

RECEIVED

Apr 30 2024

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

The Honorable Clifton B. Newman, Circuit Court Judge

Appellate Case No. 2024-000573

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 children Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown, Respondents,

v.

Adele J. Pope, Petitioner.

AFFIDAVIT OF THOMAS H. POPE III

PERSONALLY appeared before me, Thomas H. Pope III, who being duly sworn,

deposes and states as follows:

1. I am the spouse of Petitioner Adele J. Pope and not a party to this appeal or to the underlying case of Russell L. Bauknight, et. al v. Adele J. Pope in Case No. 2010-CP-40-04900. This affidavit is in opposition to Respondents' Motion for Sanctions against Adele and her counsel, Adam Silvernail, Daryl Williams, and Jeff Smith. My resume is attached as Exhibit A hereto.

BACKGROUND

2. I have been married to Adele Jeffords Pope since November 17, 1973, and we both graduated from the University of South Carolina Law School in 1974. She was a member of the Law Review and graduated near the top of our class. After graduating from undergraduate college, Adele earned degrees from three graduate schools: Masters of Fine Arts in Spanish at the University of Virginia; Juris Doctor at the University of South Carolina Law School; and, LLM from the University of Miami Law School.
3. The case filed by Attorney General McMaster and others against Adele and Bob Buchanan in 2010 is pending (Case No. 4900) and I do not believe that any of the filings of her counsel, or her own filings, have been unprofessional or disrespectful, and believe that both her remarks (some of which I heard at trial in another case before Judge Doyet Early in 2017 and 2018) and mine in the deposition taken in 2017 by one of Mr. Bauknight's attorneys have been professional and appropriate in light of the fact that Adele has faced an army of lawyers who have, aided by the Office of Attorney General, attacked her viciously for what is now more than 15 years.
4. The lawyers who have opposed Adele in the James Brown litigation include Freddie Kingsmore, Ken Wingate, Mark Gende, Aaron Hayes, Assistant Attorney General Sonny Jones, Assistant Attorney General Emory Smith, Alan Medlin, David Black, Louis Levenson, Steve Slotchiver, Robert Rosen, Burl Williams, and Everett Kendall. There are many others.
5. Adele and Bob were sued initially in 2010 by Attorney General McMaster (now Governor) who testified in his deposition that he did not sue her (even though he was a named Plaintiff). He also testified that he had no knowledge of Bob or Adele doing anything wrong as Personal Representatives of the James Brown estate.
6. Since 2008, I have had the pleasure of being a visiting professor (trial advocacy and civil litigation) in a number of law schools and universities in former Soviet Republics and other European and Asian countries, including Ukraine, Georgia, Kosovo, Albania, Poland, and Myanmar. Most of these do not have the benefit of fair discovery systems, fair trials, and the Due Process level playing field which we always aspire to, and generally have, in America. I am of the firm belief that when

lawyers abuse our treasured Rule of Law, lack candor with the Court, and abuse our discovery system by stealth tactics like calling a direct, known abuse of the privacy rights of both a party and a non-party a “simple discovery order” (especially where they are acting on behalf of the Attorney General) the orders procured with those tactics should not stand.

7. I believe that Respondents cavalierly pushing the envelope in matters of discovery leads naturally to cavalierly pushing the envelope in motions and at trial, and that these tactics are not appropriate.
8. Based on my almost fifty (50) years of trial experience, it is apparent to me that the proper resolution of the August 10, 2024, hearing should have been for Mr. Gende to call Mr. Silvernail, allow him to come if he could, and reschedule if he could not.
9. I note that Mr. Silvernail, as Adele’s counsel, filed and served on Respondents’ counsel a detailed objection, with documentation, showing Adele and her counsel had fully complied with discovery, and setting out facts to indicate that it was, in fact, Mr. Gende’s firm that had abused discovery since March 2017.
10. Mr. Gende’s firm was fully aware of the position of Mr. Silvernail and Adele which they filed on August 2 because on August 3 Mr. Gende’s firm filed **Plaintiffs’ Petition for Rule to Show Cause and Motion for Sanctions**.

FACTUAL CHRONOLOGY

11. Here is a review of the chronology of events leading up to the Petitioner’s appeal of the Order denying the motion to reconsider, which was not, as characterized by Mr. Gende, a “simple discovery order.”
 - a. Order Denying Motion to Reconsider the sanctions Order was entered on July 18, 2023;
 - b. July 31, 2023: Defendant’s counsel Adam Silvernail wrote the trial court and counsel to advise that Defendant would be out of town most of the week of August 6, 2023, and that “we will shortly be filing a Notice of Appeal of Judge Newman’s Order Granting Sanctions.”
 - c. August 2, 2023: Plaintiffs’ counsel Mark Gende requests a hearing, but notes “there’s been no Notice of Appeal filed, so we want a hearing...”
 - d. August 3, 2023: Judge’s clerk sets hearing for August 10, 2023, at 11:30am (WebEx).
 - e. August 4, 2023: Defendant filed a Notice of Appeal and Mr. Silvernail provided a copy to the Clerk and counsel in an email thread regarding setting a hearing. Defendant’s counsel assumed that Rule 241,

SCACR, applied and that there was an automatic stay in place. Plaintiffs' counsel was served with the Notice of Appeal on August 4.

