STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III Circuit Court Judge

Case No. 2007-CP-02-0122; Case No. 2008-CP-02-0872;
Case No. 2008-CP-02-0322; Case No. 2010-CP-02-0721;
Case No. 2012-CP-02-1059; Case No. 2008-CP-02-1426;
Case No. 2008-CP-02-1712; Case No. 2008-CP-02-2127;
Case No. 2008-CP-02-1556; Case No. 2008-CP-02-1557;
Case No. 2008-CP-02-1758; Case No. 2008-CP-02-1759;
Case No. 2008-CP-02-1647; Case No. 2013-CP-02-1348;
Case No. 2009-CP-02-1810;
Appellate Case No.2013-002582

Alan Wilson, in his Capacity as Attorney General of South Carolina; and others, ... Plaintiffs,

v.

Albert H. Dallas and others, ... Defendants.

Of whom Adele J. Pope, Individually and on behalf of Others under South Carolina Trust Code Section 62-7-405, is the.....Appellant,

And Terry Brown, Forlando Brown, James B., David G. Cannon, Albert H. Dallas and Tommie Rae Hynie are Respondents,

And Alan Wilson in his Capacity as Attorney General of South Carolina, Deanna J. Brown Thomas and Robert L. Buchanan, Jr., are Additional Interested Persons.

IN RE:

The Estate of James Brown and The James Brown 2000 Irrevocable Trust u/a/d August 1, 2000

AFFIDAVIT OF ADELE J. POPE IN SUPPORT

MEMORANDUM RELATED TO APPEALABILITY

PERSONALLY APPEARED BEFORE ME, Adele J. Pope, who, being duly sworn, deposes and says:

1. I am informed and believe that David C. Sojourner is one of the finest trust and estate lawyers in the state. I believe, however, that Mr. Sojourner has been placed in the same position Robert L. Buchanan, Jr. and I were placed in from August 12, 2008 until May 8, 2013:

> A. Go along with Russell Bauknight, Tommie Rae Hynie, Forlando Brown and David Bell, Esquire; or
>
> B. Face lawsuits, fabricated claims and humiliation.

2. James Richardson, Esquire served *pro bono publico* for four years to put the South Carolina Supreme Court in a position to restore $50 million to The James Brown "I Feel Good" Trust. It did so on May 8, 2013.

3. Since May 8 I have dedicated almost all of my professional time *pro bono publico* to make sure the $91 million now ready to be used for scholarships for needy students stay in the "I Feel Good" Trust.

4. I am informed and believe that I have special interest and expertise as an "Other" to enforce the "I Feel Good" Trust under S.C. Trust Code § 62-7-405 because:

> a. The service is without pay and benefits the "I Feel Good" Trust.
>
> b. AG Wilson has withdrawn from the James Brown Aiken cases and moved to be dropped as a party to the Richland County "Wingate Suit" where Russell Bauknight still serves as agent for Tommie Rae Hynie and her son.
>
> c. Louis Levenson, Esq. announced on May 29, 2009 an intention

to reinstate the 2008 settlement which would pay him about $9 million from the "I Feel Good" Trust. He did so even though all of his clients now admit that Brown wanted to establish the "I Feel Good" Trust.

d. Hynie's counsel announced on May 29 and intention to reinstate the 2008 settlement, which would have paid him about $10 million from the "I Feel Good" Trust and Hynie $11+ million.

e. Mr. Bauknight announced on August 20, 2013 his intention to reinstate the 2008 settlement.

f. James Brown's backup 1999 Will – which, like the 2000 Will, leaves Brown's entire music empire to the "I Feel Good" Trust – is in jeopardy of becoming void on December 25, 2016 under the S.C. Probate Code's 10-year rule and Mr. Bauknight is not protecting it.

5. I accept that the South Carolina Supreme Court, with incomplete information about our service, chose to replace Robert Buchanan, Jr. and me in the *Wilson v. Dallas* decision and make strong statements about us.

6. James Richardson, Esquire, who served *pro bono publico* for 4 years to protect the "I Feel Good" Trust, was never asked to – nor did he – raise a hand to protect Mr. Buchanan and me, individually in the appeal.

7. The job of our small team was to put the S.C. Supreme Court in a position to restore $50 million to the "I Feel Good" Trust. Fortunately, it did so.

8. With Mr. Richardson's *pro bono publico* service as lead appellate counsel, the cost of 5 years of defense – including seven days of hearing in the circuit court – was about $200,000.

