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

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

REPLY TO RETURN TO PETITION FOR REHEARING

Appellant responds to the Return of Russell L. Bauknight to her Petition for Rehearing. Petitioner craves reference to, and stands by, her Petition as filed. She incorporates her Reply to Mr. Bauknight's Return to Motion to Hold in Abeyance

filed herewith.[1] Finally, she asks the Court to reconsider and reverse its dismissal after holding this matter in abeyance for as little as three months, to consider:

1. The record in appellate case no. 2013-00169.[2]

2. The record in appellate case no. 2014-00250.[3]

She also makes the additional responses set out herein.

I. Responses to Mr. Bauknight's Statement of the Background.

A. General Response

Mr. Bauknight states:

> The Estate of James Brown has been entangled in numerous appeals before this Court and the South Carolina Supreme Court.

A more complete statement of the Background is:

> After being entangled in appeals by James Brown's original PR/Trustees David Cannon and Albert Dallas, the Estate of James Brown was set free from the State's proposed takeover of Brown's private property and his James Brown "I Feel Good" Private Foundation by the South Carolina Supreme Court on May 8, 2013 in

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1 Without enumerating them in detail, Appellant asserts that the allegations and conclusions in the Return, in large measure, do not correctly reflect the record of the James Brown cases.

2 The Initial Brief of Appellant and designation of matter to be included in the record on appeal ("ROA") were filed February 21, 2014. Exhibit A contains a portion of the Initial Brief.

3 The Initial Brief of Appellant and designation of matter to be included in the ROA were filed February 11, 2014. Exhibit B contains a portion of the Initial Brief.

its decision of *Wilson v. Dallas.*[4]

The proposed takeover was brokered by a former Attorney General ("AG") on August 10, 2008. On January 30, 2009 Russell L. Bauknight asked the Court to approve the dismembering of Brown's estate plan. The circuit court did so on May 26, 2009.

In the AG's settlement, the State/AG, with no knowledge of its impact on the "I Feel Good" Foundation's 800+ copyrights to James Brown's songs, "stipulated" that Brown's companion Tommie Rae Hynie would be considered Brown's spouse for all purposes. Her son – not a presumed child -- would be "stipulated" to be a son without DNA testing.

The AG, Hynie and other "settling parties" contracted in the August 10 agreement to file a petition to replace PR/Trustees Robert Buchanan, Jr. and Adele Pope.

The AG's settlement came 11 days after AG McMaster had written Buchanan and Pope confirming his approval of them as permanent trustees of the "I Feel Good" Foundation. He had never challenged their status or actions as personal representatives.

The State/AG also agreed to join Hynie and the other "settling parties" to try to defeat the interests of half of Brown's known children and claimed children.

Five of Brown's then-known children were intentionally left out of the AG's agreement, even though they have rights equal to or greater under the Federal Copyright Act termination rights provisions than the settling parties.

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4 403 S.C. 411, 743 S.E. 2d 746.

B. Specific Response – The Wingate Suit Appeal

The most compelling appeal, providing essential background, is from Richland County Case 2010-CP-40-4900 (the "Wingate Suit"). It came before this Court in 2011.

On May 9, 2010 the law firm of Kenneth Wingate, Esquire ("Wingate"), sued Robert Buchanan, Jr. and Appellant for tens of millions of dollars for the State/AG and almost fifteen plaintiffs. Plaintiffs included Bauknight as agent for Hynie and many nonresidents of South Carolina.

The Wingate Suit was filed by Wingate as sole counsel for all plaintiffs. The AG was not named as counsel, and did not sign the complaint or any subsequent filing.

The Wingate Suit seeks millions of dollars from Buchanan and Appellant for conducting the *Wilson v. Dallas* appeal and other claimed wrongdoing.

Wingate moved for relief from default as to Buchanan/Appellant's counterclaims for abuse of process and other counterclaims in 2010.

The Wingate Suit is the first known tort lawsuit by an AG against his own citizens in the State in which the AG is not listed as counsel on the complaint or subsequent pleadings and a private law firm is the sole attorney for both the State and a number of non-residents.

The Court of Appeals dismissed the appeal and an accompanying writ as premature.

The Wingate Case is still pending.

One year after the *Wilson v. Dallas* decision Bauknight continues to serve as agent in the Wingate Suit for Hynie, James B., and other non-devisee, non-beneficiary contestants of Brown's estate plan..

Buchanan and Appellant contend that it was not constitutionally permissible for Wingate to represent the State/AG, nor Bauknight to speak for the State/AG, while advancing the interests of Hynie and her son.

In his March 2013 Petition for Rehearing in *Wilson v. Dallas* AG Wilson advised the Supreme Court that AG McMaster had not authorized Wingate to bring the Wingate Suit with the State/AG as a plaintiff.

AG Wilson's statement was inconsistent with the actions of Sr. Assistant AG Havird "Sonny" Jones over the preceding three years. Jones attends most of the Wingate Suit hearings. At one of the first hearings he was introduced by Wingate as one of the firm's approximately fifteen clients.

From 2011 until 2013 Bauknight and Hynie conducted a bitter fight to prevent release of the public Wingate Litigation Agreement under FOIA.[5] The Wingate Agreement would have clarified the question.

When released, it did[6].

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5 Bauknight, acting for Hynie, her son, Terry/Forlando Brown and others ,is currently seeking to intervene and prevent FOIA compliance in three separate FOIA Suits filed during the pendency of the *Wilson v. Dallas* appeal.

6 The Wingate Agreement was released in late 2013 by a federal judge in case no 3:08-cv-00014-WOB (the "Forlando Federal Suit"). It is now known Wingate had no written authorization to sue in the State's name. Bauknight had no written authority to claim he was suing "on behalf of" the State/AG. Nor were any individual plaintiffs other than Bauknight parties to the 40% contingency fee. The Wingate Agreement was signed by Bauknight, who has about 20 attorneys, Levenson, Bell and counsel for Hynie. Hynie and these lawyers expected more than $30 million

The Wingate Suit also alleged that Buchanan and Appellant had damaged the Plaintiffs by not accepting a 2007 $100 million offer to buy Brown's music empire.

