found, and the AG had not identified, a specific FOIA exemption justifying withholding the Wingate agreement.

**This Case is not Moot, and the Wingate Agreement is a Public Document**

The AG has indicated that he intends to argue that Plaintiff's request for the Wingate agreement is moot because of its disclosure by a third party pursuant to a Federal Court Order in August 2013.<sup>3</sup> This argument is specious.

The AG has continued, even after the Federal Order, to refuse to produce the Wingate agreement. See November 27, 2013 letter of Emory Smith, Esquire, attached as **Exhibit E**. Our Supreme Court has held that a FOIA action for declaratory and injunctive relief is mooted *upon the public body's production of the requested document*, which has never happened in this case as to the Wingate agreement. See *Sloan v. SCDOR*, 409 S.C. 551, 762 S.E.2d 687 (2014). As Mr. Smith's letter correctly notes, the copy of the Wingate agreement received by Plaintiff was from a third party, not from the AG. The FOIA contains no provision connecting a public body's FOIA obligations to whether the requesting person may already possess the same or similar documents from another source.

**The Wingate Agreement is not within any FOIA Exemption**

<sup>2</sup> Plaintiff submitted a brief on the issues in this case prior to the hearing before Judge Early. That brief is attached as **Exhibit C** and incorporated herein.

<sup>3</sup> A copy of the Federal Court Order is attached as **Exhibit D**.

To date, the AG has never identified any particular exemption in the FOIA statute which would prevent release of the Wingate agreement, and none does.

The AG's filings seem to indicate that he bases his opposition to releasing the document on the 9-year-old, never-decided, discovery motions in Richland 4900 (from which the AG, on his own motion, has since been dropped as a party due to his alleged misjoinder – now the subject of a pending appeal) and on the other Richland 4900 Plaintiffs' assertion that this document is privileged.<sup>4</sup>

The Court of Appeals has disposed of the AG's argument that any document subject to discovery in a pending action is exempt from FOIA. As to the suggestion that this document is somehow privileged, Plaintiff would show that the Federal Court's 2013 Order releasing the document *and finding it to be public* has mooted this argument. Plaintiff submits that it is disingenuous for the AG to acknowledge that Plaintiff is already in possession of the Wingate agreement while simultaneously asserting that its releasing the document would violate any privilege.

The AG's motion to amend its complaint should be denied as futile, since the proposed amended answer contains no assertion that the Wingate agreement is subject to any specific FOIA exemption. *See Higgins v. Med. Univ. of S.C.*, 326 S.C. 592, 604-05, 486 S.E.2d 269, 275 (Ct.App. 1997).

#### **Plaintiff is Entitled to an Award of Attorney's Fees and Costs**

The other remaining issue on remand is Plaintiff's cause of action for attorney's fees and costs incurred in this action, pursuant to S.C. Code Ann. §30-4-100(b). Plaintiff submits

<sup>4</sup> The AG has since 2011 repeatedly suggested that he is not refusing the release the document, but was somehow constrained from doing so. Plaintiff submits that the AG cannot repeatedly assert that he "has no objection" to releasing the document while continuing in this case to litigate the same issue. See Letter of C.H. Jones, attached as **Exhibit F**.

herewith the affidavit of her attorney, Adam T. Silvernail, which sets out the total fees and costs incurred in this matter as \$49,521.15. This includes fees and costs incurred up to the date of this filing, although Plaintiff notes that pursuant to the Supreme Court's holding in *Sloan, supra*, she is entitled to any further fees and costs incurred until this case is finally determined.

Plaintiff notes that this fee request is based on time averaging approximately 20 hours *per year*, and she submits that the substantial total is a result of the AG's refusal to produce public documents and his causing substantial delay and complication in this matter. The fees and costs incurred herein were substantially increased by the successful appeal necessitated by the AG's litigation of this matter.

The affidavit submitted contains substantial evidence bearing on the factors to be considered in determining reasonable fees, including Plaintiff's counsel's experience and the complexity of the matter litigated. *See Burton v. York County Sherriff's Dep't*, 358 S.C. 339, 358, 594 S.E.2d 888, 898 (Ct.App. 2004). Plaintiff also notes that the Supreme Court's most recent review of a FOIA fee award resulted in approval of a fee exceeding \$35,000 based on a total of 135 hours in a case which was commenced in 2013 and concluded in the Supreme Court in 2018. Plaintiff submits that the approximately 186 hours her counsel has spent on this matter through nearly 9 years and a successful appeal are reasonable.

### **Conclusion**

For the reasons set forth above, Plaintiff asks that this Court order the AG to immediately produce the public Wingate agreement and enter judgment in Plaintiff's favor for \$49,521.15 in attorney's fees and costs incurred herein, plus any reasonable additional

<sup>s</sup> These totals did not include fees and costs incurred in the appeal of that matter.

fees and costs incurred prior to the final conclusion of this matter.

Respectfully submitted,

s/Adam T. Silvernail \_\_\_\_\_  
Adam T. Silvernail  
Law Office of Adam T. Silvernail, LLC  
1905 Marion Street (29201)  
Post Office Box 7995  
Columbia, South Carolina 29202-7995  
Telephone: (803) 779-1770  
adam@silvernaillawfirm

February 18, 2020

Attorney for Plaintiff

<b>STATE OF SOUTH CAROLINA</b>	)	<b>IN THE COURT OF COMMON PLEAS</b>
	)	
<b>COUNTY OF RICHLAND</b>	)	Civil Action No. 2010-CP-40-4900
	)	
Adele J. Pope,	)	
	)	<b>AFFIDAVIT OF ADAM T. SILVERNAIL</b>
Plaintiff,	)	
	)	
v.	)	
	)	
Alan Wilson, in his capacity as	)	
Attorney General of South Carolina,	)	
	)	
Defendant.	)	
_____	)	

PERSONALLY APPEARED BEFORE ME Adam T. Silvernail, who being duly sworn, deposes and says:


1. I am over the age of twenty-one (21) and make this affidavit of my own personal knowledge.
2. I am an attorney licensed to practice in South Carolina; I was admitted to the South Carolina Bar in 2010; and I remain a member in good standing.
3. My practice has, from its inception, been primarily focused on civil litigation, and I have litigated cases at the trial level in both State and Federal Court, as well as handling numerous appeals in the South Carolina Court of Appeals, South Carolina Supreme Court, and the Federal Court of Appeals for the Fourth Circuit.
4. I was engaged by Adele J. Pope, Esquire, to represent her in this FOIA case in August 2011, after the Attorney General refused to substantively respond to her FOIA request for certain public documents.
5. Although the relief sought in this case has always been straightforward (a direction that the AG release public documents to a South Carolina citizen, and an award of attorneys' fees and costs pursuant to S.C. Code Ann. §34-10-100(b)), this

case has been extraordinarily complicated.

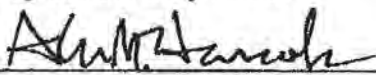
6. The AG, beginning with its response letter to Mrs. Pope's FOIA request, has taken the position that Mrs. Pope is not entitled to FOIA rights as a result of being involved in *Bauknight, et al, and Wilson, et al, v. Pope*, Case No. 2010-CP-40-4900 (Richland 4900). This required addressing the complex and extraordinary issues presented in Richland 4900 and also served as a basis for the AG to avoid the basic question presented in this case, which is whether the documents sought by a citizen under FOIA are public.
7. Further, the AG's private Richland 4900 counsel attempted to intervene in this matter on behalf of more than a dozen private co-Plaintiffs from Richland 4900 for the express purpose of preventing the AG from turning over the Wingate agreement. Despite the fact that the AG is the State's highest legal officer, tasked with enforcing the FOIA, the AG took "no position" on the intervention by his own private counsel of numerous private individuals and entities. The result of this extraordinary FOIA interference by private parties was delay and complication for this once-simple FOIA matter.
8. The AG sought a transfer of venue and consolidation of this case with the slow-moving multimillion-dollar tort suit that is Richland 4900. The ultimate consolidation of this case with Richland 4900 caused massive delay, confusion and complication.
9. The AG also forced this matter to be part of a very complex global mediation, when I am not aware that FOIA cases are regularly subject to the delay and expense of the mediation process.

10. This matter also required an appeal to the South Carolina Court of Appeals, after the AG sought and received an Order of dismissal. The Court of Appeals reversed that Order, finding that Mrs. Pope's involvement in Richland 4900 did not deprive her of her FOIA rights.
11. My involvement in this case now spans nearly nine (9) years and, despite Mrs. Pope's and my efforts to be efficient, the case has required a substantial amount of my time. Through today, including an estimated 3 hours' time to travel to and attend the hearing scheduled, I have spent 186.4 hours on this matter.
12. My hourly rate is \$250, and I believe that rate is reasonable based on my experience, the complexity of this case, the results I have obtained for my client, and the other applicable factors.
13. My total fees incurred to date on this matter are \$46,600, in addition to \$2,921.15 in costs.<sup>1</sup>

FURTHER DEPONENT SAYETH NOT.

  
Adam T. Silvernail

SWORN TO before me this 18<sup>th</sup>  
Day of February 2020.

  
Notary Public for South Carolina  
My Commission Expires: 6/26/21

<sup>1</sup> A portion of these fees and costs is pending before the Court of Appeals, pursuant to Rule 222, SCACR. The amounts set out in this affidavit are the totals, rather than the limited amounts allowed by Rule 222.



FOIA letter. Accordingly, the unsigned document that we have is not responsive to Plaintiff's original FOIA request for a copy of the "contract," and it is not subject to production under FOIA. Nevertheless, because we have said that we would produce the document if the court rules that the agreement<sup>1</sup> itself is subject to production in discovery in case 4900, we will voluntarily produce the unsigned document if such a ruling is made. Any such production of the unsigned document, would be solely discretionary and not due to Plaintiff's FOIA request or this litigation. We are no longer parties to the main action in case 4900 and take no position as to how the court should rule on the pending motion for protective order.

Respectfully submitted,

/s J. EMORY SMITH, JR.

S.C. Bar No. 5262

Deputy Solicitor General

ALAN WILSON

Attorney General

ROBERT D. COOK

Solicitor General

S.C. Bar No. 1373

Office of the Attorney General

Post Office Box 11549

Columbia, SC 29211

(803) 734-3680

(803)734-3677 (Fax)

esmith@scag.gov

February 24, 2020

ATTORNEYS FOR THE ATTORNEY GENERAL

<sup>1</sup> The Attorney General was not a party to the agreement. *See*, Supplemental Memorandum of February 18, 2020, at p. 4, citing letter of November 27, 2013, to the Honorable Casey Manning.

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS

RUSSELL L. BAUKNIGHT, as Trustee of  
the James Brown 2000 Irrevocable Trust and  
the James Brown Legacy Trust, as Personal  
Representative of the Estate of James Brown,  
and on behalf of Alan Wilson, in his capacity  
as Attorney General of the State of  
South Carolina, and others

) Case No.: 2010-CP-40-4900

) Affidavit of Susan D. Summer in  
) Support of Release of James Brown  
) Documents Under the South Carolina  
) Freedom of Information Act (FOIA)

and

ALAN WILSON, in his capacity as Attorney  
Attorney General of the State of South  
Carolina, and others,

Plaintiffs.

v.

Adele J. Pope,

Defendant.

AND

COUNTY OF RICHLAND

) Case No. 2010-CP-40-4900

Adele J. Pope,

Plaintiff,

v.

) Affidavit of Susan D. Summer in  
) Support of Release of James Brown  
) Documents Under the South Carolina  
) Freedom of Information Act (FOIA)

Alan Wilson, in his Capacity as Attorney  
General of South Carolina,

Defendants.

PERSONALLY APPEARED BEFORE ME, SUSAN D. SUMMER, who, being duly sworn, deposes and says:

1. I am over 21 years old and this affidavit is based on my personal knowledge.
2. I have been a contributor to the *Newberry Observer* and other publications for many years.
3. I have attended many James Brown estate hearings and written more than fifty articles about the James Brown estate, most of which can be found on my website, James Brown "I Feel Good" Trust FOIA Concerns, in the *Observer*, or both.
4. I have reviewed the affidavit of former Brown trustee Adele Pope filed Sept. 6, 2011, in a FOIA lawsuit she filed against the Attorney General and the Legacy Trust in Newberry County in August 2011. The affidavit is consistent with the stories that I wrote for The *Newberry Observer* about events at the time they occurred.
5. After the Attorney General delayed delivery of the documents Pope requested, I submitted one or more affidavits to support the release of documents under FOIA in the Pope lawsuit. When no documents were forthcoming, I began to make FOIA requests of my own. They were refused.
6. In 2012 I was represented by attorneys Jay Bender and Thomas Pope when the Attorney General and other Richland 4900 Plaintiffs issued a subpoena for my notes and sources after I published an article related to the contents of the "Hynie diaries" of Tommie Rae Hynie Brown.
7. The subpoena was later withdrawn at the request of the Attorney General by the law firm of Kenneth Wingate, the Attorney General's lawyer in Richland 4900. These

events were reported by the South Carolina Lawyers Weekly, attached. (Exhibit A) My attorney Jay Bender from the South Carolina Press Association is quoted as saying:

"It struck me that the lawyers for the state said, ""Aha, let's make this reporter pay for nosing around in this case,"" Bender said."

8. On December 18, 2012, through Mr. Bender and Mr. Pope, I filed Newberry County Case No. 2012-CP-36-00688 seeking the Attorney General's contract with Mr. Wingate's firm, and also seeking certain other documents.

9. I was faced with substantial resistance to the FOIA by the Attorney General, and over a period of three years Judge Eugene C. Griffith issued a series of orders which: denied a motion of Mr. Wingate's client, Russell Bauknight, to intervene in my FOIA case; and denied the motion of the Attorney General to transfer my FOIA case from Newberry County to Richland County and consolidate it with Richland 4900. Judge Griffith directed that the documents sought under FOIA be submitted, along with any documents for which an exemption was claimed, to be reviewed by the Court before release. After review, Judge Griffith ordered the production of more than 100 pages of documents for which the Attorney General had claimed a FOIA exemption, and he awarded my attorney more than \$35,000 in fees and costs.

10. I am informed and believe that when public officials fail to comply with FOIA, it is essential to our free society that FOIA Plaintiffs be awarded adequate legal fees and costs. Only with these awards can citizens secure counsel to fight for their FOIA rights, the possibility of which acts as a deterrent to public officials and public bodies who would otherwise not release documents that may shed light on public business some officials would rather keep in the shadows. Our free society must have "sunlight"

to have informed citizens and good government, and the stronger the FOIA, the more informed our citizens will be and the better government we will have. That is why awarding fees is necessary, to make sure FOIA compliance is the rule, not the exception.

11. Among the documents which I received from the Attorney General in 2015 as directed by Judge Griffith's FOIA Order, are:

a. The signed Wingate Contract, which was designated by the Attorney General as the "Signed, purported contract" and which contains numbering "Bauk126 Confidential – 142, but which Judge Griffith found to be public, and which consists of:

1. a 3-page Agreement for Legal Services (126 – 128) signed by Everett Kendall for Mr. Wingate's firm and Russell Bauknight for the Estate of James Brown; the James Brown 2000 Irrevocable Trust; and the James Brown Legacy Trust.

2. Exhibit A, Litigation Retention Agreement for Special Counsel Appointed by the South Carolina Attorney General, unsigned [129 -140]

3. A 1-page letter dated May 18, 2010 signed by Attorney General Henry McMaster [141]

4. Three apparently identical 1-page documents entitled Confirmation, Approval, and Acknowledgment, with one signed by David B. Bell for Terry Brown [142]; one signed by Louis Levenson , with no further indication [143]; and one signed by S. Alan Medlin for Tommie Rae Brown [142]

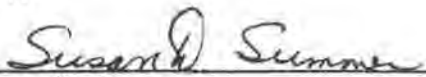
b. A number of emails among Sonny Jones and others between May 14 and May 18, 2013, the day before Richland 4900 was filed.

c. A 3-page "Wingate unsigned retention agreement" [Attachment D], a copy of which is attached to this Affidavit as Exhibit B.

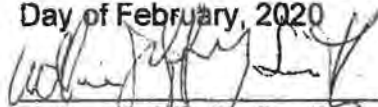
12. I was in the Richland County Courtroom on Feb. 21, 2020, for a FOIA lawsuit related to the James Brown estate when Emory Smith, attorney for the Attorney General, argued before Judge Clifton Newman that upon further study, the Attorney General's office had concluded the Wingate contract did not have to be released under

FOIA. In 2015, however, Judge Eugene Griffith ordered the Attorney General to release this contract in my FOIA lawsuit, and the Attorney General provided to me a document he described as the "purported" Wingate contract.

FURTHER DEPONENT SAYETH NOT.

  
\_\_\_\_\_  
Susan D. Summer

SWORN TO BEFORE ME this 28<sup>th</sup>  
Day of February, 2020

  
\_\_\_\_\_  
(L.S.)  
Notary Public for South Carolina  
My commission expires: 2/27/2027

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Exhibit A

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HOME > NEWS > THE REPORTER, THE ATTORNEY GENERAL AND JAMES BROWN

## The reporter, the attorney general and James Brown

By Amber Nimocks  
Published: September 21, 2012  
Time passed: 12:09 pm  
Tags: Alan Wilson, Freedom of Information Act, James Brown

**AG gives up harassment of Journalist, but question remains: Why is the Godfather of Soul's estate such a big secret?**

The most recent twist in the spiraling saga of superstar James Brown's estate had S.C. Attorney General Alan Wilson facing off against a freelance reporter for the Newberry Observer. Last week, Wilson blinked.

Late in the day Sept. 18, Wilson asked his attorney to cancel a subpoena served in August on Sue Summer, a reporter who has written several news reports on the myriad legal machinations arising from attempts to settle the Godfather of Soul's estate. Her stories have appeared in the Newberry Observer, a small paper near Columbia.

The subpoena seeks "all responsive material" including notes documenting on- and off-record conversations, source materials, e-mails and documents involving the Brown estate, an appeal of the estate settlement before the South Carolina Supreme Court, and other legal cases related to the estate.

"I've never seen anything like this," Summer said.

Attorney Jay Bender, who represents Summer in the matter, believes the state's shield law gives Summer protections from Wilson's prying. Bender said the subpoena, which he described as too broad, was an act of retaliation for her reporting.

"It struck me that the lawyers for the state said 'Aha, let's make this reporter pay for nosing around in this case,'" Bender said.

Summer's stories have raised questions about the legal appropriateness of a settlement deal former attorney general Henry McMaster drew up for the Brown estate, and about the transparency of state officials' management of the estate. A veteran journalist, Summer began covering the case after a pair of Freedom of Information Act suits caught her attention last year.

"Anytime the FOIA fire bell rings, us old broads show up and say 'Where do we carry water?'" she said.

The August subpoena, which named Wilson as a plaintiff, drew attention from state and national media, including an article in the Columbia Journalism Review. Wilson said in a statement last week that he fully supports the state's shield law.

### A legacy of litigation

Brown, who left behind a powerful musical legacy, has spawned a legacy of legal maneuvers almost as compelling. The subpoena face-off is just the latest in a



Associated Press file photo

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- Bankruptcy - Corporate - LLC Membership - Chapter 11 Plan - Real Property - Valuation *In re Low Country Land, LLC* S.C. Code Ann. § 33-44-601(7) (iv) gives a limited liability company member 90 days to contest the appointment of a receiver before the member is dissociated. In that 90-day time period, the LLC member can still exercise his authority as a member.
- Bankruptcy - Undisputed Claim - Amended Schedule - Amended Proof of Claim *In re Hawkins* Although, in his original schedules, the debtor checked a box to indicate that the bank's claim was disputed, when he amended his schedules, the debtor failed to check the same box. The amendment - filed more than two and a half months before the proof of claim deadline - had the effect of providing the bank with an allowed unsecured claim of \$500,000.
- Insurance - CGL - Auto Dealer - Errors & Omissions Liability Endorsement - Consumer Fraud Lawsuit *Graphic Arts Mutual Insurance Co. v. Caldwell Chevrolet, Inc.* The auto dealers errors and omissions liability endorsement to the policy that the plaintiff-insurer issued to the defendant-auto dealership does not require the insurer to defend or indemnify the dealership against underlying claims of what amounts to consumer fraud.
- Civil Practice - Statute of Limitations - Real Property - Price - Attorneys *Michael v. Klawah Island Real Estate, LLC* Since the closing attorneys were also the plaintiff-buyers' attorneys-in-fact, plaintiffs are charged with the attorneys' knowledge that the sellers had paid a much lower price for the property just a week before plaintiffs bought it in October 2005. Plaintiffs' action, filed in October 2011, is barred by the three-year statute of limitations.
- Administrative - Medicare - Convicted Doctor - Hydrocodone Samples - Statutory *Ben Morgan v. Sebelius* A physician who obtained hydrocodone samples for his personal use by misleading sales

series of actions that touched off after the soul singer's death on Christmas Day 2006.

Brown's will left the bulk of his estate to his "I Feel Good" scholarship trust for poor children in South Carolina and Georgia. Shortly afterward, one of the estate's trustees was accused of fraud. McMaster, the state's attorney general at the time, created a new trust and appointed new trustees, who gave control of the estate to a money manager.

David Black, the attorney for the money manager, told the Associated Press that at the time of the 2009 settlement, Brown's estate was worth just \$14,000 and was \$20 million in debt before the money manager took over. That claim, like many others, has been disputed.

The new settlement directed a chunk of the money away from the "I Feel Good" trust and included Tommie Rae Hynle, who said she was married to Brown, among his beneficiaries.

In one of the FOIA cases filed last year, former Brown estate trustee Adele Pope asked for financial documents related to the settlement deal worked out by McMaster. Summer said those details have never been released. Another FOIA suit sought access to the contingency fee contract that led to suits filed against Pope and her former co-trustee Robert Buchanan. In question is the value of Brown's assets, which Summer said the current administrators of the trust have valued at anywhere from \$4.7 million to \$100 million, depending on the situation.

"Don't tell me something's worth \$4.7 million when there's 70 lawyers involved," Summer said.

She said conflict arises from the fact that the attorney general's office is in charge of both Brown's estate and the flow of public information.

"What you have here is FOIA-dodging by the very agency that's supposed to be enforcing it and then you have them coming after the shield law," Summer said.

**A lonely pursuit**

The August subpoena is the second Summer has received this year related to her coverage of the Brown case. The first was issued by Hynle's attorney, who sought information about Summer's reporting on Hynle's diary, which is under a gag order. Summer said the diary is a key to the case because Hynle writes in it that she tried to persuade Brown to remarry her after their first marriage was annulled. Clearly, that indicates that she knew she was not his wife, Summer said.

Lou Ann Anderson, who operates estateofdenial.com, a website dedicated to documenting abuses of probate law, says it's troublesome that public money is footing the bill for the attorney general's office to orchestrate the distribution of Brown's estate, contrary to the direction of Brown's will, and for the AG to take action against a reporter seeking to shed light on that action.

"If I were a taxpayer in the state of South Carolina, I'd want to know just how this is going down," Anderson said.

Also disturbing to Anderson, Summer and Bender is the fact that in this age of diminished resources for traditional media, Summer has this case almost solely to herself. In an earlier era, Summer said, she would have been fighting larger papers from Greenville and Columbia for scraps of this story. Now she is the lone source of media coverage.

Bender, who helped write the state's shield law and teaches media law at the University of South Carolina, is also concerned about the attorney general being represented by a private attorney. Mark Gende of Columbia firm Swensen, Wingate & Barrow filed the subpoena. Gende did not return a call for comment.

"I always think it's important for private attorneys representing the state to keep in mind that it's not like they're representing a private individual," he said. "They're representing the people of the state of South Carolina. It's their job not merely to win the case, but to see that justice is done."

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representatives into believing the samples were for patients, and who pleaded guilty to knowingly obtaining a controlled substance by fraud, cannot avoid the ban on participating in the Medicare and Medicaid programs by arguing that the statutory ban under 42 U.S.C. § 1320a-7(a)(3) only applies to "financial misconduct"; the 4th Circuit dismisses the physician's challenge to application of the ban.

Exhibit B

**Summer Production Response**

**ATTACHMENT D**

**Three page Wingate unsigned retention agreement**

## AGREEMENT FOR LEGAL SERVICES

This Agreement this \_\_\_ of May, 2010 ~~between Sweeny, Wingate & Barrow, P.A.~~ ("Firm") and Russell L. Bauknight as Personal Representative of the Estate of James Brown and as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust ("Trustee"). This agreement shall remain in effect until such time as it is terminated, in writing, by either of the parties.

The Trustee hereby retains the Firm to represent its interest and pursue claims on its behalf against Robert Buchanan and Adele Pope. The Firm hereby agrees to accept such representation.

The parties hereto specifically acknowledge that the following persons, parties, and entities are third-party beneficiaries to this Agreement: Henry Dargan McMaster, in his capacity as Attorney General of the State of South Carolina; Tomny Rae Brown, individually and on behalf of her minor child, James Brown II; Larry Brown, individually and on behalf of his minor children, Lindsey Delores Brown and Janise Vanisha Brown; Vanisha Brown; Deanna J. Brown Thomas, individually and on behalf of her minor child, Jason Brown-Lewis; Yarnna N. Brown Lumar, individually and on behalf of her minor children, Sydney Lumar and Carrington Lumar; Daryl J. Brown; and Tonya Brown (hereinafter collectively "Third-Party Beneficiaries").

The Third-Party Beneficiaries are signators to a Settlement Agreement dated August 10, 2008 with Addendum dated March 25, 2009. This Settlement Agreement was approved by the Circuit Court of South Carolina by Order dated May 26, 2009. In the event that this Order should be overturned, vacated or in any manner set aside, this Agreement shall continue with the Third-Party Beneficiaries becoming the principal parties.

### ATTORNEY FEES

The Firm will be compensated on a contingency fee basis. The fee for professional services will be based upon the gross proceeds of any money collected as result of actions initiated or pursued by the Firm, in the following percentages.

a. Pursuant to the Settlement Agreement dated August 10, 2008, as amended by Addendum dated March 25, 2009, 47.5% of the gross proceeds will be attributed to the charitable portion of the James Brown Estate, the James Brown 2000 Irrevocable Trust, and/or the James Brown Legacy Trust for fee calculation purposes only. The Litigation Retention Agreement which is attached hereto as Exhibit A and which is incorporated herein shall govern the terms of representation and the payment of fees to the Firm with respect to the 47.5% of the gross proceeds attributed to the charitable portion of the James Brown Estate, the James Brown 2000 Irrevocable Trust, and/or the James Brown Legacy Trust. For example, fees will be paid to the Firm from these proceeds based on the following schedule:

Amount of net proceeds of judgment or settlement (not including exemplary or punitive damages) (in millions)	Contingent percentage
First \$0 to \$5	23%
Excess over \$5 up to \$10	19%
Excess over \$10 up to \$25	15%
Excess over \$25 up to \$50	11%
Excess over \$50 up to \$100	7%
Excess over \$100	4%

Amount of punitive or exemplary proceeds (in millions)	Contingent percentage
First \$0 to \$10	10%
Excess over \$10 to \$100	5%
Excess over \$100	3%

b. The remaining proceeds collected will be attributed to the non-charitable portion of the James Brown Estate, the James Brown 2000 Irrevocable Trust, and/or the James Brown Legacy Trust for fee calculation purposes only. A fee of 40% will be paid to the Firm from these proceeds.

c. In the event the parties reach an agreement that results in a settlement expressed in non-monetary consideration, the Firm shall be compensated pursuant to Article VI(B) of the Litigation Retention Agreement with respect to the 47.5% attributed to the charitable portion of the James Brown Estate, the James Brown 2000 Irrevocable Trust, and/or the James Brown Legacy Trust and based on the cash-equivalent of such consideration or an hourly fee, whichever is greater, for the balance. The hourly fees shall be calculated as follows:

- (a) Partners \$300.00
- (b) Associates \$225.00
- (c) Paralegal \$125.00

d. In the event that no value is recovered by the Firm on behalf of the Trustee, no fee will be paid to the Firm.

#### **EXPENSE REIMBURSEMENT**

Trustee shall reimburse all expenses incurred by the Firm as a result of this representation in accordance with Article V(B) of the Litigation Retention Agreement. Firm will submit invoices to the Trustee on a monthly basis. These expenses will be reimbursed as soon as practicable given the available funds held by the Trust.

It is understood and agreed that the Estate is reimbursing expenses for the benefit of the Estate, the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust. It is

understood that the Estate will be reimbursed 47.5% of these expenses by the Trust upon the distribution of the proceeds from any recovery.

SWEENEY, WINGATE & BARROW, P.A.

By: \_\_\_\_\_

ESTATE OF JAMES BROWN

By: \_\_\_\_\_  
Its: Personal Representative

JAMES BROWN 2000 IRREVOCABLE TRUST

By: \_\_\_\_\_  
Its: Trustee

JAMES BROWN LEGACY TRUST

By: \_\_\_\_\_  
Its: Trustee

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS

)

) Case No. 2010-CP-40-4900

)

RUSSELL L. BAUKNIGHT, as Trustee of  
the James Brown 2000 Irrevocable Trust and  
the James Brown Legacy Trust, as Personal  
Representative of the Estate of James Brown,  
and on behalf of Alan Wilson, in  
his capacity as Attorney General of the State  
of South Carolina; Tommie Rae Brown,  
individually and on behalf of her minor child,  
James B.; Daryl J. Brown, individually  
and on behalf of his minor child Janise  
Vanisha Brown; Lindsey Delores Brown;  
Deanna J. Brown Thomas; Jason Brown-  
Lewis; Yamma N. Brown, individually and  
on behalf of her minor children, Sydney  
L., Carrington L., and Tonya Brown;  
Venisha Brown; Larry Brown; and Terry  
Brown

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and

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ALAN WILSON, in his  
capacity as Attorney General of the State of  
South Carolina; TOMMIE RAE BROWN,  
individually and on behalf of her minor child,  
JAMES B.; DARYL J. BROWN,  
individually and on behalf of his minor child  
JANISE VANISHA BROWN; LINDSEY  
DELORES BROWN; DEANNA J. BROWN  
THOMAS; JASON BROWN - LEWIS;  
YAMMA N. BROWN, individually and on  
behalf of her minor children, SYDNEY  
L., CARRINGTON L., and  
TONYA BROWN; VENISHA BROWN;  
LARRY BROWN; and TERRY BROWN,

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Plaintiffs.

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v.

)

Adele J. Pope,

)

Defendant.

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)

Defendant Adele J. Pope ("Defendant") submits this supplemental memorandum opposing Sweeny, Wingate and Barrow, P.A.'s motion for a protective order and supporting Defendant's motion to compel release of the Wingate Agreement.<sup>1</sup>

Wingate claims that the Wingate Contract cannot be produced because it is privileged. In support of this argument, Wingate cites the case of *Clary v. Blackwell*, 160 S.C. 142, 158 S.E. 223 (1931), a 1931 case holding that it was error for a trial court to allow testimony by an attorney consulted (but not retained) by a party. Specifically, the testimony elicited related to the attorney's advice that the potential client take the then-available settlement offer. This nearly-100-year-old case contains little analysis, but is also entirely distinguishable from the issue before this Court.

While *Clary* primarily dealt with the issue of whether an adverse party could elicit testimony regarding *legal advice given to a potential client*, there was no indication that either the attorney or potential client had ever disclosed that information to a third party and, importantly, that case did not deal with any representation of the State.

The Wingate Contract cannot be equated to the testimony at issue in *Clary*, and cannot be considered privileged for at least three reasons, set out below.

**1. The Wingate Contract is a public document by its own terms and due to the AG's involvement.**

The Wingate Contract, attached as **Exhibit A**, appears to be composed of a three-page agreement signed by Wingate and Russell Bauknight; an 11-page Litigation Retention Agreement, which is incorporated into the former, a letter from Henry D. McMaster dated

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<sup>1</sup> Defendant incorporates the Affidavit of Susan D. Summer and Supplemental Return and Memorandum Opposing Motions to Strike in the consolidated FOIA case of *Pope v. Wilson*, both filed on the same date as this document.

May 18, 2010, and three additional pages of ratifications signed by other attorneys.<sup>2</sup> The Litigation Retention Agreement states plainly on page 5 that “[t]his agreement shall be considered a public document.”

Additionally, the Wingate Agreement has previously been declared public and/or discoverable by two other courts. On November 15, 2013, the Honorable J. Gregory Wehrman, Federal Magistrate Judge, found that the Wingate Agreement “is a public document due to the involvement of the South Carolina Attorney General.”<sup>3</sup> The Order is attached as **Exhibit B**.

On September 19, 2014, the Honorable Eugene C. Griffith, Jr., also ruled in a FOIA case that the Wingate Agreement was a public document, and the Attorney General was directed to produce it. Judge Griffith also found that Sweeny, Wingate & Barrow, P.A.’s files were subject to the FOIA as set out in the Litigation Retention Agreement.<sup>4</sup> The Order is attached as **Exhibit C**.

