

**THE STATE OF SOUTH CAROLINA
IN THE Supreme COURT**

**APPEAL FROM AIKEN COUNTY
Court of Common Pleas**

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

**Henry Dargan McMaster, 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,**

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S.C SUPREME COURT

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 Repre-
sentatives 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 Adminis-
trator 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 Repre-
sentatives 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 Adminis-
trator 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**

INITIAL BRIEF OF APPELLANTS

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STATEMENT OF QUESTIONS PRESENTED

I

Where the Attorney General set aside the trustees of a charitable trust and negotiated the settlement of a will contest in behalf of the trust, and where there was no evidence of a *bona fide* controversy about the validity of the will and charitable trust, was the settlement agreement negotiated by the Attorney General eligible for consideration by the court under S C Code Ann § 62-3-1102?

II

Where there was no evidence that the will and charitable trust were void as the product of undue influence, and where the settlement agreement replaced the testator's estate plan with a fundamentally different plan, did the circuit court err in finding that the settlement was just and reasonable?

III

Did the circuit court err in removing the appellants as trustees of the charitable trust and as personal representatives of the estate solely because they opposed the settlement agreement negotiated by the Attorney General?

STATEMENT OF THE CASE

James Brown died on December 25, 2006. The month after his death his will dated August 1, 2000 was admitted to probate in Aiken County, where the deceased resided. He left his personal and household effects ('PHE') to named adult children. The balance of his estate poured over into his 2000 Irrevocable Trust ("the 2000 Trust") created the same day as his will was executed. Mr. Brown's primary assets were his publicity rights and the right to royalties from more than 800 published and unpublished songs. Upon his death the 2000 Trust divided into two subtrusts: a family educational trust funded with a maximum amount of \$2,000,000 for the education of the issue of named children and their issue, and the James Brown "I Feel Good" Trust (hereafter, "the charitable trust" or the "I Feel Good Trust") for the education of needy and deserving students at South Carolina and Georgia schools.

In December 2007, Tommie Rae Hynie Brown (hereafter, 'Tommie Rae') filed in probate court a challenge to the validity of the will and the 2000 Trust on the ground of undue influence. On December 26, 2007, the last day for contesting the will, a will contest was filed on the same ground by six of the Mr. Brown's adult children. The two will contests were removed to circuit court, as were all other matters filed in connection with the estate.

The Attorney General of South Carolina, the Honorable Henry D. McMaster, was joined as a party defendant in September 2007 in Case No. 122, which involved claims for the removal of Messrs. Dallas, Bradley, and Cannon as personal representatives and trustees.

Appellants were appointed trustees of the 2000 Trust and personal representatives of the estate ('PR/Trustees') on November 20, 2007. They replaced Albert Dallas, David Cannon and Alfred Bradley, who resigned from those positions.

By motion dated January 20, 2009, the Attorney General Tommie Rae Hynie Brown, and five of the testator's adult children filed a motion requesting court approval under S.C.

Code Ann § 62–3–1102 of a settlement agreement reached on August 10, 2008¹ In its essential features, the settlement agreement reduced the share of the charitable trust in the residuary estate from 100% (less \$2,000,000 for the grandchildren's trust) to 50% and distributed the amount of this reduction, half to Tommie Rae and half to the adult children participating in the settlement A new trust was created, to be controlled by the Attorney General The Attorney General negotiated the settlement and agreed to it on behalf of the 2000 Trust The appellants as trustees were not informed of the negotiations leading to the agreement and did not participate

The motion came on for hearing before the Honorable Doyet A Early, III, Resident Judge of the Second Judicial Circuit, beginning January 30, 2009 Hearings continued on March 4, 5, 6, and 25, and April 4 and 6 On March 26, the proponents of the settlement filed modified documents evidencing modifications of the settlement agreement By the end of the hearings another adult son had joined in the settlement in consideration of the grant of a right of first refusal to buy the assets of the estate, and the share of the charitable trust was further reduced to 47.5% The charitable trust was agreed to be replaced with a new trust, called "the Legacy Trust," the trustee of which would be named by the Attorney General, who would control the new trust Expenses and taxes of the Legacy Trust were assigned as follows Tommie Rae, 25%, the Brown Family, LLC, 25%, and the "I Feel Good" Trust, 25%

By order dated May 26, 2009 Judge Early approved the settlement and removed the appellants as PRs/trustees, replacing them with Russell Bauknight This appeal followed,

¹ Attached to the motion were three documents

1 An unsigned "Compromise and Agreement", subtitled "Terms of Private Settlement Agreement Dated August 10, 2008," with signature lines for Henry D McMaster, Attorney General of South Carolina, Tommie Rae Brown, Larry Brown, Venisha Brown, Deanna J Brown Thomas, Yamma N Brown, Daryl J Brown, and Tonya Brown

2 An undated, unsigned "Addendum to Agreement", also entitled "Contribution Agreement" with the same signature lines, and

3 An undated, unsigned "James Brown Legacy Trust with Settlers Tommie Rae, AG McMaster and the Brown Family, LLC [Mot Dtd 1/16/09]

and was consolidated with the appellants' appeal of subsequent orders appointing and reappointing Mr Bauknight in various fiduciary capacities ²

The consolidated appeals were transferred from the Court of Appeals to the Supreme Court, and this appeal followed

STATEMENT OF FACTS

Throughout his lifetime, entertainment legend James Brown advocated the value of education. He determined to leave the great bulk of his estate to that cause. Ten years before he died, he engaged counsel and began planning The James Brown "I Feel Good" private foundation. By early 1999, the components of a complete estate plan — including a will, a revocable trust and a durable power of attorney — were ready for Brown's signature. These were executed on June 15, 1999, four days after Brown completed a \$26 million financing transaction for himself and his wholly-owned company, James Brown Enterprises, Inc. ("JBE, Inc.") in New York (the "TIAA debt")

The will of 1999 gave Brown's entire residuary estate to the trust, which at Brown's death was to be divided as follows: one-half for the education of the seven grandchildren, with a cap of \$2 million,³ and one-half for the "I Feel Good" private foundation, providing scholarships for students at Voorhees, U S C Aiken, and U S C Salkehatchie. [1999 Will, Item II, 1999 Trust, Article V.]

Brown specifically excluded all past and future spouses and all children and other claimed heirs from inheriting his music empire. *In terrorem* forfeiture clauses required his fiduciaries to vigorously defend any challenge to Brown's estate plan as an affront to his

² On August 3 and 6, 2009, the Attorney General and some respondents sought and obtained *ex parte* orders appointing Mr Bauknight as special PR and special trustee. Requests to reconsider and vacate these orders were consolidated as Case 2009-CP-02-1810 ("Case 1810"), and denied.

³ The cap was tied to the Generation Skipping Tax exemption available at Brown's death. [1999 Trust, Article V.] Subject to the *in terrorem* forfeiture clauses and the spendthrift clause, each of the seven grandchildren had an education fund of about \$285,000.00 by virtue of the 1999 will and revocable trust.

wishes [1999 Will, Item X, 1999 Trust, Article XIX] A spendthrift clause confirmed that all funds would be used solely for education [1999Trust, Article XIX]

Under the 1999 estate plan, Brown named as his fiduciaries daughter Deanna attorney Dallas, accountant Cannon, road manager Bradley, friends Willie Glenn and Ella Overton, and office assistant Freida Carter NationsBank of South Carolina was named backup PR and trustee [1999 Will, Item II, 1999 Trust, Articles I, VI]

The following year, on August 1, 2000, Brown made minor modifications to his estate plan [2000 Trust, Article VII] He expanded the scholarships to include needy and deserving students attending schools in South Carolina and Georgia He made the Trust irrevocable and funded it with a deed to his 60-acre home estate at Beech Island, in Aiken County, and with his stock in JBE Inc which held about two-thirds of the royalties to Brown's more than 800 published songs ⁴ Like the 1999 estate plan, the 2000 will and 2000 Trust contained *in terrorem* forfeiture clauses, and the Trust included a spendthrift clause

Mr Brown died at age 73 on December 25, 2006 The part of his music empire that was not already in the 2000 Trust was devised to it It appeared that Brown had created possibly South Carolina's largest individual private foundation dedicated solely to educating the needy ⁵

⁴ As a result of Dallas' conflicting statements to the courts, the question of who owns JBE, Inc — the estate or the 2000 Trust — was uncertain for some time Cannon confirmed that JBE, Inc has been owned by the Trust since its inception In September 2007 Dallas filed a knowingly false stipulation asserting that JBE Inc had never been transferred to the Trust Dallas told AG Jones that he was forced to agree to the false stipulation He later testified he authorized the false stipulation in order not to be removed [Order dtd 4/8/08] In their appeal brief in the Court of Appeals, Dallas and Bradley finally confirmed, as Cannon had always asserted that Brown transferred and the trustees accepted, JBE, Inc into the Trust in 2000 [Brief, Resp Dallas/Bradley appeal]

⁵ The Estate/Trust's original tax counsel valued James Brown's assets at \$80–\$120 million with at least \$20 million already in the 2000 Trust [E-mail from Hammond to Jones dtd 11/27/07] On June 15, 2008 Atlanta investor and branding executive Dr Terry Cox estimated the total value of the assets at about \$100 million, with \$40–50
(continued)

Like the 1999 will, the 2000 will contained a “savings clause,” incorporating the trust so that both the grandchildren’s education trust and the “I Feel Good” Trust would be created even if the 2000 Trust were not in existence when Brown died. The practical effect of these savings clauses was that four separate documents directed that Brown’s music empire go to the Brown Family Education trust and the “I Feel Good” private foundation — the two subtrusts of, first, the 1999 (revocable) trust, and second, the 2000 (irrevocable) trust.

Like the 1999 estate plan, Brown’s final estate plan acknowledged as his heirs four of his five legitimate children, as well as two of his more than six claimed children not presumed to be heirs. Among those excluded were three heirs who have qualified as children under the estate’s DNA protocol, established by original counsel after Brown’s death.⁶ [99 Will, Intro, 99 Tr., Will, Intro, Trust Art. XXII]

For the next seven years the 2000 Trust, of record in two states, operated Brown’s home estate at Beech Island. The 2000 Trust also bought and sold a bank building in Augusta and paid education benefits for four of the seven grandchildren. [Tr. Hg. 2/9/08, #122, pp. 18-19.]

By 2007 Dallas and Cannon had ransacked at least \$13 million of Brown’s assets [Amended Compl., Case 322]. It appears that neither Brown nor Deanna and Bradley, co-fiduciaries with Dallas and Cannon for seven years, knew of the massive pre-death

⁵(continued)
million assigned to publicity rights (image/likeness) and \$36–45 million to royalties for Brown’s more than 800 published and unpublished songs. [Cox, Graham Windsor proposal, 6/07.]

⁶ Those claimed and presumed heirs specifically excluded by the language of both the 1999 and 2000 estate plans are Deon (incarcerated), Lisa (born of first marriage), Jeanette (DNA protocol), LaRhonda (DNA protocol), Cinnamon (DNA protocol), James II (orally directed to take, but refused, a prepaid DNA protocol through GAL), Tonya (claimed grandchild, but no DNA and her counsel filed a statement omitting her as an heir). [See Order dtd 3/7/08, Case 872, Petition and related documents, Deon]

misappropriations as they were taking place ⁷

In December 2007, immediately after their appointment on November 20 appellants filed the long-overdue application for IRS recognition of the “I Feel Good” Trust making small technical amendments to the Irrevocable Trust, as allowed by the Trust, to assure IRS approval ⁸ By March they had assembled an Advisory Board for the 2000 Trust, including some of the distinguished leaders Dallas and Cannon had named but never called to serve ⁹

In the final ten days of December 2007, the will and the 2000 Trust were challenged by some of the children and by Tommie Rae Hynie Brown on the ground of undue influence In March 2008, an amended complaint of some of the children was filed, but it failed to allege any facts to support the claim that Brown’s 2000 Trust or the will were the product of undue influence [Amended Complaint]¹⁰

No discovery took place, and pending dispositive motions were never heard Having been impleaded in an earlier action, the Attorney General took over as spokesman for the 2000 Trust and settled the undue influence claim and the omitted spousal claim of Tommie Rae in a mediation to which the appellants, as trustees of the 2000 Trust, were not invited

⁷ Brown never used the funds he had intended for retirement not only because they were misappropriated, but also because he continued to be “the hardest working man in show business” until just before his death at 73 Brown grossed about \$6 million per year in road appearances the last three years of his life Most of Brown’s approximately \$3 million per year in royalties was pledged to bring down the TIAA royalty-backed debt The TIAA debt had been reduced from about \$17 million the summer before Brown’s death to about \$11 million when appellants’ service was terminated on May 26, 2009

⁸ Like most private foundations, the “I Feel Good” Trust although irrevocable, gave the Trustees the authority to amend the Trust solely to assure IRS compliance

⁹ Appointed were Dr Leonard McIntyre, Interim President of S C State University, Ms Inez Tenenbaum, former S C Superintendent of Education, Ret Judge Walter Williams, and Ms Ann Carmichael of U S C Salkehatchie Ms Tenenbaum resigned yo accept a federal post [See Affidavits, Carmichael, Williams]

¹⁰ By administrative directive Case 872, which was originally filed with Case 122, was segregated by the Clerk about May 14, 2008 Earlier documents bear the civil action number of Case 122

to attend. The Attorney General took over for the 2000 Trust and agreed for it to relinquish roughly half its devise in settlement of these claims. Instead of about 98% of assets after expenses, with no estate taxes, the 2000 Trust would receive 47.5% percent after estate taxes, but then further reduced by \$2 million — the amount required to fund the grandchildren's education trust.¹¹ The only expert testimony offered at the hearings below on the subject of taxation was to the effect that the settlement would cause the loss of the estate tax deduction, resulting in about 50% taxes and interest, and moreover that the "Legacy Trust", created by the settlement, would likely cause the "I Feel Good" Trust to be disqualified as a Section 501(c)(3) private foundation, resulting in income taxation problems in addition to the estate tax generated. [Tr. 4/6/09: 25]

The proponents of the settlement offered no witnesses to support the contention that the claim of undue influence, allegedly voiding the will and the 2000 Trust, was supported by any evidence. The circuit court did not purport to find merit in the claim of undue influence but found that the claim was brought in good faith. The court found that the Attorney General was entitled to control and speak for the 2000 Trust, not the trustees, and that the Attorney General was empowered to settle the will contest and omitted spousal claim in its behalf. The settlement negotiated by the Attorney General was found to be just and reasonable.

¹¹ See the charts used at trial and reproduced in the Addendum to this brief for a depiction of the effect of the settlement.

ARGUMENT

I

The settlement agreement was not eligible for court consideration for two reasons. First, the Trust did not agree to it. Second, it was not a compromise of a *bona fide* challenge to the will. But even if the settlement were eligible for consideration by the court, it did not meet the statutory standard required to nullify the testator's estate plan.

The settlement agreement at issue takes away more than half the testator's bequest to his private foundation for the education of needy and deserving students and gives that share to his adult children, whom he intended to get no part of his musical empire, and to the woman with whom he lived, who had agreed not to claim common law wife status after his death. It consigns control of his estate and his foundation to the Attorney General, operating with advice of the disinherited children and the omitted spouse claimant.

All this was done on the back of a claim that the estate plan, developed over a four-year period and embodied in a will and irrevocable trust six years before death, leaving almost everything to education, was the product of undue influence. The Attorney General set aside the trustees of the testator's private trust, purported to speak for the trust, and agreed to this settlement of the will contest, replacing the testator's estate plan with one he would have detested.

How such a breathtaking chain of events could possibly have happened requires a review of an obscure part of the probate code seen only once or twice in the appellate jurisprudence of this State.

Two sections of the Uniform Probate Code deal materially here with settlements of rights in an estate. The first is Section 3-1101, codified in South Carolina as S.C. Code Ann. § 62-3-1101 (hereafter "Section 1101")¹². The second is Section 3-1102, codified

¹² **SECTION 62-3-1101 Effect of approval of agreements involving trusts, inalienable interests, or interests of third persons**

(continued)

here as S C Code Ann § 62–3–1102 (hereafter, “Section 1102”) ¹³

Section 1101 states the *effect* of a court-approved settlement, while Section 1102 does two things. First, it prescribes the *elements* which a settlement must have to make it eligible for consideration by the court. Second, it sets the standard essential for court approval of such a settlement. Section 1102 is the key statute. It is the statute which allows a court under extraordinary circumstances to do something which the courts of this State and all others have often said is contrary to our policy, with some exceptions, of allowing citizens to leave their property as they see fit. Section 1102 allows a court to change the estate plan of the deceased, perhaps fundamentally, despite the testator’s plainly expressed intentions.

¹²(continued)

A compromise of a controversy as to admission to probate of an instrument offered for formal probate as the will of a decedent, the construction, validity, or effect of a probated will, the rights or interests in the estate of the decedent, of a successor, or the administration of the estate, if approved in a formal proceeding in the court for that purpose, is binding on all the parties including those unborn, unascertained, or who could not be located. An approved compromise is binding even though it may affect a trust or an inalienable interest. A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it. A compromise approved pursuant to this section is not a settlement of a claim subject to the provisions of Section 62-5-433.

¹³

SECTION 62-3-1102 Procedure for securing court approval of compromise

The procedure for securing court approval of a compromise is as follows:

(1) The terms of the compromise shall be set forth in an agreement in writing which shall be executed by all competent persons and parents acting for any minor child having beneficial interests or having claims which will or may be affected by the compromise. Execution is not required by any person whose identity cannot be ascertained or whose whereabouts is unknown and cannot reasonably be ascertained.

(2) Any interested person, including the personal representative or a trustee, then may submit the agreement to the court for its approval and for execution by the personal representative, the trustee of every affected testamentary trust, and other fiduciaries and representatives.

(3) After notice to all interested persons or their representatives, including the personal representative of the estate and all affected trustees of trusts, the court, 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, shall make an order approving the agreement and directing all fiduciaries subject to its jurisdiction to execute the agreement. Minor children represented only by their parents may be bound only if their parents join with other competent persons in execution of the compromise. Upon the making of the order and the execution of the agreement, all further disposition of the estate is in accordance with the terms of the agreement.

These statutes deal with the settlement of all manner of claims and controversies but only two are at issue here the claim that Mr Brown's will is invalid as the product of undue influence, and the claim that the person with whom he lived is his widow These two claims were settled by the Attorney General in a single package

* * * * *

The agreement at issue here was joined in by the Attorney General, the disinherited adult children, and the woman who agreed not to claim to be Mr Brown's common law wife [Tr 3/25/09 253] Conspicuous by its absence from the signators is the private foundation — the 2000 Trust — to which Mr Brown left the overwhelming bulk of his estate ¹⁴ The Attorney General purported to speak for the foundation but he had no authority to do so in South Carolina law

Nor was this agreement the compromise of a *bona fide* challenge to Mr Brown's will The proponents of the settlement did not even *try* to offer the court any testimony that the will contest had any basis in fact

But even if the agreement had met these two prerequisites for consideration by the court — (1) unanimity of all holders of beneficial interests and (2) the compromise of a *bona fide* challenge to the will — it was not just and reasonable by any standard which the court might apply The court erred in approving it

A The Trust's share of the estate could not be cut in half without the Trust's consent The Attorney General had no authority to speak for the Trust The Trust did not agree to the reduction The court had no authority to order the Trust to accept a reduction

¹⁴ In the scholarly literature and in much of the caselaw entities such as the charitable subtrust of the James Brown 2000 Irrevocable Trust are commonly called foundations The organizational form — whether trust or corporation — is immaterial See, e g , *Gilbert v McLeod Infirmary*, 219 S C 174, 185, 64 S E 2d 524 (1951) ('The directors or other members of the managing board are sometimes called trustees Their legal position is the same no matter by what name they are called, whether directors, trustees or governors ' 1 BOGERT ON TRUSTS 61 ") There are approximately 65,000 such private foundations in the United States Carl Schramm, *Law Outside the Market The Social Utility of the Private Foundation*, 30 HARV J LAW & PUB POL Y 355, 383 n 113 (2006)

James Brown devised to his adult children only his personal effects, and nothing to Tommie Rae Hynie Brown (hereafter “Tommie Rae”) ¹⁵ He devised his entire residuary estate, which included almost everything, to his 2000 Irrevocable Trust [Will, ITEM 2] The Trust contains two subtrusts One is a private trust for the education of named grandchildren The other — and by far the larger — is a private charitable trust for the education of needy students [Trust, Article V]

Four months after having been brought into one of the pending actions, the Attorney General convened a mediation in Augusta, Georgia, to which the trustees of the 2000 Trust were not invited [See Tr 1/30/09 22, 91] Claiming the right to negotiate and speak for the Trust, the Attorney General agreed that the adult children should receive 25% and Tommie Rae should receive 25% of the residuary estate in settlement of the will contest and the claim to a spousal share [Document dated 8/10/08, ¶ 2(d)] This reduced the Trust’s devise from virtually everything to half of the residuary estate ¹⁶ The residuary estate was to pass to a new entity — ironically dubbed “the Legacy Trust” — run by a trustee selected by the Attorney General, advised by the adult children and Tommie Rae [Document dated 8/10/08, p 2, Addendum ¶ 11(A)] Thus, the testator’s foundation will henceforth be controlled by the Attorney General of South Carolina¹⁷ and by the very people whom he disinherited

Asked to approve this agreement, the circuit court was offered two quite different rationales for the Attorney General’s authority to take charge of the Trust, to negotiate for it, to settle these disputes in its behalf, to change the estate and trust documents, and to

¹⁵ Tommie Rae and the adult children who contested the will are sometimes referred to hereafter as the contestants

¹⁶ By the time the hearings below concluded the Trust’s share had shrunk from 50% to 47.5% as the terms of the settlement agreement twisted and turned Even now, there is no single document constituting the settlement agreement ” It is a collection of different papers signed at different times by various parties

¹⁷ The settling parties told the circuit court that the trustee of the new ‘Legacy Trust’ would be “controlled completely” by the Attorney General [Tr 4/6/09 107]

replace the testator's Trust with a new one deemed more suitable by the Attorney General, and then for the court's authority to approve what the Attorney General had done, to remove objecting fiduciaries, and to order the removed fiduciaries to signify their consent, following their removal

The Attorney General's rationale was simple. The AG contended that, by authority of common law and statute, once he has entered any lawsuit to which a private charitable trust is party, he has authority to control and settle the litigation in behalf of the trust as though he were the trust itself. As the Attorney General's counsel often claimed, "The general law is when the AG appears, he controls the litigation." [Tr., 4/6/09, 149/15–16.] "The Attorney General has exclusive authority over charitable trusts." [Tr. 4/6/09, 181/18–182/7.]

The Brown contestants gave lip service to the AG's claim to such authority when asked to do so, but their rationalization for the outcome here was more sophisticated. It centered upon the provision in Section 1102 which allows the court to approve an agreement altering an estate plan over the objection of trustees if agreed upon by *all holders of beneficial interests in the estate*. The Brown contestants contended that where a charitable trust holds a beneficial interest in the estate, this statute gives the court authority to *compel* the trust to agree to an alteration in the estate plan by *ordering* the trustees to sign the agreement, once approved by the court as just and reasonable. When the court approves as just and reasonable the agreement of the other participants to alter the estate plan, the trust's consent is compulsory and the trustees are ordered to sign as a ministerial act, so the argument goes.

Neither of these theories can be sustained. The Attorney General has no right to set aside the trustees of a private charitable trust and to put himself in the position of super-trustee managing the affairs of the trust in his discretion and settling a will contest as he sees fit. The fact that a will contest is pending gives him no authority not otherwise possessed, and the AG possessed no such authority to act for the trust. The Attorney

General is one person among others with authority to “enforce” charitable trusts (a term of art), not to take them over and speak for them. No agreement exists under the Probate Code for the court to consider approving unless and until *all* the holders of a beneficial interest in the estate have joined in that agreement. The 2000 Trust was overwhelmingly the chief holder of a beneficial interest in this estate, yet it was not represented in the settlement and did not agree. There was no agreement for the court to consider.¹⁸

1 *The Attorney General is one of the persons authorized to enforce a trust. This is a police power to ensure that the trust is administered according to its terms. The Attorney General’s power to enforce a trust gives him no authority to set aside the trustees, administer the trust, and settle its disputes.*

The charitable subtrust of the 2000 Irrevocable Trust is at the same time a charity and a private trust. Its property is not public property but private. The nature of a charity administered by a private party was explained by the Court in *Strauss v Marlboro County Gen Hosp*, 185 S C 425, 194 S E 65 (1937). In that case a physician who was denied privileges at a private hospital sued to have the hospital declared a public corporation bound to admit him to practice because the hospital served the public. Relying upon “the celebrated case of the *Trustees of Dartmouth College v Woodward*, 4 Wheat 518, 671 4 L Ed 629”, the Court found that the hospital, although a charity, was a private entity in charge of its own affairs. 194 S E at 65.

James Brown’s legacy to his Trust is the private property of that foundation, not public property subject to control by the Attorney General. It is as true today as when Daniel Webster argued it to the Court in the *Dartmouth College* case. “That all property, of which the use may be beneficial to the public, belongs therefore to the public is quite a new doctrine. It has no precedent, and is supported by no known principle. In such a case, no lawyer would or could say, that the legislature might divest the trustees

¹⁸ Grandchildren Romunzo and Forlando did not join in the settlement agreement but filed objections to it as well since their share of the family education trust was reduced [Objection to Settlement]. See S C Code Ann § 62–7–301(c) (representative’s consent not effective where beneficiary objects).

constituted by deed or will, seize upon the property, and give it to other persons, for other purposes ” *Trustees of Dartmouth College v Woodward*, 17 U S (4 Wheat) at 573 (1822)

The Attorney General of South Carolina, like the attorneys general of all the States, has common law and statutory authority to enforce trusts domiciled in the State The General Assembly has conferred identical authority upon other actors as well S C Code Ann § 62–7–405(c) Thus, the Attorney General’s enforcement authority is not exclusive This authority to enforce a trust is the authority to police the administration of the trust so as to detect and cure fraud and the like on the part of the trustees, and to ensure that the trustees are administering the trust as intended by the settlor The Hawaii court emphasized the difference between enforcement and displacement in this way

The function of the attorney general, as *parens patriae* of charitable trusts, is to oversee the activities of the trustees to the end that the trust is performed and maintained in accordance with the provisions of the trust document, and to bring any abuse or deviation on the part of the trustees to the attention of the court for correction * * * The authority of the attorney general over charitable trusts does not extend beyond the performance of that function M R FREMONT-SMITH, FOUNDATIONS AND GOVERNMENT, 198 (1965)

Midkiff v Kobayashi, 54 Haw 299, 507 P 2d 724, 745 (1973) (citations omitted) “In the case of charitable trusts, traditional doctrine has generally limited the attorneys general to ascertaining that trustee actions are permitted by, and not inconsistent with, the underlying trust instrument, and safeguarding against fraud ” Mark Sidel, *The Struggle for Hershey Community Accountability and the Law in Modern American Philanthropy*, 65 U PITTS L REV 1, 2 (2003)

The role of the state in the regulation of private foundations such as the charitable subtrust of the 2000 Trust is summarized by Professor Schramm in this way

The private foundation is, of course, subject to regulation by state attorneys general and the Internal Revenue Service In general, though, government oversight is premised on a view of nonintervention in the substantive decision-making and operations of foundations The law’s proper role is thus limited to two responsibilities

[To ensure] that each charitable organization is carrying out the purposes for which it was established, and that its managers are not obtaining personal benefits from their positions at the expense of the charity. With few exceptions, the law neither attempts to control the decisions of managers made in good faith, as to how the purposes will be achieved, nor how their organizations will be administered

Generally, a state attorney general can pursue legal action against foundations in cases where charitable assets are in jeopardy (thus possibly violating donor intent), and in cases involving illegal actions

Carl Schramm, *Law Outside the Market: The Social Utility of the Private Foundation*, 30 HARV J LAW & PUB POL'Y 355, 372 (2006) ¹⁹ In the exercise of his enforcement authority, the attorney general must not be allowed to "step over the line between oversight and management." Evelyn Brody, *Whose Public? Parochialism and Paternalism in State Charity Law Enforcement*, 79 IND L J 937, 974 (2004). Accord MARION FREMONT-SMITH, GOVERNING NONPROFIT ORGANIZATIONS 301 (2004) ("[A] duty to enforce implies a duty to supervise (or oversee) in its broader sense. It does not, however, include a right to regulate, or a right to direct, either the day-to-day affairs of the charity or the action of the court." Emphasis added), Jonathan Klick and Robert Sitkoff, *Agency Costs, Charitable Trusts, and Corporate Control: Evidence from Hershey's Kiss-Off*, 108 COL L REV 749, 780–81 (2008), quoting JESSE DUKEMINIER, ROBERT SITKOFF, ET AL., WILLS, TRUSTS, AND ESTATES 750 (7th ed. 2005), Carl Schramm, *Law Outside the Market: The Social Utility of the Private Foundation*, 30 HARV J LAW & PUB POL'Y 355, 386 (2006) ("[T]he attorney general is not a 'super' member of the board.")

In the case of a charitable trust, "the beneficial interest is not given to individual beneficiaries, but instead for purposes beneficial to the community." *Brown v. Ryan*,

¹⁹ Quoting A. Kosaras, *A Conversation with Marion R. Fremont-Smith*, FOUND. NEWS AND COMMENT, Sept.-Oct. 2004, at 21–22. See also David Patton, *The Queen, the Attorney General, and the Modern Charitable Fiduciary: A Historical Perspective on Charitable Enforcement Reform*, 11 U. FLA. J. L. & PUB. POL'Y 131, 165 (2000).

Attorney General, 338 Ill App 3d 864, 788 N E 2d 1183, 1191 (2003), *citing* 4A A SCOTT & W FRATCHER, TRUSTS § 391, at 357 (4th ed 1989) “Thus the community has an interest in enforcing the trust and the Attorney General represents the community in seeing that the trust is properly construed and that the funds are applied to their intended charitable uses ” *Id* at 1191 That is the sum total of the attorney general’s authority

In re Estate of Horton, 11 Cal App 3d 680, 90 Cal Rptr 66 (Ct App 1970), is a typical case rejecting an attorney general’s claim that the authority to enforce is the authority to control

We are cited no statutory or case law authority placing the Attorney General in the position of a super administrator of charities with control over, or right to participate in, the contractual undertakings of the charities He has undoubted standing to seek redress in the courts of contracts entered into by charities which are collusive, tainted by fraud or which demonstrate any abuse of trust management

90 Cal Rptr at 68

The attorney general’s lack of authority to control, speak for, or act for a charity is expressed by Professor Brody, a frequently quoted scholar on the subject, in these terms

Where discretion is conferred on a charity’s board, proper state enforcement action over fiduciary decisionmaking reduces to a single rule The role of the attorney general and courts is to guard against charity fiduciaries’ wrongdoing, and not to interfere in decisionmaking carried out in good faith To this end, an attorney general is vested with the authority to seek to correct breaches of fiduciary duty that have not otherwise been remedied by the board *However, the attorney general is not a “super” member of the board*

Evelyn Brody, *Whose Public? Parochialism and Paternalism in State Charity Law Enforcement*, 79 IND L J 937, 976 (2004) (emphasis added) “In other words an attorney general does not have the authority to act as co-trustee of a charitable trust ” Jennifer Komoroski, Note, *The Hershey Trust’s Quest to Diversify Redefining the State Attorney General’s Role When Charitable Trusts Wish to Diversify*, 45 WM & MARY L REV 1769, 1784 (2004) *Accord In re Gebbie’s Will*, 33 A D 2d 1093 307 N Y S 2d 1002, 1004 (1970)

Not only is the Attorney General not authorized to act as trustee of a charitable trust, he is not authorized to act as *attorney* for the trustee in a will contest, as the Missouri court held in the leading case of *Murphrey v Dalton*, 314 S W 2d 726, 730–31, 67 A L R 2d 1278 (Mo 1958) The court held that the attorney general's authority to intervene in a will contest gave him no right to represent a charitable trust in that contest The Kentucky court denies the attorney general the right even to intervene in a will contest since he has no proper role to play *Commonwealth ex rel Ferguson, Attorney General v Gardner*, 327 S W 2d 947, 74 A L R 2d 1059 (Ky 1959) The court observed

The question presented is a new one in this jurisdiction It is significant that no record has been produced of any attempt by an attorney general, during the entire 167 years of the Commonwealth, to intervene in the many contests about the validity and establishment of wills involving charities

327 S W 2d at 948 As in Kentucky, it is no accident that the South Carolina Reports appear to reflect no previous instance of the Attorney General intervening in a will contest and attempting to take over the role of trustee See also *Spang v Cleveland Trust Co*, 134 N E 2d 586 (Ohio Comm 1956) (The AG is not a necessary party to a will contest where the will, if valid, created a mixed charitable/noncharitable trust, since the object of the will contest was to determine whether the will was valid, not to terminate a charitable trust)

As settlor, James Brown conferred upon the Trust, acting through its trustees and upon his estate, acting through his personal representatives, the power to compromise claims Trust, Article X(19), and Will ITEM VI See *Takabuki v Ching*, 67 Haw 515, 695 P 2d 319, 327 (1985), *Lefkowitz v Lebensfeld*, 51 N Y 2d 442, 446–47, 434 N Y S 2d 929, 415 N E 2d 919 (1980),²⁰ *In re Boston Reg Med Center*, 328 F Supp 2d 130, 146 (D Mass 2004) State attorneys general do not have the power to manage the daily affairs of a charitable organization ” Nina Crimm, *Why All is Not Quiet on the “Home Front” for*

²⁰ The *Lefkowitz* case involved a charitable corporation, but the form of the entity makes no difference in the law of charities

Charitable Organizations, 29 N M L REV 1, 1–2 n 3 (1999), and authorities cited ²¹

The proper role of the attorney general in a case of will *construction* is seen in *Watson v Wall*, 229 S C 500 93 S E 2d 918 (1956), where the AG intervened to contend that a renounced devise would then pass, not by intestacy but to the residuary legatee, a charitable trust. By contrast, the Attorney General has no substantive role to play in a will *contest*.

The circuit court cited several examples in South Carolina’s jurisprudence of the Attorney General’s duty to enforce charitable trusts [Order of 5/26/09, p 20]. The court interpreted these traditional enforcement cases to mean that “when the Attorney General does appear in litigation involving a charitable trust, he has the right to take charge and control of that portion of the litigation which relates to the charitable trust.” *Id.* at 21. The court then reasoned that the power “to take charge and control” includes the power to set aside the trustees, speak for the trust, and settle its disputes in his discretion. No South Carolina cases even come close to suggesting such a power in the office of the Attorney General.

The circuit court cited four cases from other jurisdictions to support the claimed authority of the Attorney General to act as he did. These cases provide no more support than do the South Carolina cases upon which the court relied. Two of these were trial court decisions in New York — one by a probate judge (in New York, a “surrogate”) and the other by a trial judge (in New York, a “supreme court judge”). First was a 1949 decision of a New York trial judge in the case of *In re Schlusell*, 195 Misc. 1008, 89 N Y S 2d 47 (Sup. Ct. 1949). The Attorney General consented to a settlor’s revocation of a trust where an indefinite contingent beneficiary was a charity, and replaced it instead with a noncontingent

²¹ The authorities cited include JAMES FISHMAN AND STEPHEN SCHWARZ, NONPROFIT ORGANIZATIONS 246–47 (1995), Marion Fremont-Smith, *Trends in Accountability and Regulation of Nonprofits*, in THE FUTURE OF THE NONPROFIT SECTOR 75–76 (Hodgkinson et al. eds. 1989), Henry Hansmann, *Reforming Nonprofit Corporation Law*, 129 U. Pa. L. REV. 497–600–01 (1981), and Kenneth Karst, *The Efficiency of the Charitable Dollar: An Unfulfilled State Responsibility*, 73 HARV. L. REV. 433–449–60 (1960).

gift. The trial judge relied upon another trial court decision holding that if a charity were to compromise its rights, and the Attorney General assented to the compromise, the court could approve it. From this the judge reasoned that "it could be true, then, that where indefinite charities with interests wholly contingent are concerned," the Attorney General might act to secure an absolute right for a specific charitable beneficiary in lieu of a contingent right for an indefinite beneficiary.

The second New York case relied upon by the circuit court was *In re Smith's Estate*, 75 Misc 2d 895, 349 N.Y.S.2d 281 (Surr. Ct. 1973), a decision of the probate judge of Rockland County, New York. His Honor stated with no citation of authority that Attorney General Lefkowitz had the authority to compromise a will contest where the testator left \$25,000.00 to charity. Several years later the New York Court of Appeals put a stop to Attorney General Lefkowitz' assertion of authority to control litigation involving charities. The case was *Lefkowitz v. Lebensfeld*, 51 N.Y.2d 442, 446-47, 434 N.Y.S.2d 929, 415 N.E.2d 919 (1980), where the court stated:

If the Attorney-General were suing to obtain actual enforcement of a disposition, or to require that it be applied for a stated or proper charitable purpose, there would thus be little question of his standing.

The problem here, however, is that the Attorney-General does not seek to attain any of these goals. Rather, he is attempting to enforce obligations purportedly owing to charitable organizations. In effect, the Attorney-General is stepping into the shoes of the charity without first making a demand upon the corporation or satisfying the other procedures normally associated with a derivative action. He is endeavoring, not to enforce a gift or a trust, but to enforce rights that arise from the ownership of charitable property originally received as a gift.

No authority has been furnished to this court that would sanction such an expansive reading of [the enforcement statute] EPTL 8-1.1 (subd. (f)). That provision was enacted in response to a particular problem and, although now broader than at its inception, it does not authorize a large scale incursion into the everyday affairs of charitable corporations. Indeed, in these circumstances, to confer standing upon the Attorney-General under [the enforcement statute] would be to grant all but unlimited and uncontrolled power to act as the alter ego of the charitable organization. Since most charitable holdings probably originated as gifts, as did the shares

involved here, virtually all obligations owed a charity would be independently enforceable by the Attorney-General. Such a result would require a strained interpretation of [the enforcement statute], a statute designed primarily to ensure that there is a party available to enforce charitable trusts on behalf of the ultimate beneficiaries

415 N E 2d at 931–32. In New York, the Attorney General has no authority to do what the South Carolina Attorney General did here.

The circuit court cited the Oklahoma case of *Sarkeys v Independent Sch. Distr. #40*, 592 P.2d 529 (Okla. 1979). In that case the Attorney General was requested by the visitors of a charitable corporation to intervene in his traditional capacity as charitable enforcer in an action to determine whether the charity's sale of stock constituted "indirect self-dealing" by the trustees. The action was settled by the plaintiffs, the charity's trustees, and the charity's co-receivers. The Attorney General joined the trustees and co-receivers, together with the plaintiffs, in asking the court to approve the settlement, which it did. Denying standing to a visitor, the court observed:

It is generally held that the Attorney General has a preclusive right to maintain proceedings to protect the trust and to prevent a misuse of property devoted to a public charity. A number of states have statutes which expressly provide that the Attorney General may enforce charitable trusts.

In Oklahoma, the authority of the Attorney General to enforce charitable trusts as *parens patriae* is derived from the common law and inferred from the statutory language of 60 O.S. 1971 § 175-18(B) which requires notice to the Attorney General and provides the Attorney General may intervene in an action concerning performance of a charitable trust. It has long been recognized at common law that the Attorney General has the duty of representing the public interest in securing the enforcement of charitable trusts.

592 P.2d at 533. The *Sarkeys* case is an example of the Attorney General's traditional enforcement authority — the authority to ensure that a charity's trustees are administering the trust properly. The Attorney General in the *Sarkeys* case did not take over the administration of the trust, speak for it, or purport to settle its claims.

Finally, the circuit court relied upon the 1951 Illinois case of *Kolin v. Leitch*, 343

Ill App 622, 99 N E 2d 685 (1951) The plaintiffs, asserting status as beneficiaries of a charitable foundation, brought an action to enforce the charity They joined the Attorney General as a party defendant The Attorney General moved to dismiss on the ground that the plaintiffs lacked standing to enforce the charity, but the Attorney General also answered denying that the directors of the foundation were acting in violation of the trust Like *Sarkeys*, this is a traditional charitable enforcement case This case does not remotely stand for the claim that the Attorney General may take over litigation involving a trust and settle the litigation as he sees fit

The inability of the Attorney General to marshal any appellate authority for his unprecedented claim to power in this matter is obvious

The Attorney General had no right to exclude the trustees and to speak for the Trust in regard to settlement of the will contest or the claim of the alleged widow

- 2 *The Trust was the sole beneficiary of the residuary estate The Trust was not a party to the settlement agreement The only parties were non-beneficiaries of the residuary estate, who agreed among themselves to divide it up and to leave to the Trust less than half of what the testator intended There was no Section 1102 agreement for the court to consider The Trust's consent to the agreement could not be manufactured by court order, after the fact, by ordering the removed trustees to sign*

The settling parties characterize these proceedings as a mere alteration of an estate plan to which all holders of a beneficial interest consent It is nothing of the kind It is the settlement of a will contest and a claim to an omitted spouse's share, brought by persons to whom the testator left nothing of substance — a settlement to which neither the chief beneficiary of the estate nor the personal representatives agreed

Section 1102 allows such a settlement over the objection of the personal representatives and trustees only when *all* holders of a beneficial interest in the estate agree and where the settlement is just and reasonable The overwhelming bulk of the testator's estate was in the residue and the sole beneficiary of that residue was the Trust The Trust did not agree to this settlement The contestants persuaded the circuit court that the Trust, as sole beneficiary of the residue, in the person of its trustees could

be ordered to agree to the settlement, **after the fact**, by an order compelling the removed trustees/PRs to sign the agreement as a ministerial act. Their *post hoc*, court-ordered signatures, then, would supply the agreement essential to a virtual destruction of the testator's estate plan. That was the theory.

As noted, the contestants' contention is based upon a provision of the Uniform Probate Code, enacted here as S.C. Code Ann. § 62-3-1102. If the court finds that an agreement altering the estate plan has been signed by all those holding a beneficial interest and is just and reasonable, it may order trustees to sign. This provision was written to deal with the case where all the beneficiaries of an estate have agreed to the settlement, along with all beneficiaries of any testamentary trust created under the will, but the personal representative or the trustee of the testamentary trust objects. In this situation it is possible that the personal representative or trustee may be obstructing a just and reasonable settlement to which all holders of a beneficial interest — including the beneficiaries of the trust — subscribe. This wise provision of the uniform act was never intended to apply where the beneficiary is *a charitable trust which has no beneficiaries in the usual sense and which does not itself agree to the reduction of its devise*. Moreover, the provisions applicable to modification of a *trust* were not followed, nor was there any evidence that would have satisfied these requirements. S.C. Code Ann. §§ 62-7-410, -416.

It is settled law that a charity has no identifiable beneficiaries as that term is known in the law of trusts. In the case of a charitable trust, "the beneficial interest is not given to individual beneficiaries, but instead for purposes beneficial to the community." *Brown v. Ryan, Attorney General*, 338 Ill. App. 3d 864, 788 N.E.2d 1183, 1191 (2003) *citing* 4A A. SCOTT & W. FRATCHER, TRUSTS § 391, at 357 (4th ed. 1989). The members of the public who may one day benefit from the trust are not identifiable. JESSE DUKEMINIER, ROBERT SITKOFF, ET AL., WILLS, TRUSTS, AND ESTATES 750 (7th ed. 2005). They are represented and spoken for by the trust itself, and the trust is represented and

spoken for by its duly appointed and acting trustees. The holder of the beneficial interest in a devise to a trust is the trust itself. In the agreement before the Court today not only did ***all*** the holders of a beneficial interest in Mr. Brown's residuary estate **not** agree to the settlement — ***no holder*** of a beneficial interest agreed.

In *University of Southern California v. Moran*, 365 S. Ct. 270, 617 S. E. 2d 135 (Ct. App. 2005), our Court of Appeals correctly determined that where a trust is beneficiary of a devise, it is the trust, acting through its trustee, which alone has statutory authority to participate in a Section 1102 settlement agreement.

Sections 1101 and 1102, read together, were meant to authorize a change — even, as here, a *drastic* change — in the testator's estate plan only when the holders of *all* beneficial interests concurred, if and only if the settlement agreement is just and reasonable. Here, a charitable trust was the sole holder of a beneficial interest in the testator's residuary estate, which comprised almost everything. The authors of the uniform act, and our General Assembly, could not possibly have intended to empower the court to strip a charitable trust of most of its bequest upon a finding that it is "just and reasonable" to do so, compelling the trust in the person of its removed trustees to consent to this relinquishment after the fact as a ministerial act. Yet that is the effect of the order under appeal.

Because the court lacked authority to reduce the bequest to the Trust without the Trust's consent, and because there was no such consent, the order should be reversed.

B. It was unjust and unreasonable to forfeit 28.75% of the foundation's bequest in order to settle the claim of undue influence.

Two claims against the estate were settled by the Attorney General, purporting to act for the Trust. The first was a claim that the will and the Trust were the product of undue influence and hence void. The second was the claim of Tommie Rae to an omitted spouse's share or at least an elective share of the estate. In compromise of

those two claims, the Attorney General ultimately agreed to pay to the claimants 52 5% of the value of the residuary estate — 28 75% to those who claimed that the will was void as the product of undue influence, and 23 75% to Tommie Rae, who claimed to be a widow²²

After days of testimony during which the settling parties had offered no evidence that the undue influence claim had any merit, Judge Early wondered aloud what the standard of reasonableness of a settlement might be, the settling parties having suggested no test. His Honor directed his inquiry, not to the settling parties but to Mr Buchanan, one of the trustees who opposed the settlement. His Honor wondered whether a settlement might be deemed reasonable if it were shown that the claim being settled was supported by enough evidence to get to a jury [Tr 3/4/09 561]. As would any experienced trial lawyer, Mr Buchanan responded that such a showing would **not** be enough to judge the reasonableness of a proposed settlement. One would need to know the **strength** of the claim [Tr 3/4/09 53 Tr 3/25/09 69, 71]. The contestants responded to the court's query by saying, on the contrary, that the challenge to the will should be settled without knowing the evidence [Tr 3/4/09 69]. Having been asked to produce any evidence of undue influence the settling parties produced none [Tr 3/25/09 49]. Knowing that there was no evidence of undue influence but only their alleged suspicions, the contestants took the position that the burden of proof rested upon those **objecting** to the settlement agreement to prove a **lack** of undue influence, instead of the proponents being required to prove the existence of a *bona fide* controversy [Tr 3/25/09 48 Tr 4/6/09 163/16-19].

Even if this settlement had been negotiated by the trustees of Mr Brown's foundation and not by the Attorney General acting without authority, it should not have

²² The claimants agreed to contribute any copyright rights which might come to them in the future. There is no evidence of what value these rights may have [Tr 1/30/09 117].

been approved. There was no *bona fide* controversy. Even if one had existed, this agreement was unjust and unreasonable by *any* standard.

Section 1102 is part of a uniform act. The hope always is that the jurisprudence which unfolds across the country in the train of such an act will indeed create a uniform national fabric. This has happened with Section 1102 and the statutes which inspired it. Decisions from North Carolina, Minnesota, Illinois, Michigan, Massachusetts, and Arizona show that agreements settling a challenge to the will and altering the clearly stated estate plan of the testator must meet a high standard of review under Section 1102. Most emphatically, the proponents of such agreements must show by **evidence** that the challenge to the will is substantially meritorious and that the settlement is reasonable in relation to the strength of the claim.

In *Holt v. Holt*, 304 N.C. 137, 282 S.E.2d 784 (1981), the court said

“The mere fact that a [will contest] has been filed, standing alone, is not sufficient ground for modification of the dispositive provisions of the will. The outcome of the litigation must be in doubt to such extent that it is advisable for persons affected to accept the proposed modifications rather than run the risk of the more serious consequences that would result from an adverse verdict.”

282 S.E.2d at 787, quoting *O’Neil v. O’Neil*, 271 N.C. 106, 112, 155 S.E.2d 495, 500 (1967).

This requirement that the outcome of litigation over the will be in doubt, most often expressed in terms of the need for a *bona fide* dispute, permeates our case law on family settlements.

282 S.E.2d at 788.

Whether there is a *bona fide* dispute depends, furthermore, not on what any particular party to the alleged compromise may subjectively believe about it, but whether the *bona fides* of the disagreement may, under all the facts and circumstances of the case, be reasonably found to exist by the trier of fact.

Id The court held that “there must appear from all the facts and circumstances a reasonable basis upon which to challenge the validity of a testamentary instrument

” *Id* at 790

The provisions of the Michigan Code, from whence Sections 3-1101 and 3-1102 of the Uniform Probate Code derived, were at issue in *Hay v LeBus*, 317 Mich 698, 27 N W 2d 309 (1947). Disapproving a settlement agreement, the court there stated “that to approve the settlement agreement and distribute the estate accordingly is to do nothing more or less than to make a new will for [the] deceased, which in very material respects would alter the disposition he by his will made of his estate [T]he statute providing for settlement agreements is not operative, and the statute cannot be used to defeat the lawful will of a deceased in the absence of compelling circumstances to the contrary ” 27 N W 2d at 313. The court approved the observations of the Massachusetts supreme court, construing a similar statute

The statute does not confer power to make a new will or to render the allowance of a will subject to approval as to the wisdom of its terms by interested parties and the court. That is not its scope. The statute imposes a duty of the most scrupulous care to see that the compromise *viewed with reference to the basis for contest*, is just and reasonable in all its aspects

Copeland v Wheelwright, 230 Mass 131, 119 N E 667, 669 (1918) (emphasis added)

Construing the provisions of the Minnesota settlement agreements act, materially identical to the provisions of the Uniform Probate Code, the court in the case of *In re Estate of Schroeder*, 441 N W 2d 527 (Minn 1989), dealt with a case very like the case at bar. The testatrix died nine years after making her will. (Here, it was six.) Two beneficiaries challenged the will on the grounds of revocation, mistake, and undue influence. The testatrix had provided for the income from a trust to be paid to a beneficiary for life, with the corpus to go under certain circumstances to a charity. Without the agreement of the trustee, the contestants agreed to abolish the trust so that the beneficiary would receive the bequest free of trust with certain restrictions. The

charity was to receive an immediate lump sum payment, which it agreed to accept. No evidence of revocation, mistake, or undue influence was offered to the lower court, which nonetheless found that a good faith will contest existed and that the settlement agreement was just and reasonable.

Reversing, as an initial matter the Minnesota Court of Appeals found that the personal representative/trustee who objected to the settlement had standing to appeal since a personal representative “is under a duty to see that the assets constituting the testator’s estate are not diverted from the course prescribed by the testator.”²³ 441 N.W.2d at 529, *quoting In re Healy’s Estate*, 247 Minn. 205, 209, 76 N.W.2d 677, 680 (1956). *Accord Altemeier v. Harris*, 335 Ill. App. 130, 81 N.E.2d 22 (1948).

If a personal representative cannot appeal, no one remains who can challenge a settlement agreement which aids the beneficiaries, yet emasculates the testator’s intent. To hold otherwise would mean that nominated executors and testamentary trustees do not have standing to challenge orders which are in derogation of their fiduciary responsibilities.

441 N.E.2d at 529. Moving on to the merits and citing Minnesota’s version of Section 1102, the court noted that the statute provides that

a court must approve a settlement agreement if (1) the will contest or controversy is in good faith, and (2) the effect of the agreement upon the interests of the parties represented by fiduciaries is just and reasonable. Both parts of this two-part test must be satisfied to approve a settlement agreement.

Id. The court of appeals noted that the lower court’s finding that a good faith contest existed and that the settlement agreement was just and reasonable was not based upon **evidence** but upon the representations of the settling parties — just as happened in the case at bar. “The trial court’s determinations are thus legal conclusions which are not binding upon this court.” *Id.* Addressing the question of whether the will contest was

²³ In the case at bar the respondents object to the appellants’ standing. When the respondents have raised this point in their briefs, the appellants will reply.

bona fide, the court of appeals began by observing that “[t]he decedent was a competent testatrix who executed her will with all the requisite formalities. Her will is thorough and professional.” *Id.* “Respondents nevertheless objected on the grounds of revocation, mistake, and undue influence.” The court articulated the obvious — that “[t]o constitute a good faith will contest such objections must have legal merit.” Reviewing the objectors’ attempt to show the grounds for their objections, the court rejected them one by one:

The respondents’ objection based on revocation is meritless. The respondents’ objection based on mistake is also meritless. The decedent’s independence, coupled with the very limited and modest devise to [the alleged undue influencer], clearly demonstrates no undue influence was exercised.

The decedent’s will is unquestionably valid. Because respondents’ objections are meritless, the will should have been admitted to probate. To deny probate on such frivolous grounds threatens the fundamental principle that wills executed with the requisite formalities will be admitted to probate. The will settlement agreement statute was not intended to allow circumvention of this principle. *We will not undermine this principle by allowing a valid will to be set aside based on meritless objections.*

Id. at 531–32 (emphasis added). Next, the court observed that the second prong of the test — the justice and reasonableness of the settlement agreement — “is not reached unless there is a determination that the contest or controversy is in good faith. Although we hold that no good faith contest existed here, we nevertheless choose to address the ‘just and reasonable’ requirement.” *Id.* at 532. The court approved Professor Scott’s conclusion that the beneficiaries cannot “vary the terms of a trust under the guise of a compromise agreement merely because they wish to do so.” *Id.*, quoting FRATCHER, IV SCOTT ON TRUSTS § 337.6 (4th ed. 1989). The court concluded:

We will not give our imprimatur to an estate plan which so flagrantly violates a testator’s intent. We therefore hold that the estate plan in the settlement agreement was not just and reasonable. This was a “mere moot case trumped up for the purpose of getting collusive destruction of the trust.” Bogert, *Trusts* § 152 (6th ed. 1987). To approve such

a settlement agreement threatens to unravel two fundamental principles of probate law (1) the paramount importance of carrying out the intention of the testator, and (2) the requirement that a testator express his intention with the requisite formalities We cannot approve such a settlement agreement

Id at 533–34

The Arizona Court of Appeals considered a similar case in *In the Matter of the Estate of Ward*, 200 Ariz 113, 23 P 3d 108 (2001) The personal representative/trustee appealed a finding that a settlement agreement “constituted a valid ‘compromise’ of a ‘good faith contest or controversy’” under Arizona’s versions of Sections 1101 and 1102

We find that it does not and accordingly reverse, principally because the heirs’ Family Settlement Agreement eviscerates the essence of the law of wills and trusts

23 P 3d at 109

This case presents a textbook example of abuse of the estate plan procedure described in [Arizona’s sections 1101 and 1102] The heirs’ initial petition affirmatively admitted that Ward’s will was validly executed, and was indeed her last will, and that they were unaware of any instrument revoking it Despite these admissions, which they later contradicted, the heirs sought to have the probate court override her will so that her assets would pass to them free of the limitations and delays entailed by Ward’s planned pour-over to the trust

The heirs urge the existence of a “controversy ” The one that does exist now is entirely of their own making, namely, whether the heirs’ Family Settlement Agreement qualified as a “compromise” under [sections 1101 and 1102] A controversy born only of their impatience with the will’s provisions does not approach the good faith envisioned by [section 1102]

23 P 3d at 112 The court added this comment

It is ironic that the heirs fault the Trustee for expending attorneys’ fees when they themselves began this dispute lacking good faith The Trustee could have easily capitulated to the heirs’ settlement agreement Doing so would have sacrificed Ward’s testamentary intent and breached the Trustee’s fiduciary responsibility to her, although in such a way as likely to escape complaint from anyone living

Id

In Illinois, the Court of Appeals applied a trust settlement statute in *Fleisch v First American Bank*, 305 Ill App 3d 105, 710 N E 2d 1281 (1999). The court began its review of the proposed settlement agreement, rejected by the lower court, by observing that such settlement agreements “are subjected to close scrutiny to determine whether the disputes they purport to resolve are genuine or simply ill-conceived threats concocted to subvert the settlor’s intent.” 710 N E 2d at 1283–84. Reviewing the ground offered to dispute the trust, the court concluded

It is apparent to us, as it was to the trial court, that there is no reasonable or substantial basis for finding a *bona fide* family dispute in this case.

Id at 1284

These cases from Minnesota, North Carolina, Illinois, Michigan, Massachusetts, and Arizona share common threads, variously expressed in the carefully considered opinions of these courts. The same themes appear again and again. “[T]he statute cannot be used to defeat the lawful will of a deceased in the absence of compelling circumstances to the contrary.” “The statute imposes a duty of the most scrupulous care to see that the compromise, viewed with reference to the basis for contest, is just and reasonable in all its aspects.” Such settlements “are subjected to close scrutiny to determine whether the disputes they purport to resolve are genuine or simply ill-conceived threats concocted to subvert the settlor’s intent.” Beneficiaries — much less, *nonbeneficiaries* — cannot “vary the terms of a trust under the guise of a compromise agreement merely because they wish to do so.” “We will not give our imprimatur to an estate plan which so flagrantly violates a testator’s intent.” “A controversy born only of [the beneficiaries’] impatience with the will’s provisions does not approach the good faith envisioned by [section 1102].” The will contest must be **objectively** *bona fide*, whether subjectively brought in good faith or not — although if brought in subjective bad faith (i.e., concocted or trumped up), that is the end of the

inquiry. A *bona fide* dispute about the validity of the will must be demonstrated by **evidence**, not merely by the claims of counsel. The proponent of the settlement must demonstrate by evidence — and not simply by the lawyers saying so — that the grounds of challenge to the validity of the will are substantial. “The outcome of the litigation must be in doubt to such extent that it is advisable for persons affected to accept the proposed modifications rather than run the risk of the more serious consequences that would result from an adverse verdict.” The challenge to the will “must have legal merit”

1 *The circuit court was offered no evidence of undue influence*

James Brown had little formal education and knew that his success in life was due to his hard work and artistic genius — a gift bestowed upon only a few. He was devoted to the cause of education. He decided to leave his fortune almost solely to that cause. He would leave to his children his personal effects only. [Will, ITEM I.] He would leave nothing to the woman with whom he lived.²⁴ He would provide generously for the education of his grandchildren. [Trust, Article VI.] But the vast bulk of his estate he would leave to the private foundation he created in 2000. The endowment of this foundation would be used for the education of needy students at South Carolina and Georgia schools.

To help him craft his estate plan he employed an attorney certified as an expert in that field. [See Appellants’ Brief dated 4/23/09, pp. 7–10.] By 1999 his plan was complete and was embodied in a will in that year, accompanied by the creation of a revocable trust. [Tr. 3/25/09: 230.] The plan was refined in its details the next year with a new will and the creation and initial funding of the James Brown 2000 Irrevocable Trust, of which the foundation is a subtrust. The 2000 will, in effect upon Mr. Brown’s

²⁴ She had agreed to make no claim as common law wife. [Consent Order Dismissing Annulment Action.] In the event that an earlier ceremonial marriage were found to be valid, her share would be limited by a prenuptial agreement. [Prenuptial Agreement.]

death six years later is nine pages long The 2000 Trust document is 21 pages long These are sophisticated, complex documents befitting the size of the testator/settlor's estate and the generosity of his estate plan

The contestants of the will include some but not all the adult children of the testator Their father had made his estate plan — and their virtual disinheritance — known to all for years before his death ²⁵ During his lifetime there was never a suggestion that their father had been unduly influenced to leave his fortune to education rather than to them [See Appellants' Brief dated 4/23/09, pp 7–10] On the last day before the statute of limitations would have run on contesting the will, some of the disinherited children, represented by an Atlanta firm, came forth with a claim that the will and the Trust were the product of undue influence [Tr 3/25/09 206]

In explaining to the court the basis for their challenge to the will, the contestants stated that they had “a **suspicion** that there was undue influence ” [Tr 3/4/09 62 (emphasis added)] They further explained their suspicion that Mr Brown's three agents “ **may have unduly influenced** ” him in order to procure a single provision in the estate plan, namely, that these three would be named trustees of the foundation [Tr 3/25/09 161 (emphasis added)] The trustees were limited to expending no more than 50% of the *income* (not the principal) of the trust in management expenses — not a grant of authority but a *limiting* provision [Trust, Article X(2)] The contestants' theory apparently was that these three initial trustees would be in a position to embezzle or at least to milk the foundation to that extent, following Mr Brown's death For example, if the foundation were eventually funded with one hundred million dollars, it might earn something on the order of \$2,500,000 income annually ²⁶

²⁵ Tr 3/25/09 222 The 2000 Trust document was executed on August 1, 2000 and filed for record in Aiken County six days later Tr 3/25/09 215

²⁶ Some idea of the potential income to be generated by the trust's principal is gleaned from the interest obtainable on long term treasury bills — the gold standard of any
(continued)

Under this hypothetical, the trustees would then have the opportunity, one way and the other to feather their own nests with up to \$1,250,000 annually in management expenses. Hence, the contestants suspected that these people might have unduly influenced Mr. Brown to set up his foundation, willing it almost everything and to name them as initial trustees. Therefore, the will is void. That was the claim.

(a) The law of undue influence placed insuperable obstacles in the path of the claimants.

A client and its attorneys faced with a claim of testamentary undue influence, and receiving a demand for many millions — perhaps tens of millions — in settlement, obviously would begin to assess that demand in light of the law by which the claim would be judged. There is no sign in the proceedings below that any such assessment was made. After assessing the law, the party defending the will would then evaluate the strength of the evidence of undue influence, measuring that evidence in light of the legal standard.

Chancellor Dunkin's early summary of the meaning of undue influence is unchanged today. *Parris v Cobb*, 5 Rich Eq 450, 458 (1853). The question is not one of intent. In undue influence cases the question is not whether the weaker party intended to enter into the transaction. Rather, it is **how** that intention was induced. See Green, "Fraud, Undue Influence and Mental Incompetency: A Study in Related Concepts," 43 COL L REV 176 (1943).

Successful challenges to a will on the ground of undue influence are rare, with good reason. The law places upon the party seeking to destroy a will on this ground one of the most onerous burdens known to the civil law.

²⁶(continued)

conservatively managed trust. At the date of the first hearing below, January 30, 2009, the long term real average rate on treasury bills was 2.50% http://www.ustreas.gov/offices/domestic-finance/debt-management/interest-rate/real_ltc_compositeindex_historical.shtml (last visited September 27, 2010).

For a will to be invalidated for undue influence, the influence must be the kind of mental coercion which destroys the free agency of the creator and constrains him to do things which are against his free will and that he would not have done if he had been left to his own judgment and volition. *Last Will and Testament of Smoak v Smoak*, 286 S C 419, 334 S E 2d 806 (1985). Undue influence must be shown by unmistakable and convincing evidence which is usually circumstantial. *Id*. The evidence must show that the free will of the testator was taken over by someone acting on testator's behalf. *Id*. Undue influence is demonstrated where the will of the influencer is substituted for the will of the maker. *Id*. Generally, in cases where a will has been set aside for undue influence, there has been evidence either of threats, force, and/or restricted visitation, or of an existing fiduciary relationship. *Hembree v Estate of Hembree*, 311 S C 192, 428 S E 2d 3 (Ct App 1993). The "mere existence of influence is not enough to vitiate a Will. A mere showing of opportunity and even a showing of motive to exercise undue influence does not justify a submission of that issue to a jury, unless there is additional evidence that such influence was actually utilized." *Last Will and Testament of Smoak*, *supra*, at 424, 334 S E 2d at 809.

Russell v Wachovia Bank, 353 S C 208, 578 S E 2d 329, 333 (2003). Accord *Last Will and Testament of Smoak v Smoak*, 286 S C 419, 334 S E 2d 806 (1985) (testator was bedridden, beneficiary drove testator to attorney's office for will signing, directed verdict against contestant should have been granted), *Mock v Dowling*, 266 S C 274, 277, 222 S E 2d 773, 774 (1976) (for will to be void due to undue influence, "[a] contestant must show that the influence was brought directly to bear upon the testamentary act"), *Hairston v McMillan*, 387 S C 439, 692 S E 2d 549 (Ct App 2010), *In re Estate of Anderson*, 381 S C 568, 674 S E 2d 176 (Ct App 2009).

"Dominion," "imposition," and "weakness" are words often seen in South Carolina's undue influence jurisprudence. Almost always present is some degree of mental weakness on the part of the testator or grantor. See, e.g., *Gaddy v Douglass*, 359 S C 329, 597 S E 2d 12 (Ct App 2004). Undue influence is the process of unfair persuasion by which an individual is made to do something which he or she would not have done in the exercise of unfettered judgment. The victims of such unfair persuasion are almost always lacking in the normal amount of mental ability and self-

reliance The Court has never tired of quoting Justice Story's observation that "[t]he acts and contracts of persons of weak understanding and who are thereby liable to imposition, will be held void in courts of equity, if the nature of the act or contract justify the conclusion that the party has not exercised a deliberate judgment, but that he has been imposed upon, circumvented, or overcome by cunning artifice or undue influence "²⁷

Almost without exception in these cases the one allegedly subjected to "undue influence" possessed an abnormal personality of some sort — most commonly, senile dementia — was weak in body or mind or both, or presented other indicia of mental or emotional subnormality Such circumstances would seem reasonably to increase the probability that any "undue influence" exercised was yielded to

Note, "Undue Influence in Intervivos Transactions," 41 COL L REV 707, 708 (1941) ²⁸

A circumstance to which the courts of this State have always given great weight is whether the testator or grantor acted with the aid of the competent and independent advice of a disinterested third party See, e g , *Way v Central Union Life Ins Co* , 61

²⁷ Quoted in *Owens v Sweat*, 227 S C 112, 123, 86 S E 2d 886 (1955), *Page v Lewis*, 209 S C 212, 242, 39 S E 2d 787 (1946), *Gaston v Bennett*, 30 S C 467, 473, 9 S E 515 (1888), *Wille v Wille*, 57 S C 413, 427, 35 S E 804 (1900), *Banker v Hendricks*, 24 S C 1, 12 (1885), *Parris v Cobb*, 5 Rich Eq 450 (1853)

²⁸ The courts of South Carolina have described the grantor's mental condition in typical undue influence cases in terms such as these "We are firmly persuaded that Ms M's dementia, chronic and progressive in nature, clearly rendered her incapable of possessing contractual capacity " *Gaddy v Douglass*, *supra*, 597 S E 2d at 21, "the [grantor's] mental faculties were at least so impaired at the time of the transaction as to subject him to the undue influence which the record reflects " *Owens v Sweat*, *supra*, 227 S C at 116, "[The grantor] was of such a weak understanding that she could be easily induced to shower her affections upon most any of her relatives," *Parker v Bowen*, 156 S C 381, 386, 153 S E 346 (1930) "great mental weakness, not amounting to incapacity to execute a valid deed," *Hodge v Shea*, 252 S C 601, 608, 163 S E 2d 82 (1968) "a very weak man, though capable of understanding the ordinary transactions of life," *Bunch v Hurst*, 3 Des 273 (1811), "his mind was enfeebled by age and other causes," *Wille v Wille*, 57 S C 413 426 35 S E 804 (1900), 'a person of such weak intellect as to render him liable to imposition " *Gaston v Bennett*, *supra*, 30 S C at 478 'considerable mental weakness on the part of this aged man," *Page v Lewis*, *supra* 209 S C at 227

S C 501, 504, 506, 39 S E 742 (1901) *Accord* Note, *supra*, at 720, 2 BLACK ON RESCISSION § 244 (1929), DOBBS, HANDBOOK ON THE LAW OF REMEDIES 677 (1973)

Lastly, even in those cases where the testator might have been unduly influenced, the effect of any undue influence is deemed to have dissipated where a long time has passed since the execution of the will, during which time the testator could have made a new will ²⁹

In the context of these legal principles, the claim of an unduly influenced will to charity by James Brown was to be measured

- (b) The payment of more than a quarter the estate's value to settle the undue influence claim was unreasonable by any standard

There was no showing that James Brown was weak of mind, nor could there have been There was no showing that he was dominated by his agents, nor could there have been ³⁰ There was no showing that the testator failed to have independent advice, nor could there have been He had the advice of a certified estate planner who helped him to develop and perfect his thoughtful and generous estate plan over a period of four years [Tr 3/25/09 226] There was no showing that his financial advisors influenced him to create a private foundation as the vehicle for his largess, or to leave

²⁹ Where the testator has an unhampered opportunity to revoke a will or codicil subsequent to the operation of undue influence upon him, but does not change it, the court as a general rule considers the effect of undue influence destroyed *Smith v Whetstone*, 209 S C 78, 39 S E 2d 127 (1946), as quoted in *Estate of Cumbee*, 333 S C 664, 511 S E 2d 390 (Ct App 1999)

Russell v Wachovia Bank, 353 S C 208, 578 S E 2d 329, 333–34 (2003) *Accord Calhoun v Calhoun*, 277 S C 527, 290 S E 2d 415 (1982) (testator was confined to nursing home in feeble condition yet continued to conduct business affairs for three years after execution of will, directed verdict should have been granted) *First Citizens Bank v Inman*, 296 S C 8, 370 S E 2d 99 (1988) (testator exhibited a pattern of changing her will over the years [S]he went through a consistent procedure of talking with her lawyer [I]t appears she was the ultimate decision maker " Directed verdict was proper)

³⁰ By definition, embezzlement is committed by people who are **unable** to dominate the victim Embezzlement is done in the dark, without the victim's knowledge

almost everything to charity by means of the foundation, or to appoint them as initial trustees, or to insert a provision *limiting* the portion of annual income which could be used to manage the trust, or to do anything else. Satisfied with his plan, the testator left it unchanged for six years until his death, during which time he had access to many lawyers. [Tr 3/25/09 241]

Neither the Attorney General nor the claimants made any effort to demonstrate to the circuit court that there was any **evidence** to support the claim of undue influence. The mere **existence** of this claim was the only basis for settling it with an enormous payoff. The circuit court disclaimed any finding that “the undue influence claim has merit.” [Order, p. 23.] Instead the court pointed to seven “circumstances” which led it to conclude — **not that the undue influence claim had merit** — but that the claim has a foundation in good faith.”³¹ *Id.* First was the provision limiting managerial expenses to 50% of the trust’s income. Second was the fact that the PRs had sued Cannon, Dallas, and Bradley for stealing money from Mr. Brown during his lifetime, and in that action had alleged, in shotgun-style, fraud, undue influence, or other wrongs. If they may have unduly influenced him once, reasoned the court, they may have done it again. Third, Cannon was said to have claimed that “he could have half of Mr. Brown’s estate, if he wanted.” *Id.* at 24. Fourth, during his lifetime Mr. Brown signed a blank deed, for which there was no apparent explanation, thereby evidencing that any document prepared for him by his estate planner might be invalid. Fifth, only one bit of correspondence between Mr. Brown and his estate planner had been found. Sixth, there was evidence that Mr. Brown’s estate planner was “good friends” with Cannon. Seventh, the credibility of four witnesses “to the validity of the 2000 will and trust is questionable.” Three of these were identified by the court as Dallas, Cannon, and Bradley, “whose veracity is suspect and at times contradictory.” *Id.* at 24–25. How

³¹ Subjective good faith, even if it were present — which assuredly it is not — is irrelevant. *Holt v. Holt*, 304 N.C. 137, 282 S.E.2d 784, 788 (1981).

these three might be witnesses “to the validity of the 2000 will and trust” is not explained

If the 2000 will and Trust were void as the product of undue influence then the very similar 1999 will and Trust would take their place. The court reasoned that if the 2000 will and Trust were void, then so might be the 1999 will and trust.

All this is the sheerest speculation. None of these seven circumstances, singly or together, provide the slightest evidence that the will was the product of undue influence. As the court acknowledged, it made no finding that the claim of undue influence had merit. Without such a finding, and an evaluation of the strength of such a claim, the court lacked authority to approve an agreement destroying this testator’s estate plan.

Experienced clients and litigators know that unsupported claims — if settled at all — are settled to avoid litigation costs. Here, more than a quarter of this massive estate was forfeited to avoid the cost of defending a frivolous will contest. The cost of defending the claim, although potentially large in dollars, would have been small in relation to the size of the estate. The sponsors of this settlement made no effort to show otherwise.³²

Where the proponents of the settlement offered no evidence to show that the undue influence claim had substance, by *any* standard the circuit court erred in finding that the claim was *bona fide* and that the settlement was just and reasonable.

2 *The only evidence is that the settlement was likely to have disastrous tax consequences for the foundation*

The only evidence is that the settlement agreement is likely to have catastrophic tax consequences for the foundation. [Tr. 3/25/09: 34/10-35/2, 37/6-9.] The newly coined “Legacy Trust” agrees in the settlement agreement, per the Attorney General, to

³² See Tr. 3/25/09: 268. The contestants suggested that more than \$10,000 in legal fees might be incurred in conducting discovery on the question of undue influence. [Tr. 3/4/09: 74.]

pay half of the estate taxes which will become due as a result of the settlement ³³ [Tr 1/30/09 121/13-16] Part of the problem arises because one of the testator's children was given a right of first refusal in the sale of the estate's assets ³⁴ Like the rest of this agreement, giving one of his disinherited children such a right would cause the testator to turn over in his grave Of more practical concern, however, are the provisions of the Internal Revenue Code which forbid self-dealing by a tax-exempt charity The 2000 Trust will likely pay a catastrophic price for this concession, added to the mix at literally the last minute to achieve unanimity among the testator's children as they strove to defeat his will

The settling parties offered no evidence to refute the evidence of a likely tax disaster Instead, their counsel reassured the court that they had been told that this disaster could be averted and that they were "dedicated" to preventing it [Tr 4/6/09 79-80] They assured the court that they would try whatever it took to prevent a loss of the charitable deduction as, for example, by converting the 2000 Trust or "the Legacy Trust" — they weren't clear which — from a private foundation to a public charity [Tr 4/6/09 82/24 - 83] The lengthy discussion of tax consequences in the Order of May 26th (pp 38–44) is based upon no evidence, since the proponents of the settlement presented none It was put together by the contestants at the order-writing stage

³³ With the Attorney General speaking for the Trust, '[t]hat suited the charity to do that' [Tr 1/30/09 140/7-8]

³⁴ [Tr 3/25/09 37/10-38/6] The negotiation for this provision was apparently completed in the hallway of Aiken County Courthouse minutes before the hearings below began on January 30, 2009 [Tr 1/30/09 16] The terms of the agreement continued to shift as the hearings went along [See Tr 1/30/09 15/10-11, 17, 19] When the hearings began, the agreement was for the Trust to receive 50% of the residuary estate [Tr 1/30/09 145/7-8] By the end of the hearings the number was down to 47 5% [See Tr 1/30/09 118-20] Late in the hearings, the contestants told the court that some of the settlement documents were still not finished [Tr 3/4/09 528]

The probable tax consequences of the settlement alone precluded a finding that the settlement was just and reasonable even if the will contest had been *bona fide* and substantial

3 *The Attorney General agreed to pay too much to settle the alleged widow's claim, but there is no need to reach that question. The settlement was unitary. If half of it was unreasonable, the entire settlement must fail.*

Tommie Rae claimed an omitted spouse's share or in the alternative an elective share as the alleged widow of the testator

Mr. Brown obtained from her an agreement not to claim a common law marriage [Consent Order Dismissing Annulment Action]. After his death, indeed she did *not* claim a common law marriage **but a ceremonial one**. Although married to another when she married James Brown, her contention was that the earlier marriage had been annulled following her marriage to Mr. Brown, thereby legitimating her ceremonial marriage to him. Her counsel contended that her claim would survive the decision of the Supreme Court in *Lukich v. Lukich*, 379 S.C. 589, 666 S.E.2d 906 (2008) (annulment of Marriage #1 does not retroactively validate bigamous Marriage #2) because of a footnote in the earlier decision of the Court of Appeals. That footnote disappeared in the Supreme Court's opinion.

