

**STATE OF SOUTH CAROLINA
In the Court of Appeals**

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APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

The Honorable L. Casey Manning, Circuit Court Judge

SC Court of Appeals

Appellate Case No.: 2017-001899

RUSSELL L. BAUKNIGHT, as Trustee of The James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B.; Daryl J. Brown, individually and on behalf of his minor child, Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. And Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown

And

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B.; Daryl J. Brown, individually and on behalf of his minor child Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown, Respondents.

v.

Adele J. Pope, and Robert L. Buchanan, Jr. Defendants,

Of whom Adele J. Pope is Appellant.

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) IN THE COURT OF COMMON PLEAS
) SECOND JUDICIAL CIRCUIT

Case No.: 2010-CP-40-4900

AFFIDAVIT OF ADELE J. POPE
SUPPORTING MOTION TO
ALTER OR AMEND ORDER OF
MARCH 3, 2016

RICHLAND COUNTY
FILED
2016 MAR -8 PM 2:16
JEANNETTE W. MCBRIDE
CLERK & C.S.

V.

Defendant

1. This affidavit is made of my own personal knowledge and belief.

3. I am informed and believe that the unjust delay resulting from the March 3,

2016 Order of the Honorable L. Casey Manning (the March 3 Injunction Order) continues the action of the Attorney General of South Carolina (AG) to destroy my reputation and career for challenging former AG Henry McMaster's improper attempt to take personal control of James Brown's 900 copyrights, Publicity Rights and other valuable assets through an alliance with Tommie Rae Hynie (Hynie) and Louis Levenson, Esq. (Levenson), and AG Wilson's actions, through the AG's Legacy Trust to

now take the same control for himself.

4. The March 3 Injunction order will continue the irreparable harm to my reputation and career which has been caused by this case since it was filed by the AG, Hynie and others nearly six years ago.

5. I am informed and believe that the March 3 Injunction Order has the unintended effect of continuing AG Wilson's 4 ½-year violation of my FOIA rights, and also violates my Due Process rights to defend myself against this improper State action which has been the direct result of the alliance of two AGs with Ms. Hynie.

6. I will be 73 years old this year; have devoted nine years to preventing the dismembering of the "I Feel Good" Charity by former AG McMaster; AG Wilson; Russell L. Bauknight as their agent; and Ms. Hynie; and have been scurrilously attacked and damaged by them since 2009.

7. For the last three years, at the request of AG Wilson and Hynie, I have been denied the right to proceed with discovery and trial in this case where the facts, if allowed to be revealed, will clear my reputation and may save some or all of the "I Feel Good" Charity for needy students, as James Brown intended.

8. Attached hereto are excerpts from the deposition of Mr. Bauknight taken on August 20, 2013 in Federal District Court case 3:08-cv-00014-WOB, which I have annotated.

9. Since before the S. C. Supreme Court's mandate in *Wilson v. Dallas* on May 8, 2013, AG Wilson and other Plaintiffs have, by a 3-year *de facto* stay and the March 3 Injunction, denied me a level playing field in this case.

10. I am informed and believe that Plaintiffs working to help AG Wilson reinstate

the 2008 McMaster agreement which dismembered James Brown's "I Feel Good"

Charity can be grouped as follows:

I. **The State/AG.** The **AG** and the **Legacy Trust** which he created, using James Brown's name in late 2008 or early 2009.

II. **Hynie and her son.** Neither **Hynie** nor her son **James B.** is a beneficiary under the Will/2000 Trust.

III. **Other Minor Will Contestants Without GAL.** **Sydney L.** and **Carrington L.**

IV. **Adult Will Contestants now or formerly represented by Mark Toberoff,** Federal Copyright Act Termination Rights are an important asset of many Plaintiffs. Mark Toberoff, of Malibu, California, is (or was in 2013) the announced personal attorney for Plaintiffs **Tonya Brown Fegan, Deanna Brown Thomas, Terry Brown, Yamma B. Lumar, Larry Brown** and **Venisha Brown** as to Termination Rights. All agreed Hynie was not Brown's spouse.

V. **Grandchildren and Claimed Grandchildren Who Contested Estate Plan.** While minors -- acting through their parents -- the following challenged their grandfather's estate plan I had a duty to defend: **Jason Brown Lewis, Lindsey Delores Brown** and **Janice Venisha Brown.** All are now adults.

VI. **Others Who Have Terminated Both Louis Levenson, Esq. and David Bell, Esq.** **Terry Brown** and **Daryl Brown.** Levenson and Bell, a Georgia attorney not admitted *pro hac vice* in this case, appeared at the 2012 mediation for about a dozen Plaintiffs. SWB, Bell and Levenson represented that either Levenson or Bell had full authority to act for these parties. Three were not represented by either at the time. Since 2012 many have terminated Mr. Levenson and/or Mr. Bell, or both.

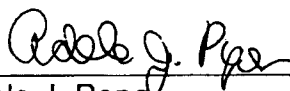
11. I am informed and believe that all of the above Plaintiffs, and their attorneys, have made clear since May 8, 2013, that they are actively working with AG Wilson and Hynie to destroy my career and reputation, and that of Robert Buchanan, Jr., the fastest path to their ultimate goal, which is a second dismembering of the "I Feel Good" Charity.

12. I am informed and believe that the March 3 Injunction unintentionally continues years of violations of my Due Process, First Amendment and FOIA rights, and causes me irreparable harm.

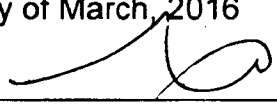
13. As an example, Ms. Hynie, at the request of AG Wilson, has been exempted from appearing at two mediations. During the 2012 mediation, while not attending, she posted:

"This mediation today is to get rid of Adelle Pope an X trustee appointed by the state that has misappropriated and slandered this family with her hatred."

FURTHER DEPONENT SAYETH NOT.


Adele J. Pope

SWORN TO BEFORE ME this 7th
Day of March, 2016


(L.S.)
Notary Public for South Carolina
My Commission expires: 7/13/2016

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION
C/A NO. 3:08-cv-00014-WOB

William F. James Brown f/k/a)
Forlando J. Brown,)

Plaintiff,)

v.)

Adele J. Pope, individually and)
As Trustee of the Irrevocable Trust)
established by James Brown in)
August 1, 2000, and)

Robert J. Buchanan, Jr.,)
individually and As Trustee of the)
Irrevocable Trust established by)
James Brown in August 1, 2000,)

Defendants.)

DEPOSITION OF

RUSSELL L. BAUKNIGHT

Tuesday, August 20, 2013
11:18 a.m. - 3:49 p.m.

The deposition of RUSSELL L. BAUKNIGHT, taken
on behalf of the Defendants at the law offices of
Nexsen and Pruet, 1230 Main Street, Suite 700,
Columbia, South Carolina, on the 20th day of August,
2013 before Jennifer L. Cash, Court Reporter and
Notary Public in and for the State of South
Carolina, pursuant to Notice of Deposition and/or
agreement of counsel.

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(Valuation Analysis of James Brown Estate)	

STIPULATIONS

It is stipulated and agreed that this
deposition is being taken pursuant to the Federal
Rules of Civil Procedure.

It is stipulated by and between counsel and the
witness that the reading and signing of the
following deposition be, and the same are, hereby
not waived. Signature sheet is attached to the
deposition at page 111.

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Columbia, South Carolina 29202
Co-Counsel for Russell L. Bauknight

Page 4

RUSSELL L. BAUKNIGHT, having been duly sworn,
deposes and testifies as follows:

MR. BAUKNIGHT - EXAMINATION BY MR. WILLIAMS:

Q: State your name for the record, please, sir.

A: Russell Bauknight.

Q: Mr. Bauknight, we've met over the last few
years. My name is Darryl Williams in the case
in which you are being deposed, which is a
federal action initiated by Forlando, now known
as William Forlando Brown. I represent Adele
Pope and have noticed your deposition in that
case. During the course of the deposition, if
you have trouble interpreting a question I ask
you, either because of language I use, a long
question or I speak too quietly for you to
hear, since we've got a probably larger than
normal distance between an examiner and witness
at this conference table, ask me to clarify the
question. Your counsel is available if you
have questions about privilege and that kind of
thing to -- to consult with. But for purposes
of the deposition moving forward and our
dialog, please contain your concerns to
requests addressed to me. Okay?

MR. WILLIAMS: I'll ask your counsel at this point

1901

1 (Pages 1 to 4)

Page 5

1 in time if there has been any decision made
 2 about reading and signing or waiver of the
 3 reading and signing of the deposition.
 4 MR. BLACK: We'll read and sign.
 5 Q: And I'll address this question to you, Mr.
 6 Bauknight, with the anticipation that counsel
 7 will probably want to explain your response.
 8 You have been placed under subpoena, a subpoena
 9 which was challenged in front of the court, to
 10 produce certain documents for your deposition.
 11 Have you today brought with you documents in
 12 response to the subpoena?
 13 A: Yes.
 14 Q: Okay. And where are they?
 15 A: I'd asked my attorney to gather those and bring
 16 them.
 17 MR. WILLIAMS: Have they been gathered and brought?
 18 MR. BLACK: They are. They are here today and we'll
 19 mark them. By way of background, this is David
 20 Black. I represent Mr. Bauknight as a special
 21 administrator of the James Brown estate and a
 22 special trustee of the James Brown trust.
 23 That's the appearance that he's making today
 24 pursuant to the subpoena. Mr. Williams is
 25 correct in that that subpoena was challenged by

Page 6

1 Mr. Bauknight and he's producing these records
 2 that were subpoenaed subject to those
 3 objections. The court in its order referenced
 4 document 83, which is the court's
 5 confidentiality agreement in this action. And
 6 pursuant to that confidentiality order from the
 7 court, attachment A has been attached to these
 8 documents which are being produced at this time
 9 bearing Bates number Bauknight 0001 through
 10 Bauknight 00144. And I have two copies that
 11 were being produced simultaneously.
 12 MR. KING: Ladies and gentlemen, this is Andrew
 13 King. Can I ask, David, could you send me a
 14 copy of those when convenient?
 15 MR. BLACK: I can, Andrew. I'll try -- I know I
 16 have two complete copy sets. I'll talk to the
 17 folks in scanning and we'll -- we'll email you
 18 the same thing.
 19 MR. KING: I'd appreciate it. And, Mr. Williams,
 20 can you do me a favor. I can't really hear.
 21 Do you mind speaking up a little bit?
 22 MR. WILLIAMS: I will do my best, Mr. King.
 23 MR. KING: I would appreciate it. And I guess the
 24 last order of business, I don't know if you
 25 were going to address it, is did you want to

Page 7

1 reserve objections except as to the form of the
 2 question?
 3 MR. WILLIAMS: Yes. Pursuant to the federal rules,
 4 we do. And Mr. -- well.
 5 Q: Mr. Bauknight, do you have a copy of the
 6 documents that your counsel has produced in
 7 front of you?
 8 A: I don't have anything in front of me but a Diet
 9 Coke.
 10 Q: In your own words, can you describe for me the
 11 documents that you have produced? Separate and
 12 apart from the certification as to
 13 confidentiality which comes from your lawyer.
 14 A: The first document entitled Secondary
 15 Confidential Agreement. It is a
 16 confidentiality agreement. And the next
 17 document ---
 18 Q: I don't think that's what was produced.
 19 MR. BLACK: Yeah. I think you all are looking at it
 20 in a different order. Go through that one
 21 first.
 22 MR. WILLIAMS: It doesn't matter, but I don't have a
 23 Secondary Confidentiality Agreement..
 24 MR. WATSON: Yeah, it's not in the one I have
 25 either.

Page 8

1 A: Okay. The new first one is an agreement for
 2 legal services with Sweeny, Wingate and Barrow.
 3 Next is the evaluation analysis of the James
 4 Brown estate as of December 25th, 2006 by
 5 Philpott Ball and Werner.
 6 Q: There were four categories of documents under
 7 the subpoena. The first listed was all
 8 documents related to your appraisal and
 9 evaluation at death and all subsequent times of
 10 the estate of James Brown and/or the James
 11 Brown 2000 irrevocable trust and/or the assets
 12 of James Brown, deceased. Is the Philpott Ball
 13 analysis produced in response to that category
 14 of documents?
 15 A: Yes.
 16 Q: And are there any other documents related to
 17 the appraisal evaluation of the estate or 2000
 18 trust of James Brown?
 19 A: None that I'm aware of.
 20 Q: Okay. Second category is all litigation
 21 retention agreements entered into by or on
 22 behalf of the James Brown irrevocable trust
 23 including but not limited to those with the law
 24 firm of Sweeny, Wingate and Barrow and you have
 25 produced what you've described as a litigation

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1902

2 (Pages 5 to 8)

Page 9

1 agreement with the Sweeny, Wingate firm. Are
 2 there any other litigation retention agreements
 3 that have not been produced?
 4 A: None that I'm aware of.
 5 MR. BLACK: Just to clarify. I want to make sure his
 6 response is subject to the -- you said any
 7 litigation agreements. Subject to the ---
 8 MR. WILLIAMS: By or on behalf of the James Brown
 9 2000 irrevocable trust.
 10 MR. BLACK: Thank you.
 11 Q: Third category is all documents related to
 12 proposed payments to attorneys for you or
 13 others under the settlement agreement approved
 14 May 26th, 2009 and subsequently voided by
 15 decisions of the Supreme Court of South
 16 Carolina. Are you in possession of any
 17 documents which fit into that description?
 18 A: None that I'm aware of.
 19 Q: All documents which you assert affirm your
 20 position that Tomi Rae Hynie Brown was the
 21 spouse of James Brown at the time of his death.
 22 Are you aware of any documents that fit into
 23 that category?
 24 A: None that I'm aware of.
 25 Q: Okay.

Page 10

1 A: I'm sorry. Would you repeat that?
 2 Q: Yes, sir. All documents which you assert
 3 affirm your position that Tomi Rae Hynie Brown
 4 was the spouse of James Brown at the time of
 5 his death.
 6 A: Well, let me clarify my answer to that. I have
 7 not taken such a position.
 8 Q: Okay.
 9 A: I don't know where that would come from.
 10 Q: All right. Well, do you have documents in your
 11 position which would relate to the issue of
 12 whether Tomi Rae Hynie Brown was the spouse of
 13 James Brown at the time of his death?
 14 A: None that I'm aware of.
 15 Q: Okay. Other than you personally, are there
 16 other persons who would have custody or control
 17 of documents related to your service as SAST of
 18 the Brown estate and trust?
 19 A: I'm not sure I understand. Could you repeat
 20 that?
 21 Q: Other than you personally, are there other
 22 persons who would have custody or control of
 23 any documents related to the -- to your role as
 24 SAST of the James Brown estate and trust?
 25 A: I'm not aware of any.

Page 11

1 Q: Let's kind of start back at the beginning of
 2 where a deposition usually starts, if we could.
 3 Mr. Bauknight, could you give me a summary of
 4 your educational background and work
 5 experience?
 6 A: I'm a graduate of Towson University, Baltimore,
 7 Maryland. I'm a certified public accountant
 8 and have worked in this field since
 9 approximately January 1980.
 10 Q: This field being accounting?
 11 A: Accounting and business type advisory services,
 12 personal advisory services, advisory services
 13 in general.
 14 Q: Has your practice been exclusively in South
 15 Carolina?
 16 A: No.
 17 Q: Where else have you practiced?
 18 A: I worked with a regional accounting firm based
 19 in Washington, D.C. when I first graduated.
 20 Q: And the name of that firm at the time was?
 21 A: I think currently they're called Bond Beebe
 22 Firm. Back when I was there it was Bond,
 23 Beebe, Barton, Muckelbauer, P.C.
 24 Q: And how long were you there?
 25 A: From January 1980 to approximately June 1981.

Page 12

1 Q: And after '81 did you move to South Carolina?
 2 A: Yes, I did.
 3 Q: And what were your business affiliations since
 4 1981 in South Carolina?
 5 A: I worked with Ernst and Young and its
 6 predecessors since arriving back in South
 7 Carolina, until approximately September of 1991
 8 at which time I, along with others, formed the
 9 firm I currently work with.
 10 Q: Among your advisory services have you had
 11 experience servicing as fiduciary of estates
 12 and trusts?
 13 A: Yes.
 14 Q: When did you start doing that?
 15 A: I don't recall exactly when that was.
 16 Q: Well, tell me this. When did you first get
 17 involved, beyond reading about it in the
 18 newspaper, with the James Brown estate and 2000
 19 trust?
 20 A: I want to say approximately 2008, in that time
 21 frame. I'm not sure of the date.
 22 Q: And what was your early involvement?
 23 A: I was asked by the courts to serve as a special
 24 administrator, special trustee.
 25 Q: For what purpose?

1903

3 (Pages 9 to 12)

Page 17

- 1 Q: You interviewed. Telephone interviews?
 2 A: Yes.
 3 Q: Did you talk to the individual children of
 4 James Brown who were recognized in his will?
 5 A: I don't recall speaking with them.
 6 Q: You talked -- did you talk to their lawyers?
 7 A: Yes.
 8 Q: Those were the interviews you conducted?
 9 A: Yes.
 10 Q: And would it be fair to say that those lawyers
 11 were advocates for the approval of the
 12 settlement agreement?
 13 A: I'm not going to speculate what they thought.
 14 Q: Hearings were ultimately conducted when the
 15 seeking of court approval from the trial court
 16 in Aiken, acting as probate court actually, I
 17 guess, for approval of the settlement. Do you
 18 recall those?
 19 A: Yes.
 20 Q: And they were in January -- beginning of
 21 January 2009 and ran for, broken hearings over
 22 several months, is that right?
 23 A: Is that a question?
 24 Q: That's a question. Do you recall that?
 25 A: Yes.

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- 1 Q: Were you present at all of those hearings?
 2 A: I do not recall missing one.
 3 Q: Do you recall going to testify at one of those
 4 -- at least one of those hearings?
 5 A: Yes.
 6 Q: And you were asked to opine on the conclusions
 7 you reached under the brief you'd been given by
 8 the order appointing you as SAST regarding the
 9 reasonableness and fairness of the settlement?
 10 A: I'm sorry. Would you repeat that?
 11 Q: And you were asked in your testimony to opine
 12 or report to the court on the conclusions you
 13 reached while performing the duties that you
 14 were appointed to do, which is examine the
 15 fairness and reasonableness of the provisions
 16 of the settlement agreement, is that correct?
 17 A: Yes.
 18 Q: And what was your testimony at that point?
 19 A: Given the facts and circumstances, at that time
 20 I testified that it was my opinion that it was
 21 a fair and reasonable settlement.
 22 Q: And did you -- at the time you gave that
 23 testimony did you feel prepared -- fully
 24 prepared to render an opinion?
 25 A: Yes.

Page 19

- 1 Q: And from the time you commenced that the
 2 investigation into the fairness of the
 3 settlement, up to the date of the hearing where
 4 you gave that testimony, do you recall how much
 5 time elapsed?
 6 A: I don't recall.
 7 Q: Do you recall, prior to the first of the
 8 hearings regarding the proposed settlement, the
 9 inclusion of James Brown's son Terry Brown in
 10 the scope of the settlement agreement for the
 11 first time?
 12 A: Are you saying the first of the hearings?
 13 Q: Before the first of the hearings.
 14 A: I was not around at that time, so I don't know.
 15 Q: The first of the hearings on the approval of
 16 the settlement. Those hearings we talked about
 17 a few minutes ago where you said you don't
 18 remember missing one. Do you recall before the
 19 first hearing commenced that Terry Brown for
 20 the first time entered into the settlement
 21 agreement?
 22 A: I do recall that he entered into the settlement
 23 agreement prior to me being called to testify,
 24 as did all the others.
 25 Q: Do you recall all the others had entered into

Page 20

- 1 the settlement agreement prior to the time the
 2 order was entered appointing you, but that
 3 Terry Brown had not?
 4 A: I do recall that.
 5 Q: Okay. Had you interviewed Mr. Brown -- Terry
 6 Brown's lawyer or lawyers?
 7 A: Yes.
 8 Q: Prior to the first hearing?
 9 A: Yes.
 10 Q: Prior to out in the hall at the first hearing
 11 when the settlement agreement was first
 12 presented?
 13 A: Yes.
 14 Q: Was Terry Brown treated any differently than
 15 his siblings in the proposed settlement
 16 agreement?
 17 A: I suppose it depends on how you look at it.
 18 The terms dealing with Terry Brown were
 19 slightly different than the others.
 20 Q: Do you recall the differences?
 21 A: Dealing with him having a right of first
 22 refusal.
 23 Q: And none of his siblings had any similar right
 24 in the settlement agreement?
 25 A: I'd have to review the document again to give

Page 21

1 you differences in more detail.
 2 Q: Were you -- before Terry Brown agreed to some
 3 terms to enter into the settlement agreement,
 4 were you prepared to testify that even without
 5 his participation in the settlement agreement
 6 the terms were fair and reasonable?
 7 A: Yes.
 8 Q: Do you recall any plans for dealing with Terry
 9 Brown's claims under the -- under the will,
 10 should the settlement agreement have gone
 11 forward without his participation?
 12 A: That was outside the scope of what I was doing.
 13 Q: What were the, in summary fashion, the issues
 14 in controversy that led you to believe that
 15 some settlement of the estate and trust
 16 interest was fair and reasonable?
 17 A: Well, it's been more than four years. But I
 18 would say in general terms the issues and
 19 controversy were the will contests by the
 20 children and by the supposed spouse.
 21 Q: You would concede at this point that the South
 22 Carolina Supreme Court ultimately determined
 23 that the settlement that was the subject of
 24 your testimony and was ultimately approved, as
 25 you testified to earlier, by the trial court in

Page 22

1 May of 2009, was not a fair and reasonable
 2 compromise of claims?
 3 A: I would not describe it that way. The Supreme
 4 Court affirmed part of that agreement in
 5 removing Ms. Pope and Mr. Buchanan for cause.
 6 That was part of the agreement. They were
 7 removed because of their harm to the estate, so
 8 that was affirmed by the South Carolina Supreme
 9 Court. In terms of the settlement of the
 10 parties in rearranging how the assets would be
 11 handled, that was remanded to lower court for
 12 taking more evidence because they didn't
 13 believe there was enough discovery to have the
 14 judge reach the order that he issued.
 15 Q: Do you recall in your testimony in front of
 16 Judge Early at the hearing to seek approval of
 17 the settlement regarding the -- or whether you
 18 at that point in time had any belief or
 19 knowledge related to any misconduct by you and
 20 Mr. Buchanan or Ms. Pope as fiduciaries?
 21 A: I'm sorry. Would you ask that again?
 22 Q: Do you recall giving testimony in front of
 23 Judge Early during the settlement approval
 24 hearings regarding whether or not you saw any
 25 evidence of misconduct by either Ms. Pope or

Page 23

1 Mr. Buchanan in their actions as fiduciaries?
 2 A: I don't recall. I'm sure there's a transcript.
 3 If you'd like to present that I'll be happy to
 4 review it.
 5 Q: At the time you served as SAST beginning in
 6 January 2009 and opined on the fairness of the
 7 settlement, were you anticipating appointment
 8 as a permanent PR or trustee or a continued
 9 SAST appointment with expanded duties?
 10 A: I'm sorry. You're going to have to ask again.
 11 She's distracting me with the typing.
 12 MR. BAUKNIGHT: If you don't mind, if you're going
 13 to do that can we move you to a different
 14 place?
 15 MS. POPE: Sure. Of course.
 16 MR. BAUKNIGHT: That would be great. I'm having
 17 trouble between the two. I'm an old guy and
 18 different sounds mess up my mind, too.
 19 MS. POPE: Sorry.
 20 A: If you don't mind, I'd ask you to ask it again.
 21 Q: I'll try to slim it down a little bit. Did you
 22 have any expectations when you were operating
 23 at SAST under that January 2009 order to
 24 evaluate the settlement and later opining on
 25 the settlement, as to your future role, if any,

Page 24

1 with the James Brown estate and 2000 trust
 2 and/or the settlement entity?
 3 A: At that point, no.
 4 Q: Were you ultimately approached about assuming
 5 the role of PR trustee after the dismissal of
 6 Mr. Buchanan and Ms. Pope?
 7 A: I was asked if appointed would I accept.
 8 Q: And who asked you?
 9 A: Judge Early.
 10 Q: None of the parties approached you before that
 11 or their counsel, on that point?
 12 A: I don't recall being approached by them asking
 13 if I would serve.
 14 Q: The order was entered -- the order approving
 15 the settlement that was ultimately the basis
 16 for the appeal was entered in May of 2009 and
 17 you were appointed successor PR trustee under
 18 that order, correct?
 19 A: Yes.
 20 Q: Did you have -- when did you first have any
 21 contact with counsel for Terry and/or Forlando
 22 or William Forlando Brown after your
 23 appointment in May of 2009 as PR trustee?
 24 A: When would I ---
 25 Q: When did you first have contact with lawyers

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6 (Pages 21 to 24)

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1 preliminary statement to which you refer?
 2 A: It's the entire agreement.
 3 Q: Well, the entire agreement doesn't say Terry
 4 Brown has a right to conduct a due diligence
 5 review. I'm asking where that -- where you see
 6 that language.
 7 A: Well ---
 8 Q: I mean, I see it in the middle of the first
 9 unnumbered paragraph under preliminary
 10 statement.
 11 A: Correct. The whole thing is dealing with the
 12 due diligence review. The specific
 13 acknowledgment that Terry Brown has that right
 14 is right there just below Forlando Brown's
 15 signature in the middle of that paragraph.
 16 Q: I draw your attention to the first page of
 17 Exhibit Three, the Secondary Confidentiality
 18 Agreement signed by William F. Brown, who we
 19 also know as Forlando Brown. The last sentence
 20 says, Terry Brown has assigned certain of his
 21 due diligence rights under the ROFR, right of
 22 first refusal, agreement to Forlando Brown, and
 23 Forlando Brown has engaged Terry Cox to
 24 coordinate such activities. Did ---
 25 A: He had asked Forlando Brown to come in and

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1 review these documents on his behalf.
 2 Q: Well, I want to go back to Exhibit One to
 3 understand. And I don't want to nitpick about
 4 your language, because what you say may mean
 5 something differently -- different to me than
 6 it does to you out in the fiduciary real world
 7 as it were. But when you say Exhibit One, the
 8 Terry Brown assignment, never happened, do you
 9 base that on a belief that there is some
 10 forgery involved in Exhibit One of Terry
 11 Brown's signature?
 12 A: I believe I explained my belief came in the
 13 form of his attorney telling me it did not
 14 happen and it could not happen. And he was
 15 well aware of this document.
 16 Q: Well, I remember you saying that. I have
 17 trouble with the phrase it never happened, no
 18 matter whether you heard it from his lawyer
 19 directly or indirectly as opposed to a hard
 20 copy of the document I'm looking at which
 21 shows, to my way of thinking, that something
 22 happened. I mean, the effectiveness of it is
 23 a different question. But my question is when
 24 -- when you understand it never happened, is
 25 that based on a belief that there's a forgery

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1 or are you just accepting the terminology used
 2 by Mr. Custer?
 3 A: Mr. Custer is Forlando's attorney. I accept
 4 what Forlando's attorney tells me in this case.
 5 Q: You do know, of course, that he is no longer
 6 Forlando's attorney?
 7 A: I don't know that and don't have any reason to
 8 have a care about it.
 9 Q: After this meeting with Mr. Cox where you said
 10 he left with an understanding or belief that
 11 the appraisal work that had been done was --
 12 was reasonable, did you have any further
 13 contacts with Mr. Cox?
 14 A: I've spoken to Terry Cox since then but I don't
 15 know how many times or when it was.
 16 Q: Was he exploring the possibility of purchasing
 17 some or all of the estate trust assets?
 18 A: No.
 19 Q: Okay. What were you all talking about?
 20 A: I don't recall anything other than small talk.
 21 Again, nobody has ever discussed buying these
 22 assets.
 23 Q: Did you ever hear again from the investment
 24 banker?
 25 A: No. I want to say that no one has, to my

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1 knowledge, ever, ever shown any interest in
 2 purchasing these assets. There's never been an
 3 offer made. There's never been any interest
 4 whatsoever in purchasing the assets of the
 5 James Brown estate, that I'm aware of, other
 6 than the items that Ms. Pope and Mr. Buchanan
 7 negligently sold at the Christie's auction.
 8 Those are the only assets of the estate and
 9 trust that I'm aware of having been sold.
 10 MR. WILLIAMS: Why don't we take a lunch break?
 11 MR. BAUKNIGHT: Yeah.
 12 (Off the Record)
 13 MR. WILLIAMS: We're back on the record.
 14 Q: Let's go back, Mr. Bauknight, in time to the
 15 May 2009 appointment of you as the successor PR
 16 and trustee of the James Brown estate and
 17 irrevocable trust. And my question was correct
 18 -- or my description was correct as you were
 19 both personal representative of the estate and
 20 trustee of the 2000 irrevocable trust when you
 21 were appointed in May of 2009?
 22 A: Correct.
 23 Q: Did the dual appointment, in your mind, create
 24 any conflict of interest?
 25 A: No. In fact, I ---

1906

10 (Pages 37 to 40)

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1 Q: You haven't shared it with any of the lawyers
2 who represent folks who are interested in the
3 estate -- have an interest in the estate?
4 A: I have not.
5 Q: Or with the Attorney General?
6 A: I have not. Lawyers who may have an interest
7 in this estate or may have a curious interest.
8 But I think the court's can determine if their
9 clients have an interest in this estate other
10 than what's in the will.
11 Q: Can you ballpark for me the annual income that
12 the estate has earned since you took over as PR
13 trustee in May of 2009?
14 A: No.
15 Q: You don't remember or ---
16 A: Well, the numbers change.
17 Q: Well, I know.
18 A: I just don't know what they are off the top of
19 my head.
20 Q: Has it been as high as \$10 million one or more
21 years?
22 A: You know, that's, I think, some fantasy that
23 Adele Pope put out there. But where she would
24 come up with something like that, I have no
25 clue. Where she comes up with most of the

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1 stuff I've heard from her I have no clue.
2 Q: What information did you provide to Philpott
3 Ball for use in this evaluation?
4 A: Information I obtained from Ms. Pope and Mr.
5 Buchanan.
6 Q: Numbers?
7 A: Excuse me?
8 Q: That would be basically numbers?
9 A: That would be approximately 180 boxes of stuff
10 that I obtained from Pope and Buchanan. A
11 hundred and forty some odd boxes were provided
12 at some length of time after they were ordered
13 to be produced so that she could go through
14 them for whatever reason she had and then
15 another 30 boxes mysteriously appeared months
16 and months and months later after we had been
17 assured that all of the documents had been
18 produced. But that's what was provided to
19 Philpott, Ball and Werner.
20 Q: Did you have any interviews with them for which
21 you gave them information?
22 A: I spoke with them at the initial part of the
23 engagement.
24 Q: I'm looking at page 36, Bates stamped Bauknight
25 46.

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1 A: I don't know what a Bates stamp is, so ---
2 Q: The second paragraph on that page is a general
3 introduction to a list of what are called
4 general assumptions. The second sentence of
5 that paragraph reads, these general assumptions
6 have been made based on conversations with
7 persons familiar with the estate and the music
8 industry and a commonsense view of business and
9 popular culture. Do you see that sentence?
10 A: Yes.
11 Q: Who would the persons familiar with the estate
12 have been, to your knowledge?
13 A: At this point I can only assume me, possibly
14 Peter Afterman. I don't know who else. I
15 don't recall. It's been several years.
16 Q: I understand, but you're the only person I have
17 to ask.
18 A: I hear you.
19 Q: Do you know who the persons familiar with the
20 music industry would have been?
21 A: I don't know who they spoke with other than the
22 person I've just mentioned here.
23 Q: And the commonsense view of business and
24 popular culture would have been anyone other
25 than theirs, to your knowledge?

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1 A: No. These are the valuation experts. These
2 are actually the same experts Adele Pope has
3 used in the past. They're nationally known
4 experts. How they -- you know, I'm not a
5 valuation expert. I went out and hired the
6 best I could find to do this valuation. But
7 how they did their job I -- you know, I don't
8 know. I'm not a valuation expert. The people
9 they spoke with, I'm sure they, as part of
10 their business, know who to talk to about
11 different industries that they're valuing. But
12 I don't know who they spoke with. I would just
13 tell you I went out and hired competent highly
14 respected professionals to do what Adele Pope
15 and Bob Buchanan should have done the moment
16 they were involved in this estate instead of
17 guessing. Taking somebody's letter of interest
18 and throwing \$100 million on a federal estate
19 tax return and a probate form so that they can
20 jack up their fees. They were self-serving in
21 the number they chose. Had no basis
22 whatsoever, in fact. And they didn't even
23 bother to hire somebody to do a valuation. I
24 went out and hired competent respected
25 professionals. I would further say that my

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14 (Pages 53 to 56)

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1 competent respected professionals then had to
 2 sit down with the highly respected well known
 3 valuation team from the Internal Revenue
 4 Service out of, I believe, Kansas City. People
 5 who value assets like this. Royalty streams.
 6 They brought their royalty stream experts in.
 7 Those people sat down with my experts and
 8 agreed. We put the right value on the 706, and
 9 Adele Pope's value was disregarded. So other
 10 than that, I don't know how else they did their
 11 job.
 12 Q: Based on your experience, has the interest in
 13 James Brown's music and likeness declined since
 14 your involvement with the estate and trust?
 15 A: I'm sorry. Would you state that again?
 16 Q: Based on your experience, has the interest in
 17 James Brown's music and likeness declined since
 18 your involvement with the estate and trust?
 19 A: I've not had that valued, but cannot imagine
 20 that it has declined under my tenure in any
 21 stretch. I've actually marketed this estate,
 22 where your client and Cal Watson's client never
 23 bothered. I've actually done my job to improve
 24 this estate where your client's never bothered.
 25 So no, I can't imagine that it's declined in

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1 that.
 2 Q: Has there been less demand for his music?
 3 A: I would not agree with that statement. I'd
 4 have to go back and ask you to clarify. Less
 5 than what? I want to retract my answer,
 6 because I don't know what you mean by less
 7 than. Than when your clients ran the estate?
 8 Was that the question? I'm not sure.
 9 Q: Well, I'm looking at the date of death
 10 valuation, and your experts used that
 11 terminology. And I'm asking if your experience
 12 has proven their assumption to be correct.
 13 A: Well, again ---
 14 Q: As James Brown's original fan base continues to
 15 age it is estimated that there will ultimately
 16 be less demand for his music by private music
 17 consumers, radio diskjockeys, television show
 18 producers and movie directors, among others.
 19 A: Well, I've had that discussion, not with these
 20 people, but with some of those experts that I
 21 said I interviewed who would assist me in
 22 marketing. And the general theme I gathered
 23 from speaking with all of them is when an
 24 artist of this caliber passes away, the royalty
 25 streams will generally increase for a period of

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1 time and then gradually start a decrease which
 2 would last for decades, until such time as
 3 there's very little interest. I don't know
 4 that I've hit the peak and started a decline.
 5 But that's the general description provided to
 6 me by experts in the music industry. I would
 7 also say that those same experts that I
 8 consulted with, many of which said that the
 9 time wasted by your client and Cal Watson's
 10 client was time that was costing the estate
 11 money, because the things they should have been
 12 doing to get that bump, the Michael Jackson
 13 bump, for instance, that he -- his estate
 14 enjoyed after his death, they didn't bother to
 15 do. That didn't start until I came.
 16 Q: My understanding and tell me if you have the
 17 same understanding, is the Michael Jackson bump
 18 began almost immediately after his death.
 19 A: I don't know that to be true. I think there's
 20 a lot of controversy about that.
 21 Q: Well, you do concede that Pope and Buchanan had
 22 no authority to do anything in that regard
 23 until nearly a year after Mr. Brown had died?
 24 A: I don't concede anything like that. I never
 25 made any statements along that line.

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1 Q: Do you know who the personal representatives
 2 and trustees were immediately -- the first
 3 appointed PRs and trustees were?
 4 A: Yes.
 5 Q: Were they Pope and Buchanan?
 6 A: No.
 7 Q: Buchanan, Dallas and Bradley?
 8 A: Yes.
 9 Q: Pope and Buchanan were not appointed until
 10 November 20th or so 2007?
 11 A: And prior to that they served in special roles.
 12 Q: Special administrator?
 13 A: Uh-huh (affirmative response.)
 14 Q: Correct?
 15 A: Yes.
 16 Q: Okay. And for years prior to his death,
 17 Buchanan, Dallas and Bradley were deeply
 18 involved in James Brown's -- the business side
 19 of James Brown's music empire. Is that a fair
 20 statement?
 21 A: I would not state that.
 22 Q: Any particular point of it that is contentious
 23 with you or just generally the statement that
 24 is not something you agree to?
 25 A: I would not agree with the statement in general

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15 (Pages 57 to 60)

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1 as you've described it. I would agree they
 2 were in positions of influence.
 3 Q: And/or in positions of authority from their
 4 appointment in early 2007 until the last of
 5 them resigned in November of 2007, regarding
 6 the estate and trust?
 7 A: They were in positions of authority during
 8 their tenure as fiduciaries.
 9 Q: And the SA role that Mr. Pope -- I mean, Mr.
 10 Buchanan and Ms. Pope were appointed to was
 11 limited?
 12 A: I think they -- I don't have the document in
 13 front of me and haven't seen it in such a long
 14 time I don't recall exactly what it said.
 15 Q: Do you recall they were not fiduciaries?
 16 A: I'm sorry?
 17 Q: Do you recall they were non-fiduciary SAs?
 18 A: I don't recall. I'm not sure how a -- I don't
 19 know how you could be an SA and not a
 20 fiduciary, but that's not my call. I'm not a
 21 lawyer.
 22 Q: Are there current conversations ongoing about a
 23 James Brown biopic movie?
 24 A: I would say yes.
 25 Q: Are you familiar with an option that was funded

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1 to -- during James Brown's lifetime to produce
 2 a James Brown biopic movie?
 3 A: I'm vaguely aware of it.
 4 Q: You know that it exists? You had heard that
 5 there was?
 6 A: I'm vaguely aware of it. I don't know the
 7 details of it, other than that it expired.
 8 Q: Do you know how long it ran?
 9 A: I don't know.
 10 Q: You know the annual ---
 11 A: I could say that I know it expired because I
 12 did check on it.
 13 Q: Right. Did -- do you know what the annual
 14 payment for the option was during his lifetime?
 15 A: I don't recall. I haven't seen that. I don't
 16 recall.
 17 Q: Have you ever seen any court documents from
 18 Aiken County regarding a formula to value the
 19 royalties of James Brown's works?
 20 A: A formula?
 21 Q: A formula approved by the court for ---
 22 A: Approved by the court.
 23 Q: Yes, sir.
 24 A: I've heard discussion of people -- I want to
 25 say Adele Pope had some kind of testimony

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1 somewhere, but I don't know where I've seen it,
 2 where people were talking with -- talking about
 3 some kind of formula for valuing royalties.
 4 But approved by the court, I'm not familiar
 5 with that. And frankly, that wouldn't matter
 6 to the IRS anyway. The IRS is going to use the
 7 values that they choose and can substantiate as
 8 appropriate for their purposes.
 9 MR. WILLIAMS: Off the record.
 10 (Off the Record)
 11 A: I would like to ask you this question. Are you
 12 telling me that the Aiken County court approved
 13 a method of valuation for this estate?
 14 Q: I was asking you.
 15 A: Okay.
 16 Q: Get your lawyer to send me an interrogatory.
 17 A: I would say this about that, as I've heard in
 18 the movies. Just because the court approves
 19 it, such as the Christie's sale or even if they
 20 approved the sale of the rest, that doesn't
 21 mean it's prudent. And prudence is what a
 22 fiduciary is going to be judged on. You don't
 23 get to hide behind an approval of the court for
 24 an action, because the court didn't say when
 25 the action should occur. Only that you had the

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1 right to make that decision. And that ruling
 2 doesn't mean that it's prudent.
 3 Q: And I guess we most recently learned that from
 4 the South Carolina Supreme Court.
 5 A: Could be. I think they made it clear when they
 6 cited that that's one of the reasons they
 7 removed the then serving fiduciaries for cause.
 8 They cited something that supposedly the former
 9 fiduciaries were relying on. But even the
 10 Supreme Court said that was not prudent.
 11 Approval is only telling you you have the power
 12 to make that decision, but it is then up to you
 13 to make a good decision. They did not.
 14 Q: What I understand so far from some of the
 15 things you said is you criticize Pope and
 16 Buchanan for the Christie's sale specifically
 17 for their failure to provide authentication of
 18 the items to be auctioned, that you criticize
 19 them for not engaging the equivalent of
 20 Philpott Ball to evaluate the value of the
 21 estate and for failure to actively market the
 22 James Brown intellectual property as such,
 23 royalties presumably. Is that what you've said
 24 so far?
 25 A: I certainly have criticized them for those

16 (Pages 61 to 64)

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1 from somebody else to peak the interest so that
 2 they could get in and do due diligence. They
 3 then wanted to go out and market the assets of
 4 the estate. Well, if your clients are so naive
 5 and inexperienced as they are in this industry
 6 and trying to do this job that they believe
 7 that, they're foolish. And to this day she
 8 spouts that off like it's a fact. She's
 9 showing her total lack of business experience
 10 in dealing with a letter of interest. It's
 11 simply something designed to peak interest so
 12 you can get your foot in the door to look at
 13 documents to see what's really there. And
 14 that's all Terry Cox ever intended. And
 15 frankly, when he got in the door and he did see
 16 what was here, he agreed. There's no way to
 17 sell these assets. And frankly, your client
 18 doesn't even understand enough to know that
 19 there's no way to sell these assets. She
 20 hadn't done any due diligence herself. That
 21 was 2009, as the testimony shows.
 22 Q: What about the Terry Brown letter of interest,
 23 slash, offer in the spring of 2008, prior to
 24 the Christie's auction? An offer ---
 25 A: You'll have to show it to me to understand what

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1 you're talking about.
 2 Q: That doesn't ring a bell to you?
 3 A: No. I wasn't aware that anybody else had ever
 4 offered to buy any assets, not that anybody has
 5 ever offered to buy assets. But the only one
 6 I've ever heard referred to by Pope is this
 7 supposed offer from Terry Cox which never was
 8 an offer. She put \$100 million out there so
 9 she could collect a \$5 million claim which
 10 she's filed. Purely self-serving. Purely self-
 11 serving. Selling assets of the estate to take
 12 money for herself and leave it insolvent.
 13 Purely self-serving. I'm sorry. I get carried
 14 away. I get passionate about something I'm
 15 working on when I see such wrong doing.
 16 Q: So would you give serious consideration to a \$5
 17 million cash offer for the estate and trust
 18 today?
 19 A: I'll tell you, I give serious consideration to
 20 anything put in front of me. It's my job to
 21 consider anything that's put in front of me, as
 22 long as it doesn't waste my time, which is paid
 23 for by this estate and trust, because that's my
 24 job. I have to consider it. As I've told
 25 Forlando Brown when he brings Oprah Winfrey

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1 supposedly to the table. That's fine. And he
 2 -- he runs in different circles and he may well
 3 have had Oprah Winfrey there. I have to take
 4 that stuff seriously, because I'm a fiduciary
 5 and it's in the best interest of this estate
 6 and trust to follow up on that stuff. But if
 7 you brought \$5 million cash to the table it
 8 likely wouldn't take long for me to make, you
 9 know, my due diligence about that offer and
 10 come to some prudent conclusion. I would
 11 consult with experts and I, you know, would
 12 arrive -- go through my normal process and
 13 arrive at a prudent conclusion.
 14 Q: Thank you for your time. Mr. Watson is
 15 entitled to ask you questions now. He may have
 16 some.
 17 MR. WATSON: Why don't we take a couple of minutes.
 18 (Off the Record)
 19 MR. BAUKNIGHT - EXAMINATION BY MR. WATSON:
 20 Q: We're back on the record, Mr. Bauknight. My
 21 name is Cal Watson. We've met previously. I
 22 represent Mr. Bob Buchanan and I just have just
 23 a few questions for you. The suit that we're
 24 taking this deposition in is Brown versus Pope
 25 and Buchanan, both individually and as trustee

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1 of a irrevocable trust established by James
 2 Brown in August 1, 2000. Are you generally
 3 familiar with the allegations in this lawsuit?
 4 A: My understanding is Forlando Brown sued Pope
 5 and Buchanan for breach of fiduciary duty.
 6 Q: Okay. Was your understanding that the suit was
 7 intended as a claim on a personal basis or
 8 individual basis or against the trust itself?
 9 A: I have no understanding of -- I mean, I don't
 10 know what he intended.
 11 Q: Okay. Have you reviewed the allegations in the
 12 complaint and the amendments to the complaint?
 13 A: At some point in the last four and a half
 14 years, yes.
 15 Q: Do you have any understanding or conclusions
 16 other than it was intended as a suit against
 17 Pope and Buchanan for breach of fiduciary duty?
 18 A: I have no conclusions at all.
 19 Q: Have you discussed this suit with Forlando
 20 Brown or William Brown?
 21 A: I don't recall having discussed it with him.
 22 Q: Has he raised any issues that are -- with you
 23 that have been raised in the complaint or the
 24 amendments to the complaint?
 25 A: I don't recall having discussed this with him.

1910

18 (Pages 69 to 72)

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South Carolina,

Defendant.

Russell L. Bauknight, etc., Henry Dargan
McMaster, in his capacity as Attorney
General, etc, et al,

Plaintiffs,

v.

Adele J. Pope and Robert L. Buchanan, Jr.,

Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2010-CP-40-4900
[formerly Newberry Co. Case No.
2011-CP-36-379]

MEMORANDUM IN SUPPORT OF
MOTION TO AMEND ANSWER,
MOTION FOR JUDGMENT ON THE
PLEADINGS, AND
MOTIONS TO STRIKE AND IN
OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT

POPE V. WILSON [former case 36-379]

Case No. 2010-CP-40-4900

Updated May 2, 2016

INTRODUCTION AND BACKGROUND

The Defendant Attorney General strongly supports the Freedom of Information Act, and his Office and his predecessors have a long history of advocating the importance of that law. Subject to all of our pending motions and defenses, the Office of the Attorney General (OAG) has responded to the FOIA at issue in this case by providing documents attached to the Answer except for the three-page document that was under the review of this Court, and is now in the public domain.

Although the OAG has responded to the FOIA, this case must be dismissed for other reasons that deprive this Court of subject matter jurisdiction. FOIA must be applied in accordance with the law, and that law, as explained below, exempts matters that are governed by the Rules of Civil Procedure, as here, and because Plaintiff's FOIA relates to pending judicial proceedings in Richland County, *Bauknight v. Pope*, 2010-CP-40-4900, and are subject to the discovery process in that case. Under FOIA and the Rules of Civil Procedure, Plaintiff cannot use FOIA in this case to make an end-run around discovery procedure in other ongoing litigation.

Response to Plaintiff's FOIA Request Provided Subject to Defenses

Plaintiff requested the following documents which are described at more length in her July 19, 2011 FOIA request attached as Exhibit B to the Complaint.

1 and 2. Published policies of the Office of the Attorney General regarding engagement of private attorneys including contingency fee counsel in effect in May, 2010 and in effect on July 19, 2011.

3. The contract of then-AG Henry McMaster and / or the State engaging Kenneth B. Wingate and Everett Kendall, II to commence Civil Action 2010-GC-4000073 in the Probate Court for Richland County on behalf of the AG.

4. Any contract and / or other document authorizing Russell Bauknight to commence case 400000073 on behalf of the AG and/ or the State.

The Office of the Attorney General did respond to this request and proposed to put the requests on hold pending the outcome of Richland County litigation, 2010-CP-40-4900. Ex. C to Complaint. The letter noted several motions pending related to discovery requests and that FOIA is not designed to supplement the rules of civil or criminal discovery.

The documents attached to the Defendant's proposed Amended Answer provided the only documents that could be considered responsive to this request except the three page agreement now in the public domain.

A. The Office of the Attorney General responded to essentially the same FOIA request in another matter as Plaintiff's request 3 for "[t]he contract of then-AG Henry McMaster and / or the State engaging Kenneth B. Wingate and Everett Kendall, II to commence Civil Action 2010-GC-4000073 in the Probate Court for Richland County on behalf of the AG ." That other request was made by Plaintiff Summer who later brought the case *Summer v. Wilson*, 2012-CP-36-0688 The Defendant craves reference to his Office's response to the Summer FOIA which are at Amended Ans. Exs pp. 1-10 and of public record in *Summer*. These responses make clear that the only document not of record that could be considered responsive to Plaintiff's request and not provided with the Amended Answer to Plaintiff is the three page document previously under judicial review in the main part of the instant case 4900. Plaintiff has had the three page document pursuant to *Brown v. Pope*, 3:08-cv-14-WOB, November 15, 2013 (the Honorable J. Gregory Wehrman, Magistrate Judge)(copy attached).

B. As to Plaintiff's FOIA requests 1 and 2. [Published policies of the Office of the Attorney General (OAG) regarding engagement of private attorneys including contingency fee counsel in effect in May, 2010 and in effect on July 19, 2011], the Defendant attaches the policy from his Office manual: Answer Exs. p 11 [Other parts of the page of the Office manual on which the policy appears are redacted only because they are not related to the FOIA request]

C. As for Plaintiff's FOIA request 4 [Any contract and / or other document authorizing Russell Bauknight to commence case 400000073 on behalf of the AG and/ or the State], the Office of the Attorney General does not have such documents.

Except for the three lines of OAG policy, Plaintiff had access to the same documents through court records prior to the provision of these attachments as Amended Answer exhibits in 2013.

Procedural Background and Summary

In earlier proceedings, the Court of Common Pleas for Newberry County, denied the Defendant Wilson's Motion to Dismiss this case pursuant to Rule 12(b)(8), SCRCF, but ordered that this case be consolidated with *Bauknight v. Pope*, 2010-CP-4900, pending in Richland. The Court did not rule on the motions to strike.

The relationship of the instant action to Richland proceedings in the main *Bauknight v. Pope* action is set forth in Plaintiff's complaint. Instant Plaintiff Pope acknowledges that she is the Defendant in a Richland County suit brought by the former Attorney General McMaster and the current trustee of the James Brown Legacy Trust. (2010-CP-40-4900). She contends that the Richland suit alleges that she caused millions of dollars in damage to the Legacy Trust and that her and her co-defendant's valuation of the trust was incorrect and improper.

Most of the documents requested in the Freedom of Information Act request of the Attorney General are the subject of pending Motions in case 4900 as Plaintiff acknowledges; Plaintiff's Return to MTD, p. 2, ¶6 ["Because certain documents sought in Case 4900 discovery are public documents in the possession of public bodies, Plaintiff attempted to obtain some of those documents through FOIA requests"]; see exhibits to Motion to Dismiss: Exhibit B,

Motion to Compel, p. 3, ¶ 3, June 7, 2011[requesting contingency fee contract] (attachments to Motion omitted); Exhibit C, Motion for Protective Order regarding fee agreement.

Pending defense motions include Defendant's Motion to Amend Answer, Motion for Judgment on the Pleadings, and Motions to Strike affidavits filed by Plaintiff. The Motion to Amend the Answer should be granted because, subject to all defense motions and defenses, it provides responses to the FOIA at issue, drops the change of venue defense because venue has been changed and adds a subject matter jurisdiction defense consistent with the Motion for Judgment on the Pleadings and earlier defenses. The Motion for Judgment on the Pleadings should be granted because it tracks the defenses and serves to resolve all outstanding issues. The Defendant's Motions to Strike should be granted to remove the multiple affidavits of Plaintiff that are riddled with hearsay, speculation and completely irrelevant material. Plaintiff's Motion for Summary Judgment should be denied for all of these reasons.

I

THE MOTION TO AMEND THE ANSWER SHOULD BE GRANTED

This Motion should be granted for the reasons set forth above.

II

PLAINTIFF CANNOT USE FOIA TO BYPASS JUDICIAL PROCEEDINGS OR TO AVOID THE RULES OF CIVIL PROCEDURE

Nothing in FOIA, the Rules of Civil Procedure or the Court system of this State would permit Plaintiff to make and enforce a FOIA request outside a pending judicial proceeding involving discovery related to many of the same documents. *See* exhibits referenced, *supra*. Clearly she is attempting to use FOIA as a discovery tool because her affidavits contain lengthy

accounts regarding the pending Richland litigation from her perspective and she seeks some of the same documents. She cannot avoid the Rules of Civil Procedure regarding discovery by this process, and the Court lacks subject matter of this action

Even if discovery motions were not pending in Richland, legal authority suggests that Plaintiff would not be permitted to use FOIA as a discovery tool regarding those proceedings. The Order of the late Marc Westbrook submitted by the Defendant Wilson (*Lominack v. Myers*, 2002-CP-32-1890, October 25, 2002) stated that “it is well settled case law that the FOIA is not intended as a substitute for discovery and was not enacted to provide procedures for obtaining information during litigation or to benefit private litigants.” (copy attached). Although our Supreme Court has not expressly addressed the issue in the civil context, it has recognized that FOIA is not to be used to bypass limits on discovery in criminal proceedings. *State v. Robinson*, 305 S.C. 469, 476-77, 409 S.E.2d 404, 409 (1991); *Evening Post Pub. Co. v. City of N. Charleston*, 363 S.C. 452, 459, 611 S.E.2d 496, 500 (2005). Moreover, our Supreme Court has also recognized that “[i]n construing the federal FOIA, the United States Supreme Court has held that the FOIA does not supplement or displace the applicable rules of discovery. *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 153 (1989)¹; *National Labor Relations Board v. Robbins Tire and Rubber Co.*, 437 U.S. 214 (1978).” *State v. Robinson*, 305 S.C. 469, 476-77, 409 S.E.2d 404, 409 (1991). Although *Robinson* involved criminal proceedings, the

¹ “[A] court must be mindful of this Court’s observations that the FOIA was not intended to supplement or displace rules of discovery. See *Robbins Tire*, 437 U.S., at 236-239, 242; *id.*, at 243, 98 S.Ct., at 2327 (STEVENS, J., concurring). See also *United States v. Weber Aircraft Corp.*, 465 U.S. 792, 801-802 (1984). Indeed, the Court of Appeals acknowledged that this was not a principal intention of Congress. 850 F.2d, at 108.” *Id.*

State Supreme Court's recitation of the federal rule suggests that it would apply the same limitation on the use of FOIA as a discovery tool as Judge Westbrook did.

Moreover, FOIA, itself, exempts matters covered by the Rules of Civil Procedure via S.C. Code Ann. §30-4-40 which states, in part, that "(a) [a] public body may but is not required to exempt from disclosure the following information: . . . (4) [m]atters specifically exempted from disclosure by statute or law." (emphasis added). These exemptions under law would include discovery which is strictly controlled by the Rules of Civil Procedure because court rules of procedure are "law." *Magnuson v. Billings*, 152 Ind. 177, 52 N.E. 803, 804 (1899)²; *United States v. Hvass*, 355 U.S. 570, 575 (1958)³; *State ex rel. Beacon Journal Publ'g Co. v. Waters*, 67 Ohio St. 3d 321, 323, 617 N.E.2d 1110, 1113 (1993).⁴ These rules include limitations on the scope of discovery in Rule 26(b) to "matter, not privileged, which is relevant to the subject matter involved in the pending action"

To allow a FOIA request to bypass the Rules of Civil Procedure would be contrary to §30-4-40(a)(4) and Rule 26(c), SCRPC, which provide for judicial involvement in the discovery process through protective orders and discovery conferences. "It is well-settled that 'the scope and conduct of discovery are within the sound discretion of the trial court'" *Palmetto*

2 "[Rules of court] have the force and effect of law, and are obligatory upon the court, as well as upon parties to causes pending before it. . . A rule of court is a law of practice, extended alike to all litigants who come within its purview, and who, in conducting their causes, have the right to assume that it will be uniformly enforced by the court, in conservation of their rights" *Id.*

3 "The phrase 'a law of the United States,' as used in the perjury statute, is not limited to statutes, but includes as well Rules and Regulations which have been lawfully authorized and have a clear legislative base" *Id.*

4 "[E]xception [under Ohio discovery statute] for other 'state law' may include procedural court rules, and does include [Ohio] Crim.R. 6(E)." *Id.*

Alliance, Inc. v. S. Carolina Pub. Serv. Comm'n, 282 S.C. 430, 436, 319 S.E.2d 695, 698 (1984).

“Our judges must use their authority to make sure that abusive deposition tactics and other forms of discovery abuse do not succeed in their ultimate goal: achieving success through abuse of the discovery rules rather than by the rule of law.” *In re Anonymous Member of S. Carolina Bar*, 346 S.C. 177, 194, 552 S.E.2d 10, 18 (2001). To allow a FOIA request to escape this authority would tie the hands of the Court from controlling the discovery process including permitting a party to bypass scheduling orders and motions hearings. FOIA was not intended to work this way nor were our Rules of Civil Procedure intended to be so limited.

III

THE ATTORNEY GENERAL’S MOTION TO STRIKE SHOULD BE GRANTED

The Attorney General has moved to strike five affidavits and some related exhibits of Plaintiff. Many of her affidavits contain vitriolic and baseless speculation. Since then he has filed two motions to strike at least an additional 4 affidavits. They all should be struck because they are not based upon personal knowledge, contain hearsay, and are speculative and irrelevant. Examples abound of these violations by Plaintiff of the basic rules for affidavits:

1. Affidavit attached to Complaint

-p.2, ¶ 5 “agent [of party not involved in instant proceeding] advised that if Bob and I did not drop a pending James Brown appeal AG . . . [note omitted] would to[sic] sue us” [hearsay, irrelevant]

-p. 5, ¶21, “ I believe the Retention Agreement will show whether AG McMaster . . . was in fact acting to punish Bob and me ;” [lack of personal knowledge; speculation]

-p. 6, ¶25 “I am informed and believe that the documents requested under FOIA . . . will show[a list follows of speculation about what the documents will show][lack of personal knowledge, hearsay]

Affidavit of Pope (September 1, 2011)Supporting Expedited hearing;

-p.8, ¶ 37 “I am informed and believe the requested documents will begin to show . . . [speculative, lack of personal knowledge];

Affidavit and attachments in support of Plaintiff’s Motion for Summary Judgment;

-Affidavit, p.2, ¶ 4 “refusal to comply with my FOIA requests is not only covering up. . . .”[lack of personal knowledge, speculative]

Supplemental Affidavit (September 26, 2011);

-p. 3, ¶8 I am informed and believe that the documents will show [speculation, lack of personal knowledge]

October 6, 2011 affidavit.

-p.4, ¶10 speculation about motives [lack of personal knowledge]

-p.7, ¶¶ 12-14, speculation about what documents will show [lack of personal knowledge]

“The rule governing summary judgment provides that ‘[s]upporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.’” Rule 56(e), SCRCP (emphasis added). *Dawkins v. Fields*, 354 S.C. 58, 64, 580 S.E.2d 433, 436 (2003). Because all of the affidavits appear to be directed to summary judgment, they must meet this standard of Rule 56(e) rather than Rule 11(c) which provides that

affidavits and verifications may include matters stated on information and belief.

In numerous respects, the affidavits clearly fail to meet standards of being based upon personal knowledge and containing admissible evidence. They contain inadmissible hearsay and refer to news articles which are not admissible. In particular, all of the affidavits are irrelevant. Many of them contain Plaintiff's account of litigation related to the James Brown estate and the Legacy Trust and allegations about why she needs the documents, but all of those statements are irrelevant to whether she is entitled to the documents under FOIA. All that is relevant to her request is whether Plaintiff is entitled to the documents at issue under the terms of FOIA. That statute does not contain standards of disclosure based upon alleged importance or need. S.C. Code Ann. §§30-4-30 through 30-30-4-50, *et seq.* Plaintiff's lack of entitlement to the documents is discussed *infra* regarding her motion for summary judgment, but those grounds have nothing to do with the alleged need for or importance of the documents.

IV

THE DEFENDANT IS ENTITLED TO JUDGMENT ON THE PLEADINGS PLAINTIFF IS NOT ENTITLED TO SUMMARY JUDGMENT

For all the reasons set forth above including the Defendant's provision of documents subject to the FOIA request, the Defendant is entitled to Judgment on the Pleadings, and Plaintiff is not entitled to summary judgment.

CONCLUSION

The Freedom of Information Act is a very important law, but it does not permit Plaintiff to bypass other judicial proceedings and the Rules of Civil Procedure controlling discovery. For the foregoing reasons, this Court should grant the Defendant's Motion to Amend his Answer and

his Motion for Judgment on the Pleadings and deny Plaintiff's Motion for Summary Judgment. Moreover, subject to all of these defenses, the OAG has responded to Plaintiff's FOIA request with documents that could be considered responsive to that request except for the three page document that Plaintiff now has and is in the public domain. Plaintiff has had access to most of the same documents prior to their attachment as exhibits to the Amended Answer filed in March, 2013. Therefore, the case should be ended for the jurisdictional and other defenses discussed above, but Plaintiff has, subject to these defenses, a response to her FOIA request.

Respectfully submitted,

ALAN WILSON
Attorney General

J. EMORY SMITH, JR.
Deputy Solicitor General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680
S.C. Bar No. 5262

BY:



ATTORNEYS FOR THE ATTORNEY GENERAL

May 2, 2016

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
Civil Minutes**

Columbia Action 3:08-cv-14-WOB

11/15/13

Forlando J. Brown v. Adele Pope, et al.

BEFORE: HON. J. GREGORY WEHRMAN, MAGISTRATE JUDGE

No Court Reporter

No Courtroom Deputy

ATTORNEYS FOR PLAINTIFF

Matt Bodman
David Bell¹

ATTORNEYS FOR DEFENDANT ADELE POPE

Daryl Williams
Adam Silvernail

ATTORNEY FOR DEFENDANT ROBERT BUCHANAN, JR.

Joseph Calhoun Watson

ATTORNEYS FOR TRUSTEE RUSSELL BAUKNIGHT

Burl Williams
J. David Black

Conference call held on November 14, 2013 regarding trustee Bauknight's motion for confidentiality order. Doc. 290. After hearing argument of counsel, the Court **ordered:** the motion for confidentiality order [Doc. 290] is **granted in part and denied in part** as follows. The retention agreement at issue is a public document due to the involvement of the South Carolina Attorney General and, accordingly, it is not protected by the confidentiality order previously entered in this action. See Doc. 83. The estate valuation at issue is discoverable because it potentially relates to the remaining claims in this action. However, during the phone conference the Court was first made aware of the fact that a supplemental inventory and appraisal was filed in state court and that the supplemental inventory set forth only the valuation's bottom line figure regarding the total value of

¹ Mr. Bell's pro hac vice motion is pending and the Court will rule on that motion once briefing has been completed.

James Brown's estate. After reviewing that supplemental inventory and upon further reflection, the Court concludes that the valuation contains confidential information, the disclosure of which to the public at large could potentially harm the Estate in any future negotiations involving the music of James Brown. Because the valuation is discoverable, the Court will require Trustee Bauknight to provide a copy of the valuation to any party upon request. However, the Court orders that the contents of the valuation itself shall be subject to protection under the extant confidentiality order.

TIC		30

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, as Trustee of
the James Brown 2000 Irrevocable Trust and
the James Brown Legacy Trust, as Personal
Representative of the Estate of James Brown,
and on behalf of Alan Wilson, in his capacity
as Attorney General of the State of
South Carolina, and others

and

ALAN WILSON, in his capacity as Attorney
Attorney General of the State of South
Carolina; and others,

Plaintiffs.

v.

Adele J. Pope,

Defendant.

And

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

ADELE J. POPE,

Plaintiff.

-v-

ALAN WILSON, in his Capacity as Attorney
General of South Carolina,

Defendant.

) IN THE COURT OF COMMON PLEAS

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) Case No.: 2010-CP-40-4900

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) IN THE COURT OF COMMON PLEAS

) SECOND JUDICIAL CIRCUIT

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) Case No.: 2010 - CP-40-4900

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AFFIDAVIT OF ADELE J. POPE

IN SUPPORT OF

MOTION TO STRIKE

CONSOLIDATION MOTION

OF

ATTORNEY GENERAL AND OTHERS

JEANETTE W. MCBRIDE
C.C.P. & G.S.