- f. August 8, 2023: Plaintiffs' counsel writes Court acknowledging receipt of "Notice of Appeal filed August 4," but requests hearing on August 10 to discuss effect of this filing. The Court does not respond to this email, and there is no further correspondence regarding a hearing or status conference prior to August 10.
 - g. August 10, 2023 (11:30am): Hearing held. Because of Rule 241, SCACR, Mr. Silvernail assumes the case has been stayed by his filing of the Notice of Appeal and does not appear. No one calls Mr. Silvernail to tell him the hearing is being held.
 - h. August 10, 2023 (6:00pm): Mr. Silvernail emails the Court and counsel after seeing an email to the Court enclosing a proposed Order directing Adele to produce documents "without objection" within 10 days. Mr. Silvernail's email explains that he was not called or notified that the hearing would proceed and if he had been called, he would have attended. He recites the fact that Plaintiffs' counsel Hayes had written on August 8, 2023, acknowledging the filing of the appeal and inquiring about whether the Court would proceed with a status conference or hearing "in light of the pending appeal." This letter notes that Plaintiffs had not made a Motion to Lift the automatic stay under Rule 241 (SCACR).
 - i. August 11, 2023 - Instead of rescheduling, Plaintiffs' counsel urges Court to proceed with order from essentially *ex parte* hearing which finds, incorrectly, there is no stay, and directs compliance by party and non-party in 10 days "without objection."
 - j. Plaintiffs have never filed a motion to lift the automatic stay.
12. Respondents instead proceeded to weaponize a request for documents which had been proffered, with appropriate confidentiality, and which the Attorney General and other SWB clients had not accepted in 2017. Mr. Gende's firm sought sanctions against Adele and her three attorneys for filing a "frivolous, slanderous, abusive, lacking in rational basis, and contemptuous."
13. In my almost fifty years' experience as a lawyer, I have never seen such blatantly unprofessional filing, where the matter should have been resolved professionally very simply by Mr. Gende calling Mr. Silvernail about his attending the hearing or rescheduling the hearing.

14. Mr. Gende did not do that, but, instead, without filing a motion to lift the stay, he pushed the circuit court judge to criminalize three lawyers, a party, and a non-party for what, at best, was a difference in opinion as to whether the appeal was stayed by the filing of the Notice of Appeal.
15. Mr. Gende asked Judge Newman to make an essentially *ex parte*, incorrect finding that the filing of a Notice of Appeal did not impose a stay.
16. Mr. Gende submitted an order that directs that the private financial documents of a party and a non-party be delivered in 10 days, even though the non-party had no notice.
17. Mr. Gende submits an order saying that the documents must be delivered “without objection,” essentially threatening Adele and her three lawyers with more attempts at criminal sanctions if they dare to deliver them redacted.

CONCLUSIONS FROM THE FACTS

18. It is my observation, upon lawyerly reflection, that Plaintiffs’ counsel (Respondents here) withheld from the court that it knew a Notice of Appeal had been filed by Defendant before the August 10, 2023, hearing; that such filing directly related to the relief sought in the upcoming hearing and resulted in an automatic stay of the lower court’s Order; and that Defendant’s attorney was not present on August 10, 2023, because he reasonably and correctly believed that a stay was in place. Further, Plaintiffs’ counsel never asked the lower court to reschedule the hearing for another date or time.
19. Adele and I were in North Carolina with family (children, grandchildren, her sister, nieces, etc.) celebrating her 80th birthday on August 10 (actually the family celebration was from August 8 to August 12, 2023); her birthday is August 9.
20. The Notice of Appeal of the November 8 Order (discovery order) cannot be viewed in isolation. While it does relate to discovery (and, without inquiry, might be considered interlocutory), because the circumstances under which the Order was obtained, along with the fact that discovery “without objection” is compelled which affects the privacy rights of both Adele and others, a serious review is needed.
21. Proceedings related to orders on appeal are automatically stayed by the filing of a Notice of Appeal unless and until a party moves to lift the stay per Rule 241, SCACR. Plaintiffs obtained the Order in essence by default, knowing that Defendant planned to file an appeal when the hearing was scheduled, and had filed a Notice of Appeal several days before the hearing. Plaintiffs have not filed a motion to lift the stay. Secondly, Plaintiffs’ counsel did not inform the Court of these facts; no one asked to reschedule the August 10 hearing when Mr. Silvernail did not appear; and, no one called Mr. Silvernail.

22. In addition, I am informed that Mr. Silvernail and Adele had actually produced the information requested – and would have produced it back in 2017 with appropriate redaction and with a confidential designation, if appropriate, under the Second Amended Confidentiality Order of February 1, 2017 (copy attached as Exhibit B) which, with proper documentation, would have bound the Attorney General and Respondents to treat the document as confidential.

