

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

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Doyet A. Early, III, Circuit Court Judge

JUN 06 2017

Trial Court Case Nos. 2013-CP-02-02849 and 2013-CP-02-02850
Appellate Case No. 2015-002417

SC Court of Appeals

In Re: The Estate of James Brown a/k/a James Joseph Brown,

Tommie Rae Brown Respondent,

v.

David C. Sojourner, Jr., in his capacity as Limited
Special Administrator and Limited Special Trustee,
Deanna Brown-Thomas, Yamma Brown, Venisha Brown,
Larry Brown, Terry Brown and Daryl Brown Respondents below,

Of whom David C. Sojourner, Jr., in his capacity as
Limited Special Administrator and Limited Special Trustee,
Deanna Brown-Thomas, Yamma Brown, Venisha Brown,
Terry Brown, Michael Deon Brown and Daryl Brown are the Appellants.

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1 A THANK YOU. I'M READY.

2 Q YOU ARE FAMILIAR WITH THE SECTION?

3 A YES.

4 Q OKAY. AND YOU HAVE BEEN INVOLVED AS AN ATTORNEY IN
5 TRUSTS THAT YOU'VE DEALT WITH OR CASES THAT YOU'VE DEALT
6 WITH IN THE PAST; CORRECT?

7 A MANY.

8 Q IS IT YOUR POSITION FROM LOOKING AT THIS SECTION IN
9 THIS CASE THAT YOU OR MR. BUCHANAN HAVE AN ABSOLUTE
10 AUTHORITY TO VETO A SETTLEMENT THAT WE PRESENT TO THE
11 COURT? WE BEING THE SETTLEMENT ENTITY.

12 A AS PRESENTED TODAY?

13 Q YES. CAN YOU ANY TIME P.R. TRUSTEE UNDER THIS
14 SECTION VETO ANY SETTLEMENT PRESENTED TO THE COURT? I
15 DIDN'T SAY INPUT. I SAID VETO.

16 A YES. AND I'LL EXPLAIN.

17 THE COURT: PLEASE DO.

18 THE WITNESS: I THINK THAT WHEN A SETTLEMENT DOES NOT
19 COMPORT WITH THE REQUIREMENTS OF THE LAW ANY INTERESTED
20 PERSON CAN CALL TO THE ATTENTION OF THE COURT THE
21 DEFICIENCIES, AND TO THE EXTENT THAT THOSE DEFICIENCIES
22 ARE JURISDICTIONAL OR VIOLATE DUE PROCESS OR DON'T HAVE
23 THE PROPER PARTIES THAT FOR THAT REASON YOU SHOULD HAVE A
24 RIGHT TO HAVE A VETO. I THINK THAT IS THE REASON WHY WE
25 HAVE A RIGHT HERE TO VETO BECAUSE THIS IS NOT AN AGREEMENT

1 IN WRITING. IT IS NOT AN AGREEMENT EXECUTED BY ALL
2 COMPETENT PERSONS. IT DOES NOT COMFORT WITH ANY OF THESE
3 THINGS, AND, MORE IMPORTANTLY, IT DOESN'T DEAL, I DON'T
4 BELIEVE, WITH THE REQUIREMENTS OF A MODIFICATION OF A
5 CHARITABLE TRUST. SO, NO, I AM NOT PRESUMING THAT I CAN
6 VETO IT EXACTLY AS YOU SAY THAT, BUT I THINK I HAVE AN
7 ABSOLUTE RIGHT AND DUTY TO CALL TO THE PROPER COURT'S
8 ATTENTION WHEN THE STATUTORY MANDATES IN ADDITION TO THE
9 FACT THAT IT'S A BAD SETTLEMENT ARE NOT BEING MET, WHEN
10 DUE PROCESS IS BEING VIOLATED, WHEN THERE ARE
11 JURISDICTIONAL PROBLEMS, WHEN THERE ARE IMPROPER PARTIES,
12 WHEN THERE IS NOT AN AGREEMENT IN WRITING, WHEN THEY'RE
13 NOT GUARDIANS AD LITEM, WHEN THERE IS A CONFLICT BETWEEN
14 PARENTS AND CHILDREN -- ALL OF THOSE PRESENT IN THIS CASE
15 IN ADDITION TO THE FACTS THAT THE NUMBERS ARE NOT -- ARE
16 TERRIBLE FOR JAMES BROWN'S ESTATE PLAN.

17 I THINK I HAVE A RIGHT TO CALL ALL OF THOSE THINGS TO
18 THE COURT. AM I THE VETO PERSON? NO. I AM THE VEHICLE
19 BY WHICH WE CALL TO THE ATTENTION OF THE COURT THE
20 JURISDICTIONAL AND DUE PROCESS AND OTHER DEFICIENCIES THAT
21 WOULD MAKE A VETO NECESSARY.

22 Q FAIR, MRS. POPE. YOUR HONOR HAS ASKED FOR YOUR
23 INPUT. HE'S ASKED FOR OUR UNPIT, AND I THINK HE'S LEFT IT
24 OPEN FOR ANYBODY THAT WANTS TO PUT THEIR INPUT IN AS FAR
25 AS THIS SETTLEMENT. WOULD YOU AGREE TO THAT?

1 A NO, BECAUSE WE DON'T HAVE HERE THE PROPER PARTIES,
2 AND ONE OF THE TWO TRUSTEES IS NOT EVEN HERE BECAUSE HE'S
3 IN FEDERAL COURT AND HE COULDN'T BE HERE AND ASKED TO
4 DELAY THIS HEARING AND WE'RE STILL HAVING THIS HEARING.
5 SO, NO, I DO NOT THINK -- I DO NOT THINK EVERYBODY HAS HAD
6 A SAY. I DO NOT THINK DUE PROCESS HAS BEEN FOLLOWED. I
7 DO NOT THINK THE COURT YET HAS JURISDICTION TO HEAR THIS
8 BECAUSE WE DO NOT HAVE THE PROPER PARTIES BEFORE THE
9 COURT.

10 Q LET'S TALK ABOUT MR. BUCHANAN NOT BEING HERE
11 YESTERDAY AND TODAY BUT WILL BE HERE TOMORROW. WHEN THE
12 HEARING WAS SCHEDULED FOR MARCH 26, MRS. POPE, AND YOUR
13 HONOR ASKED FOR AVAILABILITY OF DATES ON MARCH 25 AND 26 I
14 APPRISED YOUR HONOR THAT I WOULD NOT BE AVAILABLE BUT
15 MR. NICHOLSON AND MARY FRANCES JOWERS WOULD BE AVAILABLE,
16 AND WHAT DID YOU -- WHAT DID YOU COMMUNICATE BACK TO ME OR
17 TO MY OFFICE CONCERNING MY NON-AVAILABILITY AND I WAS OUT
18 ON STATE BUSINESS?

19 A WELL, WHAT WE HAD COMMUNICATED -- DO YOU MIND IF I
20 EXPLAIN BY WHAT WE PREVIOUSLY COMMUNICATED TO THE COURT
21 THAT WE DON'T BELIEVE YOU SHOULD BE A LAWYER HERE. WE
22 BELIEVE YOU SHOULD BE A WITNESS, BUT THE COURT HAS REFUSED
23 TO HEAR THAT. WE THINK THAT'S CRITICAL. THE COURT HAS
24 ELECTED NOT TO HEAR IT. YOU KNOW, HERE WE ARE ON THE 3RD
25 OF MARCH WITHOUT MR. BUCHANAN OR THE -- SORRY, THE 5TH OF

1 MARCH.

2 Q NOW WOULD YOU AGREE WITH ME -- DID YOU HEAR THE
3 COMMENTS, I BELIEVE, YESTERDAY MORNING THAT I MADE AND
4 MR. ROSEN MADE CONCERNING THE MODEL ACT? I THINK YOUR
5 HONOR LOOKED AT THE MODEL ACT AND MS. HENDERSON ACTUALLY
6 PULLED IT UP ON THE INTERNET -- THE COMMENTS TO SECTION
7 1102 -- 62-3-1102 SETTLEMENTS. DO YOU RECALL THAT
8 BECOMING AN ISSUE OR BEING DISCUSSED?

9 A WELL, I WAS HERE YESTERDAY. I WAS UNDER A LITTLE
10 STRESS. SO, I CAN'T SAY I RECALL EVERYTHING, BUT, I MEAN,
11 I CAN LOOK HERE AT THE REPORTER'S COMMENTS, YOU KNOW.

12 Q OKAY. SO, YOU HAVE THE REPORTER'S COMMENTS THERE?

13 A YES.

14 THE COURT: WELL, THE REPORTER'S COMMENTS AND THE
15 CODE, I DON'T KNOW --

16 Q IT WAS THE MODEL ACT I WAS REFERRING TO, MRS. POPE.
17 I DON'T KNOW IF YOU HAVE THOSE OR NOT.

18 THE COURT: ARE YOU TELLING US THAT THE REPORTER'S
19 COMMENTS ARE THE SAME THING AS THE MODEL ACT'S COMMENTS?

20 MR. JONES: WELL, THE MODEL ACT'S COMMENTS I'M
21 TALKING -- SHE'S TALKING ABOUT REPORTER'S COMMENTS. I
22 MIGHT HAVE MISSTATED, YOUR HONOR. I'M LOOKING AT THE
23 COMMENTS I MADE YESTERDAY -- MR. ROSEN AND I DID --
24 CONCERNING GUIDANCE WE HAVE ON INTERPRETING 1102 AND THE
25 PURPOSE OF 1102?

1 A COULD I SAY A WORD OR TWO ABOUT THE REPORTER'S
2 COMMENTS?

3 Q I AM JUST ASKING DO YOU REMEMBER THAT?

4 A WELL, I REMEMBER THERE WAS SOME DISCUSSION ABOUT IT,
5 YES.

6 Q OKAY. OKAY. MY QUESTION IS THIS. DO YOU DISAGREE
7 WITH THE STATEMENT IN THOSE MODEL COMMENTS THAT -- MY
8 QUESTION IS DO YOU DISAGREE WITH THE STATEMENT OF MODEL
9 COMMENTS THAT IT WOULD BE A CONFLICT OF INTEREST FOR A
10 P.R. TRUSTEE TO HAVE INPUT ON A SETTLEMENT?

11 A NO. I MEAN, I DO NOT AGREE WITH THAT. I DO NOT
12 AGREE WITH THAT STATEMENT. I DO NOT AGREE WITH THAT
13 STATEMENT IN THIS CASE. I ABSOLUTELY DO NOT AGREE.

14 Q IN THIS CASE?

15 A RIGHT; IN THIS CASE.

16 Q DO YOU AGREE THAT GENERALLY IT APPLIES?

17 A NO, NO. IT COULD APPLY. I THINK THE INSTANCE THEY
18 WERE TALKING ABOUT AND THERE IS A CALIFORNIA CASE IS IF
19 ATTORNEYS -- THERE IS A CALIFORNIA CASE NOT LONG AGO THAT
20 IF ATTORNEYS ARE JUST DRAGGING SOMETHING OUT FOREVER AND
21 EVER -- AND I BELIEVE IN CALIFORNIA THE CASE HAS BEEN
22 GOING ON FOR SIX AND AND HALF YEARS -- AT SOME POINT IT
23 MAY APPEAR THAT THE P.R.'S AND TRUSTEES ARE MORE
24 INTERESTED IN PRESERVING THEIR POSITION AND, SURELY, THAT
25 COULD HAPPEN. IT CERTAINLY IS NOT HAPPENING HERE.

1 Q WELL --

2 A IT'S NOT EVEN CLOSE.

3 Q MRS. POPE, WE HAVEN'T GONE THERE. A PREVENTATIVE
4 EFFECT OR COMMENT LIKE THIS IS TO PREVENT IT HAPPENING OR
5 THE APPEARANCE OF IT HAPPENING. WOULD YOU AGREE?

6 A NO, BECAUSE I THINK DUE PROCESS AND JURISDICTIONAL
7 REQUIREMENTS AND STATUTES OF LIMITATIONS AND LEGAL
8 DECISIONS AND TO SOME EXTENT DISCOVERY TRUMP RUSHING
9 THROUGH AND GETTING THINGS DONE WITHOUT PROPER DUE
10 PROCESS, PROPER JURISDICTION, PROPER PARTIES, SIGNED
11 AGREEMENTS, UNREPRESENTED MINORS WHO HAVE CONFLICTS WITH
12 THEIR PARENTS AND A NUMBER OF OTHER FACTS THAT WE HAVE
13 PRESENT HERE.

14 Q MRS. POPE, LET ME ASK YOU, HOW MANY CHARITABLE TRUST
15 CASES HAVE YOU BEEN INVOLVED IN IN THE STATE OF SOUTH
16 CAROLINA IN THE LAST 20 YEARS?

17 A I CAN'T -- I CAN'T SAY FOR SURE BECAUSE I'VE
18 REPRESENTED A LOT OF PEOPLE WITH LITTLE CHARITABLE TRUSTS
19 THAT WE MIGHT GO INTO COURT FOR A LITTLE THIS OR A LITTLE
20 THAT, BUT ONES OF THIS MAGNITUDE -- THE ONLY ONE CLOSE
21 WOULD BE THE BOYCE CASE WHICH HAD A WONDERFUL SETTLEMENT,
22 WONDERFUL MEDIATION, GREAT -- SHOULD BE THE MODEL FOR THIS
23 CASE THE WAY THAT WAS HANDLED.

24 Q SO, YOUR ANSWER IS AS YOU RECALL ONE LARGE CHARITABLE
25 TRUST?

1 A NO, NO, NO. I HAVE REPRESENTED LOTS OF LARGE
2 CHARITABLE TRUSTS, BUT IN THE LITIGATION -- IN THE
3 LITIGATION ASPECTS OF -- OH, NO, THERE WAS ANOTHER ONE.
4 IT WAS NOT SO LARGE, BUT IN THE LITIGATION ASPECTS THE ONE
5 THAT COMES TO MIND THAT WAS BOTH MODERATELY LARGE AND
6 CHARITABLE WAS THE BOYCE CASE.

7 Q OKAY.

8 A AND THAT CASE WAS A MODEL FOR DOING IT RIGHT.

9 Q OKAY. MRS. POPE -- AND I AM ABOUT READY TO FINISH,
10 YOUR HONOR, AND I APPRECIATE YOUR TIME AND YOUR
11 INDULGENCE -- WOULD YOU DISAGREE WITH MY STATEMENT THAT
12 THE ATTORNEY GENERAL'S OFFICE PROTECTS CHARITABLE TRUSTS
13 AND A COURT OF EQUITY SUPERVISES HIS PROTECTION?

14 A HE CERTAINLY HAS THAT AUTHORITY --

15 Q OKAY.

16 A -- TO BE ONE OF THE PEOPLE TO PROTECT CHARITABLE
17 BENEFICIARIES.

18 Q WOULD YOU SAY IN THIS COURTROOM TODAY THAT JUDGE
19 EARLY HAS THE LAST SAY OF DETERMINING IF THIS IS A VALID
20 SETTLEMENT OR IF THE ATTORNEY GENERAL'S OFFICE IS THE
21 APPROPRIATE PARTY -- LET ME FINISH -- TO PROTECT THE
22 INTEREST OF CHARITABLE TRUSTS -- IN THIS COURTROOM TODAY?

23 A NO, BECAUSE THE PARTIES AREN'T PROPERLY JOINED.
24 THERE IS NO JURISDICTION.

25 Q OKAY.

1 A OUR DUE PROCESS RIGHTS ARE BEING OVERRUN.

2 Q OKAY.

3 A AND FOR LOTS OF REASONS.

4 Q OKAY. LET ME SAY IT AGAIN A DIFFERENT WAY.

5 MR. BAILEY: YOUR HONOR, IF HE IS GOING TO SAY IT
6 AGAIN A DIFFERENT WAY, I OBJECT.

7 MR. JONES: WHAT IS YOUR OBJECTION?

8 MR. BAILEY: YOU'RE REPEATING THE QUESTION.

9 THE COURT: ASKED AND ANSWERED. SUSTAINED.

10 Q MRS. POPE, IS IT YOUR POSITION -- AND I THINK YOU'VE
11 BEEN ASKED THIS BEFORE, BUT I HAVE -- I THINK YOUR HONOR
12 ASKED QUESTIONS BEFORE THAT OTHER PARTIES HAVE ASKED. I
13 WANT TO ASK THIS QUESTION.

14 IF YOUR HONOR AFTER REVIEWING ALL OF THIS MATERIAL
15 AND MAKES A DECISION SAYING THAT THE PROPER PARTIES ARE
16 HERE -- YOUR HONOR MAKES THE FINAL DECISION. HE ISSUES AN
17 ORDER SAYING IN HIS OPINION ALL OF THE PROPER PARTIES ARE
18 HERE AND THE INTEREST OF ALL THE PARTIES ARE REPRESENTED
19 AND PROTECTED, IS IT YOUR POSITION THEN THAT YOU'RE GOING
20 TO APPEAL THIS MATTER?

21 A IT IS MY POSITION THAT I WOULD HAVE TO RESPECTFULLY
22 DISAGREE WITH HIM.

23 Q OKAY.

24 A I DO NOT BELIEVE THE PROPER PARTIES ARE HERE. I DO
25 NOT BELIEVE THERE IS PROPER JURISDICTION. I BELIEVE THAT

1 YOU AND THE OTHER SETTLING PARTIES HAVE RUN ROUGHSHOD OVER
2 THE DUE PROCESS RIGHTS OF JAMES BROWN'S ESTATE AND TRUST.

3 MR. JONES: I DON'T HAVE ANYTHING FURTHER.

4 THE COURT: THANK YOU.

5 MRS. POPE, YOU MAY STEP DOWN. THANK YOU.

6 MR. SHAHID: JUDGE, I WILL HAVE SOME QUESTIONS FOR
7 HER TOMORROW.

8 THE COURT: SIR?

9 MR. SHAHID: JUDGE, I WILL HAVE SOME QUESTIONS FOR
10 HER TOMORROW.

11 THE COURT: THAT'S FOR TOMORROW.

12 MRS. POPE: COULD WE FINISH TODAY?

13 THE COURT: HOW MANY MORE PEOPLE WANT TO ASK
14 QUESTIONS? JUST MR. SHAHID?

15 MR. BAILEY, ARE YOU GOING TO HAVE QUESTIONS?

16 MR. BAILEY: NO.

17 THE COURT: MR. BELL?

18 MR. BELL: NO, YOUR HONOR.

19 THE COURT: ALL RIGHT. GO AHEAD.

20 CROSS-EXAMINATION

21 BY MR. SHAHID:

22 Q MRS. POPE, DO YOU BELIEVE --

23 MR. LEVENSON: MAY I APPROACH?

24 THE COURT: GO AHEAD.

25 (WHEREUPON, A BENCH CONFERENCE WAS HELD WITH

1 MR. LEVENSON.)

2 Q -- OR NOT BELIEVE THAT JAMES BROWN, II, IS THE
3 BIOLOGICAL SON OF THE DECEDENT?

4 A I BELIEVE THAT HE HAS NOT TAKEN THE APPROPRIATE STEPS
5 TO PROVE THAT HE IS, AND UNDER THE LAW HE'S PRESUMED NOT
6 TO BE.

7 MR. SHAHID: YOUR HONOR, I WOULD ASK THAT THAT ANSWER
8 BE STRICKEN.

9 MY QUESTION TO YOU IS DO YOU BELIEVE --

10 THE COURT: WELL, YOU MIGHT NOT LIKE HER ANSWER, BUT
11 I AM NOT GOING TO STRIKE IT. GO AHEAD. ASK IT AGAIN.

12 Q DO YOU BELIEVE WHETHER OR NOT JAMES BROWN, II, IS A
13 BIOLOGICAL SON OF THE DECEDENT?

14 A I DO NOT YET KNOW BECAUSE HE HAS NOT MET HIS
15 STATUTORY BURDEN TO PROVE THAT HE IS.

16 Q DO YOU RECALL RECEIVING A LETTER -- LET ME BACK UP.
17 MR. BAILEY WAS YOUR LAWYER BACK IN MAY OF 2008?

18 A HE REPRESENTED US AS PERSONAL REPRESENTATIVES AND
19 TRUSTEES.

20 Q DID YOU SEE A LETTER THAT I SENT TO HIM BACK ON MAY 6
21 OF 2008?

22 A I DON'T KNOW. I MIGHT HAVE.

23 Q LET ME SHOW YOU A COPY.

24 A OH, I HAVE SEEN YOUR LETTER WITH THE PATERNITY SCREEN
25 TEST.

1 Q AND IN THAT LETTER IT CONTAINED THE PATERNITY TEST
2 SHOWING THAT --

3 THE COURT: HOLD ON A SECOND.

4 MR. BAILEY, ANY OBJECTION?

5 MR. BAILEY: YES.

6 THE COURT: WHAT ARE THEY?

7 MR. BAILEY: THAT THE TEST RESULTS ARE QUALIFIED AND,
8 NUMBER ONE, IT CASTS DOUBT ON THE RESULTS OF THE TEST.

9 THE COURT: WELL, THAT GOES TO --

10 MR. BAILEY: NUMBER TWO --

11 THE COURT: GO AHEAD.

12 MR. BAILEY: -- THAT IT'S MY UNDERSTANDING THAT THERE
13 WAS A PROCESS SET UP FOR JAMES BROWN, II, TO HAVE HIS
14 D.N.A. MATCHED WITH JAMES BROWN'S D.N.A. AND THAT HAS YET
15 TO BE DONE. THAT PROCEDURE IS ALREADY PAID FOR BY THE
16 ESTATE. IT HAS -- HE HAS NOT SUBMITTED TO THAT TEST AS
17 FAR AS I KNOW.

18 THE COURT: ANY OTHER OBJECTION?

19 MR. BYRD: YOUR HONOR --

20 THE COURT: HOLD ON.

21 MR. BYRD: I BEG YOUR PARDON.

22 MR. BAILEY: IT'S NOT CERTIFIED AND I JUST -- THAT'S
23 IT.

24 THE COURT: NOT CERTIFIED?

25 MR. BAILEY: NOT A CERTIFIED COPY. IT'S NOT BEEN

1 PROVEN TO BE A RECORD THAT --

2 THE COURT: NOT PROVEN TO BE WHAT?

3 MR. BAILEY: A RECORD THAT'S MAINTAINED IN ITS PROPER
4 COURSE OF BUSINESS. WE DON'T HAVE ANYBODY HERE TO SUPPORT
5 -- WE DON'T HAVE ANYBODY TO CROSS EXAMINE.

6 THE COURT: IN OTHER WORDS, IT IS HEARSAY; IS THAT
7 CORRECT? YOU GOT A HEARSAY OBJECTION?

8 MR. BAILEY: WELL, IT IS HEARSAY, BUT I WAS JUST
9 REMINDED IT REQUIRES THE INTERPRETATION BY A SPECIALIST.

10 THE COURT: THANK YOU.

11 MR.~BYRD?

12 MR. BYRD: YOUR HONOR, MINE WAS HEARSAY.

13 THE COURT: YOU WANT TO BE HEARD?

14 MR. SHAHID: JUDGE, I AM OFFERING THE LETTER AS AN
15 INDICATION THAT IT INCLUDED AN ATTACHMENT OF A REPORT.

16 THE COURT: I UNDERSTAND THAT, BUT YOU GOT THE GUY
17 HERE TO TESTIFY ABOUT THE REPORT?

18 MR. SHAHID: NO, SIR. IF I MAY, YOUR HONOR,
19 CONTINUE. WHETHER OR NOT SHE HAD SAW THE REPORT AND THE
20 RESULTS OF THE REPORT, NOT THE TRUTH OF THE MATTER OF THE
21 REPORT BUT AS TO --

22 THE COURT: YOU CAN ASK HER IF SHE'S SEEN IT AND SEEN
23 THE RESULTS, BUT I AM NOT GOING TO LET THE RESULTS IN, NOT
24 UNLESS YOU GET SOMEBODY TO LAY A FOUNDATION SUBJECTED TO
25 CROSS EXAMINATION.

1 Q AND DID YOU SEE THE RESULTS OF THE REPORT THAT WERE
2 ATTACHED TO THE LETTER?

3 A I SAW A REPORT AND I UNDERSTOOD THAT IT WAS YOUR
4 POSITION THAT THAT PROVED TO BE HIS SON. I DON'T KNOW --
5 I DIDN'T -- I WAS VERY CONCERNED THAT HE DID NOT TAKE THE
6 OFFICIAL TEST. I COULDN'T UNDERSTAND WHY YOU WOULD REFUSE
7 MY PHONECALLS AND NOT HAVE YOUR CLIENT --

8 MR. SHAHID: YOUR HONOR, I OBJECT TO HER TESTIMONY.
9 MY QUESTION TO HER WAS WHETHER OR NOT SHE SAW THE RESULTS
10 OF THE TEST.

11 THE COURT: SHE'S ANSWERED IT.
12 YOU HAVE SEEN IT; IS THAT CORRECT?

13 THE WITNESS: I MEAN, I RECALL IT COMING ACROSS MY
14 DESK. I DIDN'T INTERPRET IT. I DIDN'T THINK ABOUT IT
15 OTHER THAN TO WONDER WHY HE WOULD NOT TAKE THE OFFICIAL
16 TEST.

17 Q AND, MRS. POPE, THE LETTER ALSO CONTAINED THE
18 FOLLOWING INFORMATION OR RESPONSE TO MR. BAILEY: I
19 UNDERSTAND FROM OUR CONVERSATION THIS AFTERNOON THAT THE
20 PERSONAL REPRESENTATIVES TRUSTEE UPON RECEIPT OF THIS
21 REPORT WILL BE SATISFIED AS TO PATERNITY OF JAMES BROWN,
22 II, AND THUS WILL NOT PURSUE A SECOND D.N.A. TEST. IF I
23 HAVE MISSTATED THEIR POSITION, PLEASE ADVISE ME AT YOUR
24 EARLIEST CONVENIENCE. IS THAT AN ACCURATE STATEMENT
25 CONTAINED IN THAT LETTER OF MAY OF 2008?

1 A YES, AND MAY I EXPLAIN? WE REPEATEDLY TOLD YOU THAT
2 WE WERE NOT SATISFIED WITH ANYTHING SHORT OF YOUR
3 CLIENT'S --

4 THE COURT: LET ME SEE THE LETTER.

5 THE WITNESS: -- SUBMITTING -- WE HAVE REPEATEDLY
6 SINCE MAY 6 TOLD YOU THAT IS UNACCEPTABLE AND THE JUDGE
7 HAS ORDERED A D.N.A. TEST. WE'VE DONE DRAFT ORDERS.
8 WE'VE TRIED TO COOPERATE WITH YOU. IT IS SO EASY. WE
9 PAID FOR THE TEST. WE CAN'T UNDERSTAND WHY --

10 Q MY QUESTION TO YOU, MRS. POPE, WAS THAT CONTAINED IN
11 THE LETTER I WROTE TO MR. BAILEY ON MAY OF 2008?

12 THE COURT: THE LETTER SPEAKS FOR ITSELF.

13 Q DO YOU HAVE A WRITTEN DOCUMENTATION IN RESPONSE TO
14 THAT LETTER? OR LET ME REPHRASE THE QUESTION.

15 A I --

16 Q DO YOU HAVE A WRITTEN DOCUMENTATION OR WHATEVER
17 WRITTEN DOCUMENTATION IN RESPONSE TO THAT LETTER?

18 A I AM UNCERTAIN, BUT IF I CAN EXPLAIN. I HAVE
19 REPEATEDLY COMMUNICATED TO YOU WOULD YOU CLIENT PLEASE
20 TAKE THE D.N.A. TEST --

21 Q MRS. POPE, MY QUESTION TO YOU IS --

22 THE COURT: HOLD ON. LET HER FINISH, PLEASE.

23 THE WITNESS: -- AND YOU HAVE REFUSED.

24 MR. SHAHID: YOUR HONOR, I WOULD MOVE TO STRIKE THAT.
25 THAT IS NOT RESPONSIVE TO MY QUESTION. MY QUESTION IS

1 WHETHER OR NOT SHE'S AWARE OF A WRITTEN DOCUMENTATION IN
2 RESPONSE TO THAT LETTER?

3 THE COURT: ARE YOU AWARE OF ANY WRITTEN RESPONSE TO
4 THE LETTER MAY 6, 2008, MA'AM?

5 THE WITNESS: SITTING HERE TODAY, I DON'T RECALL. I
6 KNOW WHAT THE RESPONSE WAS. I DON'T KNOW HOW MANY
7 DIFFERENT WAYS IT WAS COMMUNICATED.

8 Q ARE YOU AWARE OF A WRITTEN RESPONSE?

9 THE COURT: SHE'S ANSWERED THAT. SHE SAID SHE
10 DOESN'T KNOW.

11 Q ARE YOU AWARE OF A BIRTH CERTIFICATE OF JAMES BROWN,
12 II, EXISTING?

13 THE COURT: A WHAT?

14 MR. SHAHID: BIRTH CERTIFICATE.

15 THE WITNESS: I AM.

16 Q I WILL HAND YOU THIS DOCUMENT.

17 A THIS DOCUMENT SAYS NOT VALID WITHOUT THE RAISED SEAL,
18 BUT IT SEEMS TO BE A COPY --

19 Q MY QUESTION TO YOU IS ARE YOU AWARE OF THE DOCUMENT,
20 MA'AM?

21 A I BELIEVE THAT I HAVE SEEN IT. I BELIEVE THAT I HAVE
22 SEEN IT.

23 Q DOES THAT PURPORT TO BE A BIRTH CERTIFICATE OF JAMES
24 BROWN, II?

25 MR. BAILEY: MAY I TAKE A LOOK AT IT, YOUR HONOR?

1 THE COURT: WAIT A MINUTE.

2 MR. SHAHID: I AM JUST ASKING IF IT PURPORTS TO BE.

3 THE COURT: ARE YOU GETTING READY TO INTRODUCE IT OR
4 WHAT?

5 MR. SHAHID: NO, SIR. I AM JUST ASKING HER THE
6 QUESTION FIRST.

7 THE COURT: YOU'RE ASKING HER TO THE TESTIFY ABOUT A
8 DOCUMENT BEFORE IT COMES IN THE RECORD.

9 MR. SHAHID: I AM ASKING WHAT IT PURPORTS TO BE.

10 THE COURT: DOES IT PURPORT TO BE A BIRTH
11 CERTIFICATE?

12 THE WITNESS: YES, YES, YES.

13 THE COURT: ALL RIGHT. WHAT IS THE NEXT QUESTION?

14 THE WITNESS: A NEVADA BIRTH CERTIFICATE.

15 Q DOES IT PURPORT --

16 MR. BAILEY: I AM GOING TO OBJECT TO IT.

17 THE COURT: WELL, HE HADN'T ASKED --

18 MR. SHAHID: I HAVEN'T ASKED TO HAVE IT ADMITTED YET.

19 THE COURT: HOLD ON, MR. SHAHID. LET ME CARRY ON
20 THIS CONVERSATION. WAIT AND LET'S SEE WHAT HE DOES WITH
21 IT. ASK YOUR QUESTION.

22 Q DOES IT PURPORT TO BE A CERTIFICATE OF LIVE BIRTH OF
23 JAMES JOSEPH BROWN, II?

24 A COULD I LOOK AT IT IT?

25 Q I'M SORRY.

1 A IT PURPORTS TO BE A NEVADA CERTIFICATE OF LIVE BIRTH
2 OF JAMES JOSEPH BROWN, II, YES.

3 Q AND DO YOU HAVE ANY REASON TO BELIEVE THAT DOCUMENT
4 IS INACCURATE?

5 A I DON'T HAVE ANY FEELINGS ABOUT THE DOCUMENT EXCEPT
6 THAT I DO UNDERSTAND THAT SHE WAS IN NEVADA WHEN SHE GOT
7 PREGNANT.

8 Q OR GAVE BIRTH?

9 A AND GAVE BIRTH. EXCUSE ME. BOTH. BOTH.

10 Q I DON'T KNOW WHERE SHE WAS WHEN SHE WAS PREGNANT.

11 THE WITNESS: SORRY.

12 THE COURT: MAYBE.

13 THE WITNESS: IT'S BEEN A LONG DAY.

14 THE COURT: LET'S GET THE RECORD STRAIGHT ON THAT
15 ONE.

16 THE WITNESS: WELL, I ACTUALLY UNDERSTOOD BOTH.

17 Q AND PRIOR TO TODAY HAVE YOU SEEN THIS DOCUMENT,
18 MRS. POPE?

19 A I BELIEVE I SEEN A COPY.

20 Q AND DO YOU HAVE ANY REASON TO BELIEVE THAT THIS
21 DOCUMENT IS NOT AN ACCURATE DOCUMENT?

22 A I JUST DON'T KNOW.

23 Q CAN I GET IT MARKED AS AN EXHIBIT FOR IDENTIFICATION
24 ONLY RIGHT NOW, JUDGE.

25

1 (WHEREUPON, SHAHID'S EXHIBIT NO. 1 WAS MARKED FOR
2 IDENTIFICATION ONLY.)

3 Q RECOGNIZING THIS IS A COPY THAT DOES NOT HAVE THE
4 SEAL, DO YOU RECOGNIZE WHAT'S CONTAINED ON THE DESCRIPTION
5 AS TO THE PARENTS --

6 A I'D HAVE TO LOOK AT IT --

7 Q -- OF JAMES BROWN?

8 A I MEAN, I'VE SEEN THE DOCUMENT, BUT IT'S BEEN A LONG
9 TIME. LET'S SEE. I DO RECOGNIZE THAT THERE ARE NO
10 SIGNATURES ON THIS DOCUMENT OF PARENTS -- EITHER PARENT.

11 Q OKAY. BUT IT DOES --

12 A EITHER PURPORTED PARENT.

13 Q -- LIST THE PARENTS; IS THAT CORRECT?

14 A IT LISTS THE MOTHER AS TOMI RAE HYNIE AND IT LISTS
15 THE FATHER AS JAMES JOSEPH BROWN, JR.

16 Q AND THE ADDRESS OF THE FATHER?

17 A THE ADDRESS OF THE FATHER IS 430 DOUGLAS DRIVE.

18 Q AND --

19 A NEVADA, SOUTH CAROLINA. OH, NO. SORRY. SOUTH
20 CAROLINA. BUT IT SAYS RICHMOND COUNTY AND THEN IT SAYS
21 BEECH ISLAND. RICHMOND IS NOT RIGHT. SO, THAT'S
22 INCORRECT. IT SAYS -- IT SAYS THAT THE FATHER IS 68 AND I
23 DON'T THINK THAT'S CORRECT.

24 Q WHAT IS THE DATE OF BIRTH?

25 A JUNE 11, 2001. SO, I DON'T THINK THE AGE OF THE

1 FATHER IS CORRECT. I'M SORRY. YOU CAN'T TELL WHO THE
2 ADDRESS APPLIES TO, I DON'T THINK. I CAN'T TELL WHETHER
3 IT APPLIES TO THE MOTHER OR THE FATHER. I CAN'T TELL. I
4 MEAN, MAYBE I AM JUST LOOKING QUICKLY AT IT, BUT I CAN'T
5 TELL. I MEAN, IT MAY BE THE FATHER. IT MAY BE THE
6 MOTHER. I WOULDN'T WANT TO SAY.

7 Q IT SHOWS PLACE OF BIRTH --

8 A IN NEVADA.

9 Q -- AND THE HOSPITAL AND IT SHOWS A SIGNATURE OF A
10 REGISTRAR; IS THAT CORRECT?

11 A LET'S SEE. THIS IS A SIGNATURE OF SOME CERTIFIER'S
12 NAME AND TITLE JANET FUNK WITH MEDICAL RECORDS CLERK.

13 Q AND IT SHOWS THE MOTHER AND HER NAME?

14 A MOTHER'S NAME, TOMI RAIN HYNIE.

15 Q AND HER --

16 A AND HER --

17 Q -- COUNTY. MOTHER. UNDER MOTHER.

18 A UNDER MOTHER -- OH, THIS IS UNDER MOTHER. HER BIRTH
19 PLACE NEVADA, RESIDENCE SOUTH CAROLINA, COUNTY RICHMOND,
20 CITY BEECH ISLAND, DOUGLAS DRIVE, INSIDE CITY LIMITS, YES,
21 MOTHER'S MAILING ADDRESS.

22 Q AND THEN THE FATHER UNDERNEATH THAT?

23 A AND THEN IT JUST HAS THE NAME OF THE FATHER WITH NO
24 ADDRESS AND HIS INCORRECT AGE AND NO SIGNATURES.

25 Q BESIDES WHAT YOU BELIEVE TO BE THE INCORRECT AGE,

1 ANYTHING ELSE ON THAT DOCUMENT THAT YOU TAKE ISSUE WITH?

2 A OH, I MEAN, I DON'T KNOW. I DON'T KNOW THE REST OF
3 THE PEOPLE.

4 MR. SHAHID: JUDGE, AT THIS TIME I WOULD MOVE
5 EXHIBIT 1 INTO EVIDENCE.

6 MS. HAYES: I AM GOING TO OBJECT, YOUR HONOR,
7 RELEVANCY, FOUNDATION. THERE IS ALSO NO -- HE HASN'T
8 ESTABLISHED THAT THERE IS A CONCLUSION THAT THE FACT THAT
9 THERE IS A FATHER LISTED ON THE BIRTH CERTIFICATE MEANS:
10 ANYTHING AT ALL.

11 MR. SHAHID: JUDGE, UNDER RULE --

12 THE COURT: HOLD ON. HOLD ON. ANY OTHER OBJECTIONS?

13 MS. HAYES: WELL, IT'S NOT -- WELL, IN ADDITION TO
14 THE FACT THAT IT'S NOT A CERTIFIED COPY, IT'S HEARSAY.

15 THE COURT: IS IT CERTIFIED?

16 MS. HAYES: IT'S NOT BEING RELIED ON BY AN EXPERT.
17 IT PURPORTS TO GIVE AN OPINION AS TO THE IDENTITY OF THE
18 FATHER, AND WE OBJECT TO THAT BECAUSE THERE IS NO
19 FOUNDATION THAT THE A CONCLUSION COULD EVEN BE VALID..

20 THE COURT: ANYBODY ELSE WITH AN OBJECTION?

21 MR. BYRD: THE FACT THAT IT WOULD BE -- THAT DOCUMENT
22 WOULD BE HEARSAY. IT'S NOT A CERTIFIED COPY. IT WOULDN'T
23 COME IN UNDER OUR RULES OF EVIDENCE.

24 THE COURT: MR. SHAHID, HOW ARE YOU GOING GET IT IN?

25 MR. SHAHID: JUDGE, UNDER RULE 901 THE REQUIREMENT

1 OF--

2 THE COURT: HOLD ON. RULES OF EVIDENCE?

3 MR. SHAHID: YES, SIR. I'M SORRY. IF I AM READING
4 THIS CORRECTLY, RULE 901 IS ON PAGE 406, I THINK, OF THE
5 RULES OF EVIDENCE, JUDGE.

6 THE COURT: 901, REQUIREMENT OF AUTHENTICATION OR
7 IDENTIFICATION.

8 MR. SHAHID: JUDGE, IT SAYS UNDER GENERAL PROVISION
9 THE REQUIREMENT OF AUTHENTICATION OR IDENTIFICATION AS A
10 CONDITION PRECEDENT TO ADMISSIBILITY IS SATISFIED BY
11 EVIDENCE SUFFICIENT TO SUPPORT A FINDING THAT THE MATTER
12 IN QUESTION IS WHAT THIS PROPONENT CLAIMS, AND IT GOES
13 NUMBER B, ILLUSTRATIONS, UNDER NUMBER 7, EVIDENCE THAT A
14 WRITING AUTHORIZED BY LAW TO BE RECORDED OR FILED AND, IN
15 FACT, RECORDED AND FILED BY A PUBLIC OFFICE A PURPORTED
16 PUBLIC RECORD, REPORT, STATEMENT, OR DATA IN ANY FORM IS
17 FROM THE PUBLIC OFFICE WHERE ITEMS OF THIS NATURE ARE
18 KEPT.

19 AND THE DOCUMENT STATES CERTIFICATE OF LIVE BIRTH,
20 STATE OF NEVADA, DEPARTMENT OF HUMAN RESOURCES, DIVISION
21 OF HEALTH, SECTION OF VITAL STATISTICS WOULD BE A PUBLIC
22 RECORD, AND, SO, YOU DON'T NEED TO HAVE THE SEAL ON IT.
23 IT IS SELF-AUTHENTICATING.

24 THE COURT: OBJECTION OVERRULED.

25 MS. HAYES: YOUR HONOR, ALSO, THE DOCUMENT STILL SAYS

1 IT'S NOT VALID AND THERE ARE LIMITATIONS ON WHO CAN OBTAIN
2 A BIRTH CERTIFICATE. WE DON'T DISPUTE THE FACT THAT JAMES
3 BROWN, II, WAS ACTUALLY BORN. WE'RE TALKING ABOUT THE
4 INFORMATION CONTAINED --

5 THE COURT: YOU DON'T DISPUTE THAT HE WAS BORN?

6 MS. HAYES: RIGHT. RIGHT. RIGHT. ABSOLUTELY.

7 MR. ROSEN: WE'RE GETTING SOMEWHERE.

8 MS. HAYES: EXACTLY. THE EXCEPTION -- THE HEARSAY
9 EXCEPTION FOR RECORDS PERTAINING TO BIRTH, DEATH,
10 MARRIAGE, FAMILY RELATIONSHIPS APPLIES TO ESTABLISH THE
11 FACT THAT THERE IS A RECORD RECORDING THAT THAT EVENT
12 HAPPENED. WE DON'T DISPUTE THAT. WE'RE SAYING THAT WE
13 OBJECT TO THE INFORMATION CONTAINED OR BEING STATED AS AN
14 OPINION OF WHO THE FATHER IS, AND IF THERE IS ANY
15 PRESUMPTION AS TO THAT, IT'S REBUTTED BY THE FACT THAT HE
16 FAILED TO TAKE THE D.N.A. TEST AND LIKE IN FAMILY COURT
17 YOU HAVE TO TAKE A BLOOD TEST --

18 THE COURT: WE'RE GOING TO DEAL WITH THE D.N.A. TEST.
19 WE'RE GOING TO DEAL WITH IT.

20 OBJECTION OVERRULED. I'LL LET YOU INTRODUCE IT
21 SUBJECT TO YOUR OBJECTION.

22 (WHEREUPON, SHAHID'S EXHIBIT NO. 1 WAS ADMITTED INTO
23 EVIDENCE.)

24 Q HAVE YOU SEEN THIS PHOTOGRAPH BEFORE?

25 A I BELIEVE I HAVE.

1 Q DO YOU REMEMBER WHERE YOU MAY HAVE SEEN THAT
2 PHOTOGRAPH?

3 A NO. I REALLY DON'T, BUT IT LOOKS FAMILIAR.

4 Q WOULD YOU ACCEPT MY REPRESENTATION THAT THIS WAS
5 SOMETHING THAT WAS ON THAT CHRISTIE'S LIST AT AUCTION?

6 A NO, I COULDN'T -- I MEAN, IF YOU COULD FIND IT. I
7 DON'T REMEMBER.

8 MR. SHAHID: LET ME HAVE THIS MARKED AS EXHIBIT NO.
9 -- I.D. ONLY, NUMBER 2.

10 (WHEREUPON, SHAHID'S EXHIBIT NO. 2 WAS MARKED FOR
11 IDENTIFICATION ONLY.)

12 MR. BAILEY: YOUR HONOR, I HAVE AN OBJECTION TO THIS
13 LINE OF QUESTIONING NOW. IT DOES NOT SEEM TO HAVE
14 ANYTHING TO DO WITH THE APPROVAL OF THIS SETTLEMENT. IT
15 SEEMS TO BE AN EFFORT TO PROVE A MATTER THAT WE SAY HAS
16 NOT YET BEEN PROVEN BY THE COURT ORDER THAT REQUIRED THE
17 D.N.A. TESTING.

18 THE COURT: YOU KNOW, I'VE SIGNED SO MANY ORDERS.
19 MR. BAILEY. HAVE WE SIGNED THAT ORDER?

20 MR. SHAHID: NO, SIR. THAT ORDER WAS NEVER SIGNED.

21 THE COURT: WELL, I SAID I WAS GOING TO SIGN IT.

22 THE WITNESS: WE COULDN'T AGREE ON THE LANGUAGE.

23 THE COURT: COULDN'T AGREE ON THE LANGUAGE?

24 THE WITNESS: AND WE PAID FOR THE TEST AND ASKED THAT
25 IT BE DONE.

1 THE COURT: THE CONCEPT WAS THERE, THOUGH.

2 MR. BAILEY: I WITHDRAW THAT PART, BUT WHAT I'M
3 POINTING TO IS THIS IS MORE ABOUT ESTABLISHING THAT HE IS
4 AN HEIR OR NOT AN HEIR OR IS THE SON OF JAMES BROWN --

5 THE COURT: I AGREE.

6 MR. BAILEY: -- AND THAT HAS NOTHING TO DO WITH THE
7 APPROVAL OR DISAPPROVAL OF THIS SETTLEMENT.

8 THE COURT: WELL, I AM GOING TO -- THAT'S BEEN RAISED
9 ALL DAY LONG AS TO WHETHER OR NOT HE HAS OR HAS NOT TAKEN
10 THE D.N.A. YOU KNOW, I MAY MAKE THAT A CONDITION OF ME
11 APPROVING THIS -- DECIDING AS TO WHETHER OR NOT I'M GOING
12 TO APPROVE THIS SETTLEMENT IS FOR HIM TO TAKE THE D.N.A.
13 THAT'S BEEN PROTOCOL FOR OTHER PEOPLE IN THIS CASE. THAT
14 WILL SETTLE THAT ISSUE WITHOUT ALL OF THIS --

15 MR. SHAHID, WHAT DO YOU SAY TO THAT?

16 MR. SHAHID: JUDGE, AS TO THE PHOTOGRAPH IN
17 GENERAL --

18 THE COURT: NO, AS TO THE D.N.A. BY LAB CORPS, ISN'T
19 IT?

20 MR. SHAHID: WELL, JUDGE, THE D.N.A. TEST -- I'LL
21 REPRESENT TO THE COURT ABOUT THE CONDITIONS OF THE D.N.A.
22 TEST. IF YOU WANT TO HEAR TESTIMONY ABOUT THAT, I'LL
23 REPRESENT TO THE COURT IN A PROFFER ABOUT THE D.N.A. TEST.

24 THE COURT: I MEAN, IT'S SIMPLE TO GO DOWN TO LAB
25 CORPS AND DO A D.N.A. TEST.

1 MR. SHAHID: IT CERTAINLY IS, JUDGE, AND IT'S BEEN
2 DONE. I MEAN, THE CONDITIONS -- A D.N.A. TEST IS NOT --

3 THE COURT: IT'S BEEN DONE BY LAB CORPS?

4 MR. SHAHID: IT WAS DONE BY A COMPANY THAT I BELIEVE
5 IS CREDIBLE.

6 THE COURT: I AM NOT ASKING YOU THAT. I'VE SEEN
7 THAT. I'M ASKING YOU BY LAB CORPS WHO WE'VE ALL AGREED TO
8 THE PROTOCOL IN THE CASE.

9 MR. SHAHID: JUDGE, I DON'T HAVE ANY OBJECTIONS TO
10 THAT, QUIET FRANKLY, BUT I THINK THE D.N.A. TEST HAS BEEN
11 DONE AND IT WAS DONE UNDER MY DIRECTION.

12 THE COURT: I'M NOT CRITICIZING THAT --

13 MR. SHAHID: I KNOW YOU'RE NOT.

14 THE COURT: -- WHATSOEVER, BUT I THINK TO PUT THIS TO
15 REST FOREVER THAT EVERYBODY ELSE HAS GONE THROUGH LAB
16 CORPS AND NOW I AM GOING TO PROBABLY MAKE THAT A CONDITION
17 OF WHETHER OR NOT I APPROVE THIS SETTLEMENT AND YOU DON'T
18 HAVE ANY PROBLEM WITH THAT. THAT SETTLES THAT.

19 MR. MEDLIN: YOUR HONOR, IF I MAY, WE'D JUST SIMPLY
20 LIKE YOU TO DEFER MAKING THAT DECISION UNTIL WE'VE HAD AN
21 OPPORTUNITY TO DISCUSS SOME OTHER THINGS BECAUSE IT ALSO
22 IMPACTS MS. BROWN AND WHAT WE CONSIDER TO BE THE
23 REASONABLENESS OF THE SETTLEMENT WHICH I THINK WE'LL BE
24 ABLE TO GET IN FRONT OF YOU. SO, WE JUST ASK YOU TO DEFER
25 THAT DECISION FOR RIGHT NOW.

1 THE COURT: PROFESSOR MEDLIN --

2 MR. MEDLIN: WELL, YOU WON'T LET US PROVE THE
3 MARRIAGE, AND NOW YOU'RE GOING TO LET THEM FORCES US TO
4 PROVE PATERNITY, AND I THINK WE'LL BE ABLE TO SHOW THAT
5 JUST THE FACT THAT THERE IS A REASONABLE ARGUMENT -- WE
6 THINK MORE THAN A REASONABLE ARGUMENT, WE THINK
7 CERTAINTY -- IS ENOUGH TO SHOW THAT THE SETTLEMENT WHICH
8 IS WHAT THIS IS ABOUT IS FAIR AND REASONABLE WITHOUT
9 SUBJECTING A 7-YEAR-OLD CHILD TO ANOTHER D.N.A. TEST.

10 THE COURT: WELL, THAT MAY VERY WELL BE TRUE. IT IS
11 MY DISCRETION. IF I DON'T WANT TO CONSIDER THE
12 REASONABLENESS OF THE SETTLEMENT WITHOUT THE D.N.A.,
13 THAT'S, I THINK, MY DISCRETION.

14 MR. MEDLIN: YOUR HONOR, I AGREE WITH THAT ENTIRELY.
15 ALL I AM SAYING IS IF WE COULD ASK YOU TO DEFER THAT PART
16 OF THE DECISION UNTIL YOU MAKE YOUR RULING.

17 THE COURT: I JUST HAVE A LOT OF LISTS UP HERE OF
18 THINGS I NEED BEFORE MAKING A DECISION. THAT HAPPENS TO
19 BE ONE OF THEM, BUT I WILL NOT PUT ALL OF THE REQUIREMENTS
20 DOWN UNTIL WE GET TO THE END.

21 MR. MEDLIN: THAT'S ALL I'M ASKING, YOUR HONOR.

22 THE COURT: I GIVE YOU FAIR WARNING.

23 MR. MEDLIN: THANK YOU.

24 THE COURT: MR. SHAHID?

25 MR. SHAHID: YOU WANT ME TO CONTINUE, JUDGE?

1 THE COURT: I DON'T KNOW THAT IT'S NECESSARY. I
2 MEAN, I JUST DON'T SEE HOW GOING INTO ALL THAT -- THAT'S
3 SORT OF LIKE THE MARRIAGE SITUATION A WHILE AGO.
4 OBVIOUSLY, IT'S A CONTESTED ISSUE IN THE CASE.

5 MR. ROSEN: YOUR HONOR, IF I MIGHT, IF YOU MIGHT
6 ALLOW ME TO ENTER THE FRAY, THE REASON I THINK THIS
7 PHOTOGRAPH IS RELEVANT IS IT'S JUST A PIECE OF EVIDENCE TO
8 SHOW THAT JAMES BROWN CONSIDERED JAMES, II, TO BE HIS SON,
9 AND WE'RE NOT HERE TO TRY ANY OF THESE ISSUES BECAUSE IF
10 WE DID THAT WE'D BE HERE FOR SEVEN YEARS. WE'RE HERE JUST
11 TO TRY TO SEE WHETHER THERE IS A LEGITIMATE CASE IN
12 CONTROVERSY. SO, WE'RE JUST PUTTING UP A LITTLE BIT OF
13 EVIDENCE JUST TO SHOW THERE IS A CONTROVERSY. THAT'S ALL.

14 THE COURT: GO AHEAD.

15 MR. ROSEN: VERY LOW STANDARD.

16 Q AS TO WHAT'S BEEN MARKED FOR IDENTIFICATION PURPOSES
17 ONLY EXHIBIT NO. 2 I BELIEVE THAT YOU TESTIFIED EARLIER
18 THAT YOU DO RECOGNIZE THAT PHOTOGRAPH?

19 A BY RECOGNIZE THE PHOTOGRAPH I MEAN THE FACE.

20 MR. BAILEY: YOUR HONOR, I RENEW MY OBJECTION.

21 THE WITNESS: I RECOGNIZE THAT LOOK ON HIS FACE. I
22 DON'T KNOW WHETHER THAT FRAME OR THAT WRITING -- I WAS
23 TALKING ABOUT THE FACE.

24 THE COURT: YOU RECOGNIZE IT TO BE JAMES BROWN AT
25 SOME POINT IN HIS LIFE?

1 THE WITNESS: RIGHT. AND IT'S A FAMILIAR-LOOKING --

2 Q BUT YOU DON'T RECOGNIZE THE PHOTOGRAPH BEING IN ANY
3 PARTICULAR LOCATION AT ANY TIME?

4 A I REALLY DON'T. I AM NOT SAYING IT ISN'T OR WASN'T,
5 BUT I DON'T.

6 Q ARE YOU ABLE TO READ WHAT'S HANDWRITTEN ON THAT
7 PHOTOGRAPH?

8 A YEA. WELL, TO LITTLE MAN, DADDY LOVE THE LITTLE MAN,
9 AND THEN I CAN'T READ IT.

10 Q AND LITTLE MAN HAS BEEN REFERENCED THROUGHOUT MANY OF
11 THESE PROCEEDINGS AS JAMES BROWN, II -- JAMES JOSEPH
12 BROWN, II?

13 A YES. OH YES.

14 MR. SHAHID: YOUR HONOR, I MOVE EXHIBIT 2 INTO
15 EVIDENCE AT THIS TIME.

16 MR. BAILEY: SAME OBJECTION, YOUR HONOR. SHE CAN'T
17 IDENTIFY THE PHOTOGRAPH.

18 THE COURT: SHE CAN'T IDENTIFY THE WRITING.

19 MR. BAILEY: IT'S NOT -- YOU KNOW, I DON'T KNOW IF
20 IT'S AN ORIGINAL DOCUMENT OR A COPY OF A DOCUMENT. I
21 DON'T THINK IT'S -- IT'S HEARSAY.

22 THE COURT: WELL, IT'S NOT HEARSAY. ONLY ONE
23 OBJECTION, MA'AM. YOU CAN WHISPER IN MR. BAILEY'S EAR.

24 MR. SHAHID: IT'S NOT OFFERED FOR THE MATTER OF THE
25 TRUTH ASSERTED, JUDGE. IT IS JUST OFFERED TO SHOW THAT

1 THERE IS INFORMATION CONCERNING A PHOTOGRAPH OF WHAT
2 APPEARS TO BE MR. JAMES BROWN.

3 THE COURT: WELL, IT IS. I CAN TELL THAT.

4 MR. SHAHID: YOU CAN TAKE JUDICIAL NOTICE AND THAT HE
5 IS WRITING TO WHAT IS AFFECTIONATELY KNOWN AS LITTLE MAN.

6 THE COURT: I ASSUME THAT'S HIS WRITING. WE HAVEN'T
7 IDENTIFIED THAT AS HIS WRITTEN.

8 MR. SHAHID: NO. I AM NOT OFFERING IT FOR THE TRUTH
9 OF THE MATTER ASSERTED, JUDGE, IT IS JUST TO LITTLE MAN.

10 MR. ROSEN: THAT PHOTOGRAPH IS IN THE LIST OF
11 EXHIBITS THAT ARE GOING TO BE RATTLED OFF AT CHRISTIE'S
12 AND SOMEWHERE IN THE FILE THERE IS A BIG BOOK WITH ALL OF
13 THESE THINGS IN IT AND THAT PHOTOGRAPH IS IDENTIFIED AS
14 SOMETHING THAT CAME FROM THE HOUSE. SO, I MEAN, WE
15 CAN --

16 THE COURT: I AM GOING TO ADMIT IT AND GIVE IT
17 WHATEVER WEIGHT, IF ANY, I DECIDE TO GIVE IT. I MAY NOT
18 GIVE IT ANY WEIGHT. I'LL ADMIT IT.

19 MR. BAILEY: MAY I FINISH MY OBJECTION?

20 THE COURT: YOU MAY.

21 MR. BAILEY: WE ALSO BELIEVE THAT IT'S IRRELEVANT
22 BECAUSE --

23 THE COURT: I'LL TELL YOU WHAT. I WILL RELAX MY
24 RULING. MA'AM, YOU MAY DO IT.

25 MS. HAYES: YOUR HONOR, IT IS IRRELEVANT BECAUSE IF

1 MR. BROWN CONSIDERED HIM TO BE HIS SON, THAT'S GREAT. WE
2 DON'T HAVE A PROBLEM WITH THAT. THEY'RE NOT TRYING TO
3 ESTABLISH COMMON LAW FATHERHOOD. THE ISSUE HERE IS
4 WHETHER OR NOT HE WOULD BE AN INTESTATE HEIR IF THE ESTATE
5 PLAN IS OVERTURNED. SO, IF MR. BROWN CONSIDERED HIM HIS
6 SON, THAT'S GOOD, AGAIN, BUT IT DOESN'T HAVE ANYTHING TO
7 DO WITH THE HEIR ISSUE.

8 THE COURT: THANK YOU. I'LL NOTE YOUR OBJECTION.
9 (WHEREUPON, SHAHID'S EXHIBIT NO. 2 WAS ADMITTED INTO
10 EVIDENCE.)

11 MR. SHAHID: CAN I GET THIS MARKED AS EXHIBIT NO. 3?
12 (WHEREUPON, SHAHID'S EXHIBIT NO. 3 WAS MARKED FOR
13 IDENTIFICATION ONLY.)

14 MR. SHAHID: YOUR HONOR, I HAVE MARKED AS EXHIBIT
15 NUMBER 3 MY LETTER OF MAY 6, 2008 AND I'D MOVE THAT INTO
16 EVIDENCE AT THIS TIME.

17 MR. BAILEY: MAY I SEE IT?

18 MR. SHAHID: NO OBJECTION TO NUMBER 3, JUDGE.

19 THE COURT: ALL RIGHT. MOVE ALONG.

20 MR. SHAHID: ONE MORE EXHIBIT, JUDGE. CAN I HAVE
21 THIS MARKED FOR I.D. PURPOSES?

22 (WHEREUPON, SHAHID'S EXHIBIT NO. 3 WAS ADMITTED INTO
23 EVIDENCE.)

24 (WHEREUPON, SHAHID'S EXHIBIT NO. 4 WAS MARKED FOR
25 IDENTIFICATION ONLY.)

1 Q WERE YOU AWARE AS TO WHETHER OR NOT JAMES BROWN, II,
2 LITTLE MAN WAS RECEIVING MEDICAL BENEFITS THROUGH HIS
3 FATHER'S MEDICAL INSURANCE PLAN?

4 A I THINK I HAVE HEARD THAT, BUT I WASN'T AWARE OF IT.
5 I THINK I HAD HEARD THAT, AND, YEA, I THINK I HAD HEARD
6 THAT.

7 Q I'VE MARKED AS --

8 A WAIT, WAIT. NO, NO, NO. I'M SORRY. YOU SAID
9 THROUGH HIS FATHER'S PLAN.

10 Q RIGHT.

11 A NO. THROUGH JAMES BROWN'S PLAN.

12 Q JAMES BROWN'S PLAN.

13 A THAT WAS BEFORE JAMES BROWN BROUGHT SUIT TO DECLARE
14 HIM NOT THE BE THE CHILD, THOUGH, AND WHEN JAMES BROWN
15 BROUGHT SUIT TO DECLARE HIM NOT TO BE THE CHILD THEY
16 SETTLED IMMEDIATELY AND THE SUIT WAS DISMISSED AND I
17 LOOKED AT THAT HEALTH STUFF AND THOUGHT MAYBE THEY SETTLED
18 IT IN ORDER NOT TO LOSE SOME BENEFITS.

19 Q I MARKED AS EXHIBIT 4 FOR I.D. PURPOSES ONLY THIS
20 DOCUMENT. HAVE YOU SEEN THIS EXHIBIT 4 BEFORE?

21 A NO.

22 MR. BAILEY: MAY I SEE IT?

23 MR. SHAHID: YEA.

24 THE WITNESS: I MEAN, I'M NOT SAYING IT'S NOT IN THE
25 HUNDREDS OF THOUSANDS OF DOCUMENTS, BUT I DON'T RECALL IT.

1 THE COURT: MRS. POPE, WHEN YOU SAY HUNDREDS OF
2 THOUSANDS, GIVE ME A GOOD IDEA OR GOOD GUESTIMATE AS TO
3 HOW MANY DOCUMENTS ARE IN THIS CASE.

4 THE WITNESS: MANY MORE THAN A MILLION. IN THIS CASE
5 OR FOR MR. BROWN?

6 THE COURT: WELL, IN THIS LITIGATION.

7 THE WITNESS: WELL, MANY MORE THAN A MILLION. MANY,
8 MANY. I MEAN, MORE THAN 100 BOXES NOW AND YOU KNOW...

9 THE COURT: THAT'S 100 BANKER'S BOXES OF DOCUMENTS?

10 THE WITNESS: YES, MORE THAN THAT NOW. IT USED TO BE
11 80.

12 THE COURT: ONE HUNDRED PLUS?

13 THE WITNESS: A HUNDRED PLUS.

14 Q MRS. POPE, I THINK YOU SAID EARLIER THAT YOU WERE
15 AWARE THAT HE, BEING LITTLE MAN, WAS RECEIVING INSURANCE
16 BENEFITS?

17 A I HAVE EITHER HEARD THAT OR SEEN IT SOMEWHERE AMONG,
18 YOU KNOW, OVER THE LAST YEAR.

19 Q WOULD EXHIBIT NO. 4 HELP REFRESH YOUR MEMORY AS TO
20 WHAT YOU MAY OR MAY NOT HAVE SEEN?

21 A NO. NO, I MEAN, IT REALLY WOULDN'T BECAUSE I TOLD
22 YOU I DIDN'T RECOGNIZE THAT DOCUMENT, BUT I'M NOT SAYING I
23 HAVEN'T SEEN SOME DOCUMENT. I DON'T KNOW WHAT IT WAS AND,
24 YOU KNOW, NO, I DON'T THINK SO.

25 Q DOES EXHIBIT 4 PURPORTS TO REFLECT SOME TYPE OF

1 INSURANCE BENEFIT FOR JAMES BROWN, II?

2 A YES, IT DOES. WAIT A MINUTE. YEA.

3 Q AND DOES IT HAVE A DATE --

4 A WAIT A MINUTE. WAIT A MINUTE. YEA..

5 Q DOES IT HAVE A -- THIS IS CALLED NOTICE OF
6 ELIGIBILITY; IS THAT CORRECT?

7 A WELL, I MEAN, YEA, THAT'S WHAT THE PAPER SAYS NOTICE
8 OF ELIGIBILITY.

9 Q AND IT REFLECTS A SCREEN ACTOR'S GUILD PRODUCER'S
10 HEALTH PLAN; IS THAT CORRECT?

11 A IT DOES AND THAT WAS MY RECOLLECTION THAT IT WAS
12 SOMETHING ABOUT S.A.G., BUT, AGAIN, I'M NOT SURE I'VE SEEN
13 THAT DOCUMENT, BUT I'VE SEEN SOMETHING TO INDICATE THAT HE
14 HAD SOME S.A.G. HEALTH INSURANCE.

15 Q AND THAT WOULD?

16 A I WOULDN'T DENY THAT IS IT, BUT I DON'T REMEMBER.

17 Q AND THIS PLAN IS DATED OR NOTICE OF ELIGIBILITY IS
18 DATED DECEMBER 1, 2004; IS THAT CORRECT?

19 A LET ME SEE. WHERE IS THAT? THAT SAYS -- ACTUALLY,
20 THAT SAYS JAMES BROWN.

21 Q RIGHT. PARTICIPANT.

22 A PERFORMER.

23 Q YES, PARTICIPANT JAMES BROWN.

24 A AND ELIGIBILITY TYPE IS PERFORMER. YEA.

25 Q AND THEN IT LISTS THE BENEFICIARIES UNDERNEATH THAT.

1 ARE THOSE WHO ARE COVERED?

2 A WELL, IT LOOKS THAT WAY, BUT YOU CAN'T TELL WHEN THEY
3 WERE COVERED AND WHAT THE RESULT OF THAT 2004 LITIGATION.

4 I MEAN --

5 Q DOES IT SHOW A DATE OF 12/10/04?

6 A FOR JAMES BROWN.

7 Q AND DOES IT SHOW ELIGIBILITY --

8 A 12/1/04.

9 Q 12/1/04. DOES IT SHOW ELIGIBILITY PERIOD BEGINNING
10 JANUARY 1, 2005 THROUGH DECEMBER 31, 2005?

11 A IT DOES, BUT, I MEAN, I DON'T KNOW WHETHER IT'S JUST
12 A SPIT-OUT RENEWAL. I HAVE NO IDEA WHAT IT IS.

13 Q BUT IT'S --

14 A AS I SAID, I HAVE NOT -- IT'S NOT SOMETHING I --

15 Q BUT IT DOES SHOW AN ELIGIBILITY PERIOD?

16 A WELL, IT SHOWS WHAT IT SHOWS. I MEAN, I AM NOT
17 FAMILIAR WITH THE DOCUMENT. I HAD HEARD OR SEEN SOME
18 LITTLE INDICATION THAT THE CHILD WAS COVERED UNDER SOME
19 S.A.G. HEALTH BENEFITS. I DON'T -- I MEAN, YOU KNOW,
20 THE DOCUMENT SAYS WHAT IT SAYS. I'M NOT FAMILIAR WITH
21 THE DOCUMENT. IF YOU WANT ME TO READ IT, I MEAN, YOU
22 KNOW...

23 Q AND IT SHOWS THAT THOSE WHO COVERED INCLUDE JAMES,
24 THE MEMBER; TOMI, THE SPOUSE, AND JAMES, THE CHILD; IS
25 THAT CORRECT?

1 A THAT IS WHAT THE DOCUMENT SAYS THAT THAT -- IT SAYS
2 COVERED FAMILY MEMBERS: JAMES, TOMI, JAMES.

3 Q AND THEN UNDER JAMES IT LISTS CHILD AND A DATE OF
4 BIRTH OF 6/11/01.

5 A IT DOES.

6 MR. SHAHID: I'D MOVE EXHIBIT 4 IN EVIDENCE AT THIS
7 TIME, JUDGE.

8 MS. HAYES: ALL OF THE SAME OBJECTIONS, YOUR HONOR.
9 WE RENEW THAT OBJECTION AND WE MOVE TO STRIKE ALL OF THAT
10 TESTIMONY WHERE SHE WAS READING THE HEARSAY INTO THE
11 RECORD.

12 THE COURT: THANK YOU. MR.~BYRD, LIKEWISE?

13 MR. BYRD: YES, SIR, YOUR HONOR. THIS DOCUMENT
14 HADN'T BEEN AUTHENTICATED BY ANYBODY. THERE IS NO WAY
15 THAT DOCUMENT SHOULD COME INTO EVIDENCE, IF YOUR HONOR
16 PLEASE.

17 MR. SHAHID: JUDGE, SHE'S TESTIFIED THAT SHE RECALLS
18 INFORMATION THAT SHE MAY HAVE COME ACROSS REGARDING HEALTH
19 INSURANCE BENEFITS THROUGH THE SCREEN ACTOR'S GUILD AND
20 THIS DOCUMENT IS LISTED UNDER THE SCREEN ACTOR'S GUILD,
21 AND, SO, FOR THAT I BELIEVE IT HAS SOME RELEVANCE AND CAN
22 AID THIS.

23 THE COURT: WELL, IT MAY HAVE RELEVANCE, BUT I DON'T
24 KNOW -- I AM GOING TO SUSTAIN THE OBJECTION.

25 Q ARE YOU AWARE THAT JAMES BROWN, II, IS ALSO GETTING

1 SOCIAL SECURITY BENEFITS?

2 A I DON'T DENY THAT HE WAS, BUT, YOU KNOW, IT'S NOT
3 SOMETHING I --

4 Q AND THAT WOULD HAVE BEEN BECAUSE OF HIS FATHER'S AGE?

5 A I DON'T HAVE ANY IDEA. SINCE I DIDN'T KNOW ABOUT
6 THEM I DON'T KNOW WHY HE WOULD HAVE GOTTEN THEM.

7 Q BUT YOU SAID YOU HEARD SOMETHING ALONG THOSE LINES?

8 A NO, NO, NO. I DIDN'T SAY ABOUT SOCIAL SECURITY.

9 Q OKAY.

10 A NO, I DID NOT. I'M NOT SAYING HE DIDN'T HAVE IT.
11 DON'T GET ME WRONG. I JUST DON'T KNOW.

12 MR. SHAHID: EXCUSE ME ONE SECOND, JUDGE. I MAY BE
13 FINISHED.

14 Q MRS. POPE, WHAT CREDIBLE INFORMATION DO YOU POSSESS
15 THAT JAMES BROWN, II -- JAMES BROWN NUMBER TWO -- IS NOT
16 THE BIOLOGICAL CHILD OF THE DECEDENT?

17 A WE HAVEN'T HAD DISCOVERY YET, BUT I WILL TELL YOU
18 WHAT I HAVE LEARNED WITHOUT HAVING THE OPPORTUNITY TO HAVE
19 HAD DISCOVERY AND WITHOUT A D.N.A. TEST. FORLANDO BROWN
20 SAID IN A SWORN STATEMENT IN THE FEDERAL COURT PROCEEDING
21 THAT IT WAS GENERALLY KNOWN THAT JAMES BROWN WAS NOT THE
22 FATHER AND THAT IT WAS GENERALLY SAID AROUND THAT CHARLES
23 BOBBIT WAS THE FATHER. I HAVE NO -- I AM JUST TELLING YOU
24 WHAT I --

25 Q AND THAT WOULD BE --

1 A IT'S BEEN SAID UNDER OATH.

2 THE COURT: YOU ASKED THE QUESTION.

3 MR. SHAHID: NO, NO, I'M NOT --

4 THE WITNESS: BUDDY DALLAS, OF COURSE, HAS WIDELY
5 SAID THAT MR. BROWN HAD A VASECTOMY AND WAS UNABLE TO
6 FATHER CHILDREN AND BUT FOR JAMES, II, THERE IS NO
7 EVIDENCE THAT I'M AWARE OF OF ANY CHILDREN AFTER THE DATE
8 OF THE VASECTOMY AND THERE IS LOADS BEFORE.

9 Q LET ME ASK THE QUESTION.

10 A THE --

11 Q DO YOU KNOW WHEN THIS SUPPOSED VASECTOMY TOOK PLACE?

12 A I BELIEVE -- I DON'T WANT TO SAY, BUT I THINK HE SAID
13 IT WAS --

14 THE COURT: HE SAID?

15 THE WITNESS: -- IN THE 80'S. MR. DALLAS REPORTED
16 THAT IT WAS IN THE '80'S. MR. LEVENSON HAS GOTTEN
17 MR. BROWN'S MEDICAL RECORDS, AND WE HAVEN'T GOTTEN A COPY
18 FROM HIM YET. WE COULD FIND OUT MORE ABOUT THAT IN
19 DISCOVERY, BUT THAT'S ONE.

20 THE VIDEO OF MS. MARY HOLMES IN WHICH SHE SAID THAT
21 TOMI RAE WENT OFF TO LAS VEGAS AND CAME BACK REPRESENTING
22 THAT JAMES BROWN WAS THE DADDY OF HER CHILD AND THAT SHE
23 WAS REALLY PROMOTING THAT, BUT OTHER PEOPLE WERE CONCERNED
24 THAT IT WASN'T TRUE AND THE FACT THAT SHE WAS GONE WHEN
25 SHE GOT PREGNANT.

1 AGAIN, YOU ASKED ME WHAT CREDIBLE EVIDENCE I HAD, AND
2 I BELIEVE MS. HOLMES' TESTIMONY -- IT APPEARED TO BE
3 CREDIBLE. THE MAIN FACTOR FROM OUR CONSIDERATION WHICH
4 COULD ALL BE CLEARED UP BY A D.N.A. TEST WAS THAT IN JULY
5 OF 2004 MR. BROWN HIMSELF IN HIS REPLY IN THE DOMESTIC
6 ACTION -- HE BROUGHT AN ACTION TO ANNUL HIS MARRIAGE TO
7 TOMI RAE. SHE ANSWERED AND, I THINK, COUNTERCLAIMED AND
8 HE REPLIED. SO, THIS WAS LONG AFTER HE ALLEGEDLY WAS
9 SUPPOSED TO HAVE PAID FOR HER ANNULMENT. HE SAID HE
10 WANTED THE D.N.A. TESTING.

11 Q AND THAT LITIGATION --

12 A NOT LONG AFTER. I MEAN, IT WAS ALL KIND OF GOING ON
13 AT THE SAME TIME.

14 Q AND THAT LITIGATION ENDED WITH AN ORDER OF DISMISSAL?

15 A IT DID BASED ON HER PROMISE NEVER TO CLAIM TO BE THE
16 COMMON LAW SPOUSE OF JAMES BROWN.

17 Q BUT, STILL, THAT LITIGATION GOT DISMISSED?

18 A IT WAS LATER DISMISSED AND AND SO IT WAS UNRESOLVED,
19 AND THEN THERE ARE LOTS OF -- LOTS OF ANECDOTAL TESTIMONY
20 THAT HE WANTED TO KNOW WHETHER HE WAS THE CHILD BUT DID
21 NOT -- SOME PEOPLE SAY HE DIDN'T WANT IT DONE UNTIL AFTER
22 HE DIED.

23 Q AS I UNDERSTAND THAT ONE LITIGATION THAT YOU
24 MENTIONED IN FAMILY COURT, THAT DISMISSAL WAS BY AGREEMENT
25 BETWEEN THE PARTIES?

1 A I BELIEVE SO. YES.

2 Q AND AS YOU SAID SOMETHING ABOUT THE COMMON LAW
3 MARRIAGE, BUT IT DID NOT ADDRESS A CONDITION OR
4 STIPULATION AS TO THE PARENTAGE OF HIM NOT BEING THE
5 FATHER? IT JUST ADDRESSED COMMON LAW MARRIAGE.

