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S C. Supreme Court

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

THE HONORABLE DOYET A EARLY, III, CIRCUIT COURT JUDGE

Case No 2008-CP-02-1647

Alan Wilson, in his capacity as Attorney General of the State of South Carolina, Daryl J Brown, on behalf of his minor children, Lindsey B and Janise B , Deanna J Brown Thomas, on behalf of her minor child, Jason L , Yamma N Brown, on behalf of her minor children, Sydney L , Carrington L , and Tonya B , Vanisha Brown, Larry Brown, Tommie Rae Hynie Brown, and James B , through his
Guardian ad Litem, Respondents,

vs

Albert H Dallas, Alfred A Bradley, and David G Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust, Adele J Pope and Robert L Buchanan, Jr , Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust, Terry Brown, Romunzo Brown, Forlando Brown, Cinnamon N M Parris, LaRhonda Petitt, Jeanette Mitchell, and Russell L Bauknight, as Special Administrator and Special Trustee for the Estate of James Brown and the James Brown 2000 Irrevocable Trust,

of whom Robert L Buchanan, Jr and Adele J Pope, as Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust
are Appellants,

And Albert H Dallas, Alfred A Bradley, and David G Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust, Terry Brown, Romunzo Brown, Forlando Brown, Cinnamon N M Parris, LaRhonda Petitt, Jeanette Mitchell, and Russell L Bauknight, as Special Administrator and Special Trustee for the Estate of James Brown and the James Brown 2000 Irrevocable Trust
are Respondents

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

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ISSUES ON APPEAL

I Whether Appellants lack standing?

II Whether the circuit court correctly approved the Settlement Agreement under S C Code Ann § 62-3-1102, where the Settlement Agreement (1) resolved a good-faith controversy and (2) was just and reasonable?

III Whether the Attorney General possessed the authority, pursuant to his *parens patriae* and statutory authority, to steer and compromise litigation on behalf of the charitable beneficiaries?

IV Whether the circuit court properly removed Appellants as personal representatives and trustees, replacing them with an independent fiduciary?

STATEMENT OF THE CASE AND STATEMENT OF FACTS

This is an appeal by former personal representatives and trustees, Adele Pope (Pope) and Robert Buchanan (Buchanan) (collectively, Appellants), from an Order of the circuit court approving a settlement agreement (the Settlement Agreement) pursuant to S C Code Ann § 62-3-1102 The Settlement Agreement resolved nearly all litigation concerning the Estate of James Brown (Mr Brown), the world-famous "Godfather of Soul" Further, the Settlement Agreement ensured that a charitable trust will not be invalidated and left with nothing for its charitable beneficiaries

During the course of settlement negotiations, the individual settling parties were represented by privately-retained counsel The beneficiaries of the public charitable trust were represented by the Attorney General of South Carolina pursuant to his *parens patriae* and statutory authority The Settlement Agreement approved by the circuit court resolved the vast majority of the controversy surrounding Mr Brown's Estate and allowed its administration to move forward without contentious litigation and divisive administration The Order approving the Settlement Agreement also removed Appellants, who are not professional fiduciaries, from their positions as personal representatives and trustees The circuit court replaced them with a professional fiduciary If the settlement is upheld, the only remaining litigation will involve issues typical of estate administration, such as creditors' claims

Appellants claim they are owed $5 million for their 18-month tenure as fiduciaries This claim is in direct conflict with their position in this litigation They profess to represent and protect the beneficiaries of the charitable trust, yet seek recovery of their claim from those same beneficiaries

James Brown s Estate Plan

Mr Brown, a resident of Aiken County, died testate on December 25, 2006 He purportedly executed a will and trust (2000 Will, R pp 2068-76, and Trust, R pp 2077-97) on August 1, 2000 The 2000 Will was filed with the probate court on January 18, 2007 and immediately admitted to informal probate The 2000 Will named six of his children to whom he left his personal and household effects [1] (2000 Will, R p 2071) The 2000 Will poured over the remainder of his Estate into the 2000 Trust

The 2000 Trust divides into two trusts First, the Brown Family Educational Trust is for the benefit of certain of Mr Brown's grandchildren and is intended to pay for their educational expenses [2] (2000 Trust, R pp 2082-83) Second, the James Brown "I Feel Good" Trust is for the benefit of certain members of the public and is intended to provide "tuition, educational expenses, and financial assistance of and for poor and financially needy children, youth, or young adults (Who are both qualified and deserving) who seek and have need of such assistance to obtain and further their education at the many educational entities and/or institutions available in the States of South Carolina and Georgia " (R pp 2083-84) The probate court removed all matters related to the Estate and Trust to the Aiken County Court of Common Pleas

Litigation Concerning James Brown s Estate

The litigation concerning Mr Brown's estate included both statutory claims for various spousal and omitted-child's shares, as well as two petitions contesting the validity

[1] The six children named in the 2000 Will are Deanna J Brown Thomas, Yamma N Brown, Vanisha Brown, Daryl J Brown, Larry Brown and Terry Brown

[2] The Brown Family Educational Trust eventually pours into the "I Feel Good" Trust Consequently, the Family Trust falls within the statutory definition of a charitable trust under S C Code Ann § 62-7-103(3) and is properly represented by the Attorney General

of the 2000 Will and Trust If any of the spousal or omitted-child's claims were successful, it would materially diminish the amount of Mr Brown's Estate received by the 2000 Trust Additionally, if any of the Will and Trust contests were successful, nothing would pass to the charitable beneficiaries Accordingly, all parties, including Appellants, agreed that a settlement was necessary (*See* Offer of Compromise, March 31, 2009, Supplemental R pp 2935-39, R p 1668, lines 8-18)

Three actions, which were consolidated for purposes of this matter, constitute the bulk of litigation that has plagued Mr Brown's Estate since his death [3] These lawsuits were (1) a will and trust contest, as well as a claim for an elective share or, alternatively, an omitted spouse's share, brought by Mr Brown's surviving spouse, Tommie Rae Hynie Brown (Mrs Brown), (2) a claim to an omitted child's share brought on behalf of Mr Brown's son, James Brown, II (Brown II), by his Guardian ad Litem, and (3) a Will and Trust contest brought by five of the six children named in Mr Brown's Will

Administration of James Brown s Estate and Trust

Mr Brown's 2000 Will and Trust nominated David G Cannon (Cannon), Albert

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[3] There is a fourth category of claimants whose success could have altered Mr Brown's putative estate plan alleged children not included in the 2000 Will However, these alleged children would take only if the 2000 Will and Trust were overturned One child, Brown II, filed an omitted-child's claim and is a party to the Settlement Agreement Three other alleged children filed claims against Mr Brown's estate However, these three alleged children would take only if the Will and Trust were overturned Only two of these children joined in the Will and Trust contests These three children entered into a stipulation that consents to the Settlement Agreement, including the dismissal of the Will and Trust contests But these children reserved any federal copyright rights they may have (R p 1330, lines 5-23) Because all of the Will and Trust contestants agreed to dismiss the Will and Trust contests, no alleged child, other than Brown II, could take from the Estate or Trust Moreover, the Settlement Agreement and the Order approving it specifically provide that the Settlement Agreement will not affect the rights of any beneficiary not a party to it Thus, the status of these three children is irrelevant for purposes of this appeal, and all beneficial interests were represented in the settlement

H Dallas (Dallas), and Alfred A Bradley (Bradley) to serve as personal representatives of his estate and trustees of the Trust, respectively (2000 Will, R p 2073, 2000 Trust, R p 2081) Dallas, Cannon, and Bradley's tenure as personal representatives and trustees was clouded with controversy, including but not limited to, allegations of undue influence in the execution of Mr Brown's 2000 Will and Trust

On January 24, 2007, the six children named in Mr Brown's Will filed an emergency petition seeking the removal of Dallas, Bradley, and Cannon as personal representatives (R pp 958-65) On February 1, 2007, Mrs Brown filed an emergency petition for appointment of a special administrator (R pp 966-69) The circuit court denied the children's petition for removal of personal representatives, but granted Mrs Brown's petition for the appointment of a special administrator On March 12, 2007, the circuit court appointed Appellants to serve as special administrators (R pp 179-80)

On July 27, 2007, Appellants filed a motion in the circuit court requesting that it remove Dallas, Cannon, and Bradley as personal representatives and trustees (R pp 975-79) At a hearing on Appellants motion, Cannon resigned from his fiduciary positions (R p 2022, lines 8-22) On September 24, 2007, a hearing was held regarding allegations that Cannon misappropriated estate assets both before and after his resignation [4] (R p 2024, line 1-p 2025, line 19, *see also* R pp 161-67) Subsequently, Dallas and Bradley each resigned their positions as personal representative and trustee

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hearing

[4] The court found Cannon in contempt by Order filed October 2, 2007 (R pp 173-78) A hearing to address whether Cannon's contempt was willful was held on November 15, 2007 and continued on November 20, 2007 By Order dated December 18, 2007, the Court found Cannon in willful contempt for failing to pay $373,000 in restitution to Mr Brown's Estate, as previously ordered by the Court (R pp 161-67)

(R p 2032, lines 9-16) By order, the circuit court accepted their resignations [5] (R pp 168-70) In that same Order, the circuit court also appointed Appellants to serve as personal representatives of Mr Brown's estate and trustees of the 2000 Trust (R p 169)

The Attorney General Intervenes

At the hearing regarding misappropriation of estate assets by Cannon, the Attorney General of South Carolina appeared and moved to intervene in order to enforce the 2000 Trust and protect the beneficial interests No one objected to the Attorney General's intervention This includes Appellants, who were serving as special administrators at the time, and their predecessors serving as personal representatives and trustees The circuit court granted the Attorney General's motion to intervene by Order dated October 4, 2007 [6] (R pp 171-72) Specifically, the circuit court granted the motion for intervention so the Attorney General could "represent and protect the interests of the beneficiaries of any charitable trust created by the Last Will of James Brown dated August 1, 2000, and the Irrevocable Trust Agreement of James Brown dated August 1, 2000, or any other assets of the Estate of James Brown that may be impressed with a charitable trust" (R p 172)

The Attorney General objected to Appellants' appointment as personal representatives and trustees After a hearing on the matter, the circuit court denied the

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[5] Dallas and Bradley filed a motion asking the court to vacate its order accepting their resignation, arguing that the court lacked the authority to appoint Appellants as personal representatives and trustees The circuit court denied this motion, and Dallas and Bradley appealed The Supreme Court dismissed the appeal as moot

[6] The Attorney General of Georgia also appeared and moved to intervene Although the circuit court granted this motion, the *pro hac vice* admission of the Georgia Attorney General was later withdrawn because the Court found that the South Carolina Attorney

Attorney General's request The Attorney General filed a motion to alter or amend, (R pp 993-1003), but later asked the circuit court to hold the motion in abeyance while Dallas and Bradley's appeal regarding their removal as personal representatives and trustees was pending (R pp 1008-09) The circuit court never ruled on the Attorney General's motion to alter or amend [7]

Informal Mediation and Settlement Agreement

Five of the six children named in the 2000 Will, the Attorney General, and Mrs Brown held mediation on August 10, 2008 The Settlement Agreement was reached and signed by all parties participating in the mediation The parties to the agreement are Mrs Brown, individually and on behalf of her minor child, Brown II, Larry Brown, individually and on behalf of his minor child Janise Vanisha Brown, Lindsey Delores Brown, Venisha Brown, Deanna J Brown, Jason Brown-Lewis, Yamma N Brown, individually and on behalf of her minor children Sydney Lumar and Carrington Lumar, Daryl J Brown, Tonya Brown, and the Attorney General, on behalf of the charitable beneficiaries of the 2000 Trust Terry Brown, one of the six children named in the 2000 Will, later joined in the Settlement Agreement The Settlement Agreement does not affect the rights of anyone not a party to it (R p 2365, ¶¶ 6-7) The circuit court's Order approving the Settlement Agreement reiterated this provision (R p 25)

Despite the fact that they were unaware of its terms and had previously supported settlement efforts, Appellants filed a motion opposing the Settlement Agreement (R pp 1056-78) On the following day, the settling parties disclosed the existence and terms of

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General was the appropriate party to represent the interests of the charitable beneficiaries

[7] That motion to reconsider is one of the numerous matters that will become moot if the circuit court's approval of the Settlement Agreement is affirmed

the Settlement Agreement to the circuit court Appellants' counsel was present in chambers at the time the terms of the agreement were disclosed The parties also disclosed the existence of the Settlement Agreement in open court, but did not disclose its precise terms in that setting Appellants claim they purposely did not allow anyone to inform them of the terms of the Settlement Agreement, notwithstanding the fact that their counsel knew the terms and the fact that Appellants had already challenged the terms of the Settlement Agreement Following disclosure, Appellants began filing numerous and unnecessary pleadings to obstruct a resolution of this matter [8]

