

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM AIKEN COUNTY
Court of Common Pleas

JUN 06 2017

Doyet A. Early, III, Circuit Court Judge

SC Court of Appeals

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

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 MR. BAILEY: It's with one of Mrs. Pope's staff who
2 went to the clerk to see if there was any way that it
3 could be opened.

4 THE COURT: It was an order of the family court,
5 though, wasn't it?

6 MR. BAILEY: I'm sorry?

7 THE COURT: It is an order of the family court
8 sealing it?

9 MR. BAILEY: Yes, sir.

10 MR. ROSEN: I am not necessarily following the
11 conversation, but if he's talking about getting the
12 original family court records?

13 MR. BAILEY: No, sir; just a copy of the file.

14 MR. ROSEN: That's all been done. That's all been
15 done. The whole file was copied. We got an order in the
16 family court releasing it. Everybody has it. It's in
17 your file. I know -- you know, it's there. I'll be happy
18 to make another copy.

19 THE COURT: Mr. Michel, how about find that today or
20 early this morning since you're the keeper of the file
21 back there?

22 MR. BAILEY: We would like to put a certified copy of
23 that into this record.

24 MR. ROSEN: Your Honor, let me say this. I believe a
25 certified copy of everything that happened in the family

1 court is already in evidence, but if it isn't, you've
2 already issued an order and those things have been
3 floating around for about a year and a half. So, I didn't
4 bring that box with me today, but I'll represent to the
5 court that I will get that to them.

6 THE COURT: You want what, Mrs. Pope?

7 MRS. POPE: Your Honor, I need to testify about those
8 documents.

9 THE COURT: Okay. Well, do you have them?

10 MRS. POPE: Your Honor, I have copies in my office.
11 We went to get a certified copy from the clerk this
12 morning. The record indicates that it is sealed.

13 THE COURT: In which court is it?

14 MRS. POPE: In the clerk's office --

15 MR. BAILEY: It would be in the family court.

16 MRS. POPE: In the family court clerk's office and
17 Mr. Rosen has said it's unsealed. We are the personal
18 representatives. We want it unsealed. We're the
19 Plaintiff's representative.

20 THE COURT: Where is the file right now?

21 MRS. POPE: In this courthouse.

22 THE COURT: All right. Do you not have a certified
23 copy that Mr. Rosen said has been put in the record?

24 MR. ROSEN: Both cases -- the one in Charleston which
25 the annulment was in and the one in Aiken -- both files

1 have been produced over a year ago. They have them.

2 THE COURT: Okay. They don't have them with them
3 this morning.

4 MR. ROSEN: They don't have them with them, but they
5 have it.

6 THE COURT: Question: Does anybody have it so
7 Mrs. Pope can testify from it and then we'll put a
8 certified copy in if we don't already have so?

9 MR. MICHEL: I've got tons of marriage documents if
10 she'll just tell me.

11 MR. ROSEN: Well, I think all we have today -- We'll
12 look through our files. To the extent that we have copies
13 of the summons and complaints and order we'll provide them
14 to opposing counsel.

15 MR. BAILEY: We're interested in the the summons, the
16 complaint, the answer, the counterclaim, the reply, and
17 the order in that file.

18 THE COURT: Well, Mr. Bailey, how can I help you?

19 MRS. POPE: Let me ask my assistant since there is no
20 objection to its unsealing if it hasn't already been
21 unsealed allow my assistant with an order which Mr. Rosen
22 says that you've already issued to go down and get
23 certified copies.

24 MR. ROSEN: Since this is my part of the case I can
25 represent to the court that an order of this court allowed

1 the parties to go to the family court. Everybody signed
2 the consent order allowing the sealed file to be
3 reproduced. I think Mr. Bell may be able to address
4 it.

5 MR. BELL: Your Honor, I am the one who requested it.

6 THE COURT: Where is it?

7 MR. BELL: Well, I've got it at my law office, but I
8 don't bring my whole file.

9 THE COURT: I am not fussing.

10 MR. ROSEN: The point is we provided it. So, they
11 have it. The fact they don't have it this morning --

12 THE COURT: I am trying to help them just like I
13 tried to help y'all.

14 MR. ROSEN: Mr. Shahid has given me the annulment
15 pleadings that he happens to have with them. I think we
16 can lend it to them.

17 THE COURT: Ma'am, can you look? How do y'all have
18 it? On disk?

19 THE CLERK: No.

20 MR. ROSEN: Your Honor, I am also handing up over to
21 them the final order. Every previous hearing I brought
22 all of these files and today I just thought we didn't need
23 them.

24 THE COURT: My clerk is going downstairs to see if
25 she can find my order wherein I ordered them to be opened

1 and we can take that order downstairs and bring a copy up
2 here.

3 Mr. Bailey, can we get started and once they get back
4 up with the file, can we go with that?

5 MR. BAILEY: Yes, sir, Your Honor. Your Honor, we'd
6 call Mrs. Adele Pope.

7 THE COURT: Whose box of stuff is that up here?

8 MRS. POPE: Your Honor, I believe that is a copy of a
9 good bit of the Herring box for my convenience. I'm
10 sorry -- the privilege box. I called it wrong.

11 THE COURT: All right. Mrs. Pope is already under
12 oath. She remains under oath.

13 ADELE POPE, after being previously duly sworn,
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MR. BAILEY:

17 Q Mrs. Pope, how did you come to be here?

18 A I was appointed personal representative of the estate
19 of James Brown and trustee of the James Brown 2000 trust
20 by order of the Honorable Doyet A. Early, III on
21 November 20, 2007 which order was reconfirmed after
22 various motions for reconsideration on April 8, 2008. I
23 was appointed to serve along with Robert L. Buchanan, Jr.

24 Q All right. When you were so appointed were there
25 recommendations made for you and Mr. Buchanan to be

1 appointed by the parties?

2 A I can't -- The order says that we were recommended
3 and so far as I know with minor exceptions that was not
4 appealed and is the law of the case. I believe that at a
5 minimum there was acquiescence in our appointment by
6 everyone except the attorney general of South Carolina,
7 the attorney general of Georgia, Mr. Dallas, and
8 Mr. Bradley.

9 Q All right. And how did you come to learn the
10 attorney general's opposition to your appointment as
11 trustee of the James Brown irrevocable trust?

12 A Not the attorney general himself, but Mr. Jones
13 objected in court on the 20th of November and said that he
14 would be filing -- asking for reconsideration as I recall
15 as did the attorney general from Georgia -- perhaps not on
16 the record, but I certainly left with that impression.
17 The next morning on November 21, 2007 which was the day
18 before Thanksgiving I received an e-mail from Mr. Jones
19 telling me that I needed to resign; that it was unethical
20 and improper for Mr. Buchanan and me to serve as both
21 personal representative and trustee.

22 Bob Buchanan and I had worked together closely since
23 March 7. I did not know him before that, but I had come
24 to have great trust in him, and riding back home on the
25 night of the 20th -- The one thing that we had always done

1 unofficially before but we did officially then is decide
2 that we would never make any important statements without
3 each other because this was too important what we had been
4 -- what had been thrust upon us, but it was Wednesday
5 morning the day before Thanksgiving, and I wrote Mr. Jones
6 back immediately and I said, Mr. Jones, I do not take
7 lightly being accused of ethical violations. Please let
8 me know right away what you think I've done unethically
9 because I want to take it up with the court and do not
10 want to serve if I cannot serve both appropriately under
11 the documents and ethically. That was on the 21st.

12 On the 27th Mr. Jones sent an e-mail to Bill Hammond
13 saying that he tried again to get me to resign and because
14 I wasn't resigning --

15 MR. JONES: Your Honor --

16 THE WITNESS: -- he --

17 MR. JONES: -- we have been opposing Mr. Buchanan --

18 THE COURT: Are you making an objection or what?

19 MR. JONES: It an objection. It is irrelevant to --

20 THE COURT: Overruled.

21 THE WITNESS: On the 27th Mr. Jones sent an e-mail to
22 Bill Hammond and he -- he told Mr. Hammond that he had
23 spoken to me again and I had refused to resign which was
24 probably true because I had very grave concern. At that
25 point Mr. Dallas and Mr. Cannon and Mr. Bradley had not

1 started accusing the Judge of improper behavior and us of
2 improper behavior, but everything was in such turmoil that
3 I felt that it was not in the best interest to resign and
4 I still don't think that.

5 So, he told Mr. Hammond that that we would not resign
6 and he was armed to get rid of us, and, quite frankly,
7 it's been that way ever since.

8 Q All right.

9 A Within three days after that the tenor of things had
10 changed. Mr. Dallas and Mr. Bradley had asked the Judge
11 to recuse themselves. All sorts of things were going on.
12 Within 45 days of our appointment four lawsuits contesting
13 the validity of the will and trust had been filed.
14 Forlando Brown had filed suit in federal court represented
15 by Powell Goldstein and David Bell who are here today
16 representing his father Terry Brown in taking part of this
17 estate saying that we had tried to wrest control of this
18 estate in order to get ourselves a high fee and to prevent
19 the valid service of Mr. Cannon, Mr. Dallas, and
20 Mr. Bradley.

21 On about January 6 -- I did not check it last
22 night -- Bob Buchanan and after various motions for
23 reconsideration had been filed by the attorney general of
24 Georgia, by the attorney general of South Carolina using
25 affidavits of Probate Judge -- former or Probate Judge

1 Eubanks who knows nothing about the case, Buddy Dallas,
2 and Albert Bradley to say that we acted inappropriately.
3 Bob Buchanan and I looked at each other and said, If it's
4 not appropriate -- the same thing I told Sonny Jones on
5 November 21. If it's not both appropriate and ethical for
6 me to serve, I do not want to serve.

7 We filed a document to that effect. I want to think
8 it was on or about January 6, 2008. It was in response to
9 all the various objections to our appointment. As a
10 result of that the Judge and the result of various motions
11 for reconsideration for our appointment the Judge held a
12 set of two hearings. The first was in February of 2008
13 resulting in an order dated March 7, 2008.

14 (Whereupon, the witness is given a cup of water.)

15 MRS. POPE: Thank you. The Judge, in effect,
16 bifurcated the issue. The first issue he took up was
17 whether the resignation -- Well, first he had to get rid
18 of the recusal matter. Then he took up whether the
19 resignation of Mr. Dallas and Mr. Bradley was appropriate.
20 He determined that it was by order dated March 7, 2008.
21 On that same day he conducted a hearing where I was
22 questioned extensively by Mr. Jones about things like did
23 Mr. Brown's documents ever even mention the word estate
24 plan which, of course, they did. I didn't answer then,
25 but the Judge in response to those motions -- those

1 objections issued an order dated April 8, 2008 in which he
2 found and I would not be here today if he had not so found
3 that it was both appropriate and ethical for Bob and me to
4 serve and at least up until through March 7 of 2008, the
5 hearing on which he heard those matters, that we had
6 served appropriately and ethically as I believe we have
7 done to the end.

8 That April 8th order was appealed by Mr. Dallas and
9 Mr. Bradley. It was not appealed by anyone else, and,
10 however, in that matter which is still pending before the
11 Court of Appeals and in which the court found that there
12 was no viable advisory committee at the time of our
13 appointment which was November 20th that we had been
14 appropriately appointed under the will and trust which we
15 had because the appointment rested with the court. That
16 order, again, was not appealed by anyone except Mr. Dallas
17 and Mr. Bradley. It's pending in the Court of Appeals.

18 The attorney general did intervene in that matter in
19 connection with the Christie's sale, but his intervention
20 was later in the summer of 2008.

21 Q Mrs. Pope, would you please give us your educational
22 background?

23 A I went to public schools in South Carolina except I
24 went to boarding school in the fourth grade. My mother
25 was sick. I went to Mary Baldwin College, spent a year in

1 Spain. I was a spanish major. I then went to the
2 University of Virginia, received a Master's of Art in
3 teaching, studied a little bit in Guatemala, various
4 places, taught for a number of years, had a mid-life
5 career change, went to the University of South Carolina,
6 got a JD, practiced for a while. I went to the University
7 of Miami and over a course of about four years while
8 practicing law and raising children got an LLM in estate
9 planning from the University of Miami and that's it.

10 Q Have you ever been certified as a specialist in --

11 A I am. I am a certified specialist in estate planning
12 and probate law.

13 Q Tell me something about your participation in
14 organizing and processing and ending settlements in
15 complex cases such as this.

16 A I have as much experience -- not bragging. I have as
17 much or more experience as everyone in South Carolina
18 about bringing fiduciary matters to a conclusion and a
19 conclusion that is lasting and anticipates future
20 problems. I was involved -- and I didn't look it up
21 because I wasn't sure I was going to be testifying, but
22 approximately 1989 in the Boyce case which has many, many
23 similarities to what's going on here. It was the estate
24 of Ann T. Boyce. I'll just say briefly because the
25 settlement was so wonderful that I spoke to my client the

1 other day and she said I'm so glad you're using -- that
2 you believe my case sets an example for doing things
3 right.

4 In the Boyce case there were approximately -- the
5 Boyce case involved a charitable trust and ended up -- the
6 settlement ended up with the gift of what is now the
7 biological reserve for USC Coastal Carolina and so it was
8 like this case. It involved a big old valuable piece of
9 property which was a third of Waives Island, the northern
10 most island in South Carolina. It involved I want to
11 think about six cases in different courts, and that is
12 very usual to have five or six different pieces of
13 litigation going on when you have a decedent with complex
14 assets, and I have done many more, but this one is
15 important because it is so the model for what we should be
16 doing here.

17 In Boyce approximately two years -- Boyce actually
18 ended up having two trials, neither of which was lengthy
19 and both of which ended in a wonderful result.

20 MR. MEDLIN: Your Honor, objection. First of all,
21 we'll be happy to stipulate that Mrs. Pope is an expert in
22 estate planning and probate and has been involved in
23 settlements.

24 THE COURT: And imminently qualified.

25 MR. MEDLIN: But this is not relevant to this case.

1 THE WITNESS: That's fine.

2 THE COURT: And imminently qualified.

3 MR. MEDLIN: We'll stipulate to that.

4 THE COURT: And the court will put on the record that
5 I've known Mrs. Pope since she graduated from law school
6 and she's an excellent, highly-qualified ethical
7 specialist in estate planning and I qualify her as such as
8 an expert. Anybody object to that? Thank you.

9 Mr. Bailey?

10 MR. BAILEY: Yes, sir, Your Honor.

11 THE COURT: Please move on.

12 Q When you were appointed on November 20, 2007 what was
13 your previous relationship with the estate of James Brown?

14 A Bob Buchanan and I had been serving as special
15 administrators from March 7 until November 20. The role
16 was fundamentally different from our role as PR Trustees
17 because we had a non-fiduciary oversight role. It was not
18 the broad special administrator appointment that you might
19 look at in the code, but if you keep looking it says that
20 it can be limited in any way the judge chooses as he's
21 done twice -- once with us and then again with
22 Mr. Bauknight.

23 Our role was oversight essentially to make sure --
24 not to make sure. We couldn't do that, but to keep an eye
25 on assets that were or might become assets of the estate

1 and that term estate -- that was the estate of James
2 Brown. We were not appointed with respect to the trust at
3 that point, and then we remained in that non-fiduciary
4 oversight role for the entire period until November 20.
5 So, in essence, although, we were learning all sorts of
6 things, we did not take or have a position with respect to
7 the ultimate outcome. We did not perceive that to be our
8 job. When we went to depositions, you know, it was almost
9 by accident. If we felt that there was something we
10 needed to listen to, we might put it on the telephone
11 while we were doing something else, but that was -- We did
12 not try to focus at all on the what I would call the
13 developing internal fights.

14 As you know there were no contests to the will until
15 I think the first one was filed by Ms.~Hynie Brown on
16 December 19. Ms.~Hynie Brown had, in fact, already filed
17 some papers electing against the will and claiming to be
18 -- claiming an elective share. Some papers had been
19 filed. Some heirs had filed documents, but there had been
20 no official contest to either the will or the trust during
21 our service, and even if there had been, that was not our
22 role. That, of course, fundamentally changed on
23 November 20.

24 Q When you went from special administrator, special
25 trustees to being the actual personal representatives and

1 the trustees, did you become responsible for the
2 day-to-day operations of administering this estate that
3 has an extremely significant value and is extremely
4 complex? Did you have to take that role over?

5 A On the evening of November 20 we took responsibility
6 for, essentially, a great big hundred million dollar
7 chapter 11. It was a wonderful estate with wonderful
8 assets in deep, deep financial trouble, and that is what
9 we took on then, and that is what we have endeavored to
10 preserve and protect, and very much of our work has been
11 that and even to enhance to the extent that we have not
12 been hampered in so doing and also then, of course, we
13 took on -- We took on the defense of Mr. Brown's wonderful
14 estate plan, his wonderful gift to education, and the very
15 first thing we did was try to stave off at every turn any
16 contest to his will and trust and we did that in several
17 ways. We did it by calling and begging people not to
18 contest his will. We did it by asking Mr.--

19 MR. MEDLIN: Your Honor --

20 THE COURT: Yes, sir?

21 MR. MEDLIN: Objection. Cotton field. This has
22 been --

23 THE COURT: Well, we have been over this.

24 MR. MEDLIN: -- discussed. You heard it it. We
25 recognize -- Their bill alone would indicate that they say

1 they spent a lot of time on this case. So, we'll
2 stipulate to the fact they've spent a lot of time on this
3 case, but we're heard all of this before, Your Honor.

4 THE COURT: Mr. Bailey, I have. I've heard it and I
5 am not trying to preclude you from making a record. This
6 is all in the record.

7 MR. BAILEY: I think --

8 THE COURT: I don't know why we have to keep plowing
9 through this.

10 MR. BAILEY: What I am trying to point out to the
11 court and for the record is that the vast majority of the
12 time was spent trying to enforce the estate plan of James
13 Brown, regardless of the fact that there were all this
14 litigation coming up. That is simply to show that there
15 was much more work behind the scenes than perhaps
16 everybody is aware of. Again --

17 THE COURT: Mrs. Pope, just comment on that briefly,
18 but nobody knows I don't think that any better and
19 appreciate what Bob Buchanan and Adele Pope has done than
20 this court, and I'll say that publicly and on whatever
21 kind of order I issue it's going to have a long, long
22 paragraph as to my thanks to them for what they have done
23 as a result of my appointment.

24 Now, you can make whatever record your want to. I
25 don't want to cut you off.

1 MR. BAILEY: I understand, Your Honor.

2 THE COURT: But I just don't need to hear it again.

3 MR. BAILEY: I understand, but we are trying to
4 establish the due diligence that was undertaken and the
5 basis for the reasons why Mrs. Pope believes that a
6 settlement agreement is inappropriate;

7 THE COURT: Mr. Bailey, we went over -- She testified
8 for almost two or three days and I don't think that she
9 left anything out about why she opposes the settlement
10 agreement. She had charts. She had excellent testimony,
11 excellent responses to why she believed that I -- why she
12 believes the settlement agreement is not fair and
13 reasonable.

14 MRS. POPE: Your Honor, I would respectfully
15 disagree. The court has no idea and there has never been
16 a record of what we've done because so much of it has been
17 private, and, for example, there is no record that we have
18 reduced the claims of this estate from 46 million to about
19 26 million and if we were not hampered by the court within
20 a period of approximately six months we could probably
21 reduce them by another 15 million.

22 I have never -- I have never had an opportunity to
23 testify about that. We've never been in a quiet
24 courtroom.

25 THE COURT: I'll let you testify as to what you've

1 done. We're not going to go back through why you feel
2 like the settlement is not fair and reasonable. We've
3 been through that.

4 MRS. POPE: And, Your Honor, I have never had an
5 opportunity to say why I believe that this settlement is
6 outrageous in light of the facts supporting the validity
7 of the will. I believe that it is my duty to say all of
8 the facts in a closed courtroom that I believe indicate
9 that there is absolutely no basis whatsoever to contest
10 Mr. Brown's will and that his children knew that and did
11 it anyway, and that is my duty to defend the estate plan
12 of James Brown, and I respectfully request that the court
13 allow me to -- to make a full record of why I believe it
14 is absolutely outrageous to settle on these terms. I have
15 not had an opportunity to do so.

16 THE COURT: I respectfully disagree that you have,
17 but I will allow you to make your record out of an
18 abundance of caution.

19 MR. LEVENSON: Judge, may I make a suggestion as a
20 friend of the court? Perhaps an affidavit of Mrs. Pope
21 would be filed which we would waive the right to cross
22 examine so as to expedite the process because what we're
23 about to embark on could be a two-hour narrative with no
24 end in sight and we hoped to be finished today. In other
25 words, we're prepared to let Ms. Pope perfect the record

1 because we understand why she's doing that, but it doesn't
2 need to be done right now on the witness stand when we
3 could be doing something else that would lead to -- That's
4 just my suggestion. I don't know what co-counsel -- I
5 mean, Mr. Medlin or Mr. Jones has to say about it, but we
6 assume that Your Honor is not going to rule from the
7 bench. We assume you're not going to enter an order
8 today; therefore, Your Honor could agree to keep the
9 record open so Mrs. Pope could file such an affidavit so
10 she can put everything in that she wants to put in. Just
11 a suggestion.

12 THE COURT: Mr. Bailey, what do you think about that?

13 MR. BAILEY: Your Honor, we spent five days with the
14 settling parties being able to present their position, and
15 I understand that there has been some overlap; however, we
16 have a different perspective.

17 THE COURT: I understand that.

18 MR. BAILEY: And that perspective is the due
19 diligence that was conducted by Mrs. Pope and
20 Mr. Buchanan, the information that they gleaned that is
21 the basis for our belief that it's not a good faith
22 controversy. There is no probable cause to contest the
23 will, and these are things that we would like to present
24 to the court.

25 THE COURT: Well, I am giving you an opportunity.

1 Anybody object to her doing it by way of affidavit? She
2 and Mr. Buchanan?

3 MR. JONES: Your Honor, as far as the affidavit
4 route, Mr. Levenson has a motion before the court to
5 strike some affidavits which, in fact, those affidavits --
6 what I'm wary of, Your Honor, and I need to be heard on
7 this. In the affidavits and pleadings Mrs. Pope has said
8 that Sonny Jones individually is responsible for a
9 40 million-dollar loss. So, I don't want to give her a
10 license to go out and say things that we can't cross
11 examine her, but we're going over the same things that you
12 allowed her to say to get a full record earlier on and
13 even come back the next day and correct what she said the
14 day before.

15 THE COURT: Thank you. Move along, Mr. Bailey.

16 MR. MEDLIN: Your Honor, may I make another objection
17 please?

18 THE COURT: You may.

19 MR. MEDLIN: It is the same objection that Mr. Bailey
20 made before. To the extent that the testimony appears to
21 be an attempt to defend their service as personal
22 representatives, that is not what we're after in this
23 hearing, Your Honor. We are simply trying to determine
24 whether the settlement is fair and reasonable and our
25 questions of both Mr. Buchanan and Mrs. Pope were directed

1 for that one sole purpose. How they came to the
2 conclusions they came to affected that issue, but we're in
3 no way in this hearing impugning their service and they
4 don't need to try to defend the removal action here.

5 Yes, we do have a position to remove all five
6 previous fiduciaries. We do that, Your Honor, as we'll
7 discuss at the appropriate time simply to make it clear
8 that we do have a fiduciary who truly is legally
9 authorized to be in charge among other reasons, but, Your
10 Honor, it's not relevant to hear that testimony today.

11 Also, I would suggest, Your Honor, that Mrs. Pope was
12 asked on the stand more than once probably, What are your
13 objections to the settlement? What are your problems with
14 the settlement? We've heard all of this, Your Honor. She
15 got the opportunity, and just because she chose not to
16 answer it when it was asked by us I don't think she should
17 have license to now be allowed to go off on that tangent.
18 She was asked those questions.

19 MR. BAILEY: Your Honor, Mr. Medlin, Mr. Jones,
20 Mr. Levenson -- and I objected to this type of testimony
21 that they were soliciting from both Mrs. Pope and
22 Mr. Buchanan -- were challenging their due diligence and
23 their competency as fiduciaries to be fair and impartial.
24 That, as the court may recall, I objected to because they
25 were geared more towards the petition for the removal --

1 that type of questioning -- challenging the fairness of
2 what Mrs. Pope -- Mr. Buchanan and Mrs. Pope were doing as
3 opposed to whether the settlement agreement was fair and
4 proper.

5 What we're looking at is we are entitled -- even
6 though it may have overlaps, we're entitled to show the
7 due diligence that Mrs. Pope engaged in that involves a
8 historical background of James Brown and what she has
9 done. That was not brought out on examination by the
10 settling parties.

11 THE COURT: Mr. Bailey, I respectfully disagree. I
12 mean, I've got note after note after note as to why she
13 said the the settlement is not fair and reasonable --

14 THE WITNESS: Your Honor --

15 THE COURT: -- but out of due respect to you and
16 Mrs. Pope, make your record.

17 THE WITNESS: Mr. Bailey, as of my testimony on
18 January 30 I had not seen the latest amendment to the
19 settlement which was shared with others the night before.
20 My co-personal representative Bob Buchanan -- this court
21 conducted a hearing without allowing him to be here and we
22 have received another devastating amendment to the
23 settlement just two days before this hearing.

24 I have not testified fully either about why I believe
25 there is absolutely no basis to contest the will of James

1 Brown or why this settlement is outrageous and unfair and
2 absolutely cannot in any way be conceived to be in the
3 best interest of the estate and trust of James Brown.

4 THE COURT: Ma'am, I just gave y'all permission to
5 testify like you want to.

6 THE WITNESS: Okay.

7 THE COURT: But I would ask you to be responsive to
8 Mr.~Bailey's questions.

9 THE WITNESS: Thank you.

10 Q Let me ask you if you can identify this document.

11 A Yes, I can.

12 Q What is that document?

13 A This is a Certificate and Agreement of Trust,
14 Irrevocable Trust Agreement of James Brown and trustees
15 dated August 1, 2000. It is and has been a matter of
16 public record in Richmond County, Georgia and in Aiken
17 County, South Carolina since the 7th of August, 2001 --
18 more than six years before any action was brought to
19 contest the validity of Mr. Brown's trust. It
20 specifically gives public notice of the existence of the
21 James Brown 2001 trust as well as the Brown Family
22 Education Trust and the James Brown "I Feel Good Trust,"
23 gives certain information about the trust, is signed by
24 all three trustees, and this document which has been of
25 record more than six years before the commencement of any

1 action to set aside the trust in my opinion makes the
2 James Brown 2000 Irrevocable Trust untouchable, and that
3 is the central component of the James Brown estate plan
4 and that -- that trust has actually been a matter of
5 public record even a year before this document by
6 Mr. Brown's deeding his home to the trust in August of
7 2001 -- I'm sorry, August of 2000. That deed was filed
8 before the end of 2000 right at the end of the year as
9 people often do.

10 So, this trust -- the existence of the trust, the
11 name of the subtrust, and the name of the trustees in my
12 opinion have been so clear in public as have all of
13 Mr. Brown's public endorsements and statements of the
14 trust and the very knowledge his own children and
15 grandchildren had of the trust in my opinion make the
16 James Brown 2000 Irrevocable Trust untouchable from a
17 legal standpoint.

18 THE COURT: Mr. Bailey, please mark that.

19 MRS. POPE: It is also located in the Herring box,
20 but it's been in the public record.

21 THE COURT: Any objection?

22 (Whereupon, Pope's Exhibit No. 2 was marked for
23 identification and received into evidence.)

24 THE COURT: While we're at a stopping point,
25 Fletcher, would you go down and ask the family clerk of

1 court if we can borrow that file for a little while?

2 Let the record reflect I am handing Mrs. Pope's
3 assistant the consent order and I am asking him to go down
4 and get the file that we need just for this morning. That
5 will be the original file -- the original domestic file
6 that exist in the Aiken County Family Court.

7 Mr. Bailey, you may proceed.

8 Q Mrs. Pope, did you look into the defense of statute
9 of limitations that would deal with the recording of this
10 certification and agreement of trust and how it may impact
11 on the will contest, trust contest?

12 A I did.

13 Q What did you discover?

14 A Well, I discovered that it's uncertain, but in no
15 event in my -- You know, the Judge will decide the law,
16 but -- and we have a motion to dismiss all claims against
17 the trust based on this, but it's my -- it's my conclusion
18 that a couple of statutes of limitations might make it
19 earlier but in no event even if this trust were procured
20 by fraud would it be more than six years. In no event.
21 And I think it is shorter and I would need the codes to
22 tell you why, but in no event more than six years.

23 Q Now --

24 A From the date of its inception which is August 1,
25 2000 at which time it was known to two of Mr. Brown's

1 children.

2 THE COURT: What do you mean by the statute of
3 limitations issues uncertain?

4 THE WITNESS: Well, an action to set aside a deed or
5 a trust that's created by fraud has several -- fraud --
6 nobody said fraud or maybe they have and we don't know,
7 but the worst thing you can say about a deed or trust is
8 it was created by fraud and I don't -- and --

9 THE COURT: Is that six years from the date of the
10 signing of the instrument or six years from the date
11 someone discovered it had been signed?

12 THE WITNESS: Under the probate code as it exists now
13 it's six years knowledge when a person has knowledge or
14 reasonable discovery and since two of Mr. Brown's children
15 witnessed the advisory board document which was executed
16 that very same day August 1 as did Ms.~Hynie Brown and
17 that's in the record here, they had actual knowledge of
18 the existence of a trust for which they were witnessing
19 the advisory board document on August 1, 2000, more than
20 seven years before the commencement of the action.

21 Mr. Brown spoke freely and openly everywhere about
22 this document. Mr. Brown had been creating this document
23 since 1996 and prior to his altercation with Deanna in
24 1998 she was named as a trustee and she had communication
25 with Mr. Herring giving the names and addresses of

1 grandchildren and at that time she worked in his
2 enterprise. So, Mrs. Deanna Thomas had notice of its
3 creation on the very -- on the day of one of his two wills
4 Mrs. Thomas was named as attorney-in-fact for Mr. Brown
5 along with Mr. Cannon, Mr. Dallas, and Mr. Bradley. That
6 -- her appointment as his attorney-in-fact, certainly,
7 with access to his records was done either in 1999 or
8 2000. I have it with me -- the same day as one of his
9 wills and to my knowledge even though that has been a
10 matter of public record for now eight years she has never
11 repudiated her service as his attorney-in-fact which would
12 have given her absolute access to all of his documents.

13 Again, she provided information to Mr. Herring on two
14 matters between 1996 and '99 -- the first of Mr. Brown's
15 documents -- and there's lots of other evidence which I
16 would like to share with the court in a closed courtroom.

17 THE COURT: It is closed, ma'am.

18 THE WITNESS: All right.

19 THE COURT: Isn't it?

20 THE WITNESS: I'll wait for a question.

21 THE COURT: Well, I want to ask you, I mean, a
22 statute of limitation -- you say it's uncertain. It is
23 obviously six years from the date they discover it's an
24 alleged fraud. Isn't that a question of fact as to when
25 they discovered it?

1 THE WITNESS: Judge, we do not believe that it is and
2 we have a motion to dismiss which we respectfully submit
3 should have been heard long before we got to this hearing
4 along with other motions that are pending such as our
5 motion to dismiss under Lukich versus Lukich.. Those are
6 legal matters. We've given the court a number of legal
7 matters that we thought it was critical to be heard before
8 we even proceed with discovery. The court has elected not
9 to do that and to proceed to the merits without hearing
10 motions to dismiss, without hearing -- So much could be
11 resolved by legal conclusions that we can't decide just
12 glancing at a paper that we have to --

13 THE COURT: What papers are we glancing at?

14 MRS. POPE: Well, this paper, Your Honor.

15 THE COURT: Mr. Whittle?

16 Go ahead. I'm listening.

17 THE WITNESS: This is a legal issue. I believe we're
18 correct on that issue. I believe it is a question for the
19 court. I believe the court should have ruled on it long
20 before we got here today, but we've -- Everything has
21 gotten backwards.

22 THE COURT: Thank you. Move along.

23 Q Mrs. Pope, the will contest and trust contest, are
24 they based upon the the sole grounds, essentially, of
25 undue influence?

1 A The pleadings suggest that there are some secret
2 facts that Mr. Brown may be -- may have been
3 incapacitated. The fact is under the law when you bring
4 an action to set aside based on incapacity you have to
5 recite the facts. You can't say there is some secret that
6 I know that might mean that he was incapacitated and there
7 is not a scintilla of evidence to indicate that he was
8 incapacitated at that time.

9 Q Now, is the --

10 THE COURT: That's incapacitated. How about unduly
11 influenced? Is there a scintilla of evidence?

12 THE WITNESS: There is a scintilla, but not enough to
13 -- not enough for probable cause under the facts and I'll
14 be glad to explain.

15 THE COURT: Well, explain. That's your opinion, is
16 it not?

17 THE WITNESS: It is my opinion, Your Honor.

18 THE COURT: Okay.

19 THE WITNESS: Mr. Brown -- Mr. Brown's life, work,
20 and entire philosophy were clear throughout his career.
21 His songs in many ways speak to the kind of person he was
22 including sex machine. He was a very virile, very
23 in-control man. That mattered to him. Respect mattered
24 to him, and other important things mattered to him.
25 Public -- public respect, not just internal respect, but

1 public respect which he demanded of everyone who worked
2 with him, high professionalism. I have spoken with Jay
3 Ross, one of his very close attorneys, and Jay Ross said
4 every move Mr. Brown made he made for posterity.

5 He had his hair fixed everytime he had an interview
6 with anybody. He knew he was speaking to the future.
7 Mr. Brown's belief was that education was the way out. He
8 believed that he had done a lot for his children and that
9 they should do for themselves. He provided for them
10 generously, but only in the way that he thought
11 appropriate which was by providing an excellent education
12 for their children.

13 He told four of them this before his death in a
14 meeting and Forlando Brown has testified that it was well
15 known in the family that he was not giving anything to
16 them, but if I could just go briefly through the history.

17 Mr. Brown did not believe in handouts. Mr. Brown
18 believed in being in control. Mr. Brown said, Give me a
19 way out, not a handout, and the way out that he believed
20 was education and every -- every document of his estate
21 plan reflected that from beginning to end.

22 He contacted -- I do not believe that there was one
23 scintilla of undue influence and I think the file is --
24 That's my belief. Somebody might find a scintilla, but
25 not much.

1 THE COURT: Well, I asked Mr. Buchanan yesterday
2 about whether or not Mr. Cannon was taking an undue
3 influence of him in his business dealings. Do you agree
4 with Mr. Buchanan's assessment of that?

5 THE WITNESS: I believe that there is a huge
6 difference and here is the difference.

7 THE COURT: Do you agree with Mr. Buchanan and then
8 you can explain?

9 THE WITNESS: Not exactly. Not exactly the way that
10 you've characterized it.

11 THE COURT: Well, what was the relationship between
12 Cannon and Brown in your opinion?

13 THE WITNESS: It was a relationship of absolute trust
14 until August 2006.

15 THE COURT: 2006. And that was?

16 THE WITNESS: I'm not sure what happened.

17 THE COURT: Okay.

18 THE WITNESS: It was a relationship of absolute trust
19 with Mr. Dallas until the end, and I think --

20 THE COURT: What is your opinion as to the way
21 Mr. Cannon handled that trust with Mr. Brown? Did he
22 honor it or did he abuse it?

23 THE WITNESS: He abused it, but I think there is
24 absolutely no -- no connection between your placing trust
25 in someone and -- appropriately or inappropriately placing

1 trust in someone and then their abusing it and to say that
2 they're the same makes no sense. If you say as Mr. Brown
3 did in August of 1999 I turn my Morgan Stanley account
4 over to my accountant to manage and you don't look and
5 you're doing 300 shows a year and you're not an accountant
6 and you trust your accountant and he provides you what you
7 need, there is a huge difference. That doesn't mean --
8 That doesn't mean that when you signed the document saying
9 I give Mr. Cannon the authority to handle my Morgan
10 Stanley account that you did it wrong. You didn't do it
11 wrong. And that's exactly -- There is no -- These are --
12 I believe Mr. Buchanan said you're talking apples and I'm
13 talking oranges. You know we're talking apples and
14 coconuts.

15 He had no basis not to place his trust in Mr. Dallas
16 and Mr. Cannon. They did lots of things for him.
17 Mr. Friday -- and there are sad things, but they're true.
18 Mr. Friday says that the three people who risked their
19 life and their future for Mr. Brown in 1988 -- '98 when he
20 was in reeling destruction were Deanna, Mr. Cannon, and
21 Mr. Bradley. They were his friends. Just because you're
22 somebody's friend doesn't mean you can't end up doing
23 something wrong.

24 Unfortunately, and it was his choice, Mr. Brown
25 elected to take his anger about those -- that 1998 crisis

1 out more on Deanna than he did on Mr. Cannon and
2 Mr. Bradley. Unfortunately, as a as a result of that
3 Deanna and Yamma then in the year 2000 sued him making
4 the --

5 MR. MEDLIN: Your Honor, for the record there is an
6 objection for hearsay.

7 THE COURT: Very well. Go ahead.

8 THE WITNESS: -- making it worse and that lawsuit
9 continued until 2004. Is that sad? Yes, because every
10 indication is that Deanna Thomas was Mr. Brown's golden
11 girl and he respected her and loved her and thought she
12 was well-educated, and I knew that when I got appointed
13 and that's why I begged Louis Levenson do not bring this
14 will contest. Find a way for Deanna Thomas to help run
15 this trust because she was the golden girl. She loved her
16 father. She risked her whole inheritance to what
17 Mr. Larry Friday described save his life in 1998, but
18 because she did that doesn't make his documents wrong.

19 They are not wrong. They are the perfect reflection
20 of what he intended to do. They are the perfect
21 reflection, and, unfortunately, Your Honor, Bob Buchanan
22 and I are the only people standing here for James Brown,
23 and I believe that James Brown has the same right that
24 Judge Russell had. This case is on all fours with the
25 Russell case. Judge Russell knew he had a litigious

1 family. Judge Russell took every possible step he could
2 take.

3 MR. MEDLIN: Your Honor, objection for relevance for
4 the same grounds. This is not the Russell case. This is
5 not the Boyce case. This is Mr. Brown's case.

6 THE COURT: I understand.

7 MR. BAILEY: And, Your Honor, if I may respond?

8 THE COURT: No. I am letting her answer out of pure
9 respect.

10 MR. JONES: What question, Your Honor?

11 THE COURT: I had asked her about the undue influence
12 of Mr. Cannon and the trust and somehow how we got to
13 this.

14 THE WITNESS: All right. Well, I will tell you why I
15 think not. Because Mr. Brown spent longer on his estate
16 planning documents than any person I have ever known.

17 THE COURT: How do you know that?

18 MRS. POPE: Because in April of 1996 in the record in
19 this case Dewain Herring opened a file called the James
20 Brown Irrevocable -- the James Brown "I Feel Good
21 Irrevocable Trust." 1996. Mr. Herring had at least two
22 meetings and a bunch of drafts of a document -- far more
23 than I have ever done. I have never had a client wait
24 three years to do a document. Sometimes they go away and
25 you never see them, but never working on it three years.

1 Never. And I have also never seen two valid estate plans
2 set aside in my almost 35 years, but he worked on it. He
3 worked with Deanna. In 1998 Mr. Cannon who if he had
4 really been such an undue influencer, Mr. Cannon wrote and
5 said Mr. Brown has spent \$10,000 on this. Don't do
6 anymore work. I don't think he is going to pay you.

7 So, Mr. Cannon was not pushing this effort.
8 Mr. Cannon, like everybody else who worked with Mr. Brown,
9 was doing what Mr. Brown said to do. Now, what he was
10 doing behind his back is a different story, but in front
11 of his back -- in front of his back. In front of his
12 front he was doing what Mr. Brown said to do.

13 And then Deanna was communicating with them. Deanna
14 was giving the birthdates of the grandchildren. He was
15 also working on something for James Brown Communications
16 which was the radio station in which Deanna was employed,
17 and Mr. Larry Friday was employed. Then the '98 events
18 happened and he got mad at Deanna. He was hurt and
19 embarrassed. His public image mattered to him.

20 It was clear that he made public statements to the
21 Atlanta Constitution and others that she was never going
22 to get a dime of her money. That's contained in her
23 lawsuit against him. I haven't seen all of the documents.
24 We just got some of them the day before yesterday from
25 Mr. Friedman, but what I do know is that in the 2002

1 documents Deanna and Yamma specifically said that he told
2 them they'd never get a dime of his money. It has been
3 reported but I haven't been able to find the document yet
4 that they actually said he said he would cut them out of
5 the will and he did.

6 I haven't seen that. It was reported in a Texas
7 newspaper, but I do know that we can't get to the
8 pleadings. They were sealed. But we can get to Deanna
9 and she --

10 THE COURT: Well, let me ask you this. You filed a
11 suit -- you and Mr. Buchanan as PR's and trustees --
12 against Mr. Bradley, Cannon, and Dallas, et al. Tell me
13 exactly what that suit is about.

14 THE WITNESS: Okay.

15 THE COURT: In your own words.

16 THE WITNESS: The suit --

17 THE COURT: And for how much money are you suing them
18 for?

19 THE WITNESS: Well, we're suing them and they're
20 suing us. Both.

21 THE COURT: I am asking you about you suing them.

22 THE WITNESS: Our suit -- and, again, Mr. Buchanan is
23 more familiar with it than I am.

24 MR. BAILEY: Your Honor, my I just add that it's also
25 Greenberg Traurig?

1 THE COURT: I said et al.

2 MR. BAILEY: Okay. I'm sorry.

3 THE WITNESS: Right. On June 4 and June 11 of 1999
4 Mr. Brown executed many, many documents before many, many
5 lawyers including his long-term lawyer Leon Friedman.
6 This was four days before his 1999 will. He executed many
7 documents closing the 26 million-dollar TIAA bond. He
8 signed within a short period of that -- a month or two --
9 a document authorizing David Cannon to manage his Morgan
10 Stanley account.

11 During that period in the late 1999 and going on
12 until 2002 the funds in the Morgan Stanley account --

13 THE COURT: 26 million; right?

14 THE WITNESS: No, no, no, no. Well, it was a
15 26 million-dollar deal. What happened is -- What we now
16 know happened is that there was so many closing costs,
17 interest buy-downs, blah, blah, blah, all of that, the net
18 was around 20 million or 19 million. That's important.
19 He paid off the tax debt, and then right then never
20 discovered so far as I know until we were appointed was
21 what we've all called the 5 million-dollar check to
22 nobody. A check to nobody cleared Enterprise Bank and it
23 now appears it was Mr. Cannon, but that was way later that
24 that was discovered.

25 So, Mr. Brown -- So far as we know, Mr. Brown had no

1 idea about that. All right. He signed a document along
2 in there that authorized his trusted accountant to manage
3 the Morgan Stanley account.

4 THE COURT: Being who?

5 THE WITNESS: Mr. Cannon. Mr. Cannon was the sole
6 signatory on that account. It was opened in the name of
7 James Brown Enterprises, Inc., and if Your Honor will
8 recall, although he had done his January -- I mean, his
9 June 15 will just -- 1999 will just four days later, he
10 had -- and he had indicated an intention to transfer JBE,
11 Inc., to it there is no evidence that even corporate
12 documents were signed for the '99 trust. So, JBE, inc.,
13 was outside of the trust, although wholly owned by
14 Mr. Brown.

15 Mr. Cannon had an old power of attorney and on the
16 15th of June Deanna, Mr. Cannon, Mr. Bradley, and
17 Mr. Dallas got a power of attorney, but that power of
18 attorney called for a majority which included one of
19 either Mr. Dallas or Mr. Cannon. That was in '99 all
20 about the same -- That was on the very day of his will
21 when he appointed Deanna to that power of attorney and
22 named her as a personal representative in the '99 will,
23 although not a trustee.

24 Then, so, he put Cannon in charge of that
25 essentially -- and, again, don't hold me to the exact

1 dates, but by about 2002 the Morgan Stanley account was
2 gone.

3 THE COURT: All 19 million?

4 THE WITNESS: Well, I'm sorry. About 19 million came
5 out. Then there was a tax debt and the 5 million-dollar
6 check to nobody. Ten million made it to Morgan Stanley.
7 It went up to 12 and was gone by about 2002. Now, yet to
8 be known how much Mr. Cannon -- I mean, Mr. Dallas and
9 Mr. Bradley participated in that. We had extensive
10 dealings with them from -- from before August 10.

11 Actually, I started having almost daily conversations with
12 Buddy Dallas in June of 2007, but on August 10 Buddy
13 Dallas and Judge Bradley told Bob and me and consistently
14 told us that there was a veil of secrecy between
15 Mr. Cannon and -- Mr. Cannon and Mr. Brown being on one
16 side and the whole rest of the world on the other side.

17 THE COURT: That's why it led to Seventh Decade?

18 THE WITNESS: Seventh Decade was solely -- Seventh
19 Decade, Your Honor, did not come until later.

20 THE COURT: But it was solely Mr. Cannon?

21 THE WITNESS: It was solely Mr. Cannon, and, so, we
22 have -- we have the question of I believe that there are
23 things -- there are things Buddy Dallas says I do not
24 believe. Sure, lots of things, but I -- there are things
25 that I do believe and that is that he understood Mr. Brown

1 and that Bob Buchanan and I learned a lot from him between
2 June and November about Mr. Brown when it wasn't our job
3 to know it and by November we knew what we needed to know.

4 THE COURT: When did you discover the money missing
5 from after he died?

6 THE WITNESS: The \$5 million?

7 THE COURT: No, ma'am. The 800 -- was it \$900,000?

8 THE WITNESS: July 17. July 17. The very first day
9 -- The very first day we looked at the books of the trust.
10 If Your Honor will recall, we were directed to try to get
11 along with the personal representatives and if we couldn't
12 get along with them to bring a motion before the court.
13 We tried, tried, tried to get along with them. I will
14 have to say it was impossible to get along with
15 Mr. Cannon. We --

16 THE COURT: And be a little more specific about that.
17 Why?

18 THE WITNESS: All right. Our first meeting with
19 Mr. Cannon was March 26 of 2007. It was at Hull Towill.
20 We sent them sort of a whistling little letter before we
21 went saying, Please have the following things ready for
22 us. Nothing was there. The table was empty. A bunch of
23 lawyers, Mr. Cannon all red-faced essentially banging on
24 the table and screaming at me. We don't want you. You're
25 a friend of the enemy. You're Louis Levenson's agent. We

1 hate you -- kind of like it feels today, but somebody else
2 saying it. And, you know, I just looked at him and I
3 said, Mr. Cannon, I am just here doing my job.

4 It was always that way with Cannon. He was furious
5 everytime we ever walked in the room. We got nothing that
6 day, but we didn't give up because we were mandated to try
7 to get along with these people. So, from March until
8 June 5 we tried. We did everything we could. We had
9 little meetings with Hull Towill. You know, we cajoled
10 them. We talked to them. We didn't get to talk to Buddy
11 that much, although Buddy loved to chat. I mean, Buddy
12 was friendly from the very beginning. He came to me that
13 very day after. He said, I don't know why David is acting
14 this way. He said, You know, I've heard you're Adele from
15 hell.

16 MR. MEDLIN: Your Honor, wasn't the question what the
17 lawsuit was a about?

18 THE COURT: No. I asked her a little bit more than
19 that.

20 THE WITNESS: So, Buddy was cheery from the
21 beginning. On June 5 we could not get anything -- even
22 basic documents. So, we filed a motion and we tried to
23 always do it quietly. You know, our assistant -- my
24 assistant Adam had found all of those corporations on the
25 internet, but we tried. We didn't want to embarrass

1 anybody. So, on June 5 we filed a motion. On June 13 we
2 had a hearing. On June 22 Your Honor issued an order
3 giving us, in essence, full access to documents which we
4 should have received before, but we hadn't.

5 On June 26 I went alone to Barnwell. Buddy Dallas
6 was there, David Cannon, Bradley, and a paralegal and a
7 lawyer. Mr. Cannon did exactly the same thing he did on
8 March 26. He said, I don't care. I don't care what
9 anybody says. I don't care what an order says. I am not
10 showing you anything until Bill Hammond tells me to, and I
11 just said, Thank You, Mr. Cannon. I drove from Newberry
12 this morning, but I'm not wasting my time. I'll see you
13 later. So, I got up and I left, and Buddy walks me out
14 and he says, I don't know what's wrong with him. I don't
15 know what's wrong with him. And I said, Well, I certainly
16 don't know what's wrong with him.

17 So, I said, Well, okay, goodbye. So, I leave in the
18 car and I am on the outskirts of Barnwell, and Buddy calls
19 me, and he said, Do you mind coming back? I said, Of
20 course not, if it'll help. I said, I am not going to
21 stand on ceremony, but I'll come back if it will help. I
22 drove back and Mr. Cannon stood -- sat on the other side
23 of the table and he said, I have been -- Mrs. Pope, I have
24 been unable to grieve the death of a friend. He said, I
25 am not a crook.

1 MR. SHAHID: Your Honor, I am going to object to all
2 of the hearsay. She's talking about what other people are
3 saying and not saying. It is clearly hearsay information.
4 I mean, it's totally irrelevant.

5 THE COURT: Overruled. I asked her the question. Go
6 ahead.

7 THE WITNESS: He said, I am not a crook. He said, I
8 could have gotten -- he said, Mr. Brown wanted to do a
9 will leaving me half. I could have gotten him to do it if
10 I wanted to and I didn't.

11 I wasn't asking for that conversation. I didn't want
12 to have it, but, so, I just said, you know, the same thing
13 I always said to Mr. Cannon -- Mr. Cannon, I am just doing
14 my job. So, he said, Come back after the Fourth of July.
15 I need a holiday. So I said, Fine. When I left I went by
16 Bob Buchanan's. I said, I am never going there alone
17 again. I am not going to be in a situation where it's my
18 word against David Cannon. I am not going again.

19 It was at that point where Bob and I began to make
20 plans to try to get -- I said, We've got to go there,
21 though. We've got to go. We knew there was a hearing
22 coming up on August 10. I said, We got to get there
23 because we got to see those records, and, so, we kept
24 trying. We tried for July 6. We kept getting put off and
25 the history of what was happening during that time -- none

1 of which we knew about, of course -- is, you know -- So,
2 we went back on the 17th of July, the first day we could
3 go back, and that was the day that we discovered the
4 900,000.

5 We discovered it through the help -- actually,
6 through an answer to --- I mean, we came upon it because of
7 an answer to an interrogatory that Keith Babcock and those
8 had done that indicated that Mr. Brown -- that Mr. Cannon
9 had been paid \$350,000 in the year of 2006 and we asked to
10 see what account that came from, and that was the account
11 where we discovered the 900,000.

12 Sort of the rest is history, but the night before we
13 went there Mr. Dallas called me and said, Oh, Adele, I
14 just don't know what David is doing. He said, I hope that
15 you'll just go tomorrow and just tell the Judge that
16 everything is all right, and I said, Buddy, it's not in my
17 power to make it all right or bad. I am just doing my
18 job. And, so, again, from shortly before that July 17
19 Buddy Dallas was helping us get tax returns. It's hard to
20 sort out, but I do not feel that he was malicious in the
21 way that Mr. Cannon was malicious. I can say that
22 unqualifiedly.

23 Do I have problems with what he did? Yes. Did I
24 think from March until November I could teach him to be a
25 good trustee? Yes. I failed.

1 THE COURT: You're talking about Mr. Dallas?

2 THE WITNESS: I never thought I could teach
3 Mr. Cannon. I thought I could teach Mr. Dallas. I was
4 wrong.

5 THE COURT: You mentioned a while ago that Mr. Cannon
6 said I could get him to leave me half of the estate if I
7 wanted to. How do you take that?

8 THE WITNESS: Well, what he said -- You know, I just
9 took it as like, why are you saying this to me? But, you
10 know, Mr. Cannon hated me. He just got in a rage
11 everytime he saw me, and, so, I -- but, yet, then he would
12 want to talk to me. I couldn't understand it. It was
13 unexplicable to me, but anyway he said to me -- and I
14 never fact-checked this at all. He said, Look,
15 Mrs. Pope -- and he always called me Mrs. Pope.
16 Mrs. Pope, I am not a crook. If I had wanted Mr. Brown to
17 leave me his estate, I could have done it. He said -- and
18 this I remember, but I didn't check it. He said, He
19 wanted to do a will giving me half, but I didn't let him
20 and at the time -- and I didn't check this either -- He
21 said, At the time he wanted to leave out Buddy Dallas
22 because he was divorcing his wife and James Brown liked
23 his wife, and I understand Mr. Dallas had had lots of
24 wives, and I didn't check to see which wife it was or
25 anything, but that was what he said to me. I just took

1 it, you know -- I just -- You know, the whole thing was
2 sad to me, but Mr. Cannon was not sad. He was mean and
3 conniving, and I knew that.

4 With buddy it was more complex because there were
5 things that he did that were -- were truly helpful and you
6 could tell that he loved Mr. Brown. He just didn't
7 operate like I operated.

8 THE COURT: All right. Mr. Bailey, let's -- I
9 apologize for getting Mrs. Pope off on my question. I
10 will stop that. I have been accused of being the
11 investigator. I was simply asking what I thought would be
12 relevant questions. Everybody need a break? It's about
13 10.

14 MR. LEVENSON: Please.

15 THE COURT: Let's take about a 10-minute break. We'll
16 start back in a few minutes.

17 (Whereupon, a break was taken.)

18 THE COURT: Anybody have any problem with me signing
19 this? We sealed it after we made copies. I now have to
20 do another order asking that it be unsealed. Everybody
21 consent on the record?

22 MR. BAILEY: Yes, Your Honor.

23 MR. JONES: Yes, sir.

24 MR. ROSEN: We agree, Your Honor.

25 THE COURT: All right. Does anybody know anything

1 about this one I have put on my desk -- an order to
2 relieve counsel in this case and all cases 16471220872. I
3 don't know who this is. It is an order to relieve John
4 Kachmarksy, K-A-C-H-M-A-R-K-S-Y?

5 MRS. POPE: That was counsel for --

6 THE COURT: It says he's counsel for Jackie
7 Hollander.

8 MR. ROSEN: She's not a party to the case. There is
9 no need to sign it because she's not a party to the case.

10 MR. MEDLIN: He was here yesterday and was sitting
11 next to them.

12 THE COURT: All right. Mr. Bailey, you may proceed.

13 MR. BAILEY: Thank you, Your Honor.

14 Mrs. Pope, I'd like to direct your attention back to
15 undue influence and what your understanding of undue
16 influence is in order to overturn a will or invalidate a
17 trust.

18 THE WITNESS: Well, I didn't look this up, but it is
19 generally an influence that is so strong that a person --
20 that a person substitutes his will for the will of the
21 testator for the benefit of that person and it is not just
22 the influence of friendship or confidence or trust or
23 love, but an influence so strong that it robs the testator
24 of his ability to think for himself and another critical
25 element of proving a case of undue influence is the notion

1 that the testator lacked the opportunity to become free
2 from the undue influence, and Mr. Brown had many, many
3 years even if he had been unduly influenced and I don't
4 believe he was and I don't believe his documents benefit
5 the testators -- I mean, I'm sorry, benefit Mr. Dallas,
6 Mr. Cannon, and Mr. Bradley. I believe they affirmatively
7 do not.

8 Now, did they benefit themselves? That is a
9 different question, but the documents affirmatively do not
10 benefit them, and then in addition and most importantly he
11 had many, many, many years for that influence to dissipate
12 and, in fact, I've spoken with Jay Ross in my conduct of
13 due diligence -- one of Mr. Brown's long-time attorneys
14 and a man who loved Mr. Brown and is part of the Corbus
15 litigation and actually believes he is entitled to some
16 money from the estate but said he would never put his name
17 against anything with James Brown at the other side of the
18 versus. He said that Mr. Brown had asked him to draft a
19 will. He was considering doing another will at some point
20 before his death but didn't -- decided not to and, so, he
21 was certainly free to ask, and, again, I don't -- I don't
22 know all of the details of that.

23 I glanced at the draft. I understand that it was
24 mailed to Mr. Dallas' office. I haven't finished
25 investigating that, but it was certainly evidenced to me

1 that Mr. Brown was completely free to make and felt free
2 and I'm looking at this annulment proceeding and seeing
3 how much Mr. Brown was in charge of everything, and, so, I
4 just think there was no undue influence. There was no
5 benefit to the alleged undue influencers in the documents
6 without regard to impropriety later.

7 You know, if your trustee acts bad, that doesn't make
8 your documents bad, and they didn't -- They could not
9 properly benefit from them under the documents and there
10 was loads of time to consider a change and he did,
11 apparently, consider and I won't say he rejected a change,
12 but he decided -- I mean, so far as I know he never signed
13 another document and nobody has suggested that he did.

14 Q So, from 2000 -- August of 2000 to his death on
15 December of '06 do you know of any restraints on his
16 freedom, his movement? Was he deprived of any type of
17 contact with friends, with business men? Was there any
18 indication whatsoever that that ever occurred?

19 A I have never seen anything that would suggest that he
20 did not have access to multiple and differing attorneys:
21 Leon Friedman in New York, Jay Ross in Chicago, and Jay
22 met with him in Chicago when he would come to town and Jay
23 also came. Jay also came in December of '99 and
24 negotiated the -- that wrestling pay-per-view deal for
25 him. That was his first contact with Mr. Brown, and he's

1 very proud of that contract, but nothing. He was in very
2 close contact with his attorney Debra Opri on the west
3 coast.

4 He was sued three days after his August 1, 2000 will
5 by a lady named Lisa Agbalaya and Ms.~Opri represented him
6 in that just four days after the will and she made some
7 very strong statements on Mr. Brown's behalf that he did
8 not put up with extortion and he was not -- Mrs. Agbalaya
9 sued him for a million dollars. He said he was not going
10 to be extorted. He was taking this to court which was
11 kind of typical of Mr. Brown. He did take it to court.
12 He appeared in court in the year of 2002 and in her
13 million dollar lawsuit she got \$40,000, and that was just
14 within four days after Mr. Brown signed the August 1 will.

15 A couple of months before the will another Lisa --
16 Lisa Rushton -- sued him in, I believe it was, Richmond
17 County. Again, that case was settled. I don't know
18 exactly how. Both of the cases related to incidents that
19 had occurred in 1999 about the time of the '99 will, and
20 there was never any suggestion that he didn't know exactly
21 what he was doing, you know.

22 Mrs. Agbalaya was the head of his west coast
23 operations. In fact, right after the lawsuit he fired her
24 and that was -- the \$40,000 she got was for wrongful
25 termination. She did not get the million dollars she was

1 seeking for some sort of sexual harassment. She wouldn't
2 have sex with him or something.

3 Q Was there any evidence that you can find in your due
4 diligence that prior to the signing of the 1999 will gave
5 any hint of restrictions that were placed on Mr. Brown,
6 any type of coercion, any type of duress exercised over
7 him to challenge the validity of that will by undue
8 influence?

9 A Absolutely not. None. The whole story of what he
10 was doing from '96 to 2000 is -- has just been
11 corroborated by Larry Friday who said they met every week
12 to discuss it with Deanna present to discuss the "I feel
13 Good Trust" back when and he said -- I think his words
14 were she was going to be the president of the trust, but,
15 again, Larry Friday loved Deanna, and Larry Friday knew
16 that that '98 incident had been hard on everybody, and,
17 so, he was not -- his testimony is very interesting
18 because he really loved Deanna.

19 MR. LEVENSON: Excuse me, Your Honor, just a point of
20 order here. When Mrs. Pope says testimony. May I inquire
21 what it is she's referring to because I don't know what
22 testimony?

23 MRS. POPE: It is a sworn statement that was taken by
24 the prior PR's through the use of Gene Stahlcup. I wasn't
25 even appointed when -- but he went around and took a

1 number of sworn --

2 MR. LEVENSON: Thank you, Judge.

3 MRS. POPE: -- video testimony of a bunch of people
4 that and they've been back in the back of the office, you
5 know, since they were delivered on August 10, 2007, and
6 Mr. Friday; Ms. Mary Holmes who has very compelling
7 testimony -- sworn testimony, video; his assistant at the
8 office; one of the guards at the gate, Ms. Sterling, Diane
9 Sterling. You know, there is a lot of testimony -- sworn
10 testimony -- that we've had an opportunity to review and
11 then last night I talked to somebody else who called me to
12 just say more of the same.

13 Q Does -- in your opinion does the James Brown
14 situation that we have here today -- does it compare very
15 similarly to the Russell versus Wachovia factual setting?

16 A It does, except that we haven't had the benefit of
17 even a little discovery to get summary judgment. The
18 criteria that the court used -- litigious family, a
19 prominent decedent, the court's desire to respect
20 decedent's -- decedent made every effort possible to
21 assure in the public that his documents were -- you know,
22 -- that there was no secret; that there was nothing
23 hidden -- documents consistent with his ideals and beliefs
24 and the problems that he had had with that particular
25 family member Mim Russell and then an in terrorem clause

1 that not only -- not only had an in terrorem clause, but a
2 forfeiture clause which was enforced against Mim Russell
3 and it really even had one more thing because -- that's on
4 all fours with this case and that is that -- it was my
5 personal belief, although I was highly criticized for it
6 by Powell Goldstein and David Bell -- it was my personal
7 belief that there had been so much confusion during the
8 year of 2007 and I told this to Louis Levenson and I have
9 been criticized for it forever by Powell Goldstein and
10 David Bell that I felt if they simply filed an action and
11 took a little time to look into the facts and then let it
12 go that it would be entirely inappropriate to enforce the
13 in terrorem clause because of the fact that I was the one
14 on Christmas Eve of 2007 who disseminated the '99 will. I
15 understood that there were only two days before the
16 deadline, although, Ms. Hynie Brown had already contested
17 the will, but Mr. Levenson's clients had not, and I firmly
18 believe that it would not have been fair to try to enforce
19 the in terrorem clause had they just taken the time to
20 learn everything Bob and I already knew and dropped the
21 case, and, so, and that was what happened in the Mim
22 Russell case.

23 They said she might have had probable cause to bring
24 it, but at some point she had enough information that she
25 should have dropped it, and, therefore, all of this about

1 how all of her 11 attorneys should be paid from the estate
2 and all of that, I think that is just so inconsistent with
3 the facts of this case. It makes no sense that there is
4 going to be some secret payment of what we estimate to be
5 12 to 14 million to people who have done nothing to
6 benefit the estate. There is just no basis whatsoever for
7 that.

8 THE COURT: Mrs. Pope, in that case was there an
9 agreement between the, quote, settling, unquote, parties?

10 THE WITNESS: Judge Early, in 30 years I have never,
11 never seen an agreement where -- which is among part of
12 the interested parties and opposed by the trustees. Never
13 seen one. Well, I've seen them, but never seen a court be
14 asked to approve one.

15 THE COURT: My question, though, in the Russell case
16 was there an agreement that the court was asked to
17 approve?

18 THE WITNESS: No, no.

19 MR. BAILEY: No.

20 THE WITNESS: They held that Mim Russell had
21 contested Judge Russell's will without probable -- Well,
22 she continued her contest without probable cause, and,
23 therefore, she was liable for attorneys' fees and costs
24 and she lost her inheritance.

25 Q But there was no agreement that the parties in that

1 case were asking the court to approve?

2 A I don't believe there is one now, Your Honor.

3 THE COURT: No, ma'am. I understand your position
4 well. I am just asking in that case was there an
5 agreement for the court to consider whether it was fair
6 and equitable?

7 THE WITNESS: They through it out on summary
8 judgment, Your Honor, as we should do here.

9 THE COURT: Ma'am, was there an agreement is all I'm
10 asking?

11 THE WITNESS: No, Your Honor.

12 THE COURT: Thank you. now, Mrs. Pope, give me your
13 opinion on this. Let's say the court hypothetically
14 agrees with you and Mr. Buchanan that it was, in fact,
15 Mr. Brown's wishes, y'all have defended his estate plan,
16 and we have these other cases filed; ie, Ms.~Brown's case;
17 ie, the children's case contesting the will or claiming to
18 be the spouse -- all of those issues and that those
19 parties have reached an agreement whether you like it or
20 not and if I find that the contest is in good faith and
21 that the agreement considering the global aspects of this
22 matter to be fair, just, and reasonable, how does that
23 reconcile with his estate plan if they reached that
24 agreement and I find it to be fair and just and in good
25 faith?

1 THE WITNESS: Your Honor, I do not believe that the
2 trustees who are charged under the law with the defense of
3 this mixed charitable and non-charitable trust -- I do not
4 believe such an agreement can be reached without their
5 consent or approval.

6 THE COURT: Give me some law that you base that
7 opinion on.

8 THE WITNESS: I base it on 30 years of practice and
9 the probate code.

10 THE COURT: Can you be specific?

11 THE WITNESS: And general principals of due process
12 and it is -- Judge, it's sort of like proving the sun came
13 up this morning. It is so alien to due process, proper
14 jurisdiction, the probate code, what everybody knows about
15 proper joinder of parties, everything. Most importantly
16 we don't -- we don't yet know who's agreed because it's
17 changed since January. Just two small examples, Your
18 Honor, and they're important: James, II. Your Honor,
19 that is a disgrace, and let me please explain why because,
20 unfortunately, Mr. Buchanan did not get that exactly
21 right.

22 THE COURT: Well, I am going to let you explain that
23 in just a minute, but tell me where in the probate code
24 because I am reading 62-3-1102 and I don't see anywhere in
25 the probate code that says I'd have to have your consent.

1 THE WITNESS: Well, Judge, for starters --

2 THE COURT: Ma'am?

3 THE WITNESS: For starters, I don't think that can
4 control an irrevocable charitable and part charitable
5 trust which was created more than six years before this
6 action was begun. Cannot do it.

7 THE COURT: Okay.

8 THE WITNESS: I do not believe that it can control
9 what the trustees named in the will -- that would be us --
10 have an obligation to do. I do not believe that the
11 attorney general of South Carolina has any business
12 stepping in the shoes of the trustee of a charitable and
13 non-charitable trust. With all due respect, I do not
14 believe he has that authority; therefore, the very essence
15 of the agreement which I don't believe necessarily applies
16 to charities any way -- I think you might have to look in
17 the back about deviation from a charitable trust. That's
18 new law, Your Honor, but, so, I'm not even sure we're
19 looking at the right section, but this is a mixed
20 charitable and non-charitable trust, and Bob Buchanan and
21 I are the only people standing defending Mr. Brown and the
22 other people who could defend his estate plan are not here
23 and that is Voorhees, USC Salkehatchie, and Aiken, and
24 here is why.

25 On August 10 the attorney general signed a document

1 by which he committed himself to try to defeat the
2 interest of all other successors and to favor certain
3 heirs and beneficiaries. At that point he rendered
4 himself unable to defend Mr. Brown's trust, and it keeps
5 getting worse because the agreement keeps changing, keeps
6 becoming more disasterous from a tax standpoint; probably
7 will now not only disqualify the \$40 million tax
8 charitable deduction, but will also destroy the charity
9 itself because of the prohibited transaction caused by
10 this right -- 10-year right of refusal that came in the
11 day before yesterday.

12 Now, remember, the attorney general entered into what
13 he called an irrevocable agreement on August 10 and that
14 irrevocable agreement has now changed. So, I believe that
15 more than 70 percent -- and I'm good at math -- of
16 Mr. Brown's -- Mr. Brown's -- what Mr. Brown intended for
17 education is now going to people he not only did not
18 intend to get it, but who have probably forfeited because
19 of their contest -- their contests without probable cause
20 to his documents and if I could just ask the court to take
21 judicial notice of the entire file of James Joe Brown
22 versus Tomi -- Tomi Rae Hynie Ahmed Brown which was
23 commenced on May --

24 THE COURT: Hold on. That's the Charleston file;
25 right?

1 THE WITNESS: No. This is after that is over.

2 Mr. Brown's lawsuit against her.

3 THE COURT: Okay.

4 THE WITNESS: In which in his complaint for annulment
5 he specifically says in his amended complaint for
6 annulment dated May 5, 2004 after the date of her
7 annulment in which has been characterized as some friendly
8 family thing they did together May 5, 2004, 20 days --

9 MR. MICHEL: Your Honor, in all due respect is this
10 in response to a question? I am just trying to keep my
11 notes.

12 THE COURT: Is that an objection?

13 MR. MICHEL: Objection, Your Honor.

14 THE COURT: You're not asking the questions. So the
15 objection comes from Mr. Medlin.

16 MR. MICHEL: I'm sorry. Will do.

17 THE COURT: It is in response to a question. Go
18 ahead.

19 THE WITNESS: On April 15, 2004 Ms.~Hynie Brown
20 received her annulment. I read in the paper because I am
21 not a family lawyer. So, this is how -- I mean, I had
22 already seen all of this before, but now I think I
23 understand why it happened. I read in the paper that
24 there was an announcement that everything James Brown and
25 Ms.~Hynie Brown did got in the papers; that her marriage

1 had been annulled freeing him to annul his marriage to her
2 which he immediately began to do.

3 In the marriage he alleged that they had been
4 separated in the -- and this would be the amended
5 complaint dated May 5, 2004 in the case of James Joe
6 Brown, Jr., Plaintiff versus Tomi Rae-Hynie Ahmed Brown,
7 Family Court, Second Judicial Circuit, 04-DR-02-157. He
8 alleged that she lived -- that -- Oh, I'm sorry. I got
9 the wrong thing. He alleged that on December 15 Ms.-Hynie
10 Brown had filed an annulment action against Mr. --

11 THE COURT: Of what year?

12 THE WITNESS: -- Ahmed. 2003. Ms.-Hynie Brown had
13 filed an annulment action against Mr. Ahmed. The
14 Charleston County Family Court made findings of fact and
15 conclusions of law that the Defendant was, in fact,
16 married to Mr. Ahmed on February 17, 1997. The Family
17 Court granted the Defendant an annulment on April 15.
18 Defendant in that action has not filed any appeal.
19 Defendant -- and as such the findings of fact in the
20 Charleston Family Court are binding on this court.
21 Pursuant to the order of the Charleston Family Court
22 Defendant in this case -- that would be Ms.-Hynie Brown --
23 is collaterally and judicially estopped from denying the
24 allegations in this action and he says he's entitled to an
25 annulment from her and that she should be responsible for

1 any fees.

2 So, he seeks an annulment from her based on her
3 Charleston County annulment filed about 21 days after she
4 received her annulment because he said that she conceded
5 that she had been married to him and he seeks an annulment
6 from her. Then she answers and counterclaims in July.

7 THE COURT: What is the final order? I know what
8 they allege.

9 THE WITNESS: Well, I think it's fairly important
10 what he asks in his reply. He asks for DNA testing of
11 James, II.

12 THE COURT: Okay.

13 THE WITNESS: And then the case is settled. And the
14 case is settled --

15 THE COURT: You got an agreement that was approved.

16 THE WITNESS: It was settled on her promise never to
17 claim to be the common law spouse of Mr. Brown which would
18 free him to respect both of them by referring to her as
19 his wife if he wanted to without fear of her claiming to
20 be his spouse. I have never known -- although, I haven't
21 done domestic law -- of any married person who had to
22 promise not to claim to be the common law spouse. It is
23 clear from the documents that he did not -- that he
24 alleged he was not the father.

25 He -- and I ask the court to take judicial notice of

1 the whole file because it is clear Mr. Brown's position in
2 all of this and this is one Mr. Brown was in deep control
3 of. They settled it. There is a right interesting
4 affidavit by Ms. Cleo Anna Douglas -- Tomi Rae Hynie's
5 mother -- saying Tomi Rae goes fancy places, she loves to
6 shop, she usually spends \$3,000 when she shops -- you
7 know, asking for support and separate maintenance.

8 MR. ROSEN: Your Honor, I want the court to take
9 judicial notice I don't take cases where people don't have
10 a lot of money. I think the court can take judicial
11 notice of that.

12 THE COURT: It sounded like my wife when I practiced
13 law. I am just kidding.

14 MRS. POPE: Well, I hate to deflate Mr. Rosen's
15 balloon, but later on when they finally separated she said
16 next time she was going to get a good lawyer and get
17 millions of dollars instead of the 20,000 she apparently
18 got with this. But that is all -- Well, it's not hearsay.
19 Ms. Holmes heard it and she's a competent witness.

20 THE COURT: All right.

21 THE WITNESS: I think there is no evidence that he
22 thought she was married to her. I think he felt -- I
23 think that he respected that little child and this -- and
24 the order that he got allowed him to show respect for that
25 child and to show respect for her without fear of her

1 claiming to be his spouse and that was wholly consistent
2 with what he did with lots of other women where he had
3 them sign papers when they visited the house saying that
4 they were only guests. They weren't going to claim to be
5 -- Well, it may seem strange to Your Honor but he --

6 THE COURT: No, ma'am.

7 THE WITNESS: I was just noting your look, Your
8 Honor.

9 THE COURT: Well, it is sort of strange.

10 THE WITNESS: Well, well, I think he had a lawyer.

11 THE COURT: Even your lawyer has that look down
12 there.

13 THE WITNESS: Well, I think his own lawyer Mr. Dallas
14 understood that James Brown needed protection because a
15 lot of women visited. Many, many women visited, and it is
16 generally known and I have heard it personally from two or
17 three visitors that Mr. Brown had a sexual relationship
18 with many of the people he worked with -- with his
19 hairdresser, with his friends, and, of course, the
20 lawsuits indicate he tried to have them with more, but one
21 of the things his lawyer did for him -- and maybe
22 Mr. Rosen would shake his head that it is a good idea --
23 whenever he could -- had some measure of input Mr. Brown
24 developed -- I mean, Mr. Dallas developed a little thing,
25 a little statement that said you're visiting the house.

1 You're only a guest. You're not a wife. You'll never
2 claim -- you know, essentially, you'll never try to build
3 this little visit into anything more than it is.

4 So, I think and it seems a little funny, but
5 Mr. Brown really -- his virility and his, you know,
6 prowess were important to him, and he was getting himself
7 in trouble a lot about that.

8 THE COURT: Go ahead.

9 Q Mrs. Pope, do you recall the contents of the 2000
10 will that makes a devise of personal effects to some of
11 the settling parties?

12 A I do. I would have to pull it for more specific
13 discussion.

14 THE COURT: Mrs. Pope, hand me that divorce
15 annulment, whatever you were looking at.

16 THE WITNESS: This is -- I am handing you the amended
17 complaint for annulment --

18 THE COURT: And the counterclaim and reply.

19 THE WITNESS: -- yea, dated May 5, 2004 in Brown --
20 James Joseph Brown, Jr., versus Brown.

21 THE COURT: You referred to an affidavit.

22 THE WITNESS: And then the reply to the counterclaim,
23 Your Honor, in that same case.

24 THE COURT: And an affidavit.

25 THE WITNESS: Oh, Your Honor, this is an unsigned

1 affidavit of Cleo Anna Douglas and I can't -- I can't
2 sitting here represent -- Cleo Anna Douglas is Mrs. Hynie
3 Brown's mom and I can't -- it's dated in the summer of
4 2004 and I haven't looked in the file. I assume that it
5 was filed in the file, but -- and they handed me what they
6 represent to be the file. I can't say for sure.

7 THE COURT: Thank you.

8 THE WITNESS: But it talks about how in control
9 Mr. Brown was.

10 THE COURT: All right. You're asking about the
11 language in the 2000?

12 MR. BAILEY: Yes, Your Honor.

13 THE COURT: All right.

14 Q Have you --

15 A Yes?

16 Q With respect to the personal household effects and
17 I'm speaking somewhat in general terms, was there anything
18 else left to any of Mr. Brown's children or any other
19 person other than the trust?

20 A No and he made the gift of the trust in two ways. He
21 did what we call a pour-over gift which says the trust is
22 in existence and we know it was. I give my entire residue
23 other than personal and household effects to the trust and
24 then he had what is a typical stop-gap provision item
25 three which says, you know, if for any reason that gift is

1 no good then I incorporate the terms and I create a trust
2 that looks just like that one.

3 So, it was sort of a double assurance that there
4 would be no -- that there would be no termination. I
5 mean, no loss of a gift which looked exactly like that
6 trust even if, for example, that trust had been terminated
7 by the trustees and turned over to a college or something.

8 Q In devising as you've indicating the pour-over into
9 the trust, who actually gets that property? Real,
10 personal, or whatever?

11 A You mean the rest of the property?

12 Q Yes. Who gets that? Where does it go?

13 A Well, it goes to Alfred Bradley, Albert H. Dallas,
14 David G. Cannon as trustees, but I think the law is
15 generally that that is a gift to them in their capacity
16 and whoever is serving as trustee receives it.

17 Q And that's to them in their fiduciary representative
18 capacity?

19 A Right. As fiduciaries, of course.

20 Q You recall the section that allows private agreements
21 among successors or -- yes, among successors -- and that
22 would be 62-3-912 and what I'd like -- I'd like to read to
23 you just briefly.

24 THE COURT: Which section?

25 MR. BAILEY: 62-3-912, Your Honor. May I go ahead?

1 THE COURT: Certainly.

2 Q "Subject to the rights of creditors and taxing
3 authorities competent successors may agree among
4 themselves to alter the interests, shares, or amounts to
5 which they are entitled under the will of the decedent or
6 the laws of intestacy."

7 First of all, would you characterize the trustees as
8 competent successors under the 2000 will?

9 A Yes, but I am not at all sure that even as competent
10 successors we could enter into such an agreement with
11 respect to that charitable trust. That is new ground. I
12 think you would have to take a second look. You might be
13 able to do it, but I believe -- and, again, I don't -- the
14 the probate code is -- the trust code is kind of new, but
15 I believe that there would be an overlay over there -- a
16 duty that Mr. Buchanan and I had in addition to the duty
17 to uphold and defend the will, not to take any action
18 which would disqualify the trust. I believe -- if we had
19 joined in this, I believe that we would have to carefully
20 study and characterize any settlement so that we could
21 find that it was -- that we had not damaged the charitable
22 intent of the testator as competent successors.

23 Now, there might be -- a charity can, of course --
24 the trustees of a mixed charitable and non-charitable
25 trust can defend claims. That's a different issue, but

1 can the trustees. -- Could Bob and I just say, oh, heck,
2 let's just give some of that to them without really
3 determining is a material purpose of the charitable
4 portion of the trust altered? And, again, I haven't like
5 completely studied that because we were never asked to
6 participate in these things, but if I had been that would
7 have been what I would have been looking at. Can we --
8 Can we really even do this even if we had all the right
9 parties or do we have to go have an additional standard
10 because we have an irrevocable already in existence
11 charitable trust that puts us to the higher standard of
12 deviation from the purpose of a charitable trust.

13 Now, you know, I haven't finished studying that, but
14 I do -- I just can't believe that -- I don't believe that
15 you can enter into that private agreement with an
16 irrevocable trust of any sort and have it binding without
17 the court and even then when you come to the court if it's
18 a charitable trust I think you have to really give it a
19 triple look and the main look is are we destroying the
20 intended tax consequences which are an important factor
21 under the probate code. It is important. It is a
22 40 million-dollar question. Are we disqualifying the
23 trust which is an in perpetuity terrible problem and are
24 we negating a material charitable -- a material purpose of
25 the trust itself?

1 And, again, you know, like I said if we had been
2 asked to participate, we would have been thinking about
3 all of these things for months.

4 Q Is it your opinion or do you have an opinion as to
5 whether or not the attorney general qualifies as a
6 competent successor?

7 A I do not believe so for this reason. Later on it
8 says in the back somewhere and, you know, I'm not a
9 professor. I don't know numbers, but somewhere in the
10 back there it says charitable trusts do not have
11 traditional beneficiaries, and, you know, Mr. Medlin
12 questioned Mr. Buchanan a long time about that. You know,
13 technically, you know, if I'm saying something a little
14 bit wrong, it's not very wrong, but I think the general
15 gist is that charities don't have traditional
16 beneficiaries. So, when you start saying, well, who is
17 the beneficiary, who is the beneficiary -- well, if by
18 that you mean who is going to benefit? Both the
19 educational institutions and the children, but who is the
20 beneficiary is a different question.

21 So, but I think it goes on to say and it may be in a
22 footnote that they don't have traditional beneficiaries
23 but they have people who have certain rights to enforce
24 the trust including the settlor, the trustee, the attorney
25 general, and, you know, so...

1 Q Are you aware in performing your due diligence of any
2 law in South Carolina or perhaps outside of South Carolina
3 where the attorney general has authority to disseminate a
4 part of a charitable trust to individuals who are not
5 beneficiaries under the trust but are outside of the
6 trust?