**2. Any privilege that may have been attached to the Wingate Agreement was long ago waived.**

As set out above, the Wingate Agreement has previously been declared public by two other Courts and, as a result, has been publicly disseminated. Plaintiffs cannot now claim privilege as to a document that is readily available from Court files, the media and otherwise.

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<sup>2</sup> This is the composition of the document produced by Russell L. Bauknight pursuant to a 2013 Federal Court Order, discussed in more detail below.

<sup>3</sup> This Order, issued in *Brown v. Pope and Buchanan*, Case No. 3:08-cv-14-WOB, is not binding on this Court but is binding on Russell L. Bauknight and the James Brown 2000 Irrevocable Trust, which were parties to the case in which the Order was issued.

<sup>4</sup> This Order, issued in *Summer v. Wilson*, Case No. 2012-CP-36-688, is also not binding precedent on this Court, but is offered as persuasive precedent for both the analysis used in the Order and the fact that the document Plaintiffs call privileged has already been declared *public* and released by another Court.

Tellingly, Plaintiffs' own counsel did not object to testifying about the documents in non-confidential depositions in another case.

Everett A. Kendall, Esquire, a signatory to the Wingate Agreement, was presented with the document in a 2017 deposition and testified extensively about it as follows:

6 Q. Okay. Let's look at Wingate No. 12 and see  
7 if you can tell me what that is.

8 A. (Perusing.) These are the multiple forms  
9 that comprise the engagement agreement between  
10 our firm and our clients.

11 Q. Okay. Is there anything, so far as you  
12 know, missing from the Wingate firm's litigation  
13 agreement as set -- as presented in 12?

14 A. I don't recognize that there's anything  
15 missing.

...

23 Q. Okay. Can you describe to me what -- what  
24 you believe that the authorization and the  
25 meaning of the whole and the various components

Page 23

1 is?

2 A. Of document 12?

3 Q. Yes.

4 A. The first portion of this is between the  
5 firm and Mr. Bauknight in his various capacities  
6 on behalf of the Estate and the Trust that he  
7 was -- that he was representing. And it contains  
8 a fee agreement. It contains a lot of terms, but  
9 it's the engagement letter.

10 Out of sequence with that is also a  
11 portion -- or is the -- a portion of the  
12 agreement with the Attorney General's Office that  
13 starts at Exhibit A, Bauknight 129, and runs  
14 through 140. That is -- that document is  
15 incorporated into and made part of the letter  
16 authorization from then Attorney General Henry  
17 McMaster, which is at 141.

18 142, 143, and 144 are the adoptions or  
19 ratifications, whatever you want to call them, by  
20 other -- the remaining individual clients. So it  
21 is -- this document is in multiple parts. It  
22 is -- it has to be read together. And it is  
23 fully authorized by all -- all of the clients.

[Depos. Kendall, Case 1337, pp. 22-24]

"The attorney-client privilege protects against disclosure of *confidential* communications by a client to his attorney." *State v. Owens*, 309 S.C. 402, 407, 424 S.E.2d 473, 476 (1992) [emphasis added]. Here, to the extent the document was ever privileged (which, as set out above, it was not), no privilege can be maintained if the document is no longer confidential.

### **3. The Wingate Agreement is Relevant and Discoverable**

Plaintiffs argue that the Wingate Agreement, even if not privileged, is not discoverable because it is irrelevant. This document is, however, relevant and discoverable as it relates to the claims and defenses in this action. Among Defendant's counterclaims are those for abuse of process and civil conspiracy, both of which substantively related to the formulation of the "Plaintiffs group" and the bringing of this case. Additionally, the AG's role as a Plaintiff in this case remains a matter in dispute, even among the AG and Plaintiffs' counsel.

In his Case 1337 deposition, now-Governor Henry D. McMaster denied ever bringing this case against Buchanan and Defendant, despite the AG being shown as a Plaintiff in the caption herein. When asked about the matter, the Governor testified, "Ma'am, I did not sue you." [McMaster Depos. p. 50] Nonetheless, when Kenneth B. Wingate was deposed in Case 1337, his testimony was that then-AG McMaster had authorized the suit.

23 Q. Do you believe that Henry McMaster  
24 authorized you to bring the Wingate Suit?

25 A. Yes, I know that he did.

Page 16

1 Q. Okay. Tell me how that happened.

2 A. I had a couple of meetings with the Attorney  
3 General at which this suit was discussed and he  
4 authorized us, serving as his counsel, to file  
5 the suit.

6 Q. Do you know when the meetings took place?

7 A. Just prior to; meaning within the week or  
8 couple of weeks prior to the filing of the suit.  
9 Q. Okay. Did you tell the Attorney General  
10 that he would be named as a Plaintiff in the  
11 Wingate lawsuit?  
12 A. Yes.  
13 Q. Personally?  
14 A. Yes.  
[Wingate depositions, pp. 15-16]

"In South Carolina the scope of discovery is very broad and 'an objection on relevance grounds is likely to limit only the most excessive discovery request.'" *Samples v. Mitchell*, 329 S.C. 105, 495 S.E.2d 213 (1997) (quoting J. Flanagan, South Carolina Civil Procedure 216 (2d ed.1996)). Defendant's request for production of the Wingate Agreement is well within the scope of discovery, as the Wingate Agreement is relevant to all claims and defenses in Richland 4900.

### Conclusion

For the foregoing reasons, Defendant asks that this Court deny Plaintiffs' motion for a protective order; grant her motion to compel; and direct the production of the requested documents. This memorandum is based on the South Carolina Rules of Civil Procedure, particularly Rule 26, applicable statutory and case law, and the entire record herein.

Respectfully submitted,

s/Adam T. Silvernail SCBAR #80219  
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*Attorneys for Adele J. Pope*

March 2, 2020

STATE OF SOUTH CAROLINA  
In the Court of Appeals  
APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge  
The Honorable L. Casey Manning, Circuit Court Judge

---

Appellate Case Nos.: 2018-002229 and 2017-001899  
Richland County Circuit Court Case No. 2010-CP-40-4900

---

RUSSELL L. BAUKNIGHT, as Trustee of The James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B.; Daryl J. Brown, individually and on behalf of his minor child, Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. And Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown

And

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B.; Daryl J. Brown, individually and on behalf of his minor child Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown, Respondents.

v.

Adele J. Pope, and Robert L. Buchanan, Jr. Defendants,

Of whom Adele J. Pope is Appellant.

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**SUPPLEMENTAL MEMORANDUM SUPPORTING LIFTING OF STAY**

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Based on the Supreme Court's June 17, 2019 decision finding that Respondent Tommie Rae<sup>1</sup> is not the spouse of entertainer James Brown and three orders of the Honorable J. Michelle Childs issued on June 18, 2019, Appellant respectfully submits this supplemental memorandum supporting her motion to lift the automatic stay in this case (Richland 4900). Appellant incorporates her motion to lift the automatic stay filed April 27, 2020 and all supporting documentation for that motion and earlier motions to lift stay.

This is the fourth pretrial appeal filed in this 10-year old case. The automatic stay has been in place since September 2017. All earlier requests of Appellant to lift the automatic stay imposed by Rule 241, SCACR, were denied by the Honorable Doyet A. Early, III (former Aiken Court).

This supplemental memorandum addresses some of the ongoing efforts of Respondent Attorney General of South Carolina (AG), Respondent Russell Bauknight, trustee of Respondent Legacy Trust, and Respondents Tommie Rae, her son James and others to deprive the Court of jurisdiction over the parties to this appeal and their property, and to render the contested issues in the appeal moot.

#### **Bauknight and AG Seek to Render Tens of Millions of Dollars Spent Moot**

Since 2013 the AG has monitored the James Brown litigation and praised Bauknight as he spent tens of millions of dollars in litigation costs from a claimed \$4.7 million music

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<sup>1</sup> Claimed relatives and formerly-claimed relatives of entertainer James Brown are referred to by first names to avoid confusion. The James Brown Legacy Trust, which was created by the Attorney General of South Carolina, Tommie Rae, and former clients of Louis Levenson, Esq., is referred to as the "Legacy Trust" to make clear that it was never part of the estate plan of Brown. It was, instead, created by the Attorney General and parties to his 2008 settlement to help dismember Brown's estate plan.

empire to carry into effect the announced May 29, 2013 plan to disregard *Wilson v. Dallas* and reinstate the AG's 2008 settlement. In 2018 Bauknight told a federal court those tens of millions of dollars would all be paid from James Brown's charity.

The tens of millions of dollars include more than \$1.4 million paid to David Sojourner not to protect the "I Feel Good" Charity's royalties from the claims of Tommie Rae and James under the Copyright Act; a \$700,000.00 war chest awarded by the former Aiken Court to James in 2016; more than a million dollars paid to Peter Afterman as he helped Tommie Rae and James siphon off royalties owned by Brown's charity; payment to a \$600-an-hour New York expert and \$700 and \$400 an-hour California Richland 4900 experts to appear in Aiken 1337 to praise Bauknight and Afterman; and what appears to be almost \$20 million paid to a dozen Nexsen Pruet lawyers who began representing the Legacy Trust in 2009.

Legacy Trust lawyers began interfering in FOIA cases in 2011. They are currently representing Bauknight who, with Sojourner, is being sued for improper handling of termination rights proceeds under Sections 304 and 203 of the U.S. Copyright Act (Termination Interests).

In 2018 the former Aiken Court directed Bauknight to file a record of all of the litigation costs he had incurred and paid since May 26, 2009. The order was issued in Aiken 1337. After resistance, Bauknight filed the records with the Court *ex parte*, claiming that this was his customary method of dealing with Court.

When counsel for Appellant (Pope) objected, the Aiken Court which had reviewed the records discarded them and failed to retain a sealed copy for Appellate review.

The tens of millions were not spent by Bauknight for the benefit of James Brown's

Estate, 2000 Trust, or "I Feel Good" Charity. They were spent to dismember it and ruin the careers and reputations of Buchanan and Pope. The AG continues to praise Bauknight for these action, including by adopting a brief of Tommie Rae, the Legacy Trust and Bauknight "on behalf of" the AG in this appeal.

The AG and Bauknight have pursued Richland 4900 for ten years to blame the reckless dismembering of James Brown's estate plan on Robert Buchanan, Jr. and Pope. They now seek to render the contested issues of their intentional devaluation of Brown's music empire by \$79 million, abuse of process and other wrongdoing moot, and leave Buchanan, Pope and Brown's "I Feel Good" Charity to bear the loss.

The AG, to the extent of at least 47.5%, and Bauknight to the extent of the Legacy Trust funds he cannot recoup from Tommie Rae, James and others, should pay the damage to Buchanan and Pope – not James Brown's charity.

#### **Assets as to Which Respondents Seek to Deprive the Court of Jurisdiction**

In 2010 Respondents placed the power of the State of South Carolina; all of the assets of the Estate/2000 Trust of entertainer James Brown; all of the assets of Respondent Legacy Trust; and all of the termination rights proceeds under Sections 304 and 203 of the U.S. Copyright Act (Termination Interests) of all Respondents under the jurisdiction of the Richland 4900 Court.

The AG and Respondents told the Court that the Legacy Trust was in operation in Richland County; Bauknight was its trustee; it was controlled by the State/AG; it held all of the James Brown assets and all Termination Interests of all Respondents. Respondents said that the ownership of the Legacy Trust was as follows:

<b>AG (Charity)</b>	<b>Tommie Rae</b>	<b>Terry</b>	<b>Venisha</b>	<b>Deanna</b>	<b>Yamma</b>	<b>Larry</b>	<b>Daryl</b>
47.5 %	23.75 %	4.79%	4.79%	4.79%	4.79%	4.79%	4.79%

The Wingate Contract to sue Buchanan and Pope provides that the Richland 4900 costs – which have been advanced for 10 years by Bauknight from funds James Brown gave his “I Feel Good” Charity – would be paid by certain Plaintiffs in the above shares. It further provides that the State/AG will receive 10% of the legal fee associated with the charitable portion.

Today most Respondents, including the Legacy Trust owner-successors, are seeking to escape the jurisdiction of the Court. None has paid any portion of the Wingate costs or the costs they were ordered by the Honorable L. Casey Manning to pay in 2012.

The Court should lift the automatic stay so that the damage by the Legacy Trust to Buchanan and Pope will be paid by those who caused the damage from the assets its owners placed under the jurisdiction of this Court a decade ago.

#### **Bauknight and Others Seek to Render the May 29 Plan to Disregard *Wilson Moot***

In an extraordinary action taken in 2020, Bauknight claimed that the May 29, 2013 announcement of Tommie Rae's counsel Alan Medlin, Esq., and Levenson to the former Aiken Court of their plan to disregard *Wilson v. Dallas* and reinstate the AG's 2008 settlement did not happen. This settlement gave them about \$2 million income a year and half of Brown's \$80 million charity in exchange for their Termination Interests, worth less than \$8.8 million in 2018. This is simply not correct.

Bauknight made the claim based on a sworn 2017 deposition of Louis Levenson, Esq., in which Levenson failed to recall his own announcement and more than 50 other events of

the period. The claim was made by David Black, Esq., one of the two lawyers present with Russell Bauknight at the time the Tommie Rae/Levenson announcement was made. The second was William Newsome, Esq.

Newsome was lead trial counsel in the Aiken 1337 trial in 2017 and 2018 where Judge Early's failure to report the announced plan of Tommie Rae and others to the Supreme Court was discussed. Neither Newsome, nor Bauknight made the claim that the announcement had not taken place. They could not.

Bauknight's effort, using funds from Brown's charity, to render his own wrongdoing and damage moot, increases the damage to Buchanan and Pope. Lifting the stay will prevent this contested issue and others from becoming moot and help bring it to a conclusion.

#### **Bauknight Seeks to Render the Legacy Trust's Liability for Interest Moot**

On May 26, 2009 Buchanan was owed about \$500,000 and Pope about \$1.4 million for their service and the service of their staffs under their court-approved contract with Brown's Estate/2000 Trust. Under Judge Early's order of January 8, 2008 these amounts, and \$47,972 of Pope's unpaid 2007 SA fee, were earning interest at 8  $\frac{3}{4}$ %.

In 2017 the former Aiken Court awarded Pope's \$47,972 SA fee, with interest, but Bauknight refused to pay.

In 2020 Bauknight secured an order from the Honorable Clifton Newman to pay the \$47,972, and interest that had doubled it, into the Court. Bauknight secured the order by claiming that Pope had agreed to withholding the amount, and by claiming that Aiken 1337, her fee case, was a companion case to Richland 4900. It is not.

The Probate Code requires that claims be promptly paid, and bear interest when not

paid. More than \$1.5 million of interest accrued at 8 3/4% by the strategy of the Attorney General, Bauknight, and Tommie Rae to further damage Pope by not paying her a penny of the SA fee due in 2008 or earned partial PR/Trustee fee due in 2009. This damage should be borne by them – not by James Brown’s charity. The stay should be lifted so this matter will not be rendered moot.

### **Bauknight Seeks to Render Buchanan’s Re-Entry into Richland 4900 Moot**

In 2012 Bauknight advanced \$500,000 to Buchanan from Brown’s charity to secure releases from Buchanan’s counterclaims against the Attorney General, Tommie Rae, and the Levenson Will/Trust contestants. The AG, without notifying the Supreme Court in *Wilson*, required Buchanan not to file a petition for rehearing when the decision was issued. A motion to declare the conditions of the claimed settlement void has been pending since 2012.

The AG, Legacy Trust Tommie Rae and others never repaid Brown’s charity for the funds advanced to Buchanan or the costs ordered by the Court.

In October 2013 Judge Early gave Buchanan a *Wilson v. Dallas* remand hearing and “double approved” Buchanan’s service as SA and as PR/Trustee, all of which was joint with Pope. He also paved the way for Buchanan’s re-entry into Richland 4900 to seek damages against all Plaintiff/Counterclaim Defendants other than Brown’s Estate/2000 Trust.

The Court directed Bauknight’s counsel Newsome to present an order confirming his ruling, but Bauknight’s counsel did not do so. Today Bauknight “on behalf of” the AG and other Respondents seeks to render this issue moot. The stay should be lifted and motion to join Buchanan heard.

**Bauknight and Others Seek to Render Issues Related to Forlando Moot**

In January 2011 Terry transferred his interest in James Brown's estate and the Legacy Trust to Forlando. The AG facilitated the transfer. That month Forlando planted the false Grammy © claim which was noted by the Supreme Court in 2013 and which Bauknight, with knowledge of its falsity, has used to damage Buchanan and Pope since.

A motion to add Forlando as a party to Richland 4900 has been pending for eight years and should be heard.

In 2015 Bauknight began spending funds Brown gave his charity to help Forlando in his 2008 case seeking to enjoin the 2000 Trust until felon David Cannon and his co-trustee Albert Dallas were reinstated as Brown's trustee. Bauknight hired the law firm of Kenneth Wingate, Esq. (Wingate), Richland 4900 counsel, to assure that Buchanan and Pope not be paid the approximately \$400,000 for their 4-year defense of the 2000 Trust from Forlando's attempted injunction.

As a result of the \$4.7 million Afterman/Bauknight valuation, Forlando's Trust now owns about 4.4% of \$1 million a year and the assets of the 2000 Trust until he reaches 35. This fund should be available to pay the damages caused by Plaintiffs and Wingate to Buchanan and Pope.

The stay should be lifted so that the Court will secure jurisdiction over Forlando and retain jurisdiction over his 4.4% of the 2000 Trust.

**Bauknight and Others Seek to Deprive Court of Jurisdiction Over Terry**

Terry submitted his 10% of Termination Interest to the jurisdiction to the Richland 4900 Court. In 2019 he secured a ruling of the Court of Appeals that he had never challenged

the estate plan of James Brown. Yet he has, for ten years, sought to discredit and damage Buchanan and Pope for defending the estate plan. Terry's damage to Buchanan and Pope should be redressed from Terry's assets – not the assets of Brown's charity.

Without objection of Bauknight, Terry and others have already has already received some of the U.S. royalty Termination Interests they placed under the jurisdiction of this Court during the stay. The stay should be lifted so that the Court can retain jurisdiction over Terry's approximately \$800,000 Termination Interests, whether or not he has successfully assigned the proceeds to Forlando.

**Efforts to Deprive Court of Jurisdiction Over Legacy Trust Successors**

In 2019 the Legacy Trust was determined not to exist, but the June 2019 Supreme Court decisions shows that Respondents are substantial owners of its valuable Termination Interests in approximately the following shares:

Terry	Venisha's Estate	Deanna	Yamma	Larry	Daryl	Tonya	James
10%	10% <sup>2</sup>	10%	10%	?	0	10%	10%
\$800,000+/-	\$800,000+/-	\$800,000+/-	\$800,000+/-			\$800,000 +/-	\$800,000 +

The automatic stay should be lifted so that the Court will not lose jurisdiction over this \$4 million or more for payment of costs and damages related to the contested issues in this proceeding.

**Efforts to Render Bauknight's Shift of Nearly 1/3 (31%) of Charity to Family Moot**

In 2011 Bauknight, with Peter Afterman, valued Brown's music empire at \$4.7 million

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<sup>2</sup> Venisha has a vested interest in Termination Rights proceeds to 246 copyrights, the U.S. royalties of which will become payable between 2018 and 2026. Her right to participate in unvested rights to Termination Rights proceeds ended at her death

to damage "Bobadele." By doing so, he shifted \$1 million a year and nearly 1/3 (31%) of the assets of Brown's "I Feel Good" Trust over to family members for 20 years or more. Instead of owning 41/42 of Brown's assets, the charity now owns only about 69%. The rest is owned as follows:

<b>"I Feel Good" Charity</b>	<b>Forlando</b>	<b>Jason</b>	<b>Janise</b>	<b>Lindsey</b>	<b>Sydney</b>	<b>Carrington</b>
69%	4.4%	4.4%	\$4.4	4.4%	4.4%	4.4%

The Attorney General has had actual knowledge of this damage since 2013 but joins Bauknight in 2020 to try to render the damage moot and blame it on Buchanan and Pope. The stay should be lifted so that contested issues related to Bauknight's shift of nearly 1/3 out of Brown's charity to Brown's family to damage Buchanan and Pope can be addressed and redressed.

#### **The Attempts of Wingate to Deprive the Court of Jurisdiction Over Former Minors**

In 2010 Levenson signed the 40% Wingate Contract for about a dozen Plaintiffs, four of whom were minors. Levenson and Wingate refused to appoint a GAL for the minors, or for the incarcerated Venisha. They have resisted efforts to lift the stay to preserve jurisdiction over these now-adult parties who have received a substantial windfall from the shift of nearly 1/3 of Brown's charity to their trusts.

#### **James Seeks to Deprive Court of his 10% Termination Interest**

In 2010 James sued Buchanan and Pope for tens of millions of dollars even though they never owed him any duty; he was not a presumed child of James Brown; and he had refused a paid-for \$300 DNA test. They counterclaimed.

In 2013, through a lawyer with a contingency-fee contract with Tommie Rae, James

made patently false statements to the Supreme Court about the \$4.7 million claimed value and the Copyright Act.

In 2016 the former Aiken Court declared James a child of James Brown and awarded his attorney and GAL fees of \$700,000.00.

In 2018, when James was sued by Respondents Venisha Brown and others, James claimed he was a resident of London, U.K. and beyond the jurisdiction of U.S. Courts.

The Supreme Court's 2020 ruling confirms that James owns about 10% of the Termination Interests. Richland 4900 Plaintiffs' expert Roger Miller valued the Termination Interests at \$8.8 million. Lifting the stay will prevent the Court from losing jurisdiction over James and his Termination Interests.

#### **Lifting the Stay is Necessary to Prevent Loss of Jurisdiction Over Tommie Rae**

Tommie Rae and her advisors hatched the conspiracy to devalue James Brown's worldwide music empire at \$24 million or less to discredit "Bobadele," The use of the fabricated \$4.7 million to accuse them of a federal felony has caused millions of dollars of damage to Buchanan's and Pope's careers and reputations over the last 9 years.

Tommie Rae has pursued a suit for tens of millions of dollars against Buchanan and Pope for a decade even though they never owed her any duty. She – not James Brown's charity – should be responsible for that damage.

The AG, Bauknight and Tommie Rae are seeking to deprive this Court of jurisdiction over Tommie Rae and render moot the issue of recouping about \$1.8 million in Termination Interests she obtained while being advised by Bauknight's music manager Peter Afterman.

Tommie Rae now claims to be a resident of London, U.K., and beyond the jurisdiction

of the U.S. Courts. This Court has jurisdiction to make her, and her counsel, disgorge the funds to pay for her damages to Buchanan and Appellant.

#### **Efforts of Deanna to Deprive Court of Jurisdiction Over Termination Interests**

As set out herein, Respondents placed approximately 60% of Termination Interests under the jurisdiction of this Court in 2010. All Termination Interests were valued by Respondents' expert at about \$8.8 million in 2018. These Termination Interest should pay for the damage to Buchanan and Pope. The stay should be lifted to secure the Court's jurisdiction over them.

#### **Attempts to Deprive the Court of Jurisdiction Over Tonya's Termination Interests**

For ten years Tonya has sued Buchanan and Pope for tens of millions of dollars even though she is not a beneficiary of Brown's estate plan; was intentionally excluded by him; and they never owed her any duty. The Court's jurisdiction over her approximately 10% of the Termination Interests should be preserved.

#### **The AG's FOIA Noncompliance and Efforts to Render Contested Issues Moot**

In 2011 and 2012 the AG began withholding under both FOIA and Richland 4900 discovery a handful of public documents which could have brought an end to Richland 4900. They included the so-called "Hynie diary;" the Wingate Contract; the Legacy Trust 2011 amendments; and the claimed Bauknight/Afterman \$4.7 million valuation.

In 2020 the AG is still refusing to produce these documents under FOIA and Wingate and Bauknight "on behalf of" the AG are refusing to produce them in Richland 4900 discovery. When Wingate was ordered to produce the Wingate Contract, it contained a different signature page for Terry than was in the previously-produced copy. The issue is not

resolved.

Lifting the stay will prevent contested issues related to the damage caused by the AG's withholding these documents from becoming moot.

### **Deanna and Levenson Use Contempt Claims to Deprive Court of Jurisdiction**

In June 2019 the Supreme Court confirmed that Respondents own more than half of the \$8.8 million of Termination Interests. Deanna, Yamma, and Venisha's Estate own about 30% of them.

In 2018 Deanna told the Aiken Probate Court that Venisha's Estate had little or no assets. Then both Deanna and Levenson, without any sworn petition or rule to show cause, asked the Honorable Clifton Newman to hold Pope in contempt of the Supreme Court for filing an answer to Deanna's defective and knowingly incorrect formal petition for the appointment of herself as Deanna's PR. Deanna's clear intention was to deprive the Richland 4900 Court of jurisdiction over approximately \$800,000 of Termination Interests Venisha placed under the jurisdiction of this Court, and which should be used to pay her damages to Buchanan and Pope.

### **Attempts to Render Sworn Testimony of the Governor, the AG and Others Moot**

Governor McMaster has testified under oath in Aiken 1337 that he did not authorize Wingate to bring Richland 4900 in the name of the State/AG; did not authorize Bauknight to act "on behalf of" the AG in Richland 4900; and did not even know he was a Richland 4900 Plaintiff until after he left office as AG in January 2011. The Solicitor General has testified to meeting with Pope in March 2013 when she and the AG discussed the problems caused by the Bauknight/Afterman devaluation to \$4.7 million and incorrect IRS filings, which needed

to be corrected to protect Brown's charity from Tommie Rae. The AG did not require Bauknight to make the changes.

In 2020 Wingate, Bauknight and the AG have taken strong steps to render this critical testimony moot, even though it was given in what Bauknight claims is a "companion case." The stay should be lifted to preserve this and other testimony so that more damage to Buchanan and Pope will not be financed by James Brown's charity.

### **CONCLUSION**

For the reasons stated herein and in Appellant's April 27, 2020 motion, the automatic stay in this matter should be lifted; the actions taken by SWB during the automatic stay voided; and the parties corrected under Rule 19 as stated herein and found within pending motions. Discovery in this 10-year-old case should proceed.

Respectfully submitted,

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April 27, 2020

*Counsel for Appellant Adele J. Pope*

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS

Adele J. Pope, )  
 )  
Plaintiff, )  
 )  
v. )

Case No. 2010CP4004900  
[formerly Newberry Co. Case No.  
2011-CP-36-379]

Alan Wilson, in his capacity as )  
Attorney General of South Carolina, )  
 )  
Defendant. )

**MEMORANDUM  
OF ATTORNEY GENERAL  
FOR 11/2/2020 HEARING**

\_\_\_\_\_  
Russell L. Bauknight, etc., Henry Dargan )  
McMaster, in his capacity as Attorney )  
General,etc, et al, )

Plaintiffs, )

v. )

Adele J. Pope and Robert L. Buchanan, Jr., )

Defendants. )

Case No. 2010-CP-40-4900

Plaintiff apparently wants the Office of Attorney General to produce pursuant to Court Order what it has already given her voluntarily. This request is baseless under the law and facts of this case. In the Second Supplemental Memorandum submitted earlier this year in which the Attorney General said the following

Although the unsigned [three pate Wingate document] that the Office of the Attorney General has and the signed document produced in Federal litigation appear to be the same, upon closer examination in preparation for the hearing in this case on February 21, we have found that they contain a few differences. Therefore, the unsigned document that the Office of the Attorney General has is neither an agreement nor an unsigned copy of the “contract of the then AG [Henry D. McMaster] and /or the State of South Carolina engaging Kenneth B. Wingate . . . .” which Plaintiff requested in her FOIA letter.

Accordingly, the unsigned document that we have is not responsive to Plaintiff's original FOIA request for a copy of the "contract," and it is not subject to production under FOIA. Nevertheless, because we have said that we would produce the document if the court rules that the agreement<sup>1</sup> itself is subject to production in discovery in case 4900, we will voluntarily produce the unsigned document if such a ruling is made. Any such production of the unsigned document, would be solely discretionary and not due to Plaintiff's FOIA request or this litigation.

Therefore, the document was not responsive to the FOIA and produced only voluntarily. Further, the document, even if responsive, was not subject to production under FOIA earlier. As stated in the Attorney General's Supplemental Memorandum in this case:

The Attorney General asserts that the Wingate document is exempt from discovery and therefore, FOIA, as privileged matter under the pending Motion for Protective Order and a matter under the control of the court pursuant to that Motion under the Rules of Civil Procedure because its production is under consideration pursuant to the Rules 26, 34 and 37. These rules make clear that the court presiding over discovery makes the decision about the disclosure of documents under pending motions. These discovery provisions constitute exemptions under the Rules of Civil Procedure and therefore, fall under FOIA's exemption of "[m]atters specifically exempted from disclosure by statute or law" (§30-4-40(a)(4)), and the circuit court's consideration of these motions constitutes, "the rule of law" which must be observed.

Plaintiff's case should be dismissed for the above reasons. For the record, this Court should also grant the motions to strike her affidavits for all the reasons set forth in the Attorney General's February 18, 2020, Supplemental Memorandum.

Because the Plaintiff is not entitled to prevail in this case, she is not entitled to Attorney's Fees. In addition, her attorney's affidavit is conclusory and does not set forth an itemized list of tasks and time on this case which are essential in determining the reasonableness of the fee. *See eg*, S.C. Code Ann. §30-4-100 (may be awarded reasonable attorney's fees); §15-77-330

<sup>1</sup> The Attorney General was not a party to the agreement. *See*, Supplemental Memorandum of February 18, 2020, at p. 4, citing letter of November 27, 2013, to the Honorable Casey Manning.

(Requiring itemized statement before payment of fees); *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997)(six factors must be considered in determining a reasonable attorney’s fee) cited in *Burton v. York Cty. Sheriff’s Dep’t*, 358 S.C. 339, 357–58, 594 S.E.2d 888, 898 (Ct. App. 2004). (In a FOIA action, “[t]he award . . . must be reasonable and supported by adequate findings.”). In particular, Plaintiff should not be able to claim time for any work in the filing of the affidavits subject to the motions to strike.

### CONCLUSION

For the foregoing reasons, the Attorney General requests that this Court grant him judgment in this case.

Respectfully submitted,

/s J. EMORY SMITH, JR.  
S.C. Bar No. 5262  
Deputy Solicitor General

ALAN WILSON  
Attorney General

ROBERT D. COOK  
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November 2, 2020

ATTORNEYS FOR THE ATTORNEY GENERAL

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
Adele J. Pope,	)	Case No. 2010-CP-40-4900
Plaintiff,	)	Affidavit Opposing Participation of
v.	)	SWB Law Firm in this FOIA Case
Alan Wilson, in his capacity as	)	and in Support of Exemplary Legal Fees
Attorney General of	)	Based on Defendant's Release of
South Carolina,	)	of "October 2020 Documents"
Defendant	)	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
Adele J. Pope,	)	Case No. 2012-CP-02-
Plaintiff,	)	Affidavit Opposing Participation of
v.	)	SWB Law Firm in this FOIA Case
Alan Wilson, in his capacity as	)	and in Support of Exemplary Legal Fees
Attorney General of	)	Based on Defendants' Release
South Carolina,	)	of "October 2020 Documents"
Defendant	)	

PERSONALLY APPEARED BEFORE ME, ADELE J. POPE, who, being duly sworn, deposes and says:

1. I am over eighteen (18) years of age.
2. This affidavit is based on the "October 2020 Documents" released by Defendant ("Attorney General") under FOIA; the subsequent appearance of the private Sweeny, Wingate & Barrow, PA ("SWB") law firm at a hearing in these FOIA cases seeking certain Court consideration; the depositions I have personally taken of SWB attorneys Kenneth Wingate, Esq. ("Wingate") and Everett Kendall, Esq.; Governor

Henry McMaster, Attorney General Alan Wilson, former Chief Deputy AG John McIntosh, Solicitor General Robert Cook and other AG staff; the AG's termination rights expert Robert Miller; Russell Bauknight ("Bauknight"); the Supreme Court's *Wilson v. Dallas* decision; the open records policy of the Estate/2000 Trust of James Brown from November 2007 until May 2009 while Robert Buchanan, Jr. and I served as PR/Trustees, including hearings, stated positions of the parties and Circuit Court rulings related to our nonconfidentiality policy during this period; facts and Court rulings related to the public so-called "Hynie diary;" facts, stated positions of the parties and Court rulings related to claimed confidentiality of the public "Wingate Contract"; facts, stated positions of the parties and Court rulings related to the "Afterman \$4.7 million Value" with which I am personally familiar; the public record and admissions of Tommie Rae Hynie Brown ("Tommie Rae"), Peter Afterman ("Afterman") and others; and my personal knowledge, including from more than 40 depositions I have taken or attended since I made my FOIA requests in related to these cases in June 2011.