6 A NO. THERE WAS NO STIPULATION THERE, AND AS YOU KNOW
7 HER ANNULMENT NEVER MENTIONED AHMED NOT BEING THE
8 FATHER --

9 Q WELL, THAT'S --

10 A -- AND HE IS CERTAINLY THE PUTATIVE FATHER AND THAT
11 WAS NOT EVEN MENTIONED IN HER ANNULMENT --

12 Q AS I --

13 A -- TO TERMINATE HIS RIGHTS.

14 Q AS I RECALL THERE WAS AN ORDER --

15 MR. MEDLIN: I OBJECT.

16 THE COURT: SIR, HE ASKED THE QUESTION.

17 MR. MEDLIN: WE ARE GOING TO HAVE TO HAVE A CHANCE TO
18 RESPOND TO THAT I WOULD HOPE, YOUR HONOR --

19 THE COURT: WELL, I --

20 MR. MEDLIN: -- ON REDIRECT.

21 Q AS I RECALL THE FINAL ORDER BETWEEN AHMED AND TOMI
22 RAE, THAT ORDER SAID THERE WERE NO CHILDREN BORN OF THAT
23 MARRIAGE; ISN'T THAT CORRECT?

24 A I'M NOT SURE. I'M NOT SURE. I KNOW --

25 THE COURT: WHICH ONE? BETWEEN TOMI RAE AND --

1 THE WITNESS: I'M NOT SURE. I CAN'T REALLY REMEMBER,
2 BUT THERE WAS A CHILD BORN OF THE MARRIAGE -- BORN DURING
3 THE MARRIAGE.

4 THE COURT: HERE IT IS RIGHT HERE.

5 MR. SHAHID: HAS IT ALREADY BEEN MARKED AS AN
6 EXHIBIT, JUDGE?

7 THE COURT: WELL, I DIDN'T ALLOW IT IN.

8 Q THERE WAS AN ORDER FILED IN CASE NUMBER 03-DR-10-4609
9 DATED APRIL 15, 2004. I THINK YOU'VE SEEN THIS ORDER
10 BEFORE?

11 A I HAVE.

12 Q AND I WANT TO HAND TO YOU WHAT'S BEEN PREVIOUSLY
13 MARKED AS MEDLIN EXHIBIT NO. 8.

14 THE COURT: WHICH IS WHAT?

15 MR. SHAHID: THE SAME ORDER.

16 THE COURT: BUT IT WAS NOT IN.

17 MR. SHAHID: NO, JUST IT'S BEEN MARKED AS EXHIBIT
18 NUMBER 8, I THINK.

19 THE WITNESS: YEA, WELL, IT SAYS THEY HAD NO SEXUAL
20 INTERCOURSE AND THERE WERE NO CHILDREN BORN OF THE
21 MARRIAGE. YES.

22 Q AND SPECIFICALLY UNDER FINDINGS OF FACT ON PAGE TWO,
23 PARAGRAPH THREE SAYS WHAT YOU JUST REPEATED, NO CHILDREN
24 WERE BORN OF THIS MARRIAGE BETWEEN THE PARTIES; IS THAT
25 RIGHT?

1 A YEA.

2 Q THAT'S AN ORDER OF A COURT OF COMPETENT JURISDICTION?

3 A I DON'T KNOW ABOUT THE COMPETENT JURISDICTION. IT'S
4 AN ORDER.

5 Q WELL, THE FAMILY COURT IN CHARLESTON COUNTY IS NOT A
6 COURT OF COMPETENT JURISDICTION?

7 THE COURT: I'LL TAKE JUDICIAL NOTICE THAT IT IS.

8 MR. SHAHID: YOUR HONOR, AT THIS POINT I'D MOVE
9 EXHIBIT MEDLIN'S EXHIBIT NUMBER 8 INTO EVIDENCE. I KNOW
10 IT'S BEEN OBJECTED TO. I WOULD RENEW MY REQUEST THAT IT
11 BE ADMITTED INTO EVIDENCE AT THIS TIME.

12 MS. HAYES: SAME OBJECTION, YOUR HONOR.

13 THE COURT: MA'AM?

14 MS. HAYES: SAME OBJECTION AS WE MADE EARLIER WHEN
15 MR. MEDLIN ADMITTED IT, YOUR HONOR -- MR. ROSEN. EXCUSE
16 ME.

17 MR. SHAHID: JUDGE, I WILL STATE TO THE COURT -- AND
18 I THINK YOU HAVE A COPY OF IT -- IT SAYS STATE OF SOUTH
19 CAROLINA, COUNTY OF CHARLESTON, IN THE FAMILY COURT, 9TH
20 JUDICIAL CIRCUIT. IT PURPORTS TO HAVE A JUDGE'S SIGNATURE
21 ON IT. IT IS...

22 THE COURT: I'LL LET IT IN FOR WHATEVER WEIGHT, IF
23 ANY, I GIVE IT.

24 ANY OTHER QUESTIONS?

25 MS. HAYES: YOUR HONOR, ONE QUICK OBJECTION ABOUT THE

1 ORDER. IT DOESN'T --

2 THE COURT: I HAVE ALREADY LET IT IN, MA'AM.

3 MS. HAYES: I JUST WANTED TO MENTION THAT IT DOESN'T
4 SPECIFY THE DATES OF THE SUBSEQUENT MARRIAGE CERTIFICATE
5 AND MARRIAGE LICENSE THAT ARE AT ISSUE. IT DOESN'T SAY
6 WHETHER THE ORDER CAME BEFORE OR AFTER, AND THAT'S MY
7 OBJECTION.

8 THE COURT: THANK YOU.

9 ALL RIGHT, MR. SHAHID. LET'S GO.

10 MR. SHAHID: THAT'S ALL THE QUESTIONS I HAVE.

11 THE COURT: THANK YOU.

12 (WHEREUPON, MEDLIN'S EXHIBIT NO. 8 WAS ADMITTED INTO
13 EVIDENCE.)

14 THE COURT: ALL RIGHT, MA'AM. YOU MAY STEP DOWN.
15 THAT WILL CONCLUDE HER TESTIMONY. YOU SAID YOU DID NOT
16 WANT TO ASK --

17 MR. BAILEY: WE HAVE NO QUESTIONS, YOUR HONOR.

18 THE COURT: WELL, THERE IS NO CROSS --

19 MS. HAYES: WE RESERVE THE RIGHT TO RECALL HER DURING
20 OUR CASE, YOUR HONOR.

21 THE COURT: MA'AM?

22 MS. HAYES: WE DO PLAN TO CALL MRS. POPE FOR OUR CASE
23 AFTER THEY CALL THE REST OF THEIR WITNESSES, I BELIEVE.

24 THE COURT: THAT'S FINE.

25 MS. HAYES: THANK YOU, YOUR HONOR.

1 THE COURT: CALL WHOEVER YOU WANT. ALL RIGHT. IS
2 9:30 -- MR. BYRD, ARE YOU STILL IN COLUMBIA?

3 MR. BYRD: YES, SIR, AND THAT'S FINE.

4 THE COURT: IS 9:30 AN IMPOSITION TO ANYBODY? THE
5 CLERK WILL BE HERE AT -- LET'S DO 9:45. THE CLERK WILL BE
6 HERE AT 9 O'CLOCK WITH THE EXHIBITS. SO, I WANT THAT
7 TAKEN CARE OF BEFORE I GET HERE AND START AT 9:30.

8 (WHEREUPON, ON MARCH 6, 2009 THE FOLLOWING
9 PROCEEDINGS WERE HELD:)

10 THE COURT: MR. MEDLIN, YOU WANT TO ASK ME SOMETHING?

11 MR. MEDLIN: YES, YOUR HONOR. WE WOULD LIKE TO ASK
12 YOUR INDULGENCE TO MEET IN CHAMBERS FOR JUST A FEW
13 MINUTES. WE HAVE A MATTER THAT WE THINK THAT'S DESERVING
14 OF SOME SENSITIVE TREATMENT, AND, CONSEQUENTLY, WE'D LIKE
15 TO START WITH THAT OUT IN CHAMBERS.

16 THE COURT: CAN WE DO IT WITHOUT A COURT REPORTER?

17 MR. MEDLIN: I THINK WE CAN, YOUR HONOR.

18 THE COURT: ALL RIGHT. STEP BACK. IS THE GRAND JURY
19 ROOM OKAY?

20 THE BAILIFF: YES, SIR.

21 MS. HAYES: YOUR HONOR, WE WOULD LIKE TO HAVE A COURT
22 REPORTER PRESENT.

23 THE COURT: THANK YOU. WE'RE GOING TO DO IT WITHOUT
24 A COURT REPORTER.

25 (WHEREUPON, A BREAK WAS TAKEN.)

1 THE COURT: MR. MEDLIN OR WHOEVER IS GOING TO CALL
2 THE NEXT WITNESS.

3 MR. ROSEN: YOUR HONOR, I'LL CALL RUSSELL BAUKNIGHT.

4 MS. HAYES: YOUR HONOR --

5 THE COURT: JUST A SECOND.

6 RUSSELL BAUKNIGHT, AFTER BEING DULY SWORN,
7 TESTIFIED AS FOLLOWS:

8 THE COURT: YES, MA'AM.

9 MS. HAYES: YOUR HONOR, WE JUST HAVE AN OBJECTION TO
10 MR. BAUKNIGHT TESTIFYING BECAUSE HIS APPOINTMENT IS
11 CURRENTLY UNDER APPEAL, AND THAT ONE PARTICULAR ISSUE IS
12 STAYED.

13 THE COURT: WHAT PURPOSE ARE YOU CALLING --

14 MR. NICHOLSON: YOUR HONOR, CAN SHE REPEAT THAT? I
15 DIDN'T HEAR IT.

16 THE COURT: SHE SAYS SHE OBJECTS BECAUSE HIS
17 APPOINTMENT IS UNDER APPEAL. IS THAT CORRECT?

18 MS. HAYES: YES, YOUR HONOR.

19 MR. ROSEN: THIS HAS NOTHING TO DO WITH HIS
20 APPOINTMENT, YOUR HONOR. I AM CALLING HIM AS AN EXPERT
21 WITNESS.

22 MS. HAYES: WE OBJECT TO HIM TESTIFYING IN BOTH
23 CAPACITIES.

24 THE COURT: THANK YOU, MA'AM. OVERRULED.

25 MS. HAYES: THANK YOU, YOUR HONOR.

1 MR. ROSEN: HAS THE WITNESS BEEN SWORN, YOUR HONOR?

2 THE COURT: HE HAS.

3 DIRECT EXAMINATION

4 BY MR. ROSEN:

5 Q WOULD YOU STATE YOUR NAME, PLEASE?

6 A RUSSELL BAUKNIGHT.

7 Q MR. BAUKNIGHT, WHERE DO YOU RESIDE, SIR?

8 A I LIVE IN COLUMBIA, SOUTH CAROLINA.

9 Q WHAT IS YOUR OCCUPATION?

10 A I AM A CERTIFIED PUBLIC ACCOUNTANT.

11 Q NOW, YOU'VE PREVIOUSLY TESTIFIED THAT YOU'VE SERVED
12 AND CURRENTLY SERVE AS A FIDUCIARY NUMEROUS ESTATES AND
13 TRUSTS; CORRECT?

14 A THAT IS CORRECT.

15 Q CAN YOU REVIEW SOME OF THAT FOR THE COURT?

16 A I SERVED --

17 THE COURT: MR. ROSEN, WHY ARE WE REPEATING THIS? I
18 HAVE TAKEN HIS QUALIFICATIONS LAST TIME.

19 MR. ROSEN: YOUR HONOR, I ANTICIPATED THAT, AND AT
20 PAGE 98 OF THE TRANSCRIPT YOUR HONOR SAID BEFORE YOU
21 PROCEED ANY FURTHER, MR. BAUKNIGHT, GIVE ME YOUR
22 EDUCATIONAL BACKGROUND, YOUR PROFESSIONAL BACKGROUND, AND
23 ANY DEGREES, AND HE GAVE YOU A VERY BRIEF SUMMARY WHICH IS
24 I AM A SHAREHOLDER IN AN ACCOUNTING FIRM --

25 THE COURT: YOU WANT TO EXPAND ON THAT?

1 MR. ROSEN: I'M SORRY?

2 THE COURT: YOU WANT TO EXPAND ON THAT?

3 MR. ROSEN: I JUST FEEL LIKE IF EVERYBODY WILL
4 STIPULATE HE'S AN EXPERT -- IF EVERYBODY WILL STIPULATE
5 HE'S AN EXPERT, I DON'T HAVE TO TAKE HIM THROUGH THIS.

6 MS. HAYES: WE CAN'T STIPULATE, YOUR HONOR. WE'RE
7 NOT SURE ABOUT THE AREA OF EXPERTISE.

8 THE COURT: VERY WELL. MR. ROSEN MAKE A RECORD.

9 MR. ROSEN: THANK YOU, YOUR HONOR. I'M SORRY WE HAVE
10 TO DO THAT.

11 THE COURT: THAT'S ALL RIGHT. THEY CERTAINLY HAVE
12 THE RIGHT TO OBJECT.

13 Q MR. BAUKNIGHT, WOULD YOU TELL THE COURT YOUR
14 EDUCATIONAL BACKGROUND?

15 A I'M A 1980 GRADUATE OF TOWSON UNIVERSITY IN
16 BALTIMORE, MARYLAND. PRIOR TO GRADUATING I ALSO ATTENDED
17 THE UNIVERSITY OF SOUTH CAROLINA IN COLUMBIA.

18 Q ALL RIGHT, SIR. AFTER THAT DID YOU RECEIVE ANY
19 FURTHER DEGREE?

20 A NO FURTHER FORMAL DEGREES.

21 Q AND YOU ARE -- YOU SAID YOU WERE A CERTIFIED PUBLIC
22 ACCOUNTANT?

23 A THAT'S CORRECT.

24 Q HOW LONG HAVE YOU BEEN A CERTIFIED PUBLIC ACCOUNTANT?

25 A AS I TESTIFIED EARLIER I AM NOT SURE OF THE DATE THAT

1 I WAS CERTIFIED, BUT IT WAS IN THE EARLY 1980'S.

2 Q SO, YOU HAVE BEEN A CERTIFIED PUBLIC ACCOUNTANT FOR?

3 A TWENTY-FIVE YEARS.

4 Q TWENTY-FIVE YEARS. AND IN THAT CAPACITY, HAVE YOU
5 GOTTEN ANY CERTIFICATES, AWARDS, OR DEGREES OF ANY KIND?

6 A I'VE PARTICIPATED IN MANY SPECIALIZED PROGRAMS BOTH
7 THROUGH MY EMPLOYMENT AT ARTHUR YOUNG, EARNST AND YOUNG
8 AND PARTICIPATED IN ALL OF THE REQUIRED EDUCATIONAL
9 UPDATES THAT YOU'RE REQUIRED TO TAKE.

10 Q AND YOU'VE BEEN A MEMBER OF WHICH C.P.A. FIRMS?

11 A I STARTED WORKING WITH A WASHINGTON, DC BASED FIRM
12 RIGHT OUT OF SCHOOL; FROM THERE CAME TO COLUMBIA BECAUSE
13 THIS IS WHERE I WAS ORIGINALLY FROM AND BEGAN WORKING WITH
14 THE PREDECESSORS TO EARNST AND YOUNG --

15 Q ALL RIGHT.

16 A -- GOING THROUGH ALL OF THE MERGERS THAT TOOK PLACE.

17 Q AND WERE YOU A PARTNER OR A PRINCIPAL IN EARNST AND
18 YOUNG?

19 A I WAS A PRINCIPAL AT EARNST AND YOUNG AND IN 1991
20 LEFT THE COLUMBIA OFFICE OF EARNST AND YOUNG TO BECOME A
21 FOUNDING MEMBER OF THE CURRENT FIRM THAT I'M WITH NOW.

22 Q EARNST AND YOUNG IS A MAJOR ACCOUNTING FIRM IN THIS
23 COUNTRY?

24 A THAT'S CORRECT, IN THE WORLD.

25 Q IN THE WORLD. AND THEY HAVE OFFICES --

1 A ALL OVER THE WORLD.

2 Q NOW, HAVE YOU PARTICIPATED IN ANY SEMINARS AND TAUGHT
3 ANY COURSES AND TAUGHT OTHER ACCOUNTANTS?

4 A I HAVEN'T TAUGHT IN MANY, MANY YEARS. THAT DOES DATE
5 BACK TO MY DAYS AT EARNST AND YOUNG.

6 Q NOW, COULD YOU PROVIDE A SUMMARY OF FIDUCIARY
7 POSITIONS IN WHICH YOU CURRENTLY SERVE?

8 A I HAVE SERVED AS PERSONAL REPRESENTATIVE IN MANY
9 ESTATES, BOTH SMALL AND LARGE. THE LARGEST WOULD BE ONE
10 THAT WAS IN EXCESS OF \$150 MILLION. I SERVE CURRENTLY AS
11 TRUSTEE IN APPROXIMATELY 50 TRUSTS, BUT HAVE SERVED IN
12 MANY MORE IN MY CAREER BOTH IN THE CAPACITY OF SOLE
13 TRUSTEE AND CO-TRUSTEE. THE CO-TRUSTEE POSITIONS ARE WITH
14 TWO MAJOR UNIVERSITIES -- I BELIEVE AS I TESTIFIED
15 EARLIER, CASE WESTERN RESERVE UNIVERSITY IN OHIO,
16 UNIVERSITY OF SOUTH CAROLINA IN COLUMBIA. I ALSO SERVE AS
17 CO-TRUSTEE WITH MERRILL TRUST WHICH IS NOW A DIVISION OF
18 BANK OF AMERICA.

19 Q WELL, GOING INTO A LITTLE MORE DETAIL WITH THAT WITH
20 REGARD TO CASE AND USC, WOULD YOU DESCRIBE BRIEFLY WHAT
21 THOSE TRUSTS ARE?

22 A IN THOSE TWO PARTICULAR CASES THOSE WERE CHARITABLE
23 REMAINDER TRUSTS. THE UNIVERSITY OF SOUTH CAROLINA
24 BROUGHT ME IN BECAUSE THEY WERE NOT CURRENTLY SERVING AS
25 TRUSTEE IN ANY TRUST AND KNEW OF MY EXPERIENCE IN THAT

1 AREA. I WAS BROUGHT BEFORE THE EXECUTIVE COMMITTEE AT
2 USC, INTERVIEWED BY THEM AND APPROVED BY THEM TO ASSIST
3 THE EDUCATIONAL FOUNDATION IN SETTING UP THE TRUST AREA AT
4 THE UNIVERSITY. ONCE THAT WAS UP AND GOING I DID
5 AFFIRMATIVELY RESIGN FROM THE CO-TRUSTEE POSITION THERE.

6 AT CASE WESTERN RESERVE UNIVERSITY I AM THE TRUSTEE
7 RESPONSIBLE FOR ALL ADMINISTRATION OF THE TRUSTS. THEIR
8 POWER AS WRITTEN IN THE TRUST AGREEMENT IS ONLY WITH
9 RESPECT TO DISTRIBUTIONS FROM THE TRUST.

10 Q WHAT IS THE LARGEST TRUST YOU ARE THE TRUSTEE OF AT
11 THE CURRENT TIME OR IN THE LAST FIVE TO TEN YEARS IF YOU
12 CAN DEVELOP THAT INFORMATION?

13 A WELL, WITHOUT GOING INTO THE NAMES OF THE
14 BENEFICIARIES OR SETTLORS, I HAVE TWO TRUSTS THAT HAVE
15 BEEN VALUED AT APPROXIMATELY 38, \$39 MILLION EACH. I HAVE
16 A TRUST CURRENTLY THAT I JUST BECAME CO-TRUSTEE OF THAT'S
17 VALUED AT APPROXIMATELY \$13 MILLION.

18 Q ALL RIGHT.

19 A I HAVE BEEN A SUBSTITUTE TRUSTEE WITH RESPECT TO A
20 LARGE NUMBER OF TRUSTS, ONE OF WHICH HAD A CUMULATIVE
21 VALUE OF APPROXIMATELY \$48 MILLION.

22 Q AND HAVE YOU SERVED AS A FIDUCIARY FOR ANY CHARITABLE
23 ORGANIZATIONS IN THE STATE OF SOUTH CAROLINA OR UNIVERSITY
24 OTHER THAN THE ONES YOU MENTIONED?

25 A I HAVE CHAIRED THE ASSET COMMITTEE AT CENTRAL

1 CAROLINA COMMUNITY FOUNDATION AND HAVE CHAIRED THAT
2 COMMITTEE FOR THREE OR FOUR YEARS. AS CHAIRMAN OF THAT
3 COMMITTEE I RECOGNIZED THE NEED TO GO THROUGH A SUBSTITUTE
4 TRUSTEE PROCESS WITH RESPECT TO A LARGE NUMBER OF TRUSTS
5 THAT NEEDED A SUBSTITUTION. SO, I LED THAT PROCESS.

6 Q AND DOES YOUR FIRM SPECIALIZE IN ACTING AS A
7 FIDUCIARY OR DO YOU DO OTHER THINGS?

8 A WE DON'T SPECIALIZE IN ANY ONE AREA. WE DO A GREAT
9 DEAL OF ESTATE AND TRUST WORK AMONGST MANY OTHER AREAS
10 THAT WE DO PRACTICE IN.

11 Q WHAT IS THE NAME OF YOUR FIRM?

12 A BAUKNIGHT, PIETRAS, AND STORMER.

13 Q AND HOW MANY EMPLOYEES OR PRINCIPALS DO YOU HAVE?

14 A WE CURRENTLY HAVE SIX SHAREHOLDERS AND APPROXIMATELY
15 45 EMPLOYEES.

16 Q WHERE IS THAT LOCATED?

17 A ON GERVAIS STREET IN COLUMBIA.

18 Q ALL RIGHT. AND HAVE YOU TESTIFIED AS AN EXPERT
19 WITNESS PREVIOUS TO THIS OCCASION?

20 A I HAVE.

21 Q HAVE YOU TESTIFIED IN CIRCUIT COURT, FEDERAL COURT?

22 A I HAVE NOT TESTIFIED IN CIRCUIT COURT OR FEDERAL
23 COURT. I WAS CALLED TO TESTIFY IN FEDERAL COURT, BUT THE
24 CASE SETTLED.

25 Q NOW, YOU'VE TESTIFIED IN ANY OTHER COURT?

1 A I REGULARLY TESTIFY IN MAGISTRATE'S COURT FOR A
2 DIFFERENT REASON AND I HAVE TESTIFIED IN FAMILY COURT,
3 PROBATE COURT.

4 Q AND YOU'VE BEEN QUALIFIED AS AN EXPERT IN THOSE?

5 A I HAVE.

6 Q NOW, AND YOU'VE PREVIOUSLY MADE A RECOMMENDATION TO
7 THIS COURT CONCERNING THE SETTLEMENT AGREEMENT; CORRECT?

8 A YES, I HAVE.

9 Q NOW, THAT WAS ON JANUARY 30. BASED ON WHAT'S
10 TRANSPIRED SINCE JANUARY 30 HAVE YOU UNDERTAKEN ANY
11 ADDITIONAL INVESTIGATION IN REGARD TO YOUR RECOMMENDATION
12 TO THE COURT?

13 THE COURT: I THOUGHT. NOW, HOLD ON A SECOND. I
14 THOUGHT YOU WERE --

15 MR. ROSEN: I'LL REPHRASE.

16 THE COURT: YOU KNOW, THIS THING IS UNDER APPEAL ON
17 THAT SPECIFIC ISSUE. YOU SAID YOU WERE GOING TO OFFER HIM
18 AS EXPERT TODAY I ASSUMED ON NOT RECOMMENDING SETTLEMENT
19 BUT ON OTHER MATTERS.

20 MR. ROSEN: I'LL MOVE ON.

21 MS. HAYES: OBJECTION, YOUR HONOR.

22 THE COURT: WELL, IT'S NOT A MATTER OF MOVING ON. IT
23 IS A MATTER OF BEING CAREFUL NOT TO GET INTO THE AREAS
24 THAT'S ON APPEAL.

25 MR. ROSEN: I UNDERSTAND, YOUR HONOR.

1 Q MR. BAUKNIGHT, HAVE I ASKED YOU TO LOOK AT THE
2 COPYRIGHT ISSUE IN THIS CASE?

3 A YES, YOU HAVE.

4 Q NOW, HAVE YOU DONE THAT?

5 A YES, I HAVE.

6 Q AND THAT INCLUDES THE TERMINATION ISSUE?

7 THE COURT: NOW, MR. ROSEN, GIVE ME SOME TESTIMONY AS
8 TO HIS QUALIFICATIONS IN COPYRIGHT LAW OR COPYRIGHT
9 RIGHTS.

10 MR. ROSEN: WELL, YOUR HONOR, ONE OF THE ISSUES IN
11 THE CASE IS WHETHER OR NOT THIS AGREEMENT IS FAIR AND
12 JUST.

13 THE COURT: I UNDERSTAND THAT.

14 MR. ROSEN: HE'S AN EXPERT.

15 THE COURT: I UNDERSTAND THAT, BUT HE HADN'T GIVEN ME
16 ANY BACKGROUND ON HIS COPYRIGHT EXPERTISE.

17 MR. ROSEN: WELL, HE IS ABOUT TO EXPLAIN THAT A
18 FIDUCIARY HAS THE DUTY OF DUE DILIGENCE TO LOOK AT THESE
19 ISSUES AND HE HAS LOOKED AT THEM.

20 THE COURT: WELL, I ASSUME THAT YOU'RE GOING TO ASK
21 HIM OPINIONS ABOUT COPYRIGHTS.

22 MR. ROSEN: NO; NOT REALLY.

23 THE COURT: KEEP GOING, BUT IF YOU'RE GOING TO TRY TO
24 GET OPINIONS OUT OF HIM REGARDING COPYRIGHT YOU'VE NOT
25 QUALIFIED HIM YET.

1 MR. ROSEN: I KNOW THAT.

2 MS. HAYES: SAME CONTINUING OBJECTION, YOUR HONOR.

3 THE COURT: AND WHEN YOU'RE GOING TO OFFER HIM AS AN
4 EXPERT IN WHATEVER FIELD YOU ARE GOING TO OFFER, I HAVE TO
5 GIVE THE OTHER SIDE AN OPPORTUNITY TO CROSS EXAMINE HIM ON
6 HIS QUALIFICATIONS BEFORE I DEEM HIM AN EXPERT IN WHATEVER
7 FIELD YOU'RE OFFERING HIM IN.

8 MR. ROSEN: WELL, I AM OFFERING HIM AS AN EXPERT
9 FIDUCIARY AT THIS TIME.

10 THE COURT: MR. NICHOLSON, MR. ROSEN HAS PRACTICED
11 LAW A LONG TIME. I'M SURE HE KNOWS HOW TO DO THAT.

12 MR. ROSEN: YOUR HONOR, I AM OFFERING HIM AS AN
13 EXPERT AT THIS TIME.

14 THE COURT: IN WHAT FIELD?

15 MR. ROSEN: IN HIS CAPACITY AS A FIDUCIARY.

16 THE COURT: ALL RIGHT. ANYBODY WANT TO CROSS EXAMINE
17 HIM AS HIS EXPERTISE IN HIS AREA AS A FIDUCIARY?

18 MS. HAYES: YES, YOUR HONOR.

19 THE COURT: GO AHEAD. JUST ON HIS QUALIFICATIONS.

20 MS. HAYES: YOUR HONOR, WE OBJECT TO THAT AREA OF
21 EXPERTISE BECAUSE IT PURPORTS TO BE THE SAME ISSUE AS A
22 SPECIAL ADMINISTRATOR AND THAT'S THE ISSUE THAT'S ON
23 APPEAL.

24 THE COURT: YOU'VE NOTED THAT OBJECTION, MA'AM. JUST
25 ASK YOUR QUESTIONS.

1 MS. HAYES: THANK YOU, YOUR HONOR.

2 THE COURT: AND I NOTE IT FOR THE RECORD AND IT'S
3 OVERRULED.

4 MS. HAYES: THANK YOU, YOUR HONOR.

5 VOIR DIRE EXAMINATION

6 BY MS. HAYES:

7 Q HI, MR. BAUKNIGHT. IT IS NICE TO SEE YOU AGAIN. DO
8 YOU HAVE A CURRENT C.V. OR RESUME WITH YOU BY CHANCE?

9 A I DO NOT.

10 Q OKAY. MAY WE GET ONE OF THOSE WHILE THE HEARING IS
11 HELD IN ABEYANCE IF WE DON'T FINISH TODAY?

12 A CERTAINLY.

13 THE COURT: ALL RIGHT. I NEED A C.V. WHEN CAN WE
14 GET IT, MR. ROSEN?

15 MR. ROSEN: WHEN CAN WE GET IT?

16 THE WITNESS: I CAN PUT IT TOGETHER FOR YOU AND HAVE
17 IT HERE MONDAY.

18 THE COURT: THAT'S FINE.

19 Q THANK YOU VERY MUCH. SORRY FOR THE ADDITIONAL
20 QUESTIONS. IF I HAD HAD THAT, THAT WOULD'VE BEEN VERY
21 HELPFUL. YOU'VE BEEN OFFERED AS AN EXPERT FIDUCIARY. I'D
22 LIKE TO ASK YOU A FEW QUESTIONS ABOUT THE TRUST YOU
23 MENTIONED. OF COURSE, I DON'T WANT TO ASK ABOUT ANYTHING
24 PRIVILEGED OR CONFIDENTIAL. I AM ASKING JUST ABOUT TRUSTS
25 THAT YOU REPRESENTED THAT MAY HAVE BEEN OF PUBLIC RECORD

1 BY WAY OF LAWSUIT, FOR INSTANCE.

2 MR. SHAHID: JUDGE, I'M SORRY. I CAN'T HEAR HER.

3 THE COURT: MA'AM, YOU'RE GOING TO HAVE TO SPEAK UP.

4 MS. HAYES: THANK YOU, YOUR HONOR. I'M SORRY.

5 THE COURT: THAT'S OKAY.

6 Q IF YOU COULD, PLEASE, TELL US THE TRUSTS THAT YOU'VE
7 REPRESENTED THAT'S A MATTER OF PUBLIC RECORD AND I DO NEED
8 THE NAMES IF IT IS PUBLIC RECORD, PLEASE.

9 A OFF THE TOP OF MY HEAD I CANNOT THINK OF ONE THAT IS
10 A MATTER OF PUBLIC RECORD.

11 Q SO, YOU DO NOT THINK THAT THERE ARE THAT ARE PUBLIC
12 RECORD?

13 A OFF THE TOP OF MY HEAD I CANNOT RECALL ONE THAT IS ON
14 PUBLIC RECORD.

15 Q WOULD YOUR C.V. OR RESUME INCLUDE A LIST OF ALL CASES
16 YOU'VE BEEN INVOLVED IN AS A TRUSTEE OR FIDUCIARY?

17 THE COURT: CASES LIKE LITIGATION CASES?

18 MS. HAYES: YES, YOUR HONOR.

19 THE WITNESS: MY C.V. WOULD NOT. I REALLY HAVE NOT
20 KEPT TRACK OF ALL OF THE CASES SERVING AS A TRUSTEE. I
21 HAVE BEEN INVOLVED ON LITERALLY A DAY-TO-DAY BASIS WITH MY
22 ATTORNEYS WITH RESPECT TO ANY POTENTIAL LITIGATION OR ANY
23 LITIGATION THAT IS THREATENED. WITH THAT IN MIND, THERE
24 MAY BE ONE CASE ACTUALLY ONGOING RIGHT NOW THAT HAS
25 INFORMATION IN THE PUBLIC RECORD AND I WOULD BE HAPPY TO

1 PULL THAT. I NEED TO CONSULT WITH MY ATTORNEY --

2 Q OH, ABSOLUTELY.

3 A -- WITH RESPECT TO THAT, THOUGH.

4 Q ABSOLUTELY. AND IF YOU'RE NOT SURE --

5 A SURE.

6 Q -- I DON'T WANT TO KNOW THE NAME UNTIL YOU'RE SURE.

7 A RIGHT.

8 Q WHEN YOU COMMIT TO ACT AS AN EXPERT FIDUCIARY OR
9 CONSULTANT, DO YOU PERFORM A CONFLICT CHECK, EXCUSE ME,
10 WITHIN YOUR FIRM?

11 A WE --

12 THE COURT: WHAT WAS THE QUESTION?

13 MS. HAYES: WHEN MR. BAUKNIGHT SERVES AS A FIDUCIARY,
14 CONSULTANT, OR EXPERT DOES HE CONDUCT A CONFLICT CHECK
15 WITHIN HIS FIRM.

16 THE COURT: MA'AM, THE PURPOSE OF YOUR CROSS
17 EXAMINATION NOW IS AS TO HIS QUALIFICATIONS AS A
18 FIDUCIARY. WHAT YOU'RE ASKING HIM NOW IN MY OPINION IS
19 GOING TO -- IF I QUALIFY HIM, GOES TO, PERHAPS, TO THE
20 WEIGHT. SO PLEASE LIMIT YOUR EXAMINATION NOW TO HIS
21 QUALIFICATIONS. DO YOU DO CONFLICT CHECKS WHEN YOU SERVE
22 AS A FIDUCIARY?

23 THE WITNESS: YOUR HONOR, OUR FIRM IS OF A SIZE WHERE
24 WE REGULARLY DISCUSS FACE-TO-FACE NEW CLIENT
25 OPPORTUNITIES. IT'S NOT A FORMAL WRITTEN CONFLICT CHECK,

1 BUT WE DO DISCUSS THAT AMONGST ALL OF THE SHAREHOLDERS.

2 MS. HAYES: YES, YOUR HONOR, AND I DON'T HAVE ANY
3 REASON TO THINK MR. BAUKNIGHT DOES ANYTHING
4 INAPPROPRIATELY. I AM ASKING SO WE CAN GATHER SOME
5 INFORMATION ABOUT THESE CASES, IF POSSIBLE.

6 THE COURT: I UNDERSTAND THAT. THEY'RE OFFERING HIM
7 AS AN EXPERT IN THE AREA OF FIDUCIARY, AND THE WAY YOU DO
8 THAT HE HAS TO QUALIFY HIM BASED ON EDUCATION, EXPERIENCE,
9 AND SO FORTH. HE'S ASKED THOSE QUESTIONS. YOU'RE NOW
10 CROSS EXAMINING HIM ON HIS QUALIFICATIONS. ONCE THAT IS
11 DONE, I WILL EITHER ADMIT HIM AS AN EXPERT OR NOT. IF I
12 ADMIT HIM, MR. ROSEN WILL ASK QUESTIONS, AND THEN YOU'LL
13 BE ABLE TO CROSS EXAMINE HIM ON ANYTHING OTHER -- I MEAN,
14 BEYOND THE QUALIFICATIONS STAGE. SO, RIGHT NOW IT'S
15 SIMPLY AS TO HIS QUALIFICATIONS.

16 MS. HAYES: YES, YOUR HONOR. THANK YOU.

17 MR. BAUKNIGHT, HAVE YOU EVER TESTIFIED AS AN EXPERT
18 AS TO THE FAIRNESS OR REASONABLENESS OF A SETTLEMENT
19 INVOLVING A CHARITABLE TRUST?

20 THE WITNESS: I HAVE TESTIFIED TO THAT IN THE
21 JANUARY 30 HEARING.

22 Q ASIDE FROM THIS CASE?

23 A ASIDE FROM THIS CASE I HAVE NOT PROVIDED TESTIMONY TO
24 A COURT WITH RESPECT TO THAT ISSUE.

25 Q AND ON JANUARY 30 WERE YOU QUALIFIED OR CALLED AS AN

1 EXPERT ON JANUARY 30 IN THIS CASE?

2 A NO, MA'AM, I WAS NOT. EXCUSE ME. I'LL CLARIFY. I
3 WAS NOT CALLED AS AN EXPERT. I'M NOT GOING TO -- I DID
4 NOT MEAN TO INSINUATE I WAS NOT QUALIFIED AT THAT TIME.

5 Q RIGHT. YOU WEREN'T QUALIFIED BY AN ATTORNEY OR THE
6 COURT; IS THAT CORRECT?

7 A CORRECT. CORRECT.

8 Q AND AS FAR AS YOUR TESTIMONY TODAY ARE YOU HERE AS A
9 RETAINED EXPERT BY A PARTY?

10 A NO, MA'AM, YOUR HONOR. NO, MA'AM. HIS HONOR, MY
11 UNDERSTANDING, TOLD MY ATTORNEY IN CHAMBERS ON JANUARY 30
12 THAT I SHOULD PLAN TO ATTEND THIS HEARING. SO, I HAVE
13 COME HERE AT HIS HONOR'S REQUEST AS PART OF MY ORDER FROM
14 HIM TO BE HERE AT THE LAST HEARING. I WAS APPROACHED BY
15 THE SETTLING PARTIES WHILE I WAS HERE AND ASKED IF I WOULD
16 OBJECT TO BEING CALLED AS AN EXPERT WITNESS.

17 MS. HAYES: YOUR HONOR, I BELIEVE THE REST OF THE
18 QUESTIONS I HAVE WILL GO TO SUBSTANCE OF HIS OPINION.

19 THE COURT: WHY DON'T YOU CHECK WITH MR. BAILEY
20 FIRST?

21 MS. HAYES: THANK YOU, YOUR HONOR.

22 MS. HAYES: I JUST HAVE ONE MORE FOLLOW-UP QUESTION.

23 THE COURT: YES, MA'AM.

24 Q MR. BAUKNIGHT, JUST TO CLARIFY, ARE YOU HERE TODAY TO
25 TESTIFY AS A FIDUCIARY OR AS AN EXPERT WITNESS?

1 A I CAME TO COURT THIS WEEK -- EXCUSE ME -- IN MY
2 CAPACITY AS A FIDUCIARY. I SAT PATIENTLY THROUGH THE
3 HEARINGS, AND, AGAIN, AS I MENTIONED I WAS APPROACHED BY
4 THE SETTLING PARTIES AND ASKED IF I WOULD TAKE THAT HAT
5 OFF AND PUT ON THE HAT OF EXPERT FOR PURPOSES OF PROVIDING
6 TESTIMONY. I DID NOT OBJECT TO THAT.

7 SO, I TURNED OFF THE CLOCK AT THE POINT THAT I WAS
8 CALLED TO BE AN EXPERT. I HAVE TURNED OFF THE CLOCK WITH
9 RESPECT TO SERVING AS FIDUCIARY.

10 MS. HAYES: THANK YOU, YOUR HONOR. I'LL RESERVE
11 OTHER QUESTIONS FOR THE APPROPRIATE TIME.

12 THE COURT: THANK YOU, MA'AM.

13 MS. HAYES: THANK YOU.

14 THE COURT: ALL RIGHT. I WILL QUALIFY HIM IN THE
15 AREA OF FIDUCIARY. YOU MAY RENDER OPINIONS AS TO A
16 FIDUCIARY. THAT DOESN'T MEAN I HAVE QUALIFIED HIM IN THE
17 AREA OF COPYRIGHT LAW. SO, I DON'T KNOW...

18 MR. ROSEN: I UNDERSTAND.

19 THE COURT: TREAD LIGHTLY.

20 CONTINUED DIRECT EXAMINATION

21 BY MR. ROSEN:

22 Q MR. BAUKNIGHT, SINCE THE LAST HEARING YOU HAVE
23 CONDUCTED FURTHER RESEARCH INTO THIS SETTLEMENT AGREEMENT,
24 HAVE YOU NOT?

25 THE COURT: MR. ROSEN, I AM NOT GOING TO LET HIM

1 TESTIFY ABOUT THIS SETTLEMENT AGREEMENT AS TO THAT
2 FIDUCIARY --

3 MR. ROSEN: I'LL REPHRASE, YOUR HONOR.

4 THE COURT: -- BECAUSE THAT IS UNDER APPEAL AND I AM
5 NOT GOING TO GO THERE.

6 Q AT THE REQUEST OF THE COURT OR AT THE REQUEST OF
7 SOMEBODY, HAVE YOU HAD AN OPPORTUNITY TO REVIEW THE ISSUES
8 THAT HAVE BEEN BROUGHT BEFORE THIS COURT AND OBJECTION TO
9 THE TERMINATION AGREEMENT?

10 THE COURT: HOLD ON A SECOND.

11 MR. ROSEN: THE SETTLEMENT AGREEMENT.

12 THE COURT: THE COURT HAS NOT ASKED HIM TO DO ONE
13 THING.

14 MR. ROSEN: I'LL REPHRASE AGAIN, YOUR HONOR. I
15 APOLOGIZE.

16 MR. BAUKNIGHT, HAVE YOU TAKEN A LOOK AT THE ISSUE OF
17 TERMINATION RIGHTS AS IT AFFECTS THE SETTLEMENT AGREEMENT?

18 THE COURT: NO, SIR. I'M NOT GOING TO LET HIM TALK
19 ABOUT THIS PARTICULAR SETTLEMENT AGREEMENT. HE -- THAT --
20 MY APPOINTMENT OF HIM AS A SPECIAL P.R. TO ADVISE THE
21 COURT ON THE APPROPRIATENESS AND WHATEVER ELSE OF THE
22 SETTLING AGREEMENT, HE'S DONE THAT AND THAT'S UNDER
23 APPEAL, AND I AM NOT GOING TO LET HIM OFFER ADDITIONAL
24 TESTIMONY THIS MORNING ON HIS OPINIONS AS TO THIS
25 PARTICULAR SETTLEMENT DOCUMENT. THAT'S UNDER APPEAL.

1 MR. ROSEN: WELL, YOUR HONOR, IF I COULD BE HEARD.

2 THE COURT: WELL, YOU MAY.

3 MR. ROSEN: WE'RE HERE IN A PROCEEDING TO DECIDE
4 WHETHER THIS SETTLEMENT AGREEMENT IS FAIR AND JUST.

5 THE COURT: THAT'S CORRECT. I AGREE.

6 MR. ROSEN: THIS GENTLEMAN HAS DONE A GOOD BIT OF
7 WORK ON THAT MATTER.

8 THE COURT: HE WAS -- I ASSUME HE DID THAT WORK
9 PURSUANT TO MY ORDER WHERE I APPOINTED HIM FOR THAT SOLE
10 LIMITED PURPOSE.

11 MR. ROSEN: HE DID.

12 THE COURT: HE GAVE TESTIMONY AT THE PREVIOUS
13 HEARING. SUBSEQUENT TO THAT HEARING, I THINK, THE APPEAL
14 WAS FILED AS TO HIS APPOINTMENT, AND I'VE AGREED TO
15 CONTINUE TO CONDUCT THE HEARING IN TAKING TESTIMONY AS TO
16 WHETHER OR NOT I SHOULD APPROVE THE AGREEMENT, BUT HIS
17 APPOINTMENT SINCE THAT'S APPEALED I DON'T THINK I CAN
18 ALLOW HIM NOW TO TESTIFY ABOUT THE APPROPRIATENESS OF THE
19 PARTICULAR SETTLEMENT AGREEMENT IN QUESTION. I MAY BE
20 WRONG, BUT I AM NOT GOING TO ALLOW IT UNTIL THE COURT OF
21 APPEALS RULES ON THAT.

22 MR. ROSEN: YOUR HONOR, I WAS ALWAYS TAUGHT ONCE A
23 JUDGE ISSUES A RULING NOT TO CONTINUE TO ARGUE.

24 THE COURT: WELL, I WOULD RESPECTFULLY ASK YOU TO
25 COMPLY WITH WHAT YOU WERE TAUGHT.

1 MR. ROSEN: THANK YOU, YOUR HONOR. I HAVE NO FURTHER
2 QUESTIONS OF THIS WITNESS.

3 THE COURT: WAIT A MINUTE. MR. MICHEL?

4 MR. MICHEL: BRIEFLY.

5 MR. ROSEN: EXCUSE ME ONE SECOND. WOULD YOU ALLOW ME
6 TO ASK HIM IF HE COULD TESTIFY GENERALLY ABOUT TERMINATION
7 RIGHTS WITH REGARD TO THE SETTLEMENT AGREEMENT?

8 MR. MEDLIN: WITHOUT --

9 THE COURT: NOW, MR. ROSEN, YOU'RE GETTING A DOSE OF
10 YOUR OWN MEDICINE.

11 MR. ROSEN: YES, SIR. I UNDERSTAND.

12 MR. MEDLIN: EXCUSE ME, YOUR HONOR.

13 (WHEREUPON, THE ATTORNEYS CONFERRED.)

14 Q HAVE YOU EDUCATED YOURSELF ABOUT TERMINATION RIGHTS?

15 A I'VE UNDERTAKEN SOME STUDY OF THAT OUT OF INTEREST IN
16 FINDING OUT WHAT THEY WERE.

17 THE COURT: TERMINATION RIGHTS OF WHAT? OF A P.R.
18 TRUSTEE?

19 MR. ROSEN: TERMINATION RIGHTS UNDER COPYRIGHT LAW.

20 MS. HAYES: WE OBJECT TO LACK OF FOUNDATION, YOUR
21 HONOR.

22 THE COURT: WELL, MR. ROSEN, HE HADN'T BEEN QUALIFIED
23 IN THE AREA OF COPYRIGHT. THAT'S A VERY -- NUMBER ONE,
24 VERY UNIQUE SUBJECT TO SAY THE LEAST; NUMBER TWO, THERE IS
25 ALL KIND OF CASELAW ABOUT AN EXPERT TELLING THE COURT WHAT

1 THE LAW IS.

2 MR. ROSEN: YOUR HONOR, I HAD INTENDED TO ASK HIM
3 ABOUT -- TO ADDRESS THE ISSUE OF TERMINATION RIGHTS AND
4 TRANSITIONS WHICH ARE TWO ISSUES THAT YOU ARE CONCERNED
5 ABOUT.

6 THE COURT: THAT'S CORRECT, BUT YOU HADN'T QUALIFIED
7 HIM. I DON'T KNOW IF HE KNOWS THE FIRST THING ABOUT
8 COPYRIGHT.

9 MR. ROSEN: WELL, I GUESS WHAT I AM TRYING TO SAY IS
10 HE'S A FIDUCIARY. SOMEONE HAS GOT TO COME IN AND TAKE
11 THIS CASE OVER AND SOMEONE HAS GOT TO MAKE -- I MEAN, AT
12 SOME POINT WE HAVE TO MOVE AHEAD.

13 THE COURT: WE ARE, BUT YOU HAVEN'T QUALIFIED HIM AS
14 TO WHETHER OR NOT HE KNOWS THE FIRST THING ABOUT COPYRIGHT
15 LAWS. HAS HE EVER HAD CLASSES ON IT, COURSES ON IT,
16 TESTIFIED ABOUT IT, RECEIVED DEGREES IN COPYRIGHT? IS HE
17 A COPYRIGHT LAWYER? IS HE A COPYRIGHT C.P.A? I DON'T
18 KNOW.

19 MR. ROSEN: NO, HE ISN'T, BUT A FIDUCIARY IS NOT
20 GOING TO BE A COPYRIGHT EXPERT. A FIDUCIARY IS GOING TO
21 BE SOMEBODY WHO IS GOING TO CONFER WITH A COPYRIGHT
22 EXPERT.

23 THE COURT: BUT YOU JUST ASKED HIM ABOUT TERMINATION
24 RIGHTS. I DON'T KNOW THAT I CAN -- YOU HADN'T QUALIFIED
25 HIM. I KNOW THE FIDUCIARY IS GOING TO GET PROFESSIONAL

1 HELP IN THAT AREA. I ASSUME ANYBODY WOULD.

2 MR. ROSEN: EXACTLY. EXACTLY. SO, THE FIDUCIARY IS
3 GOING TO HAVE TO RELY ON THE OPINIONS OF OTHERS IN ORDER
4 TO DECIDE WHETHER THIS MATTER IS FAIR. AN EXPERT CAN RELY
5 ON THE OPINIONS OF OTHERS. HE HAS STUDIED THE OPINIONS OF
6 OTHERS.

7 THE COURT: MR. ROSEN, I AM NOT GOING TO ALLOW HIM TO
8 TESTIFY ABOUT COPYRIGHT TERMINATION RIGHTS OR ANYTHING
9 ELSE. I'M SORRY. HE'S NOT QUALIFIED.

10 MR. ROSEN: ALL RIGHT. LET ME ASK HIM A GENERAL
11 QUESTION ABOUT TRANSITION.

12 THE COURT: WELL --

13 MS. HAYES: YOUR HONOR --

14 THE COURT: TRANSITION OF WHAT?

15 MS. HAYES: DUE DILIGENCE FROM JANUARY 30; SAME
16 OBJECTION, YOUR HONOR.

17 THE COURT: TRANSITION FROM?

18 MR. ROSEN: YOUR HONOR, HE IS A FIDUCIARY.

19 THE COURT: I UNDERSTAND.

20 MR. ROSEN: HE'S AN EXPERT.

21 MR. NICHOLSON: YOUR HONOR, MAY WE BE HEARD ON --

22 THE COURT: ONE AT A TIME, MR. NICHOLSON. IT IS HARD
23 ENOUGH DEALING WITH MR. ROSEN. GO AHEAD. I SAY THAT IN
24 JEST.

25 MR. ROSEN: YOU'RE SAYING THAT. I UNDERSTAND THAT.

1 YOUR HONOR, THIS GENTLEMAN HAS BEEN INVOLVED OVER THE
2 YEARS IN MANY ESTATES, IN MANY TRUSTS.

3 THE COURT: I AGREE. HE'S TESTIFIED TO THAT.

4 MR. ROSEN: PEOPLE HAVE BEEN REPLACED AND THERE'S A
5 SO-CALLED TRANSITION PERIOD. I THINK HE'S COMPETENT TO
6 GIVE AN OPINION ABOUT HOW A TRANSITION SHOULD TAKE PLACE.

7 THE COURT: WELL, THAT'S A WHOLE DIFFERENT THING THAN
8 COPYRIGHT LAW.

9 MR. ROSEN: WELL, THAT'S WHY I AM MOVING ON. YOU'VE
10 ALREADY TOLD ME YOU'RE NOT GOING TO LET ME GET INTO THE
11 COPYRIGHT ISSUE.

12 THE COURT: VERY WELL. I'LL LET HIM TALK ABOUT
13 TRANSITION FROM ONE P.R. TO THE NEXT. I ASSUME THAT'S
14 WHAT YOU WANT TO ASK.

15 MR. ROSEN: THAT'S WHAT I AM GOING TO ASK HIM.

16 IN THE EVENT -- IN THE EVENT, MR. BAUKNIGHT, THAT THE
17 COURT --

18 THE COURT: NO, SIR. I AM NOT GOING TO LET YOU ASK
19 HIM ABOUT THIS PARTICULAR CASE. ASK HIM GENERALLY IF A
20 P.R. IS TERMINATED AND A NEW P.R. STARTS GENERALLY
21 WHATEVER QUESTIONS YOU WANT TO ASK HIM CONCERNING
22 TRANSITION -- NOT THIS CASE.

23 MR. ROSEN, IT'S ON APPEAL. I JUST CAN'T GO THERE.

24 MR. ROSEN: I UNDERSTAND.

25 MR. BAUKNIGHT, HAVE YOU BEEN INVOLVED IN SITUATIONS

1 IN WHICH P.R.'S AND TRUSTEES HAVE BEEN TERMINATED?

2 THE WITNESS: YES, I HAVE.

3 Q WHAT IS THE PROCEDURE THAT IS GENERALLY FOLLOWED WITH
4 REGARD TO ESTATES AND TRUSTS WHERE THE P.R.'S ARE
5 REPLACED?

6 A WELL, THE PROCESS THAT I HAVE EXPERIENCE WITH AND, IN
7 FACT, HAVE GONE THROUGH ON A I DON'T WANT TO SAY REGULAR
8 BASIS, BUT I'VE GONE THROUGH THIS MANY TIMES IS GENERALLY
9 A TWO-STEP PROCESS. THE FIRST STEP IS IDENTIFYING THAT
10 THE THEN CURRENT P.R. TRUSTEE FIDUCIARY SHOULD BE REPLACED
11 AND THAT PERSON IS TERMINATED. STEP TWO IN THAT PROCESS
12 IS TO IDENTIFY AND APPOINT A SUBSTITUTE FIDUCIARY.

13 THERE HAVE BEEN -- I HAVE NOT ACTUALLY EXPERIENCED
14 THIS, BUT I'VE HAD TIME TO CONSULT WITH AND I REGULARLY
15 CONSULT WITH A TRUST ADMINISTRATION EXPERT, MR. JULIAN
16 WALKER, AND HE AND I FROM TIME TO TIME HAVE DISCUSSED A
17 POTENTIAL --

18 THE COURT: NO, SIR, THAT'S HEARSAY.

19 MS. HAYES: OBJECTION.

20 MR. ROSEN: YOUR HONOR, AN EXPERT CAN RELY --

21 THE COURT: HE IS TELLING ME WHAT HE SAID. IF YOU
22 WANT TO ASK HIM -- DON'T SIT HERE AND TESTIFY ABOUT WHAT
23 MR. JULIAN SAID.

24 MR. ROSEN: AN EXPERT CAN RELY ON OPINIONS --

25 THE COURT: I UNDERSTAND THAT, BUT HE CAN'T PRESENT

1 HEARSAY TESTIMONY IN THE COURTROOM.

2 MR. ROSEN: I UNDERSTAND.

3 THE COURT: YOU KNOW HOW TO ASK THAT QUESTION.

4 MR. ROSEN: APPARENTLY NOT. I'VE BEEN TRYING ALL
5 MORNING.

6 THE COURT: IN REACHING YOUR OPINION WHAT HAVE YOU
7 RELIED ON? AS A RESULT OF THOSE CONVERSATIONS -- THAT'S
8 HOW YOU DO IT.

9 THE WITNESS: A THIRD STEP IN VERY RARE CIRCUMSTANCES
10 WHERE A SUBSTITUTE FIDUCIARY COULD NOT IMMEDIATELY BE
11 IDENTIFIED MIGHT INVOLVE A SPECIAL FIDUCIARY SITUATION.

12 Q ALL RIGHT.

13 A IN THAT CASE THE SPECIAL FIDUCIARY MAY SERVE ON AN
14 INTERIM BASIS UNTIL SUCH TIME AS A PERMANENT FIDUCIARY HAS
15 BEEN FOUND.

16 Q DO YOU HAVE AN OPINION AS TO WHETHER OR NOT THE
17 TRANSITION PERIOD WOULD TAKE SOME -- ANY PARTICULAR LENGTH
18 OF TIME?

19 MS. HAYES: SAME OBJECTION, YOUR HONOR.

20 MR. ROSEN: AND WHAT GOES INTO IT.

21 THE COURT: WHAT'S THE OBJECTION?

22 MS. HAYES: FOUNDATION, YOUR HONOR.

23 THE COURT: OVERRULED.

24 THE WITNESS: YOU USED A TERM TRANSITION PERIOD AND
25 PROFESSIONALLY I DON'T BELIEVE THAT TRANSITION PERIOD IS

1 AN APPROPRIATE DESCRIPTION OF THE TERM. IT IS A TWO-STEP
2 PROCESS. THERE IS A TERMINATION AND A SUBSTITUTION.

3 THE COURT: WHAT HAPPENS IN BETWEEN? DOES THAT
4 HAPPEN AUTOMATICALLY AT THE SAME TIME?

5 THE WITNESS: IN EVERY CASE THAT I HAVE DEALT WITH,
6 YOUR HONOR, IT HAS BEEN A SIMULTANEOUS TRANSACTION.

7 Q IN YOUR OPINION --

8 THE COURT: HAVE YOU EVER DEALT WITH A CASE THAT'S
9 GOT AS MUCH SUBSTANTIAL LITIGATION GOING ON, PROBLEMS IN
10 VALUATION OF ASSETS, PROBLEMS IN IDENTIFYING ASSETS?

11 THE WITNESS: YOUR HONOR, I'VE DEALT WITH A
12 SUBSTITUTION PROCESS WHOSE ASSETS EXCEEDED \$100 MILLION
13 WITH EXTREMELY COMPLEX SECURITIES AND EXCHANGE COMMISSION
14 ISSUES ON A LARGE VOTING BLOCK OF SHARES, CONTROLLED BLOCK
15 OF SHARES IN A PUBLICLY-TRADED COMPANY.

16 THE COURT: HOW DID Y'ALL HANDLE THAT TRANSITION?

17 THE WITNESS: IT WAS A SIMULTANEOUS EXIT AND
18 ENTRANCE, YOUR HONOR. A PROFESSIONAL TRUSTEE IS THAT:
19 THEY UNDERSTAND HOW TO OPERATE AND ADMINISTER THE ESTATE
20 OR TRUST THAT THEY ARE BEING CHARGED WITH OPERATING.

21 Q IN YOUR EXPERIENCE HAVE YOU EVER DEALT WITH OR ARE
22 YOU AWARE OF THE CONCEPT OF A COMPLEX TRANSITION PLAN?
23 HAVE YOU EVER HEARD OF SUCH A THING?

24 A I HAVE NEVER HAD ANY INVOLVEMENT WHATSOEVER, NOR HAVE
25 I READ OF OR HEARD OF A COMPLEX TRANSITION PLAN BEING

1 NEEDED TO SUBSTITUTE.

2 Q SO, ORDINARILY, IF THE P.R. IS REPLACED, WHAT
3 HAPPENS?

4 A WHERE ONE FIDUCIARY IS REPLACED THE FIRST IS
5 TERMINATED. THE SUCCESSOR IS SUBSTITUTED.

6 Q ALL RIGHT. IS THERE ANY NEED FOR ANY TRANSITIONAL
7 SPECIAL ADMINISTRATOR OR ANY OTHER PERSON IN YOUR OPINION,
8 IN GENERAL?

9 A IN MY PROFESSIONAL OPINION, NO.

10 Q HAVE YOU EVER SEEN IT DONE?

11 A NO, SIR.

12 Q ALL RIGHT. AND, SO, HOW DOES THE TRANSITION TAKE
13 PLACE? I MEAN, HOW DOES IT TAKE PLACE IN AN ORDERLY
14 FASHION?

15 A WELL, AGAIN, I DON'T CALL IT A TRANSITION. IF THE
16 INITIAL FIDUCIARY IS TERMINATED AND THE SUCCESSOR IS
17 APPOINTED, GENERALLY, THE INITIAL PERSONAL REPRESENTATIVE
18 MAY BE AVAILABLE FOR CONSULTATION BY THE SUCCESSOR IF,
19 THAT'S NECESSARY, BUT I'VE PARTICIPATED IN SUCCESSION AND
20 SUBSTITUTION PROCESSES WHERE THE INITIAL FIDUCIARY WAS NOT
21 AVAILABLE IN THE CASE OF A DEATH AND THAT IS NOT ALWAYS
22 POSSIBLE, BUT, CERTAINLY, PREFERABLE TO HAVE THEM
23 AVAILABLE FOR INFORMATION.

24 Q IS THAT SOMETHING THAT CAN BE DONE WITH RELATIVE
25 SIMPLICITY?

1 A I HAVE NEVER EXPERIENCED A PROBLEM WITH THAT.

2 THE COURT: WELL, WHAT HAPPENS, SIR, IF A COURT
3 APPROVES A SETTLEMENT WHICH INCLUDES THE NAMING OF NEW
4 P.R.'S AND THAT ORDER IS APPEALED? THEN YOU'RE GOING TO
5 HAVE A SUBSTANTIAL TRANSITION PERIOD, ARE YOU NOT,
6 PERHAPS?

7 THE WITNESS: YOUR HONOR, I AM NOT AN ATTORNEY AND I
8 CAN'T SPEAK --

9 THE COURT: WELL, ASSUME THAT YOU DID HAVE THAT
10 TREMENDOUS GAP IN THERE WHILE AN APPEAL OF THE ORDER IS
11 TAKING PLACE -- MAYBE A YEAR, YEAR AND A HALF, OR TWO
12 YEARS.

13 THE WITNESS: I WOULD HAVE TO ASSUME AT THAT POINT
14 THAT THE SUBSTITUTED FIDUCIARY WOULD CONSULT WITH LEGAL
15 ADVISERS AS TO WHAT POWERS THEY HAD. I DON'T KNOW -- I'M
16 NOT A LAWYER. I DON'T KNOW THE POWERS THAT I WOULD HAVE
17 AS A FIDUCIARY OR WHO THAT FIDUCIARY MIGHT BE. I DON'T
18 KNOW, BUT YOU WOULD HAVE TO CERTAINLY UNDERSTAND THE
19 POWERS THAT WERE THERE AND WHAT WAS LIMITED BECAUSE OF THE
20 APPEAL.

21 Q AND HAVE YOU EVER BEEN REPLACED YOURSELF -- IN OTHER
22 WORDS, WHERE YOU WERE ASKED TO STEP ASIDE AND I AM USING
23 THE WORD TRANSITION BUT YOU WERE REPLACED AND ANOTHER P.R.
24 TOOK OVER?

25 A I HAVE NOT BEEN ASKED TO STEP ASIDE. I HAVE ACTUALLY

1 ASKED TO STEP ASIDE, AND I HAVE BEEN THE STEP ONE IN THAT
2 PROCESS A NUMBER OF TIMES.

3 Q WHAT HAPPENS IN THAT SITUATION?

4 A I TURNED OVER ALL OF THE BOOKS AND RECORDS TO THE
5 SUCCESSOR.

6 Q WERE THERE ANY PROBLEMS IN THAT PARTICULAR SITUATION?

7 A NO. I WAS CALLED ON A NUMBER OF OCCASIONS TO TALK
8 ABOUT CERTAIN ASPECTS OF THE TRUST.

9 Q AND AS A FIDUCIARY YOU CONTINUE TO HAVE THE FIDUCIARY
10 DUTIES TO HELP WITH THE MOVEMENT OF THE FILE TO THE OTHER
11 P.R.?

12 A WELL, I TURNED IT ALL OVER. IT WAS A ONE-STEP
13 PROCESS THERE. I HAD MY OWN PERSONAL OBLIGATION TO
14 CONSULT WITH THEM AS NEEDED JUST TO ASSIST WITH THEIR
15 TAKING OVER.

16 Q DID YOU HAVE THE OPPORTUNITY TO REVIEW THE
17 BULLET-POINT TRANSITION PLAN?

18 MS. HAYES: OBJECTION, YOUR HONOR.

19 THE COURT: SUSTAINED.

20 MR. ROSEN: THANK YOU, YOUR HONOR. LET ME CONFER
21 WITH CO-COUNSEL, YOUR HONOR. I FEEL I AM IN FOR A LITTLE
22 CRITICISM.

23 THE COURT: ANYBODY ELSE HAVE ANY QUESTIONS FOR
24 MR. BAUKNIGHT?

25 MR. ROSEN: YOUR HONOR, I HAVE NO FURTHER QUESTIONS.

1 THE COURT: THANK YOU. ANYBODY ELSE? MR. LEVENSON?

2 CROSS-EXAMINATION

3 BY MR. LEVENSON:

4 Q AS AN EXPERT IN FIDUCIARY MATTERS I WANT YOU TO
5 ASSUME THAT THIS JUDGE WERE TO APPROVE THE SETTLEMENT
6 AGREEMENT. I WANT YOU TO FURTHER ASSUME THAT THIS JUDGE
7 WERE TO MAKE A DETERMINATION THAT A SUCCESSOR FIDUCIARY
8 WERE TO BE APPOINTED. I WANT YOU TO MAKE THOSE
9 ASSUMPTIONS, SIR.

10 A OKAY.

11 Q BASED ON THOSE ASSUMPTIONS DO YOU KNOW ANY FACTS FROM
12 YOUR REVIEW OF THE CIRCUMSTANCES OF THIS CASE WHY THE
13 SUCCESSOR --

14 MS. HAYES: SAME OBJECTION, YOUR HONOR.

15 THE COURT: SUSTAINED.

16 MR. LEVENSON: MAY I UNDERSTAND THE BASIS FOR THE
17 OBJECTION, YOUR HONOR --

18 THE COURT: WELL --

19 MR. LEVENSON: -- SO I CAN RESPOND TO IT?

20 THE COURT: WELL, IT'S GOING INTO THIS PARTICULAR
21 CASE. YOU NEED TO KEEP YOUR HYPOTHETICAL GOING. YOU WERE
22 GOOD FOR THE FIRST TWO HYPOTHETICALS AND THEN YOU WENT
23 STRAIGHT TO THIS CASE.

24 Q GENERALLY I WANT YOU TO ASSUME THAT THERE IS A CASE
25 THAT I WON'T MENTION THAT HAS ALL KINDS OF COMPLEX

1 LITIGATION INVOLVED IN IT. DO YOU KNOW ANY REASON THAT A
2 SUCCESSOR FIDUCIARY COULD NOT IMMEDIATELY STEP INTO THAT
3 ROLE AND DIRECT THE ADMINISTRATION OF THE ESTATE OR THE
4 TRUST?

5 MS. HAYES: OBJECT TO SPECULATION, YOUR HONOR, AND
6 FOUNDATION.

7 THE COURT: OVERRULED.

8 THE WITNESS: NO, SIR, I DON'T. MR. LEVENSON, THAT
9 SITUATION HAPPENS, I'M SURE, ON A REGULAR BASIS BECAUSE--

10 THE COURT: WELL, DON'T SPECULATE. IF YOU KNOW.

11 THE WITNESS: WELL, I'VE READ MANY TRUSTS AND MANY
12 WILLS, AND UNDER THE HEADING OF SUCCESSION AND TENURE
13 THERE IS GENERALLY A LISTING OF HOW THE FIDUCIARY
14 SUCCESSION WOULD FLOW. THAT'S PUT IN THERE IN
15 ANTICIPATION OF SOMEONE REFUSING TO SERVE OR BEING UNABLE
16 TO SERVE. TRUSTEES REGULARLY DO BOTH. THEY DIE. THEY'RE
17 INCAPACITATED. THEY SIMPLY DON'T WANT TO SERVE AND A
18 SUBSTITUTE TRUSTEE OR FIDUCIARY IS A REGULAR OCCURRENCE
19 WITH RESPECT TO TRUSTS.

20 Q HAS THERE EVER BEEN AN OCCASION WHERE IN GENERAL YOU
21 HAVE FELT IN YOUR EXPERIENCE THAT WHERE A PRIOR FIDUCIARY
22 WAS REPLACED OR DIED -- EITHER REMOVED OR REPLACED OR
23 DIED -- AND A SUCCESSOR WAS APPOINTED THAT THERE WAS A
24 NEED FOR A SPECIAL TRUSTEE OR SPECIAL ADMINISTRATOR IN A
25 CASE THAT YOU ACTUALLY WERE INVOLVED IN OF SOME KIND?

1 A PRIOR TO JANUARY 30, 2009 I HAD NOT -- I HAD NOT
2 PARTICIPATED IN ANY FASHION IN ANY TRUST WHERE A SPECIAL
3 FIDUCIARY WAS INVOLVED.

4 Q OKAY. AND HOW MANY -- IF YOU COULD ESTIMATE FOR
5 JUDGE EARLY, HOW MANY CASES HAVE YOU BEEN INVOLVED IN
6 WHERE THERE HAS BEEN A SUCCESSION SUCH AS THE SIMULTANEOUS
7 TYPE THAT YOU DESCRIBED GENERALLY TO THE COURT -- SOMEONE
8 DIES OR IS REMOVED AND A SUCCESSOR IS APPOINTED?

9 A AT LEAST 50, MR. LEVENSON.

10 MR. LEVENSON: THANK YOU, SIR.

11 THE COURT: ANYTHING ELSE ON THIS SIDE OF THE AISLE?
12 MA'AM, ANY QUESTIONS ON CROSS?

13 MS. HAYES: YES, SIR, YOUR HONOR, JUST A FEW.

14 CROSS-EXAMINATION

15 BY MS. HAYES:

16 Q MR. BAUKNIGHT, ARE YOU RETAINED BY PARTIES TO TESTIFY
17 TODAY?

18 A ACTUALLY, NO, MA'AM, I'M NOT.

19 Q OKAY. SO YOU'RE --

20 A AS I TESTIFIED EARLIER I WAS HERE ALL WEEK AT THE
21 REQUEST OF HIS HONOR. I WAS ASKED IF I WOULD OBJECT TO
22 BEING CALLED THIS MORNING AND WAS CALLED.

23 Q ASKED BY MR. ROSEN?

24 A I WAS ASKED BY SOMEONE WHO APPROACHED MY ATTORNEY. I
25 AM NOT SURE WHO AMONGST THE SETTLING PARTIES ACTUALLY

1 APPROACHED MY ATTORNEY.

2 Q ARE YOU BEING COMPENSATED FOR YOUR TESTIMONY TODAY?

3 A UNFORTUNATELY, I HAVE NO ARRANGEMENTS WHATSOEVER FOR
4 BEING PAID, AND, AS I SAID, I TURNED OFF THE CLOCK ONCE I
5 WAS CALLED. SO, AT THIS POINT IN TIME I HAVE NO
6 UNDERSTANDING THAT I WILL BE PAID.

7 Q THANK YOU. WE APPRECIATE YOU BEING HERE UNDER THOSE
8 CIRCUMSTANCES. IF YOU WERE ASKED BY THE COURT OR THE
9 PARTIES TO STEP IN AS A SPECIAL ADMINISTRATOR OR SPECIAL
10 TRUSTEE --

11 MR. ROSEN: YOUR HONOR --

12 THE COURT: NOW, THAT'S --

13 MS. HAYES: THIS ISN'T JANUARY 30.

14 THE COURT: NO, MA'AM.

15 MS. HAYES: THANK YOU, YOUR HONOR.

16 THE COURT: YOU'RE ASKING ABOUT THIS CASE AND YOU'VE
17 BEEN OBJECTING TO THAT. IT'S ON APPEAL.

18 MS. HAYES: YOUR HONOR, IT IS A DIFFERENT ISSUE, BUT
19 I'LL SAVE IT.

20 THE COURT: WELL, I UNDERSTAND THAT, BUT --

21 MS. HAYES: THANK YOU, YOUR HONOR.

22 THE COURT: -- IT WAS YOUR OBJECTION AND I THINK
23 RIGHTFULLY SO AND THAT IT'S ON APPEAL. WE CAN'T GO INTO
24 THAT.

25 MS. HAYES: THANK YOU YOUR HONOR. I APPRECIATE THAT.

1 THE COURT: I AM GETTING AFFIRMANCE FROM BEHIND YOU,
2 TOO. SO THAT MAKES ME FEEL BETTER.

3 MS. HAYES: THANK YOU, YOUR HONOR.

4 I BELIEVE YOU TESTIFIED THAT YOU HAVE NOT BEEN
5 INVOLVED IN A SITUATION WHERE THE REMOVAL OF A FIDUCIARY
6 WAS GOVERNED BY A SETTLEMENT DOCUMENT ITSELF?

7 THE WITNESS: I DID NOT TESTIFY TO THAT, I DON'T
8 BELIEVE.

9 Q OKAY. I MAY HAVE MISHEARD THE ANSWER. HAVE YOU EVER
10 BEEN INVOLVED IN A CASE WHERE A FIDUCIARY STEPPED ASIDE
11 BECAUSE THEY -- IT WAS A TERM OF A SETTLEMENT AGREEMENT.

12 A I AM ACTUALLY INVOLVED IN A SITUATION RIGHT NOW WHERE
13 A SETTLEMENT AGREEMENT IS BEING NEGOTIATED WHERE THAT HAS
14 BEEN A TERM PUSHED BY ONE OF THE BENEFICIARIES. THAT
15 SETTLEMENT AGREEMENT PROCESS IS ONGOING AND NOT SETTLED
16 YET. OTHER THAN THAT, I CANNOT THINK OF ANOTHER ONE OFF
17 THE TOP OF MY HEAD.

18 MS. HAYES: THANK YOU VERY MUCH, MR. BAUKNIGHT. I
19 APPRECIATE IT.

20 MR. ROSEN: NOTHING FURTHER, YOUR HONOR.

21 THE COURT: YOU MAY STEP DOWN.

22 MS. HAYES: IF THERE ARE NO OTHER QUESTIONS OF
23 MR. BAUKNIGHT, WE MOVE TO STRIKE THE TESTIFY BECAUSE HE
24 DID NOT TESTIFY TO THE DEGREE OF REASONABLE CERTAINTY.

25 THE COURT: BUT YOU DIDN'T OBJECT WHEN HE WAS ASKING

1 THE QUESTIONS.

2 MS. HAYES: WE OBJECT NOW BECAUSE WE BELIEVE THE
3 STANDARD WASN'T MET, YOUR HONOR.

4 THE COURT: OVERRULED.

5 MS. HAYES: THANK YOU, YOUR HONOR.

6 THE COURT: NEXT WITNESS. NEXT WITNESS.

7 MR. MEDLIN: YES, YOUR HONOR. WE'D LIKE TO CALL
8 MR. BUCHANAN PLEASE.

9 MR. BAILEY: YOUR HONOR, COULD WE -- BEFORE
10 MR. BUCHANAN TESTIFIES COULD WE REQUEST SOME GUIDANCE FROM
11 THE COURT ON TRYING TO ELIMINATE A LOT OF TESTIMONY -- NOT
12 NECESSARILY FROM MR. BUCHANAN, BUT FROM OTHER SETTLING
13 PARTIES? WHAT WE WERE LOOKING FOR IS WE WOULD LIKE FOR
14 THE SETTLING PARTIES TO MAKE AS A SINGLE EXHIBIT THE
15 ENTIRE AGREEMENT THAT THEY'RE -- THAT'S BEING PRESENTED TO
16 YOU FOR APPROVAL. WE THINK IT SHOULD BE A PART OF THE
17 RECORD.

18 THE COURT: GO AHEAD.

19 MR. BAILEY: AND THE SECOND THING WE'RE INTERESTED IN
20 IS IT'S MY UNDERSTANDING THAT THE HEARING THAT IS TAKING
21 PLACE TODAY IS ONLY IN THE CASE OF THE MCMASTER VERSUS
22 DALLAS, CASE NUMBER 08-1647. IS MY UNDERSTANDING CORRECT
23 OF THAT?

24 MR. MEDLIN: YOUR HONOR, OUR MOTION TO APPROVE THE
25 SETTLEMENT INCLUDES THE GENERAL ESTATE MATTER AND THE

1 WILLS-TRUST-HEIR MATTER.

2 THE COURT: BUT THE CASE BEFORE ME TODAY EVEN THOUGH
3 IT INCLUDES ALL OF THAT IS THE MCMASTER CASE.

4 MR. MEDLIN: WELL, YOUR HONOR, THERE ARE THREE
5 CAPTIONS IN THE CASE. THE REAL SETTLEMENT IS IN THOSE TWO
6 CONTESTED MATTERS -- THE ESTATE -- THE MCMASTER CASE WAS A
7 PETITION TO REMOVE THE PERSONAL REPRESENTATIVES AND
8 TRUSTEES, BUT THE SETTLEMENT MOTION COVERS THE GENERAL
9 ESTATE MATTER AND THE WILLS-TRUST-HEIRS MATTER.