2016 MAY 27 PM 3:51

RICHLAND COUNTY
FILED

IN RE:

Proposal of Alan Wilson, in his Capacity as Attorney
General of South Carolina, and others, to consolidate
discovery in this action with Aiken County Case 2013-CP-02-1337

PERSONALLY APPEARED BEFORE ME, ADELE J. POPE, who being duly sworn, deposes and says:

1. I am over 21 years of age, and this Affidavit is made of my own personal knowledge.

2. The Motion of Attorney General Alan Wilson ("AG Wilson"), Tomirae Brown, and others to consolidate my Aiken County commissions claims case (Aiken 1337) with Richland County Case 2010-CP-40-4900 (Richland 4900), a tort suit they brought against me in 2010, and a Freedom of Information Act (FOIA) suit already consolidated with Richland 4900, for purposes of discovery, was not properly served on me; did not even contain the caption of Aiken 1337; and, on information and belief, was never filed in Case 1337.

3. The current parties to Case 1337 are shown in the caption set out below:

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	Case No. 2013-CP-02-1337
Adele J. Pope,	)	
Plaintiff	)	
v.	)	
The Estate of James Brown and the James	)	
Brown 2000 Irrevocable Trust,	)	
Defendants.	)	

4. The AG, Tomirae and other Richland 4900 Plaintiffs made the Consolidation Motion without stating the caption or parties of the cases, which would have shown on its face that about fifteen Richland 4900 Plaintiff/Counterclaim Defendants are **not** parties to Aiken 1337.

5. The AG and others made the motion with actual knowledge that the attorney they share in Case 4900, Kenneth Wingate of Sweeney, Wingate and Barrow, P.C., ("Wingate"), has **of record** actual and irreconcilable conflicts in the simultaneous representation of the AG and the private Case 4900 Plaintiff/Counterclaim Defendants.

6. The AG made the motion with actual knowledge that **none** of the below-named Richland 4900 Plaintiff/Counterclaim Defendants is a party to Aiken 1337, and **none** has sought to intervene in Aiken 1337 in the 3 years since it was filed on June 10, 2013:

- a. AG Alan Wilson
- b. Russell Bauknight ("Bauknight") purportedly acting on behalf of AG Alan Wilson
- c. The James Brown Legacy Trust, a part-charitable/part private trust created by AG Henry McMaster, Tomirae and others (the "McMaster Legacy Trust")
- d. Bauknight, as agent for James B., a minor (without GAL);
- e. Tonya Brown and Bauknight, as agent for Tonya Brown;
- f. Jason Brown Lewis, and Bauknight as agent for Jason Lewis;
- g. Lindsey Delores Brown and Bauknight as agent for Lindsey;
- h. Janice Venisha Brown and Bauknight as agent for Janice Venisha;
- i. Venisha Brown and Bauknight as agent for Venisha Brown.
- j. Deanna Brown Thomas and Bauknight as agent for Deanna;
- k. Yamma Brown Lumar and Bauknight as agent for Yamma;
- l. Larry Brown and Bauknight as agent for Larry;
- m. Terry Brown, and Bauknight as agent for Terry Brown;

n. Bauknight as agent for minors Sydney L. and Carrington L.

7. AG Henry McMaster and the above persons sued Robert Buchanan, Jr., and me six years and two days ago in Richland 4900.

8. In 2011 AG Wilson and Bauknight sought to change venue in two Newberry County FOIA suits and consolidate them with Richland 4900. They were successful in one FOIA case, as shown in the caption above.

9. As a result of AG Wilson's actions, both FOIA cases were delayed for 4 ½ years.

10. In 2012 AG Wilson and Bauknight sought to transfer a Newberry County FOIA suit brought by a Newberry journalist seeking the so-called Hynie "diary," to Richland County, and to consolidate it with Richland 4900.

11. AG Wilson was unsuccessful in the journalist's case; the journalist's FOIA suit is now resolved; and the so-called Hynie "diary" has been re-released as a public document.

12. On February 27, 2013, the first decision in *Wilson v. Dallas* admonished AG Wilson to conclude the Wingate suit [Richland 4900] and the FOIA suit in the first instance.

13. In his Petition for Rehearing filed with the South Carolina Supreme Court on March 14, 2013, AG Wilson told the Court the following about Case 4900:

The Attorney General's intent not to bring the action on behalf of the Attorney General's Office is fully demonstrated by a letter, dated May 18, 2010, to Mr. Bauknight...

AND

From the standpoint of the Attorney General, in light of this Court's

ruling, we now see no need to pursue this action further. We advise this Court, therefore, that we will shortly move to have the Attorney General removed as a party in this action and any further action in this case to protect the charitable beneficiaries may be pursued by the new trustee.

14. On June 10, 2013, at the request of Tomirae, certain Case 4900 Plaintiffs, and Bauknight, Judge Doyet A. Early, III, issued administrative orders prohibiting Adele Pope and Robert Buchanan, Jr. from participating in Aiken County James Brown cases other than their own claims cases.

15. Judge Early's administrative orders were issued 3 days after Aiken 1337 was filed, and I have been prohibited from participation in Aiken County cases involving fifteen Richland 4900 Plaintiffs/Counterclaim Defendants since.

16. AG Wilson thereafter withdrew from the Aiken County James Brown cases, and – until he made the Consolidation Motion – has not sought to become involved in discovery in any Aiken County case.

17. Since Bob Buchanan and I were barred from participation in the Aiken James Brown cases in 2013, Judge Early has:

- a. Declared Case 4900 Plaintiff Tomirae to be Brown's spouse
- b. Awarded Tomirae's son James B. what Dave Sojourner asserts could be \$700,000 in legal and GAL fees, payable from funds James Brown gave his "I Feel Good" Charity. [Both Orders are under review.]

18. On information and belief, AG Wilson now asserts, as Buchanan and Pope asserted when Richland 4900 was filed, that Wingate has no legal authority to claim that he is acting on behalf of the Attorney General of South Carolina in Richland 4900, or in any other case.

19. On information and belief, the public record of which the Court is asked to take judicial notice, shows that Bauknight now claims that the McMaster Legacy Trust, including its original charitable component, is a private trust.

20. On information and belief, AG Wilson now admits that Russell Bauknight has no legal authority to file any Motion or otherwise act on behalf of Plaintiff/Counterclaim Defendant the Attorney General of South Carolina in Case 4900.

21. As a result of AG Wilson's recent admissions, I am informed and believe that all motions, including the Consolidation Motion, filed by Wingate on behalf of AG Wilson are improper, illegal, and should be stricken and declared void by the Court.

22. I am informed and believe that the Attorney General; those acting improperly on his behalf; and their Co-Plaintiff in Case 4900, Tomirae, filed this Consolidation Motion, and an earlier Motion to Quash made by AG Wilson in Aiken 1337, for the improper purpose of evading the depositions of Sr. Assistant AG Havird "Sonny" Jones, Assistant AG Mary Frances Jowers in Aiken 1337 and Tomirae in Richland 4900.

23. I incorporate herein my Return and Supplemental Return to AG Wilson's Motion to Quash.

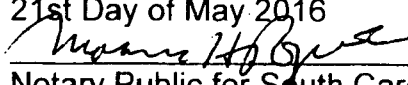
22. I am informed and believe that it would violate the Attorney General's public duty, and be manifestly unjust to me, to allow Attorney General Wilson, and Bauknight acting on his behalf, while serving *Tomirae*, to inject themselves, with lawyers paid for by James Brown's "I Feel Good" charity, into my commission claim case.

23. I believe \$2,525.00 is an appropriate fee for my having to oppose the Attorney General's motion as to Case 1337, and that it should be charged against Attorney General Wilson, Bauknight, individually, and Tomirae.

FURTHER DEPO0NENT SAYETH NOT.


Adele J. Pope

SWORN TO BEFORE ME, This
21st Day of May 2016

 (L.S.)
Notary Public for South Carolina

My Commission expires: 3-28-2022

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James Brown; Daryl J. Brown, individually and on behalf of his minor child Janise Vanisha Brown; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children Sydney ~~Lester~~ and Carrington ~~Lester~~; Tonya Brown; Venisha Brown Larry Brown; and Terry Brown

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY ~~Lester~~ and CARRINGTON ~~Lester~~; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

Adele J. Pope,

Defendant

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

RICHLAND COUNTY
FILED
2016 JUN 10 AM 11:17
JEANETTE W. MCBRIDE
C.C.P. & G.S.

Memorandum in Support of Plaintiffs'
Motion to Consolidate
Cases 4900 and 1337

The Richland County Case 4900 Plaintiffs hereby submit this memorandum of law in support of the Plaintiffs' Motion to Consolidate with Aiken County Case 1337.

BACKGROUND

Richland County Case 2010-CP-40-4900 ("Case 4900") and Aiken County Case 2013-CP-02-1337 ("Case 1337") are the primary remaining litigation surrounding the James Brown Estate. Case 4900 is a claim brought by the Estate and individual family members against the Estate's former fiduciaries. Adele Pope is the sole remaining defendant in that action. Case 1337 is a fee claim brought by Adele Pope against the Estate for fees allegedly earned for management of the Estate. Discovery in both cases will be substantially similar, as both cases arise out of the same facts and occurrence, involve overlapping parties, and will result in potentially offsetting damages verdicts.

LEGAL STANDARD

"When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all matters in issue in the action, it may order all the actions consolidated, and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay."

Rule 42(a), SCRPC.

The South Carolina Court of Appeals has outlined the application of consolidation under Rule 42:

Consolidation under Rule 42(a), SCRPC, may be ordered whenever actions involving a common question of law or fact are pending before the court. *Ellis by Ellis v. Oliver*, 307 S.C. 365, 415 S.E.2d 400 (1992). Under a consolidation order, the parties and the pleadings are not merged, and each action retains its own identity. *Id.* Consolidation is within the broad discretion of the trial court. *Worthy v. Chalk*, 44 S.C.L. (10 Rich.) 141 (1856). The moving party has the burden of persuading the court that consolidation is desirable. *Prudential Insurance Co. v. Marine National Exchange Bank*, 55 F.R.D. 436 (E.D.Wis.1972). An appellate court will not disturb a trial court's ruling on a motion to consolidate absent an abuse of discretion. *Winchester v. United Insurance Co.*, 231 S.C. 288, 98 S.E.2d 530 (1957).

Keels v. Pierce, 315 S.C. 339, 433 S.E.2d 902 at 904 (S.C. App. 1993)

ARGUMENT

This matter is properly “before the court” within the meaning of Rule 42, SCRCP because of the South Carolina Supreme Court’s Orders of March 24, 2016 granting “exclusive jurisdiction” in both Aiken County Case 1337 and Richland County Case 4900 to Judge Early “regardless of where [Judge Early] may be assigned to hold court.” *Bauknight , et al. v. Pope*, 2010-CP-40-04900 and *Pope v. Estate of James Brown, et. al.*, 2013-CP-02-01337 (S.C.Sup.Ct Orders, March 24, 2016).

Consolidation of Case 4900 and Case 1337 is desirable pursuant to Rule 42, SCRCP, because discovery in both cases will be substantially similar as both cases arise out of the same facts and occurrence, involve common questions of law, overlapping parties and witnesses, will avoid duplicative expenses, promote judicial economy, and avoid inconsistent outcomes at trial.

A. The cases involve common questions of fact.

Because Cases 4900 and 1337 arise out of the same events, actions and occurrences they are grounded in common questions of fact.

Both cases deal with Mrs. Pope’s duties, actions, and alleged omissions concerning the Estate of James Brown during her periods of appointment as special administrator, special trustee, personal representative or trustee of the Estate of James Brown. And both cases deal with whether Mrs. Pope should be paid for her execution of her duties or whether she should pay the Estate for her breaches of duty during her periods of administration.

Discovery regarding Mrs. Pope’s management, actions, and omissions of the Estate during her tenure is central to both cases, will be the same in both cases, and need not be conducted twice. Consolidation would permit depositions and discovery to be taken once, with

the vast majority of testimony applicable to both actions and any nuances between Cases 4900 and 1337 able to be addressed by the attorneys in each action as needed. Any written discovery will also be similar in both cases, and the taking of discovery concurrently for both actions will eliminate significant duplication and unnecessary expense.

Likewise, the trial of Cases 1337 and 4900 will require proof of these same core facts by both Mrs. Pope in her fee claim to show her alleged entitlement to fees and the Estate of James Brown Plaintiffs in their breach of fiduciary duty claim to show Mrs. Pope's liability for damages to the Estate and should not be repeated twice in separate trials.

This common core of facts is like the common metals composing a single coin.

B. These cases involve common questions of law.

Case 1337 deals with Mrs. Pope's claim that she is owed fees for the duties she is alleged to have performed, and Case 4900 deals with the Plaintiffs' claim that she owes the Estate damages for the duties she failed to properly perform.

The legal principles and questions of law relevant to both cases are those relating to the duties of a special administrator, special trustee, personal representative and trustee of an estate, what constitutes a breach of these duties, and what is appropriate compensation for those duties, if not breached.

These questions of law are the two sides of the coin of common facts. The questions of law are complementary and interconnected. Mrs. Pope is not due a fee if she did not perform her legal duties consistent with the standard of care, and the Estate is not due damages unless Mrs. Pope failed to perform her duties consistent with the standard of care.

D. These cases involve common parties and witnesses.

The principal parties in both Case 4900 and Case 1337 are Adele Pope and the Estate of James Brown. These are the same in both actions. The additional family member plaintiffs of Case 4900 are those who were part of a court-approved settlement agreement reached in 2009 in an effort to resolve numerous will contest cases. While the family members have primarily personal property claims justifying their presence as parties, it is the claims of the Estate that overwhelmingly predominate in this case and Mrs. Pope's damages to the Estate of James Brown will compose the vast majority of the damages. Therefore, a simple mathematical analysis balancing the number of plaintiffs against the single defendant in Case 4900 would be misguided. The principle parties are two: the Estate and Mrs. Pope.

The witnesses in Case 4900 will be those who had direct personal knowledge of the actions and inactions of Mrs. Pope. Because of this Court's April 8, 2016 Order in Case 4900 re-starting discovery ("discovery in the case shall begin anew"), at this time a full witness list is unknown. The Case 4900 Plaintiffs have served renewed discovery on Mrs. Pope, which responses have yet to be received. Mrs. Pope has not served renewed discovery on the Plaintiffs. However, the witnesses, whoever they may be, will be those who are able to testify as to the core facts of administration of the Estate, questions common to both Cases 4900 and 1337.

Concerning Case 1337 witnesses, Mrs. Pope's conduct in recent depositions noticed by her of certain witnesses from the Office of the Attorney General, reveal clearly that Mrs. Pope will use Case 1337 depositions to seek discovery intended for Case 4900. For example, in the deposition of Mr. Sonny Jones, Esq. taken last month ostensibly for Case 1337, Mrs. Pope questioned Mr. Jones repeatedly and extensively about the fee agreement between Sweeny, Wingate, and Barrow in Case 4900, and she even produced as an exhibit to the deposition the Complaint in Case 4900 and

repeatedly and extensively questioned Mr. Jones about specific allegations of the Complaint. That Mrs. Pope was actually conducting discovery in Case 4900 under the guise of a deposition in Case 1337 was so apparent that both defending attorneys objected to her questioning on that basis.¹

E. Consolidation will avoid duplicative expenses.

The consolidation of Cases 1337 and 4900 will avoid duplicative expense by allowing the parties to combine discovery, especially depositions. Now that Mrs. Pope has taken the Attorney General witness depositions in Case 1337 and used them for Case 4900 discovery, it may well be necessary for the Case 4900 Plaintiffs to re-take these depositions in order to follow-up, clarify, or open different lines of questioning. This is manifestly unjust to the Case 4900 Plaintiffs and a wasteful expense to both parties.

F. Consolidation will promote judicial economy.

Judicial economy will be promoted by the consolidation of discovery in Cases 4900 and 1337 because the Court will have greater control over the coordination and preparation for trial of both cases.

In particular, the cases will be readied for trial more quickly and efficiently because the numerous, time-consuming depositions can be completed concurrently. The Court will also be able to address discovery disputes that overlap both cases once, which will ensure consistency between both actions. Consolidation will also enhance the Court's control over Rule 26, SCRCP considerations including scope, timing, sequence, and overall administration of discovery.

Our Supreme Court has implicitly recognized the trial court's authority to consolidate discovery in the interests of judicial economy. See In re Asbestosis Cases 78-CP-06-105, 274

¹ At the time of this memorandum only a draft deposition transcript of Mr. Jones' testimony is available, therefore no citations are provided, because of the likelihood that page and line numbers in the draft will differ from those in the final version. Plaintiffs will supplement this memorandum with citations when the final version becomes available, should the court so direct.

S.C. 421, 432, 266 S.E.2d 773, 778 (1980) abrogated on other grounds by Whaley v. CSX Transp., Inc., 362 S.C. 456, 609 S.E.2d 286 (2005) (noting that a consolidation order “does not have the effect of making opinions in other cases binding on defendants not parties thereto,” but rather the consolidation in question “appears to have been an administrative consolidation motivated by convenience and judicial economy.”).

G. Consolidated for trial will avoid inconsistent outcomes and promote efficient offsetting of outcomes

The outcomes of Case 4900 and Case 1337 are interconnected. There is the possibility of inconsistent verdicts, if the cases are not tried together; and there is the probability of offsetting verdicts, which argues for the cases being tried together.

An inconsistency that would be unjust to both parties is the possibility that a jury in Case 4900 finds that Mrs. Pope did not breach any duties to the Estate, and that the Estate should not recover; but a jury in Case 1337 found she did breach her duties and should not be paid. Mrs. Pope may respond to this conundrum by noting she has a claim for her fees in Case 4900. That argument, however, supports the idea of consolidation, because it admits to trying the same issue in both cases.

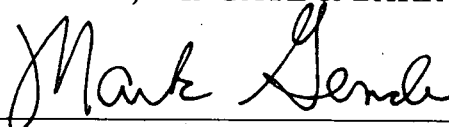
Furthermore, if Pope is awarded a judgment on her fee claim in Case 1337, but the Estate obtains a judgment against Pope in Case 4900, the amount of the lesser judgment would offset the prevailing party or parties’ collection in the other matter. Consolidation would greatly increase the accuracy and efficiency of calculating this setoff. The accuracy would be assured by having the same jury who head the same evidence calculate both the amount of any fee owed and the amount of any offsetting damages. The efficiency would also be assured by both issues being decided at the same time by the same jury.

CONCLUSION

For the foregoing reasons, the Case 4900 Plaintiffs' respectfully requests that this Court consolidate discovery and trial in Cases 4900 and 1337.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Kenneth B. Wingate

Mark V. Gende

Joseph O. Thickens

Sweeny, Wingate & Barrow, P.A.

Post Office Box 12129

Columbia, SC 29211

(803) 256-2233

ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina

June 7, 2016

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS

)

) Case No. 2010-CP-40-4900

RUSSELL L. BAUKNIGHT, as Trustee of
the James Brown 2000 Irrevocable Trust and
the James Brown Legacy Trust, as Personal
Representative of the Estate of James Brown,
and on behalf of Henry Dargan McMaster, in
his capacity as Attorney General of the State
of South Carolina' and others,

and

ALAN WILSON, in his capacity as Attorney
General of the State of South Carolina; and
others,

Plaintiffs.

v.

Adele J. Pope and Robert L. Buchanan, Jr.,
Defendants.

**AFFIDAVIT OF ADELE J. POPE
IN SUPPORT OF MOTION TO
COMPEL PLAINTIFF LINDSEY
DELORES BROWN'S
ATTENDANCE AT HER
DEPOSITION AND FOR
RELATED RELIEF**

2016 AUG 23 AM 8:38
JANETTE W. MCBRIDE
J.C.P. & G.S.
RICHLAND COUNTY
FILED

PERSONALLY APPEARED BEFORE ME, ADELE J. POPE, who being duly
sworn, deposes and says:

1. I am informed and believe that for her refusal to appear at a properly and
courteously noticed video deposition scheduled for August 19, 2016 the Court should
direct Lindsey Delores Brown ("LINDSEY") to do the following:

- a. Pay my counsel \$7,500 for the legal fees and costs spent in scheduling
the video deposition at which she refused to appear, payable within 30
days.
- b. Appear at a deposition scheduled before October 1, 2016.

2. If LINDSEY had appeared at her noticed deposition, I am informed and
believe that she would have admitted the facts set out below; authenticated the
documents shown on the Schedule of Documents set out below; and provided

important testimony as to my defense and counterclaims in this lawsuit she filed against me 6 years and 3 months ago.

3. The facts related to LINDSEY'S bringing this frivolous suit against me, and continuing it for 6 years are:

- a. LINDSEY has been involved in James Brown litigation since January 4, 2007, when she was 16.
- b. LINDSEY was represented in the Aiken County James Brown Litigation by her father, Daryl Brown ("DARYL") and attorney Louis Levenson, Esq. ("LEVENSON").
- c. On January 9, 2007 DARYL, 5 other claimed children of James Brown and 2 adult grandchildren hired LEVENSON to help them dismember Brown's plan to leave the bulk of his fortune to the "I Feel Good" Charity even though LINDSEY and all others knew:

... the establishment of a Charitable Trust intended to provide financial assistance to deserving students who seek education in South Carolina and Georgia. This objective was the often stated and well-known desire of James Brown. [Mem. Opp. P.2]

- d. LEVENSON would be paid \$150,00 + of 30% of what he could get them from the "I Feel Good" Charity.
- e. In early 2007 LEVENSON and others attended a meeting at Yamma Lumar's house with Dr. Terry Cox, Al Sharpton and others to plan.
- f. Affidavits by DARYL and others, and statements of LEVENSON at a February 2007 hearing make clear DARYL and LEVENSON knew David Cannon and his Co-Trustees were trying to, or had, taken cash from James Brown.
- g. Cannon had misappropriated \$17 Million from Brown. SLED later found \$12MM of the takings. And Cannon himself admitted that he allowed James Brown to use Cannon's home safe to evade taxes; and Cannon had seen – but claimed not to have taken – 2 boxes full of \$100 bills.
- h. LINDSEY, through LEVENSON, nominated Adele Pope as SA.
- i. On October 12 Dr. Cox, through TJBL, an entity to be formed, made a \$100MM offer for Brown's music empire.

- j. In November 2007 LEVENSON demonstrated that Cannon & Albert Dallas, were expecting an option or a "kickback" from the \$100 MM sale.
- k. On Nov. 14, 2007, LINDSEY, through LEVENSON, was served with a RETURN AND RECOMMENDATION of Buchanan, Jr. & Pope to value Brown's 900 copyrights and Publicity Rights on the estate tax return by a formula.
- l. On Nov. 15, 2007 an Inventory & Appraisalment ("I&A") prepared by Tax Lawyer Wm. Hammond was given to the Attorney General ("AG") & filed, showing assets at \$100 MM less the TIAA debt, about \$15MM.
- m. On November 20, 2007 DARYL, LINDSEY and other LEVENSON clients supported the appointment of Buchanan & Pope as PR/Trustees.
- n. On Dec. 26, 2007 LINDSEY, through DARYL & LEVENSON, sued to set aside Brown's Will & 2000 Trust.
- o. In early 2008 FORLANDO and David Bell, Esq., ("BELL") filed a federal suit to reinstate the Cannon trustees and false grievances against LEVENSON, including a false claim he forged the fee agreement.
- p. On Jan. 8, 2008 the Honorable Doyet A. Early, III ("Jg. Early") approved Buchanan/Pope's fee contract with Brown's Estate/2000 Trust.
- q. In orders dated February 20 and April 1, 2008, Jg. Early approved the Christie's sale and directed Buchanan/Pope to sign the contract.
- r. In orders dated March 7 and April 8, 2008 Jg. Early found significant wrongdoing by the Cannon PR/Trustees and found the service of Buchanan and Pope to be both ethical and appropriate.
- s. In an order dated March 8, 2008 Jg. Early, with the consent of LEVENSON, ordered service by publication and a determination under State and Federal law of Brown's heirs. This was the first step to a DNA & DIGNITY program to protect the "I Feel Good" Charity's 900 copyrights from premature or improper exercise of Federal Copyright Act Termination Rights.
- t. LINDSEY's position in the March 8 consent Order was that Brown died without a spouse, and DARYL knew that to be true.
- u. At some point LINDSEY became aware that AG McMaster, through Havird "Sonny" Jones, Esq. ("SONNY"), was claiming the right to take

over the James Brown litigation and Brown's 2000 Trust.

- v. With DARYL's knowledge that Tomirae Hynie was not Brown's spouse, on August 10, 2008, DARYL, LEVENSON, Tomirae & AG McMaster agreed to:
 - 1. Dismember Brown's estate plan, including the "I Feel Good" Charity and LINDSEY's \$285,000 Education Trust.
 - 2. Replace Buchanan & Pope, who were defending the Will.
 - 3. Treat Tomirae and her son as heirs.
 - 4. Give Tomirae 25% of Brown's assets and LEVENSON clients another 25%.
 - 5. Place the AG in control.
- w. LINDSEY was an adult in 2009 when Jg. Early approved the McMaster Settlement, but LEVENSON did not explain to her that:
 - 1. The McMaster Settlement dismembered her education trust.
 - 2. By "stipulating" that Tomirae was Brown's spouse, the AG's Settlement damaged LINDSEY's Federal Copyright Act Termination Rights.
- x. At some point LINDSEY became aware, and LEVENSON knew, that Buchanan and Pope were the only persons protecting LINDSEY's Trust.
- y. In March 2009 LEVENSON told the media that those standing in the way of the McMaster Settlement deal better "get out of the way."
- z. LINDSEY was not told of the 2009 MEDLIN proposal in 2009 to discredit Buchanan & Pope by devaluing Brown's 900 Copyrights to \$4.7MM and his Publicity Rights to ZERO.
- x. LINDSEY was not consulted when Russell Bauknight valued Brown's Tangible Personal Property ("TPP") at \$.5MM, less than the sale price of the 350 of the 3,000+ items sold at the Christie's sale in 2008.
- y. LINDSEY and other LEVENSON clients worked with FORLANDO and Dallas to sabotage the Christie's, even though they had not timely sought to withhold the Grammy© or any other item, even though they were given a chance.

- z. Jg. Early's April 1, 2008 found that some LEVENSON clients had interfered with the Christie's sale, but not caused any damage.
- aa. LEVENSON, who attended the July 17 Christie's sale, responded for LINDSEY and others to the Estate/2000 Trust's Motion to charge Dallas and others who interfered with the Christie's sale. She doesn't know whether the motion has been heard.
- ab. LINDSEY has never reviewed the Richland 4900 Complaint; was not advised by LEVENSON or anyone that it was going to be filed; and does not believe she has a valid contract with the law firm of Kenneth Wingate, Esq. ("WINGATE") to bring Richland 4900.
- ac. LINDSEY did not meet or speak to WINGATE at any time before 2013.
- ad. LINDSEY did not know WINGATE was going to move for LINDSEY to intervene in a suit under the South Carolina Freedom of Information Act ("FOIA"); does not know what the FOIA is; does not know that she has sought sanctions against Pope and Adam Silvernail, Esq., in a FOIA suit; and does not know of any damage they have caused her.
- ae. LINDSEY does not know what action was taken by WINGATE, Russell Bauknight ("BAUKNIGHT") or LEVENSON to stop release of the so-called Hynie "diary" in 2012, but does know that her father DARYL has regretted agreeing to call Tomirae Brown's spouse, when he knew she was not.
- af. LINDSEY would like to have her \$285,000 education trust, and she would like to know that she has Federal Copyright Act Termination Rights after the death of her father, who is around 60 years old.
- ag. LINDSEY is aware that DARYL fired LEVENSON at some time in 2010 or 2011, and began a public campaign to save her Grandfather's "I Feel Good" Charity.
- ah. LINDSEY was not told about the October 12, 2012 Mediation in Richland 4900, and did not ask WINGATE to exempt her from the Mediation.
- ai. LINDSEY believes that LEVENSON attended the October 2012 Mediation in Richland 4900 as the agent for DARYL, LINDSEY and her sister, and claimed to have full authority to act for them, at a time when LEVENSON did not represent any of them.
- aj. LINDSEY was not told about the Offer of Pope made in August 2012 to settle with her, which might have saved the "I Feel Good" Trust; her

\$285,000 education trust; and her Termination Rights.

- ak. LINDSEY was not told about the \$500,000 paid by BAUKNIGHT to WINGATE for expert witness fees in Richland 4900 – more than the size of her education Trust, or of its return without interest in 2013.
- al. LINDSEY does not know about the terms of the James Brown Legacy Trust, created by AG McMaster; the amendment to the McMaster Legacy Trust by AG McMaster, Terry Brown, MEDLIN and LEVENSON on or about December 30, 2010; or the assignment from Terry Brown to FORLANDO of his Right of First Refusal in January 2011.
- am. After the October 2012 mediation LEVENSON came to the house of her mother, and – from there – called DARYL to arrange a meeting.
- an. In later 2012, at LEVENSON's request, LINDSEY, DARYL, JANISE and LINDSEY's mother met with BAUKNIGHT & LEVENSON at a Dunkin Donuts in Augusta, where BAUKNIGHT & LEVENSON persuaded them to support the McMaster Settlement deal.
- ao. LINDSEY understands that in his December 21, 2012 deposition DARYL claimed that he and LEVENSON had "kissed and made up."
- ap. After the *Wilson v. Dallas* decision DARYL again terminated LEVENSON; and hired BELL.

4. If LINDSEY had appeared at the deposition, she could have testified about her position as to following things:

- a. Jg. Early's exclusion of LINDSEY and others whose Federal Copyright Act Termination Rights are damaged by a finding that Tomirae was Brown's spouse from the Tomirae spousal proceeding.
- b. Jg. Early's allowing James B. up to \$700,000 in GAL and legal fees, when WINGATE, BAUKNIGHT and LEVENSON refused a GAL in Richland 4900 for her minor sister Janise Vanisha Brown.
- c. AG Wilson's failure to protect the "I Feel Good" Charity when Tomirae and James B. filed defective Federal Copyright Act Termination Claims.
- d. What part, if any, she received from the \$2 MM distributed to Tomirae and others in the recent sale of "Please, Please, Please" and 2 other copyrights, reputed to have been for \$6 MM.

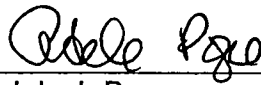
- e. How she, AG Wilson and BAUKNIGHT as her agent reconcile suing Pope and Buchanan for not selling Brown's music empire for \$100MM with their claim to the Supreme Court – and BAUKNIGHT's claim to the IRS- that Brown's music empire was worth \$4.7MM at his death, and there have been no offers.
- f. Whether she believe Brown's Image and Persona is still known worldwide 10 years after his death.
- g. Whether she has evidence to support the ZERO value place on Brown's Publicity Rights in IRS and Supreme Court filings by AG Wilson, BAUKNIGHT, Nexsen Pruet, and others, which she, through LEVENSON, endorsed.
- h. Whether she has evidence to refute the approximately \$50MM value placed on Brown's Publicity Rights by Dr. Cox, Wm. Hammond, the original trustees, Buchanan and Pope.

5. AG Wilson, LINDSEY and others have multiplied the damage to me by continuing this case for four years after DARYL repudiated the McMaster Settlement deal; fired LEVENSON; and urged AG Wilson to save James Brown's "I Feel Good" Charity.

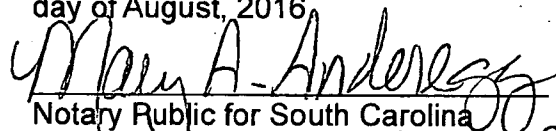
6. If LINDSEY has benefited from the reputed \$6MM sale, or otherwise, by continuing this frivolous suit, I am informed and believe that I am entitled to know.

7. I am informed and believe that the deposition of LINDSEY, with that of former AG Henry McMaster taken on August 18, 2016, shows that the 2, and others, acting through Nexsen Pruet, WINGATE and BAUKNIGHT, brought the false, frivolous claims against Robert Buchanan, Jr. and me in May 2010, and continued them for six years to damage us, including with the false \$4.7 MM valuation of the music empire; the false \$.5MM value of the Tangible Personal Property; and the false Grammy © claim planted by FORLANDO/BELL.

FURTHER DEPONENT SAYETH NOT.


Adele J. Pope

SWORN TO before me this 22nd
day of August, 2016


Notary Public for South Carolina
My Commission Expires: 4-5-2026

SCHEDULE OF DOCUMENTS

- a. Email of LEVENSON to DARYL & others dtd. March 26, 2007
- b. Ltr. Of Powell Goldstein, LLP to Dallas, dtd. July 10, 2007 re: Moving Brown's 2000 2000 Trust to Ga
- c. FORLANDO email of October 2, 2007 to Cannon
- d. FORLANDO email of December 14, 2007 to Dallas re: LEVENSON emails.
- e. Email of SONNY to Buchanan/Pope, Nov. 21, 2001, w/ copy to others re: claimed conflict, including possible ethical conflict
- f. Ltr. Of Pope to SONNY dtd. Nov. 21, 2007 in response to Nov. 21 email.
- g. RETURN AND RECOMMENDATION OF SPECIAL ADMINISTRATORS, dtd. Nov. 14, 2007 (pgs. 1,2,3 & 11) re: Valuation Formula for Estate Tax Return
- h. Email of AG Mary Frances Jowers dtd Feb. 13, 2008, re: Christie's Sale.
- i. Order of the Hon. Doyet A. Early, III dtd. March 8, 2008 re: Heirs Determination [Emphasis added]
- j. Email chain from March 6, 2007 to March 18, 2008 re: Nomination of Pope, FORLANDO 's contacts to start disruption of Christie's sale.

Exhibit A

From: Lacey Musgrove [Lacey@LevensonLaw.com]
Sent: Monday, March 26, 2007 1:37 PM
To: David Yount; Cherry V. Cordle; Louis Levenson
Cc: drylumar@yahoo.com; dsweetied@aol.com; labigbrown@yahoo.com; funktiludrop@comcast.net; bro7lar@aol.com; sarahdeanbrown@yahoo.com; ferrari.production@yahoo.com
Subject: memorandum / meeting 3/19/07
Attachments: 20070326113641193.pdf

6/24/2008

1947

FB005877

FB05946

****CONFIDENTIAL ATTORNEY CLIENT COMMUNICATION****

MEMORANDUM

To: Clients

From: Levenson & Associates

Date: March 21, 2007

Subject: Meeting with special administrators on Monday March 19, 2007

On Monday March 19, 2007 Louis and David traveled to Columbia to meet with the two court appointed Special Administrators (SAs), Ms. Adele Pope, Esq. and Mr. Robert Buchanan, Esq.

We presented both individuals with a significant number of documents and gave each an extensive overview of the history regarding the three personal representatives (PRs)/trustees dating back to the 1999 bond deal with David Pullman.

The conversation, in the beginning, was focused on what authority we believed the SAs should possess and also clarifying our position that in order for the SAs to be effective, they MUST have extensive authority over the PRs and they MUST have the ability to investigate all claims, past, present, and future of inappropriate activity by the PRs.

Regarding the 1999 Bond deal, we expressed our concern that more than \$20 Million came to James Brown from that deal and, yet, in 2000, upon the creation of the Irrevocable Trust, that money was not accounted for by the Trustees, apparently not part of the Trust, and has not been accounted for at present.

We then provided the SAs with all of the pleadings and discovery documents we obtained regarding the 2001 lawsuit against James Brown Enterprises by South Trust Bank. They both seemed particularly interested (and troubled) by the fact that the Trustees, through their inactions, allowed this lawsuit to be filed and intimated that further investigation would likely be necessary.

We informed the SAs of our meeting with the trustees in Mr. Thurmond's office in January and that our request for an accounting of the Trust was refused and that at least one of the trustees told us that the Trust was busted and that there had never been anything in the Trust. The SAs made an extensive list of documents they wanted turned over from the PR's immediately such as tax returns for the Trust for all past years. We will continue to monitor these requests so that if and when the PRs comply we can notify all of you immediately.

We also brought to their attention the lawsuit pending in New York that James Brown, James Brown Enterprises, and James Brown, LLC initiated against David Pullman providing them with copies of the pleadings we obtained from the Court in New York. Neither of the SAs was familiar with the pending NY litigation. There is a hearing in New York on Monday regarding this lawsuit and Louis advised Ms. Pope and Mr. Buchanan that he would be attending and, if necessary, provide that Judge with a copy of the Order entered in Aiken County appointing the SAs and restricting the powers of the PRs.

Because the Will devises all personal property to our clients, we advised the SAs that we had serious concerns about the security and inventory of the property and would like the SAs to immediately take control over securing the personal property and securing the real property of James Brown. We plan on making a formal request to the appropriate parties and serving upon all concerned early next week.

FB005878

Exhibit B

**POWELL
GOLDSTEIN**

Atlanta • Washington • Dallas

Direct Dial No.
404.572.8851
E-Mail: fmcgaughey@pogolaw.com

July 10, 2007

Albert H. Dallas, Esq.
Dallas Law Firm
304 Black Street, SE
Thomson, Georgia 30824

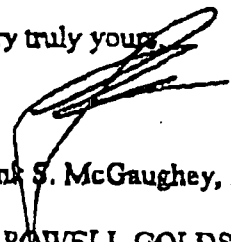
Re: The James Brown "I Feel Good" Trust

Dear Buddy:

Enclosed for your review and consideration is a document by which the Trustees of the above-referenced trust would change the controlling law of the trust, and amend the powers of the Trustee. Essentially, this moves the trust to Georgia. When you have had a chance to look at this and to consult with David Cannon and Judge Bradley, please let me know if there are any questions.

Best regards.

Very truly yours,


Frank S. McGaughey, III

For POWELL GOLDSTEIN LLP

FSM/jp

Enclosure

cc: William B. Shearer, Jr.
ODMAVPCDOCSVATL117525311

Exhibit C

Fw: Helpful Information... - Yahoo! Mail

Page 1 of 1



Thursday, June 26, 2008 4:18 PM

— On Tue, 10/2/07, Forlando J. Brown <forlandoj.brown@yahoo.com> wrote:

From: Forlando J. Brown <forlandoj.brown@yahoo.com>
Subject: Helpful Information...
To: "David Cannon" <dcannon@bamwellsc.net>
Date: Tuesday, October 2, 2007, 7:21 PM

Mr. Cannon,

After I spoke with you earlier this morning, I realized that I had remembered a piece of valuable information. I remembered my grandfather telling me he was receiving money "funds" on a monthly basis and that he did not need to worry of having \$400,000 after performing or having \$0.00 funds if he did not perform. He went on to say not only could he retire from performing so hard; but, "this is the best thing I have ever done." I am not sure how helpful this information would be, but I cannot let good and decent people have terrible circumstances unjustly thrown toward them and not do something or offer something to help. Again, I am not sure how much of this is useful, but you were a close friend to my grandfather, and, now I feel to myself. If there is anything, anything at all, I can do please contact me.

Your Friend,

Forlando J. Brown

Moody friends. Drama queens. Your life? Nope! - their life, your story.
[Play Sims Stories at Yahoo! Games.](#)

FB005796

1850

<http://us.mc448.mail.yahoo.com/mc/showMessage?fid=Sent&sort=date&order=down&sta...> 6/26/2008

FB05944

— Original Message —

From: Forlando J. Brown

To: Albert Buddy Dallas

Sent: Friday, December 14, 2007 1:26 PM

Subject: Levenson info

I have decided to check all e-mails (bulk, trash, inbox) to ensure I do not leave anything from Levenson's Office from going directly to you.

Never miss a thing. Make Yahoo your homepage.

Exhibit D

1951

Exhibit E

Adele J. Pope

From: Sonny Jones [AGSJONES@ag.state.sc.us]
Sent: Wednesday, November 21, 2007 11:15 AM
To: ribuchananjr@bellsouth.net; adele@popelawfirm.com
Cc: John W. McIntosh; jacksonstanley@bellsouth.net; shahidlo@bellsouth.net; sslotch@bellsouth.net; weskirkland@bellsouth.net; ericbland@blandlaw.com; davidbell@davidbelllawfirm.com; carter@eckb.com; whtucker@hullfirm.com; jmg@jimgriffinlaw.com; islj@jtbpa.com; glewis@law.ga.gov; louis@levensonlaw.com; kmb@lewisbabcock.com; rmaxwell@maxwelllawfirm.com; cmcgowan@mcgowanhood.com; jfelder@mcgowanhood.com; akirby@mgclaw.com; tmorris@morrislawpartners.com; rrosen@rosen-lawfirm.com; ronni@rrichterlaw.com; amedlin@sc.rr.com; dearlyj@sccourts.org; d_michel@yahoo.com; robtyoungatty@yahoo.com
Subject: James Brown Matter

I am in receipt of the Order appointing you as PRs and Trustees in this case. The order is absent any reference to the fact that the court gave the GA and SC AGs 10 days to object to this appointment. We would request the order to be amended to accurately reflect the ruling of the court.

As we stated in court yesterday it is our position that it is an inherent conflict (including possible ethical conflict) for you to serve in the dual roles of PRs under the will and at the same time Trustees of an inter vivos trust. Granted that while the issue of the status of the trust is yet to be decided by the court, during that interim time, including possible appeal, this ongoing conflict exist and we are in the process of assembling a wealth of authority on this issue. This obvious conflict is further exacerbated by you stating to me and in court that the trust is NOT an inter vivos trust.

Please advise if you would like us to review any proposed language in the amended order.

Thanks.

C. Havird Jones, Jr.
Senior Assistant Attorney General
Office of the South Carolina Attorney General P.O. Box 11549 Columbia, SC 29211
Phone: 803.734.3654
Fax: 803.734.3677
AGSJONES@ag.state.sc.us

--- Scanned by M+ Guardian Messaging Firewall ---

1952

Exhibit F

Adele J. Pope, P.C.

Exhibit 10

ATTORNEY AT LAW

Certified Specialist in Estate Planning and Probate Law

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November 21, 2007

C. Havird Jones, Jr.
Senior Assistant Attorney General
Office of the South Carolina Attorney General
P.O. Box 11549
Columbia, South Carolina 29211
Fax: (803) 734-3677

BY FAX OR MAIL

Re: Estate of James Brown/James Brown 2000 Irrevocable Trust

Dear Sonny:

I am in receipt of your e-mail sent at 11:15 this morning and am responding to it quickly because of the coming holidays. Bob may want to answer this separately.

I do not fully understand your position with respect to the obvious conflict, since Mr. Brown himself designated the same persons to be personal representatives and trustees, and there is incorporation by reference language in the Will. Also, whereas our obligations prior to yesterday were to oversee preservation and protection of assets, I believe, as personal representatives, we now have the obligation to support and uphold the Will and Trust, which are wholly compatible with each other and which, together, constitute Mr. Brown's known estate plan.

You asserted that "you" stated in court "that the trust is NOT an inter vivos trust". Again, Bob may want to answer this separately, but I don't recall such a statement by either of us. If it was made, it was an inadvertent error, and should be corrected on the record.

The James Brown 2000 Irrevocable Trust was clearly an inter vivos trust, into which at a very minimum, the real estate was deeded during Mr. Brown's lifetime. It has received, or by its terms will receive, what we hope will be many millions of dollars. Under the formula clause, we hope the bulk of that will go to the James Brown "I Feel Good" Trust and be dedicated to charitable purposes.

I am concerned about your assertion of a possible ethical conflict, as I take very seriously such a remark. Please let Bob and me know the basis for such an allegation, as we would want that matter fully explored in connection with any motion filed by you, and, if appropriate, ruled on by the Court.

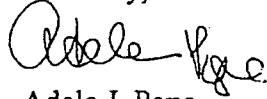
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Letter to Mr. Jones
November 21, 2007
Page 2

I look forward to working with you in connection with this project. It presents many challenges, but great educational opportunity for financially needy children, youth, and young adults (who are both qualified and deserving) who seek and have need of help to obtain and further their education..

Bob and I would very much appreciate an opportunity to meet with you and Attorney General McMaster to review what we believe to be both the challenges and the great potential rewards which Mr. Brown provided. We will be glad to come to your office to meet with you and Mr. McMaster at any time that he can schedule us.

Sincerely,


Adele J. Pope

AJP:kfr

cc: (with copy of your e-mail)

The Honorable Henry Dargan McMaster
Robert L. Buchanan, Jr.
Beneficiary Review File

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	
	)	CIVIL ACTION NO. 2007-CP-02-0122
	)	
	)	
IN RE:	)	RETURN AND RECOMMENDATION
	)	OF
	)	SPECIAL ADMINISTRATORS
THE ESTATE OF JAMES BROWN	)	
A/K/A JAMES JOSEPH BROWN	)	
_____	)	

The Special Administrators of the Estate of James Brown, Robert L. Buchanan, Jr. and Adele J. Pope, make the return to Motions and recommendations set out below:

AS TO THE TANGIBLE PERSONAL PROPERTY

1. They believe that the immediate adoption and seamless implementation of a plan to value the Tangible Personal Property (TPP) including Personal and Household Effects (PHE), is in the best interest of the Estate.
2. They believe that any plan must balance the rights of the beneficiaries of the Will to receive, in kind, the PHE, with the need for appropriate security for the payment of Estate Taxes and expenses, where applicable.
3. They are informed that Tom Wells, engaged by the PRs, with others, has completed an inventory of TPP owned by the Estate, the Trust and James Brown Enterprises, Inc. (JBE).
4. They request that the Court engage Llewellyn M. Dykes at a cost of no more than Thirty Thousand (\$30,000.00) Dollars to value the TPP as of December 25, 2006, on or before December 25, 2007 (whether claimed by the Estate, the Trust, or any Brown Entity).
5. With respect to the TPP, they further recommend the following:
 - a. All TPP, other than cars titled in the name of James Brown Enterprises, Inc., collectively be reported on the Inventory & Appraisal as assets of the Estate,

but without prejudice.

- b. All cars titled in the name of James Brown Enterprises, Inc., be included in the valuation of that entity, but be marketed with other TPP as set out below.
- c. Within 30 days (on or before December 30, 2007) the Personal Representatives (PR) and the children of James Brown designated in the Will be directed to deliver to the SAs a list of all inventoried items which they deem to be PHE as described in the Will. In addition, the children shall deliver, at the same time, their "Request List" as described below.
- d. From the list of articles of PHE, each of the six children of James Brown designated in the Will may select up to Five (5%) Percent in value. (The 4 clients of Mr. Levinson may pick collectively, ~~20%~~ 20%.) These items must be removed by the children, at their expense, on a day designated by the SAs. If there are overlapping selections, the SAs shall choose the taker by lots. If a child designates less than ~~Five (5%)~~ ^{Five (5%)} Percent of the value, his or her share of the net proceeds of sale shall ultimately be adjusted accordingly.
- e. The Special Administrators, within 45 days, shall engage on behalf of the Estate an Auction Company to conduct an auction of the TPP of the Estate, Trust and Brown Entities, upon such terms as they shall deem appropriate. It will be the goal of the Estate to conduct the sale as soon as is reasonable, giving due regard for the unique nature of the property. The contract may include any additional terms and agreements, such as the creation and sale of a catalogue in connection with the auction. The contract shall, however, be subject to the rights of the children of James Brown in the Personal and Household Effects (PHE) as set out above.
- f. A hearing should be held on or about January 21, 2008, for the purpose of resolving disputes, if any, related to the above plan.
- g. The net proceeds from the sale shall be deposited by the SAs into a separate fund, and applied as follows:
 - 1. First, to the payments of Estate Taxes and interest of the Estate of James Brown.
 - 2. Thereafter, pursuant to Order of this Court, to the parties as their interests appear, with the Special Administrators to present to the Court a proposal for distribution, after taking into Account items received by the children, estate taxes, and other factors.

AS TO THE VALUATION OF THE ROYALTIES, IMAGE, NAME AND PERSONA

6. The SAs oppose the motion to engage New York Counsel because resources are available locally to perform the same task at a savings of what is estimated to be at least \$50,000.

7. Because of the crisis caused by the termination one month before the due date of the Estate Tax Return of the primary financial advisor of James Brown and the Brown Entities, the SAs request that the Court approve the following valuation procedure for the Royalties, Image, Name and Persona of James Brown:

- a. A unified valuation of the Royalties, Image, Name and Persona, which appears to be appropriate based on the scant case law and legal commentary.
- b. Use of the following formula for date-of-death valuation of the Royalties, Image, Name and Persona of James Brown, working with Williams Sellars, CPA, M&T Bank and the available records of David Cannon:
 1. 1 year royalties, based on 5 yr. M&T average
 2. PLUS 50% of Gross known Performance Contracts from 2006
 3. X - a figure recommended by accountant within range of 12.5 - 14.
 4. LESS payoff amount due M&T Bank as of date of death
 5. EQUALS date-of-death value of Royalties, Image, Name and Persona
- c. The royalties, image, ^{name} and persona should be returned as Estate assets, with full disclosure that they may be claimed, in whole or in part, by James Brown Enterprises, Inc., which, in turn, may be claimed, in whole or in part, by the Trust.
- d. The PRs should be directed to prepare, with the assistance of the SAs, a detailed report to accompany the above valuation when filed with the Estate Tax Returns in March, 2008, to include:
 1. A complete explanation of the structure of the \$26,000,000, 7.98% Royalty-Backed Pay-through Note, Class A No A-1 (CUSIP No. 470277 AA2) and receipts, payments and misappropriations from said fund. (This would including the structure of James Brown Royalty Venture I SPC, Inc, James Brown, L.L.C., etc.)
 2. A detailed explanation of the filing, and failure to file, tax returns with respect to the various entities.

b. The preservation of Tangible Personal Property (TPP) which belongs to one or more of the following: James Brown Enterprises, Inc; ~~and~~ the James Brown Irrevocable Trust; ^{and}

c. Inventory and appraisal of the TPP, with mixed ownership as described above; ^{the} Estate

c. Payments to the accountant in connection with compliance related to the Estate Tax Return and income tax returns for the Estate, the Irrevocable Trust and various Brown entities, which work is critical to the Estate, Trust and entities;

d. Payment for litigation expenses in the New York Litigation to defend against The Pullman claim for more than \$12 Million. This defense is pending on behalf of the Estate of James Brown and James Brown Enterprises, Inc. and on which more than \$50,000 is now due.

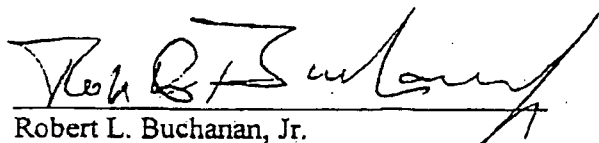
12. The SAs are informed and believe that the maintenance of a loan system, through one or more combined accounts, with full records so that complete reconciliation may be made as soon as there is adequate liquidity and ownership is determined, is in the best interest of both the Estate and Trust, and promotes its preservation.

AS TO THE PAYMENTS BY WEDGE

1. The Wedge contract appears to have been signed by James Brown, individually even though its first page refers to James Brown Enterprises, (d/b/a, not a corporation).

2. The SA s believe that these funds should be deposited in the account of Estate of James Brown as aforesaid, records and receipts retained.

Respectfully submitted,


Robert L. Buchanan, Jr.

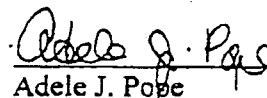

Adele J. Pope

Exhibit h

Mary Frances Jowers

From: Mary Frances Jowers <MFJowers@ag.state.sc.us>
Sent: Wednesday, February 13, 2008 9:01 AM
To: jdbaileylaw@bellsouth.net; rlbuchananjr@bellsouth.net; adele@popelawfirm.com
Cc: Sonny Jones
Subject: Clarification

I'm writing to clarify something from the meeting yesterday. Adele, as I understood it, you mentioned that you thought we were fully in support of the Christie's sale, and you are planning to include that fact in the Order you prepare relating to the sale. You based this on what Sonny said in Court at the hearing.

My recollection was that we are taking no position on the Christie's sale at this time, but that Sonny stated we were working on resolving the commingling issue and you had been cooperative with us in reviewing the accounts. I didn't mention anything yesterday because I wanted to check on it.

I checked with Sonny this morning, and he confirmed that we are not taking a position on the Christie's sale, and he did not state in open court (or any other time) that we are in support of it.

If I misunderstood what you said about our position, let me know - I just wanted to clarify this as soon as possible.

Exhibit I

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN

) CASE NUMBER: 2007-CP-02-0122

1. DARYL J. BROWN, individually and on behalf)
of his minor children, LINDSEY DELORES)
BROWN and JANISE VANISHA BROWN, 2.)
VANISHA BROWN, 3. LARRY BROWN, 4.)
DEANNA J. BROWN THOMAS, individually and)
on behalf of her minor child JASON BROWN)
LEWIS, 5. YAMMA N. BROWN, individually and)
and on behalf of her minor children SYDNEY)
LEWIS and CARRINGTON LEWIS and 6.)
TONYA BROWN)

Plaintiffs,

v.

ADELE POPE as Personal Representative of the)
Estate of James Brown and as Trustee of the)
purported Irrevocable Trust of James Brown dated)
August 1, 2000, ROBERT L. BUCHANAN, JR. as)
Personal Representative of the Estate of James)
Brown and as Trustee of the purported Irrevocable)
Trust of James Brown dated August 1, 2000,)
TOMMIE RAE BROWN, as the potential heir of ()
James Brown, JAMES JOSEPH BROWN ~~as the~~ as the)
potential heir of James Brown, CINNAMON)
NICOLE MERNICKLE PARIS as the potential heir)
of James Brown, LARHONDA PETITT as the)
potential heir of James Brown, JEANETTE)
MITCHELL, as the potential heir of James Brown,)
TERRY BROWN, as the potential heir of James)
Brown, ROMUNZO BROWN as the potential heir)
of James Brown, FORLANDO BROWN, as the)
potential heir of James Brown, HENRY DARGAN)
MCMASTER in his capacity as ATTORNEY)
GENERAL OF THE STATE OF SOUTH)
CAROLINA, JANE DOE and JOHN DOE numbers)
I, II, III, IV as potential heirs and/or devisee and/or)
beneficiaries of James Brown and as representatives)
of all other persons known or unknown claiming to)
be an heir and/or devisee and/or beneficiary of)
of James Brown.

Defendants.

**ORDER RESOLVING MOTION OF
PR/TRUSTEES TO DISMISS AND
REQUIRING SERVICE
BY PUBLICATION**

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

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

MAK 10 2008

CCCP, & G.A., Algon County, S.C.

1960

This matter was commenced with the filing by the Plaintiffs on December 26, 2007 of two separate Complaints. This Court has jurisdiction to hear this matter because it was duly removed to the Circuit Court on Motion of the Honorable Sue Roe, Probate Judge.

Within 30 days after filing of the original complaints, they were consolidated into a single amended complaint. On or about January 15, 2008, Defendants Adele J. Pope and Robert L. Buchanan, Jr., as Personal Representatives of the Estate of James Brown and as Trustees of the James Brown 2000 Irrevocable Trust (the "PR/Trustees") served a Motion to Dismiss or Consolidate and for Related Relief. This Order resolves the PR/Trustees' motion.

Plaintiffs give notice that their position as to the lawful heirs of James Brown and their respective shares is as follows¹:

1. Daryl J. Brown (1/6)
2. Vanisha Brown (1/6)
3. Larry Brown (1/6)
4. Deanna J. Brown Thomas (1/6)
5. Yamma N. Brown (1/6)
6. Terry Brown (1/6)

Plaintiffs have agreed to the clerical change in the caption to correctly name a Trustee.

Plaintiffs agree that it is appropriate to serve all parties by publication in the Augusta Chronicle and the Aiken Standard. Because of the worldwide media recognition of James Brown, and because of James Brown's longstanding connection with Augusta, Georgia and Aiken, South Carolina, Plaintiffs and other parties assert that publication in these papers will

¹ This is without prejudice to the position of Defendant PR/Trustees and certain others that James Brown died testate and that the action to set aside the Will and Trust is without merit. Said defendants acknowledge, however, that the determination of the lawful heirs of James Brown may have bearing on other rights and obligations of the parties.

provide the best notice to the Doe Defendants.

It is therefore ORDERED, ADJUDGED and DECREED:

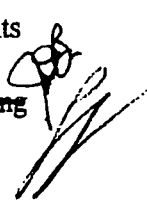
1. The Caption is hereby modified as stated above.

2. Plaintiffs shall publish the Summons for 3 weeks in the Augusta Chronicle and the Aiken Standard as provided by law, and shall also publish therewith the following notice:

Nature of action: The purpose of the above action is to determine all lawful heirs at law of James Brown, including lawful heirs at law who may be entitled to rights under state and federal laws. This action is also an action by plaintiffs to set aside the will of James Brown and the James Brown 2000 Irrevocable Trust, along with its subtrusts, the Brown Family Education Trust and The James Brown "I Feel Good" Trust. Failure to respond to the summons and complaint may result in loss of any and all rights with respect to the above matters.

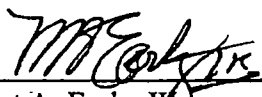
3. Plaintiffs shall serve all defendants with the amended complaint within 30 days.

4. Defendants who have been served but who have not answered the Amended Complaint shall have Thirty (30) days from the date of this Order to answer, move or otherwise appear:

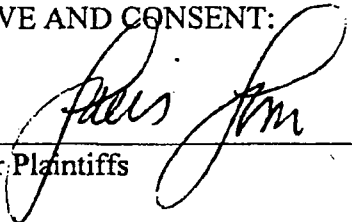
5. The resolution of the PR/Trustees' motion to dismiss is without prejudice to the rights of any party to assert any defenses, counterclaims and/or crossclaims in the proceeding, ~~including but not limited to laches and statutes of limitations.~~ 

AND IT IS SO ORDERED.

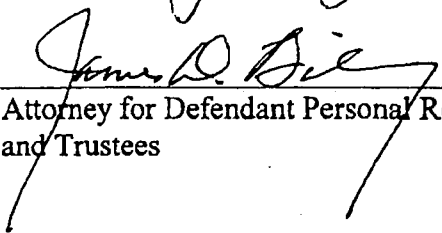
March 8, 2008
Aiken, South Carolina


Doyet A. Early, III
Resident Judge, Second Judicial Circuit

WE SO MOVE AND CONSENT:


Attorneys for Plaintiffs

3/7/08


Attorney for Defendant Personal Representatives
and Trustees

-- On Tue, 3/18/08, Forlando J. Brown <forlandoj.brown@yahoo.com> wrote:

From: Forlando J. Brown <forlandoj.brown@yahoo.com>
Subject: JB
To: funktiludrop@comcast.net
Date: Tuesday, March 18, 2008, 11:27 PM

Daryl:

I need to speak with you. It is extremely important that you contact me.

For more information contact:

Forlando J. Brown
The Graham Windsor Group
3340 Peachtree Road, NE
Atlanta, GA 30326
678-324-1807

Be a better friend, newshound, and know-it-all with Yahoo! Mobile. Try it now.

Never miss a thing. Make Yahoo your homepage.

From: Forlando J. Brown <forlandoj.brown@yahoo.com>
Subject: Fw: JB
To: "Albert Buddy Dallas" <dallaslaw@classicsouth.net>
Date: Tuesday, March 18, 2008, 11:31 PM

Buddy:

Sent this to Deanna and Daryl, but Deanna does not know I sent this to Daryl. I want to see if she is willing to talk with me on different issues. I wanted you to be aware of this so as not to disturb anything you might be working on or engaged in doing.

Forlando

— On Tue, 3/18/08, Forlando J. Brown <forlandoj.brown@yahoo.com> wrote:

From: Forlando J. Brown <forlandoj.brown@yahoo.com>
Subject: JB
To: dsweetieb@aol.com
Date: Tuesday, March 18, 2008, 11:22 PM

Deanna:

I need to speak with you. It is extremely important that you contact me. I need only to speak with you as I feel it is time to talk about things going on that might interest you.

For more information contact:

Forlando J. Brown

The Graham Windsor Group

3340 Peachtree Road, NE

6/30/2008

1965

FB005758

FB05934

Deanna

We meet with the new Special Administrators on Monday in Columbia to get

them to act in this area and in a number of others as well. We will file motions with the Court after that as will the Special Administrators (or at least we will encourage them to do so).

More to follow as soon as we know.

Thanks

LL

-----Original Message-----

From: DBrown [mailto:dsweetieb@aol.com]

Sent: Thursday, March 15, 2007 9:42 PM

To: Louis Levenson

Subject: Re: Email to Judge Early

What's going on w/the latest order? We need to have our own inventory person. If Judge Early is keeping to dad's wishes, these personal belongings are now ours we want our own person doing inventory and a report of what has been done so far. It is IMPORTANT THAT WE KEEP HEAT UNDER THEIR SEATS I DON'T SEE ENOUGH HEAT BEING PUT ON THEM NOW. WHERE ARE WE? Please let me know

DEANNA

-----Original Message-----

From: Louis Levenson

To: DSWEETIEB@aol.com

To: drylumar@yahoo.com

Cc: david@levensonlaw.com

Sent: Mar 7, 2007 3:49 PM

Subject: FW: Email to Judge Early

-----Original Message-----

From: Early, Doyet A. [mailto:dearlyJ@sccourts.org]

Sent: Wednesday, March 07, 2007 3:43 PM

To: T Heyward Carter

Cc: Robert Rosen; Louis Levenson; Alan Medlin; Alan Medlin;

Andrew W. Chandler; M Jean Lee

Subject: RE: Email to Judge Early

FB005764

I have signed an order today appointing Robert L. Buchanan and Adele J. Pope as co- special administrators. A formal order will be mailed to the clerk tomorrow with a copy to each of you. D.A. Early

From: T Heyward Carter [mailto:Carter@eckb.com]
Sent: Tuesday, March 06, 2007 2:40 PM
To: Early, Doyet A.
Cc: Robert Rosen; Louis Levenson; Alan Medlin; Alan Medlin;
Andrew W. Chandler; M Jean Lee
Subject: FW: Email to Judge Early

Dear Judge Early,

The parties were unable to come to full agreement on their choice of a Special Administrator. Mr. Levenson, on behalf of the children and grandchildren, and Mr. Rosen and his colleagues, on behalf of Tommie Rae

Brown, have agreed that their choice is Ms. Adele Pope. Messrs. Babcock and Peeples are not in agreement as to Ms. Pope.

We (Messrs. Levenson, Rosen et al.) would prefer that the Court decide on the appointment of the Special Administrator without a Hearing, as

FB005765

1987

FB05937

we
do not believe that a Hearing would be productive of any information
additional to that

.Sent via BlackBerry from SunCom Wireless

FB005766

1968

FB05938

Exhibit K

From: Forlando J. Brown <forlandoj.brown@yahoo.com>
Subject: SHAME ON YOU!
To: adele@popelawfirm.com, rlbuchanon@bellsouth.net
Date: Thursday, April 3, 2008, 10:13 PM

To Whom It May Concern:

You are selling MY grandfather's property that you have stolen through this racist Judge Early court system of South Carolina by being put into the position of PR, of which you can never represent James Brown, and as well Trustee which I believe you have failed. I am praying for you because you certainly will need it where you all are going after you've finished stealing all you can to fill your pockets full of My grandfather's treasure. Time will catch you all...GOD...is watching.

"The path of the righteous man is beset on all sides by the inequities of the selfish and the tyranny of evil men. Blessed is he who, in the name of charity and good will, shepherds the weak through the valley of the darkness. For he is truly his brother's keeper and the finder of lost children. And I will strike down upon thee with great vengeance and furious anger those who attempt to poison and destroy my brothers. And you will know I am the Lord when I lay my vengeance upon you."

1969

FB06194

In my fierce anger, I will take revenge on them. And when I punish them, they will know that I am the LORD.

Ezekiel

You rock. That's why Blockbuster's offering you one month of Blockbuster Total Access, No Cost.

You rock. That's why Blockbuster's offering you one month of Blockbuster Total Access, No Cost.

