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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM AIKEN COUNTY

Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Trial Court Case No. 2008-CP-02-01647

Appellate Case No. 2016-001373

RECEIVED

JAN 12 2017

SC Court of Appeals

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

The Estate of James Brown; James Brown Irrevocable Trust Agreement, u/a/d August 1, 2000, by and through its fiduciaries Russell L. Bauknight, Personal Representative and Trustee; and David C. Sojourner, Jr., Limited Special Administrator and Limited Special Trustee, Respondents, and

Tonya Brown a/k/a Sarah LaTonya Brown, Vanisha Brown, Larry Brown, Deanna J. Brown Thomas, Jason Brown Lewis and Yamma N. Brown Lumar, individually and on behalf of her minor children, Sydney Lumar and Carrington Lumar, Respondents, and

Daryl Brown and Terry Brown, Respondents below,

Of whom Terry Brown is the Appellant.

RECORD ON APPEAL, VOLUME III OF IV

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STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)
IN RE:)
)
The Estate of James Brown a/k/a)
James Joseph Brown)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Case No. 2008-CP-02-1647

**RESPONDENT TERRY BROWN'S MOTION
TO ALTER, AMEND AND RECONSIDER**

ORIGINAL FILED

MAR 08 2016

AIKEN COUNTY
CLERK OF COURT

TO: ALL COUNSEL OF RECORD

YOU WILL PLEASE TAKE NOTICE that ten days after service hereof, or as soon thereafter as he may be heard, Respondent Terry Brown will move the Court in accordance with Rule 59(a), (b) and (e) and 60(a) and (b) of the South Carolina Rules of Civil Procedure, for an order altering, amending, and/or reconsidering the Order Authorizing Settlement of The Brown Children's Undue Influence Cases and Dismissing Cases With Prejudice ("Settlement Order").

Respondent Terry Brown received an e-mail from the Court on February 24, 2016 which included a signed copy of the Settlement Order attached to it in this matter. In the e-mail the Court asked Petitioner's Counsel to file the original Settlement Order and sent the same to Petitioner's Counsel. It was not clear whether the Court intended for the February 24, 2016 e-mail to be an actual entry of the Settlement Order. In light of the most recent decision by the South Carolina Court of Appeals in Wells Fargo Bank, N.A. v. Fallon Props. S.C., LLC, 413 S.C. 642, 776 S.E.2d 575, 2015 S.C. App. LEXIS 204, *1 (S.C. Ct. App. 2015) and out of an abundance of caution, Respondent filed this Motion on March 4, 2016. On March 3, 2016, Petitioner's Counsel sent the original Settlement Order to the Aiken County Clerk for filing and served the same on all parties. The original Settlement Order dated February 24, 2016 was filed with the Aiken County Clerk on March 7, 2016 and served on the parties the same day via e-mail by the Clerk. A copy of the Settlement Order as filed and served on March 7, 2016 is attached as

Exhibit A. To avoid any issues with the fact that Respondent's Motion was filed one business day prior to the filing of the original Settlement Order with the Aiken County Clerk, Respondent now re-files its Motion.

The Motion is based upon all memorandum of law, stipulated facts, and/or affidavits that may be submitted in support of this motion, along with all common and statutory law, and such other evidence this Court may consider. Additionally, this motion adopts and incorporates all previous filings by Respondents and parties in this matter which include: 1) Respondent's Response to Joint Motion for Settlement dated December 23, 2015 and Amended Response to Joint Motion for Settlement filed on December 30, 2015; 2) all arguments made before the Court on January 14 2016 by Respondents; 3) all Motions to Alter, Amend, and Reconsider and Memorandums, Affidavits and Exhibits in Support of such Motions filed by any and all Respondents; 4) Deposition Transcript of Deanna Brown Thomas dated October 31, 2007; 5) Deposition Transcripts Vol. I and Vol II of H. Dewain Herring, Jr. dated November 18, 2015 and December 9, 2015, respectively; 6) Yamma Brown's Responses to LSA's First Set of Interrogatories and Requests for Production of Documents, dated May 23, 2014; 7) Deanna Brown Thomas's Responses to LSA's First Set of Interrogatories and Requests for Production of Documents dated June 2, 2014; Tommie Rae Brown's Responses to LSA's First Set of Interrogatories and Requests for Production of Documents dated September 14, 2015; and 8) Larry Brown's Responses to LSA's First Set of Interrogatories and Requests for Production of Documents dated October 19, 2015.

ARGUMENT WITH LAW AND ANALYSIS

As the Court is more than aware, litigation has been pending in this matter for almost nine (9) years as a result of the groundless undue influence estate challenges and filings made by several of the decedent's children and alleged spouse¹. Specifically, it is these contesting children, that now jointly motion for settlement, who filed groundless undue influence challenges to the Last Will and Testament dated August 1, 2000 ("Will") and Irrevocable Trust dated August 1, 2000 ("Trust") of the decedent. The Will and Trust contain in terrorem clauses that preclude the above named beneficiaries from receiving any assets of the estate or trust.

Terry Brown and his heirs are the only beneficiaries that have consistently and publically supported the Will and Trust for the last nine (9) years. They have never challenged the Will or Trust. As a result of the proposed settlement that the parties now seek to have approved, Terry Brown and his heirs would be injured by the Personal Representative and Trustee if this Court approves the proposed settlement. The Personal Representative and Trustee have a duty to enforce the in terrorem clauses and act impartially among the beneficiaries. Failure to do so rewards the bad acts of the contesting children, their heirs, and alleged spouse who challenged the Will and Trust. These individuals have caused nine (9) years of pain, suffering, litigation and expense in this matter. Rewarding such groundless undue influence claims is not only unjust but unfathomable. Decedent would not "feel good" as a result of these proceedings. To the contrary, this is exactly what the decedent did not want and why in terrorem clause concepts were developed.

¹While this Court has ruled that Tommie Rae Hynie Brown is the spouse of the decedent, Terry Brown along with numerous other Appellants have currently disputed this issue with appeals filed before the South Carolina Court of Appeals.

The Personal Representative and Trustee have a duty of impartiality and fiduciary duty not to favor or injure beneficiaries of the Estate or Trust. Failing to enforce the in terrorem clauses in this matter, breaches both of these duties and unfairly punishes the only beneficiaries that have not challenged the Will and Trust. Rewarding such action with monetary compensation and then placing the challenging heirs back in the same position as if they had never challenged the estate plan with the only non-contesting beneficiaries is unconscionable and legally indefensible.

LEGAL ANALYSIS

James Joseph Brown ("Mr. Browns") died Christmas day 2006. Mr. Brown left a Will and Irrevocable Trust. Last Will and Testament dated August 1, 2000 ("Will") and Irrevocable Trust dated August 1, 2000 ("Trust") which were very specific as to Mr. Brown's intentions for the disbursement of his assets.

The Will, dated August 1, 2000, devised all of his personal and household effects to six adult named children: Deanna J. Brown Thomas, Yamma N. Brown, Vanisha Brown, Darryl J. Brown, Larry Brown and Terry Brown. Mr. Brown left the remainder of his estate to The James Brown 2000 Irrevocable Trust via a pour-over provision in his Will. Brown created the 2000 Irrevocable Trust under separate agreement, also dated August 1, 2000, as part of his estate plan to provide financial assistance for the education of his grandchildren and disadvantaged youths.

Upon Mr. Brown's death, the principal and income contained in the Trust, as augmented by Mr. Brown's General estate, was to be divided, by its terms, into two "shares" or subtrusts: (1) The Brown Family Educational Trust ("Family Trust"), which was capped in the amount of

\$2 million for tax purposes and designated for the education of Mr. Brown's grandchildren; and (2) The James Brown "I Feel Good" Trust ("Charitable Trust"), which Mr. Brown declared "shall be used solely for the tuition, educational expenses, and financial assistance of . . . poor and financially needy children, youth, or young adults (Who are both qualified and deserving) who seek and have need of such assistance to obtain and further their education at the many educational entities and/or institutions available in the States of South Carolina and Georgia."

Mr. Brown's Will and Trust each contained a no-contest clause, which provided that any beneficiary who challenged the Will or the 2000 Irrevocable Trust "shall forfeit his or her entire interest thereunder." Mr. Brown noted in both documents that the persons described therein, i.e. the six named children and their legitimate issue, comprised "the entire class . . . acknowledge[d] to be [his] heirs and issue." Mr. Brown expressly disavowed any other potential beneficiaries, stating, "I have intentionally failed to provide for any other relatives or other persons, whether claiming, or to claim, to be an heir of mine or not." Mr. Brown stated any person not provided for in his Will or Trust "whether or not claiming to be a beneficiary, party in interest, or otherwise shall not have standing or be qualified to contest, claim an interest in or otherwise dispute the disposition of [his] estate as he herewith disclaims and disinherits any such person."

Mr. Brown stated that any challenges by such persons to the disposition of his estate or the validity of the documents would "be considered an affront to [his] wishes," and "shall be vigorously challenged as such by his fiduciaries."

On December 21, 2007, five of the six adult children Mr. Brown named in his Will, along with their children, brought actions to set aside the Will and Trust so that Mr. Brown's estate would pass to them directly, intestate, based on undue influence. Other children, not named in

Mr. Brown's will also brought actions so that Mr. Brown's estate would pass to them directly, intestate, based on undue influence. Respondent Terry Brown refused to bring action against his father's Will and Trust and fired the attorney representing the contesting children prior to them instituting the action. Respondent Terry Brown wanted his father's wishes as outlined above to be honored.

The Honorable Court should reconsider, alter and/or amend its ruling for the following reasons:

1. This Honorable Court erred in determining that the Settlement Order was approved in accordance with South Carolina Code §62-3-105 and that South Carolina Code §62-3-1101 did not apply. See, Settlement Order, p. 2; Wilson V. Dallas, 403 S.C. 411 (2013). The South Carolina Supreme Court in Wilson v. Dallas, clearly determined that any settlement agreement reached involving an estate controversy had to be approved in accordance with South Carolina Code §62-3-1101. This case clearly involves the settling of undue influence claims and other issues related to an estate controversy. As such, it was error for this Court to determine that South Carolina Code §62-3-105 rather than South Carolina Code §62-3-1101 applied.

2. The Honorable Court erred when it determined that South Carolina Code §62-3-1101 did not apply because the Settlement Order would only be binding on the moving parties when in fact the Settlement Order directly impacted the inheritance rights of Respondent Terry Brown (a non-moving party) by affirming his siblings rights to share in the personal property of the estate and approving avoidance of the in terrorem clauses in both the Will and the Trust which is the settlement of an estate controversy or item related to an estate that requires approval under South Carolina Code §62-3-1101. Contrary to this Honorable Court's contention in its Settlement Order, this ruling does amend or change the distribution schemes in this estate by placing all of

the siblings back in a position to receive personal property under the will and determining that the in terrorem clause will not be enforced. See Settlement Order p. 5-7. As a result of failing to comply with South Carolina Code §62-3-1101, the Settlement Order approved by this Court is void. See Wilson v. Dallas, 403 S.C. 411, 426 (2013) (citing In re Estate of Riley, 228 Ariz. 382, 266 P.3d 1078, 1080 (Ariz. Ct. App. 2011)).

3. This Honorable Court erred by focusing on alleged bad character of the trustees and their compensation as opposed to whether contesting children provided evidence of undue influence that Mr. Brown did not intend to leave his personal and household effects to six adult named children and the remainder of his estate to The James Brown 2000 Irrevocable Trust via a pour-over provision in his Will as part of his estate plan to provide financial assistance for the education of his grandchildren and disadvantaged youths. There is no evidence before the court or in the record that this was not Mr. Brown testamentary intent. In fact, the drafting attorney and contesting children confirmed that was Mr. Brown's intent.² It was error to rule otherwise.

4. This Honorable Court erred in not considering Deanna's deposition wherein she concurred that it was her father's intent to leave his estate to provide financial assistance for the education of his grandchildren and disadvantaged youths. Deanna provided a deposition on October 31, 2007 less than two (2) months prior to contesting her father's Will and Trust on the ground of undue influence seeking for the Will and Trust to pass to her and her siblings intestate and not to provide financial assistance for the education of his grandchildren and disadvantaged youths as Mr. Brown wished. Deanna, in her deposition, only disputed who was appointed

² Deanna Depo, pages 14 through 23; 56 through 58; 61 through 66; 147 through 148; Larry Brown's Responses to LSA Ints. and RFP Response 10 (4); Yamma Brown's Responses to LSA Ints. and RFP Response 10(4); Depo. H. Dewain Herring dated November 18, 2015 (52:1-25, 53:1-25, 54:1-25, 55:1-25, 56:1-25, Exhibit 8, (78:1-25, 79:1-13)) and December 9, 2015 (400:10-25, 401:1-25, 402: 1-7; Exhibit 8, 524:15-25, 525:1-2)

trustees. As the following testimony reflects, she did not object to the terms of the will or trust as not being her father's wish, desire and intent and confirmed Mr. Brown was of sound mind when the documents were executed:

Q. Do you understand that to have been the last will and testament of your father?

A. Yes

Q. Do you believe your father had full capacity when he executed that document?

A. Yes

Q. Do you have any reason to believe that he did not have full capacity when he executed his last will and testament?

A. Not to my knowledge.

Q. Do you have any problem with the will?

A. No, I don't have a problem with the will, no.

Q. Do you—is it within your interest to follow your father's wishes as are contained in the will?

A. Yes³

Q. Do you have any—can you articulate any other problem you have with the trust document other than the decision your father made as to the three trustee?

A. No

Q. Other than the selection that your father made of Cannon, Bradley and Dallas as trustees, are you willing to cooperate with all of the terms of the James Brown Irrevocable Trust?

A. I can't say fully, but most of, yes.

Q. What parts of the James Brown irrevocable trust would you not want to cooperate with other than the selection of the trustees?

A. Other than that—

Q. Yes

A. —I can't think of anything right now.⁴

³ Deanna Depo, 16: 5-19

Q. You're aware of an audiotape that's been given to the news?

A. yes

Q. Have you heard the audiotape?

A. yes

Q. Do you believe that audiotape is in fact your Dad's voice?

A. Yes⁵

Q. In that tape he talks about his desires for his legacy and his estate; is that correct?

A. He mentions that he wants to see poor children taken care of and given an opportunity that he didn't have. . . .

Q. Do you have any disagreement with seeing his words of looking out for poor children implemented?

A. No, I do not.⁶

Q. Do you believe that the last will and testament that you saw in December of 2006 does fulfill what he represented to you that you and the other children would be taken care of?

A. Yes⁷

* * *

Q. Let's just say what do you want to see the Trust to be doing right now?

A. Providing the educational money for his grandchildren and a criteria put into place for needy children.⁸

* * *

⁴ Id. at 22: 2-16.

⁵ Id. at 56.

⁶ Id. at 57:3-16.

⁷ Id. at 65: 14-18.

⁸ Id. at 155: 7-12.

Q. Just thinking out loud, who do you think would be best to carry out these wishes?

A. Other than me and my brothers and sisters, I don't know.

Q. Would that be your preference that the brothers and sisters carry it out?

A. I know that – I know that we want what Dad wanted. And we know these children can be blessed and that's who – you know, that's who should be blessed, people who can't afford it .

* * *

Q. You said your father was a generous man.

A. Yes

Q. That's certainly clear. What was his heart on the topic of education for poor people, poor children?

A. He wanted to be able to assist poor children getting an education.¹⁰

5. This Honorable Court erred in not considering the massive damage caused by the Will and Trust contests over the last nine (9) years when it approved a settlement that unconscionably rewarded the contesting beneficiaries in direct contradiction of the directives contained in James Joseph Brown's Will and Trust. There can be no greater example of the desirous effect of an in terrorem clause. Such clauses are there to prevent wasteful litigation seeking to destroy the testator's intent. This Court is fully aware of the extent of the litigation, the massive expense taxed to the estate and Trust, not to mention the uncountable nameless, faceless disadvantaged children whose lives were forever changed because the contesting children desired to destroy Mr. Brown's legacy and testamentary intent and instead direct the financial windfall to themselves. They now seek to settle for a pittance and receive according to the Will as if nothing ever happened. Additionally this Court should acknowledge the admitted fact that the contesting children have taken no depositions, asked no questions of the Will and

⁹ Id. at 148: 17-25, 149: 1.

¹⁰ Id. at 146: 6-11.

Trust drafting attorney, provided no documentation supporting their position and merely provided uncorroborated allegations in interrogatory responses.

6. This Honorable Court erred in not considering the admittedly limited discovery performed by the Personal Representative and Limited Special Administrator, Trustee and Limited Special Trustee. There was only one deposition taken, however, the settlements were executed prior to its taking. The contesting children have neither taken any depositions nor made any attempt to schedule depositions and merely provided interrogatories filled with allegations.¹¹ No actual evidentiary documents have been submitted into evidence by the contesting children, the PR/Trustee, or LSA/LST supporting undue influence and probable cause of the same.

7. It was error for this Honorable Court to allow the testimony of Louis Levenson, Esq. (“Levenson”) and rely on his testimony in support of the Settlement Order on numerous grounds:

- a. Allowing his testimony was a violation of South Carolina Rules of Civil Procedure 6(d) as no affidavit of Levenson was presented with the Joint Motion alerting Respondent to the fact that Levenson would be testifying at the hearing and thereby giving Respondent an opportunity to provide opposing affidavits or prepare for such testimony (“Ambush Testimony”). This was an abuse of discretion.
- b. Allowing testimony of Levenson was a violation of the SCACR 407 (3.7) as he is still counsel of record and an advocate in this matter (“Party Attorney Biased Testimony”). It was error not to disqualify him as a witness at the time of objection. As noted in comment 2 to such rule “The opposing party has

¹¹ Deanna, Yamma and Larry Responses to LSA Req. for Int. and RPD

proper objection where the combination of roles may prejudice that party's rights in the litigation." As such, Counsel's objection to Louis Levenson testifying should have been sustained.

- c. Allowing the testimony of Levenson without: 1) any prior notice of such testimony; 2) adequate opportunity to prepare or be heard; 3) the right to introduce evidence in rebuttal of a "surprise" witness; 4) the right to **meaningfully confront and adequately** cross examine a witness was a violation of both substantive due process and procedural due process in accordance with S.C. Rule of Civil Procedure 6(d), U.S. Const. Amend. XIV, §1, and S.C. Const. Art. I, §3. The result was prejudice to Respondent as this Court has relied almost solely on such testimony in its Settlement Order. Allowing the testimony of Levenson, and then relying on it, resulted in a taking of Respondent's property rights in the form of a reduced inheritance by not requiring the fiduciaries in this matter to enforce the in terrorem clauses in the Will and Trust. As a result, such actions deprived Respondent of due process to have a property right (i.e. his right to an inheritance) adequately adjudicated and were error("Due Process Violation Testimony"). See. Moore v. Moore, 376 S.C. 467 (2008); State v. Brown, 178 S.C. 294 (1935); South Carolina Dep't of Health & Environmental Control v. Armstrong, 293 S.C. 209 (1987); State v. Fussell, 299 S.C. 162 (1989) (making findings without evidentiary support is an abuse of discretion).
- d. The testimony of Levenson was inadmissible hearsay which was relied on by this Court in making its determination in the Settlement Order which was

prejudicial to Respondent and an abuse of discretion (“Hearsay Testimony”).

See. Allegro, Inc. v. Scully, 409 S.C. 392 (2014).

- e. Allowing Levenson to testify in narrative format was a violation of due process and SCRCR Rule 43(h) related to the examination of witnesses (“Narrative Testimony”). There was no counsel examining Levenson. As a result, a proper record based on direct, cross-examine and objections was unable to be adequately created. Further, his narrative testimony was clearly prejudicial as this Court spent five pages of the twenty pages of its Settlement Order referencing the same. Such result was error and prejudicial to Respondent.
- f. This Honorable Court erred in relying on Levinson’s Ambush Testimony, Party Attorney Biased Testimony, Due Process Violation Testimony, Hearsay Testimony and Narrative Testimony that Mr. Levenson testified it became apparent to his clients in December 2007 that certain people who were close to Decedent, and who also held confidential relationships with him,¹² were involved in preparing documents for Decedent to sign.¹³
- g. This Honorable Court erred in relying on Levinson’s Ambush Testimony, Party Attorney Biased Testimony, Due Process Violation Testimony, Hearsay Testimony and Narrative Testimony when Levenson testified that some of the witnesses he interviewed were also aware of contracts, some oral and some

¹² January 14, 2016 Hearing Transcript, 81:5-10.

¹³ Id. at 55:2-16.

written, prepared by Messrs. Cannon, Dallas, and Bradley which purported to give them each five percent of Decedent's gross revenue.¹⁴

- h. This Honorable Court erred in relying on Levinson's Ambush Testimony, Party Attorney Biased Testimony, Due Process Violation Testimony, Hearsay Testimony and Narrative Testimony when Mr. Levenson was informed there was a pattern of Messrs. Cannon, Dallas, and Bradley asking Decedent to sign blank documents without reading them.¹⁵
- i. This Honorable Court erred in relying on Levinson's Ambush Testimony, Party Attorney Biased Testimony, Due Process Violation Testimony, Hearsay Testimony and Narrative Testimony regarding his [Levenson's] discussions with Tommie Rae Brown, he was informed Ms. Brown had allegedly observed Decedent signing documents during instances when he was under the influence of certain controlled substances.¹⁶
- j. This Honorable Court erred in relying on Levinson's Ambush Testimony, Party Attorney Biased Testimony, Due Process Violation Testimony, Hearsay Testimony and Narrative Testimony when Ms. Brown also told him [Levenson] that Messrs. Cannon, Dallas, and Bradley would visit Decedent at home during times of the day when they allegedly knew he was under the influence of substances in order to get him to sign documents.¹⁷

¹⁴ Id. at 56:10-15.

¹⁵ Id. at 55:23; 56:1.

¹⁶ Id. at 63:7-19.

¹⁷ Id.

k. This Honorable Court erred in relying on Levinson's Ambush Testimony, Party Attorney Biased Testimony, Due Process Violation Testimony, Hearsay Testimony and Narrative Testimony that Ms. Brown accusations were purportedly corroborated by Ms. Elif Crawford, Decedent's personal assistant or secretary.¹⁸

l. This Honorable Court erred in relying on Levinson's Ambush Testimony, Party Attorney Biased Testimony, Due Process Violation Testimony, Hearsay Testimony and Narrative Testimony when he testified his clients were informed and believed at the time they filed the subject Petitions that Decedent did not read many of the documents he signed and/or was incapable of understanding or reading the documents due to his altered condition.

1. As aforementioned, Deanna in her deposition just a month and a half prior to the filing of the undue influence claim testified that she believed her father to be of sound mind when he executed the Will and Trust.

m. This Honorable Court erred in relying on Levinson's Ambush Testimony, Party Attorney Biased Testimony, Due Process Violation Testimony, Hearsay Testimony and Narrative Testimony that such information, when set alongside information Levenson obtained from Dr. Richardson and Loric Yanel, painted a troubling picture from the perspective of Levenson's clients in 2007. Dr. Richardson informed Levenson about Decedent's commitment to a facility in

¹⁸ Id.

Atlanta, Georgia for alleged substance dependence.¹⁹ Mr. Yanel further indicated Decedent's European tour ended prematurely in July 2000 because of Decedent's behavior during the tour caused by his alleged substance dependence.²⁰

- n. This Honorable Court erred in relying on Levinson's Ambush Testimony, Party Attorney Biased Testimony, Due Process Violation Testimony, Hearsay Testimony and Narrative Testimony when Levenson testified that after 1999, but before approximately 2002 or 2003, large sums of money were being transferred from Decedent's Morgan Stanley account upon the sole authorization of Mr. Cannon.²¹ Levenson stated that by 2002, Decedent's Morgan Stanley account had lost significant value due to transfers by Mr. Cannon.²² These transactions were believed by Levenson and his clients, to have all occurred under the direction of Mr. Cannon and without the direct knowledge of Decedent.²³
- o. This Honorable Court erred in relying on Levinson's Ambush Testimony, Party Attorney Biased Testimony, Due Process Violation Testimony, Hearsay Testimony and Narrative Testimony when Levenson also recounted details

¹⁹ Id. at 49:17-20.

²⁰ Id. at 49:9-16.

²¹ Id. at 58:16-24.

²² Id. at 58:25; 59:7.

²³ Id. at 59:8-13.

regarding alleged substituted and/or altered documents.²⁴ For example, Mr. Dallas testified during a hearing on February 8, 2008 before this Court that a document attached as Exhibit B to Decedent's 2000 Irrevocable Trust was a document Mr. Dallas himself substituted *after* Decedent's death.²⁵ This testimony corroborated the belief by Mr. Levenson's clients that Decedent's "confidantes" were substituting their judgment for that of Decedent and that Decedent had been unduly influenced.

1. As aforementioned, Deanna in her deposition just a month and a half prior to the filing of the undue influence claim testified that she did not contest or question her father's testamentary intent to leave his personal and household effects to six adult named children and the remainder of his estate to The James Brown 2000 Irrevocable Trust as part of his estate plan to provide financial assistance for the education of his grandchildren and disadvantaged youths.
- p. This Honorable Court erred in relying on Levinson's Ambush Testimony, Party Attorney Biased Testimony, Due Process Violation Testimony, Hearsay Testimony and Narrative Testimony when Levenson further testified regarding discussions he had with his own clients, including, in 2007, Terry Brown and Daryl Brown.²⁶ His clients allegedly informed Levenson their

²⁴ Id. at 60:22; 61:20.

²⁵ Id. at 60:25; 61:4.

²⁶ Id. at 54:22-25.

father was pathologically afraid of going to jail for tax evasion.²⁷ Decedent's alleged fear of going to jail for tax evasion was purportedly encouraged or unnecessarily emphasized by Messrs. Cannon, Dallas, and Bradley.²⁸ Levenson stated his clients believed Messrs. Cannon, Dallas, and Bradley were, on the one hand, informing Decedent he would likely go to jail for tax evasion while, at the same time, allegedly stealing money from him, and not reporting it on their own taxes.²⁹

1. Deanna in her deposition just a month and a half prior to the filing of the undue influence claim testified that she was unaware of any tax issues her father had. To which client is Levinson assessing such uncorroborated statements.

Q. Were you aware of any difficulty he had with the IRS?

A. No, not—not to my knowledge. (Denna Depo, 111:13-15).

q. This Honorable Court erred in relying on Levinson's Ambush Testimony, Party Attorney Biased Testimony, Due Process Violation Testimony, Hearsay Testimony and Narrative Testimony when Levenson further testified regarding his clients' concern about Decedent's engagement of Mr. H. Dwaine Herring, Esquire, for the purpose of preparing Decedent's 1999 and

²⁷ Id. at 61:21; 63:6.

²⁸ See. id.

²⁹ Id.

2000 Will and Trust.³⁰ Levenson testified his clients' were concerned because Mr. Herring had not been a lawyer their father had traditionally used with respect to the management of his business or legal affairs.³¹ Levenson testified his clients believed Mr. Herring was an attorney who had been referred to Decedent through Messrs. Dallas or Cannon and therefore the circumstances of his employment by Decedent were suspicious to Petitioners.³² This does not provide grounds for probable cause.

- r. This Honorable Court erred in relying on Louis Levinson's Ambush Testimony, Party Attorney Biased Testimony, Due Process Violation Testimony, Hearsay Testimony and Narrative Testimony when Mr. Levenson testified he interviewed Mr. Herring in 2007³³ and learned that although Mr. Herring had communicated with Decedent himself on a few occasions, Messrs. Cannon, Dallas, and/or Bradley were present when those conversations took place, further corroborating Petitioners' belief that their father had been unduly influenced with respect to signing the 1999 and 2000

³⁰ Id. at 69:10-14.

³¹ Id. at p. 71:7-19; 69:16; 70:18 (stating Decedent had previously retained Joel Katz, Jay Ross, and Leon Friedman and testifying: "there's nothing wrong with a person getting their own lawyer totally different from any lawyer they've ever used.") Id. at 88:20; 89:5.

³² Id. at 70:18-21.

³³ Id. at 75:12-13.

Wills and Trust Agreements.³⁴ At least Deanna, Larry and Darryl agreed with and supported their father's intent to help educate his grandchildren and disadvantaged youths.

- s. Allowing the Ambush Testimony, Party Attorney Biased Testimony, Due Process Violation Testimony, Hearsay Testimony and Narrative Testimony of Levenson and then relying on it resulted in a taking of Respondent's property rights in the form of a reduced inheritance by not requiring the fiduciaries in this matter to enforce the in terrorem clauses in the Will and Trust. See. U.S. Const. Amend. XIV, §1, and S.C. Const. Art. I, §3.

8. This Honorable Court erred when it failed to consider the LSA made no effort to corroborate the allegations made by the contesting children. In fact, Petitioners specifically acknowledged to the Court that the Levinson testimony was just that, ALLEGATIONS not evidence.³⁵

9. This Honorable Court misconstrued Respondent's argument when it determined that Respondent Terry Brown sought compensation for his support of the Will and Trust. See. Settlement Order p. 6. Respondent's position was to require the respective fiduciaries to perform their fiduciary duties and uphold the in terrorem clause as the documents specifically and explicitly require. The will states: "Any such alleged claim shall be considered an affront to my wishes and **shall be challenged as such by my fiduciaries.**" The Trust is even more emphatic when it states: "Any such alleged claim shall be considered an affront to Grantor's wishes and

³⁴ Id. at 84:5-18; 86:10; 88:18.

³⁵ Id. at 74:1-7.

shall be vigorously challenged as such by his fiduciaries.” These clauses place unequivocal duties on the Personal Representative and Trustee to defend the in terrorem clauses.

10. This Honorable Court erred in footnote 10 of the Settlement Order when it determined that Respondent would be in violation of the in terrorem clause for signing the 2009 settlement agreement that was struck down as illegal by the South Carolina Supreme Court. As a result, such settlement agreement failed as it was illegal, lacked consideration and was rescinded thereby making the settlement agreement void ab initio and a nullity. See. Crowe v. Cherokee Wonderland, Inc., 379 F.2d 51 (1967) (failure of consideration nullifies a contract); Groesbeck v. Marshall, 44 S.C. 538 (1895) (contract based on illegal consideration is null and void); Rice & Santos, Inc. v. Jones, 279 S.C. 201 (1983) (rescission occurs where the parties are returned to the status quo). Further, execution of the 2009 settlement agreement logically cannot be a violation of an in terrorem clause because such a result would mean that no document involving an in terrorem clause could ever be settled if litigation arose over estate documents because signing a settlement agreement would violate the clause. Additionally, the other siblings, who have been rewarded by this Court’s Settlement Order, signed the same 2009 settlement agreement. Footnote 10 of this Court’s Settlement Order places the Trustee and Personal Representative in quandary (which proves that it is incorrect). If signing the 2009 settlement agreement is a breach, the Trustee and Personal Representative should never have filed the motion that led to the Settlement Order. They should have instead pursued all of the siblings in violation of the in terrorem clause. Failure to do anything else would be a breach of fiduciary duty. That means this Settlement Order approving the settlement with the five (5) children and their heirs is a breach if this Honorable Court’s footnote 10 is correct. As a result, such assertion cannot be correct. Signing a settlement agreement is not a breach of an in terrorem clause. This Honorable Court clearly

erred when it determined that signing a settlement agreement was a breach of an in terrorem clause. Additionally, this Honorable Court erred in the interpretation of the enforcement of the in terrorem clause. The LSA has consistently argued that only the challenging parties would be impacted by the in terrorem clause (Depo. H. Dewain Herring December 9, 2015 (541:25, 542:1 through 555:14)). Forlando Brown and Ramunzo Brown, Terry Brown's children, who are also represented by Respondent's counsel, never signed a settlement agreement or filed a challenge in this matter. Based on the LSA's consistent interpretation of the in terrorem clauses, the LSA should be defending them as they are Terry Brown's heirs who would take if he did indeed "challenge" the estate plan. Failure to do so is breach of fiduciary duty, duty of impartiality and duty of loyalty. See. S. C. Code §62-7-804 and §62-3-703. The Court should rectify such breaches by requiring the enforcement of these clauses and it was error not to do so.