The Attorney General on behalf of the Trust agreed to pay nearly a quarter of the value of the estate to settle this claim. This was in the range of half and perhaps three-quarters of the amount which the claimant would have realized if she had prevailed in her claim.³⁵

³⁵ An omitted spouse's share would have been half the value of the estate. An elective share would have been one-third. [See Tr. 3/25/09 153-54.] If married to the testator, her prenuptial agreement limited her claim. [Prenuptial agreement.] Because the will specifically omits her, her maximum claim would be one third of the net estate. The Attorney General agreed to give her nearly one-quarter of the value of the Estate in settlement.

Whatever the merits of this claim and the Attorney General's open-handed settlement of it there was no need for the circuit court to decide whether the settlement of this claim was reasonable. The settlement agreement was a unitary package, presented to circuit court for approval as a whole and not in pieces. Since there was no semblance of merit to the undue influence claim, it was error to approve the settlement agreement as a whole. See *Midkiff v Kobayashi*, 54 Haw 299, 507 P 2d 724, 744 (1973) ("Inasmuch as the [first] agreement and the [second] agreement were negotiated as a single package, our holding on the former has sealed the fate of the latter.")

* * * * *

The order of May 26, 2009 shows that the circuit court was motivated by one factor more than any other in approving this agreement. The circuit court was persuaded to find that the Brown estate was embroiled in controversy and that this settlement would end it. This settlement would end the claims resulting from the contestants' groundless challenge to the will and the omitted spousal claim. Surely it was wrong — unjust and unreasonable, in the phrase of the statute — to allow the contestants to create this imbroglio, then offer this settlement as a means of freeing the estate from its effects. See *In the Matter of the Estate of Ward*, 200 Ariz 113, 23 P 3d 108, 112 (2001). Controversies about the content of property in an estate, or the identity of heirs, or the omission of a spouse, or the pretermission of a child are resolved in the administration of estates far smaller than this one. There is nothing "mind boggling," as the circuit court found, about the task of resolving estate controversies of this nature. But regardless of whether such issues are routine or extraordinary, they cannot be avoided by simply rejecting the testator's estate plan and replacing it with another. The desire to simplify the administration of an estate cannot justify the rejection of the testator's estate plan and the dividing-up of the estate by those to whom the testator intended to leave little or nothing. In the absence of a genuine controversy

about the validity of the will and the Trust on the ground of undue influence, these secondary issues are never reached

There was no good faith controversy about whether the will and Trust were valid. Even if such a controversy existed, it was not just and reasonable to shred the testator's estate plan and replace it with one which would have been anathema to him.

II

The circuit court erred in removing the appellants from their duties because they opposed the settlement agreement, and then ordering them to sign the agreement after their removal

The settlement agreement calls for the removal of the appellants as personal representatives of the estate and as trustees of the 2000 Trust. They are to be replaced by persons chosen by the Attorney General and the contestants of the will. [Document dated 8/10/08, p. 2.] This was done, without complying with S.C. Code Ann. §§ 62-7-611, -614, or -616. No statutory ground was claimed or found for removing the appellants as trustees. See S.C. Code Ann. § 62-7-706 ("Removal of trustee"). They were removed because theirs were the sole voices raised in opposition to the shredding of the testator's estate plan. Since their removal was part and parcel of the approval of the settlement agreement and without good cause, this part of the order of May 26th should be reversed if the Court reverses the approval of the settlement itself.

The appellants moreover submit that it was error to order them to sign the settlement agreement. They were deemed removed the moment that the circuit court's order was entered. If anyone should have been ordered to sign the agreement, it was Mr. Bauknight, the appellants' replacement, chosen by the Attorney General and the contestants, who was glad to sign.³⁶ Moreover, the settlement agreement contains

³⁶ If the approval of the settlement agreement is reversed, then Mr. Bauknight's fiduciary appointment in the Order of May 26, 2009 and in subsequent appealed orders should also be vacated. The appointment of a successor trustee must follow the terms of the trust on that subject, S.C. Code Ann. § 62-7-704, but that was not done here. On

(continued)

many provisions immaterial to the substance of the settlement, such as a contractual promise not to speak out against the settlement [Document dated 8/10/08, p 1] Surely the statute which allows the court to require fiduciaries ministerially to sign an approved settlement agreement was never intended to force persons being removed to agree to such personal *contractual* terms as these, with which they personally and adamantly disagree

The Trust Code provides amply for the ways and means to remove fiduciaries for good reason Those methods are always available It is a myth propagated by the settling parties that the appellants hungered for the task assigned to them by the circuit court in this estate, which assuredly they did not seek Their professional careers have been severely damaged by this service³⁷ The court could replace them at any time for good cause — but opposition to this unbelievable settlement is not a good cause

CONCLUSION

The case at bar is a case in equity, as the Attorney General often affirmed to the circuit court [Tr 1/30/09 39 Tr 3/4/09 8/4-5] But it makes no difference whether the procedure devised by Section 1102 is characterized as equitable or at law The settlement agreement at issue here fails the statutory test at every stage by any measure The Trust is not a party to this agreement The claim that this will and this Trust were the product of undue influence is frivolous The proponents of the settlement made no effort to carry their burden of proving by evidence that there was any factual basis for the claim This record is utterly devoid of any evidence tending to demonstrate that this will was signed or this trust was created by James Brown acting as the mere puppet of others For six years after he completed his complex and generous estate

³⁶(continued)

remand, the circuit court would be free to determine all issues regarding the service of fiduciaries in this matter as may arise

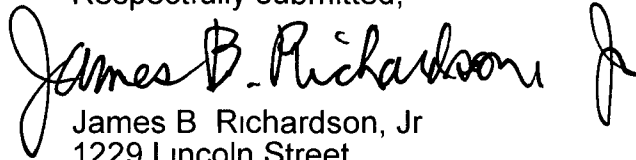
³⁷ See, e g , Tr 3/4/09 175

plan — four years in the making — the testator/trustor left his estate plan in place and untouched until his death. The very notion that a will leaving perhaps 98% of one's estate to a mostly charitable trust of one's own creation is the product of undue influence is preposterous on its face.

The only conclusion which this record will bear is that the settlement agreement did not spring from a good faith controversy about the validity of the will or the Trust. Even if it did, it was not just and reasonable by any test which could measure that standard.

For these reasons the appellants urge the Court to reverse the approval of the settlement agreement and related orders.

Respectfully submitted,



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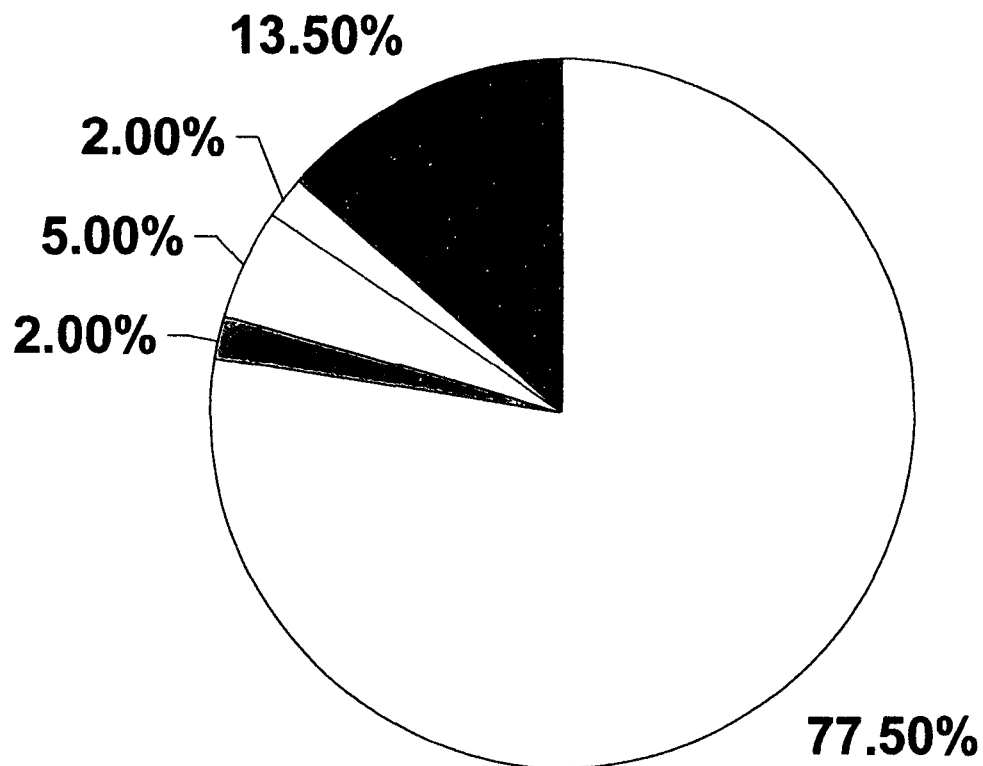
October 22, 2010

Attorneys for Appellants

ADDENDUM

Chart 1
James Brown's INTENTIONS in his
Last Will & Trust (2000)

2/09



☐ Educational Trust	☒ G'children's Education Trust
☐ PR/Tr Comm	☐ Legal Fees/Admin
☒ Debt to Teachers	

Chart 3

HOW THE PROPOSED "SETTLEMENT" DESTROYS/IGNORES JAMES BROWN'S INTENTIONS

James Brown Estate/Trust Settlement Proposal
(Hynie Brown/AG/8 of 13+ potential Heirs)
(Over objection of PR/Trustees Buchanan and Pope)
(2/09)

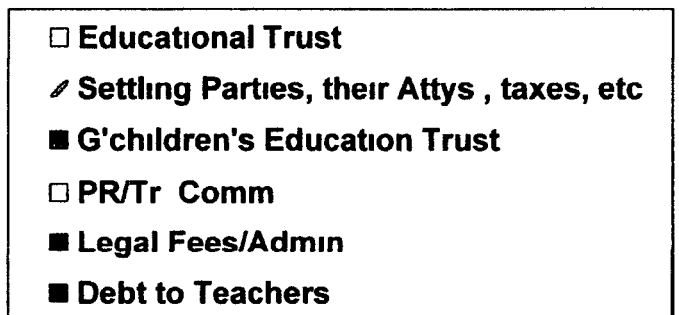
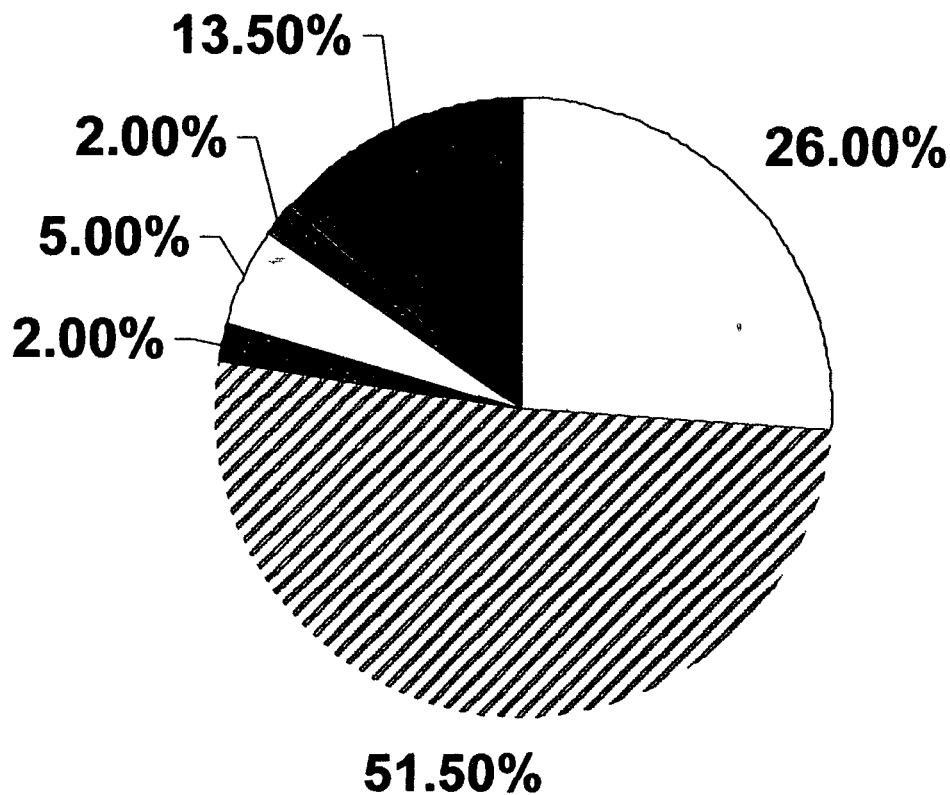
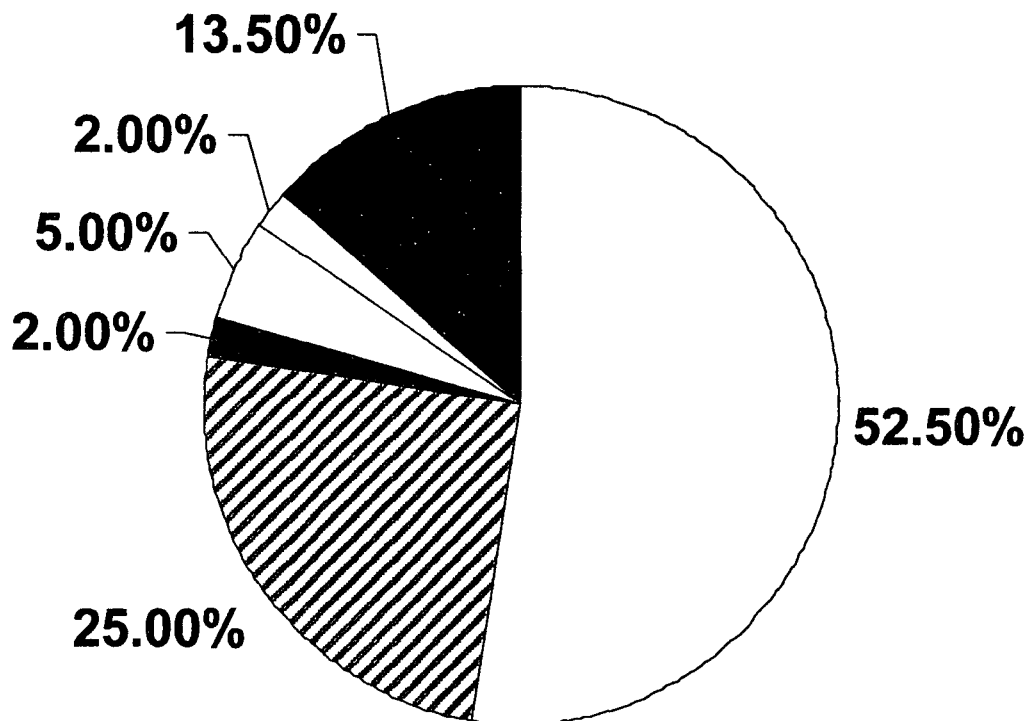


Chart 4 **WHAT THE "SETTLING" PARTIES WOULD GET** **IF THEY SET ASIDE BROWN'S INTENTIONS** **EXPRESSED IN HIS 2000 & 1999 WILLS/TRUSTS**

2/09



☐ Estate Taxes/Attys Fees	☒ Received by "Heirs"
☒ G'children's Education Trust	☐ PR/TR Comm
☐ Legal Fees/Admin	☒ Debt to Teachers

Division of 25% “Heirs” receive if 2000 and 1999 Wills and Trusts declared void

If no spouse and 12 “Heirs”:

Each “Heir” receives 2.08% of Estate/Trust

If spouse and 12 “Descendant/Heirs”:

- 1. Hynie Brown receives 12.5%**
- 2. Each Descendant/Heir receives 1.04%**

Possible Descendant/Heirs (Parties to Case 872, and Parties not joined):

- 1. Daryl Brown**
- 2. Larry Brown**
- 3. Terry Brown**
- 4. Deanna Thomas**
- 5. Vanisha Brown**
- 6. Yamma B. Lumar**
- 7. Tonya Brown**
- 8. James Brown II**
- 9. LaRhonda Petit**
- 10. Cinnamon Parris**
- 11. Jeanette Mitchell**
- 12. Deon Brown – not joined**
- 13. Doe Defendants**

**THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

**APPEAL FROM AIKEN COUNTY
Court of Common Pleas**

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

RECEIVED

OCT 26 2010

S.C. SUPREME COURT

**Henry Dargan McMaster, 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 Repre-
sentatives 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 Adminis-
trator 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 Repre-
sentatives 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 Adminis-
trator 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**

**Appellants' Designation of Matter to be
Included in the Record on Appeal**

ORDERS, CASE 1647 and CASE 1810

- 1 Order of the Honorable Doyet A Early, III dtd October 1, 2009
- 2 Order of the Honorable Doyet A Early, III dtd September 23, 2009 (1810)
- 3 Order of the Honorable Doyet A Early, III, dtd September 14, 2009,
- 4 Order of the Honorable Sue H Roe dtd August 6, 2009,
- 5 Order of the Honorable Doyet A Early, III dtd August 3, 2009,
- 6 Order of the Honorable Sue H Roe dtd July 29, 2009 (SA),
- 7 Order of the Honorable Sue H Roe dtd July 29, 2009 (ST),
- 8 Order Consolidating Appeals, dated November 6, 2009,
- 9 Order of the Honorable Doyet A Early, III dtd July 8, 2009,
- 10 Order of the Honorable Doyet A Early, III dtd May 26, 2009,
- 11 Form Order of the Honorable Doyet A Early, III dtd June 30, 2009,
- 12 Form Order of the Honorable Doyet A Early, III dtd June 30, 2009,
- 13 Amended Order of the Honorable Doyet A Early, III, dtd March 6, 2009,
- 14 Order of the Honorable Doyet A Early, III dtd March 4, 2009,
- 15 Order of the Honorable Doyet A Early, III dtd January 7, 2009,

ORDERS AND DECISIONS - OTHER CASES

- 1 Order of the Honorable Doyet A Early, III, Case 872, 122, dtd October 23, 2008
- 2 Order of the Honorable Doyet A Early, III, Case 122, dtd April 8, 2008,
- 3 Order of the Honorable Doyet A Early, III, Case 122, dtd March 7, 2008,
- 4 Order of the Honorable Doyet A Early, III, Case 122, dtd January 8, 2008
- 5 Order of Dismissal, Brown vs Brown, dtd July , 2004

PLEADINGS - CASE 1647 and CASE 1810

- 1 Petition for Removal and Restraint of Trustees, dtd September 28, 2008,
- 2 Response to Petition for Removal and Restraint of Trustees and Response to
- 3 Motion to Remove to Circuit Court, dtd October 17, 2008, with Exhibits a,b, and c
- 4 Amended Petition for Removal and Restraint of Trustees and Removal and
- 5 Restraint of PR s and Trustees dtd November 7, 2008 with Exhibits a,b, c and d
- 6 Answer to the Amended Petition Counterclaim, Cross Claim, Return to
- 7 Petitioners' Emergency Motion, dtd November 21, 2008,
- 8 Answer to the Amended Petition and Responsive Pleadings of Terry Brown and
- 9 Romunzo Brown dtd December 22, 2008,
- 10 Special Appearance on Behalf of Forlando Brown, dtd January 29, 2009,
- 11 Response of Terry and Romunzo to Motion to Realign dtd January 29, 2009
- 12 Petition for Removal of Bauknight dated February 5th, 2009
(Bradley/Dallas) w/ service
- 10 Application/Petition for Emergency Appointment (ST) dtd July 24, 2009,
- 11 Application/Petition for Emergency Appointment of (SA) dtd July 24, 2009
- 12 Grounds of Appeal dtd September 8, 2009

MOTIONS, RETURNS, MEMORANDA AND NOTICES - CASE 1647 and CASE 1810

- 1 Motion to Intervene and Dismiss, dtd October 24, 2008,
- 2 Motion to Add Necessary Party and for Mandamus/Restraint dtd November 24,
- 3 2008 (Cannon)
- 4 Response to Amended Petition and Motion dtd November 24, 2008, (Cannon),
- 5 with Exhibits 1 – 6
- 6 Motion to Dismiss Tommie Rae Hynie as a Party dtd November 25, 2008,
- 7 (Cannon) with Exhibits 4, 5, and 6
- 8 Supplemental Return and Objection to Appointment, dtd December 9, 2008,
- 9 Motion to Realign, for Partial Summary Judgment and for Mediation after Proper
- 10 Joinder dtd January 9, 2009, with Attachments A - S ,
- 11 Motion to Alter or Amend Judgment, dtd January 14, 2009,
- 12 Motion for Approval of Settlement Agreement, dated January 16, 2009, with
- 13 Attachments,
- 14 Motion for Partial Summary Judgment, dtd January 20, 2009 with Exhibits A
- 15 through E and docs dtd November 27, 2001 and June 19, 2000 referenced in Responses
- 16 11 and 12, Ex D
- 17 Response, Partial Agreement and Partial Objection to the Brief in Opposition to
- 18 Settlement, dated January 21, 2009, with Attached Brief,
- 19 Due Diligence Issues Related to Motion to Approve Settlement
- 20 Response of Terry, Romunzo Brown to Motion to Realign, dtd January 29, 2009,
- Return and Motion of Buchanan and Pope dtd February 17, 2009,
- Return of Defendants Buchanan and Pope to Motion for Approval of Settlement,
- dtd February 5, 2009,
- Objection to Settlement, dtd February 9, 2009,
- Motion and Memorandum, dated February 23, 2009,
- Response and Objection dtd March 2, 2009,
- Return and Opposition dtd March 3, 2009,
- Motion to Reconsider, Vacate, Set Aside, Alter and/or Amend and/or Clarify
- Orders, dtd March 12, 2009,
- Supplemental Motion of PR/Trustees to Dismiss and for Partial Summary
- Judgment, dtd March 17, 2009,

21 Supplemental, Continuing Objections dtd April 2, 2009,
22 Brief of Trustees and PRs dtd April 23, 2009,
23 Supplemental Motion of PR/Trustees for Summary Judgment, dtd April 28,
2009,
24 Motion to Alter or Amend Judgment, dtd June 1, 2009,
25 Motions of Michael Deon Brown, dated June 11, 2009,
26 Motion to Alter or Amend and/or Reconsider dtd August 20, 2009,
27 Appellants' Motion for Reconsideration dtd September 23, 2009,
30 Motion to Alter or Amend and/or Reconsider and Vacate August 3, 2009

Order Appointing Special Trustee, dated August 20, 2009,
31 Notice of Appeal of August 6, 2009 Order Appointing Special Administrator,
dated August 13, 2009

PLEADINGS – OTHER CASES

1 Amended Complaint for Annulment, Case No 04-DR-02-157
2 Amended Complaint, Case No 2008-CP-02-0322
3 Amended Petition, Case No 872 (Will/Trust/Heirs)
4 Answer of Attorney General, Case No 872
5 Answer of PR/Trustees and Petition for Alternate Probate, Case 872
(Note Case 872 Documents, bear the number of Case 122 in
Captions prior to May 14, 2008)
6 Motion for Partial Summary Judgment dtd 9/12/08, Case 872
7 Motion to Dismiss dtd September 15, 2008, Case 872

TRANSCRIPTS

1 Hearing held February 9, 2008, pp 1, 18, 19
2 Hearing held November 25, 2008, pp 1, 3, 44-45
3 Hearing held January 30, 2009, pp 1, 5, 6, 9, 11, 13-15, 16, 17, 19-26, 31, 32,
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AFFIDAVITS AND OTHER - CASE 1647

1 Joint Affidavit of Buchanan and Pope, dtd November 24, 2009,
2 Joint Affidavit of Buchanan and Pope, dtd January 20, 2009,
3 Joint Affidavit of Robert L Buchanan, Jr and Adele J Pope, dated February 5,
2009,

4 Affidavit of Robert L Buchanan, Jr and Adele J Pope, dtd February 17, 2009,
with Exhibits A through EE
5 Joint Affidavit of Robert L Buchanan, Jr and Adele J Pope, dtd February 19,
2009, with Exhibits a through d, with attachments
6 Affidavit of Adele J Pope, dtd February 23, 2009, with Exhibits a – f
7 Affidavit of Adele J Pope, dated February 23, 2009,
8 Affidavit of Albert H Dallas, dated March 24, 2009,
9 Joint Affidavit of Robert L Buchanan, Jr and Adele J Pope, dtd April 2, 2009,
with Exhibits a – j
10 Affidavit of Jay Ross, dated April 10, 2009,
11 Joint Affidavit of Robert L Buchanan, Jr and Adele J Pope, dtd April 28, 2009,
12 Affidavit of Adele J Pope, dated May 15, 2009, including exhibits a - f ,
13 Joint Affidavit of Robert L Buchanan, Jr and Adele J Pope, dtd June 24, 2009,
14 Supplemental Affidavit of Robert L Buchanan, Jr and Adele J Pope, dtd July
13, 2009,
15 Affidavit of Adele J Pope, dtd July 17, 2009,
16 Affidavit of Adele J Pope, dtd July 20, 2009,
17 Affidavit of W Steven Johnson, dtd July 20, 2009,
18 Affidavit of Robert L Buchanan, Jr and Adele J Pope, dtd October 14, 2009

AFFIDAVITS AND OTHER - CASE 1810

1 Affidavit of Adele J Pope Opposing Hearing Without Proper Notice, Requesting
Due Process Notice and Hearing, and Confirming that No Emergency Exists, dated
August 24, 2009, with the following Exhibits
a Copy of Probate Code Section 62-1-308, Appeals
b Letter from Mary Frances Jowers, Assistant Attorney General, to the Aiken
County Clerk of Court, dated August 21, 2009, with proposed Order
2 Letter from C Havird Jones, Jr to the Aiken County Clerk of Court, dated July
30, 2009

OTHER

1 Letter from H Dewain Herring to James Brown, dtd April 2, 1999
2 Last Will and Testament dtd June 15, 1999
3 Revocable Trust dtd June 15, 1999
4 Last Will and Testament dtd August 1, 2000
5 James Brown 2000 Irrevocable Trust dtd August 1, 2000
6 Advisory Board Document, dtd August 1, 2000
7 Memorandum of Trust dtd August 1, 2000
8 Durable General Power of Attorney dtd August 1, 2000
9 Agreement of James Brown and Tommie Rae Hynie dtd June 19, 2000
10 Amended Complaint, Brown vs Brown, Case No 04-DR-02-0157
11 Acknowledgement of Service, Brown vs Brown, Case No 04-DR-02-0157
12 Answer and Counterclaim, Brown vs Brown, Case No 04-DR-02-0157
13 Reply, Brown vs Brown, Case No 04-DR-02-0157
14 Prenuptial Agreement of Tommie Rae Hynie and James Brown
15 Appointment of Deanna B Thomas, Trustee
16 Appointment of Yamma Lumar Executive Assistant to Board
17 Ltr of Levenson to Thurmond Massey dtd January 18, 2007
18 Affidavit of Daryl J Brown dtd January 18, 2007
19 Affidavit of Deanna J Brown Thomas dtd January 18, 2007
20 Affidavit of Yamma B Lumar dtd January 18, 2007
21 Affidavit of Ann Carmichael

- 22 Affidavit of Walter Williams
- 23 Response to Requests to Admit dtd 8/27/08, Case 872
- 24 Ltr of C Havird Jones dtd January 29, 2009
- 25 Ltr of David Bell to Jones dtd January 29, 2009
- 26 First Right of Refusal Language
- 27 Letter from James D Bailey to the Honorable Doyet A Early, III, dtd March 23,
2009
- 28 Agreement dtd 8/10/08, with Addendum and attachments, filed March 26, 2009

CERTIFICATION OF COUNSEL

I certify that this designation contains no matter which is irrelevant to this appeal

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by James B Richardson Jr
Attorneys for Appellants

October 22, 2010

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

RECEIVED

DEC 22 2010

SC Supreme Court

Henry Dargan McMaster, 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 Pettitt, 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 Pettitt, 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 a 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 and Trust) 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 effects¹ (2000 Will at 4). 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 expenses² (2000 Trust at 4). 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" (2000 Trust at 4-5). 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 of the 2000 Will and Trust. If any of the spousal or omitted-child's claims were

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.

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, April 6, 2009, Testimony of Appellant Buchanan, Tr Hg 3/25/09 at 53)

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 H Dallas (Dallas), and Alfred A Bradley (Bradley) to serve as personal representatives

³ There is a fourth category of claimants whose success could have altered Mr Brown's putative estate plan: alleged children not included in his 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. (Tr Hg 1/30/09 at 92) 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 hearing.

of his estate and trustees of the trust, respectively (2000 Will at 5-6, 2000 Trust at 2) 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 (Petition, January 24, 2007) On February 1, 2007, Mrs Brown filed an emergency petition for appointment of a special administrator (Petition, February 1, 2007) 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 (Order, March 12, 2007)

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 (Motion, July 27, 2007) At a hearing on Appellants' motion, Cannon resigned from his fiduciary positions (Tr Hg 8/10/07 at 8) On September 24, 2007, a hearing was held regarding allegations that Cannon misappropriated estate assets both before and after his resignation⁴ (Tr Hg 9/24/07 at 73-77, *see also*, Order, December 18, 2007) Subsequently, Dallas and Bradley each resigned their positions as personal representative and trustee (Tr Hg 11/15/07 at 398-402) By order, the circuit court accepted their

⁴ The court found Cannon in contempt by order filed October 2, 2007 (Order) 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 (Order)

resignations⁵ (Order, November 20, 2007) 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 *Id*

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 11, 2007⁶ (Order, October 11, 2007) 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 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 " *Id*

The Attorney General objected to Appellants' appointment as personal representatives and trustees After a hearing on the matter, the circuit court denied the Attorney General's request The Attorney General filed a motion to alter or amend, but

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

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 (Motion, April 24, 2008) 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 a 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 (Settlement Agreement at para 6-7) The circuit court's order approving the Settlement Agreement reiterated this provision (Order, May 26, 2009, at 17)

Despite the fact that they were unaware of its terms and had previously supported settlement efforts, Appellants filed a motion opposing the Settlement Agreement (Motion, August 18, 2008) On the following day, the settling parties disclosed the existence and terms of the Settlement Agreement to the circuit court Appellants' counsel

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

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 Brown's 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

⁸ After the announcement of the settlement, Appellants filed the following: (1) Motion for Partial Summary Judgment, dated September 12, 2008, (2) Supplemental Motion to Dismiss All "Spousal" Claims of Mrs. Brown, dated September 12, 2008, (3) Motion to Dismiss all Causes of Action to Set Aside the Irrevocable Trust Agreement, dated September 15, 2008, (4) Motion to Dismiss, dated October 9, 2008, (5) Motion to Intervene and Dismiss, dated October 24, 2008, (6) Motion to Dismiss Buchanan and Pope as Individual Parties, dated November 14, 2008, (7) Motion to Disqualify C. Havird Jones, Jr. and Mary Frances Jowers as Counsel and Related Relief, dated November 14, 2008, (8) Emergency Motion to Quash Subpoena and Protect Evidence, dated November 14, 2008, (9) Motion to Realign, for Partial Summary Judgment and for Mediation after Proper Joinder of Parties and Discovery, dated January 9, 2009, (10) Motion to Alter or Amend Judgment, dated January 14, 2009, (11) Motion for Partial Summary Judgment, dated January 20, 2009, (12) 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, (13) Emergency Motion for Appointment of Special Administrator and Special Trustee, dated February 27, 2009, (14) Motion to Reconsider, Vacate, Set Aside, Alter and/or Amend and/or Clarify Orders, dated March 12, 2009, and (15) Supplemental Motion of PR/Trustees to Dismiss (where applicable), and for Partial Summary Judgment, dated March 17, 2009.

the contests and statutory claims were all unsuccessful⁹ 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 percent¹⁰ (Addendum to Settlement Agreement at para. 11B) Critically, the Settlement Agreement also includes a provision addressing the removal of Appellants and replacing them with a professional fiduciary (Settlement Agreement at 2) 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 *Id.* at 3 Each of the settling parties agreed to dismiss any and all will contests *Id.* 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 *Id.* at 1 Mrs. Brown agreed to dismiss her spousal claims (See Settlement Agreement at para. 5j)

The Attorney General, on September 29, 2008, filed a petition for removal and 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 (Petition, September 29, 2008) Further, on November 7, 2008, the settling parties filed an amended petition for the removal and restraint of the

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

original trustees Cannon, Dallas, and Bradley, and Appellants (Amended Petition, November 7, 2008) 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 Bauknight, by order dated January 7, 2009 (Order, January 7, 2009) 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” *Id* The appointment order was appealed by Appellants (Notice of Appeal, July 21, 2009)

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 (Tr Hg 11/25/08 pp 4-5) The circuit court commenced a hearing on January 30, 2009, which spanned seven non-consecutive days¹² The circuit court issued its order approving the Settlement Agreement and removing Appellants as personal representatives and trustees on May 26, 2009 (Order, May 26, 2009)

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

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

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

order, the circuit court found that all interested parties received proper notice ¹³ (Order, May 26, 2009, at 17) 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 ” *Id* at 20 Further, the circuit court found that the authority of the Attorney General allows it to “control the litigation”¹⁴ and “settle or compromise litigation ” *Id* at 21

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 *Id* at 23 First, the circuit court found that the claims of undue influence “certainly [have] a foundation in good faith ” *Id* at 24 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 *Id* at 24 The

¹³ Supporting this conclusion was the court’s order of March 10, 2008, whereby it required service by publication (Order) 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

¹⁵ Appellant Pope and Appellants’ expert admitted that the fifty percent provision was extraordinary and endangered any charitable deduction (Tr Hg 3/4/09 at 237, Tr Hg

circuit court also concluded that the credibility of the only four witnesses concerning the execution of the 2000 Will was questionable *Id* at 24-25 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 *Id* at 25-27 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 *Id* at 27-30 Fourth, the circuit court found that a good-faith controversy existed as to the claim of Brown II to an omitted-child's claim *Id* at 30-31 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 *Id*

The circuit court found that the Settlement Agreement was just and reasonable *Id* at 35 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 *Id* 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" *Id* Each

4/6/09 at 45, 47) 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), Tr Hg 3/4/09 at 54, 155, Tr Hg 3/25/09 at 109)

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, 2008, at 31-34)

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 *Id* The circuit court found that continued litigation would cost the estate millions of dollars of fees and costs *Id* at 36 Further, the percentages allocated to each of the settling parties by the agreement were “fair and reasonable ” *Id* 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 *Id* at 37

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 *Id* The circuit court appointed Russell Bauknight, a professional fiduciary, to serve in those capacities *Id* 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, May 27, 2009, *see also* Dec 31, 2009) 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 and received the circuit court’s approval to conduct a sale of Mr Brown’s household and personal effects, (Motion to Sell Household Effects, 11/27/08), yet spent a substantial portion of the proceeds paying themselves Specifically, the sale netted \$544,077 87 Appellants paid themselves \$275,926 38 and their lawyers and accountants \$126,816 42 from the sale proceeds Additionally, Appellants paid themselves \$42,000 and their lawyers and accountants \$45,773 79 from other Estate assets (Estate Accountings, May

20, 2009 and June 24, 2009)

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, which their own expert opined should have been done (Tr Hg 3/4/09 at 546-47, Tr Hg 4/6/09 at 48-49). 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 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, yet Appellant Pope asserted that a successor would

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, Complaint for Expedited Approval of Corbis Settlement filed 3/24/09 (Appellants named the Attorney General as the only defendant), Complaint for Declaratory Judgment filed 11/27/07, para 37) (2) Appellants' testimony during 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., Tr Hg 3/4/09 at 477, 493, 561, and 575). Nonetheless, later in the same hearing they proposed their own settlement (Offer of Compromise) (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 (Tr Hg 3/4/09 at 255, 257, Motion to Sell Household Effects, 11/27/08) (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 (Tr Hg 3/4/09 at 242, *see also Pope and Buchanan v Cannon Dallas and Bradley*, 2008-CP-02-322 at 8, para 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 at 2, 12/9/08), yet later asserted that the estate was in an emergency situation asking the court to appoint a professional fiduciary (Tr Hg 3/4/09 at 32)

not protect creditors as a reason Appellants should remain as fiduciaries (Tr Hg 3/4/09 at 188, Tr Hg 3/25/09 at 106-07) 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 This is contrary to their fiduciary duties of impartiality and fairness (Tr Hg 3/25/09 at 7, Motion in Opposition to Settlement Agreement) Finally, as the circuit court found, Appellants' promise to appeal the approval of the Settlement Agreement created an "irreconcilable conflict" between Appellants and the beneficiaries of Mr Brown's Estate (Order, May 26, 2009 at 37)

Appellants are not professional fiduciaries, (Tr Hg 3/4/09 at 41, Tr Hg 3/25/09 at 4), 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

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)

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 *Pee Dee Stores Inc v Doyle*, 381 S C 234, 241, 672 S E 2d 799, 802 (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 SC 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 SC 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 fees²¹ and want to scuttle a settlement so that the litigation will continue This stands in stark

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, filed days after the circuit court denied Appellants’ motion to alter or amend its order approving the Settlement Agreement

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 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 standing²²

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.

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")

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 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 that issue, an appellate court of Indiana has recognized that an order

²³ *Bailey v. Bailey*, 312 S. Ct. 454, 458, 441 S. E. 2d 325, 327 (1994).

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 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

²⁴ As discussed in the circuit court’s order, the evidence on behalf of the settling parties 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

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 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, April 6, 2009). 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, at para. 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 compromise.

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* (Tr Hg 3/4/09 at 242, *See Complaint Pope and Buchanan v Cannon Dallas and Bradley*, 2008-CP-02-233 at 8, para 25(b) “in pursuance of the objectives of such conspiracy, they procured the signatures 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 former handlers and confidants took advantage of and unduly influenced him has a good-faith basis.

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. 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 expenses²⁸. 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. (Tr. Hg. 3/25/09 at 235). 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.” (Tr. Hg. 3/25/09 at 237). Certainly, Appellant Pope recognized the level of control that Cannon had over Mr. Brown. “[Cannon] was mean and conniving, and I [Pope] knew that.” (Tr. Hg. 3/25/09 at 238). Unfortunately, at the end of the day, Cannon, Dallas and Bradley’s undue influence over Mr. Brown appears to have prevailed. Mr. Brown

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. (Tr. Hg. 3/4/09 at 244-45).

essentially left half of his estate to Cannon, Dallas, and Bradley through the fifty percent management expense clause. According to Appellant Pope and Harley Ruff, an estate-planning expert who testified for Appellants, the fifty percent management fee provision is unprecedented and problematic—especially in a charitable trust. (Tr Hg 3/4/09 at 237, 4/6/09 at 45, 47)

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). 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. (Tr Hg 3/4/09 at 229). 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." (Tr Hg 3/25/09 p. 60-61). Appellant Buchanan explained, "that happens all the time." *Id.* 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. (Tr Hg 3/25/09 p. 58)

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, and Bradley²⁹ is suspect and often contradictory. For example, Dallas admitted that he presented a stipulation to the circuit court knowing it was false because he wanted to

²⁹ Bradley is now deceased.

keep his position as fiduciary (Tr Hg 2/7/08 pp 203-07) 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, (Tr Hg 3/4/9 pp 154-55), and later asserted that the trust contained only the homestead real estate and an interest in a music company (Appellants' Complaint for Declaratory Judgment dated 5/22/09 at para 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 (Stipulation) But Dallas later testified that the stipulation was inaccurate and that he signed the stipulation to avoid losing his position as fiduciary (Tr Hg 2/7/08 pp 203-07)

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 for 2004, 2005, 2006). 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.” (Tr. Hg. 2/7/08 p. 196). 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 trust³⁰

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 (Marriage license and certificate). Mr. Brown also represented that Mrs. Brown was his lawful wife in his 2005 autobiography (Autobiography pp. 230-32, 234, 262). A binding family court order concluded that there was no impediment to her marriage when she married Mr. Brown (Order, April 15, 2004).

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 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

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 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 (Tr. Hg. 3/25/09 pp. 32-38).

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 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

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 pp. 232, 234, 262). Mr Brown is listed as the father on Brown II's birth certificate (Tr. Hg. 3/4/09 at 408). Mr Brown obtained health insurance and social security benefits for Brown II, and named him as his son in his medical directive. *Id.* at 422-24. Finally, a DNA test performed by the guardian ad litem showed a greater than 99% probability that Mr Brown was the biological father of Brown II. *Id.* at 401.

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 valid³³. 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 happen³⁴.

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 override section 62-2-301, which establishes the omitted-spouse's share, Mrs. Brown is entitled to one-half of the probate estate³⁵ 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

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 849, 853 (2005).

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

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) ("harmonious disposition of the matter will serve to 'avoid the expense, bitterness of 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 ("that 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

³⁶ Appellants also contend that the settlement creates tax problems, but the order

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 passed³⁷. 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 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 at para. 5d, Addendum at para. 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

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 assignment. 17 U.S.C. §§ 203, 304.

rights have been described as “immensely valuable” and may contribute substantial value to the Settlement Entity (Superman Article, see also Pope Affidavit in which article was incorporated) 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 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, para. 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 62-3-1102 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 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,

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).

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

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 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 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 5 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 re 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" (Appellant's 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

⁴⁰ There can be no greater exercise of an Attorney General's protection of a charitable trust than to settle a case that threatens the charitable trust's very existence

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 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

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 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 would presumably create a rule that precluded the Attorney General from ever

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?

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 v. Hodges*, 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. (Tr. Hg. 4/6/09 at 184). 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.” *Id.* 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 [?]” *Id.*

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." (Tr. Hg 3/4/09 at 74). 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, 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

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 ("[c]ounsel for former Personal Representatives/Trustees filed an 80 page Motion containing 404 grounds"). Furthermore, over the past year alone, 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.

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 Uniform Probate Code section 3-912, the New Jersey statute provided that "the personal representative shall abide by the terms of the 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 (emphasis added). 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

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.

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). 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 abeyance⁴⁴ (Motion, June 18, 2008). 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 at 2). On November 7, 2008, the settling parties filed an amended petition for the removal of Appellants as personal representatives and trustees (Amended Petition, filed November 7, 2008). 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" (Motion, January 16, 2009). 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

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 mooted the motion to reconsider.

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, three of which are non-existent, in support of their position⁴⁵ 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 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

⁴⁵ Appellants cite to S C Code Ann §§ 62-7-611, -614, -616, and 3-611 The first three sections do not exist Appellant likely intended to reference sections 62-3-611, -614, and -616, which are provisions relating to removal of a personal representative Nonetheless, the failure to reference these statutes properly is indicative of the nonchalant manner in which Appellants addressed this particular issue

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 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 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 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. (Tr. Hg. 3/4/09 at 153). 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

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.

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

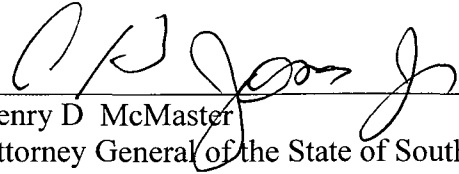
of a settlement agreement submitted to a court for approval, the court may order the fiduciaries to sign the agreement S C Code Ann § 62-3-1102 It necessarily follows that where such a situation arises and an irreconcilable conflict between the fiduciary and the estate is created, a court has the authority 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 (Settlement Agreement at 2) 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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December 22, 2010

Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A Early, III, Circuit Court Judge

Case No 2008-CP-2-1647

RECEIVED

DEC 22 2010

S C Supreme Court

Henry Dargan McMaster, 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

**RESPONDENTS' DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

ORDERS

- 1 Order of the South Carolina Court of Appeals, dated February 12, 2010, granting Motion to Substitute
- 2 Order of the Honorable Doyet A Early, III dated July 10, 2009, denying Pope and Buchanan's Motion to Alter or Amend Order Approving Settlement Agreement
- 3 Order of the Honorable Doyet A Early, III dated May 26, 2009, approving Settlement Agreement
- 4 Order of the Honorable Doyet A Early, III dated January 7, 2009, appointing Russell L Bauknight as Special Administrator
- 5 Order of the Honorable Doyet A Early, III dated April 8, 2008, denying Attorney General's Objection to Appointment of Pope and Buchanan as PR/Trustees
- 6 Order of the Honorable Doyet A Early, III dated March 10, 2008, requiring Service by Publication of the Will contest
- 7 Order of the Honorable Doyet A Early, III dated December 18, 2007, finding Cannon in willful contempt
- 8 Order of the Honorable Doyet A Early, III dated November 20, 2007, accepting PR/Trustee Dallas and Bradley resignations and appointing Pope and Buchanan as PR/Trustees
- 9 Order of the Honorable Doyet A Early, III dated October 11, 2007, granting Attorney General Motion to Intervene
- 10 Order of the Honorable Doyet A Early, III dated October 2, 2007, finding Cannon in contempt
- 11 Order of the Honorable Doyet A Early, III dated March 12, 2007, appointing Pope and Buchanan as Special Administrators
- 12 Order of the Honorable Sue H Roe dated January 17, 2007, admitting Will for informal probate
- 13 Order of the Honorable F P Segars Andrews dated April 15, 2004, finding Tommie Rae and Javed Ahmed marriage null and void ab initio

PLEADINGS—Complaints

- 1 Complaint for Declaratory Judgment filed by Pope and Buchanan, dated May 22, 2009
- 2 Complaint for Expedited Approval of Corbis Settlement filed by Pope and Buchanan, dated March 24, 2009
- 3 Complaint of Lawsuit against Dallas, Bradley, and Cannon by Pope and Buchanan, filed by Gilreath, dated February 5, 2008
- 4 Complaint for Declaratory Judgment filed by Pope and Buchanan, dated November 27, 2007

PLEADINGS—Offer of Compromise, Motions, Memos, Petitions,

- 1 Notice of Appeal in opposition to Appointment of Russell L. Bauknight as special administrator filed by Pope and Buchanan, dated July 21, 2009
- 2 Motion to Reconsider Approval of Settlement Agreement filed June 1, 2009
- 3 Offer of Compromise from Pope and Buchanan filed April 6, 2009
- 4 Supplemental Motion of PR/Trustees to Dismiss (where applicable), and for Partial Summary Judgment, dated March 17, 2009
- 5 Motion to Reconsider, Vacate, Set Aside, Alter and/or Amend and/or Clarify Orders filed by Pope and Buchanan, dated March 12, 2009
- 6 Emergency Motion for Appointment of Special Administrator and Special Trustee filed by Pope and Buchanan, dated February 27, 2009
- 7 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) filed by Pope and Buchanan, dated February 23, 2009
- 8 Motion for Partial Summary Judgment filed by Pope and Buchanan, dated January 20, 2009
- 9 Motion to Approve Settlement Agreement, dated January 16, 2009, filed by Respondents
- 10 Motion to Alter or Amend Judgment filed by Pope and Buchanan, dated January 14, 2009
- 11 Motion to Realign, for Partial Summary Judgment and for Mediation after Proper Joinder of Parties and Discovery filed by Pope and Buchanan, dated January 9, 2009
- 12 Supplemental Return filed by Pope and Buchanan, dated December 9, 2008
- 13 Motion to Approve Sale of Household Effects (Christie's Sale) filed by Pope and Buchanan, dated November 27, 2008
- 14 Emergency Motion to Quash Subpoena and Protect Evidence filed by Pope and Buchanan, dated November 14, 2008
- 15 Motion to Disqualify C. Havird Jones, Jr. and Mary Frances Jowers as Counsel and Related Relief filed by Pope and Buchanan, dated November 14, 2008
- 16 Motion to Dismiss Buchanan and Pope as Individual Parties filed by Pope and Buchanan, dated November 14, 2008
- 17 Petition from Attorney General and Settling Parties for Removal and Restraint of PR/Trustees (Dallas, Bradley, Cannon, Pope and Buchanan) filed by Attorney General on November 7, 2008
- 18 Motion to Intervene and Dismiss filed by Pope and Buchanan, dated October 24, 2008
- 19 Motion to Dismiss filed by Pope and Buchanan, dated October 9, 2008
- 20 Petition from Attorney General for Removal and Restraint of Dallas and Bradley to the extent they were trustees filed September 29, 2008

- 21 Motion to Dismiss all Causes of Action to Set Aside the Irrevocable Trust Agreement filed by Pope and Buchanan, dated September 15, 2008
- 22 Supplemental Motion to Dismiss All “Spousal” Claims of Mrs Brown filed by Pope and Buchanan, dated September 12, 2008
- 23 Motion for Partial Summary Judgment filed by Pope and Buchanan dated September 12, 2008
- 24 Motion in Opposition to Settlement Agreement filed by Pope and Buchanan on August 18, 2008
- 25 Motion to Hold Decision from April 24, 2008, Motion to Alter/Amend in Abeyance filed on June 18, 2008
- 26 Motion to Alter/Amend decision to Appoint Pope and Buchanan as PR/Trustee filed by Attorney General on April 24, 2008
- 27 Motion to Remove PR/Trustees (Dallas, Bradley, Cannon) filed by Appellants on July 27, 2007
- 28 Petition for Appointment of Special Administrator filed by Mrs Brown on February 1, 2007
- 29 Petition for Removal of Trustees (Dallas, Bradley, Cannon) filed by children named in Brown will on January 24, 2007

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- 1 Hearing held August 10, 2007, pp 7-8
- 2 Hearing held September 24, 2007, pp 73-77
- 3 Hearing held November, 15, 2007, pp 398-402
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- 9 Hearing held June 30, 2009, pp 28

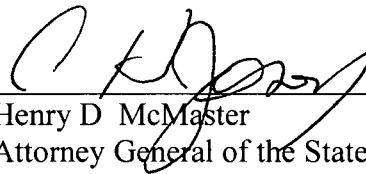
EXHIBITS AND OTHER MATERIALS

- 1 Last Will and Testament dated August 1, 2000

2 James Brown 2000 Irrevocable Trust dated August 1, 2000
3 Settlement Agreement
4 Addendum to Settlement Agreement
5 Affidavit of Pope dated February 23, 2009, with exhibits
6 Notice of Creditors Claim (Fee Petition) filed by Pope and Buchanan dated July
17, 2009
7 Blank Deed signed by James Brown from the file of Dewain Herring
8 Superman Article, used as exhibit during settlement hearing
9 Tax Returns of JBE, Inc , 2004, 2005, and 2006
10 Marriage License and Certificate of James Brown and Tommie Rae Brown
11 Accounting of James Brown Estate 5/28/09-12/31/09
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13 Accounting of James Brown Estate 5/21/09-5/27/09
14 James Brown Autobiography (pages discussing Mrs Brown and Brown II)
15 Stipulation regarding Trust Assets

CERTIFICATION OF COUNSEL

I certify that this designation contains no matter which is irrelevant to this appeal



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December 22, 2010

Columbia, South Carolina

**THE STATE OF SOUTH CAROLINA
IN THE Supreme COURT**

**APPEAL FROM AIKEN COUNTY
Court of Common Pleas**

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

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FEB 01 2011

S.C. Supreme Court

**Henry Dargan McMaster, 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 and
Carrington L , Tonya Brown,
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 Repre-
sentatives 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 Adminis-
trator and Special Trustee for The
Estate of James Brown and The
James Brown 2000 Irrevocable
Trust, Defendants,**

**of whom Robert L Buchanan, Jr ,
and Adele J Pope, as Personal Repre-
sentatives of the Estate of James
Brown and Trustees of the James**

Brown 2000 Irrevocable Trust are the

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 Adminis-
trator 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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Treatise

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ARGUMENT IN REPLY

I

Standing is a flexible concept, measured by the particular facts of the case. Standing is acquired in one or more of three ways. The appellants have standing in all three ways.

The thousands of students deprived of millions of dollars intended for them by the testator over many years in the future are unidentifiable — many of them not yet born — and none are parties to this case. Hence, say the respondents, there is no one with standing to complain about the decimation of the testator's educational foundation.

The personal representatives were dealing in a normal manner with claims of undue influence, pretermitted child, and omitted spouse when the Attorney General of the State stepped in and took over. The Attorney General did this by claiming that the chief beneficiary of the estate was a charitable trust, and the Attorney General has the power to set aside the trustees and speak for the trust, entering into a Section 1102 settlement agreement in its behalf and relinquishing more than half the estate to disinherited claimants. As part of this settlement the Attorney General, acting for the 2000 Trust, agreed with the disinherited members of the Brown family to unseat the duly appointed PRs/trustees without cause, replacing them with a nominee of their mutual choice and obtaining a court order requiring the ousted PRs/trustees to signify their consent to all this.

Nothing like this has ever been seen in the caselaw of South Carolina, so far as we know. There is not a case in the country that we have found — and none has been cited by the respondents — holding that the ousted fiduciaries lack standing to appeal an order approving events such as these.

Repeatedly in recent years this Supreme Court has reiterated that “the rule [of standing] is not an inflexible one.” *Thompson v. South Carolina Comm’n on Alcohol & Drug Abuse*, 267 S.C. 463, 467, 229 S.E.2d 718, 719 (1976). Accord *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005), *Davis v. Richland County Council*, 372 S.C. 497, 642

S E 2d 740 (2007) Standing is assessed under all the facts and circumstances of the particular case and this case is unprecedented

The Court has identified the sources of standing, as follows

Standing may be acquired (1) by statute, (2) through the rubric of “constitutional standing,” or (3) under the “public importance” exception

ATC South, Inc v Charleston County, 380 S C 191, 195, 669 S E 2d 337, 339 (2008)

The appellants possess standing in all three ways

A The appellants have standing and authority under the 2000 Trust and the default trust code provisions

The first place to look for an authoritative answer to the question of standing is the Code of Laws See, e g , *Sloan v Friends of Hunley, Inc* , 369 S C 20, 630 S E 2d 474 (2006) (FOIA confers standing upon citizens)

The applicable code — the South Carolina Trust Code — is primarily a “default statute ” The terms of a trust prevail over any trust code provision, with eleven exceptions These exceptions do not include the authority to settle claims against the trust, or to represent or act for the trust in the defense or settlement of a will contest S C Code Ann § 62–7–105(b) Thus, the Trust Code confers upon a settlor the authority to appoint those who may defend the trust against attack and to appoint those who may settle claims in its behalf The Court must therefore look to the terms of the 2000 Trust before looking to the statute, in order to determine who has authority to defend the trust, to settle claims against it, and to act for it in the settlement of a will contest

1 The 2000 Trust confers upon the trustees the authority to defend the trust

The private partially charitable 2000 Trust expressly gives authority and fiduciary discretion to its trustee to “compromise, adjust, mediate, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against the Trust Estate as the Trustee shall deem best ” [2000 Trust, Art X(19)] James Brown’s will and 2000 Trust provide that any challenges to the estate plan “shall be considered an affront to Grantor’s

wishes and shall be vigorously challenged as such by his fiduciaries ” [2000 Trust, Art XXI, Will, Item X] Appellants are thus charged with an affirmative duty to defend the will and 2000 Trust against the contests brought by many of the respondents The duty to defend the estate plan is mandatory, and “[a]bsolute liability arises when the trustee fails to do some mandatory act required by the express terms of the trust instrument ” *Cartee v Lesley*, 290 S C 333, 350 S E 2d 388, 389 (1986) If the appellants bear absolute liability for any failure to meet Mr Brown’s requirement that they vigorously defend contests to his estate plan, they are certainly aggrieved by an order which requires them to assent to a settlement they know to be damaging to the estate and 2000 Trust

2 *Even if the default provisions of the Trust Code came into play, those default provisions would confer upon the duly appointed trustees the authority to defend the trust*

There is no need to look beyond the terms of the 2000 Trust because it is valid However, if the provisions of the default statute did come into play, the result would be the same the duly appointed and acting trustees have standing to defend the trust Under § 62–1–308, the appellants are Interested Persons injured by their improper removal as fiduciaries The appellants have statutory standing to appeal for the benefit of the “I Feel Good” Trust and the Education Trust as statutory beneficiaries and as representatives of the settlor under §§ 62–7–410 through –416 of the Trust Code ¹ As persons with a duty to defend the estate plan, appellants are interested persons injured by their removal as fiduciaries and by actions designed to prevent their defense of the estate plan S C Code Ann § 62–1–308

Moreover, S C Code Ann § 62–7–405(c) authorizes a trustee, among others, to “maintain a proceeding to enforce the trust ” The use of the word “proceeding” encompasses a broader range of court activity than the word “action” would have conveyed This appeal is in the nature of a proceeding to enforce the 2000 Trust the

¹ Obviously the appellants are not beneficiaries in the traditional sense Their statutory inclusion in the category of ‘Beneficiary’ was intended by the General Assembly to confer upon them the right to enforce the trust

purpose being to prevent its decimation, followed by its obliteration and replacement by a new entity created and controlled by the Attorney General and the other parties to the August 2008 agreement

B The appellants have “constitutional standing ”

The appellants have been ousted without cause from their fiduciary positions The corpus of the estate and of the trust which they have a fiduciary duty to protect has been more than cut in half They have been compelled to signify their agreement with the order which ousts them and which decimates the estate and the trust

These wrongs give the appellants standing under the three-part test of constitutional standing

First, the plaintiff must have suffered an “injury in fact” — an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent not ‘conjectural’ or ‘hypothetical’ “Second, there must be a causal connection between the injury and the conduct complained of — the injury has to be “fairly trace[able] to the challenged action of the defendant, and not th[e] result [of] the independent action of some third party not before the court ” Third, it must be “likely,” as opposed to merely “speculative,” that the injury will be “redressed by a favorable decision ”

ATC South, Inc , ATC South, Inc v Charleston County, 380 S C 191, 195, 669 S E 2d 337 (2008), *quoting Lujan v Defenders of Wildlife*, 504 U S 555, 560–61

Each of the injuries suffered by the appellants is concrete and actual Each is directly attributable to the order approving the rejection of the testator’s estate plan, entrusted to their care, and ousting them without cause from their positions See, e g , *Davis v Richland County Council*, 372 S C 497, 642 S E 2d 740 (2007) (recreation commissioners had standing to challenge the constitutionality of a statute authorizing their removal from office), *Smiley v South Carolina Dept of Health & Envir Control*, 374 S C 326 649 S E 2d 31 (2007) (recreational jogger had standing to challenge permit for removal of sand from beach) These injuries will be redressed by reversal

Thus, the appellants have constitutional standing

C This is a case of public importance

The “public importance” exception to traditional rules of standing is now firmly seated in the jurisprudence of this state. See, e g , *Baird v Charleston County*, 333 S C 519 5111 S E 2d 69 (1999), *Sloan v Stanford*, 357 S C 431, 593 S E 2d 470 (2004), *Sloan v Department of Transportation*, 365 S C 299, 618 S E 2d 876 (2005), *Sloan v Hardee*, 371 S C 495, 640 S E 2d 457 (2007), *Sloan v Greenville Hosp System*, 388 S C 152, 694 S E 2d 532 (2010) (demonstrating that the public importance exception is so well-established at this point that Sloan’s standing is no longer even challenged), *Sloan v School Distr of Greenville County*, 342 S C 515 537 S E 2d 299 (Ct App 2000), *Sloan v Greenville County*, 356 S C 531, 590 S E 2d 338 (Ct App 2003)

The case at bar is of public significance on two levels

First is the impact of the order of May 26, 2009 on the private foundation which Mr Brown created for the education of students at South Carolina and Georgia schools. This case raises the question of whether potentially thousands of college students in the decades ahead will be deprived of the scholarship benefits intended for them by the testator. Given the importance of education in our pantheon of values, it is scarcely debatable that this is a matter of substantial public importance.

On a second level of public importance is the question of whether the Attorney General has the legal authority to take over the administration of an estate and the operation of a private trust, settling a will contest and claims against the estate as he sees fit and preempting fiduciaries without cause. Private foundations such as the “I Feel Good” foundation/trust are not public charities. They are an expression of private philanthropy sanctioned by this State and by the Internal Revenue Code. The benefactor is granted certain tax benefits in exchange for dedicating assets to charitable, educational or scientific purposes selected by the settlor. Persons considering the creation of private foundations, and counsel advising them, should know whether the Attorney General has the authority claimed by him in this case. Private philanthropy in South Carolina would be chilled if a

settlor's funds could be diverted from the settlor's chosen class of recipients to others chosen by the Attorney General. If this is the law of South Carolina, the Bar and many others need to know it.

E The cases from other jurisdictions support standing, as do the South Carolina cases

In support of their contention that the appellants lack standing to challenge the Section 1102 settlement, the respondents cite a decision by a New Jersey trial judge.² This was an appeal by the executor of an estate from a probate court judgment approving a will contest settlement to which all the charity beneficiaries of the estate agreed. Since the executor failed to allege "any substantive grounds for opposing the settlement," 445 A 2d at 458, other than the statute of limitations, the trial judge found no standing. His Honor cautioned, however, that "a personal representative faced with an agreement that violates the testator's intent may have greater standing." *Heritage Bank-North, N A v Hunterdon Med Center*, 164 N J Super 33, 395 A 2d 552 (App Div 1978). In the *Heritage Bank-North* case, a New Jersey appellate court sustained the appeal of an executor/trustee from an order approving the abolition of a trust by agreement of all beneficiaries. The settlement contravened "the well settled principle that termination by consent of the beneficiaries cannot be compelled where continuation of the trust is essential to carry out a material purpose thereof." 395 A 2d at 554. This case shows that the courts of New Jersey would accord standing to the appellants in the case at bar.

As noted in our principal brief, the Minnesota Court of Appeals found that the personal representative/trustee who objected to the settlement had standing to appeal since a personal representative "is under a duty to see that the assets constituting the testator's estate are not diverted from the course prescribed by the testator." *In re Estate of Schroeder*, 441 N W 2d 527, 529 (Minn. 1989), quoting *In re Healy's Estate*, 247 Minn 205, 209, 76 N W 2d 677, 680 (1956).

² *Matter of Liss' Will*, 184 N J Super 184, 445 A 2d 455 (N J Super L. 1981)

If a personal representative cannot appeal no one remains who can challenge a settlement agreement which aids the beneficiaries, yet emasculates the testator's intent To hold otherwise would mean that nominated executors and testamentary trustees do not have standing to challenge orders which are in derogation of their fiduciary responsibilities

441 N E 2d at 529 Accord *Altemeier v Harris*, 335 Ill App 130, 81 N E 2d 22 (1948) (trustees have not only right but duty to appeal order approving settlement which they believed thwarted the will of the creator of the trust which they were required to defend), *In the Matter of the Estate of Ward*, 200 Ariz 113, 23 P 3d 108, 109 (2001), *Budin v Levy*, 343 Mass 644, 648, 180 N E 2d 74, 76 (1962) ("An executor has a duty to see that what he reasonably believes to be his testator's intent is carried out, and, should his judgment be that a decree in the Probate Court did injustice, he would have standing to seek appellate review " [internal citations omitted]) See also *Brown v Peters*, 39 Ill App 3d 962, 350 N E 2d 565 (Ill App 1976) (executor is aggrieved party where court approves probate of codicil which executor believes is contrary to testator's wishes), *In re Estate of Denman*, 270 S W 3d 639 (Tex App 2008) (executor has standing to appeal where estate is damaged by ruling of court below)

In *Blackmon v Weaver* 366 S C 245, 621 S E 2d 42 (Ct App 2005), the personal representative appealed her removal The Court of Appeals reversed Although standing was not challenged, the court could have considered the question *ex mero motu* if any doubt existed See also *Floyd v Floyd*, 365 S C 56, 615 S E 2d 465 (Ct App 2005)

* * * * *

The respondents' challenge to appellants' standing to appeal the approval of the settlement rests upon the fact that they were removed from their fiduciary offices by the order under appeal If the appellants had sought a full stay of that order (which they chose not to do in the interest of the estate), and if the court had stayed the order, the appellants at this stage would continue to hold their fiduciary offices Their standing would be unquestioned Surely the vital question of standing cannot rest upon such happenstances of litigation

None of the potentially thousands of students who would have benefitted from the 2000 Trust has standing to challenge its decimation. See generally *Robert Schalkenbach Foundation v Lincoln Foundation, Inc*, 208 Ariz 176, 91 P 3d 1019 (App Div 2004). See also M Blasko, *et al*, *Standing to Sue in the Charitable Sector*, 28 U SAN FRAN L REV 37, 72 (1993) (hereafter, "Blasko"), and cases cited and see *Trustees of Dartmouth College v Woodward*, 17 U S (4 Wheat) 518, 641 (1819). If the appellants have no standing, then no one does. It is simply unthinkable that *no one* has standing to seek appellate review of these important questions.³

II

As the respondents assured the circuit court, Section 1102 devises an equitable procedure for considering approval of a settlement

The Attorney General repeatedly assured the circuit court that the procedure for considering approval of the settlement is equitable. None of his co-petitioners demurred. Now that it is politic to insulate the result from meaningful appellate review, they tell this Supreme Court without a blush that the procedure is at law. In support of their turnabout, the respondents say that a will contest is an action at law, which of course it is. From this proposition they reason that "an order approving the settlement of a will contest" is likewise at law. In support they cite two cases,⁴ neither of which involved the settlement of a will contest and neither of which was a Section 1102 procedure for changing a

³ The circuit court accorded standing to appellants to challenge the settlement. Respondents' objection to appellants' standing was not addressed in the order of May 26, 2009 nor was it raised in a Rule 59 motion to alter or amend. A challenge to standing is subject to ordinary issue-preservation rules. *Kolle v State*, 386 S C 578 690 S E 2d 73 (2010), *Michael P v Greenville County Dep't of Soc Servs*, 385 S C 407, 413 n 4, 684 S E 2d 211, 214 n 4 (Ct App 2009). See *A Fast Photo Express, Inc v First Nat'l Bank*, 369 S C 80, 630 S E 2d 285 (Ct App 2006). Of course the Court may choose to consider the question in its discretion. *I'On, L L C v Town of Mt Pleasant*, 338 S C 406, 421 526 S E 2d 716 724 (2000) (appellate court is "likely to ignore any additional sustaining grounds not presented to the trial court). There is no reason to exercise that discretion in favor of insulating this judgment from appellate review.

⁴ *Johnson v Johnson*, 235 S C 542, 112 S E 2d 647 (1960), *In re Estate of Weeks*, 329 S C 251, 495 S E 2d 454 (Ct App 1997).

testator's estate plan by unanimous consent of the beneficiaries, approved by the court as just and reasonable. This is not an appeal from a judgment in a will contest but an appeal of a judgment entered pursuant to the statutory procedure devised by Section 1102.

In South Carolina the scope of appellate review of the facts does indeed continue to turn upon whether a claim would have been characterized as equitable or at law before that distinction was nominally abolished with the introduction here of the Field Code in 1870. But the procedure devised by Section 1102 was unknown to courts of law or equity before this statute was enacted. Hence, the Court is free to choose the proper appellate role for it to play in this process. This might involve imputing an "intent" to members of the General Assembly — almost certainly none of whom gave it a thought. But we do know that the General Assembly enacted here a *uniform* law, and stated its intention that this law should be interpreted *and applied* so as to make uniform the laws of the States which enact it. S.C. Code Ann. § 62-1-102(b)(5). There can be no doubt, either, that the National Conference of Commissioners on Uniform State Laws, which wrote this law, intended a robust role for the appellate court in reviewing the trial court's decision to approve a settlement which could — and here *does* — destroy a testator's estate plan. Every other appellate court which has reviewed a decision approving a settlement under this uniform law has scrutinized it inside out. Those decisions are all cited in the appellants' principal brief. The respondents in a 57-page brief have addressed none of these cases. The appellate courts of those States no longer speak of at-law versus equitable claims, but they *do* exercise the full power of review of the facts which this uniform law accords them. This Supreme Court of South Carolina can and should do the same.

Especially is this so where, as here, the impact of the settlement falls so heavily upon a trust. Viewing this statutory procedure as equitable in nature would fit seamlessly into this Court's trust jurisprudence. "Trusts have long and broadly been a field for the jurisdiction of equity." *Epworth Orphanage v. Long*, 199 S.C. 385, 389, 19 S.E.2d 481, 482 (1942), *quoted in Floyd v. Floyd*, 365 S.C. 56, 615 S.E.2d 465, 485 (Ct. App. 2005).

For yet another reason, this case sounds in equity. Part and parcel of the August 2008 agreement approved by the circuit court was the removal of the appellants as personal representatives and trustees. As the respondents confirm [Brief at 52–56], the only reason for their removal was their opposition to the settlement agreement. The propriety of their removal, therefore, depends upon the validity of the settlement agreement. The removal of a fiduciary sounds in equity. *Dean v Kilgore*, 313 S C 257, 437 S E 2d 154 (Ct App 1993) (action to remove a personal representative is equitable). Hence, this Supreme Court may and should scrutinize the facts as an equity court to determine whether the settlement is valid — *i e* , just and reasonable.

For all these reasons, Section 1102 creates an equitable claim, just as the respondents told the circuit court, and the removal of the appellants likewise sounds in equity.

As we said before, it makes no difference in the end since there is no evidence upon which to find that this settlement is just and reasonable.

III

The will contest was frivolous. The challenge to the validity of the 2000 Trust was frivolous. The dismemberment of the estate was neither just nor reasonable.

1 The offer of compromise was evidence of nothing

Rule 68, SCRCP, provides a mechanism for a party to attempt to shift certain court costs to an opposing party. Like all settlement offers, it is inadmissible in evidence. See Rule 408, SCRE, and see authorities cited in *QHG of Lake City, Inc , v McCutcheon*, 360 S C 196, 600 S E 2d 105, 111 (Ct App 2004). Where, as here, there was little chance of acceptance, Rule 68 provides a safe means of attempting to shift some of the costs of litigation to the opposing parties.

The respondents now contend that the offer of judgment is an admission that the undue influence challenge to the will and 2000 Trust was “a good faith controversy” [Brief at 23]. It is nothing of the kind.

The challenge to the will and trust was frivolous, but even frivolous claims may have settlement value if the party sued would rather pay to settle a frivolous claim than pay the lawyers to fight it. By April 2009 the proceeding to approve the settlement had become an intensely litigated issue. It was clear that the State's resources would continue to be applied in aid of the disinherited parties so as to force the settlement, despite its massive flaws.

Especially where the party managing the litigation is not the party whose property is at stake, the need to consider the settlement of even a frivolous claim may be prudent. If an offer of judgment were evidence of anything — which it is not — the size of the offer would be measured in relation to estimated litigation costs against a small army of opposing parties, and not in relation to the value of the property at issue.

Again, such offers of judgment are evidence of nothing and admit nothing.

2 The challenges to the will and 2000 Trust were frivolous

The respondents contend that the challenge to the will and to the 2000 Trust must have been meritorious because the appellants themselves once alleged that Cannon, Dallas, and Bradley “procured the signatures of James Brown on various documents by undue influence, fraud, and/or forgery.” [Brief at 24.] Astonishingly the respondents tell the Court that “the same set of facts” was involved in the fraud suit against these three for embezzlement over a period of years as was involved in the execution of the will and the 2000 Trust. [Brief at 24, n. 27.] The appellants’ action to recover some of the money secretly stolen began with a lawyer’s typical shotgun “and/or” allegation in the complaint. These defalcations had nothing remotely to do with the execution of Mr. Brown’s will and his 2000 Trust — four years in the making and in the refinement.

The respondents next identify the supposed *evidence* of undue influence upon which they rely. First, they contend that an allegedly generous limitation on the management expenses which the trustees might incur is evidence that they unduly influenced the

trustor⁵ Under this theory, every benefit conferred by a will or a trust would be evidence that the recipient unduly influenced the giver There is no evidence in this massive record that the trustees had anything to do with this provision But even assuming *arguendo* that they did importune Mr Brown for such a provision, there is nothing wrong with that

The mere influence of affection and attachment, or the mere desire of gratifying the wishes of another, will not vitiate a testamentary act unless that act was the result of coercion or importunity beyond the testator's power to resist ”

In re Estate of Anderson, 381 S C 568, 674 S E 2d 176, 179 (Ct App 2009), *quoting Harris v Berry*, 231 S C 201, 205, 98 S E 2d 251, 253 (1957) The suggestion that a bequest in a will or a benefit conferred in a trust, in and of itself is evidence of undue influence exerted by the recipient is frivolous It is no accident that the respondents fail to cite a single case of a successful challenge to a will on the ground of undue influence [See Respondents' Brief at 23–27]

Next, the respondents say [Brief at 25] that Cannon's boast, following Mr Brown's death, that he could have induced Mr Brown to leave him the entire estate is evidence of undue influence The respondents neglect to tell us what rule of evidence would apply here — for a good reason Cannon's idle boast is evidence of nothing

The respondents then say that Mr Brown once signed a blank deed The only evidence is that many lawyers have had clients to sign blank deeds [Tr 3/4/09, p 229] The respondents offered no evidence of undue influence at trial Instead, they combed a myriad documents in this record at their leisure to find what they might, and this was the best they could come up with This is evidence of nothing

Finally, we are told that “the credibility of four principal witnesses to the validity of

⁵ This limitation originated in the 1999 Trust [Art V(1)], in which Cannon, Dallas, and Bradley constituted a *minority* of the board of trustees The limitation was carried over into the 2000 Trust The trustees' fees are specified elsewhere in the 2000 Trust [Art VI(3)] There is no suggestion that the fees allowed were excessive If the trustees were to claim excessive *expenses*, they would be subject to the remedy of enforcement by the beneficiaries or by the Attorney General, among others S C Code Ann § 62–7–405(c)

the 2000 Will and Trust is questionable ” [Brief at 26] The logic of this statement can only flow from the respondents’ belief, voiced at trial, that the burden is on the *proponent* of the will to prove the *absence* of undue influence. Since the burden of proof is the other way round, undue influence trials usually start with the challenger offering the testimony of the witnesses to the will. The respondents do not identify the witnesses to the will, but Cannon, Dallas, and Bradley were not among them. The respondents nonetheless say that the witnesses to the will are not to be believed. It is hard to see how the challenger to a will can prevail while offering the testimony of witnesses who, according to the challenger, cannot be believed.

The respondents point out that the challenge to the validity of the will and 2000 Trust was not the only claim eliminated by this settlement. The claims of the alleged omitted spouse and omitted child were also removed.⁶ The portion of the settlement fund attributable to the settlement of these two claims is in the neighborhood of what these claims would have generated *if they had prevailed*. But the heart of this settlement and the hole into which most of the settlement money is poured is the frivolous claim of undue influence. If the settlement was unreasonable on that account, the entire settlement was unreasonable.

The respondents say that the administration of the estate was simplified by this settlement. Perhaps it was. Capitulation to a frivolous claim may simplify things greatly.

