THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

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

RECEIVED
NOV 28 2018
S.C. SUPREME COURT

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

Tommie Rae Brown ..... S.C. Respondent

v.

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

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

RECORD ON APPEAL – VOLUME III

Robert C. Byrd, SC Bar #1069
A. Smith Podris, SC Bar #78051
Parker Poe Adams & Bernstein LLP
200 Meeting Street, Suite 301
Charleston, SC 29401
(843) 727-2650
bobbybyrd@parkerpoe.com
smithpodris@parkerpoe.com

Attorneys for Appellants Deanna Brown-Thomas, Dr. Yamma Brown, and Venisha Brown

OF COUNSEL
Pro Hac Vice:

Marc Toberoff
Toberoff & Associates, P.C.
23823 Pacific Coast Hwy, Suite 50-363
Malibu, CA 90265
Telephone: (310) 246-3333
Facsimile: (310) 246-3101
mtoberoff@toberoffandassociates.com

Other Counsel of Record:

Robert N. Rosen, Esq.
Erin C. Casey, Esq.
Rosen Law Firm, LLC
18 Broad Street, Suite 201
Charleston, SC 29401
rnrosen@rosen-lawfirm.com
csmith@rosen-lawfirm.com
(*Attorneys for Tommie Rae Brown*)

S. Alan Medlin, Esq.
USC School of Law
1713 Phelps Street
Columbia, SC 29205
amedlin@sc.rr.com
(*Attorney for Tommie Rae Brown*)

T. Heyward Carter, Jr., Esq.
Andrew Chandler, Esq.
M. Jean Lee, Esq.
Evans, Carter, Kumes & Bennett, PA
115 Church Street
PO Box 369 (29402-0369)
Charleston, SC 29401
carter@eckb.com
(*Attorneys for Tommie Rae Brown*)

David L. Michel, Esq.
15 State Street
Charleston, SC 29401
d_michel@yahoo.com
(*Attorneys for Tommie Rae Brown*)

Sen. Arnold S. Goodstein
Goodstein Law Firm, LLC
PO Box 2350
Summerville, SC 29484-2350
(*Attorneys for Tommie Rae Brown*)

John F. Beach, Esq.
Lyndey Ritz Zwing, Esq.
Adams and Reese LLP
1501 Main Street, Fifth Floor
PO Box 2285 (29202)
Columbia, SC 29201
john.beach@arlaw.com
lyndey.zwing@arlaw.com
(*Attorneys for David C. Sojourner, Jr., as Limited Special Administrator for the Estate of James Brown and as Limited Special Trustee of the James Brown 2000 Irrevocable Trust*)

Davis C. Sojourner, Jr., Limited Special Trustee
Adams and Reese LLP
1501 Main Street, Fifth Floor
PO Box 2285 (29202)
Columbia, SC 29201
david.sojourner@arlaw.com

David B. Bell, Esq.
David Bell Law Firm
619 Greene Street
PO Box 1011 (30903-1011)
Augusta, GA 30901
davidbell@davidbelllawfirm.com
(*Attorney for Larry Brown and Daryl Brown*)

Matthew Day Bodman, Esq.
Matt Bodman, P.A.
1500 Calhoun Street
Columbia, SC 29201
mattbodmanlaw@aol.com
(*Attorney for Larry Brown, Daryl Brown and Michael Deon Brown*)

Louis Levenson, Esq.
Levenson & Associates
125 Broad Street, SW
Atlanta, GA 30303
Louis@levensonlaw.com
(*Attorney for Larry Brown*)

Scott Keniley, Esq.
Keniley Kumar LLC
Two Ravinia Drive, Suite 500
Atlanta, GA 30346
scott@k5law.com
(*Attorney for Terry Brown*)

John A. Donsbach, Esq.
Donsbach & King, LLC
504 Blackburn Drive
PO Box 212139 (30917)
Augusta, GA 30907
jdonsbach@donsbachking.com
(*Attorney for Terry Brown*)

A. Peter Shahid, Jr., Esq.
Shahid Law Office, LLC
89 Broad Street
Charleston, SC 29401
shahidlo@bellsouth.net
(*Attorney for Guardian Ad Litem Stephen M. Slotchiver*)

William Joseph Barr, Esq.
Vera Gilford, Esq.
Barr Law LLC
108 N. Academy Street
Kingstree, SC 29556-3422
barrlaw@ftc-i.net
veragilford@yahoo.com
(*Attorneys for Jeanette Mitchell and Amici Curiae LaRhonda Petitt, Ciara Petitt, Cheriquarious Williams and Sarah LaTonya Brown Fegan*)

J. David Black, Esq.
Fred L. Kingsmore, Jr., Esq.
Nexsen Pruet, LLC
PO Drawer 2426 (29202-2426)
1230 Main Street, Suite 700
Columbia, SC 29201
dblack@nexsenpruet.com
fkingsmore@nexsenpruet.com
(*Attorneys for Russell Bauknight, Personal Representative of the James Brown Estate and Trustee of the James Brown 2000 Irrevocable Trust Agreement*)

Russell L. Bauknight, Estate Trustee and Personal Representative
Bauknight Pietras & Stormer, P.A.
1517 Gervais Street
PO Box 1330 (29202)
Columbia, SC 29201
rbauknight@bpscpas.com

C. Havird Jones, Jr., Esq.
Office of the SC Attorney General
PO Box 11549
Columbia, SC 29211-1549
agsjones@ag.state.sc.us

James Mixon Griffin, Esq.
Griffin & Davis Law Firm
1527 Blanding Street
Columbia, SC 29201
jgriffin@griffindavislaw.com

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FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP0202850

PLAINTIFF(S)	DEFENDANT(S)
Tommie Rae Hynie-Brown	David Soujourner, Terry Brown, Deanna Brown Thomas, Yamma Brown, Vanisha Brown, Larry Brown, Daryl Brown, Jeanette Mitchell, Michael Deon Brown
Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ ACTION DISMISSED (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ ACTION STRICKEN (*CHECK REASON*): ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

1/14/2015

Circuit Court Judge | Judge Code | Date

For Clerk of Court Office Use Only

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

This judgment was entered on **14th day of January, 2015**, and a copy mailed first class or placed in the appropriate attorney's box on **14th day of January, 2015**, to attorneys of record or to parties (when appearing pro se) as follows:

Robert N. Rosen 18 Broad Street Suite 201 Charleston, SC 29401

J. David Black PO Drawer 2426 Columbia, SC 29202-2426
John Fisher Beach 1501 Main St., 5Th Floor Columbia, SC 29201
Matthew Day Bodman 1500 Calhoun St. Columbia, SC 29201
William Joseph Barr 108 N. Academy St. Kingstree, SC 29556-3422
John Andrew Donsbach Sr. PO Box 212139 Martinez, GA 30917-2139

ATTORNEY(S) FOR THE PLAINTIFF(S)

probate

Court Reporter

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard by Sharron Jowers

Liz Godard - Clerk of Court

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

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

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP0202849

PLAINTIFF(S)	DEFENDANT(S)
Tommie Rae Hynie-Brown	David Special Administrato Soujourner Terry Brown
	Deanna Brown Thomas Yamma Brown
	Vanisha Brown Larry Brown
	Daryl Brown Jeanette Mitchell
	Michael Deon Brown

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

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

1/14/2015

Circuit Court Judge **Judge Code** **Date**

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

For Clerk of Court Office Use Only

This judgment was entered on **14th day of January, 2015**, and a copy mailed first class or placed in the appropriate attorney's box on **14th day of January, 2015**, to attorneys of record or to parties (when appearing pro se) as follows:

J. David Black PO Drawer 2426 Columbia, SC 29202-2426
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Matthew Day Bodman 1500 Calhoun St. Columbia, SC 29201
William Joseph Barr 108 N. Academy St. Kingstree, SC 29556-3422
John Andrew Donsbach Sr. PO Box 212139 Martinez, GA 30917-2139

Robert N. Rosen 18 Broad Street Suite 201 Charleston, SC 29401

ATTORNEY(S) FOR THE PLAINTIFF(S)

probate

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard by Sharon Gruck

Court Reporter

Liz Godard - Clerk of Court

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

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

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

STATE OF SOUTH CAROLINA COUNTY OF AIKEN Tommie Rae Brown, ☐ Plaintiff v. David C. Sojourner, Jr., In His Capacity As Limited Special Administrator And Limited Special Trustee, et al., ☒ Defendants.	)))))))))))	IN THE COURT OF COMMON PLEAS CASE NO. 2013-CP-02-02849, 02850 MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney:	Defendant's Attorney:
Robert N. Rosen, Bar No. 4918 Address: 18 Broad St., Suite 201, Charleston, SC 29401 phone: 843-377-1700 fax: 843-377-1709 e-mail: rnrosen@rosen-lawfirm.com other:	John F. Beach, Bar No. 595 Address: 1501 Main St., 5th Floor, Columbia, SC 29201 phone: 803-343-1269 fax: 803-799-8479 e-mail: john.beach@arlaw.com other:

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Limited Special Administrator's Motion to Alter, Amend and Reconsider
Estimated Time Needed: 1 Hour Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

/JFB

Signature of Attorney for ☐ Plaintiff / ☒ Defendant — January 26, 2015 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by:
☐ MOTION FEE COLLECTED:
☐ CONTESTED – AMOUNT DUE:

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA COUNTY OF AIKEN Tommie Rae Brown, Petitioner, v. David C. Sojourner, Jr., in his capacity as Limited Special Administrator and Limited Special Trustee, Deanna Brown Thomas, Yamma Brown, Venisha Brown, Larry Brown, Terry Brown, and Daryl Brown Respondents, IN RE: The Estate of James Brown a/k/a James Joseph Brown	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT Case Number 2013-CP-02-02849 - orig Case Number 2013-CP-02-02850 - cert copy RESPONDENTS' MOTION TO ALTER OR AMEND JUDGMENT AND/OR FOR RECONSIDERATION

1-26-15
FILED
Liz Hodges
C.C.P.&G.S.
Anita Knoepfle 12:50 pm/am
Deputy Clerk

TO: ROBERT N. ROSEN, ESQ., AND S. ALAN MEDLIN, ESQ., ATTORNEYS FOR PETITIONER TOMMIE RAE BROWN; JOHN F. BEACH, ESQ., AND LYNDEY RITZ ZWING, ESQ., ATTORNEYS FOR DAVID C. SOJOURNER, JR., AS LIMITED SPECIAL REPRESENTATIVE OF THE ESTATE OF JAMES BROWN AND LIMITED SPECIAL TRUSTEE OF THE JAMES BROWN AUGUST 1, 2000 IRREVOCABLE TRUST AGREEMENT; DAVID B. BELL, ESQ., AND MATTHEW D. BODMAN, ESQ., ATTORNEYS FOR LARRY BROWN, AND DARYL BROWN; JOHN A. DONSBACH, ATTORNEY FOR TERRY BROWN; AND WILLIAM J. BARR AND VERA E. GILFORD, ATTORNEYS FOR JEANETTE MITCHELL:

YOU WILL PLEASE TAKE NOTICE that ten days after service hereof, or as soon thereafter as Respondents may be heard, Respondents' Larry Brown, Venisha Brown, Deanna Brown-Thomas, and Yamma Brown, will move before the Court, pursuant to Rule 59(a)(b) and (e) and 60(a)(b) of the *South Carolina Rules of Civil Procedure*, for an order altering, amending, and/or reconsidering the Order Re Petitioner Tommie Rae Brown's Motion for Summary Judgment and the Limited Special Administrator's Motion for Summary Judgment, dated January 13, 2015 (the "Summary Judgment Order").

Respondents' Larry Brown, Venisha Brown, Deanna Brown-Thomas, and Yamma Brown received notice of entry of the Summary Judgment Order from the Aiken County Clerk of Court via electronic mail on January 23, 2015 and have not yet received written notice of entry of the Summary Judgment Order.

This Motion is based upon any memoranda of law, stipulated facts, and/or affidavits that may be submitted in support of this motion, along with all applicable common and statutory law, and such other evidence and authority as this Court may consider.

Pursuant to Rule 59(a)(b) and (e) and 60(a)(b), Respondents' Larry Brown, Venisha Brown, Deanna Brown-Thomas, and Yamma Brown, respectfully moves this Court to Alter or Amend Judgment and/or for Reconsideration of its Order Denying Limited Special Administrator's Motion for Summary Judgment and Granting Related Relief, dated January 13, 2015, and filed January 14, 2015, and judgment entered in the Clerk's Office on January 14, 2015, in the above-captioned matter. The parties electronically received notice of the Order from the Clerk's Office on January 23, 2015.

Respondents respond to the current motions and fully adopt and incorporate herein Limited Special Administrator David C. Sojourner, Jr.'s Motion to Alter or Amend Judgment And/Or For Reconsideration of its Order Denying Limited Special Administrator's Motion for Summary Judgment and Granting Related Relief, dated January 13, 2015, and filed January 14, 2015, and judgment entered in the Clerk's Office on January 14, 2015, in the above-captioned matter as if stated fully verbatim herein.

WHEREFORE, Respondents respectfully move this Honorable Court to deny Petitioner's motion for partial summary judgment, grant the LSA's motion for summary judgment, and deny Petitioner's omitted spouse and elective share claims.

For the reasons set forth above, and to be provided in our subsequent memorandum, this motion for reconsideration should be granted and the Order Denying Limited Special Administrator's Motion for Summary Judgment and Granting Related Relief should be set aside.

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

Respectfully submitted this 26TH day of JANUARY 2015

LOUIS LEVENSON
SC BAR No. 7395
Counsel for Respondents Larry Brown, Venisha Brown, Deanna Brown-Thomas, and Yamma Brown

LEVENSON & ASSOCIATES
125 Broad Street, SW
Atlanta, GA 30303
(404) 659-5000
(404) 659-1355 *facsimile*
Email: louis@levensonlaw.com

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

Tommie Rae Brown) CASE NO.
☐ Plaintiff) 2013-CP-02-02849
2013-CP-02-02850

v.) MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

David C. Sojourner, Jr., In His Capacity As Limited Special Administrator And Limited Special Trustee, Deanna Brown Thomas, Yamma Brown, Venisha Brown, Larry Brown, Terry Brown And Daryl Brown,

Respondents,

In Re: The Estate Of James Brown A/K/A James Joseph Brown
☒ Defendant.

FILED 1-26-15 2:00
in accordance with S.C.C.P.&G.S.
Anita Knoepfle 12:50 pm/alk
Deputy Clerk

Plaintiff's Attorney:	Defendant's Attorney:
See Attached Certificate Of Service, Bar No. 7395 Address: phone: fax: e-mail: other:	Louis Levenson, Bar No. 7395 Address: 125 Broad Street, SW, Atlanta, GA 30303 phone: (404) 659-5000 fax: (404) 659-1355 e-mail: louis@levensonlaw.com other:

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☒ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Respondents' Motion To Alter Or Amend Judgment And/Or For Reconsider
Estimated Time Needed: n/a Court Reporter Needed: ☐ YES / ☒ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant — January 26, 2015 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by:

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN) FOR THE SECOND JUDICIAL CIRCUIT
)
Tommie Rae Brown,) C/A No. 2013-CP-02849 -orig.
Petitioner,) C/A No. 2013-CP-02850 certcopy
v.)
)
David C. Sojourner, Jr., in his capacity) **DARYL BROWN'S MOTION TO ALTER, AMEND AND RECONSIDER**
as Limited Special Administrator and)
Limited Special Trustee, Deanna Brown)
Thomas, Yamma Brown, Venisha)
Brown, Larry Brown, Terry Brown and)
Daryl Brown,)
Respondents,)
IN RE:)
THE ESTATE OF JAMES BROWN)
A/K/A JAMES JOSEPH BROWN)
)
)

FILED 1-28-15
Liz Godard
C.C.C.P.&G.S.
Anita Knoepfle
Deputy Clerk

TO: JOHN BEACH, ESQ., ATTORNEY FOR LIMITED SPECIAL ADMINISTRATOR, ROBERT N. ROSEN, ESQ., AND S. ALAN MEDLIN, ESQ., ATTORNEYS FOR PETITIONER TOMMIE RAE BROWN; LOUIS LEVENSON, ESQ., ATTORNEY FOR DEANNA BROWN THOMAS, YAMMA BROWN, AND VENISHA BROWN; ATTORNEYS FOR LARRY BROWN; JOHN A. DONSBACH, ATTORNEY FOR TERRY BROWN; AND WILLIAM J. BARR AND VERA E. GILFORD, ATTORNEYS FOR JEANETTE MITCHELL:

YOU WILL PLEASE TAKE NOTICE that ten days after service hereof, or as soon thereafter as he may be heard, Daryl Brown, will move before the Court, pursuant to Rule 59(a)(b) and (e) and 60(a)(b) of the *South Carolina Rules of Civil Procedure*, for an order altering, amending, and/or reconsidering the Order Re Petitioner Tommie Rae Brown's Motion for Summary Judgment and the Limited Special Administrator's Motion for Summary Judgment, dated January 13, 2015 (the "Summary Judgment Order").

Daryl Brown received notice of entry of the Summary Judgment Order from the Aiken County Clerk of Court via electronic mail on January 23, 2015 and has not yet received written notice of entry of the Summary Judgment Order.

This Motion is based upon any memoranda of law, stipulated facts, and/or affidavits that may be submitted in support of this motion, along with all applicable common and statutory law, and such other evidence and authority as this Court may consider.

ARGUMENT

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

1. The Summary Judgment Order is based upon "facts" that have not been stipulated by the parties, including but not limited to the following:

a. That Ahmed was given proper notice of the Charleston County Family Court rescheduled hearing in the Ahmed Annulment Action. *See* Summary Judgment Order at pp. 7-8.

b. That Decedent requested the Aiken County Family Court be bound by the Findings of Fact in the Charleston County Family Court Order. *See id.* at p. 8.

c. That Decedent and Petitioner "reconciled" after Decedent filed an annulment action in Aiken County. *See id.*

d. That Decedent "supported the annulment litigation" by paying Petitioner's legal fees. *See id.* at pp. 33-34.

It was error for such facts to form the basis of the Summary Judgment Order as no party had the opportunity to refute or challenge such facts through discovery, including without limitation, deposing parties and other witnesses, reviewing the Hynie Diaries, and conducing written discovery.

All parties were prohibited from conducting such review and discovery by the Court's March 31, 2014 order staying discovery and holding in abeyance the LSA's motion to amend the protective orders prohibiting the Parties from possessing or using the Hynie Diaries.

2. The Court failed to consider that the Petitioner has the burden of proving she is Decedent's surviving spouse.

3. The Court failed to consider that the facts establish a presumption Petitioner's purported marriage to James Brown ("Decedent") was bigamous and Petitioner can only overcome that presumption by proving, through the presentation of admissible evidence in this proceeding, that Petitioner's marriage to Javed Ahmed was bigamous.

4. The Court failed to consider that, in accordance with extant case law, Petitioner is required to present admissible evidence in this proceeding proving Javed Ahmed ("Ahmed") was already married when he and Petitioner married in Texas on February 17, 1997 in order to overcome the presumption in favor of the validity of Petitioner's marriage to Ahmed.

5. The Court failed to consider that the Petitioner cannot, through the April 15, 2004 Final Order issued in the Ahmed Annulment Action (the "Ahmed Annulment Order"), lawfully establish in this proceeding that her marriage to Ahmed was bigamous.

6. The Court failed to consider that, because the Ahmed Annulment Order is a judgment *in rem*, it is only binding on non-parties to that action as to the marital status of Petitioner and Ahmed from the date of the Ahmed Annulment Order; i.e., only establishes the annulment of Petitioner's marriage to Ahmed from the date of the Ahmed Annulment Order forward. The Court failed to consider that the findings of fact and conclusions of law upon which the judgment annulling Petitioner's marriage to Ahmed was based are not binding on non-parties to that action.

The Court failed to distinguish cases that hold that judgments in rem are not binding against third parties beyond the status adjudicated therein.

7. The Court failed to consider that the parties are not collaterally estopped by the Ahmed Annulment Order's findings of fact or conclusions of law because the Decedent was not a party to the Ahmed Annulment Action and not in privity with any party to the Ahmed Annulment Action.

8. The Court misconstrued the holding in *Carolina Baking Co. v. Geilfuss*, 169 S.C. 348, 168 S.E. 849, 852 (1933), and erroneously based its decision upon a misstated holding.

9. The Court failed to consider that Decedent did not exercise control over the Ahmed Annulment Action or participate in the Ahmed Annulment Action and therefore is not in privity with Petitioner in the Ahmed Annulment Action. The Court failed to consider that Decedent could not have exercised control over Petitioner's case in the Ahmed Annulment Action based on the *South Carolina Professional Rules of Conduct*, specifically Rule 1.7.

10. The Court failed to consider that the Ahmed Annulment Order cannot be used for collateral estoppel purposes because it was procured against a party in default.

11. The Court failed to consider that in the Charleston County Family Court for the Ahmed Annulment Proceeding there was not an "opposing party" and the Ahmed Annulment Order was a default judgment.

12. The Court misconstrues Decedent's use of the Ahmed Annulment Order in Decedent's own Aiken County annulment action against Petitioner as a basis for asserting that equitable estoppel should be applied in the present cases. Further, the Court misconstrues cases cited by Petitioner which are procedurally and substantively distinguishable from the present case for reasons given by the LSA at the court's hearing of this matter.

13. The Court failed to consider that collateral and equitable estoppel are equitable doctrines and even where all of the elements are met, these doctrines should be used "sparingly" and only in cases where it would be equitable. The Court failed to consider that it would be inequitable to apply the underlying facts and conclusions of the Ahmed Annulment Order through doctrines of collateral or equitable estoppel to the present proceeding.

14. The Court failed to consider evidence submitted in opposition to Petitioner's Motion for Summary Judgment establishing that Ahmed was not married to another person when he married Petitioner. Such evidence creates a genuine issue of material fact that defeats Petitioner's Motion for Partial Summary Judgment. In granting Petitioner's motion, the Court erred in not accepting such evidence but, instead, accepting Petitioner's self-serving hearsay testimony, or inferences to be drawn therefrom, as referenced in the Ahmed Annulment Order and Petitioner's affidavits.

15. The Court erred in holding that the Compromise Agreement establishes Petitioner is Decedent's surviving spouse as a matter of law and is binding on the parties. The Court failed to consider that neither the Estate nor the Trust were parties to the Compromise Agreement, the personal representatives of the Estate and trustees of the Trust actively opposed and contested the Compromise Agreement, and the South Carolina Supreme Court effectively held the settlement was not binding by "invalidating" it on appeal.

16. The Court failed to consider that judicial estoppel is inapplicable in this case because not all of the requisite elements have been proven and it would be inequitable to apply judicial estoppel in this action.

17. The Court erred in finding that Petitioner establishes through the briefs and oral arguments presented in the *Wilson v. Dallas*, *supra*, appeal that Petitioner is Decedent's

surviving spouse. The Court also erred in holding judicial estoppel binds the Estate or Court to the Settling Parties' alleged application of *Lukich* in the *Wilson v. Dallas* appeal.

18. The Court erred in finding that Petitioner establishes through the lower court's Order Approving Settlement Agreement that Petitioner is Decedent's surviving spouse. The Court also erred in holding the Court and the Estate are bound to the Settling Parties' alleged interpretation of *Lukich* relating to that Order. Such holding is in error where the South Carolina Supreme Court held on appeal that the settlement was "invalidated," remanding the case for further discovery on Petitioner's "surviving spouse" status.

19. The Court erred in allowing Petitioner to use the Ahmed Annulment Order issued by the Charleston County Family Court in 2004 to retroactively validate Petitioner's and Decedent's bigamous marriage in 2001.

20. The Court failed to consider that the clear and unambiguous holding in *Lukich*, supra, based on S.C. Code Ann. § 20-1-80, bars Petitioner and the Court from retroactively applying the Ahmed Annulment Order to validate Petitioner's bigamous marriage to Decedent.

21. The Court failed to consider the final paragraph in *Lukich*, as well as the holdings in *Rodman v. Rodman*, *White v. White* and *Splawn v. Splawn*, bar Petitioner and the Court from retroactively applying the Ahmed Annulment Order to validate Petitioner's bigamous marriage to Decedent based.

22. The Court failed to consider that *Joye v. Yon* bars Petitioner and the Court from retroactively applying the Ahmed Annulment Order to validate Petitioner's bigamous marriage to Decedent.

For at least the foregoing reasons, Daryl Brown respectfully requests that this Court grant this Motion for Reconsideration, deny Petitioner's motion for partial summary judgment, and grant the Respondent's motion for summary judgment.

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

This 28th day of January, 2015.

Respectfully submitted,

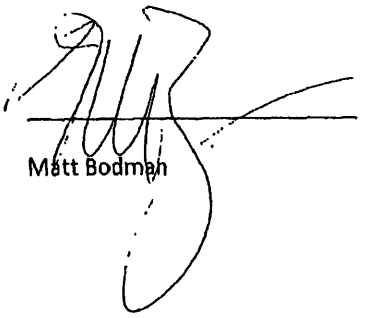
MATT BODMAN
SOUTH CAROLINA BAR NO. 11143
1500 CALHOUN STREET
COLUMBIA, SC 29201
(803)806-8605

DAVID B. BELL
Georgia State Bar No. 047750
619 Greene St.
Augusta, GA 30901
(706) 724-1882

COUNSEL FOR DARYL BROWN

AFFIRMATION OF COUNSEL

Counsel for Daryl Brown affirms that, prior to filing this motion, I communicated with opposing counsel and have attempted in good faith to resolve the matter contained in this motion, or that consultation would serve no useful purpose, or could not timely be held, or there was no duty of consultation pursuant to Rule 11 of the South Carolina Rules of Civil Procedure.



Matt Bodman

FILED 1-28-2015
Liz Godard
C.C.C.P.&G.S.
Anita Knoepfle 150 ash
Deputy Clerk

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

Tommie Rae Brown
Plaintiff,

vs.

David C. Sojourner, Jr., in his capacity as Limited Special Administrator and Limited Special Trustee, et al.,
Defendant.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

CASE NO.: 2013-CP-02849, 02850-____

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

FILED 1-28-2015
Lisa Goodwin
C.C.P.&G.S.
Anita Knowlle 150 case
Deputy Clerk

Plaintiff's Attorney:	Defendant's Attorney:
Robert N. Rosen, Bar No. 4918 Address: 18 Broad Street, Suite 201, Charleston SC 29401 Phone: 843-377-1700Fax 843-377-1709 E-mail: rnrosen@rosen-lawfirm.comOther: ____	Matt Bodman, Bar No. 11143 Address: 1500 Calhoun Street Columbia SC 29201 Phone: 803-806-8605 Fax803-758-6087 E-mail: matt@mattbodmanlaw.comOther: ____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion to Alter, Amend and Reconsider
Estimated Time Needed: 1 hour Court Reporter Needed: ☒ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff /☒ Defendant Date submitted 1/28/15

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: ____
☐ Other: ____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE ____ Date: ____

CLERK'S VERIFICATION

Collected by: ____ Date Filed: ____ CK# 7829
☒ MOTION FEE COLLECTED: $ Rept. 43635
☐ CONTESTED – AMOUNT DUE: $

STATE OF SOUTH CAROLINA COUNTY OF AIKEN	) IN THE COURT OF COMMON PLEAS) SECOND JUDICIAL CIRCUIT)) CASE NO.: 2013-CP-02-02849 - orig) CASE NO.: 2013-CP-02-02850 - cert copy))
IN RE: THE ESTATE OF JAMES BROWN A/K/A JAMES JOSEPH BROWN	) NOTICE OF MOTION AND MOTION) TO RECONSIDER ALTER AMEND 1-29-2015) JANUARY 13, 2015 ORDER Liz Godard) C.C.C.P.&G.S. Anita Knoepfle DC Deputy Clerk

TO: ALL COUNSEL OF RECORD

MOTION TO RECONSIDER ALTER AMEND JANUARY 13, 2015 ORDER

NOW COMES the undersigned counsel and move the Court pursuant to Rule 59 (e) SCRCP to Reconsider Alter or Amend its January 13, 2015 Order (Attached as Exhibit A) Granting Tommie Rae Hynie Brown's Motion for Summary Judgment based upon the following errors.

1. THERE WAS ERROR IN FAILING TO VIEW THE EVIDENCE AND ALL REASONABLE INFERENCES THEREFROM IN THE **LIGHT MOST FAVORABLE TO THE PARTIES OPPOSING** TOMMIE RAE'S MOTION FOR SUMMARY JUDGMENT

Fongberger v Smith, 406 S.C. 37, 748 S.E.2d 625 (S.C. App., 2013) held, It is well settled in South Carolina that a party "may not rest upon the mere allegations or denials of his pleading" to defeat a motion for summary judgment pursuant to Rule 56(e), SCRCP. The Court found that the Frongbergers were not merely relying on the allegations of their own pleadings. Instead, they pointed to the pleadings provided by adverse parties containing admissions that were found to indicate the existence of genuine issues of material fact.

Rule 56(a), FRCP, provides that summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." In determining whether any triable issues of fact exist for summary judgment purposes, the evidence and all the inferences that can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. Cunningham v. Helping Hands, Inc., 352 S.C. 485, 575 S.E.2d 549 (2003).

Disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Anderson. 477 U.S. at 248, 106 S.Ct. 2505.

A dispute about a material fact is genuine if there is a sufficient evidentiary basis that would allow a reasonable fact finder to return a verdict for the non-moving party. *Id.* at 248, 106 S.Ct. 2505.

The question of whether Ahmed had other wives at the time he married Tommie Rae in February 1997 was a material issue under the governing law of South Carolina. The April 15, 2004 Order says that Ahmed had another wife in February 1997 when he married Tommie Rae. However, the marriage license offered by the opponents of the Motion for Summary Judgment was signed by Ahmed and is a business record of the State of Texas and admissible into evidence as a business records exception to hearsay, reflects that Ahmed had no other wife when he married Tommie Rae in February 1997. The trier of facts could accept or reject either document. Since the document offered by the non-moving party reflects that Ahmed had no other wife when he married Tommie Rae; it was improper to grant Tommie Rae's Motion for Summary Judgment.

2. THERE WAS ERROR IN THE FINDING OF THE JANUARY 13, 2015 ORDER **THAT THE SETTLEMENT AGREEMENT WAS A BINDING PRIVATE AGREEENT REGARDLESS OF COURT APPROVAL** AND BINDS PERSONAL REPRESENTATIVES AND TRUSTEES TO FIND THAT MRS BROWN WAS THE SURVIVING SPOUSE REGARDLESS OF WHETHER THE AGREEMENT WAS APPROVED BY A COURT

In Wilson v. Dallas, 403 S.C. 411 (S.C. 2013), after a review of the settlement agreement the South Carolina Supreme Court stated that the ruling court must find (1) the presence of a good faith controversy between the parties and (2) **the effect of the agreement upon the interest of persons represented by fiduciaries or other representative is just and reasonable** under S.C. Code § 62-3-1102(3). This was a statutory requirement for court approval and was not found to exist in the settlement agreement. Id at 436. The Settlement Agreement certainly was not just and reasonable as to the interest of Jeanette Mitchell, LaRhonda Petitt's daughters Ciara Petitt and Cheriquarius Williams and T B . The Supreme Court found no evidence as to the potential value of rights under Federal Copyright, rights to which these four are entitled as DNA tested and 99.99% confirmed heirs of the decedent James Brown. The Settlement Agreement did not protect the federal copyrights of these four beneficiaries and was not just and reasonable with

regard to them. A local form of practice may not defeat a federal right. Bean v. South Carolina Cent. R.R. Co. Inc., 392 S.C. 532, 709 S.E.2d 99 (S.C. App., 2011)

Citing Duncan v. Alewine, 273 S.C. 275, 255 S.E. 2d 841 (1979) the Court said the law generally favors an agreement of compromise among family members to promote a settlement and distribution of an estate. However, the Court in Wilson did not find a private settlement agreement, but rather an agreement fashioned by the Attorney General of South Carolina, created outside of his authority; and found that the settlement agreement was not just and reasonable. The court found further that court approval was not appropriate and that the agreement should not have been condoned by the court. Wilson 438, 439, 443.(S.C. 2013)

3. THERE WAS ERROR IN THE FINDING THAT MR. BAUKNIGHT WAS ORDERED TO COINTINUE SERVING IN A FIDUCIARY CAPACITY AS SPECIAL ADMINISTRAOR AND SPECIAL TRUSTEE

The South Carolina Supreme Court said in Wilson v. Dallas, Id at 443 In light of our decision invalidating the circuit court's approval of the compromise agreement we direct the circuit court upon proper application to appoint new, neutral fiduciaries to oversee the matter of James Brown Estate.

4. THERE WAS ERROR IN **STAYING ALL DISCOVERY PENDING** RESOLUTION OF MRS BROWN'S MOTION FOR SUMMARY JUDGMENT

The diaries of Tommie Rae, and all other discovery should have been disclosed to the opposing parties prior to the hearing on the Motion for Summary Judgment. The diary could have explained whether the parties believed that their marriage was void as a result of Tommie Rae's marriage to Ahmed.

Tommie Rae's diary, which has not yet been disclosed to the opposing parties may likely reveal that Tommie Rae and James Brown believed that their December 2001 marriage was void due to her February 1997 marriage to Ahmed. If James Brown was advised (as some of the lawyers in this case believe) that his ceremonial marriage to Tommie Rae was void due to AN impediment caused by Tommie Rae's prior marriage to Ahmed, then it could explain why the Consent Order signed by the parties dismissing Mr. Brown's annulment action against Tommie Rae stated that she would not make any claim as his "common law" spouse, without including ceremonial wife. If Tommie Rae was no longer Brown's ceremonial wife, then the Consent

Order would not need to state that fact. When he signed the Consent Order, if James Brown believed that his December 2001 marriage to Tommie Rae was void, then the Consent Order would not have needed to state she was no longer his "common law or ceremonial wife." The Consent Order only stated that Tommie Rae would make no claim as James Brown's common law wife. What is clear is that the Consent Order unequivocally stated that Tommie Rae would **make NO CLAIM AGAINST JAMES BROWN'S ESTATE.**

Disclosure of the diaries and other discovery would show whether James Brown and Tommie Rae believed in 2004 that their ceremonial marriage was void due to the impediment of her prior marriage to Ahmed. These answers would clarify why the consent order only made reference to "common law" spouse, but not "ceremonial marriage." For Tommie Rae and James Brown to agree that Tommie Rae was not his "common law" spouse without referencing "ceremonial spouse" would only make sense if the parties believed she was not his "ceremonial spouse". Disclosing Tommie Rae's diaries and allowing further discovery will provide answers to significant questions, including any discrepancy in whether Ahmed told Tommie he was already married. Tommie Rae stated at the April 15, 2004 hearing that Ahmed told her in February 1997 that he had other wives, yet Ahmed signed a marriage license at the same time stating that he did not have other wives. This issue is key to Tommie Rae's case. To grant Tommie Rae's Motion for Summary Judgment while she hides critical evidence is a farce of justice and should not be allowed.

South Carolina cases point out that summary judgment is a "drastic remedy" which should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues. Cunningham v. Helping Hands, Inc., 352 S.C. 485, 575 S.E.2d 549 (2003); because summary judgment is a drastic remedy, it must not be granted until the opposing party has had a "full and fair opportunity to complete discovery." Doe v. Batson, 345 S.C. 316, 322, 548 S.E.2d 854, 857 (2001); Summary judgment is not appropriate when further development of the facts is desirable to clarify the application of the law. Middleborough Horizontal Property Regime Council of Co-Owners v. Montedison S.P.A., 465 S.E.2d 765, 320 S.C. 470 (S.C. App., 1995). Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. Where reasonable minds can disagree as to the facts, it is improper to grant summary judgment. Baril v. Aiken Regional Medical Centers, 352 S.C. 271, 573 S.E.2d 830 (S.C. App., 2002).

5. THERE WAS ERROR IN THE FINDING THAT THERE WAS **NO DEFECT IN PERSONAL JURISDICTION** THAT SERVICE WAS PROPER WITH NO FAILURE OF DUE PROCESS

The Order erroneously stated that Mr. Pannell's affidavit satisfied SC Code § 15-9-710 when it lacked language "After the exercise of due diligence AHMED could not be found within the state."

At the hearing on Tommie Rae's motion for Summary Judgment, the court heard testimony from Mr. Pannell regarding his attempts to serve Ahmed. However, Mr. Pannell's testimony on November 24, 2014 was not the basis on which the court in 2004 made a determination whether to permit service by publication and issued an Order of Publication.

The January 13, 2015 Order relies on the holding in Yates v. Gridley, 16 S.C. 496 (S.C., 1882), where the appellate court said, the trial court is without authority to overrule the finding of the clerk of court that the defendant could not, "after due diligence, be found in the County and State of their last known residence. However, service of process by publication in the cases of Yates, id; Yarbrough v. Collins, 293 S.C. 290, 360 S.E.2d 300 (S.C., 1987); and Montgomery v. Mullins, 325 S.C. 500, 480 S.E.2d 467 (S.C. App., 1996), was authorized by S.C.Code Ann. §§ 15-9-710(3) and (4) (Supp.1995). These sections apply "when a defendant **is a resident of the state of South Carolina or is not a resident of the state but has property in the state and the court has jurisdiction over the property.**

Yarbrough involved service by publication on a non-resident property owner, where the court had subject matter jurisdiction and the clerk satisfied the three facts that they could not, with due diligence, be located within the state. In Montgomery, the appellate court found that the petition satisfied the three requirements since it stated that after due diligence he had been unable to locate the Mullinses in Berkeley County, which is in South Carolina. This satisfied the Court that the Defendants could not, after due diligence, be found in the County and State of their last known residence in the State of South Carolina.

However, the facts with Ahmed are different because (1) he was not a resident of the state of South Carolina, (2) he owned no property in the state of South Carolina, and (3) he was served under S.C.Code Ann. § 15-9-710(8), which applies to a defendant who is a party to an annulment. The affidavit of Pannell's affidavit did not mention due diligence and failed to state that after due diligence Ahmed could not be found within the state.

S.C. Code § 15–9–710(8) specifically permits service by publication on a defendant in an annulment action **when the defendant cannot be found within the State of South Carolina after due diligence.**

The court if Caldwell v. Wiquist, 402 S.C. 565, 572, 741 S.E. 2d 583, (S.C App 2013), was asked to overturn the Gates, Montgomery, Wachovia line of cases. While it could not overturn those cases, it considered the distinction that Caldwell was a non-resident. The Caldwells' affidavits requesting service by publication provided:

> "...The Defendant who is a non-resident of Beaufort County, South Carolina, Cannot be served a copy of the Summons in Beaufort County, and it is necessary and proper to serve her by publication..."

The Caldwell court considered the distinction when involving a non-resident. It adhered to a stricter compliance and held that affidavits requesting service by publication to be fatally **defective on their face** because they only provided that Wiquist could not be served in Beaufort County, but **contained no information regarding whether or not she could be found in the State of South Carolina.** In addition, the affidavits requesting service by publication did not contain any statements regarding the due diligence undertaken **and did not contain the phrase "due diligence."**

South Carolina courts have **repeatedly required strict compliance with** publication statutes. The South Carolina Supreme Court in in Riker v. Vaughan, 23 S.C. 187, 189 (1885), considered a publication statute when determining whether a non-resident minor had properly been made a party to an action. Even though the minor defendant attempted to acknowledged service, the Riker Court found that the failure of the plaintiff to procure an order for service by publication, **the only statutory mode by which a non-resident minor could be made a party defendant to an action, was a fatal defect rendering service incomplete**. *Id. The South Carolina* statutory requirements for service by publication supersede a party's attempt to acknowledge service.

In Du Bose v. Du Bose, 90 S.C. 87, 89, 72 S.E. 645, 646 (1911), the South Carolina supreme court noted the "rule that the statutory requirements as to constructive service by publication must be strictly carried out." It looked to the **requirements of the publication statute** and held that despite the clerk's endorsement on the back of the order of publication, the order of

publication was invalid because it had not been signed on the front as **required by the publication statute**. *Id.*

Courts in both South Carolina and North Carolina adhere to strict compliance with the service by publication statutes. The South Carolina Supreme Court determined the affidavit requesting publication was "fatally defective, on its face, where it did not show that due diligence was used to find the defendant." Ray v. Pilot Fire Ins. Co., 128 S.C. 323, 324, 121 S.E. 779, 779–80 (1924). The court said applicable North Carolina statutes require a showing of due diligence in order to secure an order of publication. Id. .

Ray v. Pilot Fire Ins. Co, 121 S.E. 779, 780, 128 S. C. 323 (S.C., 1924). Involved an affidavit, filed to procure an order of publication, over a defendant that was a nonresident. It was fatally defective because of failure to allege that the defendant could not after due diligence, be found within the state. The court held that the defendant in that case was in fact a nonresident. The service of summons by publication was held to be fatally defective, because it did not conform to the requirements of the statute. The Court said, the foundation and first step of service by publication is an affidavit that "the person on whom the summons is to be served cannot, after due diligence, be found within the state. The Ray court noted multiple North Carolina cases that had approved the holding in Wheeler v. Cobb, 75 N.C. 21 (1876), where the Supreme Court of North Carolina held that the **service of summons by publication was fatally defective and did not conform to the requirements of the statute because the affidavit requesting service by publication failed to allege that the defendant could not, after due diligence, be found within the state**. *Id.* at 325, [402 S.C. 573]

Nash Cnty. v. Allen, 241 N.C. 543, 85 S.E.2d 921, 923 (1955), involved an affidavit requesting service by publication. The Supreme Court of North Carolina **determined the affidavit was defective because it failed to state that the defendant "could not, after due diligence be found in the State of North Carolina."** The *Nash* court stated that where service of the summons is made by publication, the requirements of the statute must be strictly followed" and "that everything necessary to dispense with personal service of the summons must appear by affidavit." *Id.* at 924. Moreover, it said "[a]n affidavit on which publication is predicated is fatally defective in the absence of an allegation that the person on whom the summons is so served cannot, after due diligence, be found within the State." *Id.*

The January 13, 2015 Order correctly states in Section D on page 26 that a court has to have a reason to refuse to recognize an order and the only reason is the failure of due process, failure to obtain personal jurisdiction. Since the Affidavit of Attempted Service and the Order of Publication were defective, there was a defect in personal jurisdiction

6. THERE WAS ERROR IN THE FINDING THAT THE ORDER OF PUBLICATION WAS NOT VOID AND CANNOT BE ATTACKED

Since the Affidavit of Attempted Service mentioned in Section 5 above was defective, the Order of Publication would also be rendered void.

7. THERE WAS ERROR IN THE FINDINGS THAT **MRS BROWN PROPERLY GAVE WRITTTEN NOTICE OF THE RESCHEDULED HEARING**

Mr. Ahmed was not properly notified of the rehearing date. The order of publication gave the date of March 26, 2004. However the hearing took place on April 15, 2004. The Notice of the re hearing date was improperly mailed to Ahmed by Tommie Rae's attorney.

8. THERE WAS ERROR IN THE FINDING THAT **MR BROWN WAS COLLATERALLY AND JUDICIALLY ESTOPPED** FROM DENYING THE ALLEGATIONS IN HIS ANNULMENT ACTION BECAUSE THE ACTION WAS DISMISSED BY A **CONSENT ORDER** WITHOUT ALSO FINDING THAT MRS TOMMIE RAE BROWN IS COLLATERALLY AND JUDICIALLY ESTOPPED BY THAT SAME CONSENT ORDER FROM MAKING CLAIM TO MR. BROWN'S ESTATE.

The court errored in its finding that because Mr. Brown was aware of Mrs. Brown's annulment hearing that gave him standing to participate in that proceeding.

9. THERE WAS ERROR IN THE FINDING THAT THERE WAS **NO IMPEDIMENT** AT THE TIME OF RAE'S MARRIAGE TO BROWN

Tommie Rae married Ahmed on February 17, 1997. At the time that Tommie Rae married James on December 12 2001, she was already married to Ahmed. At that time Tommie Rae's earlier marriage created an impediment to a valid marriage with Brown.

10. THERE WAS ERROR IN THE FINDING THAT AHMED HAD A FORMER LIVING WIFE WITHOUT CONSIDERING THE CONTRADICITING EVIDENCE IN THE **CERTIFIED MARRIAGE LICENSE SIGNED** BY AHMED THAT THERE WAS

NO OTHER WIFE AT THE TIME HE MARRIED TOMMIE RAE IN FEBRUARY 1997 WHICH CREATED A GENUINE ISSUE OF MATERIAL FACT

In Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249-50 106 S.Ct. 2505, 91 L.Ed. 2d 202 (1986) the court explained that when determining whether summary judgment is appropriate, the judge's function is not to weigh the evidence and determine the truth of the matter, but to ascertain whether "there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party".

11. THERE WAS ERROR IN THE COURT **FAILING TO** DISREGARD THE APRIL 15, 2004 FAMILY COURT ANNULMENT ORDER (STATING AHMED HAD OTHER WIVES WHEN HE MARRIED RAE) BUT **DISREGARDING THE CERTIFIED MARRIAGE LICENSE** (SIGNED BY AHMED STATING THAT HE WAS NOT MARRIED AT THE TIME HE MARRIED RAE) WHICH CREATED A GENUINE ISSUE OF MATERIAL FACT AND SHOULD HAVE RESULTED IN A DENIAL OF TOMMIE RAE'S MOTIN FOR SUMMARY JUDGMENT

Ahmed's Certified Marriage license signed by Ahmed in February 1997 states that he was not married. This Exhibit was properly admissible as evidence in opposition toTommie Rae's Motion for Summary Judgment and clearly created a genuine issue of material fact.

12. THERE WAS ERROR IN THE JANUARY 13, 2015 ORDER TAKING **JUDICIAL NOTICE** THAT MR AHMED HAS TAKEN NO JUDICIAL ACTION TO ATTACK THE ANNULMENT ORDER (23)

Page 23 of the January 13, 2015 order takes judicial notice that Ahmed has taken no judicial action to attack the annulment order. The record does not reflect that Ahmed has taken judicial action to attack the annulment order. While this matter can be verified in the public record it does not establish as against strangers and it cannot be conclusively determined that no action has been taken by Ahmed. Whether Ahmed has taken any judicial action to attack the annulment order does not constitute "indisputable matter" that is common or general knowledge subject to judicial notice. Masters v. Rodgers Development Group, 321 S.E.2d 194, 283 S.C. 251 (S.C. App., 1984).

13. THERE WAS ERROR IN THE JANUARY 13, 2015 ORDER **SPECULATING** THAT AHMED MAY HAVE MARRIED SUBSEQUENTLY AND HAD CHILDREN AND OVERTURNING THE ANNULLMENT ORDER WOULD RENDER HIS CHILDREN ILLEGITIMATE (23)

Page 23 of the January 13 Order improperly speculates that Ahmed may have married subsequently and the consequences of a decision based on that speculation. Speculation is not a proper basis for a decision. Able Communications, Inc. v. South Carolina Public Service Com'n, 351 S.E.2d 151, 290 S.C. 409 (S.C., 1986).

14. THERE WAS ERROR IN THE JANUARY 13, 2015 ORDER **SPECULATING** THAT MR BROWN OBVIOUSLY UNDERSTOOD THAT AN ANNULMENT ACTION IS THE METHOD TO SEEK AN INVALIDATION OF A MARRIAGE BECAUSE HE BROUGHT AN ACTION TO ANNUL HIS MARRIAGE TO MRS BROWN

On page 23 of the January 13, 2015 order speculates that Mr. Brown obviously understood that an annulment action is the method to seek an invalidation of a marriage because he brought an action to annul his marriage to Mrs. Brown. Mr. Brown dismissed his annulment against Tommie Rae only after she agreed to sign a Consent Order that she would not make a claim as his wife. See the discussion in number 4 above. Speculation is not a proper basis for a decision. Able Communications, Inc. v. South Carolina Public Service Com'n, 351 S.E.2d 151, 290 S.C. 409 (S.C., 1986).

15. THERE WAS ERROR IN THE FINDING THAT IT IS **TOO LATE FOR MR BROWN TO COLLATERALLY ATTACK THE ANNULMENT ORDER OR INVALIDATE HIS MARRIAGE TO MRS BROWN**

The January 13, 2015 Order correctly states on page 26 that a judgment may be collaterally attacked if the court lacked jurisdiction and the lack of jurisdiction appears on the face of the record.

Page 29 of the Order emphasizes the Joye v Yon, 345 S.C. 264, 547 S.E. 2d 888 (Ct app.2001) where Yon was not made a party to the annulment action. That court rejected his argument that the outcome directly affected him. That court stated that generally a person must be joined as a party to an action if his absence precludes complete relief among those already parties or his interest in the subject matter that he could not receive complete resolution without his participation. Citing Rule 19(a) SCRCP and First Citizens Bank & Trust Co v. Strable, 292 S.C. 146, 148, 355 S.E. 2d 278, 279 (Ct App. 1987). In that case complete relief in the annulment action could take place without his presence as a party so he was not a necessary party. Similarly, Tommie Rae's annulment action could have been completely resolved without

Mr. Brown's participation as a party, therefore he could not been made a party. Like the facts in the Yon case, Mr. Brown's presence in Rae's annulment action could not have altered the decision to grant the annulment. However, unlike the facts in Yon the facts with Mr. Brown are distinguished because the Yon court found that the outcome did not directly affect him. It said, "Yon suffered no prejudice by not being made a party to the action. Mr. Brown, however clearly suffers prejudice as a result of the April 15, 2014 Order. By the court relying on the April 15, 2004 Annulment Order to find that Tommie Rae was Brown's surviving spouse, it takes away up to one half of Brown's estate and gives it to Tommie Rae, contrary to the Prenuptial Agreement and Consent Orders signed by Tommie Rae and Brown. It also robs his remaining heirs, including Jeanette Mitchell, Ciara Petitt, Cheriquarius Williams and T B who stand in privy to Federal copyrights of their interest and portions of educational benefits to Brown's grandchildren or any interest as intestate heirs to which they may be entitled. Unlike the Yon case, Mr. Brown and those claiming through him clearly suffer prejudice by the January 13, 2015 Order relying on the April 15, 2004 Order of Annulment to grant Tommie Rae's Motion for Summary that she is the surviving spouse of James Brown. To take this interest but not allow Brown or his heirs to contest the annulment order for any reason including lack of personal jurisdiction contradicts the Constitutional rights to due process upon which this country was founded.

The January 13, 2015 Order correctly states on page 32 that heirs are in privy with their ancestors, citing Thompson v. Hudgens, 161 S.C. 450, 463, 159 S.E. 807, 812 (1931). Consequently, Mr. Brown's heirs may assert any claims that their ancestor, Mr. Brown would have been able to assert. To the extent that the April 15, 2004 Annulment Order was rendered without obtaining personal jurisdiction over Ahmed and since Mr. Brown was unable to participate in that action but is prejudiced by losing property interest due to that decision, heirs claiming on behalf of Brown may collaterally attack it, since personal jurisdiction may be attacked at any time.

16. THERE WAS ERROR IN THE FINDING THAT THE STIPULATIOON OF FACTS SHOW THAT MR. BROWN **SUPPORTED THE ANNULMENT LITIGATION BY PAYING MRS BROWN'S LEGAL FEES.**

The Stipulated Facts simply state that Mr. Brown paid Mrs. Brown's legal fees. However, Mr. Brown agreed to pay Mrs. Brown's legal fees in exchange for her agreeing not to make any claim as his common law spouse or make any claim to his estate. Because Mr. Brown made a financial contribution towards the payment of Mrs. Brown's legal fees cannot be speculated to mean that he supported anything other than a financial payment toward Mrs. Brown's legal fees in exchange for her giving up all claims against his estate. What is clear is that even after the April 15, 2004 Order annulling Tommie Rae's marriage with Ahmed, James Brown still proceeded to annul his marriage with Tommie Rae by amending his Complaint to seek annulment and payment of his legal fees by her. This action was dismissed only after Tommie Rae signed a Consent Order stating that she was not his common law wife and would not make claim to his estate.

The Order erroneously found that by paying Mrs. Brown's attorney fees it made James Brown a party to Tommie Rae's annulment suit.

17. THERE WAS ERROR IN GRANTING TOMMIE RAE'S MOTION FOR SUMMARY JUDGMENT WHEN THIS ISSUE IS MOOT

Tommie Rae signed a valid Consent Order and Prenuptial Agreement giving up any claim to any of James Brown's estate as though she predeceased him. It has been fourteen years since Tommie Rae Hynie signed a prenuptial Agreement with James Brown and eleven years since Tommie Rae signed a Consent Agreement with James Brown. Neither agreement has ever been challenged by Tommie in a judicial proceeding. In both agreements the language and the intention of the parties are clear. Tommie Rae has accepted the benefits of those agreements. James Brown has fulfilled his portion of those agreements and is now deceased. Tommie Rae should not be able to now change the terms to place her in a more favorable position to reap additional benefits. The Prenuptial Agreement and Consent Order signed by Tommie Rae waived her rights to make any claim to the Estate of James Brown. Since they preclude her from making any claim to Brown's estate, the question of whether she was James Brown's surviving spouse should be considered moot since it will not change the ultimate outcome. Tommie Rae's Motion for Summary Judgment should be denied as moot.

WHEREFORE, on behalf of Amicus Curiae Jeanette Mitchell, Sarah LaTonya Brown Fegan, Ciara Petitt and Cheriquarius Williams (daughters of LaRhonda Petitt), the undersigned counsel

move that this court reconsider alter or amend its January 13, 2015 order Granting Tommie Rae Hynie's Motion for Summary Judgment and denying the LSA's Motion for Summary Judgment.

January 26, 2015

Respectfully submitted,

William J. Barr, Esq. S.C. Bar No 546
Barr Law, LLC
108 N. Academy Street
Kingstree, South Carolina 29556-3422
Phone: (843) 355-5444
Fax: (843) 355-5194
E-mail: barrlaw@ftc-i.net

Vera Gilford, Esq. Fla. Bar No 345806
P.O. Box 12553
Miami, Florida 33101
Phone: (305) 877-9470
Fax: (800) 865-9705
E-mail: veragilford@yahoo.com

Exhibit A 1-29-15

Liz Godard
C.C.P.&G.S.
Anita Knoepfle
Deputy Clerk

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	Case Nos.: 2013-CP-02-02850 cert. copy
	)	
	)	
	)	**ORDER RE PETITIONER TOMMIE RAE BROWN'S MOTION FOR SUMMARY JUDGMENT AND THE LIMITED SPECIAL ADMINISTRATOR'S MOTION FOR SUMMARY JUDGMENT**
IN RE THE ESTATE OF	)	
JAMES BROWN A/K/A	)	
JAMES JOSEPH BROWN	)	
	)	

This matter came before the court on November 24, 2014 on Petitioner Tommie Rae Brown's Motions for Summary Judgment filed October 30, 2007, November 26, 2007, and April 28, 2014, and the Limited Special Administrator's (LSA's) Motion for Summary Judgment dated May 29, 2014. Each of these Motions requests summary judgment determining whether Mrs. Brown is the surviving spouse of James Joseph Brown. All parties have submitted detailed memoranda in support of their respective positions as well as responsive memoranda, and all parties have consented to a Joint Stipulation of Facts filed September 5, 2014.

The following counsel appeared at the hearing: (1) Robert N. Rosen, S. Alan Medlin, M. Jean Lee, David L. Michel, and Corey T. L. Smith, counsel for Tommie Rae Brown; (2) John F. Beach, counsel for the LSA David C. Sojourner; (3) A. Peter Shahid, Jr., counsel for Guardian ad Litem Stephen M. Slotchiver; (4) Stephen M. Slotchiver, Guardian ad Litem for J[illegible] B[illegible], (5) David B. Bell and Matthew D. Bodman, counsel for Daryl Brown; (6) John A. Donsbach and Scott Keniley, counsel for Terry Brown; (7) Louis Levenson, counsel for Deanna Brown Thomas, Yamma N. Brown, Venisha Brown, and Larry Brown; and (8) William Barr and Vera Gilford, counsel for amicus curiae Jeanette Mitchell.

Liz Godard
C.C.P.&G.S.
Deputy Clerk

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)
_____)
Plaintiff,)
vs.)
)
IN RE:)
JAMES JOSEPH BROWN
Defendant.)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

CASE NO.: 2013-CP-02-02850-orig
CASE NO: 2013-CP-02-02849- with copy

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Plaintiff's Attorney:	Defendant's Attorney:
William J. Barr, Bar No. 546 Address: 108 N. Academy Street Kingstree, SC 25996 Phone: 843-355-5444 Fax 843-355-5194 E-mail: barrlaw@ftc-i.netOther: ____	John Beach, Bar No. 595 Address: 1501 Main St. 5th FL, Columbia, SC 29201 Phone: 803-343-1269 Fax803-799-8479 E-mail: john.beach@arlaw.comOther: ____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion to Reconsider Alter Amend 1-13-15 Order
Estimated Time Needed: 45 Court Reporter Needed: ☒ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

[signature] 1/26/2015
Signature of Attorney for ☒ Plaintiff /☐ Defendant Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: ____
☐ Other: ____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: CK# 5557

JUDGE CODE
FILED 1:29 pm 15
Date: ____
Liz Godard
C.C.C.P.&G.S.
Anita Knoepfle
Deputy Clerk

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN) FOR THE SECOND JUDICIAL CIRCUIT
)
Tommie Rae Brown,) C/A No. 2013-CP-02-02849 - orig
Petitioner,) C/A No. 2013-CP-02-02850 - cert copy
v.)
)
David C. Sojourner, Jr., in his capacity) **MICHAEL DEON BROWN'S MOTION TO**
as Limited Special Administrator and) **ALTER, AMEND AND RECONSIDER**
Limited Special Trustee, Deanna Brown)
Thomas, Yamma Brown, Venisha)
Brown, Larry Brown, Terry Brown and)
Daryl Brown,)
Respondents,)
)
IN RE:)
THE ESTATE OF JAMES BROWN)
A/K/A JAMES JOSEPH BROWN)
)

FILED 2:2 15 2pm
C.C.P.&G.S.
Anita Knoepfle
Deputy Clerk

TO: JOHN BEACH, ESQ., ATTORNEY FOR LIMITED SPECIAL ADMINISTRATOR, ROBERT N. ROSEN, ESQ., AND S. ALAN MEDLIN, ESQ., ATTORNEYS FOR PETITIONER TOMMIE RAE BROWN; LOUIS LEVENSON, ESQ., ATTORNEY FOR DEANNA BROWN THOMAS, YAMMA BROWN, AND VENISHA BROWN; ATTORNEYS FOR LARRY BROWN; JOHN A. DONSBACH, ATTORNEY FOR TERRY BROWN; AND WILLIAM J. BARR AND VERA E. GILFORD, ATTORNEYS FOR JEANETTE MITCHELL:

YOU WILL PLEASE TAKE NOTICE that ten days after service hereof, or as soon thereafter as he may be heard, Michael Deon Brown, will move before the Court, pursuant to Rule 59(a)(b) and (e) and 60(a)(b) of the *South Carolina Rules of Civil Procedure*, for an order altering, amending, and/or reconsidering the Order Re Petitioner Tommie Rae Brown's Motion for Summary Judgment and the Limited Special Administrator's Motion for Summary Judgment, dated January 13, 2015 (the "Summary Judgment Order").

Michael Deon Brown received notice of entry of the Summary Judgment Order from the Aiken County Clerk of Court via electronic mail on January 23, 2015 and has not yet received written notice of entry of the Summary Judgment Order.

This Motion is based upon any memoranda of law, stipulated facts, and/or affidavits that may be submitted in support of this motion, along with all applicable common and statutory law, and such other evidence and authority as this Court may consider.

ARGUMENT

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

1. The Summary Judgment Order is based upon "facts" that have not been stipulated by the parties, including but not limited to the following:

a. That Ahmed was given proper notice of the Charleston County Family Court rescheduled hearing in the Ahmed Annulment Action. *See* Summary Judgment Order at pp. 7-8.

b. That Decedent requested the Aiken County Family Court be bound by the Findings of Fact in the Charleston County Family Court Order. *See id.* at p. 8.

c. That Decedent and Petitioner "reconciled" after Decedent filed an annulment action in Aiken County. *See id.*

d. That Decedent "supported the annulment litigation" by paying Petitioner's legal fees. *See id.* at pp. 33-34.

It was error for such facts to form the basis of the Summary Judgment Order as no party had the opportunity to refute or challenge such facts through discovery, including without limitation, deposing parties and other witnesses, reviewing the Hynie Diaries, and conducing written discovery.

All parties were prohibited from conducting such review and discovery by the Court's March 31, 2014 order staying discovery and holding in abeyance the LSA's motion to amend the protective orders prohibiting the Parties from possessing or using the Hynie Diaries.

2. The Court failed to consider that the Petitioner has the burden of proving she is Decedent's surviving spouse.

3. The Court failed to consider that the facts establish a presumption Petitioner's purported marriage to James Brown ("Decedent") was bigamous and Petitioner can only overcome that presumption by proving, through the presentation of admissible evidence in this proceeding, that Petitioner's marriage to Javed Ahmed was bigamous.

4. The Court failed to consider that, in accordance with extant case law, Petitioner is required to present admissible evidence in this proceeding proving Javed Ahmed ("Ahmed") was already married when he and Petitioner married in Texas on February 17, 1997 in order to overcome the presumption in favor of the validity of Petitioner's marriage to Ahmed.

5. The Court failed to consider that the Petitioner cannot, through the April 15, 2004 Final Order issued in the Ahmed Annulment Action (the "Ahmed Annulment Order"), lawfully establish in this proceeding that her marriage to Ahmed was bigamous.

6. The Court failed to consider that, because the Ahmed Annulment Order is a judgment *in rem*, it is only binding on non-parties to that action as to the marital status of Petitioner and Ahmed from the date of the Ahmed Annulment Order; i.e., only establishes the annulment of Petitioner's marriage to Ahmed from the date of the Ahmed Annulment Order forward. The Court failed to consider that the findings of fact and conclusions of law upon which the judgment annulling Petitioner's marriage to Ahmed was based are not binding on non-parties to that action.

The Court failed to distinguish cases that hold that judgments in rem are not binding against third parties beyond the status adjudicated therein.

7. The Court failed to consider that the parties are not collaterally estopped by the Ahmed Annulment Order's findings of fact or conclusions of law because the Decedent was not a party to the Ahmed Annulment Action and not in privity with any party to the Ahmed Annulment Action.

8. The Court misconstrued the holding in *Carolina Baking Co. v. Geilfuss*, 169 S.C. 348, 168 S.E. 849, 852 (1933), and erroneously based its decision upon a misstated holding.

9. The Court failed to consider that Decedent did not exercise control over the Ahmed Annulment Action or participate in the Ahmed Annulment Action and therefore is not in privity with Petitioner in the Ahmed Annulment Action. The Court failed to consider that Decedent could not have exercised control over Petitioner's case in the Ahmed Annulment Action based on the *South Carolina Professional Rules of Conduct*, specifically Rule 1.7.

10. The Court failed to consider that the Ahmed Annulment Order cannot be used for collateral estoppel purposes because it was procured against a party in default.

11. The Court failed to consider that in the Charleston County Family Court for the Ahmed Annulment Proceeding there was not an "opposing party" and the Ahmed Annulment Order was a default judgment.

12. The Court misconstrues Decedent's use of the Ahmed Annulment Order in Decedent's own Aiken County annulment action against Petitioner as a basis for asserting that equitable estoppel should be applied in the present cases. Further, the Court misconstrues cases cited by Petitioner which are procedurally and substantively distinguishable from the present case for reasons given by the LSA at the court's hearing of this matter.

13. The Court failed to consider that collateral and equitable estoppel are equitable doctrines and even where all of the elements are met, these doctrines should be used "sparingly" and only in cases where it would be equitable. The Court failed to consider that it would be inequitable to apply the underlying facts and conclusions of the Ahmed Annulment Order through doctrines of collateral or equitable estoppel to the present proceeding.

14. The Court failed to consider evidence submitted in opposition to Petitioner's Motion for Summary Judgment establishing that Ahmed was not married to another person when he married Petitioner. Such evidence creates a genuine issue of material fact that defeats Petitioner's Motion for Partial Summary Judgment. In granting Petitioner's motion, the Court erred in not accepting such evidence but, instead, accepting Petitioner's self-serving hearsay testimony, or inferences to be drawn therefrom, as referenced in the Ahmed Annulment Order and Petitioner's affidavits.

15. The Court erred in holding that the Compromise Agreement establishes Petitioner is Decedent's surviving spouse as a matter of law and is binding on the parties. The Court failed to consider that neither the Estate nor the Trust were parties to the Compromise Agreement, the personal representatives of the Estate and trustees of the Trust actively opposed and contested the Compromise Agreement, and the South Carolina Supreme Court effectively held the settlement was not binding by "invalidating" it on appeal.

16. The Court failed to consider that judicial estoppel is inapplicable in this case because not all of the requisite elements have been proven and it would be inequitable to apply judicial estoppel in this action.

17. The Court erred in finding that Petitioner establishes through the briefs and oral arguments presented in the *Wilson v. Dallas, supra*, appeal that Petitioner is Decedent's

surviving spouse. The Court also erred in holding judicial estoppel binds the Estate or Court to the Settling Parties' alleged application of *Lukich* in the *Wilson v. Dallas* appeal.

18. The Court erred in finding that Petitioner establishes through the lower court's Order Approving Settlement Agreement that Petitioner is Decedent's surviving spouse. The Court also erred in holding the Court and the Estate are bound to the Settling Parties' alleged interpretation of *Lukich* relating to that Order. Such holding is in error where the South Carolina Supreme Court held on appeal that the settlement was "invalidated," remanding the case for further discovery on Petitioner's "surviving spouse" status.

19. The Court erred in allowing Petitioner to use the Ahmed Annulment Order issued by the Charleston County Family Court in 2004 to retroactively validate Petitioner's and Decedent's bigamous marriage in 2001.

20. The Court failed to consider that the clear and unambiguous holding in *Lukich*, supra, based on S.C. Code Ann. § 20-1-80, bars Petitioner and the Court from retroactively applying the Ahmed Annulment Order to validate Petitioner's bigamous marriage to Decedent.

21. The Court failed to consider the final paragraph in *Lukich*, as well as the holdings in *Rodman v. Rodman*, *White v. White* and *Splawn v. Splawn*, bar Petitioner and the Court from retroactively applying the Ahmed Annulment Order to validate Petitioner's bigamous marriage to Decedent based.

22. The Court failed to consider that *Joye v. Yon* bars Petitioner and the Court from retroactively applying the Ahmed Annulment Order to validate Petitioner's bigamous marriage to Decedent.

For at least the foregoing reasons, Michael Deon Brown respectfully requests that this Court grant this Motion for Reconsideration, deny Petitioner's motion for partial summary judgment, and grant the Respondent's motion for summary judgment.

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

This 2nd day of ~~January~~ Feb., 2015.

Respectfully submitted,

MATT BODMAN
SOUTH CAROLINA BAR NO. 11143
1500 CALHOUN STREET
COLUMBIA, SC 29201
(803)806-8605

DAVID B. BELL
Georgia State Bar No. 047750
619 Greene St.
Augusta, GA 30901
(706) 724-1882

COUNSEL FOR Michael Deon BROWN

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)
IN RE:)
THE ESTATE OF JAMES BROWN)
Plaintiff,)
vs.)
)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

CASE NO.: 2013-CP-02-02849
2013 CP02 02850

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Plaintiff's Attorney: Matt Bodman, Bar No. 11143 Address: 1500 Calhoun St., Columbia SC 29201 Phone: 803.806.8605 Fax 803-758-6087 E-mail: mattbodman@mattbodmanlaw.com Other:	Defendant's Attorney: SEE ATTACHED SERVICE LIST, Bar No Address: Phone: Fax E-mail: Other:

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion:
Estimated Time Needed: Court Reporter Needed: ☐ YES/ ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant Date submitted: Feb. 2, 2015

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE Date: , 20

CLERK'S VERIFICATION

Collected by: Date Filed: 2-2-15, 20
C.C.P.&G.S.
☒ MOTION FEE COLLECTED: $ 25.00
☐ CONTESTED – AMOUNT DUE: $
Anita Knoepfle 130
Deputy Clerk

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)) COUNTY OF AIKEN)) Tommie Rae Brown,)) Petitioner,)) v.)) David C. Sojourner, Jr., in his Capacity as Limited Special Administrator and Limited Special Trustee, Deanna Brown Thomas, Yamma Brown, Vanisha Brown, Larry Brown, Terry Brown and Daryl Brown)) Respondents.)) IN RE:)) The Estate of James Brown a/k/a James Joseph Brown)	IN THE COURT OF COMMON PLEAS FOR THE SECOND JUDICIAL CIRCUIT Case No. 2013-CP-02-2849 - Original (Omitted Spouse Claim) Case No. 2013-CP-02-2850 - Work copy (Elective Share Claim) **RESPONDENT TERRY BROWN'S MOTION TO ALTER, AMEND AND RECONSIDER** FILED 2-2-2015 Liz Godard C.C.C.P.&G.S. Anita Knoepfle 12:30 Deputy Clerk

TO: ALL COUNSEL OF RECORD

YOU WILL PLEASE TAKE NOTICE that ten days after service hereof, or as soon thereafter as he may be heard, Respondent Terry Brown will move the Court in accordance with Rule 59(a), (b) and (e) and 60(a) and (b) of the South Carolina Rules of Civil Procedure, for an order altering, amending, and/or reconsidering the Order Re Petitioner Tommie Rae Brown's Motion for Summary Judgment and the Limited Special Administrator's Motion for Summary Judgment, dated January 13, 2015 ("Summary Judgment Order").

Respondent Terry Brown received notice of entry of the Summary Judgment Order by electronic mail from the Aiken County Clerk on January 23, 2015, a copy of such Summary Judgment Order is attached as Exhibit A.

The Motion is based upon all memorandum of law, stipulated facts, and/or affidavits that may be submitted in support of this motion, along with all common and statutory law, and such other evidence this Court may consider. Additionally, this motion adopts and incorporates all previous filings by Respondents in this matter which include: 1) Each and every Memorandum filed by each of the Respondents in the matter in support of the LSA's Motion for Summary Judgment; 2) all arguments made before the Court on November 24, 2014 by Respondents; and 3) all Motions to Alter, Amend, and Reconsider and Memorandums, Affidavits and Exhibits in Support of such Motions filed by any and all Respondents.

ARGUMENT WITH LAW AND ANALYSIS

Tommie Rae Hynie ("Tommie Rae") has not provided one scintilla of admissible proof to this Honorable Court or any other court that her first husband Javed Ahmed ("Ahmed") was married at the time he married Tommie Rae Hynie. In fact, she defiantly, mocks this Honorable Court arguing that because she convinced another court, without proof, that Ahmed was married is sufficient to bind this Honorable Court. All parties and this Honorable Court are in full agreement that Tommie Rae Hynie has provided no proof that her marriage to Ahmed was in fact bigamous. This Honorable Court's Order erroneously supports Tommie Rae Hynie as James Brown's widow based merely on a purported legal technicality concerning a questionable annulment, not facts or evidence. This Honorable Court additionally and prematurely, allowed summary judgment without opportunity for discovery. Essentially, Tommie Rae Hynie is a

bigamist, however, she may now, as a result of this Honorable Court's Order, be entitled to millions of dollars because she simply duped the legal system. This Honorable Court in its Summary Judgment Order has herein declared that a court order can manufacture facts by issuance of an order and that those manufactured facts have the benefit of being placed in time most convenient to one party over another. According to corroborated unbiased facts, Tommie Rae Hynie was a bigamist when she married James Brown. It was only when Tommie Rae Hynic received an order declaring her marriage to Ahmed as bigamy, without providing any facts or admissible evidence, that the bigamist marriage was manufactured. Hynie's marriage to Javed Ahmed was declared to be a manufactured court ordered bigamy, not a factual bigamy based on actual evidence. However, the legal system has safeguards for this exact situation and this Honorable Court, respectfully, overlooked those applications. Unfairness and injustice should never prevail in American Jurisprudence.

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

1. The Summary Judgment Order is based on alleged evidence and facts that the parties did not stipulate to and had not had a chance to be challenged through discovery or other means as this Honorable Court stayed discovery:

a. This Honorable Court misconstrued and mischaracterized the marriage of Tommie Rae Hynie to Javed Ahmed as "putative" when in fact the parties stipulated that a marriage license was obtained and marriage ceremony entered into on February 17, 1997. See. Summary Judgment Order at pp. 5 and Joint Stipulation of Facts, p. 2, ¶¶ 1,2.

b. This Honorable Court misconstrued and mischaracterized the marital status of Javed Ahmed and Tommie Rae Hynie at the time that James Brown and

Tommie Rae Hynie were married on December 14, 2001, when the parties had agreed and stipulated to the fact that "**no order of any court** or other occurrence of which Plaintiff[Petitioner Tommie Ray Hynie] is aware at this time ended or caused to end any marriage that certain parties assert existed between Petitioner and Javed Ahmed." See. Joint Stipulation of Facts, p. 3, ¶6 This Honorable Court erred when it determined that Charleston Court Family Court (CCFC) Order trumped a stipulation of fact between the parties. The parties had already agreed that the marriage to Ahmed was not annulled as of December 14, 2001 because they specifically stipulated to the fact that Charleston Family Court Order had not annulled the marriage at that time. The Honorable Court instead misapprehended, misconstrued and erred when it included a fact from another court order to which the parties had agreed did not invalidate the marriage between Javed Ahmed and Tommie Rae Hynie thereby overriding the Joint Stipulation of Facts that the parties are bound to in this matter and effectively making up a fact for the Honorable Court's ruling. The Honorable Court erred when it allowed Petitioner to use the CCFC Order to change the facts that it had already jointly stipulated to in this matter. This was error.

c. This Honorable Court misconstrued and mischaracterized James Brown's amended complaint when it indicates that his amended complaint determined that the "Findings of Facts of the Charleston Family Courts are binding on the Aiken County Family Court". See. Summary Judgment Order p. 8. A closer review of the Brown-Hynie Annulment documents does not show this to be an accurate depiction of what occurred. James Brown pointed to one fact that was determined by the CCFC. Specifically, in paragraph 8 of James Brown's Amended Annulment Complaint, he

indicated that the Court determined that Petitioner was previously married to Javed Ahmed. See. Joint Stipulation of Facts, Exhibit 16, ¶ 8. He did not specifically adopt all of the facts of the Ahmed Annulment Order, he adopted only facts that would prove that Petitioner was a bigamist for purposes of his annulment. Petitioner emphatically and incorrectly argued at the November 24, 2014 Summary Judgment hearing that paragraph 10 of the Brown Amended Annulment Complaint adopted all of the facts of the Ahmed Annulment Order. A closer examination of such paragraph indicates that this is not the case. In fact, paragraph 10 of James Brown's Amended Annulment Complaint makes the argument that **Petitioner**, not James Brown, is collaterally and judicially estopped from challenging the facts of the Ahmed Annulment Order. Id. at ¶10. Nowhere in such paragraph, does it indicate that James Brown intends to be bound by the facts of the Ahmed Annulment Order. If such a result were true, James Brown would have been unable to argue any other facts at his own annulment hearing because he would be bound by the facts of the Ahmed Annulment Order. Clearly, that result is neither possible nor reasonable and would have been extremely prejudicial to James Brown's due process rights.

d. This Honorable Court misconstrued and mischaracterized the Consent Order when it characterizes the Consent Order as "Mr. and Mrs. Brown reconciled". See. Summary Judgment Order, p. 8. The parties did not stipulate that the Consent Order was a reconciliation document. However, this Honorable Court creates this fact without the entry of any evidence on such matter. The Consent Order was a settlement conclusion to Petitioner's ugly divorce claims and James Brown's annulment claim wherein Petitioner agreed she was not James Brown's wife, thereby giving Petitioner and James Brown what

they both desired in their mutual claims, an order declaring they were not married. This Honorable Court's interpretation any other way is error.

e. This Honorable Court erred when it improperly considered and applied the contents of an affidavit of Daryl Brown's attorney as it was not jointly stipulated to by the parties and not properly in evidence before this Honorable Court as the result of the stay in discovery by this Honorable Court's own order. See. Summary Judgment Order, p. 23. Additionally, this Honorable Court erred in speculating that Ahmed may have married and subsequently had children which are clearly facts that are not in evidence.

2. This Honorable Court erred in refusing to consider that the parties stipulated that Tommie Rae Hynie and Javed Ahmed were married as of December 14, 2001. See. Joint Stipulation of Facts 1, 2 and 6.

3. This Honorable Court erred when it determined that Javed Ahmed was properly served and notified of his annulment proceeding when it applied Rule 5(b)(1) of the South Carolina Rules of Civil Procedure rather than Rule 4(d)(8). See. Summary Judgment Order, pp. 8-9.

4. This Honorable Court erred when it made a delineation between void and voidable marriages for purposes of annulment under the Lukich v. Lukich, 379 S.C. 589 (2008), 666 S.E. 2d 906 (2008). See. Summary Judgment Order p. 13. The South Carolina Supreme Court decision in Lukich makes no such distinction. It ruled that bigamous marriages are void *ab initio* as to the parties involved and that the capacity to marry was not restored until an annulment order was issued. The South Carolina Supreme Court specifically noted:

> "The question is whether the October 2003 annulment order declaring Wife's first marriage void *ab initio* relates back so as to validate her purported 1985 marriage. In construing a statute, we need not resort to rules of construction where the

> statute's language is plain. (citing Tilley v. Pacesetter Corp., 355 S.C. 361, 585 S.E.2d 292 (2003).) Lukich 379 S.C. at 592.

The South Carolina Supreme Court did not distinguish between void and voidable marriages. It made the decision based on the statute's plain language. South Carolina Code §20-1-80 states:

> All marriages contracted while either of the parties has a former wife or husband living shall be void. But this section shall not extend to a person whose husband or wife shall be absent for the space of five years, the one not knowing the other to be living during that time, not to any person who shall be divorced or whose first marriage shall be declared void by the sentence of a competent court.

The statute could not be more unequivocally clear. For the third exception to apply, and not have a marriage void *ab initio*, the first marriage must be **declared void by the sentence of a competent court.** As such, Tommie Rae Hynie was married to Ahmed at the time she married James Brown. Therefore, by straight statutory reading, the Hynie-Brown marriage was void *ab initio* because her marriage to Ahmed was not declared void at that time. There can be no confusion or issue. As such, this Honorable Court erred when it interpreted the case in any other manner.

5. This Honorable Court misconstrued the holding in Hallums v. Hallums, 74 S.C. 407, 54 S.E. 613 (S.C. 1906) and misapplied its facts to the matter at hand. At the point in time that James Brown and Tommie Rae Hynie were married, this matter is exactly like the Hallums matter as no order had been entered at that time declaring the Ahmed-Hynie marriage annulled. The parties stipulated to this fact. See. Joint Stipulation of Facts, p. 3, ¶6. It was Petitioner and this Honorable Court that misconstrued Hallums, not the LSA. This is error.

6. This Honorable Court erred when it determined that the CCFC Order as an *in rem* action was binding on James Brown and Respondents as a factual determination. James Brown was not a party to such *in rem* action and could not be bound.

7. This Honorable Court erred when it took judicial notice that James Brown did not annul his marriage prior to his death as no such order or fact is before this Honorable Court. See. Summary Judgment Order, p. 22.

8. This Honorable Court erred in raising the issue related to the legitimization of J B in this matter as it is pending in another matter before this Honorable Court and not proper for discussion in this matter. See. Summary Judgment Order, p.22.

9. This Honorable Court misconstrues why the Brown annulment action was brought. See. Summary Judgment Order, p. 23. James Brown's marriage was void *ab initio* under Lukich. James Brown was simply seeking to regain his capacity to marry another person. James Brown and Tommie Rae Hynie's relationship was void from the beginning. As required by Lukich, James Brown was just clearing his right to be able to marry another party by filing an annulment action. As he never remarried prior to his death, whether he properly annulled the Hynie relationship is irrelevant. What is relevant is that it was void *ab initio*. This was error.

10. This Honorable Court erred in its application of South Carolina Code §62-2-802. The Brown-Hynie relationship was void *ab initio* under South Carolina Code §20-1-80. As such, the statute cannot apply on its face because there was never a marriage that Tommie Rae Hynie could enforce. The application of this statue was a red herring that Petitioner's presented to this Honorable Court. This Honorable Court erred in a significant fashion when it analyzed a statute that could not apply from the beginning because the parties were not married. Therefore, Tommie Rae Hynie had no marital property rights that would apply. This Honorable Court misconstrued the statute.

11. This Honorable Court erred when it determined that the CCFC Order was binding on all parties in this matter thereby retroactively validating the Brown-Hynie bigamous

relationship in contravention of both Joye v. Yon, 345 S.C. 264, 547 S.E. 2d 888 (Ct. App 2001) and Lukich. See. Summary Judgment Order, p. 28. Further, in the same analysis this Honorable Court cites from the treatise of Homer H. Clark, Jr. which specifically notes that: "[A]nnullment decrees are binding upon nonparties as well as parties respecting the validity of the marriages involved." See. Summary Judgment Order, p. 29, footnote 32. This Honorable Court completely misconstrues this quote. The quote very clearly says "Annulment Decrees" are binding on non-parties. That is true once an annulment order is entered as of record. This is exactly what Lukich was saying. The annulment becomes binding on third parties once the decree is entered and not before. There is no retroactive application on non-parties. James Brown was a non-party to the Ahmed-Hynie Annulment proceeding. As such, it could not be applied to him until April 15 2004. By that time, he was already in a bigamous relationship that had been entered into on December 14, 2001. These facts have been stipulated to by the parties. The Court erred when it retroactively applied the CCFC Order and found it binding on the parties prior to April 15, 2004.

12. This Honorable Court erred when it states that: "The stipulated facts show that Mr. Brown supported the annulment litigation by paying Mrs. Brown's legal fees." See. Summary Judgment Order, p. 34. The Joint Stipulation of Facts state: "James Brown gave Tommie Rae Brown the funds to pay the legal fees for the Ahmed Annulment litigation." See. Joint Stipulation of Facts, p. 4, ¶13. Nowhere in that statement does it say that James Brown supported the annulment litigation. It simply says he paid for it. Any number of conclusions and reasons could be drawn from the fact that he paid for the annulment. In fact, the Court could have, and should have based on the evidence in the matter, construed the fact of payment as an indication that James Brown wanted to begin his own annulment action. This Honorable Court

created a fact and then used it as a foundation for its ruling on estoppel in favor of the moving party rather than the non-moving party as it is required to do. This is error.

13. This Honorable Court erred in its entire application of the *in rem* cases and their analysis as it relates to the CCFC Order. See. Summary Judgment Order, p. 34-45. Respondent Terry Brown agrees that the CCFC Order was *in rem*. However, what this Honorable Court misconstrues, in application of the analysis at hand, is that *in rem* judgments only become binding as to the world upon entry. The CCFC Order could not have affected the status on Tommie Rae Hynie and Javed Ahmed's relationship as it related to the non-party James Brown until its entry on April 14, 2004. Prior to such date, Tommie Rae Hynie had already entered into a bigamous relationship with James Brown before the "status" of her relationship with Javed Ahmed was impacted. As such, the Court misconstrued and erred in applying the analysis and case law related to *in rem* actions.

14. This Honorable Court misconstrues the actual effect of an *in rem* judgment as it relates to the facts. See. Summary Judgment Order, pp. 39-45. While this Honorable Court's analysis is correct that judgments are based on facts, the idea that: "It is nonsensical to say that a person is bound only by a court's conclusions, and not by the factual findings that lead inevitably to those conclusions. If the factual findings are not binding, then the court in a future action is free to find different facts and reach a different result, and nothing is binding at all." See. Summary Judgment Order, p. 39., is misplaced. These statements ignore one of the basic fundamentals of our judicial system which is that on collateral matters (i.e. whether Tommie Rae Hynie and James Brown were married) the facts can be combined with additional facts to change an outcome. Here, this Honorable Court precluded discovery and failed to review additional facts that when combined with the alleged facts of the CCFC Order (which the parties never had

a chance to challenge as facts), should have caused this Honorable Court to reach a ruling in Respondents favor. This was error

15. This Honorable Court erred when it further states: "Section 74(2) says that on issues collateral to status, the judgment is binding only on persons who appear, and over whom the court has jurisdiction. Likewise, factual findings in a status judgment cannot be binding on issues other than status, because those issues require personal jurisdiction and not merely in rem jurisdiction. This rule makes perfect sense. ... An in rem judgment cannot be used to bind third parties on an issue that is not subject to personal jurisdiction." See. Summary Judgment Order. p. 40. However, oddly enough, after making this statement, this Honorable Court misconstrued Section 74(2) and ruled in exactly the opposite fashion in effect ignoring the rule and statement that it clearly states makes perfect sense. This Honorable Court someone how found, after saying the rule makes perfect sense, that the factual findings in the CCFC Order (i.e. the status judgment as to the Hynie-Ahmed marriage) bound James Brown who was not before the CCFC with personal jurisdiction and actually changed the status of collateral matters (i.e. whether Tommie Rae Hynie and James Brown were married). This Honorable Court also declared the facts binding on James Brown and his heirs from the CCFC Order as to a collateral matter. This is exactly the opposite of the rule that this Honorable Court stated made sense. This Honorable Court determined that Respondents were using Section 74(2) to attack the finding that the Hynie-Ahmed marriage was annulled. See. Summary Judgment Order, p. 44. This statement misconstrues Respondents arguments and is error. The Respondents were never disputing the Ahmed-Hynie Annulment Order and its effect on the status of the Ahmed-Hynie marriage. The Respondents argued that **the facts** of the Ahmed-Hynie Order could not be used against a non-party (i.e. James Brown) to change his status (i.e. whether Tommie Rae Hynie and James Brown

were married). This was not an attack on the Ahmed-Hynie Order as this Honorable Court misstates in its Summary Judgment Order, but on the proof of status as to the Hynie-Brown marriage. This Honorable Court completely misconstrued and misapplied the law and analysis related to the effect of *in rem* judgments under Section 74(1) and 74(2) of the Restatement on Judgments. This is error.

16. This Court erred when in its ruling it stated: "Mrs. Brown has presented a valid marriage certificate, placing upon the Respondents the burden of proving that her most recent marriage is invalid. They seek to defeat Mrs. Brown's claim by proving that her marriage to Mr. Brown was bigamous. But it is bigamous only if Mrs. Brown had a valid marriage to someone else at the time she married James Brown. **To prove that Mrs. Brown's marriage to Mr. Brown was bigamous, the Respondents must prove that Mrs. Brown's marriage to Ahmed was valid**." (Emphasis added). This is an amazing statement in this matter. Respondent Terry Brown disagrees with this Honorable Court's determination as to who has the burden of proving the marriages in this matter as a result of Yarborough v. Yarborough, 280 S.C. 546, 314 S.E.2d 15 (Ct. App. 1984) and therefore this Honorable Court erred. Petitioner bears the burden of proving she is James Brown's wife and she has not carried this burden. But even further, this Honorable Court declares that it is Respondents duty to prove the above while binding Respondent's hands with a stay in discovery and a gag order on the Diary. This an incredible violation of due process. Thereafter, this Honorable Court issued a summary judgment ruling indicating that it was Respondent's job to prove its case without allowing discovery. This is error.

17. This Honorable Court erred when it ultimately ruled that Respondents were estopped from challenging the status of James Brown's alleged marriage to Tommie Rae Hynie.

This Honorable Court erred when it failed to apply any of the principles or elements of estoppel and set forth no case law or facts that supported the elements of estoppel which would ultimately support this Honorable Court's ruling on the same. Instead, with no legal analysis of any type on the principles of estoppel and facts of this matter, this Honorable Court simply declared Respondents estopped. This is error.

18. This Honorable Court erred when, for purposes of estoppel, it determined that James Brown was effectively a party to the Ahmed-Hynie Annulment action because James Brown paid Tommie Rae Hynie's fees. The Honorable Court misconstrued and misapplied the facts of this case as it related to Pye v. Aycock, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997) which adopted the Restatement (Second) of Judgments § 28 (1982). Obviously, substantial portions of Pye apply to the case sub judice. First, James Brown was neither a party nor had an adequate opportunity or incentive to obtain a full and fair adjudication in the initial action. It was neither his annulment action nor was Mr. Rosen his attorney or working at his direction. The result certainly was not sufficiently foreseeable at the time of the initial action that the issue would arise in the context of a subsequent action, i.e. his own estate litigation. Most importantly, the order of the CCFC, if it was intended as Petitioner currently uses as a weapon, would create absolute chaos and vividly provide the potential adverse impact of the determination on the public interest or the interests of persons not themselves parties in the initial action. Public policy considerations must be addressed and considered by this Court, and failure to do so is error.

19. This Honorable Court misconstrued and improperly analyzed the procedural elements of res judicata and collateral estoppel, especially in light of the lack of evidence Tommie Rae Hynie fails to put forth and the obvious damage to third parties. "The Supreme Court of the United States cautioned that [b]ecause res judicata may govern grounds and

defenses not previously litigated, however, it blockades unexplored paths that may lead to truth. For the sake of repose, res judicata shields the fraud and the cheat as well as the honest person. It therefore is to be invoked only after careful inquiry." Brown v. Felson, 442 U.S. 127, 132 99 S. Ct 2205 (1979) (Emphasis added). In this case, the unexplored path that may lead to the truth about Ahmed's marital status would be blocked. Tommie Rae Hynie is shielded and protected by this Honorable Court from explaining her uncorroborated, self-serving testimony in a default hearing. To establish res judicata, the defendant must prove three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. Sealy v. Dodge, 289 S.C. 543, 347 S.E.2d 504 (1986); Rogers v. Kunja Knitting Mills U.S.A., 336 S.C. 533, 537, 512 S.E.2d 106 (1999); Owenby v. Owens Corning Fiberglas, 313 S.C. 181, 437 S.E.2d 130 (Ct. App. 1993). Even though Petitioner attempts to assert James Brown was a de facto party to the initial action, South Carolina law does not create such a requirement. James Brown actually had to be a party. Petitioner blatantly admits that James Brown was not a party when she states in her Reply Brief, "Mr. Brown was obviously not a party to the annulment action." See. Reply Memorandum in Support of Tommie Rae Hynie's Partial Motion for Summary Judgment, p. 44. As such, Petitioner fails the first prong of the test for res judicata in that Mr. Brown was not a party to the original action. Additionally, the other two prongs of the test are not met either. The same subject matter was not litigated (i.e. whether the Brown-Hynie marriage was legal) and the issue has not been adjudicated. Res judicata cannot apply. The court must determine whether the issue was actually litigated "with particular care." Combs v. Richardson 838 F.2d 112, 113 (1988). As articulately stated in People v. Plevy, 52 N.Y.2d 58, 64, 436 N.Y.S.2d 224, 417 N.E.2d 518, 521 (1980) (citation omitted), "[P]reclusive doctrines are

'not to be rigidly or mechanically applied and must on occasion, yield to more fundamental concerns.'