While suing Buchanan/Pope for not accepting a $100 million offer, the State/AG, Bauknight and Hynie represented to the South Carolina Supreme Court that there were never any offers to buy the music empire. They also represented to the Supreme Court that the at-death value of Brown's music empire was under $4.7 million.

They represented that Buchanan and Appellant had intentionally overstated the value of the music empire by $79 million for the improper purpose of obtaining a $5 million commission.

They concealed a 2006 appraisal of the Royalties by a professional appraiser and other documents which would show the allegations were false.

C. The August 10, 2008 Settlement

Mr. Bauknight states:

> In August of 2008 ...Hynie (who purports to be the surviving spouse..), Brown's children and grandchildren and the Attorney General entered into a compromise agreement which was submitted to the circuit court for approval...Ms. Pope objected to the agreement.

A correct statement is:

> In August of 2008 Hynie, who all of Brown's acknowledged children have now confirmed was not Brown's spouse, fewer than half of Brown's DNA-proven or presumed

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from the AG's settlement.

children and one claimed-but-unconfirmed grandchild entered into a compromise agreement .

The AG and settling parties intentionally omitted, and agreed to try to defeat the interests of:

1. DNA-proven and acknowledged daughters: 1. La Rhonda; 2. Nicole; 3. Jeanette

2. Daughter from first marriage: 4. Lisa

3. Son (incarcerated in California) 5. Michael, awaiting testing under the Estate's official "Peeples DNA Protocol" since 2007.

4. Other "Doe Defendants" in the Levenson Intestacy Suit filed December 26, 2007. This included 6. James Curtis.

The AG's settlement disrupted the Estate/2000 Trust's DNA & DIGNITY program for identifying Brown's real heirs and making agreements with the most cooperative HALF – from those not challenging the estate plan – to protect the "I Feel Good" Trust's Royalties for decades[7].

With proper completion of the Peeples DNA Protocol and agreements with ONLY those omitted from the AG's 2008 agreement, the Royalties could have been secured for decades,

By 2011 and 2012 Daryl and Terry had repudiated the AG's Agreement, asking publicly that the Will and 2000 Trust be enforced.

Every fiduciary who has served James Brown other than Bauknight opposed the AG's agreement.

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7 If the Estate /"I Feel Good" Trust had not been immediately able to secure termination rights agreements with a cooperative HALF of Brown's real heirs, multiple strategies exist to otherwise protect the Royalties. See *Nine Ways to Avoid Copyright Terminations, Part I and PartII*;also see Smith, Pope, *Private Foundation, Copyright Heirs and Musical Millionaires: why the James Brown"I Feel Good" Trust doesn't...[unpublished draft, 2011]*

D. Terms of the AG's Agreement

Mr. Bauknight states:

> Under the terms of the agreement Ms. Pope was removed for good cause as the personal representative and trustee and Mr. Bauknight replaced her.

A correct statement is:

> The State/AG, Tommie Rae and others agreed:
>
> ...that a joint motion or other pleading will be filed seeking the removal of Mr. Robert Buchanan and Ms. Adele Pope as Personal Representatives of the Estate of James Brown and as Trustees of the August 1, 2000 Irrevocable Trust of James Brown, deceased and will mutually agree upon persons to appoint as successor representatives of the estate and trust...[Agr., p. 2]
>
> While they had already selected Bauknight before he gave his January 30, 2009 "independent" opinion that the AG's settlement should be approved by the Court, this part of the agreement was not disclosed. Bauknight testified he did not know who was going to be appointed the next PR/Trustee.

II. The South Carolina Supreme Court, without a complete record of the improper actions of Bauknight and Hynie which the AG condoned or overlooked, confirmed the replacement of Buchanan and Pope.

A. The Court's confirmation of replacement of Buchanan and Pope

For about $200,000 in legal fees, and headed in the final 3 ½ years by *pro bono publico* lead counsel James Richardson, Esquire, the Supreme Court was given the opportunity to – and did – void the AG's settlement. The settlement had threatened to dismember not only the "I Feel Good" Trust but seven $285,000 trusts for certain designated grandchildren.

Appellant's and Buchanan's counsel were not asked to protect them against

the mounting fabrications of Hynie and Bauknight in which two Attorneys General actively joined until March 2013.

There was no basis to give 52 ½ % of Brown's music empire to a non-wife and fewer than half of Brown's properly identified children. [Exhibit D] There was no basis to give a son ("Terry") a right of first refusal ("ROFR") to buy Brown's assets at "fair market value" and then participate in a devaluation to $4.7 million which reduced the "I Feel Good" Trust to almost nothing.

The devaluation became more troublesome in January 2011 when Bauknight and a Sr. Assistant AG became involved in the secret transfer of the ROFR from Terry to his son Forlando. [See Exhibit E]

Now Forlando – who knew that $84 million was a conservative value, and had testified that $150 million offers were available in 2008 – was placed in a position to exercise a ROFR at less than 1/15 that amount.

Bauknight, the Sr. Assistant AG and Terry/Forlando fought FOIA and other requests to keep this secret transfer secret for two years.

From 2008 until 2013 the AG simply parroted Hynie's attorneys, even though they were directly adverse to the "I Feel Good" Trust.

Mr. Bauknight continues <u>today</u> as agent for Hynie and Terry/Forlando in <u>four</u> lawsuits. One is the Wingate Suit. He has not; cannot; and will not protect Brown's estate plan.

B. Bauknight and LSA/LST Appointment Not on Proper Application

All of Bauknight's appointments, and those of the LSA have either been *ex*

parte or in direct violation of the Due Process and Probate Code rights of Brown's heirs, devisees, beneficiaries and Interested Persons who have made demand for notice.

Brown's heirs, devisees, beneficiaries and Interested Persons were not served with the Summons and Petition which led to the orders which are the subject of this appeal. Appellant is one of those who had a right to be served. So are Michael, for whom she has a pending GAL petition, and claimed son James Curtis.

Appellant was enjoined from participating or naming proposed PR/Trustees.

The Advisory Board and the nomination of Ronald Stanley, Esq. and former Warner Music executive Ray Gonzales were ignored.

The "hearing" was a non-hearing. Not a single question was allowed to be asked of Bauknight or the LST.

During the process, Bauknight concealed $563,000 he had paid Wingate in 2012 – in addition to the 40% contingency.