Exhibit L

CHRISTIE'S SALE SUMMARY

Deposits

Date	Amount
8/25/2008	\$5,000.00
8/25/2008	\$463,326.12
9/3/2008	\$4,137.00
10/8/2008	\$60,922.25
10/23/2008	\$20,192.50
11/13/2008	\$500.00
	\$554,077.87

Payments to Pope & Buchanan

Date	Amount	Paid To	Description
2/26/2008	\$15,000.00	Buchanan	
2/26/2008	\$15,000.00	Pope	
5/6/2008	\$3,000.00	Buchanan	
5/6/2008	\$3,000.00	Pope	
6/4/2008	\$3,000.00	Buchanan	
6/4/2008	\$3,000.00	Pope	
9/2/2008	\$100,000.00	Pope	
9/2/2008	\$100,000.00	Buchanan	
10/16/2008	\$15,000.00	Pope	
10/16/2008	\$15,000.00	Buchanan	
10/28/2008	\$951.24	Pope	costs for Cannon/Dallas/Bradley appeals
11/5/2008	\$894.94	Pope	costs only - 11/4/08 bill
11/6/2008	\$10,000.00	Pope	
11/6/2008	\$10,000.00	Buchanan	
1/9/2009	\$739.98	Buchanan	costs for Corbis travel
1/15/2009	\$3,095.43	Pope	costs only - 1/15/09 bill
2/9/2009	\$5,000.00	Pope	
2/9/2009	\$5,000.00	Buchanan	
3/2/2009	\$637.30	First Citizens Visa (Pope)	costs for AJP's trip to NY (Corbis)
3/2/2009	\$1,497.20	Pope	costs only - 3/2/09 bill
4/8/2009	\$2,000.00	Buchanan	
4/8/2009	\$2,000.00	Pope	
Total	\$313,816.09		
Total w/o cost payments	\$306,000.00		
Total paid before Christies	\$42,000.00		
Total paid after Christies w/o costs	\$264,000.00		

Payments to Attorneys & Accountants for Pope & Buchanan

Date	Amount	Paid To	Description
12/4/2007	\$12,047.29	Sellers and Cole	
2/13/2008	\$1,228.00	Sellers and Cole	
2/26/2008	\$15,000.00	James Bailey	
3/19/2008	\$500.00	James Bailey	
3/20/2008	\$1,999.50	Sellers DuRant	
4/28/2008	\$3,000.00	James Bailey	
5/6/2008	\$3,000.00	James Bailey	
5/14/2008	\$999.00	Sellers DuRant	
5/22/2008	\$3,000.00	James Bailey	
6/4/2008	\$5,000.00	James Bailey	
9/2/2008	\$50,000.00	James Bailey	
9/2/2008	\$10,000.00	Shipley & Hayes	
10/10/2008	\$15,000.00	James Bailey	
10/16/2008	\$7,580.00	Shipley & Hayes	appellate matters
10/27/2008	\$9,191.00	Sellers DuRant	
10/28/2008	\$5,000.00	James Bailey	
11/25/2008	\$5,000.00	James Bailey	
11/25/2008	\$440.00	Sellers DuRant	
1/15/2009	\$5,000.00	Shipley & Hayes	appellate matters
1/15/2009	\$5,000.00	James Bailey	
2/9/2009	\$5,000.00	James Bailey	
2/9/2009	\$5,000.00	Shipley & Hayes	
3/2/2009	\$500.00	Sellers, Cole & Bachkosky	
3/2/2009	\$2,000.00	Shipley & Hayes	appellate matters
3/2/2009	\$2,000.00	James Bailey	
3/17/2009	\$105.42	James Bailey	costs - copies of Hering file
Total	\$172,590.21		
Total paid before Christies	\$45,773.79		
Total paid after Christies	\$126,816.42		

1971

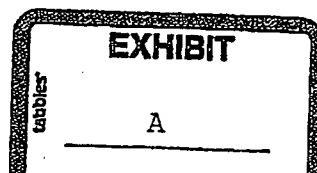


Exhibit B

Exhibit m



Estate of James Brown
212 Newberry Street NW
Aiken, South Carolina 29801

Robert L. Buchanan, Jr., Personal Representative

Adele J. Pope, Personal Representative

June 13, 2008

The Honorable Henry Dargan McMaster
Attorney General
State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549
FAX: 734-3677

BY FAX AND MAIL

Re: Estate Plan of James Brown

Dear Attorney General McMaster:

Thank you for your recent meeting. We deeply regret that the Attorney General, as the principal legal officer of the State of South Carolina, has not elected to join us in the pursuit of our primary, and critical, goals for the Estate Plan of James Brown. Those are:

1. **Defend the Estate Plan of James Brown against challenges;**
2. **Defend against the Elective Share Claim;**
3. **Prevent the Return of former PR/Trustees Cannon, Dallas and Bradley; and**
4. **Avoid a fire sale of Mr. Brown's valuable royalties, image and persona, the primary purpose of which is to put about \$35 Million in the hands of Cannon, Dallas, Bradley, Greenberg Traurig [All Defendants] and Frank Copsidas, and which will expose the Estate to millions of dollars of unnecessary claims.**

If we are successful in the above efforts, current available information indicates that, **within 3- 5 years, Mr. Brown, through his Estate Plan, will have provided:**

1. **Mr. Brown's personal and household effects (PHE) to certain children.** (Property or its value, less \$500,000 (+/-) Estate Taxes);
2. **Non-charitable Brown Family Education Trust, \$2 Million (+/-) to educate certain of Mr. Brown's grandchildren.**

Letter to Attorney General McMaster

June 13, 2008

Page 2

3. The remainder, after debts, to **The James Brown "I Feel Good" Foundation.**

It became our duty on November 20, 2007 to defend Mr. Brown's Estate Plan. We look forward to that challenge. Our Six-Month Report, a copy of which was distributed last month, outlines our progress and challenges during the period. [Additional copy enclosed.]

As required by the Court, as Special Administrators appointed March 7, 2007, we worked with David Cannon, Buddy Dallas and Al Bradley for 5 months between our appointment and David Cannon's resignation as PR/Trustee on August 10, 2007. Thereafter, until November 20, 2007 when they resigned, we had substantial contact with Buddy Dallas and Al Bradley.

We can say unequivocally that it is in the best interest of Mr. Brown's Estate Plan, and its primary beneficiaries, the Brown Family Education Trust and the James Brown "I Feel Good" Trust, that none of David Cannon, Buddy Dallas or Al Bradley returns to any fiduciary position with Mr. Brown's Estate Plan.

We can also say unequivocally that Mr. Cannon and Mr. Dallas' proposed sale of Mr. Brown's valuable Royalties, Image and Persona under the terms of "October 18 GT Letter", if implemented, would be a humiliation to the State of South Carolina and would eviscerate Mr. Brown's Plan for the education of his own grandchildren and other needy and deserving children.

Attorney General's Support of Cannon, Dallas, Bradley and Hammond

Long after our appointment on November 20, 2007, and as recently as last week, we have become aware of how deeply the office of the Attorney General was, and continues to be, involved in actions which support or encourage the efforts of Buddy Dallas and Al Bradley to be reinstated as Trustees and bring about this Fire Sale, intended to enrich themselves and David Cannon by more than \$16 Million.

Many are, quite frankly, baffled by this. We share that view. We also have the additional concern that the Attorney General, one of whose missions is the protection of South Carolina charities, is supporting efforts to defeat the funding of The James Brown "I Feel Good" Trust through actions which erode our ability to defend Mr. Brown's Estate Plan.

The Attorney General's Office and William Hammond

We are extremely troubled by the strong and continued reliance of the Attorney General on affidavits and statements of Bill Hammond in the light of his extraordinary efforts to protect David Cannon, Buddy Dallas and Phil Farr. Within the last few weeks we have received copies of emails between Bill Hammond and others, including your office. They confirm our repeated assertions that it will not advance Mr. Brown's Estate Plan or the future funding of The James

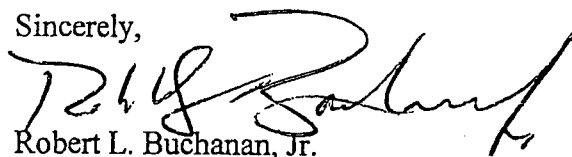
Ltr. to Attorney General McMaster

June 13, 2008

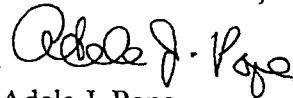
Page 9

For the sake of the children who will be the primary beneficiaries of Mr. Brown's Estate Plan, and for the State of South Carolina, the Attorney General of South Carolina should be taking positions that will effectively protect this valuable asset.

Sincerely,



Robert L. Buchanan, Jr.



Adele J. Pope

AJP/RLB,JR:ats

Enclosures

Exhibit N

Form 706

(Rev. October 2006)

Department of the Treasury
Internal Revenue Service

United States Estate (and Generation-Skipping
Transfer) Tax Return

Estate of a citizen or resident of the United States (see separate instructions).
To be filed for decedents dying after December 31, 2006, and before January 1, 2007.

OMB No. 1545-0015

1a Decedent's first name and middle initial (and maiden name, if any) James		1b Decedent's last name Brown		2 Decedent's Social Security No. 259-32-3801	
3a County, state, and ZIP code, or foreign country, of legal residence (domicile) at time of death Aiken County SC 29801-		3b Year domicile established 1933	4 Date of birth 05/03/1933	5 Date of death 12/25/2006	
6a Name of executor (see page 4 of the instructions) Robert L. Buchanan, Jr.		6b Executor's address (number and street including apartment or suite no. or rural route; city, town, or post office, state, and ZIP code) and phone no. 212 Newberry Street NW Aiken, SC 29801 (803) 649-2586			
6c Executor's social security number (see page 4 of the instructions) 254-90-4348		7a Name and location of court where will was probated or estate administered Aiken County Probate Court			
7b Case number 2007ES020056					
8 If decedent died testate, check here ☒ and attach a certified copy of the will		9 If you extended the time to file this Form 706, check here ☒			
10 If Schedule R-1 is attached, check here					

1 Total gross estate less exclusion (from Part 5 - Recapitulation, page 3, item 12)	1	85,845,034
2 Tentative total allowable deductions (from Part 5 - Recapitulation, page 3, item 22)	2	81,419,981
3a Tentative taxable estate (before state death tax deduction) (subtract line 2 from line 1)	3a	2,425,053
b State death tax deduction	3b	0
c Taxable estate (subtract line 3b from line 3a)	3c	2,425,053
4 Adjusted taxable gifts (total taxable gifts (within the meaning of section 2503) made by the decedent after December 31, 1976, other than gifts that are includible in decedent's gross estate (section 2001(b)))	4	0
5 Add lines 3c and 4	5	2,425,053
6 Tentative tax on the amount on line 5 from Table A on page 4 of the instructions	6	976,324
7 Total gift tax paid or payable with respect to gifts made by the decedent after December 31, 1976. Include gift taxes by the decedent's spouse for such spouse's share of split gifts (section 2513) only if the decedent was the donor of these gifts and they are includible in the decedent's gross estate (see instructions)	7	0
8 Gross estate tax (subtract line 7 from line 6)	8	976,324
9 Maximum unified credit (applicable credit amount) against estate tax	9	780,800
10 Adjustment to unified credit (applicable credit amount). (This adjustment may not exceed \$8,000. See page 6 of the instructions.)	10	0
11 Allowable unified credit (applicable credit amount) (subtract line 10 from line 9)	11	780,800
12 Subtract line 11 from line 8 (but do not enter less than zero)	12	195,524
13 Credit for foreign death taxes (from Schedule(s) P). (Attach Form(s) 706-CE.)	13	0
14 Credit for tax on prior transfers (from Schedule Q)	14	0
15 Total credits (add lines 13 and 14)	15	0
16 Net estate tax (subtract line 15 from line 12)	16	195,524
17 Generation-skipping transfer (GST) taxes payable (from Schedule R, Part 2, line 10)	17	0
18 Total transfer taxes (add lines 16 and 17)	18	195,524
19 Prior payments. Explain in an attached statement	19	0
20 Balance due (or overpayment) (subtract line 19 from line 18)	20	195,524

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than the executor) is based on all information of which preparer has any knowledge.

Signature of executor(s) <i>Robert L. Buchanan, Jr.</i>	Date 9/24/2008
Signature of preparer other than executor <i>Wade J. Pope</i>	Date 9/24/2008
4408 Forest Drive, Third Floor Columbia SC 29206	Date 9/24/2008

For Privacy Act and Paperwork Reduction Act Notice, see page 28 of the separate instructions for this form. Form 706 (Rev. 10-2006)

SEE PRS' STATEMENT @ ATTACHMENT #1

CMR 7005 18Y0 0004 3836 3637

1975

Part 4 - General Information (continued)

If you answer "Yes" to any of questions 8-16, you must attach additional information as described in the instructions.		Yes	No
8a	Was there any insurance on the decedent's life that is not included on the return as part of the gross estate? <u>uncertain</u>		
b	Did the decedent own any insurance on the life of another that is not included in the gross estate?		X
9	Did the decedent at the time of death own any property as a joint tenant with right of survivorship in which (a) one or more of the other joint tenants was someone other than the decedent's spouse, and (b) less than the full value of the property is included on the return as part of the gross estate? If "Yes," you must complete and attach Schedule E	X	
10	Did the decedent, at the time of death, own any interest in a partnership or unincorporated business or any stock in an inactive or closely held corporation?	X	
11	Did the decedent make any transfer described in section 2035, 2036, 2037, or 2038 (see the instructions for Schedule G beginning on page 13 of the separate instructions)? If "Yes," you must complete and attach Schedule G	X	
12a	Were there in existence at the time of the decedent's death any trusts created by the decedent during his or her lifetime?	X	
b	Were there in existence at the time of the decedent's death any trusts not created by the decedent under which the decedent possessed any power, beneficial interest, or trusteeship?		X
c	Was the decedent receiving income from a trust created after October 22, 1986 by a parent or grandparent? If "Yes," was there a GST taxable termination (under section 2612) upon the death of the decedent?		X
d	If there was a GST taxable termination (under section 2612), attach a statement to explain. Provide a copy of the trust or will creating the trust, and give the name, address, and phone number of the current trustee(s).		
e	Did decedent at any time during his or her lifetime transfer or sell an interest in a partnership, limited liability company, or closely held corporation to a trust described in question 12a or 12b? If "Yes," provide the EIN number to this transferred/sold item.	X	
13	Did the decedent ever possess, exercise, or release any general power of appointment? If "Yes," you must complete and attach Schedule H		X
14	Was the marital deduction computed under the transitional rule of Public Law 97-34, section 403(e)(3) (Economic Recovery Tax Act of 1981)? If "Yes," attach a separate computation of the marital deduction, enter the amount on Item 20 of the Recapitulation, and note on Item 20 "computation attached."		X
15	Was the decedent, immediately before death, receiving an annuity described in the "General" paragraph of the instructions for Schedule I or a private annuity? If "Yes," you must complete and attach Schedule I		X
16	Was the decedent ever the beneficiary of a trust for which a deduction was claimed by the estate of a pre-deceased spouse under section 2056(b)(7) and which is not reported on this return? If "Yes," attach an explanation		X

Part 5 - Recapitulation

Item number	Gross estate	Alternate value	Value at date of death
1	Schedule A - Real Estate	1	60,000
2	Schedule B - Stocks and Bonds	2	202,000
3	Schedule C - Mortgages, Notes, and Cash	3	138,505
4	Schedule D - Insurance on the Decedent's Life (attach Form(s) 712)	4	0
5	Schedule E - Jointly Owned Property (attach Form(s) 712 for life insurance)	5	115,000
6	Schedule F - Other Miscellaneous Property (attach Form(s) 712 for life insurance)	6	84,114,529
7	Schedule G - Transfers During Decedent's Life (att. Form(s) 712 for life insurance)	7	1,215,000
8	Schedule H - Powers of Appointment	8	0
9	Schedule I - Annuities	9	0
10	Total gross estate (add items 1 through 9)	10	85,845,034
11	Schedule U - Qualified Conservation Easement Exclusion	11	0
12	Total gross estate less exclusion (subtract item 11 from item 10). Enter here and on line 1 of Part 2 - Tax Computation	12	85,845,034

Item number	Deductions	Amount
13	Schedule J - Funeral Expenses and Expenses Incurred in Administering Property Subject to Claims	13 50,000
14	Schedule K - Debts of the Decedent	14 0
15	Schedule K - Mortgages and Liens	15 0
16	Total of items 13 through 15	16 50,000
17	Allowable amount of deductions from item 16 (see the instructions for item 17 of the Recapitulation)	17 50,000
18	Schedule L - Net Losses During Administration	18 0
19	Schedule L - Expenses Incurred in Administering Property Not Subject to Claims	19 0
20	Schedule M - Bequests, etc., to Surviving Spouse	20 0
21	Schedule O - Charitable, Public, and Similar Gifts and Bequests	21 83,369,981
22	Tentative total allowable deductions (add items 17 through 21). Enter here and on line 2 of the Tax Computation	22 83,419,981

Exhibits

Estate/Trust of James Brown
212 Newberry Street NW
Aiken, South Carolina 29801

Robert L. Buchanan, Jr., Personal Representative

Adele J. Pope, Personal Representative

March 16, 2009

The Honorable Henry Dargan McMaster
Attorney General for the State of South Carolina
State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549

BY FAX ONLY

Re: Sale of Beech Island

Dear Attorney General McMaster:

We urge you to join us in requiring one or more of the individual "settling" parties of James Brown to immediately purchase Mr. Brown's Beech Island Home Estate for \$925,307, its tax-assessor's value, on the terms set out below, or allow Beech Island to be sold immediately to others. [All to be presented to the Court for approval at the next hearing]

The terms we proposed to Mr. Levenson's clients on March 12 were:

1. [Purchasers] agree immediately, and close purchase of Beech Island by April 15, 2009 at tax assessor's value, \$925,307.
2. Give \$50,000 at closing and first mortgage with interest at 5% over 10 years (equal payments). Usual and customary mortgage terms.
3. Sale absolutely as is, with only real estate taxes and utilities prorated.
4. Deed in Lieu of Foreclosure placed as additional security, to be utilized by the PR/Trustees at their option upon default.
5. TPP to remain in home and insured with home, unless earlier removed by PR/Trustees, until mortgage paid in full.
6. If not purchased by [one or more "settling" parties] by April 15, to be sold by PR/Trustees in their total discretion.

We believe this proposal is fair to all parties, whether or not the current proposed "settlement", or another settlement, is reached. It also minimizes the chances that the proposed "Right of First Refusal" the "settling" parties are attempting to give certain individuals will disqualify The James Brown "I Feel Good" Trust in its entirety, exposing the Estate/Trust to

Letter to The Honorable Henry Dargan McMaster
March 16, 2009
Page 2

millions of dollars of unnecessary taxes.

As you know from reviewing the bank statements and Estate Tax Return, Mr. Brown's Estate/Trust does not have the estimated \$70,000.00 needed to provide even basic security, utilities and taxes for the Beech Island house for this year.

As the Estate Tax Return shows, the value of Beech Island at Mr. Brown's death was \$1.215 Million. Granting a Right of First Refusal to disqualified individuals to purchase the house at tax assessor's value (currently \$925,307), more than a 30% discount, in itself exposes the "I Feel Good" Trust to possible disqualification. Compounding the problem by continuing to maintain the property (even at minimal levels) at a cost in excess of \$70,000.00 per year so that the disqualified individuals may purchase it at some future time, exposes the qualification of the "I Feel Good" Trust to greater risk.

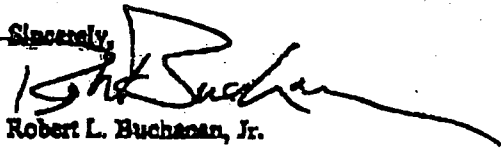
We believe that the emergency status of the Estate/Trust, along with the ability to conduct an immediate sale which will relieve the Estate/Trust of this possibly IRS-disqualifying private maintenance burden, is in the best interest of all. If a member of the "settling" parties does not elect to purchase on these terms, an outside group should be allowed to make the purchase.

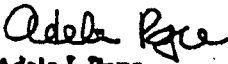
We have consulted with a number of people about the possibility of making Beech Island a museum, and look forward to sharing all of the information that has come to us. Immediately separating Beech Island will give the "settling" party (or other) purchasers an ability to begin immediately to partner with others; find volunteers; and find donors to begin the preservation project.

Please join us in seeking this immediate and necessary resolution for Beech Island. If we can provide any additional information, please let us know. We will be asking the Court to approve an immediate sale at the next hearing, and very much want you to join in that request.

Thank you for your consideration and response.

Sincerely,


Robert L. Buchanan, Jr.


Adela J. Pope

cc: Aiken County Probate Court (for file No. 2007-ES-02-0056)

Other Interested Persons or counsel

Dr. Leonard McIntyre

Ms. Inez Tenenbaum

Judge Walter Williams

Dr. Ann Carmichael

Harley D. Ruff, Esquire

Alan F. Rothschild, Jr., Esquire

Exhibit P

212 Newberry Street NW
Aiken, South Carolina 29801

June 24, 2009

William Y. Klett III, Esquire
Nexsen Pruet, LLC
1230 Main Street
Suite 700
PO Drawer 2426
Columbia, SC 29202
FAX: 727-1452

BY FAX ONLY

Re: Reasons for approval of CORBIS/Greenlight settlement agreement,
May 1, 2009.
See Boxes 81, 94, 140

Dear Mr. Klett:

We were somewhat surprised to receive your letter dated June 22, 2009 this morning (June 24) since Russell Bauknight declined to attend a meeting the afternoon of June 22 as you were writing. We offered to speak with him (and you if you elected to accompany him) about any matters of concern.

By copy of this letter to Russell Bauknight, we offer again, and request, again, that you and others take advantage of our offer to meet weekly. When Russell has possession of the file, such as he had in our June 16 conversation (Box 81), it makes it difficult to discuss a matter.

Rather than waiting until the next offered meeting to discuss questions raised in various correspondence, we will respond quickly because we believe that the CORBIS/GreenLight Settlement Agreement is of tremendous value to the Estate/Trust.

Your letter does not correctly reflect the file or our position. Rather than addressing each point, we will try to make available for your easy reference the information which is of record, and which Russell has.

First we refer you to the pleadings index in Robert L. Buchanan, Jr. and Adele J. Pope, Plaintiffs, vs., Henry Dargan McMaster, Defendant, Aiken County Case Number 2009-CP-02-0597, which you have, especially:

1. 3/24/09 Summons and Complaint for Expedited Approval of Corbis Settlement
[with contract]
3. 4/9/09 Joint Affidavit of Robert L. Buchanan, Jr., and Adele J. Pope

Supporting Summary Judgment

5. 4/27/09 Joint Supplemental Affidavit of Robert L. Buchanan, Jr. and Adele J. Pope Supporting Approval of Contract with Greenlight with COS and Filing Letter
6. 5/4/09 Affidavit of Robert L. Buchanan, Jr. and Adele J. Pope Related to Motion to Dismiss AG and Corbis Settlement
8. 5/5/09 Motion for Summary Judgment W/COS
13. 5/19/09 Return and Opposition to Motion to Intervene W/COS
14. 5/19/09 Memorandum in Opposition to Motion to Intervene W/COS
15. Proposed Final Order Approving Settlement of Corbis Litigation and Contract and Granting Related Relief

A review of the pleadings, which were in Russell's possession when we spoke (and), in particular, our affidavits and motion for summary judgment; the contract itself; and the other affidavits confirm why we attempted as early as March 24, 2009, to have the settlement approved so that we would not lose this valuable two-year right to exploit Mr. Brown's Publicity Rights.

We have spoken with Russell and several of his attorneys, including Freddie Kingsmore and you, about our strong feelings that this opportunity, once missed, cannot be recouped.

Among the many reasons we have discussed and will visit in more detail in a meeting, are:

1. The GreenLight contract was negotiated to be for **only 2 years** - causing no damage to the eventual outcome of the "Settling Parties", or other parties, regardless of the outcome of the reconsideration and appeal of the May 26 Order.¹
2. This is a "**clean**" **Publicity Rights contract**. As we discussed, a combination of Intrigue (Copsidas); Dallas, Cannon, Bradley, Toby Byron and others have made

¹ We considered this an important component of the settlement, as proposed to be implemented May 1, 2009 and terminated in 2011.

some claim to virtually every deal presented to the Estate/Trust. Further, Forlando Brown, who claims to be a 55% owner of TJBL, LLC, reports that he has been in contact with CMG. [See his September 2008 deposition.] These claims, though unfounded, and the related interference with the Estate/Trust's contracts have been substantial. The GreenLight contacts and contract have been solely through us and Mr. Gold. The fact that it is free of these claims is positive.

3. **GreenLight's confidential presentation** and discussions with Bob Buchanan and me in January 2009² establish the substantial possibilities for the James Brown brand, even during this short two-year period.
4. The contract provides that the Estate/Trust has **substantial control** over, and does not have to accept, proposals.
5. **Anecdotal comments** we have received in connection with our Royalty management, information that the American market is ready for extensive use of James Brown in advertising. [The reports were that before we were appointed the James Brown team was "too difficult to work with".]
6. Terry Cox's **income projections presented to the Attorney General in February 2008** for increased income through "Brand" [Publicity Rights] management.
7. Terry Cox's June, 2007, **valuation of the Publicity Rights** at approximately the value of the Royalties, followed by the October, 2007 \$100 Million offer based on these relative values.
8. The **Royalty earnings** (TIAA) for the first half of 2009, reflecting royalties earned in 2008, are more than \$2,215,000, suggesting that a \$1 Million annual projection for the equally-important Publicity Rights is conservative.
9. **Virtual Imagery** is now so advanced that, with proper exploitation of the Publicity Rights James Brown, by image, could be dancing with Ellen DeGeneres (and others) to the songs which these shows are already using.
10. A part of the publicity campaign, if appropriately handled, could be **publicity for the future James Brown House Museum**. [Adele had a nice image exploration initial

² To which Russell and all "Settling Parties" were invited.

Letter to Mr. Klett

June 24, 2009

Page 4

correspondence with the Tavis Smiley people about the possibility of something related to Beech Island just before the May 26 Order.]

11. GreenLight could be ready for **the Masters** next year (2010), where huge numbers of international visitors have tremendous interest in James Brown.

12. Art Gold's reduced contingency percentage of settlement approved.

Just this morning, public radio played an article on the resurgence and popularity of three-dimension in movies. As mentioned above, the ability to display Mr. Brown in 3-D is limitless, and just one aspect of his Publicity Rights waiting to be exploited.

Out of respect for our having tendered (temporarily and without prejudice) management of the Estate and Trust to Russell Bauknight pending the final outcome in the McMaster v. Dallas case, we request again that you reserve questions and inquiries for a scheduled meeting, which we are willing to have.

As we advised Russell, we will not respond to additional inquiries (or you and his other counsel) except at the meetings where the relevant documentation from the 145 boxes now in Russell's possession are brought to the meeting so that we can discuss, with documents in hand, whatever matters are of importance.

Adele will be on vacation next week, but we will be happy to speak with you about this further at a scheduled meeting as early as the second week in July. Please have Russell advise if he would like to have such a meeting.

Again, please do not consider our failure to respond to any future correspondence as agreement with your statements. Because of the complexity of issues related to Mr. Brown's Estate and Trust, and the fact that Russell is in temporary possession of the 145 boxes, more than 45 of which we referred to regularly, we simply consider those necessary to any reasonable discussion.

Sincerely,

Robert L. Buchanan, Jr.

Adele J. Pope

cc: Russell L Bauknight, CPA (Fax: 803-771-8958)

From: Alan Medlin <amedlin@sc.rr.com>
Sent: Sunday, August 30, 2009 4:11 PM
To: Kingsmore, Fred L.; Carter@eckb.com; Chandler@eckb.com; JLee@eckb.com; rnrosen@rosen-lawfirm.com; AGSJONES@scag.gov; MFJowers@scag.gov; JCNicholson@scag.gov; David Michel; louis@levensonlaw.com; lori@levensonlaw.com
Cc: rbauknight@BPSCPAS.COM
Subject: Tax valuation
Attachments: tax valuation.rtf
Follow Up Flag: Follow up
Flag Status: Completed

Attached please find a case hot off the press dealing with tax valuation issues of the second greatest country music songwriter (after Hank Williams) who wrote what is arguable the best country song ever. Patsy Cline's "I Fall to Pieces." It is a treasure trove of information for us, including: (1) the method of valuation for songwriter royalties includes an average of some prior years royalty stream multiplied by a multiple (somewhere between 5 and 8 seems reasonable based on the opinion); (2) names of some experts; (3) the Service accepted the multiple of 8. Based on the info in the opinion, Bobadele has grossly overvalued the estate for 706 purposes. The opinion deals only with royalties and not image and likeness, which apparently was inapplicable to the decedent songwriter. Of course, among ourselves, we are not sure we have the right to image and likeness under SC law, so any separate valuation of that should be discounted accordingly.

1983

Exhibit R



JAMES BROWN'S SON REGRETS CONTESTING WILL

[EURPUBLISHER / HTTP://WWW.EURWEB.COM/AUTHOR/RABERCOM/](http://www.eurweb.com/author/rabercom/) ■ JULY 1, 2012

[ENTERTAINMENT / HTTP://WWW.EURWEB.COM/CATEGORY/ENTERTAINMENT/](http://www.eurweb.com/category/entertainment/) [NEWS / HTTP://WWW.EURWEB.COM/CATEGORY/NEWS-2/](http://www.eurweb.com/category/news-2/)

[TOP NEWS / HTTP://WWW.EURWEB.COM/CATEGORY/NEWS-2/HEADLINES/](http://www.eurweb.com/category/news-2/headlines/)

[1 COMMENT / HTTP://WWW.EURWEB.COM/2012/07/JAMES-BROWNS-SON-REGRETS-CONTESTING-WILL/#COMMENTS](http://www.eurweb.com/2012/07/james-browns-son-regrets-contesting-will/#comments) 5642 VIEWS

1984



Daryl Brown

*The son of music legend James Brown now regrets that he did not follow his father's wishes as expressed in his will—and he shared his concern that his daughters will never receive the education funds their grandfather left them in a trust he established in 2000.

Daryl Brown, in a taped telephone interview on Wednesday (June 27), said, "When my oldest daughter went to school, her mother had to get loans for her because no money was there (in the trust). We asked for it and asked for it, but still no money came."

Had Brown's will been carried out at his death over five years ago, a \$285,000 education fund would have been created for each of Daryl's daughters.

The rest of Brown's music empire would have funded the "I Feel Good" charity to provide scholarships for needy and deserving students in South Carolina and Georgia.

Brown says his younger daughter graduates next year and his nephew is already in school, but they have received no assurances that their tuition will be paid, despite pleas to his attorney, Louis Levenson of Atlanta, as well as to Brown trustee Russell Bauknight of Columbia and to the office of the S.C. Attorney General (AG).

"They paid off the bond deal. Why is the money for the grandchildren not being released now?" Daryl asked.

"Every time we want to hear where the money goes, we're told this person has to be paid first, that person has to be paid first. They throw up smokescreens," he said.

Brown's estate plan gave his personal and household effects to six children named in the will, including Daryl. Although Daryl did not see the estate plan before his father's death in 2006, his father had told him about the education charity and the grandchildren's education funds.

In 2007 James Brown's estate plan was contested by the children named in the will and by Brown's companion, Tommie Rae Hynie, who claimed to be his wife even though she was married to another man when she and Brown exchanged vows in 2001.

"I just went along with the family, but I admit my mistakes," Daryl said.

Although Daryl's attorney Levenson filed affidavits in 2007 that accused original trustees—"Buddy" Dallas, David Cannon, and Alford Bradley—of mismanagement of the trust, Daryl now claims they did not exercise "undue influence" over Brown when he set up his estate plan. "I trusted those guys. My father trusted those guys. I'd known Mr. Dallas since I was a little boy."

Daryl insisted, "James Brown knew what he was doing. Nobody ran James Brown, he did it his own way."

On Nov. 1, however, "Sonny" Jones of the AG's office told the S.C. Supreme Court that the "undue influence" claim by Daryl and others supported a settlement deal forged by former AG Henry McMaster—a deal that gave more than half of Brown's music empire to Daryl, certain other children, and Hynie.



content/uploads/2012/07/james-brown-2012-med-

James Brown & Daryl Brown

Brown's will and trust directed his trustees to vigorously defend his estate plan, and anyone who challenged the estate plan would receive nothing. According to original trustee Dallas and his successors, Bob Buchanan of Aiken and Adele Pope of Newberry, there was no basis for the settlement deal—and it should be overturned.

Estate records show that Brown's trustees Pope and Buchanan obtained court approval to make education distributions to grandchildren before the settlement deal was reached.

The AG's office approached the Brown family about a settlement deal, Daryl said. "I admit, I was very vulnerable then... We were told if we didn't sign on this agreement, the judge would make a decision against us."

The 2008 mediation lasted from 10 a.m. to 10 p.m., and Daryl had misgivings even during the discussions, especially about Brown's companion. The agreement required the children to acknowledge Hynie as their father's wife and to give her one-quarter of his music empire. "I knew that would bite us in the a--," Daryl said.

"Sonny" Jones of the AG's office attended the mediation. Daryl said, "The AG's office was supposed to protect the charity, by law. Everything we did, we went by our lawyer's advice and advice from the AG's office."

In the beginning, he and the family made mistakes, Daryl said. "But after the mistakes were made, who's running the show now? That's the AG and Bauknight. He talks to us terribly, a very nasty attitude. When we call, they say 'we'll get to you whenever.' Something is not right here."

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When questions are asked about the estate, Daryl said, the family is stonewalled. "We're told, 'Don't say anything. You don't want Adele Pope to get back in here.' That's just throwing up a smokescreen."

(mailto:?)

Things would have been better if his father's last will and testament had been honored, he said. "Things never would have been this way if we'd left it alone."

Buchanan and Pope defended James Brown's estate plan with an appeal to the S.C. Supreme Court, and arguments were heard Nov. 1. After the appeal was filed, Buchanan and Pope were sued by Daryl and others, current trustee Russell Bauknight, and the AG for allegedly causing "millions of dollars" in damages to the estate.

The lawsuit is being handled by the Wingate firm of Columbia, but the AG's office refuses to release a complete copy of the contingency-fee contract authorizing the lawsuit.

"Things were done without me knowing. Just like, I didn't know I was suing Adele Pope until I went over to Columbia with Deanna," Daryl said.

Daryl claims he did not sign a contract with the Wingate firm, and he knew nothing about an October motion by Mark Gende of the Wingate firm to add him as a defendant in a Freedom of Information Act (FOIA) lawsuit filed by Pope for the release of the contract.

"No, I don't know anything about all that. They'll put my name on it, but I'm telling you, I didn't know anything about that," he said.

Daryl is considered to be the child closest to his father. He toured with him for eight years and travelled around the world twice, and even as a young man, he worked for his father in the summers. He is planning a CD and is available for performances through the website, thesonsoffunk.com (<http://thesonsoffunk.com>).

"My father was a genius. He knew what he wanted to do, and he knew what other people would do—and other people got greedy...People need to sit down now and really do his wishes," Daryl said.

Sonny Jones

From: Adele Pope <adele@popelawfirm.com>
Sent: Monday, November 05, 2012 4:32 PM
To: louis@Levensonlaw.com
Cc: Sonny Jones; Alan Wilson; dwilliams@jeterandwilliams.com; dblack@nexsenpruet.com; fkingsmore@nexsenpruet.com; MFJowers@scag.gov; adam@silvernaillawfirm.com
Subject: JAMES BROWN MATTERS - Daryl, Lindsey and Janise

1228 Walnut Street
Newberry, South Carolina
November 5, 2012

Louis Levenson, Esquire -- By EMAIL and Ordinary First Class Mail

Dear Louis:

I received this morning your email of November 2, 2010 which you make as the agent for Daryl Brown, Lindsey Brown and Janise B. (a minor). I make the following response to Daryl, Lindsey, Janice and you, and to the many people you elected to copy on your letter to me:

AS TO INNUENDO, THREATS AND FALSE ALLEGATIONS OF IMPROPRIETY ON MY PART AND THAT OF BOB BUCHANAN:

1. I do not believe that the continued false allegations and veiled (and unveiled) threats by Daryl, Lindsey and you, which began nearly three years ago in January 2009, are helpful.
2. The first threat by you, for Lindsey, Daryl and others, to ruin Bob Buchanan and me with Rule 11 sanctions, etc., if we did not resign and go along with the McMaster settlement deal, was by telephone on January 30, 2009 to Bob Buchanan. His telephone notes showing his response to you suggest that the threat was not effective.
3. I respectfully submit that after I learned in May 2011 that you, Daryl, AG Wilson and Lindsey, with others had falsely accused Bob Buchanan, a part-time Federal Magistrate Judge, and me of a Federal Felony which, if true, could permanently ruin our careers and reputations, all threats short of that became ineffective for any purpose.
4. If you, Daryl and Lindsey really believe I made an improper contact with anyone why didn't you, Daryl, Lindsey and Janise take advantage of the hearing scheduled before Judge Doyet A. Early, III on July 12, 2012 to determine who was lying about improper contacts, direct and indirect, and also who was lying about the following critical issues:
 - a. Was James Brown's worldwide music empire worth \$100 Million less the TIAA debt at Brown's death, or less than \$4.7 Million?
 - b. Isn't the "longtime friend" of James Brown who discussed the widely-know contents of the Hynie "diary" with a Newberry journalist really someone who actually knew James Brown?

c. Why did Hynie's lawyers and Bauknight meet with Buddy Dallas after they falsely accused me of being the "longtime friend" -- then not even ask Dallas if he was the "longtime friend" or knew who the "longtime friend" was?

5. Your letter makes me wonder why you, Daryl, Lindsey and Janise fought so hard NOT to have the July 12, 2012 hearing where Daryl, Lindsey and Janise's mother could have testified or presented affidavits about who had made contacts with them.

THE REAL FACTS:

1. I believe that you, Daryl, Lindsey and Janise's mother all know that I have never made any inappropriate contact with them or any of your clients, either direct or indirect.

2. I hope each of Daryl, Lindsey and Janise will consider, and accept, the Offers I made to them -- appropriately through my counsel -- in Case 4900. I believe their accepting the Offers would be a significant first step in undoing the wrong they have done to James Brown's dignity and private property through the McMaster deal and AG/State takeover of Brown's private property.

3. It is my earnest hope that Daryl and the five other named children in Brown's Will will NOT get \$30 Million or more of Brown's music empire, nor pay you the approximately \$8.7 Million or more you claim from that under a contingency fee of 30% plus \$150,000.

4. It is my earnest hope that Tommie Rae Hynie will not get any of the approximately \$25 Million Henry McMaster, without cause in my opinion, agreed to take from needy and deserving student beneficiaries of The James Brown "I Feel Good" Trust and give to Hynie, and that Hynie's attorneys will not get the \$9.7 Million or more they want from what Hynie is claiming.

5. It is my earnest hope that Bauknight's less-than \$4.7 Million valuation of Brown's worldwide music empire; scurrilous false allegations about Bob Buchanan and me; false claims to our Supreme Court, including that Hynie's Elective Share claim was a "slam dunk;" recommendation and support of a settlement which made false findings of who were the heirs of James Brown under the Federal Copyright Act; false claim both to the IRS and the S.C. Supreme Court that Bob Buchanan and I committed a Federal Felony by overvaluing Brown's music empire by \$79 Million for the improper purpose of obtaining a large commission; alliance with David Cannon's counsel; work to defeat our claims against David Cannon; refusal to seek either jail time or restitution from David Cannon; failure to have the most minimal understanding of what happened between November 20, 2007 and May 26, 2009; inappropriate loyalty to and alliance with Tommie Rae Hynie to the continuing detriment of The James Brown "I Feel Good" Trust and its needy and deserving student beneficiaries; along with his other shortcomings and conflicts will result in his removal by the Court or the Attorney General as Trustee of the James Brown 2000 Irrevocable Trust and PR under Brown's Will.

6. If your clients tell the truth, they will confirm I am not the "longtime friend" who revealed to a journalist the contents of the Hynie "diary" which you, Daryl, Lindsey, scores of others and I all know about.

7. I have made clear to you, Daryl, Lindsey and Janise in open Court before Judge Early that I believe the Hynie "diary" Gag Orders were unconstitutional when issued, but have not spoken of their contents since the 2008 Hynie "diary" Gag Orders out of respect for the Court.

8. Since Daryl has now given a taped media statement -- which I applaud even though I had nothing to do with it -- supporting my position that Daryl and others who settled with Hynie in August 2008 knew at the time she was not Brown's spouse, I certainly wish you, Daryl, Janise and Lindsey would join me in the Hynie "diary"

Gag Orders appeal, so that the widely-known contents of the Hynie "diary" could be disseminated and discussed.

9. Hynie's lawyers, and probably you, Daryl, Lindsey and others, I believe, know that the much more likely "longtime friend" who revealed the contents of the widely-known contents of the Hynie "diary" to the media was either Buddy Dallas, David Cannon or one of the number of Brown family members or their agents who had had on-the-record conversations with the journalist.

10. I do not accept and will not honor your invitation/direction to report to you who I think might be having direct or indirect contacts with your clients. I believe that Daryl, Lindsey and/or Janise's mother are the more appropriate parties to make such reports to you.

11. I would make such a report to you for Daryl, Lindsey and Janise only if I believed it appropriate or required, or if I believed the report might help save James Brown's Estate Plan and the "I Feel Good" private foundation.

12. I hope you will discuss with each of Daryl, Lindsey and Janise's mother my offers to join me in asking the Court to try to save James Brown's Estate Plan and The James Brown "I Feel Good" Trust. Failing that, I hope you will make clear that I want both needy and deserving students AND Lindsey, Janise and other minor beneficiaries of Brown's \$285,000 education Trusts to have access to education funds James Brown gave them even before the Supreme Court rules, and have made this known.

13. I believe you, Daryl and Lindsey all know by now my public position that Brown's children and grandchildren could not have destroyed Brown's Estate Plan and decimated The James Brown "I Feel Good" private foundation without Henry McMaster's having abandoned his duty to the "I Feel Good Trust." By the same token, however, McMaster's abandonment of his fiduciary duty to the "I Feel Good" private foundation, and the State's takeover of Brown's private property, probably could not have happened without the support of your original six children clients, including their abandonment of their minor children to whom James Brown gave separate \$285,000 education trusts.

14. I believe you, Daryl and Lindsey all know by now my public position that Hynie's claim was always without merit for numerous reasons -- including that it was not timely filed in the right Court. Further, now that Hynie has certified to the Courts and supported Bauknight's less-than \$6 Million value to the IRS, the threat of a Hynie claim -- even if she overcame the fact that she is not the wife; that she had a pre-nup; that she obtained a fraudulent marriage license; that she filed her claim in the wrong court; that she failed to meet requirements for the filing, including summons and service requirements; that she was married to someone else, etc -- has been reduced to between \$0 and \$2 Million -- nothing like the \$25 Million Sonny and Henry McMaster, and now AG Wilson, want to give her.

15. Deanna's widely televised meeting with biological sister Nicole -- Brown's child who was given nothing under the McMaster settlement deal -- is living proof, but just one example, of the huge problem AG McMaster, Daryl, Lindsey and others caused by making a knowing false determination of heirs in the August 10 2008 settlement deal and repeatedly presenting that false determination both to the IRS and Supreme Court and other courts.

16. Deanna's public misstatements, partly supported by misstatements by Bauknight, that copyright termination rights are "all this case is about," that there will be a disaster by 2023 if the settlement is not upheld reflect a troublesome lack of understanding (at best) of the principal and income act; the Federal Copyright Act; the value of James Brown's Publicity Rights; and other facts, including:

- a. that, under Brown's TRUE Estate Plan, as much as 90% of the \$10 Million he earned last year -- to the extent earned from Royalties ---, would be allocated to principal.
 - b. Under Brown's TRUE Estate Plan as drafted, the \$100 Million music empire, because of the allocation of a portion of the Royalties received to principal --- but for the McMaster settlement -- could already be providing about \$5 Million in scholarships for needy students each year, while diversifying and increasing in value so that each year the scholarships to be given to needy and deserving students could increase.
 - c. "Splitting heirs," as described in the Smith/Pope draft 2011 article, would allow Daryl and five or six others a chance to cooperate with the Estate/2000 Trust with respect to copyright terminations as and when termination issues arise, at a moderate price which would be both fair to the cooperating heirs and to "I Feel Good" private foundation.
 - d. Bauknight's refusal to take advantage of Publicity Rights opportunities between 2009 and 2011 he told the Circuit Court in September 2009 were ready to go has delayed realization of the full potential of Brown's music empire. [See transcript.]
17. It is not too late to save James Brown's TRUE legacy; return his Estate and the 2000 Trust to private hands, as he intended; and restore the dignity to which he is entitled. The children he chose to acknowledge, in my opinion, should be instrumental in doing that. If James B, the only post-vasectomy claimed child, should pass the official DNA test, he should be allowed to join in the effort to save the "I Feel Good" Trust. [James B's confirmation of Bauknight's assertion that Brown's probate estate was worth less than \$6 Million when he died now makes James B's claim -- even if he takes the official DNA protocol test; turns out to be a child; is found not to have been intentionally omitted by Brown; and is found not to be provided for with the \$80,000 Brown gave him -- between \$0 and less-than about \$500,000.]
18. Nobody -- including but not limited to Hynie, her son and her contingency-fee attorneys-- should be allowed to file or ratify documents with the IRS and/or Supreme Court stating the date-of-death value of Brown's music empire was less than \$4.7 Million, then change their story to adopt the REAL value when they make a claim.
19. Bob Buchanan's settlement, extracted unfairly from a financial standpoint, but confirming that he did nothing inappropriate in his service under the Will of James Brown and the James Brown 2000 Irrevocable Trust, has caused me to redouble my determination to completely clear his name, along with mine, from the false accusation by two South Carolina Attorneys General AND Daryl, you and your other clients that he and I committed a Federal Felony when we CORRECTLY stated James Brown's music empire on the Estate Tax Return at just under \$85 Million (about \$100 million less the TIAA debt).
20. Daryl, Lindsey and Janise filed in March of 2008, as part of consent order and just after the Hynie "diary" Gag Order silenced everyone from discussing the known contents of the Hynie "diary", a declaration that the heirs at law of James Brown, and thus his heirs under the Federal Copyright Act, were Daryl, Terry, Larry, Deanna, Yamma and Venisha. Hynie was excluded, as was her son.
21. Daryl, Lindsey, Janise and you know that since early 2008 Bob Buchanan and I have taken the consistent position that you and Daryl should not be allowed to speak for Lindsey (either a minor or represented to be a minor) or Janise in the Will/Trust matter, or later as to the McMaster settlement deal, because both the contest and the settlement were intended to destroy their \$285,000 education funds. Further, you and Daryl had, on Lindsey's and Janise's behalf, supported the 2000 Trust throughout 2007 as a platform giving Daryl and his siblings standing to oust David Cannon, Albert Dallas and Al Bradley.

22. Daryl, Lindsey, Janise and you know that Bob Buchanan and I have worked since the summer of 2007 to make sure that Janise, Lindsey and the other 5 grandchildren not be deprived of their \$285,000 Education Trust as a result of lawsuits brought by their parents or others, and that when Daryl and other parents of the minor children challenged -- without probable cause -- the 2000 Trust, Bob and I continued this position.

23. Daryl, Lindsey, Janise and you -- and anyone else -- is familiar, or has had a chance to become familiar, with Bob Buchanan's and my positions about James Brown matters through our joint (or Bob's sole) Affidavits, their attachments, and other filings, including but not limited to:

(1) Affidavit in Support of Respondent's Motion for Summary Judgment (Will/Trust Contest, Bob only) dated April 4, 2008;

(2) Affidavit dated May 15, 2008 (Cases 122 & 872);

(3) Supp. Affidavit in Support of Commissions and Payment of Certain Priority Expenses of Administration dated July 13, 2009 (Case 872)

(4) Joint Affidavit Opposing Motion to Dismiss dated March 12, 2010 (McMaster Settlement appeal);

(5) Joint Affidavit Related to Reply (Dallas Appeal) dated March 18, 2010;

(6) Affidavit in Support of Dismissal Based on Statutes of Limitations (Case 4900) dated September 10, 2010;

as well as:

(1) Bob's and my Amended Answers and Counterclaims of May 2012 in the Forlando Suit;

(2) Bob's and my filings and the briefs of James Richardson in the appeal of the McMaster Settlement;

(3) My FOIA Complaints filed in August 2011, and the subsequent filings and affidavits;

(4) Thousands of pages of other documents made public by the Order of Judge Early dated August 10, 2007 in Case 122

and through our open policy as PR/Trustees.

(5) The transcripts of the October 2011 hearing at which David Cannon was allowed to enter an Alford Plea after being charged with more than \$12 Million of takings from James Brown and the 2008 forgery, and at which AG Wilson's assistant, ignoring my request that he speak for the victims, told the Court there were no victims' statements; sought no restitution; and sought no jail time for Cannon; followed by a another hearing in 2012 at which AG Wilson and Bauknight blamed each other for the failure to seek restitution while Cannon still owns a million-dollar retirement home in the Carribean.

(6) My filed statements questioning why AG McMaster sued Bob and me for tens of millions of dollars when we handled Brown's Estate/Trust properly but resisted the AG/State takeover of Brown's private property and rewrite of his Estate Plan; never charged Cannon with \$5 Million he took in the summer of 1999 even though Cannon admitted in a 2002 deposition to being "paid" \$4.9 Million in 1999; took control of the Cannon criminal matter in early 2008 at the same time McMaster was working with Cannon and Dallas to try to oust Bob Buchanan and me and accepting large political contributions from the lawyers for Cannon, Dallas and Forlando; appeared on WIS TV to denounce Bob and me, and support Forlando, Cannon and Dallas' attempts to oust us; never indicted Cannon until February 2010 and then never tried him during his remaining year in office; never helped collect any of the \$17 Million which took missing while Cannon and Dallas were Brown's trustees;

allowed Cannon to keep his \$1 Million retirement home in Honduras; named Cannon and Dallas as witnesses against Bob and me in Case 4900; supported the fabricated less-than \$4.7 Million value of the music empire, and also my statements questioning why AG Wilson has refused to comply with the South Carolina Freedom of Information Act ("FOIA") so that the public can receive public documents which will show what really happened -- including McMaster's public contract (if there is one) with Wingate to sue Bob and me.

(7) My public statements and filing about the trouble a takeover by the AG/State of a private trust and private property can cause, even when the Attorney General is actually invited by the Trustees to take over, as is now (November 2012) playing out in the State of Utah, where Utah Taxpayers have been ordered to advance about \$4.6 Million to pay legal and other costs of the United Efforts Trust the Utah AG took over in 2006. [The AG is now at odds with his own appointed Trustee.]

(8) My public statements and filings that private philanthropy in South Carolina will be dealt a death blow if the AG, on a whim and without cause, can take over private foundations just because they are involved in litigation; give to private individuals property the Settlor intended to be used for charitable purposes; rewrite the Settlor's Estate Plan without regard to what the Settlor wanted; and appoint, remove and replace the Trustees at will.

(9) My concerns, such as those expressed in the Spitzer Ethics Opinion 06-06 that there is a conflict of interest when an Attorney General uses a private foundation which he both controls and regulates under the State's civil and criminal laws to enhance his political position and obtain contributions from investment advisors, attorneys and others engaged by the Attorney General's appointee to manage the foundation and its investments.

(10) My personal belief, first expressed to you, Daryl, Deanna, Yamma, Venisha, Larry and your other clients in later November and early December 2007, BEFORE they challenged James Brown's noble Estate Plan -- and unchanged for 5 years -- that there was no probable cause to challenged Brown's Will or the James Brown 2000 Irrevocable Trust; that we should work together to defeat the claims of Hynie, who was not Brown's spouse and, even if she had been, had properly waived her claims to his assets under both State and Federal law; and that Brown's 2000 Trust should have 3 PRIVATE Trustees, including a permanent family seat for one of the six acknowledged children or a descendant of one of the six who fully supports Brown's noble Estate Plan and the "I Feel Good" Foundation.

24. You, and presumably Daryl, Lindsey and Janise, know the frustration that you expressed to us in 2008 before the McMaster Settlement deal that -- inexplicably -- it was virtually impossible to get an audience with the Attorney General's Office ("Sonny") without going through Tommie Rae Hynie's lawyer.

25. You, Daryl, Lindsey and Janise have all seen and heard since 2007 the abundant evidence that Brown's worldwide music empire, even without the \$12 Million Cannon had taken since 1999, was worth about \$85 Million at Brown's death; Rodney Peeples' statement BEFORE Bob and I became involved that Brown earned \$1 Million or more a week on the European tours; Robert Rosen's statement in February 2007 that the Royalties alone (without considering the Publicity Rights) might be worth \$100 Million; your then-clients Forlando and Darren Lumar's January 2007 prospectus to raise \$200 Million to buy and run the music empire; Dr. Terry Cox, Dallas, Cannon and Terry's serious plans from mid-2007 until at least some time in 2008 to buy the music empire for \$90 -- \$100 Million and do an IPO; and the William Morris statement showing Brown grossed \$18 Million on road show between 2003 and his 2006 death.

26. You, Daryl and Lindsey have known since Lindsey turned 18 several years ago that Bob's and my position was that neither you nor Daryl had any right to continue to speak for her, and that if she went along with the destruction by her father of the \$285,000 Education Trust her grandfather created for her it was her place -- not that of her father -- to move to intervene in the Aiken County Cases and tell the Court her position as an adult.

27. You, Daryl and Lindsey know we remained concerned about this until Lindsey -- as a Plaintiff -- appeared in Case 4900, which seemed -- at first -- to indicate that she had actually consented to the destruction of her \$285,000 Education Trust Fund given her by James Brown.

28. You, Daryl and Lindsey know all of that has now become cloudy by Daryl's and Lindsey's refusal to appear at depositions in the 2 1/2 year old case they brought, seeking tens of millions of dollars from Bob Buchanan and me; by Daryl's letter to Attorney General Wilson asking him to uphold James Brown's wishes in the creation of the "I Feel Good" Trust; Daryl's taped interview claiming that Tommie Rae Hynie was not Brown's surviving spouse and that he, you and your other clients knew it when you and Sonny Jones, acting for AG McMaster, agreed on August 10, 2008 to treat Hynie as Brown's spouse.

29. You, Daryl and Lindsey know that neither Sonny nor anyone at AG McMaster's office understood on August 10, 2008 the destruction to be caused to Brown's copyrights by making a knowing false determination of heirs, but -- for as-yet-not-fully-explained reasons --- Sonny was determined to give a wholly unwarranted 25% of Brown's music empire to Hynie.

30. I believe that accepting the 6 children James Brown acknowledged, the three DNA proven children (Nicole, Jeanette and LaRhonda) and others who pass the proper DNA protocol is the sensible and correct way to determine Brown's heirs under the Federal Copyright Act.

31. You, Daryl and Lindsey know that I believe the representation you, on behalf of Daryl, Lindsey and Janise, made to our Supreme Court that James Brown's worldwide music empire AND the claim against David Cannon for the \$12+ Million he took were worth less than \$4.7 Million when James Brown died was outrageous.

32. You, Daryl and Lindsey know that when Terry Brown -- whose lawyer David Bell was representing parties on both sides of the McMaster Settlement deal at the same time and actively participating in cases without pro hac vice admission --- secured from Attorney General McMaster a right of first refusal for Terry to buy Brown's worldwide music empire (on January 30, 2009), it was an open invitation to the extreme "devaluation" of Brown's assets which then followed.

33. You, Daryl and Lindsey know from having read -- or having had an opportunity to read -- *Private Foundations, Copyright Heirs and Musical Millionaires: Why the James Brown "I Feel Good" Trust doesn't...* my position that Sonny and AG McMaster's total lack of understanding of the Federal Copyright Act, coupled with a troublesome alliance with and reliance on Hynie's counsel; coupled with their alliance with Terry and Powell Goldstein; coupled with a knowing false determination of the heirs of James Brown, was devastating to The James Brown "I Feel Good" private foundation, and possibly to private philanthropy in South Carolina.

34. You, Daryl and Lindsey should know from my filings -- but I will say again -- that when the Attorney General and his appointee, with the blessing of Daryl, Lindsey, Janise and you -- told BOTH the IRS and the S.C. Supreme Court that Bob Buchanan and I had committed the Federal Felony of overstating Brown's worldwide music empire at close to \$85 Million -- falsely alleged to be an intentional \$79 Million overstatement -- for the improper purpose of obtaining a large commission that false allegation so struck at the core of my ability to practice law that I determined to stay involved until that false allegation has been appropriately straightened out.

35. You, Daryl, Lindsey and perhaps Janise all know that Hynie's lawyer's false allegation that I am the "longtime friend" who discussed the contents of the Hynie "diary" with the media is pure fiction, and his threat to file yet another lawsuit against me on this fabricated claim simply strengthens my resolved to stay involved until these false statements -- made by the very people who TWICE asked the Court to appoint me --- are shown to be false.

I remain optimistic that Daryl, Lindsey and/or others of your clients will join me in trying to undo what they, with former AG McMaster, did. Failing that, I hope you will encourage Daryl and Lindsey, along with your other clients, to make themselves available ASAP for depositions so that the conflict and discrepancies between what you are saying as their agent; what Wingate is representing to be their positions in 2 separate cases; and what Daryl has said and written over the last year can be reconciled.

I will ask that Adam Silvernail, my counsel in Case 4900, provide a copy of this email to Kenneth Wingate and other members of Sweeney, Wingate & Barrow, who assert they represent Daryl, Lindsey and Janice in Case 4900 and in the attempt by Daryl, Lindsey and Janice to intervene in a FOIA suit and seek sanctions against me, so that the Wingate Firm will be fully aware of our communication.

Sincerely,

Adele J. Pope

cc: as shown

Cc:
'AGWilson@scag.gov','DBlack@nexsenpruet.com','AGSJONES@scag.gov','dwilliams@jeterandwilliams.com',
'FKingsmore@nexsenpruet.com','MFJowers@scag.gov','adam@silvernaillawfirm.com','Lori Christman,Louis
Levenson','mvg@swblaw.com','Alan Medlin \amedlin@sc.rr.com\'
Subject: RE: DARYL BROWN - REFUSAL TO DEPART FROM JAMES BROWN WILL & TRUST;
LEVENSON TERMIN

--- Scanned by M+ Guardian Messaging Firewall ---

Exhibit T

SCOTT KENILEY

From: William James Brown <williamjames.brown@yahoo.com>
Sent: Friday, September 27, 2013 12:39 PM
To: SCOTT KENILEY
Subject: Fw: Notice to the Court - The Estate of James Brown A/K/A: James Joseph Brown
Attachments: Brown - Terminations - MT Letter to Warner-Chappell 9.23.2013.pdf

----- Forwarded Message -----

From: William James Brown <williamjames.brown@yahoo.com>
To: "dearlylc@sccourts.org" <dearlylc@sccourts.org>
Sent: Friday, September 27, 2013 12:37 PM
Subject: Notice to the Court - The Estate of James Brown A/K/A: James Joseph Brown

Dear Judge Early,

I hope you are well. Out of an abundance of caution and in respect to this court, I am submitting this letter written on behalf of certain interested parties by their counsel, to the court. The letter contains pertinent information I believe the court is entitled to as your Honor continues to oversee these Estate of James Brown matters.

The letter outlines knowledge of actions, taken on behalf of certain interested parties under the courts jurisdiction, that are intended to strip the "I Feel Good" Trust of James Brown of revenues. The letter points to certain representatives of the Estate of James Brown assisting in filing notice of termination rights, on behalf of Tommie Rae Hynie, pursuant to the copyright act, that will do harm to this courts jurisdiction in such legal matters. It is my assumption that all the actions taken by Estate representatives, that deal specifically with the Estate of James Brown, under this courts jurisdiction, be noticed to the court for guidance and approval.

Very Respectfully,

William Forlando Brown

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, and others

and

ALAN WILSON, in his capacity as Attorney
General of the State of South Carolina and
others,

Plaintiffs.

v.

Adele J. Pope,

Defendant.

) IN THE COURT OF COMMON PLEAS

)

)

) Case No.: 2010-CP-40-4900

)

) **MEMORANDUM IN SUPPORT OF**
) **DEPOSITION OF ATTORNEY**
) **GENERAL AND OPPOSING**
) **PROTECTIVE ORDER**

RICHLAND COUNTY
FILED
2015 AUG 29 AM 10:12
JEANNETTE W. MCBRIDE
C.C.P. & S.S.

Summary of Relief Requested

For five years and seven months Attorney General Alan Wilson has been the one person who could end this unprecedented litigation brought in 2010 to stop an appeal of a settlement reached by his predecessor which dismembered entertainer James Brown's "I Feel Good" Foundation and threatened its 900 copyrights.¹

For two of those years Wilson claimed the right to control the James Brown assets solely because his office had entered the proceedings. For three he has praised Russell Bauknight as millions of dollars in legal fees were spent from funds Brown left his "I Feel Good" Charity² to carry out its proposed second dismembering announced to Judge Doyet A. Early, III in open court on May 29, 2013 by Louis Levenson, Esq., and counsel for the

¹ Defendant does not waive her position that this case, "Richland 4900", violates the U.S. and S.C. Constitutions because the Attorney General and private citizens share a single, private attorney.

² Since May 8, 2013, Bauknight has paid or incurred legal fees of his Nexsen Pruet ("NP") lawyers, Dave Sojourner, Jr., Esquire, and Sojourner's attorney of more than \$3.4 Million, paid from an estate he asserts is a \$5 Million estate.

Attorney General's Richland 4900 Co-Plaintiff Tommie Rae Brown.³

Now in August 2016, the Attorney General asserts that *United States v. Morgan*, 313 U.S. 409, 422 (1941) and its progeny shield Wilson from being deposed because he holds a high office; it will take time from his official duties; and the Defendant he has been suing for five years has not demonstrated that the information cannot be obtained from other sources.

This is not correct. A reading of *Morgan* and the subsequent cases, as well as South Carolina cases and the Rules of Civil Procedure, makes clear that the deposition of Wilson is appropriate under the extraordinary facts of this case. His testimony is essential in this case *which the State brought against Robert Buchanan, Jr. and Defendant*. The circumstances make clear that injustice will result if the deposition is not granted. This is not an examination of the policy of the Attorney General's office, but of Wilson's actions through his office, his Legacy Trust, and Bauknight to damage Defendant over five years.

Wilson is the only person who can give the necessary information.⁴ Since he took over control of Richland 4900 in January 2011, the damage to Defendant and Buchanan, as well as the threat to Brown's Charity, has increased exponentially.

Some of the circumstances showing the deposition to be essential follow.

³ The final decision in *Wilson v. Dallas* was rendered on May 8, 2013. By May 14, 2013 the Attorney General had actively worked with Levenson and Alan Medlin, Esq., counsel for Tommie Rae, to have Bauknight reappointed. Through the private law firm, Sweeny, Wingate and Barrow, P.C. ("Wingate"), they share, Tommie Rae, the Levenson Plaintiffs and Attorney General Wilson had also sought a stay of this case, Richland County Case 2010-CP-40-4900 ("Richland 4900.")

⁴ In considering the circumstances supporting a deposition, the Court is asked to take judicial notice under SCRE 201 of the entire participation of the Attorney General, the James Brown Legacy Trust, NP and Bauknight in all roles, in Aiken Cases 2007-CP-02-0122; 2008-CP-02-1647; 2013-CP-02-1337; the Tommie Rae Spousal and James B. Heirs proceedings; and appeals from all of these cases; the James Brown Estate file; all James Brown FOIA cases filed since August 3, 2011 and related appeals; and Richland 4900.

I. Background to Involvement of Attorney General Wilson in Richland 4900⁵

a. The McMaster Settlement and Creation of the Legacy Trust

On September 24, 2007 Attorney General Henry McMaster entered the James Brown proceedings. For the next five years McMaster and Wilson, his successor, asserted the Attorney General had the right to control the James Brown litigation.

In December 2007 Tommie Rae and Levenson's clients filed meritless suits to set aside Brown's estate plan. Most later admitted the suits had no merit.⁶

On January 8, 2008 Judge Early approved the Buchanan/Pope fee contract; praised their work; and found that their work commitment had more than doubled since they became PR/Trustees on November 20, 2007.

On April 8, 2008 Judge Early issued a comprehensive order examining the appointment and service of Buchanan and Pope as SAs and PR/Trustees. He found their appointment proper, and all of their service both ethical and appropriate.