⁶ Although some claims had still to overcome dispositive motions at the time of the settlement, the record contains much evidence weighing against Tommie Rae Hynie Brown’s claim. The evidence shows, among other hurdles, that her marriage to Mr. Brown was bigamous and thus void, that after the annulment of her first marriage, she and Brown never attempted to validate their marriage, and that her prenuptial agreement with Mr. Brown precludes all of her claims. The success of James II’s claim was entirely dependent on the success of the will contest, as the will specifically disinherits him. Despite almost no discovery having taken place at the time the August 2008 agreement was signed, the evidence was overwhelmingly unsupportive of such a large payout. At page 29 of their brief, the respondents say that the appellants have “abandoned” any challenge to the contention that respondent Tommie Rae was the testator’s wife. Although the appellants do not understand the basis for this claim, suffice it to say that the validity of that putative marriage was not before the circuit court, is not before this Court, and will be adjudicated in due course unless properly settled at some point.

That can never justify the court in substituting a new estate plan for the one devised by the testator, without the clearest legal reasons to do so ⁷

The respondents claim that the will contestants have contributed “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 successful ” [Brief at 9 and 33] Under federal law, it is doubtful whether these rights are transferrable at all See A Scott, *Oh Bother Milne, Steinbeck, and an Emerging Circuit Split Over the Alienability of Copyright Termination Rights*, 14 J INTELL PROP L 357 (2007), *Stewart v Abend*, 495 U S 207 (1990), *Classic Media, Inc v Mewborn*, 532 F 3d 978 (9th Cir 2008) The caselaw on these relatively new rights is developing and inconsistent There is no evidence of when or if the termination rights to Mr Brown’s seven decades of work might come into the hands of any respondent The record is devoid of evidence tending to establish who might own these termination rights if and when they take effect There is no evidence of the value of such termination rights, in any event No value can be given to this assignment, nor do the respondents try

3 *Section 1102 commits to the Court the duty to scrutinize settlements of this nature rigorously*

One of the remarkable things about the respondent’s brief is its failure to discuss, or even to mention, the uniform treatment given the role of the appellate court in Section 1102 litigation across the country This is an admission by silence that the legislative intent was to create a statutory procedure ending with a probing search at the appellate level into the question of justice and reasonableness

* * * * *

⁷ By no means would this settlement remove all the issues present in this estate For example the respondents say that the settlement removes all question about which assets are owned by the estate and which are owned by the 2000 Trust The settlement documents do not answer that question The agreement simply provides that all respondents will pool whatever interest they have in James Brown’s assets into the Legacy Trust Creditors, taxing authorities, or other beneficiaries could still require a determination of ownership

For all the unrefuted reasons given in our principal brief, this settlement was unjust and unreasonable

IV

There was no Section 1102 settlement agreement since the chief beneficiary, the 2000 Trust, was not a party

The respondents appear to agree that the 2000 Trust, as chief beneficiary of the estate, was a necessary party to any Section 1102 settlement, although even this is not crystal clear [See, e g , Brief at 44–45] The respondents later appear to contend that the 2000 Trust, as a legal entity and as chief beneficiary of the will, is not actually the one whose consent was required Rather, it was the unidentifiable beneficiaries of the 2000 Trust whose consent was required, and it was they who were spoken for and signed for by the Attorney General The only case cited for this proposition [Brief at 47] is the decision of the same New Jersey trial judge who held that a personal representative had no standing to object to a settlement but might have had “greater standing” if the settlement agreement violates the testator's intent ” *Matter of Liss’ Will*, 184 N J Super 184, 445 A 2d 455 (N J Super L 1981)

The thousands of students who will be beneficiaries of the 2000 Trust are not beneficiaries of the will ***The 2000 Trust is that beneficiary*** The Attorney General had no authority to sign the settlement agreement in behalf of the 2000 Trust

These students are not beneficiaries of the will but of the 2000 Trust They are not the only beneficiaries of the Trust Certain of Mr Brown’s grandchildren are entitled to benefits from the Brown Family Education Trust, a sub-trust of the 2000 Trust Although some of the beneficiaries of the Education Trust signed the settlement agreement, at least two adult beneficiaries of this sub-trust have not ⁸ Respondents state in a footnote that

⁸ The original settling parties went to great lengths to obtain unanimity among all claimants and beneficiaries but failed Respondents assert that Terry Brown, a son of the testator, “later joined in the Settlement Agreement [Brief at 7] A more accurate account is that respondents bought-off Terry Brown to induce him to abandon his support of his father’s estate plan and his opposition to the settlement The parties to
(continued)

because the Education Trust shifts any assets remaining at its termination to the “I Feel Good” Foundation the Education Trust is a charitable trust” as defined by S C Code Ann § 62-7-103(3) According to the respondents, this enables the Attorney General to speak for the Education Trust This assertion is incorrect The Education Trust is not a charitable trust Section 103(3) of the Trust Code defines a “charitable trust” as “a trust, or portion of a trust, created for a charitable purpose ” The terms of the Education Trust make abundantly clear that Mr Brown’s purpose in creating it was to provide for the education of his grandchildren The trustees are given broad discretion to distribute income and principal to pay for “education and related expenses” for each grandchild until he or she attains age 35 [2000 Trust, Art VI]

The 2000 Trust is the principal beneficiary of the estate, but was not a party to the settlement, nor were other beneficiaries Hence, the settlement agreement does not qualify for consideration under Section 1102

⁸(continued)

the August 2008 agreement treat the payment to Terry Brown as an *expense* of the settlement entity [Undated Contribution Agreement, p 2] Terry’s consent was expensive indeed The rights granted to him could be worth millions When the original settling parties moved for approval, Terry strongly opposed the settlement on grounds similar to some of those advanced by the appellants Specifically, he asserted that no settlement could be binding without his consent and that of his sons Forlando and Romunzo Brown, who are beneficiaries of the Brown Family Education Trust Ten days later Terry agreed to abandon his support of the estate plan in exchange for a 4 79% interest in the settlement entity a 6-month exclusive right to bring a buyer for some or all assets of the Estate/Trust, and a 10-year right of first refusal to buy the James Brown Assets As Terry Brown correctly pointed out before reversing his position, two of his children, Forlando and Romunzo Brown, are beneficiaries of the Brown Family Education Trust [Brief of Terry Brown in Opposition to Settlement, dtd 1/20/09, pp 6–9] They are not parties to the August 2008 agreement, nor have they joined in the brief of the other respondents

V

The Attorney General has now abandoned his contention that the law in other jurisdictions supports his authority to sign the settlement agreement in behalf of the 2000 Trust. The South Carolina authorities upon which he relies are nowhere in point.

In the proposed order which they submitted to the circuit court, resulting in the Order of May 26, 2009, the respondents assured the circuit court that the Attorney General's authority to assume command of the 2000 Trust and to enter into a Section 1102 settlement in its behalf was supported by authorities in other States. None of those authorities are relied upon or even mentioned in the respondents' brief in this Court. This is a belated concession of the fact that the attorney general of no other State has the authority to do what the South Carolina Attorney General did here.⁹

Instead, the respondents now rely exclusively for caselaw authority upon South Carolina cases, none of which stand for the claimed proposition. Typical of these is the Furman University case, *Furman University v McLeod*, 238 S C 475, 120 S E 2d 865 (1961). When Professor Freemont-Smith was preparing her leading treatise on the law of charities, cited in our principal brief, she wrote to Attorney General McLeod, whose thoughtful response is what one would have expected from this modest and devoted public servant. Explaining the significance of the *Furman University* case, General McLeod told Professor Freemont-Smith

[T]he case of *Furman University v McLeod*, 238 S C 475, 120 S E 2d 865, was brought to determine the proper construction to be given certain deeds whereby land had been conveyed in 1820 for the purpose of maintaining a male and female academy in this State. The case is important chiefly for the reason that it establishes that the Attorney General of South Carolina is the only proper and necessary party defendant in a proceeding involving a public

⁹ Although they have abandoned the claim that attorneys general elsewhere have authority to settle will contests in behalf of private foundations, the respondents do cite BOGERT ON TRUSTS AND TRUSTEES for the proposition that the AG is a necessary party to an action approving a settlement agreement affecting the interest of charitable beneficiaries. The appellants have never questioned the right of the Attorney General to be present in this case as a party. The respondents ask the Court to conclude that status as a party carries with it the power to oust the trustees without cause and act for the charity. Nothing in Professor Bogert's treatise remotely supports such a claim.

trust where no private rights, such as by way of reversion or reverter exist

Attorney General McLeod's letter of June 1, 1965 to Professor Freemont-Smith is reproduced in the addendum to this brief. In his brief to the Supreme Court in the *Furman* case, Attorney General McLeod confirmed that "[t]he presence of the Attorney General provides no representation so far as those who may have a special interest in the trust. The joining of the Attorney General in this suit does not cut off the rights of those persons who are students or were former students, or the patrons of the school situate upon the land in question." [Appellant's Brief at 20, *Furman University v McLeod*, *id*]. Mr. McLeod would be shocked to learn that his role in the *Furman* case and the Court's holding therein were today being offered as support for the Attorney General's claim to speak and act for a private foundation in its capacity as chief beneficiary involved in a will contest, to the exclusion of its trustees.

The respondents explore the **facts** of only one South Carolina decision, *Watson v Wall*, 229 S.C. 500, 93 S.E.2d 918 (1956). Attorney General McLeod, who intervened on appeal in the *Watson* case, explained to Professor Fremont-Smith that this case establishes that the Attorney General may intervene in a case where the public interest in a charitable bequest is shown to exist." [1965 WL 11641 (S.C.A.G. June 1, 1965)]. The Attorney General argued for a particular outcome there, as any other litigant might do. He entered into no contract, signed no settlement agreement, and ousted no one in charge in the management of a private foundation. The respondents quote general observations in the Court's opinion in *Watson* to the effect, for example, that the Attorney General's function is to enforce trusts. That is indeed his function (which he shares with others, including the trustees themselves) as the appellants demonstrated in their principal brief. "Enforcement of a charity" is a term of art. The "[p]ower to enforce charities" is the power "to remedy cases of maladministration of a charity."¹⁰ *Blasko op cit*, p. 43. The Attorney

¹⁰ Chief Justice Traynor recounted the history of the AG's enforcement authority, and its limited nature, in *Holt v College of Osteopathic Physicians and Surgeons*, 61 Cal.2d (continued)

General, among others, has that power. The Attorney General “does *not*, under any circumstances, have the power to govern trusts , but she does have the power to bring suit to enforce the charitable purposes of the organization ” *Id* at 43 (orig emphasis) ¹¹

¹⁰(continued)
750, 755–56, 40 Cal Rptr 244, 394 P 2d 932 (1964)

The prevailing view of other jurisdictions is that the Attorney General does not have exclusive power to enforce a charitable trust and that a trustee or other person having a sufficient special interest may also bring an action for this purpose. This position is adopted by the American Law Institute (REST 2D TRUSTS, § 391) and is supported by many legal scholars (Karst, *The Efficiency of the Charitable Dollar: An Unfulfilled State Responsibility*, 73 HARV L REV 433, 443-449, 4 SCOTT, TRUSTS (2d ed) § 391, 4 POMEROY, EQUITY (5th ed) 287 n 13, see also Note 62 A L R 881, 4 WITKIN, SUMMARY OF CALIFORNIA LAW (7th ed) 2918-2919)

The foregoing statutes were enacted in recognition of the problem of providing adequate supervision and enforcement of charitable trusts. Beneficiaries of a charitable trust, unlike beneficiaries of a private trust, are ordinarily indefinite and therefore unable to enforce the trust in their own behalf. Since there is usually no one willing to assume the burdens of a legal action, or who could properly represent the interests of the trust or the public, the Attorney General has been empowered to oversee charities as the representative of the public, a practice having its origin in the early common law (See generally SCOTT, *supra*, § 391, pp 2753-2756)

Although the Attorney General has primary responsibility for the enforcement of charitable trusts, the need for adequate enforcement is not wholly fulfilled by the authority given him. The protection of charities from harassing litigation does not require that only the Attorney General be permitted to bring legal actions in their behalf. This consideration ‘ * * * is quite inapplicable to enforcement by the fiduciaries who are both few in number and charged with the duty of managing the charity's affairs ’ (Karst, *supra*, 73 Harv L Rev at pp 444-445) There is no rule or policy against supplementing the Attorney General's power of enforcement by allowing other responsible individuals to sue in behalf of the charity [4]. The administration of charitable trusts stands only to benefit if in addition to the Attorney General other suitable means of enforcement are available. ‘ The charity's own representative has at least as much interest in preserving the charitable funds as does the Attorney General who represents the general public. The cotrustee is also in the best position to learn about breaches of trust and to bring the relevant facts to a court's attention ’ (Karst *supra*, 73 Harv L Rev at p 444) Moreover, permitting suits by trustees does not usurp the responsibility of the Attorney General, since he would be a necessary party to such litigation and would represent the public interest.

¹¹ These authors again emphasize the “[l]imitations of the Attorney General's [a]uthority”

(continued)

The holding of any common law court and the precedential scope thereof can be understood only in light of the facts of the case. The holding in *Watson v Wall* gives no support to the Attorney General's contention here. The other South Carolina cases cited are equally unsupportive.¹²

The statutes cited by the Attorney General codify his common law authority to enforce trusts. They are typical of the statutes found in every jurisdiction. They confer no authority for the Attorney General's action here.

¹¹(continued)

The duty to protect the public interest by litigation *does* imply broad investigatory and supervisory powers. The attorney general does *not*, however, have a right to regulate the actions of a charity or to direct its day-to-day affairs. As a California court put it in *In re Horton's Estate*, [90 Cal Rptr 66, 68 (Ct App 1970)], the attorney general is not a super-administrator of charities. She has "no control over, or right to participate in, the contractual undertakings of charities." The attorney general has standing to seek redress for demonstrated abuse of trust management, but cannot control or manage the everyday affairs of charities.

Id at 47 (orig emphasis)

¹² For example, the respondents rely upon *Cooley v South Carolina Tax Comm'n*, 204 S C 10, 28 S E 2d 445 (1943), for the proposition that the Attorney General has authority to compromise disputes in which the State has an interest. In *Cooley* the South Carolina Tax Commission disavowed a settlement entered into in its behalf in an estate tax case by its attorney, the Attorney General, and petitioned the Court to disapprove the settlement. The Court addressed only the narrow issue of whether the Attorney General, when representing the Tax Commission at its request, had the authority to settle the case prior to an adjudication of the deceased taxpayer's legal domicile — the issue upon which the right of taxation depended. Since the Attorney General had statutory authority to represent the State in such litigation and had acted in good faith, the Court rejected the Tax Commission's claim. The result would be the same if the Tax Commission had been represented by a private attorney. Where the attorney has apparent authority, the client is bound by the attorney's settlement agreement. *Shelton v Bressant*, 312 S C 183, 439 S E 2d 833 (1993).

In *Epworth Children's Home v Beasley*, 365 S C 157, 616 S E 2d 710 (2005) (decided under the former § 62-7-503), the Court held that where a testatrix has established a valid testamentary trust, the courts must enforce it. *Epworth* involved facts opposite to those here: the trustees wished to terminate the trust in a manner that would have violated the testatrix/settlor's intent. The AG intervened to protect the charitable trust from being destroyed by the trustees. This was a traditional case of enforcement.

VI

The appellants were removed as trustees and as personal representatives for one reason they opposed the settlement. If the order approving the settlement is reversed, so must their removal be

The respondents confirm [Brief at 52–56] that the appellants were removed as personal representatives of the estate and as trustees of the 2000 Trust for one reason they opposed the settlement

The respondents say [Brief at 52] that the appellants' argument of this point is too brief. Respondents' counsel are unable to tell the difference between a concise argument and a perfunctory one. If the approval of the settlement is reversed, and if the only reason for the appellants' removal was their opposition to the settlement, it follows inexorably that their removal must also be reversed.

The respondents sought and obtained this Court's permission to exceed the page limitation of their brief with the purpose, it turns out, of filling their brief with page after page of unfounded criticism of the appellants' administration of the estate and their opposition to the settlement. To answer these criticisms properly, we too would have to ask the Court to waive the page limits. Since all this is immaterial, we have not done so. We only note that the circuit court made no such findings in its Order of May 26, 2009, nor did it remove appellants for any alleged breach of duty. The opposite is true. During the Section 1102 hearing the court noted appellants' extraordinary service. [Tr. 1/30/09, pp. 62–63.]

CONCLUSION

The respondents told the circuit court that Section 1102 creates an equitable procedure. They reverse their field in this Court, but they were right the first time. They do not try to distinguish the Section 1102 cases in every other State where such settlements have been addressed at the appellate level. In every case the court found a duty to scrutinize such settlements rigorously, refusing to approve the destruction of a testator's estate plan unless clearly justified.

The respondents have failed to defend their contention, offered to and accepted by

the circuit court, that the attorneys general of other States have authority to enter into a Section 1102 settlement agreement in behalf of a trust beneficiary, thereby settling a will contest in the trust's behalf. Nowhere is such authority conferred upon the office of attorney general.

The respondents make no effort to show that **the facts** of any South Carolina case resulted in a holding of this Court which might support the Attorney General's authority to act as he did here. None do.

More than half of James Brown's assets were paid in settlement of claims, the principal one of which was utterly frivolous. The remnant which is left does not go to the 2000 Trust created by James Brown. That trust is obliterated by this settlement. It is turned over instead to a new entity created by and controlled by the Attorney General and the disinherited members of the Brown family.

By any standard this settlement was unjust and unreasonable.

For these reasons and the others given earlier, the appellants again urge the Court to reverse the Order of May 26, 2009 and related orders.

Respectfully submitted,

James B. Richardson, Jr.
1229 Lincoln Street
Columbia, South Carolina 29201
(803) 799-9412

Tressa T. H. Hayes
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Asheville, North Carolina 28802
(803) 603-8583

by James B. Richardson, Jr.
Attorneys for Appellants

February 2, 2011

ADDENDUM
1965 WL 11641 (S C A G June 1, 1965)

Office of the Attorney General
State of South Carolina
June 1 1965

Mrs Marion R Fremont-Smith
Russell Sage Foundation
75 Federal Street
Boston 10 Massachusetts

Dear Mrs Smith

I must apologize for not having heretofore responded to your inquiries with respect to the administration of charitable trusts in this State. The same reasons which have caused a lack of full implementation of statutes relating to this subject have necessitated the lack of response to your inquiry and the resume set forth below explains this in further detail.

The administration of the uniform act relating to charitable trusts encompassed in Section 67-81 to 67-85 Code of Laws 1962 has been plagued by lack of administrative personnel brought about principally by the large increase of litigation involving the interstate highway construction program. The latter project has required the greater portion of the time of personnel available for the administration of this office, particularly in the last five years.

Eighteen trustees have filed copies of trust instruments with this office in accordance with the provisions of the statutes and submit annual reports to this office. They are examined by me and by non-lawyer personnel but such examination is not in detail for the reasons recited above. There have been no actions taken to assure compliance with the act and I am not aware of any violation of the law or omission or improper performance of trustees' duties. In one instance an inspection of the returns of the trustees indicated that loans were being made to the trustees in a relatively small amount. Informal report of this was made to the trustees with the result that the practice ceased.

The statutes comprised in Sections 67-50 through 67-57 2 relate to trustees generally and do not necessarily involve this office nor do I consider that Section 67-57 2 requires that notice be given to the Attorney General for the allowance of acts by testamentary trustees. The commissions paid to trustees are fixed by statute and in only one instance have allowances in excess of the statutory limits pursuant to a specific statute been called to my attention. In that case a charitable trust was involved and I was made a party to the proceeding.

The principal statute which was not cited by you in my opinion is Section 1-240 Code of Laws of South Carolina, 1962 which provides

The Attorney General shall enforce the due application of funds given or appropriated to public charities within the state prevent breaches of trust in the administration thereof and when necessary prosecute corporations which fail to make to the General Assembly any report or return required by law

This statute has been in existence since 1868 but only recently have actions involving its application been brought before the Supreme Court of this State.

Watson v Wall 229 S C 500 93 S E 2d 918 involv[ed] the construction of a will whereby the testator devised certain portions of his estate to charitable purposes. The matter was heard on the trial level without the knowledge of the Attorney General but on appeal to the Supreme Court this office petitioned for leave to intervene for the purpose of protecting the interests of the public in the charitable trust and the position adopted by this office with respect to the construction to be given the will was adopted by the Court. This case is most important because of the clarification given South Carolina law with respect to the devolution of a lapsed or renounced devise but more importantly it establishes that the Attorney General may intervene in a case where the public interest in a charitable bequest is shown to exist.

Subsequently the case of Furman University v McLeod 238 S C 475 120 S E 2d 865 was brought to determine the proper construction to be given certain deeds whereby land had been conveyed in 1820 for the purpose of maintaining a male and female academy in this State. The case is important chiefly for the reason that it establishes that the Attorney General of South Carolina is the only proper and necessary party defendant in a proceeding involving a public trust where no private rights such as by way of reversion or reverter exist. Aside from this postulate the result of the case was that the trustees of Furman University were not restricted to the maintenance of the school established upon the land conveyed in 1820 but could sell such lands and build a new school in a suburban area.

Subsequently an action predicated upon Furman University v McLeod was brought in the Circuit Courts wherein the Attorney General was named as the only party defendant and the action was remarkably similar to Furman and in fact involved the construction of a deed of the approximate time and verbiage as that in Furman and involved also a denominational institution. Based upon the holding in Furman the matter was adjudicated at the trial court level and no appeal was taken.

Of interest also is Cothran v South Carolina National Bank of Charleston 242 S C 80 130 S E 2d 177 wherein the Attorney General was made a party defendant. The net result of this case was that dividends in stock received by trustees under a trust created by a will were considered to be net income and distributable to the life beneficiaries whereas, a contrary holding would have resulted in accretion to a fund which ultimately would have devolved to the benefit of a charitable trust.

The foregoing are the principal areas in which this office has been engaged with respect to charitable trusts. As noted they arise under Section 1-240 of the South Carolina Code of Laws which is a tangential relation to the newer charitable trust act (Section 67-81 et seq.)

The field of charitable trusts and charitable organizations is one to which I am directing my attention but which has not received the supervision which is indicated chiefly because of lack of personnel. I find also that in some instances I am required to adopt a paradoxical position. For instance in a pending case an application has been made to the South Carolina Tax Commission for a refund of taxes assessed upon funds held but not distributed by trustees. As attorney for the South Carolina Tax Commission it is my duty to urge the collectibility of such taxes but as the officer charged with the preservation of funds bequeathed for charitable purposes, I am likewise vested with the duty of attempting to assert nonliability. If the issues were legally clear-cut there would be no problem but in this particular instance the respective positions are reasonably arguable.

In another instance a charitable trust is sought to be taxed and I am convinced from the facts in evidence, that the corporate entity is not in actuality a charity but has used such corporate organization as a subterfuge. Various factors as well as trial court determinations have prompted me to approve a settlement of the matter without the necessity of bringing an action to revoke the charter of the corporation. The ultimate result will be that a portion of the taxes will be paid and the alleged charity will surrender its charter.

The field of public charities is one which requires attention and one which will receive further extensive consideration so far as the capabilities of this office permit. I am pressing the program of supervision of charitable trusts as intently as is possible under the circumstances and I anticipate that increased emphasis will be directed in this field.

Very truly yours

/s/ Daniel R. McLeod
Attorney General

**THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

**APPEAL FROM AIKEN COUNTY
Court of Common Pleas**

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

RECEIVED

FEB 01 2011

S.C. Supreme Court

**Henry Dargan McMaster, 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 and
Carrington L , Tonya Brown,
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 Repre-
sentatives 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 Adminis-
trator 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 Repre-
sentatives 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 Adminis-
trator 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

APPELLANTS' SUPPLEMENTAL DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

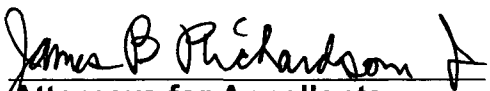
TRANSCRIPT

1 Hearing held January 30, 2009, pp 62-63

I certify that this designation contains no matter which is irrelevant
to this appeal

James B Richardson, Jr
1229 Lincoln Street
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Tressa T H Hayes
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(803) 603-8583

by 
Attorneys for Appellants

February 1, 2011

The Supreme Court of South Carolina

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 children,
Jason L , Yamma N Brown, on
behalf of her minor children,
Sydney L , Carrington L , and
Tonya Brown, Vanisha Brown,
and Larry Brown, Tommie Rae
Hynie Brown, 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, and
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 Pettitt,
and 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

ORDER

Pursuant to Rule 265(d), SCACR, Attorney General Alan Wilson
is hereby substituted for the former Attorney General in this matter. The
caption of this case shall be amended to read as shown above.

 C.J.

FOR THE COURT

Columbia, South Carolina

March 23, 2011

cc James B Richardson, Jr , Esquire
Tressa T H Hayes, Esquire
Senior Assistant Attorney General C Havird Jones
Assistant Deputy Attorney General Robert D Cook
Assistant Attorney General J C Nicholson, III
Assistant Attorney General Mary Frances Jowers
H Wesley Kirkland, Jr , Esquire
James Mixon Griffin, Esquire
Louis Levenson, Esquire
Matthew Day Bodman, Esquire
Max N Pickelsimer, Esquire
R Wayne Byrd, Esquire
Robert N Rosen, Esquire
T Heyward Carter, Jr , Esquire
S Alan Medlin, Esquire
David L Michel, Esquire
William Joseph Barr, Esquire
William W Wilkins, Esquire
Albert P Shahid, Jr , Esquire

The Supreme Court of South Carolina

Ex Parte 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
children, Jason L , Yamma N
Brown, on behalf of her minor
children, Sydney L , Carrington
L , and Tonya Brown, Vanisha
Brown, and Larry Brown,
Tommie Rae Hynie Brown,
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, and
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,
and 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

The Honorable Doyet A Early, III
Aiken County
Trial Court Case No 2008-CP-02-01647

ORDER

The request for an extension to serve and file the record on appeal is granted
and extended until March 23, 2011

IT IS SO ORDERED

JEAN H TOAL, CHIEF JUSTICE

BY



CLERK

Columbia, South Carolina

March 3, 2011

cc James B Richardson, Jr, Esquire
Tressa T H Hayes, Esquire
Attorney General Alan Wilson
Senior Assistant Attorney General C Havird Jones
Assistant Deputy Attorney General Robert D Cook
Assistant Attorney General J C Nicholson, III
Assistant Attorney General Mary Frances Jowers
H Wesley Kirkland, Jr, Esquire
James Mixon Griffin, Esquire
Louis Levenson, Esquire
Matthew Day Bodman, Esquire
Max N Pickelsimer, Esquire
R Wayne Byrd, Esquire
Robert N Rosen, Esquire

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S Alan Medlin, Esquire
David L Michel, Esquire
William Joseph Barr, Esquire
William W Wilkins, Esquire
Albert P Shahid, Jr , Esquire

**Law Office of
James B Richardson, Jr**

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TELEPHONE 803/799 9412
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February 28, 2011

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MAR 02 2011

SC SUPREME COURT

Hon Daniel E Shearouse
Clerk of the S C Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re McMaster, Henry v Bauknight, Russell

Dear Mr Shearouse

Service of the Record on Appeal is due on March 3rd Because of the unusual length of the Record we find that we must ask for a 20-day extension of time for this purpose We hope to finish the process earlier than that, however

Your consideration of this request is appreciated

Thanking you, I remain

Yours very truly,


James B Richardson, Jr

cc Senior Assistant Attorney General C Havird Jones
William W Wilkins, Esq
J David Black, Esq
Fred L Kingsmore, Jr , Esq
H Wesley Kirkland, Jr , Esq
James M Griffin, Esq
William J Barr, Esq
Louis D Levenson, Esq
Matthew D Bodman, Esq
Max N Pickelsimer, Esq
R Wayne Byrd, Esq
Robert N Rosen, Esq
T Heyward Carter Jr Esq
S Alan Medlin, Esq
David L Michel, Esq
Albert P Shahid, Jr Esq

**Law Office of
James B Richardson, Jr**

1229 LINCOLN STREET
COLUMBIA SOUTH CAROLINA 29201

TELEPHONE 803/799 9412
FAX 803/799 9628

February 1, 2011

RECEIVED

FEB 01 2011

S C Supreme Court

Hon Daniel E Shearouse
Clerk of the S C Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

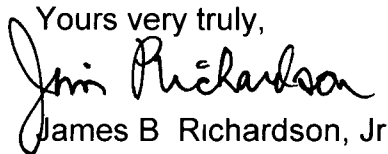
Re McMaster, Henry v Bauknight, Russell

Dear Mr Shearouse

Enclosed for filing are appellants' initial reply brief and designation of matter in reply

Thanking you, I remain

Yours very truly,


James B Richardson, Jr

cc Senior Assistant Attorney General C Havird Jones
William W Wilkins, Esq
J David Black, Esq
Fred L Kingsmore, Jr , Esq
H Wesley Kirkland, Jr , Esq
James M Griffin, Esq
William J Barr, Esq
Louis D Levenson, Esq
Matthew D Bodman, Esq
Max N Pickelsimer, Esq
R Wayne Byrd, Esq
Robert N Rosen, Esq
T Heyward Carter Jr , Esq
S Alan Medlin, Esq
David L Michel, Esq
Albert P Shahid, Jr Esq

THE STATE OF SOUTH CAROLINA
IN THE Supreme COURT

RECEIVED

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

FEB 01 2011

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

Henry Dargan McMaster, 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 and
Carrington L , Tonya Brown,
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 Repre-
sentatives 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 Adminis-
trator 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 Repre-
sentatives 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 Adminis-
trator 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**

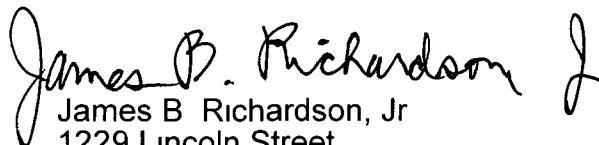
CERTIFICATE OF SERVICE

The undersigned certifies that he served a copy of appellants' initial reply brief and designation of matter in reply upon the respondents by first class mail, postage prepaid, addressed to their respective attorneys, namely

Attorney General Henry Dargan McMaster
Assistant Deputy Attorney General Robert D Cook
Senior Assistant Attorney General C Havird Jones
Assistant Attorney General J C Nicholson, III
Assistant Attorney General Mary Frances Jowers
William W Wilkins, Esq
J David Black, Esq
Fred L Kingsmore, Jr , Esq
H Wesley Kirkland, Jr , Esq
James M Griffin, Esq

Louis D Levenson, Esq
Matthew Day Bodman, Esq
Max N Pickelsimer, Esq
R Wayne Byrd, Esq
Robert N Rosen, Esq
T Heyward Carter, Jr , Esq
S Alan Medlin, Esq
David L Michel, Esq
Albert P Shahid, Jr Esq
William J Barr, Esq

addressed to them at their respective addresses of record, on February 1, 2011


James B Richardson, Jr
1229 Lincoln Street
Columbia, South Carolina 29201
(803) 799-9412

February 1, 2011

Attorney for Appellants

The Supreme Court of South Carolina

Henry Dargan McMaster, 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
children, 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, 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 Appellants,

Brown and The James Brown
2000 Irrevocable Trust,/Oof
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,

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 Pettitt,
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

The Honorable Doyet A Early, III
Aiken County
Trial Court Case No 2008-CP-02-01647

ORDER

For good cause having been shown, the time for serving and filing the Appellant's Initial Reply Brief in the above entitled matter is hereby extended until February 2, 2011

IT IS SO ORDERED

JEAN H TOAL, CHIEF JUSTICE

BY *Shirley J. Shealy*
CHIEF DEPUTY CLERK

Columbia, South Carolina

December 30, 2010

cc James B Richardson, Jr, Esquire
Tressa T H Hayes, Esquire
Attorney Gen Henry Dargan McMaster
Senior Assistant Attorney Gen C Havird Jones
Assistant Deputy Attorney Gen Robert D Cook
Assistant Attorney Gen J C Nicholson, III
Assistant Attorney Gen Mary Frances Jowers
H Wesley Kirkland, Jr , Esquire
James Mixon Griffin, Esquire
Louis Levenson, Esquire
Matthew Day Bodman, Esquire
Max N Pickelsimer, Esquire
R Wayne Byrd, Esquire
Robert N Rosen, Esquire
T Heyward Carter, Jr , Esquire
S Alan Medlin, Esquire
David L Michel, Esquire
William Joseph Barr, Esquire
William W Wilkins, Esquire
Albert P Shahid, Jr, Esquire

**THE STATE OF SOUTH CAROLINA
IN THE Supreme COURT**

**APPEAL FROM AIKEN COUNTY
Court of Common Pleas**

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

**Henry Dargan McMaster, 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 Repre-
sentatives 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 Adminis-
trator 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 Repre-
sentatives of the Estate of James
Brown and Trustees of the James**

RECEIVED
DEC 30 2010
SC SUPREME COURT

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 Adminis-
trator 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**

MOTION FOR EXTENSION OF TIME

**TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES
OF THE SUPREME COURT OF SOUTH CAROLINA**

Appellants respectfully move the Court for a thirty-day extension of time in which to serve and file their initial reply brief. As grounds for the motion, appellants would show as follows:

1 The respondents' 57-page initial brief raises many points deserving a carefully considered reply. Among these is the issue of appellants' standing. The court earlier directed this question to be addressed in the briefs. Although the question was touched upon in appellants' principal brief, their reply brief will be the means to deal thoroughly with that issue.

2 Assisting the undersigned in the appellants' representation is Tressa T H Hayes, Esq., who is in the process of moving with her family to Asheville, North Carolina. Ms. Hayes will be unable to contribute much to the work of the reply brief. In the next month the undersigned faces a briefing deadline in the Court of Appeals,

a certiorari deadline in this Supreme Court, and other trial and appellate work, together with the usual press of office business

3 The appellants respectfully ask the Court to consider a thirty (30) day extension, to and including February 2, 2011, for service and filing of the appellants' initial reply brief

Respectfully submitted,

James B Richardson, Jr
1229 Lincoln Street
Columbia, South Carolina 29201
(803) 799-9412

Tressa T H Hayes
Post Office Box 7346
Asheville, North Carolina 28802
(803) 603-8583

by James B. Richardson, Jr
Attorneys for Appellants

December 29 2011

**THE STATE OF SOUTH CAROLINA
IN THE Supreme COURT**

**APPEAL FROM AIKEN COUNTY
Court of Common Pleas**

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

**Henry Dargan McMaster, in his
capacity as Attorney General of
the State of South Carolina,
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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 Repre-
sentatives of the Estate of James
Brown and Trustees of the James
Brown 2000 Irrevocable Trust,
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Forlando Brown, Cinnamon N
M Paris, LaRhonda Petitt,
Jeanette Mitchell, and Russell
L Bauknight, as Special Adminis-
trator 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 Repre-
sentatives 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
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Trust, Terry Brown, Romunzo Brown,
Forlando Brown, Cinnamon N
M Paris, LaRhonda Petitt,
Jeanette Mitchell, and Russell
L Bauknight, as Special Adminis-
trator 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 SERVICE

The undersigned certifies that he served a copy of appellants' motion for an extension of time upon the respondents by first class mail, postage prepaid, addressed to their respective attorneys, namely

Attorney General Henry Dargan McMaster
Assistant Deputy Attorney General Robert D Cook
Senior Assistant Attorney General C Havird Jones
Assistant Attorney General J C Nicholson, III
Assistant Attorney General Mary Frances Jowers
Fred L Kingsmore, Jr , Esq
H Wesley Kirkland, Jr , Esq
James M Griffin, Esq
William Joseph Barr, Esq

Louis Levenson, Esq
Matthew Day Bodman, Esq
Max N Pickelsimer, Esq
R Wayne Byrd, Esq
Robert N Rosen, Esq
T Heyward Carter, Jr , Esq
S Alan Medlin, Esq
David L Michel, Esq
Albert P Shahid, Jr Esq

addressed to them at their respective addresses of record, on December 29, 2010


James B Richardson, Jr
1229 Lincoln Street
Columbia, South Carolina 29201
(803) 799-9412

December 29, 2010

Attorney for Appellants

**Law Office of
James B Richardson, Jr**

1229 LINCOLN STREET
COLUMBIA SOUTH CAROLINA 29201

TELEPHONE 803/799 9412
FAX 803/799 9628

December 29, 2010

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SC SUPREME COURT
pm 12-29-10

Hon Daniel E Shearouse
Clerk of the S C Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

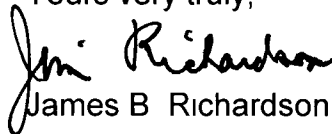
Re McMaster v Dallas
2008-CP-2-1647

Dear Mr Shearouse

Enclosed for filing is appellants' motion for an extension of time in which to serve and file their initial reply brief

Thanking you, I remain

Yours very truly,


James B Richardson, Jr

cc Attorney General Henry Dargan McMaster
Assistant Deputy Attorney General Robert D Cook
Senior Assistant Attorney General C Havird Jones
Assistant Attorney General J C Nicholson, III
Assistant Attorney General Mary Frances Jowers
Fred L Kingsmore, Jr , Esq
H Wesley Kirkland Jr , Esq
James M Griffin, Esq
William Joseph Barr, Esq
Louis Levenson, Esq
Matthew Day Bodman, Esq
Max N Pickelsimer Esq
R Wayne Byrd, Esq
Robert N Rosen, Esq
T Heyward Carter, Jr , Esq
S Alan Medlin Esq
David L Michel Esq
Albert P Shahid, Jr Esq



HENRY McMASTER
ATTORNEY GENERAL

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DEC 22 2010

S C Supreme Court

December 22, 2010

The Honorable Daniel Shearouse
Clerk of Court
South Carolina Supreme Court
P O Box 11330
Columbia, SC 29211

RE The Estate of James Brown and the James Brown 2000 Irrevocable
Trust dated August 1, 2000

Dear Mr Shearouse

Enclosed for filing are Respondents' Initial Brief and Designation of Matter to be
Included in the Record on Appeal

Very truly yours,

C H Jones, Jr
Senior Assistant Attorney General

cc
See attached Certificate of Service

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

Henry Dargan McMaster, 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

PROOF OF SERVICE

The undersigned certifies that a copy of the Respondents' Initial Brief and Designation of Matter to be Included in the Record on Appeal has been served upon the Appellants by U S Mail, postage prepaid, addressed to attorneys listed below

VIA Hand Delivery
James B Richardson, Jr , Esquire
1229 Lincoln Street
Columbia, South Carolina 29201

Tressa T H Hayes, Esquire
Shipley & Hayes, PC
445 Meeting Street
West Columbia, South Carolina 29169

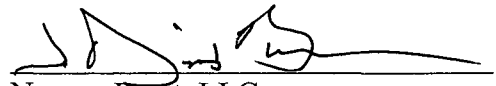
H Wesley Kirkland, Jr , Esquire
Kirkland & Rush
PO Box 8012
Columbia, SC 29202

James Mixon Griffin, Esquire
Law Office of James Mixon Griffin
PO Box 999
Columbia, SC 29202

William J Barr, Esquire
The Barr Law Firm, LLC
108 North Academy Street
Kingstree, SC 29556

Max N Pickelsimer, Esquire
WARNER, PAYNE & BLACK, L L P
1122 Lady Street, Suite 1200
Post Office Box 2628
Columbia, South Carolina 29202

R Wayne Byrd, Esquire
TURNER PADGET GRAHAM &
LANEY, P A
Post Office Box 2116
Myrtle Beach, South Carolina 29587

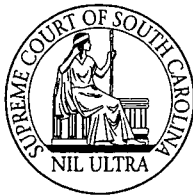

Nexsen Pruet, LLC

December 22, 2010

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DEC 22 2010

S C Supreme Court



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA SOUTH CAROLINA 29211

(803) 734 1080

FAX (803) 734 1499

December 22, 2010

Senior Assistant Attorney General C. Havird Jones
Office of the Attorney General
P O Box 11549
Columbia, SC 29211

Re McMaster, Henry v. Dallas, Albert

Dear Counsel

The following Order has been endorsed on your Motion to Increase Page Limit of Respondent's Brief Pursuant to Rule 208(b)(5), SCACR in the above entitled case on appeal

"Granted

s/ Costa M. Pleicones J
For the Court

December 22, 2010 "

By copy of this letter we are advising all interested parties of the action of the Court in this matter

Very truly yours,


CLERK

DES/dmh

McMaster, Henry v Dallas, Albert
Page Two
December 22, 2010

By copy of this letter we are advising all interested parties of the action of the Court in this matter

cc James B Richardson, Jr , Esquire
Tressa T H Hayes, Esquire
William W Wilkins, Esquire
Louis D Levenson, Esquire
H Wesley Kirkland, Jr , Esquire
James Mixon Griffin, Esquire
Matthew Day Bodman, Esquire
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S Alan Medlin, Esquire
David L Michel, Esquire
William Joseph Barr, Esquire
Albert P Shahid, Jr , Esquire



HENRY McMASTER
ATTORNEY GENERAL

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DEC 15 2010

December 15, 2010

SC Supreme Court

The Honorable Daniel Shearouse
Clerk of Court
South Carolina Supreme Court
P O Box 11330
Columbia, SC 29211

RE The Estate of James Brown and the James Brown 2000 Irrevocable
Trust dated August 1, 2000

Dear Mr Shearouse

Enclosed please find the original and six (6) copies of the Motion to Increase the Page Limit of Respondents Brief Pursuant to Rule 208(b)(5), SCACR, in connection with the above-referenced matter. Also enclosed is the Certificate of Service.

Very truly yours,

C H Jones, Jr
Senior Assistant Attorney General

enclosures
cc
See attached Certificate of Service

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A Early, III, Circuit Court Judge

Case No 2008-CP-02-1647

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S C Supreme Court

Henry Dargan McMaster, 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, and Larry Brown,
Tommie Rae Hynie Brown, 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, Jeannette 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

**MOTION TO INCREASE THE PAGE LIMIT OF RESPONDENTS BRIEF
PURSUANT TO 208(b)(5), SCACR**

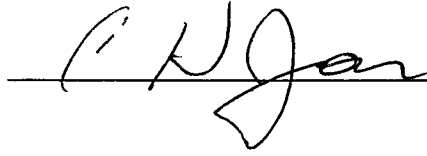
TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SOUTH
CAROLINA SUPREME COURT

Respondents respectfully request to increase the page limit of their brief by
ten (10) pages

1 The Respondents include all the settling parties, all beneficiaries, and
the South Carolina Attorney General

2 The Respondents seek a page limit increase out of an abundance of
caution and for three specific reasons One, the procedural and factual background
of this case is extensive and requires an unusually long discussion Two, the legal
questions raised in Appellants' brief are extensive and require a thorough analysis
And three, when this Court denied Respondents Motion to Dismiss based upon
standing by Order dated July 22, 2010, it further ordered the Respondents to "brief
the issue of appellants' standing in this matter along with the merits of the appeal "
Together, these three reasons may cause the Respondents to exceed the page limits
set by this Court, and therefore, the Respondents respectfully request a page limit
increase

Respectfully submitted,



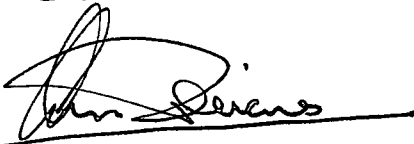
Henry D McMaster
Attorney General of the State of South Carolina
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Senior Assistant Attorney General
Robert D Cook
Assistant Deputy Attorney General
J C Nicholson, III
Assistant Attorney General
Mary Frances Jowers
Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
State of South Carolina
Post Office Box 11549
Columbia, South Carolina 29211-1549

William W Wilkins
Nexsen Pruet, LLC
55 E Camperdown Way
Suite 400
Greenville, South Carolina 29601
Attorney for Russell L Bauknight Trustee/PR

Louis D Levenson
LEVENSON & ASSOCIATES
125 Broad Street
Atlanta, Georgia 30303

Counsel for James Brown Children and Grandchildren Daryl J Brown individually and on behalf of his minor children Lindsey Delores Brown and Janise Vanisha Brown Deanna J Brown Thomas individually and on behalf of her minor children Jason Brown Lewis Yamma N Brown individually and on behalf of her minor children Sydney Lumar Carrington Lumar and Tonya Brown Vanisha Brown Larry Brown

GRANTED



FOR THE COURT

December 22, 2010

Robert N Rosen
T Heyward Carter, Jr
S Alan Medlin
David L Michel
Post Office Box 1510
Charleston, South Carolina 29402
Attorneys for Tommie Rae Hynie Brown

Matt Bodman
MATT BODMAN P A
1500 Calhoun Street
Columbia, South Carolina 29201
(803) 806-8605
Attorney for Terry Brown

Greenville, South Carolina

December 15, 2010

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
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The Honorable Doyet A Early, III, Circuit Court Judge

Case No 2008-CP 02-1647

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v

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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, Jeannette 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 Service

I hereby certify that this 15 day of December, 2010, I served a copy of the
within **Motion to Increase the Page Limit of Respondents Brief pursuant to Rule
208(b)(5), SCACR** on all counsel of record by depositing a copy in the U S Mail and
addressed as follows

Tressa T H Hayes, Esquire
Shipley & Hayes, PC
445 Meeting Street
West Columbia, SC 29169

H Wesley Kirkland, Jr , Esquire
Kirkland & Rush
P O Box 8012
Columbia, SC 29202

James B Richardson, Esquire
1229 Lincoln Street
Columbia, SC 29201

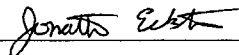
James Mixon Griffin, Esquire
Law Office of James Mixon Griffin
P O Box 999
Columbia, SC 29202

Max Pickelsimer, Esquire
1122 Lady Street, Suite 1200
PO Box 2628
Columbia, SC 29202

William J Barr, Esquire
The Barr Law Firm, LLC
108 North Academy Street
Kingstree, SC 29556

Peter Shahid, Jr , Esquire
Shahid Law Office
89 Broad Street
Charleston, SC 29401

R Wayne Byrd, Esquire
Turnet Padgett Graham & Laney, PA
PO Box 2116
Myrtle Beach, SC 29587



Hopkins, Debbie

From Jim Richardson <jbrcolumbia@gmail.com>
Sent Monday, December 20, 2010, 1:59 PM
To Hopkins, Debbie
Subject Brown Estate

Debbie, this confirms that the appellants have no objection to the respondents' motion to exceed the page limit.

Jim

--
Jim Richardson
1229 Lincoln St
Columbia, SC 29201
ph 803-799-9412
fax 803-799-9412

RECEIVED

DEC 20 2010

S C Supreme Court

The Supreme Court of South Carolina

Ex Parte Henry Dargan
McMaster, 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 children,
Jason L , Yamma N Brown, on
behalf of her minor children,
Sydney L , Carrington L , and
Tonya Brown, Vanisha Brown,
and Larry Brown, Tommie Rae
Hynie Brown, 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, and
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,
and 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

The Honorable Doyet A Early, III
Aiken County
Trial Court Case No 2008-CP-02-01647

ORDER

The request for an extension to serve and file the Initial Brief of
Respondent and Designation of Matter on behalf of respondents, Office of
the Attorney General and the parties represented by Mr Rosen, Mr
Levenson, Mr Kingsmore and Mr Bell is granted and extended until
December 22, 2010

IT IS SO ORDERED

JEAN H TOAL, CHIEF JUSTICE

BY _____
CLERK

Columbia, South Carolina

November 15, 2010

cc James B Richardson, Jr , Esquire
Tressa T H Hayes, Esquire
Assistant Deputy Attorney General Robert D Cook
Senior Assistant Attorney General C Havird Jones, Jr
Assistant Attorney General J C Nicholson, III
Assistant Attorney General Mary Frances Jowers
Fred L Kingsmore, Jr , Esquire
Burl Williams, Esquire
H Wesley Kirkland, Jr , Esquire
James Mixon Griffin, Esquire
Louis Levenson, Esquire
Matthew Day Bodman, Esquire
Max N Pickelsimer, Esquire
R Wayne Byrd, Esquire
Robert N Rosen, Esquire
T Heyward Carter, Jr , Esquire
S Alan Medlin, Esquire
David L Michel, Esquire
William Joseph Barr, Esquire
Albert P Shahid, Jr , Esquire



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NOV 15 2010

S.C. SUPREME COURT

HENRY McMASTER
ATTORNEY GENERAL

November 12, 2010

The Honorable Daniel Shearouse (via fax only 734-1499)
Clerk of Court
South Carolina Supreme Court
P O Box 11330
Columbia, SC 29211

RE The Estate of James Brown and the James Brown 2000 Irrevocable
Trust dated August 1, 2000

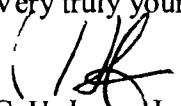
Dear Mr Shearouse

As an amendment to my letter of earlier today, I am writing to clarify that this extension request is being made on behalf of the Attorney General and the clients of Mr Rosen, Mr Levenson, Mr Kingsmore, and Mr Bell

The request is that these Respondents receive an extension of thirty (30) days to complete the Initial Brief and Designation of Matter to be Included in the Record on Appeal This request is being made due to the complexity and importance of the appeal in addition to current caseloads By my calculation, if the extension is granted, the Initial Brief and Designation of Matter to be Included in the Record on Appeal will be due on December 22, 2010, they are currently due on November 22, 2010 A check in the amount of \$25 00 in connection with the request was included in my prior letter to the Court If the Court requires a formal motion, please let me know

Thank you for your consideration of this request

Very truly yours,


C H Jones, Jr

Senior Assistant Attorney General

cc

See attached Certificate of Service

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A Early, III, Circuit Court Judge

Case No 2008-CP-02 1647

Henry Dargan McMaster, 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, and Larry Brown,
Tommie Rae Hynie Brown, 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, Jeannette 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 Service

I hereby certify that this 17 day of November, 2010, I served a copy of the
within Amended Letter with Request for Extension of Time on all counsel of record by
depositing a copy in the U S Mail and addressed as follows

Tressa T H Hayes, Esquire
Shiple & Hayes, PC
445 Meeting Street
West Columbia, SC 29169

James Mixon Griffin, Esquire
Law Office of James Mixon Griffin
P O Box 999
Columbia, SC 29202

James B Richardson, Esquire
1229 Lincoln Street
Columbia, SC 29201

William J Barr, Esquire
The Barr Law Firm, LLC
108 North Academy Street
Kingstree, SC 29556

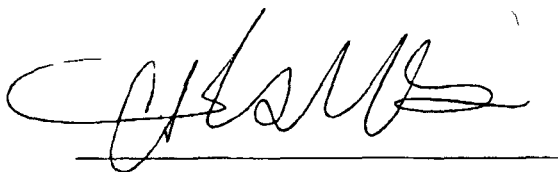
Fred L Kingsmore, Jr, Esquire
Nexsen Pruet Adams Klemmeier, LLC
1230 Main Street, Suite 700
PO Box 2426
Columbia, SC 29202-2426

R Wayne Byrd, Esquire
Turnet Padget Graham & Laney, PA
PO Box 2116
Myrtle Beach, SC 29587

Max Pickelsimer, Esquire
1122 Lady Street, Suite 1200
PO Box 2628
Columbia, SC 29202

Peter Shahid, Jr, Esquire
Shahid Law Office
P O Box 591
Charleston, SC 29402

H Wesley Kirkland, Jr, Esquire
Kirkland & Rush
P O Box 8012
Columbia, SC 29202





HENRY McMASTER
ATTORNEY GENERAL

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NOV 12 2010

November 12, 2010

SC Supreme Court

The Honorable Daniel Shearouse
Clerk of Court
South Carolina Supreme Court
P O Box 11330
Columbia, SC 29211

RE The Estate of James Brown and the James Brown 2000 Irrevocable
Trust dated August 1, 2000

Dear Mr Shearouse

On behalf of the Respondents in the above-referenced matter, I respectfully request an extension of thirty (30) days to complete the Initial Brief and Designation of Matter to be Included in the Record on Appeal. This request is being made due to the complexity and importance of the appeal in addition to my current caseload. By my calculation, if the extension is granted, the Initial Brief and Designation of Matter to be Included in the Record on Appeal will be due on December 22, 2010, they are currently due on November 22, 2010. Enclosed please find a check in amount of \$25.00 in connection with the request. If the Court requires a formal motion, please let me know.

Thank you for your consideration of this request.

Very truly yours,

C. H. Jones, Jr.
Senior Assistant Attorney General

cc
See attached Certificate of Service

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A Early, III, Circuit Court Judge

Case No 2008-CP-02-1647

RECEIVED

NOV 12 2010

S C Supreme Court

Henry Dargan McMaster, 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, and Larry Brown, Tommie Rae Hynie Brown,

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, Jeannette 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 Service

I hereby certify that this 12 day of November, 2010, I served a copy of the
within Request for Extension of Time on all counsel of record by depositing a copy in the
U S Mail and addressed as follows

Tressa T H Hayes, Esquire
Shipley & Hayes, PC
445 Meeting Street
West Columbia, SC 29169

James Mixon Griffin, Esquire
Law Office of James Mixon Griffin
P O Box 999
Columbia, SC 29202

James B Richardson, Esquire
1229 Lincoln Street
Columbia, SC 29201

William J Barr, Esquire
The Barr Law Firm, LLC
108 North Academy Street
Kingstree, SC 29556

Fred L Kingsmore, Jr, Esquire
Nexsen Pruet Adams Klemmeier, LLC
1230 Main Street, Suite 700
PO Box 2426
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R Wayne Byrd, Esquire
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Myrtle Beach, SC 29587

Max Pickelsimer, Esquire
1122 Lady Street, Suite 1200
PO Box 2628
Columbia, SC 29202

Peter Shahid, Jr, Esquire
Shahid Law Office
P O Box 591
Charleston, SC 29402

H Wesley Kirkland, Jr, Esquire
Kirkland & Rush
P O Box 8012
Columbia, SC 29202



**Law Office of
James B Richardson, Jr**

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OCT 26 2010

SC SUPREME COURT

1229 LINCOLN STREET
COLUMBIA SOUTH CAROLINA 29201

TELEPHONE 803/799 9412
FAX 803/799 9628

October 22, 2010

Hon Daniel E Shearouse
Clerk of the S C Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

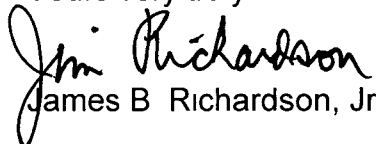
Re McMaster, Henry v Bauknight, Russell

Dear Mr Shearouse

Enclosed for filing are appellants' initial brief and designation

Thanking you, I remain

Yours very truly


James B Richardson, Jr

cc Attorney General Henry Dargan McMaster
Assistant Deputy Attorney General Robert D Cook
Senior Assistant Attorney General C Havird Jones
Assistant Attorney General J C Nicholson, III
Assistant Attorney General Mary Frances Jowers
Fred L Kingsmore, Jr , Esq
H Wesley Kirkland, Jr , Esq
James M Griffin, Esq
William Joseph Barr, Esq
Louis Levenson, Esq
Matthew Day Bodman, Esq
Max N Pickelsimer, Esq
R Wayne Byrd Esq
Robert N Rosen Esq
T Heyward Carter, Jr , Esq
S Alan Medlin, Esq
David L Michel, Esq
Albert P Shahid Jr Esq

**THE STATE OF SOUTH CAROLINA
IN THE Supreme COURT**

**APPEAL FROM AIKEN COUNTY
Court of Common Pleas**

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

RECEIVED

OCT 26 2010

S.C. SUPREME COURT

**Henry Dargan McMaster, 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 Repre-
sentatives 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 Adminis-
trator 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 Repre-
sentatives 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 Adminis-
trator 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 SERVICE

The undersigned certifies that he served a copy of appellants' initial brief and designation of matter upon the respondents by first class mail, postage prepaid, addressed to their respective attorneys, namely

Attorney General Henry Dargan McMaster
Assistant Deputy Attorney General Robert D Cook
Senior Assistant Attorney General C Havird Jones
Assistant Attorney General J C Nicholson, III
Assistant Attorney General Mary Frances Jowers
Fred L Kingsmore, Jr , Esq
H Wesley Kirkland, Jr , Esq
James M Griffin, Esq
William Joseph Barr, Esq

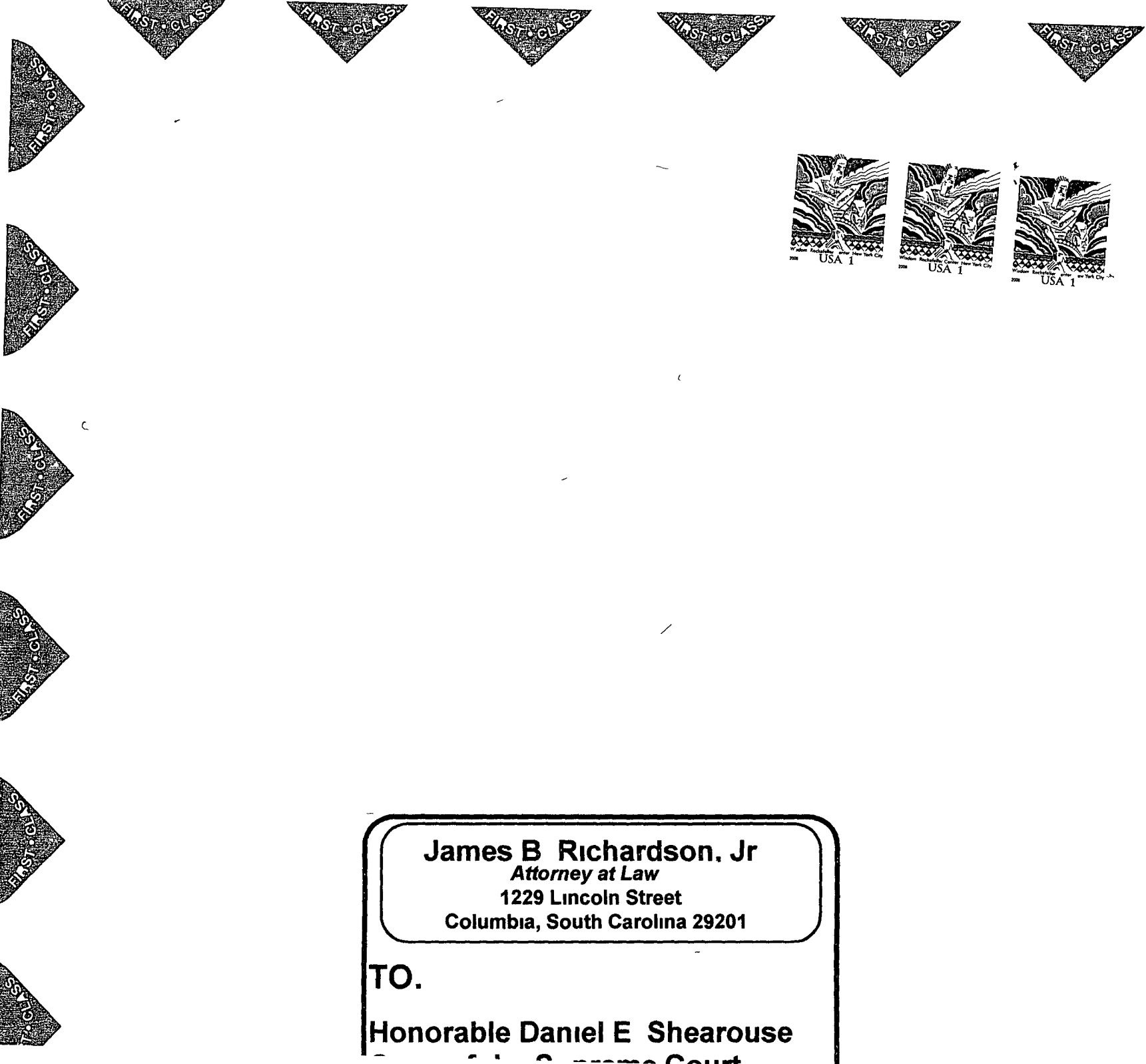
Louis Levenson, Esq
Matthew Day Bodman, Esq
Max N Pickelsimer, Esq
R Wayne Byrd, Esq
Robert N Rosen, Esq
T Heyward Carter, Jr , Esq
S Alan Medlin, Esq
David L Michel, Esq
Albert P Shahid Jr Esq

addressed to them at their respective addresses of record, on October 22, 2010


James B Richardson, Jr
1229 Lincoln Street
Columbia, South Carolina 29201
(803) 799-9412

October 22 2010

Attorney for Appellants



James B Richardson, Jr
Attorney at Law
1229 Lincoln Street
Columbia, South Carolina 29201

TO.

Honorable Daniel E Shearouse
U.S. Supreme Court

The Supreme Court of South Carolina

Ex Parte Henry Dargan
McMaster, 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 children,
Jason L , Yamma N Brown, on
behalf of her minor children,
Sydney L , Carrington L , and
Tonya Brown, Vanisha Brown,
and Larry Brown, Tommie Rae
Hynie Brown, 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
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Brown, Romunzo Brown,
Forlando Brown, Cinnamon N
M Paris, LaRhonda Pettitt, and
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^v, LaRhonda Petitt,
and 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

ORDER

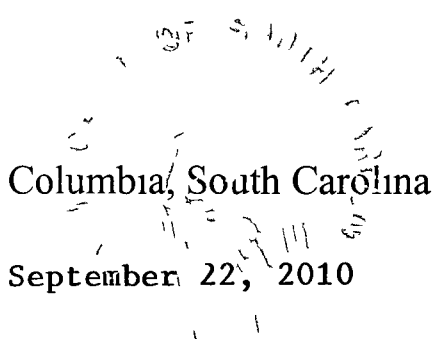
Appellants have filed a Motion for an Extension of Time in Which to
Serve and File their Initial Brief and Designation of Matter

The motion for an extension of time is granted and extended until October 22,
2010

IT IS SO ORDERED



For the Court C J


Columbia, South Carolina

September 22, 2010

cc James B Richardson, Jr , Esquire
Senior Assistant Attorney General C Havird Jones
Assistant Attorney General J C Nicholson, III
Assistant Attorney General Mary Frances Jowers
Fred L Kingsmore, Esquire
H Wesley Kirkland, Jr , Esquire
James M Griffin, Esquire
William Joseph Barr, Esquire
Louis Levenson, Esquire
Matthew Day Bodman, Esquire
Max N Pickelsimer, Esquire
R Wayne Byrd, Esquire
Robert N Rosen, Esquire
T Heyward Carter, Jr , Esquire
S Alan Medlin, Esquire
David L Michel, Esquire
Albert P Shahid, Jr , Esquire

**THE STATE OF SOUTH CAROLINA
IN THE Supreme COURT**

**APPEAL FROM AIKEN COUNTY
Court of Common Pleas**

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

**Henry Dargan McMaster, 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,**

RECEIVED

AUG 30 2010

SC SUPREME COURT

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 Repre-
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Brown and Trustees of the James
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Terry Brown, Romunzo Brown,
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M Paris, LaRhonda Petitt,
Jeanette Mitchell, and Russell
L Bauknight, as Special Adminis-
trator and Special Trustee for The
Estate of James Brown and The
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Trust,**

of whom Robert L Buchanan, Jr ,
and Adele J Pope, as Personal Repre-
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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
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L Bauknight, as Special Adminis-
trator 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**

**APPELLANTS' REPLY TO RETURN
TO MOTION FOR EXTENSION OF TIME**

**TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES
OF THE SUPREME COURT OF SOUTH CAROLINA**

Appellants make the following reply to the return filed by the Attorney General
and other respondents in opposition to appellants' motion for an extension of briefing
time

1 **Delay in the appeal** Up until now, the only delay in the normal progress
of this appeal was occasioned by the respondents' motion to dismiss the appeal for lack
of standing Proceedings in circuit court and in the Court of Appeals regarding whether
the order under appeal should be stayed delayed nothing Proceedings in the Court of
Appeals regarding a substitution of parties in another case had no effect upon this

appeal

2 **Novelty of issues** Among other things, this appeal will present the question of whether the Attorney General has authority to oust duly appointed and acting trustees of a private trust, entering into a private settlement agreement with those claiming against the estate of the trustor and eviscerating the trust. No answer to this question is to be found in caselaw of this Court to this date.

3 **The nature of lead counsel's service** As one of the reasons for the requested extension of time, the undersigned, as lead counsel, explained that his service in this matter is *pro bono* and he must attend to the business of his other clients while this work progresses. The Attorney General and the attorneys for some (but not all) of the other respondents now tell the Court that this was a misrepresentation. It is difficult to know how to respond to this claim, other than to say that this exchange of documents is not the place to determine who is misrepresenting. That must be determined in a different forum.

4 **Value of the estate** In paragraph 6 of the return, the Attorney General predicts for the first time that the testator's estate will soon be appraised at only \$12,000,000. The Attorney General then implies that this appeal is somehow related to the appellants' personal claim for fees and commissions up to the time they were replaced. The Attorney General is well aware that the undersigned do not represent the appellants in their claim for commissions. That claim has not been ruled upon by the lower court nor is it contingent upon the outcome of this appeal.

5 **Need for an extension** Appellants' attorneys respectfully reiterate that this appeal deserves the best effort which counsel are capable of giving to the Court, and that an unusual — but not unprecedented — extension is needed, and would not have been sought otherwise.

Respectfully submitted,

James B Richardson, Jr
1229 Lincoln Street
Columbia, South Carolina 29201
(803) 799-9412

Tressa T H Hayes
Post Office Box 5329
Columbia, South Carolina 29250
(803) 603-8583

by 
Attorneys for Appellants

August 30, 2010

**THE STATE OF SOUTH CAROLINA
IN THE Supreme COURT**

**APPEAL FROM AIKEN COUNTY
Court of Common Pleas**

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

**Henry Dargan McMaster, 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
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L Buchanan, Jr , Personal Repre-
sentatives of the Estate of James
Brown and Trustees of the James
Brown 2000 Irrevocable Trust,
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M Paris, LaRhonda Petitt,
Jeanette Mitchell, and Russell
L Bauknight, as Special Adminis-
trator 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 Repre-
sentatives 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 Adminis-
trator and Special Trustee for The
Estate of James Brown and The
James Brown 2000 Irrevocable
Trust are**

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AUG 30 2010

SC SUPREME COURT

Respondents

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

CERTIFICATE OF SERVICE

The undersigned certifies that he served a copy of appellants' reply to some respondent's return to appellants' motion for an extension of time upon the respondents by first class mail, postage prepaid, addressed to their respective attorneys, namely

Attorney General Henry Dargan McMaster
Assistant Deputy Attorney General Robert D Cook
Senior Assistant Attorney General C Havird Jones
Assistant Attorney General J C Nicholson, III
Assistant Attorney General Mary Frances Jowers
Fred L Kingsmore, Jr , Esq
H Wesley Kirkland, Jr , Esq
James M Griffin, Esq
William Joseph Barr, Esq

Louis Levenson, Esq
Matthew Day Bodman, Esq
Max N Pickelsimer, Esq
R Wayne Byrd, Esq
Robert N Rosen, Esq
T Heyward Carter, Jr , Esq
S Alan Medlin, Esq
David L Michel, Esq
Albert P Shahid, Jr Esq

addressed to them at their respective addresses of record, on August 30, 2010


James B Richardson, Jr
1229 Lincoln Street
Columbia, South Carolina 29201
(803) 799-9412

August 30 2010

Attorney for Appellants

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

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AUG 23 2010

S.C. SUPREME COURT

The Honorable Doyet A Early, III Circuit Court Judge

Case No 2008-CP-02-1647

Henry Dargan McMaster, 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, and Larry Brown, Tommie Rae Hynie Brown, 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, Jeannette 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

RETURN TO APPELLANTS' REQUEST FOR EXTENSION OF TIME

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SOUTH
CAROLINA SUPREME COURT

Respondents respectfully oppose the requested amount of time sought by the
Appellants in this matter

1 The Respondents include all the settling parties, all beneficiaries, and
the South Carolina Attorney General. The Respondents must object to the
Appellants request for it is unneeded. Since May 26, 2009—the day the lower court
approved the settlement agreement, which ended almost all of the “James Brown
litigation”—the Appellants have tirelessly sought to prevent the settlement
agreement from coming into effect.

2 The Appellants’ actions since May 26, 2009, belie any need for further
time to “frame” the issues before this Court. In their motion for reconsideration
from the order approving the settlement agreement, the Appellants identified 404
grounds for the circuit court to alter its decision to approve the settlement
agreement—the appellate issues have been thought through. See **Exhibit A**, July 10,
2009 Order Denying Motions to Alter or Amend.

3 On September 16, 2009, the circuit court granted the settling parties
Motion to Lift Stay and on October 1, 2009, the circuit court denied the Appellants’
motion for reconsideration. On October 13, 2009, the formal notice of appeal of the
May 26, 2009 order was filed. Were this Court to grant the Appellants’ request for

a seventy-five day extension, it would mean that they would have been given more than one year from the time their notice of appeal was filed until their initial brief was filed. Granted, the Appellants did defend against the Respondents' motion to dismiss their appeal on the basis of standing—which the Court has requested additional briefing on—but this cannot justify the current request. Over the past year 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 for them in the James Brown appeal matters. Appellants have gone to such great lengths in taking inconsistent legal positions that the Court of Appeals has applied judicial estoppel. See **Exhibit B**, February 12, 2010 Order of the Court of Appeals Granting Motion to Substitute. These litigation tactics should not now be rewarded by a seventy-five day extension of time.

4 Respondents dispute Appellants' contention that this "appeal presents novel issues of public importance in the management of estates and in the law of trusts." The crux of Appellants' appeal of the settlement agreement is their contention that they, rather than the South Carolina Attorney General, have the sole authority to represent the charitable beneficiaries of the Estate and Trust and to enter into a settlement agreement on behalf of the charitable beneficiaries.¹ This is

¹ Problematically, Appellants, who claim to have an uber-authority to represent charitable beneficiaries, are unaware of who the actual charitable beneficiaries of the Estate and Trust are. In their motion for a seventy-five day extension of time, Appellants represent that the Trust provides "for the college education of needy students of South Carolina and Georgia." Instead, the Trust would benefit students from anywhere who wish to attend any educational institution in Georgia and South Carolina, not simply limited to colleges. The Trust actually provides "tuition, educational expenses, and financial assistance of and for poor and financially needy children, youth, or young adults (Who are both qualified

not a novel issue of law just because Appellants claim it is. The authority of the Attorney General to represent charitable beneficiaries has been recognized throughout the history of the law of wills, trusts, and estates.

5 Respondents also dispute the contention that Appellants' counsel serve *pro bono publico*. Appellants' counsel are representing two deposed fiduciaries who seek approximately Five Million (\$5,000,000.00) Dollars in commissions and fees. The South Carolina Attorney General represents the charitable beneficiaries, for the public good.

6 Respondents dispute Appellants' assertion that the settlement agreement has the potential to divert "tens of millions of dollars" from the Trust. Presumably, this representation to the Court is based on Appellants' numerous under oath representations about the date-of-death value of the Trust, ranging anywhere from approximately Eighty-Five Million (\$85,000,000.00) Dollars on the federal estate tax return to approximately One Hundred Million (\$100,000,000.00) Dollars in affidavits, pleadings, and testimony. Appellants' assertions about the value of the Estate and Trust have been made without any underlying appraisal. According to the federal estate tax return, Appellants based their valuation on a valuation provided by their three predecessors as Personal Representatives and Trustees, whom the Appellants themselves decry as untrustworthy, except for their valuation of the Estate and Trust. Valuation assertions by Appellants' three

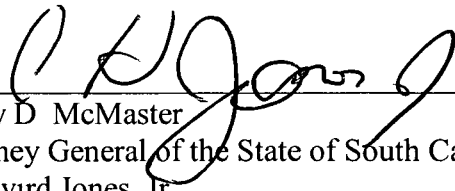
and deserving) who seek and have need of such assistance to obtain and further their education at the many educational entities and/or institutions in the State of South Carolina and Georgia." See May 26, 2009 Order Approving Settlement Agreement, p. 3.

predecessors were similarly made without any underlying appraisal. By contrast, Bauknight has pursued the appropriate fiduciary route and engaged a nationally-renowned and respected appraisal firm to value the Estate and Trust. Although the expected final completion date for that appraisal is a couple of weeks away, a preliminary report indicates that the date-of-death value of the Estate and Trust will not exceed Twelve Million (\$12,000,000.00) Dollars. In light of that actual appraised value, Appellants' claim for approximately Five Million (\$5,000,000.00) Dollars for their commissions and fees totals perhaps half or more of the date-of-death value of the Estate and Trust, which further refutes any notion that their counsel are acting for the public good.

7 Respondents finally dispute Appellants' assertion that Mr. Brown "expressly intended to disinherit" the 'recipients of the settlement.' The settling parties include the children of Mr. Brown named in his will to receive assets, his surviving spouse whom he married after the execution of the will, and his grandchildren named in his trust to receive benefits. Even assuming *arguendo* that Mr. Brown intended to disinherit all of these parties, which Respondents deny, a testator cannot expressly disinherit a surviving spouse because she has elective share rights regardless of a testator's intentions. Moreover, federal law provides valuable copyright termination rights to the surviving spouse and children, which pass to them despite Mr. Brown's intentions. The settling parties contributed these termination rights, as well as all rights they have in Mr. Brown's probate and nonprobate assets, to the settlement entity.

8 In the alternative, if the Court finds that an extension is proper, the Respondents would respectfully request that the Court allow the Appellants the customary 30-day extension to file their initial brief

Respectfully submitted,



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minor children Jason Brown Lewis Yamma N
Brown individually and on behalf of her minor
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Tonya Brown Vanisha Brown Larry Brown*

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Columbia, South Carolina

August 23, 2010

Exhibit A

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Case No 08-CP-02-1647

HENRY DARGAN MCMASTER, in his
capacity as Attorney General of the State
of South Carolina, DARYL J BROWN,
on behalf of his minor children, LINDSEY
DELORES BROWN and JANISE
~~VANISHA BROWN~~, DEANNA J
BROWN THOMAS, on behalf of her minor
children, JASON BROWN LEWIS,
YAMMA N BROWN, on behalf of her
minor children, SYDNEY ~~LEWIS~~,
CARRINGTON ~~LEWIS~~, and TONYA
BROWN, VANISHA BROWN, and
LARRY BROWN, TOMMIE RAE
HYNIE BROWN

(Case No 07-CP-02-0122)
(Estate of James Brown)

(Case No 08-CP-02-00872)
(Wills/Trust/Heirs Matter)

Orig. filed in 08 1647
but copies filed in 07-122 and
08-872

**ORDER DENYING MOTIONS TO
ALTER OR AMEND**

Petitioners,

- vs -

RUSSELL L BAUKNIGHT,
as Special Administrator and Special
Trustee for The Estate of James Brown
and The James Brown 2000 Irrevocable
Trust, TERRY BROWN, ROMUNZO
BROWN, FORLANDO BROWN,
CINNAMON N M PARIS, LARHONDA
PETITT, and JEANNETTE MITCHELL

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing represents a true and correct copy of the
original documents which have been filed in my office this

JUL 10 2009

Liz Godard
C.C.P. & G.A. Aiken County S.C.