Even modest questioning would have revealed :

1. Bauknight's less than $4.7 million "appraisal" is wholly inconsistent with the facts, and is directly contradicted by a $42 million professional appraisal of the Royalties (without even considering the Publicity Rights) in 2006 in connection with a Royal Bank of Scotland transaction.

2. Hynie was not Brown's spouse and knew it. She, Brown and Dallas had a three-way conversation in 2006 in which it was confirmed that Hynie was a mere guest at his Beech Island mansion.

3. James B. is not Brown's son.

4. The $84 million at-death value placed on the music empire by Buchanan and Pope on the Estate Tax Return is correct and conservative.

5. Had the assets been reported at their proper value, the AG's settlement

would have generated millions of dollars in taxes.

6. The estate tax proceeding needs further reporting and adjustment because:

A. Mr. Bauknight's claim on the Return that Hynie is Brown's surviving spouse will cause the Estate/"I Feel Good" problems in Copyright Termination Rights issues and otherwise unless Corrected.

B. Mr. Bauknight's claim on the estate tax return that less than $3 million goes to the "I Feel Good" Trust – instead of the correct at-death approximately $80 million – will distort the required payments to needy students under IRS guidelines.

7. Mr. Bauknight's claim to the Supreme Court that Hynie's elective share claim was a slam dunk was inaccurate, as was the claim that she and her son control the Copyright Act terminations.

8. The AG and Mr. Bauknight knew at least by the time of the Smith/Pope draft article, *Private Foundations* in 2011 that recognition, dignity and modest contracts with the HALF of Brown's *real* heirs not contesting Brown's estate plan was all that was necessary to protect the Royalties for decades.

9. The AG has either joined in or failed to correct misrepresentations about heirs, offers and value made by Bauknight and others.

10. The AG has allowed the fabricated Wingate Suit to continue for three years, and consolidated a Newberry FOIA Suit with it.

11. Mr. Bauknight touted a "settlement" in the Wingate Suit with Buchanan which was invalid and against public policy to make it appear that Appellant and Buchanan were at odds in their positions. They were not.

12. Bauknight, the AG and Terry/Forlando Brown concealed Legacy Trust amendments and a transfer from Terry – who supported the AG's Settlement– to Forlando, who was telling the Federal Court he opposed it.

It is reasonable to project that if the juggernaut of 10 Taxpayer-paid lawyers, 15 lawyers for Bauknight, 8 for Forlando and 5 for Hynie had not carried out a 4-year attack on Buchanan, Appellant and their small team – or if Bauknight had not withheld court-approved funds due them – the result might have been different.

Mr. Bauknight claims Appellant and Buchanan lost. While arguably they did for themselves, they put the Supreme Court in a position to save both the "I Feel Good" Trust and private philanthropy in South Carolina. And it did.

On the day before the Supreme Court oral arguments, Mr. Bauknight's attorney gave an interview reported in over 330 media outlets attacking Buchanan and Pope. With that level of power applied against them, Buchanan and Appellant were powerless to make the Court understood that the vitriol never came from Buchanan and Pope or their fine team. They were simply carrying out their duty to vigorously defend the estate plan of James Brown.

III. Order on Appeal

The word "Administrative" on Judge Early's permanent injunction in the June 13 Orders does not keep it from being an injunction. Likewise, the title "Interim" on the appointment orders does not make them interim.

They are permanent. They last until the conclusion of all litigation.

The Due Process rights of everyone who seeks to enforce the "I Feel Good" Trust and the Due Process and Equal protection rights of Brown's real heirs have been trampled on since the June 13 Orders. The October 1 appointment is a continuation of the June 13 injunction.

The October 1 Order praises Bauknight for having a summons on his petition. It disregards that it neither named nor was served on heirs, devisees, beneficiaries or Interested Persons who had demanded notice. Appellant is one of those. Further, Appellant and other were enjoined from the process by a direction in the June 13 Orders that the Clerk of Court remove Appellant's filed motions from

the record and not accept any future filings.

Attempts to be heard since June 10, 2013 on why Bauknight's appointment should be voided or he be removed for cause were not heard or considered at the September "hearing." The "hearing" did not meet the Probate Code definition of hearing.

Nobody who supported the estate plan was allowed to participate. No questions were allowed.

As one small example:

> Mr. Bauknight bragged that he had $1 million in the bank for payment of education funds of grandchildren Lindsey, Janice, Romunzo and others. He bragged that he was holding it until the conclusion of all litigation.
>
> He did so even though all prior PR/Trustee had cleared the way for these students not to be held hostage to the litigation.
>
> Having these students sign a ratification of the 2000 Trust and receive their funds should have been done February 28, 2013 at the latest.
>
> And it would have helped in the defense of the estate plan.

The appointment order does not chastize Bauknight this cruel treatment of student grandchildren. It praises him.

There are numerous additional examples.

IV. Appellant has Special Interest Standing under § 62-7-405; Standing as a Creditor; and as Proposed GAL for Michael and others

A. Appellant has Special Interest Standing under Section 62-7-405

South Carolina Trust Code Section 62-7-405 confers standing to enforce charitable trusts on the Attorney General, the Settlor, the Trustee and others.

The "I Feel Good" Private Foundation is a charitable trust as defined in the Trust Code. The "I Feel Good" Trust is set out in four separate documents, including two successive Wills (1999 and 2000.) Both wills have incorporation by reference provisions to create the "I Feel Good" Trust even if the trust associated with the will is missing.

Fifteen years ago – on February 24, 1999 – Brown prepared a voice tape as he was preparing to sign the first will/revocable trust creating the "I Feel Good" Foundation. It is a compelling expression of his wishes.

It has never been heard by an Aiken County Court, even though it has been in the Estate's possession since shortly after Brown's death.

In the three years before Brown's death, <u>after his 2000 Trust had been funded for years</u>, all of the now-contestants to Brown's estate plan discussed his estate plan with him. Tommie Rae and the children Brown acknowledged in the Will have all admitted in the Wingate Suit that:

> ...the establishment of a Charitable Trust intended to provide financial assistance to deserving students who seek education in South Carolina and Georgia. This objective was the often stated and well-known desire of James Brown. [Mem. Opp., p.2, 8/27/10]

All children of James Brown and all fiduciaries except Bauknight – who serves as Hynie's agent in four lawsuits – have confirmed that Brown died without a spouse.