On May 20, 2008 Buchanan and Pope served their First Semi-Annual Report as PR/Trustees to Devisees, Beneficiaries and the Attorney General.⁷

On May 29, 2008, at the request of philanthropist John Rainey, McMaster met with

⁵ Defendant asks the Court to take mandatory judicial notice under Rule 201 SCRE of the entire record in *Wilson v. Dallas*, and of proceedings after the Administrative Orders of June 13, 2013, in which – at the request of Levenson, Tommie Rae and Bauknight – Judge Early excluded Buchanan and Defendant from all James Brown proceedings except their own claim cases.

⁶ In the first filings in this case, all Richland 4900 Plaintiffs admitted that the creation of a Trust for the education of needy students was a long-held and often-stated desire of James Brown. In her October 31, 2008 deposition Levenson client Deanna Brown confirmed that the Will was valid. Plaintiffs Daryl and Terry Brown have openly urged the Attorney General to support Brown's estate plan.

⁷ In his August 18, 2016 Deposition McMaster said he had never seen the Buchanan/Pope First Semi-Annual Report. Contemporaneous Records, however, show that it was served on the Attorney General and others on or about May 20, 2008, and that Buchanan & Pope hand-delivered it to McMaster in a meeting with McMaster, Jones, Jowers, Chief Deputy John McIntosh and others, on May 29, 2008.

Rainey, Pope and Buchanan.⁸ The Semi-Annual Report was handed to McMaster.

According to Jones, Rainey admonished him for interfering with the operation of Brown's Foundation, and McMaster directed him to work with Buchanan and Pope.⁹

On July 14, 2008, at the request of Buchanan, Pope and McMaster, the S.C. Court of Appeals directed the Christie's sale to proceed on July 17.

In July 2008 McMaster nominated five persons from whom Buchanan and Pope would select a third Trustee for Brown's 2000 Trust, the bulk of which goes to the "I Feel Good" Charity.¹⁰

On July 30, 2008 McMaster approved Buchanan and Pope as permanent Trustees of Brown's 2000 Trust.

On August 10, 2008, McMaster brokered the settlement with Tommie Rae and some Levenson clients which dismembered the "I Feel Good" Charity and \$285,000 Education

⁸ Also present at the May 29 meeting were some of the employees of the Attorney General's office who have worked for both McMaster and Wilson on James Brown matters: Havird "Sonny" Jones; Mary Frances Jowers; and John McIntosh, who has served as Chief Deputy for both McMaster and Wilson. On August 27, 2016 *The State* announced the retirement of John McIntosh from the Office of Attorney General. In deposition in Aiken Case 2013-CP-02-1337 ("Aiken 1337"), in which the Attorney General has asserted the discovery is similar to Richland 4900, Jowers and Jones have refused to answer, or only partially answered, most questions. Directed by the Attorney General, Jowers and Jones assert that they enjoy privilege under the Common Interest Doctrine with all of the parties to the McMaster Settlement Deal and their counsel from 2009 through May 8, 2013. In addition, Jones claims that he had a privilege under the Common Interest Doctrine with Bauknight and his dozen NP attorneys since Bauknight was reappointed by Judge Early just after May 8, 2013.

⁹ This testimony was given by Jones in his Aiken 1337 deposition. In his deposition in this Case, McMaster had little memory of the meeting. He did recall that Rainey was very supportive of Pope. Contrary to contemporaneous records, he claimed never to have seen the Semi-Annual Report. He also claimed to have very little knowledge or memory of the events from 2007 - 2011. The Court is asked to take judicial notice under Rule 201 SCRE of the McMaster WIS-TV video made a part of the Jones and Jowers depositions. In February 2007 McMaster spoke of the vast value of Brown's image and persona, as well as his copyrights.

¹⁰ In 2008 the Attorney General nominated W. Steven Johnson, Esq.; Xavier Starkes, Esq.; Russell Bauknight; David Sojourner, Jr.; and Tracey Greene, Esq. In 2009 Johnson presented an Affidavit/Opinion that the work of Buchanan and Pope met or exceeded the standard for fiduciaries. In his 2016 deposition in Aiken Case 2013-CP-02-1337 ("Aiken 1337") Johnson reiterated his position, and the documentation for it.

In his 2016 deposition in Aiken 1337 Sojourner, like Johnson, admitted that even today he had no expertise in matters related to Federal Copyright Act Termination Rights.

Trusts for certain grandchildren. It also threatened the Charity's 900 copyrights; created McMaster's James Brown Legacy Trust;¹¹ and provided that Buchanan and Pope would be replaced.¹²

Levenson and Tommie Rae's lawyers would reap about \$20 Million in legal fees for will challenges pending only seven months, and for which there had been no discovery.¹³

By September 2008 Medlin claimed he, Levenson and McMaster "spoke as one."

In September 2008 Brown's estate tax return, valuing the music empire and certain related assets at about \$84 Million, was filed.¹⁴

In January 2009, as Judge Early began hearings on the McMaster Settlement, Levenson called Buchanan to threaten Rule 11 sanctions and other problems if he and Pope did not resign, clearing the way for the settlement.

In March 2009, David Bell, Esquire, whose client had joined the McMaster Settlement, wrote Buchanan threatening a judicial grievance if Buchanan did not resign.¹⁵

11 Although it bears Brown's name the Legacy Trust was actually created by McMaster. Until May 8, 2013 the Attorney General and Tommie Rae had more than 2/3 voting control of the Legacy Trust and the Attorney General the right to appoint and replace Trustees at will.

12 In his August 18, 2016 deposition McMaster claimed to have little memory of his 3-year involvement in James Brown matters; claimed he had not seen the May 20, 2010 report Buchanan and Pope had hand-delivered to him on May 29, 2008; did not recall ever reading Brown's Will; did not know what the Legacy Trust he created and controlled when he left office was. When asked by Wingate if the Legacy Trust had charitable beneficiaries, he did not know. Despite this vague memory, McMaster vigorously asserted that the McMaster Settlement Deal was a good idea, and that Supreme Court's *Wilson v. Dallas* decision finding that his settlement deal dismembered Brown's noble estate plan was wrong.

13 While Tommie Rae has still not been determined to be Brown's spouse, and some Levenson clients are still contesting Brown's estate plan, Tommie Rae and some children received about \$2 Million from a sale of "Please, Please, Please" and two other songs. The sale of just 3 of Brown's 900 songs, apparently condoned by AG Wilson, Bauknight and NP, is reputed to have been for \$6 Million. Jones and Jowers appeared not to know of the \$2 Million payment. Or, based on their claimed Joint Interest Doctrine privilege shared with Bauknight, they simply excluded it (as directed) from deposition responses.

14 The \$84 Million was consistent with a formula for valuation of the estate tax return presented to Judge Early by Buchanan & Pope as SAs on Nov. 15, 2007; with the \$42 Million value placed on about 850 of the copyrights by a 2006 Royal Bank of Scotland Appraisal; and the at-death balance of a TIAA debt, approximately \$15MM. SEE WIS-TV interview of McMaster of February 7, 2007, part of the Jones and Jowers Aiken 1337 deposition.

15 Bell, a Georgia lawyer closely aligned with the Cannon PR/Trustees, has been infamous for his .

In March 2009, through James Gilreath, Esq., Levenson made a threat to Pope similar to that he had made to Buchanan in January. Levenson also told the media that anyone standing in the way of the settlement better get out of the way.

In May 2009 Judge Early approved the McMaster Settlement. Bauknight, already Trustee of the Legacy Trust, replaced Buchanan and Pope as PR/Trustee.¹⁶

On May 26, 2009 Buchanan was owed \$500,300 and Pope about \$1.4 Million under their contract with Plaintiff Estate/2000 Trust. Judge Early's compensation order provided for interest to accrue on both amounts until paid.¹⁷

dirty tricks in James Brown matters since early 2008 when he filed multiple grievances against Levenson in two states. Bell claimed Levenson had forged his 2007 fee contract with Bell clients Terry, Forlando and Romunzo Brown, and others.[The three fired Levenson in 2007 and aligned themselves with Cannon & Dallas.] In January 2008 Bell and Atlanta Law Firm Powell Goldstein ("PG") filed a baseless federal lawsuit seeking to enjoin Brown's 2000 Trust until the Cannon Trustees were reinstated.

In 2007, as the \$17 Million Cannon took was being uncovered, PG sent documents to Cannon and Dallas to change the situs of Brown's 2000 Trust to Georgia. The documents were defective, and the plan aborted in August 2007, just before Cannon's resignation.

As set out below, Attorney General Wilson and Bauknight as trustee of the Attorney General's Legacy Trust secretly aligned themselves with Forlando in early 2011.

In 2015 Buchanan and Pope were unsuccessful in their effort to charge Forlando's interest in the Estate/2000 Trust with the costs of the 4-year frivolous suit. Bauknight, speaking for the 2000 Trust Forlando had worked 4 years to paralyze, claimed Forlando had done nothing wrong, and that Buchanan and Pope were the wrongdoers.

16 From 2009 until today, the Attorney General has had sole authority to remove and replace Bauknight as Trustee of the Legacy Trust.

17 The Court is asked to take judicial notice of the representations of Bauknight and NP lawyers in Aiken 1337 about the \$1.4 Million owed Defendant as of May 26, 2009.

In 2015 Bauknight/NP claimed that, even though the amount due Pope on that May 26, 2009 under her contract with Plaintiff Estate/2000 Trust and Judge Early's Order had been earning interest at more than \$120,000 a year for six years, it could not be paid because Richland 4900 was still pending. At the same time Bauknight/Wilson/Wingate were asking that Richland 4900 be stayed until all matters in Aiken County were concluded.

The Estate/2000 Trust also claimed the Grammy© withdrawal from the Christie's sale on July 17, 2008, also a subject of Richland 4900, prevented this payment.

The Grammy© withdrawal was entirely appropriate; without penalty; and made with Levenson present over the urging of Christie's counsel that it remain in the sale.

Christie's counsel advised that the Academy which produces Grammys© uses strongarm tactics to try to avoid sales of Grammys© such as James Brown's because there have no legal right to stop the sales. Media reports of two Grammy sales of the Stevie Wonder's Grammy© support Christie's position.

Because Cannon, Dallas, Forlando, PG and Levenson clients had all taken action to chill the July 17, 2008 Christie's sale, and the projected sale price of the Grammy© was small, Buchanan and Pope made the wise business decision not to incur the legal costs of defending the sale. The James Brown Grammy© was returned. With thousands of other James Brown items, it was placed by Buchanan and Pope in a museum for safekeeping pending

b. The Attorney General's Efforts to Stop Appeal of the McMaster Settlement

On July 29, 2009, as Brown's documents required, Buchanan and Pope appealed the McMaster Settlement.

The Attorney General, now controlling a \$100 Million Foundation, wanted to stop the appeal. So did lawyers whose \$20 Million in contingency fees was threatened.

The Attorney General had the services of Bauknight, Trustee of his Legacy Trust. He also had the dozen NP lawyers who have represented the Legacy Trust – and been paid from funds Brown gave his "I Feel Good" Charity – for seven years.

In the summer of 2009 Bauknight and NP, joined by the Attorney General, began to assert that Buchanan and Pope had been replaced out of concerns for mismanagement.

The claim was false.¹⁸ The Attorney General knew it was false.

Bauknight and NP, aided by the Attorney General, virtually ignored the \$17 Million Cannon had taken from funds Brown gave the Foundation. Instead they searched Brown's 150 + boxes of files for problems causes by Buchanan and Pope.¹⁹

the outcome of the Will/2000 Trust challenges.

It is now known that the inaccurate Grammy © claim referenced by the Supreme Court in the *Wilson* decision was planted on the Kilpatrick Stockton ("KS") website in January 2011 when KS was working with Bell/Forlando, and Attorney General Wilson's office was secretly working with Forlando, and also working with James Trigg of KS.

Robert Potter, Esq., of KS, who was attributed with stopping the sale, informed Defendant that he had no knowledge of the post. [See Affidavit of E. Alexander, Aiken 1337.]

18 In addition to the direct involvement of Attorney General McMaster and Jones in numerous matters, including approving the Christie's sale, Jowers was invited to every PR/Trustee meeting held by Buchanan and Pope. Auditor Sandra Matthews examined the Estate/2000 Trust's monthly bank statements and whatever additional documents she requested to see. Jones, and then Robbie McNair, were assigned to the David Cannon criminal matter, which was handled by the Attorney General, and not the Barnwell solicitor. Chief Deputy John McIntosh and now-solicitor Robert Cook appeared on pleadings with the Attorney General. J.C. Nicholson II was involved in the Attorney General's rejection of the 2009 CORBIS/GreenLight Publicity Rights contract protected to bring in about \$2 Million per year for two years, in addition to the copyright royalties.

19 Documents obtained in a FOIA request made after the Cannon plea show that in 2009 NP lawyer Freddie Kingsmore, Esq. was interviewed by SLED, which was investigating takings from James Brown by Cannon. Kingsmore produced an Inventory of the many boxes made by Buchanan and Pope, and annotations compiled by NP with the assistance of Attorney General. Neither the Attorney General nor Kingsmore notified SLED of the \$5

In the fall of 2009 the Attorney General and others secured an order of Judge Early which prevented Buchanan and Pope from receiving even costs as they pursued the appeal of the McMaster Settlement. Bauknight and the NP lawyers, now poised to be paid from funds Brown gave his Private Foundation, became the spokesmen for the Attorney General and settling parties.

It was becoming clear that Buchanan and Pope, even without funds to do so, would carry out their duty to appeal the McMaster Settlement. The Attorney General, Medlin and Levenson needed to destroy their credibility. Medlin came up with an idea.

c. Devaluing the James Brown Assets to Discredit Buchanan and Pope In August 2009 Medlin suggested that a ruling related to the Estate of Harlan Howard could be used by the Settling Parties to discredit Buchanan and Pope.

Ignoring overwhelming evidence that Brown's assets had been properly valued at about \$100 Million less the \$15 Million TIAA debt, Medlin suggested that Brown's worldwide music empire should be valued at 6 - 8 times annual royalties²⁰. He suggested Brown's Publicity Rights – the right to exploit his famous image and persona – should be valued at zero.

A year later, ignoring the *Gigniliatt* decision and the facts, Jones told the Court of

Million "check to nobody" Cannon cashed in 1999.

In 2010 Cannon was charged with taking more than \$12 MM and a 2008 forgery. He was not charged with taking the \$5 Million "check to nobody." The Attorney General's office, not the local solicitor, handled the Cannon criminal matter until his October 2011 *Alford* Plea. He was designated as a witness against Buchanan and Pope in Richland 4900.

20 Howard was a country music writer. His accountant valued Howard's copyrights on the estate tax return at 6-8 time annual revenues – the time each song was expected to last. The IRS accepted the appraisal. About 850 of Brown's 900 copyrights had been valued in 2006 by the Royal Bank of Scotland at \$42 million, about 14 times annual revenues. Professor Einhorn, with whom Buchanan consulted – but who had not been hired when the McMaster Settlement was reached – suggested that 15 - 20 x annual revenues was more appropriate for Brown.

Appeals in the *Wilson v. Dallas* appeal that Bauknight had reviewed a draft appraisal that would show that Brown's assets were worth less than \$12 Million when he died.

He said that the final "appraisal" which would support this valuation would come within a few weeks.

The appraisal did come. It was even lower than Jones had predicted: \$4.7 Million. Supported by the Attorney General, NP lawyers Rick Reames, Esq., and Kingsmore, presented this startling devaluation to the IRS. They told the IRS that Tommie Rae was Brown's spouse. They told the IRS that James Brown's "I Feel Good" Charity was worth about \$3 Million when he died. They did not tell the IRS that \$2 Million of that \$3 Million would be taken out for private individuals.

In the fall of 2010 NP, Bauknight, the Attorney General and other Settling Parties decided to withhold the September 2010 "appraisal" and the claimed \$4.7 Million from the appellate court until all the briefs had been filed. Eight months would elapse between the arrival of the "appraisal" in September 2010 and its disclosure to the Supreme Court in May of 2011. By then Wilson would be Attorney General.

d. Attempts by Buchanan and Pope to Stop Richland 4900

In March 2010 Medlin threatened that Jones had already hired Wingate. He said Wingate was already working on the complaint that would become Richland 4900. He said Buchanan and Pope would be sued if they did not drop the appeal.²¹

A similar threat was made to Buchanan's and Pope's *pro bono* *pupilco* lead attorney,

²¹ The Medlin threat is documented in Buchanan's and Pope's records. It was made to Elizabeth Van Doren Gray, who represented Buchanan in the Forlando Federal Suit. Buchanan reported the threat to Pope the following day.

James B. Richardson, Jr., by Kingsmore.²²

In response, Buchanan and Pope presented the Attorney General and Settling Parties with a detailed Agreement Among Successors to Decedent which gave the Attorney General everything he got in his settlement, with only two conditions:

1. GALs needed to be appointed for the minors whose \$285,000 Education Trusts were affected; and
2. The proposal had to be approved by the Appellate Court.

Despite repeated prompting of Kingsmore by Richardson, the Attorney General, and Settling Parties refused to respond to the proposal.

Instead, they sued.

e. The Attorney General's Multiple Roles in Richland 4900

Documents made public after 2013 show that between May 12 and May 19, 2010, Wingate, the Attorney General's staff, NP and other Settling Parties were deeply involved in revisions to the Richland 4900 complaint, as well as who would sign the complaint; and the form of the Wingate Litigation Agreement.

In the end, neither the AG nor most of the seventeen Plaintiffs signed the Wingate Litigation Agreement. It was, instead, signed by Bauknight, Levenson, Bell and Medlin.²³ McMaster signed a letter approving the suit.

²² By March 2010 NP and the Attorney General had tried to stop the McMaster Settlement appeal by securing a September 2009 Order from Judge Early preventing all payments to fiduciaries. Richardson, however, advised the Court in 2010 he would be serving *pro bono publico* as lead counsel. This reduced the cost of the 4-year appeal to about \$50,000.00.

²³ There is growing evidence that most Richland 4900 individual Plaintiff/CC Defendants were not even aware that Richland 4900 was filed until after it was filed. Wingate did not comply with the requirements for a contingency fee contract. And the Attorney General, for the first time in the history of the State – so far as Defendants could ascertain – became a Plaintiff in a tort lawsuit against a S.C. citizen in which he shares a private lawyer with nonresidents and in which he was not a signatory on the pleadings.

The Attorney General has multiple roles in Richland 4900, as does Bauknight.

The Attorney General is a named party. He also controls Bauknight through his power over the Legacy Trust. And Bauknight is also a named party "on behalf of" the Attorney General.

f. The Status of Richland 4900 When McMaster Left Office²⁴

The negative impact on Buchanan and Pope of being sued by the Attorney General was immediate. Their professional negligence insurance – already strained from the Forlando Federal Suit – would be cancelled. They were sued by Cincinnati, which denied coverage.

Pope, in a position to serve as a consultant and expert, was rendered worthless to clients by a lawsuit by the Attorney General claiming she had breached her fiduciary duty and committed breaches of trust.

But Richland 4900 had defects.

Wingate had failed to timely respond to the counterclaims of Buchanan and Pope, and had filed a motion for relief from default.

Judge L. Casey Manning had denied Buchanan's and Pope's Motion to Dismiss, which was made on multiple and detailed (and correct) grounds, including Due Process and other grounds related to the Attorney General's using a private law firm with Tommie Rae and

²⁴ In his 2016 deposition in Aiken 1337, Jones refused to (and was directed by Wilson's staff not to) answer questions about transactions and communications with Tomirae, the Levenson clients, Bauknight and their attorneys from 2008 to May 8, 2013. He based his refusal on the Joint Interest Doctrine the Attorney General's office claims with all Richland 4900 Plaintiff/CC Defendants and their counsel from the time they joined the McMaster Settlement Deal until it was finally overturned.

Jones further asserted that the Common Interest Doctrine shields transactions and communications with Bauknight and his dozen NP lawyers for the above period, and, in addition, since Judge Early reappointed Bauknight before the remittitur from *Wilson v. Dallas* was handed down.

In his August 2016 deposition in this case, McMaster testified he knows almost nothing about what happened during this period; relied on Jones; and did not authorize Sweeney, Wingate & Barrow, P.C. ("Wingate") to file Richland 4900 on behalf of the State/Attorney General.

others. But Buchanan and Pope would be seeking early appellate review in an effort to avoid the costs of litigation of a suit they believed to be improper.

McMaster had named indicted felon Cannon, Dallas and others as witnesses. The October 2010 Witness List produced by the Attorney General indicated there was no evidence to support Plaintiffs' claims.

The Attorney General's \$12 Million value claim made in the Appellate case, in addition to being incorrect, directly contrasted with the claim in Richland 4900 that Buchanan and Pope should have accepted a \$100 Million offer made for Brown's assets in 2007.²⁵

Buchanan and Pope wanted to save the "I Feel Good" Trust. They wanted to be reinstated because they had become the only two people who fully understood the litigation and wanted to protect the "I Feel Good" Charity. They had made clear to the Attorney General that they wanted to stay only long enough to defend the estate plan; protect the "I Feel Good" Charity's copyrights; and set up a healthy board – hopefully with one of the three seats reserved for a descendant of James Brown.

With a new Attorney General, there seemed to be hope of resolution. It did not come.

²⁵ The offer referenced in the Richland 4900 Complaint was made by TJBL, an entity to be formed, on October 12, 2007. At the time Dallas and Al Bradley were PR/Trustees. It was the first of three TJBL Letters of Intent proposing to purchase the Brown assets for between \$90 Million and \$100 million, the last being in March 2008. All required that the Estate/2000 Trust be able to give good title. Both the December 2007 Will/Trust challenges and the January 2, 2008 Forlando Federal Suit, were impediments to giving good title at the time.

Cannon and Dallas were pushing a sale because from a \$100 Million sale each had documented an expectation to receive more than \$5 Million and options or a "kickback" from the IPO to be floated.

It was later learned that on December 5, 2007 – less than a month before he sued to enjoin the 2000 Trust and reinstate the Cannon Trustees – Forlando was given a 39% stake in TJBL without making any contribution.

TJBL was represented by PG, which simultaneously represented Forlando, with Bell, in the Federal Suit.

II. Richland 4900 Under Attorney General Alan Wilson

a. The Legacy Trust's Amendments and Wilson's Alliance With Forlando ²⁶

Just before leaving office McMaster, with Terry Brown and others, secretly amended the Legacy Trust to allow Bell's client Terry Brown to begin due diligence on a sale of the James Brown assets under the rights of first refusal ("ROFR") McMaster had given him. Four days later, Terry assigned the ROFR to Forlando.

Within days Attorney General Wilson, through Jones, was distributing documents and arranging meetings with PG and others related to a sale. Forlando would later say that Bauknight showed no interest in a potential sale of as much as \$200 Million to agents of Oprah Winfrey. The Attorney General and Bauknight would tell the Courts the \$4.7 Million value was correct and there were never any offers. In 2013 Bauknight would even claim that the assets could not be sold.

b. Wilson Seeks Sanctions Against Buchanan/Pope for Cannon Brief

In January 2011 one of Attorney General Wilson's first acts in James Brown was to seek sanctions against Buchanan and Pope for filing a brief that would have helped collect from Cannon for the benefit of Brown's Charity the approximately \$1.2 Million cost of the 2007 suit ("Case 122") which resulted in the resignations of the Cannon PR/Trustees.

The Appellate Court did not grant sanctions. But it did strike the brief. And NP

²⁶ Forlando and Bell have been closely aligned with the Cannon Trustees and PG since 2007. In July 2007, just before Buchanan and Pope discovered the first \$900,000.00 of the approximately \$17 Million David Cannon took from James Brown, PG lawyer Wm. Shearer sent David Cannon and Buddy "Buddy" Dallas documents to change the situs of Brown's 2000 Trust to Georgia to escape increasing scrutiny by Judge Early and the SAs. The documents were defective, and the move aborted. Bell had been known since 2008 for his dirty tricks, including filing false affidavits and multiple grievances against Levenson. Bell accused Levenson of a forgery on Levenson's 2007 contract with Terry and Forlando Brown and others to be paid \$150,000 + a 30% contingency for what he could get the "family" from Brown's "I Feel Good" Charity.

lawyers, Bauknight and Tommie Rae were emboldened by the aggressive stance the new Attorney General took against Buchanan and Pope.

c. Wilson's False Felony Claims Against Buchanan and Pope

The devaluation of James Brown's music empire to less than 1/15 its real value would have had very little traction in the hands of disgruntled heirs and a claimed spouse. In the hands of Attorney General Wilson the claim that Buchanan and Pope had intentionally devalued Brown's music empire by \$79 Million on a sworn estate tax return for the improper purpose of securing a \$5 Million commission they did not deserve did not just damage their reputations and careers. It was a claim that they had committed a crime.

Anyone with doubt about the impact of a sworn false statement to the IRS which violates 18 U.S.C.A. 1001 need only read *In re Chaplin*, S.C. Supreme Court Op. 27658 (Decided August 24, 2016).

The Attorney General, NP and Bauknight began making the false felony claim in May of 2011. They continue to make it today. It has caused the damage which they were planning to inflict as the Attorney General, Medlin, NP and Bauknight structured Richland 4900.

The false devaluation claim also had the intended effect with the Courts. Buchanan and Pope were not reinstated. The Attorney General was happy with what Bauknight had done. As a result, Judge Early excluded Buchanan and Pope from James Brown proceedings. Wilson remained in control of the Legacy Trust.

d. Attorney General Wilson and James Brown FOIA Requests

Attorney General Wilson is charged with the enforcement of the South Carolina Freedom of Information Act. Since 2011 he has supported Bauknight's and Wingate's

attempts to enter three FOIA suits; have them transferred to Richland County; and have them subordinated to discovery in Richland 4900.

There is no person other than Attorney Wilson who can address these unprecedented acts.

e. Attorney General's Suppression of the So-Called Hynie "Diary"

In his August 2016 deposition McMaster, who had reviewed the so-called Hynie "diary" recalled that his office had concluded that Tommie Rae was not Brown's spouse. He was not the only one. The same conclusion has been reached by six other James Brown fiduciaries and at least eight of Brown's claimed children. The so-called Hynie "Diary" supports that conclusion.

The Hynie "Diary" was public from 2007 until 2008. It is public again. It shows that Tommie Rae was married and living in Texas before she met Brown. It shows that after Brown discovered she was married during their 2001 ceremony he refused to marry her, and she was upset.

Between 2011 and its release in 2015, Wilson worked with Tommie Rae and Bauknight – who is a fiduciary for Tommie Rae under the Legacy Trust – to conceal this important document. He even subpoenaed a reporter's notes and sources. Wingate withdrew the subpoena only after Wilson received harsh criticism from the national media.

In 2015 Attorney General Wilson advised Defendant he would not seek reconsideration of the Tommie Rae spousal decision.

The Attorney General remains a Co-Plaintiff in Richland 4900 with Tommie Rae. Questions about his relationship with her are not simply relevant. They are essential to this case. Only Wilson can answer these questions.

f. False Representations About Federal Copyright Act Termination Rights

In 2011 the Attorney General and Bauknight made representations to the Supreme Court about the Federal Copyright Act which are simply not correct.

In 2015, apparently as a result of the application of these incorrect principles, Tommie Rae and other Will/Trust contestants were paid \$2 Million on the sale of three of James Brown's Charity's 900 songs.

The information about the sale came from Tommie Rae. It is not privileged. It is essential. Only Wilson can answer about his actions.

g. The \$700,000 Award to James B's GAL and the GAL's Attorney

In 2007 Tommie Rae entered into a contingency fee contract with the lawyer who would become the lawyer for her son's GAL.²⁷ This relationship was not disclosed for eight years.

In 2013 the attorney for the GAL filed a Petition for Rehearing in *Wilson* detailing how Brown's assets were worth only \$5 Million at death. He explained in detail how the still-secret "appraisal" arrived at a \$4.7 Million value for Brown's worldwide music empire.

In 2013, after he had refused the \$300 DNA test for six years, James B. and Tommie Rae filed Termination Notices attempting to terminate royalties payable to Brown's "I Feel Good" Charity from about 90 songs over ten years.

In 2014 the GAL was allowed to enter his mother's spousal proceeding, even though

²⁷ By 2016 Judge Early, in addition to the contingency fee Peter Shahid had contracted with Tommie Rae, awarded the GAL and Shahid approximately \$700,000.00 in fees for James B. from what James B., the Attorney General and Bauknight had told the Supreme Court was a \$5 Million estate. The award included \$5,000 for each of 40 depositions Shahid planned to take. Neither the Attorney General nor Bauknight challenged the \$700,000 award.

his potential interest in both Brown's Estate and Termination Rights (if he is a child) would be reduced by up to half if Tommie Rae is successful.

In 2015 the GAL and attorney asked Judge Early to approve a payment to them estimated to be about \$700,000.00. Even though he had refused a paid-for DNA test in 2008, and James B's maximum correct share of the Estate (if he succeeds in having his mother declared Brown's spouse) is 1/24 or less, the GAL said he and the attorney were entitled to \$500,000.00 for their work to date. And another \$5,000 for each of the 40 depositions they intended to take.

Judge Early granted the request. Bauknight, an agent for James B. in Richland 4900, did not complain. The Attorney General, who had not presented a scintilla of evidence of any loss caused by Buchanan and Pope, did not complain about this payment to his Co-Plaintiff.

An inquiry into the Attorney General's relationships with James B., his co-Plaintiff, and these expenses is essential to this case. Only Wilson can answer.

h. Wilson Meets with Pope Between Wilson Decisions

Wilson and Pope have unique and essential knowledge about her visit to him on March 6, 2013, between the two *Wilson* decisions. Pope requested the conference. She drove from Spartanburg where she was helping care for an ill daughter. She urged Wilson to save the "I Feel Good" Trust. She explained how crucial it was to correct the false IRS filings. She urged that Buchanan be replaced, only to resign with dignity after the meritless attacks. She asked only to stay to finish defending the estate plan.

Wilson excused himself to have lunch with someone from NP.

Wilson called Pope a few days later to say he would be seeking to get out of Richland

4900.

Years later the vitriolic attacks have continued. The false felony claim is still being lodged. Pope's career remains in shambles. She cannot obtain professional insurance.

Only Wilson can testify about this meeting; the call; and his continued, false attacks.

III. The Attorney General Must be Deposed to Prevent Injustice

a. The *Morgan* Rule is Inapplicable to Richland 4900

The Attorney General asserts that *United States v. Morgan*, 313 U.S. 409, 422 (1941) and the cases which follow support the prohibition of his deposition. Neither *Morgan* nor its progeny lends support to the Attorney General's position under the extraordinary circumstances of this case.

Morgan involved an attempt to depose the U.S. Secretary of Agriculture to probe intra-governmental policies developed by the Department. The case stressed not only the fact that this high official was busy, but that allowing such depositions would impair the necessary free flow of information with the government in its communications related to the establishment of its policies.

Attorney General Wilson's deep involvement in this case in three capacities over five years simply has nothing to do with government policy. Particularly troublesome, and an essential subject of inquiry, is why the Attorney General has allowed Bauknight to continue to speak on his behalf long after he has claimed Bauknight has no authority to do so.

Also, since January 2011, Attorney General Wilson has had absolute authority under the Wingate Contract to bring this suit to an end by terminating Bauknight; properly dissolving the Legacy Trust; and correcting false IRS filings and criminal accusations against Buchanan and Pope. Attorney General Wilson's testimony is essential. It cannot

come from anyone else.

Attorney General Wilson asserts that *Carl Zeiss Stiftung v. V.E.B. Carl Zeiss, Jena*, 40 F.R.D. 318, 325-26 (D.D.C.1966), aff'd, 384 F.2d 979 (D.C.Cir.), cert. denied, 389 U.S. 952 (1967) suggests that he should be exempt from being deposed because he is a high ranking government official with greater constraints than other witnesses. He asserts the judiciary is not authorized "to probe the mental processes of an executive or administrative officer."

The proposed deposition is about the actions of Wilson as a party and in multiple roles.

In *Zeiss* the government was not a party. Here the Attorney General is a Plaintiff; a Trust he controls is a Co-Plaintiff; and the Trustee of that Trust has been allowed for years to claim he speaks "on behalf of" the Attorney General while also serving as fiduciary for Tommie Rae and Will contestants.

In *Zeiss*, after producing 4,500 documents in a case in which it was not a party, the government claimed executive privilege as to 49. The Attorney General provided an Affidavit stating that the information sought consisted of intra-departmental memoranda and inter-departmental documents. In the affidavit the Attorney General stated his conclusion that production of the 49 documents would be contrary to public policy.

The Attorney General is a party. He has produced no affidavit. The circumstances related to the deposition of Wilson in this case bear no relation to *Zeiss* Court, which stated:

Here, unlike the situation in some cases, no charge of governmental misconduct or perversion of governmental power is advanced. Since the Government is not a party to the New York action, no problem of an unfair litigating advantage is presented. All that is involved is a collision

between what the claimants feel they need to see and what the Government conceives is a must defend from outside scrutiny.

The problems cited by the *Zeiss* Court as missing from that case do exist in Richland 4900.

In re United States (Kessler), 985 F.2d 510, 512 (11th Cir.1993) (per curiam) (quoting *Simplex Time Recorder Co. v. Secretary of Labor*, 766 F.2d 575, 586 (D.C.Cir.1985)) stands, under its facts, for the proposition that if other persons can provide the information sought, discovery will not be permitted against such an official. *Id.* at 513; see also *In re FDIC*, 58 F.3d 1055, 1062 (5th Cir.1995). The March 6, 2013 interview with Wilson; his personal call; and his acts described above make clear that only he can give the essential testimony.

The Attorney General cites *In re U.S.*, 197 F.3d 310, 313-14 (8th Cir. 1999) for the proposition that "exceptional circumstances" must exist before the involuntary depositions of high agency officials are permitted. *In re Office of Inspector General*, 933 F.2d 276, 278 (5th Cir.1991) (per curiam) (citing *EEOC v. K-Mart*, 694 F.2d 1055, 1067-68 (6th Cir.1982)). For the proposition that "[h]igh ranking government officials have greater duties and time constraints than other witnesses" he cites *In re United States*, 985 F.2d 510, 512 (11th Cir.) (per curiam), cert. denied, 510 U.S. 989, 114 S.Ct. 545, 126 L.Ed.2d 447 (1993). The facts of Richland 4900; the false felony claim; the false claims to the Supreme Court about the Federal Copyright Act; and the unconstitutional nature of Richland 4900 are just some of the exceptional circumstances present here.

A review of the cases shows that the alliance of two Attorneys General with private individuals, many non-residents to destroy the careers and reputations of two attorneys is

more extraordinary than any of the circumstances of the cited cases. When added to the fact that the Attorney General has allowed his attack on these people to be paid for, in large part, by a charity he had a duty to protect, the facts are clearly both exceptional and compelling.

The entire record of Richland 4900; the false felony claim; the \$2 Million payment of Will contestants; and the FOIA interference to prevent release of public documents to prevent disclosure of the Hynie "diary" all make a clear showing that the deposition is needed to prevent injustice to the Defendant who is seeking the deposition. Discovery by interrogatory and requests for admissions are not an adequate means of discovery in this unprecedented case.

The Attorney General is suing in a representative capacity, but also through a Trust created by the use of public power and a citizen he has empowered to act "on his behalf."

This deposition does not involve annoyance, embarrassment, oppression, or undue burden. The opposite is true. It is the Attorney General who, for five and a half years, has used his high office to burden and oppress Defendant.²⁸

Citing *United States v. Northside Realty Associates*, 324 F.Supp. 287 (N.D.Ga.1971), the Attorney General suggests the purpose of the deposition is to probe the mind of Wilson, "to determine why he exercised his discretion as he did in regard to a particular matter." The bulk of the Wilson deposition is expected to probe not his mind, but his actions. This testimony is necessary to prevent injustice to the Defendant. The trial court should

²⁸ An egregious example to the harassment is the career-threatening claim Attorney General Wilson has lodged against Buchanan and Pope intentionally since 2011: that they overstated James Brown's assets on a sworn Estate Tax Return by \$7 Million to secure a \$5 Million commission. Just this week the Supreme Court has confirmed that such a claimed violation of 18 U.S.C. A § 1001 can destroy a legal career. See *In re Chaplin*, *supra*.

consider the SCRCP, to which the Attorney General subjected himself when he brought this case. It should consider those rules with other factors, including [1] the substantiality of the case in which the deposition is requested; [2] the degree to which the witness has first-hand knowledge or direct involvement; [3] the probable length of the deposition and the effect on government business if the official must attend the deposition; and [4] whether less onerous discovery procedures provide the information sought." *Id.* at 613-14, 563 A.2d at 632.

In that light it will be clear that Wilson should be deposed.

The depositions (in another case) of the two assistants who have worked on James Brown matters for nine years were lengthy only because deponents refused, were directed not answer; or were directed to limit their answers to most questions. The directions not to answer did not come only from Attorney General Wilson. They came from private NP lawyers who serve Tommie Rae and the Levenson clients.

It is patently in the public interest that the Attorney General who has *personally* worked for five years to destroy the only two persons who worked continuously for six years to save the James Brown "I Feel Good" Charity be deposed.

The Attorney General cites *Wirtz v. Local 30, International U. of Operating Engineers* (S.D.N.Y. 1963) 34 F.R.D. 13, 14, for the proposition that "... common sense suggests that a member of the Cabinet and the administrative head of a large executive department should not be called upon personally to give testimony by deposition ... unless a clear showing is made that such a proceeding is essential to prevent prejudice or injustice to the party who would require it." Common sense shows that a deposition is necessary here to prevent prejudice and injustice.

b. The Attorney General's Action Makes His Deposition Essential

The Attorney General's opposition to Defendant's Motion to Disqualify Wingate, a private lawyer, from being sole counsel to the Attorney General, Tommie Rae and others stated: "this is a tort action plain and simple." Attorney General Wilson said, quoting Judge Couch in his order in *Eli Lilly*:

if Defendant Pope still challenges the Attorney General's place in a private tort action against private, individual defendants, Plaintiffs will reiterate the law set forth by Judge Couch in his prior Order.

There are plain and simple rules applicable to the parties to a private tort action the Attorney General has chosen to bring against private citizens. He cannot ignore the Rules of Civil Procedure. The standard for taking a deposition or discovery in general is "reasonably calculated to lead the admissible evidence."

While Defendant does not waive her position that this suit is illegal and has been used to violate her Due Process, Equal Protection and First Amendment Rights, those matters have been temporarily decided in favor of the Attorney General. Now he must follow the rules. Defendant has found no other case in the State or nation where an Attorney General joins with non-residents of the State to bring a tort suit against his own citizens, using solely a private lawyer.

Our Supreme Court is clear when the Attorney General enters litigation he must play by the rules. As stated by the Court in *Ex Parte Condon*, 583 S.E.2d 430, 354 S.C. 634 (2003), "this Court has never held that the Attorney General's authority . . . [to protect the public interest] is unlimited or somehow uniquely exempts him from acting in accordance with the Rules of Civil Procedure" [citing *State v. Beach*, 271 S.C. 425, 248 S.E.2d 115

(1978)].

Defendant submits that barring the deposition of Attorney General Wilson would constitute reversible error in this case.

This Memorandum is based on the entire record of this case and the entire record in Aiken Case 2013-CP-02-1337, of which the Court is asked to take judicial notice.

Conclusion

For each of the reasons states herein the Protective Order of Attorney General Wilson should be denied.

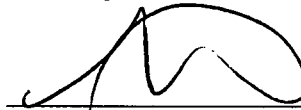
In view of the unprecedented circumstances of this Case, the deposition of Wilson is essential and must be taken to avoid further injustice to the Defendant. Only Wilson can give the required testimony. No substitute person or procedure is reasonable. Because these matters were known when he filed the motion, the Attorney General should pay Defendant's legal fees and costs for the defense of this matter.

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Respectfully submitted,

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August 29, 2016

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served a copy of the foregoing document on counsel for Movant and Plaintiff/CC Defendants on August 29, 2016, by emailing and depositing a copy of the same into the United States Mail, First-class postage prepaid, addressed as follows:

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2016 AUG 29 AM 10:12
FILED
RICHLAND COUNTY
JENNIFER W. MCBRIDE
& G.S.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Russell L. Bauknight, et al,

Plaintiffs,

v.

Adele Pope,

Defendant,

IN THE COURT OF COMMON PLEAS

No. 2010-CP-40-4900

**MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER
AS TO DEPOSITION OF
ATTORNEY GENERAL**

2016 AUG 30 AM 10:28
JEANETTE BRIDGES
C.C. J.C. S.
RICHLAND COUNTY
FILED

This Memorandum supports the Motion for Protective Order of Attorney General Alan Wilson to bar the taking of his deposition in this case. The taking of his deposition would pose an undue burden under Rule 26(c), SCRCP, for the following reasons

1. Alan Wilson, who took Office in January, 2011, was not the Attorney General when this suit was initiated and, therefore, lacks personal knowledge of all or most of the matters at issue in the suit. Defendant has deposed former Attorney General Henry McMaster who was in Office when this suit was brought.

2. All or most of any questions Attorney General Wilson might be asked would be subject to attorney client and work product privileges

3. Questioning of the Attorney General with objections thereto would likely take a day or more of his time. Depositions of two lawyers on his staff in a related proceeding took nearly five days. The deposition of Henry McMaster took approximately four hours or more. Such a time consuming deposition would interfere with the Attorney General's handling of the important duties of his Constitutional Office.

The above concerns fit squarely within the often called *Morgan* rule that is well recognized by the Federal Courts and other states that have considered it. Under that rule or related authority, depositions should not be taken of high ranking government officials unless the party noticing the deposition shows that the information sought is essential, that it is not obtainable elsewhere, and that the deposition of the official would not interfere with his government responsibilities. See discussion below. Defendant cannot make such a showing for a deposition of the Attorney General. The Attorney General did not witness the events that are the subject of the Complaint nor did he make the decision to institute suit. Questions related to the continuation of the suit since he took Office would be barred by attorney client and work product privileges.¹ Therefore, a deposition of the Attorney General would be an unproductive, time consuming exercise that would be an undue burden on him in his execution of his responsibilities as a State Constitutional Officer.

I

THIS COURT SHOULD APPLY THE AMPLE AUTHORITY THAT DEPOSITIONS SHOULD NOT BE TAKEN OF HIGH RANKING OFFICIALS ABSENT LIMITED EXCEPTIONS THAT DO NOT APPLY HERE

The above referenced *Morgan* rule is based on a United States Supreme Court decision (*United States v. Morgan*, 313 U.S. 409, 422 (1941)), that is widely accepted throughout the Federal Courts, including the Fourth Circuit Court of Appeals, and has been adopted by a

¹ Another ground for this motion is that the deposition should not be taken before this Court rules on the Attorney General's Motion to be removed as a party to this case. Now, that motion is scheduled to be heard on the same date as this Motion for Protective Order. Regardless of the outcome of the motion of the Attorney General to be dropped as a party, his deposition would be an undue burden for the other reasons given.

number of states. *See below*. As stated 27 years ago by the Supreme Court of Vermont, “[t]he federal courts have uniformly held that a highly-placed executive branch governmental official should not be called upon personally to give testimony by deposition, at least unless a clear showing is made that such a proceeding is essential to prevent prejudice or injustice to the party requesting it. The few states that have had occasion to reach this question have adopted this standard as well.” *Monti v. State*, 563 A.2d 629, 631, 151 Vt. 609, 611-12 (Vt.,1989) (emphasis added).

The Circuit Court should apply this rule to our pending motion because of this authority. Although apparently not all of the Federal cases have based the *Morgan* rule on Rule 26(c), FRCP, our State court rule is similar and would empower the Circuit Court to apply the rule based upon the undue burden that the deposition would impose on the Attorney General. The *Morgan* doctrine is certainly consistent with our Supreme Court’s decision applying a similar rule to testimony of judges.

The modern trend of courts [is of] not allowing a judge to testify regarding a case in which he previously presided unless the testimony is: 1) critical; and 2) can be obtained by no other means. *See United States v. Dowdy*, 440 F.Supp. 894 (W.D.Va.1977); *Commonwealth v. Ellis*, 10 Mass. L. Rptr. 333 (Mass.1999) available at 1999 WL 855196; *State ex rel. Carroll v. Junker*, 79 Wash.2d 12, 482 P.2d 775 (Wash.1971); *Helmbrecht v. St. Paul Ins. Co.*, 117 Wis.2d 74, 343 N.W.2d 132 (Wis.Ct.App.1983. . . which he previously presided). . . .”

In re Whetstone, 580 S.E.2d 447, 448, 354 S.C. 213, 216 (2003).

II

THE *MORGAN* RULE ITS PROGENY AND RELATED AUTHORITY SHOULD BE APPLIED TO BAR THE DEPOSITION OF THE ATTORNEY GENERAL

The *Morgan* rule and its progeny and related cases discussed below apply similar requirements for the showing of “extraordinary circumstances,” (*Franklin Sav. Ass'n v. Ryan*, 922 F.2d 209, 211–12 (C.A.4,1991), *infra*) to depose a high ranking official such as the Attorney General. It makes clear that the burden is on the party seeking the deposition to make such a showing. At a minimum, the Defendant must show that the testimony is “critical” (*Whetstone, supra*), “can be obtained by no other means” (*Id.*), and will not interfere with his other responsibilities (*McNamee v. Massachusetts*, 2013 WL 1285483, at *3 (D.Mass.,2013), *infra*). As stated in *McNamee*, a deposition will not be allowed unless the party seeking the testimony shows that “ (1) the information sought is essential (not merely relevant) to the case, (2) the information sought is not obtainable elsewhere, and (3) provision of the testimony will not interfere with the official's government responsibilities, . . . ”

The Defendant cannot show extraordinary circumstances to justify the taking of Attorney General Wilson’s deposition. The information sought is not “essential” or “critical,” under the first criteria, *supra*, because Attorney General Wilson did not take Office until the year after this suit was brought and lacks personal knowledge of the circumstances when this action was initiated. Defendant cannot show that “the information sought is not obtainable elsewhere” under the second criteria. She has taken the deposition of former Attorney General McMaster who was holding Office when this suit was brought, and she has also taken the depositions of Senior Assistant Deputy Attorney General Sonny Jones and Assistant Deputy Mary Frances Jowers in a related case. This summer, she has served on the Attorney General requests to admit the authenticity of documents, interrogatories and production requests in this case. For these

reasons, Defendant cannot show that the information sought “can be obtained by no other means”(Whetstone). She also cannot show that the “provision of the testimony will not interfere with the [the Attorney General’s] government responsibilities . . .” (McNamee). The Jones and Jowers depositions took nearly five days and the questioning of former Attorney General McMaster took nearly four hours. Given that all or most questions would be subject to objection as going to privileged matter, the deposition would be very unproductive and an undue burden.

Excerpts from *Morgan*, its progeny and related cases set forth below barred depositions of the public officials including Attorneys General and other heads of government agencies including plaintiffs and defendants.

III

THE MORGAN RULE AND A SAMPLING OF CASES FOLLOWING IT

The need for limited access to high government officials through the discovery process is well established. In *United States v. Morgan*, 313 U.S. 409, 422 (1941), the Supreme Court indicated that the practice of calling high ranking government officials as witnesses should be discouraged. Relying on *Morgan*, other courts have concluded that top executive department officials should not, absent extraordinary circumstances, be called to testify or deposed regarding their reasons for taking official action. *Simplex Time Recorder Co. v. Sec’y of Labor*, 766 F.2d 575, 586 (D.C.Cir.1985); see also *In re United States (Holder)*, 197 F.3d 310, 313 (8th Cir.1999); *In re FDIC*, 58 F.3d 1055, 1060 (5th Cir.1995); *In re United States (Kessler)*, 985 F.2d 510, 512 (11th Cir.1993). This rule is based on the notion that “[h]igh ranking government officials have greater duties and time constraints than other witnesses” and that, without appropriate limitations, such officials will spend an inordinate amount of time tending to pending litigation. *Kessler*, 985 F.2d at 512.4 But this limitation is not absolute. Depositions of high ranking officials may be permitted where the official has first-hand knowledge related to the claim being litigated. See *Baine v. Gen. Motors Corp.*, 141 F.R.D. 332, 335 (M.D.Ala.1991); *Church of Scientology of Boston v. IRS*, 138 F.R.D. 9, 12 (D.Mass.1990); *Cnty. Fed. Sav. & Loan Ass’n v. Fed. Home Loan Bank Bd.*, 96 F.R.D. 619, 621 (D.D.C.1983). However, even in such cases, discovery is permitted only where it is shown that other persons cannot provide the necessary information. *Holder*, 197 F.3d at 314.

The parties agree that [Defendant] Mayor Menino is a high ranking government official and therefore is not subject to being deposed absent a demonstrated need. . . [T]he district judge did not abuse his discretion in issuing a protective order for Mayor

Menino because the Bogans had not exhausted other available avenues of discovery.(emphasis added)

Bogan v. City of Boston, 489 F.3d 417, 423-24 (C.A.1 (Mass.),2007)(deposition of Defendant mayor).

Since *Morgan*, federal courts have consistently held that, absent “extraordinary circumstances,” a government decision-maker will not be compelled to testify about his mental processes in reaching a decision, “including the manner and extent of his study of the record and his consultations with subordinates.” *Id.* See *Simplex Time Recorder Co. v. Secretary of Labor*, 766 F.2d 575, 586 (D.C.Cir.1985); *Sweeney v. Bond*, 669 F.2d 542, 546 (8th Cir.), cert. denied, 459 U.S. 878 (1982); *Kyle Engineering Co. v. Kleppe*, 600 F.2d 226, 231–32 (9th Cir.1979); *Warren Bank v. Camp*, 396 F.2d 52, 56 (6th Cir.1968); *Carl Zeiss Stiftung v. V.E.B. Carl Zeiss, Jena*, 40 F.R.D. 318, 325–26 (D.D.C.1966), *aff’d*, 384 F.2d 979 (D.C.Cir.), cert. denied, 389 U.S. 952 (1967). Typical of these decisions is *Carl Zeiss*, in which the court said:

The judiciary, the courts declare, is not authorized “to probe the mental processes of an executive or administrative officer. This salutary rule forecloses investigation into the methods by which a decision is reached, the matters considered, the contributing influences, or the role played by the work of others—results demanded by the exigencies of the most imperative character. No judge could tolerate an inquisition into the elements comprising his decision—indeed, “[s]uch an examination of a judge would be destructive of judicial responsibility”—and by the same token “the integrity of the administrative process must be equally respected.”

Id. at 325–26 (emphasis added; footnotes omitted).

Franklin Sav. Ass'n v. Ryan, 922 F.2d 209, 211–12 (C.A.4,1991)(deposition of Director of Defendant Office of Thrift Savings).

It is well established that high-ranking government officials may not be deposed or called to testify about their reasons for taking official actions absent “extraordinary circumstances.” See, e.g., *Franklin Sav. Ass'n v. Ryan*, 922 F.2d 209, 211 (4th Cir.1991); *Simplex Time Recorder Co. v. Sec'y of Labor*, 766 F.2d 575, 586 (D.C.Cir.1985); *In re FDIC*, 58 F.3d 1055, 1060 (5th Cir.1995). When such circumstances are not present, mandamus is appropriate to prevent a district court from compelling an official's

appearance. See, e.g., *U.S. Bd. of Parole v. Merhige*, 487 F.2d 25, 29 (4th Cir.1973), cert. denied, 417 U.S. 918 (1974); *In re United States (Jackson)*, 624 F.3d 1368, 1372-73 (11th Cir.2010); *In re Cheney*, 544 F.3d 311, 314 (D.C.Cir.2008).

In re McCarthy, 636 Fed.Appx. 142, 143 (C.A.4,2015)(Deposition of EPA Administrator in suit against EPA).

The need for controlling the use of subpoenas against high government officials was recognized by the Supreme Court in *United States v. Morgan*, . . . In that case involving a subpoena directed to the Secretary of Agriculture, the Court stated that regular examination of high officials concerning the reasons for their official actions would undermine the integrity of the administrative process. Id. at 422, 61 S.Ct. 999. Other courts have reasoned similarly. Because “[h]igh ranking government officials have greater duties and time constraints than other witnesses ... [they] ‘should not, absent extraordinary circumstances, be called to testify regarding their reasons for taking official actions.’ ” *In re United States (Kessler)*, 985 F.2d 510, 512 (11th Cir.1993) (per curiam) (quoting *Simplex Time Recorder Co. v. Secretary of Labor*, 766 F.2d 575, 586 (D.C.Cir.1985)). If other persons can provide the information sought, discovery will not be permitted against such an official. Id. at 513; see also *In re FDIC*, 58 F.3d 1055, 1062 (5th Cir.1995) (“We think it will be the rarest of cases ... in which exceptional circumstances can be shown where the testimony is available from an alternate witness.”). . . . It is not disputed here that the Attorney General and the Deputy Attorney General are high government officials. Lee must therefore establish at a minimum that the Attorney General and the Deputy Attorney General possess information essential to his case which is not obtainable from another source. *Kessler*, 985 F.2d at 512-13; see also *In re FDIC*, 58 F.3d at 1062. This means both that the discovery sought is relevant and necessary and that it cannot otherwise be obtained. *Kessler*, 985 F.2d at 512-13. Without establishing this foundation, “exceptional circumstances” cannot be shown sufficient to justify a subpoena. See id. . . .

Testimony by [U.S. Attorney General Janet] Reno and [Deputy Attorney General] Holder is not necessary to establish a factual basis for Lee's attempt to overturn the jury's sentencing recommendation on the basis of noncompliance with the protocol.

In re U.S., 197 F.3d 310, 313-14 (C.A.8,1999) (deposition of Attorney General Reno in a Federal prosecution).

It is a settled rule in this circuit that “exceptional circumstances must exist before the involuntary depositions of high agency officials are permitted.” *In re Office of Inspector General*, 933 F.2d 276, 278 (5th Cir.1991) (per curiam) (citing *EEOC v. K-Mart*, 694 F.2d 1055, 1067–68 (6th Cir.1982)). . . . “High ranking government officials have greater duties and time constraints than other witnesses.” *In re United States*, 985 F.2d 510, 512 (11th Cir.) (per curiam), cert. denied, 510 U.S. 989, 114 S.Ct. 545, 126 L.Ed.2d 447 (1993). “[T]he Supreme Court has indicated that the practice of calling high officials as witnesses should be discouraged.” *Id.* (citing *United States v. Morgan*, 313 U.S. 409, 61 S.Ct. 999, 85 L.Ed. 1429 (1941)). . . .

We disagree that Pacific Union has made the strong showing necessary for a finding of exceptional circumstances. Pacific Union disclaims any intention to “suggest that senior government officials may be deposed in every case in which the government is a party.” (Footnote omitted). Yet the reasoning Pacific Union advances would risk eviscerating well-settled principles of administrative law. If countenanced, this rationale would justify deposing high-level government officers in a plethora of cases in order to probe their decision-making processes and the reasons for their decisions. Agency leaders often send and receive correspondence relative to their actions. Their official conduct frequently affects—sometimes adversely—the property rights of private parties. This does not of itself subject them to the burdens of litigation discovery.

Nor is the present case distinguished by the fact that the FDIC initiated the Houston declaratory judgment action. As the FDIC correctly points out, the order before us for review was entered in the Brownsville Action, which the FDIC did not commence and to which it is not a party. It is not sufficient for Pacific Union to rely upon the joint nature of the discovery undertaken in the two cases, because in the Houston Action—to which the FDIC is a party—the magistrate judge quashed the depositions. . . .

In re F.D.I.C., 58 F.3d 1055, 1060- 1062 (C.A.5 (Tex.),1995)(Depositions of three FDIC directors in action in which the FDIC was not a party but deposition had already been quashed of them in an action in which the FDIC was a party).

This Court has already ruled that Augustus qualifies as a “high ranking government official” for the purposes of this dispute. In light of this fact and the case law presented above, Plaintiff’s subpoena of Augustus will be quashed unless (1) the information sought is essential (not merely relevant) to the case, (2) the information sought is not obtainable elsewhere, and (3) provision of the testimony will not interfere with the official’s

government responsibilities. *In re F.D.I.C.*, 58 F.3d 1055, 1061 (5th Cir.1995); *Hankins*, 1996 WL 524334, at *1 (E.D.Pa. Sept.12, 1996) (internal citations omitted).

McNamee v. Massachusetts, 2013 WL 1285483, at *3 (D.Mass.,2013)(deposition of former chief of staff of legislator).

Defendants state that the information sought by the depositions is needed. They argue that the factual basis for the allegations must be made known before defendants can defend themselves. This is the only proof of need which is made. Absent a clear showing of need to prevent injustice to the party seeking the deposition, such deposition may not be taken from a cabinet official or head of an executive department. *Wirtz v. Local 30, International Union of Operating Engineers*, 34 F.R.D. 13 (S.D., N.Y.1963). The Court feels that discovery by interrogatory and requests for admissions (which have been pursued already) are presently adequate means of discovery for the defendants. Thus, plaintiff's motion for a Protective Order as to the taking of the deposition of the Attorney General and the Secretary of Housing and Urban Development is GRANTED.

U.S. v. Northside Realty Associates, Inc., 324 F.Supp. 287, 295 (D.C.Ga. 1971) (deposition of Attorney General in suit initiated by him on behalf of United States).

[I]t is our view the Attorney General and Director of the Division of Criminal Justice, as well as other high-level government officials, should not be deposed, absent a showing of first-hand knowledge or direct involvement in the events giving rise to an action, or absent a showing that such deposition is essential to prevent injustice. *Wirtz v. Local 30, International Union of Operating Engineers*, 34 F.R.D. 13 (S.D.N.Y.1963); Cf. *Virgo Corporation v. Paiewonsky*, 39 F.R.D. 9 (D.C.Virgin Islands, 1966).

. . . Clearly, information concerning previous cases brought under the Removal Act which defendant contends is relevant to his defense of selective enforcement, may be obtained from other representatives of the Attorney General's Office. The rationale of the trial judge that since Hyland is the plaintiff he is subject to being deposed ignores the fact that the Attorney General is suing solely in a representative capacity under N.J.S.A. 2A:81—17.2a4.

Hyland v. Smollok, 349 A.2d 541, 543, 137 N.J.Super. 456, 460 (N.J.Super.A.D. 1975)(deposition of Plaintiff New Jersey Attorney General).

In *Morgan*, 313 U.S. 409, 61 S.Ct. 999, *supra* n. 1, the Supreme Court created an exception to the general discovery principles as it applies to high-ranking officials holding public office. *Id.* at 422, 61 S.Ct. 999. Under the doctrine, as developed in later case law, high-ranking government officials are not subject to being deposed with respect to their mental processes in performing discretionary acts. *In Re Office of Inspector General*, 933 F.2d 276, 278 (5th Cir.1991); *Singer Sewing Machine Co. v. NLRB*, 329 F.2d 200, 206–08 (4th Cir.1964). The privilege applies to former as well as current officials. *Arnold Agency v. West Virginia Lottery Commission*, 206 W.Va. 583, 526 S.E.2d 814, 830 (1999).[footnote omitted] The *Morgan* doctrine is not absolute, for instance, in situations where a high-ranking official's involvement becomes less supervisory and directory and more hands-on and personal, that it is considered so intertwined with the issues in controversy, fundamental fairness may require the deposition of an official. In general, a deposition of a high-ranking official in litigation not specifically directed at his alleged misconduct will only be permitted if (1) extraordinary circumstances are shown, *United States v. Merhige*, 487 F.2d 25, 29 (4th Cir.1973); or (2) the official is personally involved in a material way. *Singer Sewing Machine Co.*, 329 F.2d at 206–08. The burden is on the party seeking the deposition of the high-ranking official to demonstrate the existence of the foregoing.

Johnson v. Clark, 21 A.3d 199, 210, 199 Md.App. 305, 323 (Md.App.,2011)(deposition of county executive of county defendant).

We agree with the observation of the United States District Court for the Eastern District of Pennsylvania that “[d]epartment heads and similarly high-ranking officials should not ordinarily be compelled to testify unless it has been established that the testimony to be elicited is necessary and relevant and unavailable from a lesser ranking officer.” *Halderman v. Pennhurst State School and Hospital*, 559 F.Supp. 153 (E.D.Pa.1982).

State, Dept. of Health and Rehabilitative Services v. Brooke, 573 So.2d 363, 371 (Fla.App. 1 Dist.,1991)(Deposition sought of Secretary of Defendant Department of Health and Rehabilitative Services); *see also*, *Department of Agriculture and Consumer Services v. Broward County*, 810 So.2d 1056, 1058 (Fla.App. 1 Dist.,2002)(Deposition of agency head in challenge to agency rule);

As previously noted . . . in the instant case we are asked to determine whether a discovery deposition request may be found to be an annoyance, embarrassment, oppression, or undue burden based upon the deponent's position as a government official. Because the language contained in Rule 26(c) of the West Virginia Rules of Civil Procedure is nearly identical to Rule 26(c) as contained in the Federal Rules of Civil Procedure, we look to federal case law for guidance.

In *United States v. Northside Realty Associates*, 324 F.Supp. 287 (N.D.Ga.1971), the United States District Court for the Northern District of Georgia, reviewed plaintiff's motion for a protective order under Rule 26(c) of the Federal Rules of Civil Procedure and commented:

It has been recognized that a member of the Cabinet or the head of a large executive department should not be called upon to give his deposition if such deposition is taken in order to probe the mind of the official to determine why he exercised his discretion as he did in regard to a particular matter. *De Cambra v. Rogers*, 189 U.S. 119, 122 . . . (1903) and *United States v. Morgan*, 313 U.S. 409, 422 The case of *Wirtz v. Local 30, International Union of Operating Engineers*, 34 F.R.D. 13 (S.D.N.Y.1963) extends this doctrine to allow the taking of personal testimony of a cabinet official only on a clear showing that the testimony of the official is necessary to prevent injustice to the party [requesting it].

Id. at 293 (emphasis added).

* * *

We, therefore, hold that highly placed public officials are not subject to a deposition absent a showing that the testimony of the official is necessary to prevent injustice to the party requesting it. When determining whether to allow the deposition of a highly placed public official, the "trial courts should weigh the necessity to depose or examine an executive official against, among other factors, [1] the substantiality of the case in which the deposition is requested; [2] the degree to which the witness has first-hand knowledge or direct involvement; [3] the probable length of the deposition and the effect on government business if the official must attend the deposition; and [4] whether less onerous discovery procedures provide the information sought." *Id.* at 613-14, 563 A.2d at 632. Moreover, we find that the burden is upon the proponent of the deposition to show the necessity of taking an oral deposition of a highly-placed government official.

(emphasis added) *State ex rel. Paige v. Canady*, 475 S.E.2d 154, 160, 197 W.Va. 154, 160-162 (W.Va.,1996)(deposition of Secretary / Tax Commissioner in FOIA action apparently against him).

It is patently in the public interest that the Attorney General be not unnecessarily hampered or distracted in the important duties cast upon him by law. And that public interest obviously transcends the convenience that would otherwise be afforded private litigants by the availability of that official as an expert witness on their attorneys' reasonable fees in successful litigation against the state or its agencies.

This view has several times been confirmed, and insofar as we can determine never rejected, by the courts of this nation. A highly placed public officer should not be required to give a deposition in his official capacity in the absence of "compelling reasons." (*645 *Weir v. United States* (8th Cir. 1962) 310 F.2d 149, 154-155.) Such a requirement should be discouraged as "contrary to the public interest, ..." (*Union Savings Bank of Patchogue, New York v. Saxon* (D.D.C. 1962) 209 F.Supp. 319, 319-320.)

"... There must be some showing, if the right to take a deposition is challenged by the prospective witness, why the prospective witness should be examined. This applies particularly to heads of government agencies. If the head of a government agency were subject to having his deposition taken concerning any litigation affecting his agency or any litigation between private parties which may indirectly involve some activity of the agency, we would find that the heads of government departments and members of the President's Cabinet would be spending their time giving depositions and would have no opportunity to perform their functions. [¶] ... It would be oppressive and vexatious to require [the head of a government agency] to submit to an interrogation that might last for several hours and that would, of course, disturb government business." (*Capitol Vending Co. v. Baker* (D.D.C. 1964) 36 F.R.D. 45, 46.)