3. Based on SWB's and the State/Attorney General's 9 ½ year violation of my FOIA, Due Process, First Amendment and Equal Protection rights in these two FOIA cases, I request that the Court reject efforts of SWB to participate in my FOIA cases; direct the Attorney General to comply with my June 2010 FOIA requests by enforcing the FOIA obligations to which SWB and its private clients, including the now-defunct Legacy Trust and its trustee, agreed in the Wingate Contract in 2010; award exemplary damages to my counsel for the State/AG's intentional violation of my FOIA and constitutional rights for private benefit; and direct the AG to comply with FOIA by an

order substantially in accordance with the 2014 FOIA Order of the Honorable Eugene C. Griffith, Jr., but addressing the following:

- a. All motions of SWB and its clients to participate in these FOIA cases are denied, but SWB, the Legacy Trust and other SWB clients shall remain bound by their FOIA obligations under the public Wingate Contract as consented to by SWB, the Legacy Trust and all other SWB clients in 2010 in the public Wingate Contract.
- b. The Attorney General shall produce to Pope every document responsive to her June 2011 FOIA requests from the date of such requests to the date of full compliance, including documents of the Attorney General, SWB, the Legacy Trust, its successors and/or any other SWB clients as agreed to in the in the Wingate Contract, and every document requested under FOIA shall be deemed a public document unless the specific document is identified; filed under seal; and certified by the Attorney General and, if applicable, the party seeking exemption under FOIA, in the manner set out herein.
- c. Because she has been determined by the Supreme Court not to have any interest or right in the Estate/2000 Trust of James Brown and Brown's James Brown "I Feel Good" charity which the Attorney General has a public duty to protect, in addition to the AG's duties under FOIA, no claim to privilege or exemption under FOIA may be asserted as to any document used, possessed, or shared with Tommie Rae and/or her counsel and/or advisors.
- d. Every document responsive to Pope's FOIA requests not specifically designated as Confidential on the date of Plaintiff's original FOIA requests shall be deemed public and delivered to Pope.
- e. If the Attorney General claims that any document responsive to Pope's FOIA request and held by the AG, SWB and/or any clients of SWB, the Attorney General shall deliver the specific document under seal to the Court and to Plaintiff's counsel, and shall present a sworn certification of the Attorney General as follows:
  1. The AG has reviewed the August 10, 2007 and March 2010 orders of the Honorable Doyet A. Early, III; the 72-page Custody Receipt signed by Russell Bauknight in June 2007; considered the open administration policy of Buchanan and Pope as PR/Trustees from November 2007 until May 2009; the 145 boxes of public James Brown documents delivered to the Legacy Trust trustee in 2009; the 120

boxes of nonconfidential documents held by Pope and reviewed by SWB for 5 days in May 2013; the 50+ CDs of public documents delivered to SWB by Pope; and the public records in the James Brown appeals and, to the best of the knowledge and belief of the AG a copy of the document for which exemption is sought is not contained within those public documents.

2. To the best of the AG's knowledge and belief, the document claimed not to be public and subject to release under FOIA has not been shared with Tommie Rae or her counsel or advisors.

3. To the best of the AG's knowledge and belief, the documents claimed not to be public and subject to release under FOIA, has been treated by the person asserting confidentiality as confidential and not shared with any other party or counsel.

4. To the extent a claim of confidentiality is asserted pursuant to a Court order or directive, the Attorney General has reviewed the order or directive; asserts that it is the AG's opinion the order or directive is enforceable under S.C. law; and the party relying on the confidentiality order has complied with the confidentiality order, including by maintaining records of those reviewing the document claimed to be confidential.

4. Based on the 9 ½ year history of my June 2011 FOIA requests, I believe that the public record shows that SWB and its private clients have unclean hands in my FOIA cases; have no right to participate in my FOIA cases; have agreed that every document used in Richland 4900 belongs to S.C. and is public; have waived any claim of confidentiality by sharing documents with Tommie Rae, her advisors, and others; are bound under the Wingate Contract to allow the AG to produce all documents used in Richland 4900 because they belong to the State of South Carolina; and, through the Attorney General, must deliver to the AG the documents to comply with my 2011 FOIA requests for each and all of the following reasons:

a. Since May 2010 SWB has violated my Due Process rights since May 2010 by concealing the public Wingate Contract while taking unconstitutional,

unauthorized State action against me for the benefit of Tommie Rae and SWB's private clients aligned with Tommie Rae.

b. In addition, since June 2011 SWB has violated its FOIA obligations under the Wingate Contract and my FOIA rights, and induced the Legacy Trust to do so, at great cost to me and to James Brown's charity.

c. In addition, since June 2011 SWB has directly violated my FOIA rights and those of others by not immediately producing the public Wingate Contract and all documents used in Richland 4900 which, under the Wingate Contract, are the property of the State S.C. and subject to FOIA.

d. In addition, since January 2012 SWB has advised the Attorney General, the State official charged with the enforcement of FOIA, not to comply with his duties under FOIA, and aided and abetted the AG in the violation of his public duties under FOIA and the violation of my constitutional rights.

e. In addition, since 2012 SWB has both acted for the State/AG and induced the Attorney General to retaliate against and violate the First Amendment rights of persons making valid FOIA requests, including by seeking sources and notes of a journalist on behalf of the AG [Exhibit A]; secreting the known-public so-called "Hynie-diary" on behalf of the AG; and securing an unconstitutional 2017 order to silence me in a case SWB was seeking to consolidate.

f. In addition, SWB has combined 10 years of extraordinary discovery abuse with 9 ½ years FOIA noncompliance, withholding without justification the public Wingate Contract to conceal SWB's lack of legal authority to act for the State/AG.

g. In addition, SWB withheld the Legacy Trust documents which should have been produced under the Wingate Contract pursuant to my June 2011 FOIA request from 2011 until 2013; induced the Legacy Trust to violate my FOIA requests; then, from 2013, claimed in FOIA cases that the Legacy Trust does not exist, while simultaneously seeking and securing substantial benefits for Tommie Rae and other Legacy Trust owner/successors in Richland 4900.

h. In addition, SWB has supported the false and misleading statements made by Tommie Rae, Peter Afterman, and those aligned with them to multiple courts for more than a decade, used FOIA disruption and noncompliance, including reliance on unconstitutional, inapplicable, ill-gotten or waived confidentiality claims, to deny FOIA compliance and counsel the Attorney General to deny his obligations under FOIA.

5. I crave reference, and ask the Court to consider under Rule 201 SCRE my

earlier filings and affidavits, of those and other citizens, as well as the 100 media and public posts filed by SWB in Richland 4900 in 2012 in connection with their motion for guidance as to pretrial publicity, for an understanding of the origins of the extraordinary role Tommie Rae, her counsel, those aligned with her and Peter Afterman have played in the denial of my FOIA, Due Process, First Amendment and Due Process rights.

6. Tommie Rae was a major client of SWB from 2010 until 2013 as a 23.75% owner-beneficiary of Richland 4900 Plaintiff Legacy Trust, but since April 24, 2013, when the Attorney General made clear he would have no part in paying SWB, and the Legacy Trust disappeared, Tommie Rae, with a 46% stake in Richland 4900, is the principal client of SWB and principal stakeholder in Richland 4900.

7. Further, Tommie Rae is the only disclosed SWB client currently supporting all of the allegations in the never-amended Richland 4900 complaint, which asserts that Tommie Rae is the spouse of James Brown and entitled to a quarter of his worldwide music empire in exchange for half of her non-existent termination rights and those of her son James.

8. Terry Brown ("Brown") and Daryl Brown ("Daryl") have both repudiated the Richland 4900 complaint in filings in the Circuit Court and Court of Appeals, supporting James Brown's estate plan; claiming that the Will/2000 Trust challenges made by clients of Louis Levenson, Esq., were frivolous; and even claiming that Bauknight should have imposed the *In Terrorem* clauses of Brown's estate plan against the Levenson clients for challenging the estate plan.

9. SWB's relationship to Forlando Brown ("Forlando"), who became a 4.79%

Legacy Trust owner-beneficiary in January 2011; planted the false Grammy© claim with Kilpatrick Stockton (KS) that month; but has never been disclosed to the Court as the client of SWB, including in the March 2017 depositions of two SWB attorneys directed by the Honorable Jean Toal, Acting Circuit Judge, to answer questions regarding their authorization to commence and continue Richland 4900.

10. SWB's FOIA noncompliance under the Wingate Contract, and SWB's use of the power and prestige of the State/AG for Tommie Rae since April 24, 2013, when it clearly had no legal authority to do so, have exponentially increased the damage of the denial of my FOIA rights and the FOIA rights of other citizens who are entitled to public information about the role of the State/Attorney General in James Brown's "I Feel Good" charity.

11. The "I Feel Good" Trust should today be South Carolina's largest-ever private foundation for the education of needy students in South Carolina and Georgia.

**SWB Breaches Its FOIA Obligations Under the Wingate Contract for 9 ½ Years**

12. In June 2011 when I made my FOIA requests SWB was already breaching its obligations under the Wingate Contract by NOT delivering me a copy of the Wingate Contract in discovery in Richland 4900.

13. Whether or not the AG is bound by the Wingate Contract Governor McMaster did not sign should not be the concern of any S.C. citizen making FOIA requests because SWB and all of its private Richland 4900 Plaintiffs/Clients agreed to the unequivocal terms of the Wingate Contract they signed on May 18, 2010.

14. The Wingate Contract states on page 1:

The Litigation Retention Agreement which is attached hereto as Exhibit A and which is incorporated herein shall govern the terms of representation and the payment of fees to the Firm with respect to the 47.5% of the gross proceeds attributable to the charitable portion of the James Brown Estate, the James Brown 2000 Irrevocable Trust, and/or the James Brown Legacy Trust. [Exhibit 1, p. 1]

15. Exhibit A states in part:

F. Any material, data, files discs, or documents created, produced or gathered by Special Counsel or in Special Counsel's possession in furtherance of this litigation, or which fulfills an obligation of this appointment, shall be considered the exclusive property of the State of South Carolina. Special Counsel agrees to adhere to South Carolina's Freedom of Information Act, South Carolina Code of Laws §30-40-10 et seq., and to maintain all public records in accordance with State law; provided, however, that Special Counsel shall consult with, and obtain the approval of the Attorney General before responding to any public records request. Special Counsel agrees to comply with the Attorney General's policy on document retention and to refrain from destroying documents unless otherwise permitted under this policy. Special Counsel agrees to comply with Rule 417 of the Appellate Court Rules. Special Counsel agrees to request written confirmation from the Attorney General's Office prior to destroying any documents. This Agreement shall be considered a public document. [p.5, Emphasis supp.]

16. I believe the problem of SWB's not having the Attorney General and most Richland 4900 Plaintiffs<sup>1</sup> sign the Wingate Contract should not be the problem of citizens seeking FOIA compliance by SWB.

17. When I filed my FOIA request for the Wingate Contract with the Attorney General in June 2011, there should have been NO resistance by SWB.

18. Instead, over the next 9 ½ years, SWB moved to intervene in three FOIA

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<sup>1</sup> In 2020, when compelled to produce the Wingate Contract in discovery, SWB produced a copy that contained one material difference from the copy of the Wingate Contract produced by Bauknight under Federal Court order in 2013.

cases; sought to transfer three FOIA cases to Richland County and consolidate them with Richland 4900; gave the Attorney General legal advice in January 2012 NOT to comply with his statutory duties under FOIA; continued State action for the benefit of Tommie Rae and private clients after the AG's April 24, 2013 confirmation that SWB had no authority to act for the State/AG.

**SWB Creates AG's FOIA Claim that Wingate Contract is "Under Court Review"**

19. In September 2011 the Attorney General's Office wrote the Honorable L. Casey Manning saying the AG was ready and more than willing to produce to me its copy of the Wingate Contract, but understood it was under review by the Court.

20. With SWB's clear direction on the face of the Wingate Contract that it was a public document, SWB filed a baseless motion for protective order to keep the Wingate Contract from being release in discovery.

21. For the next 9 years SWB and the Attorney General used the baseless claim that the public Wingate Contract was "under Court review" to evade release under FOIA not only of the Wingate Contract but of every document used by SWB in Richland 4900.

22. In the fall of 2011 the AG posted his public Special Counsel Litigation Retention Agreement contracts with outside counsel, but not the Wingate Contract. His website said the AG was not posting contracts under court review.

23. On January 20, 2012, SWB hand delivered a letter to the Attorney General, first released in 2020, urging the AG not to release the public Wingate Contract under FOIA , and setting out "the following detrimental impact" on Richland 4900:

First, you will certainly incur the sanction of costs and attorneys

fees in the pending FOIA actions. That defeat will be more costly and publicly embarrassing than a decision to continue litigating the fee agreement.

Secondly, your decision will jeopardize the rights of your co-litigants. Once you release what you have deemed to be the public portions, defendants will certainly argue that your actions waive your co-litigants' claim to privilege for the remainder of the Agreement.

24. SWB advised the AG:

Third, FOIA specifically exempts from production privileged documents. Whether this complicated fee agreement is privileged is currently before the Court. . . [Ltr. SWB to AG Wilson, 1/20/20]

25 Today the Attorney General has still not released the Wingate Contract to me under FOIA.

26. The copy of the Wingate Contract SWB produced in discovery in Richland 4900 was materially different from the copy produced by Russell Bauknight in 2013.

27. The AG's copy of the public Wingate Contract will show whether it was signed by David Bell, Esq. for Terry Brown ("Terry") or by Terry himself, as the copy produced by SWB in 2020 shows.

**AG's Claim that FOIA Request Sent to AG, SWB and Legacy Trust Not Received**

28. I sent my June 2011 FOIA request for the "Afterman \$4.7 million Value" and the Legacy Trust documents to the Attorney General, the Legacy Trust, and to SWB. I also attached a copy of my FOIA request to my FOIA complaint.

29. Under FOIA and the Wingate Contract, SWB had an obligation to consult with the AG, then comply with my FOIA request within the 15-day period, as did the Legacy Trust and the Attorney General.

30. On July 15, 2011 Legacy Trust attorney David Black, Esq., one of the \$375 - \$500-an-hour attorneys engaged by Bauknight as revealed in the October 2020 Documents, responded to my FOIA request.

31. Bauknight's FOIA response, claiming the Legacy Trust, SWB's primary client, was the "Trust and Estate," stated in part:

In the event that you continue to file unnecessary discovery and/or FOIA requests, please be advised that the Trust and Estate will have no choice other than to file an action against you for abuse of process and sanctions. [Ltr., Black, 7/15/11]

32. Black, and 4 other Legacy Trust lawyers, at least four SWB lawyers, Tommie Rae and Levenson, who signed the Wingate Contract for 11 Plaintiffs, would make good on the Legacy Trust's FOIA promise.

33. By the end of 2011 Tommie Rae, the Legacy Trust and all of the Levenson clients had moved to intervene in the Wingate Contract FOIA case; move it to Richland County; and obtain sanctions against me.

34. By 2012 the AG and Legacy Trust, through SWB, began violating the First Amendment rights of anyone who dared to discuss the contents of the long-public "Hynie diary", not a diary but Tommie Rae's handwritten, discarded notes owned by Brown's 2000 Trust in which Tommie Rae admitted her marriage ceremony with Brown was bigamous, and that she discussed it with Brown it before he did.

35. By December 18, 2020 the AG had not complied with any of my FOIA requests from 2011 and SWB attorneys, Black, and his partners, and Levenson had filed more than a dozen requests for sanctions against me, and, in addition had filed

more than two dozen motions to strike affidavits and filings in my FOIA cases, Richland 4900, and Aiken County Case 2013-CP-02-1337 ("Aiken 1337"). In Aiken 1337 Bauknight, through Black,<sup>2</sup> is refusing to pay the \$47,972 of my 2007 SA fee, with

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<sup>2</sup> On May 29, 2013, the day Tommie Rae and Levenson announced to the Honorable Doyet A. Early, III, in open court their plan to disregard *Wilson v. Dallas* and reinstate the AG's 2008 settlement which made Tommie Rae the spouse and gave her a quarter of Brown's music empire, Nexsen Pruet ("NP") \$375- \$500-an-hour attorney William Newsome, Esq., identified by Bauknight as his "probate claims expert" disallowed my portion of the joint protective claim Robert Buchanan, Jr. and I had filed in 2009, including for my unpaid \$47,972 SA fee from 2007 and our partial PR/Trustee commissions earned through May 26, 2009 under our contract with Brown's Estate/2000 Trust to be paid on an hourly basis as approved by Judge Early in his first "Payment Order" of March 8, 2008. Our hourly rate was lower than any Legacy Trust attorney as shown on the recently-released public 2008 fee schedule for NP attorneys. The payment order provided for interest at the legal rate on any unpaid amount.

Newsome/Buchanan paid Robert Buchanan's full unpaid partial PR/Trustee commission in 2012, and Buchanan waived interest and the remainder of his claim.

Newsome did not allow or disallow my claim until 2013, after substantial interest had accrued. Then he served me with a "Disallowance" alluding to the false felony claim and forcing me to file Aiken 1337 within 30 days or be "forever barred" from being paid a penny for my PR/Trustee service or the costs I personally paid for the *Wilson v. Dallas* appeal.

In 2017 and 2019, Judge Early again directed that the Estate/2000 Trust pay my \$47,972, with interest at 8 ¾% since March 2008, but Bauknight/Newsome/Burl Williams, Esq. filed 2 motions to pay the \$47,972 into the Court. The second motion to pay into the court was granted by the Honorable Clifton Newman based on Bauknight's incorrect claim that Richland 4900 – for the benefit of Tommie Rae and SWB's private clients – was a "companion case" to Aiken 1337, and on Black's claim that I had consented in 2015 to have my \$47,972 withheld until the conclusion of Richland 4900.

The matter is now the subject of S.C. Court of Appeals Case No. 2020-000962. As of December 18, 2020 Bauknight/Black had secured dismissal of the appeal as Interlocutory; I had asked for reconsideration; and the Court has asked Bauknight/Black to respond.

Judge Early "double approved" Robert Buchanan's payments in 2013 and praised Buchanan's service, all of which was joint with mine, based on Judge Early's personal memory.

In 2019, however, Judge Early, in an order which overlooked the testimony of the Governor, the Attorney General, the Chief Deputy AG, the Solicitor General, Sr. Asst. AG Havird Jones, James Hardin III, Esq.; Wallace Lightsey, Esq.; Judge (Ret'd) Walter Williams; and Graham Foundation Trustee Stephen Lambert, Judge Early held that Buchanan (who had been paid) and I (who have not been paid for any work since November 2007 or the costs of the *Wilson v. Dallas* appeal which I paid) had breached our fiduciary duty by appealing the AG's 2008 settlement

interest at the legal rate from March from March 8, 2008. .

36. In the Court of Appeals, and in 2020 to the Circuit Court, the Attorney General is claiming that an AG staffer has no record or receiving the FOIA request I sent to the AG, the AG's lawyer, and the Legacy Trust the AG controlled.

37. The AG asserts in 2020 that this is a justification for 9 ½ years of FOIA noncompliance.

38. The AG's position in 2020 is troublesome in light of a communication from a member of the AG's staff in the fall of 2011.

39. They AG said:

Responding to your request (number 1 and 4) for appraisals and other documents supporting the position of the Office of the Attorney General and/or Russell Bauknight's position on the valuation of the Estate, this office does not possess any such documents, and therefore, is unable to provide this information to you. [Ltr. AG Meyers, 10/3/11 p. 1]

### **SWB Seeks to Intervene and AG Violates FOIA Order in Summer FOIA Suit**

40. By 2012 a local journalist interested in FOIA and covering the AG's FOIA noncompliance in my suits, began making FOIA requests of her own, and receiving the

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which dismembered James Brown's estate plan and were not entitled to any payment for our 5 ½ years of service to James Brown's Estate/2000 Trust or the costs we paid out of pocket for four years for the *Wilson v. Dallas* appeal.

In Aiken 1337 Newsome and Williams claimed, incorrectly, that I had demanded a fee of \$19 million, when I had actually proposed, both before and during the Aiken 1337 trial, to settle for \$2.1 million for ALL of my 5 ½ years service; the costs of the *Wilson v. Dallas* appeal; and the costs of the unnecessary Aiken 1337 in which Bauknight testified that he had spent a million dollars to defend my *pro se* fee claim. Robert Buchanan's fee claim was resolved in a 15-minute hearing in 2013.

resistance SWB was counseling the Attorney General to raise.

41. SWB counseled the Attorney General NOT to comply with his FOIA obligations, and the AG has not done so as of December 18, 2020.

42. In December 2012 journalist Summer filed her own FOIA suit, seeking everything I had sought, plus the so-called "Hynie diary" and other documents.

43. That year the AG, through SWB, had already subpoenaed Summer's notes and sources trying to stop her from writing about the so-called "Hynie diary," which was public from 2007 until 2008; the subject of an unconstitutional *ex parte* gag order from 2008 until 2015; and is now public again.

44. On January 7, 2013 *Lawyer's Weekly* published an article entitled *Records Request Ignored so Reporter Sues State AG.*

45. Exhibit A is a copy of the Attorney General's response to the article.

46. The AG's response and the 100 media articles and public posts filed by SWB in Richland 4900 in 2012 make clear that the AG was defying FOIA and violating First Amendment rights to benefit Tommie Rae.

47. Ignoring the AG's direct control over both Bauknight and the Legacy Trust and ownership of SWB documents, the AG stated:

a. "We received at least six FOIA requests from this reporter and responded to every one."

b. "In some instances, a court order prohibited release of certain documents and in other instances the documents either were not in our possession or they simply did not exist."

48. *All* documents I requested and all that Summer requested were, under the

Wingate Contract and FOIA, public and subject to being released at the time.

49. The Legacy Trust documents, including the amendment signed by Governor McMaster just before leaving office, did exist. The Afterman \$4.7 million valuation and documents to show it was both inaccurate and fabricated also existed, as did the Wingate Contract.

50. The ex parte gag order was patently unconstitutional and no basis for denying FOIA, and there was no other court order prohibiting release of any document.

51. Judge Griffith's July 2014 Order in the Summer FOIA Suits directs, in relevant part:

1. The motion of Bauknight [SWB's client] to intervene is denied.
2. Defendant [AG] shall within 15 days, produce to plaintiff all documents responsive to all FOIA requests of plaintiff (from the date of the respective requests to the date of this Order) which are under the custody or control of the Attorney General, or which the Attorney General has prepared, owned or used.:
3. To the extent defendant asserts that it should not be required to produce any document which his office has prepared, owned or used, the document shall be marked confidential and accompanied by a sworn certificate by the Attorney General or his designee that in his opinion as the State's highest legal officer, such document cannot be legally produced under FOIA.
4. Any certification and document shall be provided to the Court and to Plaintiff's counsel as "confidential" and shall be subject to a hearing within 30 days of this order.
6. This Court shall retain jurisdiction to insure compliance with the FOIA as set out herein and determine fees and costs to plaintiff. [Emphasis supplied]

52. Instead of complying with Judge Griffith's Order, and sending the documents to comply with FOIA, the AG played a game of "Gotcha" with the reporter, delivering the Wingate Contract at the last moment, then claiming the AG did not possess the public documents he used to accuse us of federal felony; and even claiming that the unconstitutional 2008 gag order prevented the AG from releasing his copy of the so-called "Hynie diary."

53. A quarter of James Brown's charity and the integrity of FOIA rested on Tommie Rae's handwritten admissions, but AG allowed Bauknight and Legacy Trust lawyers to waste what by 2018 was tens of millions of dollars of Brown's charity to conceal it.

***SWB Asks the Circuit Court to Ignore the FOIA Mandate of Wilson v. Dallas***

54. On February 27, 2013 the Supreme Court, in the first, later amended, *Wilson v. Dallas* decision, at footnote 29, stated in part:

Although Brown's music rights have been widely reported as being worth up to \$100 million or more at his death, Bauknight filed documents with the Internal Revenue Service indicating the value of Brown's music empire was only a net of \$4.7 million. The \$4.7 million valuation has been questioned . . .

Further, the AG, with Bauknight's knowledge and cooperation, allegedly entered into contingency-fee agreements with outside counsel Kenneth Wingate, for Wingate to sue Appellant Pope on behalf of the State, Bauknight and others while also representing private plaintiffs in the suit. The suit sought damages to Brown's estate allegedly arising during Pope's appointment. Despite FOIA requests, the AG has refused to publicly release all of the documents pertaining to this purported arrangement. These matters should be considered by the circuit court in the first instance and any fees found to be inappropriately incurred should be disgorged and returned to the trust in light of our finding that the compromise is void and the AG has exceeded his authority by, among other things, controlling the charitable trust through the appointment of Bauknight, who

serves at the AG's pleasure. [Emphasis supplied]

55. On March 6, 2013 I personally discussed with the AG, Chief Deputy AG and Solicitor General the damage the fabricated Afterman \$4.7 million Value and Bauknight IRS filings claiming Tommie Rae was James Brown's spouse had done, and threatened to do, to Brown's "I Feel Good" charity.

56. Using the Afterman \$4.7 million Value, under the "fractional share" clause of Brown's 2000 Trust, Bauknight had shifted about \$1 million of income a year and nearly 1/3 (31%) of Brown's "I Feel Good" Trust out of James Brown's charity and over to a taxable trust for Forlando Brown ("Forlando") and 5 clients of Louis Levenson, Esq., all SWB's Richland 4900 clients.

57. Bauknight's shift of funds out of Brown's charity using the Afterman \$4.7 million Value would last for 20 years or more and unnecessarily and substantially increase income taxes.

58. My attorney Adam Silvernail, Esq., and I met a few days later with the Solicitor General and Chief Deputy to discuss the same concerns I had raised a few days earlier.<sup>3</sup>

59. By 2013 Afterman was working for Tommie Rae's attorneys [Ex.B.C] and in March Tommie Rae's minor son James provided details of the Afterman \$4.7 million

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<sup>3</sup> The damage caused by the Afterman \$4.7 million Value was fully aired at the trial in Aiken County Case 2013-CP-02-1337 ("Aiken 1337"), but the Circuit Court which supported the reinstatement of the AG's 2008 settlement which dismembered James Brown's estate plan and charity disregarded my testimony and that of expert Steven Johnson, Esq., about this damage.

claimed Value in rehearing filings in *Wilson v. Dallas*, making clear that confidentiality had not been maintained.

60. In March and April 2013 SWB communicated with the AG and sent the AG a proposed agreement to terminate SWB's representation which required the AG treat its dealings with SWB's private clients since 2010 as confidential despite the mandate of the Wingate Contract.

61. As shown by the October 2020 Documents and public record, by April 23, 2013 all of the documents sought under FOIA by me or in the Summer FOIA suit were not only public under the Wingate Contract but had been shared with Powell Goldstein; Brayan Cave ("PG/BC") which, in James Brown matters, had represented TJBL, an investment group which made 3 letters of intent to buy the music empire for about \$100 million; Forlando Brown ("Forlando") who was seeking to reinstate felon David Cannon, who took \$17 million from Brown, and Albert Dallas; Cannon and Dallas in their effort to move the situs of the 2000 Trust from South Carolina to Georgia as Cannon's takings were being discovered; Terry Brown ("Brown") in tax matters related to his rights of first refusal under the AG's 2008 settlement.<sup>4</sup> There was no basis to withhold them.

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<sup>4</sup> In 2007 BC, then Powell Goldstein, represented felon David Cannon, who had stolen \$17 million from funds James Brown devised to his charity; and Cannon's co-trustee Albert Dallas in an effort to move Brown's 2000 Trust to Georgia as the funds Cannon had taken were being discovered. On January 2, 2008 BC, still Powell Goldstein, and Bell, who signed the Wingate Contract for Terry, filed U.S. Dist. Ct. Case 3:08-cv-00014-WOB (the "Forlando Federal Suit") seeking to enjoin Brown's 2000 Trust from taking any action until Cannon and Dallas were reinstated as Brown's trustee. BC then began representing TJBL, the investment group which issued 3 letters of intent to buy the James Brown music empire for about \$100 million in 2007 and 2008, and two letter of Terry to buy the tangible personal property at \$2 million.

**SWB Disregards April Letter and *Wilson*, Disrupting FOIA for 7 ½ More Years**

62. On April 24, 2013 the Attorney General made clear that SWB had no legal authority to act for the State/AG.

63. The April 24, 2013 letter, first released under FOIA by the AG in 2020, makes clear that from that date Tommie Rae was SWB's primary client, now holding an approximately 46% stake in Richland 4900.

64. SWB's undisclosed client, Forlando, held a 4.79% stake in Richland 4900 before *Wilson v. Dallas*, and now holds approximately 9%.

65. SWB's relationship with Levenson, who signed the 40% Wingate Contract for 11 Richland 4900 Plaintiffs, some of whom never knew they were named as parties, and the 11 Richland 4900 Plaintiffs SWB claims to represent, has become increasingly problematic as all denounced Tommie Rae's spousal claims..

66. On May 8, 2013 the Supreme Court issued its final decision in *Wilson v. Dallas*. The Supreme Court voided the AG's 2008 settlement and voided Bauknight's PR/Trustee appointment, making clear that the \$375 - \$500-an-hour lawyers working to enforce the AG's 2008 settlement were working for the Legacy Trust.

67. For the next 7 ½ years SWB used FOIA and the power and prestige of the AG's Office to benefit Tommie Rae and blame on Robert Buchanan and me the tax problems and millions of dollars of damage caused by Tommie Rae and the AG's 2008 settlement.

68. The final *Wilson v. Dallas* decision was issued on May 8, 2013.

69. Within two days SWB asked the Richland 4900 Court to stay my FOIA cases

and Richland 4900.

70. SWB told the Circuit Court that the Supreme Court's omission of footnote 29 from the final *Wilson v. Dallas* decision indicated that the Supreme Court placed no importance on the prompt conclusion of Richland 4900 or the FOIA cases. [ Ltr. SWB, 5/13]

71. On May 29, 2013 I was present when SWB's client Tommie Rae's, through her personal counsel (Medlin), and Levenson announced to Judge Early in open court their plan to disregard *Wilson v. Dallas* and reinstate the AG's 2008 settlement which had just been voided by the Supreme Court.

72. From 2013 until 2016 no hearing was held in my FOIA cases despite numerous requests by my counsel. Within months after the stay was lifted, the Circuit Court dismissed both cases.

73. My FOIA cases were remanded by the Court of Appeals in 2019, and today SWB is still trying to evade its obligations under the Wingate Contract, and the agreement and waiver of all of its private clients.

74. Since 2013, concealing the AG's April 24, 2013 letter, SWB has used the power and prestige of the Office of the AGI for the benefit of Tommie Rae.

75. SWB's claims about applicable court orders which the AG claims prevent FOIA compliance are not correct.

**The Claimed Confidentiality Order Related to the Afterman \$4.7 Million Value is Inapplicable and was Secured by Misrepresented Facts**

76. Robert Buchanan and I were the ones who sought the original 2008

confidentiality order on which the AG claims he cannot produce the Afterman \$4.7 million Value, and the 2013 order, issued two years after my FOIA request, was based on misrepresentations to the Court in an affidavit filed by Bauknight.

77. Bauknight has presented several problematic affidavits, including a 2012 affidavit that says he had managed the Legacy Trust in Richland County for 3 years and a 2016 affidavit stating that the Legacy Trust never existed.

78. Bauknight also supported the AG's 2008 settlement in a deposition given in August 2013 in which he called me dishonest and claimed that I (and presumably Robert Buchanan) had "raped" James Brown's estate.

79. Bauknight, as shown in the media articles filed by SWB has claimed since 2010 that the Afterman \$4.7 million Value is "under lock and key," but it was created by Afterman, who worked for the Legacy Trust from 2009 until 2013, and has worked for Tommie Rae from 2013 until 2020.[Exhibit B]

80. The public record, including Supreme Court filings by Tommie Rae's son, show that Bauknight has shared the Afterman \$4.7 million Value with numerous others, and that all SWB clients used it to falsely accuse us of a federal felony.

### **SWB's FOIA Disruption Conceals the Tommie Rae/Afterman Devaluation Scheme**

81. The plan to devalue Brown's music empire to \$24 million or less to discredit "Bobadele" was the 2009 idea of Tommie Rae's attorney, carried out by Afterman.

82. Relying on the Tennessee Case released in 2009 which dealt, in part, with the IRS proceeding related to the valuation of royalties of songwriter Harlan Howard, who died in 2002, Tommie Rae's attorney stated to AG Jones and others:

Attached find a case hot off the press dealing with tax valuation issues of the second greatest country music songwriter...It is a treasure trove of information for us, including (1) the method of valuation for songwriter royalties...Based on the information in the opinion Bobadele has [sic] grossly overvalued the estate for 706 purposes. The opinion deals only with royalties and not image and likeness, which apparently was inapplicable to the decedent songwriter. Of course, among ourselves, we are not sure we have the right to image and likeness under SC law, so any separate valuation of that should be discounted accordingly [Medlin email of 8/30/09].