There was absolutely no basis in 2008 to give Tommie Rae more than $11 million and her lawyers $10 million. There was no basis to give Levenson $9 million.

Had the 2000 Will been set aside, the 1999 Will stood to make it ironclad.

The voice tape in Brown's famous voice was icing on the cake.

But the AG's settlement gave lawyers wanting $20 million a taste of something they did not deserve. And they will not let go.

It was Levenson, Hynie's lawyer and Bell who signed the Wingate 40% contingency fee contract with Bauknight in 2010. Many children did not even know about the suit in which they were Plaintiffs -- or the 40% contingency.

It was Levenson, Hynie's lawyers and Bell who authorized Bauknight, Hynie and Wingate to interfere with three FOIA suits – and to seek sanctions in the name of children who did not know they were trying to intervene.

It was Bauknight who became Hynie's principal spokesperson. When asked after the decision whether Buchanan's and Pope's role in *Wilson v. Dallas* helped the estate, he stated:

> That's poppycock. Pure speculation from your client. Fantasy...I'm the person who actually looked at this. And I said it was a fair and reasonable settlement. I don't know where this fantasy is that $50 million was gone away. Number one, your client made up that number. Your client did that in a self-serving fashion so that she could take $5 million out of this estate for her retirement. So to say that this would have diminished is a load. A total load. I looked at this. I say. You have no clue how termination rights where [sic].
>
> You don't know the value. . . She has no clue what she was dealing with and put stuff in the paper that it's just totally fabricated untrue. It blows me away that someone with a law degree can be so dishonest and get away with it. ...You know, what? That's set aside by the Supreme Court. That's fine. I've got a new roadmap, and I'm going to follow this new roadmap to a T....
>
> ...[Y]our client raped this estate taking every dime out of it for her own fees and for Bob's fees and her lawyer's fees leaving it insolvent....Your client didn't even try. Your client didn't know the

numbers. I know the numbers. There was no diminished Legacy Trust. That's fabrication from your client. [Emphasis supplied.]

For a full year Bauknight has done nothing to dismiss the claims of Hynie; require DNA testing of James B. under the official Peeples DNA Protocol; or allow requested DNA testing of Michael, James Curtis and the Doe Defendants.

Bauknight and the LSA are fighting a GAL for an incarcerated son. They are either condoning or participating in interference by Bell and others with the Estate/"I Feel Good" Trust's ability to secure its copyright for decades by treating Brown's real heirs with dignity; completing the Peeples DNA Protocol for non-presumed heirs; and seeking agreements with the most cooperative half.

Both have fought the admission to probate of the 1999 Will, and placed it in great jeopardy of the 10-year rule.

Neither has argued that *all* heirs should be determined and allowed to help show Brown had no wife.

Bauknight will not do it. He is still her agent.

In short: Bauknight and his appointee LSA/LST have abandoned the "I Feel Good" Private Foundation. The AG – once too involved – has abandoned the "I Feel Good" Trust.

As a result of Bauknight's conflict, the A G's withdrawal, the jeopardy faced by the 1999 backup will, and the threat to Brown's royalty copyrights by actions which favor Hynie, Appellant and Buchanan, in addition to their individual rights, have Special Interest Standing under Section 62-7-405 to enforce the "I Feel Good" Trust.

Bauknight and the LST are not just refusing to act. They are allowing Bell and others to usurp the termination rights contracts Bauknight should have completed –if not earlier – the moment the February 27, 2013 decision was rendered.

Where the Settlor is dead; the Attorney General has withdrawn; and the fiduciaries are openly hostile to the private foundation, Section 62-7-405 standing is not just appropriate. It is essential.

Appellant does not seek to be Trustee. But she does seek – and but for the injunction of the June 13 Orders – should have been involved in, helping find three PR/Trustees with the ability; interest and energy to take on the protection of what should now be South Carolina's largest-ever private foundation dedicated solely to the education of needy students.

Appellant currently serves as trustee of a tiny foundation. She formed and assisted for years the Pope-Brown Foundation. She is currently assisting an approximately $50 million upstate family foundation as it transitions to its third generation[8]. She has special knowledge of the interplay of copyright termination law and State Probate law. She has worked *pro bono publico* since May 8, 2013 to help enforce the "I Feel Good" Trust.

Appellant has multiple standing to be part of this appeal and the process.

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8 A trustee of the Graham Foundation has stated in an affidavit that he might not have recommended the engagement of Appellant by the Foundation for the self study if he had not known of her work and experience with others before the James Brown accusations against her.

V. Appellant's Role in the Litigation is not over

In his conclusion on page 8 Mr. Bauknight states:

" Her role in this litigation is over."

Had Mr. Bauknight not brought the Wingate Suit in the wrong county and prevailed in keeping it there, he might be right.

Had Mr. Bauknight not intervened for Ms Hynie and others in two FOIA Suits as to which he has no right to intervene – then consolidated one with the Wingate Suit – the public documents necessary to bring his false claims to an end might have been released three years ago.

That did not happen.

For more than a year since the first *Wilson v. Dallas* decision, Bauknight – and now the LSA – have blocked the Richland County Court's proceeding with important issues. Bauknight does so even though he and the State/AG prevailed in their claim that the following matters must be heard in Richland County:

1. Are Buchanan and Appellant correct that they owed no duty to Tommie Rae and James B. because neither is an heir, devisee or beneficiary of James Brown?

2. Did Buchanan and Pope commit the federal felony of intentionally overstating Brown's music empire by $79 million to the IRS, or does the estate tax return need to be corrected because Bauknight claimed:

   a. Brown's worldwide music empire was worth less than $4.7 million;

   b. Brown's TPP was worth only about $.5 million;

   c. Tommie Rae was Brown's spouse and got about $1.3 million;

   d. The AG's "Legacy Trust" is entitled to a $3 million charitable deduction even though $2 million of it is going to private

individuals?

3. Did Brown really give about $80 million to the "I Feel Good" Trust, as claimed by Buchanan, Pope, Cannon, Dallas and Bradley – or about $1 million as claimed by Bauknight?

