

STATE OF SOUTH CAROLINA
In the Court of Appeals
APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

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

The Honorable L. Casey Manning, Circuit Court Judge

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SC Court of Appeals

Appellate Case No.: 2018-002229

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

And

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

v.

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

Of whom Adele J. Pope is Appellant.

RECORD ON APPEAL
Volume IV of V
(Pages 1469 – 1961)

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and they get into a little kerfuffle.

And the representative allege -- doesn't allege; threatens the clerk that if you don't, you know, withdraw this, I'm going to sue you -- or, excuse me, if you don't resign your position as being Clerk of the House, I'm going to sue you. And she threatened criminal and civil causes of action that could have been brought.

Well, she didn't resign her seat, as I'm sure Your Honor is well aware of the history of the case, and the lawsuit came. And then there was a decision on the lawsuit and it eventually wound up in front of the Supreme Court. And the whole question before the Supreme Court was, was it an abuse of process for this House member to have said, you resign your position, Clerk, or I'm going to bring a lawsuit against you.

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And the House -- excuse me. The Supreme Court held that it was not an abuse of process. They said very interestingly that the defendant argues that the plaintiff demanding something, resignation, which she was not entitled to demand -- excuse me. Let me read that again. I did a poor job.

The opinion states that the defendant argues that Plaintiff demanded something, resignation, which she was not entitled to demand. That's similar to this case. Ms. Pope is alleging -- again, we deny it, but taking the facts most

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12 favorable to her, she's alleging that we asked
13 something that we somehow didn't have a right to
14 demand, her abandoning her appeal.

15 The defendant argues that Plaintiff demanded
16 something, resignation, which she was not entitled
17 to demand. And the opinion goes on: "It is not
18 unusual for plaintiffs in the negotiating stage to
19 demand more than they are entitled to receive." And
20 it was held here that the demand that someone resign
21 their position as the Clerk of the House was not an
22 abuse of process when that demand was part of a
23 threat to bring a criminal or civil action.

24 Taking the facts in the light most favorable to
25 Ms. Pope, even if we did put pressure on her to

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1 abandon her appeal by means of bringing this suit,
2 it would not rise to the abuse of process based on
3 Russell vs. Risher. It also would not rise to the
4 level of abuse of process because it's not the
5 primary or sole reason that the suit was brought, as
6 the Food Lion case and the other cases that we cite.

7 Wilson v. Dallas holds conclusively, so that
8 they are precluded from arguing otherwise, that we
9 had many -- we have many justifiable grounds on
10 which to sue Ms. Pope for breach of fiduciary duty.
11 Therefore, we believe that the abuse of process
12 counterclaim should be found that it is
13 appropriately done away with by summary judgment and
14 dismissed.

15 The second cause of action in the counterclaims
16 is a cause of action for civil conspiracy. Again,
17 we discussed this at length in the brief. I would
18 just highlight certain portions for you.
19 Civil conspiracy is a combination of two or
20 more persons joining for the purpose of injuring or
21 causing special damage to the plaintiff. It has to
22 be a combination of two or more people for the
23 purpose of injuring the plaintiff which causes
24 special damages.
25 The primary inquiry is whether the primary

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1 purpose or object of a combination is to injure the
2 plaintiff; in this case, to injure Ms. Pope. And
3 that's Lee vs. Chesterfield County --

4 THE COURT: There was a case decided and I
5 think recorded in this week's --

6 MR. GENDE: There is.

7 THE COURT: -- about special damages on
8 conspiracy.

9 MR. GENDE: Correct. That case, pretty much
10 they didn't want to change the pleadings standard in
11 an old case, you know, one that had been very long,
12 and there was a need to allege special damages. And
13 if I was arguing this on a 12(b)(6) motion, I might
14 take that up. But that's not going to be the focus
15 of my issue here. And in that case the Supreme
16 Court decided, at least at this juncture, not to
17 change the pleadings standard, but to let that case
18 continue on.

19 First of all, if there's any reliance on the
20 fact that this was an unlawful enterprise and
21 because of that it was a civil conspiracy, we have
22 shown, based on Wilson v. Dallas, that it was not an
23 unlawful enterprise to file this lawsuit because the
24 Supreme Court has now justified many of the grounds
25 and the central ground under which the lawsuit was

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1 brought by the 4900 plaintiffs.

2 Next, even if there's no unlawful enterprise,
3 the Supreme Court has held that civil conspiracy can
4 exist where one party to the conspiracy has
5 justifiable grounds for an action but the others who
6 join in the act don't have the same justification.

7 And that's the Charles v. Texas County case.
8 That's a 1942 case, but as we researched the issue,
9 there's nothing more on-point, and this case has not
10 been overturned and this holding has not been
11 vacated in any way.

12 And I want to read this section because it's
13 important. If you're following on our brief, this
14 is page 10 of our brief. It's right at the top of
15 page 10. In the right-hand corner you'll see the
16 "see Charles v. Texas," and in parentheses it says
17 this: The case notes that "where an act done by an
18 individual, though harmful to another, is not
19 actionable because justified by his rights, yet the
20 same act becomes actionable when committed in
21 pursuance of a combination of persons actuated by

8-29-16+Bauknight%2c+Wilson%2c+et+al+v+Adele+Pope.txt
malicious motives and --" and here's the very

important part -- "not having the same justification
as the individual."

Well, civil conspiracy might arise in a case

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where one person has a justifiable claim, others
join in that claim, but they do not have the same
justification. That's what this is saying. It's
also saying the converse. If everyone, one party
and those who are joining it, have the same
justification, there can be no civil conspiracy.

And what we argue is, in this case, every one
of us, all of the plaintiffs that I represent, have
the same essential claim and justification for
bringing the case. We're all listed on the caption
together, we're all shared in the allegations that
are made, there's no complaints that eliminate any
one from the other. We all bring this together as a
group because we're all held together by the
settlement agreement. That was the claim. And you,
Your Honor, had approved the settlement agreement.

And this case was filed before Wilson v. Dallas
was decided that I agree ultimately did vacate the
settlement agreement. However, at the time that
they brought the claim, at the time that we brought
the claim in 2010, the settlement agreement stood.
And they all had the same claim, the same essential
causes of action.

There was no civil conspiracy, there was no
intention to get together, maliciously bring

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1 something against Ms. Pope to cause her some kind of
2 special damage. We all were seeking to vindicate
3 the same legal right because we were all joined
4 together under that settlement agreement. Those are
5 the people who brought the case, and they brought
6 the case under the settlement agreement as the glue,
7 the joint right that held them all together.

8 Interestingly -- and you mention the federal
9 case, the Forlando case -- in her pleadings,
10 Ms. Pope refers to Forlando as one of the people
11 that we conspired with. Now, he's not a party in
12 Case 4900, but that is also a matter of law that she
13 would be issue precluded now from resorting to
14 because Judge Bertelsman, in a motion for summary
15 judgment after the evidence in a case involving
16 Forlando against Ms. Pope and Mr. Buchanan at that
17 time, found that the same counterclaims were ripe
18 for summary judgment and, indeed, did dismiss them,
19 including civil conspiracy.

20 So we know that in her complaint -- we couldn't
21 have conspired with Forlando because Forlando was
22 held as a matter of law and not to have conspired
23 against her, because we all had the same
24 justification for bringing the case. Everyone had
25 the same justification for bringing the case.

1 We believe that there can be no civil
2 conspiracy as a matter of law; that Wilson v. Dallas
3 has nailed that down because it clearly finds that
4 we had ample legal basis to bring the case,
5 therefore, the civil conspiracy claim should be
6 summarily dismissed.

7 The next counterclaim of Ms. Pope is
8 intentional interference with contract. This begins
9 at page 12 of our brief. We point out that the
10 elements of intentional or tortious unfairness with
11 contract involve, number one, the existence of the
12 contract; two, knowledge of the contract; three,
13 intentional procurement of its breach; four, the
14 absence of justification; five, resulting damages.

15 I want to address two of these, and I think
16 they are dispositive as far as this motion for
17 summary judgment.

18 THE COURT: Well, one of them there is no
19 contract, right?

20 MR. GENDE: Right. There is no contract. No
21 matter which way you look at it, there's no
22 contract. Whether she's talking about us somehow
23 interfering in her appointment by the Court
24 initially as SA or ultimately PR and trustee, we
25 have case law in here that says those appointments

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1 are not a contract. Or if she's saying no -- and,
2 you know, the counterclaim has some clarity and has
3 some areas that would need to be clarified.

4 But if she's saying, no, it's not the
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5 appointment I'm having trouble with, it's collecting
6 that money from the January 8th, 2008 order, that's
7 what you're interfering with -- and, in fact, as she
8 spoke in Case 1337 earlier, she referred to that
9 order as a contract. My contract for payment that
10 you ordered, she said.

11 we have case law cited in this brief that court
12 orders are not contracts. So on the very first
13 element, she fails and -- because there's no way
14 that she can get around that, and that's a matter of
15 established law. Just on that element alone, the
16 intentional interference with contract should be
17 summarily dismissed. However, a fourth element of
18 intentional interference with contract is the
19 absence of justification. And as I pointed out
20 early on, Wilson v. Dallas shows that we had
21 absolute justification to bring the case.

22 Does Wilson v. Dallas prove our case? Maybe
23 not, although I'm working on a legal argument that
24 says it might. But that's for another day. But it
25 sure says that we had justification to bring the

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1 case and that the case is not some ruse or something
2 malicious or something with no foundation, you know,
3 as in some of the abuse of process cases that you
4 see.

5 So we had legal justification to bring the
6 case. So she can't meet two of the five elements of
7 intentional interference with contract, and because

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of that, the tortious or intentional interference

with contract should be summarily dismissed as well.

The next counterclaim is violation of Probate Code section 62-1-106. This begins on page 15 of our brief. 62-1-106 is essentially a code that allows a trustee to bring a cause of action for fraud or evasion. And there are issues that she alleges were handled fraudulently or evasively, and she invokes the right to bring this counterclaim.

I want to deal with this rather simply. First of all, she's got no standing. It's a cause of action that accrues to the estate of people appropriately representing the state, and they deal with a couple of things. The South Carolina Supreme Court, in Wilson v. Dallas, did allow her standing to prosecute that appeal to conclusion, the appeal of your approval of the order; huge distinction between that and the counterclaims in a breach of

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fiduciary duty case.

In the Wilson v. Dallas matter, her appealing of your order approving the settlement, at the time the settlement was entered into, she was the trustee; during the period of time that the hearings were held where you made a decision of approving or disapproving the settlement, she was the trustee, she was allowed to make arguments, she was allowed to participate. It's that on which the Supreme Court bases its conclusion that she was -- had standing to bring this case.

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12 There's no case law -- let me step back. You
13 held that she was removed. The Supreme Court upheld
14 you that she was removed. Her counterclaim was
15 brought in 2010 after you removed her. There's no
16 case that says a trustee that has been removed can
17 still bring claims on behalf of the Trust or claims
18 that are intended for the Trust after they've been
19 removed. And, of course, that would be a -- a very
20 problematic principle to be in the law.

21 So she was allowed standing to bring Wilson v.
22 Dallas because she was involved in the whole
23 settlement removal hearing process. She should not
24 be allowed to bring 62-1-106 violation counterclaims
25 because she was removed and can make no argument

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1 that she had standing.

2 In fact, we have the June 15th -- June 10th,
3 excuse me, 2015 order of the Supreme Court denying a
4 number of appeals in other cases and then stating
5 these words that I take no relish in repeating, but
6 is important to our argument.

7 They say: "Pope is hereby prohibited from
8 filing any further motions or appeals in actions
9 involving the estate and trust of James Brown -- "
10 and importantly -- "such as the above actions in
11 which she has clearly has no standing. We caution
12 Pope the continuous attempts to involve herself in
13 the resolution of the estate and trust may result in
14 contempt charges." So the Supreme Court has even

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weighed in on whether she would have standing in

anything else related to the estate and trust, and
they have said no.

We make another argument that I won't go into
in great detail, but it's clearly in here. It's a
statute of limitations argument. And even if for
some reason she had standing, it was not brought
within the appropriate time period for the statute
of limitations to bring that claim; therefore, her
claim for violation of 62-1-106 should be summarily
dismissed as well.

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Finally, Ms. Pope makes a claim for attorneys'
fees, again, pursuant to the Probate Code 62-7-104.
And I think -- it's not absolutely crystal clear,
but I think she's referring to her fees that she has
incurred probably involving the appeal and then
probably involving in responding to Case 4900 and
defending herself in this case.

Just as a matter of preliminary review, we all
know that we're held to the American rule and that
litigants have to bear the cost of their own
expense. So there's no reason why her being sued
for breach of fiduciary duty in Case 4900 she would
not have to bear the cost of her own expense of her
defense. We're having to bear the cost of our
defense against her counterclaims, which we feel are
without grounds.

However, 62-7-104 provides: "In a judicial
proceeding involving the administration of a Trust,

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19 the Court, as justice and equity may require, may
20 award costs and expenses, including reasonable
21 attorneys' fees and pardon to be paid by another
22 party or from the Trust that is the subject of the
23 controversy."

24 A couple of observations on that: First of
25 all -- and this is additional argument from what is

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1 in the brief expressly, by way of illustration more
2 than anything -- we don't think that Case 4900 is a
3 judicial proceeding involving the administration of
4 the Trust.

5 Case 4900 is no different than a medical
6 malpractice case. I defend a lot of doctors in
7 medical malpractice cases. When the plaintiff
8 brings a medical malpractice case or when I defend
9 that medical malpractice case, we are not involved
10 in the practice of medicine. And thank the Lord for
11 that, because there would be trouble. It's a
12 separate case. It's a negligence action.

13 When we bring Case 4900 against Ms. Pope for
14 breach of fiduciary duty, we are not involved in a
15 case that deals with the administration of a Trust
16 no more than a medical malpractice attorney is
17 involved in the practice of medicine. We're dealing
18 with a negligence case.

19 There's a difference between proof and
20 participation. Yes, some of our proof -- in fact,
21 all of our proof will come from how she conducted

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22 herself in the administration of that estate. But
23 we are not participating in the administration of
24 the estate. And 62-7-104 has a basic analysis;
25 requires that it involve the administration of the

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1 Trust, and it doesn't meet that base-level
2 requirement. That's a separate and distinct
3 negligence action that is not involved in the
4 administration of the Trust. So we believe, on that
5 level, that the final cause of action should be
6 summarily dismissed.

7 62-7-104 also involves justice and equity. It
8 says if justice and equity require, there might be
9 an award of attorneys' costs and expenses. Here
10 again we believe that Wilson v. Dallas is important
11 to provide issue of reculsion and collateral
12 estoppel.

13 we have good grounds, absolutely rock solid
14 grounds supported by the South Carolina Supreme
15 Court, to bring that lawsuit. So we've got the
16 right to sue her. There's nothing in the case of
17 justice or equity that would abrogate the American
18 rule and cause us to have to pay her fees.

19 So justice and equity can't be invoked, and
20 it's specifically an element of 62-7-104. So it's
21 not the administration of a trust and it is not
22 justice and equity requiring that costs and
23 attorneys' fees somehow be reimbursed to her.

24 Finally, she's got a case for her fee claim.
25 That's 1337. You're intimately familiar with that.

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1 She already outlined this morning that her -- or
2 earlier this afternoon that her fee claim case
3 involved two elements; it involved her January 8th,
4 2008 order, and then it involved additional time for
5 the rest of the appeal.

6 So by her own statement in open court to you
7 today, anything that might not be covered under the
8 American rule she already has being contemplated in
9 Case 1337. So --

10 THE COURT: In the federal case where summary
11 judgment was granted, all the causes of action in
12 her counterclaim in 4900 were presented to the
13 federal judge; is that correct? All five?

14 MR. GENDE: That's correct.

15 THE COURT: The statutory provision, the
16 contract situation, the --

17 MR. GENDE: We have a copy attached to that.
18 Let me just review it so that I'm clear.

19 THE COURT: I have it. I'm looking at it now.

20 MR. GENDE: And my associate is pointing out a
21 verbal slip I might have made referring to a
22 statute. I apologize. Apparently in referring to
23 62-7 I'm saying 104 at times, but it's 62-7-1004.

24 THE COURT: 1004.

25 MR. GENDE: Yes, sir. The claims dispensed of

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1 in the federal case were abuse of process --

2 THE COURT: It's all the same.

3 MR. GENDE: Yeah. Civil conspiracy, potential
4 interference with contract, 62-1-106, 62-7-1004.
5 Same ones.

6 Your Honor, for those reasons, the plaintiffs
7 assert that under the apparent authority of the
8 Court and the legal document issue of preclusion,
9 claim of estoppel based on the Supreme Court's
10 speaking of clarity in Wilson v. Dallas, that all of
11 Ms. Pope's counterclaims against the plaintiffs
12 should be summarily adjudged and dismissed.

13 THE COURT: All right. Thank you.

14 MR. MCDONALD: Judge, Brent McDonald. It's
15 good to see you this afternoon. I know you haven't
16 heard from me before.

17 THE COURT: Well, I'm getting ready to.

18 MR. MCDONALD: Thank you, Judge. May it please
19 the Court.

20 THE COURT: How are you?

21 MR. MCDONALD: Very well.

22 THE COURT: Nice to have you in Bamberg.

23 MR. MCDONALD: Thank you very much.

24 I'd like to start off by stating what this
25 motion is and what it's not, as far as I understand

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1 it. This motion was originally filed under the
2 grounds that Wilson v. Dallas collaterally estops my
3 client, Ms. Pope, from bringing any other
4 counterclaims. That's it. It's a two-page letter

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5 that was written to Your Honor. Don't need to do
6 any discovery, Judge, because Wilson v. Dallas
7 conclusively prevents her -- to use his term, not
8 mine -- from bringing these claims, these claims
9 that were talked about here today.

10 what was argued here wove through the facts of
11 what has been presented and what hasn't been
12 presented, and something completely different from
13 what the original argument was under Wilson v.
14 Dallas conclusively prevents her, under the Doctrine
15 of Collateral Estoppel, from bringing these claims.
16 And I wanted to start off pointing that out to your
17 Honor.

18 I was handed a memorandum as I was sitting on
19 that bench right there -- I note I'm not on the
20 certificate of service, counsel of record in this
21 case -- that changed some of the positions they
22 brought with regard to this summary judgment. So I
23 want to point that out to Your Honor. I think it's
24 improper to change it on the Friday before of what
25 the summary judgment motion is going to be, and

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1 anything that is in what they call the
2 revised memorandum that changes the grounds --

3 THE COURT: Do you need additional time?

4 MR. McDONALD: -- is improper.

5 well, Your Honor, I haven't even had a chance
6 to go through it, see what the merit is. I've heard
7 the argument --

8 THE COURT: Do you need additional time to
9 respond?

10 MR. MCDONALD: I can respond to the portions of
11 the motion for summary judgment as it was moved and
12 alleged based upon collateral estoppel.

13 THE COURT: Do you need additional time in
14 regards to the revised memo?

15 MR. SILVERNAIL: Not only do I need additional
16 time, I need to get discovery from these people. We
17 don't have any discovery from them. We have been
18 thwarted at every turn in this case from taking
19 discovery. And the argument that was just made to
20 Your Honor was, the primary purpose of my clients
21 for bringing this case was X, Y, and Z. That's
22 Mr. Gende on what their primary purpose is. But
23 we're not allowed to ask them the question.

24 Mr. Wilson is a plaintiff in this case. This
25 is not a class action. He doesn't let somebody else

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1 prove up his -- he's got to come into court and
2 prove up his causes of action just like we do. But
3 to suggest that at the summary judgment stage we
4 don't get to do any discovery and Mr. Gende gets to
5 stand up and say, well, the primary purpose of my
6 clients for abuse of process, for civil conspiracy
7 was this, and it wasn't that.

8 So, Your Honor, not only do I need additional
9 time to respond to the substantive things where they
10 say, well, there is no issue of fact here, we need
11 to finish discovery. Now, I am prepared, of course,

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12 to respond to collateral estoppel arguments that
13 have been brought --

14 THE COURT: I simply asked, do you need
15 additional time?

16 MR. MCDONALD: And I do need additional time as
17 well as to respond to the motion, but to complete
18 discovery, as is the law. Summary judgment would
19 not be appropriate without the plaintiff having a
20 reasonable opportunity to --

21 THE COURT: You've done no discovery? I
22 thought y'all have done a lot of discovery.

23 MR. MCDONALD: Your Honor, as I understand
24 it -- and I'm obviously one of the last ones
25 involved in this case -- these depositions of these

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1 plaintiffs in a six-year-old case have tried to be
2 taken in 2011, 2012 --

3 THE COURT: I didn't ask you that.

4 MR. MCDONALD: -- and now once again, and we
5 can't seem to get it done.

6 THE COURT: Well, I've heard a lot of
7 depositions have been taken. Have they not?

8 MR. SILVERNAIL: My understanding is there's
9 been three depositions taken in this case -- four
10 depositions taken in this case. So I'm -- and
11 that's one of the primary purposes -- or one of the
12 primary arguments we make, is the arguments are
13 premature.

14 But to answer Your Honor's question directly,

15 we need additional time to respond to new things
16 that I've just got handed on the bench over there,
17 and two, we'd need an adequate time to complete
18 discovery. Now, what that is as a result of
19 Mr. Gende's inability to communicate with his
20 clients, I don't know. But that -- that is
21 something we're entitled to and I think we would
22 need before we respond to any substantive summary
23 judgment issues.

24 THE COURT: I'll let you argue it when we come
25 back on the -- we've got three or four motions we're

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1 going to hear in about two or three weeks. I'll
2 give you two or three weeks to respond to it.

3 MR. MCDONALD: And, Your Honor, I would -- and
4 I understand where the Court is coming from. But
5 with regards to the substantive allegations, I
6 believe I would be entitled to discovery as well.

7 THE COURT: Well, I'll tell you what; since
8 you're beating around the bush, just go ahead and
9 argue them if you don't want any additional time.
10 I'm trying to help you, son. Just tell me what you
11 want.

12 MR. MCDONALD: Well, I understand Your Honor.
13 Here's what I want: I want adequate time to
14 complete discovery. Okay? And the way this motion
15 was originally presented was, didn't need to do any
16 discovery because the motion for collateral
17 estoppel, which I completely disagree with, prepared
18 to talk about, prevent these counterclaims. I

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19 believe it does not.
20 THE COURT: All right. Argue your position.
21 MR. MCDONALD: Okay. With regard to collateral
22 estoppel, copy of the summary judgment from the
23 motion that I have -- or the memo that I have,
24 Plaintiffs now assert this motion for summary
25 judgment on the grounds that Pope's counterclaims

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1 are barred by the Doctrine of Collateral Estoppel
2 because the Supreme Court's opinion in Wilson v.
3 Dallas conclusively establishes the validity of
4 Plaintiffs' claims in this action. That's the basis
5 for their motion.

6 Now, Your Honor, I have copies and I can
7 certainly hand them up. This case was pending in
8 front of Judge Manning. There were several motions,
9 now five years ago. In a brief, Plaintiffs'
10 memorandum in opposition to the defendants' motion
11 to stay stated this: Defendants' pending South
12 Carolina Supreme Court challenge to the settlement
13 agreement reached by the attorney general and heirs
14 and the challenge to the defendants' removal as
15 trustees of the estate -- what came to be Wilson v.
16 Dallas -- has no impact on the instant tort action.

17 So five years ago, the position was completely
18 different in this very case on whether or not that
19 case had any impact on this instant tort action.
20 Now, why is that important? There was a motion to
21 dismiss in this case wherein my client, Ms. Pope,

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22 moved to dismiss the plaintiffs' cause of action,
23 taking a position she was unsuccessful at taking.
24 But some of the cases that gave rise to Wilson v.
25 Dallas established some of the things in this

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1 action, okay, and moved pursuant to rule 12(b)(8).

2 In opposition to that, the plaintiffs,
3 represented by the same lawyer, stated: "Cases were
4 resolved --" cited cases. "The cases were resolved
5 by way of a May 26, 2009 order approving the
6 settlement. However, not one of the lawsuits
7 brought in relation to this estate concerns the
8 breaches of fiduciary duty by Adele Pope and Robert
9 Buchanan in the management of the estate."

10 They convinced Judge Manning that they were
11 right. Judge Manning issued an order in this case.
12 A review of this order -- referencing your
13 settlement order -- the settlement order you
14 approved and signed -- a review of this order
15 indicates that these cases are not similar in any
16 significant respect of the case involved. Not one
17 of the lawsuits brought in relation to the Estate
18 concerns the breaches of fiduciary duty brought by
19 Adele Pope and Robert Buchanan in the management of
20 the estate.

21 So why is that important, Your Honor, from our
22 standpoint at the outset? They're judicially
23 estopped. They won that motion. They're judicially
24 estopped from coming in here today and taking a
25 completely different position, which is Wilson v.

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1 Dallas and the Estate cases conclusively establish
2 their claims in this case. They can't do it, under
3 my reading of the law in judicial estoppel.

4 Once they're successful in taking that position
5 in this case, they don't get to change it again if
6 they think they've got a new argument that they can
7 pursue. So that's the first argument that I have in
8 regard to collateral estoppel.

9 The second argument I have with regard to
10 collateral estoppel is, nothing in Wilson v. Dallas,
11 nothing that was read to you, establishes
12 the elements -- or fails to establish the elements
13 of abuse of process, tortious interference, civil
14 conspiracy, or the statutory causes of action, which
15 I'll go through here in a moment.

16 There was nothing that was ruled upon in that
17 case that has an impact on whether or not Ms. Pope
18 can bring an abuse of process for conduct, as
19 alleged in the complaint, or tortious interference
20 with contractual relations, as alleged in the
21 complaint. Nothing in there that would suggest that
22 what the issue is, is conclusive as to one of the
23 elements of any of the causes of action that have
24 been brought.

25 And I'll draw your attention while we're here,

1 talk about the abuse of process. You were handed up
2 a case -- the Food Lion case. I'd note to Your
3 Honor that certiori was granted in that case. And
4 apparently the case settled, because it still
5 appears on my Westlaw as August 6th, 2003.

6 So I do have a case that postdates that called
7 Swicegood v. Lott. Certiori was denied in that
8 case, Your Honor. And that is 379 S.C. 346. And
9 what happened in that case was the sheriff's office
10 had a deputy that thought -- they thought he knew
11 something about -- something else that another
12 deputy was doing that was improper.

13 And what they did is they went back through his
14 time records, because at the time, the time sheriffs
15 would -- not moonlight, but in their off time, they
16 would take up some private security guard type of
17 things. And they compared his time records and
18 there was some overlaps. Right? And they tried to
19 say, well, you know, we -- you know, he had the
20 right -- he had the overlap on his time records,
21 we're good, you can't have an abuse of process case.

22 And what the Court of Appeals said in that case
23 was: "The existence of probable cause for the
24 double-dipping arrest warrants is not in dispute.
25 Nonetheless, there's clearly evidence in this record

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1 that the Department initiated the investigation into
2 Swicegood's moonlighting with the intent of coercing
3 him into implicating Galley. The willful act of
4 abuse of process --" and goes through the elements.

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5 "The evidence before us is sufficient to create a
6 jury question as to both ulterior purpose element
7 and all three aspects comprising the willful act
8 element."

9 So I'd submit to you that it's a misnomer to
10 suggest to this Court that even if Wilson v. Dallas
11 could be read that way, which it's obviously the
12 complete opposite position that they were taking
13 before this Court prior to today, it still doesn't
14 conclusively establish anything. It's still a jury
15 question. To use the terms that were thrown about,
16 primary, whether it's a primary purpose, whether
17 it's an incidental purpose, those are questions of
18 fact.

19 So to suggest that Wilson v. Dallas could be
20 read in such a way where it's conclusively
21 established their claims with regard to abuse of
22 process, I think, is completely improper.

23 The next thing they say is, well, it's moot.
24 The abuse of process claim is moot because the
25 Supreme Court overturned the settlement agreement.

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1 well, of course that doesn't make this action and
2 the counterclaims that are brought in this case moot
3 if the -- you find the money that the bank robber
4 took, the case isn't moot, okay, it's just that that
5 settlement agreement was thrown out. But that
6 doesn't moot her counterclaim, so I wanted to
7 address that. Somewhat confused.

8
9 incidental issues related to abuse of process in the
10 Swicegood case. The other case that's the primary
11 Supreme Court case, the Winn-Dixie case, the -- a
12 gentleman was in there getting some things, cooking
13 oil, I think, and some other things, and put some
14 sardines or some salted meat or something in his
15 pocket. And he checked out, he didn't pay for it.

16 The manager comes up to him and basically says,
17 I think you've been stealing in here before, okay,
18 so you either give me \$10, even though the cost of
19 items was only, like, a dollar, or I'm going to call
20 the cops on you, okay, that's just the way it's
21 going to be.

22 And what the Supreme Court in the Winn-Dixie
23 case -- and I would encourage Your Honor, if you
24 don't have a copy, I believe I have a copy here.
25 But it reiterates the holding in Swicegood, which

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1 is, regardless of how the guy -- obviously we're not
2 conceding that Ms. Pope did anything wrong. But
3 regardless whether the guy walked out of the store
4 with the salted meats in his -- that's not a
5 defense, okay, to what you did.

6 And, guess what, like all of these abuse of
7 processes cases, it was extremely factual in what
8 they looked into; what is the extent, what -- was
9 there the willful element of intent? And I think
10 that makes this especially improper for summary
11 judgment, but also this notion of conclusively

12 establishes, as a result of the Wilson v. Dallas
13 decision, we would disagree with.

14 The same is true for civil conspiracy. The
15 case law under the case that was read to you and
16 cited in their memo talks about the primary purpose
17 of bringing the --

18 THE COURT: Well, why should my analysis be
19 different than the federal judge's analysis?

20 MR. MCDONALD: Well, the federal -- the facts
21 with regard to the -- and if you read that opinion,
22 Your Honor --

23 THE COURT: I did.

24 MR. MCDONALD: -- which is attached to their
25 motion, the facts with the federal case, okay, give

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1 rise to the conduct of Forlando Brown; what did you
2 do, sir? And this brings me back to my point
3 earlier: This is not a class-action situation where
4 one of these plaintiffs gets to ride on the
5 coattails of other plaintiffs so their conduct is
6 somehow justified by the conduct of another
7 individual. If you read that decision, it's focused
8 on the conduct -- and there's some history with that
9 decision as well.

10 But it's focused on the conduct of that
11 individual that brought that federal court case.
12 The notion that these other -- who is not a party to
13 the present action -- that these other defendants
14 somehow simply could not be liable for abuse of

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process because of conduct related to that case, I

think, is -- would be incredibly improper. That doesn't give them a pass under issue of preclusion, factual -- that there's no link to those things, would be my submission on the federal court case.

With regard to the tortious interference case, again -- tortious interference cause of action, again, obviously, you've heard some arguments here that are new with regard to whether or not they don't believe that there was a contract. And, obviously, I would continue -- or have my continued

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objection to that on the basis I just got that argument before this hearing started.

But with regard to the collateral estoppel element, the facts or scenario or the elements of a tortious interference case are not precluded by the ruling in Wilson v. Dallas. There's no finding in Wilson v. Dallas, even if the plaintiffs are not judicially estopped from making that -- or taking that position, which we believe they are.

There's no finding that either proves or forbids facts associated with those causal elements. It just doesn't line up that way, it's not that simple, and would be inappropriate for collateral estoppel at this stage in summary judgment and, we would take the position, at any stage.

With regard to the fraud statute, you heard some argument, Your Honor. And I believe the position was, there's not any case law, Judge, so we

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19 don't know how this statute applies. Well, what I
20 typically do is I read the statute, because my
21 position is that legally a statute is to be given
22 its plain and ordinary meaning. And to the extent
23 it's not ambiguous going down that road, well, then
24 you don't have any case law and, quite frankly, you
25 don't need any case law.

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1 And what that section says is: "Whenever fraud
2 has been perpetrated in connection with any
3 proceeding or any statement filed under this code,
4 probate code, or if fraud is used to avoid or
5 circumvent the provisions or purposes of this code,
6 any person injured thereby may obtain appropriate
7 relief --" it goes on -- "against the perpetrator of
8 the fraud." And it specifically talks about third
9 parties up to and including saying you can't go up
10 against a bona fide purchaser.

11 So our position on that would be, with regard
12 to collateral estoppel, is any person can bring it.
13 There was no finding in the Supreme Court, Wilson v.
14 Dallas, once again, assuming that they're not
15 judicially estopped from taking this position, that
16 Ms. Pope wasn't injured by a fraud, that there was a
17 fraud, that there wasn't a fraud and, therefore,
18 would be inappropriate for collateral estoppel.

19 with regard to the attorneys' fees, 62-7-1004,
20 once again, the statute reads: "In a judicial
21 proceeding involving the administration of a trust,

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the Court, as justice and equity may require, may
award costs, expenses, including reasonable
attorneys' fees to any party to be paid by another
party or from the trust of the subject of the

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controversy.

Once again, as this motion was originally
brought under collateral estoppel, it says: "Pope
cannot show that award of attorneys' fees would be
required by justice and equity, once again pointing
back to Wilson v. Dallas which did not have any
bearing on 4900 because it wasn't related to 4900,
as was the position of the defendants when they
survived the motion to dismiss."

So there was no determination that justice and
equity would not require attorneys' fees in this
case, one; two, the record in Wilson v. Dallas, if
I'm not mistaken, was closed in, I believe, 2009,
Your Honor. And so the notion that collateral
estoppel somehow would give rise to conduct and
events that occurred after the record was closed is
also a misnomer to me and, I think, would be
inappropriate.

Now, in response to a few of Mr. Gende's
arguments, the primary arguments, as I heard them,
as I've addressed so far, is the collateral estoppel
element with regard to Wilson v. Dallas. The issue
related to the application of collateral estoppel at
the summary judgment stage requires the -- is still
subject to that standard of viewed in the light most

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1 favorable to the plaintiff -- or to the nonmoving
2 party. And there is not -- there is not a scintilla
3 of evidence to suggest one way or the other, okay,
4 in a preponderance of the evidence burden of proof.

5 That -- the representations that are made in
6 this brief with regard to collateral estoppel are
7 made in a light that they want it to be viewed.
8 They want it to be read that way and read in such a
9 way that establishes these things. I would suggest,
10 Your Honor, that for that very reason it's
11 inappropriate for summary judgment, notwithstanding
12 the fact that we believe they're judicially estopped
13 from taking the position and notwithstanding the
14 fact that Wilson v. Dallas doesn't do that. From
15 the standpoint of our reading, it doesn't establish
16 any of those things, as we just went through, which
17 is the elements of these counterclaims.

18 But I did want to point out to Your Honor that
19 the way I heard the argument from the other side was
20 simply, we want it to be read in a way that's most
21 beneficial to us. And the highlight that I wanted
22 to bring that out was the quote: "Everyone had the
23 same justification for bringing this case." well,
24 what does that mean? Wilson v. Dallas doesn't say
25 what their justifications were for bringing this

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case, doesn't have anything to do with it. So I

think that for those grounds, summary judgment would
be inappropriate.

We have a memorandum here that we filed in
opposition that I can hand up to Your Honor. I'm
not sure if you have a copy of it.

THE COURT: Please hand it up.

MR. MCDONALD: This is our memorandum in
opposition to the motion for partial summary
judgment that they filed. And I have a copy for
Your Honor if you'd like. Actually, I have two.

THE COURT: Thank you. Anything else?

MR. MCDONALD: Yes, Your Honor. We'd just rely
on the filings in the record, including the
affidavit of Ms. Pope. I think it was filed in
conjunction with both this motion and the next
motion that's set to be heard. Thank you, Your
Honor.

THE COURT: All right. Anything in reply?

MR. GENDE: A few things, Your Honor. I think
it's interesting --

THE COURT: Speak up for me.

MR. GENDE: I think it's interesting that
counsel would find some fault in us e-mailing them
our revised memorandum on Friday and I get handed

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their memorandum in opposition now. Unless I'm
missing something, I haven't gotten it before.

THE COURT: That's okay. Let's not --

MR. GENDE: No. It's just --
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5 THE COURT: Go to the merits.

6 MR. GENDE: There's -- I think there's some of
7 the merits in there. Let me just quickly address
8 the items that have been raised.

9 THE COURT: Well, are you taking an
10 inconsistent position now that you took with Judge
11 Manning?

12 MR. GENDE: Well, let's look at that.

13 THE COURT: Let's do look at it.

14 MR. GENDE: Where is the item they handed up?
15 Okay. They handed up a memorandum in opposition to
16 defendants' motion to stay filed in 2011. Okay. I
17 haven't had time to go read back through that whole
18 thing. Counsel referred to some other cases. Now,
19 he hasn't handed those to me and I don't know what
20 cases he's talking about and I don't know what
21 positions he's talking about. Maybe he's going to
22 hand that to me now and I'll be able to see it. I
23 guarantee you the date is prior to the determination
24 of Wilson v. Dallas.

25 And to quote Amos, I'm not the profit and I'm

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1 not the son of a profit. No one knew what Wilson v.
2 Dallas was going to do, no one knew what the Supreme
3 Court was going to do. So positions that we were
4 taking prior to the subsequent intervening, and in
5 many ways earth-shattering event in Wilson v. Dallas
6 cannot be used against us to indicate that we're
7 taking an inconsistent position.

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New information has come down the pipe. The

8
9 Supreme Court spoke on things in Wilson v. Dallas.
10 Therefore, again, I haven't had time, because they
11 haven't given me the benefit of this either, to
12 review all of their arguments. But I'd say we're
13 not -- when all of the information is taken into
14 account, Wilson v. Dallas included, we are not
15 taking prior inconsistent positions. So that's --
16 without addressing each one of them individually, I
17 would say that.

18 I don't believe I weaved through facts when I
19 presented my argument, and you can be the judge of
20 that. The items that we raised, for example, the
21 primary purpose, there is no need for any discovery
22 to be on that because if there's another purpose --
23 and Wilson v. Dallas conclusively establishes that
24 she was removed for cause, discord among the family
25 members, problems with the payment of attorneys'

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1 fees, problems with the sale of the Grammy, items
2 that we allude to.

3 Since the Supreme Court has conclusively
4 established that, the primary purpose cannot be
5 bringing the case either for an abuse of process or
6 for civil conspiracy. We all are bound together.
7 It's conclusively established that we're all bound
8 together. You know we're all bound together.

9 I'll be happy if I need to -- and just for
10 purposes of the record, I'll hand up the settlement
11 agreement and the addendum that you approved which

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12 shows that that's what binds my clients together.
13 so they all have the same justification in bringing
14 the suit. That's not going to change with
15 discovery. The settlement agreement is what it is.

16 The fact that it was overturned doesn't vitiate
17 that argument. At the time of our bringing the
18 suit, the settlement agreement was, in fact, in
19 effect. So just for the completeness of the record,
20 if I may approach, I'll hand those to the court
21 reporter.

22 (Defendants' Exhibit No. 1 marked for
23 identification and received in evidence.)

24 we aren't arguing about establishing the
25 elements of any causes of action, because I think I

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1 stated clearly. And I won't rehash every one of
2 them. We're arguing that the holding in Wilson v.
3 Dallas means Ms. Pope cannot sustain certain
4 elements required by law of her causes of action.
5 That's why the issue of preclusion is appropriate,
6 and that's why discovery is not necessary, and
7 that's why I did not read through the facts and, I
8 will submit, that is, in part, why we wanted to make
9 that very clear in the revised memorandum.

10 THE COURT: Thank you.

11 All right. Mr. Jones.

12 As to the motion for summary judgment, I want
13 proposed orders within --

14 MR. GENDE: Whatever pleases Your Honor.

15 THE COURT: No, sir.

16 MR. GENDE: Fifteen days.

17 THE COURT: Within -- how many days you want?

18 MR. MCDONALD: Yes, sir. Just as a point of
19 clarity, I just need to know what I'm going to be
20 responding to because, obviously, I took the
21 position that the -- and I don't want to waive that
22 objection to the new items. So are the proposed
23 orders only going to relate to the collateral --

24 THE COURT: The proposed orders will be on
25 what's been argued here before me today. I gave you

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1 an opportunity if you wanted additional time. You
2 hem-hawed all around. So I'm going to rule on
3 what's been argued here today.

4 MR. MCDONALD: And the --

5 THE COURT: Fifteen days? How long you want?

6 MR. SILVERNAIL: Just so the record -- just so
7 I -- to make the records clear, obviously we object
8 to the new stuff and needing additional time for
9 discovery. With regards to proposed orders, 15 days
10 is --

11 THE COURT: Thank you.

12 All right. Last on the list is AG's motion to
13 be dropped --

14 MR. JONES: Yes, sir.

15 THE COURT: -- to be no longer a party --

16 MR. JONES: Yes, sir.

17 THE COURT: -- whatever the correct word is.

18 Mr. Jones.

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19 MR. JONES: Yes, sir. Your Honor, Sonny Jones,
20 State Attorney General's Office. At the counsel
21 table with me is Assistant Deputy Attorney General
22 Mary Frances Jowers.
23 I would like to comment on the last argument.
24 If we can go back to your ruling on the judicial
25 estoppel issue, your ruling on the Wilson v. Dallas

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1 case, I would like to go back there, but we can't do
2 that.

3 On the issue of the AG being dropped, I think
4 it's helpful to kind of give a background of what
5 Your Honor probably knows but I'd like to put in the
6 record as far as why the AG is in charitable trust
7 cases. There's statutory law in 1-7-130, there's
8 common law in the cases. If you go to Epworth, you
9 go to the McMaster case, or even the Wilson v.
10 Dallas case, it talks about the responsibility of
11 the Attorney General's Office and the public
12 interest to protect charitable trust, prevent
13 breaches in the administration of the trust, and to
14 protect known and unknown beneficiaries.

15 With that in mind, Your Honor, back in 2007 in
16 September we approached Your Honor. We became
17 concerned about the current James Brown case, the
18 actions of the trustees that were currently trustees
19 of the case -- two of them were left at that time, I
20 believe -- and then the subsequent appointment of
21 Mr. Buchanan and Ms. Pope as far as, initially,

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22 conflict of interest, also about the fact that our

23 contention was that they were not properly
24 appointed.

25 So we had an interest to stay in that case.

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1 And we stayed in that case through the decision by
2 the State Supreme Court in Wilson v. Dallas. And
3 based upon our reconsideration in that case, which
4 we've attached to our motion that we filed with you,
5 we tried to correction some things we thought were
6 in the record. But one thing we told the Court was
7 that with the removal of Mr. Buchanan and Ms. Pope
8 and the appointment of a new trustee, that our job
9 will be done because we don't need to be in a case
10 unless we think there's some fraud or mismanagement
11 or -- and sometimes different interpretations by a
12 trustee in the law.

13 So, Your Honor, when that case went back to you
14 in 2013, we approached you in, might have been in
15 this courtroom or it might have been the one in
16 Barnwell, saying we understand that Mr. Bauknight's
17 up for consideration for appointment, our office is
18 definitely satisfied with the way he is a
19 professional fiduciary, and that based upon -- I
20 think you'd appointed him as an SA at the time or --
21 and also a trustee, temporary trustee -- that we'd
22 be satisfied and we would take -- and we asked the
23 Court to let us take in a monitoring role, which
24 Your Honor did an order of October of that year.

25 So the point is that when -- we have concerns

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1 we're in cases. And we -- in fact, we are a
2 necessary party per law, but not an indispensable
3 party, meaning that everybody basically tells us
4 about charitable trust cases, but we don't
5 necessarily have to be in all the cases to get a
6 final result.

7 THE COURT: Well, but you got in the James
8 Brown case, and then it went up on appeal, and then
9 Attorney General McMaster engaged the services of
10 current counsel, I assume, to bring the litigation.

11 MR. JONES: Yes, sir. I'm going to get to that
12 in a second.

13 There's some confusion on what was the role of
14 the AG on Mr. Bauknight retaining the wingate firm.
15 I would go back to, Your Honor, when we had an issue
16 with Few and Gilreath being hired by Ms. Pope early
17 on, and we said, Your Honor, we want them to go by
18 the fee part of the AG's contract because it's a
19 charity, may be a big charity here, and we recognize
20 we can't control Ms. Pope on who she hires, but we'd
21 ask them to try to consider to lower the fee down.
22 And you pointed to Mr. -- I think Mr. Gilreath in
23 the crowd out here and said, you go talk to him, but
24 I don't think you can get his fee down. I said,
25 Your Honor, we don't have to get his fee down but

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1 find somebody just as good. That's when we went

2 through Mark Bite [phonetic] and Steve Hamm, but
3 they were not satisfactory to Ms. Pope.

4 In January of -- and filed a motion with you
5 outlining the different fees, how much less it would
6 cost in charity on certain levels and we filed that
7 with you. And you filed an order, which you did in
8 January, recognizing that we can't control who the
9 trustee hires. And, in fact, to Mr. Few and
10 Gilreath's credit they did reduce their fee down for
11 the whole thing.

12 So when the case came about the deadline for
13 the 4900 case -- and it was a year, coming up on the
14 date of a year -- and something having to be done,
15 our office -- and I was concerned, again, about the
16 fee. I would like the fee -- if Mr. Bauknight hired
17 the Wingate firm, that the fee be a lower fee for
18 the charity part.

19 And so you see that letter is in the packet May
20 18th, 2010. It's a letter to Mr. Bauknight saying,
21 I understand you're going to hire Mr. Wingate. And,
22 in fact, he did. And, in fact, to my understanding,
23 the fee is less for the charity part.

24 We're on the caption of this case, Your Honor,
25 the 4900 case. And if you look at that caption,

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1 there's a reason for the way it's laid out. At this
2 time, the case was pending before the State Supreme
3 Court. We didn't know what would happen. And, in
4 fact, the thought was, if you look at the -- that

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5 first part, you got Mr. Bauknight representing
6 everybody. And we're included in the complaint as
7 the beneficiary.

8 And in the second part, you don't see
9 Mr. Bauknight. And that would be from a strategy
10 point of view. If the case was overturned and
11 Ms. Pope and Mr. Buchanan was still in there and
12 Mr. Bauknight was out, there's a statute of
13 limitations of one year, she'd be suing herself. So
14 the fault would be, the strategy part was to keep us
15 in -- all these in the suit, if it would work that
16 way.

17 So when the case came out -- so there's no
18 question at this juncture when this case came out
19 that Mr. Bauknight was hiring the Wingate firm. You
20 have to keep in mind also, Your Honor, from what I
21 just said about the law, is we only have one reason
22 to be in this case, and that is to protect the
23 charitable beneficiaries and to protect the
24 charitable trust.

25 Under 62-7-405, the probate code allows the

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1 attorney general, a trustee, or a party with a
2 special interest to protect the charitable trust.
3 So when Mr. Bauknight was appointed back in the
4 earlier case by you, we're satisfied with Mr.
5 Bauknight, we're stepping back.

6 In this case when Mr. Bauknight brought the
7 action, Mr. Wingate's firm, they were representing

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8 our interest. They, in effect, were our lawyers.

9 No different than if Mr. Few and Gilreath were here
10 today, I'd be sitting back there and I'd say good
11 job because you're our lawyers for the charitable
12 interest.

13 Now, that may be a communication, that may be
14 bad words, I would say, but when I deal with fee
15 contracts -- and I've dealt in our office, for ten
16 years, probably 20. I'm probably the sole person
17 outside of maybe two of them. It's pretty rigorous.
18 We've been to the Supreme Court twice, been attacked
19 two or three times about fee contracts. All that we
20 intended in this one and all that was included was
21 the fee part, not anything else on control or
22 anything else.

23 So Mr. Bauknight hired Mr. -- the Wingate firm.
24 And right now, when we responded with consideration
25 with the Supreme Court, said, we want to make sure

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1 you understand our position, we aren't going to
2 argue with you about what you did, but let you know
3 we aren't trying to control everything, but with you
4 saying a new trustee is going to be appointed, we're
5 going to step back. That's what we told the Supreme
6 Court in our reconsideration, which we filed with
7 you. That's the same position we took when we went
8 down to, I think it was, Barnwell and you assigned
9 Mr. Bauknight; let us step back to a monitoring
10 role, we don't need to be there.

11 So what we're picking up today is a motion that
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12 we filed back in 2013, I think, to be dropped. Our
13 job is done, Mr. Bauknight is still there, the
14 courts appointed him, got a great firm with
15 Mr. Wingate, he's representing Wingate firm to
16 Mr. Bauknight, our interest, and the charity. So
17 they're our lawyers in effect because they are
18 representing our interest. And I wouldn't be able
19 to stand up and say anything with Mr. Gilreath and
20 Few, so there's no reason for us not to be dropped
21 in the case today.

22 Now, I did make a notice of special appearance.
23 I hope Your Honor will give us that. We've been
24 talking here for a little while. But it's necessary
25 to argue that motion.

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1 Now, the issue could come up on the
2 counterclaim. Now, the counterclaim has not been
3 resolved, that's why I wanted it to be argued before
4 we argued our case so I wouldn't have to go into
5 much detail. Our position, one, would be that any
6 counterclaim, if it was found to be against the
7 parties, at that time would be for the interests
8 that were in the case.

9 And what is that interest? To protect the
10 charitable beneficiaries. So anything that goes --
11 if it's meritorious in the counterclaim, if you
12 don't drop them today, would be against the
13 charitable beneficiaries. That's why we're in the
14 case, not the AG's office.

15 So, first of all, we should be dropped. We
16 have asked the Supreme Court that. We're satisfied
17 with Mr. Bauknight's professional fiduciary,
18 satisfied with Wingate firm. We don't need to be in
19 this case. Justice Toal said outside of fraud or
20 concern, you don't need to be in the case. And on
21 the counterclaim, we're saying that would go against
22 the charitable beneficiaries, not go against the AG.
23 Now, following up on that, just looking, Your
24 Honor, at the counterclaims -- and this is kind of
25 echoing what Mr. Gende said. There's no question on

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1 the abuse of process. They're saying you filed it
2 to get an advantage in the Wilson v. Dallas case.
3 Well, that case is over, and it shows it was
4 meritorious. It shows that there were problems with
5 Mr. Buchanan and Ms. Pope. So we think, number one,
6 on its face, that part of the counterclaim is gone.

7 Number two, on the conspiracy, Mr. Gende
8 addressed it. In addition to what he said, there --
9 her claim against the AG's office in paragraph 88 is
10 we didn't help her out in the federal case. Well,
11 in the federal case, Forlando Brown sued her for
12 conflict of interest. That was the same -- because
13 initially, Your Honor, we filed a conflict of
14 interest against Ms. Pope and Mr. Buchanan in your
15 court, and I think they adopted our pleadings.

16 But so that was her complaint against us then,
17 and that we gave no notice to the settlement. I
18 would ask you to take judicial notice of the

19 documents that we filed in support of our
20 reconsideration. There's an issue that Mr. Buchanan
21 and Ms. Pope did not know the very date. But you'll
22 see it in the record under oath when Mr. Levenson
23 and Professor Medlin questioned her; there could
24 have been issue of the settlement, but did not know
25 about the date. So we're saying that's not

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1 meritorious on its face.
2 And the issue that I think Mr. Gende has
3 addressed on the counterclaim about a court order on
4 the contract is fine. Plus, with the June 15 order,
5 that Supreme Court said what a great job you're
6 doing, Your Honor, and you were -- and I think
7 you're doing a great job, and others think the same
8 thing -- is they said, Ms. Pope, we don't want you
9 to mess with the James Brown case anymore, you're
10 costing a lot of time and a lot of money.

11 Well, this part of her coming in under
12 62-1-106, how can she say and complain that the
13 proper heirs were not designated? She has no
14 standing. So -- but that's gone per the Supreme
15 Court order. That's, once again, some things that
16 have happened after the letter or the motion that
17 Mr. Gende filed early on in the 4900 case because
18 the Wilson v. Dallas changed some things. I'm a
19 witness to that; it changed some things.

20 And that would be -- Your Honor, in summation,
21 we'd ask, per our request, per our statements to the

22 Supreme Court, that we be dropped as a party in this
23 case and the other case. We've been dropped in the
24 other case. The reason is we got a great trustee in
25 both spots --

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1 THE COURT: Dropped in the other case?

2 MR. JONES: In the case below. We came in and
3 withdrew the first case and you allowed us to
4 withdraw because of Mr. Bauknight being appointed.
5 In this case, we've been in this case, Mr. Bauknight
6 has hired the Wingate firm, we're satisfied with
7 them, they're our lawyers the same as Few and
8 Gilreath are.

9 If anybody thinks that when I -- when somebody
10 says client and they're thinking of something else,
11 that's my problem on communication. Because, Your
12 Honor, for example, when you think of national
13 championship football, you think of Carolina. You
14 know what I think of? I think of Clemson. That's
15 communication. It's my communication. I said that
16 they're our lawyer. Okay?

17 But with a history of me doing all the fee
18 contracts and doing these cases with charities, that
19 is what it was. It was exactly that; that they're
20 representing our interest. For those reasons, I
21 would ask that the Attorney General's Office and the
22 Attorney General be dropped in this case.

23 THE COURT: Thank you. Who is going to
24 respond?

25 MR. McDONALD: I will, Your Honor.

1 THE COURT: Mr. McDonald.

2 MR. MCDONALD: Brent McDonald once again. May
3 it please the Court.

4 THE COURT: Yes, sir.

5 MR. MCDONALD: Mr. Jones said a lot of things.
6 This is a Rule 21 motion that he's made to be
7 dropped pursuant to Rule 21, which is the misjoinder
8 rule. There's been no allegation of misjoinder
9 under that rule at all just at the outset. So for
10 that very reason, this motion in and of itself
11 should be denied because Rule 21 has no bearing on
12 what I understand they're asking the Court to do.

13 Now, there's been at least two issues in this
14 case when it was before Judge Manning wherein my
15 client tried to get the Attorney General out of the
16 case. What are you doing in a private tort action
17 with other private plaintiffs suing me, a private
18 citizen?

19 wherein, the Attorney General, by and through
20 their lawyers, took the position, no, we are a
21 proper party to this case, we are a party to this
22 case. And, in fact, they stated, to use Judge
23 Couch's words -- because they had gone and said,
24 well, the Lilly -- the Eli Lilly case allows us to
25 be a party. To use Judge Couch's words from Lilly,

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1 this is a tort action, plain and simple.

2 well, how it works, Judge; and you know this --
3 I'm hesitant to even go through it. How it works
4 is, you bring an action against somebody, and you're
5 subject to the rules of civil procedure. And the
6 South Carolina courts have spoke to this. If you
7 want to come and play in that field, well, then
8 that's where --

9 THE COURT: Well, if you wanted them out back
10 then, why are you opposing it now?

11 MR. SILVERNAIL: Because now we're six years
12 later. All right? And what they want -- when we
13 get in front of a jury one day, they want to say,
14 well, we're out -- assuming Your Honor rules with us
15 moving forward and we go and get in front of a jury.
16 They want to say, we're out because Judge Early said
17 we could be out.

18 And that prejudices us at this point on the
19 counterclaims. We're out because we got a judicial
20 order here and all the reasons that we just heard
21 from Mr. Jones, this is why we were doing it, and
22 we've got an order at the end of it.

23 And we think it's inappropriate under Rule 21
24 because it's just not what Rule 21 allows for, one,
25 and two, the counterclaims are still pending against

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1 them, and, three, most importantly, perhaps, is
2 they've jumped into this pool, convinced the judge
3 on at least one occasion with regard to motion to
4 dismiss, and another occasion with regard to a --

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5 Pope's motion to disqualify Sweeney, Wingate &
6 Barrow and to enjoin Russell Bauknight's set
7 depositions to amend answer, that this is just a
8 tort action, plain and simple, and they don't get to
9 have special rules.

10 So just to reiterate, Rule 21 has absolutely no
11 application to this whatsoever. The motion should
12 be denied; two, it prejudices our client just to let
13 them come into the case with the -- we took the
14 deposition of former attorney general now Lieutenant
15 Governor McMaster, and he made the point on his own
16 to say, listen, the attorney general of this state
17 enjoys a very good reputation. It's not like some
18 billboard lawyer bringing a case against you, it's
19 the Attorney General of the State of South Carolina
20 bringing this case. And that's what happened in
21 this case, and that's where we are today. And we
22 think it would be improper to let them be dropped
23 under Rule 21.

24 MR. BUNDY: Your Honor, I hate to pull on -- do
25 you mind if I say --

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1 THE COURT: Only one person can make an
2 argument. But I'll let you do it.

3 MR. BUNDY: Thank you, Your Honor. I'll be
4 brief.

5 If they want to be dismissed with prejudice,
6 you know, and we leave our counterclaim, I won't
7 oppose that. But what I would like from you, if

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8 that's the way to go -- because that's the

9 appropriate way to go. Okay?

10 They have -- to be moved to be dismissed, they
11 have to have our permission, right, at least at this
12 point, six years later. They don't have a right
13 under Rule 21 to get out, but they can absolutely
14 quit whenever they want to.

15 But if you grant the motion to dismiss, the
16 only thing I'd like you to do is put in there that
17 when we try -- when it comes up at trial, that they
18 were in it and that they got dismissed with
19 prejudice. They can't come in and give a bunch of
20 reasons about all this other stuff. What they
21 really ought to have to -- because they will.

22 That goes to the heart of our counterclaim. If
23 they can come in and say, we have the judicial
24 imprimatur, okay, that we brought a case and we
25 dismissed it without prejudice because we didn't

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1 have any ulterior motives or none of this other
2 stuff, then they're going to undermine our
3 counterclaim through this kind of a tricky move.

4 So either they ought to be required to dismiss
5 with prejudice without the ability to explain that,
6 or they should be required to come to court, put up
7 their evidence, and at the end of their case, I'll
8 move to dismiss based on of lack of evidence under
9 the hood of directed verdict. You see what I'm
10 saying?

11 I mean, they came into this thing. They sued
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12 Adele. She counterclaimed against them. Henry
13 McMaster, I took his deposition, he said they were a
14 party. We got a videotape of it. I'd love for you
15 to see it. We've cut it. We can send it to you.

16 THE COURT: I believe what you say.

17 MR. BUNDY: Sir?

18 THE COURT: I believe what you're telling me.

19 MR. BUNDY: But I -- we went through the -- and
20 he said -- I said, well, it's not only there,
21 Mr. McMaster, but in the body of the complaint, you
22 allege that you're a party. He goes, yeah, it looks
23 like I'm a party. And we agreed that when he was a
24 defense lawyer --

25 MR. JONES: Your Honor, I have to object

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1 because I understand that Mr. -- General McMaster
2 has not reviewed or brought back his transcript.

3 THE COURT: Your objection is noted.

4 MR. JONES: So anything he's saying now is part
5 and parcel and has not been reviewed in a certified
6 transcript.

7 THE COURT: Very well.

8 MR. BUNDY: Well, he said it under oath. He's
9 going to have to explain it.

10 THE COURT: Go ahead.

11 MR. BUNDY: He testified -- okay. We went
12 through the caption. And he testified, yes, we were
13 a party. I went through the body of the complaint
14 with him and he testified, yes, we were a party. I

15 said, Mr. McMaster, you're a lawyer too. I said, if
16 you were defending this case, would you expect and
17 read this to say that party is a plaintiff and I
18 better send him an answer, otherwise I'm going to be
19 in default, or words to that effect? And he agreed
20 with me.

21 He also testified he'd never read the will, he
22 also testified he had not one single personal fact
23 about one single allegation of the entire complaint,
24 never read the will.

25 THE COURT: Thank you.

115

1 MR. BUNDY: Thank you, Your Honor, for allowing
2 me to speak.

3 MR. JONES: Short response, Your Honor?

4 THE COURT: Yes, sir.

5 MR. JONES: I think the -- and I'm looking here
6 for the basis for our -- the drop. I think there's
7 no injustice to the other side, I think there's no
8 injustice in our position to be dropped.

9 As far as us being dismissed with prejudice,
10 Your Honor, I think in any case that we're in, in a
11 charity case that we're dropped as a party, that
12 Your Honor has the option in the future, or his
13 office does, of making a motion to intervene. If
14 we're out of the case and something goes wrong with
15 the case, no different than wrong with the case down
16 below.

17 We have the option because we have a
18 responsibility of the public interest to come back

Page 102

19 into the case. That's why the shoe of dismissal
20 with prejudice would not be appropriate for the
21 Attorney General's Office. Thank you.
22 THE COURT: Thank you.
23 All right. Let me have proposed orders within
24 15 days from both of you.
25 -- END OF TRANSCRIPT OF RECORD --

116

C E R T I F I C A T E

1
2
3 STATE OF SOUTH CAROLINA
4 COUNTY OF LEXINGTON
5

6 I, the undersigned, Bethanie K. Creppon, Circuit
7 Court Reporter for the Second Judicial Circuit of
8 the State of South Carolina, do hereby certify that
9 the foregoing is a true, accurate and complete
10 transcript of record of all the proceedings had and
11 the evidence introduced in the hearing of the
12 captioned cause, relative to appeal in the Circuit
13 Court for Richland County, South Carolina, on the
14 29th of August, 2016.

15 I do further certify that I am neither of kin,
16 counsel, nor interest to any party hereto.
17

18 September 15, 2016

19
20 s/Bethanie K. Creppon

21 Bethanie K. Creppon

8-29-16+Bauknight%2c+wilson%2c+et+al+v+Adele+Pope.txt
Circuit Court Reporter

22

23

24

25

EXHIBIT 21

1.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

CIRCUIT COURT
2007-CP-02-0122

IN RE:

THE ESTATE OF JAMES BROWN
a/k/a JAMES JOSEPH BROWN

TRANSCRIPT OF RECORD

Heard on Friday, December 21, 2007

Aiken, South Carolina

BEFORE:

THE HONORABLE DOYET A. EARLY III

CIRCUIT COURT JUDGE

Cheri L. Young, RPR
Circuit Court Reporter
P O Box 1154

THE COURT: Ma'am, I'm going around the room as nice as I can.

Ms. Lewis.

MS. LEWIS: Thank you, Your Honor. Ms. Levenson in his petition
for accounting has taken the position that the trust has not
been funded, and as a result that the charitable trust is
invalid.

It is disturbing to hear Adele Pope say today that the
charitable trust is not currently funded, because she has
adopted the position of Louis Levenson who seeks to destroy the
charitable trust. It points out, once again, that Adele Pope's
interests are adverse to the interests of the charitable
beneficiary. And that as a trustee, there are serious issues of
breach of fiduciary duty related to Adele Pope and Bob Buchanan.
If Adele —

THE COURT: Ma'am, I'm asking you to address the issue of Mr.
Gilreath and Few.

MS. LEWIS: I am, Your Honor. If Adele Pope and Bob Buchanan —

THE COURT: And look at me when you talk.

MS. LEWIS: I will, Your Honor.

THE COURT: Thank you.

MS. LEWIS: If Adele Pope and Bob Buchanan have the right to
control litigation over breaches of fiduciary duty of the
charitable trust, they have a conflict of interest because one
of the greatest breaches of all may be the breach of Adele Pope

I — as much as all of us would like for it to be expedited, I don't think any of us believe that this matter is going to be concluded within a short period of time. And so the thought that it has to be made today on hiring Kendall Few and Mr. Gilreath, who are excellent attorneys —

THE COURT: What is your objection, if any? The fee agreement?

MR. BELL: Absolutely. If the attorney generals can negotiate with a quality law firm a better fee agreement, I think we ought to go that way.

THE COURT: Mr. Jones?

MR. JONES: Your Honor, I think, well, I know Professor Medlin and the P.R. trustees have cited provisions of the Trust Code and Probate Code. We don't dispute those. I think our posture at the first hearing was, we just came into this. We can get someone to go by the A.G.'s fee agreement. No one qualms that either the trust is funded first or it goes to the estate. And we have an interest in this —

THE COURT: Sure, you do.

MR. JONES: — because ultimately we're protecting charitable beneficiaries. And we've offered out in an e-mail, and actually it was a 30 percent rate rather than a 33 and a third percent and now they've dropped it to a 30 percent rate, to show the dramatic difference in the two. Millions of dollars in this. And we would offer that to show that, wait a minute here, we can

MS. POPE: Mr. Dallas, Mr. Cannon, Mr. Bradley,

MR. LEVENSON: Greenberg Traurig.

MS. POPE: Greenberg Traurig. Accountants, Ms. Tomi Rae.

MR. MEDLIN: Our client.

MS. POPE: Ms. Tomi Rae, Farr, everybody.

THE COURT: Hold on. I think the Probate Code is pretty clear on that, if I remember my abbreviated probate practice. Go to their claim.

MR. MEDLIN: Mr. Buchanan and Ms. Pope's claim, we would suggest that they in effect have the authority to approve their own claims.

THE COURT: And they've sidestepped that, likely so.

MR. MEDLIN: Sure. They also have the ability as Ms. Pope pointed out to ask the Court for guidance and approval, but even if they had implicitly already approved their own claims, interested persons would have the ability to ask the Judge to review the compensation. And so, I think the process was joined appropriately in by Mr. Buchanan and Ms. Pope who are asking rather than telling us that they want to take their fees.

With respect to the amount of their fees, although special administrators are included within the definition of personal representative for many purposes of the Probate Code, the section that Ms. Lewis cites has one provision she omitted. And that is, you can order beyond the maximum fee for extraordinary

services.

We would certainly take the position at the appropriate time, Mr. Buchanan and Ms. Pope have provided extraordinary services as compared to the usual estate administration, but that ceiling that she cites applies only if you determine there are not extraordinary services.

THE COURT: If I do approve it, what's the payment, how is it paid?

MR. MEDLIN: I think that's what Mr. Jones wanted to hear about from me, and I would agree with Mr. Jones and I think with the language of the petition of Mr. Buchanan and Ms. Pope that that becomes a question of fiduciary accounting at the appropriate time. We need to determine what services were performed on behalf of what entity. We've got an estate and a trust, although that now is an issue.

THE COURT: When you say that's an issue, I assume that we have not had the attack on the validity of the trust.

MS. POPE: Yes, Your Honor.

THE COURT: I mean, formally.

MS. LEWIS: I haven't seen it. What's the attack?

MR. BELL: It's been filed.

MS. POPE: I haven't read it yet.

MS. LEWIS: Louis, did you file it yesterday?

MR. ROSEN: I filed it. You'll be served in due course.

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

COURT OF COMMON PLEAS
07-CP-02-122

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

TRANSCRIPT OF RECORD

SEPTEMBER 28, 2008
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, ESQ.
ATTORNEY FOR THE THE HEIRS

ROBERT N. ROSEN, ESQ.
DAVID L. MICHEL, ESQ.
M. JEAN LEE, ESQ.
S. ALAN MEDLIN, SQ.
ATTORNEYS FOR THE TOMI RAE HYNIE BROWN

ADELE J. POPE, ESQ.
ROBERT L. BUCHANAN, JR., ESQ.
SPECIAL ADMINISTRATORS

A. PETER SHAHID, JR., ESQ.
ATTORNEY FOR THE GUARDIAN AD LITEM

STEPHEN M. SLOTCHIVER, ESQ.
GUARDIAN AD LITEM

Statement of Mr. Jones

15

1 MCMASTER SAT AT ONE TABLE. THE BUDGET AND CONTROL BOARD
2 AND THE TRUSTEE OF THE CHARITABLE TRUST WHICH WAS MENTAL
3 HEALTH -- IT'S A STATE FUND -- SAT AT THE OTHER TABLE AND
4 THE SUPREME COURT SAID IN THAT CASE THAT THE ATTORNEY
5 GENERAL IS THE PROPER PARTY TO PROTECT ADMINISTRATION OF
6 THE CHARITABLE TRUST.

7 SO, IF ANYBODY DISAGREES WITH WHAT THE ATTORNEY
8 GENERAL IS DOING IN THIS CASE, THEY HAVE NO STANDING. THE
9 ATTORNEY GENERAL IS HERE. HE IS PROCEEDING IN GOOD FAITH.
10 WE HAVE A DEAL WHICH WE THINK IS A REMARKABLE DEAL TO GET
11 SCHOLARSHIPS TO THE KIDS.

12 NOW, THE THOUGHT WOULD BE IF --

13 THE COURT: SO, YOU HAVE THE AUTHORITY ON BEHALF OF
14 THE STATE AND THE TRUSTS FOR THE CHILDREN TO TELL THIS
15 COURT YOU THINK IT IS AN EXCELLENT SETTLEMENT ON BEHALF
16 FOR THEIR BENEFIT?

17 MR. JONES: YES, SIR. AND, ALSO, A PRIVATE
18 SETTLEMENT DOESN'T HAVE TO BE APPROVED -- PRESENTED TO THE
19 COURT FOR APPROVAL. THE ATTORNEY GENERAL TAKES A LITTLE
20 DIFFERENT POSITION. MR. MEDLIN AND I HAVE GONE BACK AND
21 FORTH ABOUT THIS, BUT IN A TRUST WE FEEL, YOUR HONOR, THAT
22 THE RESOLUTION THAT WE HAVE MUST BE PRESENTED TO YOU IN
23 WHICH WE'LL DO THAT AT THE APPROPRIATE TIME WHEN THE TAX
24 ISSUES AND A FEW OTHER THINGS THAT'S BEEN WORKED OUT, AND,
25 HOPEFULLY, THAT IS PROBABLY IN JUST A COUPLE WEEKS AWAY.

State of South Carolina)
County of Newberry)

In The Court of Common Pleas
Eighth Judicial Circuit
2011-CP-36-00364

Adele J. Pope,

Plaintiff,

vs.

Alan Wilson, in his
capacity as Attorney General
of South Carolina and James
Brown Legacy Trust, by
Russell L. Bauknight, its
Trustee,

Defendants

2011-CP-36-00379

Adele J. Pope,

Plaintiff,

vs.

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

Defendant.

Transcript of Record

January 11, 2012
Newberry, South Carolina

B E F O R E:

The Honorable Frank R. Addy, Jr., Judge

000266

1 THE COURT: Okay. I'm inclined to transfer -- at the
2 very least, transfer venue to Richland County, if not
3 consolidate this with Richland County. They'll give you
4 another case number and another track that you can pursue
5 this matter on. I ordered the other case consolidated.
6 Once this matter is transferred to Richland County, in
7 terms of venue -- and that's the grounds that I'm using to
8 transfer this case -- either party may seek consolidation;
9 either party may seek an expedited hearing with the judge.
10 And I hope you get the information sooner, rather than
11 later.

12 But that's what I feel is appropriate to do under the
13 circumstances and based upon everything that has transpired
14 with the -- this case, Case 4900, and Case 379. I've
15 consulted with some other judges on this very issue, and I
16 have yet to hear one of them remark to me that they think
17 that this is a bad idea. There seems to be a consensus, so
18 that's what I'm doing.

19 Now, concerning Case 379, the last correspondence I
20 received from you, Mr. Silvernail, in your motion for
21 reconsideration, that is still pending?

22 MR. SILVERNAIL: Yes, it is.

23 THE COURT: You don't want to do that today?

24 MR. SILVERNAIL: I ---

25 THE COURT: You sure you want a hearing on it?

000273

RECEIVED

MAY 15 2015

SC SUPREME COURT

State of South Carolina

Court of Common Pleas

County of Aiken

IN RE: The Estate of	)	
James Brown, A/K/A	)	
James Joseph Brown	)	Transcript of Record
	)	2013-CP-02-02849
	)	2013-CP-02-02850
	)	2013-CP-02-02851
	)	2013-CP-02-1647

March 31, 2014
Bamberg, 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:

A. Peter Shahid, Jr., Esquire
Attorney for Stephen Slotchiver

John F. Beach, Esquire
Attorney for David C. Sojourner, Jr.

Robert N. Rosen, Esquire
Attorney for Tommie Rae Brown

William Barr, Esquire
Attorney for Janette Mitchell

Louis Levenson, Esquire
Attorney for Brown Heirs

Bethanie K. Patterson
Circuit Court Reporter

1 allowed her back in. But if that's -- and has some
2 type of common law and/or privilege that would
3 preclude the submission of the diary for these
4 proceedings.

5 In the alternative, in the event that I say it
6 should be subject to discovery in this litigation,
7 that the protective order should include a
8 confidentiality provision that he sets out in his
9 motion to protect the contents of that diary being
10 disseminated in any manner whatsoever other than for
11 the purposes of this litigation and then to be
12 returned back to Ms. Tommie Rae Brown at the
13 conclusion of all of this -- is that sort of where
14 we are?

15 MR. ROSEN: Yes, sir.

16 THE COURT: Mr. Rosen, what common law -- you
17 cite in your memo keeping the diary is protected by
18 both common law and statutory provisions, and then
19 you sort of segue into something else about a 403
20 analysis. Is there a statutory provision that I'm
21 unaware of?

22 MR. ROSEN: No.

23 THE COURT: Privilege?

24 MR. ROSEN: No, there isn't, Your Honor. But I
25 have an argument I want to make on this. I want to

1 STATE OF SOUTH CAROLINA

CIRCUIT COURT

2 COUNTY OF RICHLAND

3 ADELE POPE

2010-CP-40-04900

4 -vs-

5 ALAN WILSON, et al

6 -&-

7 ADELE POPE

8 -vs-

2012-CP-40-00350

9 ALAN WILSON and

10 JAMES BROWN LEGACY TRUST,

et al

11 TRANSCRIPT OF RECORD

12 Heard on May 17, 2016

13 Aiken, South Carolina

14 BEFORE:

15 THE HONORABLE DOYET A. EARLY, III

16 APPEARANCES:

17 Adele Pope, Esq.

J. David Black, Esq,

18 Russell L. Bauknight

J. Emory Smith, Esq.

19 Ariail E. King, Esq.

David Paavola, Esq.

Adam T. Silvernail, Esq.

Mark V. Gende, Esq.

22 Cheri L. Young, RPR
23 Circuit Court Reporter
24 P O Box 5232
25 Aiken, SC 29804-5232

000274

1 THE COURT: I don't mean a waste of time, but
2 isn't it duplicative? 4900 is going to open to
3 discovery in the James Brown case, everything
4 that's gone on. Why are we fussing about
5 jurisdiction? And why are we fussing about --

6 MR. SMITH: Because the Plaintiff continues
7 to press this FOIA case and is asking for
8 attorney's fees. That's why -- and is not willing
9 to drop it. That's why we're here.

10 We agree that the documents that she is
11 seeking, the efforts to obtain documents, should be
12 made in 4900. In fact, we believe that the,
13 essentially the same requests have been made within
14 4900 as to many of the documents she seeks in both
15 of these cases. And that's where it should be, not
16 here in an independent Freedom of Information Act
17 action.

18 THE COURT: But aside from that, though, you
19 say you've already given her everything that you
20 have and you don't have the other thing that she
21 wants?

22 MR. SMITH: Yes, Your Honor. As to Case 350.

23 THE COURT: Anything else you want to tell
24 me?

25 MR. SMITH: Well, she says we ought to get

**LAST WILL AND TESTAMENT
OF
JAMES BROWN**

Introductory Clause. I, *James Brown*, also known as "*The Godfather of Soul*", a resident of and domiciled in the Community of Beech Island, County of Aiken and State of South Carolina, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all Wills and Codicils at any time heretofore made by me.

I have six living children: *Deanna J. Brown Thomas; Yamma N. Brown; Vanisha Brown; Daryl J. Brown; Larry Brown; and Terry Brown*. These named children and any of their legitimate issue who shall also be lineage issue of mine shall be the entire class that I acknowledge to be my heirs and issue. Except as otherwise provided in this Will and corresponding instruments, I have intentionally failed to provide for any other relatives or other persons, whether claiming, or to claim, to be an heir of mine or not. Such failure is intentional and not occasioned by accident or mistake.

ITEM I

General Bequest of Personal and Household Effects With a Mandatory Memorandum. I give and bequeath all my personal and household effects of every kind including but not limited to furniture, appliances, furnishings, pictures, silverware, china, glass, books, jewelry, wearing apparel, boats, automobiles, and other vehicles, and all policies of fire, burglary, property damage, and other insurance on or in connection with the use of this property, as follows:

(1) I may leave written memoranda disposing of certain items of my tangible personal property. Any such item of tangible personal property shall pass according to the terms of such memoranda in existence at the time of my death. If no such written memoranda is found or identified by my Personal Representative within ninety (90) days after my Personal Representative's qualification, it shall be conclusively presumed that there is no such memoranda and any subsequently discovered memoranda shall be ineffective. Any property given and devised to a beneficiary who is not living at the time of my death and for whom no effective alternate provision has been made shall pass according to the provisions of the following paragraph, and not pursuant to any anti-lapse statute.

(2) In default of such memoranda, or to the extent such memoranda do not completely or effectively dispose of such property, I give and bequeath the rest of my personal and household effects of every kind to my children surviving me in approximately equal shares; provided, however, the issue of a deceased child surviving me shall take per stirpes the share their parent would have taken had he or she survived me. If my issue do not agree to the division of the property among themselves, my Personal Representative shall make such division among

them, the decision of my Personal Representative to be in all respects binding upon my issue. If any beneficiary hereunder is a minor, my Personal Representative may distribute such minor's share to such minor or for such minor's use to any person with whom such minor is residing or who has the care or control of such minor without further responsibility and the receipt of the person to whom it is distributed shall be a complete discharge of my Personal Representative. The cost of packing and shipping such property shall be charged against my estate as an expense of administration.

ITEM II

Pour-Over Gift to Trustee of Testator's Inter Vivos Trust. I give, devise and bequeath all the rest, residue and remainder of my property of every kind and description (including lapsed legacies and devises), wherever situate and whether acquired before or after the execution of this Will, to *Alford A. Bradley, Albert H. Dallas, David G. Cannon* as Trustee(s) under that certain Irrevocable Trust Agreement between me as Grantor and *Alford A. Bradley, Albert H. Dallas, David G. Cannon* as Trustee(s) executed prior to or of even date with the execution of this Will. My Trustees shall add the property bequeathed and devised by this Item to the principal of the above Trust and shall hold, administer and distribute the property in accordance with the provisions of the Irrevocable Trust Agreement including any amendments made solely by the Trustee(s), if any had to be made to carry out the terms of said Trust.

ITEM III

Alternate Provision to Incorporate Trust by Reference if Pour-Over is Invalid. In the event for any reason the bequest and devise above is ineffective and invalid, then I hereby give, devise and bequeath the rest, residue and remainder of my property of every kind and description (including lapsed legacies and devises), wherever situate and whether acquired before or after the execution of this Will, to *Alford A. Bradley, Albert H. Dallas, David G. Cannon* as Trustee(s) to be held, administered and distributed in accordance with the provisions of that certain Trust Agreement between me as Grantor and *Alford A. Bradley, Albert H. Dallas, David G. Cannon* as Trustee(s) executed prior to or of even date with the execution of this Will, which Irrevocable Trust Agreement is hereby incorporated by reference and made a part hereof the same as if the entire Trust Agreement were set forth herein, including any amendments thereto made solely by the Trustee(s), if any had to be made to carry out the terms of said Trust.

ITEM IV

Naming the Personal Representative, Personal Representative Succession, Personal Representative's Fees and Other Matters. The provisions for naming the Personal Representative, Personal Representative succession, Personal Representative's fees and other matters are set forth below:

(1) **Naming Individuals as Personal Representative.** I hereby nominate, constitute and appoint as Personal Representatives of this my Last Will and Testament *Alford A. Bradley, Albert H. Dallas, David G. Cannon*, and direct that they shall serve without bond.

(2) **Individual Personal Representatives Succession.** If any of the three (3) individual Personal Representative should fail to qualify as Personal Representative hereunder, dies, or for any reason should cease to act in such capacity, the remaining Personal Representative(s) shall continue to serve and shall elect and/or appoint another Representative so that at all times there are three (3) individual Personal Representative(s) serving. If the Personal Representatives are unable to come to such agreement as to a successor then they are obligated to seek the advise of the Advisory Board Members set out in that certain Advisory Board document signed and dated of even date with this Will, if there is a then recognized Board in effect. If the Advisory Board is unable to persuade the remaining Personal Representative(s) to reach an election or appointment, then, absent an agreement the court having jurisdiction over this Will shall then appoint the remaining individual Personal Representative who shall also serve without bond.

(3) **Fee Schedule for Individual Personal Representative.** For its services as Personal Representative, the individual Personal Representative shall receive reasonable compensation for the services rendered and reimbursement for reasonable expenses.

(4) **Personal Representative Voting Rights.** If there is more than one Personal Representative serving, then the vote of the Personal Representatives for any action hereunder must be by majority action of the Personal Representatives.

ITEM V

Definition of Personal Representative. Whenever the word "Personal Representative" or any modifying or substituted pronoun therefor is used in this my Will, such words and respective pronouns shall include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Personal Representative named herein and to any successor or substitute Personal Representative acting hereunder, and such successor or substitute Personal Representative shall possess all the rights, powers and duties, authority and responsibility conferred upon the Personal Representative originally named herein.

ITEM VI

Powers for Personal Representative. By way of illustration and not of limitation and in addition to any inherent, implied or statutory powers granted to Personal Representatives generally, my Personal Representative is specifically authorized and empowered with respect to any property, real or personal, at any time held under any provision of this my Will: to allot, allocate between principal and income, assign, borrow, buy, care for, collect, compromise claims, contract with respect to, continue any business of mine, convey, convert, deal with, dispose of, enter into, exchange, hold, improve, incorporate any business of mine, invest, lease, loan, manage, mortgage, grant and exercise options with respect to, take possession of, pledge, receive, release, repair, sell, sue for, to make distributions or divisions in cash or in kind or partly in each without regard to the income tax basis of such asset, and in general, to exercise all the powers in the management of my Estate which any individual could exercise in the management of similar property owned in his or her own right, upon such terms and conditions as to my Personal Representative may seem best, and to execute and deliver any and all instruments and to do all acts which my Personal Representative may deem proper or necessary to carry out the purposes of this my Will, without being limited in any way by the specific grants of power made, and without the necessity of a court order.

ITEM VII

Definition of Words Relating to the Internal Revenue Code. As used herein, the words "gross estate," "adjusted gross estate," "taxable estate," "unified credit," "state death tax credit," "maximum marital deduction," "marital deduction," "pass," and any other word or words which from the context in which it or they are used refer to the Internal Revenue Code shall have the same meaning as such words have for the purposes of applying the Internal Revenue Code to my estate. For purposes of this Will, my "available generation-skipping transfer exemption" means the generation-skipping transfer tax exemption provided in section 2631 of the Internal Revenue Code of 1986, as amended, in effect at the time of my death reduced by the aggregate of (1) the amount, if any, of my exemption allocated to lifetime transfers of mine by me or by operation of law, and (2) the amount, if any, I have specifically allocated to other property of my gross estate for federal estate tax purposes. For purposes of this Will if at the time of my death I have made gifts with an inclusion ratio of greater than zero for which the gift tax return due date has not expired (including extensions) and I have not yet filed a return, it shall be deemed that my generation-skipping transfer exemption has been allocated to these transfers to the extent necessary (and possible) to exempt the transfer(s) from generation-skipping transfer tax. Reference to sections of the Internal Revenue Code and to the Internal Revenue Code shall refer to the Internal Revenue Code amended to the date of my death.

ITEM VIII

Statement by Testator of Intent Not to Exercise Power of Appointment. I hereby refrain from exercising any power of appointment that I may have at the time of my death.

ITEM IX

Severability and State Law to Govern. If any part of this Will shall be invalid, illegal or inoperative for any reason, it is my intention that the remaining parts, so far as possible and reasonable, shall be effective and fully operative. Regardless of the situs of execution of this Will, it is acknowledged that it is deemed to have been executed in conformity with and shall be construed, regulated and governed by and in accordance with the laws of the State of South Carolina.

ITEM X

Provisions as to any Contest of My Estate Plan. Should any beneficiary under this Will or my Irrevocable Trust, and as amended, dated prior to or of even date with this Will and as referred to herein, become an adverse party in a proceeding for the probate of my Will or in any manner contest the validity of my Irrevocable Trust, such beneficiary shall forfeit his or her entire interest thereunder and such interest shall pass to such other beneficiaries as would be entitled to take as if such beneficiary predeceased me. Furthermore, any person not provided for in this Will, my Irrevocable Trust or other such instrument, whether or not claiming to be a beneficiary or party in interest, shall not have standing or be qualified to contest, claim an interest in or otherwise dispute the disposition of my estate, as I herewith disclaim and disinherit any such persons. Any such alleged claim shall be considered an affront to my wishes and shall be challenged as such by my fiduciaries.

**END OF PAGE
SEE NEXT PAGE FOR EXECUTION**

Testimonium, Attestation and Self-Proving Affidavit. I, James Brown, the Testator, sign my name to this instrument this 1 day of AUGUST, 2000, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Last Will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind (with the capacity to understand the nature of my act, to know my property, and to remember and recollect the natural objects of my bounty), and under no constraint or undue influence.

[Signature] (Seal)
James Brown, Testator.

We, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the Testator signs and executes this instrument as his last will and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the Testator, and in the presence of each other, hereby signs this will as witness to the Testator's signing, and that to the best of our knowledge the Testator is eighteen years of age or older, of sound mind (with the capacity to understand the nature of his act, to know his property, and to remember and recollect the natural objects of his bounty), and under no constraint or undue influence.

[Signature] (Seal)
(Witness)
[Signature] (Seal)
(Witness)

The State of South Carolina
GEORGIA
County of Richmond)

Probate

Subscribed, sworn to, and acknowledged before me by James Brown, the Testator, and subscribed and sworn to before me by the above signed witnesses, this 1st day of August, 2000.

[Signature] (Seal)
Notary Public for SC
My Commission Expires: 3/17/2000

**IRREVOCABLE TRUST AGREEMENT
OF
*JAMES BROWN***

H. Dewain Herring, Esquire
Law Offices of H. Dewain Herring, LLC
3612 Landmark Dr., Suite A
Columbia, South Carolina 29204

00030

IRREVOCABLE TRUST AGREEMENT

Introductory Clause

ARTICLE I

Provisions for Grantor During Lifetime

ARTICLE II

This Trust Shall Be Irrevocable

ARTICLE III

Grantor's Right to Add Property

ARTICLE IV

Trustee's Shall Hold, Manage, Invest and Reinvest the Trust Property

ARTICLE V

Continuance of *The Brown Family Education Trust* and *The James Brown "I Feel Good" Trust*

ARTICLE VI

***The Brown Family Education Trust* Introductory Provision Division Into Shares for Grandchildren Income/Discretionary Invasion of Principal for Grandchildren Distribution of Shares and Termination of Trust**

ARTICLE VII

***The James Brown "I Feel Good" Trust* Introductory Provision Purpose of The James Brown "I Feel Good" Trust Intention of The James Brown "I Feel Good" Trust Discretion to Sell Trust Property Trustee Must Not Engage in Self-dealing Trustee Must Not Distribute as to Incur Taxes Upon This Trust Power of Amendment**

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ARTICLE VIII

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IRREVOCABLE TRUST AGREEMENT

Introductory Clause. This Agreement made between *James Brown*, also known as "The Godfather of Soul", hereinafter referred to as the Grantor and *Alford A. Bradley, Albert H. Dallas, David G. Cannon* hereinafter referred to singularly and/or collectively as the Trustee(s). For and in consideration of the mutual covenants and promises set forth herein Grantor and Trustee(s) agree:

ARTICLE I

Grantor transfers and delivers to Trustee(s), in trust, the property described in Schedule A, B and/or C attached and incorporated by this reference. Receipt of the property is acknowledged by Trustee(s). The property, and any other property subject to this trust, shall constitute the trust estate, and shall be held in trust for the uses and purposes expressed in this trust agreement and shall be subject to the conditions provided in this instrument.

ARTICLE II

This trust shall be irrevocable. Grantor waives the right and the power to alter, amend, revoke, or terminate the trust or any of the terms of this trust agreement. Grantor renounces any power to determine or control, by alteration, amendment, revocation, termination, or otherwise, the beneficial enjoyment of the principal or income of the trust. Grantor renounces any interest in the income or principal of the trust estate, whether vested or contingent, including any reversionary interest or possibility of reverter.

ARTICLE III

Grantor and any other person shall have the right at any time to add property acceptable to Trustee(s) to this trust. The property, when received and accepted by Trustee(s), shall become part of the trust estate.

ARTICLE IV

The Trustee(s) shall hold, manage, invest and reinvest the Trust Property, shall collect and receive the income from it and, after deducting all necessary expenses incident and as allowed herein for administration of this Trust, shall dispose of the income and principal as follows:

At anytime and from time to time Trustee(s) may distribute to or for the benefit of any beneficiary so much of the principal and income of the Trust as Trustee(s) shall determine in Trustee(s)'s absolute and sole discretion. The income not so distributed shall be accumulated and added to the principal of the Trust.

Payments made to or for beneficiaries pursuant to this section need not be equal and shall be made in the Trustee(s)'s absolute and sole discretion.

Payments may be made currently and during the life of the Grantor:

- To or for the benefit of the Grantor during his life
- To or for the benefit of the Beneficiaries of the Brown Family Education Trust pursuant to its terms as set out
- To or for the benefit of the Beneficiaries of the James Brown "I Feel Good" Trust pursuant to its terms as set out.

Upon the death of the Grantor all principal and undistributed income of this Trust shall at that time be consolidated, distributed and paid over to the Trustee(s) of the Brown Family Education Trust and the Trustee(s) of The James Brown "I Feel Good" Trust and shall continue to be administered as therein set out.

ARTICLE V

Continuance of *The Brown Family Education Trust* and *The James Brown "I Feel Good" Trust*. Upon the death of the Grantor, the Trustee shall divide the remaining Trust Estate (which shall include any property which may be added from the Grantor's general estate) into Two (2) separate shares, hereinafter designated as "*The Brown Family Education Trust*" and "*The James Brown "I Feel Good" Trust*." The two shares shall be equal, subject only to the limitation imposed on *The Brown Family Education Trust* by the maximum available generation-skipping transfer exemption as computed by the following formula. *The Brown Family Education Trust* shall be a fraction of the Trust Estate (undiminished by estate, inheritance, succession, death or similar taxes), the numerator of which shall be an amount equal to the Grantor's available generation-skipping transfer exemption as hereafter defined and the denominator shall be an amount equal to the value of the Trust Estate. For purposes of establishing such fraction the values as finally determined in the Grantor's federal estate tax proceedings shall be used. The Grantor recognizes that the numerator of such fraction may be zero, in which case no property shall be distributed under this paragraph to *The Brown Family Education Trust*. The Grantor also recognizes that the numerator of such fraction may be equal to or greater than the denominator, in which case the entire Trust Estate shall be distributed to *The Brown Family Education Trust*.