11. The Court erred when it determined that Petitioners' had probable cause to file the undue influence claim as there is actually no evidence as to all of the elements of undue influence. Undue influence requires the proof that the influence destroyed the free agency of the maker and prevented the maker to exercise judgment and free choice. See. Wilson v. Dallas, 403 S.C. 411, 437 (2013). Further, it requires actual force and coercion. Id. Inferences are not enough. Id. Finally, and most importantly, the influencing individuals must have replaced the Testator's intent and desires with their own. Id. The evidence presented in this matter does not reflect these elements were ever met or occurred at any point in time. Further, the evidence that was relied on by this Honorable Court was inadmissible on several grounds chief among them is that it is hearsay evidence that clearly prejudiced the Respondent as this Honorable Court relied solely on such testimony. See. Order p. 10-14. This Honorable Court and Petitioners specifically cited to no other evidence in the record in support of the contention that probable

cause existed. As such, this Honorable Court's determination that probable cause existed is error as there is no proof that there was probable cause as to all of the elements of undue influence.

12. The Court erred when it determined that a probable cause exception exists for irrevocable trusts in South Carolina. See. South Carolina Code §62-3-905 and §62-7-605 (dealing with wills and revocable trusts). No such corresponding statute exists for irrevocable trusts, which is the type of trust at issue in this matter.

13. This Honorable Court erred in determining that there was probable cause to challenge the documents. In fact, the evidence reflects that no undue influence occurred and therefore probable cause did not exist.³⁶

14. Failure to continue the enforcement of the in terrorem clause by the Personal Representative and Trustee, which specifically and explicitly require such enforcement, was a breach of fiduciary duty by such fiduciaries that this Honorable Court should have remedied by requiring enforcement of the same. See. S. C. Code §62-7-804 and §62-3-703; Doolittle v. Exchange Bank, 241 Cal. App. 4th 529 (2015) (A Trustee is under a duty to enforce an in terrorem clause in a trust when such duty is specifically required by the trust language until such time as a party challenging meets the burden of proof that they had probable cause to bring the claim. The court also ruled that the trust should pay for the defense of such challenge regardless of the economic disadvantage that might be placed on different beneficiaries of the trust because it was the Settlor's express directive in the trust terms to enforce the in terrorem clause.)

³⁶Deanna Depo, pages 14 through 23; 56 through 58; 61 through 66; 147 through 148; Larry Brown's Responses to LSA Ints. and RFP Response 10 (4); Yamma Brown's Responses to LSA Ints. and RFP Response 10(4); Depo. H. Dewain Herring dated November 18, 2015 (52:1-25, 53:1-25, 54:1-25, 55:1-25, 56:1-25, Exhibit 8, (78:1-25, 79:1-13)) and December 9, 2015 (400:10-25, 401:1-25, 402: 1-7, Exhibit 8, 524:15-25, 525:1-2)

15. As noted hereinabove, it was error for this Court to determine in footnote 55 that Respondents had an adequate and meaningful opportunity to cross-examine Louis Levenson. No notice was given that an attorney acting as an advocate in the case would become a witness. No opportunity given for counsel to adequately and meaningfully prepare for cross-examination or prepare rebuttal or other evidence to use in cross-examination. In short, due process failed. Counsel raised this issue as well as many others related to the process. See. January 14, 2016 Hearing Transcript, 41:6-17; 43:25; 44:1-8; 48:12-25; 51:1-8; 52:6-25; 53:1-3; 70:22-25; 71:1-3; 85:12-17; 91:2-11.

16. Approval of the Settlement should be voided as it is not reasonable and just in accordance with S.C. Code §62-3-1102(3).

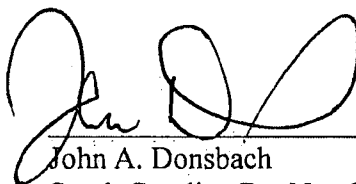
17. It was error to allow Mr. Medlin to be involved in the proceeding in any fashion as this Honorable Court determined that he did not have standing to be involved in the motion hearing. See. Id. at 100:1-25; 101:1-25.

For the foregoing reasons, Respondent Terry Brown respectfully requests that this Court grant this Motion to Alter, Amend and Reconsider, deny Petitioners' Motions.

Under Rule 11, SCRCP, the undersigned affirms consultation with opposing counsel would serve no useful purpose.

This 8th day of March, 2016.

Respectfully submitted.

A handwritten signature in black ink, appearing to read 'John A. Donsbach', is written over a horizontal line.

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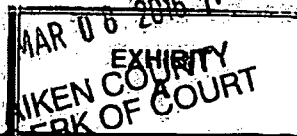
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	
	)	CASE NO. 2008-CP-02-1647
	)	
IN RE:	)	ORDER AUTHORIZING SETTLEMENT OF
	)	THE BROWN CHILDREN'S UNDUE
THE ESTATE OF JAMES BROWN	)	INFLUENCE CASES AND DISMISSING
A/K/A JAMES JOSEPH BROWN	)	CASES WITH PREJUDICE
	)	

This matter is before the Court on a joint motion filed by the Estate of James Brown ("Estate") and James Brown Irrevocable Trust Agreement, w/a/d August 1, 2000 ("Trust"), by and through its fiduciaries, Russell L. Bauknight, Personal Representative and Trustee ("Bauknight"), and David C. Sojourner, Jr., Limited Special Administrator and Limited Special Trustee ("Sojourner") (collectively, the "Fiduciaries"), and Petitioners Tonya Brown, a/k/a Sarah LaTonya Brown, Vanisha Brown, Larry Brown, Deanna J. Brown Thomas, Jason Brown Lewis, and Yamma N. Brown Lumar, individually and on behalf of her minor children, Sydney Lumar and Carrington Lumar ("Petitioners") (collectively the "Moving Parties").

The Moving Parties request an order confirming the authority of the Estate and Trust to enter into two settlement agreements with Petitioners which would dispose of Petitioners' challenges to the Will and Trust (the "Settlement Agreements"); entering the Settlement Agreements into the record, in satisfaction of Rule 43(k), SCRCF; dismissing with prejudice all challenges to the Will and Trust filed by Petitioners, as amended, pursuant to Rule 41(a)(2), SCRCF; and dismissing Petitioners as parties to the above-captioned action.

¹ This Order does not dispose of all claims to set aside the Will and Trust, as Tommie Rae Brown also has Petitions to Set Aside Informal Probate and to Set Aside the Trust Agreement, filed on December 20, 2007, which are not resolved by the Settlement Agreements and will continue under this case caption.

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Daryl Brown and Terry Brown were the only parties who filed oppositions to the Joint Motion. See Opposition to Joint Motion filed by Daryl Brown on or about December 29, 2015, and Amended Response of Terry Brown, filed on or about December 30, 2015.

The Court conducted a hearing on the Joint Motion on January 14, 2016 in Aiken, South Carolina. During the hearing, the Court heard oral argument from counsel for all parties and received sworn testimony from counsel for Petitioners, Mr. Louis Levenson.

DISCUSSION

I. BAUKNIGHT AND SOJOURNER, AS REPRESENTATIVES OF THE ESTATE AND TRUST, HAVE AUTHORITY TO ENTER INTO THE SETTLEMENT AGREEMENTS.

The Moving Parties sought confirmation pursuant to S.C. Code Ann. Section 62-3-105² that Mr. Bauknight, as Personal Representative and Trustee, and Mr. Sojourner, as Limited Special Administrator and Limited Special Trustee, had authority to enter into the Settlement Agreements on behalf of the Estate and Trust.

On October 1, 2013, the Court appointed Messrs. Bauknight and Sojourner as fiduciaries of the Estate and Trust (the "Appointment Order"). The Appointment Order does not expressly list a power to settle claims; however, the Court finds such power is inherent in both the Appointment Order and applicable legal authority.³ In addition, Decedent's Irrevocable Trust Agreement, Article X(19), authorizes the trustee, in his fiduciary discretion, to "compromise,

² This statutory provision enables estate representatives, including personal representatives and trustees, to request rulings which assist in the administration of estates and trusts. The Court finds the Joint Motion is appropriately asserted under this statute.

³ See S.C. Code Ann. § 62-3-715(8) (authorizing a personal representative to "settle claims" against the estate); S.C. Code Ann. § 15-51-42(A) ("Only a duly appointed personal representative, as defined in Section 62-1-201(30), shall have the authority to settle wrongful death or survival actions"); and S.C. Code Ann. § 62-7-816(14) (granting trustees with the power to "pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust").

adjust, mediate, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against the Trust Estate as the Trustee shall deem best." The Court finds there are no other fiduciaries or representatives with capacity to enter into agreements on behalf of the Estate and Trust. Therefore, the Court confirms that Messrs. Bauknight and Sojourner are duly authorized to enter into the Settlement Agreements on behalf of the Estate and Trust.⁴

This Court confirms that Messrs. Bauknight and/or Sojourner are empowered to bind the Estate and Trust to the subject Settlement Agreements, as well as resolve, in whole or in part, other Will and Trust Challenges, so long as the fiduciary determines such agreements to be appropriate and in the best interests of the Estate and Trust.⁵

II. THE SETTLEMENT AGREEMENTS ARE IN THE BEST INTERESTS OF THE ESTATE AND TRUST.

Based on the Court's review of the pleadings, affidavits of record, transcripts of depositions, and discovery submitted by the parties, and after considering the testimony of Louis Levenson, Esquire, counsel for Petitioners, the Court finds the Settlement Agreements to be appropriate and in the best interests of the Estate and Trust.

As a preliminary matter, the Settlement Agreements fully resolve pending claims that, if successful, would significantly alter or invalidate Decedent's 2000 estate plan. The Court is informed that discovery is ongoing—limited written discovery has been conducted between the parties and certain depositions have been taken with others being scheduled. The Parties have informed the Court that additional discovery will be time-consuming and extremely expensive.

⁴ The Court notes that because the Joint Motion was not filed pursuant to Section 62-3-1101 of the Probate Code, and the Court is not being asked to "approve" the Settlement Agreements, the Settlement Agreements are not binding on parties other than the Moving Parties.

⁵ Messrs. Bauknight and Sojourner are free to seek guidance from the Court pursuant to S.C. Code Ann. § 62-3-105 with regard to future settlement agreements, but are not required to do so.

In addition, the LSA pointed out during the hearing that if Petitioners were successful on their claims, and Decedent's 2000 Will and Irrevocable Trust Agreement were set aside or invalidated, the Court would then have to consider the enforceability and validity of Decedent's prior estate plans, such as the 1999 estate plan consisting of a will and revocable trust agreement. Trying the current undue influence cases, seeking to set aside the 2000 estate plan of Decedent, and if successful, subsequently seeking to enforce the in terrorem clauses against Petitioners, will cost the Estate and Trust substantial legal fees, will require lengthy discovery, and will involve at least a week, if not more, of judicial resources for trial. If the 2000 Will and Trust are overturned, additional estate litigation involving Decedent's prior estate plans will result. Undoubtedly, additional trials on the enforceability and validity of prior estate plans, such as Decedent's 1999 estate plan, will be as costly if not more so. Settlement at this stage saves substantial estate and trust assets and eliminates all risks to the Estate and Trust that Petitioners might succeed in setting aside Decedent's estate plan.

The Settlement Agreements also have the beneficial effect of eliminating challenges asserted by Petitioners, Decedent's children, who have intimate and deep personal knowledge of Decedent, his testamentary intentions, and the manner in which he operated his businesses. The Estate and Trust's settlements with these Petitioners are also valuable because of Petitioners' close connection to the local community and personal relationships with key witnesses. Furthermore, Petitioners have agreed, through the express terms of their Settlement Agreements, to support the LSA in his ongoing defense of the Estate and Trust in other still-pending Will and

Trust Challenge actions.⁶ Petitioners' support is in addition to the already-existing, and acknowledged,⁷ support of the Estate and Trust by Terry Brown and Daryl Brown.

For these reasons, the Court finds the Settlement Agreements are in the best interests of the Estate and Trust to the extent they secure a prompt, certain, and favorable resolution of the Petitioners' challenges to the validity of the Will and Trust, save potential time, expenses, and resources of the Estate and Trust, and reduce the expenditure of judicial time and resources. The Estate and Trust's one-time payment of \$37,500 to each Petitioner, while undisputedly valuable to Petitioners, is easily justified when compared to the foreseeable litigation costs and risk to the Estate and Trust if these actions were tried before a jury.

Daryl Brown argued in his opposition to the Joint Motion that the Settlement Agreements are unfair because they purportedly reward children of Decedent who opposed Decedent's will and trust instrument whereas Daryl "gets nothing" in spite of his "support" for these instruments and aide to the Estate and Trust since Decedent's death.⁸ Daryl Brown asked "[a]t a minimum," for "payment equal to that given to [Petitioners]."⁹ Because this Court does not have authority in the context of the Joint Motion before the Court to order the Estate and Trust to compensate Daryl Brown for his alleged support¹⁰ of Decedent's testamentary instruments, the Court

⁶ See Tommie Rae Brown's undue influence action (C/A No. 2008-CP-02-01647); Tommie Rae Brown's elective share and omitted spouse actions (C/A Nos. 2013-CP-02-02849 and -02850); and James Brown II's omitted child claim (C/A No. 2013-CP-02-02851).

⁷ See Transcript of Hearing, January 14, 2016, at p. 16, lines 5-11, p. 24, line 24 – p. 25, line 3, p. 26, lines 11-19; p. 27, lines 7-15; p. 29, lines 3-15

⁸ See Opposition to Joint Motion filed by Daryl Brown on or about December 29, 2015 ("[T]he proposed settlement rewards bad behavior and punishes those named in the will who supported the will.").

⁹ *Id.*

¹⁰ The Court notes that Daryl Brown contested the validity of the 2000 Will and Trust in this litigation as a named plaintiff. Daryl and Terry Brown were both parties to the 2009 settlement agreement, which purported to overturn the 2000 Will and Trust and replace that estate plan with a different one. Daryl and Terry Brown also advocated

declines to address Daryl's request for compensation as it appears improper. For that same reason, Terry Brown's arguments, to the extent they seek compensation for his past support of the Will and Trust, are improper and the Court declines to address those requests for compensation. The Estate and Trust's failure to compensate Terry Brown and Daryl Brown does not constitute reasonable grounds to prohibit the Moving Parties from entering into the Settlement Agreements.

Terry Brown asserted during the hearing the South Carolina Supreme Court would reverse the Settlement Agreements for the same reasons it reversed the 2009 Compromise Agreement in 2013. *See Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013). The Settlement Agreements presently before the Court are substantively and materially different from the 2009 Compromise Agreement and therefore the Supreme Court's concerns about the 2009 Compromise Agreement are not a concern here. First, in 2009, the moving parties asked the Court to approve the Compromise Agreement pursuant to S.C. Code Ann. § 62-3-1101. Here, the Moving Parties have not asked the Court to "approve" the Settlement Agreements and, in fact, the Settlement Agreements bind only the Moving Parties.

Second, and more importantly, the 2009 Compromise Agreement materially changed, and effectively rewrote, Mr. Brown's estate plan and therefore strayed from the testamentary intentions of Decedent. For example, the 2009 Compromise Agreement (a) purported to settle all will and trust challenges, including those filed by alleged heirs of Decedent who were not acknowledged in the Will or Trust, (b) acknowledged Tommie Rae Brown as Decedent's

approval of the Settlement Agreement as parties in *Wilson v. Dallas*. Daryl and Terry were either adverse parties in a proceeding for the probate of the Decedent's Will and Trust and/or contested the validity of the Decedent's Will and Trust. Their own insistence that the in terrorem clause be exercised against anyone challenging the Will and Trust, if accepted by the Court, would place a similar duty upon the Estate and Trust to enforce the in terrorem clause against Daryl and Terry Brown.

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“surviving spouse,” and (c) awarded Tommie Rae Brown and the six children named in the Will a significant portion of Decedent’s Estate. In addition, the 2009 Compromise Agreement called for the creation of a new trust to be known as the James Brown Legacy Trust designed to “receive, hold, manage and be authorized to sell the James Brown Assets.”

The Settlement Agreements presently before the Court do not in any way alter, modify, or amend the terms or distribution scheme of Decedent’s Will or Trust. They do not purport to resolve all pending Will and Trust Challenge cases and do not alter the testamentary intentions of Decedent. Rather, they resolve pending challenges to set aside Decedent’s estate plan brought only by Petitioners through the Estate and Trust’s payment of what the Court considers to be a “nuisance value” settlement. The Settlement Agreements leave intact Decedent’s express intention to devise all of his tangible personal property to certain named heirs. The Settlement Agreements do not disturb Decedent’s express intention of pouring over all remaining Estate assets into an irrevocable trust designed to benefit the education of his grandchildren and qualified poor and financially needy children seeking education in Georgia and South Carolina.

Rule 43(k), SCRPC, enables the Court to bind parties to a private settlement agreement by entering the settlement in the record. In Section XVIII of the Brown Children Settlement Agreement and Section XVII of the Fegan Settlement Agreement, Petitioners consented to submit the Settlement Agreements to the Court pursuant to the procedures set forth in Rule 43(k), SCRPC. Accordingly, the Court confirms that (i) Messrs. Bauknight and Sojourner have authority to enter into the Settlement Agreements, and further finds that (ii) the Settlement Agreements are appropriate and in the best interests of the Estate and Trust, and (iii) based on the consent of all Moving Parties, the Court hereby incorporates the Settlement Agreements into the

record in the above-captioned action. These Settlement Agreements are therefore binding on all Moving Parties pursuant to Rule 43(k), SCRPC.

III. SETTLEMENT IS NOT BARRED BY THE FIDUCIARIES' FAILURE TO ENFORCE THE IN TERRORUM CLAUSES BECAUSE THERE IS RECORD EVIDENCE THAT PETITIONERS HAD PROBABLE CAUSE TO FILE THE UNDUE INFLUENCE ACTIONS.

The Moving Parties' Joint Motion was opposed by only Daryl Brown and Terry Brown, both of whom are acknowledged children of Decedent and are specifically named in Decedent's testamentary instruments. Both oppositions center around an argument that settlements with challenging parties contradict the *in terrorem* clauses, or "no contest" clauses, contained in Will (*see* 2000 Last Will and Testament at Item X) and Trust (*see* 2000 Trust at Article XXI) and therefore should not be permitted by this Court.¹¹ Terry Brown also goes as far as to say the Estate and Trust's failure to enforce the *in terrorem* clauses may amount to a breach of fiduciary duty.¹²

There is no dispute by any of the parties that *in terrorem* clauses are enforceable in the State of South Carolina. *See Russell v. Wachovia Bank, N.A.*, 370 S.C. 5, 12, 633 S.E.2d 722, 725 (2006). However, such clauses need not be invoked and cannot act as a bar to a petitioner's recovery where the petitioner has probable cause to contest the testamentary instruments. *See* S.C. Code Ann. § 62-3-905, 62-7-605.

As established above, the Court has already concluded the Fiduciaries have authority to enter into the Settlement Agreements and, further, the Settlement Agreements are in the best

¹¹ *See* Opposition to Joint Motion filed by Daryl Brown on or about December 29, 2015 ("Th[e] proposed settlement is in contradiction of the In Terrorem clause contained in the will."), and Amended Response of Terry Brown to Joint Motion filed on or about December 30, 2015 at pp. 3-11 (arguing the personal representative and trustee have a duty to enforce the *in terrorem* clauses).

¹² *See* Amended Response of Terry Brown to the Joint Motion at § 3.

interests of the Estate and Trust. In addition, sufficient evidence exists in the record which would have enabled Messrs. Bauknight and Sojourner to reasonably conclude probable cause existed in relation to Petitioner's Will and Trust Challenges.

In *Wilson v. Dallas*, the Supreme Court addressed what it perceived as a lack of evidence in the matter as it related to the ability of Petitioners to invoke the good faith, probable cause exception to enforcement of in terrorem clauses in Decedent's Will and Trust. *Wilson v. Dallas*, 403 S.C. at 437-440, 743 S.E.2d at 760-762. The Supreme Court stated:

Although proof of a claim is not required, we believe something more than a subjective belief or a mere allegation is necessary to avoid the potential for collusion among disinherited or disgruntled family members who wish to dispose of the testator's estate plan and substitute it with one more to their liking.

Id. at 436, 743 S.E.2d at 760.

The Supreme Court further defined its analysis as follows:

However, it is universally acknowledged that full proof of the asserted claims is not required because the *reason d'être* for the [family settlement] statute is to dispense with the necessity of litigating the case on the merits. The circuit court's duty was not to decide the ultimate question of the merits of the undue influence and other claims; rather, the statutory standard is whether the proposed compromise agreement resolves a good faith controversy and whether the agreement is just and reasonable. (citations omitted).

Id.

The Supreme Court's analysis in *Wilson v. Dallas* focused on whether a good faith controversy existed sufficient to justify a settlement "that seeks to vitiate the decedent's entire estate plan." *Id.* at 440, 743 S.E.2d at 762 (citations omitted). The standard necessary for approval of the May 26, 2009 Compromise Agreement, as addressed in *Wilson v. Dallas*, is higher than the one necessary for the Court to grant the present motion. In contrast to the May 26, 2009 Compromise Agreement addressed by the Supreme Court, the settlements presently before the Court do not rewrite or modify any term of the 2000 Will and Trust. Rather, the

settlement agreements simply allow the Petitioners to drop their Will and Trust challenges against the Estate and Trust in exchange for monetary payments from the Estate and Trust. Requiring the Moving Parties to litigate this matter into perpetuity would serve no useful purpose other than to unnecessarily prolong costly litigation. Such result would be unjust and harmful to the Estate and Trust.

At oral argument on the Moving Parties' Joint Motion, Mr. Louis Levenson, counsel for Petitioners,¹³ testified regarding his efforts to investigate Petitioners' claims prior to their filing of the Petitions in the undue influence actions in order to establish probable cause to challenge the estate plan. His testimony is sufficient to establish the existence of a good faith controversy as to whether Petitioners had probable cause to initiate the above-captioned legal actions and helps to establish that the Settlement Agreements are just and reasonable.

Mr. Levenson testified he conducted an extensive investigation before he filed the claims at issue.¹⁴ As a part of that investigation, Mr. Levenson interviewed the following persons: Elif Crawford, one of Decedent's secretaries¹⁵; Jeff Allen, Decedent's booking agent for shows and tours on behalf of Universal Attractions¹⁶; Tommie Rae Brown, Decedent's alleged surviving spouse¹⁷; Loic Yanel, a European tour promoter¹⁸; Dr. Tommy Richardson, a physician in

¹³ Mr. Levenson testified that his original clients included Deanna Brown Thomas, Yamma Brown Lumar, Vanisha Brown, Larry Brown, Daryl Brown, Terry Brown, Tonya Brown, Romunzo Brown, and Forlando Brown. See Hearing Transcript, January 14, 2016, at p. 43, lines 5-16.

¹⁴ *Id.* at p. 43, lines 17-24, p. 71, line 20 – p. 72, line 5.

¹⁵ *Id.* at p. 48, lines 2-4, p. 63, lines 7-19.

¹⁶ *Id.* at p. 48, lines 4-11, p. 64, lines 3-13.

¹⁷ *Id.* at p. 49, lines 1-8, p. 62, line 16 – p. 63, line 19.

¹⁸ *Id.* at p. 49, lines 9-16, p. 59, lines 16-23.

Atlanta, Georgia¹⁹; Reverend Al Sharpton, a close friend and confidante of Decedent²⁰; and Joseph Lizzio of Morgan Stanley in New York, New York, who acted as an agent or broker for Decedent.²¹ Mr. Levenson also discussed the factual foundation of Petitioners' claims with his clients, including Terry Brown and Daryl Brown.²²

Mr. Levenson testified it became apparent to his clients in December 2007 that certain people who were close to Decedent, and who also held confidential relationships with him,²³ were involved in preparing documents for Decedent to sign.²⁴ These persons included David Cannon, Albert Bradley, and Buddy Dallas.²⁵ One such purported document, allegedly prepared by Messrs. Cannon, Bradley and Dallas, was a blank deed.²⁶ Mr. Levenson testified that some of the witnesses he interviewed were also aware of contracts, some oral and some written, prepared by Messrs. Cannon, Dallas, and Bradley which purported to give them each five percent of Decedent's gross revenue.²⁷ Mr. Levenson was informed there was a pattern of Messrs. Cannon, Dallas, and Bradley asking Decedent to sign blank documents without reading them.²⁸ This pattern appears to be indirectly corroborated by claims of alleged wrongdoing brought on behalf

¹⁹ *Id.* at p. 49, lines 17-20, p. 53, line 23; p. 72, line 9.

²⁰ *Id.* at p. 53, line 24 – p. 25, line 11.

²¹ *Id.* at p. 57, lines 3-7, p. 59, lines 8-13.

²² *Id.* at p. 54, lines 22-25.

²³ *Id.* at p. 81, lines 5-10 (testifying Messrs. Cannon, Dallas, and Bradley had "great control over [Decedent] during the later years of his life ... in various – each in different areas....").

²⁴ *Id.* at p. 55, lines 2-16.

²⁵ *Id.* at p. 58, lines 15-21.

²⁶ *Id.*

²⁷ *Id.* at p. 56, lines 10-15.

²⁸ *Id.* at p. 55, line 23 – p. 56, line 1.

of the Estate against Messrs. Dallas, Cannon, and Bradley through the Estate and Trust's legal counsel.²⁹

From Mr. Levenson's discussions with Tommie Rae Brown, he was informed Ms. Brown had allegedly observed Decedent signing documents during instances when he was under the influence of certain controlled substances.³⁰ Ms. Brown also told Mr. Levenson that Messrs. Cannon, Dallas, and Bradley would visit Decedent at home during times of the day when they allegedly knew he was under the influence of substances in order to get him to sign documents.³¹ This information was purportedly corroborated by Ms. Elif Crawford, Decedent's personal assistant or secretary.³² Based on such information, Mr. Levenson testified his clients were informed and believed at the time they filed the subject Petitions that Decedent did not read many of the documents he signed and/or was incapable of understanding or reading the documents due to his altered condition.

Such information, when set alongside information Mr. Levenson obtained from Dr. Richardson and Loric Yanel, painted a troubling picture from the perspective of Mr. Levenson's clients in 2007. Dr. Richardson informed Mr. Levenson about Decedent's commitment to a facility in Atlanta, Georgia for alleged substance dependence.³³ Mr. Yanel further indicated Decedent's European tour ended prematurely in July 2000 because of Decedent's behavior

²⁹ *Id.* at p. 82, line 13 – p. 83, line 17.

³⁰ *Id.* at p. 63, lines 7-19.

³¹ *Id.*

³² *Id.*

³³ *Id.* at p. 49, lines 17-20.

during the tour caused by his alleged substance dependence.³⁴ This European tour allegedly ended only weeks, if not days, before he executed the August 1, 2000 Will and Trust which are the subject of the undue influence claims.³⁵

Mr. Levenson took Mr. Joseph Lizzio's deposition on or about September 21, 2007.³⁶ Based on the deposition testimony, an entity allegedly incorporated by Mr. Cannon during Decedent's lifetime, Seventh Decade, purportedly transferred approximately \$2.5 million dollars from Decedent's Morgan Stanley account into Seventh Decade's corporate account.³⁷ It was during this same time period that a \$5 million check, signed by Decedent, disappeared.³⁸ Mr. Levenson testified that after 1999, but before approximately 2002 or 2003, large sums of money were being transferred from Decedent's Morgan Stanley account upon the sole authorization of Mr. Cannon.³⁹ Mr. Levenson stated that by 2002, Decedent's Morgan Stanley account had lost significant value due to transfers by Mr. Cannon.⁴⁰ These transactions were believed by Mr. Levenson and his clients, to have all occurred under the direction of Mr. Cannon and without the direct knowledge of Decedent.⁴¹

³⁴ *Id.* at p. 49, lines 9-16.

³⁵ *See id.*

³⁶ This sworn testimony led to a claim being made by the Estate's Trustee and Personal Representative against Morgan Stanley for breaches of fiduciary duty. *Id.* at p. 58, lines 4-6.

³⁷ *See* Hearing Transcript, January 14, 2016, at p. 57, line 3 – p. 60, line 16. Mr. Levenson testified as to additional transfers from Decedent's Morgan Stanley account, totaling upwards of \$10-15 million dollars. *Id.* at p. 58, line 8 – p. 59, line 7.

³⁸ *Id.* at p. 58, lines 1-3.

³⁹ *Id.* at p. 58, lines 16-24.

⁴⁰ *Id.* at p. 58, line 25 – p. 59, line 7.

⁴¹ *Id.* at p. 59, lines 8-13.

Mr. Levenson also recounted details regarding alleged substituted and/or altered documents.⁴² For example, Mr. Dallas testified during a hearing on February 8, 2008 before this Court that a document attached as Exhibit B to Decedent's 2000 Irrevocable Trust was a document Mr. Dallas himself substituted *after* Decedent's death.⁴³ This testimony corroborated the belief by Mr. Levenson's clients that Decedent's "confidantes" were substituting their judgment for that of Decedent and that Decedent had been unduly influenced.

Mr. Levenson further testified regarding discussions he had with his own clients, including, in 2007, Terry Brown and Daryl Brown.⁴⁴ His clients allegedly informed Mr. Levenson their father was pathologically afraid of going to jail for tax evasion.⁴⁵ Decedent's alleged fear of going to jail for tax evasion was purportedly encouraged or unnecessarily emphasized by Messrs. Cannon, Dallas, and Bradley.⁴⁶ Mr. Levenson stated his clients believed Messrs. Cannon, Dallas, and Bradley were, on the one hand, informing Decedent he would likely go to jail for tax evasion while, at the same time, allegedly stealing money from him, and not reporting it on their own taxes.⁴⁷

Mr. Levenson further testified regarding his clients' concern about Decedent's engagement of Mr. H. Dwaine Herring, Esquire, for the purpose of preparing Decedent's 1999 and 2000 Will and Trust.⁴⁸ Mr. Levenson testified his clients' were concerned because Mr.

⁴² *Id.* at p. 60, line 22 – p. 61, line 20.

⁴³ *Id.* at p. 60, line 25 – p. 61, line 4.

⁴⁴ *Id.* at p. 54, lines 22-25.

⁴⁵ *Id.* at p. 61, line 21 – p. 63, line 6.

⁴⁶ *See id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at p. 69, lines 10-14.

Herring had not been a lawyer their father had traditionally used with respect to the management of his business or legal affairs.⁴⁹ Mr. Levenson testified his clients believed Mr. Herring was an attorney who had been referred to Decedent through Messrs. Dallas or Cannon and therefore the circumstances of his employment by Decedent were suspicious to Petitioners.⁵⁰ Mr. Levenson testified he interviewed Mr. Herring in 2007⁵¹ and learned that although Mr. Herring had communicated with Decedent himself on a few occasions, Messrs. Cannon, Dallas, and/or Bradley were present when those conversations took place, further corroborating Petitioners' belief that their father had been unduly influenced with respect to signing the 1999 and 2000 Wills and Trust Agreements.⁵²

Mr. Levenson also testified about an alleged provision in Decedent's 2000 Irrevocable Trust Agreement which provided an unusual compensation package for the trustees, including, Messrs. Dallas, Cannon, and Bradley, after Decedent's death.⁵³ Mr. Levenson indicated he had never seen such a high compensation provision in any trust or charitable trust he has ever been involved with, despite his extensive experience handling fiduciary cases during his career.⁵⁴

⁴⁹ *Id.* at p. 71, lines 7-19; p. 69, line 16 – p. 70, line 18 (stating Decedent had previously retained Joel Katz, Jay Ross, and Leon Friedman and testifying: "there's nothing wrong with a person getting their own lawyer totally different from any lawyer they've ever used. But from the perspective of the reasonable suspicion and belief, that was an additional concern."); *id.* at p. 88, line 20 – p. 89, line 5.