4. Have the State/AG, Bauknight and Tommie Rae misrepresented the heirs and their rights under the Copyright Law to multiple courts by claiming Tommie Rae is the spouse when she is not, and ignoring *real* heirs who are not challenging the estate plan, including: Michael, La Rhonda, Nicole, Lisa, and Jeanette?

5. Should James B. – the only claimed child born in the 22 years between Brown's vasectomy and his death – have been required, and Michael, James Curtis and DOE Defendants allowed, to complete the Estate's official $300 Peeples DNA Protocol?.

V. Appellant's Application to be GAL for Michael and Others

Judge Early's declining to appoint her GAL for Michael, or hold a hearing, is damaging both the "I Feel Good" Trust and Michael.

Bell – known for filing false grievances, threatening grievances and filing false affidavits – is claiming to be Michael's lawyer. But he has not filed a *pro hac vice* application or protected Michael in the Hynie petition proceeding where he is protecting son Terry.

Michael still needs a GAL under Rule 17 (c). And – unsolicited– he called Appellant to thank her for applying.

The "I Feel Good" Trust needs to properly identify and make agreements with the most cooperative half of Brown's heirs – the ones who expect the least from the "I Feel Good" Trust; will be proud to be acknowledged; and will be proud to be supporting their father's noble estate plan.

On May 29, 2013 Hynie's counsel and Levenson – expecting about $20

million in legal fees from the AG's Settlement – announced their plan to re-do the State's takeover and dismember "I Feel Good" Trust – again. Bauknight and his LSA/LST are helping them do just that.

VI. Appellant as a Creditor who made demand for notice has Standing.

As a creditor Appellant had a right to participate in the appointment proceeding. She was denied that right by failure of service and the injunction of the June 13 Orders. She was also denied by a hearing which was not a hearing.

Conclusion.

Appellant respectfully requests that the Rehearing decision be delayed until the Court has the full record in appellate case numbers 2013-00169 and 2014-00250. Should the Court elect to proceed, she requests that the Petition for Rehearing be granted; the dismissal reversed; and the appeal proceed.

Respectfully submitted,

Adele Pope

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Attorney for Appellants

February 27, 2014
Exhibits:
Exhibit A - Partial, Initial Brief - 2013-00169
Exhibit B - Partial, Initial Brief - 2014-00250
Exhibit C- DNA & DIGNITY Plan to Protect Royalties
Exhibit D - Toberoff Ltr., 9/13
Exhibit E - Forlando, Sr. Assistant Jones, Others, emails Jan 2011

Exhibit A

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
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The Honorable Doyet A. Early, III Circuit Court Judge
The Honorable Liz Godard, Clerk of Court

Appellate Case No. 2013-00169

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v.

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

OF WHOM:

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Appellant, *pro se*

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Exhibit B

THE STATE OF SOUTH CAROLINA
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APPEAL FROM AIKEN COUNTY
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Doyet A. Early, III, Circuit Court Judge
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Adele J. Pope,.....Appellant,

v.

Estate of James Brown, Deceased; The James Brown 2000 Irrevocable Trust; Russell L. Bauknight, Individually, as former *Executor de son tort,* and in every current and former fiduciary status claimed or held as to the Estate of James Brown and the James Brown 2000 Irrevocable Trust,.....Respondents,

AND:

Robert L. Buchanan, Jr.,.....Interested Party.

INITIAL BRIEF OF APPELLANT ADELE J. POPE

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Apellant, *pro se*

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Exhibit C

DNA & DIGNITY

(Proposed Plan for "I Feel Good" Foundation to Protect its Royalties for Needy Students)

1. The "I Feel Good" Foundation's Position and Protocol.

a. James Brown died unmarried on December 25, 2006. [Toberoff, etc.]

b. Termination rights agreements will be made only with DNA-proven or Presumed children who support James Brown's noble estate plan.

c. Current candidates (subject to abandoning any claims) are:

a. DNA-Proven: 1. LaRhonda (daughters), 2. Jeanette, 3. Nicole;

b. First marriage: 4. Terry, 5. Larry, 6. Lisa;

c. Second marriage: 7. Deanna, 8. Yamma;

2. Offer - But do not require – Peeples DNA Protocol for 30 - 60 days.

DNA testing under the Estate's official Peeples DNA Protocol, paid for by the Estate, to be offered for 30-60 days to: 9.Michael (incarcerated), 10. James Curtis, 11. Tonya, 12. James B.,13. DOE Defendants identified as likely heirs by the GAL, Levenson Intestacy Suit.

3. Dignity & Reconciliation for Termination Rights Cooperation of Excluded Heirs.

After above 30-60-days, offer to the first six to accept of : La Rhonda, Jeanette, Nicole, Lisa and anyone passing Peeples DNA Protocol listed above, in exchange for agreement for lifetime termination rights cooperation:

1. Full recognition as heirs by the Estate and "I Feel Good" Foundation at a ceremony to be conducted at Brown's home estate in Beech Island .

2. [If possible] VIP Invitation to, and additional recognition, at the opening of South Carolina screening of "Get on Up!"

3. $10,000 per year for life, effective 2011.

4. Offer Termination Rights Agreements to some Children Acknowledged in Will.

Make the offer set out above to the first two children acknowledged in the Will to accept – but with payment of $50,000 per year for life, commencing upon execution of termination rights agreement and withdrawal of all claims against the Will, 2000 Trust and Estate.

5. If two Acknowledged Children do not accept, re-offer to all Excluded Heirs.

6. Consider "splitting heirs"and other available strategies to protect the Royalties for Needy Students as James Brown directed.

7. Update Protocol at death of each child, and as needed.[1]

1

This proposal is consistent with the "Splitting Heirs" technique described in *Private Foundations, Copyright Heirs and Musical Millionaires: why the James Brown "I Feel Good" Trust doesn't....* Also see: The Aspen Institute (supp. 2013). *The artist as philanthropist. strengthening the next generation of artist-endowed foundations.*

The Estate/2000 Trust's plan to protect its rights to more than 800 published and unpublished songs (the "Royalties") was started by Brown's original PR/Trustees in 2007. They established the Estate's official "Peeples DNA Protocol." Using the Peeples DNA Protocol, the Estate identified and officially acknowledged La Rhonda, Jeanette and Nicole. Others were excluded. Incarcerated son Michael's request for testing was interrupted by the AG's 2008 Settlement.