Deputy Clerk

Respondents

In Re

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

11-14-09 - 9-10-09
840

This matter comes before the Court on a Motion to Alter or Amend and/or Reconsider and
Vacate May 26, 2009 Order filed by counsel for the former Personal Representatives and Trustees,

DAE
#1

Pope and Buchanan and a Motion to Vacate, Amend or Reconsider filed by Albert H Dallas and Alford A Bradley

This matter came on to be heard by the Court on June 30, 2009 Counsel for the former Personal Representatives/Trustees filed an 80 page Motion containing 404 grounds

Counsel for Albert H Dallas and Alford A Bradley filed a much more limited Motion, in part, objecting to language in the Order found in a paragraph which begins at the bottom of page 24 and ends at the top of page 25 of the said Order

Upon commencement of the hearing, counsel for Dallas and Bradley made it clear that their Motion was to be narrowly construed to address only the Paragraph as noted The Court has carefully reviewed each ground and heard argument of counsel on both Motions

The Motion of Albert H Dallas and Alford A Bradley is denied, except to the extent that the subject Paragraph beginning at the bottom of page 24 and ending at the top of page 25 of the said Order is modified to read as follows

Furthermore, the credibility of four principal witnesses to the validity of the 2000 will and trust is questionable Mr Herring is in jail for murder The accuracy and veracity of the testimony in this matter by Messrs Cannon, Dallas, and Bradley is suspect and at times contradictory For example, Mr Dallas testified that he allowed his attorney to agree to a stipulation presented to this Court knowing it to contain false information because he did not want to lose his position as fiduciary This is an astonishing admission that he did and would allow a stipulation containing false information to be presented to this Court to protect his position as a fiduciary The questionable credibility of the four witnesses most involved with the preparation and execution of the 2000 will and trust certainly supports the good faith basis of the contestants' claims

Counsel for the former Personal Representatives/Trustees asked the Court to review and rule upon all grounds but pointed out two particular areas which should be reconsidered by the Court, namely, the authority of the Attorney General to act in this case and the lack of no evidence of undue influence

The Court denies the Motion to Alter or Amend The Court finds that there is ample authority for the Attorney General in his parens patria capacity to protect the public interest with regard to charitable trusts This issue was addressed in the Order (pages 20-22)

As to the contention that there was no evidence of undue influence, the record is replete with evidence of undue influence, ranging from a trust which authorizes the trustees to expend up to 50% of gross income for management purposes, to a blank deed signed by James Brown and witnessed, to the fact that the former Personal Representatives/Trustees themselves have brought an action against Messrs Cannon, Dallas and Bradley alleging undue influence.

This Court was charged by §62-3-1102 of the South Carolina Code with the duty to hold a hearing on the settlement agreement, to determine whether there is a good faith contest or controversy and to determine whether the effect of the agreement on various persons was just and reasonable.

The Court has never seen a case with as many good faith issues, claims, contests and controversies. The pleadings, filings, exhibits and testimony amply show a genuine controversy. Indeed, this Court took seven days of testimony on these issues.

A settlement was reached after many months of negotiation and a lengthy mediation. The Court finds the settlement agreement to be just and reasonable.

At the hearing, counsel for the former Personal Representatives/Trustees moved the court to relieve the former Personal Representatives/Trustees of their duty to sign the agreement. §62-3-1102 is clear that if the Court finds a good faith controversy and that the settlement is just and reasonable, it "shall make an order approving the agreement and directing all fiduciaries subject to its jurisdiction to execute the agreement" (emphasis added). Counsel's motion is therefore denied.

The Motion to Alter or Amend of the former Personal Representatives/Trustees is denied.

The Motion of Dallas and Bradley is denied except as set forth herein.

IT IS SO ORDERED:



Judge Doyet A. Early, III

July 8, 2009
Aiken, South Carolina

The South Carolina Court of Appeals

In Re The Estate of James Brown
a/k/a James Joseph Brown Albert H
Dallas and Altred A Bradley Trustees
of the Irrevocable Trust Agreement of
James Brown Appellants,

v

Adele J Pope and Robert L Buchanan,
Jr , Putative Trustees of the Irrevocable
Trust Agreement of James Brown, Respondents

The Honorable Doyet A Early III
Aiken County
Trial Court Case No 2007 CP-02 00122

**ORDER GRANTING MOTION TO SUBSTITUTE
AND MOTIONS TO INTERVENE**

This matter comes before the court pursuant to (1) Russell L. Bauknight's (Bauknight) Motion to Substitute Party filed October 5, 2009, requesting this court to substitute him as the Respondent in place of Adele J. Pope (Pope) and Robert L. Buchanan Jr. (Buchanan) in this appeal (the Dallas and Bradley Appeal); (2) Pope and Buchanan's motion, filed October 8, 2009, to reject any return filed by the Attorney General (AG) in response to Bauknight's substitution motion; (3) Tommie Rae Hynie Brown's (Widow) Motion to Intervene and Return in Support of the AG's Return,¹ filed October 13, 2009; and (4) James Brown's Beneficiaries' (the Beneficiaries) Motion to Intervene and Return in Support of the AG's Return filed October 19, 2009.

FACTS

This case revolves around the estate of the late James Brown (the Estate) and the James Brown Irrevocable Trust (the Trust). In 2000, James Brown executed his Last Will and Testament and chose David G. Cannon (Cannon),² Albert H. Dallas (Dallas), and Alfred Bradley (Bradley) to serve as personal representatives (PR) of the Estate and trustees of the Trust. In

¹ The AG's return filed October 9, 2009, was in support of Bauknight's Motion to Substitute

² Amidst allegations of impropriety arising out of his handling of trust assets, Cannon resigned as PR of the Estate and trustee of the Trust on August 10, 2007, leaving only Dallas and Bradley as PRs and trustees. Immediately thereafter, the circuit court issued an order relinquishing Cannon's "signatory authority on all transactions, accounts, contracts, checks and/or instruments or undertakings of any kind for James Brown, the Estate, the Brown Entities, and the Brown Trusts." The circuit court held another hearing on September 24, 2007, and found Cannon in contempt for violating the August 10, 2007, order. Cannon appealed this finding of contempt to this court, and in an opinion dated June 23, 2009, this court affirmed the finding of contempt. See Ex Parte David G. Cannon, In Re The Estate of James Brown, Op. No. 4570 (S.C. Ct. App. Filed June 23, 2009) (Shearhouse Adv. Sh. No. 29 at 53). Cannon filed a Petition for Rehearing and Petition for Rehearing *En Banc* in that appeal (the Cannon Appeal). Bauknight filed a motion to be substituted for Pope and Buchanan and to submit a return in the Cannon Appeal. This court granted Bauknight's motion.

January 2007 several of Brown's family members petitioned the circuit court seeking (1) the termination of the appointment of Cannon Dallas and Bradley and (2) an emergency appointment of a Special Administrator (SA) for the Estate. By order dated January 26, 2007, the Probate Court of Aiken County removed the action to the Court of Common Pleas for Aiken County. In March 2007 circuit court Judge Doyet A. Early, III denied the petition seeking the removal of the PRs, but he granted the petition for appointment of an SA, selecting Pope and Buchanan to serve as SAs of the Estate.

On November 20, 2007, Dallas and Bradley announced their intentions to resign as PRs of the Estate and trustees of the Trust. The circuit court immediately accepted the resignations and appointed Pope and Buchanan as the successor PRs of the Estate and trustees of the Trust. Thereafter, Dallas and Bradley filed, among other things, a motion to reconsider, vacate, and amend the circuit court's order accepting their resignations. The circuit court denied this motion, and Dallas and Bradley timely filed a notice of appeal. That appeal (the Dallas and Bradley Appeal) is presently before this court.

After being appointed PRs and trustees, Pope and Buchanan sought the circuit court's assistance and permission to auction off certain of Brown's possessions to generate funds to protect the assets of both the Trust and the Estate. In February 2008, the circuit court issued an order directing the auction take place. Pope and Buchanan negotiated a deal with Christie's to conduct an auction on July 17, 2008. However, eight days before the auction, Dallas and Bradley filed a motion to enforce the automatic stay in this court, arguing Pope and Buchanan were not legally allowed to dispose of property while the order removing Dallas and Bradley and

appointing Pope and Buchanan as PRs/trustees was still under appeal. In response, Pope and Buchanan filed a motion requesting the stay, if any, be lifted because the circuit court had accepted Dallas and Bradley's resignations and they therefore had "no beneficial interest in the Trust." This court held in favor of Pope and Buchanan.

[W]e find that regardless of whether Rules 205 and 225 [now renumbered as Rule 241] SCACR provide for an automatic stay, this Court elects to lift the stay. The auction may take place as scheduled, and for practical purposes, Pope and Buchanan may continue to act as trustees while this appeal is pending.

In May 2009, many of the various parties involved (the Settling Parties) collectively settled the majority of the litigation revolving around the Estate and the Trust. As part of the settlement, the Settling Parties agreed it was in the best interests of the Estate and the Trust to replace Pope and Buchanan with a professional PR. Accordingly, Pope and Buchanan were removed as SAs/PRs and trustees by the circuit court on May 26, 2009. In the May 26, 2009 order, Judge Early appointed Bauknight to replace Pope and Buchanan as SA/PR and trustee. Specifically, Judge Early held:

The [S]ettling [P]arties propose [Bauknight] be appointed as the replacement [PR] and trustee. I find that he is qualified and willing to serve and suffers from no conflicts of interest because the settling parties have all consented to his appointment and because the settlement agreement places all possible probate estate and trust assets into the same settlement entity, he has no conflict of interest by serving as both [PR] and trustee. Pursuant to [Bauknight's] testimony, I find that no transition period is necessary before the appointment of [Bauknight] to replace Pope and Buchanan.

[Bauknight] is immediately appointed as [PR] of the Estate and Trustee of the [Trust] in replacement of Pope and Buchanan.

On June 1, 2009, Pope and Buchanan filed a Motion to Reconsider the May 26, 2009 order. Judge Early denied the motion in an order dated July 8, 2009. On July 21, 2009, Pope

and Buchanan appealed the circuit court's May 26 and July 10 orders to this court. That appeal is still pending.

On July 17, 2009, Bauknight filed a motion in this court requesting the court substitute him in place of Pope and Buchanan in the Cannon appeal. This court granted Bauknight's motion to substitute in the Cannon appeal because (1) having been removed by the circuit court, Pope and Buchanan no longer had an interest in the management of the Estate and Trust, and (2) when Pope and Buchanan were in Bauknight's position, they had previously argued that a recently removed PR/Trustee does not retain an interest in the Estate/Trust while the appeal of their removal is pending.

On July 24, 2009, Bauknight filed an application to lift the stay with the circuit court, seeking authority to act for the Estate and Trust during Pope and Buchanan's appeal of the May 26 and June 10 orders. On September 16, 2009, Judge Early granted Bauknight's application to lift any stay that might have been in place as a result of Pope and Buchanan's appeal of the May 26 and June 10 orders.

On October 5, 2009, Bauknight filed a Motion to Substitute Party requesting this court substitute him in place of Pope and Buchanan in the Dallas and Bradley Appeal. On October 8, 2009, Pope and Buchanan filed a motion to reject any return filed by the AG. On October 9, 2009, the AG filed a return in support of Bauknight's substitution motion. On October 13, 2009, Widow filed a motion to intervene in the Dallas and Bradley appeal and a return in support of the AG's return. On October 19, 2009, the Beneficiaries filed a motion to intervene in the Dallas and

Bradley Appeal and a return in support of the AG's return. Pope and Buchanan filed returns and memoranda in opposition to both Widow's and the Beneficiaries' motions to intervene.

LAW/ANALYSIS

In his supporting memorandum Bauknight presents the same arguments that supported his motion to be substituted in the Cannon appeal. Specifically, he argues (1) Pope and Buchanan's continued involvement in the matter would prejudice the Estate and Trust, and (2) Pope and Buchanan should be judicially estopped from asserting they should remain as PR/Trustees during the pendency of the Dallas and Bradley Appeal because when they were in Bauknight's position (i.e., when they were first appointed to replace the former PR/Trustees) they took a position directly contrary to their current position.³ We agree.

The South Carolina Appellate Court Rules provide for the substitution of a party by motion to the appellate court. See Rule 265(c), SCACR ("If substitution of a party is desired for any reason other than death or incompetency, substitution shall be by motion to the appellate

³ Pope and Buchanan have taken inconsistent positions as to whether a newly appointed PR/trustee, such as Bauknight, should be able to exercise control over an estate/trust during the pendency of the recently removed PR/trustees' appeal. When the circuit court appointed Pope and Buchanan to replace Dallas and Bradley as PRs/trustees, Pope and Buchanan argued Dallas and Bradley, as the recently removed PRs/trustees, retained "no beneficial interest" in the Estate. Therefore, to allow Pope and Buchanan to manage the Estate and Trust while Dallas and Bradley's appeal was pending was proper. This court agreed and gave Pope and Buchanan exclusive control over the Estate and Trust while Dallas and Bradley's appeal was pending. Now, however, Pope and Buchanan argue that despite being the recently removed PRs/trustees, they continue to have a beneficial interest in the management of the Estate so long as their appeal of their removal is pending. Thus, Pope and Buchanan make the same argument now that Dallas and Bradley made against them when they were first appointed. As such, Pope and Buchanan ask this court to find that although their substitution for Dallas and Bradley was proper under the circumstances, Bauknight's substitution for them is now improper. We decline to accept this line of reasoning.

court ") Furthermore, the South Carolina Rules of Civil Procedure provide the substitution of parties may be made by the appellate court during the pendency of an appeal See Rule 25(e) SCRPC (' Substitution of parties under the provision of this rule may be made by the trial court either before or after judgment or pending appeal by the appellate court ")

The test of whether an amendment allowing a party substitution should be allowed is whether the amendment will prejudice or work an injustice to the adverse party Shah v Richland Mem'l Hosp., 350 S C 139 147, 564 S E 2d 681 685 (Ct App 2002) Thus, for the purposes of this motion, the question is whether granting Bauknight's motion to substitute as a party will prejudice Pope and Buchanan We find that not only will the substitution not prejudice Pope and Buchanan, but the failure to substitute will prejudice the Estate and the Trust

The circuit court explicitly removed Pope and Buchanan as PRs and trustees and appointed Bauknight In doing so, the circuit court relieved Pope and Buchanan of any fiduciary duty to the Estate or the Trust It is, therefore, questionable whether Pope and Buchanan have any interest in the management of the Estate or the Trust because the circuit court has discharged them See Glenn v E I Dupont De Nemours & Co., 254 S C 128 134, 174 S E 2d 155, 158 (1970) (holding an action for wrongful death instituted by a discharged administratrix should be dismissed because such action was a nullity)

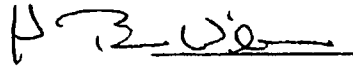
It is however, unquestionable that Bauknight as the court-appointed PR/trustee, does have an interest in ensuring the proper management of the Estate and Trust At the same time the circuit court relieved Pope and Buchanan of their duties it also placed upon Bauknight the

fiduciary duty to manage and control the Estate and Trust. Thus, Bauknight should be substituted because the liability for mismanagement of the Estate or the Trust now falls on him not Pope and Buchanan. See Shah, 350 S.C. at 148, 564 S.E.2d at 685 (holding the substitution of a successor company was necessary so that the party who would be ultimately responsible for judgment would have opportunity to be heard). Moreover, as Judge Early stated, "[I]t is important to allow for consistent administration of the Estate and Trust," and "to interfere with Bauknight's continuing administration of the Estate and Trust would not be in the best interests of the Estate, the Trust, or the beneficiaries." If third parties transacting with the Estate and the Trust cannot be certain who possesses the power to bind the Estate and Trust, there will be a chilling effect on the continued operation and management of the Estate and Trust. Furthermore to restrict Bauknight's ability to exercise control during the pendency of Pope and Buchanan's appeal will certainly prejudice the Estate and Trust.

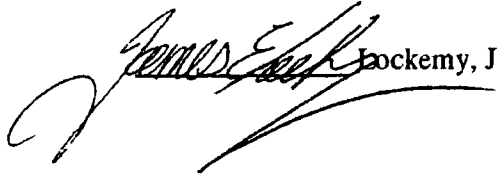
CONCLUSION

Accordingly, Bauknight's motion to substitute in the Dallas and Bradley Appeal is hereby GRANTED. As to the Beneficiaries' and Widow's motions to intervene and returns in support of the AG's return, we interpret those motions as requests to join in the AG's return, which itself was no more than a return in support of Bauknight's substitution motion. Thus, to the extent those motions were filed for that purpose, they are hereby GRANTED. Finally, because we have granted Bauknight's motion to be substituted as Respondent in this case, Pope and Buchanan's motion to reject any return filed by the AG is hereby DENIED.

AND IT IS SO ORDERED

 Williams J

 Pieper J

 Lockemy, J

Columbia, South Carolina

cc R Wayne Byrd, Esquire
 Audra M Byrd, Esquire
 R Hawthorne Barrett, Esq
 Curtis Ott Esq
 James Daniel Bailey, Esquire
 Tressa T H Hayes, Esquire
 Senior Assistant Attorney General C Havird Jones, Jr

RECEIVED

AUG 23 2010

SC SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A Early, III, Circuit Court Judge

Case No 2008 CP-02-1647

Henry Dargan McMaster, in his capacity as Attorney General of the
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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, Jeannette 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 Service

I hereby certify that this 23 day of August, 2010, I served a copy of the
within **Return to Appellants' Request for Extension of Time** on all counsel of record
by depositing a copy in the U S Mail and addressed as follows

Tressa T H Hayes, Esquire
Shipley & Hayes, PC
445 Meeting Street
West Columbia, SC 29169

H Wesley Kirkland, Jr , Esquire
Kirkland & Rush
P O Box 8012
Columbia, SC 29202

James B Richardson, Esquire
1229 Lincoln Street
Columbia, SC 29201

James Mixon Griffin, Esquire
Law Office of James Mixon Griffin
P O Box 999
Columbia, SC 29202

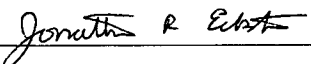
Fred L Kingsmore, Jr , Esquire
Nexsen Pruet Adams Klemmeier, LLC
1230 Main Street, Suite 700
PO Box 2426
Columbia, SC 29202-2426

William J Barr, Esquire
The Barr Law Firm, LLC
108 North Academy Street
Kingstree, SC 29556

Max Pickelsimer, Esquire
1122 Lady Street, Suite 1200
PO Box 2628
Columbia, SC 29202

R Wayne Byrd, Esquire
Turnet Padget Graham & Laney, PA
PO Box 2116
Myrtle Beach, SC 29587

Peter Shahid, Jr , Esquire
Shahid Law Office
P O Box 591
Charleston, SC 29402



**THE STATE OF SOUTH CAROLINA
IN THE Supreme COURT**

**APPEAL FROM AIKEN COUNTY
Court of Common Pleas**

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

**Henry Dargan McMaster, 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 Repre-
sentatives 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 Adminis-
trator 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 Repre-
sentatives of the Estate of James
Brown and Trustees of the James**

RECEIVED

**17
AUG 18 2010**

S C SUPREME COURT

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 Adminis-
trator 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**

MOTION FOR EXTENSION OF TIME

**TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES
OF THE SUPREME COURT OF SOUTH CAROLINA**

Appellants respectfully move the Court for a substantial extension of time in which to serve and file their initial brief and designation of matter. As grounds for the motion, appellants would show as follows:

1 This is an appeal from an order approving the settlement of an estate and diverting potentially tens of millions of dollars from the trust created during his lifetime by the testator for the college education of needy students of South Carolina and Georgia. The recipients of the settlement are persons whom the testator expressly intended to disinherit.

2 The appeal presents novel issues of public importance in the management of estates and in the law of trusts. Those issues are being framed at this time, as work on the appellants' initial brief progresses.

3 The record below is massive.

4 The undersigned represents the appellants *pro bono publico*. Assisting him is Tressa T. H. Hayes, Esq., who is in transition from her previous law firm to new circumstances of law practice. Ms. Hayes will contribute what she can to the work, but the bulk of it will be the responsibility of the undersigned. In comparison, arrayed on the other side of this case are the State of South Carolina and some of the finest firms in this State (and elsewhere) with, effectively, unlimited resources.

5 This appeal deserves the best effort on behalf of the appellants which it is possible to muster, the undersigned having had no more important role in forty years of practice than to represent the appellants in this appeal. Nevertheless, the usual press of other appellate and trial work, and office business, is unrelenting.

6 Next month includes a ten-day vacation out of the country which the undersigned has planned for a year and which probably could not be rescheduled with those who are joining, if it were to be cancelled. This, too, accounts for a small portion of this request.

7 The appellants respectfully ask the Court to consider a seventy-five (75) day extension, to and including November 4, 2010, for service and filing of the appellants' initial brief and designation.

Respectfully submitted,

James B. Richardson, Jr.
1229 Lincoln Street
Columbia, South Carolina 29201
(803) 799-9412

Tressa T. H. Hayes
Post Office Box 5329
Columbia, South Carolina 29250
(803) 603-8583

by 
Attorneys for Appellants

August 13, 2010

**THE STATE OF SOUTH CAROLINA
IN THE Supreme COURT**

**APPEAL FROM AIKEN COUNTY
Court of Common Pleas**

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

**Henry Dargan McMaster, 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 ,
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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
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James Brown 2000 Irrevocable
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Jeanette Mitchell, and Russell
L Bauknight, as Special Adminis-
trator 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 Repre-
sentatives 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 Adminis-
trator 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 SERVICE

The undersigned certifies that he served a copy of appellants' motion for an extension of time upon the respondents by first class mail, postage prepaid addressed to their respective attorneys, namely

Attorney General Henry Dargan McMaster
Assistant Deputy Attorney General Robert D Cook
Senior Assistant Attorney General C Havird Jones
Assistant Attorney General J C Nicholson, III
Assistant Attorney General Mary Frances Jowers
Fred L Kingsmore, Jr , Esq
H Wesley Kirkland, Jr , Esq
James M Griffin Esq
William Joseph Barr, Esq

Louis Levenson, Esq
Matthew Day Bodman, Esq
Max N Pickelsimer, Esq
R Wayne Byrd, Esq
Robert N Rosen, Esq
T Heyward Carter, Jr , Esq
S Alan Medlin, Esq
David L Michel, Esq
Albert P Shahid, Jr Esq

addressed to them at their respective addresses of record, on August 13, 2010


James B Richardson, Jr
1229 Lincoln Street
Columbia, South Carolina 29201
(803) 799-9412

August 13, 2010

Attorney for Appellants

**Law Office of
James B Richardson, Jr**

1229 LINCOLN STREET
COLUMBIA SOUTH CAROLINA 29201

TELEPHONE 803/799 9412
FAX 803/799 9628

August 30, 2010

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AUG 30 2010

SC SUPREME COURT

Hon Daniel E Shearouse
Clerk of the S C Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

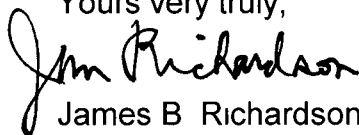
Re McMaster Henry v Bauknight, Russell

Dear Mr Shearouse

Delivered for filing is appellants' reply to the return of some of the respondents to appellants' motion for an extension of time in which to serve and file their initial brief and designation

Thanking you I remain

Yours very truly,


James B Richardson, Jr

cc Attorney General Henry Dargan McMaster
Assistant Deputy Attorney General Robert D Cook
Senior Assistant Attorney General C Havird Jones
Assistant Attorney General J C Nicholson, III
Assistant Attorney General Mary Frances Jowers
Fred L Kingsmore, Jr , Esq
H Wesley Kirkland, Jr , Esq
James M Griffin, Esq
William Joseph Barr, Esq
Louis Levenson, Esq
Matthew Day Bodman, Esq
Max N Pickelsimer, Esq
R Wayne Byrd, Esq
Robert N Rosen, Esq
T Heyward Carter, Jr Esq
S Alan Medlin Esq
David L Michel, Esq
Albert P Shahid, Jr Esq

HENRY McMASTER
ATTORNEY GENERAL



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AUG 23 2010

SC SUPREME COURT

August 23, 2010

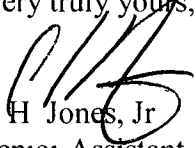
The Honorable Daniel Shearouse
Clerk of Court
South Carolina Supreme Court
P O Box 11330
Columbia, SC 29211

RE The Estate of James Brown and the James Brown 2000 Irrevocable
Trust dated August 1, 2000

Dear Mr Shearouse

Enclosed please find the original and six (6) copies of the Return to Appellants' Request
for Extension of Time in connection with the above-referenced matter Also enclosed is the
Certificate of Service

Very truly yours,


C H Jones, Jr
Senior Assistant Attorney General

enclosures
cc
See attached Certificate of Service

**Law Office of
James B Richardson, Jr**

1229 LINCOLN STREET
COLUMBIA SOUTH CAROLINA 29201

TELEPHONE 803/799 9412
FAX 803/799 9628

August 13, 2010

Hon Daniel E Shearouse
Clerk of the S C Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

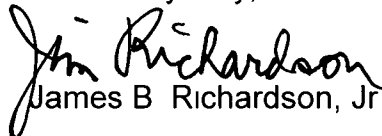
Re McMaster, Henry v Bauknight Russell

Dear Mr Shearouse

Delivered for filing is appellants' motion for an extension of time in which to serve and file their initial brief and designation

Thanking you, I remain

Yours very truly,


James B Richardson, Jr

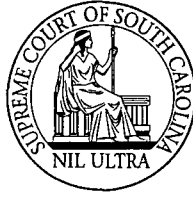
cc Attorney General Henry Dargan McMaster
Assistant Deputy Attorney General Robert D Cook
Senior Assistant Attorney General C Havird Jones
Assistant Attorney General J C Nicholson, III
Assistant Attorney General Mary Frances Jowers
Fred L Kingsmore, Jr , Esq
H Wesley Kirkland, Jr Esq
James M Griffin, Esq
William Joseph Barr, Esq
Louis Levenson, Esq
Matthew Day Bodman, Esq
Max N Pickelsimer Esq
R Wayne Byrd, Esq
Robert N Rosen Esq
T Heyward Carter, Jr , Esq
S Alan Medlin Esq
David L Michel Esq
Albert P Shahid, Jr Esq

RECEIVED

17

AUG 16 2010

S C SUPREME COURT



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734 1080

FAX (803) 734 1499

August 9, 2010

James B. Richardson, Jr., Esquire
1229 Lincoln St
Columbia, SC 29201

Tressa T. H. Hayes, Esquire
P O Box 5329
Columbia, SC 29250

Re McMaster, Henry v. Bauknight, Russell

Dear Counsel,

Enclosed is another copy of this Court's order dated July 22, 2010 in the above entitled matter reflecting a correction to the caption of the case.

By copy of this letter we are advising all interested parties of the action of the Court in this matter.

Very truly yours,

Daniel E. Shearouse
65

CLERK

DES/dmh

Enclosure

McMaster, Henry v Blacknight, Russell

Page Two

August 9, 2010

cc Attorney General Henry Dargan McMaster
Assistant Deputy Attorney General Robert D Cook
Senior Assistant Attorney General C Havird Jones
Assistant Attorney General J C Nicholson, III
Assistant Attorney General Mary Frances Jowers
Fred L Kingsmore, Jr , Esquire
H Wesley Kirkland, Jr , Esquire
James Mixon Griffin, Esquire
Louis Levenson, Esquire
Matthew Day Bodman, Esquire
Max N Pickelsimer, Esquire
R Wayne Byrd, Esquire
Robert N Rosen, Esquire
T Heyward Carter, Jr , Esquire
S Alan Medlin, Esquire
David L Michel, Esquire
William Joseph Barr, Esquire
Albert P Shahid, Jr , Esquire



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734 1080

FAX (803) 734 1499

July 22, 2010

Attorney General Henry Dargan McMaster
Assistant Deputy Attorney General Robert D. Cook
Senior Assistant Attorney General C. Havird Jones
Assistant Attorney General J. C. Nicholson, III
Assistant Attorney General Mary Frances Jowers
Office of the Attorney General
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Columbia, SC 29211

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Atlanta, GA 30303

Matthew Day Bodman, Esquire
Matt Bodman, PA
1500 Calhoun St.
Columbia, SC 29201

Robert N. Rosen, Esquire
T. Heyward Carter, Jr., Esquire
S. Alan Medlin, Esquire
David L. Michel, Esquire
Rosen Law Firm, LLC
The Peoples Building
18 Broad Street, Suite 201
Charleston, SC 29401

Re McMaster, Henry v. Bauknight, Russell

McMaster, Henry v Bauknight, Russell
Page Two
July 22, 2010

Dear Counsel

Enclosed is the order issued in the above entitled matter

Please be advised the Initial Brief of Appellant and Designation of Matter should be served and filed within thirty (30) days of the date of this letter

Very truly yours,

A handwritten signature in black ink, appearing to be "D. L. Hayes", written over a horizontal line.

CLERK

DES/dmh

Enclosure

cc James B Richardson, Jr , Esquire
Tressa T H Hayes, Esquire
Fred L Kingsmore, Jr , Esquire
H Wesley Kirkland, Jr , Esquire
James Mixon Griffin, Esquire
Max N Pickelsimer, Esquire
R Wayne Byrd, Esquire
William Joseph Barr, Esquire
Albert P Shahid, Jr , Esquire

The Supreme Court of South Carolina

Henry Dargan McMaster, 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

ORDER

This matter comes before the Court by way of an appeal from an
order approving a settlement agreement concerning the estate of James
Brown The parties to the settlement agreement now move to dismiss
appellants' appeal, alleging appellants have no standing to pursue the appeal

We deny the motion to dismiss the appeal and order the parties to
brief the issue of appellants' standing in this matter along with the merits of
the appeal

George

C J

John Davis

J

Donald W. Batty

J

John Rithgoff

J

Kyle L. Farn

J

Columbia, South Carolina

July 22, 2010

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A Early, III, Circuit Court Judge

Case No 2008-CP-02-1647
Case No 2007-CP-02-0122
Case No 2008-CP-02-0872
Case No 2009-CP-02-1810

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

Ex Parte Robert L Buchanan, Jr and Adele
J Pope, as Personal Representatives of the Estate
Of James Brown and the James Brown 2000
Irrevocable Trust

Appellants,

Henry Dargan McMaster, in his capacity as
Attorney General of the State of South Carolina,
Daryl J Brown, on behalf of his minor children,
Lindsey Delores B and Janise Vanisha B ,
Deanna J Brown Thomas, on behalf of her minor
children, Jason Brown L , Yamma N Brown, on
behalf of her minor children, Sydney L ,
Carrington L , Tonya Brown, Vanisha Brown, and
Larry Brown, Tommie Rae Hynie Brown,

Respondents,

v

Albert H Dallas, Alfred A Bradley,
and David G Cannon, individually
and as (purported) Trustees of the James Brown
2000 Irrevocable Trust, Russell Bauknight, as
Special Administrator and Special Trustee of the
Estate of James Brown and the James Brown 2000
Irrevocable Trust, Terry Brown, Romunzo Brown,
Forlando Brown, Cinnamon N M Paris,
LaRhonda Petitt, and Jeannette Mitchell, also

Respondents

Reply to Pope and Buchanan's Return and Opposition to Motion to Dismiss

Henry Dargan McMaster, in his capacity as Attorney General of the State of South Carolina, on behalf of the beneficiaries of the charitable trust, Daryl J Brown, individually and on behalf of his minor child, Janise B , Lindsey Delores Brown, Deanna J Brown Thomas, Jason L Thomas, Yamma N Brown, individually and on behalf of her minor children, Sydney L and Carrington L , Tonya Brown, Vanisha Brown, Larry Brown, Terry Brown, and Tommie Rae Brown (collectively, "the Settling Parties") respectfully Reply to the Return and Opposition to the Motion to Dismiss filed by Robert L Buchanan, Jr , and Adele J Pope in this appeal

Pope and Buchanan have no standing in this case for two simple reasons First, the Attorney General, not Pope and Buchanan, is the proper party to negotiate settlements on behalf of the beneficiaries of a charitable trust, and second, because Pope and Buchanan were not and are not parties to the settlement agreement As provided by section 62-3-1102, Pope and Buchanan do not have any right to vote on or veto the approval of the settlement, and they do not have standing to appeal it¹ They are not aggrieved or prejudiced by it, and they have no standing to appeal and attempt to dismantle the settlement of such a complex matter

¹ The uniform comment to section 62 3 1102 recognizes why fiduciaries are not given a vote on or veto over a settlement agreement fiduciaries could let their interest in earning fees and commissions conflict with and interfere with the best interests of the beneficiaries in settling the case 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 See also Byrd v Shell 169 S C 226 168 S E 692 (S C 1933) (supporting rationale of uniform comment to section 62 3 1102 by preventing executor from appealing division of land because he would get a commission from its sale)

Pope and Buchanan contend that there is an insufficient record for the Court to decide the Motion to Dismiss their appeal. However, the record has already been made. The settlement agreement was executed by all competent persons whose beneficial interests or claims will or may be affected by the settlement, as required by South Carolina Probate Code Section 62-3-1102. Pope and Buchanan did not obtain a ruling from the Circuit Court to support their newly invented claim that the Attorney General has exceeded his statutory and common law authority in representing the charitable trust beneficiaries in the negotiation and execution of the settlement agreement. Moreover, even if they had, no further development of the facts could result in these two former court appointed substitute fiduciaries having standing to oust the Attorney General from representing the beneficiaries of the charitable trust. The question of standing is a legal one, and a mountain of facts can't change the reality that the Attorney General is the appropriate party to represent the beneficiaries of a charitable trust.

In their Return, Appellants cite numerous issues and arguments that they will assert or expect to assert in their appeal concerning the Attorney General exceeding his authority. However, they did not obtain a ruling in the lower court on any of these issues and arguments. Issues not raised to and ruled on by the lower court are not preserved for appeal. Lucas v Rawl Family Ltd P'ship, 359 S.C. 505, 598 S.E.2d 712 (2004). In any event, they do not have standing to assert these issues, and raising them in their Return does nothing except distract from the real issue before the Court: whether two former court-appointed substitute fiduciaries² have

This is exactly the situation in this case. Pope and Buchanan are seeking to be paid the outrageous amount of approximately \$5 million which they base on an equally outrageously inflated and undocumented valuation of the estate. As if that were not enough, they continue to claim that the South Carolina Attorney General has cost the charities \$50 million by entering into the settlement agreement. Their figure is based on the same undocumented valuation of the estate (which differs by about \$16 million depending on their statements under oath before this court or their statements on the federal estate tax return) which is undoubtedly going to be far more than the actual value when properly determined by proper fiduciary methods.

² Whom Mr. Brown did not know nor did he nominate them to serve as fiduciaries.

standing to challenge the right of the Attorney General to negotiate a settlement on behalf of the beneficiaries of a charitable trust. Appellants repeatedly contend that the Attorney General has exceeded his authority while ignoring the fact that his statutory and common law duty is to protect the charitable interests. Appellants have cited no case which holds that former court-appointed substitute fiduciaries have standing to oust the Attorney General from representing the charitable beneficiaries because the former court-appointed substitute fiduciaries do not think the Attorney General is upholding the decedent's testamentary intent, and especially not where the former court-appointed substitute fiduciaries never met the decedent and know nothing more about his testamentary intent than what can be gleaned from the documents themselves, the very same documents the Attorney General has access to and has thoroughly reviewed.³

Pope and Buchanan contend that there is no case in the country supporting the position that "ousted fiduciaries lack standing to appeal an order approving events such as these." However, there are numerous cases holding that a fiduciary lacks standing to appeal and there is at least one case virtually directly on point, except that the fiduciary continued to serve and was not removed. That case, described below, recognized the authority of the Attorney General to settle a case on behalf of charitable beneficiaries⁴ and denied standing to appeal to the objecting personal representative.

In Will of Liss, 445 A 2d 455 (N.J. 1981), the testator's will made devises to ten charities. The successors entered into a private settlement agreement, settling what the court described as complex litigation. Because some of the successors were charities, the state

³ Of course the Attorney General has conducted appropriate and extensive due diligence reviewing far more than the will and trust documents relied on by Pope and Buchanan. After the appropriate and extensive due diligence review the Attorney General properly concluded that the charitable beneficiaries were best served and protected by entering into the settlement agreement.

⁴ See also Sarkys v. Independent School District #40, 592 P.2d 529 (Ok. 1979).

attorney general was involved and determined that the settlement was in the best interests of the charities because, after an extensive review by the attorney general, there was a substantial chance that the charities would lose the will contest and thus their devises. The court noted that the necessary involvement of the state attorney general “merely reflects a value judgment made by our society that in matters involving charities the Attorney General should have the power to intervene as protector of the public interest.” The court recognized the danger to the charities if the will contest were successful “If this litigation is permitted to continue, they [the charities] may lose and never receive anything or win and find that in victory their net recovery is less than what is definitely available at this time.’

Although the personal representative argued that the charitable beneficiaries were not within the definition of competent successors required by the state private settlement statute (a position the court rejected), the Liss court nevertheless found that the personal representative lacked standing “it is equally evident that the executor is not an aggrieved party, and that he has no standing to resist the interested parties’ wish to settle this will contest.” In re Rogers, 15 N J Super 189, 200-201, 83 A 2d 268 (Cty Ct 1951)

Thus, under the Liss rationale, which is consistent with the concern of section 62-3-1102 about the conflict of interest of a fiduciary stemming from the issue of fees, Pope and Buchanan would not have standing to appeal the settlement even if they had not been removed.

Liss also rejects other positions taken by Pope and Buchanan. The court cited the proper behavior for a fiduciary who was not a party to a settlement agreement among competent successors “when faced in a will contest with an agreement which complies in all respects with

N J S A 3A 2A-81,⁵ decedent's personal representatives should abide thereby, or, at most, in a nonadversarial manner, present the agreement for court approval if he desires the additional personal protection afforded by N J S A 3A 14-4 ” Suffice it to say that Pope and Buchanan have not acted in a nonadversarial manner, let alone acted to abide by the agreement

Citing precedent, the Liss court noted that a court can approve the compromise of a will contest despite the objections of the fiduciary

The Liss court rejected the personal representative’s contention that the court could not approve the settlement without taking testimony on certain issues The court found nothing in the statutes that required testimony for the approval of a settlement The court recognized that, because of the ongoing complex litigation, the judge had gained appropriate knowledge about the case “Indeed, it has properly been noted that in almost every case [involving court approval of the settlement of an estate litigation] the taking of testimony is unnecessary ’ In re White's Estate, 182 Misc 223, 46 N Y S 2d 917, 928 (Surr Ct 1943)” The court held that a limited hearing would not aid the court and that a “plenary hearing is precisely the event which a settlement is intended to avoid ” Pope and Buchanan state that they testified in a hearing that lasted seven days Based on its knowledge of the record and a seven day hearing, the circuit court certainly had sufficient information to approve the settlement

The Liss court also noted that the applicable statute, New Jersey’s version of South Carolina section 62-3-912 concerning private settlement agreements, required the personal representative to abide by the terms of the agreement The settling parties sub judice entered into a binding settlement pursuant to 62-3-912, which does not require court approval, and section 62-3-1102, which does Both sections require the fiduciary to honor the agreement — the former

⁵ This New Jersey statute is derived from the Uniform Probate Code and is the counterpart to South Carolina Code section 62 3 912 allowing private settlements among successors without court approval

without court approval and the latter once the court orders the fiduciary to sign the agreement --- which Pope and Buchanan refuse to do in either case

Although Liss is from another jurisdiction (New Jersey), it serves as valid precedent for South Carolina because it involves provisions of the Uniform Probate Code, which both New Jersey and South Carolina have enacted

Under the rationale of Liss and sections 62-3-912 and 62-3-1102, Pope and Buchanan are not aggrieved in their representative capacity. As they admit, the will and trust were upheld by the settlement agreement, what was settled was the issue of the shares of the settling parties. Liss and sections 62-3-912 and 62-3-1102 require Pope and Buchanan to abide by that agreement. Consequently, they have no gravamen of a complaint in their representative capacities. Despite Pope and Buchanan's inability to find any authority abounds for the proposition that they lack standing to appeal the settlement, in addition to Liss and sections 62-3-912 and 62-3-1102. See, e.g., In re Estate of Wirebaugh, 616 N.E.2d 245 (Ohio App. 6 Dist. Wood Co. 1992) ("Ordinarily, executor is not aggrieved party, and, thus, may not appeal probate court order in his individual capacity in proceeding which affects only the rights of beneficiaries"), Krause v. Tullo, 835 S.W.2d 488 (Mo. App. S. Dist. 1992) ("Executor or administrator is not aggrieved or prejudiced by decree determining rights of beneficiaries and hence may not appeal"), First Nat. Bank of Dewitt v. Yancey, 826 S.W.2d 287 (Ark. App. 1991) ("Generally, a trustee, acting in its representative capacity, cannot by an appeal litigate the conflicting claims of beneficiaries"), Matter of Savage's Estate, 650 S.W.2d 346 (Mo. App. S. Dist. 1983) ("Even though personal representative of decedent's estate is named as party in action, he is not entitled to appeal every judgment pertaining to estate as 'aggrieved party', to appeal as such, personal representative must be adversely affected in his representative capacity

as distinguished from his personal capacity”), Estate of Fowler, 860 S W 2d 380 (Mo App S D 1993) (“To have standing to appeal in his representative capacity, personal representative of estate must be aggrieved’ or adversely affected in his official or representative capacity as opposed to his individual capacity”), Fried v Fried, 582 N E 2d 1038 (Ohio App 8 Dist Cuyahoga Co 1989) (“Executor cannot appeal judgment which does not prejudice him in his representative capacity”), and Boulger v Evans, 377 N E 2d 753 (Ohio 1978) (“Generally, fiduciary may not appeal judgment which does not affect him prejudicially in his representative capacity”)

Even if Pope and Buchanan are somehow aggrieved in their individual capacities — that they were removed as fiduciaries — they lack standing to appeal the approval of the settlement, as demonstrated by the cases cited above. The cases cited above also prevent them from appealing any alleged individual grievance, consistent with the hornbook law notion that a fiduciary’s job is to serve and the fiduciary is not a beneficiary. Pope and Buchanan insist that they were not removed for cause. Another case confirms that, based on that position, they have no individual right to appeal their removal. See Fleet Nat Bank’s Appeal from Probate, 837 A 2d 785 (Conn 2004) (“Bank, which was removed upon the request of the beneficiaries as a corporate fiduciary under an irrevocable trust, was not removed for cause,’ and thus was not aggrieved,’ as required to pursue an appeal of its removal, bank’s removal as trustee was not based on any conduct or an inability to perform the duties of a fiduciary”)

Pope and Buchanan also contend that “untested legal issues” should not be resolved on an insufficient record. They cite various issues including undue influence, pretermitted child, and omitted spouse, which they claim need to be more fully developed. They ignore the fact that the relevant parties have settled these issues, and they are appealing a Court’s approval of the

settlement of these issues. Because these matters were settled, the Court did not rule on issues such as the omitted spouse, undue influence, and pretermitted child – rather, the Court heard about the complex factual nature of these issues and why it is in the best interests of all parties that the parties were able to settle these issues. Pope and Buchanan did not obtain a ruling on any of these issues from the Circuit Court, and even if they had, further briefing and oral argument would not shed any new light on these factual issues or develop any relevant issues related to standing, as standing is purely a legal issue.

Pope and Buchanan contend that they are the only parties with standing to seek review. The problem with this argument is that they are not parties to the settlement and do not have standing to seek its review – the other parties involved are part of the settlement and would have standing but have not chosen to seek review because they are in favor of the settlement – and any others do not have standing. Yet despite this fact, Buchanan and Pope claim in paragraph 19 of their affidavit that they believe they are “the only remaining unimpaired parties to Case 1647 with standing to enforce James Brown’s Estate Plan.” It is shocking that two individuals who are not part of a settlement continue to attempt to defeat it (and, not coincidentally, continue to attempt to hold onto their jobs as paid fiduciaries at the expense of the settling parties). If the Court decides they have standing, this will open the door to third-party attacks on settlement agreements which could halt the efficient resolution of disputes through settlement, and in this setting, will set a precedent of eviscerating the Attorney General’s authority to act on behalf of charitable beneficiaries.

Pope and Buchanan contend they have standing on three grounds, yet none of their proposed vehicles to insert themselves into this case provides proper standing. First, by process of elimination, they contend that everyone else has somehow forfeited standing. However, they

do not cite any law that indicates standing is something that can be forfeited. In connection with the family members, they ignore the rule that if a person has probable cause to challenge a Will and Trust, he does not forfeit his interest. The probable cause issue was not reached because the parties settled their disputes. Further, Pope and Buchanan ignore the fact that the Attorney General has the authority and duty to protect the interests of charitable beneficiaries.⁶

Second, appellants contend they have constitutional standing, yet they do not have an injury in fact. “Constitutional standing requires, at a minimum, that the party bringing the action sustain a direct injury or the immediate danger a direct injury will be sustained.” Commander Health Care Facilities, Inc. v. South Carolina Dept. of Health and Environmental Control, 370 S.C. 296, 634 S.E.2d 664 (Ct. App. 2006). “An injury in fact has been defined as an invasion of a legally protected interest which is concrete and particularized and actual or imminent, not conjectural or hypothetical.” Id. (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)). Pope and Buchanan do not have a legally protected interest in this matter.

As former fiduciaries removed by the Court that appointed them, Pope and Buchanan have no due process rights because they have no beneficial interest in the assets, despite their assertion that they do. It is hornbook law that fiduciaries do not have personal and beneficial interests in the property. Reduced even more to its illogical conclusion, their position that they have a personal and beneficial interest in the estate would mean that Mr. Brown intended for them to receive a benefit from the estate and trust. In contravention of Pope and Buchanan’s position, fiduciaries serve for beneficiaries, not as beneficiaries, and for the court appointing

⁶ Moreover, Pope and Buchanan conveniently fail to mention other significant claims that could have substantially reduced any amounts passing to charity: The right of Tommie Rae Brown, Mr. Brown’s surviving spouse, to assert her omitted spouse and/or elective share claim; and the right of James Brown II, the son of Mr. Brown, to assert his omitted child’s share.

them. Even assuming arguendo that Pope and Buchanan would have standing to appeal their removal as a single, separate issue, they would still not have standing to appeal the rest of the settlement agreement. However, awarding them standing in this case to appeal the single, separate issue of their removal would lead to an absurd result.⁷ As recognized by the uniform comment to section 62-3-1102, Pope and Buchanan have no vote on or veto over a settlement agreement because of their conflict of interest. To allow them standing to contest appeal of the settlement agreement by bootstrapping onto the right, assumed arguendo, to appeal their removal would allow them to act on their conflict of interest and gut the legislative purpose of section 62-3-1102. The result would be to elevate the interest of fiduciaries over that of beneficiaries, which would stand trust and estate law on its head.

Third, there is a public importance exception to the requirement for standing in “cases which fall within the ambit of important public interest, standing will be conferred ‘without requiring the plaintiff to show he has an interest greater than other potential plaintiffs.’” ATC South, Inc. v. Charleston County, 380 S.C. 191, 669 S.E.2d 337 (2008) (quoting Davis v. Richland County Council, 372 S.C. 497, 642 S.E.2d 740 (2007)). However, this language indicates that the Plaintiffs must have some interest in the matter, even in matters of great public importance, otherwise, any party could bring an action under this exception even if he has no interest at all. In the present case, Pope and Buchanan do not have any interest in the settlement approval, and thus they do not meet this exception. As the Court explained, “[a]n appropriate balance between the competing policy concerns underlying the issue of standing must be realized. Citizens must be afforded access to the judicial process to address alleged injustices. On the other hand, standing cannot be granted to every individual who has a grievance against a

⁷ It is the settlement agreement that provides for their removal.

public official. Otherwise, public officials would be subject to numerous lawsuits at the expense of both judicial economy and the freedom from frivolous lawsuits.” Id. (citing Sloan v. Sanford, 357 S.C. 431, 434, 593 S.E.2d 470, 472 (2004)). Similarly in the present case, Pope and Buchanan cannot be granted standing simply because they do not agree with a settlement that was appropriately reached. Further, the Attorney General’s duty is to protect the public interest, and granting Pope and Buchanan standing to appeal a settlement the Attorney General has reached usurps the power of the Attorney General to handle charitable trust matters.

In their Return and Opposition to Motion to Dismiss, Pope and Buchanan introduce a number of notions that are without merit and assert a number of facts that are incorrect.

For example, they assert that the Attorney General has no authority to represent a private foundation because they claim that a private foundation is not a public charity.⁸ Despite Pope and Buchanan’s attempt to disguise the nature of the real issue of charitable beneficiaries, the James Brown Estate and Trust clearly have charitable beneficiaries who are properly represented by the South Carolina Attorney General.

Pope and Buchanan qualified the James Brown I Feel Good Trust with the IRS as a tax-exempt private foundation in 2008. On the United States Estate Tax Return (IRS Form 706) signed by them on September 24, 2008 and filed with the IRS, *they* listed the James Brown I Feel Good Trust *as a charitable organization*, stating that the \$83,369,981 of assets of the estate of James Brown which they listed as passing into that trust were exempt from estate taxation. IRC Section 501(c)(3) (“Exemptions From Tax on Corporations, Certain Trusts, Etc., List of Exempt Organizations”) states that the following are exempt from taxation as charitable entities: “(3) Corporations, and any community chest, fund or foundation, organized and operated exclusively

⁸ They introduce the notion that the James Brown I Feel Good Trust is not a charitable trust in their Return and Opposition to Motion to Dismiss.

for educational purposes ” IRC Section 509(a) (“Private Foundation Defined”) states that “the term ‘private foundation’ means a domestic or foreign organization described in section 501(c)(3) ” with certain exceptions Thus, the James Brown I Feel Good Trust, being a private foundation which is exempt from taxation under IRC 501(c)(3), is clearly a charitable organization It is well settled in South Carolina that the Attorney General has the standing, the responsibility and the authority to defend and enforce charities in this state S C Code Ann §1-7-130, Furman Univ v McLeod, 238 S C 475, 482, 120 S E 2d 865, 868 (1961), Epworth Children’s Home v Beasley, 365 S C 157, 616 S E 2d 710 (2005) ⁹

Other examples of their meritless claims abound They contend that “the Trust Code confers upon a settler the authority to appoint those who defend the trust against attack and those who may settle claims against it ” They base their contention on section 62-7-105, which provides that the terms of a trust prevail over the provisions of the South Carolina Trust Code, which they claim gives the trust provisions the force of a statute This, of course, is an absurd reading of that section First, section 62-7-105 simply recognizes the long-settled rule that, absent certain situations that are illegal or violate public policy, a settlor’s expressed intentions can override statutory rules of construction That is far short of affording a trust document the effect of a statute The next section of the Code, section 62-7-106, confirms that the common law and principles of equity continue in effect except to the extent supplanted by the Code Not only does the Attorney General have the right under South Carolina Trust Code section 62-7-405 to enforce charitable trusts, but the common law doctrine of parens patriae and section 1-7-130 afford the same authority, as noted above Neither the common law or section 1-7-130 is in the

⁹ And they want it both ways they claim the Attorney General has no authority over a private foundation yet still recognize that there are charitable beneficiaries for purposes of making their outrageous claim of the estate s value

South Carolina Trust Code, so even if section 62-7-105 somehow supplanted section 62-7-405, section 62-7-105 could not override the common law doctrine of parens patriae or section 1-7-130, section 62-7-105 applies only to provisions in the South Carolina Trust Code

Moreover, Pope and Buchanan were not appointed by James Brown, nor were they even know by him To suggest that section 62-7-105 replaces the authority of the Attorney General to protect charitable trusts with that of trustees not even known by the settlor is a bootstrapping exercise in extremis

Pope and Buchanan, once again taking a position based on inconsistency, assert that “all other fiduciaries” waived standing because the other fiduciaries were not properly appointed under the terms of the trust, yet Pope and Buchanan themselves were not properly appointed by the terms of the trust¹⁰ They assert that the other settling parties, including the Attorney General, somehow waived their right to settle by contesting the will and trust before settlement As noted above, forfeiture provisions do not apply if probable cause existed for contest, which would prevent any waiver by the settling parties other than the Attorney General¹¹ The Attorney General did not contest the will or trust, and even if such a waiver as asserted by Pope and Buchanan were possible, did nothing to trigger any forfeiture clause in the will or trust It is the Attorney General’s authority that is the central issue of this case For Pope and Buchanan to prevail, the Attorney General must have no authority to protect and enforce a charitable trust, while somehow Pope and Buchanan do Such a finding would wreak catastrophic results on the law of protection of charitable beneficiaries

¹⁰ In their Joint Affidavit (para 32) Pope and Buchanan admit there was no advisory board in place in November 2007 which was required for replacement of trustees by the terms of the trust yet they insist that their appointment was valid

¹¹ Obviously any no contest clause in the will or trust could not cause Mr Brown s surviving spouse to forfeit her elective share claim otherwise a simple no contest clause would eviscerate the elective share statutes

The assertion by Pope and Buchanan that the court erred “in compelling them, as improperly removed fiduciaries, to sign documents they know to be false and damaging to the estate plan” is misleading as to the facts and demonstrative of their misunderstanding, or misapplication, of their role as fiduciaries. Section 62-3-1102 authorizes the court to require fiduciaries to execute the settlement agreement once approved by the court. This provision is consistent with that section’s recognition that fiduciaries do not have a vote on or veto over such settlement agreements because of their conflict of interest over fees. Hence, the court approving the settlement necessarily is empowered by that section to require the fiduciaries to sign the approved agreement. However, Pope and Buchanan have refused to obey the court’s order to sign the settlement. Once again, they take inconsistent positions. Their apparent position in disregarding a court order is that they are not required as former fiduciaries to obey the court yet they assert that they are effectively still fiduciaries because they claim they were improperly removed. Based on their position on the settlement, it is doubtful that they would have agreed to sign the agreement as directed even if they had not been removed by the court.¹²

Pope and Buchanan argue that Mr. Bauknight had a conflict of interest when he, as requested by the circuit court, offered his opinion about the reasonableness of the settlement. But, when he offered that opinion, Mr. Bauknight had not been appointed as personal representative and trustee, or even asked to serve in those capacities. Thus, he had no conflict of interest.

Pope and Buchanan claim that “private philanthropy in South Carolina would be chilled if a settlor’s funds could be diverted from the settlor’s chosen class of recipients to the Attorney General’s chosen class.” They have it exactly backwards: private philanthropy would be chilled

¹² Or, based on their actions, perhaps they are asserting that they have some sort of *uber* authority as fiduciaries who are not subject to orders from the court that appointed them.

if the Attorney General was not empowered to settle cases that might otherwise leave the charitable beneficiaries with nothing or if the Attorney General was not empowered to prevent fiduciaries of charitable trusts from prevailing on outrageous fee claims – approximately \$5 million in this case – based on undocumented valuations serving as the basis for those outrageous fee claims. According to Pope and Buchanan, neither the Attorney General nor the circuit court nor the South Carolina legislature¹³ have the power to stop them from such outrageous claims.

Pope and Buchanan include a “factual addendum” with their Return in Opposition to Motion to Dismiss. The “factual addendum” is not sworn and is not appropriate for consideration by this Court, and should thus be stricken and/or disregarded. The “factual addendum” was not considered by the circuit court and is an improper attempt to create new evidence on appeal. Moreover, the settling parties would dispute many of the “facts” attempted to be presented in that “factual addendum.”

Pope and Buchanan include a joint affidavit with their Return in Opposition to Motion to Dismiss. The affidavit includes statements based on information and belief that are not appropriate for consideration by this Court, and should thus be stricken and/or disregarded. Moreover, the settling parties would dispute many of the “facts” attempted to be presented in that affidavit.

Conclusion

The central issue in this case is simple: does the South Carolina Attorney General have the authority to protect charitable beneficiaries or do Pope and Buchanan? Even though fiduciaries are normally required to protect beneficiaries, including charitable beneficiaries of

¹³ Section 62-3-1102

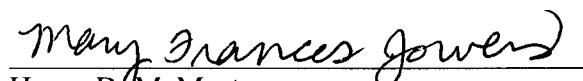
charitable trusts, when the Attorney General and the fiduciaries disagree, the Attorney General must have the sole power to assert the position of the charitable beneficiaries. Otherwise, the interests of the charitable beneficiaries would be conflicted. In cases, such as this, when the Attorney General has asserted its authority, the fiduciaries can have no standing or the Attorney General's power would effectively be rendered moot. In cases such as this, when the issue is simply the validity of a court-approved settlement agreement, when the Attorney General has asserted its authority, the fiduciaries can have no standing or the intent of the legislature would be disregarded. Section 62-3-1102 does not give the fiduciaries a vote or veto over the settlement agreement. If the fiduciaries have standing to appeal the approval of a settlement under 62-3-1102, then they would effectively have a vote or veto. It would be inconsistent with legislative intent to give them no vote or veto at the trial level yet let them appeal.

Who is better suited to have standing: the Attorney General or fiduciaries who seek to be paid \$5 million?¹⁴ Pope and Buchanan have nothing to lose if there were no settlement and the will and trust contests, and the omitted spouse and elective share claims, and the omitted child claim, proceeded. If the will and trust contests prevailed, the charitable beneficiaries *would receive nothing*. Yet Pope and Buchanan will claim their \$5 million commission regardless of who prevails. Only the Attorney General has a stake in whether the charities might get nothing. Consequently, only the Attorney General has standing to represent the charitable beneficiaries and enter into a settlement in the best interests of the charitable beneficiaries.

¹⁴ See uniform comment to section 62-3-1102.

Based on the foregoing reasons, the Settling Parties ask the Court to dismiss the consolidated appeals of Pope and Buchanan

Respectfully Submitted,


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March 29, 2010

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A Early, III, Circuit Court Judge

Case No 2008-CP-02-1647
Case No 2007-CP-02-0122
Case No 2008-CP-02-0872
Case No 2009-CP-02-1810

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

Ex Parte Robert L Buchanan, Jr and Adele
J Pope, as Personal Representatives of the Estate
Of James Brown and the James Brown 2000
Irrevocable Trust

Appellants,

Henry Dargan McMaster, in his capacity as
Attorney General of the State of South Carolina,
Daryl J Brown, on behalf of his minor children,
Lindsey Delores B and Janise Vanisha B ,
Deanna J Brown Thomas, on behalf of her minor
children, Jason Brown L , Yamma N Brown, on
behalf of her minor children, Sydney L ,
Carrington L , and Tonya B , Vanisha Brown, and
Larry Brown, Tommie Rae Hynie Brown,

Respondents,

v

Albert H Dallas, Alfred A Bradley,
and David G Cannon, individually
and as (purported) Trustees of the James Brown
2000 Irrevocable Trust, Russell Bauknight, as
Special Administrator and Special Trustee of the
Estate of James Brown and the James Brown 2000
Irrevocable Trust, Terry Brown, Romunzo Brown,
Forlando Brown, Cinnamon N M Paris,
LaRhonda Petitt, and Jeannette Mitchell, also

Respondents

Certificate of Service

I hereby certify that this 27th day of March, 2010, I served a copy of the
within **Reply to Pope and Buchanan's Return and Opposition to Motion to Dismiss**
on all counsel of record by depositing a copy in the U S Mail and addressed as follows

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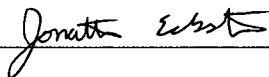
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MAR 29 2010
SC Court of Appeals

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PO Box 2116
Myrtle Beach, SC 29587

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1950 N Park Place N Ste 400
Atlanta, GA 30339





HENRY McMASTER
ATTORNEY GENERAL

March 29, 2010

RECEIVED

MAR 29 2010

SC Court of Appeals

The Honorable Tanya A. Gee
Clerk of Court
SC Court of Appeals
P O Box 11629
Columbia, SC 29211

RE In Re the Estate of James Brown and the James Brown 2000 Irrevocable
Trust dated August 1, 2000
Case Tracking No 2009142286

Dear Mrs. Gee

Enclosed please find the original and six (6) copies of the Reply to Pope and Buchanan's
Return and Opposition to Motion to Dismiss in connection with the above-referenced matter.
Also enclosed is the Certificate of Service.

Very truly yours,

Mary Frances Jowers

Mary Frances Jowers
Assistant Attorney General

enclosures
cc
See attached Certificate of Service

**Law Office of
James B. Richardson, Jr.**

**1229 LINCOLN STREET
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JAMES B RICHARDSON JR

**TELEPHONE 803/799 9412
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Fellow of the American Academy of Appellate Lawyers

RECEIVED
MAR 16 2010
SC Court of Appeals

March 16 2010

The Honorable Tanya Gee, Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE Re Ex Parte Buchanan and Pope
 McMaster and Others v Dallas and Others
 Aiken County Case No 2009-CP-01810
 Aiken County Case No 2008-CP-01647

Dear Ms Gee

Enclosed for filing please find the original and seven copies of the following

- 1 Return and Opposition to Motion to Dismiss,
- 2 Joint Affidavit of Robert L Buchanan, Jr and Adele J Pope Opposing Motion to Dismiss, dated March 12, 2010, and
- 3 Certificate of Service for each

We would appreciate your filing the originals and returning a file-stamped copy with the courier who delivers this package

Thank you for your attention to these matters

Sincerely,



James B Richardson Jr , Esq
Attorney for Buchanan and Pope

cc Tressa T H Hayes
 All Counsel of Record (See attached Certificates of Service)

STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

MAR 16 2010

SC Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
Honorable Doyet A. Early III Circuit Court Judge

Case No. 2008-CP-02-01647
Case No. 2009-CP-02-01810

In Re: The Estate of James Brown and
The James Brown 2000 Irrevocable Trust w/a/d August 1, 2000

Ex Parte: 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

Appellants

Henry Daigan McMaster, in his capacity as Attorney
General of the State of South Carolina, Daryl J. Brown
on behalf of his minor children, Lindsey Delores B.
and Janise Vanisha B. Deanna J. Brown Thomas
on behalf of her minor children, Jason Brown
L. Yamma M. Brown on behalf of her minor children,
Sydney L., Carrington L. and Tonya B.
Vanisha Brown and Larry Brown, Tommie Rae Hynie
Brown,

Respondents

v

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

Respondents

RETURN AND OPPOSITION TO MOTION TO DISMISS

OVERVIEW

On the order of fifty million dollars of scholarship money has been taken from
future students of South Carolina and Georgia by the doings below. The testator s

ORIGINAL

Carefully crafted estate plan has been shredded. The responder is — the Attorney General — in league for some unknown reason with the disinherited members of the Brown family — are anxious to avoid appellate review of what has been done here. Hence, they have devised an extraordinary motion to dismiss, seeking premature adjudication of the question of standing. The claim that one's adversary lacks standing is a time-honored shield, of course. The thousands of students deprived of these millions of dollars over many years in the future are not parties to this case, and so there is no one to complain, say the respondents.

The place to challenge an appellant's standing is in the respondent's brief, where the flexible concept of standing can be measured in the light of a full record. See, e.g., *Home Medical Systems, Inc. v. South Carolina Dept. of Revenue*, 382 S.C. 556, 558, 677 S.E.2d 582, 584 (2009), where the Supreme Court deferred ruling on the motion to dismiss until after full briefing on the issue and oral argument. Especially is this traditional procedure needed in the context of this unique litigation. To avoid the light of a full record upon the story of this litigation, the respondents present the question in the abstract, by motion with no Record. The issue deserves resolution in light of a concrete record, not in the abstract.

For this reason, appellants submit that the question of standing should be resolved in the traditional way, after the appeal has been fully briefed and the Record filed, so that the Court can address this issue with full knowledge of all the facts.

FACTS

Because this dispositive motion has been filed before the Record on Appeal has been gathered and filed, the appellants accompany this Return with an affidavit summarizing the machinations which led to the dismantling of the testator's estate plan in the proceedings below.

The respondents, by contrast, have submitted nothing but a copy of the main

order under appeal the order of May 26, 2009. The respondents quote selected factual findings and dicta of that order as though they were unchallenged. A party cannot prevent appellate review of an order by reciting the findings of the very order which is the subject of the appeal. Many factual findings of that order will be challenged in this appeal. For example, the respondents recite statements in the order characterizing as massive and complex the claims made against the testator's will and his plan. **On the contrary, those claims were routine and in the chief instance frivolous.** The very idea that an estate plan which took four years to evolve under expert guidance, and which left perhaps 99% of the estate to the cause of education, was the product of undue influence is absurd on its face. The courts of this state could try that claim a thousand times, and if the contestant ever survived a directed verdict motion, no jury in South Carolina would uphold such a silly claim. All the lesser claims against this estate were of a kind expected to surface where a wealthy testator has left his estate to educational purposes instead of to his family. These were all claims of a sort routinely tried and resolved in the courts of this state. There was no flood of claims or nightmare of litigation. The only thing unusual about the administration of this estate was its size. It is of course a complicated estate.

In the absence of a Record, appellants respectfully refer to their affidavit. Pertinent facts will be mentioned in the context of the argument sections below, and a Summary of Facts is appended to this Return as an Addendum and incorporated herein.

ISSUES ON APPEAL

The respondents ask the Court to determine the question of standing in a vacuum, before the issues on appeal have even been framed. Those issues will not be solidified until the appellants' brief is written, but obviously at the heart of this appeal is the question of whether the Attorney General exceeded his authority by entering Case

122 to assist with the enforcement of James Brown's private foundation, but then expanded that role by setting aside the duly acting fiduciaries contracting to dismantle the private foundation transferring about half the assets of the Irrevocable Trust to unintended beneficiaries and placing not only the private foundation but also Mr Brown's noncharitable trust and his estate under the AG's control. Even if the Attorney General has such authority, the appellants will show that he acted without proper joinder of parties notice and opportunity for challenge.

The appellants will assert that the Attorney General violated Sections 62–7–410 through 62–7–415 of the Trust Code, the due process clause and the provisions of the Irrevocable Trust and other estate planning documents when he placed the estate and the Trust under his direct control.

The appellants will further assert that the Attorney General may not contract with nonbeneficiaries to defeat the provisions of the Irrevocable Trust then approve, over objection and without review the estimated \$12–\$14 million in contingency fees of the attorneys for the claimants for their work in dismantling the Trust.

Appellants expect to assert that because of his conflict of interest as the nominee of the Attorney General and as the trustee for Hynie Brown and Terry Brown, Mr Bauknight could not give an independent evaluation of the AG's settlement proposal, so that it was error for the court to accept his recommendation that the settlement be approved.

As well the appellants may question the Attorney General's authority to take over the estate's functions as he did such as determining the heirs.

The appellants will assert that the circuit court erred in compelling them, as improperly removed fiduciaries to sign documents they know to be false and damaging to the estate plan requiring them not to criticize the actions of the Attorney General and to speak only through their lawyers.

The fundamental question is whether properly managed private foundations — not public charities — are subject to being taken over by the Attorney General's office

It is simply unthinkable that *no one* has standing to seek appellate review of these important questions

ARGUMENT

I **Untested legal issues should not be resolved on an insufficient record**

The duly appointed and acting fiduciaries of this trust and estate were dealing in a normal manner with claims of undue influence, pretermitted child, and omitted spouse when the Attorney General of the State stepped in and took over, holding talks from which the fiduciaries were excluded, and giving away roughly half of Brown's assets in settlement of these claims. The Attorney General did this by claiming that the chief beneficiary of the estate was a charitable trust, and the Attorney General has the power to take over a charitable trust in his discretion, set aside the trustees, and speak for the trust. He then agreed with the disinherited members of the Brown family to unseat the duly appointed PRs/trustees without cause, replacing them with a nominee of their mutual choice, and obtaining a court order requiring the ousted PRs/trustees to signify their consent to all this.

There is not a case in the country that we have found — and certainly none has been cited by the respondents — holding that the ousted fiduciaries lack standing to appeal an order approving events such as these. The great mass of cases cited by the respondents in their motion are from foreign jurisdictions. None is in point. The few South Carolina cases cited are not even closely in point.¹ Nothing like this has ever

¹ For example, in *Epworth Children's Home v. Beasley*, 365 S.C. 157, 616 S.E.2d 710 (2005) (decided under the former §62-7-503), the Court held that where a testatrix has established a valid testamentary trust, the courts must enforce it. *Epworth* involved facts opposite to those here: the trustees wished to terminate the trust in a manner that would have violated the testatrix/settlor's intent. The AG intervened to protect the charitable trust from being destroyed. In the case at bar, the appellants were

been seen in the caselaw of South Carolina so far as we know

It is a familiar principle of South Carolina jurisprudence that novel legal questions should not be decided until the facts have been fully explored. The most frequent application of that rule occurs when a motion to dismiss a complaint is lodged (under the former practice a demurrer), asserting that South Carolina does not take the plaintiff's view of the law and will not do so in the future. See, e.g., *Evans v. State*, 344 S.C. 60, 67-69, 543 S.E.2d 547-551 (2001). Here, the facts have indeed been fully developed at trial. When this Court has the benefit of a Record of that trial and the other events which transpired in the court below, the Court will be in a position to give a full and mature consideration of the question of standing under these unprecedented facts.

Time after time in recent years our courts have reiterated that the rule [of standing] is not an inflexible one. *Thompson v. South Carolina Comm'n on Alcohol & Drug Abuse*, 267 S.C. 463, 467, 229 S.E.2d 718, 719 (1976). Accord *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005); *Davis v. Richland County Council*, 372 S.C. 497, 642 S.E.2d 740 (2007). Standing is assessed under all the facts and circumstances of the particular case.

The unique and unprecedented facts of the case at bar make it all the more important to await a full Record before assessing this important question. The motion should therefore be denied, and the question of standing addressed in due course in briefing and oral argument.

* * * * *

Our Supreme Court has identified the sources of standing as follows:

Standing may be acquired (1) by statute, (2) through the

appropriately defending the terms of the valid 2000 Trust as the persons expressly authorized to do so when the AG intervened engineering a radical alteration of the terms of the trust and crippling the testator's estate plan.

rubric of constitutional standing or (3) under the public importance exception

ATC South, Inc v Charleston County, 380 S C 191 195 669 S E 2d 337 339 (2008)

The appellants have acquired standing in all three ways

II The appellants have standing and authority under the 2000 Trust and the default trust code provisions

The first place to look for an authoritative answer to the question of standing is the Code of Laws See, e g , *Sloan v Friends of Hunley, Inc* , 369 S C 20, 630 S E 2d 474 (2006) (FOIA confers standing upon citizens)

The applicable code — the South Carolina Trust Code (SCTC) — is primarily a default statute The terms of a trust prevail over any trust code provision, with eleven exceptions These exceptions do not include the authority to settle or compromise claims against the trust S C Code Ann § 62–7–105(b) Thus the Trust Code confers upon a settlor the authority to appoint those who may defend the trust against attack and those who may settle claims against it The Court must therefore look to the terms of the Irrevocable Trust Agreement of James Brown dated August 1 2000 (2000 Trust) before looking to the statute in order to determine who has authority to defend the trust and to settle claims against it

A The Trust Agreement confers upon the trustees the authority to defend the trust

The private partially charitable 2000 Trust expressly gives authority and fiduciary discretion to its trustee to compromise, adjust, mediate, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against the Trust Estate as the Trustee shall deem best ' [2000 Trust Art X(19)] There is no provision or just reason for the Attorney General to substitute his judgment for the fiduciary discretion of a properly serving trustee There is no provision or just reason for beneficiaries and nonbeneficiaries to attempt to veto or override the fiduciary discretion of a properly serving trustee There is no provision or just reason for a court to substitute the

preference of the Attorney General for the fiduciary discretion of a properly serving trustee. This is what occurred in this case.

At all pertinent times before and during the seven-day hearing of the motion to approve the partial settlement, the duly appointed and properly serving trustees were Buchanan and Pope. They were also the duly appointed and properly serving personal representatives of Mr. Brown's estate. They were the only persons authorized to settle claims against the 2000 Trust or Mr. Brown's estate prior to the Order of May 26, 2009, approving the settlement agreement and replacing them with Mr. Bauknight.

The circuit court did not hear the settling parties' unfounded petition for removal for cause prior to the settlement proceedings. Rather, on January 7, 2009, while the settling parties' frivolous November 7, 2008 petition for emergency restraint and removal for cause was pending, the circuit court appointed Bauknight as limited SA/ST for the sole limited and exclusive purpose of reviewing and providing input and recommendations to the Court as to the proposed Settlement Agreement among the Petitioners in this case — over the objection of Buchanan and Pope — while also ordering Buchanan and Pope to continue to serve in their capacity as previously ordered by this Court and [they] will continue to be responsible for all estate and trust matters except for the limited duty of Bauknight. [Order dtd 01/07/09.]

The court deviated from the controlling terms of the 2000 Trust without setting forth any reasons for doing so. There was no evidence that Buchanan and Pope had abused their discretion or breached any duties. There was no reason to override their authorized fiduciary discretion in favor of persons not authorized by the 2000 Trust. After nearly two years of service and experience — during which time the court praised their service and found it to be ethical and appropriate — Buchanan and Pope's fiduciary discretion, supported by expert testimony, was given less weight than the self-serving recommendation of Mr. Bauknight developed during his 23-day-period of

service. In their capacity as the only persons duly authorized to settle the claims at issue, the trustees have standing to complain when their authority is usurped in this manner.

In addition to being unauthorized to settle or compromise claims against the estate and 2000 Trust, each and every settling party with any possible default statutory standing waived it by attacking and attempting to dismantle the valid 2000 Trust which provides, in similar fashion to the valid Will of same date:

Should any beneficiary contest the validity of Grantor's Irrevocable Trust, such beneficiary shall forfeit his or her entire interest [f]urthermore, **any person not provided for in this Irrevocable Trust,** Grantor's Will or other such instrument, whether or not claiming to be a beneficiary, party in interest, or otherwise **shall not have standing or otherwise be qualified** to contest, claim an interest in **or otherwise dispute the disposition of Grantor's estate** as he herewith disclaims and disinherits any such person. Any such alleged claim shall be considered an affront to the Grantor's wishes and shall be vigorously challenged as such by his fiduciaries.

[2000 Trust Art. XXI] [Emphasis added.] Article XXI confers standing upon appellants to challenge the Attorney General's contract to transfer more than \$40 million from the Trust.² Under the Trust Code's default provisions, S.C. Code Ann. § 62-7-105 (a) and (b), this trust provision has the force of a statute.

Although the settling parties initially challenged the Will and 2000 Trust, they stipulated that the same were valid when the Attorney General offered them 50% of the assets devised to and in the 2000 Trust. In consideration of their agreement to file a joint motion to remove the appellants and to join the AG in creating a new trust giving the AG full authority to appoint, control, and remove trustees at his pleasure, this new entity, ironically dubbed the James Brown Legacy Trust, was created not by James Brown but by the AG and by Mr. Brown's disinherited family members. But the settling

² The August 10, 2008 contract appeared to take only about \$42 million from the Trust. Subsequent amendments by the Attorney General required the Trust and Estate to pay \$12 - \$14 million of secret attorneys' fees and other taxes and payments, increasing the loss to more than \$50 million.

parties at that time had already forfeited any potential interest by continuing to pursue frivolous undue influence claims beyond the point of any reasonable bona fide inquiry, if cause for one ever existed. See *Russell v. Wachovia Bank, N.A.*, 370 S.C. 563, 632 S.E.2d 722 (2006) (no contest clause enforceable where contestant proceeded beyond reasonable inquiry); *Russell v. Wachovia Bank*, 353 S.C. 208, 578 S.E.2d 329 (2003) (summary judgment properly granted as to validity of will where contestants failed to meet heightened standard of unmistakable and convincing evidence of undue influence). The settling parties then stipulated to the validity of the documents they had contested. Their stipulation that the above Trust terms are valid is inconsistent with their failure to concede that Buchanan and Pope properly fulfilled their duty to defend the terms of the valid Will and 2000 Trust against all attacks. As the persons with standing to object, Buchanan and Pope are the persons with standing to appeal those matters.