⁵⁰ *Id.* at p. 70, lines 18-21.

⁵¹ *Id.* at p. 75, lines 12-13.

⁵² *Id.* at p. 84, lines 5-18; p. 86, line 10 – p. 88, line 18.

⁵³ *Id.* at p. 85, lines 3-11; p. 90, lines 5-24, p. 91, lines 13-21.

⁵⁴ *Id.* at p. 76, line 2 – p. 77, line 9 (testifying he served as the Fulton County, Georgia, guardian and administrator, a "public fiduciary" position for approximately 10 years; tried probate and estate contests to a jury four or five times, etc.);

Based on the foregoing evidence and testimony, the Court finds sufficient evidence and issues of fact exist in the record to support the Fiduciaries' conclusion that a genuine dispute existed regarding Petitioner's good faith and/or probable cause to initiate the actions challenging the Will and Trust. Accordingly, this Court finds the existence of a good faith controversy as to whether Petitioners had probable cause to initiate the above-captioned legal actions and the Settlement Agreements are just and reasonable.

Terry Brown has asserted the Petitioners did not have probable cause to challenge the validity of the Will and Trust, and, therefore, the Court must deny the Joint Motion and find the Fiduciaries have breached their fiduciary duties by entering into the Settlements and not seeking to enforce the in terrorem clauses. Terry Brown has submitted evidence, including sworn deposition testimony, in support of his assertions and has explained at length, in written submissions to the Court and his counsel's arguments on January 14, 2016, why he contends the evidence before the Court establishes Petitioners' challenges to the Will and Trust were not supported by probable cause.

As explained above, a finding by the Court on the merits of the issue of probable cause is unnecessary to support the Court's conclusion that the Settlements are just, reasonable, and in the best interests of the Estate and Trust, or the Court's decision to grant the present motion. The Court's findings set forth in other parts of this Order fully support and justify the Court's ruling. However, because Terry Brown has placed the merits of this issue squarely before the Court and because he has asserted grave allegations of wrongdoing by the Fiduciaries, the Court has spent considerable time reviewing the evidence and considering the arguments of the Parties with regard to the issues Terry Brown has raised.

Based upon the Court's review of the evidence submitted by the Parties, which include discovery responses, several hundred pages of sworn deposition testimony, and sworn testimony presented by Mr. Levenson at the January 14, 2016 hearing, the Court finds Petitioners had probable cause to bring their challenges against the Will and Trust.⁵⁵ The Court further finds the Fiduciaries, in negotiating the Settlements and submitting them to the Court, have not violated any fiduciary duties to the Estate, Trust, or beneficiaries. Indeed, the Court finds these Settlements constitute an appropriate exercise of discretion by Messrs. Bauknight and Sojourner for the reasons explained elsewhere in this order.

The LSA also argued that enforcement of the in terrorem clauses, while potentially benefiting Terry Brown and Daryl Brown, would have resulted in a significant financial detriment to the beneficiaries of Decedent's Irrevocable Trust. It is undisputed that fiduciaries of an estate and trust are under a duty of loyalty to act in the best interests of the beneficiaries. See S.C. Code Ann. §§ 62-1-201, 62-7-703, 62-7-802; *Yates v. Yates*, 292 S.C. 49, 354 S.E.2d 800 (Ct. App. 1987) (citing *Ramage v. Ramage*, 283 S.C. 239, 322 S.E.2d 22 (Ct. App. 1984) (trustees are under duty of loyalty to administer trust property solely in beneficiary's interest)). "That a fiduciary relationship exists between each heir or beneficiary of an estate and the administratrix thereof is fundamental." *Witherspoon v. Stogner*, 182 S.C. 413, 414, 189 S.E.2d 758, 759 (1937). This duty includes the duty to administer the trust expeditiously for the benefit of the beneficiaries and a continuing duty to administer the trust according to the objectives of the trustor. See *id.* at §§ 62-7-301, 62-7-305; see also *Ex parte Wheeler v. Estate of Green*, 381

⁵⁵ Counsel for the opposing parties, Terry Brown and Daryl Brown, had an adequate opportunity to cross-examine Mr. Levenson during the January 14, 2015 hearing on this Joint Motion. See generally Hearing Transcript, January 14, 2016. Counsel for Terry Brown availed himself of this opportunity by asking Mr. Levenson a series of questions pertaining to his involvement during the deposition of H. Dewain Herring in November and December 2015. *Id.* at p. 74, line 16 – p. 75, line 8.

S.C. 548, 673 S.E.2d 836 (Ct. App. 2009). The South Carolina Probate and Trust Codes require a fiduciary to act impartially. *See* S.C. Code Ann. § 62-7-803 ("If a trust has two or more beneficiaries, the trustee shall act impartially in investing, managing, and distributing the trust property, giving due regard to the beneficiaries' respective interests.")

The LSA argued, pursuant to these statutory provisions and jurisprudence, the Fiduciaries had an obligation to consider *all beneficiaries* of Decedent's Estate and Trust in determining whether a potential settlement with Petitioners was appropriate and in the best interests of the Estate and Trust. In coming to their conclusion, the Fiduciaries determined that should the Estate and Trust be forced to continue to litigate against Petitioners, the costs of defense would be placed directly upon the shoulders of the residual beneficiary of Decedent's Estate and Trust, the James Brown "I Feel Good" Charitable Trust.

The Court agrees with the LSA's arguments. Under these circumstances, continuing litigation, including defending the Estate and Trust against the undue influence actions and then, separately, seeking to enforce the in terrorem clauses, would be extraordinarily costly to the Estate and Trust. These costs would be disproportionately borne by the charitable trust and would, under Daryl Brown's and Terry Brown's own arguments, benefit only two named beneficiaries, Daryl Brown and Terry Brown, who apparently seek to gain a windfall from their father's estate.⁵⁶ Under their counsel's own analysis the in terrorem clause should be enforced against them as well. The Court finds that such unbalance and inconsistent legal positions are not in the best interests of the Estate and Trust and that it would be inequitable to require the Estate and Trust to continue to defend these actions in such an unbalanced and partial manner.

⁵⁶ As discussed in footnote 10, above, both Daryl and Terry Brown have served the role of "adverse parties in a proceeding for the probate of Grantor's Will" or beneficiaries who "in any manner contest the validity of Grantor's Irrevocable Trust." *See*, 2000 Will, Article X and 2000 Trust, Article XXI.

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IV. GROUNDS EXIST FOR DISMISSAL OF THESE ACTIONS WITH PREJUDICE.

The Moving Parties provided the Court consent orders signed by Petitioners in which Petitioners consent to dismissal of their claims with prejudice.⁵⁷ Based on the foregoing findings, including that the Settlement Agreements are appropriate and in the best interests of the Estate and Trust, the Court finds a complete dismissal with prejudice of all challenges to the validity of the Will and Trust filed by Petitioners, including without limitation those set forth in the Petitions filed on December 26, 2007, as amended on January 24, 2008, is just and proper. Pursuant to Rule 41(a)(2), SCRCP, Petitioner's challenges shall be dismissed with prejudice and Petitioners shall be dismissed as parties to the Undue Influence Case.

CONCLUSIONS

The Court hereby grants the Moving Parties' motion in its entirety and orders as follows:

(1) The Court confirms that Russell L. Bauknight, as Personal Representative of the Estate and Trustee of the Trust, and Dave C. Sojourner, Jr., as Limited Special Administrator of the Estate and Limited Special Trustee of the Trust, are authorized and empowered to enter into the Settlement Agreements with Petitioners;

(2) The Settlement Agreements are in the best interests of the Estate and Trust;

(3) The Settlement Agreements shall be and hereby are expressly incorporated into the record, in satisfaction of Rule 43(k), SCRCP; and

(4) All challenges to the Will and Trust filed by Petitioners, including those filed on December 26, 2007, as amended on January 24, 2008, are hereby dismissed with prejudice

⁵⁷ The Moving Parties' federal termination rights and interests under the Copyright Act are expressly excluded from the Settlement Agreement, as are any claims regarding the disposition of educational funds and personal property under the Will and Trust.

pursuant to Rule 41(a)(2), SCRCP, and Petitioners are hereby dismissed as parties to Civil
Action No. 2008-CP-02-1647.

IT IS SO ORDERED.



Doyet A. Early III, Circuit Court Judge

Bamberg, South Carolina
February 24, 2016.

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

IN RE:

THE ESTATE OF JAMES BROWN
A/K/A JAMES JOSEPH BROWN,

IN THE COURT OF COMMON PLEAS

CASE NO.
2008-CP-02-1647

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Mary Frances G. Jowers, Bar No. Address: PO Box 11549, Columbia, SC 29211 phone: 803-734-3996 fax: e-mail: other:		Defendant's Attorney: John F. Beach, Bar No. 595 Address: 1501 Main St., 5 th Floor, Columbia, SC 29201 phone: 803-343-1269 fax: 803-799-8479 e-mail: john.beach@arlaw.com other:	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
 Signature of Attorney for ☐ Plaintiff / ☒ Defendant		March 3, 2016 Date submitted	
SECTION III: Motion Fee			
☐ PAID - AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☒ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION		FILED 3.7.16	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE  CODE: Date:	
CLERK'S VERIFICATION			
Collected by: _____		Date Filed: _____	
☐ MOTION FEE COLLECTED: _____			
☐ CONTESTED - AMOUNT DUE: _____			

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2008CP0201647**

Henry Dargan McMaster	Daryl J Brown Janise Vanisha Brown Larry Brown Jason Brown Lewis Sydney Lumar	Lindsey Delores Brown Vanisha Brown Deanna J. brow Thomas Yamma N Brown
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PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant
	☒ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

3/7/2016

Date

For Clerk of Court Office Use Only

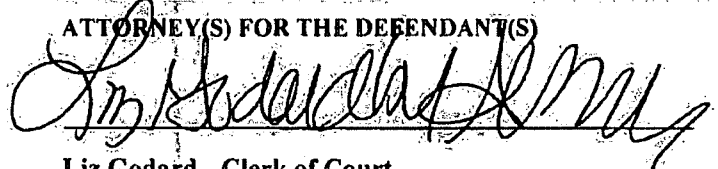
This judgment was entered on 3-7-16, and a copy mailed first class or placed in the appropriate attorney's box on 3-7-16, to attorneys of record or to parties (when appearing pro se) as follows:

Mary Frances G. Jowers PO Box 11549 Columbia, SC
29211

J. David Black PO Drawer 2426 Columbia, SC 29202-2426
William W. Wilkins PO Drawer 10648 Greenville, SC
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Adele Pope ,
William Joseph Barr 108 N. Academy St. Kingstree, SC
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Robert N. Rosen 18 Broad Street Suite 201 Charleston, SC
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Matthew Day Bodman 1500 Calhoun St. Columbia, SC
29201
Louis Levenson 125 Broad St., SW Atlanta, GA 30303
James Mixon Griffin PO Box 999 Columbia, SC 29202

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)


Liz Godard - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

LSA Memo in Opposition to Motion to Alter, Amend and Reconsider filed April 15, 2016
Pages 557-569

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	
	)	CASE NO. 2008-CP-02-1647
	)	
	)	LSA'S MEMORANDUM IN OPPOSITION
IN RE:	)	TO RESPONDENT TERRY BROWN'S
	)	MOTION TO ALTER, AMEND AND
THE ESTATE OF JAMES BROWN	)	RECONSIDER ORDER GRANTING JOINT
A/K/A JAMES JOSEPH BROWN	)	MOTION TO AUTHORIZE SETTLEMENT
	)	

David C. Sojourner, Jr. (the "LSA"), as Limited Special Administrator of the Estate of James J. Brown ("Estate") and Limited Special Trustee of the James Brown Irrevocable Trust Agreement, u/a/d August 1, 2000 ("Trust"), opposes the Motion to Alter, Amend, and Reconsider filed by Terry Brown ("Respondent") on or about March 4, 2016. Respondent has not set forth sufficient grounds under Rules 59(a), (b), (e), 60(a) or (b) for this Court to alter, amend, and/or reconsider its Order Authorizing Settlement of the Brown Children's Undue Influence Cases and Dismissing Cases with Prejudice, filed March 7, 2016 ("Order"). To support this memorandum in opposition, the LSA incorporates by reference all legal arguments in motions and memoranda filed with this Court and legal arguments made on January 14, 2016.

BACKGROUND

The Court's Order determined Russell L. Bauknight, Personal Representative of the Estate and Trustee of the Trust, and David C. Sojourner, Jr., as LSA of the Estate and LST of the Trust, were authorized and empowered to enter two settlement agreements with certain children of Decedent James Brown who initiated petitions in 2007 to set aside Decedent's Will and Trust. These children included Vanisha Brown, Larry Brown, Deanna J. Brown Thomas, Jason Brown Lewis, Yamma N. Brown Lumar, individually and on behalf of her minor children Sydney Lumar and Carrington Lumar, and Tonya Brown, a/k/a Sarah LaTonya Brown Fegan

(collectively the “Brown Children”). The Order authorized Messrs. Bauknight and Sojourner to execute the Settlement Agreements on behalf of the Estate and Trust and entered the Settlement Agreements into the record, to satisfy South Carolina Rule of Civil Procedure 43(k). Because of the conclusive nature of the Settlement Agreements, the Court appropriately dismissed with prejudice all claims initiated by the Brown Children to set aside the Will and Trust.¹

STANDARD OF REVIEW

Respondent asks this Court to reconsider its Order of March 7, 2016 under Rules 59(a), (b), (e) and Rules 60(a) and (b), SCRPC. Rules 59(a) and (b) pertain to a motion for new trial. At the risk of stating the obvious, this Court has not tried the above-captioned action in either a bench or jury setting, and clearly, these rules are not applicable to the motion.

Regarding Rule 59(e), SCRPC, South Carolina law has not addressed the standard of review applicable to such a motion. However, notes to the Rule indicate that South Carolina’s Rule 59(e) “is substantially the Federal Rule.” SCRPC 59, Notes. “Rule 59(e) of the Federal Rules of Civil Procedure provides a mechanism for an aggrieved party to petition the Court to alter or amend a judgment under certain limited circumstances. The purpose of a Rule 59(e) motion is to allow the court to reevaluate the basis for its decision. Because the interests in finality and conservation of judicial resources, Rule 59(e) motions should be granted sparingly. Thus, Rule 59(e) motions are not at the disposal of an unsuccessful party to ‘rehash’ the same arguments and facts previously presented” *Rouse v. Nielson*, 851 F.Supp. 717, 734 (D.S.C. 1994) (internal quotations omitted).

¹ Including the Petitions to Set Aside Informal Probate and to Set Aside Trust Agreement, filed by the Brown Children on December 26, 2007, and the Amended Petitions to Set Aside Informal Probate and to Set Aside the Trust Agreement, filed January 24, 2008.

The Fourth Circuit has similarly said of Rule 59(e) Motions that, “[i]n general ‘reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly.’” *Pac. Ins. Co. v. American Nat’l Fire Assoc.*, 148 F.3d 396, 402 (4th Cir. 1998) (citation omitted). “A motion under Rule 59(e) is not authorized ‘to enable a party to complete presenting his case after the court has ruled against him.’” *Id.* at 403 (citation omitted). “The Rule 59(e) motion may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment.” *Id.* (citation omitted).

The South Carolina District Courts and the Fourth Circuit have held that “while the Rule itself provides no standard for when a ... court may grant such a motion, we have previously recognized that there are three grounds for amending an earlier judgment: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.” *Pac. Ins. Co. v. American Nat’l Fire Assoc.*, 148 F.3d 396, 402 (4th Cir. 1998).

Respondent has offered nothing to justify reconsideration of the Court’s ruling under the three Rule 59(e) factors. There has been no change in the law or offering of new evidence. In addition, there is no error of law that needs correcting. Respondent is merely attempting to relitigate issues already thoroughly analyzed and decided by the Court, which rendered its Order after reading lengthy briefs and evidence submitted by the parties, and considering the testimonial evidence presented at the hearing. As duly noted by the Fourth Circuit in *Pacific Ins. Co.*, it is improper for Respondent “to complete presenting his case after the court has ruled against him” or to use the Rule 59(e) motion “to relitigate old matters.” *Id.* at 403.

Respondent has also brought his motion under Rules 60(a) and (b), SCRCp. These rules pertain to alleged clerical mistakes in a court’s order, *see* Rule 60(a), or intervening mistakes,

inadvertence, excusable neglect, newly discovered evidence, and fraud, allegedly made known to the moving party, *see* Rule 60(b). A “clerical error” has been defined as an error “in judgments, orders, or other parts of the record ... arising from oversight or omission.” *Ex parte Strom*, 343 S.C. 257, 264, 539 S.E.2d 699, 702 (2000). It “is a mistake or omission by a clerk, counsel, judge, or printer, *which is not the result of exercise of judicial function.*” *Id.* (quoting *Dion v. Ravenel, Eiserhardt Assocs.*, 316 S.C. 226, 230, 449 S.E.2d 251, 253 (Ct. App. 1994)) (emphasis in original). Respondent has not alleged a clerical error, as our courts have defined that term. Rather, the entire basis of his motion is this Court misconstrued law or fact. Rule 60(a), SCRCP, is therefore inapplicable.

Rule 60(b), SCRCP, enables a court to relieve a moving party from a final judgment, order, or proceeding based on certain grounds, including: “(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence ...; (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged” Courts in this State have concluded a party may not use the rule governing a motion for relief from judgment for mistake, inadvertence, surprise or excusable neglect as a vehicle for relief from a mistake of law. *Tobias v. Rice*, 379 S.C. 357, 665 S.E.2d 216 (Ct. App. 2008). Because Respondent has alleged a mistake or miscomprehension of law, Rule 60(b), SCRCP, is inapplicable. To the extent he alleges a mistake of fact, he has offered no evidence to support a finding that one of the five reasons for relief under Rule 60(b), SCRCP, are present.

ARGUMENTS

I. THE FIDUCIARIES ARE NOT OBLIGATED TO ENFORCE THE IN TERRORUM CLAUSES IN THE WILL AND TRUST.

Respondent's opposition is based on the flawed legal argument that Messrs. Bauknight and Sojourner, as fiduciaries of the Estate and Trust, are required, *at all costs*, to enforce in terrorem clauses in the Will and Trust against all challengers, including those who may have probable cause to contest the estate documents executed by Decedent.² Nothing in South Carolina statutory law or case precedent provides such an unyielding directive.

As fiduciaries of an estate and trust, the Fiduciaries must act in the best interests of Estate beneficiaries³; however, nothing about that duty compels the Fiduciaries to assert the in terrorem clause against the Brown Children. Rather, South Carolina law is clear that fiduciaries have an obligation to consider *all beneficiaries* of the Estate, not just one or two. See S.C. Code Ann. § 62-3-703(a)(2009) (stating "[a] personal representative is a fiduciary" and must "use the authority conferred upon him ... for the best interests of successors to the estate").

Here, in concluding the Settlements were in the best interest of the Estate and Trust, the Fiduciaries determined the foreseeable costs of continued litigation against Petitioners, including enforcement of the in terrorem clauses, would be born directly by the residual beneficiary of Decedent's Estate and Trust, the James Brown "I Feel Good" Charitable Trust. But even though

² See Motion to Alter, Amend, and Reconsider at p. 3 ("The Personal Representative and Trustee have a duty to enforce the in terrorem clauses and act impartially among the beneficiaries. Failure to do so rewards the bad acts of the contesting children, their heirs, and alleged spouse who challenged the Will and Trust. ... The Personal Representative and Trustee have a duty of impartiality and fiduciary duty not to favor or injure beneficiaries of the Estate or Trust. Failing to enforce the in terrorem clauses in this matter, breaches both of these duties and unfairly punishes the only beneficiaries that have not challenged the Will and Trust.").

³ See S.C. Code Ann. §§ 62-1-201, 62-7-703, 62-7-802; *Yates v. Yates*, 292 S.C. 49, 354 S.E.2d 800 (Ct. App. 1987); S.C. Code Ann. §§ 62-7-301, 62-7-305; *Ex parte Wheeler v. Estate of Green*, 381 S.C. 548, 673 S.E.2d 836 (Ct. App. 2009); S.C. Code Ann. § 62-7-803.

these costs would fall entirely on the shoulders of the residual beneficiaries, any potential benefit of continuing such “wasteful litigation”⁴ would inure only to Daryl Brown and Terry Brown. After balancing the risks and foreseeable costs of continued litigation against the minimal potential benefits, the Fiduciaries determined settlement with the Brown Children was in the best interests of the Estate and Trust, including its beneficiaries as a whole.

The Fiduciaries’ decision to settle was a reasonable and legally-appropriate exercise of discretion. *See also* S.C. Code Ann. § 62-3-703(a) (providing a personal representative has the “duty to settle and distribute the estate ... as expeditiously and efficiently as is consistent with the best interests of the estate” and the “successors to the estate”). Respondent’s own assertion the Court “erred in not considering the massive damage caused by the Will and Trust Contests”⁵ undercuts his own argument. The “massive damage” caused by continued litigation is precisely why the Fiduciaries determined it would be in the best interests of the Estate and Trust to settle with the Brown Children under the terms of the Settlement Agreements. A failure to so settle would only cause continued damage to the assets in the Estate and Trust – damages that would harm only the Estate’s residual beneficiaries, the educational trusts.

Respondent’s argument that the Court “erred when it failed to consider the LSA made no effort to corroborate the allegations made by the contesting children”⁶ should be rejected. The LSA’s trial preparation materials and mental processes are unquestionably protected by the work product doctrine. S.C. R. Civ. P. 26(b)(3); *see also Grayson Consulting, Inc. v. Cathcart*, No. 2:07-cv-00593-DCN, 2013 WL 3946203, at *3 (D.S.C. July 31, 2013) (“Work product may be

⁴ Terry Brown acknowledges the wasteful nature of continuing the Will and Trust Challenges in his Motion to Alter, Amend, and Reconsider at p. 10.

⁵ *Id.*

⁶ *Id.* at p. 19.

fact work product or opinion work product”) (citing *In re Allen*, 103 F.3d 582, 607 (4th Cir. 1997)). The record reveals that LSA has conducted written discovery, interviewed key witnesses, and taken the deposition of H. Dewain Herring after meeting with him informally for an extended period.⁷ The LSA has no burden or obligation to corroborate, substantiate, or submit evidence to support the contesting parties’ case in order to conclude settlement is reasonable and appropriate.

Respondent argues the Estate’s failure to enforce the in terrorem clause “was a breach of fiduciary duty that this Honorable Court should have remedied by requiring enforcement of the same.”⁸ Respondent’s attempt to inject a breach of fiduciary duty claim into this matter through his opposition to a settlement agreement is procedurally inappropriate and insufficient to preclude the Fiduciaries’ settlement with the Brown Children. Moreover, to succeed on such an assertion, Respondent would have to prove a breach of the Fiduciaries’ obligations based on evidence submitted to the Court. See *Turpin v. Lowther*, 404 S.C. 581, 745 S.E.2d 397 (Ct. App. 2013). Any such finding by the Court must be supported by an evidentiary foundation. *Jordan v. Holt*, 362 S.C. 201, 205, 608 S.E.2d 129, 131 (2005) (stating the trial court’s findings in a breach of fiduciary duty action will be upheld unless they are “without evidentiary support.”). Respondent presented no testimony or other evidence during the hearing that the Fiduciaries breached their legal duties, although he was not precluded from doing so.

Case law cited by Respondent, including *Doolittle v. Exchange Bank*, 241 Cal. App.4th 529 (Cal. 2015) does not support his position. In fact it supports an affirmance by this Court of its Order in favor of settlement. Respondent represents to the Court that *Doolittle* held “[a

⁷ See Transcript of Deposition of H. Dewain Herring, December 9, 2015, at p. 496, line 19 – p. 497, line 19 (testifying he met with counsel for the LSA “prior to November 18, 2015” approximately “maybe five times” with each meeting lasting approximately “two to maybe four hours”).

⁸ Motion to Alter, Amend, and Reconsider at p. 23.

Trustee is under a duty to enforce an in terrorem clause in a trust when such duty is specifically required by the trust language until such time as a party challenging meets the burden of proof that they had probable cause to bring the claim.”⁹ *Doolittle* does not include or even imply such a holding.

Instead of purporting to require a fiduciary to enforce an in terrorem clause at all costs, the *Doolittle* court recognized: “Under the conventional understanding of a no-contest clause—as a provision removing or reducing what is otherwise given to the contesting party—the provision *need not and cannot be enforced* until it is known whether the contest has merit.” *Id.* at 543 (emphasis added). The *Doolittle* court did not compel the trustee to enforce an in terrorem clause against the challenging party. Instead, it held that such a clause *could only be enforced* after it was determined (presumably through trial of the challenge itself) that the underlying challenge lacked merit. *See id.*

The *Doolittle* decision is long and detailed, addressing many topics related to estate and trust contests. However, contrary to Respondent’s assertions, the decision *does not* discuss whether a fiduciary must enforce an in terrorem clause. Rather, the case addressed a trust beneficiary’s contention the trust could only pay the trustee’s legal fees for defending a beneficiary’s challenge to the trust *after* the Court had determined the beneficiary’s challenge lacked merit and was brought without probable cause. The *Doolittle* court disagreed with the beneficiary, finding:

If on the other hand, the directive to the trustee to defend the challenge were construed as a no-contest clause, which could be enforced only after it was determined that the underlying challenge lacked merit and was brought without probable cause, the trustee would have no means of knowing whether the instruction should be observed prior to resolution of the merits of the underlying controversy. The trustee would be unable to comply with the directive until after the litigation had been concluded, rendering the directive meaningless.

⁹ Motion to Alter, Amend, and Reconsider at p. 23.

Id. at 543-544.

An action to enforce an in terrorem clause is only appropriate *after* a court has first determined the underlying challenges to the validity of the will or trust lack merit. (*see*, Doolittle, *supra*. “[An in terrorem clause] need not and cannot be enforced until it known whether the contest has merit.” *Id.*, at 543).

No South Carolina law requires a fiduciary to bring an action to enforce an in terrorem clause. Case law from this jurisdiction does, however, recognize the authority of beneficiaries to directly seek enforcement of in terrorem clauses.¹⁰ Here, while Respondent alleges the Brown Children breached the in terrorem clauses in Decedent’s Will and Trust, he failed to take action to directly enforce these clauses himself. In light of this, the Fiduciaries’ own decision not to seek such enforcement could not constitute a breach of their duty to Respondent.

Respondent’s primary contention—Fiduciaries cannot enter into the Settlement Agreements because that would violate their fiduciary duty to enforce the in terrorem clauses against all parties that challenge the Will and Trust—has no support and should be rejected.

II. RESPONDENT’S MOTION TO ALTER, AMEND, AND RECONSIDER IS REplete WITH OTHER FACTUAL AND LEGAL INACCURACIES.

Respondent misstates the South Carolina Supreme Court’s rulings in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013). Respondent contends the Supreme Court “clearly determined that any settlement agreement reached involving an estate controversy had to be approved” under S.C. Code Ann. § 62-3-1101.¹¹ There is no such pronouncement by the

¹⁰ *See Russell v. Wachovia Bank, N.A.*, 370 S.C. 5, 10, 633 S.E.2d 722, 725 (2006) (“Following remittitur, the Williams Children filed a motion for summary judgment seeking to enforce the no-contest clauses appearing in Testator’s will and revocable trust. Wachovia intervened, making similar arguments.”)

¹¹ Motion to Alter, Amend, and Reconsider at p. 5.

Supreme Court. As the LSA has already conceded, *Wilson v. Dallas* dealt with this Court's approval of a 2009 compromise agreement between the parties which the parties sought to have approved under S.C. Code Ann. § 62-3-1101. When that approval was appealed, it is only natural the Supreme Court analyzed the approval under section 62-3-1101.

South Carolina law already authorizes a personal representative and trustee to "settle claims" against an estate and trust.¹² The Fiduciaries do not need the Court's approval of the underlying settlement, as Respondent appears to contend.¹³ The Fiduciaries were not seeking "approval" from this Court of the proposed settlements, which may have required a motion under Section 62-3-1101. Instead, they were seeking the Court's declaration, under Section 62-3-105, that they had authority to enter the Settlement Agreements on behalf of the Estate and Trust. Although this declaration was not required for the settlements to legally bind the Estate and Trust, the Fiduciaries sought the Court's authorization to eliminate any argument another party might have that the Court's October 1, 2013 appointment orders did not bestow this authority to settle upon the Fiduciaries.

The Supreme Court's decision in *Wilson v. Dallas*, which reversed this Court's approval of the 2009 Compromise Agreement, is not applicable because the 2009 Compromise Agreement was materially and substantially different from the settlement agreements presented to the Court here. First, the Settlement Agreements are not binding on all beneficiaries, but only bind the Moving Parties. Second, the 2009 Compromise Agreement materially changed, and rewrote,

¹² See S.C. Code Ann. § 62-3-715(8) (authorizing a personal representative to "settle claims" against the estate); S.C. Code Ann. § 15-51-42(A) ("Only a duly appointed personal representative, as defined in Section 62-1-201(30), shall have the authority to settle wrongful death or survival actions"); and S.C. Code Ann. § 62-7-816(14) (granting trustees with the power to "pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust").

¹³ Motion to Alter, Amend, and Reconsider at p. 5 ("This Honorable Court erred in determining that the Settlement Order was approved in accordance with South Carolina Code § 62-3-105 and that South Carolina Code § 62-3-1101 did not apply.").

Decedent's estate plan and express testamentary intentions. The present Settlement Agreements do not alter, modify, or amend the terms or distribution scheme of Decedent's estate plan. Rather, they resolve pending challenges brought only by the Brown Children for what this Court appropriately considered, and Respondent conceded,¹⁴ to be a "nuisance value" settlement.

Respondent disagrees that the Settlement Orders are only binding on the Moving Parties, contending the settlements, and the Court's Order authorizing same, "directly impacted the inheritance rights of Respondent."¹⁵ Respondent refuses to acknowledge the "inheritance rights" he claims—a 100% share of the tangible personal property of Decedent's estate—is contingent and highly speculative. For Respondent to recover this theoretical inheritance, the Estate and Trust would have to successfully defeat the Brown Children's undue influence actions and then successfully prosecute another action against the Brown Children for violation of the in terrorem clauses. Only if the Fiduciaries succeeded in both the underlying will and trust action¹⁶ and the subsequent in terrorem enforcement action would Respondent be entitled to more than the 1/6 share of the tangible personal property Decedent left to him. As stated in this Court's order, such litigation would be time consuming and costly, and the Estate's success on both actions is far from certain.

The evidence submitted in support of the Settlement Agreements reveals a genuine issue of material fact for trial. Respondent contends the Brown Children "have taken no depositions, asked no questions of the Will and Trust drafting attorney, provided no documentation supporting their position and merely provided uncorroborated allegations in interrogatory

¹⁴ Respondent acknowledges on page 10 of his Motion the Brown Children are settling "for a pittance." Motion to Alter, Amend, and Reconsider at p. 10.

¹⁵ *Id.* at p. 6.

¹⁶ Including, perhaps, actions to set aside not only the 2000 Will and Trust but also a Last Will and Testament and Revocable Trust Agreement executed by Decedent on June 15, 1999.

responses.” His contention could not be further from the truth. As the record reflects, and Mr. Levenson testified, the Brown Children participated in the depositions of Joseph Lizzio on September 21, 2007 and Forlando Brown on October 31, 2007, and interviewed H. Dewain Herring, the Will and Trust drafting attorney prior to his deposition being scheduled and taken. Several of Mr. Levenson’s clients provided answers to interrogatories under oath, which, under Rule 33, SCRCP, are the equivalent of sworn testimony.