The James Brown "I Feel Good" Trust shall be the balance of the Trust Estate.

The Brown Family Education Trust and *The James Brown "I Feel Good" Trust* shall be administered as hereinafter set forth.

ARTICLE VI

The Brown Family Education Trust Introductory Provision. ***The Brown Family Education Trust*** shall be held, administered and distributed as follows:

(1) **Division Into Shares:** Upon the death of the Grantor, the Trustee shall divide this Trust as then constituted into equal separate shares so as to provide one (1) share for each then living grandchild, who has not reached the age of Thirty-Five (35), of the Grantor. Each share shall be distributed or retained in trust as hereinafter provided.

(2) **Income/Discretionary Invasion of Principal.** Net income from each share so provided for above shall be paid to or applied for the benefit of such grandchild for that grandchild's education and related education expenses until complete distribution of the share as herein provided. Any income not so paid or applied shall be accumulated and added to principal for that share. In addition to income, the Trustee may pay to or apply for the benefit of such grandchild such sums from the principal of his or her share as in its sole discretion shall be necessary or desirable from time to time for his or her education, taking into consideration to the extent the Trustee deems advisable, any other income or resources of such grandchild known to the Trustee. My intent is to provide for any and all primary, secondary and post-secondary education, whether grade school, middle school, high school, vocational training, college or post-graduate education, or professional schooling, for each grandchild as can best encourage and allow each grandchild to reach his or her full potential. This directive shall include, but not necessarily be limited to, public, private, parochial, denominational and/or any government schooling and educational opportunities.

(3) **Distribution of Shares and Termination of Trust.** After division into shares for the Grantor's grandchildren, upon each grandchild of the Grantor attaining the age of Thirty-five (35) years, or death, whichever first occurs, and prior to complete distribution of his or her share, the undistributed balance of such named grandchild's share shall be added to ***The James Brown "I Feel Good" Trust*** and shall thereafter be administered and distributed according to its terms. When no grandchild is living who is under the age of Thirty-five (35) years, ***The Brown Family Education Trust*** shall terminate, and all accumulated income and principal shall be paid over and added to ***The James Brown "I Feel Good" Trust*** and shall thereafter be administered and distributed according to its terms.

ARTICLE VII

The James Brown "I Feel Good" Trust Introductory Provision. ***The James Brown "I Feel Good" Trust*** shall be held, administered and distributed as follows:

(1) **Purpose of *The James Brown "I Feel Good" Trust*.** It is my intent that the net income and such portions of principal of this Trust as determined by my Trustees in their sole and absolute discretion, shall be used solely for the tuition, educational expenses, and financial

assistance of and for poor and financially needy children, youth, or young adults (Who are both qualified and deserving) who seek and have need of such assistance to obtain and further their education at the many educational entities and/or institutions available in the States of South Carolina and Georgia. My Trustee(s) may, upon their discretion, include any of my heirs and issue herein defined for purposes of fulfilling the terms of this Trust.

My Trustee(s) shall exercise their sole and absolute discretion in making the decisions necessary to fulfill the terms and directives of this Trust. The Trustee(s) are however, directed to make payment directly to such educational entities and/or institutions. All entities and/or institutions shall qualify as bodies corporate, politic or educational under IRS Code 501 (C)(3), 115,117, et seq., status and as amended, or such other same or similar IRS Code and/or Section status as shall achieve tax free income and distribution as I desire that the maximum benefit be for education.

(2) My intent is to provide for any and all primary, secondary, and post-secondary education, whether grade school, middle school, high school, vocational training, college or post-graduate education, or professional schooling, for each of the beneficiaries as can best encourage and allow each of the beneficiaries to reach his or her full potential. This directive shall include, but not necessarily be limited to, public, private, parochial, denominational and/or any government schooling and educational opportunities.

(3) **Discretion to Sell Trust Property.** I authorize and empower my Trustee to sell any portion or all of said property at private or public sale at such price as they deem most advantageous, at such time or times as my Trustee may deem advisable in its discretion, and to execute good and sufficient deeds and other instruments necessary or proper to convey and transfer the same to the purchasers, who shall not be bound to see to the application of the purchase money. I direct that my Trustee shall convert the assets of this Trust to income producing assets within such reasonable time as in my Trustee's sole discretion, it shall determine is most advantageous to carry out my intent and the purposes of this Trust.

(4) **Trustee must not Engage in Self-dealing.** My Trustee is prohibited from engaging in any act of self-dealing as defined in Section 4941(d) of the Internal Revenue Code of 1986, from retaining any excess business holding as defined in Section 4943© of the Internal Revenue Code of 1986, from making any investments which would subject the Trust to tax under Section 4944 of the Internal Revenue Code of 1986, and from making any taxable expenditures as defined in Section 4945(d) of the Internal Revenue Code of 1986. My Trustee shall make distributions at such time and in such manner as to not subject the Trust to tax under Section 4942 of the Internal Revenue Code of 1986.

(5) **Trustee must not distribute as to incur taxes upon this Trust.** All principal held and distributions made as described herein shall be for such entities, organizations, funds, as shall qualify under such provisions of the Internal Revenue Code, and as amended so that such principal and distributions are exempt from payment of taxes.

(6) **Power of Amendment.** The Trustee(s) shall have the power to amend the Trust in any manner required for the sole purpose of ensuring that the Trust qualifies and continues to qualify as an exempt entity in compliance with the Internal Revenue Code, and as amended.

ARTICLE VIII

Trustee Succession, Trustee's Fees and Other Matters. The provisions for naming the Trustee, Trustee succession, Trustee's fees and other matters are set forth below:

(1) **Individual Trustees Succession.** If any of the three (3) individual Trustee should fail to qualify as Trustee hereunder, dies, or for any reason should cease to act in such capacity, the remaining Trustee(s) shall continue to serve and shall elect and/or appoint another Trustee so that at all times there are three (3) individual Trustee(s) serving. The notice and election provisions of Article XIII, Powers of Trustee(s) Succession shall be followed.

(2) **No Trustee(s) or Successor Trustee(s)** shall be required to give any bond or other security.

(3) **Fee Schedule for Individual Trustee.** For its services as Trustee(s), the Trustee(s) shall receive reasonable compensation for the services rendered and reimbursement for reasonable expenses.

(4) **Trustee Voting Rights.** If there is more than one Trustee serving, then the vote of the Trustees for any action hereunder must be by majority action of the Trustees.

(5) **Limitations on Trustees.** No person who at any time is acting as Trustee hereunder shall have any power or obligation to participate in any discretionary authority which has been given to the Trustee so as to pay principal or income to such person, or for his or her benefit or in relief of his or her legal obligations.

(6) **Advisory Board.** There shall exist an Advisory Board of three (3) initial members. This Board shall confer with and advise the Trustee(s) in such a manner as would be consistent with Grantors objectives for this Trust. The Trustee(s) may consider, but are not obligated to follow advisories as propounded by the Advisory Board. The Initial Members shall be designated in/or by a separate writing, reference thereto being craved and to be given effect as if such Advisory Board Members were set forth herein.

ARTICLE IX

Definition of Trustee. Whenever the word "Trustee" or any modifying or substituted pronoun therefor is used in this Trust, such words and respective pronouns shall include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Trustee named herein and to any successor or substitute Trustee acting hereunder, and such successor or substitute Trustee shall have all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

ARTICLE X

Powers for Trustee. The Trustee is authorized in its fiduciary discretion (which shall be subject to the standard of reasonableness and good faith to all beneficiaries) with respect to any property, real or personal, at any time held under any provision of this Trust Agreement and without authorization by any court and in addition to any other rights, powers, authority and privileges granted by any other provision of this Trust Agreement or by statute or general rules of law:

(1) The Trustee(s) shall have the power to distribute the income or principal or both of the Trust Estate to or for the benefit of all or any one or more of the Beneficiaries as the Trustee(s) may in their sole and absolute discretion think fit, provided that no such power may be exercised to violate any applicable rule against perpetuities.

It is Grantor's intention to hereby create a discretionary trust and, except as otherwise provided herein, no Beneficiary hereunder has any ascertainable right, title, or interest to any portion of the Trust Estate, whether determined actuarially or otherwise; and the Trustee(s) have the discretion to completely withhold distributions from any one Beneficiary.

(2) The stated intent(s) of this Trust Agreement and various Trust(s) established or to be established does not prevent my Trustee(s) from making or directing an allocation of up to 50% of the gross income from this Trust for the payment of administrative and managerial expenses incurred on behalf of this Trust as in the sole discretion of my Trustee may be advisable.

(3) To retain in the form received any property or undivided interests in property donated to, or otherwise acquired as a part of the Trust Estate, including residential property and shares of the Trustee's own stock, regardless of any lack of diversification, risk or non-productivity, as long as it deems advisable, and to exchange any such security or property for other securities or properties and to retain such items received in exchange, although such property represents a large percentage of the total property of the Trust Estate or even the entirety thereof.

(4) To invest and reinvest all or any part of the Trust Estate in any property and undivided interests in property, wherever located, including bonds, debentures, notes, secured or unsecured, stocks of corporations regardless of class, interests in limited partnerships, real estate or any interest in real estate whether or not productive at the time of investment, interests in trusts, investment trusts, whether of the open and/or closed fund types, and participation in common, collective or pooled trust funds of the Trustee's Agents, if any, insurance contracts on the life of any beneficiary or annuity contracts for any beneficiary, without being limited by any statute or rule of law concerning investments by fiduciaries.

(5) To sell or dispose of or grant options to purchase any property, real or personal, constituting a part of the Trust Estate, for cash or upon credit, to exchange any property of the Trust Estate for other property, at such times and upon such terms and conditions as it may deem best, and no person dealing with it shall be bound to see to the application of any monies paid.

(6) To hold any securities or other property in its own name as Trustee, in its own name, in the name of a nominee (with or without disclosure of any fiduciary relationship) or in bearer form.

(7) To keep, at any time and from time to time, all or any portion of the Trust Estate in cash and uninvested for such period or periods of time as it may deem advisable, without liability for any loss in income by reason thereof.

(8) To sell or exercise stock subscription or conversion rights.

(9) To refrain from voting or to vote shares of stock which are a part of the Trust Estate at shareholders' meetings in person or by special, limited, or general proxy and in general to exercise all the rights, powers and privileges of an owner in respect to any securities constituting a part of the Trust Estate.

(10) To participate in any plan of reorganization or consolidation or merger involving any company or companies whose stock or other securities shall be part of the Trust Estate, and to deposit such stock or other securities under any plan of reorganization or with any protective committee and to delegate to such committee discretionary power with relation thereto, to pay a proportionate part of the expenses of such committee and any assessments levied under any such plan, to accept and retain new securities received by the Trustee pursuant to any such plan, to exercise all conversion, subscription, voting and other rights, of whatsoever nature pertaining to such property, and to pay any amount or amounts of money as it may deem advisable in connection therewith.

(11) To borrow money and to encumber, mortgage or pledge any asset of the Trust Estate for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the Trustee.

(12) To enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust.

(13) To subdivide, develop, or dedicate real property to public use or to make or obtain the vacation of plats and adjust boundaries, to adjust differences in valuation on exchange or partition by giving or receiving consideration, and to dedicate easements to public use without consideration.

(14) To make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings.

(15) To continue and operate any business owned by the Grantor at the Grantor's death and to do any and all things deemed needful or appropriate by the Trustee, including the power to incorporate the business and to put additional capital into the business, for such time as it shall deem advisable, without liability for loss resulting from the continuance or operation of the business except for its own negligence; and to close out, liquidate or sell the business at such time and upon such terms as it shall deem best.

(16) To collect, receive, and receipt for rents, issues, profits, and income of the Trust Estate.

(17) To insure the assets of the Trust Estate against damage or loss and the Trustee against liability with respect to third persons.

(18) In buying and selling assets, in lending and borrowing money, and in all other transactions, irrespective of the occupancy by the same person of dual positions, to deal with itself in its separate, or any fiduciary capacity.

(19) To compromise, adjust, mediate, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against the Trust Estate as the Trustee shall deem best.

(20) To employ and compensate agents, consultants, accountants, investment advisers, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, realtors, and other assistants and advisors deemed by the Trustee needful for the proper and successful administration and investment of the Trust Estate, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative provided such person was selected and retained with reasonable care.

(21) To determine what shall be fairly and equitably charged or credited to income and what to principal.

(22) To hold and retain the principal of the Trust Estate undivided until actual division shall become necessary in order to make distributions; to hold, manage, invest, and account for the several shares or parts thereof by appropriate entries on the Trustee's books of account; and to allocate to each share or part of share its proportionate part of all receipts and expenses; provided, however, the carrying of several trusts as one shall not defer the vesting in title or in possession of any share or part of share thereof.

(23) To make payment in cash or in kind, or partly in cash and partly in kind upon any division or distribution of the Trust Estate (including the satisfaction of any pecuniary distribution) without regard to the income tax basis of any specific property allocated to any beneficiary and to value and appraise any asset and to distribute such asset in kind at its appraised value; and when dividing fractional interests in property among several beneficiaries to allocate entire interests in some property to one beneficiary and entire interests in other property to another beneficiary or beneficiaries.

(24) In general, to exercise all powers in the management of the Trust Estate which any individual could exercise in his or her own right, upon such terms and conditions as it may reasonably deem best, and to do all acts which it may deem reasonably necessary or proper to carry out the purposes of this Trust Agreement.

(25) To purchase property, real or personal, from the Grantor's general estate upon such terms and conditions as to price and terms of payment as the Grantor's personal representatives and the Trustee shall agree, to hold the property so purchased as a part of the Trust Estate although it may not qualify as an authorized trust investment except for this provision, and to dispose of such property as and when the Trustee shall deem advisable. The fact that the Grantor's personal representatives and the Trustee are the same shall in no way affect the validity of this provision.

(26) To lend funds to the Grantor's general estate upon such terms and conditions as to interest rates, maturities, and security as the Grantor's personal representatives and the Trustee shall agree, the fact that they may be the same in no way affecting the validity of this provision.

(27) To receive property bequeathed, devised or donated to the Trustee by the Grantor or any other person; to receive the proceeds of any insurance policy which names the Trustee as beneficiary; to execute all necessary receipts and releases to Personal Representatives, donors, insurance companies and other parties adding property to the Trust Estate.

(28) To combine assets of two or more trusts if the provisions and terms of each trust are substantially identical, and to administer them as a single trust, if the Trustee reasonably determines that the administration as a single trust is consistent with the Grantor's intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

(29) To divide any trust into separate shares or separate trusts or to create separate trusts if the Trustee reasonably deems it appropriate and the division or creation is consistent with the Grantor's intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

(30) To divide property in any trust being held hereunder with an inclusion ratio, as defined in section 2642(a)(1) of the Internal Revenue Code of 1986, as from time to time amended or under similar future legislation, of neither one nor zero into two separate trusts representing two fractional shares of the property being divided, one to have an inclusion ratio of one and the other to have an inclusion ratio of zero, to create trusts to receive property with an inclusion ratio of either one or zero and if this cannot be done to refuse to accept property which does not have a matching inclusion ratio to the receiving trust's ratio, all as the Trustee in its sole discretion deems best.

(31) If the Trustee shall act as the Personal Representative of the Grantor's estate, to elect to allocate any portion or all the Grantor's generation-skipping transfer exemption provided for in Code section 2631 or under similar future legislation, in effect at the time of the Grantor's death, to any portion or all of any other trusts or bequests in the Grantor's Will or any other transfer which the Grantor is the transferor for purposes of the generation-skipping tax. Generally, the Grantor anticipates that the Grantor's Personal Representative will elect to allocate this exemption first to direct skips as defined in Code section 2612, then to *The Brown Family Education Trust*, unless it would be inadvisable based on all the circumstances at the time of making the allocation; and to make the special election under section 2652(a)(3) of the Code to the extent the Grantor's Personal Representative deems in the best interest of the Grantor's estate.

(32) The Trustee(s) may acquire on behalf of the beneficiaries, such public support and government funds for which the beneficiary shall qualify; and if such sources of moneys are obtained, the Trustee(s) shall maintain, spend, and account for such funds separately from other trust funds and not commingle such funds with other funds of the trust.

ARTICLE XI

Provision for Trustee to Act as Trustee for Beneficiary Under Age Twenty-One. In case any share hereunder becomes distributable to a beneficiary who has not attained the age of Twenty-one (21), such share shall immediately vest in the beneficiary, but notwithstanding the provisions herein, the Trustee shall retain possession of the share in trust for the beneficiary until the beneficiary attains the age of Twenty-one (21), using so much of the net income and principal of the share as the Trustee deems necessary to provide for the education of the beneficiary, taking into consideration to the extent the Trustee deems advisable any other income or resources of the beneficiary or his or her parents known to the Trustee. Any income not so paid or applied shall

be accumulated and added to principal. The beneficiary's share shall be paid over and distributed to the beneficiary upon attaining age Twenty-one (21), or if he or she shall sooner die, to his or her personal representatives. The Trustee shall have with respect to each share so retained all the powers and discretions it had with respect to the trusts created herein generally.

ARTICLE XII

Trustee's Discretion in Making Payments to a Person Under Age Twenty-One, Incompetent, or Incapacitated Person. In case the income or principal payment under any trust created hereunder or any share thereof shall become payable to a person under the age of Twenty-one (21), or to a person under legal disability, or to a person not adjudicated incompetent, but who, by reason of illness or mental or physical disability, is, in the opinion of the Trustee unable properly to administer such amounts, then such amounts shall be paid out by the Trustee in such of the following ways as the Trustee deems best: (1) directly to the beneficiary; (2) to the legally appointed guardian of the beneficiary; (3) to some relative or friend for the education of the beneficiary; (4) by the Trustee using such amounts directly for the beneficiary's care, support and education; (5) to a custodian for the beneficiary under the Uniform Gifts or Transfers to Minors Act.

ARTICLE XIII

Power of Trustee(s) Successions. Any Trustee may resign this trusteeship during his lifetime by giving the then remaining Trustee(s) Thirty (30) days notice in writing delivered to the Trustee(s) in person or mailed to the Trustee(s) last known address, the resignation to become effective as hereinafter provided. Upon receipt of such notice, or the death of a Trustee(s), the Trustee(s) shall appoint a successor Trustee. Upon the failure of the Trustee(s) to appoint a successor Trustee who accepts the trust within Sixty (60) days from the time notice was delivered in person or mailed to the Trustee(s), or date of death, the Trustee's successor shall be determined by unanimous vote of the advisory board; as then in existence, if at all. Failing such of either voting requirements then the court having jurisdiction over this Trust shall select the then successor Trustee. Upon the appointment of and acceptance by the successor Trustee, the withdrawing Trustee shall pay over, deliver, assign, transfer or convey to such successor Trustee the Trust Estate and make a full and proper accounting to the Successor Trustee, whereupon his resignation shall become effective. The substitute or successor Trustee upon acceptance of this trust and the Trust Estate shall succeed to and have all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

ARTICLE XIV

Discretion in Trustee to Terminate Small Trust and Distribute to Income

Beneficiary. If at any time any trust created hereunder has a fair market value as determined by the Trustee of Fifty Thousand (\$50,000.00) Dollars or less, the Trustee, in its absolute discretion if it determines that it is uneconomical to continue such trust, may terminate such trust and distribute the trust property to the person or persons determined or then entitled to receive or have the benefit of the income therefrom or the legal representative of such person. If there is more than one income beneficiary, the Trustee shall make such distribution to such income beneficiaries in the proportion in which they are beneficiaries or if no proportion is designated in equal shares to such beneficiaries.

ARTICLE XV

Definition of Words Relating to the Internal Revenue Code. As used herein, the words "gross estate," "adjusted gross estate," "taxable estate," "unified credit," "state death tax credit," "maximum marital deduction," "marital deduction," "pass," and any other word or words which from the context in which it or they are used refer to the Internal Revenue Code shall have the same meaning as such words have for the purposes of applying the Internal Revenue Code to the Grantor's estate. For purposes of this Trust Agreement, the Grantor's "available generation-skipping transfer exemption" means the generation-skipping transfer tax exemption provided in section 2631 of the Internal Revenue Code of 1986, as amended, in effect at the time of the Grantor's death reduced by the aggregate of (1) the amount, if any, of the Grantor's exemption allocated to lifetime transfers of the Grantor by the Grantor or by operation of law, and (2) the amount, if any, the Grantor has specifically allocated to other property of the Grantor's gross estate for federal estate tax purposes. For purposes of this Trust Agreement if at the time of the Grantor's death the Grantor has made gifts with an inclusion ratio of greater than zero for which the gift tax return due date has not expired (including extensions) and the Grantor has not yet filed a return, it shall be deemed that the Grantor's generation-skipping transfer exemption has been allocated to these transfers to the extent necessary (and possible) to exempt the transfer(s) from generation-skipping transfer tax. Reference to sections of the Internal Revenue Code and to the Internal Revenue Code shall refer to the Internal Revenue Code amended to the date of the Grantor's death.

ARTICLE XVI

Payment of Funeral Expenses and Expenses of Last Illness of Income Beneficiary.

On the death of any person entitled to income or support from any Trust hereunder, the Trustee is authorized to pay the funeral expenses and the expenses of the last illness of such person from the principal of the Trust from which such person was entitled to income or support.

ARTICLE XVII

Personal Trust. The beneficiary of this trust shall have the right to occupy that certain homeplace, improvements and acreage, more particularly described as 430 Douglas Drive, Beech Island, SC 29841 during his entire lifetime.

The rights described herein are personal to the beneficiary; and those rights may not be sold, pledged, assigned, or otherwise alienated by the beneficiary.

ARTICLE XVIII

Beneficiary's Spouse. The Grantor is now not married. It is the Grantor's intention that the trust estate be available only to the beneficiaries and not to be the Grantor's past or future spouse. The Trustee(s) are directed to enforce this provision.

If a court having jurisdiction over this trust issues a valid, legally enforceable order requiring distribution to a past or future spouse, then Grantor requests that such distribution shall be the minimum amount necessary to provide sustenance to said spouse, it being the Grantor's intention that the trust estate not be used to provide said spouse with funds to support said spouse in the manner to which she may be accustomed.

ARTICLE XIX

Severability and State Law to Govern. If any part of this Trust shall be invalid, illegal or inoperative for any reason, it is the Grantor's intention that the remaining parts, so far as possible and reasonable, shall be effective and fully operative. Regardless of the situs of execution of this Trust Agreement and the trusts created hereby, it is acknowledged that it is deemed to have been executed in conformity with and shall be construed, regulated and governed by and in accordance with the laws of the State of South Carolina.

Notwithstanding the foregoing, the Trustees shall have the power, exercisable in their sole and absolute discretion, to declare, by written instrument that this Trust and any and all trusts derived here from shall from the date of such written instrument take effect in accordance with the law of some other state or country in any part of the world which shall be the forum for the administration hereof (but subject to the power conferred by this paragraph and until any further declaration is made hereunder). In selecting a new Controlling Law the Trustee(s) are urged to give special care and attention to the tax and other laws of the applicable jurisdiction so as to most closely implement the Grantor's intentions, including, without limitation, the intention not to pay any unnecessary taxes and to preserve the Trust Estate.

If the Controlling Law of this Trust changes, then the Trustee(s) may by written instrument amend the Trustee's powers and such other provision of this Trust as the Trustees shall consider necessary or desirable to secure that so far as may be possible such trust's powers and provisions shall be as valid and effective under the applicable law

ARTICLE XX

Spendthrift Provision. Except as otherwise provided herein, neither the principal of this trust (or any trust created hereunder) nor the income therefrom while in the hands of the Trustee(s) shall be subject to assignment, alienation, pledge, attachment, execution, or claims of creditors or any beneficiary or beneficiaries whomsoever through legal process, bankruptcy, operation of law, or otherwise. Any attempted sale, assignment, alienation, pledge, or attachment of the principal or income held in this trust (or any trust created hereunder) shall be null and void and shall not be recognized under any circumstances by Trustee(s).

In the event of any attempted sale, assignment, alienation, pledge, attachment, execution, or claim resulting from an act of a beneficiary or beneficiaries, voluntarily, involuntarily, by operation of law, by bankruptcy, or otherwise with respect to the principal or income of the trust, Trustee(s) are authorized to withhold from such beneficiary or beneficiaries all or part of any distribution otherwise payable hereunder to such beneficiary or beneficiaries until such attempted anticipation, voluntary or involuntary transfer, or lien is completely removed, during which time Trustee(s) may apply such distribution, or any part thereof, for the use and benefit of such beneficiary or beneficiaries in such amount or amounts and in such manner as Trustee(s), in Trustee(s)'s sole discretion, may determine.

ARTICLE XXI

Provisions as to any Contest of Grantor's Estate Plan. Should any beneficiary under this Irrevocable Trust or Grantor's Will dated after or of even date with this Trust and as referred to herein, become an adverse party in a proceeding for the probate of Grantor's Will or in any manner contest the validity of Grantor's Irrevocable Trust, such beneficiary shall forfeit his or her entire interest thereunder and such interest shall pass to such other beneficiaries as would be entitled to take as if such beneficiary predeceased Grantor. Furthermore, any person not provided for in this Irrevocable Trust, Grantor's Will or other such instrument, whether or not claiming to be a beneficiary, party in interest, or otherwise shall not have standing or be qualified to contest, claim an interest in or otherwise dispute the disposition of Grantor's estate as he herewith disclaims and disinherits any such person. Any such alleged claim shall be considered an affront to the Grantor's wishes and shall be vigorously challenged as such by his fiduciaries.

ARTICLE XXII

Declaration of Children. I have six living children: *Deanna J. Brown Thomas; Yamma N. Brown; Vanisha Brown; Daryl J. Brown; Larry Brown; and Terry Brown.* These named children and any of their legitimate issue who shall also be lineage issue of mine shall be the entire class that I acknowledge to be my heirs and issue. Except as otherwise provided in this Trust Agreement and corresponding instruments, I have intentionally failed to provide for any other relatives or other persons, whether claiming, or to claim, to be an heir of mine or not. Such failure is intentional and not occasioned by accident or mistake.

**END OF PAGE
SEE FOLLOWING PAGE FOR EXECUTION**

Trust Agreement of James Brown
c:\6010.1\irrev trust agreement - FNL2

00047

IN WITNESS WHEREOF, The Grantor and the Trustees have executed this Trust Agreement this 1 day of AUGUST, 2000. The Grantor understands all of its provisions, including the fact that he has conveyed or transferred his interest in the property described in Schedule A, B and/or C to Trustee(s), and the fact that the Trust Agreement has provisions that will govern his interest in the property currently, in the future and on the death of the Grantor. Grantor approves the Agreement and consents that all property originally or later contributed to the Trust shall be held, administered, and distributed as provided in the Trust Agreement, and Grantor agrees to be bound by it.

WITNESSES:

James Brown (Seal)
James Brown, Grantor
Alford A. Bradley (Seal)
Alford A. Bradley, Trustee
Albert H. Dallas (Seal)
Albert H. Dallas, Trustee
David G. Cannon (Seal)
David G. Cannon, Trustee

STATE OF South Carolina
Georgetown)
COUNTY OF Richmond)

ACKNOWLEDGMENTS

I, a Notary Public, within and for the State and County aforesaid, do hereby certify that the foregoing instrument of written Trust Agreement was this day produced to me in the above State and County by **James Brown**, Grantor, and **Alford A. Bradley, Albert H. Dallas, and David G. Cannon**, Trustee(s), all being parties hereto and was executed and acknowledged by them to be their free act and voluntary deed and all have the requisite capacity to execute this Trust Agreement.

WITNESS my signature this 1st day of August, 2000.

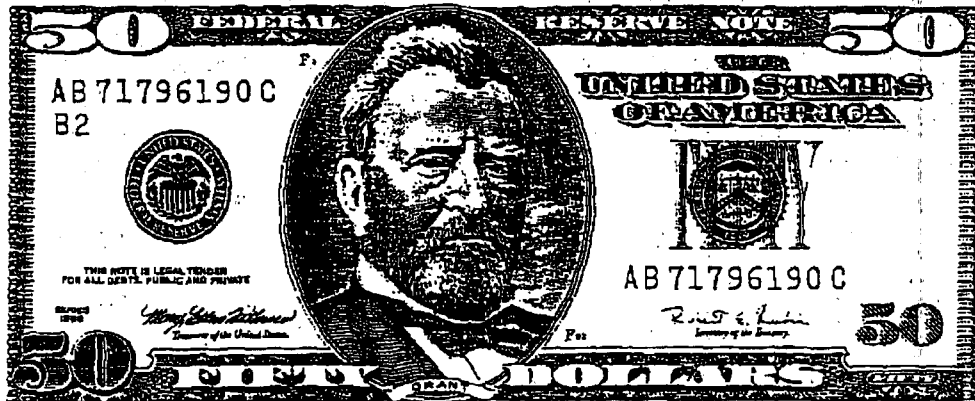
James Brown (Seal)
Signature of Notary Public
James Brown
Printed Name of Notary Public
Notary Public for: SC

My Commission Expires: 7/17/2010

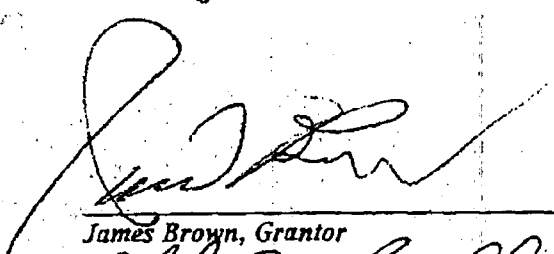
SCHEDULE "A"

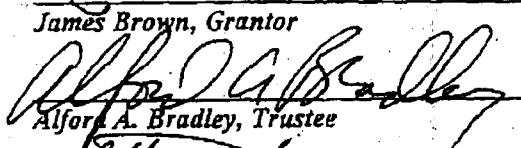
Initial Funding

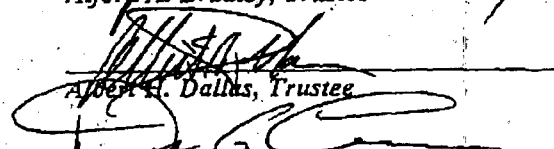
1)

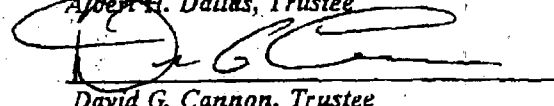


- 2) All ownership interest(s) in James Brown Enterprises, Inc.
- 3) All ownership interest(s) in my primary residence, including all land and improvements located 430 Douglas Drive, Beech Island, SC 29841 together with such other acreage and property within the vicinity. (See Attached Real Estate Description)
- 4) All ownership interest(s) in


James Brown, Grantor


Alford A. Bradley, Trustee

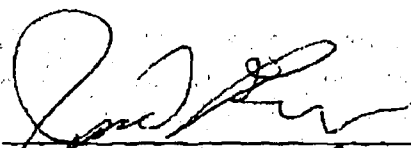

Albert H. Dallas, Trustee

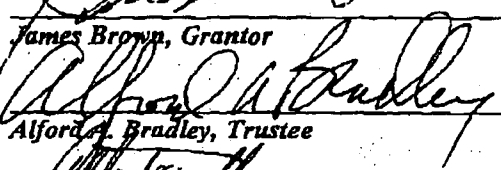

David G. Cannon, Trustee

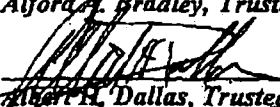
SCHEDULE "B"

Additional Schedule of Assets
Such assets as may be added (if any)

SCHEDULE "C"
Insurance Policies
(if any)


James Brown, Grantor


Alford A. Bradley, Trustee


Albert H. Dallas, Trustee


David G. Cannon, Trustee

STATE OF SOUTH CAROLINA) AMENDMENTS AND RATIFICATION
) OF AMENDMENTS AND OTHER ACTIONS,
COUNTY OF AIKEN) JAMES BROWN 2000 IRREVOCABLE TRUST

This is an Amendment and Ratification of Amendments and other actions, JAMES BROWN 2000 IRREVOCABLE TRUST, executed on July 28, 2008 by Robert L. Buchanan, Jr. and Adele J. Pope (described herein as the "Trustees").

RECITALS:

WHEREAS, James Brown created an irrevocable Trust dated August 1, 2000 (the "Trust") under which The James Brown "I Feel Good" Trust, a charitable educational Trust, was established at his death; and

WHEREAS, James Brown died on December 25, 2006, leaving a last Will dated August 1, 2000 which devises his residuary estate to the Trust, with the majority to pass, by formula, to the "I Feel Good" Trust; and

WHEREAS, the Will of James Brown also established a new Trust, identical to the Trust, should the devise to the Trust be invalid; and

WHEREAS, the three original Trustees of the Trust, David G. Cannon, Albert H. Dallas and Alfred A. Bradley did not at any time between August 1, 2000 and November 20, 2007 apply for recognition of exemption of the James Brown "I Feel Good" Trust under Section 501(c)(3) of the Internal Revenue Code; and

WHEREAS, on or before November 20, 2007 the original Trustees resigned and the Trustees were duly appointed as Trustees of the Trust and all of its subtrusts, including The James Brown "I Feel Good" Trust, on November 20, 2007; and

WHEREAS, between November 30, 2007 and July 14, 2008 the former Trustees have challenged the authority of the Trustees to act under the Trust, and many Interested Parties have challenged the validity of the Will and the Trust; and

WHEREAS, on July 14, 2008, the Honorable Jasper M. Cureton, Judge, South Carolina Court of Appeals, confirmed the authority of the Trustees to act under the Trust and its subtrusts pending an appeal of two of the former Trustees' unsuccessful attempts to withdraw their resignations; and

WHEREAS, although the Trustees do not believe that the challenges of the former Trustees and others impaired their authority to protect the Trust, including the James Brown "I Feel Good" Trust, during the period, they now desire to take all necessary action to confirm that

the actions they have taken on behalf of the Trust, including The James Brown "I Feel Good" Trust are valid and remain in full force and effect; and

WHEREAS, Paragraph (6) of Article VII of the Trust provides that the Trustees shall have the power to amend The James Brown "I Feel Good" Trust in any manner required for the sole purpose of ensuring that the Trust qualifies and continues to qualify as an exempt entity in compliance with the Internal Revenue Code, and as amended; and

WHEREAS, prior to submission of the Application for Recognition of The James Brown "I Feel Good" Trust on December 5, 2007, the Trustees took certain actions, including the adoption of By-laws and the adoption of an Amendment to Article VII of the Trust, to insure qualification of the Trust; and

WHEREAS, after submission to the Internal Revenue Service, in order to insure qualification, additional amendments were made to the Trust as requested by the Internal Revenue Service for qualification; and

WHEREAS, The James Brown "I Feel Good" Trust had no assets on November 20, 2007 and has had no additions since that time, but does have an expectation of a substantial devise provided it qualifies under Section 501(c)(3) of the Internal Revenue Code; and

WHEREAS, to insure the proper administration, the Trustees now desire to confirm and ratify the actions taken by the Trustees between November 20, 2007 and the date hereof, including the adoption of the By-Laws and Amendments to the Trust referenced herein;

NOW, THEREFORE, IT IS RESOLVED:

FIRST

The James Brown "I Feel Good" Trust is hereby amended by adding a new paragraph 5 (a) of Article VII of the Trust, to be located after paragraph 5 and before paragraph 6, which shall read as follows:

Article VII

...

(5a) The name of the organization is **The James Brown "I Feel Good" Trust.**

The organization is organized exclusively for charitable, religious, educational, and/or scientific purposes under section 501(c)(3) of the Internal Revenue Code.

Upon the dissolution of the organization, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or shall be distributed to the Federal government, or to a state or local government, for a public purpose.

The Trustees agree that no part of the net earnings of the organization shall inure to the benefit of, or be distributable to its members, trustees, officers, or other private persons, except that the organization shall be authorized to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in the purpose clause hereof. No substantial part of the activities of the organization shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the organization shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of these articles, the organization shall not carry on any other activities not permitted to be carried on (a) by an organization exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, or (b) by a corporation, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code.

Termination, Dissolution, or Winding Up. Upon the termination, dissolution, or winding up of the Trust, the assets of the Trust remaining after payment, or provision for payment, of all its debts and liabilities shall be distributed to such organization or organizations organized and operated for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, or the federal government, or to a state or local government, for a public purpose. Such distribution shall be made in accordance with all applicable provisions of the laws of the State of South Carolina.

SECOND

Except as modified above, the Trust shall in all respects remain in full force and effect.

FURTHER RESOLVED, that each action taken by the Trustees between their appointment on November 20, 2007 and July 28, 2008, including but not limited to all actions related to the adoption of By-Laws of The James Brown "I Feel Good" Trust; the Application for Recognition of Exemption submitted to the Internal Revenue Service on behalf of The James Brown "I Feel Good" Trust, and the adoption of the above amendments to the Trust, is hereby ratified, confirmed and/or approved; and

FURTHER RESOLVED, to the extent allowed by law, and necessary under the circumstances, these actions are approved and ratified nunc pro tunc as of the original date of the action.

IN WITNESS WHEREOF, the Trustees have set their hands and affixed their seals as of the day and year above written.

Robert L. Buchanan, Jr., Trustee (SEAL)
Robert L. Buchanan, Jr., Trustee

Adele J. Pope (SEAL)
Adele J. Pope, Trustee

90 61102
Columbus 29200

CERTIFICATE AND AGREEMENT OF TRUST
"IRREVOCABLE TRUST AGREEMENT"
JAMES BROWN & TRUSTEES AUGUST 1, 2000"

MISCELLANEOUS

VOL 1088 PAGE 116

The undersigned Grantor(s) and Trustee(s) of a certain trust (the "trust") represent, warrant, certify and agree as follows:

EXHIBIT 3

1. The Grantor(s) of the trust is/are: James Brown
2. The Trustee(s) of the trust is/are: Alford A. Bradley, Albert H. Dallas, David G. Cannon
3. The Successor Trustee(s) of the trust is/are: As Appointed by the original Trustee(s),
as and if necessary
4. The Beneficiaries of the trust are: Grantor, The Brown Family Education Trust,
The James Brown "I Feel Good" Trust
5. The trust is evidenced by written agreement dated: August 1, 2000
The trust provides, in general, full and unrestricted powers for the Trustees to act in the same manner and capacity as any individual can act for/in his own behalf.
6. The trust is revocable and amendable _____ irrevocable X
7. The trust is governed by the laws of the state of South Carolina
8. The trust Tax I.D. No. is: Applied For
9. Any two (2) of the Trustees, (or any one (1) acting upon the written authority, direction or consent of any one (1) of the other Trustees), shall have the authority to execute binding deeds, mortgages, notes, contracts, contracts of sale and purchase, and all other document(s) incident or otherwise pertaining to the administration of the trust pursuant to the applicable laws of the state in which the trust is transacting business.
10. The undersigned Grantor(s) and Trustee(s) jointly and severally indemnify and hold harmless third parties or entities from any liabilities and expenses that arise from reliance on this Certificate of Agreement. This indemnification and hold harmless shall survive termination or amendment of the trust.
11. Third parties or entities may rely upon this Certificate and Agreement until it receives a new Certificate and Agreement advising of any changes to the trust.
12. This Certificate and Agreement supersedes any prior certificates, documents, or information provided to Any parties regarding the trust.
13. Where there are more than one Grantor and one Trustee or where the Grantor(s) and Trustee(s) are not the same person(s), this Certificate and Agreement (and its provisions) may be executed in counterparts all of which shall together be considered as one document.
14. This Certificate and Agreement may be recorded in any jurisdiction for any purpose.

End of Page. See Next 1566 for Execution.

2001023955 Augusta - Richmond County

Book 00742 2303 Augusta - Richmond County
2001023955 08/07/2001 11:15:55.00
312 00 AGREEMENT

P.O. Box 61102
Columbia, SC 29260

Excerpts, Herring Box Exhibit, #19715

DEED

VOL 2004 PAGE 270

Book 00717:1624 Augusta - Richmond County
2001005412 02/26/2001-14:02:12.00
\$28.00 POWER OF ATTORNEY
2001005412 Augusta - Richmond County

THIS POWER OF ATTORNEY SPECIFICALLY REVOKES ALL OTHER
POWERS OF ATTORNEY THAT I HAVE PREVIOUSLY EXECUTED.

STATE OF SOUTH CAROLINA)

DURABLE POWER OF ATTORNEY

COUNTY OF AIKEN)

EXHIBIT 4

KNOW ALL MEN BY THESE PRESENTS that as principal (the "Principal") I, James Brown, a resident of the State and County aforesaid, have made, constituted and appointed and by these presents do make, constitute and appoint Alford A. Bradley, David G. Cannon, Albert H. Dallas and Deanna Brown Thomas, to serve as my true and lawful Attorney(s)-in-Fact ("Attorney") to exercise the powers set forth below. These powers are to be exercised by them jointly, by the majority vote of all of them at any time so serving, provided that the vote of David G. Cannon and/or Albert H. Dallas is with the majority position. The affidavit or certificate under penalty of perjury of any of my Attorneys shall be conclusive evidence insofar as third parties are concerned that any act of such Attorney has been authorized by a valid majority of my Attorneys.

It is my intention and direction that there, at all times, be three serving Attorneys. If at any time one or more of my three originally named Attorneys is no longer serving then the remaining original Attorney(s) shall nominate and appoint successor Attorneys to ensure that there are at all times three serving Attorneys. If at any time none of the three originally named Attorneys are serving in that event the then serving successor Attorneys shall be the final class of Attorneys to serve and no further nominations or appointments of successor Attorneys shall be made.

My Attorney and my Standby Attorney is subject to removal as provided in Article II, paragraph D, below.

ARTICLE I

Empowerment of Attorney

Attorney is authorized in Attorney's absolute discretion from time to time and at any time with respect to my person and my property, real or personal, at any time owned or held by me and without authorization of any court (and regardless of whether I am mentally incompetent or physically or mentally disabled or incapable of managing my property and income), as follows:

A. Powers in General

To do and perform all and every act, deed, matter, and thing whatsoever in and about my estate, property and affairs as fully and effectually, to all intents and purposes, as I might or could do in my own proper person, if personally present, the specifically enumerated powers described below being in aid and exemplification of the full, complete and general power herein granted and not in limitation or definition thereof.

EXHIBIT 104

Nov 24 2003 12:01PM JAMES B HUFF LAW FIRM, PC 8034424422

P. 2

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)
JAMES JOE BROWN, JR.,)
Plaintiff)
vs.)
TOMMIE RAE HYNE AHMED BROWN,)
Defendant.)
IN THE FAMILY COURT
SECOND JUDICIAL CIRCUIT
CASE NUMBER: 04-DR-02-157
CONSENT ORDER OF DISMISSAL

FILED
AIKEN COUNTY

AUG 16 2004
CLERK OF COURT

HEARING DATE: July 22, 2004
PRESIDING JUDGE: Peter R. Nuesale
ATTORNEY FOR PLAINTIFF: James B. Huff
ATTORNEY FOR DEFENDANT: Robert N. Rosen
COURT REPORTER: Lisa Hicklin

This matter was scheduled to come before the Court for a Temporary Hearing on the above listed date. Prior to the hearing the parties informed the Court that they had reached an Agreement in this matter. The Agreement is as follows:

1. The parties hereby dismiss their respective pleadings without prejudice to either party.
2. Plaintiff will pay the sum of \$12,000.00 to Defendant for her attorney fees and costs in this matter. This will be paid within 10 days of the filing of this order.
3. Defendant agrees to and does hereby forever waive any claim of a common law marriage to the Plaintiff, both now and in the future.
4. The parties agree to seal the courts file in this matter.

Based upon the review of the court's file I make the following Findings of Fact:

1. The Agreement is fair and reasonable to both parties and should be approved by the Court.
2. The Court has considered the Agreement and finds that sealing the Courts file in this matter is proper. Both parties have mutually consented to having the case dismissed without being litigated. The parties have resolved their differences and

STATE OF SOUTH CAROLINA

AIKEN COUNTY

CLERK OF COURT

By: [Signature]

Deputy Clerk

AUG 16 2004

EXHIBIT 6

MEETING OF TRUSTEES
IRREVOCABLE TRUST AGREEMENT
OF JAMES BROWN
DECEMBER 27, 2006

It having come to the attention of the Trustees that ALFORD A. BRADLEY, named Trustee, Irrevocable Trust Agreement of James Brown dated August 01, 2000, has failed to qualify and accept responsibility as Trustee, by unanimous agreement of the other two named Trustees, ALBERT H. DALLAS and DAVID G. CANNON, Deanna Brown issue by appointed Trustee to serve in lieu of the named ALFORD A. BRADLEY with all rights and obligations as Trustee as if originally named by Grantor, JAMES BROWN, by signature attached below, the undersigned Deanna Brown accepts the responsibility and duties of Trustee, Irrevocable Trust of James Brown dated August 01, 2000.

This 27th day of December, 2006

Deanna Brown
Albert H. Dallas
David G. Cannon

EXHIBIT 7

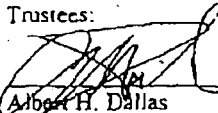
MINUTES OF TRUSTEES
IRREVOCABLE TRUST AGREEMENT
JAMES BROWN
U/A DATED AUGUST 1, 2000

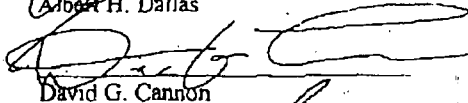
WHEREAS, the Trustees of the Irrevocable Trust Agreement of James Brown dated August 1, 2000 (the "Trust Agreement"), constituting, ALBERT H. DALLAS, DAVID G. CANNON and DEANNA BROWN did meet at the offices of Smith, Massey, Brodie, Thurmond & Guynn, P.A. on January 3, 2007;

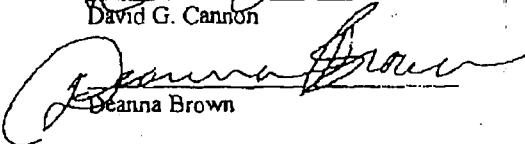
WHEREAS, the Trustees of the Trust Agreement by their signatures below do hereby resolve to hire YAMMA BROWN LUMAR, the daughter of James Brown, found to be a competent and qualified person as an executive assistant to the Trustees to assist the Trustees in carrying out the responsibilities of their office.

NOW, THEREFORE, it is hereby resolved that the Trustees will hire YAMMA BROWN LUMAR as an executive assistant to the Trustees of the Trust Agreement to work at the pleasure of the Trustees, and that no employment agreement will be entered into with YAMMA BROWN LUMAR, and that this resolution shall not be construed as an obligation to provide continued employment.

Trustees:


Albert H. Dallas

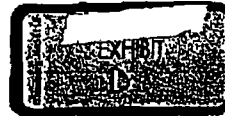

David G. Cannon


Deanna Brown

Effective Date: January 3, 2007

00053

EXHIBIT 16



IN THE PROBATE COURT OF AIKEN COUNTY

STATE OF SOUTH CAROLINA

IN THE MATTER OF:
JAMES BROWN, a/k/a
JAMES JOSEPH BROWN

CASE/ESTATE NO. _____

AFFIDAVIT OF DARYL J. BROWN

Personally appeared before the undersigned officer, duly authorized under law to administer oaths, Daryl J. Brown, who, after being sworn, states as follows:

1.

I am over 21 years of age, I am competent to make this Affidavit and I have personal knowledge of the facts set forth herein.

2.

I am a resident of Richmond County, GEORGIA.

4.

I am the son of James Brown, a/k/a James Joseph Brown and specifically designated in his Will as one member of the entire class of heirs to the Estate of James Brown.

5.

The personal representatives of the Estate of James Brown have not made any accounting to me, as a beneficiary of the Estate, of the assets of certain trusts that make up the bulk of the Estate of James Brown.

6.

I believe all or some of the personal representatives of the Estate have knowledge of certain liquid assets whose location is unknown to the lawful heirs of the Estate.

7.

The personal representatives have failed to account for any assets of the Estate or for of the purported Irrevocable Trust even after demand for same.

8.

These liquid assets of the Estate are in jeopardy of being misappropriated by some or all of the appointed personal representatives.

9.

The personal representatives have attempted to take legal action and use their influence in the community, and the fact that the security guards are paid for by the personal representatives, to prevent the undersigned access to the real and personal property of the Estate or of the purported trust.

10.

On January 23, 2007 the personal representatives, along with their attorneys and certain other private individuals, came to the real property of James Brown, to wit, Douglas Road, Beech Island, SC and without knowledge of or permission of the undersigned brought investigators (See Affidavit of Joseph Lee) who, according to Lee, head of security for the James Brown Estate, insisted on coming on the property to allegedly inventory the property of the deceased's estate.

11.

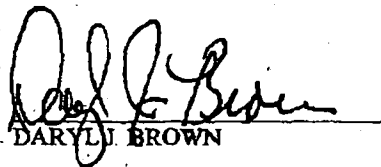
The undersigned affiant witnessed the investigators and personal representatives photographing vacant areas of land and other areas of the real property (which consists of approximately 100 acres) which actions, for reasons of personal security and property security that affiant will not discuss in this document but will present testimony to the Court "in camera" at any and all hearings, the affiant believes places assets of the estate at risk and in jeopardy and may be lost if this Court does not immediately act. Affiant does not believe, as will be shown to this Court in an "in camera" presentation of evidence, that the personal representatives are trustworthy or that they would disclose the

existence of or even the nature of the assets being described herein if, such assets were found exclusively by the personal representatives nor would such personal representatives be trusted by the affiant to account to this Court and the Estate to account for said undisclosed assets. Affiant recognizes that the language of this paragraph is vague and that language is created specifically by the affiant for the protection of the Estate and not to mislead the court because affiant recognizes that the affiant's motion and this affidavit, once filed, will become a public document and such public document will be available to anyone including the media.

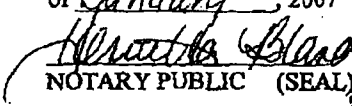
12.

Affiant shows, through this affidavit, that all of the personal representatives of the Estate of James Brown have become incapable of discharging the duties of their office, have mismanaged the estate and/or failed to perform certain duties pertaining to the office.

FURTHER AFFIANT SAITH NOT.


DARYL J. BROWN

Sworn to and subscribed
before me this 24 day
of January, 2007


NOTARY PUBLIC (SEAL)

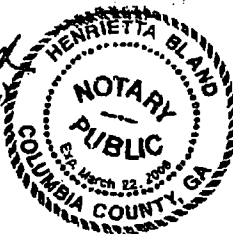


EXHIBIT C

13. 2007 6:33PM

Levenson & Associates

No. 6437 P. 46

Pinnacle Media & Entertainment, LLC
Amount Requested \$200,000,000

Executive Summary

Key Information

Pinnacle Media & Entertainment, LLC
 Anthony "Chip" Lumar, Chairman/CEO
 Yamma Brown Lumar, President
 Peachtree Center Ave
 500

404-343-0048

404-343-2825

www.pinnaclemediaent.com

alexm@info@pinnacleclp.com

Management Team

Anthony "Chip" Lumar, Chairman/CEO
 Yamma Brown Lumar, President
 Terry B. Cox, Graham Windsor Group
 Boyd Carter, Esq.
 In Waters, The Machine Group
 Vin Waters, The Machine Group
 J. McKnight, Undiscovered Live
 Michelle Orves, Special Advisor to Mr. Lumar

Industry

Content provider to the entertainment industry
 via television/cable

Company Resources

Intellectual Property Rights

Source of Financing Sought

Acquisition financing for the James Brown Estate

Initial Internal Capital Invested

\$300,000 has been pledged by the Owners for
 the set up of Pinnacle Communications Inc., and
 Pinnacle Media & Entertainment for print rights
 acquisition, trade show sponsorships, production
 and marketing.

Professionals

Accounting firm)
 Reg C. Takasian
 Takasian & Company, LLC
 36 Intervale Rd
 Suite B1
 Milford, NH 03249
 tel: 617-230-0832

Banking

Yachovia Bank
 1111 Lefford
 Jave Nungesser
 Marietta, GA 30066
 tel: 770-420-0326
 ext: 770-420-0634

Pinnacle Communications, Inc c/o Chip Lumar
 404-404-343-0048
www.pinnaclemediaent.com
pinnaclemediainfo@pinnacleclp.com

Business Description

Pinnacle Media & Entertainment, LLC "PME" is an independent film production and distribution company. The company specializes in commercial grade theatrical films, documentaries, video and content for the major motion picture/television/cable industries. The company presently has the film option rights to several properties that can be acquired through its sister company, Pinnacle Communications, Inc.

Philosophy

There is an inherent marriage between music entertainment and the film/television industries. Both require massive amounts of content to satisfy the needs of their clients/customers, and this company intends to exploit this fact by appointing the daughter of a true living "Legend" James Brown, to be its leader. Pinnacle Communications Inc is currently reviewing over fifty titles for our film and distribution companies. Upon successful completion of funding, PME will launch the national television and cable networks with Atlanta as its national base of operations.

James Brown Estate Acquisition

On December 25, 2006, the legend, James Brown died at the age of 73. He left behind a legacy that will stand the test of time. His estate, the most valuable of assets has the potential to surpass the estates of Elvis Presley, Frank Sinatra, and Dean Martin, in yearly revenues generated, licensing rights, sampling rights, feature films, documentaries, tributes, and future record sales. We believe the estate of the late James Brown can and will generate over 100 million per year. Under the right management structure and capitalized properly, there will be no end in sight. With the right investment partner, Pinnacle Media & Entertainment will become the premier entertainment/management company in the world.

Currently the estate is under the protection of Greenberg Truig, more specifically Joel Katz; Mr. Katz has been an advisor, legal counsel, but more importantly a close personal friend to Mr. Brown for over 20 years. Mr. Katz has intimate knowledge of the estate, past, present and future. It is our hope that once the acquisition is completed, Mr. Katz and his team would remain in their current capacity and would assume the lead in the future development of the "James Brown Living Legend Experience"

Management

Our President is a distinguished graduate of Mercer University (1993) where she received her Doctorate in Pharmacy. Being the daughter of a star of music and film, Dr. Lumar has had intimate knowledge of both industries. Another advantage Dr. Lumar gives is her access to the Hollywood elite. Among some of the more notable Hollywood are Academy Award Winners Jamie Foxx, and Dan Aykroyd, other celebrities' friends includes actor Eddie Murphy, and playwright Tyler Perry.

The company will have only one paid employee initially as all other work not performed by the President is outsourced to contract professionals, i.e. directors, scriptwriters, cast and crew professionals on a per-project basis.

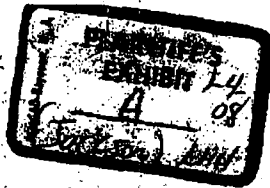


EXHIBIT 22

Deanna

We meet with the new Special Administrators on Monday in Columbia to get them to act in this area and in a number of others as well. We will file motions with the Court after that as will the Special Administrators (or at least we will encourage them to do so). More to follow as soon as we know.

Thanks

LL

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

From: DBrown [mailto:dsweetieb@aol.com]
Sent: Thursday, March 15, 2007 9:42 PM
To: Louis Levenson
Subject: Re: Email to Judge Early

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

DEANNA

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

From: Louis Levenson
To: DSWEETIEB@aol.com
To: drylumar@yahoo.com
Cc: david@levensonlaw.com
Sent: Mar 7, 2007 3:49 PM
Subject: FW: Email to Judge Early

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

From: Early, Doyet A. [mailto:dearlyJ@sccourts.org]
Sent: Wednesday, March 07, 2007 3:43 PM
To: T Heyward Carter
Cc: Robert Rosen; Louis Levenson; Alan Medlin; Alan Medlin; Andrew W. Chandler; M Jean Lee
Subject: RE: Email to Judge Early

FILED
JANUARY 24, 2008 12:30 PM
J. H. [Signature]
J. H. [Signature]
J. H. [Signature]
J. H. [Signature]

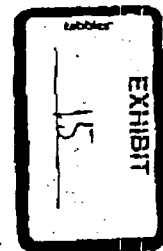
EXHIBIT 32

Developing the James Brown Legacy

*...transforming intellectual and real property into sustainable
high capital value*

Presented by:
Terry Bradford Cox, PH.D.
The Graham Windsor Group
3340 Peachtree Road
Suite 1800
Atlanta, GA 30326

June, 2007



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EXHIBIT 15

POWELL
GOLDSTEIN LLP

Atlanta • Washington • Dallas

Direct Dial No.
404/572-6651
E-Mail: fmcgaughey@pogolaw.com

July 10, 2007

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

Re: The James Brown "I Feel Good" Trust

Dear Buddy:

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

Best regards.

Very truly yours,

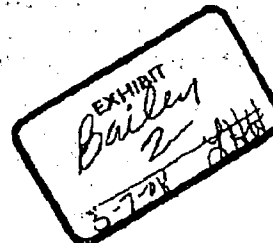
Frank S. McGaughey, III

For POWELL GOLDSTEIN LLP

FSM/jp
Enclosure
cc: William B. Shearer, Jr.
ODMAUCDOCSWTL117525311

37 8

5:25



**IRREVOCABLE TRUST AGREEMENT OF JAMES BROWN
CREATING THE BROWN FAMILY EDUCATION TRUST AND
THE JAMES BROWN "I FEEL GOOD" TRUST**

**DECLARATION OF TRUSTEES CHANGING CONTROLLING LAW
AND AMENDING THE POWERS OF THE TRUSTEE**

WITNESSETH, that by Trust Agreement dated August 1, 2000 (the "Trust Agreement"), James Brown as Grantor did establish The Brown Family Education Trust and The James Brown "I Feel Good" Trust (the "Trusts") with Alford A. Bradley, Albert H. Dallas and David G. Cannon as Trustees (the "Trustees"); and

WHEREAS, Article XIX of the Trust Agreement provides that notwithstanding that the laws of the State of South Carolina are initially to govern the execution of the Trusts, the Trustees are authorized to declare by written instrument that the Trusts from the date of such instrument shall be governed by the laws of another state which shall thereafter become the Controlling Law of the Trusts; and

WHEREAS, Article XIX of the Trust Agreement further provides that if the Controlling Law of the Trusts changes, the Trustees may by written instrument amend the Trustees' powers and such other provisions of the Trust Agreement as they may consider necessary or desirable to secure that such powers and provisions shall be as valid and effective under the applicable law.

THEREFORE, the Trustees of the Trusts hereby declare that:

1. They are the sole acting Trustees of the Trusts.
2. The Controlling Law of the Trusts shall hereafter be the laws of the State of Georgia.

Exhibit A

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

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN) AUG 24 2007 SECOND JUDICIAL CIRCUIT

IN RE:) CIVIL ACTION NO. 2007-CP-02-0122
THE ESTATE OF JAMES BROWN)
A/K/A JAMES JOSEPH BROWN)
RELATED TO DISBURSEMENT OF
ROYALTY PROCEEDS

This Order is made on motion of Robert L. Buchanan, Jr. and Adele J. Pope, Special Administrators of the Estate of James Brown, with the consent of the remaining Personal Representatives/ Trustees of the Estate and Trusts of James Brown, supplements this Court's Order on August 10, 2007. In the August 10 Order, the service of David G. Cannon as Personal Representative of the Estate of James Brown and Trustee of the James Brown 2000 Irrevocable Trust and its subtrusts was terminated. His service as officer and/or director of various Brown Entities, including James Brown, LLC, was also terminated.

At the hearing on August 10, 2007, Mr. Cannon delivered to the Estate a check in the amount of \$350,000.00. The funds represented a portion of a \$900,000.00 check (the "Universal Audit Funds") payable to the James Brown LLC Collection Account, Manufacturers and Traders Trust (M&T). The Universal Audit Funds were deposited by Mr. Cannon into Enterprise Bank account #211100029 of the James Brown Irrevocable Trust on or about August 1, 2006.

The Universal Audit Funds (less a valid payment of approximately \$180,000 to the auditor) should have been deposited into the M&T account, to be applied toward repayment of a \$26 Million 1999 Royalty-backed Note held by Teachers Insurance and Annuity Association of America ("Teachers") for which M&T Trust serves as Trustee. All parties agree that \$720,000 of the Universal Audit Funds belongs to M&T Trust as Trustee, for the benefit of Teachers.

The August 10 Order stated, in part:

...
4. The SAs and PRs are seeking a waiver from M&T Bank and the TIAA-CREF [sic] holders of the 1999 royalty-backed note for the \$350,000 returned by Cannon to be retained by the Estate of James Brown. No part of the funds shall be expended unless and until such authority is received.

The SAs and remaining Personal Representatives have advised the Court that Teachers has consented in writing to the use by the Estate of a portion of the \$350,000 to assist the Estate in its investigation into and return of the remainder of the Universal Audit Funds, as well as other claims the Estate, the Brown Trusts and Brown Entities may have against Cannon.

NOW, THEREFORE, to assure compliance with the requirements imposed by Teachers, and agreed to by the Estate, the Trust and the SAs, IT IS ORDERED, ADJUDGED AND DECREED:

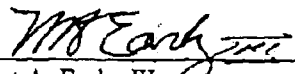
WMC
10/2
1. The Estate may use up to One Hundred Thousand (\$100,000.00) Dollars of the Universal Audit Funds for the investigation and pursuit of claims related to actions of David G. Cannon, including:

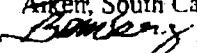
- A. Paralegal and/or contract services (at rates from \$50 - \$125 per hr.), and costs, including internal staff of the SAs, and duplication costs from July 17, 2007.
- B. Computer/technical copying Services to copy and preserve, organize Mr. Cannon's Computer records for James Brown Enterprises, Inc; The New James Brown Enterprises, Inc [sic]; James Brown, LLC; James Brown Royalty Venture I, SPC; James Brown; Seventh Decade; and all other Brown Entities as described in the August 10 Order.
- C. Accounting Services to File 2006 extensions, as necessary, for the Estate, the Brown Trusts, and, as appropriate, Brown Entities, with full disclosure (statement to be prepared by SAs) of activities of Cannon to the extent known; prepare extension of Estate Tax Return (due Sept. 25, 2007); to file Application for Charitable Recognition of the James Brown "I Feel Good" Trust and the take such additional actions as shall benefit the investigation.
- D. Up to \$25,000 for Estate preservation.

3. The \$100,000 and any additional advance funds advanced by Teachers shall be repaid from the first recoveries, with interest at the rate of the Royalty-backed Note. Since these funds, loaned for a specific purpose, do not belong to the Estate, their return with interest shall have priority over all other priority expenses of administration.

4. The remainder of the Universal Audit Funds, \$250,000, shall be immediately delivered to M&T, payable to the James Brown LLC Collection Account.

AND IT IS SO ORDERED.

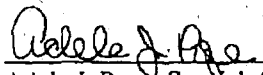

Doyet A. Early, III
Resident Judge, Second Judicial Circuit

August 19, 2007
Aiken, South Carolina

WE SO MOVE:

Albert H. Dallas, Personal Representative
of the Estate of James Brown and Trustee
of the Brown Trusts

Alfred A. Bradley, Personal Representative
of the Estate of James Brown and Trustee
of the Brown Trusts

Robert L. Buchanan, Jr., Special Administrator


Adele J. Pope, Special Administrator

08/17/2007 11:41 88364913

BUCHANAN LAW OFFICE

PAGE 05

08/16/2007 17:15 8836491392

BUCHANAN LAW OFFICE

PAGE 05

THE UNDERSIGNED CONSENT TO THE RELIEF REQUESTED IN THE ATTACHED
ORDER

Teachers Insurance and Annuity Association of America

BY:

Charles M. Mott

EXHIBIT 16

The James Brown Legacy, Inc.
(name pending)
28 East Andrews Dr.
Suite K
Atlanta, GA 30305

October 12, 2007

Mr. Buddy Dallas
Judge Alford Bradley
The Irrevocable Trusts of James Brown, dated 8-1-00
The Brown Family Educational Trust
The James Brown "I Feel Good" Trust

Dear Mr. Dallas and Judge Bradley:

We are pleased to present this initial presentation of a corporation to be formed, after approval, named "The James Brown Legacy, Inc." (hereinafter "JBL") and letter of intent to begin due diligence involved with the James Brown Trust Estate (Trust Estate) with the objective of a purchase of the Trust Estate in its entirety, image, songbook, etc. of James Brown. We make this presentation as an initial introduction of our intent and with the understanding that any final agreement will be subject to formal documentation and acceptance and approval by the Trust Estate and the Court.

It is our belief that the legacy of James Brown and his noble wishes as set out in the trust documents will be best served by maximizing the value of the non-performing assets of the Trust Estate and transferring the items to a group interested in not only paying a fair price but also interested in continuing the altruism of Mr. Brown. It is our belief that the Trust Estate will have peak value by keeping the items grouped together and selling them as a unit instead of breaking up the items and liquidating them piecemeal. As you surely know, merely selling the items individually will do nothing to perpetuate the good works of James Brown.

Our organization's mission will be to develop a Strategic Plan and infrastructure that will build and promote the legacy of James Brown. We intend to work and partner with government agencies and educational institutions to turn James Brown's home into an experiential setting commensurate with the stated intentions of the I Feel Good Trust. We also envision plans that would include the establishment of the James Brown Museum. The purpose of this museum will be to tell the story of how James Brown persevered against all odds: a true "Horatio Alger" story. We will also work and partner with other interested parties within the Strategic Plan to maximize the brand equity and performance of the idle assets over time. We believe that this approach, coupled with the right structured sales agreement, will provide the most value for all interested parties.

Our intent is to make a formal offer to the Estate of James Brown and the Irrevocable Trust of James Brown dated 8-1-00 and must meet several criteria and approval by certain specific parties. Our intent is to purchase the assets, in their entirety, of the trust estate to include the writer's share of the music, the songbook, all intellectual property, real estate, personal property such as costumes, etc., Mr. Brown's image and persona, individually and as an entertainer to include all indicia, stage names such as "Godfather of soul", "The hardest working man in show business", etc.

Our intent is to make a formal offer, as of the date of this letter, for the above referenced property, for a payment of \$100 million US dollars plus Five percent (5%) of the gross profits of the company to be formed, JBL, to be portioned to the "I Feel Good" Trust over a determined period of time as legacy royalties. Our formal offer shall provide earnest money in the amount of \$100,000.00 to be paid into the Estate/Trust as directed during the initial 90 day period which will begin upon approval of the formal offer by the Court. In order to maximize the value of the Trust Assets, we also anticipate the Trust granting JBL contingent, exclusive rights to maximize Trust Assets during the 90-day period, the contingency being our eventual closing on the transaction. During this period, JBL will have all of the rights and privileges to determine marketability of assets and enter into arrangements to secure cash infusions. Further, inasmuch as the closing of the purchase, if approved by the parties and the Court, will be as of the date of this letter and all income or receipts of the Trust will be part of the assets that we will be purchasing, the \$100,000.00 earnest money may be paid into the Estate/Trust from any source during that 90 day period.

We envision that, upon tentative approval of the formalized offer by the Court, we will begin a brief period of due diligence.

By the end of the first 90 days following tentative approval, if JBL's due diligence warrants proceeding further, JBL will make a payment of \$5 million to be credited toward the purchase price at the closing. That payment will begin an additional 90 day period in which the parties have to finalize and close the transaction. Provided all the conditions set forth in the formal offer are met, the closing will occur on or before the 90th day following the \$5 million dollar payment. Principals of our group have already been in contact with John H. Tiller, Esq. of Haynsworth Sinkler Boyd, P.A., who has tentatively agreed to be the closing attorney, should the Court approve our formal offer.

At the final closing, the remaining balance of the \$100 million offer shall be paid. We anticipate that the Gross Profits Agreement will be executed at that time as well.

As you will certainly understand, this letter of intent is subject to due diligence by us and our agents. We anticipate certain contingencies to be in the formal offer, including a completed inventory and appraisal of all items in the Trust, assurance of control of assets, assurance of full rights to publicity, reasonable financing if necessary, no limitations or conditions that would inhibit the implementation of the JBL Strategic Plan to develop the James Brown Legacy, and no impediments to creating performing assets over time.

We understand and appreciate that this letter of intent and any formal offer shall be subject to evaluation and approval of both the Special Administrators and the final approval of the Court.

As you understand, it is our hope and desire to maintain the legacy and good will of James Brown as so aptly set forth in the Trust agreements. We understand the limitations that the Trust may have at this juncture, however. As a small demonstration of our wish to "keep up the good works" of James Brown, we wish to provide the Trust Estate with funds necessary to continue James Brown's tradition of providing turkeys for the needy this Thanksgiving 2007. We believe that this important tradition is needed to maintain the James Brown Legacy, Mr. Brown's wishes, and are honored to assist.

We appreciate the opportunity to provide this letter of intent and believe it be truly reflective of the valuation of the estate at this time. If the Trust Estate is willing to consider entering into a formal agreement, kindly contact me or my counsel, John T. Sparks, Sr., within the next 30 days.

I look forward to discussing this matter with you further.

Sincerely,

Gray M. Campbell

cc: John T. Sparks, Sr., Esq., Austin & Sparks, P.C.
cc: John H. Tiller, Esq., Haynsworth Sinkler Boyd, P.A.

EXHIBIT 17

1. What do you think about this?

From: David Yount [mailto:david@Levensonlaw.com]
 Sent: Saturday, November 10, 2007 2:18 PM
 To: jdele@popelawfirm.com; rlbuchananjr@bellsouth.net; d_michel@yahoo.com; rrosen@rosen-lawfirm.com;
 amedlin@sc.rr.com; Carter@eckb.com; Ariail E. King; wjh@LewisBabcock.com; Keith M. Babcock; jacksonstanley@bellsouth.net;
 davidbell@davidbelllawfirm.com; rmaxwell@maxwelllawfirm.com; Ericbland@blandrichter.com; ronnie@blandrichter.com;
 jmg@jimgriffinlaw.com; AGSJONES@ag.state.sc.us; Grace Lewis; aggramp@ag.state.sc.us; akirby@mgclaw.com;
 weskirland@bellsouth.net; robtyoungatty@yahoo.com; cmcgowan@mcgowanhood.com; islj@jtbpa.com;
 jfelder@mcgowanhood.com; bat@jtbpa.com; shahidlo@bellsouth.net
 Cc: Louis Levenson
 Subject: Brown estate - William Morris Agency document

To All:

Pursuant to subpoena and our various communications with William Morris Agency we obtained the documents attached on Friday Nov. 9.

My office is therefore copying these documents to you.

These documents reflect that touring revenue (each date is segregated by individual in the agency, I think) from 2003 till date of death was almost \$18,000,000, assuming that all dates were booked through the agents for Mr. Brown and not done by Mr. Brown himself or by those around him.

Our information indicates that there were dates he worked not identified to the agency (though we do not have specific information). This fact would only cause the total touring number to increase. Obviously Mr. Carmon and Mr.

Illas (and possibly Mr. Bradley) who were utilizing 7th Decade for some operational purpose have failed to account to us or to anyone how this flow of revenue moves logically from one entity to another.

We urge you that you agree that the written information from William Morris can be used at the hearing on Nov. 15 and at any other hearings or for trial in lieu of a live witness to authenticate the documents. If there are any objections to the documents being used for evidence on the 15th, please advise me so we may make arrangements for a live witness from the agency.

Thank you.
 Louis Levenson

David M. Yount, Esq.
 Levenson & Associates
 125 Broad Street, SW
 Atlanta, Georgia 30303
 (404) 659-5000 office
 (404) 372-8935 mobile
 (404) 659-1355 fax
 vid@levensonlaw.com

C121

Information contained in this transmission may contain privileged and confidential information. It is intended only for the use of the person(s) named above. If you are not the recipient, you are hereby notified that any review, dissemination, distribution or of this communication is strictly prohibited. If you are not the intended

EXHIBIT 17

Excerpts, Return and Recommendation of Special Administrators
dtd. November 14, 2007

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

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

AS TO THE TANGIBLE PERSONAL PROPERTY

1. They believe that the immediate adoption and seamless implementation of such a plan to value the TPP including Personal and Household Effects (PHE), is in the best interest of the Estate.

2. They believe that any plan must balance the rights of the beneficiaries of the Will to receive, in kind, Personal and Household Effects (PHE), with the need for appropriate security for the payment of Estate Taxes and expenses, where applicable.

3. They are informed that Tom Wells, engaged by the PRs, with others, has completed an inventory of assets owned by the Estate. They request that the Court engage Llewellyn M. Dykes at a cost of no more than Thirty Thousand (\$30,000.00) Dollars to value the TPP on or before December 25, as of December 25, 2006 (whether claimed by the Estate, the Trust, or any Brown Entity).

4. With respect to the TPP, they further recommend the following:

- a. All TPP, other than cars titled in the name of James Brown Enterprises, Inc., collectively be reported on the Inventory & Appraisement as assets of the Estate,

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

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

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

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

EXHIBIT 20

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
IN THE MATTER OF: JAMES BROWN

IN THE PROBATE COURT

INVENTORY AND APPRAISEMENT

CASE NUMBER: 2007-ES-02-0056

Filed: 11-15-2007

Sue H. Ros
Judge of Probate

By: K. Duffin☒ ORIGINAL☐ SUPPLEMENTAL #Personal Representative (s): ALBERT H. DALLAS, and ALFRED A. BRADLEYDecedent's Social Security Number: 269-32-3801Decedent's Date of Death: December 25, 2006

Domicile at death:

Was there a will? ☒ YES ☐ NOAiken
(county)SC
(state)

The undersigned, being sworn, states: That the following schedules contain a complete and accurate inventory and appraisement of all real and personal property of this estate so far as the undersigned is informed: that he/she has estimated and/or appraised all listed property at its fair market value, according to the best of his/her knowledge and ability.

SWORN to me this 15th day of
November 20 07

Stanley G. Jackson
Notary Public for South Carolina
My Commission Expires

Attorney: Stanley G. Jackson
Address: 321 1/2 Newberry Street SW
Aiken, SC 29801
E-Mail: jacksonstanley@bellsouth.net
Telephone: 803.643.1003

Signature: [Signature]
Name: Albert H. Dallas
Address: Post Office Box 115 Post Office Box 1150
Thomson, GA 30824

E-Mail:
Telephone (O): (706) 585-7170
(H):

Signature: [Signature]
Name: Alfred A. Bradley
Address: 1803 Green Pine RD
Aiken, SC 29803
E-Mail: usabali@bellsouth.net
Telephone (O): 803.648.4201
(H): (803) 652-8443

For estates of decedents, the gross fair market valuation of all assets, regardless of situs, should be given as of the date of death. List all out-of-state assets on appropriate schedules. A Supplemental Inventory should be utilized for correcting, adjusting or adding to an original inventory. A qualified and disinterested appraiser may be employed to ascertain the value of any asset, the value of which may be subject to reasonable doubt. If an appraiser is employed, name and address should be indicated with the item or items he/she appraised.

Within ninety (90) days following an appointment, a copy of the inventory and appraisement shall be sent to each interested person who requests it, and the original inventory filed with the Probate Court.

RECAPITULATION

	Non-Probate	Probate
Schedule A - Real Estate		Unknown
Schedule B - Stocks and Bonds	James Brown Enterprises, Inc. will be determined by the Court as to whether it is a probate asset	205,218.86
Schedule C - Notes Due Decedent and Cash		138,506.13
Schedule D - Insurance on Decedent's Life: Part 1 - Payable to Estate		NONE
Part 2 - Payable to Beneficiary		NONE
Schedule E - Jointly Owned Property	320,000.00	58,687,046.00
Schedule F - Other Miscellaneous		
Other Assets Payable to Estate		
Schedule G - Transfers during Decedent's Life	28,332,792.00	
Schedule H - Powers of Appointment		NONE
Schedule I - Annuities and Retirement Accounts		NONE
TOTAL GROSS VALUE	\$ 85,683,562.99	
ENCUMBRANCES	(0)	
TOTAL NET WORTH	\$ 85,683,562.99	

Adele J. Pope, PC**EXHIBIT 34****ATTORNEY AT LAW***Certified Specialist in Estate Planning and Probate Law*

1218 Taylor Street

PO Drawer 7125

Columbia, SC 29202-7125

Telephone (803) 779-1870

Telecopier (803) 779-1673

June 15, 2007

Phillip G. Farr, CPA, P.C.
104 Cobb Street
Thomson, Georgia 30824
Fax: 706-595-6070

BY FAX ONLY

Re: The Estate of James Brown
Date of Death: December 25, 2006
Our File No. 8377

Dear Phil:

Thanks to you and Martha (and Buddy) for helping us get these tax returns organized.
Here is what I understand:

1. No tax returns have been filed for the James Brown 2000 Irrevocable Trust.
2. You have the tax returns for James Brown Enterprises, Inc., 1999-2005. (You will send all except 2005, which I have, and 2006 when available.)
3. You have James Brown's individual returns for 1999-2005. (You will send all except 2005, which I have, and 2006 when available.)

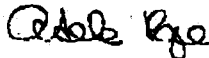
4. James Brown LLC and/or James Brown Royalty Venture I SPC, Inc. Only one return filed (probably 1999). You will send that one to me.

5. You also confirmed that you have not prepared any income tax returns for Geronimo Music, Ltd.

You have indicated that you have these readily available and will copy and send them. If we can help in any way by sending someone to assist with the copying, or otherwise, please let me know.

Bob and I thank you in advance.

Sincerely,



Adele J. Pope

AJP:lwm

cc: Robert L. Buchanan, Jr., Esquire

Albert H. Dallas, Esquire

Other Personal Representatives and Counsel

BROWN, ALTR, FARR, wpl

Adele J. Pope

From: Bill Hammond [whamm@bellsouth.net]
Sent: Friday, June 15, 2007 1:17 PM
To: Brown Est. / Robert L. Buchanan Jr.
Cc: adele@popelawfirm.com; Keith M. Babcock
Subject: Disbursements from Bond Deal and repudiation of Writer's Share sale

Adele and Bob: You asked about the disbursement of the bond proceeds. I sent you the list of disbursements of approximately \$15M. These are the disbursements made by Leon Friedman from a net check to him at the bond closing. All of the costs- Pullman, lawyers etc. were taken out before Leon received the net proceeds. I am obtaining from Leon the disbursements made by the closing attorneys prior to his receipt of the net. The Morgan Stanley account was in the name of JBE, Inc. and was controlled by JB. I will send the pre \$15M disbursements on the closing statement to you as soon as it is available. If litigants wish to chase rabbits I guess that is better than bothering us with relevant matters before the court.

I recall Phil stating there were some \$6M+- in closing costs which had never been accounted for by JBE or JB, amortized and deducted. You will recall that Phil and I concluded these previously undeducted costs and the NOL carry forward would largely offset the gain from the sale of the writer's share and payoff of the bond as it relates to JBE, Inc. A charitable deduction would offset some part of the gain at the estate level. Therefore, it is discouraging to hear that you object to going forward with the sale of the writer's share, especially when it appears it can be done with a limited tax consequence, provide much needed liquidity to the estate, and force any contract claims in the October letter, if any, to be proven as a claim against the estate at a later time, and without even allowing GT the opportunity to explore settlement with Pullman. I have been representing fiduciaries, both corporate and individual for over 25 years and this is not a prudent fiduciary course of action. It is likewise inconsistent with the terms of the trust, which requires a sale of all assets to immediately, and not 5-10 years from now, fund the education of grandchildren and deserving residents of GA/SC. When the GC reach age 35, they receive no benefits from the education trust, so waiting to fund it is to their detriment. If the October letter and claims there under are valid claims and contractual obligations, they will be asserted whether the Writer's share is sold or not. I have advised the PR's to obtain separate counsel for any claim they may have, if any, under the October letter, since I represent the estate and trust. So your decision to hold this revenue stream, which will decline over time and is under the control of third parties is a risky and imprudent fiduciary call. I have the estate and children's interest in mind and do not understand your objection to maximizing the estate's value, or taking the risk of its diminution over time. I have no dog in this race except the beneficiaries of the trust and make these comments sincerely. Bill

LAW OFFICES
LEWIS & BABCOCK, L.L.P.
POST OFFICE BOX 11208
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: 803/771-8000
FAX: 803/733-3534
INTERNET: FIRM@LEWISBABCOCK.COM

A. CAMDEN LEWIS
KEITH M. BABCOCK
MARY G. LEWIS
ARIAIL E. KING
PETER D. PROTOPAPAS
BRADY R. THOMAS
W. JONATHAN HARLING

STREET ADDRESS:
1513 HAMPTON STREET
COLUMBIA, SOUTH CAROLINA 29201

November 16, 2007

EMAIL AND U.S. MAIL

Albert H. Dallas, Esquire
Dallas Law Firm
Post Office Box 1150
Thompson, Georgia 30824-1150

The Honorable Alfred A. Bradley
1803 Greenpond Road
Aiken, South Carolina 29083

Re: Estate of James Brown a/k/a James Joseph Brown, Our File No. 07-116

Dear Buddy and Judge Bradley:

I have enclosed a copy of the correspondence we received from Judge Early today regarding the November 20, 2007 hearing. Earlier today, a copy was forwarded to you by email. In his letter, Judge Early indicates that he is strongly considering your removal and requests that you consider resigning as personal representatives and trustees.

Keith and I believe you should strongly consider resigning rather than being removed by the court. Resignation would afford you the opportunity to leave on your own terms and make a public statement to that effect. If Judge Early removes you, and there is a strong indication that he will, it will be done after a public hearing where you will have to respond to various allegations of improper conduct. The hearing, and any orders issued afterward, will be the subject of media attention.

Obviously, the ultimate decision to resign or remain as Personal Representatives and Trustees is yours. We feel we would be doing you a disservice if we did not suggest that you strongly consider resignation as an option at this time. This suggestion falls outside our actual representation of you in estate litigation, but we have worked with you for many months and do not want to see your efforts on behalf of Mr. Brown, the estate, and the trust end in court ordered removal.

Exhibit 2



Adele J. Pope

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

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

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

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

Thanks.

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

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

Adele J. Pope, P.C.

ATTORNEY AT LAW

Certified Specialist in Estate Planning and Probate Law

1218 Taylor Street
PO Drawer 7125
Columbia, SC 29202-7125
Telephone: (803) 779-1870
Telecopier: (803) 779-1673
Email: adele@popelawfirm.com

November 21, 2007

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

BY FAX OR MAIL

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

Dear Sonny:

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

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

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

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

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

Letter to Mr. Jones

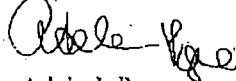
November 21, 2007

Page 2

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

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

Sincerely,



Adele J. Pope

AJP:kfr

cc: (with copy of your e-mail)

The Honorable Henry Dargan McMaster

Robert L. Buchanan, Jr.

Beneficiary Review File

STATE OF SOUTH CAROLINA	)	
COUNTY OF AIKEN	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
IN RE:	)	
THE ESTATE OF	)	
JAMES BROWN A/K/A	)	
JAMES JOSEPH BROWN	)	C/A No. 2007-CP-02-122
	)	
	)	AFFIDAVIT OF
	)	WILLIAM F. HAMMOND

AFFIDAVIT OF WILLIAM F. HAMMOND

Before me, the undersigned authority on this day personally appeared
 WILLIAM F. HAMMOND, who after being duly sworn, disposes and makes this
 affidavit.

1.

I am of the age of majority, of sound mind and memory and depose this
 AFFIDAVIT is based on my personal knowledge and observations.

2.

My name is William F. Hammond, and I am a partner/owner of the law
 firm of Hull Towill Norman Barrett & Salley, P.C., 801 Broad St., SunTrust Bank
 Building, Suite 700, Augusta, Georgia 30901. I was licensed in Georgia as a
 Certified Public Accountant and practiced accounting in Augusta, Georgia
 immediately prior to attending Law School.

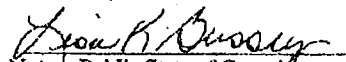
3.

I was admitted to practice law in Georgia in 1980 after graduation from
 Mercer University, and subsequently received a Masters of Law in Taxation LLM

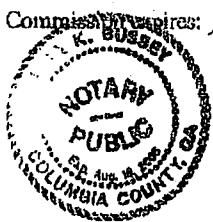
and adverse and detrimental to the intentions of James Brown and the intended beneficiaries of his Estate and the Trusts he created. I also advised the Trustees, after our first meeting with the Special Administrators, that the Special Administrators' goal was not to assist them in the administration of the Estate but, rather, to remove them as fiduciaries of the Estate and Trust and to have themselves appointed. I advised my clients that a Personal Administrator's statutory fee in South Carolina is 5% of the fair market value of an estate worth \$85,000,000 or more, and control of a private charitable foundation with assets over \$80,000,000 and the compensation therefrom, made them sitting ducks for attempted removal.


WILLIAM F. HAMMOND

Sworn to and subscribed
before me this 30th day of
November, 2007.


Notary Public State of Georgia

My Commission Expires: August 18, 2008



Adele J. Pope

From: Sonny Jones [AGSJONES@ag.state.sc.us]
Sent: Thursday, December 06, 2007 4:04 PM
To: rbuchananjr@bellsouth.net; adele@popelawfirm.com
Cc: Bob Cook
Subject: James Brown Matter
Attachments: James Brown Legacy initial offer 10-12-07_.doc



James Brown
Legacy initial off...

I, like each of you, have been contacted by Dr. Cox and Toby Byron as to the purchase (see attached 10/12/07 letter) of the Trust Estate for \$100 million plus 5% of the gross profits from the company to be formed. I, like each of you, have very little time left to devote to the intellectual property issue. However, I do not want to be the one referenced as the one who sat on an offer of \$100 million and lost it. Therefore, please advise as to the following (and more if you have further insight):

1. Is it that we do not have time to deal w/ this now and if so do we need to consult w/ someone who has the expertise
2. I have heard for the last 3 months that the sky will fall and the offer will go away if we do not accept it now...your thoughts. Also, who else is out there that can make an offer if at all
3. Are there some self serving interest w/ some of the local players in this that is causing this push
4. I was given Joe Katz in Atlanta as a person to call to get a feel if these current offer will in fact decrease in the near future...your thoughts on that contact

I would appreciate your thoughts and your indulgence but I would like to discuss now rather than explain later on...

Please advise. Thanks.

PS: When can we talk about the interesting information you recently discovered in the boxes from Keith Babcock.

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT

COUNTY OF AIKEN)

CASE NUMBER: 2007-ES-02-_____

TOMMIE RAE BROWN)

Petitioner,)

Vs.)

PETITION TO SET ASIDE TRUST

ADELE POPE AND BOB BUCHANNAN)

AS TRUSTEES OF THE)

IRREVOCABLE TRUST OF)

JAMES BROWN U/A/D AUGUST 1, 2000)

Respondents.)

YOUR PETITIONER HEREBY RESPECTFULLY ALLEGES AS FOLLOWS:

1. That James Brown (the "Decedent"), died on December 25, 2006, a resident of Aiken County, South Carolina.

2. That Petitioner is the surviving spouse of the Decedent, having married him on December 14, 2001, and has filed claims against the Decedent's estate as the surviving spouse.

3. That the Decedent executed a purported Last Will and Testament ("Will") and a purported Irrevocable Trust ("Trust") on August 1, 2000 (collectively, "Estate Documents").

4. That the Will of the Decedent was admitted for informal probate in the Aiken County Probate.

5. That said Will of the Decedent nominated David G. Cannon ("Cannon"), Albert H. Dallas ("Dallas"), and Alford A. Bradley ("Bradley") as Co-Personal Representatives of the Estate, and said individuals were informally appointed as such Co-Personal Representatives by the Aiken County Probate Court. Each said Co-Personal Representative has since resigned.

6. That the original Trustees named in the Trust dated August 1, 2000, also were Cannon, Dallas, and Bradley. Each said Co-Trustee has since resigned.

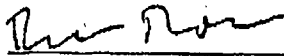
7. That, under the provisions of the Will, six (6) named children are to receive the Decedent's personal and household effects, and the residue of the estate passes to the Trust and, ultimately, to one or more subtrusts thereunder.

FOR A FIRST CAUSE OF ACTION
UNDUE INFLUENCE

8. Petitioner realleges paragraphs 1 through 7 as if fully restated herein.

9. That, upon information and belief, one or more of Cannon, Dallas and Bradley initiated the contact between the Decedent and H. Dewain Herring, attorney at law, for purposes of

- (b) That, in the alternative, the Court determine that the Decedent's purported irrevocable Trust dated August 1, 2000, is illusory for purposes of calculating Petitioner's spousal share and, to the extent assets in the Decedent's probate estate are insufficient to satisfy Petitioner's spousal share, the assets of the Trust should be made available to satisfy such spousal share; and
- (c) For such other and further relief as this Honorable Court deems just and proper.



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

T. Heyward Carter, Jr.
Andrew W. Chandler
M. Jean Lee
Evans, Carter, Kunes & Bennett
115 Church Street
P.O. Box 369
Charleston, SC 29402

S. Alan Medlin
1713 Phelps Street
Columbia, SC 29205

David L. Michel
Michel Law Firm, LLC
15 State Street
Charleston, SC 29401
Attorneys for Petitioner, Tommie Rae Brown

December 19, 2007
Charleston, SC

EXHIBIT 90

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Forlando J. Brown,

Plaintiff,

v.

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

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

Defendants.

Case No. _____

COMPLAINT

COMES NOW Plaintiff Forlando J. Brown and hereby files his complaint against Adele J. Pope, individually and as a purported Trustee of an Irrevocable Trust established by James Brown on August 1, 2000 (the Irrevocable Trust"), and Robert L. Buchanan, Jr., individually and as a purported Trustee of the Irrevocable Trust, and for his Complaint, respectfully alleges the following:

Respectfully submitted, this 2nd day of January, 2008.