SECOND AMENDED CONFIDENTIALITY ORDER (February 1, 2017)

23. It is my understanding that the applicable “Confidentiality Order” entered in this case was the Second Amended Confidentiality Order of February 1, 2017 (see Exhibit B attached hereto). Under the terms of that Order, for a document to be confidential it is required that the producing party designate it as confidential prior to, or contemporaneously with, production of the document (Section 3 of Exhibit B).
24. The Order also says, as I understand it, that a party can designate documents as confidential only after review and certification that the documents need protection from disclosure, and that this certification “shall be made concurrently with the disclosure using the form attached to the Second Amended Scheduling Order as Attachment A. That Order also provides that information for documents which are, or have been, publicly available may not be designated as confidential, and that nothing in that Order is to be construed or presented as a judicial determination that any specific document designated as confidential by counsel is subject to protection under Rule 26(c) or otherwise...” (Section 11 of Exhibit B).
25. It is my understanding that after this Second Amended Confidentiality Order was filed on February 1, 2017, members of Mr. Gende’s law firm were allowed to spend five days in Adele’s office, which is in our home in Newberry, South Carolina, to designate which documents they wanted copied or declared confidential. I am personally aware that they were actually present for four days.
26. It is my understanding that Adele provided to Mr. Gende’s firm prior to the May 2017 73 CDs of documents and that neither the Attorney General, nor the Respondents in this matter (all represented by Mr. Gende’s firm), designated any of these documents as confidential.
27. Under the Second Amended Scheduling Order, as I understand it, any person shown the Agreement would have to sign Attachment B to the Scheduling Order before they could review it. (This may be appropriate for some of Adele’s financial information redacted to delete my information and that of others.)

ADELE J. POPE AND HER COUNSEL
HAVE NOT MADE “FRIVOLOUS FILINGS”

28. Respondents assert that Petitioner and counsel have “lied” in their filings. The extensive record in this case shows this is incorrect. Respondents and the Attorney General bullied Robert Buchanan into submission after their avalanche of assaults and accusations. They did accuse Bob and Adele of a crime – namely that they fraudulently overstated the value of the Brown estate assets at about \$85M for the purpose of increasing their commissions. This is a crime. See 18 USC § 1001 (fake statements); and 26 USC § 7206 (willfully preparing or presenting false information under the internal revenue law). Respondents did not just assert that the valuation of Bob and Adele was incorrect, but that it was a criminal act (turns out their valuation was low). Respondents are bullies. They had a hidden appraisal purportedly showing James Brown died with a \$5M estate.
29. Adele is tenacious, but totally honest and professional. To award sanctions against her, which have been obtained by dubious means, is to reward, at best, a misunderstanding about Rule 241 and, at worst, unprofessional lawyering.
30. Bob and Adele appealed the settlement orchestrated by the Respondents and the Office of Attorney General because it dismembered the James Brown estate plan, and their actions were vindicated when the Supreme Court of South Carolina reversed Judge Early’s Order approving a settlement, which did not follow James Brown’s wishes in the case of Wilson v. Dallas.
31. Private counsel for Respondent Tommie Rae Hynie threatened Bob and Adele with this lawsuit if they did not drop the appeal of Judge Early’s Order approving the settlement, but they had to appeal because it was their fiduciary obligation to do so and because they cared about scholarships for the needy children to be funded by the “I Feel Good” Trust.
32. Bob and Adele were in fact sued by the Attorney General and Respondents because they had valued (correctly) the James Brown Estate conservatively at \$85M. The Attorney General and Respondents alleged the valuation was too high.
33. The suit against Bob and Adele had to be defended.
34. Very importantly Bob and Adele consistently and vigorously took the position for more than a year prior to their removal as Personal Representatives that Tommie Rae Hynie was not the spouse of James Brown. Because of Adele’s understanding of publicity rights and termination rights, they knew this issue was critical.
35. Bob and Adele’s position about Hynie was vindicated years later, after their removal as Personal Representatives in the case of *In re Estate of Brown*, Case No. 2018-1990 (June 17, 2020).

36. In 2021, the New York Times reported on December 13, 2021, that the Brown estate assets had been sold for \$90M.

INTEGRITY COUNTS

37. The following is a list of persons who have assisted Adele in the last 12 to 15 years in the James Brown cases, either as a witness, an expert, or counsel:
- a. Jimmy Richardson: The first or second most foremost appellate lawyer in South Carolina;
 - b. Charlie Carpenter: An appellate lawyer of equal stature as Richardson;
 - c. Steve Johnson: Estate and probate specialist and expert; Testified that the James Brown estate was the “most complicated estate” he had ever seen (after 40 years as a lawyer); that he trusted the valuation of Bob and Adele, and, that Adele and Bob did an excellent job in defending James Brown’s estate plan against formidable odds;
 - d. Jim Hardin: Estate planning and probate expert who gave a professional opinion as to the good quality of the work of Adele and Bob; and,
 - e. Wallace Lightsey: An intellectual property expert and lawyer whose competency and integrity are recognized throughout South Carolina.
38. Solicitor General Bob Cook gave deposition testimony on February 8, 2017, and over strenuous and repeated objections by attorney Gende (who filed this motion for sanctions), Assistant Attorney General Emory Smith, and Nexsen Pruet lawyer Billy Newsome, which refutes the vicious statements now being thrown against the wall by Mr. Gende.
39. Solicitor General Cook, the Chief Deputy Attorney General, and Attorney General Wilson met with Adele in March 2013 where Adele raised concern that valuing James Brown’s music empire at about \$4.7M would slash James Brown’s charity to almost nothing (Exhibit C partial transcript of deposition of Robert Cook, p. 31). Cook testified that he did not think that Adele was “greedy or trying to get a big fee.” Cook also agreed that Adele sincerely wanted to save the “I Feel Good” Trust (pp. 31-32).
40. Cook also acknowledged that Adele brought up concerns that Mr. Bauknight’s filing documents with the IRS claiming that Tommie Rae was Brown’s spouse could cause terrible problems for the 900 copyrights that decedent Brown gave to the “I Feel Good” Trust (Exhibit C, pp. 32, 33).