The factors to consider in determining whether the defense of collateral estoppel exists and whether the issues were actually litigated in the first suit include: whether privity exists, whether the doctrine is used offensively or defensively, and whether the party adversely affected had a full and fair opportunity to litigate the relevant issue effectively in the prior action. Pye v. Aycock, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997). The South Carolina Courts, in Pye v. Aycock, 325 S.C. 426, 437-38, 480 S.E.2d 455, 460-61 (Ct. App. 1997), adopted the Restatement (Second) of Judgments § 28 (1982), which states in pertinent part:

> Although an issue is actually litigated and determined by a valid and final judgment (and the Respondents assert that it was in default and was not actually litigated), and the determination is essential to the judgment (whether Tommie Rae was married to James Brown), re-litigation of the issue in a subsequent action between the parties is not precluded in the following circumstances (and this Court failed to consider this analysis):
>
> > (5) There is a clear and convincing need for a new determination of the issue (a) because of the potential adverse impact of the determination on the public interest or the interests of persons not themselves parties in the initial action, (b) because it was not sufficiently foreseeable at the time of the initial action that the issue would arise in the context of a subsequent action, or (c) because the party sought to be precluded, as a result of the conduct of his adversary or other special circumstances, did not have an adequate opportunity or incentive to obtain a full and fair adjudication in the initial action.
> >
> > The mere presence of the various exceptions, many of which are founded in equity principles, warrants affording the parties the opportunity to develop the record. As noted in the Restatement provision adopted in Pye, the adverse impact upon the interests of persons not parties to the original litigation may also be considered. (Emphasis added).

More precisely, the application of res judicata and collateral estoppel 'may be precluded where unfairness or injustice results, or public policy requires it." Nelson v. QHG, 354 S.C. 290, 315,

580 S.E.2d 171, 184 (Ct. App. 2003) rev'd in part, 362 S.C. 421, 608 S.E.2d 855 (2005) citing State v. Bacote, 331 S.C. 328, 331, 503 S.E.2d 161, 163 (1998); Carrigg v. Cannon, 347 S.C. 75, 552 S.E.2d 767 (Ct. App. 2001) (Emphasis added). This should heavily way on this Honorable Court as the trier of fact and administrator of law.

This Honorable Court has erroneously enforced collateral estoppel supporting the CCFC Order in a matter wherein its decision will substantially damage parties who were not part of the Hynie-Ahmed Annulment that was ordered annulled for bigamy based on unsupported, uncorroborated, self-serving, hearsay testimony in a default hearing. No parties to this action, Petitioner or Respondent, can effectively disagree that there has been no admissible evidence of Ahmed's bigamy. It is a court ordered bigamy as opposed to a factual bigamy. Additionally, Tommie Rae Hynie suggesting that Ahmed married her so he could stay in the country does not make sense seeing that Ahmed was already legally in the country, had a social security number and an immigration attorney to advise him that he would need to complete many steps beyond a simple marriage to remain legally in the United States. Tommie Rae Hynie's unsupported, uncorroborated, self-serving, hearsay testimony in a default hearing is very suspect and it results in a massive financial windfall in Tommie Rae Hynie's favor and to the detriment of the true beneficiaries. James Brown did not support this unfairness or injustice. In fact, he had a very unambiguous estate plan that did not include the Petitioner. Any argument of benefit to James Brown is a factual issue and subject to discovery and this Honorable Court erred in considering such fact in its Summary Judgment Order.

20. This Honorable Court erred when it determined that paying legal fees created a de facto party status in violation of South Carolina Professional Rules of Conduct 1.6, 1.7, 1.8(f) and 5.4.

21. This Honorable Court erred when it failed to find the Brown-Hynie Consent Order binding on the parties. In the Brown-Hynie Consent Order, Petitioner clearly agrees that she will not seek to be James Brown's common law spouse. See. Joint Stipulation of Facts, Exhibit 19. The only possible reason for inclusion of such language in the Order is because **BOTH** parties did not consider themselves married at that time. Additionally, James Brown's actions in his annulment action, which include amendments that denote that Petitioner was previously married, after she admitted to the same in the Ahmed Annulment Action and which fact was adopted by the CCFC in the Ahmed Annulment Order, as well as continuing such action to a final Consent Order resolution rather than simple dismissals by both parties, indicate the parties understood that they were not married. Id. at Exhibits 15, 16 and 18. Finally, the Brown-Hynie Consent Order was the most recent Order entered in any court that actually involved both James Brown and Ms. Hynie where the parties denote their understanding of their marital relationship, which was that they were not married. Id. at Exhibit 19.

22. This Honorable Court erred when it denied Respondents the right to complete discovery before ruling on its summary judgment because summary judgment is a drastic remedy, it must not be granted until the opposing party has had a full and fair opportunity to complete discovery." Schmidt v. Courtney, 357 S.C. 310, 592 S.E. 2^{d}326 (Ct. App. 2003). The LSA and all parties were prohibited from conducting such review and discovery by this Honorable Court's March 31, 2014 order staying discovery and holding in abeyance the LSA's motion to amend the protective orders prohibiting the parties from possessing or using the Hynie Diaries. In fact, the Court provided, what seemed to be safeguards and proscribed rules to protect the parties from the potential abuse in a pre-discovery motion for summary judgment.

As noted in the transcript of the March 31, 2014 hearing:

Mr. Beach: Now, Judge, there are –that simple questions could be legal questions. On the other hand, if Mr. Rosen asserts that the - - if Mr. Rosen asserts that James Brown is estopped by that order, then Mr. Rosen is probably going to have to assert some facts to support that estoppel argument...

The Court: Well, if he does that – if he does that, then I think the summary judgment goes out the window.

However, then in direct contradiction of its own statements, this Honorable Court granted summary judgment to Petitioner without Respondents ability to complete discovery. This is error.

23. The Court misapprehend, misconstrued and misunderstood Respondent Terry Browns' argument related to Lukich v. Lukich, 379 S.C. 589 (2008), 666 S.E. 2d 906 (2008), when it indicates that Terry Brown states that a bigamous marriage is not void *ab initio* until an annulment order is obtained. See. Summary Judgment Order p. 13-15. Respondent Terry Brown's argument was that a bigamous relationship is void *ab initio* as to the parties who enter such relationship from the very beginning in accordance with S.C. Code §20-1-80, but is not valid as to third parties outside of the bigamist relationship until after an annulment order is obtained.

24. The Court erred when it accepted Petitioner's analysis of Lukich. The Supreme Court of South Carolina makes it clear in Lukich that Petitioner's alleged marriage to James Brown was bigamy *ab initio*. Any other facts that are discovered in this matter would not change this result. The South Carolina Supreme Court makes analysis for bigamous relationships is clear when it states:

> "Under the statute's terms, Wife's 'marriage' to Husband #2 was 'void' from the inception since at the time of that marriage she had a living spouse and that marriage had not been 'declared void.'...The statute speaks to the status quo at the time the marriage was contracted, and does not contemplate either a prospective or a retroactive

perspective. Any other construction of §20-1-80 would lead to uncertainty and chaos. ... It would be inconsistent at best to hold that a marriage declared void *ab initio* never existed for bigamy purposes, yet can serve as the foundation for a family court's division of property, alimony, and/or child support." Lukich, 379 S.C. at 592.

The South Carolina Supreme Court in its Lukich opinion, by making such unambiguous statements clearly supports the South Carolina Court of Appeals. The South Carolina Court of Appeals emphasized such Court's position in its opinion in Lukich when it specifically referenced the general rule applicable in 52 Am.Jur. 2d Marriage §57:

> [A]part from statute, bigamous marriage does not acquire validity when the prior subsisting marriage is legally terminated by divorce or by the death of the first spouse. The same rule is generally followed where the prior subsisting marriage is annulled after the second marriage is contracted, even though the purpose of an annulment proceeding is to declare that no valid marriage ever took place between the parties or that no valid marriage relation ever existed between the parties. Even where the annulment decree expressly declares the first marriage null and void ab initio, it does not relate back so as to validate the second marriage. In order for the subsequent marriage to be valid, it has been held that there must be a new ceremony following the termination of the earlier marriage. (Emphasis added). Lukich v. Lukich, 368 S.C. 47, 55, 627 S.E.2d 754, 758 (Ct. App. 2006).

The South Carolina Supreme Court has determined that the public policy of attempting to prevent bigamy has overridden all other considerations. The South Carolina Supreme Court's language when broken down into an analytical framework works for every situation on the continuum of multiple marriages if analyzed from each individual's perspective in the relationship. The South Carolina Supreme Court has determined that a person's capacity to marry a subsequent spouse will be determined by that individual's capacity and status at that time. In other words, the power to free one's own capacity to marry another individual rests solely in the hands of the person seeking to marry another individual. Simply put, the first spouse in time to enter into a bigamous relationship is the gatekeeper who has the ability to clear his or her own capacity to marry another individual and declare to the world that the first

marriage does not exist. The married party seeking a different party to marry is the vessel of the truth of his or her marital status. As between James Brown and Petitioner, Petitioner was the only party with knowledge of her prior marriage. Petitioner could have and should have legally recorded conclusion of her prior marriage to let the rest of the world know (which included James Brown). By not doing so, chaos, such as we have in the matter sub judice is the result the South Carolina Supreme Court suggested would occur.

If a person is married and wants to have the ability to marry someone else, they must have one of three things occur: 1) the first marriage annulled; 2) the first spouse divorced; or 3) the first spouse dies. The power lies in the spouse seeking to be married again. The only person that can truly know if they are married is the person who is seeking to be married a second time. As a result, an individual seeking a subsequent marriage faces the harshest penalty (i.e. being declared a bigamist) under the South Carolina Supreme Court analysis. The sanctity of marriage must be protected at all costs thereby not allowing either party to enforce rights and obligations of a normal marital relationship when bigamy exists. This analysis works in both relationships in the matter at hand (i.e the Ahmed-Hynie and Hynie-Brown) with a consistent application of the protection of the sanctity of marriage and prevention of bigamy. As such, the analysis and results must be correct because the equitable result is the same for both Petitioner in her relationship with Javed Ahmed and James Brown in his relationship with Petitioner.

It is irrelevant, for purposes of the Lukich analysis in the case at hand, whether Javed Ahmed was married at the time he married Petitioner. If Javed Ahmed was married prior to his marriage to Petitioner, the analysis under the annulment statute grants Petitioner the right to annul her marriage and remove her incapacity to marry a subsequent individual as soon as the

annulment is granted.[1] Further, her marriage to Javed Ahmed would be void *ab initio* as to any rights or obligations that either party could attempt to enforce upon the other. Any other result would reward bigamy. Petitioner would have the right to marry another individual once a court declared the marriage void because of bigamy. This is the only way the analysis can work as it fully protects the spouse upon whom bigamy is perpetrated, but also protects third parties as to status of the relationship with the filing of the annulment order. Neither party to a bigamous relationship can enforce rights or obligations upon the other spouse *ab initio*. Either party then has the right to clear the incapacity to marry a third party by seeking an annulment.[2] It should be noted that this analysis even works if both parties are bigamists at the time that they attempt to get married. To terminate the bigamist relationship, either party could file an annulment thereby terminating the bigamous relationship upon entry of an order of annulment. Additionally, as in a relationship where only one party is a bigamist neither party would have a right to enforce rights or obligations on the other *ab initio*.

As a result, it does not matter whether Javed Ahmed was married prior to entering into his relationship with Petitioner. What matters is whether either Petitioner or Javed Ahmed rectified the restrictions on Petitioner's capacity to marry when she attempted to marry a subsequent individual. Petitioner was not a bigamist at the time she married Javed Ahmed because she was allegedly unmarried and allegedly unaware of Javed Ahmed's alleged prior

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[1] Petitioner argued at the hearing that it would be unnecessary to actually obtain the annulment order because the annulment occurred *ab initio* and the error that this Court has made when it misconstrues the Lukich decision. This is exactly the chaos as to which the Lukich decision speaks. If individuals did not actually have to go to court and obtain an annulment order as proof that a marital relationship was terminated, society would have no idea whether individuals were married or not. Marriages could be voided *ab initio* in the legal world that Petitioner proposes with no document filings to prove such a result. This would be utter chaos.

[2] Interestingly enough, the bigamist would have two relationships to clean up if they were the party seeking to clear their capacity to marry. They would have to annul the bigamist relationship into which they entered and terminate their initial relationship through divorce, annulment or death. This Court will not address the legal wisdom and costs that a bigamist may incur from being the party that actually files for the annulment.

marriages. Javed Ahmed would be a bigamist if Petitioner's unsupported allegations were true. Petitioner, or Javed Ahmed for that matter, could then seek to annul the marriage because of the bigamy. Thereafter, Petitioner removes the impediments on her capacity to marry upon entry of an annulment order. Petitioner did exactly this on April 15, 2004. See. Joint Stipulation of Facts, Exhibits 5 through 12.

Petitioner, however, became a bigamist when she attempted to marry James Brown. At the time of her attempted marriage to James Brown in 2001, she was married to Javed Ahmed. Id. Exhibit 4. An annulment order was not obtained until April 15, 2004. Therefore, Petitioner had no capacity to marry James Brown. As such, Petitioner is a bigamist and neither party may enforce the relationship as it relates to rights and obligations among one another *ab initio*. James Brown regains his capacity to marry another party when either he or Petitioner seek an annulment (which he did) and obtain an Order, which he did. Id. at Exhibits 15, 16 and 18. Even if Petitioner were to argue that the Brown-Hynie Consent Order was not an annulment, it would not matter. Petitioner could not enforce any rights of the marriage *ab initio* due to her incapacity to marry at the time of the ceremony with James Brown. The only person who would have an issue with the fact that an annulment may or may not have occurred would be a subsequent spouse that James Brown attempted to marry, which he did not do. As can be seen from this analysis, the continuum is intact and the analysis produces the same result in every situation, which is to protect the sanctity of marriage and avoid bigamy.

The Supreme Court of South Carolina makes it clear that the statute does not contemplate a retroactive or prospective analysis in the determination of bigamy. Bigamy may only be analyzed on an individual basis from a particular point in time. As a result, the South Carolina Supreme Court grants the spouse with the knowledge of his or her own marital status at the time

that they attempt to marry another individual the sole and autonomous right to avoid bigamy and ultimately, chaos. This can be the only way the analysis works. A bigamous relationship is voided *ab initio* and neither party may enforce the rights and obligations of a marriage. Further, either party may file an annulment to clear the capacity issue to allow for a subsequent marriage to a third party. The equity that is provided to all parties, including third parties to the relationship, involved with the application of this analysis is sublime.

Based on the foregoing, Petitioner did not have the capacity to marry James Brown. Petitioner's capacity to marry was restored on April 15, 2004. Id. at Exhibit 12. At that time, she was free to marry anyone she chose. Instead of obtaining and annulment and then marrying James Brown, Petitioner attempted to marry James Brown on December 14, 2001 with full knowledge that she had another relationship that tainted her capacity to marry James Brown. As such, Petitioner became a bigamist on December 14, 2001 by her own control and election. No additional facts need be discovered in this case to make this determination as a matter of law. Further, based on this analysis, Petitioner's annulment action in 2004 (other than the fact that the Order was issued on April 15, 2004) and any facts contained in its ruling are also irrelevant and have no bearing on the analysis in this matter. This Honorable Court erred when it misconstrued this argument in the Summary Judgment Order. See. Summary Judgment Order pp. 13-16.

25. This Honorable Court erred when it failed to grant Respondents summary judgment on the LSA's Motion for Summary Judgment. Rule 56(a), FRCP, provides that summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." "Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no remaining genuine issue of material fact

such that the moving party must prevail as a matter of law." S.C. R. Civ. P. 56(c), Fleming v. Rose, 350 S.C. 488, 567 S.E.2d 857 (2002). In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party. Koester v. Carolina Rental Ctr., 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). "To withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence." Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). The mere scintilla of proof provided by the Respondents is multifold. Clearly this Honorable Court failed to consider evidence such as the Harris County Texas marriage license application wherein Ahmed swore under oath he was not married at the time he married Hynie. Such evidence is a scintilla of proof.

Additionally, the parties stipulated in the Joint Stipulation of Facts that Tommie Rae Hynie married Javed Ahmed. Tommie Rae Hynie testified under oath that she married Ahmed, she did not divorce him and that he had not been missing for five years. For the purpose of a collateral estoppel standard, the Court certainly erred when it considered that James Brown exercised control over the Ahmed's Annulment since he paid for Tommie Rae Hynie's attorney (a payment as part of the Consent Order and settlement), failed to consider that James Brown was not a party and therefore not in privity, failed to consider that even Tommie Rae Hynie has argued that James Brown was not allowed to intervene and was not a party to the Ahmed-Hynie Annulment Action, failed to consider that the Ahmed Annulment Order was procured by default, failed to consider that the Charleston County Family Court was not an opposing party, failed to consider that Tommie Rae Hynie has never presented any evidence, even in her annulment testimony, that Ahmed was married other than by alleging Ahmed said he was married which

even if true that he said that, it is not a fact by all known rules of evidence and law, failed to consider that Tommie Rae Hynie's testimony in the Ahmed Annulment regarding his need for immigration status is suspect in that Ahmed was already in the United States legally and had a social security number issued in Texas in 1993 as evidence by Tommie Rae Hynie's private investigators affidavit and report, failed to consider that the private investigator hired by Tommie Rae Hynie was paid a mere $75.00 for a "due diligence" search and service of process on Ahmed, failed to consider that in performing due diligence, neither Tommie Rae Hynie, nor her $75.00 private investigator performed due diligence in Ahmed's home country, Pakistan, failed to consider that in the 17 years since her marriage to Ahmed, 13 years since her marriage to James Brown, 11 years since filing her annulment action against Ahmed, and 8 years since filing the matter sub judice, Tommie Rae Hynie has never provided proof of Ahmed's prior marriage(s) to anyone, much less James Brown or any court, including this Honorable Court, and failed to consider that bringing her annulment action against Ahmed in Charleston County South Carolina creates the appearance of impropriety in that Tommie Rae Hynie did not live in Charleston, but on the other side of the state, Ahmed had no contacts with Charleston, the two were married in Texas and Ahmed's alleged last known address was in Texas. This Honorable Court obviously did not view the arguments in the light most favorable to the non-moving party. This Court erred when it determined as the fundamental grounds for granting Tommie Rae Hynie's Motion for Partial Summary Judgment that the CCFC order that the Hynie-Ahmed marriage was bigamous, based on uncorroborated, self-serving, hearsay, testimony in violation of the standards applicable to collateral estoppel.

Based upon the summary judgment standard, the above issues and Joint Stipulation of Facts, this Honorable Court should have determined that summary judgment must be denied to

Petitioner and granted to the Respondents on the issue of Petitioner as the surviving spouse of James Brown. Specifically, (1) Petitioner married Javed Ahmed on February 17, 1997; (2) when Petitioner participated in the December 14, 2001 marriage ceremony with James Brown, Petitioner was still lawfully married to Javed Ahmed; (3) it was legally impossible for Petitioner to marry James Brown in December 14, 2001 because of South Carolina's law against bigamous marriages; (4) Petitioner did not have her marriage to Javed Ahmed annulled by the Charleston County Family Court (CCFC) until April 15, 2004; (5) Petitioner cannot use the Ahmed Annulment Order to retroactively validate her bigamous December 14, 2001 marriage to James Brown; (6) Petitioner was not lawfully married to James Brown when he died on December 25, 2006; and (7) Ahmed swore under oath he did not have any other wives at the time he married Tommie Rae Hynie (which incidentally is the only sworn first person testimony regarding Ahmed's marital status and only admissible evidence on the issue in this matter).

26. This Honorable Court erred when it granted summary judgment to Petitioner and failed to consider the following facts:

a. Tommie Rae Hynie was married at the time she married James Brown on December 14, 2001.

b. the supportive effects of Brown-Hynie Consent Order and annulment dismissal which clearly is challenged by Petitioner and used by Respondents in support of their briefs;

c. the corroborating or impeaching evidence contained in the Petitioner's statements in Petitioner's Diaries as it relates to the Consent Order as well as the statements against interest made in Petitioner's Diaries;

d. the communications between Petitioner's attorney and Mr. Brown's attorney during the Brown Annulment action;

e. the estoppel arguments raised suggesting that because Mr. Brown financed the Ahmed Annulment Action that Mr. Brown desired the annulment of the Ahmed-Hynie relationship which calls into question the correspondence between Mr. Brown's attorney (Jim Huff) and Petitioner's attorney(Robert Rosen);

f. the alleged autobiography statements that Mr. Brown acknowledged Petitioner as his wife without support as to when the manuscript was submitted or when the book was sent to print (possibly prior to information related to Petitioner's bigamy);

g. whether Mr. Brown benefitted from the annulment, as stated by Petitioner as part of their collateral estoppel argument and de facto party argument, but which is never supported by any factual evidence of benefit (this once again calls into question the correspondence that might exist in Mr. Jim Huff's and Robert Rosen's file between the parties during this 2004 time period);

h. the Hynie-Ahmed marriage application where Mr. Ahmed swore under oath he was not married that has not been refuted by any other evidence other than Petitioner's own testimony and refuted in her summary judgment brief as self-serving (a fact to be determined);

i. Petitioner's knowledge of Mr. Ahmed's whereabouts as it pertains to service of process;

j. private investigator Pannell's full report and search efforts to locate Mr. Ahmed;

k. Mr. Ahmed's immigration status and related paperwork; and

l. evidence from Mr. Brown's attorney regarding the Brown-Hynie Consent Order and the understanding of the status of the parties relationship.

26. This Honorable Court erred when it determined that Javed Ahmed was given proper notice of the Charleston County Family Court rescheduled hearing in the Ahmed Annulment Action. See. Summary Judgment Order, pp. 7-8.

27. The Court erred in its refusal to allow the parties to use Tommie Rae Hynie's handwritten notes otherwise known as the Hynie Diary ("Diary"). Tommie Rae has asserted that her diary was stolen. Whether the Diary was stolen or not, is a discovery issue. Whether the document is in fact a diary, is another discovery issue. Regardless, the handwritten notes are at least discoverable and at most public domain and material to Tommie Rae Hynie's state of mind as to the marital relationship between her and James Brown. This Honorable Court, on August 10, 2007, with the consent of Tommie Rae Hynie, made the Diary public and knew it had been widely disseminated and the contents of which were known and discussed. Included in the dissemination were the Attorneys General for both South Carolina and Georgia. The Court erred in suppressing the Diary and issuing a gag order ("Gag Order") in February and March of 2008 without a hearing, notice or the laying of a proper foundation and in violation of the Respondents' due process rights. It is widely known and understood that Tommie Rae Hynie, in the Diary, made several substantial statements supporting her present sense mental impressions which support Respondents contention that she was not married to James Brown. Such information goes directly to the issue of the last and only order and contract ("Consent Order") between Tommie Rae Hynie and James Brown wherein they both agreed that they were not

married. Tommie Rae Hynie specifically agreed in the Consent Order: **"Defendant agrees to and does hereby forever waive any claim of a common law marriage to the Plaintiff, both now and in the future."** This Honorable Court erred in failing to consider that a legally married spouse would never have to make such a declaration and the Diary clearly and unequivocally will corroborate and support Tommie Rae Hynie's understanding that at the time of entering into such agreement, she did not believe she was married to James Brown or in the alternative agreed she was not married to James Brown. Therefore, this Honorable Court erred when it failed to consider the Consent Order as a clear, unambiguous and demonstrative statement that the parties did not believe they were married and it was for only that reason that James Brown dismissed his own annulment. This is a binding agreement. Respondents contend the Diary will prove it. As such, this Honorable Court erred in suppressing the Diary.

This Honorable Court's refusal to allow discovery and refusal to lift the "gag" Order on the Diary protects one party over the other thereby snuffing Respondents' due process rights. The resulting Summary Judgment Order created a multi-million dollar windfall in favor of the Petitioner whose only legal argument may be summed that she duped the CCFC into entering a default bigamy annulment without providing any admissible evidence. The Court thereby erroneously allowed Our Lady of Justice to rule with a turned head as opposed to a blind eye. Ironic how someone who agreed to never make a claim against James Brown's estate and who was intentionally left out of a will that she personally witnessed being signed ends the day with a court giving her millions of dollars and taking said sums from the intended beneficiaries.

28. The Court erred in improperly considering that the Consent Order demonstrated James Brown intentional dismissal of his annulment action. See. Summary Judgment Order, p. 21. This Honorable Court took the position in its Summary Judgment Order that James Brown

obviously understood that an annulment action is the method to seek an invalidation of a marriage because he brought an action to annul his marriage to Tommie Rae Hynie. This is a factual conclusion and at the best interpretation is discoverable through his attorney James Huff. Regardless, James Brown dismissed his own annulment in the Consent Order, otherwise recognized as a court approved contract. Cleary he did so because he believed he was not married to Tommie Rae Hynie as a result of her admitting she was married to Ahmed when she married him, she did not get a divorce from Ahmed and Ahmed was not missing for five years. As such, this Honorable Court erred when it created a fact that was not based on any evidence or discovery but instead mere speculation.

29. This Honorable Court erred when it speculated that James Brown understood that an annulment action is the method to seek an invalidation of a marriage. See. Summary Judgment Order, p. 23. Clearly, based on the facts before this Honorable Court, no such speculation could be conjured. Quite the opposite, James Brown's actions as performed by his attorney, James Huff, suggested that Tommie Rae Hynie's admitted facts made under oath that she was married to Ahmed when she married James Brown led James Brown, and obviously his attorney, to believe that the bigamy voided her marriage to James Brown. Why else would his attorney, James Huff, in James Brown's own annulment action, seek to enforce the facts admitted in the Hynie Ahmed Annulment on Tommie Rae Hynie while continuing to maintain her bigamy? The Diary will confirm this mental impression. Therefore, the Court additionally erred and misconstrued James Brown's use of the facts in the Ahmed Annulment Order in his own annulment action against Tommie Rae Hynie in Aiken County as a basis for asserting equitable estoppel applied in the present case.

30. This Honorable Court erred in holding that the Compromise Agreement in Wilson v. Dallas, 403 S.C. 411 (2013), establishes Petitioner as James Brown's surviving spouse as a matter of law and is binding on the LSA.

31. This Honorable Court failed to consider that judicial estoppel is inapplicable in this case because not all of the requisite elements have been proven and it would be inequitable to apply judicial estoppel in this action.

32. This Honorable Court erred in finding that Petitioner establishes through the briefs and oral arguments presented in the Wilson v. Dallas appeal that Petitioner is James Brown's surviving spouse.

33. This Honorable Court erred in holding judicial estoppel binds the Respondents or this Court to the settling parties' alleged application of Lukich in the Wilson v. Dallas appeal.

34. The Court erred in finding that Petitioner establishes through the lower court's order approving the Settlement Agreement in Wilson v. Dallas that Petitioner is James Brown's surviving spouse.

35. The Court erred in holding the Court and Respondents are bound to the settling parties' alleged interpretation of Lukich relating to that order approving the Settlement Agreement in Wilson v. Dallas in the lower court.

36. This Honorable Court erred when it determined that the Settlement Agreement in Wilson v. Dallas was a binding private agreement regardless of court disapproval of such Settlement Agreement.

37. This Honorable Court erred in considering any facts and evidence that were part of the Settlement Agreement in Wilson v. Dallas, as such facts and evidence were settlement negotiations that were inadmissible.

38. This Honorable Court erred in allowing Petitioner to use the Ahmed Annulment Order issued by the Charleston County Family Court in 2004 to retroactively validate Petitioner's and James Brown's bigamous marriage in 2001.

39. The Court failed to consider that the clear and unambiguous holding in Lukich based on S.C. Code Ann. § 20-1-80, bars Petitioner and this Honorable Court from retroactively applying the Ahmed Annulment Order to validate Petitioner's bigamous marriage to James Brown.

40. This Honorable Court failed to consider the final paragraph in Lukich, as well as the holdings in Rodman v. Rodman, White v. White, and Splawn v. Splawn, bar Petitioner and the Court from retroactively applying the Ahmed Annulment Order to validate Petitioner's bigamous marriage to James Brown.

41. This Honorable Court failed to consider that Joye v. Yon bars Petitioner and the Court from retroactively applying the Ahmed Annulment Order to validate Petitioner's bigamous marriage to James Brown.

42. This Honorable Court erred when it determined that there was no defect in personal jurisdiction, service was proper, and there was no failure of due process in the Ahmed-Hynie Annulment Action.

43. This Honorable Court erred when it relied on a default judgment in the form of the CCFC Order to bind parties in this matter.

44. This Honorable Court erred when it found the Order of Publication in the Hynie-Ahmed Annulment Action could not be challenged and refuted. Further, this Honorable Court erred when it determined that the Order of Publication in the Hynie-Ahmed Annulment Action was obtained through due diligence.

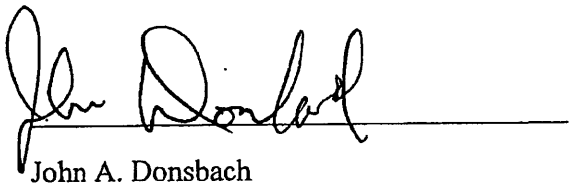
45. This Honorable Court erred when it took judicial notice that Javed Ahmed did not challenge the Ahmed-Hynie Annulment Action or that he did not take any action to challenge the CCFC Order.

For the foregoing reasons, Respondent Terry Brown respectfully requests that this Court grant this Motion to Alter, Amend and Reconsider, deny Petitioner's Motion for Partial Summary Judgment, and grant the Respondents' Motion for Partial Summary Judgment.

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

This 2nd day of February, 2015.

Respectfully submitted.



John A. Donsbach
South Carolina Bar No. 69681
Donsbach & King, LLC
P.O. Box 212139
Martinez, Georgia 30917
Telephone: (706) 650-8750
Facsimile: (706) 651-1399
Email: jdonsbach@donsbachking.com
Attorney for Respondent Terry Brown

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	Case Nos.: 2013-CP-02-02849 [illegible]
	)	2013-CP-02-02850 cert. copy
	)	
	)	**ORDER RE PETITIONER TOMMIE RAE BROWN'S MOTION FOR SUMMARY JUDGMENT AND THE LIMITED SPECIAL ADMINISTRATOR'S MOTION FOR SUMMARY JUDGMENT**
IN RE THE ESTATE OF	)	
JAMES BROWN A/K/A	)	
JAMES JOSEPH BROWN	)	
	)	

This matter came before the court on November 24, 2014 on Petitioner Tommie Rae Brown's Motions for Summary Judgment filed October 30, 2007, November 26, 2007, and April 28, 2014, and the Limited Special Administrator's (LSA's) Motion for Summary Judgment dated May 29, 2014. Each of these Motions requests summary judgment determining whether Mrs. Brown is the surviving spouse of James Joseph Brown. All parties have submitted detailed memoranda in support of their respective positions as well as responsive memoranda, and all parties have consented to a Joint Stipulation of Facts filed September 5, 2014.

The following counsel appeared at the hearing: (1) Robert N. Rosen, S. Alan Medlin, M. Jean Lee, David L. Michel, and Corey T. L. Smith, counsel for Tommie Rae Brown; (2) John F. Beach, counsel for the LSA David C. Sojourner; (3) A. Peter Shahid, Jr., counsel for Guardian ad Litem Stephen M. Slotchiver; (4) Stephen M. Slotchiver, Guardian ad Litem for J.

B (5) David B. Bell and Matthew D. Bodman, counsel for Daryl Brown; (6) John A. Donsbach and Scott Keniley, counsel for Terry Brown; (7) Louis Levenson, counsel for Deanna Brown Thomas, Yamma N. Brown, Venisha Brown, and Larry Brown; and (8) William Barr and Vera Gilford, counsel for amicus curiae Jeanette Mitchell.

2-2 2015

FILED
Liz Godard
C.C.P.&G.S.
EXHIBIT
Deputy Clerk

2015
Liz Godard
C.C.P.&G.S.
Deputy Clerk

I. SUMMARY JUDGMENT STANDARD.

The standard for granting summary judgment is clear:

> Rule 56(c) of the South Carolina Rules of Civil Procedure provides a motion for summary judgment shall be granted 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' In determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to the party opposing summary judgment. *Brockbankv. Best Capital Corp.*, 341 S.C. 372, 534 S.E.2d 688 (2000).

Progressive Max Ins. Co. v. Floating Caps, Inc., 405 S.C. 35, 42, 747 S.E.2d 178, 181-82 (2013).

II. HISTORY OF THE CASE AND STATEMENT OF FACTS.

A. These Proceedings.

Mrs. Brown filed a petition for Elective Share or Omitted Spouse's share on February 1, 2007, asserting she is the surviving spouse of Mr. Brown. She filed a Motion for Summary Judgment on October 30, 2007 on the issue of her ceremonial marriage to Mr. Brown and the legality of said marriage. Mrs. Brown filed the same motion along with the Affidavit of Tommie Rae Brown in Support of Her Motion for Summary Judgment on November 26, 2007.

On December 20, 2007, Mrs. Brown filed Petitions to Set Aside the Will and Trust. Similarly, on December 26, 2007, five of the six Devisees from the 2000 will filed Petitions to Set Aside the Will and Trust. Before these Petitions were heard, Mrs. Brown and other parties to the estate litigation participated in mediation which resulted in a private settlement agreement. In the settlement agreement, Mrs. Brown was recognized by all parties thereto as the surviving spouse of Mr. Brown. The settlement agreement provided that it was a binding private agreement, regardless of court approval, and provided that it bound personal representatives and trustees, as allowed by law. The settlement agreement expressly provided that the provision

recognizing Mrs. Brown as the surviving spouse survived regardless of whether the agreement was approved by a court.

On May 26, 2009, this Court issued an Order that, inter alia, approved the settlement agreement and found that the contest or controversy was in good faith and that the effect of the agreement on interested parties was just and reasonable in satisfaction with S.C. Code Ann. § 62-3-1102(3). This Court issued another Order which removed the then Personal Representatives and Trustees (Pope and Buchanan), and at the request of the settling parties, this Court appointed Russell Bauknight as Personal Representative and Trustee.

Pope and Buchanan appealed the order approving the settlement agreement and the order removing them from their fiduciary positions to the Court of Appeals, and at the request of the Court of Appeals the consolidated appeals were certified to the Supreme Court pursuant to Rule 204(b), SCACR. In reviewing this Court's finding that there was a good faith controversy under S.C. Code Ann. § 62-3-1102, the Supreme Court determined that the settlement failed the second element of the S.C. Code Ann. § 62-3-1102 test, *i.e.*, that the effect of the agreement on interested parties is just and reasonable. *Wilson v. Dallas*, 403 S.C. 411, 447, 2013 S.C. LEXIS 240, *64 (2013). The Supreme Court upheld the removal of the prior fiduciaries, finding that they had irreconcilable differences with the estate and trust beneficiaries, but reversed and remanded the approval of the settlement because of a lack of evidence showing a fair and reasonable settlement of a good faith controversy. The Supreme Court also vacated Mr. Bauknight's appointments and remanded the case to this Court.

This Court held a status conference on May 29, 2013 concerning the Supreme Court Opinion and issued an Order on June 13, 2013 requiring all interested persons to submit applications to serve as fiduciaries of the Estate and Trust by July 29, 2013. Mr. Bauknight was

ordered to continue serving in a fiduciary capacity as Special Administrator and Special Trustee in the interim. This Court conducted a hearing to receive testimony from all applicants on September 4 and 11, 2013. This Court then issued its October 1, 2013 Order appointing Mr. Bauknight as the Personal Representative of the Estate and Trustee of the Trust and David C. Sojourner as Limited Special Trustee of the Trust. The Probate Court of Aiken County appointed Mr. Sojourner as the Limited Special Administrator (LSA) of the Estate by its Order filed October 10, 2013.

On March 10, 2014 the LSA served a Motion to Modify Protective Orders Related to Diaries of Tommie Rae Hynie Brown asking this Court to lift the Court's protective orders and to require Mrs. Brown to produce her diaries. Mrs. Brown filed a Return to Motion to Modify Protective Orders Related to Diaries of Tommie Rae Brown and Motion for Protective Order or Order of Confidentiality along with her supporting Affidavit on March 27, 2014, and a hearing was held on March 31, 2014. This Court determined that the LSA's Motion to Modify Protective Orders and all discovery would be held in abeyance pending resolution of Mrs. Brown's Motion for Summary Judgment and later indicated the parties should negotiate a scheduling order.

Mrs. Brown filed another Motion for Summary Judgment and supporting Affidavit on April 28, 2014. She filed a Motion for Protective Order and the Affidavit of Robert N. Rosen on May 12, 2014 requesting that, other than answering the LSA's First Requests to Admit, all discovery be stayed pending resolution of her Motion for Summary Judgment. Petitioner and the LSA subsequently entered an Agreement Resolving Petitioner's Motion for Protective Order dated May 16, 2014, and this Court issued a Scheduling Order filed June 10, 2014 staying all discovery (other than the LSA's April 23, 2014 1st Requests for Admission, 2nd Interrogatories,

and 2nd Requests for Production) pending resolution of Mrs. Brown's April 24, 2014 Motion for Summary Judgment. The LSA subsequently served his own Motion for Summary Judgment on May 29, 2014.

The parties have served memoranda in support of their respective positions and responsive memoranda in accordance with the Scheduling Order, and a hearing was held on the aforementioned Motions for Summary Judgment at the Bamberg County Courthouse on November 24, 2014.

B. Stipulated Facts.

Petitioner Tommie Rae Brown ("Mrs. Brown") and James Joseph Brown ("Mr. Brown") were married by ceremonial marriage on December 14, 2001 at Beech Island in Aiken County, South Carolina.[1] Prior to their marriage, Mrs. Brown gave birth to Mr. Brown's biological son, J B on 2001.[2] Following their marriage, Mr. Brown learned that Mrs. Brown had participated in a putative marriage ceremony with another man, Javed Ahmed ("Ahmed") in February of 1997 in Texas, where both Mrs. Brown and Ahmed resided at the time. In December 2003, with Mr. Brown paying her attorney's fees, Mrs. Brown filed an action against Ahmed in the Family Court of South Carolina for an annulment on the grounds of bigamy, among other grounds.[3]

Mrs. Brown's counsel hired a licensed private investigator, Mr. Ronald Pannell, to locate Ahmed, and he was unable to do so. Mr. Pannell submitted an Affidavit of Attempted Service,

[1] *See* Joint Stipulation of Facts, p. 3, ¶¶ 4-5 and Exhibit 4 at 000005-6 (License and Certificate for Marriage).

[2] *See* Joint Stipulation of Facts, p. 2, ¶ 3 along with Exhibit 2 (birth certificate) at 000003 and Exhibit 3 (LabCorp DNA Test Results) at 000004.

[3] *Id.* at 3, ¶ 7 and Exhibit 5 at 000007-9 (Summons and Complaint for Annulment). James Brown paid for Mrs. Brown's annulment, and Mrs. Brown's attorney kept Mr. Brown's attorney informed of the proceedings. *See id.* at 4, ¶¶ 13-14 and Exhibit 14 at 000050-64; Personal Representatives' Responses to Petitioner Tommie Rae Brown's Second Request for Admission, dated January 11, 2008, pp. 3-4, Request and Response Nos. 9 and 10.

TRE #5

filed in the Family Court on February 4, 2004, stating he conducted numerous searches in national databases in an attempt to locate Ahmed, and he found two addresses.[4] One address was Houston, Texas, . Mr. Pannell stated in his affidavit that Ahmed no longer resided at that address. The other address was Houston, Texas, , which Mr. Pannell stated in his affidavit was the address on Mr. Ahmed's driver's license issued in 1999. As a result, this address (Houston Texas,) was Ahmed's last known address. Mr. Pannell stated in his affidavit that Ahmed no longer resided at that address either.

Mrs. Brown filed an Affidavit in the Family Court on February 4, 2004, with Mr. Pannell's Affidavit of Attempted Service, requesting an Order of Publication.[5] In her affidavit, Mrs. Brown stated that Mr. Pannell conducted a full skip trace report and was unable to locate Ahmed. She also said Mr. Pannell found an address where Ahmed apparently had resided since she last knew of his whereabouts. Judge Jocelyn B. Cate of the Family Court issued an Order of Publication on February 3, 2004 finding that Mrs. Brown had made a diligent effort to locate Ahmed and that it appeared to the satisfaction of the Family Court that Ahmed's current address and whereabouts were unknown.[6] The Order of Publication scheduled a Final Hearing for March 26, 2004 at 9:30 A.M. Mrs. Brown properly published the Summons and notice of the hearing in the Houston Chronicle, a newspaper of general circulation in the area, and filed an Affidavit of Publication as directed by the Order of Publication.[7] Ahmed was served by publication.

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[4] Joint Stipulation of Facts at 000010 (Affidavit of Ronald Pannell).

[5] *Id.* at 000016 (Affidavit of Tommie Rae Hynie, a/k/a Tommie Rae Brown).

[6] *Id.* at 000017 (Order of Publication).

An Order of Continuance was filed by the Family Court on March 24, 2004, rescheduling the Final Hearing to April 15, 2004 at 9:00 A.M.[8] Mrs. Brown's counsel sent Ahmed notice of the rescheduled hearing by regular mail *and* certified mail, return receipt requested, to both of the addresses found by Mr. Pannell, which included Ahmed's last known address at Houston, Texas, the address he had given to the Texas Department of Motor Vehicles.[9] Mrs. Brown's counsel therefore properly gave written notice of the rescheduled hearing pursuant to Rule 17, SCRFC as determined by Judge Segars-Andrews' April 15, 2004 Order.

At the trial in Family Court, Mrs. Brown testified that Ahmed told her he was married to several other women at the time of their purported marriage ceremony and that none of those marriages had been dissolved.[10] A final judgment was entered on April 15, 2014 annulling the purported marriage between Mrs. Brown and Ahmed ("the annulment order").[11] Judge Segars-Andrews found that Ahmed was already married at the time of his putative marriage ceremony to Mrs. Brown, that Ahmed lacked capacity to marry Mrs. Brown, and that the purported marriage between Mrs. Brown and Ahmed was "wholly null and void *ab initio*."[12]

The stipulated facts show that Mr. Brown was aware of the litigation between Mrs. Brown and Ahmed because (1) Mr. Brown paid Mrs. Brown's legal fees, (2) Mrs. Brown's

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[7] *Id.* at 000026-27 (Affidavit of Publication); *see also id.* at 000017-18 (Order of Publication).

[8] *Id.* at 000028 (Order of Continuance).

[9] *Id.* at 000019-25 (Affidavit of Marcia F. Jones); 000010 (Affidavit of Ronald Pannell).

[10] *Id.* at 000040, lines 16-20; 00004, lines 13-15 (April 15, 2004 Transcript of Record).

[11] *Id.* at 000029-32 (April 15, 2004 Final Order).

[12] *Id.* at 000030-32 (April 15, 2004 Final Order).

counsel sent Mr. Brown's attorney a copy of the Summons and Complaint in February, 2004, and (3) Mrs. Brown's counsel sent Mr. Brown's attorney the Final Order in April, 2004.[13]

Mr. Brown filed an annulment action of his own against Mrs. Brown on January 29, 2004 in the Family Court of Aiken County.[14] Just weeks after the April 15, 2004 Final Order was filed, Mr. Brown filed an Amended Complaint for Annulment in the Family Court requesting the Court to issue a judgment that the "Findings of Facts of the Charleston Family Courts are binding on [the Aiken County Family Court]..." and that "[p]ursuant to the Order of the Charleston Family Court, Defendant is collaterally and judicially estopped from denying the allegations in [Mr. Brown's annulment action]."[15] Mrs. Brown counterclaimed for a divorce and other relief.[16] Mr. and Mrs. Brown reconciled in July 2004 and signed a Consent Order on August 16, 2014 dismissing Mr. Brown's action.[17]

Mr. Brown died on December 25, 2006, and his will, dated August 1, 2000 was filed with the Aiken County Probate Court on January 18, 2007.

C. The Annulment Action.

Mrs. Brown properly brought the annulment action in South Carolina, properly served Ahmed, and properly notified him of the date of rehearing. The Family Court concluded that Ahmed "was married at the time he entered into his marriage with [Mrs. Brown] and therefore he lacked the capacity to marry [Mrs. Brown]."[18]

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[13] *Id.* at 4, ¶¶ 13-14 and Exhibit 14 at 000050-64 (Correspondence with James B. Huff, Esquire).

[14] *Id.* at 000065-67 (Mr. Brown's Summons and Complaint for Annulment).

[15] *Id.* at 000070, ¶¶ 10-11 (Mr. Brown's Amended Complaint for Annulment).

[16] *Id.* at 5, ¶ 19 and Exhibit 17 at 000072-82.

[17] *Id.* at 000085-86 (Consent Order of Dismissal).

[18] *Id.* at 000031, ¶ 4 (April 15, 2004 Final Order).

The Respondents have argued that the annulment order was improper because the summons and complaint were not properly served and notice of the final hearing was not given. The Court has already found that service and notice were proper. Mrs. Brown's counsel hired a licensed private investigator to locate the Defendant. That investigator's affidavit was found to be sufficient by the Family Court.

South Carolina law does not permit direct or collateral attacks upon an order authorizing service by publication:

> An order for service by publication may be issued pursuant to S.C. Code Ann. § 15-9-710 (Supp.1999) when an affidavit, satisfactory to the issuing officer, is made stating that the defendant, a resident of the state, cannot, after the exercise of due diligence, be found, and that a cause of action exists against him. § 15-9-710(3). *When the issuing officer is satisfied by the affidavit, his decision to order service by publication is final absent fraud or collusion.*

Wachovia Bank of S.C., N.A. v. *Player*, 341 S.C. 424, 428-29, 535 S.E.2d 128, 130 (2000) (emphasis added); *see also Hendrix v. Hendrix*, 296 S.C. 200, 203, 371 S.E.2d 528, 530 (1988). The Respondents do not contend there was fraud in the procurement of the annulment. The order authorizing service by publication therefore cannot be attacked. *See also Schleicher v. Schleicher*, 310 S.C. 275, 277, 423 S.E.2d 147, 148-49 (Ct. App. 1992) (holding that service of the notice of the time and date for a merits hearing is effective upon mailing when sent by certified mail, return receipt requested and that Rule 5(b)(1), SCRCP, rather than Rule 4(d)(8), SCRCP, is the applicable rule).

Some of the Respondents object that the annulment action should have been filed in Aiken County, not Charleston County. This is a mere matter of venue, which has no effect on the validity of the judgment. In *Lillard v. Searson*, 170 S.C. 304, 170 S.E. 449 (1933), the court held that a defect in venue cannot be used to attack a final judgment:

> Since it clearly appears that the defendant named in the case was not a resident of Richland county, at the time the action was instituted against him, but was a resident of Allendale county, the action was instituted in the wrong county, and the proper course to have pursued was for the defendant to have moved to have the case transferred to Allendale county. . . . However, the defendant did not do this, and waited until judgment had been rendered in the cause before taking any steps in the matter. *Therefore the defendant waived the jurisdictional question, and, in effect, gave to the court of Richland County authority to hear the said case on its merits*, and judgment was thereafter rendered in said court against the defendant as in any other default case.

170 S.E. at 450-51 (1933) (emphasis added). Note that the judgment in *Lillard*, like the annulment in this case, was entered without entry of an appearance by the defendant.

"The failure to bring the proceedings within the proper venue, when such is determined by the place of residence, does not render them void, the error being in practice and not jurisdictional." *In re Lemack's Estate*, 207 S.C. 137, 144, 35 S.E.2d 34, 37 (1945) (quoting 32 C.J. 633). "The irregularity [in venue] complained of is not jurisdictional." *State v. Richardson*, 149 S.C. 121, 124, 146 S.E. 676, 677 (1928).

Under the above authority, venue is clearly not jurisdictional, and it is therefore not a sufficient basis for attacking a final judgment. The Family Court has statewide jurisdiction. *See* S.C. Code Ann. § 14-2-10 (establishing "the statewide family court system").

III. BECAUSE MRS. BROWN HAD NO IMPEDIMENT, HER MARRIAGE TO MR. BROWN IS VALID.

A. The Bigamy Statute.

The South Carolina General Assembly has clearly spoken through S.C. Code Ann. § 20-1-80 that a bigamous marriage is "void" — i.e., never a marriage and never valid from the beginning.[19] This section reads as follows:

[19] For more than a century, that statute has provided that bigamous marriages are void. This is consistent with the public policy against bigamous marriages. For example, entering into a bigamous marriage is a crime. Note, however, that *State v. Sellers*, 140 S.C. 66,134 S.E. 873 (S.C. 1926), recognizes, as do all the other bigamy cases,

> All marriages contracted while either of the parties has a former wife or husband living shall be void. But this section shall not extend to a person whose husband or wife shall be absent for the space of five years, the one not knowing the other to be living during that time, not to any person who shall be divorced or whose first marriage shall be declared void by the sentence of a competent court.

S.C. Code Ann. § 20-1-80. A void marriage is treated differently from a voidable marriage. A voidable marriage is valid unless and until a court rules that such a marriage is invalid, but a void marriage is never valid for any purpose. *Lukich v. Lukich*, 368 S.C. 47, 627 S.E.2d 754 (Ct. App. 2006), *aff'd*, 379 S.C. 589, 666 S.E.2d 906 (2008), confirms the difference between a void marriage — void ab initio because of bigamy — and a merely voidable marriage — valid unless and until a court invalidates it, such as for intoxication. *Lukich* annulled two marriages: a bigamous marriage, held void ab initio, and a marriage annulled for intoxication, held voidable.

The South Carolina General Assembly demonstrates that it understands the difference between void and voidable. For example, S.C. Code Ann. § 62-3-713, governing self-dealing transactions by a personal representative, provides that such a transaction is "voidable" and can be invalidated at the request of an interested person.

Consequently, when the General Assembly uses the term "void" in the bigamy statute, the meaning is clear: a bigamous marriage is void ab initio and never valid.

B. Case Precedent.

1. A Bigamous Marriage Is Void Ab Initio And Never A Marriage.

The annulment order in this case was granted on the most serious and substantial of all grounds for rendering a marriage void: bigamy. It is against public policy and a crime to commit bigamy. A long line of South Carolina cases, including *Lukich*, holds that a bigamous marriage is not a marriage at all, at any point in time. In

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that a bigamous marriage is void ab initio, so that a void first marriage is not an impediment to a valid second marriage, and thus the second marriage is not bigamous and not a crime.

fact, every South Carolina case considering the issue has concluded that a bigamous marriage is void ab initio, and thus never a marriage:

> At the time the parties began residing together in September 1983, and throughout their cohabitation, the respondent was legally married to another woman. Thus, any marriage between the parties while respondent had a subsisting marriage was void as a matter of public policy. S.C. Code Ann. § 20-1-80 (1985) ("All marriages contracted while either of the parties has a former wife or husband living shall be void"). It was void from its inception, not merely voidable, and, therefore, *cannot be ratified or confirmed and thereby made valid.*

Johns, 309 S.C. at 201, 420 S.E.2d at 858 (emphasis added).

> A mere marriage ceremony between a man and a woman, where one of them has a living wife or husband, *is not a marriage at all.* Such a marriage is absolutely void, and not merely voidable.

Day v. Day, 216 S.C. 334, 338, 58 S.E.2d 83, 85 (1950) (emphasis added).

> There could not have been a valid marriage between the appellant, Maggie (Craft) Blizzard, and William Blizzard, as William Blizzard had a lawful living wife at the time of the claimed marriage.

Ex parte Blizzard, 185 S.C. 131, 193 S.E. 633, 634 (1937).

> When, however, there is an impediment to marriage, such as one party's existing marriage to a third person, *no common-law marriage may be formed*, regardless whether mutual assent is present.

Callen v. Callen, 365 S.C. 618, 624, 620 S.E.2d 59, 62 (2005) (emphasis added). *See also Splawn v. Splawn*, 311 S.C. 423, 425, 429 S.E.2d 805, 806 (1993); 52 Am. Jur. 2d, supra, § 57 ("A marriage that occurs while one party is still legally married to another is void from its inception and cannot be retroactively validated by estoppel, by mutual agreement, or by the parties' conduct in holding themselves out as husband and wife.").[20] This is hardly surprising as

[20] Every South Carolina case, as required by § 20-1-80, has concluded that the status of someone entering into a bigamous marriage is that of never having been married. It is Mrs. Brown's status that is critical here. At the time she married Mr. Brown, she had no impediment to their marriage because she had never been married before. Respondents cite several cases that deal with ancillary matters, but all of these cases follow the required rule about status: someone having entered into a bigamous marriage was never married. To the extent these cases also deal

the courts are required to follow the mandate from the legislature that bigamous marriages are void ab initio.

2. *Lukich v. Lukich.*

Both the Court of Appeals and Supreme Court decisions in *Lukich v. Lukich*[21] are in accord with § 20-1-80, case precedent, and Mrs. Brown's position. *Lukich* held that a *bigamous* marriage is void ab initio. *Lukich* also held that a marriage, annulled for *intoxication rather than bigamy*, could be treated as voidable.[22]

Lukich annulled two marriages: one void ab initio for bigamy and another voidable for intoxication. In *Lukich*, the wife sought alimony during a divorce from her second husband (Marriage 2). During the divorce proceeding, the second husband learned that the woman had previously been married (Marriage 1) and had never obtained a divorce or an annulment from the first husband. During the divorce case, the wife quickly obtained an annulment for Marriage 1, without her husband's knowledge and in another venue, on the ground of intoxication.[23] Both appellate courts concluded that Marriage 1 was voidable and refused to apply the annulment of Marriage 1 retroactively so that her status would allow her to enter Marriage 2. Marriage 1 in *Lukich* was properly voidable, rather than void, because the annulment was based on intoxication

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with ancillary matters, they are inapposite. See *Splawn v. Splawn*, 311 S.C. 423, 429 S.E.2d 805 (S.C. 1993) (bigamous marriage void ab initio but court had to deal with ancillary equitable apportionment of property issues); *Rodman v. Rodman*, 361 S.C. 291, 604 S.E.2d 399 (S.C. App. 2004) (similar, citing *White v. White*, 283 S.C. 348, 323 S.E.2d 521 (S.C. 1984); *Joye v. Yon*, 355 S.C. 452, 586 S.E.2d 131 (2003) (second marriage bigamous and void ab initio — court had to decide impact on first husband's obligation to pay alimony, which had ostensibly ended if second marriage was valid, which it was not).

[21] 368 S.C. 47, 627 S.E.2d 754 (Ct. App. 2006); 379 S.C. 589, 666 S.E.2d 906 (2008).

[22] "An annulment declares that a marriage never occurred because of some defect. Defective marriages may be either void or voidable. In a void marriage, the circumstances are such that the marriage could never have come into being. A voidable marriage is recognized under the law as a valid marriage until an action is brought to prove it invalid." Stuckey, *Marital Litigation in South Carolina*, Ch. 3.A. A bigamous marriage is void. In fact, "a void [bigamous] marriage technically needs no judicial action to declare that it is void." *Id.*

[23] The annulment at issue in *Lukich* was granted on the ground of intoxication. *Lukich*, 368 S.C. at 51, 627 S.E.2d at 756 ("[S]he and Havron were married during a night of heavy drinking, [and] had never lived together as husband and wife[.]").

rather than bigamy. One consequence of the *Lukich* court treating Marriage 2, the bigamous marriage, as void ab initio, is that the husband in Marriage 2 owed no alimony because Marriage 2 was "never a marriage." If *Lukich* had not treated Marriage 2 as void ab initio because it was bigamous, as required by statute and precedent, the Court would have had to conclude that the husband of Marriage 2 would have owed alimony from the time of Marriage 2 until the annulment of Marriage 2. [24]

In short, a marriage entered into by intoxicated persons is not invalid until the parties decide to attack the marriage and not to waive the defect. Therefore, it is logical, as the *Lukich* Court held, that a voidable marriage is invalid only prospectively from the date of the annulment.

A void marriage, however, is different. A void marriage is never a valid marriage. The parties are not permitted to waive the defect; the marriage is automatically invalid. Both *Lukich* appellate courts concluded that Marriage 2 was void ab initio because it was bigamous. Consequently, Marriage 2 was never a marriage so that the divorce was unnecessary and the second husband could not owe alimony.

Lukich does not change, but is instead consistent with, S.C. Code Ann. § 20-1-80 and all South Carolina case precedent: a bigamous marriage (Marriage 2 in *Lukich*) is void ab initio and never a marriage. Respondents, in particular Terry Brown, cite the following language from the Supreme Court opinion in *Lukich* as somehow changing the treatment of bigamous marriages in this state:

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[24] The holding in *Lukich* as to Marriage 1 makes perfect sense, as a voidable marriage is invalid only if it is attacked. The parties to a voidable marriage always have the option of waiving the defect and ratifying the marriage. The annulment of Marriage 1 in *Lukich* was granted on the ground of intoxication. Intoxication is one of the classic grounds that render a marriage voidable, but not void. See 52 Am. Jur. 2d Marriage § 23 (Westlaw database updated Nov. 2014); *Abel v. Waters*, 373 So. 2d 1125, 1128 (Ala. Civ. App.), writ denied, 373 So. 2d 1129 (Ala. 1979); *Barber v. People*, 203 Ill. 543, 546, 68 N.E. 93, 94 (1903).

> Under the statute's terms, Wife's 'marriage' to Husband # 2 was 'void' from the inception since at the time of that marriage she had a living spouse *and that* marriage had not been 'declared void.' § 20–1–80.

Lukich, 373 S.C. at 592, 666 S.E.2d at 907 (Emphasis added).

Respondents contend that *Lukich* creates new law with respect to bigamous marriages. Respondents claim *Lukich* disregards the clear requirement of the bigamy statute and ignores or reverses all case precedent that bigamous marriages are void ab initio. Respondents base their contention on the words "and that" emphasized in the above quote. These words, Respondents argue, indicate that regardless of whether a marriage is void or voidable, one has an impediment to marriage and must obtain an annulment before remarriage. Contrary to Respondents' contention, however, the words "and that" do not refer to the bigamous marriage (Marriage 2 in *Lukich*); the words "and that" clearly refer to the intoxication marriage (Marriage 1 in *Lukich*). Thus, *Lukich* cannot be read to change a substantive rule of law, namely that a bigamous marriage is void only from the date of the annulment order. This would render a bigamous marriage voidable rather than void. *Lukich* does no such thing. Rather, *Lukich* confirms that a bigamous marriage is void ab initio and never a marriage because it treated Marriage 2 (the bigamous marriage in *Lukich*) as never having been a marriage, so that the second husband did not need a divorce and did not owe alimony to a wife he never married.

If Respondents were correct that *Lukich* created a new rule, then the *Lukich* court would instead have held that the second husband owed alimony until an annulment order for Marriage 2 was obtained. Moreover, if Respondents are correct, then the *Lukich* appellate courts favorably cite cases holding that bigamous marriages are void ab initio while somehow overturning those cases and ignoring § 20-1-80. The clear meaning of *Lukich* is that, as required by § 20-1-80 and all case precedent, bigamous marriages are void ab initio and never a marriage.

Moreover, even if Respondents were correct in their position about *Lukich*, i.e., that even a bigamous marriage is valid unless and until an annulment order is obtained, they could still not prevail. Under their theory, *Lukich* changed the law about bigamous marriages so that a bigamous marriage remains valid unless and until an order of annulment is obtained. If that were correct, then under their theory Mrs. Brown had an impediment to marrying Mr. Brown and that marriage was therefore bigamous. But under Respondents' position, Mr. Brown's bigamous marriage to Mrs. Brown would be valid unless and until Mr. Brown obtained an order annulling their marriage, which he did not obtain during his lifetime. It is now too late for Mr. Brown to obtain an annulment.[25] So, even under Respondents' theory, the marriage between Mrs. Brown and Mr. Brown was valid at his death and cannot be invalidated because it is too late.

In this case, unlike *Lukich*, it is the first marriage (Marriage 1), rather than Marriage 2 in *Lukich*, that is bigamous and thus void. Consequently, Mrs. Brown's attempted marriage to Ahmed (Marriage 1) was void ab initio and never a marriage. Therefore Mrs. Brown had no impediment to her marriage to Mr. Brown, and that marriage (Marriage 2) is valid.

Despite the contentions of Respondents, *Lukich* is consistent with the bigamy statute and all precedent involving bigamous marriages: bigamous marriages are void ab initio and never have any effect --- they are "never a marriage." The only difference with respect to bigamous marriages between *Lukich* and this case is that, in *Lukich*, the bigamous marriage was the second marriage, while in this case, the bigamous marriage is the first marriage. That difference has no impact on the treatment of bigamous marriages. The bigamous second marriage in *Lukich* was void ab initio and never had effect. The bigamous first marriage in this case was void ab initio and never had effect, so that Mrs. Brown had no impediment to her marriage to Mr. Brown.

Were this Court to give only prospective effect to the annulment in this case, it

[25] See the discussion at IV.C. below.

would be holding that a bigamous marriage was not invalid from its inception. Rather, it would be holding that a bigamous marriage was valid from the date of its inception until the date of the annulment.

This Court is unwilling to hold that a bigamous marriage, as determined by a family court of this state, was ever legal. There is no precedent for such a holding. South Carolina law precludes this Court from giving any effect whatsoever to a bigamous marriage. Because the Court cannot give any effect to a bigamous marriage, it is required to hold that the bigamous marriage was never a marriage.

Mrs. Brown and Ahmed never had a valid marriage at any point in time, and Mrs. Brown had no impediment to her valid marriage to Mr. Brown.

3. ***Hallums v. Hallums.***

The LSA argued that *Hallums v. Hallums*, 74 S.C. 407, 54 S.E. 613 (S.C. 1906), was exactly on point and reached a different result. The LSA misses a critical factual distinction between *Hallums* and the current case: in *Hallums*, there was never a court determination that the first marriage (Marriage 1) was bigamous and, in fact, the court found that the Marriage 1 was not bigamous. By contrast, in the current case, there is a valid annulment order finding that the first marriage was bigamous.

The Hallums paradigm actually supports Mrs. Brown's position. If the *Hallums* court had determined that Marriage 1 was bigamous, then the *Hallums* opinion indicates that the second marriage (Marriage 2) would have been valid because there would have been no impediment to the wife entering into the second marriage (Marriage 2) with the decedent.

More specifically, in *Hallums*, a woman attempted to get a distributive share from

the decedent's estate, claiming to be his surviving spouse. However, the estate contended that she was already married when she attempted to marry the decedent, and thus had an impediment to the attempted marriage to the decedent. The woman then contended that her attempted first marriage was invalid because her putative first husband was already married when they attempted to get married. So far, the LSA is correct: absent the critical distinction missed by the LSA's analysis, the *Hallums* paradigm is the same as the paradigm in the current case because in *Hallums*, the woman argues that she had no impediment to marrying the decedent (Marriage 2) because she was never married to her first husband (Marriage 1) as the first husband himself was already married.

In the current case, Mrs. Brown argues that she had no impediment to marrying the decedent (Marriage 2) because she was never married to her first husband (Marriage 1) as the first husband himself was already married. The *critical* difference between the two cases is that in *Hallums*, the woman *did not* have a separate annulment order invalidating Marriage 1 void ab initio and did not get one because the court concluded her first marriage was not bigamous. In the current case, Mrs. Brown *does* have an annulment order invalidating Marriage 1. In *Hallums*, the court was asked to consider the validity of both Marriage 1 and Marriage 2 at the same time. The *Hallums* court determined that Marriage 1 was valid because there was insufficient evidence that the husband in Marriage 1 was already married: consequently, Marriage 1 in *Hallums was not bigamous* and therefore was valid. Thus, the woman in *Hallums* had an impediment to Marriage 2. That is the critical factual difference between the facts in *Hallums* and the current case. In the current case, Marriage 1 was determined by a court to be bigamous and thus never valid. In the current case, Mrs. Brown thus had no impediment to Marriage 2 (her valid marriage to Mr.

Brown).

Hallums actually supports Mrs. Brown's position. *Hallums* stands for the proposition that, *if* Marriage 1 had been bigamous and thus void ab initio, Marriage 2 to the decedent would have been valid and the woman would be entitled to her distributive share from the decedent's estate. That is exactly Mrs. Brown's position. Because she has an order confirming that Marriage 1 was void ab initio as bigamous, Marriage 2 is valid and she qualifies as a surviving spouse.[26]

4. All Bigamous Marriages Are Void.

Every bigamous marriage is void ab initio. A bigamous marriage is never valid — "never a marriage." In S.C. Code Ann. § 20-1-80, the bigamy statute, the South Carolina General Assembly requires that a bigamous marriage is void ab initio. In accordance with this legislative mandate, every South Carolina case dealing with bigamous marriages, including *Lukich* and *Hallums*, holds that a bigamous marriage is void ab initio and never has effect. Although Respondents contend that *Lukich* somehow changes that rule and instead provides that a bigamous marriage is valid until an annulment order is obtained, that is not the holding in *Lukich* as to bigamous marriages. *In Lukich, it is the second marriage that is bigamous* and both appellate courts treat that second marriage as void ab initio, in accordance with the bigamy statute and all case precedent. *In Mrs. Brown's case, it is the first marriage that is bigamous*, and that first marriage is therefore void ab initio, meaning that Mrs. Brown had no impediment to her marriage to Mr. Brown.

Despite the contention of the LSA, *Hallums* is in accord with the bigamy statute,

[26] Unlike this case, the court in *Hallums* looked at the first marriage after the decedent's death because: (1) there was no pre-existing annulment order from a court with exclusive jurisdiction over annulments, as there is today; (2) this was prior to the family court having exclusive jurisdiction over annulments – in fact, this was prior to the existence of family courts in South Carolina; (3) this was prior to § 62-2-802 defining surviving spouse for estate purposes and case law precluding postmortem annulments. See IV.C below.

Lukich, and all other case precedent in treating bigamous marriages as void ab initio. Unlike Mrs. Brown's first marriage, which was *found to be bigamous and void*, the first marriage in *Hallums* was *found not to be bigamous and was therefore valid*. However, if the first marriage in *Hallums* had been found to be bigamous and void, the opinion indicates that the second marriage would have consequently been valid because the wife would have had no impediment to her second marriage and thus could inherit. That is exactly Mrs. Brown's case: her first marriage has been found to be bigamous and void, so that she had no impediment to her marriage to Mr. Brown: their marriage is valid and she is his surviving spouse.

IV. THE ANNULMENT ORDER IS FINAL AND BINDING.

A. Introduction.

Because the bigamy statute and case law, including *Lukich*, hold that a bigamous marriage is void ab initio, the annulment order confirms that Mrs. Brown had no impediment to her marriage to Mr. Brown.

Respondents contend that the annulment order is not valid and that this Court should refuse to recognize the annulment order or alternatively disregard the findings of fact of the annulment order. For a number of reasons, this Court concludes that the annulment order is final and binding. Nor will this Court re-open or re-litigate the underlying findings of fact of the annulment order, which in this case would have the same effect as disregarding the annulment order. All of these reasons are explained in greater detail below at IV.B-G, but generally the reasons are as follows:

First, only the family court has jurisdiction over annulments. This Court does not have jurisdiction over annulments. If this Court failed to recognize the annulment order as valid, then

the result would be to re-litigate the annulment in this Court. If this Court does not have jurisdiction to hear an annulment action, it does not have jurisdiction to re-litigate an annulment action. Nor can this Court re-open or review the findings of fact underlying the annulment order. Even if this court had jurisdiction to do so, doing so would lead to only two possible results: (1) this Court's determination that the family court was correct or (2) that the family court reached an incorrect conclusion. This, presumably, would mean that the annulment order, which was not appealed, is rendered invalid by this Court. This Court simply does not have such jurisdiction.

Second, even if this Court had jurisdiction to not recognize or to re-litigate the annulment order, the appropriate parties would not be available. Mrs. Brown and Ahmed would be the necessary parties, and Ahmed is not a party to this action nor should he be. If this Court allowed Ahmed to participate as a party in the re-litigation of the order, this would allow him to collaterally attack a family court order he cannot now directly attack. The only way to invalidate a marriage in South Carolina is to bring an annulment action. Mr. Brown obviously knew that because he brought an annulment action, which he eventually dismissed. Annulment actions cannot be brought postmortem. Nor can Respondents do so. Any right they may have is derived from Mr. Brown, and they cannot have greater rights than he did.

Third, a court has to have a reason to refuse to recognize an order, and the only reason is the failure of due process, either by failure to obtain personal jurisdiction or a lack of subject matter jurisdiction. Even if this Court had jurisdiction concerning the annulment order, it finds that there is no defect in personal jurisdiction —i.e., the service was proper — and the family court had subject matter jurisdiction. There is no failure of due process and so there is no reason to refuse to recognize the order.

Fourth, even if this Court had jurisdiction, the issue of the finality of the annulment order — i.e., whether it is binding on those not parties to the action — in this case applies only to Mr. Brown because, as noted, Respondents at best stand in his shoes. The Respondents concede that an annulment is an in rem action, and in rem actions are binding on non-parties as to status. Even if Mr. Brown was not precluded by the reasons stated above, and for other reasons, he would be bound by the status determination of an in rem action. The status determination of the annulment order was that Mrs. Brown was never married to Ahmed and thus her status at the time of her marriage to Mr. Brown was that she had no impediment to that marriage. Mrs. Brown's status is the only relevant issue here.

Finally, to disregard or relitigate the annulment order would create a chaotic precedent. No marital determination of status – validation of marriage, invalidation of marriage (annulment) or termination of marriage (divorce) — would ever be final and binding. Families are critically affected by the status of family court actions and their status determinations must be sacrosanct. To allow any third party to attack a status determination would permit endless litigation over family matters and continuing uncertainty over such critical relationship matters as paternity and legitimacy, as well as a person's ability to enter into valid marriages. Some examples of unacceptable problems which would result in this case are as follows:

1. Mr. Brown brought and dismissed an annulment action attacking his marriage to Mrs. Brown. This Court takes judicial notice that Mr. Brown did not thereafter attempt to file an action in court to invalidate their marriage, which he obviously knew how to do if he wished. Mr. Brown did not annul his marriage to Mrs. Brown before his death, but Respondents now wish to do so.

2. The annulment order legitimizes J B . Because the annulment action confirmed that Mrs. Brown had no impediment to her marriage to Mr. Brown, their marriage makes J born before the marriage, legitimate. Effectively overturning the annulment order would render J illegitimate, affecting critical rights of his.

3. If Ahmed is not a party to relitigation of the annulment order, an overturning or disregard of that order could impact his family status. According to the sworn affidavit of Daryl Brown's attorney in this matter, David Bell, Ahmed has known for at least six years that his marriage to Mrs. Brown was annulled. This Court takes judicial notice that Mr. Ahmed has taken no judicial action to attack the annulment order. Relying on the validity of the annulment order, Ahmed may have married subsequently and had children: if the annulment order is overturned, then his marriage would be invalidated and his children rendered illegitimate.

B. This Court Lacks Subject Matter Jurisdiction To Relitigate Or Disregard The Annulment Order.

Respondents would have this Court relitigate or disregard the annulment order issued by the family court. However, this Court does not have jurisdiction over annulments. *Only* the family court has jurisdiction over actions for annulments. S.C. Code Ann. § 63-3-530(A)(6)[27] provides that the family court has *exclusive* jurisdiction over annulments.

The only way for Mr. Brown to have invalidated his marriage to Mrs. Brown would have been through an annulment of their ceremonial marriage. "Annulments are actions to establish the invalidity of marriages." See Stuckey, *Marital Litigation*, Ch. 3.A. Mr. Brown obviously understood that an annulment action is the method to seek an invalidation of a marriage because he brought an action to annul his marriage to Mrs. Brown. As discussed above, Mr. Brown dismissed that action through a consent order. It is now too late for Mr. Brown, or anyone acting for or through him, to bring an annulment action to invalidate his marriage to Mrs. Brown. See the discussion at IV.C below.

Consequently, if this Court lacks subject matter jurisdiction over annulments, it cannot relitigate or disregard the family court annulment order. Redetermining the underlying facts of

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[27] Formerly S.C. Code § 20-7-140.

the annulment order would be engaging in an annulment action, which this Court lacks jurisdiction to do.

Having this Court relitigate or disregard an existing valid family court order would create a precedent resulting in chaos.[28] If a third party is allowed to attack an order of annulment or divorce obtained during a decedent's lifetime, relationships relied on by the decedent during his lifetime and taken to his grave could be undone, and great damage would be done to the public policy of stability of marriage.

S.C. Code Ann. § 63-3-530(A)(6) grants the family court exclusive jurisdiction over annulments. To allow the Respondents to challenge Mrs. Brown's annulment from Ahmed in this Court would subvert the exclusive authority granted to the family court by the South Carolina General Assembly.[29] According to the plain language of the statute, the General Assembly granted exclusive jurisdiction over annulments to the family court.[30] In so doing, the General Assembly prohibited all other courts from going behind the family court's annulment orders.

Lukich fits this statutory scheme because it involved an appeal from the family court, which had jurisdiction over annulments. *Lukich* did not allow an annulment order to be challenged in a court outside of the family court. Unlike Mr. Lukich, Mr. Brown withdrew his family court action for annulment during his lifetime. The legislative scheme did not give Mr.

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[28] *See, e.g., Neely*, discussed below.

[29] "The canon of construction '*expressio unius est exclusio alterius*' or '*inclusio unius est exclusio alterius*' holds that 'to express or include one thing implies the exclusion of another, or of the alternative.' Black's Law Dictionary 602 (7th ed. 1999)." Hodges v. Rainey, 533 S.E.2d 578, 582, 341 S.C. 79, 86 (2000).

[30] In S.C. Code § 63-3-530(A)(6), the Legislature says that "[t]he Family Court has exclusive jurisdiction...to hear and determine actions for annulment of marriage".

Brown the ability to challenge the annulment order outside of the family court during his lifetime, and his heirs likewise cannot go behind a family court order in this Court.

C. Even If This Court Had Jurisdiction, A Postmortem Annulment Action Is Not Possible.

The issue before this Court on summary judgment is whether Mrs. Brown is the surviving spouse of Mr. Brown. South Carolina Probate Code § 62-2-802 is the statute governing the determination of surviving spouse qualification. Section 62-2-802 specifically addresses annulment in this context. It provides that a surviving spouse is someone from whom the decedent did not get a divorce or an annulment:

> **Section 62-2-802. Effect of divorce, annulment, decree of separate maintenance, or order terminating marital property rights.**
> (a) An individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, the individual is married to the decedent at the time of death. A decree of separate maintenance that does not terminate the status of husband and wife is not a divorce for purposes of this section.

Section 62-2-802(c) requires that any divorce decree or annulment be signed by the court and filed in the office of the clerk of court. It is too late for Mr. Brown, or those acting for or through him, to bring such an annulment action. In *Hatchell-Freeman v. Freeman*, 340 S.C. 552, 532 S.E.2d 299 (Ct. App. 2000), the Court of Appeals, addressing S.C. Code § 62-2-802, held that a divorce decree was invalid when it was filed three days after the husband's death, although his death occurred more than a week after the final divorce hearing. In *Bayne v. Bass*, 302 S.C. 208, 394 S.E.2d 726 (Ct. App. 1990), the wife committed suicide after the trial judge orally granted her request for divorce but before he signed a divorce decree. The judge signed the decree two days after she died but vacated it on motion by the husband's counsel. The Court of Appeals held that the order granting the divorce was void and that the court properly vacated its own order. Mr. Brown neither divorced nor had his marriage to Mrs. Brown annulled during his

lifetime. Therefore, under the Probate Code Mrs. Brown was still his wife at the time of Mr. Brown's death, and she is his surviving spouse.

Respondents – in privity with Mr. Brown and deriving any rights they have through him -- are attempting to do after his death what he chose not to do in life. The exclusive method to invalidate a marriage is to bring an annulment action in the Family Court. Mr. Brown obviously knew that because he brought an annulment action in the Family Court, which he dismissed.[31] Again, this Court has no jurisdiction over annulment actions, but even if it did, it is too late for Mr. Brown to collaterally attack an annulment order. Annulment actions cannot be brought postmortem. Nor can Respondents do so.

D. Even If This Court Had Jurisdiction Over Annulments And Did Not Lack Necessary Parties, There Is No Reason To Disregard The Annulment Order.

A court has to have a reason to refuse to recognize an order, and the only reason is the failure of due process, either by failure to obtain personal jurisdiction or a lack of subject matter jurisdiction. *Yarbrough v. Collins*, 293 S.C. 290, 360 S.E.2d 300 (S.C. 1987) ("A judgment may be collaterally attacked if the court lacked jurisdiction and the lack of jurisdiction appears on the face of the record. *Turner v. Malone*, 24 S.C. 398 (1886)."); *Miles v. Lee*, 319 S.C. 271, 460 S.E.2d 423 (S.C. App. 1995) (similar); *Henry v. Cottingham*, 253 S.C. 286, 170 S.E.2d 387 (S.C. 1969) ("The decree of a Probate Court admitting a will to probate is final and conclusive if not reversed by the appellate court, or set aside and revoked by direct proceeding, and cannot be questioned collaterally. *Weinberg v. Weinberg*, 208 S.C. 157, 37 S.E.2d 507; *Reed v. Lemacks*, 204 S.C. 26, S.E.2d 441; Davis v. Davis, 204 S.C. 26, 28 S.E.2d 441." . . . . "*In Wilkinson v. Wilkinson*, 178 S.C. 194, 182 S.E. 640, this court said: 'As a proceeding to probate a will is a

[31] Notably, even in Mr. Brown's short-lived annulment action, he did not attack the annulment order but rather insisted that it was binding on Mrs. Brown.

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judicial one, a judgment or decree admitting a will to probate stands on the same footing as a judgment of any other Court of competent jurisdiction; and while it is not conclusive in the sense that a person having a requisite interest may not attack it by a direct procceding within the period of time allowed by statute, without a statute conferring the right to contest, the order admitting the will to probate would be final on all parties.'") *McCampbell v. Warrich Corporation*, 109 F.2d 115 (7th Cir. 1940) (a collateral attack "is not permissible if the court had jurisdiction over the parties and the subject matter."); *Burlington Data Processing, Inc. v. Automated Medical Systems, Inc., Clinical Management Systems, Inc., and William Carlson*, 492 F.Supp. 821 (D. Vermont 1980) ("A final, valid judgment, though erroneous, is not subject to collateral attack unless it can be shown that the court rendering it was without jurisdiction. *See Midissa Television Co. v. Motion Pictures for Televisions, Inc.*, 290 F.2d 203 (5th Cir. 1961), *cert. denied* 368 U.S. 827, 82 S.Ct. 47, 7 L.Ed.2d 30 (1961). *Anderson v. Tucker*, 68 F.R.D. 461 (D.Conn.1975). *1B J. Moore, Federal Practice*, s .407."); *Popp Telcom v. American Sharecom, Inc.*, 210 F.3d 928 (8th Cir. 2000) ("When a judgment is alleged to be simply erroneous or attacked on the basis of anomalies unrelated to the court's jurisdiction, collateral attack is not an option."). *See also* Fouche v. Royal Indemnity Company, 217 S.C. 147, 60 S.E.2d 73 (S.C. 1950) ("The probate court of Orangeburg County which rendered the judgment in this case is a court of record, and had full jurisdiction over the administration proceedings. It has been held in many cases in this state that a judgment is not open to successful collateral attack unless void on its face, or upon an inspection of the judgment roll. This principle seems to be self evident, and the authority of adjudged cases support it."...."As heretofore stated, the record in the probate court of Orangeburg County does not affirmatively disclose that the court was without jurisdiction of these appellants, hence their collateral attack on the judgment cannot succeed, and the order of

discharge is binding upon them.")

Even if this Court had jurisdiction concerning the annulment order, it finds that there is no defect in personal jurisdiction —i.e., the service was proper — and the family court had subject matter jurisdiction. There is no failure of due process and so there is no reason to refuse to recognize the order.

E. The Annulment Order Is Binding On All Parties.

The annulment order is binding on all parties. South Carolina provides:

> All marriages contracted while either of the parties has a former wife or husband living shall be void. But this section shall not extend to a person whose husband or wife shall be absent for the space of five years, the one not knowing the other to be living during that time, not [sic] to any person who shall be divorced or whose first marriage shall be declared void by the sentence of a competent court.

S.C. Code Ann. § 20-1-80.

The validity of the attempted marriage between Mrs. Brown and Ahmed has already been addressed by the South Carolina court with jurisdiction. That court issued a final judgment invalidating the attempted marriage between Mrs. Brown and Ahmed, on the ground of bigamy. This annulment order is binding on Mr. Brown, and consequently is binding on Respondents.

In addition to *Lukich v. Lukich*, other South Carolina case law confirms this rule. In *Joye v. Yon*, 345 S.C. 264, 547 S.E.2d 888 (Ct. App. 2001), a husband and wife were divorced, and the husband was ordered to pay alimony. Some years later, the wife remarried. Six months later, her remarriage was annulled for bigamy, as the second husband had never divorced his prior wife. The first husband refused to resume paying alimony after the annulment, and the wife filed a contempt action to enforce the original decree. The husband then argued that the wife's remarriage, bigamous though it may have been, still terminated his ability to pay support.

The court of appeals resolved the main issue in the case by holding that a bigamous remarriage, which is void ab initio, does not terminate a prior spousal support obligation. The husband then argued in the alternative that the wife's remarriage could not be treated as bigamous *against him,* as he was not a party to the annulment action in which the remarriage was declared void. This is the same argument that Respondents make in the present case. But the court of appeals rejected this argument. It held directly that the annulment was binding upon the first husband even though he was not a party to the action:

> Yon also argues the court erred in reinstating his alimony obligation because he was not a party to Joye's annulment action. He asserts that he should have been made a party to the annulment action because its outcome directly affected him. We disagree.
>
> Generally, a person must be joined as a party to an action if his absence precludes complete relief among those already parties or his interest in the subject matter is so intertwined that he would not receive complete relief or resolution without his participation. Rule 19(a), SCRCP; see *First Citizens Bank & Trust Co.* v. *Strable,* 292 S.C. 146, 148,355 S.E.2d 278,279 (Ct. App.1987).
>
> Since Yon had no standing to challenge the granting of the annulment, it was not necessary for Joye to include him as a party to the action. Moreover, Yon suffered no prejudice by not being made a party to the action. Under South Carolina law, Joye's marriage to Vance was void ab initio and Yon's presence as a party to the action could not have altered the decision to grant the annulment.

Id. at 276, 547 S.E.2d at 894 (emphasis added). For exactly the same reasons, Respondents have no standing to question the invalidation of Mrs. Brown's previous attempted marriage to Ahmed because of Ahmed's bigamy.[32] That order can be questioned only in a direct attack by those who

[32] A leading authority on family law supports this South Carolina rule. "[A]nnulment decrees are binding upon nonparties as well as parties respecting the validity of the marriages involved." 1 Homer H. Clark Jr., *The Law of Domestic Relations in the United States* § 3.6 (2d ed. 1987). Professor Clark recognizes that this issue highlights the tension between the opportunity to be heard, on the one side, and the need for finality on the other. Although he recognizes that the rights of third persons may be affected by whether or not a marriage exists, he concludes: "No matter how clearly these [third-party] rights may depend on the existence of a marriage, they are not of the same degree of importance, seriousness or consequence as the interests of the spouses themselves in the marriage. It is perhaps this factor that has led to the well-established rule that a decree of divorce is conclusive on third parties with respect to the termination of the marriage. It is the writer's view that a decree of annulment should have the same effect."

were party to it, and only if that direct attack was timely and properly brought. Just as the first husband in *Joye* was bound by the annulment of the marriage between the wife and her second husband, so is the estate of Mr. Brown bound by the order invalidating ab initio the attempted marriage between Mrs. Brown and Ahmed.

In *Joye v. Yon*, 355 S.C. 452, 586 S.E.2d 131 (2003), the Supreme Court necessarily agreed with the court of appeals regarding the husband's standing to attack the annulment. The Court of Appeals was reversed as to the *effect* of the annulment upon the prior support obligation, and not as to the *existence* or *validity* of the annulment.[33]

The result reached in *Joye* is further consistent with S.C. Code § 20-1-520, which provides that third parties were generally bound by a court's determination that a marriage is valid:

> When the validity of a marriage shall be denied or doubted by either of the parties, the other may institute a suit for affirming the marriage and, upon due proof of the validity thereof, it shall be decreed to be valid and *such decree shall be conclusive upon all persons concerned.*

S.C. Code Ann. § 20-1-520 (emphasis added).[34]

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[33] The effect of the final and binding Family Court order invalidating the attempted marriage between Mrs. Brown and Ahmed is that the Brown-Brown marriage is valid, per the *Lukich* case, as discussed below.

[34] If third parties were able to contest family court orders, the order would never be final and chaos in family relations would ensue. *See Neely v. Thomasson*, 365 S.C. 345, 618 S.E.2d 884 (2005). As to precedent regarding finality, the Court of Appeals in *Neely* cited cases as follows:

> Adickes v. Allison & Bratton, 21 S.C. 245, 259 (1884) (alteration and emphasis added) (quoting Freeman Judgments § 12), cited with approval in *Mid-State Distribs., Inc. v. Century Importers, Inc.*, 310 S.C. 330, 335, 426 S.E.2d 777, 780 (1993). A decree of divorce is generally a final judgment of the court. Culbertson v. Clemens, 322 S.C. 20, 23, 471 S.E.2d 163, 164 (1996); cf. Corbin v. Kohler Co., 351 S.C. 613, 621, 571 S.E.2d 92, 97 (Ct. App. 2002) ("The final written order contains the binding instructions which are to be followed by the parties.")...See ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997) *(holding an unappealed ruling is the law of the case and cannot be later challenged).*

Neely v. Thomasson, 355 S.C. 521, 536, 586 S.E.2d 141, 144 (Ct. App. 2003) (emphasis added).

An annulment action and an action to validate a marriage, as described in § 20-1-520, are symmetrical: one brings an action to validate a marriage to confirm a marriage's validity while one brings an annulment action to confirm a marriage's invalidity. See Stuckey, *Marital Litigation in South Carolina*, Ch. 3-A. Thus, because "all persons concerned" are bound by a court determination that a marriage is valid, "all persons concerned" are likewise bound by a court's finding that a marriage is invalid. If third parties were able to contest final family court orders, the order would never be final and chaos in family relations would ensue.

Other states have held that annulments cannot be collaterally attacked by those who are not parties to the action. See, e.g., *Johnson County National Bank & Trust Co. v. Bach*, 189 Kan. 291, 369 P.2d 231 (1962) (certain beneficiaries made exactly the same argument that Respondents make—that the annulment was not binding on third parties – and the Kansas Supreme Court agreed with the wife that the annulment was dispositive and that it could not be questioned by third parties).

Just as the annulment decree in *Bach* was conclusive on the validity of the alleged marriage in that case, so is the annulment in this case likewise dispositive. The annulment can be attacked only in a prior direct attack filed by the parties to the action—Mrs. Brown and Ahmed.

A New York court stated the fundamental principle of law that underlies South Carolina's position:

> It is ancient law that a judgment in rem is res judicata to all the world with regard to the res or status that is determined therein. In a matrimonial action the condition of marriage or non-marriage is involved. An essential issue is, therefore, one of status—or, put another way, there is a marital res subject to in rem jurisdiction. As a consequence, in ordinary circumstances *a judgment determining marital status is binding on the whole world, and it is not confined in effect to the immediate parties to the action in which the*

judgment determining status was rendered.

Presbrey v. Presbrey, 6 A.D.2d 477, 480, 179 N.Y.S.2d 788, 792 (1958) (emphasis added), *aff'd*, 8 N.Y.2d 797, 168 N.E.2d 135, 201 N.Y.S.2d 807 (1960); *see also Luke v. Hill*, 137 Ga. 159, 73 S.E. 345, 346 (1911) ("So far as the adjudication fixes the status of the parties, the judgment concludes both parties and strangers[.]").

The *Restatement (Second) of Judgments* states the rule as follows:

> *A status determination is ordinarily binding on non-parties* because it effects a transformation of the legal status of the person involved which others have no legal authority to challenge. In this respect it is similar to status changes that parties are free to make without adjudicative proceedings, such as entry into marriage, renunciation of citizenship, or voluntary surrender of one's property to a conservator or trustee.

Restatement (Second) § 31 cmt. *f* (emphasis added); *see also id.* § 31 cmt. *a* ("Proceedings for the determination of status include divorce and annulment actions[.]").

The annulment order involves Mrs. Brown's status, and this status cannot be collaterally attacked by any third party. Because Mrs. Brown's putative marriage to Ahmed was void ab initio for bigamy, Mrs. Brown's status at the time of her marriage to Mr. Brown was that she had no impediment to that marriage.

Therefore, the Respondents have no legal authority to challenge the Family Court Order of annulment.

F. The Family Court Order Is Binding On Respondents Who Are in Privity with Mr. Brown.

Respondents are bound by the Family Court order. Heirs are in privity with their ancestors. *Thompson v. Hudgens*, 161 S.C. 450, 463, 159 S.E. 807, 812 (1931). Consequently, heirs are barred from asserting claims that their ancestors would have been barred from asserting. *Watson v. Watson*, 172 S.C. 362,369-71, 174 S.E. 33, 36 (1934). In *Watson*, the decedent was

barred from attacking a divorce; the Court held that those in privity with him, such as his children, were likewise barred. These rulings are obvious because heirs and devisees of a decedent cannot acquire any greater rights through the decedent than the decedent had himself. Similarly, a personal representative's relationship with the decedent exemplifies the classic case of privity with the decedent. It would be illogical for a personal representative, representing the decedent, or Respondents, claiming through the decedent, to have greater rights than the decedent had himself.