William B. Shearer, Jr. /*WBS*

William B. Shearer, Jr.
Attorney Identification No. 5049
POWELL GOLDSTEIN LLP
One Atlantic Center, 14th Floor
1201 W. Peachtree Street, N.W.
Atlanta, GA 30309-3488
404-572-6600

David B. Bell, Esq.
BELL & BELL
P. O. Box 1011
Augusta, GA 30903-1011
706-724-1882

Jerry Leo Finney

Jerry Leo Finney
Attorney Identification No. 6489
The Finney Law Firm, Inc.
2117 Park Street
Columbia, SC 29201
803-254-7408

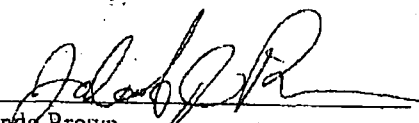
Ernest A. Finney, Jr. /*EAF*

Ernest A. Finney, Jr.
Attorney Identification No. 3071
Attorney at Law
2117 Park Street
Columbia, SC 29201
803-254-7408

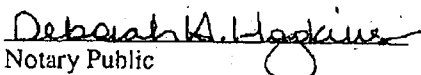
COUNSEL FOR FORLANDO J. BROWN

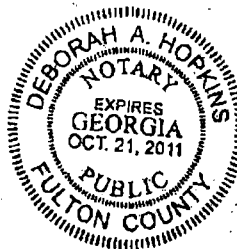
VERIFICATION

I, Forlando Brown, the Plaintiff, do hereby certify that the entire contents of this Complaint are true and accurate to the best of my belief and knowledge as of the writing of this Complaint.


Forlando Brown

Subscribed and sworn to before me
this 31ST day of DECEMBER, 2007.


Notary Public
My commission expires: 10/21/11



#1243829

EXHIBIT 22

11. If the Court determines, after a full hearing, that Mr. Buchanan and I cannot continue to serve properly and ethically as Personal Representatives and Trustees at the same time, I ask the Court to take such measures as will balance the interest of our acting properly and ethically and doing the least damage to Mr. Brown's Estate Plan.

12. I believe that Mr. Buchanan and I have acted in utmost good faith first in our service as SAs, and as Personal Representatives and Trustees since November 20, 2008.

13. I believe the resignation of Mr. Dallas and Mr. Bradley was entirely appropriate. I believe our appointment by the Court was appropriate.

14. In the fall of 2007, Mr. Dallas and Mr. Bradley advised us, and the accountant, that there was no Advisory Committee under Mr. Brown's Trust. When we became PR/Trustees, we filed for charitable recognition of the James Brown "I Feel Good" Trust. For the Advisory Committee, we selected a former South Carolina State Superintendent of Education and the now-president of South Carolina State University. We believe they embody Mr. Brown's goals and love of education. We sought, and are still seeking, to add a child of Mr. Brown who supports the goals of the 2000 Trust.

15. I ask the Court to schedule a full hearing on the motion for reconsideration of our appointment, to determine that what Mr. Buchanan and I have done as Special Administrators, and to date as Personal Representative and Trustees, is proper.

16. I also ask the Court to declare that it is both ethical and proper under Mr. Brown's documents for us to continue to serve as both Personal Representatives and Trustees.

17. I ask that my counsel be allowed to cross examine, among others, Forlando Brown, to determine whether the lawsuit he has filed against us in Federal Court was orchestrated or

motivated by Messrs. Dallas and Cannon, since he is using the law firm that helped Mr. Cannon
and Mr. Dallas in July 2007 with trying to remove Mr. Brown's Trust from the State of South
Carolina.

18. Every Will or Trust which has more than one outright beneficiary has potential conflicts. Mr. Brown's Estate Plan contemplated service by the same persons as his Personal Representatives and Trustees.

19. Mr. Buchanan and I have worked steadily for 10 months to do everything we could,
first to preserve the assets, and now to uphold his Estate Plan. I believe if we had not been appointed, and prevented it, Mr. Cannon, Mr. Dallas and Mr. Bradley would now have millions of dollars, and Mr. Brown's Estate and Trust would be in grave condition.

20. If, after this review, the Court finds that it is not both ethical and reasonable for Mr. Buchanan and me to serve both as Personal Representatives and Trustees, I would intend to work with Mr. Buchanan to tender my resignation in a way that would ensure that Mr. Brown's Estate and Trust not be put at risk of falling back into the hands of Mr. Cannon, Mr. Bradley and Mr. Dallas.

21. In this complex matter, which includes at least 5 separate lawsuits, special conflicts may arise. When they do, it will be entirely appropriate, and we, the Court, or any appropriate party, may seek either a Special Administrator or Special Trustee to deal with a particular situation. To avoid more duplication and confusion, however, I believe this procedure should be implemented only as and when needed.

22. Mr. Buchanan and I have served for only 6 weeks. We are trying to resolve seven
years of mismanagement. I hope to continue to do that if the Court finds my service appropriate.

Mr. Brown's Estate and Trust if the same fiduciaries were not serving both as his Personal Representatives and as Trustees.

5. As shown on Exhibit A, attached hereto, Albert Bradley, prior to January 2, 2003, failed to perform his duties as Trustee for six years. After that, he has joined in, and supported, the acts of Mr. Cannon and Mr. Dallas.

6. One of our primary acts as SA s from March 7, 2007 - August 10, 2007 was preventing an imprudent sale of Mr. Brown's assets which would have immediately paid Mr. Dallas and Mr. Cannon more than \$ 2 Million.

7. Along with Mr. Buchanan, I have both a fiduciary duty and a great desire to preserve Mr. Brown's Estate Plan, as outlined in his Will and the 2000 Trust, for the education of children, including his grandchildren.

8. I believe that my fiduciary duty includes taking all reasonable measures to assure that Messrs. Cannon, Dallas and Bradley not return as fiduciaries for the Estate or Trust.

9. I do not desire, however, to be serving and vigorously defending Mr. Brown's Estate Plan, something which is expected to consume more than 70% of my available time for the next year (and perhaps longer) unless accusations made against Mr. Buchanan and me by the South Carolina Attorney General (and others) related to our service as SA s are resolved in our favor after a full evidentiary hearing.

10. I now agree that I should not have believed the representations of Mr. Dallas and Mr. Bradley, speaking through their lawyer in open Court, that James Brown Enterprises, Inc. had never been transferred to the 2000 Trust. Nor should I have believed many other representations by them. I ask to take the stand to tell the Court about these matters.

EXHIBIT 24

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	CIVIL ACTION NO. 2007-CP-02-0122
	)	
	)	
	)	ORDER DIRECTING PAYMENT
IN RE:	)	OF FEES AND COSTS OF SPECIAL
	)	ADMINISTRATORS AND OTHER RELIEF
THE ESTATE OF JAMES BROWN	)	
A/K/A JAMES JOSEPH BROWN	)	

This matter comes before me on Motion of Robert L. Buchanan, Jr. and Adele J. Pope, as Personal Representatives of the Estate of James Brown; Trustees of the James Brown 2000 Irrevocable Trust; and former Special Administrators of the Estate of James Brown. They seek an order approving payment of fees of \$317,000.00 and costs for their services as Special Administrators for the period from March 7, 2007 through November 20, 2007. They also seek approval of continued payments on a "time plus costs" basis while they serve as Personal Representatives and Trustees. Their unreimbursed costs for the period are \$2,415.38. They ask that the "time plus costs" payments be a deposit towards, and without prejudice to, their right to receive full commissions as Personal Representatives and Trustees.

The motion was supported by affidavits of Robert L. Buchanan, Jr. and Adele J. Pope, with detailed attachments outlining their work as Special Administrators for the period from March 7, 2007 through November 20, 2007, and as Personal Representatives and Trustees since that time. For the 8 1/2 month period they served as Special Administrators, the two attorneys worked more than 950 hours. Their staffs and law clerks worked more than 680 hours.

Since, by limitation in this Court's ^{STATE OF SOUTH CAROLINA} ~~County of Aiken~~ ^{County of Aiken} ~~the Special Administrators~~ ^{the Special Administrators} were not fiduciaries during the period before November 20, 2007, the Court has adopted the guidelines for

JAN 09 2008
L. L. Godard
 L. L. Godard, Clerk of Court of Common Pleas and Second
 Judicial Circuit for Aiken County, South Carolina do hereby certify
 that the foregoing is a true and correct copy of the
 original documents which have been filed in this Court.

Deputy Clerk

1-9 8.
 8.30

EXHIBIT 28

Page 1 of 1

Adele J. Pope

From: Mary Frances Jowers [MFJowers@ag.state.sc.us]
Sent: Wednesday, February 13, 2008 10:22 AM
To: jdbaileylaw@bellsouth.net; rlbuchananjr@bellsouth.net; adele@popelawfirm.com
Cc: Sonny Jones
Subject: Fwd: Clarification

Please disregard the e-mail below that I sent earlier today; I've talked to Adele and my understanding is that everyone has been aware all along that our position on the Christie's sale is that we have no position. The Attorney General also has no position on the sale of the house. To the extent there is any misunderstanding of our position on that, I wanted to let you know our position.

>>> Mary Frances Jowers 2/13/2008 9:01 AM >>>

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

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

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

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

Adele J. Pope

From: Terry Bradford Cox, PhD [tbcox@mindspring.com]
Sent: Friday, February 29, 2008 6:43 PM
To: Adele Pope; Bob Buchanan
Cc: Sonny Jones; Bill Shearer
Subject: James Brown Legacy loi assumptions 02.08
Attachments: James Brown Legacy loi assumptions 02____.doc

Dear Adele and Bob

Attached is a letter of intent to purchase all of the assets of the Trust and Estate. The hard copy of this intent and letter from Powell Goldstein, LLP will be sent Monday. I appreciate your consideration.
Sincerely,

Terry

Terry Bradford Cox, PhD
The Grahm Windsor Group
683 Greenview Ave. NE
Atlanta, Georgia 30305
678.575.4180
tbcox@grahm-windsor.com

THE JAMES BROWN LEGACY, INC.
683 GREENVIEW AVENUE, NE, ATLANTA, GEORGIA 30305

EXHIBIT 25

February 29, 2008

Ms. Adele J. Pope
1218 Taylor Street
PO Drawer 7125
Columbia, SC 29202
Adele @popelawfirm.com

Mr. Robert L. Buchanan, Jr.
212 Newberry Street NW
P.O. Box 463
Aiken, SC 29802-0463
rbuchananjr@bellsouth.net

Dear Ms. Pope and Mr. Buchanan:

We are pleased to submit this letter of intent on behalf of The James Brown Legacy, Inc. (hereinafter "TJBL") expressing our intent to purchase all of the assets James Brown Estate (the "Estate") and the irrevocable trust established by Mr. James Brown dated August 1, 2000 (the "Trust"), in their entirety, including, without limitation, James Brown Enterprises, Inc that is owned by the Trust. All of these assets will be collectively referred to as the "Assets."

Our intent is to purchase all of the Assets because we believe that to obtain maximum value for the Assets so that the legacy of James Brown and his noble wishes as setout in the Trust can be fulfilled, the Assets must be sold as a unit instead of breaking up the items and liquidating them piecemeal. As you surely know, merely selling the items individually will do nothing to perpetuate the good works of James Brown.

The purchase price for the Assets will be between \$90,000,000 and \$100,000,000 plus a continuing payment equal to five percent of the gross profits that we generate from licensing those Assets that can be licensed, all depending on the outcome of our due diligence described below. The purchase price assumes clear title to the Assets and that the sale will be on a debt-free and lien free basis. The purchase price will be all cash, paid at closing and financed by a private equity fund that is our partner.

Our intent, upon receiving your agreement to this letter of intent, will be to conduct an in depth due diligence of the Assets and simultaneously develop a strategic plan and infrastructure that will build and promote the legacy of James Brown. We intend to work and partner with government agencies and educational institutions to turn James Brown's home into an experiential setting commiserate with the stated intentions of the I Feel Good Trust. We also envision plans that will include the establishment of the James Brown Museum. The purpose of this museum will be to tell the story of how James Brown persevered against all odds: a true "Horatio Alger" story. We will also work and partner with other interested

parties within the strategic plan to maximize the brand equity and performance of the Assets over time. We believe that this approach, coupled with the right structured sales agreement, will provide the most value for all interested parties.

We anticipate we will need a period of 90 days for due diligence, if all required information and people who have had influence on the assets are available (the "Due Diligence Period"). Our due diligence will focus on a review of all of the Assets, including, but not limited to, a legal review of all intellectual property and rights, all contracts and agreements, all litigation and an accounting review of the financial statements of JBE for the last 3 complete fiscal years.

At the end of the Due Diligence Period, we anticipate submitting a definitive written agreement for the purchase of the Assets (the "Definitive Agreement") that will include

- a. A deposit payment of \$5 million to be credited toward the purchase price at the closing.
- b. A closing date within 30 days following the signing of the purchase agreement.
- c. A condition that all material consents required to complete the proposed acquisition shall have been obtained prior to closing.
- d. Customary representations, warranties and covenants for this type of acquisition, including, but not limited to, organization and good standing, authority and enforceability, good title, no liens and encumbrances, condition of assets, licenses and compliance with laws, absences of adverse changes, material contracts, no undisclosed liabilities and financial statements.
- e. Customary indemnification against breach of warranties and existing liabilities.
- f. An escrow fund of Five Million Dollars (\$5,000,000) from the Purchase Price will be set aside for two years to provide security for the indemnification of TJBL any breaches of the seller's representations, warranties and obligations.

To help provide resources to protect the Assets and get the Estate and/or Trust some cash sooner rather than later, we are willing to manage the Trust assets during the Due Diligence Period. If you will allow this, TJBL will need an agreement and your full support to determine marketability of assets and enter into arrangements to secure cash infusions.

This letter agreement will remain in effect for 120 days after your acceptance below, unless earlier superseded by the definitive Agreement (the Term).

In consideration of the substantial resources that TJBL will be expending in connection with pursuing this proposed acquisition, from the time of the acceptance of this letter agreement until such time as this letter agreement has terminated (the "Exclusivity Period"), the Estate and the Trust shall not and shall counsel each of their respective representatives, agents, advisors or affiliates (collectively, the "Seller Group") not to initiate, solicit, entertain, negotiate, accept or discuss, directly or indirectly, any proposal or offer ("Acquisition Proposal") to acquire all or any significant part of the business or properties, capital stock or capital stock equivalents of the Estate or Trust or otherwise effect a change in control thereof, of any kind whatsoever, or provide any non-public information to any third party in connection with an Acquisition Proposal or enter into any agreement, arrangement or understanding requiring the Estate or Trust to abandon, terminate or fail to consummate the proposed acquisition, or otherwise encourage or facilitate any of the foregoing. The Estate or

Trust shall immediately notify the TJBL if any member of the Seller Group receives during the term of this letter agreement any indications of interest, requests for information or offers in respect of an Acquisition Proposal. The Estate and Trust represent and warrant that no member of the Seller Group is party to or bound by any agreement with respect to an Acquisition Proposal other than under this letter agreement.

This letter of intent shall not create any binding obligation on the part of any of the parties hereto to enter into the Definitive Agreement or to effect the proposed acquisition or any other transaction regarding the Assets, the Estate or the Trust, nor shall this letter agreement create any other binding obligation except for the Term and Exclusivity Period above and the Governing Law and the Expiration Date set forth below. Such provisions will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. A binding agreement with respect to the proposed acquisition will result only from the execution of the Definitive Agreement and will be entirely subject to the terms and conditions contained therein.

This letter agreement shall be governed by and interpreted and enforced in accordance with the laws of the State of South Carolina without giving effect to any choice of law rules that may require the application of the laws of any other jurisdiction (the "Governing Law").

This letter of intent will expire at 5:00 p.m., Eastern Time, on March 5, 2008, unless sooner accepted below (the "Expiration Date").

Based upon our experience, we are confident in our ability to structure a mutually beneficial transaction in a professional and timely manner. If you have any questions regarding our interest, please feel free to contact me. Thank you for your consideration of our interest in this transaction.

Very truly yours,

THE JAMES BROWN LEGACY, INC.

By: _____
Terry Bradford Cox

AGREED AND ACCEPTED
_____, 2008

THE ESTATE OF JAMES BROWN

By: _____

THE IRREVOCABLE TRUST OF JAMES BROWN
dated August 1, 2000

By: _____

EXHIBIT 28

**212 Newberry Street NW
Aiken, South Carolina 29801**

March 10, 2008

The Honorable Henry Dargan MacMaster
Attorney General for the State of South Carolina
State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549
Fax # 803 - 734-3677

BY FAX ONLY

Re: The Estate of James Brown
The James Brown 2000 Irrevocable Trust
Our File No. 8377

Dear Attorney General MacMaster:

We understand that Sonny Jones may be meeting with you this Wednesday, March 12th, to discuss matters related to the Estate/ Trust of James Brown. We respectfully request an opportunity to also meet with you that day (Bob by telephone from Florence) to discuss an immediate opportunity that we may lose if we cannot resolve the position you are taking with respect to our service as Personal Representatives and Trustees (PR/Trustees).

We have an opportunity for what it is hoped will be a 75th Birthday Musical Television Salute to Mr. Brown which could both provide critical funding to help the Estate/Trust survive until the Christie's sale, and help provide some of the funds necessary to vigorously defend the Elective Share, Will and Trust contests. (Mr. Brown's birthday is in early May.)

Unfortunately, after our attorney has done his best, the producers will not accept a contract without our providing both assurances that we have the full authority to enter into a license agreement with respect to the name, likeness, etc., but that we will indemnify them against any challenges to the project based on our lack of authority.

As you know, the former PR/Trustees, as the Court has found, left the Estate and Trust in such bad condition that at this point we cannot with any confidence assert whether the image and persona are owned by the Estate, by the Trust, by a Brown Entity owned by either the Estate or Trust, or in combination.

[There are no funds in the Charitable Trust at this time. Only about \$800 has ever been placed in the Charitable Trust (used to apply for Charitable Recognition). And the current challenges make further funding impermissible at this time. Under both the Will and the 2000 Irrevocable Trust, however, the majority of the value of Mr. Brown's assets are expected to go

Exhibit 21

HARDSHIP REQUEST

Form **4768**

Application for Extension of Time To File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes

OMB No. 1545-0181

(Rev. January 2008)
Department of the Treasury
Internal Revenue Service

Part I Identification		
Decedent's first name and middle initial James	Decedent's last name Brown	Date of death 12/25/2006
Name of executor Robert L. Buchanan, Jr	Name of application filer (if other than the executor)	Decedent's social security number 259-32-3801
Address of executor (Number, street, and room or suite no.) 212 Newberry Street, NW		Estate tax return due date 09/25/2007
City, state, and ZIP code Aiken, SC 29801	County of decedent (county, state, and ZIP code) South Carolina	Daytime telephone number

Part II Extension of Time To File Form 706, 706-A, 706-D, 706-NA, or 706-QDT (Section 6081)
Automatic Extension

If you are applying for an automatic 6-month extension of time to file:

- Form 706, check here ☐
- Form 706-A, 706-D, 706-NA, or 706-QDT, indicate the form by checking the appropriate box below.
☐ Form 706-A ☐ Form 706-D ☐ Form 706-NA ☐ Form 706-QDT

Additional Extension

If you are an executor out of the country applying for an extension of time to file in excess of 6 months, check here ☐

Also you must attach a statement explaining in detail why it is impossible or impractical to file Form 706 by the due date. See the instructions.

Enter extension date requested

Part III Extension of Time To Pay (Section 6161)

You must attach your written statement to explain in detail why it is impossible or impractical to pay the full amount of the estate (or GST) tax by the return due date. If the taxes cannot be determined because the size of the gross estate is unascertainable, check here ☐ and enter "0" or other appropriate amount on Part IV, line 3. You must attach an explanation.

Enter extension date requested
(Not more than 12 months)

- If this request is for the tax that will be or was due with the filing of Form 706, check here ☐
- If this request is for the tax that will be due as a result of an amended or supplemental Form 706, check here ☐
- If this request is for additional tax due as a result of an examination of your Form 706, check here ☐
- If this request is for a section 6166 installment payment, check here ☐

Part IV Payment To Accompany Extension Request

1	Amount of estate and GST taxes estimated to be due	1	
2	Amount of cash shortage (complete Part III)	2	
3	Balance due (subtract line 2 from line 1) (see instructions)	3	0 00

Signature and Verification

If filed by executor—Under penalties of perjury, I declare that I am an executor of the estate of the above-named decedent and that to the best of my knowledge and belief, the statements made herein and attached are true and correct.

Robert L. Buchanan, Jr Co-Principal Rep. Co-Principal Rep. 3/24/08
Executor's signature This Date

If filed by someone other than the executor—Under penalties of perjury, I declare that to the best of my knowledge and belief, the statements made herein and attached are true and correct, that I am authorized by an executor to file this application, and that I am (check box(es) that apply(ies)):

- ☐ A member in good standing of the bar of the highest court of (specify jurisdiction) ☐
- ☐ A certified public accountant duly qualified to practice in (specify jurisdiction) ☐
- ☐ A person enrolled to practice before the Internal Revenue Service.
- ☐ A duly authorized agent holding a power of attorney. (The power of attorney need not be submitted unless requested.)

Filer's signature (other than the executor)

Date

For Paperwork Reduction Act Notice, see separate instructions.
DXA

Form 4768 (Rev. 1-2008)

The above former Trustees Cannon, Dallas and Bradley were named and served as Trustees of the 2000 Trust from August 1, 2000 until the dates of their respective resignations. They were appointed PRs on January 18, 2007. PR/Trustees Dallas and Bradley have tried to withdraw their resignations. They were denied reconsideration of the Order accepting their resignation by Order of the Circuit Court dated March 7, 2008. That Order is being appealed by them.

CASH FLOW:

As of the date of this request, the Estate/Trust has approximately the following cash or equivalents:

Cash in banks	\$20,000
Cash in Savings	4,000
Brokerage MM Account	<u>4,000</u>
	\$ 28,000 ¹

When the former PR/Trustees resigned they had not prepared or filed a date-of-death Inventory & Appraisal of the Estate of James Brown or a date-of-death Statement of Assets and Liabilities of the 2000 Trust. Further, they have not accounted for their actions either as PRs or Trustees. They have been ordered to do so by the Court. Former Trustee Cannon had refused to account, asserting that he believes the delivery of approximately 30 boxes of documents constitutes an accounting.

Former Trustees Bradley and Dallas, as of the date of this request, should deliver an accounting to the Court for their services as PR and separately as Trustees, about June 10, 2008. Their appeal of the court's Order directing them to account is expected to cause further delay and hardship to the Estate in its ability to sort out what are the asset of the Estate and Trust, and their values.

When assets are described in this Request as owned by the Estate or the 2000 Trust, they may be owned by James Brown Enterprises, Inc. [JBE, Inc.]. Because of the failure of the former PR/Trustees to keep adequate records, actual ownership among these entities may not be finally determined for years.

What is known with respect to JBE, Inc. is the following:

1. It is a South Carolina Corporation, wholly owned in 1999 by Mr. Brown.
2. In 1999 JBE, Inc. was determined to own approximately 2/3s of the Artist's share of royalties to approximately 800 of Mr. Brown's songs. (Mr. Brown was designated as the owner of the other approximately 1/3.)

In 1999, prior to the creation of the 2000 Trust, JBE, Inc. and Mr. Brown entered into a complex

¹ \$20,000 of the above amount belongs to M&T Bank, Trustee of the Royalty-backed Note discussed below which TIAA, the Noteholder, has allowed the Estate to retain to pay necessary costs to assist with the recovery of about \$373,000 due from Cannon to M&T in connection with \$900,000.00 he misappropriated about August 1, 2006.

financing transaction in which certain rights related to the songs were transferred to James Brown, LLC, a Delaware Corporation. The end result was a loan of \$26 Million in exchange for which royalties from all of the approximately 800 songs were pledged to M&T Bank, as Trustee for the Noteholder of the \$26 Million Note (TIAA). That note had a value of \$18 - \$20 Million as of the death of Mr. Brown.

As of 15 months after Mr. Brown's death, the following remains unclear:

- a. What are the date-of-death assets and liabilities of JBE, Inc.?
- b. Was JBE, Inc. transferred to the 2000 Trust? If so, when?
- c. What assets and liabilities did the 2000 Trust have as of Mr. Brown's death?
- d. What assets and liabilities did Mr. Brown own outright at his death.

Mr. Brown's Estate Plan, consisting of a Will dated August 1, 2000 and the 2000 Trust, provides for the following disposition, whether assets are owned by the Estate or the 2000 Trust.

1. Personal and Household Effects to 6 named children
2. Remainder to 2000 Trust, which will be divided as follows:
 - a. Maximum available Generation Skipping (ab. \$2 Million) to a non-charitable Trust for the education of designated grandchildren.
 - b. Remainder (assuming net Trust over \$4 Million) to the James Brown "I Feel Good" Trust, a South Carolina Charitable Trust.

The following is **ROUGH ESTIMATE** of the calculation of the Estate Taxes which will be due if:

1. The Estate Plan is upheld (5 of Mr. Brown's 6 children and others have sued to invalidate both the Will and Trust);
2. The Elective Share claim of Tommie Rae Hynie, who is claiming to be the spouse of Decedent, is unsuccessful.

Note: This Estimate is made without regard to whether property is owned by the Estate or the Trust. Ownership by the Trust would result in placement on a different schedule (or possibly on a gift tax return), but with the same estimated total.

	DATE-OF-DEATH VALUE
Schedule A - Real Estate. (Real Estate title in Trust)	\$ 0
Schedule B - Stocks and Bonds (JBE, Inc. and Geronimo Music, LLC)	\$ combined with royalties, etc.
Schedule C - Mortgages, Notes and Cash	\$ 200,000
Schedule D - Insurance on Decedent's Life	
Part 1 - Payable to Estate.	\$ 0
Part 2 - Payable to Beneficiary . .	\$

(PRs have recently learned that the person claiming to be the spouse was paid a death benefit of approx \$30,000)

Schedule E - Jointly Owned Property ..	\$
Schedule F - Other Miscellaneous. . . .	\$
Royalties, image, persona, publicity rights, and all rights associated w/ unpublished songs.	\$ 80,000,000
Corbis Claim	\$ Unknown
Tangible Personal Property, as per Christie's valuation	\$ 1,400,000
Claim against Cannon, Dallas, Bradley and others for losses b/w 1999 and 2008.	\$ 10,000,000
Schedule G - Transfers during Decedent's Life	\$ See F, above
Schedule H - Powers of Appointment. . .	\$
Schedule I - Annuities.	\$
TOTAL GROSS VALUE.	\$ 91,600,000
ENCUMBRANCES	\$
\$26 Million Royalty-Backed Note	\$ (20,000,000)
Expenses of Administration	\$ (4,000,000)
Date-of-death value of defense of approximately \$65,000,000 in claims against the Estate/Trust filed by Pullman, former PR/ Trustees, Bobbitt, Intrigue, GT and others, including administrative claims	\$ (5,000,000)
TOTAL NET WORTH.	\$ 62,600,000

Assuming that the Estate Plan is upheld, the calculation of the Taxes will be as follows:

TOTAL NET WORTH	\$ 62,600,000
Distributed as follows:	
Personal and Household Effects (Approx \$1 Million) to children	
(Brown Family Education Trust non-charitable \$2 Million)	
James Brown "I Feel Good" Trust (charitable)	\$ 59,600,000
Taxable Estate	\$ 3,000,000

Federal and S.C. Estate Taxes

\$ 460,000 plus interest from September 25, 2007

The weekly maintenance cost for the protection of the assets and defense of the Estate Plan is more than \$4,000. The Estate/Trust is expected to have no cash flow in approximately 5 weeks. The Estate has more than \$350,000 in administrative costs that have been approved by the Court, but cannot be paid. There is no money to insure assets, and the Court has been so notified.

By Court Order dated February 20, 2008, a sale of a selection of pieces of Tangible Personal Property was ordered. The items are to be sold by Christie's. The Order required a selection and notification process. As of the date of this Order, the final approval process is not complete.

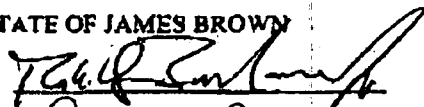
The PR/Trustees intend to make a substantial deposit toward the Estate Taxes when the net proceeds of the Christie's sale are received. This is estimated to be in September or October if the Christie's sale proceeds according to the Court-Ordered schedule.

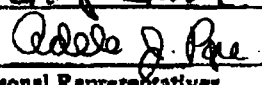
There are numerous contingencies, including a claim by a putative spouse; claims by 5 of 6 children to set aside Will; suit filed in Federal Court by a grandchild to contest the appointment of the PR/Trustees and seek the return of prior PR/Trustees; objection by the Attorney General of the State of South Carolina to the appointment of these PR/Trustees in both capacities (which objection was based primarily on affidavit by former PR/Trustees); claim by former PR/Trustees Dallas and Bradley that William Hammond, former attorney for the Estate/Trust, was named a Successor Trustee on or about July 26, 2007 (This purported designation was not disclosed to any Interested Parties or the Court until March 7, 2008.); claims by former PR/Trustees Dallas and Bradley that these PR/Trustees have no authority to act; and numerous other claims and objections.

In short, this Estate does not have the funds to pay the Estate Taxes; the beneficiaries have refused to pay their apportioned portion of the Estate Taxes as shown on Exhibit A; and, because of the failure of the former PR/Trustees to maintain adequate records, the date-of-death assets of the Estate, Trust and Related entities, and their values, are not known at this time and are not expected to be known for some time. It is, therefore, not possible to prepare an accurate Estate Tax Return at this time.

Respectfully submitted,

ESTATE OF JAMES BROWN

By: 

And: 

Its Personal Representatives

THE JAMES BROWN LEGACY, INC.
683 GREENVIEW AVENUE, NE, ATLANTA, GEORGIA 30305

EXHIBIT 27

March 27, 2008

Ms. Adele J. Pope
1218 Taylor Street
PO Drawer 7125
Columbia, SC 29202
Adele @popelawfirm.com

Mr. Robert L. Buchanan, Jr.
212 Newberry Street NW
P.O. Box 463
Aiken, SC 29802-0463
rbuchananjr@bellsouth.net

Dear Ms. Pope and Mr. Buchanan:

We are pleased to submit this letter of intent on behalf of Terry Lee Brown, sole heir to the Estate of James Brown and The James Brown Legacy, Inc. and (hereinafter "TJBL") expressing our intent to purchase all of the assets James Brown Estate established by Mr. James Brown dated August 1, 2000 (the "Estate"), as defined by Christie's Estate Tax Appraisal of February 27, 2008. in its entirety. All of these assets will be collectively referred to as the "Assets."

Our intent is to purchase all of the Assets and keep them in providence to protect the legacy of James Brown. The Assets must be held as a unit instead of an auction strategy that breaks up the items and liquids them piecemeal. As you surely know, no matter the differences within the family, no one wants this approach as the remedy for their differences.

The purchase price for the Assets will be \$2 million. If a letter of credit is necessary, to demonstrate security of the funds, one will be provided. The purchase price assumes clear title to the Assets and that the sale will be on a debt-free and lien free basis. The purchase price will be all cash, paid at closing and financed by a private funding group that is our partner.

Our intent, upon receiving your agreement to this letter of intent, is to submit definitive written agreement for the purchase of the Assets (the "Definitive Agreement") that will include

- a. A closing date within 30 days following the signing of the purchase agreement.
- b. A letter of credit to support the offer.
- c. A condition that all material consents required to complete the proposed acquisition shall have been obtained prior to closing.
- d. Customary representations, warranties and covenants for this type of acquisition, including, but not limited to, organization and good standing,

- authority and enforceability, good title, no liens and encumbrances, condition of assets, licenses and compliance with laws, absences of adverse changes, material contracts, no undisclosed liabilities and financial statements.
- e. Customary indemnification against breach of warranties and existing liabilities.
- f. An escrow fund of Two Hundred fifty Thousand Dollars (\$250,000) from the Purchase Price will be set aside for two years to provide security for the indemnification of TJBL any breaches of the seller's representations, warranties and obligations.

This letter agreement will remain in effect for 30 days after your acceptance below, unless earlier superseded by the definitive Agreement (the Term).

In consideration of the substantial resources that TJBL will be expending in connection with pursuing this proposed acquisition, from the time of the acceptance of this letter agreement until such time as this letter agreement has terminated (the "Exclusivity Period"), the Estate shall not and shall counsel each of their respective representatives, agents, advisors or affiliates (collectively, the "Seller Group") not to initiate, solicit, entertain, negotiate, accept or discuss, directly or indirectly, any proposal or offer ("Acquisition Proposal") to acquire all or any significant part of the business or properties, capital stock or capital stock equivalents of the Estate or otherwise effect a change in control thereof, of any kind whatsoever, or provide any non-public information to any third party in connection with an Acquisition Proposal or enter into any agreement, arrangement or understanding requiring the Estate to abandon, terminate or fail to consummate the proposed acquisition, or otherwise encourage or facilitate any of the foregoing. The Estate shall immediately notify the TJBL if any member of the Seller Group receives during the term of this letter agreement any indications of interest, requests for information or offers in respect of an Acquisition Proposal. The Estate represent and warrant that no member of the Seller Group is party to or bound by any agreement with respect to an Acquisition Proposal other than under this letter agreement.

This letter of intent shall not create any binding obligation on the part of any of the parties hereto to enter into the Definitive Agreement or to effect the proposed acquisition or any other transaction regarding the Assets, the Estate, nor shall this letter agreement create any other binding obligation except for the Term and Exclusivity Period above and the Governing Law and the Expiration Date set forth below. Such provisions will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. A binding agreement with respect to the proposed acquisition will result only from the execution of the Definitive Agreement and will be entirely subject to the terms and conditions contained therein.

This letter agreement shall be governed by and interpreted and enforced in accordance with the laws of the State of South Carolina without giving effect to any choice of law rules that may require the application of the laws of any other jurisdiction (the "Governing Law").

This letter of intent will expire at 5:00 p.m., Eastern Time, on April 1, 2008, unless sooner accepted below (the "Expiration Date").

Based upon our experience, we are confident in our ability to structure a mutually beneficial transaction in a professional and timely manner. If you have any questions

Excerpts, Letter of Intent, The James Brown Legacy, Inc., Terry Brown, dtd. March 27, 2008

regarding our interest, please feel free to contact me. Thank you for your consideration of our interest in this transaction.

Very truly yours,

TERRY LEE BROWN

THE JAMES BROWN LEGACY, INC.

By: _____
Terry Bradford Cox

AGREED AND ACCEPTED
_____, 2008

THE ESTATE OF JAMES BROWN

By: _____

THE IRREVOCABLE TRUST OF JAMES BROWN,
dated August 1, 2000

By: _____

CC: David B. Bell, Esq.
James Bailey, Esq.
John Sparks, Esq.
Steve A. Matthews, Esq.

EXHIBIT 75

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

To Whom It May Concern:

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

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

FB06194

EXHIBIT 103

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	(On Removal from Probate Court)
	)	
	)	CIVIL ACTION NO. 2007-CP-02-0122
	)	
	)	
IN RE:	)	ORDER DENYING MOTION TO
	)	RECONSIDER APPOINTMENT OF
	)	SUCCESSOR PERSONAL
THE ESTATE OF JAMES BROWN	)	REPRESENTATIVES AND TRUSTEES
A/K/A JAMES JOSEPH BROWN	)	AND GRANTING RELATED RELIEF
	)	

This matter came before me on March 7, 2008 on motion of the former PR/Trustees of the Estate of James Brown and the James Brown 2000 Trust and others for reconsideration of this Court's Order dated November 20, 2007 as it relates to the appointment of Robert L. Buchanan, Jr. and Adele J. Pope as Personal Representatives ("PRs") of the Estate of James Brown, deceased, and as Trustees of the James Brown 2000 Irrevocable Trust (the "2000 Trust") and its subtrusts.

In addition to Buchanan and Pope, other parties to this proceeding present in person or represented by counsel were the original petitioners Daryl J. Brown, Vanisha Brown, Larry Brown, Deanna J. Brown Thomas, Yamma N. Brown, Terry Brown, Tonya Brown, Lindsey Delores Brown, Janise Vanisha Brown, Jason Brown Lewis, Sydney Lumar, Carrington Lumar, Romunzo Brown, Forlando Brown and Tommie Rae Brown.¹ Also present or represented by counsel were James Joseph Brown II, Cinnamon Nicole Mernickle Paris and LaRhonda Pettitt;²

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

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

¹ These are all acknowledged children of James Brown and Adele J. Pope, and are not acknowledged children; and Mr. Brown's claimed spouse.

² These persons claim to be children of James Brown.

APR 14 2008

Liz Godard
C.C.P. & G.S., Aiken County, S.C.
Deputy Clerk

TURNER PADGET

TURNER PADGET GRAHAM & LANEY P.A.

PLAINTIFF'S
EXHIBIT 76

CHARLESTON
COLUMBIA
FLORENCE
GREENVILLE
MYRTLE BEACH

R. Wayne Byrd

REPLY TO:

E-Mail: WByrd@TurnerPadget.com

Writer's Direct Dial: (843) 213-5504

Direct Fax: (843) 213-5604

May 1, 2008

VIA EMAIL ONLY (louis@levensonlaw.com)

Louis Levenson, Esq.
Levenson & Associates
125 Broad Street, SE
Atlanta, Georgia 30303

Re: Estate of James Brown, Deceased a/k/a James Joseph Brown
Court of Common Pleas of Aiken County
Estate No.: 2007-CP-02-0122
Our Client/Matter No.: 09186.00101

Dear Mr. Levenson:

I am in receipt of a copy of your letter to Karen Wildau dated April 28, 2008. To the extent that you make reference to our letter of February 27, 2008, I stand corrected. It does now appear that the law firm of Powell Goldstein was engaged by Mr. Cannon on behalf of all of the Trustees for certain limited purposes. At the time of my letter of February 27, 2008, we understood the facts to be as set out in that letter. We are now informed otherwise and wish to acknowledge the correction.

Very truly yours,

TURNER, PADGET, GRAHAM & LANEY, P.A.

R. Wayne Byrd
R. Wayne Byrd

RWB:bk

cc: Honorable Doyet A. Early, III

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EXHIBIT 38

FIRST SEMI-ANNUAL REPORT TO DEVISEES, BENEFICIARIES AND ATTORNEY GENERAL

Robert L. Buchanan, Jr. and Adele J. Pope
PR/Trustees, Estate of James Brown, James Brown 2000 Irrevocable Trust
(November 20, 2007 - May 20, 2008)

The undersigned present the following summary report of their activities as PR/Trustees for the first six months of their service commencing on November 20, 2007.

BACKGROUND

The PR/Trustees were appointed to serve under the Will of James Brown dated August 1, 2000 and the James Brown 2000 Irrevocable Trust dated August 1, 2000. These documents constitute the Estate Plan of James Brown. Pursuant to the appointment Order they have all of the authority and responsibility under the documents other than the obligation to name a third PR/Trustee.

A. Prior Service as Special Administrators (SAs)

The PR/Trustees served as non-fiduciary SAs from March 7, 2007 until November 20, 2007. Their charge was to oversee the actions of David Cannon, Albert Dallas and Alfred Bradley, who served as PR/Trustees until their resignations. **The primary challenges during this period were:**

1. **Obtaining critical information about the Estate, Trust and Brown Entities.**
2. **Preventing Cannon, Dallas and Bradley from selling Estate/Trust Assets and paying themselves between \$5 Million and \$17 Million; exposing the Trust/Estate to excessive claims; and exposing the James Brown "I Feel Good" Trust to disqualification. [See Exhibit 1 - Estimated costs of proposed sales by Cannon, Dallas and Bradley.]**
3. **Discovery of \$900,000.00 misappropriation and other secret dealings of former PR/Trustees Cannon, Dallas, Bradley, with W. Hammond, P. Farr, Powell Goldstein and others.**
4. **Failure of Dallas, Cannon and Bradley to Inventory or account for assets of Estate/Trust, or properly administer Estate/Trust.**
5. **Spousal/Elective Share Claims.**

B. Primary Accomplishments of the Period from March 7, 2007 - November 20, 2007:

With the help of many members of the family of Mr. Brown, the following things were

accomplished between Mr. Brown's death and November 20, 2007:

1. **Central location of many Estate/Trust records.**
2. **Prevention of sale of Estate/Trust Assets** with no study or analysis, and for the primary benefit of Cannon, Dallas, Bradley, Copsidas, and Greenberg Traurig ("GT") under the "October 18/20 Letter".
3. **Immediate and Permanent resignations of Cannon, Dallas & Bradley.**
4. **Return of \$350,000 of the \$900,000 taken from the 2000 Trust in 2006.**

SERVICE OF PR/TRUSTEES FROM NOVEMBER 20, 2007 - MAY 20, 2008

A. Primary Challenges.

Since our appointment as PR/Trustees on November 20, 2007 the Estate Plan of James Brown has faced new and greater challenges. **The major new challenges to the Estate/Trust are:**

1. **Defending Contest of Will and 2000 Trust by 5 of Mr. Brown's 6 acknowledged children and others, further threatening the James Brown "I Feel Good" Trust.**
2. **Federal Lawsuit filed by Forlando Brown seeking return of Dallas, Cannon and Bradley as Trustees of the 2000 Trust and to paralyze the ability of Trustees to act.**
3. **Stabilizing Estate/Trust and preventing "fire sale" of major assets.**
4. **Preventing return of Cannon, Dallas & Bradley as PR/Trustees.**
5. **Preparing to defend more than \$46 Million of claims against Estate.**
6. **Recovery of losses caused by Cannon, Dallas, Bradley and others.**

B. Summary of Actions taken during first Six Months of Service:

PR/Trustee Cannon resigned on August 10, 2007, and PR/Trustees Dallas and Bradley resigned on November 20, 2007 leaving the Estate/Trust in a deplorable financial condition and the Tangible Personal Property unprotected. These problems were exacerbated by the fact that the former PR/Trustees had no accurate records of assets, liabilities and/or income and expenses of the Estate or the 2000 Trust, and have never prepared appropriate accountings of their acts as PR/Trustees.

Six months after their resignation, Dallas and Bradley have not yet filed an accounting for the Estate and Trust. (By Court Order, their accountings as both PR and Trustees are due in

the Court on or about June 5, 2008.) Cannon, who resigned 10 months ago, repeatedly asserts his 5th amendment rights, refusing to answer questions about the Trust/Estate's finances.

In the face of these conditions, our primary concern has been to protect the tangible assets of the Estate/Trust and try to stabilize the Estate/Trust's financial condition enough to effectively defend the Estate Plan; begin recovery of losses caused by Cannon, Dallas and Bradley; and prevent a "fire sale" of the masters, royalties, image and persona, which are the primary assets of the Estate/Trust. Those matters are discussed in detail below.

C. Defense of Estate Plan

The PR/Trustees consider the greatest challenges to Mr. Brown's Estate Plan to be:

- a. Contest of the Will and Trust by 5 children and others.
- b. The Elective Share/Spousal Claims.
- c. Attempts by Cannon, Dallas and Bradley to be reinstated as PR/Trustees.

Since November 20, 2007, we have actively sought the assistance of the Attorney General of South Carolina in the defense of the Estate Plan of Mr. Brown and prevention of the return of Cannon, Dallas and Bradley as PR/Trustees. (See letter of AJP to C. Havird Jones dtd. 11/21/07.)

Between November 20, 2007 and the filed challenges to the Will and Trust in late December 2007, the PR/Trustees, through counsel, actively encouraged family members not to contest the Estate Plan of Mr. Brown. They urged that the 2000 Will and 2000 Trust (absent Cannon, Dallas and Bradley) accurately represent Mr. Brown's lifelong stated wishes.

The PR/Trustees' informal attempts to prevent challenges to Mr. Brown's Estate Plan were unsuccessful.

Despite the actions of Cannon, Dallas and Bradley, the PR/Trustees believe that the 2000 Will and 2000 Trust accurately reflect Mr. Brown's desires with respect to the disposition of his property at both the time of their execution and at his death. The PR/Trustees continue to actively defend the Estate Plan.

D. Defense of Spousal/Elective Share Claim

Based on representations of the children of Mr. Brown, his former counsel, the Brown Historical Records and the Public Records, the PR/Trustees believe that Tommie Rae Hynie Brown was not the surviving spouse of James Brown at his death. They will continue to defend against the Elective Share/Spousal claims.

The PR/Trustees have actively sought to coordinate the defense of the Estate Plan and the Elective Share/Spousal claims with the Attorney General of South Carolina.

The PR/Trustees would also like to join with Forlando Brown in the defense of Mr.

Brown's Estate Plan. His relationship with former PR/Trustees Dallas and Bradley and his attempts to return them as Trustees, however, make cooperation difficult at this time.

E. Stabilizing Estate/Trust Administration

Between November 20, 2007 and May 20, 2008 the PR/Trustees have taken a number of steps to stabilize the administration of the Estate/Trust. They include:

1. **Filing of Application for Recognition of James Brown "I Feel Good" Trust.**
On December 6, 2007 the PR/Trustees applied for recognition of the James Brown "I Feel Good" Trust. (The former PR/Trustees had failed to take this action for more than 6 years.)
2. **Paying overdue security, insurance, appraisal, and storage fees not paid by the former PR/Trustees.**
3. **Terminating relationships with Intrigue Music Management (Frank Copsidas) and others who worked closely with former PR/Trustees Cannon and Dallas.**

F. Continuing work to prevent the Return of Cannon, Dallas & Bradley as Trustees

G. Protection of Tangible Asset of Estate/Trust

On November 20, 2007, the Tangible Personal Property (TPP) located at Mr. Brown's home estate was at great risk because of the Estate/Trust's financial condition. A sale of some items was required to raise funds to protect the Estate Plan. During the last 6 months, the following has taken place:

1. **Since January, 2008 approximately 70 Boxes of Masters, audio tapes and similar assets were shipped under secure conditions to an audio/film storage facility.**
2. **Approximately 360 lots have been placed with Christie's in New York, for sale at auction.**
3. **Pursuant to the request of the PR/Trustees, agreement of family members and Court Order, more than 3000 items have been placed with South Carolina State University's I.P. Stanback Museum and Planetarium, the South Carolina State Museum, The Lucy Craft Laney Museum of Black History and the Augusta Museum of History. These will be held for safekeeping (on loan) for up to 3 years while final disposition is being determined.**
4. **The PR/Trustees will seek Court approval on June 6, 2008 to Distribute or Sell (as their ultimate interests appear) much of the remaining TPP located at the Home Estate to Mr. Brown's 6 acknowledged children, James Brown II and Tommie Rae Hynie Brown. [The Estate Tax value of this Distribution/Sale is estimated to be less**

than \$250,000, but the property is believed to be of great personal value to his family. See proposal for details.]

5. Mr. Brown's capes and several other TPP issues remain unresolved. The PR/Trustees will continue to investigate, and seek counsel, when funds are received from the Christie's sale.

H. Quitclaim of Joseph Brown Home to certain family members.

With the consent of all acknowledged children of James Brown, and without objection of the Attorney General, the PR/Trustees are quitclaiming the Estate's interest in the home and contents of Mr. Brown's father, Joseph Brown, located in Augusta, Georgia, for \$60,000, taking 10% down and a note with Security Deed for the remainder. Sale is expected to close within 10 days.

I. Home Estate, Beech Island.

The PR/Trustees have determined that retaining the Home Estate is not consistent with the mission of the James Brown "I Feel Good" Trust. Pursuant to Court Order dated February 20, 2008, the PR/Trustees are seeking a museum purchaser for the home.

The museum purchaser may be either for-profit or not-for-profit. The PR/Trustees hope to be able to retain a portion of the acreage for ultimate use by the James Brown "I Feel Good" Trust in conjunction with a museum on the main Estate.

Certain children of Mr. Brown have offered less than \$1 Million for the property.

The PR/Trustees have ordered an appraisal of the property. After the appraisal is received, the PR/Trustees intend to actively pursue a museum-type sale of the property.

J. Proceedings for the Recovery of Losses Caused by Cannon, Dallas, Bradley and others.

1. On January 9, 2008 the Court approved the engagement by the PR/Trustees of Kendall Few, Esquire and James Gilreath, Esquire. With their assistance, the Estate/Trust now has pending the following actions for recovery of losses since 1999:

- a. Action against Cannon, Dallas, Bradley, GT, Enterprise Bank & Phil Farr pending in the Circuit Court for Aiken County, case number 2008-CP-02-322, seeking losses since 1999.
- b. Arbitration and Federal Court actions against Morgan Stanley related to the depletion of the 1999 Royalty-Backed Note proceeds.

2. In addition, the PR/Trustees, with James Bailey as counsel, are defending against the

approximately \$16 Million in claims filed by Cannon, Dallas & Bradley against the Estate. [See Exhibit 2.]

3. The PR/Trustees are defending the Forlando Brown Federal suit seeking the return of Cannon, Dallas & Bradley as Trustees (through voiding our appointment) and injunction to prevent the Trust from taking action.

4. The PRs disallowed GT's \$155,000 claim, and no suit was filed.

5. The PR/Trustees, represented by Matt Ballenger of Hogan & Hartson, were successful in dismissing the counterclaim by Pullman in the New York Litigation. [Details upon request.] An appeal may be taken by Pullman. [The PRs also intend to disallow Pullman's \$31 Million claim against the Estate.]

PROJECTIONS FOR NEXT SIX MONTHS

A. Receipt of Christie's Sale Proceeds:

The PR/Trustees have been severely restrained by the lack of funds. As soon as the Christie's sale proceeds are received, they hope to do the following:

1. Complete Estate Tax Return by September 25, 2008, and pay the approximately \$500,000 of Estate Taxes and Interest due.
2. Proceed with an aggressive search for a museum purchaser of the Home Estate. (Reserving some acreage for the Trust.)
3. Disallow approximately \$33 Million of pending claims, and be prepared for active defense of Petitions for Allowance of Claims. [See Exhibit 3 for claims of former attorneys/advisors of Cannon, Dallas and Bradley.]
4. Continue active defense of the Estate Plan of James Brown.
5. Continue active defense against the Spousal/Elective Share claims.
6. Work with entertainment counsel to enhance royalties, image and persona of Mr. Brown (without paying 50% of the gross, as proposed by Dallas, Cannon & Bradley).

B. Assistance with Possible Settlement.

The PR/Trustees believe that if they are joined by the Attorney General in a vigorous defense of the Estate Plan and rejection of the Spousal/Elective Share claim, the Estate/Trust will, within 6 months, be in a posture to evaluate and perhaps enter into a full settlement.

C. No sale of Royalties, Image and Persona.

Based on available information, the PR/Trustees do not believe that any sale of the royalties, image, or persona of Mr. Brown should be considered for **at least 2 - 5 years**. Mr. Brown's royalties from his approximately 800 published songs exceed \$3 Million annually. These Royalties have substantially reduced the TIAA debt since Mr. Brown's death.

The former PR/Trustees entered into only 1 substantial contract [James Brown - Boston project with David Leaf] between Mr. Brown's death and November 20, 2007 (ab. November 1). The current Trustees have entered into one substantial contract for a Musical Television Tribute to James Brown. [Confidential details available upon request.]

The PR/Trustees, over the next six months, will explore with entertainment counsel future enhancement of Mr. Brown's royalties, image and persona. Challenges to our authority as PR/Trustees by the Attorney General (based on erroneous information), former PR/Trustees Cannon, Dallas and Bradley and Orlando Brown have slowed, but not defeated, progress in these areas. The PR/Trustees are hopeful that these challenges will dissipate, allowing the Estate/Trust to enhance its potential. [Confidential details available upon request.]

REQUEST THAT ATTORNEY GENERAL AND FAMILY EXPLORE SETTLEMENT

The PR/Trustees are currently participating in at least 9 lawsuits for the benefit of the Estate/Trust, including:

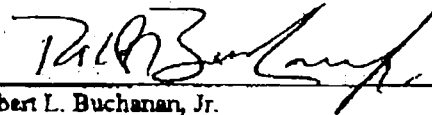
1. **Corbis (Chicago) Litigation** - brought by Mr. Brown in the name of the New James Brown Enterprises, et al, prior to his death.
2. **Pullman (New York) Litigation** - brought on behalf of James Brown Enterprises, Inc. by GT after the 2006 collapse of the Royal Bank of Scotland deal in May, 2006. Resulted in \$8 Million counterclaim by Pullman which our counsel has successfully defended as moot. [Appeal may follow.]
3. **Cannon suit against the Estate** on claim for more than \$6 Million.
4. **Dallas suit against Estate** on claim for more than \$5.5 Million.
5. **Bradley suit against Estate** on claim believed to be more than \$5 Million.
6. **Estate/Trust suit/arbitration against Morgan Stanley (2)**
7. **Estate/Trust suit against Cannon, Dallas, Bradley, Enterprise, Farr, GT**
8. **Estate/Trust suit to enjoin Hammond, Dallas, Bradley & Cannon from interference.**
9. **Defense of Will/Trust contest (Will/Trust/Heirs proceeding)**

10. Defense of Elective Share/Spousal claims.

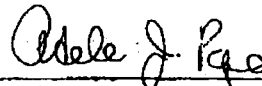
In addition, within the next few months we will also be defending a number of claims the PR/Trustees intend to disallow, including the \$31 Million Claim of Pullman and Claims of Attorneys and accountants for Dallas, Cannon and Bradley [See Exhibit 3 for List.]

While the PR/Trustees are occupied with these necessary suits and the defense of Mr. Brown's Estate Plan, they urge the Family Members and the Attorney General to work toward a reasonable resolution of the issues in dispute.

Respectfully submitted,



Robert L. Buchanan, Jr.



Adele J. Pope

May 20, 2008

EXHIBIT 1
First Semi-annual Report to Devises, Beneficiaries and Attorney General

Proposed "Gross" of Sale of Assets

	Proposed Gross Sale Price	\$ 26,000,000.00	\$100,000,000.00
	Less Payments from Sale Proposed by Cannon, Dallas and Bradley, TIAA + Pullman:*		
1	TIAA payoff	\$ (15,000,000.00)	\$ (15,000,000.00)
2	Pullman (12.5%) plus claim (\$31MM) ¹	\$ (3,250,000.00)	\$ (12,500,000.00)
3	Copsidas/Intrigue Claims (15%)	\$ (1,650,000.00)	\$ (12,750,000.00)
4	Cannon \$1,459,640 plus (5%) ²	\$ (2,759,640.00)	\$ (6,459,640.00)
5	Bobbitt (\$200,000)	\$ (200,000.00)	\$ (200,000.00)
6	Dallas (\$549,019) plus 5%	\$ (1,849,019.00)	\$ (5,549,019.00)
7	Greenberg Traurig, 5% (after TIAA) plus litigation costs (est'd)	\$ (550,000.00)	\$ (4,250,000.00)
8	P. Farr, W. Hammond, Powell Goldstein, S. Jackson, Hull Towill & other attys/acnts. of former PR/Trustees [at least]	\$ (700,000.00)	\$ (700,000.00)
9	A. Bradley [see claim]	\$ (1,300,000.00)	\$ (5,000,000.00)
10	Loss of Claims against Cannon/Dallas/Bradley/GT		\$ (13,000,000.00) ³
	PAYMENTS PROPOSED BY CANNON, DALLAS & BRADLEY*(At least)	\$ (27,258,659.00)	\$ (75,408,659.00)
	NET TO ESTATE/TRUST FROM SALE	\$-(1,258,659.00)	\$ 24,591,341.00

* Other than Pullman and TIAA, this reflects payments former PR/Trustees Cannon, Dallas and Bradley claim should be paid to themselves and others either from the GT October 18/20, 2006 Letter, their claims or fees incurred. The Pullman figure is based on his claim under 1999 document. Although disputed in it entirely, the Pullman amount would likely have to be escrowed at closing. TIAA is estimated payoff.

During 2007 a sale of all assets at \$45 Million was also proposed, from which Cannon, Dallas and Bradley proposed to pay the same percentage amounts stated above.

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¹ Both totals plus alleged damages.

² Both totals plus claim for commissions

³ At least

EXHIBIT 2

First Semi-annual Report to Devisees, Beneficiaries and Attorney General

CLAIMS BY FORMER PR/TRUSTEES

A. CLAIM OF CANNON: Five percent (5%) of all revenue generated by gross bookings, royalties and any other funds generated by James Brown Enterprises, Inc. from whatever source and two and one-half percent (2.5%) for the handling of vintage revenue... This contractual claim is an ongoing claim for all revenue earned and not paid prior to death and all revenue earned since date of death and all future revenues of James Brown Enterprises, Inc. [Emphasis supplied.]

[Claim of David Cannon filed 9/26/07]

B. CLAIM OF BRADLEY: Compensation as personal representative of the Estate of James Brown and Trustee plus Celebrity Duck 10% of Revenues; Doll Deal 5% of 300,000; Georgia-Lina record 6%; Godfather of Soul Publishing now Geronimo Music, L.L.C. 6% of revenues; 10% of any revenues earned due to blank tapes sold by Alliance of Artists and Recording Companies for Brown recordings; 10% of any revenues earned due to the marketing and/or exploitation of master recordings; 5% of the royalties received from the "James Brown Doll" [Emphasis supplied.]

[Claim of Al Bradley filed 9/7/07]

C. CLAIM OF DALLAS: Compensation as personal representative of the Estate of James Brown and trustee of the James Brown Irrevocable Trust plus \$624,876 based on purported oral contract by which Mr. Dallas would receive "5% of Mr. Brown's and his enterprises' gross revenue; 5% of revenues from Teddy Bear Productions as agent for Hakuho Advertising Agency; 25% of royalties received from the "James Brown Doll"; 10% of revenues from God Father of Soul Publishing, 5% of Global Gaming revenue, 5% of revenues from the sale of Mr. Brown's writer's share music, and 5% revenues from the 1991 pay-per-view recording. [Emphasis supplied.]

[Claim of Albert H. Dallas filed 9/7/07]

EXHIBIT 3

First Semi-annual Report to Devisees, Beneficiaries and Attorney General

**PAYMENTS, BILLS AND CLAIMS PRESENTED BY ATTORNEYS AND
ACCOUNTANTS FOR FORMER PR/TRUSTEES
FOR SERVICES FROM DEATH - NOVEMBER 20, 2007**

ATTORNEY/ACCOUNTANT	BILL OR CLAIM AMOUNT
Powell Goldstein (bill)	\$ 48,225.00
Rodney A. Peebles (payment and claim)	\$ 137,851.66
Smith, Massey, Brodie & Thurmond (claim)	\$ 33,322.20
Phillip G. Farr, CPA (claim)	\$ 25,977.60
Hull, Towill, Norman, Barrett & Salley (bill, firm of William Hammond)	\$ 124,518.26
Suggs Johnson (claim for \$5,747.81; now \$6,069.43)	\$ 6,069.43
Greenberg Traurig*	\$ 155,602.85
Lewis & Babcock (payment, claim, bill)	\$ 348,960.43
Jackson Law Office (claim filed)	\$ 61,273.25
TOTAL	\$ 941,800.68

* GT originally sought payments of approximately \$327,089.67. Claim filed was \$155,602.85.
Withdrawn after PR/Trustees disallowed claim. (See ltr. of GT dtd. 3/10/08.)

EXHIBIT 78

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

Robert L. Buchanan, Jr., Personal Representative

Adele J. Pope, Personal Representative

June 13, 2008

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

BY FAX AND MAIL

Re: Estate Plan of James Brown

Dear Attorney General McMaster:

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

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

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

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

Letter to Attorney General McMaster

June 13, 2008

Page 2

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

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

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

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

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

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

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

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

The Attorney General's Office and William Hammond

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

Letter to Attorney General McMaster

June 13, 2008

Page 3

Brown "I Feel Good" Trust for the Attorney General to rely on Bill Hammond.

Mr. Hammond is a supporter and apologist for David Cannon. Hammond's longtime friend Phil Farr, is a longtime friend of Buddy Dallas. Hammond asserts in a letter to you that he chose to be a Trustee with Dallas and Bradley. All have caused damage to the Estate Plan of Mr. Brown. Cannon, Dallas, Bradley and Farr are defendants in suits brought by Mr. Brown's Estate and Trust.

Bill Hammond's Support of David Cannon

We recently acquired the September 27, 2007 email of Bill Hammond which was sent to your office. (Copy attached) It says, in part:

"The Hatchet job on David Cannon based solely on facts supplied by the SA's, [Buchanan and Pope] many of which are unfounded, so far has been a sight to behold."

...

"When he [Cannon] resigned because of a mistake and offered to pay back the amount by which he had benefitted, the other Trustees under the terms of the trust voted to replace him with me. The SA's told them they would be removed if I [Hammond] became a co-trustee."¹

Bill Hammond's Secret "Appointment" by Cannon, Dallas and Bradley as Trustee

After the September 27, 2007 email, Hammond communicated again with your office on November 27, 2007 to say he was looking for the papers where he was appointed Trustee. (See 11/27/07 email, attached.)

¹ This is particularly troublesome since the purported appointment was concealed from the Court and us until March 7, 2008. See pronouncement of Sonny Jones and cross examination of Adele Pope, 3/7/08 Transcript pp. 17, 118-119, 121-122, enclosed.

Letter to Attorney General McMaster

June 13, 2008

Page 4

On November 15, 2007, Cannon began asserting his 5th amendment rights – which he has repeatedly asserted since. By November 20, 2007 anyone hearing the testimony, including representatives of the SC Attorney General, was aware of Cannon's problems and that it was Cannon who had done a hatchet job on the James Brown 2000 Trust.

Neither the Attorney General's Office nor Bill Hammond reported Hammond's secret appointment as Trustee to the Court or the Trust beneficiaries, even though Hammond reported to your office again on November 27, 2007 that he was looking for his appointment paper.

The secret attempted appointment of Hammond remained the secret of the SC Attorney General, the Georgia Attorney General, Dallas, Cannon, Bradley and Hammond until March 7.

Meanwhile, the SC Attorney General used affidavits of Hammond, Dallas and Bradley to assert that we were unethical.

Most troublesome is the fact that Hammond's purported appointment was concealed until March 7, 2008, when Mr. Jones raised it for the first time to help Mr. Dallas and Mr. Bradley prevent confirmation of our appointment, and be reinstated as Trustees.

The suggestion to the Court and parties on March 7, 2008 by your office was that the purported appointment of Hammond as Trustee was just discovered by Mr. Jones the night of March 6. Instead, Mr. Jones, along with Hammond, Dallas, Cannon, Bradley and Grace Lewis, had harbored this information for months until it became useful to what appears to be their joint effort to prevent anyone other than Cannon, Dallas and Bradley from being appointed.

We can see no reason why this alliance of the S.C. Attorney General in any way promotes the interest of Mr. Brown's Estate Plan and its primary beneficiary, The James Brown "I Feel Good" Trust.

David Cannon, Buddy Dallas, William Hammond and the attempted Sale of Mr. Brown's Royalties, Image and Persona

On March 26, 2007 David Cannon and Buddy Dallas urged us to approve a \$26 Million sale which (we now know) would have been disastrous to Mr. Brown's Estate Plan. [See our first Quarterly Report as SA s.] We were told:

1. Joel Katz was the authority on such deals.
2. If we did not authorize the deal (with absolutely no due diligence), the offer would disappear, and it would be our fault.

Letter to Attorney General McMaster

June 13, 2008

Page 5

At some point, the deal not to be missed became \$45 Million. By October 12, 2007 it was \$100 Million.

Without our knowing how deeply he was personally involved with David Cannon and Buddy Dallas, Bill Hammond in June 2007 gave us "independent advice" that we would breach our "fiduciary duty" if we did not approve Cannon, Dallas and Bradley's proposed deal. In particular:

1. Mr. Hammond asserted that the Estate/Trust was required to sell the Royalties.
2. Mr. Hammond asserted that it was a breach of fiduciary duty not to accept a sale which would net Mr. Brown's Estate/Trust only \$10 Million.
3. Mr. Hammond knew Dallas, Cannon and Bradley were claiming more than \$15 Million from such a sale, but was unconcerned.
4. Joel Katz was claiming about \$5 Million from such a sale.
5. The Pullman Group was claiming \$31 Million from such a sale.
6. Frank Copsidas was claiming about \$12.5 Million from such a sale.

Again, without access to any due diligence, we were told that it was improper for us to stand in the way of the sale. [See email of Bill Hammond dtd. 6/21/07, attached]

On December 6, 2007 the Office of the Attorney General, through Sonny Jones, asked appropriate questions about the proposed "\$100 Million Offer" [See Mr. Jones' email to us dated December 6, 2007, attached.] In particular, he wanted to know:

...

2. I have heard for the last 3 months that the sky will fall and the offer will go away if we do not accept it now. . . your thoughts. Also, who else is out there that can make an offer if at all

3. Are there some self serving interest w/ some of the local players in this that is causing this push

4. I was given Joe Katz in Atlanta as a person to call to get a feel if these current offer will in fact decrease in the near future. . . your thoughts on that contract.

...

Letter to Attorney General McMaster
June 13, 2008
Page 6

We immediately responded by phone, to inform your office about the "October 18 Letter" and its implications, as set out above.

Mr. Jones did not act on this information.

With knowledge of serious credibility issues for Cannon, Dallas, Bradley and Hammond; that Dallas, Cannon and Bradley had filed \$15+ Million of claims against the Estate of James Brown on September 26, 2007; and that Cannon, Dallas and Bradley were generally known to be defendants in substantial claims by Mr. Brown's Estate and Trust, on December 10, 2007 the Attorney General relied on affidavits of Dallas, Bradley and Hammond to attack us. Those affidavits, and the Attorney General's positions since December, 2007:

1. Support the assertion that Mr. Buchanan and Mrs. Pope were unethical.
2. Ignore Cannon, Dallas and Bradley's attempts to be paid \$15+ Million from the Estate, and escape liability for missing millions.
3. Ignore Bill Hammond's close association with Cannon and Farr and serious credibility issues.
4. Are being used by Forlando (William) Brown in Federal Court to attempt to reinstate Cannon, Dallas and Bradley.
5. Bolster assertions of Cannon, Dallas and Bradley, supported by Hammond, that they have done nothing wrong and are entitled to \$15+ Million from Mr. Brown's Estate. [See Affidavits of Hammond, Dallas & Bradley, submitted by the AG of SC in November/December, 2007].

The Attorney General's Reported Promise to Remove Buchanan and Pope

On November 20, 2007 Dallas and Bradley resigned as PR/Trustees and officers of any James Brown Entities (except Geronimo, LLC). We were appointed.

The attempts by Cannon and Dallas to have a quick and disastrous sale of Mr. Brown's assets and pay themselves millions seemed to be brought to a close.

Then on November 26, 2007 Terry Cox gave the "JB Team" hope. He notified members of the "JB Project" team that he was assured that the Senior Assistant Attorney General of South Carolina is preparing a motion to have (Buchanan and Pope) removed and "told me he would select a Trustee for me to work with." [See Terry Cox email dtd. 11/26/07, attached]

Letter to Attorney General McMaster
June 13, 2008
Page 7

Mr. Cox is working with William (Forlando) Brown, Buddy Dallas and David Cannon on "\$100 Million" project.

On November 30, 2007, Dallas and Bradley sought to return as Trustees.

On December 14, 2007 the SC Attorney General, based largely on affidavits of Hammond, Dallas and Bradley sought the same result. [See emails dtd. 12/14/07]

We believe that this does not promote Mr. Brown's Estate Plan, the future funding of The James Brown "I Feel Good" Trust, or the interest of needy and deserving children.

The Attorney General's Support of Forlando (William) Brown's Attempts to Return Cannon, Dallas and Bradley as Trustees

On January 2, 2008, Forlando (William) Brown, Mr. Brown's Grandson, and business partner of Terry Cox and Buddy Dallas in the "\$100 Million" deal, sued us in Federal Court asserting:

1. Judge Early's Orders related to the Trust are void. We have no authority. [The intended result: Cannon, Dallas and Bradley return, and the "Deal" goes through.]
2. Attempting to enjoin the Trustees from taking any action (Defense of Estate Plan; suits against Dallas, Cannon, Bradley & GT; etc).

In this suit, Forlando (William) Brown is represented by Mr. Cannon, Dallas and Bradley's lawyers, who have billed the Estate \$48,225 but refuse to turn over the file.

We asked the Attorney General to join in this suit to confirm that the return of Cannon, Dallas and Bradley was not appropriate. You have refused.

In early February, 2008 the Attorney General joined Mr. Dallas and Mr. Cox's partner, Forlando (William) Brown in the assault on us. He appeared on WIS Television accusing us of acting improperly. According to the associated article [we didn't watch the interview], you said that we were representing both the "poor kids' trust and the families" and that this went "far past the sign of conflict of interest." As the article and television story show, this appeared to throw the support of the Attorney General of South Carolina behind Forlando (William) Brown's attempts to return Cannon, Dallas and Bradley as Trustees. [WIS Article dtd. 2/7/08 attached]

Many family members of Mr. Brown have expressed outrage that Mr. Cannon appears to have escaped any consequences for taking \$900,000.00 which did not belong to him. It belonged to a New York Bank, payable on Mr. Brown's TIAA debt.

Ltr. to Attorney General McMaster
June 13, 2008
Page 8

The money Mr. Cannon misappropriated was taken directly from the account of the James Brown 2000 Trust.

We fail to see how the Attorney General's support of Forlando (William) Brown's attempts to reinstate Cannon, Dallas and Bradley as Trustees can help Mr. Brown's Estate Plan.

Issues Raised by Challenges to the Will and Trust and the Dallas and Bradley Appeal

Between November 30 and December 30, 2007 attempts by Dallas and Bradley to return as Trustees, with contests to the Will by Tommie Rae Hynie Brown and 5 of Mr. Brown's 6 acknowledged children, raised numerous challenges.

While the Dallas and Bradley appeal is pending, there are many things to be done to position Mr. Brown's Estate and Trust for a strong defense to these challenges. The positions of the Attorney General and the PR/Trustees should be wholly aligned. As stated above, they include:

1. **Defending the Estate Plan of James Brown against challenges;**
[At a minimum, discovery can continue as to the validity of Mr. Brown's Will, dated August 1, 2000, the same day of the Trust.]
2. **Defending against the Elective Share Claims;**
[There has been no suggestion that the "Heirs" determination cannot continue to trial. The determination of whether Mr. Brown had a Wife, and who are his children and other heirs, is important.]
3. **Preventing the Return of former PR/Trustees Cannon, Dallas and Bradley.**
[This critical project has simply moved from the Circuit Court to the Court of Appeals and, to a limited extent, the Federal Court.]
4. **Avoiding a fire sale of Mr. Brown's valuable royalties, image and persona.**
[We estimate it will take at least 2 - 3 years to defend and resolve the \$45+ Million of bills and claims against the Estate, including \$900,000+ in attorneys' and accounting fees incurred by Dallas, Cannon and Bradley. This work is critical to the implementation of Mr. Brown's Estate Plan.]

Mr. Brown's Estate account today has only about \$9,000. We are trying to hold on; defend the Estate Plan; and prevent an improvident sale of Mr. Brown's valuable royalties, image and persona. The Attorney General of South Carolina can be an important ally in our attempts to save most of Mr. Brown's assets for the James Brown "I Feel Good" Trust and \$2 Million Trust to educate certain of Mr. Brown's grandchildren.

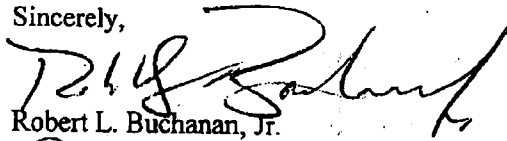
Ltr. to Attorney General McMaster

June 13, 2008

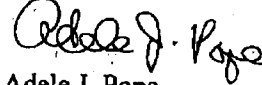
Page 9

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

Sincerely,



Robert L. Buchanan, Jr.

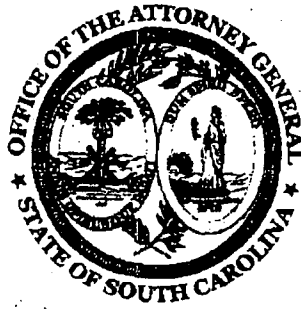


Adele J. Pope

AJP/RLB,JR:ats

Enclosures

EXHIBIT 74



HENRY McMASTER
ATTORNEY GENERAL

June 26, 2008

R. Wayne Byrd, Esquire
Turner Padgett Graham & Laney, PA
P. O. Box 2116
Myrtle Beach, South Carolina 29578

Re: The Irrevocable Trust Agreement of James Brown,
a/k/a James Joseph Brown
C/A No.:

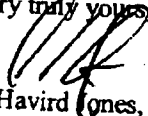
Dear Wayne:

Enclosed and served upon you please find the following:

- (1) Summons;
- (2) Emergency Petition for Appointment of Special Trustee(s);
- (3) Motion for Removal to Circuit Court.

Also enclosed is an Acceptance of Service. I appreciate your signing and returning this to me in the enclosed stamped envelope. If you are not able to accept service, please let me know.

Very truly yours,


C. Havird Jones, Jr.
Senior Assistant Attorney General

CHJ,jr/shb

Enclosures

EXHIBIT 77



HENRY McMASTER
ATTORNEY GENERAL

July 7, 2008

VIA E-MAIL

The Honorable Doyet A. Early, III
Resident Judge, Second Judicial Circuit
P. O. Box 90
Bamberg, SC 29003

Re: James Brown Trust
C/A No.: 2008-CP-02-1153

Dear Judge Early:

In connection with the Attorney General's Emergency Petition for Special Trustee(s) and your directive at the hearing last week, I requested proposals from counsel both at the hearing and in an e-mail sent last week as to their recommendations. Based upon the responses provided and his review, the Attorney General offers the following individuals to the Court for consideration as Special Trustee(s) of the James Brown Irrevocable Trust Agreement:

Russell L. Bauknight, C.P.A.
Bauknight Pietras & Stormer, PA
Columbia, South Carolina

Tracey C. Green, Esquire
Willoughby & Hoefer, PA
Columbia, South Carolina

W. Steven Johnson, Esquire
Todd & Johnson, LLP
Columbia, South Carolina

EXHIBIT 31

Estate of James Brown

212 Newberry Street NW
Aiken, South Carolina 29801

Robert L. Buchanan, Jr., Personal Representative

Adele J. Pope, Personal Representative

June 27, 2008

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

BY FAX ONLY
Fax # 803-734-3677

Re: The Estate Plan of James Brown

Dear Attorney General McMaster:

All except the first two paragraphs of this letter were completed yesterday before Mr. Jones elected to file his unfortunate Petition.

We request an opportunity to review all of your office's third-party correspondence, documents and communications, as well as time summaries of Mr. Jones, Ms. Jowers and Ms. Matthews from September 1, 2007.

We appreciate your June 16, 2008 response to our concerns related to the Estate Plan of James Brown. We look forward to working with your office in the defense of Mr. Brown's Estate Plan.

**ATTORNEY GENERAL'S EXPRESSED NEUTRALITY WITH RESPECT TO DAVID
CANNON AND ALBERT DALLAS**

We are concerned about two assertions made in your June 16th letter. Because we believe that future protection of Mr. Brown's Estate Plan is dependent on an understanding of the secret and improper actions of the former PR/Trustees, we are concerned that the Attorney General asserts that he does not oppose Messrs. Cannon and Dallas. It is our firm position that the defense of Mr. Brown's Estate Plan requires that the Attorney General, if involved, be opposed to Mr. Cannon and Mr. Dallas.

Mr. Cannon and Mr. Dallas are using every means possible to:

1. Conduct a Fire Sale of Mr. Brown's assets for their own benefit;

Letter to the Honorable Henry Dargan McMaster:

June 27, 2008

Page 2

2. Interfere with the administration of Mr. Brown's Estate and Trust so that will happen;
3. Avoid returning the \$13 Million they received between 1999 and 2007; and
4. Receive more than \$16.5 Million from Mr. Brown's assets.

The Cannon/Dallas plan is to get rid of us and immediately conduct the \$100 Million Fire Sale. This will damage the Estate Plan of James Brown **at least** as follows:

1. Prevent return of the \$13 Million
2. Pay to them **at least**:
 - a. Cannon \$ 6 Million
 - b. Dallas \$ 5.5 Million
 - c. Bradley \$ 5 Million
 - d. J. Katz \$ 5 Million
 - e. F. Copsidas \$15 Million
 - f. T. Byron \$ 5 Million (promised by Dallas in November 2007)
 - g. Forlando (William) Brown - as yet undisclosed

AND expose the Estate/Trust to a \$12.5 Million claim of Pullman under Paragraph 7 of the old engagement letter. (Subject of New York litigation.)

Mr. Cannon, Mr. Dallas and Mr. Bradley incurred more than \$900,000 in legal fees last year trying to accomplish this. Mr. Brown's Estate is now saddled with the defense of those claims. Mr. Cannon, Mr. Dallas and their business partner Forlando (William) Brown and his attorney David Bell, are currently represented by Wayne Byrd, Audra Byrd, at least 2 Powell Goldstein lawyers, William Toal, and others. To face this onslaught and defend the Estate Plan, we have about \$3,000 in the bank. [See First Accounting.]

In light of Mr. Cannon's behavior and Mr. Dallas' repeated false representations to the parties, to the Court, and under oath, we believe that the Attorney General should not treat either as some neutral party or source of reliable information. And their Affidavits should certainly not be used to skewer others.

You assert that the Attorney General's office cannot become involved in Forlando (William) Brown's attempts to have Dallas and Cannon reinstated as Trustees and enjoin the Trust from taking any action. You assert "we do not seek out lawsuits in which to get involved."

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

Robert L. Buchanan, Jr., Personal Representative

Adele J. Pope, Personal Representative

EXHIBIT 32

July 25, 2008

The Honorable Henry Dargan McMaster
Attorney General for the State of South Carolina
State of South Carolina
C. Havird Jones, Jr., Esquire
Senior Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

BY FAX OR MAIL
Fax # 803-734-3677

Re: Estate/Trust of James Brown

Dear Attorney General McMaster and Mr. Jones:

Based on the Order of Judge Cureton dated July 14, 2008, we would hope that we can return to our discussions which were derailed by various interpretations of the May 28 Order.

In an effort to work with the Attorney General toward a succession plan that will be controlled in a manner acceptable to the Attorney General, and allow us to focus all energy on defense of the Estate Plan; being certain that Dallas, Cannon and Bradley do not return; and vigorous defense of the \$46 Million in claims, we have made contact with each of the persons suggested by the Attorney General. Here is a brief report:

1. Steve Johnson and Xavier Starkes visited the Trust property on Tuesday, July 22.
2. David Sojourner has been on vacation, and we hope to talk to him within the next week or so.
3. We have attempted to contact Russell Bouknight about visiting the Trust property, but have not heard back from him.
4. We have attempted to contact Tracey C. Green. His paralegal called back to advise that he was too busy to go to the house and too busy to schedule a telephone conference to talk with us. We requested that he call back to schedule a time when he could talk. This was about 10 days ago, and he has not called.

EXHIBIT 16

EXHIBIT A



HENRY McMASTER
ATTORNEY GENERAL

July 30, 2008

Adele J. Pope, Esquire
Robert L. Buchanan, Jr., Esquire
212 Newberry Street NW
Aiken, South Carolina 29801

Re: James Brown Litigation

Dear Mrs. Pope and Mr. Buchanan:

I am writing in response to your letter dated July 25, 2008. I am pleased that we may be able to work together towards our shared goals in connection with the Estate Plan of James Brown. As I mentioned in my last letter, Mr. Brown's Charitable Trust is a wonderful opportunity to further the education of needy children at institutions in South Carolina and Georgia. I hope that we will be able to work together to ensure that scholarships are funded as soon as possible.

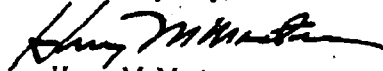
While I have no objection to returning to our previous discussions about securing your proper appointment, I have concerns about whether this is possible given your unwillingness to consider the Special Trustee position. On several occasions you have indicated that you do not want to be appointed Special Trustee. I do not believe that you can be properly appointed permanent Trustee if you are not willing to resign and ask to be appointed Special Trustee, which I would support. Once you are appointed Special Trustee, we can ask the Advisory Board for a vote on the Trustee position, as required by Article XIII of the Trust document. If there is not a unanimous vote for you to be Trustee, then we can go to the Probate Court, have the matter removed to the Circuit Court, and have you properly appointed by the Circuit Court.

I am hopeful that as we go through this process, a third Trustee can be put in place along with both of you as required by Article VIII of the Trust. I appreciate your report in connection with my suggestions as to a suitable individual to serve as the third Trustee.

REMBERT C. DENNIS BUILDING • POST OFFICE BOX 11549 • COLUMBIA, S.C. 29211-1549 • TELEPHONE: 803-734-3970 • FACSIMILE: 803-253-6283

If you are willing to work together, I believe we can secure your proper appointment without further litigation, which would give us all more time to devote to the charitable intentions of Mr. Brown.

Yours very truly,

A handwritten signature in dark ink, appearing to read "Henry McMaster", with a stylized, flowing script.

Henry McMaster

HMCM/mfj

EXHIBIT 42

Adele J. Pope

From: Alan Medlin [amedlin@sc.rr.com]
Sent: Friday, August 01, 2008 10:45 AM
To: Robert Rosen; adele@popelawfirm.com; Andrew Chandler; david@michellawoffice.com; Carter@eckb.com; Jean Lee
Subject: Re: DNA ORDER Rosen, Robert, 8037791698 - 2:02 min. for x107
Attachments: DNA order (1) medlin edit.doc



DNA order (1)
medlin edit.doc ...

I've tweaked Jean's a little.

We need to make similar changes to the scheduling order. Do you have your most recent version after comments?

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

From: "Robert Rosen" <rnrosen@rosen-lawfirm.com>
To: <adele@popelawfirm.com>; <amedlin@sc.rr.com>; "Andrew Chandler" <Chandler@eckb.com>; <david@michellawoffice.com>; <Carter@eckb.com>; "Jean Lee" <JLee@eckb.com>
Sent: Friday, August 01, 2008 9:47 AM
Subject: FW: DNA ORDER Rosen, Robert, 8037791698 - 2:02 min. for x107

Is this OK to send to judge

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

From: M Jean Lee [mailto:JLee@eckb.com]
Sent: Friday, August 01, 2008 9:43 AM
To: Robert Rosen; amedlin@sc.rr.com; Andrew W. Chandler; david@michellawoffice.com; T Heyward Carter
Subject: RE: DNA ORDER Rosen, Robert, 8037791698 - 2:02 min. for x107

See Attached

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

From: Robert Rosen [mailto:rnrosen@rosen-lawfirm.com]
Sent: Thursday, July 31, 2008 5:45 PM
To: amedlin@sc.rr.com; Andrew W. Chandler; david@michellawoffice.com; T Heyward Carter; M Jean Lee
Subject: RE: DNA ORDER Rosen, Robert, 8037791698 - 2:02 min. for x107

Can one of you revise DNA order?

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

From: Alan Medlin [mailto:amedlin@sc.rr.com]
Sent: Thursday, July 31, 2008 5:15 PM
To: Marcia Jones; Chandler@eckb.com; david@michellawoffice.com; Carter@eckb.com; jlee@eckb.com; Robert Rosen
Subject: Re: DNA ORDER Rosen, Robert, 8037791698 - 2:02 min. for x107

She's right about the grandchildren. I thought we were skirting that because we really didn't have standing so it suited me not to focus on the trust, but if she's for it and thinks that's how the judge ruled, then let's tweak the language per her suggestion. I had a 3.5 hour meeting this morning with AG and Terry Cox. Cox is no longer interested in buying the estate assets. He now wants to be part of a "team" to build back the brand, after which time his group might be interested in buying again. He claims the value of the estate has been significantly diminished because of Adolph. He said they were going to offer in the range of 65-70 M in November. Now he thinks we would get offers for 35-40M. Don't know what I think of him, but that part was interesting. Sonny of course was all over that so he can attack Adolph.

Terry, who clearly gets much of his info from Dallas, thinks the kids want to settle because they're afraid of DNA. He says they want to fire Louis but don't want to have to

EXHIBIT 40

This agreement made this 10th day of August, 2008, by and among the Attorney General of South Carolina, Larry Brown (natural child of the deceased), Daryl J. Brown (natural child of the deceased), individually and on behalf of his minor children Lindsey Delores Brown (age 17) and Janise Vanisha Brown (age 12), Venisha Brown (natural child of the deceased), Deanna J Brown Thomas (natural child of the deceased), individually and on behalf of her minor child Jason Brown-Lewis (age 17), Yamma N. Brown Lumar (natural child of the deceased), individually and on behalf of her minor children Sydney Lumar (age 8) and Carrington Lumar (age 6), Tonya Brown (grandchild of James Brown) individually, and Tommie Rae Brown (hereinafter "Tommie Rae") individually and on behalf of her minor child James Brown II.

The purpose of this agreement is to settle any and all differences among the parties above whose signatures appear below concerning the disposition, whether by will or otherwise, and/or transfer of any assets owned or controlled by James Brown, whether by will, intestacy, trust, or nonprobate means, state or federal law, and based on this, the parties hereto agree as follows:

1. All parties who sign below hereby recognize and stipulate, for all purposes and matters, that Tommie Rae was the legal wife of James Brown, during his lifetime and at the time of his death, and qualifies as his surviving spouse, and agree not to contest any claim by Tommie Rae by virtue of her status as surviving spouse and to file any and all appropriate pleadings and documents recognizing and stipulating said status as spouse.

2. All parties who sign below hereby recognize and stipulate, for all purposes and matters, that the children and grandchildren who sign below were and are the lawful and/or legitimate biological issue and heirs of James Brown during his lifetime and were in life at the time of his death, and qualify as his surviving issue, and all parties agree not to contest any claim by any child or grandchild by virtue of his or her status as lawful and/or legitimate issue or as an heir of James Brown and agree to file any and all appropriate pleadings recognizing and stipulating said status of the children and grandchildren named as lawful and/or legitimate issue.

3. All parties agree to say nothing negative in public or to any representative of the media about any of the parties hereto or about the terms of any settlement reached herein, whether about their roles in this litigation or their relative positions or status as an heir, child, issue, spouse, or as a grandchild and will further speak only through counsel or in Court about any matters relative to this case affecting or pertaining to each other or to this settlement. This agreement does not prevent any parties from publicly discussing events in court or Orders issued by the Court, so long as the parties are not critical of each other, nor does this agreement prevent any party from giving interviews or publishing books or articles about their lives, so long as they are not critical of each other nor commenting upon the terms of the settlement or the negotiations that lead thereto. The parties consent to an Order of the Aiken County Court of Common Pleas or to any appropriate Court to require the parties to comply with the terms of this paragraph of this agreement.

4. Tommie Rae, all children, and all grandchildren (if possible as to the grandchildren) agree to meet in person at a convenient time as soon as reasonably possible to reaffirm in person their mutual support and cooperation as a united group in support of the legacy of James Brown and in

LJB

DT
DT for UB
DT for AB

RS
J.B.

RB



5. It is noted that all parties to this agreement have filed, at separate times, pleadings objecting to the validity of the August 1, 2000 Will of James Brown and the August 1, 2000 Irrevocable Trust. Tommie Rae, the children and grandchildren and the Attorney General of South Carolina (hereinafter the parties) have additionally agreed as follows:
- a) that a joint motion or other pleading will be filed seeking the removal of Mr. Robert Buchanan and Ms Adele Pope as Personal Representatives of the Estate of James Brown and as Trustees of the the August 1, 2000 Irrevocable Trust of James Brown, deceased and will mutually agree upon persons to appoint as successor representatives of the estate and trust pursuant to the provisions of applicable law
 - b) that a charitable trust substantially similar to the August 1, 2000 Irrevocable Trust (hereinafter the "Charitable Trust") shall be created and/or maintained and shall be valid and enforceable, including but not limited to the possibility of amendment to the August 1, 2000 Irrevocable Trust by agreement of all the parties hereto. The trustees of the trust shall include at all times one representative selected by the parties hereto who are clients of Levenson and one representative selected by Tommie Rae. The trust shall also include an advisory board that shall include some member(s) selected by the parties hereto who are clients of Levenson and one representative selected by Tommie Rae.
 - c) that there shall be no DNA testing of any children or grandchildren (or their issue) who are parties to this agreement and all such motions for same will be withdrawn or dismissed by consent of all parties hereto.
 - d) that the parties hereto will create an entity (the "settlement entity") that will receive any and all assets and or proceeds payable to any of the parties, now or in the future, by virtue of any rights of James Brown, any of the entities of James Brown, the Estate of James Brown, the August 1, 2000 James Brown Irrevocable Trust, the Charitable Trust, and/or any rights the parties hereto have as heirs, devisees, and/or successors to James Brown for any purpose, including not limited to copyright, royalty, persona, image, likeness, etc. The parties will divide any and all such assets and or proceeds in the following proportions for as long as such assets and proceeds are paid into said entity or any successor entity thereto: (1) 50% to Charitable Trust; (2) 25% to Tommie Rae Brown, which includes any share attributable to James Brown II; and (3) 25% to all parties hereto represented by Louis Levenson as they agree among themselves. Tommie Rae hereby waives any spousal right she may have to such assets to the extent that they might otherwise exceed 25% thereof. The parties hereto represented by Levenson waive any right they may have to such assets to the extent that they might otherwise exceed 25% thereof
 - e) All parties hereto waive any claim or right to seek forfeiture against any party pursuant to any in terrorem and/or no-contest clause under any will or trust of James Brown, and specifically agree that any and all contests that were brought were brought in good faith

~~DBT~~
~~DBT for UB~~
~~DBT for VB~~

L.B.

and with probable cause.