All other fiduciaries forfeited any standing by either resigning and consenting to Buchanan and Pope's successor appointment where no Advisory Board existed, as provided in the 2000 Trust terms (Cannon, Dallas, and Bradley), or were improperly appointed without authority under the controlling 2000 Trust where Buchanan and Pope did not resign or consent to successor appointment (Bauknight), or were improperly appointed under the default statute where Buchanan and Pope did not resign and were not removed for cause (Bauknight). Nonfiduciaries — the settling parties, including the AG — waived any applicable default statutory standing to settle or compromise any claims by forfeiting any potential interest in said claims before reaching an unauthorized settlement that was erroneously approved by the circuit court.

B. Even if the Trust Agreement appointed no one to defend the trust, so that the default provisions of the Trust Code came into play, those provisions would confer upon the duly appointed trustees the authority to defend the trust.

There is no reason for this Court to look beyond the terms of the 2000 Trust

because it is valid. The parties stipulated to its validity. However, if the provisions of the default statute did come into play, the result would be the same: the duly appointed and acting trustees have standing to defend the trust. The appellants did not resign or consent to Bauknight's appointment, they did not abuse their authority or breach any duty, they were not removed for cause, and the result of the settlement agreement, approved over their objection, is an unjust evisceration of Mr. Brown's 2000 Trust.

Under the default statute, the Attorney General is only one of several persons who may maintain a proceeding to enforce the 2000 Trust. S.C. Code Ann. §62-7-405(c). These include the settlor, the trustee, and others. The AG, as chief law enforcement officer, appropriately intervened when Buchanan and Pope discovered and reported their predecessor Cannon's \$900,000 taking, but he thereafter exceeded his authority by taking control of the administration of the testator's estate and the 2000 Trust.

Because this appeal is in the nature of a proceeding to enforce the trust, the Trust Code would confer standing upon the trustees to bring this appeal, even if the trust itself were silent.

Moreover, two other provisions of the Probate Code lend standing to the appellants. Under § 62-1-308, appellants are Interested Persons injured by their improper removal as fiduciaries. And the appellants have statutory standing to appeal for benefit of the 'I Feel Good' Trust and Education Trust as statutory beneficiaries and representatives of the Settlor under §62-7-410 through §62-7-416 of the Trust Code.³

Under Probate Code §62-1-308, as the persons with a duty to defend the

³ Obviously the appellants are not beneficiaries of the 'I Feel Good' Trust in the traditional sense. Their statutory inclusion in the category of 'Beneficiary' was intended by the General Assembly to confer upon them the right to enforce the trust. Appellants' predecessors, Dallas and Bradley, waived this right by resigning. Appellants preserved their standing to appeal by objecting to Mr. Bauknight's appointment in all fiduciary capacities.

estate plan, appellants are interested persons injured by their improper removal as fiduciaries and actions which diminish their defense of the estate plan

More importantly the South Carolina Trust Code is a largely a default code, giving the Trust terms the force of law except under limited circumstances. Thus under §62-7-105 (a) and (b) the terms of the Irrevocable Trust including the standing and withdrawal of standing provisions of the Irrevocable Trust govern and grant standing to appellants to take all steps necessary to reverse the \$50 million affront to [his] wishes. During the pendency of this appeal of their improper replacement as fiduciaries, they have standing as interested others to vigorously challenge the attempts of these non-beneficiaries of the Irrevocable Trust to take tens of millions of dollars from the Trust.⁴ S.C. Code Ann. §62-7-405(c)

Under the same provisions, both the Attorney General by his August 10 contract, and his appointee Bauknight have forfeited standing to enforce, including standing to appeal any matter related to the Irrevocable Trust by their proposal to transfer \$50 million from the trust to non-beneficiaries.

Appellants for themselves and others (including those not properly joined as parties to Case 1647) have statutory standing as representatives of the Settlor James Brown under §62-7-410 through §62-7-416 of the S.C. Trust Code to challenge the Court's amendment to the Trust including the dismantling of its succession provisions without consent of either its properly serving trustees or the Advisory Board, incorporated by reference into the Trust, by placing this private trust under the direct control of the Attorney General, and allowing him to deviate from its provisions as he chooses.⁵

⁴ The amount to be taken from the irrevocable 2000 Trust is believed to exceed \$50 million.

⁵ No Advisory Board existed when predecessors Dallas and Bradley resigned. An Advisory Board did exist when the appellants were replaced without cause by the circuit.

The suggestion that the settlement is global or that all the beneficiaries of the Education Trust joined in it is both incorrect and troublesome. Appellants' accompanying affidavit dated March 12 outlines the omitted necessary parties for a global settlement, including those who were neither served nor noticed with the subject orders under appeal.

Appellants have statutory standing, as Trustees, as Personal Representatives, individually, and on behalf of all non-settling parties, non-noticed parties, creditors and taxing authorities, to appeal.

III The appellants have "constitutional standing"

The appellants have been ousted without cause from their fiduciary positions. The corpus of the estate and of the trust which they have a fiduciary duty to protect has been cut in half. They have been compelled to signify their agreement with the order which ousts them and which decimates the estate and the trust.⁶

These wrongs give the appellants standing under the three-part test of constitutional standing.

First, the plaintiff must have suffered an injury in fact — an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of — the injury has to be fairly trace[able] to the challenged action of the defendant, and not th[e] result [of] the independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

ATC South, Inc., *supra*, quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61.

Each of the injuries suffered by the appellants is concrete and actual. Each is

court, but the Board was not consulted.

⁶ The Court's later oral modification that appellants may annotate the documents with their disagreements as freely as they choose does not diminish the threat.

directly attributable to the order approving the decimation of the testator's estate plan entrusted to their care, and ousting them without cause from their positions. See, e.g., *Davis v Richland County Council*, 372 S.C. 497, 642 S.E.2d 740 (2007) (Recreation Commissioners had standing to challenge the constitutionality of a statute authorizing their removal from office); *Smiley v South Carolina Dept. of Health & Envir. Control*, 374 S.C. 326, 649 S.E.2d 31 (2007) (recreational jogger had standing to challenge permit for removal of sand from beach).

III This a case of public importance

The public importance exception to traditional rules of standing is firmly seated in the jurisprudence of this state. See, e.g., *Sloan v School Distr. of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000), *Sloan v Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003), *Baird v Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999), *Sloan v Stanford*, 357 S.C. 431, 593 S.E.2d 470 (2004), *Sloan v Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005), *Sloan v Hardee*, 371 S.C. 495, 640 S.E.2d 457 (2007).

The case at bar is of large public significance on two levels.

First is the impact of the order of May 26, 2009 on the private foundation which Mr. Brown created for the education of South Carolina and Georgia students. This order eviscerates the 2000 Trust. This case involves a tremendous sum of money diverted from the purpose intended by the settlor and handed to those whom he expressly intended to omit. In none of the public importance cases yet seen in this state has such a thing happened. Some of them have involved large sums of public money, but never with a claim of unlawful diversion or loss. This case raises the question of whether literally thousands of college students in the decades ahead will be deprived of the scholarship benefits intended for them by the settlor. Given the importance of education in our pantheon of values, it is scarcely debatable that this is a matter of great

public importance

On a second level of public importance is the question of whether the Attorney General has the legal authority to take over the administration of an estate and the operation of a private trust, settling claims against the estate as he sees fit and ousting protesting fiduciaries without cause. This conduct by the Attorney General is unprecedented. The public interest requires an authoritative judicial review of these actions and a determination of the limits of power in this office.

Settlers contemplating creating private foundations and counsel advising them should know whether the Attorney General serves as a threat to their vehicle for making a valuable, but personal, tax-favored contribution to society.⁷ Private philanthropy in South Carolina would be chilled if a settlor's funds could be diverted from the settlor's chosen class of recipients to the Attorney General's chosen class. If this is the law of South Carolina, the Bar and many others need to know it.

Private foundations like the I Feel Good foundation/trust are not public charities. They are an expression of private philanthropy sanctioned by this State and by the Internal Revenue Code. Under the laws of this state they are allowed to receive certain tax benefits in exchange for dedicating their assets for charitable, educational or scientific purposes which they select.

The State of South Carolina, through its Attorney General, has limited interests in private foundations. The Attorney General has a duty to enforce the criminal laws

⁷ See, e.g., Jonathan Klick & Robert H. Sitkoff, *Agency Costs, Charitable Trusts and Corporate Control: Evidence from Hershey's Kiss-off*, 108 COLUM. L. REV. 749, 781-2 (2008) (authors evaluate concerns regarding underfunding, overburdening, and conflicting political interests of state attorneys general); Carl J. Schramm, *Law Outside the Market: The Social Utility of the Private Foundation*, 30 HARV. J. L. & PUB. POLICY 355 (2006) (regarding concerns about state action to convert private foundations into public funds); Marion R. Fremont-Smith, *Governing Nonprofit Organizations, Federal and State Law and Regulation* 301 (2004) (attorney general has a duty to enforce in a broad sense but does not have a right to regulate or a right to direct either the day-to-day affairs of the charity or the action of the court).

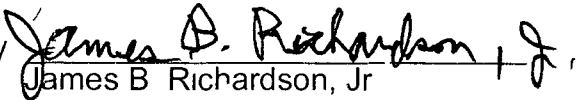
— at play here because of the confirmed taking by Cannon. If the Attorney General's authority over private foundations is as draconian as is claimed here, the Bar and the public should know it.

[Factual Addendum attached hereto with supporting Joint Affidavit of appellants both incorporated herein.]

Respectfully submitted,

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By 
James B. Richardson, Jr.

March 16, 2010

Attorneys for Buchanan and Pope

FACTUAL ADDENDUM

In a carefully considered estate plan envisioned for more than 20 years and crafted with the help of a certified specialist over a four-year period, celebrated entertainer James Brown dedicated his entire entertainment empire to two private trusts created solely for education.⁸ The primary components of the James Brown assets are his image and persona ("publicity right") and royalties to more than 700 published and certain unpublished songs, these two components having approximately equal value [Cox doc 6/07]

Mr. Brown's 1999 estate plan consisted of a *revocable* trust with and power of attorney (POA) [1999 Will, POA, Trust dtd 6/15/99]

The 1999 Trust provided lifetime discretionary support for Brown. At his death it divided into the Brown Family Education Trust (the Grandchildren's Trust) and "I Feel Good Trust" to provide scholarships for needy and deserving students at Voorhees U.S.C. Aiken and U.S.C. Salkehatchie [Trust dtd 6/15/99 Art V]¹⁰

Trustees of the 1999 *revocable* Trust were David Cannon, Albert Dallas, Alfred Bradley (the Cannon Group), Freida Carter, Willie Glenn Ella Overton and Linda Ware, all of whom except Cannon executed the 1999 Trust. PRs under the Will were the Cannon Group and Deanna [Trust dtd 6/15/99, pp 1, 14-16]

Linda Ware witnessed the Will and Trust and Carter served as Notary [Will dtd

⁸ Brown's will devises his personal and household effects (PHE) to Terry, Larry, Daryl Deanna, Yamma and Venisha Brown, four of whom are presumed to be heirs. Brown's will and the 2000 Trust exclude all past and future spouses and other claimed heirs [Will Intro Trust, Art XVIII]

⁹ The maximum size of the Education Trust under the 1999 and 2000 Trusts is tied to a federal estate tax formula: the maximum available generation skipping exemption. It provides possible education benefits of approximately \$285,000 to the following seven beneficiaries: Romunzo Forlando, Lindsey Janise Jason, Carrington and Sydney

¹⁰ Brown's 1999 will gave PHE to certain children. He gave the entire residue to the Trust [1999 Will, Item I II]

6/15/99]

Attorneys in fact under the POA were Deanna and the Cannon Group [POA p 1]

The following year James Brown executed his final estate plan. It contained only minor revisions to the 1999 version. The principal change was that James Brown made the 2000 Trust irrevocable. On August 1, 2000 Brown executed the 2000 Irrevocable Trust, the advisory board document, and his pour-over will. Daughter Venisha and companion Tommie Rae Hynie were witnesses to the Advisory Board document. Brown's POA was not changed.

The 2000 *Irrevocable* Trust, like the 1999 Trust, was dedicated solely to education. The Grandchildren's Trust was the same. The I Feel Good Trust, still for scholarships for needy and deserving students, was expanded to include students attending schools at all levels in Georgia and South Carolina.

Like the 1999 Will, the 2000 Will contained a pour-over provision incorporating the Trust by reference. This insured that Brown's entire estate would be dedicated to education, either by transfer before his death or under his will.

The Irrevocable Trust was established and funded on August 1, 2000. Brown deeded his home estate and assigned all of the shares of his wholly-owned company James Brown Enterprises, Inc. ('JBE, Inc.') to the Irrevocable Trust. Memoranda of Trust were filed in two states, and the Trust bought a bank building.¹¹ Brown's valid will leaves his entire entertainment empire to the Irrevocable Trust.¹²

¹¹ The building was sold.

¹² Under the Will, Terry, Larry, Daryl, Venisha, Deanna and Yamma each get 1/6 of Brown's personal and household effects, less Estate Taxes on what they get. The James Brown assets consist principally of his image and persona rights (Publicity Rights) and royalties to more than 700 published songs (Royalties). At his death on December 25, 2006, the assets, reduced by a debt secured by a pledge on most Royalties (the TIAA debt), were valued at about \$85 million. Royalties paid to TIAA for the first half of 2009 were about \$2.25 million.

The Irrevocable Trust is dedicated solely to education. The noncharitable Education Trust provides about \$285,000 in education benefits for each of seven designated grandchildren. None of Brown's claimed twelve or more children is a beneficiary. All past and future wives are specifically excluded as beneficiaries.

This estate plan was carefully designed over a four-year period beginning in 1996. Involved in frequent litigation himself, Brown took all reasonable measures to ensure that all his assets were dedicated to education.

In his estate plan executed on June 15, 1999, Brown included *In Terrorem* forfeiture clauses in both the will and trust, and a spendthrift clause in the trust.

A year later, on August 1, 2000, when Brown made small changes in his estate plan, and made his trust irrevocable, the *In Terrorem* forfeiture and spendthrift clauses remained in both the Will and the Trust.

Article XXI of the Irrevocable Trust provides

ARTICLE XXI¹³

Provision as to any Contest of Grantor's Estate Plan. Should any beneficiary under this Irrevocable Trust or Grantor's Will dated after or of even date with this Trust and as referred to herein, become an adverse party in a proceeding for the probate of Grantor's Will or in any manner contest the validity of Grantor's Irrevocable Trust, such beneficiary shall forfeit his or her entire interest thereunder and such interest shall pass to such other beneficiaries as would be entitled to take as if such beneficiary predeceased Grantor. Furthermore, any person not provided for in this Irrevocable Trust, Grantor's Will or other such instrument, whether or not claiming to be a beneficiary, party in interest, or otherwise shall not have standing or be qualified to contest, claim an interest in or otherwise dispute the disposition of Grantor's estate as he herewith disclaims and disinherits any such person. Any such alleged claim shall be considered an affront to the Grantor's wishes and shall be vigorously challenged as such by his fiduciaries. [Emphasis supplied.]

On November 20, 2007, Appellants were appointed under the 2000 Estate Plan.

Undisputed lay and expert testimony in the hearing which commenced January

² This Article is taken from the Trust, but the Will has a substantially identical provision.

30, 2009, confirmed that the proposal now revised transferred more than \$50 million to non-beneficiaries, their attorneys (estimated \$12–\$14 million) and for their estate taxes dismantled James Brown's estate plan, violated its purposes and provisions, and disqualified the "I Feel Good" private foundation. The settlement also reduces the share of beneficiaries of the private Education Trust from about \$285,000 per person to an undetermined but substantially smaller amount.

On March 26, after the close of petitioners' case, documents represented to be the final settlement agreement were filed. They consisted of the August 10 Contract, an addendum, the unsigned Legacy Trust, and a Contribution Agreement.¹⁴

With no showing or existence of cause for their removal, the circuit court replaced appellants with Russell Bauknight, already a trustee for Hynie Brown, Terry Brown, and others. The 2000 Trust's Advisory Board (nonexistent when Dallas and Bradley resigned) was not consulted.¹⁴ The Trust provisions were not followed, and James Brown's private trust and estate were placed under the control of the Attorney General.

In August the Attorney General obtained two more emergency *ex parte* orders with no showing of emergency. These violated an heirs' stipulation the Attorney General had made with Mitchell, Parris, and Pettit on January 30th, which caused them to withdraw from participation in Case 1647. The *ex parte* orders found incorrectly that petitioners were the only Interested Persons in the estate and trust.

The circuit court declined to vacate the *ex parte* orders.

¹⁴ Even Ella Overton, longtime companion of James Brown and James Brown's deceased wife Adrienne Rodriguez, an original designated a member of James Brown's Advisory Board who had never acted before, came forward seeking to become an active member and to defend the estate plan of James Brown. The Attorney General's office, which had previously asserted appellants' appointment was defective because the Advisory Board was not consulted, now asserted that the Board was unnecessary. The Court's stay of the James Brown cases from August 2008 until now prevented Overton's deposition prior to her untimely death.

No Probable Cause to Contest Will

A year and a day after their father's death and with knowledge¹⁵ of the validity of his 2000 estate plan (Irrevocable Trust and Will) and his 1999 backup plan five of James Brown's children challenged his Trust which had been functioning for more than seven years¹⁶ (Case 872") Four months later they served an amended complaint on some of the parties

Four months later, on August 10 2008 with motions to dismiss pending, the Attorney General and some of the children, with Hynie Brown, signed the August 10 Contract The Attorney General asserts his right to contract for the Irrevocable Trust without knowledge or consent of proper trustees to give about more than \$40 Million to these nonbeneficiaries of the 2000 Trust Their lawyers, who contested the valid estate plan on their behalf would be paid contingency fees estimated to be \$12 Million from James Brown's assets¹⁷

The Irrevocable Trust specifically omits Brown's children and any past or future spouse No part of the Irrevocable Trust, including the I Feel God private foundation is dedicated for any public purpose

The Irrevocable Trust embodies James Brown's lifelong philosophy that needy

¹⁵ 'Knowledge' is defined in Section 62-7-104 of the SC Trust Code

¹⁶ The challenge came after they had spent a year of the Court's time affirming Brown's estate plan and seeking to enforce the Irrevocable Trust in Case 122 on behalf of its minor beneficiaries Appellants assert that their representation to *enforce* the Irrevocable Trust on behalf of minors was permissible, while an action to defeat it was not

¹⁷ Original Trustee Cannon has always asserted that JBE, Inc. was transferred to the Trust in 2000 In August 2007 Trustee Dallas knowingly filed false documents with the Court asserting that JBE, Inc. was never transferred to the Trust Dallas has since admitted these filings were false and were intended to prevent his removal as Trustee Thus all original Trustees now confirm that they promptly implemented James Brown's August 1 2000 assignment, JBE Inc. resolution and stock power by transferring and accepting JBE Inc. as part of the Trust where it has remained since 2000 JBE Inc. holds about 2/3 of Brown's royalties These, with Beech Island, had a value at Brown's death of as much as \$35 million

and deserving people need a way out not a handout. That way out is education. It also provides education benefits of approximately \$285,000 each to certain grandchildren.¹⁸ The 'I Feel Good' private foundation, authorized under IRC § 501(c)(3) is dedicated solely to providing education scholarships to needy and deserving students attending school in South Carolina and Georgia.¹⁹

Between 2000 and 2007 the Irrevocable Trust provided education benefits to adult grandchildren Forlando and Romunzo Brown and minor grandchildren Sydney and Carrington L.²⁰

By order dated October 11, 2007 the Attorney General of South Carolina entered James Brown Case 122 to help *enforce* the 'I Feel Good' private foundation part of the Irrevocable Trust. Case 122 was brought to remove the Cannon Group as fiduciaries. By November 20, 2007 all had resigned.²¹

¹⁸ See Article VI. While generous, the Brown Family Education Trust, sometimes called the Grandchildren's Trust, is a private, non-charitable Trust.

¹⁹ The 1999 Trust provided similar scholarships, but only to those attending Voorhees U.S., Aiken and U.S.C. Salkehatchie [1999 Trust Article V].

²⁰ Shortly after appellants discovered Cannon's \$900,000.00 misappropriation in July of 2007, numerous other missing items were uncovered. By the fall of 2007 about \$6 million in direct misappropriations between 1999 and 2007 had been confirmed. In February 2007 appellants filed suit to recover from Cannon, Dallas and others more than \$12 million misappropriated from James Brown, the Irrevocable Trust and JBE Inc. between 1999 and 2007.

During the same 1999–2007 period Brown's daughter, Deanna, held a filed joint POA for Brown with Cannon, Dallas and Bradley, giving her full access to Brown's financial dealings. In December 2006 Deanna also briefly accepted a position as Trustee of the Irrevocable Trust with Cannon and Dallas. The three asserted she was replacing Bradley. Daughter Yamma accepted a position as executive assistant to the Irrevocable Trust. Son Daryl traveled with Brown and the Cannon Group to a business meeting in Atlanta in the fall of 2006.

There is no evidence that Deanna, Yamma or Daryl knew of the Cannon Group misappropriations until after Brown's death. Terry Brown and his son Forlando became joint venturers with Cannon, Dallas and Bradley after it was known that the Cannon Group sought options or a kickback from an asset sale, and after Cannon's cashing of the \$5 million check to nobody had been uncovered.

²¹ All later sought to return as Trustees but not as PRs. Cannon's attempts were unsuccessful. See SC Ct. Appeals Opinion No. 4570 filed June 23, 2009, refiled.

Beginning November 21 the Attorney General's office began asserting it had authority to take over all litigation related to the Irrevocable Trust, as well as James Brown's estate

On November 21, 2007 the Attorney General's office asked Appellants to resign as trustees. Appellants declined, explaining that it would return the Trust and estate to the chaos they had just inherited. The Attorney General's office aimed to replace them.²²

The record and orders, including those dated January 8, February 20, March 7, and April 8, are filled with recitations of the accomplishments of the appellants.

On July 30, 2008 the Attorney General acknowledged that appellants were appropriate trustees. They were planning to work together to appoint a third trustee.

Eleven days later on August 10, 2008, without appellants' knowledge the Attorney General's office met with several nonbeneficiaries of the Irrevocable Trust. The Attorney General executed a contract to seek removal of appellants and replace them and to give 50% of the Irrevocable Trust's assets and inheritance to nonbeneficiaries. [August 10 Contract, Exhibit A]

On September 28 the Attorney General brought Case 1647. On November 7

November 6, 2009 Dallas & Bradley's appeal of the Court's refusal to allow them to withdraw their resignation is pending in this court.

²² The Attorney General's communication was with Bill Hammond, former counsel to the Cannon Group, who described Cannon's \$900,000 taking from the Irrevocable Trust as a mistake. Hammond also had information which helped to confirm Cannon's improper cashing in 1999 of the \$5 million check to nobody — a \$5 million check with no payee that Cannon cashed at a local bank. The Attorney General's office told Hammond on November 27, 2007 that they were aiming to proceed. The Attorney General's office then used affidavits of wrongdoer trustee Dallas and of Hammond in an unsuccessful attempt to have the court reverse the trustee appointment of appellants. The Attorney General never objected to the appointment or service of appellants as PRs and did not timely appeal the April 8, 2008 order finding all of their service both appropriate and ethical.

2008 the petition was amended to name and seek emergency removal of appellants²³

Appellants all fiduciaries of James Brown and others raised appropriate and continuing objections to the lack of due process, improper parties lack of notice and other procedural and substantive errors in Case 1647, as well as to the terms and form of the proposed partial settlement after its approval was sought on January 27 2009²⁴ Appellants and former trustees Cannon Dallas and Bradley all asserted that the trustees were essential parties to any settlement agreement entered into by the Irrevocable Trust

Appellants testified at the hearing to consider the Attorney General's contract. They also called Harley Ruff as an expert witness. Both Pope and Ruff, without objection, were qualified as experts. All testimony other than Mr. Bauknight's²⁵ was to the effect that there was no probable cause to contest either the 2000 Trust or the Will, that statutes of limitation prevented a contest of the irrevocable 2000 Trust of which the

²³ The Attorney General incorrectly asserts that appellants were not parties to Case 1647. Appellants were named by the AG as parties in Case 1647 on November 7, 2008, and filed pleadings as parties to Case 1647. On January 27, 2009 the Attorney General filed with the court in Case 1647 a motion to approve settlement, with a signed August 10, 2008 Contract. He admitted he intentionally did not serve appellants. The motion unilaterally altered the caption of Case 1647 by omitting the names of the appellants and James II, although they had not been dismissed. Without motion or order the AG added to the Case 1647 caption the case numbers of Case 122 and Case 872. The parties to those cases were not served or given notice of the motion or pleadings in Case 1647. Appellants objected to the incorrect caption, improper notice, and lack of service.

²⁴ The 'final' version of the settlement agreement was filed on March 26, 2009, after the close of the Attorney General's evidence, three months after the AG had filed a motion seeking to approve the settlement. It added to the August 10 Contract and Addendum, a contribution agreement and the unsigned Legacy Trust (with Bauknight's name omitted).

²⁵ Mr. Bauknight acknowledged that he knew nothing about the litigation or James Brown's desires for his estate plan, and thought the \$83 million estate tax problem and federal Copyright Act issues were beyond the scope of his engagement.

entire family had knowledge,²⁶ and likewise demonstrated with other facts that there was no cause to contest the will dated the same day that Brown, knowledgeable about litigation, had carefully designed two estate plans over four years — both with the express intention to exclude family except for minor and education benefits²⁷

By January 7, 2009, the Attorney General had requested, and the circuit court had granted, the appointment of Bauknight as the independent fiduciary to review the proposed partial settlement. In seven days of hearings, all the evidence except Bauknight's was that the proposal was unreasonable and dismantled Brown's estate.

²⁶ See §62-7-104, which provides that a person has knowledge of a fact when the person

- (1) has actual knowledge of it,
- (2) has received a notice or notification of it, or
- (3) from all the facts and circumstances known to the person at the time in question, has reason to know it

²⁷ In addition to testimony regarding the \$40 million of unnecessary estate taxes and interest the settlement generated, Pope testified that it violated the Spendthrift clause, the *In Terrorem* clauses of both the will and the 2000 Trust that the criteria set out in §§ 62-7-411 through -416 were neither addressed nor met in the settlement, which violated the Settlor's tax objectives, and was wholly inconsistent with the Settlor's intentions, both charitable and noncharitable (Grandchildren's Trust) that the settlement was directly contrary to, and dismantled the Settlor's purposes, provisions and intention and that maintaining the Trusts for education, without beneficiary interference, was the overwhelming material purpose.

Pope also testified extensively about Brown's actions around the time of the execution of both the 1999 and 2000 estate plans. She confirmed that most of the children and both original adult grandchildren were already on record as confirming the validity of the estate plan — with Terry Romunzo and Forlando Brown insisting on enforcement of the *In Terrorem* clauses.

Pope testified that there was abundant evidence that the \$100 million offers made by the Cox Group were an accurate reflection of the date-of-death value of the assets before taking into consideration the TIAA debt. This was true despite the fact that the Cannon Group sought to pay themselves about \$16.5 million and get options or a kickback from a sale.

On March 25 no settlement agreement had been filed. Appellants moved to dismiss after the close of petitioners' evidence — consisting solely of Buchanan and Pope's testimony and that of Bauknight. Not one settling party testified. It was announced that Bauknight had been selected as PR/Trustee in addition to trustee of the Legacy Trust. The settlement documents were filed on March 26, 2009.

plan. The circuit court approved the appointment of Bauknight to serve at the pleasure of the Attorney General, and approved a partial settlement which takes more than \$50 million from the Irrevocable Trust, including an estimated \$12–\$14 of contingency legal fees for the attorneys for those who have dismantled the Irrevocable Trust.

Among the errors which led to the orders under appeal are that the Court ignored the undisputed testimony that there is no probable cause to contest the Irrevocable Trust or the Will and that all children and Hynie Brown have ratified both the Trust and the Will. The evidence shows that a transfer of more than 65% of the Irrevocable Trust to these nonbeneficiaries is unjust and unreasonable. The trustees of the Irrevocable Trust having been enjoined by the January 7 Order appointing Mr. Bauknight as SA/ST, they were prevented from protecting James Brown's estate plan.²⁸

After removing appellants without cause, the circuit court ordered them, as PRs, to sign the settlement documents. Among other things, the settlement documents require parties not to say anything negative about the settlement agreement and to speak only through their lawyers or in court.

On August 1, 2009, the Attorney General's office sought *ex parte* "emergency" orders naming Bauknight as ST and SA. There was no emergency. The unverified *ex parte* applications and orders submitted by the Attorney General incorrectly described the petitioners as the sole Interested Persons in the Irrevocable Trust and estate, and the sole beneficiaries. [See Orders dtd. 8/3/09, 8/6/09.] The circuit court refused to vacate the *ex parte* orders.

Cases 1647 and 1810 were consolidated in this appeal.

²⁸ Appellants and the 2000 Trust were deprived of due process in this matter. The January 7th order made no finding of cause for substituting Bauknight's recommendations in place of the fiduciary discretion of the properly serving trustees and the Advisory Board.

EXHIBIT A

This agreement made this 10th day of August, 2008 by and among the Attorney General of South Carolina Larry Brown (natural child of the deceased) Daryl J Brown (natural child of the deceased) individually and on behalf of his minor children Lindsey Delores Brown (age 17) and Janise ~~Waltera Brown~~ (age 12) Venisha Brown (natural child of the deceased) Deanna J Brown Thomas (natural child of the deceased) individually and on behalf of her minor child Jason Brown-Lewis (age 17) Yamma N Brown Lumar (natural child of the deceased) individually and on behalf of her minor children Sydney ~~Lumar~~ (age 8) and Carrington ~~Lumar~~ (age 6) Tonya Brown (grandchild of James Brown) individually and Tommie Rae Brown (hereinafter "Tommie Rae") individually and on behalf of her minor child James ~~Brown~~

The purpose of this agreement is to settle any and all differences among the parties above whose signatures appear below concerning the disposition, whether by will or otherwise and/or transfer of any assets owned or controlled by James Brown whether by will intestacy trust, or nonprobate means, state or federal law and based on this the parties hereto agree as follows

1 All parties who sign below hereby recognize and stipulate, for all purposes and matters, that Tommie Rae was the legal wife of James Brown, during his lifetime and at the time of his death and qualifies as his surviving spouse and agree not to contest any claim by Tommie Rae by virtue of her status as surviving spouse and to file any and all appropriate pleadings and documents recognizing and stipulating said status as spouse

2 All parties who sign below hereby recognize and stipulate for all purposes and matters that the children and grandchildren who sign below were and are the lawful and/or legitimate biological issue and heirs of James Brown during his lifetime and were in life at the time of his death, and qualify as his surviving issue and all parties agree not to contest any claim by any child or grandchild by virtue of his or her status as lawful and/or legitimate issue or as an heir of James Brown and agree to file any and all appropriate pleadings recognizing and stipulating said status of the children and grandchildren named as lawful and/or legitimate issue

3 All parties agree to say nothing negative in public or to any representative of the media about any of the parties hereto or about the terms of any settlement reached herein, whether about their roles in this litigation or their relative positions or status as an heir, child, issue spouse or as a grandchild and will further speak only through counsel or in Court about any matters relative to this case affecting or pertaining to each other or to this settlement This agreement does not prevent any parties from publicly discussing events in court or Orders issued by the Court so long as the parties are not critical of each other nor does this agreement prevent any party from giving interviews or publishing books or articles about their lives, so long as they are not critical of each other nor commenting upon the terms of the settlement or the negotiations that lead thereto The parties consent to an Order of the Aiken County Court of Common Pleas or to any appropriate Court to require the parties to comply with the terms of this paragraph of this agreement

4 Tommie Rae all children and all grandchildren (if possible as to the grandchildren) agree to meet in person at a convenient time as soon as reasonably possible to reaffirm in person their mutual support and cooperation as a united group in support of the legacy of James Brown and in

LJB

CBT
for UB
CBT for UB

JPB
J.B.

further support of the agreements made herein

5 It is noted that all parties to this agreement have filed at separate times pleadings objecting to the validity of the August 1 2000 Will of James Brown and the August 1 2000 Irrevocable Trust Tommie Rae, the children and grandchildren and the Attorney General of South Carolina (hereinafter the parties) have additionally agreed as follows

- TRB
- a) that a joint motion or other pleading will be filed seeking the removal of Mr Robert Buchanan and Ms Adele Pope as Personal Representatives of the Estate of James Brown and as Trustees of the 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
- b) that a charitable trust substantially similar to the August 1, 2000 Irrevocable Trust (hereinafter the "Charitable Trust") shall be created and/or maintained and shall be valid and enforceable, including but not limited to the possibility of amendment to the August 1, 2000 Irrevocable Trust by agreement of all the parties hereto. The trustees of the trust shall include at all times one representative selected by the parties hereto who are clients of Levenson and one representative selected by Tommie Rae. The trust shall also include an advisory board that shall include some member(s) selected by the parties hereto who are clients of Levenson and one representative selected by Tommie Rae
- c) that there shall be no DNA testing of any children or grandchildren (or their issue) who are parties to this agreement and all such motions for same will be withdrawn or dismissed by consent of all parties hereto
- d) that the parties hereto will create an entity (the "settlement entity") that will receive any and all assets and or proceeds payable to any of the parties now or in the future by virtue of any rights of James Brown, any of the entities of James Brown the Estate of James Brown, the August 1 2000 James Brown Irrevocable Trust the Charitable Trust and/or any rights the parties hereto have as heirs, devisees and/or successors to James Brown for any purpose, including not limited to copyright, royalty, persona, image likeness, etc. The parties will divide any and all such assets and or proceeds in the following proportions for as long as such assets and proceeds are paid into said entity or any successor entity thereto (1) 50% to Charitable Trust, (2) 25% to Tommie Rae Brown which includes any share attributable to James Brown, and (3) 25% to all parties hereto represented by Louis Levenson as they agree among themselves. Tommie Rae hereby waives any spousal right she may have to such assets to the extent that they might otherwise exceed 25% thereof. The parties hereto represented by Levenson waive any right they may have to such assets to the extent that they might otherwise exceed 25% thereof
- LB
- e) All parties hereto waive any claim or right to seek forfeiture against any party pursuant to any in terrorem and/or no contest clause under any will or trust of James Brown and specifically agree that any and all contests that were brought were brought in good faith

LJB

JB
JB
JB
JB

LB
J.B.

and with probable cause

- f) The promissory note and security deed currently due from the parties hereto represented by Levenson to the Estate of James Brown (with respect to the property known as Pops house which is the home of the father of James Brown) will be marked satisfied and paid in full by the settlement entity for no additional payment being due
- g) In the event that any party brings to the settlement entity any offer culminating in a contract to purchase property and/or rights from the settlement entity if such party's efforts are disclosed to the estate or trust or the settlement entity acting for said estate or trust, then such party shall be entitled to a finder's or broker's fee as shall be negotiated to the extent reasonable and appropriate under applicable law
- h) In the event that the property at 430 Douglas Drive Beech Island, SC is sold by the settlement entity, the parties hereto who are clients of Levenson shall have the right of first refusal to purchase said property at the Aiken County Tax Assessor's appraised value therefor as of the most recent assessment before the purchase. In the event the parties hereto who are clients of Levenson shall decline to exercise such right and close the sale within 120 days of the giving of the notice of the right of first refusal then Tommie Rae shall have a right of next refusal for the next 120 days on the same terms as set forth above after she receives notice thereof
- i) The parties agree that a trust similar to the Brown Educational Trust under the 2000 Irrevocable Trust will be established for the grandchildren of James Brown and their issue, for as long as allowed under the applicable Rule Against Perpetuities but in no event lasting for a period longer than 90 years from December 25, 2006. This Brown family educational trust shall be funded with a principal amount of \$2 million, which shall be carved out from the share of assets and proceeds payable to the Charitable Trust. Upon the termination of this Brown family educational trust the remaining principal and any undistributed income shall be distributed to the charitable trust
- j) The parties agree that any and all will and trust contests will be dismissed
- k) The parties agree to use their best efforts to extinguish any other outstanding interests or claims by any potential heir, devisee, or successor and to the extent the termination of such interest or claim requires payment, for such payment to be made from the settlement entity, which of necessity would be allocated among the parties to the settlement entity pro-rata in aliquot shares
- l) The parties agree that the settlement entity and/or the parties will endeavor to create an appropriate and respectful museum or other memorial burial place acceptable to the settlement entity in which to maintain the remains of James Brown preferably at 430 Douglas Drive Beech Island if feasible. If such is not accomplished within 7 years from date then in that event the remains will be interred in the cemetery where the parents of James Brown currently are located in Augusta, GA with the settlement entity paying

JB

Tom

LJB DBT JUB
DBT JUB
DBT JUB

JB

expenses of relocation Parties hereto represented by Levenson Tommie Rae and James Brown II shall all have reasonable opportunities to visit privately the gravesite upon reasonable notice The parties hereby waive any right to otherwise direct the location of the gravesite as a result of their status under law The parties consent to an Order of the Aiken County Court of Common Pleas or to any appropriate Court to require the parties to comply with the terms of this paragraph of this agreement

6 This agreement is a private binding agreement among the parties hereto Although the parties hereto may agree to ask the Court to approve this agreement this agreement remains binding among the parties and applies to personal representatives and trustees even if not approved by the Court

7 This agreement is binding on the heirs successors, and assigns of the parties hereto

Feb

Wally E. Brown

Levenson M. Musty
Attorney General

Tanya Brown

Deanna Brown Thomas

Deanna Brown Thomas for

Venisha Brown

Deanna Brown Thomas for

Yanna Brown

Tom

Tanya Brown

Wally E. Brown 8/10/08

Tom Brown 8/10/08

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MAR 16 2010
SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM Aiken County
Court of Common Pleas

The Honorable Debra A. Early III, Circuit Court Judge

Case No. 2009-CP-02-01047
Case No. 2009-CP-02-01810

In Re: The Estate of James Brown and
The James Brown 2000 Irrevocable Trust w/d August 1, 2000

Ex Parte 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,

Appellants

Henry Dargan McMaster, in his capacity as Attorney
General of the State of South Carolina Daryl J. Brown,
on behalf of his minor children Lindsey Delores B.
and Janise Vanisha B. Deanna J. Brown Thomas,
on behalf of her minor children, Jason Brown
L. Yamma N. Brown on behalf of her minor children,
Sydney L. Carrington L. and Tonya B.,
Vanisha Brown and Larry Brown Tommie Rae Hynie
Brown,

Respondents

v

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

Respondents

**JOINT AFFIDAVIT OF ROBERT L. BUCHANAN, JR.
AND ADELE J. POPE
OPPOSING MOTION TO DISMISS**

ORIGINAL

PERSONALLY APPEARED BEFORE ME ROBERT L. FUCHANAN JR.,
and ADELE I. POPE who being duly sworn, truthfully depose and say based on
their knowledge as defined by S.C. Code §62-7-104 as follows:

1 We incorporate by reference the record on appeal and briefs filed by us
in the David G. Carrion and Albert H. Dallas/Alfred A. Bradley appeals, both from
Aiken County Case No. 2007-CP-02-0122 (Case 122'). Some of the documents
are listed (some with brief description) on Exhibit A¹

2 On November 20, 2007 we became trustees of the James Brown 2000
Irrevocable Trust (the Irrevocable Trust) and Personal Representatives (PRs')
under James Brown's August 1, 2000 Will²

3 The Irrevocable Trust and Will finalize the estate plan James Brown
developed over four years between 1996 and 2000. James Brown's final 2000
Estate Plan is almost identical to his June 15, 1999 estate plan [ROA p. 2647, p.
2638]. Both leave his entire entertainment empire, estimated to have a gross
value of \$100 million at his death, to education, in two private trusts.

4 We were the only fact witnesses in Case 1647 other than Russell
Bauknight. Bauknight admitted he knew nothing about the James Brown
litigation or James Brown's desires for the disposition of his assets. He had not

¹ References to ROA are to the Dallas/Bradley Appeal.

² ROA p. 2663, ROA 2685. James Brown died on December 25, 2006. After
serving as Special Administrators (SAs) of the Estate beginning March 7, on
November 20, 2007 we were appointed Trustees and PRs.

reviewed the estate planning file'. He did confirm that as far as he knew we had performed our service correctly – which was true – and the more than 20 James Brown cases were being handled appropriately. This was also true.

5 We properly performed all of our services through May 26, 2009 and have fully accounted for our actions during that time.

6 Some of the facts in the record of Case 1647 and Case 1810 on which we base our standing to pursue this appeal are:

- a. We and others made proper and continuing objections to the Attorney General's emergency actions, lack of notice, failure to join parties, and the court's refusal to join proper parties, dismiss improper parties, or hear dispositive motions before approving the Attorney General's August 10, 2008 Contract (the August 10 Contract) [Ex. B].
- b. The August 10 Contract, as amended, damages the Irrevocable Trust and Estate by an amount we believe to be more than \$50 million⁴ and removes the only persons actively defending James Brown's Estate Plans and preventing return of Cannon/Dallas and Bradley as Trustees. That damage is described on Ex. D-G.
- c. The January 7 order appointing Bauknight was issued after an emergency November 25 hearing with no emergency, no opportunity to be heard, and no proper notice.⁵

³ Bauknight did not know that the Summons and Amended Petition in Case 872 challenging the Irrevocable Trust was served just 4 months earlier, that the Attorney General had not answered in Case 872 when he executed the August 10 Contract, or that dispositive motions to dismiss Hynie Brown had been filed on grounds that she was married to someone else when she had a 2001 ceremony with James Brown, she had executed a prenuptial agreement before the invalid marriage, and, after Brown discovered her marriage, she filed in Brown's Aiken County Family Court proceeding against her a settlement agreement relinquishing any right to claim to be his common law spouse.

⁴ See Ex. C, Jan. 29 Agreement Charts, Exs. D, E, F and G showing loss.

⁵ The emergency hearing to appoint Bauknight special administrator and special trustee (SA/ST) was held on November 25, 2008, just 18 days after the

- d Bauknight's service as trustee under the Legacy Trust for Cannon/Dallas Joint Ventures Terry Brown, Hynie Brown and others was not disclosed until March 25, 2009. This fiduciary relationship of Bauknight with Terry has interfered with the Estate/Trust's recovery of the \$12+ million missing from the Cannon/Dallas group.
- e The Irrevocable Trust specifically excludes Hynie Brown and all children of James Brown, whether born before or after the Trust.
- f The May 26 order, and the *ex parte* Case 1810 orders violate the purposes and provisions of the Irrevocable Trust and dismarble without probable cause James Brown's 2000 and 1999 Estate Plans, both of which leave his entire musical empire to private education trusts.
- g The Attorney General's January 29 Agreement granting Terry about \$4 million and a 10-year right of first refusal to purchase James Brown's assets violates the *In Terrorem* clause which Terry, Forlando and Romunzo vigorously assert should be enforced. It will also likely cause the I Feel Good Trust to be disqualified as a private foundation.⁶
- h There is no evidence that either James Brown or any family member knew before his death of Cannon's secret \$5 million misappropriation in 1999 or other wrongful acts of Cannon and Dallas, although

filing of the Summons and amended Petition. There was no showing whatsoever of emergency, affidavits of service of the Summons and Amended Petition were not filed as to Forlando, Romunzo and other parties. Numerous necessary parties were not named. See Petition of Dallas/Bradley to remove Bauknight for breach of fiduciary duty, and portion of the Cannon filings. [Ex. H]

⁶ Terry is not a beneficiary of the Irrevocable Trust. He has been a Cannon/Dallas joint venturer since at least March 2008 when he was part of a \$92 - \$102 Million TJBL offer to purchase the James Brown assets. On December 5, 2007 Terry's son Forlando became a non-contributing 39% owner of TJBL. On January 2, 2008 Forlando, represented by Powell Goldstein, sued us in Federal Court seeking return of Cannon/Dallas/Bradley as Trustees, to void all Case 122 orders as they relate to the Irrevocable Trust, and to enjoin the Irrevocable Trust from taking any action until the Cannon Group was returned. The Attorney General declined to intervene to assist us in the protection of the Irrevocable Trust. [Ex. I]. The federal lawsuit is pending.

daughter Deanna held a power of attorney (POA) with Cannon, Dallas and Bradley since 1999⁷

- There is no evidence that the secret misappropriations of Cannon and Dallas had any impact on James Brown's estate plans in 1999 or 2000. Both left nothing to Cannon, Dallas or Bradley, and provided only reasonable compensation for fiduciaries, limited by Internal Revenue guidelines
- j Before making the March 2008 combined challenge to the Irrevocable Trust and Will, virtually all family members and Hynie Brown had taken action to enforce Brown's Estate Plan or affirm its validity⁸
- k The Attorney General took no action to answer or help defend the March 2008 challenge to the Irrevocable Trust, but attempted to contract to transfer more than \$40 million from the trust about 3 months after his answer was due [See Ord dtd 3/8/08, Ex J]
- l The Irrevocable Trust has been in active, open existence and a matter of public record in two states for more than nine years⁹

⁷ Deanna was actively involved with her father and serving under the POA in 1999 when Cannon cashed the \$5 million check to nobody' at a local bank. In December, 2006 Cannon and Dallas attempted to replace Bradley with Deanna and make Yamma executive assistant to the Trust

⁸ Venisha and Hynie Brown signed the Advisory Board document, part of the 2000 Trust [ROA p 2684] Hynie Brown's counsel believes she was a member of the Advisory Board [Tr Hg , 3/7/08, p 159] In February 2007 Daryl Deanna and Yamma filed affidavits in Case 122 asserting their status as beneficiaries under the Will in order to obtain standing in Case 122. They sought standing for their children — none of whom are heirs — to *enforce* the Irrevocable Trust because the children are beneficiaries of the Education Trust. Grandchildren Romunzo Forlando, Sydney and Carrington sought and received Education Trust benefits from the Irrevocable Trust

⁹ Witnesses to the validity of Brown's estate plan in addition to children and grandchildren, include attorney Jay Ross, attorney Leon Friedman Hynie Brown, Frieda Carter, Mary Holmes Larry Fridie and ourselves [after review of more than 1 million pages of documents] Many of the same witnesses would confirm the validity of the 1999 Estate Plan

- m Completing the defense of the Estate Plan of James Brown is estimated to save most or all of the estimated \$12 \$14 million in contingency fees the August 10 Contract pays to nonbeneficiaries of the Irrevocable Trust and is estimated to cost substantially less than \$250,000 Our payments to counsel as shown in the accounting and claim of attorney James Bailey show that we have and will efficiently use counsel to benefit James Brown's Estate Plan the Irrevocable Trust and the Estate
- n If successful, the Cannon and Dallas/Bradley appeals we perfected should result in an accounting by Dallas and Bradley (2 years overdue) and payment by Cannon, Dallas and Bradley of all of the Trust and Estate's legal fees in Case 122 benefitting beneficiaries [See Order dtd 4/8/08, Case 122, ROA p 156]
- o The unappealed order dated March 8, 2008 in Case 872¹⁰ finds that a correct determination of James Brown's heirs is important, although they receive nothing from the Irrevocable Trust That determination was interrupted, damaged and distorted by the August 10 Contract, and damages the Trust/Estate's ability to protect itself under the Federal Copyright Act
- p Terry Brown is a joint venturer with Cannon Dallas and Forlando in TJBL Forlando owns 39% of TJBL, and Cannon/Dallas seek options or a 'kickback' in TJBL's planned purchase of James Brown's assets
- q Powell Goldstein (PG) represented Cannon/Dallas but refuses to deliver the file in violation of the August 10, 2007 order in Case 122 PG also represents Forlando in the federal suit to return Cannon/Dallas as Trustees TJBL, and Terry
- r Before November 7, 2008 we discreetly attempted to prevent the Attorney General from damaging the Irrevocable Trust through alliances with Cannon Dallas and Hynie Brown and their representatives [See Ex I]
- s All previous fiduciaries of the Irrevocable Trust agree that Bauknight has an irreconcilable conflict in service as PR/Trustee under Brown's Estate Plan and under the Legacy Trust for Hynie Brown, Terry and

¹⁰ The March 8 Order uses Case 122, but the Court assigned # 872 to the Will/Trust/Heirs proceeding shortly thereafter [Ex J]

others. Authorities cited by the Attorneys General confirm the conflict.¹¹

- t. Bauknight's fiduciary obligations to Cannon/Dallas joint venturer Terry jeopardize the Estate/Trust's ability to recover the \$12+ Million in losses Cannon/Dallas caused and losses caused by Forando in the federal suit to return Cannon/Dallas as Trustees.¹²
- u. The facts in the Case 1810 *ex parte* orders, including that petitioners are the only Interested Persons in the Irrevocable Trust and all Interested Persons consented to the appointment of Bauknight as PR/Trustee, are not correct, and the Attorney General had knowledge they were not correct.¹³

7. We are informed and believe that no Global Settlement and no 'Agreement Among Successors to Decedent' was reached because the Irrevocable Trust is an essential party to either and did not agree to any settlement. Also, essential parties were omitted by the Attorney General from Case 1647 and Case 1810: the court declined to hear motions to join them, and the court applied inappropriate standards to consider the Attorney General's

¹¹ See Motion of Ga. Attorney General dtd 11/29/07, ROA, Vol II, p 872; Objection of Attorney General dtd 12/14/07, ROA, Vol II, p 923. The April 8, 2008 Order in Case 122 rejected those arguments as to the PR/Trustees of James Brown's Estate Plan based on the opinion of expert Rita Cullum and testimony of Pope, because Brown's estate plan is 'unified'. The Legacy Trust is not unified with the 2000 Estate Plan because the majority of Legacy Trust beneficiaries are not beneficiaries of the Irrevocable Trust and the \$50 million they seek violates the *In Terrorem* clauses.

¹² See Ex. H: Conflicts of Estate Plan/Legacy Trust.

¹³ §62-7-104 of the S.C. Trust Code defines Knowledge as

- (1) has actual knowledge of it,
- (2) has received a notice or notification of it, or
- (3) from all the facts and circumstances known to the person at the time in question, has reason to know it.

August 10 Contract The missing necessary parties to any global settlement which affects the Estate/Trust's Federal Copyright Act rights include

- a Beneficiaries of the Estate
Buchanan and Pope as Trustees of the Irrevocable Trust
Venisha Brown - has not appeared and did not sign August 10 Contract¹⁴
- b Personal Representatives of the Estate
Buchanan and Pope or the successors they appoint
- c Trustees of the 2000 Trust sole residuary beneficiary of the Will
Cannon (But See Nov 6 Order)
Dallas & Bradley - resigned but appealing Court's failure to reinstate¹⁵
Buchanan and Pope
- d Members of the Advisory Board - not in place on November 20 2007 but active and serving between November 2008 and May 2009
- e The fiduciaries, beneficiaries and proponents of the 1999 Estate Plan, including Voorhees University U S C Aiken, U S C Salkehatchie, Frieda Carter and us,
- f The presumed Heirs of James Brown including Lisa Brown Jeanette Mitchell, LaRhonda Pettit, and Cinnamon Parris

¹⁴ Venisha did not sign the August 10 Contract or other documents Deanna signed the August 10 Contract for Venisha under a nondurable springing power of attorney (POA) which is effective only if Venisha is incapacitated Venisha's counsel, Mr Levenson, has never notified the court of any incapacity although newspaper accounts indicate she was jailed at some point during Case 1647

¹⁵ Dallas and Bradley resigned as PR/Trustees and from all fiduciary positions on November 20, 2007, as had Cannon on August 10, 2007 On November 29, 2007, Dallas/Bradley sought reconsideration of the order accepting their voluntary resignations as Trustees, which was denied on March 7 and April 8, 2008 Dallas/Bradley were the only timely appellants of the November 20 March 7 and April 8 orders On March 5 2010 their counsel Wayne Byrd, moved this Court and the circuit court to be relieved as counsel for Dallas/Bradley in several pending cases based on the clients failure to make satisfactory arrangements for compensation

- g The claimed Heirs of James Brown, who are presumed not to be Heirs including Deon Brown (Incarcerated but seeking counsel See Ex K) and James II, by his Guardian ad Litem
- h The adult and minor beneficiaries of the Education Trust, with the minors represented by GALs and acknowledging the dismantling of their \$285 000 fund each Romunzo, Forlando, Jason (not made a party, even though an adult), Lindsey (not made a party even though an adult) Carrington (no GAL), Sydney (no GAL), Janise (no GAL)
- i The non-settling parties not properly joined, the taxing authorities, not joined, and all proper creditors, including those we engaged pursuant to the terms of the Trust and by court order
- j Us, as proponents of the 1999 Estate Plan and its Education Trust and I Feel Good Trust

Attorney General's requests to stay, and court's refusal to hear and dismiss case 872 claims, as a matter of law

8 On March 8, 2008 the Court's order indicated that all responses to the amended petition challenging the Irrevocable Trust and Will in Case 122 be served by May 7 2008 [Exhibit J, ¶3 4 p 13]

9 The only beneficiaries of the 2000 Will are

a Beneficiaries of Personal and Household Effects (PHE)

Deanna – Affidavit dtd/1/24/07 supports Will [Ex L – CROA p 187 – 189, January 24 2007 Affidavits of Deanna Brown Daryl Brown and Yamma Lumar], briefly served as trustee of Irrevocable Trust sued Brown in 2002 in Georgia related to royalties and acknowledged she was omitted from Estate Plan

Yamma – Same as Deanna but Executive Assistant to Trust [Ex L CROA, p 184 - 186]

Daryl - Worked with Brown Filed 1/24/07 affidavit supporting Will [Ex L, CROA, p 190 - 192]

Larry - participated with Deanna, Yamma and Daryl in Case 122 to enforce Trust, and remove Cannon, Dallas and Bradley

Terry – Filed repeated requests to enforce *In Terrorem* clauses of Trust/Will [Ex M]

b Beneficiary of Entire Residue The 2000 Irrevocable Trust

10 The Attorney General did not timely respond to the March 2008 Case 872¹⁶ Summons and Amended Petition, leaving to us the defense of the Estate Plan

11 We answered in Case 872 and sought to dismiss all claims based in part on the *In Terrorem* clauses, Estoppel In Pais because Petitioners spent a year supporting the Trust and Will in Case 122, Waiver by asserting status under Will to bring Case 122, Laches by failing to act with knowledge of the 1999 and 2000 Estate Plans for 8 years and Statutes of Limitation. We also sought admission to probate of the almost identical alternate 1999 Estate Plan, with scholarship and the Trust's assets distributed at determination to Voorhees U S C Aiken and Salkehatchie

12 Two months after failing to answer, on July 30, 2008 the Attorney General approved us as permanent Trustees. On August 10, 2008 he secretly contracted to give away more than \$40 million from the Irrevocable Trust. And on August 19 and thereafter he asked the Court not to hear our dispositive motions which, on information and belief would *as a matter of law* have resulted in dismissal of all or most claims against the Estate Plan. At the Attorney General's request the circuit court refused to hear these dispositive motions

¹⁶ Then still a part of Case 122

13 The undisputed testimony is that even if not barred by statutes of limitations and other affirmative defenses there are no facts to support the necessary elements of undue influence, articulated in one of the Russell Cases¹⁷ as follows

for a will to be invalidated for undue influence, the influence must be the kind of mental coercion which destroys the free agency of the creator and constrains him to do things which are against his free will, and that he would not have done if he had been left to his own judgment and volition Id at 217 579 S E 2d at 333, citing Last Will and Testament of Smoak v Smoak, 286 S C 419 334 S E 2d 806 (1985) Undue influence must be shown by unmistakable and convincing evidence which is usually circumstantial Id The evidence must show that the free will of the testator was taken over by someone acting on testator s behalf Id Undue influence is demonstrated where the will of the influencer is substituted for the will of the maker Id

Generally, in cases where a will has been set aside for undue influence, there has been evidence either of threats, force, and/or restricted visitation or of an existing fiduciary relationship Hembree v Estate of Hembree, 311 S C 192 428 S E 2d 3 (Ct App 1993) The mere existence of influence is not enough to vitiate a Will A mere showing of opportunity and even a showing of motive to exercise undue influence does not justify a submission of that issue to a jury, unless there is additional evidence that such influence was actually utilized ” Last Will and Testament of Smoak, supra, at 424, 334 S E 2d at 809 Where the testator has an unhampered opportunity to revoke a will or codicil subsequent to the operation of undue influence upon him, but does not change it the court as a general rule considers the effect of undue influence destroyed Smith v Whetstone, 209 S C 78, 39 S E 2d 127 (1946), as quoted in Estate of Cumbee, supra

14 There is no evidence that James Brown knew of the wrongdoing of

¹⁷ Russell v Wachovia 353 S C 208, 578 S E 2d 329 (2003)

Cannon and Dallas Deanna was serving under Brown's POA with Cannon and Dallas and helped establish the I Feel Good and Education Trust but did not know Nor were other elements met because

- a The undue influence, if any, was much later and not brought to bear on the documents
- b The 1999 and 2000 Estate Plans conform to James Brown's wishes and desires
- c Cannon, Dallas and Bradley were given nothing under the 1999 or 2000 Trusts or Wills, and did not – and could not legally – benefit from them
- d Brown openly acknowledged the Estate Plan, including details of the Trust, for more than six years
- e Brown had knowledge of the Estate Plan for six years while Cannon and Dallas actively served as Trustees and did not change the plan or assert impropriety
- f The Trusts and Wills do not express the will of Cannon, Dallas or Bradley

15 Even if Hynie Brown were to be found to be Brown's spouse, her Claim would be limited 1/3 of the Estate, after all debts and expenses of administration She is not entitled to any part of James Brown Enterprises, Inc [JBE, Inc] or Beech Island, both of which we now believe were transferred to the Trust¹⁸ We are informed and believe that the Court should have ruled as a

¹⁸ To prevent his removal as Trustee and pretend to appear to distance himself from Cannon Dallas previously filed false documents saying JBE Inc was never received by the Trust He admitted that they were false, and that JBE Inc which holds the rights to approximately 2/3 of James Brown's more than 700 published songs, has been in the Irrevocable Trust since August, 2000 Cannon has always asserted JBE, Inc was in the Trust

matter of law that he could never be entitled to ½ of the Estate or any portion of the Irrevocable Trust under §62-2-301 because Hynie Brown is not a beneficiary of either the Trust or Will and it is clear from both documents that the omission was intentional.

16 We are informed and believe that the Court erred by refusing to rule as a matter of law that James II - not born of any marriage - could not be declared the child of James Brown based on his refusal to take the Court-ordered official DNA test, and that the Attorney General had no authority to waive his taking the test or declare him, or anyone else, an heir of James Brown.

17 Even if the Attorney General could waive court-ordered testing and declare James II Brown's son, we are informed and believe that the circuit court erred in refusing to rule as a matter of law, that James II could receive nothing from either the Trust or the Will under §62-2-302 because it is clear from the face of both the Trust and Will that his omission was intentional.

18 We are informed and believe that we have both standing and a duty¹⁹ to conduct this appeal for ourselves individually and as improperly removed fiduciaries, and also for all of the necessary but not joined parties until there is proper proceeding in which they are made parties and given adequate notice and opportunity to be heard.

19 We are informed and believe that we are the only remaining

¹⁹ Under the Irrevocable Trust, the Will, the 1999 Estate Plan, the August 10, 2007 and April 1, 2008 Orders in Case 122 and applicable law and principles of fairness.

unimpaired parties to Case 1647 with standing to enforce James Brown's Estate Plan

Standing to Enforce "I Feel Good" subtrust is not Standing to Contract or Bind Irrevocable Trust or Estate

20 Bauknight recommended the dismantling of the Estate Plan of James Brown fewer than three weeks after reading his order of appointment as SA/ST. He recommended both the Attorney General's August Contract and January 29 Agreement with Terry Brown which would

- a transfer \$50 million from the Irrevocable Trust to nonbeneficiaries specifically omitted from the Trust,
- b remove properly serving fiduciaries of the estate, private non-charitable Education Trust and private "I Feel Good" Foundation and place them under the control of the Attorney General,
- c allow the Attorney General to appoint and remove fiduciaries at will
- d defeat the non-charitable \$285,000 Education Trust fund for seven beneficiaries
- e damage the Federal Copyright Act rights of the Trust and Estate by an "incorrect stipulation" of heirs
- f grant \$4 million and a 10-year right of first refusal to Terry,
- g require the signatories not to complain about either the Attorney General or the August 10 Contract and to speak only in court through their attorneys

21 Bauknight testified that we raised numerous sincere objections and questions about the August 10 Contract, including asserting that we – not the Attorney General – were the only persons to bind the Irrevocable Trust and Estate to contracts and compromises and claims

21 Bauknight testified that he raised this issue with the Attorney General who assured him that the Attorney General had authority to bind the Irrevocable Trust [Tr. Hg. 1/30/09, p. 110]

23 Bauknight testified that he relied on the representation of the Attorney General as to the Attorney General's authority and that his recommendation would have been different if the Attorney General did not have such authority [Tr. Hg. 1/30/09 p. 110]

24 We are informed and believe the Attorney General's right to enforce the 'I Feel Good' Trust allows him to represent the interest of the charitable beneficiaries, if the 'I Feel Good' private foundation is not being administered according to its terms

25 We are informed and believe that neither traditional beneficiaries nor statutory beneficiaries of charitable trusts have any right to contract for the trustee of a Trust in violation of its provisions

26 When the Attorney General failed to answer in Case 872, we do not believe that his action was binding on the Trust since we answered and otherwise protected the interest of the Trust

27 Under the law and under the Article X (19) of the Irrevocable Trust the authority to settle claims and enter into contracts is the function of and reserved to the trustees. The same is true under Item VI of the Will for the PRs

28 The Attorney General previously urged that the succession provisions of the Irrevocable Trust must be followed

29 The Attorney General's August 10 Contract to remove us and replace us in violation of the terms including the *In Terrorem* clause is in stark contrast to our proper appointment on November 20

30 On November 20, 2007 all trustees had resigned, and there was no Advisory Board in place. Thus our appointment by the Court was in accordance with the provisions of the Irrevocable Trust and Will

31 The Attorney General's Contract, however, was to remove us without cause. We did not resign

32 While there was no Advisory Board in place in November 2007, there was an active Advisory Board in place on May 26, 2009 consisting of Dr Leonard McIntyre, Dr Ann Carmichael, and Judge (retired) Walter Williams²⁰. Further Ella Overton – now deceased and inactive until 2009 – also applied in writing to be a member of the Advisory Board to support the Irrevocable Trust

33 We are informed and believe all recommendations and all fiduciary appointments of Bauknight are tainted and should be set aside by his reliance on the representations of the Attorney General and nonbeneficiaries of the Trust and his fiduciary duty to those nonbeneficiaries. Exhibit H outlines some of the multiple irreconcilable conflicts of interest Bauknight's service as Trustee of the Legacy Trust has with James Brown's estate plan

²⁰ Inez Tenenbaum resigned when she was considered for a federal appointment

Standing to Enforce does not Grant Standing to Dismantle

34 Many parties have had standing to enforce all or part of the Irrevocable Trust and the 1999 Estate Plan if the fiduciaries do not follow the terms of the trust. We do not believe this confers a right to contract for or dismantle the Irrevocable Trust or any Estate Plan.

35 We are unaware of any case where an Attorney General with a right to *enforce* a private foundation which is part of an irrevocable trust being properly managed has a right to contract to remove those properly-serving trustees transfer \$50+ million from the trust, and take over the administration of not only the private foundation, but the noncharitable trust and the settlor's estate all in violation of its purposes and succession provisions. We are informed and believe that a contract to do this, and to work with nonbeneficiaries to defeat the interest of beneficiaries, exceeds and abuses the Attorney General's authority, violates due process rights, and should not bind the Trust or estate.

Parties with standing to enforce terms of the Irrevocable Trust

36 We are informed and believe that any party with a right to enforce any part of the Irrevocable Trust or the Will should have standing to conduct this appeal. We do not believe, however, that the Attorney General is the appropriate party to decide whether to appeal his own actions which are alleged to exceed and abuse his authority and violate constitutional rights.

37 The parties who, since 2000, have had a right to enforce the Irrevocable Trust, and the reason they are currently impaired is summarized below

- a James Brown — Settlor, standing to enforce Deceased
- b Cannon — Trustee, standing to enforce voluntarily relinquished August 10, 2007 by his resignation
- c Dallas/Bradley — Trustees, standing to enforce voluntarily relinquished November 20, 2007 by their resignation
- d Original Advisory Board — standing to name successor upon resignation or removal without named successors

Ella Overton, Willie Glenn, deceased
Deanna Thomas supported appointment of Buchanan/Pope, later relinquished before August 10, 2008 by challenge to Estate Plan

- e Attorney General of South Carolina — standing to enforce the 'I Feel Good' subtrust as Statutory Beneficiary under South Carolina Trust Code, relinquished or impaired by one or more of the following acts and inaction
 - 1 Failure to assist Trust with Cannon appeal (2008)
 - 2 Failure to assist with Dallas/Bradley appeal, while relying on Dallas and Bradley in attempts to overturn PR/Trustee appointment²¹
 - 3 Refusal to intervene to protect Trust from Forlando's attempts to return Cannon/Dallas as Trustees and void all Case 122 orders as to Trust
 - 4 Failure to file and pursue answer in Case 872 challenges to Trust or assist with motions to confirm that Hynie Brown is specifically omitted from all documents, presumed not to be surviving spouse, and signed prenuptial agreement

²¹ Damaging Trust's ability to recover all Estate/Trust legal fees from Cannon/Dallas/Bradley, as ordered in Case 122

- 5 August 10 Contract to transfer \$40+ million from trust to non-beneficiaries defeat beneficiaries, and replace proper trustees
- 6 January 29 Agreement to give \$4 million and right of first refusal which disqualifies "I Feel Good" private foundation to Cannon/Dallas joint venturer, take over "I Feel Good" Trust and Education Trust, as well as Estate, all in violation of provisions and purposes of Trust

f Buchanan and Pope —

- 1 Standing as improperly removed PR/Trustees as well as under unappealed August 10, 2007 Order in Case 122 authorizing us to act as SAs where the remaining PR/Trustees cannot act
- 2 Standing as improperly removed PR/Trustees, and individually, as to violations of our Due Process and First Amendment rights, and those of others
- 3 Standing as proponents in Case 872 of alternate 1999 Estate Plan
- 4 Standing as PRs to correctly determine heirs in order to protect the Estate/Trust's Federal Copyright Act rights where the Attorney General's August 10 Contract compels him to attempt to defeat the Trust's interest
- 5 Statutory Standing to enforce the "I Feel Good" charitable portion of the Irrevocable Trust according to its terms for its charitable beneficiaries the Attorney General has contracted to defeat
- 6 Standing under the four In Terrorem clauses in the 1999 and 2000 Estate Plans

g Advisory Board as it existed on May 26, 2009 - see above [See Ltr Attorney General, 7/30/08]

h Beneficiaries of the Education Trust (\$285,000 Trust for each dismantled by August 10 Contract)

- 1 Forlando — standing to enforce Has not joined in August 10 Contract Asserts he was not served in Case 1647 Filed January 2009 motion in Case 872 with Terry and Forlando to enforce *In Terrorem* clause

- 2 Romunzo — standing to enforce Has not joined August 10 Contract Opposes settlement through attorney, David Bell, not admitted pro hac vice in Case 1647, who at the same time promotes settlement for Terry
- 3 Jason Lewis – not a party to any James Brown case even though an adult for about 2 years
- 4 Lindsey Brown – not a party to any James Brown case even though an adult for about 2 years
- 5 Sydney, Carrington, Venisha - minors Court refused to hear motions to appoint GALs Parents represented them in Case 122 to *enforce* the Irrevocable Trust Cannot represent them to set aside Trust because it would leave them nothing and possibly trigger *In Terrorem* clause

38 Because of the impaired status of others, we are informed and believe that we are the only parties who were named and served with current clear standing to challenge the Case 1647 and 1810 Orders by appeal

39 We are informed and believe that our duty and standing rests on the Irrevocable Trust, Will and 1999 Estate plan which direct that we vigorously uphold James Brown's desire to give his musical empire to education, *Franklin vs Chavis*, 640 S E 2d 873 (S C 2007), the unappealed Order dated April 1, 2008 in Case 122, our position as statutory beneficiaries of the Irrevocable Trust and the 1999 Trust, and under our individual rights of due process and free speech provided by the First and Fifth Amendments of the U S Constitution and the Constitution of South Carolina

40 We are also informed and believe that we have standing to obtain answers to the following important questions of public importance, including constitutional issues, raised by Case 1647 and the *ex parte* Case 1810 orders

- a Did the Attorney General lose standing to help *enforce* the "I Feel Good" private foundation after executing the secret August 10 Contract in violation of the intent of James Brown and the purposes and provisions of the Irrevocable Trust?
- b Did the Court err in approving the Attorney General's attempt to bind the Trust and Estate to his August 10 Contract, and his January 29 Agreement damaging the Irrevocable Trust by more than \$50 million, with no recourse for beneficiaries or properly serving fiduciaries?
- c Did the circuit court violate our due process and first amendment rights by removing us without cause based on the Attorney General's August 10 Contract with nonbeneficiaries, then directing us, after removal, to execute documents as PRs which violate our fiduciary duty and require us not to complain about the actions of the Attorney General? [See Ex B, ¶ 3, p 1]
- d Can an Attorney General contract with non-beneficiaries and the circuit court approve, the Attorney General's placing a properly functioning private foundation, private non-charitable trust and estate under the direct control of the Attorney General? [See Exhibit B, ¶ 5 K, p 3]
- e Should Bauknight's appointments, as a result of conflicts from his fiduciary duty to Terry Brown, Hynie Brown, and others and his appointments without due process and irreconcilable conflicts with the Estate Plan of James Brown, hold any fiduciary position with respect to the Irrevocable Trust or Estate?

This appeal is part of an action to enforce the Irrevocable Trust

41 The amended complaint and 'emergency' motion filed November 7, 2008 in Case 1647 sought to replace us based on the secret August 10

Contract, which did not call for a professional Trustee²² On November 7 that Contract took about \$40 million from the Irrevocable Trust The loss and damage was increased to more than \$50 million with the Terry Brown January 29 Agreement Both violated Article XXI of the Irrevocable Trust which provides

ARTICLE XXI²³

Provision as to any Contest of Grantor's Estate Plan Should any beneficiary under this Irrevocable Trust or Grantor's Will dated after or of even date with this Trust and as referred to herein, become an adverse party in a proceeding for the probate of Grantor's Will or in any manner contest the validity of Grantor's Irrevocable Trust, such beneficiary shall forfeit his or her entire interest thereunder and such interest shall pass to such other beneficiaries as would be entitled to take as if such beneficiary predeceased Grantor Furthermore, any person not provided for in this Irrevocable Trust, Grantor's Will or other such instrument, whether or not claiming to be a beneficiary, party in interest, or otherwise shall not have standing or be qualified to contest, claim an interest in or otherwise dispute the disposition of Grantor's estate as he herewith disclaims and disinherits any such person Any such alleged claim shall be considered an affront to the Grantor's wishes and shall be vigorously challenged as such by his fiduciaries ²⁴ [Emphasis supplied]

²² Brown never selected a professional trustee He specifically sought 3 trustees – one with legal skills, one with financial skills, and one with music road experience The documents clearly contemplated the extensive use of musical industry professionals, but not as Trustees unless appointed by the three Trustees as their successors

²³ This Article is taken from the Trust, but the 2000 Will, 1999 Will and 1999 Trust have substantially identical provision

²⁴ We have vigorously asserted that the *In Terrorem* provisions prevents parents or their counsel Mr. Levenson, from representing the minor beneficiaries of the Education Trust in any proceeding exposing them to forfeiture of their \$285,000 education fund This is especially so for those minors who through a parent, have received benefits and ratified the Education Trust [Sydney L., Carrington L. Forlando and Romunzo have received part of the Education Trust fund] We have consistently asserted –but the circuit court declined to hear– that guardians

**The Attorney General and Bauknight have no standing
to seek review of the Attorney General's actions**

42 The Attorney General was admitted to James Brown Case 2007-CP-02-0122 ('Case 122") on October 11, 2007 to help *enforce* the Irrevocable Trust

43 The Attorney General was invited by Cannon Dallas and former Trust attorney Bill Hammond to intervene, based on their false statements about us and about the assets of the Trust Cannon had already resigned²⁵ Dallas and Bradley resigned on November 20, 2007

44 Exhibit I describes some of our numerous attempts to respectfully inform the Attorney General of the damage he was causing the Irrevocable Trust by his alliances with the Cannon/Dallas group and failure to help us get rid of them

45 By mid-2008 the Attorney General developed a reliance on counsel for Hynie Brown, who is specifically omitted as a beneficiary of both the Irrevocable Trust and Will When we sent our October 28 letter raising legitimate concerns

ad litem must be appointed for minors, and adult grandchildren who are beneficiaries of the Education Trust must be made parties and served, before the \$285,000 fund can be taken from them, as contemplated by the August 10 Contract

²⁵ See opinion dtd November 6 2009 in the Cannon Appeal and Order dated April 8, 2008 in the Dallas/Bradley Appeal [ROA, p 108-156] for a description of some of the improprieties of Cannon, Dallas and Bradley The Estate/Trust and JBE Inc now seek to recover from the Cannon Group and others more than \$12 million missing between 1999 and 2007 No evidence has been presented that either James Brown or daughter Deanna who held Brown s POA with the

about this relationship the Attorney General took 'emergency' action to remove us. We later learned he and Hynie Brown had already contracted to attempt to remove us three months earlier.

46 Under §62-7-103, while not traditional beneficiaries both we and the Attorney General were statutory beneficiaries because of our right to *enforce* the 'I Feel Good' private foundation, but we believe the Attorney General forfeited his standing. That section states in part

(2) Beneficiary means a person that

(E) In the case of a charitable trust has the authority to enforce the terms of the trust.²⁶ [Emphasis supplied.]

47 We are the only persons with clear standing to protect the Estate Plan in Case 1647.

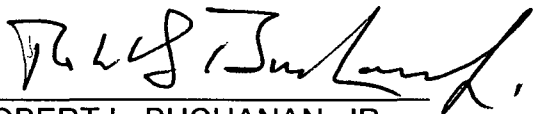
Standing because our counterclaims and crossclaims were not heard

48 We are informed and believe that our counterclaim and crossclaim in Case 1647, which has not been heard and all actions we have taken, including this appeal, are proceedings to *enforce* James Brown's Estate Plan which we have standing to pursue.

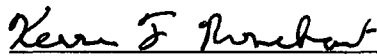
Cannon Group from 1999 until Brown's death, was aware of these missing funds prior to his death.