10 THE COURT: THAT'S YOUR POSITION?

11 MR. MEDLIN: YES, YOUR HONOR.

12 THE COURT: ALL RIGHT. MR. BAILEY? I MEAN, I ASSUME
13 IF I FIND IT TO BE JUST AND REASONABLE IT WILL TAKE CARE
14 OF THE WILLS-TRUST MATTER AND THE ESTATE MATTER AND ANY
15 OTHER CONTEST.

16 MR. BAILEY: I AM LOOKING AT THE CASE CAPTION THAT
17 THEY HAVE UTILIZED IN THEIR MOTION FOR THE APPROVAL OF THE
18 SETTLEMENT AGREEMENT IS ACTUALLY THE CASE CAPTION FOR THE
19 MCMASTER VERSUS DALLAS CASE.

20 THE COURT: WELL, IT'S IN RE: THE ESTATE OF JAMES
21 BROWN AND THE JAMES BROWN 2000 IRREVOCABLE TRUST.

22 MR. BAILEY: WELL, THAT -- I AM ONLY RECITING -- THEY
23 ONLY CITED THIS ONE CAPTION. THEY HAVE LISTED CASE NUMBER
24 122 AND 872, BUT THEY HAVEN'T PROVIDED CAPTIONS FOR THOSE
25 TWO CASES WHICH ARE SUBSTANTIALLY DIFFERENT FROM THE

1 CAPTION THAT'S IN THIS CASE.

2 THE COURT: I'LL NOTE YOUR OBJECTION. I AM MOVING
3 FORWARD ON IT AS CAPTIONED IN RE: ALL OF THE JAMES BROWN
4 LITIGATED MATTERS SETTLING PARTIES ARE ATTEMPTING TO
5 SETTLE. THAT IS JUST FOR JUDICIAL EFFICIENCY AND ECONOMY.

6 MR. BAILEY: THEN IT IS MY UNDERSTANDING THE ENTIRE
7 RECORD IN THIS CASE INCLUDING 122 IS BEING CONSIDERED IN
8 THIS HEARING OR HAS BEEN PRESENTED TO THE COURT IN THIS
9 HEARING BY --

10 THE COURT: MR. BAILEY, I AM CONSIDERING WHATEVER HAS
11 BEEN INTRODUCED INTO EVIDENCE. I DON'T -- I MEAN, Y'ALL
12 TRY YOUR OWN CASES. YOU'VE INTRODUCED SOME EXHIBITS. I
13 DON'T KNOW THAT YOU'VE INTRODUCED EVERYTHING, AND I ASSUME
14 THEY'RE GOING TO PROBABLY DO THAT BEFORE IT'S OVER, BUT I
15 DON'T KNOW.

16 MR. LEVENSON: I CAN -- THIS MAY BE AN AID TO THE
17 COURT ON THAT. I WANT TO MAKE A DISTINCTION BETWEEN THE
18 RECORD AND THE EVIDENCE, BUT I AGREE WITH MR. BAILEY THAT
19 THE COURT SHOULD CONSIDER THE ENTIRETY OF THE RECORD OF
20 ALL THE CASES OF ALL THE STYLES BUT IN ADDITION SO AS TO
21 MAKE IT EASIER CERTAIN EVIDENCE WAS INTRODUCED IN THIS
22 PROCEEDING --

23 THE COURT: THAT'S CORRECT.

24 MR. LEVENSON: -- BUT IN THE OTHER CAPTIONED
25 PROCEEDING WHERE YOU'VE HAD OTHER EVIDENTIARY MATTERS

1 WHERE EVIDENCE HAS BEEN PRESENTED. SO, I WOULD MOVE THAT
2 ANY EVIDENCE THAT YOUR HONOR HEARD IN ANY OF THE OTHER
3 MATTERS BE PART OF THE EVIDENTIARY RECORD TO BE CONSIDERED
4 IN THE TOTALITY OF THE MATTER WHICH IS BEFORE YOUR HONOR
5 TODAY WHICH IS THE MOTION TO -- THE MOTION WITH REGARD TO
6 SETTLEMENT AGREEMENT. OTHERWISE WE HAVE TO REINTRODUCE
7 THE EVIDENCE WHICH IS ALREADY ADMITTED. OBVIOUSLY, IF YOU
8 REFUSED TO ADMIT EVIDENCE IN OTHER PROCEEDINGS THAT WOULD
9 BE A MATTER OF THE RECORD TO GO UP WITH THE RECORD IN THE
10 EVENT SOME PARTY CHOSE TO APPEAL.

11 THE COURT: ANY OBJECTION TO MR. LEVENSON'S MOTION?

12 MR. BAILEY: NONE, YOUR HONOR.

13 THE COURT: VERY WELL. GRANTED. EVERYTHING -- I'M
14 SURE THE SUPREME COURT IS GOING TO LOVE IT, AND, MR.
15 BAILEY -- EXCUSE ME. GO AHEAD. MR. BAILEY, AS I SAID IN
16 CHAMBERS THIS MORNING WHEN Y'ALL ASKED ME IF I CAN JUST
17 PUT IT ALL ON THE RECORD AT THE APPROPRIATE TIME, BUT,
18 OBVIOUSLY, BEFORE I MAKE A RULING IN THIS CASE THE ENTIRE
19 AGREEMENT SIGNED BY THE SETTLING PARTIES IS GOING TO HAVE
20 TO BE PRESENTED TO THE COURT.

21 MR. BAILEY: ONE OF THE THINGS WE WOULD LIKE FOR THE
22 COURT TO DO IS WITH RESPECT TO THE CAPTION OF -- I GUESS
23 IT WOULD HAVE TO INCLUDE THE CAPTION OF 1647 AND 872 FOR
24 THE COURT TO INQUIRE IF THE NAMED PLAINTIFF IS PRESENT --
25 THE PARTY IS PRESENT -- HAS THE PARTY BEEN SERVED AND, IF

1 SO, HAS THE PARTY WAIVED NOTICE OF THE HEARING AS WE
2 CONTEND IT WAS DONE WITHOUT PROPER NOTICE AS -- HAS THE
3 PARTY READ THE SETTLEMENT AGREEMENT; HAS THE PARTY -- IF
4 THE PARTY IS NOT PRESENT, HAS THE ATTORNEY -- IS THE
5 ATTORNEY PRESENT FOR THAT PARTY TO STATE THAT THE
6 INDIVIDUAL PARTY AND ONLY IF THE PARTY IS NOT PRESENT HAS
7 AGREED TO THIS AND HAS READ IT, UNDERSTANDS IT, AND IS
8 VOLUNTARILY SIGNING IT, IN WHAT CAPACITY AS A PARENT OR AS
9 A NAMED PARTY.

10 WE THINK THIS WILL -- IF WE WENT THROUGH THIS PROCESS
11 -- AND I DON'T MEAN RIGHT THIS MINUTE. I AM SAYING IF WE
12 WENT THROUGH THIS PROCESS WE BELIEVE IT WOULD SAVE SEVERAL
13 DAYS OF TESTIMONY BY ACTUALLY HAVING -- REQUIRING THESE
14 PEOPLE OR REQUEST THESE PEOPLE TO APPEAR AND BE EXAMINED
15 UNDER OATH.

16 THE COURT: MR. BAILEY, AS WE DISCUSSED IN CHAMBERS
17 EARLIER THIS MORNING WHICH I SAID I'LL PUT ON THE RECORD
18 WHEN WE TAKE A BREAK AND GET THE COURT REPORTER BACK THERE
19 IT WAS MY INTENT -- I MENTIONED A NUMBER OF CONCERNS, BUT
20 ONE OF THEM WAS I WAS GOING TO REQUIRE, OBVIOUSLY, THE
21 COMPLETE AGREEMENT SIGNED BY ALL OF THE SETTling PARTIES;
22 THAT I WAS GOING TO REQUIRE A STATEMENT BY EACH
23 INDIVIDUAL, FOR LACK OF A BETTER TERM, BENEFICIARY OR
24 PERSON TAKING UNDER THE SETTLEMENT A STATEMENT SIGNED BY
25 THEM OR IF IT'S A CHILD BY THEIR PARENT AS THE STATUTE

1 INDICATES THAT THEY'VE READ IT, THAT THEY'RE SATISFIED
2 WITH IT, THEY'RE SATISFIED WITH THEIR LAWYER AND THEY HAD
3 REPRESENTATION.

4 AS I SAID IN CHAMBERS SIMILAR TO TAKING A GUILTY
5 PLEA, YOU KNOW, I GO THROUGH THE WHOLE 9 YARDS OF
6 UNDERSTAND WHAT THEY'RE DOING, VOLUNTARILY, ALL OF THAT,
7 AND I WILL REQUIRE THAT TO BE ATTACHED TO THE SETTLEMENT
8 AGREEMENT BY ALL BENEFICIARIES. I MENTIONED THAT IN
9 CHAMBERS EARLIER THIS MORNING. WE'LL GET THAT DRAFTED UP
10 AND THAT WILL BE A CONDITION OF THE AGREEMENT. ANYTHING
11 ELSE?

12 MR. BAILEY: THANK YOU, YOUR HONOR.

13 THE COURT: GOOD MORNING.

14 MR. BUCHANAN: GOOD MORNING, SIR.

15 ROBERT L. BUCHANAN, JR., AFTER BEING DULY SWORN,
16 TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MR. MEDLIN:

19 Q GOOD MORNING.

20 A GOOD MORNING.

21 Q MR. BUCHANAN, IF THE JUDGE APPROVES THIS SETTLEMENT
22 AGREEMENT, DO YOU INTEND TO APPEAL IT?

23 A YES, SIR.

24 Q DO YOU KNOW IF THERE ARE ANY MATERIAL FACTS IN
25 DISPUTE IN THIS CASE?

1 MR. BAILEY: YOUR HONOR, I WOULD OBJECT TO --

2 THE WITNESS: I DON'T UNDERSTAND THE QUESTION.

3 THE COURT: HOLD ON A SECOND. WHICH CASE ARE YOU
4 TALKING ABOUT? BE SPECIFIC.

5 MR. MEDLIN: I'M TALKING ABOUT THE MATTERS BEING
6 GOVERNED BY THE SETTLEMENT AGREEMENT, YOUR HONOR. YOU
7 HAVE TO DETERMINE IF IT'S JUST AND REASONABLE, AND WE HAD
8 A LOT OF TESTIMONY YESTERDAY BY MRS. POPE THAT THERE
9 WEREN'T MATERIAL FACTS AT ISSUE WITH RESPECT TO WHETHER
10 THERE WAS A GOOD FAITH CONTROVERSY, AND I AM ASKING
11 MR. BUCHANAN IF HE THINKS THERE IS NO MATERIAL FACTS AT
12 ISSUE IN THIS CASE.

13 THE COURT: THAT WOULD BE THE WILLS CONTEST AND I
14 ASSUME MS. BROWN'S AND ALL THOSE --

15 MR. MEDLIN: AND LITTLE MAN'S CLAIMS, YES.

16 MR. BAILEY: I WITHDRAW THE OBJECTION BECAUSE IT'S
17 NOW CLEAR WHAT HE'S ASKING.

18 MR. MEDLIN: THANK YOU.

19 THE COURT: SURE.

20 THE WITNESS: I DON'T THINK THERE ARE VERY MANY
21 MATERIAL FACTS KNOWN.

22 Q MR. BUCHANAN, DO YOU ASSERT THAT THERE ARE NO
23 MATERIAL FACTS IN CONTROVERSY IN THIS CASE?

24 A WELL, I DON'T KNOW WHAT YOU MEAN BY THAT QUESTION.

25 Q IS THERE ANY DISPUTE AMONG THE PARTIES AS TO WHETHER

1 A FACT EXISTS ONE WAY OR ANOTHER WAY THAT YOU'RE AWARE OF?

2 A ASK ME ABOUT THE FACT THAT YOU'RE ASKING ME.

3 Q I AM ASKING ABOUT THE ENTIRE CASE. YOU'VE BEEN
4 SERVING AS A FIDUCIARY FOR OVER A YEAR.

5 THE COURT: NOW, PROFESSOR, IF HE CAN'T ANSWER IT,
6 THEN YOU'RE GOING TO HAVE TO BE SPECIFIC OR MOVE ON.

7 Q WELL, FOR EXAMPLE, MR. BUCHANAN, BUT I DON'T WANT TO
8 LIMIT MY QUESTION --

9 A THANK YOU. AN EXAMPLE WOULD HELP. AN EXAMPLE WOULD
10 HELP.

11 THE COURT: HOLD ON. ALL RIGHT. ONE AT A TIME,
12 PLEASE.

13 Q IS THERE A DISPUTE ABOUT, FOR EXAMPLE, WHETHER LITTLE
14 MAN IS THE BIOLOGICAL CHILD OF JAMES BROWN?

15 A I THINK THERE IS BECAUSE JUDGE EARLY ORDERED LITTLE
16 MAN TO HAVE THE OFFICIAL D.N.A. DONE AT THE OFFICIAL
17 LABORATORY. WE, THEREAFTER, PAID FOR IT AND HE'S NEVER
18 HAD IT.

19 Q IS THERE A DISPUTE ABOUT WHETHER THE 2000 WILL OF
20 MR. BROWN IS A VALID WILL?

21 A WELL, THE PARTIES ARE DISPUTING IT, BUT THE FACTS ARE
22 SO UNKNOWN BECAUSE THERE'S BEEN NO DISCOVERY.

23 Q IS THERE A DISPUTE ABOUT THE VALIDITY OF THE 2000
24 TRUST?

25 A THERE HADN'T BEEN ANY DISCOVERY.

1 Q ARE YOU AWARE OF ANY PROVISIONS IN THE TRUST OR ANY
2 EVIDENCE THAT'S BEEN PRODUCED SO FAR THAT MIGHT INDICATE
3 THAT THERE WAS A GOOD FAITH REASON TO BRING THOSE CLAIMS?

4 A GIVEN THE TOTALITY OF THE CIRCUMSTANCES AND ALL OF
5 THE INFORMATION THAT HAS SURFACED SINCE THIS CASE BEGAN, I
6 DON'T THINK THOSE CLAIMS WERE BROUGHT IN GOOD FAITH.

7 Q DO YOU THINK THAT THIS CONTROVERSY OF THE MATTERS
8 REPRESENTED BY THE SETTLEMENT AGREEMENT -- ARE THERE NONE
9 THAT ARE BEING BROUGHT IN GOOD FAITH?

10 A I DON'T UNDERSTAND THE QUESTION.

11 Q WELL, FOR EXAMPLE, IS THE CLAIM BY TOMI RAE BROWN TO
12 AN ELECTIVE SHARE OR AN OMITTED SPOUSE'S SHARE, DO YOU
13 THINK THERE IS NO BASIS THAT THAT WAS BROUGHT IN GOOD
14 FAITH?

15 A WELL, WE HAVEN'T HAD ANY DISCOVERY. SO, THERE IS A
16 WHOLE LOT OF FACTS WE DON'T KNOW ABOUT THAT.

17 Q I'M AWARE OF THAT, MR. BUCHANAN. I AM ASKING AS YOU
18 SIT THERE TODAY TESTIFYING UNDER OATH DO YOU THINK THAT
19 THERE ARE GOOD FAITH REASONS, FACTS SUPPORTING THOSE
20 REASONS TO BRING AN ELECTIVE SHARE CLAIM OR AN OMITTED
21 SPOUSE'S CLAIM OR AN OMITTED CHILD'S CLAIM?

22 A YOU KNOW, I WOULDN'T CHARACTERIZE IT AS GOOD FAITH.
23 THE WILL IS VERY CLEAR ABOUT THE OBLIGATION OF THE
24 FIDUCIARY TO OPPOSE ANY CLAIM BY THE WIFE OR FORMER WIFE.

25 Q WHAT DOES YOUR OBLIGATION TO OPPOSE A CLAIM HAVE TO

1 DO A WITH AN ELECTIVE SHARE CLAIM AND WHETHER IT'S IN GOOD
2 FAITH?

3 A IT HAS TO DO WITH WHETHER OR NOT SHE'S THE WIFE.

4 Q WHAT DOES IT HAVE TO DO WITH WHETHER SHE BROUGHT HER
5 STATUTORY CLAIM WHICH THIS SOUTH CAROLINA SUPREME COURT
6 HAS ON MANY OCCASIONS STATED IS AN IMPORTANT STATUTORY
7 RIGHT -- HOW CAN BRINGING AN ELECTIVE SHARE CLAIM NOT BE
8 IN GOOD FAITH?

9 A WHERE THERE IS SUBSTANTIAL EVIDENCE THAT SHE'S NOT
10 THE WIFE, THEN I WOULD SUGGEST TO YOU THAT THERE IS LESS
11 THAN GOOD FAITH IN BRINGING IT.

12 Q SO, YOU THINK THAT SOMEONE WHO THINKS THAT SHE'S
13 MARRIED TO JAMES BROWN WHO HAS A MARRIAGE LICENSE, A
14 MARRIAGE CERTIFICATE, AN ORDER FROM THE FAMILY COURT THAT
15 THERE WAS NO IMPEDIMENT TO HER MARRIAGE TO JAMES BROWN HAS
16 BROUGHT HER ELECTIVE SHARE CLAIM, HER STATUTORY CLAIM IN
17 BAD FAITH?

18 A I WOULD SAY THAT THERE IS REASON TO KNOW THAT IT IS
19 BROUGHT IN LESS THAN GOOD FAITH AND I WOULD SAY THAT
20 NOBODY CAN KNOW WHETHER IT WAS BROUGHT IN BAD FAITH UNTIL
21 THERE'S BEEN SOME DISCOVERY DONE --

22 Q ARE YOU --

23 A -- AND THERE HAD HASN'T BEEN.

24 Q I'M SORRY. I SHOULD HAVE LET YOU FINISH. ARE YOU
25 AWARE AS OF TODAY OF ANY REASON WHY, FOR EXAMPLE,

1 MS. BROWN HAS BROUGHT HER CLAIM IN BAD FAITH? DOESN'T A
2 SPOUSE HAVE A RIGHT TO BRING AN ELECTIVE SHARE CLAIM?

3 A A SPOUSE HAS A RIGHT TO BRING AN ELECTIVE SHARE
4 CLAIM.

5 Q OKAY. AND YOU DON'T DISAGREE THAT MS. BROWN BELIEVES
6 AS BEST AS YOU CAN TELL THAT SHE IS THE SURVIVING SPOUSE
7 OF JAMES BROWN? YOU MAY DISAGREE.

8 A YOU KNOW, I HAVE NOT READ HER OR ATTENDED HER
9 DEPOSITION. THERE'S -- THERE IS EVIDENCE THAT WE'VE BEEN
10 TRYING TO DEVELOP OVER THE PERIOD OF THE LAST TWO YEARS.
11 IT HASN'T GOTTEN DEVELOPED. THERE ARE MATERIAL FACTS THAT
12 DO NEED TO BE DEVELOPED AND KNOWN IN THE CONTEXT OF A
13 SETTLEMENT, A PROPOSED SETTLEMENT SUCH AS THIS.

14 Q LET ME TRY TO ASK MY QUESTION AGAIN MORE DIRECTLY,
15 MR. BUCHANAN. DO YOU UNDERSTAND THAT IN AN ELECTIVE SHARE
16 CASE THE SURVIVING SPOUSE HAS TO PROVE THAT SHE IS A
17 SURVIVING SPOUSE?

18 A I WOULD AGREE SHE WOULD HAVE TO PROVE SHE'S A
19 SURVIVING SPOUSE.

20 Q ALL RIGHT. AND IF A SURVIVING SPOUSE HAD A MARRIAGE
21 LICENSE AND A MARRIAGE CERTIFICATE, WOULD YOU THINK THAT
22 THAT SPOUSE WAS ACTING IN BAD FAITH BY ASSERTING HER
23 ELECTIVE SHARE CLAIM?

24 A WELL, IT WOULD DEPEND ON THE CIRCUMSTANCES OF HOW
25 THAT MARRIAGE CERTIFICATE AND LICENSE WAS PROCURED --

1 Q OKAY.

2 A -- AND WHAT HAPPENED.

3 Q ALL RIGHT. AND IF YOU ADD TO THAT THAT THERE HAS
4 BEEN A FAMILY COURT ORDER THAT FINDS THAT THERE WAS NO
5 IMPEDIMENT TO THAT MARRIAGE LICENSE AND MARRIAGE
6 CERTIFICATE, WOULD YOU THEN SAY THAT IT'S NOT BEING
7 BROUGHT IN GOOD FAITH?

8 MR. BAILEY: YOUR HONOR, I THINK IF PROFESSOR MEDLIN
9 IS GOING TO --

10 THE COURT: IS THAT AN OBJECTION?

11 MR. BAILEY: -- EXPLORE THAT DOCUMENT HE NEEDS TO
12 ALLOW MR. BUCHANAN TO LOOK AT IT TO SEE IF IT IS BEING
13 REPRESENTED TO HIM AS WHAT'S IN THAT DOCUMENT.

14 THE COURT: MR. BAILEY, THEY TRIED TO DO THAT
15 YESTERDAY AND Y'ALL OBJECTED TO IT --

16 MR. BAILEY: I'LL BE HAPPY TO DO THAT, YOUR HONOR.

17 THE COURT: -- AND I KEPT IT OUT.

18 MR. BAILEY: YOU ALLOWED IT TO GO IN.

19 THE COURT: I PUT THE MARRIAGE CERTIFICATE IN, BUT I
20 DIDN'T PUT THE DIVORCE DECREE AND ALL THAT IN.

21 MR. BAILEY: YOU DIDN'T PUT YOU PUT THE MARRIAGE
22 CERTIFICATE IN, I DON'T BELIEVE.

23 MR. SHAHID: YOU PUT THE FINAL ORDER.

24 THE COURT: VERY WELL. WHATEVER I PUT IN, I PUT IN.
25 SHOW HIM WHATEVER IS IN EVIDENCE. IF YOU WANT TO PUT

1 MORE, OFFER IT.

2 MR. MEDLIN: I'LL DO THAT LATER, YOUR HONOR, BECAUSE
3 I INTEND TO COME BACK TO THIS LINE OF QUESTIONING IF
4 THAT'S OKAY.

5 THE COURT: SURE. YOU CAN CONDUCT YOUR EXAMINATION
6 HOWEVER YOU WANT TO.

7 MR. MEDLIN: AT MR. BAILEY'S INVITATION I'LL
8 DEMONSTRATE ALL OF THAT.

9 THE COURT: VERY WELL.

10 Q BUT YOU DID SAY, MR. BUCHANAN, THAT YOU ARE AWARE OF
11 AT LEAST SOME MATERIAL FACTS IN DISPUTE?

12 A YES, SIR.

13 Q LET ME ASK AGAIN JUST TO BE CLEAR. IS THERE ANY --
14 STRIKE THAT. DO YOU BELIEVE THAT YOU AND MRS. POPE ARE
15 THE ONLY TWO PEOPLE CAPABLE OF DEFENDING THE ESTATE PLAN
16 OF JAMES BROWN?

17 A NO. I JUST BELIEVE THAT WE'RE THE ONLY TWO WHO ARE.

18 Q I'M NOT SURE I UNDERSTOOD THAT ANSWER, MR. BUCHANAN.

19 A THE ONLY TWO WHO ARE DEFENDING THE ESTATE PLAN. THE
20 ONLY TWO PEOPLE WHO ARE INTERESTED IN HONORING AND
21 PRESERVING THE LAST WILL AND TESTAMENT OF JAMES BROWN AND
22 THE 2000 IRREVOCABLE TRUST AGREEMENT -- AT LEAST AMONG THE
23 PEOPLE WHO ARE HERE. NOW, THERE MAY BE SOME PEOPLE OUT OF
24 THIS ROOM WHO MIGHT BE JUST AS INTERESTED IN IT, BUT JUST
25 AREN'T HERE.

1 Q SO --

2 A JUST AS THERE MIGHT BE SOME PEOPLE OUT OF THIS ROOM
3 WHO MIGHT BE JUST AS INTERESTED IN THIS PROPOSED
4 SETTLEMENT WHO AREN'T HERE.

5 Q WE'LL TALK ABOUT THAT, MR. BUCHANAN, SINCE YOU'VE
6 RAISED IT, BUT LET'S HOLD THAT FOR JUST A MINUTE. YOU'RE
7 SAYING THAT THERE IS A UNIVERSE OF PEOPLE OUTSIDE OF THIS
8 COURTROOM FROM WHOM WE MIGHT DRAW TO SERVE AS, IF THE NEED
9 ARISE, A SUBSTITUTE FIDUCIARY WHO COULD DEFEND THE ESTATE
10 PLAN OF JAMES BROWN?

11 A THERE ARE PEOPLE IN THE WORLD, SOME OF WHOM WHO MAY
12 BE CAPABLE AND INTERESTED -- CAPABLE OF AND INTERESTED IN
13 DEFENDING THE ESTATE PLAN.

14 Q WITHOUT YOUR INVOLVEMENT, WITHOUT MRS. POPE'S
15 INVOLVEMENT?

16 A RIGHT.

17 Q IF THE 2000 WILL AND TRUST ARE UPHELD -- I ASSUME
18 THAT YOU'VE READ THE 2000 WILL AND TRUST MANY TIMES.

19 A WELL, I MEAN, I'M LIKE EVERYBODY IN THE ROOM. WE'VE
20 LOOKED AT THEM FOR A COUPLE OF YEARS. I HAVEN'T LOOKED AT
21 THEM RECENTLY.

22 Q WELL, WITH ALL DUE RESPECT, MR. BUCHANAN, YOU
23 UNDERSTAND WHY YOU'RE NOT LIKE EVERYBODY IN THE ROOM IN
24 ONE RESPECT, OTHER THAN MRS. POPE; CORRECT?

25 A YOU MEAN THAT I WASN'T HERE YESTERDAY AND THE DAY

1 BEFORE?

2 Q WELL, NO, BECAUSE MRS. POPE WAS HERE. SO, YOU AND
3 MRS. POPE HAVE SOMETHING IN COMMON THAT IS DIFFERENT FROM
4 EVERYBODY ELSE IN THIS ROOM. DO YOU UNDERSTAND WHAT THAT
5 IS?

6 A OH, ABSOLUTELY.

7 Q AND WHAT IS THAT JUST TO BE CLEAR?

8 A WE'RE THE PERSONAL REPRESENTATIVES AND THE TRUSTEES.

9 Q AND YOU'RE FIDUCIARIES?

10 A THAT'S CORRECT.

11 Q RIGHT. SO, YOU WOULD BE INTIMATELY FAMILIAR WITH THE
12 DOCUMENTS THAT YOU ARE SO VIGOROUSLY AND ZEALOUSLY
13 DEFENDING?

14 A WELL, I, LIKE YOU, WOULD REFER TO THE DOCUMENTS.

15 Q I WASN'T GOING TO ASK THE NEXT QUESTION,
16 MR. BUCHANAN -- CAN YOU RECITE THE TERMS OF THE WILL AND
17 TRUST FROM HEART? I WASN'T GOING TO DO THAT. SURE, BUT I
18 AM JUST ASKING YOU FEEL FAMILIAR AND COMFORTABLE WITH THE
19 TERMS AND DOCUMENTS? YOU'VE LOOKED AT THEM A BUNCH?
20 YOU'VE CONSIDERED THEM?

21 A WELL, I HAVE LOOKED AT THEM. THAT DOESN'T MEAN I
22 DON'T NEED TO LOOK AT THEM IF WE -- IF MRS. POPE AND I ARE
23 TALKING ON THE TELEPHONE AND HAVE SOME DISCUSSION ABOUT AN
24 ISSUE THAT WE DON'T HAVE TO PULL IT OUT OR IF I WERE
25 TALKING TO YOU, YOU KNOW, IN MY OFFICE ABOUT SOMETHING

1 THAT I WOULDN'T HAVE TO PULL IT OUT AND LOOK AT IT.

2 Q AND, MR. BUCHANAN, I'M NOT IMPLYING THAT AT ALL.

3 THAT'S NOT WHERE I'M HEADED WITH THIS.

4 THE COURT: WELL, GET TO WHERE YOU'RE HEADED.

5 MR. MEDLIN: WELL, YOUR HONOR, I JUST WANTED TO MAKE

6 SURE HE DIDN'T THINK I WAS ACCUSING HIM OF NOT MEMORIZING

7 THE DOCUMENTS. I'M NOT.

8 THE COURT: HE'S NOT. HE'S NOT.

9 Q IF THE 2000 WILL AND TRUST ARE UPHELD, IF THE

10 CONTESTS GO AWAY, WHO HAS AN INTEREST IN MR. BROWN'S

11 PROBATE ASSETS AND TRUST ASSETS OTHER THAN THE SETTLING

12 PARTIES?

13 A WELL, WE KNOW -- THE WILL SAYS WHO IS ENTITLED TO

14 RECEIVE THE PERSONAL AND HOUSEHOLD EFFECTS. OKAY?

15 Q OKAY.

16 A THE 2000 WILL PROVIDES THAT.

17 Q MR. BUCHANAN, WOULD YOU LIKE TO --

18 A AS I RECALL THE 1999 WILL PROVIDES THE SAME THING.

19 Q WOULD YOU LIKE THAT?

20 A YEA.

21 Q I'M SORRY, YOUR HONOR. I AM NOT TRYING TO BLINDSIDE

22 HIM HERE. I'M SORRY, YOUR HONOR.

23 THE COURT: DON'T APOLOGIZE TO ME.

24 Q CONTINUE. DO CERTAIN CHILDREN GET THE PERSONAL

25 PROPERTY?

1 A THAT'S RIGHT. PERSONAL HOUSEHOLD EFFECTS.

2 Q AND THEN?

3 A AND THEN, YOU KNOW, THE GRANDCHILDREN'S TRUST AND WE
4 KNOW THAT THERE IS A CHARITABLE TRUST.

5 Q OKAY. AND IF YOU ASSUME FOR PURPOSES OF THIS
6 QUESTION THAT THE ATTORNEY GENERAL CAN REPRESENT THE
7 CHARITABLE BENEFICIARIES, ARE ANY SETTLING PARTIES --
8 EXCUSE ME. IS THERE ANYONE OTHER THAN ONE OF THE SETTLING
9 PARTIES WHO IS ENTITLED TO SOMETHING UNDER THAT WILL AND
10 TRUST?

11 Q WELL, I'M TRYING TO REMEMBER. DO YOUR SETTLING
12 PARTIES INCLUDE JIM GRIFFIN'S CLIENTS?

13 Q DO NOT; NOR MR. BARR'S?

14 A OKAY.

15 Q AT THIS POINT.

16 A ISN'T THERE A MINOR GRANDCHILD WHO'S THE CHILD OF
17 DARYL?

18 Q ASSUME THERE IS, MR. BUCHANAN.

19 A AND, YOU KNOW, THERE IS NOBODY -- THERE IS NOBODY
20 HERE FOR THAT GRANDCHILD WHO WOULD HAVE A RIGHT TO BE
21 EDUCATED IN THE EDUCATIONAL GRANDCHILDREN'S EDUCATIONAL
22 TRUST.

23 Q LET ME MAKE SURE I ASKED MY -- YOU UNDERSTOOD MY
24 QUESTION. IF THE TRUST WERE UPHeld AND IF THE WILL WERE
25 UPHeld, ARE THERE ANY SETTLING PARTIES -- EXCUSE ME. I'M

1 NOT ASKING THE QUESTION ACCURATELY. IS THERE ANYONE OTHER
2 THAN THE SETTLING PARTIES WHO WOULD BE ENTITLED TO
3 SOMETHING UNDER THE WILL AND THE TRUST?

4 THE COURT: IF IT WERE UPHELD.

5 Q IF IT IS UPHELD WHICH I WOULD AS ASSERT TO YOU IS
6 WHAT OUR SETTLEMENT AGREEMENT DOES.

7 A NO. IF THE WILL AND TRUST ARE UPHELD AND ALL OF THE
8 GRANDCHILDREN AND ALL OF THE CHILDREN AND EVERYBODY WHO
9 QUALIFIES FOR THE CHARITABLE TRUST ARE INVOLVED
10 APPROPRIATELY, THEN THERE WOULDN'T BE ANYBODY ELSE.

11 Q OKAY. AND, MR. BUCHANAN, I APPRECIATE YOUR
12 QUALIFICATION, AND, NOT TO ANTICIPATE YOUR POSITION, BUT
13 RESPECTING WHAT I ANTICIPATE YOUR POSITION WOULD BE DO YOU
14 BELIEVE THE ATTORNEY GENERAL HAS THE AUTHORITY TO
15 REPRESENT THE CHARITABLE BENEFICIARIES?

16 A I BELIEVE THE ATTORNEY GENERAL HAS THE AUTHORITY TO
17 DEFEND THE INTEREST OF THE CHARITABLE BENEFICIARIES, AND I
18 THINK IF OUR -- YOU KNOW, RIGHT NOW WE AS THE TRUSTEES
19 UNDERSTAND THAT WE ALSO HAVE THE AUTHORITY UNDER THE TRUST
20 CODE TO DEFEND THE CHARITABLE BENEFICIARIES. SO, I THINK
21 -- TO ANSWER YOUR QUESTION, I THINK IF THE SITUATION WERE
22 REVERSED AND WE WERE THE ONES WHO WERE TRYING TO SETTLE IT
23 BASED ON THIS SETTLEMENT AND THE ATTORNEY GENERAL OPPOSED
24 IT, THEY WOULD HAVE THE RIGHT -- THEY WOULD HAVE STANDING
25 TO OPPOSE IT.

1 Q SOUNDS TO ME LIKE YOU BELIEVE THE ATTORNEY GENERAL
2 WOULD HAVE THE POWER TO TRUMP YOU IN THAT SITUATION?

3 A WELL, I DIDN'T SAY THAT. I SAID THEY WOULD HAVE
4 STANDING TO DISAGREE JUST AS I BELIEVE WE HAVE STANDING TO
5 DISAGREE.

6 Q OKAY. HOW ABOUT YOUR STANDING TO OPPOSE A SETTLEMENT
7 AGREEMENT? WHAT IS THAT STANDING, AS YOU UNDERSTAND IT?

8 A WELL, WHAT I UNDERSTAND IS THAT I HAVE AN OBLIGATION
9 TO DO WHAT THE WILL AND THE TRUST DIRECT ME TO DO AND
10 INSOFAR AS THE SETTLEMENT IS CONCERNED -- THE SETTLEMENT
11 AGREEMENT IS CONCERNED -- I THINK I HAVE AN OBLIGATION TO
12 DO WHAT I CAN TO ENSURE THAT THE SETTLEMENT IS REACHED BY
13 COMPETENT SUCCESSORS.

14 Q YOU CERTAINLY HAVE A SAY IN THE PROCEEDINGS,
15 MR. BUCHANAN, YOU WOULD BELIEVE?

16 A I THINK --

17 Q I AM NOT TRYING TO LIMIT YOUR AUTHORITY TO THAT. I
18 AM JUST TRYING TO UNBUNDLE IT HERE.

19 A WELL --

20 Q YOU CERTAINLY BELIEVE YOU HAVE A SAY IN THESE
21 PROCEEDINGS?

22 A I THINK I HAVE A RESPONSIBILITY TO SEE THAT ANY
23 SETTLEMENT INVOLVES COMPETENT SUCCESSORS AS THE STATUTE
24 REQUIRES.

25 Q AND DO YOU KNOW THE DEFINITION OF SUCCESSORS UNDER

1 THE PROBATE CODE?

2 A WELL, I'M SURE IT'S DEFINED. CAN YOU SHOW IT TO ME?

3 Q I AM JUST ASKING IF YOU KNOW IT.

4 A I DON'T REMEMBER AT THE TIME WHETHER IT'S DEFINED. I
5 KNOW A LOT OF THINGS ARE DEFINED IN THE PROBATE CODE AND A
6 LOT OF TERMS DEFINED IN THE TRUST CODE.

7 Q WELL --

8 A I'D LIKE TO LOOK AT IT.

9 Q SURE. DO YOU KNOW THE SECTION NUMBER?

10 A I DON'T KNOW THE SECTION NUMBER.

11 Q WOULD YOU ACCEPT IF I SUGGESTED TO YOU THAT THE
12 SECTION NUMBER IS 62-1-201?

13 THE COURT: YOU KNOW, MR. MEDLIN, JUST READ HIM THE
14 DEFINITION AND ASK HIM IF HE AGREES TO IT.

15 MR. MEDLIN: WELL --

16 THE COURT: I AM NOT SURE WHERE YOU'RE GOING WITH
17 THIS.

18 MR. MEDLIN: I'M HAPPY TO READ IT HIM, YOUR HONOR
19 OR --

20 THE COURT: SIXTY-TWO WHAT?

21 MR. MEDLIN: 62-1-201, PARAGRAPH 42.

22 DO YOU TO LOOK AT IT?

23 THE WITNESS: YEA, I'LL BE GLAD TO LOOK AT YOURS AND
24 THE JUDGE CAN LOOK AT HIS.

25 THE COURT: HERE IT IS RIGHT HERE. WHAT SUBSECTION?

1 MR. SHAHID: FORTY-TWO.

2 MR. MEDLIN: FORTY-TWO.

3 THE WITNESS: YOU TELL ME. THERE IS NOT ANYTHING
4 DIFFERENT IN THE POCKET PART, IS THERE?

5 MR. MEDLIN: NOT TO MY KNOWLEDGE. YOU CAN DOUBLE
6 CHECK, BUT I DON'T THINK THERE IS. THEY HAVE RECODIFIED
7 THE CODE AS OF THIS YEAR -- THE BOOK.

8 THE WITNESS: SUCCESSORS MEANS THOSE PERSONS OTHER
9 THAN CREDITORS WHO ARE ENTITLED TO A PROPERTY OF A
10 DECEDENT UNDER HIS WILL OR THIS CODE.

11 Q RIGHT. AND UNDER THIS CODE WOULD MEAN SOMEBODY WHO
12 HAD A SPOUSAL SHARE OR AN OMITTED CHILD'S SHARE UNDER THE
13 CODE?

14 A IT COULD.

15 Q BUT ASSUMING THOSE WERE LEGITIMATE CLAIMS THOSE
16 PEOPLE WOULD BE DEFINED AS SUCCESSORS?

17 A ASSUMING THEY'RE LEGITIMATE CLAIMS, THEY WOULD.

18 Q MAY I HAVE THAT BACK FOR A MOMENT? THANK YOU. I
19 DON'T HAVE IT MEMORIZED EITHER. MR. BUCHANAN, IF YOU WERE
20 DEFENDING THE RIGHT OF SUCCESSORS DON'T YOU THINK YOU
21 OUGHT TO KNOW WHO THE SUCCESSORS ARE TO DEFEND THEM?

22 A WELL, I THINK SO. I'M SORRY THERE'S BEEN NO
23 DISCOVERY.

24 Q DON'T YOU THINK YOU SHOULD KNOW THE CODE DEFINITION
25 OF SUCCESSORS TO START YOUR INQUIRY AS A FIDUCIARY?

1 A WELL, I MEAN, I THINK I SHOULD REFER TO IT WHICH I
2 JUST DID.

3 Q SO, WOULD YOU AGREE THAT A SURVIVING SPOUSE WHO HAS
4 RIGHTS UNDER THE CODE WOULD BE A SUCCESSOR?

5 A ONE WHO HAS RIGHTS UNDER THE CODE WOULD BE A
6 SUCCESSOR.

7 Q SO, AS FAR AS YOUR ASSURING THAT THE PARTIES TO A
8 SETTLEMENT AGREEMENT INCLUDE SUCCESSORS, A SURVIVING
9 SPOUSE WITH THAT RIGHT WOULD BE A SUCCESSOR?

10 A ONE WHO IS, IN FACT, A SURVIVING SPOUSE WOULD BE,
11 YES.

12 Q NOW, LET'S GET BACK TO THE ISSUE OF THE ATTORNEY
13 GENERAL, MR. BUCHANAN. THE INVOLVEMENT OF THE PERSONAL
14 REPRESENTATIVES AND THE TRUSTEES UNDER THE SETTLEMENT
15 PROCESS IS WHAT I'D LIKE TO EXPLORE WITH YOU. CAN YOU
16 TELL ME YOUR UNDERSTANDING OF YOUR INVOLVEMENT IN THE
17 COURT APPROVAL PROCESS AS A PERSONAL REPRESENTATIVE?

18 A MY UNDERSTANDING IS THAT MY INVOLVEMENT IS AS A
19 PARTICIPANT IN THE HEARING TO DETERMINE WHETHER OR NOT THE
20 SETTLEMENT IS FAIR AND REASONABLE.

21 Q YES. AS WE'VE SAID BEFORE YOU WOULD AGREE THAT YOU
22 CERTAINLY HAVE THE RIGHT TO PARTICIPATE AND, IN FACT, YOU
23 ARE PARTICIPATING; CORRECT?

24 A CORRECT.

25 Q AND MRS. POPE HAS BEEN PARTICIPATING --

1 A RIGHT.

2 Q -- AS WELL AND WE UNDERSTAND YOU'VE HAD SUPERIOR
3 OBLIGATIONS OR YOU WOULD HAVE BEEN HERE?

4 A THAT'S RIGHT. I WOULD HAVE BEEN HERE.

5 Q WE UNDERSTAND THAT.

6 AND, YOUR HONOR, I DIDN'T MEAN TO INSULT THE STATE
7 COURT OF SOUTH CAROLINA.

8 THE COURT: MOVE ALONG.

9 MR. MEDLIN: I APOLOGIZE FOR THAT.

10 THE COURT: YOU'RE NOT INSULTING ANYBODY.

11 Q YOU DON'T UNDERSTAND THAT YOU HAVE A VETO POWER OVER
12 THE SETTLEMENT, DO YOU?

13 A YOU KNOW, I HAVE AN UNDERSTANDING THAT I HAVE A RIGHT
14 TO PRESENT MY POSITIONS TO THE COURT AND THE COURT WILL
15 MAKE ITS DECISION.

16 Q SO, IT'S UP TO THE COURT. IN FACT, DO YOU UNDERSTAND
17 THAT THE PROCESS EMPOWERS THE COURT TO RECEIVE A PETITION
18 FROM THE BENEFICIARIES WHO HAVE SETTLED, THE SUCCESSORS
19 WHO HAVE SETTLED WITHOUT YOUR INVOLVEMENT, AND IF THE
20 SETTLEMENT IS APPROVED TO DIRECT YOU TO SIGN ON TO THAT
21 SETTLEMENT?

22 A I UNDERSTAND THAT THE COURT CAN APPROVE -- CAN
23 RECEIVE A PETITION FROM COMPETENT SUCCESSORS AND BASED ON
24 WHAT THE COURT DECIDES AFTER WHATEVER HEARING THE COURT
25 HOLDS ON THAT PETITION ENTER A RULING.

1 Q AND THAT RULING INCLUDES THE POWER TO DIRECT YOU TO
2 SIGN ON TO THE AGREEMENT?

3 A I BELIEVE THE STATUTE PROVIDES THAT IF THE COURT
4 APPROVES THE AGREEMENT THE COURT CAN DIRECT THE PERSONAL
5 REPRESENTATIVE TO.

6 Q IF THAT WERE TO HAPPEN IN THIS CASE WOULD YOU OBEY
7 THE COURT'S ORDER?

8 A I WOULD ALWAYS OBEY A COURT'S ORDER. NOW I MAY
9 CHALLENGE THE COURT'S ORDER, BUT I WILL OBEY IT.

10 Q I KNEW THE ANSWER TO THAT QUESTION, MR. BUCHANAN,
11 BECAUSE OF THE GREAT REGARD I HAVE FOR YOU, BUT I WANTED
12 TO ASK IT FOR THE RECORD. NOW, CAN YOU COMPARE THE
13 BENEFICIARIES UNDER THE '99 TRUST AND THE 2000 TRUST FOR
14 ME?

15 A MY MEMORY IS THAT THE PERSONAL HOUSEHOLD EFFECTS
16 DISPOSITION IS IF NOT THE SAME IT'S REMARKABLY SIMILAR AND
17 THAT THE GRANDCHILDREN'S TRUST IS VERY SIMILAR. I THINK
18 THERE IS A NAME IN THE '99 TRUST THAT'S NOT IN THE 2000
19 TRUST.

20 Q WHAT ABOUT THE CHARITABLE BENEFICIARIES?

21 A THE CHARITABLE -- WELL, THE TRUST IS WRITTEN
22 DIFFERENTLY. THE '99 -- THE '99 TRUST IS MORE DEFINITIVE
23 ABOUT WHAT EDUCATIONAL INSTITUTIONS GET THE MONEY FOR
24 TEACHING THE STUDENTS THAN THE 2000 TRUST.

25 Q MORE DEFINITIVE IN WHAT WAY, MR. BUCHANAN?

1 A WELL, THERE ARE THREE INSTITUTIONS OF HIGHER
2 LEARNING, AS I REMEMBER, THAT ARE LISTED IN THE '99 TRUST.

3 Q IN THE '99 TRUST?

4 A RIGHT.

5 Q AND THOSE THREE INSTITUTIONS WOULD BE USC AIKEN,
6 SALKEHATCHIE, AND VOORHEES?

7 A YES, SIR.

8 Q AND AS YOU DESCRIBED IT, THE 2000 TRUST IS LESS
9 DEFINITIVE. WHICH EDUCATIONAL INSTITUTIONS ARE INCLUDED
10 IN THAT TRUST?

11 A INSTITUTIONS IN SOUTH CAROLINA AND GEORGIA IN THE
12 2000.

13 Q ANY LIMIT TO THOSE INSTITUTIONS AS YOU READ THAT --

14 A NOT THAT I READ IT.

15 Q -- DOCUMENT? WHO DO YOU CONSIDER THE BE THE
16 BENEFICIARIES OF THE '99 TRUST -- THE CHARITABLE
17 BENEFICIARIES? I'M SORRY.

18 A OF THE '99 TRUST?

19 Q YES.

20 A WOULD BE THE STUDENTS WHO ARE ATTENDING THOSE THREE
21 SCHOOLS WHO QUALIFIED -- I MEAN, WHO, I GUESS, ARE
22 APPROVED UNDER THE TRUST.

23 Q RIGHT. I UNDERSTAND YOUR ANSWER, AND IT WOULD BE THE
24 STUDENTS WHO ARE ATTENDING THOSE THREE SCHOOLS, AND UNDER
25 THE 2000 TRUST THE CHARITABLE BENEFICIARIES WOULD BE --

1 WHO WOULD?

2 A ARE YOU ASKING ME?

3 Q I'M SORRY. YES. WHO WOULD THE CHARITABLE
4 BENEFICIARIES BE?

5 A DESERVING AND NEEDY STUDENTS WHO QUALIFY OR ENABLED
6 BY THE TRUSTEE TO ATTEND A SCHOOL IN SOUTH CAROLINA AND
7 GEORGIA.

8 Q DO YOU CONSIDER THE THREE COLLEGES TO BE
9 BENEFICIARIES UNDER THE '99 TRUST? I THINK YOU SAID
10 STUDENTS, BUT DO YOU CONSIDER THE COLLEGES TO BE
11 BENEFICIARIES?

12 A WELL, I THINK THE STUDENTS ARE THE BENEFICIARIES. I
13 THINK THE STUDENTS ARE JUST AT -- I THINK THEY'RE MORE
14 CONFINED IN TERMS OF WHERE THEY CAN BE EDUCATED.

15 THE COURT: PROFESSOR, IT IS 11:30. I AM TRYING TO
16 RUN EVERYDAY UNIFORMLY. SO, WE'RE GOING TO TAKE A BREAK
17 FOR THE MORNING FOR THOSE WHO NEED TO STRETCH THEIR LEGS.
18 LET'S TAKE ABOUT 10 TO 15 MINUTES, AND THEN I'D LIKE FOR
19 Y'ALL TO COME BACK HERE. I'VE GOT ONE THING I WANT TO
20 DISCUSS WITH YOU OFF THE RECORD. IT IS A SCHEDULING
21 MATTER. I THINK IT IS SORT OF CRITICAL TO WHERE WE ARE.

22 LET'S TAKE ABOUT 10 AND WE'LL MEET IN CHAMBERS FOR A
23 SECOND AND THEN WE'LL COME BACK OUT.

24 MR. BUCHANAN, OBVIOUSLY, YOU CAN STEP DOWN. JUST
25 DON'T DISCUSS YOUR CASE.

1 (WHEREUPON, A BREAK WAS TAKEN.)

2 Q MR. BUCHANAN, YOU UNDERSTAND THAT YOU REPRESENT THE
3 BENEFICIARIES OF MR. BROWN'S ESTATE AS PERSONAL
4 REPRESENTATIVE OF HIS ESTATE?

5 A YES, SIR.

6 Q AND DO YOU UNDERSTAND THAT YOU REPRESENT THE
7 BENEFICIARIES OF HIS 2000 TRUST AS TRUSTEE OF HIS 2000
8 TRUST?

9 A YES, SIR.

10 Q OKAY. DO YOU THINK THAT THERE ARE ANY NOTICE AND DUE
11 PROCESS PROBLEMS WITH THE APPROVAL OF A SETTLEMENT
12 AGREEMENT?

13 A WELL, I THINK WE GOT TO GET ALL THE PEOPLE WHO
14 POTENTIALLY CAN BENEFIT HERE. YOU KNOW, I MEAN -- I THINK
15 THAT -- I THINK WE GOT TO GIVE EVERYBODY THE PROPER
16 NOTICE. YOU KNOW, FOR EXAMPLE, FOR THIS HEARING I THINK
17 EVERYBODY REALLY WAS ENTITLED TO AT LEAST 20 DAYS NOTICE
18 AND I DON'T THINK ANYBODY HAD IT.

19 I THINK WE NEED TO UNDERSTAND A LITTLE BIT MORE OF
20 THE FACTS BEFORE WE START TRYING TO, YOU KNOW, WHITTLE UP,
21 CARVE THE PIE UP. I THINK WE NEED -- FOR EXAMPLE, YOU
22 KNOW, YOUR CLIENT. I THINK WE NEED MORE -- WE NEED THE
23 DEVELOPMENT OF MORE FACTS ABOUT HER CLAIM. YOU KNOW, IT
24 WOULD HELP TO HAVE THE D.N.A. IT WOULD HELP TO HAVE SOME
25 DISCOVERY.

1 IT WOULD HELP TO KNOW WHETHER THERE REALLY COULD BE,
2 YOU KNOW, DIFFERENT RESPECTIVE SHARES AMONG THE PEOPLE AND
3 THAT KIND OF THING. SO, I MEAN, I REALLY THINK THAT IT IS
4 PREMATURE FOR US TO TRY TO, YOU KNOW, TAKE HALF OF WHAT --
5 WELL, NOT HALF, BUT MOST OF WHAT WOULD BE -- WHAT WOULD
6 ULTIMATELY BE THE CHARITY -- THE CHARITABLE TRUST -- AND
7 DIVIDE IT UP AMONG PEOPLE WHO REALLY MAY NOT BE
8 SUCCESSORS -- COMPETENT SUCCESSORS BASED ON THE EVIDENCE.

9 Q MR. BUCHANAN, LET'S LEAVE ASIDE FOR THE MOMENT YOUR
10 CONCERNS WITH THE STRUCTURE OF THE SETTLEMENT, BUT WITH
11 RESPECT PARTICULARLY WITH NOTICE AND DUE PROCESS PROBLEMS,
12 IF WE CAN FOCUS ON THAT AGAIN. WHAT ARE YOUR PROBLEMS
13 WITH THIS HEARING OTHER THAN AS YOU STATED LACK OF 20 DAYS
14 NOTICE? WHO DIDN'T GET NOTICE?

15 A WELL, I DON'T KNOW WHO DIDN'T GET NOTICE, BUT NOBODY
16 -- I MEAN, I DIDN'T GET ENOUGH NOTICE AND YOU SEE I'M
17 SITTING HERE UNPREPARED UNLIKE YOU. YOU'VE HAD AN
18 OPPORTUNITY TO PREPARE FOR THIS HEARING, AND I'VE BEEN IN
19 COURT EVERYDAY THIS WEEK AND I'LL --

20 THE COURT: WELL, MR. BUCHANAN --

21 THE WITNESS: -- BE OUT OF TOWN NEXT WEEK. SO...

22 THE COURT: -- LET ME ASK YOU THIS.

23 THE WITNESS: YES, SIR.

24 THE COURT: IF YOU DON'T FEEL LIKE YOU'RE PREPARED TO
25 TESTIFY THEN I CAN LET YOU TESTIFY AT THE NEXT HEARING

1 WHICH WE'RE GOING TO HAVE IN THE NEXT WEEK OR 10 DAYS.

2 THE WITNESS: DO YOU KNOW WHEN? BECAUSE I AM GOING
3 TO BE ON THE BENCH FOUR DAYS NEXT WEEK.

4 THE COURT: WELL, NEXT WEEK IS OUT, BUT WE'RE TRYING
5 TO WORK ON THE WEEK OF THE 16TH AND WE'RE ALSO TRYING TO
6 WORK ON MARCH 23, 25, AND 26.

7 MR. MEDLIN: YOUR HONOR, WITH ALL DUE RESPECT AND I'M
8 SORRY BECAUSE I HAVE GREAT DEFERENCE FOR MR. BUCHANAN AND
9 HIS POSITION --

10 THE COURT: GO AHEAD.

11 MR. MEDLIN: -- I HAD EXACTLY THE SAME NOTICE THAT
12 MR. BUCHANAN HAD. SO DID EVERYBODY IN THIS ROOM.
13 MRS. POPE IS A CO-FIDUCIARY, AND WE'RE TRYING TO RESOLVE
14 SOME MATTERS IN THIS CASE THAT, YOU KNOW, IF WE CAN DEAL
15 WITH THEM AT THIS POINT, WE SHOULD DEAL WITH THEM.

16 THE COURT: WELL, I UNDERSTAND THAT.

17 MR. MEDLIN: A FIDUCIARY -- I DON'T THINK I AM GOING
18 TO ASK QUESTIONS THAT A FIDUCIARY SHOULDN'T KNOW.

19 MR. BUCHANAN: CAN I GET MY CALENDAR OUT OF MY BAG
20 REAL QUICK?

21 MR. BAILEY: YOUR HONOR, JUST SO THAT WE'RE CLEAR,
22 WE'RE NOT WAIVING THE NOTICE REQUIREMENTS THAT WE FEEL
23 WE'RE ENTITLED TO UNDER DUE PROCESS UNDER THE CODE, AND
24 THE PROBLEMS THAT HAVE OCCURRED -- MR. BUCHANAN WASN'T
25 ABLE TO BE HERE FOR A HEARING THAT WAS SCHEDULED WITHIN

1 THE 20-DAY PERIOD WHICH WORKS AS A TREMENDOUS DISADVANTAGE
2 TO HIM. HE IS A PARTY TO THIS. HE IS ENTITLED TO HEAR
3 ALL OF THE TESTIMONY, AND WE HAVE PROCEEDED WITHOUT HIS
4 ABILITY TO BE HERE AND TO LISTEN TO THE TESTIMONY.

5 THE COURT: THANK YOU.

6 MR. MEDLIN: YOUR HONOR --

7 THE COURT: HOLD ON. I'LL --

8 MR. MEDLIN: -- THIS IS A CONTINUATION OF A HEARING.
9 THAT WAS COMMENCED JANUARY 30. IT'S NOT A NEW HEARING.

10 THE COURT: I AM GOING TO LET YOU CONTINUE ON,
11 MR. BUCHANAN. IF WE NEED TO WHEN WE FINISH TODAY YOU'LL
12 HAVE AN OPPORTUNITY -- YOUR LAWYER CAN CALL YOU BACK TO
13 THE STAND AT THE NEXT HEARING. LET'S TRY TO PLOW ON.

14 Q MR. BUCHANAN, WHEN DID YOU GET NOTICE OF THE
15 JANUARY 30 HEARING?

16 A I DON'T REMEMBER.

17 Q THEN WERE YOU AT THE JANUARY 30 HEARING?

18 A YES, SIR.

19 Q MRS. POPE WAS AT THE JANUARY 30 HEARING?

20 A YES, SIR.

21 Q AGAIN, I WANT TO GET INTO THIS NOTICE QUESTION THAT
22 SEEMS TO BE OF SOME CONCERN. DO YOU UNDERSTAND THAT THE
23 CODE PROVIDES THAT PERSONAL REPRESENTATIVES REPRESENT ALL
24 BENEFICIARIES WITH RESPECT TO NOTICE AND THE OPPORTUNITY
25 TO BE HEARD AND THE BINDING EFFECT OF ORDERS?

1 A WELL, I AM NOT SURE I UNDERSTAND THAT QUESTION.

2 Q WELL, ARE YOU FAMILIAR, FOR EXAMPLE, WITH SECTION
3 1-403 OF TITLE 62 OF THE PROBATE CODE?

4 A I'LL BE HAPPY TO LOOK AT IT.

5 THE COURT: WHAT IS THAT SECTION?

6 MR. MEDLIN: 62-1-403, YOUR HONOR.

7 THE COURT: THANK YOU.

8 Q IF YOU WOULD, MR. BUCHANAN, IF YOU'D LOOK AT
9 PARAGRAPH TWO AND SUB-ITEM TWO AND, PARTICULARLY, THE
10 LANGUAGE THAT READS, ORDERS BINDING A TRUSTEE BIND
11 BENEFICIARIES OF THE TRUST AND PROCEEDINGS TO PROBATE A
12 WILL ESTABLISHING OR ADDING TO A TRUST, ET CETERA, AND IT
13 ALSO SAYS ORDERS BINDING A PERSONAL REPRESENTATIVE BIND
14 PERSONS INTERESTED IN THE UNDISTRIBUTED ASSETS OF A
15 DECEDENT'S ESTATE IN ACTIONS OR PROCEEDINGS BY OR AGAINST
16 AN ESTATE. DO YOU SEE THAT LANGUAGE INTERSPERSED IN THE
17 MIDDLE OF SUB-ITEM TWO?

18 A YOU'RE TALKING ABOUT WHICH LANGUAGE?

19 Q PARAGRAPH TWO, SUB ITEM TWO.

20 A RIGHT.

21 Q AND IN PARTICULAR FOR THIS QUESTION, MR. BUCHANAN,
22 THE LANGUAGE THAT READS ORDERS BINDING A PERSONAL
23 REPRESENTATIVE BIND PERSONS INTERESTED IN THE
24 UNDISTRIBUTED ASSETS OF A DECEDENT'S ESTATE IN ACTIONS OR
25 PROCEEDINGS BY OR AGAINST THE ESTATE.

1 THE COURT: AND YOUR QUESTION?

2 Q MY QUESTION IS DO YOU UNDERSTAND THAT YOU REPRESENT
3 THE BENEFICIARIES OF THE ESTATE OF JAMES BROWN IN THIS
4 PROCEEDING?

5 A I DO UNDERSTAND I REPRESENT THE BENEFICIARIES.

6 Q AND DO YOU UNDERSTAND THAT NOTICE TO YOU AND AN ORDER
7 TO -- I'M SORRY -- AN ORDER WOULD BIND YOU -- THAT BINDS
8 YOU WOULD BIND THE BENEFICIARIES OF THE ESTATE?

9 A WELL, OF THE ESTATE.

10 Q OKAY.

11 A YES, SIR.

12 Q AND THEN, AGAIN, MR. BUCHANAN, IF YOU LOOK UP A
13 COUPLE OF LINES ABOVE THAT, ORDERS BINDING A TRUSTEE BIND
14 BENEFICIARIES OF THE TRUST. THAT LANGUAGE ACTUALLY IS A
15 LITTLE GARBLED WHEN YOU KEEP READING, BUT I AM GOING TO
16 GET TO SOME LESS GARBLED LANGUAGE IN A LITTLE BIT.

17 THE COURT: WHAT IS THE QUESTION?

18 MR. MEDLIN: I JUST WANT TO MAKE SURE HE SEES THAT
19 FIRST, YOUR HONOR. ARE YOU WITH ME, MR. BUCHANAN? ORDERS
20 BINDING A TRUSTEE BIND BENEFICIARIES OF A TRUST. DO YOU
21 SEE THAT?

22 THE WITNESS: I SEE THE LANGUAGE.

23 Q I'M SORRY. SO, YOU WOULD AGREE THAT AS TRUSTEE OF
24 THE 2000 TRUST AN ORDER BINDING YOU WOULD BIND ALL
25 BENEFICIARIES OF THE 2000 TRUST?

1 A I'M NOT SURE I WOULD AGREE WITH THAT FOR THIS REASON.
2 YOU KNOW, THE FIRST LINE OF LITTLE 2(I) IS TO THE EXTENT
3 THERE IS NO CONFLICT OF INTEREST BETWEEN THEM OR AMONG
4 PERSONS REPRESENTED AND WE'RE BACK TO THE PROBLEM OF NOT
5 HAVING ENOUGH PARTIES HERE.

6 Q MR. BUCHANAN, ARE YOU TELLING ME THAT YOU HAVE A
7 CONFLICT OF INTEREST --

8 A NO, I'M --

9 Q -- WITH THE BENEFICIARIES OF YOUR TRUST?

10 A I'M TELLING YOU WE NEED OTHER PARTIES HERE
11 REPRESENTING SOME, FOR EXAMPLE, MINORS. WE'VE GOT SOME
12 CHILDREN WHO IN THIS PROPOSED SETTLEMENT WHOSE INTERESTS
13 ARE NOT DELINEATED AND WE'VE GOT -- WE'VE GOT SOME
14 GRANDCHILDREN WHO ARE ENTITLED TO BE EDUCATED IN THE
15 GRANDCHILDREN'S TRUST WHO ARE MINORS FOR WHOM THEIR
16 PARENTS ARE SPEAKING AND THEIR PARENTS AS PART OF THE
17 SETTLEMENT ARE TAKING AT LEAST HALF AWAY FROM THE PIE.

18 SO, YOU KNOW, WE'VE TALKED ALL ALONG ABOUT HAVING ALL
19 THE APPROPRIATE PARTIES HERE, AND I DON'T THINK WE HAVE
20 ALL OF THE APPROPRIATE PARTIES HERE. THERE IS NO GUARDIAN
21 FOR THOSE CHILDREN SPEAKING FOR THEM, AND, SO, YOU KNOW
22 TO ANSWER YOUR QUESTION, YOU KNOW, ORDINARILY --
23 ORDINARILY, THAT WOULD BE TRUE, BUT IN THIS CASE FOR THE
24 REASONS THAT WE HAVE REPEATEDLY ASKED TO HAVE THE PARTIES
25 -- ALL THE RIGHT PARTIES IN HERE, YOU KNOW -- AND I DON'T

1 KNOW WHAT WE CAN DO BUT ASK FOR IT, OKAY? I DON'T KNOW
2 WHAT ELSE WE CAN DO BUT SAY WE NEED TO GET MORE PARTIES
3 HERE.

4 Q MR. BUCHANAN, IF WE HAD ALL OF THE PARTIES NECESSARY
5 TO THIS ACTION HERE TODAY, WOULD YOU CHANGE YOUR OPINION
6 ABOUT YOUR ABILITY TO BIND THE BENEFICIARIES OF A TRUST TO
7 AN ORDER TO YOU AS TRUSTEE? IS THAT WHAT YOUR ANSWER WAS?

8 A WELL, YOU'RE ASKING ME TO LOOK AT ONE PARTICULAR
9 SECTION OF THIS CODE AND I'M NOT SURE THAT THAT QUESTION
10 CAN BE ANSWERED BY TAKING ONE PARTICULAR CODE SECTION
11 HERE, 62-1-403(2)(1)(2) AND ANSWERING THAT QUESTION WITH
12 JUST THAT. I THINK IT'S GOING TO HAVE TO REQUIRE, YOU
13 KNOW, SOME ANALYSIS OF OTHER PARTS OF THIS CODE AND
14 PERHAPS SOME CASELAW WITH IT.

15 Q MR. BUCHANAN, LET'S -- DO YOU THINK THAT YOU HAVE A
16 CONFLICT OF INTEREST AS TRUSTEE WITH ANY BENEFICIARY OF
17 THE TRUST?

18 A I DON'T THINK I HAVE A CONFLICT OF INTEREST WITH ANY
19 BENEFICIARY, BUT I THINK THERE ARE BENEFICIARIES OF THE
20 TRUST WHO NEED TO -- NEED A GUARDIAN TO PARTICIPATE.

21 Q TO THE EXTENT THAT YOU REFERRED TO THE PREAMBLE
22 LANGUAGE OR THE INTRODUCTORY LANGUAGE OF PARAGRAPH TWO,
23 SUB-ITEM TWO, THAT WOULDN'T APPLY IF YOU DON'T HAVE A
24 CONFLICT OF INTEREST WITH YOUR BENEFICIARIES; CORRECT?

25 A AGAIN, PROFESSOR, YOU'RE ASKING ME TO -- YOU KNOW,

1 YOU'RE ASKING ME TO, YOU KNOW, HYPOTHETICALLY INTERPRET
2 ONE LITTLE CODE SECTION HERE WITHOUT HAVING THE BENEFIT OF
3 LOOKING AT THE COMPLETE CODE AND THE CASES THAT GO ALONG
4 WITH IT.

5 Q MR. BUCHANAN, I'M NOT ASKING HYPOTHETICAL. LET'S
6 MAKE THAT CLEAR. I'M TRYING TO DETERMINE THAT WE HAVE ALL
7 OF THE PROPER PARTIES IN THIS COURTROOM, AND, SO, I'M
8 ASKING ABOUT THIS PARTICULAR CASE JUST TO MAKE THAT CLEAR.
9 DO YOU UNDERSTAND WHOM YOU REPRESENT IN THIS COURTROOM
10 TODAY?

11 A I UNDERSTAND I REPRESENT THE BENEFICIARIES OF THE
12 TRUST AND THE ESTATE.

13 Q ALL RIGHT. WOULD YOU LOOK AT PARAGRAPH THREE,
14 SUB-ITEM TWO OF THAT SAME SECTION?

15 A ALL RIGHT, SIR.

16 Q ALL RIGHT. IT READS, NOTICE AS PRESCRIBED BY SECTION
17 1401 WHICH ASSUMES FOR PURPOSES OF THIS QUESTION PLEASE --
18 THAT'S THE GENERAL NOTICE SECTION OF THE PROBATE CODE --
19 SHALL BE GIVEN TO EVERY INTERESTED PERSON OR TO ONE WHO
20 CAN BIND AN INTERESTED PERSON AS DESCRIBED IN PARAGRAPH
21 TWO SUB-ITEM ONE OR TWO SUB-ITEM TWO ABOVE.

22 NOW, YOU'VE TOLD ME THAT YOU AGREE THAT AS PERSONAL
23 REPRESENTATIVE THE ORDER TO YOU BINDS THE BENEFICIARIES OF
24 THE ESTATE UNDER PARAGRAPH TWO SUB-ITEM TWO. SO, NOTICE
25 TO YOU WOULD ALSO BE NOTICE TO ALL OF THOSE PERSONS, WOULD

1 IT NOT, UNDER THAT PROVISION?

2 A WELL, HERE'S WHAT I DON'T UNDERSTAND ABOUT YOUR
3 QUESTION. IF THE NOTICE TO ME WASN'T ANY GOOD, HOW CAN IT
4 BE ANY GOOD TO ANYBODY ELSE?

5 Q YOU'RE HERE TODAY PARTICIPATING IN THIS HEARING, ARE
6 YOU NOT, MR. BUCHANAN?

7 A I'M HERE.

8 Q AND YOU'RE REPRESENTING THE PARTIES TODAY, ARE YOU
9 NOT, MR. BUCHANAN?

10 A YES, SIR.

11 Q THEN ASSUME THAT THE NOTICE TO YOU WAS VALID. ARE
12 NOT ALL THE PARTIES YOU REPRESENT UNDER THAT SECTION
13 NOTIFIED THROUGH YOU?

14 A DEPENDS ON HOW THAT SECTION FITS IN WITH OTHER
15 SECTIONS OF THE CODE. I'D HAVE TO LOOK AT THAT.

16 Q ARE YOU AWARE OF ANY OTHER SECTIONS OF THE CODE THAT
17 HAVE A DIFFERENT --

18 A I HAVEN'T DONE THAT RESEARCH.

19 Q OKAY. WOULDN'T YOU WANT TO KNOW AS A FIDUCIARY WHOM
20 YOU REPRESENT AND HOW YOU BIND THEM IN COURT PROCEEDINGS
21 BEFORE YOU STEP INTO A COURTROOM?

22 A WELL, YES, I WOULD.

23 Q DID YOU?

24 A WELL --

25 Q YOU'RE SAYING YOU DIDN'T DO THE RESEARCH?

1 A WELL, I HAVE DONE THE RESEARCH THAT I THOUGHT I
2 NEEDED TO DO, BUT I HAVEN'T RESEARCHED THAT POINT BECAUSE
3 IT'S JUST NOT COME UP BEFORE NOW.

4 Q DO YOU UNDERSTAND DIFFERENTLY --

5 MR. BAILEY: YOUR HONOR, I AM GOING TO OBJECT TO THIS
6 LINE OF QUESTIONING. IT'S HEADED IN THE DIRECTION MORE OF
7 THE PETITION TO REMOVE MR. BUCHANAN FOR FAILING TO DO SOME
8 ITEMS THAT MR. MEDLIN FEELS HE NEEDS TO BE AWARE OF.

9 MR. MEDLIN: YOUR HONOR --

10 MR. BAILEY: THIS IS BASICALLY -- THIS IS, BASICALLY,
11 A HEARING BY AMBUSH. MR. BUCHANAN WAS NOT AFFORDED, NOR
12 WERE WE AFFORDED, 20-DAYS NOTICE. THAT'S ALL WE'RE
13 SAYING.

14 THE COURT: OVERRULED.

15 MR. MEDLIN: AND, YOUR HONOR, JUST FOR THE RECORD, I
16 AM NOT TRYING TO AMBUSH MR. BUCHANAN. THAT IS THE LAST
17 THING I'M TRYING TO DO, AND I'M NOT TRYING TO ESTABLISH
18 GROUNDS TO REMOVE MR. BUCHANAN.

19 THE COURT: WELL, HE'S RAISED THE DUE PROCESS ISSUES
20 OF NOTICE AND YOU'RE ASKING HIM QUESTIONS ABOUT IT.

21 MR. MEDLIN: I AM TRYING TO SATISFY THE COURT THAT WE
22 HAVE ALL OF THE PROPER PARTIES HERE TODAY, AND I AM DOING
23 THAT THROUGH MR. BUCHANAN WHO IS THE FIDUCIARY. THAT'S
24 ALL I'M TRYING TO DO.

25 THE COURT: MOVE ALONG.

1 Q ARE YOU AWARE OF ANY OTHER PROVISIONS OF THE CODE OF
2 LAW THAT WOULD CONTRADICT THE SECTIONS THAT WE JUST TALKED
3 ABOUT, MR. BUCHANAN?

4 A I'M NOT AWARE AT THIS TIME.

5 Q MR. BUCHANAN, ARE YOU A BENEFICIARY REPRESENTATIVE AS
6 DEFINED UNDER THE CODE?

7 THE COURT: IN ALL FAIRNESS TO HIM, WHERE IS IT
8 DEFINED?

9 MR. MEDLIN: I'M SORRY, YOUR HONOR, AND, ALSO,
10 MR. BUCHANAN, I APOLOGIZE.

11 MR. BUCHANAN AND, YOUR HONOR, IF YOU WOULD LOOK AT
12 SECTION 62-7-301, PARAGRAPH A.

13 THE COURT: 62-7-301.

14 MR. MEDLIN: PARAGRAPH A.

15 THE COURT: THAT'S NOT --

16 MR. MEDLIN: 62-7-301. NO, I WANT THE DEFINITION OF
17 BENEFICIARY REPRESENTATIVE. THAT'S PARAGRAPH A, I
18 BELIEVE.

19 THE COURT: 62-7-301?

20 MR. MEDLIN: YES, SIR, YOUR HONOR, TITLED WHEN
21 PARTIES BOUND BY OTHERS.

22 THE COURT: IT'S IN THE SUPPLEMENT, MR. BUCHANAN.

23 MR. MEDLIN: I'M SORRY. I'VE GOT A PRINTOUT HERE,
24 YOUR HONOR. I DIDN'T REALIZE THAT.

25 THE WITNESS: I THINK YOU'VE GOT A NEWER VOLUME HERE.

1 MR. MEDLIN: CAN I PRESENT THAT TO YOU?

2 THE COURT: LOOK IN THE SUPPLEMENT, BOB.

3 MR. MEDLIN: AND, YOUR HONOR, THIS VOLUME --

4 THE WITNESS: JUDGE, WHAT SUPPLEMENT ARE YOU LOOKING
5 AT? 2000?

6 THE COURT: I'VE ACTUALLY GOT THE 2007.

7 THE WITNESS: OKAY. WELL, IT'S 2008. THIS IS A
8 NEWER VOLUME. I BELIEVE IT TO BE RIGHT HERE.

9 MR. SHAHID: THERE IS A 2009 VOLUME.

10 MR. MEDLIN: YOUR HONOR, WOULD YOU LIKE THE 2009
11 VERSION?

12 THE COURT: THAT'S THE SAME THING AS IN THE
13 SUPPLEMENT. THANK YOU.

14 THE WITNESS: OKAY. IT'S HERE.

15 Q AS YOU READ THE DEFINITION OF BENEFICIARY
16 REPRESENTATIVE --

17 A SUBSECTION A SAYS, QUOTE, FOR PURPOSES OF THIS PART
18 BENEFICIARY REPRESENTATIVE REFERS TO A PERSON WHO MAY
19 REPRESENT AND BIND ANOTHER PERSON CONCERNING THE AFFAIRS
20 OF TRUSTS.

21 Q OKAY. THANK YOU. IF YOU WOULD ALSO LOOK AT SECTION
22 62-7-303 TITLED REPRESENTATION BY FIDUCIARIES AND PARENTS.

23 A I SEE IT.

24 Q PARAGRAPH (A)(4), A TRUSTEE MAY REPRESENT AND BIND
25 THE BENEFICIARIES OF THE TRUST WITH RESPECT TO QUESTIONS

1 OR DISPUTES INVOLVING THE TRUST.

2 A I'M SORRY. YOU SAID WHAT NUMBER? FOUR?

3 Q PARAGRAPH FOUR.

4 A A TRUSTEE MAY REPRESENT AND BIND THE BENEFICIARIES OF
5 THE TRUST WITH RESPECT TO QUESTIONS OR DISPUTES INVOLVING
6 THE TRUST.