Further such authority is found in *Wirtz v. Local 30, International U. of Operating Engineers* (S.D.N.Y. 1963) 34 F.R.D. 13, 14, where the court stated: "... common sense suggests that a member of the Cabinet and the administrative head of a large executive department should not be called upon personally to give testimony by deposition, either in New York or elsewhere, unless a clear showing is made that such a proceeding is essential to prevent prejudice or injustice to the party who would require it. No such showing has been made here and in the nature of things it could not be made."

We find the foregoing authority to be applicable to the proceedings at hand. No clear showing was made that the Attorney General's deposition was required in order "to prevent prejudice or injustice to the party who would require it." It is concluded that the superior court's ruling on the motion to quash was without sanction of law, and an abuse of judicial discretion.

State Board of Pharmacy v. Superior Court, 78 Cal.App.3d 641, 644-45
(Cal.App.1.Dist)(deposition of California Attorney General regarding appropriate attorney's fees to be awarded against a state agency and the impact of the case).

CONCLUSION

The *Morgan* rule and its progeny and related cases protect against depositions of high-ranking public officials except under extraordinary circumstances not present here. This deposition would be an undue burden for this reason and those others noted above. Therefore, this Court should issue a protective order barring the taking of the deposition of Attorney General Wilson in this case.

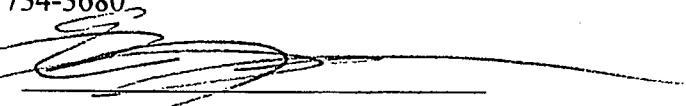
Respectfully submitted,

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Attorney General

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BY: 

AUGUST 26, 2016

ATTORNEYS FOR ALAN WILSON

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Russell L. Bauknight, et al,)

Plaintiffs,)

v.)

Adele Pope,)

Defendant,)

IN THE COURT OF COMMON PLEAS

No. 2010-CP-40-4900

**SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
MOTION TO BE DROPPED
AS PARTY**

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C.C.P. & G.S.
RICHLAND COUNTY

Respectfully, the Attorney General submits this supplemental memorandum in support of his Motion to be Dropped as a Party. In addition to those arguments previously submitted regarding that Motion, the Attorney General, asserts that dropping him as a party to this action is appropriate because he is absolutely immune from suit with respect to the counterclaims herein. This issue may be raised now because it is covered by the Attorney General's defense of failure to state a claim under Rule 12(B)(6), SCRCP, in his Answer to the Counterclaim.¹

The South Carolina Supreme Court has found a prosecutor is absolutely immune from suit under 42 U.S.C §1983 or the South Carolina Tort Claims Act "for actions relating to their prosecution of an individual as a criminal defendant-regardless of the prosecutor's motivation."

¹ Ramsey v. City of Forest Park, 418 S.E.2d 432, 433, 204 Ga.App. 98, 99 (Ga.App.,1992)("an answer pleading a defense of failure to state a claim at least would be minimally sufficient to give notice of substantive immunity defenses. . . ."); Baker v. Sudo, 240 Cal.Rptr. 38, 42, 194 Cal.App.3d 936, 942 (Cal.App. 4 Dist.,1987)(affirmative defense of failure to state a cause of action sufficient to raise statutory immunity)

Williams v. Condon, 553 S.E.2d 496, 509, 347 S.C. 227, 250 (S.C.App.,2001). Case law has extended the immunity of Attorneys General to civil actions undertaken by them such as enforcement of the charities laws here and would bar the counterclaims that Plaintiff has brought against the him in this action. The Attorney General is given specific enforcement authority as to public charities in the State including breaches of trust. S.C. Code Ann. §1-7-130. He is absolutely immune from the counterclaims against him.

Butz v. Economou, 438 U.S. 478, 516 (1978) is a basis for the numerous cases extending immunity beyond criminal prosecutions. The United States Supreme Court held that those officials who are responsible for the decision to initiate or continue a proceeding subject to agency adjudication are entitled to absolute immunity from damages liability for their parts in that decision. Applying *Butz* and other authority, the Fourth Circuit Court of Appeals in *Vosburg v. Department of Social Services*, 884 F.2d 133, 138 (C.A.4 ,1989) held that “Virginia State social workers are absolutely immune from liability resulting from their decision to file a removal petition.” See also, *Ostrzenski v. Seigel*, 177 F.3d 245, 251 (C.A.4, 1999).²

Mathis v. McDonough, 2014 WL 3894133, at *11 (D.Md.,2014) outlined much of the authority for applying absolute immunity outside of criminal prosecutions and found the Maryland Attorney General, a Maryland Assistant Attorney General and the Maryland Secretary of State absolutely immune for a TRO motion regarding production and distribution of a primary election campaign sample ballot. Citing *Butz*, *Vosburg* and *Ostrzenski*. the District Court held that “courts have found absolute immunity to apply to advocates in a number of other contexts

² “In sum, a physician requested by the Board to conduct a peer review performs a function analogous to a prosecutor reviewing evidence to determine whether charges should be brought. As such, absolute immunity is necessary to foster an atmosphere in which the peer reviewer can exercise his professional judgment without fear of retaliation.” *Ostrzenski*

beyond traditional criminal prosecutions, including where government attorneys pursue civil enforcement actions analogous to the proceeding at issue” As stated by *Mathis*:

In other instances, the Fourth Circuit and district courts within this Circuit have extended absolute immunity outside the context of traditional criminal prosecutions. See, e.g., *Pak v. Ridgell*, 2011 WL 3320197, at *7 (D.Md. Aug. 1, 2011) (concluding that “bar counsel prosecutors are afforded absolute immunity for conduct performed in a judicial capacity”), *aff’d*, 476 F. App’x 750 (4th Cir.2012), cert. denied, — U.S. —, 133 S.Ct. 1279 (2013); *Hunter v. Virginia State Bar*, 786 F.Supp.2d 1107, 1112 (E.D.Va.2011) (extending prosecutorial immunity to an assistant bar counsel); see also *Ostrzenski v. Seigel*, 177 F.3d 245, 250 (4th Cir.1999).

Courts outside the Fourth Circuit have reached similar conclusions, including in cases involving either assistant state attorneys general, civil enforcement actions, or both. See, e.g., *Skinner v. Govorchin*, 463 F.3d 518, 525 (6th Cir.2006) (extending absolute immunity to state assistant attorney general); *Fry v. Melaragna*, 939 F.2d 832, 837–38 (9th Cir.1991) (stating that “the principles outlined in *Butz* should a fortiori apply to the government attorney’s initiation and handling of civil litigation in a state or federal court” and extending absolute immunity to IRS attorneys who initiated civil tax litigation); *Murphy v. Morris*, 849 F.2d 1101, 1005 (8th Cir.1988) (extending absolute immunity to “the advocacy functions of a state assistant attorney general defending state officials” in civil litigation); *Barrett v. United States*, 798 F.2d 565, 571–73 (2d Cir.1986) (extending absolute immunity to state assistant attorney general in connection with defense of a civil suit); *Dukes v. Pappas*, 2010 WL 571779, at *8–9 (E.D.Pa. Feb. 17, 2010) (extending absolute immunity to Maryland assistant attorney general regarding conduct pertaining to civil enforcement action brought against plaintiff).

2014 WL 3894133, at *13 (D.Md.,2014).

Metro Charities, Inc. v. Moore, 748 F.Supp. 1156, 1163–64 (S.D.Miss.,1990) is directly on point in finding absolute immunity of the Attorney General and a Special Assistant Attorney General from Plaintiff’s suit against them for initiating a state civil action seeking to enjoin bingo games conducted by Plaintiffs.

Absolute immunity is afforded those charged with the civil enforcement of state laws. The attorney general is, under Mississippi law, the chief legal officer and adviser for the state, both civil and criminal and is charged with managing all litigation on behalf of the state.... He shall have the powers of the attorney general at *1164 common law and is given the sole power to bring or defend a lawsuit on behalf of a state agency, the subject matter of which is of statewide interest. Miss.Code Ann. § 7–5–1 (1972). At common law,

the state attorney general was vested with "the right to institute, conduct and maintain all suits necessary for the enforcement of the laws of the state, the preservation of order and protection of public rights." *Capitol Stages, Inc. v. State of Mississippi*, 157 Miss. 576, 128 So. 759, 763 (1930) (citing 2 R.C.L. §§ 4 and 5, at 915-17). The state court action was, therefore, a civil enforcement proceeding of the type for which absolute immunity applies.

* * *

Thus, regardless of their motivation in bringing the action, so long as defendants were performing a prosecutorial function, they enjoy absolute immunity from plaintiffs' claims relative to the civil proceeding. And in the court's view, it is manifest that in proceeding with the civil litigation before the chancery court, Moore and Warren were acting in their prosecutorial capacities on behalf of the state.

Metro Charities, Inc. v. Moore, 748 F.Supp. 1156, 1163-64 (S.D.Miss.,1990)

In *State v. Superior Court In and For County of Maricopa*, 921 P.2d 697, 700, 186 Ariz. 294, 297 (Ariz.App. Div. 1,1996), the Court applied absolute prosecutorial immunity to claims against the Attorney General for abuse of process and malicious prosecution for civil actions taken against the Plaintiff as to an adult care facility. See also, *Dinsdale v. Com.*, 675 N.E.2d 374, 377, 424 Mass. 176, 180 (1997) ("absolute immunity [extends] to government attorneys in their conduct of civil litigation as well").

Under the above authority from the United States Supreme Court, the Fourth Circuit Court of Appeals and numerous other courts, absolute immunity clearly extends to the Attorney General in this action so as to bar the counterclaims against him. Therefore, for this reason, and the others noted herein, his Motion to be Dropped as a Party should be granted.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT D. COOK
Solicitor General
S.C. Bar No. 1373

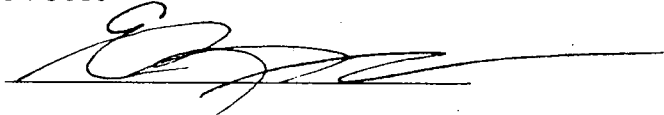
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J. EMORY SMITH, JR.
Deputy Solicitor General
S.C. Bar No. 5262

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BY:

A handwritten signature in black ink, appearing to be "J. Emory Smith, Jr.", written over a horizontal line.

APRIL 3, 2017

ATTORNEYS FOR THE ATTORNEY GENERAL

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, and others
and

HENRY DARGAN MCMASTER, in his
capacity as Attorney General of the State
of South Carolina and Others,

Plaintiffs.

v.

Adele J. Pope and Robert L. Buchanan, Jr.,
Defendants.

TO: ALL PLAINTIFFS AND THEIR ATTORNEYS:

) IN THE COURT OF COMMON PLEAS

)

) Civil Action No.: 2010-CP-40-4900

)

)

) MOTION TO ADD

) WILLIAM FORLANDO JAMES BROWN

) a/k/a FORLANDO JAMAL BROWN

) AS A PARTY

)

)

)

)

)

)

)

2013 APR 25 PM 4:21
JEANETTE W. McBRIDE
C.C.P. & C.S.

RICHLAND COUNTY
FILED

YOU WILL PLEASE TAKE NOTICE that ten days after service hereof or so
thereafter as she may be heard, Defendant, through her undersigned counsel, will move
before the Honorable L. Casey Manning at the Richland County Court House, located at
1701 Main Street, Columbia, South Carolina pursuant to Rules 17 and 19, *SCRCP*, and other
applicable law, for an Order for an Order adding William Forlando James Brown, a/k/a
Forlando Jamal Brown ("William"), as a party to this action.

The grounds of this motion are:

1. William is the real party in interest as to the claims of Plaintiff Terry Brown
(Terry") against Plaintiffs in this case by virtue of:

- a. An amendment to Plaintiff Legacy Trust dated December 31, 2010,
executed by Terry others in December 2010. [Exhibit A]
- b. The immediate assignment by Terry to William of all of Terry's
interest in assets of the Estate of James Brown (the "Assignment").
[Exhibit B].

2. As a result, William is a necessary party under Rule 17(a) *SCRCP*.

3. Defendant made this motion promptly after she learned of the Assignment in
2013, and confirmed its breadth and import in William's April 10, 2013 deposition
in a Federal Suit William brought in 2008 against Defendant and Robert Buchanan,
Jr.

4. William has stated under oath in the deposition, and/or provided documents to show:

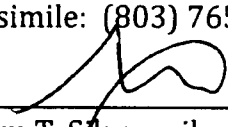
- a. He owns all claims of Terry in this matter, including the right to control this litigation for Terry; and
- b. The Assignment has been presented to the Wingate Firm and its termination as Terry's counsel confirmed in writing;
- c. Neither William nor Terry has sought a stay of this Case since the February 27, 2013 decision of the Supreme Court.
- d. William, for himself and Terry, has voiced his support for the Court's voiding of the McMaster Settlement.

5. The addition of William will not delay the litigation, and may promote settlement, as William has voluntarily withdrawn all claims against Defendant and Buchanan in the Federal Suit, and their counterclaims are proceeding expeditiously.

This motion is based on the South Carolina Rules of Civil Procedure, especially Rules 17 and 19, and statements in the deposition of William in the Federal suit, as well as such other proper documentation as shall come before the Court prior to the hearing on this matter.

Respectfully submitted,

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EXHIBIT A

Confirmation and Amendment

Certain parties entered into an Addendum to Private Agreement of August 10, 2008 to Include Settlement Agreement with Terry Brown Creating Restated and Amended Private Agreement (the "agreement"), that created an entity (the "Settlement Entity") to hold all of the assets related to James Brown, as described in paragraph 1 of the agreement. Capitalized terms not defined herein have the meanings set forth in the agreement. Those parties hereby confirm and amend certain provisions of the agreement, as follows:

1. Under the agreement, Terry Brown ("Terry") has a Right of First Refusal ("ROFR"). This agreement confirms that Terry's ROFR in all respects under the agreement applies only to "the sale of all or substantially all" of the "James Brown Assets" (as the term James Brown Assets is defined in paragraph 1 of the agreement). The term "the sale of all or substantially all" includes only (a) the sale of the entirety (that is, one hundred percent) of the James Brown Assets in one or a series of related transactions, or (b) the sale of at least 65% of the estimated value of the entirety of the James Brown Assets as of such time in one or a series of related transactions. Terry's ROFR does not apply to any other transfer of any of the James Brown Assets or an interest therein. For example, and notwithstanding anything to the contrary in the agreement or in the foregoing, the ROFR does not apply to the granting of one or more clearances or licenses of any duration, scope, or description for the use of any or all of the James Brown Assets, including but not limited to such purposes as movies, documentaries, video games, commercials or other advertisements, product brands, books or other publications, or theatrical productions.
2. Under the agreement, Terry has the exclusive right to conduct a due diligence review ("due diligence right") of all of the James Brown Assets as provided in Paragraph 5 of the agreement. With respect to the due diligence right, the agreement is hereby amended to the extent and only to the extent as follows: (a) Terry may commence the due diligence review immediately upon the execution of this confirmation and amendment; (b) the due diligence period will be for a period of twelve months from the execution of this confirmation and amendment; (c) there is no prohibition against the Settlement Entity, and/or Russell Banknight as fiduciary or any agent or consultant employed by or on behalf of the Estate or Settlement Entity, soliciting, encouraging, entertaining, discussing, or accepting offers with respect to the sale, transfer, license, or other disposition or exploitation of any of the James Brown Assets (including any offer generated by a beneficiary of the Estate or such other agents or representatives as the Estate or Settlement Entity may from time to time authorize), subject in all cases to the Terry's exclusive solicitation rights clarified in paragraph 3 below; and (d) Terry Brown or his designee shall have the exclusive right to use any work product or other materials in any medium prepared by or on behalf of Terry in the course of the exercise of the due diligence right for purposes of soliciting, encouraging, entertaining or discussing offers with respect to the sale, transfer, license, or other disposition or exploitation of any of the James Brown Assets.
3. Under paragraphs 6, 7 and 8 of the agreement, Terry has the exclusive right to solicit offers for a period of six months ("right to solicit"). With respect to the right to solicit, the agreement is hereby amended to the extent and only to the extent as follows: the six-month period of the right

to solicit (which was formerly contemporaneous with the Exclusivity Period of the due diligence right) shall commence three months after notice from Terry (at any time after the later of the expiration of the due diligence review period or the funding of the Settlement Entity). The three-month period is to allow the Estate/Settlement Entity a reasonable time to wind down or complete any then-ongoing discussions, but the Estate and Settlement Entity will not use such period for any purpose that is intended to defeat Terry's enjoyment of the right to solicit; provided however, that Terry's right to solicit will prohibit neither the continued granting of music clearances nor the continued performance of licenses and clearances permitted by paragraph 1 above.

4. Terry and the other parties to the agreement shall agree that, during the periods in which Terry is exercising the due diligence right and the right to solicit under paragraphs 2 and 3 above, they shall cooperate with respect to providing Terry and his representatives full access to any and all records, documents, things and information within the parties' control concerning the James Brown Assets and the value thereof, including but not limited to contracts, documents and things pertaining to or reflecting James Brown's songwriting or recording activities, royalty statements, bank records, audits, valuations, tax documents, audio master tapes, video master tapes, government filings (including but not limited to trademark and copyright filings), personal effects, artwork, writings, journals, photographs, press clippings, promotional materials, whether or not constituting "Confidential Information" for purposes of the agreement (collectively, the "Documents"), subject to an obligation to safeguard such items. Terry shall have the right to make the Documents or information therein available to third parties as he reasonably deems necessary in connection with the exercise of the due diligence right and the right to solicit, provided that such third parties first enter into confidentiality agreements in favor of the Estate and/or the Settlement Entity, as applicable, that are at least as protective of such information as the provisions of paragraph 9 of the agreement.

5. Except as confirmed and amended by this confirmation and amendment, the agreement remains in full force and effect.

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Senior Assistant Attorney General
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B., Lindsey Delores Brown, Vanisha Brown, Deanna J.
Brown Thomas, Jason Brown Lewis, Yanna N. Brown-
Lumar, Sydney L. Carrington L. and Tonya Brown*



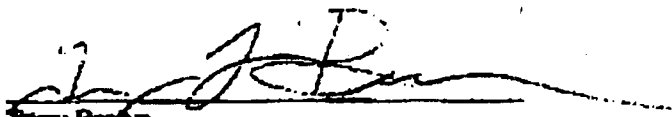
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B., Lindsey Delores Brown, Vanisha Brown, Deanna J.
Brown Thomas, Jason Brown Lewis, Yanna N. Brown-
Lunar, Sydney L., Carrington L., and Tanya Brown*



Terry Brown

EXHIBIT B

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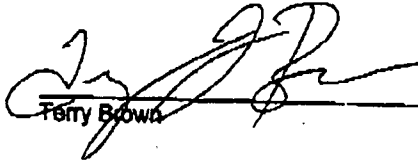
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Georgia, Stephens County

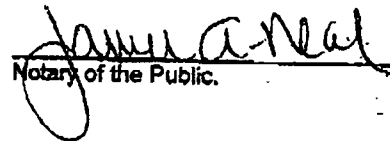
For in consideration of the sum of \$1 with love and affection and other valuable consideration, the undersigned, Terry Brown, being a biological child of James Brown the entertainer and known world-wide as the godfather of soul, and beneficiary under the Last Will and Testament of James Brown and the Irrevocable Trust of James Brown dated 8-1-2000, does hereby transfer, irrevocably convey and assign unto William Forlando James Brown all my interest of every nature and kind in the Estate of James Brown.

To the extent that any third party may deem this transfer ineffective for any reason, I hereby designate and appoint, my son William Forlando James Brown, as my true and lawful attorney in fact hereby granting unto him a power, coupled with an interest, to execute any document in my name and stead as and to the same extent that I may execute and convey my interest in the matter of James Brown. This transfer shall be deemed irrevocable and coupled with an interest. I hereby acknowledge that I have made this transfer with due consideration, thought and design, and that I do so voluntarily and of my own accord.

Witness my hand and seal this date January 3, 2011


Terry Brown


Witness


Notary of the Public.

MY COMMISSION
EXPIRES ON
JUNE 7, 2011



SWEENEY WINGATE & BARROW P.A.

May 10, 2013

Reply to: Main Office

Mark V. Gende
(803) 256-2233 x121
mvg@swblaw.com

VIA EMAIL AND U.S. MAIL

Honorable L. Casey Manning, Jr.
Circuit Court Judge
Richland Judicial Center
1701 Main Street, Room 214 (2nd Floor)
Post Office Box 192
Columbia, SC 29202-0192

RE: Russell L. Bauknight, et al. v. Adele J. Pope
Civil Action No.: 2010-CP-40-04900
Our File: 4077-7389

Dear Judge Manning:

Please accept this letter as Richland County Case 4900 Plaintiffs' and Proposed FOIA Intervenor's assessment why all matters in Case 4900 should be held in abeyance pending the outcome of all James Brown Estate matters that the Supreme Court has now unequivocally remanded to Aiken County.

On Wednesday, May 8, 2013 the South Carolina Supreme Court denied all petitions for rehearing and took a significant additional step. The Court substituted a new and revised opinion for its prior decision in the James Brown Estate matter. This new opinion is lengthy and makes certain additions and deletions to the prior, replaced opinion. This new opinion has significant bearing on the continued progress of Case 4900.

First, the new Supreme Court opinion creates significant uncertainty as to what persons or entities constitute the plaintiffs group. The new opinion voids the Section 1102 settlement agreement that had bound the plaintiff's group together. The new opinion also voids the appointment of Russell Bauknight as personal representative and trustee of the James Brown Trust and Estate, but expressly allows Mr. Bauknight the right to reapply and, potentially, be

reappointed as a fiduciary of the Trust and Estate. Therefore, until the individual family members' position with reference to the Trust and Estate is finally determined by the Aiken Court and until fiduciaries are installed for the Trust and Estate, my firm has substantial uncertainty on what basis each named plaintiff will continue in Case 4900. We believe these matters can and will be resolved as each Aiken County matter is resolved.

Furthermore, the Attorney General, for whom Sweeny, Wingate & Barrow, PA is counsel of record in Richland Case 4900, has independently filed a motion to withdraw from the case and made various other representations and filings in related matters. Consequently, Sweeny, Wingate & Barrow, PA today is filing a motion to be relieved as counsel for the Attorney General.

Second, the new Supreme Court opinion upholds the for-cause removal of the Case 4900 Defendant, Mrs. Adele Pope, as a fiduciary of the James Brown Estate. In upholding her for-cause removal, the court relies on some of the very same allegations made by the Case 4900 Plaintiffs against Mrs. Pope. Mrs. Pope is afforded no opportunity to reapply for any fiduciary position with the Trust or Estate. Because of her for-cause removal, she can have no further part in the Estate and Trust.

Third, the Supreme Court, in substituting the new opinion has completely eliminated Footnote 29 of the prior opinion. Footnote 29, while only dicta in the now replaced opinion, addressed, among other items, the FOIA matters and called for them to be heard "in the first instance" without any clear definition of what that meant. Such language is totally absent from the new order. While the court does recognize that the Attorney General is contesting releasing some documents pursuant to FOIA, the court no longer puts any primacy or priority on any court hearing these matters. We believe that such a position is entirely appropriate, because the documents requested under FOIA are subject to a claim of privilege which is the subject of a motion for protective order before this court in Case 4900. The claim of privilege must be decided before any court can make a determination of the application of any FOIA claim.

In summary, all of the uncertainty that your honor recognized at the last status conference still exists, and possibly a bit more. With the Supreme Court now having said all it is going to say on the matters that were before it, it is now abundantly clear that all matters related to the James Brown Estate cases must now be heard and decided by the Aiken Court. How the Aiken Court rules on a number of issues across a number of cases will then determine the posture of the group of plaintiffs or individual plaintiffs who will continue on with Case 4900.

May 10, 2013

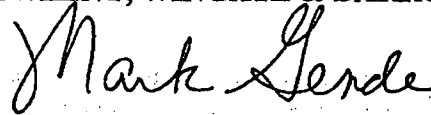
Page 3 of 3

Therefore, Case 4900 Plaintiffs and Proposed FOIA Intervenors respectfully request that Case 4900 be held in abeyance in its entirety until all the underlying issues related to the Plaintiffs are resolved by the Aiken Court. Should you deem it best for Plaintiffs to make a formal motion for stay, I would be pleased to do so.

As always, I am available to provide the court any further information it requires in order to fully consider this matter.

Yours truly,

SWEENEY, WINGATE & BARROW, P.A.



Mark V. Gende

MVG/lda

cc: Adam T. Silvermail, Esquire
Daryl L. Williams, Esquire
J. Emory Smith, Jr., Esquire

2050

000511

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; **Tommie Rae Brown**, individually and on behalf of her minor child, **James Brown**; **Daryl J. Brown**, individually and on behalf of his minor child **Janise Vanisha Brown**; **Lindsey Delores Brown**; **Deanna J. Brown Thomas**; **Jason Brown-Lewis**; **Yamma N. Brown**, individually and on behalf of her minor children **Sydney Lamar** and **Carrington Lamar**; **Tonya Brown**; **Venisha Brown Larry Brown**; and **Terry Brown**

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; **TOMMIE RAE BROWN**, individually and on behalf of her minor child, **JAMES BROWN**; **DARYL J. BROWN**, individually and on behalf of his minor child **JANISE VANISHA BROWN**; **LINDSEY DELORES BROWN**; **DEANNA J. BROWN THOMAS**; **JASON BROWN-LEWIS**; **YAMMA N. BROWN**, individually and on behalf of her minor children **SYDNEY LAMAR** and **CARRINGTON LAMAR**; **TONYA BROWN**; **VENISHA BROWN**; **LARRY BROWN**; and **TERRY BROWN**,

Plaintiff

v.

Adele J. Pope and Robert L. Buchanan, Jr.,

Defendants

**THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Civil Action No.: 2010-CP-40-04900

and

Civil Action No.: 2012-CP-40-00350

**ORDER CONCERNING PLAINTIFF'S
MOTION FOR CONTINUANCE**

RICHLAND COUNTY
FILED
2012 JUL -5 AM 10:58
JEANETTE W. McBRIDE
C.C.P. & G.S.

At a hearing on April 12, 2012 in Richland County, South Carolina before the Honorable L. Casey Manning, Plaintiffs, through counsel, moved for an Order continuing all outstanding motions in the following matters: 2010-CP-40-4900 (Case 4900), former Newberry County 2011-CP-36-379 (FOIA 1), which is now consolidated with Case 4900, and former Newberry County 2011-CP-36-00364 (FOIA 2), which has been transferred to Richland County as 2012-CP-40-00350, for a period of thirty (30) days in order to allow time for all parties to explore the possibility of a framework for settlement negotiations.

Counsel for the Office of the Attorney General consented to plaintiffs' motion with respect to the Office of the Attorney General's separate involvement in FOIA 1 and FOIA 2.

Counsel for Defendant Pope, Adam Silvernail, Esquire and Daryl Williams, Esquire, opposed Plaintiff's Motion on the grounds that their client had waited a long time to be heard on the matters set for the April 12, 2012 hearings and their client desired the Court to hear and rule on each pending motion.

The Court carefully considered the motion and the arguments of each party.

Based on the interests of justice and judicial efficiency, the Court hereby grants Plaintiffs' motion for a continuance of all the above-referenced matters. The Court's authority to continue all of the above-referenced matters, including matters in FOIA 2, is found in the designation of Case 4900 as complex to which the Honorable L. Casey Manning has been assigned Judge and granting Judge Manning authority to hear and decide all matters related to Case 4900 (see November 1, 2011 Order of The Honorable Allison R. Lee).

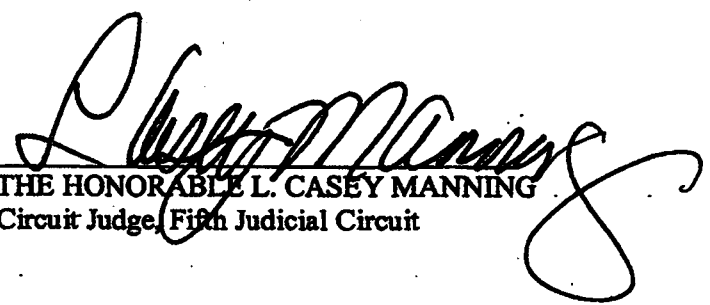
The parties are to report back thirty (30) days from the date of this Order, if settlement discussions are not progressing and submit a Scheduling Order to reset these continued Motions.

IT IS SO ORDERED.

(Signature Page Immediately Following)

2052

Order re: Plaintiffs' Motion for Continuance
Page 3 of 3


THE HONORABLE L. CASEY MANNING
Circuit Judge, Fifth Judicial Circuit

Dated this 5 day of July, 2012

Columbia, South Carolina



SWEENEY WINGATE & BARROW P.A.

October 10, 2016

Reply to: Main Office

Joseph O. Thickens
(803) 256-2233 x7123
jot@swblaw.com

Via electronic mail

W.H. Bundy, Jr., Esquire
M. Brent McDonald, Esquire
Smith, Bundy, Bybee & Barnett, P.C.
Post Office Box 1542
Mt. Pleasant, SC 29465-1542

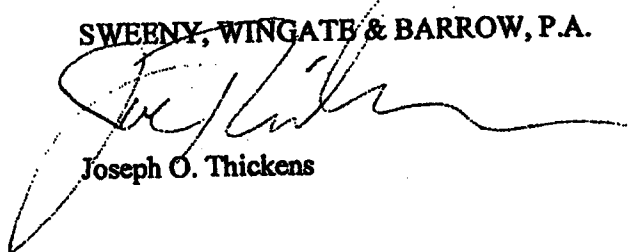
RE: Russell L. Bauknight, et al. v. Adele J. Pope
Our File: 4077-7389

Gentlemen:

Enclosed please find Alan Wilson's Answers to First Set of Interrogatories which were inadvertently omitted from previous correspondence to you in this matter.

Yours truly,

SWEENEY, WINGATE & BARROW, P.A.



Joseph O. Thickens

JOT/ljm
Enclosures

2054

MAIN OFFICE: T • 803-256-2233 F • 803-256-9177 1515 LAKE ST. (29201) • POST OFFICE BOX 12129 • COLUMBIA, SC 29211
PEE DEE OFFICE: T • 843-878-0390 F • 843-878-0393 115 CARGILL WAY • SUITE B • POST OFFICE BOX 88 • HARTSVILLE, SC 29551

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Henry Dargan McMaster, in his capacity as Attorney General of the State of South Carolina; **Tommie Rae Brown**, individually and on behalf of her minor child, **James Brown II**; **Daryl J. Brown**, individually and on behalf of his minor child **Janise Vanisha Brown**; **Lindsey Delores Brown**; **Deanna I. Brown Thomas**; **Jason Brown-Lewis**; **Yamma N. Brown**, individually and on behalf of her minor children **Sydney Lumar** and **Carrington Lumar**; **Tonya Brown**; **Vanisha Brown**; **Larry Brown**; and **Terry Brown**

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; **TOMMIE RAE BROWN**, individually and on behalf of her minor child, **JAMES BROWN II**; **DARYL J. BROWN**, individually and on behalf of his minor child **JANISE VANISHA BROWN**; **LINDSEY DELORES BROWN**; **DEANNA I. BROWN THOMAS**; **JASON BROWN LEWIS**; **YAMMA N. BROWN**, individually and on behalf of her minor children **SYDNEY LUMAR** and **CARRINGTON LUMAR**; **TONYA BROWN**; **VENISHA BROWN**; **LARRY BROWN**; and **TERRY BROWN**,

Plaintiffs

Adele J. Pope,

Defendant

IN THE COURT OF COMMON PLEAS

Civil Action No. 2010-CP-40-4900

**PLAINTIFF ALAN WILSON'S
ANSWERS TO DEFENDANT ADELE
POPE'S FIRST SET OF
INTERROGATORIES**

**TO: W. H. BUNDY, JR., ESQUIRE, ADAM T. SILVERNAIL, ESQUIRE AND
DARYL L. WILLIAMS, ESQUIRE, ATTORNEY FOR DEFENDANT ADELE J.
POPE AND TO DEFENDANT ADELE J. POPE**

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, the following constitute Plaintiff's Answers to First Set of Interrogatories propounded by Defendant Adele S. Pope.

1. Give the names and addresses of persons known to Plaintiff or Plaintiff's attorney to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

- a. All witnesses, both fact and expert, identified by Defendant Pope.
- b. Plaintiffs reserve the right to call any and all witnesses, whether fact or expert, named by any party to this action at the trial of this case.

Plaintiff reserves the right to supplement this Answer.

2. Set forth a list of photographs, prints, sketches or other prepared documents in possession of the Plaintiff or Plaintiff's attorney that relate to either the claim or any of the defenses asserted in this case.

ANSWER: As discovery is ongoing, documents are still being reviewed and Plaintiffs reserve the right to supplement this Answer. However, at this time Plaintiffs identify the following:

1. All filings of Buddy Dallas, David Cannon and Albert Bradley on behalf of the Estate of James Brown and the 2000 Irrevocable Trust in Cases 2007-JS-0256 and 2007-CP-92-122.
2. All filings of Adele Pope and Robert Buchanan on behalf of the Estate of James Brown and 2000 Irrevocable Trust.
3. All documents in the possession of Adele Pope.

4. All documents listed by Adele Pope in Response to Request for Production of the Plaintiff Number 1 dated June 8, 2016.

5. One hundred forty-five (145) boxes of Estate and Trust materials catalogued by Adele Pope.

3. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim, and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

ANSWER: None.

4. List the names and addresses of any expert witnesses whom the Plaintiff proposes to use as a witness at the trial of this case.

ANSWER: Plaintiff has not at this time determined what expert witness(es) will be used at the trial of this case. Plaintiff may supplement this response and reserves the right to call any expert listed by any party at the trial of this case.

5. For every expert witness, set forth a summary of specific opinions held by such expert as they relate to this case.

ANSWER: See number 4.

6. For each person known to Plaintiff or Plaintiff's attorney to be a witness concerning the facts of the case, set forth either a summary sufficient to inform Defendant of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: See number 1.

7. State the full names and addresses and the official capacity of all persons furnishing information used to answer these interrogatories and state the source of each person's

knowledge.

ANSWER: Plaintiff is responding through the undersigned counsel.

Columbia, South Carolina
September 8, 2016

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Russell L. Bauknight, et al,

Plaintiffs,

v.

Adele Pope,

Defendant,

IN THE COURT OF COMMON PLEAS

No. 2010-CP-40-4900

**MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER
AS TO DEPOSITION OF
ATTORNEY GENERAL**

JEANETTE
2016 AUG 30 AM 10:28
RICHLAND COUNTY
FILED

This Memorandum supports the Motion for Protective Order of Attorney General Alan Wilson to bar the taking of his deposition in this case. The taking of his deposition would pose an undue burden under Rule 26(c), SCRCP, for the following reasons

1. Alan Wilson, who took Office in January, 2011, was not the Attorney General when this suit was initiated and, therefore, lacks personal knowledge of all or most of the matters at issue in the suit. Defendant has deposed former Attorney General Henry McMaster who was in Office when this suit was brought.

2. All or most of any questions Attorney General Wilson might be asked would be subject to attorney client and work product privileges

3. Questioning of the Attorney General with objections thereto would likely take a day or more of his time. Depositions of two lawyers on his staff in a related proceeding took nearly five days. The deposition of Henry McMaster took approximately four hours or more. Such a time consuming deposition would interfere with the Attorney General's handling of the important duties of his Constitutional Office.

The above concerns fit squarely within the often called *Morgan* rule that is well recognized by the Federal Courts and other states that have considered it. Under that rule or related authority, depositions should not be taken of high ranking government officials unless the party noticing the deposition shows that the information sought is essential, that it is not obtainable elsewhere, and that the deposition of the official would not interfere with his government responsibilities. See discussion below. Defendant cannot make such a showing for a deposition of the Attorney General. The Attorney General did not witness the events that are the subject of the Complaint nor did he make the decision to institute suit. Questions related to the continuation of the suit since he took Office would be barred by attorney client and work product privileges.¹ Therefore, a deposition of the Attorney General would be an unproductive, time consuming exercise that would be an undue burden on him in his execution of his responsibilities as a State Constitutional Officer.

I

THIS COURT SHOULD APPLY THE AMPLE AUTHORITY THAT DEPOSITIONS SHOULD NOT BE TAKEN OF HIGH RANKING OFFICIALS ABSENT LIMITED EXCEPTIONS THAT DO NOT APPLY HERE

The above referenced *Morgan* rule is based on a United States Supreme Court decision (*United States v. Morgan*, 313 U.S. 409, 422 (1941)), that is widely accepted throughout the Federal Courts, including the Fourth Circuit Court of Appeals, and has been adopted by a

¹ Another ground for this motion is that the deposition should not be taken before this Court rules on the Attorney General's Motion to be removed as a party to this case. Now, that motion is scheduled to be heard on the same date as this Motion for Protective Order. Regardless of the outcome of the motion of the Attorney General to be dropped as a party, his deposition would be an undue burden for the other reasons given.

number of states. *See below*. As stated 27 years ago by the Supreme Court of Vermont, “[t]he federal courts have uniformly held that a highly-placed executive branch governmental official should not be called upon personally to give testimony by deposition, at least unless a clear showing is made that such a proceeding is essential to prevent prejudice or injustice to the party requesting it. The few states that have had occasion to reach this question have adopted this standard as well.” *Monti v. State*, 563 A.2d 629, 631, 151 Vt. 609, 611-12 (Vt.,1989) (emphasis added).

The Circuit Court should apply this rule to our pending motion because of this authority. Although apparently not all of the Federal cases have based the *Morgan* rule on Rule 26(c), FRCP, our State court rule is similar and would empower the Circuit Court to apply the rule based upon the undue burden that the deposition would impose on the Attorney General. The *Morgan* doctrine is certainly consistent with our Supreme Court’s decision applying a similar rule to testimony of judges.

The modern trend of courts [is of] not allowing a judge to testify regarding a case in which he previously presided unless the testimony is: 1) critical; and 2) can be obtained by no other means. *See United States v. Dowdy*, 440 F.Supp. 894 (W.D.Va.1977); *Commonwealth v. Ellis*, 10 Mass. L. Rptr. 333 (Mass.1999) available at 1999 WL 855196; *State ex rel. Carroll v. Junker*, 79 Wash.2d 12, 482 P.2d 775 (Wash.1971); *Helmbrecht v. St. Paul Ins. Co.*, 117 Wis.2d 74, 343 N.W.2d 132 (Wis.Ct.App.1983. . . which he previously presided). . . .”

In re Whetstone, 580 S.E.2d 447, 448, 354 S.C. 213, 216 (2003).

II

THE *MORGAN* RULE ITS PROGENY AND RELATED AUTHORITY SHOULD BE APPLIED TO BAR THE DEPOSITION OF THE ATTORNEY GENERAL

The *Morgan* rule and its progeny and related cases discussed below apply similar requirements for the showing of “extraordinary circumstances,” (*Franklin Sav. Ass’n v. Ryan*, 922 F.2d 209, 211–12 (C.A.4,1991), *infra*) to depose a high ranking official such as the Attorney General. It makes clear that the burden is on the party seeking the deposition to make such a showing. At a minimum, the Defendant must show that the testimony is “critical” (*Whetstone, supra*), “can be obtained by no other means” (*Id.*), and will not interfere with his other responsibilities (*McNamee v. Massachusetts*, 2013 WL 1285483, at *3 (D.Mass.,2013), *infra*). As stated in *McNamee*, a deposition will not be allowed unless the party seeking the testimony shows that “ (1) the information sought is essential (not merely relevant) to the case, (2) the information sought is not obtainable elsewhere, and (3) provision of the testimony will not interfere with the official's government responsibilities. . . . ”

The Defendant cannot show extraordinary circumstances to justify the taking of Attorney General Wilson’s deposition. The information sought is not “essential” or “critical,” under the first criteria, *supra*, because Attorney General Wilson did not take Office until the year after this suit was brought and lacks personal knowledge of the circumstances when this action was initiated. Defendant cannot show that “the information sought is not obtainable elsewhere” under the second criteria. She has taken the deposition of former Attorney General McMaster who was holding Office when this suit was brought, and she has also taken the depositions of Senior Assistant Deputy Attorney General Sonny Jones and Assistant Deputy Mary Frances Jowers in a related case. This summer, she has served on the Attorney General requests to admit the authenticity of documents, interrogatories and production requests in this case. For these

reasons, Defendant cannot show that the information sought "can be obtained by no other means" (*Whetstone*). She also cannot show that the "provision of the testimony will not interfere with the [the Attorney General's] government responsibilities . . ." (*McNamee*). The Jones and Jowers depositions took nearly five days and the questioning of former Attorney General McMaster took nearly four hours. Given that all or most questions would be subject to objection as going to privileged matter, the deposition would be very unproductive and an undue burden.

Excerpts from *Morgan*, its progeny and related cases set forth below barred depositions of the public officials including Attorneys General and other heads of government agencies including plaintiffs and defendants.

III

THE MORGAN RULE AND A SAMPLING OF CASES FOLLOWING IT

The need for limited access to high government officials through the discovery process is well established. In *United States v. Morgan*, 313 U.S. 409, 422 (1941), the Supreme Court indicated that the practice of calling high ranking government officials as witnesses should be discouraged. Relying on *Morgan*, other courts have concluded that top executive department officials should not, absent extraordinary circumstances, be called to testify or deposed regarding their reasons for taking official action. *Simplex Time Recorder Co. v. Sec'y of Labor*, 766 F.2d 575, 586 (D.C.Cir.1985); see also *In re United States (Holder)*, 197 F.3d 310, 313 (8th Cir.1999); *In re FDIC*, 58 F.3d 1055, 1060 (5th Cir.1995); *In re United States (Kessler)*, 985 F.2d 510, 512 (11th Cir.1993). This rule is based on the notion that "[h]igh ranking government officials have greater duties and time constraints than other witnesses" and that, without appropriate limitations, such officials will spend an inordinate amount of time tending to pending litigation. *Kessler*, 985 F.2d at 512.4 But this limitation is not absolute. Depositions of high ranking officials may be permitted where the official has first-hand knowledge related to the claim being litigated. See *Baine v. Gen. Motors Corp.*, 141 F.R.D. 332, 335 (M.D.Ala.1991); *Church of Scientology of Boston v. IRS*, 138 F.R.D. 9, 12 (D.Mass.1990); *Cnty. Fed. Sav. & Loan Ass'n v. Fed. Home Loan Bank Bd.*, 96 F.R.D. 619, 621 (D.D.C.1983). However, even in such cases, discovery is permitted only where it is shown that other persons cannot provide the necessary information. *Holder*, 197 F.3d at 314.

The parties agree that [Defendant] Mayor Menino is a high ranking government official and therefore is not subject to being deposed absent a demonstrated need. . . . [T]he district judge did not abuse his discretion in issuing a protective order for Mayor

Menino because the Bogans had not exhausted other available avenues of discovery.(emphasis added)

Bogan v. City of Boston, 489 F.3d 417, 423-24 (C.A.1 (Mass.),2007)(deposition of Defendant mayor).

Since *Morgan*, federal courts have consistently held that, absent "extraordinary circumstances," a government decision-maker will not be compelled to testify about his mental processes in reaching a decision, "including the manner and extent of his study of the record and his consultations with subordinates." *Id.* See *Simplex Time Recorder Co. v. Secretary of Labor*, 766 F.2d 575, 586 (D.C.Cir.1985); *Sweeney v. Bond*, 669 F.2d 542, 546 (8th Cir.), cert. denied, 459 U.S. 878 (1982); *Kyle Engineering Co. v. Kleppe*, 600 F.2d 226, 231-32 (9th Cir.1979); *Warren Bank v. Camp*, 396 F.2d 52, 56 (6th Cir.1968); *Carl Zeiss Stiftung v. V.E.B. Carl Zeiss, Jena*, 40 F.R.D. 318, 325-26 (D.D.C.1966), aff'd, 384 F.2d 979 (D.C.Cir.), cert. denied, 389 U.S. 952 (1967). Typical of these decisions is *Carl Zeiss*, in which the court said:

The judiciary, the courts declare, is not authorized "to probe the mental processes of an executive or administrative officer. This salutary rule forecloses investigation into the methods by which a decision is reached, the matters considered, the contributing influences, or the role played by the work of others—results demanded by the exigencies of the most imperative character. No judge could tolerate an inquisition into the elements comprising his decision—indeed, "[s]uch an examination of a judge would be destructive of judicial responsibility"—and by the same token "the integrity of the administrative process must be equally respected."

Id. at 325-26 (emphasis added; footnotes omitted).

Franklin Sav. Ass'n v. Ryan, 922 F.2d 209, 211-12 (C.A.4,1991)(deposition of Director of Defendant Office of Thrift Savings).

It is well established that high-ranking government officials may not be deposed or called to testify about their reasons for taking official actions absent "extraordinary circumstances." See, e.g., *Franklin Sav. Ass'n v. Ryan*, 922 F.2d 209, 211 (4th Cir.1991); *Simplex Time Recorder Co. v. Sec'y of Labor*, 766 F.2d 575, 586 (D.C.Cir.1985); In re FDIC, 58 F.3d 1055, 1060 (5th Cir.1995). When such circumstances are not present, mandamus is appropriate to prevent a district court from compelling an official's

appearance. See, e.g., *U.S. Bd. of Parole v. Merhige*, 487 F.2d 25, 29 (4th Cir.1973), cert. denied, 417 U.S. 918 (1974); *In re United States (Jackson)*, 624 F.3d 1368, 1372-73 (11th Cir.2010); *In re Cheney*, 544 F.3d 311, 314 (D.C.Cir.2008).

In re McCarthy, 636 Fed.Appx. 142, 143 (C.A.4,2015)(Deposition of EPA Administrator in suit against EPA).

The need for controlling the use of subpoenas against high government officials was recognized by the Supreme Court in *United States v. Morgan*, . . . In that case involving a subpoena directed to the Secretary of Agriculture, the Court stated that regular examination of high officials concerning the reasons for their official actions would undermine the integrity of the administrative process. *Id.* at 422, 61 S.Ct. 999. Other courts have reasoned similarly. Because “[h]igh ranking government officials have greater duties and time constraints than other witnesses ... [they] ‘should not, absent extraordinary circumstances, be called to testify regarding their reasons for taking official actions.’ ” *In re United States (Kessler)*, 985 F.2d 510, 512 (11th Cir.1993) (per curiam) (quoting *Simplex Time Recorder Co. v. Secretary of Labor*, 766 F.2d 575, 586 (D.C.Cir.1985)). If other persons can provide the information sought, discovery will not be permitted against such an official. *Id.* at 513; see also *In re FDIC*, 58 F.3d 1055, 1062 (5th Cir.1995) (“We think it will be the rarest of cases ... in which exceptional circumstances can be shown where the testimony is available from an alternate witness.”). . . . It is not disputed here that the Attorney General and the Deputy Attorney General are high government officials. Lee must therefore establish at a minimum that the Attorney General and the Deputy Attorney General possess information essential to his case which is not obtainable from another source. *Kessler*, 985 F.2d at 512-13; see also *In re FDIC*, 58 F.3d at 1062. This means both that the discovery sought is relevant and necessary and that it cannot otherwise be obtained. *Kessler*, 985 F.2d at 512-13. Without establishing this foundation, “exceptional circumstances” cannot be shown sufficient to justify a subpoena. See *id.* . . .

Testimony by [U.S. Attorney General Janet] Reno and [Deputy Attorney General] Holder is not necessary to establish a factual basis for Lee's attempt to overturn the jury's sentencing recommendation on the basis of noncompliance with the protocol.

In re U.S., 197 F.3d 310, 313-14 (C.A.8,1999) (deposition of Attorney General Reno in a Federal prosecution).

It is a settled rule in this circuit that "exceptional circumstances must exist before the involuntary depositions of high agency officials are permitted." *In re Office of Inspector General*, 933 F.2d 276, 278 (5th Cir.1991) (per curiam) (citing *EEOC v. K-Mart*, 694 F.2d 1055, 1067-68 (6th Cir.1982)). . . "High ranking government officials have greater duties and time constraints than other witnesses." *In re United States*, 985 F.2d 510, 512 (11th Cir.) (per curiam), cert. denied, 510 U.S. 989, 114 S.Ct. 545, 126 L.Ed.2d 447 (1993). "[T]he Supreme Court has indicated that the practice of calling high officials as witnesses should be discouraged." *Id.* (citing *United States v. Morgan*, 313 U.S. 409, 61 S.Ct. 999, 85 L.Ed. 1429 (1941)). . .

We disagree that Pacific Union has made the strong showing necessary for a finding of exceptional circumstances. Pacific Union disclaims any intention to "suggest that senior government officials may be deposed in every case in which the government is a party." (Footnote omitted). Yet the reasoning Pacific Union advances would risk eviscerating well-settled principles of administrative law. If countenanced, this rationale would justify deposing high-level government officers in a plethora of cases in order to probe their decision-making processes and the reasons for their decisions. Agency leaders often send and receive correspondence relative to their actions. Their official conduct frequently affects—sometimes adversely—the property rights of private parties. This does not of itself subject them to the burdens of litigation discovery.

Nor is the present case distinguished by the fact that the FDIC initiated the Houston declaratory judgment action. As the FDIC correctly points out, the order before us for review was entered in the Brownsville Action, which the FDIC did not commence and to which it is not a party. It is not sufficient for Pacific Union to rely upon the joint nature of the discovery undertaken in the two cases, because in the Houston Action—to which the FDIC is a party—the magistrate judge quashed the depositions. . . .

In re F.D.I.C., 58 F.3d 1055, 1060- 1062 (C.A.5 (Tex.),1995)(Depositions of three FDIC directors in action in which the FDIC was not a party but deposition had already been quashed of them in an action in which the FDIC was a party).

This Court has already ruled that Augustus qualifies as a "high ranking government official" for the purposes of this dispute. In light of this fact and the case law presented above, Plaintiff's subpoena of Augustus will be quashed unless (1) the information sought is essential (not merely relevant) to the case, (2) the information sought is not obtainable elsewhere, and (3) provision of the testimony will not interfere with the official's

government responsibilities. *In re F.D.I.C.*, 58 F.3d 1055, 1061 (5th Cir.1995); *Hankins*, 1996 WL 524334, at *1 (E.D.Pa. Sept.12, 1996) (internal citations omitted).

McNamee v. Massachusetts, 2013 WL 1285483, at *3 (D.Mass.,2013)(deposition of former chief of staff of legislator).

Defendants state that the information sought by the depositions is needed. They argue that the factual basis for the allegations must be made known before defendants can defend themselves. This is the only proof of need which is made. Absent a clear showing of need to prevent injustice to the party seeking the deposition, such deposition may not be taken from a cabinet official or head of an executive department. *Wirtz v. Local 30, International Union of Operating Engineers*, 34 F.R.D. 13 (S.D., N.Y.1963). The Court feels that discovery by interrogatory and requests for admissions (which have been pursued already) are presently adequate means of discovery for the defendants. Thus, plaintiff's motion for a Protective Order as to the taking of the deposition of the Attorney General and the Secretary of Housing and Urban Development is GRANTED.

U.S. v. Northside Realty Associates, Inc., 324 F.Supp. 287, 295 (D.C.Ga. 1971) (deposition of Attorney General in suit initiated by him on behalf of United States).

[I]t is our view the Attorney General and Director of the Division of Criminal Justice, as well as other high-level government officials, should not be deposed, absent a showing of first-hand knowledge or direct involvement in the events giving rise to an action, or absent a showing that such deposition is essential to prevent injustice. *Wirtz v. Local 30, International Union of Operating Engineers*, 34 F.R.D. 13 (S.D.N.Y.1963); *Cf. Virgo Corporation v. Paiewonsky*, 39 F.R.D. 9 (D.C.Virgin Islands, 1966).

... Clearly, information concerning previous cases brought under the Removal Act which defendant contends is relevant to his defense of selective enforcement, may be obtained from other representatives of the Attorney General's Office. The rationale of the trial judge that since Hyland is the plaintiff he is subject to being deposed ignores the fact that the Attorney General is suing solely in a representative capacity under N.J.S.A. 2A:81—17.2a4.

Hyland v. Smollok, 349 A.2d 541, 543, 137 N.J.Super. 456, 460 (N.J.Super.A.D. 1975)(deposition of Plaintiff New Jersey Attorney General).

In *Morgan*, 313 U.S. 409, 61 S.Ct. 999, *supra* n. 1, the Supreme Court created an exception to the general discovery principles as it applies to high-ranking officials holding public office. Id. at 422, 61 S.Ct. 999. Under the doctrine, as developed in later case law, high-ranking government officials are not subject to being deposed with respect to their mental processes in performing discretionary acts. *In Re Office of Inspector General*, 933 F.2d 276, 278 (5th Cir.1991); *Singer Sewing Machine Co. v. NLRB*, 329 F.2d 200, 206-08 (4th Cir.1964). The privilege applies to former as well as current officials. *Arnold Agency v. West Virginia Lottery Commission*, 206 W.Va. 583, 526 S.E.2d 814, 830 (1999).[footnote omitted] The *Morgan* doctrine is not absolute, for instance, in situations where a high-ranking official's involvement becomes less supervisory and directory and more hands-on and personal, that it is considered so intertwined with the issues in controversy, fundamental fairness may require the deposition of an official. In general, a deposition of a high-ranking official in litigation not specifically directed at his alleged misconduct will only be permitted if (1) extraordinary circumstances are shown, *United States v. Merhige*, 487 F.2d 25, 29 (4th Cir.1973); or (2) the official is personally involved in a material way. *Singer Sewing Machine Co.*, 329 F.2d at 206-08. The burden is on the party seeking the deposition of the high-ranking official to demonstrate the existence of the foregoing.

Johnson v. Clark, 21 A.3d 199, 210, 199 Md.App. 305, 323 (Md.App.,2011)(deposition of county executive of county defendant).

We agree with the observation of the United States District Court for the Eastern District of Pennsylvania that "[d]epartment heads and similarly high-ranking officials should not ordinarily be compelled to testify unless it has been established that the testimony to be elicited is necessary and relevant and unavailable from a lesser ranking officer." *Halderman v. Pennhurst State School and Hospital*, 559 F.Supp. 153 (E.D.Pa.1982).

State, Dept. of Health and Rehabilitative Services v. Brooke, 573 So.2d 363, 371 (Fla.App. 1 Dist.,1991)(Deposition sought of Secretary of Defendant Department of Health and Rehabilitative Services); *see also*, *Department of Agriculture and Consumer Services v. Broward County*, 810 So.2d 1056, 1058 (Fla.App. 1 Dist.,2002)(Deposition of agency head in challenge to agency rule);

As previously noted . . . in the instant case we are asked to determine whether a discovery deposition request may be found to be an annoyance, embarrassment, oppression, or undue burden based upon the deponent's position as a government official. Because the language contained in Rule 26(c) of the West Virginia Rules of Civil Procedure is nearly identical to Rule 26(c) as contained in the Federal Rules of Civil Procedure, we look to federal case law for guidance.

In *United States v. Northside Realty Associates*, 324 F.Supp. 287 (N.D.Ga.1971), the United States District Court for the Northern District of Georgia, reviewed plaintiff's motion for a protective order under Rule 26(c) of the Federal Rules of Civil Procedure and commented:

It has been recognized that a member of the Cabinet or the head of a large executive department should not be called upon to give his deposition if such deposition is taken in order to probe the mind of the official to determine why he exercised his discretion as he did in regard to a particular matter. *De Cambra v. Rogers*, 189 U.S. 119, 122 . . . (1903) and *United States v. Morgan*, 313 U.S. 409, 422 The case of *Wirtz v. Local 30, International Union of Operating Engineers*, 34 F.R.D. 13 (S.D.N.Y.1963) extends this doctrine to allow the taking of personal testimony of a cabinet official only on a clear showing that the testimony of the official is necessary to prevent injustice to the party [requesting it].

Id. at 293 (emphasis added).

* * *

We, therefore, hold that highly placed public officials are not subject to a deposition absent a showing that the testimony of the official is necessary to prevent injustice to the party requesting it. When determining whether to allow the deposition of a highly placed public official, the "trial courts should weigh the necessity to depose or examine an executive official against, among other factors, [1] the substantiality of the case in which the deposition is requested; [2] the degree to which the witness has first-hand knowledge or direct involvement; [3] the probable length of the deposition and the effect on government business if the official must attend the deposition; and [4] whether less onerous discovery procedures provide the information sought." *Id.* at 613-14, 563 A.2d at 632. Moreover, we find that the burden is upon the proponent of the deposition to show the necessity of taking an oral deposition of a highly-placed government official.

(emphasis added) *State ex rel. Paige v. Canady*, 475 S.E.2d 154, 160, 197 W.Va. 154, 160-162

(W.Va.,1996)(deposition of Secretary / Tax Commissioner in FOIA action apparently against him).

It is patently in the public interest that the Attorney General be not unnecessarily hampered or distracted in the important duties cast upon him by law. And that public interest obviously transcends the convenience that would otherwise be afforded private litigants by the availability of that official as an expert witness on their attorneys' reasonable fees in successful litigation against the state or its agencies.

This view has several times been confirmed, and insofar as we can determine never rejected, by the courts of this nation. A highly placed public officer should not be required to give a deposition in his official capacity in the absence of "compelling reasons." (*645 *Weir v. United States* (8th Cir. 1962) 310 F.2d 149, 154-155.) Such a requirement should be discouraged as "contrary to the public interest, ..." (*Union Savings Bank of Patchogue, New York v. Saxon* (D.D.C. 1962) 209 F.Supp. 319, 319-320.)

"... There must be some showing, if the right to take a deposition is challenged by the prospective witness, why the prospective witness should be examined. This applies particularly to heads of government agencies. If the head of a government agency were subject to having his deposition taken concerning any litigation affecting his agency or any litigation between private parties which may indirectly involve some activity of the agency, we would find that the heads of government departments and members of the President's Cabinet would be spending their time giving depositions and would have no opportunity to perform their functions. [¶] ... It would be oppressive and vexatious to require [the head of a government agency] to submit to an interrogation that might last for several hours and that would, of course, disturb government business." (*Capitol Vending Co. v. Baker* (D.D.C. 1964) 36 F.R.D. 45, 46.)

Further such authority is found in *Wirtz v. Local 30, International U. of Operating Engineers* (S.D.N.Y. 1963) 34 F.R.D. 13, 14, where the court stated: "... common sense suggests that a member of the Cabinet and the administrative head of a large executive department should not be called upon personally to give testimony by deposition, either in New York or elsewhere, unless a clear showing is made that such a proceeding is essential to prevent prejudice or injustice to the party who would require it. No such showing has been made here and in the nature of things it could not be made."

We find the foregoing authority to be applicable to the proceedings at hand. No clear showing was made that the Attorney General's deposition was required in order "to prevent prejudice or injustice to the party who would require it." It is concluded that the superior court's ruling on the motion to quash was without sanction of law, and an abuse of judicial discretion.

State Board of Pharmacy v. Superior Court, 78 Cal.App.3d 641, 644-45
(Cal.App.1.Dist)(deposition of California Attorney General regarding appropriate attorney's fees to be awarded against a state agency and the impact of the case).

CONCLUSION

The *Morgan* rule and its progeny and related cases protect against depositions of high-ranking public officials except under extraordinary circumstances not present here. This deposition would be an undue burden for this reason and those others noted above. Therefore, this Court should issue a protective order barring the taking of the deposition of Attorney General Wilson in this case.

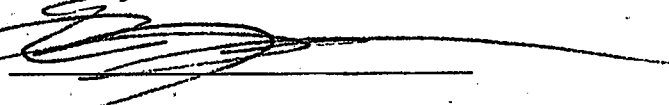
Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT D. COOK
Solicitor General
S.C. Bar No. 1373

J. EMORY SMITH, JR.
Deputy Solicitor General
S.C. Bar No. 5262

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680

BY: 

AUGUST 26, 2016

ATTORNEYS FOR ALAN WILSON

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, and others

and

ALAN WILSON, in his capacity as Attorney
General of the State of South Carolina and
others,

Plaintiffs.

v.

Adele J. Pope,

Defendant.

) IN THE COURT OF COMMON PLEAS

)

)

) Case No.: 2010-CP-40-4900

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**DEFENDANT'S SUPPLEMENTAL
MEMORANDUM IN OPPOSITION
TO MOTION FOR SUMMARY
JUDGMENT AND IN
SUPPORT OF DEFENDANT'S
POSITION AS TO OTHER
PENDING MOTIONS**

JEANNETTE W. MICHAELS
C.C.P. & C.S.

2016 SEP 23 AM 10:18

RICHLAND COUNTY
FILED

Supplementing her memoranda filed in connection with Plaintiff/Counterclaim

Defendants' motion for summary judgment and other matters, Defendant/Counterclaim

Plaintiff Adele J. Pope ("Defendant") supplements the record with the letter to the

Honorable Doyet A. Early, III, dated September 22, 2016, and the documents set out therein

(Exhibit A) and a recent Facebook post by Plaintiff Tommie Rae Brown regarding published

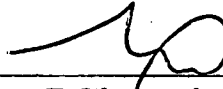
news reports related to Plaintiff Daryl Brown (Exhibit B).

Such of the referenced documents which are not on file as of today will be filed with
the Court as received.

[SIGNATURE BLOCK APPEARS ON FOLLOWING PAGE]

Respectfully submitted,

W.H. Bundy, Jr.
H. Brent McDonald
SMITH, BUNDY, BYBEE & BARNETT, P.C.
1037 Chuck Dawley Blvd., Suite 100
Post Office Box 1542
Mount Pleasant, South Carolina 29465
Telephone: (843) 881-881-1623
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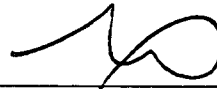
Adam T. Silvernail
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Columbia, South Carolina 29202
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adam@silvernaillawfirm.com
*Attorneys for Defendant/Counterclaim
Plaintiff Adele J. Pope*

September 23, 2016

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served a copy of the foregoing document on counsel for Plaintiff/CC Defendants on September 23, 2016, by emailing and depositing a copy of the same into the United States Mail, First-class postage prepaid addressed as follows:

Kenneth B. Wingate, Esquire
Joseph O. Thickens, Esquire
Mark V. Gende, Esquire
PO Box 12129
Columbia, SC 29211



Adam T. Silvernail

2016 SEP 23 AM 10:18
FILED
RICHLAND COUNTY
JEANETTE W. MCBRIDE
CLERK, P. & G.S.

EXHIBIT A

W.H. BUNDY, JR.
M. BRENT MCDONALD

BUNDYMCDONALD, LLC
ATTORNEYS AT LAW
1516 OLD TROLLEY ROAD, 2ND FLOOR
SUMMERVILLE, SC 29485
TELEPHONE: 888-552-1559

W. H. BUNDY, JR.
Direct: 843-212-0525
walter@bundymcdonald.com

September 23, 2016

By E-mail and U.S. Mail:
The Honorable Doyet A. Early, III
Post Office Box 90
Bamberg, South Carolina 29003

Re: *Bauknight, et al, and Wilson, et al vs. Pope*
Case No. 2010-CP-40-4900

Dear Judge Early:

On behalf of our client, Defendant/Counterclaim Plaintiff Adele J. Pope, we are writing your Honor to both supplement our arguments made before the Court on August 29, 2016, in relation to Plaintiff/Counterclaim Defendants' motion for partial summary judgment as to Mrs. Pope's counterclaims and to keep the Court informed regarding ongoing discovery in this matter. I anticipate that as discovery continues in its normal course there will be additional matters requiring supplementation. Should you desire some other format for the presentation of such supplements, please just let me know.

As your Honor will recall, we argued strenuously that the motion for partial summary judgment could not be granted without discovery. We believe that what has happened in discovery since August 29 continues to bear that out and should be a part of the record. It is our position that the discovery affects the motion for summary judgment and other motions argued that day.

We will review these separately with respect to the various Plaintiff/CC Defendants who have recently been deposed.

Plaintiff/CC Defendant Venisha Brown

As the Court is aware, Venisha Brown has been a Plaintiff/CC Defendant in this action for six years. A motion for partial summary judgment and numerous other motions have been filed on her behalf. Since August 29, 2016, however, she has failed and refused to appear at a deposition. Her deposition was properly noticed for September 23, 2016. Counsel moved for a protective Order to prevent the deposition. Thereafter, your Honor Ordered that the deposition take place on September 22, 2016. We attempted to agree with Plaintiffs' counsel to cancel the deposition in exchange for a stipulation that she would not appear. Plaintiffs' counsel refused such a stipulation, and we proceeded with the deposition yesterday. Again, Venisha Brown did not appear.