- FLB
- l)
- The promissory note and security deed currently due from the parties hereto represented by Levenson to the Estate of James Brown (with respect to the property known as Pops house, which is the home of the father of James Brown) will be marked satisfied and paid in full by the settlement entity for no additional payment being due.
- g)
- In the event that any party brings to the settlement entity any offer culminating in a contract to purchase property and/or rights from the settlement entity, if such party's efforts are disclosed to the estate or trust or the settlement entity acting for said estate or trust, then such party shall be entitled to a finder's or broker's fee as shall be negotiated to the extent reasonable and appropriate under applicable law.
- h)
- In the event that the property at 430 Douglas Drive, Beech Island, SC, is sold by the settlement entity, the parties hereto who are clients of Levenson shall have the right of first refusal to purchase said property at the Aiken County Tax Assessor's appraised value therefor as of the most recent assessment before the purchase. In the event the parties hereto who are clients of Levenson shall decline to exercise such right and close the sale within 120 days of the giving of the notice of the right of first refusal, then Tommie Rne shall have a right of next refusal for the next 120 days on the same terms as set forth above after she receives notice thereof.
- i)
- The parties agree that a trust similar to the Brown Educational Trust under the 2000 Irrevocable Trust will be established for the grandchildren of James Brown, and their issue, for as long as allowed under the applicable Rule Against Perpetuities, but in no event lasting for a period longer than 90 years from December 25, 2006. This Brown family educational trust shall be funded with a principal amount of \$2 million, which shall be carved out from the share of assets and proceeds payable to the Charitable Trust. Upon the termination of this Brown family educational trust, the remaining principal and any undistributed income shall be distributed to the charitable trust.
- j)
- The parties agree that any and all will and trust contests will be dismissed
- k)
- The parties agree to use their best efforts to extinguish any other outstanding interests or claims by any potential heir, devisee, or successor and to the extent the termination of such interest or claim requires payment, for such payment to be made from the settlement entity, which of necessity would be allocated among the parties to the settlement entity pro-rata in aliquot shares
- Tom
- l)
- The parties agree that the settlement entity and/or the parties will endeavor to create an appropriate and respectful museum or other memorial burial place acceptable to the settlement entity in which to maintain the remains of James Brown, preferably at 430 Douglas Drive, Beech Island, if feasible. If such is not accomplished within 7 years from date, then in that event the remains will be interred in the cemetery where the parents of James Brown currently are located in Augusta, GA, with the settlement entity paying

expenses of relocation. Parties hereto represented by Levenson, Tommie Rae, and James Brown II shall all have reasonable opportunities to visit privately the gravesite upon reasonable notice. The parties hereby waive any right to otherwise direct the location of the gravesite as a result of their status under law. The parties consent to an Order of the Aiken County Court of Common Pleas or to any appropriate Court to require the parties to comply with the terms of this paragraph of this agreement.

6. This agreement is a private binding agreement among the parties hereto. Although the parties hereto may agree to ask the Court to approve this agreement, this agreement remains binding among the parties and applies to personal representatives and trustees even if not approved by the Court.

7. This agreement is binding on the heirs, successors, and assigns of the parties hereto.

Feb

Walter E. Brown

Levon M. Masten
Attorney General

Louisa Brown

Deanna Brown Thomas

Deanna Brown Thomas for

Venusta Brown

Deanna Brown Thomas for

Yanna Brown

Tom

Louisa Brown

Walter E. Brown 8/10/08

Levon M. Masten 8/10/08



Adele J. Pope

From: Sonny Jones [AGSJONES@ag.state.sc.us]
 Sent: Tuesday, August 12, 2008 10:51 AM
 To: dearlyj@sccourts.org
 Cc: J. C. Nicholson; Mary Frances Jowers; Matt Bodman; jdbaileylaw@bellsouth.net; rlbuchananjr@bellsouth.net; shahidlo@bellsouth.net; weskirkland@bellsouth.net; davidbell@davidbelllawfirm.com; Carter@eckb.com; William Barr; jmg@jirngriffinlaw.com; William Toal; Lori Christman; louis@levensonlaw.com; Thomas Lydon; Steve Morrison; adele@popelawfirm.com; rrosen@rosen-lawfirm.com; amedlin@sc.rr.com; Audra Byrd; WByrd@turnerpadget.com; C. Bradley Hutto; d_michel@yahoo.com; robtyoungatty@yahoo.com; Steve Brown

Subject: Fwd: Re: Proposed Email to Judge Early

Dear Judge Early:

We, the Attorney General of South Carolina, and Robert Rosen and Louis Levenson along with our clients are very pleased to announce to the Court that all differences between our clients have been resolved and fully settled in a written agreement which was executed following a mediation all day on Sunday August 10, 2008 on James Brown Boulevard in Augusta, Georgia. The Mediator was Tom Wills. We believe that most of the issues in contention in the estate and trust matters are resolved by this agreement. There are still some issues that remain outstanding involving persons or attorneys who are not parties to our settlement. As such, we respectfully request that, before the hearing scheduled for Tuesday Aug. 19, 2008 in Aiken, SC, Your Honor please devote some time to a status conference with all counsel to discuss the ramifications of the settlement and how it impacts the future administration of the Estate and the Trust. Because Louis Levenson had intended to present a proposed consolidated agenda for the hearing on August 19, 2008, and because all parties to the settlement referenced above believe that certain disputes involving non settling parties still remain and require hearings, below is an agreed upon list of issues and motions that can and hopefully will go forward on August 19, 2008:

1. The PR/Trustees' Order Separating claims of Cannon, Dallas and Bradley (Approved by Mr. Byrd).
2. Scheduling hearing on separate Accountings of Dallas and Bradley as PRs and Trustees, and Attorney's fees. Removal/Appointment/Accounting, Case No. 2007-122 (For September, before September 25th please, Estate Tax Return due that day.)
3. Louis Levenson's Motion for Supersedeas and Bond regarding the Appeal by Buddy Dallas and Al Bradley (Evidence of damages will need to be presented.)
4. Remaining evidence and argument on Motion for Contempt as to Buddy Dallas and Al Bradley, filed by Clients of Louis Levenson on March 18, 2008 regarding testimony on March 7, 2008.
5. Rule 59 Motion to Alter or Amend and/or Reconsider Order Approving and Setting Conditions of Interim Payment of Educational Benefits filed by Louis Levenson on July 31, 2008.
6. David Bell/Forlando Brown's Withdrawal of Stipulation (filed on 8-1-08); and
7. David Bell's Motion to be Admitted Pro Hac Vice filed August 7, 2008.
8. Steve Brown's motions regarding M&T Bank.

We request that you stay or defer all other matters until some date after this status conference.

We also request that you let us know in advance if this is acceptable to you.

Thank you.

C. Havird Jones, Jr.
 Senior Assistant Attorney General
 Office of the South Carolina Attorney General
 P.O. Box 11549



Adele J. Pope

From: Robert Rosen [rrosen@rosen-lawfirm.com]

Sent: Tuesday, August 12, 2008 12:20 PM

To: adele@popelawfirm.com

Cc: Louis Levenson; Sonny Jones; Marcia Jones; Lindsay Foreback; arnedlin@sc.rr.com; Andrew Chandler; david@michellawoffice.com; Carter@eckb.com; Jean Lee

Subject: Discovery

In light of the fact that the case is settled, I would request that you and Bob and Jim stop all work on the estate at this time and that we be given a 30 days extension on all discovery.

EXHIBIT 34

Estate/Trust of James Brown

212 Newberry Street NW
Aiken, South Carolina 29801

Robert L. Buchanan, Jr., Personal Representative

Adele J. Pope, Personal Representative

September 2, 2008

The Honorable Henry Dargan McMaster
Attorney General for the State of South Carolina
C. Havird Jones, Jr., Esquire
Senior Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

Louis Levenson, Esquire
Levenson & Associates
125 Broad Street, SW
Atlanta, Georgia 30303

Robert N. Rosen, Esquire
Post Office Box 1510
Charleston, South Carolina 29402

Re: Estate of James Brown

Gentlemen:

We are writing you as representatives of those Alan Medlin described to us as speaking as one in connection with working toward a settlement related to the James Brown Estate Plan.

This will confirm our conversation with Alan last Friday, August 29, and raise other matters.

First, we know nothing of any confidential in-camera discussions related to Mr. Brown's Estate Plan, and have specifically instructed Mr. Bailey not to discuss them either with us or with our counsel in other matters.

Facing a Federal Court hearing on November 18 on the serious (and we believe frivolous) attempts by Forlando (William) Brown to shut down Mr. Brown's Trust and return Cannon, Dallas and Bradley as fiduciaries, as well as challenges by most remaining family members to the Estate Plan, we feel that any proposed settlement which we are asked to consider should be open for debate by us, by educators, and by others.

We have encouraged, and will continue to support, the efforts of Mr. Brown's Family and the Attorney General to reach resolution, provided that any proposed settlement:

1. Honors the desires of Mr. Brown as set forth in his Estate Plan;

2. Provides for a smooth and appropriate transition which protects Mr. Brown's Estate Plan, but acknowledges the conflict-of-interest policy which was required and adopted in connection with the application for Charitable Recognition of the "I Feel Good" Trust; sensitive estate, gift and income tax issues at stake; issues related to Mr. Brown's recapture and other rights related to his royalties under Federal and contract law; the proper administration of the ongoing litigation; and the rights and obligations of the Estate, Trust and Brown Entities with respect to federal and state taxing authorities and other creditors

In that spirit, we offered to allow the Estate Tax Returns, due September 25, to be prepared (for our review and signing) by the preparer selected by the Settling Parties. This person presumably would be the accountant you select for work for the Estate/Trust and Brown Entities when there is a change of leadership if the settlement is finalized, presented to us and others, and approved by all appropriate Courts. Alan has advised us that you have not yet selected an accountant.

On Friday we advised Alan, and asked that all be advised, that Bill Sellars' firm appreciates the confidence shown in him, but would not remain after we complete our service with the Estate and Trust. He will complete the Estate Tax Return and other matters pending final settlement as described above.

While there are many issues that would have to be addressed in any transition, there are several matters which we urge all parties who are considering a settlement to address at your earliest convenience. We discuss each below:

1. Appointment of a Representative of the "Settling Parties" to work with us on enhancement of the royalties, image and persona pending final settlement and transition. Our legal authority to enhance the royalties, image and persona was seriously challenged by the AG and former PR/Trustees from our appointment in November, 2007, until July 14, 2008. It has now been clarified by Judge Cureton's July 14 Order. But the Christie's sale is an example of the damage that can still be inflicted when Interested Persons and their agents are working against – rather than to benefit – Mr. Brown's Legacy. The effort to enhance Mr. Brown's legacy should be ongoing. The Settling Parties should support that effort now, through the settlement process, the approval process and into the new regime contemplated by any approved settlement. There is no reason for any Interested Person to interfere with the enhancement of the James Brown Legacy. The appointment of a "Royalty Representative" by the Settling Parties – the AG and most of the family – to work with enhancement of this valuable asset until a final settlement can be reached and approved would be of great value to Mr. Brown's Estate Plan. We urge you to do so immediately.

Letter to Attorney General and Other Counsel

September 2, 2008

Page 3

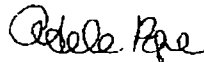
2. Selection by Settling Parties of Accountant/Tax Advisor. As we have discussed with counsel for all family members, Messrs. Dallas, Cannon and Bradley caused tremendous tax problems for Mr. Brown's Estate and Trust. How much we, or any future regime, can do to alleviate the problems remains to be seen. It is absolutely essential that there be clear communication and transition so that our efforts to deal with these critical problems will not be in vain. The first step is for the Settling Parties to designate a "Tax Representative" to speak for the Settling Parties who will understand and be ready to deal with these issues. Please do this.
3. Selection by Settling Parties of Liaison to Work with Estate in Defense of Claims. It would be extremely helpful to us for Settling Parties to appoint a "Litigation Representative" with authority to speak for all of the Settling Parties in connection with the approximately 20 lawsuits by creditors which the Estate is facing. These suits, in total, claim more than \$45 Million of the assets of the Estate/Trust. While it is our responsibility to handle them, we invite and encourage the Settling Parties to assign someone who can represent this important mass of Estate/Trust beneficiaries.

As we advised Alan, we are copying this letter to David Bell. At this point, it is our position that all family members are legally adverse to Mr. Brown's Estate Plan – the Levenson and Rosen clients by challenges to the Will and Trust, and David Bell's clients by attempting to return Cannon, Dallas and Bradley, and purchase assets for their personal gain. Nevertheless, we hope you will all work with the Attorney General toward a settlement that will honor, protect and preserve Mr. Brown's Estate Plan as he intended.

Sincerely,



Robert L. Buchanan, Jr.



Adele J. Pope

AJP:kfr

cc: David B. Bell, Esquire

0104

1 a third party evaluating so that you made sure you
2 got a fair price, and at the same time provide a
3 source of income to the Trust on a yearly basis to
4 continue funding this Trust for forever and ever
5 and ever and ever and ever and ever and ever and
6 ever, and giving the Trust an interest in these
7 royalties and things so that you can continue to
8 educate children. And if you didn't get to
9 \$100 million dollars, you got to eighty or ninety

10 or whatever it was, it was a worthwhile expenditure
11 on behalf of an investor because you're educating
12 children.

13 Q Did this third-party appraisal ever take place, to
14 your knowledge?

15 A No. Before they got in real detail about it, of
16 course, Buddy was removed and I think Terry and
17 Toby Byron had been working together to put the
18 things together to move forward, and I think they
19 gave a, or were trying to give a presentation in
20 Judge Early's courtroom in Bamberg. But I-- I
21 mean, it was all behind in judge's chambers.

0105

13 Q Now, Mr. Dallas and Mr. Bradley resigned in late
14 November of 2007, so is your testimony that the
15 first, I guess fruition of these negotiations would
16 have been close to the time he resigned in late
17 November or were there written offers before that?

18 A I don't know the exact dates. I know that I-- I
19 think I'm-- I recall conversations getting down
20 basically to the bare details of putting the whole
21 thing together. I just don't remember the exact
22 time it happened as it relates to the November date
23 when they resigned over in Bamberg.

24 Q Okay. And did you have a role in whatever that
25 offer was when it was made?

0106

need 106

3 sure that everything was sound and-- And standard.
4 And that was his involvement.

5 And Gray had brought-- I think Gray is
6 the one-- I'm pretty sure Gray is the one who had
7 the investors that were willing to put \$100 million
8 dollars on the table. And so because of that and
9 because of the relationship he had and the
10 contribution he made in to bringing the real
11 dollars in that Buddy was requesting, I believe
12 that's why he was on this.

13 Q That's why he was a signatory?

14 A Uh huh.

15 Q Okay. But this was Doctor Cox's deal? The --

16 A Uh huh.

17 Q -- same deal? Okay.

18

19 MR. CUSTER: You need to-- You need to say
20 "yes" out loud.

21 THE WITNESS: Yes. I'm sorry.

22

23 BY MR. WILLIAMS:

24 Q On the last page I see copies going to two lawyers,
25 one of whom is John Tiller. This is a lawyer at

0109

1 Haynesworth Sinkler Boyd, who I know. Who is
2 John Sparks? Do you know?

3 A Yes, sir.

4 Q Who is he?

5 A He is an attorney that has-- He has his own
6 private practice. Him and Terry have had-- Have
7 been involved in a prior-- A prior litigation
8 before. He handled some things for Terry when
9 it came to amounts of money and things in business,
10 and Terry had a company called the Graham Windsor
11 Group --

12 Q Uh huh.

13 A -- which was a former group of the Mescon Group,
14 which handled government contracts for the Air

15 Force and for the Pentagon Department, and John had

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

OMB No. 1545-0015

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

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

1 Total gross estate less exclusion (from Part 5 - Recapitulation, page 3, item 12)	1	85,845,034
2 Tentative total allowable deductions (from Part 5 - Recapitulation, page 3, item 22)	2	83,419,981
3a Tentative taxable estate (before state death tax deduction) (subtract line 2 from line 1)	3a	2,425,053
b State death tax deduction	3b	0
c Taxable estate (subtract line 3b from line 3a)	3c	2,425,053
4 Adjusted taxable gifts (total taxable gifts (within the meaning of section 2503) made by the decedent after December 31, 1976, other than gifts that are includible in decedent's gross estate (section 2001(b)))	4	0
5 Add lines 3c and 4	5	2,425,053
6 Tentative tax on the amount on line 5 from Table A on page 4 of the instructions	6	976,324
7 Total gift tax paid or payable with respect to gifts made by the decedent after December 31, 1976. Include gift taxes by the decedent's spouse for such spouse's share of split gifts (section 2513) only if the decedent was the donor of these gifts and they are includible in the decedent's gross estate (see instructions)	7	0
8 Gross estate tax (subtract line 7 from line 6)	8	976,324
9 Maximum unified credit (applicable credit amount) against estate tax	9	780,800
10 Adjustment to unified credit (applicable credit amount). (This adjustment may not exceed \$8,000. See page 6 of the instructions.)	10	0
11 Allowable unified credit (applicable credit amount) (subtract line 10 from line 9)	11	780,800
12 Subtract line 11 from line 8 (but do not enter less than zero)	12	195,524
13 Credit for foreign death taxes (from Schedule(s) P). (Attach Form(s) 706-CE.)	13	0
14 Credit for tax on prior transfers (from Schedule Q)	14	0
15 Total credits (add lines 13 and 14)	15	0
16 Net estate tax (subtract line 15 from line 12)	16	195,524
17 Generation-skipping transfer (GST) taxes payable (from Schedule R, Part 2, line 10)	17	0
18 Total transfer taxes (add lines 16 and 17)	18	195,524
19 Prior payments. Explain in an attached statement	19	0
20 Balance due (or overpayment) (subtract line 19 from line 18)	20	195,524

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

Signature of executor(s) *Robert L. Buchanan, Jr.* Date 9/24/2008
Signature of preparer other than executor *Charles J. Pao* Date 9/24/2008
Address (and ZIP code) 4408 Forest Drive, Third Floor
Columbia SC 29206 Date 9/24/2008

For Privacy Act and Paperwork Reduction Act Notice, see page 28 of the separate instructions for this form.

Form 706 (Rev. 10-2006)

SEE PRS STATEMENT @ ATTACHMENT #1

CMA 7005 1870 0004 9836 3637

EXHIBIT 35

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

Robert L. Buchanan, Jr., Personal Representative

Adele J. Pope, Personal Representative

October 20, 2008

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

Louis Levenson, Esquire
Levenson & Associates
125 Broad Street, SW
Atlanta, Georgia 30303

S. Alan Medlin, Esquire
1713 Phelps Street
Columbia, South Carolina 29205

David B. Bell, Esquire
Bell & Bell Associates
Post Office Box 1011
Augusta, Georgia 30903-1011

Re: James Brown - Royalty/Image/ Persona Issues

Gentlemen:

We are writing again to urge that the "Settling Parties" designate a Royalty/Image/Persona agent to join David, as representative of Forlando, Terry and Romunzo Brown, and us, in working together to study, explore and take advantage of opportunities to enhance Mr. Brown's royalties, image and persona.

As you know, challenges to the Will and James Brown 2000 Trust, as well as to our authority to act as both PRs and Trustees, until July 14, 2008, were a substantial impediment to our ability to enhance the royalties, image and persona of Mr. Brown. The July 14th Court of Appeals Order clarified the problem to a great extent. But it was followed almost immediately by the August 10, 2008 mediation and "stand down" request of Robert Rosen, followed by similar requests of Louis' clients. All of this makes enhancement of Mr. Brown's royalties, image and persona more challenging.

Excerpts, Ltr. Of Buchanan and Pope to AG McMaster, Levenson, Medlin and Bell
Dtd: October 20, 2008

Letter to Attorney General and Other Counsel
October 20, 2008
Page 2

Even with hard work of the parties and counsel, we believe that it will take at least 1 - 3 years to resolve the many challenges facing Mr. Brown's Estate Plan. During that time, without regard to the ultimate outcome of the pending litigation, we strongly urge that we work together to explore matters critical to the enhancement of Mr. Brown's royalties, image and persona.

If we could get together regularly with you solely for purposes of the royalty/image/persona issues, here are a few of the things we believe we could accomplish within the next year or so:

1. Financial Analysis - through engagement of a mutually-agreeable consultant - of long-range options, to include:

A. Whether sale of some or all of the assets is in the best interest of the Estate/Trust.

B. With industry-related help, development of a medium to long-range plan for management and enhancement of assets not to be sold;

C. Structure of tax and financial issues related to various decisions under above scenarios.

2. Study and decisions, with assistance of experts and counsel, related to copyright termination rights which will impact the Estate/Trust over the next 5 - 10 years.

3. Current enhancement of royalties, image and persona which will not disproportionately devalue remaining asset sale and/or exploitation plan. (Movie, Musical, etc.)

We urge you to obtain the authority to begin working with us now to address these important issues. Here are just a few immediate issues we are facing currently, and for which we would like your positive input:

1. Requests of Band. Mr. Brown's band has been requesting for some time to do something "positive" about their experience with Mr. Brown. We would like to work with them, but believe any project must be carefully narrowed not to interfere with future projects of the Estate/Trust. Positive input of the representative of the AG and family members would be very helpful in assessing this.

2. Various documentary requests. We have a documentary request related to a concert in Africa and another related to a high school in the South which developed a first-class band. The inclusion of Mr. Brown's material is small, and the payments offered are also small. The subject matters are, however, of interest — particularly the story of the school in the South, which is consistent with the educational goals of the Trust. Input of the family's representatives for this would be helpful.

EXHIBIT 36

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

IN THE PROBATE COURT

Case No.: 07-ES-02-0056

HENRY DARGAN MCMASTER, in his)
capacity as Attorney General of the State)
of South Carolina; DARYL J. BROWN,)
on behalf of his minor children, LINDSEY)
DELORES BROWN and JANISE)
VANISHA BROWN; DEANNA J.)
BROWN THOMAS, on behalf of her minor)
children, JASON BROWN LEWIS;)
YAMMA N. BROWN, on behalf of her)
minor children, SYDNEY LUMAR,)
CARRINGTON LUMAR, and TONYA)
BROWN; VANISHA BROWN; and)
LARRY BROWN; TOMMIE RAE)
HYNIE BROWN; JAMES JOSEPH)
BROWN, II, through his Guardian Ad)
Litem)

Petitioners,)

- vs-)

ALBERT H. DALLAS, ALFRED A.)
BRADLEY, and DAVID G. CANNON,)
individually and as (purported) Trustees)
of the James Brown 2000 Irrevocable Trust;)
ADELE J. POPE and ROBERT L.)
BUCHANAN, JR., individually and as)
(purported) Personal Representatives of the)
Estate of James Brown and Trustees of the)
James Brown 2000 Irrevocable Trust;)
TERRY BROWN; ROMUNZO BROWN;)
FORLANDO BROWN; CINNAMON)
N.M. PARIS; LARHONDA PETITT; and)
JEANNETTE MITCHELL)

Respondents.)

In Re:)

The Estate of James Brown and The James)

AMENDED PETITION FOR
REMOVAL AND RESTRAINT
OF TRUSTEES ALBERT H.
DALLAS, ALFRED A. BRADLEY,
and DAVID G. CANNON and
REMOVAL AND RESTRAINT OF
PERSONAL REPRESENTATIVES
and TRUSTEES ADELE J. POPE
and ROBERT L. BUCHANAN, JR.

Filed: 11-7-2008

Sue H. Roe

Judge of Probate

By: *[Signature]*

EXHIBIT 70

Robert L. Buchanan, Jr.

From: Law Office of James Bailey [jdbaileylaw@bellsouth.net]
Sent: Thursday, February 19, 2009 9:23 AM
To: rlbuchananjr@bellsouth.net; adele@popelawfirm.com; thayer@shipleigh-hayes.com
Subject: FW: Email to Bob and Adele

*Shirley H. Martin
Legal Administrator
Law Office of James D. Bailey, PC
P. O. Box 2376
Aiken, SC 29802*

From: Alan Medlin [mailto:amedlin@sc.rr.com]
Sent: Wednesday, February 18, 2009 10:40 PM
To: jdbaileylaw@bellsouth.net
Subject: Email to Bob and Adele

The settling parties request that you forward this to your clients Bob and Adele. I hope that finally your family is getting some relief from the spate of health problems. You deserve a break from all that.

Dear Bob and Adele - As we indicated last week, we believe we have a fundamentally different understanding about what Bob agreed to provide us with respect to the "transition" to your successor(s). We understood that the proposal from Bob was to assume that the settlement agreement was approved. Thus, your previous and continued assertion of issues that would relate merely to the merits of the settlement agreement, as apparently you see it, misses the mark as we understand the task.

Having not received from you what we were expecting, we offer this partial bullet list of "transition" issues for your consideration and comment:

1. Process of terminating your fiduciary status - i.e., resignation vs. removal - recognizing that the settlement agreement reflects the unanimous position of the settling parties that the time for the termination of your fiduciary status has arrived.
2. Process for your expeditious transfer of all property, including assets, records, files, and other information to your successor(s).
3. Process for providing an accounting of your estate and trust administration to your successor(s).
4. Process for providing support to your successor(s) - e.g., willingness to remain as paid consultants to successor(s).
5. Process (if any needed) to substitute parties in pending litigation (not related to settlement).
6. Process of negotiating any release and/or hold harmless for you with respect to the settlement itself.
7. Process of transferring relevant tax information and any legal or other opinions and appraisals with respect to tax, copyright, and other issues.

2/19/2009

1668

I would also remind you of our position that we have a binding settlement among beneficiaries under section 62-3-912, which requires you to abide by it - rather than fight it at the continuing expense of the estate or trust - while protecting creditors and taxing authorities and non-affected beneficiaries. Nothing in our settlement agreement adversely affects or impacts creditors, taxing authorities, and non-affected parties, to which we have stipulated in court. We consider your refusal to abide by this statute to be a breach of your duties. (We consider any claim that the AG is not able to represent any charitable beneficiary for purposes of the agreement as specious. If that is what you are hanging your hat on to protect yourself from claims of breach of fiduciary duty under section 62-3-912, inter alia, I would beseech you to reconsider.)

Thank you for your attention.

No virus found in this incoming message.

Checked by AVG - www.avg.com

Version: 8.0.237 / Virus Database: 270.11.1/1960 - Release Date: 02/19/09 10:48:00

EXHIBIT 66

STATE OF SOUTH CAROLINA)
COUTNY OF AIKEN)

IN THE PROBATE COURT
Probate Court No.: 2007-ES-02-0056
Civil Action No.: 2008-CP-02-1647

HENRY DARGAN McMASTER,)
In his capacity As Attorney General)
of the State of South Carolina)

Petition,)
Vs.)

PETITION FOR REVIEW OF
COMPENSATION

Albert H. Dallas, Alfred A. Bradley, and)
David G. Cannon, et al,)
Respondents.)

IN RE: THE JAMES BROWN)
IRREVOCABLE U/A/D AUGUST 1, 2000)

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
CASE NO: 2007-CP-02-0122

COUNTY OF AIKEN)

IN THE MATTER OF:)
THE ESTATE OF JAMES BROWN)
a/k/a JAMES JOSEPH BROWN)

TO: JAMES BAILEY, TRESSA HAYES, ADELE POPE & ROBERT BUCHANAN:

You will please take notice that, James Joseph Brown, II, by and through his Guardian ad Litem, Stephen Slotchiver, will move before the Honorable Doyet Early, Aiken County Court House, 109 Park Avenue, SE, Aiken, South Carolina during the term of Court beginning March 4, 2009 through March 6, 2009, at 10:00 am or as soon thereafter as the matter can be heard for the following:

1. For the Court to review the compensation of Adele Pope and Robert Buchanan, as the personal Representatives and Trustees, to include, but not limited to fees, expenses, attorney's fees, and other similar expenses.

The basis of this Motion is as follows:



SMALL BUSINESS/SELF-EMPLOYED DIVISION

EXHIBIT 53

March 24, 2009

Mr. Robert L. Buchanan, Jr.
212 Newberry Street, NW
Aiken, SC 29801

Ms. Adele Pope
1218 Taylor Street
Columbia, SC 29201

Mr. William Sellars, Jr., CPA
4408 Forest Drive, 3rd Floor
Columbia, Sc. 29206

RE: Estate of James Brown

Dear Mr. Buchanan, Ms. Pope & Mr. Sellars:

The federal estate tax return of the above estate has been selected for verification. I request that you gather the items noted below and send it to me to arrive by April 15, 2009.

1. Please provide copies of decedent's federal income tax returns for the 2006 and the two years before death. Also, please provide copies of any income tax returns filed for decedent's estate or trust since death. IRS will retain the return copies.
2. Please provide for review the decedent's banking records for the year of death, through the month after death, and the two prior years, including:
 - Checking account registers/ledgers
 - Checking account statements
 - Brokerage account money-fund records
 - Cancelled checks
3. Please furnish a completed Form 4421, Declaration (of fees, enclosed) to verify that the fees reported have been paid. The Form 4421 has a blank about one-half way down on which taxpayer is to indicate whether any of the fees shown have been or will be taken as an income tax deduction. The estate must complete this blank and respond to this question.
4. Has the estate discovered any additional assets, transfers, or deductions, which were not reported on the estate tax return? If so, please advise me, in writing, by April 5, 2009.
5. The estate has discussed multiple issues raised in Attachment # 1 which could affect the estate tax. Please bring me up to date on the resolution of these issues, including:
 - Has the Will & Trust validity litigation been resolved? If so, please show what happened.
 - Has the other litigation been resolved? If so, please show what happened.
 - Was the question of what property was placed in the Irrevocable Trust prior to death resolved? If so, please show what happened.
 - has the issue of which items of personal property went to the children been resolved? If so, please show what happened.
 - have the pretermitted spouse and elective share issues been resolved? If so, please show what happened.
 - have the fee issues with the previous PR/Trustees been resolved? If so, please show

Internal Revenue Service Estate Tax Stop 4106JS, 5971 Cattlebridge Blvd., Sarasota, FL 34232
Telephone: 941/378-6425, Fax: 941/378-6458

EXHIBIT 58

Estate/Trust of James Brown

212 Newberry Street NW
Aiken, South Carolina 29801

Robert L. Buchanan, Jr., Personal Representative

Adels J. Pope, Personal Representative

April 10, 2009

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

BY FAX AND MAIL

Re: Estate/Trust of James Brown
CORBIS Settlement/Contract

Dear Attorney General McMaster:

We ask again that you shorten the 30-day period to respond to the CORBIS settlement approval and join us in a consent order to permit this important exploitation of James Brown's image/persona and publicity right to go forward.

As Mr. Gold's letter to you and the affidavit confirm, the short 2-year Greenlight contract, which is part of the settlement, poses no problems and presents a valuable opportunity which, if lost, cannot be recovered.

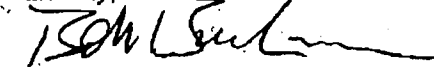
If a consent Order is presented on April 20 when Judge Early returns, we could have a dismissal in Illinois and implementation in May.

We respectfully urge that the attempt of certain persons to confuse other matters with this beneficial settlement of the 7-year-long CORBIS litigation, which was important to Mr. Brown for protection of his publicity rights, will directly and immediately harm James Brown's Legacy.

We look forward to meeting with you to discuss in confidence the positive impact the CORBIS settlement will have on the Pullman litigation. [This week we learned that Pullman is seeking leave to appeal the recent in favor of the Estate/Trust.]

Thank you for your consideration.

Sincerely,



Robert L. Buchanan, Jr.



Adels J. Pope

EXHIBIT 69

Robert L. Buchanan, Jr.

From: Law Office of James Bailey [jdbaileylaw@bellsouth.net]
Sent: Friday, May 15, 2009 9:42 AM
To: adele@popelawfirm.com; rbuchananjr@bellsouth.net
Subject: FW: Motion to Intervene

Shirley H. Martin
Legal Administrator
Law Office of James D. Bailey, PC
P. O. Box 2376
Aiken, SC 29802

From: Robert Rosen [mailto:mrosen@rosen-lawfirm.com]
Sent: Thursday, May 14, 2009 6:36 PM
To: agsjones@ag.state.sc.us; davidbell@davidbelllawfirm.com; weskirland@bellsouth.net; jdbaileylaw@bellsouth.net; jmg@jimgriffinlaw.com; Louis Levenson; mattbodmanlaw@aol.com; shahidlo@bellsouth.net
Subject: FW: Motion to Intervene

From: Robert Rosen
Sent: Thursday, May 14, 2009 6:34 PM
To: 'thayes@shipley-hayes.com'
Cc: Louis Levenson (louis@levensonlaw.com); 'Mattbodmanlaw'; 'jcnicholson@ag.state.sc.us'; 'agsjones@ag.state.us'; Alan Medlin (amedlin@sc.rr.com); Andrew Chandler; David Michel (david@michellawoffice.com); Heyward Carter Jr Esquire (Carter@eckb.com); Jean Lee
Subject: Motion to Intervene

Dear Tressa:

The settling parties wish to intervene in the new case, Buchanan and Pope v. McMaster, No. 2009-2-0597. Do you object? This is a Rule 11 consultation.

Sincerely, Robert Rosen

From: Tressa Hayes [mailto:thayes@shipley-hayes.com]
Sent: Thursday, May 14, 2009 12:07 PM
To: dearlyj@sccourts.org; dearlylc@sccourts.org
Cc: abyrd@turnerpadget.com; adele@popelawfirm.com; AGSJONES@ag.state.sc.us; amedlin@sc.rr.com; barrlaw@ftc-i.net; carter@eckb.com; d_michel@yahoo.com; davidbell@davidbelllawfirm.com; dslish@turnerpadget.com; fkingsmore@nexsenpruet.com; jmg@jimgriffinlaw.com; jlw@janwarner.com; jdbaileylaw@bellsouth.net; lori@levensonlaw.com; louis@LevensonLaw.com; mattsteinmetz@janwarner.com; Mattbodmanlaw@aol.com; max@janwarner.com; mfjowers@ag.state.sc.us; JCNicholson@scag.gov; rlbuchananjr@bellsouth.net; Robert Rosen; shahidlo@bellsouth.net; thayes@shipley-hayes.com; tmorris@morrislawpartners.com; WByrd@TurnerPadget.com; weskirland@bellsouth.net
Subject: Beech Island/ May 27 CORBIS hearing

Please see attached letter regarding Beech Island and the May 27 agenda. Thank you.

MAY 22 2009

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

PROBATE COURT

IN THE MATTER OF ESTATE OF JAMES BROWN
CASE NUMBER 2007-ES-02-0056

ACCOUNTING
(Supplemental and Amended)

[] FINAL
[X] INTERIM #1A

The undersigned Personal Representatives submit this Supplemental and Amended Accounting, which covers the period from November 20, 2007, through May 20, 2009.¹

The attached documentation sets forth a complete accounting for the period specified, which is summarized as follows:

	Income	Principal	Total*
Beginning Balance			\$100,000,000.00
Plus: Receipts			\$ 6,196,325.60
Subtotal			\$106,196,325.60
Less: Disbursements			\$ (6,333,310.58)
Ending Balance			\$ 99,863,015.02

*If a consolidated accounting, use this column.

The Personal Representatives declare that this account has been examined and that its contents represent a correct statement of all receipts and disbursements and are true to the best knowledge and belief of the Personal Representatives.

FORM #360PC (7/87)
SCPC 3-704, 3-1003

PAGE 1 OF 2

¹ This amends and supplements the accounting that covers November 20, 2007 through June 20, 2008.

Filed: 5-20-2009
Sue H. Roe
Judge of Probate
By: [Signature]
1074

[Signature]

Signature: Robert L. Buchanan, Jr.

Name: Robert L. Buchanan, Jr.

Address: 212 Newberry Street NW

P.O. Box 463

Aiken, South Carolina 29802-0463

Telephone(O): 803-649-2586

Signature: Adele J. Pope

Name: Adele J. Pope

Address: 1218 Taylor Street

PO Drawer 7125

Columbia, SC 29202-7125

Telephone(O): 803-779-1870

SWORN to before me this

20th day of May, 2009

James D. Bell (L.S.)

Notary Public for South Carolina

My Commission Expires: 2/12/15

an
Rosh.

MAY 22 2009

**ATTACHMENT TO
SUPPLEMENTAL AND AMENDED ACCOUNTING¹
OF ROBERT L. BUCHANAN, JR. AND ADELE J. POPE
PERSONAL REPRESENTATIVES
IN THE MATTER OF THE ESTATE OF JAMES BROWN**

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
11/20/07	To Show Assets at beginning of period. ² Valued as per \$100 Million offer of Terry Cox GWC, dtd. October 12, 2007 and confirmed in sworn statement by Cox on Nov. 20, 2007. See transcript of 11/20/07 hearing, Case 2007-CP-02-122:		
	1. Security Federal Account #408015768 consisting primarily of remainder of original \$25,000 loan from TIAA and Shout! Factory contract. [See Supplemental Order re: Disbursement of Royalty Proceeds dtd 8/19/07.]	\$	87,060.85
	2. Security Federal Acct. #427486282, remainder, loan from TIAA in accordance with 8/19/07 Order.	\$	64,761.91
	3. 430 Douglas Drive, Beech Island, South Carolina Estate [owned by James Brown 2000 Trust but included for control purposes]	\$	1,215,000.00
	4. Personal and Household Effects ("PHE") ³ devised under Item I of Will dtd August 1, 2000.	\$	425,053.00 ⁴
	5. Remaining Tangible Personal Property ("TPP")	\$	1,574,947.00

¹ This accounting amends and supplements the accounting filed earlier, and covers the period for November 20, 2007 through May 20, 2009.

² Assets may be owned within James Brown Enterprises, Inc. (JBE, Inc.), James Brown, LLC or another Brown Entity. JBE, Inc., is equitably owned by the James Brown 2000 Trust.

³ At Estate Tax Value.

⁴ As reported on Estate Tax Return.

MAY 22 2008

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
	6. Remaining assets ⁵	\$ 96,633,177.24	
	Total value, Beginning assets:	\$ 100,000,000.00	
	Less Secured Claims, Etc.:		\$ 17,026,624.18
	1. TIAA Royalty Debt		
	2. Priority loan from TIAA/M&T, Trustee		\$ 100,000.00
	3. Other claims, including Debts and disputed claims at nominal carrying value.		\$ 1.00
	NET VALUE OF BEGINNING ASSETS	\$ 82,873,374.82	
11/20/07	Beginning Assets as shown above: \$100,000,000.00	\$ 100,000,000.00	
11/20/07	Sizemore Security (Ck #1033) SFB #5768		\$ 4,284.00
11/28/07	D. Washington (Ck #1039) SFB #5768		\$ 403.81
11/28/07	Aiken County Probate Court - filing fee, Complaint for DJ (Ck #1040) SFB #5768		\$ 150.00
11/29/07	Cruise Security (Ck #1041) (for Trust) - Installation of Security System, April. Not paid by former Trustees [Advance to 2000 Trust] SFB #5768		\$ 3,976.45
11/30/07	Service Charge SFB #5768		\$ 10.00
12/2/07	Interest Deposit SFB #5768	\$ 8.13	
12/4/07	Hogan and Hartson, LLP - Portion fee, as per Court Order dtd 6/22/07 (Ck #1042) (Estate, JBE and JB, LLC, as per 8/10/07 Order) SFB #5768 . Engaged per Court Order		\$ 17,444.27

⁵ Residue of assets including those owned by estate, trust & other James Brown entities including but not limited to royalty interests, image, persona, Publicity Rights, licenses & other related rights including rights owned by Geronimo, LLC; James Brown d/b/a The New James Brown Enterprises, Inc. Also including but not limited to rights and claims against former PRs/Trustees, Seventh Decade and/or others for losses during the period prior to the death of James Brown. Also includes: GG Contract and Soundexchange Contract.

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DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
12/11/07	Sizemore Security (Ck #1051) SFB #5768 Inv. #144449, 12/2/07 \$ 2142.00 rem., Inv. #143256, 11/11/07 \$ 448.96 portion, Inv. #142911, 11/4/07 \$1,409.04		\$ 4,000.00
12/11/07	D. Washington - w/e 12/15/07 (Ck #1052) SFB #5768		\$ 494.00
12/11/07	Tony Pounds - petty cash, guard house (Ck #1053) SFB #5768		\$ 200.00
12/13/07	Deposit - AFM New Use (PP) SFB #5768	\$ 489.80	
12/15/07	Royalties received, 2 nd Half, 2007	\$ 2,441,417.38	
12/15/07	Royalties applied to TIAA debt as follows: Principal: \$1,996,452.32 Interest: \$444,965.06		\$ 2,441,417.38
12/18/07*	D. Washington - w/e 12/22/07 (Ck #1055) SFB #5768		\$ 494.81
12/18/07	Sizemore Security (Ck #1058) SFB #5768 Inv. #145161, 12/2/07 \$ 2,142.00 portion, Inv. #144791, 12/9/07 \$1,858.00		\$ 4,000.00
12/18/07	SC Employment Security Commission (Ck #1062) - 3 rd & 4 th Quarter SFB #5768		\$ 25.00
12/18/07	AT & T (Ck #1065) (Home Estate Security)		\$ 310.28
12/26/07	D. Washington - w/e 12/29/07 (Ck #1056) SFB #5768		\$ 494.81
12/26/07	Sizemore Security (Ck #1059) SFB #5768 Inv. #145457, 12/23/07 \$ 2,142.00 rem., Inv. #144791, 12/9/07 \$ 284.00 rem., Inv. #142911, 11/4/07 \$ 761.66 portion, Inv. #142466, 10/28/07 \$ 812.34		\$ 4,000.00
12/31/07	Interest Deposit SFB #5768	\$ 12.04	

* Checks 1054, 1060, 1063, 1064, 1159, 1160, 1217, 1293, 1294, 1278 Void

AK
12/31/07

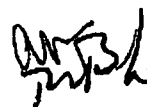
DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
5/30/08	D. Washington - extra mileage (Ck #1188)		\$ 100.00
5/30/08	Interest Deposit	\$ 3.14	
6/3/08	SCE & G - DRAFT		\$ 100.42
	Acct #4-2100-7444-7824 \$24.86		
	Acct #4-2100-7444-7045 \$67.15		
	Acct #4-2100-7444-6733 \$ 8.41		
6/4/08	D. Washington - petty cash (Ck #1192)		\$ 250.00
6/4/08	Buchanan (Office) - partial payment for costs, etc., as per Court Order (Ck #1193)		\$ 3,000.00
6/4/08	Pope (Office) - partial payment for costs, etc., as per Court Order (Ck #1194)		\$ 3,000.00
6/4/08	Law Office of James D. Bailey, PC - portion, 3/13/08 bill (Ck #1195)		\$ 5,000.00
6/4/08	Hogan & Hartson, LLP - portion, legal fees, Pullman Litigation (NY) (Ck #1196)		\$ 3,000.00
6/6/08	D. Washington - w/c 6/7/08 (Ck #1186)		\$ 494.81
6/6/08	D. Washington - extra mileage (Ck #1189)		\$ 100.00
6/9/08	AT & T (Ck #1197)		\$ 113.08
6/9/08	Beech Island Water District (Ck #1198) Accts. #01-3940-00: \$11.00; #01-3942-00: \$11.00		\$ 22.00
6/13/08	Deposit - Entertainment Partners, payable to James Brown ck #68022373 dtd 1/4/08 \$71.79 ck #68418020 dtd 2/29/08 \$44.33	\$ 116.12	
6/13/08	Sound Archives - storage of masters, invoice range LZ88382 (Ck #1199)		\$ 490.90
6/13/08	D. Washington - Extra Mileage (Ck #1190)		\$ 100.00
6/13/08	D. Washington - w/c 6/14/08 (Ck #1187)		\$ 494.81
6/15/08	Royalties received, 1 st Half, 2008	\$ 1,460,887.94	

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
8/8/08	D. Washington - extra mileage (Ck #1218)		\$ 100.00
8/8/08	D. Washington - w/e 8/09/08 (Ck #1216) (E/T)		\$ 494.81
8/15/08	D. Washington - w/c 8/16/08 (Ck #1235) (E/T)		\$ 494.81
8/15/08	D. Washington - extra mileage (Ck #1236)		\$ 100.00
8/22/08	D. Washington - w/e 8/23/08 (Ck #1237) (E/T)		\$ 494.81
8/22/08	D. Washington - extra mileage (Ck #1238)		\$ 100.00
8/25/08	Deposit - proceeds from Christie's sale (notation: total of \$468,326.12, remainder available 9/10/08)	\$ 5,000.00	
8/25/08	Deposit - proceeds from Christie's sale	\$ 463,326.12	
8/29/08	D. Washington - w/e 8/30/08 (Ck #1239) (E/T)		\$ 494.81
8/29/08	D. Washington - extra mileage (Ck #1240)		\$ 100.00
9/01/08	Interest Deposit	\$ 9.86	
9/2/08	Law Office of James D. Bailey, PC - partial payment, fees and costs (Ck #1241)		\$ 50,000.00
9/2/08	Tressa T. H. Hayes, Esquire - Shipley & Hayes, partial payment appellate matters (Ck #1242)		\$ 10,000.00
9/2/08	Law Office of Sherry T. Barnes - payment towards fees/costs, Georgia Farm Bureau suit (Ck #1243)		\$ 5,000.00
9/2/08	Pope (Office) - partial payment for costs, etc., SA pyl. as per Court Order (Ck #1244)		\$ 100,000.00
9/2/08	Buchanan (Office) - partial payment for costs, etc., SA pyl. as per Court Order (Ck #1245)		\$ 100,000.00
9/2/08	Hogan & Hartson, LLP - portion, legal fees, Pullman Litigation. As per Court Order (NY) (Ck #1246)		\$ 50,000.00
9/2/08	Beech Island Water District (Ck #1255) Accs. #01-3940-00 and #01-3942-00 (T)		\$ 33.56

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
12/5/08	D. Washington - w/e 12/6/08 (Ck #1326) (E/T)		\$ 494.81
12/10/08	Zumwalt, Almon & Hayes, PLLC - invoice #10771 (Ck #1324)		\$ 192.50
12/10/08	Secure storage - masters. Inv. NT46097 dtd. 11/30/08 (Ck #1344)		\$ 490.90
12/10/08	AT & T (Ck #1345)		\$ 66.96
12/10/08	AT & T (Ck #1346)		\$ 43.47
12/10/08	Deposit - AARC \$3,116.34; National Fin. \$2.11	\$ 3,118.45	
12/12/08	Security for files: \$683.15 (Ck #1347); shelves/lock \$50.12; labor \$150.00		\$ 883.00
12/12/08	C. Edwards (Ck #1348)		\$ 150.00
12/12/08	D. Washington - mileage (Ck #1329)		\$ 100.00
12/12/08	D. Washington - w/e 12/13/08 (Ck #1328) (E/T)		\$ 494.81
12/15/08	Royalties received, 2 nd Half, 2008	\$ 1,590,412.21	
12/15/08	Royalties applied to TIAA debt as follows: Principal: \$ 1,017,004.94 Interest: \$ 573,407.27		\$ 1,590,412.21
12/19/08	D. Washington - w/e 12/27/08 (Ck #1340) (E/T)		\$ 494.81
12/19/08	D. Washington - mileage (Ck #1331)		\$ 100.00
12/19/08	D. Washington - extra mileage (Ck #1341)		\$ 100.00
12/22/08	Beech Island Water District (Ck #1349) Acct. #01-3940-00		\$ 35.20
12/24/08	D. Washington - w/e 1/3/09 (Ck #1342) (E/T)		\$ 494.81
12/24/08	D. Washington - mileage (Ck #1358)		\$ 100.00
12/31/08	Interest Deposit	\$ 3.55	
	Debt Outstanding (TIAA-CREF): \$13,165,163.25		
1/2/09	SCE & G - DRAFT		\$ 69.61

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
	3. Other claims, including Debts and disputed claims at nominal carrying value. ¹	\$ 1.00	
	Total Debts listed above	\$ 13,265,164.25	
	NET VALUE OF ENDING ASSETS	\$ 86,597,850.77	

¹ See Attached list of Status of Claims.



MAY 22 2009

Estate of James Brown - 2007-ES-02-0056

STATUS OF CREDITORS' CLAIMS

November 20, 2007 - May 20, 2009

1: CLAIMS RESOLVED (OR PARTIALLY RESOLVED) IN FAVOR OF ESTATE (BY DISALLOWANCE OR JUDGMENT)

NO.	CREDITOR	EXPLANATION	AMOUNT DISALLOWED
1	Bobby Bennett a.k.a. Famous Flames	Hearing 10/23/08. Disallowed. Form Order dtd. 10/23/08.	\$ 450,000.00
2	Gene Staulcup & Associates, Inc.	Hearing 10/23/08. Disallowed. Form Order dtd. 10/23/08.	\$ 2,508.25
3	Greenberg Traurig, LLP	Withdrawn. See Ltr dtd 3/10/08.	\$ 155,602.85
4	Phillip G. Farr, CPA, PC	Hearing 10/23/08. Disallowed. Form Order dtd. 10/23/08.	\$ 25,977.60
5	Roosevelt Royce Johnson I	Disallowed 8/12/08 and 2/6/09. No timely petition filed.	\$ 2,500,000.00
6	The Pullman Group, LLC	Disallowed as per Judge Early's oral Order on 10/23/08 and written Order of 11/13/08. See footnote 1.	\$ 31,000,000.00
7	William Murrell (also see Chart 2)	\$8,170 granted; \$1,100 denied, Order of Jg. Early dtd 10/23/08	\$ 1,100.00
8	Dr. Rita Udom, MD	Claim filed on 9/28/07. Disallowed on 8/12/08.	\$ 22,500.00
9	Leon (Lee) Austin	Claim filed on 9/20/07. Disallowed on 8/12/08.	\$ 9,999.99
TOTAL CLAIMS RESOLVED			\$ 34,167,688.69

¹ By the terms of Jug. Early's Order, This Order cannot, and does not, affect the outcome of the claim pending against James Brown in the New York case on December 25, 2006, the date of his death, in which the Estate of James Brown, James Brown Enterprises, Inc. and James Brown, LLC are defending Pullman Group counterclaims.

MAY 22 2009

2: VALID CLAIMS/PRIORITY EXPENSES OF ADMINISTRATION (SECTION 62-3-805(a)(1))² BY ALLOWANCE, ACKNOWLEDGMENT OR JUDGMENT/ORDER AND CLAIMS HAVING SPECIAL STATUS

May 20, 2009

No.	CREDITOR	EXPLANATION	CLASS	PAYMENT STATUS
1	M&T Bank, Trustee TIAA	Claim secured by Assignment and terms of indenture. Also see claim file 9/20/07 for \$473,595.46		Current - \$13,165,163.25
2	Hogan and Hartson, LLP	Counsel Pullman NY litigation. Engaged by Ct. Orders dtd. 6/22/07 and 8/10/07, Case 122. Hrly. rate and costs, as per contract	Priority (Admin.)	\$109,523.56 (5/1/09)
3	Law Office of James D. Bailey, PC	Counsel, Probate and Circuit Court matters including claims resolution; Will/Trust Defense; Spousal/Heirs Claims; and other general matters; co-counsel, Appellate matters. Hrly. rate and costs, as per contract	Priority (Admin.) allowed by PRs	\$116,605.42 (5/1/09)
4	Shipley & Hayes, PC	Primary Appellate counsel and co-counsel in certain Circuit Court matters; Hrly rate and costs as per contract	Priority (admin.) allowed by PRs	\$29,580 (5/1/09)
5	Smith, Massey, Brodie & Thurmond	Counsel to former PRs/Trustees. Allowed as per Court Order (Hearing 10/23/08) claim plus interest at Jmt. rate.	Priority (Admin.)	\$33,322.20, plus interest unpaid
6	Art Gold (Gold and Coulson, LLC)	Counsel fee and costs Corbis/Illinois litigation; counsel Hollander vs. Estate/Trust, filed 5/09. Hrly rate plus costs as per contract	Priority (Admin.)	Unpaid
7	Harley Ruff	Tax consultations etc., hrly rate plus costs as per contract		\$1,500 paid; approx. \$1,500 due (5/20/09)

² SECTION 62-3-805. For Classification of claims.

(a) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

(1) costs and expenses of administration, including attorney's fees, and reasonable funeral expenses.

No.	CREDITOR	EXPLANATION	CLASS	PAYMENT STATUS
8	Buchanan and Pope	Special Administrators Commissions, pursuant to Jg Early Order, dtd 1/8/08, Case 122. \$317,000 plus unreimbursed costs of \$2,415.38 plus interest per Order	Priority (Admin.) as per jmt	Partial payment
9	Buchanan and Pope	Personal Representative/Trustees' Commissions as per Will Item IV, plus Article VIII, partially allowed to date per Order of Jg. Early, 1/8/08; plus claims for reimbursement, defense of frivolous Federal litigation: indemnity; defense other pending litigation and tax matters; and payment of future expenses	Priority (Admin.) Partial, per judgment	Unpaid
10	Cruise Security	Installation Security system. Claim filed and satisfied.	Priority (Admin.)	\$4,041.45 - paid
11	David Washington	Re: prior service Amount 1,392.79 paid. Claim filed and satisfied.	Priority (Admin.)	\$1,392.79 - paid
12	Lewis & Babcock, LLP	Counsel to former PR/Trustees Cannon, etc. Acknowledged validity of claim, but subject to amount to be determined by Court by stipulation w/Claimant; hearing pending; Claims filed \$246,552.45 and \$348,960.43; AG, Trust and Estate	Priority (Admin.)	Amount/payment pending
13	Rodney A. Peebles	Counsel to former PR/Trustees, Cannon, etc., claim of \$97851.66. Acknowledged validity of claim, but subject to amount to be determined by Court by stipulation w/Claimant.	Priority (Admin.)	Amount/payment pending
14	William Murrell (also see Chart 1)	Portion of claim granted: \$8,170 granted; \$1,100 denied, Order of Jg. Early dtd 10/23/08	General	\$8,170 - unpaid

3: PENDING, UNRESOLVED CLAIMS (PARTIAL)

No.	CREDITOR	EXPLANATION	PAYMENT STATUS
1	Albert H. Dallas	Petition of Former PR/Trustee for approx. 5% of \$90-\$100 MM PLUS \$624,876.00. Disputed in its entirety	Unpaid/disputed
2	Alfred A. Bradley	Makes various claims PLUS \$12,795.76. Disputed in its entirety	Unpaid/disputed
3	Augusta Communications, Inc.	\$800.00. Under review	Unpaid
4	CA Reid, Sr. Memorial	\$17,995.00 Under review	Unpaid
5	Charles A. Bobbitt	Claim for \$200,000.00 Petition for Allowance pending. Disputed	Unpaid
6	David G. Cannon	Former PR/Trustee 5% of \$90-\$100 MM PLUS additional amounts. Disputed in its entirety. Petition for Allowance pending	Unpaid/disputed
7	Georgia Dept of Revenue	\$26,828.35. Claim filed 5/18/07	Unpaid
8	Hull, Towill, Norman, Barrett & Salley	Petition for Allowance pending. Re: disputing claim \$ 124,518.26	Unpaid
9	International Formal Wear	\$ 17,889.00. Under review. Claim filed 10/1/07. May be barred by limitation	Unpaid
10	Intrigue Music Management, Inc.	Petition for Allowance pending. Claim in excess of \$175,000. Disputed in its entirety.	Unpaid/disputed
11	IRS	\$14,366.25 PLUS other unfiled claims and liens, including liens related to Federal Estate taxes remain unpaid	Unpaid
12	Jackson Law Office	Petition for Allowance Pending \$61,273.25. Disputed	Unpaid
13	Kirby Locksmith, Inc.	\$371.47. Under review	Unpaid
14	LaRhonda Pettit	Claim filed on 8/23/07. Disallowed 8/12/08. Disputed in its entirety.	
15	Lewis Lease Equipment Co., Inc. D/B/A Lewis Bus Line	Under review. Holding vehicles. Estate lacks funds to cover; engaged counsel; Georgia; resolved. Claim filed 8/23/07 \$6,335.00	Unpaid
16	Nicole Parris	\$9,999.99	Unpaid
17	Suggs Johnson	Petition for Allowance pending. \$5,747.81	Unpaid

No.	CREDITOR	EXPLANATION	PAYMENT STATUS
18	Tom Wells	Petition for Allowance pending \$39,994.26. Has been paid substantial amounts by PR/Trustees	Claim amount Unpaid

Handwritten signature/initials

Exhibit A

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

PROBATE COURT

IN THE MATTER OF ESTATE OF JAMES BROWN
CASE NUMBER 2007-ES-02-0056

ACCOUNTING

☒ FINAL (RESERVING ALL RIGHTS)¹
☐ INTERIM #

The undersigned Personal Representatives submit this Final Accounting, which covers the period from May 21, 2009, through May 27, 2009, and relates to the assets of the Estate of James Brown and the James Brown 2000 Irrevocable Trust.

The attached documentation sets forth a complete accounting for the period specified, which is summarized as follows:

	Income	Principal	Total*
Beginning Balance			\$ 99,863,015.02
Plus: Receipts			\$ 2,338,393.75
Subtotal			\$ 102,201,408.77
Less: Disbursements			\$(102,201,408.77)
Ending Balance in hands of Buchanan and Pope			\$ 0*

*If a consolidated accounting, use this column.

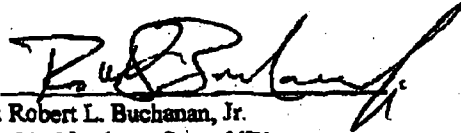
The Personal Representatives declare that this account has been examined and that its contents represent a correct statement of all receipts and disbursements and are true to the best knowledge and belief of the Personal Representatives.

FORM #360PC (7/87)
SCPC 3-704, 3-1003

PAGE 1 OF 2

¹ \$99,860,509.21 was delivered to Russell L. Bauknight, reserving all rights pursuant to the appeal of this Court's Termination of Appointment dated May 26, 2009 and all objections and reservations to the Order of the Honorable Doyet A. Early, III, dated May 26, 2009.

Filed: 6-24-2009
Sue H. Roe
Judge of Probate
By: S. R. Ready

Signature: 

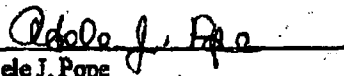
Name: Robert L. Buchanan, Jr.

Address: 212 Newberry Street NW

P.O. Box 463

Aiken, South Carolina 29802-0463

Telephone(O): 803-649-2586

Signature: 

Name: Adele J. Pope

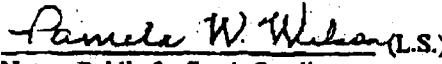
Address: 1218 Taylor Street

PO Drawer 7125

Columbia, SC 29202-7125

Telephone(O): 803-779-1870

SWORN to before me this
24th day of June, 2009

 (L.S.)

Notary Public for South Carolina

My Commission Expires: 04-08-2012

FORM #360PC (7/87)
SCPC 3-704, 3-1003

PAGE 2 OF 2

ATTACHMENT TO FINAL ACCOUNTING
ROBERT L. BUCHANAN, JR. AND ADELE J. POPE, AS PERSONAL
REPRESENTATIVES OF THE ESTATE OF JAMES BROWN AND TRUSTEES OF
THE JAMES BROWN 2000 IRREVOCABLE TRUST

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
5/21/09	To Show Assets at beginning of period:		
	1. Security Federal Account #408015768	\$ 14,837.78	
	2. 430 Douglas Drive, Beech Island, South Carolina Estate [owned by 2000 Trust]	\$ 1,215,000.00	
	3. Personal and Household Effects ("PHE") devised under Article I of Will, and/or proceeds	\$ 425,053.00	
	4. Remaining Tangible Personal Property ("TPP"); including TPP on loan to S.C. State University, Lucy Craft Laney Museum of Black History, Augusta Museum of History, SC State Museum; masters, etc. located in secure storage; and automobiles	\$ 1,574,947.00	
	5. Note, Security Deed, JJ Brown House sale	\$ 54,000.00	
	6. Remaining assets ¹	\$ 96,579,177.24	
	Total Value, Beginning Assets	\$ 99,863,015.02	
	Less Secured Claims, etc.:		
	1. TIAA Royalty Debt		\$ 13,165,163.25
	2. Priority loan from TIAA/M&T, Trustee		\$ 100,000.00
	3. Other claims, including Debts and disputed claims at nominal carrying value. ²		\$ 1.00
	Total Debts listed above		\$ 13,265,164.25
	NET VALUE OF BEGINNING ASSETS	\$ 86,597,850.77	

¹ Residue of assets including those owned by estate, trust & other James Brown entities including but not limited to royalty interests, image, persona, Publicity Rights, licenses & other related rights including rights owned by Geronimo, LLC; James Brown d/b/a The New James Brown Enterprises, Inc. Also including but not limited to rights and claims against former PRs/Trustees, Seventh Decade and/or others for losses during the period prior to the death of James Brown. Also includes: GG Contract and Soundexchange Contract. Assets may be owned within James Brown Enterprises, Inc. (JBE, Inc.), James Brown, LLC or another Brown Entity.

² See list of Status of Claims attached to Interim Accounting 1A covering the period through May 20, 2009.

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
	Beginning Assets as shown above: \$99,863,015.02	\$ 99,863,015.02	
5/22/09	D. Washington - w/e 5/23/09 (Ck #1436)		\$ 494.81
5/22/09	David Washington - mileage (Ck #1437)		\$ 100.00
5/22/09	Lisa Hicklin - transcripts for hearings: 3/4-3/6/09 (Ck #1438)		\$ 1,911.00
5/22/09	Royalties received through May 26, 2009 inclusive of earnings	\$ 2,338,393.75	
5/22/09	Royalties applied to TIAA debt as follows: Principal: \$1,776,883.24 Interest: \$ 561,510.51		\$ 2,338,393.75
5/27/09	To show assets transferred (RESERVING ALL RIGHTS) to Russell L. Bauknight on May 27, 2009:		
	1. Security Federal Account #408015768		\$ 12,331.97
	2. 430 Douglas Drive, Beech Island, South Carolina Estate [owned by 2000 Trust]		\$ 1,215,000.00
	3. Personal and Household Effects ("PHE") devised under Article I of Will, and/or proceeds		\$ 425,053.00
	4. Remaining Tangible Personal Property ("TPP"); including TPP at I.P. Stanback Museum and Planetarium, S.C. State University; TPP on loan to Lucy Craft Laney Museum of Black History; TPP on loan to Augusta Museum of History; TPP on loan to South Carolina State Museum; masters, etc. located in secure storage; and automobiles		\$ 1,574,947.00
	5. Note, Security Deed, JJ Brown House sale		\$ 54,000.00
	6. Remaining assets as described above.		\$ 96,579,177.24
	Total value, assets transferred: \$99,860,509.21		
5/27/09	To show assets remaining in hands of Buchanan and Pope as PR/Trustees	\$ 0.00	\$ 0.00

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
	TOTAL	\$ 102,201,408.77	\$ 102,201,408.77
	Less Secured Claims, etc.:		
	1. TIAA Royalty Debt	\$ 11,388,280.01	
	2. Priority loan from TIAA/M&T, Trustee	\$ 100,000.00	
	3. Other claims, including Debts and disputed claims at nominal carrying value. ³	\$ 1.00	
	Total Debts listed above	\$ 11,488,281.01	
	NET VALUE OF TRANSFERRED ASSETS	\$ 88,372,228.20	

*Also see the following exhibits:

Exhibit 1 - Summary of Accountings of Buchanan and Pope

Exhibit 2 - Custody Receipt for books and records transferred (**without prejudice**) to Russell L. Bauknight in connection with (temporary) management of Estate and Trust on or before June 23, 2009

³ See list of Status of Claims attached to Interim Accounting 1A covering the period through May 20, 2009.

EXHIBIT 71

212 Newberry Street, N. W.
Aiken, South Carolina

June 22, 2009

Russell L. Bauknight, C.P.A.
Bauknight, Pietras & Stormer, P.A.
1517 Gervais Street
P.O. Box 1330
Columbia, SC 29202
FAX: 771-8958

BY FAX OR MAIL

Re: Estate of James Brown
James Brown 2000 Irrevocable Trust

Dear Russell:

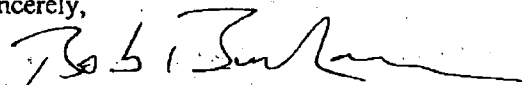
This letter and the file delivery discussed herein are without prejudice to our objection to your appointment and reservations to objections and rights contained in all matters related to the Estate of James Brown and the James Brown 2000 Irrevocable Trust.

Enclosed please find a final detailed Custody Receipt for the boxes you have already received and the boxes waiting for you at 1218 Taylor Street. Kindly pick them up and receipt for them at your earliest convenience.

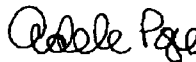
This will confirm that you have advised us that the boxes will remain available to us until a final Order is issued in the McMaster v. Dallas case. It will further confirm that the "Settling Parties" have ratified your agreement to this joint availability of the transferred documents.

We are sorry you elected not to meet this week. Many of your questions in correspondence identified on the agenda for today's meeting (copy attached) will be answered by the contents of boxes being produced, but if you have remaining questions, please do not hesitate to schedule a time to discuss them with us.

Sincerely,



Robert L. Buchanan, Jr.



Adele J. Pope

JUN 29 2009

**CUSTODY RECEIPT
DOCUMENTS OF ESTATE OF JAMES BROWN AND
THE JAMES BROWN 2000 IRREVOCABLE TRUST**

Without prejudice to the position of either party as to rights to ownership or custody on behalf of the Estate of James Brown and/or The James Brown 2000 Irrevocable Trust, the undersigned acknowledge the transfer of custody to Russell L. Bauknight on or before June 22,¹ 2009, of the boxes listed below:

BOX 1 - FORMERLY CANNON BOX 1

This is one of many boxes delivered to 1218 Taylor Street, Columbia, pursuant to Order of the Honorable Doyet A. Early, III, dated August 10, 2007. These documents were maintained until August 2007 by David G. Cannon, who resigned as PR/Trustee on August 10. Custody and control of the boxes remained with Albert H. Dallas and Alfred A. Bradley, the remaining PR/Trustees, until their resignations on November 20, 2007. Since November 20, 2007, the boxes have been, under various Orders, reviewed by interested parties and counsel; counsel for the PR/Trustees; counsel for the former PR/Trustees; and opposing counsel in litigation. 1218 Taylor Street was considered the "Reading Room" in various confidentiality agreements in various cases.

[If requested, we will be glad to discuss this matter at a weekly meeting.]

BOX 2 - FORMERLY CANNON BOX 2

Delivered to 1218 Taylor Street by Mr. Cannon in August, 2007 pursuant to Order dtd. August 10, 2007 in Case 122. Delivered to Mr. Bauknight on May 29, 2009. See Comments to Box 1.

BOX 3 - FORMERLY CANNON BOX 3

Delivered to 1218 Taylor Street by Mr. Cannon in August, 2007 pursuant to Order dtd. August 10, 2007 in Case 122. Delivered to Mr. Bauknight on May 29, 2009. See Comments to Box 1.

BOX 4 - FORMERLY CANNON BOX 4

Delivered to 1218 Taylor Street by Mr. Cannon in August, 2007 pursuant to Order dtd. August 10, 2007 in Case 122. Delivered to Mr. Bauknight on May 29, 2009. See Comments to Box 1.

BOX 5 - FORMERLY CANNON BOX 5

Delivered to 1218 Taylor Street by Mr. Cannon in August, 2007 pursuant to Order dtd. August 10, 2007 in Case 122. Delivered to Mr. Bauknight on May 29, 2009. See Comments to Box 1.

Filed: 6-24-2009

Sue H. Roe
Judge of Probate

By: J.R. Coody

¹ Boxes 1-83 previously delivered. See Receipts dated May 27, 2009 and May 29, 2009.

JUN 23 2009

See Comments to Box 1.

BOX 32 - FORMERLY 7TH DECADE BOX 15a

BOX 33 - FORMERLY 7TH DECADE BOX 15b

BOX 34 - FORMERLY 7TH DECADE BOX 15c

BOX 35 - FORMERLY LEWIS & BABCOCK BOX 1

These documents were maintained by Lewis & Babcock law firm, attorneys for PR/Trustees Cannon, Dallas and Bradley until August 10, 2007, and for remaining PR/Trustees Dallas and Bradley until November 20, 2007. The documents were delivered to 1218 Taylor Street between August 13 and August 24, 2007, pursuant to Court Order dated August 10, 2007. They remained under the control of Dallas and Bradley until their resignations on November 20, 2007. A list of the L & B index to the boxes is attached to this receipt as Exhibit A.

BOX 36 - FORMERLY LEWIS & BABCOCK BOX 2

Delivered to 1218 Taylor Street by Lewis & Babcock in August, 2007 pursuant to Order dtd. August 10, 2007 in Case 122. Delivered to Mr. Bauknight on May 29, 2009. See Comments to Box 35.

BOX 37 - FORMERLY LEWIS & BABCOCK BOX 3

Delivered to 1218 Taylor Street by Lewis & Babcock in August, 2007 pursuant to Order dtd. August 10, 2007 in Case 122. Delivered to Mr. Bauknight on May 29, 2009. See Comments to Box 35.

BOX 38 - FORMERLY LEWIS & BABCOCK BOX 4

Delivered to 1218 Taylor Street by Lewis & Babcock in August, 2007 pursuant to Order dtd. August 10, 2007 in Case 122. Delivered to Mr. Bauknight on May 29, 2009. See Comments to Box 35.

BOX 39 - FORMERLY LEWIS & BABCOCK BOX 5

Delivered to 1218 Taylor Street by Lewis & Babcock in August, 2007 pursuant to Order dtd. August 10, 2007 in Case 122. Delivered to Mr. Bauknight on May 29, 2009. See Comments to Box 35.

BOX 40 - FORMERLY LEWIS & BABCOCK BOX 6

Delivered to 1218 Taylor Street by Lewis & Babcock in August, 2007 pursuant to Order dtd. August 10, 2007 in Case 122. Delivered to Mr. Bauknight on May 29, 2009. See Comments to Box 35.

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Iron Mountain
House Maintenance
Sellars and Cole
Attorneys' fees paid
Beech Island Water
SCE & G
AT & T
Deposits

BOX 83 - CLEARANCES/PROPOSAL BOX with following sub-files:

YoHa Technology - Kenneth Chin
Carlton International - Conlin
Ray Gonzalez/TV Special
Contract Authorization
Compulsory Licenses Notice
Slackers, Inc. Proposals
Global Gaming
Llewellynn M. Dykes - Master Appraiser
Warner/Chappell-Marjorie Schecker
Warner/Chappell- Laura Masseria
Warner/Chappell- Brian Cherchiglia
Jennifer Lamping/Gonzalez Agreement
Warner/Chappell- Timothy Kane
Warner/Chappell- Cecilia Harvey
Warner/Chappell- Winifred Jow
Warner/Chappell- Pat Woods
Warner/Chappell- Deborah Keegan
Warner/Chappell- Claudia Lyon
Warner/Chappell- Dave Pettigrew
Warner/Chappell- Steve Barton
Carlton International - Rogoff
Warner/Chappell- Paulette

✓ **BOX 84 - (formerly 14A) TANGIBLE PERSONAL PROPERTY ("TPP")**
Christie's materials

✓ **BOX 85 - (formerly 14B) TANGIBLE PERSONAL PROPERTY ("TPP")**
Museums. Also see CDs.

✓ **BOX 86 - (formerly 14C) TANGIBLE PERSONAL PROPERTY ("TPP")**
TPP Notebooks - The notebooks are part of an inventory prepared by Tom Wells, Thompson, Ga. engaged by the Cannon Group after James Brown's death. A Wells notebook is part of the Inventory & Appraisalment (I&A) filed by Dallas & Bradley on

JUN 29 2009

White Notebook containin February 7, 2008 Hearing Transcript
Black Notebook containing Hotel Receipts, etc. from 2002

BOX 92 - FRIEDMAN FILE #1

Leon Friedman was Mr. Brown's attorney for many years on various litigation matters. Mr. Friedman made himself available in New York in July of 2008, and at other times by telephone for background valuable information. It was the July 17, 2007 telephone conference with Mr. Friedman, with Messrs. Dallas, Cannon, Bradley, and their Estate/Trust counsel present, which made clear that David Cannon had misappropriated the \$900,000.00. [Prior to the telephone conference, Mr. Cannon asserted that he had deposited the funds at the direction of Mr. Friedman. Both Mr. Friedman and the records reflect that this is not the case.]

This is one of 6 boxes delivered to Buchanan and Pope for Estate after various requests. As shown on shipping labels, first 2 boxes were shipped to Estate's official address in Aiken on October 28, 2008. They became part of the Reading Room on October 31, 2009. 4 Additional boxes were shipped by Mr. Friedman in 2009.

Because of their historical importance in pending litigation, the Leon Friedman files in our possession have been carefully retained in their original order, although there is much which, for administrative purposes, could arguably have been transferred to the "Royalties" files; defense of the approximately \$16 Million of claims filed by Cannon, Dallas and Bradley, and other files.

Contains the following files:

JB - General, w/ ltr. To Jg. Al Bradley dtd. March 18, 1999;

JB- Mashantucket Pequot Tribe v. JB d/b/a/ the New JB, Inc (2000);

PolyGram Records, Inc. w- James Brown, including ltr. from PolyGram rep. Janna Lasser to LF dtd. May 3, 1999 enclosing 17 MGM & JB dtd. 1/17/55., King w JB dtd. 6/23/60; Mercury Records Corporation w/ Fair Deal, Jadar, Polydor Incorporated w JB, Lin Broadcasting; JB and Top Notch, Inc.; FINISH. These contracts were part of the TIAA project which was closed on June 11, 2000. Brown, 2000;

Stallworth and Bennett v. Polygram et al (N.Y. County Index 122196/98). This case was begin on December 10, 1998 by Mr. Bennett related to PolyGram's and its predecessors' payment of royalties dating back to 1955. Matter was resolved more than a year later, but contains valuable background and contract information related to royalties. to JB which were

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Agendas and Related Docs (includes agendas from 1/23/07 - 3/3/08)

FORT KNOX

includes 2 groups of statements entitled 2006-1H and 2005-1H

ROYALTIES/ UNIVERSAL MUSIC GROUP

Including Statements to various entities dated 12/07, 6/08, 12/08, 6/07.

CORBIS Corporation, Brown J. Proposals

✓ **BOX 95 - BMI (formerly 17A)**

Includes 3 Red Rope folders containing quarterly royalty reports, including:

2002 2nd - 4th Quarters

2003 1st - 4th Quarters

2004 1st - 4th Quarters

2005 1st - 4th Quarters

2006 2nd - 3rd Quarters

2008 1st Quarter, but no backup documentation

Also includes correspondence from 1993 and other royalty documents

[If requested, we will be glad to discuss this matter at a weekly meeting.]

✓ **BOX 96 - Royalties - Warner/Chappell**

WARNER/CHAPPELL ROYALTIES

Materials related to W/C royalties, including:

Statements dated:

9/30/02 - 6/30/04 AUDIT

2006 - 3rd and 4th Qtrs.

2007 - 2nd, 3rd and 4th Qtrs.

2008 - 1st and 2nd Qtrs.

2008 - 3rd and 4th Qtrs.

Jadar, Etc. For Jan. - March 2009

Haber Corporation royalty Examination of Warner Chappell Music, Inc. On Behalf of James Brown LLC for the Periods Ended September 30, 2002 to June 30, 2004

✓ **BOX 97 - TIAA (formerly 20A)**

This box contains a copy of the closing package and Agreements of Mr. Brown, JBE, Inc., James Brown, LLC, opinions of counsel, Indenture, etc. for the June 11, 2000 \$26 Million Royalty-backed Note held by the New York Teachers' Union (TIAA), with Manufacturers' and Traders'.

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CD VIDEO OF TOMI RAE HYNIE BROWN - FEBRUARY 9, 2007
CD LAMINATED POSTER
CD JAMES BROWN SAFE INVENTORY, FEBRUARY 26, 2007 1 OF 2
CD JAMES BROWN SAFE INVENTORY, FEBRUARY 26, 2007 2 OF 2
CD SWORN STATEMENT OF DIANE STERLING, FEBRUARY 3, 2007
CD JAMES BROWN AND BITTERSWEET
Keys, Beech Island

OCTOBER 19, 2006 PHOTOS JAMES BROWN MAUSOLEUM SITE EXTERIOR OF
RESIDENCE ATTORNEY ALBERT H. DALLAS
LAURICE MONICA AND BITTERSWEET
BROWN HOME BY TOM WELLS
CD Sworn Statement of Diane Sterling, February 3, 2007
2 CDs Sworn Statement of David Bernard Washington, January 29, 2007
2 CDs Sworn Statement of Joseph Lee Sr., January 31, 2007
CD Sworn Statement, Jewel Libby, February 5, 2007
2 CDs, Sworn Statement, Larry Friddle, February 2, 2007
CD JAMES BROWN ESTATE PLANNING FEBRUARY 24, 1999
CD JAMES BROWN ESTATE - S.C. UNIVERSITY IP STANBACK MUSEUM
CD SWORN STATEMENT - JEWEL LIBBY FEBRUARY 5, 2007
CD JAMES BROWN SOUL SESSION CINE VU
AUGUSTA MUSEUM OF HISTORY - LOAN
CD WITH NOTATION WJBF 2/5/07 11 PM, CHANGE IN SECURITY GUARD
JAMES BROWN WEDDING DECEMBER 14, 2001 JIMMY
CARTER/PHOTOGRAPHER
CD JAMES BROWN TURKEY GIVE AWAY
CD computer documents from Phil Farr, 1/24/08

PLASTIC ENVELOPE CONTAINING 33 CDS OF PHOTOS, ETC., INCLUDING

1. JAMES BROWN - SCHOOL IS IN
2. LAST XMAS PARTY - STATUE 2 PICS
3. XMAS TOYS 2004
4. VARIOUS, INCLUDING WEDDING
5. JAMES BROWN DAY 2003 - AIKEN VIDEO
6. JAMES BROWN DAY 2003
7. JB CYCLES, JB HOT, JB SHOW, PAINE COLLEGE, HONORS, JB
8. GODFATHER HOMECOMING 1ST SET
9. GODFATHER HOMECOMING 1ST SET
10. GODFATHER HOMECOMING 2D SET
11. GODFATHER PICS MISC.
12. JAMES BROWN TURKEY GIVE AWAY 2004
13. JB STATUE UNVEILING
14. JAMES BROWN X-MAY TOYS 2002

JUN 23 2009

Regions Bank I/N/O The Irrevocable Trust of James Brown, last entry 4/18/07. Checkbook, Regions Bank, The New James Brown Enterprises, Inc., with notation "acct. closed January of 2007" with receipts inside. Checkbook, Estate of James Brown, first entry February 23, 2007; last entry, 4/30/07. Note: check register of Dallas and Bradley covering period 8/28/07 - 11/17/07 was added to this box.

BOX 116 - Box delivered to 1218 Taylor Street from Lewis and Babcock in August, 2007 pursuant to 8/19/07 Order in Case 122

Grammy Awards Invitation

Note: front of file contains unofficial stack of documents copied by Audra Byrd, counsel for Messrs. Dallas and Bradley, on 2/4/2008, including:

1. Docs bearing various L&B numbers under 2100, including info re: SouthTrust judgment; TRHB premap; and 1991 document JBE Inc and DGC filing foreign SouthTrust Judgment; Assignment of SouthTrust Judgment to Cannon; Satisfaction of Judgment; JB collection/receipts 12/29/06 - 2007; Statements of Libby, Sterling, Holmes, Rembert, D. Washington, Agreement TR Hynie and JBE dated June 19, 2000, signed and witnessed by Charles Bobbit, Johnny R. Phill IPS and Albert H. Dallas; Statement of Colonel Joseph Lee and other documents

Contains numerous automobile folders including: title insurance; 1988 Ford Pickup; 1962 Ford Thunderbird; 1983 Ford Van; Lincoln NAV; 1972 Rolls Royce; 1941 Lincoln; 2005 Chrysler 300; 1992 Mercedes; 1992 Mercedes 190E; 1990 Lincoln; Rhodes Imports 1988 Merc. 300E; 2004 bank records; Skymiles; Ford Motor Credit; German Shepherd, male; Bank of America; Associates National Bank, Delaware (from 2000); SAG Information; brown folder entitled "Deanna"; limousine; 1991 Mercedes; 1941 Lincoln Towncar; 1985 Lincoln; 1991 Ford; Chevy Roadster, 67; bus (located at Lewis Bus Lines in Augusta). Folder containing MGM correspondence to JBE, Inc, 2004. Social Security Folder. AFTRA Health and Retirement Funds envelope. Medical Insurance statements. FedEx information from AFTRA (2006). Re: coverage and billing for 2006. Citibank Credit Card. Bank records, August 2003. Bank records, Regions Bank, the New JBE, Inc., 2003, 2004 and 2005. Autos. House insurance. Leon Friedman. Regions Bank. Royalties Statements from 2004. Sizemore, Inc. Taxes. State Farm Policy. JBE Fax Coversheets from 2002 and 2003. Insurance claims pending. IAPA. Jackson Heat, A/C. Requests for Change in Case Status WAAW. James Huff. Advance Disposal. Policy file WAAW Radio. Medicare. 1999 Ford Expedition.

BOX 117 - MISCELLANEOUS DOCUMENTS DELIVERED TO 1218 TAYLOR STREET IN AUGUST, 2007

Containing:

1. Numerous Small Manila Folders
2. Notebooks

JUN 29 2009

2002 Payroll Tax Report; 2002 Quarterly Earnings report; 2002 Yearly earnings report; 2002 plain paper W-2s; 2002 Account Variance; 2002 Detailed General Ledger; 2002 Form 1120 Corporate Tax Return; 2002 Form SC-1120 Corporate Tax Return.

E. 2003:

JBE, Inc: 2003 General Ledger Trial Balance; 2003 Working Trial Balance; 2003 Detailed General Ledger; Form 1120 Corporate Tax Return; Form SC-1120 Corporate Tax Return; 2003 check Register; 2003 Chart of Accounts.

F. 2004:

JBE, Inc: 2004 General Ledger; 2004 Check Register; 2004 Vendor Ledgers; 2004 General Ledger; 2004 Account variance; 2004 Vendor Master File List; 2004 Vendor Master File List.

G. 2005:

JBE, Inc: 2005 Balance Sheet; 2005 Income Statement; 2005 General Journal; 2005 Detailed General Ledger; Form 1120 Corporate Tax Return; Form SC-1120 Corporate Tax Return; 2005 Working Trial Balance; 2005 Chart of Accounts; 2005 Check Register; 2005 Employee List-plain paper W2s; 2005 Vendor List; 2005 Customer List/Customer Ledger.

NOTE: As noted on top of box, the 2006 Report was removed and used as an exhibit at the hearing and has not been returned.

✓ **BOX 125 - ADDITIONAL CANNON DOCUMENTS**

Additional documents related to David G. Cannon, including:

- A. Original documents.
- B. Manila folder entitled "David G. Cannon" bearing various numbers between 04800 and 05000.
- C. Red Rope folder containing note of documents provided to Angela Kirby from box 31 of David Cannon, October 10, 2007, including:
 - 1. Regions Bank statements; 7th Decade 2004 Income Tax Return; 7th Decade 2003 Income Tax Return; and other docs bearing numbers 22120 to 22226.
 - 2. payment vouchers and tax records bearing numbers 22227 to 22244.
 - 3. JBE Inc Regular account 39-3300-1562 Regions Bank, 2000, including copies of various checks, bearing numbers 22245 to 22442.
 - 4. JBE Inc Regular account 39-3300-1562 Regions Bank, 2001, including copies of various checks, bearing numbers 22443 to 22605.

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16. James Brown bike Race
 17. James Brown Wedding
 18. James Brown X-Mas 2003
 19. James Brown Video 2003
 20. James Brown Video 2003
 21. James Brown Day 2003
 22. Godfather Homecoming 1st Set
 23. Godfather Homecoming 2d Set
 24. Godfather Printed JB Brochure JB Festival 2006
 25. JB Cycles; JB Hot; JB Show, etc.
 26. James Brown in Greenville
 27. James Brown & Hakim
- Plastic bag containing numerous keys
Silver Album with Wedding Photos

NOTE: These were preserved as returned.

TRANSFERRED FROM:

Adele J. Pope Robert J. Buchanan, Jr.
ROBERT L. BUCHANAN, JR OR
ADELE J. POPE

RECEIVED BY:

[Signature]
RUSSELL B. UKNIGHT

**212 Newberry Street NW
Aiken, South Carolina 29801**

June 24, 2009

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

BY FAX ONLY

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

Dear Mr. Klett:

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

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

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

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

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

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

Supporting Summary Judgment

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

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

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

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

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

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

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

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

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

Letter to Mr. Klett
June 24, 2009
Page 4

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

11. GreenLight could be ready for **the Masters** next year (2010), where huge numbers of international visitors have tremendous interest in James Brown.
12. Art Gold's reduced contingency percentage of settlement approved.

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

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

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

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

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

Sincerely,

Robert L. Buchanan, Jr.

Adele J. Pope

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

MEMORANDUM EXHIBIT 63

To: Russell Bauknight
From: Adele J. Pope ^{an} and Robert L. Buchanan, Jr., Esquire ^{R.L.B., Jr.}
Date: July 14, 2009

Russell:

Bob is on the road today, but has reviewed this message. We are responding to your email to us of late Friday afternoon and David Black's call to Tressa Hayes yesterday.

We look forward to seeing you at our next weekly meeting which will be at 3:00 on Wednesday, July 22 in Aiken at Bob's office. We will have our counsel available by phone or in person if necessary.

Please bring any files, pleadings, etc. you wish to ask us about. You may also want to send us a list of issues so we can be thinking about them.

We will copy this letter to David Black (through Freddie Kingsmore as per Freddie's request) and ask that you, he and your other counsel respect our request not to contact our attorneys except through us at the weekly meetings unless and until:

- a. As appropriate, we develop a joint litigation (and attorney-client/work product) strategy at our weekly meetings for a particular case; and
- b. The Estate/Trust, under your temporary management, has agreed to pay the attorney.

As you know, we want to avoid unnecessary costs, duplication and – most important – misunderstanding during the appeal period. When questions such as those asked by Mr. Black of Tressa arise, we need to look at them globally. For that reason we will ask Tressa and Jim not to respond to such inquiries, but to reserve them for the weekly meetings.

As relates to the Cannon Appeal, it has been our widely published opinion that we will take, and have encouraged all Interested Persons in the Estate/Trust to take, all actions appropriate to help prevent the return of David Cannon to any position of trust or confidence with the Estate or Trust and to make more likely the recovery of the \$12+ Million of funds missing between 1999 and 2007.

We will be glad to discuss the Cannon Appeal and other Cannon cases further at the next weekly meeting.

The weekly meeting should help us avoid emergencies. Should a matter arise, however, that you or your counsel believe cannot wait until our next weekly meeting, please direct it to us in writing so that we can determine if we want to respond – or whether one or more of our counsel should be involved. We look forward to seeing you!

cc: Tressa T.H. Hayes, Esquire, James D. Bailey, Esquire;
Fred Kingsmore, Esquire, for Mr. Black (per request of Mr. Kingsmore dtd: 7/10/09)

EXHIBIT 105 3

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN) SECOND JUDICIAL CIRCUIT
)
) Case No.: 08-CP-02-1647 (Original)
) Case No.: 07-CP-02-0122 (Copy)
) Case No.: 08-CP-02-0872 (Copy)
HENRY DARGAN McMASTER, in his)
capacity as Attorney General of the State of)
South Carolina; and others)
Petitioners,) SUPPLEMENTAL AFFIDAVIT
ALBERT H. DALLAS and others) OF ROBERT L. BUCHANAN, JR.
Respondents.) AND ADELE J. POPE IN
) SUPPORT OF COMMISSIONS AND
) PAYMENT OF CERTAIN PRIORITY
) EXPENSES OF ADMINISTRATION
IN RE:)
The Estate of James Brown and the James)
Brown 2000 Irrevocable Trust u/a/d August)
1, 2000)

AND

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN) SECOND JUDICIAL CIRCUIT
) Case Number: 2009-CP-02-1140
)
)
Robert L. Buchanan, Jr. and Other,)
Plaintiffs,)
vs.)
)
The Honorable Henry Dargan McMaster,)
as Attorney General for the State of South)
Carolina,)
Defendant.)
)
IN RE: The Estate of James Brown)
and the James Brown 2000 Irrevocable)
Trust)

AND

THE STATE OF SOUTH CAROLINA
IN THE CIRCUIT COURT FOR THE
SECOND JUDICIAL CIRCUIT

APPEAL FROM AIKEN COUNTY
PROBATE COURT

needy and deserving children desiring to be educated in South Carolina and Georgia.³ We believe that it is our duty to preserve the James Brown Legacy for the State of South Carolina.

3. After August 10, 2007, approximately 80 boxes of documents were delivered to 1218 Taylor Street, the back of Adele's office, by or on behalf of the predecessor PR/Trustees David G. Cannon (Cannon), Albert H. "Buddy" Dallas (Dallas) and Alfred A. Bradley (Bradley), and more than 65 additional boxes of documents, records and pleadings have been gathered since November 20, 2007, during our service as PR/Trustees.⁴

II. SUMMARY OF RELIEF REQUESTED

4. Reserving all rights and objections to our removal as PR/Trustees, and orders of this Court related to the March 26 Document and appointment of Russell Bauknight as Successor PR/Trustee, we ask the Court for the following relief:

- a. Payment of a full commission of \$4,993,151, to be divided between Bob and Adele, based 1/3 on relative time and staff time spent; and 2/3 equally, based on our shared responsibility, as follows:

Bob: \$ 2,147,221

Adele: \$ 2,845,930

- b. Payment of attorneys' fees for all counsel engaged or continued by us, as a priority expense of administration.
- c. Payment from the first available monies of \$2,153,983, plus interest from

³According to *Philanthropy in the Sunshine State*, in 2001, the year after which James Brown created the 2000 irrevocable Trust and executed his Will, both of which would fund, in addition to the Grandchildren's Trust, The James Brown "I Feel Good" private foundation, only 19 private foundations in Florida had assets in excess of \$100 Million, the size of James Brown's Gross Estate, even though Florida housed 2 of the nation's 100 largest private foundations and 5.3% of the nation's private foundations.

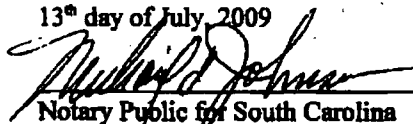
⁴ 145 boxes have been delivered (without prejudice) to Russell Bauknight.

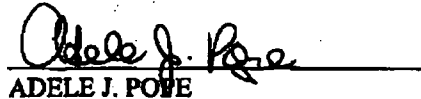
the Estate of James Brown and the James Brown 2000 Irrevocable Trust.

FURTHER DEPONENTS SAYETH NOT.

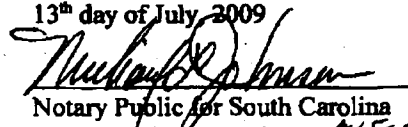

ROBERT L. BUCHANAN, JR.