83. Tommie Rae's devaluation proposal was not consistent with what Legacy

Trust attorney Wilkins told the Circuit Court the same month:

THIS ESTATE SHOULD BE AND COULD BE TODAY MAKING A LOT OF MONEY OR BRING ITSELF UP TO MAKE A LOT OF MONEY JUST LIKE THE ESTATE OF MICHAEL JACKSON IS MAKING A LOT OF MONEY TODAY... THIS STAY SHOULD BE LIFTED ...TO ENTER INTO VARIOUS BUSINESS VENTURES FOR THE ESTATE; FOR EXAMPLE, MARKETING JAMES BROWN'S MUSIC, MARKETING HIS IMAGE, HIS PERSONA, DEVELOPING VIDEO GAMES WITH JAMES BROWN AS THE CENTRAL CHARACTER, PRODUCING A DIGITAL REBIRTH OF JAMES BROWN JUST LIKE THE BEATLES ARE DOING TODAY AND NEGOTIATING A MOVIE DEAL. WE'VE HAD NUMEROUS OPPORTUNITIES TO ENTER INTO A DOCUMENTARY SERIES...AND ALL THESE THINGS ARE JUST SITTING THERE READY TO DO.

84. The Afterman \$4.7 million Value is incorrect, and while generated to damage Robert Buchanan and me, it also seriously damaged Brown's charity. It is less than what we brought in per year as PR/Trustees despite constant disruption, \$7.83 million in 18 months.

85. The Afterman \$4.7 million Value was never confidential under the Wingate Contract or FOIA. It was created to help Tommie Rae and the Legacy Trust dismember James Brown's estate plan.

86. James described its contents in 2013 to the Supreme Court, and Forlando testified under oath that it is “bogus.”

87. Bauknight has taken no steps to keep it confidential, waiving any claim of confidentiality even if the order for confidentiality had not violated Rule 11.

**Legacy Trust and Bauknight Use FOIA Noncompliance for Retaliation**

88. In 2010 a Legacy Trust \$375- \$500-an-hour attorney, speaking primarily for Tommie Rae and those taking 52 ½% of Brown’s charity, told the Circuit Court of the *Wilson v. Dallas* appeal:

THEY HAVE NO STANDING...VIRTUALLY NO CHANCE OF SUCCESS ON THEIR APPEAL. THEY WILL NEVER BE ABLE TO OBTAIN RESINSTAMENT AS PERSONAL REPRESENTATIVES. THE BENEFICIARIES DON'T WANT [THEM]..

89. Tommie Rae’s lawyer also made clear the AG/Legacy Trust’s plan to retaliate against Robert Buchanan and me:

WE’RE UNANIMOUS AS MR. WILKINS POINTED OUT ON THIS ISSUE, WE DO NOT WANT THEM TO BE FIDUCIARIES AND IF THEY PREVAIL — IF THEY WIN ON APPEAL AND THEN WE GO BACK AND TRY THOSE WILL AND TRUST CONTESTS AND THEY WIN...AND WE TRY THE OMITTED SPOUSE AND....AND THEY WIN THOSE, THEN EVERYTHING GOES TO CHARITY WHICH YOU BELIEVE ACCORDING TO YOUR ORDER AND WE BELIEVE ACCORDING TO THE LAW THAT’S EXISTED SINCE THE BEGINNING OF COMMON LAW IN MY ESTIMATION THAT THE ATTORNEY GENERAL HAS THE AUTHORITY TO REPRESENT THE CHARITIES IN THAT CASE. THE ATTORNEY GENERAL DOESN’T WANT THEM. EVEN IF THEY WIN ALL THE WAY OUT, THE ATTORNEY GENERAL WOULD BE THE LAST PERSON STANDING AND THE ATTORNEY GENERAL’S OFFICE DOES NOT WANT THEM AS FIDUCIARIES. [ Tr. 9/09, Case 1647, P. 33]

90. And an Assistant to AG Jones stated:

...SO, LIKE I SAID, I DON'T WANT TO PLOW THE SAME GROUND THAT MR. WILKINS AND MR. MEDLIN DID, BUT WE DO INCORPORATE THEIR ARGUMENTS.

91. I believe that the October 2020 Documents make clear that SWB's FOIA disruption and the AG's FOIA noncompliance have been essential to the retaliation by the AG, Tommie Rae and those aligned with here in Richland 4900.

**The Solicitor General Confirms that Richland 4900 is Extraordinary**

92. Like me, the Solicitor General finds Richland 4900 to be unique. In his 2017 deposition, the following took place::

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?**

[Objections]

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**

Page 15

1 **is named as a plaintiff, but claims not to be a**  
2 **plaintiff?**

[Objections]

8 A. In my 40 years, I have never known of a case like  
9 that...

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.

93. I believe that SWB's attempt to be involved in my FOIA cases for the benefit of Tommie Rae make Richland 4900 more unique and more troublesome.

94. Mr. Bauknight, however, did not agree in a deposition I took that the FOIA

disruption by SWB was inappropriate:

5 **Q. Was the purpose of trying to intervene in FOIA**  
6 **suits to prevent release of the Wingate contract,**  
7 **the \$4.7 million appraisal and the so-called Hynie**  
8 **diary?**

9 A. Well, documents that belong to the estate and  
10 trust are not subject to FOIA. And no one  
11 associated with the Attorney General. . .  
12 has  
13 any of those documents. And the estate and trust  
14 is not subject to FOIA.

**The False Felony Claim Alone Merits Release of the Afterman \$4.7 Million Value**

95. Russell Bauknight, a CPA, when questioned about the false felony claim in his deposition which I took, denied it, after the following exchange took place:

**Q. . . . You have accused me both**  
5 **outloud and in pleadings on Page 9 of artificially**  
6 **inflating the reported value of the estate without**  
7 **any substantiation and without any consistency for**  
8 **the purpose of justifying their claim -- that**  
9 **would be Mr. Buchanan and me -- for approximately**  
10 **\$5 million. If we overstated the value of James**  
11 **Brown's assets by \$79 million, for the purpose of**  
12 **securing a five million-dollar fee, would that**  
13 **constitute a felony under the federal law?**

14 MR. BLACK: Object to form.

15 **Q. If you know?**

16 A. Number one, Ms. Pope, I'm not a lawyer. Number  
17 two, commissions earned in South Carolina don't  
18 fall under federal law and I believe if you're  
19 saying I've accused you of a federal felony,  
20 you're making that up pure and simple.

96. Unlike Bauknight, the Governor, a former U.S. Attorney, agreed to the seriousness of the false felony claim, which was discussed in his deposition:

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?

Page 84

[Objections]

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?

[Objections]

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.

### **Tommie Rae's Son Reveals Details of the Afterman \$4.7 Million Value**

97. Bauknight told the federal court that he had kept the Afterman \$4.7 million

Value confidential, but five months earlier James told the Supreme Court:

Effectively, the appraisal...which is for the date of death value,

shows the royalty stream belonging to the estate worth approximately \$4.7 million, which is the fair market value of the royalty stream, less outstanding associated debt of approximately \$19 million arising from bonds secured by the royalty stream. Thus, without the bond debt, the date of death value of the royalty stream would be approximately \$24 million, a valuation derived from taking the royalty stream up to the termination dates and discounted back for the present value purpose. Seen in this light, the \$4.7 million date of death valuation for the royalty stream. . . does not seem as counter-intuitive as it might otherwise to a layman guessing what the value of the estate might be.

98. The AG's 2017 deposition, which I took, shows:

**Q. Have you investigated that Mr. Medlin, Mr. Bauknight, and the AG's staff and Nexsen Pruet were working on the devaluation of Brown's music empire to \$4.7 million at the same time Mr. Medlin and your senior assistant, Sonny Jones, were working with the law firm of Ken Wingate to sue Adele Pope and Bob Buchanan for not accepting a hundred million dollar offer for James Brown's assets?**

A. I'm going to reread the question because it --

**Q. Please. It's question forty-three.**

A. Yeah, you've asked me if I've done an investigation in a very long sentence or two, and I'm just not aware of the --

**Q. Certainly. Is an important. Take your time. Forty-three.**

A. I will restate, I have no personal knowledge that I can recall.

### **My Personal Knowledge of the Nonconfidential Documents as of May 26, 2009**

99. When 80 Boxes of Brown Historical Documents became available by Order of Judge Early on August 10, 2007, but with our rights as SAs to declare certain documents confidential, we favored some confidentiality.

100. After becoming PR/Trustees we determined that uncovering of fraud, including the \$17 million Cannon had taken, and keeping the AG abreast of our actions, was more important than confidentiality, and we conducted an open administration policy until May 26, 2009, allowing everyone access to copy virtually everything except the so-called "Hynie diary," which was under what we thought was a brief gag order.

111. We turned over 145 boxes of NONCONFIDENTIAL documents to Bauknight immediately after he took over as trustee of the Legacy Trust (his PR/Trustee appointment was declared void by the Supreme Court).

112. Bauknight agreed to keep these documents available to use, but did not.

113. Beginning in 2011 the AG and Legacy Trust \$375- \$500-an-hour lawyers began declaring documents that had been public for years as confidential if they showed that Tommie Rae was not Brown's spouse or that the AG's 2008 settlement was a bad idea.

114. That practice continues today both in civil suits and under FOIA.

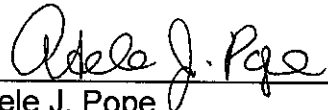
115. SWB was allowed five days in May 2017 to review more than 120 boxes of public documents I have gathered in my defense in Richland 4900, as well as more than 50 CDs of public documents I have had to gather.

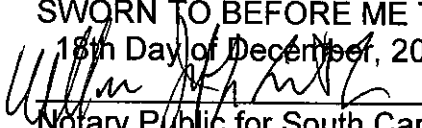
116. I do not believe the AG or any SWB lawyer has knowledge of the claimed confidentiality orders on which SWB has counseled the AG to rely.

117. I am informed and believe that exemplary legal fees consistent the hourly rate the State/Attorney General allowed Legacy Trust attorneys to charge to disrupt

FOIA, not produced until October 2020, would be appropriate in my FOIA cases to help prevent the Attorney General from violating his own FOIA policies and FOIA in the future.

FURTHER DEPONENT SAYETH NOT.

  
Adele J. Pope

SWORN TO BEFORE ME THIS  
15th Day of December, 2020  
 (L.S.)  
Notary Public for South Carolina  
My commission expires: 2/27/2027

<b>STATE OF SOUTH CAROLINA</b>	)	<b>IN THE COURT OF COMMON PLEAS</b>
	)	
<b>COUNTY OF RICHLAND</b>	)	Civil Action No. 2010-CP-40-4900
	)	
Adele J. Pope,	)	
	)	<b>AFFIDAVIT OF ADAM T. SILVERNAIL</b>
Plaintiff,	)	
	)	
v.	)	
	)	
Alan Wilson, in his capacity as	)	
Attorney General of South Carolina,	)	
	)	
Defendant.	)	
_____	)	

PERSONALLY APPEARED BEFORE ME Adam T. Silvernail, who being duly sworn, deposes and says:

1. I am over the age of twenty-one (21) and make this affidavit of my own personal knowledge.
2. I am an attorney licensed to practice in South Carolina; I was admitted to the South Carolina Bar in 2010; and I remain a member in good standing.
3. My practice has, from its inception, been primarily focused on civil litigation, and I have litigated cases at the trial level in both State and Federal Court, as well as handling numerous appeals in the South Carolina Court of Appeals, South Carolina Supreme Court, and the Federal Court of Appeals for the Fourth Circuit.
4. I was engaged by Adele J. Pope, Esquire, to represent her in this FOIA case in August 2011, after the Attorney General refused to substantively respond to her FOIA request for certain public documents.
5. Although the relief sought in this case has always been straightforward (a direction that the AG release public documents to a South Carolina citizen, and an award of attorneys' fees and costs pursuant to S.C. Code Ann. §34-10-100(b)), this case has been

extraordinarily complicated.

6. The AG, beginning with its response letter to Mrs. Pope's FOIA request, has taken the position that Mrs. Pope is not entitled to FOIA rights as a result of being involved in *Bauknight, et al, and Wilson, et al, v. Pope*, Case No. 2010-CP-40-4900 (Richland 4900). This required addressing the complex and extraordinary issues presented in Richland 4900 and also served as a basis for the AG to avoid the basic question presented in this case, which is whether the documents sought by a citizen under FOIA are public.

7. Further, the AG's private Richland 4900 counsel attempted to intervene in this matter on behalf of more than a dozen private co-Plaintiffs from Richland 4900 for the express purpose of preventing the AG from turning over the Wingate agreement. Despite the fact that the AG is the State's highest legal officer, tasked with enforcing the FOIA, the AG took "no position" on the intervention by his own private counsel of numerous private individuals and entities. The result of this extraordinary FOIA interference by private parties was delay and complication for this once-simple FOIA matter.

8. My correspondence files in this matter show numerous occasions where private 4900 counsel objected to hearings proceeding on the FOIA matters because of various alleged procedural issues in the main Richland 4900 case, as well as private counsel's availability for FOIA hearings in which they insisted on being present.

9. The AG sought a transfer of venue and consolidation of this case with the slow-moving multimillion-dollar tort suit that is Richland 4900. The ultimate consolidation of this case with Richland 4900 caused massive delay, confusion and complication.

10. The AG also forced this matter to be part of *two* very complex global mediations in 2012 and 2015, when I am not aware that FOIA cases are regularly subject to

the delay and expense of the mediation process.

11. Nearly all of the above can be summed up to the AG's repeated attempts to use procedural wrangling in order to avoid addressing the simple matter of providing a proper and timely FOIA response to my client. Had this matter been left to proceed as the simple FOIA case my client commenced in Newberry County, it likely would have been fully decided by the Circuit Court in 2012, with minimal attorney's fees and costs incurred.

12. Although some of the delay was caused or aggravated by the inappropriate attempted intervention of the AG's private counsel on behalf of the AG's Richland 4900 co-Plaintiffs, the AG never once took action to curtail its private counsel's involvement. Although the AG has clung to the refrain that it took "no position" on various actions and requests by private counsel, my observation is that the AG in fact allowed private counsel to further the AG's desire to avoid any substantive decision in this case. The AG and private counsel's working in concert was very successful to that end, as the FOIA claims have only been disposed of in May 2021, nine years and eleven months after my client made her FOIA request.

13. This matter also required an appeal to the South Carolina Court of Appeals, after the AG sought and received an Order of dismissal. The Court of Appeals reversed that Order, finding that Mrs. Pope's involvement in Richland 4900 did not deprive her of her FOIA rights. That appeal required extensive time to research and brief the issues in this case, as well as to assemble the unusually large record developed over the years this FOIA case had then been pending.

14. My involvement in this case now spans nearly ten (10) years and, despite Mrs. Pope's and my efforts to be efficient, the case has required a substantial amount of my time.

Through today, I have spent 213.5 hours on this matter.

15. My hourly rate ranges between \$250 and \$275, depending on the type of matter. I believe that \$250 per hour is reasonable based on my experience, the complexity of this case, the results I have obtained for my client, and the other applicable factors.

16. My total fees incurred to date on this matter are \$53,375, in addition to \$2,921.15 in costs.

17. In reviewing my timesheets on this matter (attached as **Exhibit D**), I must note that the investment of my time was drastically reduced by my client's ability and willingness to assist with her own litigation. Mrs. Pope is a very experienced lawyer who is able to draft her own affidavits and did nearly all the work involved in collecting affidavits of others. Although the AG has repeatedly expressed concern that my fees were driven up by the affidavits we have filed in the course of this case, my timesheets match my recollection in showing that I spent negligible time preparing or collecting affidavits in this matter.

18. Additionally, my fees have been substantially reduced in this matter by the assistance of administrative help Mrs. Pope has personally paid for. I do not maintain any staff, and I am therefore normally tasked with copying, mailing and/or delivering documents I generate. In this case, although I have at times handled those tasks, I have often been able to utilize Mrs. Pope's administrative help to handle copying, mailing and/or delivering filings to Courts and other counsel. Although Mrs. Pope has paid for that assistance, we do not seek any reimbursement by the AG for the cost of this valuable assistance.

19. I am aware that the fees and costs set out in this affidavit are substantial, I am also certain that they are substantially lower because of my client's personal involvement and provision of paid administrative help. Further, this case could have been wholly avoided

by the AG's simple compliance with the FOIA in 2011.

20. I have reviewed recent appellate decisions regarding awards of fees and costs in FOIA actions, all of which dealt with much shorter and simpler cases. *See Horton v. Jasper Cnty. Sch. Dist.*, 815 S.E.2d 442 (S.C. 2018) (Approximately \$36,000 in fees for 135.6 hours' time in a case that appeared to involve only two hearings); *Glassmeyer v. City of Columbia*, 414 S.C. 213, 777 S.E.2d 835 (S.C. App. 2015) (Approximately \$11,000 in fees awarded for litigation over a January 2013 FOIA request, which was concluded by an August 2013 Circuit Court Order); *Sloan v. Friends of The Hunley Inc.*, 393 S.C. 152, 711 S.E.2d 895 (S.C. 2011) (Approximately \$6,500 in attorneys' fees awarded for work spanning less than two months between the time a FOIA action was commenced and the subsequent FOIA response by a public body.)

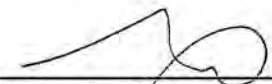
21. Additionally, I have reviewed and provided this Court with copies of Orders from *Summer v. Wilson*, Newberry Case No. 2012-CP-36-688, which was a FOIA case in which a Newberry journalist sought and ultimately received the fee contract at issue in this case. That matter was filed in mid-2012 and concluded in mid-2015, and the plaintiff's counsel was awarded over \$37,000 in attorney's fees. I believe this case is also instructive, because the AG continued to refuse to make a proper FOIA response to my client for years after the very documents she sought were declared public and subject to the FOIA in the *Summer* case.

22. This Court has found that Mrs. Pope is the prevailing party in this matter, and I request that this Court award \$53,375 in attorney's fees and \$2,921.15 in costs pursuant to S.C. Code Ann. §30-4-100(b), plus any additional reasonable fees and costs incurred to bring this matter to a final conclusion. The Attorney General has previously paid \$4,195.55 of this amount pursuant to the Order of the Court of Appeals, dated February 20, 2020, so the total now due is \$52,100.60.

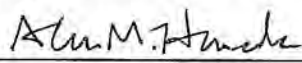
23. In support of our request for fees and costs, I attach the Affidavit of Thomas H. Pope III as **Exhibit A**; the affidavit of Jay Bender as **Exhibit B**; and the Affidavit of Adele J. Pope as **Exhibit C**. Mr. Pope and Mr. Bender's affidavits confirm my time spent on this matter has been modest and that the hourly rate I request is reasonable under the applicable factors. Mrs. Pope's affidavit gives a more detailed history of this matter and the extreme complication caused by the Attorney General's actions.

24. I reserve the right to present additional affidavits documenting any and all additional time and costs incurred to bring this matter to an end, including any time and costs which must be expended in defending any forthcoming appeal by the Attorney General.

FURTHER DEPONENT SAYETH NOT.

  
Adam T. Silvernail

SWORN TO before me this 3<sup>rd</sup>  
Day of June, 2021.

  
Notary Public for South Carolina  
My Commission Expires: 6/28/21



SWEENEY WINGATE & BARROW P.A.

June 9, 2021

Reply to: Main Office

Mark V. Gende  
(803) 256-2233 x7121  
mvg@swblaw.com

The Honorable Clifton B. Newman  
125 West Main Street  
Post Office Box 516  
Kingstree, SC 29556-0516

RE: Russell L. Bauknight, et al. v. Adele J. Pope  
Civil Action No: 2010CP4004900  
Our File: 4077-7389

Dear Judge Newman:

I represent the remaining Plaintiffs in the breach of fiduciary claims of 2010-CP-40-04900 (“Case 4900”). I am in receipt of the Court’s recent order concluding the FOIA case consolidated with Case 4900, and I am also in receipt of the June 3, 2021 Affidavit of Adam T. Silvernail (and exhibits) in support of Mr. Silvernail’s claim for attorney’s fees pursuant in the FOIA matter.

I take no position as to Mr. Silvernail’s claim for fees, but I must object to the portions of his filed Affidavit and Exhibits, including but not limited to Adele Pope’s supporting Affidavit (Exhibit C to Mr. Silvernail’s Affidavit), that incorrectly characterize the actions of my firm and my clients in the Case 4900 FOIA matter. Specifically, I object to the following statements, and any such similar statements as may appear in the Affidavit and Exhibits:

- Mr. Silvernail’s claim of “extraordinary FOIA interference by private parties.” (Aff. of Silvernail at ¶ 7.)
- Mr. Silvernail’s claim of “inappropriate attempted intervention of the AG’s private counsel on behalf of the AG’s Richland 4900 co-plaintiffs.” (Id. at ¶ 12.)
- Mrs. Pope’s assertion that there are “other public documents used in Richland 4900 which the Wingate Contract determines to be the property of the State of SC and subject to release under FOIA,” Aff. of Pope at ¶ 6, and “[a]ll Richland 4900 Plaintiffs and [my firm] consented to the FOIA requirements . . .”, Aff. of Pope at ¶ 7.
- Mrs. Pope’s assertion that my firm “directed the AG in 2012 not to comply with his duty under FOIA . . .” and related statements. (Aff. of Pope at ¶¶ 13-14.) This particular

statement is a complete fabrication and mischaracterization of advice my firm provided to the Attorney General regarding appropriate FOIA compliance.

- Mrs. Pope's assertion that my firm "sought sanctions against me in 2011 for exercising my FOIA rights . . ." (Aff. of Pope at ¶ 78.) This particular statement is a complete fabrication and mischaracterization of a motion filed by my clients to defend against attacks brought by Pope in the FOIA side of Case 4900, prior to its transfer from Newberry County.
- Mrs. Pope's assertion that "the Wingate contract makes all Richland 4900 documents property of the State of S.C., and subject to FOIA." (Aff. of Pope at ¶ 84; see also id. at ¶88.)

My clients object to these statements and other related statements as they are conclusory, self-serving and false and a further attempt of Pope to create her own set of facts in this case. My clients further object to Pope's attempt to flood the record with personal attacks against my clients, to which they do not have an opportunity to respond in traditional fashion. As I continue to review Mr. Silvernail's Affidavit and accompanying Exhibits, I respectfully reserve the right to object further if needed.

Because my clients are part of Case 4900, but not part of this FOIA action, I am filing their objection as a letter brief. Please let me know if the Court requires further information regarding this correspondence, or would like it in another format.

Sincerely,

SWEENEY, WINGATE & BARROW, P.A.



Mark V. Gende

MVG/tnn

cc: Adam T. Silvernail, Esquire  
J. Emory Smith, Jr., Esquire

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS

)

) Case No. 2010-CP-40-4900

)

RUSSELL L. BAUKNIGHT, as Trustee of  
the James Brown 2000 Irrevocable Trust and  
the James Brown Legacy Trust, as Personal  
Representative of the Estate of James Brown,  
and on behalf of Alan Wilson, in  
his capacity as Attorney General of the State  
of South Carolina; Tommie Rae Brown,  
individually and on behalf of her minor child,  
James B.; Daryl J. Brown, individually  
and on behalf of his minor child Janise  
Vanisha Brown; Lindsey Delores Brown;  
Deanna J. Brown Thomas; Jason Brown-  
Lewis; Yamma N. Brown, individually and  
on behalf of her minor children, Sydney  
L., Carrington L., and Tonya Brown;  
Venisha Brown; Larry Brown; and Terry  
Brown

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and

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ALAN WILSON, in his  
capacity as Attorney General of the State of  
South Carolina; TOMMIE RAE BROWN,  
individually and on behalf of her minor child,  
JAMES B.; DARYL J. BROWN,  
individually and on behalf of his minor child  
JANISE VANISHA BROWN; LINDSEY  
DELORES BROWN; DEANNA J. BROWN  
THOMAS; JASON BROWN - LEWIS;  
YAMMA N. BROWN, individually and on  
behalf of her minor children, SYDNEY  
L., CARRINGTON L., and  
TONYA BROWN; VENISHA BROWN;  
LARRY BROWN; and TERRY BROWN,

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Plaintiffs.

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v.

Adele J. Pope,

)

)

Defendant.

)

The undersigned counsel for “Richland 4900” tort Defendant/Counterclaimant Adele Pope submit the following status report in response to the notice of the Honorable Clifton Newman (“Judge Newman”) of a status hearing to be held on June 11, 2021 in cases related to the Estate of James Brown.

Richland 4900 and its consolidated FOIA matter are the only James Brown matters currently pending in the Circuit Court in which Pope is a party. Judge Newman has previously indicated that the FOIA matter will not be addressed at the status conference.

By orders of the Honorable Doyet A. Early, III (“Judge Early”) dated June 13, 2013 Pope and Robert Buchanan, Jr. were excluded from participating in any James Brown Aiken County cases other than their own fee cases.

### **Description of Richland 4900**

Richland 4900 was filed against Buchanan and Pope by the Attorney General of South Carolina (“AG”), the James Brown Legacy Trust (“Legacy Trust”) and the “Owner-Beneficiaries” of the Legacy Trust in Richland County on May 19, 2010.

In 2011 a Newberry County FOIA suit seeking, among other public documents, the “Wingate Contract” to bring Richland 4900 was ordered consolidated with Richland 4900 at the request of the AG and other Richland 4900 Plaintiffs, all represented by the private law firm of Kenneth Wingate, Esq., Sweeny, Wingate & Barrow, PA (“Wingate’).

### **Current Status of Richland 4900 and the Consolidated FOIA Case**

Since the *Wilson v. Dallas* decision on May 8, 2013, Wingate, for the Richland 4900 Plaintiffs, has resisted all efforts to conclude discovery, and Richland 4900 has been stayed for about 7 of the 8 years since *Wilson*.

Multiple reasons exist for Judge Newman to proceed with the motions described below, including that the Supreme Court has twice expressed a desire that Richland 4900 be concluded; that serious Due Process and other legal issues are involved, including Due Process violations by individuals acting under color of state law; and that the recent FOIA ruling of Judge Newman, along with his Honor's May 2020 discovery ruling, has helped end the logjam of refusal to release public documents used by Wingate in Richland 4900 but concealed both under FOIA and in discovery.

The motions which should be promptly heard by the court, and some of the reasons they should be heard as briefly set out below.

### **Motions Which Should be Heard Immediately by the Circuit Court**

The motions which should be considered by the Circuit Court are those seeking reconsideration of the following 2012 and 2015 orders of the Circuit Court:

1. The 2012 Circuit Court order declining to disqualify Wingate from acting for the State/AG while serving as counsel for Hynie and other individual Richland 4900 Plaintiffs.
2. The same 2012 order which declined to prohibit Russell L. Bauknight from speaking and acting "on behalf of" the State/Attorney General in Richland 4900 while servicing as trustee and agent for Hynie and others seeking to dismember James Brown's estate plan and charity.
3. The 2015 order granting Hynie, the Legacy Trust, the AG and owners of the Legacy Trust relief from their 2010 default as to the counterclaims of Buchanan and Pope.

### **The Supreme Court's 2021 Order Supports Consideration of the Motions**

Although this Court has previously declined to lift the stay in Richland 4900 because of two then-pending appeals, a recent Order of the Supreme Court appears to direct the Court

to proceed with at least the above-listed motions. On April 21, 2021 the Supreme Court, while denying certiorari in Case 2017-001899 (arising from the Rule 21 dismissal of the AG as a party to Richland 4900 and the orders subject to the above-listed motions), stated:

The motions currently pending before the Honorable Clifton Newman in the circuit court may now be resolved so that the extensive litigation in this matter may be promptly concluded.

This is a clear indication that the Supreme Court believes that this 11-year-old case should proceed. The Supreme Court in the same Order declined to consider the denial of the above-listed motions, which the Court of Appeals determined were not appealable until these long-pending Rule 59(e) motions are decided.

#### **The Current Record is Adequate to Address the Due Process and Other Issues**

When reconsideration of the 2012 and 2015 orders was sought, there was abundant evidence of Due Process violations, First Amendment violations and FOIA violations by the State/Attorney General and the Circuit Court at the behest of the AG and private persons acting in Richland 4900 under color of state law.

While a *de facto* stay existed from 2013 until 2016, and an actual stay has been in place since September 2017, the record to decide the above motions is not only adequate, but abundant. The Record on Appeal in Case No. 2017-001899, which was assembled from documents already before this Court, is adequate for a full understanding of this issue.

The failure of the Circuit Court to reconsider the 2012 order for 5 years before the appeal in 2017-001899, and the 2015 order for 2 years before the appeal increased the damage caused to Pope. Pope submits that Judge Newman, who was first assigned to this case more than two years after the appeals were filed, should proceed to hear and dispose of

these important motions to avoid further delay.

These serious constitutional violations have been meticulously preserved by Buchanan and Pope since 2010, including in two separate requests that the Court of Appeals address constitutional issue, which were found to be premature. They are now before the Circuit Court. They should be considered.

The May 19, 2010 complaint in Richland 4900, which has never been amended, is virtually identical to the claims made by the Attorney General, Bauknight, and Hynie to the Supreme Court in *Wilson v. Dallas*, namely the claims that:

- a. Hynie is the spouse of James Brown and she and her son control over 50% of the “termination rights” under sections 304 and 203 of the U.S. Copyright Act to Brown’s now-1100+ copyrights.
- b. James Brown’s 10,000 items of Tangible Personal Property (TPP), including a Rolls Royce and other vehicles, are worth less than \$.5 million,
- c. Buchanan and Pope should have accepted a \$100 million offer in 2007 for Brown’s music empire, but also that Brown’s music empire was worth only \$4.7 million when he died.
- d. Buchanan and Pope had a duty to Hynie and other Legacy Trust owners and breached it by appealing the AG’s 2008 settlement deal and securing the *Wilson v. Dallas* decision.

It is time for the Court to consider whether these parties should have been relieved from default as to the Buchanan’s and Pope’s counterclaims, and whether Wingate and Bauknight can continue to act under color of state law for the benefit of Hynie and Wingate’s private Legacy Trust owner-successors.

## Conclusion

The Circuit Court's consideration of the above, and certain other, motions should proceed.

Respectfully submitted,

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*Appellate Counsel for Appellant Adele J. Pope*

June 10, 2021

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS

)

) Case No. 2010-CP-40-4900

)

RUSSELL L. BAUKNIGHT, as Trustee of  
the James Brown 2000 Irrevocable Trust and  
the James Brown Legacy Trust, as Personal  
Representative of the Estate of James Brown,  
and on behalf of Alan Wilson, in  
his capacity as Attorney General of the State  
of South Carolina; Tommie Rae Brown,  
individually and on behalf of her minor child,  
James B.; Daryl J. Brown, individually  
and on behalf of his minor child Janise  
Vanisha Brown; Lindsey Delores Brown;  
Deanna J. Brown Thomas; Jason Brown-  
Lewis; Yamma N. Brown, individually and  
on behalf of her minor children, Sydney  
L., Carrington L., and Tonya Brown;  
Venisha Brown; Larry Brown; and Terry  
Brown

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MEMORANDUM IN SUPPORT OF  
MOTION TO ALTER, AMEND, VACATE  
AND/OR RECONSIDER ORDER  
DENYING MOTION TO DISQUALIFY  
AND ENJOIN PLAINTIFFS' COUNSEL

and

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)

ALAN WILSON, in his  
capacity as Attorney General of the State of  
South Carolina; TOMMIE RAE BROWN,  
individually and on behalf of her minor child,  
JAMES B.; DARYL J. BROWN,  
individually and on behalf of his minor child  
JANISE VANISHA BROWN; LINDSEY  
DELORES BROWN; DEANNA J. BROWN  
THOMAS; JASON BROWN - LEWIS;  
YAMMA N. BROWN, individually and on  
behalf of her minor children, SYDNEY  
L., CARRINGTON L., and  
TONYA BROWN; VENISHA BROWN;  
LARRY BROWN; and TERRY BROWN,

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Plaintiffs.

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v.

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Adele J. Pope,

)

Defendant.

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)

On May 18, 2011 Defendant moved to enjoin and disqualify the law firm of Kenneth Wingate, Esq., (collectively "Wingate") and Russell Bauknight, trustee of Plaintiff Legacy Trust, from acting on behalf of the State/Attorney General ("AG") in this case, and for related relief (the "Injunction Motion") [Exhibit A] Defendant asserted that it violated the constitutional rights of Robert Buchanan and Defendant for the two to use the power and prestige of the State/AG to advance the private interests of Tommie Rae Hynie, Terry Brown ("Terry") and other Legacy Trust owners who were seeking to dismember the "I Feel Good" education charity of entertainer James Brown which Buchanan and Defendant were protecting, and which the AG has a statutory duty to protect.

Wingate acting for the State/AG Alan Wilson, opposed the well-documented Injunction Motion.<sup>1</sup> [See Affidavit Supp. Inj., filed 5/18/11] The motion was denied on July 5, 2012, and a timely motion to alter, amend and vacate was filed. [Exhibit B]

After a tortured 9-year history, the motion to alter, amend and vacate the 2012 order and grant the relief sought in the Injunction Motion is scheduled for hearing on July 29, 2021.