Evidence submitted by Respondent purporting to foreclose a probable cause conclusion supports no alteration, amendment, and/or reconsideration of this Court’s Order. Deanna Brown’s deposition testimony, cited by Respondent at page 7 of Respondent’s Motion, does not conclusively establish she lacked probable cause to challenge the Will and Trust because, among other things, she gave the deposition testimony *prior to* filing her undue influence challenge and, upon information and belief, prior to her attorney completing his investigation of the underlying facts. Further, Deanna Brown’s deposition testimony does not establish what the other Brown Children knew or learned before or after they filed their undue influence challenges.

Respondent argues “Petitioners specifically acknowledged to the Court that the Levenson testimony was just that, ALLEGATIONS not evidence.”¹⁷ Respondent’s argument is incorrect and unsupported by the record in this case. While counsel for Mr. Bauknight stated on the record that Mr. Levenson’s testimony was “allegations to things that have been said, they’re allegations that go to what Mr. Levenson looked at and reviewed in filing his complaint,” none of the Settling Parties have stated or implied that Levenson’s testimony was not evidence. As the record reflects, Mr. Levenson was under oath and providing testimony on his investigation of the Brown Children’s claims and potential causes of action. His testimony is evidence that can and should be considered by this Court.

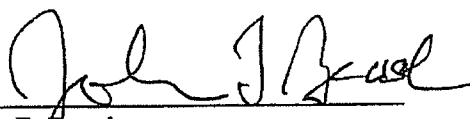
¹⁷ Motion to Alter, Amend, and Reconsider at pp. 19-20 (capitalized emphasis in original).

It was unnecessary for the Court to consider whether probable cause existed for the Brown Children's undue influence challenges in order to address the Moving Parties' motion. The probable cause issue was raised entirely by Respondent, making it necessary and appropriate for the Moving Parties to present opposing evidence and testimony, and the Court to rule upon Respondent's allegations. To the extent Respondent considers himself prejudiced by the "lack of notice" or "inability to meaningfully cross examine" the witnesses, he created his own fate.

CONCLUSION

The Court should deny Respondent's Motion to Alter, Amend, and Reconsider the Court's March 7, 2016 Order Authorizing Settlement of the Brown Children's Undue Influence Cases and Dismissing Cases with Prejudice. Respondent presents nothing new for the Court to consider, offers nothing to establish the Court committed an error of law resulting in a manifest injustice, and merely attempts to relitigate matters already addressed by the Court. Nothing presented by Respondent entitles him to relief under Rules 59(a), (b), (e) or Rules 60(a) and (b).

Respectfully submitted,



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Brown, Jr., and Limited Special Trustee of the
Irrevocable Trust Agreement, w/a/d August 1, 2000*

April 15, 2016

Deposition of Deanna Brown Thomas dated October 31, 2007
Pages 570-752

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF AIKEN) IN THE COURT OF COMMON PLEAS
3) SECOND JUDICIAL CIRCUIT
4 IN RE: THE ESTATE OF) CASE NO. 2007-CP-02-0122
5 JAMES BROWN a/k/a)
6 JAMES JOSEPH BROWN)
7)
8)
9)

10 DEPOSITION OF DEANNA BROWN THOMAS

11 Taken By Counsel For Terry, Forlando and Romunzo Brown

12 Before Gina L. Smith, Certified Court Reporter

13 At the Law Offices of Bell & Bell Associates

14 619 Greene Street, Augusta, Georgia

15 On October 31st, 2007, Commencing at 9:20 a.m.
16 - - - - -
17
18
19
20

21 AUGUSTA WEST REPORTING

22 Certified Court Reporters
23 505 Courthouse Lane
24 Augusta,
25 Georgia 30901

(706) 722-3746

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41		

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1	APPEARANCES OF COUNSEL, CONTINUED	
2	For the Beneficiaries	Ms. Grace E. Lewis
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7		Mr. Forlando Brown
8		Mr. Terry Brown
9		Ms. Velma Brown Whitley
10		Mr. David Cannon
11		Mr. Albert H. Dallas
12		Mr. Alford Bradley
13		Ms. Adele Pope, Esq.
14		Mr. Robert L. Buchanan, Jr.,
15		Esq
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1 DEPOSITION OF

2 DEANNA BROWN THOMAS

3 [Pursuant to O.C.G.A. 9-11-28(d), Augusta West
4 Reporting has no contract with any of the parties or
5 their counsel. The court reporter's charges are the
6 usual and customary charges for services within the
7 industry and are available upon request by either
8 party, with no financial or services discount being
9 given to any party named in this litigation.]

10 [Ms. Pope and Mr. Buchanan are not present at the
11 commencement of the deposition.]

12 MR. BELL: This is the deposition of Deanna Brown
13 Thomas taken pursuant to notice, taken for all
14 purposes allowed by the South Carolina Civil Practice
15 Act. The--I think it would be helpful to the court
16 reporter if we went around the room and everybody
17 identified themselves by name and their relationship
18 to the case. And also, the gentlemen on the speaker
19 phone, it would be helpful if we--if you identify
20 yourself and each time you choose to speak or ask a
21 question, if you will introduce your words by
22 identifying yourself by name. It will help the court
23 reporter. Is that agreeable?

24

25

1 MR. RICHTER: That is. This is Ronnie Richter.

2 MR. ROSEN: This is Robert Rosen. That's fine.

3 MR. SLOTCHIVER: Steve Slotchiver. That's fine.

4 MR. BELL: And if y'all--if Robert and Ronnie
5 will start off and identify themselves and then we'll
6 go around the room to Stan and then clockwise.

7 MR. ROSEN: Robert Rosen and I'm representing
8 Tomi Rae Brown.

9 MR. RICHTER: Ronnie Richter representing David
10 Cannon.

11 MR. JACKSON: Stan Jackson representing Al
12 Bradley and Buddy Dallas.

13 MR. CANNON: David Cannon here with my attorney,
14 Ronnie Richter.

15 MR. THOMAS: Shawn Thomas with my wife Deanna
16 Brown Thomas.

17 MR. BELL: Well, she's going to have to identify
18 herself. And we'll go to the outside and then we'll
19 come to the table.

20 MR. DALLAS: Albert H. Dallas here with my
21 attorney Stan Jackson.

22 MR. HARLING: Jonathan Harling. I represent the
23 estate of James Brown.

24

25

1 MR. LITTLEJOHN: Dylan Littlejohn. I'm with
2 Levenson and Associates.

3 MR. BRADLEY: Al Bradley, P.R., here with my
4 attorney Stan Jackson.

5 MR. MAXWELL: Ronnie Maxwell along with David
6 Bell representing Forlando, Romunzo and Terry Brown.

7 MR. FORLANDO BROWN: Forlando Brown represented
8 by David Bell.

9 MR. TERRY BROWN: Terry Brown represented by
10 David Bell.

11 MS. VELMA BROWN WHITLEY: Velma Brown Whitley,
12 Forlando's grandmother.

13 MS. LEWIS: Grace Lewis with the Georgia Attorney
14 General's office representing the charitable
15 beneficiaries under the will and the irrevocable
16 trust.

17 MR. LEVENSON: I'm Louis Levenson. I represent
18 Deanna and other named parties in the action.

19 MS. THOMAS: Deanna Brown Thomas.

20 MR. BELL: And I'm David Bell. I represent
21 Forlando Brown, Romunzo Brown and Terry Brown. Are
22 the stipulations agreeable?

23 MR. LEVENSON: Yes, sir.
24
25

1 DEANNA BROWN THOMAS,
2 Having Been First Duly Sworn, was Examined
3 and Testifies as Follows:

4 EXAMINATION

5 BY MR. BELL:

6 Q. If you'd be kind enough to tell me your name,
7 please.

8 A. Deanna Brown Thomas.

9 Q. Ms. Thomas, I usually start off a deposition with
10 just some identifying information. Tell me where you live.

11 A. 3131 Silver Bluff Road, Aiken, South Carolina,
12 29803.

13 Q. Aiken, South Carolina. And how long have you
14 lived there?

15 A. Nine years.

16 Q. Where did you live before that?

17 A. Augusta, Georgia.

18 Q. And what was the address in Augusta?

19 A. 7 Lake Forest Court.

20 Q. How long did you live on Lake Forest Court?

21 A. About three years.

22 Q. And where before that?

23 A. Atlanta, Georgia.

24

25

1 Q. Where in Atlanta?

2 A. Buckhead. I don't remember my address.

3 Q. Who did you live with in Buckhead?

4 A. My sister Yamma.

5 Q. Anyone else?

6 A. My son Jason.

7 Q. Anyone else?

8 A. In Atlanta?

9 Q. Yes, ma'am.

10 A. No.

11 Q. And how old is your son Joseph?

12 A. 17. Jason is 17.

13 Q. He's Jason?

14 A. Jason.

15 Q. I'm sorry. I thought I heard Joseph. I'm sorry.

16 And--

17 MR. RICHTER: Pardon the interruption. This is
18 Ronnie Richter. I don't want the conference to become
19 an inconvenience but is it possible to get the witness
20 to speak up a little bit or to get the speaker phone
21 closer to the witness?

22 MR. ROSEN: Yeah. We really cannot hear her.

23 MR. BELL: The phone doesn't reach as far as we
24
25

1 would like and that's part of our problem.

2 MS. LEWIS: Why don't you switch places.

3 MR. DALLAS: Should we just shift the table down?

4 MR. BELL: We will move the table down. We have
5 moved closer to you.

6 MR. RICHTER: Thank you.

7 Q. [Mr. Bell] Where is Lake Forest Court?

8 A. In west Augusta.

9 Q. Where in west Augusta? Of Lake Forest Drive?

10 A. Yes.

11 Q. Right up by the lake?

12 A. Yes.

13 Q. Is it a cul-de-sac?

14 A. I don't know about a cul-de-sac but it's--no, no,
15 no. No, no, no, no, no. No, not that far up. Across from
16 the school. What is it now?

17 Q. Lake Forest Hills?

18 A. Yes.

19 Q. Five or six houses in there?

20 A. It was actually a townhome--

21 Q. Uh-huh.

22 A. --across the street from there.

23 Q. And who did you live with on Lake Forest Court?

24

25

1 A. I lived with my son.

2 Q. Jason?

3 A. Yes.

4 Q. And then on Silver Bluff Road who do you live
5 with?

6 A. My husband Shawn and my son Jason.

7 Q. Tell me about your employment.

8 A. I work for Radio One.

9 Q. Where is that located?

10 A. North Augusta.

11 Q. What are your duties with Radio One?

12 A. Air personality.

13 Q. Disc jockey on air?

14 A. Yes.

15 Q. How long have you worked for Air Personality?

16 A. I've been--

17 Q. I mean how long have you been--how long have you
18 worked for Radio One?

19 A. Three and a half years.

20 Q. Any other employment?

21 A. Now?

22 Q. Yes, ma'am.

23 A. No. I'm not employed, no.

24

25

1 Q. And where does your husband work?

2 A. He works for Global Employment, Global--

3 Q. And what is that?

4 A. It's a company that does the human resource
5 forces--human resources for Deanna Incorporated.

6 Q. And Deanna Incorporated is--is that you?

7 A. Yes, that's me.

8 Q. Tell me about Deanna Incorporated.

9 A. That's a company my dad and I formed years ago.

10 Q. And what does Deanna Incorporated--what's its
11 purpose?

12 A. We own a transportation company and a furniture
13 store.

14 Q. Where is the furniture store?

15 A. In Clearwater, South Carolina.

16 Q. What's the address?

17 A. I don't know the exact address. It's on
18 Aiken-Augusta Highway. I don't know the exact number.

19 Q. What's the name of the furniture store?

20 A. Value Furniture & Appliance.

21 Q. Tell me what it's near.

22 A. It's right next to Hill Auto Sales.

23 Q. I'm leaving Augusta on the Aiken-Augusta Highway.
24
25

1 A. Pass Taylor Toyota, go through the light, come on
2 down at the bottom of the hill. It's right there on the
3 right.

4 Q. Past the lake?

5 A. I didn't say a lake.

6 Q. I'm sorry.

7 A. I said Taylor Toyota.

8 Q. Past Taylor Toyota going towards Aiken?

9 A. Yes. Go through the light. It's at the bottom
10 of the hill on the right.

11 Q. Go through--under the Atomic Highway?

12 A. Yes.

13 Q. Across the Atomic Highway and then just past
14 that?

15 A. Go under the underpass. At the bottom of the
16 hill--

17 Q. On the right?

18 A. --it's on the right.

19 Q. And where's the transportation company?

20 A. Sandbar Ferry Road, Augusta, Georgia.

21 Q. And the name of it?

22 A. T&T Transportation.

23 Q. What's T&T stand for?

24

25

1 A. T&T really didn't stand for anything. We just
2 came up with that name since our last name was Thomas.

3 Q. Got it. Thomas & Thomas. Now, are you familiar
4 with the last will and testament of your father?

5 A. Yes.

6 Q. When did you first become aware of that last will
7 and testament?

8 A. December 27th.

9 Q. Of '06?

10 A. '06.

11 Q. Were you aware that he had executed a will before
12 that?

13 A. Yes.

14 Q. And tell me about your just general awareness
15 that he had executed a will.

16 A. He had done a will.

17 Q. Did he--how did you learn that? Did he tell you
18 that or did someone else tell you?

19 A. Yes, he--he did let me know that he had a will.

20 Q. Tell me what he said to you about having a will.

21 A. He said that he had a will and that all of the
22 children would be taken care of.

23 Q. Was--

24

25

1 A. And grandchildren would be taken care of.

2 Q. Was he in good, sound mind when he told you that?

3 A. Yes.

4 Q. Was there any incapacity on his ability to know
5 what his assets were and what he was doing?

6 A. I don't understand the question.

7 Q. Was he of good, sound mind?

8 A. Yes.

9 Q. Was he capable of making business decisions?

10 A. Yes.

11 Q. Was he--did he know who his family was?

12 A. Yes.

13 Q. Was he able to transact business?

14 A. In terms of--when you say able--

15 Q. Generally able to conduct his own business
16 affairs.

17 A. Yes.

18 Q. At all times up to his death?

19 A. To my knowledge, yes.

20 Q. Do you have any reason whatsoever to believe that
21 he was lacking in any mental capacity at any time prior to
22 his death?

23 A. Not to my knowledge.

24

25

1 Q. Are you aware of anyone who has said that he was
2 lacking any mental capacity prior to his death?

3 A. No. Some people tried to call him crazy.

4 Q. Is that--was that just in a generic term or
5 specifically?

6 A. I guess they were upset at the time. Some people
7 have tried to call him crazy.

8 Q. Any particular people?

9 A. Just maybe people that maybe worked with him.
10 You know--

11 Q. Just--

12 A. --might be a little disgruntled employee.

13 Q. Typical conflicts of people that he might come in
14 contact with?

15 A. Uh-huh.

16 Q. It helps her if you say yes or no.

17 A. Yes.

18 Q. Now, you said you then became aware of the will
19 on December the 27th, 2006.

20 A. Yes.

21 Q. Tell me about that, please.

22 A. Mr. Dallas and Mr. Cannon came to my home and
23 presented it to me.

24

25

1 Q. Did they give you a copy?

2 A. Yes.

3 Q. Do you still have that copy?

4 A. Yes.

5 Q. Were you able to read it?

6 A. Yes.

7 Q. Do you understand that to have been the last will
8 and testament of your father?

9 A. Yes.

10 Q. Do you believe that your father had full capacity
11 when he executed that document?

12 A. I don't know when he executed it. I would assume
13 that he did, yes.

14 Q. Do you have any reason to believe that he did not
15 have full capacity when he executed his last will and
16 testament?

17 A. Not to my knowledge.

18 Q. Do you have any problem with the will?

19 A. Do I have any problem with the will.

20 Q. Yes.

21 A. No. I don't have a problem with the will, no.

22 Q. Do you--is it within your interest to follow your
23 father's wishes as are contained and written in the will?

24

25

1 A. Yes.

2 Q. Are you aware of the trust documents that go with
3 the will?

4 A. Yes.

5 Q. The creation of the I Feel Good trust?

6 A. Yes.

7 Q. When did you become aware of the--

8 A. Same day as the will.

9 Q. Were you given a copy of the trust documents?

10 A. Actually, I knew about the trust but not in
11 detail until December 27th. I had heard that there was a
12 trust. I did not--I don't know if that was the trust that
13 was presented to me on the 27th that I had heard about, but
14 a trust--the trust, James Brown irrevocable trust--
15

16 Q. Yes.

17 A. --was presented to me on December 27th--

18 Q. At the same time--

19 A. --2006.

20 Q. At the same time you saw a copy of the will?

21 A. Yes.

22 Q. Was your--prior to December 27th, 2006, was your
23 general understanding of the trust similar to your
24 understanding of the will?
25

1 A. No. I didn't know--I didn't understand a lot
2 about the trust.

3 Q. Well, you were aware that there was a trust?

4 A. I was told there was a trust. I don't know if
5 that was the trust.

6 Q. But you were told that there was a will?

7 A. Yes.

8 Q. But you--prior to December 27th, 2006, you had not
9 seen the will?

10 A. I had not seen that will, no.

11 Q. And you didn't know the details of the will?

12 A. Other than to know that the children, all of--me,
13 my brothers and sisters and grandchildren would be taken
14 care of. We would all be taken care of.

15 Q. And your dad had said that in general terms?

16 A. Yes. He said that to me.

17 Q. In general terms?

18 A. What do you mean by general terms?

19 Q. Well, had he gone into specifics?

20 A. Well, I mean he said some things to me that I
21 held dear to my heart that he felt about me.

22 Q. What did he say?

23 A. Well, he said that--you know, Deanna, you've
24

25

1 traveled a lot, you've seen a lot with me and I want you to
2 make sure that everybody's taken care of and everybody's
3 okay.

4 Q. Did he say anything else in--to you in regard to
5 his estate plans?

6 A. Not in detail, no.

7 Q. In general terms?

8 A. I think that he wanted his home to be a museum.

9 Q. Would that have been part of the trust?

10 A. I don't know.

11 Q. But he wanted his home to be perpetuated as a
12 museum?

13 A. Yes.

14 Q. And when did you learn of that desire?

15 A. I don't know.

16 Q. Now, do you have any reason to believe that your
17 father did not have full mental capacity when he signed the
18 trust documents?

19 A. No.

20 Q. Have you read the trust documents?

21 A. Yes.

22 Q. Did you read the trust documents at the same time
23 you read the will?

24

25

1 I was provided with a sheet to sign to become a trustee on
2 that day, to be added to that document.

3 Q. My question was not conversations or actions
4 subsequent to your dad's death. But my question went to
5 the document itself. My question is: do you have any
6 problems with the trust document?

7 A. In terms of what it contains?

8 Q. Yes.

9 MR. LEVENSON: And I'm going--Deanna, you are not
10 to discuss with him anything you and I have discussed
11 as far as legal advice. If he's asking your personal
12 opinion you can answer the question; otherwise, my
13 advice is do not answer the question if it calls upon
14 legal advice that I've given you.

15 THE WITNESS: Yes.

16 Q. [Mr. Bell] And my question is what problems do
17 you have with that trust document?

18 A. As I stated, that problem will be that statement
19 as when I said it's in terms of that being signed, having
20 to sign that document.

21 Q. But that's something after the fact that I would
22 characterize as a problem you might have with Mr. Cannon
23 and Mr. Dallas. As far as the document itself is concerned
24
25

1 can you articulate for us any problem you might have with
2 the document?

3 A. Can I articulate any problem that I have with the
4 document. The fact that the three trustees that were--the
5 two trustees that were named, I had a problem with that.

6 Q. And which--you have a problem that your--that
7 your father named Cannon, Dallas and Bradley as the
8 trustees of the trust document?

9 A. Yes.

10 Q. Do you understand that to have been your father's
11 free will intention?

12 A. Yes.

13 Q. Was your father fully capable of making that
14 decision when he signed the document?

15 A. To my knowledge, I would assume so.

16 Q. Do you have any--can you articulate any other
17 problem you have with the trust document other than the
18 decision your father made as to the three trustees?

19 A. No.

20 Q. Other than the selection that your father made of
21 Cannon, Bradley and Dallas as trustees, are you willing to
22 cooperate with all the other terms of the James Brown
23 irrevocable trust?

24

25

1 A. I can't say fully but most of, yes.

2 Q. What parts of the James Brown irrevocable trust
3 would you not want to cooperate with other than the
4 selection of the three trustees?

5 A. Other than that--

6 Q. Yes.

7 A. --I can't think of anything right now.

8 Q. And my question was--you know, I understand you
9 have a disagreement with the three individuals that your
10 dad named as the trustees. Can you articulate any other
11 aspect of--

12 A. No.

13 Q. --the James Brown irrevocable trust that you are
14 not willing to cooperate with?

15 A. No, I can't right now.

16 Q. Now, did--now, prior to your dad's death how
17 frequently would you visit the Douglas--is it Douglas Road
18 or Douglas Street?

19 A. Douglas Drive.

20 Q. How frequently would you visit the Douglas Drive
21 property?

22 A. Probably, when he was home, once every couple
23 weeks.

24

1 Q. When he was not home?

2 A. I would not go down. I think--well, I have been
3 down there when he wasn't home if I had to go and see
4 someone that worked there.

5 Q. But primarily when your dad was--

6 A. Oh, yeah.

7 Q. And every couple of weeks stop by and say hello.

8 A. Uh-huh.

9 Q. Was it one of those nondescript visits? Just
10 hey, how are you doing. Get a cup of coffee, drink a Coke.

11 A. It just depend. He may wanted to see me. I may
12 go by or just maybe stopping by on a Sunday after church,
13 me and my husband and my son, to check on Dad, see how
14 Dad's doing.

15 Q. No particular reason, just--

16 A. No particular reason at all. Stopping by to see
17 how Dad's doing. That's it.

18 Q. Just a nondescript family visit?

19 A. Uh-huh.

20 Q. No particular reason?

21 A. Uh-huh.

22 Q. It really--

23 MR. LEVENSON: Yes or no.

24

25

1 A. Yes, yes, yes.

2 Q. [Mr. Bell] Now, how did you learn of your
3 father's untimely passing?

4 A. I was away. I was overseas visiting--well, me
5 and my family were overseas in Mexico and, unfortunate for
6 me, I found out on CNN.

7 Q. I'm sorry. Came home immediately?

8 A. Immediately.

9 Q. When was the first time you visited Douglas Drive
10 after--

11 th
12 A. December 26 --

13 Q. The next day?

14 A. --2006.

15 Q. Who was present then?

16 A. All my family, Mr. Bobbitt, Mr. Dallas, Mr.
17 Cannon, Reverend Al Sharpton, his driver.

18 Q. Reverend Sharpton's driver?

19 A. Yes. A private investigator--two private
20 investigators that Mr. Dallas had in there, some of the
21 security that was there, two or three of the security guys.
22 And when I say all my family, I meant all my brothers and
23 sisters except for Darrell. My husband Shawn, Yamma's
24 exhusband Darren. And I said all my brothers and sisters

25

1 but there was a grand--Forlando was there; Romunzo. That's
2 all I can think of right now.

3 Q. Do you know the names of the two investigators
4 Mr. Dallas had there?

5 A. I don't remember. I think that they work with
6 Gene Staulcup.

7 Q. Do you know Mr. Staulcap?

8 A. I met him once or twice.

9 Q. So was it--

10 A. It wasn't him. It was two other people that I
11 assume work for him.

12 Q. You think it was two Staulcup employees?

13 A. Yeah, that's what I assume. I don't know. They
14 were doing videotaping.

15 Q. Now--

16 A. And then I think that same night someone from
17 Dixie Lock & Safe came for the vault.

18 Q. Now, let me go down that list. Bobbitt; Dallas;
19 Cannon; Sharpton; Sharpton's driver; two investigators that
20 you believe were with Staulcup & Associates that were
21 videotaping the activities of the day; then you said the
22 security.

23 A. Uh-huh.

24

25

1 Q. Were those the security--

2 A. Security that were there.

3 Q. But was that the ones that had--

4 A. Worked there.

5 Q. Before your dad's passing?

6 A. No.

7 Q. They were called in--

8 A. No, I'm sorry. Yeah, it was a couple of people
9 that worked there prior to--no. There was one security guy
10 that worked there and then--that I knew that worked there
11 before Dad passed. And then a couple that was hired after
12 Dad passed.

13 Q. Was the gentleman that had worked security for
14 your dad prior to his passing, was that--did he work for a
15 company or was it just an individual?

16 A. He--I don't know. He worked for my dad.

17 Q. Now, you--

18 A. Also two--David Washington was there, too.

19 Q. And who is David Washington?

20 A. He worked for Dad, his personal assistant.

21 Q. Did the security--do you think there might have
22 been some new security guards?

23 A. Yes, there was. They were new.

24

25

1 Q. Who brought them in?

2 A. Mr. Dallas and Mr. Cannon.

3 Q. Do--were they with a company or were they
4 individuals?

5 A. They were with a company.

6 Q. What company would that be?

7 A. Sizemore.

8 Q. And you said your family was there except for
9 Darrell. Your other brothers and sisters?

10 A. Yes.

11 Q. Give me their names, please.

12 A. Terry, Larry, Venetia, Yamma.

13 Q. So Venetia, Larry, Terry, Deanna and Yamma were
14 present; Darrell was not?

15 A. Right.

16 Q. Was any cash or--was any cash found or discovered
17 in the house on that day?

18 A. Yes.

19 Q. How much?

20 A. I don't remember how much.

21 Q. Who found the cash and where did they find it?

22 A. I don't exactly remember who found it. It was
23 found in one--in the cabinet, one of the cabinets in the
24
25

1 living room, and it was immediately taken to the vault. If
2 I'm not mistaken, Forlando and my sister Yamma and Venetia
3 took it to the vault. It was in--there was some in a brown
4 paper bag and then there were some coins in a Quaker oats
5 can--canister.

6 Q. Was it--did the coins have any--

7 A. I don't know what the coins looked like.

8 Q. What I was going to ask is did the coins have
9 collectors value or was it just--

10 A. I don't know.

11 MR. LEVENSON: Let him finish the question
12 completely, Deanna, and then answer it, okay.

13 Q. [Mr. Bell] Or was it--and I'll give you an
14 example. At the end of the day I take the change out of my
15 pocket and dump it in a jar and every month or so I'll roll
16 up the coins and--

17 A. I don't know.

18 Q. Did anyone count the cash?

19 A. I can't remember.

20 Q. Do you what range--are we talking about small
21 denominations, large denominations? Were we talking
22 several--

23 A. \$100 bills.

24

25

1 Q. Are we talking several \$100 bills--

2 A. Uh-huh.

3 Q. --or thousands?

4 A. Yes, several \$100 bills.

5 Q. Was it more than 1,000 or less than 1,000? How
6 much?

7 A. I don't know the exact amount >cause I did not
8 count. All I know is it was a bunch of \$100 bills.

9 Q. Well, if it's several \$100 bills I would--my
10 characterization of that would be in the smaller range. If
11 it was a bunch of \$100 bills I would put that in a larger
12 range.

13 A. That's you.

14 Q. Would you--

15 A. A bunch of \$100 bills.

16 Q. And that was all put into the safe?

17 A. Yes.

18 Q. Were there any cashier's checks found?

19 A. I understand, yes, there was. They were put in
20 the vault as well.

21 Q. Did you see the cashier's checks?

22 A. No, I did not.

23 Q. Did you count the cashier's checks?

24

25

1 A. No, I did not.

2 Q. Do you know if anyone counted the--

3 A. No, I do not.

4 Q. --cashier's checks or the cash?

5 A. No.

6 Q. Was it a lot of cashier's checks or a small
7 number of cashier's checks?

8 A. I don't know how many it was.

9 Q. What were the denominations?

10 A. I don't know.

11 Q. Do you know who found the cashier's checks?

12 A. I don't know exactly who found them.

13 Q. Would it have been one of your family members or
14 would it have been one of the non-family members?

15 A. One of the family members.

16 Q. Were they--for want of a better term, was the
17 inventory and the looking through things, was that
18 conducted by the family members or by the non-family
19 members?

20 A. What? The inventory?

21 Q. Well, somebody had to have been looking for
22 things when they found the checks and the cashier's checks
23 and the cash and the coins.

24

25

1 A. Okay.

2 Q. Was the process--

3 A. I don't--like I said, I don't know exactly when
4 they were found. I know that they were put in the vault.

5 Q. And I understand that. But what I'm getting at
6 was the--were the individuals who were doing the looking
7 for things, were those family members or the non-family
8 members?

9 A. Family members.

10 Q. Now, talk to me about the safe. What is the size
11 of the safe?

12 A. It's--

13 Q. Well, you called it a vault. Do you call it a
14 vault or a safe?

15 A. It's a safe. I say a vault but it stands high.

16 Q. Now, your hand is--it looked to me like around
17 four feet off the ground.

18 A. At least.

19 Q. Four or five feet high?

20 A. Yes.

21 Q. Does it go all the way to the ground?

22 A. Yes.

23 Q. Now, inside if it's four or five feet high what
24
25

1 would be the internal dimensions?

2 A. I don't know.

3 Q. Two by three, two feet by three feet?

4 A. I don't know.

5 Q. Deanna, some people have what's called gun safes
6 to put guns in. Have you--do you know what I'm talking
7 about?

8 A. I think I've seen one before, but.

9 Q. Would the safe that your dad has in his house be
10 kind of the size of a gun safe?

11 A. Maybe.

12 Q. Now, who was present when the safe was opened?

13 A. What day?

14 Q. Everything I'm talking about is on the 26th.

15 A. Everyone was there; everyone that's listed was
16 there.

17 Q. So the whole crowd was there for the opening?

18 A. I don't know if everyone was in the room at that
19 time.

20 Q. But most of them were there?

21 A. But when I was in the room, it was Mr. Dallas and
22 Mr. Cannon because they wanted things out of there. So
23 that--and my sister. I know we were standing there because
24

25

1 they asked for stock certificates.

2 Q. And I'll get to that in a minute. How was the
3 safe opened?

4 A. This Dixie Lock man had to come in and open it
5 >cause no one could open it.

6 Q. Now, did he use safe cracking devices or was he
7 given the combination?

8 A. He was given the combination.

9 Q. Who had the combination?

10 A. Mr. Dallas.

11 Q. Before he showed up Mr. Dallas had the
12 combination?

13 A. Yes.

14 Q. And did anyone try to open the safe before Dixie
15 Lock got involved?

16 A. Yes.

17 Q. Who was that?

18 A. Mr. Dallas tried, the private investigator guy I
19 think tried. That's all I can remember but they couldn't
20 get it open.

21 Q. And the combination they had was given to the
22 Dixie Lock man and--

23 A. Yes.

24

25

1 Q. --he opened it? Do you know how Mr. Cannon--how
2 Mr. Dallas got the combination to the safe?

3 A. No, I don't.

4 Q. Do you know if he had just received it or if he
5 had had it for some time?

6 A. I do not know.

7 Q. And when Dixie Lock opened the safe did they
8 change the combination or did--

9 A. Yes.

10 Q. And so after it was initially opened on the 26th a
11 new combination was implanted into the computer?

12 A. Yes.

13 Q. And that was done by Dixie Lock or Dixie Safe
14 company?

15 A. Yes.

16 Q. Do you know who received the new combination?

17 A. Yes.

18 Q. And that would be?

19 A. Myself and Yamma.

20 Q. Anyone else?

21 A. No, uh-uh. Not at that time.

22 Q. Now, when the safe was initially opened by Dixie
23 Lock who was in the room?

24

25

1 Q. But it would have been crowded?

2 A. Yes.

3 Q. Now, when the safe was opened for the first time
4 by Dixie Lock what did you observe in the safe?

5 A. Jewelry, stock certificates, other documents,
6 safes--smaller safes.

7 Q. Smaller safe or safes, plural?

8 A. Safes, plural.

9 Q. Jewelry; stock certificates; smaller safes,
10 plural.

11 Q. And other documents.

12 Q. Have I written down everything? Jewelry, stock
13 certificates, smaller safes and documents?

14 A. Yes.

15 Q. Was the videographer there to video things as
16 they were being identified in the safe or removed from the
17 safe?