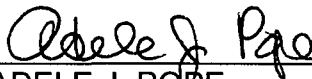
²⁶ While not a public charity, the "I Feel Good" subtrust is a Charitable trust under §62-7-405(a) because it is a portion of a trust created for charitable purposes.

FURTHER DEPONENTS SAYETH NOT

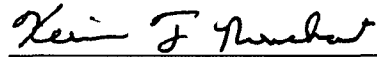

ROBERT L. BUCHANAN, JR

SWORN TO before me this
12th day of March, 2010


Notary Public for South Carolina
My Commission expires 3/4/16 (LS)


ADELE J POPE

SWORN TO before me this
12th day of March, 2010


Notary Public for South Carolina
My Commission expires 3/4/16 (LS)

Exhibits List
Affidavit of Robert L. Buchanan, Jr. and Adele J. Pope
Dated March 12, 2010

- Exhibit A - Documents Incorporated by Reference, Cannon and Dallas/Bradley Appeals
- Exhibit B - Attorney General's August 10, 2008 Contract with Nonbeneficiaries of Irrevocable Trust (August 10 Contract)
- Exhibit C - Portion, Attorney General's January 29, 2009 Agreement (Tr. Hg., 1/30/09, Ex. 1)
- Exhibit D - Chart 1, James Brown's Intentions in his Last Will and Trust 2000
- Exhibit E - Chart 2, James Brown's Intentions in his 1999 Will and Trust
- Exhibit F - Chart 3, How the proposed "Settlement" Destroys/Ignores James Brown's intentions
- Exhibit G - Chart 4, What the "Settling" Parties would get if they Set Aside Brown's Intentions Expressed in his 2000 & 1999 Wills/Trusts
- Exhibit H - Conflicts of Bauknight (Chart - conflicts James Brown's Estate Plan/Legacy Trust, Dallas/Bradley Petitions, (partial), Cannon Documents, partial)
- Exhibit I - Our concerns and correspondence related to Attorney General's allegiances with Cannon/Dallas and Hynie Brown (partial)
- Exhibit J - March 8, 2008 Order, Case 872 (then 122)(partial)
- Exhibit K - Deon Brown, Motion for Appointment of Counsel, Case 1647 (partial)
- Exhibit L - Partial, Affidavits of Deanna Brown, Daryl Brown and Yamma Brown, dtd 1/24/07
- Exhibit M - Terry Brown's Requests to enforce In Terrorem clause (partial)

EXHIBIT A

Documents Incorporated by Reference McMaster v Dallas Appeal¹

June 15, 1999	James Brown 1999 Revocable Trust [ROA, Vol VI, pp 2647-2662] [CROA ² , Vol IV, pp 1846-1861], James Brown 1999 Will [ROA, Vol VI, pp 2638-2646], [CROA, Vol IV, pp 1837-1845] [James Brown's Comprehensive Estate Plan in progress since 1996 Also appointed Deanna under Power of Attorney ("POA") with Cannon/Dallas/Bradley]
August 1, 2000	James Brown Irrevocable Trust [ROA, Vol VI, pp 2663-2683], [CROA, Vol III, pp 1452 - 1472], Advisory Board document [ROA, Vol VI, p 2684] [CROA, Vol IV, p 1866], James Brown Last Will and Testament [ROA, Vol VI, pp 2685-2693], [CROA, Vol III, pp 1473 - 1481]
February 19, 2007	Order, Case 122 [ROA, Vol I, pp 5-10], [CROA, Vol I, pp 4-9]
March 5, 2007	Trustee Minutes [ROA, Vol VI, pp 2694-2701], [CROA Vol IV, pp 1824 - 1831] [Cannon, Dallas, Bradley hire Hammond and Powell Goldstein]
March 7, 2007	Order Appointing Special Administrators, Case 122 (SAs), [ROA, Vol I pp 11-13], [CROA, Vol I, pp 10 - 11] [Non-fiduciaries]
June 22, 2007	Order Granting access to SAs, Case 122 [ROA, Vol I, pp 14-22], [CROA, Vol I, pp 14 - 22] [Allowing us to see records of Irrevocable Trust and Estate]
July 10, 2007	Letter of Powell Goldstein [ROA, Vol VI, pp 2715-2718], [CROA, Vol IV, pp 1862- 1865]
July 27, 2007	Motion and Recommendation of SAs [ROA, Vol I, pp 304-308], [CROA, Vol I, pp 241 - 250]

¹ ROA denotes location in Dallas and Bradley Appeal, Case No 2007-CP-02-0122 ("Case 122"), Tracking number 200883946

² CROA denotes location in Cannon Appeal, Case No 2007-CP-02-0122 ("Case 122"), Tracking number 200878366

August 10, 2007	Order accepting resignation of CANNON, terminating accountants and counsel [ROA, Vol I pp 23-32], [CROA, Vol I pp 33-41]
August 27, 2007	Motion of DALLAS & BRADLEY for Accounting by CANNON [ROA, Vol I, pp 311 - 312], [CROA Vol 271 - 272]
August 31, 2007	Motion of DALLAS & BRADLEY to Declare James Brown Enterprises, Inc ["JBE, Inc"] [ROA, Vol I, pp 313 - 338]
November 2, 2007	Motion of SA's to engage counsel to seek recovery from CANNON and Other [ROA, Vol I, pp 342-345], [CROA, Vol I, pp 440 - 443]
November 19, 2007	Motion of SA's [ROA, Vol II, pp 834-841]/ [re valuation]
November 20, 2007	Order allowing combining of funds, Case 122 [ROA, Vol I, pp 50-51], [CROA, Vol I, pp 53-54]
November 20, 2007	Order accepting resignation of DALLAS and BRADLEY and appointing Buchanan and Pope, Case 122 [ROA, Vol I, pp 52 - 55], [CROA, Vol I, pp 55 - 57]
November 29, 2007	Motion of Georgia Attorney General to set aside Nov 20 Order with Affidavit of DALLAS and other attachments [ROA, Vol II, pp 872 - 910]
December 5, 2007	[Buchanan/Pope] Application for Recognition "I Feel Good" Trust [ROA, Vol VI, pp 2731-2747]
December 14, 2007	Objection of S C Attorney General to Appointment of the SAs as PR/Trustees [ROA, Vol II, pp 923-933]
December 14 2007	Affidavit of Adele J Pope [ROA, Vol V pp 2201-2322], [CROA, Vol IV, pp 1519-1640]
December 17, 2007	Affidavit of Robert L Buchanan, Jr [ROA, Vol V, pp 2323 - 2335] [CROA, Vol IV, pp 1641 - 1653]
December 18 2007	Withdrawal [by Buchanan/Pope] of [Dallas/Bradley] Motion of Ownership of JBE, Inc [ROA, Vol II, pp 934 - 936], [CROA, Vol I, pp 456-458]
December 28 2007	Return by Children and Grandchildren to Mot [of DALLAS/BRADLEY] to Vacate [ROA, Vol II, pp 983 - 984],

[CROA, Vol I, pp 463-464]

January 6 2008 Affidavit of Adele J Pope [ROA, Vol V, pp 2388 - 2393]
[CROA Vol IV, pp 1654 -1658]

January 7, 2008 Supplemental Affidavit of Adele J Pope, [ROA Vol V pp 2395 -
2397] [CROA , Vol IV, pp 1660-1662]

January 7, 2008 Affidavit of Robert L Buchanan, Jr [ROA, Vol V , p 2394],
[CROA, Vol IV, p 1659]

January 7, 2008 [Buchanan/Pope] Return and Opposition to Motions Related to
[Nov 20, 2007 Order] [ROA, Vol III, pp 1021 - 1024]

January 7, 2008 [Dallas/Bradley] repudiation of oral resignation as Trustees
[ROA, Vol III , p 1025]

January 8, 2008 Order Directing Payment of Fees and Costs of Special
Administrators and Other Relief [ROA, Vol I, pp 65 - 68],
[CROA, Vol I, pp 65 - 68]

February 7, 2008 Excerpts from Hearing

Testimony of Forlando Brown

[Tr Hg 2/7/08 pp 12 - 45, ROA, Vol IV, pp 1699-1723]

Testimony of Albert H Dallas

Direct by L Levenson - [Tr Hg 2/7/08, pp 120-184, ROA,
Vol IV, p 1724 - 1788]

Cross by Bailey - [Tr , Hg 2/7/08, pp 184 - 222, ROA, Vol IV,
pp 1788 - 1826]

Testimony of William Hammond

[Tr Hg, 2/7/08, pp 223 - 226, ROA, Vol IV, pp 1827 - 1830]

February 15, 2008 Return and Opp of PR/Trustees [Buchanan/Pope] to Second
Am and Supp Motion to Vacate [ROA, Vol III, pp 1034 -
1067]

February 18 2008 Affidavit of Adele J Pope with Exhibits [ROA, Vol V - VI, pp
2425 - 2514] [CROA, Vol IV, pp 1663 -1750]

February 18, 2008	Affidavit of Robert L. Buchanan, Jr. with exhibits [ROA, Vol. VI, pp. 2515 - 2589] [CROA, Vol. IV pp. 1751 - 1823]
March 7, 2008	Order Denying Motion to Alter, Amend or Vacate Order Approving Resignation and Granting Related Relief, Case 122 [ROA, Vol. I, pp. 87-107] [CROA, Vol. I, pp. 82-101]
March 7, 2008	Excerpts from Hearing <u>Testimony by Pope</u> Direct by James Bailey - [Tr. Hg. 3/7/08, pp. 29 - 41, ROA, Vol. IV, pp. 1897-1908] Cross-examination by C. Havird Jones - [Tr. Hg. 3/7/08, pp. 42 - 64, ROA, Vol. IV, pp. 1909-1931] <u>Testimony by Dallas</u> Direct by C. Havird Jones - [Tr. Hg. 3/7/08, pp. 112 - 121, ROA, Vol. IV, pp. 1977 - 1985]
April 8, 2008	Order Denying Motion to Reconsider appointment of [Buchanan and Pope] and Granting Related Relief [ROA, Vol. I, pp. 108 - 156], [CROA, Vol. I, pp. 102 - 151]
April 25, 2008	Excerpts from Hearing
May 18, 2008	Affidavit of Mary Holmes [ROA, Vol. VI, pp. 2597 - 2598]
May 21, 2008	Affidavit of Louis Levenson (Ct. Appeals) [ROA, Vol. VI, pp. 2599 - 2604]
July 10, 2008	Joint Affidavit of Buchanan and Pope (ROA, Vol. VI, pp. 2605 - 2637)
July 28, 2008	Amended and Rat. 2000 Irrevocable Trust [ROA, Vol. VI, pp. 2763 - 2766]
August 5, 2008	Supp. Ret. and Opp. of PR/Trustees to Motion of Attorney General to Alter - asserting April 24, 2008 Motion not timely filed [ROA, Vol. III, pp. 1073 - 1141]
October 25, 2008	Joint Affidavit of Buchanan and Pope, (CROA, Vol. II, pp. 729-744)

December 30 2008	Final Brief of Respondents Robert L Buchanan, Jr and Adele J Pope Dallas and Bradley
January 20, 2009	Initial Brief of Creditor/respondent M&t Bank, Cannon Appeal
February 27, 2009	Final Brief of Respondents Robert L Buchanan, Jr and Adele J Pope, Cannon Appeal
October 14 2009	Joint Affidavit of Buchanan and Pope Supporting Partial Enforcement of Stay, dated [Portions as Exhibit Q]

EXHIBIT B

[Emphasis Supplied]

This agreement made this 10th day of August, 2008 by and among the Attorney General of South Carolina Larry Brown (natural child of the deceased) Daryl J Brown (natural child of the deceased) individually and on behalf of his minor children Lindsey Delores Brown (age 17) and Janise ~~Venisha Brown~~ (age 12) Venisha Brown (natural child of the deceased) Deanna J Brown Thomas (natural child of the deceased) individually and on behalf of her minor child Jason Brown-Lewis (age 17) Yamma N Brown Lumar (natural child of the deceased) individually and on behalf of her minor children Sydney ~~Lamar~~ (age 8) and Carrington ~~Lamar~~ (age 6) Tonya Brown (grandchild of James Brown) individually and Tommie Rae Brown (hereinafter "Tommie Rae") individually and on behalf of her minor child James ~~Brown~~

The purpose of this agreement is to settle any and all differences among the parties above whose signatures appear below concerning the disposition whether by will or otherwise and/or transfer of any assets owned or controlled by James Brown whether by will intestacy trust or nonprobate means state or federal law and based on this the parties hereto agree as follows

1 All parties who sign below hereby recognize and stipulate, for all purposes and matters that Tommie Rae was the legal wife of James Brown, during his lifetime and at the time of his death and qualifies as his surviving spouse and agree not to contest any claim by Tommie Rae by virtue of her status as surviving spouse and to file any and all appropriate pleadings and documents recognizing and stipulating said status as spouse

2 All parties who sign below hereby recognize and stipulate for all purposes and matters that the children and grandchildren who sign below were and are the lawful and/or legitimate biological issue and heirs of James Brown during his lifetime and were in life at the time of his death, and qualify as his surviving issue and all parties agree not to contest any claim by any child or grandchild by virtue of his or her status as lawful and/or legitimate issue or as an heir of James Brown and agree to file any and all appropriate pleadings recognizing and stipulating said status of the children and grandchildren named as lawful and/or legitimate issue

3 All parties agree to say nothing negative in public or to any representative of the media about any of the parties hereto or about the terms of any settlement reached herein whether about their roles in this litigation or their relative positions or status as an heir, child, issue spouse or as a grandchild and will further speak only through counsel or in Court about any matters relative to this case affecting or pertaining to each other or to this settlement This agreement does not prevent any parties from publicly discussing events in court or Orders issued by the Court so long as the parties are not critical of each other nor does this agreement prevent any party from giving interviews or publishing books or articles about their lives, so long as they are not critical of each other nor commenting upon the terms of the settlement or the negotiations that lead thereto The parties consent to an Order of the Aiken County Court of Common Pleas or to any appropriate Court to require the parties to comply with the terms of this paragraph of this agreement

4 Tommie Rae all children and all grandchildren (if possible as to the grandchildren) agree to meet in person at a convenient time as soon as reasonably possible to reaffirm in person their mutual support and cooperation as a united group in support of the legacy of James Brown and in

LJB

UBT
J.B. for UB
D.B. for LB

J.B.

further support of the agreements made herein

5 It is noted that all parties to this agreement have filed at separate times pleadings objecting to the validity of the August 1 2000 Will of James Brown and the August 1 2000 Irrevocable Trust Tommie Rae, the children and grandchildren and the Attorney General of South Carolina (hereinafter the parties) have additionally agreed as follows

- a) that a joint motion or other pleading will be filed seeking the removal of Mr Robert Buchanan and Ms Adele Pope as Personal Representatives of the Estate of James Brown and as Trustees of the 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
- b) that a charitable trust substantially similar to the August 1, 2000 Irrevocable Trust (hereinafter the "Charitable Trust") shall be created and/or maintained and shall be valid and enforceable including but not limited to the possibility of amendment to the August 1, 2000 Irrevocable Trust by agreement of all the parties hereto. The trustees of the trust shall include at all times one representative selected by the parties hereto who are clients of Levenson and one representative selected by Tommie Rae. The trust shall also include an advisory board that shall include some member(s) selected by the parties hereto who are clients of Levenson and one representative selected by Tommie Rae
- c) that there shall be no DNA testing of any children or grandchildren (or their issue) who are parties to this agreement and all such motions for same will be withdrawn or dismissed by consent of all parties hereto
- d) that the parties hereto will create an entity (the settlement entity) that will receive any and all assets and or proceeds payable to any of the parties now or in the future by virtue of any rights of James Brown, any of the entities of James Brown the Estate of James Brown the August 1 2000 James Brown Irrevocable Trust the Charitable Trust and/or any rights the parties hereto have as heirs devisees and/or successors to James Brown for any purpose, including not limited to copyright, royalty persona, image likeness etc. The parties will divide any and all such assets and or proceeds in the following proportions for as long as such assets and proceeds are paid into said entity or any successor entity thereto (1) 50% to Charitable Trust, (2) 25% to Tommie Rae Brown which includes any share attributable to James Brown, and (3) 25% to all parties hereto represented by Louis Levenson as they agree among themselves. Tommie Rae hereby waives any spousal right she may have to such assets to the extent that they might otherwise exceed 25% thereof. The parties hereto represented by Levenson waive any right they may have to such assets to the extent that they might otherwise exceed 25% thereof
- e) All parties hereto waive any claim or right to seek forfeiture against any party pursuant to any in terrorem and/or no-contest clause under any will or trust of James Brown and specifically agree that any and all contests that were brought were brought in good faith

LJB

JBT
JBT
JBT
JBT

J.B.

and with probable cause

- f) The promissory note and security deed currently due from the parties hereto represented by Levenson to the Estate of James Brown (with respect to the property known as Pops house which is the home of the father of James Brown) will be marked satisfied and paid in full by the settlement entity for no additional payment being due
- g) In the event that any party brings to the settlement entity any offer culminating in a contract to purchase property and/or rights from the settlement entity if such party's efforts are disclosed to the estate or trust or the settlement entity acting for said estate or trust then such party shall be entitled to a finder's or broker's fee as shall be negotiated to the extent reasonable and appropriate under applicable law
- h) In the event that the property at 430 Douglas Drive Beech Island, SC is sold by the settlement entity the parties hereto who are clients of Levenson shall have the right of first refusal to purchase said property at the Aiken County Tax Assessor's appraised value therefor as of the most recent assessment before the purchase. In the event the parties hereto who are clients of Levenson shall decline to exercise such right and close the sale within 120 days of the giving of the notice of the right of first refusal then Tommie Rae shall have a right of next refusal for the next 120 days on the same terms as set forth above after she receives notice thereof
- i) The parties agree that a trust similar to the Brown Educational Trust under the 2000 irrevocable Trust will be established for the grandchildren of James Brown and their issue, for as long as allowed under the applicable Rule Against Perpetuities but in no event lasting for a period longer than 90 years from December 25, 2006. This Brown family educational trust shall be funded with a principal amount of \$2 million which shall be carved out from the share of assets and proceeds payable to the Charitable Trust. Upon the termination of this Brown family educational trust the remaining principal and any undistributed income shall be distributed to the charitable trust
- j) The parties agree that any and all will and trust contests will be dismissed
- k) The parties agree to use their best efforts to extinguish any other outstanding interests or claims by any potential heir, devisee, or successor and to the extent the termination of such interest or claim requires payment, for such payment to be made from the settlement entity, which of necessity would be allocated among the parties to the settlement entity pro-rata in aliquot shares
- l) The parties agree that the settlement entity and/or the parties will endeavor to create an appropriate and respectful museum or other memorial burial place acceptable to the settlement entity in which to maintain the remains of James Brown preferably at 430 Douglas Drive Beech Island if feasible. If such is not accomplished within 7 years from date then in that event the remains will be interred in the cemetery where the parents of James Brown currently are located in Augusta, GA with the settlement entity paying

ALB

Tom

LJB DBT JNUB
DBT JNUB
DBT JNUB

JLB

expenses of relocation Parties hereto represented by Levenson Tommie Rae and James Brown II shall all have reasonable opportunities to visit privately the gravesite upon reasonable notice The parties hereby waive any right to otherwise direct the location of the gravesite as a result of their status under law The parties consent to an Order of the Aiken County Court of Common Pleas or to any appropriate Court to require the parties to comply with the terms of this paragraph of this agreement

6 This agreement is a private binding agreement among the parties hereto Although the parties hereto may agree to ask the Court to approve this agreement this agreement remains binding among the parties and applies to personal representatives and trustees even if not approved by the Court

7 This agreement is binding on the heirs successors and assigns of the parties hereto

frb

Wayne E. Brown

Levenson M. Levenson
Attorney General

Joseph Brown

Alauna Brown Thomas

Maureen Brown Thomas for

Venisha Brown

Deanne Brown Thomas for

Yanna Brown

xtom

Tanya Brown

8/10/08

John H. Brown 8/10/08

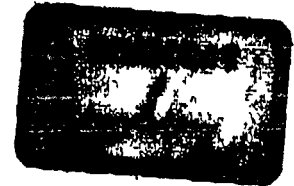
John H. Brown 8/10/08

LAW OFFICE OF
DAVID B BELL619 GREENE STREET
POST OFFICE BOX 1011
AUGUSTA, GEORGIA 30903 1011

DAVID B BELL

SHARON BLAIR ENOCH

January 29, 2009

JOHN C BELL
(1916 1967)AREA CODE 706
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davidbell@davidbelllawfirm.comVIA FACSIMILE #1-803-734-3677Mr C Havird Jones, Jr
Senior Assistant Attorney General
State of South Carolina
P O Box 11549
Columbia SC 29211-1549

Dear Sonny

After we spoke on Wednesday, I had a lengthy conversation with Terry Brown. I am authorized to extend a settlement proposal on his behalf. The terms are

1 Terry Brown will receive five (5%) percent of what is referred to as the "settlement entity" as it appears in Paragraph five (5)(d) of the August 10, 2008 compromise and agreement signed by the South Carolina Attorney General, Tommie Rae Hynie (Brown), individually and on behalf of her son, as well as the clients of Louis Levenson. The settlement entity is the same as is referred to as the "Legacy Trust" as that term appears in the addendum to the Private Agreement.

2 Terry Brown shall retain ownership of his residual copyright that he received under the Federal Copyright Act that came from copyrights granted to his late father, James Brown. These residual rights shall not reduce his five (5%) percent share as referred to in Paragraph one (1) above. However, as to the residual copyright, he shall not contest the standing of Tommie Rae Hynie (Brown), her son or the clients of Louis Levenson as their rights are created by their private settlement agreement.

3 The Trustee for the handling of the James Brown Estate shall be an individual selected by the South Carolina Attorney General. The person selected shall have no relationship to the parties to this case, shall be fair, neutral and capable of handling the assets created for the settlement entity. Terry Brown shall have a veto over the person recommended by the South Carolina Attorney General to ensure neutrality, impartiality and competence.

Mr C Havird Jones, Jr
January 29, 2009
Page 2

4 The Estate of James Brown, the Irrevocable Trust of James Brown dated August 1, 2000, and James Brown Enterprises, Inc (collectively, the "Brown Entities") will provide Terry Brown with the exclusive right to conduct a due diligence review of the assets of the Brown Entities, including without limitation, the Music Rights and the Image and Likeness Rights (collectively, the "Brown Assets") for a period of six months from the date a binding Settlement Agreement is finally approved (the "Exclusivity Period")

Terry Brown will also be given an irrevocable and continuing Right of First Refusal, beginning on the date a binding Settlement Agreement is finally approved, to purchase any and all of the Brown Assets that the Brown Entities offer for sale by matching the price and terms of any proposed sale Terry Brown will be given customary notice of any proposed sale and a customary time period in which to match the proposed offer and close the sale

5 This settlement agreement shall not be final, binding or accepted until memorialized in writing and signed by the South Carolina Attorney General, Terry Brown, Tommie Rae Hynie and the clients of Louis Levenson

I am,

Sincerely

A handwritten signature in black ink, appearing to read "David B Bell", written over the word "Sincerely".

David B Bell

DBB dg

1 BELL, YOU STEADFASTLY HAVE BEEN ONE OF THE NON-SETTLING
2 PARTIES, AND I HAVE RECEIVED YOUR MEMORANDUM AND READ THE
3 CASE OF DUNCAN VERSUS ALEWINE WHICH YOU RELY HEAVILY UPON AND
4 WHICH I'VE READ ARE YOU NOW IN THE FOLD, SO TO SPEAK?

5 MR BELL I DON'T KNOW YOUR HONOR---

6 THE COURT YOU DON'T KNOW?

7 MR BELL MAY IT PLEASE THE COURT, YOUR HONOR? ON
8 BEHALF OF MY CLIENT, TERRY BROWN, I SENT A LETTER OF
9 JANUARY 29TH, 2009, TO MR JONES I WOULD LIKE TO FILE THAT
10 WITH THE CLERK OF COURT AND MAKE IT PART OF THE RECORD IT'S
11 SET OUT, YOUR HONOR -- WOULD YOU GIVE ME A STAMP OR A
12 STICKER, PLEASE? IT'S SET OUT, YOUR HONOR---

13 THE COURT HOLD ON SHE CAN'T DO TWO THINGS AT ONCE

14 (MR BELL'S EXHIBITS 1, 2, AND 3 FOR TERRY BROWN,
15 FORLANDO BROWN, AND ROMUNZO BROWN WERE RECEIVED IN EVIDENCE)

16 MR BELL YOUR HONOR, I'M GOING TO FILE WITH THE COURT
17 WHAT'S MARKED AS EXHIBIT NUMBER 1 WHICH IS A LETTER DATED
18 JANUARY 29TH, 2009, ON BEHALF OF MY CLIENT, TERRY BROWN, THAT
19 I SENT TO MR JONES THAT OUTLINED FIVE POINTS THAT WE
20 RECOMMENDED TO OUR CLIENT THAT BE A PART OF THE TERMS OF AN
21 AGREEMENT FOR HIM TO SETTLE YOUR HONOR, IN RESPONSE TO THAT
22 MR JONES WROTE ME BACK A LETTER THE SAME DAY IN WHICH MR
23 JONES OFFERED TO MAKE TERRY BROWN A PART OF THE SETTLEMENT
24 ENTITY WITH TERRY BROWN RECEIVING A SETTLEMENT ENTITY SHARE
25 OF 4 7916---

1 **THE COURT** I'VE ALLOWED YOU TO DO IT, MR BELL

2 **MR BELL** YOUR HONOR, THE TERMS OF THE AGREEMENT THAT
3 MY CLIENT IS ACCEPTING AND I WANT TO PUT IT ON THE RECORD SO
4 THAT THERE'S NO MISUNDERSTANDING -- HE IS TO RECEIVE 4 7916
5 PERCENT OF THE SETTLEMENT ENTITY HE RECEIVES THE RIGHT OF
6 FIRST REFUSAL TO PURCHASE THE ASSETS OF THE ESTATE, AND THAT
7 IS DESCRIBED IN THE LETTER THEN WHAT WE AGREED TO THIS
8 MORNING AS TO THE RIGHT OF FIRST REFUSAL AS TO THE ASSETS
9 COVERED BY THE RIGHT OF FIRST REFUSAL, TERRY BROWN WILL BE A
10 PART OF THE DEAL TO THE EXTENT AGREED TO BY THE FINANCING
11 ENTITY

12 **MR JONES** CORRECT

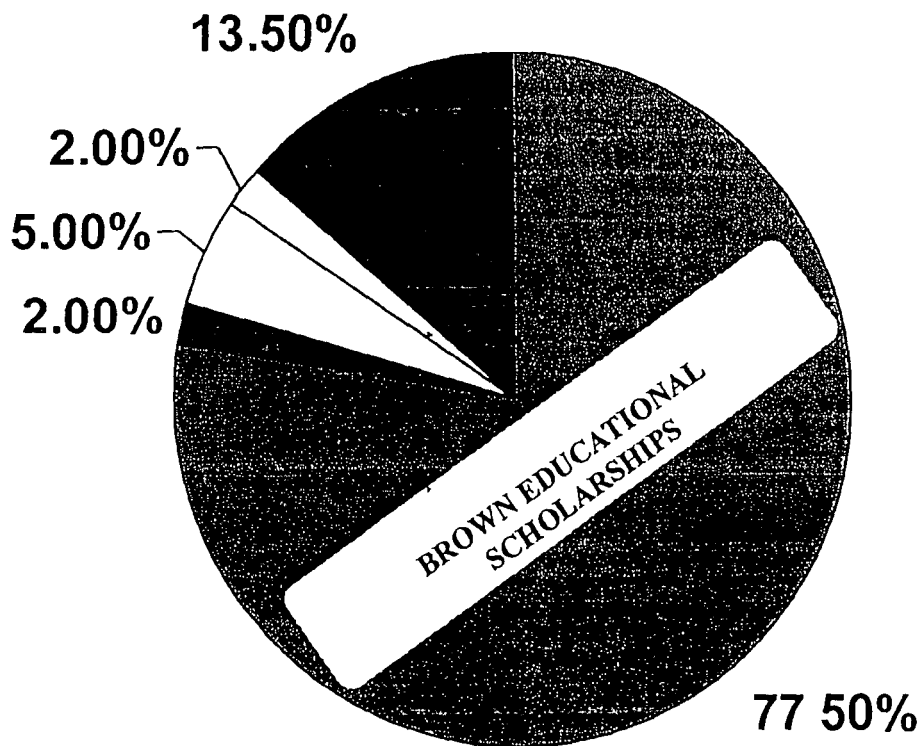
13 **MR BELL** AND, YOUR HONOR, WE HAVE NOT FINALIZED THE
14 RIGHT OF FIRST REFUSAL, BUT I HAVE GIVEN TO MR JONES THIS
15 MORNING A WORKING DRAFT THAT I WOULD LIKE TO FILE WITH THE
16 COURT TO EVIDENCE -- THAT WOULD BE THE WORKING DRAFT OF THE
17 RIGHT OF FIRST REFUSAL, YOUR HONOR SO THAT -- AND I FILED
18 THESE THREE DOCUMENTS JUST SO THAT THERE IS NO MISUNDER-
19 STANDING AS TO WHAT TERRY BROWN -- WHAT I AM AGREEING TO ON
20 BEHALF OF MY CLIENT I WILL STATE FOR THE RECORD THAT I --
21 THAT I HAD A LENGTHY CONVERSATION WITH MR BROWN YESTERDAY IN
22 WHICH HE WAS -- IN WHICH I READ THE LETTERS IN WHICH HE GAVE
23 ME AUTHORITY TO MAKE THE REPRESENTATIONS THAT I'M MAKING
24 TODAY

25 **THE COURT** THANK YOU HOLD ON HOLD ON THAT TAKES

EXHIBIT D

Chart 1
James Brown's INTENTIONS in his
Last Will & Trust (2000)

2/09

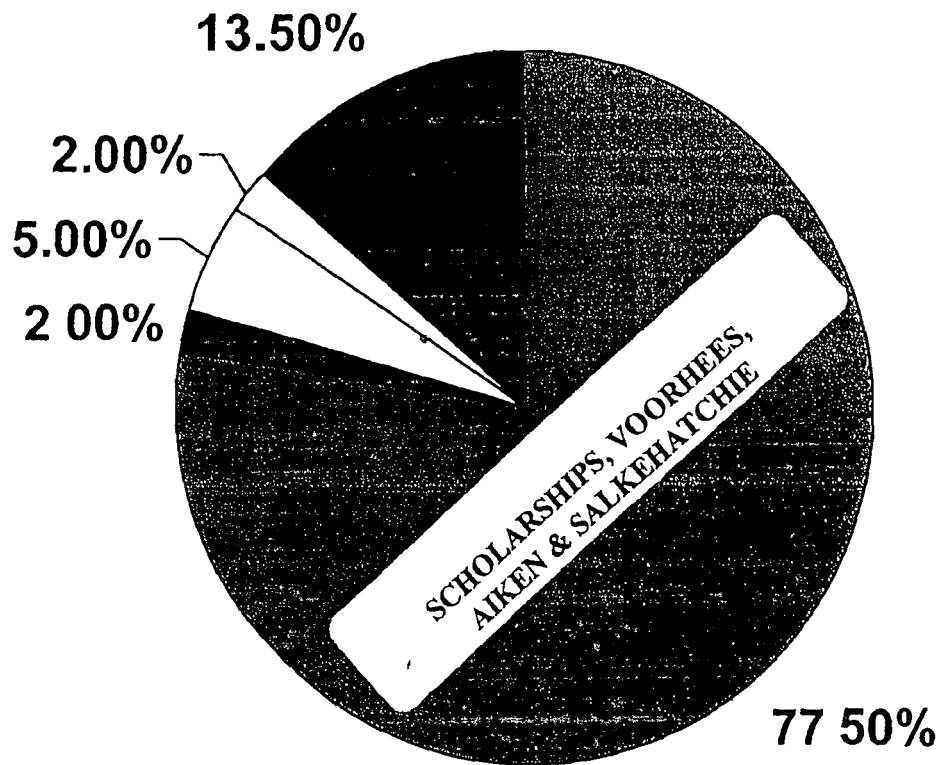


 Educational Trust	 G'children's Education Trust
 PR/Tr Comm	 Legal Fees/Admin
 Debt to Teachers	

EXHIBIT E

Chart 2
James Brown INTENTIONS in his
1999 Will and Trust

2/09



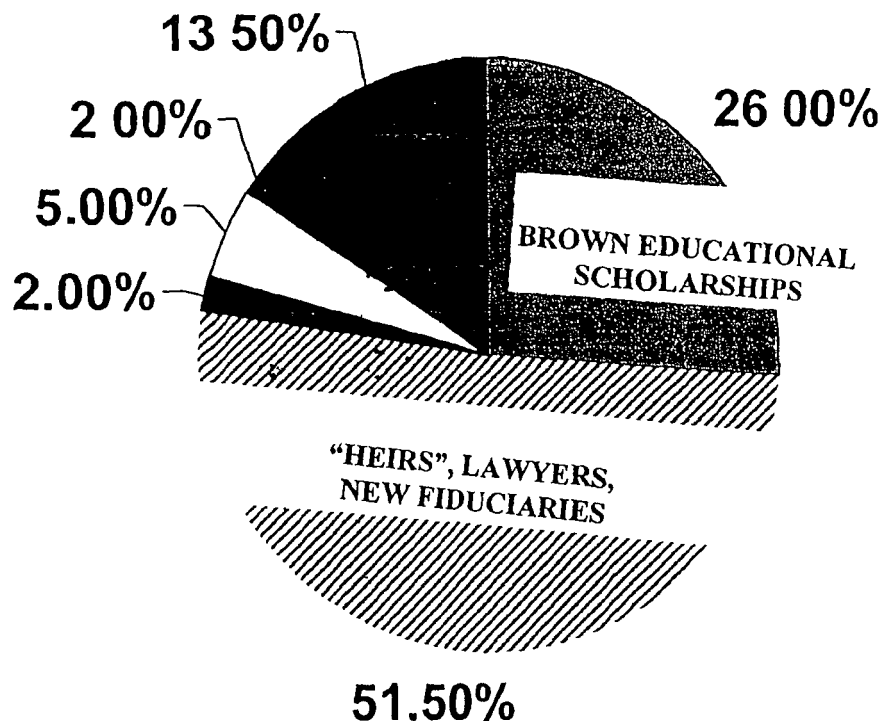
 Voorhees, etc Scholarships	 G'children's Education Trust
 PR/Tr Comm	 Legal Fees/Admin
 Debt to Teachers	

EXHIBIT F

Chart 3

HOW THE PROPOSED "SETTLEMENT" DESTROYS/IGNORES JAMES BROWN'S INTENTIONS

James Brown Estate/Trust Settlement Proposal
(Hynie Brown/AG/8 of 13+ potential Heirs)
(Over objection of PR/Trustees Buchanan and Pope)
(2/09)

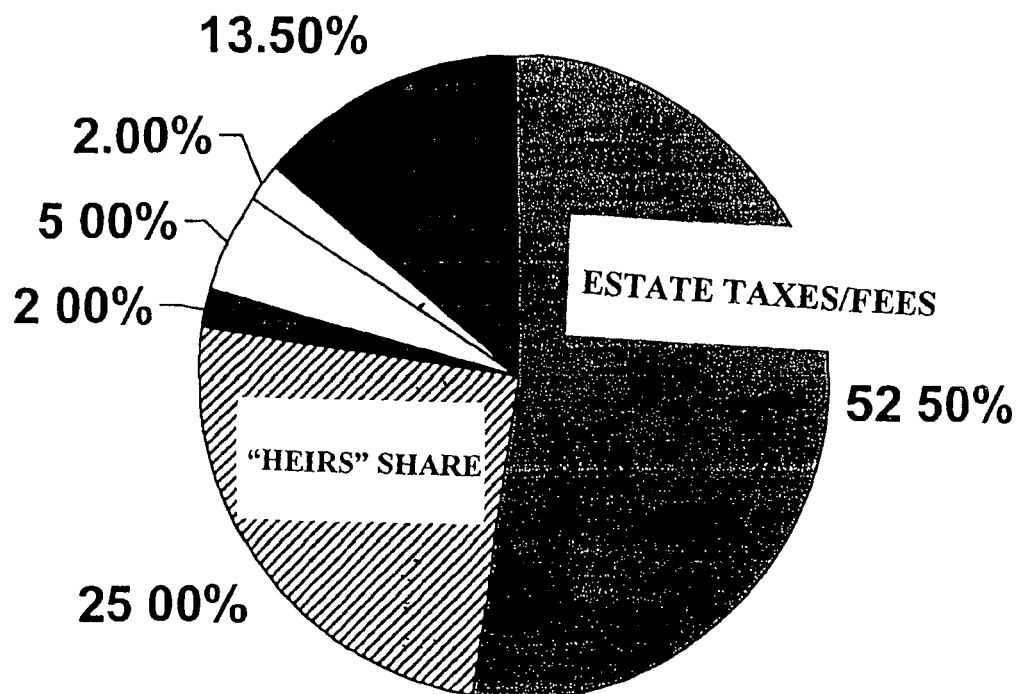


- Educational Trust
- ▨ Settling Parties, their Attys, taxes, etc
- G children's Education Trust
- PR/Tr Comm
- Legal Fees/Admin
- Debt to Teachers

EXHIBIT G

Chart 4
WHAT THE "SETTLING" PARTIES WOULD GET
IF THEY SET ASIDE BROWN'S INTENTIONS
EXPRESSED IN HIS 2000 & 1999 WILLS/TRUSTS

2/09



■ Estate Taxes/Attys Fees	▨ Received by "Heirs"
■ G's children's Education Trust	□ PR/TR Comm
□ Legal Fees/Admin	■ Debt to Teachers

Division of 25% “Heirs” receive if 2000 and 1999 Wills and Trusts declared void:

If no spouse and 12 “Heirs”

Each “Heir” receives 2 08% of Estate/Trust

If spouse and 12 “Descendant/Heirs”.

- 1 Hynie Brown receives 12.5%**
- 2 Each Descendant/Heir receives 1 04%**

Possible Descendant/Heirs (Parties to Case 872, and Parties not joined)

- 1. Daryl Brown**
 - 2. Larry Brown**
 - 3 Terry Brown**
 - 4 Deanna Thomas**
 - 5. Vanisha Brown**
 - 6 Yamma B. Lumar**
 - 7 Tonya Brown**
 - 8 James Brown II**
 - 9 LaRhonda Petit**
 - 10. Cinnamon Parris**
 - 11 Jeanette Mitchell**
 - 12 Deon Brown – not joined**
 - 13. Doe Defendants**
-

Exhibit H

Irreconcilable Conflicts between fiduciary service for James Brown Estate Plan and Russell Bauknight's fiduciary service as Legacy Trust Trustee (partial)

2000 and 1999 Estate Plans	Legacy Trust
Payment by Forlando, costs of Federal Suit	Recovery unlikely Forlando expects Bauknight not to seek fees
Education Beneficiaries received about \$80 Million from \$100 Million sale	Seeks \$50+ Million, so that Education Beneficiaries receive less than \$35 Million from \$100 Million sale
"I Feel Good" Trust pays <u>No Estate Taxes</u> or interest	"I Feel Good" Trust pays \$5 - \$20+ Million Estate taxes & interest
Education Trust Beneficiaries - \$285,000 each (7 grandchildren)	Education Trust Beneficiaries undetermined <u>much smaller</u> amount
Legal Fees, Less than \$1 Million ¹	Legal Fees \$12 - \$14 Million <u>Plus</u> 10 Attorneys engaged by Bauknight ²
Commissions of Both PR/Trustees over 5 years Buchanan - \$2 1 Million Pope - \$2 8 Million	Buchanan/Pope \$2,153,983, plus interest from 9/1/09 ³ , as per unappealed 1/8/08 Order PLUS Bauknights' commissions for 3 years Undisclosed
Corbis/Greenlight 2-year accepted	Corbis/Greenlight 2-year rejected as per Terry Brown
Right of First Offer to sell assets to best purchaser	Binding obligation to sell James Brown assets to Terry
Federal Copyright Act rights protected	Federal Copyright Act rights impaired by improper heirs determination
Trust/Estate managed as per Will/Trust	Trust/Estate controlled by Attorney General

¹ to defend Estate Plan administer Estate after recovery from Cannon Dallas Bradley and Forlando

² Recovery from Cannon Dallas Bradley and Forlando less likely

³ This is the amount earned by Buchanan and Pope through May 26 2009 in accordance with unappealed January 8 2008 Order of the Honorable Doyet A. Early III in Case 122 [ROA p 65]

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF AIKEN	)	Case Number _____

Albert H Dallas and Alfred A Bradley,	)	
	)	
Petitioners,	)	
	)	
vs	)	PETITION TO REMOVE RUSSELL L
	)	BAUKNIGHT AS SPECIAL TRUSTEE OF
Russell L Bauknight,	)	THE IRREVOCABLE TRUST
	)	AGREEMENT OF JAMES BROWN
Respondent	)	
_____	)	

Petitioners Albert H Dallas ("Dallas") and Alfred A Bradley ("Bradley"), complaining of Respondent Russell L Bauknight, would allege and show unto the Court as follows

JURISDICTION AND VENUE

1 Petitioner Dallas is a citizen and resident of the State of Georgia. Petitioner Dallas was duly appointed by James Brown to serve as Trustee of the Irrevocable Trust of James Brown, and Petitioner Dallas has continuously served as such since the creation of the Irrevocable Trust on August 1, 2000.

2 Petitioner Bradley is a citizen and resident of the State of South Carolina, County of Aiken. Petitioner Bradley was duly appointed by James Brown to serve as Trustee of the Irrevocable Trust of James Brown, and Petitioner Bradley has continuously served as such since the creation of the Irrevocable Trust on August 1, 2000.

3 Upon information and belief, Respondent Bauknight is a citizen and resident of the County of Richland. Respondent Bauknight has purportedly been appointed Special Trustee of the Irrevocable Trust of James Brown, which has its principal place of administration in Richland County, South Carolina.

4 This Court has *exclusive* subject matter jurisdiction over the cause of action
alleged herein pursuant to S C Code Ann § 62-7-201(a)(4) (2007)

5 Venue is proper in this Court pursuant to S C Code Ann § 62-7-204(c) and (d)
(2007)

FACTUAL ALLEGATIONS

6 On or about January 7, 2009, Respondent Bauknight was purportedly appointed
by the Court of Common Pleas for Aiken County to serve as Special Trustee of the Irrevocable
Trust Agreement of James Brown

7 In the order of appointment, Respondent Bauknight was granted only the limited
power to review and provide input and recommendations to the Court as to the proposed
Settlement Agreement reached among the Petitioners in the case styled as Henry Dargan
McMaster et al v Albert H Dallas et al, Civil Action number 2008-CP-02-1647

8 Merely twenty three (23) days after his purported appointment, on January 30,
2009, Respondent Bauknight appeared before Judge Doyet A Early, III at a hearing held in
Aiken, South Carolina and expressed his satisfaction and approval of the proposed settlement
agreement

9 During the hearing, Respondent Bauknight testified that he had not reviewed any
documents related to the Irrevocable Trust, including the file of Attorney Herring, who was
responsible for drafting the Last Will and Testament and the Irrevocable Trust of James Brown

10 Respondent Bauknight has admitted that he conducted no independent inquiry
into the facts and circumstances surrounding James Brown's execution of his Last Will and the
Irrevocable Trust and generally conducted no due diligence whatsoever before making his
recommendation to the Court

FOR A FIRST CAUSE OF ACTION
(Removal as Special Trustee)

11 Petitioners incorporate the allegations contained in Paragraphs 1 through 10 as if repeated verbatim herein

12 On January 7, 2009, Respondent Bauknight was purportedly appointed to serve as Special Trustee of the Irrevocable Trust of James Brown, and Respondent Bauknight accepted the purported appointment and agreed to serve

13 As Special Trustee of the Irrevocable Trust, Respondent Bauknight would be a fiduciary and would have a duty to administer the Irrevocable Trust in good faith, in accordance with its terms. Respondent Bauknight also owes a duties of trust, loyalty, good faith, and due care.

14 During his brief service as the purported Special Trustee, Respondent Bauknight breached his fiduciary duties in each of the following specifics

a Failing to conduct due diligence before making a recommendation regarding the propriety of the proposed settlement agreement,

b Failing to review any documents related to the Irrevocable Trust before making a recommendation regarding the appropriateness of the proposed settlement,

c Failing to conduct an independent investigation of the facts and circumstances surrounding the proposed settlement

d Failing to consider the tax implications of the proposed settlement on the assets of the Irrevocable Trust

e Failing to take into account the explicit terms of the Irrevocable Trust and the expressed intentions of James Brown

EXHIBIT I

November 21, 2007

C Havird Jones, Jr
Senior Assistant Attorney General
Office of the South Carolina Attorney General
P O Box 11549
Columbia, South Carolina 29211
Fax (803) 734-3677

BY FAX OR MAIL

Re Estate of James Brown/James Brown 2000 Irrevocable Trust

Dear Sonny

I am in receipt of your e-mail sent at 11 15 this morning and am responding to it quickly because of the coming holidays Bob may want to answer this separately

I do not fully understand your position with respect to the obvious conflict, since Mr Brown himself designated the same persons to be personal representatives and trustees, and there is incorporation by reference language in the Will Also, whereas our obligations prior to yesterday were to oversee preservation and protection of assets, I believe, as personal representatives, we now have the obligation to support and uphold the Will and Trust, which are wholly compatible with each other and which, together, constitute Mr Brown's known estate plan

You asserted that "you" stated in court "that the trust is NOT an inter vivos trust" Again, Bob may want to answer this separately, but I don't recall such a statement by either of us If it was made, it was an inadvertent error, and should be corrected on the record

The James Brown 2000 Irrevocable Trust was clearly an inter vivos trust, into which at a very minimum, the real estate was deeded during Mr Brown's lifetime It has received, or by its terms will receive, what we hope will be many millions of dollars Under the formula clause, we hope the bulk of that will go to the James Brown "I Feel Good" Trust and be dedicated to charitable purposes

I am concerned about your assertion of a possible ethical conflict, as I take very seriously such a remark Please let Bob and me know the basis for such an allegation, as we would want that matter fully explored in connection with any motion filed by you, and, if appropriate, ruled on by the Court

I look forward to working with you in connection with this project. It presents many challenges, but great educational opportunity for financially needy children, youth, and young adults (who are both qualified and deserving) who seek and have need of help to obtain and further their education.

Bob and I would very much appreciate an opportunity to meet with you and Attorney General McMaster to review what we believe to be both the challenges and the great potential rewards which Mr Brown provided. We will be glad to come to your office to meet with you and Mr McMaster at any time that he can schedule us.

Sincerely,

Adele J Pope

AJP kfr

cc (with copy of your e-mail)

The Honorable Henry Dargan McMaster

Robert L Buchanan, Jr

Beneficiary Review File

William F Hammond

From Bill Hammond [whamm@bellsouth.net]
Sent Thursday, April 24, 2008 11:44 AM
To William F Hammond
Subject FW: FW: State Law Issues- Brown Estate Research



James Brown
Matter

IRS CIRCULAR 230 DISCLOSURE Pursuant to United States Treasury Department Regulations the firm is now required to advise you that unless otherwise expressly indicated, any federal tax advice contained in this communication including attachments and enclosures is not intended or written to be used and may not be used, for the purpose of (i) avoiding tax related penalties under the Internal Revenue Code or (ii) promoting marketing or recommending to another party any tax related matters addressed herein.

ATTORNEY-CLIENT PRIVILEGED DO NOT FORWARD THIS E-MAIL WITHOUT PERMISSION

The information contained in this transmission is privileged and confidential. It is intended only for the use of the individual or entity named above. NOTE: E-mails are not a secure method of communication. They may be copied and held by various computers through which they pass.

Individuals not participating in our communication could intercept them.

You have consented to receive communications from the firm via e-mail. If you should change your mind, please advise the firm immediately.

William F Hammond
Hull Towill Norman Barrett & Salley P C
P O Box 1564
Augusta, GA 30903-1564
706-722-4481

-----Original Message-----

From Sonny Jones [mailto:AGSJONES@ag.state.sc.us]
Sent Tuesday, November 27, 2007 5:53 PM
To Bill Hammond
Subject Re: FW: State Law Issues- Brown Estate Research

Your time is appreciated. See the attached letter I sent to the court for an extension.

We will still need your affidavit so please continue to work on it. Per my conversation w/ Adele today she declined to resign so we are aiming to proceed. We will talk in detail as things develop.

The game was not that good but it still looks like a W from here.

>>> Bill Hammond <whamm@bellsouth.net> 11/27/2007 5:39:05 pm >>>
I sent these to the SAs since I realized they were not printed out and included in my file which I was ordered to turn over to the SAs under the order of August 10th, 2007. They called and immediately attempted to get me to renounce my opinion on the ownership of JBE Inc. and I stood my ground. They were very aggressive and argumentative when they called. I told them I could not change the facts and the law applicable to those facts in SC was clear to me. Bill

PS Sonny I am never wrong even though only by 3 points and 3 seconds to go. Ha!

#1

Adele J Pope

From Sonny Jones [AGSJONES@ag.state.sc.us]
Sent Thursday, December 06, 2007 4:04 PM
To ribuchananjr@bellsouth.net; adele@porelawfirm.com
Cc Bob Cook
Subject James Brown Matter

Attachments James Brown Legacy initial offer 10-12-07_.doc



James Brown
Legacy initial off

I, like each of you, have been contacted by Dr. Cox and Toby Byron as to the purchase (see attached 10/12/07 letter) of the Trust Estate for \$100 million plus 5% of the gross profits from the company to be formed. I, like each of you, have very little time left to devote to the intellectual property issue. However, I do not want to be the one referenced as the one who sat on an offer of \$100 million and lost it. Therefore, please advise as to the following (and more if you have further insight):

1. Is it that we do not have time to deal with this now and if so do we need to consult with someone who has the expertise?

2. I have heard for the last 3 months that the sky will fall and the offer will go away if we do not accept it now. Your thoughts? Also, who else is out there that can make an offer in at all?

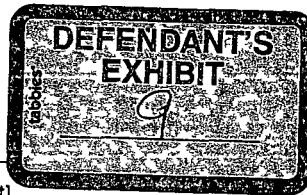
3. Are there some self-serving interests with some of the local players in this that is causing this push?

4. I was given Joe Katz in Atlanta as a person to call to get a feel if these current offers will in fact decrease in the near future. Your thoughts on that contact?

I would appreciate your thoughts and your indulgence but I would like to discuss now rather than explain later on.

Please advise. Thanks.

PS: When can we talk about the interesting information you recently discovered in the boxes from Keith Babcock?



William F Hammond

From Bill Hammond [whamm@bellsouth.net]
Sent Wednesday, April 23, 2008 8:14 PM
To William F Hammond
Subject FW: Plaintiffs Motion for Summary Judgment fax from the law offices of Adele Pope

IRS CIRCULAR 230 DISCLOSURE Pursuant to United States Treasury Department Regulations, the firm is now required to advise you that, unless otherwise expressly indicated, any federal tax advice contained in this communication, including attachments and enclosures, is not intended or written to be used, and may not be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing, or recommending to another party any tax-related matters addressed herein.

ATTORNEY-CLIENT PRIVILEGED DO NOT FORWARD THIS E-MAIL WITHOUT PERMISSION The information contained in this transmission is privileged and confidential. It is intended only for the use of the individual or entity named above. NOTE: E-mails are not a secure method of communication. They may be copied and held by various computers through which they pass. Individuals not participating in our communication could intercept them. You have consented to receive communications from the firm via e-mail. If you should change your mind, please advise the firm immediately.

William F Hammond
Hull, Towill, Norman, Barrett & Salley, P.C.
P.O. Box 1564
Augusta, GA 30903-1564
706 722-4481

From Bill Hammond [mailto:whamm@bellsouth.net]
Sent Tuesday, April 15, 2008 2:19 PM
To Brown Est / Albert H Dallas (dallaslaw@classicssouth.net)
Subject FW: Plaintiffs Motion for Summary Judgment fax from the law offices of Adele Pope

Buddy, Please advise if you have any objection to my disclosure of the information below under the attorney/client privilege. Please send to Wayne for his response. Thanks, Bill

Subject FW: Plaintiffs Motion for Summary Judgment - fax from the law offices of Adele Pope

FYI Bill

I get thrown in the pot but honestly have no knowledge of most of this. I was not involved in the movement of the situs, other than to recommend they not implement the move after a document to remove, prepared by another lawyer, was shown to me. They took my advice and decided to not move the situs to GA. If that document to remove to GA exists, I do not know where it is. I just looked at it, the statute below, rejected the idea and dispensed with it. No steps were taken under SC law to move the situs and this decision was accepted by the Trustees. Who took or kept the situs transfer document, I do not remember. See SC Code Sec. 62-7-108 (b) - (g) below - especially (e).

Ech b.t B

4/24/2008

Estate of James Brown

212 Newberry Street NW
Aiken, South Carolina 29801

Robert L. Buchanan Jr. Personal Representative

Adele J. Pope Personal Representative

June 13, 2008

The Honorable Henry Dargan McMaster
Attorney General
State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549
FAX: 734-3677

BY FAX AND MAIL

Re: Estate Plan of James Brown

Dear Attorney General McMaster:

Thank you for your recent meeting. We deeply regret that the Attorney General, as the principal legal officer of the State of South Carolina, has not elected to join us in the pursuit of our primary and critical goals for the Estate Plan of James Brown. Those are:

1. **Defend the Estate Plan of James Brown against challenges,**
2. **Defend against the Elective Share Claim,**
3. **Prevent the Return of former PR/Trustees Cannon, Dallas and Bradley, and**
4. **Avoid a fire sale of Mr. Brown's valuable royalties, image and person, the primary purpose of which is to put about \$35 Million in the hands of Cannon, Dallas, Bradley, Greenberg Traurig [All Defendants] and Frank Coppsidas, and which will expose the Estate to millions of dollars of unnecessary claims.**

If we are successful in the above efforts, current available information indicates that **within 3-5 years, Mr. Brown, through his Estate Plan, will have provided**

1. **Mr. Brown's personal and household effects (PHH) to certain children (Property or its value less \$500,000 (+/-) Estate Taxes)**
2. **Non-charitable Brown Family Education Trust, \$2 Million (+/-) to educate certain of Mr. Brown's grandchildren**

Letter to Attorney General McMaster

June 13, 2008

Page 2

3 The remainder after debts to The James Brown "I Feel Good" Foundation

It became our duty on November 20, 2007 to defend Mr. Brown's Estate Plan. We look forward to that challenge. Our Six-Month Report, a copy of which was distributed last month, outlines our progress and challenges during the period. [Additional copy enclosed.]

As required by the Court as Special Administrators appointed March 7, 2007, we worked with David Cannon, Buddy Dallas and Al Bradley for 5 months between our appointment and David Cannon's resignation as PR/Trustee on August 10, 2007. Thereafter, until November 20, 2007, when they resigned, we had substantial contact with Buddy Dallas and Al Bradley.

We can say unequivocally that it is in the best interest of Mr. Brown's Estate Plan and its primary beneficiaries, the Brown Family Education Trust and the James Brown "I Feel Good" Trust, that none of David Cannon, Buddy Dallas or Al Bradley returns to any fiduciary position with Mr. Brown's Estate Plan.

We can also say unequivocally that Mr. Cannon and Mr. Dallas' proposed sale of Mr. Brown's valuable Royalties, Image and Persona under the terms of October 18, 2007 Letter, if implemented, would be a humiliation to the State of South Carolina and would eviscerate Mr. Brown's Plan for the education of his own grandchildren and other needy and deserving children.

Attorney General's Support of Cannon, Dallas, Bradley and Hammond

Long after our appointment on November 20, 2007, and as recently as last week, we have become aware of how deeply the office of the Attorney General was and continues to be, involved in actions which support or encourage the efforts of Buddy Dallas and Al Bradley to be reinstated as Trustees and bring about this Fire Sale, intended to enrich themselves and David Cannon by more than \$16 Million.

Many are quite frankly, baffled by this. We share that view. We also have the additional concern that the Attorney General, one of whose missions is the protection of South Carolina charities, is supporting efforts to defeat the funding of The James Brown "I Feel Good" Trust through actions which erode our ability to defend Mr. Brown's Estate Plan.

The Attorney General's Office and William Hammond

We are extremely troubled by the strong and continued reliance of the Attorney General on affidavits and statements of Bill Hammond in the light of his extraordinary efforts to protect David Cannon, Buddy Dallas and Phil Farr. Within the last few weeks we have received copies of emails between Bill Hammond and others, including your office. They confirm our repeated assertions that it will not advance Mr. Brown's Estate Plan or the future funding of The James

Letter to Attorney General McMaster

June 13 2008

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Brown I Feel Good Trust for the Attorney General to rely on Bill Hammond

Mr Hammond is a supporter and apologist for David Cannon Hammond's longtime friend Phil Farr is a longtime friend of Buddy Dallas Hammond asserts in a letter to you that he chose to be a Trustee with Dallas and Bradley All have caused damage to the Estate Plan of Mr Brown Cannon Dallas Bradley and Farr are defendants in suits brought by Mr Brown's Estate and Trust

Bill Hammond's Support of David Cannon

We recently acquired the September 27 2007 email of Bill Hammond which was sent to your office (Copy attached) It says in part

"The Hatchet job on David Cannon based solely on facts supplied by the SA's, [Buchanan and Pope] many of which are unfounded, so far has been a sight to behold "

"When he [Cannon] resigned because of a mistake and offered to pay back the amount by which he had benefitted, the other Trustees under the terms of the trust voted to replace him with me The SA's told them they would be removed if I [Hammond] became a co-trustee "¹

Bill Hammond's Secret "Appointment" by Cannon, Dallas and Bradley as Trustee

After the September 27 2007 email Hammond communicated again with your office on November 27 2007 to say he was looking for the papers where he was appointed Trustee (See 11/27/07 email attached)

¹ This is particularly troublesome since the purported appointment was concealed from the Court and us until March 7 2008 See pronouncement of Sonny Jones and cross examination of Adele Pope 3/7/08 Transcript pp 17 118 119 121 122 enclosed

Letter to Attorney General McMaster

June 13 2008

Page 4

On November 15, 2007, Cannon began asserting his 5th amendment rights – which he has repeatedly asserted since. By November 20, 2007 anyone hearing the testimony including representatives of the SC Attorney General, was aware of Cannon's problems and that it was Cannon who had done a hatchet job on the James Brown 2000 Trust.

Neither the Attorney General's Office nor Bill Hammond reported Hammond's secret appointment as Trustee to the Court or the Trust beneficiaries, even though Hammond reported to your office again on November 27 2007 that he was looking for his appointment paper.

The secret attempted appointment of Hammond remained the secret of the SC Attorney General, the Georgia Attorney General, Dallas, Cannon, Bradley and Hammond until March 7

Meanwhile, the SC Attorney General used affidavits of Hammond, Dallas and Bradley to assert that we were unethical.

Most troublesome is the fact that Hammond's purported appointment was concealed until March 7 2008 when Mr. Jones raised it for the first time to help Mr. Dallas and Mr. Bradley prevent confirmation of our appointment and be reinstated as Trustees.

The suggestion to the Court and parties on March 7 2008 by your office was that the purported appointment of Hammond as Trustee was just discovered by Mr. Jones the night of March 6. Instead, Mr. Jones along with Hammond, Dallas, Cannon, Bradley and Grace Lewis had harbored this information for months until it became useful to what appears to be their joint effort to prevent anyone other than Cannon, Dallas and Bradley from being appointed.

We can see no reason why this alliance of the S.C. Attorney General in any way promotes the interest of Mr. Brown's Estate Plan and its primary beneficiary, The James Brown "I Feel Good" Trust.

David Cannon, Buddy Dallas, William Hammond and the attempted Sale of Mr Brown's Royalties, Image and Persona

On March 26, 2007 David Cannon and Buddy Dallas urged us to approve a \$26 Million sale which (we now know) would have been disastrous to Mr. Brown's Estate Plan. [See our first Quarterly Report as SAs.] We were told:

- 1 Joel Katz was the authority on such deals
- 2 If we did not authorize the deal (with absolutely no due diligence) the offer would disappear and it would be our fault.

At some point the deal not to be missed became \$45 Million By October 12 2007 it was \$100 Million

Without our knowing how deeply he was personally involved with David Cannon and Buddy Dallas, Bill Hammond in June 2007 gave us independent advice that we would breach our fiduciary duty if we did not approve Cannon Dallas and Bradley's proposed deal. In particular:

- 1 Mr. Hammond asserted that the Estate/Trust was required to sell the Royalties
- 2 Mr. Hammond asserted that it was a breach of fiduciary duty not to accept a sale which would net Mr. Brown's Estate/Trust only \$10 Million
- 3 Mr. Hammond knew Dallas Cannon and Bradley were claiming more than \$100 Million from such a sale, but was unconcerned
- 4 Joel Katz was claiming about \$5 Million from such a sale
- 5 The Pullman Group was claiming \$31 Million from such a sale
- 6 Frank Copsidas was claiming about \$12.5 Million from such a sale

Again without access to any due diligence we were told that it was improper for us to stand in the way of the sale [See email of Bill Hammond dtd 6/21/07 attached]

On December 6 2007 the Office of the Attorney General, through Sonny Jones asked appropriate questions about the proposed \$100 Million Offer [See Mr. Jones' email to us dated December 6, 2007 attached]. In particular, he wanted to know:

- 2 I have heard for the last 3 months that the sky will fall and the offer will go away if we do not accept it now - your thoughts. Also - who else is out there that can make an offer if at all
- 3 Are there some self-serving interest w/ some of the local players in this that is causing this push
- 4 I was given Joe Katz in Atlanta as a person to call to get a feel if these current offer will in fact decrease in the near future - your thoughts on that contract

Letter to Attorney General McMaster

June 13 2008

Page 6

We immediately responded by phone to inform your office about the October 18 Letter and its implications as set out above

Mr Jones did not act on this information

With knowledge of serious credibility issues for Cannon Dallas Bradley and Hammond, that Dallas Cannon and Bradley had filed \$15+ Million of claims against the Estate of James Brown on September 26, 2007 and that Cannon, Dallas and Bradley were generally known to be defendants in substantial claims by Mr Brown's Estate and Trust on December 10 2007 the Attorney General relied on affidavits of Dallas Bradley and Hammond to attack us. Those affidavits and the Attorney General's positions since December 2007

- 1 Support the assertion that Mr Buchanan and Mrs Pope were unethical
- 2 Ignore Cannon Dallas and Bradley's attempts to be paid \$15+ Million from the Estate and escape liability for missing millions
- 3 Ignore Bill Hammond's close association with Cannon and Farr and serious credibility issues
- 4 Are being used by Forlando (William) Brown in Federal Court to attempt to reinstate Cannon, Dallas and Bradley
- 5 Bolster assertions of Cannon, Dallas and Bradley, supported by Hammond that they have done nothing wrong and are entitled to \$15+ Million from Mr Brown's Estate [See Affidavits of Hammond, Dallas & Bradley submitted by the AG of SC in November/December 2007]

The Attorney General's Reported Promise to Remove Buchanan and Pope

On November 20, 2007 Dallas and Bradley resigned as PR/Trustees and officers of any James Brown Entities (except Geronimo LLC) We were appointed

The attempts by Cannon and Dallas to have a quick and disastrous sale of Mr Brown's assets and pay themselves millions seemed to be brought to a close

Then on November 26 2007 Terry Cox gave the JB Team hope He notified members of the JB Project team that he was assured that the **Senior Assistant Attorney General of South Carolina is preparing a motion to have (Buchanan and Pope) removed and "told me he would select a Trustee for me to work with"** [See Terry Cox email dtd 11/26/07 attached]

Letter to Attorney General McMaster

June 13 2008

Page 7

Mr Cox is working with William (Forlando) Brown Buddy Dallas and David Cannon on '\$100 Million project

On November 30 2007 Dallas and Bradley sought to return as Trustees

~ On December 14 2007 the SC Attorney General based largely on affidavits of Hammond Dallas and Bradley sought the same result [See emails dtd 12/14/07]

We believe that this does not promote Mr Brown's Estate Plan the future funding of The James Brown I Feel Good Trust or the interest of needy and deserving children

The Attorney General's Support of Forlando (William) Brown's Attempts to Return Cannon, Dallas and Bradley as Trustees

On January 2 2008, Forlando (William) Brown, Mr Brown's Grandson and business partner of Terry Cox and Buddy Dallas in the \$100 Million deal sued us in Federal Court asserting

- 1 Judge Early's Orders related to the Trust are void We have no authority [The intended result Cannon, Dallas and Bradley return and the Deal goes through]
- 2 Attempting to enjoin the Trustees from taking any action (Defense of Estate Plan suits against Dallas, Cannon Bradley & GT etc)

In this suit Forlando (William) Brown is represented by Mr Cannon Dallas and Bradley's lawyers who have billed the Estate \$48 225 but refuse to turn over the file

We asked the Attorney General to join in this suit to confirm that the return of Cannon Dallas and Bradley was not appropriate You have refused

In early February 2008 the Attorney General joined Mr Dallas and Mr Cox's partner, Forlando (William) Brown in the assault on us He appeared on WIS Television accusing us of acting improperly According to the associated article [we didn't watch the interview] you said that we were representing both the poor kids' trust and the families and that this went far past the sign of conflict of interest As the article and television story show this appeared to throw the support of the Attorney General of South Carolina behind Forlando (William) Brown's attempts to return Cannon Dallas and Bradley as Trustees [WIS Article dtd 2/7/08 attached]

Many family members of Mr Brown have expressed outrage that Mr Cannon appears to have escaped any consequences for taking \$900 000 00 which did not belong to him It belonged to a New York Bank payable on Mr Brown's TIAA debt

The money Mr Cannon misappropriated was taken directly from the account of the James Brown 2000 Trust

We fail to see how the Attorney General's support of Forlando (William) Brown's attempts to reinstate Cannon Dallas and Bradley as Trustees can help Mr Brown's Estate Plan

Issues Raised by Challenges to the Will and Trust and the Dallas and Bradley Appeal

Between November 30 and December 30 2007 attempts by Dallas and Bradley to return as Trustees, with contests to the Will by Lommie Rne Hynie Brown and 5 of Mr Brown's 6 acknowledged children raised numerous challenges

While the Dallas and Bradley appeal is pending there are many things to be done to position Mr Brown's Estate and Trust for a strong defense to these challenges The positions of the Attorney General and the PR/Trustees should be wholly aligned As stated above, they include

- 1 **Defending the Estate Plan of James Brown against challenges,**
[At a minimum discovery can continue as to the validity of Mr Brown's Will dated August 1, 2000 the same day of the Trust]
- 2 **Defending against the Elective Share Claims,**
[There has been no suggestion that the ' Heirs' determination cannot continue to trial The determination of whether Mr Brown had a Wife and who are his children and other heirs is important]
- 3 **Preventing the Return of former PR/Trustees Cannon, Dallas and Bradley**
[This critical project has simply moved from the Circuit Court to the Court of Appeals and to a limited extent the Federal Court]
- 4 **Avoiding a fire sale of Mr Brown's valuable royalties, image and persona**
[We estimate it will take at least 2 - 3 years to defend and resolve the \$45+ Million of bills and claims against the Estate including \$900 000+ in attorneys and accounting fees incurred by Dallas Cannon and Bradley This work is critical to the implementation of Mr Brown's Estate Plan]

Mr Brown's Estate account today has only about \$9 000 We are trying to hold on defend the Estate Plan and prevent an improvident sale of Mr Brown's valuable royalties image and persona The Attorney General of South Carolina can be an important ally in our attempts to save most of Mr Brown's assets for the James Brown I Feel Good Trust and \$2 Million Trust to educate certain of Mr Brown's grandchildren

Ltr to Attorney General McMaster

June 13, 2008

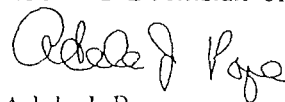
Page 9

For the sake of the children who will be the primary beneficiaries of Mr Brown s Estate Plan, and for the State of South Carolina, the Attorney General of South Carolina should be taking positions that will effectively protect this valuable asset

Sincerely



Robert L Buchanan Jr



Adele J Pope

AJP/RLB JR ats

Enclosures

--
--

**212 Newberry Street NW
Aiken, South Carolina 29801**

June 16, 2008

The Honorable Henry Dargan McMaster
Attorney General for the State of South Carolina
C Havird Jones, Esquire
State of South Carolina
P O Box 11549
Columbia, SC 29211-1549
Fax # 803-734-3677

BY FAX ONLY

Re The Estate of James Brown
 The James Brown 2000 Irrevocable Trust

Dear Attorney General McMaster and Mr Jones

We respectfully request that the Attorney General's Office take the following steps in a timely manner

- 1 Withdraw your second Motion for Reconsideration as to the Removal of Dallas and Bradley and our appointment as PR/Trustees
- 2 Correct the record in the Circuit Court regarding knowledge of the purported "appointment" of William Hammond as Trustee so that it will not be used in State and Federal Court to bolster the efforts of Messrs Cannon, Dallas and Bradley to return as Trustees
- 3 Agree with us, in principle, either privately or for publication (your choice), that we consider ourselves caretakers of this legacy, have no interest in remaining permanently, believe it will take 3 - 5 years to stabilize the Estate/Trust and defend the Estate Plan, and that we look forward to working with the Attorney General (and Mr Brown's Family, as appropriate) to present a succession plan which will prevent the return of Dallas, Cannon and Bradley and preserve and protect this valuable legacy
- 4 As we stated to you earlier, we are happy to consent to adding a 3rd PR/ Trustee now PROVIDED that person brings value and stature to Mr Brown's legacy, has the energy and commitment to defend the Estate Plan, is wholly independent, and the appointment can be accomplished without giving any encouragement to Messrs Cannon, Dallas and Bradley or those contesting Mr Brown's Estate Plan

Letter to The Honorable Henry Dargan McMaster and Mr Jones

June 16, 2008

Page 2

We would appreciate your responses to Paragraphs 1 and 2 by the end of the week, as we are preparing for the June 30 hearing and are constrained by service and filing timelines

Sincerely,

Robert L Buchanan Jr

Adele J Pope

AJP lwm

Estate of James Brown
212 Newberry Street NW
Aiken, South Carolina 29801

Robert L. Buchanan Jr. Personal Representative

Adele J. Pope Personal Representative

June 27, 2008

The Honorable Henry Dargan McMaster
Attorney General for the State of South Carolina
State of South Carolina
P O Box 11549
Columbia, SC 29211-1549

BY FAX ONLY
Fax # 803 734-3677

Re The Estate Plan of James Brown

Dear Attorney General McMaster

All except the first two paragraphs of this letter were completed yesterday before Mr Jones elected to file his unfortunate Petition

We request an opportunity to review all of your office's third-party correspondence documents and communications, as well as time summaries of Mr Jones, Ms Jowers and Ms Matthews from September 1, 2007

We appreciate your June 16, 2008 response to our concerns related to the Estate Plan of James Brown. We look forward to working with your office in the defense of Mr Brown's Estate Plan.

ATTORNEY GENERAL'S EXPRESSED NEUTRALITY WITH RESPECT TO DAVID
CANNON AND ALBERT DALLAS

We are concerned about two assertions made in your June 16th letter. Because we believe that future protection of Mr Brown's Estate Plan is dependent on an understanding of the secret and improper actions of the former PR/Trustees, we are concerned that the Attorney General asserts that he does not oppose Messrs Cannon and Dallas. It is our firm position that the defense of Mr Brown's Estate Plan requires that the Attorney General, if involved, be opposed to Mr Cannon and Mr Dallas.

Mr Cannon and Mr Dallas are using every means possible to

1 Conduct a Fire Sale of Mr Brown's assets for their own benefit,

- 2 Interfere with the administration of Mr Brown s Estate and Trust so that will happen,
- 3 Avoid returning the \$13 Million they received between 1999 and 2007, and
- 4 Receive more than \$16 5 Million from Mr Brown's assets

The Cannon/Dallas plan is to get rid of us and immediately conduct the \$100 Million Fire Sale This will damage the Estate Plan of James Brown **at least** as follows

- 1 Prevent return of the \$13 Million
- 2 Pay to them **at least**
 - a Cannon \$ 6 Million
 - b Dallas \$ 5 5 Million
 - c Bradley \$ 5 Million
 - d J Katz \$ 5 Million
 - e F Copsidas \$15 Million
 - f T Byron \$ 5 Million (promised by Dallas in November 2007)
 - g Forlando (William) Brown - as yet undisclosed

AND expose the Estate/Trust to a \$12 5 Million claim of Pullman under Paragraph 7 of the old engagement letter (Subject of New York litigation)

Mr Cannon, Mr Dallas and Mr Bradley incurred more than \$900,000 in legal fees last year trying to accomplish this Mr Brown's Estate is now saddled with the defense of those claims Mr Cannon, Mr Dallas and their business partner Forlando (William) Brown and his attorney David Bell, are currently represented by Wayne Byrd, Audra Byrd, at least 2 Powell Goldstein lawyers, William Toal, and others To face this onslaught and defend the Estate Plan, we have about \$3,000 in the bank [See First Accounting]

In light of Mr Cannon's behavior and Mr Dallas repeated false representations to the parties, to the Court, and under oath, we believe that the Attorney General should not treat either as some neutral party or source of reliable information And their Affidavits should certainly not be used to skewer others

You assert that the Attorney General's office cannot become involved in Forlando (William) Brown's attempts to have Dallas and Cannon reinstated as Trustees and enjoy the Trust from taking any action You assert we do not seek out lawsuits in which to get involved '

We respectfully submit that the Attorney General, at the request of Messrs Cannon and Dallas, did seek to become involved in early September, 2007, and actively supported Cannon and Dallas in their false accusations and attacks on us as Special Administrators

These matters have now been partially straightened out – but with a great loss of energy and time

Here is a brief review of what is now known about Mr Cannon and Dallas' actions, with Forlando (William) Brown, Mr Bradley and William Hammond, to summon the Attorneys General of two states to their rescue

July 10 2007	When Cannon, Dallas and Bradley knew we would shortly see the Trust's records on July 17, they attempted a secret transfer of the Trust to Georgia
July 17, 2007	We discovered the missing \$900,000 00 [from the Trust]
Late July	Dallas, Cannon and Bradley secretly "appointed" Bill Hammond as Trustee
Early August	Dallas and Bradley pretended to distance themselves from Cannon
August 10, 2007	Cannon resigned Dallas and Bradley promised transparent administration of the Estate and Trust
August 31, 2007	Dallas and Bradley filed a Motion to Declare James Brown Enterprises, Inc (JBE, Inc) an Asset of the Estate – Not the Trust (We refused to join in the motion)
	In his Federal Lawsuit of Forlando (William) Brown asserts Dallas was forced by us to join in <u>our</u> motion We never filed any motion Dallas then "immediately and purposefully contacted the attorneys General of South Carolina and Georgia " [See Attachment A]
Sept 20, 2007	The SC Attorney General, at the invitation of Cannon and Dallas, moved to intervene in the action Instead of attacking Cannon and Bradley, they went after us

Sept 24, 2007	Dallas, Bradley and Forlando (William) Brown all signed, with others, a stipulation that JBE, Inc is part of the Estate – not the Trust (A month after refusing to join in the JBE, Inc , motion, we still refused to sign such stipulation, despite affidavits of Phil Farr and others asserting that JBE, Inc was an Estate asset) [See Attachment B , Transcript, and Affidavit of Farr, with attachments]
October 2007	Cannon, Dallas and business partner William (Forlando) Brown, (without disclosing their conflict) presented to themselves as PR/Trustees the first \$100 Million letter of intent, which they represented to be an independent offer (The “Fire Sale”)
October 2007	Cannon reported to a friend that “[t]he tide seems to be turning I went to the Attorneys General of SC & GA and they have entered the proceedings The Judge and other attorneys have been quite [sic] ” [See Attachment C]
By Nov 20, 2007	Everyone involved in the Estate/Trust knew that Mr Hammond, Mr Cannon and Mr Dallas were not credible
December 6, 2007	Sonny Jones questioned the “\$100 Million Deal,” but did not investigate or challenge Cannon, Dallas, or Forlando (William) Brown Instead the Attorney General sent auditors to check the small amount of funds in our hands (No problems found)
December 2007	The Attorney General used affidavits of Bradley, Dallas and Hammond to accuse us of unethical behavior Accused us of improper commingling (Later withdrawn)
Jan - April, 2008	Cannon, Dallas business partner Forlando (William) Brown filed Federal Suit
June 2008	William Hammond gave press interview intending to damage the Estate Plan by interfering with the Christie’s sale [See Attachment D]

In short, the Attorney General did accept an invitation – from Mr Hammond, Mr Cannon and Mr Dallas – and became involved in this “case” You became involved fairly actively on the side of Messrs Cannon and Dallas That involvement, and the accompanying

statements, accusations and representations, are still being used by Mr Cannon, Mr Dallas and Mr Bradley [and business partner Forlando (William) Brown] in attempts to paralyze the 2000 Trust, prevent the defense of the Estate Plan, prevent the return of the \$13 Million, and take home more than \$40 Million from the Fire Sale for themselves and their joint venturers

We understand that the Attorney General's decision to become involved in any aspect of the Defense of Mr Brown's Estate Plan is discretionary. But you elected in September 2007 to enter, with the Attorney General of Georgia, at the request of Mr Cannon and Mr Dallas. Now that the Attorney General is immersed in the whole project of the defense of Mr Brown's Estate Plan, we think it appropriate and perhaps critical, for the Attorney General to declare that the State of South Carolina has an interest in seeing that Forlando (William) Brown is not successful in his attempts to paralyze the Trust and return Cannon, Dallas and Bradley, as Trustees. (He characterizes Cannon as "courageous" and "honest." See deposition dtd 10/31/07.)