Based on the Injunction Motion, the supporting documentation, the sworn testimony of Governor Henry McMaster and others on file in Richland 4900, and the admissions of Wingate, Bauknight, their agents, Hynie, and other Wingate private clients, the order denying the relief sought in Injunction Motion should be reversed and vacated, and all relief sought in the Injunction Motion granted. The unauthorized state action of Wingate and Bauknight

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<sup>1</sup> The Injunction Motion was fully supported, including by the Affidavit of Adele J. Pope filed May 18, 2011, with Exhibits A, B, and C, attached as **Exhibit C**. Pope also made efforts both under FOIA and in discovery to obtain the public Wingate Special Counsel Litigation Agreement ("Wingate Contract") which Wingate claimed to be its authorization to bring Richland 4900 in the name of the State/AG, as well as the claimed \$4.7 million valuation. Under the Wingate Contract, the \$4.7 million claimed value is a public document and subject to FOIA.

for the benefit of Hynie and other Wingate private clients should be declared a violation of 42 U.S.C. §1983,<sup>2</sup> the Due Process and First Amendment rights of Buchanan and Defendant as protected by the U.S. and S.C. Constitutions; and a violation of their FOIA and other rights. This unauthorized state action was improper in 2011 and has continued for a decade while Wingate and Bauknight have continued to act for the State/AG to benefit Hynie and those allied with her.

A brief history of the state actions of Wingate and Bauknight are set out below.

#### **I. AG FILES RICHLAND 4900 FOR THE BENEFIT OF HYNIE & LEGACY TRUST**

In May 2010 the State/AG, Terry, Hynie and others sued Buchanan and Pope in Richland 4900 for tens of millions of dollars. They claimed Buchanan and Pope owed the Legacy Trust, Hynie and its other beneficiaries a fiduciary duty, which was not correct. The State/AG claimed Buchanan's and Pope's appeal of the AG's 2008 settlement which dismembered James Brown's "I Feel Good" education charity was a breach of their duty to the Legacy Trust and its owner-beneficiaries. They claimed Buchanan and Pope should have accepted a \$100 million offer for Brown's music empire in 2007. But the AG, the State's chief prosecutor, through Wingate, also claimed in the Richland 4900 complaint that Buchanan and Pope had overstated the value of Brown's music empire in IRS filings to get a \$5 million commission, a federal felony. The claim was false. They also claimed that Buchanan and Pope knew nothing about termination rights under Sections 304 and 203 of the U.S. Copyright Act of Hynie and others which Bauknight was managing in the Legacy Trust. This, also, was

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<sup>2</sup> See, for example, *Lugar v. Edmonson Oil Company, Inc.*, 457 S.Ct. 922, 102 S.Ct. 2744 (1982).

incorrect.

## **II. WINGATE OUTLINES THE STATE/AG'S POSITION IN RICHLAND 4900**

On August 30, 2010, speaking for the AG, Wingate told the Circuit Court:

Your Honor, and this global settlement that brought all 15 of these people together on this caption into one group, rewrote the estate plan, rewrote the terms of the Trust. And the revised Trust is what Your Honor sees on page 3, the second diagram that's at the top.

THE COURT: All right.

MR. WINGATE; And again, Your Honor, you see that Will just sits over there in Aiken. The Estate administration is over in Aiken. But the Settlement Trust [Legacy Trust], the Charitable Trust that receives the royalties, the intangible assets, the intellectual property of James Brown, is then administered in Richland County... the South Carolina Attorney General is in this case as one of our client Plaintiffs... [Tr. 8/30/10, pp. 32 - 33. Ex. C]

## **III. BAUKNIGHT'S & HYNIE'S 2011 CLAIMS TO THE SUPREME COURT**

The claims Bauknight and Hynie were making to the Supreme Court in 2011, when the Injunction Motion was filed, parallel the claims Wingate was making for the State/AG and Hynie in the Richland 4900 complaint. Today, using the power of the State/AG, Wingate and Bauknight continue to claim in Richland 4900 that Brown's worldwide music empire was properly valued by Peter Afterman as of Brown's death in 2006 at \$4.7 million, and:

- i. Hynie is Brown's spouse and her elective share claim is a "slamdunk;"
- ii. Hynie and her son control the termination right to Brown's 1100+ copyrights;
- iii. Termination rights is "all this case/estate is about;"
- iv. Hynie and her son gave up a lot in the AG's 2008 settlement:
- v. Nobody is trying to buy the James Brown assets;

- vi. Brown's Estate/2000 Trust have no corpus to speak of;
- vii. the AG's 2008 settlement saved taxes and was good for Brown's charity;
- viii. Buchanan and Pope are greedy, incompetent felons who overstated the value of Brown's assets to get \$5 million from Brown's \$5 million estate; lied to the IRS; and failed to file proper income tax returns; and
- ix. Buchanan and Pope breached their fiduciary duty by opposing the AG's 2008 settlement and conducting the appeal which became *Wilson v. Dallas*.

In 2011 Bauknight was paying a dozen Legacy Trust lawyers \$375 - \$500 an hour from Brown's charity to make these claims. They are still making the claims, and still concealing public documents that prove them false, including Hynie's handwritten admission of her bigamy and the state-owned Afterman claimed \$4.7 million valuation. They are making them to help Hynie and those allied with her retaliate against Buchanan and Pope for preventing her from taking about \$1 million a year and a quarter of Brown's "I Feel Good" charity in the AG's 2008 settlement, and taking 75% control of Brown's assets with the AG.

#### **IV. THE INCORRECT COPYRIGHT & VALUE CLAIMS OF WINGATE & BAUKNIGHT**

In 2009 Hynie, Terry and the Levenson<sup>3</sup> clients told Jg. Early that the termination rights proceeds Hynie, her son and other settling parties had put in the Legacy Trust were so valuable they might be worth more than Brown's music empire. The claim was absurd. That year Hynie's attorney Medlin proposed a massive devaluation of Brown's music empire to discredit "Bobadele."

<sup>3</sup> Louis D. Levenson, Esq., signed the 40% Wingate Contract for more than 10 Richland 4900 Plaintiffs with expectation of receiving an approximately \$9 million legal fee if the *Wilson v. Dallas* appeal could be stopped. Several Plaintiffs were unaware that he had signed the Wingate Contract. According to the depositions of Deanna Brown-Thomas and others, Levenson was terminated in 2016 or earlier. He testified in Aiken County Case No. 2013-CP-02-1337 ("Aiken 1337") in 2017, asserting that it was improper for Buchanan and Pope to oppose and appeal the AG's 2008 settlement.

Hynie's proposed devaluation was carried out by Bauknight's Legacy Trust music manager, Peter Afterman, in September 2010. Even though Bauknight later claimed he and Afterman approved clearances of \$10 million that year, Afterman valued Brown's music empire at \$4.7 million as of Brown's death. Bauknight, Hynie and the Levenson clients agreed to withhold the claimed \$4.7 million from the Supreme Court in *Wilson v. Dallas* for 8 months.

The Injunction Motion was filed immediately after Bauknight told the Supreme Court of his claim that Buchanan and Pope had overstated the value of Brown's \$4.7 million music empire to get a \$5 million commission on Brown's \$5 million estate.

In November 2011 Bauknight's Legacy Trust attorney Wilkins, coached by Hynie's attorney Medlin, made many of the above claims at the Supreme Court's oral argument in *Wilson v. Dallas*. The claims were incorrect, in part because:

- i. Hynie was not the spouse, and most Richland 4900 Plaintiffs knew it;
- ii. Termination rights under the Copyright Act apply only to U.S. royalties, and non-U.S. royalties made up about ½ of Brown's \$4 million-a-year copyright royalty stream in 2009, which remained steady in 2018.
- iii. By the AG's own expert, Brown's 900 copyrights, at death were worth 15 – 20 times annual royalties, as much as \$80 million, \$40 million of which would never be subject to dissipation by termination rights;
- iv. Brown's image and likeness (right of publicity), valued by Dr. Terry Cox, based on outside investors, at over \$40 million, will never be subject to termination rights;
- v. The AG's 2008 settlement and Legacy Trust did not include an ownership interest for at least 5 potential Copyright Act heirs; and
- vi. At least two Levenson clients given a share of the Legacy Trust

have been shown by other Levenson clients not to be heirs under the Act.<sup>4</sup>

#### **V. WINGATE STATES FINAL INJUNCTION MOTION IMPORTANT, THEN DELAYS**

On January 13, 2012, Wingate, speaking for AG Wilson, wrote Jg. Manning stating:

1. The fee production issue<sup>5</sup> should be settled first. . .
2. Defendant Pope's Motion to Disqualify and/or Enjoin [Wingate] should be heard and decided following resolution of the fee agreement production.

... Plaintiffs do not believe any depositions are appropriate or possible when the Plaintiffs' law firm is subject to pending motions to disqualify. Going forward with any deposition without first resolving this most basic issue essentially forces the Plaintiffs into the untenable positions of "lame duck" representation...

While admitting the importance of a final ruling on the Injunction Motion, Wingate and Bauknight would spend from July 2012 until July 2021 trying to keep the reconsideration motion from being heard. While doing so, for the benefit of Hynie and those allied with her, they consistently violated §1983 and the Due Process, First Amendment, FOIA and other rights of Buchanan and Pope and other citizens to conceal Hynie's own admissions of her bigamy, the Wingate Contract and the fabricated \$4.7 million Afterman valuation used in Richland 4900 to support the State/AG's false felony claim.

#### **VI. THE 2012 ORDER DOES NOT ADDRESS §1983 & CONSTITUTIONAL ISSUES**

The July 5, 2012 order denying the relief sought in the Injunction Motion does not

<sup>4</sup> See filing of Bauknight, 2/28/18, U.S. Dist. Ct. (S.C.) Case No. 2:18-cv-02191-JMC, Entry No. 21, p. 3, confirming the heir status of several Richland 4900 Plaintiffs under the Copyright Act remained uncertain.

<sup>5</sup> At the time, and until 2020, Wingate claimed that the Wingate Contract was "the epitome of" a private document. Not only was the Wingate Contract, on its face, a public document subject to FOIA, but it also, on its face, makes clear that the Afterman claimed \$4.7 million value and every document used in Richland 4900 is property of the State of SC and subject to FOIA.

address the serious constitutional issue that were before the Court. Wingate – purporting to act for the State/AG, but concealing the Wingate Contract which shows he had no authority to do so – assured the Circuit Court that Wingate’s engagement was entirely legal and regular.

The order denying the constitutional relief sought in the Injunction Motion simply stated:

At a hearing before the Honorable L. Casey Manning on April 12, 2012 the Court heard Defendant Pope’s Motion to Disqualify [ Wingate] from representing the Office of the Attorney General of South Carolina, enjoining [Bauknight] from purporting to speak on behalf of the Office of the Attorney General of South Carolina, and for other relief.

Having considered the Memoranda of Law from Defendant Pope and Plaintiffs, hearing the oral argument from both parties, and carefully considering the merits of the arguments of each party, this Court denies the relief sought by Defendant Pope in her Motion. [Ex. A, Ord. Jg. Manning, 7/5/12]

## **VII. IMPROPER STATE ACTION WHICH CONTINUED AFTER 2012 ORDER**

### **a. Wingate & Bauknight, for AG Wilson, Help Hynie Damage Buchanan & Pope**

Hynie is not the spouse, and Buchanan and Pope owed her no duty. The same is true of the Legacy trust and its owner-beneficiaries. Hynie was clearly and intentionally excluded from Brown’s estate plan. Bauknight could not have anticipated the creation of the Legacy Trust, set up to take more than half of his charity for termination rights that – 10 years after his death – were worth less than \$8.8 million.

Hynie’s marriage ceremony to Brown was bigamous. Her handwritten admissions of bigamy were public for a year in 2007 and 2008. Then she secured an unconstitutional *ex parte* gag order which Wingate and Bauknight, to help Hynie damage Buchanan and Pope,

bitterly fought to conceal – and have concealed in Richland 4900 – since 2010. The admissions were made public in 2015 when the Supreme Court refused to enforce the 2008 gag order. Wingate and Bauknight are still concealing it to help Hynie damage Buchanan and Pope.

The State/AG has helped Hynie slander Buchanan and Pope for 11 years, calling them thieves. The State/AG, through Wingate, exempted Hynie from the 2012 mediation. Hynie stayed at home and publicly posted that the purpose of the mediation was to get rid of Pope, whom she described as “the last of the rats.” The other “rat” was Buchanan.

The State/AG, through Wingate, contracted for Buchanan to be paid \$500,000 in 2012 to release his claims against Hynie, Bauknight, and Bauknight’s Legacy Trust owner-beneficiaries. Bauknight paid Buchanan \$500,000 and Wingate \$500,000 that year to benefit Hynie and Bauknight, all from Brown’s charity.

By 2015 most Richland 4900 Plaintiffs were revealing what they had known, many from James Brown himself: Hynie was not his spouse. She was not entitled to any termination right. Hynie was not entitled to \$1 million a year and a quarter of Brown’s charity, as provided in the AG’s 2008 settlement. Hynie and the AG had no right to take 75% control of Brown music empire and give away half of his charity for about half of the \$8.8 million of termination rights proceeds.

When most Richland 4900 Plaintiffs abandoned Hynie, the State/AG, through Wingate and Bauknight took her side, continuing to help Hynie and Levenson carry out their May 29, 2013 announced plan to ignore *Wilson v. Dallas* and reinstate the AG’s 2008 settlement. The entire time Wingate and Bauknight, acting for the State/AG to benefit Hynie,

used the fabricated Afterman \$4.7 million valuation to falsely accuse Buchanan and Pope of a federal felony. While they did so, the State/AG Wilson, through Wingate and Bauknight, condoned Hynie's siphoning off millions of dollars of termination rights proceeds which she had put in the Legacy Trust in 2009 – with the help of Peter Afterman.<sup>6</sup> From 2013 until 2021 the State/AG, through Wingate, has consented to Afterman's serving as music manager for Hynie as well as for Bauknight.

This state action to help Hynie retaliate against Buchanan and Pope was unconstitutional, illegal and improper in 2011 and is the same today. The Injunction Motion should be granted for this alone.

b. The State/AG, through Wingate, Conceal Public, State-Owned Documents, Including the Afterman \$4.7 Value

The 2011 Injunction Motion was filed just after Bauknight revealed he had valued Brown's music empire at \$4.7 million and Forlando Brown ("Forlando"), who had testified in 2008 that offers of \$150,000 were available for the music empire, had begun to exercise the right of first refusal ("ROFR") the AG's 2008 settlement gave to his father Terry.

In 2007 and 2008 Terry and Forlando were part of 3 offers to buy James Brown's music empire for about \$100 million. Terry offered to buy Brown's 10,000 items of Tangible Personal Property ("TPP") for \$2 million.

In 2009 Terry joined the AG's 2008 settlement and was given a 4.79% interest in the Legacy Trust and the ROFR. By January 2011 the Legacy Trust had been amended for Terry

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<sup>6</sup> See Footnote, p. 2-3, of Motion of Estate (Bauknight) to Dismiss Complaint, U.S. Dist. Ct. (S.C.) Case No. 2:18-cv-02191-JMC, entry No. 21, for Bauknight's claim that the public termination notices filed in 2013 in the U.S. Copyright Office were "unbeknownst to the Estate and Trust."

to exercise the ROFR, and, aided by Legacy Trust attorneys, Terry had assigned his ROFR to Forlando.<sup>7</sup>

In August 2010 Bauknight's NP attorney Kingsmore told the Supreme Court Bauknight had reviewed a draft appraisal that would show Brown's assets were worth less than \$12 million when he died in 2006 – less than 1/6 their actual value.<sup>8</sup>

In September 2010 Afterman's claimed \$4.7 million valuation arrived, but Bauknight, Hynie and others agreed to keep it from the Supreme Court for 8 months.

In May 2011 the \$4.7 million was revealed and the Injunction Motion was filed. Supporting documents filed by Pope show that the combined devaluation and a sale to Terry would bring Brown's charity from about \$80 million to less than \$1 million under the AG's 2008 settlement. The valuation made no sense. Buchanan and Pope had brought in \$7.83 million in the 18 months they had served as PR/Trustee – more than \$4.7 million per year.

Acting for the State/AG, Wingate and Bauknight have spent a decade and millions of dollars to conceal the Afterman \$4.7 million valuation while using it to help Hynie and Legacy Trust owners damage Buchanan and Pope with both the false felony claim and false claims about their other dealings with the IRS. Legacy Trust attorney Newsome, at \$400 an hour, even accused Pope of perjury in Aiken 1337.

<sup>7</sup> See Exhibit D, emails of Forlando, a/k/a William James Brown, Legacy Trust Attorney Kingsmore and others, 1/7/11-1/18/11.

<sup>8</sup> The claim was entirely inconsistent with the public record of Brown's assets and income. Brown's music empire had brought in \$80 million between 1999 and Brown's death in 2006. During that time Brown reduced his \$26 million TIAA debt to \$15 million. The year after Brown died, *Forbes* listed him as one of its highest earning "dead celebrities" with income of \$5 million. When Buchanan and Pope served as PR/Trustees Brown's Estate/2000 Trust brought in more than \$4.7 million per year, \$7.83 million in 18 months.

### VIII. THE AG, THROUGH WINGATE, SUPPORTS 20 ATTORNEYS AND 10 EXPERTS

From 2011 until 2017 the State/AG, through Wingate, supported Bauknight's spending tens of millions of dollars in litigation costs in Richland 4900 and other cases to help enforce the AG's 2008 settlement until 2013 and help reinstate it from 2013 when Hynie and Levenson announced their plan to ignore *Wilson v. Dallas* and reinstate the AG's 2008 settlement would give Hynie's attorneys and Levenson about \$19 million in contingency legal fees from what they claim is a \$5 million estate.<sup>9</sup> A substantial portion of the cost to carry out the Levenson/Hynie announced plan has been spent to damage Buchanan and Pope in Richland 4900; prevent any hearings in Richland 4900 unless the State/AG, through Wingate, wanted them; and to hire about 20 attorneys and 10 experts, including "expert" Peter Afterman, proposed by Hynie's attorneys.

With the apparent blessing of the State/AG Wilson, Bauknight contracted for Brown's charity to advance all of the costs in Richland 4900. The Wingate Contract provides that the Legacy Trust owners will pay back what Bauknight, with the blessing of the State/AG, advances to them from the charity's devise.

But then-AG, now Governor McMaster did not sign the Wingate Contract. On April 24, 2013, AG Wilson told Wingate the AG's office had never hired Wingate; the AG would not pay either the 47.5% called for in the Wingate Contract or anything. AG Wilson said Wingate would have to disgorge what he had been paid if the *Wilson v. Dallas* decision did not change.

<sup>9</sup> See p. 3, Motion of Estate (Bauknight) to Dismiss Complaint, U.S. Dist. Ct. (S.C.) Case No. 2:18-cv-02191-JMC, entry No. 21, where Bauknight says: "Litigation costs to the estate and ultimately to the charitable trust have now run into the tens of millions of dollars."

It did not.

Yet in 2016 and 2017 the State/AG, through Wingate, designated for Hynie, the AG and Legacy Trust owners, the same 9 experts Bauknight designated in Aiken 1337. And the State/AG, through Wingate and Bauknight, tried to consolidated Aiken 1337 with Richland 4900 and try them together to benefit Hynie and other Legacy Trust owners.

Since 2008 Bauknight had been paying a dozen Legacy Trust attorney \$375 - \$500 an hour to conduct the Legacy Trust's business. They continued after the AG's April 24, 2013 letter. In 2016 and 2017, in addition to Afterman, to whom Bauknight spoke almost daily, Bauknight and Wingate hired the following experts to testify for Hynie and the Legacy Trust owners against Buchanan and Pope in Richland 4900: Nathan Crystal, Esq. (\$600 an hour); Brad Sharp (CA., \$700 an hour); Laura Woolley (CA, \$400 an hour); Julian Walker, Esq. (\$600 an hour); Ellison Thomas, CPA; Roger Miller and others. Wingate had already hired Mark Hobbs, CPA and Tiffany Provence, Esq., in 2010.

The purpose for which they were hired was to help Hynie and Levenson defend the AG's 2008 settlement and blame the damage on Buchanan and Pope. As is shown in their testimony in Richland 4900, all experts were told by Wingate and Bauknight that Hynie was Brown's spouse and controlled ½ of the termination rights elections. None was shown the claimed Afterman \$4.7 valuation, or told that it had been used to shift nearly 1/3 of Brown's charity (31%) over to a trust for Forlando and 5 Levenson clients. None was told that it shifted \$1 million a year from the charity to the trust for Forlando and 5 Levenson clients, or that Bauknight's spouse/CPA had failed to file the tax returns to show the \$1 million a year taken from the charity.

### **IX. AG, THROUGH WINGATE, REJECTS NUMEROUS SETTLEMENT OFFERS**

When Richland 4900 was threatened in the spring of 2010, Buchanan and Pope offered to resign and allow the AG's 2008 settlement to remain in place if the parties and the Court of Appeals agreed that the AG could substitute his fiduciary judgment for theirs. Despite multiple requests to Bauknight's Legacy Trust counsel, Bauknight refused to respond to the offer.

With no authority, Wingate, acting for the State/AG but for Hynie's benefit, has rejected and filed multiple offers to end Richland 4900, including offers in 2012 to let the AG, Brown's Estate/2000 Trust and minor beneficiaries of the 2000 Trust out of Richland 4900 at no cost. The State/AG rejected the same offer in 2013. In 2014, when Pope urged the AG to prevent the announced plan of Hynie and Levenson to dismember Brown's charity and reinstate the AG's 2008 settlement, Wingate admonished Pope for contacting a "represented party." [See selected letters attached as **Exhibit F**]

In 2017 and 2018, offers made to the AG and others to end Richland 4900 do not appear to have been delivered to the AG either by Wingate or Bauknight.

### **X. THE STATE/AG SEALS AFFIDAVITS OF POPE WITHOUT REVIEW**

From 2011 until 2021 Wingate and Bauknight, acting for the State/AG, violated and disrupted FOIA rights. In 2017 the State/AG, through Wingate and Bauknight, secured an extraordinary order violating Pope's First Amendment rights. The March 2017 Order, issued at the request of AG Wilson by Wingate, seals without review an affidavit of Pope and directs that all future affidavits filed by Pope in Richland 4900 must be sealed without review until trial.

## **XI. STATE/AG SUPPORTS SILENCING BUCHANAN FOR BENEFIT OF HYNIE**

In 2012 the AG, through Wingate, endorsed Bauknight's payment of \$500,000 to Buchanan and \$500,000 to Wingate from Brown's charity. The AG, through Wingate, required Buchanan, as a condition of the settlement, to agree not to file a petition for rehearing in *Wilson v. Dallas*, or do anything to help Brown's charity.

Buchanan did not agree to release Forlando, who was not disclosed as a Wingate client. A motion to void these improper State/AG actions had been pending since 2012. AG Wilson, through Bauknight and Wingate, has prevented it from being heard.<sup>10</sup>

## **XII. THE AG'S SUPPORT FOR SHIFT OF NEARLY 1/3 OF CHARITY TO FAMILY TRUST**

The Bauknight/Afterman claimed \$4.7 million value was hatched by Hynie's attorney and carried out by Afterman for the purpose of discrediting and damaging Buchanan and Pope, which it did. But Bauknight's \$4.7 million also shifted nearly 1/3 (31%) of the assets of Brown's charity and \$1 million a year of income to Brown's education trust for Forlando and 5 Levenson clients. This not only severely damaged the charity, but caused significant tax problems which Bauknight's spouse/CPA did not address.

Bauknight did not show the \$4.7 million claimed valuation to any member of the AG's staff. According to Legacy Trust attorney Black in a media report, it was "under lock and key" in 2011. Although used in Richland 4900 to benefit Hynie and thus property of the State of S.C., it remains under lock and key in July 2021.

<sup>10</sup> See Return and Objection to Motion to Enforce Purported Settlement, filed 5/31/12, addressing the State/AG's support, through Wingate, of Hynie's fraud by silencing Buchanan.

**XIII. STATE ACTION TO CONCEAL THE ROLE OF FORLANDO IN RICHLAND 4900**

The State/AG, through Wingate and Bauknight has concealed the role of Forlando in Richland 4900 since the Injunction Motion was file, apparently because he was involved both in the claimed \$4.7 million valuation and the \$100 million offer to buy the music empire reference in the never-amended Richland 4900 complaint.

Forlando's trust share was increased tenfold by Bauknight with the Afterman \$4.7 million valuation. Yet he testified under oath, after reviewing the Afterman \$4.7 million value, that it was "bogus." Both Buchanan and Pope, who also reviewed it under an ill-gotten confidentiality claim of Bauknight, agree.

The Injunction Motion was made immediately after Buchanan and Pope learned of the \$4.7 million claim which reduced Brown's charity by \$79 million. The fact that Forlando was in the midst of trying to work out a purchase of the music empire was concealed.

In 2017 Bauknight offered testimony in Aiken 1337 of Dr. Terry Cox. Cox had been the front man for the TJBL investors, of which Forlando was made a part in 2007. Cox had valued Brown's copyright at about \$40 million and rights of publicity at about \$40 - \$45 million in 2007, based on information from his investors. Bauknight, however, told Cox that all royalties would end as each termination date approached. This was incorrect. Only about half of Brown's then-\$4 million annual royalty stream would ever be subject to termination rights elections. Brown's right of publicity and all non-U.S. royalties would never be touched by them.

**XIV. HYNIE'S SON REVEALS CONTENTS OF CLAIMED \$4.7 MILLION VALUATION**

In March 2013 Hynie's son ("James") told the Supreme Court how Afterman had

arrived at the claimed \$4.7 million value. Afterman valued Brown's 900 copyrights – now more than 1100 – at \$23.7 million; Brown's famous image and likeness (right of publicity) at zero or near zero; and Brown's 10,000 items of TPP and other business assets at zero or near zero. Then Afterman reduced the \$23.7 by \$19 million, arriving at \$4.7 million. In addition to an incorrect value for the assets, Afterman overstated the \$15 million TIAA debt by nearly \$4 million.

#### **XV. AG CONDONES AFTERMAN'S SERVICE TO HYNIE.**

In 2013 Afterman began advising Hynie's counsel in the efforts of Hynie and James to siphon off U.S. royalties from Brown's "I Feel Good" charity. Through Wingate and Bauknight, the State/AG Wilson has condoned and supported this conflict.

#### **XVI. HYNIE ANNOUNCES INTENTION TO REINSTATE THE AG'S 2008 SETTLEMENT**

##### **a. The Supreme Court Addresses Richland 4900 & the FOIA Cases (February 2013)**

On February 27, 2013 the Supreme Court addressed Richland 4900 and this FOIA suit in the Footnote 29 of the first, later substituted, *Wilson v. Dallas* decision, stated in part:

Although Brown's music rights have been widely reported as being worth up to \$100 million or more at his death, Bauknight filed documents with the Internal Revenue Service indicating the value of Brown's music empire was only a net of \$4.7 million. The \$4.7 million valuation has been questioned . . .

Further, the AG, with Bauknight's knowledge and cooperation, allegedly entered into contingency-fee agreements with outside counsel Kenneth Wingate, for Wingate to sue Appellant Pope on behalf of the State, Bauknight and others while also representing private plaintiffs in the suit. The suit sought damages to Brown's estate allegedly arising during Pope's appointment. Despite FOIA requests, the AG has refused to publicly release all of the documents pertaining to this purported arrangement. These matters should be considered by the circuit court in the first instance and any fees found to be inappropriately incurred

should be disgorged and returned to the trust in light of our finding that the compromise is void and the AG has exceeded his authority by, among other things, controlling the charitable trust through the appointment of Bauknight, who serves at the AG's pleasure. [Emphasis supplied]

On March 6, 2013, Pope secured a meeting with AG Wilson, Chief Deputy John McIntosh and Solicitor General Robert Cook to discuss the damage caused to Brown's charity and its copyrights by Bauknight's IRS filings claim that Hynie was the spouse of James Brown, and using the Bauknight/Afterman devaluation of the music empire by \$79 million to \$4.7 million. Pope had previously sent AG Wilson a copy of *Private Foundations*<sup>11</sup>, but AG Wilson and his Sr. staff said they were hearing much of what Pope said for the first time. Pope and counsel Adam Silvernail, Esq., had a second meeting with the Solicitor General and Chief Deputy AG within a few days for the same purpose.

A few days later AG Wilson advised both Pope and the Supreme Court of his intention to withdraw from Richland 4900. Levenson, speaking for 10 Richland 4900 Plaintiffs advised the Supreme Court of his clients' intention to continue to pursue Richland 4900. James, through a GAL, "explained" Copyright Act termination right incorrectly to the Supreme Court and defended the claimed \$4.7 million Afterman valuation, outlining it in detail.

b. Hynie's Son Explains Afterman \$4.7 Million Valuation and Sets Out Bauknight/Wingate Incorrect Copyright Act Termination Rights Claims to Supreme Court

In an extraordinary March 2013 filing James gave the Supreme Court the details of

<sup>11</sup> *Private Foundations, Copyright Heirs and Musical Millionaires: why the James Brown "I Feel Good" Trust doesn't...*, by Wm. Jeffrey Smith and Adele J. Pope was filed on May 18, 2011, as part of the Affidavit of Adele J. Pope Supporting Injunction.

the claimed confidential Afterman \$4.7 million valuation of Brown's worldwide music empire, confirming that Afterman had valued Brown's 900 copyrights at about \$23.7 million; valued Brown's right of publicity and 10,000 items of TPP at near zero; and then reduced the figure by \$19 million – a nearly-\$4 million overstatement of Brown's TIAA debt – to arrive at the claimed \$4.7 million value. Hynie son also misstated the U.S. Copyright Act termination rights provisions, and failed, like Bauknight, to inform the Court that termination right would never apply to the approximately \$2 million annual non-U.S. royalty stream, or that multiple strategies exist for charities to minimize the impact of termination rights claims, as explained in *Private Foundations*. In short, James set out the position he and Hynie had taken since 2008, and which Hynie, with Wingate and Bauknight using the prestige of the State/AG, would continue to take until 2021.

c. AG Wilson Advises Wingate that the Office of the AG Never Hired Wingate Public documents concealed by Wingate and Bauknight for 8 years, but released under FOIA by the AG in late 2020, confirm the actions of AG Wilson after the meeting where he learned of the damage Bauknight's alliance with Hynie and IRS claims about her marital spouse and the \$4.7 million value was causing damage to Brown's charity. In March and April 2013 Wingate tried to negotiate an agreement with AG Wilson to terminate its asserted representation of the State/AG and keeps the terms of the termination secret.

AG Wilson refused to sign a termination agreement with Wingate; said the AG would not pay any 47.5% of the Wingate fees and costs Bauknight had been advancing from funds Brown gave his charity; did not agree to pay 47.5% of the \$500,000,00 Bauknight had paid Buchanan in the 2012 "settlement;" and advised that if the Supreme Court's *Wilson v. Dallas*

decision remained the same, Wingate would be required to disgorge the fees it had received. In addition, on April 24, 2013 AG Wilson, through the Chief Deputy, confirmed that the Office of the AG had never been a client of Wingate in Richland 4900, and never had an attorney-client relationship with Wingate.

Wingate and Bauknight did not disclose the public April 24, 2013 letter to the Court or parties, including when 2 Wingate attorneys were directed by the Honorable Jean Toal in 2017 to testify about their authorization to bring and continue Richland 4900 for the AG from 2010 until 2017.<sup>12</sup>

d. Hynie & Levenson Announce Plan to Ignore *Wilson v. Dallas* and Reinstate the AG's 2008 Settlement to Judge Early on May 29, 2013

On May 29, 2013, just days after the remittitur in *Wilson v. Dallas*, Hynie, through Medlin, and Levenson for 10 Richland 4900 Plaintiffs, announced to Jg. Early their plan to ignore *Wilson v. Dallas* and reinstate the AG's 2008 settlement. For the next 8 years Wingate and Bauknight used the power and prestige of AG Wilson's office to help Hynie and those aligned with her to try to secure Hynie's status as Brown's spouse; reinstate the AG's 2008 settlement; and use the concealed Afterman \$4.7 million and the false felony claim to blame the damage Hynie caused on Buchanan and Pope in Richland 4900. From 2013 until 2020, as the plan progressed, Afterman advised Hynie's attorneys as she and her son James siphoned off more than \$1 million in U.S. royalties from Brown's charity.<sup>13</sup>

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<sup>12</sup> See Order of Judge Toal, 3/1/17, Aiken 1337.

<sup>13</sup> See See p. 3, Motion of Estate (Bauknight) to Dismiss Complaint, U.S. Dist. Ct. (S.C.) Case No. 2:18-cv-02191-JMC, entry No. 21.

## **XVII. WINGATE & BAUKNIGHT SUPPORT HYNIE'S MAY 29, 2013 PLAN**

### **a. State Action by Wingate/Bauknight to Conceal Hynie's Bigamy Admissions.**

From 2013 until 2016 the State/AG, through Wingate, obtained a *de facto* stay of everything in Richland 4900 which Wingate did not want heard, including a motion to void the conditions placed by the AG on Buchanan; the motion to alter, amend or vacate the Injunction Motion; the motion to add Forlando as a party based on his own statements about Legacy Trust ownership; and others. Speaking for the State/AG, Wingate told Jg. Manning on May 10, 2013 that the Supreme Court placed no primacy on promptly concluding either the FOIA cases or Richland 4900.