7 Q OKAY. SINCE YOU HAVE THAT AUTHORITY UNDER 62-7-303,
8 WOULDN'T YOU AGREE THAT WITH RESPECT TO THE 2000 TRUST YOU
9 FIT THE DEFINITION OF A BENEFICIARY REPRESENTATIVE -- A
10 PERSON WHO MAY REPRESENT OR BIND ANOTHER PERSON CONCERNING
11 THE AFFAIRS OF THE TRUST?

12 A I WOULD AGREE.

13 Q THEN WOULD YOU LOOK AT PARAGRAPH B OF SECTION
14 62-7-301 WHERE IT READS, NOTICE TO A BENEFICIARY
15 REPRESENTATIVE HAS THE SAME EFFECT AS IF NOTICE WERE GIVEN
16 DIRECTLY TO THE REPRESENTED PERSON.

17 A I SEE THE LANGUAGE.

18 Q OKAY. DO YOU DISAGREE THAT NOTICE TO YOU AS TRUSTEE
19 OF THE 2000 TRUST UNDER THESE SECTIONS SERVES AS NOTICE TO
20 THE BENEFICIARIES OF THE TRUST?

21 A I HAVEN'T DONE ANY SUBSTANTIAL RESEARCH ABOUT THIS
22 NOTICE ISSUE AND THESE PARTICULAR SECTIONS THAT YOU'VE
23 ASKED ME ABOUT --

24 Q OKAY.

25 A -- MR. MEDLIN. SO, I'M IN NO POSITION TO TELL YOU.

1 I MEAN, YOU AND I HAVE SPENT FIVE MINUTES LOOKING AT, YOU
2 KNOW, SUB A AND SUB WHATEVER OF TWO SECTIONS.

3 Q MR. BUCHANAN --

4 A AND, SO, YOU KNOW, I AM NOT GOING TO AGREE WITH YOU
5 OR DISAGREE WITH YOU UNTIL I'VE LOOKED AT THAT QUESTION A
6 LITTLE MORE CAREFULLY.

7 Q MR. BUCHANAN, YOU AND MRS. POPE HAVE TAKEN THE
8 POSITION ON NUMEROUS OCCASIONS, HAVE YOU NOT, THAT WE HAVE
9 NOT GIVEN PROPER NOTICE AND DUE PROCESS RIGHTS TO THE
10 PARTIES THAT NEED TO BE PARTIES TO THIS SETTLEMENT
11 APPROVAL. WHAT DID YOU BASE THAT ON?

12 A WELL, WE BASED IT ON THE INHERENT CONFLICT BETWEEN,
13 FOR EXAMPLE, GRANDCHILDREN WHO ARE ENTITLED TO BE EDUCATED
14 THROUGH THE EDUCATIONAL TRUST AND PARENTS WHO, IN EFFECT,
15 ARE TAKING FROM THAT WHO ARE SPEAKING FOR THEM.

16 Q AREN'T THE BENEFICIARIES OF THE EDUCATIONAL TRUST
17 BENEFICIARIES OF THE 2000 TRUST?

18 A YES.

19 Q SO, WHAT RESEARCH HAVE YOU DONE BEFORE THE FIVE
20 MINUTES THAT YOU'VE LOOKED HERE IN COURT TODAY TO TAKE THE
21 POSITION THAT THERE ARE PARTIES TO THIS -- THAT WE DON'T
22 HAVE ALL OF THE PARTIES NECESSARY TO APPROVE THIS
23 SETTLEMENT?

24 A WELL, YOU KNOW, IT'S JUST -- YOU KNOW, IT'S BASED ON
25 JUST FUNDAMENTAL FAIRNESS AND REASONABLE NOTICE TO PEOPLE

1 WHO HAVE INTEREST AND NEED TO HAVE AN OPPORTUNITY TO
2 PARTICIPATE.

3 Q DID YOU AND MRS. POPE DISCUSS EITHER OF THESE -- ANY
4 OF THESE SECTIONS THAT WE'VE BEEN TALKING ABOUT IN
5 DETERMINING WHETHER YOU SHOULD ASSERT THE POSITION AS
6 FIDUCIARIES OF THIS ESTATE THAT THERE WERE UNREPRESENTED
7 PARTIES HERE -- EXCUSE ME, BUT THAT WE HAVE PARTIES WHO
8 SHOULD BE HERE WHO ARE NOT REPRESENTED?

9 A I DON'T RECALL THAT -- I MEAN, I JUST DON'T REMEMBER
10 WHETHER THESE CODE SECTIONS WERE PART OF THAT DISCUSSION
11 OR NOT, BUT I DON'T -- I DON'T THINK THEY WERE.

12 Q OKAY. WOULD YOU LOOK AT PARAGRAPH 62-7-303(A)(5),
13 PLEASE, MR. BUCHANAN, WHICH READS, A PERSONAL
14 REPRESENTATIVE OF A DECEDENT'S ESTATE MAY REPRESENT AND
15 BIND PERSONS INTERESTED IN THE ESTATE WITH RESPECT TO
16 QUESTIONS OR DISPUTES INVOLVING THE DECEDENT'S ESTATE. IS
17 THAT CORRECT?

18 A I SEE THAT.

19 Q OKAY. THANK YOU. WOULD THAT MAKE YOU A BENEFICIARY
20 REPRESENTATIVE UNDER THE DEFINITION OF SECTION 62-7-301(A)
21 WITH RESPECT TO BENEFICIARIES OF THE ESTATE AS OPPOSED TO
22 THE TRUST?

23 A WHAT WAS THE OTHER SECTION?

24 Q 62-7-301, MR. BUCHANAN. I WOULD ASK YOU TO LOOK AT
25 AGAIN AS THE DEFINITION OF A BENEFICIARY REPRESENTATIVE

1 THIS TIME WITH RESPECT TO THE BENEFICIARIES OF THE ESTATE.

2 A ARE YOU TALKING ABOUT SUBSECTION A?

3 Q YES, SIR.

4 A I SEE THE LANGUAGE.

5 Q YOU AGREED, I THINK, THAT YOU WERE A BENEFICIARY
6 REPRESENTATIVE OF THE BENEFICIARIES OF THE TRUST. DO YOU
7 AGREE THAT YOU ARE A BENEFICIARY REPRESENTATIVE OF THE
8 BENEFICIARIES OF THE ESTATE IN YOUR CAPACITY AS PERSONAL
9 REPRESENTATIVE?

10 A WELL, I'M NOT SURE. OBVIOUSLY, SOME OF THE ESTATE
11 FLOWS INTO THE TRUST. SO, I DON'T KNOW THE ANSWER TO THAT
12 QUESTION.

13 Q WELL, LET'S TALK ABOUT THAT, MR. BUCHANAN. I'M SORRY
14 TO BELABOR THIS, BUT IT SEEMS TO BE AN IMPORTANT ISSUE.
15 WHO ARE THE BENEFICIARIES OF THE 2000 WILL? DIDN'T WE GO
16 THROUGH THAT?

17 A YES, SIR.

18 Q THEY WOULD BE THE CHILDREN?

19 A AND THE TRUST.

20 Q AND THE TRUST?

21 A AND THE TRUST. THEY ARE THE BENEFICIARIES.

22 Q AND, SO, IS ANYBODY IN THAT UNIVERSE OF BENEFICIARIES
23 NOT COVERED BY PARAGRAPH (A)(5) OF SECTION 62-7-303 AND
24 YOUR SERVICE AS PERSONAL REPRESENTATIVE OF THE ESTATE?

25 A WELL, SUBJECT TO THE LIMITED READING OF THESE CODE

1 SECTIONS, IT WOULD APPEAR THAT (A)(5) WOULD APPLY.

2 Q SO, WE'VE ACTUALLY LOOKED AT TWO PLACES IN THE
3 PROBATE CODE WHERE SUBJECT TO YOUR FURTHER REVIEW OF THE
4 LAW THE CODE APPEARS TO SAY THAT AS TRUSTEE YOU REPRESENT
5 ALL OF THE TRUST BENEFICIARIES AND AS PERSONAL
6 REPRESENTATIVE YOU REPRESENT ALL OF THE ESTATE
7 BENEFICIARIES FOR PURPOSES OF NOTICE AND OF THE BINDING
8 EFFECT OF THE ORDER?

9 MR. BAILEY: OBJECTION TO THE FORM OF THE QUESTION.
10 THAT DOES NOT PROPERLY RECITE THE WORDING OF THE STATUTE
11 THAT MR. MEDLIN IS REFERRING TO.

12 THE COURT: OVERRULED.

13 THE WITNESS: I WOULD AGREE WITH YOU THE LANGUAGE OF
14 THE STATUTE IS WHAT YOU'VE READ.

15 Q AND, AGAIN, MR. BUCHANAN, I AM NOT TRYING TO SHORTCUT
16 YOUR OPPORTUNITY TO EXAMINE THIS FURTHER. I AM JUST
17 TRYING TO EXAMINE WITH YOU THE LANGUAGE OF THE PROBATE
18 CODE IF YOU'LL BEAR WITH ME. NOW, IF THE 2000 WILL IS
19 UPHELD, THEN WE'VE ALREADY DISCUSSED HOW THE ASSETS OF THE
20 PROBATE ESTATE WOULD PASS, HAVE WE NOT --

21 A YES, SIR.

22 Q -- THAT TO THE TRUST AND TO THE CHILDREN UNDER THAT
23 DOCUMENT?

24 A AT LEAST WITH RESPECT TO EVERYTHING THAT'S OWNED BY
25 THE ESTATE, YES, SIR.

1 Q AND IF THE ASSETS PASS UNDER THE 2000 TRUST WHATEVER
2 ASSETS ARE IN THE TRUST AND WHATEVER ASSETS MIGHT BE ADDED
3 TO THE TRUST, THEN YOU AS TRUSTEE REPRESENT ALL OF THE
4 BENEFICIARIES OF THAT TRUST?

5 A ARE YOU ASKING?

6 Q YES.

7 A YES.

8 Q NOW, ASSUME IF YOU WOULD, MR. BUCHANAN, THAT THE '99
9 TRUST IS VALID AND STILL OPERATIVE. YOU'VE INDICATED IN
10 YOUR ANSWER TO A PREVIOUS QUESTION THAT THE STUDENTS OF
11 THOSE WHO WOULD ATTEND THOSE THREE INSTITUTIONS WOULD BE
12 THE CHARITABLE BENEFICIARIES OF THAT TRUST -- CHARITABLE
13 BENEFICIARIES; CORRECT?

14 A THAT'S WHAT I UNDERSTAND, YES, SIR.

15 Q AND, MR. BUCHANAN, WITHOUT MAKING YOU GO BACK TO THE
16 DOCUMENT WHICH YOU'RE CERTAINLY WELCOME TO DO SO THERE ARE
17 OTHER BENEFICIARIES. IT IS A SIMILAR GRANDCHILDREN'S
18 TRUST, ET CETERA, UNDER THAT TRUST. DO YOU KNOW WHO THE
19 TRUSTEES OF THAT TRUST ARE?

20 A I'VE SEEN THEY'RE LISTED IN THERE.

21 Q AND AMONG THAT LIST ARE INCLUDED MR. CANNON,
22 MR. DALLAS?

23 A ARE YOU TALKING ABOUT THE '99?

24 Q YES, SIR. I'M SORRY.

25 A YEA. RIGHT.

1 Q MR. CANNON, MR. DALLAS, AND MR. BRADLEY ARE THREE OF
2 THOSE TRUSTEES?

3 A YEA, AND I THINK DEANNA THOMAS IS MENTIONED IN ONE
4 PLACE AND HER NAME IS STRICKEN OUT IN ANOTHER.

5 Q BUT YOU WOULD AGREE THAT DESPITE SOME QUESTIONS ABOUT
6 THAT PARTICULAR ISSUE MR. CANNON, MR. DALLAS, AND
7 MR. BRADLEY ARE NAMED AS TRUSTEES?

8 A I'LL AGREE.

9 Q MR. CANNON IS REPRESENTED IN THIS PROCEEDING TODAY BY
10 MR. PICKELSIMER. DID YOU UNDERSTAND THAT?

11 A I KNOW THAT MR. CANNON IS REPRESENTED BY MR. JAN
12 WARNER AND MR. PICKELSIMER IS IN MR. WARNER'S OFFICE AND I
13 CAN SEE THAT MR. PICKELSIMER IS PRESENT.

14 Q THANK YOU. MR. DALLAS AND MR. BRADLEY ARE ABLY
15 REPRESENTED BY MR. ~BYRD?

16 A I SEE MR. ~BYRD. I HAVE TALKED TO MR. ~BYRD.

17 Q YOU DIDN'T WANT TO AGREE THAT -- NEVERMIND. WOULDN'T
18 ANY OF THE BENEFICIARIES UNDER THE '99 TRUST BE
19 REPRESENTED BY THOSE TRUSTEES IF THE TRUST IS VALID AND
20 ASSUMING THAT THOSE TRUSTEES ARE BENEFICIARY
21 REPRESENTATIVES UNDER THE PROBATE CODE?

22 A WELL, YOU KNOW, I, OBVIOUSLY, HAVE NO RELATIONSHIP TO
23 THE '99 TRUST AS TRUSTEE. SO, I REALLY HAVEN'T GIVEN THAT
24 A LOT OF THOUGHT, AND MY OBLIGATION IS TO THE 2000 TRUST.
25 SO, I AM NOT ADVOCATING FOR THE '99 TRUST, YOU UNDERSTAND?

1 I AM ADVOCATING FOR THE 2000 TRUST, BUT IF YOUR QUESTION
2 IS DOES ALL THE SAME LANGUAGE APPLY IN ONE VERSUS THE
3 OTHER IN TERMS OF THE CODE SECTION THAT YOU'VE ASKED ME
4 ABOUT I WOULD AGREE.

5 Q AND IF IT WERE DETERMINED THAT MR. BROWN DIED
6 INTESTATE, YOU ARE THE PERSONAL REPRESENTATIVE OF HIS
7 ESTATE. YOU WOULD STILL BE IN CHARGE OF THE ASSETS OF THE
8 ESTATE WHETHER THERE IS A WILL OR WHETHER THERE IS AN
9 INTESTACY; IS THAT CORRECT?

10 A CORRECT.

11 Q SO, IF THERE IS AN INTESTACY, ASSUMING THOSE STATUTES
12 SAY THAT WHAT I ASSERT TO YOU THEY SAY, YOU WOULD BE
13 REPRESENTING THOSE INTESTATE BENEFICIARIES, WOULD YOU NOT,
14 AS A BENEFICIARY REPRESENTATIVE?

15 A ASSUMING THERE IS NO OTHER LANGUAGE IN THE CODE THAT
16 WOULD QUALIFY OR CONDITION THE LANGUAGE WE'VE EXAMINED
17 HERE TODAY, YES.

18 Q OKAY. THANK YOU, MR. BUCHANAN. SO, WHO IS NOT
19 REPRESENTED HERE TODAY?

20 A WELL, WE TALKED ABOUT SOME OF THE MINOR GRANDCHILDREN
21 WHOSE INTEREST IS UNDER THE 2000 TRUST AND THE EDUCATIONAL
22 PART OF THAT WHO ARE NOT SPEAKING OR NOT BEING SPOKEN FOR
23 EXCEPT BY THEIR PARENT WHOSE INTEREST IS IN REMOVING AT
24 LEAST HALF OF WHAT WOULD BE IN THAT TRUST FOR THEMSELVES.

25 Q ARE THEY NOT BENEFICIARIES OF THE TRUST?

1 A THEY ARE.

2 Q AND ASSUMING THAT A TRUSTEE AS BENEFICIARY
3 REPRESENTATIVE REPRESENTS ALL OF THE BENEFICIARIES OF THE
4 TRUST WOULDN'T YOU REPRESENT THEM, MR. BUCHANAN?

5 A I WOULD, BUT I WOULD WITH THE QUALIFICATION THAT THEY
6 NEED TO HAVE SOMEONE SPEAKING FOR THEM WHICH IS WHY WE'VE
7 ASKED THE COURT TO REQUIRE THAT SOMEBODY BE HERE FOR THEM.

8 THE COURT: WELL, LET ME ASK YOU THAT, MR. BUCHANAN.
9 WHO ARE YOU SUGGESTING THEY -- A GUARDIAN OR A
10 CONSERVATOR --

11 THE WITNESS: A GUARDIAN.

12 THE COURT: WELL, IN THAT SAME REGARD 62-7-303(A)(6),
13 DOES THAT NOT LET THE PARENT DO THE REPRESENTATION AND
14 BIND THE MINOR CHILD OR UNBORN CHILD WHEN A GUARDIAN OR
15 CONSERVATOR HAS NOT BEEN APPOINTED?

16 THE WITNESS: IT WOULD TO THE EXTENT THAT THERE IS NO
17 CONFLICT OF INTEREST BETWEEN THAT PARENT AND THAT CHILD.

18 THE COURT: ALL RIGHT, SIR.

19 THE WITNESS: YOU'RE RIGHT. YES, SIR.

20 Q BUT MR. BUCHANAN, AS FAR AS THE NOTICE PROVISIONS ARE
21 CONCERNED THAT WE'VE LOOKED AT THERE IS NO QUALIFICATION
22 THAT A TRUSTEE HAS TO GET A GUARDIAN AD LITEM TO REPRESENT
23 ANY BENEFICIARY, IS THERE, THAT WE'VE LOOKED AT? YOU AS
24 THE TRUSTEE REPRESENT THOSE BENEFICIARIES, DO YOU NOT?

25 A I REPRESENT THEM.

1 Q FOR PURPOSES OF NOTICE; IS THAT NOT CORRECT?

2 A WE'VE LOOKED AT THE CODE SECTIONS THAT SEEMED TO SAY
3 THAT THE NOTICE TO ME IS NOTICE TO THEM AND WE'VE
4 DISCUSSED THE NOTICE TO ME. SO...

5 Q SO, WHO ELSE ISN'T REPRESENTED IN THIS HEARING TODAY?

6 A YOU KNOW, PROFESSOR MEDLIN, I REALLY WOULD LIKE TO DO
7 A LITTLE MORE RESEARCH ON THESE CODE SECTIONS THAT YOU'VE
8 ASKED ME ABOUT TODAY. I MEAN, I KNOW YOU TEACH THIS AND I
9 THINK YOU PROBABLY WROTE THIS CODE. I AM NOT A CERTIFIED
10 SPECIALIST IN THIS AREA OF THE LAW. MRS. POPE IS. AND IN
11 MANY, MANY INSTANCES I HAVE, OBVIOUSLY, DEFERRED TO HER
12 BECAUSE OF THAT SPECIALTY THAT SHE HAS AND I DON'T HAVE
13 IT.

14 SO, I WOULD LIKE TO DISCUSS IT WITH HER. I WOULD
15 LIKE, YOU KNOW, TO GET ON WESTLAW MYSELF AND TAKE A LOOK
16 AT A FEW THINGS. I'M NOT SAYING THAT I AM GOING TO
17 DISAGREE WITH YOU, BUT YOU'RE ASKING ME QUESTIONS HERE
18 TODAY THAT I AM JUST NOT PREPARED TO ANSWER AND MAY NOT BE
19 QUALIFIED TO ANSWER.

20 Q I ASK AGAIN, MR. BUCHANAN, WHY DID YOU ALLEGE A LACK
21 OF NOTICE AND NO DUE PROCESS?

22 A WELL, FIRST OF ALL, LET ME SAY THAT MRS. POPE HAD
23 STRONG FEELINGS ABOUT THAT, AND WE HAD CONVERSATIONS ABOUT
24 THAT. I AM A CIVIL LITIGATOR. I UNDERSTAND THE
25 IMPORTANCE OF NOTICE TO PARTIES, AND I UNDERSTAND THE

1 ISSUE OF FAIRNESS TO EVERYBODY, AND I UNDERSTAND THE NEED
2 FOR PEOPLE TO HAVE A VOICE THAT IS -- THAT IS
3 DISINTERESTED AND OBJECTIVE AND DETACHED AND NOT -- AND
4 FROM SOMEONE WHOSE INTERESTS ARE NOT IN CONFLICT WITH
5 THEM. I UNDERSTAND THE BASIC, GENERAL CONSTITUTIONAL
6 FAIRNESS AND NOTICE REQUIREMENT OF THE LAW AND THAT, YOU
7 KNOW -- YOU KNOW, I UNDERSTAND THE CONSTITUTIONAL LAW
8 BETTER THAN I UNDERSTAND THIS PROBATE CODE.

9 SO, YOU'RE ASKING ME A QUESTION THAT I'M TELLING YOU
10 THAT I AM JUST NOT PREPARED TO ANSWER. IF YOU WANT ME TO
11 RESEARCH IT, I'LL GO RESEARCH IT AND THEN I'LL BE WILLING
12 TO GET BACK ON THE STAND AND ANSWER YOUR QUESTION.

13 Q MR. BUCHANAN, YOU ARE A CO-FIDUCIARY WITH MRS. POPE;
14 CORRECT?

15 A CORRECT.

16 Q YOU HAVE THE SAME RESPONSIBILITIES AS MRS. POPE;
17 CORRECT?

18 A THAT'S RIGHT.

19 Q AND YOU DIDN'T RECALL A SPECIFIC CONVERSATION WHERE
20 MRS. POPE ADVISED YOU ABOUT THESE SECTIONS OTHER THAN THE
21 POSSIBILITY OF A CONVERSATION AS I RECALL YOUR EARLIER
22 TESTIMONY?

23 A THAT'S CORRECT.

24 Q DO YOU RECALL PETITIONING THE COURT TO APPROVE THE
25 PAYMENT OF YOUR FEES BOTH AS SPECIAL ADMINISTRATOR AND

1 SPECIAL TRUSTEE AND CULMINATING IN AN ORDER OF
2 JANUARY 2008 THAT WOULD ALLOW THE PAYMENT OF YOUR FEES AS
3 A DEPOSIT GOING FORWARD TOWARDS A FULL COMMISSION? IS
4 THAT THE ESSENCE OF THAT ORDER?

5 A WELL, I DO REMEMBER THAT IT WAS IN EARLY 2008.

6 Q DID YOU NOTIFY VOORHEES, SALKEHATCHIE, USC AIKEN WHEN
7 YOU WERE ASKING FOR YOUR FEES FROM THE ESTATE?

8 A NO, SIR.

9 Q WOULD THAT BE FAIR TO THEM IF THEY SHOULD HAVE BEEN
10 NOTIFIED AND WEREN'T OTHERWISE REPRESENTED?

11 A WELL, IF THEY WERE ENTITLED TO NOTICE, THEY SHOULD
12 HAVE RECEIVED NOTICE.

13 Q DID YOU NOTIFY THE MINOR GRANDCHILDREN WHEN YOU
14 PETITIONED FOR YOUR FEES?

15 A NO, SIR. NO, SIR.

16 Q DO YOU RECALL PETITIONING THIS COURT TO APPROVE THE
17 CHRISTIE'S SALE?

18 A YES.

19 Q DID YOU NOTIFY THE THREE COLLEGES WHEN YOU PETITIONED
20 TO SALE THE PROPERTY?

21 A NO, SIR.

22 Q DID YOU NOTIFY THE MINOR GRANDCHILDREN?

23 A NO, SIR.

24 Q WERE SOME OF THE PROCEEDS OF THE CHRISTIE'S SALES
25 EXPENDED OR ACTUALLY USED TO PAY YOUR FEES?

1 A YES, SIR.

2 Q IN FACT, YOU AND MRS. POPE HAVE FILED A BUNCH OF
3 MOTIONS IN THIS COURT, HAVEN'T YOU, MR. BUCHANAN?

4 A YES, SIR.

5 Q HAVE YOU EVER NOTIFIED THE THREE COLLEGES OR THE
6 GRANDCHILDREN?

7 A NO, SIR; NOT TO MY RECOLLECTION.

8 Q AND YOU UNDERSTAND WHY SOMEONE MIGHT TAKE THE
9 POSITION THAT YOU AND MRS. POPE ARE CONCERNED ABOUT DUE
10 PROCESS ONLY WHEN YOU WANT TO TRY TO OBSTRUCT A SETTLEMENT
11 BUT NOT WHEN IT SUITS YOUR PURPOSES?

12 A NO, SIR.

13 Q THANK YOU. YOU'VE ASKED THE COURT TO APPOINT IN AN
14 EMERGENCY A SPECIAL ADMINISTRATOR AND SPECIAL TRUSTEE?

15 A YES, SIR.

16 Q HAVE YOU NAMED A PERMANENT -- EXCUSE ME. I MEAN,
17 HAVE YOU NAMED SOMEONE THAT YOU WOULD LIKE TO BE
18 APPOINTED?

19 A NO, SIR. WE -- YOU KNOW, HERE IS WHAT OUR VIEW OF
20 THAT IS. YOU KNOW, YOU MENTIONED THE CHRISTIE'S SALE. WE
21 HAD TWO ORDERS OF THIS COURT AUTHORIZING THAT SALE, AND
22 MRS. POPE AND I SPENT WHAT SEEMS LIKE 20 HOURS A DAY THE
23 WHOLE FIRST HALF OF JULY TRYING TO DEFEND AGAINST ALL THE
24 ATTACKS THAT EVERYBODY OTHER -- EVERYBODY WHO IS INVOLVED
25 IN THIS OTHER THAN US MADE TO PREVENT THAT SALE BOTH IN

1 THE FEDERAL COURT AND IN THE COURT OF APPEALS, AND IT
2 DIDN'T DO US MUCH GOOD TO HAVE THOSE TWO ORDERS THAT
3 HADN'T BEEN APPEALED HERE AUTHORIZING THAT TO GO FORWARD.

4 SO, IT TOOK A TREMENDOUS AMOUNT OF ENERGY WHICH WE
5 WERE HAPPY AND WILLING TO GIVE. IT TOOK A LOT OF --
6 UNFORTUNATELY, A LOT OF TIME AND EXPENSE TO TRY TO GET
7 THAT CHRISTIE'S SALE GOING. NOW, RECENTLY -- RECENTLY WE
8 PROVIDED A NOTICE UNDER THE SAME ORDER OF A SALE OF SOME
9 OTHER ASSETS AND NOW WHAT I REMEMBER IS THERE'S BEEN
10 ANOTHER PETITION OR MOTION FILED TO PREVENT THAT. SO,
11 HERE WE GO AGAIN.

12 SO, WE'VE NOW REACHED THE POINT WHERE JUST BASED ON
13 OUR EXPERIENCE IT IS CLEAR TO US THAT IT'S JUST A HARDSHIP
14 FOR THE TRUST AND THE ESTATE FOR US TO HAVE TO ALLOCATE
15 TRUST AND ESTATE MONEY TO DEAL WITH ALL OF THAT. SO, OUR
16 THOUGHT ABOUT THE SPECIAL ADMINISTRATOR SPECIAL TRUSTEE
17 WAS WE WOULD ASK THE COURT TO APPOINT SOMEONE TO TAKE OVER
18 THE ADMINISTRATION OF THE ESTATE AND THE TRUST THAT Y'ALL
19 LIKED WHO WOULDN'T HAVE TO FIGHT THE WORLD EVERYTIME THEY
20 TRY TO MOVE, AND, YOU KNOW, IT WOULD JUST SAVE MONEY FOR
21 THE ESTATE AND TRUST.

22 SO, WE REALLY HAVEN'T. I MEAN, IT WOULD SUIT ME, YOU
23 KNOW, FOR Y'ALL TO GET TOGETHER AND DECIDE WHO OUGHT TO
24 ADMINISTER THE ESTATE AND TRUST JUST SO YOU DON'T HAVE TO
25 FILE SOMETHING TWICE A DAY TO OPPOSE EVERYTHING THEY WANT

1 TO TRY TO DO.

2 Q MR. BUCHANAN, YOU TOLD ME EARLIER THAT THERE WERE
3 OTHER PEOPLE IN THIS UNIVERSE OR OTHER INSTITUTIONS IN
4 THIS UNIVERSE WHO WERE COMPETENT TO DEFEND THE ESTATE PLAN
5 OF JAMES BROWN?

6 A I'M SURE THERE ARE PEOPLE IN THIS WORLD WHO ARE
7 COMPETENT.

8 Q AND YOU THINK WHO WOULD TAKE THEIR JOB SERIOUSLY AND
9 DO THEIR JOB AS A FIDUCIARY?

10 A WELL, YOU KNOW, YOU'RE ASKING ME TO SPECULATE. I
11 MEAN, YOU KNOW, THERE ARE PEOPLE OUT THERE WHO WOULD TAKE
12 ANY JOB SERIOUSLY.

13 Q ARE YOU AWARE OF ANY PROFESSIONAL FIDUCIARY WHO HAS
14 UNDER COURT AUTHORITY DELIBERATELY DISREGARDED THE COURT'S
15 DIRECTION IN ADMINISTERING AN ESTATE? A PROFESSIONAL
16 FIDUCIARY? ARE YOU AWARE OF ANY IN YOUR YEARS OF
17 PRACTICE?

18 MR. BAILEY: YOUR HONOR --

19 A I DON'T REMEMBER. I MIGHT --

20 MR. BAILEY: I OBJECT. THIS IS SO FAR IRRELEVANT.

21 THE COURT: SUSTAINED.

22 MR. MEDLIN: YOUR HONOR --

23 THE WITNESS: TO ANSWER YOUR QUESTION.

24 THE COURT: SUSTAINED. DON'T ANSWER IT. THAT'S
25 SPECULATION.

1 MR. MEDLIN: THANK YOU, YOUR HONOR. THANK YOU,
2 MR. BUCHANAN.

3 IF YOU STEPPED DOWN TODAY AND MRS. POPE STEPPED DOWN
4 TODAY IN ALL OF YOUR CAPACITIES AND THERE WERE IN THIS
5 WIDE UNIVERSE SOME COMPETENT PROFESSIONAL FIDUCIARY WHO
6 WOULD PROTECT THE ESTATE OF JAMES BROWN UNDER THE PROPER
7 COURT'S AUTHORITY, DON'T YOU AGREE THAT THAT WOULD REDUCE
8 COSTS AND EXPENSE AND LITIGATION AND HARD FEELING AND
9 ALSO, PERHAPS, RAISE THE VALUE OF THE ESTATE?

10 THE WITNESS: NO, I WOULDN'T AGREE TO ALL THAT. I
11 WOULD AGREE THAT THERE COULD BE PEOPLE OUT THERE WHO COULD
12 MAYBE DO IT PROVIDED THEY'RE LEFT ALONE. I DON'T KNOW
13 THAT THERE IS ANYBODY OUT THERE THAT'S GOING TO, YOU KNOW,
14 RAISE THE VALUE OF THE ESTATE.

15 Q YOUR --

16 A I MEAN, IT MAY OR MAY NOT. IT IS JUST TOO MANY
17 FACTORS RELATIVE TO THE VALUE. WE ALL KNOW THE IMPOSITION
18 OF THE VALUE.

19 Q LET'S DEAL WITH THAT INDIVIDUALLY. AS A FIDUCIARY OF
20 THIS ESTATE YOU AGREE THAT YOU HAVE A RESPONSIBILITY TO
21 HAVE AN UNDERSTANDING OF THE ASSETS OF THE ESTATE AND THE
22 VALUE OF THOSE ASSETS. DO YOU UNDERSTAND THAT?

23 A YES, SIR.

24 Q DO YOU THINK THE VALUE OF ESTATE HAS GONE UP OR DOWN
25 SINCE THE DEATH OF MR. BROWN?

1 A WELL, I DON'T THINK ANYBODY CAN ANSWER THAT QUESTION
2 IN THIS ECONOMY. I THINK YOU'VE ASKED A QUESTION THERE
3 JUST IS NO ANSWER TO.

4 Q WHY DON'T YOU KNOW THE ANSWER, MR. BUCHANAN, IF
5 YOU'RE THE FIDUCIARY?

6 A BECAUSE THE ECONOMICS INVOLVED ARE SUCH THAT NOBODY
7 CAN UNDERSTAND IT.

8 Q WOULD YOU THEN AT LEAST --

9 A AND, YOU KNOW, WE TRIED. OKAY? WE'VE TRIED.
10 EVERYTIME WE TURN AROUND WE'RE TOO BUSY HAVING TO FIGHT
11 AND RESPOND TO EVERYTHING Y'ALL FILE. YOU KNOW, IN THE
12 FALL -- IN THE LATE SUMMER, EARLY FALL SEPTEMBER, OCTOBER
13 WE STARTED TRYING TO IDENTIFY ALL OF THE APPROPRIATE
14 PEOPLE TO HELP US WITH VALUATIONS AND THEN THE NEXT THING
15 WE KNOW HERE WE GOT THIS -- WE GOT A PETITION FROM
16 MR. JONES TO ENJOIN US. WE GOT HEARING IN BEAUFORT IN
17 FEDERAL COURT TO ENJOIN US. WE GOT -- IT MAKES IT HARD TO
18 GET A COMMITMENT.

19 YOU KNOW, WE GOT A LITTLE RESEARCH DONE HERE.
20 DR. MARSHA SHELLBURN WAS ABLE TO GIVE ME -- WHO IS AN
21 ECONOMIST HERE -- ABLE TO GIVE ME A NAME AND I'VE BEEN
22 COMMUNICATING WITH DR. MICHAEL EINHORN AT PRINCETON
23 SINCE -- I DON'T REMEMBER WHEN I STARTED, BUT IT'S BEEN A
24 LONG TIME AND -- IT'S JUST, YOU KNOW, ARE YOU READY YET?
25 NO, THEY'RE STILL ATTACKING US. SO, BUT, YOU KNOW, I

1 DON'T KNOW WHETHER HE CAN TRUTHFULLY IN THIS ECONOMY. WE
2 THINK WE'VE DONE PRETTY WELL WITH IT, BY THE WAY.

3 Q MR. BUCHANAN, DO YOU RECALL FILING APPROXIMATELY A
4 90-PAGE MOTION AGAINST THE PROPOSED SETTLEMENT AGREEMENT
5 OF AUGUST 10 BEFORE WE EVEN PRESENTED IT TO THIS COURT
6 BEFORE YOU COULD EVEN SEE IT?

7 A BEFORE I COULD SEE IT?

8 Q YES, BECAUSE IT HADN'T BEEN PRESENTED YET.

9 A YOU KNOW, WE FILED A MOTION WHATEVER DATE WE FILED
10 IT.

11 Q YOU DON'T RECALL IT BEING BEFORE WE ACTUALLY
12 PRESENTED THE SETTLEMENT AGREEMENT?

13 A I DON'T KNOW WHETHER IT WAS BEFORE. WE HAD
14 CONVERSATIONS. YOU KNOW, YOU AND I TALKED ON THE PHONE.
15 YOU AND I AND ADELE TALKED ON THE TELEPHONE AFTER WE WERE
16 ADVISED THAT THERE WAS A SETTLEMENT AUGUST 10, AND I DON'T
17 KNOW HOW MUCH WE KNEW FROM THOSE CONVERSATIONS OR
18 TELEPHONE CONVERSATIONS. SO, THE QUESTION IS WHETHER OR
19 NOT, YOU KNOW -- ARE YOU SAYING THAT NOBODY -- NOBODY KNEW
20 THE TERMS OF THE SETTLEMENT UNTIL YOU PRESENTED IT IN
21 COURT?

22 Q WELL, LET'S GO THROUGH THAT, MR. BUCHANAN.

23 A AND THEN THERE WAS THE ISSUE OF -- YOU MAY REMEMBER
24 THERE WAS THE ISSUE OF THE DISCUSSION IN THE GRAND JURY
25 ROOM THAT WE DIDN'T PARTICIPATE IN. YOU AND I HAD

1 DISCUSSED HERE ON THE FLOOR IN THE COURTROOM THE FACT THAT
2 IT WAS A GOOD IDEA FOR US NOT TO PARTICIPATE SINCE WE WERE
3 GETTING READY TO BE TRIED BY MR. BELL DOWN IN BEAUFORT AND
4 THAT IT MIGHT BE MORE APPROPRIATE THAT WE NOT KNOW WHAT'S
5 GOING ON BACK HERE SO WE WOULDN'T HAVE TO TALK ABOUT IT
6 THERE, AND THEN, OF COURSE, LATER WE'VE ALL HEARD YOU
7 STAND AT THE TABLE THERE AND CRITICIZE US FOR NOT MAKING
8 OURSELVES AWARE OF THE TERMS OF THE SETTLEMENT EARLIER.

9 Q. MR. BUCHANAN, DID I EVER SUGGEST TO YOU TO INITIATE
10 THE CONVERSATION THAT YOU SHOULD NOT KNOW THE TERMS OF THE
11 SETTLEMENT AGREEMENT SO YOU COULD BE PROTECTED IN THAT
12 FEDERAL --

13 A YEA, WE STOOD RIGHT OVER THERE, RIGHT IN THIS ROOM.

14 Q NO.

15 THE COURT: HOLD ON, GENTLMEN.

16 Q WHO INITIATED THAT THOUGHT?

17 A AND YOU SAID --

18 Q DO YOU NOT RECALL A TELEPHONE CONVERSATION THAT YOU
19 AND MRS. POPE AND I HAD AFTER AUGUST 19 IN WHICH YOU ONCE
20 AGAIN TOLD ME -- YOU TWO ONCE AGAIN TOLD ME THAT YOU
21 DIDN'T WANT TO KNOW THE TERMS OF THE SETTLEMENT AGREEMENT?

22 A I DO RECALL THAT CONVERSATION, BUT THAT'S A SEPARATE
23 CONVERSATION.

24 Q AND ON AUGUST 19 WE DID PRESENT THAT SETTLEMENT
25 AGREEMENT IN CHAMBERS WITH YOUR COUNSEL PRESENT; IS THAT

1 CORRECT?

2 A I BELIEVE SO. I DON'T REMEMBER THE DATE.

3 Q ASSUMING --

4 A I REMEMBER YOU PRESENTED IT IN THERE WITH COUNSEL
5 PRESENT. I DO REMEMBER THAT.

6 Q SO, YOU WOULD NOT HAVE HAD THE OPPORTUNITY BEFORE
7 AUGUST 19 TO KNOW THE TERMS OF THE PROPOSED SETTLEMENT
8 AGREEMENT?

9 A NOT UNLESS YOU MENTIONED THEM IN THE TELEPHONE
10 CONVERSATION BECAUSE WE HAD MORE THAN ONE, I'M SURE.

11 Q BUT, MR. BUCHANAN, WE WERE HERE ON AUGUST 19 THE DAY
12 WE WENT BACK INTO CHAMBERS AND THAT'S WHEN YOU AND I HAD
13 THE CONVERSATION ABOUT YOU NOT KNOWING ANYTHING ABOUT IT?

14 A WELL, IT WAS KIND OF -- I MEAN, AS I UNDERSTAND IT,
15 WAS KIND OF AN EVOLVING SETTLEMENT. AT VARIOUS TIMES
16 Y'ALL WERE AT VARIOUS STAGES.

17 Q ASSUME FOR THE PURPOSES OF THIS QUESTION,
18 MR. BUCHANAN, THAT YOU FILED AN APPROXIMATELY 90-PAGE
19 MOTION OPPOSING THE SETTLEMENT BEFORE YOU COULD POSSIBLY
20 HAVE KNOWN THE TERMS OF IT AND ASSUME THAT EVER SINCE THEN
21 THERE'S BEEN A LOT OF MOTIONS FILED BY YOU TWO ATTACKING
22 THE SETTLEMENT, ATTACKING THE LEGITIMACY OF THE PARTIES.
23 CAN YOU UNDERSTAND WHY WE MIGHT HAVE A DIFFERENT OPINION
24 ABOUT WHO IS BEING ATTACKED?

25 THE COURT: GENTLEMEN, LET'S MOVE ALONG. YOU KNOW,

1 WHO'S BEING ATTACKED HADN'T GOT ANYTHING TO DO WITH ME
2 APPROVING THIS SETTLEMENT.

3 THE WITNESS: NO. THE ANSWER TO YOUR QUESTION IS NO.

4 THE COURT: ALL RIGHT. MOVE ALONG TO ANOTHER
5 SUBJECT.

6 MR. MEDLIN: I WILL, SIR.

7 THE COURT: IN FACT, IT'S 1 O'CLOCK. IT MIGHT BE
8 TIME FOR --

9 MR. MEDLIN: YOUR HONOR, I CAN FINISH THIS LITTLE
10 SEGMENT IN ABOUT TWO MINUTES, IF I MAY.

11 THE COURT: THIS LITTLE SEGMENT OR ALL --

12 MR. MEDLIN: NO, YOUR HONOR. I'M AFRAID THERE IS
13 MORE.

14 THE COURT: DON'T BE AFRAID. I'M HERE TO HELP Y'ALL
15 OUT.

16 MR. MEDLIN: I KNOW, YOUR HONOR. I JUST HATE TO TAKE
17 THE COURT'S TIME.

18 THE COURT: YOU'RE NOT TAKING IT. THIS IS YOUR TIME.
19 IT AIN'T MINE.

20 Q DO YOU RECALL FILING PLEADINGS RECENTLY WHERE YOU
21 ASSERTED THAT ONE OF THE PROBLEMS WITH OUR TRYING TO
22 APPROVE THE SETTLEMENT IS THAT WE HAD NOT NAMED A
23 PERMANENT FIDUCIARY?

24 A I REMEMBER BEING CONCERNED THAT THERE WASN'T A
25 SUCCESSOR FIDUCIARY INVOLVED IN THE PROCESS. WE WERE

1 CONCERNED ABOUT THAT, AND IT COULD HAVE BEEN ADDRESSED IN
2 THAT.

3 Q OKAY. BUT YOUR EMERGENCY MOTION FOR APPOINTMENT OF A
4 SPECIAL ADMINISTRATOR AND SPECIAL TRUSTEE DIDN'T EITHER;
5 CORRECT? IT DIDN'T NAME THE PERSON YOU WANTED TO BE THE
6 FIDUCIARY?

7 A I THINK MAYBE WE -- I CAN'T REMEMBER EXACTLY WHETHER
8 WE SUGGESTED THAT Y'ALL NAME THEM.

9 Q BUT YOU DIDN'T NAME A PARTICULAR INDIVIDUAL?

10 A NO.

11 MR. MEDLIN: YOUR HONOR --

12 THE WITNESS: WE JUST THINK IT OUGHT TO BE SOMEBODY
13 THAT SUITS Y'ALL.

14 MR. MEDLIN: YOUR HONOR, THIS WOULD BE A GOOD
15 BREAKING POINT IF IT SUITS YOUR HONOR.

16 THE COURT: ALL RIGHT, GENTLEMEN, LADIES. HOW LONG
17 DO YOU WANT FOR LUNCH? IT IS FRIDAY AND YOU WANT TO GO
18 STRAIGHT THROUGH OR DO YOU WANT TO BREAK?

19 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

20 THE COURT: YES, SIR?

21 MR. BAILEY: YOUR HONOR, I'VE TALKED WITH PROFESSOR
22 MEDLIN AND WE WANTED TO BE SURE THAT THERE WOULD BE A
23 SINGLE EXHIBIT OF WHAT IS BEING DISCUSSED TODAY -- THE
24 SETTLEMENT AGREEMENT -- AND ANY DOCUMENTS ATTACHED TO IT
25 WOULD BE -- AND WE UNDERSTAND WHAT THEIR POSITION IS ABOUT

1 IT'S A WORK IN PROGRESS, BUT WE WANT WHAT'S BEEN DONE SO
2 FAR TO BE MARKED AS A SINGLE EXHIBIT BECAUSE IT'S BEEN --
3 THAT'S WHAT WE'RE HERE FOR.

4 MR. MEDLIN: YOUR HONOR, WE'RE HAPPY TO OBLIGE, AND
5 JUST TO REFRESH EVERYONE'S MEMORY IF NEED BE FROM
6 WEDNESDAY MORNING MR. BELL AND I PRESENTED IT TO YOUR
7 HONOR. WHAT WE HAVE IS OUR MOTION WHICH AS ATTACHMENTS
8 HAD THE SETTLEMENT AGREEMENT, A LEGACY TRUST DOCUMENT, AND
9 A CONTRIBUTION AGREEMENT.

10 THE COURT: I DON'T THINK I EVER GOT IT, BUT
11 ANYWAY...

12 MR. MEDLIN: AND THEN, YOUR HONOR, MR. BELL
13 INTRODUCED ON JANUARY 30 THE LETTER FROM HIM TO MR. JONES
14 AND A LETTER FROM MR. JONES TO HIM, AND THAT CONSTITUTES
15 THE SET OF DOCUMENTS THAT WE SAY CREATES THE PRINCIPALS
16 THAT WE'RE ASKING YOU TO APPROVE, AND WHEN THOSE OTHER
17 DOCUMENTS ARE FINISHED QUICKLY, HOPEFULLY, WE'LL GET THOSE
18 TO EVERYONE.

19 THE COURT: BUT YOU UNDERSTAND AS I SAID IN CHAMBERS
20 BEFORE I AGREE TO APPROVE IT OR DISAPPROVE IT Y'ALL GOT TO
21 GET IT IN FINAL FORM WITH EVERYBODY'S SIGNATURE.

22 MR. MEDLIN: WE UNDERSTAND THAT, YOUR HONOR, WITH
23 WHATEVER PROTECTIONS YOU WANT TO PUT IN THERE FOR THE
24 VARIOUS PARTIES. WE UNDERSTAND THAT. THE DISCLOSURE
25 ABOUT HAVING BEEN REPRESENTED AND STUFF.

1 THE COURT: SHOW THAT TO MR. BAILEY.

2 MR. ROSEN: YOUR HONOR, I BELIEVE, IF I MIGHT,
3 EXHIBIT 1 IS THE MOTION.

4 THE COURT: OFF THE RECORD. Y'ALL GET IT
5 STRAIGHTENED OUT AND THEN WE'LL PUT IT ON THE RECORD.

6 (WHEREUPON, A DISCUSSION WAS HELD OFF THE RECORD.)

7 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE'LL
8 DO THIS AT 4 O'CLOCK WHEN WE FINISH TESTIMONY.

9 MR. ROSEN, YOU'LL BE GLAD TO STAY UNTIL FIVE.

10 PROFESSOR MEDLIN.

11 MR. MEDLIN: THANK YOU, YOUR HONOR. THANK YOU,

12 MR. BUCHANAN.

13 BY MR. MEDLIN:

14 Q MR. BUCHANAN, IS IT YOUR UNDERSTANDING THAT WHEN
15 NOTICE IS SERVED BY PUBLICATION UNDER THE LAW THAT A
16 GUARDIAN AD LITEM HAS TO BE APPOINTED SUBSEQUENTLY TO
17 PERFECT THAT NOTICE?

18 A NO, I DON'T THINK IT HAS TO BE APPOINTED TO PERFECT
19 THE NOTICE IF THE NOTICE IS PROPER -- IF IT IS A PROPER
20 CIRCUMSTANCE FOR PUBLICATION AND PUBLICATION IS DONE
21 APPROPRIATELY, BUT IF, YOU KNOW, IF THE NOTICE IS DIRECTED
22 TO PEOPLE WHO MAY FALL OR SUFFER UNDER SOME -- MAY FALL
23 UNDER OR SUFFER SOME DISABILITY OR DEFICIENCY, THEN I
24 THINK IT WOULD BE APPROPRIATE TO HAVE A GUARDIAN APPOINTED
25 FOR THAT CLASS OF PEOPLE.

1 Q THAT WOULD BE MY FOLLOW-UP QUESTION. CERTAINLY, YOU
2 WOULD AGREE THAT IN CERTAIN CASES IT WOULD BE APPROPRIATE
3 AT ANY TIME IN COURT FOR A COURT TO APPOINT A GUARDIAN AD
4 LITEM TO REPRESENT SOMEONE --

5 A THAT'S RIGHT.

6 Q JUST AS A BASIC NOTION AND ASSUMING THAT ALL OF THE
7 REQUIREMENTS WERE MET BEFORE THE ISSUANCE OF THE ORDER OF
8 PUBLICATION, THERE IS NO ADDITIONAL REQUIREMENTS. THAT THAT.
9 THE GUARDIAN AD LITEM BE APPOINTED?

10 A NO, BECAUSE WHO ARE YOU APPOINTING THE GUARDIAN FOR?
11 YOU GOT TO SERVE -- YOU GOT TO SERVE UNKNOWN CLAIMANTS,
12 SOME OF WHOM MAY SUFFER UNDER A DISABILITY, BUT, YOU KNOW,
13 AT SOME STAGE AFTER NOTICE -- AT SOME APPROPRIATE STAGE IF
14 YOU GOT PEOPLE OUT THERE WHO FALL INTO THAT CATEGORY THEN
15 I THINK A GUARDIAN IS APPROPRIATE.

16 Q DO YOU RECALL THAT THE JUDGE SIGNED AN ORDER OF
17 PUBLICATION IN THIS MATTER?

18 A YES, I DO. IT WAS NOT IN YOUR CASE. IT WAS IN
19 MR. LEVENSON'S CASE, I BELIEVE.

20 Q MR. LEVENSON'S CASE BEING WHICH CASE?

21 A IT WAS HIS CASE TO -- THAT HE BROUGHT TO SET ASIDE
22 THE WILL AND THE TRUST.

23 Q WHAT HAS BEEN DESCRIBED AS THE WILL-TRUST-HEIRS
24 MATTER?

25 A IT IS NOW, I BELIEVE, THE WILLS-HEIRS-TRUST MATTER.

1 Q AND, AGAIN, YOU UNDERSTAND THAT WE BELIEVE THAT WE
2 ARE COVERING BOTH THE GENERAL ESTATE MATTERS AND CONFLICT
3 AMONG THE SETTLING PARTIES HERE TODAY AND THE
4 WILLS-TRUST-HEIRS MATTER AS IT AFFECTS THE SETTLING
5 PARTIES HERE TODAY?

6 A WELL, I'M NOT QUITE SURE WHAT Y'ALL BELIEVE ABOUT A
7 LOT OF THINGS. SO, I AM NOT SURE THAT'S A FAIR QUESTION,
8 BUT I KNOW THAT YOU ALL ARE TOGETHER AS SETTLING PARTIES.
9 I KNOW THAT MUCH. I KNOW THAT Y'ALL ARE ALL PROMOTING THE
10 SETTLEMENT.

11 Q AND ARE YOU AWARE OF ANY DEFECTS IN THAT PUBLICATION
12 NOTICE AND ORDER?

13 A I'M NOT AWARE OF A DEFICIENCY WITH RESPECT TO THE
14 PUBLICATION THAT OCCURRED.

15 Q OKAY. THANK YOU.

16 A I THINK IT WAS DONE IN ACCORDANCE WITH THE ORDER.
17 THAT'S WHAT I BELIEVE.

18 Q THANK YOU.

19 A I HAVEN'T CHECKED IT, BUT THAT'S WHAT I BELIEVE.

20 Q THANK YOU, MR. BUCHANAN. IN YOUR EXPERIENCE IS THERE
21 A PROHIBITION AGAINST SOME BUT NOT ALL PARTIES TO A
22 LAWSUIT SETTLING AMONG THEMSELVES?

23 A IN MY EXPERIENCE THERE WOULD BE A PROHIBITION IF IT
24 AFFECTED THE INTEREST OR THE RIGHTS OF THE PROPERTY OF THE
25 PARTIES.

1 Q AND IF IT DID NOT AFFECT ANY RIGHTS OTHER THAN AMONG
2 THE SETTLING PARTIES WOULD THERE BE A PROHIBITION?

3 A IF IT AFFECTS RIGHTS THAT PERSONS WHO ARE NOT
4 SETTLING PARTIES MAY HAVE, IT WOULD BE PROHIBITED, BUT,
5 NO, YOU'RE RIGHT. IN MANY CASES THE PARTIES DO SETTLE. I
6 MEAN, YOU KNOW, I'LL FILE SUIT AGAINST FOUR DEFENDANTS AND
7 I MAY SETTLE WITH TWO AND END UP TRYING A CASE AGAINST
8 TWO.

9 Q AND YOU UNDERSTAND THAT THE SETTLING PARTIES HAVE
10 ASSERTED THAT THEY DO NOT INTEND FOR THE APPROVAL OF THIS
11 SETTLEMENT TO AFFECT ANY RIGHTS OF PARTIES WHO ARE NOT
12 PARTIES TO THE SETTLEMENT AGREEMENT?

13 A I UNDERSTAND THEY'VE ASSERTED IT, BUT I DON'T QUITE
14 KNOW HOW THEY'RE GOING TO DO IT UNLESS THEY JUST GO OUT
15 AND SETTLE WITH THEM IN WHICH CASE I SUPPOSE THAT RAISES A
16 LOT OF QUESTIONS ABOUT, YOU KNOW, HOW YOU DEAL WITH THINGS
17 LIKE, YOU KNOW, CHARITABLE DEDUCTION AND SO FORTH AND SO
18 ON. I DON'T KNOW HOW YOU QUITE QUANTIFY WHAT'S HAPPENING
19 AT THE TIME OF THE SETTLEMENT IF, FOR EXAMPLE, THE
20 SETTLING PARTIES SETTLE IT AMONG THEMSELVES AND THEN
21 DECIDE THAT, YOU KNOW, MR. GRIFFIN'S CLIENTS ARE THERE AND
22 WE NEED TO SETTLE WITH THEM, YOU KNOW, OR WHATEVER --
23 ANYBODY ELSE, I MEAN.

24 Q HOW WOULD THE SETTLEMENT AGREEMENT AFFECT
25 MR. GRIFFIN'S CLIENTS' RIGHTS?

1 A WELL, I AM NOT SURE I UNDERSTAND THAT. I AM NOT EVEN
2 SURE UNDERSTAND COMPLETELY HOW THE SETTLEMENT AGREEMENT
3 AFFECTS THE SETTLING PARTIES' RIGHTS OR AFFECTS THE TRUST.

4 Q HOW WOULD YOU --

5 A I MEAN, I'VE HEARD YOU DESCRIBE IT AS, YOU KNOW, THE
6 FUNNEL. EVERYTHING GOING IN, BUT, YOU KNOW, I DON'T KNOW
7 -- YOU KNOW, I DON'T KNOW WHAT THIS SETTLEMENT DOES, YOU
8 KNOW, TO THE TAX ISSUES.

9 Q HAVE YOU READ THE SETTLEMENT AGREEMENT?

10 A YES, SIR.

11 Q HAVE YOU --

12 A NOT RECENTLY, BUT I READ IT.

13 Q HAVE YOU READ THE ACCOMPANYING DOCUMENTS WITH THE
14 SETTLEMENT AGREEMENT? LEGACY TRUST DOCUMENT, THE
15 CONTRIBUTION AGREEMENT?

16 A YEA, I HAVE READ THE CONTRIBUTION AGREEMENT. I HAVE
17 READ -- I HAVE READ THE TRUST DOCUMENT.

18 Q OKAY. WHAT QUESTIONS DO YOU HAVE ABOUT THE PARTIES'
19 INTENTIONS?

20 A I'D HAVE TO -- YOU KNOW, I COULDN'T TELL YOU RIGHT
21 NOW BECAUSE I HAVEN'T LOOKED AT EITHER ONE OF THOSE
22 DOCUMENTS IN A WHILE.

23 Q YOU'RE OPPOSED TO THE SETTLEMENT BUT YOU'RE NOT SURE
24 WHAT YOU'RE NOT SURE ABOUT WITH RESPECT TO THE SETTLEMENT
25 AGREEMENT?

1 A YOU KNOW, MAYBE IF THERE THERE'S A NOTEPAD AROUND
2 HERE SOMEWHERE. MAYBE IF I COULD DRAW A PICTURE ON IT I
3 MIGHT BE ABLE TO HELP MYSELF ARTICULATE IT. THERE'S AN
4 EASEL.

5 THE COURT: YOU MEAN THAT KIND OF NOTEPAD OR EASEL?

6 THE WITNESS: ISN'T THERE A BIG PIECE OF PAPER? YOU
7 KNOW, MAYBE YOU CAN HELP ME WITH THIS. YEA, SOMETHING
8 LIKE THAT.

9 THE COURT: SOMETHING LIKE THAT?

10 THE WITNESS: YES, THAT WILL WORK.

11 THE COURT: DO YOU HAVE AN EASEL, MERT?

12 THE WITNESS: CAN I JUST LAY IT RIGHT HERE FOR A
13 MINUTE?

14 MR. BAILEY: DO YOU NEED A POINTER?

15 THE WITNESS: NO.

16 (WHEREUPON, THE WITNESS COMES DOWN FROM THE WITNESS
17 STAND AND USES THE EASEL.)

18 THE WITNESS: NOW, IF WE'VE GOT THE ASSETS OF THE
19 ESTATE AND TRUST OVER HERE, OKAY, WHATEVER THE VALUE, BUT
20 LET'S ASSUME JUST FOR THE SAKE OF ILLUSTRATION IT'S
21 100 MILLION, OKAY? WE KNOW WE'VE GOT PERSONAL HOUSEHOLD
22 EFFECTS. WE GOT THE GRANDCHILDREN'S TRUST, AND THEN WE
23 GOT THE BIG PART OF IT GOING INTO THE CHARITY. IF WE CUT
24 THAT IN HALF AND WE TAKE 25 PERCENT OF IT HERE AND GIVE IT
25 TO, SAY, MR. LEVENSON'S CLIENTS, OKAY? WELL, THAT'S A BIG

1 PIECE OF THE PIE, AND I'M ASSUMING IT GOES INTO THE TOP OF
2 THE FUNNEL BASED ON WHAT I HEARD YOU DESCRIBE. IS THAT
3 RIGHT?

4 MR. MEDLIN: I THINK YOU'RE THE ONE ANSWERING THE
5 QUESTION, MR. BUCHANAN.

6 THE COURT: THIS IS HIS UNDERSTANDING OF IT.

7 THE WITNESS: ALL RIGHT. YOU GOT THIS 25 PERCENT
8 RIGHT HERE. YOU GOT THAT 25 MILLION RIGHT THERE GOING OUT
9 TO MR. LEVENSON'S CLIENTS AND I'M ASSUMING BECAUSE WE
10 CAN'T FIND OUT ANYTHING ABOUT FEES, BUT I'M ASSUMING
11 MR. LEVENSON HAS GOT AN ATTORNEY'S FEES. I WOULD EXPECT
12 HIM TO HAVE AN ATTORNEY'S FEE. SO, THIS PIECE OF PIE OVER
13 HERE IS IN THE FUNNEL AND WE GOT -- I AM JUST GOING TO
14 MAKE AN ASSUMPTION. LET'S JUST SAY THAT A THIRD OF THAT
15 GOES OFF AS ATTORNEY'S FEES AND THEN BECAUSE THE
16 CHARITABLE DEDUCTION IS, OBVIOUSLY, NOT THERE FOR THAT
17 PIECE OF THE PIE THAT'S LEAVING, WE'VE GOT 25 PERCENT OF
18 THE TOTAL THAT ISN'T GOING TO BE COVERED BY THAT
19 CHARITABLE DEDUCTION.

20 SO, WE GOT A HUGE CHUNK IN TAXES COMING OUT OF THERE
21 AND I AM ASSUMING IT'S ALL COMING OUT OF THAT PIECE OF
22 PIE, BUT I DON'T KNOW IT. I DON'T KNOW WHETHER THIS PIECE
23 OF PIE IS STILL GOING TO GO TO MR. LEVENSON'S CLIENTS AND
24 WHATEVER THE ATTORNEY'S FEES ON IT ARE ARE GOING TO COME
25 OUT OF WHATEVER ELSE IS IN THIS FUNNEL AND THE PORTION OF

1 THE TAXES IS GOING TO COME OUT OF WHATEVER ELSE HAS BEEN
2 FUNNELED IN THERE OR NOT. I DON'T UNDERSTAND THAT. I
3 KNOW THAT EVERYTHING IS GOING INTO THIS FUNNEL AND THAT,
4 ULTIMATELY, WHAT FLOWS OUT OF HERE -- THE DISTRIBUTIONS --
5 IS GOING TO BE -- THE ONLY THING GOING TO THE CHARITABLE
6 TRUST NOW IS INCOME AS I READ IT. NO ASSETS.

7 SO, THERE'S, OBVIOUSLY, NO CHARITABLE DEDUCTION FOR
8 THAT PIECE. NOW, IF YOU GO DOWN HERE TO THIS 25 PERCENT
9 THAT IS SUPPOSED TO GO TO YOUR CLIENT, YOU KNOW, THERE MAY
10 OR MAY NOT BE A MARITAL DEDUCTION. WE, OBVIOUSLY, HAVEN'T
11 HAD DISCOVERY. THAT'S AN ISSUE THAT'S GOING TO HAVE TO BE
12 DECIDED EITHER BY THE I.R.S. OR BY THE HIGHEST COURT OF
13 THE STATE FOR THAT DEDUCTION FOR THAT TO BE BINDING ON THE
14 I.R.S. EVEN IF IT IS THEN AND I AM NOT SURE IT IS THEN.
15 SO -- AND MRS. POPE HAS STUDIED THIS A LOT MORE THAN I
16 HAVE AND SHE'S PROBABLY GOING TO GET BACK UP HERE AND
17 STRAIGHTEN IT ALL OUT, BUT I'M CONFUSED. I DON'T SEE ANY
18 ASSETS GOING INTO THE CHARITABLE TRUST. I SEE ONLY INCOME
19 GOING INTO THE CHARITABLE TRUST AND I SEE LOTS OF THINGS
20 COMING OUT OF IT BEFORE IT ALL WORKS ITS WAY DOWN, AND I
21 AM NOT QUITE SURE WHAT EFFECT THAT HAS ON IT EXCEPT THAT
22 IT REDUCES -- YOU KNOW, IF YOU START TAKING OUT WHAT GOES
23 IN HERE AND START MAKING DEDUCTIONS, IT'S JUST GOING TO --
24 YOU'RE GOING TO END UP, OBVIOUSLY, WITH A MUCH SMALLER
25 CHARITY BASED ON THIS GOING IN. OKAY?

1 NOW, YOU PROBABLY HAVE SOME MORE QUESTIONS FOR ME
2 ABOUT THAT, BUT, I MEAN, I REALLY DON'T UNDERSTAND HOW
3 THIS THING IS GOING TO WORK. NOBODY HAS -- I HAVEN'T SEEN
4 A WITNESS GET UP HERE WHO CAN REALLY EXPLAIN IT IN A WAY
5 THAT MAKES IT MAKE SENSE TO ME.

6 Q THANK YOU, MR. BUCHANAN. ASSUME THAT YOU DON'T
7 UNDERSTAND THE SETTLEMENT AGREEMENT AS WE PROPOSE IT. DO
8 YOU THINK THE FIDUCIARY CONDUCTING HIS FIDUCIARY DUTY AND
9 DUE DILIGENCE WOULD TRY TO UNDERSTAND THE SETTLEMENT
10 AGREEMENT BEFORE DECIDING TO OPPOSE IT ALL THE WAY TO THE
11 SUPREME COURT?

12 A WELL, I THINK THAT WHAT WE DO IN HERE IS TRYING TO
13 UNDERSTAND IT.

14 Q BUT YOU'VE ALREADY OPPOSED IT. YOU'VE ALREADY TOLD
15 US THAT YOU'RE GOING TO APPEAL THE DECISION OF THE JUDGE
16 IF HE APPROVES IT, BUT YOU TOLD ME YOU DON'T UNDERSTAND
17 IT. SO --

18 A WELL, IT TAKES -- I DON'T UNDERSTAND HOW YOU TAKE --
19 HOW YOU TAKE ALL THE MONEY OUT OF THE CHARITY AND EXPECT
20 IT TO COMPORT WITH THE ESTATE PLAN. MR. BROWN HIMSELF
21 DECIDED THAT MOST OF HIS ASSETS WOULD GO TO THIS CHARITY
22 -- TO THIS EDUCATIONAL FUND. HE IS THE ONE WHO DECIDED
23 THAT YOUR CLIENT WOULD NOT GET ANYTHING. HE'S THE ONE WHO
24 DECIDED THAT MR. LEVENSON'S CLIENTS WOULD NOT GET
25 ANYTHING.

1 Q MR. BUCHANAN, IF YOU'D LIKE TO BE MORE COMFORTABLE I
2 AM NOT GOING TO ASK YOU TO DRAW ANYMORE YOU CAN HAVE A
3 SEAT UNLESS YOU WANT TO DRAW SOME MORE.

4 A NO, I WAS JUST -- I JUST THOUGHT THAT HELPED ME THINK
5 IT THROUGH -- THINK THE QUESTION THROUGH, BUT AS I READ --
6 AND I DON'T HAVE IT IN FRONT OF ME AND IT'S BEEN A WHILE
7 SINCE I'VE READ IT, BUT IT SEEMS TO ME THAT, YOU KNOW,
8 THERE'S JUST A LOT OF VALUE LEAVING WHAT WOULD OTHERWISE
9 BE AVAILABLE FOR THE EDUCATION OF NEEDY AND DESERVING
10 CHILDREN.

11 Q AND, AGAIN, MR. BUCHANAN, I ASK YOU TO ASSUME THAT
12 YOU DON'T UNDERSTAND THE PROPOSED SETTLEMENT AGREEMENT AS
13 WE INTEND IT TO BE AND YOU'VE SAID YOU'RE NOT SURE YOU
14 UNDERSTAND IT. DON'T YOU THINK A FIDUCIARY CONDUCTING DUE
15 DILIGENCE WOULD EXPLORE TRYING TO UNDERSTAND THE
16 SETTLEMENT AGREEMENT BEFORE PREDISPOSING HIMSELF TO
17 APPEALING IT ALL THE WAY TO THE SUPREME COURT OF SOUTH
18 CAROLINA IF IT'S APPROVED?

19 A I UNDERSTAND ENOUGH OF IT TO KNOW THAT THIS IS NOT A
20 GOOD THING FOR NEEDY AND DESERVING CHILDREN WHO NEED TO BE
21 EDUCATED.

22 Q OKAY. WELL, LET'S GO THROUGH THAT A LITTLE BIT.
23 WHAT HAPPENS TO THE CHARITIES IF MR. BROWN'S WILLS AND
24 MR. BROWN'S TRUSTS ARE FOUND TO BE INVALID? HOW MUCH GOES
25 TO THE CHARITIES?

1 A WELL, NOTHING GOES TO THE CHARITY IN THAT EVENT, BUT
2 WHERE IS THE EVIDENCE TO INVALIDATE THE WILL AND THE
3 TRUST?

4 Q MR. BUCHANAN -- AND WE CAN DEAL WITH THAT LATER, TOO,
5 PERHAPS -- WHAT HAPPENS IF MS. BROWN IS DETERMINED TO BE
6 ENTITLED TO HER OMITTED SPOUSE'S SHARE? HOW MUCH GOES TO
7 THE CHARITY?

8 A WELL, SHE GETS 50 PERCENT. IF SHE'S ENTITLED TO AN
9 OMITTED SPOUSAL SHARE, BUT WE HAVEN'T HAD ANY DISCOVERY.
10 NOW, 50 PERCENT, OBVIOUSLY, THAT'S GOING TO DIMINISH THE
11 AMOUNT THAT'S AVAILABLE FOR THE CHARITY.

12 Q AND IF LITTLE --

13 A SO --

14 Q EXCUSE ME.

15 A NO, I JUST THINK WE OUGHT TO BE ABLE TO DEVELOP SOME
16 FACTS ABOUT WHETHER THIS IS A GOOD -- ABOUT WHETHER THERE
17 IS SOME REASONABLE RELATIONSHIP OR SOME NEXUS BETWEEN THE
18 ADMISSIBLE EVIDENCE ON THESE ISSUES AND THE RESULT.
19 THAT'S ALL I'M SAYING.

20 Q I UNDERSTAND.

21 A I MEAN, YOU GUYS MAY HAVE A SMOKING GUN I HAVEN'T
22 SEEN. IF YOU DO, I NEED TO SEE IT.

23 Q MR. BUCHANAN, IF LITTLE MAN IS FOUND TO BE ENTITLED
24 TO HIS OMITTED CHILD'S SHARE, HOW MUCH WILL THAT REDUCE
25 THE SHARE GOING TO THE CHARITIES?

1 A I DON'T REMEMBER WHETHER -- I DON'T REMEMBER WHAT THE
2 OMITTED SPOUSE -- THE CHILD'S SHARE IS AS I SIT HERE, BUT
3 IT'LL REDUCE IT. IT WILL REDUCE IT.

4 Q MR. BUCHANAN, YOU UNDERSTAND THE ATTORNEY GENERAL OF
5 SOUTH CAROLINA PURPORTS TO BE REPRESENTING THE CHARITABLE
6 BENEFICIARIES IN THIS SETTLEMENT?

7 A I UNDERSTAND THAT HE HAS SAID HE IS.

8 Q YOU HAVE ANY DOUBT ABOUT HIS GOOD FAITH BELIEF THAT
9 HE'S ENTITLED TO, WHETHER YOU AGREE WITH THAT OR NOT?

10 A WELL, YOU KNOW, MAYBE THE SIMPLEST WAY -- IN THE
11 ABSENCE OF DISCOVERY MAYBE THE SIMPLEST WAY TO RESOLVE THE
12 IMPASSE IS TO JUST HAVE SOME DUE DILIGENCE. MAYBE IF I
13 LOOKED THROUGH HIS FILE AND SAW THE EVIDENCE THAT I
14 HAVEN'T HEARD ABOUT, THEN I MIGHT BE MORE INCLINED TO
15 AGREE WITH THAT, BUT...

16 Q MR. BUCHANAN, DO YOU DOUBT THE ATTORNEY GENERAL'S
17 GOOD FAITH INTENTIONS IN REPRESENTING THE CHARITABLE
18 BENEFICIARIES IN THIS CASE?

19 A YOU KNOW, I'M SAD TO SAY THAT I DO. OKAY? I'M
20 REALLY DISAPPOINTED IN THE WAY WE'VE BEEN TREATED BY THAT
21 OFFICE SINCE WE STARTED.

22 Q DO YOU BELIEVE THAT THE ATTORNEY GENERAL WOULD NOT
23 HAVE CONDUCTED DUE DILIGENCE TO SATISFY THE ATTORNEY
24 GENERAL THAT THE SETTLEMENT WAS APPROPRIATE?

25 A WHAT I FIND JUST UNBELIEVABLE IS THAT THE ATTORNEY

1 GENERAL WOULDN'T COME SIT DOWN AND SAY, LOOK, LET ME SHOW
2 YOU THIS STUFF.

3 Q MR. BUCHANAN, THAT'S NOT MY QUESTION. MY QUESTION IS
4 DO YOU BELIEVE THE ATTORNEY GENERAL OF SOUTH CAROLINA
5 WOULD ENTER INTO A SETTLEMENT AFFECTING A CHARITY IN THIS
6 CASE WITHOUT HAVING CONDUCTED DUE DILIGENCE?

7 A I BELIEVE THAT THE ATTORNEY GENERAL EITHER HAS SOME
8 EVIDENCE THAT WE'VE NOT -- THAT WE'RE NOT PRIVY TO OR THE
9 ATTORNEY GENERAL HAS MISEVALUATED THE CASE.

10 Q DO YOU KNOW WHAT DUE DILIGENCE THE ATTORNEY GENERAL
11 HAS PERFORMED?

12 A I HAVE HEARD YOU TALK ABOUT WHAT THE ATTORNEY GENERAL
13 DID.

14 Q DO YOU KNOW -- ASSUME THAT WHAT YOU'VE HEARD ME TALK
15 ABOUT, MR. BUCHANAN, ARE THE CONSIDERATIONS THAT THE
16 ATTORNEY GENERAL HAD TO TAKE INTO ACCOUNT CONCEPTUALLY.
17 DO YOU KNOW WHAT DUE DILIGENCE THE ATTORNEY GENERAL HAS
18 PERFORMED?

19 A NO, I DON'T. THE ATTORNEY GENERAL HAS NOT -- FOR
20 EXAMPLE, THE ATTORNEY GENERAL HAS NOT TOLD ME THAT, YEA,
21 I'VE BEEN TO CHARLESTON AND I'VE BEEN THROUGH THIS FILE
22 AND THIS FILE AND THIS FILE AND I SEEN THIS PIECE OF
23 EVIDENCE AND THAT PIECE OF EVIDENCE AND THAT PIECE OF
24 EVIDENCE. NO, I DON'T KNOW -- I DON'T KNOW WHAT -- THE
25 ATTORNEY GENERAL MIGHT HAVE FLOWN TO CALIFORNIA AND

1 INTERVIEWED SOME PEOPLE THERE. I DON'T KNOW BECAUSE THEY
2 HAVEN'T TOLD ME AND WE HAVEN'T HAD ANY DISCOVERY.

3 Q SO, IF YOU DON'T KNOW WHAT THE ATTORNEY GENERAL DID,
4 HOW CAN YOU DOUBT THE ATTORNEY GENERAL'S DUE DILIGENCE AND
5 GOOD FAITH INTENTIONS IN THIS CASE?

6 A I CAN DOUBT ANYBODY'S GOOD FAITH INTENTIONS BASED ON
7 THE EVIDENCE AS I UNDERSTAND IT TO BE AND THE AMOUNT OF
8 MONEY THAT'S LEAVING THE NEEDY AND DESERVING CHILDREN.

9 Q THEN WHAT EVIDENCE DO YOU HAVE THAT THE ATTORNEY
10 GENERAL DID NOT CONDUCT DUE DILIGENCE?

11 A THAT HE HASN'T?

12 Q YES. YOU SAID YOU COULD FORM ANY BELIEF BASED ON
13 EVIDENCE THAT YOU HAD. WHAT EVIDENCE DO YOU HAVE THAT HE
14 DIDN'T CONDUCT DUE DILIGENCE?

15 A HE HADN'T DISCLOSED ANY EVIDENCE TO ME. WELL, HE'S
16 DISCLOSED SOME EVIDENCE, BUT I'M TALKING ABOUT EVIDENCE
17 THAT WOULD JUSTIFY THIS DISPARITY BETWEEN WHAT MR. BROWN
18 INTENDED IN HIS DOCUMENTS AND THIS RESULT.

19 Q WHAT EVIDENCE DO YOU HAVE, MR. BUCHANAN, THAT THE
20 ATTORNEY GENERAL DID NOT CONDUCT DUE DILIGENCE IN THIS
21 CASE?