Buchanan & Pope continued the plan to protect Brown's Royalties. They consented to a March 8, 2008 Order of the Hon. Doyet A. Early, III which would have proceeded with the official Heirs determination in the Levenson Intestacy Suit although Brown had <u>two valid</u> Wills.

Four months later – and for nearly five years – the AG's 2008 Settlement stood as an impediment to a proper protection plan for the Royalties.

The completion of a properly-documented Heirs baseline during the probate process would have given the "I Feel Good" Foundation – and gives all charities who have been devised Copyrights -- maximum flexibility to:

1. Contract with the <u>half, or half + 1</u> needed to protect the copyrights ("Splitting Heirs") –5 or so in the case of the "I Feel Good" Foundation

2. Avoid later costly federal litigation with a <u>proper</u> Heirs baseline.

A proper heirs determination was particularly important in this case because all fiduciaries, all children and others had overwhelming evidence that Brown died without a spouse. And his companion's child was not a presumed child. [He is the only claimed child born in the 22 years between Brown's vasectomy and death.. He has refused DNA testing under the Peeples Protocol for 7 years.] Yet the AG "spoke as one" with the two from August 2008 until May 2013. His appointee became their agent in four separate lawsuits. The AG's contract "stipulated" that both the companion and her son were heirs. The State/AG exempted companion's son from DNA testing under the Peeples DNA Protocol. The State/AG contracted to join them in attempting to defeat the interests of <u>real</u> heirs.

Since February 27, 2013 the Estate/"I Feel Good" Trust has been in a position to complete the Peeples DNA Protocol for non-presumed heirs and make Termination Agreements under the above, or a similar, plan. To do so will provide appropriate respect and recognition for all DNA-proven non-presumed children excluded by Brown.

It will also be good for the "I Feel Good" Foundation.

For under $200,000 per year (and with almost no attorneys' fees), the above plan would have secured the "I Feel Good" Foundation's Royalties (about $3 million a year) for needy students for decades. Starting in 2011. It still can.

To accomplish the same result the AG's 2008 agreement proposed to give away 52 ½% of the "I Feel Good" Foundation – about $40 million at the time.

TOBEROFF & ASSOCIATES, P.C.

A PROFESSIONAL CORPORATION

22337 PACIFIC COAST HIGHWAY #348
MALIBU, CALIFORNIA 90265
Tel: (310) 246-3333; Fax: (310) 246-3101
mtoberoff@toberoffandassociates.com

Exhibit D

September 23, 2013

Via E-mail and U.S. Mail

Scott McDowell
Senior Vice President and
Head of Legal & Business Affairs
Warner/Chappell Music, Inc.
10585 Santa Monica Blvd.
Los Angeles, CA 90025

Re: James Brown/Terminations under the Copyright Act

Dear Mr. McDowell:

We represent James Brown's children, Terry L. Brown, Larhonda Waller, Deanna Brown Thomas, Yamma Brown, Venisha Brown, Jeanette Mitchell Bellinger and Cinnamon Nicole Parris, and James Brown's grandchild, Sarah LaTonya Fegan a.k.a. Tonya Brown (collectively, the "Heirs"), who are believed to constitute all or a super-majority of James Brown's statutory heirs entitled to exercise termination rights under 17 U.S.C. §304. On the Heirs' behalf, we will be serving Warner/Chappell Music and others, in the near future, with statutory notices of termination regarding Mr. Brown's music.

The Heirs are informed and believe that Tomi Rae Hynie and James Brown, Jr., acting as James Brown's putative surviving spouse and child, respectively, have served purported notices of termination regarding his musical compositions (the "Tomi Rae Termination"). The Heirs are further informed and believe that the Tomi Rae Termination is being handled by a representative of the Estate of James Brown, despite the glaring conflicts of interest that this would appear to entail.

This letter is to notify Warner/Chappell Music that the Heirs vigorously contest the validity of the Tomi Rae Termination and the standing of Tomi Rae Hynie and James Brown, Jr. to serve any notices of termination under the Copyright Act regarding James Brown's music.

The Heirs' claim is based, without limitation, on the well-known fact that when Ms. Hynie purported to marry James Brown in December 2001 she was already married to Javed Ahmed (since 1997). The Heirs contend that this rendered her 2001 marriage void, and that the 2004 default judgment thereafter obtained by Ms. Hynie from a South Carolina family court, annulling her marriage to Mr. Ahmed, did not resuscitate Ms. Hynie's 2001 marriage to Mr. Brown pursuant to the recent on-point decision of the South Carolina Supreme Court in *Lukich v. Lukich*, 379 S.C. 589, 592 (2008)("The question is whether the []2003 annulment order declaring Wife's first marriage void *ab initio* relates back so as to validate her purported 1985 marriage." "While an annulment order relates back in most senses, it does not have the ability to validate the bigamous second [1985] 'marriage.'").

Furthermore, Ms. Hynie's default judgment in *Tomi Rae Hynie v. Javed Ahmed* has no claim or issue preclusion effect on the Heirs as they were not parties to that action, and, in any event, the purported findings of fact and conclusions of law in that default judgment have no issue preclusion effect because such issues do not appear to have been "actually litigated" on the merits. *See State v. Bacote*, 331 S.C. 328, 330-31 (1998) ("In the context of a default judgment, collateral estoppel or issue preclusion does not apply because an essential element of that doctrine requires that the claim sought to be precluded actually have been litigated in the earlier litigation."). The Heirs' challenge to James Brown, Jr. is based, among other things, on his refusal to take a simple Court-supervised DNA test verifying that he is James Brown's child.

Please be further advised that these essential legal matters will be the subject of pending litigation in the South Carolina courts or in an alternative forum.

We hope to keep you well advised as this process marches towards a resolution. In the meantime, the Heirs and I look forward to an amicable relationship with Warner/Chappel Music regarding their statutory termination interests, and the future of James Brown's music.

Very truly yours,

Marc Toberoff

cc: Kelly Burnett via E-mail, Senior Director, Legal & Business Affairs
Warner/Chappell Music, Inc.