41. I understand that in approximately 2017, Justice Jean Toal issued an Order directing Ken Wingate and his partner Everett Kendall to testify in depositions, and when they were directed to testify by Order of Judge Toal, both Mr. Kendall and Mr. Wingate stated that they represented both then-Attorney General McMaster and Attorney General Wilson continuously from 2010 to 2017.
42. It is my belief that the lower court Order of November 8, 2023, to the extent that it directs production of my financial information to be revealed without objection is a deprivation of my due process rights, as was my not being notified by Plaintiffs and under circumstances where neither Adele nor I had a fair chance to object to the production of our financial information.
43. I understand that in October 2016 now-Governor McMaster said he did not authorize Mr. Gende's firm to bring the lawsuit against Bob and Adele, but Mr. Gende's firm continued to act for Attorney General Wilson, even as they spent four days in Adele's home office and never copied anything.

CONCLUSION

44. I have practiced law in South Carolina since November 1974 and have had the pleasure of trying cases to verdict before more than 30 circuit court judges (multiple trials before some) and five or six federal court judges. There have been several occasions during my practice where lawyers have failed to appear at hearings. In no case have judges or opposing counsel ever failed to contact lawyers who did not appear. In my experience, those "missing lawyers", upon receiving contact that a hearing was in progress, have either immediately proceeded to the hearing or apologized, in which event the judges have sua sponte rescheduled the matter on a later date (or at a later time on the same date). Even in the absence of contacting missing counsel, trial judges have rescheduled hearings on motions where counsel is not present. Such is the custom or practice which has been followed without exception during my 49+ years at the bar.
45. I assert that, per Rule 241, a Notice of Appeal operates as an automatic stay of all matters in a case affected by the appeal unless and until a party files a motion to lift the stay and the motion is granted. In this case, Plaintiffs' counsel did not call Defendant's counsel at the time of the hearing, nor did they file a motion to lift the stay.
46. Their failure to do so resulted in an Order directing that my financial information be produced for Plaintiffs when such information is confidential and which is a violation of my due process rights.
47. The Order which Plaintiffs obtained without defense counsel present on August 10, with knowledge that Defendant had filed a Notice of Appeal six days earlier, was unprofessional and contrary to normal concepts of civility.

48. Plaintiffs' counsel have engaged in a pattern of "weaponizing" Rule 11 in a manner that is egregious and unprofessional. I have sought sanctions in only one case in my career and the circumstance justified it: a DOT attorney ignored numerous written pleas from me to provide discovery responses. The lower court struck the DOT's Answer, and it was affirmed. I did not seek attorney's fees or costs against the Defendant in that case.
49. It is clear that had Plaintiffs' counsel called Defendant's attorney on August 10, this never would have arisen as the trial court would not have proceeded to hear Plaintiffs' motion unless and until Plaintiffs had filed a motion to lift the stay and it had been granted.
50. Plaintiffs' counsel knew that Defendant's attorney Adam Silvernail had filed a Notice of Appeal and he (Gende, Plaintiffs' counsel) is presumed to know that the Notice constituted an automatic stay of the motion. Yet, Plaintiffs' counsel did not follow the appellate rules, Rule 241, SCACR, and file a motion to lift the stay. The Sweeny Wingate & Barrow law firm is trying to destroy Adele.
51. I have been informed that Sweeny Wingate & Barrow (Plaintiffs' counsel) threatened Adele, Adam Silvernail, and other defense counsel that if they filed a Petition for Certiorari, they would seek sanctions – for the 12th time in the Brown cases.
52. Bob Buchanan and Adele appealed the settlement which would have taken at least \$50 million in scholarships for needy students and they vindicated James Brown's wishes in the case of Wilson v. Dallas.
53. Bob Buchanan and Adele have been threatened, sued, slandered, and damaged financially because they dared to protect James Brown's charity from 2007 until 2013, and this lawsuit is just part of the damage, but they cared about scholarships for the needy children to be funded by the "I Feel Good" Trust.
54. This civil suit has been criminalized since the Attorney General and Respondents' falsely accused Bob Buchanan and Adele of a felony, claiming they had improperly valued Brown's "I Feel Good" charity at \$80 million instead of \$4 million in IRS filings, but future needy students may be happy the Attorney General's trustee didn't sell Brown's music empire for \$5 million.
55. Needy students may also be happy that Tommie Rae Hynie was not paid \$20 million when the music empire was sold for a reported \$90 million in 2021.

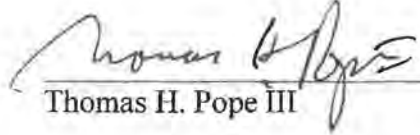
FURTHER DEPONENT SAYETH NOT.

SWORN to before me this 29th day)
of April 2024.)

Mrs Elizabeth Brock Alexander)
E.S.)