The Terms of the Settlement Agreement

The Settlement Agreement created an entity containing all of Mr Brown's

[8] After the announcement of the settlement, Appellants filed the following (1) Motion for Partial Summary Judgment dated September 12, 2008 (R pp 1182-84), (2) Supplemental Motion to Dismiss All "Spousal" Claims of Mrs Brown dated September 12, 2008 (R pp 1185-86), (3) Motion to Dismiss All Causes of Action to Set Aside the Irrevocable Trust Agreement dated September 15, 2008 (R pp 1187-89), (4) Motion to Intervene and Dismiss dated October 24, 2008 (R pp 200-09), (5) Motion to Dismiss Buchanan and Pope as Individual Parties dated November 14, 2008 (R pp 244-47), (6) Motion to Disqualify C Havird Jones, Jr and Mary Frances Jowers as Counsel and Related Relief dated November 14, 2008 (R pp 251-55), (7) Emergency Motion to Quash Subpoena and Protect Evidence dated November 14, 2008 (R pp 259-62), (8) Motion to Realign, for Partial Summary Judgment and for Mediation after Proper Joinder of Parties and Discovery dated January 9, 2009 (R pp 329-46), (9) Motion to Alter or Amend Judgment dated January 14, 2009 (R pp 495-504), (10) Motion for Partial Summary Judgment dated January 20, 2009 (R pp 534-40), (11) Motion and Memorandum of PR/Trustees for Partial Summary Judgment that the AG and PR/Trustees have a Duty to Defend and Uphold the James Brown 2000 Irrevocable Trust, the Trust and Transfer to the Irrevocable Trust of Beech Island are Valid, and all Challenges to the Irrevocable Trust and the Deed of Beech Island to the Trust are Barred by Statutes of Limitation and Estoppel, and Petition for Mandatory Guidance under Section 62-7-932(D) dated February 23, 2009 (R pp 612-20), (12) Emergency Motion for Appointment of Special Administrator and Special Trustee dated February 27, 2009 (R pp 629-36), (13) Motion to Reconsider, Vacate, Set Aside, Alter and/or Amend and/or Clarify Orders dated March 12, 2009 (R pp 660-71), and (14) Supplemental Motion of PR/Trustees to Dismiss (where applicable), and for Partial Summary Judgment dated March 17, 2009 (R pp 684-89)

probate and non-probate assets (Settlement Entity) Additionally, the family members increased the Settlement Entity's worth by contributing valuable assets, including federal copyright termination rights, that under federal law would never have been in the 2000 Trust even if the contests and statutory claims were all unsuccessful [9] After Terry Brown later joined in the settlement, the charitable beneficiaries own a 47 5 percent interest in the Settlement Entity and the other settling parties share the remaining 52 5 percent [10] (R pp 2381-82, ¶ 11B) Critically, the Settlement Agreement also includes a provision addressing the removal of Appellants and replacing them with a professional fiduciary (R p 2363, ¶ 5(a)) Each party to the agreement waived any claim or right he or she had in Mr Brown's Estate to the extent such claim or right might exceed the value of their respective share in the Settlement Entity (R p 2363, ¶ 5(d)) Each of the settling parties agreed to dismiss any and all will contests (R p 2364, ¶ 5(j)) The parties agreed that Mrs Brown was the surviving spouse of Mr Brown and that the six children named in the 2000 Will were his children (R p 2362, ¶ 1-2) Mrs Brown agreed to dismiss her spousal claims (R p 2364, ¶ 5(j))

The Attorney General, on September 29, 2008, filed a petition for removal and

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[9] After a certain number of years pass from the assignment of a copyright by a songwriter, federal copyright law allows the songwriter, if alive, to terminate or revoke that assignment thereby regaining control of that assigned right with the freedom to negotiate a new assignment However, if the applicable time period for that song has not expired before the songwriter dies, that termination right passes by federal law to the statutory heirs (the surviving spouse and children) regardless of the songwriter's attempt to otherwise transfer the termination right by will or otherwise *See* 17 U S C §§ 203, 304, Ann Bartow, *Intellectual Property and Domestic Relations Issues to Consider When There Is an Artist Author Inventor or Celebrity in the Family*, 35 FAM L Q 383 (2001)

[10] Specifically, Mrs Brown and Brown II share a 23 75 percent interest in the Settlement Entity, and each of the children that are parties to the Settlement Agreement receive a 4 79 percent interest in the Settlement Entity

restraint of trustees, asking that Dallas and Bradley be removed, in the event they were still trustees if they prevailed in their appeal of the circuit court's refusal to accept their rescission of their resignations (R pp 196-99) Further, on November 7, 2008, the settling parties filed an amended petition for the removal and restraint of the original trustees Cannon, Dallas, and Bradley, and Appellants (R pp 223-30) The circuit court did not immediately take up these motions, pending hearings on the approval of the Settlement Agreement However, the circuit court did appoint a new special administrator, Russell L Bauknight, by Order dated January 7, 2009 (R pp 58-61) The Order indicated he was appointed for the "sole limited and exclusive purpose of reviewing and providing input and recommendations to the Court as to the proposed Settlement Agreement" (R p 60) The appointment order was appealed by Appellants (R p 911)

Approval of the Settlement Agreement

Although the Settlement Agreement provides that it was a binding private agreement under S C Code Ann § 62-3-912,[11] the settling parties also sought court approval pursuant to S C Code Ann §§ 62-3-1101 and -1102 On November 25, 2008, the circuit court held a hearing in which the settling parties disclosed the terms of the Settlement Agreement on the record and reported they were ready to move forward with a hearing regarding its approval (R p 1296, line 20-p 1297, line 23) The circuit court commenced a hearing on January 30, 2009, which spanned seven non-consecutive days [12] The circuit court issued its Order approving the Settlement Agreement and removing

[11] Section 62-3-912 does not require court approval of a settlement agreement, but does require the personal representative to abide by it

[12] Specifically, the hearing was held on January 30, 2009, March 4, 5, 6, 25, and 26,

Appellants as personal representatives and trustees on May 26, 2009 (R pp 9-53)

All persons interested in the Estate, as well as Appellants, were present at the hearing and had an opportunity to be heard For the numerous reasons set forth in its Order, the circuit court found that all interested parties received proper notice [13] (R p 25) Additionally, the circuit court found that the Attorney General "has the authority to protect the public interest and to enforce the due application of those funds given or appropriated to any charitable trust, and the Attorney General is the proper party to protect the interests of the public at large in the matter of administering or enforcing charitable trusts " (R p 28) Further, the circuit court found that the authority of the Attorney General allows it to "control the litigation"[14] and "settle or compromise litigation " (R p 29)

With respect to the merits of the Settlement Agreement, the circuit court found that it (1) resolved multiple good-faith controversies and (2) was just and reasonable These are the two requirements for approval pursuant to S C Code Ann § 62-3-1102 The circuit court found that "an overwhelming set of grounds" supported its conclusion that multiple good-faith controversies existed (R p 31) First, the circuit court found

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2009, and April 6, 2009

[13] Supporting this conclusion was the Court's Order of March 10, 2008, whereby it required service by publication (R pp 184-87) The Notice was published in the Aiken Standard on April 19 and 26, 2008 and May 3, 2008 The published notice stated that it was "to determine all lawful heirs of James Brown, including lawful heirs at law who may be entitled to rights under state and federal laws " No additional parties have appeared as a result of the publication

[14] The Court recognized the Attorney General's authority, once having intervened, to control the litigation on behalf of the charities However, the Attorney General did not purport to control the administration of the 2000 Trust, nor did the Court indicate that he had that authority Thus, the Order follows the distinction between controlling the litigation, which the Attorney General is empowered to do, and controlling the trust, which the Attorney General did not attempt to do

that the claims of undue influence "certainly [have] a foundation in good faith" (R p 31) The fact that the 2000 Trust authorized the trustees to pay themselves up to *fifty percent* of gross income was a significant factor in the circuit court's analysis [15] (R pp 31-32) The circuit court also concluded that the credibility of the only four witnesses concerning the execution of the 2000 Will was questionable (R pp 32-33) Not only are Cannon, Dallas, and Bradley self-interested persons, but the draftsman of this Will, Dewain Herring, is in prison for murder Second, the circuit court found that significant questions existed concerning what property would fund the trusts and what property would pass through the probate estate [16] (R pp 33-35) The circuit court viewed these questions as additional support for its conclusion that the Settlement Agreement resolved a good-faith controversy Third, the circuit court found that Mrs Brown's claim to an elective share or omitted-spouse's share constituted grounds of a good-faith controversy (R pp 35-38) Fourth, the circuit court found that a good-faith controversy existed as to the claim of Brown II to an omitted-child's claim (R pp 38-39) The circuit court found that substantial evidence existed to support the conclusion that Brown II was Mr Brown's son, despite the fact that Appellants contested this finding of fact [17] (R pp 38-

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[15] Appellants' expert admitted that the fifty percent provision was extraordinary and endangered any charitable deduction (R p 1911, line 7-p 1913, line 23) Nevertheless, Appellants now contend that the fifty percent provision is a "limitation" on trustees (Appellants' Brief at 32)

[16] Appellants admitted the dearth of documentation and uncertainty of ownership in their testimony, and Appellants' documents confirm this (*See* Pope Affidavit, 2/23/09, (Ex A, Letter to Attorney General McMaster stating they don't know ownership of assets (R pp 2248-49)), R p 1415, line 9-p 1416, line 1, R p 1470, lines 1-4, R p 1690, line 11-p 1691, line 24)

[17] Appellants argued that there was no good-faith controversy underlying the Settlement Agreement because the applicable statutes of limitation barred any action contesting the trust The circuit court disagreed, finding that any applicable statutes had been tolled (Order, May 26, 2009, R pp 40-41)

39)

The circuit court found that the Settlement Agreement was just and reasonable (R p 43) In so doing, the circuit court identified as a key issue the way in which the agreement treated the beneficiaries represented by the Attorney General (R p 43) Supporting its conclusion that the agreement provided them with a just and reasonable result, the circuit court found "the risks of not approving the settlement are substantial" (R p 43) Each of the claims filed by the settling parties posed significant threats to the charitable interests, including the possibility that the charitable beneficiaries would receive nothing (R p 43) The circuit court found that continued litigation would cost the Estate millions of dollars of fees and costs (R p 44) Further, the percentages allocated to each of the settling parties by the agreement were "fair and reasonable" (R p 44) The circuit court also found that the contribution of certain assets to the Settlement Entity by the settling parties increased the value of the Settlement Entity and further supported that the agreement was just and reasonable (R p 45)

Removal of Appellants and Appointment of a Professional Fiduciary

Also by its Order dated May 26, 2009, the circuit court removed Appellants as the personal representatives of Mr Brown's Estate and trustees of the 2000 Trust (R p 45) The circuit court appointed Russell Bauknight, a professional fiduciary, to serve in those capacities (R pp 45-46) When Mr Bauknight was appointed, he learned that the balance of the bank account for Mr Brown's Estate was less than $15,000 (Estate Accounting, R p 2732) He was forced to borrow money to pay outstanding liabilities, such as insurance premiums on Mr Brown's home at Beech Island, South Carolina The fact that the Estate was forced to borrow money after Appellants' removal is particularly

egregious because, while they were still fiduciaries, Appellants petitioned, (R pp 980-92), and received the circuit court's approval, (R pp 149-56), to conduct a sale of Mr Brown's household and personal effects, yet spent a substantial portion of the proceeds paying themselves Specifically, the sale netted $554,077 87 (R pp 2758-59, 2761, 2763 (note entry of "receipts," *e g* , 8/25/08 $463,326 12)) Appellants paid themselves $264,000, (R pp 2758, 2761-63, 2766-67, 2769) (note "disbursements" to Pope and Buchanan, *e g* , 9/2/08 $100,000 00), and their lawyers and accountants $126,816 42 from the sale proceeds, (R pp 2758, 2760-63, 2765, 2767-69) (note "disbursements" to Bailey and Hayes and Sellars) Additionally, Appellants paid themselves $42,000, (R pp 2750, 2753, 2755) (note "disbursements" to Pope and Buchanan), and their lawyers and accountants $45,773 79 from other Estate assets, (R pp 2744, 2749-51, 2753-55) (note "disbursements" to Bailey and Hayes and Sellars)