As your Honor knows, a motion to dismiss Venisha Brown's complaint for failure to prosecute has been served and is pending. In addition, Venisha Brown has failed to verify her Interrogatory answers. They have, instead, been verified by someone who appears to have a "springing" power of attorney executed in Georgia in 2008 and filed in 2010, after the commencement of this action.

We respectfully request that the motion to dismiss Venisha's complaint, your Honor's Order directing her to appear at the deposition at which she failed to appear, the exhibits to that deposition, and this letter be made part of the record in opposition to her motion for partial summary judgment and all other relief requested on behalf of Venisha Brown.

Plaintiff/Counterclaim Defendant Lindsey Delores Brown

It is my understanding that this case (Richland 4900) is the only James Brown case in which Lindsey Delores Brown is a Plaintiff as an adult and has been since the commencement of the action.

Filings have been made in this action on behalf of Lindsey for six years. In 2013, as with Venisha and Janice Brown, it became known that Lindsey had not executed the 40% contingency-fee agreement with the Wingate firm to commence this action. In 2012, Mrs. Pope made an offer to Lindsey which would have dismissed her from this action at no cost. The offer was filed and met with a motion to strike made on Lindsey's behalf. As your Honor knows, Lindsey did not appear at her deposition scheduled for August 19, 2016, and your Honor Ordered that she appear on September 19, 2016. When Lindsey was deposed on September 19, she gave significant testimony relative to her pending motion for partial summary judgment and other motions made on her behalf.

Lindsey testified that she had never seen the Richland 4900 Complaint; did not know Robert Buchanan, Adele Pope or Russell Bauknight; and did not know of the existence of Richland 4900 until a week prior to her deposition on September 19, 2016.

Lindsey further testified that prior to last week when she met her Richland 4900 counsel, she has seen lawyers only twice since her grandfather's death. Once was at the Olive Garden a few years earlier, and the second was at the home of her aunt Deanna.

A document Lindsey admits she signed is witnessed by an attorney with the firm of Louis Levenson and bears the date October 26, 2012.

If the first meeting was on October 26, 2012, it was more than two years after Mr. Levenson signed the Richland 4900 contingency-fee contract on Lindsey's behalf and approximately two weeks after Mr. Levenson appeared at the first Richland 4900 mediation. It was represented to Judge Manning that counsel who appeared had full authority to settle on behalf of their clients.

We respectfully submit that the two Lindsey Delores Brown depositions, their exhibits, and your Honor's Order directing the depositions should be entered as a supplement to our response to Lindsey's motion for partial summary judgment and all other relief sought by Lindsey.

Plaintiff/Counterclaim Defendant Janise Vanisha Brown

As your Honor is aware, there were two depositions for Janise Vanisha Brown, which followed the same path as described above for her sister Lindsey.

Janise's testimony was almost identical to that of her sister, with certain minor exceptions. First, Lindsey was fifteen when this action was commenced, but an adult prior to the final decision in *Wilson v. Dallas*. Like Lindsey, Janise testified that she had never met any lawyer in the James Brown matters until a few years ago; that she met her Richland 4900 attorney only the week before the deposition; and that she had never seen the complaint in Richland 4900 before the September 2016 meeting with her attorneys.

Like her sister, Lindsey testified that she did not know Mrs. Pope, Mr. Buchanan or Mr. Bauknight. She specifically confirmed that she had never authorized Mr. Bauknight to act as her agent. She had no knowledge of anyone having sought to intervene in a FOIA case on her behalf.

Like Lindsey, Janise signed a document dated October 26, 2012, which we have taken the liberty of attaching to this letter. At the time she signed Exhibit A, Janise was seventeen years old.

We respectfully request that the motion made on Janise's behalf for partial summary judgment; your Honor's Order related to her deposition; and the two depositions, with all exhibits including the October 2012 document be accepted by the Court as a supplement to the record.

Because of the serious nature of the facts revealed in the three depositions we have conducted or attempted to conduct, we respectfully request that the Court hold any ruling on motions on behalf of any Plaintiff/Counterclaim Defendant open until the deposition of that Plaintiff has been concluded. With respect to our progress in obtaining such depositions, we wish to make the following report on the status of the depositions of the following Plaintiff/Counterclaim Defendants:

1. Daryl J. Brown - In addition to all of the reasons cited to re-depose Daryl Brown, we advise the Court that a news report appearing on or about September 17, 2016, suggested that Mr. Brown is contesting a recently-obtained DNA test and has reported that he has terminated his lawyers and obtained new counsel. (See television report, WRDW, September 17) While we were unaware of any ongoing testing and have no other details, we respectfully submit that the Court should consider Daryl Brown's public statements in connection with our request that he be re-deposed. In that regard, we ask the Court to take judicial notice of Mr. Brown's 2012

deposition, already on file with the Court, and the fact that he, also, did not sign the Wingate 40% contingency-fee contract to bring Richland 4900. That contract was signed on his behalf by Louis Levenson, Esquire.

2. Henry Dargan McMaster – Mr. McMaster, among other statements, said that his office had concluded that the Attorney General's co-Plaintiff/CC Defendant Tommie Rae Brown was not James Brown's spouse. He also testified that if Mr. Buchanan and Mrs. Pope had performed the actions recounted in their first semi-annual report to the Attorney General and others, such actions were laudable. We ask the Court to receive this deposition into the record when the transcript is available.
3. Deanna Brown Thomas – We have scheduled the deposition of Deanna Brown Thomas for October 26, 2016. This is Ms. Thomas' first deposition since October 31, 2007 in an Aiken County case before your Honor.
4. Dr. Yamma N. Brown – The deposition of Dr. Brown is scheduled for October 28, 2016.
5. Attorney General and Plaintiff/CC Defendant Alan Wilson is currently seeking not to be deposed. We believe that his deposition is essential based on both our earlier stated position and what has taken place since the hearing. In 2011 when Robert Buchanan, Jr. and Ms. Pope sought an early appeal of Judge Manning's decision not to dismiss Richland 4900, AG Wilson was successful in having the early appeal dismissed. For the five years since, he has actively participated in this action, allowing numerous filings to be made on his behalf. We ask that the Court, considering recent events with our earlier arguments, direct that Attorney General Wilson be deposed. The presence of the AG in this litigation is a central factor, especially in light of his recent statements to Your Honor supporting actions taken by Mr. Bauknight in this case.
6. Robert Buchanan, Jr., was an original Defendant/CC Plaintiff. In 2010 he and Ms. Pope moved to dismiss this case as unconstitutional because of the AG's participation. Had they been successful, damages to Mr. Buchanan and Ms. Pope would have been limited to a loss of their professional negligence insurance and a suit by Cincinnati. In 2012 Mr. Buchanan reached a "settlement" in which he was required not to file a Petition for Rehearing in *Wilson v. Dallas* when the decision was rendered, and was prohibited from doing anything that might help Ms. Pope. A motion to void the settlement as against public policy because it was not disclosed to the Appellate Court is pending. We ask that it be heard at the next hearing. Mr. Buchanan's deposition was commenced in 2012, but not completed. As soon as the motion is resolved, we plan to complete Mr. Buchanan's deposition.
7. Terry Brown – We will shortly propose dates to depose Mr. Brown in November 2016 under the consent protocol.

8. Jason Brown-Lewis - We will shortly propose dates to depose Mr. Brown-Lewis in November under the consent protocol.
9. James Brown Legacy Trust - Because of substantial issues related to the control, ownership and assets of the James Brown Legacy Trust, we will shortly be preparing detailed written discovery before conducting depositions of principals or fiduciaries. We anticipate that we should be able to begin Legacy Trust deposition discovery by January or February.
10. Plaintiffs' Experts- The Plaintiffs' experts have not yet been identified by the Plaintiffs pursuant to the current Scheduling Order. We have just received written discovery responses indicating that such experts will apparently be responsible for providing the bulk of the testimony regarding the existence or non-existence of any damages allegedly suffered by the Plaintiffs.

As to the remaining depositions, we will be noticing them according to the consent protocol, but are willing to accelerate the consent protocol in any reasonable manner acceptable to the Court and the Counterclaim Defendants.

As an update to written discovery, we have received certain basic, written discovery from Plaintiff/CC Defendants and have, within the week, received the Court Ordered verifications for Plaintiffs other than Venisha Brown. We will follow up on these matters, including the service of additional written discovery.

Because your Honor is in Bamberg and the file in Columbia, we are taking the liberty of attaching a copy of this letter to a very brief supplemental memorandum in opposition to summary judgment and in support of our other positions which will be served and filed this afternoon. Should your Honor wish that any of this be briefed in greater detail when the transcripts arrive, we will be happy to do so.

With kindest regards I remain

Very truly yours

A handwritten signature in black ink, appearing to be "W.H. Bundy, Jr.", with a large, stylized initial "W" and a trailing flourish.

W.H. Bundy, Jr.

Enclosures

cc: (by email only)
Adele J. Pope, Esquire
Adam T. Silvernail, Esquire
Daryl L. Williams, Esquire
Mark V. Gende, Esquire
Kenneth B. Wingate, Esquire
C. Havird Jones, Esquire

October 26, 2012

2:30 PM

1. The undersigned Daryl J. Brown, Janise Brown and Lindsey Brown certify that Louis Levenson is currently our lawyer and any reference to terminating the services of Louis Levenson or his firm is incorrect. The specific purported letter dated Sept 10, 2010 from Daryl J. Brown to Louis Levenson is clearly an error and is revoked and rescinded to the extent that it terminates our lawyer's responsibilities to us and to continue in his efforts on our behalf to enforce the terms of the Settlement in the James Brown Estate and Trust which is currently awaiting a decision by the Supreme Court of South Carolina.

2. We understand that we will not talk to any lawyers about our case nor allow anyone to talk to us about our case except through our lawyer Louis Levenson.

continued on page (2)

~~Witness~~
Daryl J. Brown
Janise Brown
Lindsey Brown
Cory Brown

~~Daryl J. Brown~~
Janise Brown
Lindsey Brown

3. We understand and agree that the left

will be provided to the SC Attorney General,

Judge Robert A. Early, Article 106 and

Russell. Bankright to inform them of our

current intentions and wishes regarding enforcing

the settlement agreement. Approved by Judge

Early and our intention to waive Mr.

Levi Levinson continue his representation of

our legal interests. Any statement to the

contrary in the letter dated Sept 19, 2010

were the result of us being misled about

the effects of the litigation or the settlement.

of the Estate and Trust. Litigation and we wish

to make it clear now that we do not wish to

oppose the settlement and will cooperate with all

efforts to preserve the legacy of James

Brown through his Estate and Trust as such

is set forth in the Settlement Agreement.

This 26 day of October, 2012

David J. Brown

James Brown

David J. Brown
James Brown

~~Witness
James Brown
David J. Brown
Witness
James Brown
David J. Brown~~

EXHIBIT B



Tomirae Brown

September 18 at 4:33am · 🌐

I told you that I would never say.... "I told you so".... when indeed, I am praying for our collective peace of mind. GOD BLESS YOU James Brown. We're almost free of this unnecessary torture. I know he would want me to thank you for all of your due diligence.

Mrs. Brown & James Brown II.



1.2K Views

👍 Like

➦ Share

👤👤👤 120

5 shares

27 Comments



Jeannie Mortensen Isn't there enough money for all? Did they say 37000 only for each child? Must be a misunderstanding?

Like · 🌐 3 · September 18 at 5:12am



Lynn Meinhold-Thomas on your side

Like · 🌐 1 · September 18 at 5:23am



Mary Kryah I support you baby!!

Like · 🌐 2 · September 18 at 5:30am

➦ Tomirae Brown replied · 1 Reply



Tomirae Brown Forgive me for what to some, may seem to be immature. In our defence... This all has been precipitated by Daryl Brown's comments both on television and in his autobiography /tell all book.... where in which Daryl is carelessly&wildly spewing his heartless diatribe of how our son & I. Who are blatantly referred to as... James Brown's partner and illegitimate child. Daryl insistantly Swearing that "my right hand to God... that is not my father's child"!... Well, two DNA tests later, and the senseless removal of one of my husbands legs. Just so they could test us properly??? Only to find that 99.999 % of his bone marrow actually proved to be (conclusively and finally). ONCE AND FOR ALL!!! To be his beloved son & namesake. James Brown II.

I remain humbled and forgiving of my step children. How ever.... in the absence of such an honest and stern father figure such as my husband. It is my duty as a wife and mother to try and teach them to be more respectful of their step mother, ill' brother and especially their Father. Because I love them all and only want what is best for our family!

God bless all of you. I love you and pray for you every day. I'm still here for you when you need to be reminded that you are all better than that. And we were all taught better than that by him as well.... Respect!!!

Like · 🌐 21 · September 18 at 5:46am

Defendant,

2017 APR - 6 AM 11:34
C.C.R. J.G.S.
um in support of
iously submitted
y to the section is

2088

Williams v. Condon, 553 S.E.2d 496, 509, 347 S.C. 227, 250 (S.C.App.,2001). Case law has extended the immunity of Attorneys General to civil actions undertaken by them such as enforcement of the charities laws here and would bar the counterclaims that Plaintiff has brought against the him in this action. The Attorney General is given specific enforcement authority as to public charities in the State including breaches of trust. S.C. Code Ann. §1-7-130. He is absolutely immune from the counterclaims against him.

Butz v. Economou, 438 U.S. 478, 516 (1978) is a basis for the numerous cases extending immunity beyond criminal prosecutions. The United States Supreme Court held that those officials who are responsible for the decision to initiate or continue a proceeding subject to agency adjudication are entitled to absolute immunity from damages liability for their parts in that decision. Applying *Butz* and other authority, the Fourth Circuit Court of Appeals in *Vosburg v. Department of Social Services*, 884 F.2d 133, 138 (C.A.4 ,1989) held that “Virginia State social workers are absolutely immune from liability resulting from their decision to file a removal petition.” See also, *Ostrzenski v. Seigel*, 177 F.3d 245, 251 (C.A.4, 1999).²

Mathis v. McDonough, 2014 WL 3894133, at *11 (D.Md.,2014) outlined much of the authority for applying absolute immunity outside of criminal prosecutions and found the Maryland Attorney General, a Maryland Assistant Attorney General and the Maryland Secretary of State absolutely immune for a TRO motion regarding production and distribution of a primary election campaign sample ballot. Citing *Butz*, *Vosburg* and *Ostrzenski*. the District Court held that “courts have found absolute immunity to apply to advocates in a number of other contexts

² “In sum, a physician requested by the Board to conduct a peer review performs a function analogous to a prosecutor reviewing evidence to determine whether charges should be brought. As such, absolute immunity is necessary to foster an atmosphere in which the peer reviewer can exercise his professional judgment without fear of retaliation.” *Ostrzenski*

beyond traditional criminal prosecutions, including where government attorneys pursue civil enforcement actions analogous to the proceeding at issue” As stated by *Mathis*:

In other instances, the Fourth Circuit and district courts within this Circuit have extended absolute immunity outside the context of traditional criminal prosecutions. See, e.g., *Pak v. Ridgell*, 2011 WL 3320197, at *7 (D.Md. Aug. 1, 2011) (concluding that “bar counsel prosecutors are afforded absolute immunity for conduct performed in a judicial capacity”), *aff’d*, 476 F. App’x 750 (4th Cir.2012), cert. denied, — U.S. —, 133 S.Ct. 1279 (2013); *Hunter v. Virginia State Bar*, 786 F.Supp.2d 1107, 1112 (E.D.Va.2011) (extending prosecutorial immunity to an assistant bar counsel); see also *Ostrzenski v. Seigel*, 177 F.3d 245, 250 (4th Cir.1999).

Courts outside the Fourth Circuit have reached similar conclusions, including in cases involving either assistant state attorneys general, civil enforcement actions, or both. See, e.g., *Skinner v. Govorchin*, 463 F.3d 518, 525 (6th Cir.2006) (extending absolute immunity to state assistant attorney general); *Fry v. Melaragna*, 939 F.2d 832, 837–38 (9th Cir.1991) (stating that “the principles outlined in *Butz* should a fortiori apply to the government attorney’s initiation and handling of civil litigation in a state or federal court” and extending absolute immunity to IRS attorneys who initiated civil tax litigation); *Murphy v. Morris*, 849 F.2d 1101, 1005 (8th Cir.1988) (extending absolute immunity to “the advocacy functions of a state assistant attorney general defending state officials” in civil litigation); *Barrett v. United States*, 798 F.2d 565, 571–73 (2d Cir.1986) (extending absolute immunity to state assistant attorney general in connection with defense of a civil suit); *Dukes v. Pappas*, 2010 WL 571779, at *8–9 (E.D.Pa. Feb. 17, 2010) (extending absolute immunity to Maryland assistant attorney general regarding conduct pertaining to civil enforcement action brought against plaintiff).

2014 WL 3894133, at *13 (D.Md.,2014).

Metro Charities, Inc. v. Moore, 748 F.Supp. 1156, 1163–64 (S.D.Miss.,1990) is directly on point in finding absolute immunity of the Attorney General and a Special Assistant Attorney General from Plaintiff’s suit against them for initiating a state civil action seeking to enjoin bingo games conducted by Plaintiffs.

Absolute immunity is afforded those charged with the civil enforcement of state laws. The attorney general is, under Mississippi law, the chief legal officer and adviser for the state, both civil and criminal and is charged with managing all litigation on behalf of the state.... He shall have the powers of the attorney general at *1164 common law and is given the sole power to bring or defend a lawsuit on behalf of a state agency, the subject matter of which is of statewide interest. Miss.Code Ann. § 7–5–1 (1972). At common law,

the state attorney general was vested with "the right to institute, conduct and maintain all suits necessary for the enforcement of the laws of the state, the preservation of order and protection of public rights." *Capitol Stages, Inc. v. State of Mississippi*, 157 Miss. 576, 128 So. 759, 763 (1930) (citing 2 R.C.L. §§ 4 and 5, at 915-17). The state court action was, therefore, a civil enforcement proceeding of the type for which absolute immunity applies.

* * *

Thus, regardless of their motivation in bringing the action, so long as defendants were performing a prosecutorial function, they enjoy absolute immunity from plaintiffs' claims relative to the civil proceeding. And in the court's view, it is manifest that in proceeding with the civil litigation before the chancery court, Moore and Warren were acting in their prosecutorial capacities on behalf of the state.

Metro Charities, Inc. v. Moore, 748 F.Supp. 1156, 1163-64 (S.D.Miss.,1990)

In *State v. Superior Court In and For County of Maricopa*, 921 P.2d 697, 700, 186 Ariz. 294, 297 (Ariz.App. Div. 1,1996), the Court applied absolute prosecutorial immunity to claims against the Attorney General for abuse of process and malicious prosecution for civil actions taken against the Plaintiff as to an adult care facility. See also, *Dinsdale v. Com.*, 675 N.E.2d 374, 377, 424 Mass. 176, 180 (1997) ("absolute immunity [extends] to government attorneys in their conduct of civil litigation as well").

Under the above authority from the United States Supreme Court, the Fourth Circuit Court of Appeals and numerous other courts, absolute immunity clearly extends to the Attorney General in this action so as to bar the counterclaims against him. Therefore, for this reason, and the others noted herein, his Motion to be Dropped as a Party should be granted.

Respectfully submitted,

ALAN WILSON
Attorney General

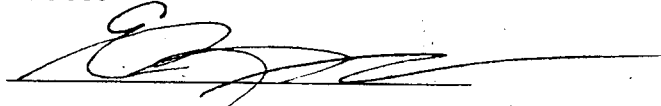
ROBERT D. COOK
Solicitor General
S.C. Bar No. 1373

[Signature block continues next page]

J. EMORY SMITH, JR.
Deputy Solicitor General
S.C. Bar No. 5262

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680

BY:

A handwritten signature in dark ink, appearing to be "J. Emory Smith, Jr.", written over a horizontal line.

APRIL 3, 2017

ATTORNEYS FOR THE ATTORNEY GENERAL



ALAN WILSON
ATTORNEY GENERAL

May 23, 2017

The Honorable Doyet A. Early, III
Judge, Second Judicial Circuit
P.O. Box 90
Bamberg, SC 29003

Re: Bauknight v. Pope 2010-CP-40-4900

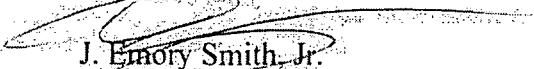
Dear Judge Early:

I enclose for your consideration the amended proposed order granting the Attorney General's Motion to be Dropped as a Party. I previously submitted an amended order last month, but I have made a few revisions in it since then which are reflected in the second paragraph on page 2 which continues onto page 3, in the first two sentences of the paragraph beginning at the bottom of page 4, in the last paragraph on page 5 which continues onto page 6 and in the addition of footnote 4 on page 5. Last month, I submitted a supplemental memorandum in support of the Motion and a reply to Ms. Pope's return.

I respectfully request that you not schedule any Court appearances or filing deadlines during my absence from the Office on May 26 and all next week for a family event and travel, and on my first day back in the Office on June 5.

Thank you for your consideration of this matter.

Respectfully submitted,


J. Emory Smith, Jr.

Deputy Solicitor General

803-734-3642 Direct -esmith@scag.gov

cc: Adam T. Silvernail, Esquire
Walter H Bundy, Esquire
M. Brent McDonald, Esquire
Daryl L. Williams, Esquire
Kenneth B. Wingate, Esquire

Mark V. Gende, Esquire
Everett A. Kendall, II, Esquire
J. Calhoun Watson, Esquire
Robin A. Braithwaite, Esquire

2093

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
Russell L. Bauknight, et al.
and
Alan Wilson, as Attorney General et al
Plaintiffs,
v.
Adele J. Pope
Defendant.

) IN THE COURT OF COMMON PLEAS
)
)
) Case No. 2010-CP-40-4900
)
)
)
)
) AFFIDAVIT OF HARLEY D.
)
)
)
)
)

2017 JUL 19 AM 10:52
JEANNE D. W. MCBRIDE
Clerk & G.S.
RICHLAND COUNTY
FILED

PERSONALLY APPEARED BEFORE ME, HARLEY RUFF, who being duly sworn, deposes and says:

1. I am over 21 years of age.
2. I am a Certified Specialist in Estate Planning and Probate Law.
3. On April 6, 2009 I qualified without objection as an expert in Estate Planning and Probate law and related tax matters in the case related to a settlement brokered by former Attorney General Henry McMaster related to the estate and 2000 Trust of entertainer James Brown.
4. I was examined on direct examination by James Bailey, Esq., attorney for James Brown's Estate and 2000 Trust..
5. I was cross examined by Alan Medlin, Esq. and Louis Levenson, Esq., both of whom represented persons who had contested Brown's estate plan, and who were parties to the McMaster settlement which was being considered by Judge Doyet A. Early, III.

6. It was my opinion to a reasonable degree of professional certainty, based on James Brown's Will, 2000 Trust and the portion of James Brown's estate tax return that I considered, that the McMaster settlement would increase the Federal Estate Taxes payable by James Brown's estate by millions of dollars.

7. At that time James Brown's Estate claimed an Estate Tax Charitable Deduction of \$83, 419,981 for assets passing at James Brown's death to The James Brown "I Feel Good" Trust, Brown's charitable foundation to educate needy students.

8. Under the McMaster settlement nearly 25% would pass to Tommie Rae, whose status as Brown's claimed spouse was disputed, and just over 25% to various claimed children of James Brown.

9. It was, and is, my opinion to a reasonable degree of professional certainty within my areas of expertise that the McMaster settlement, based on the Estate Tax Return as filed, would cause Brown's estate to incur many millions of dollars in estate taxes.

10. Because of the structure of James Brown's estate plan and the McMaster settlement, with \$2 Million without taxes going to James Brown's education trust for certain grandchildren, the value of all property passing to Brown's claimed children attracted an Estate Tax, which would have been several millions of dollars.

11. If instead of the \$84,114, 529 value of Brown Schedule F assets as shown on the Estate Tax return, the Schedule F assets were \$ 4.7 Million, there would still be estate taxes due under the McMaster settlement.

12. With a gross estate of approximately \$6.5 Million, if the IRS accepted the claim that Tommie Rae was Brown's spouse and entitled to a marital deduction, AND

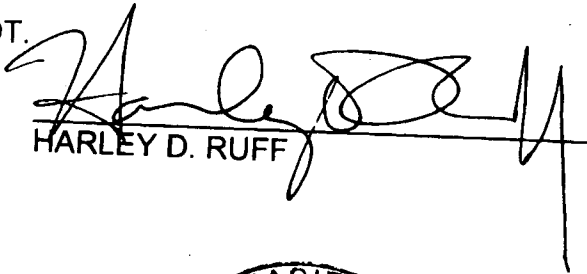
the Legacy Trust qualified for a charitable deduction, under the McMaster Settlement, about \$1.8 Million would be subject to estate taxes.

13. It was, and is, my opinion that there was substantial doubt as to whether the Legacy Trust created by Attorney General McMaster would qualify for a federal estate tax charitable deduction. It was also my opinion that the right of a family member to purchase the assets placed James Brown's charity in jeopardy of incurring excise tax as a result of self-dealing. Finally, it was my opinion that there was some doubt as to whether Tommie Rae would qualify for a marital deduction.

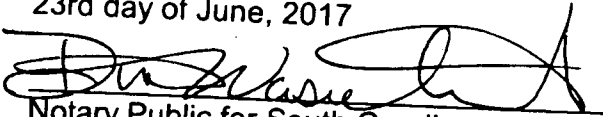
14. It was, and is, my opinion that seeking a private letter ruling from the IRS as to this complicated settlement proposal was appropriate.

15. The *Wilson v. Dallas* decision, by voiding the McMaster settlement, suspended some of the concerns I raised.

FURTHER DEPONENT SAYETH NOT.


HARLEY D. RUFF

SWORN TO before me this
23rd day of June, 2017

 (L.S.)
Notary Public for South Carolina
My Commission expires: 11/28/2022





ALAN WILSON
ATTORNEY GENERAL

July 26, 2017

The Honorable Doyet A. Early, III
Judge, Second Judicial Circuit
P.O. Box 90
Bamberg, SC 29003

Re: Bauknight v. Pope 2010-CP-40-4900
Response to Pope's Rule 59 Motion as to Order Dropping the AG

Dear Judge Early:

I would appreciate your accepting this letter request for dismissal of the above Rule 59, SCRCF, Motion to Alter or Amend filed by Ms. Pope as to this Court's Order of May 31 dropping the Attorney General as a party. She also makes this motion under Rule 52, but that rule does not appear to apply here as it is for actions "tried" and the Order at issue, instead, granted a motion.

Although Ms. Pope filed her Motion on or about July 19 after she had filed her Notice of Appeal dated July 12, this Court still has jurisdiction to dismiss this Motion. *Hudson v. Hudson*, 349 S.E.2d 341, 341-42, 290 S.C. 215, 216 (1986).¹ We respectfully request that this Court summarily dismiss the Motion.

The Motion is extraordinary in length – 54 pages with 247 numbered paragraphs alleging ways in which this "Court overlooked or misapprehended matters" and filled with vitriolic, baseless accusations about this case. Attached to the Motion is an affidavit not properly before this Court as it was prepared after this Court's Order.²

¹ "Service and filing of a Notice of Appeal before the filing of timely post-trial motions under Rule 59 by any party does not deprive the lower court of jurisdiction to consider the motions. . . . [I]n the event timely post-trial motions are filed under Rule 59, simultaneously with or subsequent to the filing of a Notice of Appeal, the appellant shall notify the Clerk of this Court in writing. Upon receipt of such notice, the appeal shall be dismissed without prejudice." *Id.*

² *Mozingo ex rel. Estate of Stewart v. Ford Motor Co.*, 2009 WL 9528979, at *1 (S.C.App.,2009)("a party cannot use Rule 59(e) to present new evidence to the court.")

The Honorable Doyet A. Early, III
Return to Pope's Rule 59 Motion
July 26, 2017
Page 2

The Motion lists seemingly countless complaints that Ms. Pope has about this case and other Brown or Pope cases over the years almost all of which have nothing to do with the grounds for the Order dropping the Attorney General. To address each one of her 247 allegations point by point would result in a return even more voluminous than the Motion, itself. Fortunately, the unnecessary, excessive length of this motion underscores its complete lack of merit.

The Motion to be Dropped was thoroughly briefed and argued and carefully considered by this Court. Ms. Pope has raised not one point that warrants reconsideration of this Court's Order. Absolute immunity bars the counterclaim against the Attorney General.

For the foregoing reasons, I respectfully request that the Rule 59 Motion be denied. Doing so serves the purposes of judicial economy by narrowing this litigation and in doing so, moving this case closer to resolution.

Thank you for your consideration of this matter.

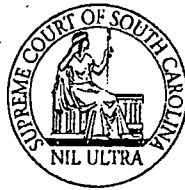
Respectfully submitted,



J. Emory Smith, Jr.
Deputy Solicitor General
803-734-3642 Direct -
esmith@scag.gov

cc: Adam T. Silvernail, Esquire
Walter H Bundy, Esquire
M. Brent McDonald, Esquire
The Honorable Jeanette W. McBride

Daryl L. Williams, Esquire
Kenneth B. Wingate, Esquire
Mark V. Gende, Esquire
Everett A. Kendall, II, Esquire



South Carolina Court Administration
South Carolina Supreme Court
Columbia, South Carolina

TONNYA K. KOHN
INTERIM DIRECTOR

1220 SENATE STREET, SUITE
200
COLUMBIA, SOUTH
CAROLINA 29201
PHONE: (803) 734-1800
FAX: (803) 734-0269

July 26, 2017

Via U.S. Mail and Email

Adam T. Silvernail, Esq.
adam@silvernaillawfirm.com
P.O. Box 7995
Columbia, SC 29202

RECEIVED

JUL 26 2017

SC Court of Appeals

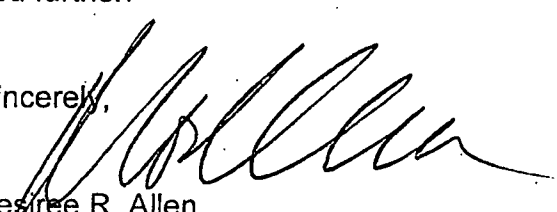
In re: Bouknight v. Pope, et al, 2010CP4004900

Dear Mr. Silvernail:

This is in response to your letter dated July 21, 2017, requesting a transcript from proceedings heard in 2012 from Crystal Holmes, a court reporter previously employed by this office.

When court reporters leave our employ, they have to deliver their records to us. In maintaining court reporter records, we adhere strictly to Rule 607, which requires that court reporter records be kept for five years. Therefore, the records to prepare a transcript from proceedings heard before July 2012 are no longer available. I am sorry that I cannot assist you further.

Sincerely,


Desiree R. Allen
Court Reporter Manager

CC (via email): J. Emory Smith, Jr., Esq. (esmith@scag.gov)
Mark V. Gende, Esq., (mvg@swblaw.com)
Walter H. Bundy, Esq., (walter@bundymcdonald.com)
Adele J. Pope, Esq., (adele@popelawfirm.com)

Jenny S. Kitchings, Clerk, S.C. Court of Appeals ✓

2099

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

) IN THE COURT OF COMMON PLEAS
) SECOND JUDICIAL CIRCUIT
)
)

RUSSELL L. Bauknight, as Trustee,
and others

Case No.: 2010-CP-40-4900

and

ALAN WILSON and others,

Opinion/Affidavit of William Jeffrey Smith

Plaintiffs,

v.

Adele J. Pope,

Defendant

FILED
2010 JUL 14 PM 2:01
JANETTE W. MCBRIDE
C.C.P. & G.S.

PERSONALLY APPEARED BEFORE ME, WILLIAM JEFFREY SMITH, who
being duly sworn, deposes and says:

1. I am over twenty one years of age, and give the opinions stated herein based on personal information, and, within my area of expertise, to a reasonable degree of professional certainty.
2. I am a graduate of Georgetown University Law Center and a former patent examiner with the United States Patent and Trademark Office.
3. I was engaged in June 2008 by the Estate of James Brown and the James Brown 2000 Irrevocable Trust to explore issues related to the protection of James Brown's "I Feel Good" Charity from the premature and/or improper exercise by heirs and claimed heirs of Federal Copyright Act Termination Rights, which would begin to come into play in 2012.
4. Shortly after I was engaged Attorney General Henry McMaster brokered a

settlement deal which stopped the Estate's official DNA testing program; declared Tomirae, Brown's companion, would be stipulated to be his spouse; and declared that fewer than half of Brown's claimed children, along with Tomirae's son, would be Brown's heirs.

5. I did not continue to work after August 12, 2008, the day the McMaster settlement was announced, but I have remained interested in Brown's music and copyright issues related to his estate.

6. I was engaged by Defendant as an expert in this case and in Aiken County Case 2013-CP-02-1337 in 2016.

7. I have not been deposed in this case, but have been deposed in the Aiken Case, and incorporate herein in its entirety my opinions as stated in my deposition.

8. In addition, I have review the non confidential parts of many depositions of experts in this case, as well as the Aiken case, and attach parts of a number of those depositions to this Affidavit.

9. My review of these depositions, especially the depositions of Plaintiffs' Termination Rights experts Roger Miller and Jonas Herbsman, and the depositions of Russell Bauknight, provide further support for my opinion that the Attorney General's in action taking over James Brown's assets; terminating the heirs proceeding that Robert Buchanan, Jr. and Adele Pope were conducting for James Brown's estate; and then devaluating Brown's music empire to damage Mr. Buchanan and Mrs. Pope caused James Brown's "I Feel Good" Charity great damage, as it did Mr. Buchanan and Mrs. Pope.

10. I am informed and believe that the incorrect representation made to the

Supreme Court by the Attorney General and Tomirae to support their efforts to take over the assets James Brown gave his "I Feel Good" Charity damaged Mr. Buchanan and Mrs. Pope in their efforts to protect the "I Feel Good" Trust and its 900 copyrights for needy students. They said in part:

This IRS finding music empire] , based upon its own independent review and valuation, directly and incontrovertible refutes Appellants' contention that: (1) the Settlement Agreement will cause the Estate to lose the charitable deduction; (2) that the Settlement Agreement creates additional tax liability; and (3) that on the date of death the Estate was worth \$80 - \$120 Million dollars. Absent the inclusion of the Supplemental Inventory and Appraisal, the IRS Audit and the Closing Letter, the Court is left with a factual and legally inaccurate probate and circuit court record...

CONCLUSION ...Absent a complete record, this Court does not have an accurate picture of the underlying probate proceeding. As a result, Appellants may inequitably benefit through their own fiduciary inaction in failing to properly value the Estate and in turn claiming a right to receive a \$5 Million dollar commission.

...
F4 Appellants are presently pursuing a \$5 Million dollar fee petition against the Estate and Trust based upon their incorrect representation that the Estate and Trust was worth approximately \$80 - \$120 Million. (Rpp.2879-80)

11. I am informed and believe that Attorney General's and Tomirae's inaccurate claims a few weeks later continued to damage Mr. Buchanan and Mrs. Pope in their efforts to protect the "I Feel Good" Charity and its copyrights. They said:

In fact, the IRS tax records reveal that the Settlement Agreement benefitted the Estate in that it no longer owes any federal estate taxes. Moreover, the IRS records show that the Estate/s charitable deduction was not impacted by the Settlement Agreement and further, that the Estate was able to favorably utilize the marital deduction because of the Settlement Agreement. All of this reveals that Appellants' assertions in their brief regarding the alleged negative tax consequences that would flow from the Settlement Agreement are patently incorrect. These official IRS documents are relevant to the current appeal, as they are records of the Estate that contradict Appellants' misleading valuation and tax assertions contained within their brief. [Emphasis supplied.]

...Appellants intimate the appraisal is not legitimate. . . the IRS has accepted the date of death valuation of the assets; it has the final word in this matter.

The Court should supplement the record on appeal to include the IRS tax records, and the Supplemental Inventory and Appraisement...

... Not once did the circuit court order approving the Settlement Agreement address asset valuation... Appellants' myopic focus on asset valuation can only be explained, then, by one fact: their nearly \$5 Million personal representative fee petition. R. Pp.3879-80) If the valuation of the assets asserted by the Appellants falls, then their fee petition and credibility falls with it. As explained below, the valuation asserted by the Appellants is based on pure speculation and unsupported by their own citations...

No One Ever Made an Offer

The [willing buyer/willing seller] argument is inapplicable here, however, because no one ever made an offer...Every valuation Appellants rely upon is nothing more than speculation.

Appellants have misrepresented to this Court the 'offers' were made to the Estate and Trust to buy its assets:

... At the date of James Brown's death, the intellectual property assets of his estate were worth roughly \$4.7 Million...

Appellants' opposition to the supplement is simply an attempt to appear credible regarding their fee petition. The basis for their valuation argument has been shown to be groundless....

12. After the *Wilson v. Dallas* decision the Attorney General continued his alliance with Tomirae and support of Mr. Bauknight and Mr. Bauknight continued to attack Mr. Buchanan and Mrs. Pope despite public documents which showed Mr. Bauknight had valued Brown's Right of Publicity at zero, and overstate Brown's deductions in the IRS estate tax proceed by \$5 Million. In a deposition given August 20, 2013 deposition in Case 3:08-cv-00014-WOB, Mr Bauknight, talking about the PBW \$4.7 Million "appraisal" said:

Page 54

2 Q: What information did you provide to Philpott

3 Ball for use in this evaluation?

4 A: Information I obtained from Ms. Pope and Mr.

5 Buchanan.

6 Q: Numbers?

7 A: Excuse me?

8 Q: That would be basically numbers?

9 A: That would be approximately 180 boxes of stuff

10 that I obtained from Pope and Buchanan....

Page 55

1 A: I don't know what a Bates stamp is, so ---

2 Q: The second paragraph on that page is a general

3 introduction to a list of what are called

4 general assumptions. The second sentence of

5 that paragraph reads, these general assumptions

6 have been made based on conversations with

7 persons familiar with the estate and the music

8 industry and a commonsense view of business and

9 popular culture. Do you see that sentence?

10 A: Yes.

11 Q: Who would the persons familiar with the estate

12 have been, to your knowledge?

13 A: At this point I can only assume me, possibly

14 Peter Afterman. I don't know who else. I

15 don't recall. It's been several years.

16 Q: I understand, but you're the only person I have

17 to ask.

18 A: I hear you.

19 Q: Do you know who the persons familiar with the

20 music industry would have been?

21 A: I don't know who they spoke with other than the

22 person I've just mentioned here.

23 Q: And the commonsense view of business and

24 popular culture would have been anyone other

25 than theirs, to your knowledge?

Page 56

1 A: No. These are the valuation experts. These

2 are actually the same experts Adele Pope has

3 used in the past. They're nationally known
4 experts. How they -- you know, I'm not a
5 valuation expert. I went out and hired the
6 best I could find to do this valuation. But
7 how they did their job I -- you know, I don't
8 know. I'm not a valuation expert. The people
9 they spoke with, I'm sure they, as part of
10 their business, know who to talk to about
11 different industries that they're valuing. But
12 I don't know who they spoke with. I would just
13 tell you I went out and hired competent highly
14 respected professionals to do what Adele Pope
15 and Bob Buchanan should have done the moment
16 they were involved in this estate instead of
17 guessing. Taking somebody's letter of interest
18 and throwing \$100 million on a federal estate
19 tax return and a probate form so that they can
20 jack up their fees. They were self-serving in
21 the number they chose. Had no basis
22 whatsoever, in fact. And they didn't even
23 bother to hire somebody to do a valuation. I
24 went out and hired competent respected
25 professionals. I would further say that my

Page 57

1 competent respected professionals then had to
2 sit down with the highly respected well known
3 valuation team from the Internal Revenue
4 Service out of, I believe, Kansas City. People
5 who value assets like this. Royalty streams.
6 They brought their royalty stream experts in.
7 Those people sat down with my experts and
8 agreed. We put the right value on the 706, and
9 Adele Pope's value was disregarded. So other
10 than that, I don't know how else they did their
11 job.

Page 62

17 Q: Have you ever seen any court documents from
18 Aiken County regarding a formula to value the
19 royalties of James Brown's works?

20 A: A formula?

21 Q: A formula approved by the court for ---

22 A: Approved by the court.

23 Q: Yes, sir.

24 A: I've heard discussion of people -- I want to

25 say Adele Pope had some kind of testimony

Page 63

1 somewhere, but I don't know where I've seen it,

2 where people were talking with -- talking about

3 some kind of formula for valuing royalties.

4 But approved by the court, I'm not familiar

5 with that. And frankly, that wouldn't matter

6 to the IRS anyway. The IRS is going to use the

7 values that they choose and can substantiate as

8 appropriate for their purposes.

Page 65

2 Q: Any other areas of criticism?

3 A: I couldn't begin to get into all of them...

8 ... They failed to even review the 706

9 that they filed, because they had testified in

10 court -- I believe Adele Pope testified in

11 court it contained some unknown person's

12 schedule of assets in the 706 that they filed

13 with the IRS and they didn't even know it. You

14 know, it seems to me if you file a tax return

15 and sign it, you ought to know what's in there...

Page 68-70

14 Q: Yes.

15 A: Well, let me just clearly say, the Terry Cox

16 letter of interest -- I have spoken with Terry

17 Cox about that supposed letter of interest.

18 Yes, I've seen that letter of interest. Terry

19 Cox laughs at that letter of interest and said

20 it was never intended to be an offer. Maybe

21 you all should follow up with Terry Cox on

22 this, because your client has made some just

23 fantasy statements by way of Sue Summer in the

24 Newberry paper about this \$100 million value...

Page 69

4 ... Well, if your clients are so naive
5 and inexperienced as they are in this industry
6 and trying to do this job that they believe
7 that, they're foolish. And to this day she
8 spouts that off like it's a fact. She's
9 showing her total lack of business experience
10 in dealing with a letter of interest. It's
11 simply something designed to peak interest so
12 you can get your foot in the door to look at
13 documents to see what's really there. And
14 that's all Terry Cox ever intended. And
15 frankly, when he got in the door and he did see
16 what was here, he agreed. There's no way to
17 sell these assets. And frankly, your client
18 doesn't even understand enough to know that
19 there's no way to sell these assets...

Page 70

...
2 Q: That doesn't ring a bell to you?
3 A: No. I wasn't aware that anybody else had ever
4 offered to buy any assets, not that anybody has
5 ever offered to buy assets. But the only one
6 I've ever heard referred to by Pope is this
7 supposed offer from Terry Cox which never was
8 an offer. She put \$100 million out there so
9 she could collect a \$5 million claim which
10 she's filed. Purely self-serving. Purely self-
11 serving. Selling assets of the estate to take
12 money for herself and leave it insolvent.
13 Purely self-serving. I'm sorry. I get carried
14 away. I get passionate about something I'm
15 working on when I see such wrong doing.

13. Mr. Bauknight and the Attorney General have continued to claim that James Brown's copyrights were worth only \$4.7 Million, and his Right of Publicity zero, when he died despite strong evidence to the contrary. In his January 31, 2011 ^{WJ} deposition

Mr. Bauknight again attacked Mr. Buchanan and Mrs. Pope for what we know was a very conservative value of \$84 Million. Mr. Bauknight said:

10 RESUMING EXAMINATION

11 BY MS. POPE:

**12 Q. Is there any reason why you didn't designate
13 anyone at Philpott Ball as an expert in this case?**

**14 A. I designated experts based on advice of my
15 attorneys.**

**16 Q. So you don't know why someone in Philpott Ball was
17 this not designated?**

18 A. I don't know.

**19 Q. And Philpott Ball is the firm that valued James
20 Brown's music empire at less than 4.7 million as
21 of the date of his death?**

**22 A. I don't agree with your term "empire." I don't
23 know where you came up with that, but the
24 intellectual property of the estate and trust of
25 James Brown was valued by Philpott Ball and**

Page 38

1 Werner.

**2 Q. Well, actually, Mr. Bauknight, isn't the Schedule
3 F not simply the intellectual property, but the
4 entire music empire?**

**5 A. I'm not sure what you're referring to at Schedule
6 F and if you'd let me, please, before you
7 interrupt, I'd like to finish my answers. You're
8 starting to speak before I finish.**

**9 Q. Oh, I certainly want you to finish. Please let's
10 do not speak over each other. Do you believe that
11 James Brown had a music empire?**

**12 A. I believe James Brown had intellectual property.
13 I don't understand what you mean by empire...**

Page 57

**9 Q. Now, am I correct that you valued Mr. Brown's
10 intellectual property in filings with the IRS at
11 less than 4.7 million as of his date of death?**

12 A. It was -- well, number one, I did not value it.

13 That was the investment banking firm of Philpott
14 Ball and Werner that prepared the professional
15 valuation of the IP of James Brown. I reported
16 that value to the Internal Revenue Service. That
17 value was examined by the service at the agent
18 level, was reviewed by the agent's manager. That
19 was forwarded to the national office of the
20 Internal Revenue Service and the Internal Revenue
21 Service national office brought in the royalty
22 engineers, as they called them, which are the
23 royalty experts, who spoke directly with my
24 investment banking firm of Philpott Ball and
25 Werner, and those royalty examiners for the

Page 58

1 service agreed with the valuation done by my
2 experts. To my knowledge, that's the only
3 valuation that has been done on Mr. Brown's IP...

14. Mr. Bauknight's Termination Rights expert in this case, however, who
was disclosed last year, contradicted Mr. Bauknight and made the \$84 Million
value Mr. Buchanan and Mrs. Pope put on Brown's assets appear conservative.
Under oath at his deposition on March 16, 2017 Mr. Miller said:

Q. Right, so but buy low is still essential to the concept, right?"

A. [Miller] When possible.

Q. Right.

A. But, in my experience, if you want to buy this type of high quality content, you
are often, more so than not, a price taker, not a price maker in the market.

Q. So, you think James Brown's assets were very spectacular assets, don't you?

A. Solid gold.

Q. Solid gold, right, right. [Depos. Miller, 17, p. 10.]

And:

Q. And there is nothing second [sic.] secret about your opinion that James Brown's is
a solid gold catalog?

A. No. I think anybody would agree.

Q. Okay.

A. Who is familiar with the work.

Q. Okay. And there is nothing secret about your opinion that 15 to 20 times multiples [\$45 - \$60 Million] would not be an unreasonable value for James Brown's catalog?

A. No

Q. Nor would it have been when he died?

[Objection/response]

A. When he died valuations were as frothy, if not more so. There was an initial, what I call influx of private equity in the space around 2004 and '5... But there was a time when 20 times multiples was a pretty common multiple of pay for very high quality assets like this.

Q. Okay. And let me just ask you this, because you know all of this and I don't, but when there was the general downturn in 2008, is it fair to say that these kinds of assets held their value as well as anything else?

A. It is.

Q. Or even better?

A. Yeah, I would say even better...

15. In addition to the Attorney General's and Tomirae's own expert, many Plaintiffs have disagreed with the Attorney General and Mr. Bauknight about Mr. Bauknight's valuation; Tomirae's claim to be Brown's spouse; and other positions Tomirae, the Attorney General and Mr. Bauknight continue to take. Brown's grandson Jason Brown-Lewis has recently made statements under oath contrary to the Attorney General's and Bauknight's claims. Excerpts from his June 29, 2017 deposition in this case are set out below:

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
RUSSELL L. BAUKNIGHT, et al.,)
and ALAN WILSON, et al.)

Plaintiffs,

VS.

ADELE J. POPE,

Defendant.

)

)

) No. 2010-CP-40-4900

)

)

)

)

)

DEPOSITION OF JASON BROWN-LEWIS

LOS ANGELES, CALIFORNIA

THURSDAY, JUNE 29, 2017

REPORTED BY:

LINDA D. WHITE

CSR NUMBER 12009

54...

14 Q. See if I can jog your memory. Do you know

15 that one of the allegations in your Complaint is that

16 Adele Pope and Bob Buchanan should have accepted

17 \$100 million offer for James Brown's assets in 2007?

...

20 THE WITNESS: I do know of that Complaint, yes.

21 BY MR. SILVERNAIL:

22 Q. Were you aware of the \$100 million offer

23 itself?

24 A. I wasn't aware of it being an offer. I was

25 aware of it being an estimate of the value of the

55

1 Estate.

2 Q. And when did you become aware that that was an

3 estimate of the value of the Estate?

4 A. About 2013, 2014. Something like that. 2012,

5 2013.

6 Q. Did you know anything about the value of the

7 Estate between Mr. Brown's passing and then?

8 A. No.

9 Q. Do you have any opinion today about what the

10 value of Mr. Brown's Estate is?

11 A. Yes.

12 Q. What you think?

13 A. My opinion is: If it's -- if somebody's

14 willing to pay \$100 million, or if it's being estimated

15 by an outside party as \$100 million, it's worth double
16 or triple that...

18 Q. Do you know who was?

19 A. No. Yes. Tommie Rae was involved selling
20 songs and her lawyers.

21 Q. Do you know who her lawyers are?

22 A. Yeah, Rose and [sic.] something. It's the guy with
23 the bow tie. Am I right?

24 MR. KENDALL: You're right.

25 MR. SILVERNAIL: That's a fair identification.

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1 MR. KENDALL: We know who that is.

2 THE WITNESS: I think Peter Afterman.

...
19 Q. And do you remember that the Estate had set up
20 a D.N.A. protocol to test anybody who claimed to be an
21 heir?

22 A. Yes.

...
14 Q. Now, there were a couple of folks that you
15 listed as children of your grandfather earlier who you
16 didn't just mention in that list of people who took
17 D.N.A. tests. If I'm hearing correctly, I did not hear
18 Larry Brown or Daryl Brown, do you know whether they
19 took D.N.A. tests at all?

20 A. I know Daryl did. I know Larry refused.

21 Q. And?

22 A. Or I believe. This is what I have an
23 understanding of.

24 Q. And do you -- have you heard anything about
25 what the results of Daryl's test were?

67

1 A. That he's not my granddad's biological child.
2 Q. Okay. To your knowledge, Larry has never, to
3 date, taken a D.N.A. test?
4 A. To my knowledge, no.
5 Q. Okay. Now, some of the people who were
6 identified as biological children of your grandfather
7 were not mentioned in his Will or Trust, correct?
8 A. Right.
9 Q. But do you understand that all biological
10 children have the same rights as one another under the
11 copyright statutes?
12 A. I do.
13 Q. And do you believe that makes it important to
14 determine who the biological heirs are?
15 A. Yes.
16 Q. Do you believe that process is complete?
17 A. No.
18 Q. And included in that process would be the
19 determination of whether there was a spouse who survived
20 Mr. Brown, correct?
21 A. Yes.
22 Q. And I think I heard you say earlier that that
23 was up on appeal?
24 A. Yes.
25 Q. Do you think Tommie Rae and her son should get
68
1 more than half of your grandfather's copyright rights?
2 MR. KENDALL: Objection.
3 THE WITNESS: No.
4 BY MR. SILVERNAIL:
5 Q. Did you know that Mr. Buchanan and Ms. Pope
6 worked from 2008 until 2013 to try to avoid that result?
7 MR. KENDALL: Objection.
8 THE WITNESS: No.
9 BY MR. SILVERNAIL:
10 Q. Do you have any opinion of what the value of
11 your grandfather's Estate is generally?
12 A. Yes.

13 Q. Tell me what that is.

14 A. At this point, I'm content -- well, I have the
15 same opinion of it being \$100 million.

16 Q. You believe that is the value?

17 A. At this point, yes.

18 Q. And do you believe it's ever been less than
19 \$100 million since he passed away?

20 A. No, it's only gone up since then.

21 Q. Now, are you aware that your grandfather had a
22 Will and Trust from 1999?

23 A. Yes.

24 Q. Are you aware that they're generally similar
25 to the last Will and last Trust he had from 2000?

69

1 A. Yes.

...

15 Q. Now, after your grandfather passed away, have
16 you ever seen documents that are sometimes referred to
17 as Tommie Rae's diaries?

18 A. I have not seen them.

19 Q. Are you aware of them?

20 A. I am....

25 And I know that there was also an issue
73

1 brought up about a reporter who got a hold of them and
2 they went public. However, the courts tried to shut it
3 down, but it became public again or something like that.
4 So I know there was a fiddle around with the diary.

...

13 Q. Do you have any idea what your grandfather's
14 personal property -- and personal property being
15 furniture, collectables, photos, items around the house
16 more or less, do you have any idea what his personal
17 property would be worth?

18 A. Is this my opinion or is this factual?

19 Q. I'm asking you if you have any idea
20 personally.

21 A. So you saying all the items in the house, the

22 house, the land, the things in the land?

23 Q. No, I'm not including the home itself, the
24 buildings. I'm talking about the stuff that could be
25 picked up and taken away.

84

1 A. Everything that was in that house I would
2 probably estimate it, to give you my best opinion, I
3 remember the Christie's sale didn't make anything near
4 what we were expecting. But I would estimate all that
5 stuff to be \$1 million to \$1.5 million.

6 Q. Did you attend the Christie's sale?

7 A. Not at all.

8 Q. Did your mom?

9 A. I think she did. If she didn't attend it
10 physically, she attended it telephonically.

11 Q. Do you know whether any members of the family
12 purchased items at the Christie sale?

13 A. My mother purchased an item.

...

1 Q. Now, do you remember what the Christie's sale
2 brought in?

3 A. Was it \$800,000, something like that? How
4 much was it?

14 Q. And do you recall whether you or any members
15 of your family tried to stop the Christie's sale from
16 occurring?

17 A. Yes.

18 Q. And was that you?

19 A. I believe I was a part of that on paper. I
20 can't remember if I was of age then.

21 Q. It was held in July of 2008.

22 A. Then yes, I was a part of that.

23 Q. And was your mother a part of it?

24 A. Yes.

...

86

...

9 Q. Did you know that Judge Early, who was
10 presiding over the Estate proceedings, had approved the
11 Christie's sale and directed it to take place in two
12 Orders?

13 MR. KENDALL: Object to the form.

14 THE WITNESS: I didn't know it was two. I thought
15 it was just one, but I'm not surprised with two.

16 BY MR. SILVERNAIL:

17 Q. And have you ever seen the document Christie's
18 produced? It was entitled "Selection for Sale"?

19 A. Is it the booklet with all the photos in it?

20 Q. Prior to that.

21 A. No.

22 Q. So you weren't aware that the exact items
23 which Christie's would auction were presented to the
24 Court and that that selection for sale was circulated to
25 all the parties in that case?

87

1 A. No.

2 Q. And did you know that the judge had offered a
3 process for family members to ask to withhold certain
4 items?

5 A. No.

6 Q. So I can anticipate the answer, but just to be
7 clear, were you aware that none of Mr. Levenson's
8 clients made a request to withhold any item from the
9 sale?

10 A. No.

11 Q. And did you personally communicate any
12 requests to withhold any item from the sale to anybody
13 other than your lawyer?

14 A. I didn't.

...

25 Q. You don't have any idea what your
89

1 grandfather's music brings in in a year?

2 A. I have an idea.

3 Q. What's your idea?

4 A. \$2- to \$4 million a year.

5 Q. And did that change any after your

6 grandfather's passing?

7 A. It fluctuated a bit higher and then lower.

8 And then when the movie came out, higher.

9 Q. Do you have any expectation that your

10 grandfather's music will begin a general consistent

11 decline anytime in the near future?

12 A. Yes, it would, just as everything fades away

13 at some point.

14 Q. Do you think that -- do you expect that in the

15 next four or five years or are we talking over decades?

16 A. We're talking over the next 30 to 40 years,

17 maybe even longer till my grandad's music dies.

18 Q. Would you agree with me?

19 A. Actually, my granddad's music will never die.

20 He's the most sampled artist in the world. And he's

21 also Michael Jackson's biggest idol. He will never die

22 and neither will his music.

....

25 Q. And so you are aware that there's a pending

93

1 dispute between the Michael Jackson's estate and the IRS

2 about valuation of some aspects of his estate?

3 A. I'm somewhat aware, but I'm not fully

4 knowledgeable.

5 Q. Were you aware that the dispute seems to be

6 that the estate believes Michael Jackson's image and

7 likeness was worth approximately \$2,100 and the IRS

8 believes it was approximately \$430 million?

...

6 Q. Now, take a look back through. And I tell you

7 what, we're short on copies of this one. I'm going to

8 hand this back to you, turned over to Page 5. And the

9 answers to Interrogatory Number 8 there, particularly

10 8A, which I believe generally asks for identification of

11 anybody to whom Tommie Rae Hynie had been married,

12 correct?

13 A. It does state that.

14 Q. And is it correct that the response provided
15 in bold is that responding parties only know of a
16 marriage to Javed Ahmed, possible past addresses in
17 Texas; is that correct?

18 A. That's what it reads, yes.

19 Q. Okay. So as of March 4th, 2008, when this
20 document is dated on Page 6, the members of your family
21 represented by Louis Levenson were taking the position
22 that Tommie Rae's only marriage had been to Javed Ahmed,
23 correct?

24 MR. KENDALL: Object to the form.

25 THE WITNESS: Yes.

11 Q. Okay. Do you know who Ray Charles is?

12 A. Yes.

13 Q. Are you aware that he left behind a charitable
14 foundation?

15 A. Yes.

16 Q. Have you heard anything about what the value
17 of that foundation is?

18 A. No.

...
24 Were you aware that Ray Charles's foundation
25 was approximately \$50 million?

110

1 A. No. This is his foundation, not his estate?

2 Q. Yes.

3 A. Okay.

4 Q. Do you think James Brown's foundation should
5 be at least that much?

6 A. Well, to my knowledge, I don't know there
7 being a James Brown foundation.

8 Q. I'm referring to the James Brown I Feel Good
9 Trust.

10 A. It's -- I mean, not trying to sound arrogant
11 here, but James Brown did more physically and during his

12 life. I would -- I would speculate that it would be
13 worth a bit more than \$50 million, but it would be in
14 the same ballpark.

3 Q. Now, earlier today I think you -- and correct
4 me if I'm misremembering or misunderstood -- but I think
5 you told me that you thought the things in your
6 grandfather's house, exclusive of the house and the
7 property itself might be worth \$1 million to a million
8 and a half dollars?

9 A. On the low end, yes.

10 Q. Did you know Mr. Bauknight had valued that
11 property at close to or maybe zero?

12 A. No.

13 Q. I think this is obvious. But just for the
14 record, does that sound like a reasonable valuation to
15 you?

16 A. No.

16. I was designated as a witness in this case more than six months ago, but Plaintiffs have not tried to depose me. If they did, my testimony would be similar to my opinions stated in the article I wrote with Mrs. Pope in 2011, *Private Foundations, Copyright Heirs and Musical Millionaires: why the James Brown "I Feel Good" Trust doesn't...*, and my sworn testimony given in Aiken Case No. 2013-CP-02-1337 on March 14, 2017. My opinions, given to a reasonable degree of certainty within my areas of expertise, are set out in part below:.

7 Q Okay. And then you've got a stack of
8 something underneath that notebook. I don't know
9 if I've seen that yet.

10 A Well, for instance, this is about what's
11 going on in the Prince estate. And, of course,
12 looking at the Prince estate, it's partly to see

13 the value of some of these musicians' estates when
14 they die and how much money is involved with both
15 Michael Jackson, Ray Charles, Prince, and the
16 valuations of their estates and how it can run into
17 the hundreds of millions of dollars, whether it's
18 publicity rights, copyrights or different things
19 like that, and some of the problems with
20 determining heirs and how important it is to
21 determine the heirs in these situations.
22 But, of course, but every -- each case is
23 different. Prince estate, no will, but it's still
24 very important, obviously, to find the heirs and
25 determine who the heirs are because of copyright
Page: 27

1 terminations.

2 MR. WILLIAMS: In case you didn't catch
3 it, he's saying Prince's, as in the late --

4 THE WITNESS: Yeah...

...

19 Q Let me --

20 What was the artificial devaluation of
21 Brown's assets described in paragraph 7?

22 A Well, I've seen the papers -- we've got a
23 list of -- I might have to find that piece of
24 paperwork later.

25 I guess it was basically the idea that we
Page: 84

1 all know about the -- what the royalty interests
2 were, but image and persona and the idea that --
3 I've studied -- I know about the -- what's going on
4 in the Ray Charles estate, the Prince estate,
5 Michael Jackson estate, and the amount of money
6 that's being talked about is anywhere from a
7 hundred million to 250 million or more in some of
8 those estates, and there's no reason why -- I don't
9 see any reason why the James Brown estate wouldn't
10 be in that same ballpark.
11 And it seems obvious that it was based on

12 the income at the time and all the publicity rights
13 and all the different things that going -- the idea
14 of going from, you know, 84 million to -- or in the
15 realm of a hundred million down to 4.7 million just
16 seems unbelievable. I mean, it's just -- you know,
17 it's like a factor of 10. You know, if it was a
18 small percentage ...

19 But to do something that's more than a
20 factor of 10, that's -- to me, that's an artificial
21 devaluation; I mean, that there's no -- there was
22 no basis for that.

...
Page 85

16 Q How are the other what you called music
17 empires similar to the estate of James Brown's?

18 A You say how are they similar? That's the
19 question?

20 Q How do you compare them?

21 A Well, I compare them by time period,
22 general popularity of the person, the known -- the
23 worldwide recognition of the person, the popularity
24 of their songs, the sampling, the publicity. Just
25 the career.

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1 When somebody writes and performs
2 songs -- I mean, not only just performs songs. I
3 mean, there's obviously been a lot of performers
4 over the years, but, I mean, somebody -- the people
5 who actually writes songs -- see, you're back in
6 the copyright area -- but performance and persona
7 for decades, those estates know that they have
8 ongoing values of hundreds of millions of dollars
9 sometimes.

10 I mean, Elvis died 40 years ago, and a
11 lot of people don't know anything about him but his
12 estate is generating a tremendous amount of money
13 now, and Michael Jackson and Prince are gonna be
14 probably way beyond that, probably because they

15 wrote a lot more of their songs, they're just more
16 well-known worldwide probably, and -- so that --
17 And, once again, it's not the particular
18 number as far as what you mentioned, the
19 84 million, but the idea of saying something --
20 4.7 million, given the amount of money that was
21 coming in for all kinds of different situations per
22 year, it just -- that seems very artificial to me.
23 Seems very unreasonable.

....

11 Q Your opinions that you have given include
12 the opinions stated in the article "Private
13 Foundations, Copyright Heirs and Musical
14 Millionaires"?

15 A Yes.

16 Q "Why the James Brown 'I Feel Good' Trust
17 doesn't" ...

18 Is that correct?

19 A That's correct.

20 Q I'd like you to look at that article and
21 see if there's a section in that article called
22 "Almost nothing."

23 A Yes. I see it.

24 MS. POPE: Before we begin, let's mark
25 that, please, as an exhibit.

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...

17 Q And does the article deal with a concern
18 about a devaluation of James Brown's assets as well
19 as other copyright concerns?

20 A Yes, it does.

21 Q And at that time, was the case now known
22 as Wilson versus Dallas on appeal?

23 A Yes.

24 Q It was on appeal to set the scene from
25 about May of 2009 until 2013?

Page: 125

1 A Yes. Of course, that's when the decision

2 came out, yes.

3 Q Okay. At that time, had Sonny Jones and
4 others announced that an appraisal would be
5 forthcoming that would show James Brown's assets to
6 be less than \$12 million?

7 A Yes. That's right.

17. Nothing in the sworn deposition testimony of the Attorney General's and Tomirae's experts desingnated in this case, but deposed in other cases, persuades me to change my position that the Attorney General, Tomirae and Bauknight intentionally devalued James Brown's assets by tens of millions of dollars to damage Mr. Buchanan and Mrs. Pope in the eyes of the Supreme Court, but Attorney General's alliance with Tomirae and those false devaluation and filings, through Bauknight, also severely damaged The James Brown "I Feel Good" Charity and its 900 copyrights.

18. I do not find anything in the expert, party and lay witness depositions I have reviewed which refutes my opinions or provides any support for the Attorney General's and Bauknight's devaluation of James Brown assets to less than 1/10 of their real value in order to attempt to discredit Mr. Buchanan and Mrs. Pope.