More generally, "[t]he term 'privity' when applied to a judgment or decree, means one so identified in interest with another that he represents the same legal right." *H.G. Hall Constr. Co. v. J.E.P. Enters.*, 283 S.C. 196, 204, 321 S.E.2d 267, 271 (Ct. App. 1984). *Carolina Baking Co. v. Geilfuss*, 169 S.C. 348, 168 S.E. 849, 852 (1933), held that a judgment is binding upon nonparties who "sought, consented to, or acquiesced in" the judgment. *Id.* To similar effect is *Tillman v. Tillman*, 93 S.C. 281, 76 S.E. 559 (1912). There, a father executed a deed giving custody of his children to his parents. A custody action then followed between the father's parents and the mother, in which the mother prevailed. The court held that the father was bound by the judgment:

> It is true that [the father] was not a formal party to that proceeding, but he submitted an affidavit therein making no claim on his own behalf, but insisting on the claim of his father and mother, to whom he had solemnly conveyed all his rights of custody. *It is clear that by this action he became bound by the decree rendered in the former proceeding.*

Id. (emphasis added). By supporting his parents in the custody case, therefore, the father became bound by the result.

In *Neely v. Thomasson*, 365 S.C. 345, 618 S.E.2d 884 (2005), the decedent was divorced from his wife during his lifetime, and the divorce decree held that a daughter was born during the

marriage. After the decedent's death, the decedent's heirs argued that they were not parties to the divorce case, that they were not bound by the court's decision, and that the daughter was actually not the child of the decedent. The South Carolina Supreme Court held that the decedent was bound by the judgment, and that the heirs were likewise bound:

> Because the issue of paternity was raised and ruled upon in a prior action, Decedent, if alive, would have been barred from challenging paternity at a later date. *See Eichman,* 285 S.C. at 380, 329 S.E.2d at 766. As a result, Decedent's heirs are likewise barred from asserting claims that Decedent himself would have been barred from asserting. *See Watson,* 172 S.C. at 370-71, 174 S.E. at 36. Moreover, we find that it would be unjust to allow Decedent's siblings to assert a claim that Decedent himself never chose to assert during his lifetime. In fact, there is no evidence in the record that Decedent took any steps whatsoever during his lifetime to disclaim Nancy as his daughter. To the contrary, Decedent acknowledged, on more than one occasion, that Nancy was his child. Therefore, we hold that Decedent's siblings should not have been permitted to challenge the prior paternity determination.

Id. at 354-55, 618 S.E.2d at 889 (emphasis added). The stipulated facts show that Mr. Brown supported the annulment litigation by paying Mrs. Brown's legal fees. After signing the Consent Order of Dismissal concerning his own annulment action, Mr. Brown never again sought to annul his marriage to Mrs. Brown. As such, the Respondents, in privity with Mr. Brown, are bound by the Family Court's order.

G. Binding Effect Of In Rem Judgments.

1. General Rule.

The LSA and other Respondents argue that this Court is not bound by the factual findings set forth in the judgment annulling Mrs. Brown's marriage to Ahmed. The Court respectfully disagrees.

The LSA expressly cites section 73 of the Restatement (First) of Judgments. That section applies on its face only to "Proceedings with Respect to Property." This case is governed by section 74, which applies to "Proceedings with Respect to Status." The validity

of the marriage between Mrs. Brown and Ahmed is a matter of status, not a matter of property. There is no question that a judgment annulling a marriage is a judgment in rem.

Section 74 of the Restatement provides:

> (1) In a proceeding in rem with respect to a status the judgment is conclusive upon all persons as to the existence of the status.
>
> (2) A judgment in such a proceeding will not bind anyone personally unless the court has jurisdiction over him, and it is not conclusive as to a fact upon which the judgment is based except between persons who have actually litigated the question of the existence of the fact.

Restatement § 74.

2. Section 74(1).

The above language states two competing rules. The first rule provides that an in rem judgment is binding upon "all persons" when the issue is the existence of the status. The drafters elaborate:

> *Effect of judgment on the status.* Where in a proceeding for the creation or termination or judicial determination of a status a competent court has after proper notice given a valid and final judgment, the judgment is binding on all persons in the world as to the existence of the status. The judgment is not subject to collateral attack by anyone. . . . *As far as the status is concerned, the judgment is binding not only on persons who were subject to the jurisdiction of the court which rendered the judgment, but also on persons not personally subject to the jurisdiction of the court.*

Restatement § 74 cmt. *a*. As regards the existence of the status itself, therefore, a judgment of annulment binds everyone, including persons not parties to the action or otherwise not subject to personal jurisdiction.

Mrs. Brown provides compelling authority in support of section 74(1). "*[A]nnulment decrees are binding upon non-parties* as well as parties respecting the validity of the marriages involved." 1 Homer H. Clark Jr., *The Law of Domestic Relations in the United States* § 3.6 (2d ed. 1987) (emphasis added). Professor Clark

continues:

> No matter how clearly these [third-party] rights may depend on the existence of a marriage, they are not of the same degree of importance, seriousness or consequence as the interests of the spouses themselves in the marriage. It is perhaps this factor that has led to the well-established rule that a decree of divorce is conclusive on third parties with respect to the termination of the marriage. It is the writer's view that a decree of annulment should have the same effect.

Id.

Clark's rule has been followed in South Carolina. *See Joye v. Yon*, discussed above.

The holding of a New York decision is squarely on point:

> It is ancient law that a judgment in rem is res judicata as to all the world with regard to the res or status that is determined therein. In a matrimonial action the condition of marriage or non-marriage is involved. An essential issue is, therefore, one of status—or, put another way, there is a marital res subject to in rem jurisdiction. As a consequence, in ordinary circumstances *a judgment determining marital status is binding on the whole world*, and it is not confined in effect to the immediate parties to the action in which the judgment determining status was rendered.

Presbrey v. Presbrey, 6 A.D.2d 477, 480, 179 N.Y.S.2d 788, 792 (1958) (emphasis added), *aff'd*, 8 N.Y.2d 797, 168 N.E.2d 135, 201 N.Y.S.2d 807 (1960).

In *Johnson County Nat. Bank & Trust Co. v. Bach*, 189 Kan. 291, 369 P.2d 231 (1962) and *Michelli v. Michelli*, 527 So.2d 359, 361 (La. Ct. App. 1988), courts directly held that annulments were binding upon third parties. These decisions did not draw any distinction between the facts and the law. They held, consistently with § 74(1) of the first Restatement, that in rem judgments of status bind all parties on the issue of status itself.

Another similar case is *Headen v. Pope & Talbot, Inc.*, 252 F.2d 739, 744 (3d Cir. 1958), where the court, dealing with South Carolina facts, expressly acknowledged the exception of § 74(2), but held that the case was controlled by the general rule of § 74(1). An in rem judgment of status binds the world on the question of status itself. Third parties are not bound only as to

questions collateral to status. As to status, and necessarily the facts determining status, all parties are bound. *See also Bair v. Bair*, 91 Idaho 30, 31, 415 P.2d 673, 674 (1966) (denying decedent's heirs' attempt to attack a divorce decree obtained by decedent's widow and stating that the heirs "as strangers to the divorce decree, have no right to attack its validity. To hold otherwise could cause chaos and uncertainty in the lives of thousands of persons" and that "[o]nce a divorce decree is final, it should not be disturbed by strangers who had no preexisting rights or interests adversely affected by such judgment); *Brown v. United States*, 196 F.2d 777, 777-78 (D.C. Cir. 1952) ("Appellant was a stranger to the divorce proceedings. She had no interest in the same; no right or standing to qualify as a party to the proceedings and oppose a divorce").

The rule was applied to an annulment in *Deyette v. Deyette*, 92 Vt. 305, 104 A. 232 (1918). That case was a Vermont divorce action. The wife had been previously married, but the marriage had been annulled in New York on grounds that the parties were underage. The husband attempted to collaterally attack the judgment on grounds that the wife and her first husband were not actually underage, but the court held that he lacked standing. 104 A. at 234.

The Court further finds that the rule of section 74(1) is good policy. If annulment judgments are not binding upon third parties, then there would be no such thing as a final judgment of annulment. Persons whose marriages are annulled would never have any security, because the judgment would always be subject to collateral attack by persons not parties to the original action. For example, if a woman's first marriage is dissolved by annulment, and she then marries again, the facts of the annulment would not be binding on third parties. She would be required to prove the merits of her annulment every time the validity of her second marriage becomes a contested issue. That would happen not only in her divorce action after the second marriage, but also when she takes title to property with

her second husband or files a joint federal or state income tax return. The LSA's argument boils down to an assertion that a decree of annulment is itself a nullity if the facts are contested.

There are strong reasons why annulments should be binding upon all third parties on issues of status—that is, as to the invalidity of the marriage annulled. The Court finds that on the issue of status, the judgment annulling Mrs. Brown's marriage to Ahmed is binding on all third persons, regardless of whether they were parties to the proceedings. Specifically, on the issue of status, the judgment is binding on Mr. Brown and his heirs.

3. Section 74(2).

The LSA recognizes the rule of section 74(1), but argues that this case is controlled by another rule. The LSA at points cites section 73 for this rule, but section 73 applies only to property judgments and not to status judgments. But the LSA also cites section 74(2), and as noted above, that section clearly does apply to status judgments.

The LSA argues under section 74(2) that the annulment does not bind James Brown on issues of fact. The LSA misconstrues section 74(2). That subsection again provides:

> A judgment in such a proceeding will not *bind anyone personally* unless the court has jurisdiction over him, and it is not conclusive as to a fact upon which the judgment is based except between persons who have actually litigated the question of the existence of the fact.

Restatement § 74(2) (emphasis added). The LSA construes this section to hold that an in rem judgment does not bind anyone on questions of fact. This position sweeps too broadly.

The Restatement provides, in section 74(1), that judgments of annulment are binding on all third parties *as to the existence of the status itself.* But if a judgment is binding on the issue of status, both its findings and its conclusions are necessarily binding. Indeed the

LSA and Respondents claim that they are not disputing Mrs. Brown's status. It is nonsensical to say that a person is bound only by a court's conclusions, and not by the factual findings that lead inevitably to those conclusions. If the factual findings are not binding, then the court in a future action is free to find different facts and reach a different result, and nothing is binding at all.

The LSA's position uses section 74(2) to functionally destroy section 74(1). The Court rejects that position. The Court holds that where the issue is the existence (or necessarily, the nonexistence) of a status itself, an in rem judgment regarding status binds all third parties. It is binding not only as to its conclusions, but also as to its factual findings.

This result is completely consistent with section 74(2). The key phrase in that section is highlighted in the quotation above. A judgment does not "bind anyone personally" unless the court has jurisdiction over him. That is, a judgment in rem cannot have the binding effect of a judgment in personam unless the court has personal jurisdiction over the defendant. But a judgment that cannot be binding in personam can still be binding in rem. The status change itself is clearly an in rem action, so as regards the issue of status itself, the judgment binds anyone. But as to issues *other than status*, which may require in personam jurisdiction, the judgment is not binding.

Comment *b* to section 74 sheds considerable light upon the relationship between section 74(1) and (2). That comment states:

> *Personal liabilities.* Although a valid judgment in rem is binding on all the world as to the existence of a status which is the subject of the action, it will not bind anyone personally over whom the court does not have jurisdiction. The court cannot impose a personal liability upon a person who is not subject to the power of the court. *The question of the power of the court to impose a personal liability in a proceeding in rem to affect a status arises most frequently in a suit for divorce with respect to a judgment for alimony.*

Id. § 74 cmt. *b* (emphasis added).

The emphasized last sentence gives a direct example of the distinction between section 74(1) and (2). The drafters had in mind the well-known rule that a divorce binds everyone as to the validity of the divorce itself (and necessarily the grounds of the divorce). But when the issue is not the existence of a status, but rather personal liability for alimony, the judgment does not even bind the named defendant unless the court had personal jurisdiction over him. *See Estin v. Estin*, 334 U.S. 541, 548-49 (1948); *Kreiger v. Kreiger*, 334 U.S. 555 (1948) (companion case to *Estin* reaching the same result); *Vanderbilt v. Vanderbilt*, 354 U.S. 416 (1957).

Section 74(2), therefore, is aimed only at issues other than the status change itself. Section 74(2) says that on issues collateral to status, the judgment is binding only on persons who appear, and over whom the court has jurisdiction. Likewise, factual findings in a status change judgment cannot be binding on issues other than status, because those issues require personal jurisdiction and not merely in rem jurisdiction.

This rule makes perfect sense. In rem jurisdiction allows the court to adjudicate only the question of status. The status here is Mrs. Brown's marital or non-marital status when she married Mr. Brown. If the order is binding, her status was unmarried. It cannot be used as a jurisdictional piggyback to allow the court to decide issues other than the question of status, which are not properly a basis for in rem jurisdiction. The effect of section 74(2) is that in rem judgments bind third parties only as to issues that are proper subjects for in rem jurisdiction, such as status. An in rem judgment cannot be used to bind third parties on an issue that is not subject to personal jurisdiction.

But the LSA seeks to give a broader effect to section 74(2). The LSA argues under

section 74(2) that the factual findings in an in rem judgment do not bind third parties on the central issue of the status change itself. That is going too far. If the factual findings do not bind third parties on issues of status, the third parties are necessarily not bound by the entire judgment, and section 74(1) is pointless. If section 74(1) is to have any effect at all, an in rem judgment must be functionally binding on all issues regarding the status change itself. The judgment is not functionally binding unless both its factual findings and its conclusions are binding. To say that the latter is binding, but the former is not, is to reject the entire premise of section 74(1).

The Court therefore holds that the annulment order in this case binds all third parties on the question of status itself. Third parties are bound on status issues by both the judgment's factual findings and its conclusion. On issues other than the status change itself, however, the annulment does not bind third parties unless they were subject to the personal jurisdiction of the court.

The cases cited by the LSA are consistent with this discussion. For example, in *Gratiot County State Bank v. Johnson*, 249 U.S. 246 (1919), the Supreme Court held:

> The [bankruptcy] adjudication is, for the purpose of administering the debtor's property, that is, in its legislative effect, conclusive upon all the world. Compare *Shawham v. Wherritt*, 7 How. 627, 643, 12 L. Ed. 847. So far as is [sic] declares the status of the debtor, even strangers to the decree may not attack it collaterally. *Michaels v. Post*, 21 Wall. 398, 428, 22 L. Ed. 520; *New Lamp Chimney Co. v. Ansonia Brass & Copper Co.*, 91 U. S. 656, 661, 662, 23 L. Ed. 336. Compare *Hebert v. Crawford*, 228 U. S. 204, 208, 209, 33 Sup. Ct. 484, 57 L. Ed. 800. But an adjudication in bankruptcy, like other judgments in rem, is not res judicata as to the facts or as to the subsidiary questions of law on which it is based, except as between parties to the proceeding or privies thereto.

Id. at 248.

The LSA cites the last sentence and argues that the Court held that the factual findings

in the bankruptcy case were not binding anywhere. But the Supreme Court expressly held, in the first two sentences, that the bankruptcy judgment was "conclusive upon all the world," *id.*, as regards the issue of status. If the factual findings in the bankruptcy judgment were not likewise binding against the world, *on the issue of status*, then the Court's third sentence completely destroyed its first two sentences. That was not the Court's intent. *Gratiot County* recognizes the same two competing rules as section 74(1) and (2). It simply held on the facts that the issue in the later action was not one of status.

In *Hunter v. Hunter*, 111 Cal. 261, 43 P. 756 (1896), the issue was the effect of a divorce judgment. The court held that the judgment "was conclusive against all the world that the plaintiff in that suit was no longer the wife of Joseph Milam, and it was an adjudication of nothing else." *Id.* at 265, 43 P. at 757. Likewise, the present annulment is conclusive against all the world that Mrs. Brown was never validly married to Ahmed.

In *Becher v. Contoure Laboratories*, 279 U.S. 388 (1929), the first case was a state court action to declare a party trustee of a patent, while the second case was a federal court action for patent infringement. The Supreme Court very emphatically pointed out that these were different cases, presenting different issues. Whether the patent was placed in a trust said nothing about whether the patent was infringed. *Becher* therefore involved a collateral right, not a direct question of status.

In *Hendrick v. Biggar*, 209 N.Y. 440, 442, 103 N.E. 763, 764 (1913), the issue was whether a judgment in a divorce case finding that a spouse committed adultery was binding in a later action for alienation of affections. The issue in the alienation of affections case was not the validity of the divorce; it was whether the defendant had alienated the affections of a spouse. The second action was therefore a question collateral to status, on which personal

jurisdiction was required.

Fromm v. Glueck, 161 Misc. 502, 293 N.Y.S. 530 (Sup. Ct. 1937), involved an in rem judgment from another state. The case involved jurisdictional issues not present here, where both the former and present actions arise in South Carolina. The court also recognized that the judgment was binding on direct questions of status. "[I]t must be conceded that, even though personal jurisdiction of the defendant had not been obtained, the Court of Chancery had the full power to decree the foreclosure of the mortgage and the sale of the property." *Id.* at 504, 293 N.Y.S. at 533.

Finally, *In re Rowe's Estate*, 172 Or. 293, 141 P.2d 832 (1943), is distinguishable on several grounds. To begin with, the case involved a decree of divorce, not a decree of annulment. The issue was whether a finding of desertion in the divorce decree conclusively established lack of access for the purpose of paternity. The fact at issue was therefore again not the status of marriage itself, but rather a fact collateral to status. The court expressly held that the divorce was binding on issues of status. "[T]he decree in a divorce suit as a decree in rem binds the whole world as to the status of the parties, to the extent that their status is the res adjudicated[.]" *Id.* at 302, 141 P.2d at 836.

In short, all of the cases cited by the LSA recognize the same basic two rules stated in section 74(1) and (2). An in rem judgment binds the world on the direct question of status. It does not bind any nonparty on collateral issues, which are not subject to in rem jurisdiction, and which require that the court have personal jurisdiction over the defendant. The textbook example, cited expressly in the *Restatement* comments, is alimony in a divorce case.

Having stated the competing rules of section 74(1) and (2), the Court must now decide which of those two competing rules applies here. The issue presented here is whether Mrs.

Brown is Mr. Brown's surviving spouse. Mrs. Brown has presented a valid marriage certificate, placing upon the Respondents the burden of proving that her most recent marriage is invalid. They seek to defeat Mrs. Brown's claim by proving that her marriage to Mr. Brown was bigamous. But it is bigamous only if Mrs. Brown had a valid marriage to someone else at the time she married Mr. Brown. To prove that Mrs. Brown's marriage to Mr. Brown was bigamous, the Respondents must prove that Mrs. Brown's marriage to Ahmed was valid.

The issue here is therefore directly one of status: Was Mrs. Brown's marriage to Ahmed valid? The judgment of annulment held that it was not. The Respondents argue that the judgment of annulment was wrong. If the judgment of annulment was wrong, it would obviously affect Mrs. Brown's status. The entire issue turns upon whether the annulment judgment correctly held that Mrs. Brown's status had been that of a single person all along, because her marriage to Ahmed was void from its inception.

Because the central issue in this case is the effect of the annulment judgment upon Mrs. Brown's status, this case falls squarely under section 74(1). Section 74(2) states that the factual findings in an in rem judgment are not binding, but only on issues other than the status change itself, which turn upon jurisdiction in personam and not upon jurisdiction in rem. *Section 74(2) cannot be used to attack the factual findings of an in rem judgment on the question of status itself.* To permit that is to allow section 74(2) to completely destroy section 74(1). Regarding the issue of status itself, the judgment annulling Mrs. Brown's marriage to Ahmed is binding upon all third parties, including Mr. Brown and his heirs.

The LSA and most, if not all, of the Respondents agreed in their arguments before

the Court that Mrs. Brown's marriage to Ahmed was legally annulled. They stated that they were not questioning her status. They agreed that the annulment order is binding "on all the world." Their disagreement is on the facts underlying the annulment. However, this Court cannot separate the judgment from the facts. If Mrs. Brown's marriage to Ahmed was annulled, it was annulled on the grounds set forth in the Order. It could not be annulled for no reason. The factual findings are binding on direct questions of status, although, arguably, factual findings on collateral matters are not binding.

To that end, the Respondents have cited no case holding that the factual findings of an annulment or divorce are not binding when the issue being raised in the second action is the direct question of status itself, and not a collateral issue. For the foregoing reasons, the Family Court Order of annulment is binding on the Respondents.

V. CONCLUSION.

This Court finds that the conclusion it has reached is not unfair or inequitable to Mr. Brown or the estate. Mr. Brown was well aware of Mrs. Brown's annulment action. He paid Mrs. Brown's legal fees. He was copied on pleadings. He sought to have the findings of fact set forth in the annulment order adopted in his own later annulment case. It has long been settled that a person who accepts the benefits of even a void order is estopped to question its validity. *Edwards v. Edwards*, 254 S.C. 466, 176 S.E.2d 123 (1970) ("Since [husband] proposed the transfer of the property and has accepted the benefits accruing to him therefrom, he is now estopped to assert the invalidity of the judgment."); *Scheper v. Scheper*, 125 S.C. 89, 118 S.E. 178 (1923) ("Even where one who did not procure it accepts the benefits of a void judgment, he is estopped to assert its invalidity.").

Mr. Brown knew he could pursue an annulment from Mrs. Brown as he initiated such an action himself. If he wanted to annul his marriage, he could have proceeded with the action he commenced. But he decided not to proceed with it. As he never obtained an annulment during his lifetime, his marriage was never annulled and he was married to Mrs. Brown at the time of his death, certainly for the purposes of surviving spouse pursuant to S.C. Code Ann. § 62-2-802, which required him to take action. Further, in this case, Mr. Brown affirmatively sought to benefit specifically from the Findings of Fact in the annulment order. These are the very Findings of Fact the LSA now wants this Court to ignore. He alleged in his own short-lived annulment action that the "Findings of Facts of the Charleston Family Courts" were binding.[35]

Therefore, it is hereby ORDERED, DECREED and ADJUDGED that Tommie Rae Brown is the surviving spouse of James Joseph Brown. The Family Court's April 15, 2004 Final Order is binding on James Joseph Brown and his heirs and must be respected by this Court.

It is further ORDERED, DECREED and ADJUDGED that the Petitioner Tommie Rae Brown's Motion for Summary Judgment on her status as James Joseph Brown's wife and surviving spouse is granted, and the Limited Special Administrator's Motion for Summary Judgment is denied.

It is further ORDERED, DECREED and ADJUDGED that all other issues, including the validity of the prenuptial agreement between Tommie Rae Brown and James Joseph Brown are reserved for a future determination.

This 13 day of January, 2015, at Aiken, South Carolina.

DOYET A. EARLY, III
JUDGE, SECOND JUDICIAL CIRCUIT

[35] Joint Stipulation of Facts at 000070, ¶ 10 (Mr. Brown's Amended Complaint for Annulment).

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP0202850

Tommie Rae Hynie-Brown	David Soujourner, Terry Brown, Deanna Brown Thomas, Yamma Brown, Vanisha Brown, Larry Brown, Daryl Brown, Jeanette Mitchell, Michael Deon Brown
PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

1/14/2015

Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

This judgment was entered on **14th day of January, 2015**, and a copy mailed first class or placed in the appropriate attorney's box on **14th day of January, 2015**, to attorneys of record or to parties (when appearing pro se) as follows:

Robert N. Rosen 18 Broad Street Suite 201 Charleston, SC 29401

J. David Black PO Drawer 2426 Columbia, SC 29202-2426
John Fisher Beach 1501 Main St., 5Th Floor Columbia, SC 29201
Matthew Day Bodman 1500 Calhoun St. Columbia, SC 29201
William Joseph Barr 108 N. Academy St. Kingstree, SC 29556-3422
John Andrew Donsbach Sr. PO Box 212139 Martinez, GA 30917-2139

ATTORNEY(S) FOR THE PLAINTIFF(S)

probate

Court Reporter

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard by Sharron Jowers

Liz Godard - Clerk of Court

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

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

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP0202849

PLAINTIFF(S)	DEFENDANT(S)
Tommie Rae Hynie-Brown	David Special Administrato Soujourner Deanna Brown Thomas Vanisha Brown Daryl Brown Michael Deon Brown Terry Brown Yamma Brown Larry Brown Jeanette Mitchell
Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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1/14/2015

Circuit Court Judge **Judge Code** **Date**

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ATTORNEY(S) FOR THE PLAINTIFF(S)

probate

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard by Sharon Jones

Court Reporter

Liz Godard - Clerk of Court

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

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

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN) SECOND JUDICIAL CIRCUIT
)
) CASE NO.: 2013-CP-02-02849, 02850
Tommie Rae Brown)
Plaintiff,) **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**
vs.)
)
David C. Sojourner, Jr., in his capacity as Limited Special Administrator and Limited Special Trustee, et al.,)
Defendant.)

Plaintiff's Attorney:	Defendant's Attorney:
Robert N. Rosen, Bar No. 4918 Address: 18 Broad Street, Suite 201, Charleston, SC 29401 Phone: 843-377-1700Fax 843-377-1709 E-mail: rnrosen@rosen-lawfirm.comOther:	John A. Donsbach, Sr., Bar No. 69681 Address: P.O. Box 212139, Martinez, Georgia 30917 Phone: 706-650-8750 Fax706-651-1399 E-mail: jdonsbach@donsbachking.comOther:

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Respondent Terry Brown's Motion to Alter, Amend, and Reconsider
Estimated Time Needed: 1 hour Court Reporter Needed: ☒YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff /☒ Defendant — February 2, 2015 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25.00
☐ EXEMPT:
(check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: ____
☐ Other: ____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE CODE ____ FILED 2-2-2015
Date: ____ U.C.C.P.&G.S.

CLERK'S VERIFICATION

Collected by: ____ Date Filed: ____
☒ MOTION FEE COLLECTED: $ CK# 6047

Anita Knoepfle 12:30
Deputy Clerk

☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

FILED 7-6 20 15
Liz Hadgard
C.C.P. & G.S.
Deputy Clerk

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN) SECOND JUDICIAL CIRCUIT
) Case Nos.: 2013-CP-02-02849 - orig-
) 2013-CP-02-02850 - cert copy

IN RE: THE ESTATE OF JAMES BROWN A/K/A JAMES JOSEPH BROWN

PETITIONER TOMMIE RAE BROWN'S RETURN IN OPPOSITION TO RESPONDENTS' MOTIONS TO ALTER, AMEND OR RECONSIDER

Petitioner Tommie Rae Brown ("Mrs. Brown"), as and for her Return to the respective Motions to Alter, Amend or Reconsider filed by the Limited Special Administrator ("LSA") David C. Sojourner, Jr., Larry Brown, Venisha Brown, Deanna Brown-Thomas, Yamma Brown, Daryl Brown, Michael Deon Brown, Jeanette Mitchell, and Terry Brown, respectfully shows the court as follows:

I. PRIOR MEMORANDUMS INCORPORATED HEREIN

This Return is based upon all memoranda of law, stipulated facts, and/or affidavits that may be submitted, all common and statutory law, and such other evidence and support that this Court may consider. This Return incorporates all memoranda and arguments previously made by Mrs. Brown.

II. RESPONSE TO ALL MOTIONS

All of the motions to reconsider object to the Court's denial of discovery. Discovery is permitted only on issues of fact. The entire basis for granting summary judgment is that there are no contested material issues of fact. If no contested factual issues exist, then discovery, by definition, is irrelevant.

The Court properly held that no contested issues of fact exist here. Mrs. Brown's alleged marriage to Javed Ahmed was annulled by a final family court order on the ground of bigamy.

(Order of Apr. 15, 2004, J. Stip. Ex. 12, pp. 29-32.) As the Court properly held, this Court lacks subject-matter jurisdiction to relitigate or disregard the annulment. (Order of Jan. 13, 2015, pp. 23-26.) Even if this Court had jurisdiction, a postmortem annulment action is not possible, and South Carolina Probate Code section 62-2-802 consequently defines Mrs. Brown as Mr. Brown's surviving spouse. Even if this Court had jurisdiction and a postmortem annulment was possible, the annulment is binding upon all third parties.[1] (Order of Jan. 13, 2015, pp. 28-32, 35-44.) It is especially binding upon James Brown, who paid the attorney's fees that made the annulment possible and who relied upon the annulment during his lifetime. The opposing parties here all claim through James Brown, and they cannot have any greater rights now than he had during his lifetime. (Order of Jan. 13, 2015, pp. 32-34.)

To hold otherwise "would create a chaotic precedent" (Order of Jan. 13, 2015, p. 22 line 10), as there would be no such thing as a final and binding judgment of annulment. On the contrary, every judgment of annulment would be subject to attack by an infinite stream of third parties who were not parties to the original action. The public policy of the finality of judgments requires that annulments bind all third parties. *See* Restatement of Judgments § 74(1) (1942 & Westlaw database updated June 2015) (stating that judgments regarding status are "conclusive upon all persons").

Much is made of allegations regarding a private diary allegedly kept by Mrs. Brown. All references to the diary are clear violations of this Court's order of March 10, 2008, which states: "No party shall use the information in the diaries for any purpose pending the further order of the Court." (Order of Mar. 10, 2008, p. 1, para. 2.) For this reason alone, the Court should ignore all references

[1] And even if the Court had jurisdiction over annulments, did not lack necessary parties, and it was possible to have a postmortem annulment, there is no reason to disregard the annulment order. The contesting parties would have to jump all four of these hurdles to prevail in their argument about revisiting the annulment, and they fail to jump any of the hurdles.

to the diary, and strike all references to the content of the diary from all motions to reconsider.

To the extent various parties claim that the order was error, the proper remedy was to challenge the order by prior motion, *before filing for summary judgment,* so that the diary was equally available to everyone. It is not an acceptable procedure to simply ignore the order and cite the diary at will, which is essentially what the opposing parties have done here. The use of the diary by the opposing parties, in direct violation of a court order, is a gross breach of Mrs. Brown's privacy rights.

Regardless of the violation of this Court's order, the contents of the diary cannot change the result of this Court's ruling. Nothing in the diary could give this Court subject- matter jurisdiction to invalidate the family court's judgment annulling the marriage between Mrs. Brown and Ahmed. Nothing in the diary could change the rule that judgments regarding status are binding upon all third parties, especially those who financed the judgment and relied upon it during their lifetimes. The diary is simply not a relevant fact in these proceedings.[2]

III. RESPONSES TO THE LSA'S MOTION

1(a). The LSA claims that this Court did not have a proper factual foundation for finding that Ahmed was given proper notice of the Charleston County Family Court rescheduling hearing in the Ahmed annulment action. To the contrary, the parties to this action stipulated that "[t]he Charleston County Family Court found that Javed Ahmed was properly served by publication *and notified of the hearing*" in the annulment action. (J. Stip. ¶ 17

[2] The so-called diary cannot affect the legal status of the marriage. Nothing that Mrs. Brown might write down as a personal confidential thought to herself can cause her valid marriage to be invalid, just as someone's personal confidential thoughts could not cause an invalid marriage to be valid. For example, assume arguendo that the diary contained a couple of passages responding to untrue statements that others might have told her about her marriage: her personal thoughts about that cannot possibly invalidate the marriage. It is hypocritical that the children and the LSA seem to care mightily about Mrs. Brown's private thoughts in the diary, yet they disregard Mr. Brown's expressed intent, through words (such as the autobiography) and actions (such as the failure to seek an annulment or divorce after their reconciliation). They are standing in Mr. Brown's shoes. They should care about his expressed intention, rather than trying to destroy it.

(emphasis added).)

The parties to this action further stipulated to the authenticity of the Exhibits to the Joint Stipulation. (*See* J. Stip. ¶ 9.) Among those Exhibits, as the Court noted in its Summary Judgment Order (*see* Order of Jan. 13, 2015, p. 7), is an affidavit by Marcia Jones stating that certain documents were mailed to Ahmed at what the court found to be his last known mailing address (*see* J. Stip. Ex. 9), to which was attached notice of the hearing. Also relevant is Exhibit 10, the actual affidavit of publication, stating that Ahmed was validly served with notice of the hearing by publication.

The LSA is not entitled to take discovery to collect evidence to impeach a Joint Stipulation signed by his own counsel. (J. Stip. p. 7.) There is no material issue of fact as to how Ahmed was notified of the rescheduled hearing; the relevant facts have all been stipulated.

In addition, the holding of the Court was that when the order that authorized service is satisfied with the affidavit of publication, that court's decision cannot be questioned by another court. (Order of Jan. 13, 2015, p. 9.) Under this reasoning, it is not relevant whether this Court deemed notice to be sufficient or insufficient. That decision was made by the court that approved service by publication, and its decision was binding thereafter.

1(b). The LSA claims that this Court did not have a proper factual foundation for finding that Mr. Brown requested that Aiken Family Court be bound by the Findings of Fact in the Charleston County Family Court order in Mrs. Brown's annulment action.

Mr. Brown's annulment complaint alleges that "the Findings of Fact of the Charleston Family Courts are binding on this Court." (J. Stip. Ex. 16, p. 70, ¶ 10.) That language is a request, directed at the Aiken County Family Court, that it treat the factual findings of the Charleston County Family Court as binding.

Mrs. Brown is at a loss to understand how the LSA has any power to attack a finding of fact based upon a direct quotation from a stipulated exhibit. Again, the LSA has no right to take discovery for the purpose of attacking a stipulation signed by his own counsel.

1(c). The LSA objects to the finding that Mr. and Mrs. Brown reconciled after the annulment action. Exhibit 19 to the Joint Stipulation is the Consent Order dismissing Mr. Brown's annulment action. Finding 2 in that order states, "[t]he parties have resolved their differences and are currently residing together." (J. Stip. Ex. 19, Finding 2.) Mrs. Brown fails to understand how it is improper to state that the parties have reconciled when they *agree* that they have "resolved their differences." (J. Stip. Ex. 19, Finding 2.)

It is also worth noting that there is strong undisputed evidence that Mr. Brown wanted Mrs. Brown to be his wife. He refers to her as his wife in his 2005 autobiography. (Aff. of Mrs. Brown ¶ 10, Nov. 26, 2007.) He dismissed the Aiken County action to annul his marriage to Mrs. Brown on the stated basis that the parties had resolved their differences and were living together. These actions show clearly that Mr. Brown wanted to be married to Mrs. Brown. Mr. Brown's children appear to disagree with his choice of wife, but the decision of whom to marry was his, not theirs. It is understandable that, because of greed, the children want to change their father's expressed intentions, through words and actions, about the validity of his marriage to Mrs. Brown; it is hard to understand why the LSA also takes this position, since he supposedly acts as an amanuensis for Mr. Brown.

1(d). The LSA further complains that this Court did not have a sufficient factual foundation for finding that Mr. Brown supported the annulment litigation by paying Mrs. Brown's attorney's legal fees.

Paragraph 13 of the Joint Stipulation states, "James Brown gave Tommie Rae Brown the

funds to pay the legal fees for the Ahmed Annulment litigation." (J. Stip. p. 4, ¶ 13.) When one party pays the attorney's fees for a second party's legal action, it is entirely fair and reasonable to infer that the first person supports the action. People do not commonly pay the legal fees of parties who bring legal actions of which they disapprove.

2. The LSA complains that the Court erred in failing to find that Mrs. Brown has the burden of proving that she is Mr. Brown's surviving spouse. Mrs. Brown has admitted all along that she bears the burden of proving that she is the surviving spouse. She met that burden by introducing a facially valid marriage certificate between herself and Mr. Brown. (J. Stip. Ex. 4, p. 5.) Because the law presumes that the most recent in a series of successive marriages remains valid, the burden was then upon the opposing parties to prove that the marriage certificate between Mr. and Mrs. Brown was invalid. *Yarbrough v. Yarbrough*, 280 S.C. 546, 550, 314 S.E.2d 16, 18 (Ct. App. 1984). The LSA failed to meet this burden.

Indeed, *the LSA admitted in his Summary Judgment Brief that the marriage certificate meets Mrs. Brown's burden of proof, and that the LSA bears the burden of proving that Mrs. Brown's marriage to Mr. Brown is invalid.* That brief stated:

> The LSA acknowledges Petitioner has established the existence of her marriage to Decedent through the Stipulation and its Exhibits. However, this only serves to shift the burden to the LSA to prove Petitioner's marriage to Decedent invalid.

(LSA's Summ. J. Br. p. 16.) This passage was followed by footnote 57, expressly citing *Yarborough.* The LSA should not be heard to claim that the entire burden of proof is on Mrs. Brown, after expressly admitting in his Summary Judgment Brief that the LSA bears the burden of proving that Mrs. Brown's marriage to Mr. Brown was invalid. Any error on this point (and Mrs. Brown strongly submits there was none) was expressly invited by the LSA's own brief.

In addition, the Court expressly accepted Mrs. Brown's position on the burden of proof

(*see* Mem. Supp. Tommie Rae Brown's Mot. Summ. J. ["Mrs. Brown's Initial Mem."] pp. 14-17), stating that "Mrs. Brown has presented a valid marriage certificate, placing upon Respondents the burden of proving that her most recent marriage is invalid" (Order of Jan. 13, 2015, p. 44.) This statement essentially recognized that once Mrs. Brown presented a valid marriage certificate, the burden was on the LSA, thus recognizing the fact which the LSA accuses this Court of not recognizing.

This Court's holding on the burden of proof was completely consistent with the Joint Stipulation and, indeed, the position taken by the LSA *in his own brief.* The Court correctly recognized that o n c e Mrs. Brown presented a facially valid marriage certificate, it was the LSA's burden to prove that the marriage certificate was invalid.

However, even if it were Mrs. Brown's burden to prove that her marriage to Mr. Brown was not invalid, she has clearly, convincingly, and completely met that burden.

3. The LSA complains that the Court failed to recognize a presumption that the marriage between Mr. and Mrs. Brown was bigamous.

This claim is simply wrong. South Carolina law is clear that when multiple marriage certificates exist, the most recent marriage is presumed valid. *Yarbrough*, 280 S.C. 546, 314 S.E.2d 16; 55 C.J.S. *Marriage* § 55, at 892-93 (Westlaw database updated Dec. 2014) (presumption is "one of the strongest presumptions known to the law"). (*See generally* Mrs. Brown's Initial Mem. pp. 14-15.) Once Mrs. Brown introduced a certificate of marriage—which was stipulated to be authentic (*see* J. Stip. ¶ 4 & Ex. 4)—a presumption existed that the marriage between Mr. and Mrs. Brown was valid. The Court did not err in failing to consider a presumption that is not recognized by South Carolina law.

4. The LSA argues that the Court erred by failing to find that Mrs. Brown was

required to present admissible evidence to prove that her marriage to Ahmed was bigamous.

On the contrary, Mr. Brown's most recent marriage is to Mrs. Brown, and the burden of proof is upon those who argue that it is invalid. Also, the marriage between Mrs. Brown and Ahmed had already been annulled by a final judgment from the family court, and that judgment is binding all third parties. (*See* Mrs. Brown's Initial Mem. pp. 19-20; Reply Mem. Supp. Tommie Rae Brown's Mot. Partial Summ. J. ["Mrs. Brown's Reply Mem."] pp. 22-32.) If the rule is otherwise, there would be no such thing as a final judgment of annulment, and public policy of stability of marriage would be thrown into chaos.

The Court properly held that Mrs. Brown is not required to prove the merits of the annulment all over again each time it is questioned by a new third party.

5. The LSA objects that Mrs. Brown cannot use her final judgment of annulment to prove that her marriage to Ahmed was actually invalid.

This contention shows a striking lack of respect for a final judgment of the family court. The LSA apparently believes that he is free to disregard a final judgment whenever it reaches a conclusion not to his liking. The Court did not err in rejecting the LSA's argument and in holding that a judgment of annulment indeed establishes the actual invalidity of the marriage that was annulled. This result is clearly required by the basic policy of the finality of judgments.

6. The LSA argues that the Court erred in failing to hold that a judgment in rem does not bind nonparties.

"The LSA concedes that the *decree* or *judgment* of annulment is binding on the parties and the world." (LSA's Reply Mem. p. 8 (emphasis in original) (footnote omitted).) "The LSA agrees that *decrees* of annulment, i.e., the portion of an annulment order declaring the parties are no longer married, are binding on parties, **non-parties** and 'all persons in the world.'" (LSA's Reply Mem.

pp. 8-9 (italics in original; boldface added).) Once again, the LSA is trying to disavow his own prior statements.

The Court's argument is fully consistent with the on-point legal authority cited by the LSA, which states that in rem judgments are binding upon all third parties. Restatement § 74(1). Again, if this were not the law, there would be no such thing as a final judgment of annulment, and the law on the stability of marriages would be thrown into chaos. (Order of Jan. 13, 2015, pp. 34-45.) The Court did not err in reaching a result that is directly supported by the primary source of authority cited by the LSA.

To the extent that the LSA relies on the exception in § 74(2), the LSA construes that exception so broadly as to swallow the general rule of § 74(1). The Court properly held that § 74(2) is a limited exception, applying only on issues other than the validity of the marriage itself. (Order of Jan. 13, 2015, pp. 38-41.) If § 74(2) applies to all factual findings in an annulment, as the LSA argues, then annulments will never functionally be binding, and § 74(1) will have no effect at all. With regard to the bigamous nature of the marriage between Mrs. Brown and Ahmed, the annulment is binding upon all third persons.

7. The LSA argues that the Court erred in finding that the LSA is collaterally estopped by the annulment judgment.

Judgments in rem are binding upon all third parties, regardless of whether they were parties to the action. In addition, Mr. Brown supported the annulment action by paying Mrs. Brown's legal fees. He was therefore in privity with a party, and he was bound by the result of that action. (Mrs. Brown's Initial Mem. pp. 23-28; Mrs. Brown's Reply Mem. pp. 44-48); *Piney Oil & Gas Co. v. Scott*, 258 Ky. 51, 79 S.W.2d 394 (1934) (applying the rule specifically to a person who paid part of a party's attorney's fees).

Even if the judgment in rem was not binding on the LSA and the children, they are without an avenue to attack it. The family court has exclusive jurisdiction over annulments. Nor can an annulment action be brought postmortem.

8. The LSA complains that the Court misconstrued the holding in *Carolina Baking Co. v. Geilfuss*, 169 S.C. 348, 168 S.E. 849 (1933). The relevant passage from that case has been quoted repeatedly in multiple briefs. It is quoted one more time here:

> [I]t does not follow that the decree is invalid as to all the parties to the action. It was sought, consented to, or acquiesced in by all of them except the named appellants herein. They objected to it, and they alone have appealed from it. They are not bound by it; all the others are, and as to them it is res adjudicata.

Id., 168 S.E. at 852. The Court's construction of the case was consistent with the above quotation.

Mrs. Brown also notes that *Carolina Baking Co.* was cited exactly one time in the Court's opinion, as secondary support for the point that a person is in privity with a party when the person represents the same legal right as a party. The LSA does not question the Court's construction of the other cases cited for the same point, *H.G. Hall Construction Co v. J.E.P. Enterprises*, 283 S.C. 196, 321 S.E.2d 267 (Ct. App. 1984), and *Tillman v. Tillman*, 93 S.C. 281, 76 S.E. 559 (1912).

9. The LSA objects that Mr. Brown had no control over the annulment action. This is yet another attempt by the LSA to impeach facts that the LSA has stipulated to be true. In particular, the LSA stipulated that Mr. Brown was aware of the action, that he paid Mrs. Brown's legal fees for the action, and that he received copies of the Summons and Complaint. Mrs. Brown fails to understand how a party can be said to have no control over an action when he paid the legal fees that made the action possible. Nevertheless, Mrs. Brown does not understand the order to be based on Mr. Brown having control of the family court action.

Moreover, judgments in rem bind all third parties, regardless of whether they had control over the action. If this were not the law, a party who receives an annulment would be required to prove the merits of the annulment all over again every time the annulment is attacked by another third party. This Court properly held that there is such a creature as a final judgment of annulment, and that the annulment here is binding upon all third parties, including Mr. Brown, regardless of whether they did or did not have control over the action.

10. The LSA objects that the annulment was not binding upon Mr. Brown because it was procured against a party in default.

At the final hearing on the annulment, Mrs. Brown's counsel stated, "the [d]efendant, I guess, arguably, is in default *but we're not moving to put him in default."* (4/15/04 Tr. p. 4, lines 7-8, *reprinted in* J. Stip. Ex. 13, p. 35, lines 7-8 (emphasis added).) There can be no true default judgment in an annulment case, as the court is required to adopt an oppositional stance and test independently the sufficiency of the evidence. *See Fogel v. McDonald*, 170 S.C. 506, 157 S.E. 830, 833 (1931) ("[T]he trial judge has the power, *and it is his duty*, to see that [marital] status is not disturbed except under circumstances and for causes fully sanctioned by law." (emphasis added)); *Davis v. Davis*, 236 S.C. 277, 284, 113 S.E.2d 819, 823 (1960) (quoting *Holliday v. Holliday*, 235 S.C. 246, 253-54, 111 S.E.2d 205, 210 (1959)). The annulment was simply not a default judgment.

Finally, even if the annulment were a default judgment, the Court still correctly held that annulments are binding on all third parties. The public policy of stability of marriage requires that all annulments, including those obtained by default, be binding upon the world. *See Neely v. Thomasson*, 365 S.C. 345, 618 S.E.2d 884 (2005) (finding a default judgment binding as to paternity).

11. The LSA objects that the family court was not an opposing party in the annulment action and that the action was a default judgment. The Court properly held that annulments bind all third parties on the issue of marital status, regardless of whether they are default judgments, in accord with on-point legal authority cited by the LSA. Restatement § 74(1).

Also, for the reasons stated in the previous paragraph, the LSA's position on this issue was expressly rejected in controlling appellate case law. The trial court has a positive duty to test the sufficiency of the evidence in an annulment case. *Fogel*, 170 S.C. 506, 157 S.E. 830. Finally, counsel for Mrs. Brown expressly stated at the annulment hearing that he was not asking the court to hold that Ahmed was in default.

12. The LSA makes a very vague argument that the Court misconstrued certain cases, "which are procedurally and substantively distinguishable" on some basis not stated in the LSA's Motion. (LSA's Mot. to Reconsider ¶ 12.) This argument is not sufficiently developed to allow a response.

The LSA further argues that the Court misconstrued Mr. Brown's use of the Charleston County annulment order in his own Aiken County annulment action. To the extent that the Court relied upon Mr. Brown's actions in the Aiken County action, that reliance was entirely proper. In particular, Mr. Brown argued in the Aiken County action that the Charleston County findings were binding on the court, and that Mrs. Brown should not be permitted to attack them. Having used the Charleston County holding for his benefit in the Aiken County action, Mr. Brown was bound by the Charleston County holding. (*See* Mrs. Brown's Initial Mem. pp. 23-28.)

13. The LSA objects that the Court failed to realize that collateral and equitable estoppel are doctrines that should be used "sparingly." He then argues that the use of those doctrines would be "inequitable" for reasons that the Motion does not expressly state.

The Court properly refused to find that application of these doctrines would be inequitable. There is nothing inequitable in holding that a judgment of annulment binds third parties; that is the general nationwide rule. Restatement § 74(1). Mr. Brown was fully aware of Mrs. Brown's annulment action, and he even paid Mrs. Brown's legal fees. He then filed his own annulment action in Aiken County, in which he had a perfect opportunity to argue that his marriage to Mrs. Brown was invalid. Instead, he voluntarily chose to reconcile with Mrs. Brown and drop that action. It is highly equitable for the LSA, who stands in the shoes of Mr. Brown, to be bound by an annulment judgment that Mr. Brown himself clearly accepted during his lifetime. (*See* Mrs. Brown's Initial Mem. pp. 29-31.)

14. The LSA objects that the Court failed to consider evidence establishing that Ahmed was not married to another person when he married Mrs. Brown. That evidence is relevant only if the LSA is permitted to attack the annulment. The Court properly held that judgments of annulment are legally binding on all third parties, in accordance with on-point authority cited by the LSA. Restatement § 74(1).

15. The LSA argues that the Court erred in holding that the Compromise Agreement establishes Mrs. Brown as Mr. Brown's spouse. Mrs. Brown does not see anywhere in this Court's opinion where it holds that the Compromise Agreement requires this result. To the extent that the Court so held, it was correct for the reasons stated in Mrs. Brown's Initial Memorandum at pages 32-35.

16. The LSA argues that judicial estoppel is not applicable here because "not all of the requisite elements have been proven" and because application would be "inequitable." (LSA's Mot. to Reconsider ¶ 16.) This contention is mostly too vague to permit a response. To the extent that the LSA cites equity, Mrs. Brown fails to understand why it is inequitable to hold that the LSA is

bound by a judgment of annulment that Mr. Brown clearly accepted during his lifetime.

17. The LSA objects that the Court erred in finding that the briefs and oral arguments in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013), establish Mrs. Brown as Mr. Brown's surviving spouse. To the extent that the Court so held, it was correct for the reasons stated in Mrs. Brown's Initial Memorandum at pages 32-35.

The LSA further claims that the Court erred in holding that judicial estoppel binds the estate or the Court to the construction of *Lukich* in the *Wilson* appeal. *See Lukich v. Lukich*, 368 S.C. 47, 627 S.E.2d 754 (Ct. App. 2006), *aff'd*, 379 S.C. 589, 666 S.E.2d 906 (2008). To the extent that the Court so held, it was correct for the reasons stated in Mrs. Brown's Initial Memorandum at pages 32-35.

18. The LSA claims that the Court erred in holding that the Order Approving Settlement Agreement establishes Mrs. Brown as Mr. Brown's surviving spouse. To the extent that the Court so held, it was correct for the reasons stated in Mrs. Brown's Initial Memorandum at pages 32-35.

The LSA further claims that the Court erred in holding that the Court and the estate are bound by the settling parties' interpretation of *Lukich*. To the extent that the Court so held, it was correct for the reasons stated in Mrs. Brown's Initial Memorandum at pages 34- 35.

19. The LSA argues that the Court erred in allowing Mrs. Brown to use the Ahmed annulment order retroactively. The Court properly held that annulments bind all third parties, retroactively and prospectively, on the issue of status itself. This result is strongly supported by on-point authority cited by the LSA himself. Restatement § 74(1).

If the annulment decree applies only prospectively, then South Carolina has held for the first time ever that a bigamous marriage is valid. The Court properly held, in accordance with long-

standing South Carolina case law cited fully in the Court's opinion, that a bigamous marriage is no marriage at all, either prospectively or retroactively. The Court did not err in rejecting the LSA's request that it give retroactive validity to Mrs. Brown's marriage to Ahmed, a marriage that a final decision of the family court holds was bigamous from its inception. (*See* Mrs. Brown's Reply Mem. pp. 38-39.)

20. The LSA argues that the Court misconstrued *Lukich*, 368 S.C. 47, 627 S.E.2d 754. Long-standing South Carolina law holds that a bigamous marriage is no marriage at all, in the past, present, or future. *Lukich* did not intend to overrule that case law and hold that a bigamous marriage is valid retroactively. On the contrary, as the Court found (Order of Jan. 13, 2015, pp. 13-14), *Lukich* involved two marriages, one of which was absolutely held void for bigamy. The Court did not err in refusing to construe *Lukich* to overrule years of South Carolina case law and give retroactive validity to a bigamous marriage.

21. The LSA repeats his argument that *Lukich* somehow intended to hold that bigamous marriages are retroactively valid. That has never been the law of South Carolina, not by any case and not by the bigamy statute, and it is not the law of South Carolina now. The Court properly held that a bigamous marriage does not exist under the law, for any purpose, *at any time.*

22. The LSA argues that the Court was also required to give retroactive validity to a bigamous marriage under *Joye v. Yon*, 355 S.C. 452, 586 S.E.2d 131 (2003). Again, the law of South Carolina is and has always been that a bigamous marriage has no validity whatsoever. The LSA's construction of *Joye* is wrong for the reasons stated in Mrs. Brown's Reply Memorandum at pages 23-25.

IV. RESPONSES TO DARRYL BROWN'S AND MICHAEL DEON BROWN'S MOTION

Darryl Brown's and Michael Deon Brown's Motions to Reconsider are verbatim the same as

the LSA's Motion. Mrs. Brown makes the same responses as she made to the LSA's Motion.

V. RESPONSES TO THE MOTIONS OF LARRY BROWN, VENISHA BROWN, DEANNA BROWN-THOMAS, AND YAMMA BROWN

These parties filed a single motion that incorporates the LSA's Motion by reference. Mrs. Brown makes the same responses as she made to the LSA's Motion.

VI. RESPONSES TO TERRY BROWN'S ARGUMENTS

Contrary to Terry Brown's initial unnumbered argument, Mrs. Brown is not required to present evidence in this action that her marriage to Ahmed was void for Ahmed's bigamy. The Charleston County Family Court has already reached that result, and its decision is binding in these proceedings. A final judgment of a court of record cannot be dismissed as a "legal technicality," and a party who convinces a court to follow such a judgment has not "duped the legal system." (Terry Brown's Mot. to Reconsider pp. 2-3.)

Mrs. Brown has presented a marriage certificate showing that she and Mr. Brown were married. *(See* J. Stip. Ex. 4 (which was stipulated as true in Joint Stipulation ¶ 4.) That certificate represents the last marriage James Brown entered into before he died. That marriage is therefore presumed valid, and the burden of proof is on those parties who attack that marriage to prove that it is invalid. *See Yarbrough*, 280 S.C. 546, 314 S.E.2d 16; 55 C.J.S., *supra*, § 55, at 892-93 (presumption is "one of the strongest presumptions known to law"). (*See generally* Mrs. Brown's Initial Mem. pp. 14-15.)

It is therefore not Mrs. Brown's burden to prove that her marriage to Ahmed was bigamous. Rather, it is Terry Brown's burden to prove that Mrs. Brown's marriage to Mr. Brown was invalid. Terry Brown cannot meet that burden. The only ground for invalidity that has even been alleged is bigamy, because Mrs. Brown was already married to Ahmed when she married Mr. Brown, but the annulment judgment expressly holds that Mrs. Brown's marriage to Ahmed was

void ab initio. The annulment is binding upon all third parties, including Terry Brown.

1(a). The Court properly described the marriage ceremony of Mrs. Brown and Ahmed as "putative." "Putative" means "commonly regarded as such; reputed; supposed." Dictionary.com, "putative," http://dictionary.reference.com/browse/putative?s=t (last visited June 23, 2015). A final judgment of the Charleston County Family Court, binding in these proceedings, holds that the marriage between Mrs. Brown and Ahmed was void for Ahmed's bigamy. Since the marriage ceremony did not actually result in a valid marriage, the ceremony can properly be called putative.

The fact that a marriage certificate exists between Mrs. Brown and Ahmed means nothing, because (1) the annulment judgment holds that the marriage was void ab initio, and (2) the marriage certificate is not the most recent marriage certificate involving Mr. Brown, and there is a presumption of law that the most recent marriage certificate is valid. *Yarbrough*, 280 S.C. 546, 314 S.E.2d 16.

Terry continues his contradictory and non sequitur argument, which is a consistent theme throughout for him. As to the putative marriage between Mrs. Brown and Ahmed, he contends that the marriage was invalid only when the family court order was issued and that its effect was only prospective: in other words, as to that marriage, Terry contends that it was not void ab initio but only void when the family court issued its order. Terry contends that, as to that putative marriage, that marriage was *valid* up until the time a court issued an order. He then argues the complete opposite as to the marriage between Mrs. Brown and Mr. Brown, which he alleges is bigamous: that marriage, he contends, is void ab initio, even without a court order ever being issued invalidating that marriage. It is too late for Mr. Brown to annul his marriage to Mrs. Brown, but that does not bother Terry --- he wants different rules to apply because it suits him.

Terry wants this court to (1) completely disregard the law of this state, both statutory and case law, which holds without exception that bigamous marriage is void ab initio; and (2) reach opposite conclusions on the exact same issue simply because he wants it.

1(b). Terry Brown argues that the parties stipulated that no order of any court ended the marriage between Mrs. Brown and Ahmed. This argument is based upon a blatant misreading of the Joint Stipulation. The provision referenced by Terry Brown provides:

> *From the February 17, 1997 marriage ceremony between Petitioner and Javed Ahmed through the December 14, 2001 marriage ceremony between Petitioner and Decedent*, no order of any court or other occurrence of which Plaintiff is aware at this time ended or caused to end any marriage that certain parties assert existed between Petitioner and Javed Ahmed.

(J. Stip. ¶ 6 (emphasis added).)

Terry Brown quotes the non-emphasized portion of the above quotation and argues that Mrs. Brown has stipulated that no court order has ever had any effect upon her marriage to Ahmed. *This is simply not what the above language says.* As the emphasized language makes clear, Mrs. Brown stipulated only that the court orders entered *between two dates* had no effect upon her marriage to Ahmed. Those two dates are February 17, 1997 and December 14, 2001.

Mrs. Brown's position throughout this case has been that her marriage to Ahmed was held to be void ab initio in a Charleston County Family Court judgment, and that that judgment binds all third parties. The judgment was entered on April 15, 2004, which is well after the later date stated in the above quotation, December 14, 2001.

Mrs. Brown's position is therefore fully consistent with paragraph 6 of the Joint Stipulation. Terry Brown is willfully misreading paragraph 6 to exclude the time limitation expressly stated at the very beginning of the paragraph, before the language on which Terry Brown relies.

Moreover, the judgment of annulment did not cause the alleged marriage between Mrs. Brown and Ahmed to end. Rather, it found that the alleged marriage was void ab initio and never existed for any purpose known to the law. It is therefore not an event that caused an existing marriage to end. It is a judicial declaration that no marriage ever existed to begin with.

1(c). This Court correctly found that Mr. Brown asked the Aiken County Family Court in his annulment action to adopt the factual findings of the Charleston County Family Court in Mrs. Brown's annulment action. In paragraph 10 of his Amended Complaint, Mr. Brown stated:

> Defendant, in [the Charleston County] action has not filed any appeal from the Family Court Order and as such, *the Findings of Fact of the Charleston Family Courts are binding on this Court.*

(J. Stip. Ex. 16, p. 70, ¶ 10 (emphasis added).) The emphasized language states expressly that the Charleston County Family Court findings are binding, not that they are binding upon one party alone. Moreover, a judgment is either binding or not; a judgment cannot bind one party and not the other. The above language requests the Aiken County Family Court to hold that the Charleston County Family Court factual findings are binding on *both parties.*

As noted above, when two parties stipulate that they "have resolved their differences and are currently residing together" (J. Stip. Ex. 19, ¶ 2, pp. 85-86), it is not inaccurate to state that the parties have reconciled.

1(d). Terry Brown argues that the Court erred in finding that Mr. and Mrs. Brown reconciled. Exhibit 19 to the Joint Stipulation is the Consent Order dismissing Mr. Brown's annulment action. Finding 2 in that order states, "[t]he parties have resolved their differences and are currently residing together." (J. Stip. Ex. 19, Finding 2.) When parties to an annulment action state that they have resolved their differences and are residing together, it is surely not inaccurate to say that they have reconciled.

1(e). Terry Brown argues that this Court improperly referred to Darryl Brown's attorney's affidavit. Mrs. Brown fails to understand why it is improper for this Court to refer to a properly filed affidavit in support of a summary judgment motion. Parties are surely permitted to file affidavits when summary judgment is at issue. Rule 56(a), SCRCP.

Terry Brown did not stipulate to the accuracy of Darryl Brown's attorney's affidavit, but there is no rule that the court can consider only stipulated affidavits in resolving a summary judgment motion. If Terry Brown had any real objection to Darryl Brown's attorney's affidavit, his remedy was to argue that it was not admissible, as Mrs. Brown has done (*see* Mrs. Brown's Reply Mem. pp. 55-61) or to submit a competing affidavit. The court did not err as against Terry Brown by accepting the validity of an affidavit that Terry Brown never questioned.

The Court did not err in noting the mere *possibility* that Ahmed had remarried and had children. The Court merely used that possibility by way of one of several examples illustrating why family court status orders have to be final.

2. Terry Brown argues that the Court erred in failing to recognize an alleged stipulation that Mrs. Brown and Ahmed were married as of December 14, 2001. The Court did not err, because no such stipulation exists.

Terry Brown cites paragraphs 1 and 2 of the Joint Stipulation, but those paragraphs state only that Mrs. Brown and Ahmed obtained a marriage license and participated in a marriage ceremony. Neither of these things is sufficient to establish that a marriage is valid if one of the parties had a living spouse at the time of the marriage, as the annulment order finds that Javed Ahmed did.

Terry Brown also cites paragraph 6 of the Joint Stipulation, but that paragraph states only that the marriage between Mrs. Brown and Ahmed was not "ended or caused to end" by any court

order entered between February 17, 1997 and December 14, 2001. But the marriage between Ahmed and Mrs. Brown was rendered void ab initio by an order entered in Charleston County Family Court on April 15, 2004. Terry Brown is again willfully misreading paragraph 6 of the Joint Stipulation.

3. Terry Brown argues that this Court erred in holding that Ahmed was properly served and notified of the annulment proceeding. This claim should be ignored, because Terry Brown lacks standing to complain about whether Ahmed was validly served. As the Court found, South Carolina law does not permit collateral attacks upon orders allowing service by publication. *E.g.*, *Wachovia Bank of S.C., N.A. v. Player*, 341 S.C. 424, 535 S.E.2d 128 (2000).

Mrs. Brown also sees nowhere on pages 8-9 of this order where the Court applies Rule 5(b)(1), SCRCP.

4. Terry Brown argues that the Court misconstrued *Lukich*, 368 S.C. 47, 627 S.E.2d 754. The Court's construction of *Lukich* is correct for the reasons stated in the Court's Order at pages 13-14: *Lukich* involved two marriages, one of which was absolutely held void for bigamy. The Court did not err in refusing to construe *Lukich* to overrule years of South Carolina case law and to contravene the bigamy statute. A bigamous marriage is void from the date of its inception, not only forward from the date it is declared void by a court.

5. Terry Brown argues that the Court misconstrued *Hallums v. Bowens*, 318 S.C. 1, 428 S.E.2d 894 (1993). The Court's construction of *Hallums* was correct for the reasons stated in Mrs. Brown's Reply Memorandum at pages 42-43. Terry continues his theme of inconsistent treatment as it might suit him. In *Hallums*, not only was there no court order finding the first marriage invalid for bigamy, but there was a court order finding the first marriage valid because there was no bigamy preventing the first marriage.

6. Terry Brown argues that the Court improperly held that the holding in an in rem action binds third parties. The Court's holding is correct for the reasons stated in Mrs. Brown's Reply Memorandum at pages 32-34.

Indeed, the Court's holding is correct for the reasons stated in the *LSA's* Reply Memorandum. "The LSA concedes that the *decree* or *judgment* of annulment is binding on the parties and the world." (LSA's Reply Mem. p. 8 (emphasis in original) (footnote omitted).) "The LSA agrees that *decrees* of annulment, i.e., the portion of an annulment order declaring the parties are no longer married, are binding on parties, **non-parties** and 'all persons in the world.'" (LSA's Reply Mem. pp. 8-9 (italics in original; boldface added).)

7. Terry Brown argues that the Court erred in finding that James Brown did not seek to annul his marriage prior to his death, because no evidence of that fact is before the Court. But the entire point of judicial notice is to allow the court to rely upon certain commonly known facts even if they are not in evidence. It is well settled that "[a] court can take judicial notice of its own records, files[,] and proceedings for all proper purposes including facts established in its records." *Wise v. Wise*, 394 S.C. 591, 601, 716 S.E.2d 117, 122 (Ct. App. 2011) (quoting *Freeman v. McBee*, 280 S.C. 490, 313 S.E.2d 325 (Ct. App. 1984)). The court's power to take notice of what is present in its own records necessarily includes the power to take notice of what is absent. There is no serious dispute that Mr. Brown filed no annulment action after his Aiken County action, which was dismissed with Mr. Brown's full consent upon reconciliation of the parties.

8. Terry Brown argues that this Court erred in referring to J B , on the basis that litigation involving J B is pending in another court. Terry Brown cites no authority for this point, and it should be summarily overruled. The mere fact that litigation is pending in another court does not somehow prevent this Court from even mentioning J B .

9. Terry Brown argues that this Court misconstrued why Mr. Brown brought his annulment action. Mrs. Brown does not see in this Court's order any discussion of why Mr. Brown brought an annulment action.

Terry Brown's argument also makes no sense. If Mr. Brown wanted to ensure that he was free to marry someone else, he would have pursued the annulment action to a conclusion. By reconciling with Mrs. Brown and consenting to dismissal of his annulment action, Mr. Brown showed a clear desire to recognize Mrs. Brown as his wife, in accordance with the Charleston Count Family Court judgment.

10. Terry Brown argues that the Court erred in applying section 62-2-802 of the South Carolina Code. This argument depends upon the premise that the marriage between Mr. Brown and Mrs. Brown was void ab initio Yet Terry continues to want different treatment for the putative marriage between Mrs. Brown and Ahmed and the marriage between Mrs. Brown and Mr. Brown. Terry contends that the putative marriage between Mrs. Brown and Ahmed is valid until the court order. If that were an accurate depiction of the law, which it is not, then the same should apply for the marriage between Mrs. Brown and Mr. Brown. Even if that marriage was bigamous, which it was not, then it remained valid until Mr. Brown obtained an annulment, which he did not. And one cannot obtain an annulment posthumously. SCPC section 62-2-802 clearly defines a surviving spouse, for elective and omitted spouse's share purposes, as someone who did not divorce the deceased spouse or have their marriage annulled.

11. Terry Brown argues again that the Charleston County annulment order did not apply retroactively. This is another attempt to hold that a bigamous marriage is retrospectively valid, a rule which has been expressly rejected by every South Carolina bigamy case, including *Lukich*, which actually held on the facts that a bigamous marriage was void ab initio. A void

marriage is void from its inception. It is not valid from its inception until the date of the decree declaring it void.

12. Terry Brown argues that paying the legal fees for an action is not the same thing as supporting the action. This Court properly held otherwise. Without Mr. Brown's payment of Mrs. Brown's legal fees, the annulment action would not have happened. It is therefore entirely correct to state that Mr. Brown supported the action. He paid the legal fees that made the action itself possible.

13. Terry Brown argues again that the Court erred in holding that in rem judgments are binding on third parties. The Court's holding is correct for the reasons stated in Mrs. Brown's Reply Memorandum at pages 32-34.

14. Terry Brown continues to argue that the Court erred in holding that in rem judgments are binding on third parties. The Court's holding is correct for the reasons stated in Mrs. Brown's Reply Memorandum at pages 32-34.

This argument further makes vague references to additional facts that are not specifically mentioned. The Court's order cannot be error for failure to consider facts that Terry's Brown's objection does not even identify.

15. Terry Brown continues to argue that the Court erred in holding that in rem judgments are binding on third parties. The Court's holding is correct for the reasons stated in Mrs. Brown's Reply Memorandum at pages 32-34.

In particular, the validity of the marriage between Mrs. Brown and Ahmed was the matter directly involved in the Charleston County annulment action, not a collateral matter. On the validity of the Mrs. Brown-Ahmed marriage, the annulment judgment binds all third parties. But the validity of the Mrs. Brown-Ahmed marriage is the only objection raised to the validity of the Mr.

Brown-Mrs. Brown marriage. The real issue here is exactly the same as the real issue in the annulment action: whether the marriage between Mrs. Brown and Ahmed was valid.

Terry Brown's position is therefore necessarily a direct attack upon the exact issue litigated in the Charleston County annulment action, the validity of the marriage between Mrs. Brown and Ahmed. If his position is accepted, then every party to every annulment case will be forced to litigate the merits of that annulment case all over again, every time the annulment is attacked by a new third party. Under such a rule, no annulment judgment would ever be final.

The only relevant issue for the summary judgment is the *status* of Mrs. Brown when she married Mr. Brown.

16. Terry Brown argues again that the Court erred in holding that he bears the burden of proof in this action. The Court's ruling is correct for the reasons set forth in Mrs. Brown's Reply Memorandum at pages 4-6.

Indeed, Terry Brown's argument is correct for the reasons stated in the *LSA's* Initial Memorandum, which admits that the Joint Stipulation "shift[s] the burden to the LSA to prove Petitioner's marriage to Decedent invalid." (LSA's Summ. J. Br. p. 16.)

To the extent that Terry Brown objects to this Court's denial of discovery, discovery is permitted only if there are relevant material issues of fact. There are no relevant issues of fact here, for as the Court properly found, the judgment of annulment is binding upon Terry Brown as a matter of law. The only facts referred to in this Court's holding are those to which the parties have stipulated. Terry Brown is not permitted to take discovery for the purpose of collecting facts to impeach his own stipulation.

Terry contends that due process rights have been violated. Whose rights? Does Terry think he has a due process right to posthumously annul the marriage his father chose not to

terminate?

17. Terry Brown makes a vague objection that this Court erred in applying certain unnamed elements of estoppel. To the extent that this vague allegation requires a response at all, the Court's estoppel holding is correct for the reasons stated in Mrs. Brown's Reply Memorandum at pages 42-52.

18. Terry Brown objects that Mr. Brown should not be bound by the annulment judgment. That annulment judgments bind all third parties is a matter of law. Restatement § 74(1). It is especially fair that it binds Mr. Brown, as he paid the legal fees that made the action possible and used the judgment to his benefit in the Aiken County annulment action. Contrary to Terry Brown's position, it was highly foreseeable that if Mrs. Brown had a valid marriage to Mr. Brown, she would be his surviving spouse at his death.

If Mr. Brown had objected to that result, he would not have paid the legal fees for Mrs. Brown's Charleston County annulment action and he would not have agreed to dismiss his own Aiken County annulment action. There is simply no room for doubt that Mr. Brown fully accepted Mrs. Brown as his spouse during the years before his death.

19. Terry Brown objects to this Court's holding on res judicata and collateral estoppel. That holding is correct for the reasons stated in Mrs. Brown's Reply Memorandum at pages 44-48.

In particular, contrary to Terry Brown's position, the binding effect of judgments is not limited to parties. In rem judgments bind all third parties. *See generally* Restatement § 74(1); (Mrs. Brown's Reply Mem. pp. 32-34). Even in actions that are not in rem, judgments bind persons who are in privity with a party, and persons are in privity with a party if they provide essential support for the litigation. (Mrs. Brown's Reply Mem. pp. 44-45); *Piney Oil*

& Gas Co., 258 Ky. 51, 79 S.W.2d 394 (applying the rule specifically to a person who paid part of a party's attorney's fees). Mr. Brown paid the attorney's fees that made the Charleston County action possible. He was therefore in privity with a named party, Mrs. Brown, and he is bound by the judgment.

This result is especially equitable, because Mr. Brown had a clear chance in the Aiken County annulment action to make all of the arguments that Terry Brown now makes. Instead, Mr. Brown chose to reconcile with Mrs. Brown, dismiss the action, and recognize her as his spouse for the remainder of his lifetime. Terry Brown would obviously prefer that Mr. Brown not have done this, but the choice of spouse was a decision for Mr. Brown, not Terry Brown. This Court's decision is consistent with Mr. Brown's clear decision to affirm rather than attack his marriage to Mrs. Brown.

20. Terry Brown further argues that this Court's holding made Mr. Brown a de facto party to Mrs. Brown's annulment action, and that this result violates Rules 1.6, 1.7, 1.8(f), and 5.4, RPC. This Court did not hold that Mr. Brown was a de facto party; it simply held that he was in privity with a party and was bound by the result of the annulment judgment.

Terry Brown does not explain how the named rules were violated. Terry Brown also does not explain how Mr. Brown, who was not an attorney, is bound by the Rules of Professional Conduct.

21. Terry Brown makes the remarkable argument that when Mrs. Brown agreed in the consent order dismissing the Aiken County annulment action not to waive any claim of a common-law marriage (*see* J. Stip. Ex. 19, ¶ 3), she agreed to waive any claim of statutory marriage. This is an absurd construction. If the intent of that consent order were to strike down the existing statutory marriage between Mr. and Mrs. Brown, the parties would have agreed to grant the annulment, not to dismiss it. The very concept of an order *dismissing* an annulment action

necessarily demonstrates that the marriage is being reaffirmed. That concept is strongly corroborated by the statement that the parties "have resolved their differences and are currently residing together." (J. Stip. Ex. 19, Finding 2.) Finally, Mr. Brown agreed to pay Mrs. Brown $12,000 toward her attorney's fees, which he would not have done if the parties had intended to annul the marriage, thereby terminating any duty Mr. Brown might have had to support Mrs. Brown.

Properly construed, the consent order of dismissal is a reaffirmation of the marriage between Mr. Brown and Mrs. Brown. Terry Brown obviously objects to that reaffirmation, but the decision of whom Mr. Brown should marry was not and is not Terry Brown's decision to make.

22. Terry Brown again objects to the Court's failure to allow discovery. Again, discovery is allowed only where it is relevant. Discovery is not relevant here, because the judgment of annulment binds all third parties as a matter of law. All facts necessary to reach this result are set forth in the Joint Stipulation. That stipulation was signed by counsel for Terry Brown, and Terry Brown is not now permitted to attack it.

23 & 24. Terry Brown argues that the Court misconstrued *Lukich*, 368 S.C. 47, 627 S.E.2d 754. Long-standing South Carolina law holds that a bigamous marriage is no marriage at all, in the past, present, or future. *Lukich* did not intend to overrule that case law and hold that a bigamous marriage is valid retroactively. On the contrary, as the Court found (Order of Jan. 13, 2015, pp. 13-14), *Lukich* involved two marriages, one of which was absolutely held void for bigamy. The Court did not err in refusing to construe *Lukich* to overrule years of South Carolina case law and give retroactive validity to a bigamous marriage.

Bluntly put, this Court should not be the first court ever in the recorded history of South Carolina to give any effect whatsoever to a bigamous marriage and thus contravene the bigamy

statute. A bigamous marriage is not marriage at all, either presently, prospectively, *or retroactively*. Mrs. Brown never had any form of valid marriage to Ahmed, at any time, at any place. Her marriage to Mr. Brown was therefore completely valid.

25 & 26(1). Terry Brown argues that the Court should have granted his motion for summary judgment. This is a conclusory attack on the Court's entire holding, which was correct for the reasons discussed previously.

Terry Brown seems to suggest that Mr. Brown's autobiography, which refers to Mrs. Brown as his wife (Aff. of Mrs. Brown, ¶ 10, Nov. 26, 2007), was sent to press before Mr. Brown knew of Ahmed. This is plainly wrong. The autobiography is dated 2005. (Aff. of Mrs. Brown, ¶ 10, Nov. 26, 2007 ("'James Brown: I Feel Good, A Memoir of a Life of Soul' (New American Library: 2005.").) The facts regarding Ahmed were fully disclosed in the Charleston County annulment action, which ended with a final judgment dated April 15, 2004. (J. Stip. Ex. 12, pp. 29-32.) The parties have stipulated that "James Brown was aware of the Ahmed Annulment litigation as his attorney received a copy of the Summons and Complaint in February 2004 and the Final Order of Annulment in April 2004." (J. Stip. p. 4, ¶ 14.)

It is apparent from these facts that James Brown was well aware of Mrs. Brown's relationship with Ahmed. If he had not been so aware, he would have prosecuted his Aiken County annulment action to judgment after he learned of Ahmed's existence. Instead, he dismissed that action and reconciled with Mrs. Brown. These actions show clearly that Mr. Brown wanted to be married to Mrs. Brown. Mr. Brown's children appear to disagree with his choice of wife, but the decision of whom to marry was his, not theirs.

26(2). In a second paragraph numbered 26, Terry Brown argues that the Court erred in determining that Ahmed was properly given notice of the Charleston County annulment action.

Terry Brown states no reasons for this contention and it requires little response. The Court properly found that notice was sent to Ahmed at his last known address, and he was properly served by publication.

27. Terry Brown argues that the Court erred in refusing to allow use of Mrs. Brown's diary. For the reasons set forth above, any mention of the diary is a serious violation of this Court's prior orders.

The diary is not, in any event, a relevant fact. Terry Brown argues only that it speaks to Mrs. Brown's state of mind, but her state of mind is not a relevant issue. Regardless of what Mrs. Brown thought on any matter, judgments of annulment are binding on third parties generally, and this specific judgment of annulment was binding upon Mr. Brown and his successors in interest.

In other words, the binding effect of the annulment is an issue of law, the result of which is not affected in any way by Mrs. Brown's state of mind. Her diary is therefore irrelevant, and the Court did not err by failing to consider it.

28 & 29. Terry Brown again makes the remarkable argument that the consent order dismissing the annulment action on the ground that the parties reconciled was actually intended as an admission that the annulment action was well-founded and that the parties were not married. The Court properly found that the consent order dismissing the annulment action on the ground that the parties had reconciled was necessarily intended to reaffirm the marriage. Terry Brown had no standing to question Mr. Brown's choice of spouse.

It borders upon the absurd for Terry Brown to claim that the Court erred in holding that an annulment action is a method to seek invalidation of marriage. "Annulment" is "the act of annulling, especially the formal declaration that annuls a marriage." dictionary.com "annulment," *available at* http://dictionary.reference.com/browse/annulment. To "annul" means "to make void

or null; abolish; cancel; invalidate; "to annul a marriage." *Id.* "annul." The Court did not err in recognizing a fact that is so basic that it appears in the dictionary definition of an annulment. *See also* Stuckey, Marital Litigation in South Carolina Chap. 3.D: "Annulments are actions to establish the invalidity of marriages"; see also Stuckey Chap. 3.E: "An annulment declares that a marriage never occurred due to some defect."

30. Terry Brown argues that the Court erred in holding that the Compromise Agreement establishes Mrs. Brown as Mr. Brown's spouse. Mrs. Brown does not see anywhere in this Court's opinion where it holds that the Compromise Agreement requires this result. To the extent that the Court so held, it was correct for the reasons stated in Mrs. Brown's Initial Memorandum at pages 32-35.

30-35. These paragraphs are nearly verbatim the same as paragraphs 15-18 in the LSA's Motion to Reconsider, and Mrs. Brown refers the Court to her responses above to those sections.

36-37. Mrs. Brown does not construe this Court's order to determine that the settlement agreement disapproved in *Wilson*, 403 S.C. 411, 743 S.E.2d 746, remains binding in any way. To the extent that the Court so held, it was correct for the reasons stated in Mrs. Brown's Initial Memorandum at pages 32-35.

38-40. These paragraphs merely restate Terry Brown's *Lukich* argument, which is wrong for the reasons stated above in Mrs. Brown's responses to paragraphs 23-24.

41. Terry Brown argues that the Court was also required to give retroactive validity to a bigamous marriage under *Joye*. Again, the law of South Carolina is and has always been that a bigamous marriage has no validity whatsoever. Terry Brown's construction of *Joye* is wrong for the reasons stated in Mrs. Brown's Reply Memorandum at pages 23-25.

42. Terry Brown makes a broad attack upon the Court's holding with regard to

personal jurisdiction, service, and due process. The Court properly rejected these arguments for the reasons set forth above in Mrs. Brown's response to paragraph 3 of Terry Brown's Motion, and more generally in this Court's order at pages 20-26.

43. Terry Brown argues that the Court erred because the Charleston County Family Court order was a default judgment. It was not a default judgment, for the reasons set forth above in Mrs. Brown's response to paragraph 10 of the LSA's Motion.

44. Terry Brown argues that the Court erred in holding that the Order of Publication in the Charleston County annulment action cannot be attacked. Terry Brown provides no reason why the Court is not bound by *Wachovia Bank*, 341 S.C. 424, 535 S.E.2d 128, and other South Carolina case law holding that an Order of Publication cannot be collaterally attacked. (Order of Jan. 13, 2015, p. 9.)

45. There is no serious doubt that Ahmed has never challenged the Charleston County annulment action. The Court is permitted to take judicial notice of court records, including the absence of any entry reflecting any objection by Ahmed. See Mrs. Brown's response to paragraph 7 of Terry Brown's Motion to Reconsider.

VII. RESPONSES TO JEANETTE MITCHELL'S MOTION

1. Jeanette Mitchell argues that the Court failed to draw inferences against Mrs. Brown on factual issues. But there are no factual issues before the Court. The Court granted summary judgment because, as a matter of law, James Brown and all persons claiming through him are bound by the judgment annulling Mrs. Brown's marriage to Ahmed. The factual issues identified by Jeanette Mitchell are all improper attempts to relitigate the merits of the annulment. As the Court held, as a matter of both jurisdiction and substantive law, the annulment is binding upon all parties in this proceeding.

Mitchell also fails to note an important exception to the general rule:

> All evidence, and inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Zurcher v. Bilton*, 379 S.C. 132, 135, 666 S.E.2d 224, 226 (2008). "However, *when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.*" *Rife v. Hitachi Constr. Mach. Ltd.*, 363 S.C. 209, 214, 609 S.E.2d 565, 568 (Ct. App. 2005).

Moore v. Barony House Rest., LLC, 382 S.C. 35, 40, 674 S.E.2d 500, 503 (Ct. App. 2009).

Thus, the rule requiring that inferences be drawn against summary judgment applies only when the facts are in dispute. When the record shows "plain, palpable and indisputable facts on which reasonable minds cannot differ," *id.*, summary judgment is proper.

Here, the parties agreed upon the fact by signing a Joint Stipulation. As a matter of law, the facts set forth in that Stipulation are "plain, palpable, and indisputable." Because there can be no dispute as to these facts, the Court was permitted to grant summary judgment.

2. Jeanette Mitchell argues that the Court erred in holding that the Settlement Agreement remained binding even though it was disapproved in *Wilson*, 403 S.C. 411, 743 S.E.2d 746. Mrs. Brown does not construe this Court's Order to state that the settlement agreement, to the extent disapproved in *Wilson*, remains binding in any way as a judicially approved settlement. To the extent that the Court so held, it was correct for the reasons stated in Mrs. Brown's Initial Memorandum at pages 32-35.

3. Jeanette Mitchell claims that the Court erred in holding that Mr. Bauknight was ordered to continue serving as special administrator. Mrs. Brown does not construe this Court's order to hold otherwise.

4. Jeanette Mitchell argues that the Court erred in staying discovery. Discovery is permitted only where necessary to litigate material issues of fact. All facts relied upon in the Court's ruling were set forth in a Joint Stipulation, which was signed by counsel for all parties. It

was not signed by counsel for Jeanette Mitchell, but Jeanette Mitchell is only an amicus curiae, and she is not in any position to question facts that all named parties have accepted.

In particular, Mrs. Brown's diary speaks only to her state of mind, but her state of mind is not relevant to the issues on which the Court ruled. The Court held that Mr. Brown's estate and heirs are bound, as a matter of law, by the Charleston County Family Court judgment annulling the marriage between Mrs. Brown and Ahmed. *The effect of that judgment depends upon the law, not upon Mrs. Brown's state of mind.* Mrs. Brown's diary is irrelevant, and the Court therefore did not err in refusing to order discovery of the diary.

5 & 6. Jeanette Mitchell argues that Ahmed was not properly served. As the Court held (Order of Jan. 13, 2015, p. 9), South Carolina law does not permit collateral attacks upon orders allowing service by publication. *E.g.*, *Wachovia Bank*, 341 S.C. 424, 535 S.E.2d 128. *Wachovia Bank* cited supported authority as far back as *Yates v. Gridley*, 16 S.C. 496 (1882). Only Ahmed had standing to argue that he was not properly served with process by publication, and Ahmed did not do so.

Jeanette Mitchell cites only one recent case in support of her argument, *Caldwell v. Wiquist*, 402 S.C. 565, 741 S.E.2d 583 (Ct. App. 2013), and there the issue was raised by the party who was served by publication in a direct appeal from the resulting order. The service issue here was not raised by Ahmed, and was not raised in a direct appeal from the annulment itself. The opposing parties in this action lack standing to contest the manner in which process was served upon Ahmed by publication.

In addition, the Order of Publication is based upon an affidavit by a private investigator, Ronald Pannell. The affidavit is Exhibit 6 to the Joint Stipulation, and it is therefore before the Court by consent of the parties. Pannell stated that he conducted

searches in several national databases and found only two Texas addresses for Ahmed. (J. Stip. Ex. 6.) He further stated that he had run a full skip trace report on Ahmed. (J. Stip. Ex. 6.) He could not locate Ahmed. *Id.*

Based on Pannell's affidavit, the Order of Publication expressly found that "the Plaintiff has made a diligent effort to locate the Defendant, Javed Ahmed." (J. Stip. Ex. 8.) Assuming that the Order of Publication can be attacked, and the Court properly found that it cannot, *Wachovia Bank*, 341 S.C. 424, 535 S.E.2d 128, Pannell's affidavit was sufficient evidence that "the person on whom the service of the summons is to be made cannot, after due diligence, be found within the State," S.C. Code Ann. § 15-9-710.

The Court should reject Jeanette Mitchell's attempt to distinguish *Yates*, 16 S.C. 49. Under section 15-9-710, whenever process is served by publication in any case, there must be proof that "the person on whom the service of the summons is to be made cannot, after due diligence, be found within the State." S.C. Code Ann. § 15-9-710. This requirement is contained in the very first clause of the statute, and it applies to all cases. While there are *additional* requirements in subsections 15-9-710(3) and (4) that do not apply in annulment cases, *Yates* was governed by *at least* the same basic due diligence requirement as the present annulment. The holding in *Yates* that the Order of Publication is binding is fully applicable here.

Jeanette Mitchell cites no authority applying South Carolina law for her remarkable argument that some magic buzz phrase must appear in an affidavit supporting service by publication. That may be the law of North Carolina; it is not the law of South Carolina. It was sufficient for Pannell to list in his affidavit the measures he used in an attempt to locate Ahmed, and allow the Court to determine whether those actions constituted due diligence. The Court so found, stating that "Plaintiff has made a diligent effort to locate the Defendant, Javed Ahmed." (J. Stip. Ex.

8, p. 1.)

In *Ray v. Pilot Fire Insurance Co.*, 128 S.C. 323, 121 S.E. 779 (1924), the court applied North Carolina law on this point because the issue was whether process had properly been served *in a North Carolina action.* The court did not hold under South Carolina law that any magic buzz phrase must be contained in an Order of Publication or the affidavit on which it was based. That is not and should not be the law of South Carolina.

The proper South Carolina rule was stated in *Caldwell*, which stated that "the affidavit must include some factual basis upon which the court issuing the order of service by publication can find that the defendant cannot, after due diligence, be found within the state." 402 S.C. at 574, 741 S.E.2d at 588. Pannell provided such a basis by listing the measures used to find Ahmed. The Order of Publication then made an express finding that "a diligent effort" had been made. This case is not at all like *Caldwell*, where the Order of Publication stated that service by publication was "necessary and proper" and did not mention diligence at all. *Id.* at 571, 741 S.E.2d at 587. This point is of secondary importance here, however, for as the Court properly held, an Order of Publication is final and cannot be attacked collaterally.

Finally, if some sort of magic buzz phrase rule is to be adopted, the rule should not be applied retroactively to process that was served long before the rule was adopted, at a time when no South Carolina law required any sort of magic buzz phrase in Orders of Publication or in affidavits supporting them.

7. Jeanette Mitchell argues that Ahmed had no notice of the hearing date. Notice was provided to Ahmed by letter, sent to him by certified mail, dated March 31, 2004. (J. Stip. Stip. Ex. 22, pp. 19-23.) The named parties to this action stipulated that "[t]he Charleston County Family Court found that Javed Ahmed was properly served by publication *and notified of the hearing*" in

the annulment action. (J. Stip. ¶ 17 (emphasis added).) See generally Mrs. Brown's response to ¶ 1(a) of the LSA's Motion to Reconsider. Jeanette Mitchell, who is only an amicus curiae, is not in any position to question a stipulation signed by all named parties.

If Jeanette Mitchell is arguing that Ahmed had to be served by publication all over again every time the hearing was continued, she cites no authority so providing. The Court is not required to conduct its own search for such authority. Ahmed was clearly given sufficient notice of the continuance.

8. Jeanette Mitchell argues that Mrs. Brown was estopped by the consent order dismissing the Aiken County action from making a claim to Mr. Brown's estate. She points to no provision of that consent order providing that Mrs. Brown will make no claim to Mr. Brown's estate. On the contrary, since the dismissal of the annulment on the ground that the parties had reconciled plainly left the marriage between Mr. Brown and Mrs. Brown intact, it was foreseeable and obvious that Mrs. Brown could potentially have a claim to Mr. Brown's estate.

If Jeanette Mitchell means to argue that Mrs. Brown's waiver of any claim as Mr. Brown's common-law wife was a waiver of any claim as his statutory wife, that claim is mistaken for the reasons stated above in paragraph 21 of Mrs. Brown's response to Terry Brown's Motion to Reconsider.

9. Jeanette Mitchell argues that the Court erred in finding no legal impediment to the marriage between Mr. and Mrs. Brown. On the contrary, the only such impediment suggested is Mrs. Brown's previous marriage to Ahmed. As the Court properly found, that marriage was held void ab initio by a court order that bound all third parties, and which specifically bound James Brown and all persons claiming through him, including Jeanette Mitchell. (*See* Mrs. Brown's Reply Mem. pp. 19-52.)

10 & 11. Jeanette Mitchell argues that the Court erred by not considering the marriage license filed by Ahmed, stating that he had no living prior wife. The application is an out-of- court statement, which Jeanette Mitchell is using for the truth of the matter asserted. It is therefore inadmissible hearsay. "This statement is clearly hearsay and does not fall under any of the hearsay exceptions enumerated in the Rules of Evidence. Therefore, it would be inadmissible evidence at trial and is inadmissible to refute a motion for summary judgment." *Hall*, 349 S.C. at 175-76, 561 S.E.2d at 657.

In addition, the application is not a sufficient reason to disregard a prior family court judgment, expressly holding that Ahmed was already married at the time he married Mrs. Brown. Jeanette Mitchell is trying to relitigate the merits of the annulment, which she has no standing to do. (*See* Mrs. Brown's Reply Mem. pp. 53-55.)

It is especially remarkable that Jeanette Mitchell seems to view the judgment of annulment, a final judgment from family court that binds all third parties, as equivalent to the marriage application, a hearsay document, never approved by any court or judge, which is not even admissible into evidence. These two documents are nowhere near equivalent; the judgment carries vastly more weight. Further, in presumably all bigamy cases involving a second ceremonial marriage, at least one of the parties thereto has undoubtedly misrepresented his or her marital status on a marriage application. This case is no different.

12. Jeanette Mitchell argues that the Court erred in taking judicial notice that Ahmed has not attacked the annulment order. This argument is mistaken for the reasons set forth above in Mrs. Brown's response to paragraph 7 of Terry Brown's Motion to Reconsider.

13. Jeanette Mitchell argues that the Court erred in speculating that Ahmed might have remarried and might have had children. The Court did not err in noting the mere *possibility*

that Ahmed had remarried and had children as an example illustrating the problem with not treating family court orders of status as final and binding.