7 MR. JONES: Your Honor, objection. There is no such
8 facts in evidence.

9 THE COURT: Mr. Bailey, this situation you've got an
10 alleged good faith controversy that they're trying to
11 settle. So, he's not -- I think your characterization of
12 giving it away, that's not -- The facts don't support
13 that, I don't think.

14 MR. JONES: Yes, sir. That's the our objection. The
15 facts don't support that. We're not talking about
16 altering a trust that is, in fact, four corners absolutely
17 in existence. We're talking about a question about if
18 there is a valid charitable trust at all which is --

19 THE COURT: Well, it's being contested as to whether
20 it could withstand all of the assaults by the various
21 parties.

22 MR. JONES: Yes, sir.

23 THE WITNESS: Well, I would --

24 THE COURT: You can answer the question like he asked
25 it.

1 THE WITNESS: Well, I would respectfully disagree.
2 It certainly is in existence and the attorney general is
3 of record in the Court of Appeals as supporting that. It
4 is in existence. It has been in existence since the year
5 2000. There is no question that it is in existence. It
6 is a charitable trust, and I'll just answer by saying I
7 have looked nationwide for any case in which an attorney
8 general is attempting to dissipate a trust by more than
9 -- a charitable trust by more than 50 percent and that
10 the trustees are trying to retain that amount for charity
11 and I have been unable to find anything that is even close
12 to it as I've been unable to find any case where two valid
13 estate -- I'm sorry, two complete estate plans that look
14 almost alike and that are a year apart and more than six
15 years old have been overturned nationwide.

16 There is one little old case in California which
17 Mr. Medlin reported in his reporter which is one way I
18 keep up with things, and that was, I believe it was, a
19 6-year-old charitable case in which the trustees wanted to
20 continue to fight over which charities as I recall -- and
21 Professor Medlin could say it better -- which charities
22 were going to get the funds and the trustees wanted to
23 continue to haggle over which charities while the attorney
24 general said six years is enough.

25 If this had been going on for six years and if there

1 were a scintilla of evidence that Mr. Buchanan and I were
2 here to try to get rich rather than to do Mr. Brown's
3 wishes as expressed in his estate plan, I would reread
4 that case, but it is so wholly different from the facts of
5 this case that it would -- It bears no relation to it.

6 Q Returning to section 62-3-912 at this point do you
7 consider that there is a valid will that exists from --
8 executed by James Brown in 2000 -- august of 2000?

9 A I do and I believe that there is no probable cause to
10 contest it for numerous reasons, some of which I have
11 already told the court.

12 Q Now --

13 THE COURT: What is the threshold for probable cause
14 in an attack on a will and or a trust like we have in this
15 situation?

16 THE WITNESS: Well, Your Honor --

17 THE COURT: I deal with probable in the criminal
18 sense all the time, but I don't know if I have ever dealt
19 with it in an estate situation. Is it the same or tell me
20 what the probable cause is -- your understanding of
21 probable cause.

22 THE WITNESS: Well, Your Honor, I haven't done any
23 criminal work since we were in law school together, but I
24 think probable cause is certainly less than you're going
25 to win -- less even then that you're going to go to a

1 jury. I remember officer Terry from our class, but Terry
2 versus Ohio or something like that which means a reason to
3 suspect something wrong.

4 I think when you -- but, again, Russell versus
5 Wachovia deals exactly with that issue and the Supreme
6 Court can speak better than I can, but -- and then I think
7 you add to it as it relates to the trust the definition of
8 knowledge as contained in the trust code which is not --
9 which is not knowledge -- absolute knowledge -- but rather
10 knowledge based on what would be reasonable, but it is a
11 standard lower than proof, a standard lower than going to
12 a jury.

13 Q Now, in your position as a fiduciary you have been
14 asked before about being fair and impartial. Is a
15 fiduciary required to ignore facts that come to its
16 attention that challenges the rights of some alleged
17 beneficiaries in a trust or --

18 A Well, the reason you have a fiduciary is because as
19 the code acknowledges if you ever have more than one
20 beneficiary, there is always potential for conflict and a
21 fiduciary's job is not to be on the side of one or the
22 other beneficiaries, but to be fair and impartial, but a
23 fiduciaries first job is -- and our trust code is very
24 much -- much of the trust code is default which means if
25 you're in question you look at the document and

1 Mr. Brown's document is overwhelmingly, overwhelmingly --
2 it forces us to defend his estate plan, to enforce the
3 in terrorem clause, to not accept the challenges and
4 attempts to gain interest in the trust such as Forlando
5 Brown's which it wasn't a direct challenge but was an
6 attempt to gain the trust assets for himself improperly.
7 It admonishes us to contest all of those things as an
8 affront to the wishes of Mr. Brown which I believe is our
9 primary duty.

10 Q Touching on the in terrorem clause, have you been
11 served with any documents from any of the parties
12 demanding that you as the personal representative trustee
13 enforce the in terrorem clause?

14 A As I recall Terry Brown, Forlando Brown, and Romunzo
15 Brown in February -- I think around February 28 -- filed
16 something saying that the in terrorem clauses should be
17 enforced, and David Bell has repeatedly admonished me and
18 the entire Forlando Brown lawsuit in which Mr. Bell and
19 Powell Goldstein are representing Forlando against us
20 while at the same time they're now representing Terry
21 against the documents have said that even the mild
22 concession that I was willing to give Mr. Levenson's
23 clients to give them a few days to look at the documents
24 constituted a breach of my fiduciary duty to even consider
25 that we might have given Mr. Levenson a courtesy of, you

1 know, two or three weeks or a month to consider whether he
2 did have probable cause before enforcing that.

3 As you may recall -- no, you won't recall because you
4 weren't here. Before there was any challenge to the will
5 and in an attempt to stave off any at challenge to the
6 will and in an attempt to try to say, Hey, let's try to
7 work this out, on November 27 before there was any
8 challenge to the will we filed something saying there is
9 no probable cause to challenge the will; don't do it.
10 Mr. Bell demanded a jury trial on that issue. So, the
11 court, you know, may have a jury trial on it. It still
12 hasn't been heard, although it was filed a year and four
13 months ago on November 27 as part of the declaratory
14 judgment action.

15 And we have been roundly criticized by the same
16 lawyers. Mr. Bell and Powell Goldstein have wasted this
17 court's -- I mean, yea, this court and the federal court's
18 time and resources for a completely frivolous suit filed,
19 verified by Forlando Brown on the 31st of January, less
20 than 40 days after our appointment filed on January 3 of
21 2008 in which he absolutely falsely accused us of wresting
22 this administration from the true trustees in which he
23 alleged that we were power mongers trying to take over and
24 in which he said that the trust should be enjoined from
25 any action whatsoever which would -- if that suit had been

1 allowed to remain would have ruined Mr. Brown's estate
2 plan.

3 We tried to get the attorney general to help us with
4 it but were told that the 11th amendment prevented the
5 attorney general's defending -- helping with that lawsuit.
6 Q Mrs. Pope, given the present posture of the
7 settlement agreement and what it purports to do to the
8 estate plan of James Brown, the question of attorneys'
9 fees in order to protect the trust versus the desire of
10 the settling parties to reduce attorneys' fees and costs,
11 if you compare the attorneys' fees and costs that the
12 estate and trust would suffer if this agreement is
13 approved versus the attorneys' fees that would be incurred
14 in order to defend, what is your opinion of the difference
15 between those two figures?

16 A My opinion is that getting -- the cost of getting
17 this right would be miniscule compared to what is being
18 sought now. I still do not understand that Mr. Jones who
19 is so proud of having made all of the attorneys' fees so
20 low refuses to tell us what all of the attorneys for the
21 settling parties are going to be paid. I have never been
22 involved in a case where a charitable trust is involved
23 and nobody is told what the attorneys' fees are. We have
24 asked that from the beginning, and they refuse to tell us.

25 We have estimated the attorneys' fees and costs to be

1 between 12 and \$14 million. We are extremely concerned
2 that Mr. Rosen is taking his contingency out of whatever
3 is being allocated to that child which we thought was
4 nothing but we found out yesterday in some affidavit I
5 haven't seen -- and James, II is the most unconscionable
6 part of this settlement and please ask me about it, but
7 the notion that they will not stand up because they're not
8 entitled to a nickle -- They are not entitled to one
9 nickle from this estate or trust until they show that what
10 they have done has benefitted Mr. Brown's estate plan, and
11 if you want to know how to do it right, look at Boyce.

12 The Judge in that case used a -- with the consent of
13 all the parties, used a baseball arbitration procedure and
14 he allowed after a proper settlement -- the Judge said,
15 Judge Breeden -- He was a wonderful judge. He is. He was
16 a classmate of mine, too. He said, All right, folks.
17 Everybody go out. You've got four weeks and 25 pages --
18 Talk about saving money. You've got four weeks and 25
19 pages to tell the court what fees you think everybody
20 should be paid out of this settlement -- what legal fees
21 everybody should be paid out of this settlement and we're
22 going to do it by baseball arbitration which I didn't know
23 what it was. I don't watch baseball.

24 MR. MEDLIN: Your Honor, object to relevance. This
25 is not the Boyce case. She doesn't know what our fee

1 structure is. So, how in the world could this be
2 relevant?

3 THE WITNESS: I should know. I should know
4 because --

5 THE COURT: Ma'am, let me rule on that, please.

6 THE WITNESS: Excuse me. Sorry.

7 THE COURT: I am going to overrule it. Let her
8 continue.

9 THE WITNESS: That was a wonderful example of good
10 judicial control because every lawyer seeking attorney's
11 fees had to not only recommend to the court what was the
12 appropriate fee for him and for his client, they were
13 given a limited amount of time and a limited number of
14 pages to justify it and they not only had to say what they
15 thought they were entitled to, but had to say what they
16 thought every other lawyer -- not the fiduciaries, but
17 every other lawyer was entitled to and by agreement of the
18 parties the Judge could pick one or reject all and that
19 was such a brilliant way to handle that, and just one
20 example of what a really good, structured --
21 well-structured, well-controlled mediation with limited
22 discovery -- the discovery that you need with all the
23 parties present can do and that case -- again, it's 20
24 years later and the people are still happy about that
25 case, and, so, you can't say it doesn't have anything to

1 do with this because Mr. Brown created documents that are
2 going to last in perpetuity. That was his gift to the
3 world, and to say that we need some quick fix because we
4 don't have time to think it through carefully is a
5 disgrace to him. It's a disgrace to this state. It's a
6 disgrace to education.

7 Q Mrs. Pope, going back to section 62-3-912, do you
8 believe that as the personal representative and trustee of
9 Mr. Brown's estate and trust that it's your duty and
10 obligation to be certain that the individuals
11 participating in the settlement agreement are competent
12 successors?

13 A I do.

14 Q How do you do that? How would you determine the
15 competent successors?

16 A Well, if there were no contest to the will it would
17 be easy, but we have here a contest to two valid wills and
18 two valid -- I mean, two trusts and two wills and we have
19 people claiming to be heirs. So, in order to have the
20 competent successors you must have all of those claiming
21 under the presumed valid will, all of those claiming under
22 the presumed valid trust, all of those claiming under the
23 back-up trust which is not something that we thought of
24 last week. We have been asking for alternate admission of
25 that document since March of 2008. What changed was in

1 August the attorney general made himself unable to protect
2 Salkehatchie by signing that agreement. That's the only
3 reason we said we've got to join them now because the
4 attorney general is no longer able to protect them because
5 he's vowed to defeat their interests.

6 All right. But you need -- you need the parties to
7 the '99 document which would be both the PR's and the
8 trustees and the -- and the takers -- and the takers and,
9 for example, Deanna is named as a PR of the '99 will.
10 She's here, but she would quickly come out because she's
11 contesting it, but, you know, you need everybody named in
12 both of those wills both as fiduciaries and as takers or
13 their valid representatives which is, of course, a huge
14 problem we have with what we have here, and then you need
15 everyone who is legally -- who is claiming to be an heir
16 and the representatives of those people who can't
17 represent themselves -- the GAL for the Doe Defendants,
18 and let me say that I don't think you need the GAL when
19 you start talking. I think you need the GAL when you're
20 getting close to an agreement because you don't want to
21 waste a lot of money with a guardian ad litem sitting in
22 15 hearings. That makes no sense, but what you want is a
23 guardian ad litem when you're coming close to a resolution
24 and you need somebody independent, and this particular
25 instance I think the Lumar children are the very best

1 example of how they cannot be -- Well, no, James, II is
2 the very best example.

3 James, II cannot be represented by his mother. The
4 Lumar children cannot be represented by their mother
5 because they -- their legal differences are so inherently
6 adverse and that's who you need, and I can put them on the
7 board or I can name them, but that's who you need.

8 Q Under the 2000 --

9 A I'm sorry. And if there are pretermitted children
10 and if there is an omitted spouse. If you've determined
11 that those two categories -- that someone falls into
12 either of those categories they need to be parties. They
13 don't necessarily need to be parties to the agreement.
14 They may be lopped off early, but they need to be there at
15 the beginning of the process.

16 Q Speaking of the pretermitted child, is there a
17 statutory provision that discusses how a pretermitted
18 child may be treated?

19 A Yes. And the treatment of the James; II matter as
20 I've said before is a disgrace. That would be so cheap
21 and so easy to do. For reasons which we cannot explain a
22 humiliating process has been gone through with public
23 announcements and so forth for this poor child.

24 It is clear that in 2004 Mr. Brown contested the
25 parentage of that child. We -- the Judge orally ordered a

1 DNA test last May. In my opinion this may be the only DNA
2 test we need and I'll tell you why. If James Brown is a
3 child and we're \$300 away from finding out if he is, all
4 we have to do is this. We have to have a hearing, and the
5 Judge will decide as a matter of law based on our
6 respective positions do the four corners of the will ---
7 Well, do the four corners of the will indicate an
8 intention that James Brown not give him something?

9 There is a slight possibility that other things could
10 be considered like a fund that James Brown provided for
11 him outside of the will, but that would be -- That's what
12 the law says. If he turns out to be a child, then the
13 court will determine -- The court will do that --
14 determine whether he -- whether there was an intention to
15 leave him out. Okay? If the court determines -- and all
16 of this is easy and cheap and should have been done a year
17 ago.

18 If the court determines that he's not a child, then
19 that's when who are the heirs becomes important, and
20 that's when that child is directly adverse to his mother
21 and here is why. If his mother is an heir, it cuts his
22 share in half. And let's just call it \$80 million. Let's
23 call it \$80 million, and let's say that everybody agrees
24 that the six children over there are heirs. I can't tell
25 from the documents who the heirs are and I believe that

1 this court has a duty to declare who the heirs are before
2 we move further, but I'm not the Judge, but here are the
3 heirs that we know. We know of the six people over on the
4 settling side who are claiming to be heirs. We know that
5 four are legitimate heirs and two are arguable heirs
6 because they were not born of valid marriages, but they
7 might -- you know, they might be able to show that they
8 are.

9 All right. Who else are heirs? Jeanette Mitchell,
10 Cinnamon Paris and LaRhonda Petit. So, we know that we
11 have maybe six, nine maybe. Maybe nine. Okay. And let's
12 say that we've determined that James, II is a biological
13 heir. So that makes 10, and let's say that there are
14 80 million. So, let's say that the Judge has looked at
15 the will and we've had all of those arguments and he said,
16 no, he didn't intend to leave him out, he's entitled to an
17 intestate share. Then he must find out. So, all right.
18 So, does he get an eighth or do we have to finish deciding
19 about the other four? So, he gets a 12th or do we count
20 his mother as an heir and he gets a 24th?

21 You know, I'm not much worried about whether it's
22 four or six over there. I know there are three more.
23 That makes nine. James' share is so large if he's an heir
24 and it's so unrelated to any of this silliness that it
25 needs to be treated as a separate issue. It's not related

1 to this. It's not subject to Mr. Rosen's fee. It's not
2 subject to leaving him out and winking because we think
3 we're going to have tax fraud. None of that.

4 It's about a fair and reasonable determination is
5 this the child of James Brown. Did James Brown from the
6 document and other relevant facts intend to leave him out;
7 and it may just be by the very four corners of the
8 document and there may be some other things, and if he did
9 not intend to leave him out, who are the heirs, and the
10 court is bound to determine that, and then his little
11 share should be set aside and nobody should touch it. A
12 guardian should be appointed and he should be protected.

13 Q Prior to the settling parties announcing that they
14 had this August 10 settlement, did any of the settling
15 parties take the position that Ms.~Brown was not
16 Mr. Brown's wife?

17 A Oh, absolutely. The death certificate. Yamma was
18 the informant. The answers to interrogatories. When Mr.
19 -- One of the things -- One of the many things that is
20 just wrong in this case is when you bring -- Under the
21 South Carolina law when you bring an action to set aside
22 the will you are required to say in your petition who you
23 think the heirs are. You're required to say that in your
24 petition. It's under the law so the Judge doesn't have to
25 guess what your position is.

1 Theoretically, there should be an action to dismiss.
2 Louis Levenson did not do that, and so way back we said,
3 look, we've got to hear what your position is as to the
4 heirs, and we reached an agreement back then and he
5 declared who he said were the heirs and he named the six
6 children, the same ones that had been named by Mr. Brown
7 in the document.

8 Interestingly, he omitted --

9 THE COURT: Y'all reached an agreement on that? So
10 you agree on who the heirs are?

11 THE WITNESS: No, no, no, no. We just agreed not to
12 continue to try to dismiss the action for his failure to
13 state what his position was. That's not my position.
14 That's his. He had failed in his pleadings to comply with
15 the requirement that he state what his position is and
16 that is absolutely required, if you are seeking an
17 intestacy in the pleadings. It is really hard to read,
18 but you have to do it. All right, so --

19 Q Now --

20 A -- but I was going to say so he is -- his six clients
21 are of record and, interestingly, they're of record saying
22 that one of his clients Tonya is not an heir and Tonya,
23 again, a potential -- one of the potential 13 because
24 she -- I think that she's an out-of-wedlock claimed
25 daughter of a deceased child. That's his only deceased

1 child that I know of who might be an heir, but -- and the
2 court will have to determine that when -- to get little
3 James, II's share if James, II is an heir and if the
4 pretermitted statute does not deal with it.

5 THE COURT: Mrs. Pope, on all of the stuff that
6 you're saying that we all need to address -- particularly
7 me -- does this not show me that there is a tremendous
8 controversy in this matter?

9 MRS. POPE: The opposite. The opposite, Your Honor.

10 THE COURT: The opposite?

11 THE WITNESS: No, it shows you that this case -- We
12 should not have come to the trial of this case without the
13 case taking the normal procedure. We should not -- I
14 mean, it is -- no discovery, having a mediation without
15 the trustees -- the people who are to defend the will --
16 Judge, it is so -- I have never seen anything like this
17 before. No. I have never seen a Judge try to force a
18 settlement when there's been no discovery -- without
19 allowing discovery, with my co-personal representative.

20 THE COURT: Ma'am, I'm not trying to enforce
21 discovery. I am simply listening to the petition they
22 presented before the court. I am not forcing anybody.

23 MRS. POPE: Your Honor, that petition has not -- Your
24 Honor, If you -- The file will show that there has not
25 even been proper service on the parties in that petition.

1 Your Honor, you -- We can't do it back towards.

2 THE COURT: Yes, ma'am. So you don't think there is
3 a controversy?

4 THE WITNESS: Your Honor, I don't think there will be
5 a controversy when Your Honor hears the questions of law
6 that we have asked the court to hear in our motions to
7 dismiss and in our motions for summary judgment. I do not
8 believe there will be a controversy at that point. I
9 think the very least respect Mr. Brown is owed is for the
10 court to rule as a matter of law on the motions to dismiss
11 before we are forced to be here talking about a settlement
12 which we think is devastating to his estate, disrespects
13 his estate plan, and exposes this trust to \$40 million of
14 taxes and permanent disqualification.

15 Q Mrs. Pope, as of today have you been presented with a
16 written signed agreement outlining this purported
17 settlement?

18 A No. And I have as of today no idea who the parties
19 are.

20 Q Now, in the untoward event that we actually had to
21 try the validity of the trust and the will of 2000 --

22 THE COURT: What do you mean by "the untoward event?"

23 MR. BAILEY: Well, we hope that we could work
24 something out.

25 THE COURT: Like a settlement?

1 MR. BAILEY: Well, with the proper discovery and
2 procedure. That is the only impediment that we really
3 face to attempting to participate in any settlement
4 proceedings.

5 Who, Mrs. Pope, would you consider to be witnesses
6 other than Dallas, Cannon, and Bradley for whatever they
7 may be able to contribute as to the validity of the will
8 and lack of undue influence?

9 THE WITNESS: Bob Buchanan and I, Gloria Daniel.

10 Q Who is Gloria Daniel?

11 A Glory Daniel was one of Mr. Brown's companions. Jay
12 Ross, Mr. Brown's Chicago attorney. He would probably
13 testify by deposition. He had extensive contact with
14 Mr. Brown during the period, lots of business with him.
15 He knew how astute Mr. Brown was. He knew about Napster.
16 Again, we may not need to depose any of these people.
17 Mr. Ross would probably come here. It would be cheaper
18 than being deposed, but I'm sure he would be glad to talk
19 to anybody. Ms.~Hynie Brown, Mary Holmes.

20 Here's the interesting part -- and I wouldn't -- You
21 know, we may not even need to depose them, but the main
22 people mostly through admissions who are going to show
23 that this will is absolutely valid are the settling
24 parties themselves. Terry Brown. Terry Brown who asked
25 this court to force me to use -- to enforce the

1 in terrorem clause. Forlando Brown who has wasted this
2 trust time and effort in federal court saying that we were
3 pawns of the family and we're not doing our job to defend
4 Mr. Brown's estate plan and beginning to say that 35 --
5 fewer than 35 to 45 days of our appointment. Yamma Brown
6 and Deanna who filed a lawsuit in 2002 in which they
7 allege they knew their Dad was mad at them and was going
8 to leave them out. Deanna who was in business with her
9 Dad until she very briefly helped him get some help
10 somewhat to her detriment made worse by the lawsuit.
11 Mr. Brown didn't like disrespect.

12 THE COURT: How about Mr. Herring?

13 THE WITNESS: Well, you know, I don't -- I am not
14 even slightly bothered by Mr. Herring's misfortune. You
15 know, to suggest -- I mean Mr. Brown had a few little
16 bouts with the law himself and to suggest that
17 something that happened --

18 THE COURT: Mrs. Pope, murder, certainly, is not a
19 little bout with the law.

20 MRS. POPE: Well, Judge --

21 THE COURT: That can be introduced for credibility.
22 You know that.

23 THE WITNESS: Judge --

24 THE COURT: Yes, ma'am.

25 MRS. POPE: -- I was working on something with Dewain.

1 Herring when that happened.

2 THE COURT: Well, it is unfortunate.

3 THE WITNESS: It is very unfortunate. These are
4 self-proving wills. He is not needed.

5 THE COURT: Okay.

6 THE WITNESS: He is absolutely not needed and he's --
7 That's irrelevant.

8 THE COURT: What is irrelevant?

9 THE WITNESS: Well, that's the wrong word, Your
10 Honor. I mean, you know, it may be relevant. I don't
11 know. I mean, I wouldn't go take his deposition. I have
12 evidence of a long, long interview with him in which he
13 clarifies that there was absolutely no problem at all and
14 I have read his memoranda and I've seen his file on a
15 document -- You know, he worked on the darn thing four
16 years. You know, it wasn't like somebody ran him in there
17 and said, Let's get him to sign. I think, you know, it's
18 just so compelling that I think he -- You know, it's
19 sensational. So, you know, there are plenty of other
20 sensational things here that don't -- that don't need --
21 you know, that may or may not come out, but I think
22 Mr. Herring is not among the -- as it relates to Mr. Brown
23 only. It was a sensational, tragic, sad thing, but as it
24 relates to Mr. Brown, I just don't think it's very -- it's
25 anything of significance.

1 I think -- you know, I think the Buddy Dallas thing
2 is a problem only because I think Buddy Dallas really
3 knows a lot about Mr. Brown. I mean, I'd love to have
4 Buddy Dallas as a witness, but he has problems, but other
5 people have problems, too. You know, there's a lot --
6 There are a lot of people who say bad things about
7 Mr. Brown's children so that they're not -- I mean, the
8 suggestion by anyone that Mr. Brown's children know better
9 what he wanted in his will, you know, I just don't take
10 that at face value. I don't think that the facts bear
11 that out with the possible exception of Deanna.

12 Q In fact, what was the ultimate goal of James Brown in
13 his will and trust of 2000?

14 A To give his children -- certain designated children's
15 children an opportunity for what he thought was the way
16 out which was education -- very generous education
17 benefits to his designated grandchildren, a very generous
18 gift of the value of his personal and household effects to
19 his children, and the remainder to educate needy and
20 deserving children desiring to attend schools in South
21 Carolina and Georgia in perpetuity.

22 Q In your due diligence -- Please, just as briefly as
23 you can, in your due diligence with respect to what
24 Mr. James Brown's estate plan objective was did you find
25 anything that detracted or took away from his goal of

1 advancing education?

2 A I'm not sure I understand what you mean.

3 Q Was there anything that Mr. Brown valued more than
4 education that you're aware of?

5 A Making your own way. Those were -- education, making
6 your own way, and respect. And respect. He demanded
7 respect. It was sort of a formal kind of respect, but he
8 demanded it.

9 Q And in making your own way he was going to do what
10 with that charitable trust?

11 A He was going to give children who wanted a way out
12 and not a handout the respect they deserved by helping
13 them get an education.

14 Q All right. You've named --

15 THE COURT: Mr. Bailey, how much longer you got?

16 MR. BAILEY: I'm still not close to being finished.

17 THE COURT: Mr. Bailey, we have gone over so much
18 stuff this morning that we've been over a number of times.
19 I have been patient. I am letting y'all make a record.
20 You say you're going to appeal it. You're going to have a
21 record up there that will take them forever to read, but
22 that's fine. Let's take a break for lunch. We'll start
23 back at -- it's five after one.

24 MR. LEVENSON: Judge, could Mr. Bailey give the court
25 some estimate?

1 THE COURT: Well, he gave me an estimate yesterday of
2 an hour and we've been going three hours.

3 MR. LEVENSON: Because it really is -- I'm from
4 Atlanta. I know that what I think respectfully is a
5 filibuster is going to cause us to have to come back when
6 we talked yesterday in chambers about finishing today.
7 The question can we estimate that we will finish today?

8 THE COURT: I don't think so. I don't think we're
9 going to finish today. I still got to hear from
10 Mr.~Bauknight. I've got to hear from the lawyers on the
11 complexity of the litigation. I got to consider the James
12 Brown, II settlement. I've got to -- a number of things
13 I've got to -- So, no, we're not going to finish today, I
14 wouldn't think.

15 What do you think, Mr. Bailey? I mean, I am not
16 going to limit you, but we are going over a lot of stuff.

17 MR. BAILEY: I think --

18 THE COURT: But you can -- We'll break until -- I
19 hate to do a whole hour and a half. All right. It's
20 1 o'clock. Is is 2:15 an imposition or do we need 2:30?

21 GROUP RESPONSE: 2:15.

22 THE COURT: Well, I know we say that, but if we all
23 go up there to that little restaurant and we can't get
24 served and eat by -- I didn't go there yesterday. I went
25 someplace fast.

1 MR. MEDLIN: Your Honor, could we all agree that
2 since we hoped to make progress that we could stay later
3 this evening and make appropriate plans to do that to
4 get --

5 THE COURT: Mr. Medlin, I have to worry about court
6 personnel and court expenses --

7 MR. MEDLIN: I understand.

8 THE COURT: -- and county expenses. We're all -- I'm
9 sorry. I'd stay as late as we can, but I get frowned on
10 downstairs when we stay late.

11 MR. MEDLIN: I understand, Your Honor. That's why I
12 asked in case there was some way to anticipate that.

13 MRS. POPE: Judge, since I can't speak to my lawyer,
14 could I see whatever that thing was with Mr. Slotchiver
15 yesterday? Is it up here?

16 THE COURT: I don't know what he had. What was it?

17 THE WITNESS: The agreement that was referenced
18 yesterday some affidavit or agreement or something that I
19 hadn't seen.

20 THE COURT: You're certainly entitled to look at
21 everything that's in evidence.

22 MRS. POPE: Well --

23 MR. NICHOLSON: Your Honor, I think Mr. Shahid's
24 associate referenced it at the end, but I don't think she
25 actually showed it to anybody.

1 THE COURT: Well, what was it?

2 MR. SHAHID: Judge, there's an affidavit that's part
3 of the record.

4 THE WITNESS: I haven't seen it.

5 THE COURT: Mr. Shahid, what is it?

6 MR. SHAHID: Her affidavit is part of the record. It
7 was Steve's affidavit.

8 THE COURT: What was it, whoever knows?

9 MR. SLOTCHIVER: They were referencing during the
10 testimony Tomi Rae's affidavit.

11 THE COURT: That's part of the record, is it not?

12 MR. SHAHID: That's part of the record.

13 THE COURT: All right. Do you happen to have a copy
14 of it so she doesn't have to go through this whole box?
15 Share it with her, please.

16 THE WITNESS: This was about an agreement with Mr.--

17 MR. BAILEY: The guardian's affidavit about the
18 settlement agreement and that he had signed the settlement
19 agreement.

20 THE COURT: Well, that's not in the record in
21 evidence.

22 MR. BAILEY: Or some other document.

23 THE WITNESS: Is that in not in the record?

24 THE COURT: No, ma'am, not yet. That's one of the
25 things I read that we still got to do.

1 THE WITNESS: Would it be possible for me to see it?

2 THE COURT: Why not?

3 MR. SLOCHIVER: Your Honor, we talked about going in
4 chambers to discuss it, but we can submit it -- whatever
5 you want to do.

6 THE COURT: Well, yes. I mean, why are we trying to
7 hide that? It's not to be disseminated out of this
8 courtroom. We're in a closed setting just like we're in
9 chambers. So, if Mrs. Pope wants to look at it, she's
10 entitled to look at it.

11 MR. SLOCHIVER: We were going to file it yesterday
12 and you asked for us to wait until today. So we'll file
13 it right now.

14 THE COURT: File it now. Let her look at it. All
15 right. 1:30 -- I mean, 2:30.

16 MR. BYRD: Your Honor, can I just ask you --

17 THE COURT: On the record or off?

18 MR. BYRD: It doesn't matter.

19 THE COURT: Come ask me.

20 MR. BYRD: All right, sir.

21 THE COURT: I am going to let Mrs. Pope go to lunch
22 with her lawyers if she wants to -- all lawyers.

23 (Whereupon, a lunch break was taken.)

24 THE COURT: Mr. Bailey, are you ready to continue?

25 MR. BAILEY: Yes, sir, Your Honor.

1 THE COURT: Mrs. Pope?

2 MR. SHAHID: Judge just for the record, Your Honor,
3 we filed Mr. Slotchiver's affidavit. I have handed up to
4 all counsel -- I don't see Mr. Wayne Byrd back.

5 THE COURT: He is -- his -- I'm sorry, Your name?

6 MR. SLIGH: David Slight, Your Honor, and we have a
7 copy. Thank you.

8 MR. SHAHID: I think everybody of record has got one.

9 THE COURT: Hold on. Somebody hadn't.

10 MR. PICKLESIMER: Max Picklesimer for Mr. Cannon.

11 THE COURT: How is Mr. Warner?

12 MR. PICKLESIMER: He's doing well, Your Honor.

13 THE COURT: All right. So, everybody, we're all on
14 the same page, we're going to go until around 5 today
15 unless I can talk downstairs into going later, and if
16 everything goes according to plans we'll be back in here
17 on the 6th of April.

18 I'll try to keep y'all all up to date next week. We
19 start I was hoping -- I was on the phone with them this
20 morning -- that we settled that firestone case. They are
21 several, several, several million dollars apart and it
22 does not look like it's going to resolve. I hope that it
23 will be concluded in a week, but I'll just have to let
24 y'all know as we get closer to Thursday. I'll let you
25 know how we stand, and I'm fully aware of the fact that

1 the week of the 6th starts a religious holiday -- the
2 night of the 8th?

3 MR. SLOTCHIVER: Yes, Your Honor.

4 THE COURT: Who does that affect?

5 MR. SHAHID: Mr. Slotchiver -- it effect him.

6 MR. ROSEN: I don't think it would prevent me from
7 being here, Your Honor.

8 THE COURT: How about Mr. Shahid?

9 MR. SHAHID: No, just Good Friday, Judge.

10 THE COURT: Sir?

11 MR. SHAHID: Just Good Friday.

12 THE COURT: Well, we're not going to hold court on
13 Good Friday because the courthouse is closed.

14 MR. SHAHID: Judge, that's also the week of the
15 masters.

16 THE COURT: I couldn't care less.

17 MR. SHAHID: I know, but it is just getting hotel
18 rooms, it will be hard.

19 THE COURT: I got three bedrooms at my farm. Y'all
20 can --

21 MR. SHAHID: As long as I don't have to milk a cow,
22 I'll be okay.

23 THE COURT: See, they told me yesterday that the
24 religious holiday was for you, Mr. Shahid, and I said,
25 well, why is that? He is down there with the catholic --

1 MR. SHAHID: But, you know, we do follow the Jewish
2 tradition. So, I was having this conversation with
3 Mr. Rosen.

4 MR. ROSEN: We're trying to keep him on the right
5 path.

6 THE COURT: Mr. Bailey?

7 MR. BAILEY: Yes, sir, Your Honor. Thank you.
8 Mrs. Pope, who is David Washington?

9 THE WITNESS: He is Mr. Brown's personal assistant
10 and friend.

11 Q And have you talked with him about his relationship
12 with Mr. Brown?

13 A Yes.

14 Q And with respect to that relationship does he have
15 any information that you believe is relevant as to
16 Mr. Brown's execution of his -- or his ability to execute
17 a will and a trust?

18 A I've not probed that. Mr. Washington has had to work
19 with a lot of people and he's been a great asset to the
20 estate and trust, and I've really tried to stay away from
21 any controversial subject or potentially controversial
22 subject with him. I mean, things have come up, but I've
23 tried to use him as he is best used and that is to be a
24 valuable asset to the estate and trust. I have tried not
25 to engage in that kind of talk.

1 I believe a videotape was made of him. I am not -- I
2 watched it, but I can't really remember, and I saw the
3 videotape of him with Ms.~Hynie Brown, but I don't -- I
4 haven't discussed that. We have listened together to a
5 tape he played me from Adrian's funeral. It was -- I
6 think he played it --- It was there at the house and he saw
7 it and it was sentimental to him.

8 Q Mrs. Pope, do you have an opinion as to the effect of
9 the right of first refusal that's been provided or placed
10 in the addendum to this agreement on the overall estate
11 plan of Mr. Brown?

12 A I do.

13 Q Would you please give us that opinion?

14 A First of all, I think it substantially de-values the
15 charitable deduction if it's not already lost which would
16 mean that -- and I base this on all of the offers or
17 letters of intent that came in, all of which state that
18 preparing to make an offer such as this is a big and
19 expensive project and that's why, for example, Mr. Cox had
20 requested an exclusive period of due diligence because it
21 would cost him a lot to put together an offer, and, of
22 course, if it's going to cost you a lot to put together an
23 offer, you don't want to go to that expense solely to
24 create a market price for someone else.

25 So, that chills the market and, therefore, reduces

1 the value of the assets, and I've been very disturbed
2 already that there are suggestions of a de-valuing of the
3 assets that there is just no basis -- There may be basis
4 in the economic condition, but there is no basis for
5 suggesting that his gross assets were worth 65 million at
6 death, but -- and the second and far more critical thing,
7 I have tried to look at this document and I can't tell --
8 perhaps someone can explain -- and I've looked at it again
9 over lunch. I can't even tell whether this document is
10 supposed to take the place of the estate which I don't
11 believe it can possibly do because I think an estate has
12 certain obligations to taxing authorities and to trust --
13 I mean, I'm sorry, to its creditors and other obligations
14 and, so, for example, reading this document I can't tell
15 -- There seems to be still at the conclusion of this
16 document which, obviously, doesn't include everybody, it
17 seems to say there is this legacy trust, but it,
18 obviously, can't end the estate. I mean, that's illegal.
19 An estate has certain duties that it must comply with and
20 we all know that Mr. Brown's image and persona at a
21 minimum are valuable assets of the estate.

22 All right. So, but then it says the attorney general
23 is going to pick the trustee of this settling thing called
24 the legacy trust, and but then it says they're going to
25 withdraw the will contest and the trust contest which to

1 me says that leaves the will and trust intact, but they
2 hope will be removed. So, we're now going to have three
3 fiduciaries, I guess for at least temporarily Bob and me
4 over here and Mr. Legacy trustee over here, but what's
5 bothering me about that is with respect to the charitable
6 deduction in order to get a charitable deduction property
7 has to pass from the decedent to the charity and I've said
8 that before.

9 I don't know the effect of taking whatever it is that
10 becomes distributable to the charity, putting it in the
11 settling entity, and then putting it back there whether it
12 destroys the charitable deduction. Now, but let's go to
13 the next step.

14 THE COURT: Well, m'am, hold on a second, Mrs. Pope.
15 I am now getting confused. I thought the question was
16 right of refusal. How does that impact? Is that what
17 you're still answering?

18 THE WITNESS: I am trying to, Your Honor.

19 THE COURT: All right.

20 THE WITNESS: All right. So, the first question is
21 have you lost the 40 million-dollar -- It's an
22 80 million-dollar charitable deduction, a
23 40 million-dollar tax savings just by the creation of the
24 legacy. All right. Now, here comes question two that I
25 can't read this document and figure out. Are these

1 charitable assets housed in the legacy trust or are they
2 the housed over here in Mr. Brown's trust as he created
3 it, and if they're housed in the legacy trust, they aren't
4 a charitable trust. If they're housed over here in the
5 charitable trust with all its restrictions as already
6 approved by the IRS which Mr. Buchanan and I submitted the
7 paperwork -- if they're housed over here in the charitable
8 trust and that charitable trust gives a right of first
9 refusal to a member of the family, that is -- and a
10 10-year one as I see it here -- that is granting
11 substantial right to allow the assets of the charity to
12 enure to the benefit of a private individual and I cannot
13 say certainly whether it will absolutely disqualify the
14 trust, but at a minimum it puts it at risk and absolutely
15 disqualifying the trust means that it will become taxable
16 forever.

17 You know, it loses its status which, again, I have
18 spoken this morning to Harley Ruff who we asked to help us
19 look at these issues and who is looking at them. We were
20 very efficient about using him. We were waiting for the
21 final documents to look at it with us. We have another
22 charitable guru, but we can't afford to bring him here.
23 So, I have asked Harley to look with us, also.

24 THE COURT: Help me with Harley now.

25 THE WITNESS: Okay. Harley Ruff is an MBA -- an LLM

1 graduate from NYU in tax who has agreed to help us look at
2 these issues and I had sent him the will and trust and I
3 told him I was not going to send him the final settlement
4 until we got it, but we didn't get it until noon yesterday
5 or the day before yesterday. I was waiting for a final
6 document. I have sent them to him. I have spoken to him.
7 I have told him my concerns. I've told him I am an estate
8 planner; I have a right to have an opinion about these
9 things, but because I am a party I want to take a second
10 look. As of this morning he said, you know, Adele, what
11 if I come to a different conclusion than you do? I said,
12 Don't worry about that a bit. We're struggling for the
13 right answer here, and, so, he is looking at that, and
14 he'll be prepared, and I'll be glad to in the cheapest way
15 possible report.

16 I am reasonably certain that none of this should be
17 done without at a minimum a private letter ruling. I can
18 say for sure it shouldn't be done without seeking a
19 private letter ruling, and I particularly am troubled by
20 the language that went into the document just the day
21 before yesterday -- language I never saw before which I
22 believe could cost this trust millions and millions of
23 dollars.

24 THE COURT: What is that language?

25 THE WITNESS: That was the language about the

1 necessity of getting a final, non-appealable decision from
2 a court before these other people will contribute to the
3 taxes which means -- which means that this trust is going
4 to be put to the test of not even being able to do fair
5 negotiation with the IRS about these grave issues, and,
6 again, if I am wrong, I want to be corrected. I want to
7 have a dialogue about it.

8 If Harley Ruff comes up with any different conclusion
9 than I have that at a minimum we need a private letter
10 ruling on these things after we have a document we can
11 submit. So far my other charitable person has said, Why
12 are they bothering to create this separate entity? I
13 can't find a reason for it except to get rid of Bob and
14 me, but, I mean, you know, I don't know, but the creation
15 of that separate entity is creating in my opinion as an
16 estate planner who does these things grave potential
17 charitable estate tax problems and risking
18 disqualification of this trust, and, again, if there is an
19 expert who has a different opinion, I'd love to talk to
20 them. I haven't seen one. I don't -- I'm just gravely
21 concerned about it, and I think that it's fair to say that
22 we haven't had time to have a reasonable dialogue about
23 this \$80 million problem that might generate \$40 million
24 of taxes and might disqualify a charitable trust. I don't
25 -- We need at a minimum a private letter ruling.

1 THE COURT: How do you get one?

2 THE WITNESS: You ask for -- You, first of all, get
3 your documents and then you get your facts and you agree
4 on the facts and you submit them to the internal revenue
5 service, and then they will answer your questions, and if
6 it's not right, then you, you know, structure it in a
7 different way.

8 I mean, this is too big of a problem to us having
9 gotten this at noon the day before yesterday, and I have
10 tried since September to have a dialogue with Heyward
11 Carter, their tax expert who will not talk to me. He said
12 that's not what they understood your ruling to be, Your
13 Honor. They will not talk to me about these grave tax
14 consequences. He says he thought -- You know, I've said,
15 please, let's talk about this. Please, let's talk about
16 the transition. They write back and say, This is not what
17 we think Judge Early wanted us to talk about. This is for
18 us to talk about after you're gone.

19 And, you know, I am not dying to hang around here,
20 but I am dying to get it closer to right than we have it
21 now.

22 THE COURT: And that's your opinion; right?

23 THE WITNESS: That is my opinion as an
24 estate-planning lawyer with an LLM in estate planning.

25 Q You just indicated that you've not been provided any

1 oral communication with respect to these serious estate
2 tax matters? Have you been provided any -- Have any of
3 the settling parties shared with you any -- by that I mean
4 documents, anything to support what they are asking the
5 court to approve today? I mean, asking the court to
6 approve?

7 A Well, I mean, I've seen what's come out in court. As
8 I said, I had asked both Alan Rothschild who is our guru
9 charitable guy who we couldn't possibly afford to bring
10 here under these circumstances and our regular good tax
11 lawyer guy Harley Ruff that I've said -- You know, I've
12 have sent them the will and trust. I said, Don't read
13 these things until you get the settlement. Don't waste
14 any time, and, again, I've written. I have been in
15 communication with Heyward Carter since September when I
16 asked that they help us do the estate tax return because
17 these problems began to surface on August 10, and, so, I
18 said, please, let's get together on what we're going to do
19 on the estate tax return. Nah. I've looked back. Alan
20 Medlin said, We don't have an accountant yet. That's what
21 he said to me. Not we won't talk to you -- We don't have
22 an accountant yet.

23 And then since then, you know, this is allegedly
24 after due diligence about all of these issues and since
25 then -- since then I've repeatedly tried to say, Let's get

1 together. You know, nobody wants to pay \$40 million in
2 taxes. Nobody wants to pay any that we don't reasonably
3 have to have to pay, and I cannot get a dialogue.

4 THE COURT: Who is y'all's accountant?

5 THE WITNESS: Well, Bill Sellers is our accountant.

6 THE COURT: Bill Sellers.

7 THE WITNESS: And I have again because we -- This
8 morning I got more communication from the IRS. We began
9 in December of '07 to try to straighten out three and a
10 half years of IRS problems, and just in the last 20 days
11 I've gotten the IRS income tax transcripts from Bill --
12 I'm sorry, from the IRS. They've now assigned someone to
13 us to deal with all of these income tax issues in all of
14 the Brown entities from the year 2004 to now and even
15 recently thank heavens Mr. Byrd has been working with me
16 to try to get more information so that we can get -- I
17 mean, get the 2007 tax returns filed, the 2008 returns
18 which aren't quite due -- we can think about those
19 later -- and look at the earlier tax returns and, of
20 course, the 2007 return -- if the settlement is reached,
21 the way the income tax is treated will -- may relate back,
22 and, so, I've tried to encourage them, but that was a long
23 answer. I have tried to -- again, when we hired Bill I
24 wanted to keep him out of the politics. So, I've tried
25 not to have him be on my side because we had so many

1 problems that we inherited that I've tried to not talk to
2 him about this and I've tried to -- again, I have
3 consulted with Alan Rothschild from time to time, used
4 him. I think we've paid him, you know, like less than
5 \$2,000 in a year and four months. I have tried to only
6 call him when I felt like I just really needed a
7 charitable expert and had to have talking. We've told
8 Harley not to look until today. I am going to call him
9 tonight only because these are such grave issues and I was
10 hoping for a signed agreement.

11 Q And you still don't have one, do you?

12 A No.

13 Q What -- briefly, what effect has the -- as far as due
14 diligence and to be able to formulate a much better plan,
15 what effect has the staying of discovery had on being able
16 to analyze what the settling parties are trying to
17 achieve?

18 MR. LEVENSON: Judge, this question respectfully has
19 been asked and answered not only of this witness, but to
20 Mr. Buchanan, and at the risk of creating a recurring
21 objection, I am going to have to --

22 THE COURT: Sustained.

23 MR. BAILEY: Thank you, Your Honor.

24 You learned this morning that the Court of Appeals
25 has dismissed the appeal of the special administrator,

1 special trustee appointment of Mr. Bauknight. Do you have
2 an opinion as to whether or not Mr. Bauknight would be a
3 suitable and acceptable administrator -- special
4 administrator, special trustee under the plan that has
5 been proposed by -- the settlement plan that's been
6 proposed by the settling parties?

7 MR. LEVENSON: Judge, objection. First, I believe
8 that question was discussed in previous testimony starting
9 as early as January 30, but assuming it hasn't been asked
10 and answered, I don't believe it's the province of any
11 witness to opine for the court on the qualifications of
12 the expert if you choose to appoint someone as a successor
13 trustee.

14 THE COURT: Sustained.

15 Q What is the present condition of the estate with
16 respect to 430 Douglas Drive, the Beech Island property?

17 A I am pleased to tell the court and I beg the court to
18 approve an offer which we I think have an offer and
19 acceptance which I believe that we have reached --

20 MR. LEVENSON: Excuse me, Your Honor. Perhaps the
21 witness would like to speak with Ms. Hayes before she
22 testifies.

23 THE COURT: Mr. Levenson, that's not an objection.

24 MR. LEVENSON: All right, Your Honor.

25 MRS. POPE: Well --

1 MR. LEVENSON: Then let me state -- Judge, there is
2 no offer for the purchase of the property if she's
3 referring to an offer from my client.

4 THE WITNESS: Oh, dear.

5 MR. LEVENSON: The objection is it's irrelevant to
6 this proceeding.

7 THE COURT: It is relevant to this proceeding. The
8 house is.

9 THE WITNESS: The house --

10 THE COURT: Go ahead.

11 MR. LEVENSON: I'm sorry. I thought the question was
12 is there an offer.

13 MR. BAILEY: No. I asked her what the condition of
14 the house at 430 Douglas Drive was. What is the
15 condition?

16 THE COURT: Sir, I've overruled his objection.
17 Restate the question.

18 Q What is the condition of the house at 430 Douglas
19 Drive as of today?

20 A The condition of the house -- speaking now of the
21 economic condition of the house -- is my primary personal
22 concern and has been for months. I want more than
23 anything for that house to be preserved and saved, but we
24 don't have the funds to do it and every step -- not that I
25 think it should be done within the trust.

1 As you may recall, Your Honor, on February 20 of 2008
2 Your Honor gave us authority to sell the house and to seek
3 a museum purchaser for the house and made a specific
4 finding that it was not an appropriate asset for the
5 education trust. That unappealed order we cannot now
6 implement because every step we take we run into problems.
7 So, that piece of property was valued at a million 225 at
8 Mr. Brown's death. Under the agreement as it looked in
9 January -- I'm sorry; as it looked before January 30 when
10 I testified on January 30 there was a right of first
11 refusal in the family to purchase it at the fair -- in
12 first the Levenson clients to purchase it at its -- at its
13 tax value for the county which is about \$925,000.

14 I have the same concerns for Beech Island under the
15 settlement -- the same first refusal concerns that I have
16 for the larger concern for the right of first refusal for
17 Terry Brown, but because the house is such a smaller asset
18 I'm trying very hard and have been since January to seek a
19 solution, and, so, I made a proposal and shared it with
20 everyone. I said, Look, I'm concerned about taking a
21 \$1.225 million asset and offering it to somebody for 925,
22 but since the concept has been approved by the attorney
23 general and since we cannot maintain that house although
24 we've reduced the cost of maintenance from \$250,000 a year
25 which it was when we took it over to approximately \$70,000

1 a year and that's for basic maintenance. I said, We
2 cannot maintain it. We have about \$22,000 in the bank,
3 and we've had an emergency motion pending for over two
4 months to have -- to ask the court to help us with this.
5 So, I said, Here's an idea. I said, What are we trying to
6 do here? We're trying to get this house to the family and
7 we're trying to keep from having the house and its
8 internal contents fall by the wayside.

9 I spent six hours three weeks ago on the phone with a
10 plumber. There were nine leaks in the roof at that house.
11 The plumber tells me it is like a rabbit warren up there
12 and there are copper pipes and it is at constant risk.
13 The house needs attention. So, I said, Here's an idea.
14 Let me sell it to you guys -- me, the estate, the trust --
15 not the estate. It belongs to the trust, undisputed. Let
16 me tell you what let's do. Let the Levenson clients buy
17 it for the \$925,000. Only give us -- Take it as is. Take
18 it right now. Give us only \$50,000 and give us a note for
19 10 years with 5 percent interest. You don't have to pay
20 anything for a year. Give us a deed in lieu of
21 foreclosure which will be held in escrow or by the court
22 or by anybody.

23 Then one more thing. Do this because I know that the
24 Levenson clients love the contents of the house -- Deanna
25 lives just down the road from the house. She can help

1 provide security in a way that certainly Nexsen Pruet will
2 not be able to do. I said -- or me, although we -- I
3 speak to Mr. Washington. He calls my office every single
4 day. So, I said, Please, buy it as is and I think under
5 those conditions and the bad market conditions we can
6 justify that sale and relieving the trust of that burden,
7 and then will you protect the -- protect and help us
8 continue to inventory the tangible personal property.

9 I trust them to do that. They have a greater
10 interest in it than we do. It relieves the estate of this
11 \$70,000 burden which we don't have. We began telling the
12 court in January if we don't do this we're going to run
13 out of money. The court won't give us an emergency
14 hearing on it. If we could get that over to
15 Mr. Levenson's clients, it would relieve the pressure
16 because something is going to go wrong there, and we have
17 done everything in our power to solve that problem in a
18 way that's helpful to the family, and that's all it would
19 take. This morning Mr. Levenson and I, I thought, had an
20 agreement. Apparently, something has happened since then.

21 I ask the court to take note of that because here
22 we've got an offer and is Terry Brown's right of first
23 refusal going to stand in the way and cause that house to
24 go down the tubes? That's the question.

25 Q Mrs. Pope, do you have an opinion based upon

1 reasonable certainty within your field of expertise
2 whether or not the proposed settlement in this -- in the
3 stage that it's in at this point is fair, reasonable,
4 equitable, and in the best interest of the estate and
5 trust?

6 MR. MEDLIN: Your Honor, objection. She's not been
7 qualified as an expert witness.

8 THE COURT: She's been qualified as an expert.

9 MR. MEDLIN: She can give her opinion as special
10 trustee, but not as an expert.

11 THE COURT: ~ That's for me to decide.

12 MR. LEVENSON: Judge, may I make another objection?

13 THE COURT: You may.

14 MR. LEVENSON: Page 156, line 16 of the transcript of
15 January 30 your Honor says, "Mrs. Pope, tell me why you
16 and Mr. Buchanan in your opinion think the settlement is
17 not just and reasonable in your opinion? Is that a fair
18 question?" Forty-five minutes of narrative follows that.
19 The question was asked and answered, Judge, respectfully.

20 THE COURT: Sustained.

21 Q Mrs. Pope, in the position that you and Mr. Buchanan
22 have taken in opposing this settlement agreement as it is
23 in its condition today, have you been opposing this or do
24 you oppose this in good faith?

25 A Absolutely.

1 Q Do you believe that you have an absolute -- that you
2 and Mr. Buchanan have an absolute duty to protect the
3 estate plan of James Brown?

4 A I would not use the word absolute, but I do not
5 believe we are close to where I would feel that I had done
6 my job if I let go.

7 MR. BAILEY: Your Honor, I'd like to pass up just
8 because I didn't have it earlier the case of Russell
9 versus Wachovia. I'd like to have that marked.

10 MR. BELL: Your Honor, I would object. Cases should
11 go in as memorandum and brief and not as exhibits.

12 MR. BAILEY: I'd like to hand that up as information
13 to the court.

14 THE COURT: You can hand it up. I am not going to
15 make it part of the record.

16 MR. BAILEY: All right, sir. Your Honor, the only
17 reason I offered that case up to you is you had asked
18 earlier --

19 THE COURT: I appreciate that. I am not going to
20 make it part of the record.

21 MR. BAILEY: -- the definition of probable cause.

22 THE COURT: No problem. I appreciate you doing that.

23 MR. BAILEY: That's all our questions.

24 THE COURT: Any questions, Professor Medlin, without
25 replowing?

1 MR. JONES: One moment, Your Honor. One moment.

2 MR. MEDLIN: No, Your Honor.

3 THE COURT: Mr. Levenson?

4 MR. LEVENSON: What's the question?

5 THE COURT: The question is do you have any questions
6 of Mrs. Pope?

7 MR. LEVENSON: Oh, no. Well, I'm glad you asked that
8 question. I'm sorry. I just wasn't prepared to address
9 that question at this moment, but I'm pleased to address
10 it. Based on what Mr. Bailey said before lunch, Judge,
11 no.

12 THE COURT: Thank you.

13 MR. LEVENSON: Let me say this. I move to strike
14 Mrs. Pope's testimony as I did on January 30 because I
15 believe much of it includes conclusions and hearsay, and
16 even though I don't believe that Mrs. Pope and
17 Mr. Buchanan have a burden of proof in this proceeding, it
18 is unfair for them to be introducing and referencing. I
19 know know that you've already overruled this objection,
20 and I appreciate that, but I want to perfect the record on
21 this objection. I want to also say that, you know, when
22 you're in an evidentiary proceeding and someone makes a
23 statement as if it were a fact, sometimes the appellate
24 courts have said, well, because nobody introduced any
25 evidence to contradict it, therefore it is given to be a

1 fact, and I don't want to engage in what would be further
2 cross examination of Mrs. Pope.

3 So, what I think we as a group have talked about was
4 that we would ask no questions, but I want the record to
5 be replete with the understanding that the scurrilous
6 accusations against counsel, some attacks which could be
7 refused by cross examination and documents, and some of
8 the questions raised about my clients could be the basis
9 for cross examination, but to the extent that I don't
10 believe that Mrs. Pope and Mr. Buchanan are parties, I
11 don't believe, therefore, Your Honor, that we would be in
12 a position to have to refute their testimony because
13 they're not a party. They have no burden of proof. Their
14 evidence -- and Your Honor can consider it for what it is
15 worth and take whatever -- this is a non-jury proceeding.
16 Take whatever weight you think it is to be given, but
17 since we know -- not from our side -- that this is going
18 to be reviewed somewhere else, I thought it was important
19 for the reviewers to know that we're not by failing to
20 cross examine Mrs. Pope again acknowledging or acquiescing
21 in the allegations that it were made in her direct
22 examination. Thank you.

23 THE COURT: Well, I am certainly not going to strike
24 her testimony. I deem it utmost important to get the
25 opinions and the facts from Mrs. Pope and Mr. Buchanan

1 whom I respect, and, certainly, I am not going to strike
2 that testimony.

3 Mr.~Shahid?

4 MR. SHAHID: One second, Judge, please. I just need
5 to echo what Mr. Levenson said and agree to what he has
6 said. I think we've had about six days of testimony
7 including Mr. Buchanan and Mrs. Pope, and I don't think my
8 cross examination would uncover anything else beyond what
9 we've already covered so far.

10 THE COURT: I don't see how it could.

11 MR. JONES: Your Honor, the attorney general's office
12 joins in with Mr. Levenson and Mr.~Shahid about the same
13 position.

14 THE COURT: Thank you. Mr. Bell?

15 MR. BELL: No questions, Your Honor.

16 THE COURT: Mr. Byrd's partner?

17 MR. SLIGH: David Sligh, Your Honor, we have no
18 questions.

19 THE COURT: I'm sorry. What is your name?

20 MR. SLIGH: David Sligh.

21 THE COURT: S-L-I-G-H.

22 MR. SLIGH: Yes, sir.

23 THE COURT: Back on the back?

24 MR. PICKLESIMER: Max Picklesimer. We have no
25 questions.

1 THE COURT: Ms. Sonja Tate?

2 MRS. TATE: No questions, Your Honor.

3 THE COURT: Thank you. Have I covered everybody?

4 All right. Mrs. Pope, you may step down.

5 Next witness, please.

6 MR. BAILEY: Your Honor, at this point we cannot
7 proceed any further because we do not have a final,
8 written, signed agreement of the parties that we can
9 review. We would request that once that document is
10 prepared and provided to us that we have an opportunity --
11 a minimum of 10 days to look it over, to allow an expert
12 who was mentioned earlier to review it to see if there is
13 anything that we have not been able to address up to this
14 point. I think it is fundamental to the settlement
15 process that the statute be complied with. It calls for a
16 signed -- written and signed agreement, and until we have
17 that, we feel that we cannot proceed any further.

18 THE COURT: Before you do anything else, let me ask
19 this question. I was handed the affidavit of
20 Mr. Slotchiver and in that affidavit it refers to the
21 agreement that has been signed, does it not? Mr. Shahid?

22 MR. SHAHID: Judge, what was handed to me and I think
23 it's exhibit either G or H.

24 THE COURT: I just read it. Exhibit H, isn't it? I
25 want to make sure.

1 MR. SHAHID: Under exhibit H is the agreement and I
2 think the other documents had already been submitted to
3 the court back on January 30th, I believe.

4 THE COURT: Professor Medlin, where is a complete
5 copy of the agreement or the agreement with everybody
6 having signed it? Do we have that in existence?

7 MR. MEDLIN: Your Honor --

8 THE COURT: That's certainly not an unreasonable
9 request.

10 MR. MEDLIN: No, Your Honor, and I believe we do.

11 THE COURT: Well, either we do or we don't.

12 MR. MEDLIN: Well, may I just give you a little bit
13 of the history of this? On August 10, 2008 the settling
14 parties at that time which, of course, did not include
15 Terry Brown signed the agreement which is part of the
16 package that the attorney general's office I believe sent
17 to you before noon on Monday as you requested. We
18 announced to the court on January 30 that we had an
19 agreement in principal and submitted evidence through
20 Mr. Bell as to what those principals were with Terry
21 Brown.

22 THE COURT: I'm aware of all of that.

23 MR. MEDLIN: We have since that time been -- don't
24 even want to really use the word negotiating as the sole
25 way to describe it because a lot of what Mr. Bell and his

1 side provided to us was helpful in crafting the final
2 version of the addendum and the contribution agreement and
3 the legacy trust, all of which are part of the package
4 that we intend to encompass our settlement agreement --
5 none of which we believe differs from the principals which
6 we presented to the court on January 30.

7 We understood, Your Honor -- and give me one more
8 second, please. We understood that you wanted us to sign
9 this agreement by way of affidavit; that the affidavit
10 that you wanted to prepare with the, quote, unquote,
11 guilty plea sort of language. I know, Your Honor, but
12 that's the best I can do right now.

13 THE COURT: The best I could do when I said it.

14 MR. MEDLIN: Well, I wasn't attributing that to you,
15 Your Honor.

16 THE COURT: But, you know, fair, reasonable --

17 MR. MEDLIN: Sure. Understood.

18 THE COURT: --- and set aside with the lawyers the tax
19 aspects.

20 MR. MEDLIN: And we intended that to be the
21 signatures. So, that's what we sent to you through
22 Mr. Jones. Mr. Levenson has updated affidavits because it
23 didn't include what had gotten culminated finally last
24 Sunday as far as the technical language was concerned. I
25 believe he has those. So, we believe we have a signed

1 agreement -- the signatures being through those affidavits
2 of all of the parties.

3 THE COURT: Now, I would like for you to present to
4 Mr. Bailey a copy of that -- signed, sealed, and delivered
5 to him today.

6 MR. MEDLIN: Your Honor, I'll be happy to do that,
7 and I'll coordinate with Mr. Bailey to see what he's
8 gotten so far and make sure it matches up what we have.

9 THE COURT: It's got to be done today.

10 MR. MEDLIN: Will do, Your Honor.

11 THE COURT: Mr. Bailey, I'll give you 10 days to
12 review it and when we reconvene on April 6 we'll be glad
13 -- that's 10 days.

14 MR. BAILEY: Thank you. Judge, we'd like to have
15 marked as exhibits the family court documents that
16 Mrs. Pope testified to during her testimony. I didn't put
17 them at the moment because Mr. Shahid's provided us with
18 these copies. I was going to make extra copies, but I
19 didn't have time.

20 THE COURT: Any objection by anybody? It is the
21 answer -- Strike that. It's the summons, complaint. I
22 didn't see the answer in there. There is a counterclaim
23 and reply and an affidavit unsigned by Tomi Rae Hynie
24 Brown's mom.

25 MRS. POPE: Your Honor, it was the amended summons

1 and amended complaint, acknowledgement of service by
2 Mr. Rosen, answer and counterclaim, the reply, and the
3 order.

4 MR. SHAHID: Judge, I think this is my only copy.
5 What I propose to do is get with Mr. Bailey and find out
6 exactly what he wants to have submitted so I can get my
7 copies back and then we'll make copies of what he wants to
8 have submitted.

9 THE COURT: Any objection by anybody?

10 MR. JONES: No objection here, Your Honor.

11 THE COURT: Mark it as Bailey -- Would that be Bailey
12 2?

13 MR. BAILEY: It would be Pope 3.

14 THE COURT REPORTER: If I mark it, I keep it.

15 MR. SHAHID: We're going to make a copy of it and
16 give it to you.

17 THE COURT: Mr. Bailey, anything else?

18 MR. BAILEY: Nothing, Your Honor, at this point. We
19 would just state we don't feel we can proceed --

20 THE COURT: I understand. I've given you that 10
21 days and when we reconvene on Monday the 6th I'll allow
22 you to present an expert witness on however you want to do
23 it.

24 Now, there are a number of things we still have to
25 do.

1 MR. JONES: Your Honor, on the allowance of the
2 expert witness, can we see a CV before the expert witness
3 if they have one that's going to testify?

4 THE COURT: That's certainly reasonable.

5 MR. JONES: Yes, sir. And if we're going to -- My
6 understanding is the testimony would be limited to that
7 expert witness.

8 THE COURT: Well, no, I won't do that. Who else you
9 want to call besides the expert?

10 MR. BAILEY: I can't really answer that because until
11 we actually see what the final document is we would not
12 know if we needed to call someone else other than an
13 expert.

14 THE COURT: Well, have them ready to go that Monday.

15 MR. BAILEY: Yes, sir.

16 THE COURT: And, please, before that Monday provide
17 everybody a copy of any curriculum vitae that the expert
18 may have.

19 MR. ROSEN: Your Honor, I want to file Tomi Rae's
20 original affidavit. We sent you e-mails and scanned
21 copies. This is the original affidavit. I want to file
22 it with the clerk.

23 THE COURT: Very well.

24 MR. BELL: Your Honor, I am filing the original --

25 THE COURT: Hold on.

1 MR. JONES: Your Honor, we have the attorney --

2 THE COURT: Take them one at a time.

3 MR. BELL: Your Honor, I am filing the original Terry
4 Brown affidavit.

5 THE COURT: These are affidavits saying they've read
6 it?

7 MR. BELL: Yes, sir.

8 MR. JONES: And, Your Honor, of course, the attorney
9 general signed an affidavit. He initialed every page.
10 This is the original.

11 MR. LEVENSON: Judge, may I speak? I wanted to
12 present to the court as I represented to Your Honor in
13 chambers yesterday that we would be delivering to the
14 court today -- and I'll get copies to everyone else --
15 seven original affidavits which are now different than the
16 affidavits which we previously filed with respect to
17 paragraph five. Paragraph five of the affidavits which
18 were filed with Your Honor I believe you had given us a
19 deadline of either last Friday or last Monday. I can't
20 remember, but whatever that deadline was we sent you an
21 affidavit and paragraph five said, I have read and
22 understand the settlement agreement dated August 10.
23 Period. Now the affidavit says, I have read and
24 understand the settlement agreement dated August 10 and
25 the addendum thereto hereinafter the agreement.

1 So, I am filing those for the seven -- five clients
2 of mine, plus the two adult grandchildren of -- Well, one
3 is an adult child of Daryl Brown by the name of Lindsey
4 Brown. The other is an adult child of Deanna Thomas whose
5 name is Jason Lewis and so his -- his and her affidavits
6 are attached.

7 I also have for Your Honor signed -- the signed
8 addendum to the private agreement which is referenced by
9 the amended affidavit which I also represented to Your
10 Honor we would have for you today signed by the same
11 people I previously identified along with Mr. McMaster and
12 I believe with duplicate originals. I have original
13 signatures on this document which I'll hand to the court
14 and I believe some of the copies have signature pages that
15 are not -- People haven't all signed on the same page
16 because they were in different locations. We couldn't get
17 the documents to everyone, but there is a signature for
18 every person, and, for example, Jason who is I think I
19 indicated to Your Honor is in Savannah, he signed on the
20 page which has got signatures on it on a previous page.
21 So, I'll give that to the court for filing as well, and I
22 have copies for Mr. Bailey, and we'll get you copies of
23 those affidavits.

24 MR. BELL: Your Honor, I am giving them a copy of the
25 agreement as signed by Terry Brown. What happened because

1 of everybody being in different locations, it's the same
2 agreement signed.

3 MR. MEDLIN: Your Honor, we meant for the affidavits
4 to serve as a signature, but it appears everyone else has
5 done what we've done and signed the signature page because
6 the document anticipates --

7 THE COURT: All right. Now --

8 MR. LEVENSON: What I meant to say, Judge, is we did
9 a belt and suspenders approach. We signed the affidavits
10 and the addendums just so there would be duplicates --
11 original signatures on both of those.

12 THE COURT: All right. Now, Professor Medlin, here
13 is what I need as well as Mr. Bailey. Please this
14 afternoon put together a complete copy of everybody's
15 signature, everybody's affidavits, the agreement, the
16 contribution, the whole 9 yards so we'll have one complete
17 set instead of all of this piece-meal.

18 MR. MEDLIN: Your Honor, we will certainly do that,
19 but just --

20 THE COURT: I don't have to have mine. I want
21 Mr. Bailey to have one this afternoon.

22 MR. MEDLIN: We will do that, and just so we make
23 sure we're saying the same thing, what that document will
24 consist of is the agreements sent out by e-mail from the
25 attorney general's office for the Monday due deadline. We

1 will include the affidavits that have now all been
2 presented and those signature pages to the addendum -- the
3 counterpart signatures that have been included. That will
4 be package, Your Honor.

5 THE COURT: No, sir, and the agreement itself.

6 MR. MEDLIN: Yes, Your Honor. That's what I mean.

7 THE COURT: All right.

8 MR. MEDLIN: The agreement which is what we've
9 already sent, we will include that with what we give
10 Mr.~Bailey.

11 THE COURT: Mr.~Bailey, is that correct? That's what
12 I have been saying -- a signed agreement. I don't have to
13 say it.

14 MR. BAILEY: Well, I don't see how the agreement can
15 be signed if it's just they've submitted affidavits.

16 THE COURT: Mr. Bailey, they're going to give you
17 what they got. How about that?

18 MR. BAILEY: Yes, sir.

19 THE COURT: I don't care how you perceive it.
20 They're going to give you what they got which I assume is
21 signed and an affidavit to it.

22 MR. MEDLIN: We believe it is, Your Honor.

23 THE COURT: Thank you. Now, we have the James Brown,
24 II matter that y'all wanted to do in chambers. I don't
25 have anybody in the courtroom except parties and or

1 attorneys. Why can't we do it right in here? Any problem
2 with that?

3 MR. HARTE: Bob Harte. I just had a typo.

4 THE COURT: Well, Bob Harte could care less. I will
5 run him out. How about that?

6 MR. HARTE: I promise you I am not interested in
7 this.

8 (Whereupon, Mr. Harte spoke with the court concerning
9 another matter and then exited the courtroom.)

10 THE COURT: All right. Gentlemen and ladies, during
11 the lunch break I was presented with an affidavit of
12 Mr. Slotchiver as guardian ad litem for the minor child
13 James Brown, II. I have read his affidavit. Attached to
14 it are several exhibits including the DNA results. It is
15 also the medical records, birth certificates, other
16 exhibits as set forth in the affidavit including -- There
17 is an affidavit of Mr. Shahid about the chain of custody
18 which is not signed.

19 MR. SHAHID: I signed the original, Judge.

20 THE COURT: Very well. My copy is not signed.

21 MR. SHAHID: You want me to sign your copy?

22 THE COURT: No problem. The original is signed;
23 right?

24 MR. SHAHID: Yes, sir.

25 THE COURT: Now, also, in that affidavit it talks

1 about an agreement that the GAL -- Guardian Ad Litem --
2 for James Brown, II, has entered with Tomi Rae Brown with
3 reference to her percent. I don't see that agreement.

4 MR. SHAHID: That was not attached, Judge.

5 THE COURT: All right. Why is that?

6 MR. SHAHID: If I can sort of explain what my idea
7 was to satisfy the the court's inquiry, the affidavit I
8 was trying to establish, Judge, was sort of historical
9 legal backdrop of Mr. Slotchiver's appointment and
10 information that we had to the documents that we had
11 previously submitted to the court regarding James Brown,
12 II's birth, his parents, and the representations that the
13 parents had made publicly about their son and the petition
14 as a child being omitted from the will. He was an
15 after-born child. Also, the DNA testing as to we did
16 properly to establish we thought without any question
17 whatsoever as to his parentage.

18 We were not party to the August 10 mediation
19 agreement. There was a lot of reasons for that. Things
20 that Mr. Slotchiver and I discussed tend to be
21 attorney-client privileged communications we had
22 concerning our non-role with that mediation. We were made
23 aware of the results of the mediation, and we agreed to
24 the results of the mediation because the -- as outlined in
25 the affidavit, it was -- it was a three-way split.

1 The Louis Levenson crowd gets 25 percent, the
2 attorney general gets 50 percent, and then Tomi Rae Brown
3 gets 25 percent. Her son -- James Brown's son -- gets a
4 share of his mother's cut, and it is a very generous
5 share.

6 THE COURT: Well, I need to know what the share is.

7 MR. SHAHID: Well, part of that, Judge, is that he
8 will get a share equal to what he would get as a child
9 that other children would get, plus there is an agreement
10 between Tomi Rae Brown to establish another trust to equal
11 that percentage. So, he is getting, for lack of a better
12 way of saying it, double than what he would get if he had
13 gone through full litigation.

14 THE COURT: Let me ask my question more specifically.
15 If I approve the agreement, his mom gets 25 percent. Of
16 that 25 percent, what does young James Brown, II get?

17 MR. SHAHID: It's under 5 percent times two because
18 it's a direct -- There is a 4.75 that he gets -- 79 and
19 then there is going to be a trust established for him to
20 get another equal share of that.

21 THE COURT: Y'all are talking Greek to me.

22 Professor, can you explain it?

23 MR. MEDLIN: Your Honor, I will try. Under the
24 agreement every one of the Brown children, other than
25 little man, has gotten a 4.79 percent interest in the

1 settlement entity.

2 THE COURT: Okay.

3 MR. MEDLIN: Tomi Rae has a 23.75 percent interest in
4 the settlement entity. From that she has agreed with
5 Mr. Slotchiver --

6 THE COURT: Well, that's not what this affidavit of
7 Mr. Slotchiver -- He says she gets 25 percent.

8 MR. MEDLIN: Well, Your Honor, it was 25 percent
9 under the original agreement. We reduced our share to
10 include Terry Brown as part of our settlement.

11 THE COURT: Well, Mr. Slotchiver, you need to redo
12 this affidavit. Go ahead.

13 MR. MEDLIN: Regardless of that percentage
14 difference, little man will receive from his mother's
15 share an outright share of 4.79 percent which equals the
16 share of every other Brown child that is a settling party.

17 THE COURT: And how does that 4.79 go to him?

18 MR. MEDLIN: It will be in a trust which will have
19 the typical provisions to protect his share until he
20 reaches the appropriate age, but it will be set up so
21 that -- and, again, let me just digress a second, Your
22 Honor. My client has one beneficiary in mind in her life
23 and that is --

24 THE COURT: I understand that, but she might get
25 married tomorrow or have another baby and she may not be

1 so -- have one beneficiary in mind of after that. She may
2 have --

3 MR. MEDLIN: And, Your Honor, for those possible
4 reasons the share for little man will be in an irrevocable
5 trust over which Ms.~Brown has no control so that it
6 cannot be taken away from him. In addition to that --

7 THE COURT: That's the four-point whatever?

8 MR. MEDLIN: 79 percent. We are giving him a
9 remainder interest in another 4.79 percent. That, too,
10 will be irrevocable. That, too, will be something she
11 cannot take away from him. She will be entitled to the
12 income from that share for the rest of her life, but at
13 her death he is already vested as a remainder in that
14 4.79 percent. So, he gets one trust share that cannot be
15 tampered with by Ms.~Brown of 4.79 percent.

16 THE COURT: That goes to him and when he reaches his
17 majority or whatever the age --

18 MR. MEDLIN: Well, Your Honor, what we'd like to do
19 is do some typical estate planning with her and maybe give
20 him a share, you know, at 25, 28, 30, et cetera, for his
21 protection.

22 THE COURT: Sure.

23 MR. MEDLIN: The other share is a vested remainder
24 interest -- again, irrevocable cannot be tampered with by
25 Ms.~Brown. She is entitled to the income from it, but the

1 trustee will pay that to her, and then on her death he's
2 guaranteed that other 4.79 percent. Now, as I've stated
3 to the court I know because I prepared the documents for
4 her and supervised their execution she also has an estate
5 plan that leaves everything she has to little man, but as
6 you know that can change, but what we've agreed to under
7 this agreement cannot change -- cannot be taken away.

8 THE COURT: That's the two 4.79.

9 MR. MEDLIN: The second 4.79 present value is worth
10 less than 4.79 because he has to wait until his mom dies,
11 but it is guaranteed and protected for him. It will be
12 there.

13 THE COURT: So, Mr. Slotchiver, let's just look at
14 that affidavit before we --

15 MR. SHAHID: And, Judge, let me clarify. On
16 paragraph nine he talks about the 25 percent. That was
17 the original agreement of August 10 and then if you go to
18 page five on paragraph 12 it clarifies the March 24, 2009
19 agreement. So, if the court was looking at two different
20 percentages, one was to original part of 25 percent, but
21 it spells it out in more detail in paragraph 12.

22 THE COURT: Well, I think we ought to have the
23 affidavit reflect what the final agreement is on.

24 MR. SHAHID: Which is on paragraph 12. It does that.

25 THE COURT: Okay. I'll look at it.

1 MR. SHAHID: And, Judge, this is going to be
2 submitted to you for your approval as well -- the
3 agreement between Tomi Rae Brown and the guardian.

4 THE COURT: Now, is that a written agreement between
5 Ms.~Brown and the guardian?

6 MR. MEDLIN: A written and signed, as I understand
7 it, Your Honor.

8 THE COURT: I am going to need to see a copy of that.

9 MR. BAILEY: May we also have one, Your Honor?

10 MR. SHAHID: Well, I don't know.

11 THE COURT: I mean, I've got to. He is a minor.

12 MR. MEDLIN: No. Mr. Slotchiver and Mr.~Shahid are
13 going to have to ask the court to approve that as a
14 separate element as well. We were just trying to decide
15 whether there was a problem with confidentiality.

16 THE COURT: Well, everybody is under the
17 confidentiality rule. We know that.

18 MR. MEDLIN: I don't think Mr.~Shahid and
19 Mr. Slotchiver have a problem either.

20 THE COURT: Give Mr. Bailey a copy as well. Well,
21 obviously, I will consider that along with the rest of the
22 findings I have to make and conclusions I have to make
23 concerning the fairness and reasonableness.

24 THE COURT: Anything else concerning James Brown, II?

25 MR. SHAHID: Judge, this is a compromise and

1 agreement of Tomi Rae Brown and James Brown, II dated
2 March 24, 2009. Mr. Bailey has a copy of it, Judge.

3 THE COURT: All right. Mark that. How do you want
4 it filed? As an exhibit or just part of the court file?

5 MR. SHAHID: Judge, that's a photocopy. Let us mark
6 it as an exhibit right now and we'll submit the exhibit
7 for the court document later.

8 THE COURT: All right.

9 (Whereupon, Shahid's Exhibit No. 5 was marked for
10 identification and received into evidence.)

11 THE COURT: I will study what you have given to me
12 and I will announce on the 6th whether or not I deem it
13 necessary to have another DNA done. I'll just look at
14 that and make that decision.

15 Anything else concerning the James Brown, II
16 settlement?

17 MR. BAILEY: Your Honor --

18 MR. MEDLIN: Your Honor, could we discuss for a
19 minute the DNA issue or if you're going to decide before
20 April 6 or do you want to discuss that at that point?

21 THE COURT: I'll be glad to hear you.

22 MR. MEDLIN: We think that even though we more than
23 proved to the settling parties' satisfaction that James
24 Brown is the biological child through the DNA test that
25 Mr.~Shahid obtained and through Mr. Brown's own

1 recognition of his son in his lifetime -- for example, in
2 his autobiography -- and for many reasons, Your Honor,
3 that I think are confidential to some extent the
4 settlement agreement says no more DNA testing and
5 Mrs. Pope professes to care so much about what happens to
6 James Brown, II. We would distinctly disagree with the
7 reason why he is still without a penny from the estate,
8 but he has been subjected as has his mother to vicious
9 attacks in the press. He has been vilified as a
10 6-year-old child when this all began. He has been
11 humiliated and to make him take another DNA test when the
12 settlement agreement for a number of reasons provides that
13 there is to be no DNA tests would unbundle the settlement
14 agreement and subject this young man to another
15 humiliating experience which is just not necessary if the
16 settlement agreement is going to be approved, Your Honor.

17 Finding that he is the son or he isn't I don't think,
18 Your Honor, affects what we consider to be a fair and
19 reasonable settlement agreement and it takes us back to
20 our very argument. What Mrs. Pope and Mr. Buchanan would
21 have us do is essentially prove our case and then settle.
22 The whole purpose of the settlement, Your Honor, was to
23 lay to rest all of these issues for the various reasons we
24 wanted to lay them to rest, and that includes that no
25 member of the family including James Brown, II be

1 subjected to a DNA test.

2 Now, Mr.~Shahid has announced to the court that he
3 has conducted a DNA test which has been presented to the
4 court. It might not have been in exactly the same way
5 that Mrs. Pope and Mr. Buchanan would have it, but it
6 suited the settling parties and to start to require as a
7 condition to the settlement agreement provisions that the
8 settlement agreement covers would, in fact, unbundled the
9 settlement agreement, Your Honor.

10 So, we would ask that there not be a need for a DNA
11 test because the settlement agreement specifically
12 provides as an important part of bringing peace to the
13 family and honor to Mr. Brown's legacy that all this
14 fighting over who is whom is over. We're ready to do
15 that, Your Honor. We think the family can do that. Thank
16 you.

17 MR. SHAHID: Judge, let me add something to that. I
18 think what has been lost -- and Mr. Slotchiver and I have
19 been sort of silent litigants over here during this entire
20 controversy. This child was born in 2001. Attached to
21 Mr. Slotchiver's affidavit is a document showing his
22 eligibility for health insurance. I did not attach
23 another document which shows his eligibility and his
24 receipt for social security benefits.

25 I am convinced beyond a shadow of a doubt he is the

1 biological son of James Brown. The documents I attached
2 to the affidavit support that. The DNA test supports
3 that. His autobiography supports that. The birth
4 certificate supports that. The medical records support
5 all of that, but, Judge, he has not received anything.
6 He's been kicked out of his home. He's received nothing
7 from the estate. His lifeline includes his health
8 insurance that he's receiving and social security that
9 he's receiving, and I believe we have satisfied the world
10 and hopefully to the court's satisfaction as well he is
11 the biological son of the decedent.