9. I do not believe that the *Wilson v.Dallas* decision:

a. Deprives me of my rights under the S. C. Freedom of Information Act ("FOIA");

b. Deprives me of my rights to participate in all James Brown hearings

which threaten my property rights under my allowed and court-approved $1.4 million claim, with interest at the legal rate since 2009,

c. Deprives me of a right acting *pro bono publico,* to serve the "I Feel Good" Trust in any capacity other than trustee, including as an expert on Probate/Copyright issues and as an "Other" under S.C. Trust Code § 62-7-405 with both special interest and special knowledge.

d. Deprives me of all customary rights accorded any creditor who has not been paid, as I have not been.

e. Deprives me of my right to answer, counterclaim and obtain offset from Terry Brown, Hynie, or Mr. Bauknight as their agent, where they sued Mr. Buchanan and me in 2010 in Richland County (the "Wingate Suit") for tens of millions of dollars to stop the *Wilson v. Dallas* appeal.

f. Deprives me of the right to urge the Aiken County Court to stay the Aiken proceedings and complete the Wingate Suit – where the issue of whether Hynie is Brown's spouse will be ready for a merits determination as soon as her deposition is concluded.

g. Deprives Mr. Buchanan and me of our right to seek judgment and offset in the Federal Court against the Estate and 2000 Trust shares of Terry and Forlando Brown in the frivolous suit brought by David Bell, Esq. and Powell Goldstein ("PG") on January 2, 2008 to enjoin the 2000 Trust from taking any action until the Cannon Trustees were reinstated; and continued for 4 years until the Complaint was dismissed in 2012.

h. Deprives Brown's real heirs – whose identity under the Peeples DNA Protocol is inexpensive to determine and beneficial to the "I Feel Good" Trust – and their children of their rights under S.C. Law or the Federal Copyright Act in the pending Levenson suit seeking an "Administration in Intestacy."

i. Deprives these real heirs — and the "I Feel Good" Trust – of the right under the March 2008 Order of the Honorable Doyet A. Early, III, to proceed with an Heirs Determination even though James Brown had a valid 2000 Will and a valid backup 1999 Will.

i. Allows Mr. Bauknight to ignore real heirs while serving as agent for the only person claiming to be a child of James Brown born in the 22 years between Brown's vasectomy and his death, who refuses DNA testing under the Estate's official Peeples DNA protocol.

k. Prevents Brown's son Michael, incarcerated in California and seeking DNA testing since 2007, from having a guardian *ad litem* ("GAL") and being made a necessary party to the Levenson Suit .

l. Precludes my *pro bono publico* service as GAL for Michael, James Curtis and the Doe Defendants, whose proper identification will help protect the "I Feel Good" Trust.

m. Precludes my protection of my own property interest, and those of the "I Feel Good" Trust under Orders issued without proper service, notice or hearing, including the October 1 Order now on appeal and the void (and undisclosed) *ex parte* October 10, 2013 Order of the Honorable Sue H. Roe, attached as Exhibit A. [This order was never served on most Interested Persons. I found it by accident last week.]

10. I am happy that I am in a position to serve *pro bono publico* for as long as it takes to help insure that needy students will enjoy the magnificent gift James Brown left to them.

11. I believe that I am fully qualified to do so, and have special knowledge.

12. My probate court experience and knowledge about James Brown's decades of music, with study, have allowed me to come to understand the relationship between State Probate Law and Federal Copyright Act Termination provisions which will be important in future decades for charities which hold royalties and other copyrights.

13. Academics claim, and I believe, that only a handful of entertainment attorneys – and few estate/trust attorneys – understand this emerging area of practice as it relates to the overlap of the two specialties.

14. As the attached draft article Jeffrey Smith and I circulated in April 2011 for review by professionals demonstrates, this is an important and emerging area of the law for private foundations. [Exhibit B]

15. Mr. Smith is the former president of the Clemson Philosophy Club; a music

enthusiast; a graduate of Georgetown Law Center; a former patent examiner; and a resident of my hometown of Newberry.

16. Out of respect for the Court, Mr. Smith and I did not finalize or officially publish "Private Foundations, ..." while the *Wilson v.Dallas* appeal was pending.

17. We did, however, file it in the Wingate Suit and Aiken County to help refute the unfounded claim that Mr. Buchanan and I had intentionally overstated the assets.

18. Right after the first *Wilson v. Dallas* decision in February 2013, I asked to meet with Attorney General Wilson, and he and his staff met with me.