14. Jeanette Mitchell argues that the Court erred in holding that Mr. Brown knew the obvious purpose of an annulment is to invalidate a marriage. This argument is mistaken for the reasons set forth above in Mrs. Brown's response to paragraphs 28 and 29 of Terry Brown's Motion to Reconsider. Jeanette Mitchell essentially argues that this Court is required to assume that Mr. Brown was ignorant of the common dictionary definition of an annulment, even though he brought an annulment action with respected counsel.

15. Jeanette Mitchell argues that it is not too late for Mr. Brown to collaterally attack the annulment order. For reasons stated through these responses, and more specifically in Mrs. Brown's Reply Memorandum at pages 19-52, the Charleston County annulment judgment binds all third parties generally, and binds James Brown and his heirs specifically.

Jeanette Mitchell further argues that it is not too late for Mr. Brown to attack the validity of his marriage to Mrs. Brown. Again, Mr. Brown was bound by the judgment of annulment, but generally as a third party and specifically as a person in privity with a party. (*See generally* Mrs. Brown's Reply Mem. pp. 19-52.)

To the extent that Jeanette Mitchell suggests that the Estate could actually bring an annulment action, the law is clearly otherwise. *See* § 62-2-802; *Hatchell-Freeman v. Freeman*, 340 S.C. 552, 532 S.E.2d 299 (Ct. App. 2000). This is consistent with the strong general rule nationwide that an annulment action cannot be brought after the death of either spouse. "In line with our prior holdings that a marriage can only be inquired into or dissolved by annulment during the lives of the parties, we now hold that an annulment action also abates upon death, as other jurisdictions have held." *Stuhr v.*

Oliver, 2010 Ark. 189, at 198, 363 S.W.3d 316, 321 (citing numerous cases from other states).

Finally, to the extent that Jeanette Mitchell cites the Prenuptial Agreement, she fails to acknowledge that issue is not the subject of this partial summary judgment.

16. Jeanette Mitchell argues that the Court erred by holding that Mr. Brown paid Mrs. Brown's legal fees in the annulment action. This point was expressly admitted in the Joint Stipulation. (*See* J. Stip. ¶ 13.) See also Mrs. Brown's response above to ¶ 1(d) of the LSA's Motion to Reconsider. Jeanette Mitchell, who is only an amicus curiae, is surely bound by a stipulation signed by all parties of record. Mrs. Brown is uncertain why the opposing parties seem to be trying so hard to disavow their own stipulation.

To the extent that Jeanette Mitchell claims that Mr. Brown paid Mrs. Brown's legal fees in return for a promise by her to waive all rights in his estate, she produces absolutely no evidence of such a condition or waiver.

17. Jeanette Mitchell argues that the present issue is moot, because Mrs. Brown waived her rights in the Prenuptial Agreement. Jeanette Mitchell cannot render the present issues moot simply by waving her hands and asserting that her position on the validity of the Prenuptial Agreement is obviously correct. The validity of the Prenuptial Agreement will be determined in future litigation.

If Jeanette Mitchell's argument is that the Court should have considered the validity of the Prenuptial Agreement first, it is surely not an abuse of discretion to consider whether a valid marriage existed before considering whether a valid premarital agreement existed.

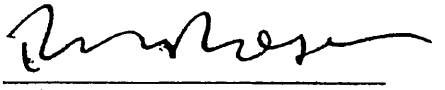
CONCLUSION

Nothing in any of the motions to reconsider raises any valid new issue. The Court has already held that it lacks jurisdiction to question the validity of the Charleston County annulment. The Court has further held that even if it has such jurisdiction, the annulment binds all third parties, and it especially binds Mr. Brown, who paid Mrs. Brown's attorney's fees and later asked the Aiken County Family Court to hold that it was bound by the annulment judgment's factual findings. Because Mrs. Brown never had a valid marriage to Ahmed, her marriage to Mr. Brown was not bigamous. The Court properly denied the opposing parties' motions for summary judgment, and properly granted summary judgment that Mrs. Brown is Mr. Brown's surviving spouse.

WHEREFORE, Mrs. Brown respectfully requests that this Court overrule all of the various motions to alter, amend, or reconsider, and reaffirm its Order of Jan. 13, 2015.

This Return and Motion is supported the record in this case, all applicable authority, and may be supplemented with additional affidavits, memoranda of law or other supporting material as permitted by the South Carolina Rules of Civil Procedure.

ROSEN LAW FIRM, LLC



Robert N. Rosen
Corey T. L. Smith
18 Broad Street, Suite 201
Charleston, SC 29401
843-377-1700
843-377-1709 (fax)
rnrosen@rosen-lawfirm.com
csmith@rosen-lawfirm.com

S. Alan Medlin
1713 Phelps Street
Columbia, SC 29205

T. Heyward Carter, Jr.
Andrew W. Chandler
M. Jean Lee
Evans, Carter, Kunes & Bennett
115 Church Street
P.O. Box 369
Charleston, SC 29402

David L. Michel
Michel Law Firm, LLC
15 State Street
Charleston, SC 29401

Sen. Arnold S. Goodstein
Goodstein Law Firm, LLC
P.O. Box 2350
Summerville, SC 29484-2350

ATTORNEYS FOR PETITIONER
TOMMIE RAE BROWN

June 28, 2015
Charleston, SC

STATE OF SOUTH CAROLINA) COUNTY OF AIKEN))	IN THE COURT OF COMMON PLEAS FOR THE SECOND JUDICIAL CIRCUIT Civil Action No. 2013-CP-02-02849 Civil Action No. 2013-CP-02-02850
Tommie Rae Brown,) Petitioner,) v.)) David C. Sojourner, Jr., in his capacity as Limited Special Administrator and Limited Special Trustee, Deanna Brown Thomas, Yamma Brown, Venisha Brown, Larry Brown, Terry Brown and Daryl Brown,) Respondents,) IN RE:) **THE ESTATE OF JAMES BROWN A/K/A JAMES JOSEPH BROWN**)	**MEMORANDUM OF LIMITED SPECIAL ADMINISTRATOR ON ISSUE OF APPLICATION OF *LUKICH V. LUKICH***

David C. Sojourner, Jr. (the "LSA"), as Limited Special Administrator for the Estate of James Brown and Limited Special Trustee of the James Brown August 1, 2000 Irrevocable Trust Agreement (collectively, the "Estate"), submits this memorandum regarding the application of *Lukich v. Lukich*, 368 S.C. 47, 627 S.E.2d 754 (Ct. App. 2006) ("*Lukich I*"), *aff'd as modified*, 379 S.C. 589, 666 S.E.2d 906 (2008) ("*Lukich II*") to the facts of the case.

On June 30, 2015 the Court heard oral arguments on certain parties' motions to reconsider the Court's January 29, 2015 Order (the "Order") granting Petitioner's Motion for Summary Judgment and denying the LSA's Motion for Summary Judgment (collectively, the "Motions for Summary Judgment"). At that hearing the Court asked the parties whether they contend the Court could rule upon the Motions for Summary Judgment without further discovery if the Court limited its ruling solely to the application of *Lukich I and II* to the Joint Stipulation

of Facts filed by the Parties on September 5, 2014 ("Stipulation"). The LSA believes the Court can issue such a ruling, and urges the Court to replace the Order with an order that is so-limited. [1]

The 46-page Order devotes only five pages to the *Lukich* analysis. The remaining 41 pages reference and discuss multiple other grounds for the Court's ruling. Indeed, the Order's Conclusion bases the Court's ruling on collateral and equitable estoppel, not even mentioning the *Lukich* decisions.[2]

The LSA applauds the Court for undertaking the present analysis and implores the Court to issue an amended order eliminating all of the extraneous portions of the Order. Some of the Court's conclusions in the Order turn upon judicial findings of disputed facts about which the Parties have not conducted discovery. On appeal, the Court's ruling will ultimately rise or fall over whether *Lukich* allows the 2004 Ahmed Annulment Order[3] to retroactively validate Petitioner's otherwise bigamous marriage to Decedent. The myriad other theories upon which the Order relies, including collateral and equitable estoppel, are either premature because the Parties have not been allowed to conduct discovery, are legally in error, or both.

The Court must take care to distinguish between applying the judgment of the Ahmed Annulment Order retroactively purely based upon *Lukich*, which the Court can decide based upon undisputed material facts, and applying the Ahmed Annulment Order's underlying facts

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[1] The LSA hereby incorporates all legal arguments made in his Motion for Summary Judgment, Memorandum in Support of Summary Judgment, Reply Memorandum, and all legal arguments made by counsel for the LSA during oral arguments on this matter.

[2] With respect, the Court signed without modification the order submitted by Petitioner following the summary judgment motion hearing. Accordingly, the LSA will refer to various positions taken in the Order as "Petitioner's position." The positions in the Order are uniformly consistent with Petitioner's briefs and arguments on summary judgment.

[3] Stipulation Exhibit 12.

and conclusions against the Estate based upon collateral, equitable, and some other estoppel theory.

The Court has directed the Parties to submit memos addressing how the Court should rule based solely upon an analysis of *Lukich*. This directive places before the Parties the following distinct issue:

> whether the April 15, 2004 Ahmed Annulment Order relates back so as to validate Petitioner's otherwise bigamous 2001 marriage to Decedent.

More precisely, the exact issue created by the Court's directive is:

> does the fact that the Ahmed Annulment Order concluded Ahmed lacked capacity to marry Petitioner in 1997 because he was already married change the otherwise clear application of the Supreme Court's ruling in *Lukich*?

As the Court considers the conflicting positions asserted by the LSA and Petitioner, the LSA urges the Court to closely examine the Petitioner's submission for three characteristics:

1) Does Petitioner's analysis make sense and is it easy to understand? The Supreme Court deals with this question directly and clearly in *Lukich II*. The entire opinion is only eight paragraphs and the analysis of how that opinion governs the question at hand does not require significant mental gymnastics or literary complexity.

2) Does the Petitioner deviate from the Court's requested analysis by arguing application of the Ahmed Annulment Order against the Estate through collateral estoppel, judicial estoppel, or equitable estoppel? At least one of the current Order's reversible errors is it applies the *findings* of the Ahmed Annulment Order against the Estate based upon collateral and/or equitable estoppel. For instance, the Order rules: "Nor will this Court re-open or re-litigate the underlying findings of fact of the annulment order...,"[4] and "Nor can this Court re-open or

[4] Order, p. 20.

review the findings of fact underlying the annulment order."[5] The Order contains more than ten such statements. Any application of the Ahmed Annulment Order to the present case based upon collateral or equitable estoppel will be reversible because estoppel theories can only be supported by findings on disputed material facts the Parties have had no opportunity to develop through discovery. Limiting the Order solely to the retroactive effect (if any) of the Ahmed Annulment Order under *Lukich* eliminates these elements of error.

3) Does the Petitioner continue to insist a decision not to give the Ahmed Annulment Order retroactive application necessarily declares the Ahmed Annulment Order invalid? Petitioner repeatedly asserts the LSA is asking the Court to "disregard a valid family court order," leading to chaos. Order, pp. 20, 21, 22, 23, and 24. Repetition of this statement ignores the LSA's clear position to the contrary, as well as the *in rem* nature of the Ahmed Annulment Order. The Ahmed Annulment Order is fully valid as to those who were not parties to the Ahmed Annulment Action (which, Petitioner admits, includes the Estate). As to those non-parties, the Ahmed Annulment Order establishes the relationship between Petitioner and Ahmed (i.e., that their marriage is annulled) *from the date of the Order forward.* This is one of the main hallmarks of *in rem* orders dealing with divorce and annulment and is why the chaos of which Petitioner continually warns does not result from the LSA's position.

The only facts the Court needs in order to rule upon these motions based solely upon *Lukich* are set forth and agreed to in the Stipulation:

> 1. "On February 17, 1997 Petitioner participated in a marriage ceremony with Javed Ahmed in Harris County Texas."[6]

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[5] Order, p. 21.

[6] Stipulation # 2, p. 2.

2. "On December 14, 2001, Petitioner and Decedent participated in a marriage ceremony in Beech Island, South Carolina."[7]

3. "From the February 17, 1997 marriage ceremony between Petitioner and Javed Ahmed through the December 14, 2001 marriage ceremony between Petitioner and Decedent, no order of any court or other occurrence of which the Plaintiff is aware at this time ended or caused to end any marriage that certain parties assert existed between Petitioner and Javed Ahmed."[8]

4. "On April 15, 2004 the Charleston County Family Court issued the Final Order in the Ahmed Annulment Action, a true copy of which is attached [to the Stipulation] as Exhibit 12."[9]

These are all undisputed material facts and the Court can rule upon the pending summary judgment motions based solely upon these facts *if the Court limits its ruling to the retroactive application of the Ahmed Annulment Order under Lukich.*

If the Ahmed Annulment Order had annulled Petitioner's marriage to Ahmed solely on a "voidable" ground (intoxication, for instance), this case would be legally identical to *Lukich* and this Court would be barred from applying that annulment retroactively. In that event, Petitioner's purported marriage to Decedent would be void as bigamous. Petitioner acknowledges the *Lukich* Court held "a voidable marriage is invalid only prospectively from the date of the annulment."[10]

The Petitioner (and the Order) asserts the key distinction between this case and *Lukich* is the Ahmed Annulment Order included a finding Ahmed was already married when he entered into marriage with Petitioner and therefore lacked the capacity to marry Petitioner (a "void"

[7] Stipulation # 5, p. 3.

[8] Stipulation # 6, p. 3.

[9] Stipulation # 11, p. 4.

[10] Order, p. 14.

ground). So the question becomes, does this single distinction change the resolution that *Lukich* otherwise requires?

It is noteworthy that while the "judgment" in the Ahmed Annulment Order annulled Petitioner's marriage to Ahmed and declared the marriage void *ab initio*, the judgment itself did not state the grounds for the Court's judgment. The grounds for the annulment are found in findings and conclusions in the body of the Ahmed Annulment Order, and base the annulment on potentially three grounds: 1) the marriage was not consummated (a "voidable" ground); 2) the marriage was procured by fraud (another "voidable" ground); and 3) Ahmed lacked the capacity to marry Petitioner because he was already married to another woman or other women (a "void" ground). This Court could only apply these findings in the present case, if at all, through collateral or equitable estoppel. Any such application would require the Court to go outside of *Lukich* and make findings between disputed facts. Such a ruling would be outside of the Court's current mandate to the Parties and would constitute reversible error, for the reasons previously mentioned.

The question posed by the Court is therefore whether the Supreme Court's ruling in *Lukich* is broad enough to prohibit retroactive application of the Ahmed Annulment Order granting an annulment of Ahmed's 1997 marriage to Petitioner, when one of the underlying grounds for the judgment is the "void" ground that Ahmed lacked capacity to marry Petitioner because he was already married. An analysis of the Supreme Court's eight-paragraph *Lukich* opinion answers this question with a resounding "yes – retroactive application is prohibited."

I. Summary of *Lukich*

Mrs. Lukich married Charles Havron in 1973. They never lived together but never divorced. In 1985, Mrs. Lukich married Mr. Lukich. The Lukiches lived together for eighteen

years. In August 2002, Mrs. Lukich filed a complaint in Berkeley County for separate support and maintenance.

During the proceeding, Mr. Lukich learned Mrs. Lukich never obtained a divorce from Mr. Havron. Mr. Lukich filed an action in September 2003 in Berkeley County to void his marriage to Mrs. Lukich on the ground of bigamy. A hearing was set for November 2003.

Meanwhile, in October 2003, Mrs. Lukich filed an action in Charleston County for annulment from Mr. Havron, alleging she and Havron were married during a night of heavy drinking and had never lived together as husband and wife. Havron submitted an affidavit to the family court corroborating Mrs. Lukich's allegations and did not contest the annulment. Judge Segars-Andrews granted Mrs. Lukich an annulment, declaring the marriage "void *ab initio*."

Mrs. Lukich then moved to dismiss Mr. Lukich's annulment action against her, supporting her motion with the annulment decree from Judge Segars-Andrews. Mrs. Lukich asserted because her prior marriage to Havron had been annulled, Mr. Lukich could no longer prove their subsequent marriage was bigamous. Her argument was premised on the legal position the "annulment decree rendered her marriage to Havron void *ab initio*, which creates the legal fiction that the marriage never existed."[11] The Berkeley County family court judge ruled Mrs. Lukich was barred from using her order of annulment from Havron as a defense to Mr. Lukich's action to void their marriage as bigamous and Mrs. Lukich appealed.

The Court of Appeals affirmed the family court's ruling.[12] The Supreme Court granted certiorari and affirmed the Court of Appeals ruling, as modified.[13]

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[11] *Lukich I*, 368 S.C. at 52, 627 S.E.2d. at 756.

[12] See *Lukich I*

[13] *Lukich II*, 379 S.C. 589, 666 S.E.2d 906 (2008).

II. Application of the *Lukich* holding to facts of this case.

Petitioner asserts because the Ahmed Annulment Order declared Petitioner's marriage to Ahmed void "ab initio," her marriage to Decedent is valid because it fits into the exception expressed in S.C. Code Ann. § 20-1-80 (Supp. 2007), titled "Bigamous Marriages shall be void: Exceptions," which provides in relevant part:

> All marriages contracted while either of the parties has a former wife or husband living shall be void. But this section shall not extend to a person . . . *whose first marriage shall be declared void by the sentence of a competent court.*[14]

Mrs. Lukich made this same argument, contending Section 20-1-80 created an exception for her otherwise bigamous second marriage because her first marriage had been "declared void by a competent court." Both the Court of Appeals and Supreme Court in *Lukich* rejected Mrs. Lukich's arguments. Similarly, this Court must reject Petitioner's assertions here.

In *Lukich I*, the Court of Appeals framed the legal issue:

> [W]hether an annulment which decrees a pre-existing marriage void *ab initio* can be used as a defense to an action to void a marriage as bigamous because the annulment relates back so as to give validity to a prior bigamous marriage.[15]

The Court of Appeals answered this question in the negative: "[W]e find an annulment that declares a pre-existing marriage void *ab initio* does not relate back so as to give validity to a marriage that was bigamous before the annulment was granted."[16]

The Supreme Court in *Lukich II* similarly foreclosed Mrs. Lukich's argument with the following holding:

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[14] *Id.* (emphasis added).

[15] *Lukich I*, 368 S.C. at 53, 627 S.E.2d at 757.

[16] *Id.* at 56, 627 S.E.2d at 758 (emphasis added).

> Under the statute's terms, Wife's "marriage" to Husband #2 was "void" from the inception since *at the time of that marriage* she had a living spouse and [Wife's first] marriage *had not been* *"declared void."*[17]

The Supreme Court therefore eliminated any doubt regarding how *Lukich* would apply to the present facts. The Supreme Court reads Section 20-1-80 to require the order declaring the first marriage void to have been issued *"at the time of [the second] marriage."*[18] Because the order declaring Mrs. Lukich's first marriage void *ab initio* "had not been" issued "at the time of" her second marriage, the Court held the exception in Section 20-1-80 did not apply. Likewise, here, because the Ahmed Annulment Order declaring Petitioner's marriage to Ahmed void *ab initio* "had not been" issued "at the time of" Petitioner's marriage ceremony with Decedent, the exception in Section 20-1-80 does not apply here.

The Supreme Court makes this conclusion certain:

> While an annulment order relates back in most senses, it does not have the ability to validate the bigamous second 'marriage.' . . . The statute speaks to the status quo at the time the marriage was contracted, and does not contemplate either a prospective or retroactive perspective. Any other construction of § 20-1-80 would lead to uncertainty and chaos."[19]

III. The facts of *Lukich* are not distinguishable.

Petitioner attempts to distinguish her case by asserting the *Lukich* holding only applies where the first marriage was annulled because the parties "had never lived together as husband and wife,"[20] and not where the first marriage is annulled as bigamous. Petitioner supports her assertion with Footnote 2 of the Court of Appeals decision.

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[17] *Lukich II*, 379 S.C. at 592, 666 S.E.2d at 907 (*citing* S.C. Code Ann. § 20-1-80) (emphasis added).

[18] *Id.* (emphasis added).

[19] *Lukich II*, 379 S.C. at 592-93, 666 S.E.2d at 907.

[20] *Lukich I*, 368 S.C. at 51, 627 S.E.2d at 756.

Footnote 2 stated the Court of Appeals' holding did not address situations where the annulled first marriage was one that never has legal validity in South Carolina, including "(1) bigamous marriages...; (2) same sex marriages...; and (3) marriages of minors under the age of 16....."[21]

While the Court of Appeals decision arguably left this question open, the Supreme Court closed it in several clear ways: First, the Supreme Court excluded the Court of Appeals footnote and any similar limitation in *Lukich II*. In spite of *Lukich I*'s footnote, the Supreme Court's holding in *Lukich II* is stated absolutely and without reservation:

> Under the statute's terms, Wife's "marriage" to Husband #2 was "void" from the inception since *at the time of that marriage* she had a living spouse and [Wife's first] marriage *had not been* *"declared void."*[22]

To make this point even clearer, *the Supreme Court's ruling does not even state the legal ground for the Family Court's annulment of Mrs. Lukich's marriage to Husband 1.* There is absolutely no mention of void marriages versus voidable marriages. In light of the Court of Appeals footnote 2, this omission from *Lukich II* makes it clear that under the present facts *any* order declaring a first marriage void *ab initio* must have been issued "at the time of" the second marriage in order to render the second marriage valid. In South Carolina, following *Lukich II, no* order annulling a first marriage, regardless of grounds, can be applied retroactively for the purposes asserted by Petitioner. As the Supreme Court held:

> The statute [§ 20-1-80] speaks to the status quo at the time the marriage was contracted and does not contemplate either a prospective or retroactive perspective. Any other construction of § 20-1-80 would lead to uncertainty and chaos.[23]

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[21] *Id.*, 368 S.C. at 58, 627 S.E.2d at 760.
[22] *Lukich II*, 379 S.C. at 592, 666 S.E.2d at 907 (*citing* S.C. Code Ann. § 20-1-80) (emphasis added).

[23] *Id.* at 592-93, 666 S.E.2d at 907.

The last paragraph of *Lukich II* further clarifies that ruling applies to *all* orders finding marriages void *ab initio*:

> [U]nder South Carolina's current view of bigamy, the Family Court has jurisdiction to decide all ancillary matters where it annuls a marriage and declares it void *ab initio*. *Rodman v. Rodman*, 361 S.C. 291, 604 S.E.2d 399 (Ct. App. 2004). It would be inconsistent at best to hold that a marriage declared void *ab initio* never existed for bigamy purposes, yet can serve as the foundation for a family court's division of property, alimony, and/or child support.[24]

The meaning of this paragraph and its application to the present facts becomes even clearer when one reads the following part of the South Carolina Court of Appeals holding in *Rodman*:

> There is no legal distinction between a marriage which is annulled and one terminated by reason of bigamy, as they are both void *ab initio*, or "from the inception." *Splawn v. Splawn*, 311 S.C. 423, 425, 429 S.E.2d 805, 806 (1993). In fact, the South Carolina Supreme Court has specifically held the family court has subject matter jurisdiction to equitably distribute property in a bigamous marriage. *Id.*, 311 S.C. at 424, 429 S.E.2d at 806.[25]

Rodman holds the Family Court may annul a marriage on the basis of bigamy, and still maintain jurisdiction over the parties' property distribution. If the annulment "related back" so that the annulled marriage never existed, then the family court would not have jurisdiction over the annulled-couple's property distribution. The *Rodman* court's ruling rejects this interpretation and *Lukich II's* citation of *Rodman* clarifies that ruling extends not just to orders annulling marriages on voidable grounds, but also orders annulling marriages on the ground of bigamy.

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[24] *Id.*

[25] *Rodman v. Rodman*, 361 S.C. 291, 296, 604 S.E.2d 399, 402 (Ct. App. 2004).

IV. South Carolina Probate Code § 62-2-802 does not prohibit this Court from determining Petitioner's purported marriage to Decedent was bigamous and therefore invalid.

Petitioner asserts § 62-2-802 precludes this Court from concluding Petitioner was not validly married to Decedent when he died and, therefore, not Decedent's surviving spouse.[26] Petitioner supports this position by asserting "Only the family court has jurisdiction over actions for annulments"[27] and "§ 62-2-802 requires that any divorce decree or annulment be signed by the court and filed in the office of the clerk of court" before the Decedent's death."[28]

Petitioner's argument ignores her burden of proof and mischaracterize the nature of the Probate Court's (and now, by removal, this Court's) obligation and authority.

The burden of proving surviving spouse status is on the person claiming an interest in the estate.[29]

> Where the evidence shows that the same person entered into a conflicting marriage, a presumption arises that the former marriage was dissolved by death or divorce.[30]

The Stipulation establishes Petitioner entered into a conflicting marriage with Javed Ahmed on February 17, 1997[31] and that the former marriage was not dissolved by death or

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[26] Order, pp. 23-26. Sections IV. B. and C.

[27] Id., p. 23.

[28] Id., p. 25.

[29] *See Byrd v. Byrd*, 279 S.C. 425, 308 S.E.2d. 788 (1983); *Calhoun v. Calhoun*, 277 S.C. 527, 290 S.E.2d 415 (1982).

[30] *Yarbrough v. Yarbrough*, 280 S.C. 546, 550, 314 S.E.2d 16, 18 (1984) (*citing Hallums v. Hallums*, 74 S.C. 407, 54 S.E. 613 (1906).(emphasis added)).

[31] Stipulation # 2, p. 2

divorce when Petitioner and Decedent had their marriage ceremony in 2001.[32] The burden is therefore on Petitioner to prove the invalidity of her 1997 marriage to Ahmed.

Regardless of the present burden, it is indisputable this Court has the jurisdiction and authority to hear evidence and rule upon whether Petitioner was validly married to Decedent when he died and, therefore, whether Petitioner is Decedent's surviving spouse. No Party is asking the Court to annul Petitioner's purported marriage to the Decedent. Nor is any Party asking the Court to reverse the prospective effect of the Ahmed Annulment Order. The LSA is asking this Court to rule upon the validity of Petitioner's purported marriage to Decedent.

Petitioner cites § 62-2-802 for the proposition that the *only* way the Court could find Petitioner is not Decedent's surviving spouse is if Petitioner had been "divorced from the decedent" or her "marriage to the decedent has been annulled" by an order "signed by the court and filed in the office of the clerk of court" during Decedent's lifetime.[33]

However, the Reporter's Comment to § 62-2-802 makes it clear that statute is not exclusive, stating:

> Perhaps other marital conditions, not valid as divorces or annulments and not detailed in Section 62-2-802(b), will continue by the common law to estop a putative spouse from claiming as a surviving spouse. See Section 62-1-103.[34]

There are reasons other than divorce or annulment through which this Court could find Petitioner is not Decedent's surviving spouse. The LSA is seeking a ruling on the most basic of these - that Petitioner and Decedent never validly married. Seeking this ruling is not the same as seeking an annulment. The Order itself recites:

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[32] Stipulation # 6, p. 3.

[33] Order, p. 25.

[34] § 62-2-802, Reporter's Comment.

> A bigamous marriage is void. In fact, "a void [bigamous] marriage technically needs no judicial action to declare that it is void."[35]

Petitioner's assertion Section 62-2-802 and/or the family court's purported exclusive jurisdiction to grant annulments and divorces somehow takes this case outside of the clear mandate of *Lukich II* is an unsupportable red herring and should be disregarded.

CONCLUSION

The clear and unambiguous holding of South Carolina's Supreme Court in *Lukich II* is that under S.C. Code Ann. §20-1-80, an order annulling a first marriage, regardless of grounds, can only validate an otherwise bigamous second marriage if it is issued prior to the second marriage. An order issued *after* the second marriage does not relate back so as to retroactively validate the second marriage.

The LSA is therefore entitled to an order finding: (1) when Petitioner participated in the December 14, 2001 marriage ceremony with Decedent, Petitioner was still lawfully married to Javed Ahmed; (2) on December 14, 2001 Petitioner lacked the capacity to marry Decedent because of South Carolina's law against bigamous marriages; (3) the Ahmed Annulment Order cannot retroactively validate Petitioner's bigamous December 14, 2001 purported marriage to Decedent; (4) Petitioner was not lawfully married to Decedent when he died on December 25, 2006; and (5) Petitioner is not Decedent's surviving spouse.

Based on these findings, the Court should issue an order on reconsideration denying Petitioner's motion for partial summary judgment, granting the LSA's motion for summary judgment, and denying Petitioner's omitted spouse and elective share claims.

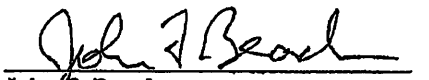
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[35] Order, p. 13, FN 22, citing Stuckey, *Marital Litigation in South Carolina,* Ch. 3.A.

In the event the Court does not grant summary judgment to the LSA, it must deny both motions and direct Petitioner to move forward and attempt to establish, through admissible, live evidence presented in this proceeding, that Ahmed was already validly married when he married Petitioner in 1997.

Respectfully submitted,

ADAMS AND REESE LLP



John F. Beach
Lyndey Ritz Zwing
1501 Main Street, Fifth Floor
Post Office Box 2285 (29202)
Columbia, South Carolina 29201
Telephone: (803) 343-1269
Facsimile: (803) 343-1224
john.beach@arlaw.com
lyndey.zwing@arlaw.com

Attorneys for David C. Sojourner, Jr. as Limited Special Administrator for the Estate of James Brown and as Limited Special Trustee of the James Brown 2000 Irrevocable Trust

July 30, 2015.

STATE OF SOUTH CAROLINA COUNTY OF AIKEN Ms. Tommie Rae Brown, Petitioner, v. David C. Sojourner, Jr., in his Capacity as Limited Special Administrator and Limited Special Trustee, Deanna Brown Thomas, Yamma Brown, Vanisha Brown, Larry Brown, Terry Brown and Daryl Brown Respondents. IN RE: The Estate of James Brown a/k/a James Joseph Brown	IN THE COURT OF COMMON PLEAS FOR THE SECOND JUDICIAL CIRCUIT Case No. 2013-CP-02-2849 (Omitted Spouse Claim) Case No. 2013-CP-02-2850 (Elective Share Claim) **RESPONDENT TERRY BROWN'S SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION TO ALTER, AMEND AND RECONSIDER**

TO: ALL COUNSEL OF RECORD

YOU WILL PLEASE TAKE NOTICE that ten days after service hereof of this supplemental brief, or as soon thereafter as he may be heard, Respondent Terry Brown will move the Court in accordance with Rule 59(a), (b) and (e) and 60(a) and (b) of the South Carolina Rules of Civil Procedure, for an order altering, amending, and/or reconsidering the Order Re Petitioner Tommie Rae Brown's Motion for Summary Judgment and the Limited Special Administrator's Motion for Summary Judgment, dated January 13, 2015 ("Summary Judgment Order").

RELEVANT PROCEDURAL STATUS

Respondent Terry Brown filed with this Court a Motion to Alter, Amend and Reconsider the Summary Judgement Order for Petitioner Ms. Hynie citing in excess of (60) enumerations of error. During the June 30, 2015 hearing on the Respondents' Motions to Alter, Amend and Reconsider, this Court directed the parties to brief and explain solely the merits and holding in the South Carolina Supreme Court case Lukich v. Lukich. Regardless of this Court's impending order on the Motions to Alter, Amend and Reconsider, a South Carolina Supreme Court appeal is inevitable by the losing party. An order supporting the Respondents' Motions to Alter, Amend and Reconsider whereby the Court reverses its Summary Judgment position, however, will solely be appealed on the merits of Lukich and the retroactive effects of annulments. A ruling for Petitioner will inevitably lead to a more protracted dispute on numerous points of law. As stated in his initial Motion to Alter, Amend and Reconsider, Respondent Terry Brown reiterates and incorporates all such arguments herein and reserves all remaining enumerations of error for appeal. This supplemental brief will focus primarily on the issue of the Lukich v. Lukich decision as it applies to the matter at hand.

ARGUMENT WITH LAW AND ANALYSIS

FACTS RELEVANT TO LUKICH LEGAL ANALYSIS

1. Petitioner("Ms. Hynie") and Ahmed filed a marriage license application on February 12, 1997 wherein Petitioner and Ahmed both swore under oath that neither were married at the time.[1]

[1] Affidavit of Scott Keniley attached to Memorandum of Law in Opposition to Petitioner's Motion for Partial Summary Judgment and in support of Respondent Terry Brown's Counterarguments.

2. Petitioner married Javed Ahmed ("Ahmed") on February 17, 1997 ("Hynie-Ahmed Marriage").[2]
3. Petitioner married James Brown("Mr. Brown") on December 14, 2001(Brown-Hynie Marriage").[3]
4. Charleston Family Court's April 15, 2004 annulment of Petitioner's February 1997 marriage to Ahmed in the case captioned Ahmed in Ms. Tommie Rae Hynie, a/k/a Tommie Rae Brown v. Ahmed, 2003-DR-1 0-4609 (the "Ahmed Annulment Action").
5. Petitioner obtained the Ahmed Annulment Order from the Charleston County Family Court (CCFC) on April 15, 2004 a/k/a Tommie Rae Brown v. Ahmed, 2003-DR-1 0-4609 (the "Ahmed Annulment Action").[4]
6. Petitioner has never proposed that she and Ahmed divorced, but she instead filed for an annulment which very clearly denotes that the parties were still married;[5]
7. Petitioner has not shown a death certificate of Ahmed, which would have made an annulment action moot;[6]
8. Petitioner's marriage to Mr. Brown was less than 5 years after the marriage to Ahmed thereby demonstrating that Ahmed was not missing for more than 5 years;[7]
9. Petitioner admittedly has no proof of factual bigamy in her marriage to Ahmed.

ANNULMENT FOR BIGAMY: A COMMON SENSE PERSPECTIVE

It is not disputed that bigamous marriages are void in South Carolina. That begs the question though; if bigamous marriages are void, then why did Ms. Hynie seek an annulment for

[2] Joint Stipulation of Facts, Exhibit 1.
[3] Joint Stipulation of Facts, Paragraph 5.
[4] Joint Stipluation of Facts, Exhibit 12.
[5] Id. at Exhibit 5.
[6] Id. at Exhibits 5 through 12.
[7] Id.

a marriage she allegedly deemed bigamous, void and never existed for all of those years prior to marrying James Brown? In fact, why would anyone need an annulment from a bigamist marriage? The answer is simple and logical. A person knowing of the alleged bigamous activity holds all the cards that would reveal the truth. Ms. Hynie held the alleged cards and she chose to withhold all of this information from everyone including Mr. Brown. The annulment order prevents chaos and is a required step under S.C. Code Section 20-1-80 to be able to marry another individual in South Carolina. If Petitioner's argument were correct, annulment actions would never be necessary if someone marries a bigamist. This is clearly not the law as stated by the plain reading of S.C. Code Section 20-1-80 by the South Carolina Supreme Court in Lukich v. Lukich. Further, these orders cannot act retroactively or prospectively because chaos ensues.

A clear and simple example of this chaos is this case. Ms. Hynie failed to put the world on notice that her marriage to Ahmed was terminated, by obtaining an annulment order, before she attempted to marry James Brown. As a result, her marital status has been thrown into a whirlpool of chaos. The parties incurred tens of thousands of dollars on their individual post Brown-Hynie Marriage annulments and millions of dollars and many wasted years determining Ms. Hynie's spousal status as it relates to the James Brown Estate. Not to mention that Ms. Hynie was intentionally left out of the James Brown Will which she witnessed being signed and she entered into a prenuptial agreement agreeing not to receive anything from his estate. Documents, that alone, were designed to avert extensive and costly litigation. Millions of dollars that could have provided scholarships to countless, faceless needy children from South Carolina and Georgia whose futures were inevitably altered because Ms. Hynie, in a most grossly negligent or intentional manner, did not or chose not to annul her alleged bigamous marriage and provide notice to the rest of the world prior to her attempt to marry James Brown.

Ironically, if not for the default Hynie-Ahmed Annulment Order where no factual proof of bigamy was provided, Ms. Hynie would have not one shred of factual argument to provide to this Court that her first marriage was bigamous. All she has is a court declared bigamy. According to Ms. Hynie, her first marriage was void, therefore, arguing, it is treated as if it never occurred. As previously stated, if the first marriage was void, then why did Ms. Hynie seek an annulment order? Ms. Hynie also had another, more appropriate, avenue available to her while Mr. Brown was alive. She could have sought affirmation of her marriage pursuant to § 20-1-520 which states:

> When the validity of a marriage shall be denied or doubted by either of the parties, the other may institute a suit for affirming the marriage and, upon due proof of the validity thereof, it shall be decreed to be valid and such decree shall be conclusive upon all persons concerned.

This was exactly the case between Mr. Brown and Ms. Hynie. Resolution of this matter would have been simple had Ms. Hynie, in response to Mr. Brown's questioning her about the Hynie-Ahmed Marriage, merely shown Mr. Brown the annulment order she received prior to her marriage to Mr. Brown, or better yet, based on Petitioner's arguments herein, merely shown Mr. Brown evidence of Ahmed prior marriage licenses and proof that Ahmed's prior marriages were not dissolved. One would think if the evidence of Ahmed's prior marriages did in fact exist, such evidence would have been paraded before this Court long ago. A person knowing of the alleged bigamous activity holds all the cards that would reveal the truth. Ms. Hynie held the alleged cards and she chose to withhold all of this information from everyone including Mr. Brown. Chaos! This is what Lukich avoids and disallows.

What is even more ridiculous about this case is the Petitioner's argument regarding void and voidable. If this Court were to accept Petitioner's argument on void versus voidable, it

would make the CCFC Order a mere formality that was unnecessary. Ms. Hynie is telling this Court that she need only stand up in Court and present her mole hill of hearsay evidence that she heard someone tell her that Ahmed had three wives and that when this is coupled with her theory of void versus voidable, this Court must rule in her favor. This to date is exactly what has happened and is a tremendous miscarriage of justice and quite frankly absurd. South Carolina law requires that an annulment order be issued. The statute could not be plainer and clearer. Further, it is the timing of that issuance of an annulment order that impacts the determination of marital status and the ability to marry. No other option is possible. Lukich makes this crystal clear. Petitioner has confused and quite frankly duped this Court into agreeing that void versus voidable matters. It does not.

Mr. Brown's marriage to Ms. Hynie was void *ab initio* as to Ms. Hynie and James Brown. As a result, neither party could enforce it as a legal marriage with any rights or obligations against the other. However, an annulment action was still necessary to allow either party to legally marry a third party because it was a bigamous relationship. A bigamous marriage in South Carolina is void. Mr. Brown, however, was required to pursue an annulment only prior to remarrying and the annulment order would remove the impediment for him to remarry by establishing court ordered public documents thereby giving notice to the world. He did not remarry so an annulment never became necessary. Interestingly, if this Court's most recent ruling is correct. Mr. Brown would not have been able to obtain an annulment even if he wanted to obtain one. The position this Court took was that no court could challenge or contravene the CCFC Order or facts supporting the Order. This ruling would have precluded Mr. Brown from seeking his own annulment action. Such a result is obviously wrong.

LUKICH v. LUKICH ANALYSIS

Ms. Hynie takes great strides to tender to this Court that a bigamous marriage is void and not voidable and that Lukich only addresses voidable annulments. Respondent Terry Brown agrees and does not dispute that bigamous marriages are void, but disagrees as to Petitioner's interpretation of Lukich as it applies to annulments for bigamy. Respondent Terry Brown's position, however, is that under Lukich, it does not matter whether a marriage is void or voidable for purposes of the analysis that the South Carolina Supreme Court requires for bigamous relationships. In analyzing Lukich, the following facts are all that is needed for the Lukich analysis:

1. Petitioner married Ahmed ("Ahmed") on February 17, 1997 ("Hynie-Ahmed Marriage").[8]
2. Petitioner married James Brown on December 14, 2001.[9]
3. Petitioner obtained the Ahmed Annulment Order from the Charleston County Family Court (CCFC) on April 15, 2004 a/k/a Tommie Rae Brown v. Ahmed, 2003-DR-1 0-4609 (the "Ahmed Annulment Action").[10]
4. From the February 17, 1997 marriage between Petitioner and Ahmed through the December 14, 2001 marriage ceremony between Petitioner and Decedent, no order of any court or other occurrence of which Plaintiff is aware at this time ended or caused to end any marriage that certain parties assert existed between Petitioner and Ahmed.[11]

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[8] Joint Stipulation of Facts, Exhibit 1.
[9] Joint Stipulation of Facts, Paragraph 5.
[10] Joint Stipluation of Facts, Exhibit 12.
[11] Joint Stipulation of Facts, Paragraph 6.

Petitioner's analysis of Lukich is simply wrong. The South Carolina Supreme Court affirmed the Court of Appeals ruling in Lukich, but wrote its own opinion to clarify the analysis used in its decision. The analysis supports granting Respondents' Motion for Partial Summary Judgment, not Petitioner's. The South Carolina Supreme Court in Wilson v. Dallas suggested a road map to this Court in footnote 16 as follows:

> The circuit court noted the decision of the Court of Appeals in Lukich v. Lukich, 368 S.C. 47, 627 S.E. 2d 754 (CT. App. 2006), in which the Court of Appeals held that an annulment declaring a spouse's first marriage void could not retroactively validate the spouse's second marriage. The circuit court distinguished Brown's situation, opining that the rule in Lukich did not apply where the first marriage was never valid because one of the parties was already married. This Court has since affirmed Lukich, in Lukich, 379 S.C. 589, 666 S.E. 2D 906 (2008). We express no opinion, however, on the circuit court's interpretation here.

Although the South Carolina Supreme Court expressed no opinion on this Court's void marriage analysis and its attempt to distinguish James Brown situation, it certainly neither opined "the circuit court is right" nor "the circuit court is wrong" for that matter. It simply noted that a period of time after this Court issued its order, wherein an attempt was made to distinguish the James Brown situation, the South Carolina Supreme Court subsequently issued its Lukich opinion affirming the Lukich decision of the South Carolina Court of Appeals. It seems clear that the South Carolina Supreme Court felt this footnote would aid this Court in making its decision on remand, otherwise they would not have written it. The South Carolina Supreme Court took the time to write a footnote in a rather lengthy opinion to point this Court to the concepts it had affirmed in Lukich that this Court did not have at the time that Wilson v. Dallas was originally decided. Specifically, the South Carolina Supreme Court took the time and went out of its way to write a footnote into its opinion regarding Lukich, which affirmed the concept that an annulment declaring the first marriage "void" could not retroactively validate the

spouse's second marriage. Further, it should be noted, the South Carolina Supreme Court, interestingly enough, pointed this Court to the Lukich opinion and specifically indicated that it was not going to comment on this Court's argument for an exception after summarizing this Court's argument in the initial ruling in Wilson v. Dallas. It is Respondents' opinion that the South Carolina Supreme Court was instructing this Court to follow the Lukich decision in making a ruling on Ms. Hynie thereby declaring her a bigamist.

Lukich makes it clear that Petitioner's alleged marriage to Mr. Brown was bigamy *ab initio*. Any other facts that are discovered in this matter will not change this result. The South Carolina Supreme Court makes analysis for bigamous relationships clear when it states:

> Under the statute's terms, Wife's 'marriage' to Husband #2 was 'void' from the inception since at the time of that marriage she had a living spouse and that marriage had not been 'declared void.'...The statute speaks to the status quo at the time the marriage was contracted, and does not contemplate either a prospective or a retroactive perspective. Any other construction of §20-1-80 would lead to uncertainty and chaos. ... **It would be inconsistent at best to hold that a marriage declared void *ab initio* never existed for bigamy purposes, yet can serve as the foundation for a family court's division of property, alimony, and/or child support.** (Emphasis added)

Placing the Lukich opinion language with our facts results in the following exactly on point example:

> Under the statute's terms, Wife's **(Hynie's)** marriage to Husband #2 **(Mr. Brown)** was void from inception since at the time of the marriage she had a living spouse (Ahmed) and that marriage had not been "declared void" **(20-1-80 third line)**[12] . . .The statute speaks to the status quo at the time the marriage **(Brown-Hynie)** was contracted and does not contemplate a prospective **(a Hynie-Ahmed Annulment)** or retroactive perspective. Any other construction of §20-1-80 would lead to uncertainty (Mr. Brown not knowing of a future annulment) and chaos **(this case)**. . . It would be inconsistent at best to hold that a marriage declared void ab initio **(Hynie-Ahmed Marriage)** never existed for

[12] **All marriages contracted** while either of the parties has a former wife or husband living shall be void. But this section shall not extend to a person whose husband or wife shall be absent for the space of five years, the one not knowing the other to be living during that time, not to any person who shall be divorced or whose first marriage shall be **declared void by the sentence of a competent court.**

bigamy purposes, yet can serve as the foundation for a family court's division of property, alimony, and/or child support.

South Carolina Code §20-1-80 provides:

> All marriages contracted while either of the parties has a former wife or husband living shall be void. But this section shall not extend to a person whose husband or wife shall be absent for the space of five years, the one not knowing the other to be living during that time, not to any person who shall be divorced or whose first marriage shall be declared void by the sentence of a competent court.

The terms "contracted while" indicates the status at the time Ms. Hynie contracted to marry James Brown. The term "while" cannot mean "subject to future determinations by competent courts." The South Carolina Supreme Court in its Lukich opinion, in interpreting such unambiguous language clearly supports the South Carolina Court of Appeals. The South Carolina Court of Appeals emphasized such Court's position in its opinion in Lukich when it specifically referenced the general rule applicable in 52 Am. Jur. 2d Marriage §57:

> [A]part from statute, bigamous marriage does not acquire validity when the prior subsisting marriage is legally terminated by divorce or by the death of the first spouse. The same rule is generally followed where the prior subsisting marriage is annulled after the second marriage is contracted, even though the purpose of an annulment proceeding is to declare that no valid marriage ever took place between the parties or that no valid marriage relation ever existed between the parties. **Even where the annulment decree expressly declares the first marriage null and void ab initio, it does not relate back so as to validate the second marriage.** In order for the subsequent marriage to be valid, it has been held that there must be a new ceremony following the termination of the earlier marriage. (Emphasis added). Lukich v. Lukich, 368 S.C. 47, 55, 627 S.E.2d 754, 758 (Ct. App. 2006).

The South Carolina Supreme Court has determined that the public policy of attempting to prevent bigamy has overridden all other considerations. The South Carolina Supreme Court's language when broken down into an analytical framework works for every situation on the continuum of multiple marriages if analyzed from each individual's perspective in the relationship at the point in time at which the parties attempt to get married. The South Carolina Supreme Court has determined that a person's capacity to marry a subsequent spouse will be

determined by that individual's capacity and status **at that time and does not contemplate either a prospective or a retroactive perspective.** In other words, the power to free one's own capacity to marry another individual rests solely in the hands of the person seeking to marry another individual. Simply put, the first spouse in time to enter into a bigamous relationship is the gatekeeper who has the ability to clear his or her own capacity to marry another individual and declare to the world that the first marriage does not exist. As between the world or spouse number 2 and a married party wanting to remarry, obviously the married party is the vessel of the truth of his/her status. As between James Brown and Ms. Hynie, Ms. Hynie was the only party with knowledge of her prior marriage. She could have and should have legally recorded the prior marriage's conclusion to let the rest of the world know that she was free to marry. By not doing so, chaos, such as we have in the matter sub judice is the result. The South Carolina Supreme Court suggested this would occur without the Lukich rule.

If a person is married and wants to have the ability to marry someone else, they must have one of three things occur: 1) the first marriage annulled; 2) the first spouse divorced; or 3) the first spouse dies. The power lies in the spouse seeking to be married again. The only person that can truly know if they are married is the person who is seeking to be married a second time. In this matter, Ms. Hynie did not know of any facts proving Ahmed was married other than merely believing the alleged Ahmed statements saying as much. Even if the alleged Ahmed statements regarding his other wives actually happened, that certainly does not make the alleged statements a fact. Further, such statements alone do not actually annul Ms. Hynie's marriage without the entry of an annulment order.

As a result, an individual seeking a subsequent marriage faces the harshest penalty (i.e. being declared a bigamist) under the South Carolina Supreme Court analysis. The sanctity of

marriage must be protected at all costs thereby not allowing either party to enforce rights and obligations of a normal marital relationship when bigamy exists. This analysis works in both relationships in the matter at hand (i.e. the Hynie-Ahmed and Brown-Hynie) with a consistent application of the protection of the sanctity of marriage and prevention of bigamy. As such, the analysis and results must be correct because the equitable result is the same for both Petitioner in her relationship with Ahmed and Mr. Brown in his relationship with Petitioner. Both would need to seek an annulment order to be able to remarry. The only difference between the two is it did not matter in Mr. Brown's case because he was not seeking to be married again.

It is irrelevant, for purposes of the Lukich analysis in the case at hand, whether Ahmed was married at the time he married Petitioner. If Ahmed was married prior to his marriage to Petitioner, the analysis under the annulment statute grants Petitioner the right to annul her marriage and remove her incapacity to marry a subsequent individual as soon as the annulment is granted.[13] Further, her marriage to Ahmed would be void *ab initio* as to any rights or obligations that either party could attempt to enforce upon the other. Any other result would reward bigamy. The same would be true of the Brown-Hynie alleged marriage as well.

Petitioner would have the right to marry another individual once a court declared the marriage void because of bigamy. This is the only way the analysis can work as it fully protects the spouse upon whom bigamy is perpetrated, but also protects third parties as to status of the relationship with the filing of the annulment order as a public record. The bigamist is unable to enforce any rights upon the other purported spouse *ab initio* and either party has the right to clear

[13] Petitioner argued at the hearing that it would be unnecessary to actually obtain the annulment order because the annulment occurred *ab initio*. This is exactly the chaos as to which the Lukich decision speaks. If individuals did not actually have to go to court and obtain an annulment order as proof that a marital relationship was terminated, society would have no idea whether individuals were married or not. Marriages could be voided *ab initio* in the legal world that Petitioner's propose with no document filings to prove such a result. This would be utter chaos.

the incapacity to marry a third party by seeking an annulment.[14] It should be noted that this analysis even works if both parties are bigamists at the time that they attempt to get married. To terminate the bigamist relationship, either party could file an annulment thereby terminating the bigamous relationship upon entry of an order of annulment. Additionally, as in a relationship where only one party is a bigamist neither party would have a right to enforce rights or obligations on the other *ab initio.*

As a result, it does not matter whether Ahmed was married prior to entering into his relationship with Petitioner. What matters is whether either Petitioner or Ahmed rectified the restrictions on Petitioner's capacity to marry when she attempted to marry a subsequent individual. As far as we know, Petitioner was not a bigamist at the time she married Ahmed because she alleges she was unmarried and allegedly unaware of Ahmed's alleged prior marriages. Ahmed would be a bigamist if her unsupported allegations were true. Petitioner, or Ahmed for that matter, could then seek to annul the marriage because of the bigamy. Upon the grant of an annulment order by a competent court, Petitioner removes the impediments on her capacity to marry. Petitioner did exactly this on April 15, 2004.[15]

Petitioner, however, became a bigamist in the above analysis, when she attempted to marry Mr. Brown. At the time of her attempted marriage to Mr. Brown in 2001,[16] she was married to Ahmed. From the February 17, 1997 marriage between Petitioner and Ahmed through the December 14, 2001 marriage ceremony between Petitioner and Decedent, no order of any court or other occurrence of which Plaintiff is aware at this time ended or caused to end

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[14] Interestingly enough, the bigamist would have two relationships to clean up if they were the party seeking to clear their capacity to marry. They would have to annul the bigamist relationship into which they entered and terminate their initial relationship through divorce, annulment or death. This Court will not address the legal wisdom and costs that a bigamist may incur from being the party that actually files for the annulment.

[15] Joint Stipulation of Facts, Exhibits 5 through 12.

[16] Joint Stipulation of Facts, Exhibit 4.

any marriage that certain parties assert existed between Petitioner and Ahmed.[17] An annulment order was not obtained until April 15, 2004, therefore, Petitioner had no capacity to marry Mr. Brown. As such, Petitioner is a bigamist and neither party may enforce the relationship as it relates to rights and obligations among one another *ab initio*. Mr. Brown regains his capacity to marry another party when either he or Petitioner seek an annulment (which he did) and obtain an Order, which he did.[18] Even if Petitioner were to argue that the Brown-Hynie Consent Order was not an annulment, it would not matter. Petitioner could not enforce any rights of the marriage *ab initio* due to her incapacity to marry at the time of the ceremony with Mr. Brown. The only person who would have an issue with the fact that an annulment may or may not have occurred would be a subsequent spouse that Mr. Brown attempted to marry, which he did not do. As can be seen from this analysis, the continuum is intact and the analysis produces the same result in every situation, which is to protect the sanctity of marriage and avoid bigamy.

The South Carolina Supreme Court makes it clear that the statute does not contemplate a retroactive or prospective analysis in the determination of bigamy. Petitioner attempts to apply the Lukich analysis in a retroactive fashion which is the fatal flaw in her analysis. She claims that the April 15, 2004 annulment order proved that the marriage was void from the beginning. This is a retroactive application of the annulment action because such fact had not been declared by a competent court at the time James Brown allegedly married Petitioner on December 14, 2001.

As Petitioner's argument fails to do, bigamy under the Lukich analysis may only be viewed on an individual basis from a particular point in time. As a result, the South Carolina Supreme Court grants the spouse with the knowledge of his or her own marital status at the time

[17] Joint Stipulation of Facts, Paragraph 6.
[18] Joint Stipulation of Facts, Exhibits 15, 16 & 18.

that they attempt to marry another individual the sole and autonomous right to avoid bigamy and ultimately, chaos. This can be the only way the analysis works. Otherwise the cycle could continue. For purposes of example, what if Ahmed actually had other wives when he married Ms. Hynie and then he had all those marriages annulled *ab initio* for reason of bigamy in 2015? Do those annulments *ab initio* for bigamy make Ahmed's marriage to Ms. Hynie valid because the other marriages were void *ab initio* for bigamy? That is Petitioner's argument, which fails for the reasons noted. A bigamous relationship is void *ab initio* and neither party may enforce the rights and obligations of a marriage. However, capacity is not cleared until the annulment order is issued by a competent court. Once cleared, a party could enter into a subsequent marriage to a third party. The equity that is provided to all parties, including third parties to the relationship, involved with the application of this analysis is sublime.

Annulment Orders as It Relates to Void versus Voidable.

Lukich applies regardless of Petitioner's attempt to obfuscate and confuse the discussion with the terms of void versus voidable. The South Carolina Supreme Court did not make this distinction. However, for purposes of argument, Respondents provide the following analysis. The Petitioner attempts to distinguish Lukich from the case sub judice by denoting Lukich's first marriage was voidable and in this case, Hynie's first marriage was void for bigamy rather than voidable and as a result bigamous marriages are void from inception.

Void versus voidable was not addressed in Lukich, however, the South Carolina Court of Appeals in its Lukich opinion referenced 52 Am.Jur. 2d Marriage §57.[19] The South Carolina

[19] [A]part from statute, bigamous marriage does not acquire validity when the prior subsisting marriage is legally terminated by divorce or by the death of the first spouse. The same rule is generally followed where the prior subsisting marriage is annulled after the second marriage is contracted, even though the purpose of an annulment proceeding is to declare that no valid marriage ever took place between the parties or that no valid marriage relation

Supreme Court affirmed Lukich. In fact, 52 Am.Jur. 2d Marriage §57 clearly addresses bigamy in its analysis in such clear concise language that inserting the names of the parties in the matter sub judice is exactly the answer that this Court must reach:

> [A]part from statute, **bigamous (Hynie-Brown)** marriage does not acquire validity when the prior subsisting **(Hynie-Ahmed)** marriage is legally terminated by divorce or by the death of the first spouse. The same rule is generally followed where the prior subsisting **(Hynie-Ahmed)** marriage is annulled **after** the second **(Hynie-Brown)** marriage is contracted, even though the purpose of an **(Hynie-Ahmed)** annulment proceeding is to declare that no valid marriage ever took place between the parties **(Hynie-Ahmed)** or that no valid marriage relation ever existed between the parties**(Hynie-Ahmed)**. Even where the **(Hynie-Ahmed)** annulment decree expressly declares the first **(Hynie-Ahmed)** marriage null and void ab initio, it does not relate back so as to validate the second **(Hynie-Brown)** marriage. In order for the subsequent **(Hynie-Brown)** marriage to be valid, it has been held that there must be a new ceremony **following** the termination of the earlier **(Hynie-Ahmed)** marriage.

Instead of the above, Petitioner is arguing and this Court has currently ruled that the Hynie-Ahmed marriage was void from the beginning (which the above language makes clear does not matter and is impossible because the annulment order was not entered until April 15, 2004) and therefore void rather than voidable which essentially means she did not have to file for the annulment. This cannot be possible. Query what happens if Ahmed had filed a Rule 60 Motion on the fraudulently obtained CCFC annulment order within a year of its issuance and proven it to be just that? Under Petitioner's theory of how the Lukich analysis works and this Court's ruling, this would mean that the Hynie-Ahmed Marriage was no longer void under her theory. As such, under the Petitioner's analysis and this Court's ruling, James Brown would yoyo from being not married, to married when the CCFC Order was issued, and then not married again when the CCFC annulment order was overturned. This is absolute lunacy and the chaos that the South Carolina Supreme Court speaks to.

---

ever existed between the parties. Even where the annulment decree expressly declares the first marriage null and void ab initio, it does not relate back so as to validate the second marriage. In order for the subsequent marriage to be valid, it has been held that there must be a new ceremony following the termination of the earlier marriage. (Emphasis added). Lukich v. Lukich, 368 S.C. 47, 55, 627 S.E.2d 754, 758 (Ct. App. 2006).

Under Respondents' and the South Carolina Supreme Court's analysis of Lukich, the James Brown marriage would be void from the beginning and unaffected by any of the above changes in circumstances related to the Hynie-Ahmed marriage because it is analyzed at one point in time which is December 14, 2001. All that matters is what a party's marital status is at the time of an attempted marriage. Petitioner is trying to get this Court to enforce Lukich in a manner that creates retrospective and prospective application of its rules. The South Carolina Supreme Court very clearly said this is not how the analysis works. The relation back in time effect Petitioner claims is the exact chaos Lukich describes if everything after the bigamist marriage is washed away as if it never occurred. Petitioner's position will open flood gates and create chaos for all bigamist to avoid prosecution or gain economic advantage.

Further, as aforementioned, what if Ahmed in 2015, seeks and annulment of all of the alleged marriages and is successful in being granted the same? Would that deem his marriage in 1997 to Petitioner valid? Under Petitioner's analysis and this Court's current ruling, it would. Suddenly, Petitioner's bigamy would be resurrected because now Ahmed was not married when Ms. Hynie married him in 1997 and everything is void *ab initio*. If the analysis works for Petitioner, it would work for Ahmed. As a result, with Petitioner's analysis and this Court's current ruling James Brown could go from being married after Hynie-Ahmed annulment occurs to not married and in a bigamous relationship after Ahmed and his alleged wives annulments occur. This would punish the innocent unknowing party to the bigamous relationship. The continuum could never end. That is why the analysis requires a specific point in time. That is why Respondents' analysis and the South Carolina Supreme Court's analysis are absolutely correct and Petitioner and this Court's current ruling are wrong. Respondents' analysis creates the same result every time for James Brown, as well as any party for that matter, regardless of

what third parties do or do not do. James Brown was never married because Ms. Hynie was a bigamist when they attempted to marry.

An additional issue with the void versus voidable argument arises when, interestingly, Ms. Hynie argues the drunkenness annulment was voidable and bigamy is void which she uses as her main point in an attempt to distinguish Lukich. All parties agree that bigamous marriages are void, however, there is no evidence that Ms. Hynie's marriage was actually bigamous. In fact, it is incontrovertible and stipulated that Ms. Hynie has no factual knowledge of Ahmed's alleged prior marriages. Therefore, Ms. Hynie did not and does not know whether Ahmed had a wife or wives at the time he married her. As a result, it is not a fact that Ahmed was a bigamist and that her marriage was void as a result of being bigamous. It was not until April 15, 2004 that the CCFC granted an annulment for bigamy. Ms. Hynie, if she had chosen to do so, could have continued life married to Ahmed, because she really did not or does not know whether he had other wives or not. By way of example, had Ahmed won the lottery after his marriage to Ms. Hynie and before the annulment, Ms. Hynie would have a spousal claim. There is no fact of Ahmed's actual bigamy so Ms. Hynie only has manufactured bigamy by order of a court. Based on Hynie's ridiculous argument, her marriage to Ahmed was therefore voidable, not void until the ruling of April 15, 2004 which would still bring this into the analysis under Lukich. However, with all of this said, it does not matter. Lukich does not distinguish between void versus voidable and neither does 52 Am. Jur. 2d Marriage §57.

As a final problem with Petitioner's argument that attempts to inject the concepts of void versus voidable in her flailing attempt to distinguish Lukich, she ignores some very important facts. The South Carolina Supreme Court simply stated that a bigamous marriage is void. The term voidable appears nowhere in the actual construct of the opinion (as noted below it appears

in a 1947 case cite, but only as a reference that such relationship is absolutely void and not merely voidable). Any attempt to distinguish between these terms reads language into the Lukich case that does not exist. Petitioner attempts to befuddle and confuse this Court by doing so. The South Carolina Supreme Court made it very clear that the way to review South Carolina Code Section 20-1-80 was through the plain language of the statute. They did not say that you look through to the type of marriage (i.e. void or voidable) that may or may not exist. The South Carolina Supreme Court lumped all bigamous relationships into one category regardless of how they came to be, which is that they are void. Specifically, they noted:

> 'A mere marriage ceremony between a man and a women, where one of them has a living wife or husband, is not a marriage at all. Such a marriage is absolutely void, and not merely voidable' Lukcih v. Luckich, 379 S.C. 589, 592 (citing Howell v. Littlefield, 211 S.C. 462, 46 S.E.2d 47 (1947))

At the time that Ms. Hynie attempted to marry James Brown, she was still legally married to Ahmed because an annulment was not declared until April 15, 2004. As such, the language cited above applies and Ms. Hynie's attempt to marry James Brown was "absolutely void." Petitioner tries to argue that it is this same language that made Ms. Hynie's marriage to Ahmed void and thereby freeing her capacity to marry Mr. Brown. However, there is a major fallacy in this argument under South Carolina law. South Carolina Code Section 20-1-80 requires that the "first marriage (Hynie-Ahmed Marriage in this instance) shall be declared void **by the sentence of a competent court**. This did not occur until April 15, 2004. As such, the Hynie-Ahmed marriage was not VOID until April 15, 2004, thereby freeing her capacity to marry as of that date.

This Honorable Court has at its disposal the ability to dispose of this entire action in one swift stroke. All of the arguments made by the parties regarding evidence, annulment, service,

extrinsic and intrinsic evidence, collateral estoppel, res judicata and every other argument made by any party in this matter need not be addressed because the entire matter may be disposed of as a matter of law. The South Carolina Supreme Court in Lukich provides that vessel clearly and convincingly when it states:

> Under the statute's terms, Wife's 'marriage' to Husband #2 was 'void' from the inception since at the time of that marriage she had a living spouse and that marriage had not been 'declared void.'...The statute speaks to the status quo at the time the marriage was contracted, and does not contemplate either a prospective or a retroactive perspective. Any other construction of §20-1-80 would lead to uncertainty and chaos. ... It would be inconsistent at best to hold that a marriage declared void ab initio never existed for bigamy purposes, yet can serve as the foundation for a family court's division of property, alimony, and/or child support.

The parties jointly stipulated to the facts that Ms. Hynie was married to Ahmed at the time she allegedly married Mr. Brown on December 14, 2001. She did not annul her relationship with Ahmed until April 15, 2004. Ms. Hynie never had another marriage ceremony of any type with Mr. Brown after the first one of December 14, 2001. There can be no other facts that can be obtained through discovery that will change or alter these facts. The parties have stipulated to them. As noted in the above analysis of Lukich and its application to these facts, this Honorable Court can reach but one conclusion, Ms. Hynie is a bigamist. Therefore, based on such result, Respondents' Motion for Partial Summary Judgment must be granted as matter of law and this Honorable Court's previous order vacated.

This 30th day of July, 2015.

Respectfully submitted.

John A. Donsbach
South Carolina Bar No. 69681
Donsbach & King, LLC
P.O. Box 212139
Martinez, Georgia 30917
Telephone: (706) 650-8750
Facsimile: (706) 651-1399
Email: jdonsbach@donsbachking.com
Attorney for Respondent Terry Brown

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	
	)	
Ms. HynieBrown,	)	CASE NO. 2013-CP-02-02849
	)	CASE NO. 2013-CP-02-02850
Petitioner,	)	
	)	
v.	)	
	)	**CERTIFICATE OF SERVICE**
David C. Sojourner, Jr., in his capacity as Limited Special Administrator and Limited Special Trustee, Deanna Brown Thomas, Yamma Brown, Vanisha Brown, Larry Brown, Terry Brown and Daryl Brown,	)	
	)	
Respondents,	)	
	)	
IN RE:	)	
	)	
THE ESTATE OF JAMES BROWN A/K/A JAMES JOSEPH BROWN	)	
	)	

This is to certify that I have caused to be served this day, one copy of the **Respondent Terry Brown's Supplemental Brief in Support of Motion to Alter, Amend, and Reconsider** and **Certificate of Service** by placing a copy of the same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed hereto and addressed as follows:

Robert N. Rosen, Esq.
Rosen Law Firm, LLC
18 Broad Street, Suite 201
Charleston, SC 29401

Arnold S. Goldstein
208 Sumter Avenue
Summerville, SC 29483

John F. Beach, Esq.
Adams and Reese LLP
1501 Main Street, Fifth Floor
Columbia, SC 29201

David B. Bell, Esq.
Law Offices of David B. Bell
619 Greene Street
Augusta, GA 30903-1011

Louis Levenson, Esq.
Levenson & Associates
125 Broad Street, SW
Atlanta, GA 30303

William J. Barr, Esq.
108 N. Academy St.
Kingstree, SC 29556

J. David Black, Esq.
P.O. Drawer 2426
Columbia, SC 29202-2426

Matthew D. Bodman, Esq.
1500 Calhoun Street
Columbia, SC 29201

T. Heywood Carter, Jr., Esq.
P.O. Box 369
Charleston, SC 29402

James Mixon Griffin, Esq.
P.O. Box 11208
Columbia, SC 29211

C. Havird Jones
Assistant Attorney General
State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549

S. Alan Medlin, Esq.
1713 Phelps Street
Columbia, SC 29205

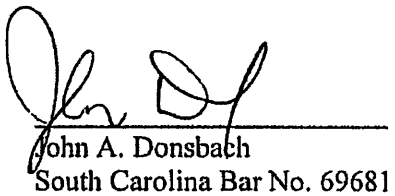
David L. Michel, Esq.
15 State Street
Charleston, SC 29401

Itriss J. Jenkins
Itriss J. Jenkins, LLC
215 E. Bay St., Suite 203
Charleston, SC 29401

A. Peter Shahid, Jr., Esq.
Shahid Law Office, LLC
89 Broad Street
Charleston, SC 29401

Scott Keniley, Esq.
Keniley Kumar, LLC
Two Ravinia Drive, Suite 500
Atlanta, GA 30346

This 30th day of July, 2015.



John A. Donsbach
South Carolina Bar No. 69681
Attorney for Respondent
Terry Brown
Donsbach & King, LLC
P.O. Box 212139
Martinez, Georgia 30917
Telephone: (706) 650-8750
Facsimile: (706) 651-1399
Email: jdonsbach@donsbachking.com

STATE OF SOUTH CAROLINA | COURT OF COMMON PLEAS

COUNTY OF AIKEN | 2008-CP-02-1647

HENRY DARGAN MCMASTER, ET AL. :
:
-VS- : TRANSCRIPT OF RECORD
:
RUSSELL L. BAUKNIGHT, ET AL. :

JANUARY 30, 2009
AIKEN, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DOYET A. EARLY, III, JUDGE.

A P P E A R A N C E S:

LOUIS LEVENSON, ESQUIRE
LORI CHRISTMAN, ESQUIRE
ATTORNEYS FOR THE HEIRS

ROBERT N. ROSEN, ESQUIRE
DAVID L. MICHEL, ESQUIRE
T. HEYWARD CARTER, ESQUIRE
S. ALAN MEDLIN, ESQUIRE
ATTORNEYS FOR TOMMIE RAE HYNIE BROWN

ADELE J. POPE, ESQUIRE
ROBERT L. BUCHANAN, JR., ESQUIRE
SPECIAL ADMINISTRATORS

A. PETER SHAHID, JR., ESQUIRE
ATTORNEY FOR THE GUARDIAN AD LITEM

STEPHEN M. SLOTCHIVER, ESQUIRE
GUARDIAN AD LITEM

DAVID B. BELL, ESQUIRE
MATT BODMAN, ESQUIRE
ATTORNEYS FOR TERRY BROWN, FORLANDO BROWN,
AND ROMUNZO BROWN

C. HAVIRD JONES, JR., ESQUIRE
MARY FRANCES G. JOWERS, ESQUIRE
SOUTH CAROLINA ATTORNEY GENERAL'S OFFICE

WAYNE R. BYRD, ESQUIRE
ATTORNEY FOR MR. DALLAS AND MR. BRADLEY

TRESSA HAYES, ESQUIRE
ATTORNEY FOR THE PERSONAL REPRESENTATIVES

JAMES M. GRIFFIN, ESQUIRE
ATTORNEY FOR LARHONDA PETIT AND CINNAMON PARIS

FRED L. KINGSMORE, JR., ESQUIRE
ATTORNEY FOR RUSSELL BAUKNIGHT

SONJA R. TATE, ESQUIRE
ATTORNEY FOR BUDDY DALLAS

JAN L. WARNER, ESQUIRE
MAX PICKELSIMER, ESQUIRE
ATTORNEYS FOR MR. CANNON

WILLIAM BARR, ESQUIRE
ATTORNEY FOR JEANETTE MITCHELL

ALSO PRESENT:

JAMES GILREATH, ESQUIRE
JACQUE HOLLANDER, PRO SE

DAPHNE D. HELMS
CIRCUIT COURT REPORTER

I N D E X

WITNESS

RUSSELL BAUKNIGHT

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ADELE J. POPE

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THE COURT: THANK YOU. GOOD MORNING. PLEASE BE SEATED.

MR. ROSEN: YOUR HONOR?

THE COURT: HOLD ON A SECOND, PLEASE. ALL RIGHT. WHERE IS EVERYBODY?

MR. ROSEN: I WAS GOING TO SAY ALAN AND SONNY AND DAVID BELL ARE IN THE HALLWAY.

THE COURT: WELL, IT'S 10:00. I'M READY TO GO.

MR. ROSEN: ALL RIGHT. THANK YOU.

THE COURT: DO WE HAVE EVERYBODY? WHERE IS WARNER?

MR. WARNER: RIGHT HERE, YOUR HONOR.

THE COURT: GOOD MORNING.

MR. WARNER: GOOD MORNING.

THE COURT: ALL RIGHT. WAYNE, HAVE WE GOT EVERYBODY?

MR. BYRD: YES, SIR, AS FAR AS I KNOW.

THE COURT: ALL RIGHT. IT CHANGES WEEKLY. WHO ARE THESE PEOPLE IN THE BOX OVER HERE? THEY NEED TO SIT IN THE AUDIENCE, PLEASE. WE'RE READY TO BEGIN. LET ME -- A LITTLE GROUNDWORK, GROUND RULES. WE HAVE A NEW COURT REPORTER TODAY, AND I WOULD ASK THAT YOU PLEASE IDENTIFY YOURSELVES EACH TIME YOU SPEAK. SHE DOES NOT KNOW ALL OF YOU BY FACE AND NAME. FAIR ENOUGH?

SECOND OF ALL, I WANT TO THANK THOSE OF WHO HAVE SENT THEIR FEELINGS TO ME AND THEIR SYMPATHY TO ME REGARDING THE DEATH OF MY DAD. IT MEANT A LOT; I APPRECIATE IT. PROFESSOR?

MR. MEDLIN: YOUR HONOR, I'M ALAN MEDLIN AND I'M SORRY I DIDN'T GET A CHANCE TO CHECK IN---

COURT REPORTER: MR. MEDLIN?

MR. MEDLIN: ---BEFORE WE GOT STARTED.

COURT REPORTER: MEDLIN?

THE COURT: MEDLIN.

MR. MEDLIN: MEDLIN. M-E-D-L-I-N.

COURT REPORTER: THANK YOU.

MR. MEDLIN: I WAS GOING TO ASK THE COURT'S INDULGENCE. A FEW OF US ARE TRYING TO IRON OUT AN ISSUE THAT I THINK IF WE COULD IRON OUT IT WOULD REALLY MAKE THE PROCEEDINGS A LOT MORE EFFICIENT THIS MORNING, BUT WE NEED JUST A FEW MORE MINUTES.

THE COURT: HOW MUCH TIME DO YOU NEED, PROFESSOR?

MR. MEDLIN: TEN MINUTES?

THE COURT: CERTAINLY. EVEN THOUGH SOME PEOPLE SAY I'M NOT EFFICIENT, I WILL CERTAINLY ALLOW YOU TO DO SO.

MR. MEDLIN: THANK YOU, YOUR HONOR.

THE COURT: ALL RIGHT. MR. MEDLIN, I'M GOING TO GO BACK IN CHAMBERS, AND IF YOU NEED MORE THAN 10 MINUTES -- BUT I DON'T WANT TO -- DO YOU THINK IT'S GOING TO SPEED THINGS ALONG OR...

MR. MEDLIN: I THINK---

THE COURT: I DON'T WANT TO DELAY THIS MORNING IF IT'S NOT GOING TO HELP US.

MR. MEDLIN: YOUR HONOR, I THINK IT WILL SPEED MATTERS ALONG IF WE CAN GET THIS...

THE COURT: WELL, YOUR CREDIBILITY GOES A LONG WAY WITH ME, SO I'LL TRUST YOU AND I---

MR. MEDLIN: THANK YOU, YOUR HONOR. THAT'S QUITE AN HONOR.

THE COURT: WE WILL STAND AT EASE FOR ABOUT 10 OR 15 MINUTES. THANK YOU.

MR. MEDLIN: THANK YOU.

THE COURT: WHERE IS THE LADY THAT'S -- WHERE ARE YOU FROM?

MS. HOLLANDER: ILLINOIS.

THE COURT: MA'AM?

MS. HOLLANDER: ILLINOIS.

THE COURT: ALL RIGHT. I THINK YOU ASKED SOMEBODY IF YOU COULD SEE ME. IS THAT CORRECT?

MS. HOLLANDER: I ASKED TO SPEAK TO ADDRESS YOU IN COURT.

THE COURT: IN COURT OR DO YOU WANT TO COME TALK TO ME IN PRIVATE?

MS. HOLLANDER: YES, SIR. CAN I?

THE COURT: YEAH. COME ON.

(WHEREUPON, A SHORT BREAK WAS TAKEN.)

THE COURT: THANK YOU. PLEASE BE SEATED. I RECOGNIZE PROFESSOR MEDLIN.

MR. MEDLIN: GOOD MORNING, YOUR HONOR.

THE COURT: GOOD MORNING.

MR. MEDLIN: THANK YOU FOR YOUR INDULGENCE. I THINK WE DID MANAGE TO IRON OUT A WRINKLE THAT WILL SAVE THE COURT SOME TIME TODAY. YOUR HONOR, AS YOU KNOW, WE HAVE ON BEHALF OF THE SO-CALLED SETTLEMENT ENTITY MADE A MOTION TO APPROVE OUR SETTLEMENT AGREEMENT WHICH WE FIRST ANNOUNCED BACK IN AUGUST OF 2008, THE TERMS OF WHICH WE DISTRIBUTED IN A COURTESY DRAFT ON NOVEMBER THE 25TH, 2008, AND THEN ONCE YOUR HONOR APPOINTED A SPECIAL ADMINISTRATOR AND A SPECIAL TRUSTEE FOR THE PURPOSE OF MAKING RECOMMENDATIONS ABOUT OUR MOTION TO APPROVE, WE HAD SOMEONE TO NAME AS THE FIDUCIARY IN OUR MOTION. SO WE HAVE FILED AND SERVED A MOTION TO APPROVE WHICH IS AGAIN CONSISTENT WITH WHAT WE TALKED ABOUT IN COURT ON NOVEMBER THE 25TH.

AT THAT TIME THE SETTLEMENT DID NOT INCLUDE TERRY BROWN AND HIS TWO SONS, FORLANDO AND ROMUNZO. WE ARE NOW HAPPY TO ANNOUNCE - I HOPE MR. BELL WILL CLARIFY IF I'M SPEAKING IMPROPERLY - THAT WE HAVE NOW INCLUDED THOSE THREE GENTLEMEN IN OUR SETTLEMENT. AND SO THEY, TOO, WOULD BE A PART OF OUR PRESENTATION TO APPROVE OUR SETTLEMENT.

THE COURT: SO THAT LEAVES -- DOES THAT LEAVE ANYBODY THAT YOU DEEM TO BE AN INDISPENSABLE PARTY OUT OF THE SETTLEMENT?

MR. MEDLIN: YOUR HONOR, WE HAVE THREE OTHER PARTIES

THAT I'M AWARE OF WHO HAVE MADE SOME TYPE OF CLAIM AGAINST THE ESTATE WITH WHAT I WOULD CONSIDER TO BE A SHARE OF THE ESTATE AS OPPOSED TO A CREDITOR'S CLAIM. TWO OF THOSE CLIENTS ARE REPRESENTED BY JIM GRIFFIN, AND ONE OF THOSE CLIENTS IS REPRESENTED BY WILLIAM BARR. THEY ARE NOT CURRENTLY PART OF OUR SETTLEMENT AGREEMENT. WE DON'T THINK THAT THEY NEED TO BE PART OF OUR SETTLEMENT AGREEMENT, AND AS WE WILL DISCUSS AS WE GO THROUGH OUR MOTION, WE DO NOT INTEND IN ANY WAY FOR OUR SETTLEMENT AGREEMENT TO IMPINGE OR INFRINGE ON ANY RIGHTS OF ANY PARTY THAT'S NOT A PARTY TO THE SETTLEMENT AGREEMENT. WE JUST ARE ASKING THE COURT TO APPROVE THE BINDING PRIVATE SETTLEMENT AGREEMENT AMONG SOME OF THE PARTIES THAT WE HAD ALREADY ENTERED INTO.

SO THE COURT APPROVAL WOULD SIMPLY BE TO RECOGNIZE THAT THIS IS A FAIR AND REASONABLE SETTLEMENT AMONG THOSE PARTIES WITH THE EXPLICIT UNDERSTANDING THAT WE IN NO WAY INTEND TO AFFECT ANY RIGHTS THROUGH OUR SETTLEMENT AGREEMENT OF ANY NON-SETTLING PARTY. AND I APOLOGIZE IF I'VE LEFT OUT OTHER PARTIES WHO MAY HAVE AN INTEREST, BUT THOSE ARE THE THREE PARTIES THAT WE THINK WOULD BE RELEVANT.

HAVING SAID THAT, YOUR HONOR, WE THINK THAT OUR SETTLEMENT RENDERS MOOT A LOT OF LITIGATION THAT COULD POSSIBLY INVOLVE THOSE OTHER THREE POTENTIALLY RELEVANT PARTIES.

THE COURT: WHAT DOES IT MOOT?

MR. MEDLIN: WELL, YOUR HONOR, OUR SETTLEMENT WOULD WITHDRAW THE WILL AND TRUST CONTEST BROUGHT BOTH BY MY CLIENT, MRS. BROWN, AND BY MR. LEVENSON'S CLIENTS, THE FIVE CHILDREN AND THEIR CHILDREN. IT WOULD MOOT THE ISSUE OF MRS. BROWN'S SPOUSAL SHARE, AND SO A LOT OF THE FIGHTING AND THE LITIGATION OVER WHICH OF THE BENEFICIARIES, HEIRS, SPOUSES, CHILDREN, RELATIVES OF JAMES BROWN WOULD BE ENTITLED TO A SHARE OF HIS ESTATE TO THE EXTENT THAT THIS COURT CAN DEAL WITH THAT -- BECAUSE, OF COURSE, AS WE DISCUSSED LAST TIME, YOUR HONOR, THERE ARE FEDERAL RIGHTS FLOATING OUT THERE THAT, IF WE'RE CORRECT, WE THINK MAY NEED TO BE HANDLED IN FEDERAL COURT. THE---

THE COURT: HOW ABOUT---

MR. MEDLIN: ---DISMISSAL OF THOSE---

THE COURT: ---YOUNG J ?

MR. MEDLIN: ---MATTERS -- YOUNG J IS, WE THINK, COVERED UNDER THE SETTLEMENT AGREEMENT. WE THINK HIS MOTHER HAD THE AUTHORITY TO BIND HIM.

THE COURT: AND MR. BELL'S CLIENTS.

MR. MEDLIN: AND MR. BELL'S CLIENTS AGAIN I THINK ARE NOW PART OF OUR SETTLEMENT ENTITY TEAM.

THE COURT: OKAY. NOW, WHAT DOES THAT DO WITH ALL THE CREDITORS' CLAIMS?

MR. MEDLIN: YOUR HONOR, THE ADMINISTRATION OF THE ESTATE---

THE COURT: WILL CONTINUE.

MR. MEDLIN: ---WILL CONTINUE. I'M NOT SURE THAT'S EXACTLY THE OPERATIVE WORD HERE BUT---

THE COURT: WELL---

MR. MEDLIN: ---BUT WILL BEGIN IN EARNEST TO DEAL WITH THOSE CLAIMS.

THE COURT: I THINK IT WILL CONTINUE.

MR. MEDLIN: THOSE -- THOSE -- THOSE MATTERS WOULD BE ONGOING. ANY LITIGATION AGAINST DEFENDANTS FOR CLAIMS THAT THE ESTATE MIGHT HAVE AGAINST OTHERS WOULD BE ONGOING AS WOULD BE PART OF ANY NORMAL ADMINISTRATION OF THE ESTATE. WHAT WE THINK WE HAVE RESOLVED - WE THINK TOTALLY BUT CERTAINLY IN LARGE PART AMONG THE SETTLING PARTIES - TOTALLY AMONG THE SETTLING PARTIES, WE THINK TOTALLY AMONG ALL THE PARTIES BUT CERTAINLY IN LARGE PART AMONG ALL THE PARTIES - IS FIGHTING AMONG THEMSELVES ABOUT WHAT SHARE, IF ANY, THEY WOULD TAKE IN THE ESTATE OF MR. BROWN.

THE COURT: WHY HAVE WE NOT INCLUDED MR. GRIFFIN'S CLIENTS AND THE OTHER CLIENT?

MR. MEDLIN: WE HAVE NOT YET BEEN ABLE TO REACH A FINAL UNDERSTANDING WITH EITHER ONE OF THOSE GENTLEMEN'S CLIENTS, YOUR HONOR. WE CERTAINLY ARE OPEN TO THAT, BUT AGAIN WE THINK THAT OUR SETTLEMENT REALLY RENDERS IRRELEVANT ANY LITIGATION ISSUES AMONG THE PARTIES THAT MIGHT CONTINUE. OF COURSE, MR. BARR AND MR. GRIFFIN CAN SPEAK TO THAT THEMSELVES

BUT THAT'S---

THE COURT: SO IF THE COURT -- IF THE COURT WERE TO APPROVE THE SETTLEMENT, THEN WE STILL HAVE ALL THE -- THE LITIGATION THAT'S NOW PENDING, I.E. AGAINST THE ESTATE AND THE ESTATE AGAINST OTHERS, WOULD CONTINUE. THE ADMINISTRATION OF THE ESTATE WOULD CONTINUE, AND WHATEVER IS LEFT WHEN ALL IS SAID AND DONE WOULD BE DIVIDED AMONGST THE CORPUS. WHATEVER IS LEFT, WHEN ALL EXPENSES ARE PAID, WOULD THEN BE DIVIDED PURSUANT TO YOUR AGREEMENT.

MR. MEDLIN: YES, YOUR HONOR. IT WOULD BE A NORMAL ESTATE ADMINISTRATION CONCEPTION, AND ANY ESTATE ADMINISTRATION -- NOTICE I USED THE WORD CONCEPTION, YOUR HONOR. I DIDN'T...

THE COURT: AND SO WHAT YOU'RE ASKING ME TODAY, AS LIKE WE TALKED ABOUT, IS UNDER SECTION 62-3-1102 IS TO CONDUCT A HEARING TO DETERMINE IF THE CONTEST OR CONTROVERSY IS IN GOOD FAITH, THE EFFECT OF THE AGREEMENT UPON THE INTERESTED PERSONS REPRESENTED BY THE FIDUCIARIES, AND WHETHER OR NOT IT'S JUST AND REASONABLE AND MAKE AN ORDER APPROVING THE AGREEMENT AND DIRECTING ALL THE FIDUCIARIES, SUBJECT TO MY JURISDICTION, TO EXECUTE THE AGREEMENT AND COMPLY WITH IT. IS THAT WHAT YOU'RE ASKING?

MR. MEDLIN: YES, YOUR HONOR. THAT'S EXACTLY WHAT WE'RE ASKING.

THE COURT: ALL RIGHT. LET ME HEAR FROM MR. BELL. MR.

BELL, YOU STEADFASTLY HAVE BEEN ONE OF THE NON-SETTLING PARTIES, AND I HAVE RECEIVED YOUR MEMORANDUM AND READ THE CASE OF DUNCAN VERSUS ALEWINE WHICH YOU RELY HEAVILY UPON AND WHICH I'VE READ. ARE YOU NOW IN THE FOLD, SO TO SPEAK?

MR. BELL: I DON'T KNOW. YOUR HONOR---

THE COURT: YOU DON'T KNOW?

MR. BELL: MAY IT PLEASE THE COURT, YOUR HONOR? ON BEHALF OF MY CLIENT, TERRY BROWN, I SENT A LETTER OF JANUARY 29TH, 2009, TO MR. JONES. I WOULD LIKE TO FILE THAT WITH THE CLERK OF COURT AND MAKE IT PART OF THE RECORD. IT'S SET OUT, YOUR HONOR -- WOULD YOU GIVE ME A STAMP OR A STICKER, PLEASE? IT'S SET OUT, YOUR HONOR---

THE COURT: HOLD ON. SHE CAN'T DO TWO THINGS AT ONCE.

(MR. BELL'S EXHIBITS 1, 2, AND 3 FOR TERRY BROWN, FORLANDO BROWN, AND ROMUNZO BROWN WERE RECEIVED IN EVIDENCE.)

MR. BELL: YOUR HONOR, I'M GOING TO FILE WITH THE COURT WHAT'S MARKED AS EXHIBIT NUMBER 1 WHICH IS A LETTER DATED JANUARY 29TH, 2009, ON BEHALF OF MY CLIENT, TERRY BROWN, THAT I SENT TO MR. JONES THAT OUTLINED FIVE POINTS THAT WE RECOMMENDED TO OUR CLIENT THAT BE A PART OF THE TERMS OF AN AGREEMENT FOR HIM TO SETTLE. YOUR HONOR, IN RESPONSE TO THAT MR. JONES WROTE ME BACK A LETTER THE SAME DAY IN WHICH MR. JONES OFFERED TO MAKE TERRY BROWN A PART OF THE SETTLEMENT ENTITY WITH TERRY BROWN RECEIVING A SETTLEMENT ENTITY SHARE OF 4.7916---

MR. LEVENSON: JUDGE, I---

THE COURT: HOLD ON. THAT'S ALL RIGHT. I JUST WANT TO KNOW NOW IF YOU CAN AGREE TO IT.

MR. LEVENSON: I DON'T UNDERSTAND---

THE COURT: THE TERMS -- I'M NOT INTERESTED IN THE TERMS RIGHT THIS SECOND. I'M JUST TRYING TO SEE WHO ALL IS IN AGREEMENT.

MR. BELL: YOUR HONOR, I VERY MUCH WANT THE TERMS TO BE ON THE RECORD SO THAT THEY'RE---

THE COURT: THEY WILL BE IN JUST A SECOND, BUT LET'S -- I'M JUST TRYING TO GET A FEELING IF YOU'RE IN THE FOLD, IF YOU AGREE. HAVE YOU AND MR. JONES AND THE PROFESSOR AND MR. LEVENSON REACHED AN AGREEMENT?

MR. BELL: YOUR HONOR, MR. JONES AND I HAVE HAD A NUMBER OF CONVERSATIONS THE LAST FEW DAYS. THERE HAVE AT TIMES BEEN SOME MISUNDERSTANDINGS AND MISCOMMUNICATION, VERY WELL MIGHT HAVE BEEN ON MY PART. IT IS VERY CRITICAL TO MY CLIENT THAT I PUT THIS ON THE RECORD, YOUR HONOR, AS TO WHAT THEY HAVE AGREED TO.

THE COURT: WHO OBJECTS TO THAT?

MR. LEVENSON: I DO. I DO, JUDGE.

THE COURT: WHY?

MR. LEVENSON: THESE ARE SETTLEMENT NEGOTIATIONS. WHAT WE BELIEVE THAT MR. MEDLIN, PROFESSOR MEDLIN, WAS REPRESENTING TO THE COURT WAS THE PRODUCT OF DISCUSSIONS BACK

AND FORTH. IT IS INAPPROPRIATE TO TENDER INTO EVIDENCE FOR THE PUBLIC RECORD NEGOTIATIONS BACK AND FORTH WHICH LED TO WHATEVER AGREEMENT DR. -- PROFESSOR MEDLIN IS REPRESENTING TO THE COURT WE HAVE REACHED. I WOULD RESPECTFULLY URGE THAT THE COURT INQUIRE OF MR. BELL WHAT HE UNDERSTANDS THE TERMS TO BE WHICH WE WILL REPRESENT TO THE COURT SHORTLY, NOT WHAT NEGOTIATIONS LED TO THAT AGREEMENT.

THE COURT: WELL, I'M NOT SURE WHAT HE'S PUTTING IN. ARE YOU PUTTING IN THE NEGOTIATIONS OR THE FINAL AGREEMENT?

MR. BELL: YOUR HONOR, I MIGHT -- THERE IS NO FINAL AGREEMENT AT THIS TIME, AND MY CLIENT IS -- IT HAS NOT BEEN PREPARED, YOUR HONOR. THAT'S WHY I FEEL IT INCUMBENT TO PUT THIS IN THE RECORD SO THAT THERE IS NO MISUNDERSTANDING.