12 We keep on fooling around with this stuff and if by
13 some quirk, by some just odd probability or something
14 happens and the DNA test for some reason which I don't
15 think will happen, but we have an obligation to this child
16 to leave well enough alone because once you start opening
17 that Pandora's box, then the question becomes is he
18 eligible for insurance? Is he eligible for social
19 security? And you could throw this kid on the street and
20 I don't think anybody wants that to happen, but, you know,
21 sometimes you have an answer to a question beyond a
22 reasonable doubt -- beyond any doubt, I believe -- and if
23 you fool with this long enough and you do enough DNA tests
24 maybe, maybe by some quirk this thing opens back up and
25 some DNA test comes out and some insurance company says I

1 am not going to insure him anymore and some Federal Court
2 says we're not going to recognize him as a son and we're
3 throwing this kid on the street, and to me, Judge, in all
4 due respect, that is insulting to this child.

5 He is a minor. He is not an adult. He cannot fend
6 for himself and to go anything beyond what's been
7 submitted to this court, Judge, I think puts that child at
8 risk and we can't afford for that to happen.

9 MR. MEDLIN: Your Honor, if I may just add one more
10 point to that. Mr.~Shahid has in his affidavit explained
11 the chain of custody for the DNA test that was obtained.
12 Now, by your order and by your arrangement Mr. Brown's DNA
13 was given to each of the parties. It was kept by
14 agreement with Mr. Rosen at the Medical University of
15 South Carolina and that is the DNA sample of Mr. Brown
16 that Mr.~Shahid obtained to send to the lab. Now --

17 THE COURT: Part of his leg bone.

18 MR. MEDLIN: -- that shouldn't be an issue because
19 anyone can take the allele chart of Mr. Brown's DNA and
20 match it to all of the other tests that have been done and
21 be sure that, in fact, Mr.~Shahid didn't cheat the system
22 which he would never do, of course, because one could just
23 look at the documents and see. You can tell. You can
24 match his DNA.

25 So, the only other possibility is that Ms.~Brown

1 cheated the system. Mr.~Shahid has said -- and correct me
2 if I am wrong, please, Peter -- that he sent the swab kit
3 by Fed Ex to Ms.~Brown while she was in Los Angeles --
4 living in Los Angeles at the time. She collected the swab
5 sample, and it was sent to the lab -- a reputable lab that
6 Mr.~Shahid explored and investigated who conducted the
7 test. Now, what's inconclusive about the data is that
8 that lab didn't watch the swab being taken.

9 Your Honor, we just ask the court to think about
10 that. At that time when the DNA test was made all of the
11 other parties were clamoring for little man's DNA test.
12 For Ms.~Brown to have cheated the system with a swab she
13 would have had to go to either Mr. Bell's client or one of
14 Mr. Levenson's clients -- male client -- and gotten them
15 to eat cheat the test so that it would match.

16 So, yes, is it possible in the great scheme of things
17 that Ms.~Brown cheated the test? Sure. The sun may not
18 come up tomorrow either, but the likelihood of that
19 happening is so extremely rare that for anyone to question
20 the validity of the DNA test I would argue, Your Honor, is
21 specious. Now, if we do another DNA test and the lab
22 technician picks up the wrong sample, that's what
23 Mr.~Shahid is worried about. Not only -- Again, I don't
24 think it affects the settlement. The other parties were
25 perfectly happy with what existed at the time of the

1 settlement, but it does take the great risk if there is a
2 mistake made this next time around that little man -- whom
3 Mrs. Pope and Mrs. Buchanan profess to want to protect
4 even though they take the position he's not entitled to
5 take anything which is a different argument we'll make --
6 he loses social security. He'll lose health insurance,
7 and there is no purpose to the test. There is only risk
8 to this innocent young man who has already been through
9 enough.

10 THE COURT: Thank you. Mr. Bailey, anything you want
11 to say?

12 MR. BAILEY: Your Honor, I just want to read one
13 thing on exhibit E on the screening report -- two things
14 and this isn't something that -- We didn't insert this.
15 All it says is, "Note, the samples were not collected
16 according to the AABB guidelines and the laboratory cannot
17 verify the origin of the DNA samples." Your Honor, I
18 don't think this document would be admissible in court if
19 it didn't comply with the guidelines that establish how a
20 DNA test is conducted.

21 THE COURT: It could be admissible. It would just go
22 to the weight, in my opinion.

23 MR. BAILEY: I'm sorry, sir?

24 THE COURT: I said it would just go to the weight.
25 It would not make it inadmissible provided a proper

1 foundation was shown. Okay. Well, I'll decide. Anything
2 else?

3 MR. BAILEY: Just under section 62-3-912.

4 THE COURT: Sixty-two-three?

5 MR. BAILEY: 912. That deals with the competent
6 successors of the decedent through a will or through
7 intestacy.

8 THE COURT: Help me with that. What do you mean by
9 that?

10 MR. BAILEY: Whether or not he is a competent
11 successor and, of course, we don't necessarily agree that
12 all of the others are competent successors either in order
13 to sign this agreement.

14 THE COURT: Well, a successor is defined under the
15 code, is it not, as a person other than a creditor who are
16 entitled to property of a decedent under his will or this
17 code, and if he is a child and he is omitted and it's not
18 determined what Mrs. Pope said from the four corners of
19 the document, he would be entitled, would he not, and he
20 would, therefore, be a successor?

21 MR. BAILEY: If he is the child.

22 MR. JONES: Your Honor, briefly, I think it's fairly
23 simple that when we entered into the settlement agreement
24 the attorney general's office with Mr. Levenson's clients
25 and Mr. Roberson and Mr. Medlin that we looked at Tomi

1 Rae's share as 25 percent. There was a question at the
2 time and during the negotiations about little man. We had
3 provision in our agreement that any additional parties
4 coming in we put in the agreement it would come out as an
5 expense. So, we dealt head-on with Tomi Rae. She's
6 included per the final agreement that night to include
7 James, II in there.

8 So, it doesn't affect our agreement at all. The DNA
9 doesn't affect our agreement at all. We're satisfied with
10 the 25 percent, and we ask the court at the appropriate
11 time to approve it.

12 THE COURT: All right. I will rule as to whether or
13 not I will require any further DNA on the little man come
14 Monday. I had talked about making the record complete
15 with the short -- making a statement as to your opinion as
16 to the complexity of this litigation for the record.
17 Anybody prepared to do that now? Professor?

18 MR. MEDLIN: Well, I am hearing a course of a request
19 for a five-minute break, Your Honor, part of which time
20 we'd like to use to copy signature pages and affidavit so
21 we can get that, but I am prepared to do that. I don't
22 know if anybody else is.

23 THE COURT: Let's go forward if you're ready. We
24 just had a break.

25 MR. MEDLIN: I am hearing a chorus asking you for a

1 restroom break for five minutes.

2 THE COURT: Okay. About 10 minutes.

3 (Whereupon, a break was taken.)

4 MR. MEDLIN: Your Honor, I'm assuming this is a
5 response to your question about the complexity. This is
6 not a summation of this motion?

7 THE COURT: That's exactly right. I just want it on
8 the record because, obviously, it's going above me for the
9 reviewing court. One of the things that I have to look at
10 is whether or not a good faith controversy exists, and I
11 just want the lawyers -- seasoned lawyers' position or
12 explanation as to the complexity of this litigation.

13 MR. MEDLIN: Thank you, Your Honor. As the court is
14 painfully aware by now, I'm certainly no litigator, but
15 I've got 30 years of experience dealing with estate
16 planning and probate matters. I have been teaching and
17 involved around the South Carolina Bar for the last 25
18 years as a professor dealing with these matters.

19 I have never ever seen a case this complicated, this
20 complex just to start off with. The various issues that
21 would have to be resolved to me would be almost
22 uncontrollable. In fact, I think that the settlement that
23 came together is a near miracle to avoid all the issues
24 that would have to be resolved if we didn't settle this
25 case.

1 Now, just by way of example, we have had six days of
2 testimony from two witnesses on a motion to approve the
3 settlement. Mrs. Pope rattled off a bunch of witnesses
4 that she thought would be necessary if we needed to get to
5 the bottom of certain issues and it was a rather long list
6 and I'm sure once we added to the list the list would grow
7 exponentially, and the issues are not all gathered into
8 one neat little bundle because in the probate of an estate
9 we have separate issues as we have discussed previously in
10 this case. We sometimes even have subject matter
11 jurisdiction issues as to what has to be heard where --
12 all of which I think would contribute to the nightmare of
13 trying this case with all attention to the conclusion.

14 Here are just some of the issues that I can think of
15 that are going to add to the complexity. We've got a
16 contest of the the 2000 will and the 2000 trust. Included
17 in that will and trust contest will be issues of the
18 capacity of Mr. Brown, and just to digress for a minute
19 part of the reason we were delicate in our pleadings is
20 that we really want to honor the memory of Mr. Brown as
21 much as can be possible in conjunction with this
22 proceeding, but there will be issues about that and
23 witnesses.

24 The main issue that we find is the issue of undue
25 influence, and we'll have to decide whether there was

1 undue influence for the 2000 will and 2000 trust and
2 including -- included in that discussion will be whether,
3 in fact, the statute of limitations has applied which we,
4 of course, don't believe is an issue and related
5 procedural matters as well -- all of which from time to
6 time might be appealed along the way seriatim because I
7 think if anything has been demonstrated by this case so
8 far, Your Honor, that so far any fiduciary who has been in
9 place is happy to appeal any issue that Your Honor
10 decides -- not to mention the rare occasions when recusal
11 is thrown at you.

12 So, we've got the 2000 will and trust, and if we
13 overturn the 2000 will and trust we then tee up the 1999
14 will and trust. We have to decide if they are valid.
15 Even if the 2000 trust is determined to be valid, we have
16 to decide if the 1999 trust is valid, and all of that
17 simply goes to the issue of whether Mr. Levenson's clients
18 and Mr. Bell's clients would take anything other than the
19 tangible personal property which raises two other issues
20 that are going to be intensely litigated.

21 Mr. Bell asked for a jury trial on the question of
22 what tangible personal property there is. Then there is
23 the question of whether the forfeiture clause would be
24 imposed as to any of the children. So, we have those nice
25 little sub-issues that could well come along on a separate

1 track because of the way this case could disburse.

2 Then if there is an intestacy that results because we
3 don't have a valid 2000 will and a valid 1999 will, we get
4 to decide who the intestate heirs are. Even if everything
5 is upheld we still have to fight about whether Tomi Rae
6 Brown is a surviving spouse because there is an elective
7 share claim, there is an omitted spouse's claim -- Those,
8 I assume, would be separate issues under the probate code.
9 There is an omitted child's share where we're going to
10 have to argue about whether little man is entitled to an
11 omitted child's share -- all three of those claims being a
12 direct result of Ms. Brown's marriage and little man's
13 birth after the purported 2000 documents were allegedly
14 executed. We're going to have to fight over all that, but
15 even then we have to decide other issues.

16 What's in the trust if the 2000 trust is found to be
17 the only trust? I heard Mrs. Pope and Mr. Buchanan both
18 testify that so far there is not enough evidence to be
19 able to determine whether the estate owns assets or
20 whether the trust owns assets although they believe both
21 the will and the trust to be valid. That's a very
22 significant question because if Ms. Brown is found to be
23 the surviving spouse she gets to take half at a maximum or
24 one-third at a minimum of the probate estate. The probate
25 estate is what passes by will or by intestacy according to

1 the statute. So, we have to determine what actually is
2 subject to the will if the will is found to be valid and
3 Ms.~Brown is found to be the surviving spouse.

4 We don't have a whole lot of documents I think that
5 so far can tell us that because if Mrs. Pope and
6 Mr. Buchanan had conducted due diligence, they would have
7 already discovered that. So, I'm believing them that it's
8 difficult to figure out whether the deed into the 2000
9 trust which Mrs. Pope keeps referring to, in fact, could
10 be transferred by Mr. Brown because maybe the 1999 trust
11 which has a written memorialization of the transfer on a
12 schedule is sufficient to have transferred his interest
13 then so that it wasn't owned by him when he tried to
14 create the 2000 trust, and then we have the James Brown
15 Enterprises which is an onion -- layer after layer.

16 First of all, who owns James Brown enterprises?
17 We'll have to get in income tax returns and decide
18 whether, in fact, they were filed with Mr. Brown's
19 understanding and so forth. We'll have to get into the
20 question of whether the signed -- excuse me, the blank
21 transfer book in the blank stock certificate were, in
22 fact, meant to transfer James Brown Enterprises into the
23 2000 trust. We got the same question with the 1999 trust.

24 Even when we decide who owns James Brown Enterprises
25 we then have to decide what James Brown Enterprises owned,

1 and so far nobody seems to be doing a good job of telling
2 where any of this stuff is. It's going to be a nightmare
3 to decide what assets belong where. In fact, even though
4 Mrs. Pope and Mr. Buchanan say they've done their due
5 diligence, we have an inventory and appraisalment that's
6 unlike any I've ever seen in the other than the smallest
7 estate, and it says, Here is what the estate has. It's a
8 group of assets that's worth "X" because we had an offer
9 for that.

10 There is no itemization of the assets. There is no
11 categorization of the assets. There is no separate
12 appraised value of the assets -- and, by the way, the
13 valuation would become a great issue as well. So, they
14 haven't corrected that inventory and appraisalment, and I'm
15 assuming it is because they don't have the information to
16 do it because otherwise they would have done their
17 fiduciary duty to get a proper inventory and appraisalment
18 before the court.

19 The same with the estate tax return. It simply says
20 the same thing. We got a blob of assets and we're not
21 saying who owns what. We can't tell who owns what. It is
22 too early to tell. We just can't uncramble that egg,
23 but we have to unscramble that egg to deal with issues
24 that I'm talking about. We're going to have to figure out
25 where the assets are, what they're worth, who owned them,

1 and what kind of documents we have, and the witnesses are
2 going to be Mr. Dallas, Mr. Bradley, and Mr. Cannon who
3 were purported trustees and people who managed the estate
4 as well as many other witnesses that we're going to have
5 to parade again in front of this court in, again, more
6 than one setting.

7 We have to decide if this continues on maybe what is
8 best for certain tax issues. Now, again, we believe that
9 we have the tax issues handled and, Your Honor, as we'll
10 discuss in more detail when we do our summation there is a
11 provision in every document that Mrs. Pope has already
12 testified is a super-veto provision in her documents and
13 that is we'll cure whatever defect there is in the tax
14 problem, but if we don't have a settlement, we don't have
15 the benefit of that. So, we're going to have to deal with
16 all of those issues as well, too, perhaps, in certain
17 cases.

18 Your Honor, by our calculation we've got a million
19 and a half or maybe a little less than that depending on
20 whether they're going to charge 325 or \$300 an hour.
21 Since November of '07 through today -- well, through the
22 submission of the bill -- I'm sure it's grown
23 significantly since that time. And I'm not arguing at
24 this point about the time that Mrs. Pope and Mr. Buchanan
25 spent. I will note that Mr. Bailey stated earlier this

1 morning that much of that time was spent dealing with this
2 settlement. Imagine how much time they're going to spend
3 dealing when there is not a settlement and everybody is
4 fighting and we're having each party trying to argue this
5 or that. Millions of dollars more will be spent
6 unnecessarily by not settling this case.

7 So, we've got the 2000 will and trust validity. We
8 got the intestate heirs issue. We got the Tomi Rae
9 spousal share issue, two different spousal shares. We got
10 the little man issue. We got the tangible personal
11 property issue. We got the in terrorem clause issue. It
12 boggles my mind how we just deal with those, and it would
13 be a lot easier if we knew which assets were where, and
14 then if Ms.~Brown is determined to be the surviving spouse
15 and entitled to an elective share and or -- or an omitted
16 spouse's share, we're going to have another argument as to
17 whether the 2000 trust if it is found to contain the trust
18 assets was really in effect a revocable trust because
19 under the Seafit and Drayer opinions of the South Carolina
20 supreme court she gets to take those assets, too. They're
21 deemed to be probate assets for purposes of her omitted
22 spouse and elective share claim.

23 And even if the 2000 trust is not found to be a
24 deemed revocable trust which is, certainly, what we're
25 going to argue based on testimony by Mr. Dallas and

1 Mr. Bradley that they didn't have anything to do with the
2 2000 trust while Mr. Brown was alive because he kept
3 control of everything -- Mrs. Pope says the same thing;
4 that he kept control of everything. I think we got a very
5 good argument there, but we're going to have to make that
6 argument, and we're going to have to prove it, and we're
7 going to then have to argue about whether the '99 trust
8 which is revocable and whose assets would certainly be
9 subject under the Drayer and Seafort cases to the probate
10 estate and Mr. Brown's elective share or omitted spouse's
11 share and I would argue by analogy the little man's
12 omitted child share. We're going to have to argue that.

13 Now, it strikes me based on what's going on so far --
14 and, again, please, Your Honor, I'm sorry I'm not a
15 litigator and so I don't understand procedure because
16 that's not what I do, but the cases are going to be going
17 back and forth and up and down because everybody
18 is going to appeal every little issue, and then we get
19 into a question like we did last summer and like we got
20 into last month and get into next week about whether there
21 is a stay and what can be done and what can't be done.
22 This is going to be Jarndyce versus Jarndyce out of the
23 Dickens novel, but it's going to become worst than than.
24 It's going to be Bleak House.

25 We got the solution right here. We avoid all of that

1 complexity if we do that. Thank you, Your Honor.

2 THE COURT: Anything else by Levenson, at al, Jones?

3 MR. JONES: Just briefly, Your Honor.

4 THE COURT: I am asking about the complexity. Don't
5 argue your case.

6 MR. JONES: Okay. Well, Your Honor, I want to say
7 that Mr. Medlin has presented the same points we would. I
8 want to say that with caution because Mr. Buchanan said on
9 the stand that he heard that Mr. Medlin presented the
10 arguments but he never heard the attorney general present
11 the arguments. We've been through this whole thing with
12 Mr. Medlin and Mr. Levenson as to the issues that we have
13 to address and consider. I would just like to bring the
14 court's attention that when we came into this case in
15 September of '07 and intervened we were the first ones --
16 You know, the first day we came to court there was a
17 signed document that put all of the James Brown
18 Enterprises in the estate and not the trust and we spoke
19 up that day.

20 As you remember we popped up everytime the issue came
21 up and the Your Honor would say, Mr. Attorney General,
22 we'll give you an opportunity to argue that. As we
23 progressed and we had affidavits from Dallas and
24 Mr. Bradley on some of our motions we talked about
25 conflicts which from the testimony yesterday with

1 Mr. Buchanan from the Federal Court he recognized there is
2 one and we've talked about subject matter, but there was a
3 hearing in March about a year ago in which our witnesses,
4 basically, said some things on the stand that would hurt
5 our case as far as proving that the assets would go
6 through the trust.

7 So, a lot of those factors were to be considered, and
8 during the course of this litigation as I mentioned my
9 attorney general has given us the resources we need to
10 proceed. We have litigation going on right now that does
11 involve or, actually, the Bull Street case was a four
12 corners case. We call it a four corners case like
13 Mrs. Pope said you look at the four corners of the
14 document. That involved 13 deeds. It was very
15 complicated, but not as complicated as this case. It is
16 the one that was in the original jurisdiction of the state
17 Supreme Court.

18 And the Epworth case which I argued in 2005 or ruling
19 came out in 2005, that case we argued four corners and we
20 lost it in probate and lost it in circuit and what we lost
21 on was a provision number nine paragraph somewhere in the
22 trust document and the court said per Justice Burnette
23 that you have to look at the whole document. So, we're
24 quite well familiar with the four corners issue.

25 Also, there is a case ongoing right now in which is

1 \$100 million down at the beach in which a four corners
2 issues. Mrs. Pope has met and Mr. Buchanan have met with
3 my AG and through other intermediaries have called him
4 several times about the case. My AG is involved, and the
5 case at the beach there have been about three major
6 meetings with my office and -- but the position of our
7 office is we don't settle. The other side said, well, we
8 want to go to mediation. That means you got to settle.
9 We said, We don't have to settle because we're satisfied
10 it is a four corners case. There is no undue influence
11 alleged, no outside factors like this one. So, we're
12 quite capable of handling major cases. We are quite
13 familiar with the four corners issues, but when you get
14 the issues that come up in a case like this it's not four
15 corners anymore.

16 So, you talk about the tax issues that are being
17 espoused by the PR and trustees saying we're costing the
18 charitable trust \$30 million or whatever scenario they
19 might mention -- Mr. Levenson mentioned this yesterday
20 quiet accurately. You pay more taxes if you get more
21 money. If we get zero, we pay no taxes. He pays more
22 taxes or Ms. Hynie will pay more taxes.

23 So, all of those issues were evolving and during the
24 course of this litigation you might think, well, we relied
25 upon Mr. Levenson or Mr. Rosen or -- in the case, but in

1 the course of this litigation we had Mr. Medlin in a case
2 that we had against us involving a hundred million
3 dollars. He filed affidavits against us in that case in
4 which we prevailed.

5 We had a case in which Andrew Chandler representing a
6 beneficiary of a charitable trust came to us and wanted
7 the trustee removed and we said the attorney general has a
8 little higher standard on removal than maybe you have.
9 Maybe you have grounds for it, but our standard is a
10 little bit higher, and we couldn't join in with him on
11 that motion at that time to remove a trustee.

12 We had Mr. Rosen in a case in which involved the
13 firefighters in Charleston in which Don Clark -- they put
14 us in a case and we said there was no charitable trust and
15 we argued before Judge Condon in probate court in
16 Charleston this is not a charitable trust. It is a
17 private trust, and Mr. Rosen said, Well, if the attorney
18 general won't do his job, we'll do it for him.

19 So, this has not been old home week here for the
20 attorney general's office as we went through leaning on
21 everybody to do our job. So, I just want to pass that
22 along to you. My attorney general has been involved in
23 this case. We've had many twists and turns. We've had
24 the calls the night before that I told Your Honor about
25 Mr. Hammond saying he was a trustee. We've had e-mails

1 that came to our office six months before that had in
2 there -- one of them the first line and one of them
3 embedded that Hammond mentioned he was a trustee.

4 Of course, we came in this case in September and we
5 weren't looking at who was the trustee in the past. So,
6 it didn't really register. Everybody else takes cover on
7 the file is big or I hadn't reviewed the file, but if the
8 attorney general's office misses something like that
9 that's circulated around with three attorneys and we're
10 criticized.

11 So, we have taken this, and we have broad shoulders
12 in our office, and we're going to take responsibility and
13 move forward, but at a point in time when our witnesses
14 imploded a little bit we had to address where we are
15 because at the end of the day we're going to be the one
16 responsible for saying there is zero for a charitable
17 trust or what is there for a charitable trust.

18 We have no problem arguing to the State Supreme Court
19 for the Chief Justice and she's familiar with us on cases
20 of charitable trusts. We have grave concerns in this case
21 about our prevailing, and with those factors in mind
22 Mr. Cox who I've heard good comments about and bad
23 comments about -- he called our office in, I believe it
24 was, July -- July of '08 and I get calls from Terry Cox
25 through permission of Mr. Byrd. Buddy Dallas would call.

1 Jackie Hollander would call. We always listen to people
2 talk on the phone.

3 Bill Hammond would call me. We're trying to collect
4 all information, and he called our office and wanted to
5 meet with our office. We said okay. I called Mr. Medlin
6 and said, I want somebody else there, and I had JC and
7 Mary Francis meet, and what he brought to our attention
8 was here is a problem here. The valuation is going down.
9 We don't know if you could sell it in his opinion. You
10 got to go out -- and this is in line with what Mrs. Pope
11 was kind of mentioning on another matter. You might could
12 build the image back up.

13 So, I am sitting there. I've got witnesses falling
14 out left and right. I got us going and getting law
15 enforcement to chase down Ahmed with five social security
16 numbers, me calling places in St. Louis -- apartments --
17 looking for Ahmed. The next day they call me back and
18 say, Mr. Attorney General, is there a terrorist action
19 here because you called my neighbor and you called me
20 about Mr. Ahmed and we're concerned is there some kind of
21 terrorist operation? I said, no, we just -- I called
22 everybody in the apartment complex.

23 So, we tried to track down all of these things. So,
24 with all of those factors in mind it came to our attention
25 that if we proceeded -- and I'll use the Department of

1 Justice example. When they come to see you they say we're
2 going to be here whether you're gone or not. We'll be
3 here. We'll just wear you out. And you're familiar with
4 that, Your Honor, if you had a case against them before,
5 and we will be here -- the attorney general's office --
6 but we have a responsibility to make sure that the
7 charitable trust is protected.

8 So, we're sitting here with all of those matters
9 floating around us and the fact is if we win there might
10 not be anything there. So, with that point in mind, we
11 said we need to figure out what we got. We need to figure
12 out the parties we have and see what their thoughts might
13 be, and that's what started this mediation, and as far as
14 my office knowing what we're doing, Your Honor, when we
15 had to pay for a mediation our part, you got to get
16 approval.

17 Everything that we do in our office our front office
18 needs to know. He gives us authority like Your Honor
19 would think he would, but any big decisions my attorney
20 general would know about. Just like this morning I made
21 sure my chief deputy knew about the summons and complaint.
22 I got my input. This is the one that Mrs. Pope filed and
23 said, no, you -- we don't want to waive it. So, I consult
24 with my front office.

25 So, with all of those factors and all these things

1 going on, Your Honor, we had a concern. We had a concern
2 that if we follow this to fruition the next deposition
3 that -- we had a court order. We looked at the law of
4 overturning a court order. We had Judge McCannon. You
5 have yourself. Six years later somebody comes back in and
6 tries to overturn a court order; it's difficult.

7 We were probably the first people to order that
8 transcript on the hearing with Tomi Rae Hynie on the
9 annulment. We checked out the affidavits on service. We
10 made sure we researched the law and we apprised my
11 attorney general of what we'd have to do to try to
12 overturn an order. So, we looked at all of those factors,
13 and we couldn't find Ahmed. So, all of those things were
14 floating around and it was very complex. Very complex.

15 I have dealt with probably more charitable trusts
16 than anybody in this courtroom and probably anybody in
17 this state outside of Alan Medlin because I have been the
18 focal point in our office for years on charitable trusts,
19 and, so, this is the most complex one I've seen, and as
20 far as settling cases my office doesn't want to settle any
21 case. We'll go to -- I could tell you many stories. I
22 will end up with this one.

23 When I went to my attorney general on the Epworth
24 case and he just got the office and I approached my chief
25 deputy about appealing the Epworth because I lost at

1 probate court and circuit court. I got a phonecall from
2 him and he said, We're going to appeal against an
3 orphanage? I mean, what is going on here? So, I go up to
4 him and I explain the case and tell him this is a four
5 corners case. They're wrong. He said, We're going to do
6 what's right.

7 When Mr. Buchanan and Mrs. Pope came with an
8 intermediary to our office and said that I was interfering
9 with their production -- their proceeding with the case to
10 protect the charitable trust, my AG said after he heard
11 the arguments he said, We got to follow what the law is,
12 and that's what we've done all the way through this.

13 So, if Your Honor is asking what our thoughts would
14 be about complexity of this litigation, we think it is
15 equally or more complex than any other charitable trust
16 case I've had including some pharmaceutical cases. Thank
17 you.

18 THE COURT: Mr. Shahid, is there anything additional
19 to be had? I just wanted everybody to get a flavor for
20 whether they think it's complex or not.

21 MR. LEVENSON: Judge, I perceived Your Honor's
22 question asked at the last visit here to be different than
23 what Professor Medlin and Mr. Jones have said. I thought
24 Your Honor was asking us to cast about in our experiences
25 as to how this case compared with other cases that we've

1 been handling either as litigators or in the trust and
2 estate area or otherwise.

3 THE COURT: Well, that's exactly right, Mr. Levenson,
4 even though I appreciate their comments, and they did
5 answer the question in a roundabout way, but I am just
6 looking for seasoned lawyers as their--- I mean, as the
7 Judge sitting up here and listening to it since the very
8 first day, maybe my perception is different than y'all's.

9 MR. LEVENSON: I just -- I'm not an academic like
10 Professor Medlin, and I read law books only when I have
11 to, I guess, but I'm sort of a nuts and bolts sort of
12 lawyer, and I want to tell you just a little bit about my
13 practice, but, first, I'll say in answer to Your Honor's
14 questions because I always learn as a trial practitioner
15 when the Judge asks the question the first thing you do is
16 give him an answer. It's not the answer he likes
17 oftentimes, but you give him a answer and then if you can
18 wedge a couple of words in to explain why you've given an
19 unsatisfactory answer. So, I am going to answer your
20 question.

21 This is the most complex case that I have ever been
22 involved in. Issues of law and fact are far more complex
23 than anything, and let me tell you a little bit about my
24 experience because that opinion is worth nothing if I
25 don't tell you the basis for the conclusion. I graduated

1 Emory in 1978 -- law school, I mean, graduate -- and
2 started rooting around for work, started taking
3 appointments in the probate courts of Fulton and DeKalb
4 counties which is the main counties in the metropolitan
5 Atlanta area -- appointments as guardian ad litem and
6 other sort of interim work.

7 In 1980 I was appointed by the Fulton County Probate
8 Judge -- and Fulton is the largest county of 159 counties
9 in the state of Georgia. I'm sure, Your Honor, it's most
10 of Atlanta and much of north and south metropolitan
11 Atlanta. I was appointed as what's called a county
12 fiduciary, county guardian, county administrator. I
13 served in that capacity for 10 years, and, basically, the
14 role of a county guardian, county administrator is when
15 two or more people come into the probate court and want to
16 be appointed administrator or they want to be appointed
17 executor or they want to be appointed the guardian for
18 incapacitated adult or minor and there appears to be from
19 the impression of the probate judge to be a conflict or
20 potential conflict of interest, a neutral person is
21 appointed; that is to say, someone whose responsibility is
22 to have no interest in the case other than the discharge
23 of the law for the ward or the court or the estate is
24 protected.

25 The other advantage of a county guardian is that I

1 can make a bond and they can't which is a nice feature
2 because, obviously, as Your Honor knows, you know, bonds
3 are contracts of indemnity and, so, the probate judge
4 feels a little more comfortable appointing someone has who
5 has a bond in place from an insurance company and the
6 insurance company knows if there is a loss, they pay the
7 loss and then they look to me. I am pleased to say that
8 there has been no losses sustained in my 31 years of
9 practicing with millions and millions and millions of
10 bonds posted in the state of Georgia.

11 So, the model of county administration is really
12 designed in some part for the judge to opt out of the
13 conflict. Why was does the judge do that? Because he or
14 she recognizes it's going to be too expensive to allow
15 this party to litigate and drain the estate of the ward or
16 the estate of the deceased with claims for legal fees
17 because there is a statute that says if you can make a
18 claim and it's valid and it more or less benefits the
19 estate -- and I'm paraphrasing because as I said I don't
20 read the law books that often, but then it's a claim and
21 the court could award such fees. The shortcut is appoint
22 someone who you know is going to do the job who will not
23 create a loss.

24 The other time that I was appointed in the vast
25 majority of the cases is after there had been a loss and

1 the surety had stepped in had to pay upon my demand -- in
2 other words, someone had been removed because of default
3 or just leaving the jurisdiction without proper
4 accounting. So, I'm very familiar I think with being a
5 fiduciary. I have been a fiduciary in between 500 and
6 1000 cases myself. I am just estimating and my paralegal
7 Ms. Cordell who is here has worked with me for 10 or 12
8 years -- it's enumerable cases requiring constant
9 accounting to courts.

10 Litigation usually follows when I've been appointed
11 as a successor because someone has done something wrong.
12 It is my responsibility to chase someone if -- That's not
13 exactly what I mean, but suing someone or being sued. The
14 privilege of being the county administrator or for that
15 matter any administrator is you always seek guidance from
16 the court. You know, I serve at the pleasure of a judge
17 who appoints me, and, so, I don't -- obviously, statutes
18 allow me certain discretion, but any kind of complicated
19 issue you ask the judge for approval with notice to all
20 parties and everybody comes in and makes their peace.

21 The point I'm making is that after being involved in
22 those cases that I was myself a fiduciary whether it's
23 trustee or co-trustee, I've also represented probably a
24 another two or three thousand cases where people are my
25 clients who are fiduciaries. Often cases have gone to the

1 Georgia Court of Appeals and the Georgia Supreme Court.
2 Fortunately I have been the appellee more often than I've
3 been the appellant in those cases that have been
4 interesting law.

5 Whenever -- and I know this is not necessarily a
6 comment on this case, but it is worth observing simply as
7 a fact in my experience which troubles me by some of the
8 testimony that was heard in this case. Never in my 31
9 years of experience have been appointed by a court as a
10 fiduciary that I have appealed an order of the court that
11 appointed me. Never. Now, that doesn't mean it can't be
12 done. I am just expressing some empirical evidence about
13 what has occurred in the years because my belief is if you
14 put me in, you can take me out. If I don't like your
15 decisions, I shouldn't have sought your guidance in the
16 first place, I guess, is the way I look at it.

17 I want to sum up quickly by saying that in cases that
18 have been heavily litigated, not necessarily -- Well,
19 partially by me because I admit there are cases which are
20 are very contested where I've either been the lawyer for a
21 fiduciary or defending someone who was formerly a
22 fiduciary -- we've always sought to settle cases. The
23 context in which their settlement is just a model set up
24 by Judge Floyd Probst who was the president of the
25 American College of Probate Judges and a probate judge in

1 Fulton County for about 27 years was an early intervention
2 mediation and arbitration. You had an offer if you want
3 to mediate it or arbitrate it. When I say early, I mean
4 30 to 45 days after the case was filed. Now, that was the
5 years when I was the county administrator.

6 The experience there taught me that if you have a
7 complex case as it appears from the pleadings initially
8 filed and it's sent to early intervention, either
9 arbitration or mediation, the assumption is the facts are
10 not known. Clearly, you haven't done the kind of
11 discovery that you would need. The judge would appoint.
12 There is a mediation group in Atlanta that was populated
13 by experienced retired Court of Appeals judges, trial
14 judges, and lawyers. So they had been around the block.
15 They understood issues. They may not have been probate
16 lawyers, but they understood the complexities of
17 litigation. I digress.

18 The point I am trying to make, Judge, is it's not
19 uncommon in my experience to be sent -- strike that --
20 ordered to mediation early on in a case before all of the
21 facts are known. Some of those cases have settled. Some
22 have not, but they didn't not settle because we didn't
23 attempt to resolve the issues, and if they did settle,
24 they were settled admittedly -- and I think I understand
25 Mrs. Pope and Mr. Buchanan's argument and I just

1 respectfully disagree -- they were settled without
2 complete information because, obviously, you can't get
3 complete information in 45 or 60 days in a complex estate
4 case. You file a petition for leave to compromise the
5 claim. Most settlements were made subject to such a
6 proposal that would have to be presented to a judge, and I
7 can think of one instance in 31 years where that proposal
8 was not approved, but all of the others were.

9 Now, I am simply just giving you the benefit of
10 experience. It doesn't have any, you know, all four
11 corners application to the facts of this case. I settled
12 the case once involving a young heiress who at the time I
13 believe was the youngest, richest girl in Georgia. I
14 won't mention her name, but she had money on both sides of
15 her family, and there was a lawyer who was contesting
16 something -- it doesn't matter what it is -- who told me
17 he would fight something like until hell freezes over and
18 would then skate on the ice. He didn't care how much it
19 cost. His position was absolutely dead wrong in my
20 opinion. We settled with him why? Because the cost of
21 litigation relative to the value of the estate was so
22 insignificant as to justify holding our nose and settling
23 it, and I, of course, didn't make that decision
24 independently. I made my recommendation to the judge of
25 the court where I had been appointed and it was approved.

1 Was it a morally reprehensible decision? Yes, in my
2 opinion it was, but it made sense relative to the
3 complexity of the case and the intention of someone who
4 was going to litigate the heck out of a case even though
5 there was no factual or legal basis. That person has
6 since been disbarred I will point out as a side note on
7 totally unrelated matters.

8 Judge, I think that these gentlemen are more eloquent
9 in expressing all of the reasons that the case settled on
10 the facts and law, but in my gut I just feel this is the
11 most complicated case I'll ever be involved in up to this
12 point or with the rest of my career, and I think from the
13 evidence you've heard it's likely that you can deduce from
14 the evidence that if it does not settle the two years of
15 wrangling is small comparison to what lays ahead.

16 THE COURT: Thank you, sir. Anybody else on this
17 side of the fence? Succinctly, Mr.~Shahid.

18 MR. SHAHID: I will try to be as quick as I can,
19 Judge. Your Honor, I am a litigator. My practice has
20 been to litigate cases and I am not a probate lawyer. I
21 do some probate work, but I will relate to the court that
22 this is a very complex case -- probably one of the most
23 complex cases that I've dealt with in my close to 30 years
24 as being a licensed lawyer in South Carolina.

25 Judge, I have served as an Assistant United States

1 Attorney in the Charleston office and in my tenure as
2 serving as an Assistant United States Attorney I dealt
3 with very complicated, fraud-related cases -- not just
4 drug-related cases, but fraud-related cases, white collar
5 crimes that accomplished weeks of trial, months of trial,
6 months of trial litigation in a courtroom. It involved
7 heavy documentation, difficult witnesses, a lot at stake
8 on both sides for the government but also on stake for a
9 white collar defendant.

10 I will tell the court, Judge, that I have served as a
11 general counsel for the dioceses of Charleston since 1997
12 in which my role is to defend the church in sex abuse
13 cases, and there is nothing that is more complicated than
14 dealing with issues of a minor who alleges that he was
15 abused by a person of authority because time has passed
16 when the incident may or may not have occurred. They have
17 gone through a terrible turmoil in their life that has
18 destroyed their lives and their family lives, and because
19 of the passage of time evidence goes away, memories fade,
20 but, also, the church is armed with very good defenses,
21 statute of limitations, and also defenses of charitable
22 immunity which existed at the time.

23 Back in 2006 we entered into a class action
24 settlement with some very good lawyers out of
25 Charleston -- Mr. Richter, Mr. Howard, and other lawyers

1 involved in that case. Even though we reached a mediation
2 agreement in 2006 we had a final hearing to wrap up all of
3 the loose ends on that case in January of 2009. It
4 involved over \$12 million of church pay-out and that
5 case -- as I was listening to Mr. Buchanan and Mrs. Pope
6 talk about you've got to get discovery and you got to do
7 this and you got to do that in preparation of trial we
8 were successful in stopping discovery. There was no
9 depositions taken. There were very few documents
10 exchanged, and in spite of all that, it still took from
11 2005 when the case was settled until the final hearing of
12 2009 and we just got an order yesterday resolving all of
13 the issues from the hearing in January of 2009.

14 I use that as a basis for the court to consider that
15 in litigation there is a point in time that a good
16 litigator knows when to settle a case and how to settle a
17 case and to avoid -- and to avoid litigation. If you
18 compare this case to what I have experienced as a federal
19 prosecutor, as a civil defense lawyer, I can compare it
20 with the volumes of paperwork that's in my office and how
21 many file cabinets it occupies, I can compare it to the
22 number of witnesses who testified, the number of lawyers
23 who have been a revolving door in and out of this
24 courtroom representing certain people at certain times,
25 the number of parties who have been in and out of this

1 courtroom. There are certain ways to measure the
2 complexity of this case, but I think that the issues that
3 Professor Medlin has brought up that has been alluded to
4 in Mr. Slotchiver's affidavit pale in comparison to what
5 we would have to actually litigate in this case and would
6 pale in comparison to how complex this case would be from
7 just the two-plus years of what we've already done and not
8 even hitting any -- as Mr. Levenson has said many times,
9 we can't get to the meat and potatoes of the case.

10 So, the complexity of this case, Judge, ranks up
11 there as one of the most complex cases that I have ever
12 dealt with as a litigator, not as from the probate aspect,
13 but just the complexity of dealing with cases that are
14 extremely complex, dealing with a lot of defenses, a lot
15 of issues involved in it. It is one of the most complex
16 cases that I've had in almost 30 years of litigation.

17 THE COURT: Thank you. Mr. Bell?

18 MR. BELL: Your Honor, the interesting thing about
19 this case it's not just the complexity of the issues, but
20 it is the variety. You could teach an entire law school
21 curriculum from the case. You have got probate matters.
22 You have got trust and estate matters. You've got
23 domestic relations. You've got paternity. You've got
24 corporate matters as to whether or not James Brown
25 Enterprises was properly operated. Then you have contract

1 issues whether or not assets were passed to James Brown
2 Enterprises what it owns. You have the corporate contract
3 issues as to who owned the tangible personal property --
4 was it part of the business or part of the home? Then you
5 get to real estate matters -- was the property correctly
6 deeded? Corporate matters -- were the shares of stock
7 correctly conveyed? And then you get to the whole
8 different issue of breach of fiduciary duty -- the past.
9 It's a case to where you look to the past actions and to
10 the future.

11 The interesting thing, Your Honor, if you were to
12 open up discovery today you could easily have in excess of
13 50 depositions that would be required to develop the
14 necessary testimony as to those various issues. Now, the
15 issues are not related. We're talking about the
16 complexity, but the facts that are required to develop the
17 wills and estate issues are totally different than the
18 ones dealing with the corporation and its structure or the
19 contractual ownership of different assets. So, even if
20 you had one person who could talk about different things,
21 what they talk about on one issue is totally different
22 from other one.

23 Now, there could easily be in excess of 50
24 depositions and there would be a great variety. When we
25 were earlier today hearing the talk about the marriage of

1 Tomi Rae Hynie, there could be depositions all over the
2 country, some international depositions on that issue of
3 her marriage, and there would be issues on ownership where
4 you could be going to New York to talk to the experts who
5 were there or to California, and, so, there would be a
6 great deal of travel.

7 One of the problems is as I count this there are at
8 least eight different sides in the issue -- in the case
9 that have to be coordinated with in order to schedule
10 depositions. Last year or the year before -- it is
11 actually now a year and a half ago -- I made the effort to
12 take the deposition of Tomi Rae Hynie at the court's
13 approval, and Your Honor it took us upwards of 90 days in
14 order to get a date that fit into everybody's schedule and
15 then right on the eve of it things came up and it got
16 delayed and stayed, but I use that as an example of the
17 time that is required to coordinate everybody's schedule
18 and then that has nothing to do with travel going out of
19 state and to other places.

20 Your Honor, if we started today and worked very
21 diligently we would have a very difficult time having all
22 of the depositions completed in a year's time. I think,
23 quite frankly, it would take more than that, and Your
24 Honor has repeatedly told us that you would let us take
25 those or give us the time required and I respect that, but

1 because of the number of sides involved and the variety,
2 if we got it done in a year we would have been very
3 fortunate. I don't think it would happen.

4 Then, Your Honor, we start the trial. There are jury
5 issues, but these jury issues aren't related. You
6 can't -- The corporate jury issues do not go in the same
7 trial with the will and probate issues. The ownership of
8 the property are different. We could very easily have at
9 least six different juries have to be empaneled to decide
10 the various issues because these aren't -- these aren't
11 related issues. They are totally separate, and if you
12 worked extremely hard you would take at least a year of
13 trying six or seven week-long trials to get all of those
14 in, and, Your honor, if we started today we would be
15 extremely fortunate if in three years we had it all done,
16 and during that time the cost -- the complexity of the
17 cost is astronomical and at that time we don't have to
18 worry about a settlement because there ain't nothing left
19 to worry about and the chicken has done been picked clean
20 and there aren't any bones left to pass out.

21 You know, there was talk today about the need to meet
22 James Brown's desires. There aren't going to be any James
23 Brown desires if we go through all of that because all of
24 it will have gone to the lawyers, and those horror stories
25 about how estates got eaten up, this would be the classic

1 example.

2 You know, Judge, my final thing. We've all been
3 through a lot of settlements, mediations, and there is
4 this great saying in the business. When both sides leave
5 a settlement a little unhappy, it usually is a pretty darn
6 good settlement. I'm not happy with everything. I would
7 change a lot of things, but when Mr. Buchanan gets on the
8 witness stand yesterday and says he recognizes that it
9 needs to be a settlement; he just doesn't agree with
10 everything, well, let me tell you I've settled a lot of
11 cases. I hadn't agreed with everything that happened in
12 just about all of those settlements, but that usually --
13 when they leave and both sides are a little unhappy,
14 that's when the mediator says that's a darn good
15 settlement, and as long as there is a little discontent
16 but yet we come together all sides realizing that nobody
17 gets it perfect, that's usually the best settlement of
18 all. Thank you, Your Honor.

19 THE COURT: Mr. Bailey, anything you want to comment
20 on the complexity or do you want --

21 MR. BAILEY: Not at this time, Your Honor. I would
22 prefer to do it after the --

23 THE COURT: I am giving you a chance now because this
24 is a separate issue. It's not a summation. I am just
25 asking to your opinion as to whether or not it's complex

1 in your mind. It may not be.

2 MR. BAILEY: Excuse me one moment, Your Honor.

3 MR. MEDLIN: Your Honor, while they confer may I add
4 one postscript to my comments? I focused on the state
5 court issues. If we don't settle this case, we've got
6 federal court issues -- the federal lawsuit that's ongoing
7 now that may well go away. We've got federal termination
8 right lawsuits that we're going to have the fight and
9 maybe international copyright lawsuits about who is going
10 to own those copyrights. I didn't even mention those in
11 my remarks.

12 THE COURT: Mr. Bailey, anything you want to comment
13 on about the complexity? You're going to get to make a
14 final argument.

15 MR. BAILEY: On the civil side this ranks as a very
16 complex case from my point of view a lot because of the
17 case management of it. I don't mean to be critical of the
18 court, but there are a lot of matters that I feel could
19 have been addressed earlier that would have made decisions
20 on down the road easier to make. I am not trying to say
21 this is court error or anything like that. It's just the
22 way --

23 THE COURT: You can say what you want to to say.

24 MR. BAILEY: It is just the way the case has evolved.
25 As far as the most complex cases I've ever been involved

1 in, they're not civil cases. They're death penalty cases,
2 and to me on the civil side this would probably be the
3 most complex I have been involved in. On the criminal
4 side I have been involved in four death penalty cases.
5 So, I understand from the criminal aspect how complicated
6 those types of cases are that seek the death penalty.
7 This case -- There is no question in my mind that it's the
8 most complicated I have ever been involved in, but I don't
9 think it has proceeded the way that I would have
10 anticipated it to proceed where issues that needed to be
11 resolved before -- not major, necessarily, issues, but
12 issues that needed to be resolved were not resolved before
13 you pressed for -- not you, Judge -- but press for a
14 settlement and I think the case management has been
15 difficult. I think motions that have been filed and
16 reserved for hearing at a later time, unfortunately, I
17 think that --

18 THE COURT: You're talking about a motion for summary
19 judgment that y'all keep alluding to and alluding to and
20 alluding to and alluding to and you know as well as
21 anybody in this courtroom, Mr.~Bailey, that our Supreme
22 Court has said if there is a scintilla of factual dispute
23 summary judgment is not proper, and if I have ever seen a
24 case where there is more facts in dispute than this case I
25 have never seen it. So, I mean, I am not prejudging a

1 summary judgment issue, but there is just no way that
2 anybody could even think that summary judgment would be
3 appropriate with all of these factual issues in dispute.

4 I am trying to expedite. We've been doing it two
5 years, and I have given y'all hearing after hearing after
6 hearing. I've interrupted my court times. I've
7 interrupted schedules, made court time -- my weeks in
8 chambers just like this week. I don't know if I could
9 have been any more available to you. I'm sorry I haven't
10 managed it like you wanted me to manage it, but I am
11 trying to provide a hearing to decide whether or not to
12 settle it to see where it goes. If I decide that it's not
13 fair and reasonable, we'll tee it up and keep on going.

14 MR. BAILEY: Thank you, Your Honor.

15 THE COURT: Thank you. Okay. For Monday I will let
16 y'all all know Thursday how we're running. I can only do
17 that.

18 Mrs. Pope a number of times has mentioned this house
19 situation. I think we probably need to look at it before
20 you put up an expert on the tax issues on the settlement.
21 So, Mrs. Pope, I will hear that motion on the house Monday
22 morning number one.

23 Anybody got any objection to that? I would encourage
24 if there is any settlement talks about that or sales of it
25 to try to resolve that between now and Monday.

1 MR. MEDLIN: Your Honor, our settlement agreement, if
2 approved, would take care of that problem, we think.

3 THE COURT: Well --

4 MR. LEVENSON: I think -- Judge, I think the two are
5 not necessarily mutually exclusive. I think we could do
6 one and if Your Honor grants the motion it could
7 seamlessly move from one to the other. We can talk about
8 how to do that.

9 THE COURT: I am going to address the house issue
10 because she has rightfully told me about the conditions of
11 it and it seems like to me it's going south. So, we need
12 to look at that. After Mr. Bailey completes his
13 presentation, I want to have Mr. Bauknight if he is going
14 to be the one that y'all suggest and if I approve it I
15 want to know as I've asked a number of times what his
16 transition plan is. I guess before I get to that his
17 willingness to serve after sitting through all of this,
18 current IRS issues that my PR's have brought to my
19 attention, how he anticipates handling the ongoing
20 litigation that is -- not the ongoing litigation, but the
21 litigation that is in progress now and generally his
22 ability to handle this matter and his willingness to do so
23 and any other questions that may be asked of
24 Mr. Bauknight.

25 Gentlemen, ladies, before I can issue an order one

1 way or the other, Mrs. Pope has raised some significant
2 issues concerning the tax matters and I know from day one
3 that Ms.~Brown has had Mr. Heyward Carter retained and I
4 assume that was for purposes of tax questions and tax
5 matters, but, Mr. Medlin, we're going to have to have some
6 type of presentation on the due diligence that y'all have
7 done concerning the tax issues and addressing some of the
8 concerns that Mrs. Pope has brought up.

9 MR. MEDLIN: We will, Your Honor. I think it will be
10 necessary for me to know the range of fees or the
11 arrangement. I'm not going to -- I'll do that by -- under
12 a protective order. You can submit that to me under seal
13 for me to look at.

14 In that tax, for lack of a better term, explanation,
15 Mr. Medlin, I am concerned about the effect, if any, and
16 the reduction, if any, of this right of refusal on the --
17 on the trust, on the tax issue, on the qualification of
18 the trust, et cetera, et cetera, as expressed by
19 Mrs. Pope. I just think I got to include all of that in
20 the record. Number one, I think I need to know it.
21 Number two, I think it needs to be in the record once this
22 thing is reviewed whichever way I go.

23 General question to everybody: Do you think we'll
24 need all of the week of the 6th if we finish the testimony
25 and have Mr.~Bauknight's report and have the tax report,

1 what else do we need to do that week?

2 MR. LEVENSON: Judge, I have one motion to strike
3 certain affidavits, but that would take -- It's argument
4 only and it'll take 15 or 20 minutes at the most.

5 THE COURT: We can squeeze that in.

6 -- Mr. Bailey, anything that you feel that's urgently
7 needed? You don't have to tell me now. You can tell me
8 next week after you had a chance to think about it. I
9 just want to -- I mean, I've got that whole week set
10 aside. I'll try to utilize as much as I can.

11 MR. LEVENSON: Judge, are you saying that you know
12 for sure we're going to be here for that week or it's a
13 function of what happens with what happens with the big
14 case?

15 THE COURT: It is a function with what happens with
16 the firestone case. I was on the phone with them at
17 4 o'clock. They are still way, way apart. Some of them
18 are getting a little cold feet and starting to move a
19 little further. I got that week set aside, but I'll know
20 more about it. As soon as I know if it's settled or if
21 anything happens to it, you'll be the first -- you
22 collectively will be the first to know. I just want to
23 utilize that week if there is anything else we need to do.

24 MR. BAILEY: Your Honor, we would like to know
25 because on Mr. Levenson's proposed agenda whether they're

1 going to want to proceed to petition to remove --

2 THE COURT: Well, I am not going to hear that whether
3 they want to or not until I complete this and make a
4 ruling in this.

5 MR. BAILEY: The only other thing I have at the
6 moment is we had talked about presenting to the court the
7 Lewis and Babcock claim and Judge Peeples' claim. We
8 understand that -- or we have agreed with a stipulation
9 with both parties. We understand that nobody wants to
10 cross examine --

11 THE COURT: That's my understanding.

12 MR. BAILEY: -- Mr. Babcock or Judge Peeples. I can
13 hand up the --

14 MR. JONES: We never said that.

15 MR. BAILEY: We had written to everybody and asked
16 them --

17 THE COURT: I saw a letter that went out that if
18 anybody wanted to cross examine they had the right to let
19 them know. Nobody let them know.

20 MR. LEVENSON: I don't know of such an agreement, but
21 we can talk about that, Jim.

22 THE COURT: Well, if we talk about it -- They got to
23 be to be here. I mean, it is my understanding that it was
24 on your agenda and Mr. Bailey sent out some type of
25 stipulation and with the understanding that if anybody

1 wanted to cross examine you would let us all know and we
2 heard from no one. I didn't hear from anybody.

3 MR. MEDLIN: Your Honor, if I may?

4 THE COURT: Yes, sir.

5 MR. MEDLIN: If I am misstating what Mr. Babcock has
6 communicated to me I apologize to you and Mr. Babcock, but
7 here is the understanding to of several phonecalls that he
8 and I have had about this issue. As you recall we took
9 the position when this was originally scheduled that
10 because we didn't file our petition for removal that under
11 section 62-3-611 that automatically restrains the personal
12 representatives from doing anything other than preserving
13 the estate and we have a far different definition of what
14 preserving the estate means under the law than,
15 apparently, the personal representatives do.

16 The concern that I have expressed to Mr. Babcock is
17 that although we're anxious to not -- to resolve their
18 matters and not leave them hanging, when we do it we want
19 to make sure we do it with the right procedure and with
20 the right person and authority and somebody who wasn't
21 restrained under the law so that it's final and we don't
22 get to appeal on other issues and so far Mr. Babcock has
23 not expressed a great concern. He's been very patient and
24 he seems to understand that position.

25 Now, whether he would actually say he'd rather not

1 have the hearing if you gave me the opportunity, I don't
2 know, but he certainly seemed understanding of that
3 concern of ours, and that would be a continuing concern of
4 ours, Your Honor, about the validity of that hearing if we
5 put the cart before the horse.

6 THE COURT: Well, let's -- hypothetically, if I,
7 obviously, don't approve the settlement and we keep
8 plugging and I listen to y'all's motion to remove them.
9 Hypothetically, if I do approve the settlement, I'll have
10 to appoint a successor PR Trustee and if it is appealed,
11 where does that leave us?

12 MR. MEDLIN: Well --

13 THE COURT: That's another whole issue.

14 MR. MEDLIN: Well, Your Honor, I would suggest maybe
15 we could agree on a special -- in that case a special
16 administrator to hear those kind of issues. We don't
17 think that's an appealable issue and hopefully people
18 wouldn't want to appeal that just for the determination of
19 Judge Peeples' and Mr. Babcock's fee issue.

20 THE COURT: Well, not just that fee issue, but all
21 types of administrative issues.

22 MR. MEDLIN: I think we could deal with that in that
23 way.

24 THE COURT: Okay.

25 MR. LEVENSON: --- but I'm not -- I happen to think

1 the world of Mr. Babcock and I have respect for Judge
2 Peeples, although I don't know him as well as I know
3 Mr. Babcock and I certainly don't want keep them from
4 having their day in court.

5 THE COURT: In other words, you're asking me not to
6 create any additional errors to send to Columbia?

7 MR. MEDLIN: I didn't say that, Your Honor.

8 THE COURT: Well, I am saying it.

9 MR. MEDLIN: I want them comfortable --

10 THE COURT: All right. We'll finish up the
11 testimony. We're going to do the house first. Anybody
12 got any problems with me listening about the house
13 situation? We'll do the house. We'll finish up with
14 Mr. Bailey's presentation, Mr. Bauknight, tax, attorneys'
15 fees, and I guess closing arguments, whatever y'all want
16 to do. Do you want to make anything else further? And
17 then we'll see where we are.

18 MR. MEDLIN: Your Honor, we have copies from the
19 clerk's office -- I think we have plenty to go around --
20 of the signature pages and affidavits to the settlement
21 agreement. I also have a complete package that I am going
22 to give Mr. Bailey. I don't have a complete package of
23 the documents to give everyone else, but I do have the
24 signature pages, and if they would just include those with
25 what Mr. Jones sent out by e-mail, that would constitute a

1 complete package for everyone else.

2 THE COURT: I just want to make sure that Mr.~Bailey
3 gets his today. You can put mine in the mail, however you
4 want to.

5 MR. MEDLIN: And then, Your Honor, for some reason I
6 was handed a copy of your order unsealing and resealing
7 the James Brown annulment. I don't know who wanted copies
8 of those, but I have a bunch of them.

9 THE COURT: I don't know anybody who did. I don't
10 know why they made those.

11 MR. MEDLIN: Thank you, Your Honor.

12 THE COURT: Okay. We'll stand adjourned until 10
13 o'clock Monday the 6th unless you hear differently in the
14 next week. Thank you very much. Everybody have a
15 pleasant weekend.

16 (End of Transcript of Record.)

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CERTIFICATE OF REPORTER

State of South Carolina)
County of Aiken)

I, Lisa H. Davenport, 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 25th day of March, 2009.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

February 1, 2010

Lisa H. Davenport, Court Reporter

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF AIKEN _) 08-CP-02-1647

HENRY MCMASTER,)
)
 PLAINTIFF,)
)
 V.) TRANSCRIPT OF RECORD
)
RUSSELL BAUKNIGHT, ET AL.,)
)
 DEFENDANTS.)
_____)

APRIL 6, 2009
AIKEN, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DOYET A. EARLY, III, JUDGE.

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1 (WHEREUPON, ON APRIL 6, 2009 THE FOLLOWING
2 PROCEEDINGS WERE HELD:)

3 THE COURT: ALL RIGHT, MA'AM. I AM READY TO HEAR YOU
4 ON YOUR MOTION TO SELL THE HOUSE.

5 MRS. POPE: YOUR HONOR, MR. BAILEY WENT TO THE
6 RESTROOM. I'M SORRY.

7 (WHEREUPON, A BREAK WAS TAKEN.)

8 THE COURT: MR. BAILEY, YOU MAY PROCEED ON THE MOTION
9 TO --

10 MR. BELL: YOUR HONOR, MAY I BE HEARD ON THIS,
11 PLEASE?

12 THE COURT: ON WHAT?

13 MR. BELL: ON THE MOTION TO SELL THE HOUSE.

14 THE COURT: HE HADN'T SAID ANYTHING YET.

15 ARE YOU READY TO PROCEED, MR. BAILEY?

16 MR. BAILEY: YES, SIR.

17 THE COURT: ALL RIGHT. MR. BELL?

18 MR. BELL: YOUR HONOR, UNDER THE TERMS OF THE
19 SETTLEMENT AGREEMENT MY CLIENT GETS THE RIGHT TO DO DUE

20 DILIGENCE TO MARKET ALL OF THE ASSETS. THE HOUSE IS PART
21 OF THE ASSETS THAT MY CLIENT WOULD HAVE UNDER THE PROPOSED
22 SETTLEMENT AGREEMENT, AND, YOUR HONOR, WE OPPOSE THE
23 PETITION TO SELL THE HOUSE BECAUSE THAT IS ONE OF THE
24 ASSETS CONTEMPLATED BY THE SETTLEMENT AGREEMENT. IF YOUR
25 HONOR IS TO APPROVE THE SETTLEMENT, THEN -- AND THAT'S TO

1 BE DONE IN THE FUTURE -- THEN THIS IS GETTING THE CART
2 BEFORE THE HORSE AND IT IS NOT REQUIRED AND I WOULD ASK
3 YOUR HONOR TO DELAY THEIR REQUEST TO MARKET OR SELL THE
4 HOUSE BECAUSE THAT IS CONTRARY TO THE -- SOME OF THE TERMS
5 OF THE SETTLEMENT AGREEMENT THAT IS CURRENTLY BEFORE YOUR
6 HONOR AND IF THIS -- IF THE SETTLEMENT GETS APPROVED, THEN
7 THAT BECOMES MOOT AND IT DOES NOT NEED TO GO FORWARD.

8 THE COURT: THANK YOU. ANYBODY ON THIS SIDE HAVE ANY
9 COMMENTS ON THAT?

10 PROFESSOR MEDLIN?

11 MR. MEDLIN: YOUR HONOR, WE AGREE WITH THAT. THE
12 SETTLEMENT AGREEMENT DEALS WITH THE HOUSE, AND IF THE
13 SETTLEMENT AGREEMENT IS APPROVED, THEN IT BECOMES PART OF
14 THE PACKAGE THAT -- AND IF THERE IS A PROBLEM, IT CAN BE
15 TAKEN CARE OF. SO, WE AGREE THAT IT DOES PUT THE CART
16 BEFORE THE HORSE.

17 MR. JONES: SAME, YOUR HONOR. ANY ISSUES CONCERNING
18 THE IMMEDIATE MAINTENANCE OF THE HOUSE WE CAN ADDRESS
19 THOSE, BUT WE THINK IT'S PREMATURE TO SELL THE HOUSE.

20 MR. SHAHID: SAME THING, JUDGE.

21 THE COURT: MR. LEVENSON?

22 MR. LEVENSON: I AGREE, YOUR HONOR.

23 THE COURT: IS THAT EVERYBODY ON THAT SIDE OF THE
24 AISLE?

25 MR. BYRD?

1 MR. BYRD: YES, SIR.

2 THE COURT: DO YOU AGREE?

3 MR. BYRD: YES, SIR, I DO.

4 THE COURT: THAT'S EVERYBODY?

5 MR. BAILEY?

6 MR. BAILEY: JUST IN RESPONSE, YOUR HONOR, TO THAT

7 OBJECTION, I WOULD POINT OUT TO THE COURT THAT THESE ARE

8 NOT ASSETS THAT ARE TO BE DISTRIBUTED UNTIL THE VERY END

9 OF THE ESTATE AND IN THE MEANTIME WE HAVE VERY, VERY

10 SEVERE FINANCIAL PROBLEMS IN THE ESTATE THAT WE BELIEVE

11 NEED TO BE ADDRESSED -- WHETHER OR NOT THE PARTIES ARE

12 AWARE OF THE STATUS OF THE HOUSE, WHAT IT COSTS TO

13 MAINTAIN THE HOUSE -- BUT WHAT WE HAVE TRIED TO DO, YOUR

14 HONOR, IS PURSUANT TO YOUR FEBRUARY 20, 2008 ORDER WHEREIN

15 YOU AUTHORIZED THE PR TRUSTEES TO SELL THE PERSONAL

16 PROPERTY AND THE REAL PROPERTY, AT THIS POINT -- AND THIS

17 WAS WHY WE ASKED FOR A CLOSED COURTROOM -- THE ESTATE IS

18 ON THE VERGE OF BANKRUPTCY.

19 THE COURT: WELL, I DON'T SEE ANYBODY IN HERE. YOU

20 GOT ONE REPORTER BACK THERE. YOU WANT IT CLOSED FOR THIS

21 PURPOSE?

22 MR. BAILEY: YES, SIR.

23 THE COURT: ALL RIGHT. ANYBODY THAT'S NOT INVOLVED

24 IN THE LAWSUIT, PLEASE STEP OUT FOR JUST A FEW MINUTES.

25 IT WON'T BE LONG.

1 MR. LEVENSON: YOUR HONOR --

2 THE COURT: WHO IS THAT GENTLEMAN ON THE BACK ROW?

3 MALE SPEAKER: I AM WITH THE AUGUSTA CHRONICLE.

4 THE COURT: WELL, YOU'RE NOT WITH THE LAWSUIT.

5 PLEASE STEP OUT.

6 MR. LEVENSON: YOUR HONOR, THIS IS MR. THOMAS,

7 DEANNA'S HUSBAND. WOULD YOU LIKE FOR HIM TO STAY OR

8 LEAVE?

9 THE COURT: HE'S BEEN HERE THE WHOLE TIME. I HAVE NO

10 OBJECTION.

11 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HELD IN A

12 CLOSED COURTROOM.)

13 MR. BAILEY: THE PR TRUSTEES HAVE ENDEAVORED TO

14 PROTECT THE ESTATE FINANCIALLY BY UTILIZING THE FUNDS THAT

15 WERE AVAILABLE FROM THE CHRISTIE'S SALE AND OTHER MINOR

16 MATTERS TO PROVIDE SECURITY FOR THE HOUSE, TO PROVIDE

17 MAINTENANCE FOR THE HOUSE, INSURANCE FOR THE HOUSE, THE

18 UTILITIES FOR THE HOUSE. THE ESTATE IS NOW IN A POSITION

19 WHERE BY AT THE END OF THIS MONTH IF NOT SOONER WE WILL

20 NOT BE ABLE TO INSURE THE HOUSE. THERE IS NO MONEY. WE

21 WILL NOT BE ABLE TO PROVIDE SECURITY FOR THE HOUSE AS WE

22 HAVE IN THE PAST. THE PERSONAL PROPERTY OR PERSONAL

23 EFFECTS THAT REMAIN IN THE HOUSE CONTINUE -- THEY'LL

24 DETERIORATE.

25 THE HOUSE ITSELF -- THE ANNUAL COST OF MAINTAINING

1 THE HOUSE IS \$70,000. RIGHT NOW THE ROOF LEAKS. THERE
2 ARE ALL KINDS OF PROBLEMS THAT ARE CONTRIBUTING TO THE
3 DETERIORATION OF THIS AS A VALUABLE ASSET. WE HAVE
4 APPROACHED ALL OF THE PARTIES -- ALL OF THE SETTLING
5 PARTIES -- WITH A PROPOSAL TO HAVE THEM BUY THE PROPERTY
6 AT A DISCOUNTED PRICE. THE APPRAISED VALUE IS
7 1.25 MILLION, BUT IN THIS ECONOMY WE HAVE OFFERED TO SELL
8 THE HOUSE TO THE SETTLING PARTIES IN ANY WAY, SHAPE, OR
9 FORM FOR APPROXIMATELY \$925,000. WE HAVE OFFERED TERMS
10 THAT PROVIDE HOW WE WOULD REQUEST THAT IT BE FINANCED, BUT
11 WHAT WE'RE LOOKING AT IS AN ASSET THAT IS ABOUT -- IT HAS
12 BEEN SIMPLY BECAUSE OF IT'S NON-USE IS SLOWLY
13 DETERIORATING IN VALUE.

14 THIS IS NOT SOMETHING THAT WE WOULD PREFER TO DO, BUT
15 IT'S SOMETHING THAT NO MATTER WHAT HAPPENS TODAY IT IS
16 GOING TO NEED TO BE DONE. IF YOU PROVIDE THROUGH SOME
17 APPROVAL OF THE SETTLEMENT DOCUMENTS THE ADDENDUM THAT
18 CREATES A RIGHT OF FIRST REFUSAL IN ONE OF THE SETTLING
19 PARTIES TO OBJECT OR WE'D HAVE TO SELL TO THAT PERSON OR

20 THAT INDIVIDUAL HAS THE RIGHT TO CONTROL THE SALE OF THAT
21 PARTICULAR PIECE OF PROPERTY FOR UP TO 10 YEARS, WELL, WE
22 THINK WHAT'S GOING TO HAPPEN IS THE PROPERTY ITSELF IS
23 GOING TO SEVERELY DECREASE IN VALUE. IT IS SUBJECT TO
24 VANDALISM. WE CAN'T AFFORD TO HAVE SOMEBODY OUT THERE
25 INSPECTING IT AND MAINTAINING THE KIND OF SURVEILLANCE

1 THAT WOULD BE NECESSARY BECAUSE OF THE VALUE OF THE
2 CONTENTS, THE VALUE OF THE HOUSE ITSELF.

3 THIS IS NOT DONE IN AN EFFORT TO JUST GENERATE MONEY
4 FOR THE SAKE OF GENERATING MONEY OR TO JEOPARDIZE THE
5 PARTIES' ABILITY TO BUY IT AND USE IT IN A SENSE THAT WE
6 HAVE THOUGHT ALL WERE INTERESTED IN AS ESTABLISHING SOME
7 TYPE OF MUSEUM, BUT WHAT WE'RE LOOKING AT IS YOU CAN'T PAY
8 THE TAXES ON THE PROPERTY. INSURANCE -- IF SOMETHING WERE
9 TO HAPPEN TO THE PROPERTY AND THERE IS NO INSURANCE ON
10 IT --

11 THE COURT: IT IS INSURED TODAY, IS IT NOT?

12 MR. BAILEY: YES, SIR, BUT I BELIEVE IT WILL BE -- IT
13 EXPIRES IN MAY.

14 THE COURT: IN MAY?

15 MR. BAILEY: YES, SIR. IF I MIGHT, WHAT WE HAVE
16 DONE, YOUR HONOR, IS WE APPROACHED THE ATTORNEY GENERAL,
17 WE APPROACHED MR. LEVENSON'S CLIENTS, BUT WHAT WE HAD
18 OFFERED TO DO IS HAVE THE SETTLING PARTIES IN ANY FORM
19 PURCHASE THE PROPERTY FOR \$925,307 WHICH IS ABOUT A

20 30 PERCENT DISCOUNT. WELL, IT'S -- THE PROPERTY IS IN THE
21 TRUST. IF IT'S SOLD AT LESS THAN ITS APPRAISED VALUE THAT
22 COULD HAVE A PROBLEM, BUT WE FEEL THAT WE COULD BE
23 JUSTIFIED IN THIS ECONOMY TO BE ABLE TO SELL IT AT A LOWER
24 PRICE.

25 WHAT WE'RE LOOKING FOR IS NOT THE TOTAL PURCHASE

1 PRICE AT ONE TIME BUT IT'S FOR THE PURCHASORS TO PAY
2 50,000 AT THE CLOSING SECURED BY A FIRST MORTGAGE AT
3 5 PERCENT FOR 10 YEARS IN EQUAL PAYMENTS. THE SALE WOULD
4 BE AS IS. THE DEED WOULD BE -- WE WOULD EXECUTE A DEED.
5 HOWEVER, WE WOULD REQUEST THE PARTIES TO EXECUTE -- THE
6 PROPER PARTIES TO EXECUTE A DEED IN LIEU OF FORECLOSURE IN
7 THE EVENT THAT PAYMENT IS DISCONTINUED SUCH AS HAS BEEN
8 DONE ON THE SALE OF MR. BROWN'S FATHER'S HOUSE. THE
9 CLIENT WHO BOUGHT THAT -- THE LEVENSON'S CLIENTS WHO
10 BOUGHT THAT HAVE FAILED TO MAKE ANY FURTHER PAYMENTS ON
11 THAT PARTICULAR PURCHASE.

12 THE TANGIBLE PERSONAL PROPERTY THAT IS IN THE HOME
13 WOULD REMAIN THERE INSURED UNLESS THERE WAS SOME OTHER
14 REASON FOR IT TO BE REMOVED BY THE PR TRUSTEES, BUT AT
15 THIS POINT WE DON'T SEE THAT AS AN IMMEDIATE CONCERN --
16 JUST THAT IT'S MANAGED, CARED FOR, THAT THE CLIMATE IN THE
17 HOUSE THE MAINTAINED. IT IS HEATED AND AIR CONDITIONED.

18 WE'VE REQUESTED THAT THEY BUY IT. WE HAVE NOT
19 RECEIVED ANY POSITIVE RESPONSE TO THE PURCHASE AND WHAT

20 WE'RE LOOKING FOR IS IF THE COURT WERE TO APPROVE THIS
21 THAT WE WOULD GIVE THIS -- CONTINUE TO GIVE THIS OPTION TO
22 THE SETTLING PARTIES, BUT BY APRIL 15 IF THEY HAVEN'T
23 DECIDED TO PURCHASE IT, THEN WE WOULD REQUEST THAT THE
24 COURT AUTHORIZE US TO SELL THE PROPERTY TO THE PUBLIC AT
25 LARGE, BUT WITH CONDITIONS ON IT -- MAINLY THAT IT IF BE

1 PURCHASED WITH THE CONCEPT THAT IT BE USED AT SOME FUTURE
2 POINT AS A MUSEUM IF AT ALL PRACTICABLE AND THE NECESSITY,
3 AGAIN, IS NOT TO TRULY GENERATE MONEY. IT WILL GENERATE A
4 LITTLE BIT OF MONEY, BUT IT IS TO GET IT INTO A MORE
5 PROTECTED STATUS.

6 IF IT'S NOT PUT INTO THAT PROTECTED STATUS, THEN OVER
7 THE NEXT SIX MONTHS TO A YEAR THERE IS NO TELLING HOW MUCH
8 THAT PROPERTY WILL DECLINE IN VALUE AS WELL AS THE
9 POTENTIAL FOR LOSS, DESTRUCTION BY WEATHER, BY VANDALISM,
10 AND SIMPLY JUST THE AGING PROCESS OF NOTHING BEING DONE,
11 NO MAINTENANCE WORK BEING PERFORMED, AND THE SAME,
12 BASICALLY, WOULD GO FOR THE TANGIBLE PERSONAL PROPERTY.

13 THE COURT: ANYTHING ELSE? ANYBODY WANT TO RESPOND
14 TO THAT?

15 MR. BELL?

16 MR. BELL: YES, SIR: YOUR HONOR, IF I MIGHT MAKE
17 THREE POINTS. ONE OF THE THINGS THAT MR. BAILEY SAID HE
18 TALKED ABOUT THE NEED TO GENERATE CASH FOR THE ESTATE
19 BECAUSE ITS INSOLVENT. THE SALE OF THE HOUSE REALLY

20 GENERATES VERY LITTLE.

21 THE COURT: HE ADMITTED THAT. HE SAID IT IS MAINLY
22 FOR PROTECTION OF THE ASSET.

23 MR. BELL: THAT'S CORRECT, BUT, YOUR HONOR, HE ALSO
24 SAID IT'S SLOWLY DETERIORATING AND IT NEEDS TO BE DONE
25 WITHIN THE NEXT SIX MONTHS, AND, YOUR HONOR, IF THE

1 SETTLEMENT GOES THROUGH IT WILL HAVE OCCURRED LONG BEFORE
2 THAT AND THE RESPONSIBILITY FOR PROTECTING WILL BE A PART
3 OF THE PACKAGE AND IT WILL BE IN A POSITION THAT IT CAN BE
4 PROTECTED.

5 I ALSO MIGHT REMIND THE COURT THAT LAST TIME WE WERE
6 TOGETHER WHEN MR. BUCHANAN WAS TESTIFYING HE SAID THAT ONE
7 OF THE STRATEGIES OF THE TRUSTEES WAS TO KEEP THE CASH IN
8 THE ESTATE DOWN SO THAT IT WOULD STRENGTHEN THEIR POSITION
9 AS TO DEALING WITH THE CREDITORS, AND, YOUR HONOR, BECAUSE
10 OF THAT EVERYTIME WE COME TO SOMETHING THERE IS A CRISIS,
11 BUT THAT CRISIS IS IN PART A STRATEGY OF THE TRUSTEES,
12 AND, YOUR HONOR, IF YOU MOVED -- IF THEY MOVED AHEAD WITH
13 SELLING IT, NOTHING IS GOING TO HAPPEN WITHIN 30 OR 45
14 DAYS WHETHER THE CASE SETTLES OR NOT WILL HAVE OCCURRED
15 BEFORE THAT.

16 THE COURT: MR. BELL, WHAT IS IN THE AGREEMENT
17 THAT -- YOU JUST MENTIONED THERE IS LANGUAGE IN THE
18 AGREEMENT THAT PROTECTS THE HOUSE THAT'S PART OF THE
19 AGREEMENT. DO YOU RECALL WHAT THAT IS?

20 MR. BELL: YOUR HONOR, I DON'T KNOW THAT THE
21 AGREEMENT SPECIFICALLY PROVIDES FOR THAT. WHAT IT DOES
22 PROVIDE FOR IS THAT MY CLIENT WILL HAVE THE RIGHT TO
23 MARKET ALL OF THE ASSETS. THAT'S PART OF THE ASSETS.
24 WHAT THE PROTECTION WOULD BE IN THE AGREEMENT IS THERE
25 WILL BE A NEW TRUSTEE -- THAT HE'LL COME IN. IT WILL BE

1 HIS RESPONSIBILITY, AND I DON'T BELIEVE THAT THERE HAS
2 BEEN ANY COMPLAINT AS TO THE ABILITY TO TAKE CARE OF AND
3 MANAGE THAT PROPERTY.

4 PUTTING THE PROPERTY IN A STABLE POSITION WILL NOT BE
5 THAT DIFFICULT. IT -- YOU KNOW, IT WILL REQUIRE SOME
6 CASH, SOME MONEY, BUT IT CAN STABILIZE IT SO IT CAN BE
7 DEALT WITH IN THE NORMAL COURSE AND I THINK, QUITE
8 FRANKLY, YOUR HONOR, THE FAMILY -- I KNOW FROM MY CLIENT'S
9 POINT OF VIEW AND I BELIEVE FROM HIS BROTHERS AND SISTERS
10 THEY VERY MUCH WANT THAT PROPERTY PRESERVED, PART OF THE
11 ESTATE, AND THEY WANT THAT TO BE THE LOCATION OF THE FINAL
12 RESTING PLACE OF JAMES BROWN. IT IS VERY IMPORTANT TO
13 THEM THAT IT BE A PART OF THE PACKAGE, AND I BELIEVE THAT
14 THERE ARE WAYS TO ADDRESS THE SHORT-TERM SECURITY OF THE
15 HOUSE WITHOUT SELLING IT AND TAKING IT OUT OF THE ESTATE,
16 AND, QUITE FRANKLY, YOUR HONOR, IT IS EXTREMELY IMPORTANT
17 TO THE FAMILY THAT IT NOT BE TAKEN OUT AT THIS TIME.

18 THE COURT: PROFESSOR MEDLIN, ANYTHING YOU WANT TO
19 COMMENT ON?

20 MR. MEDLIN: YOUR HONOR, IF I MAY DEFER TO
21 MR. LEVENSON.

22 MR. LEVENSON: JUDGE, WHAT I THINK WAS STATED TO THE
23 COURT WHEN WE LEFT HERE ON THE 26TH WAS THIS THERE WAS
24 SOME EXIGENT CIRCUMSTANCES WHICH REQUIRED THAT YOUR HONOR
25 INTERRUPT THE HEARING ON THE MOTION AND FORCE THE

1 SETTLEMENT AGREEMENT TO TAKE UP THE MATTER OF THE SALE OF
2 THE HOUSE. I AM WILLING TO ACCEPT WHAT MR. BAILEY HAS
3 SAID AS A PROFFER OF EVIDENCE AND NO EVIDENCE IS
4 NECESSARY, BUT, RESPECTFULLY, I DON'T THINK WHAT HE HAS
5 STATED EVEN IF TRUE WOULD CONSTITUTE ANY EXIGENT
6 CIRCUMSTANCES. THE FACT THAT THE ROOF IS LEAKING OR THAT
7 THERE MAY BE ISSUES WITH REGARD MAINTENANCE OF THE HOUSE
8 WOULDN'T CREATE SOME RISK THAT THE SKY IS FALLING TOMORROW
9 OR NEXT WEEK. WE EXPECT THIS WEEK OR SOONER, YOUR HONOR,
10 TO HAVE BEFORE THE COURT WHATEVER YOUR HONOR NEEDS TO MAKE
11 A DECISION ON THE MOTION TO ENFORCE THE SETTLEMENT
12 AGREEMENT, AND ONCE AN ORDER IS ENTERED, AGAIN, CONSISTENT
13 WITH WHAT MR. BELL SAID THE AGREEMENT WHICH INCORPORATES
14 THE PLAN FOR THE HOUSE WILL EITHER BE ENDORSED OR IT
15 WON'T.