The record is replete with additional evidence supporting the circuit court's removal of them as fiduciaries First, Appellants failed to conduct an appraisal of Mr Brown's Estate, (R p 1616, line 8-p 1617, line 15), which their own expert opined should have been done (R p 1914, line 8-p 1915, line 12) Despite their failure to conduct an appraisal, Appellants have asserted various values for the Estate ranging anywhere from $86 to $150 million Second, Appellants have taken numerous inconsistent and contradictory positions throughout their tenure as fiduciaries [18] This

[18] For example (1) Appellants claim that the Attorney General does not have the authority to represent the charitable beneficiaries, but brought three actions on behalf of the Trust in which they asked the Attorney General to represent the charitable beneficiaries *in settlements* (Offer of Compromise, Supplemental R pp 2935-2939, Complaint for Expedited Approval of Corbis Settlement filed 3/24/09, R pp 1272-74 (Appellants named the Attorney General as the only defendant), Complaint for Declaratory Judgment filed 11/27/07, (R p 989, ¶ 37) (2) Appellants' testimony during

erratic behavior fueled the volatility surrounding the Estate and Trust administration Third, Appellants intentionally failed to utilize the assets of Mr Brown's Estate to maintain and increase its worth They claimed they did so to deter creditors, (R p 1687, line 3-p 1689, line 21), yet Appellant Pope asserted that a successor would not protect creditors as a reason Appellants should remain as fiduciaries (R p 1485, line 1-16) Fourth, the Settlement Agreement provided that it was a binding private settlement pursuant to S C Code Ann § 62-3-912, which requires fiduciaries to abide by such agreements Nonetheless, Appellants refused to abide by the Settlement Agreement Fifth, Appellants filed a 51-page motion opposing the Settlement Agreement before they knew its terms (R p 1638, lines 12-24) This is contrary to their fiduciary duties of impartiality and fairness (Motion in Opposition to Settlement Agreement, R p 1056-78) Finally, as the circuit court found, Appellants' promise to appeal the approval of the Settlement Agreement created an "irreconcilable conflict" between Appellants and the

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the settlement hearings presented a running theme that it was too early to settle the family litigation because they did not have enough information (*E g* , R p 1565, lines 8-13, R p 1574, lines 19-25, R p 1622, lines 20-25, R p 1631, lines 16-24) Nonetheless, later in the same hearing they proposed their own settlement (Offer of Compromise, Supplemental R pp 2935-2939) (3) Appellants asserted that the settling parties did not satisfy notice requirements by failing to notify three colleges named in the 1999 Trust that Appellants never attempted to determine was valid, yet they failed to notify those three colleges when they asked for the court to approve their fees and to sell Mr Brown's iconic personal property in order to create a fund to pay their fees (R p 1513, line 9-p 1514, line 12) (4) Appellants claim there is not a scintilla of proof that Cannon, Dallas, and Bradley exercised undue influence over Mr Brown in the execution of the 2000 Will and Trust, yet Appellants sued the same individuals alleging they exercised undue influence over Mr Brown (R p 1505, line 12-21, *see also Pope and Buchanan v Cannon Dallas and Bradley*, 2008-CP-02-322, R p 1201, ¶ 25(b)) ("in pursuance of the objectives of such conspiracy, they procured the signature of James Brown on various documents by *undue influence fraud and/or forgery*" (emphasis added)) (5) Appellants asserted that the Estate was not in an emergency situation, (Supp Return, R p 313), yet later asserted that the Estate was in an emergency situation asking the court to appoint a professional fiduciary (R p 1401, lines 20-21)

beneficiaries of Mr Brown's Estate (R p 45)

Appellants are not professional fiduciaries, (R p 1636, line 21-p 1637, line 3, R p 1404, lines 10-17), and their management of Mr Brown's Estate, as well as their conduct during the course of litigation surrounding it, created a contentious and unstable atmosphere In contrast, Russell Bauknight is a certified public accountant, a professional fiduciary, and has the experience necessary to manage the complex estate and the Settlement Entity created by the Settlement Agreement His appointment, as well as the circuit court's approval of the Settlement Agreement, will bring stability to Mr Brown's Estate as its long-awaited administration moves forward

STANDARD OF REVIEW

The standard of review applicable to an appeal of matters originating "in the probate court is controlled by whether the cause of action is at law or in equity "[19] *Dean v Kilgore*, 313 S C 257, 259, 437 S E 2d 154, 155 (Ct App 1993) Where the underlying proceeding is in the nature of an action at law, an appellate court may not disturb the underlying findings except where a review of the record makes clear there is no evidence to support them *In re Estate of Pallister*, 363 S C 437, 447, 611 S E 2d 250, 256 (2005) A will contest is an action at law, and an order approving the settlement of a will contest is reviewed pursuant to this heightened standard *See Johnson v Johnson*, 235 S C 542, 546, 112 S E 2d 647, 649 (1960), *In re Estate of Weeks*, 329 S C 251, 262, 495 S E 2d 454, 460 (Ct App 1997) (internal citations omitted)

Further, settlement agreements are viewed as contracts under South Carolina law

[19] Matters removed by the probate court to the circuit court are treated as having "originated in" the Probate Court *See Waddell v Kahdy*, 309 S C 1, 4, 419 S E 2d 783, 784 (1992)

Pee Dee Stores Inc v Doyle, 381 S C 234, 241, 672 S E 2d 799, 802-03 (Ct App 2009) And where the action is one to construe a contract, the court applies the heightened and deferential "any evidence" standard of review *Felts v Richland County*, 303 S C 354, 356, 400 S E 2d 781, 782 (1991) Under this standard, "the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings" *Hofer v St Clair*, 298 S C 503, 508, 381 S E 2d 736, 739 (1989) (internal citations omitted)

ARGUMENT

I APPELLANTS LACK STANDING

Appellants lack standing to pursue this appeal because they do not have an interest in the subject matter of the litigation *Duke Power Co v S C Pub Serv Comm n*, 284 S C 81, 96, 326 S E 2d 395, 404 (1985), *Furman Univ v Livingston*, 244 S C 200, 204, 136 S E 2d 254, 256 (1964) To obtain relief from a court the person or entity seeking relief must have a *personal stake* in the subject matter of the litigation *Sea Pines Ass n for the Prot of Wildlife Inc v S C Dep t of Natural Res* , 345 S C 594, 600, 550 S E 2d 287, 291 (2001) Possession of a personal stake in the subject matter of the litigation is what gives a party seeking relief the standing required to obtain such relief *See id*

"In other words, one must be a real party in interest" *Id* "A real party in interest is one who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action" *Id* (citation omitted) Under the statutory scheme governing approval of the Settlement Agreement now challenged on appeal, Appellants have no more than a nominal or

technical interest in the circuit court's decision Appellants do not have a beneficial interest in the 2000 Will or Trust *E g*, S C Code Ann § 62-7-404 ("A trust and its terms must be for the benefit of its beneficiaries") Thus, their appeal should be dismissed for lack of standing

A Appellants Lack Standing to Appeal the Circuit Court s Approval of the Settlement Agreement and the Attorney General s Involvement in the Negotiations

Appellants lack standing to appeal the approval of the Settlement Agreement as well as the Attorney General's role in the process This is because, under applicable law, Appellants had no vote or veto power over the settlement at the trial level, therefore, they do not have standing to attack it on appeal

The South Carolina Probate Code imposes certain duties and limitations on fiduciaries when the beneficiaries have reached a settlement over a dispute concerning an estate For instance, the fiduciaries *have no power to scuttle the settlement itself* Section 62-3-1102 provides that personal representatives and trustees may "submit the agreement to the court for its approval" and must have notice of an agreement But, in cases such as this one where the beneficiaries and not the fiduciaries submit the agreement, that section provides that the court *shall* direct the personal representative or trustee to sign the agreement "if it finds that the contest or controversy is in good faith and that the effect of the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable" Section 62-3-1102 clearly anticipates that fiduciaries do not have to consent to a settlement agreement or else this language mandating that the court direct them to sign the agreement is meaningless

The reason Section 62-3-1102 does not give fiduciaries a vote or veto on approval

of settlement agreements is that fiduciaries may have a conflict of interest in wanting their fees to continue rather than end upon settlement This concern is particularly applicable in this matter As the comment to Uniform Probate Code Section 3-1102 states

> The thrust of the procedure is to put the authority for initiating settlement proposals with the persons who have beneficial interests in the estate, and to prevent executors and testamentary trustees from vetoing any such proposal *The only reason for approving a scheme of devolution which differs from that framed by the testator or the statutes governing intestacy is to prevent dissipation of the estate in wasteful litigation Because executors and trustees may have an interest in fees and commissions which they might earn through efforts to carry out testator s intention the judgment of the Court is substituted for that of such fiduciaries in appropriate cases A controversy which the Court may find to be in good faith as well as concurrence of all beneficially interested and competent persons and parent representatives provide prerequisites which should prevent the procedure from being abused* Thus, the procedure does not threaten the planning of a testator who plans and drafts with sufficient clarity and completeness to eliminate the possibility of good faith controversy concerning the meaning and legality of his plan

(Emphasis added)[20] It is telling in this case that Appellants claim $5 million in fees[21] and want to scuttle a settlement so that the litigation will continue This stands in stark contrast to the settling parties (*i e* the real parties in interest), none of whom has appealed the circuit court's approval of the Settlement Agreement

The Probate Code does not give Appellants a vote or veto, *because* their interest is peripheral and contrary to the South Carolina Probate Code's intent that fair settlements be approved Appellants simply do not have standing to challenge a decision

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[20] It is appropriate to use uniform comments to explain statutes derived from the uniform code *See* S C Code Ann § 62-1-102(b)(5), *Estate of Guide v Spooner*, 318 S C 335, 338, 457 S E 2d 623, 625 (Ct App 1995) Sections 62-3-1101 and -1102 are taken verbatim from the Uniform Probate Code S C Code T 62, Art 3, Pt 11, Misc Table

[21] Notice of Creditor's Claim, (R pp 2879-80), filed days after the circuit court denied Appellants' Motion to Alter or Amend its Order Approving the Settlement Agreement

affecting interests in which they have no real say, regardless of the propriety of their removal In sum, the South Carolina Probate Code itself recognizes that fiduciaries are not real parties in interest when it comes to settling an estate dispute, and therefore, Appellants should not be able to attack the settlement by appeal Thus, this Court should dismiss Appellants' appeal of the issues concerning the Settlement Agreement and the Attorney General's involvement therein for lack of standing [22]

B Appellants Lack Standing to Appeal Their Removal as Personal Representatives and Trustees

Appellants lack standing to appeal their removal as fiduciaries of the 2000 Will and Trust As argued *infra* at Part IV, Appellants waived the issue of whether their removal as fiduciaries was erroneous Assuming *arguendo* this Court finds Appellants did not waive this argument, they nonetheless lack standing to appeal their removal because their only remaining interest is a claim for $5 million in fees relating to the 18-month period during which they held the positions of fiduciaries, and that claim will be handled separately in the usual manner that claims are handled under the Probate Code

Appellants' interest in this matter is analogous to a former client's divorce attorney who seeks to intervene personally in an appeal from a divorce action to collect his fees Just as the divorce attorney lacks standing because his interest is "peripheral" and unrelated to "the real interest at stake" in a divorce case,[23] removed personal representatives and trustees such as Appellants have no interest in the action because

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[22] *See also In re Liss*, 184 N J Super 184, 190 (N J Super Ct 1981) (holding that an executor may appear in a will contest "to protect the interest of creditors, taxing authorities and successors who are not parties to the agreement, and to insure that the costs of administration are paid," but that he lacks standing "to resist the interested parties' wish to settle")

[23] *Bailey v Bailey*, 312 S C 454, 458, 441 S E 2d 325, 327 (1994)

their fiduciary relationship with the beneficiaries who have a personal stake in the litigation has terminated

In so far as it concerns Appellants' argument that they were erroneously removed as personal representatives of Mr Brown's Estate, the Supreme Court of Washington addressed this precise issue and held that an administrator of an estate had no standing to appeal an order revoking his appointment *Cairns v Donahey*, 109 P 334, 335 (Wash 1910) The *Cairns* court came to this conclusion despite the fact that the administrator's collection of his fees was an outstanding issue *Id* Specifically, the *Cairns* court said of the former fiduciary's appeal "[w]e fail to understand how the administrator has any interest in the subject-matter of this appeal, or how he is injuriously affected by the final order entered He has no interest in the estate other than for compensation that may be due him" *Id* , *see also In re Pedroli s Estate*, 193 P 852, 853-54 (Nev 1920) (holding that a person removed from his position as administrator of a decedent's estate could not maintain an appeal regarding the removal)