SWORN TO before me this
13th day of July, 2009


Notary Public for South Carolina (L.S.)
My Commission expires: 24 FEB 14


ADELE J. POTE

SWORN TO before me this
13th day of July, 2009


Notary Public for South Carolina (L.S.)
My Commission expires: 24 FEB 14

From:

Sent:

To:

Cc:

Subject:

Attachments:

Alan Medlin <amedlin@sc.rr.com>

Sunday, August 30, 2009 4:11 PM

Kingsmore, Fred L; Carter@eckb.com; Chandler@eckb.com; mrosen@rosen-lawfirm.com; AGSJONES@scag.gov; MFJowers@scag.gov; JCNicholson@scag.gov; David Michet; louis@levensonlaw.com; lori@levensonlaw.com

rbauknight@BPSCPAS.COM

Tax valuation

tax valuation.rtf

Follow Up Flag:

Flag Status:

Follow up

Completed

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

Exhibit

JB-41_00032

1711

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF BARNWELL)

INDICTMENT

At a Court of General Sessions, convened on February 22, 2010, the Grand Jurors of Barnwell County present upon their oath:

BREACH OF TRUST WITH FRAUDULENT INTENT

That David G. Cannon did in Barnwell County beginning on or about January 1, 2003, to on or about December 31, 2003, having been entrusted by James Brown with the care, keeping and possession of certain personal property valued at more than Five Thousand Dollars (\$5,000), did breach this trust by converting and appropriating such property to his own use and purpose, with the fraudulent intent to permanently deprive the owner thereof, to wit:

David G. Cannon was entrusted by James Brown with the care, keeping and possession of sums of money, thereby creating a trust relationship, whereby David G. Cannon was granted the authority and responsibility to disburse said sums of money per James Brown's directions and/or for his benefit; In breach of this trust, David G. Cannon did convert over Five Thousand Dollars (\$5,000) belonging to James Brown to his own use, all in violation of §16-30-230(B)(3) of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.



HENRY MCMASTER (REM)
SOUTH CAROLINA ATTORNEY GENERAL

EXHIBIT 96

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III Circuit Court Judge

Case No. 2008-CP-02-01647-*Original*
Case No. 2009-CP-02-01810-*cert/copy*

In Re: The Estate of James Brown and
The James Brown 2000 Irrevocable Trust u/a/d August 1, 2000

Ex Parte: Robert L. Buchanan, Jr., and Adele J. Pope,
as Personal Representatives of the Estate of James Brown
and Trustees of the James Brown 2000
Irrevocable Trust, ...

Appellants

Henry Dargan McMaster, in his capacity as Attorney
General of the State of South Carolina; Daryl J. Brown,
on behalf of his minor children, Lindsey Delores B.
and Janise Vanisha B.; Deanna J. Brown Thomas,
on behalf of her minor children, Jason Brown
L.; Yamma N. Brown, on behalf of her minor children,
Sydney L., Carrington L., and Tonya B.;
Vanisha Brown; and Larry Brown; Tommie Rae Hynie
Brown, ...

Respondents

v.

Albert H. Dallas, Alfred A. Bradley, and David G. Cannon,
Individually and as (purported) Trustees of the James
Brown 2000 Irrevocable Trust; Russell L. Bauknight, as
Special Administrator and Special Trustee for the Estate of
James Brown and the James Brown 2000 Irrevocable Trust,
Terry Brown; Romunzo Brown; Forlando Brown; Cinnamon
N.M. Paris; LaRhonda Pettit; and Jeannette Mitchell, also

Respondents.

ORDER FOR RELEASE OF INFORMATION RELATED TO
ATTORNEYS' FEES AND OTHER COMPENSATION

FILED 3-15 2010
Liz Anderson
CC.P.&G.S.
Barbara Rogers
Deputy Clerk

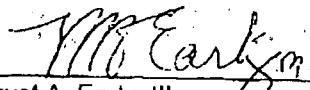
MTC
#1

This matter comes before me on motion of defendants/appellants Robert L. Buchanan, Jr. and Adele J. Pope asking the Circuit Court to deliver and/or direct the Clerk of Circuit Court to deliver all documents related to attorneys' fees, costs and/or compensation presented to the Circuit Court in this matter, including but not limited to, the contingency fee contract of Louis Levenson, Robert Rosen and the fees of the Guardian ad Litem for minor James B:

This Court has made no findings for necessity for confidentiality.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that this Court is filing with the Clerk of Circuit Court, and the Clerk is hereby directed, to deliver to Robert L. Buchanan, Jr., Adele J. Pope and/or their counsel, any and all documents related to attorneys' fees and/or compensation, and/or costs, and/or fees of guardians ad Litem and their counsel presented to this Court in the above cases.

AND IT IS SO ORDERED.


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

March / 7, 2010
Aiken, South Carolina

EXHIBIT 93

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	SECOND JUDICIAL CIRCUIT
DARYL J. BROWN, and others	)	CIVIL ACTION NO. 2007-CP-02-0122
Plaintiffs,	)	
v.	)	MOTION FOR JUDGMENT
	)	FOR COSTS,
DAVID G. CANNON, and others	)	INCLUDING ATTORNEYS' FEES,
Defendants	)	AGAINST DAVID G. CANNON
IN RE:	)	
ESTATE OF JAMES BROWN AND	)	
THE JAMES BROWN 2000	)	
IRREVOCABLE TRUST	)	

TO: DAVID G. CANNON AND ALL OTHER INTERESTED PERSONS

YOU WILL PLEASE TAKE NOTICE that at the hearing to be held 9:00 a.m. on Thursday, May 20, 2010, at the Aiken County Courthouse located at 109 Park Avenue S.E., Aiken, South Carolina, or as soon thereafter as they may be heard, Robert L. Buchanan, Jr. and Adele J. Pope, Individually, will move before the Honorable Doyet A. Early, III for an Order granting judgment for costs, including attorneys' fees, against David G. Cannon as follows:

1.	Robert L. Buchanan, Jr. and Adele J. Pope, Special Administrators fees and costs with interest as provided in Case 122 Order dated January 8, 2008	\$ 382,817.94
2.	Louis Levenson fees as per Affidavit dated November 27, 2007 (\$102,398.75 and costs \$34,379.16 Less \$ 3,000.00 Brown Family Children's Fdn.)	\$ 133,779.91
3.	Tressa T.H. Hayes, Esquire fees and costs	\$ 38,680.00
4.	James D. Bailey, Esquire fees (portion of total claim)	\$ 100,000.00

5.	Robert L. Buchanan, Jr. and S.C. Hartford Insurance	\$ 270,567.02
6.	ALPS	<u>\$ 251,566.79</u>
	Total Judgment	\$ 1,177,411.66

together with additional reasonable amounts to Levenson, M & T Bank and/or the Estate of James Brown, as set out in timely affidavits filed by them, with the Estate to receive assignment of all judgments upon full payment, with interest.

The grounds of this motion are:

1. By Order dated April 8, 2008 the Court directed that the costs of this Case 122, including reasonable attorneys' fees, be charged against Cannon and others based on affidavits and arguments without testimony, at a hearing to be heard on May 11, 2008. Movants' requests for judgment cover both indemnification for Cannon's contempt and other costs under the April 8 Order.
2. The April 8 Order became final as to Cannon by the decision of the S. C. Court of Appeals on November 6, 2009, which remanded this matter to the Circuit Court for the determination of costs related to Cannon's contempt and confirmed the April 8 Order as to Cannon.
3. More than five months have elapsed since the November 6 Decision and judgment for costs against Cannon became ripe to be determined.
4. To promote judicial economy, Movants include with this motion affidavits describing the service of most persons who performed valuable services to the Estate/2000 Trust in Case 122, with whom they worked as SA s and/or PR/Trustees, and have requested information from others.
5. On information and belief the costs, including attorneys' fees requested from

Cannon are fair and reasonable and are properly chargeable against Cannon as part of Case 122. They incorporate herein by reference the affidavits served herewith.

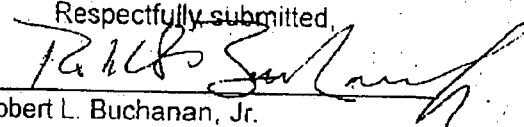
This motion is based on the following:

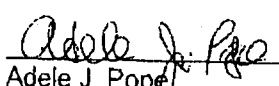
1. Order of Judge Early dated April 8, 2008 in this Case 122;
2. Opinion of the South Carolina Court of Appeals dated November 6, 2009
3. The South Carolina Trust Code and South Carolina Probate Code.
4. The Affidavits listed on Schedule A attached hereto and made a part

hereof.

5. Such additional affidavits as shall be timely served prior to hearing.

Respectfully submitted,

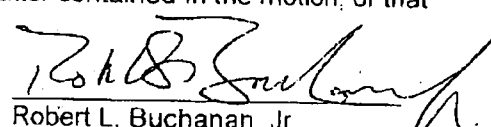

Robert L. Buchanan, Jr.

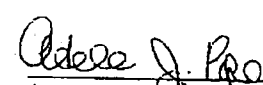

Adele J. Pope

May 3, 2010

AFFIRMATION

I certify pursuant to Rule 11 of the South Carolina Rules of Civil Procedure that prior to filing this motion I communicated, orally or in writing, with opposing counsel, and have attempted in good faith, to resolve the matter contained in the motion, or that consultation would serve no useful purpose.


Robert L. Buchanan, Jr.


Adele J. Pope

Schedule A
Affidavits Supporting Motion for Judgment of Costs
against David G. Cannon

1. Affidavit of Robert L. Buchanan, Jr. and Adele J. Pope, dated March 26, 2010
2. Affidavit of Robert L. Buchanan, Jr., dated December 17, 2007
3. Affidavit of Adele J. Pope, dated December 14, 2007 (with Exhibits List)
4. Affidavit of Adele J. Pope, dated November 28, 2007
5. Affidavit of Louis Levenson, Esquire dated November 28, 2007
6. Affidavit of Tressa T.H. Hayes, Esquire dated April 30, 2010
7. Affidavit of James D. Bailey, Esquire, dated April 29, 2010
8. Affidavit of Daryl L. Williams, Esquire
9. Affidavit of J. Calhoun Watson, Esquire

File No:

State of South Carolina
County of Richland

Russell L. Bauknight, etal

vs.

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

In the Court of
Common Pleas
Family
Probate
Magistrate
U.S. District

Affidavit Of Service Docket #
2010-GC-4000073

FILED
10 MAY 27 AM 11:59
CLERK OF COURT
PROBATE & DISTRICT
RICHLAND COUNTY, S.C.

The Undersigned Bobbie Backman
Who Being Duty Sworn, Says That He/She Served The Forgoing:

Summon XXXXXXXX
Complaint XXXXXXXX
Civil Cover
Lis Pendens
Mechanics Lien
Rule/ Show

Action on: Robert L. Buchanan, JR
Served: Robert L. Buchanan, JR

Time Serv 10:03am Leaving with Him/Her | Copies of the Same At
212 Newberry Street, Aiken, SC 29802

On this 24th Day of May 2010, and that he know the person so served
to be the defendant mentioned and described in the Pleadings served and that the
deponet is not a party to Nor interested in the Action,

Is the Defendant in the US Military : IS NOT

Sworn this 24th Day of May

Served:

2010

Bobbie P. Backman

Steven W. Smith
Commission expires January 11th 2017

This is a : N/A

EXHIBIT B

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS

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

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

and

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

Plaintiffs.

v.

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

FIRST REQUESTS TO ADMIT TO
ALL PLAINTIFFS OF
DEFENDANT ADELE J. POPE

TO: ALL PLAINTIFFS AND THEIR COUNSEL

Subject to and reserving all rights in the previously served and filed Motion to Dismiss and Motion for Transfer of Venue , Defendant Adele J. Pope hereby requests that all Plaintiffs admit the truth of the following matters of fact and the genuineness of documents. Each matter for which an admission or denial is requested shall be deemed admitted, pursuant to Rule 36, unless Plaintiffs respond within thirty (30) days after the service of the requests. If you fail to admit the matters set forth below and Defendants thereafter prove the truth of these matters, they may apply to the Court for the recovery of reasonable expenses (including attorneys' fees) incurred in making the proof, pursuant to SCRPC 37(c).

REQUESTS AS TO AUTHENTICATION OF DOCUMENTS

REQUEST NO. 1:

Exhibit 1 hereto is a true and correct copy of a Motion to Require Disclosure of Secret Settlement and for Related Relief dated August 18, 2008, Aiken County Case No. 2007-CP-02-0122 and Case No. 2008-CP-02-0872, with the following Exhibits:

- Exhibit A Email from Sonny Jones to dearvi@sccourts.org dtd. Tuesday, August 12, 2008
- Exhibit B Ltr. of Adele J. Pope, for Robert L. Buchanan and Myself to C. Havird Jones, Jr., Esquire, dated August 12, 2008
- Exhibit C Email of Robert Rosen to adele@popelawfirm.com dated Tuesday, August 12, 2008
- Exhibit D Email of Sonny Jones to rbuchananjr.@bellsouth.net and others dtd. November 21, 2007; Ltr. of Adele J. Pope to C. Havird Jones, Jr. dated November 21, 2007; emails between Bill Hammond and Grace lewis, with copy to Sonny Jones dtd. November 27, 2007; email from Sonny Jones to Bill Hammond dtd 11/27/07.
- Exhibit E Meeting of Trustees, Irrevocable Trust Agreement of James

Exhibit 102 hereto is a true and correct copy of Letter of Audra Byrd to Adele Jeffords Pope and Robert L. Buchanan, Jr. dated March 16, 2010

REQUEST NO. 103:

Exhibit 103 hereto is a true and correct copy of Order Denying Motion to Reconsider Appointment of Successor Personal Representatives and Trustees and Granting Related Relief, with Exhibit A, dated April 8, 2008, filed April 14, 2008, Case No. 2007-CP-02-0122.

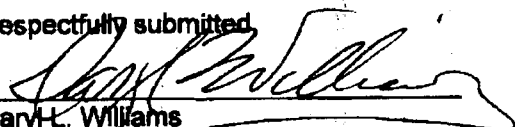
REQUEST NO. 104:

Exhibit 104 is a true and correct copy of a consent Order of Dismissal of the Honorable Peter R. Nuessle, Family Court Judge, In the Family Court, Second Judicial circuit, dated August 14, 2004 and filed August 16, 2004, Case No. 04-DR-02-157.

REQUEST NO. 105:

Exhibit 105 hereto is a true and correct copy of a supplemental Affidavit of Robert L. Buchanan, Jr. and Adele J. Pope in support of Commissions and Payment of Certain Priority Expenses of Administration, dated July 13, 2009, Case No. 08-CP-02-1647, 07-CP-02-0122, No. 08-CP-02-0872

Respectfully submitted



Daryl L. Williams
Jeter & Williams, P.A.
1204 Main Street, Suite 200
Post Office Box 7425
Columbia, South Carolina 29202
Telephone: (803) 765-0600
Facsimile: (803) 765-0619

August 12, 2010

Attorney for Defendant Adele J. Pope,

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

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

v.

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

) IN THE COURT OF COMMON PLEAS

) Case No. 2010-CP-40-4900

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

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RICHLAND COUNTY
FILED

) MEMORANDUM IN SUPPORT OF
) DISMISSAL OF COMPLAINT

Plaintiffs brought this action, which relates to an estate being probated in Aiken

County and a trust whose situs is Aiken County, in Richland County.¹ Their improvident election to do so requires dismissal of the proceeding on jurisdictional grounds because, under the South Carolina Probate Code, the courts of Richland County lack the authority to hear the proceeding, or even a motion for change of venue.

Background

Ten years ago, on August 1, 2000, music legend James Brown, a resident of Aiken County, created the James Brown 2000 Irrevocable Trust (the "2000 Trust") and transferred his Aiken County home to it. Under an occupancy provision of the 2000 Trust, Brown resided in his home until his death on December 25, 2006.

In January 2007 Brown's Will, also dated August 1, 2000, was admitted to informal probate in the Aiken County Probate Court.

Shortly thereafter most Plaintiffs brought the first formal proceeding related to both the 2000 Trust and Estate in the Aiken County Probate Court. They sought removal of the original Trustees and Personal Representatives (PRs). The cases were removed to circuit court and became Case 2007-CP-02-0122 ("Case 122").²

About twenty cases followed, with Plaintiffs being parties to many. [See Aiken County Case No. 2008-CP-02-0872 and Case 2008-CP-02-1647, for example.]

Many of these cases are still pending and the Estate remains open. Defendants

¹The Summons and Petition were originally filed in Richland County Probate Court, but removed to the Court of Common Pleas on motion by the Defendants.

² Many significant orders were issued in Case 122, including those dated February 18, March 7, August 10, August 19 and November 20, 2007 and January 8, February 20, March 7, April 1, and April 8, 2008. Some of these are attached to and discussed in Defendants' Motion to Dismiss.

were appointed by Order of the Honorable Doyet A. Early, III on November 20, 2007 to serve as PR s of the Estate and Trustees of the 2000 Irrevocable Trust.

Argument

I. Rule 12(b)(1) requires dismissal for lack of subject matter jurisdiction because the Probate Code requires that the Petition be brought in Aiken County.

The duty of Defendants to any Plaintiffs stems only from their service as PRs under the Will of James Brown or Trustees under the 2000 Trust.³

S. C. Probate Code Section 62-1-302(a)(1) and (3) provide that the probate court – subject to removal to circuit court as provided in §(d) – has exclusive original jurisdiction over all subject matter related to estates of decedents and trusts, including, as here, inter vivos trusts.

Sections 62-1-303 and Section 62-3-201, read together and with Section 62-1-302(a), make it clear that all proceedings related to the Will and 2000 Trust must be brought in Aiken County, and the failure to do so is jurisdictional, requiring dismissal.

Section 62-1-303 provides in part:

§ 62-1-303. Venue; multiple proceedings⁴; transfer.

(a) Subject to the provisions of § 62-3-201, where a proceeding⁵ under this Code could be maintained in more than one place in South Carolina, the court in which the proceeding is first commenced has the exclusive

³ The complaint does not (and could not) allege that Defendants have ever had any fiduciary duty to the so-called James Brown Legacy Trust ("Legacy Trust"). Bauknight's Legacy Trust is a creation of the Plaintiffs and others. It is the subject of the Case 1647 appeal.

⁴ Section 62-1-201(32) states that "Proceeding" includes action at law and suit in equity.

⁵ Under § 62-1-201(32) "Proceeding" includes action at law and suit in equity.

right to proceed.

(b) If proceedings concerning the same estate...., or trust are commenced in more than one court of South Carolina, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided, and if the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court. . .

(c) If a court finds that, in the interest of justice, a proceeding or a file should be located in another court of probate in South Carolina, the court making the finding may transfer the proceeding or file to the other court.

The referenced Section 62-3-201, however, provides in part:

§ 62-3-201. Venue for first and subsequent estate proceedings; location of property.

(a) Venue for the first informal or formal testacy or appointment proceeding after a decedent's death is:

(1) in the county where the decedent has his domicile at the time of his death; or

(2) if the decedent was not domiciled in this State...where property was located at death.

(b) Venue for all subsequent proceedings within the exclusive jurisdiction of the court is in the place where the initial proceeding occurred, unless the initial proceeding has been transferred as provided in §62-1-303 or (c) of this section.

(c) If the first proceeding was informal, on application of an interested person and after notice to the proponent of the first proceeding, the court, upon finding that venue is elsewhere, may transfer the proceeding and the file to another court. [Emphasis supplied].⁶

This is supplemented by Section 15-7-40 which states that an executor or executrix may be sued in the county where the testator's will has been proved or admitted to probate [Aiken].

⁶ While not original parties, Buchanan and Pope were clearly "proponents of Case 122." [Ord. dtd. 4/8/08, p. 50]

As of May 26, 2009, when Buchanan and Pope were temporarily relieved of their fiduciary duty to beneficiaries in connection with the administration of the 2000 Trust and Estate, the principal place of Administration of the Estate and 2000 Trust, by court order, was in Aiken County.

Bauknight does not allege that he has implemented a transfer of administration of the 2000 Trust in accordance with S. C. Trust Code Section 62-7-108 (c) or notified the Court of his intention to make the change pending the Case 1647 appeal of his appointment. Thus, by court order, situs of the 2000 Trust is in Aiken County, where it has owned James Brown's home for more than 10 years.

Section 62-7-204 of the S. C. Trust Code mirrors the estate provisions, and says in part:

§ 62-7-204. Venue

(a) Except as otherwise provided in subsection (b); venue for a judicial proceeding involving a trust is in the county of this State in which the trust's principal place of administration is or will be located and, if the trust is created by will, and the estate is not yet closed, in the county in which the decedent's estate is being administered.

(c) If proceedings concerning the same trust could be maintained in more than one place in South Carolina, the court in which the proceeding is first commenced has the exclusive right to proceed.

(d) If proceedings concerning the same trust are commenced in more than one court of South Carolina, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided, and, if the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court. . . [Emphasis supplied.]⁷

⁷ Even if James Brown had provided more lenient venue provisions in the 2000 Trust, they would not apply. Section 62-7-105 of the Trust Code states that the terms of the Trust prevail over any provision of this article [Article 7] except "... (11) the subject-

The undisputed facts as found in cases in which Plaintiffs are parties are:

1. The first proceeding related to the James Brown Estate was the informal admission to probate of Brown's will and the appointment of Dallas, Cannon and Bradley as PR s.
2. The first formal proceeding related to the 2000 Trust and Will was Case 122, brought by most Plaintiffs, and still pending.
3. The Estate is being administered in Aiken County and is not yet closed.
4. Case 1647 was brought by the Attorney General in Aiken County in 2008, and all Plaintiffs are parties. It is still pending both in Aiken and the Supreme Court.
5. All prior cases brought by Plaintiffs have been in Aiken County.

Under the S. C. Trust Code a person has knowledge of a fact if the person:

- (1) has actual knowledge of it;
- (2) has received a notice or notification of it; or
- (3) from all the facts and circumstances known to the person at the time in question, has reason to know it.

Having been participants in the proceedings in Aiken County, Plaintiffs filed this case in Richland County with knowledge, as defined in the Trust Code, that the statute required that it be filed in Aiken County. They did not follow the mandatory statutory procedure of filing in Aiken County and seeking a change of venue through the Aiken County court.

The Reporter's comments to Section 62-3-201 do no more than restate the

matter jurisdiction of the court and venue for commencing a proceeding as provided in Section 62-7-201 and 2-7204.

obvious from the statutes:

If proceedings concerning the same estate are commenced in more than one court in this State, the court in which the proceeding was first commenced makes the finding of proper venue. [Emphasis supplied.]

This Case was brought in Richland County in violation of a clearly defined statutory requirement that it be brought in Aiken County. This Court lacks jurisdiction to hear the complaint, or to even decide issues of venue. The complaint should be dismissed.

II. Rule 12(b)(8) supports the required Dismissal and is not inconsistent with the Statutory Jurisdictional and Venue Provisions of the Probate Code.

Section 62-1-304 of the Probate Code states that unless specifically provided to the contrary in "this Code" or unless inconsistent with its provisions, the rules of civil procedure for the probate court, and, in their absence, those adopted for the circuit court, govern formal proceedings under the Code⁸.

Rule 12(b)(8) requires dismissal where another action is pending between the same parties for the same claim. This provision complements the statutory provisions in the James Brown cases..

In the Petition in this case and Aiken County Cases 122, 1647 and 872, including the portions on appeal to the Supreme Court, the parties and issues are the same. Even if they were not, the less stringent statutory provisions requiring the Petition to be brought in Aiken County would prevail.

The Complaint should be dismissed.

⁸ Formal proceedings are defined in Section 62-1-201 are those conducted before a judge with notice to interested persons.

3. Other Arguments for Dismissal

Defendants incorporate by reference all other arguments contained in or contemplated by their Motion to Dismiss. They respectfully submit, however, that these arguments should proceed only after the case is dismissed and refiled in Aiken County.

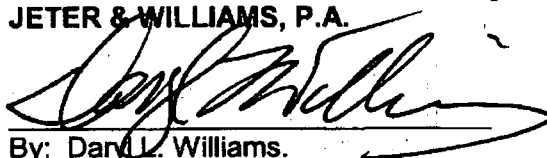
Conclusion

Plaintiffs have knowingly placed this Court and Defendants in a difficult position by failing to follow the required statutory procedure. The Aiken County Court must act on questions of venue. But it cannot act because it has nothing before it. And this Court should not act.

Dismissal is the appropriate remedy.

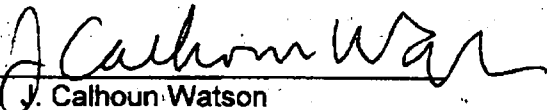
Respectfully submitted,

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Jr.

August 10, 2010

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

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

AND

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

Plaintiffs,

vs.

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

Defendants.

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

SUPPLEMENTAL MEMORANDUM
SUPPORTING DISMISSAL OF
COMPLAINT

RETTIE W. McBRIDE
C.C.P. & G.S.

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FILED
RICHLAND COUNTY

Summary of Relief Requested

Defendants Robert L. Buchanan, Jr. and Adele J. Pope respectfully submit:

1. Dismissal of the complaint is required by Probate Code §62-1-303, §62-3-

201, §62-7-704 and Rule 12(b)(1) as set out in Defendants' Memorandum dated August 10, 2010 attached hereto as **Exhibit A**.

2. The numerous additional grounds for dismissal should be addressed by the Aiken County Court if Plaintiffs elect to file there but are presented below should the Court decide to reach them.

3. The Court should issue its Order of Dismissal substantially in accordance with the proposed Order submitted herewith.

Background

On August 1, 2000 music icon James Brown finalized the estate plan he had developed over four years by creating and funding the James Brown 2000 Irrevocable Trust (the "2000 Trust").

Brown put his Aiken County home estate and his company, James Brown Enterprises, Inc. ("JBE, Inc.") into the 2000 Trust. JBE, Inc. collects about 2/3 of the royalties to more than 750 of Brown's songs.

Brown's Will left his entire music empire to the 2000 Trust, which is dedicated solely to education of certain of Brown's grandchildren and The James Brown "I Feel Good" private foundation. The "I Feel Good" foundation will provide scholarships for needy and deserving students to be educated in South Carolina and Georgia.

Brown intentionally disinherited his dozen or more children¹ and all past and future spouses from his music empire. Brown's family knew about and participated in the creation of the estate plan. In a lawsuit against their father, daughters Deanna and Yamma, acknowledged that they were excluded from the estate plan. The Brown

¹Brown's Will acknowledged legitimate children Deanna, Yamma, Terry and Larry and also out-of-wedlock children Venisha and Daryl as his only "heirs." Subject to the In Terrorem clause, the Will leaves them 1/6 each of his personal and household effects. Brown failed to acknowledge legitimate daughter Lisa, biological children LaRhonda, Cinnamon and Jeanette or

children's website, established in April 2007, confirms Brown's often-expressed desire to give the poor education as a way out, not a handout. It describes Brown as "a visionary who thought it was robbery not to give unto those who were impoverished."²

Brown's Will left his six acknowledged children only his personal effects. Consistent with Brown's beliefs, the 2000 Trust provides an education fund of about \$285,000 for seven designated grandchildren. All other heirs and claimed heirs, including past and future spouses, were intentionally omitted.

To prevent interference of wives, his companion, and litigious family, Brown placed *In Terrorem* clauses in both the 2000 Trust and his Will. (Brown had also done the same in his almost-identical 1999 Will.) Brown directed his fiduciaries to vigorously oppose all challenges to his estate plan as an affront to his wishes.

From 1999 to 2006, Brown's trustees Dallas and Cannon secretly ransacked Brown's assets both within and outside the 2000 Trust. To date there is no evidence that Brown, daughter Deanna or deceased trustee Bradley, both Brown's fiduciaries with Dallas and Cannon during the period, knew of the Dallas/Cannon misappropriations before Brown's death.

Brown died on December 25, 2006 leaving an \$85 million music empire. If fully

claimed but unconfirmed children James II and Deon (incarcerated).

²See The Brown Family Children's Foundation website and related information. This foundation was created in Georgia in April 2007 by Deanna, Daryl, Yamma, Larry and other clients of Louis Levenson, all of whom at the time acknowledged the validity of Brown's estate plan in sworn affidavits filed in Aiken County [Aff. D. Thomas, D. Brown, Y. Lumar (2)]. At the time the foundation was limited to solicitation of funds for turkey giveaways and toy giveaways during the holiday season. These same children later filed Case 2007-CP-02-0872 ["Case 872"] asserting that Brown was unduly influenced to leave his assets to education. Buchanan and Pope, as PR/Trustees, answered and counterclaimed on March 26, 2008 seeking alternate probate of

funded as set up by Brown, the "I Feel Good" Trust may be South Carolina's largest private foundation dedicated solely to educating needy and deserving students.³

Plaintiffs Deanna and Yamma immediately accepted, then abandoned, positions with the 2000 Trust. Brown's attorney Debra Opri who represented Brown in a California lawsuit from 2000 to 2002, appeared for the family on the "Larry King Live" television show to discuss the Trust.

Brown's Will was probated in Aiken County on January 18, 2007 and the trustees named Personal Representatives ("PRs").⁴

On January 24, 2007 the six acknowledged children and grandchildren Forlando and Romunzo brought Case No. 2002-CP-02-0122 ("Case 122") to remove Dallas and Cannon as PR/Trustees.⁵

By order dated November 20, 2007, Buchanan and Pope were appointed

Brown's 1999 Will. The AG was served with the amended complaint, but did not answer, leaving the defense of the estate plan to Buchanan and Pope.

³ Brown's assets are sometimes referred to as being \$100 million. The \$85 million reflects the \$100 Million reduced by a royalty-backed debt (TIAA note) incurred by Brown and JBE, Inc. in 1999 when Brown borrowed \$26 million and secured it with future royalties. More than \$12 million of Brown's money from the TIAA loan and other sources was siphoned off between 1999 and 2007 by Dallas and Cannon. In addition to being trustees, Dallas and Cannon held Brown's power of attorney ("POA") with Deanna and Bradley. Less than \$11 million is now owed on the TIAA note, which was reduced by more than \$5 Million between November 2007 and May 2009.

⁴ Atlanta Attorney Levenson, then representing Brown's six acknowledged children, requested that Dallas and Bradley not submit the Will for probate. Then-counsel Thurmond, Miller and Massey properly concluded that S. C. law required the Will to be delivered to the Probate Court.

⁵ Neither Deanna nor Bradley participated in the fabrication by Dallas of a second "Fabricated Schedule B" to the 2000 Trust, making it appear that Brown's Publicity Rights, worth about \$50 million, had been placed in the 2000 Trust before Brown's death. Dallas testified that the Fabricated Schedule B was created at the direction of attorney Cam Lewis — hired months after the fabrication. Bradley's testimony, however, demonstrated Dallas' statement was false.

PR/Trustees, replacing Dallas and Cannon.⁶

In January 2008 Forlando, through Atlanta law firm Powell Goldstein ("PG"), filed a federal suit asserting Buchanan and Pope were illegally appointed; illegally serving; and had mismanaged and converted 2000 Trust assets for their private benefit.⁷ He also sought the return of Dallas and Cannon as trustees.

In early 2008 Terry, Forlando and Romunzo filed six grievances against attorney Levenson in 2 states.⁸ By this time, Terry and Forlando were allied with an investor group, Dallas and Cannon, in a proposed \$100 Million sale of Brown assets, with Terry as a purchaser and Forlando secretly having 39% of the purchase entity (The "Terry/Dallas Group").⁹ Between January and March 2008, while simultaneously challenging the authority of Defendants to act as Trustees, the Terry/Dallas group

⁶ Both Dallas and Cannon, in different ways, attempted to retract their resignations as trustees – but not as PRs. Cannon's matters were resolved by the South Carolina Court of Appeals in a decision dated November 6, 2009. He has since appealed the Order granting certain attorneys' fees. Dallas' attempt to withdraw his resignation in Case 122 is pending in the South Carolina Supreme Court. Bauknight has not attempted to dismiss the Appeal despite Bradley's death and Dallas' failure to appeal Bauknight's appointment and Dallas' threatened bankruptcy.

⁷ PG has represented the Estate, the 2000 Trust, Dallas, Terry, Cannon, Forlando and TJBL, LLC, the investor group owned 39% by Forlando which seeks to purchase the Brown assets with options or a "kickback" to Dallas and Cannon. PG billed the Estate \$48,225, but has refused to deliver the file as directed by Order dated August 10, 2007. In July 2007 PG sent secret documents to Dallas and Cannon to transfer the 2000 Trust to Georgia to escape S.C. Court scrutiny. Thereafter, Cannon told the Court they had never hired PG. Dallas asserted there was a single consultation in February 2007 and no file. But Dallas' counsel Byrd corrected Dallas' false representations after the \$48,225 PG re-bill arrived in March 2008. PG attorney Dempsey, after being terminated with Dallas' consent in the August 10 Order, worked on Dallas' motion to require recusal of Judge Early.

⁸ Terry and Forlando, now represented by PG, became joint venturers with Dallas and Cannon who are seeking to receive options or a "kickback" on the sale. After the Court-ordered termination, PG attorney Dempsey worked with Dallas on his unsuccessful attempts to have Judge Early recuse himself. The same week Forlando's federal suit was prepared. In the Spring of 2009 Terry's Counsel threatened to file a grievance against Buchanan if he did not resign. The letter was delivered to the Court and parties.

offered¹⁰ to purchase the James Brown assets (good title; free and clear of liens) for \$90 - \$102 million.¹¹ The Court was notified of the rejection of the offers.

On February 5, 2008 the Estate/Trust filed Aiken County Case 2008-CP-02-322 ("Case 322") against Dallas, Cannon and others, seeking return of more than \$12 million misappropriated since 1999. Dallas counterclaimed. Case 322 is pending.

By March 8, 2008, some Plaintiffs had filed the amended complaint in Case 2008-CP-02-872 ("Case 872")¹², known as the "Will/Trust/Heirs Case."

More than 8 claims cases were filed in 2008 after Defendants disallowed certain disputed claims, and others with amounts due, but requiring court review.

⁹ Dallas and Cannon sought secret options or a "kickback" on the sale, as well as a commission from the Estate/Trust.

¹⁰ Investors Cox, Defendants and others refer to the communications as "offers", although they were strictly Letters of Intent to conduct due diligence and make an offer.

¹¹ The Case 122, 872 and 1647 files show that all offers were disclosed to the Court and parties when made, but that offers made between October 2007 and March 27, 2008, which required certification of good title to assets free and clear of liens, could not be accepted at the time. Reasons they could not be accepted included: (1) the Deanna/Yamma group had just filed Case 872 challenging the 2000 Trust they had ratified and served under. (2) Terry, Forlando, Dallas and AG McMaster were asserting Defendants' appointment, under reconsideration until April 8, 2008, was invalid. (3) Terry and Forlando filed documents in the Probate Court to assert that all orders issued in Case 122 affecting the 2000 Trust were invalid. (4) the hearing on Forlando's requested federal injunction to prevent the 2000 Trust from taking any action was pending; (5) the \$31 million Pullman S. C. claim was unresolved; (6) the Estate Tax Return was not filed; (7) IRS recognition of the status of the "I Feel Good" Trust was pending; (8) and Dallas/Cannon/Bradley had filed \$16.5 million of frivolous claims against the estate. Many of these issues were resolved by the April 8, 2008 Order in Case 122, and more, by the end of 2008. A July 14, 2008 Order of Judge Cureton cleared the way for Defendants to fully administer the 2000 Trust and Estate pending the Dallas appeal. Fewer than 30 days later, Hynie Brown's counsel - purporting to speak for the AG of South Carolina - directed Defendants to "stand down" and take no action for the Estate. After Case 1647 was filed on November 7, the January 7, 2009 order confirmed Defendants' full authority to continue to act. When Defendants entered discussions about a possible court-approved beneficial "right of first offer" Hynie Brown's counsel filed a motion - which is still pending - seeking an *ex parte* restraining order to prevent any sale. Similarly, the AG and Hynie Brown acted to prevent a beneficial 2-year Publicity Rights contract with Bill Gates company GreenLight which could have been in place May 1, 2009 - May 1, 2011.

¹² The order was issued while Case 872 was still part of Case 122.

By Orders dated March 7 and April 8, 2008 the Court in Case 122 reviewed the actions of Buchanan and Pope; made detailed findings; and denied all motions to reconsider their appointment. Only Dallas appealed.¹³

On July 14, 2008 the South Carolina Court of Appeals directed that the Christie's auction, already approved by two Case 122 orders, proceed. Motions for costs for interference with the Christie's auction sale are pending in Aiken County.

A July 23, 2008 order in Case 872 approves education benefits to certain beneficiaries of the 2000 Trust. Reconsideration is pending.

On August 10, 2008, after a secret mediation from which Defendants and others were excluded, the AG, Hynie Brown and some Plaintiffs signed a "private binding agreement among the parties hereto." The parties agreed to seek replacement of Defendants and to work to defeat the interests of Will and Trust beneficiaries. [See Aug. 10 Agmt.] The agreement stated in part:

Although the parties hereto may agree to ask the Court to approve this agreement, this agreement remains binding among the parties and applies to the personal representatives and trustees even if not approved by the Court.¹⁴

¹³ Bradley appealed but is deceased.

¹⁴ The Agreement also stated:

1. All parties who sign below hereby recognize and stipulate...that Tommie Rae was the legal wife of James Brown...
3. All parties agree to say nothing negative in public or to any representative of the media about any of the parties hereto...
5. a) that a joint motion or other pleading will be filed seeking the removal of Mr. Robert Buchanan and Ms. Adele Pope ...
...
b) that a charitable trust substantially similar to the August 1, 2000 Irrevocable trust (hereafter the "Charitable Trust") shall be created ...
...
d) that the parties hereto will create an entity (the "settlement entity") that will receive any and all assets or proceeds payable to any of the parties by virtue of any rights of James Brown ...entities of James Brown,...the Estate of James Brown... the August 1, 2000 Trust ..The parties will divide ...all such assets and

On August 12, 2008 counsel for Hynie Brown directed Defendants to take no further action on behalf of the estate.

By order dated August 17, 2008 the Dallas, Cannon and Bradley claims cases became 2008-CP-02-1425, -1426 and -1427.

On October 23, 2008 Defendants conducted hearings in claims cases, resulting in orders dismissing the Pullman \$31 million S. C. claim and resolution of other cases.

On November 7, 2008 the AG and some Plaintiffs filed Case 2008-CP-02-1647 ("Case 1647"), alleging improper actions by Defendants. Defendants' motions to dismiss, for summary judgment, answer, cross-claim and counterclaims are pending and several orders from Case 1647 are now on appeal in the S. C. Supreme Court.

On November 12, 2008 Cannon tendered a forged agreement, intended to make the \$900,000.00 taking discovered by Defendants appear to be compensation. On November 18 and 19, 2008, Terry attended two days of hearings in the Forlando injunction hearing in Federal Court. PG attorneys fully examined Buchanan and Pope about all alleged improprieties.

Between January 30 and April 6, 2009 hearings took place in Case 1647. Buchanan and Pope were extensively questioned.

On February 10, 2009 Hynie Brown sought an ex parte Restraining Order against Defendants in Case 1647, asserting they were improperly trying to sell James Brown's

or proceeds (1) 50% to the Charitable Trust; (2) 25% to Tommie Rae...(3) 25% to all parties hereto represented by Louis Levenson as they agree among themselves.

k) The parties agree to use their best efforts to extinguish any other outstanding

estate.

In March 2009 James II filed a petition for review of Defendants' compensation in Case 1647 and in the Probate Court. It is pending.

Between January and April 2009 Defendants' opposition to transferring more than \$50 million from Brown's estate plan to disinherited beneficiaries was fully aired, as were the opinions of Pope and tax expert Harley Ruff about the likely negative tax consequences to the "I Feel Good" foundation of Bauknight's Legacy Trust and Terry's right of first refusal to buy James Brown's assets.

On May 22, 2009 Defendants filed a case in the Aiken County Probate Court seeking review of their service; compensation; that of others; and other relief.

Effective May 26, 2009 the Court of Appeals relieved Buchanan and Pope of further liability with respect to management of the 2000 Trust and Estate pending the Case 1647 appeal. The Court of Appeals confirmed that such liability rests with Bauknight. See Order of November 6, 2009 in the Cannon Appeal.

In June 2009 Defendants, reserving all rights under the appeal, filed a final accounting in the Aiken County Probate Court.

On August 3 and 6, 2009 the AG obtained two *ex parte* orders in Aiken County, which became Case 2009-CP-02-1810. Appeal of the Case 1810 *ex parte* orders is consolidated in the Supreme Court with the Case 1647 appeal.

On August 12, 2009 Hynie Brown served requests for production of documents and interrogatories on Defendants in Case 1647.

On February 22, 2010 Cannon was indicted for felony breach of trust for each

interests or claims by any potential heir, devisee, or successor ... [Emphasis supplied.]

year from 1999 through 2006 and for uttering the forged "compensation agreement" on November 12, 2008.

More than 80 orders and decisions have been issued in the Aiken County James Brown cases and appeals from those cases. About 25 attorneys have represented Plaintiffs in these cases. Multiple allegations of wrongdoing by Defendants have been made and aired in more than 20 days of hearings in Aiken County – most recently in Case 1647. All Plaintiffs, by testimony, through counsel, and in sworn filings and documents, are on record as to their position about Buchanan and Pope's conduct at any given time since March 7, 2007.

The issues raised in the complaint herein have either been decided or are pending in Case 122, Case 872 and Case 1647 and other Aiken cases or their appeals.

Defendants have been under a microscope in Aiken County since March 7, 2007. Their every action was fully known to Plaintiffs days, if not minutes, after it took place.

Argument

I. Dismissal is Required Under Probate Code Sections 62-1-303, 62-3-201 and 62-7-204, and Rule 12(b)(1). All other grounds for dismissal should be considered by the Aiken Court.

Defendants respectfully submit that this matter should be dismissed on the statutory grounds set forth in the Memorandum dated August 10, 2010 (Exhibit A). A proposed order to that effect accompanies this memorandum.

While dismissal is also appropriate on each of the grounds stated in the Motion to Dismiss and discussed below, these should be reserved for the Aiken County Court.

II. The Attorney General is Prohibited from Seeking Money damages for Hynie Brown and Terry in this Private Tort Suit.

This case must be dismissed, as the AG does not have the authority to file an action seeking money damages on behalf of private individuals. In this case, the AG seeks money damages from Defendants for the benefit of various individuals disinherited by the Estate Plan of James Brown. The AG must have specific legislative authority to seek money damages on behalf of individuals or businesses via *parens patriae* actions.¹⁵ There is no such authority granted to the Attorney General for the claims at issue in this case and to allow the case to proceed would violate the due process rights of Defendants. This action should be dismissed.

In *California v. Infineon Technologies AG*,¹⁶ the Federal District Court for the Northern District of California considered whether AGs of various states, including South Carolina, could bring suit in a California Federal Court for money damages against technology companies.¹⁷ The claims made therein were on behalf of both the states themselves and individuals and businesses within each state. That Court found that, under South Carolina law, the South Carolina AG was not only unable to bring such a

¹⁵ *California v. Infineon Technologies AG*, 531 F.Supp.2d 1124 (N.D. Cal. 2007). In that case, the plaintiff attorneys general sought money damages on behalf of their respective states, as well as individuals and businesses in their respective states. The Court undertook a thorough discussion of the ability of each state's Attorney General to sue for money damages under the various theories asserted. It found that the South Carolina Attorney General needed specific legislative authorization to sue for money damages, and that no such authorization had been made under the Unfair Trade Practices Act. Moreover, it found that the common law *parens patriae* authority extended only to actions for injunctive relief. The Court held that the South Carolina Attorney General would require specific authorization by the legislature to seek money damages on behalf of individuals or businesses.

¹⁶ *Id.*

¹⁷ *Id.*

suit in California, but the AG was also without authority to sue for money damages in any situation not specifically authorized by the legislature.¹⁸

Here, no such authorization has been issued. The South Carolina Code has two sections pertaining to the AG's authority in respect to trusts. SC Code Ann. §1-7-130 grants limited authorization to the AG, among others, to:

... enforce the due application of funds given or appropriated to public charities within the State, prevent breaches of trust in the administration thereof

This statute makes no provision for the AG to participate in a private tort action seeking money damages for wrongs which have allegedly been committed in the past. This lawsuit does not seek any sort of injunctive relief which could amount to enforcement of the due application of charitable funds, nor does it seek to prevent breaches of trust.

Likewise, SC Code Ann. §62-7-405(c) limits the Attorney General's power to bring suits related to charitable trusts. That statute states, in pertinent part, "... the Attorney General ... may maintain a proceeding to enforce the trust." This statute also grants the AG only the authority to "enforce" a charitable trust. This case is wholly unrelated to enforcement of any charitable trust, as it seeks only money damages related to private tort claims.

Since SC Code Ann. §§1-7-130 and 62-7-405(c) do not grant the Attorney General authority to bring this action, which authority must be granted by the legislature under *California v. Inferion Technologies AG, supra*, this action must be dismissed.

¹⁸ *Id.* at 1170.

III. The Attorney General may not assert private tort claims of individuals.

The AG is acting outside the scope of his *parens patriae* authority in asserting the private tort claims of individuals in this action. The AG has asserted no separate or unique claim of the state, as distinct from the claims of the private individual plaintiffs. As such, the AG is not acting within his *parens patriae* capacity, and this suit must be dismissed.

The Supreme Court of the United States held in *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex. rel., Barez*, 458 U.S. 592 (1982), that, in order to maintain a *parens patriae* suit, a State must articulate an interest apart from the interests of particular private parties, that is, the State must be more than a nominal party. *Id.* at 593. Here, no such interest exists.

The AG joins in claims by and for the benefit of private individuals without asserting any independent interest. All claims in this action are asserted jointly by all of the Plaintiffs, and the Complaint in this action does not assert any basis for the AG's involvement. The relief sought, if proper at all, could be sought just as effectively by the 2000 Irrevocable Trust and/or the Estate. The Attorney General does not and could not assert an independent or unique claim for the State of South Carolina.

In sum, the AG has no authority as *parens patriae* to bring or participate in this lawsuit, and the case must be dismissed.

IV. The claims of all Plaintiffs are barred by SC Code Ann. Section 33-56-180

All of Defendants' actions complained of occurred while they were employees, as

defined in §33-56-170(2)¹⁹ of the "I Feel Good" Trust, a 501(c)(3) private foundation, described for purposes of §33-56-180 as a charitable organization.

SC Code Ann. §33-56-180(a) provides:

A person sustaining an injury or dying by reason of the tortious act of commission or omission of an employee of a charitable organization, when the employee is acting within the scope of his employment, may recover in an action brought against the charitable organization only the actual damages he sustains in an amount not exceeding the limitations on liability imposed in the South Carolina Tort Claims Act in Chapter 78 of Title 15. *An action against the charitable organization pursuant to this section constitutes a complete bar to any recovery by the claimant, by reason of the same subject matter, against the employee of the charitable organization whose act or omission gave rise to the claim unless it is alleged and proved in the action that the employee acted in a reckless, willful, or grossly negligent manner, and the employee must be joined properly as a party defendant.* A judgment against an employee of a charitable organization may not be returned unless a specific finding is made that the employee acted in a reckless, willful, or grossly negligent manner. If the charitable organization for which the employee was acting cannot be determined at the time the action is instituted, the plaintiff may name as a party defendant the employee, *and the entity for which the employee was acting must be added or substituted as party defendant when it reasonably can be determined.* [Emphasis supplied]

The AG and Bauknight, now acting for the "I Feel Good" Trust, must *defend* this false claim against Defendants – not bring it.

V. The hiring of contingency fee counsel by the Attorney General violates the Due Process rights of Defendants.

The AG's retention of an outside, financially interested attorney to pursue the State's claims against Defendants violates the Due Process rights of Defendants. "Due

¹⁹ "Employee" means an agent, servant, employee, or officer of a charitable organization.

process requires the government's attorneys to be financially disinterested in the outcome of the litigation inasmuch as they are –ostensibly, at least – serving the public interest, and not their own financial interests.”^{20/21}

In this case, the Attorney General, joined by private individuals, has hired Kenneth B. Wingate to pursue the interests of the State, *and their private interests*. His engagement has been reported to be on a contingency fee basis, giving counsel a financial interest in the outcome of the litigation. Even if Plaintiffs' counsel were not hired on a contingency basis, clients of attorneys Levenson and Rosen, counsel in Aiken, bring this action for their private interest and for their counsel to secure an estimated \$12-14 Million in *contingency* fees under the settlement. Because contingency arrangements motivate Plaintiff's counsel and counsel for the private parties to seek the highest possible financial return, rather than to seek a fair and just result, the arrangement violates the Due Process rights of Defendants. The Supreme Court of the United States has acknowledged that, “although an attorney for the government is an advocate, his client's goal is not to prevail but to establish justice.”²²

S.C. Code Ann. § 33-56-170(2).

²⁰ *Commonwealth of Pennsylvania v. Janssen Pharmaceutica, Inc.*, No. 24 EAP 2009 (Saylor Dissent) (Pa., Decided August 17, 2010) (citing *People ex. rel. Clancy v. Superior Court*, 705 P.2d 347 (Cal. 1985))

²¹ Although several recent cases where recovery would serve the public good have approved contingency arrangements to represent State interests, these cases are readily distinguishable because the interests asserted by the State were to the benefit of the public. The interests asserted by the State in this case are those of private individuals, without any benefit to the general public of South Carolina. See, e.g., *Philip Morris Inc. v. Glendening*, 349 Md. 660, 709 A.2d 1230 (1998); *Priceline.com Inc. v. City of Anaheim*, 180 Cal.App.4th 1130 (2010).

²² *Janssen, supra*, citing *Brady v. Maryland*, 373 U.S. 83, 87, 83 S.Ct. 1194, 1197 (1963).

The joint representation by one firm of the Attorney General *and* the numerous other Plaintiffs is untenable in light of the above. Not only does Plaintiffs' counsel have a financial interest in the outcome of the case, but he also has a duty to his private individual clients to achieve the best financial result. This duty is in direct conflict with the State's duty to seek a just result in this action. This is an irreconcilable conflict of interest.

VI. Rule 12(b)(8) requires dismissal because the same claims between the parties are pending or have been resolved in Case 122, Case 872 and Case 1647, or their appeals.

Rule 12(b)(8) requires dismissal if the same matters are pending between the same parties in another action. That is the case. All parties to this action are parties to Cases 122, 872 and 1647. No Plaintiff has appealed any order of the more than 50 orders issued in Case 122. All are bound by the common history, the orders, and their admissions through testimony, filings and statements of counsel, in the Aiken Cases.

There are more than 300 filings in Cases 122, 872 and 1647. Every action of Defendants has been immediately disclosed and been challenged by at least one Plaintiff, often (before August 10, 2008) while other Plaintiffs vigorously defended the acts of Defendants. Every allegation raised in the complaint is or has been under scrutiny in one or more of the Aiken County cases.

In addition to Cases 122, 872 and 1647, Defendants commenced a case in Aiken County Probate Court on May 22, 2009, for a Declaration of Rights as to the allocation of responsibilities between the AG and PR/Trustees, guidance as to Succession, approval of their accounting and actions as PR/Trustees, and review of their employment and

compensation and that of others who served the Estate and 2000 Trust; for the confirmation of their appointment of a Third Trustee and Successors; for guidance related to the frivolous Forlando suit; and for guidance related to substitution of parties. The AG was served but has not answered. That case is pending.

On June 24, 2009 Defendants also moved in Case 1647 and several other cases for Payment of Commissions and Related Relief. Their request was supported by affidavits setting out in detail their service and expenses, and the priority expenses of administration of Brown's Estate. On July 20 they requested that the Court either rule on the record or hold the matter in abeyance pending the Case 1647 appeal. An affidavit of W. Steven Johnson accompanied their July 20 filing.

On August 12, 2009 Hynie Brown served Interrogatories and Requests for Production to Buchanan and Pope in Case 1647 related to their service. The entire issue of the propriety of service of Buchanan and Pope, to the extent not resolved by the orders in Case 122, is before the Aiken County court in these cases.

The following chart shows just *some* of the places where Defendants' alleged improper actions set out in Paragraphs 18 and 19 of the Petition are before the Aiken County Court, the Supreme Court, or have been resolved in the Aiken cases.

<u>18.a,b,c,d.</u>	Subject of Case 122. See order dtd. 4/8/08; also subject of Case 1647, see Am. Complaint dtd. 11/7/08, Ans. CC, dtd.11/21/08; Petition for Rev. Comp. of James II; Claim of James D. Bailey; Complaint, Case. Motion for Commissions, Case 1647 and other cases.
<u>18 e</u>	Raised in Case 122 and Dallas appeal. and resolved by orders Dtd. 2/20/08, 4/1/08 and Ct. Appeals Order dtd. 7/14/08. See Mot. for costs pending, Case 122.
<u>18f,g</u>	See 18 a - d above; accountings on file in James Brown estate; Complaint

dtd. 5/22/09; claims filed Aiken County; withdrawal of GT claim; Order in Pullman claim.

18h See Order dtd. January 8, 2008, Case 122, directing that Defendants shall be paid \$317,000 plus costs, for service as Special Administrators ("SAs"), through November 20, 2007, to the extent not paid within 60 days, to bear interest at the legal rate; shall receive continuing payments as set out therein on a "time plus costs" basis for themselves and their staff, commencing November 21, 2007. This shall be a deposit toward, and without prejudice to, their full commissions. . . [Attached to Mot. Dismiss.] Also see above motions. See Ord. dtd. 4/8/08 approving all acts to date.

18i Subject of Cases 122 and 1647. See Terry's motion to declare all Case 122 orders not binding on the 2000 Trust; See challenges of S.C. and Ga. AG s and Dallas to appointment of Buchanan and Pope pending from November 30, 2007 through April 8, 2008 at which time all acts of Buchanan/Pope to date approved. See Order dtd. 2/20/08, Case 122 finding Forlando suits prevents traditional mortgage. See also discussion of Forlando suit to enjoin trust, return Cannon, Dallas, Tr. 1/9/08, p. 42, 43, Tr., 2/7/08, pp. 23- 30; Tr. March 7, 2008, pp. 171 - 177 prior to April 8 Order. Also see January 8, January 9, February 20, March 7, April 1, and April 8, 2008 Orders, Case 122. See Mot. for ex parte order of Plaintiff Hynie Brown to prevent sale; Ltr. to Court in Case 122 explaining rejection of sale; filed Ltr. of Sonny Jones dtd. December 5, 2007, related to Case 122, "I have heard for three months that the sky will fall" if \$100 million sale not accepted and responses. Order dtd. 4/8/08 approving actions.

18j,k,l,m,n Raised in amended complaint and hearing, Case 1647.

18o i - iii raised in Case 1647

18 p I See 18h, above

18 p ii Subject of Case 122 and April 8, 2008 Order.

18p iii Subject of Case 1647 and Petition of James II

18q Subject of Case 122, Case 872, Case 1647, and Forlando Case

18 r,s,t,u Subject of Case 1647, including appeal.

19 Subject of Case 1647 and Case 122. Also see Order of Ct. Appeals dtd. November 6, relieving Defendants of all liability in connection with

Estate/2000 Trust administration pending appeal, effective May 26, 2009.

VII. No Cause of Action Exists as to Paragraph 18m because the matter is on appeal and Attorney General McMaster's attempt to silence criticism violates his public duty and the First Amendment and Due Process rights of Defendants.

The AG, with a right to *enforce* the due application of monies given to *public* charities, seeks damages against Buchanan and Pope to punish them for carrying out their duty under James Brown's Will and 2000 Trust. Brown's estate does not create a *public* charity. The 2000 Trust is a private, *irrevocable* inter vivos trust which divides into a 501(c)(3) private foundation for education and a *non-charitable* education trust for the grandchildren.

The U. S. Supreme Court addressed the limits of enforcement powers of the State in the 1829 case of *Inglis v. The Trustees of the Sailor's Snug Harbor*, 28 U. S. 99.

In *Inglis* the Supreme Court allowed the New York legislature to enact a statute to establish a sailor's home on the testator's land only because *the testator had specifically requested legislative action* under certain circumstances. The Court stated:

If after such a plain and unequivocal declaration of the testator with respect to the disposition of his property, so cautiously guarding against and providing for every supposed difficulty that might arise, any technical objection shall now be imposed to defeat his purpose, it will form an exception to what we so unequivocally laid down in all our books as a cardinal rule in the construction of wills that the intention of the testator is to be sought after and carried into effect. *Id.* at 99,113.

Inglis found that the State could act only because it was *contemplated by the testator's will*. Even so, a concurring opinion warned "It is one thing to enforce a charitable trust, and quite another to destroy the legal rights of the parties to which it is

attached." New York State did not, as here, take about 65% of the decedent's assets and direct them to those he intentionally disinherited.

The Plaintiffs assert a right to "take over" all aspects of the James Brown litigation of both the estate and 2000 Trust solely because Brown created a private foundation. The AG asserts he may, at will, appoint and replace trustees. He asserts he may even convert Brown's private foundation to a public foundation if the benevolence he has bestowed on Brown's disinherited relatives has run afoul of the IRS regulations for private 501(c)(3) foundations. The AG asserts that Defendants' defense of the AG's attempts to transfer \$50 million to persons Brown expressed a clear intention to disinherit is "gambling with the Attorney General's money." See Hearing Transcript in Case 122 September 28, 2008, p.43.

After securing Defendants' removal with no cause existing or found, the AG now seeks money damages against them because they will not sign, *as PRs*, an agreement, under pain of contempt, not to criticize the AG or the settlement.

The AG's statutory authority to *enforce* and *parens patriae* authority cannot be so broad as to ignore the First Amendment and Due Process clauses. No public purpose can be served by this heavy-handed violation of Defendants' First Amendment and Due Process rights.

VIII. Dismissal is required because all allegations have previously been decided in favor of Defendants by Orders, filings and admissions in Aiken County cases.

In the unusual posture of this case, the Court should take judicial notice of the orders, filings and admissions of Plaintiffs *of record in Aiken County* which demonstrate

that all allegations against Plaintiffs have been fully aired by the Aiken County Court and either specifically approved by Plaintiffs, the Court or both.

At all times since Defendants' November 20, 2007 appointment at least one Attorney General, one additional Plaintiff²³, and one former PR/Trustee have opposed their every action. This has resulted in close, immediate and continuing court scrutiny of the allegations contained herein; numerous court decisions; and admissions in the record or by failure to appeal of all Plaintiffs. The Aiken County record shows that Defendants were replaced by Bauknight *without any finding of cause* solely because the AG contracted on August 10, 2008 to remove them as part of a settlement reached with no due diligence; no analysis of the impact of the Federal Copyright Act; and based on the outrageous suggestion – made by Hynie Brown and accepted by the AG – that the “Attorney General’s *only witnesses* to the validity of James Brown’s estate plan were a murderer and three bad trustees.”²⁴

²³ Sometimes Terry, sometimes Hynie Brown, and others after August 10, 2008.

²⁴ The AG did not advise any PR/Trustees of the secret mediation. Neither the AG nor Bauknight – who recommended the August 10 agreement to the Court – conducted any due diligence regarding Brown’s Estate Plan. Bauknight did not review the pleadings and admitted he knew nothing about James Brown’s wishes. He relied on disinherited family members to recommend that the court approve taking \$50 million from Brown’s estate plan and giving it to them. Had either Bauknight or the AG done any due diligence they would have found that those very persons joined by Brown’s grandchildren and a host of Brown’s independent attorneys in three states, business associates, and employees had already – under oath and in filings of record in Aiken County – confirmed the validity of Brown’s estate plan; his desire to leave his music empire for needy and deserving students; his fierce independence; his careful plan to quell any contest to his documents; his voice tape confirming his desires; and his open discussion of his desires over six years. Bauknight and the AG ignored affidavits by Daryl, Yamma and Deanna filed in Case 122 in January 2007 confirming their status under the Will. They ignored that Deanna and Yamma had allied themselves with Dallas and Cannon in December 2006, with Deanna agreeing to be a trustee of the 2000 Trust and Yamma executive assistant. They ignored Deanna’s October 31, 2007 deposition confirming that she had accepted the trustee position and that the estate plan carried out her father’s wishes. They ignored that Deanna, Yamma and others had uncontrolled access to the Trust property after Brown’s death in an agreement with Dallas

and Cannon. They ignored that Daryl had remained in business with Brown and attended business meetings with Dallas, Cannon and Brown in the fall of 2006. They ignored that Daryl, Deanna and Yamma were primary witnesses to the fact that neither they nor Brown knew of Dallas' and Cannon's misappropriations until after Brown's death. The AG and Bauknight ignored that Yamma had knowledge regarding her father's participation in the \$26 million 1999 TIAA closing, which took place on June 11, 1999, just 4 days before the 1999 Will and Trust were executed [Aff. Y. Lumar]. They ignored that Deanna has openly asserted that she became executive vice president of JBE, Inc in 1994 and "after the passing of her father in 2006, Deanna picked up the reigns of her father's good will and continued his legacy of giving..." [See: Website The Brown Family Childrens Foundation, bio. D. Brown.] They ignored that Yamma "...has been very involved in her father's estate planning since his death on December 25, 2006." [Id. Bio. Y. Brown.] They ignored that long-silent Ella Overton, Brown's friend for many years, stepped forward in 2008 to support Brown's estate plan. [She is now deceased.] Bauknight and the AG ignored that the 2000 Trust had been in open existence and a matter of public record for seven years before it was challenged, and Brown discussed it with at least four family members. The AG and Bauknight ignored overwhelming evidence that Hynie Brown was not Brown's spouse and had asked Brown's lawyer in 2004 to accept service on a multi-million dollar lawsuit she asserted she was filing against him. [Because the AG requested and received a stay of discovery in the Aiken County James Brown cases in August 2008, drafts of the suit have not been produced. To date a filed suit has not been located.] The AG and Bauknight ignored that Brown asked the Aiken County Court to void his marriage to Hynie Brown based on her marriage at the time she entered a ceremony with him and to DNA test her son. The AG and Bauknight ignored that the Aiken County case was settled with Hynie Brown's agreement never to claim to be Brown's common law spouse. The AG ignored that even if Brown's spouse, Hynie Brown was intentionally omitted by the estate plan and had signed a valid pre-nuptial agreement waiving any rights to Brown's assets. The AG ignored that Hynie Brown had knowledge, as defined in the Trust Code, when she signed the prenuptial agreement that she was intentionally omitted from the 2000 Trust and Will. The Attorney General ignored that Brown's daughters Deanna and Yamma sued Brown after the estate plan was put in place, and acknowledged in their suit and otherwise that Brown had elected to leave them out of his estate plan. The AG ignored, even though he is charged with the enforcement of the tax laws, the tax consequences of stipulating that a person presumed not to be James Brown's spouse was his spouse. The AG and Bauknight ignored that some of Brown's children created a website just 4 months after their father's death confirming that giving back was a defining tradition for Brown. The AG and Bauknight ignored the file of estate planning attorney Herring which showed that the "I Feel Good" Trust file was opened in 1996; that Brown worked on several drafts over 4 years; and that he created an almost-identical, but revocable, Trust in 1999 - solely dedicated to education. The AG ignored the 2008 request of Ella Overton to support and defend Brown's estate plan. The AG ignored that Brown's longtime friend Willie Glenn, his longtime worker Frieda Carter and daughter Deanna were all named as fiduciaries under the almost-identical 1999 estate plan, and that none ever repudiated the validity of either the 1999 or 2000 Estate Plan while Brown was alive. The AG ignored that Deanna and Cannon had picked up Brown's estate planning file, acting under the valid power of attorney Brown gave them on June 15, 1999, the day of the 1999 Will. The AG and Bauknight ignored that Brown's longtime attorney Debra Opri, who represented him in the Agbalaya suit from 2000 - 2002 - including at trial - confirmed the validity of his estate plan and also appeared to be unaware of the secret misappropriations of Dallas and Cannon.

Where the matter has been previously decided with the concurrence of Plaintiff, Rule 12(b)(6) requires dismissal because no cause of action exists.

The Court is asked to take judicial notice of the Aiken County record, only some of which is stated below:

Case 122

March 7, 2007	Buchanan/Pope appointed non-fiduciary SAs by Court after interview with all counsel, Case 122, and Court. Pope Nominated by Plaintiff Hynie Brown. [Orders dtd. 2/19 and 3/7/07]
August 10, 2007	Plaintiffs given complete and continuing access to Books and records of 2000 Trust/Estate.[Ord. dtd. 8/10/07]
November 20, 2008	Buchanan/Pope appointed PR/Trustees <u>"upon recommendation of all interested persons other than the Attorneys General for South Carolina and Georgia."</u> [Order dtd. 11/20/07, pp. 1, 2]
December 5, 14, 2007	AGs, based on affidavits of Dallas and others accuse Buchanan/Pope of impropriety for serving at same time as PR/Trustees, and of improper handling of assets. AG asks Court to protect "the interest of the charitable trust as set forth in the Last Will and Testament of James Brown, dated August 1, 2000 and the Irrevocable Trust Agreement dated August 1, 2000 [Ans. Of AG dtd. 12/5/07; Obj. Of AG to Appt., dtd. 12/14/07]
January 4, 2008	Buchanan/Pope ask Court for full review of their actions. Prepared to resign if their service not found both ethical and appropriate. [Mot. dtd. 1/4/08].
January 8, 2008	Judge Early issues order granting Buchanan/Pope \$317,000, with legal interest after 60 days, and costs for their service as SAs from March 7 to November 21, 2007 which he finds fair and reasonable. Finds work has more than doubled since November 21. Grants continuing fees and costs on "time plus costs" basis to Buchanan/Pope and

staff as a deposit towards their full commission. No Plaintiffs seek reconsideration or appeal.

January 4, 9, Feb.
7 and March 7, 2008

Hearings held. Pope is examined extensively by AG Jones about conflicts, etc.

February 20, 2008

Court finds that condition of estate when received by Buchanan/Pope was deplorable, and has worsened as a result of acts of Dallas and Cannon. Approves Christie's sale. No Plaintiffs appeal.

April 1, 2008

Court directs Buchanan/Pope to sign Christie's contract. *No Plaintiffs appeal.*

April 8, 2008

Court finds that all actions of Buchanan and Pope to date, including serving as both PR s and Trustees at the same time, are appropriate. Refuses to reconsider appointment. No Plaintiffs appeal.

2009

Court of Appeals issues ruling in Cannon appeal. Bauknight adopts brief of Buchanan and Pope in Dallas Appeal.

History of Case 1647

July 30, 2008

After almost a year of close scrutiny, AG McMaster approves Buchanan and Pope as 2 of 3 permanent Trustees of the 2000 Trust. [Ltr. AG, 7/30/08]

August 10, 2008

AG, Hynie Brown and some Plaintiffs – all excluded from Brown's Music empire – contract to divide Brown's assets and replace Buchanan and Pope.

November 7, 2008

AG and some Plaintiffs file Case 1647 to remove Buchanan and Pope for alleged cause. Plaintiffs seek emergency removal, claiming irreparable harm.

November 18-19

Terry attends two days of testimony in son/business partner Forlando's federal suit against Buchanan/Pope. Estate Tax Return and all alleged wrongdoing since March 7, 2007 covered. Terry's attorneys Bell and PG make no report to Court of emergency or wrongdoing.

November 21, 2008	Buchanan and Pope move to dismiss, counterclaim and crossclaim for abuse of process.
January 7, 2009	Over objection of Plaintiff Terry, Defendants and others Bauknight Appointed limited SA to consider AG's settlement. Buchanan/Pope left in charge of 2000 Trust and Estate. No Plaintiffs seek reconsideration of failure to remove. [Plaintiffs sought reconsideration, and have appealed, Bauknight's appointment.]
January, 2009	Terry, Forlando, Romunzo file opposition to AG's settlement.
January 30, 2009	Bauknight testifies about Buchanan and Pope's conduct.
February, 2009	Hynie Brown files emergency motion accusing Buchanan/Pope of secretly attempting to sell estate and seeking ex parte restraining order. No affidavit attached. No order issues.
January - March, 2009	Over continuing objections as to parties, dispositive motions, and other objections, hearing on settlement proceeds. Pope and Buchanan testify for days about issues raised in this Complaint.
May 26, 2009	Order in Case 1647 replaces Buchanan/Pope with Bauknight as part of the settlement, <i>without cause</i> . Plaintiffs do not seek reconsideration of findings. Pope and Buchanan timely sought Reconsideration of, and appealed, Case 1647 Orders.]
July, 2009	Defendants move for Commissions in Case 1647 and other Aiken Cases.
August, 2009	Hynie serves discovery on Defendants on commission issue. Pending.
November 6, 2009	Court of Appeals order confirms that Buchanan/Pope relieved of management liability as of May 26, 2009, and liability rests on Bauknight. [See Exhibit B for current status, attached hereto.]

IX. Dismissal is Required because all Claims are barred by applicable statutes of limitation

The record is clear from Argument VII that every act of Defendants was fully known, accounted for, and reviewed by Plaintiffs within days of when it took place. And Plaintiffs had at least 7 occasions to examine Defendants under oath.

The South Carolina Probate Code and Trust Code Section 62-7-307 bar their actions. Even if there were fraud involved, which did not exist and has not been alleged, Section 62-1-106 would set the outer limit at 2 years after discovery. Yet Plaintiffs allege acts going back to November 2007 which have been fully examined *and approved* not only by Court orders, but by them.

It is undisputed that every alleged wrongful act was known, accounted for, and fully disclosed when it happened, before April 6, 2009 when expert Harley Ruff testified to a reasonable degree of professional certainty, that the AG's plan to place assets in Bauknight's Legacy Trust and give Terry a 10-year right of first refusal would more likely than not cause the loss of Brown's \$83 million charitable deduction *and* destroy the status of The James Brown "I Feel Good" Trust as a 501(c)(3) private foundation, resulting in both Estate Tax and income tax on the assets Brown had dedicated to educate needy and deserving children.

Buchanan and Pope's opposition, their position on tax matters and all other aspects of this sad saga in which they were required to oppose the actions of the AG were fully known, fully accounted for and disclosed. No action was brought within the required period. Dismissal is required.

X. The Complaint must be dismissed because Plaintiffs failed to include the Proper Affidavit relating to Defendants' alleged negligence.

S. C. Code Ann. § 15-36-100 requires plaintiff to "file as part of the complaint [alleging professional negligence] an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim *based on the available evidence at the time of the filing of the affidavit*" [Emphasis Supplied.]

The available evidence as to the acts of Defendants includes at least 145 boxes of James Brown historical and administration documents; pleadings notebooks and documents from 20 cases; a detailed and complete daily summary of the acts of Defendants since November 20, 2007 and tens of thousands of pages of documents.

XI. The Complaint must be dismissed because Bauknight's Legacy Trust, Hynie Brown, James II and Terry are improper parties.

Rule 12 (b) requires dismissal if the action is brought by improper parties. That is the case here. Each is discussed below:

A. Hynie Brown is an improper party.

Hynie Brown cannot bring this action for all of the following reasons:

1. Defendants owed her no fiduciary duty.
2. She is not the spouse of James Brown.
3. She knowingly violated the *In Terrorem* clause after witnessing an Estate Planning document and even asserting that she is on the Advisory Board.

The facts related to Hynie Brown are of record in Case 122, Case 872 and Case 1647 and largely undisputed. Hynie married Javed Ahmed in 1996. In 1997 she began a

professional and nonexclusive personal relationship with Brown. Hynie had a child in Nevada in 2001 and James Brown's name was placed on the birth certificate, which was not signed by him. In 2001 she executed a pre-nuptial agreement waiving any rights to inherit from James Brown.

In December 2001 Hynie and Brown applied for and obtained a marriage license with Brown. Hynie asserted that the prospective marriage was her first. Hynie Brown's son receives AFTRA and Social Security benefits associated with Mr. Brown.

In 2003 Brown discovered that Hynie Brown was married to Ahmed. Brown and Hynie Brown announced in "Variety" that they were going their separate ways.

In 2004 Hynie obtained an annulment from Ahmed in Charleston County South Carolina. Ahmed was served by publication. Based on Hynie's Charleston County Order, which cited the existence of the Hynie/Ahmed Marriage, Brown sought to void his marriage to Hynie in an Aiken County Family Court proceeding. Hynie counterclaimed for separate maintenance and support for her son. Brown replied seeking DNA testing. The case settled with Hynie Brown's agreement never to claim to be the common law spouse of Brown. The agreement cited that the parties were again living together. No provision was made in the agreement or order related to her child.

Hynie Brown told Larry King that James Brown left money for her son at his death, which she obtained.

The couple did not marry after Hynie Brown's annulment, although they made plans to do so. According to former Trustee Dallas, Brown had a vasectomy in the 1980's. According to grandson Forlando, the parent was generally known, and was not

Mr. Brown. Certain of Mr. Brown's medical records are held by Mr. Levenson. Mr. Rosen has diaries of Ms. Hynie Brown.

The Will and Trust specifically exclude past and future spouses. Hynie, along with Brown's daughter Venisha, witnessed the August 1, 2000 Advisory Board document in which she was identified as Miss Rae, the future Mrs. Brown. At one point her attorney has asserted that Hynie Brown thought she was a member of the 2000 Trust's Advisory Board.

After seeking removal of Dallas and Cannon for a year, Hynie Brown challenged the 2000 Trust and Will on December 19, 2007. Motions to dismiss her petitions as well as her various claims are pending in Aiken.

All fiduciaries who have served under the Will and 2000 Trust have vigorously asserted that Hynie Brown is not the surviving spouse, as have children and grandchildren. Adrienne Rodriguez, his third wife, was listed as Brown's last spouse on Brown's death certificate.

On August 10 the AG agreed with 5 of Brown's children that:

1. All parties who sign below hereby recognize and stipulate, for all purposes and matters, that Tommie Rae was the legal wife of James Brown, during his lifetime and at the time of his death.

Coupled with agreeing to "use their best efforts to extinguish any other ...claims by any potential heir, devisee or successor" the AG placed himself in direct conflict with the position of all fiduciaries, the Estate and the 2000 Trust and its goals under the Federal Copyright law.

On January 30, 2009 the Attorney General and others stipulated with various

biological children and placed in the record an agreement not to use this stipulation to damage the Federal Copyright Rights of others. That should include both the Estate and 2000 Trust. They stipulated:

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 of any other country...[Tr. 1/30/09, p.96.]

As reported to the Court on March 4, 2009, the stipulation as to the civil status of Hynie Brown and others does not bind Buchanan and Pope. Hynie Brown's attorney stated:

You do understand that our request for approval is to simply settle the rights among the parties to the settlement — that we have, in fact, stated in Court that we do not expect that settlement to impact non-settling parties, certainly not taxes [sic] authorities, and certainly not creditors.
[Tr., 3/4/09, p.187.]

Claiming that Hynie Brown is the spouse is inconsistent with the record; contrary to the position of every fiduciary who has served James Brown; and damages the Estate/Trust's interests in Federal Copyright issues. It is not binding on Defendants.

Defendants have never had any fiduciary duty to Hynie Brown. They are directed by the Trust and 2000 Will to vigorously defend the estate plan against her claims to be the spouse. They have no duty to her as a beneficiary of Bauknight's Legacy Trust.

Hynie Brown is an improper party and fails to state any cause of action against Defendants.

B. Terry Brown is an improper party.

Defendants' fiduciary duty to Terry ended when -- after two years of vigorously supporting under oath the Estate Plan of James Brown -- Terry not only abandoned the

Estate Plan but dismantled The James Brown "I Feel Good" foundation by his devastating right of first refusal.

Although Terry had been a joint venturer with Dallas, Cannon, Forlando and investor Terry Cox for some time, he had not taken any action to defeat the Estate Plan. On the contrary, in January, 2009 he had vigorously supported enforcement of the *In Terrorem* clause.

Terry knowingly and intentionally violated the *In Terrorem* clause after giving sworn testimony of the validity and importance of his father's will.

He has forfeited his interest under the Estate Plan. Defendants owe him no fiduciary duty because the *In Terrorem* clause directs them to oppose his claims.

C. James II is an improper party.

Even if a child, which he is presumed not to be, James II has no standing because, as a matter of law, he is excluded from James Brown's Will and the 2000 Trust. Buchanan and Pope have never owed James II any fiduciary duty. He is not a proper party, and the Complaint should be dismissed.

D. Bauknight as Trustee of the Legacy Trust is an improper party.

Defendants owe no duty to Bauknight's Legacy Trust, Bauknight as its trustee, or its beneficiaries. He is not a proper party. The complaint should be dismissed.

XII. Dismissal is required because Romunzo and Forlando, who are seeking forfeiture of Plaintiffs' interest, are necessary parties.

While Plaintiffs believe that Forlando Brown's claims are frivolous, they cannot be ignored for purposes of this suit. And Romunzo, to date appearing innocent although represented by counsel who is simultaneously representing those who favor the AG's

settlement and those who oppose it – and who is a Georgia lawyer who appeared in Case 1647 for its entirety without seeking *pro hac vice* admission—cannot be ignored.

In documents filed on January, 2009 in Aiken County Case 872 Forlando and Romunzo – joined at the time by Terry – asserted that the *In Terrorem* clauses must be enforced and that Plaintiffs have forfeited their rights.

XIII. Dismissal is required because the conflict of Bauknight and Parents with Minor Beneficiaries of the 2000 Trust is Patent.

Brown's estate plan provided that the 2000 Irrevocable Trust would be split into the large charitable trust and a smaller private education trust for seven grandchildren. The family education trust would, under Brown's estate plan, have meant approximately \$285,000 would be available for each grandchild's education.

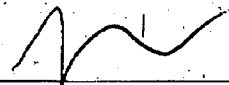
The grandchildren were not represented by GALs in the settlement hearings nor are they so represented here. One result of the settlement was to extend the family education benefits to future generations of Brown's family, thereby both reducing and making uncertain the amount available to each grandchild for whom Brown intended to provide an education. This reduction in benefits creates a patent conflict between those grandchildren and both Bauknight and their parents who agreed to it.

CONCLUSION

Including Proper procedure for any Counterclaims.

The Complaint should be dismissed. As to any Counterclaims, hearings in Richland County should be stayed while Plaintiffs seek permission for transfer of venue to Aiken County.

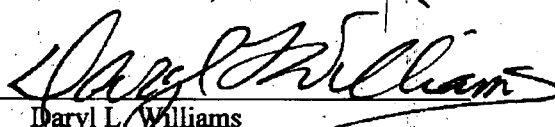
SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: 

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**Attorneys for Defendant Robert L. Buchanan,
Jr.**

JETER & WILLIAMS, P.A.

By: 

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Telephone: (803) 765-0600
Facsimile: (803) 765-0619

Attorney for Defendant Adele J. Pope

Columbia, South Carolina
August 25, 2010

EXHIBIT B

THE STATE OF SOUTH CAROLINA
IN THE Supreme COURT

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge
Case No. 2008-CP-2-1647

Henry Dargan McMaster, in his
capacity as Attorney General of
the State of South Carolina;
Daryl J. Brown, on behalf of his
minor children, Lindsey B. and
Janise B.; Deanna J. Brown Thomas,
on behalf of her minor child, Jason
L.; Yamma N. Brown, on behalf of
her minor children, Sydney L.,
Carrington L., and Tonya B.;
Vanisha Brown; Larry Brown;
Tommie Rae Hynie Brown; and
James B., through his Guardian
ad Litem, ... Respondents,

v.

Albert H. Dallas, Alfred A. Bradley,
and David G. Cannon, Individually
and as (purported) Trustees of the
James Brown 2000 Irrevocable
Trust; Adele J. Pope and Robert
L. Buchanan, Jr., Personal Repre-
sentatives of the Estate of James
Brown and Trustees of the James
Brown 2000 Irrevocable Trust;
Terry Brown; Romunzo Brown;
Forlando Brown; Cinnamon N.
M. Paris; LaRhonda Pettitt;
Jeanette Mitchell; and Russell
L. Bauknight, as Special Adminis-
trator and Special Trustee for The
Estate of James Brown and The
James Brown 2000 Irrevocable
Trust,

of whom Robert L. Buchanan, Jr.,
and Adele J. Pope, as Personal Repre-
sentatives of the Estate of James
Brown and Trustees of the James

Brown 2000 Irrevocable Trust are , ... Appellants,

**and Albert H. Dallas, Alfred A. Bradley,
and David G. Cannon, Individually
and as (purported) Trustees of the
James Brown 2000 Irrevocable
Trust; Terry Brown; Romunzo Brown;
Forlando Brown; Cinnamon N.
M. Paris; LaRhonda Petitt;
Jeanette Mitchell; and Russell
L. Bauknight, as Special Adminis-
trator and Special Trustee for The
Estate of James Brown and The
James Brown 2000 Irrevocable
Trust are Respondents.**

**In re: The Estate of James Brown and The James Brown 2000 Irrevocable
Trust u/a/d August 1, 2000.**

MOTION FOR EXTENSION OF TIME

**TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES
OF THE SUPREME COURT OF SOUTH CAROLINA:**

Appellants respectfully move the Court for a substantial extension of time in which to serve and file their initial brief and designation of matter. As grounds for the motion, appellants would show as follows:

1. This is an appeal from an order approving the settlement of an estate and diverting potentially tens of millions of dollars from the trust created during his lifetime by the testator for the college education of needy students of South Carolina and Georgia. The recipients of the settlement are persons whom the testator expressly intended to disinherit.

2. The appeal presents novel issues of public importance in the management of estates and in the law of trusts. Those issues are being framed at this time, as work on the appellants' initial brief progresses.

3. The record below is massive.

4. The undersigned represents the appellants *pro bono publico*. Assisting him is Tressa T. H. Hayes, Esq., who is in transition from her previous law firm to new circumstances of law practice. Ms. Hayes will contribute what she can to the work, but the bulk of it will be the responsibility of the undersigned. In comparison, arrayed on the other side of this case are the State of South Carolina and some of the finest firms in this State (and elsewhere) with, effectively, unlimited resources.

5. This appeal deserves the best effort on behalf of the appellants which it is possible to muster, the undersigned having had no more important role in forty years of practice than to represent the appellants in this appeal. Nevertheless, the usual press of other appellate and trial work, and office business, is unrelenting.

6. Next month includes a ten-day vacation out of the country which the undersigned has planned for a year and which probably could not be rescheduled with those who are joining, if it were to be cancelled. This, too, accounts for a small portion of this request.

7. The appellants respectfully ask the Court to consider a seventy-five (75) day extension, to and including November 4, 2010, for service and filing of the appellants' initial brief and designation.

Respectfully submitted,

James B. Richardson, Jr.
1229 Lincoln Street
Columbia, South Carolina 29201
(803) 799-9412

Tressa T. H. Hayes
Post Office Box 5329
Columbia, South Carolina 29250
(803) 603-8583

by: James B. Richardson, Jr.
Attorneys for Appellants.

August 13, 2010.

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

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

and

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

Plaintiffs

v.

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

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Civil Action No. 2010-CP-40-4900

**PLAINTIFFS' MEMORANDUM
OPPOSITION TO DEFENDANTS'
MOTION TO CHANGE VENUE**

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JEANETTE S. BRIDE
C.C.

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I. NATURE OF THE CASE

This is not a judicial proceeding regarding the Estate of James Brown, the administration

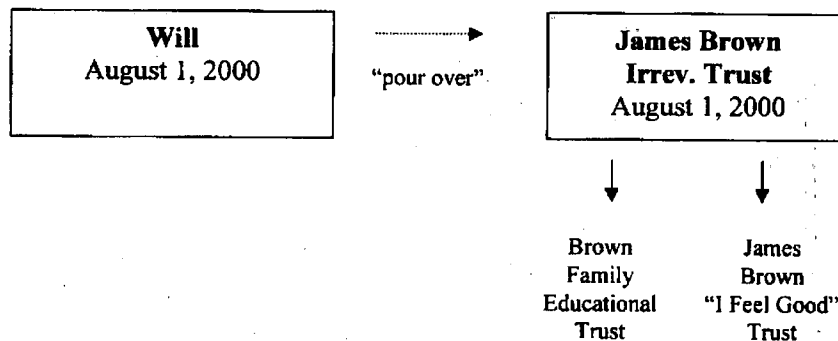
of which is in the Aiken County Probate Court. This action does not ask the Court to construe the will, enforce the will, determine the beneficiaries, or otherwise administer the Estate of James Brown in any way.

This is a judicial proceeding involving the Irrevocable Trust of James Brown dated August 1, 2000, a separate legal entity, whose sole, professional trustee administers the trust in Richland County, South Carolina.

This is a suit alleging causes of action for breach of fiduciary duty, breach of trust, and negligence by former fiduciaries. Plaintiffs brought this action against Defendants by way of a Complaint filed May 19, 2010. Pursuant to Rule 8(a)(1), SCRCP, Plaintiffs asserted that jurisdiction was proper in the Richland County Probate Court. Pursuant to S.C. Code Ann. § 62-1-302(d) (1976, as amended), this matter was removed to the Court of Common Pleas of Richland County. Defendants filed a Motion to Change Venue to Aiken County. This memorandum sets forth the grounds for opposition to such motion.

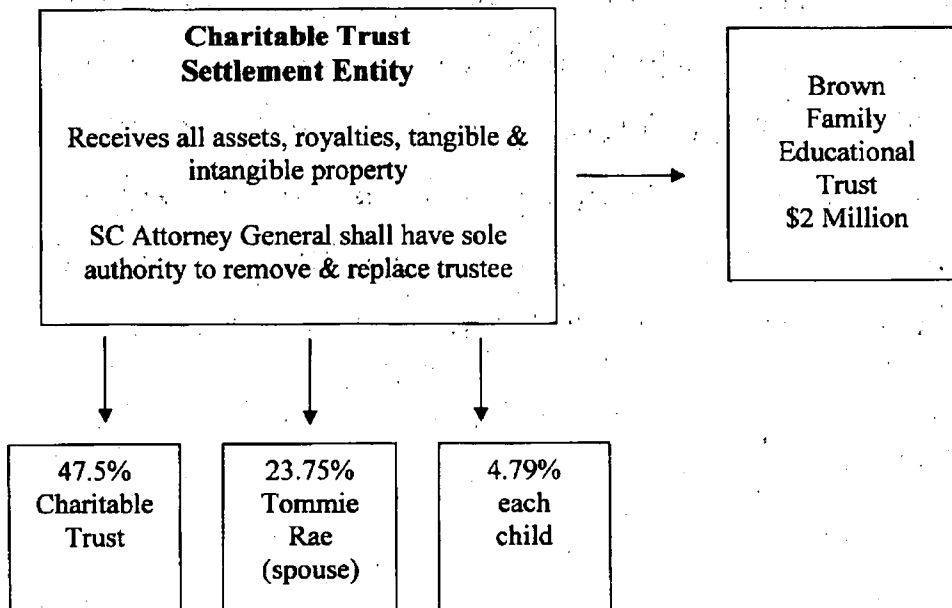
II. FACTS BEARING ON THE MOTION

The original estate plan of James Brown included a Last Will and Testament which “poured over” the bulk of his estate to a separate, irrevocable trust that was created and funded on August 1, 2000. The relationship between the estate and the Irrevocable Trust are shown as follows:



After extensive litigation to determine the identification of beneficiaries, the ownership of assets, and the identification of fiduciaries, all beneficiaries of the estate and trust came to a global settlement and entered into a written settlement agreement. The Settlement Agreement is attached hereto as Exhibit A. The Settlement Agreement was approved by the Honorable Doyet A. Early, III, on May 26, 2009, by an Order Approving Settlement Agreement, which is attached hereto as Exhibit B. Pursuant to the Settlement Agreement, the estate plan of James Brown was entirely re-written to create a "Settlement Entity" which incorporates all assets, including all royalties, tangible and intangible property of James Brown. The order provides that: "A charitable trust substantially similar to the August 1, 2000 Irrevocable Trust (hereinafter the "Charitable Trust") shall be created and/or maintained and shall be valid and enforceable." The order also affirmed the provision of the settlement agreement that a professional fiduciary, Russell Bauknight, would replace Buchanan and Pope as fiduciaries of both the Estate of James Brown and as trustees of the August 1, 2000, Irrevocable Trust of James Brown.

The Charitable Trust is diagrammed as follows:



Plaintiffs are all of the beneficiaries of such trusts established by the late entertainer James Brown, including the South Carolina Attorney General. Defendants are former fiduciaries of Brown's estate and trust. This suit alleges mismanagement of the estate and trust by Defendants.

By Order of the Honorable Doyet A. Early, III, dated May 26, 2009, Russell L. Bauknight was named Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as well as Personal Representative of the Estate of James Brown. Management of the trust estate has taken place exclusively at Bauknight's offices at 1517 Gervais Street, Columbia, South Carolina, where all of the trust assets and trust records are maintained. Such office is located in Richland County, South Carolina.

It is worth noting that the prior trustees, Pope and Buchanan, also administered the Irrevocable Trust in Richland County. The Order of the Honorable Doyet A. Early, III, dated August 10, 2007, a copy of which is attached hereto as Exhibit C, specifically provides that: "This Court orders and directs the deliver to 1218 Taylor Street, Columbia, South Carolina, of all files and documents in the possession of all attorneys, accountants, and other financial advisors whose service has been terminated as set out herein, and who have rendered prior service to James Brown, the Estate of James Brown, any Brown Entity, and/or any Brown Trust." See also Exhibited D hereto, which includes a sixty (60) page list of documents maintained by the former trustees, Pope and Buchanan, at the trust's office at 1218 Taylor Street in Columbia. Defendants now seek to assert that the administration of the trust is not in Richland County, South Carolina.