16 I WOULD ALSO OBSERVE, JUDGE, THAT WE TOOK THIS UP
17 BRIEFLY IN SOME OF THE CROSS EXAMINATION AND I DON'T -- I
18 DON'T WANT TO SEEM ADVERSARIAL HERE, BUT IT IS A LITTLE
19 DIFFICULT TO ACCEPT THE NOTION THAT THE ESTATE IS ON THE

20 VERGE OF BANKRUPTCY SUCH THAT ONE OF THE PRIZED
21 POSSESSIONS OF THE ESTATE IS IN JEOPARDY WHEN
22 APPROXIMATELY \$900,000 HAS COME INTO THE HANDS OF THE PR'S
23 AND TRUSTEES AND MORE THAN HALF OF THAT HAS GONE OUT TO
24 PAY THEIR OWN LEGAL FEES. I DON'T MEAN THAT TO SEEM TOO
25 CRITICAL, BUT IF IT WAS ANTICIPATED THAT THIS WAS GOING TO

1 BE A PROBLEM, THEN THAT COULD HAVE BEEN ADJUSTED
2 INTERNALLY BY THE PR'S AND TRUSTEES -- TO NOW CLAIMING
3 INDIGENCE THROUGH HAVING PAID THEMSELVES FEES AND
4 EXPENSES. EVEN IF THE HOUSE WERE SOLD I DON'T BELIEVE
5 YOUR HONOR COULD IMPOSE ANY RESTRICTIONS ON THE ALIENATION
6 OF THE HOUSE SUCH AS A THIRD-PARTY PURCHASER WOULD -- IT
7 WOULD BE RESTRICTED TO SOME MUSEUM TYPE OF WORK ON THE
8 HOUSE AND THEN, OF COURSE, SUCH A SALE, IF APPROVED, WOULD
9 STILL NOT ADDRESS THE TANGIBLE PERSONAL PROPERTY AND THE
10 HOUSEHOLD EFFECTS WHICH ARE STILL IN THE HOME. SOMEONE IS
11 GOING TO HAVE TO PAY TO TAKE CARE OF THOSE THINGS.

12 SO, THE ONLY -- THE RESPONSE THAT WE GAVE TO
13 MRS. POPE AND MR. BUCHANAN A MONTH OR TWO AGO WAS THAT ONE
14 OR MORE OF MY CLIENTS WOULD HAVE WITH THE EXPRESSED
15 PERMISSION OF MR. BELL'S CLIENT AND MS. TOMI RAE BROWN --
16 WE WOULD TAKE POSSESSION OF THE HOUSE. WE WOULD
17 PHYSICALLY OCCUPY IT BECAUSE THAT WOULD SOLVE SOME
18 INSURANCE PROBLEMS AND WOULD TAKE CARE OF UPKEEP, AND WE
19 WOULD PAY EVERYTHING -- IN OTHER WORDS, ALL OF THE

20 INSURANCE AND ALL OF THE TAXES, MAINTENANCE, ET CETERA.

21 SO, IT IS NOT ENTIRELY FAIR TO SAY THAT THERE'S BEEN
22 NO POSITIVE RESPONSE TO THE REQUEST FOR THE PURCHASE OF
23 THE HOUSE. WE STAND READY TO DO THAT TOMORROW. WE WOULD
24 -- I DON'T MEAN ME PERSONALLY. I MEAN MY CLIENTS OR ONE
25 OF THEM VARIOUSLY WOULD COME INTO THE HOUSE, PROVIDE

1 SECURITY, AND PROVIDE MAINTENANCE AND THE COSTS OF THE
2 UPKEEP SO THAT THE ESTATE TRUST WOULD NOT BE REQUIRED TO
3 FURTHER EXPEND THOSE SUMS.

4 I JUST DON'T BELIEVE, JUDGE, THAT YOU HAVE BEFORE YOU
5 EVEN IF THE PROFFER OF MR. BAILEY IS TO BE ACCEPTED AS
6 EVIDENCE ENOUGH TO SAY THAT YOU NEED TO TAKE IMMEDIATE
7 ACTION. I MEAN, IF THIS WAS -- IF THIS WAS BEFORE YOUR
8 HONOR ON SOME APPLICATION FOR TEMPORARY RESTRAINING ORDER
9 I DON'T BELIEVE THAT YOU'D SAY THAT THERE IS NOT A REMEDY
10 AT LAW FOR THE MOVANT SUCH THAT YOU WOULD BE REQUIRED TO
11 DENY THE INJUNCTIVE RELIEF.

12 JUDGE, I THINK THE PROBLEM IS GOING TO BE SOLVED. I
13 WOULD MAKE ONE OTHER PROFFER WHICH WE AS THE SETTLING
14 PARTIES HAVE BANDIED ABOUT IN THE EVENT YOUR HONOR WAS TO
15 CONSIDER SUCH A REQUEST WHICH IS WE COLLECTIVELY OR
16 PERHAPS ONE OF MY CLIENTS INDIVIDUALLY WOULD ADVANCE FUNDS
17 TO THE ESTATE IN THE FORM OF A LOAN. IT IS A LITTLE MORE
18 COMPLICATED BECAUSE IT WOULD REQUIRE YOUR HONOR'S EXPRESS
19 APPROVAL AS SOME SORT OF SUPER LIEN ON THE PROPERTY, BUT I

20 REALLY WOULD LIKE NOT TO HAVE TO GO THERE, BUT NOT KNOWING
21 WHAT THE EVIDENCE WAS GOING TO BE TODAY -- IF THERE WAS,
22 HYPOTHETICALLY, A TAX PAYMENT THAT HAD TO BE MADE TOMORROW
23 OR THE PROPERTY WOULD GO UP FOR SALE ON THE COURTHOUSE
24 STEPS OR AN INSURANCE PAYMENT THAT WASN'T GOING TO BE MADE
25 SUCH A THAT WE WOULD LOSE COVERAGE IMMEDIATELY, WE WOULD

1 PAY THOSE FUNDS OURSELVES EITHER COLLECTIVELY OR ONE OF MY
2 CLIENTS TAKE SOME SORT OF ENCUMBRANCE ON THE PROPERTY SO
3 AS TO PROTECT THE PROPERTY AND, INDEED, PROTECT OURSELVES.
4 WE DON'T SEEM TO ACHIEVE OWNERSHIP OF IT EXCEPT BY VIRTUE
5 OF THE SETTLEMENT AGREEMENT WHICH IS BEFORE YOUR HONOR TO
6 DECIDE.

7 WHAT I AM SAYING IS THERE ARE REMEDIES OUT THERE
8 OTHER THAN THE REMEDY SOUGHT WHICH IS IMMEDIATE
9 PUBLICATION OF SOME NOTICE TO SELL THIS PROPERTY TO THE
10 HIGHEST BIDDER WHICH DESTROYS THE LETTER AND THE SPIRIT OF
11 WHAT IS BEFORE YOUR HONOR. THANK YOU.

12 THE COURT: PROFESSOR? ANYTHING NEW?

13 MR. MEDLIN: YOUR HONOR, SIMPLY TO ADD THAT MY CLIENT
14 SHARES THE SAME CONCERN THAT THE REST OF THE FAMILY HAS
15 WITH THE MAINTENANCE AND PRESERVATION OF THE HOUSE IS AN
16 ICON AS PART OF THE ESTATE, AND WE UNDERSTAND THAT OUR
17 SETTLEMENT AGREEMENT WOULD INCLUDE THE REQUIREMENT THAT
18 THE NEXT FIDUCIARY WOULD HAVE TO MAINTAIN THE HOUSE AND
19 WE'RE ALL COMMITTED TO MAKE SURE THAT THAT WOULD HAPPEN.

20 SHE SHARES IN THAT.

21 THE COURT: MR. JONES?

22 MR. JONES: YES, SIR. THE AG'S OFFICE WOULD JOIN
23 WITH MR. LEVENSON AND MR. MEDLIN AND MR. BELL AND WHAT WE
24 WOULD SAY IS IF YOUR HONOR DOES APPROVE THE SETTLEMENT
25 AGREEMENT THIS WOULD ADDRESS THE CONCERN OF THE HOUSE, AND

1 THIS IS ONE OF THE REASONS -- COST OF LITIGATION, COSTS OF
2 RUNNING THE ESTATE WAS A FACTOR IN US CONSIDERING THE
3 SETTLEMENT AND IF YOU STEP BACK AND LOOK AT THIS WHAT
4 YOU'RE GETTING IS FROM THE CHRISTIE'S SALE AND PROPOSED
5 SALE OF THE HOUSE THIS THING IS DISAPPEARING ONE PIECE AT
6 THE TIME. THAT'S WHAT WE'RE TRYING TO AVOID, YOUR HONOR.

7 THE COURT: MR. BYRD?

8 MR. BYRD: YES, YOUR HONOR. WITH THE POSITION THAT
9 WE TOOK WITH REGARD TO THE CHRISTIE'S SALE IS THE SAME
10 POSITION WE TAKE HERE. MR. DALLAS AND MR. BRADLEY FEEL
11 THAT IF WE CAN KEEP IT TOGETHER IT IS GOING TO BRING A LOT
12 MORE MONEY. FOR THAT REASON WE WOULD OPPOSE THE SALE.

13 THE COURT: THANK YOU. ANYBODY ELSE?

14 MR. BAILEY: MAY I RESPOND TO THAT, YOUR HONOR?

15 THE COURT: YOU MAY.

16 MR. BAILEY: THE REASON WE'RE AT THIS POINT IS
17 BECAUSE WE HAVE BEEN OPPOSED AT EVERY TURN BY THE SETTLING
18 PARTIES AND EVERYONE ELSE THAT IS INVOLVED IN THIS ESTATE.
19 THE CRISIS THAT WE'RE BEING ACCUSED OF CREATING HERE IS

20 NOT A CRISIS OF OUR MAKING. IT IS A CRISIS OF THE MAKING
21 BY THE PARTIES CONSTANTLY INTERFERING WITH OUR ABILITY TO
22 DO WHAT OUR DUTIES OR THE DUTIES OF THE PR TRUSTEES ARE.

23 THIS COURT GAVE US PERMISSION TO SELL THE PROPERTY.
24 THESE PEOPLE HAVE JUMPED IN HERE, MADE ALL KINDS OF
25 OBJECTIONS. WE ONLY TRIED TO SEEK THE COURT'S APPROVAL

1 SIMPLY BECAUSE OF ALL OF THE CONTESTED POSITIONS THEY'VE
2 TAKEN AGAINST US. THEY NOW COME UP AND TELL THE COURT,
3 WELL, WE'LL BE WILLING TO ADVANCE MONEY TO PROTECT IT IF
4 YOU APPROVE, IF YOU DO THIS. THIS WAS NEVER MADE KNOWN TO
5 US. WE MADE THESE OFFERS IN GOOD FAITH TO TRY TO KEEP THE
6 PROPERTY IN THE FAMILY. NO ONE HAS GOTTEN BACK TO US AND
7 SAID THIS IS WHAT WE COULD DO. NO ONE.

8 IT'S SIMPLY NOW THAT IT'S CRUNCH TIME AND WE NEED
9 SOME ACTION TO PROTECT THE PROPERTY -- OH, IT'S -- THIS IS
10 A GOOD WAY TO SOLVE IT IS SIMPLY TO SAY WE WILL DO THIS,
11 WE WILL DO THAT IF THE APPROVAL IS OF THE SETTLEMENT IS
12 GRANTED. MR. BELL SAYS THAT, YOU KNOW, IT'S JUST SO
13 IMPORTANT TO KEEP IT IN THE FAMILY. JUDGE, WE HAVE TRIED
14 TO GET IT TO THE FAMILY. WE HAVE OFFERED IT TO THE FAMILY
15 THROUGH THEIR ATTORNEYS. THEY HAVE NOT ACCEPTED IT.

16 WE HAVEN'T SAID YOU HAVE TO PAY \$925,000 CASH. WE'VE
17 PROVIDED VERY GENEROUS TERMS. WE WANT TO MAKE SURE THAT
18 THE PROPERTY IS PROTECTED. MR. BELL SAYS, OH, WELL, YOU
19 KNOW, THIS IS GOING TO TAKE PLACE OVER SIX MONTHS WE'LL

20 HAVE ALL OF THIS DONE. JUDGE, THE INSURANCE RUNS OUT.
21 THERE IS NO WAY TO PAY FOR SECURITY FOR THE HOUSE. WATER,
22 HEAT, ELECTRICITY IS GOING TO BE CUT OFF. THOSE KINDS OF
23 PROBLEMS ARE NOT SIMPLY PROBLEMS THAT CAN'T CREATE DAMAGES
24 IN THE SHORT RUN.

25 WE ARE AT A POINT NOW THAT WE DON'T KNOW WHAT THEY

1 REALLY WANT TO DO. WE'VE GOT NOTHING IN WRITING FROM THEM
2 SAYING THIS IS WHAT WE WILL DO IN RESPONSE TO YOUR
3 PROPOSED NEED TO SELL THIS HOUSE. WE'RE NOT HERE TO SELL
4 IT BECAUSE WE WANT TO JEOPARDIZE ANYTHING. WE'RE HERE TO
5 PROTECT IT, AND IF I NEED TO I'LL PUT MRS. POPE OR

6 MR. BUCHANAN ON THE STAND TO TESTIFY AS TO THE DAILY
7 PROBLEMS THAT OCCUR AT THE HOUSE.

8 THIS IS -- THESE PEOPLE DON'T REALLY GET INVOLVED IN
9 THE DAY-TO-DAY WHAT'S-GOING-ON PROBLEMS. THEY ARE
10 PROVERBIALY IN THE ACADEMIC TOWER LOOKING DOWN SAYING,
11 OH, IT'S NOT NECESSARY TO DO THIS WHEN THEY HAVE NO REAL
12 IDEA OF THE SCOPE OF THE PROBLEMS THAT ARE GOING ON.
13 WATER LEAKS IN THE HOUSE, ALL KINDS OF REPAIR PROBLEMS --
14 NOT ALWAYS MAJOR, BUT ROOF LEAKING IS A PRETTY SERIOUS
15 PROBLEM.

16 THE GIST IS -- THE MAIN CRUX OF THE ISSUE IS WE WANT
17 TO PROTECT IT. WE'VE GIVEN THEM THE OPPORTUNITY TO TAKE
18 ADVANTAGE OF THAT, BUT THEY DON'T WANT TO DO IT -- AT
19 LEAST, THEY HAVE NOT PRESENTED US WITH A SINGLE DOCUMENT

20 THAT SOLIDIFIES WHAT THEY WILL DO SO THAT WE KNOW THE
21 PROPERTY IS TRANSFERRED PROPERLY, WE NO LONGER HAVE
22 CONTROL OVER IT, IT'S THEIRS, THEY'RE GOING TO BE
23 RESPONSIBLE FOR UPKEEP MAINTENANCE AND INSURANCE AND
24 THAT'S ALL -- AND THE LIABILITY ASSOCIATED WITH IT.

25 I MEAN, IT IS -- I AGREE IT IS AN ICON AND NEEDS TO

1 BE PRESERVED, BUT IT'S ALSO -- BECAUSE OF ITS BEING AN
2 ICON IT ATTRACTS PEOPLE AND WHO KNOWS WHO WOULD BE
3 ATTRACTED IF THERE IS NO SECURITY TO PREVENT THAT SORT OF
4 THING AND I THINK EVERYBODY WHO KNEW JAMES BROWN KNEW HOW
5 SECURITY CONSCIOUS HE WAS OF HIS PROPERTY. THANK YOU.

6 THE COURT: WE WILL NOW CONTINUE WITH THE TESTIMONY
7 ON PROVIDING OR APPROVING THE SETTLEMENT.

8 MR. BAILEY, I UNDERSTAND THAT YOU HAD SOMEONE WHO
9 WANT YOU WANTED TO CALL ON THE TAX EXPERTS?

10 MR. BAILEY: YES, SIR. YOUR HONOR, WE UNDERSTOOD
11 THAT THE COURT WAS GOING TO INQUIRE OF MR.~BAUKNIGHT BASED
12 ON THE EARLIER LETTER THAT HE WOULD -- IF THE COURT HAD
13 QUESTIONS CONCERNING HIS ACTIONS AS A SPECIAL
14 ADMINISTRATOR, ET CETERA, AND WE WOULD REQUEST THAT THE
15 COURT UNDERTAKE THAT EXAMINATION FIRST SO THAT OUR EXPERT
16 HAS SOME IDEA OF WHAT MR.~BAUKNIGHT INTENDS TO DO.

17 THE COURT: NO, SIR. I AM GOING TO GO AHEAD AND
18 COMPLETE THE TESTIMONY OF ALL -- EVERYBODY'S WITNESSES AND
19 THEN I WAS GOING TO CALL MR. BAUKNIGHT AND DISCUSS WITH

20 HIM HIS WILLINGNESS TO SERVE, HOW HE INTENDS TO GO ABOUT
21 IT IF IT IS APPROVED, AS WELL AS THE DUE DILIGENCE ON THE
22 TAX ASPECTS BY THE SETTLING PARTIES. BUT I WANT TO
23 COMPLETE THE TESTIMONY BEFORE I DO ALL OF THAT.

24 MR. BAILEY: YES, SIR.

25 THE COURT: CALL YOUR WITNESS.

1 MERT, GO TELL THAT REPORTER HE CAN COME BACK IN.

2 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HELD IN

3 OPEN COURT.)

4 MR. BAILEY: YOUR HONOR, IF IT PLEASE THE COURT WE

5 WOULD CALL MR. HARLEY RUFF, PLEASE.

6 THE COURT: COME AROUND, SIR.

7 HARLEY RUFF, AFTER BEING DULY SWORN, TESTIFIED

8 AS FOLLOWS:

9 THE CLERK: PLEASE HAVE A SEAT IN THE WITNESS CHAIR.

10 STATE YOUR FULL NAME FOR THE COURT AND SPELL YOUR LAST.

11 THE WITNESS: MY NAME IS HARLEY RUFF; R-U-F-F.

12 DIRECT EXAMINATION

13 BY MR. BAILEY:

14 Q MR. RUFF, WHERE DO YOU RESIDE?

15 A IN BEAUFORT, SOUTH CAROLINA.

16 Q HOW LONG HAVE YOU RESIDED THERE?

17 A ABOUT 12 YEARS.

18 Q ALL RIGHT. AND ARE YOU ENGAGED IN ANY TYPE OF

19 BUSINESS IN BEAUFORT, SOUTH CAROLINA?

20 A YES, SIR. I AM AN ATTORNEY.

21 Q AND HOW LONG HAVE YOU BEEN AN ATTORNEY?

22 A SEVENTEEN YEARS.

23 Q AND WHERE DID YOU GO TO COLLEGE?

24 A WAKE FOREST UNIVERSITY.

25 Q AND WHEN DID YOU GRADUATE FROM WAKE FOREST?

1 A 1988.

2 Q ALL RIGHT. AND WHAT DID YOU GET YOUR DEGREE IN?

3 A I MAJORED IN ENGLISH AND MINORED IN MATH.

4 Q DID YOU CONTINUE YOUR EDUCATION AFTER GRADUATING FROM
5 COLLEGE?

6 A YES, SIR.

7 Q WHERE DID YOU GO?

8 A I WENT TO THE UNIVERSITY OF SOUTH CAROLINA LAW
9 SCHOOL.

10 Q ALL RIGHT. AND WHAT YEARS WERE YOU THERE?

11 A FROM 1988 UNTIL 1991.

12 Q ALL RIGHT. DID YOU GRADUATE FROM UNIVERSITY OF SOUTH
13 CAROLINA SCHOOL OF LAW?

14 A YES, SIR.

15 Q WERE YOU ADMITTED TO ANY PARTICULAR STATE BARS?

16 A YES. I WAS ADMITTED TO THE SOUTH CAROLINA BAR IN
17 1992 INTO THE WEST VIRGINIA BAR IN 1993.

18 Q ALL RIGHT. AND WHAT WAS YOUR IMMEDIATE EXPERIENCE AS
19 AN ATTORNEY ONCE YOU GRADUATED FROM LAW SCHOOL AND WERE

20 ADMITTED TO THE BAR?

21 A MY FIRST POSITION WAS AS AN ATTORNEY WITH THE FIRM
22 CALLED JACKSON KELLY IN CHARLESTON, WEST VIRGINIA.

23 THE COURT: JACKSON WHAT?

24 THE WITNESS: JACKSON KELLY.

25 Q HOW LONG WERE YOU THERE?

1 A ABOUT A YEAR AND A HALF.

2 Q WHAT TYPE OF LAW DID YOU PRACTICE THERE?

3 A TAX, CORPORATE LAW, TRUSTS AND ESTATES LAW.

4 Q HAVE YOU TAKEN ANY SPECIALIZED COURSES FOR TAXES OR
5 ANYTHING?

6 A YES. I RELIEVED AN LL.M. DEGREE IN TAXATION FROM NEW
7 YORK UNIVERSITY IN 1992.

8 Q AND WHEN DID YOU BEGIN PRACTICING IN SOUTH CAROLINA?

9 A JANUARY OF 1994.

10 Q ALL RIGHT. AND HAVE YOU SOUGHT ANY TYPE OF
11 SPECIALIZATION AS AN ATTORNEY IN SOUTH CAROLINA?

12 A YES.

13 Q WHAT IS THAT?

14 A I AM A CERTIFIED SPECIALIST IN ESTATE PLANNING AND
15 PROBATE LAW.

16 Q HOW LONG HAVE YOU SO BEEN A SPECIALIST?

17 A JUST OVER 10 YEARS.

18 Q ALL RIGHT. AND WHAT THE IS THE PRACTICE THAT YOU
19 ENGAGE IN ANY IN AT THE PRESENT TIME IN BEAUFORT, SOUTH

20 CAROLINA.

21 A OUR FIRM IS RUFF AND RUFF. WE CONCENTRATE IN TRUSTS
22 AND ESTATE LAW, ESTATE PLANNING, ESTATE TRUST
23 ADMINISTRATION, PROBATE LITIGATION, TAX LAW.

24 MR. BAILEY: YOUR HONOR, I WOULD MOVE TO HAVE

25 MR. RUFF ADMITTED AS AN EXPERT IN THE AREA OF PROBATE LAW,

1 ESTATE PLANNING, ESTATE AND TRUST PLANNING ADMINISTRATION,
2 AS WELL AS THE TAX LAW THAT IS ENCOMPASSED WITH THE ESTATE
3 PLANNING AND PROBATE LAW.

4 THE COURT: ALL RIGHT.

5 PROFESSOR MEDLIN, YOU WANT TO CROSS EXAMINE HIM ON
6 HIS QUALIFICATIONS?

7 MR. MEDLIN: NO, YOUR HONOR. WE HAVE NO OBJECTION.

8 THE COURT: MR. JONES?

9 MR. JONES: NO OBJECTION.

10 THE COURT: MR. SHAHID?

11 MR. SHAHID: NO, SIR.

12 THE COURT: MR. LEVENSON?

13 MR. LEVENSON: NO, SIR.

14 THE COURT: MR. BYRD?

15 MR. BYRD: NO, SIR.

16 THE COURT: MR. BELL?

17 MR. BELL: NO, YOUR HONOR.

18 THE COURT: I'LL ADMIT HIM AS AN EXPERT IN THE AREAS
19 THAT YOU'VE SAID.

20 MR. BAILEY: THANK YOU, YOUR HONOR.

21 Q HOW WERE YOU CONTACTED ABOUT BEING HERE TODAY,
22 MR. RUFF?

23 A ABOUT TWO TO THREE WEEKS AGO MRS. POPE, ONE OF THE
24 PERSONAL REPRESENTATIVES, CALLED ME AND ASKED IF I WOULD
25 CONSIDER GETTING INVOLVED.

1 Q ALL RIGHT. AND DID SHE TELL YOU WHAT SHE WANTED YOU
2 TO DO?

3 A YES. SHE WANTED ME TO ANALYZE VARIOUS DOCUMENTS
4 INVOLVED IN THE CASE.

5 Q AND PRIOR TO THOSE DOCUMENTS BEING SENT TO YOU, DID
6 YOU, BASICALLY, GIVE HER THE TERMS OF HOW YOU WOULD HANDLE
7 REVIEWING THEM?

8 A YES, SIR. WE DISCUSSED THAT.

9 Q DID YOU DISCUSS WHETHER OR NOT THOSE DOCUMENTS MAY BE
10 IN YOUR OPINION FAVORABLE, UNFAVORABLE AS FAR AS WHAT SHE
11 MAY HAVE BELIEVED THEY STOOD FOR?

12 A NO, SIR. SHE JUST SENT ME THE DOCUMENTS AND ASKED
13 FOR MY OPINION ON TWO OR THREE SEPARATE ISSUES.

14 Q ALL RIGHT. DID SHE GIVE YOU ANY INFORMATION THAT SHE
15 WANTED YOU TO COME TO SOME PARTICULAR CONCLUSION?

16 A NOT AT ALL.

17 Q SO, WHEN YOU REVIEWED THESE DOCUMENTS IT WAS -- IN
18 YOUR OPINION WERE YOU DOING IT INDEPENDENTLY WITHOUT ANY
19 INPUT FROM MRS. POPE AS FAR AS WHAT YOUR CONCLUSIONS

20 SHOULD BE?

21 A YES.

22 Q DO YOU -- WITH RESPECT TO THE ESTATE AND THE TRUST OF
23 JAMES BROWN CAN YOU TELL US WHAT DOCUMENTS YOU WOULD HAVE
24 REVIEWED THAT MRS. POPE SENT TO YOU?

25 A YES. I REVIEWED HIS LAST WILL AND TESTAMENT THAT I

1 BELIEVE WAS SIGNED IN 2000. I REVIEWED THE IRREVOCABLE
2 TRUST THAT WAS ALSO CREATED IN 2000. I REVIEWED THE
3 SETTLEMENT AGREEMENT THAT VARIOUS PARTIES ENTERED INTO I
4 BELIEVE IN AUGUST OF 2008. I REVIEWED AN ADDENDUM TO THAT
5 AGREEMENT WHICH WAS JUST ENTERED INTO BY VARIOUS PARTIES I
6 BELIEVE LAST MONTH. I REVIEWED A DOCUMENT ENTITLED THE
7 JAMES BROWN LEGACY TRUST WHICH SHOWS TO HAVE BEEN DRAFTED
8 THIS CURRENT YEAR. I BELIEVE I REVIEWED A CONTRIBUTION
9 AGREEMENT THAT APPEARED TO HAVE BEEN DRAFTED AT ABOUT THE
10 SAME TIME. I BELIEVE THAT'S ALL THE LEGAL DOCUMENTS, SIR.

11 Q ALL RIGHT. DID YOU REVIEW ANYTHING THAT DEALT WITH
12 AMENDMENTS BY THE TRUSTEES BUCHANAN AND POPE?

13 A YES. YES, I DID. I REVIEWED AN AMENDMENT FOR
14 PURPOSES OF QUALIFYING THE CHARITABLE TRUST.

15 Q ALL RIGHT. SO, THEN YOU HAVE REVIEWED A DOCUMENT
16 PURPORTING TO BE THE AGREEMENT AMONG THE SUCCESSORS; IS
17 THAT CORRECT?

18 A YES, BOTH THE ORIGINAL AGREEMENT AND WHAT'S CALLED
19 THE ADDENDUM.

20 Q SO THAT WE'RE CLEAR ON THE RECORD I AM GOING TO REFER
21 TO THE AGREEMENT THAT WAS SIGNED AROUND MARCH 23 THAT WAS
22 FILED MARCH 26 AS THE MARCH 26 AGREEMENT COMPRISING OF THE
23 FOUR DOCUMENTS THAT YOU JUST MENTIONED EARLIER. WITHIN
24 YOUR SCOPE OF THE AREAS OF YOUR EXPERTISE HAVE YOU FORMED
25 ANY OPINIONS TO A REASONABLE DEGREE OF CERTAINTY ABOUT THE

1 FEASIBILITY OF THE MARCH 26 AGREEMENT?

2 A YES.

3 THE COURT: MR. BAILEY, EXPLAIN THAT TO ME. WHAT DO
4 YOU MEAN BY FEASIBILITY? FEASIBILITY AS TO WHAT?

5 MR. BAILEY: AS TO WHETHER OR NOT IT WILL WORK IN ITS
6 PRESENT CONDITION.

7 THE COURT: GO AHEAD.

8 THE WITNESS: YES, SIR.

9 Q ALL RIGHT. WITHIN THE SCOPE OF YOUR AREAS OF
10 EXPERTISE HAVE YOU FOUND OPINIONS TO A REASONABLE DEGREE
11 OF CERTAINTY ABOUT THE FEASIBILITY OF THE JAMES BROWN
12 LEGACY TRUST?

13 A YES.

14 Q WITHIN THE SCOPE OF YOUR AREAS OF EXPERTISE HAVE YOU
15 FORMED AN OPINION TO A REASONABLE DEGREE OF CERTAINTY
16 ABOUT TAX IMPLICATIONS OF THE MARCH 26 AGREEMENT?

17 A YES.

18 Q WITH RESPECT TO THE MARCH -- TO THE MARCH 26
19 AGREEMENT -- DO YOU HAVE A COPY OF THAT DOCUMENT?

20 A I HAVE IT IN MY FOLDER THERE. I DON'T HAVE ONE UP
21 HERE WITH ME.

22 MRS. HAYES: MAY I APPROACH, YOUR HONOR?

23 THE COURT: YES.

24 Q MR. RUFF, DID YOU HAVE AN OPPORTUNITY TO LOOK AT A
25 PORTION OF THE UNITED STATES ESTATE TAX RETURN FOR THE

1 ESTATE OF JAMES BROWN?

2 A YES.

3 Q AND I AM GOING TO HAND YOU TO DOCUMENT AND ASK YOU IF
4 YOU RECOGNIZE THE PERTINENT PARTS THAT ARE ATTACHED HERE.

5 I WILL HAND YOU THAT DOCUMENT. IS THAT A COMPLETE
6 DOCUMENT, MR. RUFF?

7 A IT DOES NOT APPEAR TO BE A COMPLETE ESTATE TAX
8 RETURN, NO, SIR, BUT IT IS CONSISTENT WITH WHAT I REVIEWED
9 EARLIER.

10 Q AND WERE YOU ADVISED OF THE CONFIDENTIALITY OF THAT
11 DOCUMENT AS FAR AS WHAT IT COULD BE USED FOR?

12 A YES, SIR.

13 Q DID YOU FEEL BASED UPON WHAT YOU NEEDED TO REVIEW IN
14 THE ESTATE TAX RETURN THAT THOSE WERE THE MOST PERTINENT
15 PARTS OF THE RETURN THAT YOU NEEDED TO SEE?

16 A YES, SIR.

17 MR. BAILEY: YOUR HONOR, I'D LIKE TO HAVE THAT MARKED
18 AS AN EXHIBIT FOR IDENTIFICATION PURPOSES ONLY.

19 (WHEREUPON, POPE'S EXHIBIT NO. 4 WAS MARKED FOR

20 IDENTIFICATION ONLY.)

21 MR. JONES: JIM, YOU GOT A COPY OF IT? EXCUSE ME,
22 YOUR HONOR. I APOLOGIZE. I JUST WANT TO GET A COPY.

23 THE COURT: ALL RIGHT.

24 MR. BAILEY, MOVE ON.

25 Q MR. RUFF, DOES THE ESTATE TAX RETURN REFLECT A

1 DEDUCTION FOR A GIFT TO CHARITY?

2 A YES, SIR.

3 Q FROM AN ESTATE TAX STANDPOINT WOULD YOU PLEASE

4 EXPLAIN THE SIGNIFICANCE OF A GIFT TO AN ENTITY WITHIN A

5 501(C)(3) QUALIFICATION?

6 A GENERALLY SPEAKING GIFTS TO CHARITABLE ORGANIZATIONS

7 THAT COMPLY WITH CODE SECTION 2055 OF THE INTERNAL REVENUE

8 CODE QUALIFY FOR A COMPLETE DOLLAR-FOR-DOLLAR DEDUCTION

9 AGAINST THE SIZE OF THE ESTATE FOR ESTATE TAX PURPOSES.

10 Q AND ON THAT PARTICULAR DOCUMENT WHAT WOULD THAT

11 DEDUCTION BE?

12 A UNDER THIS DOCUMENT THE CHARITABLE DEDUCTION IS SHOWN

13 AS \$83,369,981.

14 Q THANK YOU. WOULD YOU PLEASE TELL THE COURT WHAT THE

15 REQUIREMENTS ARE FOR OBTAINING A CHARITABLE DEDUCTION ON

16 AN ESTATE TAX RETURN?

17 A THERE ARE SEVERAL REQUIREMENTS FOR OBTAINING A

18 CHARITABLE DEDUCTION. THEY'RE ALL UNDER CODE SECTION

19 2055(A). THE REQUIREMENTS ARE THAT THERE BE A GIFT

20 DISTRIBUTION OR BEQUEST DEVISED TO A QUALIFIED CHARITABLE

21 ORGANIZATION AND THAT IT NOT BE EXCEPTED OUT FROM

22 QUALIFICATIONS UNDER THE VARIOUS EXCEPTIONS UNDER 2055.

23 Q DOES THE CHARITY HAVE TO EXIST AT THE TIME OF DEATH?

24 A I BELIEVE THE CHARITY -- IT'S POSSIBLE THAT THE

25 CHARITY COULD BE CREATED AT A LATER DATE, BUT I DIDN'T

1 LOOK INTO THAT QUESTION.

2 Q IN ORDER FOR THE DEVISE TO QUALIFY FOR THE CHARITABLE
3 DEDUCTION MUST IT PASS DIRECTLY FROM IN THIS INSTANCE THE
4 DECEDENT'S ESTATE OR THE DECEDENT TO THE CHARITY?

5 A IT COULD EITHER PASS FROM THE DECEDENT'S ESTATE
6 DIRECTLY TO THE CHARITY OR IT COULD PASS ON A TYPE OF
7 QUALIFYING CHARITABLE TRUST.

8 Q REFERRING TO THAT ESTATE TAX RETURN PORTION OF WHICH
9 IS IN FRONT OF YOU, CAN YOU EXPLAIN THE CALCULATIONS FOR
10 THE CHARITABLE DEDUCTION THAT ARE CLAIMED BY THE ESTATE OF
11 JAMES BROWN?

12 A YES. THIS ESTATE TAX DEDUCTION FOLLOWS THE TERMS OF
13 THE WILL AND THE 2000 IRREVOCABLE TRUST WHICH STATE THAT
14 AN AMOUNT EQUAL TO THE GENERATION-SKIPPING TRANSFER
15 EXEMPTION AS I RECALL \$2 MILLION HERE IS TO PASS TO A
16 SPECIAL EDUCATIONAL TRUST, THE VARIOUS PERSONAL EFFECTS
17 WERE TO BE TRANSFERRED TO FAMILY MEMBERS, AND EVERYTHING
18 ELSE WAS TO PASS TO A WHOLLY-CHARITABLE TRUST, AND,
19 THEREFORE -- THEREFORE, THE DEDUCTION LISTED IN SCHEDULE O

20 OF THE ESTATE TAX RETURN IS THE THE LION'S SHARE, OVER
21 95 PERCENT, OF THE VALUE OF THE ESTATE IS REPORTED.

22 Q HAVE YOU READ THE 2000 LAST WILL AND TESTAMENT OF
23 JAMES BROWN?

24 A YES.

25 Q HAVE YOU READ THE 2000 "I FEEL GOOD IRREVOCABLE

1 TRUST" OF JAMES BROWN?

2 A YES.

3 Q WHAT DOES THE TRUST CONSIST OF? IS IT MORE THAN ONE
4 TRUST?

5 A IT'S ONE IRREVOCABLE TRUST DOCUMENT, BUT I BELIEVE IT
6 SPLITS INTO TWO SUB-TRUSTS AT THE TIME OF HIS DEATH.

7 Q ALL RIGHT. AND DO YOU -- CAN YOU TELL THE COURT HOW
8 -- WHAT THE TWO TRUSTS ARE?

9 A THE ONE TRUST IS THE -- WHAT I AM CALLING THE
10 EDUCATIONAL TRUST WHICH IS A TRUST THAT WAS CREATED FOR
11 THE BENEFIT OF CERTAIN DECENDANTS TO PAY THEIR EDUCATIONAL
12 COSTS AND IT WAS CAPPED AT THE AMOUNT EQUAL TO WHAT WAS
13 THEN THE GENERATION-SKIPPING TRANSFER TAX EXEMPTION WHICH
14 WAS THEN \$2 MILLION. THE "I FEEL GOOD TRUST" IS A
15 WHOLLY-CHARITABLE TRUST THAT WAS TO RECEIVE THE BALANCE.

16 Q NOW, CAN A CHARITABLE DEVISE BE A SPLIT-INTEREST
17 DEVISE?

18 A IT CAN BE IF IT QUALIFIES.

19 Q HOW DOES IT QUALIFY?

20 A WELL, IT QUALIFIES BY MEETING THE TERMS OF CODE
21 SECTION 2055. IF IT WERE, SAY, A CHARITABLE REMAINDER
22 ANNUITY TRUST, A CHARITABLE REMAINDER UNITRUST, PULLED
23 INCOME FUND -- THERE ARE VARIOUS KINDS OF SPLIT-INTEREST
24 CHARITABLE TRUSTS THAT ARE ESTATE TAX DEDUCTIBLE UNDER
25 CODE SECTION 2055.

1 Q AND HOW WOULD YOU FORM A CHARITABLE ORGANIZATION OR
2 CHARITABLE TRUST?

3 A WELL, IT COULD BE DRAFTED TO EITHER BE A
4 WHOLLY-CHARITABLE TRUST OR A QUALIFYING SPLIT-INTEREST
5 TRUST.

6 Q ALL RIGHT. WITH RESPECT TO YOUR REVIEW OF THE 2000
7 TRUST DID YOU REVIEW ANY AMENDMENTS THAT MAY HAVE BEEN
8 PREPARED?

9 A WHICH TRUST, SIR? I'M SORRY.

10 Q THE 2000 TRUST. DID YOU REVIEW ANY AMENDMENTS THAT
11 MAY HAVE BEEN PREPARED?

12 A I REVIEWED THE AMENDMENT THAT I BELIEVE MR. BUCHANAN
13 AND MRS. POPE PREPARED. I WANT TO SAY THAT WAS IN 2001.
14 I'M SORRY. THEY PREPARED IT AFTER MR. BROWN'S DEATH.

15 Q ALL RIGHT. DID MR. BROWN MAKE ANY PROVISIONS IN
16 THOSE AMENDMENTS TO ENSURE THAT IT WAS A CHARITABLE TRUST
17 OR MAINTAINED ITS CHARITABLE STATUS?

18 A THAT WAS THE THRUST OF THE AMENDMENT THAT MRS. POPE
19 AND MR. BUCHANAN MADE. YES.

20 THE COURT: WHAT WAS YOUR QUESTION? DID MR. BROWN
21 MAKE PROVISIONS? HOW COULD THAT BE IF IT WAS DONE AFTER
22 HIS DEATH?

23 MR. BAILEY: I MEANT MR. BUCHANAN AND MRS. POPE, YOUR
24 HONOR.

25 THE WITNESS: MR. BROWN'S TRUST DID ALLOW FOR -- HE

1 ALLOWED IN THE ORIGINAL TRUST FOR THE FUTURE AMENDMENT
2 INCLUDING AN AMENDMENT AFTER HIS DEATH IF SO NEEDED TO
3 QUALIFY FOR THE CHARITABLE DEDUCTION.

4 Q AND WOULD THAT BE CUSTOMARY FOR CHARITABLE TRUSTS?

5 A YES.

6 Q ALL RIGHT. YOU HAVE REVIEWED ALL OF THE DOCUMENTS
7 THAT HAVE BEEN PRESENTED TO THE COURT FOR APPROVAL OF THE
8 SETTLEMENT; IS THAT CORRECT?

9 A YES, SIR, THE ONES THAT I MENTIONED EARLIER.

10 Q NOW, IF A SETTLEMENT IS TO BE REACHED IN THE CASE
11 WHAT WOULD THE PARTIES NEED TO DO TO PRESERVE THE
12 CHARITABLE DEDUCTION?

13 A WELL, THEY WOULD NEED TO ENSURE THAT THE PIECE OF THE
14 ESTATE THAT ULTIMATELY WILL PASS TO CHARITY WILL QUALIFY
15 FOR A CHARITABLE TAX DEDUCTION UNDER CODE SECTION 2055. I
16 AM HIGHLY CONCERNED AND CONVINCED, IN FACT, THAT THE
17 SETTLEMENT AS PRESENTLY SET UP DOES NOT SO QUALIFY FOR ANY
18 CHARITABLE TAX DEDUCTION UNDER CODE SECTION 2055.

19 Q AND CAN YOU --

20 THE COURT: WHY IS THAT? HOLD ON. WHY IS THAT?

21 THE WITNESS: BECAUSE IT'S CODE SECTION --

22 THE COURT: LET ME MAKE SURE I UNDERSTAND YOUR
23 OPINION. AS TO THE SETTLEMENT AGREEMENT THAT'S BEING
24 PROPOSED TO THE COURT YOU ARE OF THE OPINION THAT THE
25 PORTION GOING FOR THE NEEDY CHILDREN, I.E., THAT TRUST,

1 WOULD NOT QUALIFY?

2 THE WITNESS: YES, SIR. I AM OF THAT OPINION.

3 THE COURT: TELL ME WHY.

4 THE WITNESS: CODE SECTION 2055(E)(2) OF THE INTERNAL

5 REVENUE CODE DISQUALIFIES A CHARITABLE GIFT FOR A

6 CHARITABLE ESTATE TAX DEDUCTIONS WHERE AN INTEREST OTHER

7 THAN AN UNDIVIDED PORTION OF A FUTURE INTEREST PASSES BOTH

8 TO CHARITABLE CONCERNS AND NON-CHARITABLE CONCERNS UNLESS

9 THE TRUST -- UNLESS THE SPLIT-INTEREST TRUST IS SET UP AS

10 A QUALIFYING CHARITABLE REMAINDER ANNUITY TRUST,

11 CHARITABLE REMAINDER UNITRUST, PULLED INCOME FUND, OR IS A

12 GUARANTEED ANNUITY OR A FIXED PERCENTAGE PAYABLE YEARLY.

13 THAT'S FURTHER SUBSTANTIATED BY THE GALLOWAY CASE WHICH

14 WAS ISSUED BY THE THIRD CIRCUIT FEDERAL COURT OF APPEALS

15 IN 2007.

16 THE COURT: WHAT IS THE NAME OF THAT CASE?

17 THE WITNESS: GALLOWAY; G-A-L-L-O-W-A-Y. IT IS A

18 THIRD CIRCUIT CASE FROM JUNE OF 2007. I DO HAVE A COPY OF

19 IT HERE WHERE THE FACTS ARE VERY CLOSE IF NOT ON POINT

20 WITH THE FACTS IN PLACE HERE. THE THIRD CIRCUIT RULED

21 THAT UNDER THOSE FACTS THAT THE CHARITABLE DEDUCTION WAS

22 DISALLOWED UNDER 2055(E)(2) COMPLETELY.

23 Q IS THIS PROVISION -- DIRECT PASS PROVISION INCLUDED

24 IN THE MARCH 26 AGREEMENT?

25 A PARDON ME? I AM NOT SURE THAT I UNDERSTAND YOUR

1 QUESTION.

2 Q IS THE DIRECT PASS FROM THE ESTATE TO THE CHARITY --

3 IS THAT PROVIDED FOR THIS THIS AGREEMENT -- THIS PROPOSED

4 SETTLEMENT AGREEMENT?

5 A YEA, WELL, THE AGREEMENT -- THE DOCUMENTS TOGETHER

6 UNDER THE MARCH AGREEMENT LEAVE EVERYTHING TO WHAT'S

7 CALLED THE JAMES BROWN LEGACY TRUST OF WHICH THE CHARITY

8 HAS SOME PERCENTAGE INTEREST IN.

9 Q SO, IT DOESN'T PASS DIRECTLY TO THE TRUST ITSELF --

10 THE JAMES BROWN 2000 IRREVOCABLE TRUST. IT GOES INTO THE

11 JAMES BROWN LEGACY TRUST?

12 A IT GOES INTO THE JAMES BROWN LEGACY TRUST AND THEN

13 THE DOCUMENTS TO ME APPEAR TO CONFLICT BECAUSE THE JAMES

14 BROWN LEGACY TRUST ITSELF PURPORTS TO GIVE A CERTAIN

15 DISTRIBUTION TO THE 2000 TRUST. ANOTHER DOCUMENT -- I

16 BELIEVE THE ADDENDUM -- MAKES REFERENCE TO THE ATTORNEY

17 GENERAL CREATING A TRUST THAT WILL BE SUBSTANTIALLY

18 SIMILAR TO THAT 2000 TRUST.

19 Q IS THE LEGACY TRUST ALSO WITHIN THE CONFINES OF THE

20 DEFINITIONS USED IN THOSE MARCH 26 DOCUMENTS, THE

21 SETTLEMENT ENTITY?

22 A IT APPEARS TO BE, YES, SIR.

23 Q SO, IF I AM CORRECT IN UNDERSTANDING YOUR TESTIMONY

24 UNDER THE SETTLEMENT AGREEMENT --

25 THE COURT: LET ME ASK IT LIKE THIS. UNDER THE

1 SETTLEMENT AGREEMENT THE PORTION GOING TO, FOR LACK OF
2 BETTER TERM, THE AG TO BE ADMINISTERED UNDER THE TRUST FOR
3 THE NEEDY CHILDREN YOU ARE OF THE OPINION THAT IT DOES NOT
4 QUALIFY FOR THE CHARITABLE DEDUCTION?

5 THE WITNESS: YES, YOUR HONOR.

6 THE COURT: AND, OBVIOUSLY, THAT WOULD CREATE
7 ADDITIONAL TAXES TO THE ESTATE?

8 THE WITNESS: YES, YOUR HONOR, TREMENDOUS ADDITIONAL
9 TAXES.

10 Q ARE THERE ANY OTHER PROBLEMS WITH THE FORM OF THE
11 LEGACY TRUST OR THE RIGHT OF FIRST REFUSAL THAT IT
12 CONTAINS OR THAT IS CONTAINED WITH THE DOCUMENTS?

13 A THE RIGHT OF FIRST REFUSAL IN MY VIEW IF EXERCISED
14 UPON WOULD CONSTITUTE SELF-DEALING UNDER INTERNAL REVENUE
15 CODE SECTION 4941. I DON'T BELIEVE THAT PROBLEM IS
16 AVOIDED BY HAVING THE SELF-DEALING OCCUR WITH THE LEGACY
17 TRUST AS OPPOSED TO THE CHARITABLE TRUST BECAUSE OF THE
18 APPLICATION OF CODE SECTION 4947 WHICH APPLIES THE SAME
19 SELF-DEALING TAXES AND EXCESS BUSINESS HOLDING RULES, ET

20 CETERA, TO SPLIT INTEREST TRUSTS LIKE THE LEGACY TRUST.

21 Q WHAT THEN WOULD BE THE EFFECT OF PROVISION FOR THE
22 RIGHT OF FIRST REFUSAL IN YOUR OPINION?

23 A WELL, THERE COULD BE SEVERAL EFFECTS. FIRST, A
24 PRIVATE FOUNDATION MUST AS A GOVERNING INSTRUMENT
25 REQUIREMENT PROHIBIT ANY POSSIBILITY OF SELF-DEALING. SO

1 I HAVE GRAVE CONCERNS ABOUT THE ABILITY OF THE CHARITABLE
2 TRUST TO QUALIFY FOR EXEMPT STATUS IN THE FIRST PLACE.
3 EVEN IF IT WERE TO SO QUALIFY, AN ACT OF SELF-DEALING
4 WOULD SUBJECT EITHER THE CHARITABLE TRUST OR THE JAMES
5 BROWN LEGACY TRUST TO SELF-DEALING TAXES UNDER CODE
6 SECTION 4941 AND OR 4947.

7 Q ALL RIGHT. I'D LIKE TO CALL YOUR ATTENTION TO
8 ANOTHER ASPECT OF THE AGREEMENT AND THAT IS THE MARITAL
9 DEDUCTION ISSUE.

10 A OKAY.

11 Q THE AGREEMENT MUST BE AMONG THE COMPETENT SUCCESSORS
12 OF JAMES BROWN EITHER BY WILL OR BY INTESTATE SUCCESSION;
13 IS THAT CORRECT?

14 A WELL --

15 Q UNDER SECTION 62-3-912?

16 A WELL, THERE ARE TWO STATUTES IN A CASE LIKE THAT.
17 THERE IS THE SETTLEMENT STATUTE UNDER 3-912 AND THEN THERE
18 IS A SLIGHTLY DIFFERENT STATUTE UNDER 3-1101 AND 1102, BUT
19 3-912, YOU'RE RIGHT. IT IS AMONG COMPETENT SUCCESSORS.

20 Q UNDER THAT DOCUMENT WHAT IS THE EFFECT OF -- IN YOUR
21 OPINION THROUGH A REASONABLE DEGREE OF CERTAINTY BASED ON
22 YOUR EXPERTISE IN THE FIELDS THAT YOU'VE BEEN QUALIFIED
23 FOR WHAT IS THE EFFECT ON THE IRS OF THE PARTIES'
24 AGREEMENT THAT TOMI RAE BROWN WOULD BE AMONGST THEM THE
25 WIFE OF OR SPOUSE OF JAMES BROWN? IS THAT BINDING ON THE

1 IRS?

2 A NO, SIR. THAT CONSTITUTES ONE OF A FEW FACTORS
3 INVOLVED IN DETERMINING THE QUALIFICATION FOR THE MARITAL
4 ESTATE TAX DEDUCTION.

5 THE COURT: WELL, IF IT'S NOT BINDING ON THE IRS,
6 WHAT DOES THE IRS LOOK TO TO DETERMINE WHETHER OR NOT SHE
7 IS OR THERE IS AN ISSUE AS TO WHETHER OR NOT SHE'S THE
8 WIFE?

9 THE WITNESS: THERE ARE FOUR FACTORS THAT HAVE TO
10 BE -- FOUR HURDLES, IF YOU WILL, THAT HAVE TO BE OVERCOME
11 TO OBTAIN THE MARITAL DEDUCTION UNDER CIRCUMSTANCES LIKE
12 THIS. FIRST, THERE HAS TO BE A CONTROVERSY.

13 THE COURT: HOLD ON. A CONTROVERSY?

14 THE WITNESS: YES, SIR.

15 THE COURT: WHAT ELSE?

16 THE WITNESS: SECOND, IN THE CASE OF A SETTLEMENT,
17 THE SETTLEMENT HAS TO BE IN GOOD FAITH.

18 THE COURT: GOOD FAITH SETTLEMENT.

19 THE WITNESS: THE SETTLEMENT HAS TO BE BASED ON

20 ENFORCEABLE RIGHTS. AND THE SETTLEMENT MUST BE UNDER --
21 THE FOURTH IS THE SETTLEMENT MUST BE UNDER STATE LAW
22 PROPERLY INTERPRETED. THOSE ARE THE FACTORS ESPOUSED IN A
23 NUMBER OF CASES, THE MOST FAMOUS PROBABLY OF WHICH IS THE
24 AMENSON CASE WHICH WAS HANDED DOWN IN 1981.

25 THE COURT: WHAT WAS THAT FOURTH? UNDER STATE LAW IT

1 HAD TO DO WHAT?

2 THE WITNESS: THE FOURTH ONE IS UNDER -- THE FOURTH

3 IS THAT THE SETTLEMENT IS UNDER STATE LAW PROPERLY

4 INTERPRETED.

5 Q LET ME ASK -- MAY I PROCEED, YOUR HONOR?

6 THE COURT: YOU MAY.

7 Q UNDER ITEM FOUR THAT YOU JUST MENTIONED WHEN YOU SAY

8 THAT UNDER STATE LAW IT MUST BE PROPERLY INTERPRETED TO

9 MAKE HER THE SPOUSE, WHO CAN -- WHAT DOES THE IRS REQUIRE

10 FROM THAT STANDPOINT IN TERMS OF A RULING THAT SHE MAY OR

11 MAY NOT BE A SPOUSE?

12 A WELL, THE IRS DOESN'T NECESSARILY REQUIRE A COURT

13 RULING, BUT THE IRS WILL MAKE ITS OWN INQUIRY. FOR

14 EXAMPLE, A TRIAL COURT INQUIRY AND A TRIAL COURT

15 DETERMINATION ON THOSE FACTORS WOULD NOT BE BINDING ON THE

16 IRS. THE IRS WOULD MAKE ITS OWN INQUIRY.

17 Q BUT IS THERE ANY COURT IN THE STATE OF SOUTH CAROLINA

18 THAT THE IRS WOULD GIVE DEFERENCE TO?

19 A THE STATE SUPREME COURT.

20 Q SO IF THE STATE SUPREME COURT RULES THAT MS. BROWN

21 IS, IN FACT, THE WIFE OF JAMES BROWN, THEN THE IRS WOULD

22 RECOGNIZE THAT; IS THAT CORRECT?

23 A I BELIEVE SO, YES.

24 Q HAVE YOU SEEN ANY DOCUMENTS OR HAS ANYONE PRESENTED

25 YOU ANY DOCUMENTS THAT WOULD LEAD YOU TO BELIEVE THAT

1 THESE TAX QUESTIONS HAVE BEEN PRESENTED TO THE IRS FOR --
2 ON INQUIRY AS TO WHAT THE IRS'S POSITION MIGHT BE?

3 A NO, SIR.

4 Q IS THERE A WAY TO DO THAT?

5 A YES. ONE COULD REQUEST WHAT'S CALLED A PRIVATE
6 LETTER RULING.

7 Q WHAT DOES THAT INVOLVE, MR. RUFF?

8 A A PRIVATE LETTER RULING IS A WRITTEN REQUEST BY A
9 TAXPAYER SUCH AS THE ESTATE IN THIS CASE TO PROPOSE A
10 COURSE OF ACTION AND TO REQUEST AN ADVANCED IRS RULING
11 BEFORE THE TRANSACTION IS CLOSED UPON REGARDING THE TAX
12 CONSEQUENCES OF THOSE TRANSACTIONS.

13 Q WOULD YOU RECOMMEND A PRIVATE LETTER RULING ON ANY OF
14 THE ISSUES IN THIS CASE?

15 A ABSOLUTELY AND IN ALL OF THEM. BOTH OF THEM, I
16 SHOULD SAY.

17 Q COULD YOU BRIEFLY REITERATE WHICH ISSUES YOU BELIEVE
18 WOULD REQUIRE A PRIVATE LETTER RULING?

19 A IF THE TRANSACTION WERE TO GO FORWARD IN ITS CURRENT

20 FORM I WOULD WANT A PRIVATE LETTER RULING ON THE
21 CHARITABLE DEDUCTION UNDER CODE SECTION 2055 AND PRIVATE
22 LETTER RULING THAT THE CHARITABLE DEDUCTION IS NOT
23 DISALLOWED BY VIRTUE OF CODE SECTION 2055(E)(2), THE CASES
24 THEREUNDER AND THE GALLOWAY CASE.

25 SECOND, I WANT A PRIVATE LETTER RULING REGARDING THE

1 QUALIFICATION FOR THE MARITAL DEDUCTION IF WE COULD GET
2 THAT, AND I WOULD ALSO ASK FOR A PRIVATE LETTER RULING
3 REGARDING THE SELF-DEALING AND OTHER ASPECTS OF THE RIGHT
4 OF FIRST REFUSAL THAT YOU MENTIONED, MR. BAILEY.

5 Q OKAY. CAN YOU GIVE THE COURT SOME IDEA OF HOW LONG
6 IT WOULD TAKE TO SECURE A PRIVATE LETTER RULING FROM THE
7 IRS?

8 A IT'S A LITTLE HARD TO SAY. SOMETIMES THEY CAN BE
9 SECURED WITHIN, GOSH, A MONTH OR TWO. SOMETIMES THEY TAKE
10 FAR LONGER THAN THAT.

11 Q NOW, I'D LIKE TO GO BACK TO THE DOCUMENT REFERRED TO
12 AS THE MARCH 26 SETTLEMENT DOCUMENT AND --

13 A OKAY.

14 Q -- ASK YOU WHETHER OR NOT MR. BUCHANAN AND MRS. POPE
15 AS TRUSTEES, ARE THEY PARTIES TO THIS AGREEMENT?

16 A NO, SIR.

17 Q DO YOU HAVE AN OPINION --

18 THE COURT: MR. BAILEY, I DON'T THINK I AM GOING TO
19 LET HIM GET INTO TELLING ME WHAT THE LAW IS NOW. I HAD

20 THIS ISSUE COME UP IN A NUMBER OF CASES. THEY EVEN
21 BROUGHT IN JUSTICE LITTLEJOHN TO TELL ME WHAT CONTRACT LAW
22 MEANT. THERE ARE JUST A WEALTH OF CASES OUT THERE THAT
23 DISALLOW AN EXPERT TELLING A COURT WHAT THE LAW IS. SO, I
24 AM NOT GOING TO ALLOW THAT AREA TO BE EXPLORED.

25 MR. BAILEY: I'D LIKE TRY TO FOLLOW IT UP, JUDGE --

1 NOT THE SAME QUESTION, BUT IS IN YOUR OPINION THE
2 SETTLEMENT AGREEMENT BINDING WITHOUT THE CONSENT OF THE
3 TRUSTEES?

4 THE WITNESS: IN MY OPINION, NO, SIR.

5 MR. BAILEY: ONE MOMENT, YOUR HONOR. THANK YOU, YOUR
6 HONOR.

7 THE COURT: ALL RIGHT. LET'S TAKE ABOUT A
8 FIVE-MINUTE BREAK. YOU CAN STEP DOWN AND GO TO THE
9 RESTROOM. DON'T DISCUSS YOUR TESTIMONY WITH ANYBODY.

10 (WHEREUPON, A BREAK WAS TAKEN.)

11 CROSS-EXAMINATION

12 BY MR. MEDLIN:

13 Q GOOD MORNING, MR. RUFF.

14 A GOOD MORNING.

15 Q WHEN YOU FORMED YOUR CONCLUSIONS YOU ASSUMED THAT THE
16 2000 WILL AND THE 2000 TRUST WERE VALID; IS THAT CORRECT?

17 A NO, SIR. I LOOKED AT THOSE DOCUMENTS ALONG WITH THE
18 LEGACY TRUST AND THE OTHER SETTLEMENT DOCUMENTS, BUT I
19 DIDN'T NECESSARILY PRESUME THAT ANY OR VALID OR INVALID.

20 Q WOULD THERE BE A DIFFERENT CONCLUSION IF, FOR
21 EXAMPLE, THE WILL AND THE TRUST WEREN'T VALID?

22 A I DON'T BELIEVE SO. ON THE CHARITABLE DEDUCTION
23 ISSUE MY CONCLUSION IS REACH BASED ON THE TERMS OF THE
24 SETTLEMENT THAT HAS BEEN -- THAT HAS BEEN PRESENTED TO ME.

25 Q MR. RUFF -- EXCUSE ME. WERE YOU FINISHED?

1 A GO AHEAD. I'M SORRY.

2 Q MR. RUFF, IF THERE IS NO TRUST, HOW DOES THE CHARITY

3 GET ANY ASSETS TO CREATE A CHARITABLE DEDUCTION?

4 A ASSETS COULD BE GIVEN DIRECTLY TO THE CHARITY OR

5 ASSETS COULD BE GIVEN TO CHARITY IN A WAY THAT QUALIFIES

6 IN SOME KIND OF SPLIT INTEREST TRUST THAT DOES QUALIFY FOR

7 THE DEDUCTION.

8 Q LET ME ASK THAT A LITTLE DIFFERENTLY, MR. RUFF.

9 ASSUME MR. BROWN DIED INTESTATE.

10 A OKAY.

11 Q WOULD THE CHARITY RECEIVE ANYTHING FROM HIS ESTATE?

12 A NO, SIR.

13 Q AGAIN, ASSUMING THAT THE 2000 TRUST IS ALSO INVALID.

14 A I UNDERSTAND NOW.

15 Q SO THERE WOULD BE NO CHARITABLE DEDUCTION?

16 A THAT'S CORRECT.

17 Q WHEN YOU LOOKED AT THE ESTATE TAX RETURN DID YOU NOTE

18 ANYWHERE ON THOSE FOUR PAGES THAT THERE IS A PRIVATE

19 FOUNDATION?

20 A FROM THE ESTATE TAX RETURN, NO.

21 Q YES, SIR. HOW DID YOU KNOW THAT?

22 A BECAUSE I LOOKED AT THE WILL AND THE 2000 TRUST.

23 Q OKAY. AND YOU LOOKED AT THE FORM 1023 REQUEST --

24 A NO.

25 Q -- AS WELL? YOU HAVE NOT SEEN THAT?

1 A NO, I HAVE NOT.

2 Q BUT YOU'VE SEEN THE AMENDMENTS TO THE TRUST?

3 A I SAW THE ONE AMENDMENT THAT MR. BUCHANAN AND

4 MRS. POPE --

5 Q SO, YOU ASSUME PRIVATE FOUNDATION FROM THAT?

6 A YES.

7 Q DID YOU NOTICE A PROVISION IN THE TRUST THAT PROVIDED

8 FOR THE TRUSTEES HAVING THE AUTHORITY TO EXPEND UP TO

9 50 PERCENT OF THE GROSS INCOME FOR MANAGEMENT FEES?

10 A IN THE 2000 TRUST?

11 Q YES.

12 A I DIDN'T NOTICE THAT, BUT I AM NOT SAYING IT'S NOT

13 THERE. I COULD LOOK AT IT, BUT I DIDN'T NOTICE THAT

14 SPECIFICALLY, NO, SIR.

15 Q ALL RIGHT. IF THAT WERE THE CASE, IF THERE WERE SUCH

16 A PROVISION WHAT DOES THAT DO TO YOUR CONCERN ABOUT THE

17 CHARITABLE DEDUCTION?

18 A IF THE TRUST -- I JUST WANT TO MAKE SURE I UNDERSTAND

19 YOUR QUESTION, PROFESSOR MEDLIN. IF THE TRUST, THE 2000

20 TRUST, HAD A PROVISION THAT ALLOWED THE TRUSTEES TO DO

21 WHAT, SPEND?

22 Q TO TAKE UP TO 50 PERCENT OF THE GROSS INCOME ANNUALLY

23 FOR MANAGEMENT EXPENSES.

24 A WELL, I SUPPOSE THE IRS COULD LEGITIMATELY QUESTION

25 THE QUALIFICATION OF THAT FOR A CHARITABLE DEDUCTION.

1 Q HAVE YOU EVER IN YOUR EXPERIENCE SEEN SUCH A
2 PROVISION IN A CHARITABLE TRUST?

3 A I DON'T BELIEVE SO, SIR.

4 Q IF --

5 THE COURT: WELL, LET'S ASSUME THAT THE TRUST HAD
6 THAT PROVISION IN IT AND IT WENT TO THE IRS. WHAT IN YOUR
7 OPINION EFFECT, IF ANY, WOULD THAT TYPE OF PROVISION HAVE
8 ON THE CHARITABLE DEDUCTION? ASSUME THAT THE TRUSTEES
9 WERE ABLE TO CHARGE THE TRUST UP TO 50 PERCENT OF THE
10 GROSS INCOME OR GROSS ASSETS OR GROSS PROCEEDS.

11 THE WITNESS: WITHOUT ANY REQUIREMENT OF
12 REASONABLENESS?

13 THE COURT: JUST 50 PERCENT.

14 THE WITNESS: I SUPPOSE THAT THAT -- THAT WOULD BE --
15 THAT WOULD TROUBLE THE IRS, I THINK.

16 THE COURT: DOES IT TROUBLE YOU?

17 THE WITNESS: YES.

18 THE COURT: WHY?

19 THE WITNESS: IF THE TRUSTEES CAN SPEND ALL THAT

20 MONEY BECAUSE THEN THE WHOLE QUALIFICATION OF THE TRUST AS
21 EXISTING COMPLETELY AND EXCLUSIVELY FOR CHARITABLE
22 PURPOSES COULD BE QUESTIONED. I AM NOT SAYING IT WOULD BE
23 FATAL, BUT IT COULD BE QUESTIONED. IT WOULD BE AN ISSUE.

24 Q ARE YOU AWARE THAT MRS. POPE AND MR. BUCHANAN AS
25 FIDUCIARIES HAVE SUED THEIR PREDECESSORS FOR AMONG OTHER

1 THINGS UNDULY INFLUENCING MR. BROWN DURING HIS LIFETIME?

2 A I WAS AWARE THAT THE LAWSUIT HAD BEEN FILED AGAINST
3 THEM. I DID NOT KNOW THAT THAT WAS A CAUSE OR A REASON
4 FOR THE LAWSUIT.

5 Q AND ASSUMING THEY WOULD NOT FILE A LAWSUIT THAT WAS
6 NOT BASED ON GOOD FAITH, THEN THEY WOULD HAVE REASON TO
7 MAKE THOSE ALLEGATIONS IN A LAWSUIT?

8 A IF IT'S TRUE THAT THEY MADE THEM, I SUPPOSE SO.

9 Q IF THE SETTLING PARTIES WERE CONCERNED ABOUT THE
10 VALIDITY OF THE THE WILL AND THE TRUST SUCH THAT THEY WERE
11 CONCERNED THAT THE SAME THREE MEN UNDULY INFLUENCED
12 MR. BROWN AS TO HIS WILL AND TRUST, WOULD THE 50 PERCENT
13 MANAGEMENT FEE GIVE THEM REASON TO SUSPECT THE POSSIBILITY
14 OF UNDUE INFLUENCE?

15 A SIR, I DON'T KNOW IF I CAN GET YOU GET INTO THEIR
16 MIND AND TELL YOU WHAT THEY WOULD THINK.

17 Q BUT YOU'VE NEVER HAD A CLIENT WITH CHARITABLE
18 INTENTIONS INCLUDE SUCH A PROVISION IN A CHARITABLE TRUST
19 THAT YOU CAN RECALL?

20 A NO, SIR.

21 Q MR. RUFF, WHEN YOU LOOKED AT THE ESTATE TAX RETURN
22 YOU ASSUMED THE VALUATION WAS ACCURATE; IS THAT CORRECT?

23 A I DID AND I DIDN'T DEEM THE VALUATION IMPORTANT FOR
24 PURPOSES OF MY ANALYSIS.

25 Q WELL, WOULDN'T THAT BE IMPORTANT TO YOUR ANALYSIS IF

1 THERE WERE A CONCERN ABOUT THE TOTAL NUMBER OF DOLLARS
2 THAT MIGHT BE DISSIPATED IN CASE THE CHARITABLE DEDUCTION
3 WEREN'T ALLOWED -- THE MORE OF THE ESTATE, THE MORE THE
4 DISSIPATION?

5 A CLEARLY, THE LARGER THE ESTATE IS, THE LARGER AN
6 ISSUE THE LOSS OF THE CHARITABLE DEDUCTION BECOMES. YES,
7 I AGREE WITH THAT.

8 Q HAVE YOU EVER IN YOUR EXPERIENCE SUPERVISED THE
9 EXECUTION OF AN INVENTORY AND APPRAISEMENT THAT WAS BASED
10 SOLELY ON A PUTATIVE OFFER TO PURCHASE THE ENTIRE ESTATE?

11 A I HAVE SEEN INVENTORIES AND APPRAISEMENT THAT HAVE
12 BEEN BASED ON THIRD PARTIES' OFFERS FOR PROPERTY, YES.

13 Q BUT THE ENTIRE ESTATE?

14 A SIR, I MAY HAVE REPRESENTED SOME SMALLER ESTATES
15 WHERE THE ESTATE CONSISTED OF ONE PIECE OF PROPERTY AND
16 THE INVENTORY AND APPRAISEMENT WAS BASED ON THE OFFER THAT
17 WAS OBTAINED AS OPPOSED TO GOING OUT AND HIRING AN
18 APPRAISER, BUT, SO, YES, BUT I MEAN THOSE ESTATES WERE A
19 DIFFERENT SCOPE THAN THIS ONE.

20 Q BUT NOT A COMPLEX ESTATE OR A COMPLICATED ESTATE SUCH
21 AS THIS ONE?

22 A CORRECT.

23 Q IN FACT, WOULDN'T THE NORMAL COURSE OF BUSINESS BE TO
24 GO OUT AND GET APPRAISALS FOR THE VARIOUS ITEMS SO THAT WE
25 COULD DETERMINE THE SEPARATE VALUES OF THE ITEMS IN

1 INVENTORY AND APPRAISEMENT?

2 A YES. THAT WOULD BE THE NORMAL APPROACH.

3 Q RIGHT. AND HAVE YOU EVER SUPERVISED THE PREPARATION

4 OF AN ESTATE TAX RETURN -- A 706 -- THAT SIMPLY ACCEPTED

5 SUCH A EVALUATION OF AN INVENTORY AND APPRAISEMENT BASED

6 ONLY ON A PUTATIVE OFFER TO PURCHASE THE ESTATE?

7 A I ACTUALLY THINK I HAVE FILED A COUPLE OF 706'S WHERE

8 VALUATION POSITION WAS TAKEN PREDOMINANTLY, IF NOT

9 EXCLUSIVELY, ON THE STRENGTH OF A THIRD PARTY OFFER.

10 Q BUT, AGAIN, IN A COMPLEX, COMPLICATED ESTATE SUCH AS

11 THIS?

12 A I DON'T THINK SO.

13 Q AND ARE YOU FAMILIAR WITH THE FEDERAL COPYRIGHT

14 TERMINATION RIGHTS AND HOW THEY OPERATE?

15 A I'M NOT, SIR.

16 Q ALL RIGHT. DO YOU KNOW IF THOSE RIGHTS BELONG IN THE

17 CALCULATION OF A TAXABLE ESTATE?

18 A THAT, AGAIN, WASN'T RELEVANT TO MY ANALYSIS. SO I

19 DON'T KNOW THE ANSWER TO THAT.

20 Q WELL, WOULD IT BE RELEVANT TO YOUR ANALYSIS IN

21 DETERMINING THE OVERALL VALUE AND THE IMPACT ON THE ESTATE

22 TAX IF TERMINATION RIGHTS WERE INCLUDED IN THE TAXABLE

23 ESTATE?

24 A I SUPPOSE IT WOULD BE.

25 Q AND IF THEY SHOULD NOT HAVE BEEN, THAT WOULD IMPACT

1 THE OVERALL VALUE OF THE ESTATE; IS THAT CORRECT?

2 A I AGREE WITH THAT, YES.

3 Q ARE YOU AWARE THAT MRS. POPE AND MR. BUCHANAN FILED
4 AN AFFIDAVIT FRIDAY WHICH INCLUDED AS AN EXHIBIT AN
5 ARTICLE ABOUT SUPERMAN'S COPYRIGHTS -- THE CREATOR OF
6 SUPERMAN AND HIS COPYRIGHTS?

7 A I WAS NOT AWARE THAT THEY FILED THAT, NO, SIR.

8 Q SO, YOU'RE NOT AWARE THAT THAT ARTICLE SAYS THAT
9 TERMINATION RIGHTS ARE IMMENSELY VALUABLE?

10 A I AM NOT AWARE OF THAT ARTICLE SAYING THAT.

11 Q AND YOU'RE NOT AWARE THAT THAT ARTICLE SAYS THAT THE
12 STATUTORY HEIRS UNDER THE FEDERAL COPYRIGHT LAW ARE
13 ENTITLED TO THE TERMINATION RIGHTS UNDER FEDERAL COPYRIGHT
14 LAW?

15 A I AM NOT SO AWARE.

16 Q EVEN THOUGH THE CREATOR OF SUPERMAN TRIED TO WILL
17 THOSE RIGHTS AWAY?

18 MR. BAILEY: YOUR HONOR, I AM GOING TO OBJECT. HE
19 HAS ALREADY INDICATED HE HASN'T READ ANY OF THIS. THIS IS

20 ALL KIND OF SPECULATIVE. HE HASN'T READ THE AFFIDAVIT.

21 HE DOESN'T KNOW.

22 THE COURT: WELL, UNDER THE RULES HE CAN CROSS
23 EXAMINE ON ANY RELEVANT SUBJECTS AND COPYRIGHT LAWS HAVE
24 BEEN RELEVANT. HE SAID HE DOESN'T KNOW ANYTHING ABOUT IT.
25 SO, I DON'T KNOW WHERE YOU'RE GOING WITH IT.

1 MR. MEDLIN: I'M THROUGH WITH THAT LINE, YOUR HONOR.

2 THE WITNESS: I DON'T KNOW ANYTHING ABOUT IT.

3 Q MR. RUFF, DOESN'T SECTION 2055 SPECIFICALLY CONSIDER
4 THE POSSIBILITY OF A SETTLEMENT?

5 A I DON'T KNOW THAT THE CODE SECTION 2055 SPECIFICALLY
6 OUTLINES IT, BUT THERE ARE VARIOUS CASES AND IRS PRIVATE
7 LETTER RULINGS THAT HAVE HONORED CHARITABLE DEDUCTIONS
8 THROUGH SETTLEMENTS.

9 Q BUT YOU'RE NOT AWARE THAT THE CODE SECTION OR THE
10 REGS SPECIFICALLY DISCUSSED THE POSSIBILITY OF A
11 SETTLEMENT?

12 A OH, THE REGULATIONS DO.

13 Q SORRY. I DIDN'T ASK THE QUESTION --

14 A THAT'S OKAY. I'M SORRY.

15 Q -- AS CLEARLY AS YOU MAY HAVE WANTED TO HEAR IT.

16 THE COURT: WHAT DO THEY SAY ABOUT SETTLEMENTS?

17 THE WITNESS: THERE IS A SPECIFIC REGULATION -- I

18 WANT TO SAY IT'S 2055-6-2(D) THAT ONE OF THE SECTIONS SAYS

19 THAT AN AMOUNT -- FOR EXAMPLE, IF AN ESTATE WERE TO

20 OTHERWISE PASS COMPLETELY TO CHARITY AND A SETTLEMENT WERE

21 REACHED WHERE A SHARE DID NOT PASS TO CHARITY THAT THE

22 CHARITABLE DEDUCTION WOULD BE DISALLOWED AS TO THAT PIECE

23 NOT PASSING TO CHARITY. THAT'S ONE EXAMPLE. THERE MAY BE

24 OTHERS IN THE REGULATION.

25 Q STATED ANOTHER WAY, MR. RUFF, DOESN'T 2555 AND ITS

1 REGULATIONS PROVIDE THAT IF THERE IS A SETTLEMENT THE
2 CHARITABLE DEDUCTION CANNOT EXCEED WHAT ACTUALLY GOES TO
3 THE CHARITY?

4 A THAT'S CORRECT, SIR.

5 Q WHAT GOES TO THE CHARITY CAN QUALIFY FOR THE
6 CHARITABLE DEDUCTION?

7 A WELL, NOT NECESSARILY, BUT IT CAN'T EXCEED THAT.

8 Q ASSUME IT WOULD OTHERWISE QUALIFY, THAT'S THE AMOUNT
9 THAT WOULD QUALIFY FOR THE CHARITABLE DEDUCTION; IS THAT
10 CORRECT?

11 A YES.

12 Q AND YOU SAID THAT YOU WERE CONFUSED ABOUT THE
13 ADDENDUM AND WHETHER, IN FACT, THE ASSETS WERE PASSING
14 DIRECTLY FROM MR. BROWN'S ESTATE TO THE LEGACY TRUST?

15 A THAT WASN'T MY POINT OF CONFUSION. IT WAS FROM THE
16 LEGACY TRUST -- I BELIEVE UNDER THE LEGACY TRUST, ALTHOUGH
17 I COULD LOOK AT IT, IT CALLS FOR A CERTAIN PERCENTAGE TO
18 BE DISTRIBUTED BACK TO THE 2000 TRUST, BUT THE ADDENDUM
19 THAT VARIOUS PARTIES SIGNED ONTO CALLS FOR THE ATTORNEY

20 GENERAL TO ESTABLISH A TRUST SUBSTANTIALLY SIMILAR TO THE
21 EDUCATION OR THE CHARITABLE TRUST OR THE 2000 TRUST. SO,
22 THAT WAS THE POINT OVER WHICH I WAS CONFUSED AS TO WHETHER
23 THEY INTENDED TO ACTUALLY USE THE 2000 TRUST OR CREATE A
24 NEW ONE.

25 Q AND YOU HAVE A COPY OF THE ADDENDUM THERE, MR. RUFF.

1 A YES, I DO, BUT LET ME GRAB IT. YES, SIR. I HAVE IT.

2 Q ALL RIGHT. WOULD YOU LOOK AT PARAGRAPH ONE JUST FOR

3 A SECOND WITH ME?

4 A YES, SIR.

5 Q ARE YOU WITH ME, MR. RUFF?

6 A I'M THERE. YES, SIR.

7 Q THANK YOU. BEGINNING ON LINE FIVE THERE IS A

8 SENTENCE THAT BEGINS, "IN SETTLEMENT?"

9 A YES.

10 Q "IN SETTLEMENT THE PARTIES EACH SHALL CONTRIBUTE AND

11 ASSIGN TO THE SETTLEMENT ENTITY DESCRIBED BELOW PURSUANT

12 TO A CONTRIBUTION AGREEMENT ATTACHED AS EXHIBIT B OR IN

13 SUCH OTHER FORMS AS MAY BE AGREED TO BY ALL OF THE PARTIES

14 ALL OF SUCH RESPECTIVE PARTIES' RIGHTS AND INTERESTS IN

15 ANY ASSETS OR PROCEEDS WHATSOEVER TO BE RECEIVED OR

16 PAYABLE TO ANY OF THE PARTIES." THEN IT GOES ON TO LIST

17 THE ESTATE AND ANY NUMBER OF MR. BROWN'S ENTITIES.

18 A OKAY.

19 Q DID YOU LOOK AT THAT LANGUAGE?

20 A YES.

21 Q AND IF, IN FACT, THE LEGACY TRUST WAS COMPRISED OF

22 ASSETS THAT HAD FIRST PASSED TO THE CHARITABLE TRUST WHICH

23 THEN CONTRIBUTED THOSE ASSETS TO THE LEGACY TRUST, DOES

24 THAT CAUSE A PROBLEM WITH YOUR DIRECT PASSING CONCERN OR

25 DOES THAT RESOLVE YOUR DIRECT PASSING CONCERN?

1 A NO, IT DOESN'T. I MEAN, ALL OF THESE AGREEMENTS ARE
2 INTEGRATED TOGETHER. THEY'RE PART OF AN OVERALL
3 SETTLEMENT. THE ASSETS END UP IN THE LEGACY TRUST WHETHER
4 THEY PASS TO THE LEGACY TRUST DIRECTLY VERSUS WHAT YOU'RE
5 SAYING HERE THROUGH THIS EXHIBIT B I DON'T THINK MAKE A
6 DIFFERENCE.

7 Q BUT IF THE ASSETS PASS DIRECTLY TO THE CHARITY, THEY
8 GO DIRECTLY TO THE CHARITABLE TRUST FIRST. DOES THAT
9 RESOLVE YOUR CONCERN ABOUT DIRECT PASSING?

10 A NO.

11 Q WHY NOT?

12 A BECAUSE AS PART OF THIS OVERALL SETTLEMENT ALL OF THE
13 ASSETS END UP IN THE LEGACY TRUST AND ALL OF THESE
14 DOCUMENTS HAVE TO BE READ TOGETHER AND AN ESSENTIAL PART
15 OF THIS PROPOSED SETTLEMENT IS ALL OF THE ASSETS END UP IN
16 THE LEGACY TRUST AND I DON'T THINK TO THE EXTENT THAT YOUR
17 POINT IS THAT THAT -- BY 2055(E)(2) CONCERN IS ALLAYED BY
18 THE SECOND STEP, I DON'T AGREE WITH THAT.

19 Q ALL RIGHT. WELL, LET'S ASSUME THIS HYPOTHETICAL,

20 MR. RUFF. LET'S ASSUME THAT WE HAVE A TESTATOR WHO
21 CREATES A CHARITABLE TESTAMENTARY TRUST.

22 A ALL RIGHT.

23 Q AND IT'S A QUALIFIED TRUST. IS THAT TRUST NOT
24 ALLOWED TO INVEST IN INVESTMENTS?

25 A NO, IT IS ALLOWED TO INVEST IN INVESTMENTS.

1 Q THANK YOU. NOW, WHEN YOU LOOK AT THE QUESTION OF
2 DIRECT PASSING UNDER 2055 DID YOU LOOK AT REED VERSUS
3 UNITED STATES?

4 A PARDON ME?

5 Q AT REED VERSUS UNITED STATES?

6 A I DON'T BELIEVE I LOOKED AT THAT.

7 Q DID YOU LOOK AT TERRA HAUTE FIRST NATIONAL BANK
8 VERSUS UNITED STATES?

9 A I DON'T BELIEVE I LOOKED AT THAT.

10 Q DID YOU LOOK AT REVENUE RULING 78-152?

11 A THERE WERE A COUPLE OF REVENUE RULINGS THAT I LOOKED
12 AT, BUT I DON'T HAVE --

13 Q DID YOU LOOK AT NORTHERN TRUST COMPANY VERSUS US?

14 A YES.

15 Q OKAY. SO, THAT AND THE GALLOWAY CASE YOU TOOK INTO
16 CONSIDERATION?

17 A I DID TAKE THE NORTHERN TRUST CASE. IF WE'RE TALKING
18 ABOUT THE SAME NORTHERN TRUST CASE WHICH I KNOW IS
19 IMPORTANT UNDER SECTION 2055, I DID LOOK AT THAT ONE.