Furthermore, assuming Appellants did not waive the argument, Appellants do not have standing to assert that their removal as trustees was erroneous After all, once Appellants were removed as trustees, they had no duties or interests related to the 2000 Trust Addressing this issue, an appellate court of Indiana has recognized that an order removing a trustee is "self-executing," thus immediately canceling any connection to a trust or its administration *Union Savs & Trust Co v Eddingfield*, 134 N E 497, 498 (Ind Ct App 1922) (holding that an order removing a trustee from its fiduciary position "completely stripped [it] of its authority, and took away its representative capacity Thereby its prior connection with the estate was completely severed") The court

concluded its analysis by stating, "after [the order removing the former trustee was entered] it had no more standing as an administrator than a dead man " *Id* The same is true of Appellants in this case

II THE SETTLEMENT AGREEMENT APPROVED BY THE CIRCUIT COURT WAS A JUST AND REASONABLE RESOLUTION TO A GOOD-FAITH CONTROVERSY

As former fiduciaries, Appellants are attempting to veto the Settlement Agreement reached by all of the beneficial interests of Mr Brown's Estate and approved by the circuit court The Settlement Agreement was approved by the circuit court pursuant to Section 62-3-1102, which provides that a "settlement, or compromise, is valid and binding where the court finds (1) the controversy is in good faith, and (2) the agreement's effect is just and reasonable " *Univ of S Cal v Moran*, 365 S C 270, 280, 617 S E 2d 135, 140 (Ct App 2005)

If the Court finds that Appellants have standing and proceeds to the merits, it should affirm the circuit court's order approving the Settlement Agreement because the record provides abundant evidence supporting the circuit court s conclusions *Hofer v St Clair*, 298 S C at 508, 381 S E 2d at 739 (noting that "the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings ") Further, "[s]ettlement of family difficulties or controversies arising out of the distribution of estates are favored, both at law and in equity, if at all reasonable and entered into understandingly " *Detroit Trust Co v Neubauer*, 38 N W 2d 371, 378 (Mich 1949) Because the evidence supporting the circuit court's conclusion is overwhelming,[24] and because the Settlement Agreement was

[24] As discussed in the circuit court's Order, the evidence on behalf of the settling parties

signed by all of the beneficial interests of the Estate, and was a just and reasonable resolution to a good-faith controversy, this Court should affirm

A The Settlement Agreement Resolved a Good-Faith Controversy

Good faith is defined, in relevant part, as "honesty in belief or purpose" BLACK'S LAW DICTIONARY 713 (8th ed 2000) The requirement of a good-faith controversy in Section 62-3-1102 does not mandate that a proponent of a settlement agreement present conclusive proof that a contestant would prevail on a challenge Rather, the statute simply requires the honest belief, based on evidence in the record, that a controversy exists "This requirement is to avoid sham arrangements designed to prejudice unknown parties or parties whose addresses are unknown but would be bound by an order confirming the agreement" S C Code Ann § 62-3-1102, reporter's comments

Mr Brown's Estate has been involved in controversy since shortly after his death, when control of his corpse was an issue disputed by several beneficiaries of his Estate But that controversy was small when compared to the controversies involving the validity of the 2000 Will and Trust, the ownership of the Estate's assets, and the claims made against the Estate by Mr Brown's widow, youngest son, and adult children All of these controversies spawned lawsuits and disputes that the Settlement Agreement resolved Standing alone, each of the individual controversies satisfies the requirements of Section 62-3-1102 Taken together, these controversies create an overwhelming set of grounds supporting the circuit court's finding that multiple good-faith controversies existed Each

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included testimony of Appellants and their expert witness as well as voluminous documents included in the record, including the file of Dewain Herring, who drafted the estate planning documents

individual controversy is discussed below

1 Appellants Conceded a Good-Faith Controversy Exists by Making an Offer of Compromise

A compelling demonstration that a good-faith controversy exists comes directly from Appellants' own conduct Although Appellants now contend that no good faith controversy exists, on April 6, 2009—the day the settlement hearings concluded—they held a different belief On that day, Appellants submitted their own "Offer of Compromise" that offered to settle disputes related to Mr Brown's Estate (Offer of Compromise, Supplemental R pp 2935-39) Presumably, after hearing all of the evidence presented during the hearings, Appellants finally realized that a good-faith controversy exists

Again, when it suits their interests—and their $5 million in claimed fees—Appellants believe a good-faith controversy exists that can be resolved through settlement [25] But when Appellants are removed as fiduciaries, they change positions and now argue that no good-faith controversy exists Appellants should be judicially estopped from taking contrary positions, and the Court should likewise take judicial notice of their "Offer of Compromise" as conceding the existence of a good-faith controversy [26]

2 Controversy About Validity of 2000 Will and Trust

Five of the children named in the 2000 Will and Mrs Brown brought actions to contest the 2000 Will and Trust The contests were based on several grounds, but each

[25] Appellants' Offer of Compromise stipulated that they remain as trustees (Offer of Compromise, Supplemental R p 2937, ¶ 5)

[26] The Offer of Compromise and other attempts to settle estate litigation, *see* n 18 (1), *supra*, operate as a concession by Appellants that the Attorney General has authority to

party argued that Appellants' predecessors—Cannon, Dallas, and Bradley—exercised control over Mr Brown and unduly influenced his execution of the 2000 Will and Trust Appellants argue in their brief that Respondents "offered no evidence that the undue influence claim had any merit" *Appellants Brief* at 24 When that assertion is juxtaposed to the fact that Appellants filed a lawsuit against their predecessors for the exact same conduct, it becomes evident that their argument is without merit *Appellants previously brought an action against Cannon Dallas and Bradley for undue influence which is still pending* (R p 1505, lines 12-21, s*ee Complaint Pope and Buchanan v Cannon Dallas and Bradley*, 2008-CP-02-233, R p 1201, ¶ 25(b) "in pursuance of the objectives of such conspiracy, they procured the signature of James Brown on various documents by *undue influence fraud and/or forgery*" (emphasis added))

Again, when it benefitted Appellants' interests, they asserted that Cannon, Dallas, and Bradley unduly influenced Mr Brown But now that this position no longer suits their interests, Appellants claim that there is no evidence of undue influence Putting aside whether Appellants should be estopped from taking contrary positions during the course of related litigation involving the same parties,[27] the controversy whether Brown's

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compromise

[27] Judicial estoppel "precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation" *Hayne Fed Credit Union v Bailey*, 327 S C 242, 251, 489 S E 2d 472, 477 (1997) Appellants are well aware of judicial estoppel as they were judicially estopped from taking inconsistent positions in the Dallas appeal *In re Estate of James Brown*, 2007-CP-02-00122, Court of Appeals Order Granting Motion to Substitute dated 2/12/10, (R p 75 & n 3) Now, in this matter, it appears that Appellants again intend to take an inconsistent position Although judicial estoppel applies only to factual, and not legal, positions, Appellants first claimed that one set of facts suggested undue influence and now suggest the same set of facts does not suggest undue influence The facts are the same, but Appellants' interpretation of those facts has changed This Court should estop Appellants from asserting their most recent interpretation of the facts

former handlers and confidants took advantage of and unduly influenced him has a good-faith basis

First, the 2000 Trust was drafted in a manner that allowed Cannon, Dallas, and Bradley to enrich themselves under the guise of "management expenses," in addition to trustees' fees The 2000 Trust authorizes trustees Cannon, Dallas, and Bradley to receive up to fifty percent of gross income for management expenses [28] This is a significant fact because, after estate assets are poured over into the 2000 Trust, it would be funded substantially with intellectual property The only significant income generated by the 2000 Trust would be through royalty payments derived from licensing or selling Mr Brown's music and image Thus, the 2000 Trust is drafted in a way that would allow the trustees to siphon off fifty percent of the annual income generated from Mr Brown's lifetime of work

During the March 25, 2009 hearing, upon inquiry from the circuit court, Appellant Pope testified that Cannon admitted he could take half of the Estate if he wanted (R p 1785, lines 7-10) Appellant Pope further testified that Cannon even admitted that "[i]f I had wanted Mr Brown to leave me his estate, I could have done it " (R p 1787, lines 16-17) Certainly, Appellant Pope recognized the level of control that Cannon had over Mr Brown "[Cannon] was mean and conniving, and I [Pope] knew that " (R p 1787, lines 2-3) Unfortunately, at the end of the day, Cannon, Dallas, and

[28] Whether the fifty percent provision would be valid, in light of the charitable savings clause language in the 2000 Trust, is irrelevant to the issue of undue influence The issue is whether the alleged practitioners of undue influence believed at the time of preparation and execution of the 2000 Will and Trust that the fifty percent provision would be enforceable Presumably they did, otherwise why would a known invalid provision be included that could be evidence of undue influence Moreover, another fact exists that would show undue influence Mr Brown placed great trust in Dallas and Cannon (R p

Bradley's undue influence over Mr Brown appears to have prevailed Mr Brown essentially left half of his Estate to Cannon, Dallas, and Bradley through the fifty percent management expense clause According to Appellant Pope's estate planning expert, Harley Ruff, the fifty percent management fee provision is unprecedented and problematic—especially in a charitable trust (R p 1911, line 7-p 1912, line 23)

Second, the voluminous file of Dewain Herring, the draftsman of the 2000 Will and Trust, contains a blank deed apparently signed by Mr Brown and witnessed by Messrs Cannon and Herring (Blank Deed signed by James Brown, R pp 2728-30) There is no legitimate reason to have a client sign a blank deed, despite Appellant Pope's testimony that she has seen lots of lawyers have blank deeds signed (R p 1499, lines 4-24) The fact that this document exists casts doubt on the validity of *any* document prepared by Herring for Mr Brown Appellant Buchanan testified that he "wouldn't [be] surprise[d]" if there was not a "single piece of correspondence from Mr Herring to his client Mr Brown " (R p 1673, lines 21-25, 1-18) Appellant Buchanan explained, "that happens all the time " (R p 1673, line 7) The record evidence shows that rather than communicate with Mr Brown, Herring communicated with Appellants' predecessors Record evidence also suggests that Herring and Cannon were good friends and that Cannon introduced Mr Brown to Herring (R p 1670, lines 1-12)

Finally, the credibility of four principal witnesses to the validity of the 2000 Will and Trust is questionable Herring is now in prison for murder *State v Herring*, 387 S C 201, 692 S E 2d 490 (2009) And the accuracy of the testimony of Cannon, Dallas,

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1507, line 21-p 1508, line 1)

and Bradley[29] is suspicious and often contradictory For example, Dallas admitted that he presented a stipulation to the circuit court knowing it was false because he wanted to keep his position as fiduciary (R p 2048, lines 7-24) Cannon is accused of misappropriating at least $900,000 from the Estate and has been indicted on nine counts by the criminal division of the South Carolina Attorney General's Office The questionable credibility of the four witnesses most involved with the preparation and execution of the 2000 Will and Trust overwhelmingly suggests a good faith controversy exists as to whether Cannon, Dallas, and Bradley exercised undue influence over Mr Brown to enrich themselves

3 Controversy About Ownership of Assets

A good-faith controversy also exists over the assets funding the 2000 Trust, including what property would pass through the probate Estate under the 2000 Will According to witnesses, including Appellant Pope, the records that would show the source of the Trust's assets are either too inadequate or do not exist Appellant Pope testified that the evidence was insufficient to determine whether Mr Brown's related assets were in the Trust or in the Estate, (R p 1470, lines 1-4), and later asserted that the Trust contained only the homestead real estate and an interest in a music company (R p 1278, ¶ 14) The three original trustees have also given inconsistent testimony as to the assets funding the Trust They presented a stipulation representing that the Trust was funded with only the Beech Island property, Mr Brown's primary residence, and $50 (R pp 2153-59) But Dallas later testified that the stipulation was inaccurate and that he signed the stipulation to avoid losing his position as fiduciary (R p 2048, lines 7-24)

[29] Bradley is now deceased

Further, it is unknown whether a company owned by Mr Brown, James Brown Enterprises, Inc (JBE), was transferred to the Trust during Mr Brown's lifetime The documents show that the attempted transfer was incomplete Mr Brown never signed the documents transferring ownership of the stock to the Trust The income tax returns filed on behalf of JBE show Mr Brown, not the 2000 Trust, as the owner (JBE, Inc Tax Returns, R pp 2198, 2200, 2204, 2206, 2210, 2212, Supplemental R pp 2940-2954) Putting aside the question of which entity owns JBE—the Estate or Trust—determining what assets JBE owns is nearly impossible due to the lack of adequate records Without the Settlement Agreement resolving the controversies related to property ownership, it would be nearly impossible for a probate court to determine which assets go where