Between 2013 and 2016 Hynie, Levenson and Bauknight secured numerous orders from Jg. Early supporting Hynie's spousal claims; plan to reinstate the AG's 2008 settlement which dismembered the "I Feel Good" charity; and plan to blame the damage on Buchanan and Pope.

In August 2013, advised by Afterman, Hynie and James filed public notices in the U.S. Copyright Office as Brown's spouse and child seeking to siphon off U.S. royalties from more than 100 copyrights Brown gave the "I Feel Good" Trust between 2013 and 2023. Bauknight did nothing to stop the action during the 2 years before Hynie received the first payments. The month Afterman and Hynie made the filings Bauknight, under oath, called Pope dishonest; defended the AG's 2008 settlement; and claimed Pope (and presumably Buchanan) had "raped" James Brown's estate.

In 2014 and 2015 Wingate and Bauknight attempted to intervene in a journalist's FOIA suit to stop the AG from releasing Hynie's long-public handwritten admissions that her

marriage ceremony with Brown was bigamous. They were successful in preventing re-release of the public admission until after the Circuit Court had declared Hynie the spouse.

b. By 2015 Hynie is "spouse" and Family has nearly 1/3 (31%) of Charity.

By Early 2015 Judge Early had declared Hynie to be the spouse and issued numerous other orders which advance the plan of Hynie and Levenson. Bauknight's spouse/CPA had not reported Bauknight shift of about \$1 million a year of Brown's income from being "paid or permanently set aside" for charity, to being payable to a non-charitable trust for Forlando and 5 Levenson/Wingate private clients. Wingate and Bauknight had stopped, both in Richland 4900 discovery and by FOIA disruption, release of the public Wingate contract; the nonconfidential Afterman \$4.7 million valuation; the 2010 Legacy Trust amendment; and Hynie's handwritten bigamy admissions.

c. The May 2015 Status Report Supports Hynie and the AG's 2008 Settlement

In a May 2015 status report to the Supreme Court, Jg. Early gave an extraordinary boost to Hynie's and Levenson's announced plan to ignore the Supreme Court's *Wilson v. Dallas* decision and reinstate the AG's 2008 settlement by, apparently inadvertently, failing to tell the Supreme Court about the announced plan. Judge Early said he had never heard even a whisper or Court House talk about a settlement. Jg. Early also told the Supreme Court that the determination of Brown's heirs was complete, and that he had carefully considered the facts when he determined Hynie to be Brown's spouse. He said that Bauknight had reduced the TIAA debt by \$14 million, when he had only reduced it by about \$9.3 million. And he praised the work Peter Afterman was doing for the estate, apparently unaware that Afterman was helping Hynie and James siphon off royalties intended for needy students. In

addition, Jg. Early incorrectly stated that Pope's \$47,972 SA unpaid fee claim was for \$2 million for 3 months work, and that her PR/Trustee commission claim was for \$5 million – nearly twice the actual claim.

d. Bauknight/Wingate Conceal Wingate's Non-Hiring by the AG at 2015 Mediation

After Jg. Early declared Hynie to be Brown's spouse, he consulted with Jg. Manning and the two directed a joint mediation of Richland 4900 with Aiken 1337, Pope's fee claim case filed in 2013 after Bauknight's NP Attorney Newsome (\$440 an hour) served a Notice of Disallowance repeating the false felony claim and asserting that Pope was not entitled to any pay for her 18 months of PR/Trustee service with Buchanan and their 6-year defense of Brown's estate plan and charity against 7 baseless challenges filed by Levenson clients and Hynie, as well as the AG's 2008 settlement.

Both Wingate and Bauknight failed to disclose the AG's April 24, 2013 letter confirming that the AG's Office never hired Wingate. Even though the Legacy Trust had, at times, begun to claim that it never existed, Jg. Early declined a motion to require its successors to attend, finding that Bauknight's attendance was adequate. At Wingate's request, acting for the State/AG, Jg. Manning exempted Hynie and others from attending the mediation; declined to appoint a GAL for the incarcerated Venisha Brown ("Venisha"); and declined to appoint GALs for the minors Richland 4900 Plaintiffs. At the mediation Wingate and Bauknight spoke for all individual Richland 4900 Plaintiffs, even though a number of Richland 4900 Plaintiff were claiming that Hynie was not Brown's spouse, a position directly opposed to that of Wingate and Bauknight.

**XVIII. WINGATE, FOR AG WILSON, APPROVES \$2 MILLION TO JAMES AND SA/ST**

3 years after AG Wilson confirmed that the AG's Office had never hired Wingate in Richland 4900, Wingate and Bauknight continued to aggressively use the State/AG's power to help Hynie and James, and silence anyone who did not support Hynie's efforts to be the spouse and reinstate the AG's 2008 settlement. In 2016 SA/ST Sojourner, engaged on recommendation of Bauknight, testified that he had billed \$1.4 million to defend against the claims of Hynie and James, but knew nothing about the value of Brown's estate. Sojourner testified that he had no obligation to protect the "I Feel Good" charity's 1100 copyright from termination rights claims by Hynie and James. Sojourner had allowed Hynie to be declared Brown's spouse on summary judgment without even proffering Hynie's handwritten admissions of her bigamy.

In 2016 Jg. Early awarded James, who had refused a paid-for \$300 DNA test in 2008, and was not a presumed child of James Brown, a \$700,000 attorney/GAL fee in Aiken County -- \$500,000 for past services and \$5,000 each for an anticipated 40 depositions. He did so even though the attorney for James had a contingency fee agreement with Hynie, and both Hynie and James claimed that Brown's estate was worth only \$5 million. The maximum claim of James was 1/20 of that, or \$250,000.

These actions provided material State/AG support to the effort of Hynie and James, to whom Buchanan and Pope never owed a duty, to damage them in Richland 4900 for their proper defense of Brown's charity and estate plan.

#### **XIX. AG WILSON, THROUGH WINGATE, SEEKS TO CONSOLIDATE AIKEN 1337**

In 2016 and 2017 the State/AG Wilson, through Wingate and Bauknight, twice moved to consolidate Richland 4900 with Aiken 1337, Pope's fee claim case filed in 2013.

Pope was forced to file Aiken 1337 when Bauknight's Legacy Trust "probate claims expert" Newsome, paid \$440 an hour, served Pope with a Notice of Disallowance with Notice of Impending Bar (the "Disallowance") on May 29, 2013. The Disallowance referenced the false felony claim and said Pope was not entitled to any pay for her service as PR/Trustee or for pay or costs she paid out of pocket for the 4-year defense of Brown's estate plan in *Wilson v. Dallas*. For 4 years Newsome went to extraordinary measures to try to get witnesses to agree that the Afterman \$4.7 million valuation was correct, even though he concealed it from everyone he asked. [See Aiken 1337 depositions of James Hardin III, Esq.; W. Steven Johnson, Esq.; and William E. Sellars, CPA]

#### **XX. GOVERNOR McMASTER'S SWORN TESTIMONY SUPPORTS INJUNCTION.**

In 2016 Governor McMaster confirmed under oath that, as AG, he never authorized Wingate to sue Buchanan and Pope in Richland 4900 in the name of the State/AG<sup>14</sup>. Governor McMaster also testified that he never authorized Bauknight to act "on behalf of" the AG in Richland 4900. Gov. McMaster's sworn testimony is consistent with the fact that McMaster did not sign the

#### **XXI. WINGATE'S 2021 CLAIM THAT AG'S ROLE ENDED IN 2016 IS INCORRECT**

##### a. Wingate Claims in July 2021 that AG's Role in Richland 4900 Over, "for all intents and purposes"

In a July 2021 filing in the S.C. Court of Appeals Wingate asserts that the Attorney

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<sup>14</sup> Wingate Contract, a fact concealed by Wingate and Bauknight in Richland 4900 until 2020. Defendant attaches and incorporates in its entirety the Motion to Alter, Amend filed January 22, 2019 in Aiken 1337 [Exhibit E], which Contains excerpts from testimony of Governor McMaster, pp. 3-6; sworn testimony of Solicitor Gen'l. Cook, pp. 5-8; sworn testimony of AG Alan Wilson, pp. 8-25; sworn testimony of Sr. Asst. AG Waters, pp. 25-26; sworn testimony of IP expert Wallace Lightsey, Esquire, pp. 29ff; and others.

General's role in Richland 4900 was over "for all intents and purposes" by the time Governor McMaster gave his sworn testimony in 2016 that, as AG, he did not authorize Wingate to bring Richland 4900 in the name of the State/AG, did not authorize Bauknight to act "on behalf of" the AG, and did not know he was a Richland 4900 Plaintiff until after leaving office as AG. The statement is problematic for two reasons. First, it is entirely inaccurate. And second, even if it were true, it does not resolve the continuing unconstitutional use of the power of the State/Attorney General by Wingate and Bauknight which was ongoing in 2011 and has continued for years while Wingate concealed AG's Wilson April 24, 2013 confirmation that Wingate was never hired by Gov. McMaster as AG. Both problems were appropriately addressed in the Injunction Motion in 2011, and should be considered now.

b. Wingate & Bauknight responsible for All Delay in Reconsideration Since 2013

The 9-year delay in the Court's reconsideration of the Injunction Motion falls squarely at the feet of Wingate and Bauknight, who, using the prestige and power of the State/AG Wilson, have fought bitterly to advance Hynie's spousal claim and proposed reinstatement of the AG's 2008 settlement and the use of Richland 4900 to further damage Buchanan and Pope with the false Afterman \$4.7 million value and false felony claim. Wingate and Bauknight have sought and obtained stays in Richland 4900 and the consolidated cases for most of the time since April 24, 2013 when AG Wilson confirmed he had never hired Wingate. When the Injunction Question was presented to the Appellate Court, Wingate and Bauknight claimed it was premature, and must be heard below. In short, Wingate, Bauknight, Hynie, Terry and Forlando have succeeded in acting for the State/AG to benefit Hynie and those aligned with her in their baseless claims against Buchanan and Pope while concealing public

documents confirming Hynie's fraud on multiple courts, civil conspiracy and other actions to damage Buchanan and Pope properly opposed their suits to set aside Brown's estate plan and the AG's 2008 settlement.

c. AG Wilson, through Wingate, Supports Summary Judgment for the Legacy Trust

In 2009 Hynie and Sr. Asst. AG Clyde "Sonny" Jones assured Jg. Early that the AG would carefully oversee the operation of the Legacy Trust, over which the AG and Hynie had 75% control, to assure that Brown's charitable funds were protected, including the termination rights proceeds under Sections 304 and 203 of the Copyright Act Hynie and a dozen other Richland 4900 Plaintiffs had already assigned to the Legacy Trust.

On May 18, 2010 Bauknight, as trustee of the Legacy Trust, signed the Wingate Contract. He also signed as PR/Trustee under Brown's estate plan, but those roles were declared void by the Supreme Court in 2013. Bauknight agreed to advance Wingate's costs for suing for the Legacy Trust and its owners from funds Brown devised to his charity. The Wingate Contract provides that Hynie and the AG will pay back almost  $\frac{3}{4}$  of the Wingate costs.

In 2010 Wingate, speaking for Governor McMaster, as AG, told Jg. Manning that the Legacy Trust was a "Charitable Trust Settlement Entity" owned 23.75% by Hynie, 4.79% by Terry, 47.5% by the AG, and 4.79 each by 5 Levenson clients.

In 2011 Legacy Trust attorney Black claimed that the Legacy Trust, which had agreed to the FOIA compliance provisions of the Wingate Contract, was private, and would sue or seek sanctions against Pope if she continued to exercise her FOIA rights. That year, in addition to Black and other \$375- \$500-an-hour attorneys, Bauknight paid \$300,000.00 to

the law firm of Lewis & Babcock (L&B) and hired them to assure that the Legacy Trust not be required to comply with FOIA. L&B continued to represent the Legacy Trust, and be paid from funds devised to Brown's charity, until 2019.

In 2012 the Legacy Trust had a FOIA case moved to Richland County and began a multi-year effort to consolidate the FOIA case with Richland 4900. That year Judge Addy also transferred the Wingate Contract FOIA case from Newberry County to Richland County to benefit the Legacy Trust owners for whom Richland 4900 was filed.

In 2012 Bauknight, under oath, stated that, as trustee, he had managed the Legacy Trust in Richland County since 2009. That year Wingate and Bauknight rejected offers to let the AG and Estate/2000 Trust out of Richland 4900, keeping them in to protect the Hynie and other Legacy Trust owners.

In 2012 Bauknight paid \$500,000.00 from funds Brown devised to his charity to Buchanan to obtain releases for the Legacy Trust, himself as trustee, Hynie and other Legacy Trust owners, other than Forlando. Bauknight also paid \$500,000.00 to Wingate. Wingate apparently disgorged the \$500,000.00 in 2013. A motion to void the claimed "settlement" has been pending for 9 years, but the AG, through Wingate, has prevented its being heard.

In 2013 L&B began claiming for the Legacy Trust that it did not exist, while AG Wilson, through Wingate and Bauknight, vigorously pursued Richland 4900 for the Legacy Trust and its owners. With AG's concealed confirmation that it never hired Wingate, and Forlando's secret ownership of Terry's Legacy Trust interest, from 2013 until 2021 the State/Attorney General Wilson, through Wingate and Bauknight, has sought to damage Buchanan and Pope,

and obtain damages from Pope for distribution to the following people, in approximately the following percentages: Hynie, 46%; Forlando/Terry, 9%; Venisha (Estate) 9%; Daryl Brown ("Daryl"), 9%; Larry Brown ("Larry"), 9%; Deanna Brown-Thomas, 9% ; Dr. Yamma Brown ("Yamma"), 9%.

Both AG Wilson and Sr. Asst. AG Jones, the contact person for the State/AG on the Wingate Contract, testified under oath that they knew nothing about the operation of the Legacy Trust since 2013, and AG Wilson testified that he did not know what the Legacy Trust was, or anything about it. This testimony makes clear that Hynie and Forlando, through Bauknight, have been in control of the Legacy Trust and Richland 4900 since at least April 2013. They have used the prestige of the AG's office for Hynie and those aligned with her.

In 2016 Bauknight, under oath, changed his 2012 sworn testimony, and testified under oath that the Legacy Trust had never existed. In his 2016 deposition now-Governor McMaster did not even know what the Legacy Trust was. But this did nothing to stop the State action of Bauknight and Wingate on behalf of AG Wilson in Richland 4900 for the benefit of the Legacy Trust.

Between 2016 and 2021 Wingate and Bauknight have obtained and are currently defending summary judgment as to the counterclaims of Buchanan and Pope in Richland 4900 for Hynie, the Legacy Trust, Terry, and others. In 2016, the State/AG Wilson, through Wingate and Bauknight sought to increase the damage to Pope for the benefit of Hynie and Legacy Trust owners aligned with her by consolidating discovery, experts and trial with Aiken 1337, Pope's claim for unpaid fees and costs for her service to Brown's Estate/2000 Trust and charity from 2007 until 2013.

Supported by the State/AG's prestige, Wingate and Bauknight began calling Richland 4900 a "fiduciary duty" case, suggesting that it was being pursued for the benefit of Brown's charity. As the April 24, 2013 letter of the AG to Wingate made clear, the AG had no part in Richland 4900 or the Legacy Trust, and Richland 4900 was being pursued in the name of the State/AG solely for Hynie, the Legacy Trust, and other Wingate private clients to whom Buchanan and Pope owed no duty.

In late 2016 the State/AG Wilson, through Wingate, announced that it had secured 9 experts in Richland 4900, the same 9 experts Bauknight had secured in Aiken 1337. The State/AG, through Wingate, was unsuccessful in two attempts to consolidate the two cases, but Wingate secured the right to attend depositions of the AG and staff in Aiken 1337 to protect its "client" the Attorney General in Richland 4900. Wingate did not disclose that since April 24, 2013 it had known that the AG never engaged Wingate; the AG was not Wingate's client; and that Hynie and Bauknight, not AG Wilson, were now controlling the Legacy Trust.

In 2016 and 2017 Wingate attorneys, acting for the State/AG, its "client," attended and delayed and disrupted the depositions of Sr. Asst. AG Jones, Asst. AG Mary Frances Jowers, and other AG staff in Aiken 1337 to protect its "client," the AG. From September 2017 until 2021, Wingate and Bauknight have gone to increasing lengths to prevent the Richland 4900 Court from considering the important sworn testimony of Governor McMaster, Chief Deputy McIntosh, Solicitor General Robert Cook, and other AG staff which does not support Hynie's claims.

Solicitor General Cook testified about the meeting with Pope in 2013 in which AG Wilson learned for the first time the damage Bauknight and Legacy Trust/Hynie's advisors

had done to the "I Feel Good" charity and its needy student beneficiaries by the Afterman \$4.7 million value and IRS filings claiming that Hynie was Brown's spouse.

On March 1, 2017, with waiver by all parties, Acting Circuit Judge Jean Toal directed 2 Wingate attorneys to testify under oath about their authorization to begin and continue Richland 4900 on behalf of the Attorney General until 2017. Both were deposed on March 6, 2017. Neither Wingate attorney revealed the April 24, 2013 letter of the AG confirming that they were never hired. Neither revealed that there had been any change in the Legacy Trust, the primary Richland 4900 beneficiary. Neither revealed that Forlando had been a secret owner of the Legacy Trust since January 2011. Neither revealed that since the AG dropped out in April 2013 Hynie and Forlando, through Bauknight, had been in control of the Legacy Trust and Richland 4900 - not AG Wilson.

In March 2017 Attorney General Wilson also testified under oath in Aiken 1337, with counsel for Bauknight present. Wingate and Bauknight, acting for the State/AG had secured an order in Richland 4900 preventing his deposition. In a short, courteous deposition AG Wilson confirmed that he knew nothing about the actions Wingate and Bauknight, acting for the State/AG, had taken to damage Buchanan and Pope since January 2011 for the benefit of Hynie, the Legacy Trust, and Legacy Trust owners allied with Hynie in Richland 4900.

AG Wilson did not know that Wingate, acting for the State/AG, had secured dismissal as premature of Buchanan's and Pope's 2011 challenged to the constitutionality of the Richland 4900 complaint. Buchanan and Pope asserted then - and have consistently asserted - that it was unconstitutional for Wingate (even if purportedly authorized) to act as sole counsel for the State/AG and Hynie, the Legacy Trust and Legacy Trust owners whose

mission in Richland 4900 is to dismember the charity the AG has a duty to protect.

Importantly, AG Wilson was not told by his purported attorney Wingate of the October 2016 deposition of Governor McMaster, attended by Wingate as counsel for AG Wilson, in which Governor McMaster stated emphatically under oath that he had never engaged Wingate to bring Richland 4900 in the name of the State/AG or authorized Bauknight to act "on behalf of" the State/AG in Richland 4900.

Wingate never asked to amend the Richland 4900 complaint to show that the State/AG never authorized Wingate or Bauknight to act on behalf of the State/AG for the benefit of Hynie, the claimed-nonexistent Legacy Trust, and its other owners, Wingate's private clients. The Court should enjoin both from their continued state action and amend the caption accordingly so that the power and prestige of the State's highest legal officer will not continue to be used by Hynie and the Legacy Trust owners to damage Buchanan and Pope for their proper service to Brown's estate plan and charity.

d. AG Wilson, by Wingate, Supports Hynie's Admission of Siphoning off Royalties

In 2016 Hynie, claiming to be Brown's spouse, testified under oath that she had been paid "about \$1 million" for the "sale" of Brown's copyrights. She refused to answer questions about her marital status. Acting for the State/AG, Wingate and Bauknight supported her actions and secured an order from Jg. Early exempting Hynie from answering most of the questions she refused to answer.

Since 2017 Wingate and Bauknight have refused to lift the stay so that Hynie's testimony from 2016 can be completed.

e. AG Wilson, by Wingate, Support Summary Judgment for Hynie and Others

Since 2013 Buchanan and Pope have taken the position that Hynie, the Legacy Trust and its owners – not Brown’s charity -- should be primarily responsible for the costs of Richland 4900 and the damages they have recklessly caused Buchanan and Pope to advance their plans to dismember Brown’s charity. Through Wingate and Bauknight, however, AG Wilson continues to support Bauknight’s funding of Hynie’s mission of retaliating against Buchanan and Pope in Richland 4900 and having someone else pay the bill. Wingate and Bauknight have used the power and prestige of Attorney General Wilson to support their funding of Hynie’s mission, and that of Richland 4900 Plaintiffs aligned with her, since April 24, 2013. While doing so, they have concealed clear evidence that they lacked authority to take this State Action.

f. AG Wilson, through Wingate, Engages 9 Experts to Support Hynie’s Claims

Acting for the State/AG for the benefit of Hynie and those aligned with her to damage Buchanan and Pope, in 2016 and 2017, Wingate and Bauknight jointly hired – and the State/AG, through Wingate and Bauknight, allowed Brown’s charity to fund – 9 experts to support Hynie’s positions in Richland 4900, namely that Buchanan and Pope breached their fiduciary duty by challenging Hynie’s 5 lawsuits seeking to dismember Brown’s charity and the AG’s 2008 settlement in *Wilson v. Dallas*. While Pope defended herself *pro se* in her Aiken 1337 fee claim case from 2013 until trial in September 2013, Wingate employed 3 attorneys, including “probate claims expert” Newsome at \$440 an hour. By January 2017, months before trial, Bauknight had spent \$1 million to defend against a fee claim Pope was willing to settle for \$2.1 million.

Before trial in 2017 and again at trial in 2018 Bauknight refused the \$2.1 million offer, insisting that he would not settle unless Hynie and those aligned with her were released in Richland 4900. Bauknight's trial presentation included 7 of the AG's 9 Richland 4900 experts, all brought for the purpose of claiming that Buchanan and Pope should not have appealed Hynie's spousal claim and the AG's 2008 settlement, or that Buchanan's and Pope's conservative \$84 million value of Brown's music empire was incorrect; or that Buchanan and Pope – not Bauknight's spouse/CPA – had filed improper filings with the IRS.

Wingate and Bauknight told all 9 of the AG's experts that Hynie was Brown's spouse and did not show the fabricated Afterman \$4.7 million value to a single expert. Bauknight testified that he spoke almost daily with Afterman, and did not disclose that Afterman had helped Hynie siphon of millions of dollars of funds from Brown's "I Feel Good" charity since 2013.

The cost to Brown's charity of the defense of Pope's \$2.1 million fee claim which Bauknight refused to settle is unknown includes: Bauknight at trial at \$350 an hour; 3 Nexsen Pruet (NP) attorneys at trial, 2 full time, at \$375 - \$500 an hour; approximately \$30,000 for expert Julian Walker, Esq., who found nothing wrong with Pope's actions and did not appear; \$600 an hour for Nathan Crystal, who knew nothing of Pope's service as SA or PR/Trustee and did not appear at trial; and the 7 experts.

Brad Sharp, the AG's \$700-an-hour valuation expert came from California to challenge the "methodology" with which Buchanan and Pope arrived at the \$84 million valuation of Brown's music empire but did not say the number was incorrect. Sharp was not asked to value the music empire and did not testify that the \$4.7 million Afterman value was

correct. Sharp did not challenge the AG's expert Roger Miller's testimony that at Brown's death "frothy" investors were seeking to buy Brown's music empire at 15 - 20 times annual royalties, as high as \$80 million. He did testify that Miller had valued all termination rights in 2017, with certain assumptions, at only \$8.8 million - 10 years after Brown's death. Sharp was not asked to opine about the value of Brown's right of publicity, and had no opinion about whether the \$40 million or more placed on image and likeness (publicity rights) by Dr. Cox in 2007 was correct.

The AG's \$400-an-hour expert from California, Laura Woolley, testified that Brown's 10,000 items of TPP were worth as much as \$20 million when Brown died. Wooley was not told that Bauknight and Legacy Trust tax attorneys Kingsmore and Reames, as well as the State/AG, through Wingate and Bauknight, had endorsed the Afterman \$4.7 million valuation which placed a zero, or near zero, value on the TPP, both in Supreme Court filings and to the IRS.

g. Levenson and the AG's Expert Provence Testify that Buchanan and Pope Breached Their Fiduciary Duty by Appealing the AG's 2008 Settlement

While still claiming to speak "on behalf of" the State/AG in Richland 4900, but acting for Hynie and those allied with her, Bauknight designated Levenson as a fact witness in Richland 4900, but Levenson's actual testimony was his opinion that Buchanan and Pope should not have appealed the AG's 2008 settlement which "stipulated" that Hynie was Brown's spouse; gave her a quarter of the assets of Brown's charity; and put the State/AG and Hynie in charge of the music empire, through Bauknight.

At \$400 an hour Tiffany Provence, Esq., -- the State/AG's expert in Richland 4900

since 2010 – stated that she knew nothing about copyrights; nothing about estate taxes; nothing about valuation; and nothing about James Brown's estate plan. But she opined that Pope (and presumably Buchanan) had "block billed" on their 100+ page time records, which she thought was bad. She opined that Pope and Buchanan should not have challenged the AG's 2008 settlement, and that they "lost their neutrality" by defending Brown's estate plan. Provence also opined that Pope should not have read the 1976 Copyright Act and tried to become an "expert" in termination rights issues, but should have hired an expert such as Jonas Herbsman, Esq., at \$600 an hour, even though Brown's Estate/2000 Trust was illiquid at the time and Jg. Early had declined a request by Brown's original trustees to hire Herbsman's firm.

h. The AG's Expert Does Not Have an Opinion About *Private Foundations*

Herbsman, at \$600 an hour, testified that Buchanan and Pope should have hired both an expert such as he, and a valuation expert for the music empire, even though Brown's entire music empire except 1/42 (at the time) was paid to charity and no estate taxes were due except by the 6 Levenson clients for some of the TPP. Herbsman admitted, however, that he was a transactional attorney who knew nothing about litigation regarding the determination of heirs under either state law or the Copyright Act; that he knew nothing about valuation; and that he was told that Hynie was Brown's spouse and the settling parties were his children. He had read *Private Foundations...* and had no criticism of it.

The testimony of Pope's expert Wallace Lightsey, Esq., was that probate expertise, which Pope had, was as important in the protection of James Brown's charity from dissipation from termination rights elections as IP expertise, and that a proper heirs

determination, which Buchanan and Pope were pursuing under a court order in 2008, was a critical first step in the protection of Brown's now 1100+ copyrights. Herbsman, by contrast, was told that Hynie was Brown's spouse and the holder of 50% of the termination rights.

i. Bauknight, Rejects Open Records Obligation Under the Wingate Contract

Bauknight's 2017 sworn testimony makes clear that for a decade, while concealing the Wingate Contract, both Wingate and he, acting for the State/AG, simply ignored the open records requirement of the Wingate Contract. He stated:

**5 Q. Was the purpose of trying to intervene in FOIA  
6 suits to prevent release of the Wingate contract,  
7 the \$4.7 million appraisal and the so-called Hynie  
8 diary?**

9 A. Well, documents that belong to the estate and  
10 trust are not subject to FOIA. And no one  
11 associated with the Attorney General. . .  
12 has  
13 any of those documents. And the estate and trust  
14 is not subject to FOIA.

This position is directly contrary to the FOIA obligations under the Wingate Contract.

i. State/AG Support, through Wingate for the \$10s of Million Bauknight has Spent to Help Hynie and Legacy Trust Owners, Including to Damage Pope

In January 2019 Bauknight, while still acting for the State/AG in Richland 4900, obtained from Jg. Early exactly what Hynie and the Legacy Trust are seeking in 2021 in Richland 4900 – a Circuit Court order stating that Buchanan and Pope breached their fiduciary duty by challenging Hynie's spousal claim; claim to ¼ of the assets of Brown's charity; and control with the AG, through Bauknight, of Brown's worldwide music empire.

## XXII. WINGATE AND BAUKNIGHT USE THE AG'S POWER FOR HYNIE IN 2021

In 2021 Wingate and Bauknight continue to use the name and prestige of the State/AG in the effort of Hynie and Legacy Trust owner-successors to damage Buchanan and Pope for defense of James Brown's charity. The slanderous false claim that Pope had sued Brown's Estate for \$16 million, a version of the false claim made by Newsome in Aiken 1337, made it to an Augusta television station in July 2021. See **Exhibit G**, a request for retraction. Hynie and Forlando have spent years calling everyone who disagreed with them a thief or a "rat" and Bauknight, Wingate and Newsome added perjury and felony IRS claims to the mix.

The Attorney General never legally authorized Wingate or Bauknight to destroy the careers of Buchanan and Pope in the name of the State of South Carolina. Yet they have done so, for private benefit, for 12 years.

Wingate and Bauknight, while claiming to act for the State/AG, but acting for Hynie's benefit, continue to conceal the fabricated Afterman \$4.7 million valuation, Hynie's public handwritten admission of her bigamy, and the public Legacy Trust document, all of which are property of the State of S.C. and subject both to release under discovery and under FOIA by Wingate under the clear terms of the Wingate Contract, which says:

F. Any material, data, files discs, or documents created, produced or gathered by Special Counsel [Wingate] or in Special Counsel's possession in furtherance of this litigation [Richland 4900], or which fulfills an obligation of this appointment, shall be considered the exclusive property of the State of South Carolina. Special Counsel agrees to adhere to South Carolina's Freedom of Information Act, South Carolina Code of Laws §30-40-10 et seq., and to maintain all public records in accordance with State law; provided, however, that Special Counsel shall consult with, and obtain the approval of the Attorney General before responding to any public records request. Special Counsel agrees to comply with the Attorney General's policy on document retention and to refrain from destroying

documents unless otherwise permitted under this policy. Special Counsel agrees to comply with Rule 417 of the Appellate Court Rules. Special Counsel agrees to request written confirmation from the Attorney General's Office prior to destroying any documents. This Agreement shall be considered a public document. [Emphasis supp.]

Although the Wingate Contract may not bind the State/AG, clearly Wingate, Bauknight, the Legacy Trust, Hynie and all Richland 4900 Plaintiff are bound by the above FOIA and open records disclosure provisions as to every document used by Wingate in Richland 4900. The \$4.7 million valuation has been used to support the false felony claim for more than a decade.

#### CONCLUSION

For the foregoing reasons, this Court should alter, amend and/or vacate the July 5, 2012 order and enter its order enjoining Wingate and Bauknight from speaking for the State/AG in this action and granting the requested related relief. Wingate's state action to benefit Hynie, James and Legacy Trust owner-successors aligned with them in Richland 4900, and to conceal public documents belonging to the State for Hynie's benefit, should stop now. This memo is supported by the documents attached and/or referred to, as well as the entire record herein.

Respectfully submitted,

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July 27, 2021

*Appellate Counsel for Appellant Adele J. Pope*

# EXHIBIT A

STATE OF SOUTH CAROLINA )

) IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND )

Case No.: 2010-CP-40-4900

RUSSELL L. BAUKNIGHT, as Trustee of )  
the James Brown 2000 Irrevocable Trust and )  
the James Brown Legacy Trust, as Personal )  
Representative of the Estate of James Brown, )  
and on behalf of Henry Dargan McMaster, in )  
his capacity as Attorney General of the State )  
of South Carolina; Tommie Rae Brown, )  
individually and on behalf of her minor child, )  
James Brown II; Daryl J. Brown, individually )  
and on behalf of his minor child Janise )  
Vanisha Brown; Lindsey Delores Brown; )  
Deanna J. Brown Thomas; Jason Brown- )  
Lewis; Yamma N. Brown, individually and )  
on behalf of her minor children, Sydney )  
Lumar, Carrington Lumar, and Tonya Brown; )  
Venisha Brown; Larry Brown; and Terry )  
Brown )

and )

HENRY DARGAN MCMASTER, in his )  
capacity as Attorney General of the State of )  
South Carolina; TOMMIE RAE BROWN, )  
individually and on behalf of her minor child, )  
JAMES BROWN II; DARYL J. BROWN, )  
individually and on behalf of his minor child )  
JANISE VANISHA BROWN; LINDSEY )  
DELORES BROWN; DEANNA J. BROWN )  
THOMAS; JASON BROWN - LEWIS; )  
YAMMA N. BROWN, individually and on )  
behalf of her minor children, SYDNEY )  
LUMAR, CARRINGTON LUMAR, and )  
TONYA BROWN; VENISHA BROWN; )  
LARRY BROWN; and TERRY BROWN, )  
Plaintiffs. )

v. )

Adele J. Pope and Robert L. Buchanan, Jr., )  
Defendants. )

**DEFENDANT ADELE J. POPE'S )  
MOTION TO DISQUALIFY )  
AND/OR ENJOIN SWEENEY, )  
WINGATE & BARROW FROM )  
REPRESENTING STATE OF )  
SOUTH CAROLINA OR )  
ATTORNEY GENERAL; TO )  
ENJOIN RUSSELL )  
BAUKNIGHT; TO AMEND )  
ANSWER FOLLOWING )  
DEPOSITIONS AND TO SET )  
DEPOSITIONS IF REQUIRED )**

2011 MAY 19 PM 1:07  
JEANETTE L. ...  
C.C.P. & G.S.  
RICHLAND COUNTY  
CLERK OF COURT

**TO: ALL PARTIES AND THEIR ATTORNEYS:**

You will please take notice that ten days after the service hereof, or as soon thereafter as counsel may be heard, and based on filings in Aiken County and the Supreme Court of South Carolina on or about May 4, 2011, an Inventory and Appraisal valuing (for the first time in the four years and four months since his death) James Brown's worldwide musical empire at \$4,697,736 – less than 1/12 of its \$84 Million fair market value – and prior filings herein, Defendant/Counterclaimant Adele J. Pope will move before the presiding judge at the Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina 29201 for an Order and injunction as follows:

- a. Disqualifying Sweeney, Wingate & Barrow (the "Sweeney Firm") as counsel for the Attorney General of the State of South Carolina (and the State of South Carolina) herein, and/or enjoining the Sweeney Firm from purporting to represent or representing the Attorney General or the State of South Carolina in this case;
- b. Enjoining Bauknight purporting to as agent for the Attorney General or the State of South Carolina;
- c. Dismissing the Attorney General and/or the State of South Carolina as a party plaintiff to this action;
- d. Setting a day certain for the depositions of former Attorney General McMaster and Attorney General Wilson should they not appear for their depositions; and
- e. Following the depositions of former Attorney General McMaster and Attorney General Wilson, granting Defendant leave to amend her answer and counterclaims and/or crossclaims, including the addition of other parties, consistent with such deposition testimony and/or the additional damages caused by Terry Brown, Bauknight, AG Jones and others in connection with the sworn devaluation of the James Brown assets to less than 1/12 of their actual value and the false allegations associated therewith.