III. ARGUMENT

"The distinction between subject matter jurisdiction and venue is an important one in the law. The terms are not synonymous. Subject matter jurisdiction is 'the power to hear and determine cases of the general class to which the proceedings in question belong.' On the other hand, venue is the place or geographical location of trial." Dove v. Gold Kist, Inc., 314 S.C. 235, 237-238, 442 S.E.2d 598, 600 (1994) (internal citations omitted). In South Carolina, venue refers to the county in which the action should be brought. In re Asbestosis Cases, 276 S.C. 579, 581, 281 S.E.2d 112, 115 (1981) (abrogated on other grounds by Whaley v. CSX Transp., Inc., 362 S.C. 456, 609 S.E.2d 286 (2005)). The Defendants allege that subject matter jurisdiction is improper. They confuse subject matter jurisdiction and venue. Subject matter jurisdiction over this suit is properly laid in the Circuit Court, having been originally filed in Probate Court and then removed from the Probate Court. Defendants also contend that venue should be in Aiken County. Plaintiffs assert that venue should remain in Richland County.

The South Carolina Trust Code has its own venue statute for proceedings involving trusts:

Except as otherwise provided in subsection (b), venue for a judicial proceeding involving a trust is in the county of this State in which the **trust's principal place of administration** is or will be located and, if the trust is created by will and the estate is not yet closed, in the county in which the decedent's estate is being administered.

S.C. Code Ann. § 62-7-204(a) (1976, as amended) (emphasis added). As shown above, James Brown did not have a testamentary trust created under his will, but rather an inter vivos trust, so the last phrase about the county in which the estate is administered is inapplicable. Courts must turn to a separate section of the Trust Code to determine what constitutes a trust's "principal place of administration":

Unless otherwise designated by the terms of a trust, the principal place of administration of a trust is **the trustee's usual place of business where the records pertaining to the trust are kept**, or at the trustee's residence if he has no such place of business. . .

S.C. Code Ann. § 62-7-108(a) (1976, as amended) (emphasis added). Note that the statute designates the trustee's place of business where the records are kept, not the county of the trust settlor's residence or the county of residence of the trust beneficiaries, for a very practical reason. It is essential that the courts in the place where the trust records are kept and the trust assets are held should deal with trust litigation. In the case at bar, the records of the trust are voluminous and occupy hundreds of bankers boxes.

The professional trustee in this matter is Russell L. Bauknight. Mr. Bauknight's usual place of business is at his accounting firm, Bauknight Pietras & Stormer, P.A., located at 1517 Gervais Street, Columbia, South Carolina 29201. The records pertaining to the trust are kept at this location, which is in Richland County, South Carolina. Further, the trust agreement itself does not designate a different principal place of administration.

Based on Sections 108(a) and 204(a) of the Trust Code, venue is proper in Richland County. Even if the court were to determine that venue might be proper in either Richland or Aiken Counties, the commencement of this proceeding in Richland County prior to any filing in Aiken establishes proper venue in Richland County. See S.C. Code Ann. § 62-7-204(c) (1976, as amended). Defendants will argue that the matters raised in the complaint relate to an action previously filed in Aiken County. That is erroneous. The complaint alleges causes of action which are entirely new and are completely distinct from the prior estate litigation among the beneficiaries and the former personal representatives of the estate. Section 62-7-201(b) of the South Carolina Trust Code provides that "[a] proceeding under this section does not result in

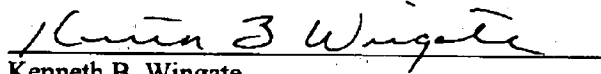
continuing supervisory proceedings." This trust litigation against the former trustees stands on its own feet, and is unrelated to any prior litigation involving James Brown's estate or trust.

IV. CONCLUSION

In this case, Defendants have moved to change venue from Richland County to Aiken County. Venue is proper in Richland County because it is the principal place of administration for the trusts at issue in this litigation. Even if venue were also proper in Aiken, the initial commencement of this action in Richland County requires that venue remain in Richland County.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



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(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina
August 27, 2010

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

HENRY DARGAN MCMASTER, in his)
capacity as Attorney General of the State)
of South Carolina; DARYL J. BROWN,)
on behalf of his minor children, LINDSEY)
DELORES BROWN and JANISE)
VANISHA BROWN; DEANNA J.)
BROWN THOMAS, on behalf of her minor)
children, JASON BROWN LEWIS;)
YAMMA N. BROWN, on behalf of her)
minor children, SYDNEY LUMAR,)
CARRINGTON LUMAR, and TONYA)
BROWN; VANISHA BROWN; and)
LARRY BROWN; TOMMIE RAE)
HYNIE BROWN)

Petitioners,)
)
- vs-)
)

RUSSELL L. BAUKNIGHT,)
as Special Administrator and Special)
Trustee for The Estate of James Brown)
and The James Brown 2000 Irrevocable)
Trust, TERRY BROWN, ROMUNZO)
BROWN; FORLANDO BROWN;)
CINNAMON N.M. PARIS; LARHONDA)
PETITT; and JEANNETTE MITCHELL)
)

Respondents.)
)
)

In Re:)
The Estate of James Brown and The James)
Brown 2000 Irrevocable Trust u/a/d)
August 1, 2000)
)

Case No.: 08-CP-02-1647

(Case No.: 07-CP-02-0122)
(Estate of James Brown)

(Case No.: 08-CP-02-00872)
(Wills/Trust/Heirs Matter)

**ORDER APPROVING
SETTLEMENT AGREEMENT**

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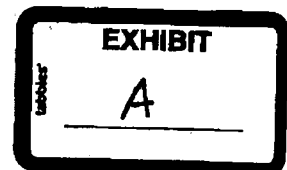
5-26-09

L. J. Haddad
U.C.C.P. & G.S.
Anita Knoepfle 945
Deputy Clerk

This matter comes before the Court on a Motion for Approval of Settlement Agreement.

The Court commenced the hearing on January 30, 2009, and continued to conduct that hearing

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STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

STATE OF SOUTH CAROLINA

ex rel. Henry McMaster, in his capacity
as Attorney General of the State of
South Carolina,

Plaintiff,

vs.

ELI LILLY AND COMPANY,

Defendant.

IN THE COURT OF COMMON PLEAS

SEVENTH JUDICIAL CIRCUIT

Case No. 2007-CP-42-1855

ORDER

MARC MITCHEMS

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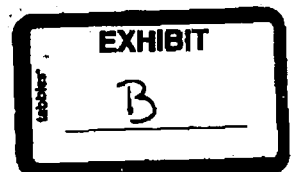
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SPARTANBURG COUNTY

THIS CAUSE is before the Court upon the Motion of Defendant Eli Lilly and Company (Lilly) to Disqualify Special Counsel filed on August 21, 2009. This matter was fully briefed by the parties, and was argued to the Court on August 31, 2009. After carefully considering all of the parties' written submissions and the oral arguments made by counsel, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

On July 19, 2006, for the purpose of pursuing litigation relating to the Lilly-manufactured drug Zyprexa, Attorney General McMaster entered into a "Litigation Retention Agreement for Special Counsel Appointed by the South Carolina Attorney General" signed by three lawyers as "Special Counsel." The three lawyers were John S. Simmons, John Belton White, Jr., and F. Kenneth Bailey, Jr. According to his Affidavit submitted in this matter, Attorney General McMaster's aim in suing was to recoup state funds and penalties related to Lilly's alleged wrongful conduct in marketing Zyprexa.

*Call
21*



Under the terms of the Special Counsel Appointment, the three signing lawyers agree to share fees (if any),¹ expenses and, subject to the Attorney General's overall control, responsibility for the work to be done. In effect, they agreed to function as de facto joint venturers, working together as a litigation team on behalf of the Attorney General and the State of South Carolina.

Under the Retention Agreement, Special Counsel will not be paid out of any award of State funds. They will be compensated, if at all, only out of a portion of such recovery as they are able to win for the State by their efforts. Meanwhile, under the Retention Agreement's terms, they have undertaken to pay all the costs of this lawsuit out of their own pockets. Thus, as part of their appointment by the Attorney General, Special Counsel have agreed to take on all the economic risk of the litigation, including the risk of a defense verdict, and give up to the State the lion's share (at least 77%) of any net recovery (after litigation costs) generated by the civil suit against Lilly. A copy of the Retention Agreement was produced to Lilly on May 22, 2009.

Since July of 2006 to the present, Special Counsel have pursued the investigation and prosecution of civil litigation against Lilly. The fact of appointment of Special Counsel in this matter has been known to Lilly from the time Special Counsel filed this lawsuit and served with the Summons and Complaint in the Spring of 2007, but an actual copy of the agreement was not given to Lilly until the date stated above.

When Lilly answered the Complaint on October 1, 2007, Lilly specifically objected to the Attorney General's use of a contingent fee arrangement in hiring Special

¹ If the lawsuit fails, all of the financial loss will fall on Special Counsel, no expenses will be borne by the State. Under Article V, ¶ B of the Retention Agreement, Special Counsel must look to the Attorney General to reimburse them for advance costs out of "the litigation's gross recovery," if any. The Attorney General, in his sole discretion may refuse to reimburse Special Counsel for "improperly documented, unnecessary, or unreasonable costs or expenses." *Id.*

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HARRIS KITCHENS

Counsel. Lilly contended the retention of Special Counsel violated Lilly's due process rights and the separation of powers doctrine. Specifically, Lilly pleaded in its answer two affirmative defenses referencing the retention of Special Counsel on a contingent fee basis, to wit:

The filing of this lawsuit by private counsel, retained on a contingent fee arrangement, violates the South Carolina Constitution's separation of the powers of the legislative and executive branches, in that the legislature has not appropriated funds for the payment of private counsel to prosecute this action in place of the Attorney General.

The filing of this lawsuit by private counsel, retained on a contingent fee arrangement, violates the due process requirements of the United States Constitution and the South Carolina Constitution, as well as conflict-of-interest rules applicable to attorneys representing the State, by giving the State's counsel a personal financial interest in the outcome of this action.

Lilly filed a Motion to Disqualify Special Counsel and filed that motion on August 21 2009, with the case at that time being scheduled to go to trial on September 14, 2009. This motion is now before this Court.

ISSUES BEFORE THE COURT AND CONCLUSIONS OF LAW

LILLY'S DUE PROCESS ARGUMENTS

I. Does the Retention Agreement violate Lilly's Due Process Rights?

Lilly contends that the hiring of Special Counsel "violated Lilly's state and federal right to due process because it gave each of these lawyers a direct financial interest in the outcome of this litigation." Lilly Motion at 2. *See also id* at 8-13. Lilly's due process argument flows from Lilly's central premise that all government lawyers must always remain neutral, even in the context of tort litigation against an alleged wrongdoer. The Court is unable to find anything in the relevant Rules of Professional Conduct, statutes, or

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MARIE KICHENS

controlling case law that supports this argument in the context of tort litigation such as this.

The notion that public officials and their lawyers (whether in-house or outside counsel) must be "neutral" or disinterested in the outcome of civil litigation they bring on behalf of the government is not only unsupported by any authority, it is unsupported in the context applicable here: tort litigation where the government is suing to collect money damages. As the United States Supreme Court explained in a unanimous opinion almost thirty years ago, the Court's "rigid" due process requirements, "designed for officials performing judicial or quasi-judicial functions, are not applicable to those acting in a prosecutorial or plaintiff-like capacity. . . . Prosecutors need not be entirely neutral and detached. In an adversary system, they are necessarily permitted to be zealous in their enforcement of the law." *Marshall v. Jerrico, Inc.*, 446 U.S. 238 (1980) (citations and internal quotation omitted); see also *Commonwealth v. Gullota*, 716 A.2d 663, 666 (Pa. Super. 1998) (rejecting argument that neutrality principles applied to adjudicative officials apply to prosecutors).

Indeed, as the Supreme Court held in *State ex rel. Condon v. Hodges*, 349 S.C. 232, 562 S.E.2d 623 (2002), the Attorney General, as the chief lawyer for the State, may sue even the Governor- ordinarily his client- when the public interest demands it for the protection of the Legislature's right to appropriate funds in accordance with the state Constitution. See also, 7 Am Jur 2d Attorney General section 18 ("...it is the duty of the Attorney General to zealously advocate the public policy positions of his or her clients in pleadings, negotiations, and the courtroom to avoid even the appearance of impropriety by appearing to be in conflict with the desires of his or her client.")

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Government lawyers have no heightened duty of neutrality when bringing civil tort lawsuits. Government officials have a duty to carry out the responsibilities of their positions and an obligation to ensure that funds appropriated for that purpose are not misused. In this lawsuit, the State of South Carolina contends that funds intended to pay for care of the elderly and the poor were misdirected by Lilly's allegedly wrongful acts. As a result, the State of South Carolina has brought suit to recover those funds. The Attorney General maintains that he owes an obligation as a public servant to prosecute this case to the best of his ability, and is doing so. Lilly has introduced no evidence demonstrating that the Attorney General has chosen attorneys that are not fully qualified and competent to handle the responsibilities which have been placed upon them in the Retention Agreement.

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The lawyers representing the State of South Carolina in civil tort cases, whether in-house or outside counsel, have a duty to represent the State of South Carolina's interests to the fullest, advocating the State of South Carolina's position in the litigation brought to vindicate the State of South Carolina's rights and recover the funds expended because of a private party's alleged wrongdoing. Nothing in South Carolina's Rules of Professional Conduct suggests that the State's retained attorneys should have any other responsibility other than pursue their obligations under the agreement that was made between them. Indeed, Lilly specifically denied that it was making any claim of professional wrong doing against the Special Counsel and agreed that the State's legal counsel have not committed any violation of the Rules of Professional Conduct. This is a significant admission, since SCACR 407 Rule 8.4(e) makes it unethical to "engage in conduct prejudicial to the administration of justice." By agreeing that the State's lawyers

have behaved ethically as lawyers, Lilly has conceded that no conduct prejudicial to the administration of justice has occurred in this case. This admission casts a long shadow of doubt over Lilly's contentions that it is the victim of constitutional violations and illegality.

In contending the State's counsel owe it an obligation to be "neutral," that is, less than unswervingly zealous in furthering the State's contentions, Lilly ignores the large body of controlling law that governs lawyer conduct in the State of South Carolina. It argues, without support in court rules, statutes, or case law that all government attorneys have a responsibility to act neutrally in all cases. In support of this argument, Lilly relies heavily on the contention that when the State of South Carolina acts in its *parens patriae* capacity, it must act as representative of all citizens, including (presumably) the State of South Carolina's adversaries in civil litigation. This argument is flawed for several reasons.

First, this is a tort action plain and simple. The State of South Carolina is out to recover actual damages it suffered from Lilly's allegedly tortious conduct. It is seeking damages for money it claims that Lilly wrongfully caused to be paid from the State treasury. This tort action is not significantly different than one brought by a private corporation or individual who suffered harm as a result of another person or entity's alleged wrongdoing.

Second, when the State of South Carolina does act in its *parens patriae* role, nothing about its duty to protect the public safety and general welfare requires it to ignore wrongdoing by a particular member of the public. Indeed, courts have held that the *parens patriae* role does not require that a state in a civil case be neutral. As one court

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has noted, a state "acting in its role as *parens patriae*, has the right and the duty to act to protect its weaker members." *In re Terwilliger*, 304 Pa. Super. 553, 560, 450 A.2d 1376, 1380 (1982). In its *parens patriae* role, the State of South Carolina acts to protect children, charities, and other members of society who need special protection. See, e.g., *Mr. T v. Ms. T*, 378 S.C. 127, 662 S.E.2d 413 (S.C. App. 2008) ("South Carolina, as *parens patriae*, protects and safeguards the welfare of its children."). In cases where it is fulfilling its *parens patriae* role the State of South Carolina may be adversarial to allegedly abusive or neglectful parents, negligent charitable trustees, or other wrongdoers. This case is no different. The State of South Carolina is adverse to Lilly, and the State of South Carolina's lawyers (whether in-house or outside counsel) are obligated zealously to represent the interests of their client to vindicate its rights.

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Finally, Lilly's due process argument ignores the reality that the State of South Carolina has not ceded its *parens patriae* role to outside counsel. As Article III (D) of the Special Counsel Contract makes clear, the State of South Carolina retains overall control of the present litigation.² And there is no question that the Attorney General has

² The Retention Agreement in question here is replete with verbiage attesting to it being consistent with sound public policy, with control over this litigation being reposed firmly in the Attorney General's hands. Thus, the retention agreement states in the first recital clause that the litigation "is in the best interest of South Carolina." The third recital clause sets forth the premise (unchallenged by Lilly) that Special Counsel "has the skill, experience, expertise, and competence necessary for the meaningful prosecution" of the matter. The Agreement further states in Article II, ¶ A, that due to the "personal nature of the services rendered under this appointment, the Attorney General shall be the sole judge of the adequacy of those services," and that "[t]he Attorney General shall have final authority over all aspects of this litigation." To quote the Agreement,

[t]he Attorney General shall have final authority over all aspects of this litigation. The litigation may be commenced, conducted, settled, approved, and ended only with the express approval and signature of the Attorney General. The Attorney General at his sole discretion has the right to appoint a designated assistant . . . to oversee the litigation, which appointment the Attorney General may modify at will. *Id.* Art. II, ¶ A(1).

The Agreement expressly provides that "[t]he Attorney General reserves the right to terminate this Agreement at any time, in his sole discretion, and without cause or duty of explanation." Article VI, ¶ A. Special Counsel "may terminate its duties and obligations under the Appointment and this Agreement upon

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authority to hire legal counsel to protect the State's interests. In order to effectuate the broad authority given to the Attorney General under the Constitution, statutes and common law, the General Assembly has empowered the Attorney General to appoint the Assistant Attorneys General. S.C. Code Ann. § 1-7-30. Indeed, the South Carolina Supreme Court has recognized that the Attorney General, as the State's chief legal officer, possesses the authority to appoint and approve private counsel to represent the State. *See Cooley v. S.C. Tax Comm.*, 204 S.C. 10, 28 S.E.2d 445 (1943).

Courts have almost universally recognized that Attorneys General possess broad authority to appoint private attorneys as special counsel on a contingent fee basis to assist in the representation of the public interest. Indeed, as was stated in *State ex rel. Nixon v. American Tobacco Co., Inc.*, 34 S.W.3d 122, 136 (Mo. 2000) (en banc),

[t]he statute that allows for the attorney general to hire assistants and to pay them from appropriations does not prohibit the attorney general in the exercise of his common law power from entering into contingency fee arrangements or agreements that otherwise provide for civil defendants sued by the State to pay attorneys fees directly to the State's outside counsel. In the absence of a statute to the contrary, we conclude that the attorney general does have the power to enter into this type of fee arrangement with his special assistant attorneys general.

And, in *State of Rhode Island v. Lead Industries Association, Inc.*, 951 A.2d 428, 474-475 (R.I. 2008), the Supreme Court of Rhode Island stated:

[i]t is our view that the Attorney General is entitled to act with a significant degree of autonomy, particularly since the Attorney General is a constitutional officer and is an independent official elected by the people.

Although we are keenly aware of the gravity of the issue and of the fact that thoughtful and potent policy-based arguments have been made on both sides of the issue, in the end we have concluded that, in principle, there is nothing unconstitutional or illegal or inappropriate in a contractual

thirty (30) days written notice to the Attorney General." *Id.* However, "[t]ermination on the part of Special Counsel shall not be effective if the Attorney General finds in his sole discretion that such termination prejudices or has a material adverse effect on the State of South Carolina." *Id.*

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relationship whereby the Attorney General hires outside attorneys on a contingent fee basis to assist in the litigation of certain non-criminal matters. Indeed, it is our view, that the ability of the Attorney General to enter into such contractual relationships may well, in some circumstances, lead to results that will be beneficial to society results which otherwise not have been attainable. However, due to the special duty of attorneys general to seek justice and their wide discretion with respect to same, such contractual relationships must be accompanied by exacting limitations. In short, it is our view that the Attorney General is not precluded from engaging private counsel pursuant to a contingent fee arrangement in order to assist in certain civil litigation, so long as the Office of Attorney General retains absolute and total control over all critical decision-making in any case in which such agreements have been entered into.

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The claim to proceeds by attorneys appointed by the Attorney General to represent the State on a contingent fee basis is not a "claim against the State." *People v. Philip Morris*, 759 N.E.2d 906 (Ill. 2001). *See, also*, ' 1-7-170 (agency may not *engage* on a fee basis an attorney at law except upon the written approval of the Attorney General and a fee must be approved by him").

Thus, should the State of South Carolina conclude that its purported obligation to act neutrally toward all parties (even the one that caused it harm) requires it to drop this lawsuit, the State of South Carolina through the Attorney General, not any outside law firms, will make that decision. *See also* SCACR 407, Rule 1.2, requiring that clients, not their legal counsel, make decisions as to the resolution of a matter. In short, there is nothing about the State of South Carolina's *parens patriae* role that requires its attorneys to act completely neutral instead of advocating zealously on behalf of their client.

Lilly's attempt to hold all government lawyers to the same neutrality standards as judges or neutral arbitrators is misguided and thus unavailing. Lawyers — even government lawyers — have never been treated as neutral parties in litigation. They are advocates. Judges, on the other hand, must be held to the highest standards of neutrality

and impartiality. See Code of Judicial Conduct Canon 2, requiring judicial independence. Thus, the longstanding jurisprudence invoked by Lilly in its brief (at 8-10), beginning with *Tumey v. Ohio*, 273 U.S. 510 (1927), and carrying through to the recent decision in *Caperton v. A.T. Massey Coal Co.*, 129 S. Ct. 2252 (2009), stands for the proposition that the judicial officer who acts as the decision-maker in an adversarial proceeding must be neutral and impartial. But none of those cases extend the neutrality principle encompassed in the Due Process Clause to the lawyer representing one side of a contested issue, even if those lawyers happen to represent the government. See Motion to Disqualify at 10-11 (citing cases involving personal financial interest of "a judicial officer or administrative fact-finder or decision-maker").

The few cases Lilly cites not involving judicial or other neutral adjudicators either disprove its arguments or are easily distinguishable from the present situation. The first case, *Marshall v. Jerico, Inc.*, 446 U.S. 238 (1980), involved a federal statute under which civil penalties collected by an agency of the Department of Labor for violations of the law were used to reimburse that agency for its costs of determining violations and assessing penalties. *Id.* at 239. A corporation that was assessed penalties under the statute challenged the statute on due process grounds, arguing that the assistant regional administrator who made the decision to assess the penalties had an improper incentive to find violations and assess penalties in order to increase revenues for the agency. *Id.* at 241-42. The Supreme Court unanimously rejected this argument:

The assistant regional administrator simply cannot be equated with the kind of decisionmakers to which the principles of *Tumey* and [*Ward v. Village of Monroeville*, 409 U.S. 57 (1972)] have been held applicable. He is not a judge. He performs no judicial or quasi-judicial functions. He hears no witnesses and rules on no disputed factual or legal questions. The function of assessing a violation is akin to that of a prosecutor or civil plaintiff. If the employer excepts

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to a penalty — as he has a statutory right to do — he is entitled to a de novo hearing before an administrative law judge. In that hearing the assistant regional administrator acts as the complaining party and bears the burden of proof on contested issues. . . . It is the administrative law judge, not the assistant regional administrator, who performs the function of adjudicating child labor violations.

Id. at 247-48 (citation and footnote omitted).

The same is true here. As in *Marshall*, the law firm here “performs no judicial or quasi-judicial functions [and] hears no witnesses and rules on no disputed factual or legal questions.” *Id.* at 247.

Strong language from *Marshall* directly forecloses Lilly’s attempt to rely on cases like *Tumey* and *Ward* for its due process argument:

The rigid requirements of *Tumey* and *Ward*, designed for officials performing judicial or quasi-judicial functions, are not applicable to those acting in a . . . plaintiff-like capacity. . . . The distinction between judicial and nonjudicial officers was explicitly made in *Tumey*, 273 U.S., at 535, where the Court noted that a state legislature “may, and often ought to, stimulate prosecutions for crime by offering to those who shall initiate and carry on such prosecutions rewards for thus acting in the interest of the State and the people.”

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Id. at 248-49 (citation omitted).

The United States Supreme Court thus has approved precisely the situation that Lilly alleges is present here: the attorney for the State of South Carolina has an incentive to zealously advocate for its government client and seek to vindicate the government’s interests against an alleged violator of the law. *Marshall*, a case relied on by Lilly, is directly on point and cuts against Lilly’s due process argument.

Similarly, *Young v. United States ex rel. Vuitton Et Fils S. A.*, 481 U.S. 787 (1987), relied on by Lilly at p. 10 of its brief, offers no support for Lilly’s due process argument. In *Young*, the Supreme Court disapproved a federal trial court’s appointment of counsel for an interested party to prosecute a criminal contempt proceeding against its

litigation opponent *Id.* at 790. Notably, the Court based its holding not on the Due Process Clause, but on its supervisory powers over lower federal courts, *Id.* at 802, 808-09, an issue not involved here.

In reaching its conclusion, the Supreme Court emphasized the criminal nature of the proceeding and the special protections afforded the accused criminal contemnor in such situations. Noting that the prosecutor in a criminal contempt proceeding "is appointed solely to pursue the public interest in *vindication of the court's authority*," the Court found an inherent conflict between the prosecuting attorneys' dual roles as advocate for one party in an ongoing civil dispute and criminal prosecutor of the opposing party "for affronts to the Judiciary." *Id.* at 804-05 (emphasis added).

These principles have no application here. The team of Special Counsel employed by the Attorney General have not been appointed by the State of South Carolina to prosecute a criminal case against Lilly, or a criminal contempt action as the lawyers were appointed to do in *Young*. They have not been appointed to "vindicate the court's authority." They have been appointed to seek to recover money in a tort case. The underlying matter here is a civil action for damages, not a criminal contempt proceeding. Special Counsel are not acting to vindicate the court's authority or punish affronts to the judiciary. They are seeking only to recover damages for the State. Nor have the private law firms, operating as de facto joint venturers, been hired to represent the State of South Carolina in a dispute in which any venture member has a preexisting vested interest, as the prosecuting attorneys did in *Young*. Rather, Special Counsel's allegedly improper interest arises from the fact that, as in all contingent fee cases, the venture members will be paid only if it wins — and the larger the judgment in favor of its

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client, the greater the possible fee to the firm. *Young* is thus readily distinguishable from this case.

Indeed, the key cases involving lawyer conduct relied on by Lilly involve lawyers acting as criminal prosecutors, a situation different from the one here. The criminal proceeding cases Lilly cites are simply inapposite here, where outside counsel has been hired not to prosecute Lilly criminally, but to bring a civil proceeding for recovery of damages. See, e.g., *Appeal of Nicely*, 130 Pa. 261, 270, 18 A. 737, 738 (1889) (noting the special duty of a criminal prosecutor to act impartially so that justice is done and commenting that, when private counsel aids a criminal prosecutor, he "should be governed by the same rules of propriety"); *Berger v. United States*, 295 U.S. 78, 88 (1935) (noting that the U.S. Attorney is the representative of a government whose interest "in a criminal prosecution is not that it shall win a case, but that justice shall be done"); *Brady v. Maryland*, 373 U.S. 83, 88 (1963) (noting that a prosecutor in a criminal case should not be "an architect of a proceeding that does not comport with standards of justice").

The cases Lilly cites that involve non-criminal prosecutions are inapplicable (because they are decisions of lower federal courts or other state courts) and distinguishable. In *Freeport-McMoRan Oil & Gas Co. v. FERC*, 962 F.2d 45 (D.C. Cir. 1992), the court, in *dicta* (after vacating the administrative orders under review), condemned as uncivil the arrogant behavior of lawyers representing a federal agency. The other federal circuit court case relied on by Lilly, *Douglas v. Donovan*, 704 F.2d 1276 (D.C. Cir. 1983), is also distinguishable. The opinion in *Douglas* was written by the same judge that authored *Freeport* and also, as in *Freeport*, resulted in the vacatur of

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the order under review (on mootness grounds). *Id.* at 1277. Once again in *dicta*, the court contended that government lawyers "have special responsibilities to both this court and the public at large." *Id.* at 1279. As in *Freeport*, the court's statement was made in the context of rebuking an arrogant, uncivil government lawyer; the court was upset it had not been informed of the settlement of the underlying dispute: "As officers of this court, counsel have an obligation to ensure that the tribunal is aware of significant events that may bear directly on the outcome of litigation." *Id.*

In short, Lilly's due process argument finds no useful support in the well-established case law holding that judges and other decision-makers must be neutral and impartial, or gleaned from a handful of cases noting the special responsibilities of criminal prosecutors. Criminal prosecutors do owe special duties, but this is not a criminal prosecution. These cases do not apply here.

Here, in contrast, Special Counsel is representing a client in a civil case and should be held to the same high standards that all lawyers are held under the South Carolina's Rules of Professional Conduct. Lilly concedes those duties have all been discharged by the Attorney General and Special Counsel. The fact that the Special Counsel team's client is the State of South Carolina does not alter this analysis or require the Special Counsel to neglect the contractual and ethical duty to zealously represent its sovereign client and obtain the best recovery possible for that client in the underlying litigation here. The applicable ethics rules and the controlling case law compel this conclusion. Because Lilly's entire due process argument is based on the faulty premise that civil tort lawyers owe a duty of neutrality when suing for the sovereign, Lilly's main due process argument fails.

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Lilly also contends that the use of contingent fee representation against it violates its due process rights. This argument is meritless. Even if government lawyers were generally held to a higher standard than private counsel and were required to act neutrally (rather than as advocates for their clients), Lilly's argument would fail. Indeed, given the high standard for finding a Due Process violation in this context (*see, e.g., Caperton v. A. T. Massey Coal Co.*, 129 S. Ct. 2252, 2265 (2009)), if Lilly is correct that a contingent fee lawyer's financial interest in a government case violates the Due Process Clause, then doubt would be cast on every contingent fee arrangement, even those involving private parties, because of their supposed improper influence on an attorney's incentives and motivations in representing his or her civil client. Yet, contingent fee contracts have been held proper for many years. *See, e.g., Perry v. Atlantic Coast Life Ins. Co.*, 166 S.C. 270, 164 S.E. 753 (1932) recognizing lawyers were "collecting compensation due them in cases where they are employed on a contingent basis." *See also*, SCACR Rule 407, Rule 1.5(d), allowing contingent fees generally, except for domestic cases and criminal cases, neither of which is involved here.

Lilly cites only a single decision adopting its view that contingent fee arrangements by government entities are improper, *People ex rel. Clancy v. Superior Court of Riverside County*, 705 P.2d 347 (Cal. 1985). In *Clancy*, a city attorney retained outside counsel on a contingent fee basis to bring an action to shut down an adult bookstore as a nuisance. *Id.* at 349. The bookstore's owner challenged the contingent fee arrangement, arguing that "a government attorney prosecuting such actions must be neutral, as must an attorney prosecuting a criminal case." *Id.* at 350. In accepting this argument, the court focused on the well-accepted principle that a prosecuting attorney in

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a criminal case should not have a vested interest in the outcome of that case. *Id.* at 350-52. Relying on a handful of secondary authorities (primarily the same ABA Model Code provision cited by the D.C. Circuit in *Freeport* and *Douglas*), the court also found that in some non-criminal situations, government attorneys must be neutral as well. *Id.* at 352. Ultimately, the court concluded that an action to abate a public nuisance shared sufficient characteristics with criminal prosecutions to require such actions to be brought by attorneys without any interest in the outcome of the case. *Id.* at 352-53.

The California Supreme Court's decision in *Clancy*, which was not grounded in the Due Process Clause (or separation-of-powers concerns), stands alone in terms of case law supporting Lilly's contention that government attorneys in non-criminal actions may not be paid on a contingent basis. In presenting *Clancy* as precedent to be followed, Lilly failed to point out that as *Clancy* is read and applied in California, it "does not bar the public entities from engaging private counsel under a contingent fee arrangement to assist in [public nuisance] litigation, so long as the public entities' in-house counsel retain control over all decision-making." *County of Santa Clara v. Superior Court*, 161 Cal.App.4th 1140, 74 Cal.Rptr.3d 842, 853 (2008). Here, the *Santa Clara* test is met, for Attorney General McMaster has absolute control over the disposition of this case. Article III (D) of the Special Counsel agreement makes this clear:

The Attorney General must approve in advance all aspects of this litigation and shall be included in any settlement discussions. Special Counsel agrees that any settlement in this case must receive the Attorney General's express prior approval in writing. Special Counsel shall confer with the Attorney General as early as practicable in any settlement negotiation process.

Contrary to Lilly's unsupported speculation, evidence in the record reflects that the State of South Carolina's Attorney General retains control and ultimate decision-making

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authority over this litigation. Indeed, General McMaster's affidavit makes clear he personally has spoken directly with Lilly's counsel about possibly resolving this case.

Lilly's discussion of the interplay between contingent fees and due process also does not deal with persuasive adverse authority such as *State v. Hagerty*, 580 N.W.2d 139, 148 (N.D.1998) ("In view of th[e] long-standing acceptance of contingent fee arrangements and in view of the historical authority of the Attorney General, we believe she has the authority to employ special assistants attorneys general on a contingent fee agreement unless such agreements are specifically prohibited by statute."), and *State v. Lead Industries, Ass'n, Inc.*, 951 A.2d 428 (R.I. 2008) (upholding the Rhode Island Attorney General's right to enter into contingent fee agreements with private counsel appointed to bring civil suits). See also *Philip Morris v. Glendening*, 709 A.2d 1239 (Md. 1998) (upholding a contingency fee agreement between private lawyers and the Maryland Attorney General in a civil case). As to the defendant's separation of powers claim, the court agreed with the Attorney General's conclusion that the situation was extraordinary and deemed his decision to hire contingent fee counsel non-reviewable; "[p]rinciples behind constitutional separation of powers place limits on a court's power to review or interfere with the conclusions, acts or decisions of a coordinate branch of government made within its own sphere of authority." *Id.* at 1239 (quoting *Hamilton v. Verdow*, 414 A.2d 914, 921 (Md. 1980)). For another example of a state court rejecting challenges to a contingency fee agreement, see *Kinder v. Nixon*, No. WD 56802, 2000 WL 684860 (Mo. App. W.D. 2000).

In sum, Lilly's contingent fee due process/constitutional violation claim is rejected. At present, only "[a] few state attorneys general's offices, notably California's

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make it a practice not to hire outside counsel on a contingent fee basis." Donald G. Giffort, *Impersonating the Legislature: State Attorneys General and Parens Patriae Product Litigation*, 49 B.C.L. REV. 913, 964 n.323 (2008). In other words, if the practice of hiring private lawyers in special cases by States' Attorneys General was actually unconstitutionally improper, one would expect that some authoritative court would have definitively ruled that way by now. Instead, the evidence is to the contrary. See Richard O. Faulk & John S. Gray, *Alchemy in The Courtroom? The Transmutation of Public Nuisance Litigation*, MICH. ST. L. REV. 941, 968 n.140 (2007) ("the majority of state attorneys general [had] contingent fee arrangements in the tobacco litigation, the mayors of over thirty cities signed contingent fee contracts to sue gun manufacturers").

Lilly's purported due process constitutional challenge is inconsistent with South Carolina's Rules of Professional Conduct; and finds no support in the controlling case law of this Court or the United States Supreme Court.

Thus, under the Contract and in fact, the Attorney General is in control of the litigation, both on an ongoing basis and in terms of its ultimate resolution. Special Counsel must follow the Attorney General's directions and cannot take important actions without the Attorney General's approval. Any claim that the State of South Carolina is not adequately controlling this litigation is contrary to evidence in the record. The hearing in this motion included reliance on an uncontradicted affidavit from the Attorney General testifying to his office's involvement in this case, plus oral argument from a lawyer on the Attorney General's staff. Both the Special Counsel Agreement and the actual conduct of this litigation make clear that the Attorney General is in charge of this case; its outside counsel is fulfilling the same role outside counsel for the State of South

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Carolina always fulfills, regardless of how they are paid: assisting the State of South Carolina in vindicating or defending its rights. After due consideration of the parties arguments and the authorities they cite, the Court concludes there is nothing in the Attorney General's Special Counsel Appointment arraignment deprives Lilly of its right to due process.

LILLY'S SEPARATION OF POWERS ARGUMENTS

Lilly contends the separation-of-powers doctrine is violated on the ground that payment of fees to Special Counsel is unauthorized under S.C. Ann. § 1-7-150(B). The flaw with this argument is that the statute expressly authorizes payment of "the costs of litigation" out of litigation proceeds, and a "cost of litigation" is precisely what legal fees are. Lilly's separation-of-powers argument rests on case law from a single jurisdiction, Louisiana, which is readily distinguishable. The leading Louisiana case is *Meredith v. Ieyoub*, 700 So.2d 478, 482 (La. 1997), followed by *Ieyoub v. W R. Grace & Co.*, 708 So.2d 1227 (La. Ct. App. 3d Cir. 1998). The statute under which those two cases were decided required that "all sums recovered" by suit or settlement "be paid into the state treasury." La. R.S. 30:2205. The Louisiana statute did not recognize the possible need to pay litigation costs; the South Carolina statute, under S.C. Ann. § 1-7-150(B) does. See Jill E. Fisch, *Cause for Concern: Causation and Federal Securities Fraud*, 94 IOWA L. REV. 811, 867 (2009) (listing "legal fees" as one of the "costs of litigation"). Thus, the Louisiana case law relied on by Lilly has no application here.

Another problem not mentioned by Lilly with its *Meredith* separation-of-powers precedent is that the Louisiana cases stand alone—they represent the only defense win on

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the point. Aside from Louisiana cases interpreting the narrow Louisiana statute, courts that have considered the issue uniformly have rejected Lilly's argument:

[N]umerous courts have heard challenges to contingency fee arrangements based on the separation of powers doctrine, but the Supreme Court of Louisiana is the sole court that found it persuasive enough to overturn a contract. The doctrine has failed to gain any significant traction.

Leah Godesky, *State Attorneys General and Contingency Fee Arrangements: An Affront to the Neutrality Doctrine?* 42 COLUM. J.L. & SOC. PROBS. 587, 612 (2009) (citing as examples, *State v. Hagerty*, *supra* and *Kinder v. Nixon*, *supra*. In *Kinder*, the Court stated that "Appellants' fundamental contention is erroneous and the contract is not void.").

As part of its separation-of-powers argument, Lilly contends that, under the Retention Agreement, should the State recover of money from Lilly, the Attorney General would distribute the lawsuit proceeds in an unconstitutional way. This argument is speculative and it is not ripe for adjudication.

SC Code of Laws Section 1-7-150 gives the Attorney General the right to withhold certain funds (investigative costs and costs of litigation) from the proceeds of litigation such as this. There has been no recovery at this time and there is no showing that investigative costs will not exceed or be equal to the 10% of recovery provided for in the contract to be retained by the Attorney General's office. Additionally, it is the Court's finding that the Defense has not shown any evidence amounting to adverse prejudice as to this issue.

The tort case is yet to be tried. A judgment has yet to be entered against Lilly and, depending on the trial's outcome, may never be. Any contention that the Attorney General will act in an unconstitutional way is thus based on events that have yet to occur. Moreover, any provision of the Special Counsel Retention Agreement that would call for

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the Attorney General to commit an illegal act is severable under the terms of Article VII (H) of the agreement. Hence, upon a timely and meritorious challenge, any offensive provision would simply be stricken without causing the entire agreement to fail. Lilly's attack on the Special Counsel Retention Agreement based on its separation of powers argument simply is not ripe at this time. Lilly's contentions are premised on alleged future wrongful acts by the Attorney General are hypothetical, lack substance, do not prove the Agreement's invalidity, and hence are rejected.

LILLY'S ILLEGALITY ARGUMENTS UNDER SECTION 1342

Citing S.C. Code § 8-13-1342, Lilly seeks a ruling that, in essence, the State's case must be derailed on the eve of trial because it is being advanced illegally by Special Counsel. The Court has carefully considered Lilly's argument on this novel point, and rejects it for multiple reasons.

I. The Illegality Contention Has Not Been Affirmatively Pleaded

First, unlike Lilly's due process and separation of powers arguments, Lilly's illegality contentions have not been affirmatively pleaded in its answer. Illegality contentions by way of a defense or avoidance are required to be affirmatively advanced under SCRCF Rule 8(c). In *Hagood v. Sommerville*, 362 S.C. 191, 197, 607 S.E.2d 707, 710 (2005), the South Carolina Supreme Court emphasized the "importance of the right to one's preferred attorney," noting that an order determining the "right to be represented by an attorney of one's choosing is one of those rare orders which, in effect, could determine the action and prevent a judgment from which an appeal might be taken, or could discontinue an action due to the potential impact on both the attorney-client relationship and the overall litigation and trial of the case." The Court concludes that a

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legal position premised on alleged illegality calculated to stymie a plaintiff's chosen path to trial represent a form of defense or avoidance that needs to be affirmatively pleaded under Rule 8(c).

Here, the campaign contribution data on which Lilly relies have long been in the public domain. Lilly has known from the start of this case about Special Counsel's appointment. In its answer filed in October of 2007, Lilly raised due process and separation of powers contentions attacking Special Counsel's appointment and the contingent fee arrangement under which Special Counsel was hired.

In view of the great importance attached to a party's right to counsel of one's choosing, and the possibility that, as stated in *Hagood*, losing counsel "could determine . . . or discontinue an action," the Court concludes that an attack seeking to disqualify counsel based on alleged illegality needs to be specifically pleaded under Rule 8(c). Lilly has not done so here. The instant motion was made on the eve of trial and only after the Court denied Lilly's motion for a continuance. Under the circumstances, the motion is not timely. Because it rests on a contention that has not been properly pleaded, and in view of the undue delay in raising the issue, Lilly's motion to disqualify based on section 1342 must be rejected.

It appears that no complaint has been filed with the State Ethics Commission by Lilly or its counsel concerning the post-retention political contributions by two of the Special Counsel lawyers. At the oral argument Lilly's counsel made clear that the only forum in which the question of compliance with section 1342 had been raised was in this case, and specifically in the context of the disqualification motion.

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Further, it should be noted that it appears that all local counsel both for the State and Lilly have made similar contributions to the campaigns of the Attorney General.

II. Lilly Has Offered No Competent Evidence Of Actual Prejudice

The Court also rejects Lilly's motion to disqualify due to Lilly's failure to show that Lilly will suffer actual prejudice unless relief is granted. In *State v. Bell*, 374 S.C. 136, 646 S.E.2d 888 (Ct. App. 2007), the Court of Appeals analyzed what needs to be shown in order to win a disqualification motion against a solicitor. Bell's contention that the trial court erred in denying his disqualification motion was rejected on the ground that when making a disqualification motion attacking the State, the movant must demonstrate actual prejudice suffered due to the allegedly unethical conduct. The court in *Bell* explained that proof of actual prejudice is required in disqualification motions filed against the State:

In *State v. Smart*, 278 S.C. 515, 299 S.E.2d 686 (1982), *overruled on other grounds by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991), our supreme court addressed the standard for disqualification of a Solicitor's Office where an attorney in that office had been employed by the Public Defender's Office during the pendency of charges against the appellant. There, the court rejected the standard of a presumption of betrayal from mere allegation of successive adverse representation resulting in a per se disqualification. *Id.* at 518, 299 S.E.2d at 688. Instead, the court adopted the requirement of a showing of actual prejudice to the defendant's case. *Id.* at 518-19, 299 S.E.2d at 688. Finding no evidence that any secrets or confidences of Smart were revealed, the court affirmed the denial of Smart's motion for disqualification. *Id.* at 520-521, 299 S.E.2d at 689. Thereafter, in *State v. Chisolm*, 312 S.C. 235, 439 S.E.2d 850 (1994), our supreme court again articulated that an appellant who seeks disqualification of a Solicitor's Office must show actual prejudice. *Id.* at 238, 439 S.E.2d at 852.

Bell, 374 S.C. 141-42, 646 S.E.2d 891 (emphasis added).

Even assuming the validity of Lilly's illegality charge, it is clear that no actual prejudice whatever has been shown here. At the motion hearing, Lilly contended that it was suffering "actual prejudice" at the hands of Special Counsel due to their alleged

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failure to comply with Lilly's discovery needs. No competent evidence was offered on this point, and the charge is at odds with Lilly's repeated admission during the hearing that Lilly was not asserting any violation of Special Counsel's professional obligations as lawyers. This is a significant concession by Lilly.

The Court notes that SCACR 407, Rule 3.4(d) makes it unethical for counsel "in pretrial procedure . . . [to] fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party." Lilly's concession that Special Counsel have acted ethically as lawyers in this matter disposes of its purported actual prejudice contention. In sum, the Court finds that in a disqualification motion under these circumstances, proof of actual prejudice must be shown by the movant. No showing of actual prejudice has been made here. Lilly's failure to prove that it would suffer actual prejudice but for disqualification of opposing counsel is an additional reason why Lilly's motion to disqualify based on section 1342 is overruled.

III. Lilly's Motion Cannot Not Reach Special Counsel Bailey

Lilly's illegality argument made under section 1342 does not rest on the contention that the Appointment of Special Counsel violated the statute when the Retention Agreement was entered into. Lilly appears to concede the Agreement did not violate section 1342 at the time of Special Counsel's appointment. Lilly also concedes that one of the three Special Counsel, F. Kenneth Bailey, Jr., never made any post-appointment contribution reached by section 1342. Thus, the statute can provide no justification for his disqualification at all.

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IV. Section 1342 Does Not Require Disqualification of Special Counsel

As for the two Special Counsel who did make post-appointment contributions to Attorney General McMaster, the Court finds, for the reasons set forth below, that their contributions are not made illegal by the statute and that, further, even if the contributions were covered by the statute, they still would not suffice to justify disqualification on the facts of this case.

It is well understood in South Carolina that a basic rule of statutory interpretation requires that, where possible, statutes receive a construction which will render them valid. *Last v. MSI Construction Co.*, 305 S.C. 349, 409 S.E.2d 334 (1991); *Mitchell v. Owens*, 304 S.C. 23, 402 S.E.2d 888 (1991) (statutes are presumed to be constitutional and will be construed so as to render them valid). "[A] statute must receive such construction as will make all of its parts harmonize with each other and render them consistent with its general scope and object" *Crescent Mfg. Co. v. South Carolina Tax Comm'n*, 129 S.C. 480, 493-94, 124 S.E. 761, 765 (1924); *Polnsett Constr. Co. v. Fischer*, 301 S.C. 343, 391 S.E.2d 875 (Ct. App. 1990). Constitutional constructions of statutes are not only judicially preferred, they are mandated; a possible constitutional construction must prevail over an unconstitutional interpretation. *Henderson v. Evans*, 268 S.C. 127, 232 S.E.2d 331 (1977).

Applied here, this rule of statutory construction requires that this Court refrain from construing § 8-13-1342 as Lilly seeks to have it interpreted, namely as an ethical prohibition covering the practice of law and lawyer-client contractual dealings usable by adverse parties to drive a wedge between the Attorney General and his Special Counsel, appointed to represent the State in litigation.

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V. Control Over the Ethics of Lawyer-Client Dealings Rests with the Court

A major reason Lilly's illegality arguments fails is because neither the General Assembly nor the State Ethics Commission controls the subject of legal ethics in South Carolina. That function belongs to the Supreme Court. Lilly has repeatedly informed this Court that no Court-created ethics rule has been violated here.

At page 5 of its Motion to Disqualify, Lilly explains that the Campaign Reform Act "gave the State Ethics Commission . . . responsibilities over . . . ethical rules of conduct," with section 8-13-1342 prohibiting persons awarded contracts with the State from contributing to campaigns of officials in a position to act on those contracts." *Id.* Insofar as the statute regulates relationships outside the practice of law, it is unexceptionable. Insofar as the statute purports to impose unique and unfair obligations restraints on Special Counsel hired by the State, it raises grave constitutional questions which should be avoided by this Court.

The General Assembly possesses no constitutional role in defining, regulating or punishing otherwise proper and ethical dealings between lawyers and their clients. Pursuant to Article 1, Section 5 of South Carolina's Constitution, the South Carolina Supreme Court possesses the ultimate responsibility for ruling on attorneys' ethical matters. See *In re Okpalaeke*, 374 S.C. 186, 193, 648 S.E.2d 593, 597 (2007), citing *In re Rushton*, 286 S.C. 543, 544, 335 S.E.2d 238, 238 (1985).

An express provision in the Rules of the Supreme Court Rule makes it clear that attorneys' ethics are determined by ethical rules established by the Court, not the General Assembly. See SCACR 407, Rule of Professional Conduct Preamble, ¶ 11, which declares: "To the extent that lawyers meet the obligations of their professional calling,

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the occasion for government regulation is obviated." Lilly has conceded that plaintiff's lawyers here have met the obligations of their professional calling; nowhere does Lilly charge them with a violation of any provision of the Rules of Professional Conduct. Reading section 1342 to create unethical behavior in the attorney-client setting is improper.

When it comes to setting rules of behavior for Special Counsel appointed by the Attorney General, the General Assembly's regulatory power is limited. Thus, in *Williams v. Bordon's Inc.*, 274 S.C. 275, 262 S.E.2d 881 (1980), the Supreme Court struck down a statute aimed at guaranteeing continuances for lawyer-legislators while the South Carolina General Assembly was in session. The Court relied on separation of powers principles in holding the statute invalid, unequivocally rejecting the notion that the General Assembly has the right to assume control over the rendition of legal services. *Williams v. Bordon's Inc.*, 274 S.C. 275, 278, 262 S.E.2d 881, 883-84 (1980). Likewise, the authority to regulate the relationship and the dealings between Special Counsel and Special Counsel's client, the State *ex rel.* the Attorney General, fall within the inherent power of the Supreme Court to control all aspects of the practice of law in South Carolina. *See also, Gmerek v. State Ethics Commission*, 751 A.2d 1241 (Pa. 2000) (Lobbying Disclosure Act, though it applied to nonlawyers as well as lawyers, is unconstitutional in regulating the professional activities which are regulated solely by the judicial branch).

Because of the Supreme Court's special role in policing attorney-client relationships, and because such a specially regulated relationship is involved in the Attorney General-Special Counsel setting, the Court concludes the Legislature did not

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intend to include such relationships within section 8-13-1342's sweep. The Court concludes that the proper way to avoid adjudicating the unconstitutionality of section 1342 is to construe it to be pre-empted by legal ethics rules to the extent it would apply to lawyers.

Pertinent case law supports this policy choice. In the words our Supreme Court used in *Hagood v. Summerville*, 362 S.C. 191, 196, 607 S.E. 2d 707, 710 (2005), "the attorney-client relationship . . . demands a confidential, trusting relationship that often develops over time." The Supreme Court's ethical rules have been written to "require attorneys to maintain the highest professional and ethical standards in their dealings with clients." *Matter of Conway*, 305 S.C. 388, 393, 409 S.E.2d 357, 360 (1991). The attorney-client relationship has long been viewed as sacrosanct. As was stated in *Martin v. Camp*, 219 N.Y. 170, 173, 114 N.E. 46 (1916),

[n]otwithstanding the fact that the employment of an attorney by a client is governed by the contract which the parties make, the peculiar relation of trust and confidence that such a relationship implies injects into the contract certain special and unique features.

As was stated in *Plaza Shoe Store, Inc. v. Hermel, Inc.*, 636 S.W.2d 53, 57 (Mo. 1982), the relation between a lawyer and his client is a delicate and exacting one, highly personal. (quoting *Craig v. Jo B Gardner*, 586 S.W.2d 316 (Mo. banc 1979) (quoting 7 AM.JUR.2D *Attorneys at Law* ' 92 at 105 (1963))). The Court concludes section 1342 has not application in the attorney-client setting.

VI. Section 1342 Yields an Unfair and Inequitable Result if Applied as Lilly Requests

Besides pre-emption of the regulation of attorneys by virtue of the separation-of-powers doctrine and Court Rule, another problem with section 1342, is the unfair result

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the statute would yield, if Lilly's section 1342 argument prevails. According to Lilly the statute criminalizes campaign contributions made to a government official by lawyers he hires, but the statute turns a blind eye to campaign contributions made to the same official by lawyers for the other side. The lawyer who signed Lilly's motion to disqualify, and the political action committee for the local law firm representing Lilly have both made significant campaign contributions to the Attorney General within the last year, i.e., while this case is pending. The corrupting potential flowing from adverse lawyers' contributions is certainly no different from that flowing from payments by counsel hired by the government official in question.

It simply is bizarre to say that the lawyers an official is working with cannot show their support for the official (and exercise their First Amendment rights) by making a contribution to him or her, but the lawyers on the other side (who may be seeking from the official a favorable deal for their client) can make contributions calculated to further their client's agenda. The facts before this Court show this is not merely a hypothetical problem.

A statute which prohibits a government official's litigation allies from contributing to him, but permits his litigation adversaries to do so is inordinately unfair. It is obvious that section 1342 was written without contemplating the practicalities of the litigation setting or the special role played by the Supreme Court in policing attorney-client relationships. This is another persuasive reason the statute should not be construed as applicable here. To the extent it discriminates against campaign contributors aligned in litigation with a government official, but allows contributions by the official's

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adversaries, it is illogical and unfairly deprives the official's retained counsel of equal treatment, that is, equal protection under the law.

VII. An Ethics Commission Opinion Supports Reading § 1342 Narrowly

The Court notes in passing that even the State Ethics Commission tends to read section 1342 narrowly. Ethics Opinion SEC A092-019 (Dec. 18, 1991), analyzes Section 1342 and concludes:

The Commission does not believe that the General Assembly intended to restrict campaign contributions to the extent that employees of companies that contract with the State would be prohibited from making a campaign contribution. Accordingly, the Attorney General's campaign may accept campaign contributions from lawyers and employees that receive contracts to provide legal services under the Attorney General's Associate Counsel Program.

Special Counsel points out that under the Retention Agreement by which they were appointed, any fees received by the Special Counsel will be paid to them as joint venturers. There is some merit in this analysis, for if the suit succeeds, the Retention Agreement makes it clear Special Counsel will share the profits, if any, flowing from their work as co-venturers. The Retention Agreement evidences a joint undertaking by Special Counsel, subject to the Attorney General's overall control, of a single project (the Lilly lawsuit) for profit, a commitment to share profits as well as losses, a contribution of skills and property by the co-venturers, and a community interest and control over the subject matter of the enterprise. It appears that as a result of the Retention Agreement, Special Counsel did in fact form a joint venture to prosecute this case on behalf of the State in this case. See *Berger v. Mead*, 127 Mich. App. 209, 338 N.W.2d 919, 922 (1983). Under the Campaign Reform Act relied on by Lilly, joint ventures are covered persons. See S.C. St. Ann. 8-13-1300 (25) defining person to include a "joint venture."

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The above-quoted 1991 Opinion rendered by the State Ethics Commission expresses the belief that the General Assembly did not intend "to restrict campaign contributions to the extent that employees of companies that contract with the State would be prohibited from making a campaign contribution." Opinion SEC A092-019 (Dec. 18, 1991), *supra*. Here, it is possible to view the "company" the Attorney General appointed as a de facto joint venture formed by Special Counsel for purposes of undertaking the Lilly case. This is significant, because the joint venture itself has never contributed anything to Attorney General McMaster; two of the joint venture's members, two of the members' firms, and employees of two members' firms have, but such contributions are plainly permitted under the Ethics Commission's ruling that "the Attorney General's campaign may accept campaign contributions from lawyers and employees that receive contracts to provide legal services."

Moreover, as noted above, it would be anomalous in the extreme to construe a statute to criminalize unsolicited campaign contributions by lawyers toiling on behalf of the State against a litigant like Lilly, while permitting Lilly's lawyers to make campaign contributions to the lawyer leading the attack against them and their client.

VIII. Appointment and Use of Special Counsel Is Properly Within the Attorney General's Powers and Unaffected by § 1342

The Attorney General is a constitutional officer, and is charged with the duties of the State's chief legal officer, possessing broad constitutional, statutory and common law authority to represent the State, to enforce the laws of South Carolina, and to protect "public rights." *State ex rel. Condon v. Hodges*, 349 S.C. 232, 240, 562 S.E.2d 623, 627 (2002). See also § 1-7-10 *et seq.*, including § 1-7-30 [Attorney General appoints assistants]; § 1-7-85 [Office of Attorney General may obtain reimbursement for attorneys

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fees or investigative costs or costs of litigation awarded by court order or settlement]; § 1-7-170 [a "department or agency of state government may not engage on a fee basis an attorney at law except upon the written approval of the Attorney General and upon a fee as must be approved by him"] It is the Attorney General who is responsible "for vindicating wrongs against the collective citizens of the State." *Condon v. Hodges*, *supra*.

As the chief law officer of South Carolina, the Attorney General is authorized not only to appoint assistant attorneys general to carry out these duties, see § 1-7-30, *supra*, but to employ special counsel from the private sector "to represent and protect the interests of the state." *Cooley v. S.C. Tax Comm.*, 204 S.C. 10, 28 S.E.2d 445, 448 (1943). It is generally acknowledged that "[a] determination by the attorney general of the extraordinariness of a case calling for outside counsel is a decision within his discretionary authority . . . and it has been stated there is no limit on the attorney general's ability to appoint a special prosecutor." 7 Am.Jur.2d, *Attorney General*, § 14.

In view of the great latitude given to decisions by the Attorney General in prosecuting and staffing cases, it is appropriate to read section 1342 narrowly. Section 1342 is best read to not reach the dealings between Special Counsel and the Attorney General relates to the unique role of the Attorney General as chief prosecutor of the State and as the state's chief legal officer. The Supreme Court has consistently recognized that certain constraints normally imposed by ethical requirements are inapplicable to the Attorney General's representation of the public interest. For example, in *State ex rel. McLeod v. Snipes*, 266 S.C. 415, 223 S.E.2d 853 (1976), the Court held that representation by the Attorney General of a public officer in a criminal case did not

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ethically conflict with the Attorney General's role in prosecution of that case. As the

Court noted,

[w]e find no mandated conflict of interest in the role occupied by the Attorney General under the Constitution [as chief prosecutor] and the statute [requesting the Attorney General to defend public officers]. The Attorney General is not required to sit at both the prosecution and defense table in the prosecution of a public official, in the sense that he or all of his staff equally participate in the prosecution or defense [The Attorney General has] ample latitude to designate an individual or individuals who could independently represent the public official, if the Attorney General found that he could not do so because of a conflict with his duties as chief prosecuting officer.

223 S.E. 2d at 855. See also, *Langford v. McLeod*, 269 S.C. 466, 238 S.E.2d 161 (1977)

(Attorney General's representation of municipal officials in criminal prosecution did not result in inherently conflicting or unethical duties upon Attorney General, including

requirement that prosecuting officer not accept fees in civil action based upon same facts); *State ex rel. McLeod v. McInnis*, 266 S.C. 415, 223 S.E.2d 853 (1976) (Attorney

General represented adverse parties in case brought to declare JARC statutes

unconstitutional). Clearly, as the State's top lawyer, the Attorney General must shoulder

special duties and responsibilities imposed by statute in order properly to represent the

State in court and to oversee the State's litigation. With these provisions in mind, the

Court does not believe that § 8-13-1342 is applicable to the situation here, a situation

which involves the Attorney General's retention of private counsel in complex litigation

to represent the State on a contingency fee basis.

Examination of the precise language of § 8-13-1342 demonstrates the great difficulty in applying this statute in this instance. Section 8-13-1342 is expressly applicable to an award of a "contract with the state" However, as has been noted,

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outside counsel's rights to the proceeds of the contingent fee for performance of his or her work is not a "claim against the state," but one against the fund paid by the defendants (if any). *People v. Philip Morris*, 759 N.E.2d 906 (2001). Moreover, courts have held that such proceeds are not state funds or "public funds" since they never are deposited in the State Treasury. *Conant v. Robins, et al.* 603 N.W.2d 143 (Minn. 1999).

Further, § 1-7-170 expressly authorizes the Attorney General to approve any engagement "on a fee basis [of any] attorney at law" to represent an agency or department of state government and to approve the fee of that private attorney or attorneys. This statute, which for many years appeared each year as a Proviso in the Appropriations Act, was codified by the General Assembly as § 1-7-170 in 2008, long after § 8-13-1342 was enacted in 1991 as part of the State Ethics Act. The Court notes that Section 1-7-170 gives virtually unlimited discretion to the Attorney General to approve private counsel and the fee arrangement for such counsel's services. Such would, of course, include a contingency fee arrangement with the Attorney General's own designated attorneys to act as special counsel on his behalf.

On the other hand, § 8-13-1342 imposes clear constraints upon the award of contracts with the State by requiring that no campaign contributions may be given to any person awarding a contract with the State. Under ordinary rules of statutory construction, § 1-7-170, a specific statute enacted later in time to the more general § 8-13-1342, would be deemed controlling. *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000).

The Court also finds the Supreme Court's decision in *S.C. Coastal Council v. State Ethics Commission*, 306 S.C. 41, 410 S.E.2d 245 (1995) to be persuasive. In *Coastal Council*, the Ethics Commission had concluded that the Coastal Council was

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governed by a provision in the Ethics Act forbidding any person from serving as a member of a body regulating business with which that person is associated. However, the Court concluded that such provision was inapplicable to the Coastal Council. In the Court's view, the separate body of statutory law governing the Coastal Council was controlling. According to the Supreme Court, "[a]fter reviewing the Act, which defines Coastal Council's regulatory duties, and after examining Coastal Council's regulations, we conclude that Coastal Council regulates the preservation and utilization of coastal resources." 410 S.E.2d at 247.

Likewise, the various statutes and common law relating to the powers and duties of the Attorney General bestow upon him broad discretion to appoint or engage attorneys to assist him in the representation of the State and to determine the fees for such representation rather than to award a contract with the State in the ordinary course of state business. Further, special ethics rules specifically tailored to policing the propriety of attorney-client dealings exist under the Rules of Professional Conduct and apply to the relationship between the Attorney General and the Special Counsel he appointed. Thus, based upon the same type of reasoning as in *Coastal Council*, the Court finds that § 8-13-1342 is inapplicable to the situation where the Attorney General appoints private counsel on a contingency fee basis to assist him in the representation of the State in this matter.

Finally, as an additional reason in support of the Court's finding that section 1342 offers no grounds for Lilly's disqualification motion, the Court notes that the special confidential fiduciary relationship embraced by the Retention Agreement falls outside the type of standard type of commercial contract award at which section 1342 is targeted. Unlike a normal state contract with a supplier or goods or a service-provider, here no

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payment has been made or will be made out of State funds to Special Counsel. They will be paid, if at all, purely out of any fund they are able to generate for the State's benefit. The fiduciary and adversary pressures involved in this case make the setting very different from that encountered in the standard commercial context. Without denying that there is a financial aspect to the dealings between Special Counsel and the Attorney General, the Court concludes that the appointment of Special Counsel by the Attorney General reflects a relationship different in kind and degree from the contract-award setting envisioned by section 1342. See, *Kinder v. Nixon*, 2000 WL 684860 (Mo. App. W.D. 2000) (Athe Attorney General has the authority to appoint special assistants unless the Legislature has expressly forbidden the exercise of that power.").

Stated differently, there are numerous huge differences between retainer agreements between Special Counsel and the Attorney General and commercial contracts between a municipality and its vendors. Supreme Court rules thoroughly regulate the former relationship not the latter. Intense, well understood fiduciary obligations permeate the former; the latter concerns mostly business as usual. Most importantly, the special attorney-client relation that arises when the Attorney General appoints a law firm or group of lawyers in whom he has absolute confidence is far different in scope and content from those generated when contracts are awarded to commercial entities by the State through other processes such as the State Procurement Code.

No provision of law expressly forbids the giving of a campaign contribution by a joint venture member to the Attorney General by whom he was appointed, unless there is a *quid pro quo* or some other unique circumstance. No such charge has been made here.

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IX. A Balancing of Equities Supports Denial of the Motion to Disqualify

As noted above, Lilly has not presented competent evidence of any adverse prejudice it has suffered due to the behavior of Special Counsel. There has been no "meaningful showing that the trial process here will be tainted in any way" due to Special Counsel's participation. *See Reilly v. Computer Assoc. Long-Term Disability Plan*, 423 F. Supp.2d 5, 10 (E.D. N.Y. 2006). It is appropriate to weigh the foreseeable lack of taint against the hardship that disqualification in this very hard-fought and difficult case would place on plaintiff on the eve of trial. *Id.* Weighing the parties' relative hardship is appropriate here. *See In re Bohack Corp.*, 607 F.2d 258, 263 (2d Cir.1979) (stating in the bankruptcy context that "[t]he delay and additional expense created by substitution of counsel is a factor to which we have attached considerable significance in these cases."). A weighing of the parties' relative hardship provides further justification for denial of the motion to disqualify based on Lilly's § 1342 illegality claim. *See also*, SCACR 407, Rule 3.7(a)(3) (listing "substantial hardship on the client" as a factor to be evaluated in determining whether a lawyer-witness must be disqualified).

X. Administrative Remedies Have Not Been Exhausted

Lilly has invoked the Ethics Act and cited an opinion by the State Ethics Commission interpreting section 1342 in its brief. Conspicuously absent from the record is any sign that Lilly has presented its ethics charges based on section 1342 to the attention of the Ethics Commission for its consideration. This Court is disinclined to mete out severe punishment to lawyers and their client based on a novel application of a statute that even the Ethics Commission seems to agree needs to be narrowly construed.

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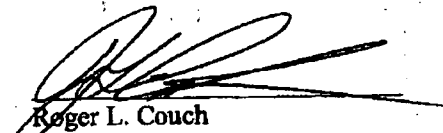
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In any event, to repeat, there has been no showing that there has been any prejudice to the Defendant and the court finds that the Special Counsel Retention Agreement contract does not constitute a denial of equal protection or due process in this case. If the Defendant wishes to complain about the behavior of Special Counsel in light of section 1342, it has access to the same Commission established to investigate and rule on such matters as any other citizen.

Alternatively, if Lilly wishes to test the legality of Special Counsel's service, the Court believes that subject should be more properly addressed in a declaratory judgment action, which has not been filed at this point, not through a motion to disqualify counsel filed at this late hour in this case. The Court's consideration of the matter on the eve of trial is particularly inappropriate since it is not an issue which has been presented to the court by pleading as required under Rule 8(c)..

SUMMARY

For all of the foregoing reasons, Lilly's Motion to Disqualify is hereby DENIED.
AND IT IS SO ORDERED.


Roger L. Couch
Circuit Court Judge

September 22 2009
Spartanburg, South Carolina

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**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

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

and

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

Plaintiffs

v.

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

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Civil Action No. 2010-CP-40-4900

**PLAINTIFFS' MEMORANDUM
OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS**

2010 AUG 27 4:24:24
JEANETTE W. BRIDE
C.C.P. & J.

FILED

In this lawsuit, Plaintiffs seek redress for the substantial injury done to the financial legacy of one of South Carolina's most famous and generous icons, the late James Brown. This

injury was the result of acts and omissions of the former Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust, Adele Pope and Robert J. Buchanan, Jr. The resulting damage—which could be in the tens of millions of dollars—threatens the fulfillment of the very legacy they were charged with protecting.

James Brown died on December 25, 2006. The initial Personal Representatives and Trustees were removed and replaced by Adele Pope and Robert Buchanan on November 20, 2007. On that date, they assumed all fiduciary responsibilities to the Estate and Trust. On May 26, 2009, Judge Doyett A. Early, III removed Pope and Buchanan as Personal Representatives and Trustees and installed Russell L. Bauknight in those positions.

Prior to May 26, 2009, a number of disputes arose among the Plaintiffs concerning the validity of the estate documents, the assertion of an elective share, and the identification of beneficiaries. By way of a negotiated agreement, the Plaintiffs have agreed to set aside their differences on these issues. This Settlement Agreement was approved in full by Judge Early on May 26, 2009 (a copy of which is attached at Exhibit A). Although specifically ordered to do so, Defendants have refused to sign the Settlement Agreement.

The most significant component of the Settlement Agreement is the establishment of a Charitable Trust intended to provide financial assistance to deserving students who seek education in South Carolina and Georgia. This objective was the often stated and well-known desire of James Brown. Mr. Brown's family members and the Attorney General, through their compromise in the Settlement Agreement, seek to fulfill this objective. The acts and omissions of the Defendants have significantly compromised this dream.

In this lawsuit, the Plaintiffs seek to recover damages for multiple breaches of fiduciary duty and other acts of negligence on the part of the Defendants. Defendants seek to obfuscate

their own culpability by characterizing this action as a continuation of that which has gone before. Defendants seek to confuse matters by raising irrelevant issues that do not bear on the merits of this suit. Defendants seek to avoid responsibility by litigating issues that are not before this Court. For these reasons, and the reasons set forth below, Defendants' Motion to Dismiss should be denied.

In their Motion to Dismiss, Defendants set forth ten bases, which are addressed herein:

1. **Plaintiffs need not comply with S.C. Code Ann. § 15-36-100 because Plaintiffs have not alleged professional negligence.**

Defendants contend that Plaintiffs' suit should be dismissed because it is not accompanied by an expert witness affidavit required under S.C. Code Ann. § 15-36-100 (1976, as amended). This code section is inapplicable because Plaintiffs have not alleged professional malpractice by Defendants. Plaintiffs' claims concern Defendants' breach of duties attendant to them as personal representatives and trustees (hereinafter collectively "administrators"), not as licensed attorneys.

2. **This matter is unique and neither precisely nor substantially the same as any litigation with similar parties or similar claims.**

Defendants assert that Plaintiffs' suit should be dismissed because "the matters alleged in this action are substantially the same as matters alleged in other cases pending in the State Court or the South Carolina Court of Appeals." (Mot. Dismiss, p. 3) Defendants do not cite Rule 12(b)(8), SCRPC in their Motion to Dismiss, but we assume it to be the basis for their motion. "In South Carolina, dismissal under Rule 12(b)(8) may be proper when there is (1) another action pending, (2) between the same parties, (3) for the same claim. The rule has historic ties to a former statute providing a defendant a similar opportunity to demur; our supreme court traditionally interpreted that statute narrowly, stating that it only applied when there was identity

of parties, causes of action and relief. We find this approach consistent with modern day practice under rules similar to our Rule 12(b)(8). Accordingly, we interpret the rule narrowly such that the claim must be precisely or substantially the same in both proceedings in order for the drastic remedy of dismissal to be appropriate under Rule 12(b)(8).” Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 105-106, 674 S.E.2d 524, 531-32 (Ct.App.2009) (internal citations omitted).

Defendants are unable to satisfy the requirements of Rule 12(b)(8). The case of Corbett v. City of Myrtle Beach, decided before Capital City Ins. Co. but unaffected by its ruling, focused on whether a “claim involves the same parties and is based upon the same facts and circumstances” as the case already pending. 336 S.C. 601, 610, 521 S.E.2d 276, 281 (Ct.App.1999). In Corbett, a widow brought a consolidated wrongful death and survivor action. A year later, she filed a tort claim for negligent infliction of emotional distress as a bystander. The Court found the tort claim properly dismissed because the facts and circumstances giving rise to the wrongful death and survivor actions were the same as those giving rise to the tort action.

Such similarities are absent in the case *sub judice*. Defendants contend that four cases are substantially similar to this case:

McMaster v. Dallas, et al, 2009-CP-02-1647 (“Case 1647”);¹
McMaster v. Brown, et al, 2009-CP-02-1810 (“Case 1810”);
Thomas, et al v. Bradley, et al, 2007-CP-02-0122 (“Case 122”); and
Brown, et al v. Pope, et al, 2008-CP-02-0872 (“Case 872”).

These cases were resolved by way of the May 26, 2009 Order approving settlement, which is under appeal. A review of the May 26 Order indicates that these cases are inapposite to the case at bar. There are no doubt “other action[s] pending” in what can be termed the Brown Estate litigation. Indeed, there have been suits contesting the Will and Trust; the suitability of Cannon,

¹ Defendants cite “James Brown Case 2009-CP-02-1647” in their Motion to Dismiss, p. 3. We assume they mean 2008-CP-02-1647 as a 2009 case cannot be found in the Aiken County Judicial Index.

Dallas, and Bradley as fiduciaries; and the existence of elective share, omitted spousal share, and omitted child claims. However, not one of the lawsuits brought in relation to this Estate concerns the breaches of fiduciary duty by Adele Pope and Robert Buchanan in the management of the Estate.

Although other actions are pending that at times involve the same parties and appear to involve some of the same facts, the claims of these other actions are not based upon the same facts and circumstances as those in the case at bar.

3. The series of court orders cited by Defendants do not amount to a ratification of the acts that give rise to the causes of action in this matter.

Defendants submit that a series of Circuit Court and Appellate orders ratify the acts of Defendants in their service as administrators. We address each in turn.

a. Circuit Court Order dated January 8, 2008

By way of an Order dated January 8, 2008, Circuit Judge Early granted the payment of fees and costs for Defendants work as administrators. A trial court's provision of fees does not amount to a ratification of the acts for which the fees are paid. Payment acknowledges the completion of those acts, but not the reasonableness of such acts as contemplated in this lawsuit. At least one lawyer-executor discovered that an award of administrative fees does not shield the administrator from liability as an administrator or as a member of the Bar. In the Matter of W. Richard James, 267 S.C. 474, 229 S.E.2d 594 (1976).

b. Circuit Court Order dated April 8, 2008

By way of an Order dated April 8, 2008, Circuit Judge Early denied the motion to reconsider Defendants' appointment as administrators. In the Order, Judge Early observes that Defendants "have properly performed" and "that their service in light of the emerging facts related to the former PR/Trustees has been outstanding." *Id.*, p. 41, 46. We submit that Judge

Early's statements are dicta. "Judicial dicta is 'not essential to the decision.' Dicta or, as it is also known, dictum 'is a statement on a matter not necessarily involved in the case, and is not binding as authority. Dictum is an opinion expressed by a court, but which, not being necessarily involved in the case, is not the court's decision.'" Nash v. Tindall Corp., 375 S.C. 36, 40-41, 650 S.E.2d 81, 83 (Ct.App.2007) (internal citations omitted). Judge Early's order should be read "in light of the judge's intent as discerned from the order as a whole." White's Mill Colony Inc. v. Williams, 363 S.C. 117, 124, 609 S.E.2d 811, 815, FN 1. (Ct.App.2005) (citing Weil v. Weil, 299 S.C. 84, 90, 382 S.E.2d 471, 474 (Ct.App.1989) (holding that "[t]he determinative factor is the intent of the court, as gathered, not from an isolated part thereof, but from all the parts of the judgment itself. Hence, in construing a judgment, it should be examined and considered in its entirety"))). The doctrine of the "law of the case" should not be applied to expressions that are not necessary to the decision of an order. Id.

The central decision of the April 8 Order was the denial of a motion to reconsider Defendants' appointment as administrators. Based on the evidence before him, Judge Early concluded that nothing had changed from the date of appointment to warrant their removal. As knowledgeable and experienced as Judge Early is with the substance of this case, he has never peered behind the curtain of the Defendants' administrative activities. A denial of a motion to reconsider and the expression of favorable opinions on estate management based on limited facts should not operate as a ratification of all of Defendants' acts.

c. Circuit Court Order dated February 20, 2008

By way of an Order dated February 20, 2008, Judge Early provided for the disposition of certain tangible personal property and real estate. Judge Early made this disposition in light of the extensive mishandling of the Estate by Defendants' predecessors, Albert Dallas, David

Cannon and Alfred Bradley. In the issuance of this order, like all others, Judge Early acted based on the facts before him. A sale of these items may have seemed a progressive step in the shadow of the deplorable administration of Dallas, Cannon and Bradley. However, the February 20 Order did not – and could not – contemplate the widespread mishandling that occurred by Defendants during the course of their administration.

d. Circuit Court Order dated April 1, 2008

On April 1, 2008, Judge Early issued an Order finding that the provisions of his earlier filed Order of February 20 had been complied with and the contract and sale contemplated therein should be executed. The reasoning regarding the February 20, 2008 Order (§3.c. *supra*) in this subsection is incorporated herein by reference.

e. Court of Appeals Order dated July 14, 2008

By way of an Order dated July 14, 2008, Judge Jasper Cureton of the Court of Appeals instructed that the Christie's Auction sale should proceed. This brief order concerned a procedural issue (i.e. whether a stay should be lifted) rather than a substantive evaluation of Defendants' acts as administrators.

f. Court of Appeals Order dated November 5, 2009

Defendants contend that an Order of the Court of Appeals dated November 5, 2009 and relieving them of fiduciary responsibility operated as an approval of their previous acts. First, we are unable to identify an order dated November 5, although there are several dated November 6, 2009. The Order we assume is referenced in Defendants' Motion to Dismiss is one dated November 6 signed by Judges Williams, Geathers and Cureton of the South Carolina Court of Appeals. Contrary to Defendants' assertion that the Order operates as a ratification of Defendants' fiduciary acts, the Order simply denotes a transfer of fiduciary duties at a particular

date in time. We can only assume that Defendants' place great stock in the Court of Appeals' language that "Bauknight should be substituted because the liability for mismanagement of the Estate or the Trust now falls on him, not [Pope and Buchanan]." Order, p. 6. Plaintiffs place great stock in this language as well. For if the Court of Appeals' Order demarcates an end to a period of liability for Defendants, it follows that a period existed for which Defendants can be held liable. Our Complaint alleges breaches of duty by Defendants during the period of their administration. It does not allege breach of duty by Defendants for mismanagement of the Estate after the Settlement was approved, because a fiduciary relationship did not then exist. The Order of November 6, 2009 is only concerned with the procedural substitution of parties necessary in the wake of Defendants' replacement with Bauknight.

4. **The Attorney General has the statutory and constitutional authority to intervene on behalf of charitable trusts.**

Defendants assert multiple grounds for dismissal in part 4 of their Motion to Dismiss, all stemming from their general contention that the Attorney General is exceeding his statutory and constitutional authority by being a plaintiff in a private tort suit. Many of these grounds attack the propriety of the Attorney General's appointment of private attorneys as special counsel, addressed in part five of our Memorandum, *infra*. In their litany of other arguments in this part of their Motion, Defendants assert that the Attorney General has no right to be a plaintiff in this private tort suit, that the Attorney General's presence in the suit violates the separation of powers, that the Attorney General has no beneficial interest in the estate plan at issue, and that there are no allegations that Plaintiff Bauknight is a proper agent of the Attorney General. Defendants also contend that campaign finance reform laws prohibit the Attorney General from participating in this lawsuit. Lastly, Defendants argue generally that the Attorney General has exceeded his statutory authority in the realm of regulating the administration of public charities.

The Attorney General is a party to this lawsuit because of the statutory scheme set up by the legislature for the enforcement and administration of charitable trusts. The Attorney General has done nothing but act according to statutorily granted authority and procedure since the beginning of this litigation. Moreover, Defendants, in their tireless effort to prevent the approval of the Settlement Agreement, pursued and lost this argument. Judge Early plainly ruled that the Attorney General has the very authority and standing that Defendants seek to deny. *See Order Approving Settlement* at pp. 20-23.

One of the primary statutes authorizing the Attorney General's presence in this case is S.C. Code Ann. § 1-7-130:

The Attorney General shall enforce the due application of funds given or appropriated to public charities within the State, prevent breaches of trust in the administration thereof and, when necessary, prosecute corporations which fail to make to the General Assembly any report or return required by law.

S.C. Code Ann. § 1-7-130 (1976). Defendants contend that this statute limits the Attorney General's authority vis-à-vis the enforcement of charitable trusts. The plain language of the statute reveals the opposite; this provision is a grant of authority to the Attorney General's office to protect charitable institutions. Further, the Attorney General is given specific authority over the enforcement of charitable trusts such as the one at issue in this case: "The settlor of a charitable trust, the trustee, *and the Attorney General, among others* may maintain a proceeding to enforce [a charitable trust]." S.C. Code Ann. § 62-7-405(c) (1976) (emphasis added). The Official Comment to this section of the Code indicates that the Legislature gave the Attorney General standing to sue, even when other entities with standing have brought suit: "The grant of standing to the settlor [in § 62-7-405(c)] does not negate the right of the state attorney general or persons with special interests to enforce either the trust or their interests." Official Comment, S.C. Code Ann. § 62-7-405 (1976). Additionally, the statutes make clear that the Attorney

General, at least for the purposes of the Trust Code, is a "beneficiary" of a charitable trust. See S.C. Code Ann. § 62-7-103(2)(C) (1976) ("'Beneficiary' means a person that . . . [i]n the case of a charitable trust, has the authority to enforce the terms of the [t]rust"); see also S.C. Code Ann. § 62-7-1001(a) (1976) ("A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust"). Without question, the statutory law of South Carolina gives the Attorney General the right to intervene to enforce a charitable trust and to sue the trustee of a charitable trust for breach of trust, because the Attorney General, as a representative of the people, is a beneficiary of such a trust.

South Carolina case law confirms the propriety of the Attorney General acting on behalf of a charitable trust. In Furman University v. McLeod, the Supreme Court explained the rule:

[The Attorney General at the time of this case], as Attorney General of South Carolina, upon whom is imposed the responsibility of protecting interests of the public in matters relating to the administration and enforcement of charitable trusts, has been named Defendant . . . Under [the predecessor to S.C. Code Ann. § 1-7-130], the Attorney General of South Carolina is charged with the duty of '[e]nforce the due application of funds given or appropriated to public charities within the State, [and] prevent breaches of trust in the administration thereof.' It is also the general law that in the matter of administering or enforcing charitable trusts, the Attorney General is the proper party to protect the interest of the members of the public at large, as distinct from those having 'immediate or peculiar interests.'

Furman Univ. v. McLeod, 238 S.C. 475, 482-83, 120 S.E.2d 865, 868 (1961). Not only does this case reinforce the statute granting the Attorney General the authority to enforce a charitable trust, it also speaks of the Attorney General's duty from the "general law" to administer the trust. The Supreme Court reinforced these basic rules of law in the more recent case of Epworth Children's Home v. Beasley, wherein the Court recognized the authority of the Attorney General to oppose an orphanage-trustee's petition to dissolve a charitable trust, even when the trustee and the only other presently existent beneficiary consented to the dissolution. 365 S.C. 157, 163-64, 616

S.E.2d 710, 713-14 (2005) (citing S.C. Code Ann. § 1-7-130 (2005); S.C. Code Ann. § 62-7-503 (1987) (revised and incorporated into current S.C. Code Ann. § 62-7-405 (1976)); Furman Univ., 238 S.C. at 482, 120 S.E.2d at 868) (“The South Carolina Attorney General’s Office (the State), as authorized by statute, responded by opposing the [t]rustee’s petition and asking the probate court to protect the interests of the charitable trust”). South Carolina case law is clear: the Attorney General’s office has the authority to represent the interests of the people of South Carolina in matters pertaining to charitable trusts, and this authority goes so far as to allow the Attorney General to challenge the decisions of the trustee made with the consent of the beneficiaries.

The undisputed facts in this case indicate that the Attorney General’s office is doing nothing more than its statutory duty to act on behalf of charitable trusts. Mr. Brown’s will established two testamentary trusts, the Brown Family Educational Trust and the “I Feel Good” Trust. (See Order Approving Settlement, p. 3, May 26, 2009). The latter trust was created to provide scholarships to students in South Carolina and Georgia. (Order Approving Settlement, p.3.) The Attorney General intervened in the litigation in September of 2007 to protect the interests of any charitable trusts created by Mr. Brown’s will, and the Attorney General has been involved in the case since then pursuant to Judge Early’s granting the Motion to Intervene. (Order Approving Settlement, p. 5.) The litigation over the will and trusts of Mr. Brown settled in 2008, with Judge Early approving the settlement in May of 2009. (Order Approving Settlement, pp. 9-11.) Plaintiff Bauknight was appointed Special Administrator and Special Trustee for the purposes of reviewing the settlement. (Order Approving Settlement, p. 11.) As part of the settlement, another charitable trust was set up as a successor to the “I Feel Good” Trust. See 2008 Settlement Agreement, ¶ 5(b). As a result of the continuing existence of a

charitable trust, the Attorney General has remained in the litigation, actively seeking to recover funds for the trust so that its charitable purpose may be continued and expanded. Well-established South Carolina law authorizes the Attorney General to participate in this lawsuit, Defendants' myriad objections notwithstanding.

Finally, the Attorney General asserts that South Carolina's campaign finance reform laws, S.C. Code Ann. §§ 8-13-100 et seq. (2009 Supp.), and specifically § 8-13-1342, are wholly inapplicable to this complex probate litigation. The Attorney General is acting in his *parens patriae* role as the chief legal officer for the State, not as an individual candidate for elected office.

5. **It is well-established law that the Attorney General may appoint private attorneys to act as special counsel on behalf of the State.**

Defendants contend that the Attorney General is without authority to appoint private attorneys as special counsel to represent the State of South Carolina. This issue has been resolved in favor of the Attorney General by a Circuit Court applying Supreme Court precedent. In South Carolina v. Eli Lilly and Co., case no. 07-CP-42-1855, the defendant pharmaceutical company moved to disqualify the special counsel appointed by the Attorney General to prosecute the case on behalf of the State, arguing that the employment of special counsel violated the separation of powers doctrine and the due process clauses of the United States and South Carolina Constitutions. (See Order of Judge Couch Denying Motion to Disqualify Special Counsel, p. 3, Sept. 22, 2009 and attached hereto at Exhibit B (hereinafter "Order of Judge Couch").) In Eli Lilly, Judge Couch ruled that it is within the boundaries of the Attorney General's authority to hire private counsel, even counsel retained on a contingent fee basis:

[T]here is no question that the Attorney General has authority to hire legal counsel to protect the State's interests . . . the South Carolina Supreme Court has

recognized that the Attorney General, as the State's chief legal officer, possesses the authority to appoint and approve private counsel to represent the State. Courts have almost universally recognized that Attorneys General possess broad authority to appoint private attorneys as special counsel on a contingent fee basis to assist in the representation of the public interest.

(Order of Judge Couch, p. 7-8 (citing Cooley v. S.C. Tax. Comm'n, 204 S.C. 10, 28 S.E.2d 445 (1943)).) In Cooley, the Supreme Court recognized the Attorney General's authority to employ special counsel in investigating the appropriate taxable value of a decedent's estate. See Cooley, 28 S.E.2d at 445, 447-48 ("the Attorney General, pursuant to the powers vested in him as the Supreme Law Officer of [South Carolina], authorized and directed the employment of special counsel in this case to represent and protect the interests of the State"). Simply stated, Defendants' contention that the Attorney General may not employ private counsel is without merit under the well-established law of South Carolina.

6. **Plaintiffs have joined all necessary parties to the suit. Forlando and Romunzo Brown are not indispensable parties as contemplated under the Rules of Civil Procedure. Further, the appointment of Guardians ad Litem are unnecessary.**

Defendants contend that the failure to join Forlando and Romunzo Brown and the failure to secure the appointment of *guardians ad litem* (GALs) for the minor parties is fatal to this matter. We address each accusation in turn.

a. **Failure to join Forlando and Romunzo Brown as parties.**

Forlando and Romunzo Brown are not indispensable parties as contemplated under Rule 19, SCRPC. Relief can still be accorded the parties in their absence and a disposition in the case will neither impair Forlando and Romunzo to protect their interest nor leave the present parties subject to a substantial risk of incurring double or inconsistent obligations. Further, even if Forlando and Romunzo were indispensable parties, the proper relief is for the Court to *add* them under Rule 19(a), rather than *dismiss* the suit. Dismissal is triggered under Rule 19(b) when the

Court determines that the indispensable party *cannot*, for whatever reason, be made a party to the suit. If Forlando and Romunzo are indispensable, a motion must be filed by Defendants to make them parties and then the Court must add them, if appropriate, under Rule 19(a). Rule 19(b) is not reached until Rule 19(a) is resolved.

b. Failure to secure the appointment of GALs.

The appointments of GALs are unnecessary for the minors involved in this matter. The Probate Code provides that a settlement may be executed by "parents acting for any minor child having beneficial interests or having claims which will or may be affected by the compromise" and that minors "represented only by their parents may be bound only if their parents join with other competent persons in execution of the compromise." S.C. Code Ann. § 62-3-1102(1), (3) (1976, as amended). Parents are sufficient representatives of the minors in this matter.

7. This action is unaffected by a statute of limitations and the doctrine of estoppel.

The Probate Code provides that a proceeding may not be commenced "against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust." S.C. Code Ann. § 62-7-1005(a) (1976, as amended). If such a report was not sent, a three year limitations period runs from the earliest of "(1) the removal, resignation, or death of the trustee; (2) the termination of the beneficiary's interest in the trust; or (3) the termination of the trust." § 1005(c). The earliest of these three dates is May 26, 2009, the date on which Defendants were removed as trustees.

The earliest "a report that adequately disclosed the existence of a potential claim for breach of trust" would have come to the attention of a beneficiary or his representative would have been May 26, 2009 when Bauknight assumed control of the Estate. As the Complaint in

this case was filed May 10, 2010, Plaintiffs are within a one-year statute of limitations under Section 1005(a). The more likely circumstance is that a Section 1005(a) report was never given and the three-year period of limitations applies. Either way, this action is not barred by a statute of limitations.

Equitable Estoppel applies when a party "by his actions, conduct, words or silence which amounts to a representation, or a concealment of material facts, causes another to alter his position to his prejudice or injury." State Acc. Fund v. South Carolina Second Injury Fund, 388 S.C. 67, 693 S.E.2d 441, 446 (Ct.App.2010) (citing Rushing v. McKinney, 370 S.C. 280, 293, 633 S.E.2d 917, 924 (Ct.App.2006)). Specifically, Defendants contend that Plaintiffs had knowledge "of all actions of Buchanan/Pope, and as demonstrated by the record, either approved the actions or failed to notify the Probate Court and/or the Circuit Court . . ." Mot. Dismiss, pp. 8-9. As discussed earlier in this section of our memorandum, we submit that the first notice Plaintiffs received of the maladministration by Defendants was when Bauknight was named administrator and had the opportunity to closely examine the Estate.

8. **Plaintiffs have standing because this suit is not against the Estate, but rather against its administrators.**

Defendants contend that the *in terrorem* clause bars certain Plaintiffs from bringing this suit. The *in terrorem* clause is inapplicable to this matter as this suit is brought against Defendants for maladministration and does not involve attempts by beneficiaries "to contest, claim an interest in or otherwise dispute the disposition of Grantor's estate . . ." Mot. Dismiss, p. 9 (citing Article XXI of Irrevocable Trust).

9. **Because Defendants' acts affected the health of the Legacy Trust, they are liable even though they never served as trustees of the Legacy Trust.**

Defendants are correct in stating that they never served as trustees of the Legacy Trust

(i.e. the settlement trust). However, Defendants acts as administrators of the charitable and family trusts directly affected the Legacy Trust as it became the successor-trust to the charitable and family trusts under Defendants' control.