Even assuming the 2000 Trust is valid, a good-faith argument exists for subjecting assets of the 2000 Trust to the elective share and the omitted-spouse and omitted-child shares because Mr Brown retained control of the 2000 Trust "[Counsel for Mrs Brown] Mr Dallas, Mr Brown was so adamant about retaining control of the property that even though you were named trustee of a trust he retained de facto control and you really had no responsibilities other than when he asked you to do something Is that a fair assessment of the trust?" [Dallas] I think that's a fair assessment " (R p 2046, lines 7-13) Accordingly, the 2000 Trust would likely be deemed a revocable trust *Dreher v Dreher*, 370 S C 75, 634 S E 2d 646 (2006), *Seifert v S Nat l Bank of S C*, 305 S C 353, 409 S E 2d 337 (1991)

4 The Controversy Concerning Mrs Brown's Claim for an Elective or an Omitted-Spouse's Share

Another good-faith controversy affecting Mr Brown's Estate is Mrs Brown's claim for an elective share or omitted-spouse's share under S C Code Ann §§ 62-2-207

through -301 If Mrs Brown qualifies as a surviving spouse, which the evidence strongly supports, she would be entitled to an elective share and may qualify for an omitted-spouse's share The elective share would be one-third of the probate assets plus any assets held by a revocable trust The omitted-spouse's share would be one-half of the probate assets plus any assets held by a revocable trust [30]

The circuit court correctly found that Mrs Brown's spousal claims were the basis of a good-faith controversy because the overwhelming evidence showed that she was married to Mr Brown Mr and Mrs Brown participated in a ceremonial marriage on December 14, 2001 The marriage was confirmed with a South Carolina marriage license and certificate (R p 970) Mr Brown also represented that Mrs Brown was his lawful wife in his 2005 autobiography (Autobiography, R pp 2905-2907A) A binding family court order concluded that there was no impediment to her marriage when she married Mr Brown (R pp 192-95)

Appellants assert that Mrs Brown's spousal claims are not the basis of a good-faith controversy However, they failed to preserve any challenge to the validity of Mrs Brown's elective share and omitted-spousal claim In fact, Appellants have *expressly* abandoned their prior challenges to the validity of Mr and Mrs Brown's marriage [31]

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[30] *See Dreher v Dreher*, 370 S C 75, 634 S E 2d 646 (2006), *Seifert v S Nat l Bank of S C*, 305 S C 353, 409 S E 2d 337 (1991)

[31] In their brief, Appellants mention *Lukich v Lukich*, 379 S C 589, 666 S E 2d 906 (2008) (holding under the particular facts an annulment order will not relate back to make current marriage valid) However, Appellants do not address that opinion except to mention that a footnote appearing in the court of appeals opinion disappears from the Supreme Court's opinion 368 S C 47, 627 S E 2d 754 (Ct App 2006) Appellants have abandoned their argument under *Lukich* for good reason Although Mrs Brown previously had a putative marriage ceremony with Javed Ahmed before she married Mr Brown, that marriage was never valid because, as the family court determined, Ahmed was already married at the time of the putative marriage ceremony As *Lukich* makes

Appellants' brief merely mentions the marriage in passing and suggests the Attorney General paid too much to settle her claim Appellants then indirectly suggest there is no need to reach that question (Appellants' Brief at 41) Thus, Mrs Brown's claim as the lawful spouse of Mr Brown is no longer disputed It created a good-faith controversy that had a substantial impact on Mr Brown's Estate The Settlement Agreement resolved this controversy

5 The Controversy Concerning Brown II's Claim for an Omitted-Child's Share

The Settlement Agreement also resolved a good-faith controversy concerning Brown II's claim for an omitted-child's share Pursuant to S C Code Ann § 62-2-302, a child born after the execution of the testator's will is entitled to receive his intestate share if omitted from the will The 2000 Will was executed before the birth of Brown II

Finally, although Appellants previously contested that Brown II was the biological child of Mr Brown, they have now abandoned that challenge [32] Thus, Brown II's claim was another good-faith controversy resolved by the Settlement Agreement

B The Settlement Agreement Was Just and Reasonable

The just and reasonable requirement of section 62-3-1102 involves the judgment

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clear, its holding would not apply to Mrs Brown since her marriage to Ahmed was void *ab initio* *Id* at 55 n 2, 627 S E 2d at 758 n 2 Appellant Buchanan admitted in testimony that *Lukich* did not apply and that Appellants would not have standing to contest the family court Order holding that Mrs Brown was not married before she married Mr Brown (R p 1650, line 1-p 1656, line 15)

[32] Appellants have abandoned their challenge against the validity of Brown II's claim with good reason In his autobiography, Mr Brown describes Brown II as his son (Autobiography, R pp 2906-2907A) Mr Brown is listed as the father on Brown II's birth certificate (R p 1557, lines 8-15) Mr Brown obtained health insurance and social security benefits for Brown II, and named him as his son in his medical directive (R p 1559, line 14-p 1561, line 25) Finally, a DNA test performed by the Guardian ad Litem showed a greater than 99% probability that Mr Brown was the biological father of

of the circuit court Under this provision, the circuit court's judgment is substituted for an opposing fiduciary *See supra* Part I A *& infra* Part II D (comments to Uniform Probate Code Section 3-1102) In order for Appellants to prevail on this issue, they must show that no evidence supported the decision of the circuit court On this record, that is a burden they cannot overcome Rather, the evidence overwhelmingly supports the circuit court's decision

1 Benefit to Charitable Beneficiaries

For the charitable beneficiaries, the risk of not approving the Settlement Agreement was substantial Significant arguments, supported by evidence, were made that the 2000 Will and Trust are not valid [33] If the challenging parties had prevailed in these contests, intestacy would have resulted and the charitable beneficiaries would have received nothing The Settlement Agreement ensured that this did not happen [34]

Further, even if the challenges to the validity of the 2000 Will and Trust had failed, the charitable beneficiaries still ran the risk that Mrs Brown's spousal share claims would reduce the amounts available to them Regardless of Mr Brown's intent, Mrs Brown would be entitled to one-third of the probate assets plus one-third of the assets in any revocable trust Further, unless Mr Brown demonstrated an intent to

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Brown II (Supplemental R p 2922, line 12-p 2923, line 2)

[33] Prior to his execution of the 2000 Will and Trust, Mr Brown executed a 1999 Will and Trust If the 2000 Will and Trust are overturned, the same arguments can be made that the 1999 Will and Trust are invalid Therefore, the existence of the 1999 Will and 1999 Trust is of no consequence to the Court's analysis of this issue

[34] The risk for the charitable beneficiaries would be enhanced by the burden of proof Because Cannon, Dallas, and Bradley, the original personal representatives and trustees, are the alleged perpetrators of the fraud and undue influence resulting in Brown's execution of the 2000 Will and Trust documents, the burden of proof would fall on the proponents of the Will and Trust because Cannon, Dallas, and Bradley were in a confidential relationship with Brown *See Dixon v Dixon*, 362 S C 388, 398, 608 S E 2d

override section 62-2-301, which establishes the omitted-spouse's share, Mrs Brown is entitled to one-half of the probate estate[35] and likely one-half of the assets of any revocable trust Thus, if Mrs Brown had prevailed on her claims, the charitable beneficiaries' share of the probate estate and any revocable trust would be reduced by either one-half or one-third Moreover, under the Settlement Agreement, Mrs Brown contributes her share of half of the termination rights, discussed in Part II B 2, *infra*, to the Settlement Entity This contribution of assets that the charitable trust would never have received further supports the circuit court's determination that the Settlement Agreement was just and reasonable

Even if the 2000 Will and Trust are upheld, Brown II's omitted-child claims also pose a substantial risk to the charitable beneficiaries Unless Mr Brown demonstrated an intent to override section 62-2-302, which establishes the omitted-child's share, Brown II would be entitled to his intestate share of the probate estate and the same share of the assets of any trust deemed to be revocable If Brown II had prevailed on his claims, the charitable beneficiaries' share of the probate estate and any revocable trust would be reduced by his intestate share

The charitable beneficiaries risk pecuniary loss due to the time and expense necessary to litigate all of the issues surrounding Mr Brown's estate Courts have noted that avoiding protracted and unnecessary litigation often supports the settlement of an estate *See e g Merkel v Long*, 117 N W 2d 130, 136 (Mich 1962) (noting "harmonious disposition of the matter will serve to 'avoid the expense, bitterness of

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849, 853 (2005)

[35] As discussed above, determining the proper ownership of probate and non-probate assets will be difficult if not impossible

feeling and disturbance of the orderly pursuits of life which are so often the incidents of lawsuits' as well as the needless delay of distribution of the corpus of the trust fund"), *Detroit Trust Co* , 38 N W 2d at 381 ("[T]hat it was for the benefit of all parties interested in the estate, presently or prospectively, to avoid litigation that might perhaps prove expensive and protracted is obvious ")

In this case, it took more than two years of estate administration and possibly millions of dollars of fees and costs just to get to the point of considering a settlement All of these factors demonstrate that the allocation of ownership interests in the Settlement Entity among the settling parties is just and reasonable [36] Even if viewed as having standing, Appellants cannot meet the "any evidence" standard necessary to reverse the circuit court's approval of the Settlement Agreement

2 . Federal Copyright Termination Rights

The family contributed valuable termination rights that the charitable trust would never have received When a songwriter assigns some of his copyrights to a third party, as Mr Brown did during his lifetime, under federal law he still retains the right to terminate or revoke the assigned copyrights after a period of time has passed [37] And if the songwriter dies before that period of time passes, the termination rights pass by federal law to the statutory heirs (the surviving spouse and children) regardless of the songwriter's attempt to transfer the termination rights by will or otherwise *See* 17

[36] Appellants also contend that the settlement creates tax problems, but the Order discusses why there are no tax problems In any event, assuming *arguendo* a tax problem exists, it is just one factor among all the factors considered as part of the settlement being just and reasonable

[37] For songs copyrighted before the 1976 Copyright Act, the time period before the termination rights can be asserted is 56 years from the date copyright was secured For songs copyrighted after the 1976 Copyright Act, that time period is 35 years from the

U S C §§ 203, 304, Ann Bartow, *Intellectual Property and Domestic Relations Issues to Consider When There Is an Artist Author Inventor or Celebrity in the Family*, 35 FAM L Q 383 (2001)

Under the Settlement Agreement, the settling parties, who are all heirs to the copyright termination rights under federal law, have contributed their termination rights and any proceeds to be derived from them to the Settlement Entity (Settlement Agreement, R p 2363, ¶ 5d, Addendum, R pp 2377-78, ¶ 1) Had the statutory heirs not agreed to contribute these rights to the Settlement Entity, the charitable beneficiaries could never have received any benefits from the termination rights Although there is not enough information to yet determine the precise value of Mr Brown's termination rights, such rights have been described as "immensely valuable" and may contribute substantial value to the Settlement Entity ("Superman Article," R pp 2308-14) Therefore, pursuant to the Settlement Agreement, many of the settling parties contributed significant assets to the Settlement Entity that otherwise would have been unavailable to the charitable beneficiaries

Mrs Brown provides substantial benefit to the settling parties, including the charitable beneficiaries Her status as surviving spouse allows her to claim, for the benefit of the Settlement Entity, a fifty percent share of the federal copyright termination rights This claim will reduce the detrimental impact to the Settlement Entity of any claim to those rights by someone qualifying under federal law as a statutory heir but who is not a settling party Moreover, her status as a surviving spouse allows the Estate to claim a marital deduction for those assets passing to her, which increases the net amount

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assignment 17 U S C §§ 203, 304

passing to the Settlement Entity in which the charitable beneficiaries have a share

Brown II provides substantial benefit to the settling parties, including the charitable beneficiaries His status as a child allows him to claim, for the benefit of the Settlement Entity, a share of federal copyright termination rights, thereby reducing the detrimental impact to the Settlement Entity of any claim to those rights by someone qualifying under federal law as a statutory heir but who is not a settling party Moreover, Brown II does not reduce the percentage of assets in the Settlement Entity created by the Settlement Agreement because the Settlement Agreement provides that his share is to be paid from Mrs Brown's share

C Sections 62-3-1101 and -1102 Apply to a Settlement Involving the 2000 Trust

Appellants imply that sections 62-3-1101 and -1102 are not applicable to a settlement involving the 2000 Trust because it is an inter-vivos, irrevocable, charitable trust and not a testamentary trust This argument is another contradiction of prior assertions by Appellants in these proceedings and ignores the plain language and history of those statutes