Notary Public for South Carolina

My commission expires: 1/29/2025



Thomas H. Pope III

RECEIVED

Apr 30 2024

S.C. SUPREME COURT

EXHIBIT A

THOMAS H. POPE III

Pope Parker Jenkins, P.A.
1508 College Street – P.O. Box 190
Newberry, South Carolina 29108
Telephone: (803) 276-2532
tom@ppjlaw.com
www.ppjlaw.com

- Peer Review** AV Preeminent Rating by Martindale Hubbell.
- Education** University of South Carolina, J.D., 1974, University of the South, B.A., 1968; Admitted to Practice, South Carolina, 1974
- Memberships**
- Fellow, American College of Trial Lawyers (1995-Present; Chair, South Carolina Chapter 2015-17)
 - American Board of Trial Advocates (Advocate; President, South Carolina Chapter, 2005)
 - Listed in South Carolina Super Lawyers (2008-Present)
 - Fourth Circuit Judicial Conference (Permanent Member)
- Military** Lt. j.g., USNR, 1968-1971; Officer in Charge, Swift Boat (PCF 102) Mekong Delta, VietNam (1969-1970)
- Other** South Carolina Board of Bar Examiners, 2006-2014; South Carolina Senate, Member, 1984-1992; Joint Judicial Screening Committee, Chairman, 1991-1992; South Carolina Bar Judicial Qualifications Committee, Chair 1992-1993; University of the South, Member, Board of Trustees, 1999-2002; Order of the Palmetto, 1992 (Gov. Carroll Campbell); Certified Mediator and Arbitrator.
- Litigation Experience** Lawsuits of all kinds: products liability; breach of fiduciary duty; auto and truck collisions; professional negligence; business torts; eminent domain; wrongful death; defamation; environmental; employment; general litigation; and, 25 years of criminal defense.
- Awarded The Jeter E. Rhodes, Jr. Trial Lawyer of the Year in February 2018 by the South Carolina Chapter of America Board of Trial Advocates.
- Teaching Experience (Trial Advocacy)**
- 2008: Eotvos Lorand University Law School, Budapest, Hungary
 - 2011: University of Tirana Law School, Tirana, Albania
 - 2013: Iliria University, Pristina, Kosovo
 - 2015: Finance University, Dnipropetrovsk, Ukraine
 - 2017: European University, Tbilisi, Georgia
 - 2019: Mandalay University Law School, Mandalay, Myanmar (Mock Trial & Moot Court)
 - 2023: Warsaw Trial Advocacy Program for Lawyers, Warsaw, Poland

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 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 FEB - 1 AM 10:02
CLERK OF COURT
COURT SECURITY

SECOND
AMENDED
CONFIDENTIALITY ORDER

Handwritten initials: ME

Whereas this Court has determined that a Confidentiality Order is necessary in this case and certain discovery material herein is and should be treated as confidential; accordingly, it is ORDERED:

1. **Scope.** All documents produced in the course of discovery herein, all responses to discovery requests, and all deposition testimony and deposition exhibits, all documents referenced in this Court's Administrative Order of August 30, 2016 (filed September 1, 2016) in Aiken County Case 2013-CP-02-1337, and any other materials which may be subject to discovery (hereinafter collectively "documents") shall be subject to this Order concerning confidential information, as set forth below.

2. **Form and Timing of Designation.** Confidential documents shall be so designated by placing or affixing the word "CONFIDENTIAL" on the document in a manner which will not interfere with the legibility of the document and which will permit complete removal of the Confidential designation. Documents shall be designated CONFIDENTIAL prior to, or contemporaneously with, the production or disclosure of the documents. However, the inadvertent or unintentional production of documents without prior designation as confidential shall not be deemed a waiver, in whole or in part, of the right to designate documents as CONFIDENTIAL, as otherwise allowed by this Order.

3. **Documents Which May be Designated Confidential.** Any party may designate documents as confidential, but only after review of the documents by an attorney who has, in good faith, determined that the documents contain information properly protected from disclosure by statute or regulation, or which contain sensitive personal information, trade secrets, research, development, or business/commercial information that justifies protection from disclosure. The certification shall be made concurrently with the disclosure of the documents,

using the form attached hereto at **Attachment A**, which shall be executed subject to the standards of Rule 11 of the South Carolina Rules of Civil Procedure. Information or documents which are or have been publicly available may not be designated as CONFIDENTIAL.

4. **Depositions.** Portions of depositions shall be deemed CONFIDENTIAL only if designated as such when the deposition is taken or within seven business days after receipt of the transcript by the designating party's attorney. Such designation shall specify the portions to be protected, by page and line numbers.

5. **Protection of Confidential Material.**

(a) **General Protections.** Documents designated CONFIDENTIAL under this Order shall not be used or disclosed by the parties or counsel for the parties, or any other persons identified below (*See Section ¶ 5.b.*), for any purposes whatsoever, other than preparing for and conducting the instant litigation (including any appeal in this litigation).

(b) **Limited Third Party Disclosures.** The parties and counsel for the parties shall not disclose or permit the disclosure of any documents designated CONFIDENTIAL under the terms of this Order to any other person or entity except as set forth in subparagraphs (1)-(5) below, and then only after the person to whom disclosure is to be made has executed an acknowledgment (in the form set forth at **Attachment B** hereto), that he or she has read and understands the terms of this Order and is bound by it. Subject to these requirements, the following categories of persons may be allowed to review documents which have been designated CONFIDENTIAL pursuant to this Order:

- (i) counsel and employees of counsel for the parties who have responsibility for the preparation and trial of the lawsuit;
- (ii) parties and employees of a party to this Order, but only to the extent that prior to disclosure, counsel shall certify that the specifically named individual's assistance is necessary to the conduct of the litigation;

- (iii) court reporters engaged for depositions and those persons, if any, specifically engaged for the limited purpose of making photocopies of documents;
- (iv) consultants, investigators, or experts (hereinafter referred to collectively as "experts") employed by the parties or counsel for the parties to assist in the preparation and trial of the lawsuit; and
- (v) other persons only upon consent of the producing party or upon Order of the Court, and on such conditions as are agreed to or Ordered.