Again, we thank you for your work toward what we see as our mutual goals

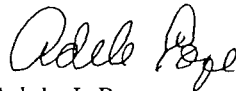
- 1 Defense of Mr Brown's Estate Plan,
- 2 Defense of the Elective Share Claim,
- 3 Avoiding a Fire Sale of this wonderful legacy, and
- 4 Making sure that Messrs Cannon, Dallas, Bradley and their agents do not return to any fiduciary position with respect to the Estate/Trust or Brown Entities

We look forward to working with you

Sincerely,



Robert L. Buchanan, Jr



Adele J. Pope

AJP ats
Enclosures

Estate of James Brown
212 Newberry Street NW
Aiken, South Carolina 29801

Robert L. Buchanan Jr. Personal Representative

Adele J. Pope Personal Representative

July 25, 2008

The Honorable Henry Dargan McMaster
Attorney General for the State of South Carolina
State of South Carolina
C. Havird Jones, Jr., Esquire
Senior Assistant Attorney General
P O Box 11549
Columbia, SC 29211-1549

BY FAX OR MAIL
Fax # 803-734-3677

Re Estate/Trust of James Brown

Dear Attorney General McMaster and Mr. Jones

Based on the Order of Judge Cureton dated July 14, 2008, we would hope that we can return to our discussions which were derailed by various interpretations of the May 28 Order

In an effort to work with the Attorney General toward a succession plan that will be controlled in a manner acceptable to the Attorney General, and allow us to focus all energy on defense of the Estate Plan, being certain that Dallas, Cannon and Bradley do not return, and vigorous defense of the \$46 Million in claims, we have made contact with each of the persons suggested by the Attorney General. Here is a brief report

- 1 Steve Johnson and Xavier Starkes visited the Trust property on Tuesday, July 22
- 2 David Sojourner has been on vacation, and we hope to talk to him within the next week or so
- 3 We have attempted to contact Russell Bouknight about visiting the Trust property, but have not heard back from him
- 4 We have attempted to contact Tracey C. Green. His paralegal called back to advise that he was too busy to go to the house and too busy to schedule a telephone conference to talk with us. We requested that he call back to schedule a time when he could talk. This was about 10 days ago, and he has not called.

Letter to Attorney General McMaster and Mr Jones
July 25, 2008
Page 2

We are hoping that Xavier Starkes and Steve Johnson remain interested in the prospect of serving Mr Brown's Estate Plan

Can we continue to work on this?

Sincerely,

Robert L Buchanan, Jr

Adele J Pope

AJP als

cc Russell L Bauknight, CPA
Tracey C Green, Esquire
W Steven Johnson, Esquire
David C Sojourner, Jr , Esquire
F Xavier Starkes, Esquire
All other interested parties in the Estate/Trust

HENRY McMASTER
ATTORNEY GENERAL

July 30 2008

Adele J Pope, Esquire
Robert L Buchanan Jr Esquire
212 Newberry Street NW
Aiken South Carolina 29801

Re James Brown Litigation

Dear Mrs Pope and Mr Buchanan

I am writing in response to your letter dated July 25 2008 I am pleased that we may be able to work together towards our shared goals in connection with the Estate Plan of James Brown As I mentioned in my last letter Mr Brown's Charitable Trust is a wonderful opportunity to further the education of needy children at institutions in South Carolina and Georgia I hope that we will be able to work together to ensure that scholarships are funded as soon as possible

While I have no objection to returning to our previous discussions about securing your proper appointment I have concerns about whether this is possible given your unwillingness to consider the Special Trustee position On several occasions you have indicated that you do not want to be appointed Special Trustee I do not believe that you can be properly appointed permanent Trustee if you are not willing to resign and ask to be appointed Special Trustee, which I would support Once you are appointed Special Trustee, we can ask the Advisory Board for a vote on the Trustee position, as required by Article XIII of the Trust document If there is not a unanimous vote for you to be Trustee, then we can go to the Probate Court, have the matter removed to the Circuit Court and have you properly appointed by the Circuit Court

I am hopeful that as we go through this process, a third Trustee can be put in place along with both of you as required by Article VIII of the Trust I appreciate your report in connection with my suggestions as to a suitable individual to serve as the third Trustee

If you are willing to work together, I believe we can secure your proper appointment without further litigation which would give us all more time to devote to the charitable intentions of Mr Brown

Yours very truly



Henry McMaster

HMCM/mfj

EXHIBIT O

Estate/Trust of James Brown 212 Newberry Street NW Aiken, South Carolina 29801

Robert L. Buchanan, Jr. Personal Representative

Adele J. Pope Personal Representative

September 2, 2008

The Honorable Henry Dargan McMaster
Attorney General for the State of South Carolina
C. Havird Jones, Jr., Esquire
Senior Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

Louis Levenson, Esquire
Levenson & Associates
125 Broad Street, SW
Atlanta, Georgia 30303

Robert N. Rosen, Esquire
Post Office Box 1510
Charleston, South Carolina 29402

Re: Estate of James Brown

Gentlemen:

We are writing you as representatives of those Alan Medlin described to us as speaking as one in connection with working toward a settlement related to the James Brown Estate Plan.

This will confirm our conversation with Alan last Friday, August 29, and raise other matters.

First, we know nothing of any confidential in-camera discussions related to Mr. Brown's Estate Plan, and have specifically instructed Mr. Bailey not to discuss them either with us or with our counsel in other matters.

Facing a Federal Court hearing on November 18 on the serious (and we believe frivolous) attempts by Forlando (William) Brown to shut down Mr. Brown's Trust and return Cannon, Dallas and Bradley as fiduciaries, as well as challenges by most remaining family members to the Estate Plan, we feel that any proposed settlement which we are asked to consider should be open for debate by us, by educators, and by others.

We have encouraged, and will continue to support, the efforts of Mr. Brown's Family and the Attorney General to reach resolution, provided that any proposed settlement

1 Honors the desires of Mr. Brown as set forth in his Estate Plan.



HENRY McMASTER
ATTORNEY GENERAL

October 21, 2008

VIA E-MAIL AND REGULAR MAIL

James D. Bailey, Esquire
P O Box 2376
Aiken South Carolina 29802

Re James Brown Charitable Trust

Dear Mr. Bailey

Per our conversation in the telephone conference with Judge Early on Monday, October 20, 2008, this letter is a follow-up to Adele Pope's and Bob Buchanan's letter dated October 8, 2008, to 'Members of the Advisory Board' seeking their help and input in analyzing the August 10, 2008, settlement agreement. Per page two of that referenced letter, Ms. Pope and Mr. Buchanan are seeking the assistance of these individuals as to in-depth risk analysis surrounding the settlement, complex tax issues, and legal assessments as to the proper court to approve the proposed settlement.

While we have the utmost respect for these individuals, it is our position, as recently stated by our State Supreme Court in the McMaster and Epworth cases, that the Attorney General is the appropriate party to protect the beneficiaries of a charitable trust. To request the assistance of these individuals at this time on such complex matters is both inappropriate and inconsiderate of their time.

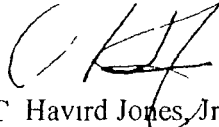
James D Bailey Esquire

Page 9

October 21 2008

However if you plan to go forward with a meeting of these individuals please advise if they will be provided a copy of the estate tax return in the course of their review

Very truly yours,

A handwritten signature in black ink, appearing to read 'C. Havard Jones, Jr.', with a stylized flourish at the end.

C. Havard Jones, Jr.
Senior Assistant Attorney General

CHJ,jr/shb

cc Robert L. Buchanan, Jr., Esquire (Via E-mail Only)
Addle J. Pope Esquire (Via E-mail Only)
Other interested Persons or Counsel (Courtesy copy) (Via E-mail Only)

EXHIBIT J

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

) CASE NUMBER 2007-CP-02 0122

COUNTY OF AIKEN

)

)

1 DARYL J BROWN, individually and on behalf)
of his minor children, LINDSEY DELORES)
BROWN and JANISE ~~VANISHA BROWN~~, 2)
VANISHA BROWN, 3 LARRY BROWN, 4)
DEANNA J BROWN THOMAS, individually and)
on behalf of her minor child JASON BROWN)
LEWIS, 5 YAMMA N BROWN individually and)
and on behalf of her minor children SYDNEY)
L ~~LEWIS~~ and CARRINGTON L ~~LEWIS~~ and 6)
TONYA BROWN)

[Emphasis Supplied]

Plaintiffs

v

ADELE POPE as Personal Representative of the)
Estate of James Brown and as Trustee of the)
purported Irrevocable Trust of James Brown dated)
August 1, 2000, ROBERT L BUCHANAN, JR as)
Personal Representative of the Estate of James)
Brown and as Trustee of the purported Irrevocable)
Trust of James Brown dated August 1, 2000,)
TOMMIE RAE BROWN, as the potential heir of ()
James Brown, JAMES ~~JAMES BROWN~~ as the)
potential heir of James Brown, CINNAMON)
NICOLE MERNICKLE PARIS as the potential heir)
of James Brown, LARHONDA PETITT as the)
potential heir of James Brown, JEANETTE)
MITCHELL, as the potential heir of James Brown,)
TERRY BROWN as the potential heir of James)
Brown ROMUNZO BROWN as the potential heir)
of James Brown, FORLANDO BROWN, as the)
potential heir of James Brown HENRY DARGAN)
MCMASTER in his capacity as ATTORNEY)
GENERAL OF THE STATE OF SOUTH)
CAROLINA, JANE DOE and JOHN DOE numbers)
I, II, III, IV as potential heirs and/or devisee and/or)
beneficiaries of James Brown and as representatives)
of all other persons known or unknown claiming to)
be an heir and/or devisee and/or beneficiary of)
of James Brown)

Defendants

PRZ
ORDER RESOLVING MOTION OF
PR/TRUSTEES TO DISMISS AND
REQUIRING SERVICE
BY PUBLICATION

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

I, Liz Godard, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this

MAY 10 2008

37

8

CCCC & GA, Aiken County, S.C.

Liz Godard
Deanna G. Galt

5:20

PRZ
11

This matter was commenced with the filing by the Plaintiffs on December 26, 2007 of two separate Complaints. This Court has jurisdiction to hear this matter because it was duly removed to the Circuit Court on Motion of the Honorable Sue Roe, Probate Judge.

Within 30 days after filing of the original complaints, they were consolidated into a single amended complaint. On or about January 15, 2008, Defendants Adele J. Pope and Robert L. Buchanan, Jr., as Personal Representatives of the Estate of James Brown and as Trustees of the James Brown 2000 Irrevocable Trust (the "PR/Trustees") served a Motion to Dismiss or Consolidate and for Related Relief. This Order resolves the PR/Trustees' motion.

Plaintiffs give notice that their position as to the lawful heirs of James Brown and their respective shares is as follows¹:

- 1 Daryl J. Brown (1/6)
- 2 Vanisha Brown (1/6)
- 3 Larry Brown (1/6)
- 4 Deanna J. Brown Thomas (1/6)
- 5 Yamma N. Brown (1/6)
- 6 Terry Brown (1/6)

Plaintiffs have agreed to the clerical change in the caption to correctly name a Trustee.

Plaintiffs agree that it is appropriate to serve all parties by publication in the Augusta Chronicle and the Aiken Standard. Because of the worldwide media recognition of James Brown, and because of James Brown's longstanding connection with Augusta, Georgia and Aiken, South Carolina, Plaintiffs and other parties assert that publication in these papers will

¹ This is without prejudice to the position of Defendant PR/Trustees and certain others that James Brown died testate and that the action to set aside the Will and Trust is without merit. Said defendants acknowledge, however, that the determination of the lawful heirs of James Brown may have bearing on other rights and obligations of the parties.

provide the best notice to the Doe Defendants

It is therefore ORDERED ADJUDGED and DECREED

1 The Caption is hereby modified as stated above

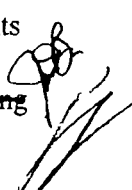
2 Plaintiffs shall publish the Summons for 3 weeks in the Augusta Chronicle and the Aiken Standard as provided by law, and shall also publish therewith the following notice

Nature of action The purpose of the above action is to determine all lawful heirs at law of James Brown, including lawful heirs at law who may be entitled to rights under state and federal laws This action is also an action by plaintiffs to set aside the will of James Brown and the James Brown 2000 Irrevocable Trust, along with its subtrusts, the Brown Family Education Trust and The James Brown "I Feel Good" Trust Failure to respond to the summons and complaint may result in loss of any and all rights with respect to the above matters

3 Plaintiffs shall serve all defendants with the amended complaint within 30 days

4 Defendants who have been served but who have not answered the Amended

Complaint shall have Thirty (30) days from the date of this Order to answer, move or otherwise appear

5 The resolution of the PR/Trustees' motion to dismiss is without prejudice to the rights of any party to assert any defenses, counterclaims and/or crossclaims in the proceeding, ~~including but not limited to laches and statutes of limitations~~ 

AND IT IS SO ORDERED

March 8, 2008
Aiken, South Carolina



Doyet A. Early, III
Resident Judge, Second Judicial Circuit

JUL 22 2009

EXHIBIT K

Filed 7-21-2009Sue H Roe
Judge of ProbateBy [Signature]

UNITED STATES DISTRICT COURT

DISTRICT OF

SOUTH CAROLINA

Michael Dean Brown,
Petitioner,CASE NO 09-CP 52-1442

V

THE HONORABLE JUDGE
Dwight A. Evers, III
Respondent

PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident in the state of California I'm currently incarcerated in a California State Prison I'm over the age of 18 years, and a party to the within action

I served the following document to each of the persons named below at the address shown By placing a true copy in a sealed envelope with postage fully prepaid, in the U S Mail at the Institutional mailroom

DOCUMENT MOTION TO BECOME A PART OF THE
JAMES BROWN ESTATE CASE

② MOTION FOR APPOINTMENT OF COUNSEL

PARTIES SERVED United States District Court for
the district of South Carolina Matthew J. Purnell
Court House 901 Richland Street Columbia
South Carolina 29201

I declare under penalty of perjury the above statements are true and correct This document
executed on the 11 Day of JUNE 2009, in the city of Tracy
San Joaquin County, California By Michael Dean Brown print your name

SIGNED [Signature]

7
 1 Michael E. Early, III (CDCR number)

2 P.O. Box 600

3 Tracy, CA 95378-0600

4 In Pro Per

5 STATE OF SOUTH CAROLINA
 6 COUNTY OF Aiken

7 Michael E. Early, III

8) CASE No CG-P 02-1647

9) Petitioner)

10) MOTION FOR APPOINTMENT
 11) OF COUNSEL

12) V THE HONORABLE JUDGE)

13) Doyle A. Early, III Respondent)

14 TO THE HONORABLE JUDGE OF THE ABOVE ENTITLED COURT

15 Notice is hereby given that the above named petitioner moves this court for
 16 appointment of counsel ~~on appeal from criminal conviction(s)~~ ^{in support of this} motion, I petitioner declare that I am indigent and have no financial means of
 17 retaining an attorney to provide representation ~~on appeal~~

18
 19
 20
 21
 22 I declare under penalty of perjury that the foregoing is true and correct based
 23 upon my information and belief

24
 25 DATED July 11, 2009

26 RESPECTFULLY SUBMITTED

27
 28

DECLARATION OF Michael Dean BrownI, Michael Dean Brown hereby declare

That through this Court, Representation be
 provided for me in the probate matter of
Mr. James Joseph Brown, As I am a heir I
 need representation in the court cases
 case no 07-cp 02-0122 (Estate of James Brown) civil
 case no 08-cp 02-00572 (Will/Trust/Heirs matter) I
 am a heir and I am willing to prove so
 through DNA testing. I am currently incarcerated
 in California and unable to secure my own
 counsel to assist me pro-bono

VERIFICATION

I am the petitioner in the above cause of action have read the statements herein,
 and declare under penalty of perjury that upon information and belief these statements are
 true and correct

DATED Jul 11, 2009

RESPECTFULLY SUBMITTED,



EXHIBIT L

[Emphasis Supplied]

ATTACHMENT - 1

IN THE PROBATE COURT OF AIKEN COUNTY

STATE OF SOUTH CAROLINA

IN THE MATTER OF
JAMES BROWN, a/k/a
JAMES JOSEPH BROWN

)
)
)
)
)
)

CASE/ESTATE NO _____

AFFIDAVIT OF YAMMA N BROWN LUMAR

Personally appeared before the undersigned officer, duly authorized under law to administer oaths, YAMMA N BROWN LUMAR, who, after being sworn, states as follows

1

I am over 21 years of age, I am competent to make this Affidavit and I have personal knowledge of the facts set forth herein.

2

I am a resident of FULTON County, GEORGIA

4

I am the daughter of James Brown, a/k/a James Joseph Brown and specifically designated in his Will as one member of the entire class of heirs to the Estate of James Brown

5

The personal representatives of the Estate of James Brown have not made any accounting to me as a beneficiary of the Estate, of the assets of certain trusts that make up the bulk of the Estate of James Brown

6

I believe all or some of the personal representatives of the Estate have knowledge

-0184



IN THE PROBATE COURT OF AIKEN COUNTY
STATE OF SOUTH CAROLINA

IN THE MATTER OF
JAMES BROWN, a/k/a
JAMES JOSEPH BROWN

)
) CASE/ESTATE NO _____
)
)
)

AFFIDAVIT OF DEANNA J BROWN THOMAS

Personally appeared before the undersigned officer, duly authorized under law to
administer oaths Deanna J Brown Thomas who after being sworn, states as follows

1

I am over 21 years of age I am competent to make this Affidavit and I have
personal knowledge of the facts set forth herein

2

I am a resident of Aiken County SOUTH CAROLINA.

4

I am the daughter of James Brown, a/k/a James Joseph Brown and specifically
designated in his Will as one member of the entire class of heirs to the Estate of James
Brown.

5

The personal representatives of the Estate of James Brown have not made any
accounting to me, as a beneficiary of the Estate of the assets of certain trusts that make
up the bulk of the Estate of James Brown.

6

I believe all or some of the personal representatives of the Estate have knowledge
of certain liquid assets whose location is unknown to the lawful heirs of the Estate





IN THE PROBATE COURT OF AIKEN COUNTY

STATE OF SOUTH CAROLINA

IN THE MATTER OF
JAMES BROWN, a/k/a
JAMES JOSEPH BROWN

CASE/ESTATE NO _____

AFFIDAVIT OF DARYL J BROWN

Personally appeared before the undersigned officer duly authorized under law to administer oaths, Daryl J Brown, who, after being sworn, states as follows

1

I am over 21 years of age I am competent to make this Affidavit and I have personal knowledge of the facts set forth herein

2

I am a resident of Richmond County, GEORGIA

4

I am the son of James Brown, a/k/a James Joseph Brown and specifically designated in his Will as one member of the entire class of heirs to the Estate of James Brown

5

The personal representatives of the Estate of James Brown have not made any accounting to me as a beneficiary of the Estate, of the assets of certain trusts that make up the bulk of the Estate of James Brown

6

I believe all or some of the personal representatives of the Estate have knowledge of certain liquid assets whose location is unknown to the lawful heirs of the Estate

EXHIBIT M

[Emphasis S applied]

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

1 DARYL J BROWN, individually and on)
behalf of his minor children, LINDSEY DELORES)
BROWN and JANISE ~~YANISHA BROWN~~,)
2 VANISHA BROWN 3 LARRY BROWN,)
4 DEANNA J BROWN THOMAS, individually)
and on behalf of her minor child JASON BROWN)
LEWIS, 5 YAMMA N BROWN, individually)
and on behalf of her minor children SYDNEY L ~~LEWIS~~)
and CARRINGTON L ~~LEWIS~~ and 6 TONYA BROWN,)

Plaintiffs)

VS)

ADELE POPE, as Personal Representative of the Estate)
of James Brown and as Trustee of the purported)
Irrevocable Trust of James Brown dated August 1, 2000)
ROBERT L BUCHANAN as Personal Representative of)
the Estate of James Brown and as Trustee of the)
purported Irrevocable Trust of James Brown dated)
August 1 2000, TOMMIE RAE BROWN as the potential)
heir of James Brown, JAMES ~~ROBERT BROWN~~ as the)
potential heir of James Brown CINNAMON NICOLE)
MERNICKLE PARIS as the potential heir of James Brown,)
LARHONDA PETITT as the potential heir of James)
Brown, JEANETTE MITCHELL, as the potential heir of)
James Brown, TERRY BROWN, as the potential heir of)
James Brown, ROMUNZO BROWN, as the potential heir)
of James Brown, FORLANDO BROWN, as the potential)
heir of James Brown, HENRY DARGAN MCMASTER in)
his capacity as ATTORNEY GENERAL OF THE STATE)
OF SOUTH CAROLINA, JANE DOE and JOHN DOE)
numbers I II, III IV as potential heirs and/or devisee)
and/or beneficiaries of James Brown and as representatives)
of all other persons known or unknown claiming to be an)
heir and/or devisee and/or beneficiary of James Brown,)

Defendants)

IN THE COURT OF
COMMON PLEAS
CASE NO 2008-CP 02-872

C O P Y
ORIGINAL FILED

JAN 27 2009
Ches 3:20 PM
AIKEN COUNTY
CLERK OF COURT

BRIEF IN OPPOSITION TO SETTLEMENT

NOW COME Terry Brown, Forlando Brown and Romunzo Brown and file this brief in opposition to the settlement of the referenced action, and show the court

STATEMENT OF FACTS

Terry Brown, the son of James Brown, is a beneficiary under James Brown's will. As a beneficiary under the contested will, Terry Brown stands to receive one sixth of his father's personal household effects. Terry's sons, Forlando Brown and Romunzo Brown, are beneficiaries of a trust created by James Brown for the education of his grandchildren. In addition to the education of his grandchildren, the trust provides for the education of disadvantaged children in South Carolina and Georgia. The South Carolina Attorney General is authorized by statute to represent the interests of the charitable beneficiaries to the trust. The Personal Representatives of Mr. Brown's estate also serve as the Trustees for the inter-vivos trust.

Pending in the Probate Court and the Court of Common Pleas are actions contesting the will and trust filed by other children of James Brown and by his putative spouse Terry Brown has raised his own claims in the will contest including a claim to enforce the *in terrorem* clause contained in the will and to challenge Mr. Brown's purported wife's claim on the grounds that she is not a legitimate heir

Recently, the Trustees, the Attorney General, some of Mr. Brown's children, and Mr. Brown's putative spouse have sought to settle all claims related to the challenges to the trust and estate. Terry, Forlando and Romunzo Brown were not included in the negotiation of the settlement, and they have refused to consent to the settlement because it is unreasonable, unjust and it fails to adequately protect their interests.

settlement is manifestly unjust because it was negotiated by the other parties to this action, without the knowledge or participation of Terry Brown. The settlement would provide greater shares in the estate to Mr. Brown's siblings in relation to his share, contrary to the intentions of the testator, James Brown. The settlement would also prevent a determination of the legal claims of the parties, including claims as to whether the *in terrorem* clause has been violated and as to who is a rightful heir.

Because his consent is required by law, Terry Brown will not be bound by any settlement to which he does not consent. The law looks with favor upon agreements among members of a family and others which avoid a will contest or promote the settlement and distribution of an estate. Such agreements are not against public policy. However, such agreements are contractual in nature. Only those parties participating in the agreement are bound thereby. Duncan v. Alewine, 273 S.C. 275, 282, 255 S.E.2d 841, 845 (S.C. 1979).

II Forlando and Romunzo Brown's consent is also required in order for a settlement of James Brown's estate to be enforceable

A Forlando Brown may object to the unjust and unreasonable settlement pursuant to South Carolina's Probate Code

As trust beneficiaries, Forlando and Romunzo Brown's interests are also affected by the settlement of the estate dispute. The requirements of South Carolina's Probate Code sections 62-3-1101 and 1102 appear to only apply to testamentary trusts, rather than the settling of disputes involving inter-vivos trusts. However, the Reporter's Comments to the South Carolina Probate Code show that the requirements of S.C. Probate Code Ann. § 62-3-1101 and 1102 would also apply to Forlando Brown's interests as a trust beneficiary. According to the Reporter's Comments, a compromise agreement settling an estate dispute is binding on *any* trusts that are related to the estate and could be affected by the settlement. The Reporter's Comments specifically provide: "[a]fter court confirmation, the agreement is binding even though the agreement affects a trust contained in

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

RECEIVED
MAR 16 2010
SC Court of Appeals

The Honorable Doyet A Early, III Circuit Court Judge

Case No 2008-CP-02-01647
Case No 2009-CP-02-01810

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

Ex Parte 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,

Appellants

Henry Dargan McMaster, in his capacity as Attorney
General of the State of South Carolina, Daryl J Brown,
on behalf of his minor children Lindsey Delores B
and Janise Vanisha B , Deanna J Brown Thomas,
on behalf of her minor children, Jason Brown
L Yamma N Brown, on behalf of her minor children,
Sydney L , Carrington L , and Tonya B ,
Vanisha Brown and Larry Brown Tommie Rae Hynie
Brown

Respondents

v

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

Respondents

CERTIFICATE OF SERVICE

I certify that on the 16th day of March, 2010, I have served the Return and
Opposition to Motion to Dismiss, as shown below by depositing a copy of same in the
United States Mail, postage prepaid addressed to their attorneys of record as follows

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March 16, 2010

Attorneys for Appellants

BY 
Tressa T H Hayes

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

RECEIVED

MAR 16 2010

SC Court of Appeals

The Honorable Doyet A Early, III Circuit Court Judge

Case No 2008-CP-02-01647

Case No 2009-CP-02-01810

In Re The Estate of James Brown and
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Ex Parte Robert L Buchanan, Jr , and Adele J Pope,
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and Trustees of the James Brown 2000
Irrevocable Trust,

Appellants

Henry Dargan McMaster, in his capacity as Attorney
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on behalf of his minor children, Lindsey Delores B
and Janise Vanisha B Deanna J Brown Thomas,
on behalf of her minor children, Jason Brown
L Yamma N Brown, on behalf of her minor children,
Sydney L , Carrington L , and Tonya B ,
Vanisha Brown, and Larry Brown, Tommie Rae Hynie
Brown,

Respondents

v

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

Respondents

CERTIFICATE OF SERVICE

I certify that on the 16th day of March, 2010, I have served the Joint Affidavit of
Robert L Buchanan Jr and Adele J Pope Opposing Motion to Dismiss, dated March
12, 2010 with exhibits as shown below by depositing a copy of same in the United

States Mail, postage prepaid, addressed to their attorneys of record as follows

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March 16, 2010

Attorneys for Appellants

BY



Tressa T H Hayes

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A Early, III, Circuit Court Judge

Case No 2008-CP-02-1647
Case No 2007-CP-02-0122
Case No 2008-CP-02-0872
Case No 2009-CP-02-1810

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

Ex Parte Robert L Buchanan, Jr and Adele
J Pope, as Personal Representatives of the Estate
Of James Brown and the James Brown 2000
Irrevocable Trust

Appellants,

Henry Dargan McMaster, in his capacity as
Attorney General of the State of South Carolina,
Daryl J Brown, on behalf of his minor children,
Lindsey Delores B and Janise Vanisha B ,
Deanna J Brown Thomas, on behalf of her minor
children, Jason Brown L , Yamma N Brown, on
behalf of her minor children, Sydney L ,
Carrington L , and Tonya B , Vanisha Brown, and
Larry Brown, Tommie Rae Hynie Brown,

Respondents,

v

Albert H Dallas, Alfred A Bradley,
and David G Cannon, individually
and as (purported) Trustees of the James Brown
2000 Irrevocable Trust, Russell Bauknight, as
Special Administrator and Special Trustee of the
Estate of James Brown and the James Brown 2000
Irrevocable Trust, Terry Brown, Romunzo Brown,
Forlando Brown, Cinnamon N M Paris,
LaRhonda Petitt, and Jeannette Mitchell, also

Respondents

RECEIVED
FEB 04 2010
SC Court of Appeals
ORIGINAL

Motion to Dismiss Appeal

Henry Dargan McMaster, in his capacity as Attorney General of the State of South Carolina, on behalf of the beneficiaries of the charitable trust, Daryl J Brown, individually and on behalf of his minor child, Janise B , Lindsey B Brown, Deanna J Brown Thomas, Jason L Thomas, Yamma N Brown, individually and on behalf of her minor children, Sydney L and Carrington L , Tonya Brown, Vanisha Brown, Larry Brown, Terry Brown, and Tommie Rae Brown (collectively, “the Settling Parties”) respectfully move the Court to dismiss the appeals of Robert L Buchanan, Jr and Adele J Pope consolidated by the order of this Court dated December 11, 2009¹ All of the consolidated appeals involve the same issue of removing Buchanan and Pope as Personal Representative and Trustee in the Estate of James Joseph Brown, Jr , and appointing Russell L Bauknicht in their place These consolidated appeals are Case Tracking # 2009134103 (appealing from orders filed January 7, 2009, March 6, 2009, May 26, 2009, July 6, 2009, and July 8, 2009), Case Tracking # 2009141888 (appealing from an order filed August 3, 2009), and Case Tracking # 2009142286 (appealing from orders dated September 16, 2009 and October 1, 2009)² The Settling Parties ask the Court to dismiss these consolidated appeals for the reasons described below

¹ The Court s Order dated November 6 2009 consolidated the appeals unless a party objected Pope and Buchanan filed a Motion opposing consolidation The December 11 2009 Order denied the Motion opposing consolidation

² The caption in this Motion lists the four case numbers that were on the Orders which have been appealed

I Background

Stated simply, this is an appeal by Buchanan and Pope of a global settlement reached by the beneficiaries of the Estate of James Joseph Brown, Jr., the world-renowned entertainer, who died testate on December 25, 2006. The settlement resolves contentious litigation involving a large cast of litigants and innumerable claims, including claims involving a charitable trust created by Mr. Brown in his will. Among the many settled issues that would otherwise require litigation are two petitions to set aside the will, two petitions to set aside the trust, an omitted child claim, a petition for elective share, a petition for omitted spouse's share, and challenges to the paternity of some of the children named in Mr. Brown's will. This litigation would, if tried to its conclusion, undoubtedly take many years and cost millions of dollars, all to the disadvantage of the beneficiaries, including the beneficiaries of the charitable trust, who are represented by the Attorney General. On May 26, 2009, the Circuit Court, the Hon. Doyet A. Early, III, after an exhaustive hearing conducted over seven days, entered an order approving the settlement, directed Buchanan and Pope to execute the settlement agreement,³ and substituted Bauknight as the personal representative and trustee.⁴

The only individuals who contest the settlement are Buchanan and Pope, who were themselves court appointed as personal representatives and trustees on November 20, 2007 after the personal representatives and trustees who had been nominated by Mr. Brown in his will submitted their resignations.⁵ Although Mr. Brown had never met and did not know either Buchanan or Pope, after the settlement was announced, Buchanan and Pope immediately

³ To date, Pope and Buchanan have not complied with the order.

⁴ Judge Early's Order Approving Settlement Agreement is attached as Exhibit A. It sets forth the extensive background and procedural history of this case, which the Settling Parties hereby incorporate by reference.

⁵ The validity of the resignation of two of these individuals, Albert Dallas and Alfred Bradley, is currently the subject of an appeal before this Court.

launched a campaign to defeat it, ostensibly on the theory that they somehow best know Mr Brown's testamentary intent and that the settlement would have been contrary to his wishes While Buchanan and Pope raise innumerable related issues (they have appealed numerous orders issued in the case), their core argument is that the settlement is not in the best interest of the beneficiaries of the charitable trust and that it is their right, rather than the right of the Attorney General, to negotiate any settlement on behalf of the beneficiaries of the charitable trust Perhaps not coincidentally, Buchanan and Pope have also estimated that their own fees in litigating every single claim in this case to its final conclusion, which they have given every indication of doing if provided with the opportunity, will amount to \$5,000,000 or more, for which they have already made a claim against the estate

II Requirements for Standing

Standing is a fundamental requirement Blandon v Coleman, 285 S C 472, 330 S E 2d 298 (1985) Standing requires an interest in the subject matter of the action, and the interest must be a personal stake Furman Univ v Livingston, 244 S C 200, 136 S E 2d 254 (1964), Duke Power Co v South Carolina Pub Serv Comm'n., 284 S C 81, 326 S E 2d 395 (1985) Although Pope and Buchanan were Personal Representatives and Trustees at the time the matter was settled, they have no interest in the subject matter of the action because all beneficiaries joined in the settlement Pursuant to section 62-3-912, the settling parties were entitled to enter into a private binding settlement agreement, which they did According to section 62-3-912, Pope and Buchanan were not required to be parties to the private settlement agreement However, pursuant to section 62-3-1101 and 62-3-1102, the settling parties also asked the Circuit Court to approve that settlement, which the Circuit Court did in its Order of May 26, 2009 As provided by section 62-3-1102, the Court was required to approve the settlement as long as the

Court found it was just and reasonable. Moreover, pursuant to section 62-3-1102, as fiduciaries, Pope and Buchanan did not have authority to vote on or veto the settlement agreement presented to the Court for approval. Thus, there was no issue in which Pope and Buchanan had any interest or personal stake. As the Circuit Court's order approving the settlement explains, "[t]he settling parties' agreement does not impact rights other than their own." Order, p. 17.

Significantly, none of the beneficiaries of the Estate have appealed, Pope and Buchanan do not claim to be beneficiaries, nor were they nominated or appointed by the decedent, and they have been removed from their offices of substituted personal representative and trustee by the order approving the settlement. As noted by this Court in Blackmon v. Weaver, 366 S.C. 245, 621 S.E.2d 42 (Ct. App. 2005), courts should be reluctant to remove a personal representative under S.C. Code Ann. § 62-3-611(b) when the personal representative has been chosen by the testator, explaining that "The Courts have ever been reluctant to take the management of an estate from those to whom it has been confided by the testator, for to that extent the intention expressed in his will would be defeated." Id. at 251, 621 S.E.2d at 45. However, this reasoning obviously has no application in this case because Pope and Buchanan were appointed by the court and neither had ever met the decedent and therefore cannot claim any personal knowledge or insight concerning his intentions. Because they do not have an interest in the order, are not aggrieved or prejudiced by it, and have no claim on Mr. Brown's confidences or affection, they do not have standing to appeal.

III Pope and Buchanan do not have standing as Personal Representatives

South Carolina Probate Code Section 62-3-1102 requires that a settlement be executed by all competent persons whose beneficial interests or claims will or may be affected by the settlement. Section 62-3-1102 thus recognizes that a settlement agreement may be effectuated

by fewer than all the interested persons in an estate, only those whose interests will or may be affected by the settlement must be signatories⁶

It is axiomatic that Pope and Buchanan as former fiduciaries did not and do not have beneficial interests in the estate or trust⁷ Recognizing this, Section 62-3-1102 provides that fiduciaries have an opportunity to be heard at a settlement approval hearing but do not have the authority to veto (or to vote on) a settlement presented to the court for approval Although section 62-3-1102 recognizes that a fiduciary may be a party to a settlement and even propose its approval to the court,⁸ it provides that a fiduciary who is not a party to the settlement can be directed by the court to execute the agreement after it is approved by the court

⁶ Section 62 3 1102 is thus consistent with section 62 3 912, which recognizes a binding settlement agreement among fewer than all of a decedent s successors Section 62 3 912 provides that [t]he personal representative shall abide by the terms of the agreement subject to his obligation to administer the estate for the benefit of creditors to pay all taxes and costs of administration and to carry out the responsibilities of his office for the benefit of any successors of the decedent who are not parties (emphasis added) If section 62 3 912 required all of a decedent s successors to enter into a private settlement agreement then the emphasized language would be contradictory

Similarly the second sentence of section 62 3 1102 also recognizes that fewer than all interested persons must execute the settlement agreement Execution is not required by any person whose identity cannot be ascertained or whose whereabouts is unknown and cannot reasonably be ascertained

⁷ Pope and Buchanan have asserted a claim against the estate for the approximately \$5 million in fees they contend they are owed As discussed below this is not the kind of claim contemplated by section 62 3 1102 and in any event is not affected by the approval of the settlement agreement Pope and Buchanan s claim will survive independently and does not depend on the approval of the settlement agreement because they contend that they have already earned their fee and that they will not charge more for any additional service

The comment to Uniform Probate Code section 3 1102 explains why Pope and Buchanan s claim for fees is not the type of claim that requires them to be part of the settlement agreement 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 (emphasis added) To read section 62 3 1102 to require the consent of a personal representative because he or she has a claim for a fee would contradict and undermine the clear intent of that section which does not provide a vote or a veto to a personal representative because he or she may obstruct the settlement for the purpose of running up fees Thus, a personal representative s claim for fees is not the type of claim contemplated by section 62 3 1102 when it states who must be a party to the execution of a settlement agreement proposed for court approval

⁸ The ability of a fiduciary to agree to be a party to a settlement is recognized in University of Southern California v Moran, 365 S C 270 617 S E 2d 135 (Ct App 2005) providing that when a trustee joins in the execution of a settlement agreement a trust beneficiary although given the opportunity to notice and to be heard cannot veto the settlement Moran does not apply to the matter sub judice which deals with a different situation the fiduciary did not join in the execution of this settlement agreement In the case sub judice section 62 3 1102 clearly provides

The reason underlying the position of section 62-3-1102 in not giving fiduciaries a vote or veto as to a settlement agreement approval, or for that matter even requiring them to be parties, is compelling. Fiduciaries may have a conflict of interest in wanting their fees to continue, which is contrary to the settlement. The comment to Uniform Probate Code section 62-3-1102 states this eloquently

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)

As noted by the comment, the fees for fiduciaries create an obvious and immediate conflict with the desire to settle. If ever there was a case evidencing this conflict, it is this one. Pope and Buchanan are claiming fees and commissions in the amount of approximately \$5 million, much of which would have been incurred in fighting the settlement.

Thus, Pope and Buchanan were not and are not parties to the settlement agreement. Consequently, as provided by section 62-3-1102, they do not have any right to vote on or veto the approval of the settlement. If they are not parties and have no right to vote on or veto the approval of the settlement, then they cannot have standing to appeal the approval of the settlement agreement. To allow them standing to appeal the approval of a settlement agreement

that because the fiduciaries did not join in the settlement agreement this Court can nevertheless approve the settlement and direct the fiduciaries to join in the execution of the approved agreement

when they did not have the right to veto or vote on the approval at the circuit court level would negate the plain intention and language of section 62-3-1102. How can they have a right to appeal something they did not have the right to veto or vote on?

In addition to the specific language of section 62-3-1102 explaining why Pope and Buchanan have no standing to appeal the approval of the settlement agreement, other precedent confirms that they lack standing.

A personal representative has no right to appeal from an order granting or denying distribution of the estate where he is not aggrieved or prejudiced by such order. The underlying rationale for the general rule denying a right to appeal appears to be that the executor or administrator is a mere stakeholder with a duty to deliver the residue of the estate to those persons designated by the court, and not bound to litigate their conflicting claims at the expense of the estate when the conflicting parties may do so at their own expense if it is their desire. Guthrie, P G, Annotation, Right of Executor or Administrator to Appeal from Order Granting or Denying Distribution, 16 A L R 3d 1274 (1967).

Pope and Buchanan have no standing to appeal the Order approving the settlement agreement because they are not aggrieved or prejudiced by the Order. They are not devisees under the will or by intestacy. Based on the long-standing law, as shown by cases from South Carolina and other jurisdictions, Pope and Buchanan have no standing to appeal.

Pursuant to Byrd v Shell, 169 S C 226, 168 S E 692 (1933), a personal representative cannot appeal a settlement among beneficiaries. In Byrd, the executor appealed because the circuit decree had ordered certain land to be sold, instead of decreeing it divided in kind, and executor's interest was affected because he would have collected commissions on the land so sold. The Court granted a motion to dismiss the appeal on the ground that the executor had no

interest in the suit which entitled him to appeal The Court stated that

[t]he appellant here is not aggrieved by the judgment of the circuit court, which deals with and declares the rights and interests of the parties to the action

The right to appeal as a party 'aggrieved' does not extend to executors who have obtained a judgment construing a will as to which of two parties is entitled to a certain bequest where the alleged claimants acquiesce in the decision The Executor cannot appeal as such from a decree of settlement and distribution although he is a legatee

Id at 230, 168 S E at 693 (citing Warren Bryant et al , Executors, v Thompson, 28 N E 522 (N Y 1891))

In Frater v Paris, 848 A 2d 673 (Md App 2004), the personal representatives appealed an order which affected the distribution of the assets of the Estate The Court found that the personal representatives had no standing to appeal the Order where there was no appeal by any of the devisees whose participation in the distribution would be affected

In Re Estate of Fusz, 397 S W 2d 595 (Mo 1966), the Court held that the executors were not aggrieved parties so as to enable them to appeal from the denial of their petition seeking an order of partial distribution of certain estate income to trustees of trusts created by the decedent's will The Court stated as follows "The great weight of authority is to the effect that an executor or administrator as such is not aggrieved or prejudiced by a decree determining the rights of the beneficiaries, and hence may not appeal The rule appears to be based on the acquiescence of the beneficiaries " Id at 595

Dismissing an appeal by an administrator from a judgment decreeing heirship and directing distribution of property, the Court in Re Lee's Estate, 243 P 2d 1013 (Okla 1952), held that since the administrator had no interest in the estate except in his capacity as administrator, he was neither an interested nor an aggrieved party Although the administrator urged that he should be allowed to appeal because he had participated in the trial in the lower court, the court,

noting that one must be aggrieved by a judgment before he could appeal, said that while a person might have been a proper party in a lower court action, he had no right to prosecute an appeal in the absence of a showing that he was aggrieved thereby. The Court stated as follows: “An executor or administrator, as such, is not, however, aggrieved or prejudiced by the decree or judgment as to the rights of the beneficiaries, and therefore, cannot appeal from a decree affecting their interests. In accordance with this rule, it is held that an administrator is not entitled to appeal from a decree of distribution.” Id. at 1014-15 (citing 2 Am Jur Appeal and Error, 183). This case is similar to the present case in that Pope and Buchanan participated in the hearing in the circuit court, yet they do not have standing to appeal.

Where there was a controversy between the widow of the decedent and his children by a former marriage as to whether a valid antenuptial agreement was in effect at the time of his death, and the court in making its order for final distribution of the estate ruled against the children, the administrator took an appeal from the distribution order. Re Benso's Estate, 199 P 2d 523 (Kan. 1948). The court held that the administrator took one side in a controversy that did not concern him at all and his appeal would be dismissed. The court held it was improper for the administrator to take sides since he was not concerned with the contest between heirs which they litigated at their own expense and on their own behalf, and he was hence not a party aggrieved. Id.

Where a party brought an action to have herself declared the adopted daughter and sole heir of the deceased so that upon the final settlement she should receive the entire estate, and her petition was granted, it was held in Love v. White, 154 S W 2d 759 (Mo. 1941), that the administrator was not a party aggrieved by the judgment, and his appeal would be dismissed. The Court explained that “an administrator, or anyone else, who does not have the right to

control the litigation, or is not a necessary or proper party to the suit or who has no interest in the subject matter or who is not injured by the judgment or who, in short, is not ‘aggrieved’ by the judgment does not have the right to appeal ” Id

Where an organization was found by the lower court to be not charitable and thus entitled to the full sum bequeathed it by the decedent rather than being compelled to take a pro-rata share in order to keep the total bequests to charity to one-third the distributive value of the estate, the executor appealed. The Court held that the executor was not a party aggrieved by the decree of distribution, and, therefore, not entitled to prosecute the appeal. Re Murphey's Estate, 62 P 2d 374 (Cal 1936)

In litigation arising from the granting of a partial distribution, the court in Lamar v Lamar, 45 S E 498 (Ga 1903), denying the executor the right to be heard on appeal, the Court stated that it is a “well-recognized truism that when an executor is a party to a case instituted with a view to invoking the direction of a court of competent jurisdiction as to the manner in which his testator's estate should be administered, and the court, having all persons concerned before it, renders a decree which definitely fixes the respective rights of all of them, and orders the executor to administer the estate in accordance with such decree, it is neither his duty nor his privilege to bring into question any ruling or decision of the court which only affects the interests of other parties to the case ”

In Bates v Ryberg, 40 Cal 463 (Cal 1871), the executor attempted to appeal from a decree of distribution upon the ground that the property available for legacies had been improperly divided between the legatees. The Court said that the heirs and devisees or legatees interested in an estate were made parties to the proceedings for a distribution, and that any one of them feeling aggrieved might appeal from the final order, but that the executor did not represent

any of these parties as against the others, and hence, if they were satisfied with the distribution, could not complain because some received less than they were entitled to, that is to say, the executor could not litigate the claims of one set of legatees as against the others at the expense of the estate

Although the above cases do not all deal with settlement, they all show that personal representatives cannot appeal an order regarding distribution of estate assets because they have no stake in the outcome. In fact, to do so would be taking the side of one party as against the others, and that is what the personal representatives in the present case are attempting to do with their arguments that the charitable trust did not get an interest that was satisfactory to them. However, as explained below, they do not represent the charitable trust, and if the Attorney General desired to appeal the Court's order, he could do so. He has not done so in the present case, but in fact he is a party to this motion to dismiss the appeal.

Further, the fact that all of the parties have settled this complex estate is a compelling reason itself to grant the motion to dismiss, as the appeal continues to increase litigation and expense despite the fact that there is no aggrieved party appealing and all reached the resolution by agreement rather than through litigation, thus evidencing their desire to move forward with this matter rather than continue litigation.

IV Pope and Buchanan do not have standing as Trustees

The 2000 Irrevocable Trust executed by James Brown divides into two trusts, the Brown Family Educational Trust and the James Brown "I Feel Good" charitable trust. As to the Brown Educational Trust, no individual's interest is changed by the settlement agreement except that the grandchildren may have greater interests following the settlement than before. Pope and Buchanan are not aggrieved or affected in any way by the grandchildren's trust, and they do not

have standing to appeal in connection with this Trust. The family members impacted by the settlement have not appealed,⁹ and Pope and Buchanan have no standing to continue to litigate these issues.

As to the charitable trust, the Attorney General's Office, which intervened in this matter and has been actively involved since the motion to intervene was granted, is the proper party to protect the interests of the public at large in the matters of administering and enforcing charitable trusts. The Attorney General intervened, and in his parens patriae capacity, he has the authority to protect the public interest and to enforce the due application of those funds given or appropriated to any charitable trust. See South Carolina Dep't of Mental Health v. McMaster, et al., 372 S.C. 175, 642 S.E.2d 52 (2007) (Attorney General is charged with the protection of public charities and is required to enforce the due application of fund given or appropriated to such charities), Epworth Children's Home v. W. F. Beasley, et al., 365 S.C. 157, 616 S.E.2d 710 (2005), and Furman Univ. v. McLeod, 238 S.C. 475, 482, 120 S.E.2d 865, 868 (1961), also see S.C. Code Ann. §1-7-130 and S.C. Code Ann. § 62-7-405(c).

It is noted that section 62-7-405(c) also allows the settlor, trustee, and among others [i.e. parties with "special interests"] to enforce a charitable trust. The general law is that the purpose for providing authority pursuant to statute to allow other parties to bring an action to enforce charitable trusts was to provide assistance to the Attorney General because of that Office's lack of resources to be in all charitable trust cases. See Bogert Trusts and Trustees § 411 - "The attorney general as the protector, supervisor and enforcer of charitable trusts." However, when the Attorney General does appear in litigation involving a charitable trust either by motion for intervention or being brought in by an amendment to the pleadings, he has the right to take

⁹ All of the settling grandchildren either were parties who executed the settlement agreement or were parties represented by their parents as beneficiary representatives. See sections 62-7-301 -303.

charge and control that portion of the litigation which relates to the charitable trust Kolin, et al v Leitch, et al, 99 N E 2d 685, 687 (Ill 1951) This authority that allows the Attorney General to control the litigation also provides that the Attorney General has exclusive authority, in order to protect the public interest, to settle or compromise litigation See Sarkeys v Independent School Dist, 592 P 2d 529 (Okla 1979)

In Sarkeys, the Court approved a settlement involving a charitable trust entered into by the parties and the Attorney General Settlor's descendants appealed The Court found that they did not have standing to appeal in the absence of an appeal by the Attorney General because the Attorney General was in control of the case Similarly in Application of Schlusel, 89 N Y S 2d 47 (1949), the Court stated as follows in regards to the Attorney General's authority to enter a settlement agreement "Under the authorities, it is, therefore, within the competence of the Attorney General to bind the uncertain charitable beneficiaries by [a compromise]" Also see In Re Estate of Smith, 349 N Y S 2d 281 (N Y Surr Ct 1973), appeal dismissed, 355 N Y S 2d 994 (N Y App Div 1974), appeal denied, 321 N E 2d 555 (N Y) (allowing Attorney General to enter into settlement agreement on behalf of charitable beneficiaries and over executor's objection, rejecting executor's contention that Attorney General did not have authority to compromise on behalf of charitable beneficiaries, observing that to delve too deeply into Attorney General's reasons to compromise could jeopardize charitable beneficiaries' ultimate case if not settled, nevertheless finding that the Attorney General had sufficient reason to enter settlement and was not making "gift", noting that failure to settle risked charities ending up with nothing, observing that settlement of cases is desirable, holding that the Attorney General has the right and the power to enter into compromise on behalf of charitable beneficiaries, subject only to an abuse of discretion standard, which was not abused in this case)

Therefore it is for the Attorney General, as the officer charged with the duty of protecting charitable beneficiaries, to exercise his discretion as to the appropriateness of an appeal. The Attorney General has the power pursuant to his common law and statutory authority to protect the charitable beneficiaries, to control such litigation as to the charitable interests when he is a party, and to make decisions regarding the appropriateness of an appeal. He alone has this authority regarding the charitable trust, and the trustees have no standing to challenge a settlement the Attorney General has reached. The Attorney General is only answerable to a court of equity in regards to the appropriateness of a settlement involving charitable assets.

V Pope and Buchanan lack standing because they are not parties to the settlement action

Pope and Buchanan were not parties to the settlement or the underlying litigation approving the settlement agreement, and therefore have no standing to appeal. Pope and Buchanan were not named in the caption and were not parties, although they were allowed to participate in the hearing on the matter and were called as witnesses, they were never made parties to the action and participated as non-parties. Rule 203, SCACR, states that a “party” intending to appeal must serve and file a notice of appeal. The rules do not allow anyone other than a party to appeal.

A nonparty to the underlying litigation who fails to intervene for purposes of appeal is precluded from appealing a consent decree approving settlement of the action. As the United States Supreme Court stated, “[t]he rule that only parties to a lawsuit, or those that properly become parties, may appeal an adverse judgment, is well settled.” Marino v Ortiz, 484 U S 301 (U S 1988) (citing United States ex rel Louisiana v Jack, 244 U S 397, 4 (1917), Fed Rule App Proc 3(c)).

Significantly, Pope and Buchanan have previously filed motions to correct the caption in

matters related to the Estate and Trust of James Brown, including the following Motion to Dismiss or, in the Alternative, to Add Parties, Require Designation in Caption, and Service Upon, All Heirs, Potential Heirs and Devisees, dated January 3, 2008, and Motion to Dismiss or Stay Appeal and Correct Caption, dated March 27, 2008. They did not seek to change the caption to add themselves as parties to the settlement matter, and despite the fact that they participated in the hearing on some of the matters on appeal, they were never made parties.

VI Pope and Buchanan are not real parties in interest

Pope and Buchanan are not real parties in interest. Rule 17(a), SCRPC, requires that “every action shall be prosecuted in the name of the real party in interest.” In addition, “[t]o have standing, a party must have a personal stake in the subject matter of a lawsuit. In South Carolina, a party must also be the ‘real party in interest.’” Bailey v. Bailey, 312 S.C. 454, 441 S.E.2d 325, (1994) (citing Duke Power Co. v. South Carolina Public Service Comm’n, 284 S.C. 81, 326 S.E.2d 395 (1985), Dockside Ass’n Inc. v. Detyens Simmons, 285 S.C. 565, 330 S.E.2d 537 (Ct. App. 1985)). “A real party in interest is one who has a real, actual, material or substantial interest in the subject matter of the action, as distinguished from one who has only a nominal, formal, or technical interest in, or connection with, the action. Id. (citing Dockside, supra). In Bailey, two attorneys attempted to intervene in a divorce action to challenge the parties’ settlement agreement. The Court found that the real interest was with the parties in the divorce action, and they alone had a real proprietary interest in the subject matter of the proceedings, and the attorneys lacked standing to intervene in the action. The attorneys’ interest in protection of their fee was peripheral and not the real interest at stake. Similarly in Townsend v. Townsend, 323 S.C. 309, 474 S.E.2d 424 (1996), a lawyer moved on his own behalf for reconsideration of a family court order when he no longer represented any parties. The Court

held that he lacked standing and did not have a pecuniary interest in continuing to represent his client. Because Pope and Buchanan are not real parties in interest, they lack the standing to appeal.

VII Specific Orders

The appeals of Pope and Buchanan should all be dismissed based on the above reasons. In addition to the above reasons, there are additional reasons some of the appeals should be dismissed, and these appeals are separately discussed below.

A Order dated January 7, 2009 relating to Russell Bauknight's Appointment as Special Administrator and Special Trustee, Order dated August 3, 2009, appointing Bauknight Special Trustee, and Order dated August 6, 2009, appointing Bauknight Special Administrator

Pope and Buchanan appeal Judge Early's Order dated January 7, 2009, appointing Russell Bauknight Special Administrator of the Estate of James Brown and Special Trustee of the James Brown 2000 Irrevocable Trust. Additionally, they appeal Judge Early's Order appointing Bauknight Special Trustee, and Judge Roe's Order appointing Bauknight Special Administrator.

The appeal of these Orders should be dismissed because the Court lacks subject matter jurisdiction to hear these appeals pursuant to Estate of Boyce v Work, 305 S C 43, 406 S E 2d 184 (Ct App 1991). In Boyce, the Probate Court appointed Boyce-Abel and Work as Special Administrators of their mother's estate. Two of their siblings appealed this Order. The Court of Appeals found that the probate court order appointing the Special Administrators was "clearly temporary." The Probate Court Order stated that the two sisters were appointed "until such time as a Personal Representative(s) shall be formally appointed." The Court of Appeals explained

that appeals from the probate court are governed by section 62-1-308, and subsection (a) provides that only final orders may be appealed. Because the order appointing the Special Administrators was temporary, the Circuit Court lacked subject matter jurisdiction over the appeal.

Similarly in the present case, each of the Orders appointing Bauknight as Special Administrator and/or Special Trustee is temporary and limited. As to the January Order appointing him Special Administrator and Special Trustee, it expressly states that Bauknight is Special Administrator and Special Trustee “for the sole purpose of providing input and recommendations for the proposed settlement agreement.” As to the August Order appointing him Special Trustee, the Court stated that Bauknight is “temporarily appointed as Special Trustee of the Trust until such time as the appeals of various orders related to the removal of the former Trustees and the appointment of Russell Bauknight as Trustee have been finally concluded[.]” The August Order appointing him Special Administrator states that he is “temporarily appointed as Special Administrator of the Estate until such time as the appeals of various orders related to the removal of the former Personal Representatives and the appointment of Russell Bauknight as Personal Representative have been finally concluded[.]” By their express language, each of these orders is temporary and limited.

In Boyce, the Special Administrators were required to post a substantial bond and were required to make monthly accountings, while Bauknight is not required to do these things. However, these requirements do not confer subject matter jurisdiction on this Court in connection with the appeal. Also in Boyce, the Special Administrators were expressly forbidden to distribute estate assets, while this language is not in the Orders appointing Bauknight. In practice, however, Bauknight cannot distribute estate assets. In the January Order, his role was

expressly limited by the Court to providing input and recommendations. As to the August Orders, his role was limited, and in addition, Judge Early's September 16, 2009, Order granting the Settling Parties application to lift stay, if any, limits his activity to activity which is necessary for the proper administration of the Estate and Trust during the pendency of the appeal of the May 26, 2009, Order.

Further, as to the January Order, Bauknight's role in providing input and recommendations for the proposed settlement agreement concluded during the hearings for the approval of the settlement agreement, which was concluded by the May 26, 2009 Order approving the settlement. Thus, the appeal of this order is now moot. "An appellate court 'will not pass on moot and academic questions or make an adjudication where there remains no actual controversy.'" Shah v. Richland Memorial Hosp., 350 S.C. 139, 564 S.E.2d 681 (Ct. App. 2002) (quoting Mathis v. South Carolina State Highway Dep't., 260 S.C. 344, 346, 195 S.E.2d 713, 714 (1973)). "A case becomes moot when judgment, if rendered, will have no practical legal effect upon [an] existing controversy. This is true when some event occurs making it impossible for [a] reviewing [c]ourt to grant effectual relief." Id. Pope and Buchanan's insistence on appealing a moot order, that even if not moot could not be appealed according to Boyce, demonstrates disregard of the estate by wasting estate assets for their own personal goals.

B. Order dated September 16, 2009, Granting Application to Lift Stay

Pope and Buchanan appeal Judge Early's September 16, 2009, Order which granted the Application to Lift Stay filed by Bauknight and the Settling Parties. Subsequently, Pope and Buchanan filed a Petition for Partial Reinstatement of Stay dated October 14, 2009. Bauknight, joined by the Settling Parties, filed a Return in Opposition to Pope and Buchanan's Petition for Partial Reinstatement of Stay dated October 23, 2009. By Order filed November 6, 2009, the

Court denied Pope and Buchanan's Petition for Partial Reinstatement of Stay. Accordingly, the matters contained in the appeal of Judge Early's September 16, 2009, Order are moot, as they have already been decided by the Court's ruling on the Petition for Partial Reinstatement of Stay.

Conclusion

Based on the foregoing reasons, the Settling Parties ask the Court to dismiss the consolidated appeals of Pope and Buchanan.

(signature pages attached)

Respectfully Submitted,



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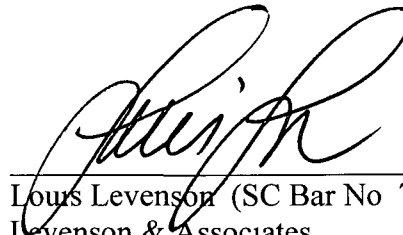
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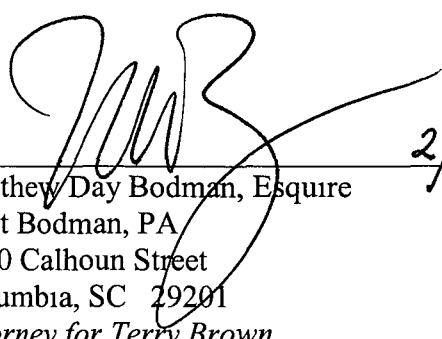
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EXHIBIT A

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN)

SECOND JUDICIAL CIRCUIT

HENRY DARGAN MCMASTER, in his)
capacity as Attorney General of the State)
of South Carolina, DARYL J BROWN,)
on behalf of his minor children, LINDSEY)
DELORES BROWN and JANISE)
~~VANISHA BROWN~~, DEANNA J)
BROWN THOMAS, on behalf of her minor)
children, JASON BROWN LEWIS,)
YAMMA N BROWN, on behalf of her)
minor children, SYDNEY L ~~BROWN~~,)
CARRINGTON L ~~BROWN~~, and TONYA)
BROWN, VANISHA BROWN, and)
LARRY BROWN, TOMMIE RAE)
HYNIE BROWN)

Petitioners,

- vs -

RUSSELL L BAUKNIGHT,
as Special Administrator and Special
Trustee for The Estate of James Brown
and The James Brown 2000 Irrevocable
Trust, TERRY BROWN, ROMUNZO
BROWN, FORLANDO BROWN,
CINNAMON N M PARIS, LARHONDA
PETITT, and JEANNETTE MITCHELL

Respondents

In Re

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

Case No 08-CP-02-1647-original

(Case No 07-CP-02-0122)- cert copy
(Estate of James Brown)

(Case No 08-CP-02-00872)- cert. copy
(Wills/Trust/Heirs Matter)

ORDER APPROVING SETTLEMENT AGREEMENT

FILED 5 26 2009

Liz Ireland
CCP & GS
Anita Knoepfle 945
Deputy Clerk

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Ireland, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this

MAY 26 2009

Liz Ireland
CCCP & GS, Aiken County, SC
Anita Knoepfle
Deputy Clerk

This matter comes before the Court on a Motion for Approval of Settlement Agreement

The Court commenced the hearing on January 30, 2009, and continued to conduct that hearing

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on March 4, 5, 6, 25, and 26, 2009, and concluded the hearing on April 6, 2009. The following counsel appeared at the hearing related to the Motion for Settlement Approval: (1) Louis Levenson, counsel for Deanna J. Brown, Larry Brown, Yamma N. Brown, individually and on behalf of her minor children Sydney Lumar and Carrington Lumar, Vanisha Brown, Daryl J. Brown, individually and on behalf of his minor children child Janise Vanisha Brown, Lindsey Delores Brown, Jason Brown Lewis, and Tonya Brown, (2) Robert N. Rosen, S. Alan Medlin, T. Heyward Carter, David L. Michel, M. Jean Lee, Andrew W. Chandler, and F. Patricia Scarborough, counsel for Tommie Rae Hynie Brown, (3) Tressa Hayes and James D. Bailey, counsel for Adele J. Pope and Robert L. Buchanan, Jr., (4) A. Peter Shahid, Jr., counsel for Guardian ad Litem Stephen M. Slotchiver, (5) Stephen M. Slotchiver, Guardian ad Litem for James Joseph Brown, II, (6) David B. Bell and Matt Bodman, counsel for Terry Brown, Forlando Brown, and Romunzo Brown, (7) C. Havird Jones, Jr., J. C. Nicholson, III, and Mary Frances Jowers, on behalf of the South Carolina Attorney General, (8) R. Wayne Byrd, counsel for Albert Dallas and Alfred Bradley, (9) James M. Griffin, counsel for LaRhonda Pettitt and Cinnamon Paris, (10) Fred L. Kingsmore, Jr., counsel for Russell Bauknight, (11) Jan L. Warner and Max Pickelsimer, counsel for David Cannon, (12) William Barr, counsel for Jeanette Mitchell, (13) Sonja R. Tate, counsel for Albert Dallas, and (14) Kayman D. West, counsel for Greenberg Traurig and Joel Katz.

I Statement and History of the Case

A Facts and Procedural History

This matter arises out of the Estate of James Joseph Brown, Jr. Mr. Brown died on December 25, 2006, a resident of Aiken County, South Carolina. Mr. Brown's will, dated August 1, 2000, was filed with the Aiken County Probate Court on January 18, 2007. His will

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nominated three individuals as Personal Representatives, and they were appointed by the Probate Court by Order dated January 18, 2007 Albert H Dallas, David G Cannon, and Alfred A Bradley These same individuals were appointed Trustees of the Trust by the express terms of the Trust

Mr Brown's will named six children Deanna J Brown Thomas, Yamma N Brown, Vanisha Brown, Daryl J Brown, Larry Brown, and Terry Brown (collectively "named children") Mr Brown left "all [his] personal and household effects of every kind " to these named children in equal shares per stirpes All of the named children were alive at the time of Mr Brown's death Mr Brown left the remainder of his Estate to the Trust created under his Irrevocable Trust Agreement dated August 1, 2000 The will provided that the remainder of his Estate would go to the Trust as a pour-over devise

Mr Brown's Irrevocable Trust Agreement created two trusts the Brown Family Educational Trust and the James Brown "I Feel Good" Trust The Brown Family Educational Trust provides for income to be paid for the benefit of each then-living grandchild who has not reached the age of thirty-five (35) for his education and related expenses Upon termination of the Family Trust, the balance would be added to the "I Feel Good" Trust The "I Feel Good" Trust is for the "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 in the State of South Carolina and Georgia " In addition to the three appointed Trustees, the Trust created an Advisory Board of three initial members The Trust describes the powers of the Trustees, including the power to allocate up to 50% of the gross income from the Trust for the payment of administrative and managerial expenses The

Trust provides for Trustee Succession. If the Trustee resigns, the Trust provides that he appoint a successor, or upon failure of that, the successor shall be determined by unanimous vote of the advisory board then existing. Failing this, the Court having jurisdiction shall select the successor Trustee. The Trust included a Schedule A listing initial funding of the following: (1) Fifty Dollars (\$50.00), (2) all ownership in James Brown Enterprises, Inc., and (3) ownership of Mr Brown's primary residence at 430 Douglas Drive, Beech Island, South Carolina.

Mr Brown's will was admitted to informal probate on January 18, 2007. On January 26, 2007, the Aiken County Probate Court removed the matter to the Court of Common Pleas. From this time forward, the Aiken County Probate Court continued to remove all matters filed in this Estate to the Court of Common Pleas.

On February 1, 2007, Tommie Rae Hynie Brown filed a Petition for Elective Share or Omitted Spouse's Share, asserting she is the widow of Mr Brown. She and Mr Brown were married on December 14, 2001, in Beech Island. She had previously been involved in a putative marriage ceremony with Javed Ahmed on February 17, 1997, in Texas. Mrs Brown subsequently brought an action to annul her marriage to Ahmed, and the Charleston County Family Court found her marriage to Ahmed void *ab initio* by Order dated April 15, 2004. Among other conclusions, the Court found that Mr Ahmed was married at the time he entered into his marriage with Mrs Brown, and therefore he lacked capacity to marry her.

The six named children filed an Emergency Petition for Termination of Appointment of and Removal of Personal Representatives on January 24, 2007. On February 1, 2007, Tommie Ray Hynie Brown filed an Emergency Petition for Appointment of Special Administrator. The Court held a hearing on these Petitions on February 9, 2007. By Order dated February 20, 2007, the Court denied the Petition for Removal of the Personal Representatives and granted the

Petition for Special Administrator By Order filed March 12, 2007, the Court appointed Adele J Pope and Robert L Buchanan, Jr, as Special Administrators At that time, the Special Administrators' duties were limited and included the power to "monitor, investigate, and oversee the performance by the general Personal Representatives of their duties, and present to the Court any appropriate issues regarding same " By Order filed June 25, 2007, the Court granted the Special Administrators "complete, direct and continuing access to all information, documents and records, in any form, related to James Brown, the Estate of James Brown, the James Brown 2000 Irrevocable Trust and all trusts created thereunder, and all Brown Entities or Interest, however titled "

In addition to the six named children, several other individuals have appeared and claimed rights as children of Mr Brown (1) James ~~Joseph Brown, Jr~~, (2) Cinnamon Nicole Parris, (3) LaRhonda Petit, and (4) Jeannette Mitchell James ~~Joseph Brown, Jr~~ seeks his rights as a pretermitted child, having been born on June 11, 2001, after Mr Brown wrote his will Steven Slotchiver was appointed Guardian ad Litem for James ~~Joseph Brown, Jr~~, by Order filed June 13, 2007 James ~~Joseph Brown, Jr~~ filed a Petition for Adjudication of Paternity on August 24, 2007 LaRhonda Petitt filed an action on August 23, 2007 Cinnamon Nicole Parris filed an action on September 21, 2007 Jeannette Mitchell filed a motion on April 21, 2008

On July 27, 2007, the Special Administrators filed a Motion and Recommendation of Special Administrators requesting the Court to remove one or more of the Personal Representatives and one or more of the Trustees A hearing was held on this Motion on August 10, 2007 At the hearing, David G Cannon resigned as Personal Representative of the Estate, Trustee of the Brown Trusts, and as director, officer, agent, and/or fiduciary of any kind as to

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Mr Brown, the Estate, the Brown Trusts, and all Brown Entities (except Seventh Decade Productions) Dallas and Bradley remained Personal Representatives and Trustees

The Court held a hearing on September 24, 2007 At the hearing, the Court heard issues related to David Cannon's obligation to account to the Court The Court found Cannon in contempt by Order filed October 2, 2007 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 \$373,00 00 as ordered, and for amending tax returns on behalf of Brown entities after being ordered to give up authority in regard to the Brown entities and for deliberately disobeying the order of this Court The Court ordered him to confinement with the South Carolina Department of Corrections for six months, though he could purge himself of the confinement by payment of the \$373,000 00, payment to the court of \$50,000 00 to be applied towards various parties' attorney fees, and a fine of \$10,000 00 Cannon appealed this Order, and as of the date of the present Order, the appeal is still pending

The South Carolina Attorney General appeared at the hearing on September 24, 2007, and requested to intervene to enforce and protect the funds given or appropriated to any charitable trust created by the will or Trust of Mr Brown, or any other assets of the Estate which may be impressed with a charitable trust The Georgia Attorney General also appeared and requested to intervene By Order filed October 11, 2007, the Court granted the Motions to Intervene The South Carolina Attorney General continues to remain involved in the case The Georgia Attorney General is no longer participating in the action, as discussed below

At the hearing on November 20, 2007, Alfred Bradley and Albert Dallas submitted their resignation as Personal Representatives of the Estate and Trustees By Order dated November

20, 2007, the Court accepted their resignations, and immediately appointed Buchanan and Pope to serve as Personal Representatives and Trustees. The Court did not consult the Advisory Board regarding their appointment. By Motion dated November 30, 2007, Dallas and Bradley moved the Court to vacate its Order accepting their resignations, arguing the Court did not have authority to accept the resignations or authority to appoint Pope and Buchanan as Trustees. The Court heard this matter on February 20, 2008, and denied Dallas and Bradley's Motion by Order filed March 7, 2008. Dallas and Bradley appealed, and as of the date of the present Order, the appeal is still pending.

On December 20, 2007, Tommie Rae Brown filed Petitions to Set Aside the Will and Trust, alleging causes of action for undue influence, fraud, lack of intent, and illusory trust. On December 26, 2007, five of the six named children (all but Terry Brown)¹ filed Petitions to Set Aside the Will and Trust, alleging the same four causes of action.

On January 4, 2008, the Court held a hearing on the Motion for Recusal filed by Dallas and Bradley. By Order filed February 20, 2008, the Court denied this Motion.

The Court held a hearing on February 7, 2008. At that hearing, the Court granted the motion of the Levenson clients to revoke the pro hac vice admission of the Georgia Attorney General, though no written Order has been issued on this matter. The Georgia Attorney General became involved in this matter based on an understanding of the Trust that only students in South Carolina and Georgia qualify for benefits under the "I Feel Good" Trust. However, a careful reading revealed that students can be from anywhere, the only limitation is that they desire to attend a school in South Carolina or Georgia. The Court found that the South Carolina

¹ The six named children and their children who are Mr. Brown's grandchildren were all originally represented by Louis Levenson. David Bell was substituted as counsel for Terry Brown, Forlando Brown, and Romunzo Brown.