18 A. Nothing was removed when the safe was opened. A
19 videotape was being--was on.

20 Q. Well, I guess was anything picked up, looked at
21 and then put back into it?

22 A. We looked inside one safe to find there was
23 jewelry there.

24

25

1 Q. Was there anything in the big safe that was not
2 in a smaller safe?

3 A. Documents.

4 Q. Was there--

5 A. I think there were some--may have been some
6 camera equipment, if I'm not mistaken. That's all I can
7 really remember.

8 Q. Was all the jewelry in a smaller safe?

9 A. Not all of it.

10 Q. Some jewelry in a smaller safe and some not?

11 A. Right.

12 Q. But--and I'm talking about all the jewelry in the
13 safe.

14 A. Yes. There was some in a smaller safe and there
15 was some that was not in a smaller safe.

16 Q. Was a videotape made of all of the jewelry?

17 A. What was just seen that night. All of the
18 jewelry--we did not see all of the jewelry that night.

19 Q. You didn't take it all out and put it back?

20 A. No.

21 Q. You just saw that there was some there--

22 A. Yes.

23 Q. --and closed it back up?

24

25

1 A. Yes.

2 Q. Do you know how much jewelry was there?

3 A. No, I do not.

4 Q. Do you know the value of the jewelry that was
5 there?

6 A. No, I do not.

7 Q. Was it diamonds and rubies and gold or was it
8 costume jewelry, or do you know the difference?

9 A. It was watches. It was rings. It was bracelets,
10 earrings. >Cause there was ladies' jewelry there.

11 Q. Men and women's?

12 A. Yes.

13 Q. Was it all--did it all belong to your dad or do
14 you know?

15 [Mr. Buddy Dallas exits the conference room
16 momentarily.]

17 A. Well, if you wear ladies jewelry. Some of his
18 jewelry was there and his late wife, Adrienne. That was
19 most of her jewelry.

20 Q. Now, you said there were stock certificates.

21 A. Yes.

22 Q. How many?

23 A. I don't exactly know how many.

24

25

1 Q. What companies?

2 A. House of Blues, Aloha Airlines.

3 Q. House of Blues?

4 A. Uh-huh. Aloha Airlines. That's all I saw.

5 Q. Now, is House of Blues a business that your dad
6 owned?

7 A. He did not own the business.

8 Q. He just had shares of stock in it?

9 A. Yes.

10 Q. Is that a privately held company?

11 A. I don't know.

12 Q. Do you know anything about--do you know what--

13 A. I know House of Blues is an entertainment
14 business.

15 Q. And do you know how many shares of stock he would
16 have had in the House of Blues?

17 A. 8,000.

18 Q. Do you know the face value?

19 A. No, I do not. I'd say roughly 8,000. I don't
20 know if that's exact.

21 Q. Where is House of Blues located?

22 A. They have places all over.

23 Q. Is it a fairly large entertainment business or
24
25

1 small?

2 A. Yes. Very large.

3 Q. Who are the principals?

4 A. Don't know.

5 Q. Do you know where the House of Blues stock is
6 now?

7 A. No, I do not.

8 Q. Would that be something that's fairly easy to
9 trace?

10 MR. LEVENSON: If you know.

11 A. I would assume.

12 Q. [Mr. Bell] Where is the principal office of
13 House of Blues?

14 A. I don't know.

15 Q. Who are the principal owners involved?

16 A. I don't know.

17 Q. Do you know anything about it?

18 A. I can--well, I do know one principal. I can tell
19 you one principal is Dan Aykroyd, but that's all I know.

20 Q. Is that something that came out of the Blues
21 Brothers?

22 A. I don't know where the concept came from.

23 Q. The other stock that you identified was Aloha
24
25

1 Airlines?

2 A. Yes.

3 Q. Tell me about that business.

4 A. It's an airline business. That's all I know.

5 Q. Is it a private airline?

6 A. I don't know.

7 Q. Do you know how many shares of stock were in--

8 A. No. I don't know exactly how many he had there.

9 Q. Do you know of any stock that was in the safe
10 other than House of Blues and Aloha Airlines?

11 A. No, I don't.

12 Q. Did you see any other stock in there but just
13 didn't see the name?

14 A. It's possible >cause there were other documents
15 in the safe.

16 Q. But do you remember seeing any other stock?

17 A. No.

18 Q. Now, you said there were other documents in the
19 safe. Could you identify those?

20 A. No, I can't exactly.

21 Q. And now, how were the smaller safes opened?

22 A. Just click the flap and open it up.

23 Q. I mean were they locked?

24

25

1 A. No.

2 Q. Were they more like containers than safes?

3 A. No. It was a safe. It was--

4 Q. But just unlocked?

5 A. Right. It wasn't locked >cause we were able to
6 open it and see the jewelry was there.

7 Q. But it wasn't secured in the smaller safe?

8 A. No, not--

9 Q. --is that correct?

10 A. No, it was not.

11 Q. Is that correct?

12 A. Yes.

13 Q. Was it locked with a key or locked with a
14 combination?

15 A. What?

16 Q. The smaller safes.

17 MR. LEVENSON: I think she said it wasn't locked
18 at all.

19 MR. BELL: I understand, I understand.

20 Q. [Mr. Bell] But was the locking mechanism by a
21 key or by a combination?

22 A. I think a key.

23 Q. Do you know where the key would have been?

24

25

1 A. No.

2 Q. But it just wasn't secured--

3 A. No.

4 Q. --is that correct?

5 A. Yes.

6 Q. Now, how long was the safe left open on the 26th ?

7 A. I don't exactly know an exact time but when it
8 was closed that night--I know it wasn't opened up that
9 night and once it was closed, it was closed.

10 Q. Are we talking about 30 minutes or in that range?

11 A. No. I'm thinking a little longer than that.

12 Q. Everybody was present during the entire time?

13 A. Yes.

14 Q. And then everybody was present when the safe was
15 closed?

16 A. Well, yes, uh-huh. Yes, yes.

17 Q. And everything that had been seen in the safe was
18 put back into the safe?

19 A. Put back into the safe, yes.

20 Q. And some additional things were put into the
21 safe?

22 A. Yes.

23 Q. The cash?

24

25

1 A. Yes.

2 Q. And the stock--not stock. The traveler's checks?

3 A. Yes.

4 Q. Was anything else put into the safe other than
5 its original contents and the cash and the traveler--

6 MR. LEVENSON: I don't think it was traveler's
7 checks.

8 MR. BELL: I'm sorry. Cashier's checks. Thank
9 you.

10 A. Some more jewelry that we found in Dad's bedroom.
11 I think a watch.

12 Q. [Mr. Bell] Now, after the 26th when did you next
13 go to the Douglas Street [sic] house?

14 A. Oh, goodness. One day--I can't remember the
15 exact day. One day that Mr. Dallas and Mr. Cannon called
16 and wanted to go over to look for some documents that they
17 felt like Dad had been hiding somewhere in the house.

18 Q. Did your dad hide things everywhere?

19 A. He did sometimes, yeah.

20 Q. So that wasn't unusual for them to think that
21 there might be some documents stashed away in the house?

22 A. I assume.

23 Q. How much longer--was it still in 2006 or had it
24

25

1 been that second visit after your dad's death? Was that in
2 2006 or 2007?

3 A. I don't remember.

4 Q. Within that--within a week or two?

5 A. Yeah. It was in that week. I can't remember
6 what day.

7 Q. Were you with Mr. Dallas and Mr. Cannon when they
8 went through the house the second time?

9 A. Yes.

10 Q. With them the whole time?

11 A. Uh-huh.

12 Q. Is that yes?

13 A. Yes.

14 Q. Were any documents found?

15 A. No.

16 Q. Was anything removed from the house that second
17 time?

18 A. No.

19 Q. Was the safe opened?

20 A. No.

21 Q. When was the next time you went to the house?

22 A. I don't remember the exact day but it was
23 following after the first of the year. It would have to be
24
25

1 nd
2 after January 2 .

3 Q. Why do you say after the second?

4 nd
5 A. Well, January 2 is my birthday and I didn't go
6 over there on my birthday.

7 nd
8 Q. And how long after January the 2 ?

9 A. That week.

10 Q. And who was with you the third time you went into
11 nd
12 the house, that week of January the 2 ?

13 A. Security, David Washington.

14 Q. Were the security and David Washington with you
15 the whole time?

16 A. Yes.

17 Q. And what did you do in the house the second time?
18 What was the reason for that--

19 A. That wasn't the second time, but.

20 Q. What was the reason for that visit after January
21 nd
22 2 ?

23 A. To clean. To clean the house.

24 Q. And by security who are we talking about in
25 security?

26 A. Colonel Lee, Diane Sterling.

27 Q. Were they with Regents Security--I mean Sizemore
28 Security?

1 A. No. They were the security that Dad hired.

2 Q. They were the private security that had worked
3 for him before?

4 A. Yes.

5 Q. And Mr. Washington?

6 A. Yes.

7 Q. And they were with you the whole time?

8 A. Yes.

9 Q. And you--was any other family member with you?

10 A. No.

11 Q. And when did you next go to the house?

12 A. Actually, I can't say exactly when but I did go
13 to the house to clean at least a couple weeks.

14 Q. Several times?

15 A. Yes.

16 Q. Are we talking about two times, three times, four
17 times, five times?

18 A. Probably about five times.

19 Q. In a two-week period?

20 A. Yes.

21 Q. And when you would go to the house to clean was
22 anyone with you?

23 A. Yes.

24

25

1 Q. And I'm not talking about the folks there. I'm
2 talking about did anyone go to the house with you?

3 A. No.

4 Q. You went by yourself?

5 A. No. My sister came one time. Yamma came one
6 time and we did some cleaning.

7 Q. And the other four or five times you were there--

8 A. With security and David Washington.

9 Q. But by yourself?

10 A. Yes, yes, yes.

11 Q. And then the--and what type cleaning were you
12 doing?

13 A. Cleaning the refrigerator, cleaning the
14 bathrooms, cleaning the floors.

15 Q. Just--

16 A. Housecleaning.

17 Q. Sweeping, mopping, dusting, vacuuming?

18 A. Housecleaning, uh-huh.

19 Q. And cleaning out the refrigerator?

20 A. Yes.

21 Q. And when you would go over there those five or
22 six times during--are we talking about up till the middle
23 of January 2007?

24

25

G

1 A. Probably, yes, sir.

2 Q. How long would you be at the house?

3 A. A few hours.

4 Q. Each time; is that right?

5 A. Maybe not each time. Maybe one time a little
6 longer than the other.

7 Q. Average several hours each time?

8 A. A couple of hours. Not--I wouldn't say several
9 but--

10 Q. A couple of hours each time?

11 A. Yeah. About three, two or three.

12 Q. Now, did Mr. Washington help you clean--

13 A. Yes.

14 Q. --or was he just there? Did the security help
15 you clean?

16 A. Yes.

17 Q. Were you washing clothes?

18 A. No.

19 Q. Washing any linens?

20 A. Yes, we did.

21 Q. Were cleaning supplies kept in the laundry room?

22 A. For the most part.

23 Q. Typical house where the Spic >n Span and the Tide
24
25

1 and the Ajax are in the--

2 A. Yes.

3 Q. --washroom with the Tide and the Clorox?

4 A. For the most part, yes.

5 Q. Now, since your dad passed away on December 25th,
6 2006, have you removed any property from your dad's house?

7 A. That night we took clothes that he had--that we
8 had to give the--

9 Q. Charlie Reid?

10 A. Yes. Mr. Reid. And--

11 Q. What, a suit and tie?

12 A. Yes. A couple suits, yeah.

13 Q. Shirt?

14 A. A couple shirts, boots.

15 Q. A couple of suits to pick and see what looked the
16 best?

17 A. Yes.

18 Q. Have you removed anything else?

19 A. No.

20 Q. Any pictures?

21 A. Oh, photos that we used for the programs.

22 Q. Other than--other than that have you removed
23 anything from the house?

24

25

1 A. No.

2 Q. --at any time since December 25th ?

3 A. No.

4 Q. To your knowledge has Yamma removed anything from
5 the house?

6 A. No.

7 Q. Are you aware if anyone has removed anything from
8 your dad's house since December the 25th , 2006?

10 A. I didn't see anyone, no.

11 Q. Has anyone told you that they have seen anyone
12 remove things from your dad's house since December 25th ,
13 2006?

14 A. Yes.

15 Q. Who has? Who has told you?

16 A. I was told by security that one day the--one day
17 in January that Mr. Dallas, Mr. Cannon and Mr. Bradley was
18 in the home and went into one of the rooms and found
19 something behind a photo. He was asked to step out of the
20 room at that point but he believes that things were taken,
21 something was taken out that day.

22 Q. Does he believe something or did he see
23 something?

24 A. He seen paperwork come from behind or some kind
25

1 of paper come from behind a photo. After that they asked
2 him to get out of the room.

3 Q. Do you know which security said that?

4 A. Colonel Lee.

5 MR. LEVENSON: Colonel who?

6 A. Colonel Lee.

7 Q. [Mr. Bell] Colonel Lee. Are you aware of
8 anything else? Has anyone else told you that they're aware
9 of anything being removed from the house, other than what
10 you've said about Colonel Lee?

11 A. We were there on September 17th, the family, and
12 we found that two cars were sold. And when we went in, I
13 was able to notice that some furniture and a few little
14 things seemed like they may have been missing.

15 Q. Do you know what furniture and what little
16 things?

17 A. Some furniture in the front room and the foyer.
18 Some awards I didn't see. I can't say that they've been
19 removed but I didn't see them, awards that I know.

20 Q. And tell me what--describe the furniture we're
21 talking about. A desk, a chair, a sofa?

22 A. It was like a desk. Bedroom furniture was gone.

23 Q. Give me the best you can an itemization.
24
25

1 A. Dresser, a couple dressers, a bed.

2 Q. Anything else?

3 A. Like I said, furniture. A couple pieces of
4 furniture, tables.

5 Q. New furniture, old furniture, antique furniture
6 or do you know?

7 A. Furniture.

8 Q. Just--

9 A. A couple tables I know that I did not see. I did
10 not see them and so that's why I said that they may have
11 been removed.

12 Q. Anything else?

13 A. No.

14 Q. You said some awards that you just don't remember
15 seeing. Do you remember the awards that you're talking
16 about?

17 A. Some plaques that were not there on the walls
18 that were there before.

19 Q. Do you remember the names?

20 A. One from NAACP, one from the Grammys, I think.
21 Not specific but I know that where they were on the wall,

22 they were not there when we went back September 17 .
23

24 Q. You've said that on December the 26th you and
25

1 Yamma received the combination to the safe.

2 A. Yes.

3 Q. Do you and Yamma still have the combination to
4 the safe?

5 A. No. We turned that over to our lawyer who turned
6 it over to Rodney Peebles.

7 Q. And when was that?

8 A. Some time in March, I think.

9 Q. Between December 25th--26th, 2006 and March 2007
10 did anyone have the combination to your dad's safe other
11 than you and Yamma?

12 A. The man at Dixie Lock.

13 Q. And the man who originally programmed it?

14 A. Right.

15 Q. Anyone else that you're aware of?

16 A. We turned it over to our lawyer. That's it.

17 Q. Now, to your knowledge did Yamma go into the
18 house at any time between December 26th and March of 2007?

19 A. She went in one time with me when we were doing
20 some cleaning.

21 Q. And was she in the house for several hours at
22 that time?

23 A. Yes.

24

25

1 Q. Anyone else?

2 A. That day?

3 Q. Anyone else to your knowledge go into the house
4 during that period of time?

5 A. The--

6 MR. LEVENSON: Do you mean with her or at any
7 time?

8 th
9 Q. [Mr. Bell] From December the 26 through March.

10 A. Other than the people that worked there?

11 Q. Yes.

12 A. The trustees.

13 Q. And other than the trustees?

14 A. A private investigator.

15 Q. Whose private investigator?

16 A. The one that Mr. Dallas hired.

17 Q. Anyone else?

18 A. Not to my knowledge.

19 Q. To your knowledge did the security keep a log of
20 everyone who went in and went out?

21 A. To my knowledge.

22 Q. Did you sign in and sign out every time you were
23 there?

24 A. Yes.

25

1 MR. BELL: Now, I'm going to shift gears for just
2 a moment. We've been going for about an hour. Does
3 anybody need to take a little break?

4 Q. [Mr. Bell] Your dad had a relationship with Tomi
5 Rae; is that correct?

6 A. Yes.

7 Q. What did your dad tell you about his relationship
8 with Tomi Rae?

9 A. He didn't talk about his relationship to much to
10 me. That was a private matter.

11 Q. Did he talk to you about whether he was married
12 to her or not married?

13 A. No.

14 Q. Did he ever say anything about he had intentions
15 to marry Tomi Rae or no intentions or anything in that
16 regard?

17 A. No.

18 Q. Do you know whether or not he was married to Tomi
19 Rae or not married to Tomi Rae?

20 A. There was a ceremony. After the ceremony, a
21 couple years later there was a problem and I know that he
22 had gotten an annulment. He did say that after this
23 problem.

24

25

1 Q. That he had the original marriage to Tomi Rae
2 annulled?

3 A. Yes. That's what he said.

4 Q. Did he ever represent that he was--after that did
5 he ever represent to you that he was married to Tomi Rae?

6 A. No.

7 MR. LEVENSON: And the that references what?

8 Q. [Mr. Bell] After he told you that he had had the
9 original ceremony annulled did he ever tell you that he was
10 married to Tomi Rae?

11 A. No.

12 Q. Tomi Rae has a child; is that correct?

13 A. Yes.

14 Q. What is the child's name?

15 A. James Joseph Junior II.

16 Q. Called Little Man?

17 A. Yes.

18 Q. Nickname?

19 A. Yes.

20 Q. Did James Brown ever tell you anything about
21 James Joseph Brown II, Tomi Rae's son?

22 A. I mean just Little Man's something else. You
23 know, we'd just have a little family conversation, that
24
25

1 kind of thing. Nothing in particular.

2 Q. Did he ever tell you that that child was his
3 child or not his child or that he had thoughts or doubts or
4 anything in that regard, the parentage?

5 A. We didn't actually talk about that.

6 Q. Now, to your knowledge--let me back up. You
7 identified at the beginning six brothers and sisters, six
8 children of James Brown.

9 A. Uh-huh, yes.

10 Q. And those being Terry Brown, Yamma Brown, Larry
11 Brown, Venetia Brown and Darrell Brown?

12 A. Yes.

13 Q. Is that the six that you identified initially?

14 A. Yes.

15 Q. Are you aware of whether or not James Brown had
16 any children other than the six including yourself that you
17 had identified?

18 A. Prior to now?

19 Q. Yes.

20 A. No, I had not.

21 Q. Now, several weeks ago Mr. Dallas sent out a copy
22 of an audiotape made by your dad on the day that he
23 executed the will. Are you aware of that?

24

25

1 MR. LEVENSON: That's an incorrect statement of
2 fact.

3 A. No, I'm not aware of it.

4 MR. LEVENSON: Just answer the question if you
5 know.

6 Q. [Mr. Bell] Are you aware that an audiotape of
7 your dad has been dispersed by Mr. Dallas?

8 A. I'm aware that there is an audiotape that was
9 given to the news.

10 Q. You're aware of an audiotape that's been given to
11 the news?

12 A. Yes.

13 Q. Have you heard that audiotape?

14 A. Yes.

15 Q. Do you believe that audiotape is in fact your
16 dad's voice?

17 A. Yes.

18 Q. Do you know when your dad made that audiotape?

19 A. No.

20 Q. Does it sound like your dad?

21 A. It sounds like.

22 Q. Does he sound to be under any stress or pressure
23 when he made that audiotape?

24

25

1 A. Can't really tell.

2 Q. Is there anything about that audiotape that you
3 agree with, disagree with or just don't have an opinion?

4 A. I just don't have an opinion.

5 Q. In that tape he talks about his desires for his
6 legacy and his estate; is that correct?

7 A. He mentions that he wants to see poor children
8 taken care of and given an opportunity that he didn't have.
9 To me, he did not go into detail about what he wanted done.
10 But he said that.

11 Q. Do you have any disagreement with seeing his
12 words of looking out for poor children implemented?

13 A. Do I have any disagreement with that?

14 Q. Yes.

15 A. No, I do not.

16 MR. LEVENSON: Let me just object to the form of
17 the question in that regard. Are you asking her her
18 personal opinion as to whether her personal views are
19 consistent with what words are spoken by her father,
20 or is that the intent--

21 MR. BELL: No. Whether she--whether she has any
22 disagreement with his words where he says he wants to
23 look out--he wants his legacy to be providing for poor
24
25

1 children.

2 A. Part of his legacy, yes, to be providing for poor
3 children, yes.

4 Q. [Mr. Bell] Do you have any disagreement with
5 what his words were--

6 A. No.

7 Q. --on that tape?

8 A. No.

9 Q. Now, in this case there has been some
10 disagreement arising out of what is estate property and
11 what is trust property. Are you aware of that?

12 A. Yes.

13 Q. Do you have any opinions as to what property
14 should be in the James Brown trust as opposed to what
15 property and assets should be in the James Brown estate?

16 A. I don't really understand the question so I don't
17 know really how to answer that.

18 Q. Well, some of your father's assets would go into
19 the estate; is that correct?

20 A. Yes.

21 Q. Some of your father's assets would go into the
22 James Brown I Feel Good Trust.

23 A. I don't know.

24

25

1 Q. You don't know if anything would go into the
2 trust?

3 A. I don't know--

4 MR. LEVENSON: I mean, David, you're asking her
5 legal questions.

6 A. I don't know.

7 MR. LEVENSON: If you're asking her what her
8 preference is or her personal point of view she may be
9 able to answer it. I mean--

10 MR. BELL: I'm not asking her preference.

11 MR. LEVENSON: Then I object to the form of the
12 question.

13 Q. [Mr. Bell] And under the rules, he objects and
14 that's stated. You can now go ahead and answer.

15 A. I don't know.

16 Q. So you don't have any knowledge as to what should
17 be estate property as opposed to what should be trust
18 property?

19 A. No, I do not, uh-uh.

20 MR. BELL: I'd like to take a little break. I
21 need a little break.

22 [Recess 11:25 a.m. to 11:40 a.m.]

23 MR. HARLING: Hey, Ms. Thomas, how are you doing?
24
25

1 THE WITNESS: Fine. How are you?

2 MR. HARLING: We've met before. My name is
3 Jonathan Harling. I'm one of the attorneys for the
4 estate. I've just got a handful of questions for you
5 this morning. I understand you've got to get out of
6 here, so I'll be as quick as possible.

7 EXAMINATION

8 BY MR. HARLING:

9 Q. Are you aware of any frequent flyer miles that
10 belonged to Mr. Brown?

11 A. No, I don't know about any.

12 Q. To your knowledge, has anyone used any frequent
13 flyer miles that belonged to Mr. Brown since he passed
14 away?

15 A. No.

16 Q. And I believe you testified earlier that to your
17 knowledge no one had removed any property from the house
18 since Mr. Brown passed away.

19 A. I didn't say that.

20 MR. LEVENSON: I think other than what she
21 testified.

22 Q. Other than--okay.

23 MR. LEVENSON: I think clothing was removed for
24
25

1 the funeral and some pictures for the funeral.

2 Whatever else the record reflects other than that.

3 A. No.

4 Q. [Mr. Harling] To your knowledge, did anyone
5 remove two plastic bags from the house?

6 A. Two plastic bags, I don't know.

7 Q. Trash bags, garbage bags?

8 A. That was garbage, yeah. There was garbage out
9 there.

10 Q. And that's it?

11 A. Yes.

12 MR. HARLING: Ms. Thomas, that's all the
13 questions I have for you. Thank you very much.

14 MS. LEWIS: I have just one or two.

15 EXAMINATION

16 BY MS. LEWIS:

17 Q. Ms. Thomas, you mentioned that your father had
18 said to you that all the children would be taken care of.

19 A. Yes.

20 Q. When did that conversation take place?

21 A. I don't know.

22 Q. Was it the year before he died, two years before,
23 three years before?

24

25

1 A. I don't know. I can't say for exactly when. I
2 mean honestly I don't know. We had that conversation once.

3 Q. Just one time?

4 A. To my knowledge, yes.

5 Q. And--

6 A. That I can think of.

7 Q. Where did it take place?

8 A. At his home.

9 Q. Who else was present?

10 A. It was just him and I.

11 Q. Did he elaborate on that statement, what that
12 meant?

13 A. In detail, no. He just said that you would--you
14 and everybody would be taken care of and I want you to make
15 sure that everyone, all your brothers and sisters and the
16 children are taken care of.

17 Q. How did it come up?

18 A. Well, Dad had deep conversations with all of us
19 from time to time and it just came up in the conversation.
20 I felt as though he was kind of putting some pressure on my
21 shoulders to make sure that family was going to be all
22 right when he passed.

23 Q. And you said that he had heard him--you had heard
24
25

1 that there was a trust?

2 A. Yes.

3 Q. He didn't share that with you?

4 A. No. Not the details, no.

5 Q. Did he share anything about a trust with you?

6 A. He just said that there is a trust. He didn't
7 say what the name of the trust was or what it entailed.

8 Q. How did that come up and when did he tell you
9 that?

10 A. I can't exactly tell you when but just in general
11 conversation.

12 Q. Was it--do you know if it was in the year before
13 he died or in the past six years or can you roughly--

14 A. I can just say in the past few years. I don't
15 know exactly when.

16 Q. Did he give you any idea that he was talking
17 about education for poor children when he talked about the
18 trust?

19 A. No.

20 Q. And you said that he told you that he wanted his
21 home to be a museum?

22 A. Yes.

23 Q. Now, when did this come up?

24

25

1 A. He mentioned that several times but I can't say
2 exactly when.

3 Q. Did he give you his vision for it?

4 A. No, no. Just that he wanted his home to be a
5 museum.

6 Q. Do you support that idea?

7 A. Wholeheartedly.

8 MS. LEWIS: That's all I have.

9 MR. JACKSON: Let me switch around since my neck
10 doesn't rotate too well. Ms. Thomas, as I stated, I'm
11 Stan Jackson. I'm representing the personal
12 representatives in this estate.

13 EXAMINATION

14 BY MR. JACKSON:

15 Q. When did he have this conversation or
16 conversations with you pertaining to that he had written a
17 will? When was that? Was it sometime shortly after he
18 wrote the will in 2000?

19 A. I can't exactly say when.

20 Q. I know that. But can you give me some time--

21 A. No, I can't.

22 Q. Was it more than three years ago or--

23 A. It may have been. I can't exactly say when.

24

25

1 Q. But did you take it he was referring to the will
2 th
that you saw on December 26 , 2006?

3 A. Yes.

4 Q. And so that's the will that you understand was
5 the will he was referring to that he had written a will?

6 A. Yes.

7 Q. Also, pertaining to the trust, you said that he
8 mentioned to you that he had written a trust.

9 A. Uh-huh, yes.

10 Q. And again, would that have been about the same
11 time he mentioned to you that he had written a will?

12 A. Maybe.

13
14 Q. And the trust that you saw on December 26 , 2006,
15 or read shortly thereafter, would that be the instrument
16 that you saw that you believe he was referring to?

17 A. I don't know if that's the one he was referring
18 to. He said a trust; he did not give the name of the
19 trust.

20 Q. But do you have any--know of any other trust that
21 he might have set up?

22 A. No. I don't know.

23 Q. Was there a meeting of the family in December
24 before his death in 2006?

25

1 A. A meeting.

2 Q. Yes. Or a gathering of family some time in
3 December before his death?

4 A. No.

5 Q. Did he ever tell you or other family members that
6 you've heard of that you may not be getting--being, quote,
7 taken care of fully under his last will and testament?

8 A. No.

9 Q. Do you believe that the last will and testament
10 that you saw in December of 2006 does fulfill what he
11 represented to you that you and the other children would be
12 taken care of?

13 A. Yes.

14 Q. As I understand the will, the personal effects of
15 James Brown are being--to be distributed to you and the
16 other named children in the will, the six that you named
17 previously. Is that your understanding?

18 A. Yes.

19 Q. What were Mr. Brown's personal effects?

20 A. Everything behind that gate.

21 Q. Everything behind the gate at--

22 A. At 430 Douglas Drive.

23 Q. Do you--did you ever get involved with any of his
24
25

1 businesses or how he operated his business?

2 A. I traveled with him. I worked at the radio
3 station.

4 Q. And you worked at the radio station and you
5 traveled with him. When you say you traveled with him,
6 would that be when he was doing performances?

7 A. Performances, yes.

8 Q. Do you know how his costumes were paid for?

9 A. He paid for them.

10 Q. How did he pay for them?

11 A. I don't know exactly how, but he paid for them.

12 Q. Did you actually see him write checks for those?

13 A. No.

14 Q. Did you see any cash that he used to pay for
15 them?

16 A. No.

17 Q. How do you know he paid for them?

18 A. Because he would always say that these are my
19 uniforms so I assumed he paid for them. He worked and paid
20 for them.

21 Q. His uniforms, they were used in his business?

22 A. Yes.

23 Q. What else was used in his business that's at his
24
25

1 house now? His uniforms were used in his business. Was
2 any of his musical instruments used in his business?

3 A. Not to my knowledge. Maybe.

4 Q. Maybe. And his business was the entertainment
5 business, as I understand it.

6 A. Yes.

7 Q. The--on December the 26th, 2006, when you met and
8 the other families met with Mr. Cannon and Mr. Dallas, did
9 you and some other members of the family go behind into his
10 bedroom and shut a door and exclude Mr. Cannon and Mr.
11 Dallas, and come out with a couple of trash sacks?

12 A. Did we go behind the door and shut the door--

13 Q. Yes.

14 A. --and exclude. No, we did not.

15 Q. Well, tell me what occurred in relationship to
16 how you obtained the--where the sacks that you say were
17 trash were obtained?

18 A. Throughout the house.

19 Q. Throughout the house?

20 A. Uh-huh. Trash, garbage. We were straightening
21 up, trying to get things for the funeral.

22 Q. Did you ever go behind a closed door without Mr.
23 Cannon and Mr. Dallas?

24

25

1 A. No.

2 Q. Did any other members of your family do so?

3 A. I don't know.

4 Q. Who determined what was in the trash bags that
5 you contend were trash?

6 A. It was a collective thing. Like I said, we were
7 all there, all my brothers and sisters except for Darrell.

8 Q. When you say a collective thing, all your
9 brothers and sisters helped put the trash in the trash
10 bags?

11 A. I don't exactly know who actually physically did
12 it. I can't say exactly but we were all there
13 collectively.

14 Q. Did Mr. Dallas or Mr. Cannon ever ask you to
15 inspect what was in the trash bags?

16 A. No.

17 Q. Did anybody else such as the security guards?

18 A. No.

19 Q. What happened to those trash bags?

20 A. Went to the trash.

21 Q. Who in addition to yourself would know what was
22 contained in those trash bags as far as trash?

23 A. I can't exactly say who would know. I don't
24
25

1 know. That was, you know, an emotional night, as well. It
2 wasn't--I wasn't, you know, keeping that close with
3 everything. I can't exactly say.