Nothing contained in this paragraph 5 is intended to or shall prevent counsel for any party from questioning a deponent about a document designated CONFIDENTIAL pursuant to this Order. In this event, counsel shall comply with the provisions of paragraph 4 above regarding designating appropriate portions of the subject deposition(s) CONFIDENTIAL. Further, Attachment B need not be obtained from the deponent prior to counsel questioning the deponent regarding the subject document(s).

(c) **Control of Documents.** Counsel for the parties shall take reasonable efforts to prevent unauthorized disclosure of documents designated as Confidential pursuant to the terms of this Order. Counsel shall maintain the originals of the forms signed, pursuant to Paragraph 5(b), by persons acknowledging their obligations under this Order.

(d) **Copies.** All copies, duplicates, extracts, summaries or descriptions (hereinafter referred to collectively as "copies"), of documents designated as CONFIDENTIAL under this Order or any portion of such a document, shall be immediately affixed with the designation "CONFIDENTIAL" if the word does not already appear on the copy. All such copies shall be afforded the full protection of this Order.

6. **Filing of Confidential Materials.** In the event a party seeks to file any material that is subject to protection under this Order with the Court, that party shall take appropriate action to insure that the documents receive proper protection from public disclosure, including:

(1) filing a redacted document with the consent of the party who designated the document as confidential; (2) where appropriate (*e.g.* in relation to discovery and evidentiary motions), submitting the documents solely for *in camera* review; or (3) where the preceding measures are not adequate, seeking permission to file the document under seal pursuant to the procedural steps set forth in the applicable South Carolina Rules of Civil Procedure. Absent extraordinary circumstances making prior consultation impractical or inappropriate, the party seeking to submit the document to the Court under seal shall first consult with counsel for the party who designated the document as confidential to determine if some measure less restrictive than filing the document under seal may serve to provide adequate protection. This duty exists irrespective of the duty to consult on the underlying motion. Nothing in this Order shall be construed as a prior directive to the Clerk of Court to allow any document be filed under seal. The parties understand that documents may be filed under seal only with the permission of the Court, after proper Motion pursuant to any applicable South Carolina Rules of Civil Procedure.

(7) **Greater Protection of Specific Documents.** No party may withhold information from discovery on the ground that it requires protection greater than that afforded by this Order, unless that party moves for an Order providing such special protection.

(8) **Challenges to Designation as Confidential.** Any CONFIDENTIAL designation is subject to challenge. The following procedures shall apply to any such challenge.

(a) The burden of proving the necessity of a CONFIDENTIAL designation rests with the party asserting confidentiality.

(b) A party who contends that documents designated CONFIDENTIAL are not entitled to confidential treatment shall give written notice to the party who affixed the designation of the specific basis for the challenge. The party who so designated the documents

shall have fifteen (15) days from service of said written notice to determine if the dispute can be resolved without judicial intervention and, if not, to move for an Order confirming the CONFIDENTIAL designation.

(c) Notwithstanding any challenge to the designation of documents as confidential, all material previously designated CONFIDENTIAL shall continue to be treated as subject to the full protections of this Order until one of the following occurs:

- (i) the party who claims that the documents are CONFIDENTIAL withdraws such designation in writing;
- (ii) the party who claims that the documents are CONFIDENTIAL fails to move timely for an Order designating the documents as confidential as set forth in paragraph 8.b. above; or
- (iii) the court rules that the documents should no longer be designated as confidential information.

(d) Challenges to the confidentiality of documents may be made at any time, and are not waived by the failure to raise the challenge at the time of initial disclosure or designation.

9. Treatment on Conclusion of Litigation.

(a) **Order Remains in Effect.** All provisions of this Order restricting the use of documents designated CONFIDENTIAL shall continue to be binding after the conclusion of the litigation, unless otherwise agreed or ordered.

(b) **Return of CONFIDENTIAL Documents.** Within thirty (30) days after the conclusion of the litigation, including conclusion of any appeal, all documents treated as confidential under this Order, including copies as defined above (*See* Section ¶ 5.d.) shall be returned to the producing party, unless: (1) the document has been entered as evidence or filed (unless introduced or filed under seal); (2) the parties stipulate to destruction in lieu of return; or (3) as to documents containing the notations, summations, or other mental impressions of the

TOR
2/20

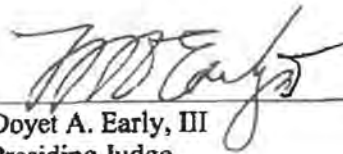
receiving party, that party elects destruction. Notwithstanding the above requirements to return or destroy documents, counsel may retain attorney work product, including an index which refers or relates to information designated CONFIDENTIAL, so long as that work product does not duplicate verbatim substantial portions of the text of confidential documents. This work product continues to be CONFIDENTIAL under the terms of this Order. An attorney may use his or her work product in a subsequent litigation, provided that its use does not disclose the confidential documents.