20 Q ALL RIGHT. NOW, YOUR SELF-DEALING CONCERNS ARE BASED
21 ON THE ASSUMPTION THAT THIS IS A PRIVATE FOUNDATION?

22 A YES.

23 Q ALL RIGHT. ARE YOU AWARE OF ANY SOLUTIONS TO THAT
24 PROBLEM -- THE SELF-DEALING PROBLEM?

25 A SOLUTIONS TO THE SELF-DEALING PROBLEM?

1 Q YEA. IF WE WANTED TO AVOID THE PROBLEM YOU SAY
2 EXISTS BECAUSE THIS IS A PRIVATE FOUNDATION AND THERE ARE
3 SELF-DEALING RESTRICTIONS UNDER SECTIONS 4941 AND 4947,
4 ARE THERE WAYS TO FIX THAT PROBLEM?

5 A YES. ONE WAY WOULD BE TO NOT HAVE THE PROVISION FOR
6 RIGHT OF FIRST REFUSAL IN THERE IN THE FIRST PLACE.

7 Q ARE THERE OTHER WAYS?

8 A THERE MAY BE.

9 Q CAN YOU THINK OF ANY?

10 A I DIDN'T THINK ABOUT THAT BEFORE TODAY. WELL, THERE
11 IS A SPECIFIC REGULATION AS I RECALL UNDER CODE SECTION
12 4941 THAT ALLOWS FOR AN OPTION OF RIGHT OF FIRST REFUSAL
13 AS LONG AS IT'S DONE WITHIN THE PERIOD -- GENERALLY
14 SPEAKING, AS LONG AS IT'S DONE JUST WITHIN THE PERIOD OF
15 ESTATE REVOCABLE TRUST ADMINISTRATION. ONE SOLUTION MAY
16 BE TO EXERCISE ANY OPTION OF RIGHT OF FIRST REFUSAL RIGHT
17 AWAY AND TO DO IT AS CALLED FOR UNDER THAT REGULATORY SAFE
18 HARBOR.

19 Q AND THAT WOULD BE WHAT WE COULD CALL THE

20 ADMINISTRATION EXCEPTION?

21 A THAT WOULD BE THE ADMINISTRATION EXCEPTION, BUT
22 THAT'S NOT WHAT THIS DOES.

23 Q ALL RIGHT. ANY OTHER WAYS YOU CAN THINK OF THAT --

24 A NOT OFFHAND.

25 Q HOW ABOUT IF THE "I FEEL GOOD TRUST" WERE A PUBLIC

1 CHARITY INSTEAD OF A PRIVATE FOUNDATION?

2 A WELL, IF IT WERE A PUBLIC CHARITY, THEN THE CODE
3 SECTION 4941 WOULD SEEM NOT TO APPLY.

4 Q OKAY. DID YOU NOTICE WHAT WE WOULD CALL SAVINGS
5 CLAUSES IN EACH OF THESE DOCUMENTS IN THE SETTLEMENT
6 AGREEMENT, MR. RUFF?

7 A I SAW SOME CLAUSES THAT ONE WOULD REFER TO AS SAVINGS
8 CLAUSES.

9 Q WHERE, IN EFFECT, THAT THE SETTLING PARTIES AGREED
10 THAT NO MATTER WHAT THE CHARITABLE EXEMPTION IS GOING TO
11 BE PROTECTED?

12 A WELL, I DON'T KNOW IF THAT'S EXACTLY WHAT IT SAYS,
13 BUT LET ME -- CAN YOU POINT OUT WHERE YOU'RE REFERRING TO?

14 Q WELL, NO, I AM JUST ASKING IF YOU RECALL THAT.

15 A I RECALL SOME CLAUSES THAT WOULD BE CONSIDERED --

16 MR. BAILEY: YOUR HONOR, HE IS REQUESTED --

17 THE COURT: HOLD ON. HOLD ON.

18 MR. BAILEY: HE HAS REQUESTED THE OPPORTUNITY TO SEE
19 WHERE IT IS IN THE DOCUMENT. HE IS ENTITLED TO HAVE THE

20 OPPORTUNITY TO LOOK FOR IT.

21 THE WITNESS: I JUST WANT TO MAKE SURE THAT WE'RE
22 TALKING ABOUT THE SAME ONE SO I DON'T GET --

23 THE COURT: SHOW IT TO HIM WHAT YOU'RE TALKING ABOUT.

24 MR. MEDLIN: YOUR HONOR, I AM NOT ASKING ABOUT ANY
25 SPECIFIC PROVISION.

1 THE COURT: WELL, THEN ASK THE QUESTION AGAIN.

2 Q ALL RIGHT. YOU DO RECALL GENERALLY THAT THERE WERE
3 SAVINGS CLAUSE PROVISIONS IN THESE DOCUMENTS?

4 THE COURT: IF YOU NEED TO LOOK AT THE DOCUMENT, YOU
5 MAY.

6 THE WITNESS: THANK YOU, YOUR HONOR.

7 UNDER WHICH DOCUMENTS?

8 Q LET ME WITHDRAW THAT QUESTION, MR. RUFF.

9 A OKAY.

10 Q I AM NOT MEANING TO PUT YOU THROUGH THAT EXERCISE.

11 A OKAY.

12 Q DON'T TAX LAWYERS GENERALLY USE SAVINGS CLAUSE
13 PROVISIONS WHEN THEY WANT TO ENSURE THAT THE TAX GOAL IS
14 PROTECTED?

15 A YES.

16 Q AND, IN FACT, DON'T MOST WELL-DRAFTED CHARITABLE
17 DOCUMENTS INCLUDE SUCH A SAVINGS CLAUSE PROVISION?

18 A YES.

19 Q ARE YOU AWARE THAT MRS. POPE TESTIFIED THAT THE

20 SAVINGS CLAUSE PROVISION IN THE 2000 TRUST EFFECTIVELY
21 ERADICATED THAT 50 PERCENT MANAGEMENT FEE PROVISION THAT I
22 TALKED ABOUT EARLIER?

23 A I WAS NOT AWARE THAT SHE SO TESTIFIED.

24 Q MR. RUFF, DO YOU ALWAYS ASK FOR A SUPREME COURT
25 DETERMINATION ABOUT THE VALIDITY OF A SURVIVING SPOUSE'S

1 MARRIAGE WHEN YOU ASK FOR THE MARITAL DEDUCTION?

2 A NO, SIR.

3 Q IF YOU HAVE A MARRIAGE LICENSE, IF YOU HAVE A COURT

4 ORDER THAT SAYS THERE WAS NO IMPEDIMENT TO THE SPOUSE

5 BEING MARRIED, YOU WOULDN'T NECESSARILY GO OUT AND ASK FOR

6 THE SUPREME COURT TO RULE ON THAT, WOULD YOU?

7 A NO, SIR.

8 Q MR. RUFF, ONE MORE QUESTION. ARE YOU A CERTIFIED

9 SPECIALIST IN TAXATION?

10 A NO, SIR.

11 MR. MEDLIN: THANK YOU. NO FURTHER QUESTIONS.

12 THE COURT: MR. JONES?

13 MR. JONES: NOTHING, YOUR HONOR.

14 THE COURT: MR. SHAHID?

15 MR. SHAHID: NO, SIR.

16 THE COURT: MR. LEVENSON?

17 MR. LEVENSON: JUST A FEW.

18 CROSS-EXAMINATION

19 BY MR. LEVENSON:

20 Q MR. RUFF, I AM LOUIS LEVENSON. I DON'T THINK WE'VE

21 EVEN MET. I REPRESENT MEMBERS OF THE BROWN FAMILY AND

22 CHILDREN OF MR. BROWN. DID I UNDERSTAND YOU TO SAY THAT

23 IN DIRECT EXAMINATION THAT YOU -- AS TO HOW LONG IT WOULD

24 TAKE TO GET A PRIVATE LETTER RULING YOU SAY IT IS A LITTLE

25 HARD TO SAY?

1 A IT IS A LITTLE HARD TO SAY.)

2 Q CAN YOU GIVE THE COURT MORE GUIDANCE AS TO WHAT THAT
3 MEANS EXACTLY?

4 A WELL, PRIVATE LETTER RULINGS -- IT'S A LITTLE BIT
5 LIKE AN APPEAL OF A COURT CASE. YOU DON'T HAVE CONTROL
6 OVER THAT TIMING. IT'S JUST A FUNCTION OF HOW LONG IT
7 TAKES THE IRS TO PROCESS YOUR RULING AND TO CONTACT YOU IF
8 NECESSARY AND ULTIMATELY ISSUE A RULING.

9 Q WELL, IN CONNECTION WITH OTHER CASES THAT YOU'VE
10 HANDLED WHERE A PRIVATE LETTER RULING HAS BEEN REQUESTED,
11 CAN YOU HELP THE COURT TO UNDERSTAND HOW LONG THAT WOULD
12 HAVE TAKEN?

13 A WELL, NOT THE CASES I'VE HANDLED. I HAVE PROBABLY
14 RECEIVED -- ASKED FOR ONLY TWO PRIVATE LETTER RULINGS IN
15 MY ENTIRE CAREER. BOTH OF THOSE HAVE BEEN A WHILE BACK.
16 AS I RECALL IT TOOK A FEW MONTHS.

17 THE COURT: HOW LONG?

18 THE WITNESS: A FEW MONTHS.

19 Q IS IT YOUR CONTENTION HERE THAT IT IS NOT APPROPRIATE

20 FOR THERE TO BE A SETTLEMENT AS BETWEEN THE PARTIES IN
21 INTEREST WITHOUT SUCH A PRIVATE LETTER RULING?

22 A I WOULD NOT ADVOCATE A SETTLEMENT ON THESE TERMS
23 GIVEN WHAT I FEEL ABOUT THE TAX OUTCOMES THAT I'VE
24 MENTIONED WITHOUT A PRIVATE LETTER RULING.

25 Q YOU SAID THERE -- YOU SAID SOMETHING ABOUT THAT THIS

1 PARTICULAR -- YOUR OPINION WAS THAT THERE IS NO BINDING
2 AUTHORITY AS SUGGESTED IN THESE SETTLEMENT DOCUMENTS
3 WITHOUT THE CONSENT OF THE TRUSTEES OR THE PERSONAL
4 REPRESENTATIVES. DO YOU RECALL SAYING THAT?

5 A I DO.

6 Q WHAT IS THE AUTHORITY FOR THAT?

7 A THE TWO WAYS OF SETTLING A TRUST AND ESTATE
8 CONTROVERSY UNDER SOUTH CAROLINA LAW ARE CODE SECTION
9 62-3-912 WHICH CALLS FOR ALL INTERESTED PERSONS AND
10 SPECIFICALLY INCLUDING TRUSTEES IN TESTAMENTARY TRUSTS TO
11 JOIN IN WHAT'S CALLED THE PRIVATE SETTLEMENT AGREEMENT.
12 THE OTHER SET OF CODE SECTIONS IS 62-3-1101 AND -1102
13 WHICH ALSO ALLOW FOR SETTLEMENTS BY PEOPLE HAVING
14 BENEFICIAL AND OTHER INTERESTS IN ESTATES.

15 NOW, WHEN ONE READS THOSE TWO CODE SECTIONS IT
16 INITIALLY COULD BE NOT COMPLETELY CLEAR ABOUT WHETHER THE
17 TRUSTEES OR FIDUCIARY MUST BE INVOLVED IN THE SETTLEMENT
18 DISCUSSIONS, BUT THERE WAS A CASE THAT CAME OUT FOUR YEARS
19 AGO THAT HERE IN SOUTH CAROLINA AT THE UNIVERSITY OF

20 SOUTHERN CALIFORNIA VERSUS MORAN -- IT IS A STATE SUPREME
21 COURT CASE, I BELIEVE. I DON'T HAVE THE CITE TO IT. IT
22 WAS ISSUED IN 2005 -- THAT ELIMINATED THAT AMBIGUITY UNDER
23 THOSE CODE SECTIONS AND SAID THAT IN THAT CASE THE
24 TRUSTEES OF A POUR-OVER TRUST WAS THE PROPER PARTY UNDER
25 62-3-1101 AND 1102 OF THAT SETTLEMENT AND BECAUSE OF THE

1 MORAN CASE AND BECAUSE OF THE SPECIFIC STATUTE 3-912 I
2 BELIEVE THE FIDUCIARIES ARE ESSENTIAL PARTIES UNDER SOUTH
3 CAROLINA LAW CLEARLY TO THE SETTLEMENT AGREEMENT.

4 Q HOW DO YOU RECONCILE THAT OPINION WITH THE
5 CONSTRUCTION OF THAT CODE SECTION THAT THE 1102 ANYWAY
6 THAT REQUIRES THE PERSONAL REPRESENTATIVES TO SIGN THAT
7 WHICH THE COURT ORDERS TO BE SETTLED?

8 A WELL, I SAID THAT THE MORAN CASE -- IT DIDN'T REQUIRE
9 THAT THE PERSONAL REPRESENTATIVE TO BE A PARTY, BUT IT
10 REQUIRED THAT THE TRUSTEES OF THE POUR-OVER TRUST WHICH
11 WAS A BENEFICIARY OF THE ESTATE BE A PARTY APPLIED TO THIS
12 CASE. THE POUR-OVER TRUST -- THE 2000 TRUST OF WHICH
13 MR. BUCHANAN AND MRS. POPE ARE THE CURRENT TRUSTEES -- IS
14 AN ESSENTIAL PARTY UNDER THE MORAN CASE -- THE SETTLEMENT.

15 Q YOUR OPINION IS THAT THE TRUSTEES WHO ARE HERE
16 TODAY -- YOUR CLIENTS WHO HAVE HIRED YOU -- WITHOUT THEIR
17 APPROVAL THERE CAN BE NO SETTLEMENT?

18 A BECAUSE OF WHAT THE COURT HANDED DOWN IN THE
19 UNIVERSITY OF SOUTHERN CALIFORNIA, YES, THAT IS MY

20 OPINION.

21 Q SO, EVEN IF THIS COURT WERE TO APPROVE IT, IT WOULD
22 REQUIRE THE APPROVAL IN WRITING OF THE TRUSTEES?

23 A YES.

24 Q THANK YOU, SIR.

25 THE COURT: MR. BELL?

1 MR. BELL: NO, YOUR HONOR.

2 THE COURT: MR. BYRD?

3 MR. BYRD: NO, SIR, YOUR HONOR.

4 THE COURT: DID I LEAVE ANYBODY OUT?

5 MR. BAILEY, REDIRECT, IF ANY?

6 MR. BAILEY: NOTHING, YOUR HONOR.

7 THE COURT: ALL RIGHT, SIR. YOU MAY STEP DOWN. MAY
8 HE BE EXCUSED? IF YOU'D LIKE TO BE.

9 NEXT WITNESS, MR. BAILEY.

10 MR. BAILEY: YOUR HONOR, WE'D CALL MR. FORLANDO
11 BROWN.

12 THE COURT: MR. FORLANDO BROWN.

13 THE COURT: IS HE UNDER SUBPOENA?

14 MR. BAILEY: NO, SIR.

15 THE COURT: NEXT WITNESS.

16 MR. BAILEY: MR. ROMUNZO BROWN.

17 THE COURT: MR. ROMUNZO BROWN. IS HE UNDER SUBPOENA?

18 MR. BAILEY: NO, SIR.

19 THE COURT: NEXT WITNESS.

20 MR. BAILEY: MR. TERRY BROWN.

21 THE COURT: MR. TERRY BROWN. IS HE UNDER SUBPOENA?

22 MR. BAILEY: NO, SIR.

23 THE COURT: NEXT WITNESS.

24 MR. BAILEY: YOUR HONOR, WE WOULD MAKE A PROFFER.

25 THESE ARE PARTIES TO THIS LAWSUIT, AND I AM SPECIFICALLY

1 REFERRING TO THE MCMASTER VERSUS DALLAS WHERE TERRY BROWN,
2 ROMUNZO BROWN, AND FORLANDO BROWN HAVE BEEN NAMED AS
3 DEFENDANTS AND ARE, THEREFORE, PARTIES TO THE CASE.

4 MR. BELL: YOUR HONOR, I --

5 THE COURT: HOLD ON ONE SECOND. LET ME HEAR WHAT HE
6 IS GOING TO SAY. DON'T MAKE THE PROFFER. TELL ME WHY
7 YOU'RE GOING TO MAKE IT.

8 MR. BAILEY: WE WOULD HAVE ASKED THEM QUESTIONS
9 CONCERNING THEIR POSITIONS WITH RESPECT TO THE SETTLEMENT
10 AGREEMENT.

11 THE COURT: WELL, THEN HOW DO YOU KNOW WHAT THEY'RE
12 GOING TO TESTIFY TO? HOW ARE YOU GOING TO MAKE A PROFFER?

13 MR. BAILEY: I WAS GOING TO PROFFER THE QUESTIONS.
14 THEY'RE PARTIES TO THE SUIT. SO, THEREFORE, IF THEY'RE
15 NOT HERE, I CAN'T DO ANYTHING ABOUT THAT. I DON'T NEED TO
16 SUBPOENA THEM IF THEY'RE A PARTY.

17 THE COURT: WHAT IS THE POSITION, MR. PROFESSOR
18 MEDLIN?

19 MR. MEDLIN: YOUR HONOR, WE OBJECT.

20 THE COURT: MR. JONES?

21 MR. JONES: SAME, YOUR HONOR.

22 THE COURT: MR. SHAHID?

23 MR. SHAHID: IF HE WANTED THEM HERE, JUDGE, HE COULD
24 HAVE SUBPOENAED THEM.

25 THE COURT: MR. LEVENSON?

1 MR. LEVENSON: PARTIES ARE NOT AUTOMATICALLY
2 WITNESSES IN A CASE. THERE IS NO LAW THAT SAYS THAT THE
3 PARTY HAS TO BE PRESENT IN THE COURTROOM UNLESS SUBPOENAED
4 OR COMPELLED BY THE COURT TO ATTEND.

5 THE COURT: MR. BYRD?

6 MR. BYRD: NO OBJECTION, YOUR HONOR.

7 THE COURT: MR. BELL?

8 MR. BELL: WE OBJECT. THEY WERE NOT SUBPOENAED AND
9 HE DID NOT REQUEST THEIR ATTENDANCE.

10 THE COURT: ALL RIGHT. I WILL SUSTAIN THE OBJECTION.

11 MR. BAILEY: ALL RIGHT. MAY I PUT THE GROUNDS OF MY
12 -- NEVERMIND, YOUR HONOR. THANK YOU.

13 THE COURT: ANY OTHER WITNESSES?

14 MR. BAILEY: THAT'S ALL, YOUR HONOR. THANK YOU.

15 THE COURT: ALL RIGHT. PROFESSOR MEDLIN, I HAVE
16 ASKED FOR YOUR EITHER TESTIMONY OR REPRESENTATION
17 CONCERNING THE DUE DILIGENCE ON YOUR TAX RESEARCH AS WELL
18 AS MR. BAUKNIGHT ANSWERING QUESTIONS CONCERNING HIS
19 ABILITY TO SERVE, HIS WILLINGNESS TO SERVE, TRANSITION

20 PROCEDURES, AND JUST GENERALLY WHETHER OR NOT HE WANTS TO
21 GET INTO THIS SITUATION, FOR LACK OF A BETTER WAY OF
22 PUTTING IT. I THINK WE NEED TO ADDRESS THE TAX ISSUES
23 SINCE IT'S FRESH ON EVERYBODY'S MIND.

24 MR. MEDLIN: YOUR HONOR, I AM HAPPY TO DO THAT NOW OR
25 HAPPY TO DO THAT AS PART OF A SUMMATION.

1 THE COURT: NO, SIR. I AM GOING TO WANT SOME
2 TESTIMONY ON THAT.

3 MR. MEDLIN: WELL --

4 THE COURT: I MEAN, WE'VE GOT A GUY WHO IS QUALIFIED
5 AS AN EXPERT IN ESTATE PLANNING WHO IS TELLING ME THAT THE
6 AGREEMENT WON'T QUALIFY FOR THE CHARITABLE DEDUCTION.
7 THAT GIVES ME GREAT CONCERN. I ASSUME THAT YOU GOT
8 SOMEBODY THAT HAS DONE RESEARCH THAT SAYS IT WILL QUALIFY.
9 I NEED TO HEAR FROM THEM.

10 MR. MEDLIN: WELL, YOUR HONOR, THE PROBLEM WITH
11 TESTIMONY -- I CAN CERTAINLY TELL THE COURT WHAT WE'VE
12 DONE IS THAT THE RESEARCH HAS BEEN DONE BY LAWYERS IN THE
13 CASE -- MR. CARTER, MR. BENNETT, MR. CHANDLER, MS. LEE,
14 MS. SCARBOROUGH -- WHO ARE ALL EXCELLENT WELL-QUALIFIED
15 TAX LAWYERS. IN FACT, I HAVE THEIR RESUMES IF YOU'D --

16 THE COURT: WELL, I UNDERSTAND THAT. I DON'T DOUBT
17 THEIR QUALIFICATIONS AND EXCELLENCE. OBVIOUSLY,
18 MR. BAILEY MAY WANT TO CROSS EXAMINE THEM.

19 THE COURT: YOU NEED TO FIND ONE OF THEM WHO CAN SORT
20 OF SPEAK FOR EVERYBODY.

21 MR. MEDLIN: YOUR HONOR, WE --

22 THE COURT: IT'S UP TO YOU. I'M ASKING FOR IT. IF
23 YOU DON'T WANT TO GIVE IT TO ME, THAT'S YOUR POSITION.

24 MR. MEDLIN: WELL, YOUR HONOR, THE IDEA THAT A LAWYER
25 -- CAN WE DISCUSS THIS FOR A COUPLE OF MINUTES?

1 THE COURT: SURE.

2 (WHEREUPON, A BREAK WAS TAKEN.)

3 THE COURT: I'LL TELL YOU WHAT. LET'S DO THIS.

4 LET'S JUST GO AHEAD AND CALL MR. BAUKNIGHT AND WE'LL BE IN

5 A POSITION FOR Y'ALL TO TALK A LITTLE BIT AT THAT TIME.

6 FAIR ENOUGH?

7 MR. MEDLIN: SURE.

8 THE COURT: MR. BAUKNIGHT. YOU'RE STILL UNDER OATH.

9 RUSSELL L. BAUKNIGHT, AFTER BEING PREVIOUSLY

10 DULY SWORN, TESTIFIED AS FOLLOWS:

11 THE COURT: MR. BAUKNIGHT; FOR THE RECORD YOU HAVE

12 BEEN IN COURT I THINK FOR THE LAST TWO OR THREE DAYS OF

13 TESTIMONY WITH MR. BUCHANAN, MRS. POPE, MR. RUFF. HOW

14 LONG HAVE YOU BEEN HERE?

15 THE WITNESS: I FIRST APPEARED IN COURT IN JANUARY.

16 AND THEN WE WERE HERE SEVERAL WEEKS AGO AGAIN.

17 THE COURT: AND YOU'VE BEEN HERE THROUGH ALL OF THE

18 TESTIMONY, IS THAT CORRECT, SUBSEQUENT TO YOUR FIRST

19 APPEARANCE?

20 THE WITNESS: YES, SIR, YOUR HONOR.

21 THE COURT: AND YOU HAVE HEARD ALL OF THE TESTIMONY

22 CONCERNING THIS ESTATE AND CERTAIN ALLEGATIONS AS TO ITS

23 COMPLEXITY. HAVING LEARNED ALL OF THAT, IF IN THE EVENT

24 THAT YOU WERE -- IF I APPROVED THE SETTLEMENT AND YOU WERE

25 APPOINTED AS SUCCESSOR PR AND OR TRUSTEE, KNOWING

1 EVERYTHING THAT YOU KNOW NOW ARE YOU WILLING TO UNDERTAKE
2 THIS TASK?

3 THE WITNESS: KNOWING WHAT I KNOW NOW I AM WILLING TO
4 DO THAT, SIR.

5 THE COURT: HAVE YOU MADE ANY PROVISION FOR A
6 TRANSITION SHOULD I APPROVE THE SETTLEMENT BETWEEN YOU AND
7 MRS. POPE AND MR. BUCHANAN?

8 THE WITNESS: IF BY PROVISIONS HAVE I CONTACTED THEM
9 WITH RESPECT TO SETTING UP THE PROCESS OF SUBSTITUTING
10 FIDUCIARIES, NO, I HAVE NOT CONTACTED THEM.

11 THE COURT: WELL, ASIDE FROM CONTACTING THEM, WHAT
12 PROCEDURE, PROTOCOL HAVE YOU SET UP FOR AN ORDERLY
13 TRANSITION FROM THE EXISTING PR TRUSTEES TO YOU?

14 THE WITNESS: SIR, WHAT I DO IN A POSITION WHERE I'VE
15 BEEN SUBSTITUTED FOR A PREVIOUS FIDUCIARY IS, FIRST, GAIN
16 CUSTODY OF THE ASSETS THAT CAN BE IDENTIFIED -- BANK
17 ACCOUNTS, KEYS TO THE RESIDENCE IN THIS CASE, ANY OTHER
18 PROPERTY THAT I NEED PHYSICAL CUSTODY OF. I CERTAINLY
19 WANT TO GAIN CUSTODY OF THE BOOKS AND RECORDS OF THE

20 ESTATE. I WOULD WANT ACCESS TO ALL OF THE TAX FILINGS
21 THAT HAVE BEEN MADE, THE PROBATE FILINGS AND OTHER FILINGS
22 THAT HAVE BEEN MADE.

23 I'D WANT TO HAVE ALL OF THE CLAIMS FILED AGAINST THE
24 ESTATE. I'D WANT TO KNOW HOW THOSE CLAIMS HAVE BEEN DEALT
25 WITH. IN THIS PARTICULAR CASE I THINK IT WOULD BE

1 EXTREMELY IMPORTANT TO ARRANGE SOME TYPE OF AGREEMENT WITH
2 THE SUBSTITUTED FIDUCIARIES AND HERE I AM NOT SIMPLY
3 REFERRING TO POPE AND BUCHANAN, BUT LITERALLY ALL OF THE
4 SUBSTITUTED FIDUCIARIES TO -- FOR COMPENSATION TO BE ABLE
5 TO OBTAIN FACTS AND INFORMATION FROM THEM. THEY ALL WILL
6 HAVE VERY VALUABLE INFORMATION. I WOULD LOOK FORWARD TO
7 BEING ABLE TO SPEND TIME WITH EACH OF THEM, WHETHER
8 TOGETHER OR INDIVIDUALLY, ON A REGULAR BASIS CERTAINLY IN
9 THE BEGINNING -- TAKE THE INFORMATION THAT I GATHER THERE,
10 PROCESS IT, WORK WITH IT, COME BACK TO THEM AGAIN. I
11 DON'T ANTICIPATE THAT PROCESS BEING A ONE-TIME-INTERVIEW
12 TYPE OF PROCESS. I EXPECT IT TO BE A PROCESS THAT WOULD
13 LAST SOME LENGTH OF TIME.

14 I WOULD ALSO IN THIS PARTICULAR CASE GIVEN THE AMOUNT
15 OF LITIGATION INVOLVED CERTAINLY BE REQUESTING AN
16 EXECUTIVE SUMMARY FROM ALL OF THE ATTORNEYS REPRESENTING
17 THE ESTATE OR TRUST IN VARIOUS CASES. THIS TYPE OF
18 SUMMARY IS SOMETHING THAT WE'RE ACCUSTOMED TO GETTING
19 WHENEVER WE DO AN AUDIT OF THE COMPANY. WE HAVE TO HAVE

20 THAT TYPE OF ATTORNEY'S LETTER PROVIDED BY THE CLIENT'S
21 ATTORNEY DESCRIBING ANY LITIGATION OUT THERE, POSSIBLE
22 OUTCOMES, HOW LONG IT'S GOING TO LAST, ET CETERA. WE ALSO
23 GET THESE LETTERS AND SUMMARIES ANYTIME WE'RE DEALING WITH
24 A CLIENT THAT'S ACQUIRING ANOTHER COMPANY OR ANOTHER
25 BUSINESS. SO, THOSE TYPES OF COMMUNICATIONS ARE REGULAR

1 FOR WHAT I DO.

2 THE COURT: WELL, THERE IS A SUBSTANTIAL -- STRIKE
3 THAT. THERE IS OTHER LITIGATION GOING ON AS A RESULT OF
4 THIS IN CONNECTION WITH THIS TRUST AND OR WILL AND OR
5 ESTATE. HAVE YOU FAMILIARIZED YOURSELF WITH THE EXISTING
6 LITIGATION? THERE IS LITIGATION GOING ON IN THE FEDERAL
7 COURTS, LITIGATION GOING ON IN CONNECTION WITH THE CASES
8 AGAINST MORGAN STANLEY, LITIGATION THAT'S CURRENTLY BEFORE
9 ME SEEKING APPROVAL, AND THERE ARE JUST A NUMBER OF
10 LAWSUITS GOING ON. HAVE YOU FAMILIARIZED YOURSELF WITH
11 THOSE?

12 THE WITNESS: YOUR HONOR, I WAS AWARE THAT THERE WERE
13 IN EXCESS OF 20 CASES AS OF THE TIME I FIRST SAT DOWN WITH
14 MRS. POPE AND MR. BUCHANAN. I HAVE NOT BASED ON MY
15 POSITION TO THIS POINT IN TIME ACTIVELY SOUGHT OUT
16 INFORMATION ON THOSE CASES. NUMBER ONE, THAT DIDN'T FALL
17 UNDER THE SCOPE OF YOUR ORIGINAL ORDER WHERE YOU HIRED ME
18 TO LOOK AT ONE SPECIFIC ISSUE.

19 THE COURT: I AGREE WITH THAT. WHAT WOULD YOU DO IN

20 CONNECTION WITH THAT ONGOING LITIGATION IF YOU WERE
21 APPOINTED?

22 THE WITNESS: WELL, I WOULD GAIN INFORMATION ON EACH
23 OF THE CASES THAT WERE PENDING FIRST FROM THE CURRENTLY
24 SERVING FIDUCIARIES AND THEN ACTIVELY DISCUSS AND THEN
25 SEEK THE COUNSEL OF THE ATTORNEYS REPRESENTING THE ESTATE

1 OR TRUST IN THE VARIOUS ACTIONS. IN ADDITION, I THINK IN
2 THIS PARTICULAR CASE THERE'S, OBVIOUSLY, A GREAT DEAL OF
3 LITIGATION INVOLVING THE SETTLING PARTIES, AND I THINK IT
4 WOULD BE EXTREMELY IMPORTANT TO AS QUICKLY AS POSSIBLE SET
5 UP MEETINGS WITH THE VARIOUS INTERESTS WITHIN THE SETTLING
6 GROUP BECAUSE I THINK AVOIDING LITIGATION IN THE FUTURE IS
7 EXTREMELY IMPORTANT. IT IS, OBVIOUSLY, TIME CONSUMING AND
8 EXPENSIVE. IT WILL IF WE'RE AVOIDING LITIGATION CERTAINLY
9 AID IN THE ADMINISTRATION PROCESS OF THE ESTATE AND TRUST.

10 THE COURT: AND HAVE YOU PRESENTED A FEE SCHEDULE FOR
11 YOUR FEES, YOUR CLERICAL WORK, THOSE PEOPLE UNDER YOU --
12 ASSOCIATES, ET CETERA -- IN CONNECTION WITH YOUR DUTIES AS
13 TRUSTEES AND OR PR IF I WERE TO APPROVE THE AGREEMENT?

14 THE WITNESS: SIR, I HAVE SUBMITTED A FEE SCHEDULE TO
15 THE SETTLING PARTIES. THAT FEE SCHEDULE IS THE FEE
16 SCHEDULE THAT I OPERATE AS A FIDUCIARY. IN ADDITION, I
17 WOULD FORMALLY REQUEST OF THE SETTLING PARTIES THAT -- AND
18 I HAVE ALREADY TOLD THEM THAT I WANTED TO BE ABLE TO
19 CHOOSE THE ATTORNEY THAT WOULD REPRESENT ME AND THE

20 ESTATE. SO, IN FACT, I ACTUALLY FOLLOWED UP WITH A FEE
21 SCHEDULE FOR MY ATTORNEY.

22 I WOULD LIKE VERY MUCH TO BE ABLE TO HIRE THE
23 ACCOUNTING ADVICE THAT I WOULD FEEL APPROPRIATE AND WOULD
24 ACTUALLY JUST TO MAINTAIN HARMONY AMONGST THE GROUP SUBMIT
25 FEE SCHEDULES WITH RESPECT TO ANY CONSULTING OR ASSISTANCE

1 THAT I WOULD REQUIRE TO THE SETTLING PARTIES BECAUSE I
2 THINK IT'S IMPORTANT FOR THEM TO SEE THAT.
3 I UNDERSTAND THAT THE ATTORNEY GENERAL CERTAINLY
4 PRIDES HIMSELF ON KEEPING FEES IN THE REALM OF
5 REASONABLENESS FOR WORK DONE FOR THE GOOD OF THE PEOPLE OF
6 THE STATE AND FOR CHARITY. SO, I DO THINK IT WOULD BE
7 IMPORTANT TO HAVE EVERYTHING OPEN TO THE BENEFICIARIES
8 CERTAINLY HERE INCLUDING THE ATTORNEY GENERAL'S OFFICE.
9 OBVIOUSLY, ULTIMATELY, ANY FEES THAT I WOULD CHARGE, YOUR
10 HONOR, ARE ONLY GOING TO BE THOSE FEES THAT THE COURT
11 FINDS REASONABLE.

12 THE COURT: I GUESS LAST, MR. BAUKNIGHT, ONCE AGAIN,
13 YOU SAT HERE. YOU'VE HEARD EVERYTHING. YOU'VE HEARD ALL
14 OF THE VARIOUS POSITIONS BY VARIOUS PARTIES. YOU'VE HEARD
15 MRS. POPE AND MR. BUCHANAN'S CONCERNS ABOUT THE SETTLEMENT
16 AGREEMENT, THE ISSUES CONCERNING THE VALUATION AND THE
17 MARITAL DEDUCTION ISSUES. I MEAN, THERE ARE JUST A HOST
18 OF ISSUES. KNOWING ALL OF THAT, I AM GOING TO ASK YOU
19 ONCE AGAIN ARE YOU WILLING TO ACCEPT THESE RESPONSIBILITY

20 AND CARRY OUT THE TERMS OF THE OFFICE -- STRIKE THAT --
21 CARRY OUT THE TERMS OF THE POSITION SHOULD I APPROVE THE
22 AGREEMENT?

23 THE WITNESS: YOUR HONOR, I THANK YOU FOR ASKING ME
24 AGAIN. I KNOW THIS IS NOT A SITUATION THAT REQUIRES AN
25 ANSWER THAT IS NOT WELL THOUGHT OUT. I HAVE THOUGHT HARD

1 ABOUT WHETHER OR NOT I WOULD SAY YES TO YOU WITH RESPECT
2 TO THAT PARTICULAR QUESTION.

3 YOUR HONOR, I BELIEVE I WILL DO A VERY GOOD JOB IF
4 YOU CHOOSE TO APPOINT ME TO THIS POSITION. I BELIEVE I
5 WILL ADMINISTER THE ESTATE AND TRUST IN A MANNER THAT WILL
6 HAVE ALL OF THE BENEFICIARIES HAPPY TO HAVE ME THERE. I
7 BELIEVE THAT I WILL ADMINISTER THE ESTATE AND TRUST IN THE
8 BEST INTEREST OF THE ESTATE AND TRUST AND ITS
9 BENEFICIARIES, AND, YES, SIR, I WILL ACCEPT IF YOU CHOOSE
10 TO APPOINT ME TO THAT POSITION.

11 THE COURT: THANK YOU.

12 MR. BAILEY, ANYTHING YOU WANT TO ASK HIM CONCERNING
13 HIS WILLINGNESS TO SERVE AS ADMINISTRATOR TRUSTEE AND OR
14 PR?

15 MR. BAILEY: YES, SIR, YOUR HONOR.

16 THE COURT: WHATEVER THE SPECIFIC TITLE IS.

17 CROSS-EXAMINATION

18 BY MR. BAILEY:

19 Q MR. BOUKNIGHT --

20 MR. MEDLIN: YOUR HONOR, IF WE MAY, MR. BOUKNIGHT HAS
21 BEEN CROSS-EXAMINED.

22 THE COURT: I KNOW THAT. I AM GOING TO LET HIM ASK
23 HIM QUESTIONS ABOUT HIS WILLINGNESS TO SERVE AND NOTHING
24 ELSE.

25 MR. MEDLIN: THANK YOU, YOUR HONOR.

1 Q IF YOU'RE APPOINTED WILL YOU DEFEND THE ESTATE

2 PLAN -- JAMES BROWN'S ESTATE PLAN?

3 A MR. BAILEY, IF I'M APPOINTED IT WILL BE MY

4 UNDERSTANDING IT IS BECAUSE THE JUDGE HAS APPROVED THE

5 SETTLEMENT AGREEMENTS AS AMONGST THE SETTling PARTIES, AND

6 UNDER THAT AGREEMENT I WOULD BE RESPONSIBLE FOR CARRYING

7 OUT THE TERMS OF THE AGREEMENTS AMONGST THE SETTling

8 PARTIES.

9 Q ALL RIGHT. AND WHAT POSITIONS ARE YOU GOING TO BE

10 APPOINTED TO IF YOU -- IF THE JUDGE WERE TO APPROVE THE

11 SETTLEMENT? WHAT ARE YOU BEING APPOINTED TO DO?

12 A I WOULD BE APPOINTED TO WHATEVER THE JUDGE DECIDES HE

13 WANTS TO APPOINT ME TO. THERE IS THE JAMES BROWN LEGACY

14 TRUST WHICH WOULD REQUIRE A TRUSTEE.

15 Q OKAY.

16 A AND THERE IS THE 2000 TRUST OR SIMILAR TRUST THAT

17 WOULD REQUIRE A TRUSTEE.

18 Q AND AREN'T THOSE TWO POSITIONS --

19 A IN ADDITION, THERE IS THE ESTATE THAT WOULD REQUIRE A

20 PERSONAL REPRESENTATIVE.

21 Q AND AREN'T THOSE TWO TRUSTS AT ODDS WITH EACH OTHER

22 SUCH THAT IT WOULD BE A CONFLICT FOR YOU TO REPRESENT OR

23 BE TRUSTEE IN ONE AND TRUSTEE IN THE OTHER?

24 A I DO NOT BELIEVE SO.

25 Q AND WHAT DO YOU BASE THAT BELIEF THAT THERE IS NO

1 CONFLICT OF INTEREST SERVING AS A TRUSTEE FOR THE LEGACY
2 TRUST, CHARITABLE TRUST, OR THE IRREVOCABLE TRUST?

3 A NO ONE HAS PROVIDED ME INFORMATION THAT THERE WOULD
4 BE A CONFLICT. SO, I HAVE NO REASON TO BELIEVE THAT THERE
5 WOULD BE.

6 Q HAVE YOU EXPLORED ON YOUR OWN WHETHER OR NOT THERE
7 WOULD BE A CONFLICT?

8 A I COULD NOT FIND ANYTHING THAT WOULD CREATE IN MY
9 VIEW A CONFLICT. I HAVE DISCUSSED THIS WITH MY ATTORNEYS.
10 I HAVE NOT SPECIFICALLY DISCUSSED CONFLICT, BUT MY
11 ATTORNEYS ARE EXPERTS IN THESE AREAS AND WOULD HAVE, I'M
12 SURE, ADVISED ME HAD THERE BEEN A CONFLICT OF INTEREST.

13 Q ARE YOU FAMILIAR WITH THE PULLMAN LITIGATION?

14 A NO, SIR.

15 Q ARE YOU FAMILIAR WITH THE CORBUS LITIGATION?

16 A NO, SIR.

17 Q WERE YOU INVITED TO ATTEND IN JANUARY OF 2009 A
18 MEETING WITH THE CORBUS?

19 MR. BELL: YOUR HONOR, I AM GOING TO OBJECT TO THESE

20 QUESTIONS. THEY GO BEYOND THE SCOPE THAT THE COURT
21 OUTLINED AS FAR AS HIS WILLINGNESS TO ACCEPT.

22 THE COURT: I AGREE. SUSTAINED.

23 Q ARE YOU PREPARED TO PROTECT ALL OF THE CREDITORS OF
24 THE ESTATE AND TRUST?

25 A IT WOULD BE MY RESPONSIBILITY TO DEAL WITH ANY OF THE

1 CLAIMS MADE AGAINST THE ESTATE OR TRUST.

2 Q WHAT ABOUT THE TAXING AUTHORITIES?

3 A IT WOULD BE MY RESPONSIBILITY TO DEAL WITH THE TAX
4 ISSUES THAT WOULD BE THERE.

5 Q HOW DO YOU INTEND TO DEAL WITH THE NON-SETTLING
6 PARTIES?

7 A SIR, THAT WOULD BE LITIGATION THAT AS I OUTLINED I
8 WOULD HAVE TO DISCUSS THAT WITH THE ATTORNEYS REPRESENTING
9 THE ESTATE OR TRUST WITH RESPECT TO ANY CASES THAT THEY
10 MAY HAVE OR MAY IN THE FUTURE BRING AGAINST THE ESTATE OR
11 TRUST.

12 Q DO YOU BELIEVE YOU ARE REQUIRED TO POST A BOND?

13 MR. BELL: YOUR HONOR, I WOULD OBJECT. THAT COULD GO
14 TO THE COURT'S DETERMINATION AND NOT HIS AND HAS NOTHING
15 TO DO WITH HIS WILLINGNESS.

16 THE COURT: SUSTAINED.

17 Q HAVE YOU HAD ANY DISCUSSIONS ABOUT YOUR CONFLICTS IF
18 YOU WERE TO FIND THEM WITH THE ATTORNEY GENERAL?

19 A NO, I HAVE NOT.

20 Q YOU HAVE PROVIDED AS I UNDERSTAND IT A FEE SCHEDULE
21 FOR YOUR SERVICES TO THE SETTLING PARTIES. HAVE YOU
22 PROVIDED IT TO --

23 MR. KINGSMORE: YOUR HONOR, I OBJECT. ASKED AND
24 ANSWERED.

25 THE COURT: LET HIM FINISH HIS QUESTION.

1 Q HAVE YOU PROVIDED COPIES TO THE PERSONAL
2 REPRESENTATIVES AND TRUSTEES, BUCHANAN AND POPE?

3 A NO.

4 Q ARE YOU WILLING TO DO THAT?

5 THE COURT: I'M NOT -- THAT'S -- I AM NOT GOING TO
6 MAKE HIM DO THAT.

7 Q YOU INDICATED THAT YOU HAVE COUNSEL RETAINED OR READY
8 TO BE RETAINED IF YOU ARE APPOINTED AS A TRUSTEE AND
9 PERSONAL REPRESENTATIVE; IS THAT CORRECT?

10 A MR. BELL, I THINK YOU'VE MET MY COUNSEL.

11 Q OKAY. WELL, WOULD HE --

12 A BUT --

13 Q I'M SORRY.

14 A -- THAT DOES NOT -- I'M NOT SURE WHERE YOU'RE GOING
15 WITH THE QUESTION. MAYBE YOU CAN RESTATE IT..

16 THE COURT: WELL, HAVE YOU RETAINED ANYBODY OR GOT
17 SOMEBODY THAT YOU TALKED TO ABOUT RETAINING IF YOU'RE
18 APPOINTED?

19 THE WITNESS: YOUR HONOR --

20 THE COURT: WITHOUT --

21 THE WITNESS: WHAT I INDICATED WAS I WOULD LIKE TO BE
22 ABLE TO CHOOSE MY ATTORNEY. THE ATTORNEY THAT I CHOOSE IS
23 FRED KINGSMORE AND I MADE HIS NAME KNOWN TO THE SETTLING
24 PARTIES. I WORK LITERALLY EVERY SINGLE DAY WITH
25 MR. KINGSMORE. I HAVE FAITH IN HIS ABILITIES AND HIS

1 FIRM'S ABILITIES AND THAT, CERTAINLY, WAS ONE OF THE
2 CONDITIONS I WOULD HAVE IN ORDER TO MOVE AHEAD WITH
3 ACCEPTING THIS POSITION.

4 Q AND WHAT IS HIS FEE?

5 MR. MEDLIN: YOUR HONOR --

6 THE COURT: MR. BAILEY, I'M NOT -- THAT'S NOT
7 RELEVANT TO ISSUE OF WHETHER OR NOT HE IS WILLING TO
8 SERVE. I WILL DEAL WITH THAT IF AND WHEN WE GET TO IT
9 JUST LIKE I'M DEALING WITH EVERYBODY ELSE.

10 MR. BAILEY: THANK YOU.

11 THE COURT: ANYBODY ELSE HAVE ANY QUESTIONS?

12 ALL RIGHT. YOU MAY STEP DOWN.

13 THE WITNESS: THANK YOU, SIR.

14 THE COURT: AT PREVIOUS HEARINGS, OBVIOUSLY, I WAS
15 ASKING THE SETTLING PARTIES TO MAKE A PRESENTATION TO ME
16 AS TO THE DUE DILIGENCE DONE ON THE TAX QUESTIONS. I
17 DON'T THINK IT WOULD BE PROPER FOR ME TO CALL MR. BAILEY
18 UP HERE TO TESTIFY ABOUT WHAT HE'S DONE ON THE TAX ISSUES
19 NOR ANY OF THE OTHER LAWYERS OF RECORD. SO, I WILL LET

20 YOU, MR. MEDLIN, PRESENT TO ME BY WAY OF SORT OF A
21 STATEMENT AS TO WHAT ALL HAS BEEN DONE IN DUE DILIGENCE
22 FOR THE ANSWER OF TAX QUESTIONS AND I MAY ASK YOU SOME
23 QUESTIONS.

24 MR. MEDLIN: WOULD YOU LIKE TO DO THAT NOW, YOUR
25 HONOR?

1 THE COURT: YES, SIR.

2 MR. MEDLIN: SURE. YOUR HONOR, WE HAVE ON OUR TEAM

3 WHAT I CONSIDER TO BE AMONG THE BEST TAX LAWYERS, NOT JUST

4 IN THE STATE OF SOUTH CAROLINA, BUT IN THE COUNTRY.

5 HEYWARD CARTER AND PATTY SCARBOROUGH WHO ARE HERE TODAY

6 FROM HIS FIRM -- EDWARD BENNETT, HENRY CHANDLER, JEAN LEE

7 FROM HIS FIRM HAVE ALL BEEN INVOLVED PRIMARILY WITH THE

8 DETERMINATION OF TAX ISSUES, AND, YOUR HONOR, I CAN ASSURE

9 YOU THAT WE HAVE WORKED DILIGENTLY TO BE CONCERNED WITH

10 AND TO TRY TO DEAL WITH AND COVER ALL OF THE TAX CONCERNS

11 THAT EXIST, NOT JUST WITH RESPECT TO THE CHARITABLE --

12 MR. BAILEY: YOUR HONOR --

13 THE COURT: YES?

14 MR. BAILEY: I AM GOING TO OBJECT. THERE IS NO

15 TESTIMONY BEING PRESENTED. THIS IS SIMPLY A LEGAL

16 STATEMENT FROM -- ARGUMENT, RATHER, FROM COUNSEL. WE HAVE

17 NO TESTIMONY. WE HAVE NO OPPORTUNITY TO CROSS EXAMINE.

18 THE COURT: YOUR OBJECTION IS NOTED. I ASKED FOR A

19 REPRESENTATION OF COUNSEL AS TO WHAT THEY'VE DONE. I AM

20 GOING TO ALLOW IT TO BE DONE AT THIS TIME.

21 MR. MEDLIN: YOUR HONOR, I HAVE THE RESUMES OF

22 MR. CARTER, ET AL., IF YOU'D LIKE TO SEE THEM.

23 THE COURT: I WOULD. LET'S MAKE THEM PART OF THE

24 RECORD. YOUR HONOR, IF I MAY, THIS PACKET SHOULD INCLUDE

25 THE RESUME OF MR. CARTER, MS. SCARBOROUGH, MS. LEE,

1 MR. CHANDLER, AND MR. BENNETT.

2 (WHEREUPON, MEDLIN'S EXHIBIT NO. 11 WAS MARKED FOR

3 IDENTIFICATION ONLY.)

4 THE COURT: YOU MAY PROCEED.

5 MR. MEDLIN: FIRST OFF, IT IS OF PARAMOUNT IMPORTANCE

6 TO EVERY ONE OF THE SETTLING PARTIES THAT TAXES BE SAVED

7 WHERE FEASIBLE AND THAT THE CHARITABLE EXEMPTION FOR THE

8 CHARITABLE TRUST BE PROTECTED, AND IN EVERY DOCUMENT THAT

9 WE HAVE SIGNED, YOUR HONOR, WE HAVE RECOGNIZED THAT IF FOR

10 ANY REASON WE MIGHT BE WRONG -- BECAUSE WE DISAGREE WITH

11 MR. RUFF IN A NUMBER OF WAYS -- BUT IF FOR ANY REASON WE

12 MAY BE WRONG, WE WILL DO WHATEVER IT TAKES TO CURE THE

13 PROBLEM EVEN IF IT MEANS A DETRIMENT TO MY CLIENT,

14 MR. LEVENSON'S CLIENTS, OR MR. BELL'S CLIENTS. WE'RE

15 GOING TO PROTECT THE CHARITABLE EXEMPTION.

16 THE ATTORNEY GENERAL IS GOING TO INSIST THAT WE

17 PROTECT THE CHARITABLE EXEMPTION. SO, EVEN THOUGH IN

18 COMING TO THE DETERMINATION ABOUT WHETHER TO SETTLE AS WE

19 HAVE DISCUSSED IN THIS COURTROOM BEFORE, YOUR HONOR, IT

20 REALLY IS JUST A QUESTION OF THE ULTIMATE DOLLARS THAT GO

21 TO THE CHARITY, AND WE WILL ARGUE LATER, YOUR HONOR, THAT

22 THE CHARITY HAS DONE VERY WELL BY THIS SETTLEMENT. IN

23 FACT, PERHAPS BETTER THAN IT WOULD HAVE DONE IN ANY OTHER

24 CIRCUMSTANCE, BUT EVEN THEN WE STILL ARE DEDICATED TO

25 PROTECTING THE CHARITABLE EXEMPTION.

1 MRS. POPE TESTIFIED THAT I TOLD HER THAT WE DIDN'T
2 HAVE AN ACCOUNTANT BACK IN AUGUST. YOUR HONOR, I'M NOT --

3 THE COURT: I JUST WANT TO KNOW WHAT Y'ALL HAVE DONE.
4 BY WAY OF DUE DILIGENCE, NOT WHAT MRS. POPE SAID.

5 MR. MEDLIN: I UNDERSTAND, YOUR HONOR, BUT THE POINT
6 BEING SIMPLY WE DON'T HAVE AN ACCOUNTANT BECAUSE WE HAVE
7 SOME OF THE BEST TAX LAWYERS IN THE COUNTRY. YOUR HONOR,
8 I HAVE ALSO SOUGHT VARIOUS OPINIONS FROM OTHER TAX EXPERTS
9 IN THE COUNTRY, BUT I WOULD RATHER YOUR HONOR BE ALLOWED
10 TO KEEP THAT CONFIDENTIAL BECAUSE THEY DID SO AS A FAVOR
11 TO ME AND I JUST DON'T THINK THEY SHOULD BE BROUGHT INTO
12 IN ANY WAY THIS CASE. SO, WE'RE NOT RELYING ON THEIR
13 OPINIONS, BUT YOU'VE ASKED HOW MUCH DUE DILIGENCE WE HAVE
14 DONE. IT IS PLENTY.

15 THE COURT: WELL, AS A RESULT OF YOUR DUE DILIGENCE
16 ARE -- IS YOUR TEAM OF THE OPINION, NUMBER ONE, THAT THE
17 TRUST AS PERTAINS TO THE NEEDY CHILDREN WILL QUALIFY?

18 MR. MEDLIN: WE ARE OF THAT OPINION, YOUR HONOR. WE
19 BELIEVE THAT THE FIRST CONCERN MENTIONED BY MR. ROOF WHICH

20 IS THAT THERE IS NOT A DIRECT PASSING IS, IN FACT, NOT A
21 CONCERN. THERE IS A DIRECT PASSING WE BELIEVE TO THE
22 CHARITY THE WAY WE STRUCTURED THE OVERALL SETTLEMENT AND
23 OUR UNDERSTANDING IS THAT EVERYBODY IS CONTRIBUTING BACK
24 TO WHAT IS, IN EFFECT, AN INVESTMENT.

25 THE COURT: YOU ARE COGNIZANT OF THAT ISSUE AND

1 CONCERN IN DRAFTING THE DOCUMENTS?

2 MR. MEDLIN: YES, WE WERE, YOUR HONOR. IN FACT, FROM
3 THE VERY FIRST DRAFT -- AND I DON'T HOLD MYSELF OUT TO BE
4 A TAX EXPERT. LET ME MAKE CLEAR FOR THE COURT, BUT FROM
5 THE VERY FIRST DRAFT WHICH I PARTICIPATED IN THE HEAT OF
6 THE MEDIATION ON AUGUST 10 WE WERE CONCERNED ABOUT THAT
7 ISSUE, AND, SO, THAT HAS BEEN A COMMON THEME THROUGHOUT
8 ALL OF THE VARIOUS ITERATIONS OF THE SETTLEMENT AS WE HAVE
9 IMPROVED IT AS WE BROUGHT MR. BELL'S CLIENT ON BOARD.
10 Q BUT, AGAIN, MR. BELL'S CLIENT WAS ALSO HAPPY TO SIGN
11 AN AGREEMENT THAT SAID WE'RE GOING TO PRESERVE THAT
12 CHARITABLE EXEMPTION. WE THINK THERE ARE SEVERAL WAYS TO
13 DEAL WITH THE SO-CALLED SELF-DEALING CONCERN ABOUT THE
14 RIGHT OF FIRST REFUSAL. THE FIRST IS UNDER THE
15 ADMINISTRATION EXCEPTION. NOW, PART OF THIS IS BECAUSE WE
16 TAKE THE POSITION THAT MR. BROWN'S 2000 TRUST IS VALID,
17 WAS, IN FACT, DEEMED TO BE A REVOCABLE TRUST BASED ON
18 TESTIMONY FROM THE TRUSTEES AND, IN FACT, BASED ON
19 TESTIMONY FROM MRS. POPE ABOUT HOW MUCH CONTROL MR. BROWN

20 INSISTED ON RETAINING. THEN WE WOULD DEEM THAT TO BE A
21 REVOCABLE TRUST AND THAT GIVES US THE TRIGGER TO ASK FOR
22 THE ADMINISTRATIVE EXCEPTION -- THE ADMINISTRATION
23 EXCEPTION, I SHOULD SAY.

24 BUT THERE ARE OTHER WAYS TO FIX THIS. WE CAN CONVERT
25 FROM THE PRIVATE FOUNDATION WHICH IS HOW MRS. POPE AND

1 MR. BUCHANAN QUALIFIED THE CHARITABLE TRUST. WE CAN
2 CONVERT TO A PUBLIC CHARITY AND AS MR. RUFF HIMSELF NOTED
3 THE SELF-DEALING CONCERNS GO AWAY.

4 THE COURT: HAVE YOU DONE THAT?

5 MR. MEDLIN: WELL, YOUR HONOR, WE CAN'T DO ANYTHING
6 UNTIL WE HAVE CONTROL OF THE SETTLEMENT ENTITY.

7 THE COURT: BUT YOU HAVE CONSIDERED IT AND KNOW THAT
8 OPTION IS AVAILABLE?

9 MR. MEDLIN: ABSOLUTELY, YOUR HONOR. AND, SO, THE
10 CONVERSION TO A PUBLIC CHARITY IS ANOTHER OPTION, BUT EVEN
11 IF THESE DIDN'T WORK, THEN WE'RE DEDICATED TO REMOVING
12 WHAT OTHER PROVISIONS MIGHT OTHERWISE CAUSE A PROBLEM FOR
13 THE CHARITABLE EXEMPTION AND THAT WOULD BE OUR LAST
14 RESORT, BUT IT WOULD BE A RESORT, YOUR HONOR.

15 NOW, WITH RESPECT TO PRIVATE LETTER RULINGS IT IS
16 CERTAINLY SOMETHING THAT WE WOULD CONSIDER DOING. IN
17 FACT, WE MAY WELL ASK FOR AT LEAST ONE PRIVATE LETTER
18 RULING AND MAYBE MORE. WE'RE FAMILIAR WITH PRIVATE LETTER
19 RULINGS, YOUR HONOR, AND LET ME SUGGEST THAT OUR COUNSEL

20 HAS BEEN INVOLVED IN FAR MORE THAN JUST TWO REQUESTS FOR
21 PRIVATE LETTER RULINGS IN THEIR CAREERS. WE KNOW VERY
22 WELL WHAT A PRIVATE LETTER RULING IS ABOUT WHICH IS A
23 REQUEST OF THE IRS TO BLESS THIS PARTICULAR SITUATION, AND
24 WHAT WE WOULD SUBMIT TO THE COURT IS THAT NONE OF US HAS
25 EVER BEEN INVOLVED IN THE REQUEST FROM THE IRS FOR A

1 FAVORABLE PRIVATE LETTER RULING WHEN THE FIDUCIARIES ARE
2 VEHEMENTLY OPPOSED TO THE DEAL. THAT'S A SURE -- THAT'S A
3 CERTAINTY WE THINK THAT THE IRS WOULD REJECT THE PRIVATE
4 LETTER RULING REQUEST.

5 THE FIDUCIARIES WHO ARE OPPOSED TO THE VERY DEAL THAT
6 WE'RE ASKING THE IRS TO APPROVE ARE GOING TO BE OPPOSED TO
7 IT AND THE IRS IS GOING TO TAKE ADVANTAGE OF THAT. ONCE A
8 FIDUCIARY WHO IS NOT OPPOSED TO THE SETTLEMENT IS IN
9 PLACE, YOUR HONOR, THAT WOULD BE THE APPROPRIATE TIME TO
10 GET A PRIVATE LETTER RULING. AGAIN, WE INTEND FOR THE
11 ATTORNEY GENERAL TO DRIVE THAT BUS. THE ATTORNEY GENERAL
12 IS GOING TO BE THE PERSON THAT WE LISTEN TO WHEN WE MAKE
13 DECISIONS ABOUT WHETHER WE ASK FOR THIS PLR OR WHETHER WE
14 ASK FOR ANOTHER PLR BASED ON THE RESULTS OF THAT FIRST
15 PARTICULAR PLR AND, AGAIN, BECAUSE WE'RE DEDICATED TO
16 PRESERVING THE CHARITABLE EXEMPTION.

17 FINALLY, WITH RESPECT TO THE MARITAL DEDUCTION, AS
18 MR. RUFF HIMSELF ADMITTED IT WOULD BE EXTRAORDINARY IN A
19 NORMAL CASE WHEN YOU HAVE THE FACTS THAT WE HAVE WHERE NO

20 ONE ELSE CAN OBJECT OTHER THAN POSSIBLY MR. AHMED TO ASK
21 FOR A DETERMINATION FROM THE SUPREME COURT OF SOUTH
22 CAROLINA, BUT, YOUR HONOR, THAT CERTAINLY IS FAIR GAME FOR
23 A PRIVATE LETTER RULING, AND WE MAY WELL ASK FOR THAT
24 ISSUE TO BE DETERMINED IN A PRIVATE LETTER RULING.

25 SO, WE HAVE DONE A LOT OF DUE DILIGENCE. WE HAVE

1 CIRCULATED AMONG US A PARED DOWN 11-PAGE MEMORANDUM THAT
2 MR. JONES TOLD ME YESTERDAY HAD SOMETHING WEIGHTY IN EVERY
3 SINGLE SENTENCE. THIS IS NOT SOMETHING THAT WE'RE TAKING
4 LIGHTLY. THIS IS SOMETHING THAT WE BELIEVE IS DOABLE, AND
5 THIS IS SOMETHING THAT WE ARE GOING TO ENSURE IS DOABLE
6 BECAUSE, AGAIN, THE ATTORNEY GENERAL IS GOING TO MAKE US
7 DO IT. SO, WHATEVER IT TAKES TO FIX IT, YOUR HONOR, WE'RE
8 GOING TO FIX IT, IF, IN FACT, THERE IS EVEN A PROBLEM.

9 THE COURT: MR. JONES, ANYTHING YOU WANT TO ADD TO
10 THAT? I ASSUME THAT Y'ALL ALL STAND BY WHAT THE PROFESSOR
11 SAYS?

12 MR. JONES: YES, SIR, YOUR HONOR. I WOULD ALSO SAY
13 THAT I AM NOT A TAX EXPERT. I REVIEWED THE INFORMATION AS
14 PROVIDED TO US FROM THE TAX EXPERTS AND I THINK AS
15 REPRESENTED TO THE COURT THAT THE ATTORNEY GENERAL IS
16 GOING TO PROTECT THE CHARITABLE TRUST AS SET FORTH IN THE
17 SETTLEMENT ENTITY AND WE'RE GOING TO DO EVERYTHING TO MAKE
18 SURE IT IS TAKEN CARE OF AND WE HAVE A CONTROL OVER THE
19 CHARITABLE TRUST AND THE SETTLEMENT ENTITY WITH THAT IN

20 MIND. SO, WE'LL MAKE SURE THAT THIS CHARITABLE TRUST AS
21 SET UP PER THIS SETTLEMENT WILL BE CARRIED FORTH PROPERLY.

22 THE COURT: ALL RIGHT. ANYTHING FROM ANYBODY ELSE?
23 ALL RIGHT. I ALSO WANTED TO HANDLE THE ATTORNEYS' FEES BY
24 WAY OF SOME TYPE OF PROTECTIVE ORDER.

25 MR. MEDLIN, WHAT IS YOUR STANCE ON THAT, POSITION ON

1 THAT?

2 MR. MEDLIN: WELL, YOUR HONOR, AGAIN, WE'RE HAPPY TO
3 PROVIDE INFORMATION TO THE COURT THAT THE COURT WANTS. I
4 DON'T THINK THE ATTORNEYS' FEES WOULD BE OF ANY GREAT
5 SURPRISE TO THE COURT ONCE DISCLOSED, BUT WE WOULD LIKE TO
6 CORRECT A MISPERCEPTION I THINK THAT WAS PERHAPS GIVEN
7 FROM TESTIMONY FROM THE FIDUCIARIES. THE ATTORNEYS' FEES
8 ARE GOING TO BE PAID FROM WHATEVER PASSES TO THE SETTLING
9 PARTIES.

10 FOR EXAMPLE, MRS. BROWN IS GOING TO HAVE
11 23.75 PERCENT OF THE OVERALL SETTLEMENT ENTITY. PART OF
12 THAT AS YOU KNOW FROM THE MOST RECENT CONVENING OF THIS
13 HEARING, YOUR HONOR, IS GOING TO BE SET ASIDE FOR
14 JAMES BROWN, II. HER ATTORNEYS' FEES ARE GOING TO BE PAID
15 FROM HER SHARE. HER ATTORNEYS' FEES ARE NOT COMING OUT OF
16 THE CHARITABLE TRUST POCKET AND THE SAME FOR
17 MR. LEVENSON'S CLIENTS AND THE SAME FOR MR. BELL'S
18 CLIENTS.

19 SO, IT DOESN'T INCREASE THE COST TO THE ATTORNEY

20 GENERAL IN ANY WAY. IN FACT, WE THINK WE HAVE A GOOD
21 FAITH ARGUMENT THAT EVEN THOUGH THE CLIENTS ARE PAYING
22 THEIR OWN ATTORNEYS' FEES AND NOT COMING OUT OF THE
23 ATTORNEY GENERAL'S POCKET THAT THESE COULD BE DEDUCTIBLE
24 WHICH, IN FACT, WOULD BENEFIT THE ATTORNEY GENERAL, THE
25 CHARITY, AND HE WOULD RECEIVE MORE, BUT WHATEVER THE

1 ATTORNEYS' FEES ARE ARE NOT BEING PAID FROM THE CHARITABLE
2 SHARE. THE ATTORNEYS' FEES ARE BEING PAID BY EACH
3 INDIVIDUAL SETTTLING PARTY.

4 THE COURT: ALL RIGHT. I WANT FROM EACH PARTY UNDER
5 PROTECTIVE ORDER I SIGNED TO NOT BE DISSEMINATED TO
6 ANYBODY BUT FOR ME TO REVIEW IN CONNECTION WITH APPROVING
7 THE SETTLEMENT -- NOT THE AMOUNT, BUT YOUR ARRANGEMENT.

8 MR. MEDLIN: THANK YOU, YOUR HONOR.

9 THE COURT: ANYTHING ELSE?

10 MR. JONES: NO, YOUR HONOR.

11 THE COURT: ALL RIGHT. THAT BRINGS US DOWN TO
12 MR. LEVENSON'S MOTION TO STRIKE THE AFFIDAVITS AS HEARSAY
13 AND THEN THAT LEAVES US CLOSING ARGUMENTS. IT IS
14 12 O'CLOCK. HOW DO Y'ALL WANT TO HANDLE THAT? LET ME
15 HEAR MR. LEVENSON'S MOTION AND THEN WE'LL BREAK FOR LUNCH
16 AND COME BACK FOR BRIEF CLOSING ARGUMENTS.

17 MR. LEVENSON: THANK YOU, JUDGE. JUDGE, IN GENERAL
18 THE REASON WE'RE HERE ADDRESSING AFFIDAVITS AND A MOTION
19 TO STRIKE AFFIDAVITS IS BECAUSE AS WE MENTIONED TO YOUR

20 HONOR THIS RECORD WILL GO SOMEWHERE PERHAPS UPON YOUR
21 HONOR'S DECISION SHOULD YOU APPROVE THE SETTLEMENT
22 AGREEMENT, AND WE WANT TO BE SURE THAT THAT WHICH PRESENTS
23 ITSELF AS EVIDENCE IS ADMISSIBLE IN EVIDENCE AND IS
24 ENTITLED TO BE TRANSMITTED AS PART OF THE RECORD OR IT IS
25 NOT EVIDENCE AND, THEREFORE, SHOULD BE STRUCK.

1 IN THAT REGARD, JUDGE, WE HAVE -- WE -- I SAY THE
2 SETTLING PARTIES -- HAVE BROUGHT TO THE ATTENTION OF FIRST
3 MR. BAILEY THE VERY FIRST TROUBLING MOTION FOR PARTIAL
4 SUMMARY JUDGMENT FILED JANUARY 20, 2009. I WILL SAY THAT
5 THIS CASE HAS BEEN PUNCTUATED BY NUMEROUS FILINGS WHICH
6 HAVE PURPORTED TO BE EVIDENCE UNDER THE GUISE OF BEING
7 AFFIDAVITS.

8 FIRST, LET ME START WITH WHAT THE STANDARD OF REVIEW
9 IS, JUDGE. WE BELIEVE THAT UNDER THE RULES OF CIVIL
10 PROCEDURE IN SOUTH CAROLINA RULE 56 WHICH IS ESSENTIALLY
11 THE SAME RULE IN EVERY STATE AND THE FEDERAL RULE AS WELL,
12 IT SAYS, "SUPPORTING AND OPPOSING AFFIDAVITS" -- THIS IS
13 RULE 56(E) -- "SHALL BE MADE ON PERSONAL KNOWLEDGE, SHALL
14 SET FORTH SUCH FACTS AS WOULD BE ADMISSIBLE IN EVIDENCE,
15 AND SHALL SHOW AFFIRMATIVELY THAT THE AFFIANT IS COMPETENT
16 TO TESTIFY TO THE MATTERS STATED THEREIN." AS IF TO
17 EMPHASIZE THE SIGNIFICANCE OF THAT PROVISION THE
18 LEGISLATURE HAS SAID UNDER SUBPARAGRAPH G WHEN AFFIDAVITS
19 ARE MADE IN BAD FAITH, "SHOULD IT APPEAR TO THE

20 SATISFACTION OF THE COURT AT ANY TIME THAT ANY OF THE
21 AFFIDAVITS PRESENTED PURSUANT TO THIS RULE ARE PRESENTED
22 IN BAD FAITH OR SOLELY FOR THE PURPOSE OF DELAY, THE COURT
23 SHALL ORDER THE PARTY EMPLOYING THEM TO PAY THE OTHER
24 PARTY," ET CETERA, ET CETERA.

25 WELL, I SIMPLY POINT OUT AND I DON'T KNOW THAT WE'RE

1 GOING IN THAT DIRECTION, BUT I POINTED OUT SUBPARAGRAPH G
2 TO EMPHASIZE HOW IMPORTANT IT IS THAT AFFIDAVITS BE MADE
3 ON PERSONAL KNOWLEDGE, AND, SO, AS TO POINT OUT TO --

4 THE COURT: WELL, I THINK YOU NEED TO BE SPECIFIC
5 WHICH WHICH AFFIDAVITS YOU ARE TALKING ABOUT.

6 MR. LEVENSON: I'M GETTING THERE. JUDGE, LET ME MARK
7 THIS EXHIBIT AS MOVANT LEVENSON'S I FOR TODAY.

8 MR. BAILEY: YOUR HONOR, WE OBJECT TO THIS. IT IS
9 JUST A LETTER FROM ONE LAWYER TO ANOTHER LAWYER WITH
10 OPINIONS EXPRESSED IN IT.

11 MR. LEVENSON: I AGREE WITH WHAT MR. BAILEY JUST
12 SAID. THIS LETTER IS DATED JANUARY 22, 2009 IN WHICH I
13 ARTICULATE THE VERY ISSUES WHICH I AM RAISING HERE TODAY
14 WHICH IS, MR. BAILEY, WITHDRAW THESE AFFIDAVITS SO THAT I
15 DON'T HAVE TO DO WHAT I AM NOW DOING BEFORE THE COURT AND
16 I SPECIFICALLY SAY IN THE LETTER THAT I AM NOT GOING TO
17 COPY THIS TO ANYONE ELSE INCLUDING THE COURT BECAUSE I
18 THINK IT WOULD BE EMBARRASSING TO HIM AND HIS CLIENTS IF I
19 HAD TO MOVE TO STRIKE THESE AFFIDAVITS. SO, I SIMPLY

20 SUGGEST THAT THIS MOTION WAS MADE AFTER CONFERRING WITH
21 THE OPPOSING PARTY SO THAT HE WAS GIVEN AN OPPORTUNITY TO
22 DO WHAT I AM NOW ASKING YOUR HONOR TO DO.

23 MR. BAILEY: HAVE YOU SUBMITTED A WRITTEN MOTION?

24 MR. LEVENSON: YOUR HONOR, NO, I HAVE NOT SUBMITTED A
25 WRITTEN MOTION, BUT I THINK RULE 56 SAYS IT CAN BE DONE AT

1 ANY TIME. THAT'S WHY I HAVE PUT IN THE AGENDA EVERYTIME
2 WE'VE HAD AN OPPORTUNITY TO COME TO COURT THAT THIS WAS A
3 REQUEST THAT --

4 THE COURT: WHAT I WOULD SUGGEST YOU DO IS DO THEM
5 AFFIDAVIT ONE, TWO, THREE, FOUR, WHICHEVER ONE YOU WANT TO
6 DO.

7 MR. LEVENSON: YES, SIR.

8 THE COURT: AND I'LL RULE ON IT.

9 MR. LEVENSON: I WILL.

10 THE COURT: I KNOW THE LAW ON AFFIDAVITS.

11 THE COURT REPORTER: THIS IS NO. 4.

12 (WHEREUPON, LEVENSON'S EXHIBIT NO. 4 WAS MARKED FOR
13 IDENTIFICATION ONLY.)

14 THE COURT: OVER MR. BAILEY'S OBJECTION FOR THE
15 RECORD.

16 MR. LEVENSON: YOUR HONOR, WHAT I'LL BE MARKING
17 MOVANT'S LEVENSON 2 WHICH IS THE MOTION THAT'S OBJECTED
18 TO.

19 THE COURT: THE MOTION THAT'S OBJECTED TO?

20 MR. LEVENSON: IT IS THE ONE DATED JANUARY 20, 2009.

21 I FIGURED THAT'S JUST A DUPLICATE COPY OF THAT WHICH HAS
22 BEEN FILED.

23 THE COURT: THAT WAS A MOTION FOR PARTIAL SUMMARY
24 JUDGMENT WHICH HAS ATTACHED TO IT AFFIDAVITS OF MRS. POPE
25 AND BUCHANAN?

1 MR. LEVENSON: CORRECT.

2 THE COURT: WHAT IS THE BASIS OF STRIKING THAT
3 AFFIDAVIT?

4 MR. LEVENSON: JUDGE, LOOK IF YOU WOULD PLEASE AT THE
5 AFFIDAVIT STYLED JOINT AFFIDAVIT OF ROBERT L. BUCHANAN AND
6 ADELE POPE. IT IS DATED JANUARY 27, 2009 AND IT APPEARS
7 TO HAVE BEEN NOTARIZED BY -- WELL, I'M SORRY. MRS. POPE
8 AND MR. BUCHANAN HAVE SIGNED IT AT DIFFERENT TIMES. IT
9 STARTS OFF SAYING, "WE BELIEVE" -- PARAGRAPH TWO, "WE
10 BELIEVE THAT IRREPARABLE DAMAGE TO THE ESTATE OF JAMES
11 BROWN 2000 TRUST -- PARAGRAPH THREE, "WE ARE CONCERNED
12 THAT THE PURPORTED SETTLEMENT MAY EXPOSE THE TRUST UP TO
13 \$40 MILLION." PARAGRAPH FOUR, "WE ARE CONCERNED THAT THE
14 PURPORTED SETTLEMENT MAKES NO PROPER PROVISION FOR
15 CREDITORS. WE BELIEVE THAT THE SETTLEMENT ASSUMES AS A
16 FACT CERTAIN MATTERS WHICH ARE NOT CORRECT." PARAGRAPH
17 SIX AND GOING ON TO TALK ABOUT THEIR BELIEFS. PARAGRAPH
18 NINE, "WE BELIEVE THAT WITH RESPECT TO THE IN TERROREM
19 CLAUSE THAT THEY" -- BEING MY CLIENTS AND I BELIEVE,

20 PERHAPS, ALSO MS. TOMI BROWN, TOMI RAE BROWN -- "WE
21 BELIEVE THEY DID SO WITHOUT PROBABLE CAUSE BECAUSE AT
22 LEAST ONE PLAINTIFF ACTUALLY ATTEMPTED TO SERVE BRIEFLY AS
23 TRUSTEE" -- I ASSUME REFERRING TO DEANNA BROWN. "SOME
24 WITNESSED TRUST DOCUMENTS AND THE EXISTENCE OF THE TRUST
25 HAS BEEN A MATTER OF PUBLIC RECORD FOR SEVEN YEARS. WE

1 BELIEVE THAT THE CONSTANT INTERFERENCE OF THE PLAINTIFFS
2 WITH THE OPERATIONS OF THE TRUST HAS CAUSED AND CONTINUES
3 TO CAUSE SEVERE DAMAGE TO THIS COMPLEX AND VALUABLE
4 ESTATE."

5 NOW, JUDGE, THERE IS -- AGAIN, CONSISTENT WITH RULE
6 56(E) THERE IS NOTHING STATED HERE THAT SUGGESTS PERSONAL
7 KNOWLEDGE BY THE AFFIANT, NOR WOULD IT BE SUFFICIENT TO
8 SHOW THAT THE AFFIANT IS COMPETENT TO TESTIFY. HERE IS
9 THE TEST. IF MRS. POPE WERE ON THE WITNESS STAND IN FRONT
10 OF A JUDGE AND PARTICULARLY IN FRONT OF A JURY AND SAID,
11 WE'RE CONCERNED THAT OR WE BELIEVE THAT, THE NEXT
12 FOLLOW-UP QUESTION WOULD BE WHAT'S THE FACTS ON WHICH YOU
13 STATE THE BELIEF? IF THE FACTS ON WHICH SHE STATED THE
14 BELIEF WERE REPORTED TO HER BY THIRD PARTIES, THE ATTORNEY
15 WOULD THEN MOVE TO STRIKE THE TESTIMONY AND ASK THE COURT
16 TO INSTRUCT THE JURY TO DISREGARD THAT, AND I BELIEVE THAT
17 THAT ALL OF THIS AFFIDAVIT FALLS IN THAT CATEGORY AND WE
18 WOULD MOVE, YOUR HONOR, TO INSTRUCT THE FINDER OF FACT
19 WHICH IN THIS CASE IS YOU TO DISREGARD IT.

20 THE COURT: MOTION OVERRULED.

21 MR. LEVENSON: THANK YOU, JUDGE. PARAGRAPH -- I
22 MEAN, THE NEXT PARAGRAPH IS A ANOTHER AFFIDAVIT OF --

23 THE COURT: THERE IS AN AFFIDAVIT OF TAJA ALLASAI
24 (PHONETICALLY SPELLED.)

25 MR. LEVENSON: I AM GOING TO GET TO THOSE AS WELL,

1 JUDGE. THE AFFIDAVITS OF -- THE MOTION FOR SUMMARY
2 JUDGMENT THAT IS FILED ALSO ATTACHES TO IT THE AFFIDAVITS
3 OF THIS TAJA ALLASAI. WELL, FIRST WE'LL TALK ABOUT TAJA
4 ALLASAI AND THE AFFIDAVIT IS PRETTY SHORT. SO, I'M SURE
5 YOUR HONOR CAN READ IT QUICKLY. IT SAYS --

6 THE COURT: I JUST READ IT.

7 MR. LEVENSON: -- THAT THIS IS HIS AFFIDAVIT BASED ON
8 HIS PERSONAL KNOWLEDGE AND THE FACTS THAT ARE KNOWN TO
9 HIM. WELL, THE FIRST QUESTION I WOULD HAVE SINCE I
10 HAVEN'T SEEN THE ORIGINAL RECORD IS I WOULD URGE THE COURT
11 TO LOOK TO SEE IF WHATEVER WAS FILED IS AN ORIGINAL
12 AFFIDAVIT WITH THE RAISED SEAL, AND THE REASON I MENTION
13 THIS IS IT APPEARS POSSIBLY TO HAVE NOTARIZED IN KARACHI,
14 PAKISTAN.

15 THE COURT: LET ME SEE THE ORIGINAL, LADIES.

16 MR. LEVENSON: I HAVE NEVER SEEN THE ORIGINAL OF
17 THAT, BUT THAT, CERTAINLY, WOULD HAVE TO BE REVIEWED BY
18 THE COURT.