THE COURT: WELL, LET THE PROFESSOR AND THE A.G. AND MR. LEVENSON AND ET AL. LOOK AT IT AND SEE IF THERE'S ANY AGREEMENT OR DISAGREEMENT---

MR. BELL: WELL, THESE ARE LETTERS THAT WE HAVE -- YOU KNOW, I'VE GOT MY LETTER TO JONES, JONES' RESPONSE TO ME, YOUR HONOR, AND THEN A STATEMENT THAT THEY -- THAT WE AGREED TO JUST A FEW MOMENTS AGO IN THE HALL.

THE COURT: ALL RIGHT. WHAT'S THE POSITION ON THE A.G.?

MR. JONES: I UNDERSTAND MR. LEVENSON'S CONCERNS, YOUR HONOR, BUT TO MEMORIALIZE WHAT THE FINAL RESOLUTION IS I THINK THAT THE CORRESPONDENCE FROM MR. BELL AND MY CORRESPONDENCE BACK TO HIM DATED YESTERDAY WOULD BE

APPROPRIATE, PLUS MR. BELL, I UNDERSTAND, IS GOING TO MAKE A STATEMENT AS TO ONE PART OF THAT.

THE COURT: SO YOU'RE TELLING ME, MR. JONES, THAT IS THE AGREEMENT?

MR. JONES: YES, SIR.

THE COURT: WELL, THEN, MR. LEVENSON, DO YOU DISAGREE WITH THAT?

MR. LEVENSON: I'M SORRY. PERHAPS I DIDN'T HEAR HIM. MR. JONES IS SAYING THAT ONE OF THESE LETTERS CONSTITUTES THE AGREEMENT THAT WAS JUST REACHED MOMENTS AGO IN THE HALLWAY?

MR. JONES: NO, NO. THIS LETTER, THE LAST LETTER OF JANUARY 29TH OUTLINING WHAT OUR POSITION WOULD BE - THE SETTLING ENTITIES' POSITION WOULD BE - PLUS WHAT I UNDERSTAND WHAT MR. BELL IS GOING TO SAY CONCERNING ONE ISSUE ON THE FIRST RIGHT OF REFUSAL. IS THAT CORRECT, MR. BELL?

MR. BELL: THAT IS CORRECT. YOUR HONOR, IF YOU READ THE TWO---

THE COURT: HOLD ON. HOLD ON. ALL RIGHT. MR. LEVENSON, I'M GOING TO ALLOW HIM TO DO IT.

MR. LEVENSON: YES, SIR. THANK YOU.

MR. BELL: AND THE REASON I'M DOING BOTH LETTERS, YOUR HONOR, IS BECAUSE THEY ARE READ TOGETHER AND MR. JONES IN HIS LETTER BACK TO ME IS SAYING WE AGREE TO PARAGRAPHS 4 AND 5. IF I DON'T PUT IN THE FIRST LETTER, YOU DON'T KNOW WHAT PARAGRAPHS 4 AND 5 ARE.

THE COURT: I'VE ALLOWED YOU TO DO IT, MR. BELL.

MR. BELL: YOUR HONOR, THE TERMS OF THE AGREEMENT THAT MY CLIENT IS ACCEPTING AND I WANT TO PUT IT ON THE RECORD SO THAT THERE'S NO MISUNDERSTANDING -- HE IS TO RECEIVE 4.7916 PERCENT OF THE SETTLEMENT ENTITY. HE RECEIVES THE RIGHT OF FIRST REFUSAL TO PURCHASE THE ASSETS OF THE ESTATE, AND THAT IS DESCRIBED IN THE LETTER. THEN WHAT WE AGREED TO THIS MORNING AS TO THE RIGHT OF FIRST REFUSAL. AS TO THE ASSETS COVERED BY THE RIGHT OF FIRST REFUSAL, TERRY BROWN WILL BE A PART OF THE DEAL TO THE EXTENT AGREED TO BY THE FINANCING ENTITY.

MR. JONES: CORRECT.

MR. BELL: AND, YOUR HONOR, WE HAVE NOT FINALIZED THE RIGHT OF FIRST REFUSAL, BUT I HAVE GIVEN TO MR. JONES THIS MORNING A WORKING DRAFT THAT I WOULD LIKE TO FILE WITH THE COURT TO EVIDENCE -- THAT WOULD BE THE WORKING DRAFT OF THE RIGHT OF FIRST REFUSAL, YOUR HONOR. SO THAT -- AND I FILED THESE THREE DOCUMENTS JUST SO THAT THERE IS NO MISUNDER-STANDING AS TO WHAT TERRY BROWN -- WHAT I AM AGREEING TO ON BEHALF OF MY CLIENT. I WILL STATE FOR THE RECORD THAT I -- THAT I HAD A LENGTHY CONVERSATION WITH MR. BROWN YESTERDAY IN WHICH HE WAS -- IN WHICH I READ THE LETTERS IN WHICH HE GAVE ME AUTHORITY TO MAKE THE REPRESENTATIONS THAT I'M MAKING TODAY.

THE COURT: THANK YOU. HOLD ON. HOLD ON. THAT TAKES

CARE OF YOUR CLIENTS. MR. LEVENSON, I ASSUME YOU'RE IN AGREEMENT WITH THE AGREEMENT ON BEHALF OF YOUR CLIENT? THE ENTIRE AGREEMENT.

MR. LEVENSON: JUDGE, THE ANSWER TO THE COURT'S QUESTION IS THAT -- MY UNDERSTANDING IS THAT WE WERE HERE TO PRESENT OUR MOTION FOR THE APPROVAL OF THE SETTLEMENT TO WHICH MR. BROWN HAS NOW CONSENTED, THAT IS IN -- THAT IS TO SAY MR. TERRY BROWN; I APOLOGIZE. MR. TERRY BROWN HAS NOW CONSENTED. THAT IS MY UNDERSTANDING OF WHAT IT IS---

THE COURT: WELL, DO YOUR CLIENTS CONSENT AS WELL?

MR. LEVENSON: I'M SORRY, YOUR HONOR. PRIOR TO TODAY, MY CLIENTS HAD CONSENTED BY VIRTUE OF BEING PARTIES TO THE MOTION OF THE DEFENDANT---

THE COURT: I UNDERSTAND THAT. BUT NOW WITH THE MODIFICATION WHICH BRINGS MR. BELL'S CLIENT INTO THE AGREEMENT, DO YOU AGREE WITH THAT?

MR. LEVENSON: YES, SIR. I'M SORRY. I DIDN'T UNDERSTAND THE COURT'S QUESTION.

THE COURT: THANK YOU. IT'S BEEN A LONG WEEK FOR ME. ON BEHALF OF THE YOUNG MAN?

MR. SHAHID: YOUR HONOR, PETER SHAHID ON BEHALF OF THE GUARDIAN AD LITEM FOR J B , WE SUPPORT THE AGREEMENT.

THE COURT: THANK YOU. ALL RIGHT. LET ME HEAR FROM THE ATTORNEY GENERAL.

MR. JONES: YES, YOUR HONOR, JUST A COUPLE OF MATTERS. IT'S CORRECT MR. BELL HANDED ME A COPY OF THE DOCUMENT HE DISTRIBUTED TO THE PARTIES A FEW MOMENTS AGO CONCERNING THE RIGHT OF FIRST REFUSAL. AS OF 15 MINUTES AGO, THIS IS THE FIRST TIME I'VE SEEN IT. IT WOULD BE MY UNDERSTANDING THAT IT'S A WORK IN PROGRESS THAT WE HAVE TO GET TOGETHER ON. WE HAVE NOT AGREED TO IT. AND A COUPLE OF OTHER MATTERS AS SET FORTH IN MY CORRESPONDENCE BACK TO MR. BELL IS THAT TERRY BROWN CONTRIBUTES HIS RENEWAL AND TERMINATION RIGHTS, WHATEVER HE MIGHT HAVE, INTO THE SETTLEMENT ENTITY AND THAT THE OTHER PARTIES IN THE SETTLEMENT ENTITY WOULD HAVE INPUT AS TO THE SELECTION OF A TRUSTEE, BUT THE ATTORNEY GENERAL WOULD MAKE THAT SELECTION. SO THAT'S ALL COVERED IN THE LETTER, JUST A COUPLE OF OTHER MATTERS.

THE COURT: SO YOU'RE IN AGREEMENT.

MR. JONES: YES, SIR.

THE COURT: NOW I NEED TO CONDUCT A HEARING TO DETERMINE ON BEHALF OF THE COURT AS TO WHETHER OR NOT IT IS JUST AND REASONABLE UNDER THE STATUTE. IS THAT CORRECT, PROFESSOR?

MR. ROSEN: YES, SIR.

MR. MEDLIN: I'M SORRY, YOUR HONOR.

THE COURT: NO PROBLEM. SO NOW I NEED TO CONDUCT A HEARING TO DETERMINE WHETHER OR NOT IT'S JUST AND REASONABLE AND LISTEN TO ANYONE WHO HAS AN OPPOSITION TO IT AS TO WHY IT IS NOT JUST AND REASONABLE.

MR. MEDLIN: THAT'S WHAT WE WOULD LIKE, YOUR HONOR, AND---

THE COURT: ALL RIGHT.

MR. MEDLIN: YOU HAD INDICATED IN CORRESPONDENCE TO ALL THE PARTIES THAT YOU WERE EXPECTING TO HAVE MR. BAUKNIGHT OFFER HIS OPINION ABOUT WHETHER TO RECOMMEND THE SETTLEMENT, AND I DON'T KNOW IF THAT'S HOW YOU WANT TO---

THE COURT: WELL---

MR. MEDLIN: ---START THE PROCESS.

THE COURT: ALL RIGHT. THANK YOU. LET ME HEAR FROM THE -- MY SPECIAL TRUSTEE, THE ADMINISTRATOR, MRS. POPE AND MR. BUCHANAN, AS I'VE READ ALL OF YOUR RESPONSES AND YOUR CONCERNS AND YOUR OPPOSITION TO IT.

MR. BUCHANAN: MAY IT PLEASE THE COURT, YOUR HONOR? FOR THE COURT REPORTER, I'M BOB BUCHANAN. I'M ONE OF THE PERSONAL REPRESENTATIVES OF THE ESTATE, ONE OF THE TRUSTEES OF THE 2000 IRREVOCABLE TRUST. MS. POPE IS WITH ME. UNFORTUNATELY MR. BAILEY COULDN'T BE WITH US. HE'S HAD A TRAGIC PROBLEM IN HIS FAMILY. TRESSA HAYES IS HERE. THIS IS HER FIRST HEARING.

THE COURT: BLESS HER HEART.

MS. HAYES: IN THIS CASE.

MR. BUCHANAN: YOUR HONOR, FIRST LET ME JUST MAKE IN RESPONSE TO MR. MEDLIN AND MR. JONES AND MR. LEVENSON AND MR. BELL PRELIMINARY -- I'D LIKE TO JUST ADDRESS THE COURT, IF I

MIGHT?

THE COURT: YOU MIGHT.

MR. BUCHANAN: THANK YOU. MAY I---

MR. JONES: YOUR HONOR, IF I MAY, ARE MR. BUCHANAN AND MS. POPE GOING TO BE ALLOWED TO BE WITNESSES AND LAWYERS IN THE CASE? THEY HAVE AN ATTORNEY HERE WITH THEM---

THE COURT: YES, SIR. LISTEN, THEY -- THEY ARE. GO AHEAD.

MR. BUCHANAN: YOUR HONOR, MAY I APPROACH THE COURT REPORTER---

THE COURT: YOU MAY.

MR. BUCHANAN: ---AND HAND UP A DOCUMENT?

THE COURT: WHAT I'M JUST TRYING TO DETERMINE NOW -- I ASSUME YOUR POSITION IS -- YOUR POSITION IS THAT YOU OPPOSE THE AGREEMENT OR DO YOU?

MR. BUCHANAN: YES, SIR, WE OPPOSE THE PRESENT AGREEMENT AT THE PRESENT TIME.

THE COURT: THANK YOU.

MR. BUCHANAN: I WOULD LIKE TO HAVE MARKED THE MOTION THAT WAS RECENTLY FILED.

THE COURT: THANK YOU.

MR. BUCHANAN: IT WAS NOT SERVED ON US. IT IS A MOTION THAT CONTAINS A CAPTION THAT DOESN'T EXIST IN ANY PLEADING. IT IS A MOTION THAT CONTAINS THREE CASE NUMBERS. YOUR ORDER I THINK WAS ISSUED IN CASE 1647. THIS MOTION BASICALLY OMITS

US AS -- AS A RESPONDENT IN CONNECTION WITH THE APPROVAL OF THE MOTION. OUR POSITION IS WE ARE AN INDISPENSABLE AND NECESSARY PARTY AS THE PERSONAL REPRESENTATIVE OF THE ESTATE. WE HAVE TO PRESERVE AND PROTECT ANY INTERESTS AND RIGHTS IN THE ADMINISTRATION THAT ANY CREDITOR, TAXING AUTHORITIES, ANY OF THOSE PEOPLE WOULD HAVE.

OUR POSITION IS THAT TO THE EXTENT THIS SETTLEMENT DEALS WITH ASSETS THAT MAY BELONG TO THE 2000 TRUST, WE ARE OBVIOUSLY THE TRUSTEES WHO SPEAK FOR THE EDUCATIONAL TRUST WITH RESPECT TO WHICH THE ATTORNEY GENERAL CLEARLY HAS NO AUTHORITY AND WITH RESPECT TO THE CHARITABLE TRUST. UNDER THE CODE, OUR POSITION IS THAT WE ARE THE AUTHORITY TO APPROVE OR DISAPPROVE ANY PROPOSED SETTLEMENT THAT AFFECTS THE INTERESTS OF THE CHARITABLE TRUST. SO WE'VE BEEN OMITTED. WE WERE NOT SERVED WITH THIS.

THE COURT: VERY WELL.

MR. BUCHANAN: WE JUST HAPPENED ACROSS IT IN THE CLERK'S OFFICE. EARLIER THIS MORNING WE WERE ADVISED THAT WE WERE OMITTED INTENTIONALLY BECAUSE WE'RE NOT PARTIES TO THIS, AND SO WE WOULD OBJECT TO ANY -- ANY POSITION THAT ANYBODY HAS IN THIS COURTROOM THAT WE'RE NOT INDISPENSABLE PARTIES TO THE SETTLEMENT. THANK YOU.

THE COURT: THANK YOU. MR. BYRD, HAVE YOU GOT A POSITION?

MR. BYRD: YES, WE DO, YOUR HONOR. ON BEHALF OF MR.

BRADLEY AND MR. DALLAS, WE BELIEVE BY VIRTUE OF THE APPEAL THAT THEY ARE THE TRUSTEES AND WITH REGARD TO BOTH TRUSTS THEY OBJECT TO IT ON THE SAME BASIS THAT MR. BUCHANAN ANNOUNCED TO THE COURT, AND THAT'S OUR OFFICIAL POSITION, YOUR HONOR.

THE COURT: THANK YOU. MR. WARNER?

MR. WARNER: MAY IT PLEASE THE COURT? IN ADDITION TO THE APPEALS PENDING, WE HAVE A MOTION TO RECONSIDER AND TO STAY THE ORDER APPOINTING MR. BAUKNIGHT THAT HAS NOT BEEN HEARD. IT WAS TIMELY SERVED. WE HAVE ISSUES WITH REGARD TO THE JURISDICTION OF THIS COURT.

I HEARD PROFESSOR MEDLIN TALKING ABOUT THE ESTATE ADMINISTRATION. THEY'RE TALKING ABOUT THE TRUST. THE TRUST IS NOT PROPERLY BEFORE THIS COURT IN THE FIRST PLACE BASED ON THE SOUTH CAROLINA CODE OF LAWS, AND THIS IS NOT JUST AN ESTATE ADMINISTRATION. THIS IS ALSO A TRUST ADMINISTRATION, AND THIS PURPORTED SETTLEMENT WOULD IMPACT THE TRUST SETTLEMENT.

IN ADDITION TO THAT, YOUR HONOR, WE HAD A RECUSAL MOTION THAT HAS BEEN PENDING AND NOT HEARD. WE HAVE A MOTION WITH REGARD TO MS. HYNIE'S STANDING. SHE IS -- IN NO WAY CAN BE AN HEIR OR A BENEFICIARY TO THIS ESTATE BASED UPON THE LAW OF THE STATE OF SOUTH CAROLINA, AND TO GIVE HER THAT STANDING WITHOUT A HEARING IN THAT REGARD WE THINK IS INAPPROPRIATE.

WITH REGARD TO THE ATTORNEY GENERAL, WE'VE ASKED THAT

THE ATTORNEY GENERAL OF GEORGIA BE IMPLEADED BECAUSE WE DO BELIEVE THAT THE SOUTH CAROLINA ATTORNEY GENERAL HAS A CONFLICT OF INTEREST BASED UPON HIS STATUTORY DUTIES UNDER SECTION 1-7-130 CONCERNING THE CHILDREN OF SOUTH CAROLINA AND GEORGIA, AND TO NOW COME INTO IT AND MAKE AN AGREEMENT THAT IN EFFECT IS GOING TO TAKE 50 PERCENT OUT OF THE CHARITABLE TRUST---

THE COURT: WELL, MR. WARNER---

MR. WARNER: YES, SIR.

THE COURT: ---WHAT IF THE ORIGINAL TRUST WENT BACK INTO EFFECT? DIDN'T YOUR CLIENTS TAKE 50 PERCENT OF IT?

MR. WARNER: PARDON ME, SIR? I DIDN'T UNDERSTAND YOU. IF IT WENT BACK---

THE COURT: I SAID IF THE ORIGINAL TRUST BECAME THE LAW IN THIS CASE---

MR. WARNER: RIGHT.

THE COURT: ---DOESN'T YOUR CLIENTS TAKE 50 PERCENT OF IT?

MR. WARNER: YOUR HONOR, I DON'T THINK MY CLIENTS TAKE ANYTHING OUT OF THAT, THE ORIGINAL TRUST, EXCEPT---

THE COURT: YOU NEED TO GO BACK AND READ THE TRUST DOCUMENTS.

MR. WARNER: WELL, SIR, THE FACT OF THE MATTER IS THAT JAMES BROWN'S INTENTION HAS BEEN TOTALLY FORGOTTEN---

THE COURT: YOU DIDN'T ANSWER MY QUESTION.

MR. WARNER: WELL, SIR, WHATEVER THE TRUST SAYS IS WHAT THE TRUST IS.

THE COURT: THAT'S RIGHT. HAVE YOU READ IT?

MR. WARNER: I'VE READ IT.

THE COURT: HOW MUCH DOES YOUR CLIENT AND MR. BYRD'S CLIENTS GET OUT OF THE GROSS COMMISSION OR GROSS PROCEEDS FROM THE TRUST?

MR. WARNER: WELL, SIR, THEY TAKE THE TRUSTEES' FEES OUT OF THE TRUST.

THE COURT: AND HOW MUCH IS IT? WHAT PERCENTAGE?

MR. WARNER: JUDGE, I CAN'T -- I DON'T -- I DIDN'T BRING IT WITH ME. WHATEVER IT IS IT IS, BUT THE FACT OF THE MATTER: THAT IS THE TRUST AND IT'S A 2000 TRUST.

THE COURT: GO AHEAD.

MR. WARNER: THERE'S NO QUESTION ABOUT MR. BROWN'S CAPACITY AT THAT TIME IN THE YEAR OF 2000, AND THE FACT OF THE MATTER IS TO ATTEMPT TO MODIFY THAT TRUST HERE WHICH IS WHAT'S BEING DONE WITHOUT ANY HEARINGS HAVING BEEN PLACED -- TAKEN PLACE OVER THE PAST TWO YEARS WITH REGARD TO---

THE COURT: NO HEARINGS HAVE TAKEN PLACE OVER THE PAST TWO YEARS?

MR. WARNER: JUDGE, I DON'T BELIEVE ON SUBSTANTIVE ISSUES, SUBSTANTIVE ISSUES LIKE MS. HYNIE'S STANDING, MS. HYNIE'S STANDING TO BE HERE, THE D.N.A. TESTING. EVERYTHING HAS BEEN STAYED IN THIS CASE. WE HAVE GOT INTO THIS CASE IN

THE MIDDLE OF LAST YEAR, THE LATTER PART OF LAST YEAR, AND WE CERTAINLY WERE NOT PRIVILEGED TO ALL 15 HEARINGS, BUT FROM WHAT WE HAVE READ, MOST OF THE HEARINGS IN THIS CASE HAVE TAKEN PLACE DEALING WITH WHAT I THINK THE PROCEDURAL ADMINISTRATIVE ISSUES OF THE ESTATE IS AND I DON'T KNOW WHAT---

THE COURT: A LOT OF IT IS DEALING WITH PROBLEMS THAT -- ALL RIGHT. YOU NEED A MOTION TO RECONSIDER HEARD AND YOUR MOTION TO RECUSE HEARD? IS THAT CORRECT?

MR. WARNER: YES, SIR, THAT ONE AND---

THE COURT: WHERE IS YOUR CLIENT SO HE CAN ANSWER QUESTIONS ON THE MOTION TO RECUSE?

MR. WARNER: MY CLIENT IS NOT HERE TODAY, YOUR HONOR.

THE COURT: THEN HOW CAN YOU GO WITH YOUR MOTION TO RECUSE? I PUT IN MY AGENDA THAT WE WERE GOING TO DO THAT TODAY AND TAKE TESTIMONY.

MR. WARNER: YOUR HONOR, I THINK IT'S ON THE BASIS OF WHAT HAS BEEN IN THE RECORD IN THIS CASE AND WHAT WE HAVE SUBMITTED TO THE COURT.

THE COURT: THAT IS YOUR POSITION, MR. WARNER, BUT YOU'VE MADE SOME STRONG ALLEGATIONS IN YOUR AFFIDAVIT, AND I WANT YOUR CLIENT TO ANSWER TO THEM.

MR. WARNER: MY CLIENT IS NOT HERE TODAY, YOUR HONOR.

THE COURT: WELL, I'LL BE GLAD TO HEAR YOUR MOTION TO RECUSE AND YOUR MOTION TO RECONSIDER BEFORE I LISTEN TO

TESTIMONY TO DETERMINE WHETHER OR NOT THIS AGREEMENT IS JUST AND REASONABLE.

MR. WARNER: YOUR HONOR, OUR POSITION IS WE DON'T BELIEVE THAT OUR CLIENT NEEDS TO BE HERE BASED ON THE RECORDS THAT WE HAVE SUBMITTED TO THE COURT PREVIOUSLY. THAT IS UPON WHICH WE BASE OUR MOTION.

THE COURT: ALL RIGHT. YOU'VE GOT A MOTION TO RECUSE AND A MOTION TO RECONSIDER. IS THAT CORRECT?

MR. WARNER: YES, SIR.

THE COURT: ALL RIGHT.

MR. WARNER: WE HAVE ALSO -- WE ASKED IN OUR RESPONSIVE PLEADINGS FOR MANDAMUS REGARDING THE SOUTH CAROLINA ATTORNEY GENERAL TO BE REQUIRED TO COMPLY WITH SECTION 1-7-130, AND I DON'T KNOW HOW THAT NEEDS TO BE HANDLED AND WITH REGARD TO MS. HYNIE'S STANDING SITUATION.

THE COURT: THANK YOU. ANYTHING ELSE?

MR. WARNER: NO, SIR. OF COURSE, JUDGE, THE JURISDICTION TO EVEN DEAL WITH THE TRUST IN THIS COURT---

THE COURT: THANK YOU.

MR. WARNER: ---WHICH IS CURRENTLY ON APPEAL.

THE COURT: MR. GRIFFIN, DO YOU NEED -- WHAT'S YOUR...

MR. GRIFFIN: YES, YOUR HONOR. JIM GRIFFIN AND I REPRESENT LARHONDA PETIT AND NICOLE PARIS. BOTH OF THOSE INDIVIDUALS HAVE PREVIOUSLY SUBMITTED D.N.A. TESTS IN ACCORDANCE WITH THE PROCEDURES ESTABLISHED BY THIS COURT, AND

THE TEST RESULTS HAVE COME BACK POSITIVE. IT'S OUR POSITION THAT WE ARE REQUIRED TO BE PARTIES TO THE AGREEMENT DESPITE WHAT PROFESSOR MEDLIN SAYS, AND BOTH MS. PARIS AND MS. PETIT HAVE -- HAVE WILL CONTESTS. THEY WERE SERVED AS PARTIES IN THE WILL AND TRUST CONTEST BY -- FILED INITIALLY BY MR. LEVENSON. IN ANSWER, WE CROSS-CLAIMED AN ALLEGED WILL CONTEST SO THAT THE SETTLEMENT HERE, TO THE EXTENT IT'S GOING TO RESOLVE A WILL CONTEST, I MEAN IT WILL AFFECT OUR RIGHTS.

THAT BEING SAID, I MEAN -- I MEAN, YOUR HONOR, WE ARE AGREEABLE FOLKS AND WE WANT TO AGREE, AND OUR BIGGEST CONCERN -- AND I ADDRESSED THIS WITH MR. MEDLIN AND I THINK THEY'RE PREPARED TO SATISFY. ONE OF THOSE CONCERNS IS THAT WHATEVER HAPPENS WITH REGARD TO APPROVAL OF THIS AGREEMENT THAT THAT NOT HAVE ANY BINDING EFFECT ON THE DETERMINATION OF MS. -- OF ANY PERSON'S RIGHTS UNDER THE RENEWAL AND TERMINATION RIGHTS UNDER THE FEDERAL COPYRIGHT LAW -- AND I KNOW THAT EVERYONE SAYS IT DOESN'T, BUT FRANKLY, YOUR HONOR, YOU KNOW, UNLESS THERE'S A CARVE-OUT BY YOUR HONOR AND A CARVE-OUT IN THE AGREEMENT, YOU KNOW, I HAVE NO SATISFACTION THAT IT WON'T BE USED AT SOME LATER DATE FOR THAT PURPOSE.

THE COURT: OKAY. WELL, I WILL ALLOW YOU TO, WHEN WE START TAKING TESTIMONY OR HOW EVER WE'RE GOING TO DO TO DETERMINE WHETHER OR NOT IT'S JUST AND REASONABLE AFTER I LISTEN TO MR. WARNER, MAKE WHATEVER YOU WANT TO PUT ON THE RECORD.

MR. GRIFFIN: THANK YOU.

THE COURT: DO WE HAVE ANY OTHER LAWYERS WITH ANY OTHER PARTIES?

MR. BARR: YOUR HONOR, WILLIAM BARR FOR JEANETTE MITCHELL.

THE COURT: FOR WHO?

MR. BARR: JEANETTE MITCHELL WHO IS NAMED AS A RESPONDENT IN THE MOTION TO REMOVE THE SETTLEMENT.

THE COURT: WHO IS JEANETTE MITCHELL?

MR. BARR: WELL, SHE'S AN ALLEGED HEIR---

THE COURT: OKAY.

MR. BARR: ---OF THE ESTATE. D.N.A. TESTING WAS DONE. IT CAME BACK AT I THINK 99 PERCENT OR SOMETHING VERY, VERY CLOSE TO THAT.

THE COURT: NINETY-NINE PERCENT THAT SHE IS A---

MR. BARR: THAT SHE'S THE DAUGHTER. THAT'S CORRECT.

THE COURT: AND WHERE DO YOU PRACTICE, SIR?

MR. BARR: I PRACTICE IN KINGSTREE, SOUTH CAROLINA.

THE COURT: THAT'S RIGHT. I MET YOU. HOW ARE YOU DOING?

MR. BARR: OKAY.

THE COURT: SO YOU'VE SORT OF GOT THE SAME SITUATION AS MR. GRIFFIN.

MR. BARR: YES, I'M HANDCUFFED LIKE HE IS.

THE COURT: OKAY. I APPRECIATE IT AND I WILL---

MR. BARR: AND WE WOULD -- WE WOULD---

THE COURT: ---PROTECT YOUR RIGHTS.

MR. BARR: WE WOULD OBJECT ON THAT BASIS AS WELL.

THE COURT: THANK YOU. DO WE HAVE ANY OTHER LAWYERS THAT ARE INVOLVED IN THE...

MR. KINGSMORE: YOUR HONOR, FRED KINGSMORE WITH NEXSEN PRUET. I'M HERE TODAY REPRESENTING MR. RUSSELL BAUKNIGHT AS SPECIAL ADMINISTRATOR AND SPECIAL TRUSTEE.

THE COURT: THANK YOU. ALL RIGHT. MR. WARNER, I'LL BE GLAD TO HEAR YOU ON YOUR MOTION TO RECONSIDER.

MR. WARNER: THANK YOU, YOUR HONOR.

MR. BYRD: YOUR HONOR, MAY IT PLEASE THE COURT?

THE COURT: SURE. I'M SORRY, MR. BYRD.

MR. BYRD: JUST ONE POINT TO CLARIFY THE RECORD. THE TRUST AGREEMENT PROVIDES FOR REASONABLE FEES NOT TO EXCEED. IT DOES NOT SAY THAT IT WILL BE 50 PERCENT, JUST FOR THE RECORD, YOUR HONOR.

THE COURT: NOT TO EXCEED 50 PERCENT.

MR. BYRD: YES, SIR.

MR. MEDLIN: YOUR HONOR, I THINK WHAT YOU MAY BE REFERRING TO IS THE PROVISION IN THE TRUST THAT ALLOWS THE TRUSTEES TO ADDITIONALLY DISBURSE UP TO 50 PERCENT OF GROSS INCOME FOR MANAGEMENT, ET CETERA, FEES.

THE COURT: I KNEW THERE WAS SOMETHING IN THERE. ANYWAY, MR. WARNER, MOTION TO RECONSIDER.

MR. WARNER: THANK YOU, YOUR HONOR. YOUR HONOR, THIS IS A MOTION TO RECONSIDER.

THE COURT: GENTLEMEN, HOLD ON. LET ME SET THE GROUND RULES THIS MORNING. ON THE MOTIONS AND ARGUMENTS, I'M LIMITING EVERYBODY TO 10 MINUTES.

MR. WARNER: THANK YOU, YOUR HONOR. YOUR HONOR, THIS IS A MOTION TO RECONSIDER YOUR ORDER. YOUR ORDER -- LET'S SEE...

THE COURT: I THINK IT WAS JANUARY 7---

MR. WARNER: JANUARY THE 9TH.

THE COURT: NINTH.

MR. WARNER: ---2009. WE RECEIVED THE -- THE ONLY COPY WE RECEIVED WAS AN UNSIGNED COPY. YOUR HONOR, THE FIRST GROUND WAS THAT THE COURT GRANTED THE RELIEF AFTER IMPROPERLY REFUSING TO HEAR THE MOTION FOR RECUSAL AS A PART OF THE STAY OF DISCOVERY WHEN THE RECUSAL MOTION SHOULD HAVE BEEN HEARD PRIOR TO THE ISSUANCE OF ANY FURTHER ORDERS AND RULINGS. FURTHER GROUNDS ARE THAT OVER THE LAST TWO YEARS WE BELIEVE THIS ESTATE HAS LOST $60 MILLION OR MORE.

THE COURT: WHAT DO YOU BASE THAT BELIEF ON?

MR. WARNER: THAT'S INFORMATION THAT WE RECEIVED FROM INDIVIDUALS THAT HAVE PROVIDED US WITH WHAT'S BEEN PROVIDED TO THE SPECIAL ADMINISTRATOR.

THE COURT: WELL, DO YOU WANT TO SHARE IT WITH THE COURT?

MR. WARNER: I'LL BE HAPPY TO DO IT. IT'S A GENTLEMAN UP IN NEW YORK WHO'S MADE OFFERS AND COMMUNICATIONS WITH REGARDS---

THE COURT: YOU DON'T HAVE HIM HERE TODAY TO TESTIFY?

MR. WARNER: I DO NOT HAVE HIM.

THE COURT: THANK YOU. MOVE ALONG.

MR. WARNER: JUDGE, HE'S IN NEW YORK. SECONDLY, YOUR HONOR, THE COURT HAS NO SUBJECT MATTER JURISDICTION TO APPOINT MR. BAUKNIGHT OR ANYONE ELSE AS SPECIAL TRUSTEE. UNDER 62-7-201 THE PROBATE COURT HAS EXCLUSIVE JURISDICTION REGARDING PROCEEDINGS INITIATED BY INTERESTED PERSONS CONCERNING THE INTERNAL AFFAIRS OF THE TRUST WHICH THE TRUST WHICH IS THAT -- WHICH IS THAT WITH WHICH WE ARE DEALING.

THE FURTHER GROUNDS ARE THAT WE BELIEVE THAT THE ORDERS THAT HAVE BEEN ISSUED WITH REGARD TO THIS TRUST BY YOUR HONOR ARE VOID FOR LACK OF SUBJECT MATTER JURISDICTION JUST AS IS MR. -- THE ORDER APPOINTING MR. BAUKNIGHT. IN ADDITION, IN APPOINTING MR. BAUKNIGHT AS SPECIAL ADMINISTRATOR, THE APPOINTMENT VIOLATED 62-3-614(2) THAT PROVIDES THAT IN -- IN A FORMAL PROCEEDING BY ORDER OF THE COURT UNDER A PETITION OF ANY INTERESTED PERSON AND FIND -- AND FINDING AFTER NOTICE AND HEARING THE APPOINTMENT IS NECESSARY TO PRESERVE THE ESTATE OR TO SECURE ITS PROPER ADMINISTRATION INCLUDING ITS ADMINISTRATION IN CIRCUMSTANCES WHERE A GENERAL PERSONAL REPRESENTATIVE CANNOT OR SHOULD NOT ACT. IF IT APPEARS TO

THE COURT THAT AN EMERGENCY EXISTS, APPOINTMENT MAY BE ORDERED WITHOUT NOTICE.

WE DON'T BELIEVE THAT A SPECIAL ADMINISTRATOR -- AN ADDITIONAL SPECIAL ADMINISTRATOR FOR THE PURPOSE OF THIS SETTLEMENT WAS APPROPRIATE. WE DON'T BELIEVE THAT IN ANY REGARD BECAUSE OF LACK OF JURISDICTION THAT A SPECIAL TRUSTEE IN MR. BAUKNIGHT AS HE WAS APPOINTED IS APPROPRIATE. WE BELIEVE THAT, YOUR HONOR, THE APPOINTMENT OF MR. BAUKNIGHT AS SPECIAL TRUSTEE WAS IN ERROR BECAUSE JURISDICTION OVER THE INTERNAL AFFAIRS OF THE TRUST REMAINED IN THE PROBATE COURT AND CANNOT BE REMOVED TO THIS COURT, AND SUCH VIOLATES 62-7-704(E) OF THE SOUTH CAROLINA CODE.

WE BELIEVE NEXT THAT THE -- THAT YOUR HONOR IS ATTEMPTING TO ENFORCE A SETTLEMENT AMONG CONFLICTED PERSONS. WE BELIEVE THAT THE ATTORNEY GENERAL OF SOUTH CAROLINA IS CONFLICTED BASED UPON HIS DUTIES UNDER TITLE 1 WITH REGARDS TO PRESERVATION AND PROTECTION OF THE CHARITABLE TRUST FOR THE CHILDREN, AND THE ATTORNEY GENERAL HAS ENTERED INTO AN ARRANGEMENT WHICH REMOVES 50 PERCENT OF THE CHARITABLE TRUSTS OR WHATEVER TRUST FOR THE PURPOSE OF MAKING THIS SETTLEMENT.

WE DON'T BELIEVE THE COURT HAD ANY AUTHORITY TO APPOINT THE SPECIAL TRUSTEE TO REVIEW THE PURPORTED SETTLEMENT AGREEMENT -- SETTLEMENT AGREEMENTS SUBMITTED BY THE COURT, AND COUNSEL FOR MS. HYNIE WHO BY LAW IS NOT -- CANNOT BE A BENEFICIARY OF THE ESTATE AND HAS NO STANDING AND SOME OF THE

CHILDREN WHO HAVE NOT TAKEN D.N.A. TESTS THAT THESE -- THAT THIS WOULD MOVE ASSETS FROM AN IRREVOCABLE CHARITABLE TRUST. WE BELIEVE THE COURT ERRED IN REFUSING TO FIND THE ATTORNEY GENERAL HAD BREACHED HIS DUTIES TO THE CHARITABLE TRUST AND BENEFICIARIES BY ENTERING INTO OR EVEN ATTEMPTING TO ENTER INTO THIS ARRANGEMENT WITH MS. HYNIE WHO HAS NO STANDING TO MAKE A CLAIM AGAINST THE ESTATE AND THE CHILDREN IN VIOLATION OF TITLE 1.

WE DON'T BELIEVE THAT THE LEGITIMATE HEIRS OF JAMES BROWN HAVE BEEN DETERMINED BY THIS COURT AT HEARINGS WHEN THE MATTERS ARE BEFORE THE COURT WITH REGARD TO THIS CASE FOR DETERMINATION OF THE HEIRS, AND A MARSHALING OF THE ASSETS OF THE ESTATE ARE NECESSARY TO PAY ANY CLAIMS AND THEN THE DISTRIBUTION AS TO THE LAWFUL HEIRS ARE DETERMINED. THERE'S BEEN NO DETERMINATION BY THIS COURT OF WHO THE LAWFUL HEIRS ARE, AND WE BELIEVE THAT THE SETTLEMENT IS INAPPROPRIATE IN THAT REGARD. WE TALKED ABOUT THE---

THE COURT: YOU'RE DOING A MOTION TO RECONSIDER NOW.

MR. WARNER: PARDON ME, SIR?

THE COURT: ISN'T YOUR MOTION TO RECONSIDER MY ORDER OF---

MR. WARNER: YES, SIR.

THE COURT: ---JANUARY 7TH?

MR. WARNER: YES, SIR.

THE COURT: ALL RIGHT, SIR.

MR. WARNER: AND THAT'S ALL A PART OF IT, YOUR HONOR.

THE COURT: ALL RIGHT.

MR. WARNER: WE DON'T BELIEVE THAT -- AND I'LL STAND ON THE REST OF IT. I'M NOT GOING TO STAND HERE AND READ IT BUT---

THE COURT: WELL, YOU FILED IT. YOU'RE PROTECTED ON THAT. I'VE READ THE WHOLE THING.

MR. WARNER: I UNDERSTAND, AND WE JUST -- WE JUST ASK TO MARK THE REST OF IT HEARD AND THE COURT CAN MAKE ANY DETERMINATION OBVIOUSLY THAT...

THE COURT: THANK YOU. ANYBODY WANT TO RESPOND TO THE MOTION TO RECONSIDER THE ORDER OF -- MY ORDER OF JANUARY 7TH, 2009?

MR. WARNER: YES, SIR, AND WE ASK THAT IT BE STAYED.

MS. HAYES: YOUR HONOR?

THE COURT: YES, MA'AM.

MS. HAYES: MAY IT PLEASE THE COURT?

THE COURT: I'M SORRY. YOUR NAME?

MS. HAYES: TRESSA HAYES.

THE COURT: AND WHERE DO YOU PRACTICE, MS. HAYES?

MS. HAYES: IN WEST COLUMBIA AT SHIPLEY AND HAYES.

THE COURT: THANK YOU.

MS. HAYES: I THANK THE COURT FOR THE EARLIER INDULGENCE. WE HOPE THAT BY PROCEEDING THIS WAY IT WILL PREVENT ANY UNNECESSARY DELAY TO ALL THE PARTIES. YOUR

HONOR, I MAKE REFERENCE TO MR. BUCHANAN AND MRS. POPE'S MOTION TO ALTER OR AMEND JUDGMENT THAT WAS FILED JANUARY 14TH, 2009.

THE COURT: YES, MA'AM.

MS. HAYES: THE COURT HAS IT, SO I'LL JUST INCORPORATE THAT HEARING BY REFERENCE. AS TO THE COURT'S JURISDICTION TO APPOINT MR. BAUKNIGHT, WE DO BELIEVE THAT THE COURT HAS APPROPRIATE SUBJECT MATTER JURISDICTION AS TO THE GENERAL CLASS OF THE MATTER THAT WE'RE HERE ABOUT. THAT ISSUE, AS YOU KNOW, IS CURRENTLY UNDER APPEAL. THERE ARE CERTAIN PROCEDURAL ISSUES THAT WE'RE CONCERNED ABOUT THAT WE HAVE OUTLINED IN OUR BRIEF THAT WE BELIEVE PRESENT PROBLEMS THAT SHOULD BE ADDRESSED, BUT I WOULD REFER TO OUR BRIEF AND ANSWER ANY ADDITIONAL QUESTIONS THAT THE COURT MIGHT HAVE.

THE COURT: THANK YOU. I'VE READ YOUR BRIEF, AND I APPRECIATE IT.

MS. HAYES: AND OUR MOTION TO ALTER OR AMEND JUDGMENT AS WELL. THANK YOU.

THE COURT: ANYBODY ELSE WANT TO SAY ANYTHING?

MR. JONES: SONNY JONES WITH THE ATTORNEY GENERAL'S OFFICE, YOUR HONOR, IF I MAY. BRIEFLY, GENERALLY AS TO THE A.G.'S AUTHORITY, YOUR HONOR RECOGNIZED THE A.G.'S AUTHORITY WHEN WE WERE ALLOWED TO INTERVENE LAST OCTOBER OR SEPTEMBER, I GUESS, OF '07. IT'S QUITE CLEAR THAT THE ATTORNEY GENERAL FOR THE STATE OF SOUTH CAROLINA IS THE APPROPRIATE PARTY TO

PROTECT THE INTERESTS OF CHARITABLE TRUSTS. I'VE HEARD STATEMENTS BY THE P.R. TRUSTEES, MR. BUCHANAN AND MRS. POPE, THAT THEY ARE. I HAVE SEEN NO LAW. ALL I HAVE IS LAW THAT SAYS THE A.G. IS THE AUTHORITY, THAT I CAN SHARE WITH ANYBODY AT ANY POINT AT ANY TIME.

AND VERY BRIEFLY, YOUR HONOR, WE CAN START -- AND I NEED TO DO THIS FOR THE RECORD IS TO GO BACK TO NOT THAT FAR, THE FURMAN V. MCLEOD CASE, AND IT SAID, "IT IS GIVEN THE POWER TO BE PRESENT AT THE TRIAL OF ANY CAUSE BY THE STATE ATTORNEY GENERAL IN WHICH THE ESTATE IS A PARTY OF INTEREST AND, WHEN SO PRESENT, SHALL DIRECT THE MANAGEMENT AND PROSECUTION OF THE CASE." IT ALSO SAYS THAT -- IN THE FURMAN CASE THAT THE ATTORNEY GENERAL IS THE ONLY NECESSARY OR PROPER PARTY IN A CASE.

THE GENERAL LAW IS AND IT SAYS FORTH IN THE PROBATE CODE -- SETS FORTH IN THE PROBATE CODE THAT A SETTLOR, A TRUSTEE, OR A SPECIAL INTEREST MIGHT BRING AN ACTION TO PROTECT THE CHARITABLE TRUST BUT ONLY WHEN THE ATTORNEY GENERAL IS NOT PRESENT. THE GENERAL LAW IS WHEN THE ATTORNEY GENERAL INTERVENES IN A CASE OR APPEARS IN A CASE INVOLVING A CHARITABLE TRUST, IT CONTROLS THE LITIGATION.

SO THE A.G. IS APPEARING. YOUR HONOR HAS ALLOWED THE A.G. TO APPEAR, AND THAT'S WHAT WE'RE DOING IN THIS CASE. ALSO, YOUR HONOR, AS TO THE AUTHORITY FOR SETTLING, THERE'S GENERAL AUTHORITY---

THE COURT: I'M JUST ON THE MOTION TO RECONSIDER MY ORDER.

MR. JONES: BUT IF IT IS, YOUR HONOR, I NEED TO GET INTO THE AUTHORITY TO SETTLE BECAUSE IT IS SAID BY MR. WARNER THAT THE A.G. DOESN'T HAVE AUTHORITY TO SETTLE AND HE'S BREACHED HIS FIDUCIARY DUTY BY DOING THAT. THE STANDARD IS WHEN THE A.G. APPEARS AND PRESENTS A COMPROMISE TO A COURT THAT, LIKE A COURT OF EQUITY LIKE YOUR HONOR IS SITTING IN RIGHT NOW, THAT THE COURT LOOKS FIRST DOES IT -- WHAT AUTHORITY DOES THE A.G. APPEAR? AND THEN THE COURT DETERMINES IF IT IS A BONA FIDE GOOD FAITH SETTLEMENT AND APPROVES IT, AND THE ATTORNEY GENERAL IS THE APPROPRIATE PARTY TO MAKE THAT PRESENTATION.

THAT'S THE LAW IN OTHER JURISDICTIONS. YOU ONLY HAVE TO GO IN SOUTH CAROLINA IN THE STATE V. COOLEY CASE WHICH IS A 1943 CASE INVOLVING THE ATTORNEY GENERAL AND THE DEPARTMENT OF REVENUE, AND THE COURT WENT THROUGH THE CONSTITUTIONAL PROVISIONS FOR THE ATTORNEY GENERAL AND WENT THROUGH THE STATUTORY PROVISIONS WHICH INCLUDED IN THAT MATTER PROTECTING THE PUBLIC INTEREST. WHEN THE A.G. APPEARS, HE CONTROLS THE LITIGATION.

NOW, IT'S OUR POSITION THAT WE ARE THE PROTECTOR OF CHARITABLE TRUSTS IN THE STATE OF SOUTH CAROLINA. WE'RE FOLLOWING THROUGH ON 1-7-130. THERE'S A CONFLICT IN THIS CASE, YOUR HONOR; IT'S BEEN IN THIS CASE TWO YEARS. EVERYBODY DOESN'T AGREE ON THE DISPOSITION OF IT. AS

PROFESSOR MEDLIN ESPOUSED A COUPLE OF MONTHS AGO, THERE ARE MANY ISSUES IN THIS CASE. THE ATTORNEY GENERAL HAS BEEN APPRISED OF THIS SETTLEMENT. HE SIGNED THE SETTLEMENT AND HE IS IN FAVOR OF THE SETTLEMENT, INCLUDING AN ADDITIONAL ASSET THAT'S BEEN PRESENTED BY THE SETTLING ENTITY OF RENEWAL AND TERMINATION RIGHTS. AND WHILE THE ATTORNEY GENERAL IS THE -- IS THE CHIEF LEGAL OFFICER OF THIS STATE AND THE PROTECTOR BY STATUTE AND COMMON LAW OF CHARITABLE TRUSTS, WE REALIZE THAT WE HAVE ASSISTANCE. WE HAVE SOMEONE ELSE IN THE JUDICIARY, THIS COURT, THE COURT OF EQUITY, THAT WOULD ASSIST US AND ALSO PROTECT THE CHARITABLE TRUSTS AND CHARITABLE FIDUCIARIES. SO IT'S NOT ONLY THE ATTORNEY GENERAL. IT'S THIS COURT, THE COURT OF EQUITY, WHICH WE'RE ASKING YOU WHEN WE PRESENT THE MOTION TO APPROVE THE SETTLEMENT.

SO, YOUR HONOR, IT IS OUR -- IT ALSO IS OUR POSITION THAT MR. WARNER -- I DON'T THINK HE MADE ANY ARGUMENTS LAST TIME ON THE APPOINTMENT OF THE SPECIAL TRUSTEE OR ADMINISTRATOR. I THINK THERE WAS A LOT OF FLACK GOING BACK AND FORTH ABOUT WHO IS INCLUDED IN THE ORDER. YOUR ORDER WAS TRIMMED DOWN. HE WAS NOT INCLUDED IN THE ORDER, SO HE'S ASKED FOR RECONSIDERATION ON SOMETHING THAT HE NEVER VOICED AN OPINION TO START OFF WITH AND HE IS NOT INCLUDED IN. AND OUR GENERAL LAW IS WHEN YOU ASK FOR RECONSIDERATION YOU CAN ASK YOUR HONOR OR THE COURT TO REVIEW THE ARGUMENTS, BUT YOU CAN'T BRING IN NEW MATTER. SO WHAT MR. WARNER IS DOING IS

ABSOLUTELY SHOWING UP ON AN ORDER THAT HE DOES NOT AGREE WITH AND IS NOW FOR THE FIRST TIME OBJECTING. SO WE WOULD OBJECT TO HIS OBJECTION, AND WE'D ASK THAT FOR THE REASONS SET FORTH THAT THE MOTION FOR RECONSIDERATION BE DENIED.

THE COURT: THANK YOU. ANYBODY ELSE HAVE ANY ARGUMENT?

MR. MEDLIN: YOUR HONOR, TODAY MR. BYRD AND MR. WARNER HAVE SIMPLY DEMONSTRATED THE WISDOM IN YOUR ORDER APPOINTING... YOU'LL RECALL, YOUR HONOR, THAT THE REASON THAT WE ASKED THE APPOINTMENT OF A SPECIAL ADMINISTRATOR AND SPECIAL TRUSTEE IS TO HAVE SOMEBODY WHO CLEARLY HAD AUTHORITY TO DEAL WITH MATTERS INVOLVING THE ESTATE---

THE COURT: WELL, I APPOINTED THEM SIMPLY TO REPORT BACK TO THIS COURT---

MR. MEDLIN: AND THAT'S ALL WE ASKED FOR.

THE COURT: ---AN OPINION.

MR. MEDLIN: THAT'S ALL WE ASKED FOR, YOUR HONOR, BUT AS TO THE MOTION TO APPROVE OUR SETTLEMENT, WE NEEDED SOMEBODY WHO CLEARLY HAD AUTHORITY TO DO SO. THESE PEOPLE ARE FIGHTING OVER WHO'S GOT AUTHORITY. WE NEED SOMEONE CLEARLY WITH AUTHORITY, AND THAT'S WHY WE ASKED YOU TO APPOINT MR. BAUKNIGHT WHICH YOU DID, AND AGAIN THEY DEMONSTRATE THE WISDOM OF YOUR DECISION. THIS COURT CLEARLY HAS JURISDICTION, YOUR HONOR. I WON'T WASTE TIME EXPLAINING THAT AGAIN. THIS HAS BEEN DEALT WITH BEFORE---

THE COURT: THANK YOU.

MR. MEDLIN: ---IN THIS COURT. BUT I WOULD LIKE TO MENTION ONE ITEM THAT HAS NOW BEEN DISCUSSED A COUPLE OF TIMES THIS MORNING AND THAT'S THE IDEA THAT SOMEHOW MRS. BROWN AND MAYBE OTHER PARTIES SOMEHOW DON'T HAVE STANDING TO ENTER INTO A SETTLEMENT AGREEMENT? CLEARLY THEY ARE SUCCESSORS UNDER THE DEFINITION OF SUCCESSOR IN PROBATE. THEY'RE SOMEBODY WHO WOULD TAKE FROM THE ESTATE. WHAT, FOR EXAMPLE, MR. WARNER WOULD HAVE US DO IS TO GO THROUGH THE ENTIRE PROCESS TO DETERMINE IF MRS. BROWN WERE ENTITLED TO, SAY, 50 PERCENT OF THE ESTATE AS AN OMITTED SPOUSE.

THE COURT: WELL, IT'S CERTAINLY BEEN A CONTESTED ISSUE ALL ALONG, AND Y'ALL HAVE RESOLVED IT---

MR. MEDLIN: HE WANTS TO SAY THAT UNTIL WE DETERMINE THAT, SHE DOESN'T HAVE STANDING. WE NEED TO SETTLE THE CASE. WE'RE SETTLING THE CASE.

THE COURT: ALL RIGHT. I THINK THAT COVERS EVERYBODY WHO IS A PARTY TO THIS ACTION.

MS. HAYES: YOUR HONOR?

THE COURT: YES, MA'AM, MS. HAYES.

MS. HAYES: MAY I CLARIFY ONE POINT?

THE COURT: YOU MAY.

MS. HAYES: THE PROPOSED ARGUMENT FOR TERRY BROWN, WE DIDN'T HEAR WHETHER OR NOT THAT INCLUDED FORLANDO AND ROMUNZO BROWN.

MR. BELL: YOUR HONOR, NONE OF THE GRANDCHILDREN HAVE

SIGNED ANY OF THE SETTLEMENT DOCUMENTS.

THE COURT: OKAY. DOES THAT ANSWER YOUR QUESTION?

MS. HAYES: THANK YOU, YOUR HONOR.

THE COURT: I'M GOING TO RESPECTFULLY DENY THE MOTION TO RECONSIDER. MR. WARNER, MOTION TO RECUSE.

MR. WARNER: THANK YOU, YOUR HONOR.

THE COURT: YOU'RE WELCOME.

MR. WARNER: MAY IT PLEASE THE COURT? WITH ALL DUE RESPECT TO THE COURT, WE FILED OUR MOTION AND FILED A MEMORANDUM IN SUPPORT THEREOF.

THE COURT: I'VE READ BOTH THE MOTION AND THE MEMORANDUM.

MR. WARNER: THANK YOU, YOUR HONOR.

THE COURT: YOU MAY -- YOU MAY INCORPORATE THAT INTO THE RECORD.

MR. WARNER: THANK YOU, SIR. IN HEARING THIS MOTION UNDER THE CASE LAW OF THIS STATE, THE COURT MUST ACCEPT AS TRUTH THE FACTS THAT ARE ALLEGED. AND WE HAVE ALLEGED, YOUR HONOR, IN THE AFFIDAVIT AND IN -- FROM THE TRANSCRIPT AND I'M NOT GOING TO SPEND 10 MINUTES ARGUING THIS MOTION BECAUSE I BELIEVE THAT IF THE COURT HAS REVIEWED THE FACTUAL ISSUES THAT ARE IN THE TRANSCRIPT AND THE FACTS OF THE CASE THE COURT HAS AS GOOD AN UNDERSTANDING AS IF I SPENT 10 MINUTES MAKING THE ARGUMENT.

FIRST OF ALL, YOUR HONOR, THROUGHOUT THE TRANSCRIPT IT

APPEARS ON THE PAGES THAT WE HAVE CITED THAT THE COURT BECAME AN INVESTIGATOR IN THIS CASE. THE COURT ISSUED ORAL SUBPOENAS, DIRECTED PEOPLE TO BRING IN RECORDS WITHOUT PROCESS.

THE COURT: YOU'RE EXACTLY CORRECT. WHEN PEOPLE STAND UP IN THIS COURTROOM AND MAKE TESTIMONY ABOUT THINGS THEY SAY THEY DID AND THEY DIDN'T, I DID ISSUE SUBPOENAS, TRYING TO COMPLY WITH ORDERS OF THIS COURT AND TRYING TO GET THIS ESTATE MOVED ALONG. I CERTAINLY DID, MR. WARNER.

MR. WARNER: ALL RIGHT, SIR. YOUR HONOR, WE BELIEVE THAT IN SO DOING THAT THE COURT ACTED NOT ONLY AS THE JUDGE BUT ALSO AS THE INVESTIGATOR -- AS AN INVESTIGATOR IN THIS CASE. THE COURT ALSO EXAMINED MY CLIENT SIGNIFICANTLY WHEN HE WAS TESTIFYING, AND AS A MATTER OF FACT---

THE COURT: MR. WARNER, DO YOU HAVE ANY AUTHORITY WHICH PRECLUDES A JUDGE FROM ASKING A WITNESS A QUESTION?

MR. WARNER: NO, SIR, I DON'T, BUT, YOUR HONOR, WE'RE TAKING ALL OF THE FACTS THAT ARE SET FORTH IN OUR MEMORANDUM OF WHAT WE SUBMIT TO THE COURT AS A WHOLE. WE BELIEVE IT SHOWS A BIAS AND PREJUDICE TOWARD OUR CLIENT, DAVID CANNON. FOR EXAMPLE, YOUR HONOR, YOUR HONOR HELD MR. CANNON IN CONTEMPT IN ONE ORDER AND MADE A DETERMINATION THAT YOU WOULD MAKE A LATER DETERMINATION AS TO WHETHER THE CONTEMPT WAS WILLFUL. IN ORDER TO BE HELD IN CONTEMPT IN THE FIRST PLACE THERE HAD TO BE A WILLFUL ACT.

THE COURT: I WAS TRYING TO HELP YOUR CLIENT TO NOT HAVE TO BE INCARCERATED FOR BEING IN CONTEMPT OF COURT. I GAVE HIM A BREAK.

MR. WARNER: YOUR HONOR, THE ISSUE IS THAT TO HOLD HIM IN CONTEMPT WOULD HAVE REQUIRED THAT HE DID A WILLFUL ACT. THE COURT HELD HIM IN CONTEMPT AND THEN MADE A LATER DETERMINATION THAT IT WAS A -- THAT THERE WAS A WILLFUL ACT TO SUPPORT THAT CONTEMPT. IN ADDITION, YOUR HONOR, THE COURT TALKED ABOUT WHEN MR. GILREATH CAME ON BOARD AND MR. FEW THAT WELCOME TO MY TEAM WHICH I THINK INDICATES AND CERTAINLY TO MY CLIENT AS SET FORTH IN HIS AFFIDAVIT THAT THE COURT WAS BASICALLY RUNNING THE INVESTIGATION AND THE OPERATION OF THIS MATTER RATHER THAN THE PERSONAL REPRESENTATIVES.

THE OTHER THING, YOUR HONOR, THAT I THINK IS SIGNIFICANT AND I DON'T WANT TO WAIVE ANY PARTS OF THE TRANSCRIPT THAT I DON'T ARGUE, BUT THE FACT OF THE MATTER IS WHEN THE COURT REQUIRED MR. CANNON TO PUT UP A LETTER OF CREDIT WITH THE STATEMENT THAT, WELL, YOU MADE A FINDING THAT HE OWED THE MONEY. YOU PUT UP THE MONEY, AND YOU SAID -- THE COURT STATED, AND I PARAPHRASE THIS, IF YOU -- IF YOU -- IF YOU -- IF YOU DON'T OWE IT AND YOU PAY IT, YOU'RE BETTER OFF THAN IF YOU OWE IT AND YOU DON'T PAY IT AND REQUIRED MR. CANNON TO PUT UP A LETTER OF CREDIT AND ALSO TO MAKE A DISTRIBUTION INTO THE COURT. THE FACT OF THE MATTER IS THAT WITHOUT AN ACTION---

THE COURT: WHOA. WHOA. MADE HIM MAKE A DISTRIBUTION INTO THE COURT?

MR. WARNER: HE PAID $350,000---

THE COURT: I DIDN'T MAKE HIM DO THAT.

MR. WARNER: EXCUSE ME. HOW MUCH? 30 -- I APOLOGIZE. $30,000---

THE COURT: THANK YOU.

MR. WARNER: ---INTO THE COURT. IT WAS $350,000---

THE COURT: HE DID IT VOLUNTARILY.

MR. WARNER: WELL, SIR, THE COURT BASICALLY TOLD HIM TO PUT IT UP.

THE COURT: WELL, OKAY. GO AHEAD.

MR. WARNER: BUT THE FACT OF THE MATTER IS THAT NOW THERE ARE OTHER LAWSUITS. MR. CANNON WAS NEVER -- AT THAT TIME WAS NEVER SERVED WITH A LAWSUIT, AND NOW THERE HAS BEEN A DETERMINATION OR AT LEAST SOMEWHAT OF A POTENTIAL JUDICIAL ESTOPPEL THAT MR. CANNON MAY, IN FACT, OWE THIS MONEY.

THE OTHER ISSUE, YOUR HONOR: MR. CANNON WAS HELD IN CONTEMPT. HE WAS NEVER SERVED WITH A RULE TO SHOW CAUSE. HE WAS NEVER SERVED WITH ANY TYPE OF PROCESS IN THIS CASE, AND WE BELIEVE THAT THAT WITH THE OTHER STATEMENTS MADE IN THE RECORD ABOUT MY TEAM, MY SPECIAL ADMINISTRATORS, ET CETERA, THAT I'M NOT GOING TO GO THROUGH WITH THE COURT -- IT'S MADE A PART OF THE RECORD. WE BELIEVE THAT YOUR HONOR HAS SHOWN A BIAS AND PREJUDICE EXHIBITED TOWARD OUR CLIENT THAT'S CLEAR

FROM THE FACTS AND THAT YOUR HONOR SHOULD RECUSE HIMSELF.

THE COURT: THANK YOU. MR. ROSEN?

MR. ROSEN: THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT? FIRST I WANT TO ASK THAT ALL OF THE TRANSCRIPTS, EXHIBITS, AND THE ENTIRE RECORD BE MADE A PART OF THIS MOTION SO THAT IN THE EVENT THIS MATTER GOES UP IT'S ALL BEFORE THE COURT. I BELIEVE MR. WARNER HAS ALREADY SAID THAT HE IS RELYING ON HIS AFFIDAVIT AND OTHER PARTS OF THE TRANSCRIPT. WE HAVE NO PROBLEM WITH THAT.

I THINK YOUR HONOR HAS ALREADY PASSED ON THIS IN A PREVIOUS MOTION, AND WHEN YOU EXAMINE EVERYTHING MR. WARNER SAYS IT COMES DOWN TO THIS: MR. CANNON IS UNHAPPY WITH THE RULINGS OF THE COURT. THAT'S THE BASIC -- WE HAVE NOT FILED ANY COUNTER AFFIDAVITS BECAUSE HIS MOTION IS FRIVOLOUS ON ITS FACE. IN FACT, IN HIS OWN MEMORANDUM HE SAYS, "THUS" - THIS IS HIS ARGUMENT - "A JUDGE IS NOT REQUIRED TO RECUSE HIMSELF WHEN NO EVIDENCE IS PRESENTED OTHER THAN THE CLAIMED ADVERSE RULINGS BY THE JUDGE." I MEAN, HE ACKNOWLEDGES THAT. AND ALL I'VE HEARD TODAY IS HE'S UNHAPPY ABOUT BEING HELD IN CONTEMPT. HE'S UNHAPPY WITH A VARIETY OF YOUR RULINGS.

WELL, IT'S JUST ELEMENTARY THAT A JUDGE IS NOT -- CANNOT BE RECUSED FOR THAT REASON. AND THE COURT IS WELL AWARE OF THE LAW AND I DON'T NEED TO GO INTO IT, BUT IN OUR -- IN OUR BRIEF I WILL POINT OUT THAT THE -- WHILE YOU DO HAVE TO ACCEPT FACTUAL ALLEGATIONS AS TRUTH, THIS DOES NOT PREVENT

YOU FROM EXERCISING YOUR RIGHT TO CONSIDER THE LEGAL SUFFICIENCY OF THOSE FACTS AND, OF COURSE, YOUR HONOR RECOLLECTS AND REMEMBERS THESE HEARINGS AND YOU CAN PUT EVERYTHING IN CONTEXT.

THE FAIR MEANING OF ANY REMARK MUST BE INTERPRETED IN THE LIGHT OF THE CONTEXT IN WHICH IT'S UTTERED IN DETERMINING WHETHER THE REMARK SHOWS PERSONAL BIAS OR PREJUDICE. AND, OF COURSE, YOU KNOW, MR. WARNER HAS FAILED TO -- YOU KNOW, HE SAYS IN HIS BRIEF BUT THEN HE DOESN'T ARGUE TODAY... ANY BIAS OR PREJUDICE OF THE JUDGE MUST STEM FROM AN EXTRA-JUDICIAL SOURCE AND RESULT IN DECISIONS BASED ON INFORMATION OTHER THAN WHAT THE JUDGE LEARNED FROM HIS PARTICIPATION IN THE CASE. AND, OF COURSE, TO OUR KNOWLEDGE, THE ONLY INFORMATION YOU HAVE ON THE CASE IS WHAT YOU HAVE LEARNED IN COURT, AND MR. WARNER DOESN'T HAVE ANY EVIDENCE THAT YOU'VE LEARNED ANYTHING OUTSIDE OF COURT.

HE KEEPS TALKING ABOUT THIS INVESTIGATION, THAT YOU'VE BEEN THE INVESTIGATOR. ONE, I AGREE WITH YOUR HONOR. I'VE BEEN IN PLENTY OF COURTS - FEDERAL COURTS, STATE COURTS, FAMILY COURTS - WHERE JUDGES START CROSS-EXAMINING WITNESSES. I HAVE NEVER HEARD ANYBODY OBJECT TO IT. I MEAN, JUDGES HAVE A RIGHT TO DO THAT IN SOUTH CAROLINA. SO THAT'S NO EVIDENCE OF ANYTHING.

THE RULE ABOUT A JUDGE CANNOT INVESTIGATE THE CASE TO ME MEANS YOU CAN'T GO OUTSIDE A COURTROOM AND GO INTERVIEW

WITNESSES AND BECOME AN INVESTIGATOR.

THE COURT: I HAVE NOT DONE IT AND I'M NOT GOING TO DO IT---

MR. ROSEN: AND I DON'T BELIEVE YOU'VE DONE IT AND I DON'T KNOW WHEN YOU WOULD HAVE TIME TO DO IT OR THE INCLINATION TO DO IT. SO I THINK HE'S MISINTERPRETING WHAT THAT SENTENCE SAYS.

THE COURT: SURE.

MR. ROSEN: SO, YOUR HONOR, WITH ALL DUE RESPECT, I THINK THE MOTION IS JUST FRIVOLOUS, AND WE WOULD ASK FOR SANCTIONS AGAINST MR. CANNON. THANK YOU, YOUR HONOR.

THE COURT: ANYBODY ELSE?

MR. LEVENSON: JUDGE, I WOULD LIKE TO JOIN IN THE OPPOSITION THAT MR. ROSEN STATED ON BEHALF OF MY CLIENTS AND POINT OUT THAT THIS ISN'T THE FIRST TIME THAT SOMEONE HAS MADE A SPURIOUS UNSUBSTANTIATED ATTACK WHEN THE PERSON MOVING FOR YOUR RECUSAL ISN'T EVEN HERE IN THE COURTROOM TO PRESENT TESTIMONY ON THIS ALLEGATION. AGAIN, THE CASE IS THE MURPHY/ MALLETT CASE CITED THAT CLEARLY SAYS THERE MUST BE EXTRA-JUDICIAL BIAS.

PERHAPS THE MOVANT DOESN'T REMEMBER THAT JUDGE IS ALSO A VERB, AND IT REQUIRES YOU TO DO SOMETHING. AND YOU'RE ENTITLED TO BE IRATE AND UPSET WHEN YOU HEAR EVIDENCE IN A COURTROOM WHICH IS UNCHARITABLY CONTRADICTORY. AND IF YOUR HONOR TOOK POSITIONS IN YOUR COMMENTS ON TESTIMONY YOU HEARD,

IT WAS BECAUSE THERE WERE WITNESSES IN THIS COURTROOM WHO WERE LYING UNDER OATH AND THEY WERE---

THE COURT: AND DEFYING COURT ORDERS ADMITTEDLY.

MR. LEVENSON: AND PROBABLY ADJUDICATED TO BE IN CONTEMPT, SOME OF WHICH MOTIONS FOR CONTEMPT ARE STILL PENDING AGAINST THOSE WITNESSES AND PARTIES. SO TO THE EXTENT THERE'S NO SINGLE PIECE OF EVIDENCE BY AFFIDAVIT OR LIVE TESTIMONY THAT YOUR HONOR LEARNED ANYTHING OTHER THAN WHAT YOU LEARNED IN THIS COURTROOM AND WHEN WE HAD COURT ELSEWHERE, THE MOTION SHOULD BE DENIED. THANK YOU.

THE COURT: THANK YOU. ANYBODY ELSE?

MR. JONES: YOUR HONOR, THE ATTORNEY GENERAL'S OFFICE WOULD JOIN IN THE ARGUMENTS OF MR. ROSEN AND MR. LEVENSON, ALSO WITH THE ARGUMENTS WE'VE MADE AND THE ARGUMENTS WE MADE IN THE EARLIER RECUSAL AND ASK THAT IT BE DENIED, THE RECUSAL MOTION BE DENIED.

MR. SHAHID: YOUR HONOR, PETER SHAHID, THE GUARDIAN AD LITEM. WE JOIN IN MR. ROSEN'S RETURN AS WELL.

THE COURT: THANK YOU.

MR. BUCHANAN: YOUR HONOR, IN MR. BAILEY'S ABSENCE WE WOULD RESPECTFULLY URGE THE COURT TO SUMMARILY DENY THE MOTION TO RECUSE FOR ALL THE REASONS ESPOUSED BY MR. ROSEN AND MR. LEVENSON, AND WE WOULD ASK THAT ALL OF THE -- ALL OF WHAT WE FILED ON THAT ISSUE BE INCORPORATED INTO OUR POSITION.

THE COURT: THANK YOU. ANYBODY ELSE? MR. BYRD?

MR. BYRD: NO, SIR.

THE COURT: NO, SIR, WHAT?

MR. BYRD: I HAVE NOTHING TO SAY OTHER THAN, "NO, SIR."

THE COURT: MR. BELL, ANYTHING?

MR. BELL: (SHOOK HEAD FROM SIDE TO SIDE.)

THE COURT: THANK YOU. ANYBODY ELSE? THANK YOU, MR. WARNER. MOTION DENIED. ALL RIGHT. MR. ROSEN, WOULD YOU PREPARE ME AN ORDER ON THAT MOTION TO RECUSE, PLEASE?

MR. ROSEN: I WILL DO SO.

THE COURT: THANK YOU. ALL RIGHT. LADIES AND GENTLEMEN, EVERYBODY OKAY? DO WE NEED TO TAKE A BREAK? LET'S GO A LITTLE BIT LONGER. AND WHAT'S THAT LADY'S NAME? ALL RIGHT. LADIES AND GENTLEMEN, I'M NOT SURE IF Y'ALL ARE AWARE, BUT I HAVE ALSO RECEIVED AN APPEARANCE FROM MS. JACQUE?

MS. HOLLANDER: JACQUE.

THE COURT: MA'AM?

MS. HOLLANDER: JACQUE.

THE COURT: JACQUE.

MS. HOLLANDER: YES.

THE COURT: HOLLANDER. H-O-L-L-A-N---

MS. HOLLANDER: HOLLANDER.

THE COURT: MA'AM?

MS. HOLLANDER: HOLLANDER.

THE COURT: HOLLANDER. EXCUSE ME. SHE'S MADE AN APPEARANCE IN THIS CASE AND HAS MOVED PRO SE TO PETITION TO INTERVENE. I DO NOT THINK THAT SHE HAS -- MA'AM, STAND UP FOR ME, PLEASE. MS. HOLLANDER, HAVE YOU SERVED THIS ON -- YOU DROPPED SOMETHING. WATCH OUT. HAVE YOU SERVED THIS ON ANY OF THE PARTIES IN THE CASE?

MS. HOLLANDER: NO, SIR.

THE COURT: OKAY.

MS. HOLLANDER: WE WERE -- WE WERE UNAWARE OF WHO ALL THE PARTIES ARE; THERE'S SO MANY OF THEM.

THE COURT: YES, MA'AM. WELL, IN ORDER TO CONSIDER A MOTION OF ANY TYPE, WHETHER IT BE TO INTERVENE OR WHATEVER, THE MOTION TO RECUSE, MOTION TO RECONSIDER, YOU HAVE TO -- OUR RULES REQUIRE THAT -- IF YOU'RE OPERATING PRO SE, YOU HAVE TO STILL COMPLY WITH THE RULES. YOU'RE GOING TO HAVE TO SERVE ALL THESE PEOPLE.

MS. HOLLANDER: OKAY. WE DID I THINK SERVE ONE OR TWO THAT WE KNEW OF. THE REST OF THEM WE DID NOT KNOW. AND ALSO I HAVE SPENT SINCE FEBRUARY OF LAST YEAR TRYING TO RETAIN LEGAL SERVICES DOWN HERE AND I DO -- I DO HAVE AN INTEREST IN THIS TRUST, YOUR HONOR, DUE TO THE FACT THAT I DID CREATE IT IN 1987 WITH MR. BROWN, THAT I HAVE THE PROOF, AND THAT I HAVE TWO SONGS THAT WERE FOR THE PURPOSES AND I HAVE THE PROOF HERE THAT THESE SONGS, THE PROCEEDS FROM THE SALE OF THESE RECORDS, WERE TO GO TO THE "I FEEL GOOD" CHILDREN'S

TRUST FUND. I HAVE MR. BROWN AS MY CO-PUBLISHER ON BOTH SONGS. THEREFORE, ANY SETTLEMENT THAT THIS COURT MAKES AFFECTS -- AFFECTS THE CHILDREN AND THE RIGHTS OF MY SONGS.

THE COURT: WELL, I'M NOT GETTING INTO THAT RIGHT NOW, MA'AM.

MS. HOLLANDER: OKAY.

THE COURT: I'M DEALING WITH YOUR MOTION -- YOUR PETITION TO INTERVENE, AND I'M TELLING YOU FOR ME TO HEAR IT YOU'RE GOING TO HAVE TO COMPLY WITH OUR RULES OF CIVIL PROCEDURE WHICH MEANS YOU'VE GOT TO SERVE EVERYBODY. THEY HAVE TO HAVE A TIME IN WHICH TO RESPOND TO YOUR PETITION, AND THEN WE COME INTO THE COURT TO CONSIDER IT. SO I'M TRYING TO BE -- GIVE YOU AS MUCH HELP AS I CAN. YOU'RE GOING TO HAVE TO SERVE EVERYBODY, AND THEN WHEN WE HAVE OUR NEXT SCHEDULED HEARING IT WILL BE ON THE ROSTER.

MS. HOLLANDER: OKAY. I---

THE COURT: IF YOU DO IT CORRECTLY.

MS. HOLLANDER: OKAY.

THE COURT: BUT I CAN'T GIVE YOU ADVICE.

MS. HOLLANDER: I UNDERSTAND THAT, YOUR HONOR, AND I THANK YOU SO MUCH FOR ALLOWING ME TO EVEN BE HERE. WHAT I'M ASKING YOU IS -- I WAS UNDER THE UNDERSTANDING THAT THIS SETTLEMENT WAS GOING TO BE DONE TODAY.

THE COURT: WELL, WE'RE GOING TO TAKE TESTIMONY IN A MINUTE, OR WHATEVER PRESENTATION ANYBODY WANTS TO MAKE, AS TO

WHY I SHOULD OR SHOULD NOT APPROVE THE SETTLEMENT, AND I HAVE TO MAKE CERTAIN FINDINGS IN ORDER TO DO SO. IF YOU WANT TO ASK A QUESTION OF WHOEVER IS TESTIFYING OR MAKE A SHORT STATEMENT AT THAT TIME, I'LL BE MORE THAN GLAD TO LET YOU DO IT UNLESS I GET ANY OF THE PARTIES OPPOSED TO IT, AND I'LL JUST DEAL WITH THAT WHEN I GET TO IT.

MS. HOLLANDER: AM I ALLOWED TO PRESENT EVIDENCE TO THIS COURT?

THE COURT: NO, MA'AM. YOU CAN ONLY -- YOU CAN ONLY QUESTION OR DETERMINE WHETHER OR NOT THE SETTLEMENT IS JUST AND REASONABLE. UNTIL YOU BECOME A PARTY, I CAN'T LET YOU PUT IN EVIDENCE AND ALL THAT BECAUSE THAT'S THE RULES. YOU REALLY NEED TO GET A LAWYER TO HELP YOU SO YOU CAN FOLLOW THE LAW, FOLLOW THE RULES.

MS. HOLLANDER: WE'VE BEEN WORKING ON THAT---

THE COURT: OKAY.

MS. HOLLANDER: ---AND I HOPE IF---

THE COURT: HOPE IT WORKS OUT? YOU TOLD ME THAT IN CHAMBERS THAT YOU'RE ALMOST THAT CLOSE TO GETTING SOMEBODY TO HELP YOU.

MS. HOLLANDER: YES, SIR. I JUST NEED TO -- I WAS TOLD TO COME IN AND BRING THIS STUFF IN AND THEN TO SEE IF---

THE COURT: WELL, I DON'T KNOW WHO TOLD YOU THAT, BUT ANYWAY YOU'RE WELCOME TO SIT, AND ONCE WE HEAR YOUR PETITION TO INTERVENE YOU MAY BE ALLOWED TO INTERVENE INTO THE CASE.

I DON'T KNOW. BUT YOU'VE GOT TO SERVE EVERYBODY, SCHEDULE A MOTION. UNDER THE RULES THEY HAVE SO MUCH TIME TO RESPOND TO YOUR MOTION AND THEN IT'S ARGUED. FAIR?

MS. HOLLANDER: THAT'S VERY FAIR, YOUR HONOR. THANK YOU.

THE COURT: THANK YOU. THANK YOU. ALL RIGHT. PROFESSOR MEDLIN, I AM LOOKING AT THE STATUTE 62-3-1102 WHICH SETS OUT THE PROCEDURE WHEREIN SOMEONE SEEKS APPROVAL OF A COMPROMISED SETTLEMENT, AND IT CALLS OR AFTER NOTICE TO ALL INTERESTED PARTIES THAT I MUST FIND THAT THE CONTEST OR CONTROVERSY IS IN GOOD FAITH, THAT THE EFFECT OF THE AGREEMENT UPON THE INTEREST OF PEOPLE OR PERSONS REPRESENTED BY THE FIDUCIARIES OR OTHER REPRESENTATIVES IS JUST AND REASONABLE, AND IF I DO APPROVE IT, I MAKE AN ORDER APPROVING THE AGREEMENT AND DIRECT THAT ALL FIDUCIARIES SUBJECT TO THE AGREEMENT OR TO MY JURISDICTION TO EXECUTE THE AGREEMENT. AND I TAKE IT FROM READING THAT THAT I NEED TO TAKE TESTIMONY TO DETERMINE WHETHER OR NOT IT IS JUST AND REASONABLE.

I DON'T THINK I NEED TESTIMONY TO DETERMINE THAT THERE IS CONTROVERSIES HERE IN THIS CASE. THAT'S BEEN GOING ON FOR SEVERAL YEARS. SO I'LL BE GLAD TO TURN IT OVER TO -- I ASSUME YOU'RE GOING TO START OFF WITH TRYING TO CONVINCE ME, AND THEN I'LL ALLOW ANYBODY TO CROSS-EXAMINE ANYBODY YOU WANT TO PUT UP OR HOW EVER YOU WANT TO DO IT.

MR. MEDLIN: WELL, YOUR HONOR, IF THAT'S THE PROCESS,

THAT'S---

THE COURT: WELL, UNLESS YOU'VE GOT A BETTER WAY OF DOING IT.

MR. MEDLIN: WELL, YOUR HONOR---

THE COURT: NO, NO, NO, AND I DON'T MEAN THAT... YOU'RE THE PROBATE TEACHER. SO IF YOU SUGGEST A BETTER PROCEDURE OR A MORE EFFICIENT PROCEDURE, I'LL BE MORE THAN HAPPY TO CONSIDER ANY---

MR. MEDLIN: I WAS JUST REFERRING TO YOUR CORRESPONDENCE THAT YOU WANTED TO HEAR FROM MR. BAUKNIGHT, AND I JUST DIDN'T KNOW WHERE IN THE PROCESS YOU WANT TO INSERT MR. BAUKNIGHT.

THE COURT: I'LL BE GLAD TO LET MR. BAUKNIGHT... BUT YOU'VE BEEN IN THE CASE A LONG TIME. HOW EVER Y'ALL WANT TO DO IT.

MR. MEDLIN: WELL, I CAN CERTAINLY MAKE OUR ARGUMENT FOR WHY WE BELIEVE THE SETTLEMENT SHOULD BE APPROVED.

THE COURT: WHY DON'T WE DO THAT? AND THEN I'LL LISTEN TO ARGUMENTS ON BEHALF OF ANYBODY WHO WANTS TO PUT INTO THE RECORD THEIR POSITION, AND THEN IF ANYBODY WANTS TESTIMONY, ANYBODY CAN CALL ANYBODY THEY WANT TO.

MR. MEDLIN: YOUR HONOR, LET ME FIRST BACK UP TO A POINT WE MADE IN THE NOVEMBER 25TH HEARING AT THE NOVEMBER 25TH HEARING. WE, THE SETTLING PARTIES, ENTERED INTO A PRIVATE SETTLEMENT AGREEMENT ON AUGUST THE 10TH, 2008, WHICH WE CONSIDERED TO BE EFFECTIVE AND BINDING AMONG THE PARTIES

PURSUANT TO THE AUTHORITY NOT ONLY OF COMMON LAW WHICH ALLOWS PARTIES TO A MATTER TO SETTLE WITHOUT HAVING ALL THE PARTIES INVOLVED -- I MEAN, THAT'S OBVIOUS I THINK THAT LOTS OF CASES INVOLVE PARTIES MAKING PARTIAL SETTLEMENTS AMONG THEMSELVES. BUT MORE SPECIFICALLY IN THIS CASE, THROUGH THE AUTHORITY OF THE PROBATE CODE ITSELF, SECTION 62-3-912, FOR EXAMPLE, SAYS THAT THE PRIVATE SETTLEMENT AGREEMENT IS BINDING ON THE PARTIES THERETO.

62-3-912 IS A VERBATIM SECTION, AS BEST I CAN TELL, FROM THE UNIFORM PROBATE CODE, AND CONSEQUENTLY I THINK THE COMMENTS TO THE UNIFORM PROBATE CODE ARE INSTRUCTIVE IN ONE REGARD. THE COMMENT TO THE UNIFORM PROBATE CODE SAYS THAT THIS SECTION MERELY STATES THE OBVIOUS, THAT PARTIES CAN SETTLE AMONG THEMSELVES. WE ARE MERELY AGREEING AS SETTLING PARTIES AMONG OURSELVES ORIGINALLY IN THE AUGUST 10, 2008, AGREEMENT AND NOW WITH THE ADDITION OF MR. BELL'S CLIENT THAT WE HAVE AGREED ABOUT THE ISSUES AMONG OURSELVES.

THE COURT: WELL, I'VE LISTENED TO YOUR ARGUMENT A NUMBER OF TIMES BEFORE ABOUT THE ABILITY TO DO SO AND THE LAW ALLOWING YOU TO DO SO. WE'VE CROSSED THAT HURDLE. WHAT I YOU WANT TO DO NOW IS TELL ME WHY DO YOU THINK IT IS JUST AND REASONABLE FOR EVERYBODY INVOLVED TO SETTLE IT, AND THERE'S SOME SERIOUS QUESTIONS THAT HAVE BEEN POSED BY THE PERSONAL REPRESENTATIVES AND OTHERS. SO LET ME JUST ASK YOU A FEW QUESTIONS FROM A LEGAL STANDPOINT.

FIRST OF ALL, HOW CAN WE HAVE A BINDING SETTLEMENT ON EVERYBODY WHEN THE SPECIAL PERSONAL REPRESENTATIVES AND/OR TRUSTEES THAT I APPOINTED -- THEY CLAIM THAT THEY ARE NECESSARY PARTIES TO THIS AND THEY SHOULD -- AND THEY SHOULD HAVE BEEN PARTICIPATING IN IT OR HAVE CONSENT.

MR. MEDLIN: WELL...

THE COURT: WHAT'S THE ARGUMENT ON THAT?

MR. MEDLIN: FIRST OF ALL, YOUR HONOR, ALL WE'RE ASKING IS AS PART OF THE SECTION 62-3-1101 AND 1102 SETTLEMENT PROCESS TO PROVE THE COMPROMISE AMONG THE PARTIES TO THAT SETTLEMENT AGREEMENT, AND SECTION 62-3-1101 AND 1102 RECOGNIZE THAT THE ONLY PARTIES TO THE AGREEMENT ARE THOSE WHOSE INTERESTS ARE TO BE AFFECTED. THE BENEFICIARIES ARE THE ONES WITH INTERESTS IN THIS ESTATE. THEY'RE THE ONES WHO ENTERED INTO THE AGREEMENT. THEY'RE THE ONES WHO ARE ASKING TO APPROVE IT.

MOREOVER, IF YOU LOOK AT THE LANGUAGE OF SECTION 62-3-1102 AND PARTICULARLY PARAGRAPH 2, AS YOU'VE ALREADY CITED, YOUR HONOR, IT PRESUPPOSES THAT THE PERSONAL REPRESENTATIVES AND TRUSTEES DON'T HAVE TO SIGN OFF ON THE AGREEMENT. IT SAYS THAT THE SETTLING PARTIES MAY PRESENT THE COMPROMISE TO THE COURT, AND YOU DETERMINE THAT IT IS JUST, FAIR, REASONABLE, ET CETERA, FOR YOUR APPROVAL AND THEN TO DIRECT PERSONAL REPRESENTATIVES, TRUSTEES, AND APPROPRIATE FIDUCIARIES TO EXECUTE THE AGREEMENT.

THE COURT: SO IF I CAN ORDER THEM TO EXECUTE IT, THAT MEANS THEY DON'T HAVE TO BE PARTIES TO IT.

MR. MEDLIN: WELL, IT MEANS THEY DON'T HAVE -- WELL, YOUR HONOR, IF THEY WERE ALREADY PARTIES TO IT, THEN THAT LANGUAGE WOULD BE MEANINGLESS. THIS SECTION UNDERSTANDS THAT THERE MAY BE A SETTLEMENT AMONG BENEFICIARIES THAT WE ASK THE COURT TO APPROVE, AND IF THE COURT FINDS THAT IT'S REASONABLE AMONG THE BENEFICIARIES, THEN HE WILL DIRECT THE FIDUCIARIES TO JOIN IN THE SETTLEMENT. OTHERWISE, I THINK THAT LANGUAGE IS MEANINGLESS.

IF THEY ARE PARTIES TO IT IN THE SENSE THAT THEY'VE AGREED TO IT, THEY WOULD BE ON BOARD WITH THIS AND WE WOULDN'T NEED THE LANGUAGE IN THE STATUTE THAT SAYS THAT YOU HAVE THE POWER AFTER APPROVAL TO DIRECT THEM TO EXECUTE IT. SO WE DON'T THINK THAT THE PERSONAL REPRESENTATIVES AND TRUSTEES OF ANY TYPE ARE NECESSARY TO AGREE TO THE AGREEMENT BEFORE YOUR APPROVAL.

MOREOVER, YOUR HONOR, WE BELIEVE THAT THE PERSONAL REPRESENTATIVES ARE RESTRAINED FROM ACTING OTHER THAN TO PRESERVE THE ESTATE. WE HAVE FILED AN ACTION TO REMOVE THEM WHICH UNDER SECTION 62-3-611 AUTOMATICALLY RESTRAINS THEM. IN PLEADINGS AND AFFIDAVITS FROM THE PERSONAL REPRESENTATIVES AND TRUSTEES THAT YOU APPOINTED, THEY THEMSELVES HAVE SAID WE BELIEVE WE'VE BEEN RESTRAINED SINCE - DEPENDING ON WHICH PLEADING OR AFFIDAVITS YOU LOOK AT - JANUARY OF 2008.

THAT IS WHY WE HAD YOU, YOUR HONOR, APPOINT A SPECIAL ADMINISTRATOR AND A SPECIAL TRUSTEE, SOMEONE WHO COULD ACT ON BEHALF OF THE COURT AND ON BEHALF OF THE BENEFICIARIES IN DEALING WITH THIS PARTICULAR MOTION. WE NEED A PARTY, A FIDUCIARY, FOR YOU TO HAVE INVOLVED, AND THAT'S WHY WE ASKED YOU TO APPOINT MR. BAUKNIGHT.

SO AS TO THIS PARTICULAR MATTER, EVEN IF SECTION 62-3-1102 REQUIRED THE INVOLVEMENT OF A FIDUCIARY WHICH I DON'T THINK IT DOES, MR. BAUKNIGHT WOULD BE THE FIDUCIARY. NOW, I DON'T KNOW WHAT MR. BAUKNIGHT IS GOING TO RECOMMEND TO THE JUDGE. I HOPE HE'S GOING TO RECOMMEND APPROVAL OF THE SETTLEMENT. I HAVE NO IDEA WHAT HE'S GOING TO RECOMMEND. BUT ASSUMING THAT HE RECOMMENDS THAT TO YOUR HONOR, WE WOULD ARGUE THAT THAT IS THE INVOLVEMENT OF A FIDUCIARY THAT YOU MIGHT BE CONCERNED ABOUT. HE IS THE VERY FIDUCIARY THAT YOU APPOINTED TO DEAL WITH THIS MATTER.

THE COURT: NO. I APPOINTED HIM TO REPORT TO THIS COURT HIS OPINION AS TO THE FAIRNESS OF THE AGREEMENT.

MR. MEDLIN: YES, YOUR HONOR, WHICH IS ALL WE'RE ASKING FOR IN THIS PROCESS.

THE COURT: WELL, THEY ALSO RAISED THE ISSUES IN THEIR BRIEFS AND CONCERNS THAT THEY ALLEGE THAT THERE MAY BE A POTENTIAL 40 MILLION DOLLAR ESTATE AND INCOME TAX PROBLEM RAISED BY THE SETTLEMENT. IS THAT CORRECT?

MR. MEDLIN: THEY RAISED THAT, YOUR HONOR.

THE COURT: WELL, IT'S CORRECT THEY RAISED IT, BUT I NEED TO HEAR FROM YOU AS TO WHETHER OR NOT THERE WILL BE THAT TYPE OF A TAX LIABILITY.

MR. MEDLIN: WELL, YOUR HONOR, WE CERTAINLY DON'T BELIEVE THAT, FIRST OF ALL, AND WE INTEND TO ASK MS. POPE AND MR. BUCHANAN EXACTLY WHY THEY HAVE MADE THESE ALLEGATIONS BOTH IN PLEADINGS AND AFFIDAVITS. WE INTEND TO GET THAT OUT ON TO THE RECORD. SO I DON'T WANT TO PRESUPPOSE WHAT THEY'RE GOING TO SAY.

THE COURT: WELL, IS IT YOUR POSITION THAT IT WOULD NOT CREATE THAT TYPE OF A TAX LIABILITY?

MR. MEDLIN: YOUR HONOR, NO, IT WOULD NOT.

THE COURT: AND TELL ME WHAT EFFORTS HAVE BEEN MADE BY THE SETTLING PARTIES TO OBTAIN TAX ADVICE TO ASSURE THE HEIRS AND THE BENEFICIARIES AND THE PEOPLE WHO ARE -- WOULD BE ENTITLED TO MONIES FROM THE TRUST THAT YOU HAVE MINIMIZED ANY TAX EXPOSURE AND HAVE NOT CREATED ADDITIONAL TAX EXPOSURE.