Sonny Jones

From:	Sonny Jones
Sent:	Thursday, January 20, 2011 10:44 AM
To:	Matt Bodman; DavidBell@davidbelllawfirm.com; JTrigg@KilpatrickStockton.com
Cc:	FKingsmore@nexsenpruet.com; amedlin@sc.rr.com
Subject:	Brown-Terry Brown Docs
Attachments:	TB ASSIGNMENT.PDF; TBCON.PDF

In order that you may have them in one email I have attached Terry Brown's Amendment and Confirmation to the ROFR and Terry Brown's Assignment to Forlando Brown.

Thanks.

Confirmation and Amendment

Certain parties entered into an Addendum to Private Agreement of August 10, 2008 to Include Settlement Agreement with Terry Brown Creating Restated and Amended Private Agreement (the "agreement"), that created an entity (the "Settlement Entity") to hold all of the assets related to James Brown, as described in paragraph 1 of the agreement. Capitalized terms not defined herein have the meanings set forth in the agreement. Those parties hereby confirm and amend certain provisions of the agreement, as follows:

1. Under the agreement, Terry Brown ("Terry") has a Right of First Refusal ("ROFR"). This agreement confirms that Terry's ROFR in all respects under the agreement applies only to "the sale of all or substantially all" of the "James Brown Assets" (as the term James Brown Assets is defined in paragraph 1 of the agreement) The term "the sale of all or substantially all" includes only (a) the sale of the entirety (that is, one hundred percent) of the James Brown Assets in one or a series of related transactions, or (b) the sale of at least 65% of the estimated value of the entirety of the James Brown Assets as of such time in one or a series of related transactions. Terry's ROFR does not apply to any other transfer of any of the James Brown Assets or an interest therein For example, and notwithstanding anything to the contrary in the agreement or in the foregoing, the ROFR does not apply to the granting of one or more clearances or licenses of any duration, scope, or description for the use of any or all of the James Brown Assets, including but not limited to such purposes as movies, documentaries, video games, commercials or other advertisements, product brands, books or other publications, or theatrical productions

2. Under the agreement, Terry has the exclusive right to conduct a due diligence review ("due diligence right") of all of the James Brown Assets as provided in Paragraph 5 of the agreement. With respect to the due diligence right, the agreement is hereby amended to the extent and only to the extent as follows: (a) Terry may commence the due diligence review immediately upon the execution of this confirmation and amendment; (b) the due diligence period will be for a period of twelve months from the execution of this confirmation and amendment; (c) there is no prohibition against the Settlement Entity, and/or Russell Bauknight as fiduciary or any agent or consultant employed by or on behalf of the Estate or Settlement Entity, soliciting, encouraging, entertaining, discussing, or accepting offers with respect to the sale, transfer, license, or other disposition or exploitation of any of the James Brown Assets (including any offer generated by a beneficiary of the Estate or such other agents or representatives as the Estate or Settlement Entity may from time to time authorize), subject in all cases to the Terry's exclusive solicitation rights clarified in paragraph 3 below; and (d) Terry Brown or his designee shall have the exclusive right to use any work product or other materials in any medium prepared by or on behalf of Terry in the course of the exercise of the due diligence right for purposes of soliciting, encouraging, entertaining or discussing, offers with respect to the sale, transfer, license, or other disposition or exploitation of any of the James Brown Assets.

3. Under paragraphs 6, 7 and 8 of the agreement, Terry has the exclusive right to solicit offers for a period of six months ("right to solicit"). With respect to the right to solicit, the agreement is hereby amended to the extent and only to the extent as follows: the six-month period of the right

to solicit (which was formerly contemporaneous with the Exclusivity Period of the due diligence right) shall commence three months after notice from Terry (at any time after the later of the expiration of the due diligence review period or the funding of the Settlement Entity). The three-month period is to allow the Estate/Settlement Entity a reasonable time to wind down or complete any then-ongoing discussions, but the Estate and Settlement Entity will not use such period for any purpose that is intended to defeat Terry's enjoyment of the right to solicit; provided however, that Terry's right to solicit will prohibit neither the continued granting of music clearances nor the continued performance of licenses and clearances permitted by paragraph 1 above.

4. Terry and the other parties to the agreement shall agree that, during the periods in which Terry is exercising the due diligence right and the right to solicit under paragraphs 2 and 3 above, they shall cooperate with respect to providing Terry and his representatives full access to any and all records, documents, things and information within the parties' control concerning the James Brown Assets and the value thereof, including but not limited to contracts, documents and things pertaining to or reflecting James Brown's songwriting or recording activities, royalty statements, bank records, audits, valuations, tax documents, audio master tapes, video master tapes, government filings (including but not limited to trademark and copyright filings), personal effects, artwork, writings, journals, photographs, press clippings, promotional materials, whether or not constituting "Confidential Information" for purposes of the agreement (collectively, the "Documents"), subject to an obligation to safeguard such items. Terry shall have the right to make the Documents or information therein available to third parties as he reasonably deems necessary in connection with the exercise of the due diligence right and the right to solicit, provided that such third parties first enter into confidentiality agreements in favor of the Estate and/or the Settlement Entity, as applicable, that are at least as protective of such information as the provisions of paragraph 9 of the agreement.

5. Except as confirmed and amended by this confirmation and amendment, the agreement remains in full force and effect.

Henry D. McMaster
Attorney General of the State of South Carolina
Robert D. Cook
Assistant Deputy Attorney General
C. Havird Jones, Jr.
Senior Assistant Attorney General
J.C. Nicholson, III
Assistant Attorney General
Mary Frances Jowers
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3680
For the South Carolina Attorney General

Georgia, Stephens County

For in consideration of the sum of $1 with love and affection and other valuable consideration, the undersigned, Terry Brown, being a biological child of James Brown the entertainer and known world-wide as the godfather of soul, and beneficiary under the Last Will and Testament of James Brown and the Irrevocable Trust of James Brown dated 8-1-2000, does hereby transfer, irrevocably convey and assign unto William Forlando James Brown all my interest of every nature and kind in the Estate of James Brown.