19 MR. BAILEY: YOUR HONOR, JUST FOR INFORMATION

20 PURPOSES MR. BELL IS THE ONE WHO ORIGINALLY FILED THAT
21 AFFIDAVIT. HE MAY HAVE THE -- I DON'T KNOW.

22 THE COURT: WELL, OTHER THAN THE ORIGINALITY OF IT,
23 GO AHEAD.

24 MR. LEVENSON: YES, SIR. YES, SIR. WELL, I MEAN, I
25 DO RECOGNIZE THIS WAS OFFERED BY MR. BELL, BUT IT WAS

1 TENDERED IN SUPPORT OF A MOTION FOR SUMMARY JUDGMENT.

2 ANYWAY, IT SAYS, "ATTACHED HERETO IS EXHIBIT A IS A

3 COPY" -- AND I POINT OUT UNCERTIFIED COPY AND THE RULE

4 VERY SPECIFICALLY SAYS IT WOULD HAVE TO BE ADMISSIBLE IN

5 ORDER TO BE CONSIDERED BY THE COURT. SO, YOU HAVE AN

6 UNCERTIFIED COPY OF THE MARRIAGE CERTIFICATE WHERE JAVED

7 AHMED MARRIED TOMI RAE HYNIE IN 1997.

8 LET'S NOT FORGET THAT THIS IS -- MR. ALLASAI IS

9 TALKING ABOUT FURTHER ON IN PARAGRAPH TWO THAT HE HAS

10 SPOKEN WITH JAVED AHMED ABOUT THE WEDDING AND THAT JAVED

11 AHMED SHOWED HIM PHOTOGRAPHS OF THE WEDDING. WELL, THIS

12 IS, OF COURSE, ALLASAI TALKING ABOUT WHAT AHMED TOLD HIM

13 AND AHMED IS THE ONE WHO ALLEGEDLY IS THE DECLARANT HERE,

14 AND HE GOES ON IN PARAGRAPHS THREE, FOUR, FIVE, AND SIX,

15 SEVEN, AND EIGHT TO TELL THIS COURT WHAT JAVED AHMED TOLD

16 HIM.

17 IT IS RESPECTFULLY INADMISSIBLE. YOUR HONOR WOULD

18 NOT ALLOW MR. ALLASAI IF HE WERE SITTING IN THE COURTROOM

19 TO TELL THIS COURT OR A FINDER OF FACT WHAT JAVED AHMED

20 SAID ABOUT ANYTHING BECAUSE THAT WOULD BE HEARSAY. SO

21 THAT AFFIDAVIT PREDICATED THE QUESTION WHETHER IT WAS

22 PROPERLY SIGNED IN ORIGINAL FORM OR NOT.

23 THE COURT: ALL RIGHT. MR. BAILEY, DO YOU HAVE ANY

24 OBJECTIONS TO STRIKING THAT AFFIDAVIT FROM THE RECORD? IT

25 IS COMPLETELY HEARSAY.

1 MR. BAILEY: YOUR HONOR, THIS WAS FILED ORIGINALLY BY
2 MR. BELL IN EITHER CASE 872 OR NUMBER 122 AND THEY'VE
3 ASKED THAT EVERYTHING IN THE RECORD BE INCORPORATED --

4 THE COURT: AND I'VE GRANTED THAT. HOW CAN I NOW
5 STRIKE IT? EVERYBODY HAS ASKED FOR EVERYTHING THAT'S IN
6 THE RECORD TO BE PART OF IT. NOW YOU'RE ASKING ME TO
7 STRIKE IT.

8 MR. LEVENSON: WELL, I DON'T SEE HOW MANY ANGELS CAN
9 DANCE ON THE END OF THAT PEN, JUDGE, BUT THAT'S NOT
10 EXACTLY WHAT WE ASKED FOR. ALL WE ASKED FOR IS ALL
11 ADMISSIBLE EVIDENCE THAT WAS INTRODUCED IN ANY PROCEEDING
12 BEFORE THIS COURT SINCE WE FIRST APPEARED BEFORE YOUR
13 HONOR IN FEBRUARY OF 2007 -- ANY EVIDENCE ADMITTED WOULD
14 BE CONSIDERED IN CONJUNCTION WITH THIS PROCEEDING FOR THE
15 PURPOSE OF THE APPROVAL OF THE SETTLEMENT AGREEMENT.
16 THAT'S NOT TO SAY THAT EVERYTHING IN THE RECORD IS,
17 THEREFORE, EVIDENCE.

18 I THINK THAT WE HAD CONSENT OF EVERYONE IN THIS ROOM
19 THAT THE EVIDENCE WOULD BE TRANSFERRED FROM CASE NUMBER TO
20 CASE NUMBER.

21 THE COURT: ISN'T THIS EVIDENCE IN THOSE FILINGS?

22 MR. LEVENSON: IT'S NOT EVIDENCE UNTIL YOUR HONOR
23 ADMITS IT AS EVIDENCE, BUT, NO, I DON'T BELIEVE IT'S BEEN
24 ADMITTED.

25 THE COURT: THANK YOU.

1 MR. LEVENSON: IT IS JUST AN AFFIDAVIT.

2 THE COURT: OVERRULED.

3 MR. LEVENSON: WITH RESPECT TO THE DEATH CERTIFICATE,
4 THE MOTION ITSELF ATTACHES THE DEATH CERTIFICATE WHICH
5 APPEARS TO BE AN UNCERTIFIED COPY OF THE DEATH CERTIFICATE
6 OF MR. BROWN AND THE ARGUMENT MADE IN THE MOTION FOR
7 PARTIAL SUMMARY JUDGMENT SUGGESTS THAT MRS. YAMMA BROWN
8 LUMAR MADE A STATEMENT AS TO THE SPOUSE OF -- WHO THE
9 SPOUSE WAS OF MR. BROWN AT THE TIME OF HIS DEATH AND I
10 BELIEVE THAT BECAUSE THE DEATH CERTIFICATE IS AN
11 UNCERTIFIED COPY AND BECAUSE IT IS HEARSAY -- THAT IS TO
12 SAY WHO THE -- WHAT MRS. BROWN SAYS SHE BELIEVES TO BE THE
13 SPOUSE OF MR. BROWN IT SHOULD BE STRICKEN.

14 THE COURT: OVERRULED. MR. LEVENSON, YOU CAN MAKE
15 YOUR RECORD. EVERYTHING THAT'S UP HERE THAT'S BEEN FILED
16 IN THIS COURT I AM GOING TO LET IT BE PART OF THE RECORD.

17 MR. LEVENSON: VERY WELL.

18 THE COURT: YOU CAN MAKE WHATEVER RECORD YOU WANT TO
19 MAKE ON IT.

20 MR. LEVENSON: VERY WELL. THANK YOU. LET ME TURN
21 YOUR HONOR'S ATTENTION TO THE AFFIDAVIT OF A MARY HOLMES
22 WHICH IS ALSO ATTACHED TO THE MOTION FOR PARTIAL SUMMARY
23 JUDGMENT. LET ME GIVE YOUR HONOR JUST SOME OF THE FLAVOR
24 OF MS. HOLMES. YOU ASKED ME ONCE BEFORE WHO SHE IS AND I
25 THINK WE SAID AS POLITELY AS POSSIBLE SHE WAS A CONFIDANT

1 OF MR. BROWN AND AGAIN WHO THE SCRIBNER WAS OF THIS
2 AFFIDAVIT I CANNOT KNOW FOR SURE, BUT WE BELIEVE -- WELL,
3 ANYWAY, PARAGRAPH TWO: "JAMES BROWN LOVED BUDDY DALLAS.
4 IT WAS ALWAYS MR. DALLAS, QUOTE, ONE OF THE BEST, QUOTE,
5 HE WOULD OFTEN SAY. MR. BROWN TRUSTED BUDDY DALLAS AS HIS
6 FRIEND AND HIS PERSONAL ATTORNEY. HE TRUSTED FEW PEOPLE,
7 BUT HE NEVER TRUSTED ANYONE COMPLETELY. GOD WAS ALWAYS IN
8 HIS DECISIONS AND HE WOULD NEVER LET ANYONE MAKE FINAL
9 DECISIONS FOR HIM. HE WOULD THINK THROUGH HIS DECISIONS
10 AND WOULD NEVER BE DICTATED TO BY ANYONE. I AM SURPRISED
11 TO LEARN THAT MR. DALLAS HAS BEEN ACCUSED OF UNDUE
12 INFLUENCE ON MR. BROWN."

13 WHAT'S REALLY AN ANOMALY HERE IS THIS IS AN AFFIDAVIT
14 SUBMITTED BY MRS. POPE AND MR. BUCHANAN ATTACHING AN
15 AFFIDAVIT AFTER MR. BUCHANAN AND MRS. POPE HAVE SUED BUDDY
16 DALLAS ALLEGING UNDUE INFLUENCE IN A SEPARATE CASE.

17 THE COURT: MR. LEVENSON, I AM THE FINDER OF FACT IN
18 THIS HEARING WHETHER OR NOT TO APPROVE THE SETTLEMENT. I
19 WILL GIVE THESE AFFIDAVITS -- ADMIT THEM IN EVIDENCE OR

20 GIVE THEM MAYBE NO WEIGHT AT ALL OR A LOT OF WEIGHT.
21 THAT'S UP TO ME TO DETERMINE. I UNDERSTAND YOUR POSITION,
22 BUT TO GO THROUGH EACH ONE OF THEM --

23 MR. LEVENSON: I AM HAPPY FOR YOUR HONOR TO MAKE THE
24 DECISION AS LONG AS I SPEAK MY PEACE HERE AND IT'S IN THE
25 RECORD AND THEN WE CAN DEAL WITH IT. I KNOW THAT YOUR

1 HONOR WILL NOT RELY ON THAT WHICH IS INADMISSIBLE, BUT IT
2 IS SURPRISING THAT THE MOVANTS FOR PARTIAL SUMMARY
3 JUDGMENT HAVE RELIED ON THIS EVIDENCE.

4 THE COURT: WELL, BUT Y'ALL HAVE ALL WANTED
5 EVERYTHING THAT'S IN THE RECORD MADE A PART OF THIS
6 RECORD. SO, IT IS. I HAVE RULED ON IT, AND I'LL GIVE IT
7 WHATEVER WEIGHT, IF ANY, IT DESERVES.

8 MR. LEVENSON: PARAGRAPH FOUR, "EVERYONE AROUND
9 MR. BROWN KNEW BETTER THAN TO EVEN TRY TO PUSH SOMETHING
10 ON HIM AS HE WOULD QUICKLY PUT YOU IN YOUR PLACE IF YOU
11 DID. IF ANYONE SAYS THAT MR. BROWN WAS UNDULY INFLUENCED,
12 THEN THEY SIMPLY DID NOT KNOW MR. BROWN THAT I KNEW FOR
13 OVER 30 YEARS." CONCLUSORY, ET CETERA. AGAIN, THE
14 ANOMALY OF THIS BEING OFFERED BY THE VERY PERSONS WHO SUED
15 MR. DALLAS FOR PERPETRATING UNDUE INFLUENCE ON MR. BROWN
16 AMONGST OTHERS.

17 PARAGRAPH FIVE, "FOR SOME REASONS UNKNOWN TO ME SINCE
18 MR. BROWN'S DEATH IT SEEMS" -- I GUESS IT SEEMS TO THE
19 AFFIANT -- "THAT ALL OF THE PEOPLE WHO ARE REALLY CLOSE TO

20 MR. BROWN HAVE BEEN ABUSED BY ALL OF THE LAWSUITS."

21 THIS PARAGRAPH -- EXCUSE ME. IN THE MOTION, YOUR
22 HONOR, ALSO PARAGRAPH 10 ON PAGE THREE OF THE MOTION FOR
23 PARTIAL SUMMARY JUDGMENT --

24 THE COURT: THAT'S NOT AN AFFIDAVIT. IT IS A MOTION.

25 MR. LEVENSON: WELL, I KNOW, BUT IT MAKES REFERENCE

1 TO THE DEBRA OPRI LARRY KING INTERVIEW WHICH STATES AS A
2 MATTER OF UNDISPUTED FACT, QUOTE, IT CONFIRMED THAT TOMI
3 -- EXCUSE ME. IT CONFIRMS THAT HYNIE BROWN WAS NOT THE
4 SPOUSE OF JAMES BROWN. AND, YOU KNOW, AGAIN, I WOULD
5 SUGGEST THAT WHEN SOMEONE FILES A MOTION FOR SUMMARY
6 JUDGMENT WHICH SEEKS TO PIERCE THE PLEADINGS OR THE
7 ALLEGATION OF THE OPPOSING PARTY AND THEY DO SO WITH
8 INADMISSIBLE EVIDENCE THAT IT IS APPROPRIATE FOR THE COURT
9 TO DISREGARD IT OR STRIKE IT, AND, AGAIN, I'M SURPRISED
10 THAT THIS IS THE PLEADING WHICH SEEKS SUMMARY JUDGMENT.
11 OBVIOUSLY, IF YOUR HONOR WERE TO APPROVE THIS
12 SETTLEMENT AGREEMENT THERE WOULD BE NO NEED TO ADDRESS A
13 MOTION FOR PARTIAL SUMMARY JUDGMENT, BUT SINCE WE DON'T
14 KNOW WHAT YOUR HONOR IS GOING TO DO IN CONNECTION WITH
15 THIS PROCEEDING IN MY LETTER TO MR. BAILEY I WAS
16 SUGGESTING TO HIM THAT ASSUMING THIS WAS PROBATIVE
17 EVIDENCE ADMISSIBLE IN THIS CASE HOW WOULD HE PROPOSE TO
18 INTRODUCE THE LARRY KING INTERVIEW OF DEBRA OPRI INTO
19 EVIDENCE AND I NEVER HEARD BACK FROM HIM ON THAT.

20 MOST RECENTLY, JUDGE, THERE ARE EVEN WHILE THIS
21 MATTER WAS PENDING -- THE MOTION TO ENFORCE THE SETTLEMENT
22 AGREEMENT WAS PENDING -- MR. BUCHANAN AND MRS. POPE HAVE
23 FILED A NEW JOINT AFFIDAVIT AND I WILL ASK, YOUR HONOR, TO
24 MARK THIS AS LEVENSON'S 3.

25 THE COURT REPORTER: WAS I SUPPOSED TO MARK THE

1 PREVIOUS ONE?

2 THE COURT: NO, THEY OBJECTED TO IT.

3 THE COURT REPORTER: THE NUMBERS -- I'M CONTINUING
4 THE NUMBERS FROM THE FIRST DAY.

5 MR. LEVENSON: OKAY. THAT'S FINE.

6 THE COURT REPORTER: BUT I HAVEN'T MARKED ANYTHING
7 EXCEPT -- I HAVEN'T BEEN GIVEN ANYTHING EXCEPT ONE OF
8 THEM.

9 MR. LEVENSON: OKAY. WE'VE GOT ONE --

10 THE COURT REPORTER: THE LETTER.

11 MR. LEVENSON: THE LETTER. THE SECOND ITEM WOULD BE
12 THE COPY OF THE MOTION FOR PARTIAL -- I DON'T REALLY THINK
13 YOU NEED TO MARK THAT AS AN EVIDENTIARY EXHIBIT BECAUSE
14 IT'S FILED.

15 THE COURT REPORTER: OKAY. THAT'S FINE.

16 MR. LEVENSON: AND THIS HAS ALSO BEEN FILED. AGAIN,
17 THE AFFIDAVIT OF MR. BUCHANAN AND MRS. POPE WHICH WAS
18 FILED SOMETIME IN THE LAST TWO OR THREE DAYS. IT HAS A
19 DATE ON IT OF APRIL 2. THE AFFIDAVIT HAS A DATE ON IT OF

20 APRIL 2, 2009 SAYS CONSISTENT WITH THE FIRST AFFIDAVIT OF
21 JANUARY 22 -- NO, OF JANUARY 20 -- PARAGRAPH FOUR, THE
22 AFFIANTS SAY, "ATTACHED AS EXHIBIT B THERE IS AN ARTICLE
23 RELATED TO COPYRIGHT TERMINATIONS WHICH WE RECEIVED TODAY
24 FROM THE ESTATE TRUST EXEMPT ORGANIZATION OF ATTORNEY ALAN
25 ROTHSCHILD. IT SUGGESTS THAT A SUCCESSFUL TERMINATION OF

1 A COPYRIGHT GRANT IS A FEAT, QUOTE, ACCOMPLISHED AGAINST
2 ALL ODDS." ONE CAN'T FLY, YOU KNOW, THIS AFFIDAVIT OVER
3 THE CASTLE WALL AND SUGGEST IT'S EVIDENCE WHEN IT RELIES
4 ON AN OPINION FROM SOMEONE ELSE NOT WITHIN THE PERSONAL
5 KNOWLEDGE OF THE THE AFFIANT AND IT DOESN'T EVEN SAY THAT
6 THAT MR. ROTHSCHILD -- AS I HAVE NO DOUBT MR. BUCHANAN AND
7 MRS. POPE HAVE GREAT FAITH IN -- IT DOESN'T EVEN CONCLUDE
8 SOMETHING OTHER THAN A SUGGESTION.

9 "WE" -- PARAGRAPH FIVE SAYS, "WE CONTINUE TO BELIEVE
10 THAT THE HEIR'S FEDERAL COPYRIGHT TERMINATION RIGHTS ARE
11 VIRTUALLY NO CURRENT VALUE; THAT ANY FINDING THAT THEY ARE
12 OF SUBSTANTIAL VALUE IS FALSE OR MISLEADING." AGAIN, THIS
13 IS AN OPINION EXPRESSED IN AN AFFIDAVIT WHICH IS NOT ON
14 PERSONAL KNOWLEDGE OR INFORMATION.

15 PARAGRAPH SEVEN, THE AFFIANT'S SAY THEY ARE INFORMED
16 ABOUT CERTAIN THINGS THAT BY ITS VERY NATURE IS HEARSAY.
17 PARAGRAPH EIGHT REFERS TO ESTATE DOCUMENTS THAT
18 ANTICIPATED -- ANTICIPATED THAT MY CLIENTS ARE GOING TO BE
19 SUING JAMES BROWN. I DON'T EVEN KNOW WHAT SPECIFIC

20 DOCUMENTS ARE REFERENCED OTHER THAN THE FOOTNOTE TO
21 PARAGRAPH EIGHT SAYS DEANNA YAMMA PUBLISHING COMPANY
22 VERSUS JAMES BROWN -- I GUESS REFERENCE TO A CIVIL ACTION,
23 A CERTIFIED COPY OF WHICH IS NOT ATTACHED.

24 THE AFFIANTS GO ON FURTHER TO ATTACK MR.~BAUKNIGHT
25 SUGGESTING THAT YOU CANNOT SERVE IN THE POSITIONS OF

1 PERSONAL REPRESENTATIVE TRUSTEE AND OF JAMES BROWN TRUST
2 OR ANY OF THE JAMES BROWN ASSETS BECAUSE ACCORDING TO
3 PARAGRAPH 10 WHEN WE MET WITH MR. BOUKNIGHT THE ONE TIME
4 WE MET THAT HE ADVISED THAT LEVENSON -- THAT'S ME -- HAD
5 CALLED HIM SOMETIME BACK ABOUT RUNNING THE ESTATE.

6 PARAGRAPH 12 OF THIS AFFIDAVIT SUGGESTS THAT BECAUSE
7 DEANNA CONTESTS THE VALIDITY OF THE TRUST SHE CANNOT SERVE
8 ON THE ADVISORY BOARD. THIS IS AN EXPRESSION OF OPINION,
9 OF COURSE. I AM NOT DOUBTING THAT THEY HAVE THE OPINION
10 OF THESE THINGS WHICH IS CONSISTENT WITH WHAT THEY'VE
11 TESTIFIED TO IN COURT. AFFIDAVITS ARE NOT EXPRESSIONS OF
12 OPINION. THEY ARE SUPPOSED TO BE PERSONAL FACTS.

13 PARAGRAPH 17 OF THIS NEWEST AFFIDAVIT --

14 THE COURT: MR. LEVENSON, MY PATIENCE IS WEARING
15 THIN. LISTEN, I AM GOING TO LET EVERYTHING IN. I WILL
16 GIVE IT WHATEVER WEIGHT. JUST GIVE ME THE AFFIDAVITS THAT
17 YOU OPPOSE AND I'LL READ THEM.

18 MR. LEVENSON: YES, SIR. I THINK I HANDED A COMPLETE
19 SET TO THE COURT, AND I BELIEVE THAT THEY WERE FILED

20 SOMETIME SINCE APRIL 2. I DON'T KNOW IF IT'S REACHED THE
21 CLERK'S FILE. THAT'S WHY I MADE A DUPLICATE COPY FOR YOUR
22 HONOR.

23 THE COURT: THANK YOU.

24 MR. LEVENSON: THANK YOU, JUDGE.

25 THE COURT: THANK YOU. ANYTHING ELSE BY WAY OF

1 AFFIDAVITS? ANYBODY HAVE ANY POSITION ON THAT?

2 MRS. HAYES: YOUR HONOR, I'M SORRY. WE JUST WANTED
3 TO ADD ONE CITATION FOR THE RECORD.

4 THE COURT: ONE WHAT?

5 MRS. HAYES: ONE CITATION FOR THE RECORD IN SUPPORT
6 OF OUR OPPOSITION TO THE MOTION TO STRIKE. WE WOULD NOTE
7 THAT A TRUST CODE HAS ITS OWN DEFINITION OF KNOWLEDGE. A
8 PERSON HAS KNOWLEDGE OF A FACT AND THIS IS PURSUANT TO
9 62-7-104, SUBSECTION A. ONE HAS ACTUAL KNOWLEDGE OF IT
10 OR, TWO, HAS PER RECEIVED NOTIFICATION OF IT, OR, THREE,
11 FROM ALL FACTS AND CIRCUMSTANCES KNOWN TO THE PERSON AT
12 THE TIME IN QUESTION HAS REASON TO KNOW IT, AND, OF
13 COURSE, THE RULES HAVE TO BE READ IN CONJUNCTION WITH THE
14 CODE, AND I WOULD ALSO JUST MENTION RULE 801, EVIDENCE
15 RULES -- 801(C). NOT ALL OF THE INFORMATION WAS OFFER FOR
16 THE TRUTH OF THE MATTER. MUCH OF IT WAS OFFERED TO SHOW
17 DUE DILIGENCE WHICH BY ITS VERY NATURE WAS SOMEWHAT
18 CONCLUSORY AS SUBJECTIVE. A LOT OF THIS INFORMATION IS IN
19 THE RECORD TO SHOW THE GOOD FAITH REASONS THAT THE PR

20 TRUSTEES OPPOSE THE SETTLEMENT, YOUR HONOR, AND I ALSO
21 MAKE REFERENCE TO --

22 THE COURT: MA'AM, I'VE LET THEM ALL IN.

23 MRS. HAYES: I JUST WANTED TO PUT IT ON THE RECORD,
24 YOUR HONOR.

25 THE COURT: YOU CAN. I AM NOT CUTTING YOU OFF.

1 MRS. HAYES: 80-319 EXCEPTION, MOST OF THE
2 INFORMATION THAT YOUR HONOR IS WELL AWARE DEALS WITH
3 REPUTATION CONCERNING PERSONAL OR FAMILY HISTORY,
4 MARRIAGE, DIVORCE. THOSE ARE CRITICAL ISSUES HERE. SO,
5 THEY ARE NOT HEARSAY OR THEY ARE EXCEPTIONS TO THE RULE.
6 THANK YOU, YOUR HONOR.

7 THE COURT: THANK YOU.

8 MR. LEVENSON: JUDGE, MAY I SAY ONE THING IN
9 RESPONSE? I UNDERSTAND YOUR PATIENCE IS ALREADY WORN
10 THIN, BUT --

11 THE COURT: WELL, YOU CAN UNDERSTAND WHY IT HAS. I
12 MEAN, I HAVE GIVEN Y'ALL EVERY OPPORTUNITY TO MAKE A
13 RECORD, PROBABLY LONGER THAN MOST RECORDS WILL EVER GO UP
14 TO COLUMBIA. GO AHEAD.

15 MR. LEVENSON: YES, SIR, BUT IN RESPONSE TO WHAT
16 MRS. HAYES SAYS THE EXPRESSION OF OPINION WAS SEEKING AN
17 ADJUDICATION ON ISSUES SUCH AS SUMMARY JUDGMENTS TO HYNIE
18 BROWN THAT SHE IS NOT THE SPOUSE, SUMMARY JUDGMENT AS TO
19 TO THE INVALIDITY OF THE PURPORTED SETTLEMENT, SUMMARY

20 JUDGMENT AS TO THE WHETHER OR NOT THE PLAINTIFFS ARE
21 STATUTORY HEIRS OF JAMES BROWN EITHER UNDER STATE LAW OR
22 FEDERAL COPYRIGHT LAW, SUMMARY JUDGMENT AS TO THE
23 AUTHORITY OF THE ATTORNEY GENERAL, SUMMARY JUDGMENT AS TO
24 TO YOUR HONOR'S OWN AUTHORITY TO EVEN APPROVE THE
25 SETTLEMENT AGREEMENT. THAT'S WHAT THESE AFFIDAVITS WERE

1 OFFERED IN. SUMMARY JUDGMENT WITH RESPECT TO THE IN
2 TERROREM CLAUSE. THEY WANTED -- I MEAN, IN THEORY THEY
3 WERE GOING TO PRESENT AN ORDER TO YOUR HONOR WHICH SAID
4 TOMI BROWN IS NOT THE SPOUSE, LEVENSON'S CLIENTS ARE NOT
5 HEIRS, AND THIS COURT HAS NO JURISDICTION TO ENTERTAIN IT
6 AND WE BELIEVE WHEN YOU DO THAT YOU HAVE TO STATE PERSONAL
7 KNOWLEDGE.

8 THE COURT: THANK YOU. ALL RIGHT. THAT LEAVES US
9 WITH THE FINAL ARGUMENTS. NOW, BEAR IN MIND THAT I HAVE
10 HEARD EVERYTHING. I DON'T NEED REAL LENGTHY ARGUMENTS.

11 HOW LONG DO YOU NEED, PROFESSOR?

12 MR. MEDLIN: YOUR HONOR, WITH ALL DUE RESPECT I WANT
13 TO TAKE AN OPPORTUNITY TO EXPLAIN THE SETTLEMENT AGREEMENT
14 AND ALSO TO BRIEFLY TOUCH UPON ALL THE REASONS BECAUSE
15 THIS IS GOING TO BE APPEALED SO --

16 THE COURT: I JUST ASKED YOU HOW LONG YOU NEED.

17 MR. MEDLIN: I KNOW AND IT COULD BE 30 MINUTES OR
18 LONGER, YOUR HONOR, IF I MAY.

19 THE COURT: BUT I ASSUME THAT ONCE YOU DO YOURS

20 WE'RE NOT GOING TO HAVE TO HAVE REGURGITATION BY EVERYBODY
21 ELSE OF THE SAME ARGUMENT?

22 MR. MEDLIN: I BELIEVE THEY WILL BE ASLEEP BY THEN,
23 YOUR HONOR, AND, SO, THAT WON'T BE A PROBLEM.

24 THE COURT: I AM NOT GOING TO SAY IT.

25 MR. MEDLIN: THANK YOU, YOUR HONOR.

1 THE COURT: MR. BAILEY, HOW LONG DO YOU THINK YOU MAY
2 NEED?

3 MR. BAILEY: FIFTEEN MINUTES.

4 THE COURT: WELL, I AM NOT GOING TO CUT ANYBODY OFF.
5 GO AS LONG AS YOU WANT. IT'S 12:30. LET'S START BACK AT
6 -- IS 2 O'CLOCK OKAY?

7 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

8 THE COURT: PROFESSOR MEDLIN?

9 MR. MEDLIN: THANK YOU, YOUR HONOR. I WANT TO SPEAK
10 ON BEHALF OF ALL OF THE SETTling PARTIES, AND, SO,
11 HOPEFULLY ANY OTHER COMMENTS BY COUNSEL FOR THE OTHER
12 CLIENTS WHO ARE MEMBERS OF THE SETTling PARTIES WILL BE
13 SIMPLY ADDITIONS TO WHAT I SAY AND NOT REPETITIVE.

14 THE COURT: THANK YOU.

15 MR. MEDLIN: YOUR HONOR, AS YOU KNOW WE BELIEVE THAT
16 WE HAVE A BINDING SETTLEMENT AGREEMENT UNDER THE PROBATE
17 CODE BECAUSE THE PROBATE CODE ALLOWS PRIVATE BINDING
18 SETTLEMENT AGREEMENT AMONG PARTIES. IT DOESN'T REQUIRE
19 ALL OF THE PARTIES. IT ALLOWS THE PARTIES TO ENTER INTO

20 PARTIAL OR COMPLETE SETTLEMENT, AND WE BELIEVE THAT WE'VE
21 ALREADY HAD THAT, AND WE ALSO AS YOU KNOW YOUR HONOR ASKED
22 YOU TO APPROVE THAT SETTLEMENT AGREEMENT WHICH INCLUDES
23 THE DOCUMENTS THAT WE HAVE NOW PRESENTED TO THE COURT, AND
24 JUST VERY BRIEFLY, YOUR HONOR -- AND, OF COURSE, I AM
25 HAPPY TO ANSWER ANY QUESTIONS THAT YOU MAY HAVE -- I AM

1 GOING TO POINT OUT THE MORE FUNDAMENTAL ISSUES IN THE
2 SETTLEMENT AGREEMENT THAT TOMI RAE BROWN, MY CLIENT, IS
3 RECOGNIZED AS MR. BROWN'S SURVIVING SPOUSE AMONG THE
4 SETTLING PARTIES; THAT MR. LEVENSON'S CLIENTS AND
5 MR. BELL'S CLIENTS ARE RECOGNIZED AS THE CHILDREN AND
6 GRANDCHILDREN OF MR. BROWN AMONG THE SETTLING PARTIES;
7 THAT THERE WILL BE A REPLACEMENT OF THE CURRENTLY SERVING
8 PERSONAL REPRESENTATIVES AND TRUSTEES WITH A MANAGING
9 TRUSTEE WHO WILL BE CONTROLLED COMPLETELY BY THE ATTORNEY
10 GENERAL OF SOUTH CAROLINA. THE ATTORNEY GENERAL OF SOUTH
11 CAROLINA UNDER THE DOCUMENTS HAS FULL POWER TO REMOVE AND
12 REPLACE ANY TRUSTEE SERVING EITHER AS TRUSTEE OF THE
13 SETTLEMENT ENTITY WHICH WOULD BE THE JAMES BROWN LEGACY
14 TRUST OR THE CHARITABLE TRUST, THE "I FEEL GOOD TRUST" OR
15 THE 2000 IRREVOCABLE TRUST.

16 THERE WILL BE FAMILY MEMBERS WHO WILL ALSO BE
17 TRUSTEES. EVERYONE AGREES THAT THE FAMILY MEMBERS' INPUT
18 AND ADVICE ABOUT MR. BROWN'S INTENTIONS WILL BE WELCOMED.
19 IN FACT, WE'VE HAD DISCUSSIONS WITH MR. BAUKNIGHT ABOUT

20 THAT AND IF HE IS APPOINTED AS A SUCCESSOR TRUSTEE HE HAS
21 INDICATED HIS GREAT INTEREST IN LISTENING TO THE ADVICE
22 AND INPUT OF THE BROWN FAMILY MEMBERS.

23 THERE IS A FAMILY EDUCATIONAL TRUST, A PRIVATE TRUST,
24 THAT IS CARVED OUT OF THE 2000 IRREVOCABLE TRUST AND THAT
25 TRUST WILL CONTINUE, BUT WE ARE MAKING ONE CHANGE TO THAT,

1 YOUR HONOR, FROM MR. BROWN'S DOCUMENTS THAT THE BENEFIT
2 WILL PASS NOT JUST TO THE GRANDCHILDREN OF MR. BROWN BUT
3 TO THEIR ISSUE AS WELL FOR AS LONG AS THE RULE AGAINST
4 PERPETUITIES WILL ALLOW. AT THAT POINT WHATEVER IS LEFT
5 IN THE TRUST CONSISTENT WITH MR. BROWN'S DOCUMENTS WOULD
6 PASS OVER TO THE CHARITABLE TRUST AT THAT POINT.
7 WE CREATED A SETTLEMENT ENTITY ORIGINALLY IN AUGUST
8 OF 2008 BEFORE WE WERE JOINED BY MR. BELL'S CLIENT IN
9 WHICH THE PERCENTAGE OF OWNERSHIP INTEREST IN THE
10 SETTLEMENT ENTITY WAS 50 PERCENT FOR THE CHARITABLE TRUST;
11 25 PERCENT FOR TOMI RAE BROWN WHICH AS WE DISCUSSED AT THE
12 LAST CONVENING OF THIS HEARING, YOUR HONOR, INCLUDES
13 WHATEVER SHARE IS GOING TO PASS TO JAMES BROWN, II WHICH
14 AS YOU MAY RECALL WOULD BE THE SAME SHARE AS THE CHILDREN
15 SET ASIDE IN A PROTECTED IRREVOCABLE TRUST AND ANOTHER
16 SHARE OF THAT SAME AMOUNT BUT AS A REMAINDER INTEREST ALSO
17 SET ASIDE IN A PROTECTED TRUST.
18 WE AGREED IN THAT DOCUMENT THAT WE INTENDED TO HAVE
19 TERRY JOIN US -- MR. BELL'S CLIENT JOIN US -- WHICH WE

20 DID. THE SETTLEMENT AGREEMENT IN ITS ORIGINAL ITERATION
21 TREATED THOSE SORTS OF SITUATIONS AS AN EXPENSE, BUT THE
22 NET RESULT WOULD BE THAT THE CHARITABLE TRUST HAS
23 47.5 PERCENT OWNERSHIP INTEREST IN THE OVERALL SETTLEMENT
24 ENTITY. THE BROWN CHILDREN -- THE SIX BROWN CHILDREN NOT
25 COUNTING JAMES BROWN, II -- WOULD HAVE A TOTAL OF

1 28.75 PERCENT OWNERSHIP INTEREST WHICH IS 4.79 PERCENT PER
2 CHILD AND MRS. BROWN'S SHARE WOULD, THEREFORE, AS A NET
3 RESULT REDUCE DOWN TO 23.75 PERCENT.

4 AS PART OF OUR AGREEMENT TO HAVE TERRY BROWN JOIN US
5 WE DID GIVE HIM A RIGHT OF FIRST REFUSAL FOR THE SALE OF
6 ASSETS FOR 10 YEARS. JUST TO MAKE IT CLEAR UNDER THE
7 DOCUMENTS THERE IS NO REQUIREMENT WHATSOEVER THAT THE
8 SETTLEMENT ENTITY SELL ANY ASSETS. THE SALE OF ANY ASSETS
9 WILL REQUIRE AT LEAST A TWO-THIRDS MAJORITY VOTE. WE
10 DON'T BELIEVE THAT THIS RIGHT OF FIRST REFUSAL CHILLS THE
11 VALUE OF THE ESTATE. EVEN IF IT DID IT WOULD HAVE AN
12 EFFECT ONLY IF WE DECIDED TO SELL THE ESTATE.

13 YOUR HONOR, WE'RE WAY TOO PREMATURE IN OUR
14 UNDERSTANDING OF WHAT HAS BEEN PROVIDED TO US BY THE
15 FIDUCIARIES AS TO THE VALUE OF THE ESTATE, THE ASSETS, AND
16 SO FORTH. SO, WE CAN'T EVEN BEGIN TO THINK WHETHER WE
17 WOULD WANT TO SELL SOME OR ALL OF THE ASSETS OF THE ESTATE
18 AND IN ANY EVENT IT MAY MAKE GREAT SENSE TO MAINTAIN THE
19 ASSETS OF THE ESTATE AND, IN EFFECT, OPERATE THE JAMES

20 BROWN LEGACY AS PART OF THE SETTLEMENT ENTITY.
21 THAT'S PART OF WHAT OUR SUCCESSOR FIDUCIARY WOULD
22 LOOK INTO WITH OUR ASSISTANCE. WE'D GET THE PROPER ADVICE
23 AND COUNSEL AS TO WHAT IS BEST FOR THE SETTLEMENT ENTITY
24 AND, OF COURSE, THE 800 POUND GORILLA IN OUR SETTLEMENT
25 ENTITY IS THE CHARITABLE INTEREST AS REPRESENTED BY THE

1 ATTORNEY GENERAL. THAT BY THE WAY, YOUR HONOR, IS THE
2 REASON THAT WE CHOSE PERCENTAGE INTERESTS BECAUSE BASED ON
3 A DERTH OF INFORMATION AND THE INVENTORY AND APPRAISEMENT
4 AND IN THE ESTATE TAX WE JUST HAVE NO IDEA WHAT THE ASSETS
5 ARE AND WHAT THEY'RE WORTH, AND, SO, WE'VE AGREED TO
6 SETTLE BASED ON A PERCENTAGE INTEREST.

7 YOUR HONOR, AS I MENTIONED BEFORE THE BREAK THE
8 ATTORNEYS' FEES THAT WILL BE PAID BY THE SETTLING PARTIES
9 WILL COME FROM THE SETTLING PARTIES, WILL NOT BE CHARGED
10 TO THE ATTORNEY GENERAL ON BEHALF OF THE CHARITABLE TRUST,
11 AND, OF COURSE, THE ATTORNEY GENERAL HAS NO ATTORNEYS'
12 FEES THAT WOULD BE CHARGED AGAINST THE CHARITABLE TRUST.
13 ANY ATTORNEYS' FEES THAT, ULTIMATELY, WOULD IMPACT THE
14 CHARITABLE TRUST, ANY FEES WOULD BE THOSE CREATED BY THE
15 PERSONAL REPRESENTATIVES AND TRUSTEES AND THEIR COUNSEL.

16 NOW, WE ALSO AGREED THAT THE WILL AND TRUST CONTEST
17 WOULD BE BE DISMISSED BY BOTH MS. BROWN AND MR. LEVENSON'S
18 CLIENTS, AND, SO, OTHER THAN THE ISSUE OF WHAT THE CHARITY
19 ENDS UP WITH THE ESSENCE OF MR. BROWN'S ESTATE PLAN IS

20 MAINTAINED AS THE FIDUCIARIES HAVE CLAIMED IS HIS ESTATE
21 PLAN. OF COURSE, YOUR HONOR, WE BELIEVE THAT WE HAD
22 ABSOLUTE GOOD FAITH REASONS TO DISPUTE THE VALIDITY OF
23 THESE DOCUMENTS CREATING A 2000 WILL AND TRUST AS WELL AS
24 OTHER REASONS THAT I'LL GET INTO MORE DETAIL ABOUT IN JUST
25 A MINUTE.

1 YOUR HONOR, WE BELIEVE THIS SETTLEMENT AGREEMENT
2 EFFECTIVELY RESOLVES ALL LITIGATION AMONG THE
3 BENEFICIARIES AND POTENTIAL BENEFICIARIES, NOT ONLY AT THE
4 STATE COURT LEVEL BUT AT THE FEDERAL LEVEL AND THE
5 INTERNATIONAL LEVEL BECAUSE THERE MAY BE INTERNATIONAL
6 FEDERAL -- INTERNATIONAL COPYRIGHT ISSUES AS WELL. THE
7 ONLY LITIGATION THAT WILL REMAIN AS WE SEE IT, YOUR HONOR,
8 WILL BE LITIGATION THAT TAKES PLACE -- AND I HATE TO USE
9 THIS TERM, BUT I WANT TO USE IT IN A TYPICAL ESTATE
10 ADMINISTRATION -- CLAIMS FOR AND AGAINST THE ESTATE BY
11 THIRD PARTIES. THE BENEFICIARIES HAVE RESOLVED ALL OF
12 THEIR DISPUTES. EVEN THE SO-CALLED NON-SETTLING
13 PARTIES -- MR. GRIFFIN'S CLIENTS AND MR. BARR'S CLIENTS --
14 HAVE STIPULATED BACK IN MARCH, I BELIEVE IT WAS, THAT THEY
15 UNDERSTAND THAT WE'RE NOT TRYING TO IMPOSE ON THEIR
16 RIGHTS, BUT, YOUR HONOR, WE THINK THAT THE ONLY ISSUE
17 THAT'S GOING TO ARISE WITH THEM IS GOING TO BE AS TO THEIR
18 RIGHTS, IF ANY, TO THE FEDERAL COPYRIGHT TERMINATION
19 RIGHTS.

20 THE ONLY OTHER REMAINING LITIGATION, YOUR HONOR, THAT
21 WE FORESEE IF THIS SETTLEMENT IS APPROVED IS THE PROMISED
22 APPEAL FROM MRS. POPE AND MR. BUCHANAN WHO TESTIFIED UNDER
23 OATH, YOUR HONOR, THAT THERE WAS NOT A GOOD FAITH
24 CONTROVERSY AND THAT THERE WAS NOT ENOUGH EVIDENCE TO COME
25 TO A SETTLEMENT AT THIS STAGE, AND, YET, YOUR HONOR, LAST

1 FRIDAY THEY MADE AN OFFER OF SETTLEMENT. NOW, I DON'T
2 UNDERSTAND HOW THAT CAN HAPPEN WHEN THEY HAVE BEEN TELLING
3 US THAT WE DIDN'T HAVE THE GROUNDS TO CREATE A SETTLEMENT,
4 AND, YET, THEY TAKE THE POSITION NOW THAT THEY CAN PROPOSE
5 A SETTLEMENT. MAYBE THEY HAVE NOW DECIDED THERE IS A GOOD
6 FAITH CONTROVERSY.

7 MR. BAILEY: YOUR HONOR, I OBJECT TO THIS. THIS WAS
8 NOT ANYTHING THAT WAS BROUGHT OUT IN THE HEARINGS
9 THROUGHOUT.

10 MR. MEDLIN: YOUR HONOR, THIS WAS MAILED --

11 MR. BAILEY: AND THIS IS SETTLEMENT NEGOTIATIONS AND
12 SHOULD NOT BE DISCUSSED IN THIS MANNER.

13 THE COURT: WELL, RULE 68, OFFER OF COMPROMISE.

14 MR. MEDLIN: YOUR HONOR, THEY MAILED YOU A COPY.

15 MR. BAILEY: NO, WE DID NOT MAIL A COPY OF IT TO THE
16 COURT. IT APPARENTLY WAS FILED, BUT NOT PRESENTED TO THE
17 COURT.

18 THE COURT: WELL, IT WAS SENT TO ME. I'LL JUST PUT
19 IT LIKE THAT. I'VE GOT IT. ALL RIGHT. IT HAS NOT BEEN

20 BROUGHT UP IN THE HEARINGS. SO, MOVE ALONG.

21 MR. MEDLIN: ALL RIGHT, YOUR HONOR. AGAIN, THE ONLY
22 PARTIES WHO HAVE AN INTEREST IN DETERMINING WHETHER THERE
23 SHOULD BE A SETTLEMENT HAVE SETTLED. THE PERSONAL
24 REPRESENTATIVES AND TRUSTEES HAVE INPUT UNDER THE LAW AS
25 WE HAVE DISCUSSED, YOUR HONOR, ON NUMEROUS OCCASIONS BUT

1 THEY DO NOT HAVE A VOTE. THEY DO NOT HAVE VETO. SECTION
2 62-3-1101 AND 3-1102 ARE CLEAR ABOUT THAT. THE COMMENT TO
3 THE UNIFORM PROBATE CODE SAYS THERE IS A REASON FOR
4 THAT -- THAT WE DON'T WANT FIDUCIARIES TO HAVE A VOTE
5 BECAUSE THEY MAY HAVE A CONFLICT OF INTEREST IN WANTING TO
6 MAINTAIN LITIGATION TO BE ABLE TO PROMULGATE FEES, ET
7 CETERA.

8 NOW, LET ME JUST IF I MAY MENTION THE MORAN CASE.
9 THE MORAN CASE IS NOT AN -- EXCUSE ME, IT IS AN APPOSITE,
10 YOUR HONOR, TO THIS SITUATION. IN THE MORAN CASE THE
11 TRUSTEE AGREED TO THE SETTLEMENT. IT WAS THE BENEFICIARY
12 UNIVERSITY OF SOUTHERN CALIFORNIA THAT ARGUED THAT IT HAD
13 TO APPROVE THE SETTLEMENT, AND OUR COURT SAID THAT IF THE
14 TRUSTEE IS ON BOARD, THEN THE BENEFICIARY IS REPRESENTED.
15 THE BENEFICIARY HAS A VOICE, BUT THE BENEFICIARY DOESN'T
16 HAVE A VOTE, DOESN'T HAVE A VETO. IT'S NOT AT ALL LIKE
17 THIS SITUATION, YOUR HONOR, WHERE WE DON'T HAVE THE
18 CONSENT OF THE TRUSTEES AND THE PERSONAL REPRESENTATIVES.
19 SO, MORAN HAS NOTHING TO DO WITH CHANGING WHAT SECTION

20 62-3-1102 CLEARLY SAYS.

21 NOW, YOUR HONOR, WITH RESPECT TO OUR REQUEST THAT THE
22 FIDUCIARIES BE REPLACED AS PART OF OUR SETTLEMENT
23 AGREEMENT WE WOULD SUGGEST THAT THE FIDUCIARIES HAVEN'T
24 SHOWN THAT THEY UNDERSTAND THE DIFFERENCE BETWEEN
25 PROTECTING THE ESTATE WHICH IS THEIR CHARGE AND THE ESTATE

1 PLAN WHICH IS WHAT THEY CLAIM TO BE THE DOCUMENTS THAT ARE
2 VALID AND BINDING UNDER THIS 2000 IRREVOCABLE TRUST AND
3 WILL, AND AT SOME POINT, YOUR HONOR, WHEN THERE IS ENOUGH
4 SMOKE THERE IS FIRE. YOU MAY NOT AS A FIDUCIARY BE
5 REQUIRED TO PROTECT AN ESTATE PLAN, BUT YOU ALWAYS HAVE TO
6 PROTECT THE ESTATE.

7 IN FACT, IN THIS CASE WE WOULD ARGUE THAT BLINDLY
8 PROTECTING THE ESTATE PLAN AND TRYING TO SCUTTLE THIS
9 SETTLEMENT WILL ACTUALLY WRECK THE ESTATE BECAUSE OF ALL
10 OF THE LITIGATION THAT WILL TAKE PLACE THAT WE DISCUSSED
11 AT THE LAST CONVENING OF THIS HEARING. YOUR HONOR, THEY
12 SAY THAT THEIR DUE PROCESS RIGHTS ARE BEING TRAMPLED UPON.
13 WELL, YOUR HONOR, I AM NOT AWARE THAT FIDUCIARIES HAVE
14 THOSE KINDS OF DUE PROCESS RIGHTS. FIDUCIARIES ARE
15 SUPPOSED TO SERVE THE BENEFICIARIES, AND I THINK ONE OF
16 THE PROBLEMS IN THIS CASE IS THAT THERE IS EVIDENCE THAT
17 EVERY FIDUCIARY WHO'S BEEN SERVING SO FAR FEELS LIKE
18 THEY'RE EMPOWERED TO DO WHAT THEY WANT TO DO, THAT THE
19 ESTATE IS THEIRS, AND THAT THERE IS NO RECOGNITION OF WHAT

20 THE BENEFICIARIES WANT TO DO.

21 AN ESTATE AND TRUST -- THEY'RE ALL ABOUT
22 BENEFICIARIES. FIDUCIARIES ARE THERE TO SERVE, NOT TO TRY
23 TO HARM THE EVENTUAL BENEFICIAL SETTLEMENT OF A CASE
24 BECAUSE THEY CLAIM THEIR DUE PROCESS RIGHTS ARE BEING
25 TRAMPLED UPON. IF THEY HAD DUE PROCESS RIGHTS, YOUR

1 HONOR, YOU WOULDN'T HAVE THE POWER UNDER THE PROBATE AND
2 THE TRUST CODE TO REMOVE THEM SUMMARILY OR TO APPOINT
3 SUBSTITUTES TO RESTRAIN THEM, ET CETERA. SO, YOUR HONOR,
4 THE DUE PROCESS ARGUMENT I DON'T THINK CAN BE GIVEN ANY
5 KIND OF WEIGHT.

6 THE SETTLEMENT ASKS FOR THE REPLACEMENT OF THE
7 FIDUCIARIES WITH A SUCCESSOR PROFESSIONAL FIDUCIARY. NOW,
8 WE BELIEVE YOU HAVE THE POWER TO DO THAT IN A COUPLE OF
9 WAYS. FIRST OF ALL, BY APPROVING THE SETTLEMENT WHATEVER
10 MR. BROWN'S DOCUMENTS SAID ABOUT REPLACING FIDUCIARIES,
11 THAT CAN BE AMENDED FOR PURPOSES OF THIS SETTLEMENT. THAT
12 IS THE VERY PURPOSE OF APPROVING A SETTLEMENT WHICH MAY
13 CHANGE SOME OF THE STATED PROVISIONS OF A DOCUMENT.

14 SECONDLY, IF YOU APPROVE A SETTLEMENT, THE OPERATIVE
15 DOCUMENTS GIVE THE ATTORNEY GENERAL OF SOUTH CAROLINA THE
16 RIGHT TO APPOINT, REMOVE, AND REPLACE THE TRUSTEE, THE
17 FIDUCIARIES IN THIS CASE. YOUR HONOR, IF WE DON'T DO
18 THAT, THEN WE HAVE ALREADY PETITIONED FOR THE REMOVAL OF
19 THE FIDUCIARIES. THAT'S DOWN THE LINE AND, HOPEFULLY,

20 THAT'S NOT SOMETHING WE'LL EVER HAVE TO GET TO, BUT WE
21 WILL HAVE TO GET TO THAT IF THE FIDUCIARIES AREN'T
22 REPLACED AS PART OF THE APPROVAL OF THIS SETTLEMENT.

23 NOW, THERE ARE A COUPLE OF WAYS THAT WE CAN DO THAT.
24 WE CAN ARGUE UNDER SECTION 62-7-706 THAT IF ALL OF THE
25 QUALIFIED BENEFICIARIES INCLUDING THE ATTORNEY GENERAL

1 ASKS FOR A REPLACEMENT OF THE FIDUCIARIES THEN YOUR HONOR
2 HAS THE POWER TO REPLACE THE FIDUCIARIES WITHOUT CAUSE,
3 WITHOUT FINDING ANY FAULT ON BEHALF OF THE FIDUCIARIES,
4 AND, YOUR HONOR, OUR SETTLEMENT APPROVAL DOESN'T ASK FOR A
5 FINDING OF ANY FAULT ON BEHALF OF THE FIDUCIARIES. WE
6 JUST SIMPLY ASK THAT THEY BE REPLACED. SO, THERE IS A
7 SEPARATE LEGAL MECHANISM TO DO THAT EVEN IF WE DON'T HAVE
8 THAT AS PART OF OUR SETTLEMENT APPROVAL, BUT IT WOULD BE
9 INEFFICIENT AND UNNECESSARY TO HAVE TO GO THROUGH THAT.
10 YOUR HONOR, IT DOESN'T MATTER WHETHER THE SETTLEMENT
11 IS APPROVED OR NOT. IF THE SETTLEMENT ISN'T APPROVED,
12 THEN THE ATTORNEY GENERAL ACCORDING TO MRS. POPE AND
13 MR. BUCHANAN ON BEHALF OF THE CHARITIES WOULD BE THE
14 PRIMARY BENEFICIARIES. THE ATTORNEY GENERAL WANTS THE
15 FIDUCIARIES REPLACED EITHER WAY. SO, THAT'S AN ISSUE
16 WE'RE NOT GOING TO AVOID, AND THEN FINALLY, YOUR HONOR, AT
17 SOME POINT IF WE HAVE TO WE WILL DISCUSS WHETHER THERE IS
18 CAUSE FOR REMOVAL. WE DON'T WANT TO DO THAT, YOUR HONOR.
19 SO, HOPEFULLY, BY APPROVING THIS SETTLEMENT WE'LL AVOID

20 THAT PROBLEM.

21 NOW, IT'S VERY IMPORTANT TO US FOR ANY NUMBER OF
22 REASONS THAT WE REPLACE THE FIDUCIARIES AS A PART OF THE
23 SETTLEMENT AGREEMENT, BUT THE MOST IMPORTANT REASON, YOUR
24 HONOR, IS THEY'VE ALREADY SAID THAT THEY'RE GOING TO
25 APPEAL ANY APPROVAL OF THE SETTLEMENT. AT THAT POINT THEY

1 HAVE AN IRRECONCILABLE CONFLICT OF INTEREST. THEY CAN'T
2 SERVE AS BENEFICIARIES UNDER AN APPROVED -- THEY CAN'T
3 SERVE THE BENEFICIARIES UNDER AN APPROVAL SETTLEMENT
4 AGREEMENT IF THEY'RE OPPOSING THE VERY SETTLEMENT.

5 THE FIDUCIARIES HAVE ARGUED THAT DEANNA HAD A
6 CONFLICT OF INTEREST AND LOST HER RIGHT TO SERVE AS
7 TRUSTEE BECAUSE SHE BROUGHT A TRUST CONTEST. THAT'S THE
8 VERY SAME IDEA, YOUR HONOR, THAT WE SUGGEST AS A PROBLEM
9 IF THE SETTLEMENT IS APPROVED AND THE FIDUCIARIES AREN'T
10 REPLACED. THEY WILL BE IN AN IRRECONCILABLE CONFLICT OF
11 INTEREST SITUATION. THE ESTATE WILL NOT BE ABLE TO MOVE
12 FORWARD IN THAT CASE.

13 NOW, YOUR HONOR, WE THINK THERE ARE ANY NUMBER OF
14 REASONS TO APPROVE THIS SETTLEMENT AND WE'VE TALKED ABOUT
15 A LOT OF THOSE OVER THE LAST EIGHT DAYS OF TESTIMONY AND
16 ARGUMENT, AND I WOULD LIKE THE COURT'S INDULGENCE. I'LL
17 GET INTO SOME OF THOSE AS BRIEFLY AS I CAN, BUT THERE IS
18 REALLY A KERNEL OF AN ISSUE HERE, AND THE ISSUE IS WHETHER
19 THE CHARITABLE BENEFICIARIES GOT ENOUGH OUT OF THE
20 SETTLEMENT.

21 YOUR HONOR, I DON'T THINK THAT WHAT MY CLIENT GOT
22 VIS-A-VIS MR. LEVENSON'S CLIENTS AND MR. BELL'S CLIENT
23 WOULD BE SOMETHING OF A CONCERN AS TO THE REASONABLENESS
24 OF A SETTLEMENT. THE CONCERN IS WHETHER THE CHARITABLE
25 BENEFICIARIES ARE GETTING ENOUGH UNDER THE SETTLEMENT. TO

1 ANSWER THE KERNEL OF THAT QUESTION, YOUR HONOR, WE SUGGEST
2 THERE ARE TWO QUESTIONS THAT NEED TO BE ASKED.

3 FIRST OF ALL, IS THE SOUTH CAROLINA ATTORNEY GENERAL
4 QUALIFIED TO REPRESENT THE CHARITABLE BENEFICIARIES? YOUR
5 HONOR, THE LAW SAYS SO. MR. JONES WILL ADDRESS THAT, I
6 BELIEVE, IN A LITTLE MORE DEPTH WHEN HE ADDRESSES THE
7 COURT. WE FOUND NO LAW TO THE CONTRARY, YOUR HONOR, THAT
8 THE ATTORNEY GENERAL DOESN'T HAVE THE POWER TO REPRESENT
9 CHARITABLE BENEFICIARIES.

10 SECOND SIMPLE QUESTION, IF THE ATTORNEY GENERAL DOES
11 HAVE THAT POWER, HAS THE ATTORNEY GENERAL DONE ITS JOB?
12 UNLESS THE ATTORNEY GENERAL EITHER DOESN'T HAVE THE POWER
13 TO REPRESENT THE CHARITABLE BENEFICIARIES OR HASN'T DONE
14 ITS JOB, HASN'T DONE ITS DUE DILIGENCE, THEN THE ANSWER TO
15 THE SIMPLE ISSUE WHICH IS ARE THE CHARITIES BEING TREATED
16 REASONABLY IS YES. THE ATTORNEY GENERAL HAS STATED IN
17 THIS COURT -- THE ATTORNEY GENERAL'S OFFICE HAS STATED IN
18 THIS COURT THAT THE ATTORNEY GENERAL'S OFFICE BELIEVES THE
19 CHARITIES HAVE DONE VERY WELL UNDER THIS SETTLEMENT, AND,

20 YOUR HONOR, WE'LL TALK ABOUT THAT IN A LITTLE MORE DETAIL
21 AS WELL.

22 AS I UNDERSTAND THE ARGUMENT OF THE FIDUCIARIES THEY
23 SOMEHOW ARGUE THEY CAN BIND THE CHARITIES BUT NOT THE
24 ATTORNEY GENERAL. YOUR HONOR, THAT'S JUST ABSURD AS A
25 GENERAL PRINCIPAL, BUT ESPECIALLY IN LIGHT OF 62-3-1102,

1 AND, AGAIN, THE COMMENT TO THE UNIFORMED VERSION WHICH CAN
2 BE INCORPORATED INTO A SOUTH CAROLINA COURT'S
3 DETERMINATION THAT THEY DON'T HAVE A VOTE AND THERE IS A
4 REASON THEY DON'T HAVE A VOTE.

5 NOW, IF THEY DON'T HAVE A VOTE AND THEY CAN'T
6 REPRESENT -- THEN THEY CAN'T REPRESENT BENEFICIARIES WITH
7 RESPECT TO THAT DETERMINATION. THERE ARE ONLY TWO PEOPLE
8 WHO CAN DO THAT, YOUR HONOR. ONE IS THE ATTORNEY GENERAL
9 OF SOUTH CAROLINA AND THE OTHER, OF COURSE, IS YOUR HONOR.

10 THE COURT: HOLD ON ONE SECOND.

11 MR. MEDLIN: YOUR HONOR, ONE OF THE PRIMARY BENEFITS
12 OF THIS SETTLEMENT AGREEMENT IS THAT IT UNIFIES
13 MR. BROWN'S FAMILY IN HONORING HIS LEGACY. TO DENY THAT
14 UNITY, YOUR HONOR, WE WOULD SUGGEST DISPARAGES THE LEGACY
15 OF MR. BROWN AND WHICH IS A PRIMARY IMPORTANCE TO THE
16 SETTLING PARTIES, THE FAMILY MEMBERS, AND THE ATTORNEY
17 GENERAL OF SOUTH CAROLINA.

18 YOUR HONOR, THE FIDUCIARIES HAVE ARGUED THAT THERE IS
19 IMPROPER NOTICE, THAT WE DON'T HAVE ALL OF THE PARTIES

20 INVOLVED, AND A LOT OF THAT GOT DISCUSSED WHEN
21 MR. BUCHANAN WAS TESTIFYING, BUT I WOULD LIKE TO WRAP ALL
22 OF THAT UP AS BRIEFLY AS POSSIBLE BECAUSE THERE ARE A
23 NUMBER OF REASONS WHY THAT IS NOT AN APPROPRIATE ISSUE
24 HERE. ALL OF THE PARTIES ARE REPRESENTED AS I'LL EXPLAIN
25 IN MORE DETAIL IN JUST A MINUTE, BUT, YOUR HONOR, EVEN IF

1 THEY WEREN'T, THE PROBATE CODE ALLOWS A SETTLEMENT AMONG
2 FEWER THAN ALL THE PARTIES TO A DISPUTE JUST LIKE THE LAW
3 GENERALLY ALLOWS A SETTLEMENT AMONG FEWER THAN ALL THE
4 PARTIES TO A DISPUTE. AS LONG AS THEY'RE NOT ADVERSELY
5 AFFECTING ANYONE ELSE'S INTEREST, THEN FEWER THAN ALL
6 PARTIES CAN COME TO A SETTLEMENT, AND THE ONLY INTEREST
7 THAT ARGUABLY WAS ADVERSELY AFFECTED ACCORDING TO THE
8 FIDUCIARIES WAS THE INTEREST OF THE CHARITABLE
9 BENEFICIARIES BUT THE ATTORNEY GENERAL IS A PARTY TO THE
10 SETTLEMENT AND, AGAIN, UNLESS YOUR HONOR DECIDES THAT THE
11 ATTORNEY GENERAL CANNOT REPRESENT CHARITABLE
12 BENEFICIARIES, THEN THE CHARITABLE BENEFICIARIES ARE
13 PARTIES AND SO THEIR INTEREST AREN'T AFFECTED BECAUSE
14 THEY'RE OUTSIDE OF THE SETTLEMENT. THEY ARE WITHIN THE
15 SETTLEMENT.

16 AS YOUR HONOR HAS HIMSELF RECOGNIZED FROM THE BENCH
17 THE PROBATE CODE DEFINES SUCCESSORS BROADLY AS ANYBODY WHO
18 MIGHT TAKE UNDER THE WILL OR UNDER THE ESTATE SO THAT
19 WOULD EVEN INCLUDE SOMEBODY WHO IS ENTITLED TO A SPOUSAL

20 SHARE OR AN OMITTED CHILD'S SHARE. WE'VE STATED TO YOUR
21 HONOR THAT WHEN WE PROPOSED OUR SETTLEMENT WE HAVE NO
22 INTENTIONS OF NOT ONLY IMPACTING THE RIGHTS OF
23 NON-SETTLING PARTIES WHO MIGHT BE BENEFICIARIES BUT ALSO
24 CREDITORS AND TAXING AUTHORITIES. WE UNDERSTAND THE
25 ADMINISTRATION OF THE ESTATE HAS TO GO FORWARD. WE

1 UNDERSTAND THAT THE LAW PROVIDES A SYSTEM FOR PAYING
2 CREDITORS WHOSE CLAIMS ARE PROPERLY ALLOWED. WE
3 UNDERSTAND THAT THE TAXING AUTHORITIES ARE GOING TO GET
4 PAID THE TAXES THAT MIGHT BE OWED.

5 SO, WE'RE NOT TRYING TO INTERFERE WITH ALL OF THAT.
6 WE'RE JUST TRYING TO AGREE AMONG OURSELVES THIS IS A FAIR
7 SETTLEMENT BUT THE BENEFIT OF THAT, YOUR HONOR, AS I SAID
8 IS THAT IT MOOTS THE ISSUES THAT HAVE CONSUMED THIS COURT
9 WITH LITIGATION OVER THE LAST COUPLE OF YEARS. THE WILL
10 AND TRUST CONTEST GO AWAY. ELECTED SHARE AND OMITTED
11 SPOUSE'S SHARE AND OMITTED CHILD'S SHARE ISSUES BECOME
12 MOOT. THE WILL AND TRUST ARE UPHELD. AGAIN, THE ONLY
13 DIFFERENCE IS WE CARVE OUT A LITTLE DIFFERENT ALLOCATION
14 AMONG THE PARTIES, BUT THAT ALLOCATION ALSO INCLUDES OTHER
15 RIGHTS THAT I'LL DISCUSS THAT MAY, IN FACT, END UP GIVING
16 THE CHARITABLE BENEFICIARIES MORE THAN THEY WOULD HAVE
17 GOTTEN EVEN IF THE ATTORNEY GENERAL PREVAILED ON ALL OF
18 THE ISSUES BEFORE IT, BUT, YOUR HONOR, WE BELIEVE ALL OF
19 THE PARTIES ARE REPRESENTED.

20 AGAIN, RECITING THE TESTIMONY OR RECALLING THE
21 TESTIMONY THROUGH MR. BUCHANAN, THE PROBATE CODE IN
22 SEVERAL PLACES BOTH IN THE PROBATE PART, THE OLDER PART,
23 AND THE NEW TRUST CODE PART PROVIDES THAT TRUSTEES AND
24 PERSONAL REPRESENTATIVES REPRESENT AND BIND THE
25 BENEFICIARIES EXCEPT FOR THOSE WHO HAVE A CONFLICT OF

1 INTEREST, AND I RECALL TESTIMONY THAT THE FIDUCIARIES
2 DON'T THINK THEY HAVE A CONFLICT OF INTEREST WITH THE
3 BENEFICIARIES. I WOULD HOPE THEY DON'T BECAUSE IF THEY'VE
4 ADMITTED TO THAT, THEN I THINK WE'VE GOT SOME PROBLEMS.
5 SO, WE START WITH THE ASSUMPTION THAT THERE IS NO
6 SUCH CONFLICT OF INTEREST. SO, HOW COULD SOMEBODY TAKE
7 FROM THE PROBATE ESTATE OF JAMES BROWN? THEY CAN EITHER
8 TAKE UNDER THE 2000 WILL OR THEY CAN TAKE UNDER THE 1999
9 WILL OR THEY CAN TAKE UNDER ANY PRIOR WILL THAT WASN'T
10 PRESENTED TO THE COURT OR THEY CAN TAKE IT UNDER
11 INTESTACY. WELL, WE'VE ONLY HAD TWO WILLS PROPOUNDED TO
12 THIS COURT AND EVEN IF THERE WERE OTHER WILLS MRS. POPE
13 AND MR. BUCHANAN WERE NOT APPOINTED AS FIDUCIARIES FOR
14 THOSE WILLS. THEY WERE APPOINTED AS FIDUCIARIES FOR THE
15 ESTATE. WHETHER ONE WILL IS VALID OR NOT OR WHETHER HE
16 DIES INTESTATE THEY ARE ARE FIDUCIARIES, PERSONAL
17 REPRESENTATIVES FOR THE ENTIRE ESTATE.
18 SO, ANY BENEFICIARY WHO WOULD TAKE UNDER ANY MATTER A
19 PROBATE ASSET OF MR. BROWN THEY'VE BEEN REPRESENTED BY THE

20 FIDUCIARIES WHO REGARDLESS OF THEIR CLAIMS ABOUT NOTICE
21 HAVE CERTAINLY PARTICIPATED IN THIS LENGTHY HEARING AND
22 CONVERSATION. THE SAME IS TRUE FOR ANY BENEFICIARY WHO
23 WOULD TAKE UNDER A TRUST. NOW, THE CHARITABLE
24 BENEFICIARIES ARE CLEARLY REPRESENTED BY THE ATTORNEY
25 GENERAL OF SOUTH CAROLINA. ANY OTHER BENEFICIARIES THAT

1 MIGHT SOMEHOW HAVE A BENEFIT UNDER THE TRUST -- ALTHOUGH I
2 DON'T KNOW WHO THEY WOULD BE OTHER THAN THE GRANDCHILDREN
3 WHO ARE ALSO REPRESENTED IN THIS AND OTHER WAYS -- THEY
4 ARE REPRESENTED BY THE TRUSTEES OF THE TRUST. IF THE 2000
5 TRUST IS VALID, MRS. POPE AND MR. BUCHANAN BY LAW NOTICE
6 TO THEM IS NOTICE TO THE BENEFICIARIES.

7 WE'VE HAD MR. DALLAS AND MR. BRADLEY AND MR. CANNON
8 REPRESENTED IN THIS HEARING. THEY WERE SOME OF THE
9 TRUSTEES OF THE '99 TRUST IF VALID. THEY WOULD,
10 THEREFORE, BY LAW REPRESENT ANY BENEFICIARY WHO WOULD TAKE
11 UNDER THAT TRUST. WE HAVE MINOR GRANDCHILDREN WHO MIGHT
12 TAKE UNDER THE PRIVATE EDUCATION TRUST. THEY ARE
13 REPRESENTED BY THEIR PARENTS AS THE PROBATE CODE
14 RECOMMENDS. THERE IS NO CONFLICT OF INTEREST ON THAT
15 ISSUE THERE WHICH IS THE ONLY EXCEPTION TO A PARENT BEING
16 ABLE TO BIND A MINOR CHILD FOR PURPOSES OF SETTLEMENT
17 BECAUSE IT DOESN'T CUT INTO WHAT THE PARENTS WOULD
18 OTHERWISE TAKE BECAUSE THEY HAVE AGREED TO KEEP INTACT THE
19 VERY AMOUNT THAT THE FIDUCIARIES CLAIM IS MR. BROWN'S

20 INTENT FOR THAT TRUST -- \$2 MILLION BASED ON A FORMULA
21 TIED TO THE GENERATION-SKIPPING TRANSFER TAX.

22 THERE IS ALSO THE DOCTRINE OF VIRTUAL REPRESENTATION
23 WHERE IF YOU HAVE SOME OF A GROUP WITH AN IDENTITY OF
24 INTEREST WITH OTHERS, THEN THOSE WHO ARE PARTIES OR WHO
25 ARE PARTICIPANTS BIND THOSE WHO AREN'T. IN FACT, UNDER

1 THE TRUST CODE THERE ARE PROVISIONS FOR AGREEING TO A
2 MODIFICATION OF A TRUST UNDER SECTION 62-7-411 WHERE, YOUR
3 HONOR, YOU CAN APPROVE AN AGREEMENT TO MODIFY THE TRUST
4 EVEN IF ALL OF THE BENEFICIARIES DON'T CONSENT AS LONG AS
5 THEIR INTERESTS ARE ADVERSELY AFFECTED.
6 IN ANY NUMBER OF WAYS THOSE GRANDCHILDREN ARE
7 REPRESENTED. THERE IS NOBODY ELSE, YOUR HONOR, WHO COULD
8 HAVE AN INTEREST UNDER A TRUST OR UNDER THE PROBATE ESTATE
9 WHO ISN'T REPRESENTED IN SOME WAY UNDER THOSE RULES OF THE
10 PROBATE CODE. LET ME DIGRESS JUST A LITTLE BIT TO TALK
11 ABOUT THE ARGUMENT THAT USC AIKEN AND VOORHEES, ET CETERA,
12 HAVE TO BE NAMED AS -- AND SALKEHATCHIE HAVE TO BE NAMED
13 AS PARTIES.*
14 FIRST OF ALL, IF THE 1999 TRUST IS VALID, THE
15 FIDUCIARIES HAVE DONE NOTHING TO PURSUE THAT WHICH IS
16 PROBLEMATIC, YOUR HONOR, BUT IF IT IS VALID, FIRST OF ALL,
17 THEY ARE NOT THE CHARITABLE BENEFICIARIES AS MR. BUCHANAN
18 HIMSELF ADMITTED FROM THE STAND. IT IS THE STUDENTS WHO
19 WOULD GO TO THOSE SCHOOLS WHO ARE THE CHARITABLE

20 BENEFICIARIES. UNDER THE ARGUMENT THAT WE WOULD HAVE TO
21 NAME THOSE THREE COLLEGES UNDER THE '99 TRUST BECAUSE
22 STUDENTS COULD MATRICULATE THERE, UNDER THAT ANALOGY WE
23 WOULD HAVE TO NAME EVERY EDUCATIONAL INSTITUTION IN THE
24 STATE OF SOUTH CAROLINA AND GEORGIA BECAUSE UNDER THE 2000
25 TRUST STUDENTS COULD MATRICULATE THERE.

1 AS WAS EVIDENCED BY TESTIMONY, YOUR HONOR, THE
2 FIDUCIARIES DIDN'T BOTHER TO NAME USC AIKEN, SALKEHATCHIE,
3 VOORHEES, ADVISORY BOARD MEMBERS OR ANYBODY ELSE WHENEVER
4 THEY WANTED SOMETHING. IF THEY WANTED TO GET THEIR FEES
5 APPROVED AND THEY GOT AN ORDER APPROVED, THEY DIDN'T NAME
6 ANY OF THOSE PEOPLE. IF THEY WANTED TO SELL THE
7 CHRISTIE'S PROPERTY TO HELP PAY THEIR FEES, THEY DIDN'T
8 NAME ANY OF THOSE PEOPLE. THEY'RE FILING DOCUMENTS AS
9 RECENTLY AS FRIDAY AND THEY'RE NOT NAMING THOSE PEOPLE.
10 YET, THEY SAY THAT OUR AGREEMENT IS DEFECTIVE BECAUSE WE
11 DIDN'T NAME THOSE PEOPLE. AGAIN, IT'S REALLY IMMATERIAL
12 BECAUSE EVEN IF THOSE THREE SCHOOLS WERE BENEFICIARIES
13 THEY ARE REPRESENTED BY THE TRUSTEES OF THE 1999 TRUST WHO
14 ARE PARTICIPATING IN THIS ACTION.

15 YOUR HONOR, ANOTHER ISSUE WITH NOTICE IS THAT YOU
16 SIGNED AN ORDER FOR PUBLICATION AS I RECALL, AND, SO,
17 WE'VE GOT THE PUBLICATION NOTICE ON TOP OF THAT. FOR ALL
18 OF THOSE REASONS, YOUR HONOR, WE DON'T THINK NOTICE IS AN
19 ISSUE. WE THINK ALL OF THE PARTIES ARE REPRESENTED AT

20 THIS HEARING.

21 NOW, YOUR HONOR, I'VE BORED THE COURT WITH THIS
22 DISCUSSION ON AT LEAST A COUPLE OF OTHER OCCASIONS AND I
23 AM GOING TO TRY TO GO THROUGH THIS PART A LOT MORE
24 QUICKLY, BUT IT'S A DISCUSSION OF WHY THERE IS A GOOD
25 FAITH CONTROVERSY AND WHY THIS SETTLEMENT IS FAIR AND

1 REASONABLE. WE GOT A WILL AND TRUST CONTEST BROUGHT BOTH
2 BY MR. LEVENSON'S CLIENTS AND BY MY CLIENT ALLEGING THAT
3 THE WILL IS INVALID.

4 NOW, ONE OF THE ARGUMENTS THAT COULD BE MADE BUT THE
5 CHILDREN AND MRS. BROWN WANT TO AVOID DISCUSSING IS THE
6 ISSUE OF MENTAL CAPACITY, BUT NEVERTHELESS ANYTIME THERE
7 IS A QUESTION ABOUT VALIDITY, THAT COULD BE AN ISSUE. IF
8 I MIGHT JUST ADD, YOUR HONOR, THE RUSSELL CASE INVOLVING
9 JUDGE RUSSELL IS HARDLY CONTROLLING HERE. YOUR HONOR, IF
10 YOU'RE FAMILIAR WITH THAT CASE JUDGE RUSSELL -- SOME OF
11 JUDGE RUSSELL'S FAMILY TRIED TO OVERTURN THE TRUST AND
12 WILL AS I RECALL THE CASE. JUDGE RUSSELL WAS SITTING ON
13 THE FOURTH CIRCUIT COURT OF APPEALS UP TO A FEW WEEKS
14 BEFORE HE DIED AND LONG AFTER THE ALLEGED PROBLEMS WITH
15 THE VALIDITY OF THE DOCUMENTS.

16 IT PROBABLY GOES WITHOUT SAYING THAT THAT
17 DISTINGUISHED GENTLEMAN WHO WAS STILL PARTICIPATING IN
18 DECISIONS FROM THE FOURTH CIRCUIT COURT OF APPEALS WAS
19 COMPETENT TO MAKE A WILL AND NOT SUBJECT TO UNDUE

20 INFLUENCE, NOT THAT HE COULDN'T BE, BUT IN JUDGE RUSSELL'S
21 CASE ONE CAN UNDERSTAND WHY A COURT WOULD FIND THAT HE WAS
22 NOT, AND IMAGINE, YOUR HONOR, IF THE COURT HAD FOUND THAT
23 HE LACKED MENTAL CAPACITY OR HE WAS SUBJECT TO UNDUE
24 INFLUENCE. IMAGINE ALL THAT WOULD HAPPEN TO THOSE
25 DECISIONS THAT HE HANDED DOWN IN THAT FINDING.

1 MR. BROWN, ALTHOUGH AN ICON, WAS NOT A SITTING
2 FEDERAL APPELLATE COURT JUDGE, AND, SO, IT'S AN ENTIRELY
3 DIFFERENT CASE. NO WILL HAS A RUDDER. EVERY WILL CONTEST
4 HAS ITS OWN FACTS AND CIRCUMSTANCES. IN NO WAY IS RUSSELL
5 CONTROLLING IN THIS PARTICULAR CASE.

6 THE MAIN GRAVAMEN OF OUR CLAIM OF THE INVALIDITY OF
7 THE WILL AND TRUST DEALT WITH UNDUE INFLUENCE, AND, YOUR
8 HONOR, UNDUE INFLUENCE IS WHEN A PERPETRATOR FORCES
9 SOMEONE TO DO THAT WHICH HE DID NOT WANT TO DO WITH
10 RESPECT TO HIS ESTATE PLANNING DOCUMENTS. NOW, I'M NOT
11 AWARE OF ANY ABSOLUTE REQUIREMENT THAT THE PERPETRATOR BE
12 A BENEFICIARY, BUT THAT REALLY DOESN'T MATTER IN THIS CASE
13 BECAUSE OUR ARGUMENT IS THE PERPETRATORS WERE THE
14 BENEFICIARIES. MR. DALLAS, MR. BRADLEY, MR. CANNON WERE
15 GOING TO GET A TRUSTEE'S FEE AND A PERSONAL
16 REPRESENTATIVE'S FEE, BUT, MORE IMPORTANTLY, THEY WERE
17 GOING TO BE ALLOWED TO TAKE 50 PERCENT OF THE GROSS INCOME
18 FOR MANAGEMENT FEES, AND, YOUR HONOR, I WOULD SUGGEST THE
19 EVIDENCE SHOWS THAT THEY ALREADY DEMONSTRATED THEY KNEW

20 HOW TO DO THAT RIGHTLY OR WRONGLY DURING MR. BROWN'S
21 LIFETIME THROUGH THE CREATION OF COMPANIES, ET CETERA, IN
22 WHICH THEY HAD SOME INVOLVEMENT.

23 THE TESTIMONY OF THE FIDUCIARIES, YOUR HONOR,
24 MISUNDERSTANDS THE ISSUE OF UNDUE INFLUENCE. IT'S NOT A
25 QUESTION ABOUT WHETHER MR. BROWN TRUSTED THESE THREE

1 GENTLEMEN. THE QUESTION IS DID HE MISPLACE HIS TRUST. IF
2 YOU THAT SOMEBODY COULDN'T BE TRUSTED, YOU WOULDN'T PUT
3 TRUST IN THEM AND THERE WOULD BE FAR FEWER UNDUE INFLUENCE
4 CASES. THAT'S THE GIST OF AN UNDUE INFLUENCE CASE.
5 SOMEBODY IS IN A POSITION TO ABUSE TRUST IN THE MAJORITY
6 OF CASES THAT I'VE SEEN ACTUALLY ABUSES THE TRUST. THIS
7 IS EXACTLY WHAT MRS. POPE AND MR. BUCHANAN ACCUSED THOSE
8 THREE GENTLEMEN OF DOING DURING MR. BROWN'S LIFETIME --
9 THAT -- TO BE GROSS ABOUT IT, THAT THEY CHEATED AND
10 TRICKED HIM.

11 WHEN LOOKING AT UNDUE INFLUENCE YOU LOOK AT WHETHER
12 THE PERPETRATOR HAS THE INCLINATION TO UNDULY INFLUENCE
13 SOMEBODY AND YOU LOOK AT WHETHER THE TESTATOR OR SETTLOR
14 WAS SUSCEPTIBLE TO THAT INFLUENCE. THEY PROVED THEMSELVES
15 BY THEIR OWN ALLEGATIONS THAT MR. BROWN WAS SUSCEPTIBLE
16 BECAUSE HE LET THEM DO IT TO HIM DURING HIS LIFETIME AND
17 THAT THEY HAD THE INCLINATION TO DO IT BECAUSE ACCORDING
18 TO THEM THEY DID IT TO HIM DURING HIS LIFETIME.

19 THE FACT THAT THE FIDUCIARIES SAY, WELL, THE

20 50 PERCENT PROVISION DOESN'T HAVE ANY EFFECT BECAUSE THE
21 SAVINGS CLAUSE WOULD ELIMINATE THAT BECAUSE IT WOULD CAUSE
22 A PROBLEM WITH THE CHARITABLE DEDUCTION WHICH WE AGREE
23 WITH IS IMMATERIAL. IT'S NOT WHAT HAPPENS AFTER MR. BROWN
24 DIES IS THE ISSUE OF UNDUE INFLUENCE. IT IS WHAT CAUSED
25 THEM TO THINK THEY COULD EFFECT THE UNDUE INFLUENCE AND IF

1 THEY THOUGHT THEY COULD GET AWAY WITH THE 50 PERCENT
2 PROVISION, THAT'S THE ISSUE AT THAT TIME -- NOT WHETHER IT
3 COULD BE UNDONE LATER.

4 I BELIEVE MR. HERRING'S FILE IS IN EVIDENCE, YOUR
5 HONOR, AND THERE'S BEEN DISCUSSION THAT LITTLE, IF ANY,
6 CORRESPONDENCE OR COMMUNICATION TOOK PLACE BETWEEN
7 MR. HERRING DIRECTLY WITH MR. BROWN. MR. BYRD DID PRODUCE
8 A LETTER THAT I AM NOT SURE WE EVER ACTUALLY ESTABLISHED
9 THE PROVENANCE OF WHERE THERE WAS A LETTER FROM
10 MR. HERRING SUPPOSEDLY TO MR. BROWN SAYING IT WAS NICE
11 MEETING YOU AND THAT LETTER WAS CREATED SEVERAL MONTHS
12 BEFORE EVEN THE '99 DOCUMENTS WERE CREATED.

13 WELL, YOUR HONOR, IF THAT'S THE ONLY LETTER IN THE
14 FILE OR IF THERE ARE FEW LETTERS IN THE FILE, IT JUST ADDS
15 FUEL TO THE FIRE THAT THERE WAS UNDUE INFLUENCE -- THAT
16 THE DISCUSSION WAS GOING ON BETWEEN THOSE THREE GENTLEMEN
17 AND THE DRAFTER OF THE WILL WHO, BY THE WAY, FROM THE FILE
18 WILL BE SHOWN HAD A VERY CLOSE FRIENDSHIP WITH MR. CANNON.
19 NOW, I UNDERSTAND, YOUR HONOR, THAT SOME ESTATE

20 PLANNERS DEAL WITH LAWYERS WHO HAVE CLIENTS WHEN THE
21 LAWYER DOESN'T FEEL COMPETENT TO DRAFT A WILL OR A TRUST.
22 IN FACT, I ADMONISH MY STUDENTS NEVER TO DO THAT WITHOUT
23 GETTING ASSOCIATED COUNSEL LIKE MR. CARTER OR SOMEBODY WHO
24 IS A QUALIFIED PROFESSIONAL, BUT, YOUR HONOR, IF, IN FACT,
25 THE COUNSEL IS THE ONE BEING ACCUSED OF THE UNDUE

1 INFLUENCE, THERE IS NO REMOVAL OF THAT TAINT. IT IS JUST
2 PART OF THE SAME ENTERPRISE. SO, WHAT MIGHT GO ON IN A
3 REGULAR SITUATION CERTAINLY DOESN'T APPLY TO THIS
4 PARTICULAR SITUATION.