19. While AG Wilson was very polite, he did not accept my suggestion to:

a. Quietly replace Mr. Bauknight;

b. Correct the $4.7 million value and claimed Marital Deduction on the Estate Tax Return (which may impair scholarship distributions for years.)

c. Ask the Court to reinstate Mr. Buchanan and me, with Mr. Buchanan to resign immediately – as he wished to do.

d. According to our filed appointment of successors and the Will/2000 Trust, appoint Ronald Stanley, Esq., and former Warner Music Executive Ray Gonzalez. I would serve only until the Will challenges and Hynie claim ended.

e. If possible, a permanent family seat on the "I Feel Good" Foundation would be held, on a rotating basis, by descendant of James Brown.

20. While he did not adopt my suggestion, AG Wilson did call personally to tell me the State/AG was seeking to be dropped as a party to the Wingate Suit. He notified the S.C. Supreme Court of this.

21. I do not believe that there is any basis for AG Wilson to oppose an "Other" working *pro bono publico* to protect the "I Feel Good" private foundation where the Settlor is dead, the AG has withdrawn, the "Other" has special interest and expertise,

and the Trustee is openly committed to reinstating a settlement which will take $50 million from the charity.

22. For two years Mr. Bauknight – purporting to speak for AG Wilson -- accused Mr. Buchanan and me of intentionally overstating Brown's worldwide music empire by $79 million for the improper purpose of obtaining a $5 million PR/Trustee commission.

23. 18 U.S. C. §7206, as I read it, makes overstating the value on a sworn estate tax return by more than 15 times for an improper purpose a felony.

24. I believe I have the right to participate in any proceeding where this, and other, career-threatening false claims are made against me, or Mr. Bauknight is lauded for his proper handling of the Estate/2000 Trust. I was denied that right as to the Orders which are the subject of this appeal by Judge Early's June 13 Orders enjoining me from participating in the hearing and directing the Court not to accept any filings by me.

25. The Petitions resulting in the appointment orders – which orders made findings about the propriety of the service of both Mr. Bauknght and his counsel — were not served on any of the following:

a. Creditors Buchahan, Pope, Hayes, Bailey, Dallas

b. DNA-proven Heirs of James Brown acknowledged by the Estate/2000 Trust after the passed the Peeples DNA Protocol:

(1) La Rhonda; (2) Jeanette; (3) Nicole

c. Child of Brown's first marriage: (4) Lisa

d. Child of James Brown who has launched a national campaign to save the "I Feel Good" Trust:

(5) Daryl Brown;

e. Claimed children of James Brown requesting and awaiting DNA testing under the Peeples Dna Protocol who have not yet been been DNA tested or made parties to Case 2008-CP-02-0872 which requests an "Administration in Intestacy", even though Mr. Bauknight has known of their requests for years.

(6) Michael Deon Brown (Incarcerated in California); (7) James Curtis

f. The Advisory Board of the James Brown 2000 Irrevocable Trust.

g. Ronald Stanley, Esq. and Ray Gonzalez, Esq., the named successors in documents on file in Aiken County.

h. Anyone to protect the 1999 Will in the unlikely event that the 2000 Will is set aside in the Levenson Suit.

i. All "Others" who want to protect the "I Feel Good" Trust.

26. Mr. Buchanan and I, in our official capacity, offered the 1999 Will for alternate probate in the Levenson Suit. Ten years after Mr. Brown's death – on December 25, 2016 – the 1999 Will cannot be offered for probate unless someone continues to protect it under our filing.

27. The 1999 Will, like the 2000 Will, is one of four documents executed over 2 years that make Brown's estate plan ironclad.

28. In the June 13, 2013 Orders, subject to a separate appeal, Judge Early enjoined Mr. Buchanan and me from participation in actions which directly affect us; directed the Clerk to remove my unheard motions from the public records; and directed her not to accept future filings.

29. I believe that Judge Early's actions in those orders and in the hearing held on September 4 orders on appeal violate my Due Process Rights.

30. The Orders make a material incorrect finding that all Interested Persons had

proper notice. This is simply not the case. They did not even get the pleadings.

31. I believed that the Orders are immediately appealable because they are a final determination despite the title; they constitute an injunction; they were issued without Due Process based on Petitions that were never served; they involve the merits because unsupported findings about Bauknight and his counsel finally determine substantial parts of pending James Brown Aiken cases. They also finally place Brown's backup 1999 estate plan in permanent jeopardy under the 10-year rule and adversely and finally deny and determine some of the rights of Brown's real heirs, including an incarcerated one.