The 2000 Will and Trust cannot be read as two separate documents The 2000 Will is a pour-over will that directs assets passing through the Estate to the 2000 Trust Moreover, if the 2000 Will's devise of the residuary estate to the 2000 Trust were to fail for any reason, the Will specifically incorporates the terms of the 2000 Trust The two documents go hand-in-hand and together comprise Mr Brown's Estate plan On numerous occasions, Appellants' own filings with the circuit court and testimony refer to these two documents together as Mr Brown's "Estate Plan" (*E g*, Motion to Sell Household Effects, R p 982, ¶ 9) Appellants apparently now assert that these

documents should be considered separately and that any modification to the 2000 Trust pursuant to the settlement should be accomplished solely under the authority of the South Carolina Trust Code This argument is inconsistent with Appellants' own prior characterization of the documents at issue

The South Carolina Trust Code is part of the broader South Carolina Probate Code under Title 62 The South Carolina Trust Code has no specific provisions for judicially-approved settlement of litigation involving trusts because sections 62-3-1101 and -1102 already existed at the time the Trust Code was incorporated into Title 62 This conclusion is further supported by the history of the South Carolina Probate Code In 1986, South Carolina adopted the original Uniform Probate Code versions of sections 3-1101 and 3-1102 A technical amendment was made to the Uniform Probate Code sections 3-1101 and 3-1102 in 1993 The Comment to Uniform Probate Code Section 3-1101 explains the amendment as follows

> 1993 technical amendments to this and the following section *clarified original intention that the described procedure would be available to resolve controversies other than those concerning a will*

(Emphasis added) [38]

The 1993 technical amendment clarifies that sections 62-3-1101 and -1102 always covered settlements involving more than just wills Appellants nevertheless cleave to an impractical and narrow view of the Probate Code In their view, the provisions favoring settlement agreements—sections 62-3-1101 and -1102—favor settlements of only will disputes Such a strained interpretation runs contrary to the legislative expression of

[38] It is appropriate to consider comments to the Uniform Probate Code when construing SCPC provisions, especially when taken verbatim from the UPC *See e g Estate of Guide v Spooner*, 318 S C 335, 338, 457 S E 2d 623, 625 (Ct App 1995)

South Carolina's public policy favoring family settlements *Dibble v Dibble*, 248 S C 165, 171, 149 S E 2d 355, 358 (1966) The Uniform Probate Code Commissioners made clear by technical amendment that the original intention was always to include other instruments, including trusts [39]

The South Carolina Reporter's Comments to section 62-3-1101 confirm the Uniform Comments' view that the settlement of controversies involving a decedent's will could involve inter-vivos trusts The Comments to section 62-3-1101 state as follows

> After court confirmation, the agreement is binding even though the agreement affects a trust contained in an instrument separate from decedent's will, and even though it affects an unalienable right

The comments are supported by the express language of section 62-3-1102(2) It lists a broad class of persons who are to execute an approved agreement "the personal representative, the trustee of every affected testamentary trust, *and other fiduciaries and representatives*" (Emphasis added) Section 62-3-1102(3) broadly requires notice to, among others, "all affected trustees of trusts," without any limitation that those affected trusts be testamentary trusts If inter-vivos trusts could not be affected by section 62-3-1102, then the statutory language would be rendered meaningless

D Appellants Were Not Necessary Parties to the Settlement Agreement

Section 62-3-1102 does not require that trustees approve the Settlement Agreement when the circuit court has determined that the trustees' interests are contrary to the interests of the trust and where removing the trustees is necessary to reach a just and reasonable resolution to a good-faith controversy Appellants, however, claim that

[39] *See e g In the Matter of Estate of Grimm*, 784 P 2d 1238 (Utah Ct App 1989) ("Under [state version of Uniform Probate Code section 3-1101, settlement agreement] is

they are the only persons who could enter into a settlement affecting the 2000 Trust under section 62-3-1102 Appellants cite *University of Southern California v Moran* as their authority 365 S C 270, 617 S E 2d 135 (Ct App 2005) But, *Moran* is different from and much narrower than what Appellants propose In *Moran*, the court of appeals held that a trust beneficiary, although given the notice and the opportunity to be heard, cannot veto the settlement when a trustee signs a settlement agreement on behalf of a trust The matter here deals with a different factual situation Appellants did not join in the execution of this Settlement Agreement Appellants propose to broaden the holding of *Moran* to give a trustee absolute and sole control over settlements, arguing that a trustee can block a settlement agreed to by the beneficiaries of the trust This is not what section 62-3-1102 does

Under Appellants' theory, the beneficiaries of a trust might never reach a settlement, because the trustees could always veto it This is true in cases such as this one where the charitable, beneficial interests join in the settlement Section 62-3-1102 simply does not give trustees veto power over trust dispute resolutions Section 62-3-1102(3) provides that a court can approve a settlement agreement and direct the fiduciaries to sign the settlement agreement even if they object to it To interpret section 62-3-1102 as Appellants suggest would make any settlement of litigation involving a trust dependent upon the consent of persons who have a financial interest in seeing that wasteful litigation continues As mentioned above, but equally applicable here, the comments to section 3-1102 of the Uniform Probate Code provide as follows

> The thrust of the procedure [for approving a settlement] is to put the authority for initiating settlement proposals with the persons who have

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thus binding, even though it may affect a trust or an inalienable interest")

> beneficial interests in the estate, and to prevent executors and testamentary trustees from vetoing any such proposal The only reason for approving a scheme of devolution which differs from that framed by the testator or the statutes governing intestacy is to prevent dissipation of the estate in wasteful litigation *Because executors and trustees may have an interest in fees and commissions which they might earn through efforts to carry out testator s intention the judgment of the Court is substituted for that of such fiduciaries in appropriate cases* A controversy which the Court may find to be in good faith, as well as concurrence of all beneficially interested and competent persons and parent representatives provide prerequisites which should prevent the procedure from being abused Thus, *the procedure does not threaten the planning of a testator who plans and drafts with sufficient clarity and completeness to eliminate the possibility of good faith controversy concerning the meaning and legality of his plan*

(Emphasis added) Here, Appellants claim a fee of approximately $5 million This is a perfect example of why section 62-3-1102 provides that the fiduciary cannot veto a settlement Appellants have five million reasons to scuttle the settlement

III THE ATTORNEY GENERAL POSSESSES THE *PARENS PATRIAE* AND STATUTORY AUTHORITY TO PROTECT THE PUBLIC INTEREST BY COMPROMISING LITIGATION ON BEHALF OF CHARITABLE BENEFICIARIES

The Attorney General has broad power in his *parens patriae* capacity to protect the public interest As stated in *Condon v Hodges*, 349 S C 232, 239, 562 S E 2d 623, 627 (2002) (quoting *State ex rel Daniel v Broad River Power Co* , 157 S C 1, 68, 153 S E 537, 560 (1929) (citation omitted and italics added by *Daniel* Court)

> As the chief law officer of the State, the Attorney General may, in the absence of some express legislative restriction to the contrary, exercise all such *power* and *authority as public interest may from time to time require* and may institute, conduct and maintain all such suits and *proceedings* as *he deems* necessary for *the enforcement of the laws of the State*, the *preservation of order*, and the *protection* of *public rights*

See also 1 S C JUR *Attorney General* § 16 Functions, Powers and Duties of Office

Pursuant to that authority, the Attorney General is the appropriate party to protect

the interests of the public at large in the matter of administering or enforcing charitable trusts *S C Dep t of Mental Health v McMaster (The Bull Street Case)*, 372 S C 175, 179 n 3, 642 S E 2d 552, 554 n 3 (2007), *Epworth Children s Home v Beasley*, 365 S C 157, 164 n 3, 616 S E 2d 710, 714, n 3 (2005), *Furman Univ v McLeod*, 238 S C 475, 483, 120 S E 2d 865, 868 (1961), *Watson v Wall*, 229 S C 500, 507-08, 93 S E 2d 918, 921 (1956), *see also* S C Code Ann § 1-7-130 (1976) In fulfilling his responsibilities, which include discharging his litigation duties, "the Attorney General is authorized to enter into a binding compromise or settlement of a suit involving the State " 1 S C JUR *Attorney General* § 16 Functions, Powers and Duties of Office (citing *Cooley v S C Tax Comm n*, 204 S C 10, 28 S E 2d 445 (1943)), *see also* S C Code Ann § 1-7-100(2) As section 1-7-100(2) explains, when the Attorney General appears in litigation representing the public interest, he manages and controls the litigation with respect to the public interest It is also recognized that when necessary, the Attorney General can intervene in matters, as he did in this case, to protect the interests of beneficiaries of a charitable trust *Watson v Wall*, 229 S C 500, 93 S E 2d 918 (1956)

Shortly after the Attorney General intervened, it became clear that the family litigation presented a real threat to the charitable trust From the Attorney General's perspective, if any of the family's Will challenges were successful, the charitable trust's share of the Estate would be significantly reduced, if not completely eliminated Of course, there was always the chance that none of the Will challenges would succeed But the Attorney General was not tasked with taking a chance on the public interest, he was (and is) tasked with protecting the public interest The Appellants did not (and do not) share the same legal obligation to the public What they considered an acceptable risk to

the future of the charitable trust was not considered acceptable to the Attorney General Therefore, the Attorney General agreed to a compromise

A compromise was reached, the circuit court was notified, and hearings were scheduled to determine whether it would be approved pursuant to section 62-3-1102 *Before* the terms of the Settlement Agreement were presented, Appellants filed a 51 page brief in opposition to the compromise Seven days worth of hearings followed As noted above, the settling parties presented testimony setting forth the requirements of section 62-3-1102(3) Importantly, Appellants were presented every opportunity to challenge the basis of the compromise, and they did Indeed, Appellants presented their own expert witness who testified in opposition to the agreement

Appellants' principal legal challenge with respect to the Attorney General's involvement in the settlement negotiations is best captured in the following sentence "The Attorney General has no right to set aside the trustees and put himself in the position of super-trustee " (Appellants' Brief at 12) That statement is nothing more than hyperbole unsupported by the record The important point here, though, is that Appellants' principal challenge is a red herring the Settlement Agreement is before this Court because it was approved by the circuit court The Attorney General did not singlehandedly settle the family litigation Instead, the Attorney General helped craft a compromise Appellants disagreed with that compromise and zealously opposed it during the seven days worth of hearings The real challenge is not to the Attorney General's involvement but the circuit court's decision, for without the circuit court's approval there would have been no compromise under section 62-3-1102, and this case would not be before this Court

The Attorney General acted well within his authority in the following respects (1) South Carolina common law supports his role in seeking to reach a compromise, (2) he has statutory authority to do so, and (3) the probate statutes utilized to seek court approval of the compromise—sections 62-3-1101 and -1102—refute Appellants' assertion that only the trustees of a charitable trust can consent to a compromise For these reasons, the Attorney General's involvement was proper and helped to end contentious litigation that could have endured for many years and caused great loss to the charitable beneficiaries

A The South Carolina Common Law and Statutes Provide the Attorney General with the Authority to Speak for the Beneficiaries of a Charitable Trust During Settlement Negotiations

As previously stated, in his *parens patriae* capacity, the Attorney General protects the public interest by enforcing the due application of funds given or appropriated to any charitable trust Additionally, "[p]ursuant to S C Code Ann § 1-7-130 (1976), the Attorney General is charged with the protection of public charities and is required to enforce the due application of funds given or appropriated to such charities "[40] *The Bull Street Case*, 372 S C at 179 n 3, 642 S E 2d at 554 n 3 "The Attorney General is the proper party to protect the interests of the public at large in the matter of administering or enforcing charitable trusts " *Epworth Children s Home*, 365 S C at 164 n 3, 616 S E 2d at 714 n 3, *accord Furman Univ* , 238 S C at 483, 120 S E 2d at 868, *Watson*, 229 S C at 507-08, 93 S E 2d at 921

In *Watson supra*, this Court recognized the power of the Attorney General to intervene in a will contest and advocate for the public interest when the contest

[40] There can be no greater exercise of an Attorney General's protection of a charitable

threatened to divert funds devised to a charitable trust In that case, the decedent's heirs sought a judicial finding that an item in the will did not create a charitable trust because the language was "merely precatory, appointed no trustee, and was so indefinite and general as to be ineffectual to create a charitable trust" *Id* at 507, 93 S E 2d at 921 Because the heirs had already convinced the lower court that two "renounced devises passed as intestate property to the testator's heirs," a ruling that the charitable trust was invalid would have caused the renounced devises to flow to them *Id* But because the lower court found that the charitable trust was valid, the heirs appealed to this Court

It was not until the case came before this Court in *Watson* that the Attorney General petitioned to intervene for "the purpose of protecting the interest of the public in the charitable trust" *Id* at 508, 93 S E 2d at 921 Without discussion, this Court granted the petition and "granted [him] permission to file exceptions to so much of the circuit decree as held that the renounced devises passed to the heirs at law" *Id* After analyzing the relevant cases, this Court affirmed the lower court's ruling that the will created a valid charitable trust, reversed its finding that the renounced devises passed to the heirs, and found they flowed via the "residuary provisions into the charitable trust" *Id* at 518, 93 S E 2d at 927