22 MR. BAILEY: YOUR HONOR, THAT'S BEEN ASKED AND
23 ANSWERED.

24 MR. NICHOLSON: HE DIDN'T ANSWER IT, YOUR HONOR.

25 THE COURT: HOLD ON.

1 MR. BAILEY: HE INDICATED THAT THE ATTORNEY GENERAL
2 HAS NOT PROVIDED HIM WITH ANYTHING, DISCOVERY --

3 THE COURT: HE HAS --

4 MR. BAILEY: WELL, NOT THE KIND OF INFORMATION THAT
5 HE WOULD BELIEVE WOULD BE VALUABLE IN EVALUATING.

6 THE COURT: I KNOW WHAT HIS ANSWER IS. SUSTAINED.
7 MOVE ON. HE'S ALREADY ANSWERED IT AS WELL AS HE CAN, I
8 ASSUME. HE'S ANSWERED FOUR OR FIVE TIMES.

9 MR. MEDLIN: YOUR HONOR, IF I MAY RESPECTFULLY
10 DISAGREE.

11 THE COURT: WELL, YOU MAY DISAGREE, BUT I'VE RULED.
12 PLEASE MOVE ON.

13 MR. MEDLIN: THANK YOU, YOUR HONOR.

14 THE COURT: MOVE TO ANOTHER AREA OFF THE DUE
15 DILIGENCE. I'VE GOT A HALF A PAGE OF HIS ANSWER HERE.
16 MOVE ALONG, PLEASE, SIR.

17 MR. MEDLIN: YES, YOUR HONOR.

18 MR. BUCHANAN, YOU'VE CHOSEN AS AN EXAMPLE A
19 100 MILLION-DOLLAR ESTATE TO SHOW AS YOUR DIAGRAM.

20 THE COURT: WELL, HE QUALIFIED IT AS JUST AN EXAMPLE.

21 MR. MEDLIN: I UNDERSTAND, YOUR HONOR. I AM ASKING
22 THAT QUESTION.

23 THE WITNESS: OH, IS THAT A QUESTION?

24 Q YEA.

25 A YEA. THAT'S WHAT I DID.

1 Q YOU'VE INDICATED IN PLEADINGS THAT THE ESTATE MAY
2 WELL BE WORTH \$100 MILLION; IS THAT NOT CORRECT?

3 A I'M SURE WE PROBABLY HAVE.

4 Q BECAUSE YOU'VE INDICATED THAT UNDER THIS -- WELL, IF
5 50 PERCENT OF THE OVERALL ESTATE PASSES TO SOMEONE OTHER
6 THAN THE CHARITY THAT THE ATTORNEY GENERAL IS LETTING
7 \$50 MILLION SHIFT AWAY FROM THE CHARITIES IMPROPERLY. YOU
8 PLEADED THAT? IN FACT, I THINK YOU HAVE AFFIDAVITS THAT
9 ALLEGE THAT; IS THAT CORRECT?

10 A YES, SIR.

11 Q DIDN'T YOU SAY BEFORE THE BREAK YOU HAD NO IDEA WHAT
12 THE VALUE OF THE ESTATE IS?

13 A NO. I DIDN'T SAY THAT AT ALL.

14 Q WELL, THEN, WHAT'S THE VALUE OF THE ESTATE TODAY?

15 A I SAID THE ONLY THING WE CAN DO ABOUT THE VALUE OF
16 THE ESTATE IS MAKE SOME REASONABLE APPROXIMATION OF IT AND
17 THAT NOBODY CAN DO ANY MORE BECAUSE THE ECONOMIC
18 CIRCUMSTANCES THAT WE'RE INVOLVED IN RIGHT NOW ARE SUCH
19 THAT IT'S IMPOSSIBLE TO KNOW FROM DAY TO DAY WHAT CITIBANK
20 IS GOING TO DO OR BE WORTH, MUCH LESS WHAT THE ESTATE OF
21 JAMES BROWN IS GOING TO BE.

22 Q SO, WHAT DO YOU THINK THE VALUE OF THE ESTATE IS
23 TODAY?

24 A WELL, YOU KNOW, HERE IS OUR BEST ESTIMATE, OKAY,
25 BECAUSE, YOU KNOW, ALL WE COULD DO IS RELY ON WHAT WE HAD.

1 WE GOT INFORMATION FROM A VARIETY OF SOURCES AT DIFFERENT
2 TIMES. YOU KNOW, WE WERE -- WE HAVE SEEN THE LETTER OF
3 INTENT THAT WAS SUBMITTED TO MR. DALLAS AND MR. BRADLEY
4 WHERE THE -- SOMEBODY WANTED TO PAY \$100 MILLION FOR THE
5 ASSETS OF THE ESTATE AND TRUST. WE'VE SEEN THAT. WE'VE,
6 OBVIOUSLY, SEEN THE INVENTORY AND APPRAISEMENT THAT WAS
7 DONE BY MR. DALLAS AND MR. BRADLEY, AND, YOU KNOW, THAT'S
8 AROUND \$86 MILLION. WE'VE HEARD FORLANDO BROWN IN A
9 DEPOSITION SAY THAT HE CAN PUT \$150 MILLION ON THE TABLE
10 NOW. WE'VE GOTTEN ALL THIS INFORMATION.

11 NOW, WE, YOU KNOW, THROUGH DR. SHELLBURN I WAS ABLE
12 TO IDENTIFY DR. EINHORN. WE -- THE CHALLENGES IS TO
13 ENJOIN US HAVE BEEN CONTINUOUS AND HAVE BEEN IN MULTIPLE
14 COURTS BY MULTIPLE PARTIES SINCE THE FALL, AND, SO, YOU
15 KNOW, I'VE JUST KIND OF BEEN STRINGING HIM ALONG. WE
16 HAVEN'T EVEN TALKED ABOUT ANYTHING EXCEPT TO SAY THAT I
17 DON'T KNOW IF I'LL BE HERE, OKAY? AND, FRANKLY, I DON'T
18 KNOW THAT HE CAN PROVIDE US -- I'M SURE HE WOULD PROBABLY
19 HAVE REAL TROUBLE TRYING TO PROVIDE A VALUE IN TODAY'S
20 ECONOMY -- EVEN HE.

21 SO, NO, I DIDN'T SAY I DON'T KNOW WHAT THE VALUE IS.
22 I SAID NOBODY CAN PRECISELY STATE THE VALUE.

23 Q ALL RIGHT.

24 A ALL WE CAN DO IS USE THE BEST EVIDENCE THAT WE HAVE
25 AROUND US, OKAY? AND WE WOULD HAVE BEEN OPEN TO OTHER

1 INFORMATION. WHEN WE ASKED YOU -- AFTER WE HAD HEARD OF
2 THE SETTLEMENT BUT BEFORE ALL OF THE TERMS CAME OUT, WE
3 ASKED YOU, WE SAID, YOU KNOW, WE'VE GOT THIS DATE. WE'VE
4 GOT TO GET THE ESTATE TAX RETURN PREPARED. WHY DON'T YOU
5 GIVE US AN ENTERTAINMENT AND LITIGATION AND A TAX LIAISON
6 SO WE CAN START A TRANSITION? I MEAN, WE WOULD HAVE BEEN
7 OPEN TO INFORMATION THAT PERSON WOULD HAVE HAD.

8 Q MR. BUCHANAN, SO FAR -- WELL, LET ME STRIKE THAT. AS
9 PRECISELY AS YOU CAN, WHAT IS THE VALUE OF THE ESTATE
10 TODAY?

11 A I THINK AS PRECISELY AS I CAN BASED ON WHAT I KNOW
12 BASED ON EVERYTHING I'VE SEEN AND EVERYTHING I'VE HEARD
13 FROM DIFFERENT PEOPLE PROBABLY INCLUDING YOU, PEOPLE IN
14 THIS COURTROOM, I THINK THAT'S ABOUT AS CLOSE AS CLOSE
15 APPROXIMATION AS WE CAN MAKE AND THAT'S WHAT IT IS -- AN
16 APPROXIMATION.

17 Q BUT WHAT IS THE APPROXIMATION? WHAT NUMBER?

18 A 100 MILLION.

19 Q 100 MILLION. YOU FILED AN ESTATE TAX RETURN THAT
20 SAID THE ESTATE IS 84, 86 MILLION, SOMEWHERE AROUND THERE
21 AS OF MR. BROWN'S DEATH?

22 A YES, SIR.

23 Q SO, YOU BELIEVE THE ESTATE HAS APPRECIATED IN VALUE
24 BY \$14 MILLION SINCE MR. BROWN'S DEATH?

25 A I DON'T KNOW THAT. YOU KNOW, WHEN YOU START TALKING

1 ABOUT -- WHEN YOU'RE TALKING ABOUT 86 MILLION TO
2 \$100 MILLION, THAT'S SO MUCH MONEY -- I MEAN, YOU KNOW,
3 MAYBE IT'S 115 MILLION. MAYBE IT'S 120 MILLION. MAYBE
4 FORLANDO IS RIGHT. MAYBE IT'S 150 MILLION.

5 Q HAVE YOU EVER BEEN INVOLVED IN AN ESTATE WHERE AN
6 ESTATE TAX RETURN WAS PREPARED?

7 A YES, SIR.

8 Q AND HAVE YOU EVER BEEN INVOLVED IN AN ESTATE -- WITH
9 AN ESTATE TAX RETURN WHERE APPRAISALS WERE OBTAINED?

10 A YES, SIR. I GOT ONE IN THIS CASE ON THE REAL ESTATE.

11 Q HAVE YOU EXPLORED GETTING INFORMATION OTHER THAN FROM
12 A LETTER OF INTENT, TESTIMONY AT A DEPOSITION, AND THE
13 INVENTORY AND APPRAISEMENT -- HAVE YOU EXPLORED TRYING TO
14 GET AN APPRAISAL OTHER THAN THAT?

15 A WE OPENED A DIALOGUE BACK IN THE FALL. DR. SHELLBURN
16 DID SOME RESEARCH AND SHE WAS ABLE -- DR. SHELLBURN IS AN
17 ECONOMIST HERE IN AIKEN. SHE TEACHES AT USC AIKEN. SHE
18 HAS A PH.D IN ECONOMICS FROM CHAPEL HILL. SHE'S TESTIFIED
19 HERE FOR ME, FOR OTHER LAWYERS. SHE'S TESTIFIED FOR ME IN
20 COLUMBIA. SHE STOPPED THAT KIND OF WORK. SHE DOESN'T
21 TESTIFY ANYMORE, BUT -- AND SHE RECOGNIZED IMMEDIATELY
22 THAT WHAT I WAS ASKING HER ABOUT WAS AN AREA THAT WOULD
23 REQUIRE PROBABLY SOMEBODY MORE KNOWLEDGEABLE THAN HER AND
24 SHE DID SOME RESEARCH FOR ME AND SHE IDENTIFIED FOR ME
25 THIS DOCTOR -- AND I AM TRYING TO REMEMBER HIS LAST NAME.

1 I THINK IT'S EINHORN -- MICHAEL EINHORN. I THINK HE'S A
2 PH.D ECONOMIST AT PRINCETON WHO HAS VAST EXPERIENCE IN THE
3 MUSIC ENTERTAINMENT INDUSTRY. HE'S WORKED FOR LOTS OF
4 PEOPLE LIKE UNIVERSAL AND ALL THESE PEOPLE -- DONE A LOT
5 OF THESE THINGS. HE'S ACTUALLY BEEN INVOLVED IN SOME OF
6 THESE MUSICIAN ESTATES AND HE'S REAL INTERESTED, BUT I
7 KEEP TELLING HIM THE JUDGE IN THE FEDERAL COURT IS SITTING
8 ON MR. BELL'S PETITION FOR INJUNCTION, THE ATTORNEY
9 GENERAL IN SOUTH CAROLINA HAS FILED ANOTHER ACTION HERE IN
10 THE STATE COURT TO ENJOIN US. YOU KNOW, WE'LL SEE WHERE
11 WE GO.

12 Q SO, YOU FEEL RESTRAINED FROM PURSUING AN ACCURATE
13 APPRAISAL OF THE ESTATE?

14 A I FEEL VERY RESTRAINED IN ADMINISTERING THE TRUST AND
15 ESTATE BY THE SETTLING PARTIES AND OTHERS.

16 Q AND WHY DO YOU BELIEVE THAT YOU'RE RESTRAINED?

17 A BECAUSE WE CAN'T DO ANYTHING WITHOUT SOMEBODY FILING
18 A PETITION TO ENJOIN US OR REPLACE US OR KEEP US FROM
19 SELLING ASSETS EVEN IN THE FACE OF ORDERS.

20 Q DO YOU BELIEVE THAT YOU'RE RESTRAINED UNDER SECTION
21 62-3-611 OF THE PROBATE CODE?

22 A WHAT SECTION?

23 Q 62-3-611.

24 A LET ME FIND, MR. MEDLIN. I DIDN'T WRITE IT. SO, I
25 DON'T REMEMBER IT AS WELL AS YOU. WHAT PART OF THE

1 STATUTE ARE YOU TALKING ABOUT?

2 Q DO YOU FEEL LIKE YOU'RE RESTRAINED UNDER THAT
3 STATUTE?

4 A I DON'T FEEL LIKE I SHOULD BE REMOVED. I FEEL LIKE I
5 NEED TO GET SOME RELIEF FROM ALL OF THE HARASSMENT AND
6 INTERFERENCE THAT'S GOING ON BY THE SETTLING PARTIES AND
7 OTHERS.

8 Q DO YOU FEEL THAT YOU ARE RESTRAINED UNDER THAT
9 SECTION, MR. BUCHANAN?

10 A I FEEL THAT I AM NOT RESTRAINED TO THE EXTENT THAT I
11 SHOULD BE REMOVED. I FEEL THAT I'M RESTRAINED TO THE
12 EXTENT THAT I NEED THE AFFIRMATIVE RELIEF FROM THE COURT
13 OR I NEED THE COURT TO GRANT OUR MOTION SO THAT AN S.A.
14 S.T. CAN JUST HANDLE THE ADMINISTRATION OF THE ESTATE AND
15 TRUST IN A WAY THAT WON'T UPSET Y'ALL AND WON'T KEEP Y'ALL
16 TIED UP CAUSING HIM TO SPEND FURTHER MONEY OF THE ESTATE
17 AND TRUST.

18 Q MR. BUCHANAN, LET ME TRY TO CLARIFY MY QUESTION. DO
19 YOU BELIEVE THAT YOU ARE RESTRAINED PURSUANT TO THE TERMS
20 OF THAT STATUTE?

21 A I JUST ANSWERED THE QUESTION.

22 THE COURT: HE HAS. ASKED AND ANSWERED. MOVE ALONG.

23 Q DO YOU REMEMBER FILING AN AFFIDAVIT SAYING THAT YOU
24 BELIEVE YOU'VE BEEN RESTRAINED UNDER THAT SECTION SINCE
25 FORLANDO FILED HIS LAWSUIT IN JANUARY OF 2008?

1 A I REMEMBER -- YEA, I REMEMBER REPRESENTING THAT WE
2 WERE -- THAT THERE WERE LIMITATIONS ON WHAT WE COULD DO
3 BECAUSE OF THAT LAWSUIT; YES, SIR.

4 Q WHERE DO YOU FEEL THAT LINE IS?

5 A I DON'T KNOW WHERE THAT LINE IS.

6 Q GETTING AN APPRAISAL IS ON ONE SIDE OF THAT LINE; IS
7 THAT CORRECT?

8 A I DON'T. -- WHAT ARE YOU TALKING ABOUT, THE LINE?

9 Q WELL, YOU INDICATED BEFORE, IF I UNDERSTOOD YOU
10 CORRECTLY, MR. BUCHANAN, THAT YOU DISCONTINUED SEEKING AN
11 APPRAISAL OF THE ESTATE?

12 A NO, I DIDN'T SAY THAT.

13 Q I'M SORRY.

14 A NO, I DIDN'T SAY THAT I DISCONTINUED SEEKING AN
15 APPRAISAL. WHAT I SAID WAS THAT THINGS WERE IN SUCH
16 TURMOIL WE COULDN'T MOVE FORWARD ON THAT ISSUE. AND, YOU
17 KNOW, THAT'S NOT THE ONLY WAY WE'RE DOING DUE DILIGENCE
18 EITHER. DON'T THINK THAT FOR A MINUTE THAT'S THE ONLY
19 THING WE'VE DONE, OKAY? WE'RE TRYING OUR BEST TO FIGURE
20 OUT THE VALUE. WE'RE DOING DUE DILIGENCE.

21 WE GOT A YOUNG LADY WHO IS DOING AN EXTERNSHIP FROM
22 THE CHARLESTON LAW SCHOOL AND SHE WAS VERY INTERESTED IN
23 MUSIC. HER MOTHER IS CELESTE JONES AT THE MCNAIR FIRM.
24 SHE'S A GOOD STUDENT. SHE'S EXTRAORDINARILY INTERESTED IN
25 MUSIC. SO, SHE'S COME ON TO HELP US SORT OF WITH THIS DUE

1 DILIGENCE AND SOME OF THE LEGAL ISSUES RELATED TO IT, YOU
2 KNOW; AND MRS. POPE CAN TELL YOU MUCH BETTER THAN I
3 BECAUSE SHE'S BEEN MUCH MORE INVOLVED IN THAT THAN I HAVE,
4 BUT, YOU KNOW, WHAT WE'VE FOUND IS THAT IS THAT THERE IS A
5 CONVERGENCE OF SEVERAL DISCIPLINES OF THE LAW AND THE
6 DIFFERENT DISCIPLINES HAVEN'T REALLY GOTTEN TO WHERE THEY
7 COME TOGETHER.

8 LET ME GIVE YOU AN EXAMPLE BECAUSE YOU'LL UNDERSTAND
9 THIS. TWO YEARS AGO I WROTE THIS LEASE. I WROTE A LEASE
10 FOR A GROUP OF DOCTORS, OKAY? AND I THOUGHT IT WAS PRETTY
11 GOOD. THIS WAS BEFORE DAVE BROWN DIED. DAVE DID A LOT OF
12 MALPRACTICE WORK. SO, I CALLED DAVE. HE SAID, OH, YOU
13 NEED TO CALL SO AND SO. I DON'T REMEMBER WHO NOW --
14 SOMEBODY. HE SAID, YOU NEED TO CALL SO AND SO AND TALK TO
15 THEM ABOUT THIS THING THEY CALL STARK TWO. SO, I DID.

16 I SENT THIS LEASE UP THERE, AND THEY CALLED ME BACK
17 AND THEY SAID, WELL, WE GOT GOOD NEWS AND BAD NEWS FOR
18 YOU. THE GOOD NEWS IS OUR REAL ESTATE DEPARTMENT HAS
19 REVIEWED THIS LEASE AND THEY THINK IT'S JUST ONE OF THE
20 FINEST ONES THEY'VE EVER SEEN. THE BAD NEWS IS THAT
21 YOU'VE JUST COMMITTED MALPRACTICE BECAUSE OF STARK TWO,
22 AND I STARTED THINKING HOW MANY -- HOW MANY REAL ESTATE
23 LAWYERS OUT THERE DRAWING LEASES FOR DOCTORS THAT DON'T
24 APPRECIATE ALL OF THOSE SPECIALIZED AREAS?

25 AND I THINK THAT'S WHERE WE ARE HERE. I THINK WE'VE

1 GOT -- I THINK THERE ARE COPYRIGHT LAWYERS AND I THINK
2 THERE ARE TAX LAWYERS AND I THINK THERE ARE ESTATE
3 PLANNERS AND I'M NOT SURE ANYBODY HAS REALLY GOT A HANDLE
4 ON WHERE THEY COME TOGETHER IN CERTAIN CIRCUMSTANCES, AND,
5 SO, YOU KNOW, THAT'S AN AREA THAT WE WERE TRYING TO
6 EXPLORE.

7 Q IS THE POINT OF YOUR ANECDOTE, MR. BUCHANAN, THAT
8 SOMEONE OUGHT TO BE WARY ABOUT UNDERTAKING AN OBLIGATION
9 FOR WHICH HE DOESN'T HAVE EXPERTISE?

10 A NO. I THINK THE POINT OF MY STORY WAS SOMEBODY OUGHT
11 TO BE CAREFUL ENOUGH TO KNOW THAT EVEN PEOPLE WITH
12 EXPERTISE CAN COME UP SHORT IN CERTAIN CIRCUMSTANCES, AND
13 WE'RE TRYING -- YOU KNOW, WE'RE TRYING TO DEAL WITH THAT.

14 Q SO, OTHER THAN THIS COLLEGE -- EXCUSE ME; THIS
15 CHARLESTON. EXCUSE ME. COLLEGE OF CHARLESTON OR --

16 A NO. THIS IS THE LAW SCHOOL.

17 Q CHARLESTON LAW SCHOOL STUDENT HELPING YOU WITH THE
18 DUE DILIGENCE. WHO ELSE IS HELPING YOU WITH THE DUE
19 DILIGENCE?

20 A WELL, WE TALK A LOT WITH, YOU KNOW, THE PUBLISHERS
21 WHO HAVE, OBVIOUSLY, THE SAME -- IN MANY INSTANCES HAVE
22 THE SAME INTEREST THAT WE HAVE. THANK YOU, SIR. THE MORE
23 VALUE THERE IS, THE BETTER FOR ALL OF THE PARTICIPANTS.
24 SO, YOU KNOW, WE TALK WITH THEM, BUT YOU GOT TO UNDERSTAND
25 THIS HADN'T BEEN THE USUAL AND CUSTOMARY ADMINISTRATION OF

1 AN ESTATE AND TRUST. IT'S BEEN VERY CONTENTIOUS.

2 Q ONE OF THE GREATEST POINTS OF CONTENTION, WOULD YOU
3 AGREE, HAS BEEN THE FEDERAL LAWSUIT WHICH SEEMS TO HAVE
4 INVOLVED A LOT OF YOURS AND MRS. POPE'S TIME?

5 A THERE HAS BEEN A FEDERAL LAWSUIT. IT HAS INVOLVED
6 SOME OF OUR TIME.

7 Q HOW MUCH OF YOUR TIME APPROXIMATELY?

8 A I COULDN'T TELL YOU. I MEAN, I CAN'T TELL YOU HOW
9 MUCH OF MY TIME HAS BEEN INVOLVED IN THAT. SINCE
10 NOVEMBER, REALLY, LESS TIME HAS BEEN INVOLVED IN THAT THAN
11 ALL OF THIS BECAUSE WE HAD -- YOU KNOW, WE HAD A COUPLE OF
12 DAYS HEARINGS IN NOVEMBER DOWN IN BEAUFORT AND THEN THINGS
13 HAVE BEEN GETTING BRIEFED AND IT'S INVOLVED SOME OF OUR
14 TIME. IT HAS INVOLVED SOME OF OUR TIME, BUT NOT THE KIND
15 OF TIME THAT THIS COURT HAS INVOLVED.

16 Q AND UNTIL SOMETIME A FEW MONTHS AGO WHEN THE SETTLING
17 PARTIES FILED A MOTION THAT I WOULD SUGGEST TRIGGERED
18 SECTION 62-3-611 FROM OUR STANDPOINT, IS IT FAIR TO SAY
19 THAT FROM JANUARY UNTIL THEN THE LEGAL MECHANISM BY WHICH
20 YOU FELT RESTRAINED WAS THE FEDERAL LAWSUIT?

21 A WE'VE BEEN RESTRAINED, YOU KNOW, BY A LOT OF
22 THINGS -- YOU AND THE OTHER SETTLING PARTIES AND OTHER
23 PEOPLE --

24 Q LET'S --

25 A -- YOU KNOW, AND THE FEDERAL LAWSUIT AND A LOT OF

1 THINGS AND, YOU KNOW, I CAN'T SIT HERE AND TELL YOU WHAT
2 HAS BEEN THE PRIMARY RESTRAINT.

3 Q WELL --

4 A IT'S KIND OF ALL TOGETHER.

5 Q WELL, WASN'T THERE A LONG PERIOD OF TIME WHERE THE
6 ONLY RESTRAINT THAT ARGUABLY COULD TRIGGER SECTION
7 62-3-611 WAS THE FEDERAL LAWSUIT?

8 A I DON'T REMEMBER. YOU KNOW, AS I SIT HERE I JUST
9 DON'T REMEMBER WHAT GOT FILED WHEN, MR. MEDLIN.

10 Q FAIR ENOUGH. THE FEDERAL LAWSUIT WAS TAKEN --

11 A THE FEDERAL LAWSUIT WAS FILED IN EARLY -- RIGHT AT
12 THE BEGINNING OF 2008.

13 Q MR. BUCHANAN, THE FEDERAL LAWSUIT HAS TAKEN ENOUGH
14 TIME TO GENERATE \$400,000 IN ATTORNEY'S FEES?

15 A THE FEDERAL LAWSUIT HAS GENERATED AT LEAST THAT.

16 Q AND WITHOUT YOU KNOWING EXACTLY, SOME OF YOUR TIME
17 FOR WHICH YOU WOULD EXPECT TO GET PAID?

18 A YES, SIR.

19 Q AND, CERTAINLY, YOU FELT RESTRAINED IN SOME REGARD
20 SINCE THAT FEDERAL LAWSUIT WAS FILED?

21 A YES, SIR.

22 Q AND IS THE GIST OF THAT FEDERAL LAWSUIT THAT YOU AND
23 MRS. POPE WERE NOT PROPERLY APPOINTED AND YOU SHOULD NOT
24 BE SERVING AS TRUSTEES OF THE 2000 TRUST?

25 A WELL, THAT -- YOU KNOW, THAT WAS PART OF THE WAY IT

1 STARTED.

2 Q IS --

3 A BUT, YOU KNOW, NOW WHAT I UNDERSTAND IS THAT FORLANDO
4 BROWN IS PART OF THE SETTLEMENT.

5 Q IS THERE ANY OTHER --

6 MR. BELL: YOUR HONOR, I AM GOING TO OBJECT TO THAT.
7 HE IS NOT PART OF THE SETTLEMENT. HE HAS NOT ASKED TO BE
8 A PART OF IT. NONE OF THE GRANDCHILDREN ARE SIGNING, YOUR
9 HONOR. WELL, I'M SPEAKING MY TWO GRANDCHILDREN CLIENTS
10 ARE NOT BEING ASKED TO SETTLE OR SIGN IT.

11 THE COURT: GO AHEAD.

12 Q THE FEDERAL LAWSUIT HAS, IN ESSENCE, ASKED FOR YOU
13 AND ADELE TO BE ENJOINED -- YOU AND MRS. POPE TO BE
14 ENJOINED ESSENTIALLY BECAUSE YOU WERE NOT PROPERLY
15 APPOINTED BY THIS COURT?

16 A WELL, IT MAKES A LOT OF OTHER ALLEGATIONS, OKAY? IT
17 SAYS THAT -- YOU KNOW, IT SAYS THAT, YOU KNOW, A LOT OF
18 ALLEGATIONS IN THAT COMPLAINT ABOUT JUDGE EARLY AND ABOUT
19 MRS. POPE AND ABOUT ME AND, YOU KNOW, NOT JUST -- NOT JUST
20 RELATED TO TECHNICALLY WHETHER THE APPOINTMENT WAS
21 APPROPRIATE OR AUTHORIZED BY THE LAW.

22 Q IF, MR. BUCHANAN, YOU AND MRS. POPE HAD AT THE OUTSET
23 OF THAT LAWSUIT STEPPED ASIDE AND A PROFESSIONAL FIDUCIARY
24 HAD BEEN PROPERLY APPOINTED BY THIS CASE TO SUBSTITUTE, DO
25 YOU BELIEVE THAT LAWSUIT WOULD HAVE CONTINUED?

1 A I DO.

2 Q AND CAN YOU TELL US WHY?

3 A WELL, THEY'VE BEEN TALKING ABOUT SUING US FOR
4 DAMAGES, TOO. I MEAN, IT'S NOT JUST FOR INJUNCTIVE
5 RELIEF.

6 Q WOULD THE LAWSUIT HAVE IF IT CONTINUED IN THAT WAY
7 PREVENTED THE ADMINISTRATION OF THE ESTATE OF JAMES BROWN
8 BY RESTRAINING THE SUCCESSOR TRUSTEES?

9 A IT HADN'T PREVENTED THE ADMINISTRATION OF THE ESTATE
10 AND TRUST OF JAMES BROWN BY RESTRAINING US. IT HAS
11 RESTRAINED US, BUT NOT TO THE EXTENT THAT WE CAN'T PROTECT
12 THE ASSETS AND THE OPPORTUNITIES. THE STATUTE ENABLES US
13 TO PROTECT THOSE THINGS.

14 Q THE RESIGNATION BY YOU AND MRS. POPE, APPOINTMENT BY
15 JUDGE EARLY IN A PROPER PROCEEDING AND SETTING OF A
16 PROFESSIONAL SUBSTITUTE SUCCESSOR WOULD HAVE REMOVED ANY
17 RESTRAINT AGAINST THE SUCCESSOR'S ADMINISTRATION OF THE
18 ESTATE, DO YOU THINK?

19 A I DON'T KNOW.

20 Q AND WHATEVER MONEY GETS PAID OUT OF THE ESTATE
21 BECAUSE OF THAT FEDERAL LAWSUIT WON'T GO TO CHARITY; IS
22 THAT CORRECT?

23 A THAT'S RIGHT.

24 Q NOW, LET'S GET BACK TO THE ORIGINAL QUESTION. I
25 DIGRESSED A LITTLE BIT HERE. IT IS YOUR UNDERSTANDING

1 THAT PARTIES TO A LAWSUIT CAN SETTLE LESS THAN ALL THE
2 PARTIES AS LONG AS OTHER PARTIES RIGHTS AREN'T AFFECTED AS
3 YOU SAID EARLIER?

4 A THAT'S RIGHT.

5 Q AND I ASKED EARLIER WHOSE RIGHTS ARE BEING AFFECTED
6 BY THIS SETTLEMENT OTHER THAN THE RIGHTS OF THE SETTLING
7 PARTIES, AND I BELIEVE YOUR ANSWER WAS YOU DON'T
8 UNDERSTAND THE SETTLEMENT AGREEMENT ENOUGH TO BE ABLE TO
9 ANSWER THAT QUESTION?

10 A I THINK THAT'S APPROPRIATE.

11 Q IF THE SETTLING PARTIES' SETTLEMENT DOES NOT AFFECT
12 THE RIGHTS OF NON-SETTLING PARTIES -- IF YOU'LL ASSUME
13 THAT, WOULD THE SETTLEMENT BE INAPPROPRIATE?

14 A ASSUMING THAT, I THINK IT -- YOU KNOW, I THINK
15 ANYTHING -- I THINK I HAVE A RESPONSIBILITY TO THIS ESTATE
16 PLAN. I THINK I HAVE A RESPONSIBILITY THAT I DIDN'T ASK
17 FOR, BY THE WAY, OKAY? I DIDN'T GO LOOKING FOR THIS JOB,
18 AND ON NOVEMBER 20, REALLY, ALL THAT HAPPENED ON THAT DAY
19 WAS SO FAST THAT IT WAS HARD FOR EVERYBODY AND ANYBODY TO
20 TAKE IT IN, BUT ON NOVEMBER 20 I BECAME OBLIGATED TO
21 PROTECT AND DEFEND THAT ESTATE PLAN THAT THE SETTLEMENT
22 VIOLATES BY TAKING A LARGE PART OF IT AWAY FROM THE NEEDY
23 AND DESERVING CHILDREN WHO WANT TO BE EDUCATED.

24 Q MR. BUCHANAN, WITHOUT IN ANY WAY TRYING TO DIMINISH
25 YOUR GOOD INTENTIONS, YOU COULD HAVE SAID NO ON

1 NOVEMBER 21; CORRECT? I MEAN, IT WAS NOT A COURT-ORDERED
2 APPOINTMENT AGAINST YOUR WILL?

3 A I COULD HAVE, BUT AT THE TIME IT DIDN'T SEEM
4 APPROPRIATE BECAUSE AT THE TIME EVERYBODY -- NOBODY ELSE
5 OPPOSED IT. EVERYBODY WANTED US TO STAY.

6 Q I UNDERSTAND.

7 A INCLUDING YOU, OKAY? AT THE TIME EVERYBODY WANTED US
8 TO STAY AND WE HAD -- IT HAD -- YOU KNOW, IT HAD TAKEN US
9 FROM MARCH 7 TO NOVEMBER 20 TO COME UP TO THE LEARNING
10 CURVE AND AT THAT POINT IN TIME WE WERE THE MOST SUITABLE
11 PEOPLE TO BE APPOINTED.

12 Q AND, AGAIN --

13 A AND I'M NOT DISAGREEING WITH THE APPOINTMENT, AND
14 SINCE THE APPOINTMENT MRS. POPE AND I HAVE TRIED OUR DEAD
15 LEVEL BEST TO DO THAT JOB IN AN APPROPRIATE WAY.

16 Q AND, AGAIN, MR. BUCHANAN, I TRIED TO PREFACE MY
17 QUESTION JUST TO MAKE IT CLEAR IN NO WAY WAS I IMPLYING
18 THAT THERE WEREN'T ABSOLUTELY GOOD INTENTIONS ON YOUR PART
19 ON THAT DAY WHEN YOU ACCEPTED THAT JOB. I AM JUST MAKING
20 THE DISTINCTION BETWEEN BEING COURT APPOINTED WITHOUT AN
21 OPPORTUNITY TO SAY NO AND --

22 A I'M SURE -- I'M SURE I WOULD HAVE HAD AN OPPORTUNITY
23 TO SAY NO.

24 Q YOU MENTIONED -- YOU MENTIONED THAT -- I'VE HEARD
25 THIS A COUPLE OF TIMES IN THIS HEARING THAT I WANTED YOU

1 TO BE TRUSTEE ON THAT DAY?

2 A WELL, LET'S PUT IT THIS WAY. YOU DIDN'T OBJECT THAT
3 DAY, AND I'VE HEARD YOU -- I HAVE HEARD YOU AND I DON'T
4 KNOW WHETHER IT WAS THAT DAY OR OTHER DAYS AND I DON'T
5 KNOW IF IT WAS IN BAMBERG OR AIKEN, BUT I'VE HEARD YOU
6 MAKE, YOU KNOW, VERY COMPLIMENTARY REMARKS IN OPEN COURT
7 ABOUT MRS. POPE AND ME AND THE JOB WE WERE DOING, AND I
8 DON'T KNOW WHETHER YOU DID THAT DAY OR NOT, BUT I JUST
9 DON'T REMEMBER THAT THERE WAS ANY OPPOSITION AND THERE
10 WAS -- EXCEPT FOR MAYBE MR. JONES. I THINK HE MIGHT HAVE
11 OBJECTED. YEP.

12 Q WERE YOU AWARE THAT I ASKED MRS. POPE THAT SHE NOT
13 SERVE AS TRUSTEE BECAUSE MR. JONES WANTED SOMEONE TO SERVE
14 AS TRUSTEE TO PREVENT A CONFLICT OF INTEREST?

15 THE COURT: PROFESSOR MEDLIN, HOW IN THE WORLD IS
16 THIS RELEVANT AS TO WHETHER OR NOT --

17 MR. MEDLIN: I'M JUST --

18 THE COURT: -- WE APPROVE THE SETTLEMENT? PLEASE
19 TELL ME.

20 MR. MEDLIN: YOUR HONOR, I AM JUST TRYING TO COVER
21 THINGS THAT HE COVERED IN HIS ANSWER.

22 THE COURT: I UNDERSTAND THAT BUT --

23 MR. MEDLIN: I AM JUST TRYING TO CORRECT THE RECORD,
24 YOUR HONOR.

25 THE COURT: WELL, EVEN IF YOU CORRECT IT, IT'S NOT

1 RELEVANT, I DON'T THINK. I AM TRYING TO DECIDE --

2 MR. MEDLIN: I AM MOVING ON.

3 THE COURT: -- WHAT'S BEST FOR EVERYBODY AND YOU AND
4 MR. BUCHANAN ARE CARRYING ON A CONVERSATION ABOUT WHO
5 LIKED WHO.

6 MR. MEDLIN: I AM MOVING ON, YOUR HONOR.

7 THE COURT: THANK YOU.

8 Q ... LET'S GO BACK TO THE QUESTION THAT I COULDN'T
9 REMEMBER EITHER, MR. BUCHANAN, THAT MR. MICHEL HAS HELPED
10 ME WITH. ASSUME THAT THE NON-SETTLING PARTIES ARE NOT
11 AFFECTED BY THE SETTLEMENT AGREEMENT. IS THE SETTLEMENT
12 APPROPRIATE?

13 A I DON'T THINK THE SETTLEMENT IS APPROPRIATE BECAUSE
14 IT TAKES WHAT MR. BROWN INTENDED FOR THE NEEDY AND
15 DESERVING CHILDREN TO RECEIVE TO BE EDUCATED. THAT WAS
16 HIS ESTATE PLAN. THAT'S WHAT HE INTENDED WHEN HE DREW HIS
17 WILL AND HIS TRUST AND THIS SETTLEMENT -- THIS PARTICULAR
18 SETTLEMENT TAKES HALF OF IT AWAY, AND, YOU KNOW, I JUST
19 HAVEN'T SEEN AND MAYBE IT'S THERE AND NOBODY HAS SHARED IT
20 WITH ME, BUT I JUST HAVEN'T SEEN ENOUGH EVIDENCE TO CREATE
21 A REASONABLE RELATIONSHIP BETWEEN THE RISK BENEFIT FOR ME
22 TO SAY IN THE FACE OF THE LANGUAGE OF THAT WILL AND TRUST
23 THAT I'M SUPPOSED TO TAKE CARE OF IT AND PRESERVE IT --
24 FOR ME TO SAY I SHOULDN'T.

25 THE COURT: MR. BUCHANAN, IF WE ASSUME THAT THERE IS

1 SUFFICIENT FACTS -- AT LEAST FACTS THAT WOULD SEND THE
2 CASE TO A JURY -- TO DETERMINE MARITAL STATUS OF MS. TOMI
3 RAE BROWN AND OR ENOUGH FACTS TO SEND TO A JURY TO
4 DETERMINE FOR A JURY OF FACT FINDERS TO DECIDE WHETHER OR
5 NOT THE WILL SHOULD BE OVERTURNED BECAUSE OF UNDUE
6 INFLUENCE OR OTHER MATTERS, WOULD THAT CHANGE YOUR MIND?
7 THAT'S AN ASSUMPTION OR HYPOTHETICAL IF THERE WERE
8 EVIDENCE THAT AT LEAST IT WOULD GO TO A JURY TO DECIDE.
9 WOULD THAT CHANGE YOUR MIND?

10 THE WITNESS: WELL, YOU KNOW, JUDGE, THIS IS -- YOUR
11 HONOR, THIS IS KIND OF WHERE I SEE MYSELF AND I'M
12 CERTAINLY NOT A LAWYER IN THIS CASE, BUT, YOU KNOW, I'M A
13 LAWYER IN A LOT OF OTHER CASES --

14 THE COURT: AND A GOOD ONE.

15 THE WITNESS: -- AND I PRACTICE HERE AND, SO, I TEND
16 ASK OUT OF HABIT OF 34 YEARS PRACTICING HERE IN AIKEN TO
17 TAKE A LOOK AT EVIDENCE AND TAKE A LOOK AT ISSUES AND TRY
18 IN MY MIND TO ASSESS WHAT AN AIKEN JURY IS GOING TO DO
19 WITH THAT, AND, SO, IT COULD CHANGE MY MIND.

20 NOW, THE QUESTION IS WHETHER OR NOT -- I GUESS, THIS
21 IS PART OF WHERE I AM. I DON'T HAVE ENOUGH -- I DON'T
22 HAVE ENOUGH THAT I FEEL LIKE I COULD HONESTLY RECOMMEND A
23 SETTLEMENT WHETHER IT'S 50 OR 10 PERCENT. I'M TRYING TO
24 FIGURE OUT HOW I CAN -- HOW I CAN GET MY HANDS ON THIS AND
25 SORT OF IN SOME QUANTITATIVE AND QUALITATIVE WAY AND SAY,

1 YOU KNOW -- AND NONE OF US IS PERFECT. EVERY LAWYER THAT
2 PRACTICES IN EVERY COUNTY WILL SAY THAT, OKAY, YOU KNOW,
3 I'VE BEEN DOING THIS 30 YEARS, BUT I'LL TELL YOU THAT THIS
4 IS WHAT I THINK, BUT IT MAY NOT HAPPEN BECAUSE EVERY JURY
5 IS DIFFERENT AND EVERY CASE IS DIFFERENT.

6 THE COURT: WELL, I UNDERSTAND THAT, BUT MY QUESTION
7 IS JUST SIMPLY BASED ON A HYPOTHETICAL. IF THERE WERE
8 ENOUGH FACTS THAT IT GOES TO THE JURY AS THE FACT FINDERS
9 WOULD THAT CHANGE YOUR MIND IN DECIDING WHETHER OR NOT
10 THIS SETTLEMENT WOULD BE SOMETHING THAT --

11 THE WITNESS: WELL --

12 THE COURT: -- AS A P.R. YOU COULD LIVE IN WITH AND
13 IN DEFENDING MR. BROWN'S ESTATE PLAN, ASSUMING IT WAS
14 GOING TO THE JURY?

15 THE WITNESS: RIGHT, BUT -- I AGREE WITH THAT, BUT
16 WITH THIS QUALIFICATION. WHAT I WOULD BE TRYING TO LOOK
17 AT IS, YOU KNOW, WITH THIS EVIDENCE WHAT'S THE PROBABILITY
18 OF -- WHAT DO I THINK A REASONABLE PROBABILITY OF WINNING
19 OR LOSING THAT POINT WITH AN AIKEN JURY IS?

20 THE COURT: NOTWITHSTANDING THE FACT THAT IT IS GOING
21 TO THE JURY, THEN YOU WOULD MAKE THE NEXT DETERMINATION OF
22 AM I GOING TO WIN OR LOSE.

23 THE WITNESS: THAT'S RIGHT.

24 THE COURT: I UNDERSTAND.

25 THE WITNESS: THAT'S RIGHT. I MEAN, YOU KNOW, LOTS

1 OF CASES CAN GO TO THE JURY THAT WE KNOW THAT JURY IS
2 GOING TO BE OUT FIVE MINUTES JUST BECAUSE THERE IS A
3 FACTUAL ISSUE IN IT, BUT ON THE OTHER HAND YOU'RE RIGHT.
4 I MEAN, IF YOU'VE GOT A CASE WHERE, YOU KNOW, IT'S A JUMP
5 BALL, IT IS A JUMP BALL AND IT CAN GO EITHER WAY AND I
6 THINK THAT'S A BIT OF WHAT WE NEED TO KNOW.

7 MR. LEVENSON: JUDGE, MAY I? I DON'T GET A CHANCE TO
8 OBJECT TO THE RESPONSIVENESS OF THE COURT'S QUESTION TOO
9 OFTEN, BUT I DON'T THINK THE WITNESS' ANSWER TO THE
10 COURT'S QUESTION SINCE YOU DEPOSITED IT THE RECORD SHOULD
11 SPEAK CLEARLY TO WHETHER THERE IS A YES OR NO ANSWER TO
12 YOUR HONOR'S QUESTION WITH THE APPROPRIATE EXPLANATION.
13 MR. BUCHANAN'S ANSWER SUGGESTS THAT IN ORDER TO ANSWER THE
14 COURT'S QUESTION HE HAS TO APPROXIMATE WHAT A FACT-FINDER
15 WOULD DO WITH THE CASE. THAT WAS NOT YOUR HONOR'S
16 QUESTION.

17 THE COURT: WELL, I AM GOING TO LET HIM -- I WILL
18 STAND BY HIS ANSWER. I KNOW WHAT -- I THINK I KNOW WHAT
19 HE SAID.

20 THE WITNESS: THE ANSWER IS YES, BUT I THINK THERE IS
21 ANOTHER LEVEL OF IT, TOO, AND THAT IS SOME SORT OF
22 QUANTITATIVE MEASUREMENT OF THE EVIDENCE.

23 Q MR. BUCHANAN, LET'S FOCUS ON THE METHODOLOGY OF THE
24 SETTLEMENT -- NOT THE NUMBERS AS TO WHETHER YOU CONSIDER
25 IT APPROPRIATE, IF I MIGHT. ASSUME THAT THE INTEREST OF

1 NON-SETTLING PARTIES ARE NOT AFFECTED BY THE SETTLING
2 PARTIES. DO THE SETTLING PARTIES NOT HAVE A RIGHT TO
3 ENTER INTO A BINDING PRIVATE SETTLEMENT AGREEMENT UNDER
4 SECTION 62-3-912?

5 THE COURT: 912?

6 MR. MEDLIN: YES, YOUR HONOR.

7 THE WITNESS: OKAY. SUBJECT TO THE RIGHTS.

8 MR. BAILEY: YOUR HONOR, MAY I OBJECT, PLEASE, TO THE
9 QUESTION? IT APPEARS TO ME THAT THESE ARE ALL, BASICALLY,
10 HYPOTHETICAL QUESTIONS THAT THEY WANT MR. BUCHANAN TO MAKE
11 CERTAIN ASSUMPTIONS AND IN MAKING THOSE ASSUMPTIONS GIVE
12 US YOUR ANSWER AS OPPOSED TO THEM EXPLAINING THROUGH THEIR
13 QUESTIONS TO MR. BUCHANAN THIS IS WHAT THE APPROVAL --
14 THIS IS WHAT THE SETTLEMENT IS GOING TO DO; WHAT DO YOU
15 SEE WRONG WITH THAT? I OBJECT TO THE FORM OF THE QUESTION
16 BEING ASKED BECAUSE IT'S ALL BASED ON HYPOTHETICAL IF YOU
17 ASSUME THIS, IF YOU ASSUME THAT.

18 THE COURT: OVERRULED.

19 THE WITNESS: ALL RIGHT, SIR. 912. SUBJECT TO THE
20 RIGHTS OF CREDITORS AND TAXING AUTHORITIES COMPETENT
21 SUCCESSORS MAY AGREE AMONG THEMSELVES TO ALTER THE
22 INTEREST, SHARES, OR AMOUNTS TO WHICH THEY ARE ENTITLED TO
23 UNDER THE WILL OF THE DECEDENT OR UNDER THE LAWS OF
24 INTESTACY IN ANY WAY THEY PROVIDE IN A WRITTEN CONTRACT
25 EXECUTED BY ALL WHO ARE AFFECTED BY ITS PROVISIONS. IS

1 THAT WHAT YOU WANTED ME TO READ?

2 Q WELL, THAT PART AND THEN IF YOU WOULD, MR. BUCHANAN,
3 THE NEXT SENTENCE AS WELL

4 A THE PERSONAL REPRESENTATIVE SHALL ABIDE BY THE TERMS
5 OF THE AGREEMENT SUBJECT TO HIS OBLIGATION TO ADMINISTER
6 THE ESTATE FOR THE BENEFIT OF CREDITORS, TO PAY ALL TAXES
7 AND COSTS OF ADMINISTRATION, AND TO CARRY OUT THE
8 RESPONSIBILITIES OF HIS OFFICE FOR THE BENEFIT OF ANY
9 SUCCESSORS OF THE DECEDENT WHO ARE NOT PARTIES.

10 Q DON'T YOU READ THAT LAST LANGUAGE WHERE THE PERSONAL
11 REPRESENTATIVE HAS TO CONTINUE TO CARRY OUT HER
12 RESPONSIBILITIES FOR THE BENEFIT OF ANY SUCCESSORS OF THE
13 DECEDENT WHO ARE NOT PARTIES TO MEAN THAT FEWER THAN ALL
14 THE PARTIES TO A DISPUTE CAN SETTLE A MATTER UNDER SECTION
15 62-3-912?

16 A ASK ME THAT QUESTION AGAIN.

17 Q BECAUSE THIS SECTION TELLS PERSONAL REPRESENTATIVES
18 THAT AFTER BINDING SETTLEMENT AGREEMENT HAS BEEN ENTERED
19 INTO THE PERSONAL REPRESENTATIVES STILL HAVE TO CARRY OUT
20 THEIR RESPONSIBILITIES TO NON-PARTIES. THAT MEANS THAT
21 FEWER THAN ALL THE PARTIES CAN SETTLE A LAWSUIT IF IT
22 DOESN'T AFFECT THOSE RIGHTS, DOESN'T IT, UNDER --

23 A THE STATUTE --

24 Q -- 62-3-912?

25 A THE STATUTE SAYS THAT.

1 Q AND YOU ARE BOUND TO ABIDE BY THAT IF IT'S A BINDING
2 SETTLEMENT AGREEMENT?

3 A THE STATUTE SAYS THAT.

4 Q WHAT ABOUT THE SETTLEMENT AGREEMENT DO YOU BELIEVE
5 ISN'T A VALID BINDING SETTLEMENT AGREEMENT AMONG THE
6 PARTIES TO WHICH YOU ARE BOUND TO HONOR?

7 A WELL, WHAT I JUST, WHAT, 10 MINUTES AGO -- JUST TO
8 ILLUSTRATE, I GUESS, HOW LITTLE I KNOW OF THE SETTLEMENT
9 MR. BELL GOT UP AND OBJECTED TO MY ANSWER AND SAID THAT
10 THEY -- YOU KNOW, SOME PEOPLE I THOUGHT WERE PART OF THE
11 SETTLEMENT AREN'T. I HAVEN'T SEEN THE WRITTEN INSTRUMENTS
12 SIGNED BY ALL THESE PARTIES.

13 Q THAT'S NOT THE QUESTION.

14 A THERE MAY BE. I MEAN, YOU MAY HAVE IT OVER THERE,
15 BUT I JUST HAVEN'T SEEN IT. I THINK THE STATUTE SAYS
16 SOMETHING ABOUT SIGNED BY ALL THE PARTIES.

17 Q 62-3-912? IS THAT WHAT YOU'RE TALKING ABOUT?

18 A THE WRITTEN CONTRACT EXECUTED BY ALL WHO ARE AFFECTED
19 BY ITS PROVISIONS.

20 Q OKAY. AND ASSUMING WE HAVE THAT, THEN DO YOU SEE
21 THIS STATUTE GIVING YOU A POWER TO DISREGARD A PRIVATE
22 SETTLEMENT AMONG PARTIES THAT DOESN'T AFFECT THE RIGHTS OF
23 NON-SETTLING PARTIES?

24 A YOU KNOW, I THINK YOU GOT TO READ THIS STATUTE IN
25 CONJUNCTION WITH OTHER LAW THAT REQUIRES THE FIDUCIARY TO

1 UPHOLD AND DEFEND THE WILL AND TRUST, AND WHAT'S HAPPENING
2 HERE -- YOU KNOW, AND THIS IS A CASE OF FIRST IMPRESSION,
3 I MEAN, I THINK. I DON'T KNOW OF ANY CASES WHERE THIS HAS
4 BEEN DECIDED, BUT WE GOT -- AS I UNDERSTAND THE LAW WE GOT
5 A BODY OF LAW THAT REQUIRES THE P.R. TO DEFEND THE WILL
6 AND WE GOT A BODY OF LAW THAT REQUIRES A TRUSTEE TO DEFEND
7 A TRUST, AND NOW WE'VE GOT THIS STATUTE THAT'S BEEN AROUND
8 A WHILE. I DON'T SEE ANY CASES REFERRED TO IN THE
9 ANNOTATION, BUT WE'VE GOT THIS STATUTE THAT SAYS THAT SOME
10 OF THE PEOPLE CAN AGREE:

11 Q SO --

12 A AND THAT THE P.R. IS OBLIGATED TO, YOU KNOW, TO
13 FOLLOW THE SETTLEMENT IF IT'S APPROVED. SO, I MEAN, I
14 THINK THERE IS -- I DON'T KNOW HOW TO RECONCILE ALL OF
15 THAT LAW.

16 Q MR. BUCHANAN -- I'M SORRY. DID I INTERRUPT YOU?

17 A NO.

18 Q SORRY. IS THERE ANYTHING ABOUT THE COURT HAVING TO
19 APPROVE THE SETTLEMENT AGREEMENT UNDER 62-3-912?

20 A LET'S SEE. MAYBE NOT. YOU KNOW, I AM PROBABLY
21 ANSWERING JUST BECAUSE THAT'S, YOU KNOW, WE'RE HERE FOR
22 THAT PURPOSE.

23 Q AND, MR. BUCHANAN, IF I MAY MAKE A SUGGESTION, WE'RE
24 GOING TO TALK ABOUT SECTION 62-3-1102 WHICH I WOULD
25 SUGGEST DOES REQUIRE COURT APPROVAL, BUT I AM MEANING TO

1 FOCUS MY QUESTION ON THIS SECTION RIGHT NOW --

2 A WELL...

3 Q -- IF THAT'S OKAY. IF THE WILL UNDER THE SETTLEMENT
4 AGREEMENT IS UPHELD AND THE SETTLEMENT AGREEMENT SAYS THE
5 WILL WILL BE UPHELD AND IF THE TRUST IS UPHELD AND THE
6 SETTLEMENT AGREEMENT SAYS THE TRUST IS BEING UPHELD, THEN
7 HOW DOES THAT NOT DEFEND THE ESTATE PLAN OF MR. BROWN?

8 A MR. BROWN INTENDED FOR MOST OF HIS ASSETS TO FUND THE
9 EDUCATION OF NEEDY AND DESERVING CHILDREN, AND HE INTENDED
10 NOT TO LEAVE ASSETS TO YOUR CLIENT, AND HE INTENDED TO
11 LEAVE PERSONAL AND HOUSEHOLD EFFECTS AND THE
12 GRANDCHILDREN'S EDUCATION TRUST TO MR. LEVENSON'S CLIENTS.
13 SO...

14 Q BUT WE'RE --

15 A YOU KNOW, IF --

16 THE COURT: HOLD ON.

17 MR. MEDLIN: I'M SORRY, JUDGE.

18 THE WITNESS: IF WE'RE OBLIGATED TO DEFEND
19 MR. BROWN'S INTENDED ESTATE PLAN UNDER HIS DOCUMENTS, THEN
20 WE REALLY ARE IN A QUANDARY.

21 Q AND BY DOCUMENTS YOU MEAN THE 2000 WILL --

22 A YES, SIR.

23 Q -- AND THE 2000 TRUST DOCUMENTS?

24 A RIGHT.

25 Q I AM NOT UNDERSTANDING, MR. BUCHANAN. IF THE

1 SETTLEMENT UPHOLDS THE WILL AND THE TRUST THAT YOU SAY
2 EXPRESS HIS ESTATE PLAN, THEN --

3 THE COURT: PROFESSOR MEDLIN, NOW YOU'RE INSULTING ME
4 NOW.

5 MR. MEDLIN: WELL --

6 THE COURT: THE WILL AND TRUST SAY LEAVE EVERYTHING
7 TO THE NEEDY CHILDREN EXCEPT THAT \$2 MILLION AND THE
8 HOUSEHOLD GOODS.

9 MR. MEDLIN: WELL --

10 THE COURT: THE SETTLEMENT DOESN'T DO THAT.

11 MR. MEDLIN: YOUR HONOR --

12 THE COURT: MR. BUCHANAN IS SAYING THAT HE'S
13 OBLIGATED TO DEFEND THAT -- EVERYTHING TO THE TRUST. YOU
14 GOT AN AGREEMENT BETWEEN YOUR PARTIES UNDER 62-3-912. HE
15 IS IN A QUANDARY AS TO WHAT TO DO.

16 MR. MEDLIN: YOUR HONOR, I AM NOT MEANING TO INSULT
17 YOU OR MR. BUCHANAN. I THINK MY NEXT QUESTION WILL
18 HOPEFULLY WILL ASSUAGE SOME OF THAT CONCERN. MY NEXT
19 QUESTION IS ISN'T YOUR REAL PROBLEM HOW THE ASSETS ARE
20 BEING ALLOCATED AMONG THE SETTLING PARTIES? WE'RE
21 UPHOLDING THE WILL AND TRUST, BUT YOUR REAL PROBLEM IS HOW
22 WE'RE DIVIDING THE ASSETS AMONG THE SETTLING PARTIES;
23 CORRECT?

24 A WELL, THE REAL PROBLEM IS THAT MOST -- A VERY
25 SIGNIFICANT PORTION OF THE ASSETS THAT WOULD BE THERE TO

1 EDUCATE THE NEEDY AND DESERVING CHILDREN ARE GOING TO
2 PEOPLE MR. BROWN DID NOT INTEND FOR THEM TO GO TO.

3 Q MR. BUCHANAN, ISN'T THE REAL PROBLEM THAT YOU HAVE
4 WITH THIS SETTLEMENT THAT THE CHARITY IS GETTING LESS
5 AMONG WHAT PASSES TO THE SETTLING PARTIES THAN YOU BELIEVE
6 MR. BROWN INTENDED? THAT'S YOUR ANSWER, I UNDERSTAND?

7 A MR. BROWN INTENDED TO LEAVE MOST OF IT TO THE NEEDY
8 AND DESERVING CHILDREN, AND UNDER THE SETTLEMENT THAT IS --
9 NOT HAPPENING.

10 Q AND I THINK WE'RE SAYING -- I AM JUST CLARIFYING
11 BECAUSE I THINK I UNDERSTAND WHAT YOU'RE SAYING. THE
12 ATTORNEY GENERAL --

13 A WELL, I JUST WANT TO SAY IT MY WAY AND NOT YOUR WAY.

14 Q I UNDERSTAND THAT, TOO, MR. BUCHANAN.

15 THE COURT: ALL RIGHT, GENTLEMEN. I UNDERSTAND BOTH
16 OF YOUR POSITIONS. LET'S MOVE ALONG.

17 Q MR. BUCHANAN, ISN'T THE REAL PROBLEM YOU HAVE WITH
18 THE DOLLARS IN THE SETTLEMENT THAT THE ATTORNEY GENERAL IS
19 SHIFTING MORE AWAY FROM CHARITY THAN YOU THINK SHOULD BE
20 SHIFTING?

21 A MY PROBLEM WITH WHAT?

22 Q WITH THE DOLLARS OF THE SETTLEMENT.

23 A THE DOLLARS?

24 Q I'M SORRY. IT TOOK ME SO LONG TO GET THERE, BUT I AM
25 TRYING TO FOCUS ON THIS POINT. THE PROBLEM IS WITH THE

1 DOLLARS OF THE SETTLEMENT, IS IT NOT, AND YOU BELIEVE THE
2 ATTORNEY GENERAL IS LETTING TOO MUCH GET AWAY FROM
3 CHARITY?

4 A THAT IS PART OF IT, AND PART OF IT IS THAT MR. BROWN
5 INTENDED WHERE HE WANTED IT TO GO, AND UNDER THE
6 SETTLEMENT IT'S GOING ELSEWHERE.

7 Q BECAUSE HE WANTED IT TO GO TO CHARITY AND IT IS GOING
8 ELSEWHERE; RIGHT?

9 A IT IS GOING WHERE HE DIDN'T WANT IT TO GO.

10 Q BUT HE WANTED IT TO GO TO CHARITY; CORRECT?

11 A HE DID WANT IT TO GO TO CHARITY.

12 Q UNDER YOUR UNDERSTANDING OF THE --

13 A YES.

14 Q AND IT'S NOT GOING TO CHARITY UNDER YOUR
15 UNDERSTANDING OF THE SETTLEMENT? SOME OF IT?

16 A IT IS GOING SOMEWHERE OTHER -- IT IS GOING TO PEOPLE
17 HE DID NOT WANT TO GET IT BY THE DOCUMENTS, BY THE WILL
18 AND THE TRUST.

19 Q NOW, ASSUMING THAT 62-3-912 ALLOWS PARTIES TO ENTER
20 INTO A BINDING SETTLEMENT AGREEMENT THAT DOESN'T AFFECT
21 NON-SETTLING PARTIES, AREN'T THE ONLY AFFECTED PARTIES TO
22 THE SETTLEMENT AGREEMENT THE ATTORNEY GENERAL REPRESENTING
23 THE CHARITIES AND THE FAMILY MEMBERS, AND AREN'T ALL OF
24 THE DOLLARS BEING CONTAINED WITHIN THEM -- ARE ANY DOLLARS
25 BEING TAKEN AWAY FROM THIS SETTLEMENT FROM ANYBODY WHO IS

1 NOT SETTLING?

2 A WELL, REMEMBER, WE'RE THE TRUSTEE.

3 Q I UNDERSTAND, MR. BUCHANAN --

4 A RIGHT.

5 Q -- BUT AS PERSONAL REPRESENTATIVE YOU'RE BOUND BY THE
6 TERMS OF A PRIVATE SETTLEMENT AGREEMENT, ARE YOU NOT,
7 UNDER 62-3-912? YOU DON'T HAVE A VETO POWER. YOU DON'T
8 HAVE A VOTE UNDER THIS, DO YOU?

9 A UNDER THE WAY THIS CODE SECTION READS, NO, I DON'T
10 HAVE A VETO.

11 Q OKAY.

12 A I CAN'T VETO A PRIVATE SETTLEMENT PROVIDED, PROVIDED,
13 PROVIDED. I CAN'T DO IT.

14 Q MR. BUCHANAN, IF THIS LITIGATION WERE TO CONTINUE AND
15 IF THE CHARITIES WERE NOT TO DO WELL IN THE LITIGATION --
16 EITHER THE WILLS AND TRUSTS WERE OVERTURNED SO THAT AN
17 INTESTACY RESULTED -- LET ME NOT ASK THAT QUESTION. IF
18 THE WILLS AND TRUSTS WERE OVERTURNED SO THAT AN INTESTACY
19 RESULTED, NOTHING WOULD GO TO CHARITY; CORRECT?

20 A YES, SIR.

21 Q SO, THE ATTORNEY GENERAL UNDER THAT SCENARIO RISKS
22 LOSING 100 PERCENT; CORRECT?

23 A ASSUMING THAT THERE'S -- YEA, ASSUMING WE KNOW ENOUGH
24 ABOUT IT TO REALLY EVALUATE WHAT THE EVIDENCE IS AND WHAT
25 THE WEIGHT OF EVIDENCE IS PROBABLY GOING TO BE AND THAT

1 KIND OF THING. AS SOON AS WE KNOW MORE ABOUT IT -- YOU
2 KNOW, THE ATTORNEY GENERAL MAY HAVE A VERY LEGITIMATE
3 CONCERN ABOUT LOSING IT ALL.

4 Q OKAY.

5 A BUT WHEN YOU TAKE THAT MUCH BY AN AGREEMENT AT THIS
6 STAGE AWAY FROM THAT CHARITY, THEN WE OUGHT TO HAVE
7 SOMETHING -- I MEAN, YOU KNOW, IF WE'RE GOING TO TELL BANK
8 OF AMERICA TO BUY MERRILL LYNCH, WE OUGHT TO TELL THEM TO
9 DO A LITTLE DUE DILIGENCE FIRST.

10 Q BUT, AGAIN, ISN'T THAT THE ATTORNEY GENERAL'S RIGHT
11 TO CONDUCT THE DUE DILIGENCE AND MAKE THE DECISION?

12 A WELL, IT IS -- THE TRUSTEE HAS A RIGHT TO REPRESENT
13 THE TRUST. THE TRUSTEE HAS A RIGHT AND THE P.R. HAS A
14 RIGHT TO REPRESENT THE ESTATE PLAN INTENDED BY MR. BROWN.

15 Q BUT --

16 A AND THAT'S ALL WE'RE DOING.

17 Q BUT DOESN'T 62-3-912 ALLOW THE PARTIES TO SETTLE
18 AMONG THEMSELVES --

19 A WE'VE AGREED --

20 Q -- WITHOUT THE TRUSTEE AND PERSONAL REPRESENTATIVE?

21 A WE'VE AGREED WHAT THAT STATUTE SAYS. WE'VE ALSO -- I
22 HAVE ALSO SAID IT'S A BIT OF A QUANDARY, OKAY?

23 Q ALL RIGHT. IF YOU'RE WRONG --

24 THE COURT: WRONG ABOUT WHAT?

25 MR. MEDLIN: I AM GOING TO CONTINUE, YOUR HONOR.

1 IF YOU'RE WRONG ABOUT THE VIABILITY OF THE WILL AND
2 TRUST CONTEST --

3 THE WITNESS: I HAVEN'T MADE -- I HAVEN'T EVALUATED
4 IT YET.

5 Q IF YOU'RE WRONG --

6 A I HAVEN'T EVALUATED IT.

7 Q I AM NOT ASKING WHETHER YOU'VE EVALUATED IT, BUT --

8 A SO, HOW CAN I BE WRONG? HOW CAN I BE WRONG? I
9 HAVEN'T FORMED AN OPINION ABOUT THAT YET.

10 THE COURT: GENTLEMEN...

11 Q IF YOU ARE WRONG, MR. BUCHANAN, THEN -- AND THE
12 ANSWER IS THE CHARITY GETS NOTHING, WHO'S LIABLE FOR THAT?
13 ARE YOU LIABLE FOR THAT? IF YOU FIGHT THIS SETTLEMENT AND
14 THIS LITIGATION CONTINUES AND THE CHARITIES END UP WITH
15 ZERO AND THE ATTORNEY GENERAL WANTED TO SETTLE TO GET
16 SOMETHING FOR THE CHARITIES AND BECAUSE YOU CLOSED THE
17 SETTLEMENT, TOOK IT TO THE SUPREME COURT, AND THEN WE HAD
18 YEARS OF LITIGATION, AND THEN THE CHARITIES ENDED UP WITH
19 ZERO, IS THAT YOUR RESPONSIBILITY?

20 A NO, YOU KNOW WHAT I'VE TOLD YOU ALL ALONG,
21 MR. MEDLIN? I HAVE TOLD YOU ALL ALONG THAT I OPPOSED THIS
22 SETTLEMENT AT THIS TIME. OKAY?

23 Q THAT'S NOT MY QUESTION, MR. BUCHANAN.

24 A YOU KNOW, I THINK I'M BEING VERY REASONABLE HERE.
25 I'M SAYING, YOU KNOW, WHAT'S THE OLD WENDY'S COMMERCIAL?

1 YOU KNOW, SHOW ME THE MEAT. I MEAN, LET'S LOOK AT IT.

2 OKAY?

3 Q MR. BUCHANAN, AREN'T YOU PLAYING WITH THE ATTORNEY
4 GENERAL'S MONEY BY OPPOSING --

5 MR. BAILEY: YOUR HONOR, I AM GOING TO OBJECT --

6 THE WITNESS: YOU KNOW, I'M --

7 THE COURT: HOLD ON, MR. BUCHANAN.

8 MR. BAILEY: I DON'T KNOW WHERE THE CONCEPT COMES
9 FROM THAT THIS IS THE ATTORNEY GENERAL'S MONEY.

10 MR. MEDLIN: I'LL REPHRASE --

11 MR. BAILEY: I DON'T SEE HOW THAT POSSIBLY --

12 THE COURT: SUSTAINED.

13 MR. BAILEY: -- IS A PROPER QUESTION.

14 MR. MEDLIN: I'LL REPHRASE THE QUESTION, MR. BAILEY.
15 YOU'RE ABSOLUTELY RIGHT.

16 AREN'T YOU PLAYING WITH THE CHARITY'S MONEY,
17 MR. BUCHANAN?

18 THE WITNESS: I AM NOT PLAYING WITH ANYBODY'S MONEY.
19 I AM ASKING TO HAVE SOME REASONABLE EVALUATION MADE SO
20 THAT WE CAN MAKE SOME ASSESSMENT OF THE EVIDENCE SO THERE
21 CAN BE SOME REASONABLE BASIS FOR IT, AND, YOU KNOW, MAYBE
22 MR. JONES WILL CALL ME UP MONDAY AND INVITE ME OVER TO HIS
23 OFFICE AND SHOW ME HIS WHOLE FILE AND SHOW ME EVERYTHING
24 HE'S DONE AND I MAY HAVE A DIFFERENT VIEW OF THIS.

25 Q SO, THIS GETS BACK, DOES IT NOT, MR. BUCHANAN,

1 BECAUSE -- STRIKE THAT. YOU SAY YOU HAVEN'T DONE ENOUGH
2 EVALUATION TO KNOW WHAT -- THAT YOU'RE WRONG. YOU
3 PRESUMABLY HAVEN'T DONE ENOUGH EVALUATION TO KNOW THAT
4 YOU'RE RIGHT; CORRECT?

5 A YOU KNOW -- NO, I HAVEN'T SAID THAT. I HAVEN'T SAID
6 I HAVEN'T DONE AN EVALUATION. WHAT I HAVE SAID IS THERE
7 IS NOTHING TO EVALUATE. THERE HAS BEEN NO DISCOVERY.
8 THERE'S BEEN NO DUE DILIGENCE. THERE IS NOTHING OUT THERE
9 TO SIT DOWN AND EVALUATE.

10 Q ALL RIGHT. THEN, MR. BUCHANAN, IF THERE IS NOTHING
11 TO EVALUATE, DOESN'T THAT MEAN THAT YOU HAVEN'T CONDUCTED
12 AN EVALUATION?

13 THE COURT: PROFESSOR MEDLIN, THAT'S NOT FAIR NOW.
14 YOU KNOW -- WE ALL KNOW THAT DISCOVERY HAS BEEN STAYED AND
15 HE CAN'T JUST GO OUT AND TALK TO YOUR CLIENTS AND
16 MR. LEVENSON'S CLIENTS. THAT'S NOT A FAIR.

17 MR. MEDLIN: I'LL WITHDRAW THE QUESTION, YOUR HONOR.
18 MY REAL QUESTION IS THIS.

19 THE COURT: ASK THE REAL QUESTION.

20 Q AREN'T YOU REALLY WORRIED THAT THE ATTORNEY GENERAL
21 HASN'T CONDUCTED SUFFICIENT DUE DILIGENCE ON BEHALF OF THE
22 CHARITIES? IF YOU BELIEVE THE ATTORNEY GENERAL HAD DONE
23 SUFFICIENT DUE DILIGENCE, THEN YOU WOULD TRUST THE
24 ATTORNEY GENERAL'S EVALUATION?

25 A I WOULD EXPECT THE ATTORNEY GENERAL TO EXPLAIN IT AND

1 DEMONSTRATE IT.

2 Q YOU'RE NOT WILLING TO JUST ACCEPT THE ATTORNEY
3 GENERAL'S POWER AND GOOD FAITH AS PART OF THIS?

4 A I DON'T THINK THE STATUTE REQUIRES THAT. I THINK THE
5 STATUTE GIVES THE ATTORNEY GENERAL AS IT DOES THE TRUSTEE
6 THE RIGHT TO DEFEND THE TRUST -- THE CHARITY. OKAY?
7 THAT'S WHAT I THINK THE STATUTE DOES.

8 Q MR. BUCHANAN -- THIS IS JUST A SHORT LITTLE SEGMENT,
9 YOUR HONOR.

10 THE COURT: YOU GOT FIVE MINUTES.

11 MR. MEDLIN: THANK YOU, YOUR HONOR.

12 THE COURT: I AM TRYING TO HONOR MR. ROSEN'S WISHES
13 TO STOP AT 4 O'CLOCK.

14 MR. MEDLIN: AND I AM DISREGARDING HIS SUGGESTION.

15 THE COURT: GO AHEAD.

16 Q MR. BUCHANAN, IF YOU NEED TO LOOK AGAIN AT THE 2000
17 TRUST DOCUMENT FOR REFERENCE, BUT DO YOU RECALL IF THERE
18 WAS AN EXPRESSION BY MR. BROWN OF THE METHODOLOGY OF
19 CHANGING TRUSTEES?

20 A NOT RIGHT NOW, I DON'T. I MEAN, I THINK THERE IS A
21 PROVISION IN THERE ABOUT CHANGING TRUSTEES.

22 Q MR. BUCHANAN, DO YOU UNDERSTAND THAT UNDER THE TRUST
23 THAT YOU BELIEVE EXPRESSES MR. BROWN'S INTENTIONS AND THAT
24 YOU WISH TO DEFEND THERE IS A METHODOLOGY FOR REPLACING
25 TRUSTEES?

1 A TRUSTEE SUCCESSION.

2 Q IS THERE ANY PROVISION IN THERE ABOUT A TRANSITION
3 PERIOD BETWEEN THE PREDECESSOR AND THE SUCCESSOR?

4 A I DON'T RECALL IT, BUT I'LL LOOK TO SEE. I DON'T
5 REMEMBER THAT THERE WAS, BUT I'LL BE HAPPY TO LOOK.

6 Q ARE YOU FAMILIAR --

7 THE COURT: THAT'S A GOOD STOPPING POINT. CHANGE OF
8 TRUSTEES IS WHERE WE'LL TAKE UP NEXT. MR. BUCHANAN, YOU
9 MAY STEP DOWN.

10 THE WITNESS: THANK YOU, SIR.

11 MR. MEDLIN: THANK YOU, MR. BUCHANAN.

12 (WHEREUPON, A DISCUSSION CONCERNING FUTURE HEARING
13 DATES WAS HELD OFF THE RECORD.)

14 MR. BAILEY: YOUR HONOR, LITTLE HOUSEKEEPING DETAIL,
15 THIS ORDER THAT WAS SIGNED BY YOU ON WEDNESDAY, I BELIEVE
16 IT WAS, EXPRESSING THAT YOU HAD JURISDICTION TO CONTINUE
17 TO HEAR DESPITE THE APPEAL OF MR. BAUKNIGHT'S
18 APPOINTMENT -- WE JUST HAVE ONE REQUESTED CHANGE TO IT.

19 THE COURT: ALL RIGHT.

20 MR. BAILEY: IT IS IN -- ON THE SECOND PAGE, THE
21 SECOND PARAGRAPH. IT IS JUST A SENTENCE. IT SAYS, AND
22 THE HEARING WAS HELD ON MARCH 4, 2009 AT AIKEN COUNTY
23 COURTHOUSE WITH ORAL ARGUMENT BEING HEARD FROM ALL
24 NECESSARY COUNSEL. WE WOULD REQUEST THAT FROM ALL
25 NECESSARY COUNSEL BE STRUCK AND THAT AN ORAL ARGUMENT

1 BEING HEARD.

2 THE COURT: WHO WAS NOT PRESENT?

3 MR. BAILEY: ALL OF THE PARTIES WHO WERE NOT PROPERLY
4 JOINED OR THEIR COUNSEL.

5 THE COURT: I WILL STRIKE ALL NECESSARY PARTIES.
6 THAT'S JUST SEMANTICS, BUT I'M NOT GOING TO -- NOT ON THAT
7 BASIS.

8 MR. BUCHANAN: HOW DO YOU WANT TO HANDLE THE
9 COMMUNICATIONS?

10 THE COURT: I'M GOING TO GET INTO THAT IN JUST A
11 SECOND.

12 MR. BUCHANAN: OKAY.

13 THE COURT: I AM JUST GOING TO STRIKE IT AND PUT MY
14 INITIAL BY IT.

15 MR. BAILEY: YOUR HONOR, ONE OTHER THING IS THE
16 RECONSIDERATION MOTION ON MR. BAUKNIGHT'S APPOINTMENT THAT
17 MR. WARNER ARGUED AND I BELIEVE WE JOINED IN.