4 MR. LEVENSON: The question was who else other
5 than you would know.

6 A. I can't exactly say. Like I said, my brothers
7 and sisters except for Darrell, we were collectively there.

8 Q. [Mr. Jackson] Did--was there more than one trash
9 bag?

10 A. Yes.

11 Q. Did you dispose of both trash--well, how many
12 trash bags were there?

13 A. I don't exactly know how many.

14 Q. Did you personally dispose of all the trash bags?

15 A. No, I did not.

16 Q. Who did?

17 A. I exactly don't know. I know that Dave
18 Washington took out a couple to put in the trash that was
19 there at the house, so. I don't exactly know who--if
20 anyone else did.

21 Q. Now, before I was involved in the case I
22 understand that your attorneys filed a petition to remove
23 Mr. Dallas and Mr. Cannon and Mr. Bradley from their
24
25

1 positions, based on that they had taken items from the
2 house, among other reasons; is that correct?

3 A. Yes.

4 [Confidential testimony sealed and filed
5 separately.]

6 Q. What--you say Colonel Lee told you they had taken
7 something from the house?

8 A. Yes.

9 Q. What did he say they had taken?

10 A. All he knows is that it was paperwork, some kind
11 of documents, don't exactly know what, that came from
12 behind a photo album--I mean a photo on the wall in one of
13 the rooms in the house.

14 Q. And I understand that Colonel Lee in the hearing
15 recanted an affidavit that was obtained that supposedly
16 stated that he had seen Mr. Dallas and Mr. Cannon remove
17 items from the house. Were you at that hearing?

18 A. Yes.

19 Q. And did Mr. Lee say no, that wasn't what I
20 stated?

21 A. I don't remember.

22 Q. Have you talked to Mr. Lee since--to Colonel Lee
23 since then?

24

25

1 A. Yes, I have.

2 Q. And what does he tell you now he states happened?

3 A. He doesn't--we don't discuss that.

4 Q. What do you discuss? Anything?

5 A. Just general business.

6 Q. General business?

7 A. Business, you know.

8 Q. Is he still at the Douglas Drive as one of the
9 security guards?

10 A. No, he isn't.

11 Q. What's the general business that you discuss?

12 A. He is security watching at my home.

13 Q. So he is now employed by you?

14 A. He is not employed by me. He is there to watch
15 over the gravesite.

16 Q. Who pays--

17 MR. LEVENSON: Hold on one second. We have--it
18 just occurred to me that we have people in the room
19 who are not parties to this action. And it further
20 occurred to me that the agreement which was made to
21 which I think everyone in the room is either a party
22 or aware of as to the arrangements for the temporary
23 interment of Mr. Brown was to be confidential.

24

25

1 MR. JACKSON: I didn't know that.

2 MR. LEVENSON: Well, I do. And so my concern is
3 that if you're going to ask any questions regarding
4 this with parties--with persons in the room who are
5 not parties to the action and not bound by those
6 confidentiality agreements and orders, then I'm going
7 to have to ask that anyone who is not a party to the
8 action leave the room. We've had--we're already going
9 down this road on one matter and I'd rather not start
10 down another road on the same issue.

11 MR. BELL: Was he asking about the interment or
12 asking about a security guard and who was paying him?
13 I think that's two different things.

14 MR. LEVENSON: My point is if you're going to ask
15 those questions, I'm going to insist respectfully that
16 anyone who is not a party to this action step out of
17 the room because everyone who is in the room, counsel
18 or parties, are bound by whatever agreements were
19 made, whether they're aware of them or not.

20 MR. BELL: Well, who in here is not a party?

21 MR. LEVENSON: Well, Mr. Thomas, I don't believe.

22 MR. BELL: Mr. Thomas and--

23 MR. JACKSON: Terry's mother.

24

25

1 MR. LEVENSON: Terry's mother is not a party to
2 the action.

3 MR. BELL: Do you want to step out for a second.

4 [Mr. Shawn Thomas and Ms. Velma Brown Whitley
5 exit the conference room.]

6 MR. LEVENSON: And let me just further perfect
7 the record. It should be evident to everyone in the
8 room that if this deposition were ever filed as a
9 matter of public record and this information were
10 spread upon the public record, not only would Deanna
11 and Shawn's personal safety be in jeopardy but so
12 would the remains of Mr. Brown be in jeopardy. So
13 that's--so it's--

14 MR. BELL: How would their personal safety be--

15 MR. LEVENSON: I'm not going to defend myself.
16 You know, this wouldn't be hard to figure out that
17 people are going to descend upon that location, David,
18 if they find out what it is that we privately in this
19 room know, okay. That's--you may disagree with me.

20 MR. BELL: Well, Louis, it's publicly known
21 that--where she lives.

22 MR. LEVENSON: That is correct. That statement I
23 agree with.

24

25

1 MR. BELL: It is publicly known that Mr. Brown's
2 remains are at that location.

3 MR. LEVENSON: No, it is not. Now, you show me
4 something that reflects that and I'll--

5 MR. BELL: I'll tell you, I wasn't a part of the
6 agreement but I very vividly remember the day that the
7 removal occurred and there were TV cameras. I
8 happened to be driving by there that day and there
9 were TV cameras outside on Silver Bluff Road that day.

10 MR. LEVENSON: That may be. I don't disagree
11 with what you just said but you point me to a public
12 recital of what it is as to the temporary resting
13 place of Mr. Brown and I will correct my statement. I
14 don't believe there is one; there is no public record
15 of that. And that's what we were--what we agreed to
16 and were bound to observe.

17 MR. BELL: There have been newspaper accounts and
18 there were TV accounts.

19 MR. LEVENSON: There may have been helicopters
20 flying over for all I know, David, but that doesn't
21 change the representation I just made and I think we
22 are bound by our representations to the Court,
23 regardless of what a media outlet may do about it.

24

25

1 MR. ROSEN: Lewis, I think there's court order
2 that restrains the lawyers from disclosing it, even if
3 everybody in the world knows about it.

4 MR. LEVENSON: That's what I just said, Robert.
5 And there's an order and an agreement both. But David
6 may be right. Media people may have been out on the
7 street when it happened but it doesn't change what we
8 as officers of the Court and parties are bound to
9 observe.

10 MR. ROSEN: But as a court order it's a matter of
11 public record so, you know, if anybody wants to
12 violate it they can go ahead and do it. Just wait for
13 the result, you know.

14 MR. LEVENSON: So anyway, respectfully, you know,
15 she'll answer your question now that we are just
16 parties and lawyers in this room. But I think that we
17 have to be careful what we expose Deanna and her
18 husband and the remains of Mr. Brown to by our
19 actions.

20 Q. [Mr. Jackson] My question was: who is paying
21 Colonel Lee?

22 A. I don't know who's paying him.

23 Q. And--

24

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1 MR. BELL: And as soon as you get off of that
2 subject let us know because--

3 MR. JACKSON: Okay.

4 MR. BELL: --the two individuals can come back
5 in.

6 Q. [Mr. Jackson] Do you see Colonel Lee on a
7 regular basis?

8 A. Not regular but I do see him, yes.

9 Q. Is he one of several security people at your
10 residence?

11 A. Yes.

12 Q. Who are the others?

13 A. Mr. Carlos Jones; Carol Anderson I think her last
14 name is; and Mr. Ernest Hobson.

15 Q. How do you spell that, please?

16 A. H-O-B-S-O-N.

17 Q. Hobson, okay. Are they--are these security
18 people all employed by a security company or are they
19 employed by someone else or do you know?

20 A. I don't know who they're employed by.

21 Q. Did you--had you arranged through some security
22 company for their presence?

23 A. No.

24

25

1 Q. Has someone else done so for your--in your
2 behalf?

3 A. No.

4 Q. How is it that they have come to be the security
5 at your residence?

6 A. We asked them to come there.

7 Q. So you--when you say we, who is we?

8 A. We, my husband and family and my brothers and
9 sisters.

10 Q. Now, how did you choose these individuals,
11 Colonel Lee, Carlos James, Carol Anderson and Ernest Hobson
12 as--

13 A. Other than Mr. Hobson, they--other than Mr.
14 Hobson and Ms. Anderson, they worked for my dad.

15 Q. And does Colonel Lee oversee the other security
16 people by virtue of being named Colonel or is that just--

17 A. That's just--that's his title. That's his title;
18 that's not a title I gave him for that reason.

19 Q. Do you know of--

20 MR. JACKSON: I think we can invite everybody
21 else back in.

22 Q. [Mr. Jackson] Unless Officer Sterling has any
23 relationship to your house. Does--

24

25

1 A. I'm sorry?

2 Q. Officer Sterling, he doesn't have any
3 relationship to your house, does he?

4 A. Officer Sterling.

5 Q. Yeah.

6 A. No.

7 [Mr. Shawn Thomas and Ms. Velma Brown Whitley
8 enter the conference room.]

9 MR. BELL: Lewis, do you contend that those
10 questions got into the interment?

11 MR. LEVENSON: I believe her answer did, yes.

12 MR. BELL: Just the name of the security guards
13 at the place, because that--those were identified
14 before you raised the point. The only thing I
15 understood you objected to was the question concerning
16 who paid for their services. And I think she said she
17 didn't know. So my question to you is, is there
18 anything that was disclosed that you believe is
19 covered by--

20 MR. LEVENSON: Yes, I do.

21 MR. BELL: Did you tell us--

22 MR. LEVENSON: I think the answer--

23 MR. BELL: So--

24

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1 MR. LEVENSON: I think she indicated that Colonel
2 Lee was there protecting--I think the words were
3 gravesite or words to that effect. So it wouldn't
4 take--it wouldn't take, you know, a brain surgeon to
5 figure out what gravesite they're talking about.

6 MR. BELL: Just so that we understand, nobody can
7 be in violation of the order. You understand that
8 that's the portion of her testimony that you believe
9 is covered by a confidentiality agreement.

10 MR. LEVENSON: I think it--I believe that that
11 and other related issues--the fact that Colonel Lee is
12 protecting the property along with the names that the
13 witness testified to would lead a reasonable person to
14 figure out what it is that's going on there which
15 would create a potential violation of the order and
16 harm or risk of harm to my clients, her husband and
17 most importantly--actually, that's not necessarily
18 most importantly. Equally importantly, the remains of
19 James Brown. We took great pains to create this with
20 approval of the Court and with the consent of Robert's
21 client who had an arguable interest in the disposition
22 of Mr. Brown's remains. And so that was my concern
23 and I still have that concern.

24

25

1 MR. JACKSON: Madame Court Reporter, could I ask
2 that you take from the words Colonel Lee when I first
3 asked them through this last statement today and seal
4 that portion of the record separately. Thank you.

5 MR. LEVENSON: Do you have any idea as to how
6 much longer you're going to be, sir?

7 MR. JACKSON: I'd say 30 minutes to an hour.
8 Would you like to take a break or recess for lunch? I
9 don't know what time it is.

10 MR. BELL: It's eleven o'clock. Let's try to
11 finish before lunch.

12 MR. LEVENSON: Okay. Let's move through then as
13 quickly as possible.

14 MR. RICHTER: And, folks, just for scheduling
15 purposes--this is Ronnie Richter. I probably have ten
16 minutes, maybe 15.

17 MR. ROSEN: Yeah. I've probably got 10 or 15
18 myself. This is Robert Rosen.

19 Q. [Mr. Jackson] Ms. Thomas--

20 THE WITNESS: Excuse me for a second.

21 [Off record momentarily.]

22 Q. [Mr. Jackson] You in your prior testimony
23 mentioned that you and your dad started Deanna Inc.

24

25

1 A. Yes.

2 Q. What did your dad do in relationship to Deanna
3 Inc.?

4 A. He had his lawyer at the time, Mr. Reginald
5 Simmons, just form the corporation for me.

6 Q. Did your--so he--did he pay Mr. Simmons to do
7 that?

8 A. Yes, I assume he did.

9 Q. When was the corporation formed?

10 A. In the early >90s.

11 Q. And what state was it formed in?

12 A. South Carolina.

13 Q. Was it ever qualified to do business in Georgia?

14 A. Yes.

15 Q. When was that?

16 A. I don't exactly know when.

17 Q. In the early >90s likewise?

18 A. No, not that soon.

19 Q. Not that soon. Would it be about the same time
20 it was formed or you--

21 A. No. Later.

22 Q. Later. How much later?

23 A. I don't exactly know the date.

24

25

1 Q. Well, can you give me an approximation.

2 A. No, actually I can't >cause I don't exactly know
3 when, like I said. It's been done since early >90s.

4 Q. Deanna Inc. owns T&T Transport Company; is that
5 right?

6 A. Transportation, yes.

7 Q. Transportation Company. And that's out on
8 Sandbar Ferry Road here in Augusta?

9 A. Yes, it is.

10 Q. How long has T&T Transportation Company been in
11 business?

12 A. A couple years, about two years.

13 Q. And--

14 A. Yeah. T&T about two years.

15 Q. And then you also said Value Furniture Company &
16 Appliance?

17 A. Yes.

18 Q. And how long has it been in business?

19 A. A year.

20 Q. One year?

21 A. Yes.

22 Q. And does Deanna Inc. own any other businesses
23 other than T&T Transportation Company and Value Furniture &
24

25

1 Appliance?

2 A. No.

3 Q. Who are the officers--excuse me. Is Deanna Inc.,
4 I assume, a regular corporation? Does it have a board of
5 directors and officers?

6 A. No. It--well, officers, yeah.

7 Q. Who are the officers?

8 A. I am president and my mother is secretary.

9 Q. Does it have directors?

10 A. No.

11 Q. Did your father ever have an office or a
12 directorship in that company?

13 A. No.

14 Q. Did he ever invest any of his money in Deanna
15 Inc.?

16 A. No.

17 Q. Where did the money for Deanna Inc. assets--I
18 assume it has assets--with T&T Transportation and Value
19 Furniture Company & Appliances--where did it obtain its
20 money to acquire its assets?

21 A. Bank loan.

22 Q. A bank loan?

23 A. Yes.

24

25

1 Q. Who was--which bank is that?

2 A. First Bank.

3 Q. And where is that located?

4 A. Walton Way.

5 Q. And is there a particular officer that approved
6 the loan?

7 A. Cedric Johnson.

8 Q. Between the early >90s and two years ago when T&T
9 Transportation Company was started and about a year ago
10 with the Value Furniture & Appliances, what did Deanna Inc.
11 from the early >90s do as far as a business?

12 A. Well, actually, we--in the early >90s?

13 Q. You said it was formed--

14 A. Entertainment.

15 Q. Entertainment?

16 A. Yes. When I did--if I did something, I was paid,
17 Deanna Incorporated, if I did some entertainment work.

18 Q. And so it was in--it was your entertainment
19 corporation prior to about two years ago?

20 A. Actually, it was an entertainment corporation
21 prior to more than two years ago, but T&T started about
22 close to two.

23 Q. Do you still use Deanna Inc. as an entertainment
24
25

1 company?

2 A. Yes.

3 Q. And what kind of entertainment company do you do?

4 Do you do like your father and go on the road?

5 A. If I host a show or do an appearance I am paid
6 that way.

7 Q. So--okay. So you're paid by having--hosting a
8 show, they actually would write a check to Deanna Inc.?

9 A. Yes. If I tell them that's who they need to
10 write it to, yes.

11 Q. Did your father ever have shows with you and then
12 have the payment go to Deanna Inc.?

13 A. I have been on the road with him and he paid
14 Deanna Inc., yes.

15 Q. When you say he paid Deanna Inc., would it
16 possibly have been a payment from one of his affiliated
17 companies such as James Brown Enterprises?

18 A. Yes.

19 Q. Did James Brown Enterprises ever pay for your
20 costumes while you were on the show--on the road?

21 A. Not to my knowledge, no.

22 Q. Who paid for your costumes?

23 A. If I were--my dad every now and then may buy me
24
25

1 something, just being his daughter.

2 Q. Uh-huh.

3 A. But I would have my own clothes.

4 Q. You were saying that you didn't--if I recall your
5 testimony correctly and please forgive me if I don't and
6 you correct me. I recall that you said you didn't actually
7 discover the cashier's checks that you maintain were put in
8 the safe?

9 A. No, I didn't.

10 Q. Did you ever see the cashier's checks?

11 A. I saw an envelope. I didn't see the actual
12 check.

13 Q. You saw an envelope?

14 A. Yes.

15 Q. And who represented to you what was in the
16 envelope?

17 A. I can't remember exactly who it was, honestly.
18 But I know they went to the vault.

19 Q. You know the envelope went to the vault?

20 A. Yeah. The cashier's checks went to the vault. I
21 don't know exactly who discovered them or who actually put
22 them in. I don't remember.

23 Q. Well, let me see what you do remember. You
24
25

1 remember an envelope?

2 A. Uh-huh.

3 Q. Where did the envelope come from?

4 A. I don't know.

5 Q. Did it come from within the house?

6 A. I assume so, yes.

7 Q. Who had--did you ever have your hands on the
8 envelope?

9 A. No.

10 Q. So you saw the envelope laying on a counter or
11 somebody else had it in their hand?

12 A. I can't remember exactly.

13 Q. How do you know what was in the envelope?

14 A. I was told that it was checks in the envelope and
15 I can't remember who told me, exactly who, that night or
16 when it was.

17 Q. When you say that night, was this on the 26th ?

18 A. Yeah. I'm thinking that night. I'm not for sure
19 but I believe that was the night.

20 Q. And did you actually see someone put that
21 envelope in the safe?

22 A. No.

23 Q. So when you--

24

25

1 combination, at least as far as their knowledge of safes?

2 A. Right. But when the Dixie Lock man came there,
3 he gave him the combination and the Dixie Lock man opened
4 it right up.

5 Q. So they didn't know how--they had the numbers.
6 They just didn't know whether to go right or left or--

7 A. Right.

8 th
9 Q. And after the 26 through the middle of March
10 only you and your sister Yamma had the safe combo; is that
11 right? And Dixie Lock & Safe.

12 A. Yes.

13 Q. When was it--as I understand it the--you don't
14 know what the other documents in the safe might be, other
15 than what might show on the videotape?

16 A. Right.

17 Q. When they videotaped the contents of the safe did
18 they remove the items and put them back in the safe so that
19 they could get a clear videotape or did they just take a
20 photograph and the items were not removed on the 26 ?
th

21 A. Some items came out and went back in. Not all
22 items came out.

23 Q. Are you aware of your sister Yamma going into the
24 house without Mr. Dallas or Mr. Cannon or--and the security
25

1 guard, Mr. Sterling?

2 A. No.

3 Q. Are you aware that she went to the house with--

4 A. On--she went with me on a day to clean, yes.

5 Q. Were you with your sister during the whole period
6 of time that you cleaned?

7 A. For the most part, yes.

8 Q. What part wasn't--you weren't with her?

9 A. I mean sometimes she might have been in the
10 bathroom cleaning and I may have been someplace else
11 cleaning.

12 [Mr. David Bell exits the conference room.]

13 Q. Was there ever an opportunity that she would have
14 had enough time in the laundry room to open the safe with
15 the combination and then shut it back up without your
16 presence?

17 A. It could but I--that's not to my knowledge.

18 Q. And then I think you've testified somewhere in
19 nd
20 the two-week period following January 2 , 2007, Yamma came
21 one time. Was that the time you're referring to that--

22 A. Yes.

23 Q. --you accompanied her?

24 A. Yes.

25

1 Q. Do you know if she ever came an additional time
2 without your presence?

3 A. No.

4 Q. Have you ever heard that she might have come
5 additional times?

6 A. No.

7 Q. Do you know the whereabouts of the Hubert
8 Humphrey memorial scrapbook that your father and Hubert
9 Humphrey had made together?

10 A. No.

11 Q. Are you familiar with the scrapbook that your
12 father had pertaining to his experiences with Hubert
13 Humphrey?

14 A. No.

15 Q. You don't know about that scrapbook?

16 A. No.

17 Q. Are you aware of the whereabouts of any of his
18 watches or jewelry that he--

19 A. They should be in the home.

20 MR. LEVENSON: Why don't you let him finish the
21 full question.

22 THE WITNESS: Oh, I thought he was done. Sorry.

23 Q. [Mr. Jackson] When you say they should be in the
24
25

1 home--

2 A. That's where I last seen them.

3 [Mr. David Bell enters the conference room.].

4 Q. Do you or your sister or any other member of the
5 family that you've heard of have possession of the lifetime
6 achievement award from the Grammys?

7 A. No.

8 Q. You said that you didn't see that. Was
9 that--excuse me. You said you didn't see some award from
10 the Grammys when you went back to the house in September of
11 this year.

12 A. That was--yes.

13 Q. Is that the lifetime achievement award from the
14 Grammys?

15 A. I don't know.

16 Q. Do you know the whereabouts of the cap and honors
17 awarded by Paine University to your father?

18 A. Do I know?

19 Q. Yes. Do you know where they may be?

20 A. No.

21 MR. LEVENSON: Is this the one that was--are you
22 referring to the one conferred at the memorial service
23 or the one conferred previously?

24

25

1 MR. JACKSON: The one conferred previously by
2 Paine University.

3 MR. LEVENSON: That's the better question for you
4 because there was some--

5 A. At the--yeah. At--now, which one?

6 MR. LEVENSON: Well, he's talking about the one
7 before the memorial service.

8 A. No.

9 Q. [Mr. Jackson] Do you or your sister or any
10 member of your family to your knowledge have any personal
11 memorabilia of your father that was acquired after December
12 th
13 25 , 2006, the day he died?

14 A. I have things that were given to me.

15 Q. What are those?

16 MR. LEVENSON: Well, the question is before
17 th
December the 25 .

18 MR. JACKSON: No. After December 25th .

19 MR. LEVENSON: After.

20
21 Q. [Mr. Jackson] After December 25th ?

22 A. Gifts that people have given to me.

23 Q. What has been given to you and by whom?

24 A. I don't know. I mean I've gotten cards, I've
25 gotten different little plaques. A lot of little,

1 different things that's been given to me.

2 Q. How about personal memorabilia your sister Yamma
3 may have that you've seen that she acquired after December
4 th
5 25 , 2006?

6 A. I don't know.

7 Q. The--when you said you went through the house on
8 th
9 September 17 , 2007, you said that there was some bedroom
10 furniture, a dresser and a bed, that appeared to be
11 missing. Would that--an explanation for that be that that
12 was the bed that Little Man or his mother used and was put
13 in the POD?

14 A. The bedroom furniture that I was speaking of was
15 the room that had some of Little Man's things in it, yes.

16 Q. And were you there when those items were
17 transferred and sealed into the POD for disposition to--

18 A. No. I don't know where they are.

19 Q. You don't know where they are?

20 A. No.

21 Q. Do you know whether they're in the POD?

22 A. I don't know where they are.

23 Q. But those would be the items that--

24 A. Yes.

25 Q. --you were talking about would be the bedroom

1 suite furniture for Little Man?

2 A. Yes.

3 Q. And/or his mother?

4 A. Yes.

5 Q. You also mentioned some furniture in the front
6 room. Is that the first room that you walk into that
7 used--that was the old porch of your dad's house that has
8 now been added on or is that--

9 A. Yes.

10 Q. What furniture in the front room did you notice
11 was missing? Can you describe it for me, please.

12 A. It's like an antique desk. When you walked in
13 the front door it would be right to the right.

14 Q. And an antique desk. What--when you say it's
15 antique, could you give me an approximate age?

16 A. It's wood. I don't know an age. It's wood,
17 mahogany wood.

18 Q. It's mahogany. You also described some rewards
19 and I think we've talked about the Grammy. Could you give
20 me any other descriptions of anything you maintain may be
21 missing from the house that was there when you first saw it
22 and was not there or in the same place on September 17th,
23 2007?
24
25

1 A. As I said before, I know an NAACP award. It was
2 on the wall and I remember a Grammy award that was on the
3 wall that was not on the wall when we went on September
4 th
5 17 .

6 Q. And which walls are we talking about so that I--

7 A. It would be called the family den area.

8 Q. The family den area where--

9 A. That's the room right off that--the next room you
10 walk into once you walk through the foyer. It's the next
11 room you walk into.

12 Q. Oh, in the family den room. That's where there's
13 a little bar on the left?

14 A. Yes. You know about the bar.

15 Q. Well, and the kitchen on the right. And you
16 mentioned two cars were sold. Which two cars are you
17 referring to?

18 A. Lincoln Navigator and a 300 Chrysler.

19 Q. Your lawyer has filed a motion to remove the
20 personal representatives of the estate. Could you tell me
21 all the facts that you know of that support the motion to
22 remove my clients.

23 A. No. I can't say all the facts.

24 Q. Well, tell me the facts as you know them.

25

1 A. In terms of reasoning?

2 Q. Yes. What has--what are the facts that support
3 the motion that you know of?

4 A. They've already come out in court, a lot of them.

5 Q. Well, could you tell me which ones that you
6 maintain are--that support the motion from your standpoint?

7 A. That they have not held up to their fiduciary
8 duty as trustees or personal representatives to handle the
9 business of James Brown.

10 Q. That's a very broad statement. What is their
11 fiduciary duties or duty that they have not met?

12 MR. LEVENSON: If you know. And this is not
13 based on anything that your attorney has told you.

14 A. Well, things that we have asked for, accounting,
15 is not--has not been addressed properly.

16 Q. [Mr. Jackson] Okay, accounting.

17 A. And just from the--from the initial reasoning of
18 me having to sign a paper because Mr. Dallas and Mr. Cannon
19 felt like Mr. Bradley was not--did not have the whatever
20 effect that he needed to be a trustee led me to believe
21 that there was some problem there. So--

22 Q. Did they--what problem--I'm sorry. I didn't mean
23 to interrupt you. Were you finished?

24

25

1 A. Well, that was--that was a reasoning there, that
2 they didn't trust him at the time enough to ask me to sign
3 a paper to be a trustee. So they didn't trust him and, you
4 know, they worked with him in terms of this. That let me
5 know that I didn't need to trust him.

6 Q. The accounting and they led you to believe that
7 they didn't trust Mr. Bradley.

8 A. Yes.

9 Q. Any other facts that you maintain support the
10 motion to remove?

11 A. When they was at my home they--and I say they. I
12 mean Mr. Dallas and Mr. Cannon. Wanted my sister and I to
13 pretty much--me and my sister being Yamma--to be a part of
14 the trust and wanted to exclude our brothers and sisters
15 and we did not agree with that. We told them that we were
16 a family and we were working together. So when they
17 offered to give me and my sister percentages on income--we
18 don't know which income or what--we turned it down because
19 we did not want to exclude our brothers and sisters.

20 Q. What percentages?

21 A. Five percent per person.

22 Q. And you don't know of what income?

23 A. Don't know. They said everything so that--we
24
25

1 don't know what everything is.

2 Q. Who made this statement?

3 A. Mr. Cannon and Mr. Dallas.

4 Q. And when was this? Was this December 26th or was
5 it some time later?

6 A. This was December 27th.

7 Q. 27th. And who all was present during this meeting
8 with Mr. Cannon and Mr. Dallas in addition to you? Was
9 your sister Yamma there?

10 A. Yes.

11 Q. Anybody else?

12 A. My husband Shawn Thomas, her husband Darren.

13 MR. LEVENSON: Say who her is.

14 A. Yamma's husband--exhusband Darren.

15 Q. [Mr. Jackson] And were Mr. Thomas and Yamma's
16 exhusband Darren--when I asked you if they were there, were
17 they involved in the conversations or witnesses to the
18 conversation or--

19 A. Witnesses to the conversation, yes.

20 Q. When you say accounting, what--as one of the
21 reasons or factual bases to--that you seek the removal of
22 Mr. Cannon--I mean Mr. Dallas and Mr. Bradley, what
23 accounting are you referring to? Accounting of what?

24
25

1 A. Accounting of my dad's business.

2 Q. And what--is this--when you say dad's business,
3 can you be specific. Are you talking about--

4 A. All of his business.

5 Q. All of his business?

6 A. All of his business.

7 Q. For what period of time?

8 A. From the time it started. Well, I'll tell you.
9 From at least dated back to when this trust was begun
10 August of 2000.

11 Q. So you're looking for an accounting of the trust?

12 A. I'm looking for--we would like to see an
13 accounting of all his business.

14 Q. All his business?

15 A. Not just the trust.

16 Q. Can you--when you--all of his business, is that
17 his music business?

18 A. Yes, yes.

19 Q. Is it also accounting of his interests, say for
20 example, in--I understand there was House of Blues stock.
21 Does he receive any income or do you know from the House of
22 Blues?

23 A. That's why I say all his business because I don't
24
25

1 know.

2 Q. Do you--other than the accounting are you
3 maintaining that the--an accounting prior--are you
4 maintaining the personal representatives need to account
5 for anything from the date of their appointment forward? I
6 think I understand your--that you want an accounting of all
7 his business from 2000 forward for the trust.

8 A. For all his business including the trust.

9 Q. Including the trust. And what have you--have you
10 gotten any information or provided any information as far
11 as that accounting?

12 A. Not completely.

13 Q. Not completely. In what regard do you contend
14 it's incomplete?

15 A. It hasn't been done completely. We have--I have
16 not seen an accounting of all of his business in complete.

17 Q. Can you be more specific as to what--

18 A. Where the money went; who was disbursed money;
19 what was earned here; what was spent here; et cetera.

20 Q. Now, as far as--have you been provided everything
21 that--as far as the trust accounting goes?

22 A. No.

23 Q. What in respect to the trust accounting do you
24
25

1 contend has not been provided?

2 A. That would be a legal question that I really
3 can't answer but I know that we have not received
4 everything.

5 Q. What would you say you're looking for just in
6 layman's terms that you think is missing as far as the
7 trust material that's been provided?

8 A. As far as the trust material--

9 Q. Yeah.

10 A. --provided?

11 Q. Right.

12 A. The original.

13 Q. The original trust document?

14 A. Yes.

15 Q. Anything else in addition to the original trust
16 document that hasn't been provided as far as the
17 irrevocable trust of 2000?

18 A. Well, no. But with the original you would know
19 what everything is; without the original you don't.

20 Q. Concerning the personal representatives, are you
21 seeking--this being after your father's death till today.
22 Are you seeking any additional information as to their
23 activities as far as personal representatives that you

24

25

1 haven't received for an accounting?

2 A. I think that's another legal question.

3 MR. LEVENSON: Just if you know, you know. If
4 you don't, you don't.

5 A. No. I can't say for sure.

6 Q. [Mr. Jackson] Tell me what you think then
7 that--if there's something missing that needs to be
8 provided.

9 A. Well, again, like I said, there are things
10 missing from the home. The original trust documents that
11 we could--that we need to see.

12 Q. Have you covered what you maintain--you said
13 missing but I think your testimony was that you didn't know
14 whether they were missing or not, that you just didn't see
15 th
16 them on September 17 . Do you maintain now that they were
17 missing actually from the home?

18 A. I did not see them.

19 Q. You didn't see them. And we're talking about the
20 beds and bedroom suite for Little Man and--

21 A. And a couple tables, yes.

22 Q. And a couple of tables and the antique desk in
23 the foyer as you come in.

24 A. Those are just things that I can remember right
25

1 now. There may be others.

2 Q. There may be others. Have you compiled a list of
3 what is missing?

4 A. No, I have not compiled a list. I was told that
5 stuff was there from the storage and there are things that
6 I'm aware that was in the storage that I did not see at the
7 home. For example, an organ, a red organ, the Godfather
8 organ, that we have questioned about and no one knew the
9 answer.

10 Q. There's two organs in what I would call the big
11 bar room that I've seen, one of which is now black. Could
12 that have been recovered?

13 A. No.

14 Q. Is there a third organ that you're looking for,
15 the red organ, and where was it located in the home?

16 A. It was actually located in the storage.

17 Q. Oh, in storage?

18 A. Yes.

19 Q. And what storage?

20 A. Storage in Augusta.

21 Q. In Augusta?

22 A. Uh-huh.

23 Q. And the organ in storage in Augusta, can you tell
24
25

1 me >cause I just don't know--is there more than one storage
2 unit?