The grounds of this motion are:

1. The contingency-fee contract entered into by former AG McMaster and the Sweeney firm, in which McMaster seeks money damages against Defendants for himself and private individuals, is illegal and void, and violates the Due Process and First Amendment rights of Defendants, rendering

the Sweeney Firm unable to represent or speak for the State of South Carolina.

2. The Sweeney Firm has an irreconcilable conflict of interest in representing the State of South Carolina and its AG, whose duty it is to protect private foundations while simultaneously representing Terry Brown in his attempt to purchase James Brown’s worldwide music empire for less than \$5 Million, reducing the “I Feel Good” Trust from the \$80 Million James Brown gave to it to less than \$1 Million, as follows:

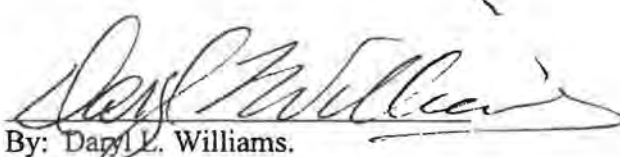
- a. To Brown’s disinherited companion (18.96%) \$1,128,775
- b. To children and claimed children Brown specifically excluded from his music empire (4.79% x 7) \$2,000,390
- c. To the Family Education Trust, rewritten by McMaster \$2,000,000
- d. **To The James Brown “ I Feel Good” private foundation (47.5% LESS \$2 Million) \$ 827,292**

3. Russell Bauknight, who carried out the massive devaluation of Brown’s assets for the Benefit of Terry Brown should be enjoined from purporting to speak as agent for the State of South Carolina or its Attorney General.

8. To the extent the contingency fee contract with AG McMaster gives the Sweeney Firm authority to act as an agent of the State of South Carolina, on information and belief, McMaster and the Sweeney Firm have an impermissible financial stake and interest in this case, and further, a constitutionally impermissible motivation to use the power of the State to seek money damages for their private co-plaintiffs.

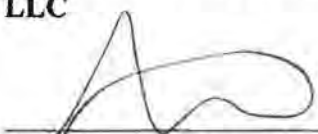
This motion is based on the Affidavit of Adele J. Pope dated May 18, 2011 filed herewith, with Exhibits, including “Private Foundations, Copyright Heirs and Musical Millionaires:...” (April 2011 draft) and Chart C attached hereto; all prior motions and filing of Defendants in this case; and such additional information as shall be presented to the Court prior to the hearing on this matter.

**JETER & WILLIAMS, P.A.**



By: Daryl L. Williams.  
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Post Office Box 7425  
Columbia, South Carolina 29202  
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**LAW OFFICE OF ADAM T. SILVERNAIL,  
LLC**



By: Adam T. Silvernail  
1218 Taylor St.  
Columbia, South Carolina 29201  
Telephone: (803) 779-1770  
Facsimile: (803) 403-8092  
Attorneys for Defendant Adele J. Pope

May 18, 2011

The undersigned hereby certifies pursuant to SCRCP 11 that conferring with opposing counsel would serve no useful purpose.



Daryl L. Williams

# EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Henry Dargan McMaster, in his capacity as Attorney General of the State of South Carolina and others

and

HENRY DARGAN McMASTER, in his capacity as Attorney General of the State of South Carolina; and others,

Plaintiffs.

v.

Adele J. Pope,

Defendant.

) IN THE COURT OF COMMON PLEAS

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) Case No.: 2010-CP-40-4900

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C.C.P. & C.S. CLERK  
RICHLAND COUNTY  
FILED

**TO: THE PLAINTIFFS NAMED ABOVE AND THEIR COUNSEL:**

**YOU WILL PLEASE TAKE NOTICE** that ten days after the service hereof, or as soon thereafter as she may be heard, Defendant Adele J. Pope , through her undersigned counsel, will move before the Honorable L. Casey Manning, at the Richland County Courthouse located at 1701 Main Street, Columbia, South Carolina, pursuant to Rule 59(a), (b) and (e) and 60(a) and (b) SCRPC, for an order vacating, setting aside, altering and/or amending his Order dated July 5, 2012, mailed July 16, 2012 and received by counsel for Pope and Pope on July 17, 2012 denying her request for an injunction against Russell L. Bauknight from representing that he speaks on behalf of the State/Attorney

General of South Carolina and also denying her request to enjoin and/or disqualify the law firm of Sweeney, Wingate and Barrow, PA ("Wingate") from serving as sole counsel for the State/Attorney General of South Carolina in this tort suit for money damages while simultaneously serving as counsel to, and seeking money damages for, more than a dozen private plaintiffs, the majority of whom are not residents of South Carolina. A copy of the referenced Order (the "Injunction Denial Order") is Attached hereto as Exhibit A.

### **Summary of Relief Requested**

In her injunction request Defendant/Counterclaim Plaintiff Adele J. Pope ("Pope") seeks on Federal and State Constitutional Grounds, and based on equitable principles, to enjoin Wingate from placing the awesome power of the State/Attorney General against a South Carolina citizen in a tort suit for money damages to benefit his private clients, most of whom are nonresidents of the State (the "Private Co-Plaintiffs"), to whom Wingate simultaneously serves as counsel in this suit. This case is the only case of its kind in the nation of which Pope is aware in which a State/AG – without the participation of any attorney of the Office of the AG – has used private counsel to launch a tort suit using the State/AG to obtain money damages from a citizen for attorney's other, private clients.

Pope also seeks to enjoin private citizen Bauknight, a fiduciary for some of Wingate's Private Clients, from asserting that he speaks "on behalf of" the State/AG.

Pope asserts that failure to grant the injunction violates the U.S. and S.C. constitutions and illegally and/or improperly places the awesome power of the State against her and at the service of Wingate's private clients. Pope further asserts that the total failure of oversight or control by the AG is illegal and/or improper.

For the reasons stated in her Motion and Related filings, the Denial of Injunction

Order should be set aside; injunction and disqualification of Wingate ordered; and injunction as to Bauknight granted.

The grounds of this motion are:

**I. The Parties and former Parties**

1. **Pope**, a citizen and resident of Newberry County, SC, is now the sole Defendant and Counterclaim Plaintiff in this Case.

2. **Robert L. Buchanan Jr. ("Buchanan")**, served as Personal Representative of the Estate of entertainment icon James Brown with Pope from November 20, 2007 until May 26, 2009 and , along with Pope, is appealing a settlement and Order entered into by then-**AG Henry McMaster ("McMaster")**; recommended by Special PR/Trustee **Russell L. Bauknight ("Bauknight")**; and approved by Order of the Honorable Doyet A. Early, III ("Judge Early"). Buchanan was dismissed as a party to this action on July 5, 2012; was paid \$500,000 by Plaintiff/Counterclaim Defendants; and executed mutual releases with some or all them.

3. **Alan Wilson** replaced **McMaster** in January 2011 but, like McMaster, has never appeared as counsel in this tort suit; addressed the Court on behalf of the State; or signed a pleading or motion.<sup>1</sup>

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<sup>1</sup> Wilson did move to consolidate a Newberry County suit brought by Pope against Wilson in 2011 under the S.C. Freedom of Information Act ("FOIA") with this suit. In that suit, Wilson appeared through Emory Smith, Esquire of his Office. Over strenuous objection of Pope the FOIA Case, which seeks public documents, was consolidated but not merged with this Case ("Case 4900"). Nearly one year after the FOIA suit was filed, Wilson – at the request of Wingate on behalf of the Private Clients - has refused to produce the following public documents:

- 1. The McMaster/Wingate Contingency Fee "Litigation Retention Agreement"
- 2. Any authorization of Bauknight to speak on behalf of the State/AG.
- 3. A copy of the signed McMaster-created "Legacy Trust" which is one of

4. The **Private Plaintiffs**, for whom Wingate serves as sole counsel, are broadly classed as follows:

- a. Non-residents of South Carolina - includes adults (1) Jason,(2) Lindsey,(3) Janise (minor), (4)Yamma, (5) Terry,(6) Larry, (7) Venisha, (8) Sydney (minor) and (9) Carrington, (10) Tommie Rae (11) James (minor)
- b. Residents of South Carolina
- c. Bauknight in 3 fiduciary capacities.
- d. Bauknight as purported agent for all of the above and the State/AG.

## II. Background

On May 19, 2010 Wingate filed this tort suit as sole counsel for all Plaintiffs. The complaint seeks actual and punitive damages for all Plaintiffs against Pope, a South Carolina resident, for the benefit of the majority non-S.C. resident clients.

Neither AG McMaster, nor AG Wilson, nor any member of the AG's office signed the Complaint or other pleadings, and none has appeared as counsel in this case.<sup>2</sup>

For the past 18 months, Plaintiffs/Counterclaim Defendants have been in default as to Pope's counterclaims for attorneys fees under the S.C. Trust Code and the following causes of action:

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Plaintiffs herein.

<sup>2</sup> J. Emory Smith, Esq., counsel for AG Wilson in the FOIA Case has made clear that he does not purport to speak for the State in the Case 4900 tort claims or counterclaims by Pope. The FOIA transfer and consolidation has resulted in Pope's not receiving the documents requested under FOIA in the year since the request was made. Wingate's Plaintiffs have all refused to appear at depositions first noticed 15 months ago; has asserted that the Litigation Retention Agreement is private, although AG Wilson has said it is public; and have moved to intervene and sought sanctions against Pope for his Private Plaintiffs in the FOIA suit.

- a. Abuse of Process
- b. Civil Conspiracy
- c. Intentional Interference with Contract (Approximately \$1.5 Million, plus interest at the legal rate since 2009, approved and awarded by The Honorable Doyet A. Early, III by unappealed Order dated Jan. 8, 2008 in Aiken Case 2007-CP-02-0122 ("Case 122")).
- d. Fraud under § 62-2-106 of the S.C. Probate Code.

Pope, and Buchanan prior to his dismissal, have at every turn called to the Court's attention that this unprecedented case violates Pope's Due Process rights and exceeds and abuses McMaster's authority because McMaster – through an illegally or improperly engaged private attorney – placed the mighty power of the State against its private citizen for the benefit of the Wingate Private Clients, mostly non-residents.

To date, including in its Order denying the request for Injunction of Bauknight and Injunction and Disqualification of Wingate, the Court has rejected Pope's arguments.

### **III. Grounds for Reconsideration**

1. The Court failed to consider, find and order that the injunction should be granted because the AG is a Plaintiff in this suit, private counsel does not have statutory authority to represent the State of South Carolina pursuant to S.C. Code Ann. § 1-7-40 which requires that the AG shall appear for the State in the trial and argument of civil causes in which the State is a party or interested.

2. The Court failed to consider, find and order that the injunction should be granted because the AG is a Plaintiff in this suit, private counsel's attempted representation of the State of S.C. while simultaneously representing the Wingate Private Clients to obtain funds for themselves is void as violating the Constitution of S.C, the separation of powers of the

S.C. Constitution, the requirements for the engagement of Special Counsel for the State; the public trust; and Ethical Rules for Public Officials; and the Supreme Court requirements for legal representations.

3. The Court failed to consider, find and order that the injunctions should be granted where the Complaint violates the Due Process rights of Pope and others because the AG may not legally participate in or control a private tort action in which the proceeds will go to individual plaintiffs the AG has neither a duty nor a right to protect.

4. The Court failed to consider and/or find that the injunctions should be granted because the AG's authority to engage special counsel from the private sector is limited to matters which represent the interests of the State of S.C. in special situations and complex litigation.

5. The Court failed to consider and/or find that the injunctions should be granted because the Complaint neither alleges nor presents any constitutional, statutory or common law basis for the Attorney General to participate and help the Wingate Private Clients, nor any public right to be protected. *State ex rel. Condon v. Hodges*, 349 S.C. 232, 240, 562 S.C.2d 623, 627 (2002). See also S. C. Code Ann. § 1-7-10. Et seq.

6. The Court failed to consider and/or find that the injunctions should be granted because the purported joint engagement of counsel by the Wingate Private Clients and the AG violates S.C. Code Ann. § 1-7-40, as well as the public trust held by the AG.

7. The Court failed to consider and/or find that the injunctions should be granted because the S.C. Supreme Court Rules of Professional Conduct and S.C. Law require that the contract to engage outside counsel be declared void because counsel cannot serve the public interest and be under the direction of the AG of S.C. while at the same time

representing:

- a. Sydney L., Carrington L. and Janice B., minor beneficiaries of Brown's 2000 Trust, who have no guardian *ad litem* ("GAL").
- b. Minor James B., intentionally excluded by Brown, with no GAL.
- c. Tommie Rae Hynie Brown, specifically excluded by James Brown from his Estate Plan.

8. The Court failed to consider and/or find that the injunctions should be granted because the AG is a Plaintiff in this case, the Complaint violates the Due Process rights of Pope because it seeks funds from which, if recovered, it would be required by §1-7-150 to be deposited into the general fund of the State of S.C. which does not own, and is not entitled to any funds of Pope, the Estate of James Brown or the James Brown 2000 Trust.

9. The Court failed to consider, find and order that the injunctions should be granted because neither Wingate nor Bauknight has any authority whatsoever to bind the general fund of South Carolina as to the Counterclaims of Pope, as to which all Wingate clients are now in default.

10. The Court failed to consider, find and order that the injunctions should be granted because Bauknight has failed for two years to allege or demonstrate any constitutional, statutory or regulatory basis for his assertion in the caption and complaint that he is or can be an agent of the AG of South Carolina.

11. The Court failed to consider, find and order that the injunctions should be granted because the AG has no beneficial interest in James Brown's Private Estate Plan and is prohibited by law from having an interest as a beneficiary of the Legacy Trust.

12. The Court failed to consider, find and order that the injunctions should be granted because the Complaint violates Art. I, § 8 of the Constitution of South Carolina

which states that "the legislative, executive and judicial powers of the government shall be forever separate and distinct from each other," on the grounds that the AG, by seeking funds through Wingate and Bauknight on behalf of the State of S.C. from Pope to be paid to private individuals, usurps the legislative function by the executive branch.

13. The Court failed to consider, find and order that the injunctions should be granted because Wingate/AG by entering into a private contract with Wingate Private Clients Tommie Rae and Terry Brown has violated Section 8-13-1342 of the South Carolina Ethics, Government Accountability, Campaign Reform Act (the "Campaign Reform Act"), which provides that:

No person who has been awarded a contract with the State...other than contracts awarded through competitive bidding practices, may make a Contribution after the awarding of the contract or invest in a financial venture in which the public official has an interest if that official was in position to act on the contract's award. [Emphasis supplied.]

14. The Court failed to consider and find that the injunctions should be granted because the Wingate and Bauknight representations violate S.C. Code Ann. § 1-7-130 which limits the AG's authority as follows:

The Attorney General shall enforce the due application of funds give or appropriated to public charities within the State, prevent breaches of trust in the administration thereof and, when necessary, prosecute corporations which fail to make to the General Assembly any report or return required by law.

15. The Court failed to consider and find that the injunctions should be granted because McMaster' decision to allow Wingate's representation while representing the Wingate Private Clients exceeds the AG's statutory and constitutional authority.

16. The Court failed to consider and find that Wingate has threatened Pope with

sanctions – and sought them on behalf of the Wingate Private Clients for exercising her rights under FOIA while it is the duty of his purported client the AG to comply with FOIA.

17. The Court failed to consider and find that the injunctions should be granted because it is now apparent the AG cannot and should not support the action of Wingate Private Plaintiffs Terry Brown and Bauknight in undervaluing James Brown's worldwide music empire at less than \$4.7 Million for their private purposes where the proper value was about \$85 Million.

18. The Court failed to consider and find that the injunctions should be granted because there are now multiple and increasing irreconcilable conflicts between the public interest – which AG Wilson must uphold – and the interests of the Wingate Private Clients.

19. The Court failed to consider and find that the injunctions should be granted because it is the duty of AG Wilson to investigate documented statements such as that of Daryl Brown that he did not contract with Wingate to represent him; that he knew nothing about the suit until after it was filed; and that he regrets contesting his father's will which left about \$80 Million to The James Brown "I Feel Good" Trust, while Wingate must protect Tommie Rae and other Wingate Private Clients whom James Brown intentionally excluded from his Estate Plan.

20. The Court failed to consider and find that the injunctions should be granted where Wingate's clients have falsely accused Pope of overstating the value of James Brown's assets by \$79 Million, which would be a crime.

This Motion is supported by the United States Constitution; the Constitution of the State of South Carolina; the South Carolina Probate Code; the South Carolina Rules of Civil Procedure, including Rules 59(a), (b) and (e) and 60(a) and (b); the S.C. Appellate

Court Rules; all filings herein; and such additional memoranda and information as the Court shall require and Pope provide.

Respectfully submitted,



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July 27, 2012

Attorneys for Defendant Adele J. Pope

CERTIFICATE OF SERVICE BY MAIL

I, Daryl L. Williams, of Jeter & Williams, P. A., attorneys for the Defendant Adele J. Pope, do hereby certify that on the date noted below the foregoing document, was served on counsel of record by placing a copy thereof in the United States Mail, postage prepaid, addressed as noted below.

Dated Mailed: **July 27, 2012**

  
Daryl L. Williams

RICHLAND COUNTY  
**FILED**  
2012 JUL 30 AM 11:45  
BEANETTE W. McBRIDE  
S.C.P. & G.S.

Mailed To:

Kenneth B. Wingate, Esquire  
Mark V. Gende, Esquire  
Sweeney, Wingate & Barrow  
PO Box 12129  
Columbia, SC 29211

J. Emory Smith, Jr. Esquire  
Assistant Deputy Attorney General  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211

Hon. L. Casey Manning, Jr.  
Richland County Court of Common Pleas  
PO Box 192  
Columbia, SC 29202-0192

# EXHIBIT C



whom Bauknight serves as Trustee.

4. For four years Hynie Brown and Terry Brown, with others, have engaged in a plan to take the assets of The James Brown "I Feel Good" Trust for themselves, depriving the needy and deserving students James Brown intended to benefit. They have done so in at least three ways:

- a. Filing knowingly false documents about which assets were owned by Brown; which by the 2000 Trust; and which they claim.
- b. Filing knowingly false representations as to who are the heirs of James Brown.
- c. Manipulating the value of James Brown's assets to reduce the \$80 Million Brown gave to the "I Feel Good" Trust for scholarships for needy and deserving students.

5. Former Attorney General Henry D. McMaster and his assistant AG Havird "Sonny" Jones became involved in the James Brown cases in late 2007 through a close association with PR/Trustees Albert "Buddy" Dallas and now-indicted David Cannon and their advisors. Jones also developed a close relationship with advisors to Hynie Brown.

6. The damage McMaster and AG Jones did to the "I Feel Good" Trust before May 4, 2011 is outlined in the April 2011 draft of "Private Foundations, Copyright Heirs and Musical Millionaires," attached hereto as Exhibit A and incorporated herein.

7. Plaintiff Bauknight undertook to serve as trustee for Terry Brown in early 2009, and recommended (without disclosing he was to be Terry's trustee) that the court give Terry a right to buy Brown's assets.

8. As outlined in "Private Foundations...", the first hint of Bauknight's massive

undervaluation of Brown's assets came in August 2010 when then-AG McMaster informed the Court of Appeals that Bauknight had reviewed a draft appraisal that would show Brown's assets were worth less than \$12 Million.

9. Exhibit B is a chart prepared by me which shows the damage to the "I Feel Good" Foundation of a sale of Brown's assets at \$12 Million.

10. Bauknight's devaluation to \$5,953, 457, which AG Jones and AG McMaster apparently condoned, threatens to completely destroy the "I Feel Good" Foundation, reducing it to less than \$1 million, as follows:

a. To Brown's disinherited companion (18.96%)	\$1,128,775
b. To children and claimed children Brown specifically excluded from his music empire (4.79% x 7)	\$2,000,390
c. To the Family Education Trust, rewritten by McMaster	\$2,000,000
d. <b>To The James Brown " I Feel Good" private foundation (47.5% LESS \$2 Million)</b>	<b>\$ 827,292</b>

11. I am informed and believe that AG McMaster's contingency fee contract with Sweeney, Wingate and Barrow (the "Sweeney Firm") was made to try to silence Mr. Buchanan and me and force us to abandon our appeal of McMaster's settlement described in the article; serves no proper public purpose; violates my Due Process Right; violates my First Amendment rights; and illegally uses the name and power of the State to seek funds against me for private citizens, including McMaster.

12. I am informed and believe that the substantial contribution to McMaster's political campaign made by Mark Barrow, a principal in the Sweeney Firm, just after being awarded the contingency fee contract to sue us, was either illegal or

inappropriate, or both, as was the contribution of Powell Goldstein law firm at about the time McMaster appeared on television to support their client and falsely attack us. Powell Goldstein represents Terry Brown and his purchase group, and formerly represented Cannon and Dallas.

13. The unfounded attacks by AG Jones and AG McMaster on Mr. Buchanan and me are fully documented in the Record on Appeal in Case 2008-CP-02-1647. which I incorporate herein by reference. I am informed and believe they began as a direct retaliation because Mr. Buchanan's and I would not hire private attorneys AG McMaster, through AG Jones, tried to force us to hire.

14. I am informed and believe that the Sweeney Firm contract and this suit, in which Bauknight as purported agent for the Attorney General (either past or present) and the Sweeney Firm's simultaneous service as counsel for the State of South Carolina and private citizens attempting to destroy the "I Feel Good" Foundation, serve only the private needs of McMaster, Jones, Terry Brown and Hynie Brown. I believe that the Sweeney Firm has an irreconcilable conflict of interest and their vicious and unfounded attacks are not tempered by any duty to serve the public.

15. Members of the Sweeney Firm, who were not involved in the James Brown cases in Aiken County, have made material misrepresentations to this court about those cases, including the false assertion that Judge Early's April 8, 2008 findings of the propriety of our service from March 7, 2007 to that date is dicta. The AG's office, which has no attorney other than the Sweeney Firm serving as counsel of record herein, has actual knowledge that this representation is false, as are others which have

been made.

16. I am informed and believe the false allegations made by Bauknight and AG Jones, now on behalf of AG Wilson – including the suggestion that Mr. Buchanan and I overstated the Brown assets by \$79 Million – are quasi-criminal in nature; violate our Due Process rights; and are intended to destroy our professional reputations and careers. This is particularly troublesome since Mr. Buchanan and I did not seek our positions; were court-appointed; and properly served until May 26, 2009 when we were relieved of management responsibility pending the outcome of the Case 1647 appeal.

17. I am informed and believe that Bauknight and the Sweeney Firm should not be allowed to speak as agents for the Attorney General of South Carolina where the biased positions and false statements they have made will, if not stopped, serve not only to destroy the "I Feel Good" private foundation but also to discourage private philanthropy in the State of South Carolina.

18. I do not know whether AG Alan Wilson participated in or condoned the massive understatement of the value of Brown's assets, but am informed and believe his deposition – requested for July 2011 – is necessary to determine the truth of the matter.

19. I am informed that AG Jones and McMaster knowingly and intentionally exceeded and abused the power of their offices for personal, and McMaster's political, purposes; should answer individually for their actions, including the filing of this suit; and should not be protected by the power of the State.

20. I ask the Court to take judicial notice of a complaint filed on March 14, 2011 by Nexsen Pruet, LLC, a law firm involved in the James Brown cases, which outlines

other alleged abuses by former AG McMaster of contracts with private counsel.

[See Complaint for Declaratory Judgment, Civil Action No. 2011-CP-42-1213, 3/14/11.]

21. I am informed and believe that if AG Wilson, at his deposition, ratifies or acknowledges active participation in Bauknight's attempt to reduce the value of Brown's musical empire to less than \$5 million and destroy the "I Feel Good" Foundation, he, also, should be joined as an individual defendant because no public purpose would or could be served by the destruction of a private foundation created by one of South Carolina's most talented and generous citizens.

22. Based on the extraordinary and unprecedented actions of a former AG and current assistant AG Jones, I am informed and believe that the following, or similar, steps are necessary to alleviate the violation of my Due Process and First Amendment rights and to serve the ends of justice:

- a. Substitute Henry D. McMaster, individually, for Henry D. McMaster as Attorney General ("AG") and Russell Bauknight as his individual agent, as plaintiff and counterclaim defendants.
- b. Require a day-certain deposition of McMaster and AG Alan Wilson if either fails to appear, as requested, for a deposition requested in July 2011.
- c. Disqualify and enjoin the Sweeney Firm from representing the State or its Attorney General in this action, based on its illegal contract and irreconcilable conflict in simultaneously representing Terry Brown, Hynie Brown and others.
- d. Enjoin Bauknight from purporting to speak as an Agent of the AG.
- e. Add as an individual party (either counterclaim or third-party defendant) McMaster and Assistant AG Jones (and AG Wilson only if he ratifies their actions).
- f. Upon conclusion of the Wilson and McMaster depositions, allow amendment to our pleadings and counterclaims or crossclaims to seek individual relief against McMaster and Jones and other relief consistent with the facts revealed on May 4<sup>th</sup> and in the depositions.

23. McMaster, AG Jones and Bauknight have each had knowledge (as defined in the Trust Code) since becoming involved in the Brown cases that the fair market value of Brown's assets at death, as defined by the IRS, was between about \$86 Million and about \$110 Million. Branding expert Dr. Terry Cox's figures, set out below, have been available since June 2007:

Image/Likeness	\$40MM - \$50MM
Music Catalogue	\$36MM - \$45MM (Industry standard is 12- 15 x revenue)
Property	\$10MM - \$15 MM

24. Based on the IRS definition that fair market value is "the price at which a willing buyer and a willing seller, neither being under compulsion to buy or to sell both having reasonable knowledge of all relevant facts", the \$84 Million value Bob Buchanan and I placed on Brown's Publicity Rights, Royalties, \$12+ million claim against Albert Dallas/David Cannon and other residuary assets was fair but conservative.

25. Neither AG McMaster nor AG Jones filed any objection to the approximately \$85 Million value set out in the estate tax return filed on September 24, 2008.

26. The \$85 Million<sup>1</sup> was within the value range placed on Brown's assets by some Plaintiffs in a securities prospectus issued in early 2007 (\$200 million). [See Exhibit C] ;3 separate proposals made in 2007 and 2008 to purchase Brown's assets (\$90 - \$102 million) by Terry Brown and others; Cox's valuations; and the \$80 - \$120 Million opinion of Estate/Trust's tax then-tax-counsel.

27. The \$85 Million is substantially less than the \$150 million value placed on

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<sup>1</sup> About \$100 Million, less the TIAA royalty-backed debt.

the assets by Forlando Brown, a 39% owner in the prospective purchaser, in September 2008.

28. The \$85 Million value was also consistent with our Motion filed in November 2007 asking Judge Early to approve the valuation method of Brown's Royalties as reported on the estate tax return as a multiple of his \$3 million annual royalties.

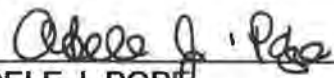
29. On November 20, 2007 Judge Early asked AG McMaster and others to notify him of any objections to our valuation method. Nobody objected.

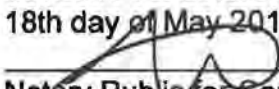
30. My attorneys have noticed the depositions of Plaintiffs Terry Brown and Tommie Rae Hynie Brown for June 2011 and also asked to depose AG Wilson and former AG McMaster in July 2011.

31. I respectfully submit that the depositions of former AG McMaster and AG Wilson are essential, and request that the Court, if they do not appear in July, direct that each appear on a day certain.

32. I request that the Court also order the depositions of Hynie Brown and Terry Brown on a day certain should they fail to appear in June as noticed.

FURTHER DEPONENT SAYETH NOT.

  
ADELE J. POPE

SWORN TO before me this  
18th day of May 2011  
 (L.S.)  
Notary Public for South Carolina  
My Commission expires: 7/13/2016

**Private Foundations, Copyright Heirs and Musical Millionaires:  
or  
Why The James Brown “I Feel Good” Trust doesn’t...**

By Adele J. Pope and W. Jeffrey Smith<sup>1</sup>

©<sup>2</sup>

2011

God has Smiled on Me<sup>3</sup>

Entertainment icon James Brown died on Christmas Day 2006. Although he was a grammar school dropout, he left the bulk of his \$100 million music empire to The James Brown “I Feel Good” private foundation. The “I Feel Good” Trust was restricted solely to providing scholarships for needy and deserving students.

Over his long career, Brown had earned the reputation as “the hardest working man in show business.” Through hard work, tenacity—and years of litigation with publishers, family and others—he had amassed and held onto his fortune, mostly rights in more than 850 copyrights, unpublished works and his publicity rights.

Don’t Be a Dropout

About 20 years before his death, Brown decided to create the “I Feel Good” Trust as a monument to his personal philosophy: the way to escape poverty was with education and hard work. Brown’s songs such as “Don’t be a dropout” underscored this belief.

After four years of work with an estate planning specialist, Brown’s final estate plan was completed in 2000. It included a Will that left Brown’s residuary estate to his 2000 Irrevocable Trust, which was dedicated solely to education. At Brown’s death the 2000 Trust created a \$285,000 education fund for each of seven grandchildren. Everything else went to the “I Feel Good” Trust.

Anticipating trouble from relatives who knew about Brown’s estate plan but did

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<sup>1</sup> Ms. Pope received a JD degree from the University of South Carolina and an LLM in Estate Planning from the University of Miami. Mr. Smith received a JD degree from Georgetown Law Center and is a former patent examiner with the U. S. Patent Office.

<sup>2</sup> While the © symbol is not required, it was placed in this article to remind estate planners, fiduciaries and advisors to consider copyrights in all philanthropic estate planning and administration involving authors.

<sup>3</sup> The copyright to “God has smiled on me” by James Brown and Al Sharpton was issued in 1981. The earliest date this copyright could be terminated by heirs under the Copyright Act is 2016.

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not complain during his lifetime, Brown directed his fiduciaries to defend "vigorously" all attacks on the approximately \$80 million he gave to the "I Feel Good" Foundation as "an affront to my wishes." He armed his fiduciaries with *In Terrorem* forfeiture clauses and other means to defend the 2000 Trust.

Brown also named and then specifically excluded from his music empire some of his 14 or more claimed children, as he did all other claimed heirs and past and future spouses.

Damn Right, I'm Somebody<sup>4</sup>

At Brown's death his philanthropic legacy was poised to be as impressive as his musical legacy. The \$80 million "I Feel Good" Foundation promised to be his home state's largest-ever private foundation dedicated solely to scholarships for needy and deserving students, as well as one of its largest private foundations.

Then in the fall of 2007 an attorney general with gubernatorial aspirations stepped in to "help" the "I Feel Good" Trust.<sup>5</sup>

Bewildered

Three months later, in February 2008, the AG announced before a television camera that the trustees of the "I Feel Good" Foundation must serve only the interest of the "poor kids," and that any failure to do so went "far past the stop sign of conflict of interest."<sup>6</sup>

He was right about that, but sadly, he did not heed his own advice.

On August 10 of the same year, a mere six months later, the AG signed an agreement that in only two years would destroy the "I Feel Good" Foundation – reducing it to \$2 million or less.

Much of the explanation for this bewildering turn of events lies in the failure of

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<sup>4</sup> The Copyright to sound recording "Damn right, I'm somebody," by James Brown and his famous sideman Fred Wesley, was issued in 1974 and renewed in 2002. The earliest possible date it could be subject to termination under the Copyright Act is 2030.

<sup>5</sup> AG Henry D. McMaster, with the AG of Georgia *pro hac vice* under him, entered Aiken County, SC Case 2007-CP-02-0122 ("Case 122") in October 2007 to help protect the interest of the "I Feel Good" Foundation's charitable beneficiaries.