19. The deposition of the Attorney General's and Tomirae's expert Jonas Herbsman, Esq., at his deposition on March 17, 2017 in Aiken County Case 2013-CP-02-1337 does not, in my opinion, provide any support for Mr. Bauknight's devaluation of James Brown's assets or the attacks on Mr. Buchanan and Mrs. Pope related to their protection of the copyrights James Brown gave his "I Feel Good" Charity. Parts of Mr. Herbsman's testimony are set out below:

IN THE COURT OF THE COMMON PLEAS
SECOND JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

-----X

ADELE J. POPE,

PLAINTIFF, -against-

Case No.: 2013-CP--02-1337

ESTATE OF JAMES BROWN and THE JAMES BROWN

2000 IRREVOCABLE TRUST,

DEFENDANTS.

-----X

DATE: March 16, 2017

TIME: 9:25 A.M.

CONFIDENTIAL EXAMINATION BEFORE TRIAL

of the Expert Witness, JONAS HERBSMAN,

ESQ., taken by the respective parties, under the South Carolina Rules of Civil Procedure, pursuant to a Court Order, held at the offices of Shukat Arrow Hafer Weber & Herbsman, LLP, 494 Eighth Avenue, 6th Floor, New York, New York 10001, before

Cleo Shenkin, a Notary Public of the State of New York

...

Q. Okay, do you recall who first engaged you?

A. Mark Gende.

Q. Okay. Now, let me talk just a few minutes about your qualifications.

You are a transactional lawyer; is that correct?

A. Correct.

Q. Okay. Do you do any litigation

A. No.

Q. Well, first of all, tell me, if you will, a little bit about termination rights under Section 203 and 304 of the Federal Copyright Act.

A. Okay, well, termination rights are a right for an author who when they created the work in question may not have had the negotiating power to negotiate a good deal, may have negotiated away their rights, and so the termination rights give the author an opportunity at a certain point in time to terminate the grant that was given and recapture those rights.

And depending on whether the author is still alive, you know, it's the author who exercises the rights or it's the author's widow and children who exercises the rights or it's the -- if there are no widow and children, there are next of kin provisions, all the way down to an executor, who might exercise those rights if there are no appropriate next of kin, widow, children.

And depending on which you are talking about, there is a 56-year termination right, there is a 35-year termination right. The 35 termination right, that is only available if you are -- if it was a grant that was made by the author directly, as opposed to the earlier termination right in copyright law, the 56-year termination right, which is a right that is just a general termination right, not specific to having been a grant by the author made after 1978.

Are we going further?

Q. Whatever you would like to say, I am interested.

A. I think that is good.

Q. Well, let me ask you, how do you determine heirs under the Federal Copyright Act?

A. Well, either someone has to be acknowledged by the creator of the work in their lifetime, so someone being acknowledged as a child, either their natural child, they could be adopted or they could be otherwise acknowledged as the, you know, as the heir or -- you know, as a child or as a spouse.

Q. Tell me what you mean by "otherwise acknowledged."

A. Well, if an individual during their lifetime acknowledges a child as their child and they can form the basis for the individual being acknowledged as an heir, despite the child not necessarily being officially adopted or a natural child. If an order affiliation is being issued, if someone has been recognized as the child.

Q. Are you aware of any litigation related to the determination of children under the Federal Copyright Act?

A. Yes.

Q. Okay. Tell me about those cases.

A. Well, I am not prepared to give full dissertations on the cases; that is not what I prepared for this morning.

Q. Well, I just want to know what you know sitting here today. I am not asking for a full dissertation, I just want to know your knowledge or understanding about any litigation you are aware of related to the determination of children

under the Federal Copyright Act termination rights provisions.

A. Hank Williams, there was a Hank Williams case with Hank Williams' daughter. And, again, I would have to go and do the -- you know, review again, to be able to have an appropriate conversation about it.

Q. Sure. Sure.

Do you recall whether the question was whether she was or was not the daughter?

A. I don't recall.

Q. Okay. Are you aware of any other Federal Copyright Act termination rights case involving the question of whether someone is a child that you are aware of?

A. Off the top of my head, no.

Q. Okay. Now, are you aware nationwide of any Federal Copyright Act termination rights litigation or case or article or study related to the determination of who is a spouse under the Federal Copyright Act?

A. To quote specific cases, no.

...

Q. Okay. All right, now, we will just short of go through it.

You believe your first conversation was November 21, 2016 with whom?

A. Mark Gende.

Q. Okay. And is it correct that on November 21, 2016, Mark Gende wrote you and said "Jonas, attached are additional documents for your review and certain documents for your review"?

Q. Did he tell you that the personal representative had told the Internal Revenue Service that James Brown's assets were worth only about 6.5 million when he died?

A. No.

...

Q. Okay. And are you aware that the valuation of one's image and persona could be a substantial issue in the case of a celebrity?

A. Yes.

Q. Okay. Are you aware of the pending Michael Jackson litigation

A. I am.

Q. Okay. You are not a lawyer in the Michael Jackson --

A. I am not involved in the litigation.

Q. Okay, just tell me briefly what is going on with Michael Jackson.

A. A dispute has arisen as to the values of Michael Jackson's name and likeness on the date of his death.

Q. Okay.

A. And my understanding is that the difference in opinion is that Mr. Jackson's Estate tax return indicated a value of approximately \$6,000 and the IRS believes it is approximately \$1.3 billion.

Q. Well, have they reduced that to a \$150 million now?

A. I think they may have.

Q. Right. In other words, the issue of the value of a celebrity's image and persona at death is important?

A. It is.

Q. And James Brown is certainly a

personality who would fit into the category of persons whose image would be important?

A. Yes.

Q. Okay. Without divulging client secrets, would you have a way of comparing James Brown to Bob Marley?

A. From a name and likeness perspective?

Q. Yes.

A. Is that what we are talking about?

Q. For the moment.

A. Okay. Well, you would need to consider the image of each individual at the time of their death. So one would have to look at how the individual was positioned in the eye of the public at the time of their death to determine, you know, what the value would be of that name and likeness. So comparing two specific individuals is difficult because the market for each of them is generally going to be different.

...

Q. So sitting here today, you have no -- and I am not asking you to be an expert in an area that you are not an expert, but you have no idea of the comparable value of James Brown's image and persona at death to Bob Marley; is that correct?

A. I could not personally be the expert who would make that valuation.

Q. Well, do you just have a personal opinion, a nonexpert opinion?

A. I do.

Q. So tell me about it.

A. I think that James Brown was

one of the seminal musical figures of the 20th Century and that there would have been a substantial market for his name and likeness, if handled properly.

Q. And, again, the date-of-death value that one must put on an estate tax return must make some reasonable assumptions, correct?

A. Yes.

...

Do you know anything about the at-death value of James Brown's personal property?

A. I do not know what the value would have been of his personal property.

Q. Okay. Do you know anything about its value today?

A. I know some was auctioned via Christie's; I do not know what the ultimate total is that was recognized and I don't know what is left, so I don't know what the value would be.

...

Q. Okay. Have you seen a Barnebys [sic.] add for a pair of James Brown's shoes for \$1500 minimum?

A. I have not.

Q. Okay. Do you know what in fact was in the Christie's sale and what was left after the Christie's sale?

A. I do not.

Q. Are you aware of which of the thousands of items were placed in museums for safekeeping during the litigation?

A. No.

I just know that items were referred to in the papers I saw as having been -- potentially being place in museums.

Q. Okay. Right.

Did you see an order, in fact, dated February 20, 2008 that allowed the personal representatives to place items of tangible personal property in museums for safekeeping?

A. I did.

Q. Did you understand why that order was necessary?

A. My recollection was that items were being held in a house that had some structural issues.

Q. And did you understand that at least arguably from and after December 26th those five contesting children would have lost any special status with respect to the personal effects?

A. I only know that from what I read; I personally don't know whether that is correct or not.

Q. Okay. Have you dealt with in terrorem clauses before?

A. I have seen them, I have read them, I have not been a party to a litigation involving them.

Q. Okay. So were you aware that at the time of the order, the sixth child, who had not contested the will, was asserting that he owned all the personal and household effects?

A. I do recall reading that.

...

Q. Okay. So you don't have any knowledge that the larger body of personal tangible property had been valued at about \$2 million?

A. I recall seeing the number 2 million, but I don't know exactly what

items were specifically included with the valuation of that number.

Q. Okay. Did you know that Christie's had conducted an appraisal of the household items?

A. Yes.

Q. Okay. And did you see what value Christie's put on the items it a braced [sic.]?

A. I have not seen the Christie's appraisal.

...

Q. Do you know that Mr. Bauknight told the IRS that James Brown's image, persona, copyrights, claim against Greenberg Traurig, claim against former trustee David Cannon, claim against Morgan Stanley, claim against Phillip Farr, business tangible personal property and other assets had a value of only \$4.7 million at James Brown's death?

MR. WILLIAMS: Object to the form.

A. No.

Q. Would that surprise you?

MR. WILLIAMS: Object to the form.

A. I couldn't form an opinion on it without knowing the basis of how that value was derived.

Q. And none of your work has been related to the propriety of a proper valuation of James Brown's assets?

A. No.

Q. Okay. And none has been attempted?

A. No.

That is not my area.

...

Q. I think we were taking a break for you to secure the names of two lawyers you have spoken with about this matter since November 21, 2016; is that correct?

A. Correct.

Q. Who are they?

A. Rett Kendall.

Q. Okay.

A. And William Newsome.

Q. Okay. What do you know about Rett Kendall and William Newsome?

A. That they are attorneys representing the Estate of James Brown.

Q. Okay. Do you know who else Rett Kendall represents?

A. I do not.

Q. Do you know the name Tomi Rae Hynie?

A. I do.

...

Q. Did you do any research to determine who all the people were who were challenging Ms. Hynie's status as James Brown's spouse?

A. No.

That wasn't in the scope of what I was asked to do.

...

This is a document, Exhibit 2, Plaintiff's Exhibit 2 is a petition of respondent James B. for rehearing, received March 14, 2013 by the South Carolina Supreme Court in a case which became known as Wilson v. Dallas, case No. 2008-CP-02-1647.

Do you know anything about the Wilson versus Dallas decision?

A. No.

Q. Okay. In your preparation, did anyone talk to you about the subject of that appeal or the ruling of the court?

A. I don't recall a conversation on that.

...

Q. Right, but did you know at the time, which was more than six years after his death, whether James B. had been determined to be James Brown's child?

A. No.

Q. Do you know that, in fact, he had refused DNA testing?

A. I don't know one way or the other.

It's not relevant to what I was asked to examine.

Q. Do you know whether he was born of a marriage?

A. No.

Q. Do you know whether he was born of the marriage of Tomi Rae Hynie to Javed Ahmed?

A. No.

...

Q. Okay. Did Mr. Gende tell you that Ms. Hynie was one of his clients?

A. No.

...

Q. Okay. Do you know that in September of 2010 Mr. Bauknight and others received a document which they claim is a proper appraisal of Mr. Brown's intellectual property at less than \$4.7 million?

MR. WILLIAMS: Object to the form.

A. I haven't seen an appraisal.

Q. Okay. Did you know that that had happened in September of 2010?

A. I know that an appraisal was sought.

Q. Do you know when it was received?

A. I don't know the date it was received.

Q. If I tell you it was September 2010, do you have any information to the contrary?

A. I do not.

...

Q. Okay. Now, looking back at Plaintiff's Exhibit 2, would it be fair to say that James B. is discussing the results of that appraisal on page six and elsewhere?

A. (Witness perusing document.)

When you say James B. is discussing it, it's Peter Shahid.

Q. James B.'s lawyer?

A. James B.'s lawyer.

(Witness perusing document.)

There is a discussion of an appraisal submitted to the IRS, but I don't know if it is the appraisal that you are referring to or that Mr. Bauknight provided on the date that you are referring to.

Q. Okay. But on page six, Mr. Shahid refers to an appraisal, which he says "confirmed by the IRS on audit, which is for the date-of-death value, shows the royalty stream belonging to the Estate worth approximately \$4.7 million, which is the fair market value of the royalty stream less outside associated debt of

approximately \$19 million arising from bonds secured by the royalty stream"?

A. It does say that.

Q. Okay. Do you know anything about the debt he is talking about?

A. I would assume he is talking about the bonds that were held by TIAA-CREF issued by David Pullman.

Q. Yes.

Actually, everybody says TIAA-CREF, but it's really just TIAA, isn't it, the New York Teachers?

A. The Teachers Association, Association of Teachers.

Q. Right. People confuse it a lot, you see it in the documents. But what do you know about the TIAA debt?

A. That they are bonds issued and secured by publishing royalties and record royalties.

Q. Have you studied the Pullman or the TIAA bond in connection with your representation?

A. No. I have not seen it.

Q. All right. Do you know whether the date-of-death value of the TIAA bond was 19 million, as stated by James B., or actually about 16 million?

A. I have no knowledge of that.

Q. Okay. All right, do you know the difference between an IRS audit and a closing letter?

A. Yes.

...

All right, now, do you know that in early 2011, Mr. Buchanan and Mrs. Pope received notice that the value of

Mr. Brown's Schedule F assets in the Estate tax proceeding had been reduced from 84 million to 4.7 million?

A. Only to the extent that I saw reference to it in the documents I was provided.

Q. Okay. Did you know that both immediately took steps to make sure that their names weren't associated with that 79 million devaluation?

A. I am not aware of that.

Q. Okay. Did you know that later, Mr. Bauknight and others asserted that Bob Buchanan and Adele Pope had overstated the value of James Brown's assets by \$79 million for the improper purpose of obtaining a large commission?

MR. WILLIAMS: Object to the form.

A. I have seen documents that refer to that.

Q. Would that be a felony under the IRC?

MR. WILLIAMS: Object to the form.

A. I am unaware of what is or is not a felony.

Q. Okay. You wouldn't want to commit one, would you?

A. I wouldn't want to commit a felony, but I can't comment on what is or is not a felony, I am not familiar with those rules.

Q. Nor would you want to be accused of one, would you?

A. No.

Q. Okay. All right.

And do you know anything else

about the value of the James Brown assets on his date of death that you have not told me?

A. No.

Q. Okay. Do you know anything else about the value of the James Brown assets on November 20, 2007, when Adele Pope and Bob Buchanan took office?

A. No, I wasn't asked to assess valuation.

Q. Okay. Well, do you know anything else that you have learned from anyone?

A. No.

Q. Okay. Do you know anything else about the value of the James Brown assets when Bob Buchanan and Adele Pope surrendered those assets to Russell Bauknight on May 26, 2009?

A. No.

Q. Okay. So is it fair to say you have no information to suggest that the Estate and Trust decreased in value during that time?

A. No, I would say I was not asked to examine that issue.

Q. Okay. And you have no such knowledge?

A. No.

Q. Have you ever read an article written by Adele Pope and William Jeffrey Smith entitled, Private Foundations, Copyright Heirs and Musical Millionaires or Why the James Brown "I Feel Good" Trust Doesn't?

A. Yes.

...

Q. Was there anything in the

article that you found to be incorrect?

A. I didn't assess the article for whether it was correct or not.

Q. Okay. Why were you reading it?

A. It was provided to me with other documentation, so I read through it.

Q. Okay. Do you agree with the premise of Mr. Smith and Ms. Pope that the determination of heirs is critical to a charity for the protection of its copyrights?

A. I am not sure of the question -- I am not sure I am following the question.

Q. Well, I'm sorry, let's see if we can make a context here.

A. Sure.

Q. Are you aware that James Brown left the bulk of his assets to charity?

A. Yes.

Q. Okay. To the James Brown "I Feel Good" private foundation?

A. Yes.

Q. Okay. And you and I both know that a private foundation bears the name private, but is a charity in many respects?

A. Yes.

Q. Okay. And James Brown's will actually provided that the residue of his estate, except for \$2 million, went to the "I Feel Good" private foundation, correct?

A. That is what the will said, yes.

Q. Okay. And that the "I Feel Good" foundation was dedicated solely to the education of needy and deserving students in Georgia and South Carolina?

A. I have also read someplace else

that it was for students from anyplace, so I can't -- I haven't read the foundation documents, so I can't confirm or -- I know it's for the benefit of education for underprivileged, yes.

Q. Okay, right.

Did you know that he had done two estate plans a year apart, both leaving his residuary assets for the education of needy students?

A. I did read that in the documents.

Q. Okay, good.

All right, so would it be fair to say that the "I Feel Good" charity and any other charity holding copyrights would have a duty to protect those copyrights?

A. If a charity validly holds a copyright, they should protect it.

...

Q. Right, okay. Now, then, would it be fair to say that the "I Feel Good" Trust, if he owned those copyrights, like any other charity in America, would have a duty to protect the copyrights for the benefit of the charity?

A. I think that would depend on the specific state law applying to charities within the state, so I can't opine as to whether South Carolina law requires, you know, a charity to do or not do something.

Q. Okay. Well, I am not talking about maximize or such as that, I am just talking about a general fiduciary duty to protect your assets, trustees have that duty, don't they?

A. Yes.

Q. Okay. So if a trustee has a duty to protect its assets, then one method of protecting those assets is to protect it against incorrect or premature exercise by heirs of terminations rights; would you agree?

A. I would think that a charity should do what is most prudent to generate the best value from the assets which they have.

...

Q. Okay. So in your representation of the James Brown matter, your expertise, you never attempted to look at the issue of the likelihood that Ms. Hynie would have been determined to the spouse?

A. I have accepted that Ms. Hynie would be determined to be the spouse.

...

Q. Okay. Do you know in fact that Ms. Hynie admitted in handwritten notes that she was married, living in Texas and thought she might be pregnant when she took up with James Brown, concealed her marriage and then later, in 2001, had a ceremony with Mr. Brown?

A. I am familiar with those statements, but I haven't seen the notes.

...

Q. Were you aware that despite the appeal by both the Estate and at least three of her co-plaintiffs in the Wingate suit, Ms. Hynie received \$1 million in 2015 or early 2016 in relation to a sale or transfer of "Please, Please, Please" and two other songs?

A. I am not aware of that.

Q. Okay. Were you aware that Ms. Hynie claimed in court filings that Brown's music empire, including all his Schedule F residuary assets, were worth only \$4.7 million when he died and that the total of all James Brown assets was only 6.5 million?

A. Only to the extent that I have read it in the documents that I have been provided.

Q. Were you aware that it was Tomi Rae's lawyer who proposed in 2009 to value Brown's copyrights like those of Harlan Howard and value Brown's publicity rights at zero?

A. No.

Q. Do you know who Harlan Howard is?

A. No.

Q. Okay.

A. A performer, I assume.

Q. Would you compare Harlan Howard in any way to James Brown?

A. I don't know who Harlan Howard was.

...

Q. Okay. Did you know that twice in the year 2016 Henry McMaster, who is now the governor South Carolina, has stated under oath that he did not authorize the Wingate suit to be filed in the name of the attorney general?

A. I don't think I am aware of that.

Q. Okay. Are you aware that Mr. McMaster, now Governor McMaster, said under oath in this case, just shortly before you were hired, that he never

authorized Mr. Bauknight to act on behalf of the attorney general in the Wingate suit?

A. I haven't seen any documents related to that.

Q. If it turned out that the Wingate suit was either unconstitutional or illegal or both, would that affect your opinion?

A. No.

Q. Okay. Do you know who Dr. Yamma Noyola Brown is?

A. I believe also a child of James Brown.

Q. Right. Do you know that she and Deanna and others are currently represented by Marc Toberoff?

A. No.

Q. Do you know who Marc Toberoff is?

A. Yes.

Q. If Marc Toberoff were trying to take away a charity's copyrights, the charity might want to protect itself, mightn't it?

A. I don't know that Marc Toberoff is trying to take away a charity's copyrights.

Q. Do you know anything about Marc Toberoff's actions in connection with James Brown?

A. No.

Q. Okay. Do you know anything about Marc Toberoff's actions with respect to heirs and other charities?

A. I know that Marc Toberoff represents individuals seeking to reclaim rights via termination filings.

Q. Okay. Are you aware of the Ray Charles litigation?

A. Yes.

Q. Okay. Is it fair to say that the heirs of Ray Charles are adverse to Ray Charles's charity?

A. I wouldn't know one way or the other; I am just aware of the fact that there is litigation with the heirs regarding terminations.

Q. Well, the litigation, wasn't the litigation the heirs trying to terminate the copyrights and saying that the charity had no business being there and the charity saying our royalties are affected, we have a right to be here?

A. I can't comment on that; I know that the litigation exists, but I haven't been involved in it and I haven't read any of the documentation.

Q. Okay. All right.

Do you know anything about Larry Brown?

A. No.

Q. Okay. Have you ever seen the circumstance related to termination rights where a child is born of a marriage, acknowledged in a will, but may not be the DNA proven child; do you know anything about that?

A. No, I don't think that specific circumstance.

Q. All right. And then if you added, in addition, then challenged the will in which he was acknowledged, but still, that would be a complicated fact, wouldn't it?

A. Yes.

Q. And when you are dealing with termination rights, you have really got to look at the facts, don't you?

A. Yes.

Q. You wouldn't want to make any quick decisions without having an understanding of who the heirs were, right?

A. Correct.

19. Mr. Herbsman's testimony confirms my opinion that since the *Wilson v. Dallas* decision the alliance of the Attorney General, Tomirae and Bauknight has continued to damage Mrs. Pope and, where needed, Mr. Buchanan, and the millions of dollars the Attorney General has allowed Mr. Bauknight to spend from Brown's Charity for this purpose is unprecedented for a Constitutional Officer charged with the protection of a charity such as the James Brown "I Feel Good" Trust.

20. Portions of the deposition of Plaintiffs' CPA expert Ellison Thomas taken April 14, 2017 are set out below:.

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 AIKEN COUNTY

4 DEPOSITION OF WILLIAM ELLISON THOMAS

5 ADELE J. POPE,

6 Plaintiff,

7 vs. CASE NO. 2013-CP-02-1337

8 ESTATE OF JAMES BROWN AND THE JAMES BROWN 2000
9 IRREVOCABLE TRUST,

10 Defendants.

11

12

13 DEPONENT: WILLIAM ELLISON THOMAS

14 DATE: April 14, 2017

15 TIME: 1:15 p.m. - 3:52 p.m.

16 LOCATION: Nexsen Pruet, LLC

205 King Street, Suite 400

17 Charleston, South Carolina, 29401

18

REPORTED BY: SARAH GACIOCH

...

18 Q. Well, I want you to recall all of the
19 discussions that you can recall with Mr. Gende
20 and/or Mr. Newsome or Mr. Bauknight about these two
21 cases, okay? Because they are about the service of
22 Bob Buchanan and Adele Pope. So I want you to
23 recall anything that anybody has told you that I'm
24 not going to find on this disc about the service of
25 Bob Buchanan and Adele Pope.

1 A. And I'll answer you very generally, I'm not
2 going to sit here and tell you that I can recall the
3 details of conversations that I've had weeks ago,
4 months ago.

5 Q. Okay.

6 A. I can tell you generally that we have talked
7 about the facts in this case.

8 Q. Tell me what you mean by that.

9 A. We've talked about the probate accountings.
10 We've talked about the documents that support the,
11 you know, the notice of the creditor's claim or the
12 allowance of the claim or we've talked about the
13 706. We have talked about the documents in this
14 case.

15 Q. When you have talked about the 706, did you
16 also talk about the modifications to the estate tax
17 proceeding by Mr. Bauknight?

18 A. No. We have talked about this 706.

19 Q. So you've made no attempt to look into how

20 Mr. Bauknight valued James Brown's Schedule F assets
21 at \$4.7 million?

22 **A. I have not looked at anything, other than**
23 **this 706.**

24 Q. Okay. Well, that was -- this is the 706 that
25 was in that proceeding, isn't it?

1 **A. The 706 that I have was the one that was**
2 **filed by you and Mr. Buchanan.**

3 Q. Well, it's the only one that's been filed,
4 isn't it?

5 **A. That I don't know.**

6 Q. Okay. So you were not asked to look to how,
7 for example, the Schedule F2 assets changed from 84
8 million to 4.7 million?

9 **A. I have not been asked to do that.**

10 Q. Have you given any thought to that?

11 **A. I have given no thought to how they changed.**

...

14 Q. Okay.

15 **A. But the issue I'm tracking here is whether**
16 **there was a tax liability.**

17 Q. Uh-huh. Okay. And did you reach a
18 conclusion about that?

19 **A. On whether there was a tax liability?**

20 Q. An estate tax liability?

21 **A. I reached a conclusion on the issue with the**
22 **Christie's money, and I followed it through to the**
23 **tax return that was filed. So the first thing I**
24 **looked at is what I just told you.**

25 Q. Uh-huh.

1 **A. The next thing is a cover letter from March**
2 **24, 2008 from Sellers and Durant, and it is a -- it**
3 **is a hardship request for an application for an**
4 **extension of Form 4768. In Mr. Sellers' cover**
5 **letter he says, attached is a letter prepared by the**
6 **Estate Personal Representatives detailing the status**
7 **of the estate and related entities.**

8 Q. And did you give the date of that extension

9 and letter so we'll have it on the record, please?

10 **A. It's March 24, 2008.**

11 Q. Okay.

12 **A. And, of course, any of these are signed under**
13 **penalty of perjury.**

14 Q. And while you're looking at that extension
15 request, what's the gross estate that's stated on
16 that extension request on March 24, 2008?

17 **A. I don't see an amount.**

18 Q. I'm sorry, we'll just share that for a
19 moment, if you don't mind.

20 **A. Sorry, just so we're clear, I don't see that**
21 **amount on the Form 4768. Attached there is a**
22 **Schedule -- a letter on page 4 that makes reference**
23 **to a total net worth of \$62 million.**

24 Q. How about the gross?

25 **A. The gross value -- I'm sorry, that's the**
1 **question, sorry -- was \$91,600,000.00.**

2 Q. Right.

3 **A. And then one of the last paragraphs on page 5**
4 **of this letter says, the PR/Trustees intend to make**
5 **a substantial deposit towards the estate taxes when**
6 **the net proceeds of the Christie's sale are**
7 **received. This is estimated to be in September or**
8 **October of the Christie's sale proceeds according to**
9 **the Court Order -- according to the Court Order**
10 **schedule.**

...

16 Q. Now, would you agree that but for the \$2
17 million and the tangible personal property, all
18 money in James Brown's Estate under his estate plan
19 was -- would have been considered, from a tax
20 standpoint, as paid or permanently set aside to
21 charity?

22 **A. I'm sorry, what was that?**

23 Q. Except for his personal and household effects
24 and the \$2 million for education for the certain
25 grandchildren, was all the rest of James Brown's

1 Empire paid or permanently set aside to a charity?

2 **A. Well, that's what the will and the trust say.**

3 Q. Right. Right.

4 **A. Yes.**

5 Q. Right. So when you're thinking about estate
6 taxes, whether you get a charitable deduction or not
7 is pretty huge, right?

8 **A. Well, yeah.**

25 Q. Do you know of any significant event between
1 March 24, 2008 and the fall of 2008, when the
2 Christie's money comes in?

3 **A. I mean, if you ask me about a specific event,**
4 **I'll tell you if I know about it or not.**

5 Q. Do you know that the Attorney General of
6 South Carolina had asserted he had the right to take
7 over the operation of the James Brown assets, stop
8 the action of the fiduciaries under James Brown's
9 documents, designate the people he wanted to
10 designate as heirs, and remove the Trustees and
11 replace them with Trustees he selected; did you know
12 all that?

13 **A. The way you asked the question I think would**
14 **require a legal conclusion.**

15 Q. Okay.

16 **A. And I'm not a lawyer.**

17 Q. Sure. Sure.

18 **A. So if all that happened, that would be**
19 **something that would be a legal issue.**

20 Q. Okay. Well, but let me ask you this. If
21 among the things that happened on August 10, 2008 --

22 **A. Yes.**

23 Q. -- was that the Attorney General said, I'm
24 giving half of this charity to private individuals,
25 and I'm declaring Tommie Rae Hynie the wife, that
1 makes it an accounting problem, doesn't it?

2 **A. No. I think you've again asked me something**
3 **that would require a legal conclusion.**

4 Q. Well, let's just you and I assume that on
5 August 10, 2008 the Attorney General said, I'm
6 stipulating Tommie Rae Hynie is the wife, and I'm
7 giving half of these assets to noncharities, just
8 take my word that, that is what happened.

9 **A. Well, first of all, I think that the parties**
10 **would -- I think that in a situation like this all**
11 **the parties would have to agree. You said the**
12 **Attorney General did something, and again, that's a**
13 **legal question. So from the standpoint of what I**
14 **know about settling estate matters, I think the**
15 **parties have to agree.**

16 Q. I wish you had been there by my side, Mr.
17 Thomas, in 2008, because that is what Mr. Buchanan
18 and Ms. Pope thought, too. Nevertheless, that
19 wasn't what happened. On August 10, 2008 the
20 Attorney General stipulated that a person, not a
21 charity, would get 25 percent of James Brown's
22 assets, and that some other people would get another
23 25 percent, and the Trustees did not agree that he
24 had the authority to do that.

25 So would you agree that in terms of preparing
1 an estate tax return, if you have an estate of a
2 certain size, and you have somebody saying it goes
3 to charity, and somebody saying it goes to private
4 individuals, you have yourself a dilemma; would you
5 agree with that?

6 **A. That would be a legal dilemma.**

7 Q. Yeah, but it would be an accounting dilemma
8 also; wouldn't it be?

9 **A. It would be an accounting dilemma for someone**
10 **that was charged with some accounting role in it,**
11 **but the settlement would be -- would be a legal --**
12 **would be decided by the parties and whatever --**
13 **whatever legal, you know...**

14 Q. Let me just add this fact, if the Attorney
15 General asserted on August 10, 2008 and James
16 Brown's fiduciaries didn't agree with him, and the

17 Court did not determine until May 26, 2009 the
18 answer to that, would that create a dilemma for
19 people preparing an estate tax return, anybody,
20 accountant, lawyer, anyone?

21 **A. I'm not sure "dilemma" is the right word. I**
22 **mean, it would -- it would require, you know -- it**
23 **would -- it would require something being done that**
24 **I don't do on a daily basis, so I'm not the person**
25 **that can tell you --**

1 Q. Right.

2 **A. -- what the -- what the issue would be there.**

3 Q. Well, it's a little bit of a hard issue,
4 isn't it? If you go a whole year with a big estate
5 with the fiduciary saying it all goes to charity and
6 somebody else saying, no, it doesn't, half of it
7 goes to private individuals, it's just a problem,
8 wouldn't you say?

9 **A. Well, you keep framing questions where I'm --**
10 **I'm getting lost, because on the one end you're**
11 **saying the fiduciary does something, and those are**
12 **all legal issues.**

13 Q. Right. Right.

14 **A. Those are not accounting issues.**

15 Q. Okay. So you don't have any opinions then
16 about whether Bob Buchanan and Adele Pope or Bill
17 Sellers, the accountant, faced a dilemma when that
18 happened on August 10, 2008?

19 **A. When you say -- you'd have to ask me a**
20 **specific dilemma that they faced.**

21 Q. All right. Well, I will. Okay. On August
22 10, 2008, the Attorney General of South Carolina
23 asserted the right to settle the James Brown Estate
24 matter without James Brown's fiduciaries to declare
25 that Tommie Rae Hynie would be treated as the spouse
1 for all purposes, to give her 25 percent of the
2 assets of the estate, and to give five claimed
3 children of James Brown another 25 percent. The
4 fiduciaries of James Brown's Estate did not agree

5 with the Attorney General's assertion that he had
6 that authority.

7 **A. Okay.**

8 Q. Did that create a dilemma from August 10,
9 2008 until May 26, 2009, when the Circuit Court
10 agreed with the Attorney General?

11 **A. And, again, what you have described to me is**
12 **that there was a -- August the 10th, for lack of,**
13 **I'll use the word, agreement, that wasn't blessed**
14 **until sometime in May 2009 by the Court.**

15 Q. Yes.

16 **A. So I would -- I would say that, yes, that's**
17 **true. There was a period where if the Attorney**
18 **General did that, then that's what happened, and**
19 **then it wasn't blessed by the Court the way that I**
20 **would think that the probate matter would flow, but,**
21 **again, I'm an accountant who does work in estate**
22 **matters -- does forensic accounting in estate**
23 **matters.**

24 Q. Right.

25 **A. But would not be the person to say that**
1 **there's a dilemma.**

2 Q. What about -- let me just take you all the
3 way through the dilemma, and I know it feels
4 confusing, because you're not the first person who's
5 felt confused by it, but suppose then the Circuit
6 Court agrees with the Attorney General on May 26,
7 2009, and the Supreme Court on May 8th, 2013 doesn't
8 agree with the Attorney General --

9 **A. Correct.**

10 Q. -- so don't you really have a dilemma that's
11 lasted from August 10, 2008 until May 8th, 2013?

12 **A. But when you say "a dilemma," I'm not sure --**

13 Q. Well --

14 **A. What dilemma?**

15 Q. Can you take a marital deduction for someone
16 who's not a wife?

17 **A. Well, the answer to that from the code would**

18 probably be, no, that you can't take a deduction,
19 but if the -- if the -- I'll give you an example,
20 okay, because I don't -- I'm not going to get
21 wrapped around the axle on legal matters, okay? I
22 was involved in a dispute recently that was an A, B
23 Will. There was Will A, there was Will B. The
24 settlement was a mixed bag.

25 Q. Sure...

19 Q. I don't want to cut you off. No. No. I
20 agree with you.

21 A. But I'm sitting here as an accountant who
22 works in these matters that says, I have seen things
23 resolved that don't follow the documents. So if you
24 asked me -- which your question was, can you take a
25 marital deduction if you don't have a spouse? I
1 would probably have to say, no, the code is pretty
2 clear that you can't take a marital deduction if you
3 don't have a spouse, but if you file an estate or a
4 706 or whatever filings you filed and there was an
5 agreement that there was one, does that become an
6 invalid, false filing? I don't know. I wouldn't
7 think so.

8 Q. I completely agree with everything you've
9 said about all the other cases. Cases can and
10 should be settled, we agree on that, when there is a
11 reasonable settlement that everybody can live with,
12 whether they like it or not; we agree on that, don't
13 we? That's customary, isn't it?

14 A. Yes.

15 Q. But if you have an instance where the
16 Attorney General has said, I get to say the way it
17 is --

18 A. And Ms. Pope, at that point I'm an
19 accountant.

20 Q. Okay, good.

21 A. The Attorney General is a lawyer. He's the
22 chief law enforcement officer of South Carolina. So

23 I can't -- I can't --

24 Q. So you really can't speak to the dilemma, if
25 there was one, of fiduciaries defending an estate
1 plan that they don't believe the Attorney General
2 has the right to dismember?

3 A. That would be a legal issue. That would not
4 be --

5 Q. Right.

6 A. -- in my opinion, an accounting issue.

...

1 Q. Okay. What, if anything, do you know about
2 the claimed overinflated, self-serving, valuation of
3 James Brown's assets?

4 A. I have looked at the probate -- I mean, I
5 have looked at the 706, and I have looked at the
6 valuation process, the road map to valuation, so to
7 speak, for estate issues.

8 Q. Have you read the opinion -- have you read
9 the deposition of Roger Millot [SIC.], the Defendant's
10 expert in this case?

11 A. I don't recall if I have.

12 Q. Do you recall -- do you recall being told his
13 opinion that 15 to 20 times royalties would not be
14 at all surprising for a gold-standard copyright
15 package, such as James Brown's?

16 A. Well, I may or may not have read that.

17 Q. Okay. Do you know what the annual revenues
18 for James Brown's copyrights were for the decade
19 before his death?

20 A. Roughly, yes.

21 Q. What?

22 A. Well, you said "the decade," I would look
23 more at, like, 5 to 6 years, in round numbers is
24 about \$3 million.

25 Q. And though it was actually a little more
1 coming in from sources that didn't make it to TIAA,
2 didn't they?

3 A. There were some, yes.

4 Q. And what's 20 times \$3 million?

5 A. I'm not here to do math.

6 Q. You don't know what 20 times \$3 million is?

7 A. I think it's 60 million. I hate to do math
8 on a high wire.

9 Q. Right.

10 A. I have everything to lose and nothing to
11 gain.

12 Q. Well, let's keep going. What's 15 times 3
13 million? You're doing very well. 45 to 60 million
14 would be what Mr. Miller would say would have been
15 within the range reasonable for the copyrights
16 alone. Do you know what else made up the Schedule
17 F2 assets of James Brown's Estate?

18 A. When you say the "Schedule F2," which --

19 Q. Well, was the music empire, the publicity
20 rights, the 900 copyrights, the claim against Farr,
21 the claim against Cannon, the claim against GT, the
22 sampling revenue claims, the claim against Morgan
23 Stanley, the business tangible personal property,
24 that was the Schedule F2, and certain other assets
25 was with the Schedule F2 residuary assets, 84
1 million.

2 A. You're talking about the 706 that you signed?

3 Q. Yes.

4 A. And what's the question, again?

5 Q. Have you looked at the values of all of those
6 components of the Schedule F2 music empire and
7 residuary assets?

8 A. I haven't done a valuation.

...

2 Q. What if you had put 4.7 million and used that
3 same description, do you think -- may I finish? Do
4 you think it should have gotten past the IRS
5 process?

6 A. And, again, this is not about what the number
7 is. This is about what you have to do to get to the
8 number to put it on the 706, to take the documents

9 and file the 706 with the IRS.

10 Q. Okay. Let's talk about that a little bit.

11 Do you know anything about the Estate of Herlen [sic.]

12 Howard?

13 A. I remember reading something.

14 Q. Was it the conclusion -- or, actually, a
15 fact, not a conclusion, in the Estate of Herlen
16 Howard that an accountant familiar with Herlen
17 Howard's copyrights was an appropriate person to
18 value his copyrights, even though he wasn't an
19 appraiser, and didn't have traditional expertise; do
20 you recall that?

21 A. No, if you're telling me he was an accountant
22 who valued the copyrights on an estate return.

23 Q. Yes.

24 A. Okay.

25 Q. So do you agree that copyrights and publicity
1 rights are unique assets and arguably hard to value?

2 A. Are they unique assets and hard to value?

3 Q. Yes.

4 A. Which one? Copyrights and what else?

5 Q. Publicity rights.

6 A. Well, I don't know. When you say "unique,"
7 they would be unique to the person, but they
8 wouldn't be unique like one of a kind.

21. I am informed and believe that the sworn Deposition of Mrs. Pope's Intellectual Property Litigation expert Wallace Lightsey, Jr., taken on April 10, 2017, portions of which are printed below, lends support to my opinion that the attacks by the Attorney General, Bauknight and the Wingate Firm on Mr. Buchanan and Mrs. Pope, were baseless because, as a team, they were wisely and appropriately protecting the "I Feel Good" Trust and its 900 copyrights generally, and specifically

protecting the copyrights from improper and/or premature Termination Rights elections
by claimed heirs:

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF AIKEN

ADELE J. POPE, :

: Civil Action No.:

Plaintiff, :

: 2013-CP-02-1337

vs. :

:

ESTATE OF JAMES BROWN and THE :

JAMES BROWN 2000 IRREVOCABLE :

TRUST, :

:

Defendants. :

DEPOSITION OF WALLACE K. LIGHTSEY, ESQUIRE

DATE TAKEN: April 10, 2017

TIME BEGAN: 10:00 a.m.

TIME ADJOURNED: 10:50 a.m.

LOCATION: Nexsen Pruet

55 E. Camperdown Way

Greenville, South Carolina

REPORTED BY: Tami I. Watters, RPR, CRR

EveryWord, Inc.

P.O. Box 1459

Columbia, South Carolina 29202

(803) 212-0012

....

14 Q Okay. The second sentence: "At that

15 time -- of the second paragraph -- Termination

16 Rights were described as a 'coming storm,' with the
17 first substantial impact expected in 2013."

18 What is that -- does that refer -- how --

19 Explain that to me, I should say.

20 A Well, and that's not my phrase, the
21 "coming storm," but I think it's a good description
22 of the sense, again, among the sort of general IP
23 lawyer community.

24 Again, there was an awareness of
25 termination rights; that there was a provision for
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1 it in the '76 Act, and to my awareness and what I
2 was seeing from the groups that I belonged to,
3 there was a growing sense that this was an issue
4 that was gonna start coming up with more frequency.
5 And for post-'78 grants, the 35-year window for
6 termination would go into effect -- or would start
7 in 2013, and then for the works from the late
8 fifties through the sixties, which would be kind of
9 the heyday, really, of the recording industry, the
10 56-year window for those works would start coming
11 up again around that same time.

12 Q Okay.

13 A And this was -- too, this was about when
14 you started to see some significant case law
15 developing on termination rights, particularly in
16 the kind of situation that this case presents.

17 Q Okay. Is it your opinion that the
18 absence of case law is somehow an excuse for not
19 knowing about the operations of termination rights?

20 A I wouldn't call it an excuse. But,
21 again, what I'm -- what I understand I'm being
22 asked to talk about is the general awareness among
23 the IP community.

24 Q So does the absence of case law, in your
25 opinion, account for --

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1 What does case law -- or there being no
2 case law, where does that fit in your mind?

3 A Well, I mean, that's how lawyers become
4 aware of issues. You know, unless you are a

5 Hollywood entertainment lawyer and you're being
6 asked to deal with these issues on a day-to-day
7 basis, for somebody like me, how I would become
8 aware of this would be through hearing about a
9 case, like the Winnie the Pooh case or something
10 like that, which is the first one I remember.

11 Q Okay. The next sentence says -- well,
12 paragraph 3, sentence 1: "There are ways for
13 charities to limit losses from the exercise by
14 heirs of Termination Rights."

15 Where does that fit inside of your
16 opinion? What does that sentence have to do with
17 general awareness?

18 A Well, in connection with this matter,
19 I've attempted to educate myself a little more on
20 termination rights, so I have done some reading and
21 some research on it to learn how these things work.
22 And like I said, I remember hearing about
23 the Winnie the Pooh case. I remember hearing a
24 little bit about the Marvel cases and the Superman
25 case. So I had a vague notion that that -- those

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1 issues being out there.

2 When Adele asked me to get involved with
3 this, I tried to learn a little bit more about it.
4 And, in the course of doing that, I feel very
5 strongly that what that sentence says is correct.

6 Q Okay.

7 A But that's been a process of
8 self-education for this case.

9 Q Okay. Do you know whether Mrs. Pope made
10 any inquiry into how to find ways for charities to
11 limit losses from the exercise by heirs of
12 termination rights during her fiduciary service?

13 A I've read the article that she drafted
14 with Jeff -- Smith? Is that right?

15 So I've got -- I've got that
16 understanding of what she did.

17 Q Okay. Do you know whether or not that
18 article was drafted during her fiduciary service?

19 A I'm not sure.

20 Q Okay. So beyond that article, do you
21 know of any other instance in which Mrs. Pope made
22 efforts to limit losses from the exercise by heirs
23 of termination rights during her fiduciary service?

24 A Well, all my communications with Ms. Pope
25 about this have been over the last year plus.

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1 But -- I mean, we did talk about it a little bit
2 when we first talked about the case, and we had
3 some follow-up conversations and we had some
4 e-mails that I've produced.

5 So I've gotten some understanding of the
6 facts from her perspective from those things.

7 Q Okay. Do you know that the -- the time
8 brackets for Mrs. Pope's fiduciary service?

9 A I've read it. I think she was appointed
10 in 2007. I'm not sure. And I can't remember
11 exactly when she was replaced.

12 Q Okay.

13 A My understanding is that she continued to
14 do some work during the appeal of the decision to
15 replace her.

16 Q Okay. So --

17 A I kind of got a general time frame. It
18 was either '07 or '09 through 2013.

19 Q Okay. So I think you have it in your
20 head.

21 So it's November 2007 until May 26, 2009.

22 That's when the lower court issued a settlement
23 agreement -- or order approving a settlement
24 agreement.

25 Do you know of anything that Mrs. Pope

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1 did during that window to limit the losses from the
2 exercise by heirs of termination rights?

3 A My understanding from her article was
4 that during that time she and the other gentleman
5 were working on cataloging the works that were
6 bequeathed to the trust to get a handle on what
7 kinds of contracts had been entered into with
8 regard to those works to determine -- or at least
9 start trying to determine who the heirs were, who
10 could rightfully claim termination rights under the
11 statute, as well as whether the alleged spouse had
12 a right to claim termination rights under the
13 statute.

14 Q Okay. And so then how -- in your
15 opinion, how do you limit the losses? What do you
16 do?

17 A Well, I think -- my opinion is, A: This
18 is an incredibly complex set of legal processes;
19 and B: There have been some decisions, notably the
20 Milne case and the Steinbeck case, that have
21 further complicated and created confusion around
22 it.

23 So I think all of that together gives a
24 trust like the "I Feel Good" Trust a good bit of
25 bargaining power to work out something with the
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1 music publishers, as well as the heirs, that would
2 get a maximum amount of future income to the trust
3 in the most efficient way possible.

4 Q Do you have any concrete examples of how
5 that would work?

6 A Just, you know, the Milne case and the
7 Steinbeck case both involved a situation like this
8 where the authors' will left the rights to the
9 works to an entity or an individual who was not the
10 same as the statutory heirs to the termination
11 rights.

12 And there, the publishers went and
13 negotiated a deal, you know, with the -- I guess
14 I'd call it legatees -- to get an increased royalty

15 rate and cut out the heirs altogether.

16 So those would be my particular examples.

17 Q Would it be reasonable or would it be
18 prudent to try and make a deal with the heirs?

19 A You know, I think -- I thought about
20 that. I think it depends on the circumstances; how
21 many there are, what kind of attitude they have
22 about respecting the wishes of the deceased author
23 as expressed in the estate documents.

24 I certainly think that would be a
25 strategy that could be used to see what --

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1 And I think there, the objective would be
2 to see what can be worked out to get the maximum
3 amount of income for the trust in the most
4 efficient way. You don't necessarily want to end
5 up in litigation, because that can be expensive.
6 Q Uh-huh.

7 A So if something could be worked out with
8 the publishers and with the heirs, that might be
9 the best approach. But depending on the
10 personalities of the people you're dealing with,
11 that may not be the best approach.

12 Q Okay. Is it correct that if the heirs
13 exercise their termination rights, then they can
14 completely cut out the trust?

15 A For -- for works that are subject to the
16 termination rights, yeah.

17 Q Is that -- that is correct?

18 A I think so, yeah. If they go through all
19 the hoops to do that and if you get a majority
20 interest to do it.

21 Q Right.

22 A But then again, I would say, you know,
23 you've got the Milne case and the Steinbeck case
24 that kind of created a blueprint for a way for
25 publishers to go around that and do a deal with the

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1 legatee, if that's the right word, that cuts out
2 the heirs.

3 Q Uh-huh. The next sentence you have here
4 is paragraph 3: "The Ray Charles Foundation case
5 makes clear that a charity owning copyrights has a
6 right to be part of the Termination Rights process
7 because its royalty stream is at stake."

8 Is that just a -- what are you trying to
9 communicate with that sentence?

10 A Well, just that the Ninth Circuit in that
11 case held that the foundation had standing to
12 contest a notice of termination by the heirs.

13 Q Okay. Do you intend to offer any
14 opinions besides what's written right here?

15 A I haven't been asked to, so ...

16 Q Okay. Can you generally tell me your
17 opinion of what role your opinion has, if I can ask
18 that question?

19 A I really don't know.

20 Q Okay.

21 A I'm not sure exactly how this fits into
22 the whole broader issues in the case.

23 Q Okay. Do you have any -- do you know how
24 much Mrs. Pope is asking the estate to pay for her
25 work?

Page: 20

1 A I've seen a figure of 1.4 million.

2 Q Okay.

3 A I don't know if that -- I'm thinking
4 there may be something more.

5 Q Yes. Okay. So you generally would come
6 to Aiken County and you would testify that
7 termination rights were a new thing and IP
8 lawyers -- even IP lawyers weren't fully familiar
9 with the workings of it?

10 A Well, again, I'd -- you know, I can't say
11 exactly what I'll be asked to testify to or what
12 the judge might consider me an expert on or not an

13 expert. That's up to the court to decide.

14 Q Sure.

15 A As I've said, I do believe, within the
16 general community of lawyers who practice
17 intellectual property, which I do believe I'm
18 representative of -- a good representative of, that
19 there was only a vague awareness of termination
20 rights up until, you know, starting maybe in the
21 mid-2000s; 2006 and later --

22 Q Okay.

23 A -- when some of these cases started
24 coming down and we started hearing more about this.

25 Q Okay. Would you agree that a fiduciary
Page: 21

1 should seek entertainment counsel in trying to
2 learn about these rights?

3 A I wouldn't have an opinion on that.

4 Q Okay. Those are all the questions I
5 have. I may want to make some copies of your file.

6 A Sure. Sure.

7 - - -

8 EXAMINATION

9 - - -

10 BY MS. POPE:

11 Q Mr. Lightsey, can you describe for me how
12 thick your file is?

13 A It's, I guess, about 2 or 3 inches.

14 Q All right. So would you say there are at
15 least a couple of hundred pages in there?

16 A Probably.

17 Q And is it fair to say you've done a good
18 bit of thinking about this issue since we first
19 talked?

20 A Yes.

21 Q Okay. You were asked about the knowledge
22 of entertainment lawyers with respect to
23 termination rights back in 2008 and today.

24 Do you know of any entertainment lawyers

25 within the state of South Carolina?

Page: 22

1 A No.

2 Q Okay. In researching termination rights,
3 have you thought about whether, in certain
4 instances, a knowledge of state probate law is as
5 important as a knowledge of the copyright law?

6 A Yes. I think -- my understanding is
7 that when there are questions about who is a child
8 or who is a spouse for purposes of the termination
9 rights, that that's determined by state law.

10 Q Certainly the spouse, if not the
11 children?

12 A Uh-huh.

13 Q Is that correct?

14 A Yes.

15 Q So does that mean that if a foundation
16 such as the "I Feel Good" Charity wanted to protect
17 itself in the termination rights area, job one
18 would be not to create a spouse if there isn't one?

19 A I think -- if there's a question about
20 whether somebody who claims to be a spouse really
21 is or really qualifies, I think that's an essential
22 question, just because of this whole negotiation
23 process I've touched on.

24 Under the termination provisions of the
25 Copyright Act, if the person is -- does qualify as

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1 a spouse, they get -- and there are children, the
2 spouse has a 50 percent vote on whether to
3 terminate. And since a majority is required, if
4 there is a spouse and children, then the spouse has
5 to be part of that majority or you won't be able to
6 get the necessary percentage to terminate.

7 So, yeah, I think that would be
8 absolutely essential.

9 Q And in connection with the determination
10 of heirs under the federal Copyright Act, is it

11 fair to say that even today there has been very
12 little litigation over the issue of how to
13 determine who are children?

14 A Yeah. I'm not aware of any, other than
15 this litigation.

16 Q And if, for example, James Brown had a
17 child who was acknowledged in his divorce but not a
18 biological child, to date, do we have any guidance
19 about whether that child would be considered an
20 heir under the federal Copyright Act?

21 A None that I know of.

22 Q Okay. What if, for example, James Brown
23 had a child who was not born of a marriage and
24 acknowledged only in a will, which the child
25 contested? Do we have any guidance that you're
Page: 24

1 aware of under the federal Copyright Act about that
2 child's entitlement to termination rights?

3 A No.

4 Q What if James Brown, in his documents,
5 intentionally disinherited any child who claimed --
6 who challenged his estate plan? Do we have any
7 court guidance on whether -- the impact of such a
8 provision in the will might affect termination
9 rights?

10 A None that I know of.

11 Q Okay. Now, at least during those early
12 years after the death of a person who owns as many
13 as 900 copyrights, could the probate process be
14 even more important than the entertainment law
15 process?

16 A You'll have to explain that one.

17 Q Well, during the early years after
18 James Brown's death -- let's just use him as the
19 example -- could the proper determination of heirs
20 have been as important to termination rights
21 protection as anything else?

22 A Yeah. I think that would be an essential

23 early step.

24 Q So if Mrs. Pope was replaced in 2009,
25 would there be any reason to stop that process?

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1 A No. I mean, I think -- I think anybody
2 who was trying to maximize the income for the trust
3 would have to get to a firm conclusion as to who
4 the people are who are entitled to exercise the
5 termination rights so that you can then decide on
6 the best strategy for dealing with that.

7 Q And so if on August 10, 2008 the attorney
8 general agreed to stipulate that a claimed spouse
9 would be treated as a spouse, despite overwhelming
10 evidence to the contrary, would that be a wise
11 method of protecting the copyrights?

12 A Based just on what you've said, I would
13 say no.

14 I would acknowledge, I think you have to
15 look at all the circumstances in the case,
16 including, as I said, the personalities of the
17 people involved.

18 Q Okay.

19 A You know, if -- for example, if the
20 spouse were very supportive of the trust position
21 and wanted to give full effect to the desires of
22 Mr. Brown, in that circumstance, it might move the
23 trust to try to work something out quickly with
24 her. But I think it just depends on the whole
25 situation.

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1 Q Well, that reminds me. Did the Smith and
2 Pope article suggest a mechanism called splitting
3 heirs?

4 A Yeah.

5 Q Can you explain how what you've just said
6 relates to the term "splitting heirs"?

7 A Well, because the -- a termination has to
8 be done by people who have a majority of the rights

9 to terminate.

10 If there are multiple heirs and the --

11 again, I'm not sure if I'm using the right word.

12 I'm not a probate lawyer. The legatee or devisee

13 or whoever -- the recipient under the will has the

14 opportunity to negotiate and try to get the best

15 deal it can for the trust. So if there are

16 multiple heirs, it's possible to split them up.

17 Some may be more cooperative, some may be less.

18 And if you can split them and get a majority and

19 work out a deal that's good for the trust, that's a

20 good strategy.

21 Q And -- back to the attorney general. If

22 on August 10, 2008 the attorney general stopped the

23 DNA testing process which had been in place since

24 shortly after James Brown's death, would that have

25 helped the protection of the "I Feel Good" Trust

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1 termination rights?

2 A I don't see how it could. Again, I

3 think -- I think a good strategy for the trust is

4 to try to work out something with the music

5 publishers initially and, if possible, with the

6 heirs.

7 But whatever -- whatever is done, I don't

8 think you'd want to have it subject to a later

9 attack on the grounds that somebody who was part of

10 that didn't really have a termination right.

11 Q You were asked what you knew about

12 Mr. Buchanan and Ms. Pope's service, and I will

13 tell you: It was from November 2007 until May 26,

14 2009 that they served as personal representatives.

15 Have you heard of or were you aware of

16 something known as the Peebles' DNA protocol?

17 A Yes.

18 Q Did you understand that it had been begun

19 by the original -- counsel for the original

20 personal representatives and continued by

21 Mr. Buchanan and Ms. Pope?

22 A I don't know the details of it.

23 Q Okay. Did you understand that it had
24 been stopped on August 10, 2008 by the attorney
25 general?

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1 A I understood that it was stopped.

2 Q Did you understand that when he did so,
3 he declared that five -- I'm sorry -- six claimed
4 children would be determined to be James Brown's
5 heirs?

6 A Yeah. I'm sorry. I don't really
7 remember the details.

8 Q Okay. You don't remember that it was
9 fewer than -- half or fewer than the potential
10 heirs?

11 A Yes. I knew it was not the whole group.

12 Q Okay. And did you know that at least
13 three of those were not presumed heirs even under
14 South Carolina law?

15 A I don't remember.

16 Q Okay. All right. Now, tell me just a
17 little bit about the Ray Charles case.

18 A It was a similar situation with a great
19 songwriter and recording artist. Ray Charles
20 bequeathed his -- I guess the residuary of his
21 estate to a foundation, a charitable foundation,
22 like Mr. Brown did here, and then the statutory
23 heirs under the termination provisions sent
24 termination notices to the publishing companies,
25 and the foundation brought a suit to declare those

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1 termination notices ineffective.

2 District court held that the foundation
3 did not have standing to challenge the termination,
4 and the Ninth Circuit reversed and held that it did
5 have standing because of its interest in the
6 royalty stream.

7 Q And that case was begun in about 2012?

8 A That sounds right.

9 Q And approximately when was it concluded?

10 A I think the Ninth Circuit decision was in
11 2015.

12 Q Okay. Do you know what's happened since
13 2015?

14 A No. I did check the district court
15 docket on PACER, I don't know, a month or two ago,
16 and I could not see anything that happened since
17 the remand.

18 Q Do you know who represented the heirs in
19 that matter?

20 A No.

21 Q I'm gonna hand you a document -- well,
22 before that, let me ask you this: I would like, if
23 we could, to mark your file as an exhibit, and then
24 if Mr. Williams and I can agree to a CD of the file
25 or something that would be smaller --

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1 A That's fine.

2 Q -- may I do that?

3 A Sure.

4 Q We'll mark that, then, as Plaintiff's
5 Exhibit 1, your entire file.

6 - - -

7 (File marked Plaintiff's Exhibit
8 Number 1, for identification.)

9 - - -

10 MS. POPE: I'd like to hand you
11 Plaintiff's Exhibit 2.

12 - - -

13 (Value of Tomirae Federal Copyright Act
14 Termination Rights at Death of James Brown
15 marked Plaintiff's Exhibit Number 2, for
16 identification.)

17 - - -

18 BY MS. POPE:

19 Q I'm gonna give you a moment to look at
20 it, because I think we'll agree, you haven't seen
21 it before today; is that correct?

22 A That's correct.

23 Q If you'll take a moment to glance at it.

24 And I'll represent that it is my work.

25 A Okay.

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1 Q When you're ready to chat about it, let
2 me know.

3 A Okay. I'm ready.

4 Q I have attempted in this document to
5 recreate the position of James Brown's estate and
6 trust as it was on November 20th, 2007.

7 If the -- and I have concluded that the
8 value of Tomi Rae's federal Copyright Act
9 termination rights at the death of James Brown was
10 negligible based on the facts that were available
11 between the period 2007 and May 26, 2009.

12 If these facts existed and there was fair
13 proof of them on the part of the estate and trust,
14 should they have taken advantage of those facts to
15 protect the copyrights?

16 A I think certainly, in this type of
17 situation, the trust should challenge -- what's
18 Tomi Rae's last name?

19 Q Hynie-Brown.

20 A I would certainly think the trust would
21 challenge her claim.

22 I don't know -- I don't claim to have any
23 expertise on how you decide if someone was a spouse
24 under state law. I know that the -- or it's my
25 understanding the Copyright Act doesn't speak to

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1 that, but I certainly do think it would be
2 appropriate to challenge the claim.

3 Q And before one would settle with or try
4 to split Tomi Rae off from the other heirs to

5 protect the charity, would the estate and trust not
6 need to evaluate the strength of her claim as a
7 spouse?

8 A Say that again.

9 Q Okay. If the -- if the charity is
10 looking to protect itself before it makes a deal
11 with Tomi Rae, should it not evaluate the strength
12 of her ability to be demonstrated to be the spouse?

13 A Yes. Absolutely.

14 Q Okay. Now, even if Tomi Ray had been
15 determined absolutely to be the spouse on the date
16 of James Brown's death, would there still have been
17 impediments to her taking the royalties from the "I
18 Feel Good" Charity?

19 A Well, at the most basic level, she still
20 would have to get at least one of the other heirs
21 to join with her.

22 Q Okay.

23 A And then, as I've said, I think the Milne
24 and Steinbeck cases create a mechanism for someone
25 in the position of the trust to do a deal with the

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1 music publishers to cut her off.

2 Q And isn't it fair to say that when
3 James Brown died, if his first famous work was in
4 1956, there were about six years for the estate and
5 trust to be planning to protect the "I Feel Good"
6 Charity?

7 A Yes, if the copyright was secured in
8 1956.

9 Q And, of course, anyone -- when the
10 majority of heirs seeks to make an election, a
11 majority is in fact needed; is that correct?

12 A Majority interest, right.

13 Q Or the spouse plus one.

14 A Right.

15 Q And only half of the heirs are needed to
16 stop an election; is that correct?

17 A If they have 50 percent, correct.

18 Q And there's certain technical and complex
19 election requirements, are there not?

20 A It's very complex.

21 Q And there must be at least a two-year
22 period when the election is made before the
23 termination can be effective; is that correct?

24 A That's right. The notice of termination
25 has to be served at least two years before the
Page: 34

1 effective date of termination.

2 Q And in the case of Tomi Rae, there might
3 have been, to challenge any attempt at termination,
4 a dozen or more children, the charity, and the
5 charity itself; would that be -- would that fairly
6 state the situation back in 2007?

7 A Yes.

8 Q Okay. And does everybody now kind of
9 understand that termination elections apply only to
10 American copyrights?

11 A Yes.

12 Q And James Brown, of course, had worldwide
13 copyrights?

14 A That's right.

15 Q And they do not apply to derivative
16 works?

17 A There's a derivative work exception for
18 derivative works made before the termination.

19 Q Okay.

20 A So if you make a derivative work on the
21 basis of an existing grant and then a termination
22 comes in, you can continue to exploit that
23 derivative work.

24 Q So if there's a derivative work of
25 James Brown and American copyright is terminated,
Page: 35

1 the foundation, his devisee, would continue to
2 enjoy the royalties from the derivative work unless

3 and until it was terminated?

4 A That's correct.

5 Q Okay. Now, is it fair to say -- I don't
6 want to spring too much on you -- but both
7 samplings and joint ownerships create further
8 complexity, do they not?

9 A Yes. That's true.

10 Q And is it fair to say that the
11 sampling -- a sampling could actually be a small
12 part of a subsequent copyright?

13 A Yes.

14 Q And so that that copyright might have a
15 35-year life of its own?

16 A Yes.

17 Q And in that case, in a sampling of a
18 James Brown work, the James Brown rift, let's say,
19 might be a small part of that work?

20 A Correct.

21 Q So if James Brown had, for example, 210
22 copyrights of which he had only a sampling part,
23 would the "I Feel Good" Charity likely be able to
24 have a major part in the termination rights of
25 those works?

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1 A Yes.

2 Q And then -- but those works might be --
3 the termination rights issue could be delayed for
4 many years; is that fair to say?

5 A Yes.

6 Q Okay.

7 A Depending on when the work was created.

8 Q Thank you. I'm gonna ask you to take a
9 quick look at Plaintiff's --

10 MS. POPE: Just to be sure, the value of
11 the termination rights was Exhibit 3?

12 THE WITNESS: I think it was

13 Plaintiff's 2.

14 - - -

15 (Value of Levenson 5 Clients' Federal
16 Copyright Act Termination Rights at Death of
17 James Brown marked Plaintiff's Exhibit
18 Number 3 for identification.)

19 - - -

20 THE WITNESS: And before you move on,
21 too, another thing I would say that's
22 interesting, and another level of complexity
23 with music in particular, is that sound
24 recordings made before February of 1972 are
25 not covered by federal copyright. They would
Page: 37

1 be subject to common law-copyright. So they
2 are not subject to the termination rights.

3 BY MS. POPE:

4 Q Okay. Well, let's talk a minute about
5 sound recordings between '72 and '78.

6 If James Brown had a number of sound
7 recordings during that time, those sound recordings
8 are protected for 56 years, if he's properly
9 renewed them; is that correct?

10 A I think it's -- well, it would be the --

11 I think it would be the life of the author plus 70
12 years.

13 Q But -- but my question was -- I'm sorry.

14 I didn't say it correctly.

15 They would not be subject --

16 A Oh, to termination.

17 Q -- to termination --

18 A That's correct.

19 Q -- for more than 56 years.

20 And so it's fair to say that all the
21 works between -- of the sound recordings between
22 '72 and '78 could experience a 56-year life before
23 termination?

24 A That's correct.

25 Q And do you know whether '72 to '78 was a

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1 period during which James Brown had an important
2 part in the musical genre?

3 A I can't say specifically, but I would
4 think that's true.

5 Q He actually did for decades, didn't he?

6 A Yes.

7 Q Now, just looking at Plaintiff's 3.

8 Again, this is my work, and it is my evaluation
9 that the termination rights of the five Levenson
10 clients who reached the deal with the attorney
11 general on August 10, 2008 had a value of less than
12 5 percent of the value of James Brown's copyrights
13 on that -- at that time, at James Brown's death.

14 And, again, my reasons that I have set
15 out, you have no specific knowledge about that?

16 A Correct.

17 Q But those reasons were certainly within
18 the purview of a probate lawyer, even if she wasn't
19 an entertainment lawyer; would that be fair to say?