To the extent that any third party may deem this transfer ineffective for any reason, I hereby designate and appoint, my son William Forlando James Brown, as my true and lawful attorney in fact hereby granting unto him a power, coupled with an interest, to execute any document in my name and stead as and to the same extent that I may execute and convey my interest in the matter of James Brown. This transfer shall be deemed irrevocable and coupled with an interest. I hereby acknowledge that I have made this transfer with due consideration, thought and design, and that I do so voluntarily and of my own accord.

Witness my hand and seal this date January 3, 2011

Terry Brown

Witness

Notary of the Public.

MY COMMISION
EXPIRES ON
JUNE 7, 2011

Sonny Jones

From:	Sonny Jones
Sent:	Wednesday, January 19, 2011 9:50 AM
To:	Matt Bodman; louis@levensonlaw.com
Cc:	FKingsmore@nexsenpruet.com; amedlin@sc.rr.com
Subject:	Brown: Cox- Forlando Meeting-Wed January 19, 2011 @ Nexsen Pruet
Attachments:	Terry Brown Assignment.PDF; Ppt0000002.ppt

Attached please find the assignment from Terry Brown to Forlando and a power point presentation sent late yesterday from Terry Cox.

The meeting, per the power point, w/ Russell is scheduled today(Wed) @ 2 PM. Please advise if you would like to be included per conference call or in person.

Thanks.

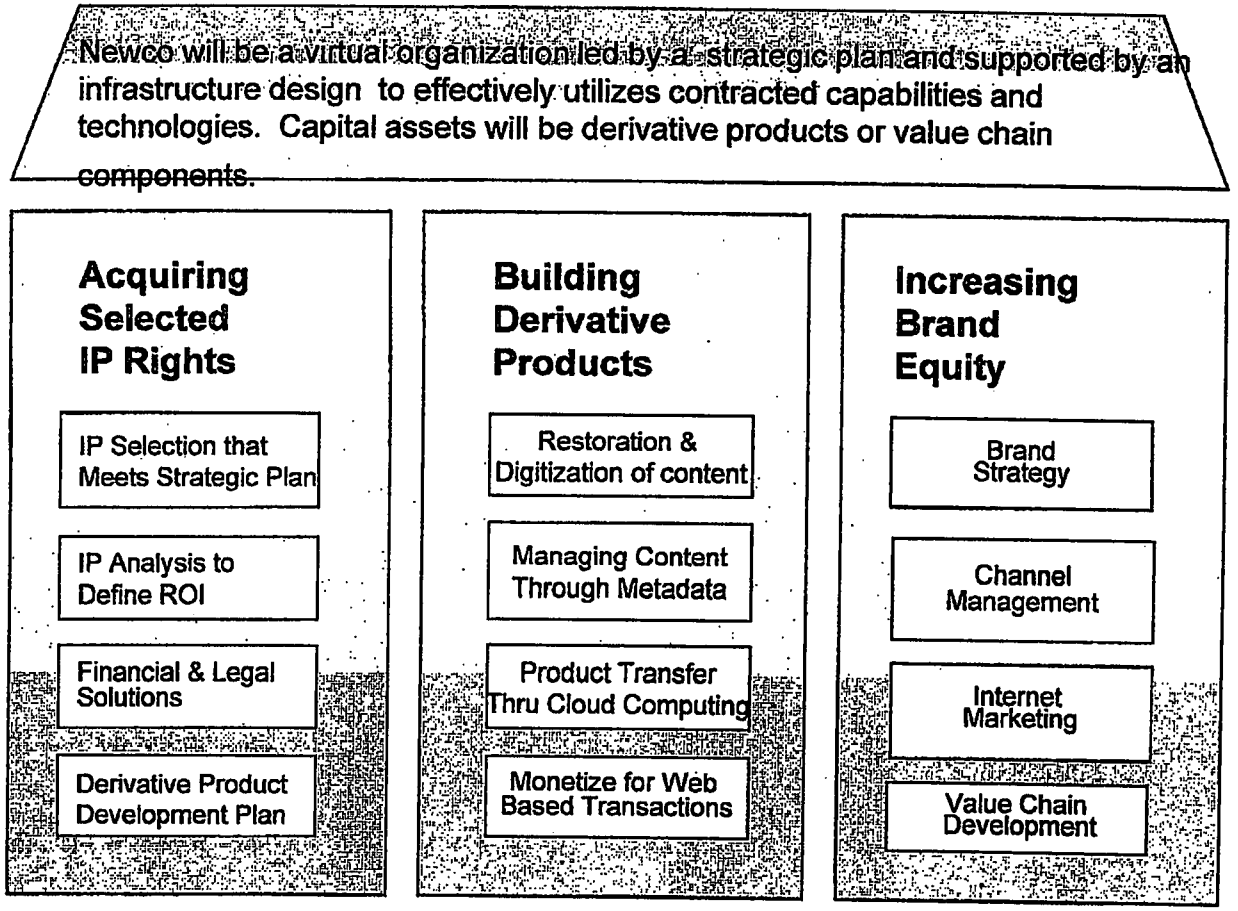
The ROFR Amendment and the Due Diligence Approach

January 19, 2011

Agenda

- The ROFR
- Our Assumptions
- Our Approach to Due Diligence
- Due Diligence Steps
- Due Diligence Structure

Newco: Provides value to its investors by: 1) providing a return from the ownership of derivative products (online video), and 2) the market value of an organization that has the capabilities for the scalability of derivative products. The following are proprietary capabilities of Newco.



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

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

PROOF OF SERVICE

I certify that on the 27th day of February, 2014, I have served the REPLY TO RETURN TO PETITION FOR REHEARING on Respondents and others as shown below by depositing a copy of same in the United States Mail, postage prepaid, addressed to their attorneys of record as follows:

ATTORNEYS OF RECORD FOR RESPONDENTS AND OTHERS:

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Charleston, SC 29401

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Atlanta, Georgia 30303

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The Honorable Alan Wilson
Attorney General of South Carolina
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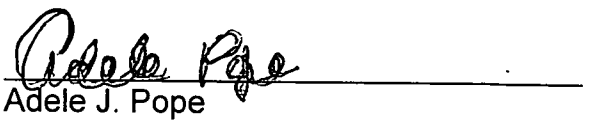
Eugene C. Covington, Jr.
Post Office Box 2343
Greenville, SC 29602



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S.C. Bar No. 4501
Attorney for Appellants

February 27, 2014