18 THE COURT: YOU DID. I NEED TO GET YOU AN ORDER ON
19 THAT, DON'T I?

20 MR. BAILEY: YES, SIR. AND NOBODY -- WHEN I READ THE
21 TRANSCRIPT IT DID NOT APPEAR THAT ANYBODY WAS APPOINTED TO
22 DO THE ORDER.

23 THE COURT: WELL, I THOUGHT I HAD ASKED MR. MEDLIN
24 AND HE TOLD ME I DIDN'T. I WILL GET AN ORDER OUT THIS
25 WEEK.

1 MR. ROSEN: YOUR HONOR, CAN I MAKE A REQUEST?

2 THE COURT: MR. ROSEN?

3 MR. ROSEN: YOUR HONOR, WE'RE IN THE MIDDLE OF THE
4 HEARING ON THE SEVENTH. COULD YOU ISSUE AN ORDER THAT
5 DIRECTS THE CLERK NOT TO ACCEPT ANY MORE FILINGS OF
6 MOTIONS, I MEAN -- AND DIRECT THE PARTIES JUST LET'S
7 JUST -- YOU KNOW, THE REST OF US HAVE LAW PRACTICES AND WE
8 WOULD LIKE TO NOT HAVE SIX MORE EMERGENCY MOTIONS BETWEEN
9 NOW AND WHEN WE FINISH WITH THIS HEARING.

10 THE COURT: I AM NOT GOING TO PRECLUDE ANYBODY --

11 MR. ROSEN: THE COST TO THE ESTATE IS ASTRONOMICAL.

12 THE COURT: I CAN'T MAKE THEM NOT FILE MOTIONS. I AM
13 NOT GOING TO MAKE YOU NOT FILE MOTIONS.

14 MR. ROSEN: I THINK YOU CAN. I THINK YOU CAN ORDER
15 THEM NOT TO DO IT.

16 THE COURT: WELL, I AM NOT GOING TO DO THAT.

17 MR. ROSEN: THANK YOU, SIR.

18 THE COURT: PROFESSOR MEDLIN?

19 MR. MEDLIN: YOUR HONOR, I AM DELIGHTED TO DO
20 WHATEVER YOU BID ME TO DO. I JUST DIDN'T UNDERSTAND THAT
21 YOU WANTED ME TO PRODUCE THAT ORDER.

22 THE COURT: AND THAT WAS MY MISTAKE; NOT YOURS.

23 MR. MEDLIN: BUT IF YOU WANT ME TO DO IT, I'M HAPPY
24 TO DO IT.

25 THE COURT: JUST SEND ME A COPY OF IT. E-MAIL IT TO

1 EVERYBODY AND I'LL TAKE A LOOK AT IT.

2 MR. MEDLIN: OKAY. THANK YOU.

3 THE COURT: NOW, MR. BAILEY?

4 MR. BAILEY: WE WOULD JUST LIKE TO KNOW WHEN THE
5 COURT WOULD BE ABLE TO HEAR THE EMERGENCY MOTION FOR THE
6 APPOINTMENT OF THE SPECIAL ADMINISTRATOR TRUSTEE TO MANAGE
7 THE ASSETS OF THE ESTATE WHILE MR. BUCHANAN AND MRS. POPE
8 CONTINUE TO DEFEND THE ESTATE PLAN.

9 THE COURT: I WILL -- WHEN I SEND OUT THE AGENDA
10 MONDAY AS SOON AS I KNOW COURT DATES I'LL PUT A DATE ON
11 THAT.

12 MR. ROSEN: YOUR HONOR, I'VE HAD A MOTION PENDING NOW
13 FOR A COUPLE OF WEEKS JOINED IN BY ALL OF THE SETTLING
14 PARTIES TO ENJOIN THE TRUSTEES AND THE P.R.'S FROM TAKING
15 ANY FURTHER ACTION AND SELLING THE ESTATE. WE DON'T WANT
16 TO COME BACK AND FIND OUT THEY HAVE A CONTRACT WITH
17 SOMEBODY TO SELL THE ESTATE. I HOPE THAT THE COURT WOULD
18 ISSUE A VERBAL ORDER NOW TELLING THEM NOT TO SELL ANY
19 ASSETS UNTIL THIS HEARING -- THIS MOTION CAN BE HEARD.

20 THE COURT: WELL, MR. ROSEN, THAT'S NUMBER FOUR ON
21 THE AGENDA. WE HADN'T GOTTEN THERE.

22 MR. ROSEN: WELL, BETWEEN NOW AND THE 26TH, YOUR
23 HONOR, THEY MAY SELL THE WHOLE ESTATE FOR \$30 MILLION FOR
24 ALL WE KNOW.

25 THE COURT: I DON'T THINK SO. ANYTHING SOLD OUT OF

1 THE ESTATE, MR. BUCHANAN AND MRS. POPE, PLEASE, PRESENT IT
2 TO THE COURT BEFORE SALE. IT'S AN ORAL ORDER.

3 MR. MEDLIN?

4 MR. MEDLIN: YOUR HONOR, I AM NOT QUITE SURE WHETHER
5 YOU HEARD AND RULED ON MRS. POPE AND MR. BUCHANAN'S MOTION
6 FOR RECONSIDERATION. I KNOW WE TALKED ABOUT --

7 THE COURT: MR. BAILEY JUST SAID I DID. I THOUGHT I
8 HEARD HE AND JAN WARNER. THEY BOTH DID.

9 MR. MEDLIN: I JUST WANT TO CLARIFY. SO YOU WANT MY
10 ORDER -- I AM NOT ARGUING THE POINT. I JUST WANT TO -- SO
11 YOU WANT MY ORDER TO COVER BOTH?

12 THE COURT: CORRECT.

13 MR. MEDLIN: THANK YOU, YOUR HONOR.

14 THE COURT: CORRECT?

15 MR. BAILEY: YES, SIR.

16 THE COURT: ALL RIGHT. NOW --

17 MR. BAILEY: BUT WE --

18 THE COURT: GO AHEAD.

19 MR. BAILEY: WITH RESPECT TO THE STATUS OF OUR
20 MANAGEMENT OF THE ESTATE WE'VE GOT SETTLEMENTS THAT ARE
21 PENDING. WE'VE GOT OTHER MATTERS OF A VERY CRITICAL
22 SENSITIVE NATURE WE'VE REQUESTED AND THOSE ARE THINGS THAT
23 WE NEED AS QUICKLY AS POSSIBLE TO BE DONE.

24 THE COURT: WHAT ARE YOU SAYING? THEY ARE STILL THE
25 P.R.'S AND THE TRUSTEES.

1 MR. BAILEY: BUT THEY'RE UNDER A MOTION RIGHT NOW
2 SEEKING TO ENJOIN, RESTRAIN THEM FROM SELLING ANYTHING
3 DESPITE YOUR FEBRUARY 20, 2008 LETTER -- ORDER --
4 AUTHORIZING THEM TO SELL THE VERY THINGS THEY'RE ASKING
5 FOR DUE DILIGENCE ON.

6 THE COURT: I AM NOT SURE, MR. BAILEY, WHAT YOU'RE
7 ASKING. I AM HERE TO HEAR Y'ALL. IF THEY'RE GETTING
8 READY TO SELL SOMETHING, PLEASE LET ME KNOW.

9 MR. ROSEN: YOUR HONOR, I JUST WANT TO SAY FOR THE
10 RECORD UNDER THE STATUTE THEY'RE STAYED FROM DOING
11 ANYTHING. THEY CANNOT DO ANYTHING. THEY CANNOT TAKE ANY
12 ACTION EXCEPT TO PRESERVE THE ASSETS, AND I JUST WANT TO
13 PUT THEM ON NOTICE THAT THAT IS THE LAW, AND THE
14 BENEFICIARIES WILL SEEK WHATEVER REMEDIES ARE NECESSARY.

15 MR. BAILEY: AND, YOUR HONOR, I WOULD POINT OUT THE
16 LANGUAGE THAT YOU EMPLOYED IN YOUR ORDER OF JANUARY 7.

17 THE COURT: WHICH HAS NOT BEEN APPEALED AND WHICH IS
18 STILL THE ORDER OF THIS COURT.

19 MR. BAILEY: AND IT PROVIDES FOR WHAT THE PERSONAL
20 REPRESENTATIVES AND TRUSTEES CAN DO.

21 THE COURT: IT DID, AND IT HADN'T BEEN APPEALED.

22 MR. MEDLIN: YOUR HONOR, IF WE COULD ASK FOR
23 CLARIFICATION ON THAT WITH RESPECT TO MRS. POPE.

24 THE COURT: MR. MEDLIN, LET ME PUT IT LIKE THIS.
25 THEY'RE GOING TO CONTINUE TO BE THE P.R.'S AND THE

1 TRUSTEES UNTIL WE GET THIS MATTER RESOLVED OR WE SETTLE
2 IT. IF THEY GET READY TO SELL OR DO ANYTHING THAT'S
3 TAKING ASSETS AWAY FROM THE ESTATE, THEY'RE TO COME BACK
4 INTO THE COURT WITH EVERYBODY AVAILABLE TO LISTEN TO
5 WHATEVER PROPOSAL THEY HAVE JUST LIKE THE CHRISTIE'S SALE.

6 MR. MEDLIN: I HAVE ONE PARTICULAR ITEM, YOUR HONOR,
7 THAT MR. BAILEY MENTIONED ABOUT THE FEBRUARY 2008 ORDER
8 REGARDING THE SALE OF THE BEECH ISLAND PROPERTY. SINCE
9 THAT TIME THE SETTLING PARTIES HAVE ENTERED INTO A PRIVATE
10 SETTLEMENT AGREEMENT WHICH WE BELIEVE IS BINDING UNDER
11 62-3-912 AND WE BELIEVE THE P.R.'S HAVE TO OBLIGE BY THAT
12 AND --

13 THE COURT: SO, YOU'RE WORRIED ABOUT THE BEACH ISLAND
14 PROPERTY?

15 MR. MEDLIN: WE'RE WORRIED ABOUT THE BEECH ISLAND
16 PROPERTY WHICH THE FAMILY IS TRYING TO RETAIN. I JUST
17 LIKE TO MAKE SURE THAT'S PART OF THAT.

18 MR. BAILEY: THEY NEED TO BUY IT THEN. IT IS
19 DETERIORATING. THERE ARE -- FUNDS ARE NOT AVAILABLE TO
20 KEEP IT IN GOOD CONDITION.

21 THE COURT: YOU GOT A SALE FOR IT?

22 MR. BAILEY: NO. WE'RE SEEKING IT. THAT'S WHAT
23 WE'RE LOOKING FOR.

24 THE COURT: WELL --

25 MR. BAILEY: THAT'S WHAT --

1 THE COURT: -- IF YOU FIND A POTENTIAL BUYER, YOU
2 HAVE TO PETITION US TO LET EVERYBODY HAVE INPUT INTO IT.

3 MR. BAILEY: THAT IS EXACTLY WHAT WE WOULD HAVE DONE.

4 THE COURT: WELL. OKAY.

5 MR. MEDLIN: THAT'S ALL I WAS ASKING.

6 THE COURT: THAT SOLVES THAT. YES, SIR?

7 MR. PICKELSIMER: YOUR HONOR, I JUST HAVE AN ORDER
8 RELIEVING COUNSEL SUBSTITUTING US FOR TOMMY LYDON IN THE
9 ESTATE CASE.

10 THE COURT: WHO IS THAT?

11 MR. PICKELSIMER: JAN WARNER.

12 THE COURT: AND MR. CANNON IS CHANGING AGAIN?

13 MR. PICKELSIMER: NO, SIR. THIS IS IN HIS ESTATE
14 CLAIM.

15 THE COURT: HAND IT UP. ANYBODY OPPOSED TO ANOTHER
16 CHANGE FOR MR. CANNON?

17 MR. PICKELSIMER: I HAVE SHOWED THIS TO MR. BAILEY.

18 THE COURT: THANK YOU. ALL RIGHT.

19 LADIES AND GENTLEMEN, AS TO MRS. POPE AND
20 MR. BUCHANAN I AM GOING TO ALLOW THEM TO TALK TO THEIR
21 LAWYERS IN CONNECTION WITH ANY ADMINISTRATION OF THE
22 ESTATE.

23 MR. BUCHANAN, YOU'RE RIGHT IN THE MIDDLE OF YOUR
24 TESTIMONY. SO, DON'T DISCUSS YOUR TESTIMONY WITH THEM.

25 MR. BAILEY: WE WILL NOT DISCUSS ANY TESTIMONY OR ANY

1 SUGGESTED TESTIMONY.

2 THE COURT: THANK YOU.

3 MR. BAILEY: I'LL MAKE THAT REPRESENTATION TO THE
4 COURT AS AN OFFICER OF THE COURT.

5 THE COURT: THANK YOU. THAT'S ALL I NEED FROM YOU,
6 MR. BAILEY. I APPRECIATE THAT. ALL RIGHT. HAVING SAID
7 THAT, I WILL E-MAIL EVERYBODY ON MONDAY AND THEN I'LL --
8 AS I'VE DONE IN THE PAST, I'LL ENTERTAIN COMPLAINTS ABOUT
9 -- NOT COMPLAINTS BUT ABOUT CONFLICTS WITH THE SCHEDULE
10 AND WE'LL DO THE BEST WE CAN, BUT I JUST FEEL LIKE WE NEED
11 TO KEEP GOING UNTIL WE GET ALL OF THE TESTIMONY SO WE CAN
12 MOVE AS FAST AS WE CAN OR MOVE -- GET THE TESTIMONY IN SO
13 WE CAN MOVE.

14 SETTLING PARTIES, I AM CONCERNED AND I TOLD Y'ALL
15 EARLIER TODAY THAT I WOULD LIKE FOR YOU TO GO AHEAD AND
16 DRAFT THAT STATEMENT FOR YOUR CLIENTS TO SIGN ABOUT
17 APPROVAL OF THE AGREEMENT AND SEND IT TO ME FOR MY
18 APPROVAL. I AM GOING TO REQUIRE YOU TO GIVE ME THE NAME
19 OF THE TRUSTEE SO I CAN EXAMINE HIM AS TO HIS OR HER
20 QUALIFICATIONS, AND I AM GOING TO REQUIRE SOMEBODY TO TAKE
21 THIS STAND OR SOMEBODY AS A LAWYER TO ANSWER MY QUESTIONS
22 ABOUT THE SETTLEMENT AGREEMENT AS TO HOW IT -- THE
23 DESCRIPTION AND EXPLANATION IN DETAIL OF THE MECHANICS OF
24 THE SETTLEMENT AGREEMENT ONCE WE HAVE IT SIGNED.

25 MR. MEDLIN: AND, YOUR HONOR, YOU WANTED US TO COVER

1 IN THAT STATEMENT FROM OUR CLIENTS TYPICAL GUILTY PLEA
2 LANGUAGE?

3 THE COURT: WELL, YOU KNOW, I'VE READ IT, I
4 UNDERSTAND IT, I'VE HAD COUNSEL, I'VE HAD THE OPPORTUNITY
5 TO GET TAX ADVICE, I'VE HAD -- COVER EVERYBODY SO I DON'T
6 WANT ANYBODY COMING BACK, I DIDN'T READ IT, MY LAWYER MADE
7 ME DO IT. IT IS THEIR OWN INDIVIDUAL EVEN AFTER ADVICE,
8 THAT SORT OF THING.

9 MR. SHAHID -- HE'S HAD GUILTY PLEAS. HE KNOWS HOW TO
10 DO IT.

11 MR. SHAHID: I'VE DONE MY SHARE ON BOTH SIDES OF THE
12 FENCE, JUDGE.

13 THE COURT: SURE. ANYTHING ELSE? WE'LL STAND
14 ADJOURNED.

15 (WHEREUPON, A BREAK WAS TAKEN.)
16
17
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21
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23
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25

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

I, LISA H. HICKLIN, OFFICIAL COURT REPORTER FOR THE
SECOND JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND
COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND
EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE,
RELATIVE TO APPEAL, IN THE COURT OF COMMON PLEAS FOR AIKEN
COUNTY, SOUTH CAROLINA, ON THE 4,5 & 6 DAYS OF MARCH,
2009.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL NOR INTEREST TO ANY PARTY HERETO.

MAY 21, 2009

LISA H. HICKLIN, COURT REPORTER

State of South Carolina)

County of Aiken)

Court of Common Pleas
07-CP-02-122

Henry McMaster,)

Plaintiff,)

v.)

Transcript of Record

Russell Bauknight, et al.,)

Defendants.)

March 25-26, 2009
Aiken, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge.

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E X H I B I T S

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1 (Whereupon, on March 25, 2009 the following
2 proceedings were held:)

3 THE COURT: Mr. Buchanan, you want to take the stand
4 again?

5 MR. BAILEY: Your Honor, may I address the court
6 prior to our beginning?

7 THE COURT: Yes, sir.

8 MR. BAILEY: I'd like to renew our objection to the
9 continuation of the hearing based on our previous
10 objections and we had hoped that the court might entertain
11 the emergency motion for the appointment of the special,
12 administrator, special trustee.

13 THE COURT: Thank you. Your objection is noted.
14 Professor Medlin?

15 MR. MEDLIN: Good morning.

16 THE COURT: Good morning.

17 DIRECT EXAMINATION

18 BY MR. MEDLIN:

19 Q Good morning, Mr. Buchanan.

20 A Good morning.

21 Q Mr. Buchanan, are you a professional fiduciary?

22 A Well, I am a fiduciary in this estate and this trust
23 and appointed by the court and I am a lawyer. I don't do
24 it as a matter of business or as a matter of course.

25 Q And, of course, I understand that as a lawyer you're

1 a fiduciary. I meant more specifically as a personal
2 representative trustee.

3 A Yes, sir.

4 Q Thank you. You would agree that a fiduciary in that
5 capacity has a duty to be fair and impartial?

6 A A fiduciary has a duty to be fair and impartial.

7 Q And -- strike that. Do you recognize this motion?

8 It is a motion that I think you and Mrs. Pope filed dated
9 August 18, 2008?

10 A Yes, sir. I see Mr. Bailey signed it on August 18.

11 Q Let's quickly go through that, if you don't mind. On
12 page two you summarized the relief requested and is it
13 fair to say that generally those are objections to the
14 settlement including in paragraph four that you believe
15 that Ms. Brown and Mr. Brown's children have no standing
16 to reach a settlement?

17 A That would be correct.

18 Q And if you look over to page eight --

19 A Yes, sir.

20 Q -- look at paragraph -- excuse me, footnote two. You
21 state that the mediation and announcement that the case
22 has settled simply failed to acknowledge that the James
23 Brown 2000 trust is the primary beneficiary of Mr. Brown's
24 entire estate plan?

25 A Yes, sir. I see the the language.

1 Q And over on page 10, footnote four, you state --
2 second sentence -- "Having been so appointed they have no
3 intention of consenting to a proposal which requires
4 Mr. Brown's intended beneficiary --"

5 THE COURT: No, sir. No, sir. It says which
6 deprives, not requires.

7 MR. MEDLIN: Sorry. Thank you. "Deprives
8 Mr. Brown's intended beneficiaries of their legacy or risk
9 the return of Cannon, Dallas, or Bradley as fiduciaries?"

10 THE WITNESS: Yes, sir. I see the language. Yes,
11 sir.

12 Q And the "they" in that sentence means you and
13 Mrs. Pope, the fiduciaries; correct?

14 A Yes, sir.

15 Q Page 11, first sentence of paragraph eight, "To allow
16 Mr. Brown's family to acquire his assets which he intended
17 for charitable and educational purposes would be an
18 affront to the estate plan of James Brown."

19 A That's the first sentence.

20 Q And then on page 12, paragraph three, you state in
21 your pleading, "Unfortunately, the South Carolina Attorney
22 General from the time of his involvement in September of
23 2007 to date, August 18, 2008, has aligned himself with
24 those who desire to destroy Mr. Brown's estate plan."

25 A You read it correctly.

1 Q So, is it fair to say that you've got problems with
2 the settlement agreement based on this motion?

3 A It's fair to say that we have problems with the
4 settlement agreement.

5 Q But this motion takes that position as well; correct?

6 A It does.

7 Q And this motion --

8 A Well, you know, what this motion does is take a
9 position relative to any settlement that is destructive to
10 the intent of Mr. Brown as expressed in his will and
11 trust. That's what this motion does.

12 Q But this was issued in response to an announcement
13 from a few days earlier that the parties believed they had
14 settled the case. So, it was as to that particular
15 settlement?

16 A It was a motion to require disclosure of the secret
17 settlement.

18 Q And this motion was dated the day before the hearing
19 at which we were scheduled to present the terms of the
20 settlement proposal?

21 A I don't remember that.

22 Q Well, if you would assume that August 19, 2008 was
23 that date, then this was prepared before that hearing?

24 A That would be right.

25 Q And this was prepared before you knew the terms of

1 the settlement agreement?

2 A Yea, this was a motion to require disclosure.

3 Q But including in that motion was an objection to the
4 settlement agreement?

5 A It was an objection to any settlement that would
6 violate the intent of the decedent.

7 Q Do you think that it's fair and impartial to oppose a
8 settlement before you've even seen it?

9 A I think it's fair to be on record that we would
10 oppose a settlement, the effect of which would destroy the
11 intent of the decedent.

12 Q You are concerned on page 18 towards the bottom,
13 Mr. Buchanan, that Dr. McEntire and Ms. Tenenbaum should
14 have been consulted or should be consulted?

15 A Well, the motion says what it says about them.

16 Q And how often have you consulted with Dr. McEntire
17 and Ms. Tenenbaum about proposals that you've made?

18 A I've discussed with Dr. McEntire. I've had more
19 conversations with Dr. McEntire than I have with
20 Ms. Tenenbaum.

21 Q Have you consulted them everytime you have an issue
22 come before the estate that would affect the estate of any
23 significance?

24 A Well, what do you mean of any significance?

25 Q Well, for example, the Corbus litigation which I

1 believe you're going to ask the court to look at sometime
2 during this process -- have you consulted with them about
3 that latest development?

4 A No, but the Corbus litigation -- There is not
5 anything about the resolution of the Corbus litigation
6 that destroys the intent of the decedent. So, no, I
7 haven't.

8 Q Don't you think they'd be interested just as much in
9 the intent of the decedent with other matters than just
10 the settlement agreement?

11 A I don't understand that question.

12 Q Okay. If you'd look --

13 THE COURT: Professor, hold on one minute. Is that a
14 lawyer out there that's late?

15 THE CLERK: She went down to file papers. Can I let
16 her in?

17 THE COURT: Yes, ma'am.

18 Q If you'd look at exhibit E it is a few pages from the
19 end.

20 A Yes, sir, I see exhibit E.

21 Q And you see a page, second page as I see it, of
22 exhibit -- excuse me -- of exhibit E that is entitled
23 advisory board?

24 A Yes, sir.

25 Q Do you see some handwriting at the bottom of that

1 document?

2 A Yes, sir. Starting at about the middle of the page
3 going down there is some handwriting.

4 Q Do you read item two to read this way: "Raye \$20,000
5 a month and live in house as long. Ms. Raye future
6 Ms. Brown will be totally in charge?"

7 A Raye appears to be a Y -- R-A-Y-E, 20,000 month.

8 Q Have you explored the provenance of that language?

9 A What do you mean? We haven't had any discovery. So,
10 no, nobody has been asked about it.

11 Q But it appears --

12 A There's been no depositions taken about this.

13 Q Right, but you're the fiduciary, you're the trustee,
14 and you've done nothing so far to determine if, in fact,
15 that sentence has validity or meaning?

16 A No, sir, I have not. The answer to your question is
17 -- the answer to your question is no. I have asked for
18 discovery.

19 Q Are you precluded as a fiduciary from conducting your
20 own investigation as to the decedent's intent?

21 A No. I'm not.

22 Q You could pick up the phone and call people. You
23 could look at materials?

24 A And I have done that.

25 Q But this particular item you haven't explored?

1 A I'm trying to remember whether I have or not. You
2 know, we've done so much, Mr. Medlin, since we were
3 appointed.

4 Q But you state --

5 A Maybe I'll remember it if you ask me if I talked to
6 somebody whose name is on the paper. Maybe I'll remember
7 that. I mean, I don't remember talking to Venisha about
8 it. I don't remember talking to -- and I can't even read
9 the name of the first witness. I didn't talk to
10 Ms. Hynie. She's represented.

11 Q Well, when you decide what Mr. Brown's intent was
12 under the trust just what parts of the trust document do
13 you take as valid and what parts do you assume aren't
14 valid?

15 A Well, I haven't assumed any part of the trust is
16 invalid.

17 Q Well, do you recall ever pleading that this trust
18 might have evidenced an intent by Mr. Brown to give
19 \$20,000 a month for the rest of her life to Ms. Brown?

20 MR. BAILEY: Your Honor, I am going to object to the
21 relevance of this. What does it have to do with respect
22 to this --

23 THE COURT: Settlement?

24 MR. BAILEY: -- settlement agreement?

25 THE COURT: I don't know.

1 MR. MEDLIN: Your Honor, we're trying to determine if
2 this is fair and reasonable.

3 THE COURT: I understand what I am trying to
4 determine. How does who he talked to help me determine
5 that?

6 MR. MEDLIN: Well, Your Honor, part of the reason
7 that the fiduciaries have testified so far that they don't
8 believe the settlement is fair and reasonable is because
9 they don't have enough due diligence. They don't have
10 discovery and --

11 THE COURT: Mr. Medlin, I've heard all of that. Why
12 is this relevant?

13 MR. MEDLIN: Well, because, Your Honor, it shows that
14 the lack of due diligence on the part of the fiduciaries
15 is part of the reason that they're taking the position
16 that the settlement isn't fair and reasonable. But I'll
17 move on.

18 THE COURT: Thank you. Of course, that's your
19 statement. That's not a statement of the court that they
20 haven't done due diligence.

21 MR. MEDLIN: Your Honor, if I may?

22 THE COURT: You may.

23 MR. MEDLIN: If I may, the only copy I have with the
24 motion page on it is the one I gave you.

25 THE COURT: You want it back?

1 MR. MEDLIN: Can we steal that back and put it into
2 evidence, please?

3 (Whereupon, Medlin's Exhibit No. 9 was marked for
4 identification and received into evidence.)

5 Q Mr. Buchanan, if you'd look at Medlin exhibit 8.

6 A Yes, sir.

7 Q Do you recognize that exhibit?

8 A I recognize it is a copy of an order dated April 15,
9 2004 that grants an annulment of a marriage solemnized on
10 February 17, 1997 between Tomi Rae Hynie AKA Tomi Rae
11 Hynie Brown and Javed Ahmed.

12 Q Thank you, Mr. Buchanan. Would you look at page
13 three --

14 A Yes, sir.

15 Q -- under conclusions of law and read paragraph four?

16 A Yes, sir.

17 Q Would you read it aloud, please?

18 A Yes, sir. "The court concludes that Defendant was
19 married at the time he entered into his marriage with
20 Plaintiff, and, therefore, he lacked the capacity to marry
21 Plaintiff."

22 Q Okay. And would you look at page two under findings
23 of fact, paragraph three?

24 A Yes, sir.

25 Q Would you read that aloud, please?

1 A "No children were born of this marriage between the
2 parties."

3 Q So, we have a family court order that says that there
4 were no children of the marriage of the purported marriage
5 of Mr. Ahmed and Ms. Brown and that that marriage was
6 never valid because Mr. Ahmed lacked the capacity to be
7 married at the time of the purported ceremony?

8 A Paragraphs three of the findings of fact and four of
9 the conclusions of law say -- say exactly what I
10 published.

11 Q In the numerous motions and pleadings opposing the
12 settlement agreement, Mr. Buchanan, have you ever attached
13 a copy of this order?

14 A I don't remember. I could have. Is that something
15 that Mr. Bailey filed or is that something that --

16 Q If you -- Were you aware of this order before your
17 testimony began in this hearing?

18 A Yes, sir.

19 Q If you were aware of it and if you never included a
20 copy of it or referred to it to say what we just indicated
21 it says, would that be fair and impartial?

22 A In what context?

23 Q In the fiduciary context.

24 A In what context?

25 Q If you're opposing a settlement as a fiduciary and

1 you don't present to the court this order, do you think
2 that's fair and impartial?

3 A Well, hadn't you already presented this to the court?

4 Q Mr. Buchanan, if you didn't present it to the court
5 as a fiduciary, were you being fair and impartial?

6 A Sure. I mean, that doesn't -- It just depends on
7 what I am presenting to the court and for what purpose I
8 am presenting it. Okay?

9 Q So, a fiduciary, if litigation is involved, can
10 simply take the position and present evidence only to
11 support that position and has no duty to get the full set
12 of facts before a court?

13 A No, I didn't say that. You said that.

14 Q I ask that question, Mr. Buchanan.

15 A Well, ask the question again more precisely and I'll
16 try to answer it.

17 THE COURT: I agree with him.

18 MR. MEDLIN: Thank you, Your Honor.

19 THE COURT: All right. Give me three minutes. Let
20 me take this phonecall dealing with y'all on next -- week
21 after next. Just bear with me. Everybody stay seated.
22 I'm sorry. Bear with me.

23 (Whereupon, a break was taken.)

24 Q Mr. Buchanan, what do you understand the impact of an
25 unappealed family court order to be?

1 A An order of the family court.

2 Q Binding on the parties?

3 A Yes, sir.

4 Q Mr. Buchanan, if you take a look at this affidavit
5 and see if you recognize that as having been filed with
6 your pleadings.

7 (Whereupon, Medlin's Exhibit No. 10 was marked for
8 identification only.)

9 THE WITNESS: This appears to be an affidavit of
10 Adele J. Pope dated February 23, 2009.

11 Q Okay. Thank you. And, apparently, was filed in
12 opposition to the removal of PR trustees Buchanan and
13 Pope, et cetera, et cetera, in the caption?

14 A Caption is affidavit of Adele J. Pope opposing
15 removal of PR trustees Buchanan and Pope, denying
16 emergency supporting stay and proper joinder, supporting
17 proper notice of hearing, supporting order compelling
18 parties to appear with records to testify, and seeking
19 court ruling under South Carolina Trust Code section
20 62-7-930(D) related to principal and income charges under
21 will, trust, in terrorem clauses.

22 Q So, this was filed on behalf of the fiduciaries, both
23 you and Mrs. Pope?

24 A I am assuming it was filed. This document that you
25 handed me doesn't have a file date. It is an affidavit of

1 Mrs. Pope as I have described it.

2 Q Would you look at page 10, footnote 10, please? It
3 reads -- correct me if I misstate this, please,
4 Mr. Buchanan. "In 2008 Ahmed who had returned to Pakistan
5 gave testimony to a notary that he was not married to
6 anyone else as Hynie alleged when he married Hynie; that
7 contrary to her allegations he and Hynie had lived
8 together as man and wife and that he knew nothing of the
9 purported annulment proceeding when it was brought." Is
10 that a correct rendition?

11 A You've quoted it correctly.

12 Q Do you have a copy of that statement that Mr. Ahmed
13 made to a notary?

14 A I don't know. We may. We've got, you know, a whole
15 building full of documents.

16 Q That wouldn't be referring to an affidavit by
17 Mr. Allasai?

18 A I don't know.

19 MR. LEVENSON: Judge, let me -- There is a motion
20 that has been put on the agenda relative to striking that
21 affidavit and other affidavits like it. So, I don't know
22 if that affidavit has been admitted into evidence.

23 THE COURT: He hasn't said there is an affidavit.

24 MR. LEVENSON: It is Mrs. Pope's affidavit. I'm
25 sorry. That's the affidavit that's been presented to --

1 THE COURT: Well, he hasn't offered it into evidence.
2 When he does, you can object.

3 MR. LEVENSON: Very well, sir. Thank you.

4 THE COURT: If you want to. The question was what?

5 Q If there is no such affidavit from Mr. Ahmed, then
6 that would be an incorrect statement; correct,
7 Mr. Buchanan?

8 A Well, let me look at the statement. Well, not
9 necessarily. It says that he gave testimony to a notary.
10 That could be in the form of an affidavit. It could be in
11 form of other testimony. So --

12 Q If there is no document in your possession that shows
13 such testimony before a notary, that would be an
14 inaccurate statement?

15 A Well, not necessarily. This would be an accurate
16 statement if what's contained in the footnote is accurate
17 whether that's information that's contained in an
18 affidavit, another piece of written material, or
19 transmitted orally from somebody who knew.

20 Q This affidavit is a statement under oath, is it not?

21 A This affidavit?

22 Q Yes.

23 A Yes.

24 Q And --

25 A Are you talking about Mrs. Pope's affidavit?

1 Q Mrs. Pope's affidavit.

2 A Yes, yes.

3 Q When you file an affidavit under oath you know when
4 you state a fact that it's correct?

5 A Yes, sir, or either that you --

6 Q You don't otherwise qualify it?

7 A -- or that you're informed and believe that it's
8 correct, have information indicating it's correct.

9 Q No statement in footnote 10 about being informed and
10 believe?

11 A There is no such statement in footnote 10.

12 Q Do you know if Mr. Brown was aware of the family
13 court order that we just looked at?

14 THE COURT: There is no way in the world he can
15 answer that. How does he know what Mr. Brown was aware
16 of?

17 MR. MEDLIN: Well, Your Honor, if I may. In response
18 to our requests for admissions the personal
19 representatives responded upon information and belief that
20 he was.

21 THE COURT: How did you form that opinion,
22 Mr. Buchanan?

23 THE WITNESS: Pardon me?

24 THE COURT: How did you form that opinion upon
25 information and belief that Mr. Brown was -- What is the

1 rest of the question?

2 THE WITNESS: May I see the response?

3 Q If you'd look at response number 10, Mr. Buchanan.

4 A Yes, sir. I see request number 10.

5 Q And the response also?

6 A I see the response to request number 10. I don't see
7 the request. Do you have the request?

8 Q Sorry, Mr. Buchanan. Let me give you a complete set.

9 A This has both in it?

10 Q I'll take that back, please. Response number 10.

11 A To answer your question the response is based on the
12 exhibits that were attached to your request.

13 Q And would you read the response please, Mr. Buchanan?

14 A "James Brown was aware of the annulment proceeding as
15 his attorney received a copy of the summons and complaint
16 in February of 2004 and the final order of annulment in
17 April of 2004 as can be seen in exhibits to the affidavit
18 of Tomi Rae Brown notarized on November 15, 2007."

19 Q And the response?

20 A And the response was, "Admit upon information and
21 belief."

22 Q Do you recall seeing in those documents referred to
23 in request number 10 correspondence from Mr. Rosen to
24 Mr. Huff sending the final order to Mr. Huff?

25 A What I see attached to the request, exhibit A,

1 license and certification for marriage; exhibit B,
2 marriage certificate; exhibit C, judgment in a family
3 court case; exhibit -- and it has attached to it the order
4 that you asked me about earlier and those are the exhibits
5 I see attached to it.

6 Q Mr. Buchanan, my question is more general. Do you
7 recall seeing correspondence from Mr. Rosen to Mr. Huff
8 conveying that final order?

9 A I don't recall it at the moment. I could very well
10 have seen it at some time.

11 Q And do you recall that Mr. Huff was representing
12 Mr. Brown back during that period?

13 A I recall that Mr. Huff represented Mr. Brown in some
14 matters and I don't remember specifically which matters.

15 Q Do you recall perhaps that he was representing
16 Mr. Brown in the annulment that -- action that Mr. Brown
17 brought and was dismissed?

18 A I don't recall -- He could very well have represented
19 him.

20 Q And would you read request number nine and response
21 number nine, please, to that same document?

22 A Yes, sir. Request number nine, quote, "James Brown
23 gave Tomi Rae Brown the funds to pay the legal fees for
24 the annulment litigation," closed quote. And the response
25 is, quote, "admit upon information and belief," closed

1 quote.

2 Q Okay. Thank you, Mr. Buchanan. Mr. Buchanan, do you
3 recognize this document that I just handed you?

4 A It appears to be a copy of an affidavit of Adele J.
5 Pope dated April 14, 2008.

6 Q Okay. Would you look at the last exhibit -- exhibit
7 D, starting I believe, Mr. Buchanan, four pages from the
8 end?

9 A Yes, sir.

10 Q That is -- do you recognize what that is
11 Mr. Buchanan?

12 A It is -- It appears to be a copy of a CNN Larry King
13 Live interview with James Brown's widow aired January 3,
14 2007. This is a rushed transcript. This copy may not be
15 in its final form and may be updated.

16 Q So --

17 A That's sort of the introduction to it.

18 Q Right. So, that statement that you just read might
19 lead you to question the reliability of that document?

20 A Well, it wouldn't lead me to question the reliability
21 of the document. It just would lead me to know that the
22 form -- it may not be in its final form.

23 Q And if you'd look on the second page, does Mr. King
24 -- does the transcript indicate -- the second page of that
25 exhibit -- I'm sorry, Mr. Buchanan. If you'd look at the

1 second page of that exhibit, does it look that Mr. King is
2 continuing his interview with a different interviewee?

3 A Do you mean different people are being interviewed?

4 Q Yes.

5 A Yes.

6 Q Do you recognize who is interviewee is at that
7 portion beginning at the half-way point of the second page
8 of that exhibit?

9 A Debra Opri.

10 Q Do you recall filing this exhibit several different
11 times in opposition to the settlement agreement with
12 various pleadings?

13 A I don't specifically recall which -- how often it's
14 been filed.

15 Q Attached to your motion for partial summary judgment.
16 You don't recall that?

17 A Well, I'd have to look at it.

18 Q Okay. Attached to your motion of 8/18/08 that we
19 looked at earlier this morning -- you don't recall that?

20 A I don't, but if you'll hand it to me I'll look at it
21 again.

22 Q That's fine, Mr. Buchanan. I am just asking if you
23 recall.

24 A If you look at the last statement on that page two
25 from Mrs. Opri, Mr. King says, 'Set it straight, and in the

1 first sentence Ms. Opri says, Tomi Rae and Mr. Brown were
2 was married, but Tomi Rae Hynie was married to someone
3 else at the time she married James Brown and the marriage
4 with Mr. Brown was annulled. Is that a correct rendition
5 of that sentence?

6 A Yes, sir.

7 Q To your knowledge was the marriage between Mr. and
8 Ms. Brown annulled?

9 A Yes, sir. I thought the order that we just looked at
10 annulled the marriage.

11 Q The marriage between James Brown and Tomi Rae Hynie
12 Brown was annulled?

13 A Oh, no, I'm sorry. No. I thought you were asking me
14 about the order you showed me.

15 Q In fact, as far as you know the action that was
16 commenced by Mr. Brown to annul the marriage with
17 Ms. Brown was dismissed by consent?

18 A Well --

19 Q Is that correct?

20 A What I understand is it was settled.

21 Q Yea. So, there was no annulment?

22 A I understand the case was settled and there was no
23 order on the issue of annulment.

24 Q You think somehow that an annulment arose from that
25 settlement? Is there anything in that settlement that

1 says there was an annulment?

2 A That's not what I said. I answered your question.
3 There was not -- I understand that action did not result
4 in an order of annulment.

5 Q Thank you. Ms. Opri says that that marriage was
6 annulled. She's incorrect, is she not?

7 A Unless she has information I don't have. Unless
8 there is another order she knows about that I don't know
9 about.

10 Q Assuming that Ms.~Opri doesn't know something that
11 you don't know about with respect to that annulment how
12 reliable a witness do you think her to be?

13 A Well, I've certainly -- I haven't -- I have certainly
14 not talked to Ms.~Opri.

15 MR. LEVENSON: Judge, I am going to renew my
16 objection.

17 THE COURT: What is your objection?

18 MR. LEVENSON: Well, first, Ms.~Opri is not a
19 witness. Second, her affidavit hasn't been introduced in
20 this case. Third, what you have is Mrs. Pope and or
21 Mr. Buchanan swearing under oath that what Ms.~Opri said
22 is true which we have moved to strike.

23 MR. BAILEY: I object to that, Your Honor.

24 THE COURT: That's not true.

25 MR. BAILEY: If the motion is read carefully, it

1 states --

2 THE COURT: The motion says what it says. The
3 affidavit says what it says.

4 MR. LEVENSON: My -- Let me just be heard on the
5 record. The reason I am continuing my objection, Judge,
6 is because there is now being read into the record matters
7 from a document which is not admitted in evidence. So, I
8 realize I can't move to strike it until it's been offered
9 in evidence, but I would object to it being read from the
10 document which has not been admitted.

11 MR. MEDLIN: Mr. Levenson, I don't intend to
12 introduce it into evidence.

13 MR. LEVENSON: Very well.

14 Q Is Ms.~Opri a reliable witness based on what we
15 discussed, Mr. Buchanan?

16 A I -- You know, I think Ms.~Opri is a reliable witness
17 generally. She might have made a mistake.

18 THE COURT: Do you know Ms.~Opri?

19 THE WITNESS: I don't know Ms.~Opri.

20 THE COURT: Have you ever met her, ever talked to
21 her?

22 THE WITNESS: I have never talked to her, never met
23 her. I have read some excerpts about things about her
24 but, no, I haven't. I don't know -- To answer your
25 question, I don't know that she's an unreliable witness.

1 You know, I assume that if there had been any discovery
2 we'd all know more about Ms.~Opri.

3 THE COURT: Professor Medlin, my patience -- I have
4 tried to be patient. What -- Ms.~Opri -- She is not even
5 here and some interview on Larry King Live -- I am not
6 going to rely on any of that.

7 MR. MEDLIN: I understand that, Your Honor, and,
8 again, I am just trying to create a record because
9 Mrs. Pope and Mr. Buchanan say they're going to appeal.
10 We're trying to show the fairness and reasonableness of
11 the settlement and that the evidence argued by the
12 personal representatives and trustees is not such that
13 would cause the agreement to be.

14 THE COURT: I am not asking for final argument. Ask
15 your questions and move along.

16 MR. MEDLIN: Thank you, Your Honor.

17 THE COURT: Please.

18 MR. MEDLIN: I'll do this quickly, Your Honor.

19 THE COURT: Well, do it how you want to, but let's
20 keep it relevant.

21 Q Do you recall discussing Mr. Brown's autobiography,
22 Mr. Buchanan?

23 A I certainly heard it mentioned.

24 Q Have you read his autobiography?

25 A No, sir.

1 Q You don't dispute that there are excerpts in the
2 autobiography where the autobiography states that
3 Mr. Brown says that Tomi Rae Brown is his wife and that
4 James Brown, II is his son?

5 A I haven't read it..

6 Q And you don't dispute that this autobiography was
7 published after the dismissal of Mr. Brown's annulment
8 action against Mrs. Brown?

9 A I don't know the date of publication.

10 Q Okay. If I showed it to you and said it was 2005,
11 would you confirm that?

12 A Well, if you'll represent to me it was published in
13 2005 I'll accept it.

14 Q Thank you. And do you know whether that was after
15 the dismissal of Mr. Brown's annulment action against
16 Mrs. Brown?

17 A I don't know that.

18 Q Do you know that that took place in 2004?

19 A It happened somewhere approximately in that period,
20 but I couldn't say that it did.

21 Q Have you seen statements from Mr. Slotchiver's
22 affidavit that Mr. Brown is listed on the birth
23 certificate of James Brown, II as the father; that
24 Mr. Brown obtained Screen Actor's Guild Health Insurance
25 listing James Brown, II as his son and that Mr. Brown

1 executed a medical directive naming James Brown, II as his
2 son?

3 A I don't remember. May I see it?

4 Q I am just asking if you remember it.

5 A I don't remember seeing it. I may have.

6 Q You mentioned at least on one occasion previously the
7 Lukich case. What is your understanding of the impact of
8 the Lukich case on the issue of the validity of
9 Ms. Brown's marriage to Mr. Brown?

10 A Well, I certainly -- I haven't studied the Lukich
11 case, but I have seen it, and I, basically, understand two
12 things -- two implications of the Lukich decision as I
13 understand it and one is that the annulment -- Thank you.
14 The question was whether the annulment in October of '03
15 declaring the wife's first marriage void ab initio relates
16 back so as to validate her -- purported 1985 marriage and
17 the court held that it did not relate back to invalidate
18 it.

19 Q In fact, if you'll look at the Court of Appeals
20 decision which I assert is a westlaw printout,
21 Mr. Buchanan, which is the second document in that package
22 I handed you.

23 A The second one?

24 Q Yes. And if you'll look to page five.

25 A Okay. This is a Court of Appeals decision?

1 Q Yes, Mr. Buchanan.

2 A All right. I am on page five.

3 Q And in key cite number four the opinion says, "We
4 find an annulment that declares a preexisting marriage
5 void ab initio does not relate back as to give validity to
6 a marriage that was bigamous before the annulment was
7 granted."

8 A I see the language. Yes, sir.

9 Q And that language would appear to support your
10 recollection of what this case does -- that we had a wife
11 who was married, attempted to marry a second husband, had
12 not gotten divorced from the first husband, then sought to
13 annul the marriage to her first husband and argued that
14 the annulment related back --

15 MR. BAILEY: Your Honor, I object to the form of the
16 question.

17 THE COURT: Overruled.

18 THE WITNESS: Sought an annulment of the first one.

19 Q Right. And, so, the court said if all you get is an
20 annulment, then the second marriage -- the attempted
21 marriage wasn't valid?

22 A Which court are you talking about?

23 Q The Court of Appeals. This particular provision that
24 I am providing.

25 A Is there some language on this page you can point me

1 to?

2 Q That I just read. I think so far I am agreeing with
3 your recollection of what this case said, Mr. Buchanan.

4 A "We find an annulment that declares a preexisting
5 marriage void ab initio does not relate back so as to give
6 validity to a marriage that was bigamous before the
7 annulment was granted."

8 Q But now if you will look down to footnote two, would
9 you agree that it reads as follows: "We know that our
10 holding is limited to the facts of the case at bar, eg,
11 the situation where the annulled marriage would be valid
12 but for an annulment decree declaring the marriage ab
13 initio." I think they left out a word there. Most
14 importantly, Mr. Buchanan, let's look at the next
15 sentence. "Our holding is not meant to affect a party who
16 enters into one of the three types of marriages that never
17 have legal validity in south carolina; namely, marriages
18 that with void ab initio by operation of statute. Number
19 one, bigamous marriages. Two, same sex marriages. Three,
20 marriages of minors under the age of 16."

21 Do you recall us reading the family court order in
22 the action of Ms. Brown against Mr. Ahmed in which the
23 court found as a conclusion of law that the marriage
24 between Ahmed and Ms.~Brown was never valid because he had
25 an impediment to that marriage, and if you recall that

1 order it's because he was already married when he
2 attempted to marriage Ms.~Brown. Do you recall that?

3 A Yes, sir.

4 Q So, footnote two says that in a case like Tomi Rae
5 Brown's Lukich doesn't apply. Of course, it cannot apply
6 footnote two says because that marriage to Ahmed was never
7 valid.

8 A Can we see the order again? The Ahmed order?

9 Q Conclusions of law, paragraph four, specifically,
10 Mr. Buchanan.

11 A Yes, sir.

12 Q Could you read that aloud again?

13 A "The court concludes that Defendant was married at
14 the time he entered into his marriage with Plaintiff and
15 therefore he lacked the capacity to marry Plaintiff."

16 Q So, according to footnote two the basic Lukich
17 opinion could not apply to the Tomi Rae Brown fact
18 pattern; is that correct, Mr. Buchanan?

19 A Under footnote two of the Court of Appeal's decision.

20 Q Court of Appeals.

21 A That's what you're asking me about; right?

22 Q While we're on that opinion, Mr. Buchanan, if you'd
23 look at page three.

24 A Page three of the Court of Appeals?

25 Q Yes.

1 A Yes, sir.

2 Q If you'd read the third paragraph and tell me if you
3 agree with my understanding of that paragraph.

4 A Paragraph beginning after wife?

5 Q Yes, Mr. Buchanan.

6 A Okay.

7 Q Would you agree with me that the putative second
8 husband attempted to intervene in the annulment between
9 the wife and her first husband and the court found that
10 the putative second husband had no standing to intervene
11 because he was not a party to the marriage? Is that the
12 way you read that paragraph?

13 A Yes, sir.

14 Q Do you recall seeing anything in the Supreme Court
15 opinion affirming the Court of Appeals that in any way
16 overrules the statement in footnote two or the statement
17 that the putative second husband did not have standing to
18 intervene?

19 A Well, you know, as I've told you, Mr. Medlin, I
20 haven't studied these two opinions side by side. So...

21 Q But, Mr. Buchanan, in pleading after pleading after
22 pleading you assert that Ms.~Brown is married to
23 Mr. Ahmed; that James Brown, II is the son of Mr. Ahmed.

24 A Well, there is no question that she was married to
25 Mr. Ahmed. She got an annulment. You can't annul a

1 marriage unless there is a marriage.

2 Q Mr. Buchanan, you read paragraph four. The family
3 court found that there was never a marriage because he had
4 an impediment to that marriage. It would have been a
5 bigamous marriage for Mr. Ahmed, would it not?

6 MR. BAILEY: I move to strike. That's a statement,
7 not a question, Your Honor.

8 MR. MEDLIN: I asked him would it not, Mr. Bailey.

9 THE COURT: Overruled.

10 THE WITNESS: What the family court did was annul a
11 marriage between Mr. Ahmed and Ms. Hynie that they had
12 solemnized on February 17, 1997. That's what the family
13 court did.

14 Q And, also, in paragraph four made a conclusion of law
15 from a judge in the order that that purported marriage was
16 never valid?

17 A Made a conclusion that the Defendant was married at
18 the time he entered into his marriage with the Plaintiff
19 and, therefore, lacked the capacity to marry.

20 Q Which means under the South Carolina bigamy statute
21 as you understand it the family court is saying that the
22 attempted marriage ceremony between Mr. Ahmed and Tomi Rae
23 Hynie could not be valid because he had an impediment to
24 that marriage?

25 A I don't understand the family court order to do that.

1 Family court order annuls a marriage. If there is not a
2 marriage, there can't be an annulment. There is nothing
3 to annul.

4 Q Then why did the family court, Mr. Buchanan, do you
5 imagine put paragraph four in there?

6 A I don't know. I don't know why the family court
7 judge wrote that in there or why Mr. Rosen wrote that in
8 there or whoever wrote the opinion -- whoever wrote it and
9 submitted it. I don't know.

10 Q You don't doubt that this is the work of the family
11 court judge, do you?

12 A No, I don't.

13 Q May I have that?

14 A This is not a certified copy, but you represent to me
15 it is -- Well, it is attested, but I don't doubt it. You
16 have represented to me it's an order of the court. It is
17 an order granting an annulment of a marriage.

18 Q Mr. Buchanan, would you at least agree that the
19 settling parties would have to believe that Ms.~Brown has
20 a reasonable argument that her marriage to Mr. Brown was
21 valid?

22 A Ask the question again.

23 Q Would you at least agree that the settling parties
24 had a reason -- a reasonable belief that the marriage
25 between Ms.~Brown and Mr. Brown is valid?

1 A You know, in my view the answer is no. Okay?

2 THE COURT: You want to explain that for me, please?

3 THE WITNESS: You know --

4 THE COURT: Well, Mr. Buchanan --

5 THE WITNESS: -- the Supreme Court --

6 THE COURT: -- you know how much I respect you, but I
7 am reading the Supreme Court decision and it says on its
8 face a mere marriage ceremony between a man and woman
9 where one of them has a living wife or husband is not a
10 marriage at all. Such a marriage is absolutely void and
11 not merely voidable. That's pretty strong.

12 THE WITNESS: Well, I know, Your Honor, but I'm
13 looking at this final order here and this final order is
14 not a declaratory judgment that there was no marriage. It
15 is an annulment of a marriage. You know, it was an action
16 for an annulment. It wasn't a DJ action. It wasn't an
17 action to declare that there never was a marriage. The
18 annulment was sought and obtained.

19 Q So, Mr. Buchanan, you believe it unreasonable that
20 any of the settling parties would take a different
21 position about that paragraph four than you read it?

22 A You know, I am not saying they can't take a different
23 position, Mr. Medlin. You just asked me my opinion about
24 whether it thought it was reasonable or not.

25 Q I asked if the settling parties would have had a

1 reasonable position based on the documents that we've been
2 through and the Lukich opinions as to the validity of the
3 marriage between Ms.~Brown and Mr. Brown.

4 A I understand they have a position and they have an
5 argument to make.

6 Q Under --

7 A But, you know, that's -- you know, I mean, you
8 know, before we get to that, Mr. Medlin, we've got to have
9 competent successors in order to have people who can
10 settle. We got, you know, lots of problems before we get
11 to this issue.

12 Q Mr. Buchanan, if you don't mind I am going to
13 continue to direct my questions to the issues that I'd
14 like you to respond to. So, the next question is based on
15 your reading of the Lukich opinion and the Court of
16 Appeals' decision if Mr. Brown had wanted to intervene in
17 that proceeding between Ms.~Brown and Mr. Ahmed he would
18 not have had standing because he was not a party to that
19 marriage; right?

20 A Well, the Court of Appeals denied that the gentleman
21 in that case had standing because he was not a party, yes,
22 sir.

23 Q Does that position make sense to you -- that third
24 parties can't come into a family court and argue about
25 relationships between the parties and the family court?

1 A Well, I don't know that I have ever seen in the
2 family court -- I don't know that I have ever seen anybody
3 try to move to intervene. You know, I mean, it makes
4 sense to me. I have never moved to intervene in a case
5 where two parties are seeking a divorce or an annulment
6 for a client. I have never done it. I have never seen it
7 done..

8 Q So --

9 A And I see the footnote where Judge Short said that
10 family court was correct in not finding he had standing to
11 intervene because he was not a party. I see that.

12 Q If we assume that Mr. Brown would not have had
13 standing to intervene in that action would you as his
14 personal representative have standing?

15 A No, sir.

16 Q Mr. Buchanan, if the statements in the autobiography
17 are true -- excuse me. Let me rephrase the question. If
18 the statements about Ms.~Brown being Mr. Brown's wife and
19 James Brown, II, being his son are, in fact, statements
20 from that autobiography, and if, in fact, Mr. Brown
21 asserted to the Screen Actor's Guild that James Brown, II
22 was his son and that he signed a medical directive
23 asserting that James Brown, II was his son, you don't
24 think Mr. Brown was a liar, do you?

25 A No, sir.

1 Q Well, let's assume that Mr. Brown is not a liar which
2 I don't believe him to be and that he understood James
3 Brown, II to be his son. Are you saying that Mr. Brown is
4 a deadbeat Dad?

5 A No, sir.

6 Q You're saying he didn't leave anything to at the time
7 a 6-year-old boy who was his son. Isn't that the
8 definition of a deadbeat Dad?

9 A You've lost me in that question.

10 Q Well, you're taking the position that James Brown, II
11 isn't entitled to anything; isn't that correct?

12 A I'm sorry. I couldn't hear you. You're facing the
13 other way.

14 Q I'm sorry, Mr. Buchanan. You're taking the position
15 that James Brown, II is not entitled to any of the estate
16 because it all goes to charity; is that not correct?

17 A No, sir.

18 Q You haven't filed pleading after pleading --

19 A Oh, excuse me. Yes, sir. No, but it doesn't all go
20 to charity, okay? Household -- the personal household
21 effects go to some named children. It doesn't all go to
22 charity.

23 Q But none to Mr. Brown's son James Brown, II, assuming
24 that he is telling the truth about that; is that correct?

25 A Yes, sir.

1 Q So, do you think Mr. Brown is the kind of man who
2 would leave a 6-year-old son of his without any support,
3 without one penny of support?

4 A I didn't know Mr. Brown personally. You know, I
5 never talked to Mr. Brown about his estate planning. All
6 I have been able to do is to get information, gather as
7 many facts and circumstances as I can gather since I have
8 held this position to understand what Mr. Brown intended
9 in his estate plan.

10 Q So, the facts that you have presented to this court
11 are a transcript of a Larry King interview with Debra
12 Opri, an affidavit from a Pakistani -- not Mr. Ahmed --
13 which is clearly hearsay, and you don't bother to plead
14 the real reading of the Lukich case that we've gone
15 through now, what that family court order reasonably might
16 say if you just take the judge for her word in paragraph
17 four, the statements by Mr. Brown in his autobiography,
18 Screen Actor's Guild, medical directed documents. You
19 think that's being fair and impartial?

20 A In what way?

21 Q Do you think taking the position that
22 James Brown, II should take nothing from the estate
23 besmirches the name of Mr. Brown?

24 A I think Mr. Brown spent a considerable amount of time
25 and effort developing his estate plan in the way he

1 intended to develop it and I think he's entitled to be
2 respected.' I think the document is entitled to be
3 respected and I think he deserves the respect for what he
4 did.

5 Q But, Mr. Buchanan, if the impact of your position is
6 that Mr. Brown would not take care of his 6-year-old son,
7 are you respecting Mr. Brown?

8 A I'm respecting Mr. Brown by respecting his intent and
9 the estate plan he developed.

10 MR. MEDLIN: No further questions, Your Honor.

11 THE COURT: Mr. Levenson? Everybody okay? I am
12 going to go about 15 more minutes and we'll take a little
13 break.

14 Ms. Tate, are you okay? You're smiling.

15 MS. TATE: I'm good.

16 CROSS-EXAMINATION

17 BY MR. LEVENSON:

18 Q Mr. Buchanan, in furtherance of the questions that
19 Mr. Medlin was just asking you and repeating your prior
20 statement Mr. Brown spent a considerable amount of time
21 creating his estate plan. Tell us the sources on which
22 you base that testimony.

23 A A lot of it is documentary.

24 Q Give me, if you would, what documents, sir?

25 A Well, I can't tell you specifically, but we've looked

1 at -- you know, we've, obviously, looked at the Herring
2 file.

3 Q Okay. Let me stop you there. The Herring file.
4 Now, Mr. Herring just for the record is who, sir?

5 A Mr. Herring was the estate planning attorney who
6 drafted the 1999 will and trust and the 2000 will and
7 trust.

8 Q All right. Let's talk about that. And Mr. Herring ,
9 is what is referred to in estate planning parlance as the
10 the scribe of the will and trust; right?

11 A Yes, sir.

12 Q Did you speak to Mr. Herring?

13 A I haven't.

14 Q Can you explain to the court why you didn't speak to
15 Mr. Herring?

16 A Mr. Herring is incarcerated.

17 Q That's a reason you were unable to speak with him?

18 A Well, no, I mean, I could have spoken to him, but I
19 haven't spoken to him.

20 Q Do you know I spoke to him?

21 A Yea, you have and other people have, too. You know,
22 I've heard from you and I've heard from others. I have
23 heard from --

24 Q Well --

25 A -- different people who have talked to him, you know,

1 and it appears from what I remember of his file that he
2 was involved in this for something like 1996 on to 2000.
3 Maybe it's 1998. I can't remember, but it appears that --

4 Q But in furtherance, again, of the questions that
5 really bear not so much on the will and trust but the
6 reasonableness of a settlement of the contest, do you
7 think it would have been reasonable for you contesting the
8 petition now filed to approve the will and trust contest
9 to have spoken with the the scribner of the very documents
10 which are at issue in this compromise?

11 A You know, Mr. Levenson, the real problem we got is we
12 got the cart before the horse. Okay? We don't have
13 anybody that the statute will permit to settle. Okay?
14 You know, we've got some settlement agreement where these
15 people try to settle the issue of who the competent
16 successors are and the statute doesn't permit it. Okay?
17 The statute permits competent successors to alter their
18 interests. I mean, you know, and here we are. We're in
19 the fifth -- maybe fifth day of a hearing to approve a
20 settlement that is just evolving. Okay? It is just
21 evolving.

22 Q But you're here as a fact witness, sir, aren't you?

23 A I am.

24 Q And the decider of the fact is Judge Early and he
25 will decide what the facts are and he will determine what

1 the law is. That's not the province of you or I, correct,
2 sir?

3 A That's correct.

4 Q So, can we confine ourselves to questions of fact
5 now?

6 A Yes, sir.

7 Q Now, what's the answer to my question about
8 Mr. Herring and why you didn't see fit in the context of
9 whether this is a fair and reasonable settlement to talk
10 to the guy who is just over in Columbia about what he
11 observed about Mr. Brown, what his intentions were, so
12 that you could report it to this finder of fact?

13 A Well, I had heard from others who had talked to him
14 that there didn't appear to be anything he had to say that
15 would make it unreasonable.

16 Q Do you know who Perry Fuller is?

17 A No, sir. I may have seen or heard the name.

18 Q Well, if I told you Mr. Fuller was a witness to the
19 will and trust which at subject in this case, would that
20 be -- would that help refresh your recollection?

21 A Signed the will and trust?

22 Q The attesting witness, sir.

23 A All right.

24 Q Did you contact Mr. Perry Fuller?

25 A No, sir.

1 THE COURT: What's the name?

2 MR. LEVENSON: P-E-R-R-Y, Your Honor.

3 MR. BELL: I think it's a Ms. Fuller.

4 THE WITNESS: I'm sorry. I couldn't hear Mr. Bell.

5 MR. BELL: It's Ms. Fuller.

6 THE COURT: It's a lady?

7 MR. BELL: It is a lady, Your Honor.

8 THE COURT: F-U-L-L-E-R.

9 MR. LEVENSON: It is not. I have spoken to Perry
10 Fuller and it is a man, but be that as it may my question
11 to the witness is did you contact Perry Fuller?

12 THE WITNESS: No, sir.

13 Q Well, his name appears on the document as an
14 attesting witness when Mr. Brown is supposed to have
15 subscribed --

16 THE COURT: Let me have order, please.

17 MR. LEVENSON: -- the will and trust?

18 THE WITNESS: No, sir.

19 Q You didn't contact him?

20 A No, sir.

21 Q And the context of this proceeding as to whether this
22 judge should approve a settlement of the will and trust
23 where there are issues between the parties as to the
24 validity of the will and trust, would it have been
25 reasonable so that you as a contestant to the petition to

1 compromise the will and trust would have contacted that
2 person -- Mr. Perry Fuller -- assuming he is a man?

3 A Well, if I -- you know, if the will and trust on the
4 face of the instruments created some indication that there
5 might have been a problem with what he intended and
6 weren't so clear about what he intended, then perhaps I
7 would have.

8 Q Your -- you -- I'm referring now to the hearing we
9 had on January 30. I don't recall if you were present at
10 that hearing.

11 THE COURT: 2009?

12 MR. LEVENSON: Yes, sir.

13 THE COURT: What date specifically?

14 MR. LEVENSON: It would have been January 30. It was
15 the first day we commenced this proceeding on the
16 compromise.

17 THE WITNESS: I was here.

18 Q Do you recall there being testimony that you had
19 considerable evidence -- I'm sorry, not -- That may not be
20 the exact word, but that there was considerable evidence
21 that there was an absence of undue influence exercised
22 upon James Brown?

23 A Do you have something I can look at -- the
24 transcript?

25 Q Yes, it is the transcript of that proceeding page

1 163, line 2.

2 THE COURT: Who was testifying?

3 MR. LEVENSON: I believe it was Mrs. Pope.

4 Obviously, Mr. Buchanan didn't take the stand until -- if
5 you would. If you want to just start at page 163 at
6 line 1 if you want to look at the top.

7 THE WITNESS: All right, sir.

8 Q I have highlighted the relevant portions for you.

9 A All right, sir. You're talking about just those
10 first five lines?

11 Q Yes, sir. That will be fine.

12 A Yes, sir.

13 Q Okay. Why don't you just read them again since the
14 judge is not looking at the transcript?

15 A Start with the first sentence?

16 Q That will be fine.

17 MR. BAILEY: Your Honor, I --

18 THE COURT: What are we doing?

19 MR. BAILEY: -- object.

20 THE COURT: You're pitting witnesses against each
21 other? What are you trying to do, Mr. Levenson? I mean,
22 I've listened to all of the testimony. Why don't you ask
23 Mr. Buchanan what he knows? I have already heard what
24 Mrs. Pope has said.

25 Q Okay. Then I'll just focus on one question then.

1 The statement says we, does it not. "We" by Mrs. Pope, I
2 assume, refers to you and she?

3 A The last sentence is, "We have abundant evidence to
4 that effect."

5 Q So, if the "we" involves you and you're now the
6 witness, tell us what evidence you have or information you
7 have which is abundant to establish the absence of undue
8 influence which was contended by the parties that tried to
9 contradict the will and trust.

10 MR. BAILEY: Your Honor, again, I will object to the
11 relevance of this. This is really discovery, basically,
12 for the petition for the removal of Bob and Adele and it
13 doesn't go to the heart of the question which is are you
14 going to approve a settlement or not. This is --

15 THE COURT: Well, one of the issues, Mr. Bailey, is
16 whether or not there was undue influence on the execution
17 of the will by Mr. Brown and what their position -- you
18 know, y'all's position is there is none. Mr. Levenson's
19 clients' position is there was substantial amount of
20 unundue influence and that's why they filed the lawsuit
21 challenging it. So, obviously, I got to hear what
22 Mr. Buchanan's position is on that. Overruled.

23 What, Mr. Buchanan, just sort of succinctly state --

24 THE WITNESS: Yes. Well, I mean, it really has --

25 THE COURT: -- as to the absence of evidence.

1 THE WITNESS: All right. The first and most direct
2 response to the absence of evidence is the fact that
3 nobody has shown us any evidence that there was undue
4 influence and we have asked for it. We've asked the
5 people in this room to provide that evidence. The second
6 thing is just looking at Mr. Brown's activities and his
7 lifestyle and what was going on back during the period of
8 and this paragraph deals with the '99 and 2000 wills. You
9 know, Mr. Brown made a tape sometime around the 1999 will
10 where he talked about what he wanted to do and his intent
11 and that kind of thing.

12 You know, he was busy working. He was -- You know,
13 he was performing. He was touring. He was litigating.
14 He was involved in a couple of lawsuits in the year of
15 2000. So far as I know there's never been a guardian
16 appointed for him, never been a guardian ad litem
17 appointed for him in any of those lawsuits. He was --
18 During that general period of time he was involved with,
19 you know, some of the music people and he was represented
20 separately by different lawyers and different law firms
21 and in 1999, of course, he did the bond issue -- a
22 26 million-dollar bond issue and he was represented by a
23 lawyer in New York and I think he had lawyers in Atlanta.
24 I think it was Kilpatrick in Stockton and, you know,
25 nobody was raising any issues about his capacity or being

1 influenced in any kind of way.

2 In 2000 he toured in Europe either just before or
3 just after he did the will and, you know, he fired one of
4 his managers because the manager didn't comply with his
5 request to cut down on the number of concerts from 14 to
6 10. I mean, he was involved in what was going on. You
7 know, he was doing things. He was represented by lawyers.
8 He was making decisions and he -- So, I mean, there wasn't
9 any indication that anybody was particularly influencing
10 his life.

11 Now, it's true he turned over -- You know, he turned
12 over a lot of the business part of his business to some
13 other folks and --

14 THE COURT: Who were those other folks?

15 THE WITNESS: Well, Mr. Cannon and Mr. Dallas and
16 maybe Mr. Bradley. I can't remember whether Mr. Bradley
17 was involved in all of that, but, you know, Mr. Brown was
18 more interested in singing and dancing and performing than
19 taking care of the nuts and bolts of business and he
20 trusted those people and, obviously, shouldn't have, but
21 he did, but in terms of --

22 THE COURT: Well, Mr. Buchanan, do you trust those
23 people?

24 THE WITNESS: You know, I don't trust Mr. Cannon. I
25 feel like a juror with respect to Mr. -- with respect to

1 Mr. Dallas and that is I feel like I have -- in some cases
2 I feel like you know how the jurors get the charged you
3 believe some of what a witness says, none of what a
4 witness says, or part of what a witness says? And, you
5 know, with respect to -- I really doubt that I would
6 believe much of anything Mr. Cannon said and I would be
7 very selective about what I believed that Mr. Dallas said.

8 But, you know, he's -- he was -- Along about the time
9 of '99 and 2000 he was involved in things. He was doing
10 things. He was involved in a lawsuit in Augusta, Georgia.
11 He was involved in a lawsuit in California. I have seen
12 the complaint in the Georgia case, and, you know, he's a
13 defendant in the case. There is no guardian ad litem
14 appointed for him.

15 THE COURT: Let me ask you do you have an opinion as
16 to whether or not your involvement which I have
17 appreciated your and Mrs. Pope's involvement -- y'all know
18 how much -- From your involvement in the case have you
19 found evidence that Mr. Cannon took advantage of his
20 position in managing the affairs of Mr. Brown?

21 THE WITNESS: Mr. Cannon -- Yes, sir, I think he did,
22 but I think Mr. Brown -- I think Mr. Brown turned it over
23 to him. You know, Mr. Brown wasn't really checking on
24 him, and, so, I don't think -- you know, I think we're
25 talking about -- What Mr. Levenson is asking me about is

1 1999, 2000, about the time of the wills and the trust. I
2 think Mr. Brown was involved in that. Now, with respect
3 to his business problems with Mr. Cannon, I don't think he
4 was really involved in that. I think he just trusted
5 Mr. Cannon to deal with it.

6 Q And in furtherance of that question, Mr. Buchanan,
7 you have filed a lawsuit. You and Mrs. Pope have filed a
8 lawsuit alleging a civil conspiracy promulgated by Cannon,
9 Dallas, and Bradley and Greenberg traurig against
10 Mr. Brown; isn't that true?

11 A That's true.

12 Q Now, when you take that belief and join it up with
13 the testimony you just gave to Judge Early that Mr. Brown
14 trusted people he shouldn't have trusted, do you think
15 it's fair to have a reasonable belief that there were
16 people practicing undue influence upon Mr. Brown at or
17 around the time that the will and trust which are the
18 subject of this settlement was executed?

19 A Well, I think it's -- I think you can have a
20 reasonable belief based on everything we've learned that
21 people were unduly -- people were just taking advantage of
22 Mr. Brown in the business context, in the context of, you
23 know, this Seventh Decade, in the context of James Brown
24 Enterprises, but I don't think that you can say that
25 apples equal oranges, and I think in the context of the

1 will and the trust Mr. Brown from all -- from all the
2 facts and circumstances known to me at this time I have
3 every reason to know that he was in control of his
4 testamentary intent and his testamentary plan.

5 Q And, Mr. Buchanan, I respect that that is your
6 decided opinion based on the list of items that you've
7 just given the court. That's not really the decision in
8 its entirety that's before Judge Early. The question is
9 is there another point of view based in fact or in belief
10 which would be sufficient to justify a compromise on the
11 issues in dispute in the litigation such as is before the
12 court today?

13 A Well, I have always said, Mr. Levenson, that this is
14 a case that needs to be settled. You and I have sat on
15 the pews out by the window in this very building across
16 from one another and I have said, Go try to talk to these
17 people. I have always said this is a case that needs to
18 get settled. Okay?

19 THE COURT: Why did you say that, Mr. Buchanan?

20 THE WITNESS: Because there are issues and -- but the
21 settlement has to bear some reasonable relationship to the
22 facts and the circumstances of the case. Just because the
23 case is going to go to the jury doesn't mean it is a slam
24 dunk to the plaintiff. It doesn't mean that the jury is
25 going to split the baby. It may mean that the jury is

1 going to rule for the defendant. We have to evaluate some
2 evidence that we just have -- We got the cart before the
3 horse.

4 We are talking about a settlement, Your Honor, that
5 takes -- that just takes the pie and splits half of it
6 off. Now, there are a lot of problems with that that I am
7 sure they're going to ask me about, but, you know, that's
8 a pretty good sized hunk there without their really
9 knowing how to evaluate the evidence on some of these key
10 issues. I mean, you know, we are just doing it blindly.

11 Q Mr. Buchanan --

12 A I think --

13 Q I'm sorry.

14 A I think there, you know, that the issues in the case
15 are such and the potential for, you know, expensive
16 extended litigation are such that this case ought to
17 settle.

18 Q Just not now?

19 A Not now --

20 Q And not by these parties?

21 A -- and not on these terms.

22 Q But that is again your --

23 A That is --

24 Q -- that is your decided opinion?

25 A That's right.

1 Q The question, though, is not whether your opinion
2 should be sustained by the court but whether there is a
3 basis for there to be another opinion so that a compromise
4 could be reached now.

5 A Mr. Levenson, there are always opportunities for
6 people to have different opinions about many issues
7 including these.

8 Q One of the bases that you stated in your testimony I
9 believe that started at the last session was that you --
10 meaning you collectively -- had been denied discovery in
11 this case so that you were without sufficient information
12 to make the fullest determination as to the propriety of
13 the settlement and I am paraphrasing.

14 A Well, yea, and it's not just discovery, I mean. For
15 example --

16 Q Well, respectfully, though, did you say what I just
17 said that discovery was denied you in this case?

18 A Well, I may have.

19 Q Now, in that connection you have -- You are aware,
20 sir, that I took discovery of a number of witnesses and
21 you participated or you were given opportunity to
22 participate and given transcripts of those depositions;
23 correct?

24 A You're talking about the Powell Goldstein?

25 Q I am talking about Frank Copsidas, Joe Lizzio at

1 Morgan Stanley. I'm talking about Charles Bobbit. I am
2 talking about Forlando Brown.

3 A Yes, I --

4 THE COURT: Wait a second. Tell everybody you
5 deposed.

6 MR. LEVENSON: Forlando Brown. We tried to set up
7 Joel Katz' deposition which didn't get done. Let me
8 repeat Joe Lizzio, the representative from Morgan Stanley;
9 Frank copsidas. We had testimony in court which I guess
10 admittedly is not discovery, but Mr. Dallas, Mr. Cannon,
11 Mr. Bradley, Mr. Farr, Mr. Hammond -- all of which totaled
12 some evidentiary basis to develop facts which are in
13 dispute in this litigation. Would you not agree?

14 THE WITNESS: Well, I mean, Mr. Lizzio -- Most of
15 that's related to what happened at Morgan Stanley.

16 Q Well, I --

17 A And, you know, that really doesn't have much to do
18 with what happened on August 1 of 2000. I don't remember
19 anything about Mr. Lizzio dealing with those issues.