MR. MEDLIN: WELL, YOUR HONOR, WE HAVE CONSULTED SOME OF THE BEST TAX MINDS NOT ONLY IN THIS STATE BUT IN THE COUNTRY, AND WE BELIEVE THAT OUR PROPOSED SETTLEMENT WOULD MINIMIZE ANY ESTATE TAX FAR MORE THAN, SAY, A SUCCESSFUL WILL AND TRUST CONTEST PROSECUTION TO CULMINATION BECAUSE WE BELIEVE WE'RE GOING TO GET A CHARITABLE DEDUCTION FOR WHAT PASSES TO THE CHARITIES REPRESENTED BY THE ATTORNEY GENERAL.

WE BELIEVE THAT OUR SETTLEMENT ALLOWS US TO GET A

MARITAL DEDUCTION TO THE EXTENT THAT WE AGREE THAT MRS. BROWN IS THE SURVIVING SPOUSE. WE DO AGREE THAT TO THE EXTENT THE PROPERTY PASSES TO THE CHILDREN THAT THERE MAY BE SOME ESTATE TAX TO THAT LEVEL. WE ALSO -- BUT, YOUR HONOR, WE HAVE NO IDEA THAT IT'S GOING TO BE BASED ON AN $80 MILLION OR SO ESTATE.

PART OF WHAT WE INTEND TO SHOW THE COURT IS THAT NOBODY HAS ANY HANDLE ON THE VALUE OF WHAT THIS ESTATE IS. SO THROWING OUT NUMBERS, AND AGAIN DEPENDING ON WHICH PLEADING YOU READ, THERE'S GOING TO BE $40 MILLION IN TAX BECAUSE IT'S AN $80 MILLION ESTATE OR THEN YOU READ ANOTHER PLEADING FROM THE P.R. AS THE TRUSTEES THAT SAYS THAT THE CHILDREN WANT 25 MILLION AND MRS. BROWN WANTS 25 MILLION WHICH, IF YOU DO THE MATH, TAKES THE ESTATE UP TO A HUNDRED MILLION. THEY HAVE NO IDEA WHAT THE ESTATE IS, AS WE'RE GOING TO SHOW, AND WE THINK PROBABLY THE VALUE OF THE ESTATE IS SIGNIFICANTLY LESS, BUT WE DON'T HAVE THE TOOLS AS BENEFICIARIES WITHOUT FIDUCIARIES WHO HAVE BEEN HELPFUL IN PROVIDING US INFORMATION TO EVEN BEGIN TO MAKE THAT DETERMINATION. ALL I KNOW---

THE COURT: SO AS THE LAWYERS FOR THE SETTLING PARTIES -- AND YOU'RE REPRESENTING TO THE COURT THAT NOT ONLY YOU BUT THE REST OF THE SETTLING ENTITIES HAVE MADE DUE DILIGENCE STUDIES CONCERNING ALL TAX LIABILITIES OF THE PURPORTED SETTLEMENT WITH TAX CREDENTIALED LAWYERS.

MR. MEDLIN: YOUR HONOR, NOT ONLY THAT, BUT WE HAVE

AGREED AMONG OURSELVES BUILT-IN SAFEGUARDS TO INSURE THAT WE DO NOT DISQUALIFY THE CHARITABLE DEDUCTION. SO THAT IS PART OF OUR AGREEMENT THAT WE PRESENT TO YOU AS WELL.

THE COURT: AND DOES THE SETTLEMENT AGREEMENT HAVE IN PLACE OR SOME MECHANISM FOR AN ORDERLY - IT'S EASY TO SAY NOW WITH OUR NEW PRESIDENT - AN ORDERLY TRANSITION FROM MRS. POPE AND MR. BUCHANAN TO WHOEVER WE WOULD APPOINT AS THE NEW FIDUCIARIES OR THE NEW P.R. TRUSTEES?

MR. MEDLIN: THAT'S CORRECT, YOUR HONOR. WE BELIEVE -- WE AGREE AMONG OURSELVES THAT WE WOULD LIKE TO HAVE A PROFESSIONAL FIDUCIARY IN PLACE.

THE COURT: WELL, I UNDERSTAND THAT. ASSUMING IF WE APPROVED IT AND APPOINT JOHN DOE, MRS. POPE AND MR. BUCHANAN HAVE, IN MY OPINION, PERFORMED EXTRAORDINARILY UNDER DIFFICULT CIRCUMSTANCES, AND THERE IS A LOT OF THINGS THAT ARE STILL NOT COMPLETED, UNTIED. WE HAVE A NUMBER OF, I THINK, SUITS AGAINST THE ESTATE, CLAIMS AGAINST THE ESTATE INCLUDING THE DALLAS, BRADLEY, AND CANNON, AMONG OTHERS, LEGAL FEES CLAIMED AGAINST THE ESTATE. THE ESTATE IS GOING AFTER -- STRIKE THAT. THE ESTATE IS PROCEEDING WITH LITIGATION, I THINK, AGAINST FORMER PERSONAL REPRESENTATIVES, P.R.'S. THERE'S OTHER MATTERS THAT ARE IN PLACE. SO HOW -- HOW ARE WE GOING NOT TO HAVE TO RE-PLOW ALL THAT GROUND BUT HAVE AN ORDERLY TRANSITION FROM WHAT'S ALREADY GOING ON -- ONGOING NOW HAS HAPPENED AND NEEDS TO CONTINUE TO GO ON IN

THE ESTATE?

MR. MEDLIN: YOUR HONOR, I RECOGNIZE THAT THIS ESTATE HAS A LOT OF LITIGATION GOING ON. THERE ARE ESTATES THAT HAVE A LOT OF LITIGATION GOING ON BUT---

THE COURT: I DON'T KNOW MANY THAT HAVE AS MUCH AS THIS ONE DOES.

MR. MEDLIN: WELL, I'M NOT GOING TO ARGUE WITH YOU ABOUT THAT, YOUR HONOR, BUT I WILL SAY THERE ARE ESTATES THAT HAVE A LOT OF LITIGATION GOING ON, NOT NECESSARILY AMONG THE FIDUCIARIES TRYING TO FIGURE OUT WHO GETS TO RUN THE SHOW AS THIS HAS BEEN ABOUT MOSTLY FOR THE LAST TWO YEARS.

THE COURT: IT HAS.

MR. MEDLIN: BUT ABOUT CREDITORS AND CLAIMANTS AND SO FORTH AND CLAIMS BY THE ESTATE AGAINST DEFENDANTS. WE HAVE VERY ABLE LAWYERS HANDLING EVERY ONE OF THOSE CASES. I THINK ANY COMPETENT PROFESSIONAL FIDUCIARY -- AND WE'RE GOING TO INSIST ON THAT NEXT FIDUCIARY BEING A COMPETENT PROFESSIONAL FIDUCIARY WHO WILL MANAGE THE ESTATE AND WILL BE ABLE TO DO WHAT PROFESSIONAL COMPETENT FIDUCIARIES DO: TO STEP IN, TO ASSESS BY HEARING FROM THE LAWYERS WHOSE JOB IT IS TO TELL THEM WHERE THEY ARE IN THE VARIOUS MATTERS WHERE THEY ARE AND TO MAKE WHATEVER DECISIONS THE LAWYERS ASK THEM TO MAKE WITH PROPER LEGAL ADVICE.

THE COURT: IN OTHER WORDS, TO TRY TO HAVE AS MUCH CONTINUITY AS POSSIBLE BETWEEN THE OLD ADMINISTRATION AND THE

NEW ADMINISTRATION.

MR. MEDLIN: YES, SIR.

THE COURT: I ASSUME THAT'S WHAT WE'RE TALKING ABOUT.

MR. MEDLIN: ABSOLUTELY, YOUR HONOR, AND WE HOPE THERE WILL BE AN ORDERLY TRANSITION, BUT WE ALSO THINK THAT ANY COMPETENT PROFESSIONAL FIDUCIARY WITH RELATIVELY LITTLE TRANSITION TIME CAN GET A PLAYBOOK AND RUN AND MANAGE THE ESTATE AS A PROFESSIONAL FIDUCIARY WOULD DO.

THE COURT: THERE'S BEEN CONCERN EXPRESSED ABOUT THE PAYMENT OF ATTORNEYS' FEES. I ASSUME -- OF COURSE, WE'VE GOT A NUMBER OF CLAIMS AGAINST THE ESTATE THAT WOULD BE -- STILL NEED TO BE ADJUDICATED OR LISTENED TO, AND THEN OBVIOUSLY THE SETTLING PARTIES HAVE INCURRED FEES. I ASSUME THEIR FEES OR YOUR FEES AND THE LAWYERS' FEES WILL COME OUT OF THEIR SHARE. I DON'T KNOW HOW THAT WORKS.

MR. MEDLIN: WELL, CERTAINLY AS TO THE SETTLING PARTIES' FEES -- AND I HAVEN'T TALKED TO MR. BELL ABOUT THIS ISSUE SINCE WE'VE JUST RECENTLY COME TO OUR UNDERSTANDING, BUT CERTAINLY OUR UNDERSTANDING IS THAT EACH CLIENT IS GOING TO HAVE TO PAY HIS OR HER LAWYER. I DON'T THINK THE ATTORNEY GENERAL IS GOING TO GET A STIPEND, SO THERE'S NOT GOING TO BE A CHARGE TO THE CHARITABLE TRUST.

THE COURT: SO AS I UNDERSTAND IT, IF THE SETTLEMENT WERE APPROVED, WE'D CONTINUE TO -- WHEN I SAY WE, THE ESTATE CONTINUES TO BE ADMINISTERED UPON BY BRINGING IN ALL ASSETS

THAT IT CAN, CONSIDERING THE CLAIMS OF CREDITORS THAT ARE NOW FILED OR HAVE BEEN TIMELY FILED AND WHEN ALL -- THAT AND TAX LIABILITY, AND WHEN ALL THAT IS SAID AND DONE, I ASSUME THERE WILL BE X. AMOUNT OF DOLLARS LEFT OVER, AND WHATEVER THAT X. IS WOULD BE DIVIDED ACCORDING TO THE TERMS OF THE AGREEMENT.

MR. MEDLIN: THAT'S CORRECT, YOUR HONOR, BUT THE AGREEMENT ACTUALLY ANTICIPATING A FUNNEL INTO A SETTLEMENT ENTITY WHERE NOT ONLY THE PROBATE ASSETS OVER WHICH YOU HAVE JURISDICTION AND ANY TRUST ASSETS OVER WHICH YOU HAVE JURISDICTION THAT ARE LEFT WILL BE FUNNELED BUT ANY RECEIPTS, ANY RIGHTS FROM ANY FEDERAL COPYRIGHT RIGHTS THAT THE CHILDREN AND THE SURVIVING SPOUSE MIGHT HAVE INDEPENDENT---

THE COURT: INDEPENDENT OF THE ESTATE.

MR. MEDLIN: ---OF THE ESTATE. THOSE ALL GET FUNNELED IN. SO IT BECOMES A SUPER ENTITY, AND THEN THAT IS WHEN THE PARTIES BEGIN DIVIDING THEIR SHARES. YOUR HONOR, I MIGHT ALSO ADD ON THE ISSUE OF LEGAL FEES, WE HAVE STRUCTURED THIS IN A WAY THAT HOPEFULLY THE LEGAL FEES WE'LL BE ABLE TO SAVE ON WHATEVER TAX, ESTATE TAX, MIGHT NEED TO BE PAID BECAUSE OF THE CHILDREN'S SHARE, WHATEVER AMOUNT THAT MIGHT BE. SO NOT ONLY DO WE HAVE SAFEGUARDS TO PROTECT THE CHARITABLE DEDUCTION AND PROTECT THE CHARITIES HERE BUILT INTO OUR AGREEMENT, BUT WE ALSO HOPE TO BE ABLE TO MINIMIZE THROUGH METHODS, ESPECIALLY THE USE OF LEGAL FEES AS DEDUCTIONS, SO THAT THERE IS AS LITTLE TAX IMPACT AS POSSIBLE ON THE ESTATE.

THE COURT: THERE'S ALSO BEEN CONCERNS RAISED THAT UNDER THE ESTATE PLAN OF MR. BROWN THAT THE BALANCE OF THE -- THE MAJORITY -- STRIKE THAT. THE MAJORITY OF THE RESIDUARY WENT INTO THE TRUST FUND FOR THE NEEDY CHILDREN, FOR LACK OF A BETTER TERM, AND THAT THIS PROPOSED AGREEMENT NOW IS REDUCING THAT AMOUNT OF MONEY TO A 50 PERCENT LEVEL AS OPPOSED TO CLOSE TO A HUNDRED PERCENT LEVEL. HOW DO I JUSTIFY THAT AS BEING JUST AND REASONABLE TO THE ULTIMATE BENEFICIARIES OF THAT TRUST? THAT WOULD BE THE PUBLIC.

MR. MEDLIN: WELL, YOUR HONOR, I'D LIKE TO SPEND A LITTLE TIME ANSWERING THAT, TAKING YOU THROUGH THAT IF YOU'LL INDULGE ME.

THE COURT: WELL, I THINK IT'S IMPORTANT THAT THAT BE PUT ON THE RECORD AND EXPLAINED TO ME FROM MY TASK THAT I HAVE TO DO TO DETERMINE WHETHER OR NOT IT'S JUST AND REASONABLE.

MR. MEDLIN: WE AGREE, YOUR HONOR, AND THAT'S WHY WE WOULD LIKE THE OPPORTUNITY TO DISCUSS THAT IN SOME DETAIL.

THE COURT: WELL, I'M GIVING YOU THAT NOW.

MR. MEDLIN: THANK YOU.

THE COURT: THAT'S -- COURT REPORTER, ARE YOU OKAY?

COURT REPORTER: YES, SIR.

THE COURT: EVERYBODY ELSE OKAY? ANYBODY NEED A BATHROOM BREAK? EVERYBODY FINE? MOVE ON.

MR. MEDLIN: THE ASSUMPTION THAT THE ATTORNEY GENERAL IS

GIVING AWAY 50 PERCENT OF THE ESTATE ASSUMES THAT THE ATTORNEY GENERAL WOULD PREVAIL ON ALL LITIGATION. THE PERSONAL REPRESENTATIVES WANT TO PLAY WITH THE CHARITIES' DOLLARS. THEY DON'T TAKE INTO ACCOUNT THE POSSIBILITY THAT THE ATTORNEY GENERAL MIGHT END UP WITH ZERO. THEY DON'T TAKE INTO ACCOUNT THAT WHATEVER THOSE FEDERAL TERMINATION AND RENEWAL RIGHTS MIGHT BE WORTH THAT ARE BEING CONTRIBUTED OUTSIDE THIS LITIGATION BY THE PARTIES WHO OTHERWISE WOULDN'T HAVE TO CONTRIBUTE THEM AND THAT IN NO OTHER WAY WOULD END UP WITH THE ATTORNEY GENERAL ON BEHALF OF THE CHARITIES WILL PASS TO THE ATTORNEY GENERAL.

SO IT'S AN EASY ASSUMPTION TO ASSUME THAT I'M GOING TO WIN A GAME AND THEN WONDER WHY SOMEBODY AGREED TO CALL IT A TIE. AND, IN FACT, WE BELIEVE THAT IF THIS LITIGATION WERE CARRIED THROUGH THAT THE ATTORNEY GENERAL, IN FACT, WOULD END UP POSSIBLY WITH ZERO.

THE COURT: HOW WOULD THAT HAPPEN?

MR. MEDLIN: WELL, LET ME MAKE THOSE ARGUMENTS, YOUR HONOR. FIRST OF ALL, WE BROUGHT WILL AND TRUST CONTESTS AS WE'VE REFERRED TO ALREADY.

THE COURT: HOLD ON ONE SECOND. GO AHEAD.

MR. MEDLIN: OUR MAIN ARGUMENT -- WE HAVE OTHER ARGUMENTS, BUT TO HONOR MR. BROWN'S LEGACY I WOULD PREFER NOT TO DISCUSS THOSE IN OPEN COURT BECAUSE I DON'T THINK THEY'RE ESSENTIAL TO YOUR DECISION-MAKING PROCESS, YOUR HONOR. SO

OUR MAIN ARGUMENT WAS WITH RESPECT TO UNDUE INFLUENCE. WE HAVE ONE AGREEMENT AMONG ALL THE CHILDREN REPRESENTED BY MR. LEVENSON AND BY MY CLIENT, EVEN WHEN THEY WERE AT ODDS AT EACH OTHER IN THIS LAWSUIT. THEY ALL AGREE -- THEY ALL TELL THE SAME STORY: THAT MR. CANNON AND MR. DALLAS AND MR. BRADLEY CONTROLLED MR. BROWN THROUGH VARIOUS NEFARIOUS WAYS.

WE'VE ALREADY HAD EVIDENCE IN THIS COURT WHERE LARGE SUMS OF MONEY THAT WOULD SEEM TO HAVE BEEN EARNED BY THE SWEAT, HARD WORK, AND GENIUS OF MR. BROWN ENDED UP IN SOMEONE ELSE'S HANDS: THOSE THREE GENTLEMEN.

THE COURT: HOLD ON ONE SECOND. MR. WARNER?

MR. WARNER: YES, SIR?

THE COURT: ARE WE BORING YOU?

MR. WARNER: NO, SIR.

THE COURT: WELL, I DON'T LET PHONES BE USED IN MY COURTROOM. YOU KNOW THAT.

MR. WARNER: EXCUSE ME, SIR?

THE COURT: WERE YOU BACK THERE EITHER TALKING ON THE PHONE OR TEXTING OR... I DON'T KNOW WHAT YOU'RE DOING.

MR. WARNER: NO, SIR. I'M JUST CHECKING MY E-MAIL ON MY BLACKBERRY.

THE COURT: DO YOU WANT TO JUST HOLD ON A MINUTE AND LET MR. WARNER HAVE AN OPPORTUNITY TO CHECK HIS E-MAIL AND WE'LL START BACK?

MR. WARNER: I'M FINISHED, YOUR HONOR.

THE COURT: THANK YOU.

MR. MEDLIN: YOUR HONOR, I THINK MR. WARNER TENDS NOT TO PAY ATTENTION TO ME ANYWAY, SO I'M NOT GOING TO---

THE COURT: DON'T GET PERSONAL. GO AHEAD.

MR. MEDLIN: WE WOULD HAVE ARGUED THAT TO CONTINUE THE PATTERN OF CONTROL OF MR. BROWN AFTER HE DIED THERE'S ONLY ONE WAY THAT MR. DALLAS, BRADLEY, AND CANNON COULD HAVE DONE THAT. THEY COULD NOT HAVE NAMED THEMSELVES BENEFICIARIES IN THESE DOCUMENTS, PARTICULARLY THE 2000 WILL AND TRUST. THAT WOULD HAVE BEEN OBVIOUS. THAT CLEARLY WOULD HAVE BEEN UNDUE INFLUENCE.

SO WHAT DO THEY DO? THEY NAMED THEMSELVES AS TRUSTEES, AND I SAY THEY NAMED THEMSELVES FOR REASONS I'LL GET TO IN JUST A MINUTE AS TRUSTEES. AND AS I MENTIONED TO YOUR HONOR EARLIER TODAY, IN ADDITION TO THE TRUSTEES' FEES WHICH YOU FIND IN A REGULAR PART OF A TRUST, THERE'S A PROVISION IN THE TRUST THAT SAYS THAT THE TRUSTEES HAVE ABSOLUTE DISCRETION TO DISTRIBUTE UP TO 50 PERCENT OF THE GROSS ANNUAL INCOME OF THE TRUST FOR MANAGEMENT PURPOSES WHICH IS EXACTLY WHAT THEY WERE DOING TO MR. BROWN WHILE HE WAS ALIVE. THEY WERE MANAGING HIM.

THEY HAD A SPIGOT TO CONTROL 50 PERCENT OF THE ANNUAL INCOME AND PUT IT INTO THEIR OWN POCKETS. I, NOR ANY ESTATE PLANNING LAWYER I HAVE TALKED TO, HAS EVER SEEN SUCH A PROVISION IN A SO-CALLED CHARITABLE TRUST. AND YOU'LL FIND

THOSE PROVISIONS IN PLACES YOU NORMALLY WOULDN'T EXPECT TO FIND FEE PROVISIONS.

SO OUR ARGUMENT WAS GOING TO BE THAT THE SMOKING GUN OF UNDUE INFLUENCE WAS THIS ABILITY OF DALLAS, BRADLEY, AND CANNON TO CONTINUE TO PAY THEMSELVES AS FIDUCIARIES WITH THIS FAUCET THEY CAN TURN ON AND OFF OVER TIME. IT'S THE ONLY WAY THAT THEY COULD CONTINUE TO CONTROL MR. BROWN'S ESTATE AND TO TAKE MONEY FROM IT AFTER HE DIED. TOMMIE RAE AND THE CHILDREN WOULD HAVE CONFIRMED THREATS MADE TO MR. BROWN ABOUT CERTAIN THINGS THAT I'D RATHER NOT REPEAT IN OPEN COURT, THAT THEY USED HIM.

IF YOU LOOK AT THE HERRING CORRESPONDENCE FILE, MR. HERRING OF COURSE BEING THE LAWYER WHO SUPPOSEDLY DRAFTED THE DOCUMENTS, YOU SEE SOMETHING WHICH AGAIN AS AN ESTATE PLANNER IS AMAZING TO ME. YOU SEE CORRESPONDENCE BETWEEN THE DRAFTER AND MR. CANNON AND MR. DALLAS. IT'S VERY RARE THAT YOU SEE ANY CORRESPONDENCE ABOUT THE ESTATE PLAN IN ANY OF THE BUSINESS THAT GOES ON FROM MR. HERRING AND MR. BROWN OR BACK. YOU SEE VERY FEW MEETINGS, IF ANY, CHRONICLED BETWEEN MR. HERRING AND MR. BROWN.

WHEN YOU LOOK AT THIS FILE, IT IS A FILE, ESPECIALLY OF MR. CANNON, TALKING TO HIS FRIEND - BECAUSE YOU'LL SEE EVIDENCE OF FRIENDSHIP IN THERE - WITH MR. HERRING SAYING, "THIS IS WHAT WE NEED. OKAY. HOW DOES THIS DRAFT LOOK? LET'S CHANGE THIS. OKAY. HOW DOES THIS DRAFT LOOK?"

THE COURT: THAT'S CORRESPONDENCE FROM HERRING, THE DRAFTER, TO---

MR. MEDLIN: TO CANNON.

THE COURT: TO CANNON.

MR. MEDLIN: YEAH. YES, YOUR HONOR.

THE COURT: COPIED TO MR. BROWN OR?

MR. MEDLIN: SOMETIMES, YES, BUT RARELY IN MY OPINION. I WOULD HAVE EVERY CORRESPONDENCE WITH A CLIENT -- I MEAN, WE'RE ALL AS ESTATE PLANNERS USED TO DEALING WITH FINANCIAL ADVISORS IF THAT'S WHAT MR. CANNON CLAIMS HE WAS, BUT NOT WHERE WE COMPLETELY OMIT THE CLIENT. THIS IS THE CLIENT'S WILL, NOT THE FINANCIAL ADVISOR'S WILL, ESPECIALLY A FINANCIAL ADVISOR WHO IS GOING TO TAKE 50 PERCENT OR HAS THE ABILITY TO TAKE 50 PERCENT OF THE GROSS INCOME OF A SO-CALLED CHARITABLE TRUST.

ONCE MS. POPE AND MR. BUCHANAN BECAME PERMANENT PERSONAL REPRESENTATIVES AND TRUSTEES, THEY ENGAGED AN EXCELLENT ATTORNEY, MR. GILREATH, AND ANOTHER EXCELLENT ATTORNEY, MR. FEW - I WON'T SAY WHO IS BETTER, BUT THEY'RE BOTH EXCELLENT - TO BRING A LAWSUIT, INCLUDING AS DEFENDANTS DALLAS, BRADLEY, CANNON, ALLEGATIONS OF UNDUE INFLUENCE BY THOSE THREE AGAINST MR. BROWN IN THAT LAWSUIT. THE PERSONAL REPRESENTATIVES AND TRUSTEES BOLSTERED OUR CASE AGAINST THE ATTORNEY GENERAL.

THE COURT: I.E., TO TURN OVER THE WHOLE ESTATE PLAN.

MR. MEDLIN: THE WILL AND THE TRUST ARE NOT VALID

BECAUSE OF UNDUE INFLUENCE. THE PERSONAL REPRESENTATIVES AND THE TRUSTEES ARE ARGUING THE SAME THING. WE WOULD HAVE HAD A DELIGHTFUL TIME, WE STILL MAY, ARGUING ABOUT WHERE THE PERSONAL REPRESENTATIVE AND TRUSTEES EXACTLY DRAW THAT UNDUE INFLUENCE LINE. OH, THEY UNDULY INFLUENCED HIM ON ALL THESE THINGS BUT NOT HIS WILL AND TRUST.

ALSO IN THE HERRING BOX IS A SIGNED AND WITNESSED ORIGINAL BLANK DEED FORM. CLEARLY MR. HERRING OR SOMEONE GOT MR. BROWN TO SIGN A BLANK DEED AND TO HAVE IT WITNESSED. NOW, IF THAT ALSO DOESN'T SIMPLY THROW COAL ON THE FIRE AS TO THE UNDUE INFLUENCE AND THE QUESTION OF IF MR. BROWN EVEN KNEW WHAT WAS IN HIS DOCUMENTS, WE HAVE THAT TO PRESENT. AND, OF COURSE, YOUR HONOR, AS YOU ASTUTELY RECOGNIZED, IF WE PREVAIL ON THE WILL AND TRUST CONTEST, THEN WE MAY WELL HAVE AN INTESTACY.

NOW, THERE'S A '99 WILL AND TRUST WHICH MR. DALLAS AND MR. BRADLEY INFORMED US ABOUT ABOUT A YEAR AFTER MR. BROWN'S DEATH, RIGHT AT ABOUT A YEAR AFTER MR. BROWN'S DEATH, AND WE'LL TALK ABOUT THAT WITH THE PERSONAL REPRESENTATIVES AND TRUSTEES LATER, TOO. THEY CERTAINLY HAVEN'T UNTIL THIS MOMENT TAKEN A POSITION THAT EITHER OF THOSE DOCUMENTS IS VALID. THEY AREN'T APPOINTED UNDER THOSE DOCUMENTS. BUT IF WE OVERTURN THE 2000 WILL AND TRUST, THEN THE ARGUMENT BECOMES: WELL, WOULD THE '99 WILL AND TRUST BE VALID? AND THE '99 WILL AND TRUST ARE SIMILAR WITH ONE FAIRLY LARGE

DISTINCTION: INSTEAD OF THE PERMISSIBLE EDUCATION INSTITUTIONS FOR THE CHARITABLE TRUST BEING EDUCATIONAL INSTITUTIONS IN GEORGIA AND SOUTH CAROLINA, THERE WERE THREE SPECIFICALLY NAMED SOUTH CAROLINA COLLEGES AS THE EDUCATIONAL INSTITUTIONS OF CHOICE. MAKE NO MISTAKE ABOUT IT.

THE BENEFICIARIES OF THESE CHARITABLE TRUSTS, IF VALID, ARE THE POOR AND NEEDY CHILDREN, NOT THE INSTITUTIONS. THAT'S THE BASIC POINT OF THE TRUST LAW. WE'D HAVE THE VERY SAME ARGUMENTS WITH THE '99 WILL AND TRUST THAT WE JUST HAD FOR THE 2000 WILL AND TRUST: UNDUE INFLUENCE BECAUSE, ONCE AGAIN, THE '99 TRUST HAS THAT SAME 50 PERCENT MANAGEMENT FEE HIDDEN AWAY IN THE DOCUMENT, THE FAUCET TO TURN THAT MONEY ON AND OFF. SO THAT'S JUST A SMALL PART OF WHAT MR. JONES HAD TO DEAL WITH AND HIS ABLE ASSISTANTS AT THE OFFICE OF THE ATTORNEY GENERAL. THERE WAS EVERY GOOD CHANCE -- AND BY THE WAY, I'LL BE THE FIRST TO ADMIT I TELL MY STUDENTS: PREVAILING ON A WILL AND TRUST CONTEST IN SOUTH CAROLINA IS DIFFICULT, BUT I ALSO BELIEVE THAT IF THERE WAS EVER A CASE WHERE THE CONTESTANTS WERE GOING TO PREVAIL, THIS WAS IT.

NOW, YOUR HONOR, IN ADDITION TO THAT, THE ATTORNEY GENERAL HAD TO FIGHT MRS. BROWN AND HE HAD TO FIGHT LITTLE MAN, AND I WANT TO TALK MORE ABOUT THAT IN JUST A LITTLE BIT IF YOU'LL CONTINUE TO INDULGE ME, YOUR HONOR, WITHOUT---

THE COURT: MR. WARNER HAS RAISED SOME ISSUES ABOUT, AS WELL AS THE SPECIAL P.R.'S AND TRUSTEES, THAT WE DO NEED TO

LITIGATE MRS. BROWN AND THE LITTLE MAN. WHEN I SAY LITTLE MAN, THAT'S CERTAINLY NOT -- THAT'S WHAT EVERYBODY CALLS HIM, ISN'T IT?

MR. MEDLIN: YES, YOUR HONOR.

THE COURT: WE SHOULDN'T GO FORWARD UNTIL ALL THAT'S BEEN HASHED OUT AND LITIGATED.

MR. MEDLIN: WELL, UNDER THAT LOGIC, YOUR HONOR, WE HAVE TO DECIDE EVERY PARTY'S RIGHTS FIRST AND THEN WE CAN TALK ABOUT SETTLING THE CASE? THAT SEEMS COUNTERINTUITIVE TO A SETTLEMENT TO ME, BUT WE'RE VERY COMFORTABLE WITH THAT STATUS.

THE COURT: WELL, THEY SAY ALL THE LAW WAS AGAINST HER BEING THE SPOUSE AND ALL THE LAW IS AGAINST HIM BEING THE LEGITIMATE HEIR.

MR. MEDLIN: WELL, YOUR HONOR---

THE COURT: AND THEY HAVE CITED WHO WAS MARRIED TO WHO AT WHICH TIME AND...

MR. MEDLIN: YOUR HONOR, I INTEND TO ASK THEM ABOUT THAT BECAUSE WHAT THEY HAVEN'T CITED IS A FAMILY COURT ORDER THAT FINDS AS A CONCLUSION OF LAW THAT WHEN TOMMIE RAE BROWN ATTEMPTED TO MARRY JAVED AHMED IN 1987 HE WAS ALREADY MARRIED SO THAT CONSEQUENTLY SHE COULD NEVER HAVE BEEN MARRIED. THEY DON'T PUT THAT IN ANY OF THEIR PLEADINGS. THEY'RE SUPPOSEDLY FIDUCIARIES TRYING TO BE FAIR TO EVERYBODY.

THE COURT: LET'S DON'T GET PERSONAL.

MR. MEDLIN: I'M NOT GETTING PERSONAL, YOUR HONOR. I'M MAKING OUR ARGUMENT. I HAVE GREAT RESPECT, AS YOU KNOW, FOR MS. POPE AND MR. BUCHANAN.

THE COURT: SO DO I, AS WELL AS YOU AND THE REST OF THE---

MR. MEDLIN: BUT I DISAGREE WITH A FIDUCIARY TAKING A POINTED POSITION WHEN THERE IS CLEARLY---

THE COURT: SO HER MARRIAGE TO THE ORIGINAL GUY WOULD BE VOID---

MR. MEDLIN: BY A FINDING OF A SOUTH CAROLINA COURT, YOUR HONOR, AND I'LL TALK MORE ABOUT THAT IF YOU'LL INDULGE ME LATER ON. BUT LET'S ASSUME FOR THE MOMENT THAT WE WERE ABLE TO PREVAIL ON THAT SPOUSAL SHARE ISSUE. THE 2000 WILL AND TRUST WERE EXECUTED BEFORE THE MARRIAGE WHICH MEANS IN SOUTH CAROLINA MRS. BROWN HAS AN ARGUMENT THAT SHE'S ENTITLED TO 50 PERCENT OF THE PROBATE ESTATE.

NOW, THERE ARE EXCEPTIONS TO THAT OMITTED SPOUSAL SHARE. WE DON'T THINK THOSE EXCEPTIONS WOULD APPLY, BUT THERE ARE EXCEPTIONS TO THAT. THERE'S ALSO ANOTHER SPOUSAL SHARE IN SOUTH CAROLINA; THAT'S THE ELECTIVE SHARE. THERE ARE NO EXCEPTIONS TO THE ELECTIVE SHARE. IF YOU'RE THE SURVIVING SPOUSE AND YOU HAVEN'T WAIVED YOUR ELECTIVE SHARE RIGHT, YOU GET AN ELECTIVE SHARE, ONE-THIRD OF THE ESTATE.

SO IF MRS. BROWN PREVAILS BY SHOWING YOUR HONOR A JUDGMENT OF A SISTER COURT THAT SHE WASN'T MARRIED AT THE

TIME SHE ENTERED INTO A WEDDING CEREMONY WITH A MARRIAGE LICENSE ISSUED BY THE PROBATE COURT OF AIKEN COUNTY, SOUTH CAROLINA, WE'RE PRETTY SURE THAT YOUR HONOR IS GOING TO FIND THAT THAT MARRIAGE TO MR. BROWN IS VALID. WE HAVE OTHER ARGUMENTS THAT WE'LL MAKE AS WELL. WE HAVE A LOT OF OTHER EVIDENCE SHOWING THAT MR. BROWN THOUGHT SO.

THE COURT: AT THE LEAST IT WOULD HAVE BEEN A HOTLY-CONTESTED ISSUE.

MR. MEDLIN: YOUR HONOR, IT WOULD HAVE BEEN HOTLY CONTESTED, BUT AGAIN WE THOUGHT WE HAD THE BEST ARGUMENT. WE ALREADY HAD A COURT ORDER. NOW, IF SHE PREVAILS, MR. JONES IS LOOKING AT LOSING ANYWHERE FROM A THIRD TO 50 PERCENT OF THE PROBATE ESTATE. NOW, ONE COULD ARGUE THAT WHATEVER WAS FUNDED INTO THAT ALLEGED 2000 IRREVOCABLE TRUST, WHICH OUR AGREEMENT NOW WOULD SUPPORT, WOULD NOT BE SUBJECT TO HER SPOUSAL SHARE.

BUT, FIRST OF ALL, WE HAD TO DECIDE WHAT'S IN THAT TRUST. THERE'S A LACK OF DOCUMENTATION THAT MR. JONES HAS TO DEAL WITH. MR. BRADLEY, MR. CANNON, AND MR. DALLAS DIDN'T DO A VERY GOOD JOB OF EITHER CREATING OR KEEPING THE DOCUMENTATION AS TO WHAT GOT FUNDED INTO THAT TRUST IN 2000. THERE IS AN ENTRY ON THE SCHEDULE. OF COURSE, THERE'S THE SCHEDULE B. THAT MR. DALLAS CREATED BY HIS OWN ADMISSION AFTER MR. BROWN'S DEATH WHICH PROBABLY WASN'T PART OF THE TRUST, BUT THERE IS A SCHEDULE IN THE TRUST DOCUMENT THAT

SAYS "JAMES BROWN ENTERPRISES." WELL, IT MAY BE THAT JAMES BROWN ENTERPRISES OWNS A LOT OF PROPERTY. NOW, WE HAVE TAX RETURNS THAT SHOW THAT JAMES BROWN INDIVIDUALLY OWNED JAMES BROWN ENTERPRISES WHICH MR. BARR TRIED TO CHANGE AFTER MR. BROWN DIED AND AFTER YOU ORDERED ANYBODY NOT TO DO ANYTHING ON AUGUST 10TH, 2007.

SO WE HAVE A LOT OF EVIDENCE SHOWING THAT THAT ASSET DIDN'T GET INTO THE TRUST, BUT WE HAVE ONE PIECE OF VERY COMPELLING EVIDENCE. WE HAVE A STIPULATION GIVEN TO THIS COURT BACK IN SEPTEMBER OF '07 SIGNED BY THE SETTLING PARTIES. ALSO TERRY BROWN, I BELIEVE, CONSENTED TO THAT AT THE TIME, BUT MOST IMPORTANTLY IT WAS SIGNED OFF ON BY MR. DALLAS, MR. BRADLEY, AND MR. CANNON, THE THREE PEOPLE WHO PURPORTED TO BE TRUSTEES OF THE 2000 TRUST. WHO WOULD KNOW BETTER WHAT TRUST PROPERTY WAS HELD BY THE TRUST THAN THE THREE TRUSTEES?

AND AS YOU RECALL, YOUR HONOR, THAT STIPULATION SAID THE ONLY THING IN THE TRUST WAS THE BEECH ISLAND REAL ESTATE AND $50. THAT MEANS THAT I HAVE ANOTHER ARGUMENT AGAINST MR. JONES THAT ALL THE OTHER VALUABLE RIGHTS THAT ARE PROBATE ASSETS OR COULD BE NON-PROBATE ASSETS AS OPPOSED TO THE FEDERAL RIGHTS ARE IN THE ESTATE. MRS. BROWN GETS AT A MINIMUM A THIRD, MAXIMUM A HALF OF THIS.

WE HAVE UNSIGNED STOCK CERTIFICATES. WE HAVE UNSIGNED STOCK REGISTRY BOOKS. I THINK I HAD GOOD LAW THAT THERE WAS

NO TRANSFER, BUT AGAIN THE MOST COMPELLING EVIDENCE IS THE EVIDENCE THAT THE THREE TRUSTEES THEMSELVES PRESENTED TO YOUR HONOR IN SEPTEMBER. NOW, THEY'VE SINCE TRIED TO WITHDRAW THAT, AND IF YOUR HONOR RECALLS, BACK IN MARCH WHEN I QUESTIONED MR. DALLAS, HE EXPLAINED WHY HE PRESENTED THAT AFFIDAVIT TO BEGIN WITH, THAT STIPULATION - I'M SORRY - TO BEGIN WITH. HE WAS AFRAID THAT IF HE DID SOMETHING ELSE YOU WOULD FIRE HIM. YOU REMEMBER THAT TESTIMONY. I FOUND THAT PERHAPS THE MOST ASTOUNDING OF ALL THE ASTOUNDING TESTIMONY WE'VE HEARD IN THIS CASE.

IN ESSENCE, MR. DALLAS ADMITTED TO YOU THAT HE WOULD RATHER DECEIVE THE COURT THAN TO LOSE HIS JOB AS A FIDUCIARY WHICH, BY THE WAY, IS GOING TO BE OUR MOST COMPELLING ARGUMENT WHY MR. DALLAS COULD NEVER, EVER BECOME A FIDUCIARY OF THIS ESTATE AGAIN. SO WE'VE GOT THAT EVIDENCE.

I ALSO GOT MR. DALLAS AND TO SOME EXTENT MR. BRADLEY ON CROSS-EXAMINATION TO TELL ME THAT I DIDN'T UNDERSTAND WHY THEY HADN'T DONE ANYTHING AS TRUSTEE WHEN THEY SAID THEY HADN'T DONE ANYTHING AS TRUSTEE FROM 2000 FORWARD. WHAT I DIDN'T UNDERSTAND, ACCORDING TO MR. DALLAS, WAS THAT MR. BROWN KEPT ABSOLUTE CONTROL OF HIS PROPERTY; IT WAS HIS. WHAT MR. DALLAS DIDN'T UNDERSTAND IS THAT'S EXACTLY THE ANSWER I WANTED FROM HIM FOR THIS REASON: TO USE AGAINST MR. JONES.

WE HAVE TWO CASES IN SOUTH CAROLINA BY OUR SUPREME

COURT, THE SEIFERT CASE AND THE DREHER CASE, THAT SAY THAT IF ONE RESERVES THE RIGHT TO REVOKE AND INTERVIEW THOSE TRUSTS, IT'S SUBJECT TO THE ELECTIVE SHARE CALCULATION. I MENTIONED TO THIS COURT BEFORE I DISAGREE WITH BOTH OF THOSE CASES, BUT I LOVE THEM NOW. THEY ARE THE LAW IN THIS STATE, AND IT GAVE ME AN ADDITIONAL ARGUMENT WITH MR. JONES THAT ALL PROPERTY WAS GOING TO PASS THROUGH THE PROBATE ESTATE AT LEAST FOR PURPOSES OF THE ELECTIVE SHARE CALCULATION AND I WOULD ARGUE BY ANALOGY FOR PURPOSES OF THE OMITTED SPOUSE SHARE BECAUSE THE TRUSTEES THEMSELVES SAID MR. BROWN KEPT CONTROL OF THE TRUST. THEY HAD NO CONTROL; THEY HAD NOTHING TO DO WITH THE TRUST.

AND, AGAIN, THERE ARE RIGHTS THAT COULD NOT BE IN THE TRUST AND COULD NOT BE IN THE PROBATE ESTATE. I'M CERTAINLY NO EXPERT ON COPYRIGHT LAW. I'VE TALKED WITH A LOT OF PEOPLE ABOUT COPYRIGHT LAW, AND MY UNDERSTANDING IS THERE ARE CERTAIN RIGHTS THAT PASS BY LAW, FEDERAL LAW, OUTSIDE OF THE ESTATE TO THE SURVIVING SPOUSE AND TO THE SURVIVING CHILDREN. AND THAT'S PART OF WHAT I THINK MR. GRIFFIN AND MR. BARR AND I WILL TALK ABOUT LATER ON ABOUT WHY WE DON'T INTEND TO IMPOSE ON THAT ISSUE WITH RESPECT TO THEIR CLIENTS. BUT THESE ARE RIGHTS THAT MR. JONES WOULDN'T HAVE HAD ANYWAY THAT I THINK WE COULD HAVE SIMPLY WALKED INTO FEDERAL COURT, SHOWN OUR MARRIAGE CERTIFICATE, SHOWN OUR ORDER FROM THE CHARLESTON COUNTY FAMILY COURT, IF ANYBODY CONTESTED IT, WHICH MR. BELL

TOLD US AT ONE POINT HE WAS GOING TO DO, AND WE WOULD HAVE PREVAILED THERE AS WELL. IN NO EVENT WAS MR. JONES GOING TO GET THAT.

NOW, LET'S CONFUSE THINGS EVEN MORE FOR MR. JONES. HE'S NOT SOMEBODY I'VE BEEN ABLE TO CONFUSE, BUT THE FACTORS ARE CONFUSING. WE'VE GOT A '99 REVOCABLE TRUST. IT ALSO HAS A SCHEDULE THAT SAYS "JAMES BROWN ENTERPRISES" IN IT. BEECH ISLAND REAL ESTATE. NOW, WE DIDN'T FIND THE DEED INTO THE '99 TRUST AS WE FOUND THE DEED INTO THE 2000 TRUST FOR THE REAL ESTATE, BUT FOR ALL THE PURPOSES IT LOOKS THE SAME.

THE SIGNIFICANT DIFFERENCE BETWEEN THE IRREVOCABLE AND THE REVOCABLE TRUST CLEARLY WITHOUT ANY ARGUMENT NOW - EVEN I'VE GIVEN UP ARGUING WITH THE SUPREME COURT ON THIS ONE - IF THE ASSETS ARE IN A REVOCABLE TRUST, THEN THEY ARE SUBJECT TO THE SPOUSAL SHARE. MR. DALLAS - AND I BELIEVE ALSO, ALTHOUGH I'M NOT RECALLING EXACTLY, YOUR HONOR, AND I DON'T WANT TO MISSTATE BUT I THINK THIS IS THE CASE - AND MR. BRADLEY ALSO SAID THEY HAD NO IDEA WHETHER THAT '99 TRUST HAD BEEN REVOKED.

THAT TRUST HAS A PROVISION THAT SAYS TO BE REVOKED THERE MUST BE WRITTEN NOTICE DELIVERED TO THE TRUSTEE. I FOUND NO SUCH DOCUMENT IN THE HERRING BOX. THERE MAY BE ONE; I DIDN'T FIND IT. THE TRUSTEES DIDN'T KNOW ABOUT IT. MY ARGUMENT WITH MR. JONES: IF THAT '99 TRUST IS VALID AND WHO KNOWS -- IF YOU WIN ON THAT ONE, CLEARLY YOU LOSE ON THE SPOUSAL SHARE

BECAUSE IT'S A, BY DEFINITION, BY EXPRESS PROVISION IN THE TRUST, A REVOCABLE TRUST. THAT IS RIGHT IN THE WHEELHOUSE OF THE SEIFERT AND DREHER CASES. I DIDN'T EVEN HAVE TO MAKE THE EXTRA ARGUMENT THAT I WOULD HAVE FOR THE 2000 TRUST THAT MR. BROWN RETAINED CONTROL AND IT WAS EFFECTIVELY A REVOCABLE TRUST. YOU'VE GOT TO DEAL WITH ALL THAT.

NOW, LET'S TALK ABOUT, IF YOU WOULD, YOUR HONOR, IN MORE DETAIL THE VALIDITY OF THE MARRIAGE. FIRST OF ALL, AS I READ THE LAW, THE MARRIAGE IS PRESUMED TO BE VALID. WE HAVE THIS FAMILY COURT ORDER NOT APPEALED FROM. IT'S THE LAW OF THE CASE THAT FINDS AS A CONCLUSION OF LAW THAT JAVED AHMED WAS ALREADY MARRIED WHEN HE ATTEMPTED TO ENTER INTO A MARRIAGE CEREMONY WITH TOMMIE RAE BROWN, TOMMIE RAE HYNIE AT THAT TIME.

BY THE VERY ARGUMENT THAT THE PERSONAL REPRESENTATIVES AND TRUSTEES HAVE BEEN TRYING TO MAKE THAT MRS. BROWN COULDN'T BE MARRIED TO MR. BROWN BECAUSE SHE WAS ALREADY MARRIED, THAT IS EXACTLY WHY SHE CAN BE MARRIED TO MR. BROWN BECAUSE SHE COULDN'T BE MARRIED TO MR. AHMED BECAUSE HE WAS ALREADY MARRIED, AS A SISTER COURT IN SOUTH CAROLINA HAS FOUND.

NOW, MR. AHMED WAS SERVED BY PUBLICATION. IT SO HAPPENS MR. ROSEN WAS MRS. BROWN'S LAWYER, ENGAGED, IF I RECALL CORRECTLY, BY JAMES HUFF WHO WAS MR. BROWN'S LAWYER AT THE TIME AND PAID BY MR. BROWN BECAUSE HE HAD BEEN TOLD BY EITHER

DALLAS, BRADLEY, OR CANNON OR ALL OF THEM THAT THIS WAS A PROBLEM AFTER HE MARRIED TOMMIE RAE. HE WAS UNDERSTANDABLY UPSET AND HE WANTED IT FIXED, AND MR. ROSEN FIXED IT.

MR. BROWN WAS CERTAINLY AWARE OF IT. HE WAS SUPPORTIVE OF IT. HE PAID FOR IT. MR. ROSEN KEPT MR. HUFF'S COUNSEL ADVISED OF IT, THE PERSONAL REPRESENTATIVES THAT ADMITTED IN ANSWERS TO INTERROGATORIES AND REQUEST FOR ADMISSIONS, ONE, I CAN'T REMEMBER EXACTLY WHICH, THAT THEY HAD ACCESS TO ALL THIS INFORMATION SO THAT MR. BROWN HAD ACCESS TO ALL THIS INFORMATION. THERE'S NO DOUBT HE KNEW WHAT WAS GOING ON AND WAS SUPPORTING THIS ANNULMENT, AND MR. ROSEN - AND, YOUR HONOR, I HATE TO SAY THIS IN FRONT OF THE COURT - IS A GREAT LAWYER. HE GOT A CONCLUSION OF LAW THAT THERE WAS AN ANNULMENT, AND HE GOT A CONCLUSION OF LAW THAT THERE WAS NEVER A MARRIAGE. HE KILLED ONE BIRD WITH TWO STONES. AND THAT'S IMPORTANT WHEN WE GET TO THE PERSONAL REPRESENTATIVES' ARGUMENT ABOUT THE LUKICH CASE.

MR. AHMED WAS SERVED BY PUBLICATION. MR. ROSEN, A RESPECTED MEMBER OF THE BAR, DID EVERYTHING THAT HE COULD DO TO INSURE THAT THEY COULD FIND MR. AHMED. HE WAS UNSUCCESSFUL. HE GOT AN ORDER OF PUBLICATION BY THE COURT. EVERY RULE WAS FOLLOWED. THE REASON I KNOW THAT - BECAUSE I KNOW NOTHING ABOUT THOSE RULES - IS BECAUSE MR. JONES WAS DIGGING. HE WAS DIGGING HARD, AND OBVIOUSLY HE DIDN'T FIND ANYTHING THAT HE LIKED BECAUSE HE LEFT IT ALONE. BUT ANY

IDEA THAT THE ATTORNEY GENERAL HASN'T PROSECUTED AS MUCH AS ANY ZEALOUS ADVOCATE POSSIBLY COULD ON BEHALF OF THE CHARITABLE TRUST OR TRY TO GET THE GREATEST POSSIBLE RETURN WHEN THIS LITIGATION WAS ONGOING WOULD BE SPECIOUS BECAUSE I WAS ON THE RECEIVING END OF A LOT OF THAT FROM MR. JONES. HE WAS MAKING ME VERY UNCOMFORTABLE.

BUT WE LOOKED AT THE LAW. WE DON'T THINK ANYBODY HAS A RIGHT TO APPEAL, CERTAINLY NOT THE PERSONAL REPRESENTATIVES AND THE TRUSTEES, CERTAINLY NOT A THIRD PARTY. IMAGINE, YOUR HONOR, THE CHAOS THAT WOULD BE CREATED IF A THIRD PARTY COULD COME IN AND UNDO A FAMILY COURT ORDER. MR. AHMED MAY HAVE THE RIGHT TO COME IN. I WOULD ARGUE HE DOESN'T FOR ANY NUMBER OF REASONS THAT I WON'T BOTHER YOU WITH AT THIS POINT. HE WOULD BE THE ONLY POSSIBLE PARTY WHO COULD DO THAT, AND HE HASN'T SHOWN UP YET AND WE'RE PRETTY SURE HE'S NOT GOING TO.

EVEN IF HE DID, I THINK WE'D FIND THAT HE IS NOT A CREDIBLE WITNESS. I THINK WE WOULD BE ABLE TO SHOW THAT VERY QUICKLY. THE PERSONAL REPRESENTATIVES AND TRUSTEES WANT TO ARGUE THAT THE LUKICH CASE, ESPECIALLY THE SUPREME COURT VERSION OF IT -- WHICH I REMIND YOUR HONOR CAME OUT AFTER OUR SETTLEMENT. SO THEY WANT US TO UNDO A SETTLEMENT BECAUSE SOMETHING HAPPENED AFTER THE SETTLEMENT.

THEY SAY THE LUKICH CASE TIME AFTER TIME IN PLEADINGS AND IN AFFIDAVITS PROVES THAT TOMMIE RAE IS NOT THE SURVIVING SPOUSE OF MR. BROWN. IT DOES NO SUCH THING. AND RATHER THAN

TIP MY QUESTIONS, I'M GOING TO ASK MS. POPE AND MR. BUCHANAN TO SHOW ME IN THOSE CASES AND I'M GOING TO SHOW THEM WHY THEY'RE WRONG, BUT SUFFICE IT TO SAY RIGHT NOW, YOUR HONOR, THE LUKICH CASE DOES NO SUCH THING. IT CONFIRMS MY ARGUMENT ABOUT TOMMIE RAE AND JAMES BROWN'S MARRIAGE.

WE'RE ALSO GOING TO BE ABLE TO SHOW YOUR HONOR THAT MR. BROWN HELD HIMSELF OUT AS THE HUSBAND OF TOMMIE RAE AND THE FATHER OF LITTLE MAN AFTER A SECOND FAMILY COURT DISPUTE WHERE THEY DID GET IN A FIGHT. THEY HAD A TUMULTUOUS MARRIAGE; NOBODY DISPUTES THAT. ALL YOU HAD TO DO WAS CATCH THE T.V. NEWS EVERY LITTLE BIT. LOTS OF PEOPLE HAVE TUMULTUOUS MARRIAGES. I DO NOT, YOUR HONOR, BUT LOTS OF PEOPLE HAVE TUMULTUOUS MARRIAGES, JUST IN CASE MY WIFE HEARS THIS.

HE BROUGHT AN ANNULMENT ACTION AGAINST MRS. BROWN. THEY SETTLED IT. DISMISSED IT BY CONSENT. AND FROM THAT TIME FORWARD HE CONTINUED TO HOLD HIMSELF OUT AS THE HUSBAND OF MRS. BROWN AND AS THE FATHER OF LITTLE MAN. IF THE PERSONAL REPRESENTATIVES AND TRUSTEES WANT TO REPRESENT MR. BROWN, WELL, THEY SHOULD TAKE A LOOK AT WHAT MR. BROWN HIMSELF SAID AND DID. AND WE'LL GET INTO THAT, YOUR HONOR, INCLUDING WONDERING WHY, IF THEY DIDN'T LOOK INTO IT, THEY DIDN'T.

FINALLY, THE ATTORNEY GENERAL HAD TO DEAL WITH LITTLE MAN'S SHARE. IT'S NOT BEEN PRESENTED IN EVIDENCE TO THIS COURT YET, YOUR HONOR, TO MY KNOWLEDGE, BUT IT'S CERTAINLY

BEEN TALKED ABOUT. MR. SHAHID OBTAINED A D.N.A. TEST FOR LITTLE MAN. BY THE WAY, OUR CLIENT FROM DAY ONE RAILED AT US: "GET THAT TEST DONE. I'M BEING VILIFIED IN THE PRESS. I'M BEING VILIFIED IN THE COURTROOM. LITTLE MAN IS BEING VILIFIED IN THE PRESS. HE'S BEING VILIFIED IN THE COURTROOM. THIS IS JAMES BROWN'S SON. GET THE TEST."

WE HAD STRATEGIC REASONS THAT WE WAITED, BUT IT WASN'T BECAUSE OUR CLIENT WANTED IT. SHE WANTED IT RIGHT AWAY. AND SURE ENOUGH, MR. SHAHID GOT THAT AND THE TEST SHOWS, JUST LIKE MR. BARR WAS SAYING, THAT MR. BROWN IS 99.15 PERCENT PURE, WHATEVER THE IVORY SOAP TEST IS, THE FATHER OF LITTLE MAN.

THE COURT: AND YOU HAVE THAT DOCUMENT?

MR. MEDLIN: I HAVE THAT DOCUMENT, YOUR HONOR. NOW, MR. BELL'S ARGUED BEFORE THAT THAT'S BOGUS. HE DOESN'T THINK MUCH OF MRS. BROWN. MAYBE HE'S GOING TO CHANGE HIS MIND NOW THAT WE'VE COME TO AN ARRANGEMENT, BUT IN COURT HE HASN'T THOUGHT MUCH OF MRS. BROWN.

THE COURT: LEAVE THE PERSONALITIES OUT. GO AHEAD.

MR. MEDLIN: HIS POSITION, YOUR HONOR -- I HAVE NO IDEA WHAT MR. BELL THINKS OF MRS. BROWN; HE MAY NEVER HAVE MET HER. BUT HE SAYS, OH, THIS TEST IS BOGUS. WE NEED TO FOLLOW THE PRESCRIBED TEST THAT MRS. POPE AND MR. BUCHANAN HAVE SET OUT. WELL, WE WERE READY TO DO THAT UNTIL WE SETTLED. IN FACT, WE WERE GOING TO GET THE TEST DONE THAT WEEKEND IN

ACCORDANCE WITH THEIR PROCEDURE, BUT WE SETTLED. AND AT THAT POINT WE DID NOT HAVE TO DO THE D.N.A. TEST BECAUSE ALL THE CHILDREN AGREED THERE WAS GOING TO BE NO MORE D.N.A. TESTING, NO MORE EMBARRASSMENT FOR MR. BROWN'S LEGACY AND HONOR, NO MORE EMBARRASSMENT FOR THE CHILDREN OF MR. BROWN.

BUT LET'S THINK ABOUT WHAT MRS. POPE AND MR. BUCHANAN AND MR. BELL IN THEIR ARGUMENTS TO THIS COURT PREVIOUSLY WOULD HAVE TO HAVE HAPPEN FOR MRS. BROWN TO HAVE GAINED THE TEST. FIRST OF ALL, UNDER YOUR HONOR'S ORDER WE HAD A PIECE OF MR. BROWN'S D.N.A. WHICH MR. ROSEN GAVE TO A RESPECTED PROFESSOR AT M.U.S.C. WHO KEPT IT UNTIL MR. SHAHID ASKED FOR IT AND SENT IT ON TO THE LAB.

ONE MIGHT ARGUE: THEY CHEATED. MR. SHAHID, WHO IS A RESPECTED ATTORNEY AND FORMER U.S. ATTORNEY, GENERAL COUNSEL FOR THE CATHOLIC DIOCESE OF SOUTH CAROLINA, THAT HE'S A CROOK AND HE LIED ABOUT THE CHAIN OF CUSTODY. WELL, EVEN IF ALL THAT WERE TRUE AND IT'S NOT TRUE, AS WE KNOW, THAT HE'S NOT A CROOK - THE REST OF IT'S TRUE - WE HAVE OTHER EVIDENCES OF MR. BROWN'S ALLELES. ALL THE PARTIES HAVE TO DO IS LOOK AT OUR TEST AND THAT TEST AND SAY, OH, YEAH, THAT IS MR. BROWN'S D.N.A. SO THERE CAN BE NO QUESTION, NO REASONABLE QUESTION, ABOUT WHETHER MR. BROWN'S D.N.A. GOT PRESENTED AS THE FATHER.

SO WHAT'S THE NEXT QUESTION? WELL, THE LAB WILL CONFIRM, I THINK, THAT THEY TESTED A SWAB. CHEEK SWAB, MR. SHAHID?

MR. SHAHID: (NODDED HEAD UP AND DOWN.)

MR. MEDLIN: NOW, HOW IS TOMMIE RAE GOING TO GAIN THAT -- GAIN THAT? SHE CAN'T SEND IN D.N.A. OFF MR. BROWN'S HAIR BRUSHES OR CLOTHES OR WHATEVER BECAUSE SHE SENT IN A SWAB. WELL, MAYBE SHE WAS SMART ENOUGH BEFORE HE DIED TO SAY, "JAMES, LET ME GET A LITTLE SWAB HERE AND PUT IT IN AN ENVELOPE." I DON'T KNOW HOW LONG A SWAB KEEPS, BUT SHE DIDN'T DO THAT. SO IT'S A SWAB FROM SOMEBODY.

WELL, IF IT'S NOT FROM LITTLE MAN, THEN WHO IS IT FROM? FROM ONE OF THE MALE CHILDREN OF MR. BROWN? ONE OF THESE CHILDREN WHO AT THAT TIME WERE WANTING PROOF OF THE TEST? SECRETLY COLLABORATED WITH MRS. BROWN TO DEFRAUD THE COURT BY GIVING A SWAB FROM THEIR CHEEK TO SEND? COME ON. SO WE WOULD BE EXTREMELY RELUCTANT TO HAVE TO HAVE ANOTHER D.N.A. TEST AFTER THE SETTLEMENT BECAUSE OF WHAT LITTLE MAN HAS BEEN THROUGH ALREADY.

NOW, BECAUSE OF THAT, WE'RE 99.15 PERCENT SURE THAT LITTLE MAN IS THE BIOLOGICAL CHILD OF JAMES BROWN. AND WE CAN FORGET THE ARGUMENTS THAT MRS. POPE AND MR. BUCHANAN MAKE THAT HE WAS BORN TO THE MARRIAGE OF TOMMIE RAE AND JAVED AHMED BECAUSE WE'VE ALREADY DISPELLED THAT, I HOPE, WITH THE FAMILY COURT ORDER FROM CHARLESTON, BUT EVEN IF THAT WERE THE CASE, HE IS THE BIOLOGICAL SON OF JAMES BROWN. WE'VE GOT THE PROOF OF THAT. AND THEIR ATTEMPT TO MARRY, EVEN IF IT WEREN'T VALID UNDER SOUTH CAROLINA LAW, LEGITIMIZES J .

SO UNDER ANY ARGUMENT, UNLESS YOU ARGUE THAT J B , ISN'T THE BIOLOGICAL SON OF JAMES BROWN, J B , LITTLE MAN, GETS AN IMPORTANT RIGHT. HE GETS AN OMITTED CHILD SHARE, WE WOULD ARGUE, BECAUSE HE WAS BORN AFTER THAT 2000 WILL WAS EXECUTED, AND THAT OMITTED CHILD SHARE WOULD BE WHAT HIS INTESTATE SHARE WOULD BE EVEN IF THE WILL WERE VALID. SO NOT ONLY IF MR. JONES PREVAILS IN THE WILL AND THE TRUST CONTEST, WHICH HE WAS GOING TO HAVE GREAT DIFFICULTY WITH I WOULD ARGUE, HE WAS GOING TO HAVE TO FIGHT MRS. BROWN FOR 50 PERCENT OF THE ESTATE. HE WAS GOING TO HAVE TO FIGHT LITTLE MAN FOR AN ADDITIONAL PERCENTAGE OF THE ESTATE, DEPENDING ON HOW MANY CHILDREN OF MR. BROWN THERE ARE.

WE'VE GOT SEVERAL OTHER PARTIES. WE'VE GOT SIX RECOGNIZED CHILDREN. WE'VE GOT SEVERAL OTHER PARTIES WHO ARGUE THAT THEY ALSO ARE THE BIOLOGICAL CHILDREN OF MR. BROWN, BUT IT WOULD BE SOME PERCENTAGE. AND YOU THROW WHATEVER THE RENEWAL AND TERMINATION RIGHTS ARE ON TOP OF THAT AND THEY THINK HE'S GIVING AWAY THE ESTATE WHEN HE ENDED UP WITH 50 PERCENT OF THE WHOLE SHEBANG.

NO WONDER THE ATTORNEY GENERAL SAID HE WAS ECSTATIC - I THINK THAT WAS HIS WORD - WITH THE SETTLEMENT. YOUR HONOR, THAT'S WHY WE BELIEVE THE SETTLEMENT IS FAIR AND REASONABLE.

THE COURT: ALL RIGHT. LET'S DO THIS. IT'S 12:30. I KNOW MY COURT REPORTER AND THE COURT PERSONNEL NEED A

BATHROOM BREAK; I SUSPECT OTHER PEOPLE DO. WHAT'S THE PLEASURE -- DO Y'ALL WANT A LUNCH BREAK? I ASSUME EVERYBODY DOES.

IT'S 12:30. LET'S RECONVENE -- IS AN HOUR AND 15 MINUTES OKAY FOR LUNCH? ANYBODY GOT ANY PROBLEM WITH THAT OR DO YOU NEED AN HOUR AND A HALF? WE'LL RECONVENE AT 1:45. THANK YOU.

(WHEREUPON, A LUNCH BREAK WAS TAKEN.)

THE COURT: THANK YOU. GOOD AFTERNOON. PLEASE BE SEATED. THANK YOU. ALL RIGHT. PROFESSOR MEDLIN, ANYTHING ELSE YOU WANT TO RELATE TO THE COURT?

MR. MEDLIN: NO, YOUR HONOR, NOT AT THIS TIME.

THE COURT: ALL RIGHT. ANY COMMENTS BY THE ATTORNEY GENERAL?

MR. JONES: YES, YOUR HONOR, VERY BRIEF COMMENTS.

THE COURT: I ASSUME YOU ECHO WHAT THE PROFESSOR SAID AND THEN YOU WANT TO ADD SOMETHING TO IT?

MR. JONES: YES, SIR. WE AGREE THAT THOSE WERE THE ISSUES, AMONG OTHERS, THAT OUR OFFICE WAS REVIEWING.

THE COURT: WHAT OTHER ISSUES ARE THERE?

MR. JONES: THERE WERE SOME ISSUES THAT WE WERE LOOKING AT AS TO THE LOCATION OF CERTAIN INDIVIDUALS. THEY'RE CONTAINED WITHIN THE SAME ISSUES, BUT WE WERE DOING SOME THINGS THAT MAYBE PROFESSOR MEDLIN DIDN'T MENTION AS FAR AS OUR INVESTIGATION.

THESE WERE THE, I THINK, 20 OR 21 AREAS WE WERE LOOKING AT IN MAKING OUR PREPARATION FOR THIS CASE. I THINK IT'S INTERESTING THAT THOSE WHO HAVE CHALLENGED IT AT THE END OF THE DAY, IF THEY LOSE, WALK HOME -- GO HOME AND HAVE THEIR ATTORNEY'S FEES, AND THE A.G.'S OFFICE IS SITTING WITH NO MONEY FOR THE CHARITABLE TRUST AND NO SCHOLARSHIPS. SO WE ARE THE PARTY PER THE STATUTORY CASE LAW THAT HAS THE RESPONSIBILITY, THE RESPONSIBILITY, ALONG WITH THE ASSISTANCE OF THIS COURT, TO PROTECT THE CHARITABLE TRUST.

I THINK YOUR HONOR HAS SEEN OUR PRESENCE IN THIS COURTROOM OVER THE LAST YEAR AND A HALF, FROM SEPTEMBER OF '07. MARY FRANCES HAS BEEN HERE. J.C. HAS BEEN HERE, J.C. NICHOLSON. WE'VE HAD AN AUDITOR ALSO APPEAR. THERE'S NEVER BEEN A QUESTION WITH ATTORNEY GENERAL MCMASTER AS FAR AS ANY RESOURCES I NEEDED TO PROCEED IN THIS CASE. WE'VE HAD THESE PEOPLE, THESE ATTORNEYS, INCLUDING MYSELF TO DEVOTE WHATEVER TIME WAS NECESSARY TO PROCEED WITH THIS ACTION AND PROTECT THE CHARITABLE TRUST.

THERE'S ONE POINT THAT I WANT TO MENTION THAT, ALONG WITH BALANCING OUT AND DOING OUR INVESTIGATION LEGALLY AND FACTUALLY ON THE CASE, WE HAD WHAT PRECIPITATED REALLY THE SETTLEMENT NEGOTIATIONS WAS THE FACT THAT WHILE WE WERE SITTING AND WORKING WITH OUR HEAD DOWN, PROBABLY THIS TRUST WAS BEING DISSIPATED OVER A PERIOD OF TIME THROUGH THE ECONOMY, AND THAT'S WHAT REALLY BROUGHT IT TOGETHER. IT WAS

BASICALLY -- I DON'T KNOW WHAT -- I THINK I WAS THE INITIATING PARTY SAYING WE NEED TO FIGURE OUT WHERE WE ARE IN THIS CASE BECAUSE WE MIGHT WIN AND FIVE YEARS FROM NOW NOTHING WILL BE THERE, AND I THOUGHT IT WAS ONLY -- IT WAS VERY RESPONSIBLE FOR OUR OFFICE TO INITIATE THAT.

THE RENEWAL AND TERMINATION RIGHTS BEING INCLUDED WITHIN THE SETTLEMENT WAS A MAJOR FACTOR FOR US AND WHAT WE CONSIDER A BONUS, AND I WOULD ASK THE COURT BASED UPON THE ARGUMENTS AND THE HURDLES WE HAD TO OVERCOME INCLUDING WHAT WITNESSES WE WOULD HAVE HAD TO HAVE CALLED TO PRESENT OUR CASE AND THE CREDIBILITY OF THOSE WITNESSES THAT IT WAS APPROPRIATE, REASONABLE, AND AT THE PART OF US DOING OUR DUE DILIGENCE TO ENTER INTO THIS SETTLEMENT AGREEMENT AND THAT IT'S REASONABLE AND FAIR.

THE COURT: THANK YOU. MR. LEVENSON?

MR. LEVENSON: NOTHING TO ADD, YOUR HONOR. WE'LL BE PRESENTING SOME EVIDENCE AT THE APPROPRIATE TIME.

THE COURT: MR. SHAHID?

MR. SHAHID: NO, SIR, NOTHING ELSE THAT I HAVE TO ADD. PROFESSOR MEDLIN SAID IT.

THE COURT: MR. BELL, ANYTHING YOU WANT TO COMMENT ON AS TO THE JUST AND REASONABLENESS OF THE SETTLEMENT AND ANY OTHER ISSUES THAT COME UP?

MR. BELL: YOUR HONOR, I WOULD -- NOT TO THAT BUT I WOULD POINT THE COURT OUT TO CODE SECTION 63-2-1102.

THE COURT: HOLD ON. 63-2-1102?

MR. BELL: YES, YOUR HONOR.

THE COURT: WHICH SUBSECTION?

MR. BELL: SUBSECTION 1. IT SAYS, "THE TERMS OF A COMPROMISE SHALL BE SET FORTH IN AN AGREEMENT IN WRITING WHICH SHALL BE EXECUTED BY ALL COMPETENT PARTIES, PERSONS IN APPEARANCE, ACTING FOR ANY MINOR CHILD HAVING BENEFICIAL INTEREST OR HAVING CLAIMS WHICH WILL OR MAY BE AFFECTED BY THE COMPROMISE." I POINT THAT OUT TO YOUR HONOR BECAUSE THERE HAS NOT BEEN A WRITTEN AGREEMENT.

AS WAS REPRESENTED AT THE BEGINNING OF TODAY, ONLY THIS MORNING WERE WE ABLE TO COME TO AN ORAL AGREEMENT. IT IS MEMORIALIZED, YOUR HONOR, BY EXHIBITS 1 AND 2 THAT I FILED WITH THE COURT THIS MORNING. IT WAS AGREED TO ON THE OPEN RECORD -- IN OPEN RECORD BY MR. JONES, MR. MEDLIN, ROSEN, AND LEVENSON, BUT IT HAS NOT YET BEEN REDUCED TO WRITING. WHEN THEY TALKED ABOUT THE WRITTEN AGREEMENT, THAT WAS IN ESSENCE A DRAFT OR A WORKING DOCUMENT.

THE COURT: WHAT YOU'RE TELLING ME IS THAT IN ORDER TO COMPLY WITH THAT PARTICULAR SECTION, BEFORE I MAKE A RULING, THAT THE ACTUAL AGREEMENT ITSELF NEEDS TO BE REDUCED TO WRITING AND EVERYBODY EXECUTE---

MR. BELL: THAT'S CORRECT, YOUR HONOR.

THE COURT: ANYBODY DISAGREE WITH THAT? I MEAN, THAT'S WHAT THE SECTION SAYS.

MR. MEDLIN: YOUR HONOR, WE HAVE A SIGNED SETTLEMENT AGREEMENT AMONG THE PARTIES BUT NOT INCLUDING MR. BELL'S CLIENTS.

THE COURT: WELL, THEN OBVIOUSLY WE'VE GOT TO MAKE THE AMENDMENTS TO INCLUDE MR. BELL AND GET EVERYBODY TO SIGN OFF ON IT, JUST A REQUIREMENT PURSUANT TO THAT STATUTE. SHOULD BE EASY ONCE WE GET THROUGH EVERYTHING, IF I PROVE IT. CORRECT?

MR. BELL: WELL, I THINK QUITE FRANKLY, YOUR HONOR, YOU CAN'T APPROVE IT UNTIL AFTER THAT HAS BEEN DONE.

THE COURT: I UNDERSTAND THAT, BUT I CAN TAKE TESTIMONY, AND IF IT'S THEN PRESENTED TO ME, I CAN RELY ON THE TESTIMONY.

MR. BELL: YES, SIR.

THE COURT: I AGREE. NO PROBLEM. MR. BELL -- I MEAN, MR. BYRD, ANYTHING?

MR. BYRD: NO, SIR.

THE COURT: MR. WARNER?

MR. WARNER: NO, SIR.

THE COURT: MR. GRIFFIN?

MR. GRIFFIN: YOUR HONOR---

THE COURT: YOU'VE STATED -- YOU'VE STATED YOUR POSITION, BUT DO YOU NEED TO PUT ANYTHING AS FAR AS THE REASONABLENESS AND JUST...

MR. GRIFFIN: NO, SIR, BUT IN THE INTEREST OF TIME AND

CONVENIENCE, WE DID ENTER INTO A STIPULATION THAT WOULD -- I THINK WOULD TAKE CARE OF MY CLIENTS AS WELL AS MS. MITCHELL AND IF WE COULD PUT THAT ON THE RECORD AT THIS TIME TO CARVE OUT THIS ISSUE...

THE COURT: CERTAINLY.

MR. GRIFFIN: THANK YOU, YOUR HONOR. AND WE OVER THE LUNCH HOUR HAD WRITTEN OUT A STIPULATION AND WHICH WE WOULD LIKE TO BE INCLUDED AS PART OF ANY FINAL ORDER.

THE COURT: AND WE BEING WHO? WHO IS THE STIPULATION BETWEEN OR AMONG?

MR. GRIFFIN: THE STIPULATION IS THAT ON BEHALF OF -- ME ON BEHALF OF LARHONDA PETIT AND NICOLE PARIS AND MY COUNSEL -- CO-COUNSEL HERE ON BEHALF OF MS. JEANETTE MITCHELL.

MR. BARR: WILLIAM BARR.

MR. GRIFFIN: WILLIAM BARR ON BEHALF OF MS. JEANETTE MITCHELL AND WE---

THE COURT: THAT'S A STIPULATION BETWEEN THE TWO OF Y'ALL.

MR. GRIFFIN: NO, SIR. IT IS -- WE'RE ON ONE SIDE OF THE AGREEMENT, AND ON THE OTHER SIDE WOULD BE MR. MEDLIN AND HIS CLIENTS, MR. SONNY JONES AND THE ATTORNEY GENERAL'S OFFICE, MR. LEVENSON AND HIS CLIENTS, AND MR. SHAHID, I BELIEVE, AND EVERYONE ELSE ON THE LEFT SIDE OF THE AISLE HERE.

THE COURT: IS THAT THE REPUBLICAN SIDE OR THE DEMOCRAT

SIDE?

MR. BARR: DEMOCRAT.

THE COURT: SIR?

MR. GRIFFIN: OH, YEAH, BUT WE'VE NOT SHARED IT WITH MR. BELL. I APOLOGIZE.

THE COURT: HOW ABOUT SHARE IT WITH HIM AND THEN WE'LL DEAL WITH THAT IN JUST A FEW MINUTES?

MR. GRIFFIN: OKAY.

THE COURT: LET HIM LOOK AT IT.

MR. BELL: YOUR HONOR, I APPRECIATE IT. I WAS NOT AWARE OF THAT UNTIL JUST NOW. YOUR HONOR, I WILL -- I CAME HERE WITH DIRECT AUTHORITY FROM MY CLIENTS. I DON'T KNOW THAT I CAN GIVE AN ANSWER TO THIS TODAY.

THE COURT: I UNDERSTAND. WE'LL TAKE A BREAK. CAN YOU CALL THEM OR...

MR. BELL: I DON'T KNOW THAT -- WELL, I ACTUALLY DO NOT HAVE THEIR TELEPHONE NUMBERS WITH ME. TERRY BROWN LIVES IN TOCCOA. HE WORKS. HE'S A BLUE-COLLAR WORKER. HE WOULD PROBABLY BE AT WORK TODAY.

THE COURT: VERY WELL.

MR. BELL: ROMUNZO BROWN HAS BEEN IN THE HOSPITAL ALL WEEK. I DO NOT KNOW WHAT---

THE COURT: LET'S DO THIS. LET THEM PUBLISH THE STIPULATION SUBJECT TO YOUR CLIENTS LOOKING AT IT, AND OBVIOUSLY ANY OBJECTION OR ANY ADDITIONS YOU WANT TO MAKE TO

IT, YOU'RE WELCOME TO HEAR THAT.

MR. BELL: AND THAT'S PART OF THE CODE SECTION THAT I JUST QUOTED THAT EVERYTHING HAS TO BE IN WRITING AND SIGNED BY ALL AFFECTED.

THE COURT: LET THEM PUBLISH THE STIPULATION AND THEN WHATEVER YOU NEED TO DO WITH IT YOU MAY.

MR. GRIFFIN: YOUR HONOR, THE STIPULATION IS AS FOLLOWS: "THE COMPROMISE AGREEMENT IS NOT INTENDED TO NOR SHALL THE AGREEMENT BE BINDING UPON LARHONDA PETIT, NICOLE PARIS, JEANETTE MITCHELL OR THEIR RESPECTIVE HEIRS EXCEPT THAT APPROVAL OF THE AGREEMENT WILL RESULT IN THE DISMISSAL OF THE CROSS-CLAIMS OF LARHONDA PETIT AND NICOLE PARIS CHALLENGING THE WILL AND TRUST. COURT APPROVAL OF THE COMPROMISE SHALL NOT BE USED BY THE SETTLING PARTIES OR ANY OF THEM TO EFFECT ANY CLAIM TO RENEWAL AND TERMINATION RIGHTS OR OTHER CLAIMS FOR ROYALTIES UNDER COPYRIGHT LAWS OF THE UNITED STATES OR ANY OTHER COUNTRY OR LARHONDA PETIT, NICOLE PARIS, JEANETTE MITCHELL OR THEIR RESPECTIVE HEIRS TO THE EXTENT THAT THEY HAVE OR WILL PERFECT ANY SUCH INTERESTS ACCORDING TO STATE OR FEDERAL LAW."

THE COURT: IS THAT CORRECT, PROFESSOR MEDLIN? Y'ALL -- THAT'S THE STIPULATION?

MR. MEDLIN: YES, YOUR HONOR.

THE COURT: THANK YOU. ALL RIGHT. MR. BUCHANAN, HOW DO YOU WANT TO HANDLE YOUR -- DO YOU WANT TO PRESENT ANYTHING

OTHER THAN THE BRIEFS THAT YOU'VE PRESENTED? I THINK I'VE COVERED A LOT OF QUESTIONS THAT Y'ALL WERE CONCERNED ABOUT, BUT I'LL BE GLAD TO HEAR FROM YOU OR YOUR COUNSEL.

MR. BUCHANAN: WELL, YOUR HONOR, I THINK WE WERE PREPARING TO CROSS-EXAMINE WITNESSES.

THE COURT: ALL RIGHT.

MR. BUCHANAN: WHO ARE HERE TO TALK ABOUT WHY THE SETTLEMENT OUGHT TO BE APPROVED.

THE COURT: ALL RIGHT. VERY WELL. ALL RIGHT. PROFESSOR MEDLIN, DO YOU HAVE ANY WITNESSES YOU WANT TO PRESENT?

MR. MEDLIN: YOUR HONOR, WE WOULD ASK THAT RUSSELL BAUKNIGHT BE BROUGHT FIRST SO THAT HE CAN---

THE COURT: GIVE A REPORT?

MR. MEDLIN: ---GIVE A REPORT SO WE CAN KNOW WHAT THE REPORT IS, AND THEN I THINK IT MAKES SENSE WE CAN PROCEED FROM THERE.

THE COURT: VERY WELL. MR. BAUKNIGHT, COME FORWARD, PLEASE.

MR. KINGSMORE: YOUR HONOR, MAY IT PLEASE THE COURT? I'M PREPARED TO DO AN EXAMINATION OF HIM TO FACILITATE HIM PUTTING THE REPORT INTO THE RECORD AT YOUR PLEASURE.

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

DIRECT EXAMINATION

BY MR. KINGSMORE:

Q. WILL YOU PLEASE STATE YOUR NAME FOR THE RECORD?

A. RUSSELL BAUKNIGHT.

Q. MR. BAUKNIGHT, HAVE YOU HAD AN OPPORTUNITY TO REVIEW THE COURT'S ORDER OF JANUARY 7TH, 2009?

A. I HAVE.

THE COURT: HOLD ON A SECOND. MR. GRIFFIN? MR. GRIFFIN?

BY MR. KINGSMORE:

Q. ARE YOU FAMILIAR WITH THE PORTION OF THAT ORDER THAT PROVIDES THAT YOU'RE APPOINTED AS A SPECIAL ADMINISTRATOR AND SPECIAL TRUSTEE IN THIS MATTER FOR THE SOLE, LIMITED, AND EXCLUSIVE PURPOSE OF REVIEWING AND PROVIDING INPUT AND RECOMMENDATIONS TO THE COURT AS TO THE PROPOSED SETTLEMENT AGREEMENT?

A. I AM.

Q. HAVE YOU UNDERTAKEN TO REVIEW THE MATTERS INVOLVING THE SETTLEMENT AGREEMENT?

A. I HAVE.

THE COURT: BEFORE YOU PROCEED ANY FURTHER, MR. BAUKNIGHT, GIVE ME YOUR EDUCATIONAL BACKGROUND, YOUR PROFESSIONAL BACKGROUND, ANY DEGREES YOU HOLD, AND ANYTHING ELSE CONCERNING YOUR QUALIFICATIONS.

THE WITNESS: YES, SIR, YOUR HONOR. I'M A 1980 GRADUATE

OF TOWSON UNIVERSITY IN BALTIMORE, MARYLAND. I ATTENDED THE UNIVERSITY OF SOUTH CAROLINA PRIOR TO THAT. I'M A CERTIFIED PUBLIC ACCOUNTANT.

THE COURT: SINCE WHEN?

THE WITNESS: SINCE THE EARLY EIGHTIES. I DON'T HAVE THE EXACT DATES.

THE COURT: THAT'S FINE.

THE WITNESS: I AM A SHAREHOLDER IN THE ACCOUNTING FIRM OF BAUKNIGHT, PIETRAS, AND STORMER IN COLUMBIA, SOUTH CAROLINA. MY WORK HISTORY INCLUDES APPROXIMATELY 11 YEARS WITH ERNST AND YOUNG PRIOR TO FORMING THE FIRM THAT I'M WITH NOW. I AM A FIDUCIARY WITH RESPECT TO MANY SITUATIONS WITH -- RELATED TO MY WORK. I SERVE AS TRUSTEE, SOLE TRUSTEE, AND CO-TRUSTEE IN EXCESS OF 50 TRUSTS. I SERVE AS CO-TRUSTEE WITH CASE WESTERN RESERVE UNIVERSITY ON A NUMBER OF TRUSTS.

I SERVE AS A CO-TRUSTEE WITH MERRILL TRUST ON ONE LARGE TRUST, AND I HAVE SERVED AS CO-TRUSTEE WITH THE UNIVERSITY OF SOUTH CAROLINA WITH RESPECT TO A NUMBER OF TRUSTS. THE TRUSTS THAT I TRUSTEE ARE BOTH CHARITABLE AND NON-CHARITABLE TRUSTS. I'VE ALSO SERVED IN THE CAPACITY AS PERSONAL REPRESENTATIVE ON A NUMBER OF ESTATES, BOTH SMALL AND LARGE.

THE COURT: THANK YOU.

BY MR. KINGSMORE:

Q. MR. BAUKNIGHT, WILL YOU PLEASE DESCRIBE THE PROCESS TO THE COURT THAT YOU FOLLOWED SINCE YOUR APPOINTMENT AS SPECIAL

ADMINISTRATOR AND SPECIAL TRUSTEE IN ORDER TO PREPARE YOU TO COME HERE TODAY TO PROVIDE THE INPUT AND RECOMMENDATIONS TO THE COURT WITH RESPECT TO THE SETTLEMENT AGREEMENT?

A. YES. I RECEIVED A COPY OF THE SIGNED ORDER ON APPROXIMATELY JANUARY 13 AT WHICH TIME I WANTED TO READ AND UNDERSTAND THE ORDER. I DID CONSULT WITH MY COUNSEL, YOU, MR. KINGSMORE, WITH RESPECT TO THE SCOPE OF THE AGREEMENT, AND I CERTAINLY FOUND THAT THE AGREEMENT WAS VERY, VERY NARROW IN SCOPE AND TRIED TO LIMIT MY WORK TO EXACTLY WHAT THE ORDER TOLD ME TO DO. I PREPARED A---

Q. MR. BAUKNIGHT, AS FAR AS THE SCOPE, THE SCOPE OF THE ORDER AND NOT THE SETTLEMENT AGREEMENT THAT YOU'RE REFERRING TO, AS FAR AS THE SCOPE---

A. THE SCOPE OF THE ORDER. THE SCOPE OF THE ORDER.

Q. THANK YOU.

A. I PREPARED A PLAN TO GATHER INFORMATION WITH RESPECT TO THE SETTLEMENT AGREEMENT. I REQUESTED DOCUMENTS INCLUDING A COPY OF THE ACTUAL SETTLEMENT AGREEMENT. IN ADDITION TO THAT, I RECEIVED THE TERMS OF THE SETTLEMENT AGREEMENT, THE CONTRIBUTION AGREEMENT, AND THE PROPOSED TRUST THAT WENT ALONG WITH THAT AGREEMENT. I THEN SCHEDULED INTERVIEWS, BOTH FACE TO FACE AND TELEPHONE CONFERENCES, WITH THE PARTIES THAT I FELT WERE APPROPRIATE TO SPEAK WITH.

IN THIS CASE I FELT IT WAS MOST APPROPRIATE TO START WITH A CONFERENCE WITH THE PERSONAL REPRESENTATIVES AND

TRUSTEES FOR THE ESTATE AND TRUST. FROM THERE I SPOKE WITH REPRESENTATIVES OF THE SETTLING PARTIES AND, IN ADDITION, I SPOKE WITH THE REPRESENTATIVE OF MR. TERRY BROWN.

THE COURT: HAVE YOU IDENTIFIED THOSE PARTIES?

THE WITNESS: EXCUSE ME?

THE COURT: NOT NECESSARILY THE SETTLING PARTIES BUT YOU SAID THE CHARITIES?

THE WITNESS: THE SETTLING PARTIES WHICH WOULD INCLUDE---

THE COURT: WELL, I KNOW WHO THE SETTLING PARTIES ARE. WHO IS THE -- PERSONAL REPRESENTATIVES? MR. BUCHANAN? MS. POPE?

THE WITNESS: YES, SIR, I DID. THEY WERE THE FIRST THAT I SPOKE WITH.

THE COURT: WHO ELSE DID YOU TALK TO BESIDES THE SETTLING PARTIES?

THE WITNESS: FROM THOSE I SPOKE WITH MR. BELL, REPRESENTATIVE FOR MR. TERRY BROWN.

THE COURT: OKAY.

THE WITNESS: WHO AT THE TIME WAS NOT ONE OF THE SETTLING PARTIES.

THE COURT: OKAY.

THE WITNESS: I CHOSE TO SPEAK WITH MR. BELL, ASSUMING HE WOULD BE WILLING TO SPEAK WITH ME - AND HE DID - SIMPLY BECAUSE HIS CLIENT WAS A NAMED PARTY TO THE WILL, THE 2000

WILL, WHICH I WAS LOOKING AT.
BY MR. KINGSMORE:
Q. MR. BAUKNIGHT, HAVE YOU HAD AN OPPORTUNITY TO SPEAK WITH MR. BELL SINCE THE MOST RECENT DEVELOPMENTS OF THIS MORNING?
A. YES, I HAVE.
Q. SO YOU FEEL YOU'VE HAD THE OPPORTUNITY TO SPEAK WITH ALL THE PARTIES WHO HAVE SIGNED OR NOW BECOME A PART OF THE SETTLEMENT AGREEMENT?
A. YES, I HAVE.
Q. DO YOU BELIEVE YOU'VE HAD SUFFICIENT OPPORTUNITY TO EVALUATE ALL THE MATTERS NECESSARY WITH RESPECT TO YOUR INPUT AND REPORT TO THE COURT A RECOMMENDATION ABOUT THE SUBJECT MATTER OF THIS ORDER AND THE SETTLEMENT AGREEMENT?
A. YES, I DO.
Q. HAVE YOU ARRIVED AT A RECOMMENDATION TO THE COURT CONCERNING THE SETTLEMENT AGREEMENT?
A. YES, I HAVE.
Q. AND WHAT IS THAT RECOMMENDATION?
A. MY RECOMMENDATION TO THE COURT BASED ON THE INFORMATION THAT I'VE GATHERED AND MY UNDERSTANDING OF THE AGREEMENT IS THAT THE COURT APPROVE THE AGREEMENT AMONGST THE SETTLING PARTIES.
Q. AS FAR AS THE BACKGROUND TO THAT RECOMMENDATION, MR. BAUKNIGHT, WHAT INFORMATION DID YOU RECEIVE FROM THE SOUTH CAROLINA ATTORNEY GENERAL'S OFFICE THAT LED YOU TO THIS

RECOMMENDATION?

A. WHEN I INTERVIEWED THE REPRESENTATIVE FROM THE ATTORNEY GENERAL'S OFFICE, MY QUESTIONS AND CONVERSATION WITH THEM WERE REALLY GEARED TOWARDS FINDING OUT WHY THEY WANTED TO BE A PART OF THE AGREEMENT, WHETHER THEY THOUGHT THEY SHOULD BE A PART OF THE AGREEMENT AND COULD BIND THEM -- THE CHARITABLE TRUST TO THE AGREEMENT, WHETHER THEY THOUGHT THEIR PARTICIPATION IN THE AGREEMENT REPRESENTED A FAIR -- A FAIR SETTLEMENT FOR THE TRUST WHICH THEY REPRESENT.

IT WAS -- THESE -- THESE QUESTIONS TO THEM AND THE CONVERSATION WITH RESPECT TO THOSE MATTERS INCLUDED A DISCUSSION AS TO THE RISKS AND HAZARDS WITH RESPECT TO THE LITIGATION GOING ON WITH THIS ESTATE AND TRUST. THE ATTORNEY GENERAL'S REPRESENTATIVE MADE IT CLEAR THAT WHILE THEY FELT THEY HAD A GOOD CHANCE AT HAVING ASSETS GO INTO THE CHARITABLE TRUST AS MANY ITEMS WERE STILL BEING LITIGATED, THEY HAD NO SURETY THAT THAT WOULD HAPPEN.

WE WENT THROUGH VARIOUS EXAMPLES OF HOW THE ATTORNEY GENERAL'S OFFICE REPRESENTATION OF THE TRUST COULD END UP RESULTING IN LESS THAN 100 PERCENT OF THE ASSETS BEING FUNDED TO THE TRUST, AND I WAS GIVEN EXAMPLES WHICH WOULD RESULT IN NO FUNDING OF THE TRUST WHATSOEVER ON UP TO PARTIAL, LESS THAN 100 PERCENT, INTEREST BEING TRANSFERRED INTO THE TRUSTS. SO THE ATTORNEY GENERAL'S OFFICE WAS WEIGHING THE POTENTIAL RESULTS OF THE LITIGATION IN THEIR CONSIDERATION OF WHETHER

TO ENTER INTO THE AGREEMENT.