10. Section 33-56-180 is wholly inapplicable to this case.

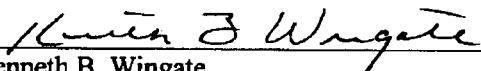
Section 33-56-180 (1976 as amended) applies only "in an action brought against the charitable organization." As the "I Feel Good Trust" is not being sued in this matter, § 180 does not apply. Section 180 is further inapplicable because Defendants were directors, not employees (agents, servants, officers) of the trust. Even if § 180 did apply, Plaintiffs could recover individually against Defendants because their conduct was "reckless, wilful [sic], or grossly negligent."

CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that Defendants' Motion to Dismiss be DENIED.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



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ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina
August 27, 2010

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

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

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Defendants

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Civil Action No. 2010-CP-40-4900

**AFFIDAVIT OF
RUSSELL L. BAUKNIGHT**

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

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FILED

PERSONALLY APPEARED BEFORE ME, the undersigned, Russell L. Bauknight, who

after being duly sworn, deposes and says:

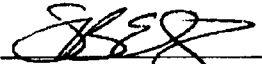
1. I am Russell L. Bauknight, Trustee of the James Brown 2000 Irrevocable Trust and Personal Representative of the Estate of James Brown.
2. On or about May 26, 2009, I was appointed to the positions of Trustee and Personal Representative in this matter by way of an Order of the Honorable Doyet A. Early, III.
3. At the time of my appointment, my usual place of business was located at 1517 Gervais Street, Columbia, SC.
4. Immediately following my appointment, I began the process of moving a large volume of documents, books, records and financial information from Adele Pope's office at 1218 Taylor Street, Columbia, SC to my office.
5. Since my appointment as Trustee, all of the books, records and documents have remained in Richland County. All business activity of the administration of the Trust has been conducted at or through my office.

FURTHER AFFIANT SAYETH NOT.



Russell L. Bauknight

SWORN TO and subscribed before me
this 26 day of AUGUST, 2010



(L.S.)
Notary Public for South Carolina
My commission Expires: 7/21/2016

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS

) Case No. 2010-CP-40-4900

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and on behalf of his minor child Janise
Vanisha Brown; Lindsey Delores Brown;
Deanna J. Brown Thomas; Jason Brown-
Lewis; Yamma N. Brown, individually and
on behalf of her minor children; Sydney
Lumar, Carrington Lumar, and Tonya Brown;
Venisha Brown; Larry Brown; and Terry
Brown

and

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

Plaintiffs.

v.

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

JEANETTE W. HARRISON
C.C.P. & G.S.
2010 AUG 27 PM 1:22
SECOND SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
DISMISSAL OF COMPLAINT

Defendants supplement their Memoranda Supporting dismissal of the Complaint

herein, by new information received by counsel in this case on August 25, 2010.

Defendants ask the Court to take judicial notice of Exhibit A, dated August 23, 2010, for presentation to the Supreme Court of South Carolina on behalf of Plaintiff Terry Brown and others, but not on behalf Plaintiffs Russell L. Bauknight. The far-reaching and startling consequences have not been fully analyzed.

The following, however, is known from the record of Case 122, Case 1647, and the brief in the Albert Dallas appeal from Case 122, which Bauknight Plaintiff Bauknight has adopted:

1. In Exhibit A Terry Brown and others assert for the first time in the 3 years and 9 months since the death of music icon James Brown, that Russell L. Bauknight has ordered [and already a reviewed preliminary draft of] an appraisal which will show that the assets of James Brown at his death on December 25, 2006 were worth only \$12 million.
2. To the knowledge of Defendants, neither Bauknight nor other Plaintiffs have ever notified any Court – including the Probate Court for Aiken County – of this startling revelation, which is wholly inconsistent with the approximately \$85 Million value of the James Brown assets known and discussed under oath and in filings for almost three years.
3. The figure of \$85.6 Million is stated twice in Buchanan and Pope's Dallas brief, now before the Supreme Court, which brief was adopted by Plaintiff Bauknight in 2010, as the gross value of the Brown assets (after considering the TIAA debt). [See Exhibit B, Excerpts from Amended Brief, Dallas Appeal]
4. The \$12 million which Terry Brown and some Plaintiffs now assert is the date-of-death value of the James Brown assets is less than 1/7 of that reported on the Estate Tax Return by Defendants under penalties of perjury, and repeatedly discussed in Court. [See for example Exhibit B, Partial Transcript of testimony of Adele Pope]
5. The \$12 million value is less than 1/7 the \$85,663,563 date-of-death value of Brown's assets reported by prior fiduciaries Dallas and Bradley (now deceased) to the Court, under oath on the inventory and appraisal filed in the Aiken County Court of November 15, 2007. [See Exhibit C]
6. The \$12 Million is less than 1/7 of the value which purported branding expert

Dr. Terry Cox of the Graham Windsor Group, who organized (and made Terry and his son Forlando part of) a group to purchase the James Brown assets repeatedly placed on those assets and/or supported in testimony under oath [November 15, 2007, Case 122] and offers, made with Terry Brown. [See Exhibit D]

7. The \$12 million date-of-death value of the James Brown assets is wholly inconsistent with, and less than 1/7 the date-of-death value discussed repeatedly in open court and filings by Terry's joint venturer David Cannon; and the some of the more than 20 lawyers who have represented Dallas and Cannon.

8. The \$12 million date-of-death value is less than 1/10 of the \$150 million Forlando Brown, joint venturer with Terry¹ stated in a federal court deposition on September 28, 2008 - three days after the EstateTax Return was filed.

9. Terry Brown, and Bauknight as his Trustee, now claim Terry has a right of first refusal to purchase the James Browns assets and retain any interest in the purchaser which the purchasers allow him to have. This is in addition to the 39% claimed by his son Forlando.

10. Terry – who, with family members, will be a substantial owner on both sides of the sale and purchase of the James Brown assets — now asserts that Brown's assets had a date-of-death value which is 1/10 of known value. This is not only extraordinary, but one of the most troublesome of the many "twists and turns" the Court's order dated April 8, 2008 predicted.

11. The suggestion that Pope and Buchanan, nominated by all Plaintiffs except the Attorney General on November 20, 2007 to serve as PR/Trustee would have – 10 months later – valued the James Brown assets at 7 times their real value for some nefarious reason is, at best, outrageous.

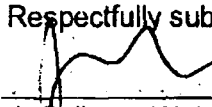
The far-reaching implications of this remarkable assertion that James Brown's music empire was not the \$100 million (about \$85 when reduced by the TIAA debt) everyone has believed for years, but a mere \$12 million, information never before revealed, cannot be analyzed in a day. Nor can it be easily analyzed by a Court which

¹ Represented by Terry's same counsel in Aiken, and represented by Dallas/Cannon counsel Powell Goldstein (now Bryan Cave) in Federal court, and a 39% owner of TJBL, LLC, the then- prospective purchaser of the James Brown assets.

does not have an understanding of the perjury and fabrication that has gone on by
Terry Brown's joint venturers in Aiken County.

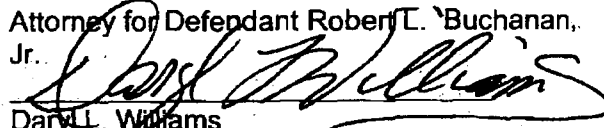
This new information only highlights why dismissal remains the appropriate
remedy, with leave of counterclaimants to seek transfer from the Aiken County Court of
the counterclaims to be filed herein..

Respectfully submitted,



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Attorney for Defendant Adele J. Pope

August 27, 2010

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

Plaintiffs.

v.

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

) IN THE COURT OF COMMON PLEAS

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

) AFFIDAVIT OF BUCHANAN
) AND POPE IN SUPPORT OF
) DISMISSAL BASED ON
) STATUTES OF LIMITATION

2010 SEP 28 PM 1:21

PERSONALLY APPEARED BEFORE ME, Robert L. Buchanan, and Adele J. Pope
(Pope), who, being duly sworn, depose and say:

1. This affidavit is truthful based on our personal knowledge related to or arising out
of our service as Special Administrators of the Estate of James Brown (SAs), Personal
Representatives of the Estate of James Brown (PRs) and/or Trustees of the James Brown
2000 Irrevocable Trust (Trustees).

2. The information contained in this affidavit is submitted solely for the purpose
of establishing what the Plaintiffs knew or reasonably should have known (and were
obligated to investigate further), and when they knew or reasonably should have known
(and were obligated to investigate further) the information. By including the information,
Buchanan and Pope do not adopt, endorse or accept any portion of the information that
consists of accusations made against them by others and reserve the right to dispute or
contest such accusations.

3. For purposes of considering dismissal of this case under statutes of limitations (and on other relevant grounds), we ask the Court, in addition to considering the matters herein averred, to take judicial notice of Plaintiffs' admissions and other facts contained within the record of pending and decided James Brown cases, including those in the Aiken County probate and circuit courts, the S. C. District Court, and the S. C. Court of Appeals and Supreme Court.¹

4. Attached to this affidavit are excerpts from the more than 3,000 pages of transcripts of at least 20 hearings, the more than 350 filings in the James Brown cases, and documents provided by Plaintiffs and their more than 20 attorney/agents, including attorneys Louis Levenson, David Bell, Powell Goldstein ("PG")³, David Yount, Alan Medlin and Robert Rosen. An index of attachments briefly describes them.

5. Emphasis has been supplied and some documents enlarged for ease of review.

I. Prior to November 20, 2007

6. All Plaintiffs except Bauknight, who, to the best of our knowledge, was not involved at the time, had access to our books and records, as well as all historical records of James Brown and his entities by Court order and our agreement as early as August 10, 2007. AG McMaster audited our records in late 2007 and early 2008. Assistant AG

¹ Records of which the court is asked to take judicial notice are the Aiken County Clerk of Court /real estate records, the Estate of James Brown, Probate File No. 2007-ES-02-0056, the transcripts of the hearings, orders and decisions in Circuit Court Case Nos. 2007-CP-02-0122 ("Case 122"), 2008-CP-02-322 ("Case 322"), 2008-CP-02-0872 ("Case 872"), 2008-CP-02-1647 ("Case 1647"), 2009-CP-02-1810 ("Case 1810"), the James Brown Estate claims cases, the appeals from Case 122 (the "Cannon Appeal", "Dallas Appeal," and "Case 1647/1810 Appeal"), as well as S. C. District Court Case 3:08-cv-00014-WOB.

³ Including attorneys William Shearer, Jennifer Dempsey, Frank McGaughey, and William Custer

Jowers was invited to our weekly meetings beginning in November 2007, and attended several.

II. Knowledge of all Interested Persons as of November 20, 2007

7. The record shows that all Interested Persons in the Estate/2000 Trust had the following knowledge by the end of the day on November 20, 2007:

a. James Brown was one of South Carolina's most famous and generous citizens. [Ex. 1]

b. It was an often stated and well-known desire of James Brown to provide financial assistance to education, especially for needy and deserving students. [Ex.2]

c. Plaintiff Deanna Brown Thomas and former PR/Trustee David Cannon, under James Brown's Power of Attorney ("POA"), had obtained Brown's attorney's estate planning file. All were aware of the PR/Trustees' duty to enforce the *In Terrorem* clauses, as was Tommie Rae, who witnessed one of the 2000 estate planning documents. [Will; Trust]

d. James Brown intentionally excluded his children and all past and future spouses, from his music empire. *In Terrorem* forfeiture clauses required his PR/Trustees to resist all attacks on his estate plan as an affront to his wishes. [Will; Trust]

e. James Brown's Will acknowledged only 6⁴ of a possible dozen or more children. The 6 received nothing in the 2000 Trust. The 6 received only James Brown's personal effects in his Will, subject to the *In Terrorem* forfeiture clauses. [Will/2000 Trust]

f. No Plaintiffs had challenged James Brown's estate plan, which was known to family and had been funded and in open existence and the 2000 Trust a matter of public record in two states for more than 7 years. [Ex. 3]

g. Plaintiff Deanna J. Brown Thomas was a co-fiduciary with David Cannon, Albert Dallas and Alfred Bradley under Mr. Brown's Power of Attorney for 7 years before Mr. Brown's death. [Ex. 4]

⁴Brown's Will acknowledged Deanna, Yamma, Terry, Larry, Venisha and Daryl. His first divorce decree also acknowledged Teddy (now deceased) and Lisa. Various others heir status. Cinnamon, Jeanette and La Rhonda passed official DNA tests established by Trust/Estate attorney Peeples, Lewis & Babcock.

h. On December 26, 2006, the day after James Brown died, Atlanta law firm Greenberg Traurig ("GT") formed the James Brown Music Education Foundation, naming Plaintiff Yamma N. Brown and Deanna Brown Thomas as two of its board members. Its website remained up in October 2007. [See Order dtd. 4/8/08; Ex. 5]

i. After James Brown died, Plaintiff Deanna J. Brown Thomas became a trustee with Dallas and Cannon, and Plaintiff Yamma N. Brown an executive/assistant of the James Brown 2000 Trust, and the two of them gained access to the Brown's home estate, owned by the 2000 Trust. They abandoned the positions in January 2007. [Ex. 6, 7]

j. In January 2007 the six acknowledged children, together with grandchildren Forlando and Romunzo Brown (Terry's children), hired Atlanta attorney Levenson and began plans to take control of Brown's assets in violation of the estate plan. [Interrog., Depos. F. Brown, Ex. 8, 9]

k. Levenson requested that then-attorneys for the Estate/2000 Trust Strom Thurmond and others not file Brown's Will, but Thurmond complied with S. C. law and filed it on January 18, 2007. [See Tr. Hg. 2/09/07, p. 52]

l. On January 24, 2007, Levenson filed Case 122, seeking removal and an accounting of Dallas and Cannon as PR/Trustees. Levenson's clients, the 6 children acknowledged in Brown's Will, asserted standing under the Will and 2 adult grandchildren clients, Forlando and Romunzo, asserted standing under the 2000 Trust, as did Yamma, Daryl and Deanna for their minor children. [Affidavits, Y. Lumar, D. Brown, D. Thomas, Ex. 10]

m. In Court filings Levenson acknowledged the validity the 2000 Trust for purposes of Case 122. [Tr. Hg. 2/09/07 p. 18]

n. By February 2007 Terry Cox (the Graham Windsor Group) was working with Levenson's clients and Plaintiff Yamma N. Brown's husband to raise \$200 million to acquire Brown's assets, partnering with Pinnacle Music and Entertainment, LLC, with Plaintiff Yamma N. Brown (a/k/a Dr. Lumar) serving as president. [Ex. 11]

o. On February 9, 2007, Hynie Brown's attorney expressed concern that Brown had "made a fortune" which could be worth \$100 million; and that there was fear that the Dallas Group would try to sell the James Brown assets for \$20 million [Tr. Hg. 2/9/07, pp. 44, 48]

p. James Brown's family, his fiduciaries, and their attorneys rejected all of Tommie Rae's claims, based on James Brown's death certificate; Mr. Brown's intentional disinheritance of her; her prenuptial agreement in 2001; the fact that she concealed her extant marriage when she obtained a license and conducted a marriage

ceremony with Mr. Brown in December 2001; and her agreement, made part of a 2004 Aiken County Order, never to claim to be Brown's common law spouse. [See, for example Mot. Dismiss, Cannon, dtd. 11/25/08, w/ exhibits]

q. With full knowledge of the 2000 Trust and Brown's assets, Tommie Rae waived any right to Brown's property at his death, including any rights to claim to be an heir under the Will, the 2000 Trust and the Federal Copyright Act. [Ex. 12]

r. By May 2007 Terry Brown and his sons Romunzo and Forlando (a/k/a William, a/k/a "Flip") Brown had fired Levenson. Cox and the Machine Group (Alvin and Calvin Waters) were working with Forlando to present to Dallas a proposal to enhance the Brown assets. Dallas wanted a sale. [Tr. Hg. 11/20/07, pp. 439-454, Ex. 13]

s. By June 2007 Forlando Brown and Cox, Dallas and Alvin/Calvin were working on a proposed \$100 million sale of the Brown assets. [See Hg. 11/20/07, pp 439-454]

t. By June 15, 2007, Estate/2000 Trust attorney Bill Hammond insisted the 2000 Trust required a sale of Brown's royalties and that Buchanan/Pope, although not fiduciaries, would breach their fiduciary duty if they did not approve a sale by Dallas and Cannon. [Ex. 14]

u. On July 10, 2007, PG sent Dallas and Cannon documents to move the 2000 Trust to Georgia. [PG later became attorneys for Forlando, Terry Brown, and the Cox investor group, but has refused, despite court order, to deliver their file.] [Ex. 15]

v. On July 17, 2007, Buchanan/Pope discovered \$900,000 taken from Brown's 2006 royalties. [Cannon decision, Ct. Appeals] and in August Cannon wired \$866,000 to Honduras to complete a turnkey retirement home. [Tr. Hg. 11/15/07, pp. 77-83]

w. In September the Dallas Group filed about \$16 million of claims against the Estate. [See Order dtd. 4/8/08]

x. In September 2007 AG McMaster and the Georgia AG appeared in Case 122. An order filed October 11, 2007 (with Buchanan and Pope's consent) admitted them to Case 122. The AG s had total access to Brown's files and the Estate/Trust files from then until May 26, 2009. [Orders dtd. 10/11/07 & 8/10/08]

y. On October 12, 2007. Cox, without disclosing his various relationships, made an offer (letter of intent) on behalf of the James Brown Legacy, Inc., "a corporation to be formed" to purchase the James Brown assets for \$100 million. [Ex. 16]

z. In November 2007 Levenson advised the Court and all Plaintiffs except for Bauknight of James Brown's almost \$18 million road revenues for the years 2003 - 2006. [Ex. 17]

aa. By November 2007 Brown's \$3+ million 2006 royalties, after adding back the \$900,000 taken by Cannon were known. [Ex. 18, Cannon Decision]

ab. On November 15, 2007, seeking Court approval, Buchanan/Pope presented to the Court and Interested Persons, including all Plaintiffs except Bauknight, a detailed proposal to value the Publicity Rights/Royalties for the Estate Tax Return, without appraisal, at 12 ½ - 14 times average Royalties plus ½ of the 2006 road revenue. [Exhibit 19, Ret. Recom. of SA s; Tr. Hg. Dtd. 11/15 /07, pp. 304 - 310]

ac. By November 20, 2007, it was known that the Dallas Group, Greenberg Traurig ("GT"), Intrigue, Pullman, Bobbit and others were claiming at least 45% of the \$100 million sale, based largely on an October 18- 20, 2006 letter from GT disclosed to the Court and to all Plaintiffs except Bauknight and AG McMaster by Levenson in February 2007. [Tr. Hg. 2/9/07, p. 46]

ad. By November 20, 2007, Dallas, by then wholly discredited, resigned, following Cannon. Cannon claimed 5th amendment rights from November 15 forward. \$7+ million was missing since 1999 when the 2 actively served as POAs and Trustees. [Orders dtd. 3/7 & 4/8/08; Cannon decision]

ae. On November 20, 2007 the same day, Cox spoke under oath about the \$100 million offer, and Dallas said he was expecting an additional proposal by the end of the year, if not earlier. Calvin and Alvin were brought by Levenson as witnesses to the \$100 million deal, which included Terry Brown's son, Forlando – also known as "Flip" and William. [Tr. Hg. 11/20/07, pp. 439-454]

af. At the November 20, 2007 hearing, any persons, including all Plaintiffs who appeared individually or through counsel except for Bauknight, who did not approve the method of reporting to the IRS, without appraisal, of the Publicity Rights and Royalties, as proposed by Buchanan/Pope on November 15, 2007, were directed by the Court to make objection. None were made. [Tr. Hg. 11/20/07, pp. 304 0310]

II. Knowledge of all Interested Persons acquired on or before May 18, 2008.

10. The record shows that in addition to the above knowledge, by May 18, 2008 all Interested Persons in the 2000 Trust and Estate of James Brown had acquired the following knowledge:

a. A detailed Inventory & Appraisalment ("I&A") filed by Dallas under oath on November 15, 2007, showed assets in the 2000 Trust at Brown's death, with retained rights, at \$26,332,792.00 and assets in the Estate at 58,667,048.00 [Exhibit 20, I&A; Tr. Hg. 11/15/07, p. 149]

b. Bill Hammond's report to AG Jones stated that the Brown assets were worth \$80 - \$120 million, with about \$20 million in the 2000 Trust.

c. On November 21, 2007 AG Jones asserted Buchanan/Pope's service as both Trustees and PRs was improper and raised possible ethical problems.

d. Between November 30, 2007 and January 4, 2008 the AG s of Georgia and S.C. filed numerous documents accusing Buchanan/Pope of impropriety, while Dallas and joint-venturer Forlando filed similar documents accusing Buchanan and Pope, and also accusing Judge Early. PG helped with Dallas' motion to recuse Jg. Early.

e. On December 14, 2007 AG Jones and the Georgia AG filed documents asserting the actions of Buchanan and Pope went "far past the stop sign of conflict of interest." [Mot. AG s Alter/Amend, 59(e), p. 3.]

f. On December 21, 2007 the Georgia AG asserted in a hearing in Case 122 that Pope had adopted the position of Levenson "who seeks to destroy the charitable trust"; that Pope's "interests are adverse to the interests of the charitable beneficiary"; and that "there are serious issues of breach of fiduciary duty related to Adele Pope and Bob Buchanan." [Tr. Hg. 12/21/07, p. 24, Ex. 21]

g. On December 21, AG Lewis, under AG McMaster, opposed our right to select counsel to recover losses caused by Cannon and others, asserting we should not control the litigation because "one of the greatest breaches of all may be the breach of Adele Pope and Bob Buchanan." [Tr., Hg. 12/21/07, pp. 24, 25.]

h. On December 21, 2007 AG Lewis also opposed our filed, detailed request for fees as SA s and prospective payments towards our PR/Trustees' commissions, specifically pointing out details to which she objected.⁵ [Tr. Hg. 12/21/07, p. 64]

⁵ By contrast, Tommie Rae's attorney stated "[w]e would certainly take the position at the appropriate time; Mr. Buchanan and Ms. Pope have provided extraordinary services as compared to the usual estate administration....". He also said "[w]e don't think the Attorney General from

i. At the December 21, 2007 hearing the Court was informed of Tommie Rae's newly filed challenges to the 2000 Trust. [Tr. Hg.12/21/07, p. 58]. Challenges from the Levenson clients followed. By January 6, we made clear our intention to vigorously defend Brown's estate plan as directed by Brown's documents.⁶

j. At a January 4, 2008 hearing in Case 122, the Court and all Interested Parties were advised of a 43-page complaint filed in Federal Court against Buchanan and Pope. Levenson advised that Count one seeks removal and Count Two seeks injunctive relief to us from proceeding, and that "its got about 120 paragraphs of factual statements." [Tr. Hg. 1/4/08, p. 64, 69.]

k. By motion and affidavit dtd. January 4 - 6, 2009 Pope advised "one of our primary acts as SA s ...was preventing an imprudent sale of Mr. Brown's assets..." We asked the Court to schedule a full hearing "to determine that what Mr. Buchanan and I have done as SA s and...as [PR/Trustees] is proper. [Mot. Dtd. 1.4.08; Ex.22]

l. By January 7, 2008 Forlando, represented by counsel for himself and Terry in State Court, along with Dallas/Bradley counsel PG, amended his federal complaint to seek damages, personally, against us for conversion and other alleged impropriety. [Exhibit 23]

m. Br order dated January 8, 2008 Judge Early made detailed findings and awarded us \$317,000.00 SA fees, plus costs, plus "continuing payment on a 'time plus costs' basis for themselves and their staff [for work from November 21]. ... This shall be a deposit toward, and without prejudice to, their full commissions as [PR/Trustees]." Legal interest applied to amounts unpaid after 60 days. [Exhibit 24, Order dtd. 1/8/08]

o. At the January 9 hearing, AG Jones advised of his knowledge of the federal lawsuit by saying "when the federal lawsuit was filed ... the pleadings were very similar to the ones that we presented ... I'd like to state for the record in direction of my office and Attorney General that our matter is before your Honor. ... We took no part in that participation." [Tr. Hg. 1/9/08, pp. 72,73]

p. On February 7, 2008 AG McMaster appeared on WIS television program with Forlando to assert that actions of Buchanan/Pope "went far past the stop sign of conflict of interest."

Georgia has a stake in any of these matters... This a South Carolina trust," [Tr., Hg. 12/21/07, pp. 58,61]

⁶ On November 28 Buchanan/Pope filed pleadings asserting no probable cause existed to challenge either the 2000 Trust or the Will. [Compl. DJ, 11/28/07]

q. On February 29, 2008 "The James Brown Legacy, Inc." of which Forlando was part owner, and from which Dallas and Cannon sought options or a "kickback", sent a letter of intent to purchase the assets of the 2000 Trust for \$90 - \$100 million. It was not accepted. [Exhibit 25]

r. On March 25, 2008 Buchanan's affidavit attached our Application for Estate Tax Extension filed March 24 with the IRS, and fully disclosed our position that the estimated value of Brown's "Royalties, image, persona, publicity rights, and all rights associated w/ unpublished songs" was about \$80 million. [Exhibit 26]

s. On March 26, 2008 Cox, Terry Brown sent 2 \$92- \$102 million letters of intent to purchase Estate/2000 Trust assets [Exhibit 27]. We notified the Court and parties of our rejection of these offers.

t. By April 22, 2008 emails generated by terminated attorney Hammond and Dallas and Cannon's own testimony demonstrated the fraud under §62-1-106 of Dallas and Cannon, as was found in the April 8 order; that both lied about not engaging PG; that both were working with PG to prevent the delivery of the PG file; and that both, with Hammond, had extensive contacts with AG Jones.

11. On information and belief, the information to meet the requests of the investigations of the AG s of two states, and those of PG, Forlando and the former PR/Trustees, with copies for all Plaintiffs, constituted a complete report of our actions and the existence of any supposed complaint before May 18, 2008.

III. Knowledge of Plaintiffs, other Interested Persons Before May 18, 2009

12. The record shows that in addition to the above knowledge, before May 18, 2009 all Plaintiffs and other Interested Persons in the 2000 Trust and Estate of James Brown had acquired the following knowledge:

a. Beginning March 2008 Buchanan and Pope respectfully and repeatedly notified AG McMaster of their positions, making him fully aware, with all Interested Persons, of their positions and actions. [See for examples, Ex. 28, 29, 30, 31, and 32]

b. In September 2008 Buchanan and Pope gave lengthy depositions in the Forlando Federal Court case, and in November were questioned, with Plaintiff

Terry present and his attorney Bell questioning Defendants. [Tr. Hg. 11/18/08]

c. On September 25, 2008 we filed the Estate Tax Return. Consistent with the earlier filings, the amount passing to The James Brown "I Feel Good" Trust was shown as approximately \$83 million.

d. On information and belief, by August 10, 2008, Bauknight had been selected by the AG and those attending the secret mediation, and obtained knowledge of all matters known to Plaintiffs. [Exhibit 33]

e. By September 2008 we made clear that the AG and Settling parties, who had generated estate taxes which under James Brown's estate plan were not required to be paid by the Estate/2000 Trust, should work on both the tax issues and the Royalty and Publicity Rights development.[See Ex. 34 and 35]

f. The Amended Complaint dated November 7, 2008 [Exhibit 36] and our charts produced in February 2009 [Exhibit 37] confirm that Plaintiffs had detailed knowledge of all of our actions by early March 2009. The Amended Complaint even accused us of acts previously approved by Court Orders. [See, for example, Ex. 38]

g. By March 2009 we had made it clear that we believed it violated our fiduciary duty to sign the settlement agreement which made a knowingly incorrect determination of the heirs of James Brown, damaging the Estate/Trust's copyright rights, and required us not to complain of AG McMaster, a public official, or what he had done. [Ex. 40]

13. We are informed and believe that this action was filed more than one year after Plaintiffs received a full report, with details, of all of our actions, including those raised in the complaint.

14. On information and belief, we were relieved by the Court of Appeals of any liability for mismanagement of the 2000 Trust and Estate after May 26, 2009, which liability rests on Russell Bauknight pending the outcome of the appeal of our replacement by him. [Exhibit 41]

IV. August 2010 Assertion to Supreme Court regarding Value of Assets

15. In August 2010, AG Jones, for the first time, predicted that Plaintiff Bauknight

would shortly produce an appraisal showing the James Brown assets were worth only \$12 million at Brown's death.

16. This revelation is inconsistent with our testimony through March 2009, the representations of Plaintiffs, and the statements of the more than 30 attorneys who have represented Plaintiffs, the Estate/2000 Trust and the former fiduciaries since Brown's death.⁷ The lowest value of Mr. Brown's assets at a time near his death which we recall hearing was in an email from counsel for Tommie Rae which we accidentally received; considered unreliable; and disregarded until it was mentioned by counsel for Tommie Rae in the Case 1647 hearings. [Ex. 42]

17. If Brown's assets were worth \$12 million, unrecouped expenses \$2.5 million, and personal effects \$1.5 million, Brown's Estate Plan would give the "I Feel Good" private foundation about half of Brown's assets, as follows:

Total value of Assets:	\$12,000,000.00	
Expenses	(2,500,000.00)	
Pers. Eff., Est. Taxes	<u>(1,500,000.00)</u>	
2000 Trust for division:	\$ 8,000,000.00	
Grandchildren's Education	\$ 2,000,000.00	(7 @ \$285,000.00 +/-)
"I Feel Good " Foundation	\$6,000,000.00	

⁷ Attorneys who represent or have represented one or more Plaintiffs and/or the former fiduciaries include (1) Strom Thurmond, (2) David Miller, (3) Rodney Peeples, (4) Cam Lewis, (5) Keith Babcock, (6) Jonathan Harling, (7) Ariel King, (8) Bill Hammond (9) Bill Tucker (10) Stan Jackson (11) Wayne Byrd, (12) Havird Jones, (13) Mary F. Jowers, (14) JC Nicholson, (15) Robert Rosen (16) Alan Medlin (17) Heyward Carter (18) Jean Lee (19) Jan Warner (20) Max Pickelsheimer (21) Fred Kingsmore (22) David Bell (23) PG attorneys Shearer (24) Custer (25) Dempsey and (26) McGaughey, GT attorneys (27) Sidman and (28) Katz, (29) Leon Friedman, (30) Levenson and (31) Yount, (32) Maxwell, (33) David Black.

18. If, as Plaintiffs asserted for the first time nearly four years after Brown's death, Brown's assets were worth only \$12 million, the AG's August 10, 2008 agreement and subsequent agreement with Terry Brown would give the "I Feel Good" Foundation only about 15 % of James Brown's assets, and decimate the Education Trust for 7 grandchildren, all to the benefit of disinherited persons, approximately as follows:

Total value of Assets:	\$12,000,000.00
Expenses	(2,500,000.00)
Estate Taxes (minimum)	<u>(1,380,000.00)</u>
Amount for Division	\$ 8,120,000.00

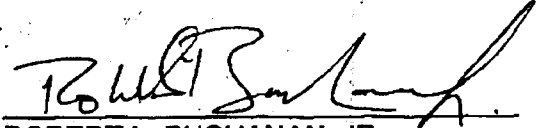
To Children & Hynie Brown (52 ½%)	\$4,263,000.00

<u>To "I Feel Good" Foundation</u> <u>(47 ½% LESS \$2 million)</u>	<u>\$1,857,000.00</u>

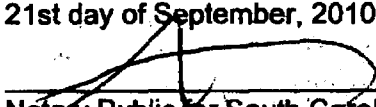
For Undesignated Descendants	\$2,000,000.00

19. Under the AG's agreement, if approved on appeal, Terry Brown also has a 10-year right to purchase assets valued at \$12 million and be part of a company owned with son Forlando who has valued assets at \$150 million, and which has proposed options or a "kickback" for Dallas and Cannon.

FURTHER DEPONENTS SAYETH NOT.

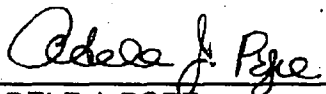

ROBERT L. BUCHANAN, JR.

SWORN TO before me this
21st day of September, 2010

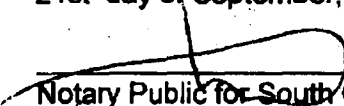


Notary Public for South Carolina
My Commission expires: 7/13/16

(L.S.)


ADELE J. POPE

SWORN TO before me this
21st day of September, 2010


Notary Public for South Carolina

(L.S.)

My Commission expires: 7/15/14

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

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

and

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

Plaintiffs

v.

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

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Civil Action No. 2010-CP-40-4900

**JEANETTE W. McBRIDE
C.C.P. & G.S.**

2010 OCT - 1 PM 3:43

FILED

AFFIDAVIT OF BETH BAUKNIGHT

1. I am Beth Bauknight. I am employed with the firm of Bauknight, Pietras & Stormer, P.A. The statements contained herein are made from my personal knowledge.
2. Since approximately May 26, 2009, I have served as the custodian of the records relating to the Estate of James Brown. I am personally familiar with documents that were filed by the former Personal Representatives, Adele Pope and Robert J. Buchanan, in the Aiken County Probate Court.
3. Attached hereto at Exhibit A is a true and correct copy of an "Interim Accounting" filed by the former Personal Representatives on May 20, 2009.
4. Attached hereto at Exhibit B is a true and correct copy of a "Final Accounting" filed by the former Personal Representatives on June 24, 2009.

Further, the Affiant sayeth not.

Beth Bauknight
Beth Bauknight

SWORN TO and subscribed before me
This 1st day of October, 2010

Therese S. Craps
Notary Public for South Carolina
My Commission Expires: 9/19/2016

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

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

AND

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

Plaintiffs,

vs.

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

Defendants.

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

AFFIDAVIT OF DEFAULT

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

2010 NOV 10 PM 4:31

RICHLAND COUNTY
FILED

PERSONALLY appeared before me, J. Calhoun Watson and Daryl L. Williams, who being duly sworn depose and say as follows:

1. We are the attorneys for Defendant Robert L. Buchanan, Jr. ("Defendant Buchanan") and Defendant Adele J. Pope ("Defendant Pope") in the above-captioned action.

2. Plaintiffs filed a Summons and Complaint in this matter on May 19, 2010 which is attached hereto as **Exhibit A**.

3. Defendants Buchanan and Pope were served with the Summons and Complaint by personal service on May 24, 2010.

4. Defendant Buchanan and Defendant Pope served their Answer and Counterclaim on Plaintiffs, by and through their counsel, via hand-delivery as evidenced by the Certificate of Service, on September 30, 2010. Answer and Counterclaim of Robert L. Buchanan, Jr. and Adele J. Pope with the Certificate of Service is attached hereto as **Exhibit B**.

5. Plaintiffs' Answer to Counterclaim was due to be served on or before November 1, 2010.

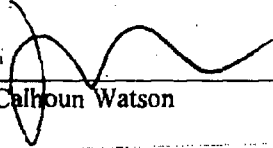
6. Plaintiffs have failed to file an answer or otherwise respond to the Counterclaims of Defendant Buchanan and Defendant Pope.

7. Plaintiffs have not sought, nor have Defendant Buchanan and/or Defendant Pope agreed to any extension of time for Plaintiff to file an answer or responsive pleading to the Counterclaim of Defendant Buchanan and Defendant Pope.

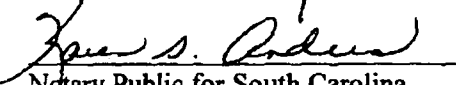
8. Plaintiffs are not a corporate entities, infants, minors, incompetent person, or persons in active military service.

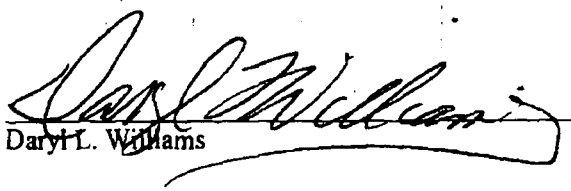
9. The time for answering the Counterclaim has now expired; no responsive pleading has been received from Plaintiffs; therefore, Plaintiffs are in default.

10. Both affiants are members of the South Carolina Bar.

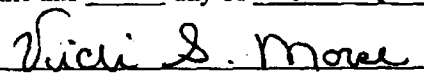

J. Calhoun Watson

SWORN to and subscribed before
me this 10th day of September, 2010.


Notary Public for South Carolina
My Commission expires: 02/27/2014


Daryl L. Williams

SWORN to and subscribed before
me this 10th day of November, 2010.


Notary Public for South Carolina
My Commission expires: 9/1/2019

Rett Kendall

From: Rett Kendall
Sent: Friday, November 12, 2010 4:15 PM
To: 'cwatson@sowellgray.com'; 'dwilliams@jeterandwilliams.com'
Cc: Ken B. Wingate
Subject: 4077-7389: Bauknight, et al. v. Buchanan and Pope

Attachments: Order Denying Defendants' Motion to Dismiss.



Order Denying
Motion to Dismiss...

Cal and Daryl,

In the event your street mail is as slow as ours, I am providing you notice of the entry of Judge Manning's Order denying the Defendants' Motion to Dismiss.

If this is your first notice, I look forward to receiving your Answer on or before November 29, 2010.

Rett

Everett A. Kendall, II
Sweeny, Wingate & Barrow, P.A.
P.O. Box 12129
1515 Lady Street (29201)
Columbia, SC 29211
(803) 256-2233
eak@swblaw.com



CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant, of the law offices of Sowell Gray Stepp & Laffitte, L.L.C., attorneys for *defendant Robert L. Buchanan, Jr.*, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by hand delivering a copy of the same, to the following address(es):

Pleadings:

**ANSWER AND COUNTERCLAIM
OF ROBERT L. BUCHANAN, JR. AND
ADELE J. POPE
(Jury Trial Demanded)**

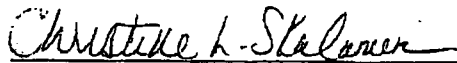
JEANETTE W. MCBRIDE
C.C.P. & G.S.

2010 SEP 30 PM 1:07

FILED
MICHIGAN COUNTY

Counsel Served:

**(VIA HAND DELIVERY)
Kenneth B. Wingate, Esquire
Everett A. Kendall, II, Esquire
Sweeny, Wingate & Barrow, P.A.
1515 Lady Street
Columbia, SC 29201
(803) 256-2233
Attorneys for Plaintiffs**


Christine L. Skalamera

September 30, 2010

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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

and

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

Plaintiffs

v.

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

IN THE PROBATE COURT

Civil Action No. 2010 - GC 4006873

SUMMONS

10 MAR 19 PM 1:10
FILED
RICHLAND COUNTY, S.C.

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

AND

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

Plaintiffs,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

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

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

2010 SEP 30 PM 1:07

RICHLAND COUNTY
FILED

ANSWER AND COUNTERCLAIM
OF ROBERT L. BUCHANAN, JR. AND
ADELE J. POPE

(Jury Trial Demanded)

Defendants Robert L. Buchanan, Jr. and Adele J. Pope, subject to their Motion to Dismiss and any Motion filed or to be filed for a change of venue, answer the Complaint of Plaintiffs and Counterclaim against Plaintiffs, as follows:

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant, of the law offices of Sowell Gray Stepp & Laffitte, L.L.C., attorneys for *defendant Robert L. Buchanan, Jr.*, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by hand delivering a copy of the same, to the following address(es):

Pleadings:

**ANSWER AND COUNTERCLAIM
OF ROBERT L. BUCHANAN, JR. AND
ADELE J. POPE
(Jury Trial Demanded)**

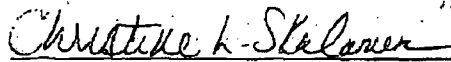
JEANETTE W. McBRIDE
C.C.P. & G.S.

2010 SEP 30 PM 1:07

FILED
ANDREWS COUNTY

Counsel Served:

(VIA HAND DELIVERY)
Kenneth B. Wingate, Esquire
Everett A. Kendall, II, Esquire
Sweeny, Wingate & Barrow, P.A.
1515 Lady Street
Columbia, SC 29201
(803) 256-2233
Attorneys for Plaintiffs


Christine L. Skalamera

September 30, 2010

EXHIBIT C

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND

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

and

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

Plaintiffs

v.

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

IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2010-CP-40-4900

PLAINTIFFS' RESPONSES TO FIRST REQUESTS TO ADMIT OF DEFENDANT ADELE J. POPE

TO: DARYL L. WILLIAMS, ESQUIRE, ATTORNEY FOR DEFENDANT ADELE J. POPE AND TO DEFENDANT ABOVE NAMED:

36. After reasonable inquiry, the information known or readily obtainable concerning this document is insufficient to allow Plaintiffs to admit or deny.

37. After reasonable inquiry, the information known or readily obtainable concerning this document is insufficient to allow Plaintiffs to admit or deny.

38. After reasonable inquiry, the information known or readily obtainable concerning this document is insufficient to allow Plaintiffs to admit or deny.

39. Admitted.

40. After reasonable inquiry, the information known or readily obtainable concerning this document is insufficient to allow Plaintiffs to admit or deny.

41. Admitted.

42. Denied. The referenced document is incomplete.

43. After reasonable inquiry, the information known or readily obtainable concerning this document is insufficient to allow Plaintiffs to admit or deny.

44. After reasonable inquiry, the information known or readily obtainable concerning this document is insufficient to allow Plaintiffs to admit or deny.

45. Denied. The referenced document is incomplete.

46. Admitted.

47. After reasonable inquiry, the information known or readily obtainable concerning this document is insufficient to allow Plaintiffs to admit or deny.

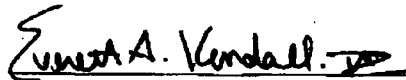
48. Admitted.

49. After reasonable inquiry, the information known or readily obtainable concerning this document is insufficient to allow Plaintiffs to admit or deny. Also, the referenced document is incomplete.

Responses to Requests to Admit
Civil Action No. 2010-CP-40-4900

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.

A handwritten signature in dark ink, appearing to read "Kenneth B. Wingate", is written over a horizontal line.

Kenneth B. Wingate
Everett A. Kendall, II
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina
September 23, 2010

EXHIBIT A

Jeter & Williams, P.A.

ATTORNEYS AND COUNSELORS AT LAW

Edwin Russell Jeter
Daryl L. Williams

1204 Main Street, Suite 200 (29201)
Post Office Box 7425
Columbia, South Carolina 29202

Tel. 803/765-0600
Fax 803/765-0619

November 8, 2010

Everett A. Kendall, II, Esquire
Sweeney, Wingate & Barrow
PO Box 12129
Columbia, SC 29211

Re: In Re: Estate of James Joseph Brown
ALPS Corporation, Claimant
Civil Action No. 2009-CP-2-02407

Dear Rett:

Please consider this correspondence the required consultation under Rule 11 regarding your clients' responses to Defendant Pope's First Requests to Admit.

Of the 90 documents your clients were asked to authenticate, for approximately 44 of those documents you responded that information was not readily obtainable to enable you to admit or deny their authenticity.

We do not believe this was an appropriate answer in that many of the documents for which your clients asserted such a position were generated by one or more of them or their attorneys/agents or are contained in the record of Case 2007-CP-02-0122 (Case 122), or Case 2008-CP-02-0872 (Case 872).

As you know, Case 122, was commenced by six of your clients, Daryl, Terry, Larry and Venisha Brown, Deanna Thomas and Yamma Brown, and is still pending in the Circuit Court for Aiken County (as to attorneys' fees and costs the Court has awarded against Dallas, Bradley and Cannon); the S. C. Court of Appeals (2d Cannon Appeal); and the Supreme Court of South Carolina (Dallas Appeal). We see no basis for your clients, all of whom are parties to Case 122, to assert the lack of information to admit or deny the authenticity of these 44 documents.

I am asking that your clients review their responses to the 44 document requests which they refused to admit or deny and serve an amended, correct response no later than the end of November, 2010.

This document was served on all of your client Plaintiffs in Case 1647, which is currently pending in the Supreme Court of South Carolina.

REQUEST NO. 49: - email from Alvin Calvin the Machine Group to Flip, monkiwringch87@yahoo.com dated Thu., 12 Jul 2007.

Availability:

As shown on the document, this document was faxed to Adele Pope by your clients Deanna, Yamma, Larry, Venisha and Daryl. It was faxed by their agent David Yount, Office of Louis Levenson, on November 13, 2007. As stated in the affidavit of Beth Bauknight, this document is in the possession of your client Plaintiff Russell Bauknight.

REQUEST NO. 50: - email from Alvin Calvin to Forlando Brown, monkiwringch87@yahoo.com, dated Sat., 14 Jul, 2007 10:13:43 and reply from Forlando Brown at 10:23:51 the same day.

Availability:

As shown on the document, this document was faxed to Adele Pope by your clients Deanna, Yamma, Larry, Venisha and Daryl. It was faxed by their agent David Yount, Office of Louis Levenson, on November 13, 2007. As stated in the affidavit of Beth Bauknight, this document is in the possession of your client Plaintiff Russell Bauknight.

REQUEST NO. 51: - email from Forlando Brown, monkiwringch87@yahoo.com dated Sat., 14 Jul, 2007 to AlvinCalvin

Availability:

As shown on the document, this document was faxed to Adele Pope by your clients Deanna, Yamma, Larry, Venisha and Daryl. It was faxed by their agent David Yount, Office of Louis Levenson, on November 13, 2007. As stated in the affidavit of Beth Bauknight, this document is in the possession of your client Plaintiff Russell Bauknight.

REQUEST NO. 52: - Letter of Adele J. Pope to Phil Farr dated June 15, 2007.

Availability:

This letter has been available to all Plaintiffs since August 10, 2007, and is part of the record of Case 122.

REQUEST NO. 53: Letter of John Stewart, Internal Revenue Service to Robert L. Buchanan, Jr. and others dated March 24, 2009.

6. Petition to Set Aside Trust dated December 19, 2007

Availability:

This complaint has been available to all Plaintiffs since January 2008, and was discussed on the record of Case 122 by Sr. Assistant A. G. Jones, agent for your client Henry D. McMaster in early 2008, in which Mr. Jones compared the federal court filing of Forlando Brown to similar filings of the S. C. Attorney General in Circuit Court.

REQUEST NO. 94: - Motion of Robert L. Buchanan, Jr. and Adele J. Pope for Judgment for Costs, Including Attorneys' Fees, Against David G. Cannon, Case 2007-CP-02-0122, dated May 3, 2010, with Schedule A, Affidavits Supporting Motion for Judgment of Costs against David G. Cannon.

Availability:

This motion was served on your client Plaintiffs in May 2010.

REQUEST NO. 102: - Letter of Audra Byrd to Adele Jeffords Pope and Robert L. Buchanan, Jr. dated March 16, 2010

Availability:

The authenticity of this letter has can be readily verified by Plaintiffs.

REQUEST NO. 104: - consent Order of Dismissal of the Honorable Peter R. Nuessle, Family Court Judge, In the Family Court, Second Judicial circuit, dated August 14, 2004 and filed August 16, 2004, Case No. 04-DR-02-157.

Availability:

This order was issued by the Court in a Case in which your client Plaintiff Tommie Rae Brown was a party, and attaches an agreement to which she was a party.

REQUEST NO. 105: - supplemental Affidavit of Robert L. Buchanan, Jr. and Adele J. Pope in support of Commissions and Payment of Certain Priority Expenses of Administration, dated July 13, 2009, Case No. 08-CP-02-1647, 07-CP-02-0122, No. 08-CP-02-0872.

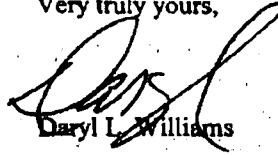
Availability:

This document was served on all parties.

Please send your complete and correct response to these more than forty items by November 15, 2010 so that we can avoid court intervention as to this matter.

With best personal regards.

Very truly yours,



Daryl L. Williams

cc: J. Calhoun Watson, Esquire
Adele J. Pope, Esquire
Robert L. Buchanan, Jr., Esquire

EXHIBIT B

Witness List

11/12/2010

Full Name	Addresses
Jeff Allen	145 West 57 Street 15th Floor New York NY 10019
Russell L. Bauknight	1517 Gervais St. P.O. Box 1330 Columbia, SC 29202
Jim Blackwell	3455 Peachtree Road NE, Suite 1700 Atlanta, GA 30326
Charles Bobbitt	3280 Golf-Linx Drive Snellville, GA 30039
Daryl J. Brown	1120 Court Drive, Apt. R Duluth, GA 30096
Forlando J. Brown	156 Liberty Hill Road Eastanollee, GA 30538
Larry Brown	110 Dresden Drive Martinez, GA 30907
Terry Brown	156 Liberty Hill Road Eastanollee, GA 30538
Tonya Brown	2417 Castlewood Dr. Augusta, GA 30904
Vanisha Brown	P.O. Box 652 Clearwater, SC 29822
Yamma N. Brown	305 Legran Bend Atlanta, GA 30328
Deanna J. Brown-Thomas	P.O. Box 652 Clearwater, SC 29822
Robert L. Buchanan	212 Newberry St., NW P.O. Box 463 Aiken, SC 29802-0463
David G. Cannon	9459 Marlboro Ave Barnwell, SC 29812-1962
Frank Copsidas	601 West 26th Street Suite 1080 New York, NY 10001
Albert H. Dallas	304 Black Street Thomson, GA 30824-2919
William F. Hammond	P.O. Box 1564 Augusta, GA 30903-1564
Tommie Ray Hynie-Brown	Los Angeles, CA
Joel A. Katz	3290 Northside Parkway, Ste 400 Atlanta, GA 30326
Adele J. Pope	1228 Walnut ST Newberry, SC 29180
Al Sharpton	106 West 145th Street New York, NY 10039
William H. Tucker	111 Park Ave, SW Aiken, SC 29801
Alvin Waters	Atlanta, GA
Calvin Waters	Atlanta, GA
Andre White	5122 Hunters Luck Stone Mountain, GA 30088

Witness List

11/12/2010

Full Name	Address
Andre White	75 Piedmont Ave NE Atlanta, GA 30303

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

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

and

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

Plaintiffs

v.

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

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Civil Action No. 10-CP-40-4900

**AFFIDAVIT OF
KENNETH B. WINGATE**

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

2018 NOV 16 PM 4:45

RICHLAND COUNTY
FILED

PERSONALLY APPEARED BEFORE ME, the undersigned, Kenneth B. Wingate,
who after being duly sworn, deposes and says:

1. I am Kenneth B. Wingate. I am an attorney licensed to practice law in the State of South Carolina. The statements contained herein are true and correct based upon my personal knowledge.
2. I am counsel of record for the Plaintiffs in this litigation.
3. I have received and reviewed the Affidavit of Default filed by Defendants on November 10, 2010. This Affidavit was received at my office on November 15, 2010, through the United States Postal Service.
4. At some previous date, a copy of the Defendants' Answer and Counterclaim was delivered to my office. Through my investigation, I have not been able to determine when or how it was received.
5. I have reviewed the time records since September 30, 2010, and can find no reference to the receipt or review of the Answer and Counterclaim.
6. On or about September 30, 2010—the date Defendants claim to have served the Answer and Counterclaim—we were in the process of preparing proposed Motions for Judge Manning in response to Defendants' Motions to Dismiss and Motions to Change Venue. Both sides submitted these to Judge Manning on October 1, 2010.
7. I have no memory of receiving the Answer and Counterclaim. However, the single copy in our file has my handwriting on it instructing my staff to file the document in the Brown litigation file. I can only surmise that this document was among the others that were being exchanged at or about this time, that I did not recognize it as a counterclaim, and simply sent it to be filed.
8. I had no reason to suspect that an Answer and/or counterclaim would be filed during that period of time. In response to the Summons and Complaint, Defendants filed a Motion to Dismiss in lieu of an Answer. Defendants also filed a Motion to Change Venue. On August 30, 2010, hearings were held before Judge Manning on these motions. As stated previously, proposed orders were due to Judge Manning on October 1, 2010. At no time between the hearing and October 1, 2010, did Defendants withdraw their Motions.
9. On November 12, 2010, I received a copy of Judge Manning's Orders denying the Motions to Dismiss and to Change Venue. Copies of these Orders were sent to the attorneys for the Defendants by email stating that we "look forward to receiving your Answer on or before November 29, 2010." A copy of this email is attached at Exhibit A, hereto.

Affidavit of Kenneth B. Wingate
10-CP-40-4900

10. Between September 30, 2010, and today, I have had no communication with the attorneys for the Defendants regarding the filing of this Answer and Counterclaim. Defendants' attorneys made no effort to contact me prior to filing the Affidavit of Default. Upon receipt of the Affidavit, my staff investigated and found the copy that had been filed at my instruction.

FURTHER AFFIANT SAYETH NOT.

Kenneth B. Wingate
Kenneth B. Wingate

SWORN TO and subscribed before me
This 16 day of November, 2010

Amber L. Miller
Notary Public for South Carolina

My Commission Expires: 9/17/20

**THE STATE OF SOUTH CAROLINA
IN THE Supreme COURT**

**APPEAL FROM AIKEN COUNTY
Court of Common Pleas**

**Doyet A. Early, III, Circuit Court Judge
Case No. 2008-CP-2-1647**

**Henry Dargan McMaster, in his
capacity as Attorney General of
the State of South Carolina;
Daryl J. Brown, on behalf of his
minor children, Lindsey B. and
Janise B.; Deanna J. Brown Thomas,
on behalf of her minor child, Jason
L.; Yamma N. Brown, on behalf of
her minor children, Sydney L.,
Carrington L., and Tonya B.;
Vanisha Brown; Larry Brown;
Tommie Rae Hynie Brown; and
James B., through his Guardian
ad Litem, ... Respondents,**

v.

**Albert H. Dallas, Alfred A. Bradley,
and David G. Cannon, individually
and as (purported) Trustees of the
James Brown 2000 Irrevocable
Trust; Adele J. Pope and Robert
L. Buchanan, Jr., Personal Repre-
sentatives of the Estate of James
Brown and Trustees of the James
Brown 2000 Irrevocable Trust;
Terry Brown; Romunzo Brown;
Forlando Brown; Cinnamon N.
M. Paris; LaRhonda Pettitt;
Jeanette Mitchell; and Russell
L. Bauknight, as Special Adminis-
trator and Special Trustee for The
Estate of James Brown and The
James Brown 2000 Irrevocable
Trust,**

of whom Robert L. Buchanan, Jr.,
and Adele J. Pope, as Personal Repre-
sentatives of the Estate of James
Brown and Trustees of the James
Brown 2000 Irrevocable Trust are , ... Appellants,

and Albert H. Dallas, Alfred A. Bradley,
and David G. Cannon, Individually
and as (purported) Trustees of the
James Brown 2000 Irrevocable
Trust; Terry Brown; Romunzo Brown;
Forlando Brown; Cinnamon N.
M. Paris; LaRhonda Pettit;
Jeanette Mitchell; and Russell
L. Bauknight, as Special Adminis-
trator and Special Trustee for The
Estate of James Brown and The
James Brown 2000 Irrevocable
Trust are Respondents.

In re: The Estate of James Brown and The James Brown 2000 Irrevocable
Trust u/a/d August 1, 2000.

INITIAL BRIEF OF APPELLANTS

James B. Richardson, Jr.
1229 Lincoln Street
Columbia, South Carolina 29201
(803) 799-9412

Tressa T. H. Hayes
Post Office Box 5329
Columbia, South Carolina 29250
(803) 603-8583

Attorneys for Appellants.

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I. The settlement agreement was not eligible for court consideration for two reasons. First, the Trust did not agree to it. Second, it was not a compromise of a <i>bona fide</i> challenge to the will. But even if the settlement were eligible for consideration by the court, it did not meet the statutory standard required to nullify the testator's estate plan.	7
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STATEMENT OF QUESTIONS PRESENTED

I.

Where the Attorney General set aside the trustees of a charitable trust and negotiated the settlement of a will contest in behalf of the trust, and where there was no evidence of a *bona fide* controversy about the validity of the will and charitable trust, was the settlement agreement negotiated by the Attorney General eligible for consideration by the court under S.C. Code Ann. § 62-3-1102?

II.

Where there was no evidence that the will and charitable trust were void as the product of undue influence, and where the settlement agreement replaced the testator's estate plan with a fundamentally different plan, did the circuit court err in finding that the settlement was just and reasonable?

III.

Did the circuit court err in removing the appellants as trustees of the charitable trust and as personal representatives of the estate solely because they opposed the settlement agreement negotiated by the Attorney General?

and was consolidated with the appellants' appeal of subsequent orders appointing and reappointing Mr. Bauknight in various fiduciary capacities.²

The consolidated appeals were transferred from the Court of Appeals to the Supreme Court, and this appeal followed.

STATEMENT OF FACTS

Throughout his lifetime, entertainment legend James Brown advocated the value of education. He determined to leave the great bulk of his estate to that cause. Ten years before he died, he engaged counsel and began planning The James Brown "I Feel Good" private foundation. By early 1999, the components of a complete estate plan — including a will, a revocable trust and a durable power of attorney — were ready for Brown's signature. These were executed on June 15, 1999, four days after Brown completed a \$26 million financing transaction for himself and his wholly-owned company, James Brown Enterprises, Inc. ("JBE, Inc.") in New York (the "TIAA debt").

The will of 1999 gave Brown's entire residuary estate to the trust, which at Brown's death was to be divided as follows: one-half for the education of the seven grandchildren, with a cap of \$2 million;³ and one-half for the "I Feel Good" private foundation, providing scholarships for students at Voorhees, U.S.C. Aiken, and U.S.C. Salkehatchie. [1999 Will, Item II; 1999 Trust, Article V.]

Brown specifically excluded all past and future spouses and all children and other claimed heirs from inheriting his music empire. *In terrorem* forfeiture clauses required his fiduciaries to vigorously defend any challenge to Brown's estate plan as an affront to his

² On August 3 and 6, 2009, the Attorney General and some respondents sought and obtained *ex parte* orders appointing Mr. Bauknight as special PR and special trustee. Requests to reconsider and vacate these orders were consolidated as Case 2009-CP-02-1810 ("Case 1810"), and denied.

³ The cap was tied to the Generation Skipping Tax exemption available at Brown's death. [1999 Trust, Article V.] Subject to the *in terrorem* forfeiture clauses and the spendthrift clause, each of the seven grandchildren had an education fund of about \$285,000.00 by virtue of the 1999 will and revocable trust.

wishes. [1999 Will, Item X; 1999 Trust, Article XIX.] A spendthrift clause confirmed that all funds would be used solely for education. [1999 Trust, Article XIX.]

Under the 1999 estate plan, Brown named as his fiduciaries: daughter Deanna; attorney Dallas; accountant Cannon; road manager Bradley; friends Willie Glenn and Ella Overton; and office assistant Freida Carter. NationsBank of South Carolina was named backup PR and trustee. [1999 Will, Item II; 1999 Trust, Articles I, VI.]

The following year, on August 1, 2000, Brown made minor modifications to his estate plan. [2000 Trust, Article VII.] He expanded the scholarships to include needy and deserving students attending schools in South Carolina and Georgia. He made the Trust irrevocable and funded it with a deed to his 60-acre home estate at Beech Island, in Aiken County, and with his stock in JBE, Inc., which held about two-thirds of the royalties to Brown's more than 800 published songs.⁴ Like the 1999 estate plan, the 2000 will and 2000 Trust contained *in terrorem* forfeiture clauses, and the Trust included a spendthrift clause.

Mr. Brown died at age 73 on December 25, 2006. The part of his music empire that was not already in the 2000 Trust was devised to it. It appeared that Brown had created possibly South Carolina's largest individual private foundation dedicated solely to educating the needy.⁵

⁴ As a result of Dallas' conflicting statements to the courts, the question of who owns JBE, Inc. — the estate or the 2000 Trust — was uncertain for some time. Cannon confirmed that JBE, Inc. has been owned by the Trust since its inception. In September 2007 Dallas filed a knowingly false stipulation asserting that JBE, Inc. had never been transferred to the Trust. Dallas told AG Jones that he was forced to agree to the false stipulation. He later testified he authorized the false stipulation in order not to be removed. [Order dtd. 4/8/08.] In their appeal brief in the Court of Appeals, Dallas and Bradley finally confirmed, as Cannon had always asserted, that Brown transferred, and the trustees accepted, JBE, Inc., into the Trust in 2000. [Brief, Resp. Dallas/Bradley appeal.]

⁵ The Estate/Trust's original tax counsel valued James Brown's assets at \$80–\$120 million with at least \$20 million already in the 2000 Trust. [E-mail from Hammond to Jones, dtd. 11/27/07.] On June 15, 2008 Atlanta investor and branding executive Dr. Terry Cox estimated the total value of the assets at about \$100 million, with \$40–50 (continued...)

Like the 1999 will, the 2000 will contained a "savings clause," incorporating the trust so that both the grandchildren's education trust and the "I Feel Good" Trust would be created even if the 2000 Trust were not in existence when Brown died. The practical effect of these savings clauses was that four separate documents directed that Brown's music empire go to the Brown Family Education trust and the "I Feel Good" private foundation — the two subtrusts of, first, the 1999 (revocable) trust, and second, the 2000 (irrevocable) trust.

Like the 1999 estate plan, Brown's final estate plan acknowledged as his heirs four of his five legitimate children, as well as two of his more than six claimed children not presumed to be heirs. Among those excluded were three heirs who have qualified as children under the estate's DNA protocol, established by original counsel after Brown's death.⁶ [99 Will, Intro; 99 Tr.; Will, Intro; Trust Art. XXII]

For the next seven years the 2000 Trust, of record in two states, operated Brown's home estate at Beech Island. The 2000 Trust also bought and sold a bank building in Augusta and paid education benefits for four of the seven grandchildren. [Tr. Hg. 2/9/08, #122, pp. 18-19.]

By 2007 Dallas and Cannon had ransacked at least \$13 million of Brown's assets. [Amended Compl., Case 322.] It appears that neither Brown nor Deanna and Bradley, co-fiduciaries with Dallas and Cannon for seven years, knew of the massive pre-death

⁵(...continued)

million assigned to publicity rights (image/likeness) and \$36–45 million to royalties for Brown's more than 800 published and unpublished songs. [Cox, Grahm Windsor proposal, 6/07.]

⁶ Those claimed and presumed heirs specifically excluded by the language of both the 1999 and 2000 estate plans are Deon (incarcerated); Lisa (born of first marriage); Jeanette (DNA protocol); LaRhonda; (DNA protocol); Cinnamon (DNA protocol); James II (orally directed to take, but refused, a prepaid DNA protocol through GAL); Tonya (claimed grandchild, but no DNA and her counsel filed a statement omitting her as an heir). [See Order dtd. 3/7/08, Case 872; Petition and related documents, Deon

misappropriations as they were taking place.⁷

In December 2007, immediately after their appointment on November 20, appellants filed the long-overdue application for IRS recognition of the "I Feel Good" Trust, making small technical amendments to the Irrevocable Trust, as allowed by the Trust, to assure IRS approval.⁸ By March they had assembled an Advisory Board for the 2000 Trust, including some of the distinguished leaders Dallas and Cannon had named but never called to serve.⁹

In the final ten days of December 2007, the will and the 2000 Trust were challenged by some of the children and by Tommie Rae Hynie Brown on the ground of undue influence. In March 2008, an amended complaint of some of the children was filed, but it failed to allege any facts to support the claim that Brown's 2000 Trust or the will were the product of undue influence. [Amended Complaint]¹⁰

No discovery took place, and pending dispositive motions were never heard. Having been impleaded in an earlier action, the Attorney General took over as spokesman for the 2000 Trust and settled the undue influence claim and the omitted spousal claim of Tommie Rae in a mediation to which the appellants, as trustees of the 2000 Trust, were not invited

⁷ Brown never used the funds he had intended for retirement not only because they were misappropriated, but also because he continued to be "the hardest working man in show business" until just before his death at 73. Brown grossed about \$6 million per year in road appearances the last three years of his life. Most of Brown's approximately \$3 million per year in royalties was pledged to bring down the TIAA royalty-backed debt. The TIAA debt had been reduced from about \$17 million the summer before Brown's death to about \$11 million when appellants' service was terminated on May 26, 2009.

⁸ Like most private foundations, the "I Feel Good" Trust, although irrevocable, gave the Trustees the authority to amend the Trust solely to assure IRS compliance.

⁹ Appointed were: Dr. Leonard McIntyre, Interim President of S. C. State University; Ms. Inez Tenenbaum, former S. C. Superintendent of Education; Ret. Judge Walter Williams; and Ms. Ann Carmichael of U. S. C. Salkehatchie. Ms. Tenenbaum resigned to accept a federal post. [See Affidavits, Carmichael, Williams]

¹⁰ By administrative directive Case 872, which was originally filed with Case 122, was segregated by the Clerk about May 14, 2008. Earlier documents bear the civil action number of Case 122.

to attend. The Attorney General took over for the 2000 Trust and agreed for it to relinquish roughly half its devise in settlement of these claims. Instead of about 98% of assets after expenses, with no estate taxes, the 2000 Trust would receive 47.5% percent after estate taxes, but then further reduced by \$2 million — the amount required to fund the grandchildren's education trust.¹¹ The only expert testimony offered at the hearings below on the subject of taxation was to the effect that the settlement would cause the loss of the estate tax deduction, resulting in about 50% taxes and interest, and moreover that the "Legacy Trust", created by the settlement, would likely cause the "I Feel Good" Trust to be disqualified as a Section 501(c)(3) private foundation, resulting in income taxation problems in addition to the estate tax generated. [Tr. 4/6/09: 25.]

The proponents of the settlement offered no witnesses to support the contention that the claim of undue influence, allegedly voiding the will and the 2000 Trust, was supported by any evidence. The circuit court did not purport to find merit in the claim of undue influence, but found that the claim was brought in good faith. The court found that the Attorney General was entitled to control and speak for the 2000 Trust, not the trustees, and that the Attorney General was empowered to settle the will contest and omitted spousal claim in its behalf. The settlement negotiated by the Attorney General was found to be just and reasonable.

¹¹ See the charts used at trial and reproduced in the Addendum to this brief for a depiction of the effect of the settlement.

replace the testator's Trust with a new one deemed more suitable by the Attorney General; and then for the court's authority to approve what the Attorney General had done, to remove objecting fiduciaries; and to order the removed fiduciaries to signify their consent, following their removal.

The Attorney General's rationale was simple. The AG contended that, by authority of common law and statute, once he has entered any lawsuit to which a private charitable trust is party, he has authority to control and settle the litigation in behalf of the trust as though he were the trust itself. As the Attorney General's counsel often claimed: "The general law is when the AG appears, he controls the litigation." [Tr., 4/6/09, 149/15-16.] "The Attorney General has exclusive authority over charitable trusts." [Tr. 4/6/09: 181/18 - 182/7.]

The Brown contestants gave lip service to the AG's claim to such authority when asked to do so, but their rationalization for the outcome here was more sophisticated. It centered upon the provision in Section 1102 which allows the court to approve an agreement altering an estate plan over the objection of trustees if agreed upon by *all holders of beneficial interests in the estate*. The Brown contestants contended that where a charitable trust holds a beneficial interest in the estate, this statute gives the court authority to *compel* the trust to agree to an alteration in the estate plan by *ordering* the trustees to sign the agreement, once approved by the court as just and reasonable. When the court approves as just and reasonable the agreement of the other participants to alter the estate plan, the trust's consent is compulsory and the trustees are ordered to sign as a ministerial act, so the argument goes.

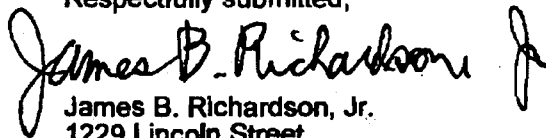
Neither of these theories can be sustained. The Attorney General has no right to set aside the trustees of a private charitable trust and to put himself in the position of super-trustee, managing the affairs of the trust in his discretion and settling a will contest as he sees fit. The fact that a will contest is pending gives him no authority not otherwise possessed, and the AG possessed no such authority to act for the trust. The Attorney

plan — four years in the making — the testator/trustor left his estate plan in place and untouched until his death. The very notion that a will leaving perhaps 98% of one's estate to a mostly charitable trust of one's own creation is the product of undue influence is preposterous on its face.

The only conclusion which this record will bear is that the settlement agreement did not spring from a good faith controversy about the validity of the will or the Trust. Even if it did, it was not just and reasonable by any test which could measure that standard.

For these reasons the appellants urge the Court to reverse the approval of the settlement agreement and related orders.

Respectfully submitted,



James B. Richardson, Jr.
1229 Lincoln Street
Columbia, South Carolina 29201
(803) 799-9412



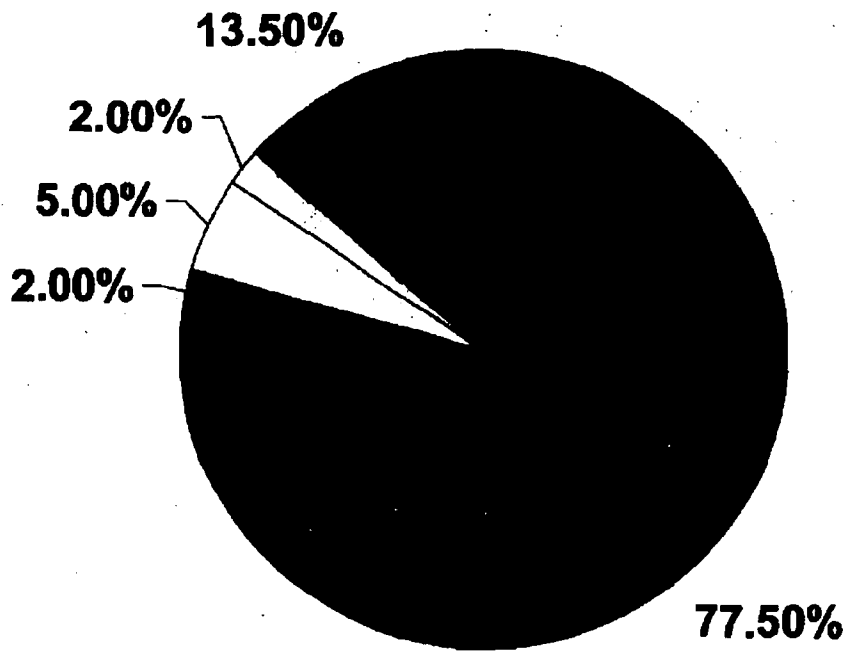
Tressa T. H. Hayes
Post Office Box 5329
Columbia, South Carolina 29250
(803) 803-8583

October 22, 2010.

Attorneys for Appellants.

Chart 1
James Brown's INTENTIONS in his
Last Will & Trust (2000)

2/09



■ Educational Trust	■ G'children's Education Trust
□ PR/Tr. Comm	□ Legal Fees/Admin
■ Debt to Teachers	

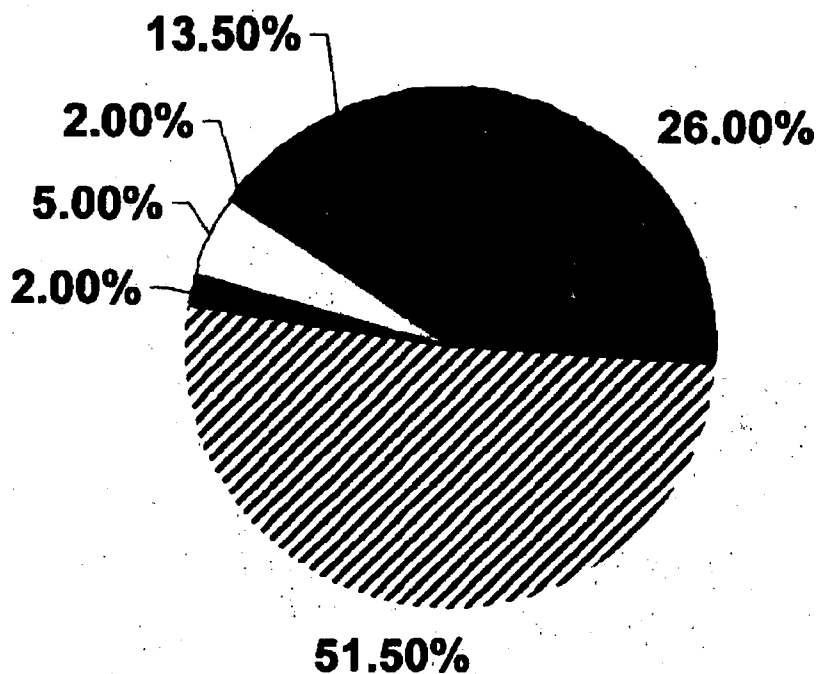
Addendum - 1

Chart 3

HOW THE PROPOSED "SETTLEMENT"

DESTROYS/IGNORES JAMES BROWN'S INTENTIONS

James Brown Estate/Trust Settlement Proposal
 (Hynie Brown/AG/8 of 13+ potential Heirs)
 (Over objection of PR/Trustees Buchanan and Pope)
 (2/09)



- Educational Trust
- ✓ Settling Parties, their Attys., taxes, etc.
- G'children's Education Trust
- PR/Tr. Comm
- Legal Fees/Admin
- Debt to Teachers

Addendum – 2

Division of 25% "Heirs" receive if 2000 and 1999 Wills and Trusts declared void:

If no spouse and 12 "Heirs":

Each "Heir" receives 2.08% of Estate/Trust

If spouse and 12 "Descendant/Heirs":

- 1. Hynie Brown receives 12.5%**
- 2. Each Descendant/Heir receives 1.04%**

Possible Descendant/Heirs (Parties to Case 872, and Parties not joined):

- 1. Daryl Brown**
- 2. Larry Brown**
- 3. Terry Brown**
- 4. Deanna Thomas**
- 5. Vanisha Brown**
- 6. Yamma B. Lumar**
- 7. Tonya Brown**
- 8. James Brown II**
- 9. LaRhonda Petit**
- 10. Cinnamon Parris**
- 11. Jeanette Mitchell**
- 12. Deon Brown – not joined**
- 13. Doe Defendants**

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

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

Plaintiffs.

v.

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

Defendants.

IN THE COURT OF COMMON PLEAS

Case No.: 2010-CP-40-

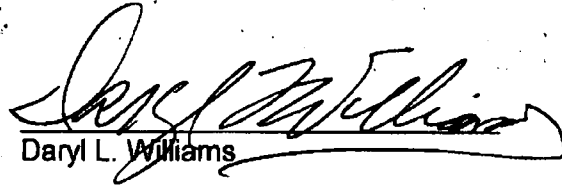
AFFIDAVIT OF DARYL L. WILLIAMS

PERSONALLY APPEARED BEFORE ME, Daryl L. Williams who, being duly sworn,
deposes and says:

I am counsel for Defendant Adele J. Pope in the above-captioned action.

Attached hereto are true copies of the Complaints in two declaratory judgment actions filed on November 17, 2010 by The Cincinnati Specialty Underwriters Insurance Company. One names Buchanan Law Office, P.A. and Robert L. Buchanan as Defendants (Civil Action No. 3:10-cv-02986); the other names Adele J. Pope as Defendant (Civil Action No. 3:10-cv-2987). Both actions are now currently pending un the United States District Court for the District of South Carolina. I obtained these copies from the PACER electronic document filing system of the United States District Court and they are true copies of documents available through that system.

FURTHER DEPONENT SAYETH NOT.


Daryl L. Williams

SWORN TO BEFORE ME this 30th
Day of November, 2010

Wicki S. Moore

Notary Public for South Carolina
My commission expires: 9/1/2019

STATE OF SOUTH CAROLINA

IN THE CIRCUIT COURT

COUNTY OF RICHLAND

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

and

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

Plaintiffs

v.

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

Case No. 2010-CP-40-4900

RESPONSE OF ADELE J. POPE
TO FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS

JEANETTE W. H. SCOTT
C.C.P. & C.S.

2010 DEC 10 AM 10:22

RICHLAND COUNTY
FILED

Defendant Adele J. Pope, subject to the objections stated below, responds to the
Request for Production of Documents of Plaintiffs as follows:

General Objection as to all Requests to Produce

1. Defendant Pope objects to the participation of the Attorney General of South Carolina (the "AG"), or any person purporting to act for the AG, in a private tort suit to obtain money damages for private individuals – as exceeding and abusing of his duty to protect funds set aside for public charities, and failing to serve the public interest.
2. Defendant Pope asserts the AG's attempt to obtain her tax returns and disseminate them to private individuals conflicts with the AG's duty to enforce the tax laws of the State of South Carolina.
3. Defendant Pope objects to the attempt by the AG and his agents to obtain her

private information for an improper private purpose, violating her due process and privacy rights.

4. Defendant Pope objects to all Requests as burdensome and intended to harass because more than 95% of the requested documents, more than 1 million pages and 160 banker's boxes, are in the possession and/or control of Plaintiffs.

5. Defendant Pope objects to the attempt by current contingency-fee Plaintiffs' counsel to serve as counsel for the AG and simultaneously serve the private interests of Tommie Rae Brown, Terry Brown and others, because it violates the public interest which the AG and his counsel are required to serve.

6. Defendant objects that AG McMaster has placed the awesome power of the State at the service of private individuals in an attempt to destroy private citizens who properly performed their duty to protect the Estate Plan of James Brown.

7. Defendant Pope objects to all matters covered by the attorney-client and work-product privilege prepared by the Defendants and their counsel in connection with litigation.

Subject to the above, Defendant Adele J. Pope responds to the First Request for Production of Documents as follows:

Request No. 1:

1. All documents generated by you or received by you during the period from February 20, 2007 through the present relating to the Estate of James Brown, any trust created by James Brown, or any entity owned, in whole or in part by James Brown.

Response No. 1:

Such of the above documents as are in the possession and control of this

Defendant will be made available to Plaintiffs at a mutually convenient time at 212

Newberry Street NW, Aiken, South Carolina. Most are copies of documents filed with

Courts and/or in the possession and/or control of Plaintiffs and include:

a. Copies of some of the following documents delivered to Mr. Bauknight on May 27, 2009:

1. Voluminous transcripts of James Brown, LLC; JBE, Inc and James Brown recently delivered to us by the Internal Revenue Service;

2. IRS Cover letter to Ms. Pope dtd. March 20, 2007, re: transcripts;

3. Copy Estate Tax Return

4. Tax box, including other IRS and tax materials, including back tax returns for all entities.

5. CORBIS Illinois litigation, 1 box containing 3 red rope files and one pleadings notebook.

6. Checkbook and checks

7. Administration box with following subfiles:

2008 and 2009 SF Statements; David Washington; Enterprise Bank; old unpaid Bills; WAMU Investments; Bank of America; Sizemore Visitor Log; Miscellaneous; Sizemore Security; Cruise Security; State Farm Auto; IRS Documents; Estate Tax Return; Probate Docs; Hogan and Hartson bills; miscellaneous checks; Iron Mountain; Agenda Jan. 19, 2009 Corbis meeting in New York;

b. Approximately 150 faxes and other documents between Bauknight and Pope and/or Buchanan between May 26 and June 27, 2009, including:

1. Correspondence re: June 2, 2009 mtg. Of Defendants, Bauknight and Bauknight agent Kingsmore.

2. Memo dtd. June 4, 2009 re: Temporary Management of Estate of James Brown and 2000 Trust, following meeting on June 2, outlining Disagreement; Agreement; and For Consideration.

3. Ltr. of J. Kendall Few to J. David Black dtd June 5, 2009 re "Estate of James Brown, et al. Litigation"

4. Memo: from AJP to Russell Bauknight dtd June 8, 2009 re: action of his agent David Black w/ respect to suit against Cannon/Dallas and others; Orders that might touch on "your obligations and ours; Relationship of Bauknight and Nexsen Pruet; and Unresolved Issues related to Litigation pending final outcome of May 26 Order;

c. Documents within the following boxes transferred to Mr. Bauknight on May 29, 2009 [See CUSTODY RECEIPT dtd. 5/29/09]:

Cannon Boxes

1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18,19,20,21,22,23,24,25,26,27(small box), 28,29,30 &31 containing Brown historical documents.

7th Decade Boxes 15a, 15b, 15c containing Brown historical documents.

Lewis & Babcock Boxes

1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18,19,20,21,22,23,24,25,26,27,28,29, 30, 31, 32 and 33 containing Brown historical documents and Estate and Trust administration and legal documents.

Dallas Boxes

1,2,3,4,5,6,7, 8,9,10,11 containing Brown historical documents.

Morgan Stanley Box 13a containing pleadings and other information.

d. Ltrs. to/From Pope to Knight, Bauknight dtd. June 12, 2009 re: JBE, Inc.

e. Emails to/from Pope and Kraig Fox, Bauknight dtd. 6/5/09 - 6/16/09.

f. Printouts of clearance emails

g. Bill of Gold & Coulson, Hollander Chicago matter.

h. Documents from the 145 boxes delivered to Plaintiff Bauknight on or before June 22, 2009, as more fully described in on the CUSTODY RECEIPT signed by Plaintiff Bauknight and filed in this Case (2009-CP-40-2900) on or about June 22, 2009.

i. All pleadings, motions, affidavits and other documents and filings, as well as correspondence between counsel for Defendants and Plaintiff in Federal Case brought by Forlando Brown on January 2, 2008, which documents are in possession of David B. Bell and/or William Shearer of Powell Goldstein, LLP

16. Due Diligence Issues Related to Motion to Approve Settlement
17. Response of Terry, Romunzo Brown to Motion to Realign, dtd. January 29, 2009;
18. Return and Motion of Buchanan and Pope dtd. February 17, 2009;
19. Return of Defendants Buchanan and Pope to Motion for Approval of Settlement, dtd. February 5, 2009;
20. Objection to Settlement, dtd. February 9, 2009;
21. Motion and Memorandum, dated February 23, 2009;
22. Response and Objection dtd. March 2, 2009;
23. Return and Opposition dtd. March 3, 2009;
24. Motion to Reconsider, Vacate, Set Aside, Alter and/or Amend and/or Clarify Orders, dtd. March 12, 2009;
25. Supplemental Motion of PR/Trustees to Dismiss and for Partial Summary Judgment, dtd. March 17, 2009;
26. Supplemental, Continuing Objections. . . dtd. April 2, 2009;
27. Brief of Trustees and PRs dtd. April 23, 2009;
28. Supplemental Motion of PR/Trustees for Summary Judgment, dtd. April 28, 2009;
29. Motion to Alter or Amend Judgment, dtd. June 1, 2009;
30. Motions of Michael Deon Brown, dated June 11, 2009;
31. Motion to Alter or Amend and/or Reconsider dtd. August 20, 2009;
32. Appellants' Motion for Reconsideration dtd. September 23, 2009;
33. Motion to Alter or Amend and/or Reconsider and Vacate August 3, 2009
34. Order Appointing Special Trustee, dated August 20, 2009;
35. Notice of Appeal of August 6, 2009 Order Appointing Special Administrator, dated August 13, 2009
36. All subsequent motions, returns and/or memoranda from any related cases.

bo. Additional Transcripts, including:

1. Transcript of Hearing on February 9, 2007
2. Transcript of Hearing on June 13, 2007
3. Transcript of Hearing on August 10, 2007
4. Transcript of Hearing on September 24, 2007
5. Transcript of Hearing on November 15, 2007
6. Transcript of Hearing on November 20, 2007
7. Transcript of Hearing on January 4, 2008
8. Transcript of Hearing on February 7, 2008
9. Transcript of Hearing on February 20, 2008
10. Transcript of Hearing on March 7, 2008
11. Transcript of Hearing on April 25, 2008
12. Transcript of Hearing on August 19, 2008
13. Transcript of Hearing held November 25, 2008
14. Transcript of Hearing held January 30, 2009

31. Transcript of Hearing Held March 4 - 6, 2009
32. Transcript of Hearing Held March 25 - 26, 2009
33. Transcript of Hearing held April 6, 2009
34. Transcript of Hearing on September 9, 2009
35. Transcript of Hearing on November 10, 2010

bp. Additional Affidavits and Miscellaneous documents, including:

1. Affidavit of David G. Cannon, dated July 22, 2007;
2. Affidavit of Albert H. Dallas, dated July 30, 2007;
3. Affidavit of Alfred A. Bradley, dated July 30, 2007;
4. Affidavit of Phil Farr, dated September 24, 2007;
5. Stipulation, dated September 24, 2007;
6. Certificate of Appointment of Robert L. Buchanan, Jr. and Adele J. Pope, dated November 20, 2007;
7. Affidavit of Adele J. Pope dated December 14, 2007 with list of Exhibits and all Exhibits;
8. Affidavit of Robert L. Buchanan, Jr., dated December 17, 2007;
9. Affidavit of Adele J. Pope, dated January 6, 2008;
10. Affidavit of Robert L. Buchanan, Jr., dated January 7, 2008;
11. Supplemental Affidavit of Adele J. Pope, dated January 7, 2008;
12. Affidavit of Adele J. Pope dated February 18, 2008 with all exhibits;
13. Affidavit of Robert L. Buchanan, Jr. dated February 18, 2008 with all exhibits;
14. Trustees Meeting Minutes, dated March 5, 2007;
15. Greenberg Taurig Letter, dated October 18, 2006;
16. Last Will and Testament dated June 15, 1999;
17. Trust dated June 15, 1999;
18. Ltr. of Powell Goldstein dtd. 7/10/07, w/ attachments
19. Inventory & Appraisement of Dallas and Bradley dated November 15, 2007 (form only, without detailed attachment)
20. Advisory Board Document dtd. 8/1/00
21. Affidavit of J. Martin Posey, Tax Collector of Aiken County, dated February 1, 2007, without attachments;
22. Affidavit of John Freeman dated December 31, 2007;
23. Affidavit of Robert N. Rosen, dated December 31, 2007;
24. Affidavit of Gerald C. Smoak dated January 1, 2008;
25. Affidavit of T. Heyward Carter, Jr., dated January 2, 2008;
26. Affidavit of S. Alan Medlin, Dated January 2, 2008;
27. Affidavit of Alfred Bradley dated January 30, 2008, with All Exhibits A-G;
28. Affidavit of Albert Dallas dated January 30, 2008;
29. Affidavit of Rita Cullum dated March 4, 2008;
30. Affidavit of Mary Holmes dated May 18, 2008;
31. Affidavit of Louis Levenson dated May 21, 2008 (Court of Appeals);
32. Joint Affidavit of Robert L. Buchanan, Jr. and Adele J. Pope, dated July

64. Amended Complaint, Brown vs. Brown, Case No. 04-DR-02-0157
65. Acknowledgement of Service, Brown vs. Brown, Case No. 04-DR-02-0157
66. Answer and Counterclaim, Brown vs. Brown, Case No. 04-DR-02-0157
67. Reply, Brown vs. Brown, Case No. 04-DR-02-0157
68. Prenuptial Agreement of Tommie Rae Hynie and James Brown
69. Appointment of Deanna B. Thomas, Trustee
70. Appointment of Yamma Lumar Executive Assistant to Board
71. Ltr. of Levenson to Thurmond Massey dtd. January 18, 2007
72. Affidavit of Daryl J. Brown dtd. January 18, 2007
73. Affidavit of Deanna J. Brown Thomas dtd. January 18, 2007
74. Affidavit of Yamma B. Lumar dtd. January 18, 2007
75. Affidavit of Ann Carmichael
76. Affidavit of Walter Williams
77. Response to Requests to Admit dtd. 8/27/08, Case 872
78. Ltr. of C. Havird Jones dtd. January 29, 2009
79. Ltr. of David Bell to Jones dtd. January 29, 2009
80. First Right of Refusal Language
81. Letter from James D. Bailey to the Honorable Doyet A. Early, III, dtd. March 23, 2009
82. Agreement dtd. 8/10/08, with Addendum and attachments, filed March 26, 2009

bq. Defendants' files, correspondence and other documents as non-fiduciary Special Administrators (Sas) from March 7, 2007 - November 20, 2007, consisting largely of documents/interaction with Plaintiffs, but also containing telephone messages, handwritten notes, and other documents.

br. Box entitled **AG McMaster/ Sonny Jones**, consisting largely of documents/ interaction among Plaintiffs and Defendants, but also containing other documents, notes and memoranda, including:

- a. Docs. from Richland Cty. Case #2009-CP-40-6278, U.S.C. Educational Foundation, vs. David S. Madison, individually and as former trustee of Tracy A. Baylis Charitable Foundation and others.

bs. Box entitled **Copyrights** containing Miscellaneous information regarding

bt. Box entitled **Private Foundations** containing articles, notes, documents, etc. related to private foundations

bu. Box entitled **Valuation** containing books, articles, documents, related to valuation issues.

bv. Such copies as Defendants have of the 145 boxes of documents delivered to Plaintiff Bauknight and described in the detailed receipt signed by Bauknight on

Request No. 3:

3. All records of time expended and expenses incurred by you in providing legal services to the 2000 James Brown Irrevocable Trust or the Estate of James Brown.

Response No. 3:

Defendant objects to this as Request because Plaintiffs have acknowledged to the Court on August 30, 2010 that Defendants performed no legal services for the Estate of James Brown and/or the James Brown 2000 Trust. Also, see Response to Request #1 and filings in Probate Court.

Request No. 4:

4. All records of expenses incurred by the Trust or Estate in obtaining the services of other professionals retained by you in your capacity as Trustee or Personal Representative.

Response No. 4:

See Answer to Request No. 1. Accounting in possession of Plaintiffs and on file in Court.

Request No. 5:

This Defendant objects to the improper use of the power of the Attorney General and/or his agents to attempt to obtain private tax returns for the benefit of other private parties and/or to seek money damages in a private tort suit to benefit private individuals as exceeding and/or abusing his authority.

The request violates the Due Process and privacy rights of this Defendant under the United States and South Carolina Constitutions and may subject her information to Freedom of Information Act requests. No public purpose is served.

Respectfully submitted



Daryl L. Williams

Jeter & Williams, P.A.

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Post Office Box 7425

Columbia, South Carolina 29202

Telephone: (803) 765-0600

Facsimile: (803) 765-0619

November 16, 2010

Attorney for Defendant Adele J. Pope

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

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

Plaintiffs.

v.