3 A. There was more than one storage, yes.

4 Q. Which storage unit in Augusta--

5 A. I don't exactly know. I know that there was more
6 than one storage. There were three storage buildings, if
7 I'm not mistaken.

8 Q. And you--

9 A. All of the contents of those things, have not
10 been--have not been--we have not seen anything on that.

11 Q. So you haven't seen the contents of the three
12 storage buildings in Augusta and you say one of them
13 contained a red organ?

14 A. Yes.

15 Q. Can you tell me the size of the organ that you
16 maintain may be missing?

17 A. It's a pretty big organ. It's red leather and it
18 has Godfather on it. I know it was dear and precious to
19 him.

20 Q. It has Godfather on it?

21 A. Yes.

22 Q. Any other items that you maintain in the--that
23 may be missing other than you've already testified to in
24
25

1 storage units in Augusta?

2 A. We have not, again, received anything that--any
3 type of inventory to know what was there. And that's part
4 of what we have asked for, inventory.

5 Q. You testified earlier about your father had the
6 marriage to Tomi Rae annulled.

7 A. Yes.

8 Q. When--tell me when that was and what you know
9 about it that that occurred.

10 A. Well, I know that there was a problem at the home
11 and from that problem that occurred at the home Dad had his
12 marriage annulled after that. And the reason I know that
13 is because he said that that's what he was doing.

14 Q. And do you know if he went to a court to do that
15 or what did he say?

16 A. I don't exactly know how it was done.

17 Q. Just so I'm clear, you're talking about the
18 marriage Tomi Rae had with--that was ceremonial with your
19 father--

20 A. Yes.

21 Q. --James Brown that was annulled?

22 A. Yes.

23 MR. JACKSON: Might I have just a moment to
24
25

1 confer with my clients, please.

2 [Brief recess.]

3 Q. [Mr. Jackson] Did you or someone else at your
4 direction remove any band members' uniforms from the James
5 Brown bus lines?

6 A. Not to my knowledge.

7 Q. Did Danny Ray get any capes--

8 MR. LEVENSON: Tomi Rae.

9 MR. JACKSON: Huh?

10 A. Uh-uh.

11 MR. LEVENSON: Tomi Rae.

12 MR. JACKSON: No. It's Danny Ray.

13 Q. [Mr. Jackson] Did Danny Ray, to your knowledge,
14 have any capes that were used by your father or owned by
15 your father?

16 A. I was told that he did keep the uniform, did keep
17 the capes, because that's what Dad wanted him to do.

18 Q. And just so everybody--

19 MR. RICHTER: I couldn't hear. Could you repeat
20 that answer.

21 A. Dad did instruct Mr. Danny Ray to keep the capes
22 or keep some capes. I don't know which capes.

23 Q. [Mr. Jackson] And this was after--Danny Ray kept
24
25

1 these after your father's death?

2 A. He's kept them, yeah.

3 Q. For the record, who is Danny Ray?

4 A. The MC for the James Brown Show and Dad's friend
5 for more than 50 years.

6 Q. The furniture--when we refer to Pop's house, do
7 you know who we're referring to?

8 A. Yes.

9 Q. That's Mr. Brown's father; right?

10 A. Yes.

11 Q. The furniture in Pop's house was taken by
12 someone. Do you know who?

13 A. Oh, really. No, I don't.

14 Q. Shortly after Mr. Brown's death you and your
15 mother took a long vacation in the Carribean; is that
16 correct?

17 A. No.

18 Q. No. Well, did your mother go to the Carribean?

19 A. No. Maybe she did. I don't know. I don't know
20 my mother's business.

21 Q. Have you traveled with your sister on--throughout
22 the US since your father's death?

23 A. Yes.

24

25

1 Q. Who provided the funds or did you provide the
2 funds to do that traveling?

3 A. I bought my ticket.

4 Q. And with what funds did you buy your ticket?

5 A. My funds that I work for every day.

6 Q. And you stayed at five-star hotels in quality
7 places that were highly expensive, did you not?

8 A. I don't know what you consider a quality hotel.
9 I stayed at a hotel.

10 Q. How much was--

11 A. I don't know.

12 Q. --the nightly rate?

13 A. I don't remember.

14 Q. Well, give me a range. Can you?

15 A. I have no idea.

16 Q. You have no idea what you paid for them?

17 A. I paid for them but I can't remember what they
18 cost.

19 Q. Can you tell me the names of the hotels you
20 stayed at?

21 A. Where?

22 Q. In New York when you were up there for the
23 depositions in New York City.

24

25

1 A. For what depositions?

2 Q. For all of them. How many depositions did you
3 attend in New York?

4 A. I've attended two.

5 Q. For the first one where did you stay?

6 A. The first one I stayed at the Sheraton--no. I
7 stayed at the Crowne Plaza.

8 Q. And is that in Manhattan?

9 A. No, it's not.

10 Q. Where is it located?

11 A. It's in Flushing.

12 Q. Flushing. And for your second deposition where
13 did you stay?

14 A. Crowne Plaza.

15 Q. In Flushing?

16 A. Yes.

17 Q. Did you--in addition to attending depositions,
18 have you taken any other trips since your father's death?

19 A. Yes, I have.

20 Q. Tell us where you've traveled, please.

21 A. I have traveled to California. I have traveled
22 to the Bahamas. I have traveled to New York.

23 Q. Any other places?

24

25

1 A. Not that I can remember.

2 Q. When was the trip to California?

3 A. I've done several trips to California.

4 Q. How many trips to California when you say
5 several?

6 A. I don't know how many.

7 Q. Were those trips for personal--pleasure or
8 business?

9 A. Both.

10 Q. Both. Which--how many trips were for business to
11 California?

12 A. Each time it's pleasure and business.

13 Q. Each time is pleasure--okay. What is the
14 business aspects of the trips to California?

15 A. Business aspects.

16 Q. Yes.

17 A. Sitting down talking with people about my career.

18 Q. Your career in music--

19 A. Entertainment.

20 Q. --or entertainment? Entertainment, okay. You've
21 traveled to the Bahamas. What was the purpose of that trip
22 or trips?

23 A. That was pleasure.

24

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1 Q. Where did you go in the Bahamas?

2 A. Nassau.

3 Q. And where did you stay?

4 A. Atlantis.

5 Q. How long were you in the Bahamas?

6 A. About four days.

7 Q. Did you stay in a room or a suite?

8 A. Small suite, I guess.

9 MR. LEVENSON: I assume, Stan, that Ms. Thomas'
10 personal spending habits are discoverable and likely
11 to lead to other discovery and relevant to this case
12 in some manner. Obviously we've got probably
13 \$5,000-an-hour-worth of lawyers' time sitting in this
14 room and we're willing to certainly allow you to ask
15 any questions subject to the stipulations we've made.
16 But there is some limit to what discovery is entitled.

17 MR. JACKSON: I think I've read the rules some
18 time in my life, Mr. Levenson.

19 MR. LEVENSON: I'm not going to allow her to
20 answer questions about her personal finances unless
21 you can make some showing that it's arguably
22 discoverable and/or relevant to this case. And I
23 would be happy to adjourn the deposition and get
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25

1 direction from the Court if you're going to inquire
2 into Mr. and Ms. Thomas' personal matters.

3 MR. JACKSON: Well, there's been questions of Sky
4 Miles that we're trying to figure out.

5 MR. LEVENSON: Well, then why don't you ask her
6 if she's used Sky Miles that belong to the estate, if
7 that's the issue?

8 MR. JACKSON: Well, I was--I'm getting to that.
9 I want to find out the number of trips and then find
10 out--so I mean I'm--that's where I'm headed so now
11 everybody knows.

12 Q. [Mr. Jackson] So you've been to New York twice.
13 You've been to the Bahamas once?

14 A. Yes.

15 Q. Since your father's death. And you've been to
16 California how many times?

17 A. I don't know.

18 Q. Multiple times?

19 A. Yes.

20 Q. And the--did you receive any assistance on those
21 travels from any of your family members, say, your sister
22 Yamma?

23 A. No.

24

25

1 Q. Did you have access to any Sky Miles that your
2 father had?

3 A. No.

4 Q. Who--do you know who would have had access to
5 your father's Sky Miles account with the airlines?

6 A. Charles Bobbitt and of course the personal
7 representatives.

8 Q. Did you make any loans to your mother for her
9 travels or any advances?

10 MR. LEVENSON: The question is did she personally
11 pay any part of her mother's travel expenses.

12 MR. JACKSON: Yes.

13 MR. LEVENSON: You can answer that question.

14 A. I may have.

15 Q. [Mr. Jackson] When you say you may have, do you
16 know how much you--

17 A. No.

18 MR. BELL: How much longer have you got, Stan?

19 MR. JACKSON: Two or three minutes, at most. I
20 think I'm about through. Matter of fact, I think I am
21 through.

22 MR. LEVENSON: Robert, did you want to ask any
23 questions? Robert. I guess not. Anyone else have
24

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1 any other questions for Ms. Thomas while she is
2 present and ready to be deposed?

3 MS. LEWIS: I do.

4 MR. RICHTER: And this is Ronnie Richter, Lewis.
5 I do have a few questions if no one else there has.

6 MR. LEVENSON: Well, go ahead. Why don't you do
7 that, Ronnie, and then Ms. Lewis will handle that when
8 you're done.

9 MR. RICHTER: All right.

10 //

11 EXAMINATION

12 BY MR. RICHTER:

13 Q. Ma'am, would you consider your father a smart
14 business man? I'm sorry?

15 A. A smart business man.

16 Q. Yes.

17 A. I think he was very knowledgeable.

18 Q. Was he--did he understand how and when he got
19 paid?

20 A. I can't answer that.

21 Q. Do you know if he knew what he got paid?

22 A. I can't answer that, either.

23 Q. Were you aware of any difficulty he had with the
24
25

1 IRS?

2 A. No, not--not to my knowledge.

3 Q. So you have no knowledge that at one point in
4 time he arguably owed the IRS upwards of \$20 million?

5 A. I don't know anything about that.

6 Q. Did he ever express to you any appreciation he
7 had for Mr. Cannon for his work in resolving whatever
8 issues he had with the IRS?

9 A. No, sir.

10 Q. What was your father's relationship with David
11 Cannon?

12 A. Business relationship.

13 Q. Did he ever express to you that he considered Mr.
14 Cannon a friend?

15 A. No.

16 Q. Did he ever express to you any affection for Mr.
17 Cannon?

18 A. No.

19 Q. What is your knowledge of the services that Mr.
20 Cannon provided for your father during his lifetime?

21 A. Business manager, accountant.

22 Q. Did anyone else perform those same functions, to
23 your knowledge?

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1 A. Although Mr. Dallas was his lawyer, he had
2 business--he was working with Mr. Cannon closely, as well
3 as Mr. Bradley when he was there. He was a business
4 manager as well.

5 Q. Did your father maintain an office in his home?

6 A. No.

7 Q. Did he maintain an office outside of his home?

8 A. Yes.

9 Q. Early in your deposition I think you were asked
10 questions about your father's understanding of his estate
11 and what his intentions were. Do you remember those
12 questions?

13 A. No.

14 Q. Do you believe that your father, at or near the
15 time of his death, understood what was in his estate or
16 what would become a part of his estate upon his death?

17 A. No.

18 Q. Do you think he knew what he owned?

19 A. No.

20 Q. Why do you say that?

21 A. Not completely.

22 Q. Why do you say that? What is the basis upon
23 which you say that?

24

25

1 A. Well, he felt as though he owned, for example,
2 Seventh Decade.

3 Q. How do you know that?

4 A. Just in hearing conversations. Not necessarily
5 talking directly to me but in conversations.

6 Q. Is it your testimony that your father told you at
7 some point in time that he owned Seventh Decade?

8 A. I said that he did not tell me directly. I heard
9 conversation.

10 Q. From whom did you hear that your father had an
11 understanding that he owned Seventh Decade?

12 A. I heard him talk about it.

13 Q. And to whom was your father speaking?

14 A. My brother Darrell, Charles Bobbitt.

15 Q. What did he say to your brother regarding Seventh
16 Decade?

17 A. I don't know what he said to my brother exactly.

18 Q. What did he say to anyone that led you to believe
19 that he was operating under the impression that he owned
20 Seventh Decade?

21 A. Well, in conversation.

22 Q. Were these conversations that you were a party
23 to?

24

25

1 A. Yes. I did hear--

2 Q. Who were the parties to the conversation?

3 A. Yes. I did hear a conversation.

4 Q. Who were the parties to the conversation?

5 A. Darrell Brown and Charles Bobbit.

6 Q. James Brown was not a party to the conversation?

7 A. Yes.

8 Q. What--did you hear James Brown say anything
9 regarding Seventh Decade?

10 A. Other than--I can't exactly remember exactly what
11 he said, but in conversation that's what I gathered.

12 Q. But, ma'am, I have to be more specific than what
13 you gathered in conversation. I'm asking you during any
14 conversation did you personally hear James Brown say
15 anything with respect to the ownership of Seventh Decade?

16 A. I can't exactly be sure of what he said. In
17 conversation that subject came up.

18 Q. Then your testimony is that you cannot say what
19 he said?

20 A. Exactly, no.

21 Q. Was your father a strong-willed man?

22 A. In terms of?

23 Q. Was that his personality? How would you describe
24
25

1 his personality?

2 A. Yes, he was strong-willed.

3 Q. Would you consider your father a generous man?

4 A. Yes.

5 Q. Did your father ever tell you anything about
6 Seventh Decade, what it was or what it did?

7 A. No.

8 Q. Did he ever say anything to you about how he was
9 paid by Seventh Decade?

10 A. No. Not directly, no.

11 Q. Do you have any personal knowledge that David
12 Cannon took any property of your father's that he was not
13 entitled to?

14 A. I have not witnessed anything.

15 Q. Do you have any personal knowledge that David
16 Cannon received from your father a dollar that he was not
17 entitled to receive?

18 A. Not to my knowledge.

19 MR. RICHTER: That's all I have. Thank you.

20 MR. ROSEN: I have a few questions if it's my
21 turn. This is Robert Rosen.

22 MR. LEVENSON: Sure. Go ahead, Robert.

23 MR. ROSEN: Do y'all want to take a break or do
24
25

1 you want me to go ahead?

2 MR. LEVENSON: No. We'd really like to finish as
3 soon as possible.

4 MR. ROSEN: Ms. Thomas, this is Robert Rosen. I
5 represent Tomi Rae Brown.

6 THE WITNESS: Yes.

7 EXAMINATION

8 BY MR. ROSEN:

9 Q. When did you first meet her?

10 A. 1998.

11 Q. And what was she doing at that time?

12 A. She was at my house.

13 Q. And what was the occasion?

14 A. She came with Dad for--he was coming to see the
15 house that me and Shawn had just moved in.

16 Q. And at some point they were involved in a
17 relationship; correct?

18 A. Yes.

19 Q. And when did their relationship begin?

20 A. I don't know.

21 Q. But at least by 1998 you were aware that they
22 were involved in a relationship?

23 A. Yes.

24

25

1 Q. Was it a monogamous relationship, to your
2 knowledge?

3 A. I don't know.

4 MS. LEWIS: Excuse me. Was that 1988 or >98?

5 THE WITNESS: >98.

6 Q. [Mr. Rosen] 1998. Were they living together?

7 A. No, not when I met her. No.

8 Q. Where was she living?

9 A. I don't know.

10 Q. Where was he living?

11 A. At 430 Douglas Drive, Beech Island.

12 Q. Beech Island. Is that the Beech Island house?

13 A. Yes.

14 Q. Now, at some point they moved in together?

15 A. Yes.

16 Q. When was that?

17 A. I don't know.

18 Q. And at some point she became pregnant?

19 A. Yes.

20 Q. And did he consider when she was pregnant that
21 that was his child at that time?

22 A. Yes.

23 Q. And the child was named James Brown II; is that
24
25

1 right?

2 A. Yes.

3 Q. And was he happy about the birth of the child?

4 A. Yes.

5 Q. Did he consider this child to be his son?

6 A. Yes.

7 Q. At any time did he ever tell you that he did not
8 believe that James was not his son?

9 A. No.

10 Q. In other words, at no time did he ever deny that
11 he was the father of James Brown II?

12 A. The only thing he said on that matter to me was
13 that people believe that he is not. And that was it. He
14 never acknowledged to me that he didn't. He didn't say
15 that.

16 Q. Well, he always acted as if Little Man was his
17 son?

18 A. Yes.

19 Q. And he referred to him as his son on numerous
20 occasions, both publicly and privately; correct?

21 A. Yes.

22 Q. Now, do you have an opinion about whether or not
23 he is his son?

24

25

1 A. No.

2 Q. Now, he and Tomi Rae were married on December

3 th
4 14 , 2001; is that correct?

5 A. Yes.

6 Q. Were you at the wedding?

7 A. Yes.

8 Q. Where was the wedding?

9 A. At 430 Douglas Drive, Beech Island.

10 Q. And as far as you know, the marriage was duly
11 performed by Reverend Larry Fryer; correct?

12 A. Yes.

13 Q. And there's a marriage license and certificate as
14 far as you know?

15 A. I don't know.

16 Q. Well, at the time did your father believe that he
17 was being legally married to Tomi Rae?

18 A. I don't know.

19 Q. Did he intend to be married?

20 A. Did he what?

21 Q. Did he intend to get married on that day when he
22 went through the ceremony?

23 MR. HARLING: Object to the form.

24 MR. JACKSON: Objection to the form. That's

25

1 outside the competency of this witness. But we object
2 to the form.

3 MR. ROSEN: I understand. But you can answer the
4 question.

5 Q. [Mr. Rosen] To your knowledge, did he intend to
6 be married on that day?

7 MR. JACKSON: Renew my objection.

8 MR. HARLING: Same objection.

9 MR. LEVENSON: You can answer it if you know.

10 MR. ROSEN: But the witness is instructed to
11 answer.

12 MR. LEVENSON: I have instructed her, Robert, to
13 answer the question if she knows what her father's
14 intent was.

15 MR. ROSEN: Yes.

16 Q. [Mr. Rosen] Do you know the answer to that
17 question?

18 A. I don't know what his intent was. I know I saw
19 him marry her that day.

20 Q. Do you have any reason to believe that he went
21 through with a marriage ceremony without intending to be
22 married?

23 A. I don't know.

24

25

1 MR. HARLING: Object to the form.

2 Q. [Mr. Rosen] Do you have any reason to believe
3 that he went through a marriage ceremony and did not have
4 the intent to be married?

5 A. I don't know that either.

6 MR. JACKSON: I renew my objection.

7 MR. HARLING: Same objection.

8 MR. ROSEN: You can make the objections,
9 gentlemen. But the witness still needs to answer.

10 MR. LEVENSON: But they have to make their
11 objections, too, Robert. You know, and they've made
12 it. Now, go ahead and answer it if you can.

13 A. I don't know.

14 Q. [Mr. Rosen] Well, you know--you knew your father
15 well, I assume.

16 MR. LEVENSON: Is that a question?

17 Q. [Mr. Rosen] Did you know him well?

18 MR. LEVENSON: Is that a tough question for you?

19 A. You know what, everybody knew him for as much as
20 he allowed you to know him. That's all I can say.

21 Q. [Mr. Rosen] So you did not know him well?

22 A. I can't say that. I felt like I knew him well.

23 My brother Terry may feel like he knows him well. A lot of
24
25

1 people might say that but no one can say specifically that
2 James Brown, they knew him well. No one can say that.

3 Q. I guess what I'm saying is--I'm only asking you.

4 A. No, no. I can say it for me but--no, no.

5 Q. You did not know him well? I mean either you did
6 or you didn't. Do you feel like you knew your father?

7 A. Yeah, I knew him. I knew him well.

8 Q. Knowing your father as you did, do you believe he
9 would have gone through a wedding ceremony that was a sham?

10 MR. HARLING: Objection to the form.

11 MR. JACKSON: Object to the form.

12 MR. ROSEN: I understand. Answer the question.

13 MR. LEVENSON: Answer it if you can. Do you
14 believe he would have gone through a wedding if he
15 knew it was a sham, I think was the question.

16 A. He might. I don't know.

17 Q. [Mr. Rosen] Did he ever say that he did?

18 A. Say that he did what?

19 Q. Married Tomi Rae as part of a sham or some kind
20 of fraud?

21 A. No. He never told me that.

22 Q. Did he ever tell you that?

23 A. No, he never told me that.

24

25

1 Q. Now, did he seem happy at the wedding?

2 A. He seemed.

3 Q. Okay. Now, as far as you knew after the wedding,
4 he was married to Tomi Rae?

5 A. Yes.

6 Q. And did they hold themselves out as husband and
7 wife?

8 MR. HARLING: Object to the form.

9 A. Did they do what?

10 MR. LEVENSON: The question is did they--

11 Q. [Mr. Rosen] Did they tell people publicly that
12 they were married?

13 A. Yes.

14 MR. LEVENSON: That's a different question. I'm
15 going to object--

16 MR. ROSEN: Yes, it is.

17 Q. [Mr. Rosen] Did they hold themselves out to the
18 public as man and wife?

19 A. Yes.

20 Q. And as far as you know, did they both have the
21 intent to be married to each other at that time?

22 MR. JACKSON: Renew our objections.

23 MR. HARLING: Same objection.

24

25

1 MR. LEVENSON: Answer the question if you can.

2 Again, it's an intent question.

3 Q. [Mr. Rosen] Answer the question.

4 A. I don't know.

5 Q. You don't know, okay. And did they live together
6 after they were married?

7 A. Yes.

8 Q. Where did they live?

9 A. 430 Douglas Drive, Beech Island.

10 Q. And did they publicly live together as husband
11 and wife?

12 A. Yes.

13 Q. As far as you know, did they consummate their
14 marriage?

15 A. I do not know.

16 MR. ROSEN: Can we stipulate that they did?

17 MR. LEVENSON: No. We will not stipulate to
18 that. She--this witness has no knowledge of that.

19 It's not a joke. She's not going to establish any
20 prima facie element of anybody's case unless she has
21 personal knowledge of it. I mean, Robert, that's--I
22 mean you can ask her if she knows.

23 MR. ROSEN: She's a member of the public. She--

24

25

1 MR. LEVENSON: She'll--

2 MR. ROSEN: --witnessed them holding themselves
3 as husband and wife.

4 MR. LEVENSON: That's a different--consummation
5 is an entirely different question, Robert. If you
6 know the answer to the question then you answer it.

7 A. I don't know.

8 Q. [Mr. Rosen] Okay. Now, did they continue living
9 together off and on from that time forward until his death?

10 A. Yes.

11 Q. Now, at some point in time somebody told Mr.
12 Brown--probably Mr. Cannon--that Tomi Rae was actually
13 married to somebody else. Do you know anything about that?

14 A. I heard about it.

15 Q. What did you hear?

16 A. I heard she had another husband.

17 Q. And did you ever speak with your father about
18 that?

19 A. No.

20 Q. Now, you testified earlier that you believe that
21 he had his marriage to Tomi Rae annulled. Was that your
22 testimony?

23 A. Is that what?

24

25

1 Q. I couldn't tell whether you were confused about
2 it. Did he discuss with you his attempts to have Tomi Rae
3 annul her--

4 A. Yes.

5 Q. --purported marriage?

6 A. Yes. Now, he did say that, yes. Yes, he did say
7 that to me on a phone conversation. Yes.

8 Q. Can you recollect what he said?

9 A. I'm going to have it annulled.

10 Q. I can't hear you.

11 MR. LEVENSON: Be serious, be serious.

12 A. I'm going to have it annulled.

13 Q. [Mr. Rosen] Meaning her marriage to the first
14 husband, Javed Ahmed?

15 A. No. Meaning his marriage to Tomi Rae.

16 Q. All right. Do you know whether or not he ever
17 actually did that?

18 A. No. I don't exactly know what was done and how
19 it was done. He told me he was doing it. I took his word.

20 Q. Well, let me ask you this. Did he ever discuss
21 with you her getting an annulment from her purported first
22 husband, Javed Ahmed?

23 A. He did say he was going to have to leave her
24
25

1 alone or she was going to have to leave him alone or
2 something. I don't know. Something to that effect.

3 Q. Well, do you know whether or not he encouraged
4 her to get an annulment from the purported husband--

5 A. No. No, I don't.

6 Q. Well, hold on. Let me finish my question and
7 then everybody can jump up and down.

8 Do you know whether or not--did you ever have a
9 conversation with him about his efforts to secure an
10 annulment of the purported marriage between Tomi Rae and
11 Javed Ahmed? Did you ever have a conversation with him
12 about that?

13 A. No.

14 Q. Do you have any knowledge about her purported
15 marriage to Mr. Ahmed?

16 A. Yeah. What I've heard, yes.

17 Q. What did you hear?

18 A. That she had another husband. She was already
19 married.

20 Q. That's all you know about it?

21 A. That's all I know.

22 Q. Okay. Now, with regard to what you witnessed at
23 the house, tell me the times you were at the house right
24
25

1 after your father's death. Do you recall the dates and
2 times?

3 A. Not all of them. No, I cannot.

4 Q. How many times were you there?

5 A. I can't--I don't know how many times.

6 Q. And did you witness any particular person
7 removing cash from the house?

8 A. No.

9 Q. Did you witness any particular person removing
10 certified checks from the house?

11 A. No.

12 Q. Did you witness any particular person taking any
13 jewelry from the house?

14 A. No.

15 Q. So while you were present nobody took any cash,
16 jewelry or checks?

17 A. No.

18 Q. To your knowledge.

19 A. No.

20 Q. Is that correct?

21 A. That's correct.

22 Q. The PI you keep referring to, what was his name?

23 A. Gene Staulcup.

24

25

1 Q. Did he work for Mr. Cannon and Mr. Dallas for
2 many years?

3 A. I don't know who he worked for. I assume he was
4 hired by Mr. Cannon and Dallas at that point.

5 Q. Now, when you were present was anyone taking
6 photographs or videotaping anything?

7 A. On a couple of occasions, yes.

8 Q. Who was videotaping?

9 A. On which occasion?

10 Q. Any occasion. Any and all occasions.

11 A. Two gentlemen that Mr. Dallas hired and Mr.
12 Cannon hired the night after Dad passed. The family, we
13 had a camera that night. And then when we went back for
14 Tomi Rae to go through her things, those days when--there
15 were about four or five cameras going on.

16 Q. So there were--you said the night after, so he
17 died on Christmas Day. This would have been on December
18 th
19 26 ?

20 A. Sixth, yes.

21 Q. At that time was a video being taken by someone
22 hired by Mr. Dallas and Mr. Cannon?

23 A. Yes.

24 Q. And then you and your family, meaning the
25

1 siblings, had a videographer?

2 A. Yes.

3 Q. Who was that?

4 A. Well, we had our own camera. We was--we were
5 kind of was taking--taking turns. We didn't hire anybody.

6 Q. So you had your own videocamera?

7 A. Yes.

8 Q. I know the time Tomi Rae was there that I was
9 there and you were there. Any other videotape or
10 photographs of the contents of the house that you are aware
11 of?

12 th
13 A. September 17 .

14 Q. Well, what was that?

15 th
16 A. September 17 when me and my brothers and sisters
17 and our lawyer, David Yount, went into the home along with
18 Mr. Dallas, Mr. Bradley, three other men who were there
19 from some auctioneer place, and security and Gene Staulcup.
20 And David Washington.

21 MR. LEVENSON: And, Robert, this is Lewis. You
22 got a copy of that; we gave you a copy of that.

23 MR. ROSEN: I know. I'm just trying to make sure
24 I know what the whole universe of videotapes are.

25 That's all.

1 Q. [Mr. Rosen] Now, the jewelry that you saw, do
2 you know whether any of that belonged to Tomi Rae?

3 A. No. The jewelry I saw belonged to Adrienne.

4 Q. And where is that jewelry now?

5 A. I do not know.

6 Q. Do you have possession of any of the jewelry?

7 A. No, I do not.

8 Q. Did you remove anything from the house?

9 A. Other than what I mentioned earlier.

10 Q. Do you believe that Little Man is your brother?

11 A. I do not know.

12 Q. You have called him your brother in public, have
13 you not?

14 A. Yes, I have.

15 Q. Bear with me. Did you get along with Tomi Rae
16 when they were married and living together?

17 A. Yes.

18 Q. Is there any bad blood between the two of you?

19 A. Not to my knowledge.

20 Q. Did y'all ever have a fight about anything?

21 A. No.

22 Q. Do you know why she was treated the way she was
23 at the funeral?

24

25

1 A. How was she treated?

2 Q. Well, who made the arrangements for the funeral?

3 A. It was a collective--a collective thing.

4 Q. Who was involved?

5 A. Well, a lot of people were involved. And which
6 funeral--

7 Q. Specific names?

8 A. Which funeral were you talking about? There were
9 three funerals.

10 Q. Well, let's start with the first one. Where was
11 that?

12 A. Well, that--I guess that wasn't a funeral but
13 that was a memorial at the Apollo in New York.

14 Q. That was at the Apollo?

15 A. Yes.

16 Q. Who was in charge of that? Who did the planning
17 for that?

18 A. I don't know if there was any one person in
19 charge but as--we collectively agreed to go there and do
20 that memorial, me, my brothers, my sisters and Reverend
21 Sharpton. We all got together along with Mr. Charlie Reid
22 and discussed that, to do that in New York.

23 Q. Why was Tomi Rae excluded from that?

24

25

1 A. She was not excluded.

2 Q. From the planning?

3 A. We did not purposely exclude her.

4 Q. Is there a videotape of the proceedings at the
5 Apollo?

6 A. There's probably public. CNN was there; a lot of
7 different media outlets were there.

8 Q. You don't have a videotape?

9 A. No, I do not.

10 Q. Was the Reverend Sharpton in charge of the
11 proceedings?

12 A. At Apollo?

13 Q. Yes.

14 A. He handled a lot of business there, yes.

15 Q. And was he the prime speaker?

16 A. He spoke along with others.

17 Q. And after the Apollo what was the next event?

18 A. It wasn't an event. It was a private funeral.

19 Q. Where was that?

20 A. Carpentersville Baptist Church.

21 Q. And who was in charge of that?

22 A. Family.

23 Q. Once again, was Tomi Rae included?

24

25

1 A. Yes, she was included.

2 Q. I mean she was present. Was she included in the
3 planning?

4 A. She did not be--she did not come and be a part of
5 the planning. No, she didn't.

6 Q. Was she invited?

7 A. It wasn't an invitation sent out.

8 Q. But anyway, she was excluded. Would that be a
9 fair statement?

10 A. No, it would not.

11 Q. And then the third event, what was that?

12 A. It was a homegoing celebration when--

13 Q. That was in Augusta?

14 A. Yes.

15 Q. Is there a videotape of that?

16 A. There's probably plenty. It was open to the
17 public and the media.

18 Q. Do you have any videotape of that event?

19 A. Yes, I do.

20 Q. Do you have any videotape of the private funeral?

21 A. Yes, I do.

22 Q. Can you tell me where you bank?

23 MR. LEVENSON: Tell him the name of the bank.

24

25

1 A. Regions.

2 Q. [Mr. Rosen] What city?

3 A. Clearwater, South Carolina.

4 Q. Do you have a safe deposit box?

5 A. No, I do not.

6 Q. Do you have a safe?

7 A. No, I do not.

8 MR. ROSEN: Bear with me one second.

9 Q. [Mr. Rosen] Was Mr. Bobbit present on any
10 occasion that you were at the house right after your
11 father's death?

12 A. Yes.

13 Q. How many--on how many occasions was he present?

14 A. At the house?

15 Q. Yeah. I'm concerned about what's happened to the
16 property, just like everybody else is. Was Mr. Bobbit
17 present when people were going through with the jewelry and
18 the cash and looking for things?