5 THERE'S A BLANK, SIGNED, WITNESSED, ORIGINAL DEED IN
6 THAT BOX. YOUR HONOR, I CAN'T THINK OF ANY REASON IN THE
7 WORLD WHY THERE WOULD BE A BLANK, UNSIGNED -- EXCUSE ME,
8 BLANK, SIGNED, WITNESSED DEED IN A FILE. I AM NOT AWARE
9 WHY YOU WOULD EVER HAVE A CLIENT SIGN A DOCUMENT THAT WAS
10 BLANK UNLESS THE INTENT WAS TO FILL IT IN LATER WHICH JUST
11 FURTHERS OUR ARGUMENT, YOUR HONOR. THERE IS ALREADY
12 EVIDENCE IN THE FILE OF IMPROPER ACTIVITY WITH RESPECT TO
13 MR. BROWN. I CAN'T YET THINK OF A REASON WHY THAT
14 DOCUMENT WOULD BE IN THE FILE OTHER THAN TO BE ANOTHER
15 SMOKING GUN.

16 YOUR HONOR, IN ADDITION TO THE ISSUE OF THE VALIDITY
17 OF THE WILL AND THE TRUST, WE ALSO HAVE THE QUESTION OF
18 WHAT ASSETS ARE IN THE WILL OR CONTROLLED BY THE WILL AND
19 WHAT ARE ALREADY IN THE TRUST AND THIS IS A CRITICAL ISSUE

20 BECAUSE EVEN IF THE WILL AND TRUST CONTEST WERE
21 UNSUCCESSFUL MY CLIENT HAD A SPOUSAL SHARE CLAIM AND I'LL
22 TALK MORE ABOUT HER RIGHTS UNDER THAT IN JUST A LITTLE
23 BIT, BUT THERE COULD BE ANYWHERE FROM A THIRD AT A MINIMUM
24 TO 50 PERCENT AT A MAXIMUM OF THE PROBATE ASSETS OF
25 MR. BROWN'S ESTATE.

1 NOW, GRANTED, IF THIS WERE AN IRREVOCABLE TRUST THAT
2 WAS PROPERLY FUNDED AND WE KNEW THE ASSETS THAT FUNDED IT,
3 THEN THOSE ASSETS WOULD NOT BE SUBJECT TO HER SPOUSAL
4 SHARE CLAIM, BUT WE'VE HAD TESTIMONY -- I DON'T THINK
5 THERE IS ANY QUESTION THAT IT IS VIRTUALLY IMPOSSIBLE TO
6 DETERMINE WHAT, IF ANYTHING, WAS IN THAT 2000 TRUST. IN
7 FACT, WE HAD A SIGNED STIPULATION FROM THE THREE TRUSTEES
8 WHO SHOULD KNOW BETTER THAN ANYBODY THAT THE ONLY ASSETS
9 IN THAT TRUST WERE THE BEECH ISLAND PROPERTY AND \$50.

10 WHAT'S CRITICAL ABOUT THAT, YOUR HONOR, IS THAT
11 UNLESS THE ATTORNEY GENERAL CAN SHOW THAT THERE ARE OTHER
12 ASSETS IN THAT TRUST MY CLIENT IF SUCCESSFUL WITH HER
13 SPOUSAL CLAIM IS GOING TO GET A THIRD, UP TO A HALF OF
14 EVERYTHING BECAUSE THEY'RE IN THE PROBATE ESTATE. EVEN IF
15 WE COULD SHOW THAT THE ASSETS WERE IN THE TRUST, WE HAVE
16 ANOTHER VERY GOOD ARGUMENT WE THINK ON BEHALF OF
17 MS. BROWN. WE HAD THE TESTIMONY OF THE THREE ORIGINAL
18 TRUSTEES. WE HAD MRS. POPE'S TESTIMONY THAT MR. BROWN IS
19 A MAN WHO INSISTED ON CONTROL.

20 THAT'S A DEEMED REVOCABLE TRUST, YOUR HONOR. YOU
21 CAN'T KEEP CONTROL OVER A TRUST AND YET SAY IT'S
22 IRREVOCABLE. THE SEAFORT AND THE DRAYER CASES ANALOGIZE
23 TO THAT AND WE WOULD RIDE THE COATTAILS OF THOSE CASES AND
24 AND MAKE THE ARGUMENT THAT EVEN IF WE COULD PROVE WHAT WAS
25 IN THE IRREVOCABLE TRUST IT'S STILL SUBJECT TO THE SPOUSAL

1 SHARE CLAIM UNDER THE SEAFORT AND DRAYER DECISIONS.
2 YOUR HONOR, WE ALSO HAVE RIGHTS THAT WOULD NOT BE IN
3 THE ESTATE OR THE TRUST AND WE'LL TALK MORE ABOUT THOSE IN
4 JUST A MINUTE -- TERMINATION RIGHTS AND PERHAPS IMAGE,
5 PERSONA, AND LIKENESS RIGHTS. THOSE WOULD ALL BE FOUGHT
6 OVER AND MAYBE NEVER END UP IN THE HANDS OF THE CHARITABLE
7 BENEFICIARIES OR AT LEAST WITH RESPECT TO THE SPOUSAL
8 SHARE ONLY 50 PERCENT TO TWO-THIRDS OF THOSE.
9 NOW, FROM DAY ONE MY CLIENT HAS BEEN VILIFIED. SHE'S
10 BEEN VILIFIED IN THIS COURTROOM AND SHE'S BEEN VILIFIED IN
11 THE PRESS. SHE'S BEEN CALLED ALL KIND OF NAMES. I
12 BELIEVE WE SHOWED, YOUR HONOR, THROUGH THE TESTIMONY OF
13 MR. BUCHANAN THAT ANY ARGUMENT THAT MRS. BROWN IS NOT THE
14 SURVIVING SPOUSE IS SPECIOUS. WE HAVE A FAMILY COURT
15 ORDER ISSUED BY THE CHARLESTON COUNTY FAMILY COURT AFTER
16 IT FOUND THAT THE ALLEGED PREVIOUS HUSBAND MR. AHMED WAS
17 PROPERLY SERVED THROUGH PUBLICATION, BUT NEVERTHELESS
18 PROPERLY SERVED. WE HAVE A MARRIAGE CERTIFICATE AND A
19 MARRIAGE LICENSE ISSUED BY THE PROBATE COURT OF AIKEN.

20 THE FAMILY COURT OF CHARLESTON FOUND IN ITS ORDER AS A
21 CONCLUSION OF LAW THAT MR. AHMED HAD AN IMPEDIMENT TO ANY
22 ATTEMPTED MARRIAGE TO TOMI RAE BROWN. HE WAS ALREADY
23 MARRIED AND AS MR. BUCHANAN HIMSELF ADMITTED FROM THE
24 STAND -- FOOTNOTE TWO OF THE LUKICH CASE AND COURT OF
25 APPEALS DECISION NOT OVERTURNED BY THE SUPREME COURT

1 DECISION NOTICED THAT OBVIOUS EXCEPTION TO THE RULING IN
2 LUKICH. LUKICH WAS AN ENTIRELY DIFFERENT SITUATION. IT
3 WAS WHEN A MARRIAGE WAS ANNULLED LATER AND IT WASN'T GIVEN
4 RETROACTIVE EFFECT AND THE LUKICH COURT SAID BUT, OF
5 COURSE, OUR RULING DOESN'T APPLY TO A SITUATION WHERE THE
6 FIRST MARRIAGE THAT WAS ALLEGED WAS NEVER VALID TO BEGIN
7 WITH.

8 WE'VE BEEN WANTING TO ARGUE THE LUKICH CASE TO YOUR
9 HONOR FOR TWO YEARS. THE FIDUCIARIES HAVE BEEN CLAIMING
10 THAT IT CREATES A PROBLEM. WE THOUGHT IT STAMPED OUR CASE
11 IN CONCRETE. I DON'T KNOW WHAT MORE WE NEED. THERE IS
12 ONLY ONE PERSON, YOUR HONOR, WHO CAN ARGUABLY COME IN AND
13 CONTEST THAT ORDER -- ARGUABLY, YOUR HONOR, AND WE HAVE
14 ALL LOOKED AT THAT AND THE ATTORNEY GENERAL CAN REFUTE
15 THIS, BUT HE AND I TALKED ABOUT THIS A LOT -- I AM NOT
16 EVEN SURE THAT HE'S GOT THE RIGHT TO DO IT AT THIS POINT.

17 MR. BUCHANAN ADMITTED IN HIS TESTIMONY FROM THE STAND
18 THAT THE LUKICH OPINION SAYS THEY DON'T HAVE THE RIGHT TO
19 DO IT. NONE OF THE OTHER SETTLING PARTIES HAVE THE RIGHT

20 TO DO IT. SO, WHO IN THE WORLD IS GOING TO ARGUE UNLESS
21 MR. AHMED SHOWS UP AND WE REALLY DON'T THINK THAT'S GOING
22 TO HAPPEN. MR. JONES ALLUDED TO SOME PROBLEMS WITH
23 MR. AHMED IF HE DID SHOW UP AND IF THE COURT DID ALLOW HIM
24 TO CONTEST THAT FINDING OF THE IMPEDIMENT TO THE MARRIAGE
25 FROM THE CHARLESTON COUNTY FAMILY COURT. WE'RE VERY

1 CONFIDENT, YOUR HONOR, HE WILL NOT MAKE A CREDIBLE
2 WITNESS. LET'S JUST LEAVE IT AT THAT.
3 SO, OF ALL OF THE THINGS THAT WE'VE BEEN CONFIDENT IN
4 SINCE DAY ONE -- ALTHOUGH, EVERYBODY -- MR. BYRD'S
5 CLIENTS, MR. BELL'S CLIENTS, THE CURRENT FIDUCIARIES, THE
6 ATTORNEY GENERAL, MR. LEVENSON'S CLIENTS -- THAT'S BEEN
7 ONE OF THEIR NUMBER ONE PRIORITIES. LET'S GET TOMI RAE
8 BROWN OUT OF THE WAY. LET'S SHOW SHE'S NOT MARRIED.
9 NOBODY COULD DO IT. THERE IS A REASON NOBODY COULD DO IT.
10 BECAUSE SHE HAD A VALID MARRIAGE TO MR. BROWN.
11 MR. BROWN HIMSELF SAYS IN HIS AUTOBIOGRAPHY AFTER THE
12 CONSENSUAL DISMISSAL OF THE ANNULMENT ACTION HE BROUGHT
13 WHEN HE AND MS. BROWN HAD ONE OF THEIR SEVERAL FIGHTS --
14 WE CERTAINLY DON'T AGREE THAT IT WAS THE MOST PEACEFUL
15 MARRIAGE. IT WAS A CONTENTIOUS MARRIAGE, BUT IT WAS A
16 LOVING MARRIAGE. SOME PEOPLE HAVE THOSE. MR. BROWN SAYS
17 SHE'S MY WIFE. HE ALSO SAYS JAMES BROWN, II IS MY SON.
18 HE SAYS THAT IN HIS AUTOBIOGRAPHY: HE SAYS IT IN OTHER
19 PLACES, TOO -- JUST A LITTLE BIT OF EVIDENCE IN FRONT OF

20 THE COURT. HE SAYS IT IN HIS APPLICATION FOR SCREEN
21 ACTOR'S GUILD HEALTH INSURANCE, IN HIS MEDICAL DIRECTIVE,
22 SOCIAL SECURITY. AND, AGAIN, REMEMBER, YOUR HONOR, THAT
23 THESE DOCUMENTS EXECUTED IN 2000 WERE EXECUTED BEFORE THE
24 MARRIAGE TO MS. BROWN, BEFORE THE BIRTH OF MR. -- JAMES
25 BROWN, II SO THAT THAT'S THE TRIGGER FOR THE OMITTED

1 CHILD'S SHARE AND THE OMITTED SPOUSE OR ELECTIVE SHARE.

2 THE ELECTIVE SHARE APPLIES IN ANY CASE.

3 NOW, THE FIDUCIARIES SAY HERE IS AN AFFIDAVIT FROM
4 SOMEBODY IN PAKISTAN WHO SAYS MR. AHMED TOLD HIM HE WASN'T
5 MARRIED WHEN HE MARRIED MS.~BROWN. THEY HAVE THE
6 TRANSCRIPT OF AN INTERVIEW FROM LARRY KING FROM THE DEBRA
7 OPRI WHO SAYS IN THE INTERVIEW MR. BROWN GOT AN ANNULMENT
8 FROM MS.~BROWN WHICH DIDN'T HAPPEN. IN FACT, IN ONE OF
9 HER AFFIDAVITS -- AT LEAST ONE OF HER AFFIDAVITS MRS. POPE
10 SAYS UNDER OATH THAT MR. BROWN BROUGHT HIS ANNULMENT
11 ACTION BEFORE MS.~BROWN BROUGHT HER ANNULMENT AND
12 INVALIDATION ACTION AGAINST AHMED.

13 YOUR HONOR, YOU CAN LOOK AT THE DOCUMENTS IN THE
14 RECORD. THAT'S NOT THE SEQUENCE OF EVENTS. MS.~BROWN DID
15 IT FIRST. MR. BROWN THEN BROUGHT HIS ACTION BECAUSE HE
16 GOT UPSET FOR A DIFFERENT REASON AND THEY DISMISSED IT BY
17 CONSENT AND IT DIDN'T SAY IN THAT DOCUMENT THEY WEREN'T
18 MARRIED. SHE DID SAY I AM NEVER GOING TO RAISE THE COMMON
19 LAW ISSUE. WHY WOULD SHE? SHE HAD A CEREMONIAL VALID

20 MARRIAGE. THERE IS NOTHING IN THE AGREEMENT ABOUT THAT.
21 WE AVOID THAT ISSUE IN THE FIDUCIARIES' PLEADINGS AND
22 AFFIDAVITS.

23 NOW, I AM GOING TO IGNORE MR. BROWN'S STATED INTENT
24 IN HIS AUTHORIZED AUTOBIOGRAPHY AND IN THESE OTHER
25 DOCUMENTS SOME OF WHICH HAVE LEGAL REPERCUSSIONS IF

1 PRESENTED FALSELY AND WE'RE GOING TO BELIEVE SOME MAN
2 PERHAPS IN PAKISTAN WHO IS NOT MR. AHMED. WE'RE GOING TO
3 BELIEVE DEBRA OPRI WHO DOESN'T KNOW WHAT SHE'S TALKING
4 ABOUT AS DEMONSTRATED BY THE VERY TRANSCRIPT. WE'RE GOING
5 TO USE THAT EVIDENCE TO CALL MR. BROWN A LIAR? AND WE'RE
6 GOING TO SAY MR. BROWN MEANT TO STARVE HIS THEN 6-YEAR-OLD
7 CHILD? THAT'S NOT PRESERVING THE LEGACY OF JAMES BROWN.
8 THAT'S ATTACKING THE LEGACY OF JAMES BROWN. MR. BROWN
9 PAID FOR THE VERY ACTION THAT MS. BROWN BOUGHT AGAINST
10 MR. AHMED FINDING THAT THERE WAS NO IMPEDIMENT TO HER
11 MARRIAGE TO MR. BROWN.
12 YOUR HONOR, THE ATTORNEY GENERAL RECOGNIZED IN OUR
13 DISCUSSIONS THAT ANY ATTEMPT TO OVERTURN THAT FAMILY COURT
14 ORDER BY CREATING SOME NEW RULES THAT A THIRD PARTY COULD
15 DO IT WHICH BY THE WAY THE LUKICH CASE CONFIRMED COULDN'T
16 BE DONE COULD CREATE JUDICIAL CHAOS. THE FAMILY COURT
17 DEALS WITH RELATIONSHIPS BETWEEN TWO PEOPLE. NOW, IF I
18 GET DIVORCED FROM MY WIFE AND SOME THIRD PARTY HAS THE
19 OPPORTUNITY TO COME IN AND INTERVENE, THERE WOULD BE CHAOS

20 AND CERTAINLY TO INTERVENE TO OVERTURN -- EXACTLY THE
21 OPPOSITE OF THE SITUATION THAT THE FIDUCIARIES ALLEGE.
22 CONSEQUENTLY, BY THE LAW OF THE CASE JAMES BROWN, II, IS
23 THE SON OF TOMI RAE BROWN AND MR. BROWN BECAUSE UNDER THE
24 LAW OF SOUTH CAROLINA EVEN IF A CHILD IS ILLEGITIMATE BORN
25 OUT OF WEDLOCK THE SUBSEQUENT MARRIAGE OF THE PARENTS

1 LEGITIMIZES THE CHILD, AND, CERTAINLY, EVEN IF HE WEREN'T
2 LEGITIMATE IT DOESN'T PREVENT HIM FROM BEING A BIOLOGICAL
3 CHILD, BUT HE IS THE LEGITIMATE CHILD OF JAMES BROWN AND
4 TOMI RAE BROWN.

5 NOW, YOUR HONOR, I WANT TO SPEND A FEW MINUTES AND I
6 KNOW YOUR HONOR IS WANTING TO ME TO BE FINISHED, BUT I
7 THINK IS A VERY IMPORTANT PART OF THIS DISCUSSION AND IT'S
8 TO GET INTO THE DISCUSSION OF THE TERMINATION RIGHTS UNDER
9 THE FEDERAL COPYRIGHT LAW. THE FEDERAL COPYRIGHT LAW
10 UNDER SECTIONS 203 AND 304 -- WE'VE HANDED UP THOSE
11 SECTIONS BEFORE, YOUR HONOR -- PROVIDE THAT THE AUTHOR
12 WRITER OF SONGS TO MAKE IT SPECIFIC TO MR. BROWN AT SOME
13 POINT HAS A TERMINATION RIGHT AND WHEN THAT TERMINATION
14 RIGHT ARISES DEPENDS ON WHEN THE COPYRIGHT WAS ORIGINALLY
15 OBTAINED, WHETHER IT WAS BEFORE THE COPYRIGHT ACT IN THE
16 70'S OR AFTER THE COPYRIGHT ACT, BUT THE NET EFFECT IS IN
17 EITHER CASE THERE IS A RIGHT TO TERMINATE.

18 AFTER A PASSAGE OF YEARS THE AUTHOR, THE WRITER HAS
19 THE RIGHT TO TERMINATE ANY ASSIGNMENTS OF THAT COPYRIGHT

20 THAT HE HAS MADE AND IT'S DONE TO PROTECT THE AUTHOR FROM
21 THE PUBLISHING HOUSES OR OTHER ASSIGNEES WHO ARE MORE
22 POWERFUL ESPECIALLY IN THE BEGINNING OF A YOUNG WRITER'S
23 CAREER. IT GETS HIM A SECOND BITE AT THE APPLE, A CHANCE
24 TO RENEGOTIATE. SO, FOR EXAMPLE, YOUR HONOR, MR. BROWN
25 HAVING ASSIGNED HIS RIGHTS TO A PUBLISHING COMPANY TO

1 PUBLISH WHICH IS A STICK IN THE BUNDLE OF COPYRIGHTS THAT
2 CAN BE ASSIGNED, HAD HE LIVED THAT LONG WOULD HAVE HAD THE
3 RIGHT TO TERMINATE. HE CAN TAKE IT BACK FROM THE
4 PUBLISHER AND THEN SELL IT TO ANOTHER PUBLISHER OR THE
5 SAME ONE, BUT IT GAVE HIM A CHANCE TO MAKE A NEW DEAL.

6 MRS. POPE AS I RECALL ADMITTED ON THE STAND THAT MANY
7 OF HIS SONGS HAD BEEN ASSIGNED TO PUBLISHERS AS TO THE
8 PUBLISHING RIGHTS. THEY'RE ALSO WRITER'S RIGHTS AND THE
9 PLEADINGS THEY FILED ON FRIDAY, FOOTNOTE SIX, IT SAYS THAT
10 EITHER ALL OR THE MAJORITY -- I CAN'T REMEMBER EXACTLY,
11 YOUR HONOR, BECAUSE IT REALLY DOESN'T MAKE THAT MUCH OF A
12 DIFFERENCE FOR PURPOSES OF THIS POINT -- HAVE BEEN
13 ASSIGNED BY MR. BROWN TO EITHER JAMES BROWN ENTERPRISES,
14 INC., OR JAMES BROWN, LLC, AND PERHAPS TO GERONIMO MUSIC
15 AND OTHERS, BUT TO THOSE TWO ENTITIES. HE'S ALSO ASSIGNED
16 HIS WRITER'S RIGHTS DURING HIS LIFETIME.

17 NOW, IF I AM THE WRITER OF A SONG AND I ASSIGN MY
18 PUBLISHING RIGHTS AND MY WRITER'S RIGHTS TO TWO DIFFERENT
19 PARTIES AND ENOUGH TIME PASSES AND MY TERMINATION RIGHT

20 COMES TO FRUITION -- BECOMES RIGHT -- I CAN TAKE IT BACK.
21 I CAN BRING THE WHOLE COPYRIGHT BACK AND I CAN RESELL IT
22 OR I CAN KEEP THE WRITER'S RIGHTS WHICH IS EFFECTIVELY THE
23 RIGHT TO THE STREAM OF ROYALTIES OF 50 PERCENT OF
24 EVERYTHING THAT'S PRODUCED BY THAT SONG. IN INDUSTRY
25 STANDARDS 50 PERCENT GOES TO THE PUBLISHER.

1 IF I NEVER ASSIGNED MY RIGHTS -- IF I OWNED THEM, I
2 DON'T NEED THE TERMINATION RIGHTS. COPYRIGHT LAW GIVES
3 THE TERMINATION RIGHTS ONLY TO THOSE WHO HAVE ASSIGNED
4 THEIR RIGHTS. SO, MR. BROWN HAD TERMINATION RIGHTS, BUT
5 HE DIDN'T LIVE LONG ENOUGH. SO, NOW THE QUESTION BECOMES
6 WHERE DO THEY GO AT HIS DEATH?

7 MRS. POPE IS DEAD WRONG ON THIS, YOUR HONOR. THE LAW
8 SPEAKS FOR ITSELF. THERE IS NOTHING THAT'S CHANGED IN
9 2002. IN FACT, YOUR HONOR, BEAR WITH ME. 2002 AMENDMENTS
10 TO 17 USCA 203, NO. 1, SUBSTITUTED CAPITAL T -- THE WIDOW
11 -- FOR SMALL T - THE WIDOW -- AND STRUCK OUT THE SEMICOLON
12 AT THE END AND INSERTED A PERIOD. CHANGE NO. 2
13 SUBSTITUTED CAPITAL T -- THE AUTHORS -- FOR SMALL CASE
14 T -- THE AUTHORS -- AND STRUCK OUT THE SEMICOLON AT THE
15 END AND INSERTED A PERIOD. CHANGE NUMBER THREE
16 SUBSTITUTED CAPITAL T -- THE RIGHTS -- FOR LOWER CASE T --
17 THE RIGHTS.

18 THOSE ARE THE CHANGES AND THE SAME CHANGES WERE
19 EFFECTED TO SECTION 304. THE LAW SPEAKS FOR ITSELF, YOUR

20 HONOR. IT IS STILL THE CASE THAT IF YOU DIE BEFORE YOUR
21 TERMINATION RIGHTS BECOME RIPE THEY DO NOT PASS UNDER YOUR
22 WILL. THEY PASS TO THE STATUTORY HEIRS -- MY CLIENT
23 50 PERCENT; MR. BROWN'S OTHER CHILDREN OR MR. BROWN'S
24 CHILDREN DIVIDE THE OTHER 50 PERCENT.

25 NOW, MRS. POPE MISREAD ONE SENTENCE -- TOOK IT OUT OF

1 CONTEXT -- MAYBE BECAUSE SHE WANTED TO BE ABLE TO SAY THE
2 TERMINATION RIGHTS DIDN'T PASS TO THE SURVIVING HEIRS
3 RATHER THAN GO THROUGH THE WILL. THAT ARTICLE DOESN'T
4 EVEN SAY THAT. SHE ATTACHES AN ARTICLE TO HER AFFIDAVIT
5 ON FRIDAY -- THE ONE SUPPOSEDLY PRESENTED TO HER THROUGH
6 ALAN ROTHSCHILD WHO IS AN EXCELLENT ESTATE PLANNING AND
7 TAX LAWYER IN GEORGIA AND THAT ARTICLE TALKS ABOUT THE
8 SUPERMAN CASE WHICH WAS RECENTLY DECIDED. HIS CREATORS
9 ARE FIGHTING THE SAME -- -- THE FAMILY OF HIS CREATOR IS
10 FIGHTING THE SAME FIGHT AND THE COURT RECENTLY RULES AS
11 WAS THE LANDMARK RULING IN THE WILLIAM SAROYAN CASE THAT
12 THOSE TERMINATION RIGHTS PASSED BY FEDERAL STATUTE TO THE
13 SURVIVING HEIRS -- NOT UNDER THE WILL. THE ONLY RIGHTS
14 THAT YOU CAN PASS BY WILL ARE THOSE RIGHTS THAT YOU KEPT
15 AND THERE AREN'T TERMINATION RIGHTS FOR THOSE.
16 SO, IF WE'RE TALKING ABOUT TERMINATION RIGHTS, THEY
17 PASS BY FEDERAL COPYRIGHT LAW TO THE SURVIVING HEIRS AND
18 HER OWN FILINGS -- THE SUPERMAN ARTICLE SAYS THAT. IT
19 RECITES TWO CASES THAT PROVE THAT, AND, BY THE WAY, WHILE

20 WE'RE AT IT IT DOES RECOGNIZE THAT PERFECTING THESE RIGHTS
21 IS PROBLEMATIC BECAUSE IT'S COMPLICATED UNDER FEDERAL LAW,
22 BUT, YET, IN BOTH OF THOSE CASES THE FAMILY MANAGED TO DO
23 IT AND IN OTHER CASES THE FAMILY HAS MANAGED TO DO IT; BUT
24 WHAT'S MORE IMPORTANT IS AT THE VERY BEGINNING OF THE
25 ARTICLE IT TALKS ABOUT HOW VALUABLE THESE RIGHTS ARE AND

1 AT THE VERY LAST PARAGRAPH IT SAYS THESE RIGHTS ARE
2 IMMENSELY VALUABLE.

3 LET'S TAKE AN EXAMPLE OF THAT, YOUR HONOR. 1956, I
4 BELIEVE, MR. BROWN WROTE HIS FIRST BIG HIT, "PLEASE PLEASE
5 PLEASE." CORRECT ME IF I AM WRONG, SOMEONE. IT'S NOT,
6 PLEASE, PLEASE, PLEASE, PLEASE AS THE FIDUCIARIES KEEP
7 ALLEGING. IT IS THREE PLEASES. IN 2012 THAT TERMINATION
8 RIGHT KICKS IN.

9 NOW, LET ME JUST USE THIS AS AN EXAMPLE BECAUSE WE
10 DON'T HAVE REAL NUMBERS FOR THIS BECAUSE, AGAIN, WE
11 HAVEN'T BEEN PRIVY TO REAL NUMBERS AND I DON'T THINK
12 ANYBODY HAS HAD ANY EXPIRATION. LET'S ASSUME THAT A
13 PUBLISHER WOULD PAY A HALF A MILLION DOLLARS TO PUBLISH
14 THAT SONG FOR THE REST OF THE SEVEN-YEAR PERIOD, AND LET'S
15 ASSUME THAT THE STREAM OF INCOME TO THE WRITER WAS WORTH A
16 HALF MILLION DOLLARS. THE VALUE OF THAT ONE TERMINATION
17 RIGHT WOULD BE AROUND ABOUT A MILLION DOLLARS. THE FAMILY
18 COULD TAKE IT BACK FROM THE PUBLISHER, TAKE IT BACK FROM
19 JAMES BROWN ENTERPRISES OR JAMES BROWN, LLC AND RESELL IT.

20 THAT IS JUST ONE SONG OF 800 AND MOST OF HIS BIG HITS
21 WILL BE COMING UP SOONER RATHER THAN LATER AND THAT'S
22 IMPORTANT BECAUSE WHEN YOU LOOK AT THE VALUE OF THE
23 ESTATE, CERTAINLY, AS LONG AS THESE RIGHTS ARE NOT SUBJECT
24 TO A TERMINATION PERIOD -- THE TERMINATION PERIOD HASN'T
25 HIT YET -- THE ESTATE WOULD OWN THE ROYALTY STREAM FROM

1 THE WRITER'S SHARE IF IT OWNS THE ENTITIES TO WHICH THEY
2 WERE ASSIGNED. THE PUBLISHER WOULD GET THE PUBLISHING
3 RIGHTS ALL ALONG, BUT AT SOME POINT WHEN THE TERMINATION
4 RIGHT KICKS IN THE TERMINATION RIGHT TAKES OVER THE VALUE.
5 SO, WITH RESPECT TO WHATEVER ROYALTY RIGHTS THE
6 ESTATE MIGHT HAVE, THEN THOSE RIGHTS ARE GOING TO BE
7 SMALLER THE SOONER THOSE TERMINATION RIGHTS WOULD ARISE.
8 THE LATER THE TERMINATION RIGHTS WOULD ARISE THOSE RIGHTS
9 WOULD BE GREATER BECAUSE THE TOTAL VALUE WOULD INCLUDE THE
10 CURRENT RIGHTS TO THE STREAM OF INCOME AND THE TERMINATION
11 RIGHT AT THE APPROPRIATE TIME.

12 NOW, AGAIN, WE HAVE NO WAY OF KNOWING THE VALUE OF
13 THIS. WE SUSPECT IT'S SUBSTANTIAL. WE BELIEVE MRS. POPE
14 WHEN SHE GIVES US THIS ARTICLE ON FRIDAY WHERE THE AUTHOR
15 SAYS -- BY THE WAY, HE'S CONDUCTING AN ABA SEMINAR ON
16 THIS -- WHERE THE AUTHOR SAYS THESE ARE IMMENSELY VALUABLE
17 RIGHTS BECAUSE IT MAKES SENSE THESE ARE IMMENSELY VALUABLE
18 RIGHTS.

19 UNDER NO CIRCUMSTANCE WOULD THE ATTORNEY GENERAL OF

20 SOUTH CAROLINA ON BEHALF OF THE CHARITY GET ANY OF THOSE
21 TERMINATION RIGHTS. UNDER NO CIRCUMSTANCE. NOT UNDER
22 THIS PHANTOM 2002 AMENDMENT BECAUSE IT DIDN'T HAPPEN.
23 NOW, WE BELIEVE -- AND MR. JONES CAN REFUTE THIS -- THAT
24 THE ATTORNEY GENERAL IS HAPPY WITH THE SETTLEMENT WITHOUT
25 THE TERMINATION RIGHTS; THAT IT WAS UNDER MY DESCRIPTION

1 JUST A CHERRY ON TOP OF THE THE ICE CREAM SUNDAY. BUT IT
2 IS AN EXAMPLE OF WHAT THE CHARITY MAY WELL END UP WITH
3 BECAUSE OF THESE TERMINATION RIGHTS.

4 PERSONAL REPRESENTATIVES AND TRUSTEES HAVE TAKEN MANY
5 CONTRADICTORY POSITIONS IN THIS CASE, YOUR HONOR. IN
6 PLEADING AFTER PLEADING AND IN AFFIDAVITS THEY HAVE
7 ALLEGED THAT THE ATTORNEY GENERAL HAS GIVEN AWAY
8 \$50 MILLION, SOMETIMES 65 PERCENT OF THE OVERALL VALUE OF
9 THE THE ESTATE WHICH RANGES ANYWHERE FROM 100 MILLION TO
10 183 MILLION TO WHATEVER IT HAPPENS TO BE ON THAT
11 PARTICULAR DAY. IT IS THEIR JOB, BY THE WAY, TO KNOW WHAT
12 THE VALUE OF THE ESTATE IS; NOT OURS. WE DON'T KNOW
13 BECAUSE WE HAVEN'T BEEN GIVEN THAT INFORMATION AND I DON'T
14 BELIEVE THEY HAVE THAT INFORMATION BASED ON THEIR
15 TESTIMONY.

16 THEY ARGUE THAT MR. BAUKNIGHT HAS A CONFLICT OF
17 INTEREST, AND, SO, THEREFORE, CANNOT SERVE AS A TRUSTEE OF
18 BOTH THE JAMES BROWN LEGACY TRUST AND THE CHARITABLE
19 TRUST. FIRST OF ALL, WITH ALL OF THE BENEFICIARIES'

20 CONSENT CONFLICTS ARE PERMISSIBLE. THERE IS NO CONFLICT
21 HERE, BUT, AGAIN, IT'S IRONIC THAT THEY CLAIM THEY DON'T
22 HAVE A CONFLICT OF INTEREST EVEN THOUGH MR. JONES HAS BEEN
23 SINGING THAT SONG SINCE THE FIRST DAY HE WAS INVOLVED IN
24 THE CASE BECAUSE HE SAID WITH RESPECT TO THE VERY CRITICAL
25 ISSUE OF WHETHER THE ESTATE OR TRUST OWNS ASSETS --

1 MR. JONES IS SAVVY. HE KNEW THAT IF THE ESTATE OWNED THE
2 ASSET MY CLIENT MIGHT GET UP TO 50 PERCENT OF IT. HE'S
3 BEEN CLAIMING THEY HAVE A CONFLICT OF INTEREST. OH, NO,
4 WE DON'T HAVE A CONFLICT OF INTEREST. MR. BOUKNIGHT DOES.
5 WELL, THEY DO AND HE DOESN'T.

6 THEY CLAIM THE ADVISORY BOARD SHOULD BE NAMED AS
7 PARTIES, YET THEY DIDN'T NAME ANYBODY ON THE ADVISORY
8 BOARD AS PARTIES, AND, YES, THEY DO IN THEIR PLEADINGS SAY
9 AT SOME POINT MRS. THOMAS GAVE UP HER RIGHT TO BE ON THE
10 ADVISORY BOARD BY CONTESTING THE TRUST. WELL, LET'S
11 ASSUME FOR THE MOMENT THAT THAT IS ACCURATE. THEY DIDN'T
12 NAME HER BEFORE THE CONTEST WAS BROUGHT. THEY DIDN'T
13 BRING HER IN OR TALK TO HER BEFORE THE CONTEST WAS BROUGHT
14 WHICH WAS SOME WINDOW OF TIME AND THEY HAVEN'T NAMED ANY
15 OF THEIR ADVISORY BOARD IN THEIR PLEADINGS JUST LIKE THEY
16 HAVEN'T NAMED SALKEHATCHIE, AIKEN, AND VOORHEES.

17 THEY OPPOSE THE SETTLEMENT AGREEMENT BECAUSE THEY SAY
18 THE RIGHT OF FIRST REFUSAL WILL CAUSE A TAX PROBLEM WHICH
19 WE TOLD YOUR HONOR THIS MORNING WE THINK IS NOT A TAX

20 PROBLEM. YET, THEY PROPOSE TO DO THE VERY SAME THING
21 THEMSELVES. THEY WANT TO SELL THE HOUSE TO ONE OF THE
22 FAMILY MEMBERS FOR A REDUCED VALUE. WE ASK FOR THE
23 APPOINTMENT OF A SPECIAL ADMINISTRATOR, SPECIAL TRUSTEE.
24 THEY SAID THERE IS NO EMERGENCY. THEN A FEW WEEKS LATER
25 THEY ASKED FOR A SPECIAL ADMINISTRATOR AND SPECIAL TRUSTEE

1 BECAUSE THEY SAID THERE IS AN EMERGENCY, AND NOW A FEW
2 WEEKS LATER AS OF FRIDAY THEY'VE WITHDRAWN THAT ACCORDING
3 TO THEIR PLEADINGS PRESUMABLY BECAUSE THAT EMERGENCY ISN'T
4 THERE. WELL, IS THERE AN EMERGENCY OR NOT?

5 THEY SUE DALLAS, BRADLEY, AND CANNON FOR UNDUE
6 INFLUENCE FOR FINANCIAL ISSUES, BUT, YET, SAY WE HAVE NOT
7 ONE SCINTILLA OF EVIDENCE TO ACT IN GOOD FAITH TO DO THE
8 SAME THING. NOW, YOUR HONOR, A WILL AND TRUST ARE THE
9 ULTIMATE FINANCIAL DOCUMENTS. THAT'S WHERE YOU DISPOSE OF
10 YOUR PROPERTY. NOW, YOU MAY HAVE OTHER REASONS FOR DOING
11 WHAT YOU DO, BUT THE ONLY THING YOU CAN DO THROUGH A WILL
12 OR TRUST IS DISPOSE OF YOUR PROPERTY. HOW THEY DRAW THE
13 LINE BETWEEN UNDUE INFLUENCE DURING LIFETIME FOR FINANCIAL
14 ISSUES AND UNDUE INFLUENCE AT DEATH IS BEYOND ME. IT
15 SEEMS PRETTY INCONSISTENT.

16 THEY SAID IN PLEADINGS AND AFFIDAVITS THEY WERE
17 RESTRAINED UNDER SECTION 62-3-611 FROM ACTING. YOUR
18 HONOR, WE WOULD ALLEGE THAT AS SOON AS WE FILED THAT
19 PETITION BACK IN NOVEMBER FOR THEIR REMOVAL THAT THE

20 STATUTE KICKS IN AUTOMATICALLY AND THE ONLY THING THEY CAN
21 DO, ESSENTIALLY, IS PRESERVE THE ESTATE, BUT DEPENDING ON
22 AT WHAT POINT IN TIME WE'RE TALKING ABOUT THEY SAID THEY
23 FELT LIKE THEY HAD BEEN RESTRAINED SINCE FORLANDO BROUGHT
24 HIS FEDERAL LAWSUIT IN JANUARY TO THEY CAN DO ANYTHING
25 THEY WANT ACCORDING TO MRS. POPE'S TESTIMONY AND SELL

1 ASSETS. INCONSISTENT.

2 THEY SAY THE TERMINATION RIGHTS HAVE LITTLE VALUE.

3 MRS. POPE SAID THAT ON THE STAND, AND, YET, THEY FILED AN

4 ARTICLE IN THEIR PLEADINGS ON FRIDAY THAT THEY WANT YOU TO

5 LOOK AT THAT SAYS THEY HAVE IMMENSE VALUE. THEY TESTIFIED

6 THAT THERE IS NO GOOD FAITH CONTROVERSY AND THAT IT IS TOO

7 EARLY TO DETERMINE WHETHER AND HOW TO HAVE A SETTLEMENT

8 AND ON FRIDAY THEY PROPOSED A SETTLEMENT.

9 YOUR HONOR, FIDUCIARIES ARE SUPPOSED TO BE FAIR AND

10 IMPARTIAL. I THINK THERE IS A LINE TO BE DRAWN IF THEY

11 WERE ACTING AS ADVOCATES HERE AS FAR AS THE INCONSISTENT

12 POSITIONS HAVE BEEN TAKEN, BUT, CERTAINLY, AS FIDUCIARIES

13 THIS IS NOT APPROPRIATE. YOUR HONOR, THE BOTTOM LINE IS

14 THEY WANT TO PLAY WITH THE CHARITY'S MONEY. THEY WANT TO

15 FIGHT THIS ALL THE WAY AND IF THEY LOSE AND THE ATTORNEY

16 GENERAL GETS NOTHING ON BEHALF OF THE CHARITIES, THEY'LL

17 PROBABLY ASK FOR THEIR FEES AND THAT WILL BE IT. SORRY,

18 CHARITIES. WE BLINDLY FOLLOWED WHAT WE BELIEVED TO BE

19 MR. BROWN'S ESTATE PLAN AND WE GOT YOU A BIG GOOSE EGG.

20 AND, BY THE WAY, WE DIDN'T GET YOU ANY OF THOSE

21 TERMINATION RIGHTS THAT YOU WEREN'T GOING TO GET ANYWAY

22 EVEN IF THE ATTORNEY GENERAL PREVAILED, AND, BY THE WAY,

23 WE'VE SPENT A FORTUNE IN YEARS BEFORE WE COULD GET THERE

24 BECAUSE OF ALL OF THE THINGS THAT WE DISCUSSED AT THE LAST

25 CONVENING OF THIS HEARING, YOUR HONOR.

1 THE ONLY THING THAT'S CERTAIN ABOUT APPEALING ANY
2 APPROVAL OF THE SETTLEMENT AND ABOUT LETTING THIS
3 LITIGATION GO ON IS THE FEES AND COSTS INCLUDING THEIR
4 FEES WILL CONTINUE. THEY WANT US TO PROVE OUR CASE, IN
5 ESSENCE, AND THEN SO. YOUR HONOR, IF WE GET MUCH FARTHER
6 DOWN THE ROAD IN PROVING OUR CASE, I AM NOT SURE MY CLIENT
7 IS GOING TO SETTLE AGAIN. I DON'T THINK SHE WILL BE AS
8 GENEROUS. SHE MAY WELL BE. A VERY IMPORTANT COMPONENT OF
9 HER DECISION-MAKING PROCESS WAS TO BENEFIT THE CHARITABLE
10 TRUST, BUT AT SOME POINT WHEN I TELL HER NOT ONLY DO WE
11 THINK IT WAS A SLAM-DUNK BUT NOW IT'S AN ABSOLUTE
12 SLAM-DUNK HOW MUCH DO YOU WANT TO GIVE AWAY? AND THE SAME
13 CAN BE SAID FOR MR. LEVENSON'S CLIENTS IF THE WILL AND
14 TRUST CONTEST STARTS GOING THEIR WAY.

15 THE PURPOSE OF THE SETTLEMENT IS TO SETTLE. ALL WE
16 HAVE TO DO IS SHOW THAT THERE WAS A GOOD FAITH
17 CONTROVERSY, AND, YOUR HONOR, THE IDEA THAT IT WASN'T PUT
18 IN THE AFFIDAVITS FROM OUR CLIENTS THAT YOU ASKED US TO
19 PREPARE AND THAT THAT SOMEHOW PROVES A LACK OF GOOD FAITH

20 CONTROVERSY, IF I WEREN'T SO TIRED, YOUR HONOR, IT WOULD
21 BE LAUGHABLE THAT THERE IS NOT A GOOD FAITH CONTROVERSY
22 HERE.

23 THE OTHER ISSUE WAS WHETHER IT'S FAIR AND REASONABLE.
24 WELL, IF YOU THINK THE ATTORNEY GENERAL IS DOING ITS JOB,
25 THEN IT'S FAIR AND REASONABLE. IF WE KEEP THIS LITIGATION

1 GOING ON IT'S JUST GOING TO DRAG MR. BROWN'S LEGACY
2 THROUGH THE MUD. MRS. POPE'S OWN TESTIMONY DID SOME OF
3 THAT AND IT WILL PROBABLY BE A LOT MORE THAN THAT IF THIS
4 LITIGATION CONTINUES. WE DON'T WANT THAT, YOUR HONOR, FOR
5 MR. BROWN. TO APPROVE THE SETTLEMENT IS TO HONOR
6 MR. BROWN'S LEGACY AND TO SAVE IT. THANK YOU, YOUR HONOR.

7 THE COURT: MR. JONES?

8 MR. JONES: YES, YOUR HONOR. THANK YOU. AS
9 PROFESSOR MEDLIN HAS SAID YOU MIGHT SAY WE'VE TALKED AND
10 WE AGREED TO WITH HIS COMMENTS AND WE ALSO TALKED TO
11 MR. LEVENSON. I WANT TO MAKE SOME COMMENTS, YOUR HONOR,
12 BRIEFLY CONCERNING THE UNIQUENESS OF THE AG IN THIS
13 MATTER.

14 AS YOU'VE HEARD US SAY BEFORE THE AG HAS AUTHORITY TO
15 PROTECT THE INTEREST OF THE CHARITABLE TRUST. THAT COMES
16 FROM THE PARENS PATRIAE AUTHORITY TO PROTECT THE PUBLIC
17 INTEREST. IT'S NO DIFFERENT THAN THE AUTHORITY THAT MY
18 ATTORNEY GENERAL IS IN THE WATER LAWSUIT THAT'S IN THE
19 ORIGINAL JURISDICTION OF THE U.S. SUPREME COURT. IT IS

20 RECOGNIZED THAT IN THAT PUBLIC INTEREST ALSO IS A
21 RESPONSIBILITY BY THE ATTORNEY GENERAL TO PROTECT
22 CHARITABLE BENEFICIARIES AND THAT IS ESPOUSED IN COMMON
23 LAW AND IS ESPOUSED IN CODE SECTION 1-7-130. 1-7-130.
24 AND IT'S ALSO SET FORTH IN THE PROBATE CODE AT 62-7-405.

25 I THINK YOUR HONOR MIGHT BE AWARE OF THE FACT THAT

1 THE TREATISES ON THE AG IN PROTECTING CHARITABLE TRUST
2 RECOGNIZED THAT DUE TO LACK OF RESOURCES THAT THE AG CAN'T
3 BE EVERYWHERE, AND, THEREFORE, IN CERTAIN SITUATIONS OTHER
4 PARTIES MAY COME FORWARD AND PRESENT TO THE COURT MATTERS
5 TO PROTECT THE CHARITABLE TRUST. IF YOUR HONOR WILL DO
6 RESEARCH ON CHARITABLE TRUSTS IN SOUTH CAROLINA YOU'LL SEE
7 SOME OF THESE CASES THAT DIDN'T INVOLVE THE ATTORNEY
8 GENERAL OR THE ATTORNEY GENERAL MIGHT HAVE APPEARED BUT ON
9 NOMINALLY. SO, IT'S AN ISSUE THAT THE COURTS HAVE
10 RECOGNIZED AND THE STATUTES AND THE PROBATE COURT
11 RECOGNIZED THAT THERE COULD BE A LACK OF RESOURCES, BUT IT
12 DOES ADDRESS IN THE PROBATE CODE THAT A SETTLOR OR
13 TRUSTEE, THE AG OR SOMEONE WITH SPECIAL INTEREST CAN MOVE
14 TO PROTECT THE CHARITABLE TRUST BECAUSE THE AG CAN'T BE
15 EVERYWHERE. THE GENERAL LAW IS WHEN THE AG APPEARS HE
16 CONTROLS THE LITIGATION.
17 THE RESOURCE ISSUE THAT IS AN OBSTACLE IN A LOT OF
18 CHARITABLE TRUST CASES, YOUR HONOR, WAS NOT AN OBSTACLE IN
19 THIS CASE. YOUR HONOR HAS SEEN MYSELF APPEAR AT EVERY

20 HEARING SINCE WE INTERVIEWED. I HAVE JASON NICHOLSON WITH
21 ME. I HAVE MARY FRANCES JOWERS. OUR OFFICE -- THE
22 ATTORNEY GENERAL -- WE HAVE AT LEAST TOTAL SIX ATTORNEYS
23 THAT HAVE THEIR FINGERPRINTS ON THIS FILE. WE'VE HAD SIX
24 STAFF MEMBERS. SO, WE'VE GOT A TOTAL OF 12 PEOPLE THAT'S
25 BEEN WORKING ON THIS CASE. AS YOUR HONOR CAN SEE, IT DOES

1 TAKE SOME TIME AND ENERGY.

2 SO, WITH THAT I'D LIKE TO DISPEL ANY THOUGHT THAT, OF
3 COURSE, THE AG GOT IN THIS THING, AND WHAT ARE WE GOING TO
4 DO? MY GOODNESS, IT IS A MAJOR CASE AND WE GOT TO SETTLE
5 IT. WE GOT INTO THIS CASE. HENRY MCMASTER GAVE US THE
6 RESOURCES. I HAVE NEVER BEEN DENIED ANY RESOURCE THAT WE
7 NEED TO MOVE FORWARD IN THE CASE. SO, THE GENERAL LAW IS
8 WHEN THE AG COMES IN HE TAKES OVER, AND THE ONLY -- THE
9 PERSON THAT THE AG LOOKS TO IS YOUR HONOR IN A COURT OF
10 EQUITY.

11 SO, THE AG HAS TO PRESENT HIS CASE AS TO WHAT'S THE
12 BEST INTEREST OF THE CHARITABLE BENEFICIARIES. YOU CAN
13 IMAGINE, YOUR HONOR, IF ONCE THE AG APPEARED YOU HAD SOME
14 OTHER BENEFICIARIES, SPECIAL INTERESTS OR WHATEVER ALSO
15 APPEARING, THERE WILL BE CONFLICTING POSITIONS GOING ON
16 ALL THE TIME. THE GENERAL LAW IN SOUTH CAROLINA IS THAT
17 WHEN THE AG APPEARS AND HE SETTLES A MATTER FOR STATE
18 AGENCIES THAT THE AGENCY CAN'T COMPLAIN IF THEY WANT TO --
19 THE STATE V COOLEY CASE IS A 1948 CASE, I BELIEVE, YOUR

20 HONOR AND I CAN GET THE CITE TO YOU IF YOU'D LIKE, BUT IF
21 IT'S FAIR AND REASONABLE AND IT'S JUST AND THERE'S A
22 CONTROVERSY, THE COURT IS GOING TO ADOPT WHAT THE ATTORNEY
23 GENERAL RECOMMENDS.

24 YOUR HONOR, WE APPEARED IN THIS CASE IN SEPTEMBER OF
25 '07. WHEN WE FIRST WALKED IN THERE WAS DOCUMENT FLOATING

1 AROUND ABOUT ALL THE ASSETS OF THE TRUST OR THE ASSETS OF
2 THE ESTATE AND TRUST GOING TO THE ESTATE. THAT'S HOW WE
3 WALKED IN, AND IT TOOK US A WHILE TO GET OUR ARMS AROUND
4 THIS CASE. I EVEN HEARD PEOPLE SAY EARLIER ON IN THE
5 FIRST THREE OR FOUR MONTHS IT LOOKS LIKE THE AG DOESN'T
6 WANT TO SETTLE OR HE'S NOT IN THE MODE TO SETTLE. HE IS A
7 SCORCHED-EARTH TYPE OF SITUATION BECAUSE HOW VIGOROUSLY WE
8 WERE OPPOSING. YOUR HONOR REMEMBERS ME STANDING UP OR
9 MEMBERS OF OUR OFFICE STANDING UP SAYING, YOUR HONOR, WE
10 WANT THE ISSUE OF THE ASSETS OF THE IRREVOCABLE TRUST
11 LITIGATED. WE WANT TO MAKE A DETERMINATION. DON'T MAKE A
12 DETERMINATION NOW. WE ARGUED ABOUT MONIES IN BANK
13 ACCOUNTS AND ET CETERA, ANY CONFLICTS OF INTEREST.
14 SO, AS WE MOVED FORWARD DEVELOPING OUR CASE WE LOOKED
15 AT THE SEVERAL THINGS. WE LOOKED AT MR. ROSEN,
16 MR. MEDLIN'S CLIENT. WE LOOKED AT MR. LEVENSON'S CLIENTS.
17 WE TRIED TO FIGURE OUT WHO TO TALK TO TO GET INFORMATION.
18 WE TALKED TO MR. BYRD'S CLIENTS. WE TALKED TO ALL PARTIES
19 AND TRIED TO DEVELOP AND GET A FACTUAL BACKGROUND AND

20 BASED UPON THAT AS WE MOVE FORWARD WE REALIZED THAT IN THE
21 TRUST ASPECT OUR CHIEF WITNESSES THERE WOULD BE SOME
22 LIABILITY -- LIABILITY THAT OCCURRED ON THE STAND RIGHT
23 HERE IN THIS VERY COURTROOM UNBEKNOWNST TO US BEFORE THE
24 INFORMATION FROM MR. LEVENSON CAME OUT OR SOME INFORMATION
25 MIGHT HAVE COME TO US.

1 WE ALSO HAD SOME SITUATIONS WITH THE DRAFTER OF THE
2 WILL. WE HAD TO STEP BACK AND LOOK. WE ARE THE ATTORNEY
3 GENERAL, BUT WE CAN'T NOT GO AHEAD ON THE SCORCHED-EARTH
4 APPROACH, AND, YOUR HONOR, TO STEP BACK A SECOND SOME
5 PEOPLE MIGHT HAVE GOTTEN THAT IDEA IN THE BULL STREET CASE
6 IN WHICH THE GENERAL ASSEMBLY SAID AND THE GOVERNOR SAID
7 IF YOU SELL PART OF THE MENTAL HEALTH BULL STREET LOCATION
8 WE'LL GIVE 50 PERCENT TO MENTAL HEALTH AND 50 PERCENT TO
9 THE GENERAL FUND AND THAT'S A 50 PERCENT SPLIT, BUT WE
10 RESEARCHED THE LAW AND IT WAS VERY CLEAR TO US THAT THE
11 FOUR CORNERS OF ABOUT 13 DOCUMENTS -- NOT JUST ONE WILL
12 AND TRUST -- THAT THE ASSETS OF THE DEPARTMENT OF MENTAL
13 HEALTH AND BULL STREET WERE IMPRESSED WITH THE CHARITABLE
14 TRUST.

15 SO, MY AG, AS YOU'VE HEARD BEFORE, ARGUED THAT CASE
16 HIMSELF. HE WENT AND ARGUED AGAINST THE GOVERNOR, AGAINST
17 THE BUDGET AND CONTROL BOARD AND, ACTUALLY, THE TRUSTEE
18 WAS A STAKEHOLDER IN THE ORIGINAL JURISDICTION OF THE
19 STATE SUPREME COURT. THERE WAS NO SETTLEMENT IN THAT

20 CASE. THERE WAS EVEN NO TALK OF SETTLEMENT BECAUSE OF THE
21 FOUR CORNERS OF THE DOCUMENT. THAT'S THE SAME WAY THAT
22 YOU MIGHT HAVE HEARD ME MENTION IN THE EPWORTH CASE.
23 THAT'S WHERE THE ORPHANAGE GOT \$300,000 AS TRUSTEE. THEY
24 WANTED TO GET ALL OF THE \$300,000 AT ONE TIME AND NOT TAKE
25 THE INTEREST OF IT. WE SAID THE FOUR CORNERS OF THE

1 DOCUMENT -- YOU CAN'T GO IN AND JUST OVERRIDE THE INTENT
2 OF A TESTATOR AND GIVE YOUR OWN DISTRIBUTION. YOU GOT TO
3 GO BY THE FOUR CORNERS, AND THAT'S WHAT THE SUPREME COURT
4 SAID. YOU GOT TO GO BY THE FOUR CORNERS OF THE DOCUMENT.
5 SOMEBODY HAS GOT TO PROTECT THE PERSON WHO WROTE THE
6 DOCUMENT.

7 SO, AND WE GOT ANOTHER CASE THAT IS LARGER THAN THIS
8 CASE WHICH MY AG HAS MET WITH PARTIES THREE TO FOUR TO
9 FIVE TIMES AND PROBABLY RECEIVED MORE PHONECALLS THAN THAT
10 IN WHICH SIX ATTORNEYS IN MY OFFICE HAVE THEIR
11 FINGERPRINTS ON IT. IT IS \$100 MILLION. HE SAYS THE FOUR
12 CORNERS OF THE DOCUMENT -- WE'RE NOT GOING TO SETTLE. HE
13 SAID, WELL, IF WE FILE A LAWSUIT, YOU GOT TO SETTLE IT.
14 WE HAVEN'T GOT TO SETTLE.

15 SO, WE LOOK AT EACH CASE DIFFERENTLY. WE'RE QUITE
16 FAMILIAR WITH THE FOUR CORNERS ASPECT, YOUR HONOR. HERE
17 WE GOT A CASE COMING OUT OF THE LEFT UNDUE INFLUENCE. YOU
18 HAD THINGS OUT OF THE RIGHT WITH TOMI RAE HYNIE BROWN.
19 THERE WERE ALL OF THESE FACTORS WE HAD TO CONSIDER IN

20 MAKING OUR DECISION AND ANOTHER FACTOR THAT CAME UP, TOO,
21 YOUR HONOR, IS WHEN ALL OF THIS WAS KIND OF GOING FORWARD
22 IN '08 WE HAD DIFFICULTY -- THE AG MET WITH THE PR
23 TRUSTEES AND WE DID WORK OUT SOMETHING WHERE WE CAN PUT
24 THEM BACK IN OFFICE TO WHAT WE CONSIDERED APPROPRIATE.
25 ALONG THAT TIME WE HAVE A MEETING AND WHEN SOMEBODY TELLS

1 US THAT YOUR TRUST ASSETS HAVE GONE DOWNHILL AND, IN FACT,
2 YOU'RE GOING TO NEED TO BRING THE ASSETS BACK UP. YOU'RE
3 DRAGGING THE NAME OF JAMES BROWN AROUND. THAT'S NOT
4 HELPING ANYBODY. SO, INSTEAD OF BUYING IT YOU'RE GOING TO
5 HAVE TO BE A WHILE OF JUST BUILDING THE ASSETS BACK UP.

6 SO, WITH THAT IN MIND AND YOU KNOW ALL THE ISSUES
7 THAT PROFESSOR MEDLIN MENTIONED WE SAID WE NEED TO GET
8 TOGETHER AND TALK ABOUT IT, SEE WHERE WE ARE. AND, YOUR
9 HONOR, ANY THOUGHT THAT MY FRONT OFFICE DIDN'T KNOW ABOUT
10 IT, YOU TRY TO RUN A MEDIATION FEE AND THESE DAYS AND
11 TIMES BY THE ATTORNEY GENERAL EVERYTHING HAS GOT TO BE
12 APPROVED.

13 SO BEFORE WE WENT TO THE MEDIATION IN AUGUSTA TO MEET
14 WITH MR. LEVENSON'S CLIENTS AND MR. ROSEN AND PROFESSOR
15 MEDLIN'S CLIENTS -- JC AND I DID -- WE WENT DOWN AND MET
16 WITH THEM NOT KNOWING WHAT WAS GOING TO COME OUT ABOUT IT
17 AND THROUGH THAT LONG DAY AND INTO THE EVENING AN
18 AGREEMENT WAS REACHED AND, OF COURSE, THERE IS A
19 UNIQUENESS ABOUT IT. MR. LEVENSON'S CLIENTS SIGNED AND

20 TOMI RAE HYNIE BROWN WAS THERE. OF COURSE, THE AG WASN'T
21 THERE. WE COULDN'T SIGN. AND SINCE IT WAS NOT A
22 COURT-ORDERED MEDIATION -- WE GOT THOSE NOW AND WE TAKE
23 THE CHIEF DEPUTY WITH US, BUT IT WASN'T SONNY JONES AND IT
24 WASN'T JASON NICHOLSON. WE MADE A RECOMMENDATION TO MY
25 ATTORNEY GENERAL. YOU SEE FROM THE AUGUST 10 DOCUMENT

1 THAT HE SIGNED IT. HE ALSO SIGNED THE ADDENDUM HIMSELF.

2 SO, WHAT WE HAVE IS WE HAVE WHAT WE THOUGHT WAS A

3 FAIR RESOLUTION AND AS PROFESSOR MEDLIN MENTIONED THE

4 RENEWAL AND TERMINATION RIGHTS WEREN'T A KICKER IN THE

5 CASE AT THE TIME. WHAT WE WANTED TO DO IS END ALL

6 LITIGATION AND NOT KNOWING ABOUT THEIR NEW TERMINATION

7 RIGHTS INDEPTH ONE POINT WAS IS THERE THAT WOULD CONTINUE

8 ON WITH LITIGATION WITH THE GROUP WE HAD NOT COUNTING

9 MR. BELLS' CLIENTS AT THE TIME. HE SAID, WELL, THESE

10 RENEWAL AND TERMINATION RIGHTS COULD HAVE BEEN ISSUES. WE

11 WANT TO INCLUDE THOSE, TOO, BECAUSE WE DON'T WANT ANYMORE

12 LITIGATION AS FAR AS JAMES BROWN.

13 THE LEGACY HAS BEEN DRUG THROUGH THE MUD ENOUGH.

14 EVERYBODY IS KIND OF SAYING IF I MEET THEM AND WHAT DO YOU

15 DO AT THE AG'S OFFICE AND IS THAT CASE OVER? IT IS JUST

16 THE GENERAL -- AND YOUR HONOR IS PROBABLY AWARE OF IT,

17 TOO -- JUST GENERAL CONVERSATION ABOUT IT AND SO WE NEED

18 TO LOOK AT HOW TO RESOLVE IT.

19 ALSO, THERE IS THE COST OF LITIGATION. OUR OFFICE

20 WILL BE THERE FOR A LONG TIME -- AS LONG AS IT TOOK, BUT

21 WE REALIZED THAT THE TRUSTEES AND PR'S CAN INCUR SOME

22 FEES, AND, YOUR HONOR, ONE THING I MAY ADDRESS THAT

23 MR. MEDLIN HAS TALKED ABOUT IS WE NEED TO LOOK AT THIS

24 TRUST TO SEE IF WE'RE GOING TO MODIFY IT, AND TO MODIFY IT

25 IN THIS SENSE WE BRING IT BACK BEFORE YOUR HONOR IS NOW IT

1 TAKES KIDS FROM KINDERGARTEN THROUGH COLLEGE IS THAT
2 FEASIBLE? I NEVER HAVE SEEN ONE DO THAT BEFORE. WE MIGHT
3 JUST GO WITH COLLEGE AND THERE ARE CERTAIN PROVISIONS IN
4 THE CODE. WE CAN COME BACK TO YOU AND SAY IT NEEDS TO BE
5 MODIFIED FOR THE MONEY AND SO FORTH.

6 THE REASON I MENTION THAT I WAS IN THE COURTROOM AND
7 I WAS WATCHING A WHILE BACK AND WE GOT A LOT OF LAWYERS
8 HERE, BUT IF YOUR HONOR HAS HAD A KID IN HIGH SCHOOL -- I
9 HAVE KIDS IN HIGH SCHOOL AND THEY'RE FINISHING COLLEGE NOW
10 AND YOU GOT 9 THROUGH 12 AND YOU GET A PALMETTO
11 SCHOLARSHIP THAT'S \$5,000. THAT'S 5000 HOURS YOU SPENT IN
12 CLASSROOM JUST TO GET A 5000 SCHOLARSHIP PER YEAR, NOT
13 COUNTING YOUR STUDIES. OKAY?

14 WELL, IN ONE DAY IN THIS COURTROOM THROUGH PROPER
15 REPRESENTATION OF THE PR TRUSTEES IT IS \$10,000. SO, I
16 SEE TWO SCHOLARSHIPS GONE EVERYDAY. NOW, THAT'S NOT
17 SAYING THAT THE PRICE WAS TOO HIGH. IT IS A FACT. WHAT
18 AM I DOING HERE? WHAT IS MY AG DOING HERE? TO GET THIS
19 PROPERLY BEFORE THE COURT IT IS GOING TO COST A LOT. WHO

20 IS GOING TO SUFFER? SO, ONE OF THE FACTORS THERE WAS THE
21 COST OF THIS LITIGATION AND IT WASN'T THE DOMINATING
22 FACTOR, BUT IT WAS A FACTOR.

23 AND THE ISSUE -- I GOT A COUPLE OF MORE MATTERS TO
24 TOUCH ON, YOUR HONOR, AND I THINK THAT IT'S ABOUT IT
25 UNLESS YOU HAVE SOME QUESTIONS OF ME. IT WAS MENTIONED

1 THAT IT'S BEEN SET FORTH IN PLEADINGS THAT THE AG'S PLAN
2 OF SETTLEMENT IS 65 PERCENT. WHERE THESE FIGURES COME
3 FROM, I DON'T KNOW. THEY COME UP AND SAY, WELL, THE
4 TAXES -- THE ATTORNEY'S FEES ARE TAKEN OUT OF OUR SHARE OR
5 WHATEVER ELSE IT MIGHT BE. WE HAVE BEEN UNWAVERING IN
6 FACT THAT ANY PROVISION IN THIS AGREEMENT -- THE ORIGINAL
7 AGREEMENT OR THE ADDENDUM -- THAT'S GOING TO HURT MY
8 CHARITABLE TRUST THIS QUALIFICATION IS OUT. THE AG WILL
9 BE THERE AND WE'LL FIGHT IT ALL THE WAY.

10 SO, THERE IS NO QUESTION THAT IF WE GOT A RIGHT OF
11 FIRST REFUSAL AND MR. MEDLIN COMMENTED IT'S A PRIVATE
12 FOUNDATION. IT'S DIFFERENT THAN WHEN IT'S CLASSIFIED AS A
13 PUBLIC CHARITY, AND I DON'T WANT TO GET INTO TOO MUCH
14 ABOUT THAT, YOUR HONOR, BUT WE'RE SATISFIED IF IT GOES TO
15 PUBLIC CHARITY BECAUSE PUBLIC CHARITY HAS A LOOSER
16 STANDARD BECAUSE THERE ARE PEOPLE TO OVERSEE IT -- AG.
17 SO, PRIVATE FOUNDATION IS MORE STRICT TO RULES YOU GOT TO
18 GO BY. IT'S MORE WIDE OPEN TO PUBLIC CHARITY, BUT STILL
19 YOU GOT TO HAVE SOMEBODY LOOKING OVER TO MAKE SURE IT IS

20 PROTECTED, AND WHILE WE RELY ON THE EXPERTS HERE AND WE
21 LISTEN AND WE DONE OUR HOMEWORK, ALSO, WE'RE GOING TO BE
22 WATCHING THESE AND MAKING SURE THAT THE CHARITABLE TRUST
23 IS PROTECTED.

24 SO, AND LIKE MR. LEVENSON MENTIONED AT THE LAST
25 HEARING -- WELL, IF HE GETS 100 PERCENT, THAT'S A BIG TAX

1 LIABILITY FOR HIM BUT A GOOD ONE TO HAVE. SO, I DON'T
2 WANT TO HEAR ABOUT US GIVING AWAY 50 PERCENT BECAUSE I
3 THINK, YOUR HONOR, THAT WE HAVE DONE VERY WELL. MR. BELL
4 IS SAYING EVERY CASE YOU GOT IN SETTLING EVERYBODY DOESN'T
5 AGREE, BUT, YOUR HONOR, I WAS THERE ON AUGUST 10 AND I'M
6 HERE TODAY AND FROM WHAT I'VE HEARD I'M FOR IT AND THE AG
7 IS FOR IT.

8 WE THINK THERE IS A CONTROVERSY, A MAJOR CONTROVERSY.
9 WE THINK THESE PARTIES HAVE GIVEN A LOT. I WOULD SAY THE
10 CHARITY GAVE A LOT, TOO, BUT NOT IN THE SENSE OF GOING
11 FROM ZERO. THERE IS A CONTROVERSY. THE SETTLEMENT IS
12 FAIR AND REASONABLE AND WE WANT YOUR HONOR -- TO ASK YOUR
13 HONOR BASED UPON THE INFORMATION AND THE EVIDENCE YOU HAVE
14 WE THINK IT WOULD BE APPROPRIATE FOR YOU TO APPROVE IT.

15 OUR POSITION, YOUR HONOR -- WE TALKED TO YOU ABOUT
16 THE CHARITABLE TRUST. WE DON'T NEED TO HEAR WITH ALL DUE
17 RESPECT FROM MR. MEDLIN OR MR. LEVENSON OR THE PR
18 TRUSTEES. IT'S THE ATTORNEY GENERAL AND THE COURT OF
19 EQUITY. SO, WITH THOSE COMMENTS, YOUR HONOR -- ALSO, WITH

20 THE NEW TRUSTEE I THINK IT WOULD BE APPROPRIATE, YOUR
21 HONOR, THAT THE AG PER THE AGREEMENT COULD SELECT THE
22 TRUSTEE AND WE'D OFFER UP MR. BAUKNIGHT IN THAT POSITION.
23 WE DON'T THINK THERE WOULD BE ANY CONFLICT. IF ANY
24 CONFLICT OCCURS ALONG THE WAY, WE CAN APPOINT SOMEBODY
25 ELSE TO HANDLE THAT ISSUE. WE ARE THE ONES WHO APPOINTED

1 HIM.

2 WE WOULD ASK THAT THE SETTLEMENT BE APPROVED AND WE'D
3 ASK THAT MR. BAUKNIGHT BE INSTATED AS THE TRUSTEE.

4 THE COURT: MR. SHAHID?

5 MR. SHAHID: YOUR HONOR, IF YOU WOULD BEAR WITH ME,
6 I'D LIKE TO TELL A LITTLE QUICK STORY TO THE COURT. I'D
7 LIKE TO ADD A LITTLE TO WHAT MR. JONES HAD JUST MENTIONED
8 AND PROFESSOR MEDLIN MENTIONED ABOUT THIS CONTROVERSY. MY
9 GRANDFATHER DIED TWO DAYS BEFORE MY TRUST AND ESTATE
10 EXAMINATION. AND I MENTION THAT BECAUSE IT IS BROUGHT TO
11 MIND WHERE I SORT OF AM IN THIS CASE AND MY REPRESENTATION
12 OF THE GUARDIAN AD LITEM, JAMES BROWN, II.

13 MY GRANDFATHER DIED, JUDGE, AFTER HE HAD DISINVESTED
14 HIMSELF OF ANY PROPERTY. HE CAME HERE FROM LEBANON WITH
15 NOT MUCH OF A FORMAL EDUCATION AND HE WORKED HARD, BUILT
16 UP A STORE, AND HE GAVE HIS CHILDREN, HIS GRANDCHILDREN
17 ALL THAT HE OWNED BEFORE HE DIED. HIS LAST BIRTHDAY A
18 YEAR BEFORE HE DIED HE SAID I LEAVE YOU WITH ONE THING AND
19 THAT IS MY NAME.

20 WHAT STRUCK ME AS I PREPARED THIS AFFIDAVIT AND
21 INTENTIONALLY INCLUDED IN MR. ~SLOTCHIVER'S AFFIDAVIT WHEN
22 YOU ASKED US TO PROVIDE YOU WITH THE AGREEMENT AND THE
23 APPROVAL OF THIS AGREEMENT THAT THE VERY FIRST EXHIBIT
24 THAT I ATTACHED WAS THE CERTIFICATE OF LIVE BIRTH OF OUR
25 CLIENT -- OUR WARD -- WHICH IS I BELIEVE AN EXHIBIT IN

1 THIS COURT. THIS HAS NOT BEEN MENTIONED MUCH IN THIS
2 COURTROOM, BUT IT NEEDS TO BE MENTIONED IN THIS COURTROOM.
3 MY CLIENT'S NAME IS JAMES JOSEPH BROWN, II. HIS FATHER IS
4 LISTED AS JAMES JOSEPH BROWN, JR.
5 WE TALK ABOUT THE NEED FOR SETTLEMENT BECAUSE OF THE
6 DRAIN OF THE RESOURCES THIS ESTATE MAY OR MAY NOT HAVE AND
7 THE EXPENSE THAT THIS MAY HAVE ON DIVESTING THE ESTATE OF
8 ITS MONETARY RESOURCES. PROFESSOR MEDLIN MENTIONED THIS
9 AND MR. JONES MENTIONED THIS AS WELL.
10 THE OTHER ASPECTS OF THIS CONTROVERSY IS THAT IT
11 DRAGS THE NAME OF AN INTERNATIONALLY-KNOWN ICON
12 POTENTIALLY THROUGHOUT THIS LITIGATION AND FOR MY
13 CLIENT -- FOR MY WARD, MR. SLOTHIVER'S WARD -- MY CLIENT
14 HAS A HIGH VESTED INTEREST IN PRESERVING HIS FATHER'S NAME
15 BECAUSE HE CARRIES HIS FATHER'S NAME. HE'S THE ONLY
16 PERSON INVOLVED IN THIS LITIGATION IN ANY ROLE THAT HAS A
17 NAME OF JAMES JOSEPH BROWN, II AND HE IS THE YOUNGEST -- I
18 BELIEVE THE YOUNGEST -- LITIGANT OR PARTY INVOLVED IN THIS
19 LITIGATION.

20 HE WAS BORN ON JUNE 11, 2001. THIS HAS BEEN A HARD
21 CASE FOR HIM. HE MAY NOT UNDERSTAND THIS CASE. HE IS TOO
22 YOUNG TO APPRECIATE IT, BUT IT'S BEEN A HARD CASE FOR HIM
23 BECAUSE HE'S BEEN WITHOUT A HOME AND HIS FATHER SINCE HIS
24 FATHER DIED ON CHRISTMAS SEVERAL YEARS AGO. MY REQUEST TO
25 THE COURT IS, JUDGE, VERY SIMPLY TO APPROVE THIS AGREEMENT

1 FOR NO OTHER REASON THAN TO PRESERVE AND TO PROMOTE THE
2 GOOD NAME OF HIS FATHER AND THE NAME THAT HE INHERITED.

3 IT STOPS ALL OF THIS LITIGATION. IT STOPS ALL THIS
4 DIVESTING OF MONETARY RESOURCES AND IT PRESERVES WHAT
5 WE'RE TRYING TO PROTECT AND THAT IS THE NAME OF JAMES
6 JOSEPH BROWN.

7 YOUR HONOR, THERE ARE SOME SIDE ISSUES THAT
8 MR.~SLOTCHIVER AND I NEED TO TAKE OUT WITH THE COURT AT
9 SOME PARTICULAR POINT AND PROBABLY PETITION TO APPROVE OUR
10 FEES AND ALSO TO APPROVE THE AGREEMENT BETWEEN TOMI RAE
11 BROWN AND MY CLIENT AND WE WILL DO THAT AT THE APPROPRIATE
12 TIME. THANK YOU.

13 THE COURT: MR. LEVENSON?

14 MR. LEVENSON: COULD I REQUEST A BREAK? WE'VE BEEN
15 GOING ABOUT AN HOUR AND A HALF.

16 THE COURT: SURE.

17 MR. LEVENSON: IT'LL BE A MORE CONCISE ARGUMENT AFTER
18 THAT.

19 THE COURT: IT MIGHT BE REAL SHORT IF I DON'T GIVE

20 YOU A BREAK. I HAVE SEEN A JUDGE DO THAT BEFORE. NOT ME.

21 LET'S TAKE A BATHROOM BREAK.

22 (WHEREUPON, A BREAK WAS TAKEN.)

23 MR. LEVENSON: I AM GOING TO DELIVER ON TIME AND
24 UNDER BUDGET. PROFESSOR MEDLIN TOLD ME HE WOULD TAKE 30
25 MINUTES.

1 THE COURT: CAREFUL WHAT YOU REPRESENT.

2 MR. LEVENSON: JUDGE, WHEN I FIRST STARTED PRACTICING
3 LAW I THOUGHT KNOWING THE LAW WAS SUFFICIENT. NOW I KNOW
4 KNOWING THE LAW AND HAVING A STRONG BLADDER IS SUFFICIENT
5 TO BEING A GOOD TRIAL LAWYER.

6 THE COURT: THAT'S CALLED AGE, MR. LEVENSON.

7 MR. LEVENSON: JUDGE, WE'RE HERE ABOUT A CODE SECTION
8 THAT YOU'RE ASKED TO REVIEW AND I WOULD IMAGINE AND I
9 WOULD SAY THIS TO A JURY IF THE JURY WERE LOOKING AT IT
10 THIS IS PROBABLY THE FIRST TIME IN YOUR HONOR'S CAREER
11 THAT YOU'VE HAD AN OPPORTUNITY TO LOOK AT THIS CODE
12 SECTION WHEN APPLYING CERTAIN UNIQUE FACTS. IN THAT
13 REGARD ONE OF THE THINGS I THOUGHT WOULD BE APPROPRIATE IS
14 TO LOOK AT WHAT CASES HAVE INTERPRETED THIS CODE SECTION
15 INSOFAR AS THE STANDARD OF REVIEW MEANING WHAT AN
16 APPELLATE COURT WOULD BE LOOKING AT IF THE APPELLATE COURT
17 WERE TO REVIEW THE DECISION OF THIS COURT IN APPLYING THE
18 LAW THAT TO THE FACTS THAT HAVE BEEN PRESENTED, AND I WILL
19 SAY THAT WE FOUND NO LAW ON THAT SUBJECT OR ONE OF US

20 WOULD BE TELLING YOU ABOUT IT. IN FACT, I LOOKED OUTSIDE
21 OF THE STATE -- THIS STATE -- FOR OTHER AUTHORITIES AND
22 COULD NOT FIND ANY WHICH LEADS ME TO MAKE A CONCLUSION
23 THAT MAY ULTIMATELY BE DECIDED ELSEWHERE, BUT THAT IT IS
24 MORE LIKELY THAN NOT IN A CASE SUCH AS THIS THAT THE
25 STANDARD OF REVIEW IS THE DISCRETION OF THE TRIAL COURT,

1 AND I BELIEVE THAT'S IMPORTANT BECAUSE IN
2 THE-DISCRETION-OF-THE-TRIAL-COURT STANDARD YOU ARE NOT
3 LIKELY TO BE REVERSED IF YOU HAVE ANY EVIDENCE ON WHICH TO
4 EXERCISE YOUR DISCRETION FOR GRANTING OR DENYING THE
5 PETITION FOR THE APPROVAL OF THE SETTLEMENT.

6 UNLIKE MY OVEREDUCATED COLLEAGUE PROFESSOR MEDLIN, I
7 LIKENED THIS CASE TO A CASE OF PROBABLE CAUSE WHICH IS TO
8 SAY WE'RE HERE BEFORE A TRIBUNAL TO ESTABLISH WHETHER
9 THERE ARE SUFFICIENT FACTS TO APPROVE THIS SETTLEMENT
10 AGREEMENT. PROFESSOR MEDLIN DID AN EXCELLENT JOB IN
11 ARGUING THE CASE TO WHAT MIGHT VERY WELL BE THE END
12 ARBITER OF THE FACTS, AND, FRANKLY, THAT WAS HELPFUL
13 BECAUSE IT HELPED ME PULL BACK FROM THAT POSITION TO
14 REALIZE THAT AT LEAST I THINK THAT NOT AS MUCH EVIDENCE IS
15 REQUIRED IN YOUR HONOR EXERCISING THE DISCRETION TO
16 APPROVE OR NOT THE SETTLEMENT AGREEMENT. I DON'T BELIEVE
17 WE WOULD HAVE HAD TO PROVE THAT WE COULD HAVE PREVAILED ON
18 THE UNDUE INFLUENCE CLAIM OR ANY OTHER CLAIM THAT WAS
19 BROUGHT THROUGH THE PLEADINGS IN THIS CASE.

20 THE CASELAW THAT WAS PRESENTED THROUGH WITNESSES
21 HERE, NOTWITHSTANDING RESPECTFULLY THE ARGUMENT THAT WE'VE
22 MADE THAT MRS. POPE AND MR. BUCHANAN DO NOT HAVE STANDING
23 TO TAKE THAT POSITION, BUT THE ARGUMENT WAS THE RUSSELL
24 CASE AND I WROTE DOWN THAT YOUR HONOR ASKED THE QUESTION
25 FOUR TIMES OF A WITNESS AS TO WHETHER THE RUSSELL CASE

1 INVOLVED A CASE THAT WAS RELATED TO THE APPROVAL OF A
2 SETTLEMENT AGREEMENT AND THE ANSWER WAS, ULTIMATELY, NO,
3 IT DID NOT. SO, AGAIN, WHETHER THERE IS ANY BINDING
4 AUTHORITY OUT THERE THAT WOULD HELP GUIDE THIS DARE I SAY
5 CASE OF FIRST IMPRESSION FOR YOUR HONOR TO CONSIDER AND
6 FOR AN APPELLATE COURT MAY DO THEREAFTER.
7 WHAT I DO KNOW, THOUGH, JUDGE, IS THAT YOU KNOW THERE
8 ARE VERY SIGNIFICANT DIFFERENCES OF OPINION BY
9 MR. BUCHANAN AND MRS. POPE ON WHAT IS IMPORTANT IN THIS
10 CASE. UNFORTUNATELY, THEY DON'T ACKNOWLEDGE THAT THERE IS
11 AN EQUAL WEIGHT TO BE GIVEN TO THE BODY OF EVIDENCE THAT
12 WE HAVE PRESENTED BECAUSE THEY PERHAPS BELIEVE MORE
13 RELIGIOUSLY IN THEIR CAUSE THAN THEY GIVE US CREDIT FOR
14 BELIEVING IN OURS.
15 MRS. POPE SAYS THAT MR. HERRING TESTIMONY IS, QUOTE,
16 NOT RELEVANT AND I BELIEVE THAT SHE FEELS VERY STRONGLY
17 ABOUT THAT AND I RESPECT THAT VIEW, BUT SHE ALSO SAYS,
18 QUOTE, I AM NOT EVEN SLIGHTLY BOTHERED BY HIS MISFORTUNE
19 REFERRING TO THE ISSUE THAT WE ALL KNOW WAS HIS

20 MISFORTUNE, BUT IF MR. HERRING COMES INTO THIS COURTROOM
21 AND EVEN THOUGH PERHAPS MR. BUCHANAN AND MRS. POPE MIGHT
22 NOT BRING HIM INTO THIS COURTROOM I ASSURE THAT YOU THAT
23 HE WOULD BE IN THIS COURTROOM PURSUANT TO AN ORDER OF THIS
24 COURT UPON OUR REQUEST TO TESTIFY ABOUT THINGS. IT IS
25 HARD TO IMAGINE THAT THERE ISN'T A JUSTIFIABLE BELIEF THAT

1 HIS MISFORTUNE MIGHT NOT INFECT THIS CASE. THAT'S NOT TO
2 SAY THAT IT WOULD OR THAT A JUDGE OR JURY MIGHT NOT SAY,
3 WELL, WE'RE GOING TO DISREGARD THE FACT THAT HE WALKED IN
4 HERE IN THE ORANGE OUTFIT AND THE CHAINS ON HIS LEGS AND
5 THE ATTACKS ON HIS CREDIBILITY AND IMPEACHMENT OF HIS
6 INTEGRITY, BUT IT IS CERTAINLY ARGUABLE THAT THERE ARE
7 SOME PEOPLE WHO WOULD BELIEVE OTHERWISE.