IN ADDITION, THE ATTORNEY GENERAL'S OFFICE WAS CONSIDERING THAT THEY WOULD, ONCE ENTERED INTO THIS AGREEMENT, BECOME A PARTY TO SOME POTENTIAL RIGHTS UNDER THE FEDERAL COPYRIGHT LAW THAT THEY MAY NOT HAVE RECEIVED ANY PORTION OF WITHOUT ENTERING INTO THE AGREEMENT. SO WHEN PUTTING TOGETHER THE LESS THAN 100 PERCENT PORTION FROM THE ESTATE OR TRUST THAT'S THERE NOW PLUS THE FACT THAT THEY WOULD SHARE IN FUTURE RIGHTS CREATED UNDER THE FEDERAL COPYRIGHT LAW, THEY FELT THEY WERE MAKING A FAIR AND REASONABLE SETTLEMENT OF THEIR CASE.

Q. AND IN RECEIVING THE INFORMATION FROM THE SOUTH CAROLINA ATTORNEY GENERAL'S OFFICE, YOU PERCEIVED REAL CONCERNS FROM THE REPRESENTATIVES THAT YOU SPOKE TO THAT THEY WERE WORRIED THAT ULTIMATELY THE OUTCOME OF THESE LAWSUITS MIGHT RESULT IN THEM RECEIVING LESS THAN THE AGREED AMOUNT?

A. WELL, THE SPECIFIC CONCERNS AND EXAMPLES THAT THEY RAISED WITH RESPECT TO HOW THEY MIGHT NOT RECEIVE 100 PERCENT OF FUNDING FOR THE CHARITABLE TRUSTS WERE IF MR. ROSEN'S CLIENT WERE TO PREVAIL AND THAT HIS CLIENT RECEIVE A 50 PERCENT OR ONE-THIRD INTEREST IN THE ASSETS, THEN THE CHARITABLE TRUST WOULD OBVIOUSLY RECEIVE LESS THAN 100 PERCENT FUNDING.

IF MR. SHAHID'S CLIENT WERE TO PREVAIL AS AN OMITTED CHILD, THE ATTORNEY GENERAL'S OFFICE WOULD END UP WITH A

SITUATION WHERE THE CHARITABLE TRUST WAS FUNDED WITH LESS THAN 100 PERCENT.

IF THE WILL CONTESTS THAT WERE BEING LITIGATED WERE SUCCESSFUL, THE ATTORNEY GENERAL'S OFFICE WOULD SEE ABSOLUTELY NOTHING GOING INTO THE CHARITABLE TRUST UNLESS ULTIMATELY SOMETHING WAS FOUND TO HAVE ALREADY BEEN FUNDED INTO A TRUST. THERE YOU HAVE TO LOOK AT WHAT -- HOW THAT LITIGATION WITH RESPECT TO THE VALIDITY OF THE TRUST ITSELF TURNED OUT. SO THERE WERE MANY SITUATIONS WHERE I WAS GIVEN EXAMPLES WHERE THE CHARITABLE TRUST WOULD RECEIVE MUCH LESS FUNDING THAN 100 PERCENT.

Q. WHAT INFORMATION DID YOU RECEIVE FROM MR. ROSEN'S CLIENT'S REPRESENTATIVE THAT LED TO YOUR RECOMMENDATION?

A. WELL, THE COMMON THEME AMONGST THE SETTLING PARTIES WAS SIMILAR TO WHAT THE ATTORNEY GENERAL PUT FORTH, THE RISKS AND HAZARDS ASSOCIATED WITH LITIGATION AS WELL AS THE COPYRIGHT BENEFITS UNDER FEDERAL COPYRIGHT LAW DOWN THE ROAD IN THE FUTURE. MR. ROSEN'S CLIENT CERTAINLY HAD THE SIMILAR RISKS OF LITIGATION. HIS CLIENT POSSIBLY WOULD NOT PREVAIL IN EFFORTS TO SHOW THAT THE MARRIAGE WAS VALID, MAY NOT PREVAIL IN GETTING EITHER THE ONE-THIRD OR 50 PERCENT SHARE SO THAT THE POTENTIAL FOR GETTING NOTHING FOR MR. ROSEN'S CLIENT WAS OUT THERE.

IN ADDITION, THAT SAME ISSUE WOULD AFFECT THE BENEFITS RECEIVED UNDER THE FEDERAL COPYRIGHT LAW AND WHETHER OR NOT

SHE WOULD BE ENTITLED TO A 50 PERCENT SHARE OF THOSE TERMINATION RIGHTS DOWN THE ROAD. SO THE HAZARDS AND RISKS OF LITIGATION WERE AGAIN THE REASON FOR ENTERING INTO THIS AGREEMENT.

Q. AND YOU SAID YOU HAD AN OPPORTUNITY TO SPEAK WITH MR. LEVENSON. WHAT INFORMATION DID YOU RECEIVE FROM MR. LEVENSON WITH RESPECT TO HIS CLIENTS THAT LED YOU TO THIS RECOMMENDATION?

A. AGAIN, THE SAME THEMES: RISKS AND HAZARDS OF LITIGATION. HIS CLIENTS WHILE HOPEFUL OF -- ON SEVERAL FRONTS RECOGNIZED THAT MR. ROSEN'S CLIENT COULD PREVAIL. THEY RECOGNIZED THAT THE WILL CONTEST WOULD NOT PREVAIL. THEY RECOGNIZED THAT THEY COULD RECEIVE ONLY THEIR SHARE OF PERSONAL PROPERTY OR THEY ALSO HAD THE POSSIBILITY OF HAVING THE WILL AND TRUST HELD TO BE INVALID.

SO THEY HAD THE POTENTIAL FOR MANY DIFFERENT OUTCOMES BASED ON THE LITIGATION AT HAND. THEY ALSO UNDERSTAND THE VALUE OF THE TERMINATION RIGHTS AND FELT THAT BASED ON THE UNCERTAINTIES WITH RESPECT TO THE LITIGATION THAT IT WOULD BE A REASONABLE CONCLUSION TO ENTER INTO THIS AGREEMENT.

I WOULD SAY THAT IN SPEAKING WITH -- WITH THE REPRESENTATIVES OF THOSE THREE GROUPS, IN ADDITION TO SPEAKING WITH MR. BELL, I HEARD TWO OTHER COMMON THEMES, ONE OF WHICH IS THE LENGTH OF TIME THAT THIS PROCESS HAS GONE ON AND THE RECOGNITION THAT THROUGH THAT TIME AND POSSIBLY EVEN

BECAUSE OF ALL THE LITIGATION THE VALUE OF THE TERMINATION RIGHTS, THE VALUE OF THE IMAGE, THE VALUE OF THE JAMES BROWN ESTATE WAS BEING DIMINISHED. AND IT MADE SENSE BASED ON WHAT THEY WERE TELLING ME -- IT MADE SENSE TO EACH OF THEM, USING THAT AS PART OF THEIR CONSIDERATION, TO ENTER INTO A SETTLEMENT AGREEMENT, TRYING TO BRING A CLOSE TO SOME OF THIS LITIGATION.

Q. I BELIEVE FROM WHAT YOU SAID, YOU HAD A SERIES OF CONVERSATIONS WITH MR. BELL CONCERNING HIS CLIENT. WHAT INFORMATION DID YOU RECEIVE FROM THOSE CONVERSATIONS THAT HAS LED TO YOUR RECOMMENDATION?

A. WELL, I HAD A CONVERSATION WITH MR. BELL BOTH BEFORE HE ENTERED THE SETTLEMENT GROUP AND AFTER. MR. BELL RAISED CONCERNS WITH ME BOTH BEFORE AND AFTER. I SPECIFICALLY WANTED TO FIND OUT IF MR. BELL'S CLIENT FELT THIS WAS A REASONABLE SOLUTION TO THE ISSUES BEING LITIGATED AND WAS TOLD BY MR. BELL THAT THIS, IN FACT, WAS A REASONABLE RESULT AND REASONABLE SETTLEMENT TO ENTER INTO.

MR. BELL CERTAINLY REMINDED ME OF A POINT THAT I DID HEAR FROM MR. ROSEN'S CLIENT AND FROM MR. LEVENSON'S CLIENT AND THAT IS THAT THE PARTIES WHO ARE OR ARE CLAIMING TO BE FAMILY OF MR. BROWN ALL WANTED TO BE SURE THAT HIS LEGACY WAS PRESERVED. IN ADDITION, IT WAS A STRONG VOICE FROM ALL OF THOSE GROUPS, IN ADDITION TO THE ATTORNEY GENERAL'S OFFICE, THAT MR. BROWN'S INTERESTS IN THE CHARITABLE TRUST BE FUNDED,

AND THIS SETTLEMENT OFFERED AN OPPORTUNITY FOR FUNDING, NOT ONLY WITH CURRENT ASSETS BUT ASSETS THAT WOULD COME DOWN THE ROAD IN THE FORM OF TERMINATION RIGHTS.

Q. I BELIEVE THAT COVERS THE PARTIES TO THE SETTLEMENT AGREEMENT, MR. BAUKNIGHT, BUT COULD YOU SHARE WITH US AND WITH THE COURT SOME OF THE CONCERNS EXPRESSED TO YOU BY MRS. POPE AND MR. BUCHANAN OVER THE SETTLEMENT AGREEMENT?

A. WELL, THEY -- WHEN I SPOKE WITH MRS. POPE AND MR. BUCHANAN WITH RESPECT TO THEIR CONCERNS, THE COURT HAS EARLIER RAISED MANY OF THOSE CONCERNS. FIRST AND FOREMOST WAS THE ESTATE TAX ISSUE THAT MRS. POPE AND MR. BUCHANAN WERE BOTH CONCERNED THAT ENTERING INTO THIS SETTLEMENT AGREEMENT AND HAVING IT APPROVED BY THE COURT MAY CREATE AS -- I WAS TOLD AS MUCH AS A $20 MILLION TAX LIABILITY.

I WANTED TO FIND OUT FROM THE SETTLING PARTIES WHETHER THEY HAD CONSIDERED THE POSSIBILITY OF ESTATE TAXES AND HOW THEY WERE GOING TO DEAL WITH THAT SITUATION. I WAS TOLD, IN FACT, BY THE INITIAL GROUP THAT I SPOKE WITH - MR. ROSEN'S CLIENTS, THE ATTORNEY GENERAL'S OFFICE, AND MR. LEVENSON'S CLIENTS - THAT THEY HAD, IN FACT, SPECIFICALLY DEALT WITH THE ESTATE TAX ISSUE, DISCUSSED IT, AND PROVIDED FOR IT. I DID NOT GET INTO THAT WITH MR. BELL AFTER THIS MORNING'S CHANGE.

THE COURT: WELL, DO YOU HAVE ANY OPINIONS AS TO WHETHER OR NOT IF THE AGREEMENT IS APPROVED THAT IT WILL CREATE ANY ADDITIONAL ESTATE TAX LIABILITY WHICH IS A CONCERN OF THE

P.R.'S NOW?

THE WITNESS: YOUR HONOR, I DO NOT BELIEVE THAT THIS OUTSIDE AGREEMENT ITSELF WOULD CREATE ANY ADDITIONAL ESTATE TAX THAT WOULD NOT BE THERE AFTER THE LITIGATION THAT'S IN PROCESS WOULD BE SETTLED. IF, FOR INSTANCE---

THE COURT: THE ESTATE TAX WOULD BE WHAT THE ESTATE TAX IS?

THE WITNESS: THE ESTATE TAX WILL BE WHAT IT IS. IF THE CHILDREN WERE TO PREVAIL IN A WILL CONTEST, FOR INSTANCE, AND FIND THAT MR. BROWN DIED INTESTATE, THERE WOULD, OF COURSE, BE A POSSIBLE MARITAL DEDUCTION DEPENDING ON THE OUTCOME OF THAT LITIGATION, BUT ANY MONEY OR ASSETS PASSING TO THE CHILDREN WOULD ALL BE SUBJECT TO FEDERAL ESTATE TAX. SO THE FACT THAT WE HAVE AN AGREEMENT IN PLACE SETTLING THESE ISSUES WILL SIMPLY MAKE THE ULTIMATE SETTLING OF THE ESTATE TAX ISSUES AN EASIER PROCESS.

MR. KINGSMORE: MR. BAUKNIGHT, AFTER ALL OF YOUR INQUIRY INTO---

THE COURT: THAT LAST QUESTION WAS NOT INTENDED TO BE AN INVESTIGATION IN THIS MATTER, SIMPLY TRYING TO LEARN A LITTLE MORE ABOUT WHAT'S GOING ON.

BY MR. KINGSMORE:

Q. MR. BAUKNIGHT, DO YOU BELIEVE THE SETTLEMENT POSITIONS ACCEPTED BY THE PARTIES TO THIS SETTLEMENT AGREEMENT REPRESENT A FAIR AND REASONABLE RESOLUTION OF THE ISSUES IN

CONTROVERSY?

A. IF I MAY, YOUR HONOR... FRANK, I DID NOT FINISH ANSWERING THE PREVIOUS QUESTION.

THE COURT: GO AHEAD.

THE WITNESS: THE ESTATE TAX ISSUE WAS ONE OF THE ISSUES RAISED. I DON'T WANT ANYONE TO THINK THAT'S THE ONLY ISSUE WE DISCUSSED. WE, IN FACT, DID DISCUSS---

THE COURT: THE QUESTION WAS WHAT DID YOU DISCUSS WITH MR. BUCHANAN AND MRS. POPE ON ESTATE TAXES, ONE, AND I INTERRUPTED. GO AHEAD AND FINISH YOUR QUESTION OR ANSWER THE QUESTION ABOUT THE CONVERSATIONS WITH POPE AND BUCHANAN.

THE WITNESS: THANK YOU, YOUR HONOR. MRS. POPE AND MR. BUCHANAN RAISED SEVERAL ISSUES. AN ISSUE THAT THEY RAISED THAT I CERTAINLY WANTED TO INQUIRE ABOUT WAS WHETHER OR NOT THE ATTORNEY GENERAL'S OFFICE HAD THE AUTHORITY TO BIND THE CHARITABLE TRUST. THAT WAS SOMETHING I DISCUSSED WITH THE ATTORNEY GENERAL'S OFFICE. I RECEIVED ASSURANCES FROM THEIR OFFICE THAT THEY COULD, IN FACT, BIND THE TRUST TO THIS AGREEMENT.

I'M NOT EXPRESSING A LEGAL OPINION WITH RESPECT TO THAT. THAT'S OBVIOUSLY AN ANSWER FOR THE COURT. SO THAT IS NOT -- ANY RECOMMENDATIONS THAT I MAKE, YOUR HONOR, I DO WANT TO STATE THAT MY ASSUMPTION WOULD BE THAT, IN FACT, THE ATTORNEY GENERAL'S OFFICE COULD BIND. HOWEVER, MY ASSUMPTION WOULD CHANGE IF YOU RULE OTHERWISE.

THE -- FURTHER IN THE DISCUSSION WITH MRS. POPE AND MR. BUCHANAN WAS THE DISCUSSION OF WHETHER THERE WOULD BE, I BELIEVE THE TERM WAS, CLEAR CONTINUITY WITH RESPECT TO WHAT WAS REPRESENTED TO ME TO BE 22 PENDING CASES INVOLVING THE ESTATE. I DISCUSSED THAT AT LENGTH WITH YOU AS MY COUNSEL AS WELL AS WITH OTHER PARTIES THAT I INTERVIEWED, AND I DO UNDERSTAND BOTH FROM MS. POPE AND MR. BUCHANAN AS WELL AS OTHERS INVOLVED IN THIS CASE THAT THOSE CASES DO HAVE QUALITY REPRESENTATION AND ARE BEING HANDLED BY ATTORNEYS, AND I HAVE CONCLUDED THAT THE DISAGREEMENT WOULD NOT IN EFFECT -- IN FACT AFFECT THE REPRESENTATION WITH RESPECT TO THOSE CASES. SO I DO NOT BELIEVE THAT THERE WOULD BE AN INTERRUPTION WITH RESPECT TO THE LITIGATION THAT'S ONGOING.

THE COURT: ANY OTHER CONCERN BY MR. BUCHANAN OR MRS. POPE?

THE WITNESS: THOSE ARE THE ONES THAT I THOUGHT WERE THE MOST RELEVANT.

THE COURT: AND CERTAINLY THEIR CONCERNS WERE LEGITIMATE CONCERNS, AND THEY HAVE A LOT OF RESPONSIBILITY IN THIS CASE AND THEY WANT TO MAKE SURE IF THE AGREEMENT IS APPROVED THAT EVERYTHING ORDERLY TRANSITIONS.

THE WITNESS: YOUR HONOR, I CAME AWAY FROM MY MEETING WITH MRS. POPE AND MR. BUCHANAN UNDERSTANDING THEIR SINCERE CONCERNS.

THE COURT: RIGHT.

THE WITNESS: I BELIEVE THEY WERE VERY VALID CONCERNS, AND AS FIDUCIARIES THEY HAVE EVERY RESPONSIBILITY TO HAVE THOSE CONCERNS.

THE COURT: THANK YOU.

BY MR. KINGSMORE:

Q. ANYTHING ELSE YOU WISH TO SHARE WITH THE COURT AS FAR AS INPUT YOU RECEIVED FROM ANY OF THE PARTIES?

A. NOT AT THIS TIME.

Q. DO YOU BELIEVE THE SETTLEMENT POSITIONS ACCEPTED BY THE PARTIES TO THE SETTLEMENT AGREEMENT REPRESENT A FAIR AND REASONABLE RESOLUTION OF THE ISSUES IN CONTROVERSY?

A. I DO.

MR. KINGSMORE: NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: THANK YOU. ALL RIGHT. I'M GOING TO -- MR. BUCHANAN, Y'ALL WANT TO GO FIRST OR WHO WANTS TO GO FIRST?

MR. BUCHANAN: YOUR HONOR, WE WOULD -- IN LIGHT OF MR. BAILEY'S ABSENCE, WE WOULD ASK TO GO LAST IF WE COULD.

THE COURT: BE GLAD TO. ALL RIGHT. PROFESSOR MEDLIN, ANY CROSS-EXAMINATION OF MR. BAUKNIGHT OR EXAMINATION OR ANYTHING ELSE?

MR. MEDLIN: NONE, YOUR HONOR.

THE COURT: MR. JONES?

MR. JONES: ONE MINUTE, YOUR HONOR.

THE COURT: IT DOESN'T HAVE TO BE CROSS-EXAMINATION. YOU MAY WANT TO ASK HIM SOMETHING ELSE.

CROSS-EXAMINATION

BY MR. JONES:

Q. MR. BAUKNIGHT, ONE POINT: IN THE COURSE OF YOUR REVIEW AND INVESTIGATION, DID YOU COME ACROSS ANY TYPE OF EVIDENCE AS TO THE A.G. BEING INVOLVED IN ANY FRAUD OR COLLUSION IN THIS AGREEMENT?

A. ANY FRAUD?

Q. ANY FRAUD OR COLLUSION BY THE ATTORNEY GENERAL'S OFFICE IN ENTERING INTO THIS AGREEMENT?

A. I WAS NOT GIVEN ANY INFORMATION WHATSOEVER ABOUT THAT.

THE COURT: HAVE YOU LEARNED OF ANY?

THE WITNESS: I HAVE NOT LEARNED OF ANY, YOUR HONOR.

THE COURT: HAVE YOU DETECTED ANY CONFLICT OF INTEREST THAT THE ATTORNEY GENERAL'S OFFICE MAY HAVE IN THIS CASE AS ALLEGED BY SOME PARTIES?

THE WITNESS: I HAVE NOT, YOUR HONOR. I WOULD TAKE THAT AS A VERY SERIOUS ISSUE TO CONSIDER WHEN WEIGHING THEIR INFORMATION THAT THEY PROVIDED TO ME. I'M NOT AWARE OF ANY.

MR. JONES: THANK YOU.

THE COURT: MR. SHAHID?

MR. SHAHID: NO, SIR, YOUR HONOR.

THE COURT: MR. LEVENSON?

MR. LEVENSON: JUST A FEW QUESTIONS.

CROSS-EXAMINATION

BY MR. LEVENSON:

Q. MR. BAUKNIGHT, DID MRS. POPE AND MR. BUCHANAN INDICATE TO YOU THAT OVERALL THEY FELT THAT THE REDUCTION OF THE CHARITABLE TRUST WAS INCONSISTENT WITH THE INTENT OF THE SETTLOR OF THE TRUST AND THE TESTATE OF MR. BROWN?

A. THEY QUESTIONED HOW THEY COULD ACCEPT AN AGREEMENT THAT -- WHERE THE ATTORNEY GENERAL WOULD AGREE TO TAKE 50 PERCENT AT THAT TIME AS OPPOSED TO A CHARITABLE TRUST WHICH WAS A 100 PERCENT CHARITABLE DEDUCTION FOR THE ESTATE AT THAT TIME. SO THEY WERE CONCERNED ABOUT THE CHARITABLE TRUST BEING FUNDED WITH LESS THAN ALL OF THE ASSETS POURING OVER FROM THE WILL OR WHAT WAS IN THE TRUST ALREADY.

Q. AND WOULDN'T YOU AGREE THAT THAT WAS PRETTY MUCH THE CENTRAL CONCERN OF MR. BUCHANAN AND MRS. POPE IN THEIR OBJECTIONS TO THE COURT'S APPROVAL OF THIS SETTLEMENT AGREEMENT?

A. MR. LEVENSON, I DON'T THINK I WOULD SAY THAT WAS THE CENTRAL CONCERN. I THINK THEY RAISED SEVERAL CONCERNS THAT I CAME AWAY FROM THE MEETING FEELING THAT I NEEDED TO REVIEW VERY STRONGLY A NUMBER OF CONCERNS THAT THEY RAISED. THE CHARITABLE ISSUE WAS CERTAINLY ONE OF THE VERY STRONG CONCERNS. THE ESTATE TAX ISSUE WAS A VERY STRONG CONCERN. THOSE -- THOSE -- I WOULD NOT PRIORITIZE THOSE.

Q. OKAY. WITH REGARD TO THEIR CONCERN THOUGH, HOW EVER

SUBSTANTIAL OR INSUBSTANTIAL IT WAS IN THE SCHEME OF THINGS RELATIVE TO THE SETTLEMENT AGREEMENT BEING INCONSISTENT WITH THE CHARITABLE INTENT OF MR. BROWN, DID THEY POINT YOU TO ANY EVIDENCE THEY HAD OR INTENDED TO INTRODUCE WHICH WOULD SUGGEST THAT THE SETTLEMENT WAS INCONSISTENT WITH THE CHARITABLE INTENT OF MR. BROWN?

A. WELL, WHEN YOU SAY POINT TO---

Q. WITNESSED A DOCUMENT.

A. I WILL TELL YOU THAT THEY DID POINT OUT VERY STRONGLY THAT 50 PERCENT WAS NOT WHAT WAS WRITTEN INTO THE TRUST, THAT, IN FACT, THE TRUST WAS EITHER FUNDED OR HAD THE POUR-OVER PROVISION FROM THE WILL SO IT WAS TO RECEIVE SUBSTANTIALLY ALL OF THE ASSETS OF THE ESTATE.

Q. OKAY. WELL, I GUESS WHAT I MEANT IS OTHER THAN THE OPERATIVE DOCUMENTS WHICH ARE BEFORE THE COURT, THAT IS TO SAY THE 2000 IRREVOCABLE TRUST AND THE JAMES BROWN WILL WHICH WE HAVE TALKED ABOUT DATED AUGUST 1, 2000, OTHER THAN THAT DID THEY POINT YOU TO ANY INFORMATION THAT MIGHT BE CONSIDERED PERSUASIVE EVIDENCE THAT WOULD SUGGEST THAT IT WAS MR. BROWN'S INTENT TO HAVE ALL OF THE ESTATE OR ALL OF THE TRUST TO BE CONTRIBUTED TO THE CHARITABLE ENTITY?

A. NO, SIR. NO, SIR. I DID ASK FOR, FROM ALL OF THE PARTIES, TO BE PROVIDED WITH WHAT THEY DEEMED TO BE ANY OTHER RELEVANT INFORMATION OR RELEVANT DOCUMENTS, AND I WAS NOT GIVEN ANY OTHER DOCUMENTS WHATSOEVER AT THAT POINT.

Q. AND HAD YOU BEEN GIVEN THAT INFORMATION, YOU WOULD HAVE -- IN DISCHARGE OF YOUR OBLIGATION FROM JUDGE EARLY WOULD HAVE PURSUED THAT INFORMATION TO FIND OUT WHAT THOSE PEOPLE OR DOCUMENTS HAD TO SAY, WOULD YOU NOT?

A. I WOULD HAVE REVIEWED THAT INFORMATION OR THOSE DOCUMENTS AND FOLLOWED THROUGH WITH THAT AS I HAVE WITH ANY OF THE OTHER INFORMATION.

Q. AND SINCE THEY DIDN'T GIVE YOU THAT INFORMATION OR POINT YOU IN THAT DIRECTION, YOU DIDN'T DO THAT. CORRECT?

A. THAT'S CORRECT.

Q. OKAY. AND DID THEY INDICATE TO YOU THAT THERE WAS ANYTHING OUT THERE THAT THEY THOUGHT EXISTED WHICH THEY HAD NOT YET DISCOVERED IN THE FORM OF EITHER DOCUMENTARY EVIDENCE OR WITNESSES THAT THEY WERE INTENDING TO INTRODUCE AT SOME POINT?

A. NO, SIR.

MR. LEVENSON: THANK YOU, SIR.

THE COURT: BUT YOU CERTAINLY AGREE THAT MR. BUCHANAN AND MRS. POPE'S CONCERNS WERE LEGITIMATE AS FIDUCIARIES IN TRYING TO DEFEND THE ESTATE BY MR. BROWN. YOU DON'T HAVE ANY CRITICISM OF THAT, DO YOU?

THE WITNESS: NO, SIR.

THE COURT: THE POSITIONS THAT THEY TOOK OR THEY'RE TAKING.

THE WITNESS: I'M NOT HERE, YOUR HONOR, TO CRITICIZE

POSITIONS.

THE COURT: NOT CRITICISM BUT THAT'S A LEGITIMATE CONCERN OF THEIRS AS THE CURRENT FIDUCIARIES.

THE WITNESS: YOUR HONOR, I BELIEVE THEY RAISED ISSUES THAT I TOOK VERY, VERY SERIOUSLY AND PURSUED TO THE POINT WHERE I WAS SATISFIED AS TO THEIR OUTCOME.

THE COURT: THANK YOU. ALL RIGHT. MR. GRIFFIN?

MR. GRIFFIN: YOUR HONOR, JUST BRIEFLY.

CROSS-EXAMINATION

BY MR. GRIFFIN:

Q. MR. BAUKNIGHT, DO YOU UNDERSTAND THAT THE AGREEMENT REACHED INVOLVES HEIRS OF MR. JAMES BROWN PUTTING BACK INTO THIS TRUST FUND THEIR RENEWAL AND TERMINATION RIGHTS THAT THEY MAY RECEIVE UNDER FEDERAL COPYRIGHT LAW?

A. IT'S MY UNDERSTANDING THEY WOULD CONTRIBUTE TO THE SETTLING ENTITY.

Q. HAVE YOU BEEN PROVIDED ANY VALUE OF WHAT THOSE RIGHTS ARE WORTH?

A. NO. I -- WELL, I SAY NO. I HAVE HAD NO ONE TELL ME WHAT THE ULTIMATE TERMINATION RIGHTS MAY BE WORTH. THE ONLY VALUE I'VE HEARD IS A POTENTIAL VALUE OF THE ESTATE ITSELF OF $80 MILLION.

Q. AND SO -- AND YOU UNDERSTAND FROM THE EXISTING TRUST THAT WAS CREATED THAT HALF OF THAT WILL -- AS PART OF THE SETTLEMENT IS GOING TO BE DISTRIBUTED, MORE OR LESS.

A. AS PART OF THE SETTLEMENT AGREEMENT?
Q. YES.
A. HALF OF IT HE IS -- WILL NOW -- AFTER THIS MORNING, SOMEWHERE CLOSE TO HALF OF THAT'S GOING TO BE FUNDING A CHARITABLE TRUST AND THE OTHER HALF WOULD BE DISTRIBUTED ACCORDING TO THE SETTLEMENT AGREEMENT TO MR. ROSEN'S CLIENTS, MR. BELL'S CLIENTS, AND MR. LEVENSON'S CLIENTS.
Q. AND THOSE CLIENTS ARE GOING TO PUT BACK IN THEIR -- A PORTION OF THEIR INTEREST IN THESE RENEWAL RIGHTS; CORRECT?
A. THAT WOULD BE THE PROPERTY OF THE SETTLEMENT ENTITY AS I UNDERSTAND IT.
Q. AND THERE YOU ARE UNABLE TO EVALUATE WHAT THE WORTH OF WHAT THEY'VE AGREED TO PUT BACK IN COMPARED TO THE WORTH OF WHAT THEY'RE TAKING OUT IS. IS THAT FAIR?
A. I HAD NO FIGURES TO COMPARE.
Q. OKAY. AND THERE'S BEEN SOME MODIFICATIONS HERE THIS MORNING AND TODAY OF THE AGREEMENT AND THE STIPULATION THAT WAS REACHED BY MY CLIENTS OF -- AND THEN MR. BELL'S AGREEMENT. HAVE YOU TAKEN THAT INTO ACCOUNT?
A. I'VE SPOKEN AGAIN TO MR. BELL, AND I UNDERSTAND THE PERCENTAGES HAVE CHANGED WITH RESPECT TO WHO WOULD GET WHAT FROM THE SETTLEMENT ENTITY.
Q. AND HAVE THOSE -- THESE MODIFICATIONS AFFECTED YOUR OPINION AT ALL?
A. NO, THEY HAVEN'T.

MR. GRIFFIN: THAT'S ALL I HAVE.

THE COURT: MR. BARR?

MR. BARR: NO QUESTIONS.

THE COURT: ANY QUESTIONS?

MR. BARR: (SHOOK HEAD FROM SIDE TO SIDE.)

THE COURT: MR. WARNER?

MR. WARNER: NO QUESTIONS, YOUR HONOR.

THE COURT: MR. BELL?

MR. BELL: NO, YOUR HONOR.

THE COURT: MY FRIEND, MR. BYRD?

MR. BYRD: YES, SIR.

THE COURT: ALL OF YOU ARE MY FRIENDS. MR. BYRD?

MR. BYRD: YES, SIR, YOUR HONOR.

CROSS-EXAMINATION

BY MR. BYRD:

Q. MR. BAUKNIGHT, YOU WERE TALKING ABOUT THE ESTATE TAX IMPLICATIONS OF THIS SETTLEMENT AGREEMENT. REGARDLESS OF WHAT THE VALUE OF THE ESTATE MAY ULTIMATELY BE, 25 PERCENT OF THAT IS GOING TO MR. BROWN'S HEIRS; CORRECT?

A. NO, SIR. IF YOU CONSIDER THAT MR. ROSEN'S CLIENT IS ONE OF HIS HEIRS, THEN APPROXIMATELY 50 PERCENT.

Q. WELL, I WAS NOT REFERRING TO THE PUTATIVE SPOUSE OF JAMES BROWN AS AN HEIR BUT A SURVIVING SPOUSE IF SHE IS. I'M REALLY TALKING ABOUT THE CHILDREN.

A. OKAY.

Q. THEY'RE TO RECEIVE 25 PERCENT; CORRECT?
A. APPROXIMATELY.
Q. ALL RIGHT, SIR. NOW, IF -- IF THE AGREEMENT IS THAT TOMMIE RAE HYNIE BROWN IS THE SURVIVING SPOUSE OF JAMES BROWN, THEN THAT WILL QUALIFY AS A MARITAL DEDUCTION.
A. THAT'S RIGHT.
Q. AND, THEREFORE, NOT BE SUBJECT TO ESTATE TAX.
A. THAT'S RIGHT.
Q. AND PRESUMABLY THAT PORTION OF THE ESTATE THAT GOES INTO THE CHARITABLE TRUST WILL LIKEWISE QUALIFY AS A CHARITABLE DEDUCTION AND WILL NOT BE SUBJECT TO ESTATE TAX. CORRECT?
A. THAT'S RIGHT.
Q. BUT THE 25 PERCENT THAT GOES TO THE CHILDREN WILL BE SUBJECT TO ESTATE TAX.
A. THAT'S CORRECT.
Q. AND IF THE ESTATE IS WORTH $80 MILLION, $20 MILLION OF THAT IS GOING TO PASS TO THE CHILDREN AND WILL BE SUBJECT TO ESTATE TAX.
A. IF, IN FACT, THE ESTATE IS WORTH $80 MILLION.
THE COURT: IT'S A HYPOTHETICAL QUESTION.
THE WITNESS: YES, SIR.
THE COURT: HE'S NOT---
THE WITNESS: YES, SIR.
THE COURT: ---TRYING TO TRICK YOU.

BY MR. BYRD:
Q. NOW, WHAT IS YOUR UNDERSTANDING ABOUT WHO IS GOING TO PAY THAT ESTATE TAX?
A. MY UNDERSTANDING IS THEY HAVE DISCUSSED THAT. THAT WILL COME FROM THE SETTLEMENT ENTITY, AND THEY, IN FACT, ALL WOULD BE SUBJECT TO A REDUCED AMOUNT.
Q. SO THE CHARITABLE TRUST IS GOING TO HAVE TO PAY SOME---
A. WHEN YOU ADMINISTER A TRUST OR AN ESTATE, IT'S GOT TO FIRST -- THE ESTATE IS GOING TO HAVE TO PAY THE TAX. WHAT'S LEFT WOULD BE CONTRIBUTED OR PAID TO THE SETTLEMENT ENTITY. SO, IN EFFECT, THEY WOULD ALL SUFFER TO SOME EXTENT WITH RESPECT TO THE ESTATE TAX.
Q. BUT THE WAY THE MATH IS WORKING OUT, THE CHARITABLE TRUST IS GOING TO SUFFER 50 PERCENT OF THE ESTATE TAX THAT RESULTS FROM THIS SETTLEMENT; CORRECT?
A. THAT IS MY UNDERSTANDING.
Q. ALL RIGHT, SIR. AND, AGAIN, WE DON'T KNOW WHAT THE ESTATE IS GOING TO ULTIMATELY BE WORTH, SO WE DON'T KNOW WHAT THAT ESTATE TAX IS GOING TO BE. IF THE ESTATE IS 160 MILLION, IT WILL BE THAT MUCH MORE, WHATEVER. BUT THAT'S THE WAY THE MATH WORKS; RIGHT?
A. THAT'S THE WAY---
Q. THE PERCENTAGES.
A. YES, SIR.
Q. ALL RIGHT, SIR. NOW, TALKING ABOUT THE INFORMATION THAT

YOU WERE PROVIDED AND THE CONCERN EXPRESSED BY MR. BUCHANAN AND MRS. POPE ABOUT THIS SETTLEMENT, ESSENTIALLY ONE OF THEIR CONCERNS WAS THAT THIS SETTLEMENT IS INCONSISTENT WITH THE JAMES BROWN ESTATE PLAN AS EXHIBITED IN HIS WILL AND TRUST; CORRECT?

A. THAT WAS A CONCERN EXPRESSED.

Q. YES, SIR. NOW, DID THEY TELL YOU WHO DRAFTED THE ESTATE PLAN, THE TRUST DOCUMENT, AND THE WILL?

A. MR. BYRD, I CAN'T RECALL WHO TOLD ME THAT, BUT I AM FAMILIAR WITH WHO DRAFTED IT.

Q. AND YOU DO KNOW THAT DEWAIN HERRING PREPARED THAT ESTATE PLAN.

A. YES.

Q. OKAY. AND YOU DO KNOW THAT HIS FILES REGARDING THAT WORK ARE AVAILABLE.

A. I DO NOT KNOW THAT.

Q. OKAY. WERE YOU GIVEN INFORMATION ABOUT WHAT WAS CONTAINED IN THAT FILE, MR. BAUKNIGHT?

A. I HAVE HEARD, AS WE HEARD THIS MORNING FROM MR. MEDLIN, IN MY MEETING OR CONFERENCE WITH HIM WITH RESPECT TO THE INTERESTS OF MR. ROSEN'S CLIENTS. I HEARD THAT SAME INFORMATION.

Q. YOU HEARD WHAT PROFESSOR MEDLIN HAD TO SAY ABOUT THAT.

A. RIGHT. THAT'S THE ONLY INFORMATION I'VE HEARD WITH RESPECT TO WHAT'S, AS HE PUT IT, IN THE BOX THIS MORNING.

Q. DID YOU EVER ASK TO SEE THE ESTATE PLAN AND FILE OF MR. HERRING?
A. I ASKED TO SEE ANY AND ALL RELEVANT DOCUMENTS FROM EACH AND EVERY PERSON I SPOKE WITH.
Q. OKAY.
A. APPARENTLY NOBODY THOUGHT THOSE WERE RELEVANT DOCUMENTS OTHER THAN THE CONVERSATION I HAD WITH MR. MEDLIN ABOUT THAT.
Q. OKAY. BUT DON'T YOU THINK, MR. BAUKNIGHT, YOU HAVE A RESPONSIBILITY TO EXERCISE YOUR OWN INDEPENDENT JUDGMENT ABOUT WHAT IS OR IS NOT RELEVANT?
A. MR. BYRD, I BELIEVE I DID EXERCISE MY BEST JUDGMENT WITH RESPECT TO THAT. I ASKED THE PARTIES WHO HAD BEEN A PART OF THIS LITIGATION FOR NEARLY TWO YEARS WHAT THEY THOUGHT WAS RELEVANT. I'VE BEEN A PART OF THIS NOW FOR TWO WEEKS, AND I FELT THAT THEY WOULD BE ABLE TO PROVIDE ME AND, IN FACT, WOULD PROVIDE ME WITH THE INFORMATION THAT WAS RELEVANT TO THE POSITIONS THAT THEY HELD.
Q. ALL RIGHT, SIR. SO YOU DON'T HAVE ANY -- BASED ON THE INFORMATION THAT YOU WERE PROVIDED, YOU DON'T HAVE ANY IDEA HOW MANY TIMES JAMES BROWN MET WITH DEWAIN HERRING OVER THE COURSE OF DEWAIN HERRING'S REPRESENTATION OF MR. BROWN.
A. NO, SIR, I DO NOT.
Q. AND YOU DON'T HAVE ANY IDEA WHAT MR. DEWAIN HERRING'S NOTES AND FILE INFORMATION MIGHT CONTAIN ABOUT THE CONSIDERATIONS THAT WERE IMPORTANT TO MR. BROWN AND HIS, THAT

IS, MR. DEWAIN HERRING'S DISCUSSION WITH JAMES BROWN. YOU'RE NOT AWARE OF ANY OF THAT.

A. I AM NOT AWARE OF ANY OF THAT.

MR. BYRD: ALL RIGHT, SIR. I THINK THAT'S ALL I HAVE, YOUR HONOR. THANK YOU, YOUR HONOR.

THE COURT: THANK YOU, MR. BYRD. MR. BUCHANAN, WHO IS GOING TO ASK QUESTIONS FOR Y'ALL?

MR. BUCHANAN: MS. HAYES IS GOING TO CONDUCT AN EXAMINATION.

THE COURT: THANK YOU. ALL RIGHT, MA'AM.

CROSS-EXAMINATION

BY MS. HAYES:

Q. MR. BAUKNIGHT, YOU'VE TESTIFIED THAT YOU ARE OPERATING UNDER CERTAIN ASSUMPTIONS IN RENDERING AN OPINION. IS THAT CORRECT?

A. I TESTIFIED THAT I DID ASSUME FOR PURPOSES OF COMING TO THE CONCLUSION I HAVE ARRIVED AT THAT, IN FACT, THE ATTORNEY GENERAL COULD BIND THE CHARITABLE TRUST.

Q. OKAY. AND SO YOU OFFER NO OPINION WHATSOEVER AS TO WHETHER OR NOT THE AGREEMENT ITSELF WOULD BE VALID FROM A PROCEDURAL STANDPOINT. IS THAT CORRECT?

A. WHETHER THE AGREEMENT WOULD BE VALID FROM A PROCEDURAL STANDPOINT?

Q. YES, SIR.

A. I'M OFFERING NO LEGAL OPINIONS WHATSOEVER.

Q. OKAY. AND YOU ARE AWARE FROM BEING IN THE COURTROOM ALL MORNING THAT THERE ARE CERTAIN LEGAL ISSUES THAT ARE DISPUTED BY THE VARIOUS PARTIES. IS THAT CORRECT?

A. ABSOLUTELY.

Q. OKAY. AND DEPENDING ON THE OUTCOME OF SOME OF THOSE ISSUES, THAT COULD POSSIBLY AFFECT YOUR OPINION. IS THAT CORRECT?

A. WELL, I THINK DEPENDING ON THE OUTCOME OF THOSE ISSUES THAT WOULD HAVE AFFECTED THE OPINIONS OF EACH OF THE PERSONS ENTERING INTO THE AGREEMENT. IT WAS THE HAZARDS OF LITIGATION AND THE RISKS ASSOCIATED THEREWITH THAT CAUSED AS ONE OF THE REASONS TO ENTER INTO THE AGREEMENT THAT THAT IS EXACTLY WHAT THEY WERE CONSIDERING.

Q. AND DO YOU HAVE AN OPINION AS TO WHETHER ALL OF THE NECESSARY PARTIES OR INTENDED BENEFICIARIES ARE INCLUDED IN THE PROPOSED SETTLEMENT?

A. I FELT THAT THE PARTIES TO THE SETTLEMENT WERE THE ONES I NEEDED TO SPEAK WITH. IN FACT, MRS. POPE AND MR. BUCHANAN DID RAISE THE ISSUE OF A CONCERN THAT ALL THE PARTIES WERE NOT INCLUDED AS A PART OF THE SETTLEMENT AGREEMENT. I INQUIRED WITH THE SETTLING PARTIES AS TO, NUMBER ONE, WOULD THEY BE WILLING TO INCLUDE OTHER PARTIES AND, IN FACT, WHAT THEY TOLD ME TURNED OUT ACTUALLY TO BE TRUE AS SHOWN THIS MORNING, THAT THEY WOULD BE WILLING TO INCLUDE OTHER PARTIES, AND I ALSO SPENT TIME WITH EACH OF THEM GETTING THEIR INPUT,

THEIR INFORMATION AS TO THE TYPE OF AGREEMENT THIS WAS AND WHETHER EVERYONE HAD TO BE A PART OF IT OR WHETHER THIS WAS A PRIVATE SETTLEMENT AGREEMENT.

Q. OKAY. DID YOU -- DID YOU REVIEW -- DID YOU READ A COPY OF THE AUGUST 2000 WILL OF JAMES BROWN?

A. YES, I DID.

Q. DID YOU ALSO PERSONALLY READ THE 2000 TRUST?

A. YES.

Q. AND YOU VISITED WITH MR. BUCHANAN AND MRS. POPE AT HER OFFICE IN COLUMBIA. IS THAT CORRECT?

A. THAT'S CORRECT.

Q. AND AT THAT TIME WERE YOU -- WERE YOU OFFERED THE OPTION TO LOOK AT ANY AND ALL DOCUMENTS?

A. I BELIEVE, AS MRS. POPE PUT IT, THERE ARE A HUNDRED BOXES IN THE BACK.

Q. RIGHT. DID YOU SEE THE BACK ROOM?

A. I DID NOT.

Q. OKAY. AND YOU ATTENDED THAT MEETING WITH YOUR ATTORNEY.

A. I ATTEMPTED TO ATTEND THAT MEETING WITH MY ATTORNEY. MY ATTORNEY WAS ASKED TO WAIT OUTSIDE. SO I ACTUALLY MET BY MYSELF WITH MR. BUCHANAN AND MRS. POPE.

Q. OKAY. SO DO YOU CONSIDER YOURSELF TO HAVE A FIDUCIARY DUTY IN THIS CASE?

A. YES, I DO.

Q. OKAY. HAVE YOU CONSULTED WITH STATE AND NATIONAL

EXPERTS AS TO HOW THIS PROPOSED SETTLEMENT WILL IMPACT THE CHARITABLE TRUST?

A. I'VE SPOKEN WITH MY COUNSEL.

Q. OKAY. WITH YOUR ATTORNEY.

A. YES.

Q. OKAY.

A. MY ATTORNEY IS AN EXPERT IN CHARITABLE TRUSTS. HE AND I HAVE WORKED ON SOME OF THE LARGEST CHARITABLE TRUSTS TOGETHER IN THE STATE OF SOUTH CAROLINA.

Q. HAS HE -- HAS HE SUBMITTED A WRITTEN OPINION IN THIS CASE?

A. NO, HE HAS NOT.

Q. HAVE YOU PREPARED A WRITTEN REPORT IN THIS CASE?

A. I HAVE NOT.

Q. YOU MENTIONED A POSSIBLE MARITAL DEDUCTION IN YOUR EARLIER TESTIMONY. IS THAT CORRECT? A, QUOTE, POSSIBLE MARITAL DEDUCTION?

A. YES.

Q. OKAY.

A. I MENTIONED POSSIBLE MARITAL DEDUCTION AS AN OUTCOME -- YOU COULD HAVE A MARITAL DEDUCTION IF, IN FACT, MR. ROSEN'S CLIENT WERE TO PREVAIL IN LITIGATION. THE MARITAL DEDUCTION WOULD CERTAINLY BE DEPENDENT ON THE OUTCOME OF THE LITIGATION.

Q. BUT WHAT IS YOUR OPINION ABOUT THE MARITAL DEDUCTION

UNDER THE PROPOSED SETTLEMENT AS IT STANDS NOW?
A. IT'S MY UNDERSTANDING THAT THE PORTION ATTRIBUTABLE TO MR. ROSEN'S CLIENT WOULD QUALIFY AS A MARITAL DEDUCTION.
Q. AND HAVE YOU OBTAINED A LEGAL OPINION OR CONSULTED ANY REFERENCES FOR AN OPINION ON THAT MATTER---
A. I HAVE NOT.
Q. ---A LEGAL OPINION ON THAT MATTER?
A. I HAVE NOT.
Q. ARE YOU AWARE OF THE BOSCH CASE, THE U.S. SUPREME COURT CASE? B-O-S-C-H.
A. NOT OFF THE TOP OF MY HEAD. I HAVE -- I HAVE HEARD OF THE BOSCH CASE. I AM NOT INSTANTLY RECALLING THE DETAILS OF IT.
Q. DID YOU DISCUSS THAT WITH YOUR ATTORNEY? I'M NOT ASKING YOU ABOUT ATTORNEY/CLIENT PRIVILEGE ISSUES.
A. NO, I DID NOT.
Q. OKAY.
THE COURT: HOW DO YOU SPELL THAT? B-O WHAT?
THE WITNESS: B-O-S-C-H.
MS. HAYES: B-O-S-C-H.
BY MS. HAYES:
Q. MR. BAUKNIGHT, DID YOU OBTAIN A PRIVATE LETTER RULING FROM THE I.R.S.?
A. NO, I DID NOT.
Q. WOULD IT HAVE BEEN POSSIBLE TO DO THAT?

A. NO, IT WOULD NOT.
Q. AND WHY IS THAT?
A. I'VE BEEN ORDERED FROM TWO WEEKS AGO TO BE PREPARED FOR COURT TODAY.
Q. HOW LONG WOULD IT TAKE TO GET ONE OF THOSE LETTERS?
A. FAR LONGER THAN TWO WEEKS.
Q. WOULD A COURT ORDER HELP SPEED IT UP?
A. I DO NOT BELIEVE SO.
Q. WOULD THAT HAVE BEEN HELPFUL INFORMATION IF YOU HAD HAD ACCESS TO IT?
A. I DON'T THINK SO.
Q. AND WHY IS THAT?
A. BECAUSE WITHOUT THIS AGREEMENT WE WOULD LIKELY HAVE SEEN THE LITIGATION CONTINUE TO ITS ULTIMATE OUTCOME, AND THAT WOULD DETERMINE WHERE THE FLOW OF ASSETS WOULD GO, AND THE FLOW OF ASSETS WOULD THEN DETERMINE WHETHER OR NOT THERE WAS GOING TO BE AN ESTATE TAX.
Q. BUT YOU'RE NOT CERTAIN AS TO WHETHER OR NOT THERE WILL BE A MARITAL DEDUCTION APPLICABLE UNDER THE PROPOSED SETTLEMENT AGREEMENT?
A. WELL, THAT WAS OUTSIDE OF THE SCOPE OF THE ORDER THAT I WAS CHARGED WITH LOOKING AT.
Q. AND DO YOU HAVE ANY PROFESSIONAL OPINIONS AS TO THE COPYRIGHT LAW TAX IMPLICATIONS?
A. I DID NOT SEEK AN OPINION ON THAT. I FELT THAT WAS

OUTSIDE OF THE SCOPE OF THE ORDER.
Q. AND I KNOW THAT'S A LOT OF INFORMATION TO TRACK DOWN IN TWO WEEKS. IS THERE ANYTHING ELSE THAT YOU FEEL LIKE YOU NEED TO HAVE TO SUPPORT YOUR RECOMMENDATION TO THE COURT TODAY AS A FIDUCIARY?
A. NO. I REQUESTED OF EACH OF THE PARTIES THAT I SPOKE WITH ANY AND ALL RELEVANT DOCUMENTS. I WAS GIVEN SOME DOCUMENTS BY -- THAT I REQUESTED UP FRONT. NO OTHER DOCUMENTS WERE PROVIDED TO ME FOR CONSIDERATION.
Q. DID YOU -- WERE YOU OFFERED THE OPPORTUNITY TO LOOK AT THE SEPTEMBER 2008 FEDERAL TAX RETURN PREPARED BY MRS. POPE AND MR. BUCHANAN?
A. WE DISCUSSED THE FEDERAL ESTATE TAX RETURN. I CANNOT RECALL IF THEY OFFERED ME A COPY OF IT THOUGH. WE DID DISCUSS THE GROSS ESTATE NUMBER AND THE TAXABLE ESTATE NUMBER, BUT I CANNOT RECALL IF THEY OFFERED ME A COPY.
Q. DO YOU REMEMBER SAYING YOU WEREN'T COMFORTABLE LOOKING AT ANYTHING THAT WAS DEEMED CONFIDENTIAL?
A. WE DISCUSSED -- IN A FAX THAT I RECEIVED FROM MRS. POPE'S OFFICE, THERE WAS A COMMENT IN THE FAX AND REALLY THE REASON I TOOK MY ATTORNEY WITH ME REGARDING THEM ASKING ME TO SIGN A CONFIDENTIALITY AGREEMENT. I CERTAINLY WASN'T GOING TO SIGN A CONFIDENTIALITY AGREEMENT WITHOUT HAVING LEGAL COUNSEL TO ADVISE ME WITH RESPECT TO THAT AGREEMENT.
FURTHER, IN READING THE ORDER FROM THE COURT ABOUT THE

JOB I'VE BEEN ORDERED TO DO, I FELT THAT IT WOULD LIKELY BE OUTSIDE THE SCOPE OF THE ORDER TO REVIEW CONFIDENTIAL INFORMATION.

Q. SO YOU DO NOT FEEL THAT IT WOULD BE RELEVANT TO REVIEW THE CURRENT PREPARED FEDERAL TAX ESTATE RETURN.

A. I DO NOT. AS I SAID, I WAS GIVEN INFORMATION CONTAINED ON THAT RETURN. I DON'T BELIEVE THERE WOULD BE ANYTHING FURTHER THERE FOR ME TO PERFECT MY RECOMMENDATION TO THE COURT.

Q. AND YOU MENTIONED THAT WHEN YOU MET WITH -- YOU LISTED BOTH THE REPRESENTATIVES FOR---

COURT REPORTER: I'M SORRY. I DIDN'T HEAR YOU.

THE COURT: YOU HAVE TO SPEAK LOUDER, PLEASE, MA'AM.

MS. HAYES: I'M SORRY. I APOLOGIZE.

BY MS. HAYES:

Q. YOU MENTIONED MEETING WITH REPRESENTATIVES FOR THE SETTLING PARTIES.

A. YES.

Q. DID YOU RECEIVE ANY ADDITIONAL DOCUMENTS AT THOSE MEETINGS?

A. I RECEIVED THE 2000 WILL AND TRUST. I RECEIVED THE ACTUAL SETTLEMENT AGREEMENT. I RECEIVED THE TERMS OF THE SETTLEMENT AGREEMENT, THE CONTRIBUTION AGREEMENT, AND THE TRUST.

Q. OKAY. DID YOU RECEIVE ANY WRITTEN FORMAT OF THE

EXAMPLES YOU DISCUSSED OF ISSUES THAT MIGHT IMPACT CHARITABLE TRUSTS?

A. NO.

Q. THESE WERE ALL DISCUSSED AS HYPOTHETICALS.

A. RIGHT.

Q. DID YOU RECEIVE ANY ADDITIONAL DOCUMENTS WHEN YOU MET WITH MR. ROSEN ON BEHALF OF HIS CLIENTS OTHER THAN THE ONES WE'VE ALREADY LISTED?

A. I DID RECEIVE A COPY OF THE LUKICH CASE. I RECEIVED CONTACT NUMBERS AND E-MAIL ADDRESSES FOR THE VARIOUS ATTORNEYS INVOLVED IN THE CASE. I DID ASK FOR THAT SO I WOULD KNOW HOW TO GET IN TOUCH WITH EACH OF THESE PEOPLE.

Q. I'M SORRY I INTERRUPTED YOU. I APOLOGIZE.

A. THAT'S ALL RIGHT.

Q. AND YOU'RE NOT OFFERING AN OPINION AS TO THE LUKICH CASE; IS THAT CORRECT?

A. ABSOLUTELY NOT.

Q. OKAY. DID YOU RECEIVE ANY ADDITIONAL DOCUMENTS FROM MR. LEVENSON?

A. NO.

Q. OR REVIEW ANY IN THE PRESENCE OF ANY OF THE OTHER PARTIES' REPRESENTATIVES?

A. NO. MY CONVERSATION WITH MR. LEVENSON WAS BY TELEPHONE. MY INITIAL CONVERSATION WITH MR. BELL WAS BY TELEPHONE WITH A FACE-TO-FACE CONVERSATION THIS MORNING.

Q. DO YOU HAVE AN OPINION AS TO HOW THIS PROPOSED SETTLEMENT WILL AFFECT FORLANDO AND ROMUNZO BROWN?
A. MY -- MY CONCLUSION WITH RESPECT TO THEM -- YOU'RE TALKING ABOUT AFTER THIS MORNING?
Q. YES, SIR.
A. THAT TERRY BROWN WOULD BE A PART OF THE SETTLEMENT AGREEMENT AND THEY ARE NOT SIGNERS TO THE AGREEMENT. SO I AM OFFERING NOTHING WITH RESPECT TO THEIR INTERESTS.
Q. SO YOU DON'T HAVE AN OPINION AS TO WHETHER IT WAS BINDING AS TO THEM.
A. I'M NOT OFFERING ANY LEGAL OPINIONS WITH RESPECT TO WHO IT'S BINDING ON.
Q. OKAY. WHO IS ACTING ON BEHALF OF THE PERSONAL REPRESENTATIVE OF THE ESTATE WITH REGARD TO THE PROPOSED SETTLEMENT?
A. CAN YOU RESTATE THAT, PLEASE?
Q. THERE'S NO PERSONAL REPRESENTATIVE SIGNING OFF ON THE PROPOSED AGREEMENT. IS THAT CORRECT?
A. THAT'S CORRECT.
Q. IS THERE AN ATTORNEY OR ANYONE APPEARING CLAIMING TO BE NEGOTIATING OR SIGNING ON THE BEHALF?
A. ON BEHALF OF THE PERSONAL REPRESENTATIVES?
Q. YES, SIR.
A. NOT THAT I'M AWARE OF.
Q. IS THERE ANYONE YOU HAVE KNOWLEDGE OF WHO'S AGREED TO

ACCEPT RESPONSIBILITY AND LIABILITY ASSOCIATED WITH THE TAX ISSUES WE'VE DISCUSSED TODAY?

A. WELL, THE TAX, AS I SAID, WOULD BE A TAX DUE BY THE ESTATE. THAT IS ULTIMATELY THE RESPONSIBILITY OF THE PERSONAL REPRESENTATIVES.

Q. UH-HUH. BUT YOU'RE NOT AWARE OF WHO IS GOING TO BE DESIGNATED TO PREPARE THOSE RETURNS AND DEAL WITH THOSE ISSUES.

A. I DID NOT INQUIRE FURTHER ABOUT THAT BECAUSE, NUMBER ONE, I WAS TOLD THE ESTATE RETURN HAD ALREADY BEEN PREPARED AND, FURTHER, I THOUGHT -- I HAD NO REASON TO INQUIRE BECAUSE THAT WOULD HAVE BEEN OUTSIDE THE SCOPE OF THE COURT'S ORDER.

Q. AND THE PROPOSED SETTLEMENT AGREEMENT DOES NOT IDENTIFY A NEW PERSONAL REPRESENTATIVE OR A TRUSTEE; CORRECT?

A. NO. THE AGREEMENT, AS I READ AND MY UNDERSTANDING OF WHAT THE PARTIES HAVE AGREED TO, IS TO FILE A MOTION TO REPLACE THE CURRENT PERSONAL REPRESENTATIVES. NO -- NO -- THAT ITSELF DOES NOT CAUSE THAT -- CAUSE THAT REPLACEMENT TO HAPPEN.

Q. WOULD THE PERSONAL REPRESENTATIVE RETAIN THE ASSETS UNTIL THE ESTATE OF JAMES BROWN CLOSED?

A. THAT -- THE ANSWER TO THAT I THINK WOULD BE OUTSIDE THE SCOPE OF THE ORDER PROVIDED TO ME, BUT AS A FIDUCIARY, THE PERSONAL REPRESENTATIVES ARE RESPONSIBLE FOR THE ASSETS OF THE ESTATE.

Q. IS THERE -- DO YOU HAVE AN OPINION AS TO WHETHER THE PROPOSED SETTLEMENT AGREEMENT ACCOMPLISHES THE INTENT -- THE INTENT OF JAMES BROWN IN DRAFTING THOSE DOCUMENTS?
A. I WOULD HAVE NO OPINION ABOUT THE INTENT OF MR. BROWN.
Q. YOU HAVE NO---
A. I'VE NEVER MET HIM.
Q. DO YOU HAVE ANY EVIDENCE THAT HE LACKED COMPETENCY TO SIGN THOSE DOCUMENTS?
A. I HAVE NO OPINION WHATSOEVER ABOUT MR. BROWN - I NEVER MET HIM - OTHER THAN HE WAS A GREAT ARTIST.
Q. AND I KNOW YOU DON'T HAVE ANY INFORMATION ABOUT HIS FRAME OF MIND. DO YOU HAVE ANY OPINION AS TO WHETHER THE DOCUMENT ITSELF WITH ITS STATED INTENT AND STATED PURPOSE -- DO YOU FEEL THAT THE PROPOSED SETTLEMENT ACCOMPLISHES THOSE STATED GOALS?
A. THE STATED GOALS OF THE SETTLEMENT AGREEMENT?
Q. YES, AS TO THE BENEFICIARIES.
A. IT'S---
THE COURT: THE STATED GOAL AS TO THE ORIGINAL TRUST AND WILL.
BY MS. HAYES:
Q. TO THE ESTATE PLAN ITSELF, YES, YOUR HONOR, AND BY THAT I MEAN THE WILL AND THE TRUST TOGETHER.
A. I HAVE NO OPINION OTHER THAN -- YOU KNOW, I HAVE NO OPINION ON THAT.

MS. HAYES: BEG THE COURT'S INDULGENCE.

THE COURT: YES, MA'AM.

MS. HAYES: I DO HAVE A FEW MORE QUESTIONS. I DON'T KNOW IF -- I DON'T KNOW IF ANYONE NEEDED A BREAK OR -- I DON'T THINK IT WILL TAKE VERY LONG.

THE COURT: NO, MA'AM. KEEP GOING, UNLESS ANYBODY IS UNCOMFORTABLE. HEARING NONE, MOVE ALONG.

MS. HAYES: THANK YOU, YOUR HONOR.

THE COURT: DO YOU NEED ONE?

MS. HAYES: NO, I'M FINE. THANK YOU.

BY MS. HAYES:

Q. DO YOU HAVE AN OPINION AS TO WHETHER THE PROPOSED SETTLEMENT AGREEMENT OFFERS A TRANSITION PLAN FOR THE CURRENTLY PENDING LITIGATION?

A. BASED ON THE INFORMATION I'VE GATHERED, THE CURRENT LITIGATION IS BEING HANDLED BY COMPETENT ATTORNEYS. I HAVE NO DIRECT KNOWLEDGE OF THAT, BUT THAT IS THE INFORMATION THAT I'VE GATHERED. THE SETTLEMENT AGREEMENT ITSELF IN MY VIEW WOULD NOT AFFECT ANY OF THE CURRENT PENDING LITIGATION OTHER THAN IT WOULD CAUSE SOME OF THE LITIGATION TO GO AWAY IN THAT THE SETTLING PARTIES HAVE AGREED TO DROP THEIR CASES THAT THEY HAD PENDING.

Q. BUT AS TO ANY CASES THAT WON'T BE RESOLVED, DO YOU HAVE AN OPINION AS TO HOW -- HYPOTHETICALLY SAY THERE'S A NEW PERSONAL REPRESENTATIVE, NEW TRUSTEE. ANY TRANSITION TO HELP

THAT PERSON WITHIN -- REGARDLESS OF THEIR ATTORNEY, STEP IN THE SHOES OF THE PARTY TO TESTIFY AT DEPOSITIONS AND ACT AS A PARTY IN THE CASES?

A. WELL, I DID NOT ASSUME THAT BY AGREEING TO THE SETTLEMENT AGREEMENT THAT WOULD AUTOMATICALLY REPLACE THE CURRENT PERSONAL REPRESENTATIVES AND TRUSTEES, AND I DON'T THINK THAT WOULD BE A FAIR ASSUMPTION. THE SETTLEMENT AGREEMENT SIMPLY CALLED FOR A JOINT MOTION TO REPLACE THEM. THAT DOESN'T MEAN THAT WOULD HAPPEN. SO THIS SETTLEMENT AGREEMENT SHOULD CAUSE NO CHANGE IN THE CURRENT PENDING LITIGATION THAT THE PERSONAL REPRESENTATIVES AND TRUSTEES ARE HANDLING.

Q. AND YOU HAVE NO OPINION AS TO WHETHER OR NOT THERE SHOULD BE NEW P.R.'S OR TRUSTEES; CORRECT?

A. I HAVE NO OPINION ON THAT.

Q. ARE THERE ANY FEES OR COSTS RELATED TO THE LITIGATION THAT NEED TO BE CONSIDERED FOR DETERMINATION OF THE TAX LIABILITY OR THE IMPACT THAT THE SETTLEMENT PLAN WILL HAVE ON THE ESTATE?

A. I'M NOT SURE WHAT YOU'RE ASKING.

Q. DID YOU TAKE INTO CONSIDERATION ANY ATTORNEY'S FEES OR ADDITIONAL COSTS WHEN YOU CONSIDERED THE TAX LIABILITY?

A. I DIDN'T SPECIFICALLY CONSIDER THE TAX LIABILITY AND WHAT IT MIGHT BE. IT WAS MY DETERMINATION, BASED ON THE INFORMATION I GATHERED, THAT THE LITIGATION WOULD -- WITHOUT

THE SETTLEMENT AGREEMENT WOULD CONTINUE TO ITS ULTIMATE END AND THE DETERMINATION OF WHO THE BENEFICIARIES ARE WOULD ULTIMATELY DETERMINE WHETHER THERE WAS, IN FACT, AN ESTATE TAX.

Q. DO YOU HAVE OPINION AS TO PRIORITY EXPENSES, ANYTHING IN THAT REGARD?

A. THAT'S OUTSIDE THE SCOPE OF WHAT I LOOKED AT.

MS. HAYES: THANK YOU VERY MUCH. I APPRECIATE IT. THANK YOU.

THE COURT: I THINK I'VE GIVEN EVERYBODY AN OPPORTUNITY TO ASK QUESTIONS OF MR. BAUKNIGHT. IS THERE ANY ADDITIONAL QUESTIONS? MR. BAUKNIGHT, YOU MAY STEP DOWN.

THE WITNESS: THANK YOU, SIR.

THE COURT: LET'S TAKE ABOUT A 10-MINUTE BREAK AND WE'LL STRETCH OUR LEGS AND WE'LL COME BACK AND KEEP GOING.

(WHEREUPON, A SHORT BREAK WAS TAKEN.)

THE COURT: THANK YOU. PLEASE BE SEATED. PROFESSOR MEDLIN, WHAT CONSIDERATIONS HAVE BEEN MADE FOR THE BOSCH CASE IN CONNECTION WITH THE SETTLEMENT OR WAS IT TAKEN INTO ACCOUNT IN LOOKING AT THE TAX ISSUES?

MR. MEDLIN: YES, YOUR HONOR, WE CONSIDERED THE BOSCH CASE.

THE COURT: I'M NOT FAMILIAR WITH IT BUT...

MR. MEDLIN: WELL, THE BOSCH CASE, IF I MAY, SAYS THE I.R.S. ISN'T NECESSARILY BOUND BY ANY RULING ON ESTATE LAW OF

THE LOWER COURT.

THE COURT: THEY DO WHAT THEY WANT TO DO?

MR. MEDLIN: THEY DO WHAT THEY WANT TO DO, BUT IF IT'S A QUESTION OF STATE LAW AND THE HIGHEST COURT IN THE STATE HAS RULED, THEN THEY ARE BOUND BY THAT RULING. IT DOESN'T SAY THAT THEY WON'T FOLLOW A RULING OF THE LOWER COURT. IT'S USUALLY A MATTER OF STRATEGY AS TO WHETHER ONE PURSUES AN ISSUE ALL THE WAY BACK UP THE CHAIN TO GET THE HIGHEST COURT TO RULE. IT'S ALSO A QUESTION OF STRATEGY AS TO WHETHER ONE GETS A PRIVATE LETTER RULING ON CERTAIN ISSUES.

ALL OF THAT WE HAVE CONSIDERED. ALL OF THAT WE CONSIDER SIMPLY PART OF THE MIX. THE BOTTOM LINE TO US IN OUR SETTLEMENT IS THE TOTAL NUMBER OF DOLLARS THAT WILL END UP WITH EACH PARTY INCLUDING AN ABIDING INTEREST IN EACH OF OUR CLIENTS FOR THE CHARITY TO GET.

THE COURT: WELL, SPEAKING OF THAT, MR. BYRD RAISED AN INTERESTING POINT IN HIS EXAMINATION OF MR. BAUKNIGHT ABOUT THE CHARITY. I UNDERSTOOD THE RESPONSE. I'M NOT SURE -- MAYBE I DIDN'T. BUT UNDER THE -- THE SETTLEMENT WILL BE RESPONSIBLE FOR ITS PRO RATA SHARE OF THE ESTATE TAXES. IS THAT -- DID I UNDERSTAND THAT CORRECTLY?

MR. MEDLIN: THAT'S PART OF THE UNDERSTANDING, YOUR HONOR.

THE COURT: EXPLAIN THAT TO ME.

MR. MEDLIN: WELL---

THE COURT: WHY SHOULD THE CHARITY BE PAYING ESTATE TAXES?

MR. MEDLIN: WELL, THAT WAS OUR AGREEMENT AND IT'S NOT ACTUALLY PAYING ESTATE TAXES. IT'S DIVIDING WHAT'S LEFT AFTER ALL EXPENSES, CLAIMS, INCLUDING TAXES OF THE ESTATE, HAVE BEEN PAID. IT'S A DETERMINATION OF WHO IS GOING TO END UP WITH WHAT AFTER THAT. THAT SUITED THE CHARITY TO DO THAT JUST AS WITH ANY OTHER EXPENSE. NOW, WE ALSO HAVE STRATEGIES FOR MINIMIZING, AS I MENTIONED THIS MORNING, YOUR HONOR, THE ESTATE TAX THAT MIGHT APPLY TO ANY SHARE THE CHILDREN GOT.

THE COURT: HOLD ON A SECOND. MR. WARNER, I HATE TO KEEP SAYING STUFF. PLEASE. IF Y'ALL NEED TO TALK, STEP OUTSIDE OR TALK NOW. DON'T MAKE -- I AIN'T PICKING ON YOU, BUT YOU'RE THE ONLY ONE TALKING.

MR. WARNER: I THOUGHT I'D WHISPERED. YOUR HONOR, I APOLOGIZE.

THE COURT: WELL, WHEN YOU SIT UP HERE AND YOU'RE TRYING TO PAY ATTENTION -- JUST LIKE THOSE PEOPLE STUCK THOSE ORDERS IN MY FACE AWHILE AGO. I'M TRYING TO LISTEN. I SEE Y'ALL OVER THERE WHISPERING. PLEASE. I AIN'T -- I'M NOT PICKING ON ANYBODY.

MR. WARNER: I UNDERSTAND, YOUR HONOR. THANK YOU.

THE COURT: THANK YOU.

MR. MEDLIN: YOUR HONOR, WE ALSO HAVE SOME WHAT WE CONSIDER TO BE FAIL-SAFE AGREEMENTS SUCH THAT WE WILL INSURE

THAT THE CHARITY WON'T LOSE ITS CHARITABLE DEDUCTION. SO THE BOTTOM LINE IS IN CONSIDERATION WITH WHAT MR. JONES AND THE ATTORNEY GENERAL'S OFFICE HAD TO MAKE, BASED ON WHATEVER AMOUNT COMES TO THE ESTATE, THEN HE'S GOING TO END UP WITH X. DOLLARS. AND I MIGHT ADD FURTHER THAT I'M NOT SURE IN MY INVESTIGATION - MAYBE THE PERSONAL REPRESENTATIVES AND TRUSTEES FOUND OUT SOMETHING ABOUT THIS - WHAT THE TAX SITUATION IS WITH THE RENEWAL AND TERMINATION RIGHTS. IF THEY ARE---

THE COURT: Y'ALL ALL KEEP TALKING ABOUT THE RENEWAL AND TERMINATION RIGHTS. LET'S, FOR THE RECORD, DEFINE WHAT THAT IS AND SORT OF WHAT PROBLEMS -- NOT PROBLEMS BUT WHAT CONCERNS IT PRESENTS.

MR. MEDLIN: WELL, YOUR HONOR, I'D LIKE PEOPLE TO CHIP IN TO HELP ME. I'M CERTAINLY, AS I SAID, NO EXPERT ON COPYRIGHT LAW.

THE COURT: I ASSUME IT HAS TO DO WITH THE SONGS?

MR. MEDLIN: I'LL TELL YOU MY UNDERSTANDING IS THAT THERE ARE -- THERE ARE CERTAIN RIGHTS THAT ARISE FOR AUTHORS WITH RESPECT TO COPYRIGHTS THAT THEY HAVE ASSIGNED TO PUBLISHERS DURING THEIR LIFETIME. THERE ARE CERTAIN RIGHTS THAT PASS TO THE SUCCESSORS, BEING THE SURVIVING SPOUSE, IF ANY, AND THE SURVIVING ISSUE, IF ANY, BY AGAIN, MY UNDERSTANDING, FEDERAL LAW THAT SEEKS THESE RIGHTS IN THE SURVIVING HEIRS.

THESE RIGHTS, AS I UNDERSTAND THEM, ARE OUTSIDE OF THE PROBATE PROCESS, AND THE WAY THAT I -- I HAVE TO SIMPLIFY THINGS TO UNDERSTAND THEM, AND THE WAY I UNDERSTAND THEM IS TO ANALOGIZE THE WRONGFUL DEATH PROCEEDS WHERE---

THE COURT: SOME GOES---

MR. MEDLIN: ---THE STATUTE---

THE COURT: ---TO THE HEIR. SOME GOES TO THE ESTATE. THE SURVIVAL ACTION GOES TO THE ESTATE AND THE WRONGFUL---

MR. MEDLIN: RIGHT.

THE COURT: ---DEATH GOES TO THE HEIRS AT LAW.

MR. MEDLIN: EXACTLY. AND THEY HAVE THAT RIGHT SIMPLY BECAUSE THE LEGISLATURE HAS GIVEN THEM THAT RIGHT.

THE COURT: OKAY.

MR. MEDLIN: THAT IS OUTSIDE THE ESTATE. IT'S NOT ESTATE TAXABLE, AS I UNDERSTAND IT, BUT THE QUESTION ARISES AS TO WHETHER THESE COPYRIGHT INTERESTS IN THE SURVIVING HEIRS ARE ESTATE TAXABLE. IF THEY'RE NOT, WONDERFUL. THAT GIVES US THAT MUCH MORE TO CONTRIBUTE TO THE CHARITIES THAT THE CHARITY UNDER NO CIRCUMSTANCE WOULD HAVE GOTTEN, WHATEVER THAT AMOUNT IS, AND WE DON'T KNOW.

IF THEY ARE TAXABLE, ESTATE TAXABLE, THEN THE QUALIFICATION OF MRS. BROWN AS A SURVIVING SPOUSE WOULD BE OF GREAT BENEFIT HERE AS WELL AS IT WOULD BE INTERNALLY WITHIN THE ESTATE AND THE ESTATE TAX ISSUE. IF SHE QUALIFIES AS A SURVIVING SPOUSE, THEN WHATEVER SHARE GOES TO HER AT LEAST

WOULD NOT BE ESTATE TAXABLE, AND SHE'D HAVE THAT MUCH MORE TO CONTRIBUTE TO THE SETTLEMENT ENTITY, HALF OF WHICH GOES TO THE ATTORNEY GENERAL TO THE CHARITIES.

SO WE'VE CERTAINLY TAKEN THE ESTATE TAXES INTO ACCOUNT. WE'RE CERTAINLY INTENDING TO MINIMIZE THE ESTATE TAX. NOBODY WANTS TO PAY TAXES IF THEY DON'T HAVE TO, BUT AGAIN TO ME IT SEEMS SORT OF A FOOL'S GOLD ISSUE, NOT A FOOL'S ISSUE BUT A FOOL'S GOLD ISSUE, BECAUSE THE REAL ANSWER IS: WHAT ARE THE ULTIMATE DOLLARS THAT WOULD END UP WITH THE ATTORNEY GENERAL? AND THE TAX IS JUST ONE PART OF IT. IF HE, FOR EXAMPLE, LOST THE WILL AND TRUST CONTEST, HE'D GET ZERO. THERE WOULD BE A LOT OF TAX BECAUSE THE CHILDREN WOULD HAVE TO PAY ESTATE TAX, BUT NOTHING WOULD GO INTO THE CHARITY.

SO ALL OF THIS WAS MIXED IN; WE CONSIDERED ALL OF IT. WE HAVE SAFEGUARDS TO PROTECT THE CHARITABLE DEDUCTION. IN FACT, YOUR HONOR, CONTRIBUTIONS BY MRS. BROWN AND/OR THE CHILDREN TO THE EXTENT THEY CAUSED THE PROBLEM, THEY'LL PAY THE TAX. AND THEN WE HAVE AN AGREEMENT FOR MAKE-UP FOR THAT SO THAT IF IT COMES OUT OF THE ESTATE -- THE COPYRIGHTS, IT GOES IN. BUT WE'VE GOT ALL THAT PROTECTION IN THERE. I REALLY WOULD HAVE BEEN RELUCTANT TO SAY THAT BEFORE, BUT I THINK IT NEEDED TO BE SAID IN RESPONSE TO YOUR QUESTION.

THE COURT: NOW, WHAT EFFECT DOES THE CURRENT APPEAL -- WHAT POSSIBLE EFFECT ON THE CURRENT APPEAL THAT IS PENDING IN THE COURT OF APPEALS OR WHEREVER -- WHAT IF PEOPLE WHO ARE

APPEALING ARE SUCCESSFUL? WILL THAT HAVE ANY EFFECT ON THE SETTLEMENT AGREEMENT?

MR. MEDLIN: WELL, YOUR HONOR, WE THINK NOT, BUT AS THE BELT AND SUSPENDERS APPROACH, AS YOU MAY RECALL, WE HAVE BROUGHT AN ACTION TO REMOVE DALLAS, BRADLEY, AND CANNON, AN ACTION THAT WAS NEVER HEARD BEFORE BY THIS COURT BECAUSE, AS WE ALL KNOW, THEY RESIGNED AND THEY'RE NOW UN-RESIGNING WHICH IS NOVEL TO US, BUT THAT'S FOR THE COURT OF APPEALS TO DECIDE AND I CERTAINLY DON'T MEAN TO USURP ON THE COURT OF APPEALS OR THE SUPREME COURT. YOU KNOW, WE DON'T THINK THEY CAN UN-RESIGN, BUT JUST TO MAKE SURE, WE WANT TO PROSECUTE OUR PETITION TO REMOVE THEM FOR CAUSE SO THAT EVEN IF THE COURT OF APPEALS DECIDES THEY DIDN'T RESIGN, WHICH WE WOULD ARGUE IS THE ONLY ISSUE WITH RESPECT TO THEM BEFORE THE COURT OF APPEALS, WE HAVE ANOTHER RULING THAT SAYS THAT THEY'VE BEEN REMOVED. IN ANY EVENT, THIS SHOULD BE ABOUT THE BENEFICIARIES OF THE ESTATE, NOT ABOUT THE FIDUCIARIES.

THE COURT: WELL, I AGREE WITH THAT.

MR. MEDLIN: AND---

THE COURT: I'M JUST TRYING TO MAKE SURE THE RECORD IS COMPLETE AND ALL QUESTIONS I HAD AS TO DETERMINE WHETHER OR NOT IT'S FAIR AND JUST AND REASONABLE -- AND I'M TRYING TO COVER ALL THE BASES. SORRY I'M PUTTING YOU ON THE HOT SPOT.

MR. MEDLIN: WELL, YOUR HONOR, I'M HAPPY TO BE SO.

THE COURT: WELL, LET ME HEAR FROM THE ATTORNEY GENERAL

ON MY QUESTIONS ABOUT THE TAX AND CONCERNS THAT MR. BYRD'S RAISED ON MAYBE THE CHARITABLE TRUST NOW HAVING TO BE RESPONSIBLE FOR PERHAPS MORE TAXES THAN IT WOULD HAVE BEEN HAD THE ORIGINAL WILL AND TRUST AGREEMENT BEEN UPHELD.

MR. JONES: YOUR HONOR, THE ANSWER IS THAT IN DRAFTING THE SETTLEMENT AGREEMENT IT WAS ENVISIONED THAT CERTAIN EXPENSES WOULD COME OUT OF THE 50/25/25 AND IT WOULD BE A -- IT WOULD BE A REFLECTIVE DISTRIBUTION LIKE THAT THAT A CERTAIN TYPE OF OVERHEAD OR COSTS WOULD BE PASSED ALONG TO THE SETTLING ENTITY WHICH COULD INCLUDE THE TAXES FOR THE -- FOR MR. LEVENSON'S CLIENTS AND NOW MR. -- MAYBE MR. BELL'S CLIENTS BUT WITH THE UNDERSTANDING THAT AS WE LOOKED AT THAT WE'D HAVE TO MAKE A DETERMINATION: DOES IT AFFECT ANY OF THE INTERNAL REVENUE'S ACCEPTANCE, AS IT IS A CHARITABLE TRUST?

SO ALL THOSE THINGS WOULD BE OUT IN FRONT OF US AS WE WORKED OUR WAY THROUGH. WE WENT IN THAT WITH EYES WIDE OPEN. KEEP IN MIND THAT IF THE CHILDREN, SO TO SPEAK, WERE HIT WITH A CERTAIN EXPENSE, THAT WOULD SUBSTANTIALLY REDUCE THEIR PART DOWN FROM THE 25 PERCENT MAYBE TO DOWN TO 12 TO 13.

SO WE ENVISIONED THAT. WE WERE UNDERSTANDING WE WERE GOING TO WORK WITH THAT TO MAKE SURE THAT THE MARITAL DEDUCTION WOULD BE MET, THE MAXIMUM THERE, AND THAT'S WHY LITTLE MAN WOULD BE INCLUDED WITH IT -- WELL, I WON'T GO INTO THAT PART. BUT WE LOOKED AT ALL -- GOT ALL THE BALLS IN THE AIR, EVERYTHING IN FRONT OF US, AND WE ENVISIONED THIS AS AN

EXPENSE NO DIFFERENT THAN OTHER EXPENSES THAT MIGHT BE INCURRED. KEEP IN MIND, YOUR HONOR, THAT WE'RE STILL BALANCING OUT THE HUNDRED PERCENT VERSUS THE ZERO PERCENT---

THE COURT: I UNDERSTAND---

MR. JONES: ---SAME CRITERIA.

THE COURT: ---IT'S A COMPROMISE LIKE ALL SETTLEMENTS ARE.

MR. JONES: NO QUESTION, YOUR HONOR, BUT WE -- THE QUESTION YOU BROUGHT UP TO MR. BYRD IS A GOOD QUESTION, BUT WE UNDERSTOOD THAT AND WE AGREED TO IT WITH THE UNDERSTANDING THAT WE HAD TO MAKE SURE THAT WE GOT THE MAXIMUMIZATION OF OUR CHARITABLE TRUST DEDUCTION AND DID NOT HURT US WITH THAT.

THE COURT: ALL RIGHT.

MR. ROSEN: YOUR HONOR, MAY I BE HEARD BRIEFLY JUST TO GIVE YOUR HONOR SOME COMFORT LEVEL?

THE COURT: SOME WHAT? SOME WHAT KIND OF LEVEL?

MR. ROSEN: COMFORT. COMFORT LEVEL.

THE COURT: MR. ROSEN, THERE'S A LOT OF THINGS YOU CAN GIVE ME. I DON'T KNOW ABOUT...

MR. ROSEN: I'LL DO MY BEST.

THE COURT: I'M NOT SURE I WANT THAT.

MR. ROSEN: MAYBE HEARTBURN WOULD BE MORE ACCURATE. YOUR HONOR, I -- WHEN I GOT INTO THIS CASE, I DID THE FIRST THING THAT ANY INTELLIGENT LAWYER WOULD DO IS I HIRED AND ASSOCIATED PEOPLE WHO ACTUALLY KNEW WHAT THEY WERE DOING, AND

I DO WANT TO REPRESENT TO THE COURT -- AND HEYWARD CARTER IS TOO MODEST TO SAY IT, BUT AFTER ALL, EVANS CARTER IS PROBABLY, IF NOT THE BEST TAX FIRM IN THE STATE, CERTAINLY ONE OF THE TOP FIRMS. THEY'VE HAD FOUR LAWYERS. I MEAN, WE HAVE THIS CASE ON A CONTINGENCY, BUT WE HAVE TAX LAWYERS, BELIEVE IT OR NOT, YOU KNOW, WORKING TO DO ALL THIS.

THIS AGREEMENT WAS PUT TOGETHER BY SOME VERY, VERY SMART PEOPLE AND, YOU KNOW, THESE ARE VERY SOPHISTICATED TAX LAWYERS, AND I THINK BETWEEN PROFESSOR MEDLIN AND OTHER PEOPLE WE'VE CONSULTED I'M JUST TELLING THE COURT THAT, YOU KNOW, I'M EXTREMELY COMFORTABLE THAT I'M IN VERY GOOD COMPANY WITH SOME VERY, VERY SMART PEOPLE. AND I THINK WE'VE TAKEN ALL THESE THINGS INTO ACCOUNT, AND I THINK THE COURT KNOWS THE REPUTATIONS OF THE LAWYERS INVOLVED WITH REGARD TO TAX ISSUES. I THOUGHT THAT MIGHT GIVE YOU A COMFORT LEVEL. THANK YOU.

THE COURT: THANK YOU. ALL RIGHT. ANY OTHER PARTY -- ANYBODY WHO WOULD LIKE TO PRESENT ANY ADDITIONAL EVIDENCE TO MAKE THE RECORD COMPLETE? MR. MEDLIN, ANY ADDITIONAL WITNESSES? PROFESSOR MEDLIN? NOTHING?

MR. MEDLIN: I'M GOING TO DEFER TO MR. LEVENSON WITH YOUR INDULGENCE.

THE COURT: WELL, I'M GOING TO GO DOWN THE LIST SO IT'LL ALL BE ON THE RECORD. PROFESSOR MEDLIN, ANY ADDITIONAL WITNESSES?

MR. MEDLIN: LOUIS?

THE COURT: NO, I'M ASKING YOU.

MR. MEDLIN: WE WOULD LIKE TO CALL MS. POPE TO THE STAND.

THE COURT: OKAY.

ADELE J. POPE, AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

THE CLERK: PLEASE HAVE A SEAT AND STATE YOUR FULL NAME FOR THE RECORD.

THE WITNESS: MY NAME IS ADELE JEFFORDS POPE.

THE COURT: MS. POPE, SPEAK UP A LITTLE BIT LOUDER OR GET CLOSER TO THE MICROPHONE, PLEASE.

DIRECT EXAMINATION

BY MR. LEVENSON:

Q. MRS. POPE, DO YOU RECALL YOU AND I BEING IN THE STREET OUT HERE IN FRONT OF THE COURTHOUSE IN THE SUMMER OF 2008 WHERE WE TOLD YOU THAT WE WERE GOING TO A SETTLEMENT MEETING WHERE ALL PARTIES WHO HAVE NOW SETTLED WERE TO ATTEND?

A. MR. LEVENSON, WE---

Q. MAY I RESPECTFULLY GET A YES OR NO ANSWER?

THE COURT: WE'RE NOT -- WE'RE BOTH GOING TO BE CIVIL TO EACH OTHER. YOU CAN ANSWER IT YES OR NO AND EXPLAIN.

THE WITNESS: NOT SPECIFICALLY.

BY MR. LEVENSON:

Q. OKAY. DO YOU HAVE AN EXPLANATION YOU'D LIKE TO GIVE

THEN NOW?
A. RIGHT. YOU'VE MENTIONED THAT MEETING TO ME. I'VE HAD ACTUALLY STREET-CORNER DISCUSSIONS WITH YOU, WITH MR. ROSEN, AND WITH OTHERS, THE STREET CORNER JUST OUTSIDE OF THE COURTHOUSE. IT SEEMS TO BE A GATHERING PLACE AFTER THE HEARINGS. I'VE ALSO HAD CONFERENCES WITH YOU IN THE NOOK OUT THERE. SO I -- WE COULD TALK ABOUT THE SUBSTANCE OF IT, BUT I CAN'T SAY THAT I ABSOLUTELY REMEMBER A PARTICULAR CONVERSATION ON A PARTICULAR---
Q. IT'S THE VENUE THAT YOU'RE CONFUSED ABOUT. ALL RIGHT. LET ME TRY TO HELP REFRESH YOU. CIGARS WERE INVOLVED.
THE COURT: WHOA, WHOA, WHOA.
BY MR. LEVENSON:
Q. AND YOU REMEMBER SAYING, "DOESN'T ANYONE SMOKE CIGARETTES ANYMORE?"
A. YOU KNOW, CIGARS HAVE BEEN INVOLVED EVERY TIME I'VE SEEN YOU AND MR. JONES---
Q. OKAY.
A. ---AND MR. MEDLIN TOGETHER IN MONTHS.
Q. AND DO YOU REMEMBER ME ASKING YOU IF YOU AND BOB BUCHANAN WANTED TO ATTEND THE MEDIATION THAT WE WERE SCHEDULING SHORTLY AFTER THAT CORNER CONVERSATION?
A. I ABSOLUTELY DO NOT.
Q. OKAY.
A. I WON'T SAY IT DIDN'T HAPPEN. I WON'T SAY IT DIDN'T

HAPPEN, BUT I ABSOLUTELY HAVE NO MEMORY OF THAT.
Q. DO YOU REMEMBER THAT PROFESSOR MEDLIN, MR. ROSEN, AND GENE LEE WERE PRESENT WHEN WE HAD THE CONVERSATION EVEN IF YOU DON'T REMEMBER WHAT THE SUBSTANCE WAS?
A. WELL, EXCUSE ME, MR. LEVENSON. CERTAINLY I REMEMBER YOU TELLING ME MORE THAN ONE TIME THAT I'M GOING TO TRY TO GET TOGETHER WITH ROBERT AND HIS PEOPLE, BUT I MEAN, DO I REMEMBER IT THAT PARTICULAR DAY? DOES IT RELATE TO A SCHEDULED MEDIATION OR ANYTHING LIKE THAT? NO. I MEAN, I CERTAINLY KNEW THAT THROUGHOUT THE PERIOD BEGINNING I GUESS WHEN ALL -- ALL OF YOU BEGAN TO CONTEST THE WILL THAT YOU WERE TRYING TO FIGURE OUT A WAY TO GET TOGETHER. I'VE HAD MANY, MANY CONVERSATIONS.
Q. WELL, AGAIN FORGETTING THE VENUE AND THE SPECIFICS, DO YOU RECALL TELLING ME YOU WOULD NOT ATTEND SUCH A MEDIATION BUT WE SHOULD BRING SUCH AN AGREEMENT TO YOU AFTERWARDS?
A. THAT WAS NOT MY INTENTION TO SAY. I THINK WHAT I SAID -- AND I DID SAY SOMETHING TO THIS EFFECT: LOOK, WHY DON'T YOU AND ROBERT GO TRY TO -- AND I SEE MR. ROSEN NODDING BECAUSE I HAD SAID THE SUBSTANCE OF THE SAME THING TO HIM. WHY DON'T YOU GUYS GO TRY TO MAKE YOUR PEACE AND THEN COME TO US? THAT WAS CERTAINLY MY INTENTION. I'VE PROBABLY SAID IT A HUNDRED TIMES IN A HUNDRED DIFFERENT VENUES. I AM GOOD AT HELPING WITH SETTLEMENTS.
Q. AND DO YOU RECALL ME TELLING YOU OR SAYING WORDS TO THE

EFFECT THAT MR. BELL WAS NOT GOING TO BE IN ATTENDANCE AND THAT IF WE SETTLED WITHOUT MR. BELL YOU WOULD, QUOTE, GET MR. BELL TO AGREE, UNQUOTE?