10. **Order Subject to Modification.** This Order shall be subject to modification on motion of any party or any other person who demonstrates an adequate interest in the matter to intervene for purposes of addressing the scope and terms of this Order. The Order shall not, however, be modified until the parties shall have been given notice and an opportunity to be heard on the proposed modification.

11. **No Judicial Determination.** This Order is entered based on the representations and agreements of the parties and for the purpose of facilitating discovery. Nothing herein shall be construed or presented as a judicial determination that any specific document or item of information designated as CONFIDENTIAL by counsel is subject to protection under Rule 26(c) of the South Carolina Rules of Civil Procedure, or otherwise, until such time as a document-specific ruling shall have been made by the Court.

12. **Persons Bound.** This Order shall take effect when entered and shall be binding upon the above named Plaintiffs and Defendant, and their respective legal counsel.

IT IS SO ORDERED.



Doyet A. Early, III
Presiding Judge

1-24, 2017
Bombay, South Carolina.

**ATTACHMENT A
CERTIFICATION BY COUNSEL OF DESIGNATION
OF INFORMATION AS CONFIDENTIAL**

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FOR THE FIFTH CIRCUIT

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

Civil Action No. 2010-CP-40-4900

2011 FEB - 1 AM 10: 05
SEARCHED
SERIALIZED
INDEXED
FILED
CLERK OF COURT
C.C.P. & S.S.

and

**CERTIFICATION BY COUNSEL OF
DESIGNATION OF INFORMATION AS
CONFIDENTIAL**

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

Adele J. Pope,

v

Defendant

Documents produced herewith [whose bates numbers are listed below (or) which are listed on the attached index] have been marked as CONFIDENTIAL subject to the Confidentiality Order entered in this action.

By signing below, I am certifying that I have personally reviewed the marked documents and, in good faith believe, based on that review, that they are properly subject to protection under the terms of Paragraph 3 of the Confidentiality Order.

Date: [date Attachment A signed]

[Signature of Counsel [s/name]]
Signature of Counsel

[Printed Name of Counsel [A]]
Printed Name of Counsel

**ATTACHMENT B
ACKNOWLEDGMENT OF UNDERSTANDING
AND AGREEMENT TO BE BOUND**

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

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

2011 FEB -1 AM 10:05
RICHLAND COUNTY
FILED
JENNIFER S. BROWN
Clerk & Sec.

**ACKNOWLEDGMENT OF
UNDERSTANDING AND AGREEMENT
TO BE BOUND**

v.

Adele J. Pope,

Defendant

The undersigned hereby acknowledges that he or she has read the Confidentiality Order in the above captioned action, understands the terms thereof, and agrees to be bound by such terms. The undersigned submits to the jurisdiction of the above Court in matters relating to the Confidentiality Order, and understands that the terms of said Order obligate him/her to use discovery materials designated CONFIDENTIAL solely for the purposes of the above-captioned action, and not to disclose any such confidential information to any other person, firm or concern.

The undersigned acknowledges that violation of the Stipulated Confidentiality Order may result in penalties, potentially including contempt of court.

Name: [undersigned name [att B]]

Employer: [Employer [att B]]

Business Address: [Business Address [att B]]

Date: [date Attachment B signed]

[Signature [attachment B]]

Signature

**ATTACHMENT C
CERTIFICATION OF COUNSEL OF NEED
FOR ASSISTANCE OF PARTY/EMPLOYEE**

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

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

2011 FEB -1 AM 10:05
JEROME T. G. S.
C.C.P. & G.S.
CLERK OF COURT
RICHLAND COUNTY

**CERTIFICATION OF COUNSEL OF
NEED FOR ASSISTANCE OF
PARTY/EMPLOYEE**

Adele J. Pope,

v.

Defendant

Pursuant to the Confidentiality Order entered in this action, most particularly the provisions of Paragraph 5.b.2., I certify that the assistance of [name, employer, and address of assistant [att C]] is reasonably necessary to the conduct of this litigation, and that this assistance requires the disclosure to this individual of information which has been designated as CONFIDENTIAL.

I have explained the terms of the Confidentiality Order to the individual named above and will obtain his or her signature on an "Acknowledgment of Understanding and Agreement to be Bound" prior to releasing any confidential documents to the named individual. I will disclose only such confidential documents as are reasonably necessary to the conduct of the litigation.

Date: [date Attachment C signed]

[Signature [attachment C]]
Signature

EXHIBIT C

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

For the Pro Se Plaintiff(s):
ADELE J. POPE, Attorney/Esquire
LAW OFFICE OF ADELE J. POPE, PC
1228 Walnut Street
Newberry, South Carolina 29108
adele@popelawfirm.com

For the Defendant(s):
J. EMORY SMITH, JR., Attorney/Esquire
OFFICE OF THE ATTORNEY GENERAL, STATE OF SOUTH
CAROLINA
Rembert Dennis Building, 5th Floor
1000 Assembly Street
Columbia, South Carolina 29201
ESmith@scag.gov

WILLIAM G. NEWSOME, III, Attorney/Esquire
NEXSEN PRUET ADAMS KLEEMEIER, LLC
1441 Main Street, Suite 1500
Columbia, South Carolina 29201
bnewsome@nexsenpruet.com

MARK V. GENDE, Attorney/Esquire
SWEENY WINGATE & BARROW, P.A.
1515 Lady Street
Columbia, South Carolina 29201
MVG@SWBLAW.com
(Representing Plaintiffs of Richland Case 4900)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CONTENTS

(Deposition of Robert Cook)

	Page
Exhibit Index	3
Examination by Ms. Pope	5
Certificate of Reporter	85
Verification Sheet	86
Errata Page(s)	87

- - - - -

EXHIBIT INDEX

Exhibits	Page
Cook 1 through 10 - premarked	4
Various Documents	
Cook 11 - U.S. Code 7206	38
Cook 12 - 07/30/2008 Letter	49

- - - - -

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

This deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.