FURTHER DEPONENT SAYETH NOT.

Adele J. Pope

SWORN TO BEFORE ME this 17th day of December, 2013

(L.S.)

Notary Public for South Carolina
My commission expires: 10/23/2022

10.1e.2013 Exhibit A

Liz Godard
C.C.P.&G.S.
Anita Knoepfle
Deputy Clerk

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

IN THE PROBATE COURT

CASE NO. 2007-ES-02-0055

CASE NO. 2008-CP-02-164

IN RE:

THE ESTATE OF JAMES BROWN A/K/A JAMES JOSEPH BROWN

INTERIM ORDER APPOINTING LIMITED SPECIAL ADMINISTRATOR

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE IN THIS COURT WITNESS MY HAND AND SEAL OF THE COURT THIS 10th DAY OF Oct A.D. 2013
Sue H. Roe
JUDGE OF PROBATE FOR AIKEN COUNTY, S.C.
BY L. Lewis CLERK

This matter comes before the Probate Court on Petition for the Appointment of Limited Special Administrator, whereby this Court is requested pursuant to applicable South Carolina law, including but not limited to S.C. Code Ann. § 62-3-614 and S.C. Code Ann. § 62-3-617, to appoint David C. Sojourner, Jr. as Limited Special Administrator of the Estate of James Brown (the "Estate"). Mr. Sojourner has been appointed by Order of the Aiken County Circuit Court dated October 1, 2013 (hereafter the "Circuit Court Order") as Limited Special Trustee of the James Brown August 1, 2000 Irrevocable Trust Agreement (the "Trust").

BACKGROUND

In *Wilson v. Dallas*, 403 S.C. 411, 450, 743 S.E.2d 746, 768 (2013) (the "Opinion"), the South Carolina Supreme Court affirmed in part, reversed in part, and remanded the Circuit Court's May 26, 2009 Order regarding the Estate and Trust. On May 29, 2013, the Circuit Court held a status conference concerning the Opinion and, by Order dated June 13, 2013, required all applications of those interested in serving as fiduciaries of the Estate and Trust to be made within 45 days of the date of that Order (July 29, 2013). On September 4 and 11, 2013, the Circuit Court conducted a hearing to receive testimony from all applicants for fiduciary positions in the Estate and the Trust. Mr. Sojourner appeared at the September 4, 2013 hearing before the Circuit Court

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Filed: 10-10-2013
Sue H. Roe
Judge of Probate
By: L. Lewis

and provided testimony. Russell L. Bauknight, having filed the Petition of Appointment of Limited Special Administrator, also provided testimony at the September 4, 2013 hearing.

After conducting the hearing, the Circuit Court appointed Russell L. Bauknight as Personal Representative of the Estate and Trustee of the Trust by its Order dated October 1, 2013. The Circuit Court, by the same Order, appointed David C. Sojourner, Jr. as Limited Special Trustee of the Trust.

This Court takes Judicial Notice of the proceedings before the Circuit Court, as provided in the transcripts of record, along with the record of testimony, and hereby adopts and incorporates the findings and conclusions of the Circuit Court. All proper parties were provided the opportunity to object and be heard at the Circuit Court hearing. This Court incorporates the record of the Circuit Court hearing in this Order and relies thereon in order to further promote judicial economy and to avoid the cost and inefficiencies of conducting a second hearing with the same parties and the same issues.

FINDINGS OF FACT

This Court has carefully reviewed the Will, the Petition for Appointment of Limited Special Administrator filed on behalf of Mr. Sojourner, all related filings, and has considered the testimony provided by Mr. Sojourner, Mr. Bauknight and others in the hearing on September 4, 2013. James Brown passed away nearly seven years ago on December 25, 2006. These factual findings and this Interim Order are all made in an effort to expedite the efficient administration of the Estate, based on the overarching goal of creating an atmosphere in which a prompt resolution of the various contested claims and a final resolution of Estate matters can occur.

This Court incorporates and adopts the findings of fact of the Circuit Court's Order dated October 1, 2013, and specifically finds:

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1. Russell L. Bauknight has continuously served as a fiduciary to the Estate, both in his role as Personal Representative since May 26, 2009 and his continuing role as Special Administrator, with general fiduciary powers, since August 6, 2009, and there has been no lapse in his authority or fiduciary service since appointment.