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

) IN THE COURT OF COMMON PLEAS

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

) ANSWERS OF ADELE J. POPE
) TO FIRST INTERROGATORIES
) OF PLAINTIFFS

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

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

2010 DEC 10 AM 10:22

RICHLAND COUNTY
FILED

2010 DEC -9 PM 12:41
RICHLAND COUNTY
FILED

TO: PLAINTIFFS OR THEIR COUNSEL:

Defendant Adele J. Pope, subject to objections as stated herein, answers
Plaintiffs' First Set of Interrogatories as follows. Defendant Pope reserves the right to
supplement these Answers at any time.

Interrogatory 1:

Give the names and addresses of persons known to the parties or counsel to be
witnesses concerning the facts of the case and indicate whether or not written or
recorded statements have been taken from the witnesses and indicate who has
possession of such statements.

Answer: In addition to Defendants, parties and witnesses designated by Plaintiffs:

1. HENRY D. McMASTER, Plaintiff (former Plaintiff upon substitution) - Written and

recorded statements, including:

- a. More than 1 million pages of documents he or his staff reviewed, or were available for review, on or before **August 10, 2008**, including McMaster's WIS TV Statement of February 7, 2008; McMaster's public statements about his role in controlling the grand jury; McMaster's public statements about his role as Tax Collector; the records from his campaign for governor; and Affidavits, Exhibits, Orders, Transcripts, correspondence, emails, documents, depositions, accountings, Inventories, records, and videos in connection with the James Brown Probate, Circuit Court and Federal Court matters.
- b. Additional documents described above & generated/acquired between August 10, 2008 and May 26, 2009.
- c. Additional documents described above & generated/acquired between May 26, 2009 and the commencement of this action on May 19, 2010.
- d. Additional documents described above & generated/acquired after May 19, 2010.
- e. The documents from the Probate Court; Case 122; Case 322; Case 872, the Claims cases; the Dallas Bankruptcy; Case 1647; Case 1810; the Forlando Federal Suit; the Corbis/GreenLight Litigation, the Pullman Group Litigation, the Georgia proceeding to obtain the Powell Godlstein("PG") file; the David G. Cannon criminal indictments for years 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006 & uttering a forged document on November 12, 2008; the Cannon Appeal and decision dated November 6, 2009; the Dallas/Bradley appeal, dismissed November 2010; and probate file of Al Bradley, deceased.

[All such documents are in the possession or control of the Office of the AG or other Plaintiffs. See Custody Receipts of Russell L. Bauknight.]

2. Alan Wilson - Attorney General Elect - no recorded statements. See #1, above.

Alan Wilson
Willoughby & Hoefer, P.A.
930 Richland Street
Columbia, South Carolina 29201

3. C. Havird "Sonny" Jones, Jr. - written and recorded statements, as in #1, above.

C. Havird Jones, Jr., Esquire
Senior Assistant Attorney General
Office of the Attorney General

State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549

4. **S. Alan Medlin** - Numerous written and recorded statements in possession of Plaintiffs.

Alan Medlin, Esquire
1713 Phelps Street
Columbia, South Carolina 29205

5. **Asst. AG Mary Frances Jowers** - written and recorded statements as in #1, above.

Mary Frances Jowers, Esquire
Assistant Attorney General
Office of the Attorney General
State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549

6. **A G Staffer Sandra Matthews** - written and recorded statements as in #1, above.

Sandra Matthews
Office of the Attorney General
State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549

7. **Assistant AG J. C. Nicholson** - written and recorded statements as in #1, above.

J.C. Nicholson, III, Esquire
Assistant Attorney General
Office of the Attorney General
State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549

8. **Plaintiff Terry Brown** - written and recorded statements as in #1, above.

Terry Brown
c/o David B. Bell, Esquire
Bell & Bell Associates

63. **Tommie Rae Hynie Brown** – written and recorded statements as in #1, above.

Tommie Rae Hynie Brown
c/o Robert N. Rosen, Esquire
Post Office Box 1840
Charleston, South Carolina 29402

Interrogatory 2:

Give the names and addresses of every person known to you to have information concerning the administration of the Estate of James Brown or the 2000 Irrevocable Trust.

Answer:

See Answer to Interrogatory #1, above and #7, below. Tressa T. H. Hayes, Esquire, James D. Bailey, Esquire; William Sellars, Esquire; Alan Rothschild, Esquire; Matthew Ballenger, Esquire; James Richardson, Esquire; Christie's; Staff of S. C. State Museum; Staff of Augusta Museum of History; Staff of I. P. Stanback Museum & Planetarium; Dr. Michael Einhorn; Heyward Carter, Esquire other names contained within the files delivered to Russell Bauknight in June 2009.

Interrogatory 3:

Give the names and addresses of every professional retained by you to advise you in your duties as Personal Representative of the Estate of James Brown or as Trustee of the 2000 Irrevocable Trust.

Answer:

See Answer to Interrogatories #1 and 2, above and #7, below.

Interrogatory 4:

Give the names and addresses of every person or entity to whom you delegated any of your duties as Personal Representative of the Estate of James Brown or as Trustee of the 2000 Irrevocable Trust.

Answer:

Defendants did not delegate their duties. They were assisted by various individuals, as designated in Interrogatories #1, #2 and #7.

Interrogatory 5:

Give the names and addresses of every person whom you consulted that provided information, analysis or recommendations that you relied upon in carrying out your duties as Personal Representative of the Estate of James Brown or as Trustee of the 2000 Irrevocable Trust.

Answer:

See Answer to Interrogatories #1 and #2, above and #7, below.

Interrogatory 6:

List the names and addresses of any expert witness whom the party proposes to use as a witness at the trial of the case.

Answer:

Defendants have not identified experts at this time, other than those, including Defendants, who are listed above or were identified as experts in other James Brown matters or who may be both fact and expert witnesses.

Interrogatory 7:

For each person known to the parties or counsel to be a witness concerning the facts of this case (to include every person identified in your responses to these interrogatories) set forth a summary sufficient to inform the other party of the important facts known to or observed by such a witness, or provide a copy of any written or recorded statements taken from such witness.

Answer:

1. HENRY D. McMASTER, Plaintiff (former Plaintiff upon substitution) - McMaster has knowledge of the following:

The James Brown Estate and 2000 Trust Intended to Support Education

- n. McMaster is expected to testify as to when and how he, Tommie Rae Hynie and the Brown Family, LLC formed the "Legacy Trust", and any amendments.

Policy Issues Raised By This Suit and McMaster's Takeover of Brown Estate and Private Foundation

- a. McMaster is expected to testify that McMaster's office has never before joined with private individuals, including non-residents of SC, to bring a tort suit for money damages against S. C. private citizens for the benefit of his private Co-Plaintiffs.
- b. McMaster is expected to explain why he thought it was proper for the State to take over James Brown's private property, including his estate and non-charitable trust.
- c. McMaster is expected to testify how allowing Attorneys General to take over and control the private property deceased South Carolina citizens have left in carefully created estate plans raises serious economic, constitutional and regulatory problems.
- d. McMaster is expected to testify that if the Attorney General can take over any private foundation – and give it to people the Settlor intended to disinherit – many citizens of South Carolina may elect not to create private foundations.
- e. McMaster is expected to testify that estates and private foundations are private property which should not be appropriated by the State acting through its Attorney General.
- f. McMaster is expected to testify why he believes that entering into a private agreement with non-beneficiaries of the James Brown 2000 Trust, giving them and their lawyers more than 65% of the Trust, in his view, benefitted the public.

McMaster's Knowledge Of or Acquiescence in Acts Of His Office

- a. McMaster is expected to testify the Georgia AG entered Case 122 *pro hac vice* under Mc Master, and both sought to overturn the order accepting Dallas' resignation.
- b. McMaster is expected to testify of his knowledge in 2007 that Cannon and Dallas had filed more than \$10 million of claims against the Estate, and that he knows such claims are frivolous.

on WIS Television and falsely accused Buchanan and Pope of simultaneously working for "the family and the poor kids" and asserting that their actions "went far past the stop sign of conflict of interest."

l. McMaster has information that his office tried to force Buchanan and Pope to hire lawyers selected by McMaster to conduct the Estate and Trust's business, and that Jones was enraged when they declined to do so.

m. McMaster is expected to testify about his decision to get rid of Buchanan and Pope and replace them with Bauknight.

2. Alan Wilson, Esquire - Attorney General Elect

Attorney General Wilson is expected to have knowledge of the following facts:

a. When he first learned of Case 4900.

b. Which of Mr. McMaster's positions with respect to the right of an Attorney General to take over the private property of estates of South Carolinians he is attempting to enforce.

c. Whether he has ratified the contingency fee contract of AG McMaster, Tommie Rae Brown, Terry Brown, Jason Lewis and others with Sweeney, Wingate and Barrow, and if so the terms of the contract and any amendments.

d. Whether the fact that Julie Houston is the mother-in-law of his brother's wife impacts his ability to work with Sweeney, Wingate & Barrow.

e. Whether he supports joining Tommie Rae Brown and Terry Brown in a private suit against Buchanan and Pope for their benefit, and what public interest he believes is served thereby.

f. Whether the Attorney General continues to support the right asserted by McMaster to take over private foundations; completely rewrite estate plans; and convert private foundations to public charities without the consent of the trustees.

g. His position on all matters raised above with respect to McMaster.

h. Whether he will obtain the 55,000 documents and 5,000 emails of the GT file which Bauknight failed to recover for more than a year; or the PG file, which Bauknight has not acquired.

Steve Sidman, Dallas, PG, Joel Katz and others in June 2007 to market the James Brown assets for \$100 Million and create an IPO expected to generate more than \$50 Million per years. The analysis made by Bauknight in his decision of all financial analysis of Bauknight's recommendation to give a right of first refusal to Terry on January 30, 2009 of assets TJBL, LLC owner Forlando valued at the time at \$150 million; the problems associated with represented both the seller and the purchaser in a \$100 million transaction; how Jones arrived at a prediction that the James Brown assets were worth only \$12 million at death; his consultations with Deanna & Yamma about the \$200 Million Prospectus; Terry about the Right of First Refusal; Forlando about his sworn \$150 million valuation; Leon Friedman about his \$100 Million assessment of the value of the James Brown assets; Phil Farr about the adjustment needed in the valuation resulting from Farr's failure to report the TIAA assets; the \$18 million road revenues generated by James Brown in the 3 years prior to his death; the negative impact on the value of the James Brown assets by refusal of Hynie Brown and Terry to approve the CORBIS/GreenLight 2-year publicity rights contract for May1, 2009 - May 2011; the negative impact on the value of the assets of the grant of first refusal to Terry; the negative impact on the value of the James Brown assets by the interference of Tommie Rae in the Right of First Offer process proposed for February 2009; the date-of-death value of the \$13 Million claim against Cannon, Dallas and others and the damage to the estate by a decision not to pursue those claims; the historical information about the royalty and other valuation information contained in the PG and GT files, as well as detailed data about the \$100 Million June 2007 offer of GT; detailed information from Levenson and/or Bell about the \$200 Million prospectus.

Has other information about the documents referenced in Answer 1 to Interrogatory #1, above.

22. **Rick Reames, Esquire** - may have information related to the various \$90 - \$102 Million offers made for the James Brown assets between October 2007 and March 2008; the \$200 Million prospectus prepared by Levenson clients in early 2007, just after the death of James Brown; the approximately \$400,000 per year reported by Hynie Brown to be received by Brown during the period prior to his death; the reduction in the TIAA debt since Brown's death; the misappropriated Voxonic contract; the details of the plan by Steve Sidman, Dallas, PG, Joel Katz and others in June 2007 to market the James Brown assets for \$100 Million and create an IPO expected to generate more than \$50 Million per years. The analysis made by Bauknight in his decision of all financial analysis of Bauknight's recommendation to give a right of first refusal to Terry on January 30, 2009 of assets TJBL, LLC owner Forlando valued at the time at \$150 million; the problems associated with represented both the seller and the purchaser in a \$100 million transaction; how Jones arrived at a prediction that the James Brown assets were worth only \$12 million at death; his consultations with Deanna & Yamma about the \$200 Million Prospectus; Terry about the Right of First Refusal; Forlando about his sworn \$150 million valuation; Leon Friedman about his \$100 Million assessment of the value of the James Brown assets; Phil Farr about the adjustment needed in the valuation resulting from Farr's failure to report the TIAA assets; the \$18 million road

Interrogatory 13:

Set forth the name and address of every financial institution to whom you have provided a financial statement in the last five years.

Answer:

This Defendant objects to the violation of her Due Process Rights, First Amendment Violations and Violation of State Privacy Policies by the Attorney General Attempting to Obtain her Private Financial Information for the benefit of Private Individuals, subjecting her personal information to FOI requests. [Upon resolution of the right of the AG to bring this private tort suit for damages and a proper protective Order, she will produce same to the Court.]

Respectfully submitted



Daryl L. Williams

Jeter & Williams, P.A.

1204 Main Street, Suite 200

Post Office Box 7425

Columbia, South Carolina 29202

Telephone: (803) 765-0600

Facsimile: (803) 765-0619

November 16, 2010

Attorney for Defendant Adele J. Pope

VERIFICATION

I have read the Answers of Adele J. Pope to First Interrogatories of Plaintiff. As of the date hereof, the matters and things therein stated are true to my own knowledge, except those matters and things therein stated on information and belief, and as to those I believe them to be true.

By: Adele J. Pope
Adele J. Pope

SWORN to and subscribed before me
this 16th day of November, 2010

(Signature) (L.S.)
Notary Public for South Carolina
My Commission Expires: July 13, 2016

FILED
2010 DEC 10 AM 10:22
JEANETTE W. McBRIDE
C.C.P. & G.S.

EXHIBIT A

Confirmation and Amendment

Certain parties entered into an Addendum to Private Agreement of August 10, 2008 to include Settlement Agreement with Terry Brown Creating Restated and Amended Private Agreement (the "agreement"), that created an entity (the "Settlement Entity") to hold all of the assets related to James Brown, as described in paragraph 1 of the agreement. Capitalized terms not defined herein have the meanings set forth in the agreement. Those parties hereby confirm and amend certain provisions of the agreement, as follows:

1. Under the agreement, Terry Brown ("Terry") has a Right of First Refusal ("ROFR"). This agreement confirms that Terry's ROFR in all respects under the agreement applies only to "the sale of all or substantially all" of the "James Brown Assets" (as the term James Brown Assets is defined in paragraph 1 of the agreement). The term "the sale of all or substantially all" includes only (a) the sale of the entirety (that is, one hundred percent) of the James Brown Assets in one or a series of related transactions, or (b) the sale of at least 65% of the estimated value of the entirety of the James Brown Assets as of such time in one or a series of related transactions. Terry's ROFR does not apply to any other transfer of any of the James Brown Assets or an interest therein. For example, and notwithstanding anything to the contrary in the agreement or in the foregoing, the ROFR does not apply to the granting of one or more clearances or licenses of any duration, scope, or description for the use of any or all of the James Brown Assets, including but not limited to such purposes as movies, documentaries, video games, commercials or other advertisements, product brands, books or other publications, or theatrical productions.
2. Under the agreement, Terry has the exclusive right to conduct a due diligence review ("due diligence right") of all of the James Brown Assets as provided in Paragraph 5 of the agreement. With respect to the due diligence right, the agreement is hereby amended to the extent and only to the extent as follows: (a) Terry may commence the due diligence review immediately upon the execution of this confirmation and amendment; (b) the due diligence period will be for a period of twelve months from the execution of this confirmation and amendment; (c) there is no prohibition against the Settlement Entity, and/or Russell Banknight as fiduciary or any agent or consultant employed by or on behalf of the Estate or Settlement Entity, soliciting, encouraging, entertaining, discussing, or accepting offers with respect to the sale, transfer, license, or other disposition or exploitation of any of the James Brown Assets (including any offer generated by a beneficiary of the Estate or such other agents or representatives as the Estate or Settlement Entity may from time to time authorize), subject in all cases to the Terry's exclusive solicitation rights clarified in paragraph 3 below; and (d) Terry Brown or his designee shall have the exclusive right to use any work product or other materials in any medium prepared by or on behalf of Terry in the course of the exercise of the due diligence right for purposes of soliciting, encouraging, entertaining or discussing, offers with respect to the sale, transfer, license, or other disposition or exploitation of any of the James Brown Assets.
3. Under paragraphs 6, 7 and 8 of the agreement, Terry has the exclusive right to solicit offers for a period of six months ("right to solicit"). With respect to the right to solicit, the agreement is hereby amended to the extent and only to the extent as follows: the six-month period of the right

BPCL 1.208227 A-AGM (ENK) 046146-00006

to solicit (which was formerly contemporaneous with the Exclusivity Period of the due diligence right) shall commence three months after notice from Terry (at any time after the later of the expiration of the due diligence review period or the funding of the Settlement Entity). The three-month period is to allow the Estate/Settlement Entity a reasonable time to wind down or complete any then-ongoing discussions, but the Estate and Settlement Entity will not use such period for any purpose that is intended to defeat Terry's enjoyment of the right to solicit; provided however, that Terry's right to solicit will prohibit neither the continued granting of music clearances nor the continued performance of licenses and clearances permitted by paragraph 1 above.

4. Terry and the other parties to the agreement shall agree that, during the periods in which Terry is exercising the due diligence right and the right to solicit under paragraphs 2 and 3 above, they shall cooperate with respect to providing Terry and his representatives full access to any and all records, documents, things and information within the parties' control concerning the James Brown Assets and the value thereof, including but not limited to contracts, documents and things pertaining to or reflecting James Brown's songwriting or recording activities, royalty statements, bank records, audits, valuations, tax documents, audio master tapes, video master tapes, government filings (including but not limited to trademark and copyright filings), personal effects, artwork, writings, journals, photographs, press clippings, promotional materials, whether or not constituting "Confidential Information" for purposes of the agreement (collectively, the "Documents"), subject to an obligation to safeguard such items. Terry shall have the right to make the Documents or information therein available to third parties as he reasonably deems necessary in connection with the exercise of the due diligence right and the right to solicit, provided that such third parties first enter into confidentiality agreements in favor of the Estate and/or the Settlement Entity, as applicable, that are at least as protective of such information as the provisions of paragraph 9 of the agreement.

5. Except as confirmed and amended by this confirmation and amendment, the agreement remains in full force and effect.

NPCOL12080327.1-AGB-(CMK)046146-00004

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Assistant Deputy Attorney General
C. Harvard Jones, Jr.
Senior Assistant Attorney General
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Attorney for Larry Brown, Daryl J. Brown, Janise Vantasha B., Lindsey Deloras Brown, Vantasha Brown, Deanna J. Brown Thomas, Jason Brown Lewis, Yanna N. Brown-Lamar, Sydney L. Carrington L., and Tonya Brown

MP0015 200827 2408 (1000) 000 1 10000



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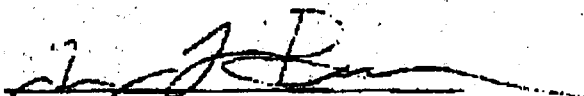
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*Attorney for Larry Brown, Daryl J. Brown, Janice K. Nichols
B., Lindsey Deloris Brown, Vanisha Brown, Deanna J.
Brown Thomas, Jason Brown Lewis, Yarnes N. Brown,
Lamar, Sydney L. Carrington L., and Tanya Brown*

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Terry Brown

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EXHIBIT B

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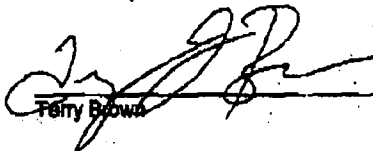
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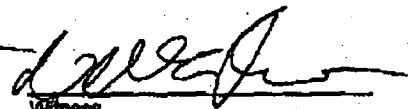
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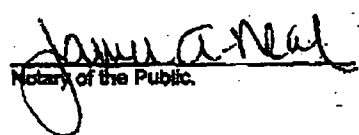
For in consideration of the sum of \$1 with love and affection and other valuable consideration, the undersigned, Terry Brown, being a biological child of James Brown the entertainer and known world-wide as the godfather of soul, and beneficiary under the Last Will and Testament of James Brown and the Irrevocable Trust of James Brown dated 8-1-2000, does hereby transfer, irrevocably convey and assign unto William Forlando James Brown all my interest of every nature and kind in the Estate of James Brown.

To the extent that any third party may deem this transfer ineffective for any reason, I hereby designate and appoint, my son William Forlando James Brown, as my true and lawful attorney in fact hereby granting unto him a power, coupled with an interest, to execute any document in my name and stead as and to the same extent that I may execute and convey my interest in the matter of James Brown. This transfer shall be deemed irrevocable and coupled with an interest. I hereby acknowledge that I have made this transfer with due consideration, thought and design, and that I do so voluntarily and of my own accord.

Witness my hand and seal this date January 3, 2011


Terry Brown


Witness


Notary of the Public.

MY COMMISSION
EXPIRES ON
JUNE 7, 2011

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable L. Casey Manning, Circuit Court Judge

Case No. 2010-CP-40-4900

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

and

ALAN WILSON,¹ in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES B.; DARYL J. BROWN, individually and on behalf of his minor child JANISE B.; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children, SYDNEY L., CARRINGTON L., and TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN.....Plaintiffs,

v.

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

OF WHOM:

Adele J. Pope is the Appellant.

NOTICE OF APPEAL

¹ Pursuant to Rule 265(d), Petitioner has updated the caption to reflect the new Attorney General. It is unclear whether Russell L. Bauknight, who is designated in the complaint as acting "on behalf of Henry Dargan McMaster, in his capacity as Attorney General of the State of South Carolina" has been authorized to act on behalf of Attorney General Wilson.

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

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

and

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

Plaintiffs

v.

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

Defendants.

**THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Civil Action No.: 2010-CP-40-04900

RICHLAND COUNTY
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JEANETTE W. MORRIS
C.C.P. & G.S.

**PLAINTIFFS' MEMORANDUM OF
LAW IN SUPPORT OF THE MOTION
TO SET ASIDE ENTRY OF DEFAULT**

For the foregoing reasons, Plaintiffs respectfully request that the Court grant this Motion and enter an Order setting aside the entry of default with respect to Defendants' Counterclaims against Plaintiffs.

FACTS BEARING UPON THE MOTION

This case is but one of many stemming from the probate of the Estate of the late singer and entertainer James Brown. This action involves claims by the current Personal Representative and Trustee (Plaintiff Russell Bauknight) against the prior PR/Trustees, Defendants Adele Pope and Robert Buchanan. The facts set forth herein are taken from the Affidavit of Kenneth B. Wingate, which is attached to the filed Motion to Set Aside. Another copy of the Affidavit is attached hereto as Exhibit 1.

Plaintiffs filed the Complaint on May 19, 2010. Defendants responded to the Complaint by filing a Motion to Dismiss and Motion to Change Venue. The Court heard these Motions on August 30, 2010. After the hearing, Judge Manning requested proposed orders on the Motions, due on October 1, 2010. On information and belief, Defendants served an Answer and Counterclaims on Plaintiffs on September 30, 2010, *before* the proposed orders were due on Defendants' Motions to Dismiss and Change Venue. Judge Manning's Order denying the Motion to Dismiss was received by Plaintiffs' counsel on November 12, 2010. Plaintiffs' counsel forwarded a copy of this Order to counsel for Defendants on November 12, and stated in the email that counsel "look[ed] forward to receiving your Answer on or before November 29, 2010." (See Exhibit A to Affidavit of Kenneth B. Wingate.) Three days later—on November 15—Plaintiffs' counsel received a copy of the Affidavit of Default (filed November 10, 2010). Plaintiffs filed this Motion on November 16, 2010, the day after receiving the Affidavit of Default. Plaintiffs also filed an Answer to the Counterclaims on November 16, 2010.

STANDARD OF REVIEW AND APPLICABLE LAW

According to Rule 55(c) of the South Carolina Rules of Civil Procedure, “[f]or good cause shown the court may set aside an entry of default . . .” Rule 55(c), SCRPC. The Court of Appeals has explained that the “good cause” standard “requires a party seeking relief from an entry of default . . . to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice.” Wilder v. Blue Ribbon Taxicab Corp., 396 S.C. 139, 144-45, 719 S.E.2d 703, 706 (Ct. App. 2011) (quoting Sundown Operating Co. v. Intedje Indus., Inc., 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009)). Once a satisfactory explanation is provided, “the trial court must also consider [the Wham factors]: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted.” Id. (quoting Sundown Operating Co. at 607-608, 681 S.E.2d at 888) (reciting the factors taken from Wham v. Shearson Lehman Bros., Inc., 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct. App. 1989)). The trial court need not make specific findings of fact regarding each factor “if there is sufficient evidence in the record to support the trial court’s decision. Id. (citing Sundown Operating Co. at 608, 681 S.E.2d at 888). Finally, “the decision whether to set aside an entry of default is within the sound discretion of the trial court.” Id. (citing Williams v. Vanvolkenburg, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994)).

ARGUMENT

I. THE ATTORNEY GENERAL’S OFFICE CANNOT BE HELD IN DEFAULT.

In its statutory role as the protector of charitable trusts, the Attorney General's Office is a party plaintiff in this case. The Attorney General's Office, as an agency of the State of South Carolina, cannot be held in default. Rule 56(e), SCRPC.

II. PLAINTIFFS CAN PROVIDE A SATISFACTORY EXPLANATION FOR THE ENTRY OF DEFAULT, AND CAN DEMONSTRATE THAT THE WHAM FACTORS ARE SATISFIED. THEREFORE, PLAINTIFFS HAVE SHOWN "GOOD CAUSE" WHY THE COURT SHOULD SET ASIDE THIS ENTRY OF DEFAULT.

A. Explanation for Default.

As set forth in the Affidavit of Kenneth B. Wingate, the explanation for Plaintiffs' default on the Counterclaims is simple: Defendants served their Answer and Counterclaims the day before proposed orders on Defendants' Motion to Dismiss were due. Plaintiffs were in the process of preparing said orders and awaiting the Court's ruling on Defendants' Motion to Dismiss. Defendants filed their Answer and Counterclaims *without withdrawing their pending Motion to Dismiss*. Defendants therefore filed their Answer and Counterclaims at an odd time in the litigation, when Plaintiffs would not be expecting an Answer or Counterclaims, because Defendants' Motion to Dismiss was pending, orders were being submitted, and—importantly—Defendants' had not withdrawn their Motion to Dismiss. This smacks of a litigation tactic intended to take advantage of the circumstances. Plaintiffs responded immediately when notified of the default.

Vacating this default would serve the ends of justice by allowing Plaintiffs to defend the Counterclaims against them, which involve many of the same issues as Plaintiff's primary claims against Defendants. See Part II.B.ii., infra. Plaintiffs are also not the stereotypical defaulting party, since they have been actively participating in (and indeed initiated) this lawsuit. Plaintiffs have not slept on any of their rights.

B. Wham Factors.

i. Timing of the Motion for Relief.

As set forth in the Affidavit of Kenneth B. Wingate, the Affidavit of Default (dated November 10, 2010) was received by Sweeny, Wingate & Barrow, P.A. on November 15, 2010. Plaintiffs filed this Motion the next day, November 16, 2010. Clearly, Plaintiffs did not waste any time in responding to the Affidavit of Default, and Plaintiffs have thus satisfied the first Wham factor.

ii. Meritorious Defenses.

Of note are the nature of Plaintiffs' primary claims for breach of fiduciary duty against Defendants. All parties are actively litigating these primary claims, which amount to meritorious defenses to Defendants' Counterclaims. If these primary claims prevail, Defendants cannot logically succeed in their Counterclaims (involving allegations of Plaintiffs' alleged improper actions).

Plaintiffs also filed and served an Answer to Counterclaims on November 16, 2010. In Plaintiffs' Answer, Plaintiffs deny the factual assertions of Defendants' Counterclaims. Therefore, the issues on the counterclaims are joined and suitable for resolution by the Court or a jury.¹ Plaintiffs also assert the affirmative defenses of Rule 12(b)(6), waiver, estoppel, unclean hands, and *res judicata*/collateral estoppel, and are prepared to move forward in establishing those defenses.

¹ Plaintiffs do not concede that Defendants' Counterclaims would survive a dispositive motion, and Plaintiffs specifically reserve the right to file such motions on the Counterclaims. Plaintiffs are simply pointing out to the Court that they deny Defendants' allegations in the Counterclaims and will contest all such issues.

Through their case-in-chief and their denials/affirmative defenses relating to Defendants' Counterclaims, Plaintiffs have shown that they have meritorious defenses to the Counterclaims. Thus, the second Wham factor is satisfied in favor of Plaintiffs.

iii. The Degree of Prejudice to Defendants.

In light of the ongoing nature of this litigation and Plaintiffs' immediate filing of a Motion to Set Aside the Default, Defendants have not and will not suffer any prejudice if the Court sets aside the entry of default. Discovery in this case is ongoing, so Defendants will have ample opportunity to develop the facts needed to establish their Counterclaims. Further, Defendants have known—ever since the day after they filed the Affidavit of Default—that Plaintiffs contested the default. Thus, Defendants' overall litigation strategy cannot have been colored by reliance on the entry of default, because Defendants have had notice of this Motion since November 16, 2010. Defendants will suffer no prejudice if this default is lifted. The third Wham factor is satisfied in favor of Plaintiffs.

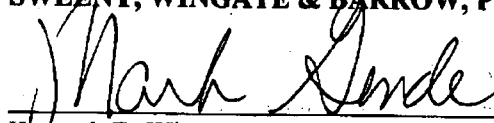
CONCLUSION

For the foregoing reasons, Plaintiffs assert that there is "good cause" to set aside the entry of default with respect to Defendants' Counterclaims against Plaintiffs. Additionally, the Attorney General's Office cannot be held in default. Therefore, this Motion should be granted.

[Signature Block on Following Page]

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.

A handwritten signature in dark ink, appearing to read "Mark V. Gende", is written over a horizontal line.

Kenneth B. Wingate

Mark V. Gende

Aaron J. Hayes

1515 Lady Street

Post Office Box 12129

Columbia, South Carolina 29211

(803) 256-2233

ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina
April 11, 2012

STATE OF SOUTH CAROUNA
COUNTY OF SPARTANBURG
STATE OF SOUTH CAROUNA
ex rel. Henry McMaster, in his capacity
as Attorney General of the State of
South Carolina,

Plaintiff,

vs.

ELI LILLY AND COMPANY,

Defendant.

IN THE COURT OF COMMON PLEAS

SEVENTH JUDICIAL CIRCUIT

Case No. 2007-CP-42-1855

ORDER

MARC HITCHENS

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SPARTANBURG COUNTY

THIS CAUSE is before the Court upon the Motion of Defendant Eli Lilly and Company (Lilly) to Disqualify Special Counsel filed on August 21, 2009. This matter was fully briefed by the parties, and was argued to the Court on August 31, 2009. After carefully considering all of the parties' written submissions and the oral arguments made by counsel, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

On July 19, 2006, for the purpose of pursuing litigation relating to the Lilly-manufactured drug Zyprexa, Attorney General McMaster entered into a "Litigation Retention Agreement for Special Counsel Appointed by the South Carolina Attorney General" signed by three lawyers as "Special Counsel." The three lawyers were John S. Simmons, John Belton White, Jr., and F. Kenneth Bailey, Jr. According to his Affidavit submitted in this matter, Attorney General McMaster's aim in suing was to recoup state funds and penalties related to Lilly's alleged wrongful conduct in marketing Zyprexa.

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Under the terms of the Special Counsel Appointment, the three signing lawyers agree to share fees (if any),¹ expenses and, subject to the Attorney General's overall control, responsibility for the work to be done. In effect, they agreed to function as de facto joint venturers, working together as a litigation team on behalf of the Attorney General and the State of South Carolina.

Under the Retention Agreement, Special Counsel will not be paid out of any award of State funds. They will be compensated, if at all, only out of a portion of such recovery as they are able to win for the State by their efforts. Meanwhile, under the Retention Agreement's terms, they have undertaken to pay all the costs of this lawsuit out of their own pockets. Thus, as part of their appointment by the Attorney General, Special Counsel have agreed to take on all the economic risk of the litigation, including the risk of a defense verdict, and give up to the State the lion's share (at least 77%) of any net recovery (after litigation costs) generated by the civil suit against Lilly. A copy of the Retention Agreement was produced to Lilly on May 22, 2009.

Since July of 2006 to the present, Special Counsel have pursued the investigation and prosecution of civil litigation against Lilly. The fact of appointment of Special Counsel in this matter has been known to Lilly from the time Special Counsel filed this lawsuit and served with the Summons and Complaint in the Spring of 2007, but an actual copy of the agreement was not given to Lilly until the date stated above.

When Lilly answered the Complaint on October 1, 2007, Lilly specifically objected to the Attorney General's use of a contingent fee arrangement in hiring Special

¹ If the lawsuit fails, all of the financial loss will fall on Special Counsel, no expenses will be borne by the State. Under Article V, § B of the Retention Agreement, Special Counsel must look to the Attorney General to reimburse them for advance costs out of "the litigation's gross recovery," if any. The Attorney General, in his sole discretion may refuse to reimburse Special Counsel for "improperly documented, unnecessary, or unreasonable costs or expenses." *Id.*

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Counsel. Lilly contended the retention of Special Counsel violated Lilly's due process rights and the separation of powers doctrine. Specifically, Lilly pleaded in its answer two affirmative defenses referencing the retention of Special Counsel on a contingent fee basis, to wit:

The filing of this lawsuit by private counsel, retained on a contingent fee arrangement, violates the South Carolina Constitution's separation of the powers of the legislative and executive branches, in that the legislature has not appropriated funds for the payment of private counsel to prosecute this action in place of the Attorney General.

The filing of this lawsuit by private counsel, retained on a contingent fee arrangement, violates the due process requirements of the United States Constitution and the South Carolina Constitution, as well as conflict-of-interest rules applicable to attorneys representing the State, by giving the State's counsel a personal financial interest in the outcome of this action.

Lilly filed a Motion to Disqualify Special Counsel and filed that motion on August 21 2009, with the case at that time being scheduled to go to trial on September 14, 2009. This motion is now before this Court.

ISSUES BEFORE THE COURT AND CONCLUSIONS OF LAW

LILLY'S DUE PROCESS ARGUMENTS

I. Does the Retention Agreement violate Lilly's Due Process Rights?

Lilly contends that the hiring of Special Counsel "violated Lilly's state and federal right to due process because it gave each of these lawyers a direct financial interest in the outcome of this litigation." Lilly Motion at 2. *See also id* at 8-13. Lilly's due process argument flows from Lilly's central premise that all government lawyers must always remain neutral, even in the context of tort litigation against an alleged wrongdoer. The Court is unable to find anything in the relevant Rules of Professional Conduct, statutes, or

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controlling case law that supports this argument in the context of tort litigation such as this.

The notion that public officials and their lawyers (whether in-house or outside counsel) must be "neutral" or disinterested in the outcome of civil litigation they bring on behalf of the government is not only unsupported by any authority, it is unsupported in the context applicable here: tort litigation where the government is suing to collect money damages. As the United States Supreme Court explained in a unanimous opinion almost thirty years ago, the Court's "rigid" due process requirements, "designed for officials performing judicial or quasi-judicial functions, are not applicable to those acting in a prosecutorial or plaintiff-like capacity. . . . Prosecutors need not be entirely neutral and detached. In an adversary system, they are necessarily permitted to be zealous in their enforcement of the law." *Marshall v. Jerrico, Inc.*, 446 U.S. 238 (1980) (citations and internal quotation omitted); see also *Commonwealth v. Gullota*, 716 A.2d 663, 666 (Pa. Super. 1998) (rejecting argument that neutrality principles applied to adjudicative officials apply to prosecutors).

Indeed, as the Supreme Court held in *State ex rel. Condon v. Hodges*, 349 S.C. 232, 562 S.E.2d 623 (2002), the Attorney General, as the chief lawyer for the State, may sue even the Governor- ordinarily his client- when the public interest demands it for the protection of the Legislature's right to appropriate funds in accordance with the state Constitution. See also, 7 Am Jur 2d Attorney General section 18 ("...it is the duty of the Attorney General to zealously advocate the public policy positions of his or her clients in pleadings, negotiations, and the courtroom to avoid even the appearance of impropriety by appearing to be in conflict with the desires of his or her client.")

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Government lawyers have no heightened duty of neutrality when bringing civil tort lawsuits. Government officials have a duty to carry out the responsibilities of their positions and an obligation to ensure that funds appropriated for that purpose are not misused. In this lawsuit, the State of South Carolina contends that funds intended to pay for care of the elderly and the poor were misdirected by Lilly's allegedly wrongful acts. As a result, the State of South Carolina has brought suit to recover those funds. The Attorney General maintains that he owes an obligation as a public servant to prosecute this case to the best of his ability, and is doing so. Lilly has introduced no evidence demonstrating that the Attorney General has chosen attorneys that are not fully qualified and competent to handle the responsibilities which have been placed upon them in the Retention Agreement.

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MARQUETTE

The lawyers representing the State of South Carolina in civil tort cases, whether in-house or outside counsel, have a duty to represent the State of South Carolina's interests to the fullest, advocating the State of South Carolina's position in the litigation brought to vindicate the State of South Carolina's rights and recover the funds expended because of a private party's alleged wrongdoing. Nothing in South Carolina's Rules of Professional Conduct suggests that the State's retained attorneys should have any other responsibility other than pursue their obligations under the agreement that was made between them. Indeed, Lilly specifically denied that it was making any claim of professional wrong doing against the Special Counsel and agreed that the State's legal counsel have not committed any violation of the Rules of Professional Conduct. This is a significant admission, since SCACR 407 Rule 8.4(e) makes it unethical to "engage in conduct prejudicial to the administration of justice." By agreeing that the State's lawyers

have behaved ethically as lawyers, Lilly has conceded that no conduct prejudicial to the administration of justice has occurred in this case. This admission casts a long shadow of doubt over Lilly's contentions that it is the victim of constitutional violations and illegality.

In contending the State's counsel owe it an obligation to be "neutral," that is, less than unswervingly zealous in furthering the State's contentions, Lilly ignores the large body of controlling law that governs lawyer conduct in the State of South Carolina. It argues, without support in court rules, statutes, or case law that all government attorneys have a responsibility to act neutrally in all cases. In support of this argument, Lilly relies heavily on the contention that when the State of South Carolina acts in its *parens patriae* capacity, it must act as representative of all citizens, including (presumably) the State of South Carolina's adversaries in civil litigation. This argument is flawed for several reasons.

First, this is a tort action plain and simple. The State of South Carolina is out to recover actual damages it suffered from Lilly's allegedly tortious conduct. It is seeking damages for money it claims that Lilly wrongfully caused to be paid from the State treasury. This tort action is not significantly different than one brought by a private corporation or individual who suffered harm as a result of another person or entity's alleged wrongdoing.

Second, when the State of South Carolina does act in its *parens patriae* role, nothing about its duty to protect the public safety and general welfare requires it to ignore wrongdoing by a particular member of the public. Indeed, courts have held that the *parens patriae* role does not require that a state in a civil case be neutral. As one court

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HARC KITCHENS

has noted, a state "acting in its role as *parens patriae*, has the right and the duty to act to protect its weaker members." *In re Terwilliger*, 304 Pa. Super. 553, 560, 450 A.2d 1376, 1380 (1982). In its *parens patriae* role, the State of South Carolina acts to protect children, charities, and other members of society who need special protection. See, e.g., *Mr. T v. Ms. T*, 378 S.C. 127, 662 S.E.2d 413 (S.C. App. 2008) ("South Carolina, as *parens patriae*, protects and safeguards the welfare of its children."). In cases where it is fulfilling its *parens patriae* role the State of South Carolina may be adversarial to allegedly abusive or neglectful parents, negligent charitable trustees, or other wrongdoers. This case is no different. The State of South Carolina is adverse to Lilly, and the State of South Carolina's lawyers (whether in-house or outside counsel) are obligated zealously to represent the interests of their client to vindicate its rights.

Finally, Lilly's due process argument ignores the reality that the State of South Carolina has not ceded its *parens patriae* role to outside counsel. As Article III (D) of the Special Counsel Contract makes clear, the State of South Carolina retains overall control of the present litigation.² And there is no question that the Attorney General has

² The Retention Agreement in question here is replete with verbiage attesting to it being consistent with sound public policy, with control over this litigation being reposed firmly in the Attorney General's hands. Thus, the retention agreement states in the first recital clause that the litigation "is in the best interest of South Carolina." The third recital clause sets forth the premise (unchallenged by Lilly) that Special Counsel "has the skill, experience, expertise, and competence necessary for the meaningful prosecution" of the matter. The Agreement further states in Article II, § A, that due to the "personal nature of the services rendered under this appointment, the Attorney General shall be the sole judge of the adequacy of those services," and that "[t]he Attorney General shall have final authority over all aspects of this litigation." To quote the Agreement,

[t]he Attorney General shall have final authority over all aspects of this litigation. The litigation may be commenced, conducted, settled, approved, and ended only with the express approval and signature of the Attorney General. The Attorney General at his sole discretion has the right to appoint a designated assistant . . . to oversee the litigation, which appointment the Attorney General may modify at will. *Id.* Art. II, § A(1).

The Agreement expressly provides that "[t]he Attorney General reserves the right to terminate this Agreement at any time, in his sole discretion, and without cause or duty of explanation." Article VI, § A. Special Counsel "may terminate its duties and obligations under the Appointment and this Agreement upon

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authority to hire legal counsel to protect the State's interests. In order to effectuate the broad authority given to the Attorney General under the Constitution, statutes and common law, the General Assembly has empowered the Attorney General to appoint the Assistant Attorneys General. S.C. Code Ann. § 1-7-30. Indeed, the South Carolina Supreme Court has recognized that the Attorney General, as the State's chief legal officer, possesses the authority to appoint and approve private counsel to represent the State. See *Cooley v. S.C. Tax Comm.*, 204 S.C. 10, 28 S.E.2d 445 (1943).

Courts have almost universally recognized that Attorneys General possess broad authority to appoint private attorneys as special counsel on a contingent fee basis to assist in the representation of the public interest. Indeed, as was stated in *State ex rel. Nixon* *American Tobacco Co., Inc.*, 34 S.W.3d 122, 136 (Mo. 2000) (en banc),

[t]he statute that allows for the attorney general to hire assistants and to pay them from appropriations does not prohibit the attorney general in the exercise of his common law power from entering into contingency fee arrangements or agreements that otherwise provide for civil defendants sued by the State to pay attorneys fees directly to the State's outside counsel. In the absence of a statute to the contrary, we conclude that the attorney general does have the power to enter into this type of fee arrangement with his special assistant attorneys general.

And, in *State of Rhode Island v. Lead Industries Association, Inc.*, 951 A.2d 428, 474-475 (R.I. 2008), the Supreme Court of Rhode Island stated:

[i]t is our view that the Attorney General is entitled to act with a significant degree of autonomy, particularly since the Attorney General is a constitutional officer and is an independent official elected by the people

.....
Although we are keenly aware of the gravity of the issue and of the fact that thoughtful and potent policy-based arguments have been made on both sides of the issue, in the end we have concluded that, in principle, there is nothing unconstitutional or illegal or inappropriate in a contractual

thirty (30) days written notice to the Attorney General." *Id.* However, "[t]ermination on the part of Special Counsel shall not be effective if the Attorney General finds in his sole discretion that such termination prejudices or has a material adverse effect on the State of South Carolina." *Id.*

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relationship whereby the Attorney General hires outside attorneys on a contingent fee basis to assist in the litigation of certain non-criminal matters. Indeed, it is our view, that the ability of the Attorney General to enter into such contractual relationships may well, in some circumstances, lead to results that will be beneficial to society results which otherwise not have been attainable. However, due to the special duty of attorneys general to seek justice and their wide discretion with respect to same, such contractual relationships must be accompanied by exacting limitations. In short, it is our view that the Attorney General is not precluded from engaging private counsel pursuant to a contingent fee arrangement in order to assist in certain civil litigation, so long as the Office of Attorney General retains absolute and total control over all critical decision-making in any case in which such agreements have been entered into.

MARC KITCHENS

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The claim to proceeds by attorneys appointed by the Attorney General to represent the State on a contingent fee basis is not a "claim against the State." *People v. Philip Morris*, 759 N.E.2d 906 (Ill. 2001). *See, also*, ' 1-7-170 (agency may not *engage* on a fee basis an attorney at law except upon the written approval of the Attorney General and a fee must be approved by him").

Thus, should the State of South Carolina conclude that its purported obligation to act neutrally toward all parties (even the one that caused it harm) requires it to drop this lawsuit, the State of South Carolina through the Attorney General, not any outside law firms, will make that decision. *See also* SCACR 407, Rule 1.2, requiring that clients, not their legal counsel, make decisions as to the resolution of a matter. In short, there is nothing about the State of South Carolina's *parens patriae* role that requires its attorneys to act completely neutral instead of advocating zealously on behalf of their client.

Lilly's attempt to hold all government lawyers to the same neutrality standards as judges or neutral arbitrators is misguided and thus unavailing. Lawyers — even government lawyers — have never been treated as neutral parties in litigation. They are advocates. Judges, on the other hand, must be held to the highest standards of neutrality

and impartiality. See Code of Judicial Conduct Canon 2, requiring judicial independence. Thus, the longstanding jurisprudence invoked by Lilly in its brief (at 8-10), beginning with *Tumey v. Ohio*, 273 U.S. 510 (1927), and carrying through to the recent decision in *Caperton v. A.T. Massey Coal Co.*, 129 S. Ct. 2252 (2009), stands for the proposition that the judicial officer who acts as the decision-maker in an adversarial proceeding must be neutral and impartial. But none of those cases extend the neutrality principle encompassed in the Due Process Clause to the lawyer representing one side of a contested issue, even if those lawyers happen to represent the government. See Motion to Disqualify at 10-11 (citing cases involving personal financial interest of "a judicial officer or administrative fact-finder or decision-maker").

The few cases Lilly cites not involving judicial or other neutral adjudicators either disprove its arguments or are easily distinguishable from the present situation. The first case, *Marshall v. Jerrico, Inc.*, 446 U.S. 238 (1980), involved a federal statute under which civil penalties collected by an agency of the Department of Labor for violations of the law were used to reimburse that agency for its costs of determining violations and assessing penalties. *Id.* at 239. A corporation that was assessed penalties under the statute challenged the statute on due process grounds, arguing that the assistant regional administrator who made the decision to assess the penalties had an improper incentive to find violations and assess penalties in order to increase revenues for the agency. *Id.* at 241-42. The Supreme Court unanimously rejected this argument:

The assistant regional administrator simply cannot be equated with the kind of decisionmakers to which the principles of *Tumey* and [*Ward v. Village of Monroeville*, 409 U.S. 57 (1972)] have been held applicable. He is not a judge. He performs no judicial or quasi-judicial functions. He hears no witnesses and rules on no disputed factual or legal questions. The function of assessing a violation is akin to that of a prosecutor or civil plaintiff. If the employer excepts

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to a penalty — as he has a statutory right to do — he is entitled to a de novo hearing before an administrative law judge. In that hearing the assistant regional administrator acts as the complaining party and bears the burden of proof on contested issues. . . . It is the administrative law judge, not the assistant regional administrator, who performs the function of adjudicating child labor violations.

Id. at 247-48 (citation and footnote omitted).

The same is true here. As in *Marshall*, the law firm here “performs no judicial or quasi-judicial functions [and] hears no witnesses and rules on no disputed factual or legal questions.” *Id.* at 247.

Strong language from *Marshall* directly forecloses Lilly’s attempt to rely on cases like *Tumey* and *Ward* for its due process argument:

The rigid requirements of *Tumey* and *Ward*, designed for officials performing judicial or quasi-judicial functions, are not applicable to those acting in a . . . plaintiff-like capacity. . . . The distinction between judicial and nonjudicial officers was explicitly made in *Tumey*, 273 U.S., at 535, where the Court noted that a state legislature “may, and often ought to, stimulate prosecutions for crime by offering to those who shall initiate and carry on such prosecutions rewards for thus acting in the interest of the State and the people.”

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Id. at 248-49 (citation omitted).

The United States Supreme Court thus has approved precisely the situation that Lilly alleges is present here: the attorney for the State of South Carolina has an incentive to zealously advocate for its government client and seek to vindicate the government’s interests against an alleged violator of the law. *Marshall*, a case relied on by Lilly, is directly on point and cuts against Lilly’s due process argument.

Similarly, *Young v. United States ex rel. Vuitton Et Fils S. A.*, 481 U.S. 787 (1987), relied on by Lilly at p. 10 of its brief, offers no support for Lilly’s due process argument. In *Young*, the Supreme Court disapproved a federal trial court’s appointment of counsel for an interested party to prosecute a criminal contempt proceeding against its

litigation opponent. *Id.* at 790. Notably, the Court based its holding not on the Due Process Clause, but on its supervisory powers over lower federal courts, *id.* at 802, 808-09, an issue not involved here.

In reaching its conclusion, the Supreme Court emphasized the criminal nature of the proceeding and the special protections afforded the accused criminal contemnor in such situations. Noting that the prosecutor in a criminal contempt proceeding "is appointed solely to pursue the public interest in *vindication of the court's authority*," the Court found an inherent conflict between the prosecuting attorneys' dual roles as advocate for one party in an ongoing civil dispute and criminal prosecutor of the opposing party "for affronts to the Judiciary." *Id.* at 804-05 (emphasis added).

These principles have no application here. The team of Special Counsel employed by the Attorney General have not been appointed by the State of South Carolina to prosecute a criminal case against Lilly, or a criminal contempt action as the lawyers were appointed to do in *Young*. They have not been appointed to "vindicate the court's authority." They have been appointed to seek to recover money in a tort case. The underlying matter here is a civil action for damages, not a criminal contempt proceeding. Special Counsel are not acting to vindicate the court's authority or punish affronts to the judiciary. They are seeking only to recover damages for the State. Nor have the private law firms, operating as de facto joint venturers, been hired to represent the State of South Carolina in a dispute in which any venture member has a preexisting vested interest, as the prosecuting attorneys did in *Young*. Rather, Special Counsel's allegedly improper interest arises from the fact that, as in all contingent fee cases, the venture members will be paid only if it wins — and the larger the judgment in favor of its

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client, the greater the possible fee to the firm. *Young* is thus readily distinguishable from this case.

Indeed, the key cases involving lawyer conduct relied on by Lilly involve lawyers acting as criminal prosecutors, a situation different from the one here. The criminal proceeding cases Lilly cites are simply inapposite here, where outside counsel has been hired not to prosecute Lilly criminally, but to bring a civil proceeding for recovery of damages. See, e.g., *Appeal of Nicely*, 130 Pa. 261, 270, 18 A. 737, 738 (1889) (noting the special duty of a criminal prosecutor to act impartially so that justice is done and commenting that, when private counsel aids a criminal prosecutor, he "should be governed by the same rules of propriety"); *Berger v. United States*, 295 U.S. 78, 88 (1935) (noting that the U.S. Attorney is the representative of a government whose interest "in a criminal prosecution is not that it shall win a case, but that justice shall be done"); *Brady v. Maryland*, 373 U.S. 83, 88 (1963) (noting that a prosecutor in a criminal case should not be "an architect of a proceeding that does not comport with standards of justice").

The cases Lilly cites that involve non-criminal prosecutions are inapplicable (because they are decisions of lower federal courts or other state courts) and distinguishable. In *Freeport-McMoRan Oil & Gas Co. v. FERC*, 962 F.2d 45 (D.C. Cir. 1992), the court, in *dicta* (after vacating the administrative orders under review), condemned as uncivil the arrogant behavior of lawyers representing a federal agency. The other federal circuit court case relied on by Lilly, *Douglas v. Donovan*, 704 F.2d 1276 (D.C. Cir. 1983), is also distinguishable. The opinion in *Douglas* was written by the same judge that authored *Freeport* and also, as in *Freeport*, resulted in the vacatur of

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the order under review (on mootness grounds). *Id.* at 1277. Once again in *dicta*, the court contended that government lawyers "have special responsibilities to both this court and the public at large." *Id.* at 1279. As in *Freeport*, the court's statement was made in the context of rebuking an arrogant, uncivil government lawyer; the court was upset it had not been informed of the settlement of the underlying dispute: "As officers of this court, counsel have an obligation to ensure that the tribunal is aware of significant events that may bear directly on the outcome of litigation." *Id.*

In short, Lilly's due process argument finds no useful support in the well-established case law holding that judges and other decision-makers must be neutral and impartial, or gleaned from a handful of cases noting the special responsibilities of criminal prosecutors. Criminal prosecutors do owe special duties, but this is not a criminal prosecution. These cases do not apply here.

Here, in contrast, Special Counsel is representing a client in a civil case and should be held to the same high standards that all lawyers are held under the South Carolina's Rules of Professional Conduct. Lilly concedes those duties have all been discharged by the Attorney General and Special Counsel. The fact that the Special Counsel team's client is the State of South Carolina does not alter this analysis or require the Special Counsel to neglect the contractual and ethical duty to zealously represent its sovereign client and obtain the best recovery possible for that client in the underlying litigation here. The applicable ethics rules and the controlling case law compel this conclusion. Because Lilly's entire due process argument is based on the faulty premise that civil tort lawyers owe a duty of neutrality when suing for the sovereign, Lilly's main due process argument fails.

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Lilly also contends that the use of contingent fee representation against it violates its due process rights. This argument is meritless. Even if government lawyers were generally held to a higher standard than private counsel and were required to act neutrally (rather than as advocates for their clients), Lilly's argument would fail. Indeed, given the high standard for finding a Due Process violation in this context (*see, e.g., Caperton v. A. T. Massey Coal Co.*, 129 S. Ct. 2252, 2265 (2009)), if Lilly is correct that a contingent fee lawyer's financial interest in a government case violates the Due Process Clause, then doubt would be cast on every contingent fee arrangement, even those involving private parties, because of their supposed improper influence on an attorney's incentives and motivations in representing his or her civil client. Yet, contingent fee contracts have been held proper for many years. *See, e.g., Perry v. Atlantic Coast Life Ins. Co.*, 166 S.C. 270, 164 S.E. 753 (1932) recognizing lawyers were "collecting compensation due them in cases where they are employed on a contingent basis." *See also*, SCACR Rule 407, Rule 1.5(d), allowing contingent fees generally, except for domestic cases and criminal cases, neither of which is involved here.

Lilly cites only a single decision adopting its view that contingent fee arrangements by government entities are improper, *People ex rel. Clancy v. Superior Court of Riverside County*, 705 P.2d 347 (Cal. 1985). In *Clancy*, a city attorney retained outside counsel on a contingent fee basis to bring an action to shut down an adult bookstore as a nuisance. *Id.* at 349. The bookstore's owner challenged the contingent fee arrangement, arguing that "a government attorney prosecuting such actions must be neutral, as must an attorney prosecuting a criminal case." *Id.* at 350. In accepting this argument, the court focused on the well-accepted principle that a prosecuting attorney in

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a criminal case should not have a vested interest in the outcome of that case. *Id.* at 350-52. Relying on a handful of secondary authorities (primarily the same ABA Model Code provision cited by the D.C. Circuit in *Freeport* and *Douglas*), the court also found that in some non-criminal situations, government attorneys must be neutral as well. *Id.* at 352. Ultimately, the court concluded that an action to abate a public nuisance shared sufficient characteristics with criminal prosecutions to require such actions to be brought by attorneys without any interest in the outcome of the case. *Id.* at 352-53.

The California Supreme Court's decision in *Clancy*, which was not grounded in the Due Process Clause (or separation-of-powers concerns), stands alone in terms of case law supporting Lilly's contention that government attorneys in non-criminal actions may not be paid on a contingent basis. In presenting *Clancy* as precedent to be followed, Lilly failed to point out that as *Clancy* is read and applied in California, it "does not bar the public entities from engaging private counsel under a contingent fee arrangement to assist in [public nuisance] litigation, so long as the public entities' in-house counsel retain control over all decision-making." *County of Santa Clara v. Superior Court*, 161 Cal.App.4th 1140, 74 Cal.Rptr.3d 842, 853 (2008). Here, the *Santa Clara* test is met, for Attorney General McMaster has absolute control over the disposition of this case. Article III (D) of the Special Counsel agreement makes this clear:

The Attorney General must approve in advance all aspects of this litigation and shall be included in any settlement discussions. Special Counsel agrees that any settlement in this case must receive the Attorney General's express prior approval in writing. Special Counsel shall confer with the Attorney General as early as practicable in any settlement negotiation process.

Contrary to Lilly's unsupported speculation, evidence in the record reflects that the State of South Carolina's Attorney General retains control and ultimate decision-making.

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authority over this litigation. Indeed, General McMaster's affidavit makes clear he personally has spoken directly with Lilly's counsel about possibly resolving this case.

Lilly's discussion of the interplay between contingent fees and due process also does not deal with persuasive adverse authority such as *State v. Hagerty*, 580 N.W.2d 139, 148 (N.D.1998) ("In view of th[e] long-standing acceptance of contingent fee arrangements and in view of the historical authority of the Attorney General, we believe she has the authority to employ special assistants attorneys general on a contingent fee agreement unless such agreements are specifically prohibited by statute."), and *State v. Lead Industries, Ass'n, Inc.*, 951 A.2d 428 (R.I. 2008) (upholding the Rhode Island Attorney General's right to enter into contingent fee agreements with private counsel appointed to bring civil suits). See also *Philip Morris v. Glendening*, 709 A.2d 1233 (Md. 1998) (upholding a contingency fee agreement between private lawyers and the Maryland Attorney General in a civil case). As to the defendant's separation of powers claim, the court agreed with the Attorney General's conclusion that the situation was extraordinary and deemed his decision to hire contingent fee counsel non-reviewable; "[p]rinciples behind constitutional separation of powers place limits on a court's power to review or interfere with the conclusions, acts or decisions of a coordinate branch of government made within its own sphere of authority." *Id.* at 1239 (quoting *Hamilton v. Verdow*, 414 A.2d 914, 921 (Md. 1980)). For another example of a state court rejecting challenges to a contingency fee agreement, see *Kinder v. Nixon*, No. WD 56802, 2000 WL 684860 (Mo. App. W.D. 2000).

In sum, Lilly's contingent fee due process/constitutional violation claim is rejected. At present, only "[a] few state attorneys general's offices, notably California's

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make it a practice not to hire outside counsel on a contingent fee basis." Donald G. Giffort, *Impersonating the Legislature: State Attorneys General and Parens Patriae Product Litigation*, 49 B.C.L. REV. 913, 964 n.323 (2008). In other words, if the practice of hiring private lawyers in special cases by States' Attorneys General was actually unconstitutionally improper, one would expect that some authoritative court would have definitively ruled that way by now. Instead, the evidence is to the contrary. See Richard O. Faulk & John S. Gray, *Alchemy in The Courtroom? The Transmutation of Public Nuisance Litigation*, MICH. ST. L. REV. 941, 968 n.140 (2007) ("the majority of state attorneys general [had] contingent fee arrangements in the tobacco litigation, the mayors of over thirty cities signed contingent fee contracts to sue gun manufacturers").

Lilly's purported due process constitutional challenge is inconsistent with South Carolina's Rules of Professional Conduct; and finds no support in the controlling case law of this Court or the United States Supreme Court.

Thus, under the Contract and in fact, the Attorney General is in control of litigation, both on an ongoing basis and in terms of its ultimate resolution. Special Counsel must follow the Attorney General's directions and cannot take important action without the Attorney General's approval. Any claim that the State of South Carolina is not adequately controlling this litigation is contrary to evidence in the record. The hearing in this motion included reliance on an uncontradicted affidavit from the Attorney General testifying to his office's involvement in this case, plus oral argument from a lawyer on the Attorney General's staff. Both the Special Counsel Agreement and the actual conduct of this litigation make clear that the Attorney General is in charge of this case; its outside counsel is fulfilling the same role outside counsel for the State of South

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Carolina always fulfills, regardless of how they are paid: assisting the State of South Carolina in vindicating or defending its rights. After due consideration of the parties arguments and the authorities they cite, the Court concludes there is nothing in the Attorney General's Special Counsel Appointment arraignment deprives Lilly of its right to due process.

LILLY'S SEPARATION OF POWERS ARGUMENTS

Lilly contends the separation-of-powers doctrine is violated on the ground that payment of fees to Special Counsel is unauthorized under S.C. Ann. § 1-7-150(B). The flaw with this argument is that the statute expressly authorizes payment of "the costs of litigation" out of litigation proceeds, and a "cost of litigation" is precisely what legal fees are. Lilly's separation-of-powers argument rests on case law from a single jurisdiction, Louisiana, which is readily distinguishable. The leading Louisiana case is *Meredith v. Ieyoub*, 700 So.2d 478, 482 (La. 1997), followed by *Ieyoub v. W R. Grace & Co.*, 2008-2d-1227 (La. Ct. App. 3d Cir. 1998). The statute under which those two cases were decided required that "all sums recovered" by suit or settlement "be paid into the state treasury." La. R.S. 30:2205. The Louisiana statute did not recognize the possible need to pay litigation costs; the South Carolina statute, under S.C. Ann. § 1-7-150(B) does. See Jill E. Fisch, *Cause for Concern: Causation and Federal Securities Fraud*, 94 IOWA L. REV. 811, 867 (2009) (listing "legal fees" as one of the "costs of litigation"). Thus, the Louisiana case law relied on by Lilly has no application here.

Another problem not mentioned by Lilly with its *Meredith* separation-of-powers precedent is that the Louisiana cases stand alone—they represent the only defense win on

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the point. Aside from Louisiana cases interpreting the narrow Louisiana statute, courts that have considered the issue uniformly have rejected Lilly's argument:

[N]umerous courts have heard challenges to contingency fee arrangements based on the separation of powers doctrine, but the Supreme Court of Louisiana is the sole court that found it persuasive enough to overturn a contract. The doctrine has failed to gain any significant traction.

Leah Godesky, *State Attorneys General and Contingency Fee Arrangements: An Affront to the Neutrality Doctrine?* 42 COLUM. J.L. & SOC. PROBS. 587, 612 (2009) (citing as examples, *State v. Hagerty, supra* and *Kinder v. Nixon, supra*. In *Kinder*, the Court stated that "Appellants' fundamental contention is erroneous and the contract is not void.").

As part of its separation-of-powers argument, Lilly contends that, under the Retention Agreement, should the State recover of money from Lilly, the Attorney General would distribute the lawsuit proceeds in an unconstitutional way. This argument is speculative and it is not ripe for adjudication.

SC Code of Laws Section 1-7-150 gives the Attorney General the right to withhold certain funds (investigative costs and costs of litigation) from the proceeds of litigation such as this. There has been no recovery at this time and there is no showing that investigative costs will not exceed or be equal to the 10% of recovery provided for in the contract to be retained by the Attorney General's office. Additionally, it is the Court's finding that the Defense has not shown any evidence amounting to adverse prejudice as to this issue.

The tort case is yet to be tried. A judgment has yet to be entered against Lilly and, depending on the trial's outcome, may never be. Any contention that the Attorney General will act in an unconstitutional way is thus based on events that have yet to occur. Moreover, any provision of the Special Counsel Retention Agreement that would call for

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the Attorney General to commit an illegal act is severable under the terms of Article VII (H) of the agreement. Hence, upon a timely and meritorious challenge, any offensive provision would simply be stricken without causing the entire agreement to fail. Lilly's attack on the Special Counsel Retention Agreement based on its separation of powers argument simply is not ripe at this time. Lilly's contentions are premised on alleged future wrongful acts by the Attorney General are hypothetical, lack substance, do not prove the Agreement's invalidity, and hence are rejected.

LILLY'S ILLEGALITY ARGUMENTS UNDER SECTION 1342

Citing S.C. Code § 8-13-1342, Lilly seeks a ruling that, in essence, the State's case must be derailed on the eve of trial because it is being advanced illegally by Special Counsel. The Court has carefully considered Lilly's argument on this novel point, and rejects it for multiple reasons.

I. The Illegality Contention Has Not Been Affirmatively Pleaded

First, unlike Lilly's due process and separation of powers arguments, Lilly's illegality contentions have not been affirmatively pleaded in its answer. Illegality contentions by way of a defense or avoidance are required to be affirmatively advanced under SCRCP Rule 8(c). In *Hagood v. Sommerville*, 362 S.C. 191, 197, 607 S.E.2d 707, 710 (2005), the South Carolina Supreme Court emphasized the "importance of the right to one's preferred attorney," noting that an order determining the "right to be represented by an attorney of one's choosing is one of those rare orders which, in effect, could determine the action and prevent a judgment from which an appeal might be taken, or could discontinue an action due to the potential impact on both the attorney-client relationship and the overall litigation and trial of the case." The Court concludes that a

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legal position premised on alleged illegality calculated to stymie a plaintiff's chosen path to trial represent a form of defense or avoidance that needs to be affirmatively pleaded under Rule 8(c).

Here, the campaign contribution data on which Lilly relies have long been in the public domain. Lilly has known from the start of this case about Special Counsel's appointment. In its answer filed in October of 2007, Lilly raised due process and separation of powers contentions attacking Special Counsel's appointment and the contingent fee arrangement under which Special Counsel was hired.

In view of the great importance attached to a party's right to counsel of one's choosing, and the possibility that, as stated in *Hagood*, losing counsel "could determine . . . or discontinue an action," the Court concludes that an attack seeking to disqualify counsel based on alleged illegality needs to be specifically pleaded under Rule 8(c). Lilly has not done so here. The instant motion was made on the eve of trial and only after the Court denied Lilly's motion for a continuance. Under the circumstances, the motion is not timely. Because it rests on a contention that has not been properly pleaded, and in view of the undue delay in raising the issue, Lilly's motion to disqualify based on section 1342 must be rejected.

It appears that no complaint has been filed with the State Ethics Commission by Lilly or its counsel concerning the post-retention political contributions by two of the Special Counsel lawyers. At the oral argument Lilly's counsel made clear that the only forum in which the question of compliance with section 1342 had been raised was in this case, and specifically in the context of the disqualification motion.

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Further, it should be noted that it appears that all local counsel both for the State and Lilly have made similar contributions to the campaigns of the Attorney General.

II. Lilly Has Offered No Competent Evidence Of Actual Prejudice

The Court also rejects Lilly's motion to disqualify due to Lilly's failure to show that Lilly will suffer actual prejudice unless relief is granted. In *State v. Bell*, 374 S.C. 136, 646 S.E.2d 888 (Ct. App. 2007), the Court of Appeals analyzed what needs to be shown in order to win a disqualification motion against a solicitor. Bell's contention that the trial court erred in denying his disqualification motion was rejected on the ground that when making a disqualification motion attacking the State, the movant must demonstrate actual prejudice suffered due to the allegedly unethical conduct. The court in *Bell* explained that proof of actual prejudice is required in disqualification motions filed against the State:

In *State v. Smart*, 278 S.C. 515, 299 S.E.2d 686 (1982), *overruled on other grounds by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991), our supreme court addressed the standard for disqualification of a Solicitor's Office where an attorney in that office had been employed by the Public Defender's Office during the pendency of charges against the appellant. There, the court rejected the standard of a presumption of betrayal from mere allegation of successive adverse representation resulting in a per se disqualification. *Id.* at 518, 299 S.E.2d at 688. Instead, the court adopted the requirement of a showing of actual prejudice to the defendant's case. *Id.* at 518-19, 299 S.E.2d at 688. Finding no evidence that any secrets or confidences of Smart were revealed, the court affirmed the denial of Smart's motion for disqualification. *Id.* at 520-521, 299 S.E.2d at 689. Thereafter, in *State v. Chisolm*, 312 S.C. 235, 439 S.E.2d 850 (1994), our supreme court again articulated that an appellant who seeks disqualification of a Solicitor's Office must show actual prejudice. *Id.* at 238, 439 S.E.2d at 852.

Bell, 374 S.C. 141-42, 646 S.E.2d 891 (emphasis added).

Even assuming the validity of Lilly's illegality charge, it is clear that no actual prejudice whatever has been shown here. At the motion hearing, Lilly contended that it was suffering "actual prejudice" at the hands of Special Counsel due to their alleged

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failure to comply with Lilly's discovery needs. No competent evidence was offered on this point, and the charge is at odds with Lilly's repeated admission during the hearing that Lilly was not asserting any violation of Special Counsel's professional obligations as lawyers. This is a significant concession by Lilly.

The Court notes that SCACR 407, Rule 3.4(d) makes it unethical for counsel "in pretrial procedure . . . [to] fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party." Lilly's concession that Special Counsel have acted ethically as lawyers in this matter disposes of its purported actual prejudice contention. In sum, the Court finds that in a disqualification motion under these circumstances, proof of actual prejudice must be shown by the movant. No showing of actual prejudice has been made here. Lilly's failure to prove that it would suffer actual prejudice but for disqualification of opposing counsel is an additional reason why Lilly's motion to disqualify based on section 1342 is overruled.

III. Lilly's Motion Cannot Not Reach Special Counsel Bailey

Lilly's illegality argument made under section 1342 does not rest on the contention that the Appointment of Special Counsel violated the statute when the Retention Agreement was entered into. Lilly appears to concede the Agreement did not violate section 1342 at the time of Special Counsel's appointment. Lilly also concedes that one of the three Special Counsel, F. Kenneth Bailey, Jr., never made any post-appointment contribution reached by section 1342. Thus, the statute can provide no justification for his disqualification at all.

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IV. Section 1342 Does Not Require Disqualification of Special Counsel

As for the two Special Counsel who did make post-appointment contributions to Attorney General McMaster, the Court finds, for the reasons set forth below, that their contributions are not made illegal by the statute and that, further, even if the contributions were covered by the statute, they still would not suffice to justify disqualification on the facts of this case.

It is well understood in South Carolina that a basic rule of statutory interpretation requires that, where possible, statutes receive a construction which will render them valid. *Last v. MSI Construction Co.*, 305 S.C. 349, 409 S.E.2d 334 (1991); *Mitchell v. Owens*, 304 S.C. 23, 402 S.E.2d 888 (1991) (statutes are presumed to be constitutional and will be construed so as to render them valid). "[A] statute must receive such construction as will make all of its parts harmonize with each other and render them consistent with its general scope and object" *Crescent Mfg. Co. v. South Carolina Tax Comm'n*, 129 S.C. 480, 493-94, 124 S.E. 761, 765 (1924); *Poinsett Constr. Co. v. Fischer*, 301 S.C. 343, 391 S.E.2d 875 (Cl. App. 1990). Constitutional constructions of statutes are not only judicially preferred, they are mandated; a possible constitutional construction must prevail over an unconstitutional interpretation. *Henderson v. Evans*, 268 S.C. 127, 232 S.E.2d 331 (1977).

Applied here, this rule of statutory construction requires that this Court refrain from construing § 8-13-1342 as Lilly seeks to have it interpreted, namely as an ethical prohibition covering the practice of law and lawyer-client contractual dealings usable by adverse parties to drive a wedge between the Attorney General and his Special Counsel, appointed to represent the State in litigation.

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V. Control Over the Ethics of Lawyer-Client Dealings Rests with the Court

A major reason Lilly's illegality arguments fails is because neither the General Assembly nor the State Ethics Commission controls the subject of legal ethics in South Carolina. That function belongs to the Supreme Court. Lilly has repeatedly informed this Court that no Court-created ethics rule has been violated here.

At page 5 of its Motion to Disqualify, Lilly explains that the Campaign Reform Act "gave the State Ethics Commission . . . responsibilities over . . . ethical rules of conduct," with section 8-13-1342 prohibiting persons awarded contracts with the State from contributing to campaigns of officials in a position to act on those contracts." *Id.* Insofar as the statute regulates relationships outside the practice of law, it is unexceptionable. Insofar as the statute purports to impose unique and unfair obligations and restraints on Special Counsel hired by the State, it raises grave constitutional questions which should be avoided by this Court.

The General Assembly possesses no constitutional role in defining, regulating or punishing otherwise proper and ethical dealings between lawyers and their clients. Pursuant to Article 1, Section 5 of South Carolina's Constitution, the South Carolina Supreme Court possesses the ultimate responsibility for ruling on attorneys' ethical matters. See *In re Okpalaeke*, 374 S.C. 186, 193, 648 S.E.2d 593, 597 (2007), citing *In re Rushton*, 286 S.C. 543, 544, 335 S.E.2d 238, 238 (1985).

An express provision in the Rules of the Supreme Court Rule makes it clear that attorneys' ethics are determined by ethical rules established by the Court, not the General Assembly. See SCACR 407, Rule of Professional Conduct Preamble, ¶ 11, which declares: "To the extent that lawyers meet the obligations of their professional calling,

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the occasion for government regulation is obviated." Lilly has conceded that plaintiff's lawyers here have met the obligations of their professional calling; nowhere does Lilly charge them with a violation of any provision of the Rules of Professional Conduct. Reading section 1342 to create unethical behavior in the attorney-client setting is improper.

When it comes to setting rules of behavior for Special Counsel appointed by the Attorney General, the General Assembly's regulatory power is limited. Thus, in *Williams v. Bordon's Inc.*, 274 S.C. 275, 262 S.E.2d 881 (1980), the Supreme Court struck down a statute aimed at guaranteeing continuances for lawyer-legislators while the South Carolina General Assembly was in session. The Court relied on separation of powers principles in holding the statute invalid, unequivocally rejecting the notion that the General Assembly has the right to assume control over the rendition of legal services. *Williams v. Bordon's Inc.*, 274 S.C. 275, 278, 262 S.E.2d 881, 883-84 (1980). Likewise, the authority to regulate the relationship and the dealings between Special Counsel and Special Counsel's client, the State *ex rel.* the Attorney General, fall within the inherent power of the Supreme Court to control all aspects of the practice of law in South Carolina. See also, *Gmerek v. State Ethics Commission*, 751 A.2d 1241 (Pa. 2000) (Lobbying Disclosure Act, though it applied to nonlawyers as well as lawyers, is unconstitutional in regulating the professional activities which are regulated solely by the judicial branch).

Because of the Supreme Court's special role in policing attorney-client relationships, and because such a specially regulated relationship is involved in the Attorney General-Special Counsel setting, the Court concludes the Legislature did not

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intend to include such relationships within section 8-13-1342's sweep. The Court concludes that the proper way to avoid adjudicating the unconstitutionality of section 1342 is to construe it to be pre-empted by legal ethics rules to the extent it would apply to lawyers.

Pertinent case law supports this policy choice. In the words our Supreme Court used in *Hagood v. Summerville*, 362 S.C. 191, 196, 607 S.E. 2d 707, 710 (2005), "the attorney-client relationship . . . demands a confidential, trusting relationship that often develops over time." The Supreme Court's ethical rules have been written to "require attorneys to maintain the highest professional and ethical standards in their dealings with clients." *Matter of Conway*, 305 S.C. 388, 393, 409 S.E.2d 357, 360 (1991). The attorney-client relationship has long been viewed as sacrosanct. As was stated in *Martin v. Camp*, 219 N.Y. 170, 173, 114 N.E. 46 (1916),

[n]otwithstanding the fact that the employment of an attorney by a client is governed by the contract which the parties make, the peculiar relation of trust and confidence that such a relationship implies injects into the contract certain special and unique features.

As was stated in *Plaza Shoe Store, Inc. v. Hermel, Inc.*, 636 S.W.2d 53, 57 (Mo. 1982), the relation between a lawyer and his client is a delicate and exacting one, highly personal. (quoting *Craig v. Jo B Gardner*, 586 S.W.2d 316 (Mo. banc 1979) (quoting 7 AM.JUR.2D *Attorneys at Law* ' 92 at 105 (1963))). The Court concludes section 1342 has not application in the attorney-client setting.

VI. Section 1342 Yields an Unfair and Inequitable Result if Applied as Lilly Requests

Besides pre-emption of the regulation of attorneys by virtue of the separation-of-powers doctrine and Court Rule, another problem with section 1342, is the unfair result

the statute would yield, if Lilly's section 1342 argument prevails. According to Lilly the statute criminalizes campaign contributions made to a government official by lawyers he hires, but the statute turns a blind eye to campaign contributions made to the same official by lawyers for the other side. The lawyer who signed Lilly's motion to disqualify, and the political action committee for the local law firm representing Lilly have both made significant campaign contributions to the Attorney General within the last year, i.e., while this case is pending. The corrupting potential flowing from adverse lawyers' contributions is certainly no different from that flowing from payments by counsel hired by the government official in question.

It simply is bizarre to say that the lawyers an official is working with cannot show their support for the official (and exercise their First Amendment rights) by making a contribution to him or her, but the lawyers on the other side (who may be seeking from the official a favorable deal for their client) can make contributions calculated to further their client's agenda. The facts before this Court show this is not merely a hypothetical problem.

A statute which prohibits a government official's litigation allies from contributing to him, but permits his litigation adversaries to do so is inordinately unfair. It is obvious that section 1342 was written without contemplating the practicalities of the litigation setting or the special role played by the Supreme Court in policing attorney-client relationships. This is another persuasive reason the statute should not be construed as applicable here. To the extent it discriminates against campaign contributors aligned in litigation with a government official, but allows contributions by the official's

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adversaries, it is illogical and unfairly deprives the official's retained counsel of equal treatment, that is, equal protection under the law.

VII. An Ethics Commission Opinion Supports Reading § 1342 Narrowly

The Court notes in passing that even the State Ethics Commission tends to read section 1342 narrowly. Ethics Opinion SEC A092-019 (Dec. 18, 1991), analyzes Section 1342 and concludes:

The Commission does not believe that the General Assembly intended to restrict campaign contributions to the extent that employees of companies that contract with the State would be prohibited from making a campaign contribution. Accordingly, the Attorney General's campaign may accept campaign contributions from lawyers and employees that receive contracts to provide legal services under the Attorney General's Associate Counsel Program.

Special Counsel points out that under the Retention Agreement by which they were appointed, any fees received by the Special Counsel will be paid to them as joint venturers. There is some merit in this analysis, for if the suit succeeds, the Retention Agreement makes it clear Special Counsel will share the profits, if any, flowing from their work as co-venturers. The Retention Agreement evidences a joint undertaking by Special Counsel, subject to the Attorney General's overall control, of a single project (the Lilly lawsuit) for profit, a commitment to share profits as well as losses, a contribution of skills and property by the co-venturers, and a community interest and control over the subject matter of the enterprise. It appears that as a result of the Retention Agreement, Special Counsel did in fact form a joint venture to prosecute this case on behalf of the State in this case. See *Berger v. Mead*, 127 Mich. App. 209, 338 N.W.2d 919, 922 (1983). Under the Campaign Reform Act relied on by Lilly, joint ventures are covered persons. See S.C. St. Ann. 8-13-1300 (25) defining person to include a "joint venture."

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The above-quoted 1991 Opinion rendered by the State Ethics Commission expresses the belief that the General Assembly did not intend "to restrict campaign contributions to the extent that employees of companies that contract with the State would be prohibited from making a campaign contribution." Opinion SEC A092-019 (Dec. 18, 1991), *supra*. Here, it is possible to view the "company" the Attorney General appointed as a de facto joint venture formed by Special Counsel for purposes of undertaking the Lilly case. This is significant, because the joint venture itself has never contributed anything to Attorney General McMaster; two of the joint venture's members, two of the members' firms, and employees of two members' firms have, but such contributions are plainly permitted under the Ethics Commission's ruling that "the Attorney General's campaign may accept campaign contributions from lawyers and employees that receive contracts to provide legal services."

Moreover, as noted above, it would be anomalous in the extreme to construe a statute to criminalize unsolicited campaign contributions by lawyers toiling on behalf of the State against a litigant like Lilly, while permitting Lilly's lawyers to make campaign contributions to the lawyer leading the attack against them and their client.

VIII. Appointment and Use of Special Counsel Is Properly Within the Attorney General's Powers and Unaffected by § 1342

The Attorney General is a constitutional officer, and is charged with the duties of the State's chief legal officer, possessing broad constitutional, statutory and common law authority to represent the State, to enforce the laws of South Carolina, and to protect "public rights." *State ex rel. Condon v. Hodges*, 349 S.C. 232, 240, 562 S.E.2d 623, 627 (2002). See also § 1-7-10 *et seq.*, including § 1-7-30 [Attorney General appoints assistants]; § 1-7-85 [Office of Attorney General may obtain reimbursement for attorneys

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fees or investigative costs or costs of litigation awarded by court order or settlement]; § 1-7-170 [a "department or agency of state government may not engage on a fee basis an attorney at law except upon the written approval of the Attorney General and upon a fee as must be approved by him"] It is the Attorney General who is responsible "for vindicating wrongs against the collective citizens of the State." *Condon v. Hodges*, *supra*.

As the chief law officer of South Carolina, the Attorney General is authorized not only to appoint assistant attorneys general to carry out these duties, see § 1-7-30, *supra*, but to employ special counsel from the private sector "to represent and protect the interests of the state." *Cooley v. S.C. Tax Comm.*, 204 S.C. 10, 28 S.E.2d 445, 448 (1943). It is generally acknowledged that "[a] determination by the attorney general of the extraordinariness of a case calling for outside counsel is a decision within his discretionary authority ... and it has been stated there is no limit on the attorney general's ability to appoint a special prosecutor." 7 Am.Jur.2d, *Attorney General*, § 14.

In view of the great latitude given to decisions by the Attorney General in prosecuting and staffing cases, it is appropriate to read section 1342 narrowly. Section 1342 is best read to not reach the dealings between Special Counsel and the Attorney General relates to the unique role of the Attorney General as chief prosecutor of the State and as the state's chief legal officer. The Supreme Court has consistently recognized that certain constraints normally imposed by ethical requirements are inapplicable to the Attorney General's representation of the public interest. For example, in *State ex rel. McLeod v. Snipes*, 266 S.C. 415, 223 S.E.2d 853 (1976), the Court held that representation by the Attorney General of a public officer in a criminal case did not

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ethically conflict with the Attorney General's role in prosecution of that case. As the Court noted,

[w]e find no mandated conflict of interest in the role occupied by the Attorney General under the Constitution [as chief prosecutor] and the statute [requesting the Attorney General to defend public officers]. The Attorney General is not required to sit at both the prosecution and defense table in the prosecution of a public official, in the sense that he or all of his staff equally participate in the prosecution or defense [The Attorney General has] ample latitude to designate an individual or individuals who could independently represent the public official, if the Attorney General found that he could not do so because of a conflict with his duties as chief prosecuting officer.

223 S.E. 2d at 855. See also, *Langford v. McLeod*, 269 S.C. 466, 238 S.E.2d 161 (1977)

(Attorney General's representation of municipal officials in criminal prosecution did not result in inherently conflicting or unethical duties upon Attorney General, including requirement that prosecuting officer not accept fees in civil action based upon same facts); *State ex rel. McLeod v. McInnis*, 266 S.C. 415, 223 S.E.2d 853 (1976) (Attorney General represented adverse parties in case brought to declare JARC statutes unconstitutional). Clearly, as the State's top lawyer, the Attorney General must shoulder special duties and responsibilities imposed by statute in order properly to represent the State in court and to oversee the State's litigation. With these provisions in mind, the Court does not believe that § 8-13-1342 is applicable to the situation here, a situation which involves the Attorney General's retention of private counsel in complex litigation to represent the State on a contingency fee basis.

Examination of the precise language of § 8-13-1342 demonstrates the great difficulty in applying this statute in this instance. Section 8-13-1342 is expressly applicable to an award of a "contract with the state" However, as has been noted,

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outside counsel's rights to the proceeds of the contingent fee for performance of his or her work is not a "claim against the state," but one against the fund paid by the defendants (if any). *People v. Philip Morris*, 759 N.E.2d 906 (2001). Moreover, courts have held that such proceeds are not state funds or "public funds" since they never are deposited in the State Treasury. *Conant v. Robins, et al.* 603 N.W.2d 143 (Minn. 1999).

Further, § 1-7-170 expressly authorizes the Attorney General to approve any engagement "on a fee basis [of any] attorney at law" to represent an agency or department of state government and to approve the fee of that private attorney or attorneys. This statute, which for many years appeared each year as a Proviso in the Appropriations Act, was codified by the General Assembly as § 1-7-170 in 2008, long after § 8-13-1342 was enacted in 1991 as part of the State Ethics Act. The Court notes that Section 1-7-170 gives virtually unlimited discretion to the Attorney General to approve private counsel and the fee arrangement for such counsel's services. Such would, of course, include a contingency fee arrangement with the Attorney General's own designated attorneys to act as special counsel on his behalf.

On the other hand, § 8-13-1342 imposes clear constraints upon the award of contracts with the State by requiring that no campaign contributions may be given to any person awarding a contract with the State. Under ordinary rules of statutory construction, § 1-7-170, a specific statute enacted later in time to the more general § 8-13-1342, would be deemed controlling. *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000).

The Court also finds the Supreme Court's decision in *S.C. Coastal Council v. State Ethics Commission*, 306 S.C. 41, 410 S.E.2d 245 (1995) to be persuasive. In *Coastal Council*, the Ethics Commission had concluded that the Coastal Council was

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governed by a provision in the Ethics Act forbidding any person from serving as a member of a body regulating business with which that person is associated. However, the Court concluded that such provision was inapplicable to the Coastal Council. In the Court's view, the separate body of statutory law governing the Coastal Council was controlling. According to the Supreme Court, "[a]fter reviewing the Act, which defines Coastal Council's regulatory duties, and after examining Coastal Council's regulations, we conclude that Coastal Council regulates the preservation and utilization of coastal resources." 410 S.E.2d at 247.

Likewise, the various statutes and common law relating to the powers and duties of the Attorney General bestow upon him broad discretion to appoint or engage attorneys to assist him in the representation of the State and to determine the fees for such representation rather than to award a contract with the State in the ordinary course of state business. Further, special ethics rules specifically tailored to policing the propriety of attorney-client dealings exist under the Rules of Professional Conduct and apply to the relationship between the Attorney General and the Special Counsel he appointed. Thus, based upon the same type of reasoning as in *Coastal Council*, the Court finds that § 8-13-1342 is inapplicable to the situation where the Attorney General appoints private counsel on a contingency fee basis to assist him in the representation of the State in this matter.

Finally, as an additional reason in support of the Court's finding that section 1342 offers no grounds for Lilly's disqualification motion, the Court notes that the special confidential fiduciary relationship embraced by the Retention Agreement falls outside the type of standard type of commercial contract award at which section 1342 is targeted. Unlike a normal state contract with a supplier or goods or a service-provider, here no

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payment has been made or will be made out of State funds to Special Counsel. They will be paid, if at all, purely out of any fund they are able to generate for the State's benefit. The fiduciary and adversary pressures involved in this case make the setting very different from that encountered in the standard commercial context. Without denying that there is a financial aspect to the dealings between Special Counsel and the Attorney General, the Court concludes that the appointment of Special Counsel by the Attorney General reflects a relationship different in kind and degree from the contract-award setting envisioned by section 1342. See, *Kinder v. Nixon*, 2000 WL 684860 (Mo. App. W.D. 2000) (Athe Attorney General has the authority to appoint special assistants unless the Legislature has expressly forbidden the exercise of that power.”).

Stated differently, there are numerous huge differences between retainer agreements between Special Counsel and the Attorney General and commercial contracts between a municipality and its vendors. Supreme Court rules thoroughly regulate the former relationship not the latter. Intense, well understood fiduciary obligations permeate the former; the latter concerns mostly business as usual. Most importantly, the special attorney-client relation that arises when the Attorney General appoints a law firm or group of lawyers in whom he has absolute confidence is far different in scope and content from those generated when contracts are awarded to commercial entities by the State through other processes such as the State Procurement Code.

No provision of law expressly forbids the giving of a campaign contribution by a joint venture member to the Attorney General by whom he was appointed, unless there is a *quid pro quo* or some other unique circumstance. No such charge has been made here.

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IX. A Balancing of Equities Supports Denial of the Motion to Disqualify

As noted above, Lilly has not presented competent evidence of any adverse prejudice it has suffered due to the behavior of Special Counsel. There has been no "meaningful showing that the trial process here will be tainted in any way" due to Special Counsel's participation. *See Reilly v. Computer Assoc. Long-Term Disability Plan*, 423 F. Supp.2d 5, 10 (E.D. N.Y. 2006). It is appropriate to weigh the foreseeable lack of taint against the hardship that disqualification in this very hard-fought and difficult case would place on plaintiff on the eve of trial. *Id.* Weighing the parties' relative hardship is appropriate here. *See In re Bohack Corp.*, 607 F.2d 258, 263 (2d Cir.1979) (stating in the bankruptcy context that "[t]he delay and additional expense created by substitution of counsel is a factor to which we have attached considerable significance in these cases.'). A weighing of the parties' relative hardship provides further justification for denial of the motion to disqualify based on Lilly's § 1342 illegality claim. *See also*, SCACR 407, Rule 3.7(a)(3) (listing "substantial hardship on the client" as a factor to be evaluated in determining whether a lawyer-witness must be disqualified).

X. Administrative Remedies Have Not Been Exhausted

Lilly has invoked the Ethics Act and cited an opinion by the State Ethics Commission interpreting section 1342 in its brief. Conspicuously absent from the record is any sign that Lilly has presented its ethics charges based on section 1342 to the attention of the Ethics Commission for its consideration. This Court is disinclined to mete out severe punishment to lawyers and their client based on a novel application of a statute that even the Ethics Commission seems to agree needs to be narrowly construed.

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In any event, to repeat, there has been no showing that there has been any prejudice to the Defendant and the court finds that the Special Counsel Retention Agreement contract does not constitute a denial of equal protection or due process in this case. If the Defendant wishes to complain about the behavior of Special Counsel in light of section 1342, it has access to the same Commission established to investigate and rule on such matters as any other citizen.

Alternatively, if Lilly wishes to test the legality of Special Counsel's service, the Court believes that subject should be more properly addressed in a declaratory judgment action, which has not been filed at this point, not through a motion to disqualify counsel filed at this late hour in this case. The Court's consideration of the matter on the eve of trial is particularly inappropriate since it is not an issue which has been presented to the court by pleading as required under Rule 8(c)..

SUMMARY

For all of the foregoing reasons, Lilly's Motion to Disqualify is hereby DENIED.
AND IT IS SO ORDERED.


Roger L. Couch
Circuit Court Judge

September 22 2009
Spartanburg, South Carolina

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