- - - - -

The reading and signing of this deposition is reserved by the deponent and counsel for the respective parties.

- - - - -

(Whereupon, Various Documents were pre-marked Exhibit Nos. Cook 1 through 10, respectively, for identification.)

- - - - -

Whereupon,

ROBERT COOK, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified and deposed as follows:

Court Reporter: State your full name for the record, please.

Witness: Robert D. Cook.

- - - - -

MR. SMITH: May we get on the record about reading and signing at this point before we forget it later?

1 MS. POPE: Yes. If we could, if he wants
2 to waive being instructed about the deposition,
3 also.

4 MR. SMITH: I'm not sure what you mean by
5 that.

6 MS. POPE: The deposition process.

7 MR. SMITH: I think Bob is familiar with
8 the process of the deposition being conducted
9 pursuant to the Rules of Civil Procedure.

10 THE WITNESS: Yes.

11 MR. SMITH: Under those rules, you have
12 the right to read, do an errata sheet, if
13 necessary, and sign your deposition. Do you
14 wish to do that?

15 THE WITNESS: Yes.

16 MS. POPE: My question, Bob, was do you
17 want me to explain the deposition process to
18 you?

19 THE WITNESS: That is not necessary.

20 DIRECT EXAMINATION

21 BY MS. POPE:

22 **Q. Would you state your full name.**

23 A. Robert D. Cook.

24 **Q. And you go by, "Bob"?**

25 A. I do.

1 Q. You hold what office with the Office of the
2 Attorney General?

3 A. The Solicitor General.

4 Q. And can you describe what type of office is.

5 A. Yes. The Solicitor General, under General Wilson,
6 is the legal advisor primarily to the Attorney
7 General. Also, we participate in some appeals to
8 the appellate courts, write briefs, and we deal
9 with policy in terms of the Attorney General's
10 office.

11 Q. How long have you held the position of Solicitor
12 General?

13 A. That's a tough one. It's over two years, I
14 believe. This is the first -- I hold the first
15 position in the office.

16 Q. And so you were appointed Solicitor General in
17 approximately 2015?

18 A. Yes.

19 Q. Prior to that, what position did you hold?

20 A. Deputy Attorney General and I also had a more
21 informal title of special counsel.

22 Q. And were you Deputy Attorney General and special
23 counsel at all times between -- for the Attorney
24 General at all times between 2007 and
25 approximately 2015 when you became Solicitor

1 Q. Mr. Cook, did you and I have a discussion about
2 this very problem in March of 2013?

3 MR. SMITH: Object to form the question
4 and scope.

5 MR. NEWSOME: Same objections.

6 MR. GENDE: Same.

7 A. I know we met with you and Mr. McIntosh and
8 General Wilson and I believe myself. I think you
9 had asked not to have Mr. Jones there I believe as
10 I remember. I can't remember every detail of our
11 discussion, but I'm sure you raised it.

12 Q. Did I raise my concern that valuing James Brown's
13 music empire at about 4.7 million would slash
14 James Brown's charity to almost nothing?

15 MR. SMITH: Object to the form and scope.

16 MR. NEWSOME: Same objection.

17 MR. GENDE: Same objection.

18 A. I believe you did.

19 Q. Did you get the idea from that meeting that I was
20 there to be greedy and get myself a big fee?

21 MR. SMITH: Object to the form and scope.

22 MR. NEWSOME: Same objection.

23 MR. GENDE: Same.

24 A. No, I did not.

25 Q. Did I seem to sincerely want to save the James

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Brown "I Feel Good" Trust?

MR. SMITH: Object to the form and scope.

MR. NEWSOME: Same objection.

MR. GENDE: Same objection.

A. **Yes, you did.**

Q. **Did you tell me at that meeting that you were hearing some of the things I said for the first time?**

MR. SMITH: Form and scope objection.

MR. NEWSOME: Same objection.

MR. GENDE: Same objection.

A. I don't remember every detail in the meeting, but I remember you saying some of those things and both myself and General Wilson said that.

Q. **Do you recall my concern about Mr. Bauknight's having filed documents with the IRS to claim that Tommie Rae was the spouse and not changing them as a result of the decision?**

MR. SMITH: Object to form and scope.

MR. NEWSOME: Same objections.

MR. GENDE: Same objections.

A. I can't particularly recall that, but -- you know, I don't doubt what you're telling me.

Q. **Might I have told you that it could cause terrible problems for the 900 copyrights James**

1 **Brown gave the "I Feel Good" Trust?**

2 MR. SMITH: Object to form and scope.

3 MR. NEWSOME: Same objection.

4 MR. GENDE: Object to the form and scope.

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?**

14 MR. SMITH: Object to the form and scope.

15 MR. NEWSOME: Same objections.

16 MR. GENDE: Object to the form and scope.

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.**