2. This Court is aware that certain parties have raised the issue of whether a conflict of interest exists with respect to Mr. Bauknight's continued role as fiduciary of the Estate in the ongoing spousal elective share matter, the omitted spouse matter, the omitted child matter, and the legal challenges to the validity of the Will and Trust that were involved in the settlement agreement (collectively, the "Will and Trust Challenges"). This Court does not believe that a conflict of interest exists. Mr. Bauknight has testified that he has no conflict of interest and that he is willing and capable of fully defending Mr. Brown's Estate plan. This Court has weighed that testimony and finds along with the Circuit Court that neither Mr. Bauknight, nor his counsel, has any conflict of interest that would prevent them from vigorously defending or prosecuting actions on behalf of the Estate and Trust. While this Court finds that no conflict of interest exists, out of an abundance of caution and in order to avoid any appearance of impropriety and to promote the efficient and speedy administration of the Estate, this Court finds that it is prudent to appoint an individual to serve as Limited Special Administrator solely, specifically, and exclusively for the purpose of defending the Estate against the claims made in the Will and Trust Challenges until final resolution thereof.

3. David C. Sojourner, Jr. has been practicing in the area of estate and gift planning and probate administration for more than twenty-six years, and is certified as a specialist in estate planning and probate law and in tax law by the South Carolina Supreme Court. Since 2001, Mr. Sojourner has been selected as a member of the American College of Trust and Estate Counsel.

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and has had specialty training in mediation of issues related to estates, including family disputes. Additionally, Mr. Sojourner has served as a fiduciary in the past and has counseled clients on their obligations and duties in a position as fiduciary. Mr. Sojourner has agreed to serve, so long as his role is limited to defending the Will and Trust Challenges on behalf of the Estate and his law firm of Adams and Reece LLP can represent him in that role. Given his experience, in addition to the resources of a 300-attorney law firm, Mr. Sojourner is well-suited to serve in the role as Limited Special Administrator.

4. Appointing a Limited Special Administrator to defend the Estate against the claims made in the Will and Trust Challenges provides structured and efficient administration, complies with sound judicial economy, and allows Mr. Bauknight the ability to manage all other aspects of estate administration.

5. At this time, this Court finds that it is in the best interests of the Estate, while Mr. Bauknight continues to serve as Personal Representative and oversees the Estate administration, that Mr. Sojourner be appointed as the Limited Special Administrator to oversee the Will and Trust Challenges and to defend the Estate plan against the claims made in the Will and Trust Challenges, and that he serve in such capacity until the conclusion of the litigation involved in the Will and Trust Challenges.

6. This Court is mindful of the practical administration problems the Estate has encountered as a result of the history of the prior and multiple fiduciary appointments. In an effort to avoid the recurrence of such problems, this Court finds, at this time, it in the best interests of the Estate to leave Mr. Bauknight's appointment as Special Administrator with general fiduciary authority undisturbed. That appointment shall continue until further order of the Court.

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CONCLUSIONS OF LAW

This Court incorporates and adopts the conclusions of law contained in the Circuit Court's Order dated October 1, 2013, and specifically concludes as follows:

1. I find that this Court has jurisdiction to hear this matter and that venue is proper. All of the interested parties have been notified of the Petition for Appointment of Limited Special Administrator of the Estate and have been given an opportunity to oppose the petition filed on behalf of Mr. Sojourner.

2. S.C. Code Ann. § 62-3-614 provides that a special administrator may be appointed upon a finding, after notice and hearing, that appointment is necessary to preserve the estate or to secure its proper administration. S.C. Code Ann. § 62-3-617 provides that a special administrator so appointed has the power of a general personal representative except as limited in the order and specifically states that the appointment may be for a specified time, to perform particular acts, or on any other terms as the court may direct.

3. After careful review of the Will and Trust, the Petition for Appointment of Limited Special Administrator, the testimony proffered by Mr. Sojourner and others in the hearing on September 4, 2013, I find that the appointment of a Limited Special Administrator of the Estate at this time is necessary in order to adequately protect and preserve the Estate, and secure the Estate's proper administration.