As a general principle of law, *Watson* recognizes that it is the Attorney General's job to protect the public interest in a charitable trust Factually, *Watson* provides precedent for the Attorney General to engage himself in a will contest that threatens the flow of assets devised to a charitable trust Indeed, the Attorney General's mandate to protect the charitable trust is so strong that his intervention was allowed at the appellate

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trust than to settle a case that threatens the charitable trust's very existence

stage of litigation

Watson supports the Attorney General's involvement in this case *Cooley v South Carolina Tax Commission*, 204 S C 10, 28 S E 2d 445 (1943) supports the Attorney General's authority to seek a resolution of litigation, when doing so protects the interest of the public—that is, the charitable beneficiaries If the Attorney General can intervene in a will contest to advocate for the public interest of a charitable trust, it must follow that the Attorney General can also seek out a compromise *See Cooley*, 204 S C at 24, 28 S E 2d at 450 (holding that the Attorney General has the authority to settle a tax dispute between an estate and the state's tax commission) [41]

To accept the Appellants' position and reject *Cooley* would lead to an absurd result if the Attorney General is empowered to intervene in a will contest but cannot seek a compromise, then the right of intervention is of little use to the public interest Further, if that were the law, then the Attorney General would have two options once he entered litigation (1) determine his entry was in error and remove himself from the litigation, or (2) "go for broke" and litigate all the way to the end These options alone are unworkable If the Attorney General is to protect the public interest, he must be able to operate in between these two extremes and compromise on behalf of the charitable beneficiaries The need for the Attorney General to intervene and seek compromise is only amplified where, as here, the trustees of a charitable trust place the very existence of the charitable trust at risk To follow Appellants' position to its illogical conclusion

[41] *See also* BOGERT'S TRUSTS AND TRUSTEES § 411 "If a court is asked to approve a compromise or settlement agreement affecting the interests of charitable beneficiaries, the Attorney General is held to be a necessary party " What purpose could the Attorney General serve as a necessary party to a compromise involving charitable beneficiaries other than to represent the interests of the charitable beneficiaries?

would presumably create a rule that precluded the Attorney General from ever compromising a case, because he is representing the public interest in every case in which he is involved To rule for Appellants would create precedent resulting in chaos

Cooley and S C Code Ann § 1-7-130 provide the Attorney General with ample authority to protect the public interest by allowing him to engage in a compromise *See also Condon*, 349 S C at 239, 562 S E 2d at 627 Section 62-7-405(c) confirms that authority Moreover, in this case, the settling parties sought approval under section 62-3-1102 Execution of the Settlement Agreement was the first step and the circuit court's approval of the Settlement Agreement was the final step

B Probate Code Sections 62-3-1101 and -1102 Refutes Appellants Argument That Only They Could Agree to the Settlement Agreement

Appellants' argument that the absence of their consent is fatal to the compromise directly conflicts with the express language of the statutory mechanism used by Respondents to bring about an end to this costly and contentious litigation Accordingly, their argument that the charitable trust "was not represented in the settlement and did not agree," *Brief of Appellants*, p 13, is also a red herring First, the charitable trust was represented by the Attorney General and, according to Appellants, by Appellants Second, the Appellants' argument that they did not agree to the Settlement Agreement asks the Court to disregard sections 62-3-1101 and -1102 of the South Carolina Probate Code Implicit in Appellants' latter argument is that this Court should ignore the glaring fact that the ultimate decision to approve a settlement agreement rests with the circuit court and further ignore their conflict of interest

1 The Beneficiaries of the Charitable Trust Were Represented

For a settlement agreement pursuant to sections 62-3-1101 and -1102 to be

effectuated, the agreement "shall be executed by all competent persons *having beneficial interests or having claims which will or may be affected by the compromise* S C Code Ann § 62-3-1102(1) (emphasis added) Under this statutory framework, what matters is whether all beneficial interests are represented As discussed above, the Attorney General represents the beneficial interest of a charitable trust, and, for the reasons discussed in the Order approving the Settlement Agreement, all persons with any beneficial interest under Mr Brown's Estate or Trust were represented at the settlement hearing

In litigation that threatens the funding of a charitable trust, the Attorney General speaks for its beneficial interests Granted, it is possible that both the trustees and the Attorney General can agree with or against the terms of a compromise, which would have the effect of allowing the trustees to speak for the beneficial interest But, where the Attorney General agrees to a compromise and the trustees do not, the trustees have no statutory right to stop a compromise

Assuming *arguendo* that, as Appellants contend, the Attorney General did not represent the charitable beneficiaries, the charitable beneficiaries were nevertheless represented at the hearing by Appellants, who contend that they represent the "trust," which would include the charitable beneficiaries The trust beneficiaries were, therefore, represented at the hearing, either by the Attorney General or Appellants Consequently, Appellants' argument that the charitable beneficiaries were not represented is without merit Section 62-3-1102 grants the circuit court the ultimate authority to approve the settlement agreement Thus, the issue is not whether the charitable beneficiaries were represented—because they were—but whether the circuit court properly concluded that

the Settlement Agreement was just and reasonable

2 The Settlement Agreement Did Not Require the Appellants' Assent

The second half of Appellants' argument is that they, in their capacity as trustees, must agree to the Settlement Agreement The express language of section 62-3-1102(3) tells a different story Once the circuit court determines the challenge presents a good-faith controversy, the resolution of which is just and reasonable to all concerned, then it "shall make an order approving the agreement and directing all fiduciaries subject to its jurisdiction to execute the agreement" S C Code Ann § 62-3-1102(3) The language could not be any clearer

The circuit court recognized the fallacy of Appellants' argument On April 6, 2009, day seven of the hearings, Appellants argued that the Attorney General cannot consent to the Settlement Agreement without first attaining their approval (R p 2013, line 16-p 2014, line 14) The circuit court, thinking out loud, queried how that argument squared with section 62-3-1102(3) "[Counsel], 62-3-1102, subsection three, mandates me to make a finding as to whether or not the controversy is, number one, in good faith, and secondly, [whether] the effect of the agreement upon the interest of persons represented by fiduciaries or other representatives is just and reasonable" (R p 2014, line 18-p 2015, line 23) The circuit court continued, "So that's the two things If I find those two things then I shall make an order approving the agreement and directing all fiduciaries subject to my jurisdiction to execute the agreement" The circuit court concluded with the following salient inquiry "So, how do you reconcile that language with your position that it requires the consent of the trustees for the settlement if the [Attorney General's] office wants to participate [?]" (R p 2015, lines 3-6)

It is against the backdrop of this statute that the Appellants' argument must be analyzed If, as the Appellants contend, they are the parties with the absolute right to speak for the beneficial interest of the 2000 Trust, then why does section 62-3-1102 preclude them from stopping a compromise? That is the question that guided the circuit court's decision and should also guide this Court's decision

As discussed above, section 62-3-1102 is designed to end costly and contentious litigation so long as the statutory requirements are met That section is meant to substitute the judgment of the fiduciary with the judgment of the circuit court This result is sought because often times the judgment of the fiduciary may be clouded with a conflict of interest As the comment notes "Because executors and trustees may have an interest in fees and commissions which they might earn through efforts to carry out the testator's intention, the judgment of the Court is substituted for that of such fiduciaries in appropriate cases "

The present controversy is the "appropriate case" noted in the comment Appellants have made a claim for $5 million in fees Appellant Pope testified that "no one but [Appellant] Buchanan and I can defend [Mr Brown's] estate plan " (R p 1435, lines 19-23) In pursuit of their fees, they have constructed every possible obstacle to slow down and/or challenge the compromise reached, at great expense to the Estate And this conduct has continued to occur even after the circuit court approved the compromise [42] This conduct highlights the need for, and the present applicability of,

[42] In their motion to reconsider Judge Early's May 26, 2009 Order approving the Settlement Agreement, Appellants identified 404 grounds for the circuit court to alter or amend its decision *See* July 10, 2009 Order Denying Pope and Buchanan's Motion to Alter or Amend, (R p 6) ("[c]ounsel for former Personal Representatives/Trustees filed an 80-page Motion containing 404 grounds") Furthermore, over the past year alone,

section 62-3-1102 and its judgment transferring effect

The New Jersey case of *In re Liss*, 184 N J Super 184 (N J Super Ct 1981), provides a textbook example for approval of compromises involving charitable beneficiaries and comprises facts and issues directly related to this case In *Liss*, the decedent's purported will directed a significant portion of her assets to charities The daughter of the testatrix filed a challenge to the validity of her mother's will, asserting, among other claims, lack of testamentary capacity *Id* at 187 The court then noted the various facts that supported the daughter's will challenge *Id* The executor of the estate moved to dismiss the daughter's challenge At the motions hearing, however, it was announced that the interested parties had reached a settlement However, the "executor expressed adamant opposition to any compromise of the litigation" *Id* at 189 The settlement was nevertheless reduced to a written agreement and submitted to the court for approval

Upon receipt of the agreement, the court instructed the parties to include the Attorney General by serving a copy upon his office The Attorney General responded to the settlement with approval Notably, the Attorney General stated that, "our office is satisfied that the settlement is in the best interest of the charities since there is a substantial chance that they would lose the will contest" *Id* at 189 Nevertheless, the executor objected The *Liss* court then looked to the terms of its compromise statute Like South Carolina's version of the Uniform Probate Code section 3-912, the New Jersey statute provided that "the personal representative shall abide by the terms of the

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Appellants have filed over 20 motions, replies, and returns in the South Carolina Court of Appeals all related to their opposition to Russell Bauknight's substitution in the James Brown appeals

agreement " Next, the court analyzed the Attorney General's approval of the settlement, and noted that it "is not bound to accept the Attorney General's view of the proposed settlement, [but] his position is entitled to great respect " *Id* at 460 The court approved the agreement The analysis of the *Liss* court is consistent with the manner in which the circuit court reached its decision to approve the compromise, and provides compelling support for this Court to affirm the decision of the circuit court

C None of the Authority Cited by the Appellants to Support Their Position That the Attorney General Exceeded His Authority Pertains to This Case

Appellants' entire argument against the involvement of the Attorney General rests upon authorities that have no application to the controversy at issue Rather than cite to any case holding that the Attorney General lacks the authority to compromise on behalf of charitable beneficiaries, Appellants' brief cites authorities that generally stand for the proposition that the Attorney General may not commandeer the day-to-day operations of running a charitable trust The day-to-day operations deal with decisions to invest and other similar management decisions The key here is that the authorities relied upon by Appellants stand for the proposition that the Attorney General may not usurp what are essentially management decisions

None of these authorities addresses the role of the Attorney General when ongoing litigation threatens to prevent the initial funding of the charitable trust Instead, these authorities merely state the proper allocation of power between trustees and the Attorney General concerning the administration of an operational valid charitable trust For these reasons, none of the authorities cited are relevant to this Court's analysis A few of the cases cited by Appellants are worthy of discussion, however

First, Appellants cite *Trustees of Dartmouth College v Woodward*, 17 U S 519

(1819), which is a significant case involving charities However, it does not address any issues related to the Attorney General's involvement in a charitable trust Rather, the case relates to the charter for Dartmouth College and whether that document is a contract within the meaning of the United States Constitution which states, in part, that [n]o State shall pass any Law impairing the Obligation of Contracts " U S CONST art I, § 10, cl 1 The *Dartmouth College* Court found that the charter was protected by the Constitution and held unconstitutional the New Hampshire legislature's attempt to interfere with the charter via legislation

Additionally, *Murphey v Dalton*, 314 S W 2d 726 (Mo 1958), is cited by Appellants for the proposition that the Attorney General is not authorized to act as the attorney for the trustees of a charitable trust during a will contest The Attorney General does not challenge this rule of law Moreover, it is not relevant The trustees have every right to pick any lawyer they want to represent their office, and they have The argument is not about representing trustees It is about representing the public interest and the charitable beneficiaries, whom the Attorney General represents

Furthermore, Appellants cite *Ferguson v Gardner*, 327 S W 2d 947 (Ky 1959) for the proposition that the Attorney General is not allowed to intervene in a will contest This case is in direct conflict with *Watson v Wall*, a decision of this Court Moreover, the reasoning of that court is in conflict with section 1-7-130 *Ferguson* reasoned that the Attorney General does not have an interest in the will contest, as his role with respect to the charitable trust does not arise until the funds flow to the trust following the validation of the will This reasoning runs counter to section 1-7-130, which instructs the South Carolina Attorney General to "enforce the due application of funds given or appropriated

to public charities within the State" S C Code Ann § 1-7-130 Moreover, here the charitable trust was purportedly created in 2000 [43]