8 AND THAT WHOLE APPROACH IS EMPHASIZED OR FOCUSED WHEN
9 MR. BUCHANAN AND MRS. POPE TOOK A DIFFERENT APPROACH TO
10 THE CASE THAN WE DID. THEY DIDN'T INTERVIEW THE WITNESSES
11 TO THE WILL -- MR. FULLER -- WHO WE DID INTERVIEW. WE
12 ASKED ABOUT THAT. THEY DIDN'T INTERVIEW MR. HERRING
13 EVIDENTLY BECAUSE THEY DID NOT FEEL IT WAS IMPORTANT, AND
14 I RESPECT THAT IS THEIR POINT OF VIEW, BUT WHAT I THINK
15 YOUR HONOR MUST EVALUATE IF THIS WAS TANTAMOUNT TO A
16 PROBABLE CAUSE HEARING IS WHETHER THERE WAS ANY EVIDENCE
17 THAT WOULD HAVE JUSTIFIED THE REASONABLENESS OF THE
18 SETTLEMENT, NOT WHETHER IT WOULD HAVE PREVAILED IN THE
19 ULTIMATE FINDING OF FACT.

20 THE GRAVAMEN OF MRS. POPE AND MR. BUCHANAN'S
21 DISAGREEMENT -- AGAIN, PRETERMITTING OUR OBJECTION TO
22 THEIR STANDING. WE'RE ASSUMING FOR THE PURPOSES OF THIS
23 ARGUMENT IS THAT JAMES BROWN HAD A LONGSTANDING CHARITABLE
24 INTENT AND THAT THE SETTLING PARTIES HAVE DISHONORED THAT
25 LONGSTANDING CHARITABLE INTENT TO BENEFIT EDUCATIONAL

1 INSTITUTIONS IN GEORGIA AND SOUTH CAROLINA FOR THE BENEFIT
2 OF PEOPLE. WE KEEP TALKING ABOUT CHILDREN. I'M NOT SURE
3 THAT THAT IS NECESSARILY A LIMITATION ON IT, BUT MR. BROWN
4 MIGHT VERY WELL HAVE INTENDED FOR ANYONE TO HAVE BEEN
5 GIVEN THE OPPORTUNITY, BUT THAT LIFETIME OF CHARITABLE
6 GIVING FOR EDUCATION HAS BEEN SUBSTANTIALLY ACCOMPLISHED
7 MINDFUL OF THE COMPETING CLAIMS THAT COULD HAVE
8 EXTINGUISHED ALL OF THE CLAIMS THAT WOULD HAVE ULTIMATELY
9 GONE TO THE ATTORNEY GENERAL IF HE HAD PREVAILED OR NONE
10 OF WHICH THAT COULD HAVE GONE TO THE ATTORNEY GENERAL, AND
11 THERE ARE SOME -- THERE ARE SOME PITCHES THAT I IMAGINE
12 PITCHERS WOULD LIKE TO HAVE BACK AND HERE IS ONE THAT I
13 THINK IF THIS WAS A TRIAL ON THE MERITS THIS PITCHER WOULD
14 WANT TO HAVE BACK.

15 NOTWITHSTANDING MRS. POPE AND MR. BUCHANAN'S BELIEF
16 THAT WE HAVE DISRESPECTED MR. BROWN'S LIFETIME CHARITABLE
17 INTENTS FOR THE EDUCATIONAL PURPOSES, MRS. POPE TELLS YOUR
18 HONOR THAT MR. CANNON SAID HE WANTED TO GIVE ME A WILL
19 LEAVING HALF OF HIS ESTATE, UNQUOTE. THAT'S WHAT

20 MRS. POPE TOLD YOUR HONOR THAT MR. CANNON TOLD HER. NOW,
21 IF MR. CANNON WAS TOLD -- IF MR. CANNON WOULD TESTIFY
22 SIMILARLY IN THE MERITS OF THE COMPETING CLAIMS AS HE TOLD
23 MRS. POPE, THEN SURELY THERE WOULD BE SOME ARGUMENT THAT
24 MR. BROWN HAD A LIFETIME PASSION FOR CHARITABLE GIVING FOR
25 THE BENEFIT OF EDUCATION UNLESS SOMEONE CAME ALONG AND

1 SAID GIVE ME HALF OF YOUR ESTATE FOR NON-CHARITABLE
2 PURPOSES SUCH AS MR. CANNON, A MAN WHO HAD HIS CONFIDENCE
3 AND A FIDUCIARY DUTY TO HIM, ALL OF WHICH WOULD BE
4 SUPPORTED IN THE ARGUMENTS WE MADE IN THE CASE.
5 FRANKLY, I DID NOT KNOW THAT STATEMENT UNTIL
6 MRS. POPE SAID IT AND I HAVE EVERY REASON TO BELIEVE THAT
7 SHE SPOKE TRUTHFULLY AND THAT THAT IS PROBABLY WHAT CANNON
8 COULD HAVE DONE NOTWITHSTANDING THE FIRMLY-HELD BELIEF BY
9 MRS. POPE AND MR. BUCHANAN THAT UNDER ANY AND ALL
10 CIRCUMSTANCES EVERYTHING SHOULD HAVE GONE TO CHARITY.
11 WHAT SHE MEANT WAS EVERYTHING SHOULD HAVE GONE TO CHARITY
12 EXCEPT IF SOMEONE CLOSE TO MR. BROWN ASKED HIM TO DO
13 OTHERWISE WHICH IS PRECISELY THE REASON THAT THERE WAS IN
14 DISPUTE A FACTUAL DISAGREEMENT BETWEEN THE CHARITABLE
15 BENEFICIARIES REPRESENTED BY THE ATTORNEY GENERAL AND MY
16 CLIENTS ALONG WITH TOMI RAE BROWN.
17 I'M SORRY. WE -- I'D LIKE TO SAY, JUDGE, THAT -- I
18 THINK I STARTED AT 3:40. IT'S 3:48. TWO MINUTES AND I'LL
19 BE THROUGH. THERE HAVE BEEN A NUMBER OF ATTACKS ON THIS

20 COURT AND THIS SYSTEM BY A NUMBER OF PARTIES SINCE
21 CHRISTMAS DAY OF 2006 AND I BELIEVE THAT THE ATTACKS ON
22 THIS COURT WERE UNJUSTIFIED. THERE HAVE BEEN A NUMBER OF
23 PEOPLE IN THIS COURTROOM THAT HAVE BEEN FRUSTRATED BY WHAT
24 THEY PERCEIVE TO BE THE COURT'S UNWILLINGNESS TO DO WHAT
25 THEY WANT TO DO, BUT NONE FRUSTRATED LONGER THAN MY

1 CLIENTS WHO HAVE BEEN IN THIS COURT LONGER THAN ANYONE,
2 AND I DON'T MEAN TO SAY THAT YOUR HONOR HAS NOT PROVIDED
3 DUE PROCESS. WHAT I MEAN IS THAT FRUSTRATION IS PART OF
4 THE PROCESS.

5 YOU DO NOT, HOWEVER, TRASH THE PROCESS, CRITICIZE THE
6 PROCESS, AND CLAIM IT IS WITHOUT FAIRNESS SIMPLY BECAUSE
7 YOU DON'T GET WHAT YOU WANT. TO SUGGEST THAT ANY COURT
8 HAS FORCED A SETTLEMENT ON THE PARTIES IS UNWARRANTED. TO
9 DESCRIBE THE EVENT OF A SETTLEMENT AS AN UNTOWARD EVENT IS
10 INAPPROPRIATE. TO CLAIM THAT THIS PROCESS WHICH HAS AS OF
11 JANUARY 30, MARCH 4, 5, 6, MARCH 25, 26 AND NOW TODAY
12 APRIL 6 HAS NOT BEEN PROVIDING A HEARING AND DUE PROCESS
13 TO PARTIES WHO WE BELIEVE DON'T EVEN HAVE STANDING TO BE
14 HERE TO MAKE THIS POSITION AS WE WOULD CONSTRUE SECTION
15 1102 IS EVIDENCE THAT YOUR HONOR HAS BENT OVER BACKWARDS
16 AND THIS COURT HAS BENT OVER BACKWARDS TO PROVIDE A
17 HEARING FOR EVERYONE.

18 WE HAVE NO IDEA WHAT YOUR HONOR IS GOING TO DO IN
19 THIS CASE EXCEPT TO SAY THAT WHEN CONSIDERING THAT YOU

20 HAVE GREAT LATITUDE AS I WOULD CONSTRUE THE CONCEPT OF
21 DISCRETION, IF THAT IS THE STANDARD OF REVIEW IN A CASE
22 LIKE THIS, THAT YOUR DECISION HERE WILL BE SUSTAINED
23 REGARDLESS OF WHO YOU SHOULD DISAGREE WITH. ONE OF THE
24 FIRST THINGS YOUR HONOR TOLD US WHEN WE CAME TO SEE YOU
25 EARLY 2007 WAS THAT THIS CASE WAS TO BE HANDLED

1 DIFFERENTLY THAN THAT CASE IS MIAMI AND I ACTUALLY CAN'T
2 REMEMBER THE LADY'S NAME.

3 THE COURT: ANNA NICOLE SMITH.

4 MR. LEVENSON: AND IT HAS. I HONESTLY THINK THAT
5 THIS CASE HAS RISEN TO THE TOP. I REALLY DO FEEL HONORED
6 TO BE A PART OF IT. IT'S BEEN EXCITING AND EDUCATIONAL,
7 BUT THE EYES OF THE WORLD ARE AFTER WE FINISH OUR
8 PRESENTATIONS HERE ARE ON YOUR HONOR TO MAKE A DECISION
9 THAT EITHER APPROVES AN AGREEMENT THAT IS HISTORICAL AND
10 FORWARD-LOOKING OR TO LEAVE THE PARTIES BACK TO THE DISMAL
11 DISAGREEMENTS THAT HAVE THROUGH THE HEAT OF BATTLE FORGED
12 THIS SETTLEMENT AND WE BELIEVE -- I BELIEVE THAT THE
13 SYSTEM HAS SERVED MY CLIENTS WELL REGARDLESS OF WHAT YOUR
14 HONOR DECIDES. THANK YOU.

15 THE COURT: MR. BELL?

16 MR. BELL: THANK YOU, YOUR HONOR. YOUR HONOR, BEFORE
17 LUNCH WHEN YOU HEARD THE MOTIONS TO STRIKE YOU REPEATEDLY
18 REMINDED US THAT THROUGHOUT THIS PROCESS YOU HAD INDICATED
19 THAT ALL OF THE FILINGS IN THIS CASE WOULD BE PART OF THE

20 RECORD AND I MENTION THAT BECAUSE IT WAS THIS PAST FRIDAY
21 THAT WE RECEIVED AND THAT WAS FILED WITH THE COURT A
22 DOCUMENT THAT WOULD BE PART OF THAT RECORD AND PART OF
23 YOUR RULING THAT EVERYTHING WAS TO BE AVAILABLE FOR
24 CONSIDERATION. THE WEIGHT WOULD BE VARIED, BUT THAT WAS
25 THE OFFER OF JUDGMENT. YOUR HONOR, WE DIDN'T PARTICIPATE

1 IN THAT. IT CAME OUT OF THE BLUE. IT WAS A TOTAL
2 SURPRISE TO ME TO OPEN MY MAIL AT THE END OF LAST WEEK AND
3 RECEIVE AN OFFER OF JUDGMENT FROM MRS. POPE AND
4 MR. BUCHANAN, BUT THAT OFFER OF JUDGMENT IS VERY
5 REVEALING.

6 PROFESSOR MEDLIN OFFERED ONE POINT, BUT THE
7 INTERESTING THING IS IT HAS ALL THE CATEGORIES IN IT THAT
8 THE SETTLEMENT HAS. THE ONLY DIFFERENCE IS THE
9 PERCENTAGES ARE DIFFERENT. THEY EVEN PROVIDE FOR PAYING
10 MONEY TO BUDDY DALLAS AND AL BRADLEY. THEY PROVIDE FOR
11 PAYING MONEY TO LITTLE MAN, TO TOMI RAE, TO MY CLIENTS.
12 EVERYBODY IS TAKEN CARE OF, BUT IT'S THE PERCENTAGES AND
13 AS PROFESSOR MEDLIN SAID THAT PROVES THAT THEY RECOGNIZE
14 THAT THERE IS A CONTROVERSY WORTH SETTLING AND RESOLVING,
15 BUT THE ONE THING THAT IS DIFFERENT IN THAT IS IT PROVIDES
16 THAT THEY WILL BE THE PERMANENT TRUSTEES, I FEEL, FOREVER.
17 NOW, THAT IS INTERESTING, YOUR HONOR, BECAUSE
18 MRS. POPE TESTIFIED AND MR. BUCHANAN SEVERAL MONTHS AGO
19 THAT THEY HAVE NO INTEREST IN BEING IN THIS JOB FOREVER.

20 THEY TESTIFIED TO US THAT THEY ARE LOOKING FORWARD TO
21 WRAPPING UP THE INITIAL PHASE AND MOVING ON. THAT'S
22 PRECISELY WHAT THIS DOES. MR. BUCHANAN TOLD US THAT HE'S
23 NOT A PROFESSIONAL TRUSTEE; THAT HE DID NOT HAVE
24 EXPERIENCE IN THE MUSIC AREA IN MANAGING THESE THINGS, HAD
25 NOT BEEN A TRUSTEE BEFORE IN SOMETHING LIKE THIS, AND SO

1 THE SETTLEMENT PROVIDES FOR AN INDIVIDUAL WHO'S DONE
2 HUNDREDS OF TRUSTS, WHO HAS THAT BACKGROUND AND EXPERIENCE
3 AND IT TAKES CARE OF IT.

4 YOU KNOW, MR. LEVENSON -- AND I RESPECT HIM FOR
5 THIS -- WANTED TO STRIKE SOME AFFIDAVITS. I, QUITE
6 FRANKLY, THINK EVERY ONE OF THOSE AFFIDAVITS LENT CREDENCE
7 TO THE NEED TO APPROVE THE SETTLEMENT BECAUSE ALL OF THOSE
8 AFFIDAVITS RAISED QUESTIONS OF CONTROVERSY AND EVERY ONE
9 OF THEM ARE THE OPPOSITE OF OTHER FACTS THAT ARE IN THE
10 RECORD AND IT'S ALL THE MORE REASON TO APPROVE IT.

11 YOUR HONOR, WE HAVE A CHOICE HERE. YOUR HONOR HAS A
12 CHOICE. WE EITHER SETTLE THIS CASE SHORT TERM OR WE'RE
13 GOING TO BE LITIGATING NOT ONCE A MONTH AS HAS BEEN THE
14 LAST YEAR, BUT IT'S GOING TO BE EVERY DAY EVERY WEEK FOR
15 THE NEXT TWO OR THREE YEARS.

16 FINAL THREE POINTS. MR. RUFF -- AND I'M SURE HE IS
17 AN EXCELLENT TAX ATTORNEY. WHEN MR. RUFF TESTIFIED AND
18 ANSWERED QUESTIONS FROM PROFESSOR MEDLIN HE GAVE MAYBE THE
19 STRONGEST TESTIMONY YET AS TO THE NEED FOR THIS SETTLEMENT

20 BECAUSE VERY CANDIDLY HE RECOGNIZED THE WEEKNESS IN THE
21 OPPOSITION AND THE FACT OF THE CONTROVERSY WHEN HE TALKED
22 IN TERMS OF THE 50 PERCENT, WHEN HE TALKED IN TERMS OTHER
23 THINGS -- DIDN'T KNOW ABOUT THE RESIDUAL RIGHTS. SO, IF
24 YOU FOLLOW THE CROSS EXAMINATION OF RUFF IT SUPPORTS THE
25 NEED FOR THIS.

1 THE FINAL TWO POINTS. THE -- AS MRS. POPE SAID, SHE
2 WAS IN HERE TO GET IT STARTED. THIS IS THE REPLACEMENT.
3 IT IS THE TRANSITION FROM THE START TO THE PERMANENCY AND
4 THAT WOULD ALLOW IT TO GO AHEAD, BUT THERE'S BEEN A LOT OF
5 TALK, YOUR HONOR, ABOUT THE TRANSITION. YOU KNOW, WHEN
6 MRS. POPE AND MR. BUCHANAN TOOK OVER THERE WAS NO
7 TRANSITION. WE'RE TOLD THAT THERE ARE 20-SOMETHING
8 LAWSUITS. THERE ARE, BUT THEY'RE NOT THE ONES -- THEY'RE
9 NOT THE ATTORNEYS IN THERE. THERE ARE GOOD LAWYERS IN
10 THOSE CASES, BUT THERE IS NO -- SHOULD BE NO DIFFICULTY IN
11 THE TRANSITION AS TO THOSE LAWSUITS BECAUSE THEY'RE BEING
12 HANDLED BY COMPETENT ATTORNEYS. MANY OF THEM ARE STAYED
13 AS TO THE LITIGATION, AS TO THE DISCOVERY, AND, SO, THAT'S
14 NOT A PROBLEM.

15 THE -- THERE ARE NO ONGOING THINGS AS FAR AS
16 MARKETING OR SELLING THE ESTATE. THAT'S NOT A PROBLEM.
17 THE THE REAL CONCERN HERE, THOUGH, YOUR HONOR, IS THE ONLY
18 PEOPLE, IN ESSENCE, OPPOSING WHAT YOUR HONOR WILL DO IF
19 YOU APPROVE IT IS AS YOU'VE SAID YOUR SPECIAL

20 ADMINISTRATORS AND YOUR TRUSTEES, AND I THINK IN ALL OF
21 OUR COMBINED EXPERIENCE NONE OF US ARE AWARE OF TRUSTEES
22 APPOINTED BY A COURT WHO THEN APPEAL A DECISION OF THE
23 COURT THAT APPOINTED THEM IN A SITUATION SUCH AS THIS.
24 THAT'S HIGHLY UNUSUAL, AND IF THEY ARE REPLACED AND THEY
25 ARE DONE SO IN A WAY TO MINIMIZE THE APPEAL THAT

1 SIMPLIFIES EVERYTHING, ALLOWS THE SETTLEMENT TO GO AHEAD,
2 AND ALLOWS THE DEPLETION OF THE ESTATE FROM ATTORNEY FEES
3 AND TIME AND WHATNOT TO STOP.

4 I URGE THE APPROVAL OF THE SETTLEMENT. THANK YOU,
5 YOUR HONOR.

6 THE COURT: MR. BAILEY?

7 MR. BAILEY: WHERE TO BEGIN.

8 THE COURT: I DON'T KNOW. I'LL LET YOU DECIDE THAT.

9 MR. BAILEY: I WOULD LIKE TO JUST READ TO THE COURT
10 SECTION 62-1-102.

11 THE COURT: HOLD ON. 62 WHAT?

12 MR. BAILEY: ONE-102.

13 THE COURT: 62-1-102.

14 MR. BAILEY: YES, SIR:

15 THE COURT: PURPOSES OF RULES?

16 MR. BAILEY: YES, SIR.

17 THE COURT: IS THAT CORRECT?

18 MR. BAILEY: YES, SIR. AND I WOULD CITE A. "THIS
19 CODE SHALL BE LIBERALLY CONSTRUED AND APPLIED TO PROMOTE

20 ITS UNDERLYING PURPOSES AND POLICIES." B. "THE
21 UNDERLYING PURPOSES AND POLICIES OF THIS CODE ARE," AND I
22 GO TO NUMBER TWO, "TO DISCOVER AND MAKE EFFECTIVE THE
23 INTENT OF THE DECEDENTS IN THE DISTRIBUTION OF HIS
24 PROPERTY," AND, FOUR, "TO FACILITATE USE AND ENFORCEMENT
25 IN CERTAIN TRUSTS."

1 NOW, ON NOVEMBER 20, 2007 YOU APPOINTED MR. BUCHANAN
2 AND MRS. POPE TO THE EXTREMELY DIFFICULT TASK OF BECOMING
3 PERSONAL REPRESENTATIVES AND TRUSTEES OF THE ESTATE OF
4 JAMES BROWN. ALL, AS FAR AS I CAN RECALL, WHO OPPOSED IT
5 WAS THE ATTORNEY GENERAL. THE REST OF THE PARTIES
6 UNDERSTOOD MRS. POPE'S CERTIFICATION AS A SPECIALIST,
7 RECOGNIZED HER ABILITY, RECOGNIZED HER DETERMINATION.
8 MR. BUCHANAN IS AN EXCELLENT LITIGATOR. I KNOW. I'VE
9 DEALT WITH HIM MANY TIMES.

10 WHEN MR. MEDLIN POINTS AT MR. BUCHANAN AND MRS. POPE
11 AND CHASTISES THEM AS FIDUCIARIES, THAT IS A TREMENDOUS
12 DOWNGRADING AND DENIGRATION OF WHAT THEY HAVE TRIED TO DO
13 FOR THIS ESTATE. THERE IS A MOUNTAIN OF MATTERS THAT BOTH
14 DEAL WITH ON A DAILY BASIS THAT THE SETTLING PARTIES OR
15 OTHERS HAVE NO REAL CONNECTION TO. THEY DON'T KNOW WHAT'S
16 GOING ON. THEY ARE FOCUSED ON ONE THING -- REDISTRIBUTION
17 THE WEALTH THAT JAMES BROWN INTENDED TO GO TO
18 UNDERPRIVILEGED CHILDREN.

19 IT STARTED -- WELL, LET ME BACK UP. WHERE DID ALL OF

20 THIS CONTROVERSY COME FROM? WAS IT THE PR TRUSTEES
21 BUCHANAN AND POPE WHO CREATED IT? NO. IT WAS CREATED BY
22 THE VERY PEOPLE WHO ARE HERE CRITICIZING MRS. POPE --
23 MR. BUCHANAN AND MRS. POPE. WHAT WE'RE LOOKING AT IS
24 CONTROVERSIES COMMENCED BY TOMI RAE BROWN, SEVERAL OF THE
25 CHILDREN, NOT CONTROVERSIES STARTED BY MRS. POPE AND

1 MR. BUCHANAN.

2 THE COURT: DOES IT MAKE ANY DIFFERENCE, MR. BAILEY,
3 UNDER 62-3-1102(3) WHO CREATES THE CONTROVERSY AS LONG AS
4 I FIND THERE IS A CONTROVERSY IN GOOD FAITH?

5 MR. BAILEY: WELL, IT IS JUST THAT WHAT I'M LOOKING
6 AT, YOUR HONOR, IS IF YOU ASSUME THERE IS A
7 100 MILLION-DOLLAR ESTATE AND YOU LOOK AT THE SECTION YOU
8 REFERRED TO AND YOU SAY, WELL, YOU KNOW, THE PR TRUSTEES,
9 THEY MAY HAVE A FINANCIAL INTEREST IN PROLONGING THE
10 LITIGATION. WHAT COULD BE FURTHER FROM THE TRUTH THAN
11 WHAT THEY'RE TRYING TO DO IS PROTECT UP TO THAT
12 \$50 MILLION. THE COST OF THE LITIGATION PALES IN
13 SIGNIFICANCE TO THE COST THAT IT WILL LEAVE TO THE TRUST.

14 THE COURT: WELL, MR. BAILEY, I DON'T KNOW WHAT MY
15 ULTIMATE DECISION IS GOING TO BE, BUT I CAN ASSURE YOU
16 THAT IT WILL NOT BE BASED ON THE FACT THAT MR. BUCHANAN
17 AND MRS. POPE ARE TRYING TO MAKE THIS LITIGATION CONTINUE
18 ON SO THEIR FEES AND COSTS CAN BE INCREASED... THAT'S THE
19 FURTHEST THING FROM MY MIND.

20 MR. BAILEY: AND I DO UNDERSTAND, YOUR HONOR, BUT
21 THAT, APPARENTLY, IS NOT THE FURTHEST THING FROM THE
22 ADVERSARIES.

23 THE COURT: WELL, I THINK YOU HAVE TO CONVINCE ME,
24 NOT THEM.

25 MR. BAILEY: THIS AGREEMENT THAT WAS WHAT I WOULD

1 HAVE TO SAY SECRETLY AGREED UPON BY THE SETTLING
2 PARTIES -- BECAUSE I WOULD LIKE TO MAKE SURE THAT THE
3 COURT UNDERSTANDS WE WERE NOT INVITED TO THE MEDIATION.
4 NO ONE GAVE US NOTICE OF THE MEDIATION. WE WERE SIMPLY
5 LEFT OUT. SO, WHEN THIS DOCUMENT WAS PRESENTED AND I READ
6 THE FIRST VERSION OF IT VERY CAREFULLY WHAT I FOUND TO BE
7 JUST ABSOLUTELY AMAZING WAS IT IS BINDING ON THE PARTIES
8 NO MATTER WHAT THE COURT DOES AND IT PROVIDED ABSOLUTELY
9 NO LANGUAGE IN IT THAT WOULD ALLOW FOR IT TO BE MODIFIED.
10 THERE IS NOTHING IN THE AUGUST 10, 2008 AGREEMENT THAT
11 AUTHORIZED THE PARTIES TO AMEND IT.
12 HOWEVER, THE ADDENDUM WAS ADDED. THE ADDENDUM IS --
13 THE ORIGINAL AGREEMENT WAS THREE AND A HALF PAGES. THE
14 ADDENDUM IS OVER SEVEN PAGES. THE ADDENDUM DOES THE VERY
15 SAME THING. THIS IS SUPPOSED TO BE A SETTLEMENT. IT IS
16 OVER. YOU DON'T GO BACK AND READJUST THE TERMS OF THE
17 SETTLEMENT AGREEMENT. THIS SETTLEMENT AGREEMENT LEAVES
18 OPEN THE OPPORTUNITY AT ANY LATER TIME FOR IT TO BE
19 AMENDED.

20 SINCE AUGUST 10 OF 2008 THERE WAS NO INDIVIDUAL FROM
21 THE SETTLING PARTIES, FROM MR. BELL, WHO APPARENTLY MADE
22 ANY EFFORT TO DEAL WITH US AS FAR AS CAN WE GET A PRIVATE
23 LETTER FROM THE IRS? WOULD YOU AGREE TO ALLOW US TO DO
24 THAT? NO. THAT NEVER HAPPENED. IN FACT, THEY PASSED UP
25 TO YOU SIX -- AND I HAVE THE UTMOST RESPECT FOR EACH OF

1 THESE ATTORNEYS WHOSE CURRICULUM VITAE HAS BEEN HANDED UP,
2 BUT I DON'T THINK THE COURT HAS BEFORE IT A SIGNED
3 DOCUMENT OR TESTIMONY FROM AN EXPERT WITNESS WHO SAYS THAT
4 EVERYTHING THAT PROFESSOR MEDLIN TOLD YOU IS GOING TO
5 HAPPEN.

6 EVERYTHING THAT HE HAS TOLD YOU IS ALL CONJECTURE.
7 IT'S NOT BEEN DECIDED. ALL OF THE TERMS OF WHETHER OR NOT
8 THERE IS GOING TO BE A DISQUALIFICATION, WHETHER -- OF THE
9 CHARITABLE TRUST -- WHETHER OR NOT THEY'RE GOING TO LOSE
10 THE CHARITABLE DEDUCTION. ALL OF THESE THINGS ARE
11 ARGUMENTS. THERE ARE NO FACTS TO SUPPORT IT.

12 WE PUT UP AN EXPERT WHO LOOKED AT THE DOCUMENTS AND
13 GAVE THE COURT HIS OPINION: THEY ARE GOING TO CREATE TAX
14 PROBLEMS AND PROBLEMS FOR THE CHARITABLE TRUST. THE ONLY
15 WITNESSES THEY CALLED ARE MR. BUCHANAN AND MRS. POPE. I
16 BELIEVE MR. BAUKNIGHT WAS PRESENTED AS THE PROPOSED
17 SPECIAL ADMINISTRATOR, SPECIAL TRUSTEE. I WAS NOT PRESENT
18 FOR THE JANUARY 30 HEARING, BUT I THINK THOSE WERE THE
19 ONLY PEOPLE WHO ULTIMATELY TESTIFIED WAS MR. BAUKNIGHT,

20 MRS. POPE, MR. BUCHANAN. THOSE ARE THE ONLY PARTIES THAT
21 WERE -- I MEAN THE ONLY WITNESSES THAT WERE CALLED BY THE
22 SETTLING PARTIES. THEY OFFERED NO LIVE TESTIMONY OF
23 ANYONE TO SUBSTANTIATE WHAT THOSE PROPOSED CONJECTURAL
24 HOPEFUL RESULTS ARE GOING TO BE.

25 WE HAVE A VERY STRONG POSITION AGAINST THE IDEA THAT

1 WE HAVE NO STANDING TO BE CONSULTED WITH RESPECT TO THIS
2 SETTLEMENT AGREEMENT. 62-3-912 DEALS WITH COMPETENT
3 SUCCESSORS OF JAMES BROWN, EITHER HIS WILL OR IF HE WERE
4 TO DIE INTESTATE. WELL, FIRST WE HAVE THE 2000 WILL WHICH
5 UNTIL I BELIEVE DECEMBER 20 OF 2007 NO ONE FELT WAS
6 CONTESTABLE OR THAT WARRANTED BEING CONTESTED AND WHAT I
7 FIND INTERESTING IS THE COMPETENT SUCCESSORS UNDER THAT
8 WILL ARE THE PEOPLE THAT ARE NAMED IN THE WILL, AND WHAT
9 THEY'RE ENTITLED TO DIVIDE UP AMONGST THEMSELVES UNDER THE
10 WILL IS WHATEVER THEY GET UNDER THE WILL.

11 SO, WE'VE MADE A QUANTUM LEAP FROM THE WILL SAYS THEY
12 GET THE PERSONAL HOUSEHOLD EFFECTS. PERIOD. THEN YOU
13 MOVE TO, OH, WELL, IF IT'S INTESTACY, WHO ARE THE HEIRS
14 BECAUSE THE HEIRS ARE THE ONLY ONES WHO BECOME COMPETENT
15 SUCCESSORS. SO, YOU'VE GOT THE PEOPLE NAMED IN THE WILL.
16 YOU'VE GOT THE PEOPLE THAT WOULD BE INTESTATE HEIRS, BUT
17 YOU'VE HAD TO JUMP NOW FROM ONE WILL, A SECOND WILL, AND
18 ALL ARGUABLY NOW THEY'RE SAYING ARE SUBJECT TO UNDUE
19 INFLUENCE TO INTESTACY.

20 WELL, UNDUE INFLUENCE -- I'D LIKE TO COURT TO
21 CONSIDER THE WILL THAT WAS DONE ON AUGUST -- IN AUGUST OF
22 2000. IF IT WAS THE SUBJECT OF UNDUE INFLUENCE -- AND I
23 THINK THE ELEMENTS OF UNDUE INFLUENCE HAVE TO BE VERY
24 CAREFULLY EXAMINED BY THE COURT. WHAT ARE THEY? THERE
25 WAS A SIX-YEAR OPPORTUNITY FOR MR. BROWN TO DO WHATEVER

1 ELSE HE WANTED TO DO BECAUSE HE WAS NOT IN A CONFINED
2 STATUS. HE WAS NOT HELD BACK FROM THE PUBLIC. HE WAS
3 AVAILABLE. HE COULD DO WHATEVER HE WANTED TO DO. ONE OF
4 THE KEY ELEMENTS OF UNDUE INFLUENCE IS THE RESTRICTION ON
5 THE MOVEMENT, RIGHT, AND THE ABILITY TO COMMUNICATE OF THE
6 TESTATOR.

7 THE TRUST. THERE WERE DOCUMENTS FILED IN 2001 IN
8 BOTH RICHMOND COUNTY, GEORGIA AND AIKEN COUNTY, SOUTH
9 CAROLINA AND AGREEMENT AND CERTIFICATION OF THE TRUST THAT
10 WAS CREATED ON AUGUST 1 OF 2000. THERE WERE SIGNATORIES
11 TO THAT WHO ARE MEMBERS OF THE SETTLING PARTY WHO WERE
12 AWARE OF IT. THE LAW IS VERY CLEAR. THAT CONSTRUCTIVE
13 NOTICE WAS ESTABLISHED IN 2001. UNDER THE APPROPRIATE
14 STATUTES OF LIMITATION AND UNDER THE PROBATE CODE THEY NO
15 LONGER ARE CHALLENGEABLE.

16 THE MATTER OF UNDUE INFLUENCE -- AGAIN, THE SAME TIME
17 ELEMENT IS A MAJOR FACTOR. IF MR. BROWN WERE UNDER THE
18 UNDUE INFLUENCE, HE HAD AN AMPLE OPPORTUNITY AND TIME TO
19 MAKE ANY CHANGES. IF IT WASN'T HIS WILL THAT HE WANTED TO

20 BE THAT WAY, HE COULD HAVE CHANGED IT BECAUSE HE WAS NOT
21 CONFINED, CONTROLLED, AS UNDUE INFLUENCE CASES INDICATE.
22 AND YOU LOOK AT -- YOU LOOK AT THAT POINT IN TIME, NOT
23 FIVE YEARS BEFORE OR FIVE YEARS AFTER, BUT YOU LOOK AT THE
24 THE POINT IN TIME OF THE EXECUTION OF THE WILL AND THE
25 TRUST TO SEE WHETHER HE WAS SUBJECT TO THAT.

1 THERE'S BEEN NO EVIDENCE OFFERED BY THE SETTLING
2 PARTIES OTHER THAN LEGAL CONJECTURE, LEGAL ARGUMENT THAT
3 WE HAVE A CASE OF UNDUE INFLUENCE. I JUST DON'T SEE THE
4 FACTS. I DON'T KNOW WHAT THEY WOULD PUT UP IN FACTS.
5 THEY DIDN'T PUT ANYTHING UP FOR YOU TO CONSIDER AS A
6 FACTUAL MATTER THAT WOULD REALLY POINT TO AN ELEMENT TO
7 SUPPORT UNDUE INFLUENCE. THE UNDUE INFLUENCE ARGUMENT IS,
8 EXTREMELY MERITLESS.

9 THE COURT: SO, IS IT YOUR POSITION THAT THERE ARE NO
10 FACTS IN THE RECORD THAT WOULD SUPPORT THEIR CLAIM FOR
11 UNDUE INFLUENCE?

12 MR. BAILEY: WELL, THEY HAVEN'T PROVIDED ANYTHING
13 OTHER THAN OPINION THAT THEY BELIEVE THERE IS. THERE'S NO
14 WITNESS THAT SAYS THIS IS WHAT HAPPENED, THIS IS WHY I
15 THINK THIS IS UNDUE INFLUENCE. IT'S ALL JUST LEGAL
16 ARGUMENT. THE SECOND ASPECT OF THE THE COMPETENT
17 SUCCESSOR'S IS THAT AS THE -- AS THE TRUSTEES -- THE
18 TRUSTEES ARE THE ONES WHO CONTROL AND RECEIVE THE INTEREST
19 IN THE PROPERTY THAT IS THE TRUST PROPERTY FOR THE

20 ADMINISTRATION OF THE TRUST. THE RECENT CASE THAT
21 PROFESSOR MEDLIN CITED TO YOU AND SAYS IS OF LITTLE
22 SIGNIFICANCE IS SOMEWHAT INTERESTING IN THE WAY THEY
23 INTERPRET SECTION 62-3-1102. IT SAYS UNDER THE
24 UNIVERSITY'S --

25 THE COURT: WHICH CASE ARE YOU -- THAT'S THE

1 UNIVERSITY OF CALIFORNIA?

2 MR. BAILEY: PARDON ME, SIR?.

3 THE COURT: WHICH CASE IS THAT?

4 MR. BAILEY: THIS IS THE UNIVERSITY OF SOUTH CAROLINA

5 VERSUS ROBERT J. --

6 THE COURT: IT'S NOT SOUTH CAROLINA.

7 MR. BAILEY: OH, I'M SORRY. UNIVERSITY OF SOUTHERN

8 CALIFORNIA. I'M SORRY. BUT IT SAYS THE UNIVERSITY --

9 UNDER THE UNIVERSITY'S INTERPRETATION OF SECTION 62-3-1102

10 OF THE MANY TRUST BENEFICIARIES COULD EXERCISE VETO POWER

11 OVER AN ATTEMPTED COMPROMISE UNDER SECTION 62-3-1102 BY

12 FAILING TO CONSENT AS A SIGNATORY OF ITS SETTLEMENT.

13 TRUST BENEFICIARIES WOULD ENCOURAGE LITIGATION RATHER THAN

14 SETTLE IT. THE BETTER APPROACH IS TO VEST THE TRUSTEE WHO

15 HAS A FIDUCIARY OBLIGATION TO ADMINISTER THE TRUST IN THE

16 BEST INTEREST OF THE TRUST BENEFICIARIES WITH THE POWER TO

17 ENTER INTO COMPROMISE ON BEHALF OF THE TRUST.

18 NOW, WE HAVE TAKEN THE POSITION THAT THE ATTORNEY

19 GENERAL IS CERTAINLY ENTITLED TO ENFORCE AND PROTECT THE

20 CHARITABLE TRUST, BUT I HAVE NOT BEEN ABLE TO FIND

21 ANYTHING THAT SUPPORTS THE FOLLOWING SENTENCE IN A

22 MEMORANDUM THAT HE SUBMITTED -- THAT THE ATTORNEY GENERAL

23 SUBMITTED TO THE COURT ON JANUARY -- REGARDING THE

24 JANUARY 7 ORDER AND ALLOWING THE COURT TO PROCEED TO HEAR

25 THIS MATTER. ON PAGE FOUR UNDER 2A CAPTION, "THE ATTORNEY

1 GENERAL HAS EXCLUSIVE SETTLEMENT AUTHORITY OVER CHARITABLE
2 TRUSTS." WELL, THE FIRST PARAGRAPH DEALS WITH THE
3 ATTORNEY GENERAL'S ENFORCEMENT AND PROTECTION CAPABILITIES
4 WHICH I HAVE NO ARGUMENT WITH, BUT THE NEXT PARAGRAPH
5 STARTS WITH, "MORE SPECIFICALLY THE AUTHORITY OF THE
6 ATTORNEY GENERAL TO SETTLE LITIGATION INVOLVING CHARITABLE
7 TRUSTS IS EXCLUSIVE."

8 NOW, THE CASE THAT IS CITED IS THE CASE OF COOLEY
9 VERSUS THE SOUTH CAROLINA TAX COMMISSION AND IT'S A 1943
10 CASE AND, ESSENTIALLY, IT DEALT -- HAD ABSOLUTELY NOTHING
11 TO DO WITH CHARITABLE TRUSTS. IT HAPPENED TO BE AN ESTATE
12 IN WHICH THE TESTATOR WAS A DOMICILIARY OF THE STATE OF
13 NEW JERSEY. HOWEVER, THERE WAS PROPERTY IN SOUTH CAROLINA
14 AND THE SOUTH CAROLINA TAX COMMISSION WANTED TO DETERMINE
15 WHETHER OR NOT THE TESTATOR DECEDENT WAS DOMICILED IN
16 SOUTH CAROLINA. IF SO, IT CREATED A TREMENDOUS INCREASE
17 IN WHAT TAX CONSEQUENCES WOULD BE ON. IT WAS AT THAT TIME
18 IN 1943 A FIVE AND A HALF MILLION DOLLAR ESTATE.

19 WELL, THE TAX COMMISSION ESSENTIALLY ASKED THE

20 ATTORNEY GENERAL TO ASSIST IN DETERMINING WHETHER OR NOT
21 THIS WAS BASICALLY AN ESTATE THAT SHOULD BE TAXED IN SOUTH
22 CAROLINA OR SIMPLY AN ANCILLARY ADMINISTRATION WITH
23 WHATEVER MINOR TAXES MIGHT BE THE RESULT OF THE PROPERTY
24 THAT WAS ACTUALLY IN SOUTH CAROLINA. AND, THIS IS DEALING
25 -- THE ATTORNEY GENERAL'S ACTING ON BEHALF OF THE TAX

1 COMMISSION. IT WAS NOT DEALING WITH A CHARITABLE TRUST
2 AND THE LANGUAGE THAT WAS USED BY THE AUTHOR OF THE
3 OPINION WAS THAT THE COURT AGREED THIS WAS A VERY LIMITED
4 APPLICATION OF THE CONCEPT OF THE ATTORNEY GENERAL HAVING
5 THE AUTHORITY TO COMPROMISE THE SETTLEMENT OF THE TAX
6 ISSUE, NOT OF THE CHARITABLE TRUST.

7 NOW, WE HAVE BEEN UNABLE TO FIND ANY TYPE OF A CASE
8 IN SOUTH CAROLINA THAT AUTHORIZES THE ATTORNEY GENERAL TO
9 SETTLE A -- AN ISSUE THAT DEALS WITH THE CHARITABLE TRUST
10 AND ITS DIMINUTION IN VALUE, DISTRIBUTION TO NON-TRUSTEES.

11 THE COURT: WELL, HE SAYS -- THE ATTORNEY GENERAL
12 USES THE LANGUAGE THAT THEY WILL CONTROL THE LITIGATION.
13 I ASSUME BY CONTROLLING THE LITIGATION THAT WOULD
14 ENCOMPASS THE ABILITY TO ENTER INTO A SETTLEMENT. YOU
15 DON'T AGREE WITH THAT?

16 MR. BAILEY: NO, SIR. I HAVE TO FALL BACK ON THE
17 PRINCIPAL THAT I MAY REPRESENT YOU IN ANY NUMBER OF
18 MATTERS, BUT AS YOUR ATTORNEY I HAVE NO RIGHT TO
19 COMPROMISE, SETTLE YOUR CLAIM WITHOUT YOUR CONSENT. I

20 THINK THAT IS THE SAME THING THAT APPLIES --

21 THE COURT: WELL, WHOA.

22 MR. BAILEY: -- TO THE ATTORNEY GENERAL.

23 THE COURT: HE IS REPRESENTING THE NEEDY CHILDREN WHO
24 ARE THE BENEFICIARIES OF THE TRUST. HE IS REPRESENTING
25 THE TRUST. WHO DOES HE HAVE TO GET CONSENT FROM?

1 MR. BAILEY: MRS. POPE AND MR. BUCHANAN.

2 THE COURT: AS PR'S AND TRUSTEES?

3 MR. BAILEY: YES, SIR.

4 THE COURT: AND THAT IS FATAL IN AND OF ITSELF IS

5 YOUR POSITION?

6 MR. BAILEY: TO THE ATTORNEY GENERAL'S POSITION --

7 THE COURT: YES, SIR.

8 MR. BAILEY: -- YES.

9 THE COURT: AND YOUR POSITION SAYS THAT HE CAN'T

10 CONSENT TO ANYTHING WITHOUT GETTING THE APPROVAL OF YOUR

11 PR TRUSTEES OR THE ONES THAT I APPOINTED?

12 MR. BAILEY: AS TRUSTEES. I DON'T WANT TO CONFUSE IT

13 WITH PR'S.

14 THE COURT: YOU'RE RIGHT. AS TRUSTEE'S.

15 MR. BAILEY: AGAIN, IT'S ALSO REFLECTED IN THAT MORAN

16 CASE -- THE PORTION THAT I READ TO YOU THAT IT SHOULD BE

17 THE TRUSTEE THAT HAS THE POWER TO ENTER INTO A COMPROMISE.

18 THE COURT: MR. BAILEY, 62-3-1102, SUBSECTION THREE,

19 MANDATES ME TO MAKE A FINDING AS TO WHETHER OR NOT THE

20 CONTEST OR CONTROVERSY IS, NUMBER ONE, IN GOOD FAITH, AND,

21 SECONDLY, THE EFFECT OF THE AGREEMENT UPON THE INTEREST OF

22 PERSONS REPRESENTED BY FIDUCIARIES OR OTHER

23 REPRESENTATIVES IS JUST AND REASONABLE. SO, THAT'S THE

24 TWO THINGS. IF I FIND THOSE TWO THINGS, THEN I SHALL MAKE

25 AN ORDER APPROVING THE AGREEMENT AND DIRECTING ALL

1 FIDUCIARIES SUBJECT TO MY JURISDICTION TO EXECUTE THE
2 AGREEMENT.

3 SO, HOW DO YOU RECONCILE THAT LANGUAGE WITH YOUR
4 POSITION THAT IT REQUIRES THE CONSENT OF THE NOW TRUSTEES
5 FOR THE SETTLEMENT IF THE AG'S OFFICE WANTS TO BECOME A
6 MEMBER OF -- PARTICIPATE IN IS A BETTER WAY OF SAYING IT.
7 AND I AM NOT FUSSING.

8 MR. BAILEY: YES, SIR.

9 THE COURT: THAT'S WHAT I AM STRUGGLING WITH WHEN YOU
10 SAY MRS. POPE AND MR. BUCHANAN HAVE TO GIVE THEIR CONSENT
11 AND I APPRECIATE YOUR POSITION, BUT HOW DO I RECONCILE
12 THAT WITH THE LANGUAGE IN 62-3-1102 (3)?

13 MR. BAILEY: WE'RE ALSO LOOKING AT --

14 THE COURT: HOLD ON ONE SECOND. WHO IS JACQUELINE
15 HOLLANDER?

16 MR. BAILEY: SHE IS THE LADY WHO WANTED TO TESTIFY
17 AND INTERVENE BUT SHE COULDN'T GET AN ATTORNEY.

18 THE CLERK: SHE'S GOT ONE.

19 THE COURT: HOLD ON A SECOND. JUST GET THAT PRINTED

20 OFF. THEY FILED AN ACTION IN THE NORTHERN DISTRICT OF
21 WHERE?

22 THE CLERK: THEY'RE IN ILLINOIS.

23 THE COURT: IN ILLINOIS JUST FOR EVERYBODY'S
24 AFTERNOON INFORMATION.

25 GO AHEAD, MR. BAILEY. YOU KNOW WHAT MY QUESTION IS.

1 WHAT I AM TRYING TO FIGURE OUT IS HOW TO RECONCILE YOUR
2 POSITION WITH WHAT THE STATUTE SAYS.

3 MR. BAILEY: WELL, THE COURT -- I WOULD REQUEST THE
4 COURT TO CONSIDER THE FACT THAT WHAT THE ATTORNEY GENERAL
5 IS ASKING INVOLVES AN ESTATE CHARITABLE AND NON-CHARITABLE
6 TRUST AND THE ATTORNEY GENERAL DOESN'T HAVE THE AUTHORITY
7 TO ACT FOR A NON-CHARITABLE TRUST WHICH WILL BE AFFECTED
8 BY THIS BECAUSE THE APPROVAL OF THE AGREEMENT CALLS FOR A
9 CHANGE IN THE GRANDCHILDREN'S TRUST FROM THE \$2 MILLION AS
10 PROVIDED IN THAT TRUST FOR A SPECIFIED PERIOD OF TIME AND
11 THEN THE BALANCE TO POUR OVER INTO THE CHARITABLE TRUST.

12 HERE THEY'RE ASKING FOR THAT TRUST TO BE CHANGED TO
13 NOT INFINITUM BUT TO COMPLY WITH THE RULE AGAINST
14 PERPETUITIES AND WOULD APPLY NOT ONLY TO THE GRANDCHILDREN
15 BUT THEIR ISSUE ON DOWN THE LINE. SO, IT CHANGES THE
16 ENTIRE SCOPE OF THE BROWN EDUCATION FAMILY TRUST.

17 WE WERE NOT ASKED, YOUR HONOR, TO PROVIDE ANY INPUT,
18 OF COURSE, INTO THE SETTLEMENT, AND, ALTHOUGH, MR. BELL
19 SPEAKS TO THE OFFER OF JUDGMENT THAT WAS FILED FRIDAY, THE

20 OFFER OF JUDGMENT IS NOT TO BE CONSTRUED.

21 THE COURT: IT IS ACTUALLY CALLED AN OFFER OF
22 COMPROMISE IS WHAT YOUR PLEADINGS SAY.

23 MR. BAILEY: OFFER OF COMPROMISE IS INTENDED TO
24 DEMONSTRATE TWO THINGS -- THAT MR. BUCHANAN AND MRS. POPE
25 AREN'T OPPOSED TO SETTLEMENT. THEY'RE OPPOSED TO AN

1 IMPROPER SETTLEMENT.

2 THE COURT: AND YOU DEFINE IMPROPER BY THE ALLEGED
3 DIMINUTIONS OF THE AMOUNT GOING INTO THE CHARITABLE TRUST?
4 IS THAT --

5 MR. BAILEY: WELL, AND IT DOESN'T INCLUDE ALL OF THE
6 NECESSARY PARTIES AND WE DON'T KNOW WHAT THE TAX RESULTS
7 ARE. SOME OF THE GRANDCHILDREN ARE NOT PARTIES TO THE
8 SETTLING DOCUMENTS. I THINK IT'S JEANETTE MITCHELL. SHE
9 -- NICOLE PARIS, ROMUNZO, FORLANDO -- THEY'RE ALL NOT
10 PARTIES TO THIS SETTLEMENT AGREEMENT. THE POSITION WHICH
11 WAS STATED MANY TIMES BY BOTH MR. BUCHANAN AND MRS. POPE
12 THIS IS NOT A FAIR AND REASONABLE DIVISION, IF YOU WANT TO
13 SAY IT THAT WAY, OF MR. BROWN'S ESTATE.

14 THE ISSUE OF DUE DILIGENCE. MR. BUCHANAN WAS ON THE
15 WITNESS STAND FOR PROBABLY A THIRD OF THE TIME, IF NOT
16 LESS, THAN MRS. POPE WAS ON THE STAND, BUT THE SETTLING
17 PARTIES' ATTORNEYS MADE SURE THEY GRILLED THEM
18 RELENTLESSLY ABOUT THEIR DUE DILIGENCE. WE HAVE NO IDEA
19 WHAT DUE DILIGENCE THE SETTLING PARTIES HAVE ENGAGED IN.

20 WE HAVE ATTORNEYS MAKING STATEMENTS TO THE COURT THAT WE
21 HAVE DONE DUE DILIGENCE, BUT THEY HAVEN'T PUT ANYBODY UP
22 TO TESTIFY AS TO WHAT IS THAT DUE DILIGENCE THAT YOU DID.
23 YOU'VE MADE ALL OF THESE STATEMENTS, BUT THOSE ARE PARTS
24 OF YOUR ORAL ARGUMENTS. WE BELIEVE THAT THE QUESTION OF
25 DUE DILIGENCE IS EXTREMELY IMPORTANT IN THE COURT'S

1 CONSIDERATION OF WHETHER THIS IS REASONABLE OR NOT.
2 ONE THING THAT MR. JONES SAID AND I AGREE WITH HIM IS
3 YOU CAN'T OVERRIDE THE INTENT THAT'S EXPRESSED IN THE FOUR
4 CORNERS OF A DOCUMENT, ESPECIALLY IN LIGHT OF THE RULES OF
5 STATUTORY CONSTRUCTION. UNDER THEIR INTERPRETATION OF THE
6 DOCUMENT IT'S A VALID WILL. THEY HAVE NO CHOICE BUT TO
7 DEFEND THE ESTATE, THE WILL AND THE TRUST. IF WE'VE
8 CALLED IT THE ESTATE PLAN, FINE, BUT THAT'S -- THAT'S
9 WHERE WE ARE REQUIRED TO GO. WE ARE TO -- WE ARE REQUIRED
10 TO UPHOLD THE INTENT OF JAMES BROWN AS EXPRESSED TO
11 MULTIPLE PEOPLE BEFORE AND AFTER THE EXECUTION OF THE
12 WILL, THE TAPE THAT HE LEFT.
13 HE DID JUST ABOUT THE SAME KINDS OF THINGS THAT JUDGE
14 RUSSELL DID IN HIS CASE TO MAKE SURE THAT THERE WAS NO
15 FRIVOLOUS LAWSUITS BROUGHT AGAINST HIS ESTATE PLAN AND HE
16 HAD THE NO CONTEST -- THEY DIDN'T CALL IT AN IN TERROREM,
17 BUT THEY CALLED IT A NO CONTEST CLAUSE. MR. BROWN DID THE
18 SAME BASIC THING.

19 THE COURT: MR. BAILEY, IF THE COURT DETERMINED THAT

20 TOMI RAE HYNIE BROWN WAS, IN FACT, HIS WIFE AND DID NOT
21 FIND THERE WAS ANY UNDUE INFLUENCE AND UPHELD THE WILL AND
22 TRUST, HOW WOULD THAT AFFECT THE DISTRIBUTION? WON'T THAT
23 DIMINISH WHAT GOES INTO THAT TRUST?

24 MR. BAILEY: YES, IT WOULD.

25 THE COURT: AND IF IT FOUND THAT JAMES BROWN, II WAS,

1 IN FACT, HIS LAWFUL HEIR, WOULDN'T THAT DIMINISH IT?

2 MR. BAILEY: NOT NECESSARILY IF THE WILL IS UPHELD.

3 IF THE WILL EXHIBITS A CLEAR INTENT TO OMIT ANYONE, THEN

4 THAT IS ONE OF THE WAYS AROUND A PRETERMITTED CHILD'S

5 GETTING A SHARE OF THE ESTATE AND THE WILL CERTAINLY IS

6 VERY STRONG IN ITS STATEMENT REGARDING WHO IS TO INHERIT

7 AND WHO IS NOT TO SO THAT IT IS A -- IT IS CERTAINLY AN

8 ARGUMENT AGAINST PRETERMISSION.

9 THE COURT: GIVE ME ONE SECOND, MR. BAILEY. I AM

10 GOING TO FORWARD TO EVERYBODY'S E-MAIL ADDRESS THIS

11 DOCUMENT I JUST RECEIVED. I DON'T KNOW IF IT'S GOT ANY

12 EFFECT. IT'S A COMPLAINT THAT'S BEEN FILED IN THE UNITED

13 STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF

14 ILLINOIS, EASTERN DISTRICT.

15 MR. BAILEY: WHO IS IN THE CAPTION, JUDGE?

16 THE COURT: WELL, MORE INTERESTING THAN WHO IS IN THE

17 CAPTION IS WHO THE LAWYER IS.

18 MR. BAILEY: IT ISN'T ME.

19 THE COURT: NO, IT'S NOT YOU. Y'ALL ARE GOING TO

20 THINK I'M KIDDING. DONALD ROSEN.

21 MR. ROSEN: HE IS THE BLACK SHEEP OF THE FAMILY.

22 THE COURT: I'LL SEND A COPY TO EVERYBODY. ALL

23 RIGHT.

24 MR. BAILEY, GO AHEAD.

25 MR. BAILEY: RATHER THAN ARGUE ANYTHING ABOUT THE

1 APPLICABILITY OF THESE ACTIONS I AM GOING TO DEFER TO THE
2 COURT IF THE COURT DESIRES TO CONSIDER THEM. SECTION
3 62-7-410.

4 THE COURT: I'M SORRY?

5 MR. BAILEY: 62-7-410 THROUGH 414 AND THEY DEAL WITH
6 MODIFICATIONS OF A TRUST.

7 THE COURT: ALL RIGHT.

8 MR. BAILEY: YOUR HONOR, FURTHER POSITION OF THE PR
9 TRUSTEES IS THAT, NUMBER ONE, THIS COURT APPOINTED THEM IN
10 THE CAPACITY OF PERSONAL REPRESENTATIVE AND TRUSTEES.
11 THAT HAS BEEN, OF COURSE, CHALLENGED BY THE APPEAL THAT'S
12 IN THE DALLAS AND BRADLEY MATTER. FURTHER, THE POSITION
13 TAKEN IN THE SETTLEMENT AGREEMENT IS TO, ESSENTIALLY, JUST
14 ELIMINATE, REMOVE -- HOWEVER YOU WANT TO PUT IT --
15 MR. BUCHANAN AND MRS. POPE AND WE DO NOT BELIEVE THAT THE
16 COURT CAN OVERRIDE ITS OWN ORDER UNLESS THERE IS CAUSE FOR
17 THE COURT TO REMOVE THEM, AND, OF COURSE, WE TAKE THE
18 POSITION THERE IS NO CAUSE FOR OUR REMOVAL. THE BASIS FOR
19 THE REMOVAL PETITION THAT WAS -- THAT WAS ORIGINALLY FILED

20 JUST AGAINST DALLAS, BRADLEY AND CANNON AND BECAUSE WE
21 WOULDN'T ACCEPT SERVICE AND WOULD NOT ANSWER BECAUSE WE
22 WERE NOT NAMED AS PARTIES IN THAT, THE AMENDED COMPLAINT
23 COMES BACK SEEKING TO REMOVE MR. BUCHANAN AND MRS. POPE.

24 AND, OF COURSE, THE INTERESTING THING IS THAT THE
25 ESTATE TAX RETURN IS THE BASIS OF THE ATTACK ON MRS. POPE

1 AND MR. BUCHANAN AS A BREACH OF THEIR FIDUCIARY DUTIES
2 BECAUSE OF THE WAY THEY HANDLED IT AND WHEN IT WAS FILED.
3 OF COURSE, WE HAD OFFERED TO AND SOUGHT THE ASSISTANCE OF
4 THE SETTLING PARTIES IN PREPARATION OF OR CONTRIBUTION OF
5 INFORMATION, THOUGHTS, OR IDEAS ON THE ESTATE TAX RETURN,
6 BUT THEY VERY POLITELY SAID, NO, WE ARE NOT GOING TO DO
7 THAT AND IT IS THE RESPONSIBILITY OF MR. BUCHANAN AND
8 MRS. POPE TO DO THE ESTATE TAX RETURN, BUT FOR THE
9 SETTLING PARTIES TO COME BACK AND THEN ACCUSE THEM OF
10 FILING AN INCORRECT OR UNRELIABLE ESTATE TAX RETURN THAT
11 THEY COULD HAVE VERY EASILY WORKED WITH THEM ON IS TO ME
12 SORT OF VERY UNDERHANDED.

13 I DID NOT HEAR ANY TYPE OF REMEDY FOR THE
14 SELF-HEALING ARGUMENT THAT IT COULD BE CORRECTED AS AN
15 ADMINISTRATIVE MATTER AS AN EXCEPTION THAT WOULD PROTECT
16 THE CHARITY, BUT, AGAIN, THERE IS NOTHING BEEN PRESENTED
17 THAT THAT HAS BEEN REQUESTED OR WE HAVE NOT BEEN ASKED TO
18 SHARE IN A DETERMINATION OF WHETHER OR NOT A PRIVATE
19 LETTER RULING OR SUCH COULD BE OBTAINED TO DETERMINE

20 WHETHER OR NOT THIS WHOLE SETTLEMENT AGREEMENT IS GOING TO
21 WORK. IT IS BEING PRESENTED TO THE COURT ON THE HOPE THAT
22 IT WILL WORK.

23 WITH -- AND I KNOW I'M A LITTLE SLOW IN RESPONDING TO
24 THIS, JUDGE, BUT I THOUGHT WE WERE GOING TO BE DOING THIS
25 FOR ABOUT 15 MINUTES. ONE OF THE INTERESTING THINGS ABOUT

1 THE PARTIES TO THE SETTLEMENT SAYING THAT, WELL, YOU KNOW,
2 WE'RE ALL GOING TO BE RESPONSIBLE FOR OUR ATTORNEY FEES, I
3 WOULD ASK WHAT ABOUT THE TAXES IF THERE IS A PROBLEM? HOW
4 ARE THEY GOING TO HANDLE THAT? IS IT GOING TO FALL ON THE
5 CHARITABLE TRUST? IS IT GOING TO HAVE TO PAY ITS

6 PROPORTIONATE SHARE? AGAIN, THE ATTORNEY'S FEES, FINE, IF
7 THEY AGREE THAT THEY'RE NOT -- THAT'S NOT AN ISSUE, BUT
8 THEY HAVEN'T DONE ANYTHING ABOUT THE POSSIBILITY OR
9 PROBABILITY -- I AM NOT SURE -- I WOULD SAY PROBABILITY
10 BASED ON MR. RUFF'S TESTIMONY THAT THERE IS GOING TO BE
11 TAX COMPLICATIONS.

12 I THINK THE MOST INTERESTING COMMENT I HEARD TODAY
13 WAS MR. MEDLIN'S FINAL COMMENT THAT TO APPROVE THIS
14 SETTLEMENT AGREEMENT IS TO HONOR MR. BROWN'S LEGACY. I
15 DON'T KNOW HOW HE COULD HAVE SAID THAT WITH A STRAIGHT
16 FACE. I DON'T THINK IT'S HONORING MR. BROWN'S LEGACY. I
17 THINK IT'S AN INSULT TO MR. BROWN'S LEGACY BECAUSE THIS IS
18 NOT WHAT HE INTENDED. HE DID NOT WANT ANYTHING MORE THAN
19 THE PERSONAL HOUSEHOLD EFFECTS TO GO TO HIS CHILDREN. HE

20 WANTED TO PROVIDE THE UNDERPRIVILEGED WITH THE
21 OPPORTUNITY, AND I THINK THE PHRASE WAS I WILL GIVE YOU A
22 WAY OUT, NOT A HANDOUT.

23 ONE THING THAT I WANTED TO JUST TOUCH ON WERE THE
24 TERMINATION RIGHTS THAT WERE TALKED ABOUT. WE HAVE NO
25 IDEA -- NOW, THIS IS BEING DONE IN THE SETTLEMENT

1 AGREEMENT. THIS IS WHAT IS GOING TO HAPPEN IN THE FUTURE,
2 BUT WE HAVE NO IDEA WHO THE HEIRS WILL BE IN 35 YEARS
3 WHICH WOULD BE THE NEXT TIME THESE RIGHTS COME AVAILABLE
4 OR IN 56 YEARS. THESE PEOPLE ARE NOT MADE PARTIES TO THE
5 SETTLEMENT AGREEMENT.

6 THIS IS WHY WE BELIEVE YOU NEED -- YOU NEED TO
7 DETERMINE, NUMBER ONE, WHO THE HEIRS ARE SO THAT AT LEAST
8 WE WOULD KNOW WHETHER OR NOT THEY'RE GOING TO BE THE SAME
9 ONES WHO ARE ALIVE WHEN THESE TIMEFRAMES KICK IN, AND,
10 AGAIN, DEALING WITH THE TERMINATION RIGHTS MR. ROSEN PUT
11 MR. BAUKNIGHT UP ON THE STAND AND MR. BAUKNIGHT STATED HE
12 WAS NOT AN EXPERT IN THAT FIELD, BUT MR. ROSEN WANTED TO
13 QUALIFY HIM AS AN EXPERT IN THESE TERMINATION RIGHTS. THE
14 COURT SAID, NO, AND THE TWO OPINION LETTERS THAT WERE
15 INTENDED TO BE RECOGNIZED BY MR. BAUKNIGHT THE COURT SAID,
16 IN ESSENCE, BRING THE PEOPLE WHO WROTE THESE OPINIONS,
17 HAVE THEM TESTIFY, AND I GET ACROSS MY DESK A MEMORANDUM
18 OF LAW THAT IS SUBMITTED TO THE COURT THAT HAS THESE TWO
19 OPINIONS IN THERE AND IT'S NOT AFFIDAVITS. THEY'RE JUST

20 OPINIONS, AND I JUST FOUND THAT A LITTLE ODD, ESPECIALLY
21 SINCE THE COURT HAD RULED, YOU KNOW, HAVE THEM TESTIFY,
22 FINE, BUT THEY WERE SUBMITTED TO THE COURT THROUGH A
23 MEMORANDUM OF LAW AND WE DON'T BELIEVE THEY THEY'RE VALID
24 BECAUSE THEY DON'T COMPLY WITH THE PROPER PROCEDURE AND
25 THEY DON'T COMPLY WITH THE COURT'S ORDER OR STATEMENT THAT

1 BRINGS PEOPLE TO TESTIFY.

2 ONE MOMENT, YOUR HONOR. THANK YOU FOR YOUR PATIENCE.

3 THE COURT: MR. BYRD, ARE YOU A PARTY TO THIS?

4 MR. BYRD: YES, SIR.

5 THE COURT: YOU ARE, AREN'T YOU? YOU MAY BE HEARD.

6 MR. BYRD: I'LL BE BRIEF, YOUR HONOR.

7 THE COURT: I HADN'T CUT ANYBODY OFF YET.

8 MR. BYRD: YOUR HONOR, I DON'T WANT MY LACK OF

9 ARGUMENT AGAINST PROFESSOR MEDLIN'S SUGGESTION OF WHAT THE

10 FACTS ARE TO BE TAKEN AS AGREEING WITH HIS VIEW OF THE

11 FACTS, BUT THERE IS ONE ASSERTION THAT HE MADE THAT I

12 CAN'T LET STAND WITHOUT COMMENTING AND THAT IS WITH REGARD

13 TO THE FAMILY COURT IN CHARLESTON, SOUTH CAROLINA AND ITS

14 RULING WITH REGARD TO MS. HYNIE BROWN.

15 THE POINT IN FACT AND LAW IS THAT JAMES BROWN COULD

16 NOT HAVE INTERVENED IN THAT CASE AND THEY CITE A CASE FOR

17 THAT PROPOSITION AND I WON'T DISPUTE THAT, BUT BECAUSE HE

18 COULD NOT INTERVENE THAT CASE IS NOT COLLATERAL ESTOPPEL

19 AS TO JAMES BROWN'S ESTATE, NOR IS IT RES JUDICATA, AND IF

20 THAT ISSUE WERE LITIGATED ON, THE ESTATE WOULD HAVE THE

21 OPPORTUNITY TO CONTEST THE VALIDITY OF THEIR MARRIAGE ON

22 ALL OF THOSE POINTS.

23 YOUR HONOR, WE AGREE WITH MR. BUCHANAN AND MRS. POPE

24 THAT THE TRUSTEES ARE NECESSARY PARTIES TO THE AGREEMENT.

25 PROFESSOR MEDLIN REFERS TO A KERNEL OF DISPUTE AND WE

1 AGREE WITH THAT. THAT'S WHERE OUR POSITION IS, JUDGE. WE
2 DON'T BELIEVE THAT THERE'S ANY QUESTION THAT THERE IS A
3 GOOD FAITH CONTROVERSY HERE. NOW, WE DON'T WANT THAT
4 COMMENT -- THAT CONCESSION -- TO BE TAKEN TO MEAN THAT WE
5 AGREE THAT THERE WAS PROBABLE CAUSE TO CONTEST THE
6 VALIDITY OF THE WILL, BUT WE DO RECOGNIZE IN THE CONTEXT
7 OF THIS CODE SECTION -- THAT IS, 1102 -- THAT THERE IS A
8 GOOD FAITH CONTROVERSY.

9 THE POINT AND THE ONLY QUESTION WE HAVE, JUDGE, AND I
10 REALLY DON'T -- I DON'T KNOW HOW YOU CAN DEAL WITH IT. I
11 DON'T KNOW IF YOU EITHER HAVE TO TAKE THEIR SETTLEMENT IN
12 TOTO OR YOU CAN SAY WE'VE GOT TO ADJUST THIS SETTLEMENT IN
13 SOME WAY, BUT HERE TO FIND THAT THIS IS A JUST AND
14 REASONABLE SETTLEMENT, YOUR HONOR, IS THE PROBLEM FOR THE
15 COURT. THE CHARITABLE TRUST NOW ENDS UP WITH 47 AND A
16 HALF PERCENT OF THE ESTATE OR THE TOTAL ASSETS OF THE
17 ESTATE AND TRUST ASSETS, LESS 47 AND A HALF PERCENT OF THE
18 ESTATE TAXES WHICH MAY ARISE AS A RESULT OF THE
19 REDISTRIBUTION OF THE PROPERTY. SO, THE TRUST DOESN'T END

20 UP WITH 47 AND A HALF PERCENT. IF IT TURNS OUT THAT THAT
21 PORTION OF THE PROPERTY THAT WAS SUPPOSED TO GO OR DOES GO
22 TO MS. HYNIE BROWN AND SHE'S NOT BY THE INTERNAL REVENUE
23 SERVICE'S DETERMINATION THE SURVIVING SPOUSE THAT WON'T BE
24 SUBJECT TO ANY SORT OF MARITAL DEDUCTION AND THE PROPERTY
25 THAT GOES TO THE CHILDREN WILL NOT BE SUBJECT TO ANY SORT

1 OF DEDUCTION. YET, UNDER THE TERMS OF THE SETTLEMENT THEY
2 DON'T TAKE ARE NOT SUBJECT TO THAT LIABILITY AND THAT'S
3 WHERE THE LIABILITY COMES FROM. IT'S SHARED BY THE
4 CHARITABLE TRUST.

5 SO, YOUR HONOR, I JUST DON'T SEE HOW THE COURT CAN
6 CONCLUDE THAT THIS IS A JUST AND REASONABLE SETTLEMENT FOR
7 THAT REASON.

8 THE COURT: DO I HAVE THE AUTHORITY OR THE RIGHT TO
9 MODIFY IT TO MAKE IT JUST AND REASONABLE OR DO I HAVE TO
10 APPROVE IT OR JUST NOT APPROVE IT?

11 MR. BYRD: I DON'T THINK, YOUR HONOR. IF YOU REACH
12 THE POINT -- AND THIS REALLY MAY GO TO WHAT WE LAWYERS
13 SOMETIME TALK AS ARM-TWISTING, BUT IF YOU REACH THE
14 CONCLUSION THAT YOU CAN'T APPROVE THE SETTLEMENT AS JUST
15 AND REASONABLE, THEN THAT MAY SEND THE PARTIES BACK TO THE
16 NEGOTIATING TABLE TO WORK OUT SOMETHING THAT YOUR HONOR
17 COULD FIND JUST AND REASONABLE, BUT I DON'T SEE HOW IN THE
18 WORLD THAT UNDER THESE CIRCUMSTANCES YOU CAN GET PAST THAT
19 POINT. THANK YOU, YOUR HONOR.

20 THE COURT: MR. BYRD, WHAT YOU'RE TELLING ME IS YOU
21 THINK THAT THE CONTROVERSY IS GENUINE AND THAT THERE NEEDS
22 TO BE SOME ADJUSTMENT AS TO THE PERCENTAGE GOING TO THE
23 THE CHARITABLE TRUST.

24 MR. BYRD: I DO, YOUR HONOR.

25 THE COURT: AND THAT'S SORT OF WHAT THE OFFER OF

1 COMPROMISE SUGGESTS, TOO. THEY SUGGEST A DIFFERENT AMOUNT
2 GOING TO THE FAMILY MEMBERS.

3 MR. BYRD: THAT'S TRUE, YOUR HONOR.

4 THE COURT: THANK YOU. ANYBODY ELSE? ANYTHING IN
5 RESPONSE, PROFESSOR?

6 MR. MEDLIN: BRIEFLY, YOUR HONOR.

7 THE COURT: BRIEFLY.

8 MR. MEDLIN: THE MORAN CASE SIMPLY PROVES OUR POINT
9 THAT THE TRUSTEE CAN BIND THE BENEFICIARIES, BUT, AGAIN,
10 IT'S AN APPPOSITE BECAUSE IT INVOLVES A TRUSTEE WHO DID
11 CONSENT AND THE BENEFICIARY TRIED TO OVERRIDE. IT DOESN'T
12 OVERTURN SECTION 3-1102. IN RESPONSE TO YOUR QUESTION
13 ABOUT 3-1102 AND YOUR AUTHORITY TO DIRECT THE TRUSTEES TO
14 RESPOND, MR. BAILEY'S RESPONSE WAS, WELL, THERE IS A
15 PRIVATE EDUCATIONAL TRUST. THE ATTORNEY GENERAL IS NOT
16 TRYING TO REPRESENT THE GRANDCHILDREN. HE IS JUST TRYING
17 TO REPRESENT THE CHARITY. SO, I DON'T SEE HOW HOW THAT'S
18 RESPONSIVE AT ALL. 3-1102 SAYS WHAT IT SAYS. THE MORAN
19 CASE DOESN'T OVERTURN IT, AND THE FACT THAT THERE IS A

20 NON-CHARITABLE TRUST INVOLVED DOESN'T OVERTURN IT. IN
21 FACT, THERE IS IS AN IMPACT ON THE CHARITABLE TRUST IN
22 THAT IT LENGTHENS THE GRANDCHILDREN'S TRUST. THEY DO
23 BETTER UNDER THE SETTLEMENT THAN THEY DO WITHOUT THE
24 SETTLEMENT, BUT THE ATTORNEY GENERAL ON BEHALF OF THE
25 CHARITABLE HAS APPROVED THAT IMPACT.

1 THE TERMINATION RIGHTS FOR A COPYRIGHT, 56 YEARS FROM
2 THE COPYRIGHT, 35 YEARS FROM THE COPYRIGHT, NOT 56 YEARS
3 FROM TODAY AND 35 YEARS FROM TODAY.

4 THE COURT: AM I CORRECT THAT IF THE WILL AND TRUST
5 WERE UPHELD THAT NONE OF THE COPYRIGHT RENEWALS, ET
6 CETERA, WOULD GO UNDER THE TERMS OF THE WILL AND TRUST?
7 IT WOULD GO UNDER THE FEDERAL LAW DEALING WITH COPYRIGHT
8 WHICH WOULD BE OUTSIDE OF THE TRUST AND THE ESTATE; IS
9 THAT CORRECT?

10 MR. MEDLIN: THAT'S THE LAW, YOUR HONOR. THERE WAS
11 NO 2002 AMENDMENT THAT CHANGED THAT RULE.

12 THE COURT: AND THE COMPROMISE NOW ALLOWS THOSE
13 COPYRIGHTS, WHATEVER THEY MAY BE, TO GO PARTLY TO THE
14 CHARITABLE TRUST AND TO THE OTHER REMAINING PEOPLE OF THE
15 SETTLEMENT; IS THAT CORRECT?

16 MR. MEDLIN: THAT'S CORRECT, YOUR HONOR.

17 THE COURT: HOLD ON. HOLD ON. YOU MAY FINISH.

18 MR. MEDLIN: THANK YOU. DUE DILIGENCE IS NOT THE JOB
19 OF BENEFICIARIES. DUE DILIGENCE IS THE JOB OF THE

20 FIDUCIARIES. AS MR. BAILEY NOTED THEY'RE SUPPOSED TO
21 COMPILE THE TAX RETURN AND I DON'T KNOW WHAT THEY EXPECTED
22 THE BENEFICIARIES TO KNOW ABOUT THE ESTATE TAX RETURN IF
23 THEY DIDN'T KNOW IF THEY HAD PERFORMED DUE DILIGENCE.

24 THE COURT: WELL --

25 MR. MEDLIN: BUT, CERTAINLY, WE WEREN'T INTERESTED IN

1 INVOLVING OURSELVES WITH PARTIES WHO VERY VEHEMENTLY
2 OPPOSED TO OUR SETTLEMENT SO MUCH SO THAT THEY FILED A
3 90-PAGE MOTION OPPOSING IT BEFORE THEY SAW IT. SO, WE
4 WEREN'T INTERESTED IN GETTING INVOLVED IN THAT AND TAKING
5 ON THEIR JOB. THAT WAS THEIR JOB, NOT OURS.

6 THE COURT: MR. MEDLIN, WHAT IF I FIND THERE IS A
7 JUST CONTROVERSY, BUT I'M -- I HAVE TROUBLE WITH THE FAIR
8 AND REASONABLENESS OF IT BECAUSE OF THE PROPORTIONS? CAN
9 I SEND Y'ALL BACK TO THE DRAWING BOARD? OR I JUST NOT
10 APPROVE THE SETTLEMENT ALTOGETHER?

11 MR. MEDLIN: WELL, I MEAN, YOUR HONOR HAS EVERY
12 AUTHORITY TO ENCOURAGE A SETTLEMENT.

13 THE COURT: I KNOW THAT.

14 MR. MEDLIN: BUT YOU CAN'T FORCE PARTIES TO SETTLE AS
15 I UNDERSTAND IT, AND I THINK YOUR CHOICE IS TO REJECT OR
16 NOT. MR. BAILEY SAID HE DIDN'T HEAR ABOUT THE CORRECTION
17 POSSIBILITIES FOR THE SELF-DEALING ISSUE BY THE
18 FOUNDATION. HE MUST NOT HAVE LISTENED TO HIS OWN WITNESS.

19 THE COURT: LET'S DON'T BE PERSONAL.

20 MR. MEDLIN: WELL, I KNOW, YOUR HONOR, BUT HIS OWN
21 WITNESS IN RESPONSE TO MY QUESTION SAID THAT THE
22 ADMINISTRATION EXCEPTION COULD APPLY AND, IN FACT, THE
23 PUBLIC CHARITY EXCEPTION OR CURE WOULD FIX THE PROBLEM.
24 SECTION 62-7-410 THROUGH 414 ARE IN THE TRUST CODE. THEY
25 DEAL WITH MODIFICATIONS OF BOTH PRIVATE AND CHARITABLE

1 TRUSTS THAT ARE OTHERWISE VALID AND DO ALLOW MODIFICATION
2 OF PRIVATE TRUST TO THE EXTENT THAT THE TRUSTS ARE PRIVATE
3 WITHOUT THE CONSENT OF ALL OF THE BENEFICIARIES IF THEIR
4 INTERESTS AREN'T HARMED AND THE COMMON LAW NOTION OF
5 EQUITABLE DEVIATION OF CHARITABLE TRUST IS CONTINUED WITH
6 SOME SLIGHT MODIFICATION IN SECTION 7-413. WE DON'T THINK
7 THAT THAT IN ANY WAY WOULD AFFECT YOUR DECISION
8 NEGATIVELY.

9 MR. JONES WAS TALKING ABOUT HONORING THE FOUR CORNERS
10 OF THE DOCUMENT THAT IS OTHERWISE UNAMBIGUOUS, NOT THE
11 DOCUMENT THAT'S QUESTIONABLE AS TO ITS VALIDITY. OUR
12 POSITION FOR WHICH WE HAVE REACHED A SETTLEMENT WAS THAT
13 THOSE DOCUMENTS AREN'T VALID. MR. BAILEY IS TRYING TO
14 HOLD US TO THE POSITION NOW THAT WE'VE AGREED TO SETTLE TO
15 WHICH IS INCONSISTENT.

16 AND THEN, FINALLY, YOUR HONOR, MY COMMENT TO CONCLUDE
17 WAS SIMPLY THAT MR. BROWN'S NAME HAS BEEN DRAGGED THROUGH
18 THE MUD AND THAT'S GOING TO CONTINUE. THAT'S HIS LEGACY
19 AND IF WE'LL STOP THIS FIGHTING AND DISSIPATION AND

20 DIMINUTION OF HIS ASSETS SO THAT WE CAN RECOGNIZE WHAT HE
21 STOOD FOR AND QUIT DRAGGING HIS NAME THROUGH THE MUD THAT
22 WILL HONOR HIS LEGACY. THANKS, YOUR HONOR.

23 THE COURT: MR. BAILEY, I AM GOING TO LET YOU
24 RESPOND. YOU JUMPED UP REAL QUICK ON THE COPYRIGHT ISSUE
25 I ASKED PROFESSOR. I AM GOING TO LIMIT IT TO THAT.