<sup>6</sup> WIS TV interview, 2/7/08. Henry D. McMaster. McMaster's conclusion that Brown's then-fiduciaries were simultaneously working for the family and the "poor kids" was incorrect. At the time, Brown's fiduciaries were actively seeking dismissal of newly filed – and unfounded – challenges to Brown's 2000 Trust and Wil; claims of Brown's companion; and other claims. [ See Ans. Interrogs. Pls., Case 4900; See Mot. Dismiss, TRHB's filing, Case 122.]

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the AG's staff, and later the AG's appointee, to understand and apply basic principles necessary for a private foundation to protect its copyright interests, namely:

1. A precipitous and incorrect determination of heirs can cause decades of damage to the copyright interests, resulting in loss and unnecessary litigation.
2. Fiduciaries and advisors to private foundations with copyrights cannot simultaneously serve the interests of the foundation and claimed heirs.

Brown's interest in 850+ copyrights and unpublished songs made these errors fatal to the "I Feel Good" Foundation.

Termination Rights under the Copyright Act -(Give it Up ) Turn it Aloose <sup>7</sup>

Termination rights under Section 203 and 304 of the Copyright Act are designed to help authors who assigned the rights to their creative works before these works were tested in the marketplace: authors are given a chance to take back *some* of the interests they gave up. Depending on the date of publication, the earliest opportunity to terminate a copyright (already in its renewal term for older copyrights) comes either 35 or 56 years after the copyright.

In the case of a deceased author *who has not previously exercised his rights*, the author's statutory heirs, as determined at the relevant time, may exercise the author's termination right. [For a good explanation of termination rights and limitations, see "Copyright Reversions, Protecting Your Musical Copyrights" by Lisa Alter, 2008.]

When an author's statutory heirs are not the beneficiaries of copyrights under his estate plan (this is always the case for copyrights held by a private foundation or charity), then the statutory heirs--in limited instances--may be able to "bump" the author's estate plan and retake some of the copyright benefits themselves. <sup>8</sup>

Emerging case law makes it clear that it is not easy to terminate assigned interests in copyrights.

Where, as with James Brown, valuable interests are at stake, private

foundations, advised by *their unconflicted* IP/Entertainment counsel, must dance a delicate dance with publishers, claimed heirs and others. The foundations' primary concern, of course, is to protect and enhance the benefits of *each* copyright for the longest reasonable time.

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<sup>7</sup> (Give it up) Turn it Aloose was published in 1969.

<sup>8</sup> The term "estate bumping" was coined by Professor Lee-Ford Tritt to describe this phenomenon. See Lee-Ford Tritt, "Liberating Estates from the Constraints of Copyright, 38 Rutgers L.J. 109 (2006)

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By omitting his heirs from any interest in his copyrights, Brown made it easier for his fiduciaries to protect them from actual and claimed heirs, because in questions related to Brown's copyrights the fiduciaries' duty of loyalty is only to the 2000 Trust — and not to any heir.

For private foundations to be ready to protect copyright benefits given to them, their fiduciaries and advisors<sup>9</sup> must take at least the following basic steps, all of which were in progress for James Brown's estate:

1. Learn the basics about the Settlor's copyright interests, including earliest publication dates and other readily-available facts.
2. Promptly and properly identify the "heirs-at-death"<sup>10</sup> to create a baseline.
3. Where appropriate and available, rely on DNA testing for disputed heirs.
4. Acknowledge heirs only if they are legally established or DNA tested.
5. Identify documents such as the Settlor's will, prenuptial agreements, lawsuit settlements and waivers, which may void, limit or delay an heir's claim to copyright termination rights.
5. Update the baseline heirs data until all copyrights expire.
6. Select IP/Entertainment counsel with no commitment to claimed heirs, publishers or other assignees.
7. As and when helpful, "split heirs"<sup>11</sup> to maximize benefits for the foundation.

For James Brown, with copyrights issued over the six decades from 1956 until his death, the earliest any termination could have occurred was 2012. There was adequate time to prepare, and in August 2008 Brown's fiduciaries were doing just that.

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<sup>9</sup> Where, as with James Brown, the AG and his appointee undertook to step into the shoes of Brown's fiduciaries, rendering the fiduciaries unable to protect the charity, they should have had, and applied, the same knowledge required of the Foundation's fiduciaries.

<sup>10</sup> The terms "heirs-at-death" is used by the authors to emphasize the timing difference between a traditional determination of heirs (death) and the statutory heirs under the Copyright Act, who cannot be determined until the window to terminate assignments as to a particular copyright opens. Statutory heirs under the Copyright Act may be different with respect to each copyright termination.

<sup>11</sup> The heirs must act by majority. This allows foundations to "split heirs" — finding the most cooperative majority of heirs to work with on termination issues related to a specific copyright assignment at the particular time.

Draft (4/11) for Editing only - Do not copyJames Brown's Copyrights

A 2007 circuit court order made available to the AG and others interested in Brown's estate about 90 boxes of "Brown Historical Documents." These documents contained virtually everything to be known about Brown's copyrights and related contracts. The documents were placed at a central location that allowed easy access to all.<sup>12</sup>

The available documents, with information from the Copyright Office and other readily available sources, showed that if Brown's copyrights were properly protected any attempt by claimed heirs to take them from the "I Feel Good" Trust was both weak and remote in time.<sup>13</sup>

The known facts included:

1. Brown's royalties continued to earn about least \$3 million per year, as they had for years.
2. Brown's publicity rights – about \$50 million of his music empire – were not subject to any claimed termination rights of heirs.
3. Brown's as-yet-unpublished works would not be subject to termination for decades, perhaps not at all.
4. Copyrights to the many derivative works in which Brown has an interest are not subject to termination right of heirs. [More than 50 CDs, with notes, have been released since Brown's death.]
5. Brown's Will leaves all of his copyrights, most of which are held in his individual or joint name, to the 2000 Trust.
6. Brown's fiduciaries were directed to vigorously protect his estate plan against heirs and claimed heirs.
7. Only 15% or fewer of Brown's many copyright interests faced possible termination before 2016 -- ten years after Brown's death. [ See Compilation, Brown copyrights, 1956 - 60 and 1978 - 81.]

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<sup>12</sup> Order dtd. 08/10/07, Aiken County, S.C. Case No. 2007-CP-02-0122. Reflecting Brown's understanding of his place in musical history, in addition to Brown Historical Documents, Brown kept more than 60 boxes of his personal musical collection, unpublished works, and masters under lock and key in the bedroom suite and office of his home estate. In February 2008 these were placed in a secure sound storage facility to await review.

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8. Co-authorship of some of Brown's works could make terminations more complex and heirs' rights, if any, less certain. See Geoffrey P. Hull, "Termination Rights and the *Real* Songwriters", Vanderbilt J. of Ent. Law & Practice, Spring 2005.
9. Brown holds an interest in some of his publishers.
10. Between 1968-1978, one of Brown's most prolific periods, about 250 copyrights were issued, none of which faces possible termination before 2024, with others as late as 2033, including:
  - a. Nearly 40 songs from 1968.
  - b. More than 50 songs from 1969, including "Ain't it funky now," "Mashed potato" and "Popcorn."
  - c. "Funky Drummer," 1970, one of the world's most sampled records; "(Get up) I feel like being a sex machine"; and about 25 other songs.
  - d. "Hot pants", "Soul power" and others from 1971.
  - e. More than 35 copyrights from 1972, including "Get on the Good Foot (with new matter)" and other sound recordings for which copyrights became available that year. [ Polydor, Inc. and/or UMG Recordings, Inc. are listed on some post-1971 copyrights]
11. In the 1990s Brown and his company JBE, Inc., reached important agreements with Warner/Chappell, Warner-Tamberlane Publishing Corp. and other publishers.
12. Documents related to Brown's 1999 \$26 million loan from TIAA, secured by a pledge of his major royalties, prohibit assignments until the loan is paid in full – 5 or more years after Brown's death.
13. Brown settled a 2002 suit over copyrights with daughters Deanna and Yamma.
14. Brown did not file a termination notice for 2016 for the famous 1956 song, "Please, please, please," which he co-authored, although the window for filing a termination notice was open in 2006. Nor did he do so for certain post-1977 copyrights. [This indicates an understanding that the TIAA Debt (at least) prevents the current exercise of termination rights.]

A host of additional impediments existed to prevent any heirs from substantially damaging the "I Feel Good" Foundation's royalty interests. These efforts included motions to dismiss all claims of Brown's companion as invalid, a waiver signed by one

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of Brown's Heirs for the TIAA Debt, and others.

In order to protect the "I Feel Good" Foundation's copyrights, the estate first had to root out non-heirs and those who had waived any claim to Brown's assets. Then negotiation with heirs could begin.

The Estate's Heirs Protocol

In August 2008 Brown's fiduciaries were nearing the completion of a proper heirs-at-death determination begun just after Brown's death. When concluded, it would have provided the "I Feel Good" Foundation with both a sword and a shield to protect its copyrights for decades.<sup>14</sup>

Knowing the importance of this heirs determination, shortly after Brown's death estate attorneys established a brilliant and widely-publicized self-identification protocol to find Brown's claimed heirs. Anyone claiming to be a child of Brown was invited to step forward; pay \$300 for controlled, official DNA testing; and find out the biological truth.

Brown's well-publicized vasectomy about 20 years earlier meant that most requests for DNA testing were made by consenting adults who understood and submitted to the media frenzy surrounding the process.<sup>15</sup>

The significance of the heirs procedure was bolstered by the increased acceptance of the accuracy of properly controlled DNA testing.

By August 2008, the DNA protocol resulted in the rejection of a number of claimants and the identification of three biological children of Brown: Jeanette Mitchell (1), LaRhonda Pettit (2) and Cinnamon Memickle (3).

Brown's fiduciaries rewarded each proven biological child with a public announcement and acknowledgment of her status as an heir. [Like all of Brown's other heirs, they were excluded from the 2000 Trust and Brown's musical empire.]

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<sup>14</sup> Brown acknowledged as his "heirs" four of the five children born of his three marriages, Terry, Larry, Deanna and Yamma. He excluded daughter Lisa, acknowledged in his divorce from first wife Velma Warren. [Will. Trust. Div. Decree. Agreement]. He also acknowledged two children not born of his marriages. *In Terrorem* forfeiture clauses threatened termination of the grandchildren's education benefits and the personal effects he gave to the six. A prenuptial agreement, executed by Brown's (married) companion, waived all of her rights under state and federal law. After discovering that companion was married when she married Brown, he brought an action to void the marriage. It was settled with her agreement and a court order by which she waived any claim to be Brown's common law spouse.

<sup>15</sup> Only one minor claimed to be a child of Brown. Through a GAL he refused official testing.

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Brown's other possible but challenged heirs, none of whom had been DNA tested, included:

- a. 5 presumed children: Terry (4) Lisa (5), Larry (6), Deanna (7) and Yamma (8). Teddy is deceased. (9);<sup>16</sup>
- b. A minor ordered to take official DNA testing, but who had refused (10);
- c. An incarcerated adult whom Brown supported under court order during minority (11);
- d. Brown's companion who:
  1. Waived all state and federal rights in a 2001 pre-nuptial agreement;
  2. Then had a marriage ceremony with Brown although she was already married;
  3. Separated from Brown in 2003 when he discovered she was married;
  4. Obtained an annulment of her previous marriage in March 2004;
  5. Thereafter settled Brown's suit to void his marriage by Court order, finding they were living together and attaching her agreement never to claim to be Brown's common law spouse (12);
- e. Two other claimed-but-not-presumed children (13), and (14);
- f. A claimed grandchild, claimed child of deceased son (9).

Considering other turmoil surrounding Brown's assets <sup>17</sup> and the long-term importance of a correct determination of heirs-at-death, the heirs protocol had progressed at lightning speed. It was close to providing a court-sanctioned heirs-at-death baseline which the "I Feel Good" Trust could use and modify in order to help protect the foundation for the duration of the copyrights.

That changed on August 10, 2008.

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<sup>16</sup> On August 10, 2008 Brown's grandsons, beneficiaries of the 2000 Trust, or others, were seeking DNA testing of some or all of these, as well as of the minor claimant.

<sup>17</sup> Brown's original fiduciaries all resigned in 2007 under a substantial cloud after more than \$12 million secretly misappropriated since 1999 was discovered. One is now deceased. David Cannon was indicted for felony breach of trust for all years 1999 - 2006 and for uttering a forged compensation agreement in 2008. To date he had not been tried. In 2010 Dallas, Brown's longtime attorney, filed bankruptcy. Schedules related to Dallas' filing show that his largest asset is a \$6 million claim he asserts against Brown's Estate and the 2000 Trust.

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"No, no, no, no (don't leave me this way)"<sup>18</sup>

On August 10, 2008 the AG's staff and some of the claimed heirs<sup>19</sup> met privately and reached the following private agreement:

1. Some of Brown's claimed heirs, including Brown's companion and excluding Brown's proven heirs, were declared to be Brown's heirs "for all purposes."
2. The AG proposed to give more than half of Brown's assets to these persons, all of whom had been specifically disinherited by Brown from his copyrights.
3. The AG agreed to prevent DNA testing of the parties to his agreement.
4. The AG agreed to replace Brown's fiduciaries with ones of their mutual choosing.
5. The AG and parties all agreed not to say anything bad about each other or the Agreement they had reached.

After signing the August 10 Agreement, with no apparent knowledge of the devastation he was causing the "I Feel Good" Trust's copyrights, the AG moved on to other matters and left the rest of the destruction of the "I Feel Good" Foundation to his staff and the appointee/fiduciary the AG selected.<sup>20</sup>

Within months, an AG staffer promised Brown's son an exclusive right to buy the James Brown assets – including his 850+ copyrights. [Ltrs. dtd. 1/29/09 and 1/30/09.]

Certain that Brown's fiduciaries could not support the August 10 deal, the AG's staff sought and obtained an "independent" person to evaluate the secret agreement for the Court.

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<sup>18</sup> "No, no, no, no (don't leave me this way)" was published in 1964. The earliest possible year it might be subject to termination is 2020.

<sup>19</sup> The AG did not notify any of Brown's fiduciaries or the three known biological heirs of James Brown of the meeting until after he had signed the August 10, 2008 agreement. [Exhibit B]

<sup>20</sup> According to the AG's senior assistant, beginning in the fall of 2007 six attorneys and six staff members worked on James Brown matters, but none undertook to inquire about or understand Brown's copyrights, even though the copyrights were generally known to make up about half the value of Brown's music empire. Beginning August 10, 2008, the AG relied on advice of counsel for the companion and other "settling parties" whose interest in Brown's copyrights was directly adverse to that of the "I Feel Good" Foundation, but who advised that they now "spoke as one" with the AG.

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On January 30, 2009, three weeks after his appointment--with no knowledge of the Federal Copyright Act, Brown's estate plan, or the tax impact of the AG's deal--the AG's appointee recommended it to the court.

Amazingly, appointee had not reviewed a single copyright or contract -- considering it beyond the scope of his assignment.

After the recommendation, the AG announced that he had selected appointee -- already trustee for Brown's companion and the disinherited settling relatives -- to be the fiduciary for Brown's estate plan, including the "I Feel Good" Foundation.

On the strength of appointee's recommendation an overworked circuit court judge approved the AG's deal.

A last glimmer of hope existed for the copyrights given to the "I Feel Good" Foundation -- the circuit court did not specifically determine that the parties to the AG's deal were Brown's heirs.

The AG's appointee would try to fix that.

"Everybody's doing the hustle and dead on the double bump"<sup>21</sup>

At first the AG appears to have been oblivious to the destruction his August 10 Agreement would cause Brown's copyrights and the "I Feel Good" Foundation. On the other hand, Brown's disinherited claimed heirs and companion knew exactly how important their newly-invented status as Brown's sole heirs was. It was this status--a gift not from Brown but from the AG--that would enable them to execute their plan for the destruction of the "I Feel Good" Foundation.

The monster that the AG had inadvertently created was raising its head. And his appointee knew which side to take.

By early 2009 AG's appointee--now trustee for the disinherited claimants--approved language added to the AG's deal after August 10 asserting that the termination rights of the newly-but-incorrectly determined "heirs"-at-death was of enormous value.

These "heirs" asserted that the termination rights belonging to them -- not all properly-determined heirs over the duration of the copyrights -- were likely worth as much or more than Brown's publicity rights, 850+ copyrights and other assets. This sleight of hand became their justification for the AG's giving them about 65% of the "I Feel Good" Foundation *plus* the right to buy it all.

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<sup>21</sup> This copyright to "Everybody's doing the hustle and dead on the double bump" was issued in 1975 and renewed in 2003.

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In March 2009 Brown's fiduciaries used a compromise procedure to try to salvage Brown's copyrights for the "I Feel Good" Foundation by continuing with a correct heirs-at death determination.<sup>22</sup> The AG's appointee, now committed to his role as trustee for Brown's companion, purchaser/son and some of the disinherited family rather than for the "I Feel Good" Foundation, declined.

And the AG never complained.

"Almost nothing"<sup>23</sup>

When it seemed things could not get worse for the "I Feel Good" Foundation, they did.

Soon after son obtained a right to buy all of Brown's assets and the appointee became his trustee, they began to question the \$100-million value of Brown's assets. This was surprising, since in 2008 son himself was involved in two separate letters of intent to purchase the same James Brown assets he was now devaluing for \$90-\$102 million.

The scheme to dismantle the Foundation proceeded, full steam ahead.

In August 2010, appointee announced he had secured an appraisal which would show that Brown's assets at death were worth less than \$12 million.

A sale to son at \$12 million would drive the final nail into the "I Feel Good" Foundation's coffin – reducing it from \$80 million to \$2 million or less.<sup>24</sup>

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<sup>22</sup> In an "offer of compromise" not normally published – but filed in James Brown Case No. 2008-CP-02-1647 – Brown's fiduciaries agreed for the Estate and 2000 Trust to acknowledge 4 of Brown's presumed children, proven children Cinnamon, LaRhonda, and Jeanette, and 3 others as Brown's heirs. Brown's companion, consistent with known facts, was rejected as an heir, but offered a payment to resolve her claim. With ten (10) children acknowledged as a non-exclusive group of Brown's heirs-at-death, Brown's estate and the "I Feel Good" Foundation would have been free to continue the heirs-at-death proceeding as to all others. In the future the "I Feel Good" foundation would have been free to "split heirs" as appropriate to a particular copyright.

<sup>23</sup> The copyright to James Brown's "Almost nothing" was issued in 1979. It will not be subject to possible termination before 2014.

<sup>24</sup> Son/prospective purchaser Terry, poised to buy James Brown's assets for as little as \$12 million, was part of two 2008 letters of intent by TJBL, LLC to purchase Brown's assets for \$90 - \$102 million. [Brown's original PR/Trustees sought about \$5 million each from the proposal, as well as options or a "kickback" from the purchaser. [Hg. 11/20/07, Case 122]. In early 2007 Terry's son and some family members issued a prospectus to raise \$200 million for the purchase of the James Brown assets.

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James Brown would have been rolling over in his. Between 2003 and 2006 he had earned about \$9 million each year.<sup>25</sup>

Think (about it)<sup>26</sup>

James Brown left two legacies – a musical legacy and a charitable legacy. Whoever benefits from it, Brown's musical legacy will live on. Brown's charitable legacy, the "I Feel Good" Foundation, cannot be recovered once it is lost. The dismantling of that legacy by the AG, his appointee and Brown's disinherited claimed relatives could have easily been avoided.

Unfortunately, it was not.

But it should serve as cautionary tale to other "needy and deserving" foundations holding valuable copyrights. It should also raise an alarm for all philanthropists and their estate planning advisors in states where the government, through activist attorneys general, is moving to take over the private property and operation of the private charitable foundations of these individuals.

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<sup>25</sup>

In 2009 AG and appointee, at the behest of purchaser/son, rejected a 2-year publicity rights contract with GreenLight . Among other deceased celebrities, GreenLight has successfully exploited the publicity rights of Steve McQueen and Einstein. According to a 2011 New York times Article, Einstein, whose publicity rights are claimed by Yeshiva University in Israel, has earned tens of millions of dollars.

<sup>26</sup> The copyright to "Think (about it)" was issued in 1973.

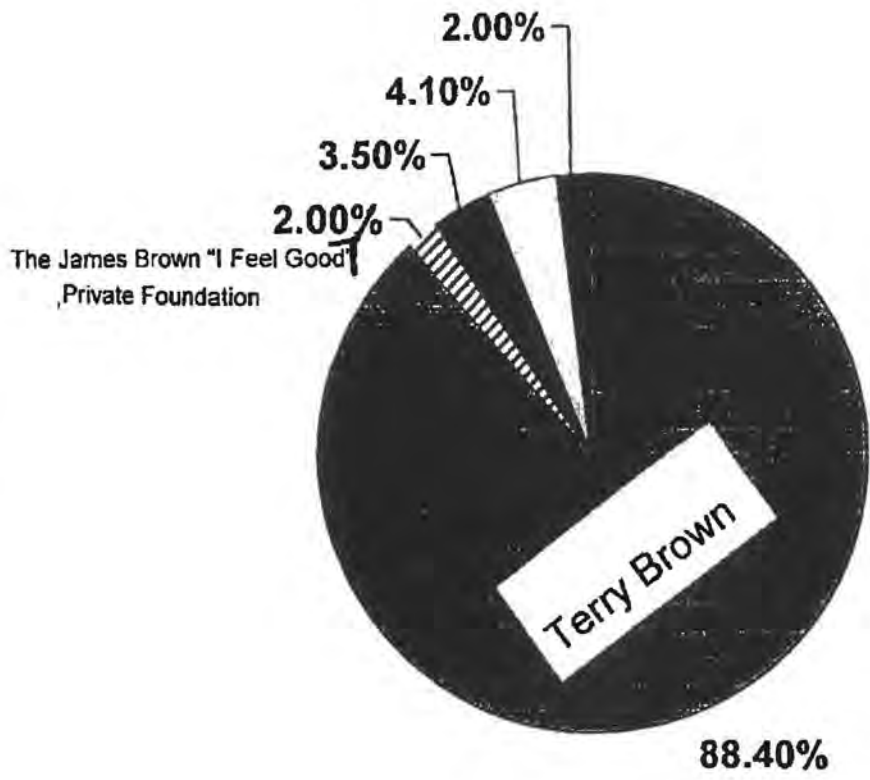
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COMPILATION  
Registered Copyrights of James Brown  
1956 - 60 and 1978 - 81

<u>Date of Publication/ Copyright</u>	<u>Description of Works</u>	<u>Earliest Possible Termination</u>
1956	About a dozen works, including "Please, please, please"	2012
1957	About six songs, including "Fine old foxy self"	2013
1978	About 30 songs	2013
1958	About 12 songs, including "Try me"	2014
1979	About 15 songs, including "Mother popcorn"	2014
1959	About 5 songs, including "Good good lovin' "	2015
1980	About 35 songs, including "Get up offa that thing"	2015
1960	About 8 songs, including "And I do what I want"	2016
1981	About 16 songs, including "God has Smiled on me"	2016

### EXHIBIT B

**Chart 5 - How Bauknight's Sale of James Brown Assets to Terry Brown at \$12 Million Under Right of First Refusal Destroys The James Brown "I Feel Good" Private Foundation**  
(03/11)



- Terry Brown
- ▨ "I Feel Good" Private Foundation
- Administrative Expenses
- Other Settling Parties
- G'Children's Trust as Modified by McMaster

13. 2007 6:33PM

Levenson & Assn

# EXHIBIT C

No. 6477 P. 46

Pinnacle Media & Entertainment, LLC  
Amount Requested \$200,000,000

## Executive Summary

**Contact Information**  
Pinnacle Media & Entertainment, LLC  
Richard "Chip" Lumar, Chairman/CEO  
Yamuna Brown Lumar, President  
100 Peachtree Center Ave  
Atlanta, GA 30309  
Tel: 404-333-0048  
Fax: 404-234-2826  
www.pinnaclemediaent.com  
pinnaclemediaent@pinnaclelp.com

**Management Team**  
Richard "Chip" Lumar, Chairman/CEO  
Yamuna Brown Lumar, President  
Terry B. Cox, Graham Windsor Group  
David Cifer, Esq.  
John Waters, The Machine Group  
John Waters, The Machine Group  
D McKnight, Undiscovered Live  
Shelle Graves, Special Advisor to Mr. Lumar

**Industry**  
Content provider to the entertainment industry  
Television/Cable

**Company Resources**  
Intellectual Property Rights

**Source of Financing Sought**  
Qualification financing for the James Brown Estate

**Financial Information**  
Total Internal Capital Invested  
\$300,000 has been pledged by the Owners for  
the set up of Pinnacle Communications Inc., and  
Pinnacle Media & Entertainment for print rights  
acquisition, trade show sponsorships, production  
and marketing.

**Professionals**  
Accounting Firm  
Ernst & Young  
Ernst & Young  
36 Intervale Rd  
Suite B1  
Beverly, NH 03249  
Tel: 617-230-0832

**Banking**  
PNC Bank  
1000 Lakeside Dr  
Atlanta, GA 30326  
Tel: 770-420-0326  
Fax: 770-420-0654

Pinnacle Communications, Inc c/o Chip Lumar  
404-404-333-0048  
www.pinnaclemediaent.com  
pinnaclemediaent@pinnaclelp.com

**Business Description**  
Pinnacle Media & Entertainment, LLC "PME" is an independent film production and distribution company. The company specializes in commercial grade theatrical films, documentaries, video and content for the major motion picture/television/cable industries. The company presently has the film option rights to several properties that can be acquired through its sister company, Pinnacle Communications, Inc.

**Philosophy**  
There is an inherent marriage between music entertainment and the film/television industries. Both require massive amounts of content to satisfy the needs of their clients/customers, and this company intends to exploit this fact by appointing the daughter of a true living "Legend" James Brown, to be its leader. Pinnacle Communications Inc is currently reviewing over fifty titles for our film and distribution companies. Upon successful completion of funding, PME will launch the national television and cable networks with Atlanta as its national base of operations.

**James Brown Estate Acquisition**  
On December 25, 2006, the legend, James Brown died at the age of 73. He left behind a legacy that will stand the test of time. His estate, the most valuable of assets has the potential to surpass the estates of Elvis Presley, Frank Sinatra, and Dean Martin, in yearly revenues generated, licensing rights, sampling rights, feature films, documentaries, tributes, and future record sales. We believe the estate of the late James Brown can and will generate over 100 million per year. Under the right management structure and capitalized property, there will be no end in sight. With the right investment partner, Pinnacle Media & Entertainment will become the premier entertainment/management company in the world. Currently the estate is under the protection of Greenberg Truig, more specifically Joel Katz; Mr. Katz has been an advisor, legal counsel, but more importantly a close personal friend to Mr. Brown for over 20 years. Mr. Katz has intimate knowledge of the estate, past, present and future. It is our hope that once the acquisition is completed, Mr. Katz and his team would remain in their current capacity and would assume the lead in the future development of the "James Brown Living Legend Experience"

**Management**  
Our President is a distinguished graduate of Mercer University (1993) where she received her Doctorate in Pharmacy. Being the daughter of a star of music and film, Dr. Lumar has had intimate knowledge of both industries. Another advantage Dr. Lumar gives is her access to the Hollywood elite. Among some of the more notable Hollywood are Academy Award Winners Jamie Foxx, and Dan Aykroyd, other celebrities' friends includes actor Eddie Murphy, and playwright Tyler Perry. The company will have only one paid employee initially as all other work not performed by the President is outsourced to contract professionals, i.e. directors, scriptwriters, cast and crew professionals on a per-project basis.

7/15/2007 6:33 PM Levenson & Assoc 404-659-1355

No. 6497

*Pinnacle Media & Entertainment, LLC*  
*Amount Requested \$200,000,000*

*Executive Summary*

arrangement never before realized. The potential for profits from both companies is incalculable, and the returns on investment will be far greater than anyone can imagine.

Pinnacle Communications, Inc d/a Chip Lumar  
404-404-343-0048  
[www.pinnaclemediacorp.com](http://www.pinnaclemediacorp.com)  
[pinnaclemediainfo@pinnaclecp.com](mailto:pinnaclemediainfo@pinnaclecp.com)

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# EXHIBIT D

# Exhibit A

**Sonny Jones**

**From:** Terry Bradford Cox, Ph.D. <cox.terry@att.net>  
**Sent:** Friday, January 07, 2011 1:15 PM  
**To:** Sonny Jones  
**Cc:** William James Brown  
**Subject:** Re: Brown- ROFR Confirmation and Amendment

A package of other documents that will define Terry Brown's "designee" is being put together. This should be done no later than next Tues. I have been told that you should have these and the original signature in your hand no later than next Wednesday.

— On Thu, 1/6/11, Sonny Jones <[AGSJONES@scag.gov](mailto:AGSJONES@scag.gov)> wrote:

**From:** Sonny Jones <[AGSJONES@scag.gov](mailto:AGSJONES@scag.gov)>  
**Subject:** Brown- ROFR Confirmation and Amendment  
**To:** [cox.terry@att.net](mailto:cox.terry@att.net), [louis@levensonlaw.com](mailto:louis@levensonlaw.com), [lori@llevensonlaw.com](mailto:lori@llevensonlaw.com), [FKingsmore@nexsenpruet.com](mailto:FKingsmore@nexsenpruet.com), [amedlin@sc.rr.com](mailto:amedlin@sc.rr.com)  
**Cc:** "J. C. Nicholson" <[JCNicholson@scag.gov](mailto:JCNicholson@scag.gov)>, "Mary Frances Jowers" <[MFJowers@scag.gov](mailto:MFJowers@scag.gov)>  
**Date:** Thursday, January 6, 2011, 4:59 PM

The AG signed this afternoon. Attached is a fully executed copy for your files. I have the original signatures from everyone except Terry Brown. Dr. Cox please advise when I can expect to receive Terry Brown's original.

Thanks. Excellent work.

C. Havird Jones, Jr.  
Senior Assistant Attorney General  
Office of the South Carolina Attorney General  
P.O. Box 11549  
Columbia, SC 29211  
Phone: 803.734.3654  
Fax: 803.734.3677  
[AGSJONES@ag.state.sc.us](mailto:AGSJONES@ag.state.sc.us)

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**Sonny Jones**

---

**From:** Terry Bradford Cox, Ph.D. <cox.terry@att.net>  
**Sent:** Monday, January 17, 2011 4:33 PM  
**To:** Sonny Jones  
**Cc:** William James Brown  
**Subject:** Wednesday Mtg

**Sonny**

This is to confirm our Mtg this Wednesday Jan. 19. Can we make it at 2pm. I then probably see a mtg to continue with just Russell and Freddie to go over administrative stuff for how we are going to get started.

Besides myself, William Brown will be attending along with a Jim Blackwell, he is a financial guy (no attorneys). I have put together an agenda and some handouts that I will go over with you Tuesday pm if you are available. Basically I see us starting with the ROFR and clarifying the key pieces that you, Alan and me worked through. (There is no issue here, I just think it is important for all to nod their head in the affirmative.) From here we can discuss our approach to the assets and the due diligence. Then we will continue with the administrative stuff, and you and Alan can leave if you want.

Original doc of ROFR is being sent today and you will also receive a doc signed by Terry Brown that gives us the right to represent him. If there is anything you want to add, let me know.

**Terry**

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**Sonny Jones**

**From:** Sonny Jones  
**Sent:** Tuesday, January 18, 2011 11:02 AM  
**To:** Ph.D. Terry Bradford Cox  
**Cc:** FKingsmore@nexsenpruet.com; amedlin@sc.rr.com; William James Brown  
**Subject:** Re: Wednesday Mtg

Good morning...Could you scan or fax me today(Tuesday) a copy of the assignment to you and Forlando from Terry Brown. My fax # is (803)734-3677. We would need to review that prior to the meeting in order that we may discuss if there are any problems on our end.

The time scheduled tomorrow is from 1-4:45 PM at Freddie's office. Because of the new semester at the law school I will be checking Alan's availability.

Please advise as to any questions. Thanks

>>> "Terry Bradford Cox, Ph.D." <cox.terry@att.net> 1/17/2011 4:33 PM >>>

Sonny

This is to confirm our Mtg this Wednesday Jan. 19. Can we make it at 2pm. I then probably see a mtg to continue with just Russell and Freddie to go over administrative stuff for how we are going to get started.

Besides myself, William Brown will be attending along with a Jim Blackwell, he is a financial guy (no attorneys). I have put together an agenda and some handouts that I will go over with you Tuesday pm if you are available. Basically I see us starting with the ROFR and clarifying the key pieces that you, Alan and me worked through. (There is no issue here, I just think it is important for all to nod their head in the affirmative.) From here we can discuss our approach to the assets and the due diligence. Then we will continue with the administrative stuff, and you and Alan can leave if you want.

Original doc of ROFR is being sent today and you will also receive a doc signed by Terry Brown that gives us the right to represent him. If there is anything you want to add, let me know.

Terry

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# EXHIBIT E