20 Q Just so the Judge understands, what was the date that
21 Mr. Brown concluded the bond matter and thereafter
22 deposited to Mr. Lizzio the funds which subsequently
23 disappeared?

24 A On September of 1999.

25 Q So, that's relatively close to August of 2000,

1 wouldn't you agree?

2 A Yes, sir. And there is not anything that I recall
3 about Mr. Lizzio and the Morgan Stanley matter, though,
4 that raises any question about whether Mr. Brown had --
5 was unduly influenced in his execution of his will and
6 trust.

7 Q Mr. Buchanan, you and Mrs. Pope have sued Morgan
8 Stanley?

9 A Yes, sir.

10 Q Alleging what as to Morgan Stanley's behavior
11 relative to Mr. Brown?

12 A Right.

13 Q What?

14 A Well, breach of fiduciary duty. I mean, conversion.
15 I mean, we've sued them as an aider and abetter of a
16 conspiracy, you know, because of Mr. Cannon. Mr. Cannon
17 took the money away from Morgan Stanley. You know that.

18 Q Yes, but would you agree that in some part the
19 discovery that was done by the children of James Brown
20 through the office of their lawyer was helpful or useful
21 to you in determining that it was appropriate to sue
22 Morgan Stanley on behalf of James Brown's estate and
23 trust?

24 A Yes, sir.

25 THE COURT: Before you move forward, Mr. Levenson,

1 Mr. Buchanan, when you reviewed Mr. Herring's file what
2 involvement, if any, is in that file concerning Dallas,
3 Cannon, and or Bradley's participation in the drafting and
4 or execution and or input into the last will and testament
5 and or trust agreement of Mr. Brown?

6 THE WITNESS: Your Honor, it's been some time since
7 I've been into that, but what, basically, I do think that
8 Mr. Cannon may have introduced Mr. Herring to Mr. Brown
9 and I remember that there was some communications to
10 Mr. Dallas from Mr. Herring, but, you know, that happens
11 everytime a lawyer associates another lawyer.

12 THE COURT: I understand.

13 MR. LEVENSON: May I ask a follow-up question on
14 that, Judge?

15 Do you know from your own personal knowledge if
16 Mr. Herring ever had a face-to-face meeting with James
17 Brown before August 1, 2000?

18 THE WITNESS: My understanding is that he met with
19 him in June of 1999.

20 Q And you base that testimony on what?

21 A Just what I remember from the files.

22 Q Well, I mean, is it something that --

23 A That, basically, they had a meeting and I don't
24 remember whether it was June or March. I think the -- I
25 think it was June and I think the '99 will and trust were

1 signed in September, but there was --

2 Q June 15, 1999 was the '99 document?

3 A Okay. So, maybe it was March, but they met. They
4 met earlier in the year is my understanding, but on the
5 day they met nothing was signed.

6 Q Okay.

7 THE COURT: Mr. Levenson, is Mr. Herring's deposition
8 -- I know y'all were trying to set up. It never has
9 been taken?

10 MR. LEVENSON: No, sir. The court's -- When we got
11 to that point I believe there was a stay imposed. So we
12 didn't do that, sir.

13 THE WITNESS: That would be helpful to everybody.

14 MR. LEVENSON: I do have some more questions. If
15 Your Honor wanted to take --

16 THE COURT: Well, I promised everybody we'd stop at
17 11:30. It's a quarter 'til now. Let's take about a
18 10-minute break. I plan to go about to 12:30 and we'll
19 start back at 2.

20 (Whereupon, a break was taken.)

21 Q We left off where you had been telling the court that
22 you believe there had been some face-to-face meeting with
23 Mr. Herring and Mr. Brown sometime in the spring or summer
24 period of 1999; is that correct?

25 A It could have been the winter. It could have been

1 the winter, but it was earlier than when the documents
2 were dated.

3 Q Regardless of what the date is --

4 A Yes, sir.

5 Q -- is that something you gleaned from something you
6 saw in the file; correct, sir?

7 A Yes, sir.

8 Q Not from --

9 A That's from something I saw.

10 Q -- communicating with anyone?

11 A No.

12 Q Just so the frame of reference is this is the
13 proverbial Herring box that came into this courtroom under
14 taped-up seal, stuff like that; right?

15 A This was the box that I spent Christmas Eve getting
16 -- almost getting chewed up by a dog trying to get some
17 parties to waive attorney-client privilege so you could
18 see it.

19 Q All right. And to you and Mrs. Pope I am indebted
20 because if you hadn't got it from Professor Jackson we
21 wouldn't have it -- Attorney Jackson, I mean. With
22 respect to the file, though, did you see even one letter
23 directed from Mr. Herring to Mr. James Brown?

24 A I don't remember. It's been a long time since I --

25 Q Well, would it surprise you if there was not in that

1 box a single piece of correspondence from Mr. Herring to
2 his client Mr. Brown?

3 A It wouldn't surprise me.

4 Q Well, why wouldn't it surprise you that if the lawyer
5 is representing the client Mr. Brown there wouldn't be
6 correspondence between the two of them?

7 A Well, because that happens all the time. I mean, for
8 example, you know, I don't do any complicated estate
9 planning, but I am a small-town lawyer. So I from time to
10 time have clients who have that need. Over the years
11 probably for the last 25 years and I can't tell you how
12 many clients or really who the clients are but over the
13 last 25 years anybody who did that -- the person who did
14 that for me would have been Steve Johnson because I just
15 knew Steve. I represented his father in a business case,
16 but I didn't know Mrs. Pope until we were appointed by
17 Judge Early, but what I am going to say to you is it
18 wouldn't -- You know, I don't remember it being unusual
19 that I might get a letter from whether it's Steve or
20 somebody else that wouldn't be directed to the client.

21 Q Well --

22 A And then if it looked like something that needed to
23 be directed to the client I would see to it that the
24 client got it, but if it's just --

25 Q Well, my question really pertains to the

1 reasonableness of a suspicion on the part of my clients
2 that there was undue influence practiced upon Mr. Brown
3 when there is at least to your recollection not a single
4 letter --

5 A Well --

6 Q -- between Mr. Brown and his lawyer either way for
7 that matter; that is to say Mr. Brown doesn't write to his
8 lawyer either saying attached is a revised handwritten
9 checked-up copy of the draft that you sent me and I have
10 the following changes in it because if that was in there
11 you would remember it, wouldn't you?

12 MR. BYRD: Your Honor, if I could object, please.
13 Mr. Levenson is now testifying about what's in that box
14 based on my information contrary to what is in that box
15 and I would object to it.

16 THE COURT: All right. If we're going refer to the
17 box, let's be specific. Let him look at it and show him
18 what you want to do, however you want to do it.

19 THE WITNESS: I just don't remember what is in the
20 box. It's been a long time.

21 MR. LEVENSON: Respectfully, Your Honor, it's this
22 witness' opposition to the settlement that is at issue,
23 not Mr. Byrd's position.

24 THE COURT: I understand that, but if he doesn't know
25 what's in the box --

1 MR. LEVENSON: Very well.

2 THE COURT: -- show it to him.

3 MR. LEVENSON: Well, I don't have the box, Judge,
4 obviously and we've been -- You know, it's been brought in
5 the courtroom from time to time.

6 THE COURT: Well, but he can't remember everything in
7 the box. So, move along.

8 MR. LEVENSON: Very well, sir.

9 You made mention in your examination by Professor
10 Medlin that you and maybe to me as well that as to what
11 evidence indicating there was no undue influence you
12 referenced his 2000 tour in Europe? Remember that?

13 THE WITNESS: Yes, sir.

14 Q You said it was contemporaneous with both the subject
15 will and trust dated August 1, 2000; right?

16 A Yes, sir; just before or just after, I think.

17 Q Now, did you ever contact his agent by the name of
18 Jeff Allen who was representing Mr. Brown at the time
19 through the agency in New York, Universal Attractions?

20 A Is he the gentleman you introduced me to in New York?

21 Q That is correct and who was in the courtroom in
22 Bamberg to attend one of the hearings where you were
23 present either 15th or 20th -- one or both. I'm sorry;
24 not both. I apologize. He was at one of the hearings in
25 Bamberg. That gentlemen. Tall gentleman, dark hair.

1 A I'm not sure I would recognize him if I saw him.

2 Q But, I mean, you knew that he had an agent;
3 correct -- Mr. Brown?

4 A Yes, sir.

5 Q Who placed his business and arranged for him to tour
6 the world; correct?

7 A Right.

8 Q And this gentleman Mr. Allen would have known, would
9 he not, what happened on that tour immediately before the
10 August 1, 2000 execution of the will and trust?

11 A Well, I've seen documents that show that there was
12 some tension between Mr. Brown and Mr. Allen over the
13 number of concerts and I've seen other documents that, you
14 know, where Mr. Allen was involved with Mr. Pullman, for
15 example.

16 Q But here is my question. Again, I am not faulting
17 you necessarily for not contacting him. My question is to
18 the extent that you know that we contacted him -- we
19 meaning my clients and I -- do you think it's reasonable
20 that what they learned from Mr. Allen as well as what they
21 learned from Perry Fuller, for example, would be at least
22 some basis for a reasonable belief that what they were
23 filing in court -- thanks to you, by the way, the 1999
24 will and trust that you graciously provided to us on
25 Christmas Eve of 2007, I think -- was a basis for the

1 filing of the contest of the will and trust?

2 A Well, you know, I would like to know, and, you know,
3 I've asked for people to explain to me what -- you know,
4 what evidence there is -- what -- you know, I'm sure you
5 and I have had this conversation, you know. What is
6 there?

7 Q Well --

8 THE COURT: Hold on.

9 THE WITNESS: I mean, what is the information that
10 these people have so I can consider and evaluate it? So,
11 you know, how can I comment on whether somebody else
12 considers it reasonable if I don't know what it is?

13 Q Well...

14 A And, you know, I did --

15 Q Did you request as I did Mr. Brown's medical records
16 at or around the time of the execution of the will and
17 trust?

18 A I think that we've asked you for them. I think we
19 gave you a release and we've asked you for copies, but I
20 don't believe that you've sent them to us.

21 Q Well, you didn't make any effort to get that
22 information until I suggested it was important for us to
23 look at; right?

24 A And we executed a release immediately and sent it to
25 you and asked you to send us copies and you agreed to, but

1 we haven't seen them.

2 Q With respect to this question of discovery that you
3 believe has been denied, do you have an opinion as to how
4 much discovery would have been appropriate so that you
5 could have had a better understanding of the facts and how
6 much it would cost and how long it would take?

7 A I think we could limit the amount of discovery we
8 need to know more about what we need to do with respect to
9 any proposed settlement.

10 Q Well --

11 THE COURT: Let me ask you this, Mr. Buchanan. Try
12 to give me your best guestimate, number one, how many
13 perhaps depositions would have been necessary and any
14 other type discovery -- interrogatories, requests to
15 produce -- and how long you think it would have lasted?

16 THE WITNESS: I think we could take the deposition of
17 Mr. Herring. I think that would be important. I think we
18 could take the deposition of Tomi Rae Hynie Brown. I
19 think that would be important. You know, maybe short
20 depositions of the witnesses to the instruments. I mean,
21 I can't imagine that would take very long, you know, and
22 then some other things that we really wouldn't need
23 depositions on. For example, I mean, it all goes to
24 whether or not we have to oppose the settlement and it may
25 not be on the facts Mr. Levenson is asking me about, but,

1 for example, Your Honor, you ordered the DNA of James, II.
2 We paid for it. That's never happened. I mean, that goes
3 to whether or not we've got competent successors as people
4 who can agree, I mean, and there are some others, but, you
5 know, some DNA and as I sit here I'm --

6 THE COURT: And I understand that you can't tell me
7 all. I was just trying to get a --

8 THE WITNESS: Right, but those are the main things
9 and I think if we -- that would be a real good start if we
10 got the depositions of Ms. Hynie Brown and Mr. Herring.

11 Q Do you know when --

12 A And that would, obviously, may lead to something.

13 THE COURT: Sure.

14 THE WITNESS: But that would be a good start.

15 Q Well, the will and trust contest was filed in the end
16 of the year 2007, correct, approximately?

17 A Yes, sir.

18 Q And do you recall when the court determined to stay
19 the discovery in this case?

20 A I don't remember that.

21 Q There was several months when discovery was available
22 to all of the parties?

23 A Yes, sir.

24 Q And I did discovery?

25 A Yes, sir.

1 Q And you didn't do any?

2 A Yes, sir. Well, we worked nearly all day everyday
3 just trying to take care of the all of the work of the
4 estate and trust.

5 Q Very well. Now, when we were here the other day you
6 made a statement and I want to make sure I wrote it down
7 right. Professor Medlin was asking you a question and you
8 said, quote, Mrs. Pope had strong feelings about this in
9 spite of the law.

10 A I said that?

11 Q Did you say something --

12 A I don't remember saying that. I mean, if that's what
13 I said, the transcript will show it.

14 Q Let's take out in spite of the law. That may be an
15 incorrect statement. You made a statement that Mrs. Pope
16 had strong feelings about something. You remember what
17 that was that she had strong feelings about?

18 A No, I don't. She has strong feelings about a lot of
19 things.

20 THE COURT: The court will take judicial notice along
21 with everybody else in this room has strong feelings.

22 Q And I -- and it is appropriate for persons in having
23 roles as advocates and you're advocating on behalf of
24 Mr. Brown to have a strong feeling about something; is
25 that correct, sir?

1 A Yes, sir.

2 Q And you've articulated your view on some of those
3 issues here today; correct?

4 A Correct.

5 Q But you do not give equal credence to the strong
6 feelings of the contestants to the will and trust so that
7 they are justified in compromising the claim? Is that
8 your position?

9 A It's not that I don't give equal credence to any
10 strong feelings anybody has, but, you know, for a big
11 variety of reasons we've got the cart before the horse.
12 We've got to have some reasonable relationship between
13 probable outcomes under South Carolina law on some issues.

14 Q But doesn't that sort of approach to the settlement
15 require you to go through all of the discovery and get
16 complete comfort level with all of the facts and the law
17 before you can settle the case?

18 A I don't think so.

19 Q Isn't that entirely inconsistent with the concept of
20 early --

21 A No, I don't --

22 Q -- intervention and ADR and discovery?

23 A No. I don't think so they're entirely inconsistent.
24 I think that you can do some measured discovery and as you
25 go I think you can evaluate what -- whose positions have

1 strength and whose positions are weak and you can evaluate
2 what, if any, further discovery is needed and what may be
3 the relative expense of it. You know, I mean, I think it
4 would be a big help to do the two depositions we just
5 discussed.

6 Q Different subject matter. Essentially, what you're
7 saying and you've said earlier when Professor Medlin was
8 questioning you is the 50 percent to the charitable trust
9 is just unacceptable to you. Is that a fair assessment of
10 your view?

11 A Well, unless there is some evidence I don't know
12 about, it is, okay?

13 Q Well, we --

14 A And, you know, but it's not 50 percent. It's changed
15 again --

16 Q Well --

17 A -- and it may change again --

18 Q But --

19 A -- as y'all deal with other people who claim to be
20 heirs.

21 Q You think based on the the questioning I've asked you
22 just in the last 30 to 40 minutes that there is some
23 evidence you don't know about?

24 A I don't know.

25 Q Well, we talked about Jeff Allen. We talked about

1 Perry Fuller. We talked about Dewain Herring. We talked
2 about people who were questioned by my clients that you
3 did not question. You think that's fair for us to say
4 that there is evidence that you don't know about?

5 A Well, I don't know -- I don't know why we don't know
6 about it. We've asked you, you know, what is it.

7 Q Back to the 50 percent.

8 A I mean, you know, maybe if Mr. Allen is so incredibly
9 close to what was going on maybe that's a deposition we
10 need to take, too.

11 Q If 50 percent is not fair, what percent is fair?

12 A I don't know that.

13 Q Well, do you have any opinion to help the court to
14 understand the unfairness of this settlement compared with
15 what would be a fair settlement?

16 A I think that any settlement that's reached without
17 having some real basis for determining whether it is
18 reasonable based on the evidence.

19 Q Reasonable means there is a reason for it; correct?

20 A Well --

21 Q There is some reason for it; correct?

22 A Reasonable means that there is some reason for it.

23 Q You don't have to have a complete understanding of
24 it. It just has to be some information; correct?

25 A It has to be some information.

1 Q Do you have --

2 A Some pertinent information.

3 Q If you are here contradicting the proposed settlement
4 and Mrs. Pope has already opined from her point of view,
5 do you have an opinion as to what percentage should be
6 shared amongst the parties who are propounding the
7 settlement agreement?

8 A I don't at this time.

9 Q Well, and the question that I asked and the court
10 asked also was how long would it take for you if discovery
11 was necessary to get to that point and then how much would
12 it cost?

13 A Well, I don't know exactly how much it would cost,
14 but I think if we take the several depositions that we've
15 talked about it wouldn't take that long to evaluate them.

16 Q Well, we know from the records we've seen that you
17 have spent in the last year 1700 hours, I believe?

18 A I don't remember exactly.

19 Q And Mrs. Pope about 3000 hours?

20 A I don't remember how many hours. She spent more time
21 than I have.

22 Q Okay. Well, doing the math -- I did the math and
23 just assuming my math is right that's more than 40 hours a
24 week that Mrs. Pope is spending?

25 A Uh-huh.

1 Q And slightly less for you?

2 A Yes, sir.

3 Q Would it be going at the same pace for the next six
4 months if discovery was to be -- if the court, for
5 example, were to consider holding in abeyance this issue
6 until discovery was completed?

7 A Well, you got to understand the time that Mrs. Pope
8 and I have spent includes a lot of things other than you.

9 Q Well, that's what I am trying to get a handle on --

10 A Yea.

11 Q -- because the judge may need that information in
12 making a determination. Do you have a view as to how long
13 it would take and how much it's going to cost if the
14 empirical evidence is used to determine how you've been
15 working in the past what it's likely to be in the future?

16 A Well, you know, I don't think it -- I mean, I've
17 talked about several depositions that could be taken. I
18 don't know why they can't be taken over the next several
19 months.

20 Q And in addition to your attorney's fees and
21 Mrs. Pope's attorney's fees and Ms. Hayes' attorney's fees
22 and Mr. Bailey's attorney's fees, all of the other parties
23 will be incurring attorney's fees to prosecute the
24 discovery over three months, six months, or whatever
25 period of time would be necessary; correct?

1 A Yes, sir.

2 Q And we're certainly entitled to the same compensation
3 from the totality of the estate that you and Mrs. Pope and
4 Ms.~Hayes and Mr. Bailey would be entitled to; correct?

5 A Well, I will be concede that you're entitled to be
6 paid.

7 Q Okay. And, so, all of that number in the aggregate
8 is a big number, correct, when you add up all the lawyers,
9 all the hourly rates, multiply by the number of lawyers,
10 and go for six months, that's probably more than \$10,000?

11 A Well, suppose we take those three depositions in the
12 next 30 days.

13 Q With regard to the lawsuit that I was referring to
14 that you filed against Mr. Dallas, Mr. Bradley, and
15 Mr. Cannon and others, in that lawsuit was an allegation
16 of undue influence, was it not?

17 A I don't remember the words. The allegations could be
18 there.

19 Q I don't have the pleadings. Does someone have it for
20 me?

21 A It could very well be, but it would be in a different
22 context.

23 MR. LEVENSON: If I may approach, Judge.

24 THE COURT: Give me the caption of that suit, please.

25 MR. LEVENSON: This is the Pope Buchanan versus

1 Cannon, Dallas, Bradley filed in this court, the court of
2 common pleas case no. 2008-CP-02-322.

3 THE COURT: Were there other defendants other than
4 the three you mentioned?

5 MR. LEVENSON: Yes, Your Honor. There is also
6 Mr. Joel Katz, the lawfirm of Greenberg Traurig, and
7 Enterprise Bank of South Carolina and I believe we had
8 that page.

9 If you would look at paragraph 25 -- 24 and 25.

10 THE WITNESS: Sure. Yea, this was the summons and
11 complaint that was filed in that case. There was
12 subsequently an amended summons and complaint filed and
13 other parties were added. Phillip Farr was one. I can't
14 remember the others right now, but looking at the
15 paragraphs that you asked me about --

16 Q Yes, sir.

17 A -- twenty-four and 25. All right, sir. Twenty-four,
18 quote, "Beginning on or before January 1, 1999 the
19 Defendants Cannon, Dallas, and Bradley entered into a
20 civil conspiracy to defraud James Brown and his related
21 interests and entities which continued up to the date of
22 his death and thereafter."

23 Q Let's just state for the record Mr. Brown -- from
24 1999 to the date of his death was December 25, 2006;
25 right?

1 A Yea, it's beginning on or before January 1, 1999.

2 Q Very well.

3 A Okay. And continued -- it would be December 25,
4 2006.

5 Q Very well.

6 A --- Okay? Paragraph 25, "Pursuant to such conspiracy the ---
7 Defendants Cannon, Dallas, and Bradley did the following:

8 A, in breach of their fiduciary duties they undertook to
9 charge James Brown and his related entities with excessive
10 and exorbitant fees and commissions; B, in pursuance of
11 the objectives of such conspiracy they procured the
12 signature of James Brown on various documents by undue
13 influence, fraud, and or forgery; C, they fraudulently
14 concealed these acts and practices from James Brown."
15 Those are the allegations.

16 Q Now, from a cursory reading of that allegation do you
17 think it's reasonable for my clients reading that to
18 believe that someone out there was procuring signatures of
19 Mr. James Brown by the use of undue influence?

20 A I think it's -- I think based on these allegations
21 it's reasonable for any person to believe that these
22 Defendants may have unduly influenced Mr. Brown in
23 connection -- in the context of what's alleged here and
24 that is in the way they were handling his business from
25 before or on January 1, '99 until the date of his death.

1 Q Right. And that you would not have filed such an
2 allegation unless you had evidence within your control to
3 support it; correct?

4 A Yes, sir.

5 Q So, now look at it from the the reader's point of
6 view, not the writer's point of view, because you're
7 essentially the writer of that. What conclusion would a
8 reader such as my clients and Tomi Rae Hynie take from
9 reading such an allegation?

10 A And such as you.

11 Q Yes, sir.

12 A And their lawyers.

13 Q Well, I am not settling the case. They're settling
14 the case.

15 A Okay.

16 Q So, they're the ones whose judgment is being assessed
17 by this court.

18 A All right. Well, I mean, I think they could
19 certainly infer that these defendants had conspired
20 against and were engaging in various bad acts in
21 furtherance of that conspiracy in connection with the way
22 they were handling Mr. Brown's business for himself and
23 James Brown Enterprises, Inc., and his business entities
24 over a period of time that could have begun years earlier
25 than January of '99.

1 Q But it covers the very period?

2 A It covers the period.

3 Q The period that is the subject of the litigation
4 which is now tendered to this court for compromise and
5 settlement, doesn't it?

6 A It covers the period.

7 Q But that's not a reason for the readers who are
8 seeking compromise to ask this court to allow them to
9 settle at least with respect to the issue of undue
10 influence which might result in a forfeiture of the
11 entirety of the estate to the attorney general's
12 charitable trust. It might result in a forfeiture of the
13 entirety of the estate to Ms.~Brown. It might result in a
14 forfeiture of the entire estate to my clients who in
15 various proportions have now settled those claims; right?

16 A The allegations in this complaint do not provide any
17 reason to question the execution of the 2000 will and
18 trust.

19 Q That case is still going on, I believe; correct?

20 A Yes, sir. It's kind of gotten stayed, too.

21 Q I'm --

22 A Well, I mean --

23 Q I really don't know. Why was that case stayed?

24 A Well, I think all of the lawyers in all of the cases
25 understand Judge Early's ruling from the bench was to have

1 stayed everything.

2 Q That case? The separate action?

3 A Uh-huh. I remember Ms. Tate asking Judge Early one
4 day at the conclusion of the hearing about -- I think
5 their firm is involved in this. They are defending
6 Mr. Dallas in this case and she wanted clarification of
7 that point.

8 Q So, essentially, no discovery has been done in that
9 case either?

10 A I don't think much, if any. Ms. Tate can probably
11 give you more information than I can.

12 Q That's okay, but there is no order they I've seen
13 that states --

14 A There is no written order saying that that I've seen
15 either, Mr. Levenson.

16 Q Okay. Mrs. Pope was questioned when she was here at
17 one of the previous hearings that she believes that you as
18 personal representatives and co-trustees have the veto
19 power over the proposed settlement tendered to Judge
20 Early. Do you agree?

21 A Well, we are a successor as trustee of the trust and
22 we have an obligation under the trust to protect those
23 persons who are beneficiaries.

24 Q Well, I understand and you're expressing that here in
25 court; correct?

1 A Yes, sir.

2 Q And you've expressed it in your pleadings, but that's
3 not my question.

4 A Okay.

5 Q My question is do you have the veto power? Do you
6 agree with Mrs. Pope's assessment that you can veto that
7 proposal notwithstanding the section 1102 which is before
8 the court?

9 A Section 1102? You mean 912?

10 THE COURT: Show him the code.

11 Q This is the section. I think Alan showed this to you
12 before.

13 A Okay.

14 Q I think when you were up there. I think it's on that
15 side.

16 A Okay.

17 THE COURT: What is the code section?

18 MR. LEVENSON: 62-3-1102.

19 THE WITNESS: 3-1102. Okay. Your question is
20 whether we have a veto?

21 Q My question is do you agree with Mrs. Pope that you
22 have a veto?

23 MR. BAILEY: Your Honor, I don't think for proper --

24 THE COURT: Sustained. Sustained. Sustained. Do
25 you have an opinion as to whether or not you have veto

1 power?

2 MR. LEVENSON: I'll rephrase the question. Thank
3 you, Judge.

4 Do you agree that you have a veto power?

5 THE WITNESS: I don't know.

6 Q So, essentially, what you're saying is if you don't
7 know, then, I mean, you don't know with any legal
8 authority for sure; correct?

9 A I'm not aware of it. Now, you know, you've got to
10 understand that Mrs. Pope is a certified specialist in
11 this area of the law and I'm not. So, I do depend and
12 rely on her --

13 Q Yes, sir.

14 A -- for a lot.

15 Q And she's been questioned about it and the Judge has
16 heard that evidence and he'll make his own
17 determination --

18 A Right.

19 Q -- but you're a separate person from her --

20 A I understand.

21 Q -- and that's why I am questioning you about it.

22 A Right.

23 Q Okay. So, you don't know of any authority and do not
24 have an opinion as to whether there is a veto power on the
25 part of the personal representative?

1 A Correct.

2 Q If the Judge is inclined to grant the petition for
3 the approval of a settlement as part of that is a
4 requirement -- the shall language I believe that is used
5 in the statute -- you shall sign the agreement. You
6 recollect seeing that in the third to last, I believe it
7 is sub-part C? Can I help you with it?

8 A Same section?

9 Q I'm sorry. Not C. Sub-part three where it says,
10 "The court shall make such an order directing all
11 fiduciaries subject to its jurisdiction to execute the
12 agreement."

13 A Yes, sir. I see that.

14 Q If the Judge were to make that determination, would
15 you execute the agreement?

16 MR. BAILEY: Objection, Your Honor. That's
17 speculation. It depends on what you ultimately rule
18 whether or not there would be a proper answer to the
19 question and the finality of the order, also.

20 THE COURT: I am going to overrule that. You can
21 answer it.

22 THE WITNESS: If the Judge orders me to execute the
23 agreement, then I'll execute the agreement. Now, I may
24 appeal the order.

25 Q And I understood --

1 A And I will appeal the order because I don't think I
2 have any alternative.

3 Q Now, do you remember the comments that were brought
4 to your attention by Professor Medlin -- the comments to a
5 uniform code that, I guess, tracks the exact same language
6 or the exact same language of the code section that you
7 have in front of you? Do you remember the language which
8 suggested that because executors and trustees may have an
9 interest in fees and commissions which they might earn
10 through the efforts to carry out the testator's intention
11 the judgment of the court is substituted for that of the
12 fiduciaries in appropriate cases. The judgment of the
13 court is substituted for the judgment of you as the
14 fiduciary. Do you remember that language in the comments?
15 Mr. Rosen filed a pleading.

16 A I'll be happy. If you've got it there, I'll look at
17 it.

18 Q Sure. I just highlighted the area that's at issue.
19 Does that refresh your recollection about a question I
20 believe Professor Medlin may have asked you when you were
21 on the stand at our last hearing?

22 A I think Professor Medlin asked me to read that
23 language out of the code.

24 Q I am not questioning your entitlement to get paid,
25 but my question really goes here. Isn't that one of the

1 reasons that we're trying to settle the case so that we
2 will stop the obligations of the estate to pay fees to
3 yourself and Mrs. Pope on matters that would now not be
4 necessary?

5 A Well, I don't know. I mean, Mrs. Pope -- You know,
6 you got to understand Mrs. Pope and I are not looking to
7 make a career out of this. We're trying to make sure that
8 whatever happens happens in accordance with the intent of
9 the testator. You know, the statute couldn't be more
10 clear. The language in the will and the trust couldn't be
11 more clear. Okay? And whether this settlement is
12 approved or not, Mrs. Pope and I do not intend to stay
13 here longer than we absolutely have to to get things
14 righted and, you know, and we made a lot of progress
15 lately. So...

16 Q Let me come back to your statement about an appeal.
17 How long will an appeal take, Mr. Buchanan?

18 A It depends on what issues are raised.

19 Q Well, you mean -- Maybe I am just not clear.

20 A You know, I --

21 Q If you were --

22 A I've appealed some cases and they get on a fast track
23 and they don't last long. I have been involved in appeals
24 that have taken a long time. So, I mean, I can't tell you
25 how long an appeal would take, but I wouldn't expect it

1 would take terribly long.

2 Q Well, what does that mean?

3 A I would say two years roughly.

4 Q So, the appeal of your -- excuse me. If Judge Early
5 approves the matter before the court today you have an
6 estimate that it would take two years for that to be fully
7 adjudicated?

8 A Give or take.

9 Q Okay. And in that interim period would you be
10 seeking fees from the estate or trust of James Brown for
11 your compensation?

12 A What we've asked for is the appointment of a special
13 administrator, special trustee to do that.

14 THE COURT: No. He's talking about prosecuting --

15 THE WITNESS: The appeal.

16 THE COURT: -- the appeal or handling the appeal.

17 Who is going to handle the appeal?

18 THE WITNESS: Who is going to handle the appeal?

19 THE COURT: Who is going to pay for it? If I approve
20 it.

21 Q It's a supposition. I am not suggesting that the
22 Judge made a decision, but, obviously, if there is an
23 approval of what's before the court today you and
24 Mrs. Pope have both uniformly stated there is going to be
25 an appeal; correct?

1 A Yes, sir.

2 Q The Judge would be entitled to know how long the
3 appeal is going to take and what it's going to cost as one
4 of those vagaries of litigation which the parties are
5 attempting to settle. You told us it will take two years.

6 THE COURT: Well, that's his opinion -- two years.

7 MR. LEVENSON: Yes, sir.

8 THE COURT: Nobody knows how long it will take.

9 MR. LEVENSON: Yes, sir.

10 THE COURT: Give me a guestimate on costs,
11 Mr. Buchanan.

12 MR. LEVENSON: You said costs, your honor?

13 THE COURT: Costs, C-O-S-T-S, including attorneys'
14 fees, et cetera, and I assume buying the transcript.

15 THE WITNESS: Judge, I don't know. I mean, I am
16 terrible at trying to estimate costs of transcripts.

17 THE COURT: That's probably not a fair question.

18 THE WITNESS: You know, I don't know whether this is
19 an appeal that's just going to go up fairly simply or
20 whether there is going to be lots of motions filed by
21 different parties.

22 THE COURT: Well, if we can judge the future by the
23 past I can tell you what it's going to be like.

24 Q Let's get back to the attorneys' fees.

25 A Okay.

1 Q You would seek to be compensated for your time in
2 connection with the service that you would provide to
3 prosecute the appeal because you would be the prosecutor
4 of the appeal; right?

5 A Yes, sir.

6 Q And so would Mrs. Pope?

7 A Yes, sir.

8 Q And would you hire separate counsel other than
9 Mr. Bailey and Ms. Hayes?

10 A I doubt it; no, sir.

11 Q So, they would be paid as well for their time?

12 A Yea. Ms. Hayes is primarily the lawyer who deals
13 with the appellate work.

14 Q But those costs, whatever they might be for two years
15 as an approximation, would not have been incurred if there
16 is no appeal and the settlement is approved and it becomes
17 a final judgment?

18 A Correct.

19 Q Now, you have an appeal currently that was filed
20 pursuant to the order of the court appointing
21 Mr. Bauknight for the purpose of reviewing the settlement
22 proposal; correct?

23 A Yes, sir.

24 Q Are you prosecuting that appeal still?

25 A Yes, sir.

1 Q Explain, if you would, to the court why that appeal
2 isn't moot.

3 A Well, it hasn't been dismissed.

4 Q Well, I understand that part, but why it isn't a moot
5 point since Mr.~Bauknight has testified and the Judge has
6 heard his testimony, I'm not -- What is the -- What order
7 do you seek from the appellate court to reverse the trial
8 court? I am just not clear about that.

9 A Well, you know, frankly, Mr. Levenson, I really need
10 to sit down and look at that file. I mean, I hadn't
11 looked at that file. You know, we look at so much -- so
12 much stuff, you know, and I could -- I probably need to
13 talk to Ms.~Hayes, the appellate lawyer, on that issue to
14 be really able to talk to you intelligently about it.

15 Q Well, right now today that appeal is pending;
16 correct?

17 A It is.

18 Q And you got counsel in that; correct?

19 A Yes.

20 Q And you and Mrs. Pope are spending time on it, are
21 you not?

22 A Really not much time on it at the moment, no, sir.
23 We've been spending time on other things.

24 Q And what is the time trajectory on that appeal
25 assuming it is to be prosecuted to a final decision by an

1 appellate court?

2 A You know, as I sit here I don't remember whether -- I
3 don't remember where we are with the briefing. I just
4 don't remember the schedule of it.

5 Q Would you intend to -- continue to prosecute that
6 appeal as you sit here today if the judge approves this
7 settlement agreement based in part on the testimony of
8 Mr. Bauknight?

9 A You know, I need to discuss that with my lawyer.

10 Q Okay.

11 I am going to finish in just a minute, Judge, if
12 you're thinking about whatever the break time is. I'll be
13 happy to get out of the way.

14 THE COURT: Well, go ahead and get out of the way as
15 you put it.

16 MR. LEVENSON: I'm taking that in the spirit as it
17 was intended.

18 THE COURT: Mr. Levenson, I am simply using your
19 words.

20 Q Do you agree that it would probably be offensive to my
21 clients for you or Mrs. Pope to say that you knew
22 Mr. Brown better than they did?

23 A I didn't know Mr. Brown in life and they did.

24 Q Try and help me with this. They're reading pleadings
25 filed by you all in this court wherein you say -- and I am

1 paraphrasing -- that you and Mrs. Pope knew the intentions
2 of Mr. Brown better than they did. Do you agree that that
3 would offend them?

4 A Well, I don't think -- you know what, Mr. Levenson, I
5 think what we've done is we've taken the position that we
6 know pretty well what his testamentary intent was, but,
7 you know, that's not to say that we know better than the
8 Brown family about, you know, which holidays he enjoyed
9 more than others or whatever.

10 Q Well, I --

11 A So, I mean, you know, I think that you need to
12 qualify a little more your question.

13 Q Very well. We'll start with the general supposition
14 that you and Mrs. Pope did not know Mr. Brown better than
15 the children of James Brown before we get to the question
16 of testamentary intent?

17 A I did not know Mr. Brown in life.

18 Q And you and Mrs. Pope didn't know Mr. Brown better
19 than Tomi Rae Brown who was living with him and
20 ceremonially married to him long before his death;
21 correct?

22 A I did not know Mr. Brown at that -- in his lifetime.

23 Q Now, were those people in a position -- now I'm
24 talking about testamentary intent, his plans. Were they
25 in a position to have observed him, heard him, spoke to

1 him, to have gleaned from him what they believed to be his
2 testamentary intent?

3 A They were, obviously, around him. Tomi Rae Hynie
4 Brown and Mr. Brown were together in court and out of
5 court as adversaries in court. Mr. Brown and some of your
6 clients -- Deanna and Yamma were around each other in life
7 and they were, obviously, together in court and out of
8 court -- in court as adversaries. You know, Mr. Levenson,
9 we've taken the facts and the circumstances that we have
10 been able to glean thus far and as of this moment, okay,
11 we have every reason to know that he intended in the 2000
12 will and trust to do what he did. Okay?

13 We did not know him in life. I certainly didn't. I
14 don't want to speak for Mrs. Pope because maybe one time
15 she met him or something, but I didn't. Okay? I did not
16 know him in life. Obviously, the people you represent and
17 the people that Mr. Rosen and Mr. Medlin represent were
18 around him in life.

19 Q Other than Mr. Dallas, Mr. Cannon, and Mr. Bradley
20 who you have just testified have trustworthiness issues in
21 various degrees; correct --

22 A Yes, sir.

23 Q -- can you think of anyone on the planet who knew him
24 better than my clients and Tomi Rae Brown for the last six
25 or seven years of his life?

1 A Well, I can think of some who might have known him as
2 well or better just based on the information that I've
3 received.

4 Q Give us those names, please.

5 A David Washington, Mary Holmes.

6 Q Mary Holmes whose affidavit you submitted to this
7 court as evidence?

8 A I don't remember whether we submitted an affidavit
9 from her or not.

10 Q Well, it's attached to your motion for partial
11 summary judgment filed January 20, 2009. Does that help
12 refresh your recollection?

13 A Well, it doesn't, but if you say it's there I'll take
14 your word for it.

15 Q Did you speak to Ms.~Holmes?

16 A No, I but I've heard Ms.~Holmes speak.

17 Q So, the evidence on which you relay is the affidavit
18 that you tendered to the court?

19 A I watched a videotape made of her.

20 Q All right. So, other than Mr. Washington and
21 Ms.~Holmes, you can't think of anyone on the planet other
22 than my clients and Tomi Rae Brown who know Mr. Brown
23 better than six or seven years before his death?

24 A You know, I don't know the answer to that question
25 one way or another.

1 Q I'm sorry. And Terry Brown. I apologize. Mr. Brown
2 and Mr. Bell -- Mr. Bell's client as well, the other child
3 that I do not represent. I would include him in the same
4 series of questions that I have just asked you.

5 A Yes, sir.

6 MR. LEVENSON: Thank you, Judge.

7 THE COURT: We're going to break for lunch. Give me
8 some idea about this afternoon.

9 MR. BAILEY: Your Honor --

10 THE COURT: Just a second, Mr. Bailey. I'll get to
11 you. Who is representing little man today?

12 MS. GROEBER: Your Honor, I am Erin Groeber. I'm
13 here for Mr. Shahid.

14 THE COURT: All right. How long is your cross going
15 to be?

16 MS. GROEBER: Mr. Shahid has requested --

17 THE COURT: I know what his request is. How long is
18 do your cross going to be?

19 MS. GROEBER: Thirty minutes.

20 THE COURT: Very well. Mr. Bell?

21 MR. BELL: Ten minutes.

22 THE COURT: Mr. Byrd?

23 MR. BYRD: About the same.

24 THE COURT: Ten, ten, thirty. Mr. Bailey, are you
25 going to have any examination?

1 MR. BAILEY: I am not sure at this point, Your Honor.
2 I'll talk with them.

3 THE COURT: Attorney Jones?

4 MR. NICHOLSON: I am not sure; half an hour.

5 THE COURT: What I am going to do is I'm going to let
6 everybody go and then if we still got time and Mr. Shahid
7 is not here I'll let you do it. If we go into tomorrow,
8 then I'll comply with his request.

9 MS. GROEBER: Thank you.

10 THE COURT: You're welcome. You look like you're an
11 able-bodied cross examiner.

12 Mr. Bailey, you asked me -- I got some e-mail today,
13 last night about the proposed settlement in another
14 case -- doing it sometime today?

15 MR. BAILEY: Yes. That would be very important, Your
16 Honor.

17 THE COURT: Well, how long will it take?

18 MR. BAILEY: Maybe an hour or less.

19 THE COURT: I assume that you sent that to everybody,
20 particularly the attorney general who is a party?

21 MR. BAILEY: He is the only party that was made to
22 the litigation. The others --

23 THE COURT: You can step down.

24 MR. BAILEY: We invite everybody in case number
25 872 -- attorneys and clients -- to hear the request, but

1 we would -- We believe it's very, very important that it
2 be ruled confidential; that it cannot be -- We don't even
3 want it done in an open courtroom. We want it done in a
4 closed courtroom or perhaps in chambers because it
5 involves trade secrets, business contracts.

6 THE COURT: Well, we've always -- You have proposed
7 anything been done in chambers --

8 MR. BAILEY: We want it on the record. We just don't
9 want it in open court.

10 THE COURT: It takes an hour? Mr. Jones?

11 MR. JONES: Yes, sir, Your Honor. We were served the
12 summons and petition yesterday afternoon around 5:00. Our
13 position is it doesn't need to be taken up right now. The
14 settlement is the appropriate and the primary thing we'd
15 like the court to focus on. The next trustee if Your
16 Honor does approve the settlement will be able to handle
17 that.

18 THE COURT: The settlement Mr. Bailey is talking
19 about?

20 MR. JONES: Yes, sir, the settlement he's talking
21 about.

22 THE COURT: Well, do you deem it as urgent as they
23 say it is?

24 MR. JONES: No, sir. I think that we got a short
25 notice on it. We got a brief telephone conversation with

1 Mr. Buchanan about it last Friday. I would need to talk
2 with them maybe about some urgency about it, but I don't
3 see any reason to take the court's time up in one hour.
4 We're trying to get this matter resolved as far as the
5 settlement. We don't think it's that important.

6 THE COURT: All right. I will ask you over the lunch
7 break to talk to Mr. Bailey and I just don't think
8 Mrs. Pope and Mr. Buchanan or Mr. Bailey would ask me to
9 do something this emergent if it weren't an emergency.

10 MR. JONES: Yes, sir.

11 THE COURT: I will probably either right when we get
12 back from lunch or starting at 4 o'clock go into that if
13 we can do it within an hour -- the last hour of the day.
14 One or the other. So, talk to Mr. Jones over the break
15 and see if there is any resolution to his concern.

16 MR. BAILEY: Your Honor, I would like to put on the
17 record that we have filed our continuing objections for
18 the PR trustees Buchanan and Pope to this hearing.

19 THE COURT: How many times you got to do it?

20 MR. BAILEY: We had filed it. We just wanted to make
21 sure it was on the record.

22 THE COURT: Please, Mr. Bailey, you know I respect
23 you and everybody in here, but if you have to file it come
24 on up and file it, but you made that objection a number of
25 times. I think you're protected. If you're not -- You're

1 protected. I know you are. Go ahead and file what you
2 need to file.

3 All right. We'll stand -- Mr. Bell?

4 MR. BELL: Your Honor, if you -- a moment ago I
5 believe you mentioned you might take it up immediately
6 after lunch?

7 THE COURT: I did.

8 MR. BELL: If that is a possibility I would request
9 that I have a federally-court-ordered doctor's deposition
10 that I have to attend late this afternoon.

11 THE COURT: You'd rather do it right after lunch
12 instead of going to 4 o'clock?

13 MR. BELL: Yes, sir. I got to leave, but Mr. Bodman
14 be will be here, but I would like to be heard on that.

15 THE COURT: Assuming I'll take it up I'll do it right
16 after lunch. Talk to the attorney general. That would be
17 the only hold up. All right. It is 10 'til 1. I know
18 everybody hadn't been able to eat in an hour. Can we
19 start back at 2:15? That's an hour and 25 minutes. We'll
20 stand at ease 'til 2:15.

21 (Whereupon, a lunch break was taken.)

22 THE COURT: Mr. Bailey, did you have an opportunity
23 to talk with the attorney general's office?

24 MR. BAILEY: Yes, Your Honor, we did. We still want
25 to go forward and at least give the court an opportunity

1 to consider our motion. We feel it's in the best interest
2 of the estate.

3 THE COURT: Well, it's not a motion. It's a summons
4 and complaint.

5 MR. BAILEY: Summons and complaint.

6 THE COURT: And they have 30 days to respond. What's
7 the --

8 MR. JONES: Yes, Your Honor. We haven't done a
9 response yet. We don't think it's appropriate now for
10 Your Honor to take it up based on my conversation with
11 Mr.~Bailey and I think if Your Honor moves forward with
12 the settlement and if Your Honor approves the settlement
13 the issue can be resolved. If you don't approve the
14 settlement, the issue can be resolved, also. It can be
15 resolved with the settlement determination.

16 THE COURT: Which settlement, Mr. Jones?

17 MR. JONES: The the settlement we have before Your
18 Honor.

19 THE COURT: Well, they're saying we have an
20 emergency; that I need to go ahead and consider this one.
21 I am trying to accommodate everybody. Do you disagree
22 with that?

23 MR. JONES: Your Honor, what they're proceeding with
24 and what relief they want I don't disagree that Your Honor
25 might need to hear it.

1 THE COURT: Do you waive your 30 days?

2 MR. JONES: No, sir.

3 THE COURT: You do not?

4 MR. JONES: No, sir.

5 MR. BAILEY: We have requested in our summons for an
6 expedited response and hearing before the court, Your
7 Honor.

8 THE COURT: Well --

9 MR. BAILEY: We alerted the attorney general to that.

10 THE COURT: But you just served it yesterday.

11 MR. BAILEY: Yes, sir. That is correct.

12 THE COURT: Well, I will give you an expedited
13 hearing, but I don't think I can do it in less than 24
14 hours. I mean, if he is going to object to it.

15 Mr. Jones, I would ask that you look at it over the
16 evening and try to accommodate them, please, and let's
17 hear it in the morning.

18 MR. JONES: Yes, sir. I understand what they're
19 asking for. I don't agree with what they're asking for.
20 We'll be ready to proceed tomorrow morning if Your Honor
21 wants to discuss it. It would need some more discovery
22 potentially and et cetera. I can comment on it, Your
23 Honor, but we're not --

24 THE COURT: Okay.

25 MR. JONES: -- we're not prepared --

1 THE COURT: Mr. Bailey, what rule allows me to hear
2 it without giving them 30 days to answer?

3 MR. BAILEY: I am not aware of one, Your Honor.

4 THE COURT: Me either. Me either. All right. I am
5 going to urge, request, beg, barter, plead. Y'all please
6 discuss it tonight and see if we can't maybe discuss it
7 tomorrow.

8 MR. JONES: Yes, Your Honor. To make sure I
9 understand your direction --

10 THE COURT: I can't make you. You have 30 days to
11 answer it.

12 MR. JONES: Yes, sir.

13 THE COURT: I can't make you give that up.

14 MR. JONES: Yes, sir.

15 THE COURT: You can certainly waive it. I am asking
16 you to --

17 MR. JONES: Consider it.

18 THE COURT: -- consider it.

19 MR. JONES: We'll consider it, Your Honor.

20 THE COURT: Thank you. Mr. Bailey, if you can give
21 me some reason or some rule or code that I can do it
22 quicker than the 30 day summons.

23 MR. BAILEY: I don't think there is a rule other
24 than, you know, if it was the court's discretion, but I do
25 agree they have 30 days.

1 THE COURT: Y'all look at it tonight.

2 MR. BAILEY: This is a very, very significant matter
3 that is in the best interest of both the estate, the
4 trust, and has been pending for over seven years.

5 THE COURT: I understand.

6 MR. BAILEY: We don't want to lose an opportunity
7 simply because --

8 THE COURT: Well, you've brought it before me on a
9 summons and complaint.

10 MR. BAILEY: I understand.

11 THE COURT: He gets 30 days.

12 MR. BAILEY: We felt like we needed to have the
13 court's approval considering the circumstances.

14 THE COURT: I don't disagree. If he'll agree to
15 waive the 30 days, I'll hear it at your convenience.

16 MR. BAILEY: Thank you, Your Honor.

17 THE COURT: But you served him, I assume, yesterday?

18 MR. BAILEY: Yes, sir.

19 THE COURT: All right. Mr. Levenson, you're through.
20 Let's see. Who is next?

21 MR. BELL: Your Honor --

22 THE COURT: Mr. Bell, would you like to go ahead?

23 MR. BELL: Yes, sir.

24 THE COURT: You got to leave, don't you?

25 MR. BELL: Yes, sir.

1 THE COURT: Anybody have any problem? I don't know
2 that that is out of order.

3 Mr. Bell?

4 THE COURT: Mr. Bailey, I am going to give you this
5 copy back that you gave to me so it won't be lying around
6 with my other --

7 MR. BYRD: If Your Honor please, while Mr. Bell is
8 getting ready may I check with the clerk on some files?

9 THE COURT: Sure. If you can do it unobtrusively.

10 MR. BYRD: I don't know if I can do it. That's the
11 reason I asked.

12 THE COURT: All right. Mr. Bell?

13 CROSS-EXAMINATION

14 BY MR. BELL:

15 Q Mr. Buchanan, how are you?

16 A Fine. How are you, Mr. Bell?

17 Q It is my understanding, Mr. Buchanan, that before you
18 were asked to be a personal estate representative in this
19 case you had never served as an estate representative
20 before; isn't that correct?

21 A If I have I don't remember it and if I have it was a
22 small minor estate.

23 Q In fact, you had never been appointed to serve as a
24 trustee for a trust before this case; isn't that correct?

25 A I think that's correct.

1 Q And, Mr. Buchanan, you've never had any experience in
2 the music industry; isn't that correct?

3 A That's correct.

4 Q You have never had any experience --

5 A You mean before?

6 Q Before this?

7 A Before this matter started?

8 Q -- no experience marketing music, selling music?

9 A No, sir.

10 Q And the biggest asset of the estate, obviously, is
11 the music, the image, and the persona of James Brown?

12 A Yes, sir.

13 Q And at least as of last fall you and Mrs. Pope had
14 not engaged anyone to help you manage the music image and
15 persona of James Brown; isn't that correct?

16 A That's right. We had discussions with some people
17 like at Warner Chappell and things, but we hadn't hired
18 anybody.

19 Q You had not hired anybody. And you had not -- You
20 have never hired anyone to evaluate the value of the
21 stream of income from James Brown's music royalties, have
22 you?

23 A Never retained anybody.

24 Q That's correct; isn't it?

25 A That's correct.

1 Q And you haven't made an effort to market his music
2 rights, have you? Isn't that correct?

3 A Well, we have -- we have granted clearances to people
4 like -- I am trying to remember her name -- who call and
5 ask about very short term.

6 Q When was that, Mr. Buchanan?

7 A Well, it's been over a period of time. I can't tell
8 you precisely.

9 Q In the last four or five months?

10 A It's been during the last four or five months.

11 Q But prior to September of 2008 you had not made any
12 effort to market the royalty rights since you became
13 trustee?

14 A Well, we had talked to -- I am trying to remember the
15 lady's name -- and granted -- We had granted some
16 clearances for the use of music.

17 Q Now, you gave your deposition under oath on September
18 22, 2008, did you not?

19 A I don't remember.

20 Q Do you remember giving your deposition at
21 Mr. Watson's law office?

22 A Oh, yes, sir. Yea, I do.

23 Q And that was --

24 A I don't remember if it was September 22, but I do
25 remember the deposition.

1 Q And I am going to show you the coversheet to the
2 deposition which shows it as September 22. Would you have
3 any reason to disagree with that?

4 A No. I don't. That's what it says.

5 Q And you were asked at that time have you ever made
6 any effort to market the royalty right since you became
7 trustee at page 32, line 7. Can you read the question
8 that was asked of you and then your response?

9 A Yes, sir. "Have you made any effort to market the
10 royalty rights since you became a trustee," and the answer
11 was, "no, sir."

12 Q And so on September 22 you answered under oath?

13 A Yes, sir.

14 Q And your answer at that time was that you had not
15 undertaken any effort to market the royalty rights?

16 A Well, you know, we hadn't tried to go out and sell
17 it. That's what I meant.

18 Q But you --

19 A But I think I discussed with you in that deposition
20 somewhere that we had talked to some people regarding
21 clearances.

22 Q Well, you also told us at that time that you had a
23 reason why you hadn't gone out and tried to market the
24 royalty right; is that right?

25 A Well, there are a lot of reasons.

1 Q But you did give us one reason at that time?

2 A Well, maybe I did.

3 Q And that reason was that you felt like keeping the
4 estate insolvent strengthened your position in dealing
5 with the creditors.

6 A Well --

7 Q Isn't that right?

8 A No, it wasn't keeping it insolvent, okay? It was --
9 you know, it was a matter of priority where our focus was
10 on dealing with creditors who were going to claim a large
11 piece of any sale of any asset.

12 Q And you felt like --

13 A And that's --

14 Q -- not having --

15 THE COURT: Hold on, Mr. Bell.

16 MR. BELL: I'm sorry.

17 THE COURT: Let him finish his answer.

18 THE WITNESS: And that's what I told you.

19 Q You felt like not having the money in the estate
20 strengthened your position in dealing with the creditors?

21 A Well, I think anybody's position with the creditors
22 is strengthened if they don't have money laying around.

23 Q And, so, and that was one reason you gave for not
24 having undertaken any efforts to market the assets of the
25 estate?

1 A Well, you know, I may have. If that's what I -- if I
2 said that was one reason, then that's what I said.

3 Q And that reason was it strengthened your position not
4 having assets in the bank to deal with creditors. Is that
5 right?

6 A I may have said that. Do you mind if I see it?

7 Q If you will read your answer line 15, page 32. You
8 can read it out loud, Mr. Buchanan.

9 A "Have you made any effort to market the royalty
10 rights since you became trustee? No, sir."

11 Q Then go down to line 15.

12 A All right. "Is there some reason why -- I was
13 listening to your answer. Is there some reason why you
14 cannot sell the royalty rights and still deal with these
15 claims against the estate and or trust contemporaneously?"
16 Answer, "Well, you know, our strategy has been that we
17 have a stronger position in defending all these claims and
18 efforts to get into that those proceeds without having the
19 money on the table or sitting in escrow. Our position has
20 been that strategically we have a stronger position
21 defending them if they haven't been sold."

22 Q And then you were asked if there was a risk involved
23 in continuing to hold the assets for an indefinite period
24 of time -- three to five years without a plan to deal with
25 them. Do you remember being asked that question?

1 A I don't.

2 THE COURT: Mr. Bell, if you're going to try to
3 impeach him with a deposition -- Hold on..

4 MR. BELL: Yes, sir.

5 THE COURT: Please do it by the rules. Ask him a
6 question. If he does something different than he did or
7 if he can't remember, then use it. Don't just read the
8 deposition.

9 Q Do you believe there is a down side to just holding
10 those assets without having a plan to market them?

11 A I do over the long run.

12 Q Okay. And you also recognize that to properly manage
13 those assets you're not the right person to deal with it?

14 A Oh, yes, sir. I would have to have some help, yea.

15 Q And you have to have professional help, do you not?

16 A Exactly.

17 Q And to this point you've not retained that
18 professional help?

19 A Not retained, but we've tried to talk to some people.

20 Q But you have not retained professional help to advise
21 you?

22 A. Not as of this date.

23 Q And to advise --

24 A 2009 is due diligence.

25 Q And to advise on the marketing and the management of

1 royalty rights and music rights and image and persona?

2 A Well, some things have happened since that
3 deposition, but as of the time of that deposition we had
4 not retained anyone.

5 Q And you're not able to do that yourself; isn't that
6 correct?

7 THE COURT: He just answered that, Mr. Bell. Move
8 along, please.

9 MR. BELL: Just a couple of real quick ones, Your
10 Honor.

11 Mr. Buchanan, one of the critical issues in the
12 matter is the determination of who owns James Brown
13 Enterprises, Inc., isn't it?

14 THE WITNESS: That's's an issue.

15 Q And you don't know who owns it whether it's the trust
16 or the estate?

17 A No, sir.

18 Q Isn't that correct?

19 A Correct.

20 Q And I believe you have said that you aren't in a
21 position to make that determination?

22 A I think that the court will have to decide that.
23 There is very compelling evidence on both sides of that
24 issue.

25 Q And as trustee you have loyalty to the trust?

1 A Yes, sir.

2 Q And as personal representative of the estate you have
3 loyalty to the estate?

4 A And the trust. The trust is the big beneficiary of
5 the estate.

6 Q But you have said in the past, have you not, that
7 you're not in a position to make that determination?

8 A I have.

9 Q And you believe that the court to make that
10 determination would have to go outside of you and
11 Mrs. Pope and actually appoint a special administrator to
12 make that determination?

13 A I have said that.

14 MR. BELL: Your Honor, that's all I have by way of
15 questions.

16 THE COURT: Thank you.

17 MR. BELL: Your Honor, may I be excused? Mr. Bodman
18 will be here the rest of the day. I apologize. I just
19 have a court-ordered doctor's deposition that I have to
20 attend.

21 THE COURT: A court-ordered deposition?

22 MR. BELL: Yes, Your Honor.

23 THE COURT: Have a nice afternoon.

24 MR. BELL: There was a problem and the court ordered
25 it and I have to be there.

1 THE COURT: I understand. You're certainly excused.

2 MR. BELL: Thank you, Your Honor.

3 THE COURT: All right. Mr. Bell? I mean, Mr. Byrd.

4 MR. BYRD: I knew who you meant, Judge.

5 CROSS-EXAMINATION

6 BY MR. BYRD:

7 Q Mr. Buchanan, please, sir, if you would look at the
8 contents of that box and observe the box and tell me what
9 it is, please.

10 MR. MEDLIN: If we may --

11 THE COURT: Hold on. Yes, sir?

12 MR. MEDLIN: I just want to make sure that Mr.
13 Byrd -- You're trying to get to the Herring box.

14 MR. BYRD: That is the Herring box.

15 MR. MEDLIN: Because I am not sure that the Herring
16 box was ever sealed.

17 MR. BAILEY: That is the privileged box, Your Honor.
18 That's not the Herring box. It does have the Herring file
19 in it.

20 MR. MEDLIN: I am not sure that does.

21 MR. BYRD: Getting ready to find out.

22 Mr. Buchanan, if you would look at those documents in
23 that box and tell us what it is.

24 THE COURT: Mr. Byrd, let's identify that box. You
25 got it from the clerk and it's -- what -- has it got a

1 name or label or got an exhibit or what is it called?

2 MR. BYRD: Judge, to my knowledge it has never been
3 marked as an exhibit. It doesn't have an exhibit sticker
4 on it. I understand that is Dewain Herring's estate
5 planning file.

6 THE COURT: Does it have a sticky on it?

7 MR. BYRD: I would just ask the court reporter to let
8 me know whether that is an exhibit sticker or something
9 else.

10 THE COURT REPORTER: It kind of looks like one.

11 THE COURT: It says Levenson number 8, 2/7/08.

12 THE WITNESS: 2/7/08, Levenson number 8, LHH.

13 THE COURT: That's my court reporter so it came in at
14 that time.

15 Now, the question is, Mr. Byrd?

16 Q Mr. Buchanan, if you could please identify that box
17 and the contents of it to the extent you can.

18 A Yes, sir.

19 Q All right, sir.

20 A Thank you. This is a box -- IKON box, legal document
21 services. It's got written in red ink privileged, in
22 black ink sealed, 2-7-08 and it's got a yellow sticky on
23 it that says sealed per judge 2/7/08 and it has what
24 appears to be an exhibit sticker dated 2-7-08 in black ink
25 Levenson number 8 in blue ink and then LLH in black ink.

1 And that is the top of the box.

2 Q All right, sir.

3 A Do you want he to read what's on all of the sides?

4 Q You don't need to do that. If you could now look at
5 the contents of the box and tell us what that is.

6 A All right. It has one -- Well, before I start
7 counting it has -- Do you want he to count all of these
8 folders?

9 Q You don't need to count them. My question to you
10 is -- and if I was not specific enough I apologize to
11 you -- do you know generally what that is, Mr. Buchanan?
12 Don't you understand that's Dewain's Herring estate
13 planning files?

14 A This appears to include Mr. Herring's file and,
15 frankly, I don't know whether it includes other things as
16 well.

17 Q All right, sir. Would you confirm for me -- and I'd
18 like to have this marked.

19 (Whereupon, Byrd's Exhibit No. 1 was marked for
20 identification only.)

21 Q I am handing you what's been marked for
22 identification at this time Byrd exhibit 1. Tell us what
23 that is.

24 THE COURT: If you know.

25 THE WITNESS: It appears to be a photocopy of a

1 letter written by H. Dewain Herring, four-page letter
2 addressed to Mr. James Brown dated April 2, 1999,
3 certified mail return receipt requested, also via first
4 class U.S. mail noted personal and confidential.

5 Q And now that letter is from Mr. Herring?

6 A Yes, sir.

7 Q To James Brown?

8 A Yes, sir.

9 Q Correct? At what address?

10 A It's addressed to Mr. James Brown, James Brown
11 Enterprises, Inc., 1217 West Medical Park Road, Augusta,
12 Georgia, 30909.

13 Q All right, sir. And read, if you would, the first
14 paragraph of that letter.

15 THE COURT: Well, it's not in evidence yet.

16 MR. BYRD: Well, if Your Honor please, Mr. Levenson
17 during his examination of Mr. Buchanan --

18 THE COURT: Just move to put it in.

19 MR. BYRD: I move to put it in, Your Honor. Thank
20 you.

21 THE COURT: Any objections?

22 MR. LEVENSON: The witness has not identified the
23 document.

24 THE COURT: He did. He identified it as a letter
25 from Dewain Herring to James Brown dated 4/2/99.

1 MR. LEVENSON: I'm sorry. The witness cannot
2 authenticate the document and has previously testified
3 that he saw no such letter in the box or recalls not
4 seeing any such letter in the box which purports to be the
5 Herring box which now includes as I understand it other
6 information as well.

7 THE COURT: Overruled.

8 (Whereupon, Byrd's Exhibit No. 1 was admitted into
9 evidence.)

10 Q Now, if you would read paragraph one of that letter,
11 Mr. Buchanan.

12 A "I enjoyed meeting with you on Thursday afternoon,
13 February 25 in your offices, Augusta, Georgia, with Judge
14 Bradley and Mr. Dallas and Mr. Cannon and with Ms. Ware
15 who joined us during the meeting. Since leaving that
16 meeting I have had you much on my mind. I truly want to
17 take a moment to offer you my thanks for doing me a great
18 favor in unusual circumstances and without you even
19 knowing that you did it."

20 Q And, Mr. Buchanan, when -- do you recall when that
21 box was delivered to you and Mrs. Pope?

22 A I don't recall exactly when it was. I just
23 remembered trying to get permission -- I remember trying
24 to get around Christmas of '07 trying to get Mr. Jackson
25 to authorize our review or inspection of it.

1 Q Do you remember where that box came from?

2 A No, sir.

3 Q All right.

4 A I don't remember.

5 Q Have you ever reviewed the contents of that box?

6 A Very briefly.

7 Q All right.

8 A Mrs. Pope spent much more time with this box than I
9 did.

10 Q All right, sir. Do you know if there's -- or do you
11 recall if there is evidence actually from Mr. Herring's
12 files which indicate that he met with James Brown on more
13 than one occasion?

14 A I just don't remember.

15 Q All right, sir. Do you remember if there is
16 communication -- written communication in that box from
17 Mr. Herring to James Brown other than the letter that
18 you're holding right there?

19 A I just don't recall.

20 Q Either way.

21 A Either way.

22 MR. BYRD: If Your Honor please, that box has been
23 introduced into evidence by Mr. Levenson at some hearing,
24 but we'd like to make sure that it is part of the record
25 in this matter and would move to introduce it specifically

1 in this proceeding, Your Honor.

2 THE COURT: Any objection?

3 MR. MEDLIN: Your Honor, we just want to make sure
4 that this isn't the Tom Wells box if we could look at it
5 for one minute to make sure.

6 MR. LEVENSON: And, Judge, if it will help, I do
7 think when we were here the last time I did move the court
8 consistent with what Mr. Byrd has just said that any
9 evidence introduced in any hearings would be part of the
10 evidentiary record for this matter present before the
11 court so that any evidence you heard or any documents that
12 have been introduced would be part of what is to be
13 considered including that box if it was, in fact, admitted
14 previously.

15 THE COURT: Any objections to this box?

16 Mr. Byrd, I think it's already in evidence, but as an
17 abundance of caution you can mark it again for this
18 particular hearing.

19 MR. BYRD: Thank you, Your Honor.

20 THE COURT: We've put everything that's ever been in
21 in evidence.

22 (Whereupon, Byrd's Exhibit No. 2 was marked for
23 identification and received into evidence.)

24 Q Mr. Buchanan, the family court order that was the
25 subject of your testimony earlier today --

1 THE COURT: Look on your desk for number 8, please.

2 THE WITNESS: Here it is.

3 Q Now, exhibit 8 -- that's the family court order and
4 what is the caption of that case Mr. Buchanan?

5 A Tomi Rae Hynie aka Tomi Rae Brown, Plaintiff, versus
6 Javed Ahmed, Defendant.

7 Q James Brown is not a party to that case; right?

8 A Right.

9 Q Okay. That order would not be binding on James
10 Brown, would it, as far as you know in connection with the
11 context of --

12 MR. MEDLIN: Your Honor, objection. That calls for a
13 legal conclusion.

14 THE COURT: It does. Sustained.

15 Q Do you have any idea what evidence was introduced, if
16 any, in that proceeding which led to that order of
17 annulment, Mr. Buchanan?

18 A No, sir.

19 Q Mr. -- excuse me. Professor Medlin questioned you
20 about Mr. James Brown cutting his putative son
21 James Brown, II out of his will. Do you remember that
22 line of questioning?

23 A Yes, sir.

24 Q Do you understand that this settlement that these
25 folks have entered into gives nothing to James Brown, II?

1 A I don't know what it gives to James Brown, II.

2 Q Okay.

3 A Because it has yet to be specified.

4 Q The agreement -- Have you seen the agreement as it
5 now exists?

6 A Well, I don't know what the agreement is. The last
7 thing that I have seen is the Powell Goldstein document
8 3/23 that changes it. It changes what the August 10
9 version and changes the January 10 version and that's the
10 most recent thing I've seen and I haven't seen anything
11 signed with respect to that.

12 Q All right, sir.

13 A Whatever verifications or things like that that were
14 signed were dated earlier than 3/23. So, I don't know
15 what it is. It just seems to keep moving.

16 Q Well, ultimately, whatever that agreement is that is
17 submitted to His Honor will be the agreement. Under the
18 will of August 1, 2000 -- James Brown's will -- did he
19 give anything to any of his children? Personal household
20 effects. Do you recall that?

21 A Yes, sir.

22 Q Do you remember specifically who was to receive those
23 assets?

24 A I'd have to look at it to see the names.

25 MR. BYRD: I have no further questions, Your Honor.

1 THE COURT: Mr. Jones, Mr. Nicholson?

2 CROSS-EXAMINATION

3 BY MR. NICHOLSON:

4 Q Good afternoon, Mr. Buchanan.

5 A How are you?

6 Q Good. Do you recall your earlier testimony today
7 where you indicated that you would have trouble believing
8 anything that David Cannon testified to?

9 A Yes, sir.

10 Q Do you recall testifying that you would have trouble
11 believing some of what Mr. Dallas says, but not all of
12 what Mr. Dallas says?

13 A I do. I do.

14 Q Okay. Are you aware that Mr. Cannon is under
15 criminal investigation by the attorney general's office?

16 A I've heard that.

17 Q And earlier you testified that Mr. Herring would be a
18 good place to start regarding the discovery of this case
19 were discovery to continue; is that correct?

20 A Well, I think I testified that that would be an
21 important piece of deposition testimony.

22 Q Mr. Herring would be an important witness for this
23 case, correct?

24 A I think so.

25 Q All right. Do you have any reason to believe

1 Mr. Bradley's credibility has been questioned in this
2 court?

3 A Well, it's been so long since I've thought about
4 Mr. Bradley. Mr. Bradley was sort of on the sidelines and
5 he was sort of along with Mr. Dallas and Mr. Cannon and
6 then later with Mr. Dallas.

7 Q So it would be --

8 A And, you know, I mean, I do remember his testimony
9 generally concerned me, but I can't remember specifically
10 why.

11 Q Okay. And you recall from your complaint against
12 Mr. Dallas, Mr. Bradley, and Mr. Cannon, Greenberg Traurig
13 and Joel Katz where there's a paragraph in there where
14 y'all have alleged undue influence over Mr. Brown in
15 relation to his business interests?

16 A You talking about what I read earlier?

17 Q Yes, sir.

18 A Yes, sir.

19 Q All right. Do you recall when that complaint was
20 filed?

21 A That complaint was filed in early February of 2008
22 and then the amended complaint was filed I think in March,
23 maybe April.

24 Q Okay. And you recall your earlier testimony -- we've
25 gone over this numerous times, but the application of the

1 blue --

2 THE COURT: Well, then why do we have to keep going
3 over it?

4 MR. NICHOLSON: I am just refreshing, Your Honor.

5 THE COURT: Listen, you don't have a jury over there.
6 I have heard this stuff seven days now. I've given y'all
7 all an opportunity to ask questions. The last couple of
8 questions have all been rehashing of what he's been
9 testifying to for two days. Mr. Nicholson, please.

10 MR. NICHOLSON: All right.

11 THE COURT: If you got new questions, ask them. I
12 can remember what he said.

13 Q Well, based on your answers previously to the Lukich
14 issue and the void ab initio issue of the family court
15 order issued in April 2004 and the credibility issues of
16 Cannon, Dallas, and Bradley and Mr. Herring being in
17 prison for life for murder --

18 THE COURT: He is not in for life. He is in for 30
19 years.

20 MR. NICHOLSON: -- 30 years, excuse me -- for murder,
21 wouldn't those particularly Cannon, Dallas, and Bradley
22 and Mr. Herring be the witnesses that the attorney general
23 would have to present in the trial of this matter to
24 disprove the undue influence that they allegedly exercised
25 over Mr. Brown?

1 THE WITNESS: They could be some witnesses you'd have
2 to present, but there are other witnesses, too.

3 Q Right. But those four -- the three former trustees
4 and the lawyer who drafted the will and estate trust
5 documents would be our main witnesses to disprove the
6 undue influence as alleged by Tomi Rae --

7 MR. BAILEY: Your Honor, I object to that. That is
8 not the proper evidence that would -- There is a
9 presumption that the will and the trust are valid under
10 the law. If there is going to be any proof to be
11 submitted, it has to be proven by the settling parties or
12 contestants to the will and trust to overcome that
13 presumption of validity of the will and trust.

14 MR. NICHOLSON: That's incorrect, Your Honor.

15 THE COURT: Overruled. Go ahead and ask your
16 question.

17 MR. NICHOLSON: Thank you, Your Honor.

18 Would not Mr. Cannon, Mr. Dallas, and Mr. Bradley and
19 Mr. Herring be important witnesses for us representing the
20 charitable beneficiaries to fight the undue influence
21 cases filed by five of the six children and Ms.~Hynie
22 Brown?

23 A It could be depending on what they present in their
24 case.

25 Q Okay.

1 A The opponents -- the persons who are attacking the
2 validity.

3 Q Okay. But we would be coming to court with
4 conflicted witnesses; correct?

5 THE COURT: With what kind of witnesses?

6 MR. NICHOLSON: Conflicted witnesses whose
7 credibility have been in question.

8 THE WITNESS: Well, you would have witnesses who were
9 not the driven snow.

10 Q How long would you envision the litigation in these
11 cases continuing if the settlement was not approved?

12 A I really -- I haven't really tried to make an
13 estimate. We haven't had time to do that.

14 Q You presented an affidavit in this case where you had
15 billed approximately 1700 hours worth of work from
16 November of '07 to February of '09; is that correct?

17 A It's whatever it says. I don't remember. If that's
18 what it is, that's what it is.

19 Q Well, coupling your 1700 hours with Mrs. Pope's 3000
20 hours in that time period billing at 325 an hour for each
21 of you, if you do the multiplication doesn't that amount
22 to around a little over a million and a half dollars?

23 A I haven't done the math and I didn't recall that we
24 were willing at that rate. I thought it was 300.

25 Q Three hundred? Well, regardless if it was 300 or

1 325, from November '07 to today y'all's fees are around a
2 little over a million dollars; correct?

3 A That's not all litigation, though. That's not
4 related to what's going on here. I mean, that's
5 everything that we've done as I recall that we bill for by
6 time.

7 Q But y'all would continue to bill at that rate would
8 the litigation continue and this settlement would not be
9 approved; correct?

10 A Well, we'll be -- what I understand is we'll bill at
11 that rate for as long as we're working --

12 Q Okay.

13 A -- whether it's -- whether we stop working, you know,
14 next week or three months from now or a year from now.
15 You know, our understanding was we'd be paid reasonably
16 for our time and effort and all of the factors that go
17 into determining fees. So...

18 Q And if a special administrator or special trustee was
19 appointed pursuant to your motion to review to handle the
20 estate matters while y'all continued with the litigation
21 that special administrator special trustee would also be
22 incurring fees against the estate and trust; correct?

23 A Yes, sir. But we wouldn't be doing what they were
24 doing.

25 Q But that would be another expense of the estate and

1 trust?

2 A And presumably they would be people that everybody is
3 happy with so they wouldn't be the subject of, you know,
4 continuous attacks. So, it would take less of their time.

5 Q Okay. Assuming the case doesn't settle if Ms.~Hynie
6 Brown were able to overturn the will and trust what would
7 be her share under the estate and trust?

8 THE COURT: Mr. Nicholson, don't make me fuss.
9 Professor has been through that ad nauseum. Well, strike
10 that. Not quite that bad. It has been -- I mean, I don't
11 know how many times we got to put this in the record.

12 MR. NICHOLSON: Okay.

13 THE COURT: Just because y'all all represent
14 different people don't mean you have to keep getting the
15 same stuff out of him. I know what the effect is win,
16 lose, or draw on these things.

17 MR. NICHOLSON: Okay. Your Honor, let me just check.

18 THE COURT: I am not fussing at you. You're a young
19 lawyer. Please don't take it the wrong way.

20 MR. NICHOLSON: I don't have any further questions,
21 Your Honor.

22 THE COURT: Now you're a smart lawyer. Seriously, if
23 you got something new, ask it.

24 MR. NICHOLSON: I understand, Your Honor, but, I
25 mean, we represent the attorney general. They don't. So

1 I got to make sure it's on the record on our behalf.

2 THE COURT: Well, it's -- you know, it's in the
3 record. Whether it's on your behalf or not your behalf,
4 it's in the record.