A. HUH-UH. NO. I'LL TELL YOU THE SUBSTANCE OF A CONVERSATION THAT I'VE HAD WITH A NUMBER OF PEOPLE. I DEEPLY REGRET, MR. LEVENSON, IF YOU MISUNDERSTOOD MY INTENTION AT THAT OR ANY OTHER CONVERSATION, BUT I WILL TELL YOU THE REPEATED SUBSTANCE IS THIS: WHEN YOU TRY TO REACH A FAIR SETTLEMENT, IT WOULD BE WONDERFUL TO GET EVERYBODY TOGETHER. IF YOU CAN'T GET EVERYBODY TOGETHER, DON'T GIVE UP. PUT GROUPS OF PEOPLE TOGETHER AND SEE WHAT YOU CAN FIND IN COMMON.

MY INTENTION WAS -- AND I THOUGHT I EXPRESSED IT CORRECTLY IS -- NOT MR. BELL BECAUSE I DON'T CONSIDER THIS PERSONAL TO MR. BELL. MR. BELL'S CLIENTS MAY OR MAY NOT BE ESSENTIAL TO A SETTLEMENT, DEPENDING ON THE OUTCOME, AND I WILL TELL YOU THAT I NEVER THOUGHT FOR A MINUTE THAT THAT OUTCOME WOULD NOT INCLUDE A RECOMMENDATION FROM ME AND FROM MR. BUCHANAN TO THE COURT THAT THAT SETTLEMENT WAS IN THE VERY BEST INTEREST OF A MAJORITY OF THE PARTIES. SO, YES, I HAVE CERTAINLY INDICATED THAT IF YOU COULDN'T GET EVERYBODY, TRY FOR WHAT YOU COULD GET AND THEN KEEP WORKING AT IT BECAUSE I BELIEVE IN SETTLEMENTS.

Q. THE POINT I'M SIMPLY TRYING TO GET AT, MRS. POPE, IS YOU WERE NOT UNAWARE THAT THE PARTIES WHO HAVE NOW MADE A

PROPOSAL TO SETTLE WITH THIS COURT WERE IN THE PROCESS OF SETTLING THIS CASE AND INVITED YOU TO PARTICIPATE WHICH YOU CHOSE NOT TO DO.

A. NO. I WAS NOT AWARE IN THE SENSE FOR STARTERS THIS CASE HADN'T BEGUN. YOU HAD NEVER ASKED TO REMOVE ME FOR CAUSE UNTIL NOVEMBER OF LAST YEAR. THIS CASE DIDN'T EXIST.

Q. I'LL WITHDRAW THE QUESTION. THIS CASE BEING A MOTION BEFORE THE COURT TODAY, THE MATTER BEFORE THE COURT TODAY IS THE MOTION FOR THE APPROVAL OF THE SETTLEMENT. NOW, THE QUESTION: YOU WERE AWARE THAT THE PARTIES WERE ATTEMPTING TO REACH A SETTLEMENT AND THAT YOU AND MR. BUCHANAN WERE INVITED TO PARTICIPATE AND YOU REJECTED THAT INVITATION.

A. I ABSOLUTELY DENY THAT.

Q. OKAY.

A. IF I COULD EXPLAIN.

THE COURT: YOU MAY. AND HOW IS THIS RELEVANT TO ME TRYING TO DETERMINE WHETHER IT'S JUST AND REASONABLE?

MR. LEVENSON: WELL, LET ME ASK YOU ANOTHER -- THE ANSWER WILL COME IN MY NEXT QUESTION.

THE WITNESS: IF I COULD EXPLAIN.

THE COURT: YOU MAY EXPLAIN. MR. LEVENSON.

MR. LEVENSON: ALL RIGHT, SIR. VERY WELL, YOUR HONOR. THE POSITION TAKEN BY MS. POPE AND MR. BUCHANAN IS THAT THEY ARE NOT PARTIES TO THE SETTLEMENT AGREEMENT.

THE COURT: I'M WELL AWARE OF THEIR POSITION.

MR. LEVENSON: AND, THEREFORE, WE HAVE -- IT IS FAIR FOR THE COURT WITH RESPECT TO WHETHER IT'S REASONABLE TO APPROVE THIS SETTLEMENT AGREEMENT WITHOUT THE AGREEMENT OF MRS. POPE AND MR. BUCHANAN FOR THE COURT TO BE AWARE THAT THEY WERE INVITED TO PARTICIPATE---

THE COURT: WELL---

MR. LEVENSON: ---AND REFUSED TO PARTICIPATE. AT LEAST THAT IS THE EVIDENCE THAT MRS. POPE CONTENDS AS SHE HAS. THERE'S OTHER EVIDENCE THAT WILL CONVINCE THE COURT, I BELIEVE, THAT IS A REASON UNDER THE JUST AND REASONABLE CRITERIA UNDER SECTION 1102, A REASON THAT THEY WOULD NOT BE PERMITTED TO OBJECT NOW TO THAT WHICH THEY PREVENTED THEMSELVES FROM BEING INVOLVED IN PREVIOUSLY.

THE COURT: WELL...

THE WITNESS: MR. LEVENSON, MANY THINGS HAVE BEEN SAID BY MANY PEOPLE OVER THE COURSE OF THE LAST YEAR SINCE YOUR CLIENTS CONTESTED MR. BROWN'S WILL AND TRUST. I BEGGED YOU NOT TO DO THAT. I BEGGED YOU TO FIND A WAY FOR YOUR CLIENTS TO BE PART OF THE BROWN LEGACY. THAT DIDN'T WORK. MANY, MANY THINGS HAVE HAPPENED SINCE THEN. PEOPLE HAVE SAID I CAN'T GET ALONG WITH THIS ONE OR THAT. I DON'T THINK -- IF THE COURT WANTS ME TO TALK ABOUT THAT, I CAN TALK ABOUT IT.

MR. LEVENSON: WELL, I DON'T THINK THE COURT---

THE WITNESS: I HAVE LOTS OF MEMORIES---

MR. LEVENSON: ---WANTS TO HEAR THAT.

THE WITNESS: ---OF CONVERSATIONS WITH YOU, MR. LEVENSON, AND OTHERS THAT WOULD NOT HELP MOVE THIS FORWARD. I'LL BE GLAD TO DISCUSS IT IF THE COURT ASKS ME TO DO SO.

THE COURT: I DON'T NEED TO DISCUSS IT. I'VE BEEN SITTING UP HERE THROUGH I DON'T KNOW HOW MANY HEARINGS AND I'VE HAD IN-CHAMBERS DISCUSSIONS. I KNOW THE EFFORTS THAT EVERYBODY HAS PUT FORTH IN TRYING TO DO WHAT IS IN THE BEST INTEREST OF THE ESTATE AND THE BENEFICIARIES AND EVERYBODY ELSE. SO, MR. LEVENSON, LET'S DON'T INFLAME FEELINGS. IF YOU'VE GOT SOME QUESTIONS TO ASK MS. POPE, SPECIFICALLY ASK THEM.

MR. LEVENSON: JUDGE, I'M NOT SUGGESTING THIS IS SOME AD HOMINEM ATTACK ON MS. POPE, BUT THE PLEADINGS BEFORE THE COURT PENNED BY MRS. POPE AND MR. BUCHANAN SUGGEST THEY HAVE BEEN KEPT OUT OF THAT WHICH WE'RE OFFERING TO THE COURT. I'M SIMPLY TRYING TO HELP YOUR HONOR UNDERSTAND THAT WE ACTED IN WHAT WE BELIEVED TO BE IN GOOD FAITH BY MAKING AN INVITATION. I UNDERSTAND MRS. POPE DISAGREES WITH THAT.

THE COURT: OKAY. WELL, ASK A QUESTION AND JUST---

MR. LEVENSON: YES, SIR.

THE COURT: ---MOVE ALONG.

MR. LEVENSON: YES, SIR.

BY MR. LEVENSON:

Q. YOU SAY YOU BEGGED MY CLIENTS TO BE PART OF THE BROWN LEGACY. IS THAT WHAT YOU JUST SAID?

A. WHAT I -- WHAT I SAID IS THAT WHEN WE WERE -- WELL, THAT'S CORRECT AND I'LL EXPLAIN. ON NOVEMBER 20TH WHEN WE WERE APPOINTED PERSONAL REPRESENTATIVES AND TRUSTEES, I TALKED TO YOU A NUMBER OF TIMES ABOUT HOW WONDERFUL IT WOULD BE IF NO ONE WOULD CONTEST THE ESTATE PLAN. WE INVITED YOUR CLIENTS TO BE MEMBERS OF THE LITTLE ADVISORY COMMITTEE BECAUSE WE WERE RUSHING TO APPLY FOR DETERMINATION OF THE JAMES BROWN "I FEEL GOOD" TRUST AND WE THOUGHT IT WOULD BE HELPFUL. WE SAID, OF COURSE, THEY COULDN'T CONTEST THE ESTATE PLAN IF THEY WERE MEMBERS. YOU WOULD NOT ALLOW THEM TO ACCEPT THAT. I URGED YOU TO PLEASE LOOK FOR AVENUES THAT WOULD NOT INVOLVE CONTESTING THE ESTATE. IS IT FUNNY, MR. LEVENSON? IT'S NOT FUNNY TO ME.

THE COURT: WE ALL KNOW THE -- THE CONTEST WAS HERE IN ALL AREAS AND WE'RE HERE TRYING TO RESOLVE THE CONTEST. I DON'T KNOW HOW THIS IS HELPING ME. MR. LEVENSON, YOU KNOW, I RESPECT YOU AND YOUR ABILITIES AND I RESPECT MRS. POPE. IF Y'ALL WANT TO CONTINUE ASKING QUESTIONS -- I JUST DON'T KNOW HOW THIS IS HELPING ME TO TRY TO DETERMINE WHETHER OR NOT IT'S JUST AND REASONABLE. I CERTAINLY, CERTAINLY FIND THERE ARE CONTESTS AND CONTROVERSIES THAT EVERYBODY HAS FILED IN GOOD FAITH. THAT'S PART OF WHAT I HAVE TO FIND.

BY MR. LEVENSON:

Q. DO YOU CONTEND TODAY UNDER OATH THAT THE PROPOSED SETTLEMENT IS NOT JUST AND REASONABLE?

A. IN ITS PRESENT FORM I CLEARLY DO. I---
Q. NOW, TELL ME -- I'M SORRY. FINISH YOUR ANSWER, MA'AM.
A. OKAY. I BELIEVE THAT THERE'S NOT BEEN ADEQUATE DUE DILIGENCE. I MADE A LITTLE LIST LAST NIGHT OF THE PROBLEMS I THOUGHT WERE ASSOCIATED WITH IT. WOULD YOU LIKE ME TO GIVE YOU ONE?
Q. I'D LOVE ONE.
A. OKAY. IF MAYBE WE COULD MARK THAT?
Q. I DON'T KNOW ABOUT THAT.
A. HERE IS ONE.
Q. YOU ASKED ME IF I WANTED TO LOOK AT IT. I DON'T KNOW IF IT'S GOING TO GO IN EVIDENCE.
A. RIGHT. RIGHT. WELL, IT'S---

THE COURT: I TELL YOU WHAT. LET ME CONDUCT THE THING.

EXAMINATION BY THE COURT

Q. MRS. POPE, TELL ME WHY YOU AND MR. BUCHANAN, IN YOUR OPINION, THINK THE SETTLEMENT IS NOT JUST AND REASONABLE IN YOUR OPINION. IS THAT A FAIR QUESTION?
A. IT REQUIRES A LONG ANSWER, YOUR HONOR. I THINK IT'S NECESSARY. THIS IS A BIG ESTATE. IT'S COMPLEX.
Q. IF IT'S A LONG ANSWER OR A SHORT ANSWER... I HAVE NOT CUT ANYBODY OFF TODAY EXCEPT ON BEHALF OF MR. LEVENSON, AND I WAS TRYING TO GET TO THE NUTS AND BOLTS.
A. FOR STARTERS, THE WHOLE ISSUE OF -- AND I WILL SAY, MR. LEVENSON, I PRACTICED LAW FOR 35 YEARS, SETTLED MANY, MANY

CASES INCLUDING ONE WITH MR. KINGSMORE THAT WE THOUGHT WAS THE WORST ONE WE EVER HAD UNTIL TODAY, BUT I BELIEVE THAT AS YOU WORK TOWARD A SETTLEMENT YOUR GOAL IS MAXIMUM INCLUSION. TO THE EXTENT THAT YOU CAN'T GET MAXIMUM INCLUSION, YOU DO NOT DO THINGS LIKE MAKE YOUR DEADLINES TOO SHORT, GIVE ULTIMATUMS, THREATEN LAWSUITS, FILE RULE 11 SANCTIONS. YOU LOOK FOR WAYS TO TRY TO MAKE THINGS WORK. THIS LAWSUIT IS A TEXTBOOK EXAMPLE OF DOING IT WRONG. YOU WANT---

Q. WHICH LAWSUIT?

A. THIS LAWSUIT IN WHICH WE'RE HAVING THE HEARING TODAY: MCMASTER AND OTHERS VERSUS DALLAS AND OTHERS, CASE NUMBER 1647. THIS LAWSUIT DOES NOT EVEN HAVE ON FILE CERTIFICATES OF SERVICE OF THE PARTIES, ALTHOUGH WE HAVE SEEN THEM THROUGH A COPY PROVIDED FOR US. SIXTY DAYS HAVE PASSED, AND WITH MINIMAL EXCEPTIONS THERE ARE NO ANSWERS OR RESPONSIVE PLEADINGS ON FILE.

SO SITTING HERE TODAY IN THIS COURT WE DO NOT KNOW WHO THE PARTIES ARE AND WE DO NOT KNOW THEIR RESPECTIVE LEGAL POSITIONS. I DON'T KNOW WHY. IS IT THAT THEY WEREN'T PROPERLY SERVED?

MR. ROSEN: YOUR HONOR, CAN I OBJECT TO THE ANSWER?

THE COURT: WELL---

MR. ROSEN: BECAUSE YOUR QUESTION WAS: WHAT'S WRONG WITH THE AGREEMENT? AND WE'RE NOW OFF ON CAPTIONS AND NUMBERS. I MEAN, REALLY AND TRULY, I THINK---

THE COURT: I'M GOING TO LET MRS. POPE HAVE HER SAY.

MR. ROSEN: ALL RIGHT. THANK YOU, YOUR HONOR.

THE WITNESS: THE FIRST THING YOU DO WHEN YOU BRING A LAWSUIT TO APPROVE A SETTLEMENT IS TO MAKE THE PARTIES PARTIES SO THAT THEY WILL BE BOUND BY THE SETTLEMENT, AND I WILL GIVE YOU AN EXAMPLE. FORLANDO BROWN HAS TOLD THE FEDERAL COURT - EVEN THOUGH HE MADE A GENERAL APPEARANCE IN THIS VERY CASE, MCMASTER VERSUS DALLAS - IN NOVEMBER THAT HE'S NEVER BEEN SERVED. WE DON'T WANT THAT TO HAPPEN.

BEFORE WE BEGIN TO CONSIDER A SETTLEMENT, WE WANT TO HAVE A LAWSUIT THAT MAKES ALL THE PROPER PARTIES PARTIES, SERVES THEM, DETERMINES AT A MINIMUM THAT THEY ARE HERE IN THE LAWSUIT, AND THEN MOVES FORWARD. SECONDLY, THIS LAWSUIT WAS BEGUN AS AN ACTION TO REMOVE ME FOR CAUSE. NO, ACTUALLY IT WAS BEGUN FOR APPROVAL OF A SETTLEMENT, AND MR. BUCHANAN AND I WERE NOT MADE PARTIES.

WHEN WE SAID, OH, YOU NEED TO BEGIN THIS RIGHT, WE WERE FIRST TOLD BY MR. MEDLIN THAT WE WERE NOT MADE PARTIES BECAUSE THEY DIDN'T WANT TO BOTHER US, AND THEN WE WERE SERVED WITH AN ACTION TO REMOVE US FOR CAUSE, THAT AND AN EMERGENCY TO REMOVE US FOR CAUSE. AGAIN, I'M NOT GOING TO TAKE IT PERSONALLY, LOOKING AT IT ONLY IN TERMS OF HOW TO REACH A JUST SETTLEMENT THAT BINDS ALL THE PARTIES. YOU NEED TO GET THE PARTIES TOGETHER AND YOU NEED TO GET THEM TOGETHER IN -- IN WAYS THAT COMPLY WITH DUE PROCESS REQUIREMENTS.

I DON'T BELIEVE THE PROPER -- THE PARTIES ARE PROPERLY JOINED. IF MR. ROSEN THINKS THAT'S A PROBLEM, MR. ROSEN SHOULD BE UP IN THE COURT OF APPEALS WITH US RIGHT NOW WHERE MR. DALLAS, MR. BRADLEY, AND MR. CANNON ARE ASSERTING THAT THIS COURT HAS NO JURISDICTION TO HAVE ISSUED THE 15 ORDERS IT ISSUED BETWEEN FEBRUARY OF 2007 AND APRIL 8TH OF 2008. THIS IS NOT AN ISSUE I'M MAKING UP TO BE NICEY-NICE. IF WE HAVE A SETTLEMENT, WE WANT IT TO WORK. THESE ARE JUST LITTLE THINGS BEFORE I GET TO THE SETTLEMENT ITSELF.

I HAVE CONCERNS, ALTHOUGH I BELIEVE THAT THERE ARE WAYS TO RESOLVE THEM, ABOUT A SETTLEMENT WHICH ASSERTS AS A FACT A DISPUTED MATERIAL ISSUE, AND THERE ARE SEVERAL HERE. AND IT'S NOT THAT I'M AGAINST SETTLEMENTS. IT'S THAT MY 35 YEARS OF EXPERIENCE AND MY UNDERSTANDING OF RULE 56 WHICH IS THE SUMMARY JUDGMENT RULE IS -- WHICH IS THAT A COURT CANNOT ISSUE SUMMARY JUDGMENT UNTIL YOU'VE HAD CERTAIN DUE PROCESS OPPORTUNITIES.

I BELIEVE A COURT ADOPTING FINDINGS OF FACT IN A SETTLEMENT NEEDS TO KNOW THAT THE PARTIES HAVE UNDERGONE THE SAME DUE DILIGENCE IN CONNECTION WITH MATERIAL FACTS, AND THERE ARE VERY, VERY SERIOUS MATERIAL FACTS THAT ARE ALLEGED AS FACT IN THIS SETTLEMENT. I DO NOT SAY THEY CAN'T BE WORKED OUT. I WILL CALL TO YOUR ATTENTION JUST TWO OF THEM.

ONE, TOMMIE RAE HYNIE BROWN IS THE SURVIVING SPOUSE OF JAMES BROWN. AS YOU KNOW, REASONABLE PEOPLE DIFFER ON THAT

ISSUE. IF ALL OF THE APPROPRIATE PEOPLE COULD GET TOGETHER OR EVEN MOST OF THEM ON THAT ISSUE, SOME PROGRESS COULD BE MADE. BUT FOR THE COURT TO APPROVE A SETTLEMENT THAT CONTAINS THAT AS A FACT AND HAS SUCH FAR-REACHING IMPLICATIONS, I DO NOT THINK IT IS GOOD. I THINK IT IS DAMAGING AND BAD FOR THE ESTATE PLAN OF JAMES BROWN.

TO MAKE A DETERMINATION THAT CERTAIN PEOPLE ARE HEIRS WITHOUT A COMPLETE UNDERSTANDING OF THE CONSEQUENCES OF THAT DECISION IS A BAD IDEA. I'M NOT POSITIVE YOU NEED D.N.A. TESTING, BUT WE HAVE A SITUATION HERE AND I WILL USE J B , AS AN EXAMPLE. J B , IF HE IS AN HEIR -- AND WE DON'T KNOW YET FOR SURE. IF J B , IS AN HEIR, HE MAY BE ENTITLED TO ONE-EIGHTH OF THE ESTATE. HE MAY BE ENTITLED TO ONE-SEVENTH OF THE ESTATE. HE MAY BE ENTITLED TO ONE-THIRTEENTH OF THE ESTATE OR IF HIS MOTHER IS AN HEIR HE MAY BE ENTITLED TO AS LITTLE AS ONE-TWENTY-SIXTH. I'M NOT SAYING THAT WE HAVE TO HAVE THAT ABSOLUTELY CORRECT BEFORE WE REACH A SETTLEMENT, BUT I'M SAYING THE PARTIES SHOULD WORK TOGETHER FOR DUE DILIGENCE ON THOSE VERY CRITICAL MATERIAL FACTS.

I AM EXTREMELY CONCERNED THAT THIS COURT HAS NO JURISDICTION TO ISSUE ANYTHING PERMANENT WITH RESPECT TO MR. CANNON AND MR. DALLAS. WITH ALL DUE RESPECT, I WHOLLY DISAGREE WITH MR. WARNER AND COMPLETELY AGREE WITH PROFESSOR MEDLIN THAT THIS COURT HAS JURISDICTION TO HEAR THIS FILED

MATTER. I DO NOT AGREE THAT THE SCRIVENER'S ERROR WHICH IS NOW BEING PRESENTED AS A PROBLEM IN THE COURT OF APPEALS EXISTS. I DO NOT AGREE WITH THAT, BUT WHAT I DO AGREE WITH IS THAT THERE ARE CERTAIN QUESTIONS NOW PENDING IN THE COURT OF APPEALS THAT THIS COURT CAN'T TALK ABOUT RIGHT NOW. WE CANNOT RAILROAD THROUGH SOMETHING AND JUST ANNOUNCE THAT IT DOESN'T MATTER.

NOW, AS A MATTER OF WHY I BELIEVE AT THIS POINT WITH SO LITTLE DUE DILIGENCE AND SO LITTLE STUDY AND SO LITTLE ATTEMPT TO GET THE PARTIES TOGETHER WHO REALLY NEED TO BE TOGETHER---

BY THE COURT:

Q. MRS. POPE, WHAT OTHER PARTIES NEED TO GET TOGETHER OTHER THAN THE ONES---

A. I BELIEVE THAT THE TRUSTEE OF THE JAMES BROWN 2000 TRUST WHICH IS A MIXED CHARITABLE AND NON-CHARITABLE TRUST IS THE ABSOLUTE PRIMARY BENEFICIARY OF THIS ESTATE. I DO NOT BELIEVE THAT THE ATTORNEY GENERAL HAS THE AUTHORITY TO BIND A MIXED CHARITABLE AND NON-CHARITABLE TRUST. I DO NOT BELIEVE THAT THE ATTORNEY GENERAL HAS THE AUTHORITY TO BIND AN ESTATE.

PROFESSOR MEDLIN AND I DO AGREE THAT IN CERTAIN CIRCUMSTANCES YOU MAY BE ABLE TO HAVE AN AGREEMENT IN WHICH THE PERSONAL REPRESENTATIVE DOES NOT JOIN. I HAVE DONE ONE IN 35 YEARS. BEFORE WE DID IT, WE WORKED CAREFULLY WITH THE

PERSONAL REPRESENTATIVE TO MAKE SURE THAT WE HAD A SMOOTH TRANSITION. FOR REASONS -- FOR REASONABLE REASONS, THE PERSONAL REPRESENTATIVE DID NOT WANT TO BE PART OF THE SETTLEMENT. I THINK IT IS FOOLHARDY NOT TO ATTEMPT TO BRING THE PEOPLE WE'VE JUST TALKED TO TODAY, THE OTHER THREE BIOLOGICAL -- POTENTIAL BIOLOGICAL HEIRS, THE P.R. TRUSTEE---

MR. ROSEN: YOUR HONOR, I'M GOING TO TAKE ANOTHER CHANCE ABOUT RENEWING MY OBJECTION. THE MATTER BEFORE YOU IS WHETHER THE AGREEMENT IS FAIR. ALL WE'RE DOING HERE IS HEARING LEGAL ARGUMENTS ABOUT SHE DOESN'T THINK THE ATTORNEY GENERAL -- YOU COULD RULE ON THAT. IF SHE'S RIGHT AND THE ATTORNEY GENERAL DOESN'T HAVE ANY AUTHORITY, YOU DON'T NEED TESTIMONY ABOUT THAT. I MEAN, SHE'S SUPPOSED TO BE TELLING US WHAT'S WRONG WITH THE SETTLEMENT.

THE COURT: THAT'S WHAT SHE'S DOING. MR. ROSEN, I'VE TRIED TO BE PATIENT THROUGHOUT THIS WHOLE THING. I THINK I HAVE AND---

MR. ROSEN: I UNDERSTAND.

THE COURT: ---MRS. POPE HAS---

THE WITNESS: I HAVE CONCERNS---

BY THE COURT:

Q. I'M GOING TO LET HER TESTIFY.

A. I HAVE CONCERNS ABOUT THE PROBLEM OF IGNORING TWO VALID WILLS. IN MY 35 YEARS OF PRACTICE I HAVE HAD ONE TRIAL IN WHICH I SET ASIDE TWO SUCCESSIVE DOCUMENTS. IT'S NOT EASY TO

DO. THAT DOESN'T MEAN YOU DON'T SETTLE. IT JUST MEANS IT'S PUT INTO THE POT. YOU -- SOMEONE ASKED DO WE HAVE ANY EVIDENCE THAT MR. BROWN'S 1999 AND 2000 WILLS WERE NOT THE SUBJECT OF UNDUE INFLUENCE. WE HAVE ABUNDANT EVIDENCE TO THAT EFFECT.

IF YOU LISTEN TO OR READ OR WATCH ANYTHING JAMES BROWN EVER SAID OR DID, YOU WOULD KNOW HOW DEDICATED HE WAS TO EDUCATION. THE SUGGESTION BY PROFESSOR MEDLIN THAT MR. BROWN'S FAMILY WOULD KNOW BETTER THAN ANYONE ELSE WHAT HIS WISHES WERE, I RESPECTFULLY DISAGREE WITH THAT. I HAVE READ ABOUT MR. BROWN. I HAVE WATCHED HIM ON TAPE. I HAVE LEARNED, TO THE EXTENT THAT I'VE BEEN ABLE TO, WHAT HE'S ABOUT. HE WAS ALL ABOUT EDUCATION AND OPPORTUNITY FOR THE UNDEREDUCATED. HE WAS ALL ABOUT GIVE ME A WAY OUT, NOT A HANDOUT.

I HAVE NO COMPUNCTION WHATSOEVER DEFENDING HIS 2000 WILL AND HIS 1999 WILL. DOES THAT MEAN WE WOULD MIND A SETTLEMENT? NO. WE WOULD NOT MIND A SETTLEMENT. BUT THE NOTION THAT YOU CAN SIMPLY IGNORE TWO SUCCESSIVE WILLS AND THE PRIMARY -- THE PRIMARY PROBLEM OF WHICH IS AN ALLEGATION OF UNDUE INFLUENCE. WELL, WE ALL KNOW THAT UNDUE INFLUENCE CAN BE DISSIPATED. WE ALL KNOW THAT THE 2000 WILL WAS A MATTER OF PUBLIC RECORD FOR SIX YEARS PRIOR TO MR. BROWN'S DEATH. EVEN IF IT HAD BEEN THE PRODUCT OF FRAUD, THERE'S SUBSTANTIAL QUESTIONS OF STATUTES OF LIMITATIONS, NOT AS TO

THE WILL BUT AS TO THE TRUST, THAT HAVE NOT EVEN BEEN ADDRESSED. SO I DO THINK UNDER THE CIRCUMSTANCES WITH THE LACK OF DUE DILIGENCE THAT IS A HUGE ISSUE.

ANOTHER ISSUE IS -- AND IF YOUR STREET CORNER -- IF YOUR STREET CORNER CONVERSATION WITH ME TOOK THE PEOPLE WHO ARE DEFENDING THE ESTATE PLAN OF JAMES BROWN OUT OF THE MIX, I THINK THAT WAS A HUGE MISTAKE ON YOUR PART. THE PEOPLE WHO ARE DEFENDING THE ESTATE PLAN OF JAMES BROWN NEEDED TO BE AT ALL THOSE CONFERENCES. THEY NEEDED TO HEAR WHAT WAS GOING ON. THEY NEEDED TO ASK THE HARD QUESTIONS. THEY NEEDED TO TALK ABOUT THE TAXES. THEY -- MR. BROWN NEEDED TO BE AT THAT MEETING, AND WE WERE THE PEOPLE TO REPRESENT HIM FOR BOTH HIS NON-CHARITABLE AND HIS CHARITABLE TRUSTS. ASSUMING FOR THE MOMENT---

Q. EVERYBODY BEHAVE, PLEASE.

A. I'M SORRY?

Q. I'M NOT TALKING TO YOU. I'M TALKING TO THE AUDIENCE.

A. ASSUMING FOR THE MOMENT THAT YOU COULD PROCEED WITH A SETTLEMENT WHERE THE PERSONAL REPRESENTATIVES -- EVERYBODY KEEPS SAYING, OH, WELL, THE ESTATE IS NOT GOING TO BE BOUND, BUT YOU'D LIKE US TO RESIGN. HOW, TELL ME, IS SOMEBODY A PERSONAL REPRESENTATIVE AND MR. BROWN AND I - I'M SORRY - MR. BUCHANAN AND I ARE THE PERSONAL REPRESENTATIVES OF THE ESTATE. UNDER THE EGREGIOUS CIRCUMSTANCES THAT WE HAVE HERE, HOW ARE MR. BUCHANAN AND I TO ABIDE BY THE TERMS OF THE

AGREEMENT BUT SUBJECT TO OUR OBLIGATIONS TO ADMINISTER THE ESTATE FOR THE BENEFIT OF CREDITORS, TO PAY ALL TAXES AND COSTS OF ADMINISTRATION, AND TO CARRY OUT THE DUTIES OF OUR OFFICE?

THIS -- THIS PROPOSED AGREEMENT DOES NOT HELP ME WITH THAT AT ALL. IT JUST RAISES 100 QUESTIONS. I'M NOT SAYING THOSE QUESTIONS CAN'T BE ANSWERED. THEY MAY BE ABLE TO BE ANSWERED, AND I AM VERY ENCOURAGED BY THE MOVEMENT JUST THIS VERY DAY, BUT THIS IS A BIG COMPLEX ESTATE AND IT NEEDS THOUGHTFUL TREATMENT. ALL RIGHT. NOW, MANAGING THE ESTATE TRUST LITIGATION. THIS IS THE PRIMARY ISSUE THAT I THINK IS GOING TO---

MR. LEVENSON: JUDGE, RESPECTFULLY---

THE WITNESS: I THOUGHT YOU ASKED ME WHAT I DIDN'T LIKE ABOUT THE SETTLEMENT.

MR. LEVENSON: JUDGE, MAY I ADDRESS AN OBJECTION TO THE RESPONSIVENESS OF THE ANSWER?

THE COURT: I'M GOING TO LET THE P.R. STATE HER POSITION JUST LIKE I LET MR. MEDLIN STATE HIS POSITION.

BY THE COURT:

Q. TRANSITION. GO AHEAD, MA'AM.

A. I AM EXTRAORDINARILY CONCERNED FOR THE LACK OF ATTENTION TO THE CRITICAL NEED TO MANAGE ESTATE AND TRUST LITIGATION FOR THE REMAINDER OF MR. BROWN'S ESTATE OR AT LEAST FOR WHAT I WOULD CALL A SIX-MONTH TO TWO-YEAR TRANSITION PERIOD.

ANYBODY WHO THINKS I WANT TO BE HERE THE REST OF MY LIFE DOES NOT KNOW ME, BUT I DO WANT TO DO MY JOB WELL JUST AS MR. BUCHANAN WANTS TO DO HIS JOB WELL, AND WE DO NOT WANT TO BE PARALYZED.

WE HAVE ALREADY BEEN PARALYZED BY THE FOUR LAWSUITS FILED BY YOUR CLIENTS AND THOSE OF MR. MEDLIN. WE DON'T WANT TO BE PARALYZED ANYMORE. IF A SETTLEMENT IS REACHED IN WHICH PEOPLE ARE TRULY GOING TO WORK TOWARD BUILDING MR. BROWN'S LEGACY, THEN WE NEED NOT TO BE PARALYZED IN GOING FORWARD. AND TO SAY THAT WE HAVE COMPETENT COUNSEL DOES NOT BEGIN TO TOUCH ON THE ISSUE OF WHO IS GOING TO CONDUCT THE LITIGATION DURING THE TRANSITION AND AFTER THE SETTLEMENT.

LET'S JUST TALK ABOUT ONE, FOR EXAMPLE. THE CORBIS LITIGATION. THIS SUIT WAS BROUGHT BY MR. BROWN HIMSELF IN THE YEAR 2003, PERFECTLY COMPETENT TO BRING THIS SUIT, PERFECTLY COMPETENT TO CARRY IT OUT FOR THE NEXT THREE YEARS OF HIS LIFE BEFORE HIS DEATH. THE TRUST WAS NOT A PARTY TO THAT SUIT. IT INVOLVED SERIOUS PUBLICITY RIGHTS ISSUES.

MR. BUCHANAN AND I WERE IN NEW YORK LAST WEEK BECAUSE WE HAD BEEN INVITED - WE DID NOT SEEK IT OUT - TO DISCUSS SETTLEMENT. UNDER CONFIDENTIALITY AGREEMENTS, THOSE -- THOSE -- PARTS OF THOSE CONVERSATIONS WERE CONFIDENTIAL, BUT WE ALWAYS MADE IT A HUNDRED PERCENT CLEAR THAT WE DON'T KNOW WHETHER WE'RE GOING TO BE HERE TOMORROW, AND IF ANYTHING GOOD COMES ALONG, IT MUST BE PRESENTED TO THE COURT AND THE RIGHT

PEOPLE, NOT BECAUSE WE DON'T HAVE AUTHORITY UNDER THE DOCUMENTS BUT BECAUSE THIS IS SUCH A TROUBLING ENVIRONMENT.

THERE IS NOT A WORD IN THAT SETTLEMENT AGREEMENT THAT WOULD HELP ME KNOW WHO IS GOING TO BE THE SUCCESSOR PLAINTIFF IN THE CORBIS LITIGATION. IS IT GOING TO BE BOB AND ME AS P.R.'S? IS IT GOING TO BE BOB AND ME AS P.R. AND TRUSTEES OF THE 2000 TRUST BUT SOMEBODY IS TELLING US WHAT TO DO? OR IS IT GOING TO BE US AS P.R.'S AND THE UNKNOWN TRUSTEE OF THE LEGACY TRUST? WHO IS GOING TO BE THE PLAINTIFF? FORGET WHETHER WE HAVE GOOD COUNSEL. WHO IS GOING TO BE THE PLAINTIFF? THAT'S JUST ONE.

HOW ABOUT THE MORGAN STANLEY LITIGATION? WE HAVE WONDERFUL COUNSEL; EVERYBODY AGREES. NEXT WEEK -- ON THREE DAYS OF NEXT WEEK THE GENTLEMEN FROM MORGAN STANLEY ARE COMING TO LOOK AT DOCUMENTS AT MY OFFICE. CONFIDENTIALITY AGREEMENTS HAVE TO BE SIGNED. AS YOU KNOW, THE PARTIES TO THAT LITIGATION ARE THE PERSONAL REPRESENTATIVES OF THE ESTATE AND THE TRUSTEES OF THE TRUST AS THEIR INTERESTS APPEAR.

WE HAVE JUST WITHIN THE LAST THREE WEEKS RECEIVED A SCHEDULING ORDER THAT PUTS THE CASE ON A FAIRLY SHORT -- IT SEEMED LIKE A LONG WAY AWAY, BUT NOW NOT KNOWING WHO IS GOING TO BE IN CHARGE IT SEEMS SHORTER. IN LESS THAN A YEAR THE MORGAN STANLEY ARBITRATION IS GOING TO BE TRIED. WHO IS GOING TO REPRESENT -- WHO IS GOING TO DO THE BEST JOB FOR

WHOEVER? MR. BROWN'S ESTATE PLAN OR THE SETTLEMENT? WHO IS THE PERSON? IS IT US? IS IT THEM? IS IT HELPFUL FOR YOU TO FILE THINGS TO REMOVE US FOR CAUSE?

NEXT. THE CANNON, DALLAS, AND BRADLEY APPEALS. AS YOU MAY KNOW IN -- OR YOU MAY NOT KNOW, IN MR. -- IN MR. DALLAS AND BRADLEY'S APPEAL IN THE COURT IN WHICH THEY ARE SAYING ESSENTIALLY THAT NOTHING THAT JUDGE EARLY DID LAST -- FOR THE WHOLE YEAR OF 2007 ON UP TO APRIL 8TH OF 2008 IS BINDING. MR. BUCHANAN AND I AS PUTATIVE SOMETHING ARE THE ONLY PARTIES. EARLY IN THE LITIGATION WE ASKED THAT OTHER PARTIES BE JOINED, AND THE COURT OF APPEALS RULED AGAINST US.

WHAT HAPPENS IF THIS SETTLEMENT IS APPROVED? DOES THAT VERY IMPORTANT PIECE OF LITIGATION WHICH WOULD DO EXACTLY WHAT YOU'RE TRYING TO DO, MAKE SURE THAT MR. DALLAS AND MR. BRADLEY DON'T RETURN -- WHAT'S GOING TO HAPPEN TO THAT?

THE CANNON APPEAL IS QUITE DIFFERENT BECAUSE ACTUALLY ALL THE PARTIES ARE PARTIES TO THAT, BUT NOBODY'S FILED A BRIEF. NOBODY'S DONE ANYTHING. MR. CANNON WAS FOUND BY THIS COURT TO OWE $373,000 THAT WE NEED TO GET BACK TO M&T BANK TO HELP BRING DOWN THAT T.I.A.A. DEBT. WHO IS GOING TO TAKE THAT UP IF THIS COURT SHOULD SAY TODAY OR ANY DAY THAT WE'RE GOING TO -- THAT WE'RE GOING TO APPROVE A SETTLEMENT? WE WOULD LOVE A SETTLEMENT BUT A SETTLEMENT THAT THROWS INTO CHAOS THESE IMPORTANT ISSUES. THERE ARE MORE.

THERE IS NO PROVISION FOR SUBSTITUTION OR TRANSITION IN

THE SUIT BROUGHT BY FORLANDO BROWN IN FEDERAL COURT, JUST 34 DAYS AFTER MR. BUCHANAN AND I WERE APPOINTED TO DECLARE THAT WE SHOULD BE ABLE TO TAKE ABSOLUTELY NO ACTION AS TRUSTEES. WE SHOULD BE ENJOINED FROM ANY ACTION WHATSOEVER, THAT MR. CANNON, DALLAS, AND BRADLEY WERE THE CHOSEN REPRESENTATIVES AND SHOULD BE SERVING AS TRUSTEES. A LAWSUIT IN WHICH MR. BUCHANAN AND I HAD TO APPEAR FOR TWO FULL DAYS IN FEDERAL COURT IN NOVEMBER AFTER WHICH MR. BROWN HAD CHANGED HIS STORY TO GUESS WHAT? NOBODY LIKES THEM ANYMORE SO THEY SHOULD GO, BASED ON YOUR FILING ACCUSING US OF IMPROPER ACTIONS.

THE FORLANDO BROWN SUIT HAS COST MORE THAN $400,000, AND THAT WASN'T FOR ME. THAT WAS TO KEEP MR. BUCHANAN AND ME FROM BEING PARALYZED IN DOING OUR JOB. THAT WAS NOT FOR US. I COULD HAVE WALKED AWAY FROM THIS ON NOVEMBER 20TH, 2007, CHEERFULLY.

THAT WAS FEWER THAN 35 DAYS AFTER WE WERE APPOINTED, YOUR FOUR LAWSUITS AND THE FORLANDO BROWN LAWSUIT, ALL OF WHICH WE BELIEVE WE HAD A DUTY TO DEFEND. I HOPE MANY OF THEM WILL BE SETTLED. I AM ENCOURAGED BY WHAT I SEE TODAY, BUT WE'VE GOT WORK TO DO.

Q. ENCOURAGED BY WHAT YOU SEE TODAY ABOUT SETTLING THE OUTSIDE LAWSUITS OR SETTLING---

A. NO, NO. I'M ENCOURAGED BY THE FACT THAT THE HEIRS THEMSELVES ARE COMING TOGETHER AND TALKING ABOUT THE POSSIBILITY OF RESOLVING SOME OF THE MAJOR ISSUES AND -- AND

TO NOT -- TO MOVE AHEAD, TO NOT ATTACK, BUT, IN FACT, ENHANCE THE LEGACY. I AM VERY ENCOURAGED BY THAT, BUT WE ARE NOT THERE.

ALL RIGHT. FIDUCIARY FEES AND ATTORNEYS' FEES. WE HAVE BEEN ATTACKED SINCE DAY ONE AND YOU ARE WELL AWARE OF THIS, MR. LEVENSON, THAT MR. BUCHANAN AND I -- IF YOU WOULD READ THE COMPLAINT IN THE FORLANDO BROWN SUIT, WE WRESTED OUR WAY INTO THIS POSITION TO TRY TO EEK OUT HUGE FIVE PERCENT COMMISSIONS. THAT IS FALSE, UNTRUE, MISLEADING, BUT YET THIS IS WHAT WE HAVE HAD TO DO TO DEFEND MR. BROWN'S ESTATE PLAN.

WE BELIEVE THAT THE COURT -- ONE OF THE PRIMARY ISSUES NECESSARY FOR A SETTLEMENT - AND, MR. LEVENSON, I'VE NEVER SEEN A BIG GOOD ONE THAT DOESN'T DO THIS - IS EVERYBODY TALK ABOUT WHAT THEIR FEES WERE. EVERYBODY TALK ABOUT HOW THEY'RE GOING TO BE CHARGED. TRY TO TELL THE COURT IF IT'S APPROPRIATE TO TELL THE COURT THAT THEY HAVE BEEN APPROPRIATELY INCURRED FOR, YOU KNOW, THE BENEFIT OF THE GOOD. HAVE THE COURT LOOK AT THEM. HAVE THE COURT APPROVE THEM. DECIDE WHAT PRIORITY THEY HAVE. DECIDE HOW THEY'RE GOING TO BE PAID. I'M GOING TO GUESS THERE ARE MILLIONS OF DOLLARS INVOLVED. HOW CAN WE NOT DEAL WITH THAT IN A SETTLEMENT? IT WOULD BE RIDICULOUS.

NOW, THE FEDERAL COPYRIGHT LAWS. I AM AN ESTATE PLANNING AND PROBATED TRUST LAWYER. I HAVE DILIGENTLY TRIED TO LEARN WHAT I COULD LEARN ABOUT MR. BROWN'S COPYRIGHT

RIGHTS. I HAVE DONE IT IN MY CAPACITY AS AN ESTATE PLANNER. I HAVE SPOKEN TO OUR ENTERTAINMENT LAWYER, RAY GONZALES. I HAVE READ EVERYTHING I CAN PUT MY HANDS ON. I THINK I'VE LEARNED A LOT. I'VE COME TO THINK I KNOW MORE THAN LOTS OF PEOPLE.

I WILL TELL YOU THAT WHAT REALLY SPURRED MY INVESTIGATION WAS A SENTENCE IN THE PROPOSED SETTLEMENT THAT SUGGESTS THAT THE FEDERAL COPYRIGHT RIGHTS OF THE HEIRS, WHOEVER THEY MAY BE, COULD BE AS LARGE AS MR. BROWN'S ESTATE. I THINK THAT STATEMENT IS SO FAR OFF THE MARK AS TO BE A DEAL STOPPER. EVERYBODY TODAY HAS SAID THAT THE FEDERAL COPYRIGHT -- AND THE WORDS THEY USE ARE RENEWAL AND TERMINATION RIGHTS.

NOW, LOOK, I'M STILL LEARNING. I'M STILL LEARNING, BUT WHAT I AM LEARNING IS THAT THE RENEWAL RIGHTS ALL ENDED IN 2006. RIGHT? BECAUSE THEY RELATED TO 28 YEARS AFTER 1978. NOW, WHAT I DO KNOW, TOO, IS THAT THE TERMINATION RIGHTS TO THE EXTENT THAT HEIRS UNDER THE FEDERAL COPYRIGHT LAW, 17 U.S. CODE, HAVE ANY RIGHTS RELATE -- AND I HAVEN'T SAID THEY HAVE ANY RIGHTS YET. WE'RE JUST TALKING ABOUT WHAT THEY RELATE TO.

THEY RELATE TO THE POSSIBLE RIGHT EITHER IN A LIVING AUTHOR, OR OTHERS WHICH I'LL DESCRIBE IN A MINUTE, TO TERMINATE HIS AGREEMENTS, TYPICALLY WITH THE PUBLISHING HOUSE, BASED ON TWO TIME PERIODS. FOR THOSE RIGHTS PRIOR TO THE YEAR 1978, THE TERMINATION RIGHTS BECOME EFFECTIVE 56

YEARS AFTER THE FIRST PUBLICATION, AND I DO UNDERSTAND THAT THIS IS A LITTLE SIMPLE, BUT I DO THINK IT WOULD HELP US.

SO FOR MR. BROWN, THAT IS GOING TO BECOME SIGNIFICANT AS EARLY AS 2012 BECAUSE HIS FIRST REALLY BIG HIT WAS IN 1956, "PLEASE, PLEASE, PLEASE, PLEASE." HE DID HAVE A FEW THINGS BEFORE THAT; I'M NOT IGNORING THAT. BUT IN GENERAL HIS FIRST BIG HIT WAS IN 1956 WHICH GIVES US UNTIL 2012 TO -- TO DEAL WITH THIS ISSUE. SO WE DON'T HAVE TO DEAL WITH IT YESTERDAY. WE NEED TO THINK ABOUT IT.

OKAY. NOW, THERE'S A SECOND RIGHT TO TERMINATE FOR THOSE WHO HAVE THE RIGHT - AND I'LL TALK ABOUT THAT IN A MINUTE - AND THAT RELATES TO COPYRIGHTS, 1978 AND LATER. THOSE RIGHTS MATURE 35 YEARS AFTER THE FIRST PUBLICATION. SO IF YOU'RE LOOKING AT MR. BROWN'S BODY OF WORK THAT BEGINS ESSENTIALLY IN 1956 AND GOES THROUGH UNTIL THE LATE NINETIES AND EVEN A LITTLE BIT LATER THAN THAT - BUT THAT'S COMPLICATED BY SOMETHING I CAN EXPLAIN IF ANYBODY WANTS ME TO - THE TERMINATION RIGHTS, THE FEDERAL COPYRIGHT TERMINATION RIGHTS, TERMINATION RIGHTS, NOT RENEWAL RIGHTS, BEGIN IN 2012 OR MAYBE 2011 AND THEN ALSO IN 2013.

SO HIS TWO BODIES OF WORK, HIS PRE '78 COPYRIGHTS AND HIS POST -- '78 AND POST COPYRIGHTS ARE RUNNING IN TANDEM. SO IN EACH OF THOSE GROUPS, EACH YEAR CERTAIN COPYRIGHT TERMINATIONS ARE BECOMING AVAILABLE AND -- AND PROFESSOR LEE-FORD TRITT WHO IS KIND OF AN EXPERT IN THIS -- IT'S A GOOD

THING TO READ IF YOU WANT TO LEARN ABOUT THIS BUT -- OR THE STATUTE -- ALL RIGHT.

NOW, SO WE DON'T HAVE THIS PROBLEM 'TIL 2013 AND IT IS A RIGHT, IF AT ALL, OF THE HEIRS AS DETERMINED UNDER FEDERAL COPYRIGHT LAW. THE PROBLEM WITH THE TERMINATION OF HEIRS UNDER FEDERAL COPYRIGHT LAW IS THAT IT DEFINES THE SPOUSE AS THE SPOUSE AS DETERMINED UNDER STATE LAW. NOW, THAT MEANS THAT BEFORE YOU HAVE A SETTLEMENT THAT MAKES A FINDING OF A DISPUTED MATERIAL ISSUE, YOU REALLY NEED TO THINK HARD ABOUT THE MEANING OF THAT. BUT THE SECOND THING THAT IT DOES IS IT DEFINES HEIRS. IT DEFINES HEIRS AS LEGITIMATE AND ILLEGITIMATE CHILDREN AND SORT OF BROADLY IN A WAY THAT DOES NOT TIE INTO THE ESTATE LAW.

NOW, DOES THAT MEAN WE CAN'T SETTLE? NO, BUT WE ALL NEED TO KNOW WHAT WE'RE SETTLING. BUT MOST IMPORTANTLY, MOST IMPORTANTLY, UNLESS I'M WRONG, THERE ARE NO TRANSFER ISSUES LEFT BECAUSE COPYRIGHT TRANSFER ISSUES WERE RELATED TO COPYRIGHTS THAT WERE COMING TO THEIR RENEWAL TERM WITHIN 28 YEARS AFTER 1978 AND THAT'S GONE. THAT ENDED AT THE END OF 2006. IF I'M WRONG, I'M SORRY. I'VE DONE MY BEST TO DO THE DUE DILIGENCE. BUT IT IS MY BELIEF THAT THERE IS NOTHING LEFT TO THE TRANSFER RIGHTS, AND I BASE THAT ON READING BOTH THE STATUTE AND PROFESSOR TRITT BUT MORE PROFESSOR TRITT.

NOW -- ALL RIGHT. SO WHO -- ALL RIGHT. WHAT IS THIS RIGHT? OKAY. LET'S TALK ABOUT WHAT IT IS. FIRST OF ALL,

HOW LONG DO COPYRIGHTS LAST AFTER DEATH? THEY LAST FOR 70 YEARS AT LEAST. SO -- SO THE COPYRIGHTS THAT MR. BROWN OWNED IN HIS INDIVIDUAL NAME WE CAN SAY WITHOUT HAVING TO BE TOO SOPHISTICATED - AND THERE ARE LOTS OF NUANCES - WILL LAST FOR 70 YEARS AFTER HIS DEATH.

SO THAT'S A GOOD LITTLE WHILE. I MEAN, THAT'S GOOD. PEOPLE DIDN'T COMPLAIN ABOUT THAT WHEN THEY EXTENDED THE TIME, BUT IT DOES. SO WHAT IS THIS RIGHT OF TERMINATION? IT IS THE RIGHT FOR CERTAIN PEOPLE OR ASSIGNEES TO COME IN AGAIN AT A TIME EITHER 56 OR 35 YEARS AFTER THE FIRST PUBLICATION AND TAKE BACK THOSE RIGHTS, AND -- AND WHEN -- IN '78 WHEN THAT WAS PUT INTO THE LAW, THEY SAID: WE DON'T WANT TO DO ANYTHING TO ALLOW THIS RIGHT OF TERMINATION TO BE -- TO BE TRANSFERABLE BECAUSE WHAT WILL HAPPEN? THE MEAN, OLD PUBLISHING COMPANY WILL GET THEM TO SIGN SOMETHING.

SO THEY SAID, WELL, WHAT CAN WE DO? WE GIVE THE RIGHTS TO THE FAMILY. AND THAT IS WHY THE FEDERAL LAW GAVE TO THE HEIRS CERTAIN RIGHTS TO TERMINATE COPYRIGHTS, AGAIN EITHER 56 OR 35 YEARS AFTER THE FIRST PUBLICATION. FOR MR. BROWN, THAT BEGINS IN 2011 AND 2013 ON TWO SEPARATE TRACKS.

NOW -- OKAY. BUT THAT, AS PROFESSOR TRITT CALLS IT, CREATED A SYSTEM OF WHAT IS CALLED WILL BUMPING. OVER THE PERIOD BETWEEN 1978 AND 2002, A NUMBER OF ARTISTS OR PEOPLE WITH COPYRIGHTS DIED, AND THEIR ESTATES OR THE ASSIGNEES UNDER THEIR ESTATES ATTEMPTED TO RENEGOTIATE WITH THE

PUBLISHING COMPANIES OR EXERCISE THEIR RIGHTS, AND THEN MAYBE ILLEGITIMATE OR DISINHERITED CHILDREN CAME IN AND TERMINATED THE RIGHTS AND TOOK THEM FOR THEMSELVES. WELL, FORTUNATELY IN 2002 THE LAW WAS CHANGED, AND THE LAW SAID THAT YOU MAY NOW TRANSMIT YOUR FEDERAL TERMINATION RIGHTS BY WILL WHICH MR. BROWN DID TO THE CHARITY.

I HAVE NOT DONE COMPLETE DUE DILIGENCE ON THIS, BUT THE VAST MAJORITY OF MR. BROWN'S ROYALTIES ARE IN HIS INDIVIDUAL NAME WHICH MEANS THAT HE CAN TRANSMIT THEM BY WILL UNDER THE FEDERAL COPYRIGHT LAW AS AMENDED IN 2002. AGAIN, WE ARE LEARNING, BUT IF WE'RE GOING TO REACH A SETTLEMENT IN WHICH EVERY PERSON, INCLUDING AN INDEPENDENT EVALUATOR, HAS STOOD UP AND SAID THAT THE FEDERAL COPYRIGHT TRANSFER AND TERMINATION, I'M SORRY, RENEWAL AND TERMINATION RIGHTS ARE CRITICAL, WE NEED TO KNOW WHAT WE'RE TALKING ABOUT.

NOW, I CAN'T SAY I'VE DONE A COMPLETE STUDY, BUT I HAVE LOOKED AT ALAN LEEDS WHO IS A VERY RESPECTED MUSICAL WRITER AND MR. LEEDS HAS LOVINGLY CATALOGUED MR. BROWN'S WORKS. AND I HAVE JUST SIMPLY LOOKED. HE HAS A MUSICOGRAPHY OF MR. BROWN'S PRIMARY SINGLES AND C.D.'S AND ALBUMS AND I HAVE TRIED TO STUDY THAT, AND MY QUICK STUDY INDICATES THAT OVER THE NEXT 10 YEARS FEWER THAN 25 PERCENT OF MR. BROWN'S COPYRIGHTS WILL COME UP FOR TERMINATION. AND IF THEY DO, IT'S CLEARLY THE POSITION OF THE ESTATE IN THE 2000 IRREVOCABLE TRUST, BOTH THE EDUCATION AND THE CHARITABLE

TRUST, THAT THE RIGHT TO TERMINATE THOSE COPYRIGHTS AND ESSENTIALLY GET A BETTER DEAL FROM THE PUBLISHER RESTS -- WILL REST IN THE TRUST.

NOW, I'M NOT SAYING EVERY SONG IS THAT WAY, BUT I HAVE LOOKED AT THE MORE THAN 800 AND THEY ALL APPEAR TO BE IN MR. BROWN'S INDIVIDUAL NAME AND, THEREFORE, TRANSMISSIBLE UNDER THE RESIDUARY CLAUSE OF HIS WILL. SO THE KIND OF DISCUSSION THAT WE'VE HAD ABOUT THE IMPORTANCE OF THE FEDERAL COPYRIGHT LAW -- I THINK THE DISCUSSION NEEDS TO CONTINUE, BUT I THINK WE NEED THE DUE DILIGENCE TO DETERMINE WHAT IS THE REAL VALUE OF THAT. AND I THINK THE SUGGESTION THAT THAT MAY HAVE A VALUE AS LARGE AS MR. BROWN'S CURRENT COPYRIGHTS, PUBLICITY RIGHTS, AND OTHER ASSETS IS JUST DEAD WRONG.

THE FEDERAL ESTATE TAX PROBLEM. I HOPE THAT MR. BROWN DOES NOT HAVE A FEDERAL ESTATE TAX PROBLEM. AS THOSE OF YOU WHO HAVE FOLLOWED CLOSELY OUR WORK, THERE WAS ACTUALLY A PROBLEM THE DAY WE BEGAN. WE HOPE -- WE HOPE WE WON'T HAVE IT. LIKE PROFESSOR MEDLIN, I HOPE AS FEW DOLLARS AS POSSIBLE WILL BE ALLOCATED TO ESTATE TAXES.

I HOPE THAT THERE WILL BE A SETTLEMENT THAT DOES EVERYTHING POSSIBLE TO MAKE THAT HAPPEN, BUT I WANT TO TELL YOU MY GRAVE CONCERNS ABOUT THE DOCUMENT AS WRITTEN, FORGETTING FOR THE MOMENT WHETHER THE PERCENTAGES ARE RIGHT OR WRONG, JUST SIMPLY THAT MY FEARS ABOUT THE DOCUMENTS AND THE PROPOSAL AS WRITTEN... I KNOW THIS IS BORING, BUT I

DON'T CONSIDER IT BORING. I HAVE SPENT 2300 HOURS IN THE YEAR 2008 TRYING TO DO MY JOB RIGHT, AND I WANT TO MAKE SURE THAT I TELL THE COURT WHAT I THINK THE COURT NEEDS TO HEAR.

HERE IS THE PROBLEM: $40 MILLION IS A CORRECT FIGURE. ANYBODY WHO SAYS THAT MR. BUCHANAN AND I DID NOT KNOW WHAT WE WERE DOING WHEN WE FILED THE ESTATE TAX RETURN, I AM SORRY, DOES NOT KNOW WHAT YOU'RE DOING. WE DID KNOW WHAT WE WERE DOING. I DON'T REALLY LIKE TO DISCUSS IT IN FRONT OF A T.V. CAMERA. I WOULD BE GLAD IN A CLOSED SESSION FOR ANYBODY TO EXAMINE ME IN ANY WAY YOU THINK POSSIBLE ABOUT THE DUE DILIGENCE WHICH WE CONDUCTED TO PREPARE THE ESTATE TAX RETURN INCLUDING THE VALUATIONS PLACED THEREON, BUT I THINK IT'S INAPPROPRIATE IN THIS OPEN COURTROOM. THAT SAID, THE APPROXIMATE -- THE APPROXIMATE AMOUNT IN QUESTION, IF WE MAKE A MISTAKE AND WE ALL HOPE THAT NOBODY WILL MAKE A MISTAKE, IS ABOUT $40 MILLION.

I WANT YOU TO KNOW THAT MR. BROWN'S DOCUMENTS DID NOT HAVE A TAX APPORTIONMENT CLAUSE AND, MR. KINGSMORE, MR. BAUKNIGHT WILL KNOW THAT IF YOUR DOCUMENTS DON'T HAVE A TAX APPORTIONMENT CLAUSE THAT UNDER SOUTH CAROLINA LAW THAT MEANS THAT EACH PERSON WHO GENERATES THE TAXES HAS TO PAY HIS OR HER PROPORTIONATE SHARE EITHER FROM HIS OR HER SHARE OF THE RESIDUE OR IT HAS TO BE RECOVERED FROM THEM. AS YOU'LL REMEMBER, WE HAD DISCUSSIONS ABOUT THIS EARLY IN 2008.

OKAY. SO WHAT DO WE HAVE HERE? WE HAVE AN $83 MILLION

CHARITABLE DEDUCTION RESULTING IN AN APPROXIMATE SAVINGS OF $40 MILLION IN ESTATE TAXES. SO WE WANT TO PAY AS LITTLE OF THAT AS POSSIBLE, AND WE WANT TO DO ALL THE DUE DILIGENCE TO MAKE IT WORK AS BEST WE CAN.

SO JUST ASSUMING FOR THE MOMENT THAT THE NUMBERS ARE CORRECT, 25 PERCENT, LET'S CALL IT, GOES TO SOME HEIRS. LET'S JUST CALL THEM HEIRS. CLEARLY OF A $40 MILLION TAX, THAT WILL GENERATE $10 MILLION OF TAXES UNLESS SOMEONE TAKES THE RESPONSIBILITY TO WORK WITH THE I.R.S. WHEN WE FILED THE RETURN, WE USED THE TERM "NO ADMINISTRATIVE DEDUCTIONS TAKEN AT THIS TIME," AND MR. CARTER, IF YOU WANT TO CALL HIM TO THE STAND, CAN TALK ABOUT... THAT LEAVES YOU OPEN TO USE DEDUCTIONS LATER IF YOU NEED THEM ON THE AUDIT PROCESS. AND, OF COURSE, HAVING TOLD THE -- HAVING TOLD THE I.R.S. THAT $83 MILLION -- UNDER PENALTIES OF PERJURY THAT WE GET A $40 MILLION TAX SAVINGS AND AN $83 MILLION DEDUCTION, MR. BUCHANAN AND I WHO SIGNED THAT DOCUMENT, UNDER PENALTIES OF PERJURY -- SOMEBODY -- EITHER US OR SOMEBODY HAS GOT TO GET TO THEM WHEN THE SETTLEMENT HAPPENS AND DO THE BEST THEY CAN TO MAKE IT WORK AS WELL AS POSSIBLE.

I WANT TO TELL YOU THAT WE CALLED PROFESSOR MEDLIN BEFORE WE FILED THIS TAX RETURN AND WE SAID, "ALAN, WE MIGHT NOT FILE THIS RETURN THE WAY YOU WANT IT, BUT PLEASE GET YOUR PEOPLE TO WORK WITH US TO FILE THE ESTATE TAX RETURN BECAUSE WE MIGHT DISAGREE ON WHAT WE'RE GOING TO PUT THERE, BUT I

WANT US TO WORK TOGETHER," TO WHICH HE ANSWERED, "NO, NO, NO. WE WANT Y'ALL TO DO IT." I SAID, "PLEASE CALL HEYWARD SOMEBODY. LET'S TRY TO GET TOGETHER ON IT." "NO, WE DON'T WANT TO DO IT." SO WE MADE EVERY EFFORT TO BE INCLUSIVE AND TO GET PARTICIPATION FROM -- FROM A PERSON I KNEW TO BE AN EXPERT WITH THE SETTLING PARTIES, HEYWARD CARTER, AND IT DIDN'T HAPPEN. IT'S TOO BAD, BECAUSE WE CERTAINLY WOULD HAVE WANTED WITHIN THE CONFINES OF OUR DUTY TO DO WHATEVER WE COULD TO DO THAT THE VERY BEST WE COULD.

THERE ARE MANY OTHER TAX PROBLEMS. I WON'T TALK ABOUT ANYTHING HERE BUT THE ESTATE TAX ISSUES. NOW, LET'S TALK ABOUT... SO OF THE 40 MILLION, WE KNOW WE'RE GOING TO GENERATE 10 MILLION UNLESS WE CAN FIND SOME DEDUCTIONS AND I'M NOT TRYING TO KEEP ANYBODY FROM FINDING DEDUCTIONS; I HOPE WE FIND THEM. MAYBE THEY'LL BE SOME OF THOSE ATTORNEYS' FEES.

NEXT, THE OTHER -- LET'S CALL IT THE SECOND 10 MILLION, THE SPOUSAL 10 MILLION, EVERYBODY - MR. CARTER, MR. KINGSMORE, MR. BYRD, MR. GILREATH - WHO KNOWS ANYTHING ABOUT FEDERAL ESTATE TAXATION KNOWS THAT THE I.R.S. EVEN IN A VERY HEATED SETTLEMENT -- A SETTLEMENT AFTER A VERY HEATED CONTROVERSY IS NOT BOUND BY THE OPINION OF A LOWER COURT OF ESTATE.

SO IF JUDGE EARLY DECLARED TOMORROW, "HUSH, ADELE. MRS. HYNIE BROWN IS THE SPOUSE. I DECLARE HER THE SPOUSE," NOBODY

APPEALS, NOTHING HAPPENS, THE I.R.S. IS NOT BOUND BY THAT. NOW, WHAT MIGHT HAPPEN? YOU MIGHT CLAIM A MARITAL DEDUCTION, BUT YOU DON'T GET IT. SO THAT'S ANOTHER $10 MILLION. AGAIN, NOT THE END OF THE WORLD. THERE MAY BE STRATEGIES FOR WORKING ON IT, BUT WHY WOULD PROFESSOR MEDLIN TELL YOU HE HAS STRATEGIES FOR WORKING ON IT WHEN WE'RE THE PERSONAL REPRESENTATIVES WHO ARE GOING TO BE OBLIGATED TO ADMINISTER THIS ESTATE IN ACCORDANCE WITH THE SETTLEMENT AND OUR DUTY TO CREDITORS, TAXING AUTHORITIES, AND NON-SETTLING PARTIES? WHY WOULD SOMEBODY NOT BE TALKING TO US ABOUT THE BEST WAY TO HANDLE THIS? IT MAKES NO SENSE. IT'S NOT -- I DON'T CARE ABOUT ME; I'M OUT OF HERE. BUT I CARE ABOUT MR. BROWN'S ESTATE PLAN, AND THIS IS NOT THE WAY TO DO IT.

THE LAST 20 -- AND THIS IS THE PART THAT I FEAR FOR THE MOST BECAUSE, IF IT HAPPENS, IT'S JUST GOING TO BE CRAZY AND THAT IS THE POSSIBILITY OF RUNNING A CHARITABLE MONEY THROUGH AN ENTITY THAT -- THAT -- I'M NOT SAYING IT WOULD BUT THAT MIGHT DISQUALIFY THE OTHER $20 MILLION TAX SAVINGS. YOU JUST WOULDN'T WANT TO DO THAT. YOU WOULD WANT TO PUT AS MANY HEADS TOGETHER AS YOU CAN TO GET IT RIGHT.

NOW, IT MAKES NO SENSE FOR ME, IF I'M THE PERSONAL REPRESENTATIVE, FOR THERE TO BE A SECRET OF ALL THESE NATIONWIDE EXPERTS WHO ARE HELPING. WHY DON'T WE ALL HELP? WE DON'T WANT TO LOSE THE $20 MILLION CHARITABLE DEDUCTION. WE WANT TO GET IT RIGHT. WHAT'S WRONG WITH THIS PICTURE?

I'M SOMEWHAT CONCERNED ABOUT THE NOTION OF REWARDING PEOPLE FOR BRINGING OFFERS TO THE SETTLEMENT ENTITY, AND JUST THIS MORNING I SAW A DOCUMENT THAT I'M NOT SAYING IT WON'T WORK BUT IT BOTHERS ME, NEEDS SOME DUE DILIGENCE. THAT IS, APPARENTLY LAST NIGHT SOMEBODY, I MEAN, AGREED TO GIVE MR. BELL'S CLIENT AN EXCLUSIVE RIGHT OF FIRST REFUSAL OR SOMETHING LIKE THAT TO PURCHASE ALL THE ASSETS OF THE ESTATE.

NOW, IN FULL DISCLOSURE, I WANT TO TELL YOU THAT MR. BUCHANAN AND I IN EARLY JANUARY DETERMINED THAT -- THAT WHEREAS BEFORE DECEMBER 31ST OF 2008 WE FELT THAT THERE WAS SO MUCH CHAOS AND UNCERTAINTY THAT TO EVEN CONSIDER A SALE OF MR. BROWN'S ASSETS WOULD HAVE BEEN -- MADE NO SENSE. BUT AFTER WE SAW THE SETTLEMENT AGREEMENT WHERE IT APPEARED THAT NOBODY'S REALLY SENTIMENTAL ABOUT THE ASSETS AND IT CLEARLY CONTEMPLATED A FUTURE SALE, THAT RELEASED US TO SAY, WELL, WE DEFINITELY SHOULD BE LOOKING AT ALL AVENUES OF THE BEST THING FOR THE -- MR. BROWN'S LEGACY.

AND SO WE HAVE LET PEOPLE KNOW WHO HAD GIVEN BITES ON SALES BEFORE THAT WE'RE JUST BEGINNING OUR DUE DILIGENCE, BUT WE DON'T RULE OUT THE POSSIBILITY OF A SALE OF ASSETS. AND I WILL TELL YOU I DON'T WANT A FINDER'S FEE FOR DOING IT. THAT'S MY JOB. BUT I'M NOT OPPOSED TO -- I'M NOT OPPOSED TO REWARDING PEOPLE WHO BRING VALUE TO THE ESTATE, BUT THAT IS A VERY LUCY GOOSEY TERM AND, YOU KNOW, IT'S BEEN IN THERE APPARENTLY, ACCORDING TO EVERYBODY, SINCE AUGUST. I MEAN,

WHO'S BROUGHT OFFERS? ALL THESE PEOPLE WHO HAVE NO IDEA WHAT THE ESTATE IS WORTH. WELL, HAS ANYBODY BROUGHT ANY OFFERS AND WHAT WERE THEY AND WHAT'S THE PERCENTAGE YOU WANT TO PAY EVERYBODY?

I'M NOT SAYING IT'S IMPERMISSIBLE, BUT I SURE WOULD WANT TO LOOK AT IT AND MAKE SURE THAT WE DON'T DISQUALIFY THE CHARITY IF WE DO IT, THAT WE PAY ONLY WHAT IS REASONABLE, AND THAT WE OTHERWISE DO NOT THROW OUT OF BALANCE A SETTLEMENT OR BEGIN ANOTHER SERIES OF LITIGATION AND FIGHTS OVER THAT. SO THAT'S THAT.

I'M WORRIED THAT THE SETTLEMENT CREATES -- AND IT MAY HAVE BEEN MODIFIED BY YESTERDAY'S LETTER, AND IF IT WAS, THAT'S GOOD. BUT I AM AFRAID THAT THE SETTLEMENT IS GOING TO CREATE EITHER A SERIES OF YES MEN AND YES LADY TRUSTEES TO THE FAMILY OR IS GOING TO CREATE A REVOLVING DOOR OF PEOPLE LIKE MR. BUCHANAN AND ME WHO COME IN CHIPPER AND FRESH AND WANTING TO DO A JOB AND LEAVE EXHAUSTED. WHAT WE HAVE BEEN THROUGH SHOULD NOT HAPPEN TO ANYBODY.

I'M HERE TO DO MY JOB AS LONG AS I NEED TO DO MY JOB, BUT THE NOTION -- AND, AGAIN, IT MAY HAVE CHANGED THIS MORNING, BUT THE NOTION THAT THE FAMILY AT ANY TIME COULD CALL A MEETING AND OUST A TRUSTEE, THAT IS JUST NOT GOOD FOR THE CHARITABLE TRUST. AGAIN, THERE MAY HAVE BEEN SOME AMENDMENTS TODAY, BUT THE WAY I LOOKED AT IT, IT WAS WHOLLY UNCLEAR ABOUT -- AND I SAW SOMETHING TODAY ABOUT THE ATTORNEY

GENERAL, BUT THE TRANSITION PLAN FOR TRUSTEES SHOULD BE CRYSTAL CLEAR, CRYSTAL CLEAR. IF WE HAVEN'T LEARNED ANYTHING FROM THE LAST TWO YEARS, WE SHOULD HAVE LEARNED THAT.

QUICKLY, I'LL SAY AND I DON'T WANT TO BE NEGATIVE, BUT I DON'T THINK THREATS, INTIMIDATION, AND TRIAL BY MEDIA HAVE HELPED THIS SETTLEMENT AT ALL, BUT I'M NOT TAKING IT PERSONALLY. I ALSO PUT TOGETHER A PLAN FOR SETTLEMENT AND I SAID WE SHOULD REMAIN. THAT WOULD BE MR. BUCHANAN AND ME, NOT BECAUSE WE'RE DYING TO BE HERE BUT BECAUSE IT'S NECESSARY AND CRITICAL. WE SHOULD REMAIN TO OVERSEE THE PROTECTION OF THE ESTATE AND ASSIST WITH REACHING AND FINALIZING AND IMPLEMENTING A REASONABLE SETTLEMENT.

IT MAY BE THE ONE THAT JUST GOT DONE, YOU KNOW, OVER LUNCH TODAY; IT MAY NOT. IT MAY TAKE SOME TWEAKING. WELL, IT CERTAINLY AT A MINIMUM WILL TAKE A BUNCH OF TWEAKING AND A BUNCH OF CLARIFICATION. TO ME, THE NOTION THAT YOU'RE GOING TO TURN THIS GREAT BIG COMPLEX ESTATE OVER TO SOMEBODY WHOSE NAME ISN'T EVEN ON THE LINE IS FRIGHTENING AT BEST.

ALL RIGHT. I BELIEVE THAT THIS PROCESS, IF PROPERLY DONE, COULD TAKE AS FEW AS SIX MONTHS. THAT WOULD SUIT ME FINE. I AM NOT LOOKING FOR PERMANENT EMPLOYMENT HERE. I BELIEVE WITH ALL DUE RESPECT TO MR. BYRD - HE'S A LAWYER I RESPECT - THAT MR. CANNON, MR. DALLAS, AND MR. BRADLEY SHOULD BE LEFT COMPLETELY OUT OF THOSE NEGOTIATIONS AND HERE'S WHY: I BELIEVE THAT THEY ARE DISCREDITED AS PERSONAL

REPRESENTATIVES AND TRUSTEES. I BELIEVE ULTIMATELY THEY WILL BE FOUND BY THE PROPER COURT NOT TO -- NOT TO BE ALLOWED TO RETURN.

I DO NOT, HOWEVER, BELIEVE TODAY THAT THIS IS THE PROPER COURT. I THINK WE SHOULD GO ON WITH GETTING AS MUCH AS WE CAN TOGETHER. WHEN I SAY IGNORE THEM, I DON'T MEAN COMPLETELY IGNORE THEM BUT LEAVE THEM ASIDE, AND AT THE POINT WHERE WE GET EVERYTHING RIGHT BUT -- BUT THE CLAIMS OF MR. CANNON AND MR. DALLAS WHICH ARE NOW ON FAST TRACK IN THE COURT OF APPEALS, IF THEY HAVEN'T BEEN RESOLVED, THEN JUST HOLD THAT AND DEAL WITH IT AT THE RIGHT TIME.

WE MUST, WHEN WE BRING THE SETTLEMENT TO THE TABLE, HAVE PROPER JOINDER AND DETERMINATION OF PARTIES. IF THE FACTS WARRANT IT, AND I'M NOT A HUNDRED PERCENT SURE THEY DO, U.S.C. AIKEN, VOORHEES, AND SALKEHATCHIE MIGHT BE GIVEN SPECIAL CONSIDERATION. I DON'T CONSIDER THAT LIFE OR DEATH, BUT THEY OUGHT TO BE AT THE TABLE. YOU CANNOT SKIP OVER TWO WILLS AND GET TO HEIRS AND JUST LEAVE THEM OUT. IN MY OPINION, YOU CANNOT DO THAT.

STRIVE FOR A SETTLEMENT WHICH INCLUDES AS MANY HEIRS AND DEVISEES AS POSSIBLE. PROVIDE REASONABLE TREATMENT FOR SET-ASIDES FOR THOSE WHO ARE NOT PART OF THE SETTLEMENT. DON'T THREATEN THEM AND INTIMIDATE THEM. PROVIDE A REASONABLE SET-ASIDE FOR THOSE WHO ARE NOT PARTIES TO THE SETTLEMENT BASED ON THEIR ENTITLEMENT UNDER THE LAW. DON'T GET TOGETHER AND

SAY THE ATTORNEY GENERAL AND THESE PARTIES HAVE PICKED THESE PEOPLE AS HEIRS AND WE'RE GOING TO FIGHT TO DO WHATEVER WE CAN TO GET RID OF HIS OTHER HEIRS. WHAT SENSE DOES THAT MAKE?

LOOK AT THE RIGHTS OF THE PEOPLE UNDER THE APPLICABLE LAW AND DO THE RIGHT THING. DUE DILIGENCE TO DETERMINE WHETHER THE DIVISION AMONG THE HEIRS IS REASONABLE IN LIGHT OF WHAT IS CLEAR MISUNDERSTANDING OF THE COPYRIGHT LAW AND SUBSTANTIAL MATERIAL QUESTIONS ABOUT WHO THE HEIRS ARE. IDENTIFY PROPOSED SUCCESSOR FIDUCIARIES AND DEVELOP WITH THEM PARTICIPATING A PLAN OF TRANSITION WHICH PROTECTS THE ASSETS. BE BOUND BY THE CURRENT AGREEMENT NOT TO SAY BAD THINGS AND DENIGRATE PEOPLE BUT TO ALL WORK TOWARD THE GOAL WHICH IS THE ENHANCEMENT OF THIS LEGACY.

USE A SPECIAL ADMINISTRATOR WHO IS NOT SEEKING AND WILL NOT ACCEPT A POSITION AS A PERMANENT FIDUCIARY. DO NOT TAINT THE PROCESS WITH A CANDIDATE. CAREFULLY ALLOCATE IN YOUR AGREEMENT I.R.S. RESPONSIBILITY WHICH IS CONSISTENT WITH STATE LAW. DECIDE THE BEST WAY TO DEAL WITH I.R.S. MATTERS. IT MAY BE TO GO TO THE SUPREME COURT OF SOUTH CAROLINA AND THERE MAY BE AN OPPORTUNITY TO DO THAT, BUT WE DON'T DO IT WITH EMERGENCY HEARINGS AND WE DON'T DO IT JUST TO GET IT OVER WITH AND GET RID OF MS. POPE AND MR. BUCHANAN. SORRY, BUT GETTING RID OF ME IS NOT THE BEST THING THAT CAN BE DONE FOR THIS ESTATE AND TRUST.

SECURE THAT MR. CANNON AND MR. DALLAS AND MR. BRADLEY RETURN -- NOT RETURN. THERE ARE MANY WAYS TO DO THAT. SUPPORT THE P.R.'S AND THE TRUSTEES IN CONTINUING LITIGATION FOR THE BENEFIT OF THE JAMES BROWN LEGACY. LET'S LOOK ALL TOGETHER AT THE COPYRIGHT LAWS AND SEE, INSTEAD OF FIGHTING OVER IT. THE GOOD THING ABOUT THE COPYRIGHT LAWS IS WE CAN ALL JUST READ IT. YOU KNOW, IT'S NOT GOING TO BE THAT HARD.

HAVE A CLEAR, PRECISE COMPONENT OF THE AGREEMENT. BE PROTECTION OF THE CREDITORS, PROTECTION OF THE TAXING AUTHORITIES, SET-ASIDES AND PRE-ARRANGED SET-ASIDES AND MECHANISMS FOR DEALING WITH CREDITORS, PRIORITY CREDITORS, TAXING AUTHORITIES. FOLLOW THE STATUTORY MANDATE AND ALSO THOSE NOT PARTIES TO THE SETTLEMENT. I'M THROUGH.

THE COURT: THANK YOU. YOU MAY STEP DOWN. MR. LEVENSON, I'M NOT GOING TO ALLOW ANY FURTHER TESTIMONY.

MR. LEVENSON: MAY I PERFECT THE RECORD THEN, PLEASE, SIR?

THE COURT: MAY YOU WHAT?

MR. LEVENSON: MAY I PERFECT THE RECORD, YOUR HONOR?

THE COURT: MR. LEVENSON, WHAT DO YOU WANT TO SAY?

MR. LEVENSON: WHAT I'D LIKE TO SAY IS THAT YOU SAID TO US ON INNUMERABLE OCCASIONS THAT WE WOULD HAVE AN OPPORTUNITY TO PRESENT EVIDENCE AND WE WOULD NOT BE CUT OFF. I'VE MADE AN OBJECTION THAT THIS IS NOT RESPONSIVE TO THE QUESTION NOR IS IT RESPONSIVE TO THE ISSUE THAT YOUR HONOR HAS TO DECIDE.

THE COURT: I DISAGREE WITH YOU.

MR. LEVENSON: WELL---

THE COURT: IT HAS BEEN RESPONSIVE. WHAT ELSE DO YOU WANT TO DO?

MR. LEVENSON: WELL, I WOULD MOVE TO STRIKE THE TESTIMONY IN ITS ENTIRETY AS BEING CONCLUSORY AND THE OPINION OF THIS WITNESS, AND IT IS NOT RESPONSIVE TO THE QUESTION THAT YOUR HONOR HAS TO CONSIDER WITH WHETHER IT'S FAIR AND REASONABLE. MRS. POPE'S PROPOSAL OF WHAT THE PARTIES SHOULD HAVE SETTLED FOR IS NOT WHAT YOUR HONOR HAS TO DECIDE HERE TODAY.

THE COURT: MR. LEVENSON, I'M WELL AWARE OF WHAT I HAVE TO DECIDE. I'VE LET PROFESSOR MEDLIN STAND UP AND GIVE HIS SPIEL. I'VE LET -- MRS. POPE HAS BEEN A SPECIAL P.R. AND A TRUSTEE AND SHE CERTAINLY HAS THE RIGHT TO EXPRESS ALL OF HER CONCERNS ABOUT THE SETTLEMENT WHICH I'VE LISTENED TO, AND SO I RESPECTFULLY DENY YOUR REQUEST TO STRIKE THAT FROM THE RECORD.

MR. LEVENSON: AND NO CROSS-EXAMINATION OF THE 45 MINUTES OF NARRATIVE THAT MRS. POPE HAS JUST GIVEN WHEN THAT IS NOW A MATTER OF THE RECORD WHICH IS PRESUMABLY GOING TO SUPPORT OR CONTRADICT THE FINDING THAT YOUR HONOR IS GOING TO MAKE IN CONNECTION WITH THE MOTION TO APPROVE THE SETTLEMENT?

THE COURT: I'LL LET YOU CROSS-EXAMINE HER.

MR. LEVENSON: I MEAN, I DON'T HAVE ENOUGH TIME TONIGHT

TO DO WHAT CROSS---

THE COURT: KEEP GOING. I COULD STAY HERE ALL NIGHT. DO YOU WANT TO STAY ALL NIGHT? GO AHEAD.

MR. LEVENSON: YOUR HONOR, I DON'T WANT TO INCUR THE COURT'S WRATH---

THE COURT: YOU'RE NOT GETTING MY WRATH.

MR. LEVENSON: ---BUT I'M NOT ALSO -- I'M ALSO MINDFUL OF THE FACT THAT -- ALL RIGHT. I'M GOING TO START THEN AND GO AS LONG AS WE NEED TO GO THEN, I'M AFRAID.

THE COURT: WELL, HERE IS THE SITUATION. I WAS CONDUCTING THIS HEARING TO DETERMINE, NUMBER ONE, WHETHER THERE'S A TRUE CONTROVERSY. NUMBER TWO, WHETHER IT'S JUST AND REASONABLE. I HAVE LET EVERYBODY HAVE THEIR SAY AS TO THEIR POSITION. I HEARD FROM MR. MEDLIN WITHOUT ANY INTERRUPTION.

I THINK IT'S ABSOLUTELY FAIR AND I THINK THE COURT NEEDS TO HEAR WHO I APPOINTED AS SPECIAL TRUSTEES AND ADMINISTRATORS TO HEAR THEIR POSITION ON IT. MRS. POPE HAS GIVEN ME HER POSITION. A LOT OF IT HAD NOTHING TO DO WITH IT BEING FAIR AND REASONABLE, BUT IT'S HER FEELINGS AND I CERTAINLY RESPECT WHAT SHE AND MR. BUCHANAN HAVE DONE AND I RESPECT HER INPUT INTO IT. SHE HAS COME UP WITH SOME -- I THINK SOME INTERESTING ISSUES THAT WE'RE GOING TO HAVE TO CROSS BEFORE WE APPROVE THE SETTLEMENT, PARTICULARLY THE TRANSITION -- TRANSITION PROBLEMS, IF I PROVE IT. BUT IF YOU

FEEL COMPELLED TO CROSS-EXAMINE HER TO PROTECT THE RECORD, MR. LEVENSON, I HAVE NOT STOPPED YOU AT ANY TIME IN THESE PROCEEDINGS NOR ANYONE ELSE. I WILL LET YOU MAKE A RECORD.

WE'LL GO TO -- I KNOW IT'S FRIDAY AFTERNOON BY NOW, FRIDAY EVENING. MY COURT PERSONNEL HAS WORKED HARD ALL WEEK. THEY'VE BEEN IN COURT EVERY DAY THIS WEEK UNTIL 6 OR 7:00 AT NIGHT. BUT I AM HERE TO MAKE A RECORD AND NOT TO CUT ANYBODY OFF.

MRS. POPE: JUDGE?

THE COURT: YES, MA'AM.

MRS. POPE: OUR SUBSTITUTE LAWYER HAS A BABY WHO NEEDS TO BE PICKED UP, AND I DON'T THINK SHE NEEDS TO -- OR COULD SHE MAKE A PHONE CALL AT LEAST?

MS. HAYES: YOUR HONOR, I'M OKAY IF I CAN JUST MAKE A PHONE CALL ABOUT---

THE COURT: MR. WHITTLE? GO AHEAD.

MRS. POPE: I'M SORRY, JUDGE.

THE COURT: YOU'RE FINE. ANYBODY ELSE GOT A PROBLEM? MA'AM, DO YOU WANT TO GO MAKE A PHONE CALL?

MR. BELL: I THINK MR. BODMAN NEEDS TO MAKE A SIMILAR PHONE CALL.

THE COURT: OR MAYBE HE DOESN'T. I DON'T. ALL RIGHT. LET'S DO THIS. LET'S TAKE -- LET'S TAKE ABOUT A FIVE OR TEN-MINUTE BREAK FOR BATHROOMS, PHONE CALLS. MY COURT REPORTER NEEDS A BREAK.

(WHEREUPON, A SHORT BREAK WAS TAKEN.)

THE COURT: PLEASE BE SEATED. MR. LEVENSON, PROFESSOR, A.G., PETER, ROBERT, BELL, BYRD.

MR. BELL: MR. BODMAN IS NOT BACK IN, YOUR HONOR.

THE COURT: WELL, I DON'T NEED HIM. I JUST NEED ONE---

MR. BELL: AS LONG AS HE CAN GET BACK IN WHEN HE FINISHES TALKING TO HIS WIFE.

THE COURT: MR. WARNER?

MR. WARNER: YES, SIR.

THE COURT: GET OFF YOUR E-MAIL AND COME ON BACK.

MR. WARNER: I WAS JUST CHECKING MY BLOOD.

THE COURT: WELL, GET OFF IT. HAVE I GOT EVERYBODY? I DON'T WANT EVERYBODY. I JUST WANT ONE FROM EACH GROUP.

(WHEREUPON, AN OFF-THE-RECORD DISCUSSION TOOK PLACE IN CHAMBERS WITH ATTORNEYS AND THE COURT.)

THE COURT: THANK YOU. PLEASE BE SEATED. HAVE WE GOT EVERYBODY? ALL RIGHT. LET THE RECORD REFLECT THAT WE HAD AN IN-CHAMBERS DISCUSSION ABOUT THE LOGISTICS THIS AFTERNOON, AND I TOLD EVERYBODY MY COURT REPORTER HAS BEEN GONE 'TIL 5:30, 6:30, 7 EVERY NIGHT THIS WEEK. IT'S BEEN A LONG WEEK, AND I THINK IT'S PROBABLY BEST FOR EVERYBODY CONCERNED THAT WE BREAK FOR THE EVENING AND RECONVENE.

I HAVE TOLD THE LAWYERS A COUPLE OF THINGS. NUMBER ONE, I WILL SEND OUT TO THEM ON MONDAY THREE DAYS THE WEEK OF THE 16TH. I DON'T WANT TO DELAY THIS THING ANY FURTHER. AND IF

WE CAN'T COME UP WITH A DATE THAT WEEK, I'LL DO IT THE 23RD, BUT I'D RATHER GET IT DONE QUICKER.

I ALSO HAVE ORDERED, ORAL ORDER, A COLLABORATION BETWEEN THE PARTIES AND THE P.R.'S TO, IF IN THE EVENT I DO APPROVE THE AGREEMENT WHICH I DON'T KNOW IF I AM OR NOT 'TIL ALL THE TESTIMONY HAS BEEN PRESENTED AND -- BUT I DO NEED FOR CONSIDERATION A TRANSITION, FOR LACK OF A BETTER TERM, A TRANSITION PLAN OR PROCEDURE ADDRESSING SOME OF THE ISSUES THAT MRS. POPE SET FORTH IN HER TESTIMONY, PARTICULARLY LOOKING AT THE VARIOUS LITIGATION WHICH SHE TALKED ABOUT: THE MORGAN STANLEY, THE CANNON/DALLAS APPEAL, THE CORBIS LITIGATION, THE FEDERAL COURT LITIGATION.

I AM MAINLY -- I AM REAL INTERESTED OR CONCERNED ABOUT IF WE DO REACH AN AGREEMENT THAT WE HAVE AN ORDERLY TRANSITION THAT PROTECTS EVERYBODY INCLUDING THE CURRENT P.R.'S TRUSTEES, THE NEW ONES, THE FAMILY MEMBERS, THE TRUST, I MEAN THE CHARITABLE TRUST, EVERYBODY. SO I THINK IT'S IMPERATIVE AND WE TALKED ABOUT IT IN CHAMBERS. SO PLEASE DO YOUR BEST TO GET ME SOME TYPE OF TRANSITION PLAN.

AND I'LL GET SOME DATES OUT MONDAY BY E-MAIL. IF THOSE DON'T SUIT, I'LL WORK WITH EVERYBODY TO TRY TO GET A DATE THAT'S COMPATIBLE TO EVERYBODY'S SCHEDULE. ALL RIGHT. ANYTHING ELSE? OF COURSE, MR. LEVENSON, YOU HAVE -- DEPENDING ON WHERE WE GO, YOU HAVE YOUR RIGHT TO CROSS-EXAMINE AND PUT UP WHATEVER YOU NEED TO PUT UP. YES, MA'AM?

MS. HOLLANDER: YOUR HONOR, I HAVE A LAWYER AND HE WANTS -- HE IS OUT OF AUGUSTA, GEORGIA. HE WANTS TO KNOW IF HE NEEDS TO COME IN PRO HAC VICE OR DOES HE HAVE TO COME IN WITH A LAW FIRM OUT OF THE STATE OF SOUTH CAROLINA?

THE COURT: MA'AM, I CAN'T GIVE LEGAL ADVICE. IF HE'S AN OUT-OF-STATE ATTORNEY AND DOESN'T HAVE A LICENSE IN THIS STATE, HE'S GOING TO HAVE TO BE ADMITTED PRO HAC VICE, AND THERE'S CERTAIN RULES ON HOW TO DO THAT. HE'LL HAVE TO HAVE A SOUTH CAROLINA LAWYER TO BE PART OF IT.

MRS. POPE: JUDGE, MAY I BE RELEASED FROM MID-TESTIMONY RESTRICTIONS?

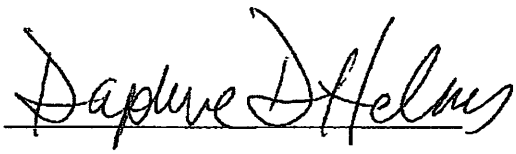
THE COURT: YES, MA'AM. THANK YOU. EVERYBODY HAVE A PLEASANT WEEKEND, EVEN THOUGH YOU'RE GETTING OFF TO A LATE START.

(MR. BUCHANAN'S SPECIAL ADMINISTRATOR'S EXHIBIT 1 WAS RECEIVED IN EVIDENCE. WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)

I, THE UNDERSIGNED DAPHNE D. HELMS, OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR AIKEN COUNTY, SOUTH CAROLINA, ON THE 30TH OF JANUARY, 2009.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

FEBRUARY 7, 2009



DAPHNE D. HELMS, COURT REPORTER