IV THE CIRCUIT COURT PROPERLY REMOVED APPELLANTS AS PERSONAL REPRESENTATIVES AND TRUSTEES AND REPLACED THEM WITH A PROFESSIONAL FIDUCIARY

The circuit court appointed Appellants to serve as personal representatives and trustees on November 20, 2007 Since that time, Appellants' appointment has been a point of controversy The Attorney General objected to the appointment of Appellants as personal representatives and trustees His objection was denied (Order, April 8, 2008, R p 79) The Attorney General filed a motion to alter or amend the circuit court's denial, but later asked the circuit court to hold the motion in abeyance [44] (R pp 1008-09) The circuit court held the Attorney General's motion in abeyance It is important to point out that the Attorney General's motion to remove Appellants from their fiduciary positions is still pending at the circuit court Litigation surrounding Mr Brown's Estate continued Paragraph 5(a) of the Settlement Agreement states

> [A] joint motion or other pleading will be filed seeking the replacement of [Appellants] 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 pursuant to the provisions of applicable law

(Settlement Agreement, R p 2363, ¶5(a)) On November 7, 2008, the settling parties

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[43] Appellants also cite *Spang v Cleveland Trust Co* , 134 N E 2d 586 (Ohio Common Ct 1956), for the same proposition Again, the case is in direct conflict with *Watson v Wall*, *supra* Further, *Spang* found that the Attorney General could not intervene because an Ohio statute controlled the situations where the Attorney General could intervene and none of those situations were present in that case *Spang* is specific to Ohio statutory law

[44] The Attorney General asked for this motion to be held in abeyance because Dallas and Bradley's appeal of their removal was pending and, depending on its outcome, may have

filed an amended petition for the removal of Appellants as personal representatives and trustees (R pp 223-30) The circuit court chose to address the matter at the hearing concerning its approval of the Settlement Agreement

On January 16, 2009, the settling parties moved for the approval of the Settlement Agreement, which contemplated the removal of Appellants as fiduciaries In their motion, the settling parties asked the circuit court to approve the Settlement Agreement and "[f]or such other relief as this Court deems necessary and proper" (R p 506) The circuit court began the hearing on January 30, 2009, and it spanned seven non-consecutive days The issues addressed at the hearing were (1) whether the Settlement Agreement should be approved and (2) whether Appellants should be removed as fiduciaries as recommended by all settling parties

A Appellants Waived the Issue Regarding Their Removal as Fiduciaries

In their brief, Appellants present the issue of whether their removal was proper, but address the matter in passing and inadequately cite authority (Appellants' Brief at 42-43) Rule 208(b)(1)(D), SCACR, requires that each "particular issue to be addressed [in a brief] shall be set forth in distinctive type, followed by discussion and citations of authority" Appellants raise the issue regarding the propriety of their removal in approximately one page and only cite four code provisions in support of their position [45] Appellants' failure to adequately brief the issue operated as a waiver of the argument *See Guinan v Tenet Healthsystems of Hilton Head Inc*, 383 S C 48, 54 n 4, 677 S E 2d 32, 36 n 4 (Ct App 2009) (holding specific issue was waived on appeal because it was

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mooted the motion to reconsider

[45] Footnote removed due to Appellants correcting typographical errors and authority citation in final brief

inadequately briefed) Further, Appellants also waived this issue because they failed to support their scant argument with sufficient authority *See Hunt v Forestry Comm n*, 358 S C 564, 573, 595 S E 2d 846, 851 (Ct App 2004) (holding that issues raised in a brief but not supported by authority are deemed abandoned and will not be considered on appeal)

B Appellants Were Properly Removed as Trustees and Personal Representatives

Assuming *arguendo*, this Court finds that Appellants did not waive this issue on appeal, the circuit court appropriately removed Appellants as fiduciaries because the procedure utilized was proper and the removal supported by sufficient cause The South Carolina Probate Code sets forth the procedures for the removal of trustees and the removal of personal representatives Appellants' removal was proper under both sets of procedure Even if this Court finds that the traditional procedures were not followed, their removal was proper pursuant to section 62-3-1102 because it impliedly grants courts authority to remove fiduciaries when their removal is contemplated by the very settlement agreement being approved and when they refuse to honor a settlement agreement the court approves

1 Appellants' Removal as Fiduciaries Was Proper Under the Traditional Procedures Set Forth in the South Carolina Probate Code

Appellants were removed as fiduciaries pursuant to the Order of the circuit court dated May 26, 2009 The procedures governing the removal of a trustee are found in section 62-7-706 Those governing the removal of a personal representative are found in section 62-3-611 The circuit court's removal of Appellants complied with both of these procedures

a) The Circuit Court's Removal of Appellants as Trustees Complied With S C Code Ann § 62-7-706

Section 62-7-706(a) sets forth the persons who may petition the court for the removal of a trustee and section 62-7-706(b) sets forth the reasons for which a trustee may be removed The circuit court's removal of Appellants as trustees complied with both subsections (a) and (b)

First, the proper individual petitioned for the removal of Appellants as trustees Section 62-7-706(a) provides that a trustee may be removed where "the settlor, a cotrustee, or a beneficiary request[s]" removal The settling parties petitioned the circuit court for the removal of Appellants as trustees on November 7, 2008, and their Settlement Agreement also provided for their removal

Second, the circuit court found sufficient cause to remove Appellants as trustees Section 62-7-706(b)(3) provides that a court may remove a trustee where such removal "best serves the interests of the beneficiaries " The circuit court found that Appellants' opposition to the Settlement Agreement and promise to appeal its approval created an "irreconcilable conflict" sufficient to remove them as trustees This reasoning sets forth the circuit court's finding that Appellants' removal as trustees was in the best interest of the beneficiaries

b) The Circuit Court s Removal of Appellants as Personal Representatives Was Proper Under S C Code Ann § 62-3-611

Appellants were removed as personal representatives pursuant to the Order of the circuit court dated May 26, 2009 The procedures governing the removal of a personal representative are found in section 62-3-611 Section 62-3-611(a) sets forth the procedures by which a court may remove a personal representative and section 62-3-

611(b) sets forth the reasons for which a court may remove a personal representative The circuit court's removal of Appellants as personal representatives complied with both subsections (a) and (b)

First, the circuit court's removal of Appellants as personal representatives of Mr Brown's Estate was procedurally proper Section 62-3-611(a) states, "[a] person interested in the estate may petition for removal of a personal representative for cause at any time " As indicated above, *all* of the settling parties petitioned the circuit court for the removal of Appellants as personal representatives on November 7, 2008 Section 62-3-611(a) also provides that a hearing shall be had to determine whether the personal representatives should be removed and that the petitioner shall give notice to the personal representative The circuit court took up the issues related to Appellants removal as personal representatives at the hearing to consider whether it should approve the Settlement Agreement Thus, a hearing concerning the removal of Appellants was held, satisfying the hearing requirement of 62-3-611(a) [46]

Second, the circuit court's removal of Appellants as personal representatives of Mr Brown's Estate was supported by sufficient cause Section 62-3-611(b) states that "[c]ause for removal exists when removal would be in the best interests of the estate " As mentioned above, the circuit court found that Appellants' opposition to the Settlement Agreement and promise to appeal its approval created an "irreconcilable conflict " Thus, its removal of Appellants as personal representatives was in the best interest of the

[46] Section 62-3-611(a) also requires that personal representatives have notice of a hearing regarding their removal Appellants were present at the hearing in which the issue of their removal was addressed and did not object to the circuit court taking up the matter Therefore, Appellants' argument generally attacking the process by which they were removed cannot include the specific issue of notice, which was waived

Estate [47] Moreover, the petition for removal was included in the petition for the approval of the Settlement Agreement, which provided for the removal of Appellants

2 The Circuit Court Removed Appellants as Fiduciaries Pursuant to Its Implied Authority Under S C Code Ann § 62-3-1102

Alternatively, the circuit court's removal of Appellants as fiduciaries was proper pursuant to a grant of implied authority in the probate code The circuit court approved the Settlement Agreement over Appellants' objections and promise to appeal (R p 1469, lines 22-25) As part of its approval, the circuit court removed Appellants as fiduciaries and appointed Russell Bauknight in their place The circuit court had this authority pursuant to section 62-3-1102

In cases such as the one presented here, where the fiduciaries oppose the approval of a settlement agreement submitted to a court for approval, the court may order the fiduciaries to sign the agreement S C Code Ann § 62-3-1102 It necessarily follows that where such a situation arises and an irreconcilable conflict between the fiduciary and the estate is created, a court has the authority to remove the personal representative and trustee so as to allow for the effective administration of the estate

This reasoning is supported by the comment to 62-3-1102(2), which states "[s]ubsection (2) would imply that the agreement is not to be signed by the personal representative or trustees of the affected testamentary trust prior to submission of the agreement to the probate court, *but the agreement should specify the proposed effect on the personal representative and affected trusts* (emphasis added) In this case, the Settlement Agreement made clear that its effect on Appellants was their removal (R p

[47] In addition to the factual findings made by the circuit court with respect to cause for Appellants' removal, the record contains evidence of Appellants' inadequacies that also

2363, ¶ 5(a)) Therefore, the circuit court did not err when it exercised its power pursuant to section 62-3-1102 and ordered the removal of Appellants from their fiduciary positions because their objection to, and promise to appeal, the Settlement Agreement created an "irreconcilable conflict" between them and the beneficiaries of Mr Brown's Estate

CONCLUSION

Appellants do not have standing to appeal the circuit court Order approving the Settlement Agreement at issue and removing them as personal representatives of the 2000 Will and Trust In the event this Court disagrees, it should affirm the Order because (1) the circuit court properly concluded, pursuant to S C Code Ann § 62-3-1102, that the Settlement Agreement resolved a good-faith controversy and was just and reasonable, (2) the Attorney General properly exercised his *parens patriae* and statutory authority in steering a settlement of the claims against Mr Brown's Estate, and (3) the circuit court did not err in removing Appellants from their fiduciary positions

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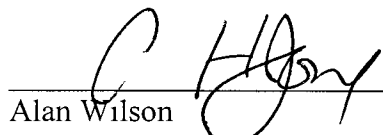
supports their removal for cause *See supra* pages 12-14



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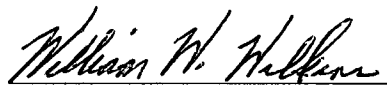

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May 2, 2011

Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S C Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A Early, III, Circuit Court Judge
Case No 2008-CP-2-1647

Alan Wilson, in his capacity as Attorney General of the State of South Carolina, Daryl J Brown, on behalf of his minor children, Lindsey B and Janise B , Deanna J Brown Thomas, on behalf of her minor child, Jason L , Yamma N Brown, on behalf of her minor children, Sydney L , Carrington L , and Tonya B , Vanisha Brown, Larry Brown, Tommie Rae Hynie Brown, and James B , through his Guardian ad Litem Respondents,

v

Albert H Dallas, Alfred A Bradley, and David G Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust, Adele J Pope and Robert L Buchanan, Jr , Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust, Terry Brown, Romunzo Brown, Forlando Brown, Cinnamon N M Paris, LaRhonda Petitt, Jeanette Mitchell, and Russell L Bauknight, as Special Administrator and Special Trustee for the Estate of James Brown and the James Brown 2000 Irrevocable Trust,

of whom Robert L Buchanan, Jr and Adele J Pope, as Personal Representatives of the Estate of James Brown and Trustees of the James Brown
2000 Irrevocable Trust are Appellants,

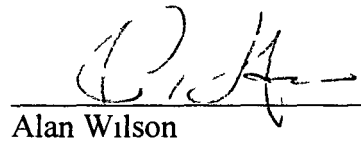
And Albert H Dallas, Alfred A Bradley, and David G Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust, Terry Brown, Romunzo Brown, Forlando Brown, Cinnamon N M Paris, LaRhonda Petitt, Jeanette Mitchell, and Russell L Bauknight, as Special Administrator and Special Trustee for the Estate of James Brown and the James Brown 2000 Irrevocable Trust are Respondents

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

CERTIFICATE OF COUNSEL

The undersigned certifies that the Final Brief complies with Rule

211, SCAR



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

PROOF OF SERVICE

The undersigned certifies that a copy of **RESPONDENTS' FINAL BRIEF** and **CERTIFICATE OF COUNSEL** have been served upon counsel of record by depositing a copy of the same, first-class postage prepaid, in the United States Mail, on the 2 day of May, 2011, to the address shown below

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