5 MR. NICHOLSON: Yes, sir. I understand.

6 THE COURT: All right. Who is left?

7 Ma'am, do you feel that you would really rather
8 Mr. Shahid do it tomorrow?

9 MS. GROEBER: I will go ahead and do it. I will make
10 every effort not to repeat any questions.

11 THE COURT: I will not fuss at you.

12 MS. GROEBER: Thank you. I appreciate that, Your
13 Honor.

14 THE COURT: I'll be glad to -- I would really like to
15 finish up. There can't be a too many novel questions left
16 to ask.

17 MS. GROEBER: I just have have a few.

18 CROSS-EXAMINATION

19 BY MS. GROEBER:

20 Q Mr. Buchanan, I am Erin Groeber. I'm here for
21 Mr. Shahid representing Stephen Slotchiver, the guardian
22 for James Brown, II.

23 A Yes, ma'am.

24 Q I'll try to keep it short. I'm sorry. You've read
25 all of the pleadings filed in this case?

1 A Well, I've tried to read them all. There a lot
2 that's been filed.

3 Q I understand that. I have seen the state of our
4 office right now. Do you remember reading Tomi Rae Hynie
5 Brown's affidavit of March 4, 2008?

6 A I can't -- I mean, I can't remember March 4, 2000.
7 If you have it, I'll look at it and see.

8 MS. GROEBER: Your Honor, I have it right here. May
9 I approach the witness?

10 THE COURT: You may let him look at it and see if he
11 reviewed it.

12 THE WITNESS: You know, to be honest with you I've
13 seen some of this information somewhere. Now, whether I
14 read this particular one I can't tell you, but -- and,
15 again, we just -- we have an onslaught of things that come
16 in.

17 Q So, is it your testimony that you don't remember if
18 you have read this particular affidavit?

19 A I don't remember that I've read this particular
20 affidavit. Some of what's included in here looks
21 familiar, but I don't know whether the source of it is
22 this affidavit or other information that's been sent to
23 me.

24 Q Do you remember ever seeing James Brown, II's birth
25 certificate which is attached to that affidavit?

1 A Is that exhibit A?

2 Q I think so.

3 A You know, as I sit here I don't know whether this is
4 -- I don't know whether it's something that I saw as early
5 as December of '06 or January of '07 or whether this is --
6 it looks like this copy was made January 10 of 2007.

7 Q Do you remember seeing that birth certificate at some
8 point during your review of this file?

9 A I don't have a specific memory. I can't tell you
10 that I have or I haven't.

11 Q Have you ever seen the Screen Actor's Guild insurance
12 form listing James Brown, II as Mr. Brown's son?

13 A I could have seen it, but, you know, I can't tell you
14 when.

15 Q In coming to your conclusions and your opinions in
16 this case how much weight, if any, did you give to James
17 Brown, II's birth certificate?

18 A Well, let me put it this way. I was much more
19 interested in the DNA.

20 Q Okay. Let's talk about the DNA. Have you seen a
21 letter from Mr.~Shahid to James Bailey referencing the
22 paternity tests of James Brown, II?

23 A I could have. Do you remember when?

24 Q I think it's actually admitted into evidence as
25 Shahid's 3. Would you like to see that?

1 A Well, if you're going to ask me about it, I'd like to
2 see it.

3 Q Your Honor, may I?

4 THE COURT: I assume it's up there.

5 MS. GROEBER: I'm sorry?

6 THE COURT: I assume it's right over there.

7 MS. GROEBER: I just saw it over here.

8 THE COURT: It's in evidence. Do you have a copy of
9 it?

10 MR. MICHEL: Here is a copy of it. I think it's in
11 evidence already as 3.

12 Q Could you read that first paragraph to me, please?

13 A "Please find enclosed a copy of the paternity
14 screening report signed by Robert M. Archer, Jr., dated
15 April 18, 2008. The report contains the conclusion that
16 the late James Brown is the biological father of James
17 Brown, II, with a 99.999975 percent probability."

18 Q I understand Mrs. Pope previously testified that the
19 only way to determine if James Brown, II is Mr. Brown's
20 son is to subject him to another paternity test?

21 A Well, before we were actually involved -- I think
22 before we were even special administrator or maybe
23 sometime contemporaneously with our appointment as special
24 administrator -- Judge Peebles who was at that time
25 representing the estate and trust set up -- made

1 arrangements with a testing laboratory, developed protocol
2 for anybody and everybody who was interested to be tested
3 and we have actually paid for James to test.

4 Q Mr. Buchanan, what's the basis of your concern over
5 the test that's indicated in Mr.~Shahid's letter?

6 A Well, as I recall the test result there was some
7 inconclusive data associated with -- I don't remember
8 whether it was specimens or what, but there was some
9 caveats related to the report that was sent.

10 Q Is it inconclusive data that would account for the
11 99.999975 percent likelihood?

12 A I don't remember what it was. Do you have a copy of
13 it?

14 Q I don't believe it's been admitted into evidence.
15 Mr. Buchanan, what information did you rely on in your
16 decision to challenge James Brown, II's paternity?

17 A The fact that he's not had the official DNA that was
18 set up for the purpose of testing persons who were
19 interested in this estate and trust.

20 Q How many autobiographies did the late Mr. Brown
21 publish in his lifetime? Do you know?

22 A No, I don't.

23 Q There's been reference to at least one today. Have
24 you read that autobiography?

25 A No, ma'am.

1 Q Have you read any parts of it?

2 A I may have -- I may have seen -- I can't tell you
3 that I haven't been shown a page out of it or something
4 and I can't -- That's entirely possible and I don't know
5 who would have shown it to me. It could be anybody over
6 there, somebody over here. Somebody could have shown me a
7 page out of that book.

8 Q In forming your opinions and conclusions in this case
9 did you give any information from that book any weight?

10 A No, ma'am.

11 Q Did you ever think it would be important to read that
12 book which came from Mr. Brown's own words?

13 A Well, I don't know that the book came from
14 Mr. Brown's own words. I haven't read it and I don't --
15 haven't done any investigation to determine whether or not
16 that book contains his own words.

17 Q Do you think that --

18 A At least by me, okay? Do I think it's important to
19 read the book? I think it would be helpful to read the
20 book and I might read the book.

21 Q So, you think it would be helpful to read the book to
22 determine Mr. Brown's wishes?

23 A Well, you know, my focus on Mr. Brown's intent is
24 really the will and the trust of August 1, 2000.
25 Mr. Brown's testamentary intent, the intent of the

1 decedent, I think -- Those are the important documents.

2 Q And that will and trust was executed August of 2000?

3 A Yes, ma'am. Yes, ma'am.

4 Q And James Brown, II was born in June of 2001;
5 correct?

6 A I'll take your word for it. I don't know.

7 Q June 11, 2001, actually. So, therefore, the will was
8 created at least 10 months before James Brown, II was
9 born?

10 A Assuming that's the date of the birth. If you tell
11 me that, I'll believe you.

12 Q Okay. If James Brown, II is the son of Mr. Brown he
13 would be entitled to receive a portion of the estate as a
14 pretermitted heir; correct?

15 A Not necessarily.

16 Q On what grounds would he not if he is the son?

17 A Well, if the will -- if the intent to not provide for
18 him is within the four corners of the will.

19 Q Is that intent within the four corners of the will?

20 A It's pretty clear what his intent was. It was to
21 leave his personal and household effects to certain named
22 persons and to leave the remainder to a trust that had two
23 sub-trusts.

24 Q If James Brown, II weren't born at the time that he
25 wrote that will, he would be a pretermitted heir; correct?

1 A He certainly would be a child born after the will.

2 Q Yes. What is your understanding of what a
3 pretermitted heir is entitled to?

4 A You know, do you have the statute? We can do get
5 this done a lot quicker if we can look at it.

6 Q I don't have a statute with me. I was just seeing if
7 you had an understanding of that.

8 A Well, you know, there is a pretermitted wife,
9 pretermitted child. The wife is 50 percent if she
10 succeeds in her claim and I just have to check the statute
11 on the child.

12 Q Are you aware that little man was ousted from his
13 home immediately after his father's death?

14 A I recall -- and this was long before I had any
15 involvement or any interest in the estate trust, but I
16 recall generally that there was some media attention right
17 along about that time that had to do with Tomi Rae Hynie
18 and little man and the home. I remember that.

19 Q Are you aware that his health insurance benefits were
20 terminated shortly after his father's death?

21 A I don't recall that.

22 Q I understand that you believe you and Mrs. Pope
23 understand Mr. Brown's estate better than anyone; is that
24 correct?

25 A What do you mean?

1 Q Do you believe that you understand -- you and
2 Mrs. Pope understand his estate better than anyone?

3 A What do you mean by his estate?

4 Q Well, the will and trust and the assets in the
5 estate.

6 A What I will tell you is that based on all the facts
7 and circumstances known to me at this time from the time I
8 have expended in the matter and based on what I've heard
9 and what I've read that is that I have every reason to
10 know that Mr. Brown expressed his intent and his will and
11 trust that were dated August 1 of 2000.

12 Q Do you believe there is anyone that better
13 understands what his intent was than you and Mrs. Pope?

14 A I don't know how to answer that question.

15 THE COURT: You don't have to.

16 Move along, ma'am.

17 MS. GROEBER: Okay.

18 THE COURT: I am being patient.

19 Q How many hours a week do you spend on this case on
20 average?

21 A It depends on the week. Some weeks I haven't done
22 anything but this. I mean, there are some weeks that I
23 have just spent the entire week doing this and there are
24 other weeks where I've spent -- you know, there have been
25 weeks where I've had days that I didn't spend more than

1 two hours on it.

2 Q Can you give me an average of how many hours a week
3 you spend?

4 THE COURT: Ma'am, he submitted his affidavit on his
5 time. Please move along.

6 THE WITNESS: I couldn't. I wouldn't want -- I'd be
7 guessing unless I sat down with a calculator and tried to
8 figure it out based on a period of time, a unit of time.
9 I'd just be guessing.

10 MS. GROEBER: Your Honor, I think that's all for me
11 right now. Thank you.

12 THE COURT: Thank you, ma'am.

13 Who does that leave? Mr. Bailey?

14 MR. BAILEY: Your Honor, we have no questions of
15 Mr. Buchanan, but we do reserve the right to call him in
16 our presentation.

17 THE COURT: All right. I think that covers the
18 bases.

19 MR. LEVENSON: May I have one follow-up on this
20 letter issue?

21 THE COURT: You may.

22 RECROSS-EXAMINATION

23 BY MR. LEVENSON:

24 Q Mr. Buchanan, you have the letter that Mr. Byrd
25 showed you?

1 A I think I put it back over here.

2 Q This is Byrd 1.

3 A Okay.

4 Q Question --

5 A Yes, sir?

6 Q Prior to it being shown to you here today in the
7 courtroom have you ever seen it before?

8 A I can't remember.

9 Q Why can't you remember?

10 A I just don't remember whether I've seen it before. I
11 mean, you know, when I got this box for you it was
12 sometime in December of '07. So, I mean, it's been a
13 while.

14 Q All right, sir. So now that you've looked --

15 A I don't think that I've looked at the box, you know,
16 much more recently than that.

17 Q Now that you have looked at it, is this the smoking
18 gun?

19 THE COURT: Wait a minute. That's not a question.

20 Q Let me ask it another way. Does this help your
21 analysis of the understanding that you believe of the
22 estate plan of James Brown?

23 A Well, if you'll give me a minute I'll read the
24 letter.

25 Q Well, if you haven't ever read it before today or you

1 have no recollection of it, maybe I'll withdraw the
2 question then.

3 THE COURT: Well, are you or are you not?

4 MR. LEVENSON: I am; yes, sir.

5 What is the date on the letter?

6 THE WITNESS: April 2, 1999.

7 Q The will that is the subject of the will contest and
8 the trust contest is the date August 2000; correct, sir?

9 A Yes, sir.

10 Q So, what's the months -- how much months are we
11 talking about the date of the letter that is Mr. Byrd's
12 exhibit and the date of August 1?

13 A About 20 months.

14 Q Twenty?

15 A Well, it's April of '99 and we're going to August of
16 2000. So, well, no --

17 THE COURT: Sixteen.

18 THE WITNESS: Yea. I added instead of subtracted.

19 Q A year and some months; correct?

20 A Right.

21 Q Do you believe that that letter whatever its contents
22 reflects the state of undue influence or lack of undue
23 influence upon James Brown on or about August 1 of 2000?

24 A Well, you know, we're talking about a period of time
25 within a couple of years. We're talking about '99 and

1 2000 instruments that were drafted that were fairly
2 similar. We're talking about a period of time that I
3 think Mr. Herring might have been involved in -- I can't
4 remember, '96 to the date of the instruments in August of
5 2000 or whether it was '98, but it was a period of a
6 number of years that he was involved.

7 Q With regard to --

8 A So, you know, I think -- you know, it's, obviously,
9 one piece of the file.

10 MR. LEVENSON: That's all I have. Thank you.

11 THE COURT: Thank you. I think that concludes
12 everybody, does it not?

13 Bob, you may step down.

14 THE WITNESS: Thank you, sir.

15 THE COURT: Professor Medlin, next witness.

16 MR. MEDLIN: Your Honor, we have no witnesses, per
17 se, at this time but you did ask us to have available
18 today the person that we would propose to be the successor
19 personal representative and trustee under our settlement
20 agreement and that would be Mr. Russell Bauknight and he
21 is here in the courtroom today. We don't plan on calling
22 him, but, of course, Your Honor, if you want us to we
23 will.

24 THE COURT: All right. The attorney general have any
25 witnesses in regards to the settlement?

1 MR. NICHOLSON: No, Your Honor. We don't have any
2 further.

3 THE COURT: Mr. Levenson, any witnesses?

4 MR. LEVENSON: No, sir.

5 THE COURT: Ma'am, any additional witnesses?

6 MS. GROEBER: No, Your Honor.

7 THE COURT: Mr. Byrd?

8 MR. BYRD: No, sir.

9 THE COURT: Mr. Bodman?

10 MR. BODMAN: No, sir, Your Honor.

11 THE COURT: Mr. Bailey?

12 MR. BAILEY: No, Your Honor. Oh, I thought you --
13 for me to call someone?

14 THE COURT: Well, you keep saying when you present
15 your side.

16 MR. BAILEY: I'd like to if we could have a 15-minute
17 break so I can talk with Mr. Buchanan and Mrs. Pope and
18 then --

19 THE COURT: That's fair.

20 MR. BAILEY: -- go from there.

21 THE COURT: All right. We'll just -- it's 3:20.
22 We'll start back at about 3:35. Thank you.

23 (Whereupon, a break was taken.)

24 THE COURT: Mr. Bailey?

25 MR. BAILEY: I'm sorry. Ms. Hayes is going to

1 present a motion to the court.

2 THE COURT: Mr. Bailey, what kind of motion?

3 MR. BAILEY: For a directed --

4 THE COURT: I am taking testimony to decide whether
5 we'll approve this agreement or not.

6 MR. BAILEY: Well --

7 THE COURT: Do y'all have any testimony to put up?

8 MR. BAILEY: We had wanted to submit our position
9 much like in the trial of a case. They have concluded
10 their case. We wanted to make a motion that they have not
11 met their burden. They have not provided the court with
12 the documents that are necessary for the court to review
13 and approve, and, I mean, there is various reasons that we
14 have and we -- that was our position was to proceed on
15 that.

16 THE COURT: Go ahead.

17 MR. BAILEY: Ms.~Hayes is going to --

18 MS. HAYES: Thank you, Your Honor. I apologize for
19 being late this morning.

20 THE COURT: You're fine. Go ahead.

21 MS. HAYES: Thank you, Your Honor. With a lot of
22 these matters we have previously raised to the court in
23 continuing objections and previously filed motions. So,
24 I'll begin with the new items, Your Honor. We move for a
25 directed verdict against proposed settlement based on

1 certain defects in the proposed settlement including but
2 not limited to the affidavits of the settling party and
3 these were attached to the continuing objections that we
4 filed this morning and I believe Mr. Bailey handed that up
5 to the court.

6 We make reference to Mr. Bailey's March 23 letter to
7 the court. I believe it was sent by e-mail to everyone
8 and attached as an exhibit to the objections. We
9 specifically object to the affidavits. Two of them refer
10 to persons as minors who are no longer minors. So, we
11 object to them not being here to tell the court --

12 THE COURT: Ma'am, I am not quite sure what you're
13 doing. Are you making a motion for directed verdict and
14 now you're objecting to stuff?

15 MS. HAYES: Well, Your Honor, I am reiterating the
16 grounds that we have these objections to explain that the
17 parties have not yet met their burden. After four or five
18 days of testimony there is no showing that some of the
19 proposed settling parties are in agreement or that they've
20 had the advice of counsel and I won't read through the
21 letter -- I think Your Honor already has it -- of
22 March 23.

23 The most important item, Your Honor, I think for the
24 directed verdict is that the settling parties have not
25 shown a critical statutory element; that is, that a

1 controversy exists -- present tense, exists -- in good
2 faith. Not one single affidavit submitted by the settling
3 parties includes those words -- good faith. They say I
4 believe the settlement is fair to me, equitable to me, in
5 my best interest. Not one single affidavit has those two
6 very important words from the statute. There must be a
7 current good faith controversy. And not one party --

8 THE COURT: Can you tell me -- Ma'am, can you tell
9 me as an officer of this court that there is not a
10 controversy going on?

11 MS. HAYES: Oh, there are many controversies, Your
12 Honor, but we believe that good faith comes down to what
13 is in that party's mind -- not necessarily when they filed
14 the action, but their impression of the action that's
15 pending, not whether or not it's reasonable for a
16 reasonable man or a reasonable woman to disagree about
17 certain items, but these particular proposed settling
18 parties. Did they bring the action in good faith and we
19 submit there is absolutely no evidence that they filed it
20 in good faith.

21 It would have been very simple for one or more
22 parties to show up and testify as to why they filed --
23 that we don't have to prove it, you know, as to the merits
24 or they could have been included in their affidavit. We
25 continue to object the the fact that these affidavits are

1 being accepted in lieu of live testimony.

2 Your Honor, the other defect in the proposed
3 settlement not all competent successors are part of the
4 proposed settlement, nor is it in the best interest of the
5 estate and trust. The proposed settlement will likely
6 cause unnecessary taxes. I am referring to the testimony
7 of Mrs. Pope. It will cause substantial loss to the
8 charitable trust. It will likely cause additional
9 litigation.

10 We've been over our concerns about in particular the
11 minor James Brown, II. We are concerned about the effect
12 of whether any proposed agreement will be binding as to
13 him if signed by only his mother. We do agree that the
14 statute says typically a parent would sign on behalf of
15 the child. Here we do believe there is a conflict of
16 interest between his interest and Ms.~Brown's interests.

17 THE COURT: I had lawyers arguing to me the other day
18 about what a statute says, and what it says is as plain as
19 it says that a parent can sign for a child. What else
20 does it mean?

21 MS. HAYES: But we believe that there's a -- I mean,
22 we have to look at it on a case-by-case basis, your Honor.
23 If there are conflicts of interest, there are always
24 exceptions to any rule or provision if there is a conflict
25 of interest. We believe here there is a conflict of

1 interest. James Brown, II is not included as a named
2 party to the settlement agreement. It just simply goes to
3 his mother. We have concerns about that, Your Honor.

4 There is no evidence that the final agreement is
5 fair, equitable, and reasonable. We didn't have --
6 Proposed expert testimony was offered. However, it wasn't
7 given to a reasonable degree of certainty. The proposed
8 expert testimony should be stricken or disregarded because
9 it did not pertain to the amended final agreement.

10 The testimony offered by Mr.~Bauknight pertained to
11 the agreement as it existed on August 10, not the one that
12 we received a couple of days ago. At this point the
13 settling parties have rested their case. It's all in
14 evidence. We don't have any testimony that this new
15 amended agreement with several new provisions is in the
16 best interest of the estate and trust. The expert
17 testimony also lacked foundation as to this particular
18 case. The proposed expert reviewed a few of the thousands
19 of documents. It's also irrelevant as to this particular
20 case.

21 We're also moving for directed verdict based on the
22 case of Russell versus Wachovia, Supreme Court case
23 opinion number 26190. Judge Russell was finally awarded
24 the respect of a competent testator and settlor after
25 lengthy appellate proceedings and we would submit that

1 Mr. Brown is entitled to the same respect. There is no
2 showing that he lacked competency at the time he executed
3 either of the two alternate estate plans. There is no
4 showing of undue influence at the time he executed those
5 documents, and there is certainly no showing that he had
6 any intent to devise any other estate plan than what we
7 have in the four corners of those documents, Your Honor.

8 And, Your Honor, also, I won't belabor the points
9 that we've made several times before, but we reiterate and
10 move for a directed verdict as to jurisdiction, personal
11 jurisdiction over certain parties who are not necessary --
12 they are necessary parties, but have not been added to
13 this case and their presence is very important. They
14 should be here and we would also submit their concurrence
15 is required. Any potentially beneficially-interested
16 parties would need to agree with any settlement agreement
17 that would purport to change their interest or the
18 interest of a trust of which they may be beneficiaries.

19 We've listed out particular parties we're concerned
20 about: Lisa Brown, Jeanette Mitchell, LaRhonda Petit,
21 Vorhees College, USC Salkehatchie, USC Aiken, Doe
22 Defendants, Lumar children, James, II. There are also --
23 for parties who are named there are no certificates of
24 service on file.

25 We would also submit that the attorney general does

1 not have authority to enter into and bind the estate or
2 trust and mix charitable and non-charitable trusts. The
3 attorney general does have the authority to protect -- to
4 enforce the application of those funds. We submit he does
5 not have the authority in South Carolina to enter into a
6 binding contract or agreement that would reduce or
7 diminish the charitable trust in any way.

8 All of the challenges to the 2000 trust are barred by
9 the applicable statutes of limitations. No viable action
10 or good faith controversy exists as to these matters.
11 They don't exist in good faith if they're not viable or
12 barred by the statute of limitations and we would submit
13 that a hearing on those motions prior to the approval or
14 denial of the motion for settlement would promote judicial
15 economy because it could dispose of them summarily, Your
16 Honor, as well as any summary judgment motions, various
17 motions to dismiss.

18 We've already raised the notice issues. Mr. Buchanan
19 was not present for several days of testimony. I won't go
20 all over all of the due process concerns. We've already
21 raised those, Your Honor. We move for a directed verdict
22 as to parties who are not heirs. All the claims by the
23 following parties should be dismissed as follows:
24 Ms. ~Hynie Brown under Lukich v Lukich and we'd be happy to
25 submit a memorandum of law as to that issue, Your Honor,

1 but we would submit that she hasn't met the burden of
2 proof that she was a spouse of Mr. Brown. Plaintiffs
3 failed to prove their status as heirs of James Brown by
4 either DNA testing, proof of a valid marriage, or other
5 legally sufficient proof. So, therefore, they're presumed
6 not to be heirs at this point in the case. James Brown,
7 II, was born during the marriage of Mr. Ahmed and
8 Ms.~Brown prior to the 2004 annulment, hasn't met his
9 burden of proof that he's the biological child of
10 Mr. Brown through the court-ordered or court-recommended
11 DNA test. Daryl Brown was not born of the marriage of
12 James Brown and has not met his burden of proof that he is
13 the biological child of James Brown.

14 We also move for a directed verdict as to violation
15 of the in terrorem or no contest clauses, Your Honor, for
16 specific reasons, and all of these reasons are basically
17 based on the Russell versus Wachovia case. I refer to
18 Mrs. Thomas -- Deanna Brown Thomas, excuse me, who
19 accepted a position as trustee and thereafter without
20 probable cause challenged the validity. We refer to
21 Russell for that holding. Mrs. Yamma Brown Lumar violated
22 the clause by accepting a position as an adviser to the
23 trustee and thereafter we assert without probable cause
24 challenged the validity. Mr. Terry Brown confirmed the
25 validity of the James Brown 2000 irrevocable trust in open

1 court, but then joined the settling parties. Mr. Forlando
2 Brown filed suit in Federal Court to enforce the trust,
3 then joined the settling parties. Sidney and Harrington
4 Lumar improperly represented by Mr. Levenson or other
5 counsel through their deceased father accepted the
6 education funds and thereafter without probable cause
7 through their mother Mrs. Yamma Lumar contested the
8 validity of the James Brown 2000 trust. Jason Brown Lewis
9 previously represented by his mother now on information
10 and belief is an adult but contested the validity of the
11 trust which his mother had accepted benefits on his
12 behalf.

13 On or about August 1, 2008 certain purported
14 grandchildren of James Brown through their attorney
15 requested entitlement to receive educational benefits by
16 challenging the validity of the James Brown 2000
17 irrevocable trust. We would submit that if the settlement
18 doesn't go through these claims are barred under the
19 clauses of Mr. Brown's will and trust. His estate plan
20 would bar them from receiving benefits, and, Your Honor,
21 if the court would indulge, I would check with co-counsel.

22 THE COURT: Ma'am, I am not cutting you off.

23 MS. HAYES: Thank you, Your Honor.

24 (Whereupon, the attorneys conferred.)

25 MS. HAYES: And, Your Honor, also we would submit

1 that the DNA testing is relatively inexpensive. I know
2 the estate has already paid for James Brown, II's test and
3 I am not aware of the cost, but we don't think it would be
4 very expensive or time-consuming to have that done. I
5 don't know whether physically it's intrusive, but we would
6 submit that there is no evidence that it shouldn't be
7 conducted.

8 And, Your Honor, too, we mentioned in the objections
9 that we filed this morning that as of today there is no
10 written settlement agreement in evidence. So, on that
11 basis alone directed verdict should probably be granted
12 against the proposed motion for settlement. Thank you,
13 Your Honor.

14 THE COURT: Professor Medlin, do you want to respond?

15 MR. MEDLIN: Thank you, Your Honor. I am going to
16 respond briefly because --

17 THE COURT: Where is the signed agreement?

18 MR. MEDLIN: We sent in affidavits and I think
19 Mr. Jones sent all of that in on Monday, Your Honor. You
20 had asked us last time to be prepared at some point to
21 discuss the complexities and issues of case and assuming
22 that that is still going to happen at some point in this
23 hearing --

24 THE COURT: Well --

25 MR. MEDLIN: -- I am going to not go into depth in a

1 lot of the issues.

2 THE COURT: Well, I suggest that you go into it
3 because they got a motion for me to direct a verdict. So,
4 this is as good a time as any to lay it all out.

5 MR. MEDLIN: Well, thank you, Your Honor.

6 THE COURT: If you're prepared.

7 MR. MEDLIN: I am prepared, Your Honor; but I also
8 think I can make the major points to dispense with those
9 arguments at this stage if there even is such a thing as a
10 directed verdict in --

11 THE COURT: Well, I don't know if it is or not, but I
12 am going to treat it as it is. So --

13 MR. MEDLIN: Okay.

14 THE COURT: -- I assume that you need to --

15 MR. MEDLIN: Well, Your Honor --

16 THE COURT: -- make whatever argument that you want
17 to make.

18 MR. MEDLIN: Thank you. I will just touch on some of
19 the points that Ms.~Hayes made. The fact that the
20 affidavits don't contain a statement that the controversy
21 is in good faith does nothing to dispel the notion that
22 there was a good faith controversy in this case. In fact,
23 the evidence that's been presented not only in this
24 hearing but incorporated from all of the other hearings
25 and just the history of this case which Your Honor is

1 familiar with demonstrates that the settling parties
2 certainly have reasons to argue about the issues that we
3 were arguing about. And I am not going to detail those,
4 Your Honor, unless you feel the need to do that.

5 THE COURT: Well, I don't feel the need. I am not
6 going to keep you from making a record.

7 MR. MEDLIN: I understand, Your Honor, and, again, I
8 think that these issues may come out at a later point.

9 THE COURT: What do you mean by later point?

10 MR. MEDLIN: Well, Your Honor, if -- if you don't
11 approve the directed verdict, then I think you had asked
12 the lawyers at some point to talk to you about what we
13 consider to be the complexities of the case and how that
14 would impact what would happen if the settlement weren't
15 approved and I don't know if you still intend to do that.

16 THE COURT: I do intend to do that and this is just
17 as good a time, but you go ahead and respond to their
18 argument and then we'll address that.

19 MR. MEDLIN: Okay, your Honor. As to not all of the
20 competent successors being parties, much of this ground
21 was plowed with Mr. Buchanan's testimony the previous
22 Friday that we had testimony. The probate code doesn't
23 require all competent successors to be parties to the
24 settlement. In fact, under both sections 3-912 and 3-112
25 only the parties whose interests are being affected need

1 to be parties to the settlement agreement. Under section
2 3-912 of title 62 the private binding settlement agreement
3 which doesn't need court approval and under 62-3-1102
4 court approval of a settlement agreement where, Your
5 Honor, you step into the shoes of the fiduciary and make
6 the decision about the reasonableness, and if you
7 determine it's reasonable you can direct the fiduciaries
8 to sign the settlement agreement which demonstrates unless
9 we just are going to disregard the language of the
10 legislature that the personal representatives are not
11 empowered to veto a settlement agreement. They have a
12 voice and they've gotten a voice -- plenty of voice -- but
13 they don't have the power to veto.

14 A successor under the probate code as we saw when we
15 talked about this with Mr. Buchanan is simply someone who
16 can take an interest from the estate and all of the
17 settling parties certainly qualify as someone who can take
18 an interest under the estate. Mr. Levenson's clients
19 under the very will that the personal representatives
20 purport is the valid will and that our settlement would
21 uphold. Mr. Bodman's client -- since Mr. Bell is is not
22 here, Mr. Bodman's client, the same position. Ms.~Brown
23 who is under South Carolina law the surviving spouse of
24 Mr. Brown would be entitled to an omitted spouse's share
25 as much as 50 percent of the probate estate or at the very

1 least an elective share 33 percent and James Brown, II who
2 would have a pretermitted child's share. The idea that we
3 have to prove our cases before we settle is absolutely
4 counter-intuitive to the notion of a settlement.

5 I would think that, although, my client, for example,
6 Ms. Brown certainly had charitable intentions when she
7 settled with the parties including with the attorney
8 general, if we go through all of the machinations of
9 having the specious attacks on her and the validity of her
10 marriage continue and, in fact, the the court rules, once
11 again, in this state that she's the wife of James Brown,
12 she's going to be less generous the next time around
13 because she will take a bigger share of the estate and she
14 will still get those federal termination rights that are
15 contributed as part of the settlement.

16 So, the notion that the parties have to prove their
17 right to prevail to satisfy some burden of proof just to
18 settle a case is counter intuitive to a settlement. The
19 idea that if two parties are getting ready to file a
20 lawsuit and they decide to settle their differences that a
21 judge who might have heard about the lawsuit is going to
22 say, oh, no, you have you are have to come in here and
23 fight this out until we can determine who is right and who
24 is wrong -- I mean, it's absurd, Your Honor. I'm sorry.
25 It's just nothing but absurd.

1 As to the alleged conflict between Ms.~Brown and
2 James Brown, II you had asked us, Your Honor, in chambers
3 to present later and hopefully in chambers the private
4 agreement between Ms.~Brown and Mr. Slotchiver who is the
5 guardian ad litem for James Brown, II. Your Honor, I can
6 simply assert to the court now that there is such an
7 agreement in place. We really didn't need such an
8 agreement because Ms.~Brown leaves everything that she
9 will ever have to James Brown, II, but beyond that
10 Mr. Slotchiver has come to an agreement with Ms.~Brown
11 where immediately some of Ms.~Brown's recovery from the
12 estate will pass directly and solely for the benefit of
13 James Brown, II. In fact, James Brown, II is going to do
14 better than any other child under this settlement and it's
15 coming out of Ms.~Brown's share.

16 That's the reason the agreement doesn't get into that
17 detail, although the agreement does say that any share
18 that comes to James Brown, II does come out of Ms.~Brown's
19 share. She's been very generous with him and we'll be
20 able to demonstrate that, Your Honor, whenever you want us
21 to demonstrate that.

22 The idea that Mr. Bauknight's testimony as an expert
23 should be dismissed and disregarded because he looked at
24 only a few of the documents is, I would think, a slippery
25 slope for some of our fiduciaries here. How many

1 documents he looked at and the period of time he looked at
2 to do the bidding of this court and then to offer his
3 opinion about a couple of limited issues for which he is
4 an expert is something that the court will weigh. Again,
5 it's not something that we have the burden of proof. This
6 is a settlement approval. All the court has to decide is
7 that there was, in fact, a controversy that was in good
8 faith, that wasn't manufactured, and that the settlement
9 proposed is fair and reasonable.

10 The necessary party argument, Your Honor. Again,
11 just to be as brief as I can about it at this point we
12 covered that with Mr. Buchanan's testimony. First of all,
13 all parties to the settlement are parties to the
14 settlement, and, in fact, earlier on in this hearing we
15 stipulated with Mr. Griffin's clients and Mr. Barr's
16 clients that our settlement is not intended in any way to
17 effect any of their rights, and if there aren't any other
18 -- excuse me. If there are other or any necessary parties
19 who are not here at this hearing who have not been
20 properly noticed which is not correct because as we
21 demonstrated with Mr. Buchanan's testimony everybody here
22 is represented under the probate code, but even if that
23 were not the case our settlement specifically does not
24 intend to affect anybody's rights other than those of the
25 settling parties. So, we have all of the necessary

1 parties for many reasons.

2 The notion that our attempt to settle among ourselves
3 is defective because we didn't name every possible person
4 on earth who might show up and make a claim against the
5 James Brown estate is undercut by the very actions of the
6 fiduciaries who consistently when they want something such
7 as the payment of their fees or the sale of assets to pay
8 their fees don't bother to name the very parties that they
9 admonish us for not naming.

10 Ours is a different purpose. If there were other
11 necessary parties out there as long as we're not affecting
12 their rights under the South Carolina Probate Code we
13 don't need to name them, but they have been named. They
14 have been represented as we demonstrated during
15 Mr. Buchanan's testimony. For the issues that they're
16 raising, if they thought they were necessary parties they
17 should have raised it.

18 The pleading that they served last night -- the
19 summons and complaint -- demonstrates once again the
20 inconsistency of their position. They asked the attorney
21 general and only the attorney general to be a party to the
22 settlement of a case that would impact this entire estate
23 as I understand their position. They say that the
24 attorney general is a necessary party under 62-7-405(C)
25 because he represents the charities, but, yet, they say

1 that he is not qualified to represent the charities for
2 purposes of what we present to the court. I just don't
3 understand the consistency there, Your Honor -- the Corbus
4 litigation just being a latest example of how unless it's
5 something they want they don't care about naming parties.

6 The idea that we need to name three colleges named in
7 the 1999 trust that they don't even know is valid when
8 they never named those colleges. They never contacted
9 those colleges according to their testimony and
10 Mr. Buchanan rightly recognized from the stand that it's
11 the students who go to those colleges, not the colleges
12 that are the beneficiaries of a charitable trust.

13 Under their analysis under the 2000 trust where the
14 students can go to any educational institution in South
15 Carolina and Georgia we would have to name as a party
16 every educational institution in South Carolina and
17 Georgia as parties because those students can go there.
18 Again, on so many levels the idea that we don't have the
19 necessary parties here and that the attorney general isn't
20 qualified to represent the charities is just completely
21 without foundation under the law.

22 Ms.~Hayes mentions the burden of proof on the heirs.
23 Well, again, Your Honor, that is the purpose of the
24 settlement. Our burden to you in this hearing is simply
25 to show you that there is a good faith controversy and

1 that the settlement of that is fair and reasonable. There
2 is no burden to prove that someone would prevail that is
3 the surviving spouse, that is an omitted child or a
4 biological child. Again, if we were to do that, we may as
5 well try the entire case. It is absolutely
6 counterintuitive to the idea of a settlement -- again,
7 successors under the probate code defined very broadly as
8 to anyone who might take from the estate, and, certainly,
9 we have successors here.

10 Ms.~Hayes says that there is a conflict problem with
11 Mrs. Thomas and Mrs. Lumar because Deanna accepted a
12 position as trustee and Yamma accepted a position on the
13 advisory board, and, yet, they brought an action to
14 contest the will and the trust. If they truly believe
15 that, Your Honor, then we wasted about a year and four
16 months of the administration of this estate because they
17 weren't properly appointed as trustees. There is a
18 provision in Mr. Brown's document that they think is the
19 gospel that provides for the appointment of trustees, and
20 if there are remaining trustees, those trustees have
21 power. If there are no remaining trustees, the advisory
22 board has power.

23 They conveniently take the position that that the
24 advisory board was never properly constituted and that
25 there were no other trustees which why they don't have to

1 follow the procedure under the trust, but when it's
2 convenient for them to argue the other side of that --
3 and, again, Your Honor, they're fiduciaries. We're all
4 lawyers in the case making these arguments do you. We
5 have positions. They're fiduciaries. They have to be
6 fair and impartial in their positions to the beneficiaries
7 and before the court. It's a different perspective that
8 we expect from them, and the notion that they now argue
9 that Deanna and Yamma had valid positions dispels the very
10 notion that they were properly appointed which is going to
11 create more of a mess than I can even imagine compared to
12 what this case situation is already.

13 The Russell case. The Russell case simply says
14 something that's hornbook law. If there is not probable
15 cause to contest a will or a trust, then an in terrorem, a
16 forfeiture clause, a no contest clause can be enforced.
17 Your Honor, there are lots of cases out there where courts
18 bond over backwards not to enforce no contest clauses. In
19 fact, the Russell case is a fairly rare case where the no
20 contest clause is enforced, but it doesn't become an
21 overriding rule for any court to have to blindly follow
22 what's in the document.

23 The question is whether there was probable cause to
24 contest the document and there, I think, is one of the
25 biggest flaws in the fiduciary's arguments. The

1 fiduciaries say, We haven't read autobiographies; we
2 hadn't worried about the family court order and the fact
3 that Mr. Brown couldn't contest it anyway and that we are,
4 as Mr. Buchanan admitted on the stand, not in a position
5 to contest the family court order that says that Ms.~Brown
6 was never married to Javet Ahmed.

7 They rely a lot on some hearsay that they got from
8 three gentlemen whose credibility they dispute. They have
9 clearly shown a lack of an effort to conduct their own due
10 diligence to find facts in evidence that I think a
11 fiduciary acting fairly and impartially should do. Their
12 mantra is simply this: We know Mr. Brown's intent because
13 we can read the documents.

14 Well, if that were the case, Your Honor, then there
15 shouldn't be will contests or trust contests. It's
16 fallacious logic to assume that just because we have a
17 document it's consequently valid and, therefore, we must
18 follow its direction. There is an underlying notion which
19 has within the premise of this whole argument in this case
20 and which is the subject of our settlement that those
21 documents were never valid. They're not the gospel. They
22 don't in any way indicate the intent of Mr. Brown, and, in
23 fact, it's demonstrated by the 50 percent provision in
24 both those and the predecessor documents given to the very
25 people that we believe may have unduly influenced

1 Mr. Brown in creating those documents and that they
2 themselves have sued for undue influence, and I really
3 don't understand how they draw the line.

4 A will and the trust are the ultimate financial
5 document. A will is where someone is trusting the court
6 system to carry out his financial intentions to take care
7 of whatever it is that he wants to take care of.
8 Fiduciaries don't trust Mr. Cannon, Dallas, or Bradley as
9 to financial matters. Then they shouldn't believe the
10 will at all based on the undue influence. It didn't stop
11 at the will. The will would be the very embodiment of a
12 financial issue where they would exercise undue influence.

13 So, Your Honor, for all those reasons, and, again,
14 that's, I think, sufficient I hope to present the bullet
15 points of our argument. We don't think that the motion to
16 dismiss, directed verdict, or whatever it is has merit.

17 THE COURT: AG? Attorney general?

18 MR. JONES: Yes, sir, Your Honor. Thank you. I
19 reiterate the arguments that Professor Medlin made. I
20 would like to make a couple of comments, Your Honor,
21 concerning what we'd like for you to address your
22 attention on on the PR trustees' motion. I think we would
23 ask the court to recognize the roles that are before you
24 today. The role of the attorney general is to protect and
25 enforce the due application of the funds given or

1 appropriated for the charitable trust. We're here and the
2 caselaw is that when the attorney general comes into a
3 case involving charitable trust, it controls the
4 litigation and we've been actively involved in this case
5 since September of 2007 which Your Honor I know would
6 attest to.

7 We recognize our role. Under 62-3-1102 which Your
8 Honor has looked at and seen the comment from the model
9 act, the PR trustees don't recognize their role. It is
10 inappropriate for them to even make a motion for directed
11 verdict. I would ask Your Honor to recognize that based
12 upon the statute and based upon the comments. They come
13 in and Your Honor has allowed them to give their input.
14 Your Honor has received their input. Per the statute and
15 comments Your Honor steps into their shoes. Because of
16 the conflict that's set forth in the statute and in the
17 comments, they can't make a recommendation -- they can
18 make a recommendation, but they can't make a decision.
19 Your Honor steps into that position.

20 The same way with the charitable trust. We have
21 other interests involved in this court today, Your Honor,
22 but in the charitable trust the executive branch, the
23 chief legal officer in this state protects the interest of
24 the charitable trust under supervision of a court of
25 equity -- not under any supervision of any PR or trustee.

1 When we come in the case, Your Honor, we take over.

2 As they have mentioned section 405 of the probate
3 code and the trust code, it allows for trustees and
4 settlors to bring matters -- to make matters of the
5 charitable trust before the court only because of history
6 that the attorney general can't be everywhere. When the
7 attorney general comes in, he takes over.

8 The attorney general is not accountable to the PR and
9 trustees. The attorney general is accountable to Your
10 Honor and this court. I want to ask you, Your Honor, to
11 recognize the roles that we have and the roles they have
12 to make a motion for directed verdict when they don't
13 understand their position from the start. Remember, Your
14 Honor, when I asked Mrs. Pope on my examination, Well, how
15 does 1102 comment of the conflict apply to her? She said
16 it doesn't apply to her.

17 I just ask the court to look at the roles and make a
18 decision based upon those roles as Your Honor can, as the
19 attorney general present in the case, and recognizing the
20 roles of the PR trustees.

21 THE COURT: Mr. Jones, let me ask you this question.
22 You've been here since almost day one. You've been
23 involved as much as anybody. We have a document that
24 provides graciously to the needy children of this state
25 for educational purposes a substantial amount of money,

1 and the settlement takes away the percentage, I should
2 say.

3 MR. JONES: Yes, sir.

4 THE COURT: As a representative or as an attorney
5 general dealing with Mr. McMaster I am asking you have you
6 diligently examined all of the possible outcomes? Have
7 you examined all the documents and pleadings and
8 affidavits and court orders and caselaw and statutes? And
9 having done that, are you of the opinion that the
10 settlement is in the best interest of these needy
11 children?

12 MR. JONES: Without a doubt, Your Honor. The
13 Attorney General, as I mentioned to you earlier on, has
14 not restricted me on any resources in my office that are
15 necessary at my beck and call to do the work we needed to
16 do. We're under -- like every other state office we have
17 problems with staffing and not enough staffing, but in'
18 this case -- and I've handled tens of charitable trusts.
19 In this case he's these given me every resource,
20 everything I might need to do my job.

21 THE COURT: And in utilizing all of those resources
22 and examining everything that's gone on with the statutes,
23 the law, the arguments, the positions, are you telling me
24 on behalf of the state of South Carolina that you are
25 recommending this settlement for my approval?

1 MR. JONES: Yes, sir. On behalf of the State of
2 South Carolina and on behalf of my Attorney General which
3 I've kept up to speed on this you'll see, Your Honor, that
4 he signed the addendum to the settlement agreement that's
5 been sent to you and I got the original in my file.

6 THE COURT: And he deems it to be just and
7 reasonable?

8 MR. JONES: Yes, sir. Actually, Your Honor, if we
9 would go any steps further than this, we're opening it up
10 to getting less money for scholarships. That's our
11 concern because as you hear more evidence and you hear
12 more things come out, if we have another deposition or
13 this or that, the PR and trustees are playing with house
14 money. Our money goes down. Now, I think Your Honor
15 doesn't have the benefit of the other cases that we've had
16 but I will tell Your Honor this and I will tell the record
17 this and anybody in this courtroom I have been at the
18 attorney general's office for many years, and the history
19 will go down that Attorney General McMaster has been the
20 most active in protecting charitable trusts.

21 It seems to be that the PR trustees reading a statute
22 say that he only gets involved -- he being the attorney
23 general -- when it gets to enforcement meaning it's
24 created and it's out working. That's incorrect. As
25 recently as the Bull Street case which my Attorney General

1 actually usurped me from arguing that case and that was a
2 case in which the Governor of the Board of Trustees said
3 it wasn't a charitable trust at all. So, we take in from
4 the get-go and we take our responsibility very seriously
5 and I don't use the word resent, but I'm holding that back
6 and anybody can substitute anything they want to, but
7 we're not giving away anything, and, Your Honor, as I was
8 sitting back thinking about all of these accusations and
9 comments made by the attorney general on us more than
10 anybody else, you remember on the fee agreement that we
11 fought to use the AG fee agreement on the retention of
12 outside counsel and I said it would save money.

13 Under a similar fee agreement in another state for
14 pharmaceutical case there was a \$30 million verdict and
15 \$70 million punitive damages -- \$100 million. Under the
16 agreement they asked Your Honor to approve in this court
17 the attorneys under that fee agreement if we got against
18 one of these individuals \$30 million and \$70 million
19 punitive, they get \$40 million. Under the AG agreement
20 they get about 10 or less. So, I don't want to hear about
21 them coming in here and saying we're giving away money on
22 litigation that we got that could go either way in which
23 they straight up said, We want this; we won't accept the
24 other when we had another attorney ready to come forward
25 and help assist with the trust and estate.

1 So, if that's the case, you give away money when you
2 have an option to go either way with very competent
3 counsel on each side. Here there are many problems with
4 this litigation as Your Honor has heard, and we've been
5 aware of those, Your Honor. Your questions -- I
6 appreciate those that you asked me, and I can represent to
7 the court that we think this is a fair and reasonable
8 settlement and we're asking the court to approve it.

9 So, if anything else Your Honor would like to ask me,
10 I'd be more than happy to answer, but we have to move
11 along, but we would ask Your Honor the easy way to dispose
12 of their motion is 1102. Thank you very much. You're the
13 Sheriff in town. You make the decision for the PR
14 trustees. They don't make it. They don't make the motion
15 for directed verdict. You see if we presented our
16 position. You make the determination; not them. Thank
17 you.

18 THE COURT: Thank you. Mr. Levenson?

19 MR. LEVENSON: Judge, I want to start by just
20 observing that I think a motion for directed verdict is
21 really a motion for involuntary dismissal in a case like
22 this. I think that's the technical term. So, I am
23 treating it for a motion for involuntary dismissal. I
24 believe that's what it should be.

25 I'd like -- You may recall that when Mrs. Pope was on

1 the stand and I asked the question like what I thought was
2 an innocuous question and there was then literally 45
3 minutes of a narrative to which I objected and asked that
4 it be struck and in that colloquy I believe there was
5 reference to the fact that Mrs. Pope did not have standing
6 essentially to advocate a position adverse to the settling
7 parties. Let me talk about standing and 1102 which I
8 don't believe that has been articulated specifically,
9 although Professor Medlin and Mr. Jones talked about it.

10 I believe that Your Honor has given far more
11 deference to the PR's and trustees in this case than would
12 be appropriate, but if there was deference it would be
13 because it gave you the opportunity to hear more
14 information than you would have ordinarily, but at this
15 stage of the proceeding when Ms. Hayes takes the position
16 that she's an adversary to the settling parties, I believe
17 she does not have standing to make that position. She is
18 not adverse to us and if you look at 1102 and you've
19 looked it at it a good bit and so I know Your Honor is
20 familiar with it, correct? It does not contemplate
21 specifically who it is should be before Your Honor arguing
22 the merits or lack thereof of a settlement, but as we've
23 argued previously to the court to the extent that the
24 personal representatives are upon approval of the
25 settlement ordered to sign the document, one could

1 reasonably infer from that statutory construction that
2 they're outsiders and the statute contemplates a situation
3 where there was a settlement, not perhaps too hypothetical
4 from the facts here. Mr. Bell's client would have
5 objected which is why Your Honor wisely induced us to
6 following August 10 to meet with Mr. Bell and his counsel
7 -- I mean, Mr. Bell and his client which happened on
8 September 15 at the attorney general's office which led to
9 more negotiations which led to the addendum which is on
10 its way to Your Honor.

11 It would have been far more appropriate if Mr. Bell
12 were here arguing -- Mr. Bodman, I'm sorry. Mr. Bodman
13 and Mr. Bell saying, Judge, that settlement is unfair to
14 me. In other words, I am just as interested as any of the
15 Brown family members. I am the one with standing to
16 object to it, and I become the advocate for the objection
17 to the settlement proposal. That's the person who
18 conceivably says they haven't made out a prima facie case
19 such that a motion for involuntary dismissal should be
20 granted.

21 Since we know this case is going somewhere else
22 beyond here based on the testimony my position is and I
23 think it should be sustained -- I was going to say shall
24 be, but I think it should be sustained by an appellate
25 court which is that however well intentioned Mrs. Pope and

1 Mr. Buchanan may be their in their objections, they don't
2 have the right to be here objecting to this settlement.
3 They have a right to come in as a witness like any other,
4 but to the extent they're simply witnesses, perhaps higher
5 priority witnesses, they still don't have the right to
6 make a motion under the involuntary dismissal statute for
7 our case to be dismissed.

8 Now, that being said, essentially, that's a standing
9 argument and that their motion should be denied based on
10 the fact that Ms. Hayes has no standing to make --

11 THE COURT: Well, the comments to 1102 concerning
12 your standing argument says that the advocates -- I guess
13 those are people who are for -- the agreement must prove
14 to the court that a controversy existed in good faith.
15 So, y'all must prove to me that the controversy existed in
16 good faith. You have to do that to avoid sham
17 arrangements and then I have to -- after you present it to
18 me and you prove that it's in good faith, then I have to
19 find that it is fair, equitable, just, and reasonable to
20 the affected parts which now y'all are the ones who called
21 Mrs. Pope and Mr. Buchanan as witnesses.

22 MR. LEVENSON: Well, but, Judge --

23 THE COURT: But we've had a full examination of
24 everybody's position.

25 MR. LEVENSON: And I'm not -- We have a right, it

1 seems to me, to call any witness we want --

2 THE COURT: I am not criticizing you.

3 MR. LEVENSON: -- on the issue of what do think and
4 help enlighten the court on your point of view.

5 THE COURT: I'm not being critical.

6 MR. LEVENSON: But that's different when you're
7 facing annihilation on a motion for directed verdict or a
8 motion for voluntary dismissal and the party says you
9 haven't carried your burden. That motion can only be made
10 by someone who has an interest in the case, and Mrs. Pope
11 and Mr. Buchanan do not technically have an interest and,
12 therefore, don't have standing, but I'm going to -- I want
13 to go on. I mean, I've made it for the record. Your
14 Honor will make that determination.

15 Ms. Hayes' argument essentially is saying there is no
16 evidence. You know, if this was a jury and you sent the
17 jury out to hear a motion for directed verdict, she'd be
18 telling you, There is no evidence at all, Judge, on which
19 you could make a determination that there is facts
20 supporting it being just and reasonable and that it's not
21 a sham and that there is a contest or controversy in good
22 faith. No facts whatsoever or inferences that might be
23 drawn from facts so that the finder of fact -- those
24 folks, assuming this was a jury -- would be able to make a
25 determination in favor of the moving parties -- that's us.

1 Well, since I walked into Your Honor's courtroom in
2 February of 2007 you have -- yes, we had the first hearing
3 I believe it was February of 2007. There was nothing but
4 a series of factual controversies about the role of the
5 former PR's about how they dealt with Mr. James Brown
6 before his death and what they did immediately after his
7 death. Ms. Hayes is suggesting that you must decide as a
8 matter of law that there was no good faith in that claim
9 starting in February of 2007 which resulted in one fellow
10 going to jail for contempt, another -- the same one being
11 investigated by Mr. Nicholson and Mr. Jones' office, by
12 the admission of Mr. Buchanan whose credibility is
13 unimpeachable Mr. Buchanan questioning the credibility of
14 the very person who he replaced, and I -- although, he
15 didn't have an opinion on Judge Bradley's testimony, Your
16 Honor heard Alfred Bradley, I mean, on a number of
17 occasions. I believe you would have enough from having
18 heard that to make an inference from that.

19 What Mr. Nicholson said so eloquently in his
20 questioning or brought to Your Honor's consideration is if
21 there were a trial in this courtroom at some point the
22 witnesses that you would expect to hear from -- not the
23 only ones, I would admit, but the ones that you would
24 expect to hear from, one would be a convicted felon
25 serving 30 years for murder.

1 Now let's just stop there for a moment. Let's assume
2 that was the only witness in the case. You wouldn't have
3 any trouble determining that anyone contesting on
4 credibility alone the testimony if that was what they
5 needed to carry the burden of proof with respect to the
6 will and the trust, you'd say, Well, you know, I don't
7 know what a jury would do, but I can understand why you
8 might want to settle that case.

9 Now you add to it Mr. Cannon who Your Honor sentenced
10 and you know, Your Honor, that if Mr. Cannon takes the
11 witness stand either for the support of will or trust if
12 they don't call him I will for cross examination so the
13 jury will hear what happened. That added to Mr. Herring's
14 credibility -- and I don't know anything about
15 Mr. herring's life or what happened in connection with
16 this, but the fact is that we're entitled to a charge that
17 he is a convicted felon and his credibility can be
18 impeached by a crime such as the one he's been convicted
19 of, and then, of course, all of the other aberrant
20 behavior that we believe is questionable for Bradley and
21 Dallas.

22 You know, Your Honor, we would show in evidence the
23 colloquy between Your Honor and Mr. Dallas if Your Honor
24 would let us in front of a jury your incredulity about
25 some of the testimony that Mr. Dallas gave to this

1 court -- non-jury, of course -- on issues that may
2 ultimately lead since we have motions pending for
3 Mr. Dallas' contempt which may ultimately leave Mr. Dallas
4 before the trial of a case for before a jury to be held in
5 contempt and incarcerated.

6 These are the witnesses that they would present to
7 support the document which my clients contested. Again,
8 to to the great credit of Mrs. Pope and Mr. Buchanan, they
9 called me literally on Christmas Eve of 2007 and said,
10 Louis, you have got to get this 1999 will and trust in
11 your hands immediately, and they provided it to me, and
12 you've heard -- I'm not just talking outside of the
13 evidence. That's what the evidence was. So, we got
14 together and filed a document -- something of a bare bones
15 document -- about the 2000 will and trust because we had
16 just been informed for the first time after a year of
17 litigation that there was another document.

18 You remember now Mr. Dallas takes the stand and says,
19 Well, yea, that's true. I knew about it, the 1999 will
20 and trust, but nobody asked me about it. So I didn't tell
21 anybody. I am paraphrasing, of course, but that was the
22 sum and substance of Mr. Dallas' testimony. My
23 recollection is that Your Honor got up out of your chair
24 and started walking around. Now, I suspect that if the
25 jurors were permitted to do that they would be equally

1 incredulous.

2 So, the in terrorem clause should be according to
3 Ms. Hayes enforced against us as a matter of law because
4 there is no evidence or inferences from evidence which
5 would justify us settling that dispute. Mrs. Pope is not
6 interested in whether there is an enforcement of an in
7 terrorem clause because in terrorem doesn't benefit her.
8 It benefits other beneficiaries or heirs of the estate.
9 In other words, if there were an enforcement of the in
10 terrorem clause, it doesn't fall to the benefit of the
11 executors, the personal representatives, or the trustees.
12 It falls to the benefit of someone else who is part of the
13 very settlement that we're making here.

14 In other words, it might reallocate the assets of the
15 estate and trust one way or the other.

16 THE COURT: Mr. Levenson, getting away from being a
17 controversy or good faith controversy, they are concerned
18 and presented a good bit of testimony in this matter that
19 maybe it's not fair and reasonable because it creates
20 significant or allegedly creates significant tax issues
21 that could be avoided if the settlement were not approved
22 and, therefore, it's not fair and just and reasonable.

23 MR. LEVENSON: In my mind I have two lines being
24 drawn from the top of the page. One is you're right, Your
25 Honor, there are be -- There is no question the incurring

1 of tax abilities which have been provided for in the
2 settlement documents by virtue of the settlement, but
3 let's talk about what happens if I prevail on behalf of my
4 clients before a finder of fact with respect to the will
5 or the trust. There will be far greater tax liabilities
6 because there will be an intestacy declared in whole or in
7 part that will result in the disallowance of the
8 charitable bequest and conceivably the disallowance of
9 whatever benefits the spouse might get. That's why, you
10 know, my client -- if there were litigation to its
11 conclusion such that we not only contested the will and
12 trust but Ms.~Hynie Brown's status as spouse -- and we did
13 at one time contest that -- we would get everything. "We"
14 meaning the heirs which either my clients or a combination
15 of my clients and Mr. Bell and Mr. Bodman's clients or any
16 other heirs that might have filed appropriately in a
17 timely manner.

18 Yes, there would be lots of taxes, but, you know,
19 it's one of the nice things about paying lots of taxes is
20 you pay lots of taxes because you have lots of money to
21 pay taxes with, and, so, yes, we would have the incurring
22 of taxes.

23 I don't think that one can analyze this settlement
24 respectfully as unreasonable simply because there is an
25 allocation to non-charitable, non-spousal shares such that

1 it creates taxes. We understand that. We've contemplated
2 it and the result of a non-settlement could be far worse
3 imposition of taxes for our clients which, of course, is
4 one of the two possibilities. Well, it's probably more
5 than two possibilities. One of them would be that we pay
6 the United States government a great deal more in estate
7 taxes.

8 I mean, I realize that that's troubling to Mrs. Pope
9 and Mr. Buchanan, but it was assessed as a risk and
10 analyzed by the attorney general after extensive
11 investigation. I mean, I would believe, Judge, that the
12 attorney general did not accept 50 percent of this
13 charitable estate and trust simply because they thought
14 that was fair. They analyzed it as Mr. Jones told Your
15 Honor on a number of occasions because he had a concern
16 that his client -- excuse me, that the attorney general
17 stood risk of losing everything. Add to it the cost of
18 litigation. Add to it the delay. Add to it the
19 attorneys' fees that would be incurred by the parties
20 defending the will and trust plan.

21 If paying taxes is a byproduct of the settlement,
22 there is no way to know whether that expense would be
23 greater or not than the cost of litigating the matter in
24 perpetuity and it looks like that would have been a very
25 real possibility. So, reasonable means, again, as I was

1 trying to ask Mr. Buchanan that not that it's absolutely
2 correct but that there is a good reason for having done
3 it.

4 Your Honor, I don't exactly understand the argument
5 made with respect to Yamma Brown and her children. She is
6 the court-appointed guardian conservator under Georgia law
7 for her two minor children. I was the one who got her
8 appointed. I believe that we file those orders with the
9 court. If not, I'll get Your Honor another copy. In
10 other words, I believe they're already in the record and
11 in the evidence, and that, of course, is as a result of
12 some other circumstances -- tragic circumstances recently.

13 Obviously, Your Honor has already observed a parent,
14 natural guardian for the minor child has responded and
15 signed the documents for the other minors. Since the
16 litigation has begun two of the minors have become adults
17 which is one of the reasons that they will be signing on
18 the affidavits and the addendum that Your Honor will have.

19 The one argument that I think is one that will be
20 made on appeal and so I think we ought to address it now
21 and Ms. Hayes touched on it that there is no document in
22 toto that you have in a complete form that you have on
23 which you can determine the totality of the settlement
24 agreement.

25 First of all, there is nothing that I've seen in the

1 statute that says you have to have it in your hands before
2 this is filed, and if I am wrong I'm sure Ms.~Hayes --

3 THE COURT: Well, it says the procedure for securing
4 court approval is as follows. One, terms of the
5 compromise shall be set forth in an agreement in writing
6 which shall be executed and signed by all competent
7 persons and parents acting for any minor child having
8 beneficial interest. So, I've got to have the signed
9 agreement.

10 MR. LEVENSON: I mean, if it says it's a condition
11 precedent for the filing of the petition for the
12 approval -- if they said that, then I think their argument
13 would obtain. It doesn't say that which is why Your Honor
14 has exercised your discretion knowing that when we first
15 presented this to Your Honor in August of 2008 we didn't
16 have Mr. Bell and his client -- Mr. Bodman and Mr. Bell's
17 client on board and that took the negotiation that
18 Mr. Buchanan was referencing through the good offices of
19 Powell Goldstein in Atlanta which has come to fruition in
20 the last, what, 72 hours? Is that fair?

21 So, to say that this has been litigated and
22 negotiated to the nth degree would be an understatement,
23 but Your Honor will have before you are asked to put your
24 signature on an order granting or denying this petition
25 everything that 1102 requires in writing signed by every

1 interested party. You will have that. You have most of
2 it now. The rest is literally as we speak on its way to
3 the court because of some typographical mistakes on the
4 documents that have been circulated previously.

5 So, I want for the record to address and perhaps the
6 appellate court will make some new law on this, but I
7 don't believe that the legislature of South Carolina
8 intended for this to be a condition precedent; that is to
9 say that the agreement be fully signed by everyone before
10 we started any evidentiary hearings or they would have
11 said so. If it doesn't say so, we can assume that as long
12 as Your Honor has it, when you enter the order granting or
13 denying this the order will be sustained on appeal. Thank
14 you, Judge.

15 THE COURT: Mr. Byrd, any comments?

16 MR. BYRD: No.

17 THE COURT: Mr. Bodman?

18 MR. BODMAN: Your Honor, I'll be brief. I don't want
19 to cover everything that's been covered already, but as
20 everyone in this room knows for some time my client,
21 Mr. Bell's client, Terry brown had been at odds with his
22 brothers and his sisters on this case. I can assure this
23 court that there was a good faith controversy for two
24 years or however long it's been -- two and a half years --
25 and I can assure this court that we believe that this.

1 agreement is just and reasonable in this case. I say that
2 on behalf of my client Terry Brown.

3 THE COURT: Yes, ma'am?

4 MS. GROEBER: Just one thing from us, Your Honor. We
5 have an affidavit here from Mr. Slotchiver approving the
6 settlement agreement and confirming the agreement between
7 Tomi Rae and James Brown, Jr.

8 THE COURT: What I want to do with that perhaps
9 tomorrow when we go -- either clear the courtroom or go in
10 chambers and we'll do that. You can present that at that
11 time.

12 MS. GROEBER: Yes, Your Honor. It also outlines the
13 substantial and good faith controversies that
14 Mr. Slotchiver has been involved in in this case.

15 THE COURT: Thank you. Anybody else?

16 Ma'am, anything in response?

17 MS. HAYES: Your Honor, just briefly to respond to
18 the standing issue. The charitable trust as everyone
19 knows is the primary beneficiary under Mr. Brown's will
20 and the non-charitable as well. So the trust -- the
21 court-appointed current trustees of that trust certainly
22 have standing to be here. We made our case by way of
23 motions to dismiss and or directed verdict hopefully to
24 save time, money, and resources, but if Your Honor is not
25 inclined to grant it, then, of course, we'll be happy to

1 move forward and put our case up, but we patiently sat
2 through five days of testimony.

3 All we're doing is trying to express to the court
4 that we don't feel that the threshold barrier has been set
5 met. We're not asking that the merits be decided. We're
6 just saying at a minimum that the threshold requirements
7 of the statute be shown, and I am going to refer again
8 just to section 62-3-912 and section 1102. The comments
9 clearly say that the concurrence of all beneficiary
10 interested and competent persons and parent
11 representatives provide prerequisites which should prevent
12 the procedure from being abused. Of course, that's the
13 uniform probate code and section 912 requires -- I would
14 agree with almost everything that Professor Medlin said if
15 the settling parties were purporting to alter only what
16 they were already entitled to under the will. The statute
17 would permit them to do that.

18 Here they're purporting to completely change the
19 estate plan. That's our primary objection, Your Honor,
20 and as far as good faith, I want to be very clear we're
21 not here to say anything negative about any of the parties
22 to this case. Did they file their suits in good faith?
23 Maybe. We won't know that because they're not here and
24 they didn't put that in their affidavit. So, we don't
25 know that, Your Honor.

1 And, of course, I take counsel's word, but we're just
2 saying as a matter of law that should be in evidence, Your
3 Honor and that's all I have at this point.

4 And I am just going to -- for the court's convenience
5 I'll just read the section numbers that we'd like for the
6 court to take under advisement of the statute: Section
7 62-7-410.

8 THE COURT: 7-410.

9 MS. HAYES: Yes, sir. 62-7-411, 62-7-412, 62-7-413,
10 and, Your Honor, about the issue of the relationship with
11 the trustees to the trust --

12 THE COURT: Ma'am, hold on a second. Sixty-two dash
13 what? Seven dash 410?

14 MS. HAYES: 412, Your Honor.

15 THE COURT: Allocation of receipts from royalties?
16 Reduction payments or the taking of natural resources?

17 MS. HAYES: No, Your Honor.

18 THE COURT: Am I looking at the wrong thing?

19 MS. HAYES: I'll get the correct numbers here, Your
20 Honor. The last thing that I wanted to mention to Your
21 Honor about the relationship with the trust and the
22 trustees and the attorney general is kind of parallel to a
23 child abuse and neglect case to the extent that DSS --
24 Department of Social Services -- is the protector and
25 enforcer of the children's rights, but we all know when

1 we're appointed to be on one of those case we've got to
2 have a separate guardian ad litem for the child to stand
3 in the shoes of the child. So, DSS -- the state -- is
4 enforcing the rules, but there's got to be someone there
5 on behalf of the child in the child's shoes.

6 Here, the same thing, and we all know the cases are
7 parallels between charitable trusts and minors. They're
8 afforded special protection under the law. Here we're
9 talking about a mixed charitable trust. The trustees have
10 to be here in the shoes of a trust to explain to the court
11 and, of course, Your Honor has the final word, but they're
12 here just to give information to you. Thank you, Your
13 Honor.

14 THE COURT: Give me those sections again.

15 MS. HAYES: I believe we've got about three different
16 versions of the code here.

17 MR. MEDLIN: You might want to look at the
18 supplement.

19 MS. HAYES: I am going to look at the supplement,
20 Your Honor, during the break if you don't mind. Your
21 Honor, I think this year is outdated. I am going to look
22 at the supplement to give you the right section number.
23 I've got one here. 62-7-412.

24 THE COURT: 62-7-412. One second for me, please.
25 Modification or termination because of unanticipated

1 circumstances or inability to administer trust
2 effectively?

3 MS. HAYES: Yes, Your Honor, and then -413, equitable
4 deviation.

5 THE COURT: Okay.

6 MS. HAYES: I've believe that you're already got
7 -411, modification or termination, and 410 is also
8 modification or termination.

9 THE COURT: Okay. 410 and 411. Anything else?

10 MS. HAYES: I think that's all at this time, Your
11 Honor. Thank you. I'm sorry to go a little longer than I
12 expected.

13 THE COURT: No, ma'am. You don't have to apologize.
14 All right, ma'am. I am going to respectfully deny any
15 motion for directed verdict or whatever you want to call
16 the motion. Obviously, they presented to me the petition
17 under 1102, 62-3-1102. The court has to find that the
18 contest or controversy is in good faith and that the
19 effect of the agreement upon the interested persons
20 represented is just and reasonable. Well, at this stage
21 of the proceeding there is certainly evidence in the
22 record that there is a controversy existing in good faith.
23 There is evidence in the record. Whether or not I decide
24 that or not, I don't know.

25 There is evidence at this point in time to if I were

1 before the jury I would be submitting it to a jury or
2 telling you to present your case. I would not be
3 directing a verdict. So, I will respectfully deny your
4 motions.

5 MS. HAYES: Thank you, Your Honor. We appreciate
6 your consideration.

7 THE COURT: Yes, ma'am.

8 MS. HAYES: We take exception and we ask in the
9 alternative that we be permitted to present our case now.

10 THE COURT: Well, when are you ready to present it?

11 MR. BAILEY: Your Honor, we had anticipated
12 questioning all of the settling parties and we had hoped
13 not to have to subpoena them; that they would appear
14 voluntarily or the court could order them to appear.

15 THE COURT: Mr. Bailey, you know we're in the middle
16 of this taking testimony. You know I've had today and
17 tomorrow set aside and we got -- so I'm ready to proceed.
18 So, you can call who you want to.

19 MR. BAILEY: Mrs. Pope.

20 THE COURT: Well, we'll call her in the morning.
21 It's 10 'til 5.

22 MR. BAILEY: Do you want me to call her now?

23 THE COURT: No, sir. We'll break for the evening,
24 but I'm not going to make the people be here. If you got
25 people you want subpoenaed, that's up to you. Ten o'clock

1 in the morning suit everybody? I've got a 9:30 hearing.

2 MR. BAILEY: Your Honor --

3 THE COURT: Hold on. Everybody remain seated. Yes,
4 sir?

5 MR. BAILEY: We would request that the attorneys
6 require their parties to be here to be examined tomorrow.
7 They are parties to this. They should be present. Their
8 input is requested and sought.

9 THE COURT: I can't make them be here. If they want
10 to be here, they can. You can subpoena them.

11 MR. LEVENSON: May I observe, first, if perhaps
12 Mr. Bailey would make a proffer as to what the clients --
13 he expects the testimony from the clients to be and we may
14 just stipulate to it, Your Honor. I mean, if he wants to
15 make a proffer -- He's calling people who are not here and
16 who have not been subpoenaed and some of whom -- one of
17 whom, for example, is in college in Savannah --

18 THE COURT: That's right.

19 MR. LEVENSON: -- and has not been under subpoena,
20 but if you've got a proffer, maybe we'll just agree to it.

21 THE COURT: Y'all can talk about that over the
22 evening. You can talk about that between now and in the
23 morning.

24 Mr. Bailey --

25 MR. BAILEY: Yes, sir.

1 THE COURT: -- you can call who you want to.

2 MR. BAILEY: I understand, Judge.

3 MR. MEDLIN: Your Honor, this is not a trial. It's
4 not an evidentiary hearing anyway. This is a motion to
5 get information in front of the court -- our motion.

6 THE COURT: I am going to let the trustees PR's put
7 up -- If they want to offer evidence, they can. Let me
8 see everybody in chambers for a second.

9 (Whereupon, the proceedings were concluded for the
10 day and were reconvened on March 26, 2009 as
11 follows:)

12 THE COURT: All right. I had a request just a second
13 ago from the clerk that Mrs. Pope needed to get into that
14 privilege box and the clerk advised me she sealed it last
15 night. You have permission to open it.

16 Mrs. Pope, you certainly have permission to go in it.

17 All right. Mr. Bailey, are you ready?

18 MR. BAILEY: Yes, Your Honor, but there is a request
19 I'd like to make first.

20 THE COURT: Let me say something. I left early from
21 home this morning. I had to go by my farm to check some
22 things out. The guy next to me was getting ready to plant
23 cotton. He's got a big field. I noticed that he plowed
24 about 80 percent of it. There is a little bit left
25 unplowed in that field. So, please, let's don't replot

1 that cotton field today and let's just do what has not
2 been plowed.

3 MR. BAILEY: We have I would call a different
4 perspective than the settling parties. So, I hope not to
5 repeat a whole lot.

6 THE COURT: Mr. Bailey, I understand, but, you know,
7 Mrs. Pope and Mr. Bailey (sic) have been on the stand for
8 a couple of days and I am going to be patient. You can
9 make your record, but I really and truly am going to be
10 restrictive as to anything that's redundant.

11 MR. BAILEY: Yes, sir. We would request, number one,
12 that the courtroom be closed because there will be very
13 sensitive, confidential matters that would be testified to
14 and that would involve the estate and that would involve
15 the business matters of the estate and trust and strictly
16 for the purposes of this hearing we would request that the
17 courtroom be closed to everyone except the parties and the
18 -- the attorneys and the parties.

19 THE COURT: What do you say Mr. Medlin?

20 MR. MEDLIN: No objection.

21 THE COURT: Attorney general?

22 MR. JONES: No objection from this end, Your Honor.

23 THE COURT: Mr. ~Shahid?

24 MR. SHAHID: No objection, Your Honor.

25 THE COURT: No objection. Who do I have in here

1 that's not parties or lawyers?

2 MS. WEST: Your Honor, my client is not a party to
3 this particular matter, but we do have a pending matter.

4 THE COURT: Who do you represent? And your name?

5 MS. WEST: Kay West representing Mr. Katz and
6 Greenberg Traurig.

7 THE COURT: All right. I am going to ask you to step
8 out, please, ma'am. All right. I see I have
9 Mr. Bauknight and his lawyer back there. Is he a party to
10 this? I am going to let him stay.

11 MR. WILLIAMS: Your Honor --

12 THE COURT: Whoa, whoa.

13 MR. WILLIAMS: Your Honor, I am not counsel of record
14 in this case, but as you know I am counsel for Mrs. Pope.

15 THE COURT: I'll allow you to stay.

16 (Whereupon, the following proceedings are held in a
17 closed courtroom.)

18 MR. JONES: Your Honor, may I bring to the court's
19 attention we were given a copy of the Court of Appeals'
20 decision in our request to dismiss the appeal filed by the
21 PR Trustees and as of March 24, Justice Goolsby granted
22 our request and denied the appeal without prejudice.

23 This --

24 THE COURT: Have you shared it with them?

25 MR. BAILEY: We haven't -- I haven't received

1 anything yet.

2 MR. JONES: I just got it this morning from Mr. Bell.
3 I didn't know about it until this morning.

4 THE COURT: Mr. Bell, how did you get it so quick?

5 MR. BELL: It came in the morning mail, your Honor.
6 It got put in the mail yesterday. I just got a good
7 delivery.

8 MR. JONES: And, Your Honor, with that, I would agree
9 with Your Honor that Mr. Bauknight should continue to be
10 in --

11 THE COURT: All right. Hold on one second. All
12 right. Mr. Bailey?

13 MR. BAILEY: With respect to this notice from the
14 Court of Appeals we would request that the court issue its
15 written order on the motion to reconsider so that we can
16 proceed in that matter.

17 THE COURT: Thank you. I will do so.

18 MR. BAILEY: There is one other matter that I would
19 request the court to do is the marriage -- The lawsuit by
20 James Ray Brown against Tomi Rae Brown -- is under seal
21 and it contains what we believe to be valuable information
22 regarding the positions asserted by parties and we feel
23 that it's relevant for the court's consideration. We have
24 a copy of the order -- it had been provided to us.

25 THE COURT: Let me see it.