Attorney General was the appropriate party to adequately protect the interests of the charitable beneficiaries because the trust situs is in South Carolina

Also arising out of the hearing on February 7, 2008, the Court issued an Order filed February 25, 2008, allowing the PR/Trustees to sell Mr Brown's tangible personal property and his home in Beech Island The PR/Trustees desired to sell the personal property through an auction, and hired Christie's Auction House to conduct the sale Over objection by other counsel, the Court allowed the sale of personal property

The Court held a hearing on March 7, 2008 At the hearing, the Court heard arguments on the Attorney General's Objection to the Appointment of Pope and Buchanan as Personal Representatives and Trustees, filed December 14, 2007 The Court heard testimony from Pope, Dallas, and Bradley in connection with the Objection The Court overruled the objection by Order filed April 10, 2008 The Attorney General filed a Motion to Alter or Amend this Order on April 24, 2008, and subsequently, by Motion dated June 18, 2008, asked the Court to hold the Motion to Alter or Amend in abeyance This request was based on the fact that the Motion relates to the appointment of successor Trustees, and the pending appeal of Dallas and Bradley also relates to the appointment of Trustees and its outcome may make the Motion moot Because of the request to hold the matter in abeyance, the Court has not ruled on the Motion to Reconsider

By Order filed March 10, 2008, the Court required service by publication of the Summons and Order in the case caption 07-CP-02-1222 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

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rights under state and federal laws ” No additional parties have appeared as a result of the publication

On August 10, 2008, the following parties participated in an informal mediation Tommie Raye Hynie Brown, the named children and grandchildren represented by Louis Levenson, and the South Carolina Attorney General The parties reached a settlement which was reduced to writing and signed by all of the participating parties

At the hearing on August 19, 2008, the parties reported the partial settlement to the Court during an in-chambers conference The parties also reported in open court that they had reached a resolution among themselves At that time, the parties did not disclose their signed settlement document

On September 29, 2008, the South Carolina Attorney General filed a Petition for Removal and Restraint of Trustees, asking that Dallas and Bradley be removed as Trustees, in the event they are Trustees On November 7, 2008, the Attorney General and the other settling parties filed an Amended Petition for Removal and Restraint of Trustees Dallas, Bradley, and Cannon, and PR/Trustees Pope and Buchanan The Court has not heard this matter pending the settlement approval Also on November 7, 2008, the settling parties filed an Emergency Petition for Appointment of Special Administrator and Special Trustee

During the pending settlement, Pope and Buchanan have filed numerous pleadings in the matter, including the following which were filed in addition to their Responses and Returns to other matters (1) Motion for Partial Summary Judgment, dated September 12, 2008, (2) Supplemental Motion to Dismiss All “Spousal” Claims of Tommie Rae Hynie Brown, dated September 12, 2008, (3) Motion to Dismiss all Causes of Action to Set Aside the James Brown 2000 Irrevocable Trust, dated September 15, 2008, (4) Motion to Dismiss, dated October 9,

2008, (5) Motion to Intervene and Dismiss, dated October 24, 2008, (6) Motion to Dismiss Robert L Buchanan, Jr and Adele J Pope as Individual Parties, dated November 14, 2008, (7) Motion to Disqualify C Havird Jones, Jr and Mary Frances Jowers as Counsel and Related Relief, dated November 14, 2008, (8) Emergency Motion to Quash Subpoena and Protect Evidence, dated November 14, 2008, (9) Motion to Realign, for Partial Summary Judgment and for Mediation after Proper Joinder of Parties and Discovery, dated January 9, 2009, (10) Motion to Alter or Amend Judgment, dated January 14, 2009, (11) Motion for Partial Summary Judgment, dated January 20, 2009, (12) 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, (13) Emergency Motion for Appointment of Special Administrator and Special Trustee, dated February 27, 2009, (14) Motion to Reconsider, Vacate, Set Aside, Alter and/or Amend and/or Clarify Orders, dated March 12, 2009, and (15) Supplemental Motion of PR/Trustees to Dismiss (where applicable), and for Partial Summary Judgment, dated March 17, 2009

In addition, they also filed numerous affidavits after the settlement was announced to the Court, including the following, (1) Joint Affidavit of Robert L Buchanan, Jr , and Adele J Pope Supporting Demand for Due Process Hearing and Related Relief, dated November 24, 2008, (2) Joint Affidavit of Robert L Buchanan, Jr and Adele J Pope, dated January 20, 2009, (3) Affidavit of Robert L Buchanan, Jr and Adele J Pope in Support of Injunction and Damages for Intentional Interference, dated February 17, 2009, (4) Joint Affidavit of Robert L Buchanan, Jr

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and Adele J Pope, dated February 19, 2009, (5) Affidavit of Adele J Pope Opposing Removal of PR/Trustees Buchanan & Pope, Denying Emergency, Supporting Stay and Proper Joinder Supporting Proper Notice of Hearings, Supporting Order Compelling parties to Appeal with records to Testify, and Seeking Ruling Under S C Trust Code section 62-7-932(D) Related to Principal and Income Charges Under Will/Trust *In Terrorem* Clauses, dated February 23, 2009, and (6) Affidavit of Robert L Buchanan, Jr and Adele J Pope as PR/Trustees Supporting Emergency Motion for Appointment of Special Administrator and Special Trustee with Full Authority to Manage, Preserve and Protect Assets of the Estate of James Brown, the James Brown 2000 Trust, James Brown Enterprises, Inc and other Brown Entities pending final resolution of all formal testacy/resignation/removal/appointment matters and challenges to the validity of the James Brown 2000 Trust

The Court held a hearing on November 25, 2008, and at that time the settling parties disclosed the terms of the settlement on the record and reported they were ready to move forward with a hearing to approve the settlement. The Court scheduled a hearing for settlement approval on January 30, 2009. The Court continued to conduct that hearing on March 4, 5, 6, 25, and 26, 2009, and concluded the hearing on April 6, 2009.

By Order filed January 7, 2009, the Court appointed Russell L Bauknight as Special Administrator and Special Trustee for the "sole limited and exclusive purpose of reviewing and providing input and recommendations to the Court as to the proposed Settlement Agreement among the Petitioners in this case." Ms Pope and Messrs Buchanan, Dallas, and Bradley appealed the Court's January 7, 2009 order to the Court of Appeals. The appeals were dismissed.

At the hearing on January 30, 2009, the settling parties reported that Terry Brown had joined the settlement. Thus, all beneficiaries of the Brown Estate/Trust were part of the

settlement agreement The settlement agreement does not include Cinnamon Parris, LaRhonda Pettitt, or Jeannette Mitchell However, those parties each stated they have no objection to the settlement, pursuant to a stipulation with the settling parties that the settling parties do not intend for the settlement to in any way impact or affect their rights

B Related Litigation

While the above actions have been pending, there are numerous collateral matters pending in other jurisdictions Forlando Brown sued Pope and Buchanan in South Carolina District Court on January 2, 2008 As a grandchild and beneficiary of the Family Educational Trust, Forlando Brown contends in the action that he has not received the scholarship money he is entitled to His allegations against Pope and Buchanan include the following (1) that they have irreconcilable conflicts of interest, (2) that they have breached their fiduciary duties, and (3) that they have disregarded the terms of the Trust He seeks removal of Pope and Buchanan and injunctive relief This action remains pending in the district court

The CORBIS litigation is pending in Illinois This action involves claims brought by Mr Brown during his life for violation of rights of publicity, violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, and a claim for profiteering on the name and likeness of Mr Brown without his consent based on CORBIS' sale and offering for sale over the internet of Mr Brown's photographs for commercial purposes There is a pending settlement in the CORBIS litigation, and on March 24, 2008, Buchanan and Pope brought an action against the South Carolina Attorney General in Aiken County, asking the Court to approve the terms of the CORBIS settlement agreement

The Pullman litigation is pending in New York During his life, Mr Brown sued the Pullman Group when he was unable to secure a loan from the Royal Bank of Scotland using

future song royalties as collateral because Pullman Group claimed it had exclusive authority to broker the transaction. The Pullman Group filed a counterclaim, and this action remains pending against the Estate.

On April 6, 2009, Jacqueline Hollander filed an action in the Northern District of Illinois against Pope, Buchanan, and the State of South Carolina. She seeks a finding that she and Mr. Brown were partners and the "I Feel Good" Trust was an extension of the partnership, which she owns as the surviving partner.

C Synopsis of Settlement Agreement

The settlement agreement dated August 10, 2008, and amended and restated on March 3, 2009, was entered into by and among Henry D. McMaster, Attorney General of South Carolina (the "Attorney General"), Tommie Rae Brown, individually and on behalf of her minor child, James Joseph 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, and Tonya Brown, and Terry Brown (the "Settling Parties").

The salient points of the settlement agreement are as follows:

1. The purpose of the agreement was to settle any and all differences among the settling parties concerning the disposition, whether by will or otherwise, and/or transfer of any assets owned or controlled by James Brown, whether by will, intestacy, trust, or nonprobate means, state or federal law, and of substantial significance, to come together as a family to honor the legacy of Mr. Brown.

2. The settling parties intend for the agreement to be a binding private settlement agreement but also are seeking court approval of the settlement.

3 Tommie Rae was the legal wife of James Brown, during his lifetime and at the time of his death, and qualifies as his surviving spouse

4 The children and grandchildren who are parties to the agreement were and are the lawful and/or legitimate biological issue and heirs of James Brown during his lifetime and were in life and at the time of his death, and qualify as his surviving issue No DNA testing will be required of any child or grandchild who is a party to the agreement

5 A professional fiduciary will replace Robert Buchanan and Adele Pope as Personal Representatives of the Estate of James Brown and as Trustees of the August 1, 2000 Irrevocable Trust of James Brown

6 A charitable trust substantially similar to the August 1, 2000 Irrevocable Trust (hereinafter the "Charitable Trust") shall be created and/or maintained and shall be valid and enforceable The South Carolina Attorney General will have sole authority to select, remove, and replace the Trustee who will manage the Charitable Trust The children and Tommie Rae shall each be empowered to select a trustee from whom the managing trustee will seek input and advice

7 The settling parties will create an entity (the "settlement entity") that will receive any and all assets and or proceeds payable to any of the parties, now or in the future, by virtue of any rights of James Brown, any of the entities of James Brown, the Estate of James Brown, the August 1, 2000 James Brown Irrevocable Trust and the charitable trust created thereunder, in any probate or non-probate assets, tangible and intangible, included in the gross estate of James Brown, as well as any and all rights and interests in any assets outside of the gross estate of James Brown, and/or any rights the parties have as heirs, devisees, and/or successors to James Brown for any purpose, including, but not limited to, any royalties, trademarks, termination

rights and other interests created by federal copyright statute or laws for heirs at law, the Beech Island real estate, all of the James Brown intellectual property rights to royalty, persona, image, likeness, royalties etc (collectively, the "James Brown Assets") The parties will divide any and all such assets and/or proceeds, and maintain beneficial ownership interests in the settlement entity, in the following proportions for as long as such assets and proceeds are paid into said entity or any successor entity thereto (1) a net 47.5% to the Charitable Trust, (2) a net 23.75% to Tommie Rae, which includes any share attributable to James ~~Joseph Brown, II~~ (by agreement between Tommie Rae and the Guardian ad Litem for James ~~Joseph Brown, II~~, he will receive a 4.79% interest in the settlement entity to be held in trust and the remainder interest in another 4.79% interest in the settlement entity to be held in trust), and (3) a net 4.79% interest in the settlement entity to each of the children who are settling parties (with the exception of James Joseph Brown, II, who is provided for as discussed above) The Charitable Trust retains a 50% voting and control interest in the Settlement Entity, and the named children and Tommie Rae Brown (including any share attributable to James ~~Joseph Brown, II~~) shall each retain a 25% voting and control interest Tommie Rae waives any spousal right she may have to such assets to the extent that they might otherwise exceed her interest in the settlement entity The children waive any rights to the Brown Assets to the extent that they might otherwise exceed their interests in the settlement entity

8 All settling parties waive any claim or right to seek forfeiture against any party pursuant to any in terrorem and/or no-contest clause under any will or trust of James Brown, and specifically agree that any and all contests that were brought were in good faith and with probable cause

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9 The promissory note and security deed currently due from the parties represented by Levenson to the Estate of James Brown (with respect to the property known as Pops house, which is the home of the father of James Brown) will be marked satisfied and paid in full by the settlement entity for no additional payment being due

10 Terry Brown will receive an exclusive due diligence period of six months during which he can market the assets of the Estate and a Right of First Refusal that terminates in 10 years. However, the settling parties do not have to agree to sell any or all of the assets and a 2/3 majority is required to do so

11 A trust similar to the Brown Educational Trust under the 2000 Irrevocable Trust will be established for the grandchildren of James Brown, and their issue, for as long as allowed under the applicable Rule Against Perpetuities, but in no event lasting for a period longer than 90 years from December 25, 2006. This Brown family educational trust shall be funded with a principal amount of \$2 million, which shall be carved out from the share of assets and proceeds payable to the Charitable Trust. Upon the termination of this Brown family educational trust, the remaining principal and any undistributed income shall be distributed to the Charitable Trust

12 Any and all will and trust contests will be dismissed

13 The parties agree that the settlement entity and/or the parties will endeavor to create an appropriate and respectful museum or other memorial burial place acceptable to the settlement entity in which to maintain the remains of James Brown, preferably at 430 Douglas Drive, Beech Island, if feasible. If such is not accomplished within 7 years from the date of the agreement, then in that event the remains will be interred in the cemetery where the parents of James Brown currently are located in Augusta, GA, with the settlement entity paying expenses of relocation. The settling parties shall all have reasonable opportunities to visit privately the

gravesite upon reasonable notice. The parties waived any right to otherwise direct the location of the gravesite as a result of their status under law.

II Findings of Fact and Conclusions of Law

A Parties, Notice, and Jurisdiction

For several reasons, I find that the interested parties have been properly notified, given an opportunity to be heard, afforded all appropriate due process rights, and thus appropriately represented at the hearing to approve the settlement. Ms. Pope and Mr. Buchanan claim a lack of notice. The notice for the hearing commenced on January 30, 2009, was provided on December 5, 2008, in advance of the time required under any applicable rule. The Court commenced the hearing on January 30, 2009, and continued to conduct that hearing on March 4, 5, 6, 25, and 26, 2009, and concluded the hearing on April 6, 2009. Because these dates involved the conduct of the same hearing commenced on January 30, 2009, notice was proper.

1 The settling parties' agreement does not impact rights other than their own. Thus, assuming arguendo that there were interested persons in the Estate of James Brown who were not properly notified and given an opportunity to be heard (although there are none), their lack of participation in the hearing, assumed for the sake of argument, would not affect the ability of this Court to approve the settlement.

South Carolina Probate Code (SCPC) section 62-3-912 recognizes that parties may enter into a private settlement agreement without court approval. The agreement may be among fewer than all persons interested in an estate. Moreover, that section requires personal representatives to honor the terms of the private settlement and to continue the administration of the estate for the benefit of those who are not parties to the settlement. By requiring the personal representatives to both honor the settlement and to continue administering the estate for those

successors who are not parties to the agreement, section 62-3-912 evidences the legislative intent to recognize as valid settlements among some but not all of the successors to an estate. Moreover, the parties to the settlement agreement are all successors to the Estate. SCPC section 62-1-201(42) broadly defines “successors” to include “those persons, other than creditors, who are entitled to property of a decedent under his will or this Code.” The charitable successors are properly represented by the Attorney General of South Carolina, as discussed below.

SCPC sections 62-3-1101 and 62-3-1102, authorizing a court to approve a settlement agreement, also recognize the validity of a settlement by fewer than all parties. Section 62-3-1102 requires that the settlement be signed by all competent persons whose beneficial interests or claims will or may be affected by the settlement. As with section 62-3-912 discussed above, section 62-3-1102 thus recognizes that a settlement agreement may be effectuated by fewer than all the interested persons in an estate, only those whose interests will or may be affected by the settlement must be signatories.

Section 62-3-1102 also provides that fiduciaries have an opportunity to be heard at a settlement approval hearing but do not have the authority to veto a settlement presented to the court for approval. Although section 62-3-1102 recognizes that a fiduciary may be a party to a settlement and even propose its approval to the court,² it provides that a fiduciary who is not a

² The ability of a fiduciary to agree to be a party to a settlement is recognized in *University of Southern California v Moran*, 365 S.C. 270, 617 S.E.2d 135 (Ct. App. 2005), providing that when a trustee joins in the execution of a settlement agreement, a trust beneficiary, although given the opportunity to notice and to be heard, cannot veto the settlement. *Moran* does not apply to the matter *sub judice*, which deals with a different situation: the fiduciary did not join in the execution of this settlement agreement. In the case *sub judice*, section 62-3-1102 clearly provides that, because the fiduciaries did not join in the settlement agreement, this Court can nevertheless approve the settlement and direct the fiduciaries to join in the execution of the approved agreement.

party to the settlement can be directed by the court to execute the agreement after it is approved by the court

2 Even though fewer than all interested persons can enter into a private settlement agreement and a court can approve such an agreement, all necessary parties are represented in this matter

The SCPC provides that personal representatives and trustees represent and bind their beneficiaries for purpose of notice and hearing See SCPC sections 62-1-403, 62-7-301, and 62-7-303

Ms Pope and Mr Buchanan, the personal representatives of the Estate, were appointed to represent any successor of the Estate, whether by any valid will of Mr Brown or by intestate distribution Thus, any successor who would take from the probate estate of Mr Brown would be properly represented by Ms Pope and Mr Buchanan, who do not have a conflict of interest with any of the successors

Similarly, any beneficiaries of the 2000 Irrevocable Trust, if valid, would be represented by Ms Pope and Mr Buchanan as trustees of that trust Any beneficiaries of the 1999 Revocable Trust, if valid, would be represented by Messrs Bradley, Cannon, and Dallas as trustees of that trust who participated in the settlement hearing

There can be no other successor or beneficiary with an interest in the Estate of James Brown or in the 2000 Irrevocable Trust or the 1999 Revocable Trust Any successor or beneficiary of the Estate or those trusts were represented by the appropriate fiduciaries Moreover, minor children of the settling parties were also properly represented by their parents

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who executed the agreement, and any charitable beneficiaries of the Estate and trusts were also properly represented by the South Carolina Attorney General ³

3 In addition to the notice and opportunity to be heard afforded by the representation discussed above, I find that any interested person also received notice and an opportunity to be heard pursuant to the publication of notice directed by order of this Court filed on March 10, 2008, as discussed above

4 It is clear that the Attorney General in his *parens patriae* capacity 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 See *South Carolina Dep't of Mental Health v McMaster, et al*, 372 S C 175, 642 S E 2d 52 (2007) (Attorney General is charged with the protection of public charities and is required to enforce the due application of fund given or appropriated to such charities), *Epworth Children's Home v W F Beasley, et al*, 365 S C 157, 616 S E 2d 710 (2005), and *Furman Univ v McLeod*, 238 S C 475, 482, 120 S E 2d 865, 868 (1961), also see S C Code Ann §1-7-130 and S C Code Ann § 62-7-405(c)

³ Ms Pope and Mr Buchanan contend that notice and hearing opportunities should have been afforded Salkehatchie Voorhees and USC Aiken as beneficiaries of the 1999 Revocable Trust and to the members of the advisory board they attempted to appoint in their capacities as trustees If these parties were interested they were represented as discussed above However none of these three institutions of higher learning nor the advisory board members are interested persons The colleges are not the beneficiaries of any trust as noted by Mr Buchanan in his testimony it is the students who would attend those schools who are the beneficiaries and they are already represented as discussed above (If those three colleges would have to be parties to any action involving the 1999 trust then by extension every educational institution in South Carolina and Georgia would have to be parties to any action involving the 2000 trust) The advisory board members have no beneficial interest in the trust

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It is noted that section 62-7-405(c) also allows the settlor, trustee, and among others [1 e parties with “special interests”] to enforce a charitable trust. The general law is that the purpose for providing authority pursuant to statute to allow other parties to bring an action to enforce charitable trusts was to provide assistance to the Attorney General because of that Office’s lack of resources to be in all charitable trust cases. See Bogert *Trusts and Trustees* § 411 - “The attorney general as the protector, supervisor and enforcer of charitable trusts.” However, when the Attorney General does appear in litigation involving a charitable trust either by motion for intervention or being brought in by an amendment to the pleadings, he has the right to take charge and control that portion of the litigation which relates to the charitable trust. *Kolin et al v Leitch et al*, 99 N E 2d 685, 687 (Ill 1951). As previously stated, the South Carolina Attorney General’s Motion to Intervene in this matter was granted by Order filed October 11, 2007.

This authority that allows the Attorney General to control the litigation also provides that the Attorney General has exclusive authority, in order to protect the public interest, to settle or compromise litigation.⁴ See *Sarkeys v Independent School Dist*, 592 P 2d 529 (Okla 1979).

In *Sarkeys*, the Court approved a settlement involving a charitable trust entered into by the parties and the Attorney General. Settlor’s descendants appealed. The Court found that they did not have standing to appeal in the absence of an appeal by the Attorney General because the Attorney General was in control of the case. Similarly in *Application of Schlusel*, 89 N Y S 2d

⁴ See 81 A L R 124 (with updates originally published in 1932) citing *Cooley v South Carolina Tax Comm’n* 204 S C 10 28 S E 2d 445 (1943) and *State v Southern R Co* 82 S C 12 62 S E 2d 116 (1908) at page 7. The general authority of the attorney general at common law under the various constitutional and statutory provisions to compromise or settle disputes in litigation in which the state is an interested party and to direct dismissal of the proceedings so far at least as the public interest is concerned provided there is doubt and an honest dispute as to the state’s rights and the compromise or settlement is a bona fide one is well settled.

47 (1949), the Court stated as follows in regards to the Attorney General's authority to enter a settlement agreement "Under the authorities, it is, therefore, within the competence of the Attorney General to bind the uncertain charitable beneficiaries by [a compromise]" Also see *In Re Estate of Smith*, 349 N Y S 2d 281 (N Y Surr Ct 1973), appeal dismissed, 355 N Y S 2d 994 (N Y App Div 1974), appeal denied, 321 N E 2d 555 (N Y) (allowing Attorney General to enter into settlement agreement on behalf of charitable beneficiaries and over executor's objection, rejecting executor's contention that Attorney General did not have authority to compromise on behalf of charitable beneficiaries, observing that to delve too deeply into Attorney General's reasons to compromise could jeopardize charitable beneficiaries' ultimate case if not settled, nevertheless finding that the Attorney General had sufficient reason to enter settlement and was not making "gift", noting that failure to settle risked charities ending up with nothing, observing that settlement of cases is desirable, holding that the Attorney General has the right and the power to enter into compromise on behalf of charitable beneficiaries, subject only to an abuse of discretion standard, which was not abused in this case)

Therefore it is for the Attorney General, as the officer charged with the duty of protecting
charitable beneficiaries, to exercise his discretion as to the appropriateness of a settlement It is the responsibility of this Court in reviewing the record to determine if the Attorney General acted in good faith entering into this compromise agreement Factors to be considered by the Court include whether the Attorney General has given careful consideration to his decision with relation to the compromise and whether the Attorney General's decision is based upon solid legal judgment and a full consideration of all the facts and circumstances available It would be appropriate for the Attorney General to include in his review whether there was a possibility that the final outcome of this litigation was in doubt and the continued expense to the charitable trust

by additional litigation See *In Re Estate of Smith*, supra at 283-4 These factors for my consideration are subsumed in the requirements of section 62-3-1102 that the settlement be in good faith and that it is just and reasonable Therefore I find that the Attorney General has the power pursuant to his common law and statutory authority to protect the charitable beneficiaries, to control such litigation as to the charitable interests when he is a party, and to compromise and settle such interests where appropriate

B Standard for Approving Settlement

South Carolina Probate Code section 62-3-1102 provides that the Court shall approve the settlement and direct the fiduciaries to execute the agreement if it (1) finds the contest or controversy is in good faith, and (2) the effect of the agreement on interested persons is just and reasonable

1 Good faith controversy

Based on the history of matters involving the Estate and other issues related to James Brown, I find that it is incontrovertible that a good faith controversy exists Any of the factors discussed hereinafter could constitute grounds for finding that a good faith controversy exists The cumulation of these issues creates an overwhelming set of grounds for finding that a good faith controversy exists Some of the more salient issues are as follows

a The Levenson clients and Tommie Rae Brown brought actions to contest the 2000 Will and the 2000 Irrevocable Trust Although the contestants raised other reasons for the contest, a compelling argument was that Cannon, Dallas, and Bradley unduly influenced Mr Brown into executing those documents Without deciding whether the undue influence argument has merit, I find that argument certainly has a foundation in good faith The 2000 Trust names Cannon, Dallas, and Bradley as trustees The 2000 trust authorizes the trustees to expend up to

50% of gross income for management expenses⁵ Based on testimony from Ms Pope and Mr Ruff, the estate planning expert presented by Ms Pope and Mr Buchanan, such a provision is unprecedented, especially in a charitable trust On behalf of the estate and trust, Ms Pope and Mr Buchanan have brought an action against Messrs Cannon, Dallas, and Bradley, alleging inter alia that Messrs Cannon, Dallas, and Bradley practiced undue influence on Mr Brown and used various entities controlled by them to syphon off his assets, effectively under the guise of management expenses Ms Pope testified that Mr Cannon told her he could get half of Mr Brown's estate, if he wanted

Moreover, the voluminous file of the drafter of the 2000 will and trust (and of the 1999 will and trust), Mr Herring, is in evidence That file contains a blank deed apparently signed by Mr Brown and witnessed There is no valid reason to create such a document, and its existence certainly adds additional credence to the argument against the validity of any document prepared for Mr Brown by Mr Herring Upon questioning, Mr Buchanan could testify to the existence of only one document that may be in that voluminous file that possibly represents direct correspondence between Mr Herring and Mr Brown There is evidence in the file that Mr Herring and Mr Cannon are good friends

Furthermore, the credibility of four principal witnesses to the validity of the 2000 will and trust is questionable Mr Herring is in jail for murder The accuracy and veracity of the testimony in this matter by Messrs Cannon, Dallas, and Bradley is suspect and at times

⁵ Whether the 50% provision would be valid in light of the charitable savings clause language in the 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 50% provision would be enforceable Assuming they did otherwise why would a known invalid provision be included that could be evidence of undue influence

contradictory For example, Mr Dallas testified that he signed a stipulation presented to this Court knowing it to be false because he did not want to lose his position as fiduciary This is an astonishing admission that he did and would lie to this Court to protect his position as a fiduciary The questionable credibility of the four witnesses most involved with the preparation and execution of the 2000 will and trust certainly supports the good faith basis of the contestants' claims

If the 2000 will and trust were found to be invalid for undue influence, and the issue of whether the 1999 will and trust were valid was then raised, the same arguments as above could be asserted against the validity of the 1999 will and trust, and that controversy would also be in good faith

In her testimony, Ms Pope asserted that the case of *Russell v Wachovia Bank NA*,⁶ was controlling That case is not controlling The issue before this Court is whether the proposed settlement agreement is the result of a good faith controversy and whether the agreement is just and reasonable There was no settlement agreement in *Russell* The gist of the *Russell* case was whether a federal appellate court judge still sitting on cases until a few weeks before his death was the victim of undue influence practiced by family members The circumstances of Mr Brown's execution of the 2000 will and trust documents are not the same as in the *Russell* case

b In addition to the controversy over the validity of any will and trust executed by Mr Brown, a good faith controversy exists over what property if any was funded into the 2000 trust and what property if any would pass through the probate estate pursuant to the 2000 will

⁶ 370 S C 5 633 S E 2d 722 (2006) 353 S C 208 578 S E 2d 329 (2003)

Testimony demonstrates that records that would adequately prove the provenance of any trust or probate assets are either non-existent or too scanty to provide adequate proof. Moreover, testimony from the three original trustees is contradictory. They executed a stipulation representing that the only assets of the 2000 trust were the Beech Island real estate and 50 dollars. Subsequently, Mr. Dallas testified that the stipulation was incorrect and that he had joined in the stipulation to avoid losing his position as fiduciary. The fiduciaries ultimately sought to withdraw the stipulation.

More specifically, questions remain as to whether James Brown Enterprises, Inc. ("JBE, Inc.") was transferred to the trust during Mr. Brown's lifetime. Available documentation shows that any attempted transfer was incomplete. Furthermore, income tax returns filed on behalf of JBE, Inc. showed Mr. Brown, not the 2000 trust, as the owner. Nevertheless, the ownership of JBE, Inc. is uncertain. Even if the ownership of JBE, Inc. could be confirmed, determining what assets if any JBE, Inc. owns is also problematic due to a dearth of documentation.

The ownership of the relevant assets as between the estate and the trust could affect the assets subject to the spousal share claims of Tommie Rae Brown, as discussed below, as well as the omitted child share claim of James ~~Joseph Brown, Jr.~~, as discussed below.

Any assets that would pass pursuant to the 2000 will would be subject to spousal share claims and omitted child claims. Also, a good faith argument exists for subjecting any assets of the 2000 trust to the elective share, pursuant to the *Seifert* and *Dreher* decisions,⁷ and by analogy, to the omitted spouse and omitted child shares. Because testimony demonstrated that Mr. Brown retained control of the 2000 trust, it could be deemed a revocable trust, which would

⁷ *Seifert v. Southern Nat. Bank of South Carolina*, 305 S.C. 353, 409 S.E.2d 337 (1991); *Dreher v. Dreher*, 370 S.C. 75, 634 S.E.2d 646 (2006).

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be subject to the elective share and, by extension, to the omitted spouse share and omitted child share

Moreover, certain assets, such as the copyright termination rights would not belong to the 2000 trust or to the probate estate, instead passing by federal law to the federal statutory heirs

Further confusing the question of ownership is the question of the validity of the 1999 revocable trust Mr Dallas, one of the trustees of that trust, testified that he did not know if the 1999 trust had been revoked in accordance with its provisions Nor was any evidence produced from Mr Herring's file that the 1999 trust had been revoked If that trust was valid and was not revoked, then ownership issues similar to the 2000 trust arise as to the 1999 trust If the 1999 trust was valid and not revoked, then any assets owned by that trust might not be included in the 2000 trust or the probate estate Furthermore, any assets owned by the 1999 revocable trust would clearly be subject to the elective share pursuant to *Seifert* and *Dreher* and, by analogy would be subject to the omitted spouse's share and the omitted child's share

If the 1999 trust was valid, funded, and not revoked, then the trustees of the 2000 trust had no power or control over those assets

c A compelling factor in finding that a good faith controversy existed is the assertion of Tommie Rae Brown (Mrs Brown) of elective share and omitted spouse's share claims If Mrs Brown qualifies as a surviving spouse, then she would clearly be entitled to an elective share and may well 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, pursuant to *Seifert* and *Dreher* The omitted spouse's share would be one-half of the probate assets plus, by analogy to *Seifert* and *Dreher*, any assets held by a revocable trust In addition, Mrs Brown would have a

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claim as a surviving spouse under federal copyright law to receive one-half of the copyright termination rights

Asserting the *Lukich* decisions,⁸ the personal representatives and trustees have argued vigorously that Mrs Brown does not qualify as a surviving spouse. They contended that she had an impediment to her marriage to Mr Brown because she was already married at the time to Javed Ahmed. However, the evidence demonstrated that the Charleston County Family Court held as a finding of fact and a conclusion of law that Mrs Brown had no impediment to her marriage to Mr Brown because she was never previously married to Javed Ahmed as he had an impediment to that purported marriage; he was already married at the time. The family court order shows that Javed Ahmed was properly served by publication.

The *Lukich* decisions effectively held that an annulled marriage could not relate back to the time of the creation of the annulled marriage for purposes of removing an impediment to a subsequently attempted marriage. However, Mr Buchanan admitted in his testimony that the *Lukich* decisions provided that its holding could not apply to a marriage that never had validity, as is the case with Mrs Brown's putative marriage to Javed Ahmed, which according to the family court order was never valid because Javed Ahmed himself had an impediment to that putative marriage. Thus, rather than supporting the position of the personal representatives and trustees, *Lukich* supports the position of Mrs Brown as Mr Brown's surviving spouse.

Moreover, Mr Buchanan also admitted in his testimony that *Lukich* held that a third party has no right to intervene in a marriage proceeding, such that Mr Brown had no right to intervene in the proceeding brought by Mrs Brown to determine that there was an impediment to her

⁸ 379 S.C. 589, 666 S.E.2d 906 (2008); 368 S.C. 47, 627 S.E.2d 754 (Ct. App. 2006).

marriage to Javed Ahmed. Rather, the evidence demonstrates that Mr. Brown paid Mrs. Brown's legal fees to bring that action.

The personal representatives and trustees assert that Mr. Brown brought his own annulment action against Mrs. Brown. The record shows that action was commenced after the commencement of the Javed Ahmed action. Mr. Brown and Mrs. Brown mutually consented to a dismissal of the annulment action brought by Mr. Brown. Although the personal representatives and trustees assert that the consent order of dismissal includes a waiver by Mrs. Brown to ever claim any status as a common-law spouse, that waiver, even if valid under the law, is immaterial to the matter *sub judice*. Mrs. Brown is not asserting her claim as a common-law spouse but rather as a surviving spouse based on her ceremonial marriage to Mr. Brown and their South Carolina marriage license and certificate.

The evidence also demonstrates that, in his authorized autobiography, Mr. Brown represented that he was married to Tommie Rae Brown. Significantly, his autobiography was copyrighted and first published in 2005, after the conclusion of both family court matters discussed above.

Thus, based on *Lukich*, Mr. Brown (or any third party) did not have the right to intervene or contest the family court order holding that there was an impediment to the purported marriage between Mrs. Brown and Javed Ahmed. If he did not have that right, neither do his fiduciaries. Thus, as to the estate and any trust, that family court order, as well as the marriage license, constitute the law of the case as to that issue.

In the settlement agreement, the settling parties agree that Mrs. Brown is the surviving spouse of Mr. Brown, presumably spurred on by the compelling factors discussed above. Treating Mrs. Brown as the surviving spouse provides substantial benefit to the settling parties,

including the charitable beneficiaries. Her status as surviving spouse allows the estate to claim a marital deduction for those assets passing to her, which increases the net amount passing to the settlement entity, in which the charitable beneficiaries have a share and thereby benefit from that tax savings.

d. Another factor evidencing the existence of a good faith controversy is the omitted child's claim submitted on behalf of James ~~Joseph Brown, II~~ by his guardian ad litem. Pursuant to SCPC section 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 James ~~Joseph Brown, II~~. Although the personal representatives contested that James ~~Joseph Brown, II~~ was the biological child of Mr. Brown, substantial evidence would demonstrate that James ~~Joseph Brown, II~~ is indeed the biological child of Mr. Brown. Mr. Brown describes James ~~Joseph Brown, II~~ as his son in his autobiography. Mr. Brown is listed as the father on the birth certificate. Mr. Brown obtained health insurance and social security benefits for James Joseph Brown, II by representing that he was his son,⁹ he named him as his son in his medical directive. The guardian ad litem procured a DNA test demonstrating that there was a greater than 99 percent probability that they were father and biological son. James ~~Joseph Brown, II~~ is presumed to be the child of the marriage of Mr. Brown and Mrs. Brown because that marriage was valid, as discussed above. Even though James ~~Joseph Brown, II~~ was born before that marriage, the subsequent marriage of Mr. Brown and Mrs. Brown would legitimize James ~~Joseph Brown, II~~, pursuant to SCPC section 62-2-109.¹⁰ Although James ~~Joseph Brown, II~~ would not

⁹ Thus, to find that James ~~Joseph Brown, II~~ was not the son of Mr. Brown opens the door for a claim that Mr. Brown defrauded the health insurance carrier and social security.

¹⁰ This would be true even if the marriage was not valid. SCPC section 62-109 legitimizes a child if his parents

need to be legitimate to qualify under section 62-2-302 for his intestate share, it is an additional factor to consider

James ~~Joseph Brown II~~ is not automatically entitled to an omitted child's share merely because he is found to be Mr Brown's son. One operative exception to the granting of the omitted child's share is if the testator specifically provides for overriding the statutory share. One might argue that language in Mr Brown's 2000 will does specifically provide for such an override, but there is compelling authority to the contrary.¹¹ Ultimately, that issue would be decided by determining Mr Brown's intent.

The settling parties agree that James ~~Joseph Brown II~~ is the biological child of Mr Brown. Treating him as a child 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 federal copyright termination rights share. Moreover, treating James ~~Joseph Brown II~~ as the child of Mr Brown does not detrimentally impact the settlement entity, including the charitable beneficiaries, because according to the settlement agreement his share is paid from Mrs Brown's share.

e. Another factor indicating the existence of a good faith controversy involves the applicable time to contest the 2000 trust. Section 62-7-5 provides that a trust is voidable if it resulted from fraud, coercion, or undue influence — the gravamen of the contestant's actions to contest the trust. The fiduciaries contend that the statute of limitations to contest the 2000 trust

subsequently attempt to marry even in the attempted marriage is not valid

¹¹ See e.g. *Estate of Robbins* 756 A 2d 602 (N H 2000) *Estate of Torregano* 352 P 2d 505 (Cal 1960) The estate would bear the burden of proof. *In re Estate of Hoigaard* 360 N W 2d 360 (Minn App 1984)

has run. However, for the reasons discussed below, the contestants would have viable arguments that no statute of limitations would bar their contest.

1 As to fraud

Assuming *arguendo* that the 2000 trust is irrevocable, South Carolina follows the discovery rule for fraud, which commences the running of the statute of limitations from discovery of the fraud itself or of such facts as would have led to the knowledge thereof, if pursued with reasonable diligence. *Burgess v American Cancer Soc*, *South Carolina Div Inc* 300 S C 182, 386 S E 2d 798 (Ct App 1989). A suspicion alone is not sufficient to place a party on inquiry. *Beattie v Pool*, 13 S C 379 (1880), *Hunt v Smith*, 202 S C 129, 24 S E 2d 164 (1943). The burden would be on the fiduciaries to show that the contestants had knowledge of the fraud or of such facts as would have led to knowledge if pursued with reasonable diligence. *Grayson v Fidelity Life Ins Co*, 114 S C 130, 103 S E 477 (1920), *Means v Feaster*, 4 S C 249 (1873), *Richardson v Mounce*, 19 S C 477 (1883). The contestants would also assert that the fraud was continuing, so that any applicable statute of limitations did not commence any sooner than Mr Brown's death.

The original trustees would be the alleged perpetrators of the fraud. The commission of a fraud or an intentional misrepresentation therefore estops the trustees from asserting any statute of limitations. See *R WE NUKEM Corp v ENSR Corp* 644 S E 2d 730 (2007), *Hunter v American General Life and Acc Ins Co*, slip copy (D S C 2004) (2004 WL 5231631), *Holmberg v Armbrrecht*, 327 U S 392 (1946). Moreover, even if the trustees did not engage in fraud or make intentional misrepresentations, they are estopped from asserting any statute of limitations because the settling parties reasonably relied on the words and conduct of the trustees in allowing any limitations period to expire. See *Regions Bank v Schmauch* 582 S E 2d 432 (Ct

App 2003), *Hedgepath v American Telephone and Telegraph Co* 559 S E 2d 327 (Ct App 2001), *Kleckley v Northwestern Nat Cas Co* 526 S E 2d 218 (2000), *Harvey v South Carolina Dept of Corrections* 527 S E 2d 765 (Ct App 2000), *Brown v Pearson*, 483 S E 2d 477 (Ct App 1997)

The fiduciaries assert that the recordation of the certificate of trust commenced the running of the statute of limitations. However, recordation of a deed will not, by itself, be sufficient notice to put a party on inquiry as to the existence of a fraudulent conveyance. *Tucker v Weathersbee*, 98 S C 402, 82 S E 638 (1914), *Means v Feaster*, 4 S C 249 (1873)

ii As to undue influence

Statute of limitations for fraud would not apply to the contestants' claims for undue influence because undue influence is an action in equity. *Dixon v Dixon* 362 S C 388, S E 2d 849 (2005)

iii Tolling as to minors

To the extent that any statute of limitations would apply to the trust contests, the contestants would assert that the statute of limitations would be tolled for a minor, such as James Joseph Brown, II

iv If the trust is deemed revocable, then SCPC section 62-7-604 provides that the trust contests were timely commenced

f One additional salient factor demonstrating the existence of a good faith controversy involves the issue of the ownership of federal copyright termination rights. Federal copyright law provides a termination right to a songwriter who has assigned some or all of his

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copyright rights to a third party, such as a publisher¹² Testimony revealed Mr Brown assigned at least a substantial number of his copyrights to one or more publishers and he assigned to one or more third party entities the remaining rights to a substantial number of his copyrights Federal copyright law allows a songwriter who is alive after a certain number of years pass from any assignment of some or all of his copyrights to terminate, or revoke, that assignment, thereby regaining control of the assigned right with the freedom to negotiate a new assignment¹³ 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 See 17 U S C A §§ 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

Under the settlement agreement, those settling parties who would qualify as statutory heirs for federal copyright law termination rights purposes have contributed their termination rights, and any proceeds therefrom, to the settlement entity, which includes the charitable beneficiaries If it were not for this contribution to the settlement entity, there is no way that the charitable beneficiaries could receive any benefits from the federal copyright termination rights

¹² Typically the publisher's share of any royalties is 50 percent of the total and the songwriter's share is 50 percent

¹³ 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 assignment

2 Just and Reasonable

Including those discussed above, there are many reasons supporting the conclusion that the proposed settlement is just and reasonable. The key issue is how the charitable beneficiaries fare under the proposed settlement. I find that the settlement is just and reasonable and provides a just and reasonable result for the charitable beneficiaries.

From the perspective of the charitable beneficiaries, the risks of not approving the settlement agreement are substantial. As discussed above, significant arguments can be made that the 2000 will and trust are not valid. If the 2000 will and trust are overturned, essentially the same arguments can be made that the 1999 will and trust are invalid. If the contestants would prevail in these contests, an intestacy would result and the charitable beneficiaries would get nothing — a substantial risk.¹⁴

Even if the 2000 will and trust (or the 1999 will and trust) are upheld, significant arguments can be made to recognize Mrs. Brown's spousal share claims, as discussed above. No matter Mr. Brown's intent, she would be entitled to one-third of the probate assets plus one-third of the assets in any revocable trust. And unless Mr. Brown demonstrated an intent to override SCPC section 62-2-301 (the omitted spouse's share), which is questionable, Mrs. Brown would be entitled to one-half of the probate estate¹⁵ and likely one-half of the assets of any revocable trust. If Mrs. Brown would prevail in her claims, the charitable beneficiaries' share of the

¹⁴ The risk for the charitable beneficiaries would be enhanced by the burden of proof. Because Messrs. Cannon, Dallas, and Bradley, the original personal representatives and trustees, are the alleged perpetrators of the fraud and undue influence resulting in Mr. 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 Messrs. Cannon, Dallas, and Bradley were in a confidential relationship with Mr. Brown. *Dixon v. Dixon*, 362 S.C. 388, S.E.2d 849 (2005).

¹⁵ As discussed above, determining the proper ownership of probate and nonprobate assets will be difficult if not impossible.

probate estate and any revocable trust would be reduced by either one-half or one-third — a substantial risk

Even if the 2000 will and trust (or the 1999 will and trust) are upheld (and even if Mrs Brown is not entitled to any spousal share), significant arguments can be made to recognize James ~~Joseph Brown, II~~'s omitted child claim, as discussed above. Unless Mr Brown demonstrated an intent to override SCPC section 62-2-302 (the omitted child's share), which is questionable, James ~~Joseph Brown, II~~ would be entitled to his intestate share of the probate estate¹⁶ and likely the same share of the assets of any revocable trust. If James ~~Joseph Brown, II~~ would prevail in his claims, the charitable beneficiaries' share of the probate estate and any revocable trust would be reduced by his intestate share — a substantial risk.

Even if the 2000 will and trust are upheld and the spousal and omitted child's claims are unsuccessful, the time and expense to litigate through appeal all of these and other issues would be extraordinary. The cost to the estate and trust for fees and costs and related expenses are substantive. It has taken more than two years of estate administration and millions of dollars of fees and costs just to get to the point of considering a settlement. The time and expense necessary to carry out all litigation to completion and appeal boggles the mind.

The Court has been apprised as to the distribution of the settling parties' interest as more fully set forth in the settlement agreement, and the settlement agreement has been made a part of the record. The percentages assigned to each settling party are fair and reasonable. The Attorney General's Office has ensured a substantial portion of the Estate will be dedicated to the specific intent of James Brown, that is providing an educational trust. The Court has also considered and

¹⁶ As discussed above, determining the proper ownership of probate and nonprobate assets will be difficult if not impossible.

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is satisfied that the minor child, James Joseph Brown II, will receive his share of the estate assets as distributed through his Mother's share and that he will receive another equal portion from his Mother in the form of a second trust

The protection of a public trust is of paramount concern to the Court and the Court is satisfied that through the diligent efforts of the Attorney General's Office, the assets to fund the public trust will now be available. Furthermore, any issues as to the protection of the minor child's interest have been preserved through this agreement.

Consideration of these factors demonstrates that the allocation of the proposed settlement is just and reasonable. However, an additional, and perhaps substantial additional benefit to the charitable beneficiaries is the contribution by the other settling parties of their federal copyright termination rights. As discussed above, these rights may have considerable value and, without the settlement, the charitable beneficiaries could derive no benefit from these rights.

Replacement of the currently serving fiduciaries is also just and reasonable. The propriety of their appointment as trustees is currently on appeal, and their replacement should moot that issue. Moreover, both fiduciaries testified that they intended to appeal the approval of the settlement, that action would place them in the position of an irreconcilable conflict of interest.

The settling parties propose that Mr. Russell Bauknight be appointed as the replacement personal representative and trustee. I find that he is qualified and willing to serve and suffers from no conflict of interest because the settling parties have all consented to his appointment and, because the settlement agreement places all possible probate estate and trust assets into the same settlement entity, he has no conflict of interest by serving as both personal representative

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and trustee Pursuant to Mr Bauknight's testimony, I find that no transition period is necessary before the appointment of Mr Bauknight to replace Ms Pope and Mr Buchanan

C Tax Issues

1 Charitable Exemption Concerns

I find that the Settling Parties have carefully considered the impact of the Settlement Agreement and participation in the Settlement Entity and the James Brown Legacy Trust on the tax exempt status of the 2000 "I Feel Good" Trust

As the Trustee of the 2000 "I Feel Good" Trust will be selected by, and can be removed for any reason by, the South Carolina Attorney General, the Settling Parties believe there is no private inurement problem Additionally, all transactions between the Brown family members, the 2000 "I Feel Good" Trust, and the James Brown Legacy Trust are at fair market value The provisions of the James Brown Legacy Trust effectively grant the 2000 "I Feel Good" Trust a veto over major decisions, allowing the 2000 "I Feel Good" Trust sufficient control over the settlement entity to prevent the Settling Parties from conducting the business of the James Brown Legacy Trust in such a manner as to allow them to use the assets or income of the "I Feel Good" Trust for their own private benefit

Marital Deduction – In order to receive the marital deduction, Tommie Rae Brown must have been the spouse of James Brown The Attorneys for Mrs Brown strongly believe that they have sufficient evidence to prevail in a trial on the merits as to whether Tommie Rae Brown was the spouse of James Brown The other Settling Parties agree that Mrs Brown has a material chance of success, as they are willing to settle with Mrs Brown and recognize her status as surviving spouse

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Charitable Deduction – The Settling Parties recognize that the charitable deduction will be limited to the amount that the 2000 “I Feel Good” Trust actually receives, per Regulation §20 2055-2(d) and Reed v U S, 26 AFTR 2d 70-6042 (DC Ill 1970), and that the amount of the charitable deduction cannot exceed the amount the 2000 “I Feel Good” Trust otherwise would be entitled to under the terms of the Will, per Terre Haut First National Bank v U S, 67 AFTR 2d 91-1217 (DC Ind 1991)

I find that the Settling Parties took the issues discussed above into account in drafting the Settlement Agreement, and, other than the loss of the charitable deduction for assets passing to heirs/devisees other than the 2000 “I Feel Good” Trust, the Settling Parties have planned to preserve the Estate’s right to a charitable deduction for the value of the assets passing to the 2000 “I Feel Good” Trust

The specific concerns of the Personal Representatives/Trustees, as expressed by their expert witness, Harley Ruff, Esquire, are addressed below

Attorneys’ Fees – According to the settlement agreement, each party is ultimately responsible for his or her own attorneys’ fees. These fees are therefore not additional costs to the charitable beneficiaries. These attorneys’ fees may be deductible for estate tax purposes. Treasury Regulation §20 2053-3(c)(3) provides “[a]ttorneys’ fees incurred by beneficiaries incident to litigation as to their respective interests are not deductible if the litigation is not essential to the proper settlement of the estate within the meaning of paragraph (a) of this section. An attorney’s fee not meeting this test is not deductible as an administration expense under section 2053 and this section, even if it is approved by a probate court as an expense payable or reimbursable by the estate.” This regulation allows attorneys fees incurred by beneficiaries to be deductible for estate tax purposes if they were incurred in litigation that was

essential to the proper settlement of the estate. The Settling Parties plan to contend that the majority of their legal fees have been incurred in litigation essential to the proper settlement of the Estate and, thus, are deductible by the Estate. By providing a pro-rata reduction of the elements of the Estate which are subject to estate taxes, the net amount to be received by the Settling Parties, including the charitable beneficiaries, would be increased.

The Settling Parties plan to assert that the payment of the Settling Parties' legal fees are deductible as an estate administration expense under §2053. The Settling Parties' legal fees were necessary in determining the proper distribution of the estate due to (i) the alleged undue influence asserted against Mr. Brown, and (ii) establishing Tommie Rae Brown as the spouse of James Brown, and her entitlement to either the elective share or the omitted spouse share. Additionally, the efforts of the Settling Parties, Pope and Buchanan, and their counsel uncovered the mismanagement and misappropriation by the initial fiduciaries and led to their resignation. Pending the outcome of additional litigation, these efforts may lead to the Estate's recovering substantial sums.

Due Diligence – The Settling Parties are aware that it is in the best interest of all beneficiaries of the Estate of Mr. Brown, whether Settling Parties or not, that the Estate minimize any potential estate tax due by Mr. Brown's estate. For that reason, the Settling Parties assert that they have carefully examined the potential estate tax consequences of the Settlement Agreement and are confident that they have drafted the Agreement in such a way as to preserve the charitable and marital deduction to the greatest extent possible in line with the provisions of the settlement.

Effect of Settlement on Charitable Deduction – Mr. Ruff expressed concerns that the structure of the Settlement Agreement and the James Brown Legacy Trust would jeopardize the

charitable deduction because it results in a non-qualified split interest trust under §2055(e)(2). The Settling Parties disagree that a non-qualified split interest trust is created, and, even if it was, assert that the form of the James Brown Legacy Trust can be revised to satisfy the split interest trust rules of §2055(e)(2).

The Settlement Agreement provides that each Settling Party will receive a specified percentage of the Estate assets. These assets are first distributed to and/or are owned by the Settling Parties outright. The Settling Parties have contractually obligated themselves to then contribute these assets to the James Brown Legacy Trust for consolidated management and marketing of the "James Brown assets." The assets do not pass directly from Mr. Brown's estate to the James Brown Legacy Trust. The assets pass directly to the Settling Parties, who in turn contribute these assets to a co-investment entity, the James Brown Legacy Trust. Such co-investment between charitable and non-charitable beneficiaries is specifically permitted by Section 4943 of the Internal Revenue Code.

Even if the IRS or a federal court were to disregard the distribution of assets to the Settling Parties and their subsequent contribution to the James Brown Legacy Trust, and treat the assets of the Estate of James Brown as passing directly to the James Brown Legacy Trust, the Settling Parties could amend the structure of the James Brown Legacy Trust (as they are required under the settlement agreement to do if necessary to preserve the charitable deduction) to allow the contribution to qualify for the charitable deduction. In *Galloway v. U.S.*, 99 AFTR2d 2007-3412, the case cited by Mr. Ruff in support of his opinion that the charitable deduction would not be allowed if the Settlement Agreement were approved, the Court emphasized that there was a single Trust that did not divide until distributions were to be made some years in the future. The Settling Parties believe that amending the James Brown Legacy Trust to provide for a charitable

share, to which the 2000 “I Feel Good” Trust assets would be contributed, and a non-charitable share, to which all other “James Brown assets” would be contributed, is one option that would resolve the issue of the non-qualified split interest trust, if necessary

2 Self Dealing

Mr Ruff alleged that the right of first refusal granted to Terry Brown in the Settlement Agreement would constitute self-dealing and would generate an excise tax and/or a loss of charitable exemption for the 2000 “I Feel Good” Trust

The Settling Parties opine that the granting of the right of first refusal and the exercise of the right of first refusal (presuming such exercise is done while the estate is still open for federal income tax purposes) fall within the “estate administration” exception to self-dealing found in Regulation §53.4941(d)-1(b)(3). If the right of first refusal does not fall within the “estate administration” exception to self-dealing, the Settling Parties could propose that the 2000 “I Feel Good” Trust become a public charity (such as a Supporting Organization supervised and controlled by the South Carolina Attorney General’s Office), which is not subject to the self-dealing prohibition

If the right of first refusal does not meet the “estate administration” exception, and the 2000 “I Feel Good” Trust cannot be converted to a public charity, the Settlement Agreement provides that “[i]f any time any federal or state agency determines that any part of this Addendum shall endanger the tax-exempt status of the Charitable Trust, and that decision becomes final and non appealable, then the parties shall take such curative action as is necessary to prevent any such loss of tax-exempt status by the charitable trust.” This type of curative language is used by planners as the ultimate safeguard to prevent charitable exemption problems

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3 Marital Deduction

Mr Ruff addressed the case of *Commissioner of Internal Revenue v Estate of Bosch* 387 US 456 87 S Ct 1776, 18 L Ed 2d 886 (1967), and its impact on the marital deduction. In *Bosch*, the issue of whether the estate was due a marital deduction was dependent on the interpretation of state law (i.e. whether the widow's purported release of a power of appointment was valid). The Supreme Court of the United States ruled that only an opinion of the state's highest court as to a state law issue is binding on federal authorities when applying federal law.

Bosch does not directly affect whether or not the Estate of James Brown will be entitled to a marital deduction for assets that pass to his wife, Tommie Rae Brown. *Bosch* simply states that the IRS and the federal courts are not required to accept a South Carolina court's ruling that Tommie Rae Brown is the spouse unless that ruling comes from the South Carolina Supreme Court. As is the case with any surviving spouse, nothing in *Bosch* prevents the Estate of James Brown from arguing the merits of Tommie Rae Brown's claim that she was the wife of James Brown. If the Estate prevails on the merits of that claim, it will be entitled to a marital deduction for assets that pass to Mrs. Brown, despite the lack of a Supreme Court ruling that she is the wife of Mr. Brown.

4 Private Letter Ruling

The Settling Parties have not yet sought a Private Letter Ruling ("PLR"). *Revenue Procedure 2009-1* states that a PLR is issued only to a "taxpayer" and must be signed by the taxpayer or an "authorized representative." In this case, the Settling Parties have no authority to act on behalf of either the estate or the 2000 "I Feel Good" Trust.

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The Settling Parties anticipate that an independent professional fiduciary appointed by this Court will carefully consider whether or not to apply for a PLR on one or more issues, after consulting with the Settling Parties, especially the Attorney General

Thus, after conducting substantial due diligence with the advice of highly-regarded tax lawyers, including a number of certified tax specialists, the Settling Parties assert that the Settlement Agreement does not disqualify the charitable exemption, cause excise tax problems, or prevent the Estate from receiving a charitable deduction for property passing to the 2000 "I Feel Good" Trust. However, to the extent that there may be a problem, the Settling Parties have a number of options. They can pursue the estate administration exception. They can pursue the conversion of the private foundation to a public charity (which they may choose to do for nontax reasons as well). If such options fail to protect the charitable exemption, the Settling Parties are required by the Settlement Agreement to take whatever curative action is necessary to protect the charitable exemption, which would be enforced by the Attorney General.

IV Conclusion

Based on the foregoing, I find as follows

- 1 All necessary parties are properly joined,
- 2 Notice has been provided to all necessary parties,
- 3 The settlement agreement has been executed by all persons having beneficial interests which are affected by the compromise,
- 4 The controversy is in good faith, and
- 5 The settlement is fair, equitable, and reasonable

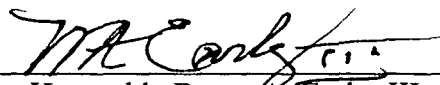
I therefore Order as follows

- 1 The settlement is approved,

2 Adele J Pope and Robert L Buchanan, Jr , are directed to execute the agreement, and

3 Russell L Bauknight is immediately appointed as Personal Representative of the Estate and Trustee of the James Brown 2000 Irrevocable Trust in replacement of Ms Pope and Mr Buchanan

AND IT IS SO ORDERED


The Honorable Doyet A Early, III

May 26, 2009
Aiken, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A Early, III, Circuit Court Judge

Case No 2008-CP-02-1647
Case No 2007-CP-02-0122
Case No 2008-CP-02-0872
Case No 2009-CP-02-1810

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

Ex Parte Robert L Buchanan, Jr and Adele
J Pope, as Personal Representatives of the Estate
Of James Brown and the James Brown 2000
Irrevocable Trust

Appellants,

Henry Dargan McMaster, in his capacity as
Attorney General of the State of South Carolina,
Daryl J Brown, on behalf of his minor children,
Lindsey Delores B and Janise Vanisha B ,
Deanna J Brown Thomas, on behalf of her minor
children, Jason Brown L , Yamma N Brown, on
behalf of her minor children, Sydney L ,
Carrington L , and Tonya B , Vanisha Brown, and
Larry Brown, Tommie Rae Hynie Brown,

Respondents,

v

Albert H Dallas, Alfred A Bradley,
and David G Cannon, individually
and as (purported) Trustees of the James Brown
2000 Irrevocable Trust, Russell Bauknight, as
Special Administrator and Special Trustee of the
Estate of James Brown and the James Brown 2000
Irrevocable Trust, Terry Brown, Romunzo Brown,
Forlando Brown, Cinnamon N M Paris,
LaRhonda Petitt, and Jeannette Mitchell, also

Respondents

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SC Court of Appeals

Certificate of Service

I hereby certify that this 4th day of February, 2010, I served a copy of the within Motion to Dismiss on all counsel of record by depositing a copy in the U S Mail and addressed as follows

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Myrtle Beach, SC 29587

Thornton Morris, Esquire
1950 N Park Place N Ste 400
Atlanta, GA 30339





The Supreme Court of South Carolina

DANIEL E SHEAROUSE
CLERK OF COURT

BRENDA F SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA SOUTH CAROLINA 29211
TELEPHONE (803) 734-1080
FAX (803) 734 1499

I, Daniel E Shearouse, Clerk of the Supreme Court of South Carolina, hereby certify that the records of this Court reflect that appeals are currently pending before this Court in the following matters

Henry Dargan McMaster, 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 children, Jason L , Yamma N
Brown, on behalf of her minor children,
Sydney L , Carrington L , and Tonya
Brown, Vanisha Brown, and Larry Brown,
Tommie Rae Hynie Brown, 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 Pettitt,

DCY
#1

and 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, and 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

(Case Tracking No 2009142286)

AND

Albert H Dallas and Alfred A Bradley, Trustees of the Irrevocable Trust Agreement of James Brown,

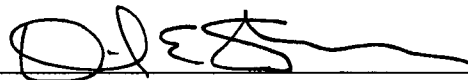
Appellants,

Adele J Pope and Robert L Buchanan, Jr ,
Putative Trustees of the Irrevocable Trust
Agreement of James Brown,

Respondents

In re The Estate of James Brown, a/k/a James Joseph Brown

(Case Tracking No 200883946)



Clerk, South Carolina Supreme Court

Columbia, South Carolina
July 8, 2010

Des
#3

The Supreme Court of South Carolina

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

Ex Parte 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, Appellants,

Henry Dargan McMaster, in his
capacity as Attorney General of
the State of South Carolina,
Daryl J Brown, on behalf of
his minor children, Lindsey
Delores B and Janise Vanisha
B , Deanna J Brown Thomas,
on behalf of her minor children,
Jason Brown L , Yamma N
Brown, on behalf of her minor
children, Sydney L , Carrington
L , and Tonya B , Vanisha
Brown, and Larry Brown,
Tommie Rae Hynie Brown, Respondents,

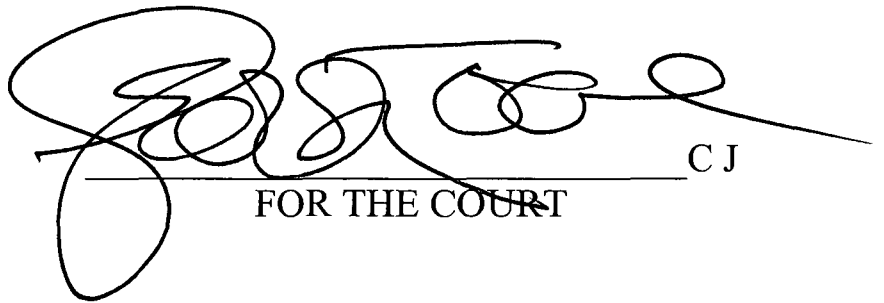
Albert H Dallas, Alfred A
Bradley, and David G Cannon,
Individually and as (purported)
Trustees of the James Brown
2000 Irrevocable Trust, Russell
L Bauknight, as Special
Administrator and Special
Trustee for The Estate of James
Brown and The James Brown
2000 Irrevocable Trust, Terry
Brown, Romunzo Brown,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

The Honorable Doyet A Early, III
Aiken County
Trial Court Case No 2008-CP-02-01647

ORDER

Pursuant to Rule 204(b) of the South Carolina Appellate Court Rules, this
appeal is hereby certified for review by the South Carolina Supreme Court

IT IS SO ORDERED


C J
FOR THE COURT

Columbia, South Carolina

May 13, 2010

cc James B Richardson, Jr , Esquire
Tressa T H Hayes, Esquire
C Havird Jones, Esquire
Mary Frances Jowers, Esquire
Fred L Kingsmore, Jr , Esquire
H Wesley Kirkland, Jr , Esquire
James Mixon Griffin, Esquire
Louis Levenson, Esquire
Matthew Day Bodman, Esquire
Max N Pickelsmer, Esquire
R Wayne Byrd, Esquire
Robert N Rosen, Esquire
T Heyward Carter, Jr , Esquire
S Alan Medlin, Esquire
David L Michel, Esquire
Thornton Morris, Esquire
William Joseph Barr, Esquire
Albert P Shahid, Jr, Esquire

The South Carolina Court of Appeals

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

Ex Parte 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,

Appellants,

Henry Dargan McMaster, in his
capacity as Attorney General of the
State of South Carolina, Daryl J
Brown, on behalf of his minor children,
Lindsey Delores B and Janise Vanisha
B ,Deanna J Brown Thomas, on behalf
of her minor children, Jason Brown L ,
Yamma N Brown, on behalf of her
minor children, Sydney L , Carrington
L , and Tonya B , Vanisha Brown, and
Larry Brown, Tommie Rae Hynie
Brown,

Respondents,

v

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

Respondents

The Honorable Doyet A Early, III
Aiken County
Trial Court Case No 2008-CP-02-01647

ORDER

For good cause having been shown, the time for serving and filing a Reply to the Return to the Motion to Dismiss in the above entitled matter is hereby extended until March 29, 2010

IT IS SO ORDERED

JOHN CANNON FEW, CHIEF JUDGE
For the Court

BY V. Claire Allen, Deputy Clerk
CLERK

Columbia, South Carolina

3/19/2010

cc James B Richardson, Jr, Esquire
Tressa T H Hayes, Esquire
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Mary Frances Jowers, Esquire
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James Mixon Griffin, Esquire
Louis Levenson, Esquire
Matthew Day Bodman, Esquire
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Robert N Rosen, Esquire
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S Alan Medlin, Esquire
David L Michel, Esquire
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William Joseph Barr, Esquire
Albert P Shahid, Jr, Esquire



RECEIVED
MAR 18 2010
SC Court of Appeals

HENRY McMASTER
ATTORNEY GENERAL

March 18, 2010

The Honorable Tanya A Gee
Clerk of Court
SC Court of Appeals
P O Box 11629
Columbia, SC 29211

RE In Re the Estate of James Brown and the James Brown 2000 Irrevocable
Trust dated August 1, 2000
Aiken County Case Numbers 2009-CP-02-1647, 2009-CP-02-1810 2009-CP-02-
0122, 2009-CP-02-872
Case Tracking No 2009142286

Dear Ms Gee

I am writing on behalf of Henry Dargan McMaster, in his capacity as Attorney General of the State of South Carolina, Daryl J Brown, individually and on behalf of his minor children, Lindsey Delores B and Janise Vanisha B, Deanna J Brown Thomas, individually and on behalf of her minor child, Jason Brown L, Yamma N Brown, individually and on behalf of her minor children, Sydney L and Carrington L, Tonya Brown, Vanisha Brown, Larry Brown, Terry Brown, and Tommie Rae Brown

We request an extension of five days to serve and file a Reply to Pope and Buchanan's Return and Opposition to the Motion to Dismiss in the above-referenced matter By Order dated February 23, 2010, the Court previously granted Pope and Buchanan's Request for a thirty-day extension to serve and file their Return to the Motion to Dismiss

We request that the Court hold in abeyance the time for filing the Reply pending a decision on this extension request Enclosed is the filing fee of \$25 00

Very truly yours,

Mary Frances Jowers
Assistant Attorney General

cc

3-29-10
3-29-10

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**1229 LINCOLN STREET
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**TELEPHONE 803/799 9412
FAX 803 799 9628**

JAMES B RICHARDSON JR

Fellow of the American Academy of Appellate Lawyers

RECEIVED
MAR 16 2010
SC Court of Appeals

March 16, 2010

The Honorable Tanya Gee, Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

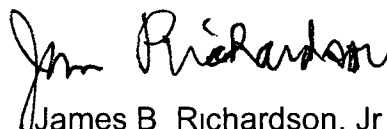
RE Re Ex Parte Buchanan and Pope
 McMaster and Others v Dallas and Others
 Aiken County Case No 2009-CP-01810
 Aiken County Case No 2008-CP-01647

Dear Ms Gee

I am notifying you that we received the final requested transcript for this matter by email on February 24, 2010 and a copy by mail shortly thereafter

Under Rule 240 (b) it is our understanding that the respondents' currently pending Motion to Dismiss, which was filed on February 2, 2010, has automatically stayed the time limits for perfecting the appeal. I understand this Court will advise of the briefing schedule upon disposition of the pending motion.

Yours very truly


James B Richardson, Jr
Attorney for Appellants

cc via mail

The Honorable Rosalyn W Frierson, Director of Court Administration
Lisa Davenport Court Reporter
Tressa T H Hayes Esquire
Counsel of Record as listed on page two

The Honorable Tanya Gee, Clerk of Court
March 16 2010
Page 2

Henry D McMaster, Esquire, Attorney General of the State of South Carolina
Robert D Cook, Assistant Deputy Attorney General
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J C Nicholson, III, Esquire, Assistant Attorney General
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Attorney for Jeannette Mitchell

The Honorable Tanya Gee, Clerk of Court
March 16 2010
Page 4

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Telephone 843-213-5500

Attorney for Respondents Albert H Dallas and Alfred A Bradley, individually and
as (purported) Trustees of the James Brown 2000 Irrevocable Trust

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Attorney for Respondent Russell L Bauknight

cc James B Richardson, squire
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C Havird Jones, Esquire
Mary Frances Jowers, Esquire
Fred L Kingsmore, Jr , Esquire
H Wesley Kirkland, Jr , Esquire
James Mixon Griffin, Esquire
Louis Levenson, Esquire
Matthew Day Bodman, Esquire
Max N Pickelsmer Esquire
R Wayne Byrd, Esquire
Robert N Rosen, Esquire
T Heyward Carter, Jr Esquire
S Alan Medlin, Esquire
David L Michel, Esquire
Thornton Morris Esquire
William Joseph Barr, Esquire
Albert P Shahid, Jr, Esquire

The South Carolina Court of Appeals

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

Ex Parte 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,

Appellants,

Henry Dargan McMaster, in his capacity as
Attorney General of the State of South
Carolina, Daryl J Brown, on behalf of his
minor children, Lindsey Delores B and
Janise Vanisha B ,Deanna J Brown
Thomas, on behalf of her minor children,
Jason Brown L , Yamma N Brown, on
behalf of her minor children, Sydney L ,
Carrington L and Tonya B , Vanisha
Brown, and Larry Brown, Tommie Rae
Hynie Brown,

Respondents

v

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

Respondents

The Honorable Doyet A Early, III
Aiken County
Trial Court Case No 2008-CP-02-01647

ORDER

For good cause having been shown, the time for serving and filing a Return to the Motion to Dismiss
in the above entitled matter is hereby extended until March 17, 2010

IT IS SO ORDERED

JOHN CANNON FEW, CHIEF JUDGE
For the Court

BY


CLERK

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

FEB 09 2010

SC Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A Early, III, Circuit Court Judge

Case No 2008-CP-02-1647
Case No 2009-CP-02-1810

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

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

Henry Dargan McMaster, in his capacity as Attorney
General of the State of South Carolina, Daryl J Brown,
on behalf of his minor children, Lindsey Delores B and
Vanisha B , Deanna J Brown Thomas, on behalf of
her minor children, Jason Brown L , Yamma N Brown,
on behalf of her minor children, Sydney L , Carrington
L , and Tonya B , Vanisha Brown, Larry Brown, and
Tommie Rae Hynie Brown, Respondents,

v

Albert H Dallas, Alfred A Bradley, and David B Cannon,
individually and as (purported) Trustees of the James
Brown 2000 Irrevocable Trust, Russell Bauknight, as
Special Administrator and Special Trustee of the Estate
of James Brown and the James Brown 2000 Irrevocable
Trust, Terry Brown, Romunzo Brown, Forlando Brown,
Cinnamon N M Paris, LaRhonda Pettitt, and Jeannette
Mitchell, also Respondents

MOTION FOR EXTENSION OF TIME
TO FILE A RETURN TO MOTION TO DISMISS

TO THE HONORABLE CHIEF JUDGE AND ASSOCIATE JUDGES
OF THE SOUTH CAROLINA COURT OF APPEALS

The appellants respectfully move for a thirty-day extension of time in

which to file a return to certain respondents' motion to dismiss these appeals, on the following grounds

1 The appellants were appointed in Case No 2007-CP-02-122 by the Court of Common Pleas as Trustees of the James Brown 2000 Irrevocable Trust and as Personal Representatives under the Will of James Brown, both dated August 1, 2000 Appellants were given all of the authority, powers and duties as if they had been appointed in the original documents other than the requirement that there be three fiduciaries [Orders dtd 12/20/7 and 4/8/08, Case 122]

2 The 2000 Trust, funded for 9 years, divides after Brown's death into two trusts, one providing education benefits for certain designated grandchildren and the second a private foundation providing education benefits for needy and deserving students

3 James Brown's Will leaves certain items of tangible personal property to six of his children and the balance to the 2000 Trust He thus declared his intention that family members receive no substantial inheritance from him and that the bulk of his assets, potentially on the order of \$100 million, if not already in the 2000 Trust be added to it to provide education scholarships

4 Certain respondents have challenged the 2000 Trust and Will asserting undue influence (Case 2008-CP-02-872) Additionally Hynie Brown has claimed elective share rights in the estate The appellants defended these claims, the first of which they considered frivolous and the second insubstantial

5 Various respondents negotiated a settlement resolving some claims Under the settlement, James Brown's estate plan will be stripped of roughly sixty-five (65%) percent of its value

6 The appellants opposed the settlement for procedural and substantive reasons, supported by expert testimony The circuit court approved the

settlement and, without finding cause, removed the appellants from office and appointed a new Personal Representative/Trustee

7 The appellants appealed Over preserved objections, other necessary parties were not properly joined or given proper notice and an opportunity to object

8 The respondents have now sought to avoid appellate review of these matters on the basis of alleged lack of standing

9 The motion to dismiss was served by mail on February 4, 2010 It is lengthy and contains citations to very many authorities from this and other jurisdictions It will require as much time to respond to as a complex brief

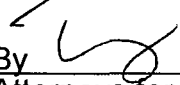
10 It will be impossible for the appellants to respond adequately to this motion in the allotted ten days In view of the demands of other business as well, the appellants respectfully move the Court for a thirty-day extension of time to reply, in addition to the usual ten-day period, for a total of forty days

11 Respondents' motion automatically tolls the time for appellants to perfect the appeal Some transcripts are still pending This extension will not cause any unnecessary delay or prejudice

Respectfully Submitted,

James B Richardson, Jr
Law Office of James B Richardson, Jr
1229 Lincoln Street
Columbia, South Carolina 29201
(803) 799-9412

Tressa T H Hayes
Shipley & Hayes, PC
445 Meeting Street
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(803) 794-7588

By 
Attorneys for Appellants

February 9, 2010

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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A Early, III Circuit Court Judge

Case No 2008-CP-02-01647
Case No 2009-CP-02-01810

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

Ex Parte 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,

Appellants

Henry Dargan McMaster, in his capacity as Attorney
General of the State of South Carolina, Daryl J Brown,
on behalf of his minor children, Lindsey Delores B
and Janise Vanisha B , Deanna J Brown Thomas,
on behalf of her minor children, Jason Brown
L , Yamma N Brown, on behalf of her minor children,
Sydney L , Carrington L , and Tonya B ,
Vanisha Brown, and Larry Brown, Tommie Rae Hynie
Brown,

Respondents

v

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

Respondents

PROOF OF SERVICE

I certify that on the 9th day of February, 2010, I have served copy of Motion
for Extension of Time to File a Return to Motion to Dismiss on Respondents as
shown below by depositing a copy of same in the United States Mail postage
prepaid, addressed to their attorneys of record as follows

Louis Levenson, Esquire
Levenson & Associates
125 Broad Street, SW
Atlanta, Georgia 30303
Telephone 404-659-5000

Attorney for Respondents Daryl J Brown, on Behalf of His Minor Children,
Lindsey B and Janise B , Deanna J Brown Thomas, on Behalf of Her Minor
Children, Jason L , Yamma N Brown, on Behalf of Her Minor Children,
Sydney L , Carrington L , and Tonya Brown, Vanisha Brown, and Larry
Brown

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Attorneys for Respondent Tommie Rae Hynie Brown

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Attorneys for Respondent Henry Dargan McMaster, in his capacity as
Attorney General of the State of South Carolina

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B

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Attorney for Respondent David G Cannon, individually and as (purported)
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Attorney for Jeannette Mitchell

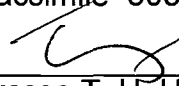
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Attorney for Respondents Albert H Dallas and Alfred A Bradley, individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust

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Attorney for Respondent Russell L. Bauknight, as Special Administrator and
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Tressa T. H. Hayes
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February 9, 2010

Attorneys for Appellants

SHIPLEY & HAYES, PC
ATTORNEYS AT LAW

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C FREDERICK SHIPLEY, IV
TRESSA T H HAYES

TELEPHONE (803) 794 7588
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February 9, 2010

Via Hand Delivery
The Honorable Tanya A Gee
Acting Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

RECEIVED
FEB 09 2010
SC Court of Appeals

CK# 11876
\$25

Re Ex Parte Buchanan and Pope
McMaster and Others v Dallas and Others
Aiken County Case No 2009-CP-01810
Aiken County Case No 2008-CP-01647

Dear Ms Gee

In connection with the above-referenced matter, enclosed for filing please find an original and seven copies of Appellants' Motion for Extension of Time to File Return to Respondents' Motion to Dismiss. The original and one copy of Proof of Service is also enclosed.

We would appreciate your filing the originals and returning a file-stamped copy of each with the courier who delivers this package.

Also enclosed please find a check in the amount of \$25.00 to cover the costs of filing.

Thank you for your assistance in this matter.

Yours very truly,



Tressa T H Hayes
Attorney for Appellants

Enclosures
cc via mail

James B Richardson, Jr, Esquire
All Counsel of Record (See enclosed Proof of Service)



RECEIVED
FEB 04 2010
SC Court of Appeals

HENRY McMASTER
ATTORNEY GENERAL

February 4, 2010

The Honorable Jeanette Barber
Clerk of Court
SC Court of Appeals
P O Box 11629
Columbia, SC 29211

RE In Re the Estate of James Brown and the James Brown 2000 Irrevocable
Trust dated August 1, 2000
Case Tracking No 2009142286

Dear Ms Barber

Enclosed please find the original and six (6) copies of the Motion to Dismiss in connection with the above-referenced matter Also enclosed is the Certificate of Service and the filing fee of \$25 00

Very truly yours,

Mary Frances Jowers
Assistant Attorney General

cc

See attached Certificate of Service