19 A. He was present on the th 26 , December th 26 , 2006.

20 Q. Do you know whether or not he would have any
21 knowledge of what happened to the property?

22 A. I don't know.

23
24 Q. Who else was present on the th 26 ?

25

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1 MR. JACKSON: I think we've already answered all
2 this.

3 MR. ROSEN: Well, you may have. You may have.
4 I'll withdraw the question.

5 Q. [Mr. Rosen] Let me ask you this. What about the
6 furs in Augusta? Are you familiar with the fur coats?

7 A. Am I familiar with what?

8 Q. There's an issue about the fur coats that Tomi
9 Rae believes belong to her but the children apparently
10 think belong to them. Do you have any knowledge of that?

11 A. No.

12 Q. Do you know anything about the fur coats?

13 A. I know he keep--yes, yes.

14 Q. What do you know?

15 A. I know he kept them at a furrier. And what fur
16 coats are you talking about? His?

17 Q. There's a furrier in Augusta and there's valuable
18 coats there, apparently.

19 A. Yes.

20 Q. Do you know who those coats belong to?

21 A. James Brown.

22 Q. And what information do you have about that?

23 A. That they belonged to James Brown.

24

25

1 Q. Well, how do you know that?

2 A. Because I know that they belonged to him.
3 They're his coats.

4 Q. Do you have any documentation or anything written
5 down about those coats?

6 A. No, I don't.

7 Q. Do you know whether or not your father made gifts
8 to his son James Brown II?

9 A. What kind of gifts?

10 Q. Well, jewelry, awards, things of value. I'm not
11 talking about plastic toys.

12 A. If he did what, again?

13 Q. Made gifts of valuable items such as awards or
14 jewelry?

15 A. I don't understand the question.

16 MR. LEVENSON: The question is did--

17 Q. [Mr. Rosen] Are you aware of any gifts that your
18 father made to James Brown II?

19 A. No.

20 MR. ROSEN: That's all I have. Thank you very
21 much.

22 THE WITNESS: Thank you.

23 MS. LEWIS: Would anybody like to take a break?

24

25

1 MR. LEVENSON: What is your estimate of time?

2 MS. LEWIS: Maybe five to ten minutes.

3 MR. LEVENSON: Then I would not like to take a
4 break.

5 MR. BELL: Do we have--

6 MR. LEVENSON: I defer to everybody else.
7 Whatever they want to do.

8 MR. BELL: Are there any other questions?

9 MS. LEWIS: I have a few.

10 MR. BELL: Why don't--I mean, Lewis, if it's not
11 many--Grace didn't have many the first time. Are you
12 going to have any more, Stan?

13 MR. JACKSON: No, I don't believe so.

14 MR. BELL: I don't have any more. John?

15 MR. HARLING: I've got one more and that's it.

16 MR. LEVENSON: My suggestion is let Ms. Lewis
17 complete her--start and complete her examination and
18 any other followup questions and then we can conclude
19 Ms. Thomas' deposition.

20 MR. BELL: Yeah.

21 MS. LEWIS: I just want to clarify your
22 testimony.

23 REEXAMINATION

24

25

1 BY MS. LEWIS:

2 Q. You were talking about the wedding on December
3 th
4 14 , 2001, and you made the statement that they told people
5 they were married and they lived together as husband and
6 wife. Did you mean to say that that was from 2001 until he
7 died? Was there a period when they told people they were
8 husband and wife and then they didn't or--and your father
9 did not say that anymore?

10 A. I don't--

11 Q. What time period are you talking about? Do you
12 know?

13 A. Well, right after they were married.

14 Q. Okay. That's what you were talking about?

15 A. Yes.

16 Q. Did you hear him say that any other time right
17 after--other than right after they were married?

18 A. A few. A few times here and there.

19 Q. But was it--did you hear him say that after he
20 found out that she had been married--that she was married?

21 A. No. I clearly can't say.

22 MR. ROSEN: I can't hear you. Would you repeat
23 that.

24 THE WITNESS: No. I clearly cannot say.
25

1 Q. [Ms. Lewis] You did not hear him say that after
2 he learned that she was married?

3 A. No. No, I didn't.

4 MR. LEVENSON: Do you mean, Ms. Lewis, that she
5 was married to someone else is what--the form--

6 MS. LEWIS: To someone else.

7 MR. LEVENSON: --of your question--

8 MS. LEWIS: That's right.

9 MR. LEVENSON: --is misleading.

10 A. No, I don't.

11 Q. [Ms. Lewis] And then in saying that they lived
12 together as husband and wife, did you--is there a time
13 period when, in your opinion, they did not live together as
14 husband and wife?

15 A. Yes. There were some times when she did not live
16 there.

17 Q. What times were those?

18 A. She did not--I can't exactly say the time period.
19 But there were times >cause she had property, houses, in
20 other places that she lived in.

21 Q. Turning to James Brown Enterprises, did you ever
22 hear your dad say anything with respect to ownership of
23 James Brown Enterprises?

24

25

1 A. Repeat the question.

2 Q. Did you ever hear him say anything about who
3 owned James Brown Enterprises?

4 A. Him.

5 Q. What did he say?

6 A. Well, he just--James Brown Enterprises was his
7 business. That's what my recollection of that is.

8 Q. Do you recall a conversation?

9 A. Not necessarily a conversation. I just knew that
10 it was his business.

11 Q. You knew it but did he ever say anything about
12 that to you?

13 A. Not directly. But, you know, James Brown
14 Enterprises was his business. I mean that's just--

15 MR. LEVENSON: I guess the question is did he
16 say--even though he didn't--

17 Q. [Ms. Lewis] Did he say anything to you?

18 MR. LEVENSON: --say anything to you, did he say
19 anything to--

20 A. Not to my knowledge, no. Not to my knowledge,
21 not that I can remember.

22 Q. [Ms. Lewis] Do you know if he said anything
23 about James Brown Enterprises ownership to anybody else?

24

25

1 A. No, I don't know.

2 Q. Turning to Colonel Lee and the document that he
3 says was taken from behind a photo on the wall in the
4 house.

5 A. Yes.

6 Q. How did that come up? How did that come to your
7 knowledge?

8 A. I was out of town and I got a call that the
9 personal representatives were in the home and he
10 told--Colonel Lee later told me that that's when he seen
11 something removed from the--when I say remove, I don't mean
12 removed from the house. I meant removed from the--from
13 where they took it from behind a photo.

14 Q. Oh, so he didn't say that it was taken out of the
15 house?

16 A. I didn't--no, no. I said he said that they took
17 it from behind the photo. Behind--that was hanging on the
18 wall. That's what he saw, something come out of there.
19 After that, they asked him to leave the room so he really
20 don't know what happened after that. He was asked to leave
21 the room and the door was shut and it was the private
22 investigator and Mr. Dallas, Mr. Cannon and Mr. Bradley.

23 Q. So no one ever told you that they took whatever
24
25

1 that was out of the house?

2 A. No. They assumed that it came out of the home.

3 Q. Now, did Colonel Lee call you up to give you this
4 information?

5 A. I don't know if he called me or I called him
6 later to get that information.

7 Q. To find out--someone had called you to say that
8 the personal representatives had been in the house?

9 A. Yes.

10 Q. And so you were calling Colonel Lee to see what
11 went on?

12 A. Yes.

13 Q. And in the course of that what--tell me exactly
14 what he did say.

15 A. I honestly can't remember exactly what he did
16 say. But he did tell me in general that they came into the
17 home. They were searching around the house looking behind
18 photo frames, looking behind several photo frames in the
19 home. And that when they went into this room that Dad kept
20 a lot of personal and very private documents because it
21 stayed locked all the time--when he went--when they went
22 into that room they did see something behind the photo
23 wall. It was removed. He doesn't know what it was >cause
24
25

1 at that point he was asked to leave the room.

2 Q. What room was it?

3 A. Well, just--when you're going down the hallway
4 into the room, it's the first door on the right.

5 Q. And when you talk about the photo wall, is it
6 just a wall that had a number of photographs on it?

7 A. Yes.

8 Q. And was he describing that they--that one of them
9 went to a photo, to something hanging on the wall, and
10 looked behind it?

11 A. Yes.

12 Q. Did he say which person--

13 A. No.

14 Q. --looked behind it?

15 A. No.

16 Q. And then is that all he told you?

17 A. That they were looking around the home. He
18 doesn't know what but they were looking around the home,
19 yes.

20 Q. Did he say anything else about finding something
21 behind the photograph?

22 A. No. At that time--actually, I can't remember.
23 Once I found out that the personal representatives was
24
25

1 there I called my brother Darrell so that he could come and
2 sit there as well to watch.

3 Q. Now, did you have other conversations with
4 Colonel Lee about this incident and finding something
5 behind the photograph hanging on the wall?

6 A. I may have. I can't remember. I've had, you
7 know, some conversations with him but I can't remember
8 exactly.

9 Q. Well, just give me the gist of it.

10 A. Well, basically, that they were there, like I
11 said, and what he saw, what he witnessed. After that, of
12 course, he was asked to leave out of the room so he doesn't
13 know what happened after that.

14 Q. Sure. Did he ever tell you that he believed they
15 were stealing something?

16 A. No, he did not. He said that it did not look
17 good. It looked as if they were hiding something. But of
18 course he was asked to leave the room so he doesn't know.

19 Q. He doesn't know so he never said they were
20 stealing anything?

21 A. No, he didn't say they were stealing. He said
22 something--they found something and he was asked to leave
23 out of the room at that time.

24

25

1 Q. Now, when did he start working over where you
2 live?

3 A. The day--March the--March the 9th.
4

5 MR. JACKSON: Do we need to exclude the
6 non-parties?

7 A. Around about 9th /10th /11th, around about.
8

9 Q. [Ms. Lewis] And does he work there every day?

10 A. No.

11 Q. What are his hours?

12 A. There's no specific hours. They come--he does
13 the schedule and he's there usually--he kind of works the
14 weekend overnight.

15 Q. Now, he signed an affidavit. How did that come
16 about?

17 A. He signed an affidavit?

18 MR. LEVENSON: The question is how did it come
19 about, if you know.

20 Q. [Ms. Lewis] How did that come about?

21 A. I don't know which affidavit. I don't know
22 exactly what.

23 Q. There was an affidavit that was tendered in
24 connection with your motion to remove the personal
25 representatives.

1 A. Yes.

2 Q. Do you know how that came about, who got it and
3 what happened? Have you ever--did you ever see that
4 affidavit?

5 A. Who got the affidavit.

6 Q. From him.

7 A. My lawyer.

8 Q. And which one?

9 A. David Yount.

10 Q. And how did he get the affidavit?

11 A. He met him at a bank, First Bank, on Walton Way,
12 got the affidavit and then it was notarized there.

13 Q. Were you present?

14 A. No.

15 Q. How did you know that that's how it happened?

16 A. He asked me to have Colonel Lee to meet him.

17 Q. So you told Colonel Lee to go down there?

18 A. Yes.

19 Q. Did you tell him what he was going to be doing?

20 A. I told him that my lawyer had questions for him.

21 Q. Did he know he was going to be signing an
22 affidavit?

23 A. He--
24
25

1 MR. LEVENSON: You answer if you know.

2 A. I can't really remember.

3 Q. [Ms. Lewis] You just told him to go on down
4 there?

5 A. Yes. And meet--

6 Q. And meet--

7 A. Yes.

8 Q. Meet your lawyer?

9 A. Yes.

10 Q. Then when he came back did he tell you what
11 happened?

12 A. Yes. He did say that he did an affidavit.

13 Q. That he signed it?

14 A. Yes.

15 Q. Did he say anything else about it? Did he read
16 the affidavit or say anything else about it?

17 A. I can't remember, honestly. I mean I'm sure he
18 read it. I don't remember exactly what was in it or
19 anything what we talked about.

20 Q. You said that your father was a very generous
21 man.

22 A. Yes.

23 Q. That's certainly very clear. What was his heart
24
25

1 on the topic of education for poor people, poor children?

2 A. He wanted to be able to assist poor children in
3 getting an education.

4 Q. What would he say to you about it?

5 A. What would he say or did he say? I don't--

6 Q. What would he say about that topic?

7 A. I mean I can just speculate that--

8 Q. I just want you to--what he would share with you
9 about his--

10 A. He didn't have an education.

11 Q. --feelings?

12 A. There are things that he didn't--there are things
13 that he didn't have when he was young that he wanted to
14 make sure that other children had.

15 MS. LEWIS: Would you like a few moments?

16 THE WITNESS: I'm fine. I'm fine, thank you.

17 Q. [Ms. Lewis] I see the emotion that this area
18 brings out in you. When you see the life that your father
19 had and education, and I'm assuming that this was a topic
20 that was a deep hurt in his own life and that's why you cry
21 for him now.

22 A. Yes. Because I know it's something that he
23 wanted. And I know it's something that he wanted >cause he
24

25

1 didn't have that opportunity. That's why he had turkey
2 giveaways every year to bless those who couldn't eat and
3 toy giveaways to help those children who were in need. And
4 he was a giver. The last thing he did was giving toys away
5 to children. And other than my family, making sure my
6 family was safe and secure, it's my wish that he gets those
7 children blessed that he wanted to get blessed.

8 Q. Because he knew the education would be the
9 greatest blessing of all?

10 A. Yes.

11 Q. And he knew that for his own family, the
12 education that he would provide would be the greatest
13 blessing of all?

14 A. Yes.

15 Q. The generations that would come?

16 A. Yes. He wanted to do something that he felt no
17 other black man could do: make sure his children,
18 grandchildren, great-grandchildren--just the Brown lineage
19 would be educated.

20 Q. And that they would have doors opened?

21 A. Yes.

22 Q. Did he ever talk about that?

23 A. Yes.

24

25

1 Q. What did he say about education opening doors?

2 A. Well, he wrote songs about it. He talked about
3 it all the time and how important education was and that
4 that was the freedom that a person would have being
5 educated.

6 Q. And I can see from what you're saying today that
7 you wholeheartedly support what he wants to do.

8 A. Yes.

9 Q. Who--but you've brought this motion asking that
10 the men who surrounded him be removed?

11 A. Yes.

12 Q. Who would you prefer would carry out these
13 wishes?

14 A. I can't answer that right now. I really don't
15 know.

16 Q. Just thinking out loud, who do you think would be
17 best to carry out these wishes?

18 A. Other than me and my brothers and sisters, I
19 don't know.

20 Q. Would that be your preference that the brothers
21 and sisters carry it out?

22 A. I know that--I know that we want what Dad wanted.
23 And we know that these children can be blessed and that's

24

25

1 who--you know, that's who should be blessed, people who
2 cannot afford it instead of--instead of--I don't want to
3 get personal with that, but.

4 Q. Do you want to say lawyers?

5 A. I just--personal representatives, lawyers,
6 anybody. If you worked with my dad, if you were with my
7 dad, you know his--you know how he felt and--

8 Q. And how was that? How did he feel about that?

9 A. I just don't think that--I don't think that it
10 would have happened had me and my brothers and sisters had
11 not did what we did. I don't think that these children
12 would be blessed and I say that because--just for example,
13 I mean there's a turkey giveaway that we're planning.
14 There's a toy giveaway that we're planning and it's just me
15 and my brothers and sisters making sure that happens. No
16 one else is making sure that that happens.

17 Q. So that that tradition continues?

18 A. Yes. And we're not rich people. You know, God
19 has blessed us and so did the Godfather but there are
20 things that I don't think are important to a lot of people
21 that were associated with him that were important to him.

22 Q. Such as what?

23 A. Such as giving to those in need instead of to
24
25

1 yourself.

2 Q. So has the family discussed how--what would be
3 the best way to carry out your father's wish and desire?

4 A. The first, housecleaning. To remove these three
5 people who we do not believe will do that wholeheartedly.
6 And two, to move forward at that point.

7 Q. With who handling the trust or who handling the
8 estate?

9 A. We haven't actually discussed that in detail.

10 Q. What are the thoughts on it?

11 A. Again, it's hard to trust outside of our own
12 lineage. So many things have come out to show that nobody
13 is trustworthy who is in position.

14 Q. Are these what you're referring to anything other
15 than what you've told us today?

16 A. I'm sorry?

17 Q. When you say so many things have come out to show
18 that nobody is trustworthy, is there anything about
19 untrustworthiness that you haven't already told us today?
20 Is there something else that we need to know?

21 MR. LEVENSON: Other than what you've discussed.

22 Q. [Ms. Lewis] Other than what you've already told
23 us today?

24

25

1 MR. LEVENSON: And other than what you've
2 discussed with me.

3 A. Well, I mean, for example, my grandfather's house
4 was put on the market and that's--each one of my brothers
5 and sisters, we've all lived in that home at some point in
6 time and it's sentimental to us and one day could be part
7 of a James Brown historical tour here in Augusta. Our
8 views are different than those who are not his family. And
9 if somebody wants to go sell my granddaddy's home where we
10 were raised up, to me they don't care. They don't care
11 about our heritage. That's our heritage.

12 Q. And when you think about the museum that your
13 father had talked about of his homeplace, what do you
14 envision in that museum that you would want the world to
15 see?

16 A. What James Brown the man was about. Everybody's
17 seen his entertainment skills but what James Brown was
18 about.

19 Q. And so what would you see being in that house to
20 show the world what James Brown--

21 A. Oh, wow.

22 Q. --was about? What would you want in there? When
23 you opened the doors to something of a Graceland, what
24
25

1 would you want them to see that would be there?

2 A. It's hard to exactly say what because there's so
3 many different facets to Dad. There's so many different
4 facets to him. But I just see coming down that driveway
5 and actually feeling the peacefulness that's there. Again,
6 that's our heritage because that was my home. I lived
7 there.

8 Q. Would you want them to see all the costumes?
9 Would you want--

10 A. Maybe not all but I would want--we would want
11 them to know who James Brown was, not just from an
12 entertainment perspective but who he really was as a giver,
13 as a philanthropist, a man who took one song, I'm Black and
14 I'm Proud, and showed freedom to a whole world of colored
15 people.

16 Q. So would you want the museum to have his costumes
17 and the shoes that he used in his entertainment business?

18 A. That and--yes. That included, yes.

19 Q. Right. And you would want it to have the Grammy
20 awards, all the awards that he received in his
21 entertainment business? Would you want all of the--

22 A. Yes.

23 Q. --original manuscripts of his music to be in that
24
25

1 museum?

2 A. Yes.

3 Q. Would you want all of his guitars and other
4 musical instruments to be in that museum?

5 A. Yes. And--and--

6 Q. Would you want--

7 A. And when you say all, maybe not everything >cause
8 he had so much.

9 Q. Yes.

10 A. And there's so many other ways that his legacy
11 can be shown. Not just at his home but all over the world.

12 Q. So what other things? Tell me that his
13 legacy--tell me how his legacy could be shown.

14 A. Education as we said was very important to him.
15 Some interactive education facility there where children
16 could come and maybe record a song or something or a little
17 James Brown studio. I mean there's so many--I don't want
18 to give everybody my ideas but there's so many things that
19 we've talked about. A school, you know, that could be
20 constructed here and, you know, when you say things in
21 there, those are material things. But, you know, there are
22 audiotape/videotape of him talking about black power
23 and--and black people owning businesses and land and, you

24

25

1 know, those things. Those are historical moments in time
2 and they teach futures to come. They teach them about
3 where he come from and what he believed in and what black
4 people were about. He--those things can be displayed in a
5 way--

6 Q. That they're--

7 A. Exhibited in a way--

8 Q. As an inspiration?

9 A. --as an inspiration, as an educational piece--

10 Q. Where are--

11 A. --to show how his arms reached across borders and
12 touched people of other cultures. How he was world
13 ambassador for children's charities and all of these things
14 that he was.

15 Q. And where are those things? Where are the
16 videotapes? Where are they located?

17 A. I honestly don't know where everything is. I
18 honestly don't know where everything is >cause there's so
19 many things. There's so many things.

20 Q. And in that house you would want the Grammy
21 awards; right?

22 A. Yes. His awards.

23 Q. You'd want the awards hanging on the wall. You
24
25

1 want the pictures of your father with every president in
2 his lifetime; is that right?

3 A. Yes.

4 Q. What are the things that the family would like to
5 take out of the house as personal effects?

6 A. I don't know. We haven't sat down and discussed
7 that. We haven't looked at that in terms of dividing up or
8 anything. We haven't discussed that.

9 Q. Well, let's just say from your point of view.
10 What would you like to take away in the way of personal
11 effects?

12 A. It's hard. I can't answer that, really. I can't
13 do that. I have things that my dad gave me that are
14 personal to me. I have gifts that people have given me
15 that they had over the years, pictures or whatever. Those
16 were his things and they should be in a way where the world
17 could see them, maybe not just in Augusta but the world at
18 large could see pieces of James Brown.

19 Q. What do you want to see the trust doing right
20 now?

21 A. Without the personal representatives there?

22 Q. Let's just say what do you want to see the trust
23 to be doing right now?

24

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1 A. Providing the educational money for his
2 grandchildren and a criteria put in place for needy
3 children because there was no criteria put in place on this
4 trust. A criteria to find out who would be eligible for
5 money.

6 Q. And then what do you envision the income would be
7 available to--let's say to do it now? Is there income
8 available? Do you know?

9 A. There's income available.

10 Q. And where is it?

11 A. I don't know where it's going.

12 Q. Where does the income come from that would--

13 A. So many different sources I can't say one thing.
14 There are so many different sources.

15 Q. Just kind of give me some of them.

16 A. There's royalties. There's--where he did movies.
17 He did movies, television shows; there's just so much. A
18 James Brown doll. There's just so many different things.

19 Q. All of which should be flowing into the trust?

20 A. Maybe not all. I don't know exactly what should
21 go into the trust.

22 MR. LEVENSON: Excuse me. Hold on a second.

23 That's a legal question. If you know--

24

25

1 MS. LEWIS: No. I'm not asking a legal question.
2 I'm just asking--

3 MR. LEVENSON: Well, yes, you are. You're asking
4 her if assets that don't belong legally to the trust
5 should go to the trust. That's a legal question.

6 MS. LEWIS: Let me just rephrase it. I'm asking-
7 -

8 MR. LEVENSON: So if you know--

9 MS. LEWIS: I've asked--

10 MR. LEVENSON: If you know, you can answer it.

11 Q. [Ms. Lewis] Here's what I'm asking. I've asked
12 what you would like to see done with the trust money and
13 you've talked about it. And I'm asking what income you
14 would like to see--what income you would like to see
15 flowing into that trust to carry out his passion.

16 A. I don't know. I can't give you a figure >cause I
17 don't know what the appropriate figure would be.

18 Q. But do you see--would you want to see the
19 royalties flowing into the trust?

20 A. I would like to see monies flowing into the
21 trust. I don't know if it should be royalties; I don't
22 know what it should be. I don't know where the income
23 should come from. I can't say that right now because of
24
25

1 the issues at hand.

2 Q. But let's just say your preference. What would
3 you like to see? Would you like to see that money, that
4 royalties, were flowing into the trust?

5 A. Yes.

6 Q. Rather than the estate?

7 A. Yes. Well, into the trust to take care of what
8 the needs would be. But before that I would like to see
9 the trustees removed.

10 MS. LEWIS: I think that's all I have. Thank
11 you.

12 MR. JACKSON: I have some more as a result of all
13 this.

14 MR. RICHTER: Yeah. Lewis, I have some more
15 questions too. So do you want to take a break or do
16 you want to keep going?

17 MS. LEWIS: I want to take a break.

18 MR. LEVENSON: We'll break.

19 MR. BELL: Yeah.

20 [Recess, 12:50 p.m. to 2:05 p.m.]

21 [Ms. Adele Pope and Mr. Robert Buchanan are
22 present at the recommencement of the deposition.]

23 REEXAMINATION

24

25

1 BY MR. JACKSON:

2 Q. Ms. Thomas, I don't want to rehash everything
3 you've already testified to so if you wouldn't mind, I'm
4 going to ask you maybe two or three questions based on your
5 testimony to--previously before lunch. And all I want to
6 know is if you--if there are any other facts that you have
7 not already testified to that support some of your
8 statements.

9 First of all, you said we do not believe that the
10 personal representatives or trustees will fulfill the
11 wishes of your father James Brown. Without stating
12 everything else you've already testified to, do you have
13 any other additional facts that you haven't testified to
14 that supports that statement?

15 A. No, no. Other than the fact that--well, yes.
16 There is one other thing >cause we don't agree that--of the
17 way it was set up in terms of what their compensation
18 should be, the personal trustees.

19 Q. The trustees. And can you be specific in that
20 regard?

21 A. It was set up for them to receive up to 50
22 percent.

23 Q. Up to 50 percent?

24

25

1 A. Yes.

2 Q. Where--

3 A. In this trust.

4 Q. In this trust?

5 A. Uh-huh.

6 Q. Can you refer to me what provision in the trust
7 you're referring to up to 50 percent?

8 A. As trustees that's what was drawn up in the trust
9 for them to receive. I guess administrative fees.

10 MR. LEVENSON: The question is can you refer to a
11 specific provision.

12 THE WITNESS: I don't--

13 MR. LEVENSON: Well, if you know a specific
14 provision.

15 A. That up to 50 percent is all I can say.

16 Q. [Mr Jackson] And did you get that from reading
17 the instrument or did you get that from some other source
18 that--

19 A. That was told to me by Mr. Cannon and Mr. Dallas
20 when they was at my home.

21 Q. Told to you. What did they tell you?

22 A. That that's how it was set up. They would
23 receive some type of administrative fee of up to 50
24
25

1 percent.

2 Q. And that was in December?

3 A. Yes.

4 Q. Any other time? And was it both of them or one
5 of them?

6 A. I don't remember.

7 [Mr. Robert Rosen rejoins the deposition
8 telephonically.]

9 MR. ROSEN: Hey, this is Robert Rosen. Are y'all
10 in the middle of this thing?

11 MR. BELL: Yeah. We've started back.

12 MR. ROSEN: All right. Thank you.

13 Q. [Mr. Jackson] The trust instrument, if it said
14 reasonable compensation, is that what you recall it saying?
15 Reasonable compensation?

16 A. I can't exactly remember but I remember that
17 figure was told to me of 50 percent.

18 Q. Now, is--you also said, quote, nobody is
19 trustworthy. Is there any other facts concerning the
20 people administrating this estate that you haven't already
21 testified to, or the trust, that substantiate that nobody
22 is trustworthy other than what you've already testified to?

23 A. Not to my recollection, no.

24

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1 MR. JACKSON: That's all I have. Thank you.

2 MR. LEVENSON: Anyone else have any questions of
3 Deanna Brown Thomas? Robert, do you have any other
4 questions?

5 MR. RICHTER: I'll follow up based on those
6 recent questions.

7 REEXAMINATION

8 BY MR. RICHTER:

9 Q. Do I understand your testimony to be that your
10 father did not repose trust in Mr. Cannon?

11 A. I'm sorry. Can you repeat that, please.

12 Q. Is it your testimony that your father did not
13 repose trust in Mr. Cannon?

14 A. I wasn't asked that question. I never--

15 Q. I'll ask you that question now. Did your father
16 repose trust in Mr. Cannon?

17 A. I don't know.

18 Q. But your father told you that he trusted no one?

19 A. That was--

20 Q. Is that true or not?

21 A. Yes. He was that type of person.

22 MR. RICHTER: That's all I have.

23 MR. ROSEN: I've got a couple of followup
24
25

1 questions. If you could speak up, I'd really
2 appreciate it.

3 MS. LEWIS: Who is that, please?

4 MR. LEVENSON: It's Robert Rosen.

5 REEXAMINATION

6 BY MR. ROSEN:

7 Q. You were asked a series of questions about
8 whether or not James Brown and Tomi Rae Brown held
9 themselves out to be husband and wife. Do you recall those
10 questions?

11 A. Yes.

12 Q. And someone asked you after I examined you
13 whether your testimony only related to the year 2001; do
14 you remember that?

15 A. No.

16 Q. Well, let me clarify that. You are aware that
17 Mr. Brown and Tomi Rae Brown continued to reside together
18 off and on until his death; correct?

19 A. Yes.

20 Q. And they continued to hold themselves out as
21 husband and wife until his death in 2006; is that correct?

22 MR. HARLING: Object to the form.

23 A. I don't know.

24

25

1 Q. [Mr. Rosen] Well, you know that after he found
2 out about her purported marriage to Mr. Javed Ahmed, that
3 was in 2003. Are you aware of that?

4 A. Yes.

5 Q. And after that they continued to live together in
6 2004, did they not?

7 A. Off and on, yes.

8 Q. Right. And they continued to live together in
9 2005, did they not?

10 A. Off and on.

11 Q. And they continued to represent to the public
12 that they were husband and wife, did they not?

13 MR. HARLING: Object to the form.

14 A. I can't be sure of that.

15 Q. [Mr. Rosen] You can't be sure of it? He didn't
16 introduce her as his wife at every occasion that they
17 appeared together?

18 A. No, he did not.

19 Q. Do you recall occasions when he did introduce her
20 as his wife?

21 A. When he did or didn't?

22 Q. That he did introduce her as his wife. He
23 continued to say she was his wife up until his death, did
24

25

1 he not?

2 A. Not all the time in a public--no.

3 Q. Well, can you remember a public event when he
4 said he wasn't married to her?

5 A. He didn't--he may not have said he was not, but
6 he didn't refer to her as his wife.

7 Q. Well, are you aware of his autobiography, his
8 memoir, James Brown: I Feel Good?

9 A. Yes.

10 Q. Have you read it?

11 A. Not completely.

12 Q. Well, if I told you that he refers to Tomi Rae as
13 his wife in 2005 in his book and the captions of the
14 photographs show them as James Brown with his wife, would
15 that refresh your recollection?

16 A. No.

17 MR. ROSEN: Thank you very much.

18 MR. HARLING: Ms. Thomas, this is Jonathan
19 Harling again. I have just briefly a few more
20 questions for you.

21 REEXAMINATION

22 BY MR. HARLING:

23 Q. After your father, Mr. Brown, discovered that
24
25

1 Tomi Rae was married to Javed Ahmed, after he learned that-

2 -

3 MR. ROSEN: Whomever is speaking, can you speak
4 up? I cannot hear you.

5 Q. [Mr. Harling] After Mr. Brown learned that--

6 MR. BELL: John, sit over here.

7 MR. HARLING: Yeah. Let me switch.

8 Q. [Mr. Harling] After your father learned that
9 Tomi Rae was married to Javed Ahmed did he participate in a
10 subsequent marriage ceremony with Tomi Rae?

11 A. After, no. No.

12 Q. And after he discovered that she was married to
13 Javid Ahmed did Mr. Brown ever state that they were not
14 married?

15 A. He told me he was getting an annulment. He said
16 that to me on the phone.

17 Q. And is that the extent of your knowledge
18 regarding--

19 A. Yes.

20 Q. --that issue?

21 A. Yes.

22 MR. HARLING: Thank you. That's all I had.

23 MR. LEVENSON: We'll reserve signature on that.

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[Deposition concludes at 2:15 p.m.]

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CERTIFICATE OF COURT REPORTER

I hereby certify that the foregoing deposition was reported as stated in the caption by the method of Stenomask and the questions and the answers thereto were reduced to typewriting by me or under my direction; that the foregoing pages numbered 6 through 182 represent a true, correct, and complete transcript of the evidence given on October 31st, 2007, by the witness, DEANNA BROWN THOMAS, and signature was reserved. I further certify that I am not kin or counsel to the parties in the case and I am not in the regular employ of counsel of said parties. I further certify that I have no contract with any of the parties or their counsel. The court reporting charges are the usual and customary charges for services within the industry and are available upon request by either party. No financial or services discount has been or will be given to any party named in this litigation.

This the 11th day of November, 2007.

Gina L. Smith

GINA L. SMITH, CCR, CVR

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