20 A I would think that anybody who is a
21 trustee would want to consider these things.

22 Q Okay. And then again, even if all five
23 of the Levenson clients had been determined to be
24 heirs of James Brown, they would still face many of
25 the same impediments that Tomi Rae would face; is

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1 that fair to say?

2 A In general terms?

3 Q Yes.

4 A Yes, as I've talked about.

5 Q And so they would have to meet the
6 election requirements.

7 A Right.

8 Q And have the two-year delay.

9 A Right.

10 Q Even if they were a majority.

11 A Correct.

12 Q And if they weren't a majority, of course

13 they would have to find somebody to work with.

14 A Correct

22. In connection with the forming of my opinions, I have gleaned from the affidavit of Elizabeth Alexander that a story was placed on the Kilpatrick Stockton law firm website in which Robert Potter, Esq., was attributed with stopping the sale of the Grammy at the James Brown Christie's sale, but that Mr. Potter did not halt the sale, and was unaware of the post. I understand from other documents that the Grammy story was placed on the firm's website in January 2011, by David Bell, Esq., one of the lawyers who signed the contract to hire the Wingate law firm in this suit.

23. I have reviewed public documents which show that, while the Academy seeks to prevent Grammy sales, their legal position is questionable; Johnny Cash, Stevie Wonder and others have sold Grammys; and Toni Braxton's Grammy has been the subject of a possible sale by a Federal Bankruptcy Court..

24. In forming my opinions I have attended and read transcripts of a number of hearings since 2011, including those related to James Brown's Freedom of Information Act cases, where the Attorney General, the Wingate Firm and Mr. Bauknight joined Tomirae in harsh attacks on Mrs. Pope and a local journalist in an effort to prevent release of documents, including Tomirae's handwritten admissions that she was married when she had a ceremony with Brown; the documents to show how Mr. Bauknight could have valued James Brown's Right of Publicity and iconic personal property almost no value; and amendments to the Legacy Trust which is controlled by

the Attorney General, but Mr. Bauknight and the Attorney General claim is not subject to public disclosure. It have also reviewed many of the 100 James Brown articles the Wingate Firm filed in this case when they were seeking guidance as to pre-trial publicity.

25. I have also reviewed the deposition of R. B. Alexander, Defendant's valuation expert, with particular emphasis on his Right of Publicity experience. Portion of his deposition, taken March 27, 2017, are set out below:

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF AIKEN

ADELE J. POPE, :

: Civil Action No.:

Plaintiff, :

: 2013-CP-02-1337

vs. :

:
ESTATE OF JAMES BROWN and THE :

JAMES BROWN 2000 IRREVOCABLE :

TRUST, :

:
Defendants. :

DEPOSITION OF RICHARD BOATWRIGHT ALEXANDER

DATE TAKEN: March 27, 2017

TIME BEGAN: 10:40 a.m.

TIME ADJOURNED: 2:10 p.m.

...
page 23-33

20 Q Fair enough. Have you ever conducted a
21 valuation analysis of copyrights?

22 A Yes. A little bit different context than
23 this. We've evaluated copyrights for people who
24 owned brand names that are copyrighted. We've --
25 That's been primarily what we've

Page: 24

1 evaluated; what is a brand name worth, what is --
2 and some of that, of course, is intangible.

3 Q Who all have you provided that valuation
4 opinion to?

5 A Brown Shoe Company, the Brown Group,
6 St. Louis. They've now changed their name.
7 Nations Bank, at that time we were
8 working with them, Pick N Pay stores, which was 13,
9 1400 stores that declared bankruptcy. Nations Bank
10 had the debt. We were working with them, what's
11 the value of the name Pick N Pay, along with all
12 their other real estate holdings and so forth.

13 Q Okay.

14 A So what's the name worth is really what
15 it amounts to. In today's jargon, what's the brand
16 worth.

17 Q Well, in analyzing the name, what -- what
18 do you do to go about arriving at a value for it?

19 A Well, you go through a process. I look
20 at -- in James Brown's case, this case we're
21 talking about, you have his publicity rights, his
22 persona, what are they worth.

23 So you can get a lot of that information
24 or some broad outlines of information public
25 knowledge. In other words, if you look at Forbes

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1 or you look at the Internet, you then talk to
2 people who market those rights, who sell those
3 rights, who lease those rights. That can be
4 attorneys, but usually it's what I'm gonna call
5 entertainment companies that do that. So that's
6 what I would --

7 I would also talk to people in that

8 business, which I also did, and what are they -- in
9 other words, what do they think it's worth or what
10 does -- what interest do they have.

11 And James Brown was number 11, I think,
12 on the dead celebrity's list at Forbes. He was
13 making pretty good money. Of course, he wasn't
14 there to spend it either, but he was making pretty
15 good money after he died, so ...

16 Q I think some of that's covered in here.

17 A Right.

18 Q We can go through it.

19 A One of the big things you look at is what
20 is the estate or what are they throwing off; in
21 other words, what is their cash flow.

22 Q Okay.

23 A Then you can use a cap rate; you know, a
24 multiple on the cash flow is one method you could
25 use.

Page: 26

1 Q Okay.

2 A Or should use.

3 Q You mentioned methods. What other
4 methodology should you use in doing valuations?

5 A Well, cash, what does it throw off, is
6 the main thing. Then what are the opportunities
7 for the persona.

8 Advertising -- ads are a good source of
9 revenue, you might say; unpublished songs. I mean,
10 a person of James Brown's stature with 8 to 900
11 copyrights, those have a tremendous value -- or
12 could have a tremendous value for a person of
13 Brown's stature.

14 There are other rights, termination
15 rights, that could flow to the estate and what are
16 they worth.

17 There are a lot of different avenues.

18 And if you, you know, look at the others that --
19 you know, Bob Marley, Ray Charles, Elvis Presley.

20 There are many others.

21 Q Have you ever valued the estate of
22 another entertainer?

23 A No.

24 Q Do you believe that you have valued this
25 estate?

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1 A Yes.

2 Q Okay. Tell me generally -- or even
3 specifically -- what experience in life and work
4 and education you have to value an entertainer's
5 estate.

6 What qualifies you to provide that
7 valuation?

8 A Just experience in having done other
9 things. But I have never done an entertainer.

...

17 Q Okay.

18 A But, having said that, Mr. Williams, also
19 in this situation, I talked to other people. One,
20 Charlotte, a friend of mine, is Reggie Smith. He's
21 Arthur Smith's son. James Brown recorded at Arthur
22 Smith Studios. He also did the soundtrack to
23 Deliverance, Dueling Banjos.

24 So Reggie took me through all the rights
25 of those songs and what that was actually worth to
Page: 28

1 the family.

2 So I was talking to people who had
3 experience with that that I knew on a -- and talked
4 with. So you're starting, you know, to get some --
5 while certainly not an expert to value or say I've
6 done 20 entertainers or 10 entertainers or 3
7 entertainers, you're starting to get a feel by
8 people you know of what they do or what is entailed
9 with that....

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2 Q Okay. What documents did you look at --

3 e. references documents related to royalties,
4 publicity rights, assets, liabilities.

5 What documents specifically are you
6 referring to?

7 A I have looked at so many documents that
8 Ms. Pope and Mr. Buchanan had, as well as through
9 what was available to the -- generally.

10 To tell you which ones I looked at, it
11 would almost be which ones I didn't look at.

12 Q Okay. What documents do you recall that
13 relate to publicity rights?

14 A We looked at several. One was -- was a
15 gaming company. I think the one was \$400,000 a
16 year. There was an offer on the table that they
17 wanted to use a -- basically a slot machine
18 company.

19 Q Okay.

20 A And they wanted the rights basically when
21 somebody hit the number to say, oh, "I Feel Good,"
22 and put it on the video screen.

23 So that was an example, I mean, of -- we
24 looked at an offer for that. That was pretty good
25 money.

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1 Q Do you recall who made the offer and
2 when?

3 A I think it was Global Gaming, but I
4 don't -- but I could be wrong.

...

10 Q Any other publicity rights documents?

11 A Looked at several -- when you're going
12 through other stars, Bob Marley who, I would say,
13 you know, is a lesser-known star than James Brown,
14 and the different publicity rights that they
15 engaged in, which is public record, what are they
16 doing in that persona.

17 Of course, the biggest star of all is
18 Elvis, Elvis Presley, and they use his persona. I

19 mean, they even have shows where they use him
20 on-screen.

21 So there are a lot of personas -- of
22 publicity rights in the use of the persona that the
23 estate or the trust would own that generates
24 income.

25 Q Did you undertake any inquiry to find out
Page: 31

1 how much income that would be?

2 A Looking at the records that you have in
3 Fortune Magazine, Forbes Magazine and different
4 trade magazines, you assume they know a little bit
5 about what they're talking about, but I didn't go
6 back and say: Okay. Forbes Magazine said Elvis
7 made 7 million in a quarter from these rights. Is
8 that an accurate number or not?

9 Q Okay.

10 A But if you check with three or four
11 different sources and the number is 6.9 million to
12 7.3 million, you assume 7.3 from trade magazines,
13 trade reporters, people in the -- would be an
14 accurate number.

15 Q Okay.

16 A And they're also looking at tax returns,
17 they're looking at financial statements, etc.

18 Q Okay. How do you extrapolate what, say,
19 Elvis makes in a given year and turn that into a
20 potential number for what Mr. Brown could make in a
21 given year, persona and image?

22 A At that point you're basically using as
23 much logic and as much as you can.

24 If you talk to the people in the
25 industry, you say: What's the potential for
Page: 32

1 this -- this star?

2 Elvis, of course, died in '77 and he's
3 making more money today than he ever made when he
4 was alive. Of course, you've got inflation and

5 everything else doing that.

6 While James Brown may not be Elvis, he's
7 bigger in Asia, bigger in Africa, and he was a
8 writer and a --

9 Elvis was an entertainer. James Brown
10 was an entertainer, a writer, a dancer. He was in
11 more areas music-wise than Elvis was.
12 Elvis never had the copyrights that
13 James Brown has. He wasn't an author. He wasn't a
14 writer.

15 Q So how do you bridge what Elvis brings in
16 to what James Brown could bring in? How do you --
17 A I'm not sure you bridge it. You use all
18 the stars, Ray Charles, all of them, as a potential
19 guide, and then you try to evaluate each section of
20 what they can do.

21 So I'm not sure you can take one law firm
22 and bridge it into what another law firm could do.
23 You just say: We're in the same line of work. You
24 know, the potential is here, so ...

25 Q Okay. Tell me what -- so you -- tell me
Page: 33

1 what your total valuation is. What's your opinion?

2 A Mine was -- when I got through, I thought
3 Ms. Pope and Mr. Buchanan were about right. I
4 thought at the time it was probably about
5 90 million.

6 Q Okay. And --

7 A So I thought 85 was okay.

8 Q And at the time, what do you -- as in as
9 of the date of his death? What are we saying?

10 A Yes, at the date of his death.

11 Q So it's your professional opinion that at
12 the date of his death, Mr. Brown's estate was worth
13 90 million?

14 A Thereabouts.

12 Q Okay. Do you ever value publicity
13 rights?

14 A Have I ever valued them?

15 Q Yes.

16 A A little bit. We used to make shoes for
17 NASCAR. We made them for Dale Earnhardt, Jr. with
18 his logos and things on them.

19 So we were aware of royalty rights that
20 went to Dale Earnhardt, Sr. as opposed to other
21 drivers who got lesser, so -- and for publicity
22 rights that Dale Earnhardt, Sr. --

23 So we worked in that venue. Also, we
24 made products for schools; tennis shoes and novelty
25 items for schools. So let's just say UCLA

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1 basketball, shoes drew a lot more money, so a lot
2 bigger royalties going to the UCLA. University of
3 South Carolina basketball in early nineties.

4 Q Okay. But have you ever independently
5 undertaken a valuation of publicity rights to
6 determine what they're worth?

7 A In connection with this and connection
8 with others, yes, we were -- what the publicity
9 rights were; and, again, some subjectiveness to
10 that.

11 Q What were the publicity rights that you
12 valued?

13 A Dale Earnhardt, Sr., NASCAR driver.

14 Q And who hired you to do that?

15 A NASCAR.

16 Q Okay. They hired your firm?

17 A Yes.

18 Q Said: We want you to value the publicity
19 rights of Dale Earnhardt, Sr.?

20 A When he died, there was the firm that
21 made his seatbelts and all the safety equipment
22 that he used, and Carousel Capital in Charlotte
23 owned that company and wanted to know what the

24 publicity rights were -- what they thought the
25 publicity rights were for Dale Earnhardt, Sr., and
Page: 89

1 we helped evaluate that along with several other
2 people who did it, in-house people.

3 Q Who are the other people?

4 A Carousel Capital in-house people.

5 Q Let me ask this: What role did you have
6 in the valuation?

7 A They called me, knew of Carousel Capital
8 and asked me to take a look at the -- just do what
9 Ms. Pope asked us to do in 2013 to see if we
10 couldn't help with the value there. We looked at
11 the publicity rights, which were big.

12 Q I mean, what did that look like? What's
13 the analysis?

14 A How much money would a firm pay for the
15 rights to use Dale Earnhardt's -- Sr.'s persona for
16 a period of time.

17 Q Okay. What did you conclude?

18 A I concluded that was probably worth about
19 \$25 million. I was a little low.

20 Q Okay. Do you -- any other publicity
21 rights that you've valued?

22 A Probably been entailed in some of the
23 stuff we do. But, no, not that I distinctly --

24 Q So the Dale Earnhardt one, you did this
25 in conjunction with Carousel Capital?

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1 A They owned it. They owned Simpson Racing
2 which made all the safety equipment.

3 When he died in the wreck in Daytona, it
4 was safety equipment issues.

5 Q Right.

6 A And so the company that made all of Dale
7 Earnhardt's safety equipment for his cars, suits,
8 his helmets, everything, and sold them to tons of
9 other drivers as well, were concerned about

10 exposure with the safety equipment company that
11 they owned. Carousel Capital owned Simpson Racing.

12 Q So help me understand how that fits into
13 the valuation of publicity rights.

14 A Let's just say that Simpson Racing had
15 had a failure of their equipment that caused
16 Mr. Earnhardt's death. His family or his heirs, or
17 whoever had control of his estate, owned his
18 estate -- in this case, Teresa Earnhardt and Dale
19 Earnhardt, Jr. and a few others -- might come back
20 and say: Okay, what are the -- we're entitled to
21 compensation on the publicity rights that we would
22 have had.

23 Q From?

24 A Dale Earnhardt, Sr., had he not succumbed
25 to his injuries caused by your equipment. That was
Page: 91

1 the factor at the time.

2 Q I'm not sure I follow.

3 A If -- if Dale Earnhardt had been earning
4 \$25 million a year -- well, let's say a dollar a
5 year to make the numbers work right -- earning a
6 dollar a year from publicity rights prior to his
7 death as a major star on the NASCAR circuit and he
8 died because Simpson Racing furnished faulty
9 equipment to him, one of the claims by the estate
10 might be: We would have made \$12 over the next 12
11 years from publicity rights of Mr. Earnhardt.

12 Because of your failed equipment, we're not able to
13 earn those. We have a claim against you for \$12

14 or --

15 Q Okay.

16 A -- some number.

17 Q Okay.

18 A So Carousel Capital, which owned the firm
19 that made all the safety equipment and which we had
20 done some work for prior to looking at the shoes
21 that they made that were fire retardant, we were

22 one of the ones asked to come in and help see what
23 the exposure might be; what Dale Earnhardt, Sr.'s
24 persona might be worth that his estate might come
25 after them for.

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1 Q Okay. And that was the only time you've
2 done a publicity rights analysis?

3 A Uh-huh -- well, probably been involved in
4 several others, but that specific one, yes.

5 Q Okay. In doing that analysis, did you
6 look at -- did you look at contracts? Did you look
7 at a history of earnings? What did you do?

8 A Where are we now?

9 Q The publicity rights analysis for Dale
10 Earnhardt.

11 A Yeah. You looked at what he -- yeah, but
12 the current deals he had.

13 Q What else?

14 A The potential deals he could do. That
15 almost changed yearly as things would happen in his
16 sport.

...
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...
22 Q Have you seen -- I believe you testified
23 previously that you've never seen the valuation
24 that was used --

25 A I have not seen Mr. Bauknight or his

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1 advisors' appraisal.

...
7 (Initial Designation of Experts and
8 Disclosure of Opinions marked Defense Exhibit
9 Number 2, for identification.)

10 - - -

11 BY MR. WILLIAMS:

12 Q Can you read that first paragraph?

13 A "Alexander is not aware of any facts

14 which could support a willing buyer and a willing
15 seller, each with knowledge of the relevant facts
16 and circumstances, placing a less-than \$4.7 million
17 value on James Brown's music empire at his death."

18 Q Yes, sir. Is that your opinion?

19 A Yes.

...

7 Q Okay. Did you look at any financial
8 documents related to your valuation in preparation
9 for your work on this case?

10 A I looked at the financial documents that
11 were available that Bradley, Dallas, and Cannon had
12 done back at the time.

13 Q And that was -- and in looking at those,
14 that's how you arrived at Defense 1? Defense 1 is
15 the affidavit.

16 A In part. Put it this way: I looked at
17 everything that Ms. Pope and Mr. Buchanan furnished
18 me. So I'm not sure, in retrospect, those were the
19 only financial documents, but they were certainly
20 documents I looked at.

21 Q Okay. Did you look at any financial
22 documents in preparation for coming to this
23 deposition?

24 A Yes. I looked at financial -- some
25 financial documents -- well, key is financial
Page: 97

1 documents.

2 I'm looking at -- when you ask that
3 question, I'm looking at financial statements. I
4 looked at reports, summations, but not what I would
5 call a financial statement.

6 So, yeah, I looked at some documents that
7 became finances. How about that?

8 Q Okay. How many times have you served as
9 an expert witness in a case?

10 A Expert witness?

...

12 THE WITNESS: Let's see. You asked
13 earlier about depositions. Expert witness, I
14 think this would be the fourth or fifth time.
15 Let's see. Eastern District of
16 North Carolina, then there was Bill Belk is
17 one, two, three -- four or -- this being the
18 fourth or fifth.

19 BY MR. WILLIAMS:

20 Q Okay. Have you ever testified at trial
21 as an expert witness?

22 A Yes.

23 Q Okay. Which ones are those?

24 A All the ones I mentioned.

25 Q So those all were --

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1 A Trials.

2 Q Okay.

3 A Landcraft Properties, Western District of
4 North Carolina, Piedmont Venture Capital, Eastern
5 District of North Carolina, Bill Belk and family,
6 appropriate investment trial.

7 Q What was the Belk trial?

8 A Bill Belk had invested money out of his
9 children's trusts in certain things which his wife,
10 who they were going through a divorce, felt like he
11 should put back in; they were not appropriate
12 investments, so ...

13 Q Okay. Where was that?

14 A Charlotte.

15 Q What was your testimony or what was
16 your --

17 A That since the money he'd invested from
18 his children were less than 5 percent of their
19 trust in an investment I considered risky, that I
20 thought it was probably appropriate given the
21 amount of money in the trust.

22 Q Okay. What was your -- what was the
23 expert analysis or what was the area of expertise

24 you were qualified by the judge in?

25 A Was the -- was the amount of money that

Page: 99

1 Mr. Belk had invested on behalf of his children's

2 trusts appropriate -- an appropriate investment.

3 Q Okay.

4 A Asked to value his investment expertise

5 or his investment choices.

....

26. In connection with my opinion that the joint action of the Attorney General, Mr. Bauknight and Tomirae, both before and since the decision in Wilson v. Dallas, has deprived The James Brown "I Feel Good" Charity of a strong, expert witness to what is necessary to protect the "I Feel Good" Charity, I have reviewed the testimony of a number of experts, including Thomas Pope. Mr. Pope, with Jay Bender, represented journalist Sue Summer in a James Brown Freedom of Information Act case. Some of his April 11, 2017 deposition testimony is set out below:

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF AIKEN

ADELE J. POPE, :

: Civil Action No.:

Plaintiff, :

: 2013-CP-02-1337

vs. :

:

ESTATE OF JAMES BROWN and THE :
JAMES BROWN 2000 IRREVOCABLE :
TRUST, :

:

Defendants. :

DEPOSITION OF THOMAS H. POPE, III, ESQUIRE

DATE TAKEN: April 11, 2017

13 EXAMINATION

14 - - -

15 BY MR. WILLIAMS:

16 Q Good morning, Mr. Pope.

17 A Good morning.

18 Q My name is Burl Williams. I'm a lawyer

19 in Greenville, Nexsen Pruet firm, and I represent

20 the estate and trust in a lawsuit that Mrs. Pope

21 brought against it for fiduciary fees.

22 A Right.

23 Q That is the case that we're appearing in

24 this morning.

25 A Correct.

18 A Right. Well, I say where I fit -- of

19 course, it's not my decision to say, but I would --

20 you're asking me so I'll tell you.

21 I fit because I had -- I've seen all the

22 work that Adele has done, but also I have

23 represented a journalist in a FOIA case and I see

24 how much difficulty is added by the attorney

25 general being hardnose, unreasonable, aggressive.

Page 6

1 And so I think in this case, not only has

2 she done lots of work for which she should be

3 paid -- lots of very good work --

4 And I -- I've read her claim and all the

5 documents with it and associated with it, and I've

6 also read Steve Johnson's deposition, and I've been

7 involved in a good bit of probate and fiduciary

8 litigation. I don't do taxes and I don't hold

9 myself out as an expert in estates, but I have seen

10 fights between people over fiduciary duties and the

11 like.

12 And so you ask where I fit. I'd say that

13 Adele and Bob discharged their duties beautifully
14 at great cost, financial and otherwise.
15 The AG made that way more difficult than
16 it had to be. The AG -- particularly Sonny Jones,
17 but the whole thing.
18 You got the attorney general bringing a
19 suit, signing a fee contract that had no party
20 signing it, bringing suit on their behalf without
21 their consent, in league with the estate, your
22 client, and others taking unreasonable positions.
23 The attorney general has already had his
24 hand slapped -- and that would be a light way of
25 putting it -- for trying to orchestrate a
Page 7

1 settlement that completely dismembered
2 James Brown's estate.
3 So I've read a lot of documents, but I
4 think that's where I fit in. The AG made this even
5 more difficult, and Adele and Bob served nobly and
6 well at great cost.

21 Q Well, let's do fact first.

22 A Okay.

23 Q As a fact witness with personal knowledge
24 of the rigors of doing the fiduciary work while
25 being challenged by the AG --

Page 8

1 A Well --

2 Q Let's kind of reboot and you tell me kind
3 of your fact witness position or fact witness
4 thoughts.

5 A It's more expert. But as far as facts
6 go, I'm aware of the work because I see it
7 firsthand; the fact that there are over 120 boxes
8 of documents, I think, and the fact that the
9 difficulty --

10 Because I'm not a probate expert but I
11 have done probate litigation, I am familiar with
12 claims being filed, and there were numerous claims.

13 There was mishandling by the initial appointed PRs
14 and trustees who acted horribly, and the estate
15 files were in a mess.

16 And so I know that Adele and Bob
17 straightened that out and got stability, as
18 Steve Johnson said.

19 But I really rely on the facts as related
20 by Steve Johnson more than what I've seen, but I
21 have seen facts that support everything he says.

22 Q Okay. So then tell me what you would
23 testify to as a fact witness.

24 A Well, it would depend on what the
25 questions were. But I would say that I know
Page 9

1 personally that Adele and Bob worked extremely
2 hard --

3 Q Okay.

4 A -- and that they were castigated at every
5 turn by opposing counsel and claimants' counsel and
6 everybody else.

7 And, you know, you've got one of the
8 children of James Brown had a guardian ad litem who
9 got \$700,000, and that's just a fraction of the
10 participants in the case; not even a principal
11 player and he got \$700,000. So I think her claim
12 is reasonable.

13 Q Did he get 700,000 or did he make a claim
14 for 700,000?

15 A The court approved it, as I understand
16 it.

20 Is that what you think you will testify
21 to as an expert in this case?

22 A And the fact that her job was made more
23 difficult by the AG's office.

24 Q Okay. Tell me -- let's start with expert
25 testimony.

Page 10

1 A Uh-huh.

2 Q Have you ever testified as an expert
3 before?

4 A I have.

5 Q Okay. Will you tell us about that?

6 A I testified one time for Harold Jacobs
7 with your firm on attorney's fees.

8 Q Okay.

9 A I testified in this class action case --
10 this is a long time ago. It was about 2000 -- but
11 Speights & Runyan. They had a plaintiffs' case
12 that was -- as I recall, it was a hearing on the
13 attorney's fees; the reasonableness of the
14 settlement and the attorney's fees.

15 I think I testified for him twice. I'm
16 not sure. I'm not a hundred percent sure.

17 Q Okay.

18 A I gave an affidavit one time for Pope
19 Johnson in connection -- it wasn't really
20 attorney's fees but it was related to attorney's
21 fees. Went to the workers' comp statute, if you
22 settle a workers' comp claim for X dollars and then
23 you bring a third-party action after that and you
24 settle the third-party action for really a fraction
25 of what it really was worth but there wasn't enough

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1 insurance or whatever, then you reduce the lien of
2 the comp carrier which creates more for the client
3 and more for the attorney. So sort of collaterally
4 related.

5 Q Okay.

6 A I've given an affidavit to a lawyer one
7 time as an expert on his attorney's fees in a
8 family court case.

9 I don't think there'd be any others. I
10 think that's it.

11 Q Okay. I counted about six. Does that
12 sound right?

13 A Five or six, yeah.

14 Q Okay. Have you ever testified in court
15 as an expert?

16 A Yeah. I did federal court for
17 Mr. Jacobs.

18 Q Okay. That's the only time?

19 A I testified in court as a party once.

...

5 Q Okay.

6 A I've handled a good number of fiduciary
7 cases, but I've never testified about the fees.

8 Q Okay. You were gonna also tell me about
9 the difficulties of litigating when the attorney
10 general opposes you.

11 A Uh-huh.

12 Q Okay.

13 A Well, is that -- yes.

14 Q Okay. Is that an expertise or --

15 A No. That's a fact-based scenario. I

16 don't say the attorney general is always impossible
17 to deal with, but I've known of another case prior
18 to this. But this is certainly a primo example.

19 And the supreme court basically approved
20 that notion. They said the attorney general was
21 way out of his -- out of line when they overturned
22 the settlement in favor of Bob and Adele.

23 And as I understand it, Sonny Jones was
24 defending the agreement, and a chief justice at the
25 oral argument said: "Who did you talk to to

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1 determine that these people making undue influence
2 claims had any basis in fact for the claims?"

3 He said he talked to the lawyers for one
4 of the claimants.

5 Q Okay.

6 A Never talked to anybody that helped
7 prepare the will or watched -- or witnessed the
8 will being signed or anything along those lines.

9 And as I recall, the chief justice said

10 to Sonny Jones: "Well, you must not practice in
11 this area much."

12 Q Okay.

13 A So the -- as I understand it, when --

14 You know, Adele and Bob didn't ask for
15 this job. They were asked by the court on a
16 nomination by some of the parties -- I don't
17 remember which one -- to do it because of her
18 expertise and because of Bob's standing also as a
19 fine lawyer with fine reputations.

20 And they undertook this without seeking
21 it. And everybody wanted them, but, for some
22 reason, the attorney general didn't.

23 Q Okay.

24 A And he has fought them every step of the
25 way.

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1 Q Okay.

2 A And I don't say it's Alan Wilson and
3 Henry McMaster. I think it's more Sonny Jones.
4 He's given too much power.

5 I'm aware of another estate he handled
6 back in the 1990s that my father and brother
7 handled where Sonny Jones was so difficult. The
8 trust was gonna provide money -- it was a vague
9 trust with three trustees. They had the discretion
10 to decide who to give it to. They knew that the
11 decedent, Buck Brown of Anderson County, loved
12 Clemson. That wasn't the only school he loved, but
13 he loved Clemson.

14 And Sonny was so difficult, that they
15 made the decision to move the trust to Georgia and
16 give the money to the University of Georgia.
17 That's -- my father, his eyes turned
18 green or blue and black every time he thought of
19 Sonny Jones --

...

3 Q Okay.

4 A I've seen the work. I've seen the order
5 of January 2008 where the judge said they were to
6 be paid hourly going forward. And nobody appealed
7 that order on the other side.

8 Q Okay.

9 A It was just a mammoth amount of work. I
10 made some notes going through it.
11 The first is this \$4.7 million estate.
12 When the year he died, the Royal Bank of Scotland
13 valued the royalties only at \$42 million.
14 Cannon offered Yamma and Deanna
15 \$5 million if he could get 5 percent of the estate.
16 Judge Peeples said that James Brown made a million
17 dollars a week when he toured Europe.
18 Terry Cox had a letter of intent of
19 \$100 million for the estate. Corbis GreenLight was
20 a contract that Bob and Adele negotiated right
21 before they were dismissed whereby they would pay
22 \$2 million for publicity rights for two years only;
23 in other words, that was a cash infusion for two
24 years while this appeal went on.
25 And, of course, the PR didn't agree with

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1 that so it didn't happen.
2 Bill Sellars, a CPA, helped her prepare
3 the return, and they put a value of \$84 million.
4 Richard Alexander said it was worth more than that,
5 but it was a rumor that Forlando -- I don't know
6 where he was gonna come up with it -- wanted to pay
7 \$150 million for the estate.
8 And then we see recently Toberoff, the
9 leading publicity rights lawyer and copyright
10 lawyer in the entertainment world in the whole
11 country practically, one of the top five, is now in
12 this case filing briefs in the supreme court for a
13 couple of children talking about the proceeds from
14 the copyright termination rights being a very
15 valuable asset.

16 So she was fighting for the estate plan
17 for a reason. She wanted a lot of money to go into
18 the trust, the "I Feel Good" Trust, and Bob did,
19 too.

20 And Bob had to get out because it was
21 ruining his life. He was behind in his home
22 payments. He was a sole practitioner. His wife
23 didn't work. But Adele is not gonna do that, as
24 you probably well know by now.

25 Q Well, I hear you on these -- these

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1 instances where you believe somebody has assigned a
2 value to it.

3 A Uh-huh.

4 Q But what's that got to do with being
5 convinced that the fiduciary fee is proper?

6 A Because she did lots of things -- she had
7 to defeat claims, she had to -- Cannon and Dallas
8 filed enormous claims, like 16 million. They stole
9 money that she found out about. The judge praised
10 her in his order of January 2008.

11 She got certification, whatever the word
12 is, for the "I Feel Good" Trust, which hadn't
13 happened -- it should have happened years before
14 but it didn't -- to preserve the integrity of his
15 charitable status.

16 She was the only person -- she and Bob
17 were the only people that were looking at the
18 estate plan and wanted to fulfill it to its
19 maximum.

20 Q Right.

21 A Now if somebody can prove an undue
22 influence claim, let them prove it. Don't get in
23 league with them and try to defeat the estate plan.

24 If somebody can prove they're the wife,
25 which is now on appeal -- and it should be on

Page: 19

1 appeal, even though nobody deposed this woman,

2 which is surprising. I don't expect you to, but I
3 don't know why the limited special administrator
4 didn't.

5 She has fought to preserve this estate
6 plan, and she's done thousands of hours of work. I
7 don't know how many hours. I would say over
8 10,000, 15,000.

...

17 Q Okay.

18 A She also continued to work during the
19 appeal after May 2009 until the supreme court
20 affirmed her position. And she hired a lawyer
21 who -- what was she gonna do? Say: "Here are 120
22 boxes of documents. Go figure out what the appeal
23 is about"? She worked with him.

24 Q Okay.

25 A And she didn't know until after a year

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1 after Jim Richardson took the case that he was
2 gonna do it pro bono.

3 And, of course, David Black of your firm
4 challenged his integrity in court and said he
5 wasn't working pro bono, which was just -- make
6 anybody's blood boil. Jim Richardson is
7 Mr. Integrity.

8 And he won the case. And he did what
9 great lawyers do: He synthesized it down to the
10 important issues and he won. All caps, underlined,
11 he won. And Adele won, and Bob won. So she'd been
12 vindicated up to that point.

13 Now, after that -- after 2013 she hasn't
14 done anything. I don't think she's seeking
15 anything beyond that. But she was working during
16 2009 to 2013 to preserve the estate plan by helping
17 her lawyer on appeal.

...

4 Q Okay. You mentioned she got an IRS
5 certification for the "I Feel Good" Trust. You

6 mentioned the January 2008 order.

7 Is there anything else that stands out in
8 your mind of things done that convince you the
9 fiduciary fee is reasonable?

10 A Well, she -- I mean, she hired

11 Ray Gonzalez. She had to go to that house over
12 there. It was -- it was -- the James Brown house.
13 She had to preserve the security of it and found
14 out there was a leak. She had to hire somebody to
15 come take all these boxes full of recordings and
16 take them to Nashville, Tennessee for safekeeping.
17 She was faced with a totally mismanaged
18 trust. So it wasn't like she was starting -- it
19 wasn't like a banker died and had all his documents
20 in neat order and you could go through it and work
21 hard but still figure it out.

22 With James Brown she had to -- she
23 couldn't even get cooperation from James Brown's
24 accountant, let alone the former PRs who were
25 fighting her tooth and nail and stealing money.

Page: 22

1 And she caught them.

2 Q Uh-huh.

3 A And she was praised for catching them,
4 and Cannon got prosecuted for it, although the AG
5 surprisingly didn't bother to come to the
6 sentencing hearing and ask for restitution. That
7 seems bizarre to me. But that's another indication
8 of strangeness.

9 So she did lots of things. The security
10 of the house was a big thing; dealing with
11 claimants. There was suits pending in three states
12 when she took over. She had to hire counsel in
13 other places to deal with them.

14 I mean, there's umpteen boxes of
15 documents that support what she did, and it's set
16 out in her claim.

17 I mean, I could get the document and

18 revive my memory, but her claim and her suit
19 provide plenty of information sufficient to justify
20 the amount she's seeking.

21 Q Okay. Let's look at what I'm gonna mark
22 as Defense 1. And this is an expert witness
23 disclosure.

24 A Okay.

3 Q Okay. Second paragraph talks about a
4 public official taking control of assets.

5 Does that have anything to do with your
6 opinion in this case?

7 A Yeah. He doesn't -- the attorney general
8 doesn't have the authority to take control over the
9 James Brown "I Feel Good" Foundation, but that's
10 what he did.

11 He has authority to supervise it and make
12 sure that the terms of the foundation are carried
13 out. He doesn't have authority to control it. So,
14 yeah, it does.

15 If he hadn't been in here -- the attorney
16 general is the leading law enforcement official in
17 the state. He has a status that is quite high in
18 the eyes of the public.

19 And, honestly, I think that the people
20 that colluded together on the settlement thought
21 that that -- and maybe they were right for a
22 while -- but having him put his imprimatur on this
23 settlement was just gonna grease the wheels and
24 make it slide on through.

25 So she was fighting the chief law

Page: 25

1 enforcement of the state and he did take control,
2 and that's not appropriate. So I think the
3 paragraph is correct.

4 Q Okay. So your opinion all ties into the
5 presence of the attorney general in this
6 litigation?

7 A That one does, yeah.

8 Q Okay. What does Case 4900 or Journalist
9 Sue Summer have to do with this case?

10 A Well, my experience in the Sue Summer
11 case was -- like, I met the same stone walls that
12 Adele has. That's really basically it. Because we
13 were requesting documents.

14 She's a journalist and, on her behalf, we
15 made -- with Jay Bender's, co-counsel, help, we
16 sought out the documents that were very important
17 to the James Brown case and to the public, and
18 those would be the fee agreement Sweeny Wingate had
19 with the attorney general and all the parties,
20 which we got.

21 It was actually produced in the federal
22 case while our FOIA request was pending, but we got
23 that. We asked for the Hynie diaries. They were
24 produced by an unknown, anonymous third party while
25 this was pending.

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1 But we prevailed and the judge awarded
2 her attorney's fees in that. We did not get the
3 \$4.7 million appraisal documents because the AG's
4 office said they did not have that.

5 I mean, I'm not denying they did not have
6 those documents, but after the final order was
7 issued, we asked the judge to reconsider
8 whether they -- if they had used those documents
9 under FOIA, then they should still be protected and
10 they should go get those documents from whoever had
11 them and present them to us. And the judge
12 declined to rule on that because the case was over,
13 as he saw it, and he did not rule.

14 But we were successful in large part, and
15 we got Ms. Summer's attorney's fees paid. So
16 that's the relation.

17 I mean, it doesn't -- what it is, it is.

18 We got documents that related to 4900, but that
19 wasn't the only purpose of it.

20 Q Okay. You mentioned the 4.7 million
21 appraisal. Why did you want to see that?
22 A Because it seems preposterous. I mean,
23 she thought it did, I think it does. Anybody in
24 the world thinks it does. You ask a guy on the
25 street that ...

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1 Q Do you know -- have you ever seen it?

2 A No, I've never seen it.

3 Q You have never signed a confidentiality
4 order and looked at it?

5 A I've never seen it, any part of it.

6 Q Okay.

7 A I mean, there are farmers in
8 Newberry County that are worth more than that; I
9 mean, honestly. It's ludicrous.

10 He had a \$3 million-plus stream of income
11 every year before he died.

12 Q So you've never looked at it, but you
13 just assume it's incorrect?

14 A I would bet my life on it being
15 incorrect.

5 Q Okay.

6 A I'd say that James Brown is probably --
7 in terms of his cultural popularity, he's probably
8 right there with Elvis. He might be a step behind
9 him, but not much.

10 Q How much in publicity rights did
11 Mrs. Pope and Mr. Buchanan generate during their
12 fiduciary service?

13 A I don't know. They tried to do one with
14 Corbis.

15 Q Do you know the terms of that deal?

16 A I don't.

17 Q Okay. Beyond Corbis, do you know if they
18 generated any other publicity rights?

19 A I don't know.

20 Q How about the prior fiduciaries?

21 A How about what?

22 Q The prior fiduciaries. Were they able to
23 do it?

24 A No. I think they were so busy stealing,
25 they never got around to it.

4 Q If you could just generally look through
5 the -- page 20 of Defense 1.

6 A Right. Uh-huh.

7 Q I read most of this -- it leads with a
8 number of paragraphs saying: "Journalists and
9 citizens have a right to know" ...

10 Is most of this really focused towards
11 something beyond the claims case? I mean, do
12 you --

13 A A lot of this is focused on my attempts
14 to -- under FOIA to get documents and information
15 from the attorney general.

16 Q Okay. I mean, do you think that it would
17 be proper to come down to the trial of this case
18 and discuss all these matters?

19 I mean, do you think they're relevant to
20 the claims case?

21 A I may not discuss them in exactly these
22 words. I think it's relevant to know what the
23 attorney general's bad influence was on this entire
24 estate.

25 He put his imprimatur on things and took
Page: 30

1 positions that were not related to fulfilling the
2 estate plan of James Brown.

3 And to me -- and that's what a trustee
4 and a PR's duty is, is to be single-mindedly
5 focused on implementing the wishes of the decedent.
6 Whether it's James Brown or Joe Smith, that's what
7 you're supposed to do.

8 And the fact that a bunch of heirs want
9 to change that or allege spouses want to change
10 that, it's contrary to what role the PR and the

11 trustee should be playing.

12 Q Okay.

13 A So you would think the AG would want to
14 implement the estate plan, but he was siding with
15 contestants of the will; people who had been left
16 out, omitted children, people who were not spouses.
17 It's astounding, really.

10 Q Yes, sir. Tell me why this Toberoff --
11 you brought this Toberoff printout.

12 Tell me why it's important to you. Why
13 did you bring it here today?

14 A Well, on valuation, I mean, Toberoff is
15 on a filing in the supreme -- in the court of
16 appeals as of counsel on behalf of -- let's see --
17 Deanna Brown, Yamma, and Venisha alleging how
18 important -- that the proposed settlement may
19 violate federal copyright laws and that the
20 proposed settlement would create a conflict of
21 interest for the PRs of the estate who may stand to
22 recover significant fees from the recovery of
23 proceeds from copyright termination rights.
24 I don't know whether that's true or not,
25 but I just mean a guy from Malibu, California is
Page: 34

1 weighing in on a \$4.7 million case on behalf of two
2 heirs or three heirs out of 15 and saying it's
3 significant?

4 So, I mean, it goes to valuation. If the
5 biggest hotshot in publicity rights in America
6 weighs in on behalf of two somewhat minor claimants
7 in this whole estate, then he must think it's worth
8 a lot of money.

...

9 Q Okay.

10 A I know it relates only to 4900, but -- I
11 mean, of course, she didn't have clients because
12 she hadn't got any malpractice insurance because of
13 these oppressive lawsuits against her; like

14 Forlando's and the one that Bauknight is -- 4900
15 that he brought. And it was brought to run her
16 off, to squash her like a bug to get her not to
17 appeal, and that wasn't -- that was like pouring
18 gasoline on a fire.

19 Q Have you ever seen a document that
20 supports that sentence you just made, that the
21 lawsuit was brought in order to run her off?

22 A They told her to -- if she appealed,
23 they'd sue her.

...

11 Q Okay.

12 A I know she turned away clients to handle
13 James Brown.

14 Q Okay.

15 A It was very busy. I mean, she was
16 dealing with misappropriating funds from PRs, she
17 was dealing with an incredible mess of documents
18 that made no sense, which took just a -- just to
19 get them together and put them in -- inventory them
20 and get them in the right form, talking to a CPA
21 that wasn't giving them information and hadn't
22 filed tax returns.

23 I mean, at every turn, it was a difficult
24 task. And when she got appointed as the PR, the
25 task wasn't over. She kind of stopped the
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1 misappropriations and caught it and duly handled
2 it, but she and Bob continued then to reconstruct
3 what was there. Hired Bill Sellars and whatnot and
4 consulted with Ray Gonzalez later, and --

5 Very, very busy.

6 Q Okay.

7 A I can't give you each year -- what
8 happened each year, but I know she was very, very
9 busy.

...

14 Q Okay. To state the obvious, you're

15 married to Mrs. Pope?

16 A Correct.

17 Q You may have some -- a little bit of a
18 bias?

19 A I would say, as a husband, I would have a
20 bias, but I wouldn't testify if I didn't believe
21 it.

11 Q Of course, if you come down to Aiken, we
12 try this case, it's fair game to ask you: You do
13 stand to benefit from recovery --

14 A We keep separate bank accounts --

15 Q Okay. Well, let's --

16 A -- so you could draw your own
17 conclusions.

18 I don't stand to benefit. I think her
19 intentions are to give a lot of this money to
20 charity, whatever she gets, but that's her
21 business.

22 Q Well, I never asked that question during
23 the deposition, so perhaps you can amplify on it.
24 Do you know what the intention is if a
25 full fee recovery were provided?

Page: 42

1 A Well, A: I'd say that's nobody's
2 business; but, B: She has said she intends to give
3 a good bit of it to charity, and we are very
4 charitable oriented.

5 That's one influence she's had over me.

6 I give as much as I can give to the charities that
7 interest me, which are most of the Newberry Opera
8 House, the Newberry YMCA, and my college.

22 BY MS. POPE:

23 Q I have just two questions: Could you
24 briefly describe the documents that you brought and
25 that you looked at in preparation for this

Page: 43

1 deposition?

2 A I looked at Steve Johnson's deposition, I
3 looked at the claim you filed, plus all the
4 supporting documents, which is about 4 inches
5 thick -- yeah, 3, 4 inches thick.
6 I looked at your deposition, Alan
7 Wilson's, the Forlando suit, bunches of court
8 orders, the report of Jim Hardin. Complaint in
9 4900 I did not look at, but I'm aware of the fact
10 there are 130-plus boxes of documents that you
11 dealt with.

12 But your supplemental affidavit in
13 support of the claim furnishes a large portion of
14 those documents.

15 Q Did you also look at your own files?

16 A Oh, yeah. I had my FOIA files for
17 Sue Summer against the AG, which are four pleadings
18 notebooks probably 4 or 5 inches high. Looked at
19 those.

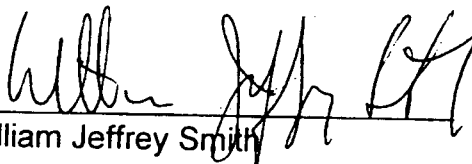
20 But -- of course, I was familiar with
21 them, but I did glance at them.

27. I have reviewed documents which show that since the Wilson decision Mr. Sojourner was paid about \$1.5 Million; Mr. Bauknight's lawyers have been paid several millions; Tomirae's son's guardian ad litem and lawyer have been awarded about \$700,000; and other funds have been spent to help Tomirae and to continue to discredit Mr. Buchanan and Mrs. Pope.

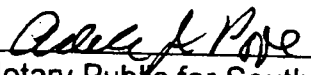
28. The Attorney General and Mr. Bauknight have allowed Tomirae to be paid \$1 Million from 3 James Brown songs and, so far as I can see, have done nothing to challenge the termination rights Tomirae is attempting to exercise to take a portion of

the "I Feel Good" Charity's royalties to 90 or so of its 900 copyrights between now and 2023.

FURTHER DEPONENT SAYETH NOT.


William Jeffrey Smith

SWORN TO BEFORE ME this 14th
Day of July, 2017

 (L.S.)
Notary Public for South Carolina
My commission expires: 9/27/2023

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James ~~Brown~~; Daryl J. Brown, individually and on behalf of his minor child Janise Vanisha Brown; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children Sydney ~~Lumar~~ and Carrington ~~Lumar~~; Tonya Brown; Venisha Brown Larry Brown; and Terry Brown

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES ~~BROWN~~; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY ~~LUMAR~~ and CARRINGTON ~~LUMAR~~; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

Adele J. Pope,

Defendant

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

PLAINTIFFS' MEMORANDUM
IN OPPOSITION TO
DEFENDANT/COUNTER-CLAIM
PLAINTIFF'S MOTION TO ALTER,
AMEND, RECONSIDER, AND/OR
VACATE THIS COURT'S JUNE 23,
2017

RICHLAND COUNTY
FILED
2017 AUG -9 AM 10:35
JEANETTE W. MCBRIDE
C.C.P. & G.S.

On June 23, 2017, the Court granted Plaintiffs' motion for summary judgment as to all of the Defendant's counter-claims. On or about July 13, 2017, Defendant filed an extensive motion to alter, amend, reconsider and/or vacate the order.

The Plaintiffs contend that the Court's June 23rd order rests on proper and adequate conclusions of both fact and law, and that the Court made no misapprehension or misapplication of any fact or law in reaching its conclusion.

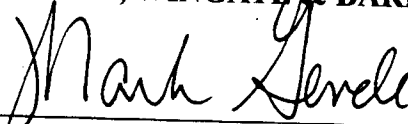
The Plaintiff's contend that Defendant's 71 page memorandum and 111 page affidavit fail to cite any basis of fact or law that would indicate the court misapprehended or misapplied any fact or law.

The Plaintiffs, therefore, respectfully request the Court deny without a hearing Defendant's motion to alter, amend, or vacate its June 23rd Order.

This memorandum may be supplemented.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Kenneth B. Wingate

Mark V. Gende

Everett A. Kendall, II

Sweeny, Wingate & Barrow, P.A.

Post Office Box 12129

Columbia, SC 29211

(803) 256-2233

ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina

August 7, 2017



J. CALHOUN WATSON
Direct Dial 803 231.7839
Direct Fax 803 231.7889
Email cwatson@sowellgray.com

October 1, 2010

VIA ELECTRONIC MAIL and U. S. MAIL

The Honorable L. Casey Manning
Judge, Fifth Judicial Circuit
Richland County Judicial Center
1701 Main Street, Room 214
Columbia, SC 29201

RE: Russell L. Bauknight, et al. vs. Adele J. Pope and Robert L. Buchanan, Jr.
Civil Action No.: 2010-CP-40-4900
Our File No.: 5478/1503

Dear Judge Manning:

As requested, enclosed please find a proposed **Order for Dismissal** for your consideration which I submit on behalf of both defendants. As you may recall, this matter was argued on August 30, 2010. Should you have questions or need further information, Daryl Williams and I are both available at your convenience.

With kind regards, I remain

Very truly yours,

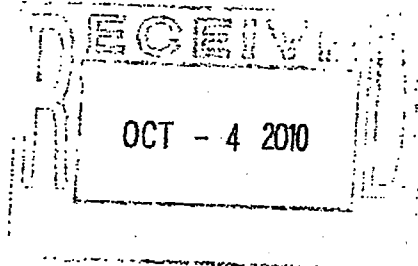
Cal Watson

J. Calhoun Watson

JCW:cls

Enclosures

cc: Kenneth B. Wingate, Esquire - via email and U. S. Mail
Everett A. Kendall, II, Esquire - via email and U. S. Mail
Daryl L. Williams, Esquire - via email



2213



SWEENEY WINGATE & BARROW P.A.

October 1, 2010

Reply to: Main Office
Kenneth B. Wingate
(803) 256-2233 x 133
kbw@swblaw.com

The Honorable L. Casey Manning, Jr.
Judge, Fifth Judicial Circuit
Richland Judicial Center
1701 Main Street
Columbia, SC 29201

RE: Bauknight, et al. v. Buchanan and Pope
Case No.: 2010-CP-40-4900
Our File: 4077-7389

Dear Judge Manning:

On August 30, 2010, you conducted a hearing in the above referenced matter. You requested that both sides submit proposed orders. By agreement of counsel, the date for doing so is today.

Enclosed you will find two orders denying Defendants' Motion to Dismiss. As you will see, one is significantly longer than the other. Given that the denial of this Motion would not be appealable, I was not sure how much detail you would want to include the Order. Thus, I have provided you options in this regard. Also enclosed is an Order denying Defendants' Motion to Change Venue. I have included an Affidavit of Beth Bauknight with Exhibits as well.

In addition to these hardcopies, email versions of these documents are being sent to you today. If anything further is required, please let me know.

For your information, I have also enclosed a copy of the Plaintiffs' Motion to Strike the Affidavit of Pope and Buchanan, which was submitted on October 1, 2010.

Thank you for your thoughtful consideration of this matter. With kind regards I remain,

Yours truly,

SWEENEY, WINGATE & BARROW, P.A.

Kenneth B. Wingate

KBW/smd
Enclosures

cc/enc: Daryl L. Williams, Esquire (via E-Mail and U.S. Mail)
J. Calhoun Watson, Esquire (via E-Mail and U.S. Mail)

2214



SWEENY WINGATE & BARROW P.A.

October 1, 2010

Reply to: Main Office
Kenneth B. Wingate
(803) 256-2233 x 133
kbw@swblaw.com

VIA HAND DELIVERY

The Honorable L. Casey Manning, Jr.
Judge, Fifth Judicial Circuit
Richland Judicial Center
1701 Main Street
Columbia, SC 29201

RE: Bauknight, et al. v. Buchanan and Pope
Case No.: 2010-CP-40-4900
Our File: 4077-7389

Dear Judge Manning:

Please find enclosed a proposed Order Striking Defendant's Motion To Transfer Venue. The matter was before Your Honor on August 30, 2010, along with other motions that were argued on the same day. The enclosed order, if signed and filed, would obviate the need for you to consider the defendant's motion to transfer venue.

Thank you for your attention to this matter.

Yours truly,

SWEENY, WINGATE & BARROW, P.A.

Kenneth B. Wingate

KBW/alm

Enclosures

cc/enc: Daryl L. Williams, Esquire (via E-Mail and U.S. Mail)
J. Calhoun Watson, Esquire (via E-Mail and U.S. Mail)

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Henry Dargan McMaster, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child. James Brown; Daryl J. Brown, individually and on behalf of his minor child Janise Vanisha Brown; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children Sydney Brown and Carrington Brown; Tonya Brown; Venisha Brown Larry Brown; and Terry Brown

and

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

Plaintiffs

v.

Adele J. Pope and Robert L. Buchanan, Jr.,
Defendants

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Civil Action No. 2010-CP-40-4900

RICHLAND COUNTY
FILED
2010 DEC -9 AM 9:57
JEANETTE A. MCGRIDE
C.C.P. & G.S.

**MOTION TO STRIKE
PORTIONS OF DEFENDANTS'
MOTION TO STAY PROCEEDINGS**

TO: DEFENDANTS AND THEIR ATTORNEYS:

YOU WILL PLEASE TAKE NOTICE that the Plaintiffs above-named, by their undersigned attorneys, will move before the Presiding Judge of the Richland County Court of Common Pleas at the Richland County Judicial Center at 9:00 a.m. on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order to strike portions of the Defendants' Motion to Stay Proceedings according to Rule 12(f), SCRPC.

Under the guise of a Motion to Stay, Defendants are attempting to engage in a character assassination wholly irrelevant to the relief they seek. Moreover, Defendants seek to clutter and confuse the record with allegations, conjecture and insult in an effort to create a parallel reality extant only in mind of the Defendants and the files of this Court. The specific grounds and facts supporting this Motion to Strike are the following:

1. Defendants' contend that the basis for their Motion to Stay is the existence of pending declaratory judgment actions in Federal Court. However, the grounds and facts cited by Defendants in support of their motion are centered on Terry Brown, one of more than a dozen Plaintiffs in this action. The references to Terry Brown are "redundant, immaterial, impertinent or scandalous" as described in the Rules of Civil Procedure and should be stricken from Defendants' Motion.
2. Specifically, "Terry Brown and the other" should be stricken from Paragraph 1 of Defendants' Motion.
3. "Terry Brown, a son of entertainment icon James Brown, and" should be stricken from Paragraph 2 of Defendants' Motion.
4. "Terry Brown and others" should be stricken and replaced with "Plaintiffs" in Paragraph 3 of Defendants' Motion.

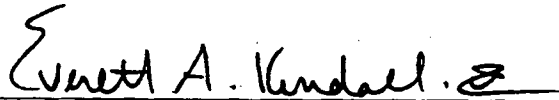
Motion to Strike
Civil Action No. 2010-CP-40-4900

5. Paragraph 4 should be stricken in its entirety from Defendants' Motion.
6. Paragraph 5 should be stricken in its entirety from Defendants' Motion as it refers solely to the assertions of Albert Dallas which have no relation to the Motion for Stay before the Court.
7. The phrase "including questions related to the actions of Terry Brown" should be stricken from Paragraph 6 of Defendants' Motion.
8. Defendants' Motion includes two exhibits. Exhibit A should be stricken as it constitutes "redundant, immaterial, impertinent or scandalous" material.

This Motion to Strike may be supported by a memorandum of law.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Kenneth B. Wingate
Everett A. Kendall, II
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina
December 7, 2010

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James Brown; Daryl J. Brown, individually and on behalf of his minor child Janise Vanisha Brown; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children Sydney Lumar and Carrington Lumar; Tonya Brown; Venisha Brown Larry Brown; and Terry Brown

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

**Adele J. Pope and Robert L. Buchanan,
Jr.,**

Defendants.

**THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Civil Action No.: 2010-CP-40-04900

**2012 APR 11 PM 4:53
JEANETTE W. MCGRIDE
C.C.P. & G.S.**

**RICHLAND COUNTY
FILED**

**PLAINTIFFS' MEMORANDUM OF
LAW IN SUPPORT OF THE MOTION
TO SET ASIDE ENTRY OF DEFAULT**

For the foregoing reasons, Plaintiffs respectfully request that the Court grant this Motion and enter an Order setting aside the entry of default with respect to Defendants' Counterclaims against Plaintiffs.

FACTS BEARING UPON THE MOTION

This case is but one of many stemming from the probate of the Estate of the late singer and entertainer James Brown. This action involves claims by the current Personal Representative and Trustee (Plaintiff Russell Bauknight) against the prior PR/Trustees, Defendants Adele Pope and Robert Buchanan. The facts set forth herein are taken from the Affidavit of Kenneth B. Wingate, which is attached to the filed Motion to Set Aside. Another copy of the Affidavit is attached hereto as Exhibit 1.

Plaintiffs filed the Complaint on May 19, 2010. Defendants responded to the Complaint by filing a Motion to Dismiss and Motion to Change Venue. The Court heard these Motions on August 30, 2010. After the hearing, Judge Manning requested proposed orders on the Motions, due on October 1, 2010. On information and belief, Defendants served an Answer and Counterclaims on Plaintiffs on September 30, 2010, *before* the proposed orders were due on Defendants' Motions to Dismiss and Change Venue. Judge Manning's Order denying the Motion to Dismiss was received by Plaintiffs' counsel on November 12, 2010. Plaintiffs' counsel forwarded a copy of this Order to counsel for Defendants on November 12, and stated in the email that counsel "look[ed] forward to receiving your Answer on or before November 29, 2010." (See Exhibit A to Affidavit of Kenneth B. Wingate.) Three days later—on November 15—Plaintiffs' counsel received a copy of the Affidavit of Default (filed November 10, 2010). Plaintiffs filed this Motion on November 16, 2010, the day after receiving the Affidavit of Default. Plaintiffs also filed an Answer to the Counterclaims on November 16, 2010.

STANDARD OF REVIEW AND APPLICABLE LAW

According to Rule 55(c) of the South Carolina Rules of Civil Procedure, “[f]or good cause shown the court may set aside an entry of default . . .” Rule 55(c), SCRPC. The Court of Appeals has explained that the “good cause” standard “requires a party seeking relief from an entry of default . . . to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice.” Wilder v. Blue Ribbon Taxicab Corp., 396 S.C. 139, 144-45, 719 S.E.2d 703, 706 (Ct. App. 2011) (quoting Sundown Operating Co. v. Intedge Indus., Inc., 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009)). Once a satisfactory explanation is provided, “the trial court must also consider [the Wham factors]: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted.” Id. (quoting Sundown Operating Co. at 607-608, 681 S.E.2d at 888) (reciting the factors taken from Wham v. Shearson Lehman Bros., Inc., 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct. App. 1989)). The trial court need not make specific findings of fact regarding each factor “if there is sufficient evidence in the record to support the trial court’s decision. Id. (citing Sundown Operating Co. at 608, 681 S.E.2d at 888). Finally, “the decision whether to set aside an entry of default is within the sound discretion of the trial court.” Id. (citing Williams v. Vanvolkenburg, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994)).

ARGUMENT

I. THE ATTORNEY GENERAL’S OFFICE CANNOT BE HELD IN DEFAULT.

In its statutory role as the protector of charitable trusts, the Attorney General's Office is a party plaintiff in this case. The Attorney General's Office, as an agency of the State of South Carolina, cannot be held in default. Rule 56(e), SCRPC.

II. PLAINTIFFS CAN PROVIDE A SATISFACTORY EXPLANATION FOR THE ENTRY OF DEFAULT, AND CAN DEMONSTRATE THAT THE WHAM FACTORS ARE SATISFIED. THEREFORE, PLAINTIFFS HAVE SHOWN "GOOD CAUSE" WHY THE COURT SHOULD SET ASIDE THIS ENTRY OF DEFAULT.

A. Explanation for Default.

As set forth in the Affidavit of Kenneth B. Wingate, the explanation for Plaintiffs' default on the Counterclaims is simple: Defendants served their Answer and Counterclaims the day before proposed orders on Defendants' Motion to Dismiss were due. Plaintiffs were in the process of preparing said orders and awaiting the Court's ruling on Defendants' Motion to Dismiss. Defendants filed their Answer and Counterclaims *without withdrawing their pending Motion to Dismiss*. Defendants therefore filed their Answer and Counterclaims at an odd time in the litigation, when Plaintiffs would not be expecting an Answer or Counterclaims, because Defendants' Motion to Dismiss was pending, orders were being submitted, and—importantly—Defendants' had not withdrawn their Motion to Dismiss. This smacks of a litigation tactic intended to take advantage of the circumstances. Plaintiffs responded immediately when notified of the default.

Vacating this default would serve the ends of justice by allowing Plaintiffs to defend the Counterclaims against them, which involve many of the same issues as Plaintiff's primary claims against Defendants. See Part II.B.ii., infra. Plaintiffs are also not the stereotypical defaulting party, since they have been actively participating in (and indeed initiated) this lawsuit. Plaintiffs have not slept on any of their rights.

B. Wham Factors.

i. Timing of the Motion for Relief.

As set forth in the Affidavit of Kenneth B. Wingate, the Affidavit of Default (dated November 10, 2010) was received by Sweeny, Wingate & Barrow, P.A. on November 15, 2010. Plaintiffs filed this Motion the next day, November 16, 2010. Clearly, Plaintiffs did not waste any time in responding to the Affidavit of Default, and Plaintiffs have thus satisfied the first Wham factor.

ii. Meritorious Defenses.

Of note are the nature of Plaintiffs' primary claims for breach of fiduciary duty against Defendants. All parties are actively litigating these primary claims, which amount to meritorious defenses to Defendants' Counterclaims. If these primary claims prevail, Defendants cannot logically succeed in their Counterclaims (involving allegations of Plaintiffs' alleged improper actions).

Plaintiffs also filed and served an Answer to Counterclaims on November 16, 2010. In Plaintiffs' Answer, Plaintiffs deny the factual assertions of Defendants' Counterclaims. Therefore, the issues on the counterclaims are joined and suitable for resolution by the Court or a jury.¹ Plaintiffs also assert the affirmative defenses of Rule 12(b)(6), waiver, estoppel, unclean hands, and *res judicata*/collateral estoppel, and are prepared to move forward in establishing those defenses.

¹ Plaintiffs do not concede that Defendants' Counterclaims would survive a dispositive motion, and Plaintiffs specifically reserve the right to file such motions on the Counterclaims. Plaintiffs are simply pointing out to the Court that they deny Defendants' allegations in the Counterclaims and will contest all such issues.

Through their case-in-chief and their denials/affirmative defenses relating to Defendants' Counterclaims, Plaintiffs have shown that they have meritorious defenses to the Counterclaims. Thus, the second Wham factor is satisfied in favor of Plaintiffs.

iii. The Degree of Prejudice to Defendants.

In light of the ongoing nature of this litigation and Plaintiffs' immediate filing of a Motion to Set Aside the Default, Defendants have not and will not suffer any prejudice if the Court sets aside the entry of default. Discovery in this case is ongoing, so Defendants will have ample opportunity to develop the facts needed to establish their Counterclaims. Further, Defendants have known—ever since the day after they filed the Affidavit of Default—that Plaintiffs contested the default. Thus, Defendants' overall litigation strategy cannot have been colored by reliance on the entry of default, because Defendants have had notice of this Motion since November 16, 2010. Defendants will suffer no prejudice if this default is lifted. The third Wham factor is satisfied in favor of Plaintiffs.

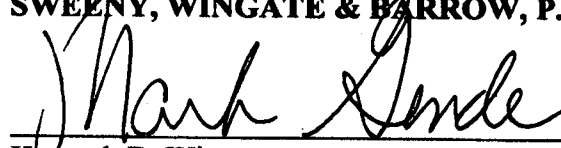
CONCLUSION

For the foregoing reasons, Plaintiffs assert that there is "good cause" to set aside the entry of default with respect to Defendants' Counterclaims against Plaintiffs. Additionally, the Attorney General's Office cannot be held in default. Therefore, this Motion should be granted.

[Signature Block on Following Page]

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.

A handwritten signature in dark ink, appearing to read "Mark V. Gende", is written over a horizontal line.

Kenneth B. Wingate

Mark V. Gende

Aaron J. Hayes

1515 Lady Street

Post Office Box 12129

Columbia, South Carolina 29211

(803) 256-2233

ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina
April 11, 2012

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Henry Dargan McMaster, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James ~~Brown~~; Daryl J. Brown, individually and on behalf of his minor child Janise Vanisha Brown; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children Sydney ~~Lewis~~ and Carrington ~~Lewis~~; Tonya Brown; Venisha Brown Larry Brown; and Terry Brown

and

HENRY DARGAN MCMASTER, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES ~~Brown~~; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY ~~Lewis~~ and CARRINGTON ~~Lewis~~; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

Adele J. Pope and Robert L. Buchanan, Jr.,
Defendants

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Civil Action No. 10-CP-40-4900

**AFFIDAVIT OF
KENNETH B. WINGATE**

RICHLAND COUNTY
FILED
2010 NOV 16 PM 4:45
JEANETTE W. McBRIDE
C.C.P. & G.S.