4. In order to avoid any appearance of impropriety and to promote the efficient and speedy administration of the Estate, this Court finds it in the best interests of the Estate for Mr. David C. Sojourner, Jr. to be appointed as Limited Special Administrator solely, specifically, and exclusively for the purpose of defending the Estate against the claims made in the Will and Trust Challenges until final resolution thereof. This interim appointment is made with the requirement

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that Mr. Sojourner, in his limited capacity, shall remain independent from Mr. Bauknight, shall act with sole and absolute authority in his limited capacity, and will retain Adams and Reese LLP to represent him in the Will and Trust Challenges. Mr. Sojourner is well-qualified and willing to serve as Limited Special Administrator of the Estate.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. David C. Sojourner, Jr. is appointed as Limited Special Administrator for the Estate for the sole, exclusive, and specific purpose of defending the Estate in the Will and Trust Challenges, until final resolution thereof, and is authorized to retain Adams and Reese LLP to represent him in such matters.

2. Russell L. Bauknight's prior appointment as Special Administrator, with general fiduciary authority, shall remain undisturbed until further order of the court.

3. No bond is required to be posted in connection with these appointments.

4. This interim Order is temporary. The Court's appointment of David C. Sojourner, Jr. as Limited Special Administrator will be revisited upon conclusion of all Estate litigation involved in the Will and Trust Challenges.

AND IT IS SO ORDERED.

Sue H. Roe

The Honorable Sue H. Roe
Aiken County Probate Judge

October 10th, 2013.
Aiken, South Carolina

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of 6

STATE OF SOUTH CAROLINA	)	**IN THE PROBATE COURT**
	)	
COUNTY OF AIKEN	)	
	)	
IN RE: THE ESTATE OF JAMES BROWN	)	
	)	
CASE NO.: 2007ES02-0056	)	
	)	

CERTIFICATE OF MAILING

I, Theodora Lewis, Clerk of Probate Court, certify that on the 16th day of October, 2013 a certified copy of the foregoing Order was hand delivered to the following attorney, to be served on all interested parties:

Fred L. Kingsmore, Esq.
Attorney at Law
P.O. Box 2426
Columbia, SC 29202-2426

Theodora Lewis
THEODORA LEWIS

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[1]

God has Smiled on Me [3]

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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[1] 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.

[2] 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.

[3] 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.

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 [4]

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. [5]

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." [6]

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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[4] 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.

[5] 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.

[6] 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.]

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 [7]

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. [8]

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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[7] (Give it up) Turn it Aloose was published in 1969.

[8] 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)

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[9] must take at least take 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"[10] 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"[11] to maximize benefits for the foundation.

For James Brown, with copyrights issued over the six decades from 1956 until

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[9] 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.

[10] 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.

[11] 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.

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.

James 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.[12]

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.[13]

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

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[12] 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.

termination before 2016 -- ten years after Brown's death. [See Compilation, Brown copyrights, 1956 - 60 and 1978 - 81.]

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 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.[14]

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.[15]

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 Mernickle (3).

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[14] 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.

[15] Only one minor claimed to be a child of Brown. Through a GAL he refused official testing.

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.]

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);[16]

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 [17] 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.

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[16] 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.

[17] 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.

That changed on August 10, 2008.

"No, no, no,no (don't leave me this way)"[18]

On August 10, 2008 the AG's staff and some of the claimed heirs[19] 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.[20]

Within months, an AG staffer promised Brown's son an exclusive right to buy the James Brown assets – including his 850+ copyrights. [Ltrs. dtd. 2/39/09 and 2/30/09.]

Certain that Brown's fiduciaries could not support the August 10 deal, the AG's

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[18] "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.

[19] 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]

[20] 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.

staff sought and obtained an "independent" person to evaluate the secret agreement for the Court.

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"[21]

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

[21] This copyright to "Everybody's doing the hustle and dead on the double bump" was issued in 1975 and renewed in 2003.

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.

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.[22] 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"[23]

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.[24]

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[22] 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.

[23] The copyright to James Brown's "Almost nothing" was issued in 1979. It will not be subject to possible termination before 2014.

[24] 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

James Brown would have been rolling over in his. Between 2003 and 2006 he had earned about $9 million each year.[25]

Think (about it)[26]

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 these private individuals.

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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 in early 2007 to raise $200 million for the purchase of the James Brown assets.

[25] 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 May 2011 New York times Article, Einstein, whose publicity rights are claimed by Yeshiva University in Israel, earned more than $60 million in 2010.

[26] The copyright to "Think (about it)" was issued in 1973.

COMPILATION
Registered Copyrights of James Brown
1956 - 60 and 1978 - 81

Date of Publication/ Copyright	Description of Works	Earliest Possible Termination
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