

STATE OF SOUTH CAROLINA

In the Court of Appeals

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May 07 2020

APPEAL FROM AIKEN COUNTY

Court of Common Pleas

SC Court of Appeals

The Honorable Doyet A. Early, III Circuit Court Judge

Appellate Case No. 2019-000362

Adele J. Pope,

Appellant,

v.

Estate of James Brown and The James Brown 2000 Irrevocable Trust, Respondents.

**RETURN AND MEMORANDUM OF APPELLANT IN OPPOSITION TO
SUPPLEMENTAL MOTION OF RESPONDENTS TO STRIKE RECORD ON APPEAL**

Respondents' April 2020 supplemental motion to strike the record on appeal (ROA) in this case continues Respondents' 11-year delay of the resolution of Appellant's portion of the 2009 joint claim of Robert Buchanan, Jr. and Appellant related to their 2007 SA service and their PR/Trustee service through May 26, 2009 under a court-approved "time + costs" contract with Respondents. They do so even though the court-approved claim has been earning interest at the legal rate for more than a decade.

Because the circuit court discarded the litigation records, filed *ex parte*, what Russell Bauknight spent during his void 4-year service as PR/Trustee to delay this claim with "Richland 4900", and what Respondents have spent since, is not within the record. What is known is that this

claim should have been resolved in 2009, when it could have been settled for \$1.5 million or less, or tried if not settled. Four years later it could have been resolved with a *Wilson v. Dallas* remand hearing, such as was given Buchanan, or settlement of \$2.1 million or less. By 2016, however, Respondents had named 9 new experts, all experts in Richland 4900, and located as far away as New York and California. Before trial, Respondents did not even respond to a \$2.1 million offer. Instead, they presented 7 of the 9 new experts to trial where Respondents again refused to respond to the \$2.1 million settlement offer.

In 2016 Respondents successfully resisted Appellant's motion to disqualify Bauknight and his counsel in this case only, one of the orders on appeal in this case.

In 2017, just weeks before trial, Respondents told the circuit court there was no need for a jury in this case, and the matter was moved to the nonjury roster.

In 2019 Tommie Rae told the Supreme Court that Respondent Estate wants her to be designated Brown's spouse because it is good for Brown's charity. Respondents' music manager Peter Afterman, in support of the claim, recanted the claimed \$4.7 million value of Brown's music empire used by Bauknight "on behalf of" the Attorney General and others since 2011 to accuse Appellant and Robert Buchanan of a federal felony.

In 2020, in their fourth motion to strike in this appeal, Respondents describe Appellant's timely-filing of a brief as a "headlong rush;" divine what her motives are; and claim that a truthful recounting of a May 29, 2013 hearing which has been undisputed for seven years was "concocted" by Appellant after the fact.

The Supplemental Motion to Strike of Respondents should be denied. It is inaccurate and a troublesome continuation of Respondents' decade-long effort to rewrite both the facts and the law to damage Buchanan and Appellant for the benefit they provided to James Brown's

Estate/2000 Trust by the appeal which became *Wilson v. Dallas*. Appellant supports her opposition with all of her earlier responses to motions to strike and the memorandum which follows.

Memorandum Opposing Supplemental Motion of Respondents to Strike ROA

Brown's Charity Funds Respondents' Retaliation and Delay

In a 2008 settlement the AG tried to rewrite the estate plan of entertainer James Brown and give the trustee of his "Legacy Trust"/"Settlement Entity" full rein to use James Brown's fortune to implement his 2008 settlement. Paragraph 5k of the settlement said:

5k The parties agree to use their best efforts to extinguish any other outstanding interest or claim 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.

A 2009 amendment made paragraph 5k even clearer:

4. All costs and expenses of the Settlement Entity shall be shared proportionately by the parties. Thus, the net proceeds of any income or distribution proceeds received by the Settlement Entity will be net of the expenses such as but not limited to the following: settlement costs of any lawsuits...payments, if any, to former trustees in settlement of their claims;....

In May 2009 the Honorable Doyet A. Early, III, approved the AG's 2008 plan. The stay imposed by the appeal which became *Wilson v. Dallas* was quickly lifted, and Bauknight, as trustee of the Legacy Trust, took control of Brown's fortune. He has held the purse strings ever since.

In March 2013 the AG told the Supreme Court he was getting out of Richland 4900 and hoped to conclude the FOIA cases in a short time. He did not. Within two days of the *Wilson v. Dallas* decision, the AG, with Richland 4900 Plaintiffs seeking to dismember the estate plan a

second time, put Bauknight back in charge of Brown's assets. The retaliation against Buchanan and Appellant continued unabated.

By 2018 Bauknight admitted that tens of millions of dollars in litigation costs had been spent from Brown's charity. The records of his expenditures were discarded by the circuit court in this case. Thus, the exact amount of the millions of dollars spent by Bauknight and Respondents to carry out a decade-long pattern of delaying this 2009 claim and making it as expensive as possible for Appellant is not known.

The supplemental motion to strike continues Respondents' scorched-earth effort to damage Buchanan and Pope and blame the problems caused to James Brown's "I Feel Good" charity by the AG's 2008 settlement and a Bauknight/Afterman \$79 million devaluation to \$4.7 million on Buchanan and Pope. Respondents seek to cast Buchanan and Pope as greedy, incompetent, felons. The motion continues that pattern. It does so by mischaracterizing Richland 4900 as a case to benefit James Brown's Estate/2000 Trust, when Richland 4900 seeks solely to benefit Legacy Trust owners to whom Buchanan and Pope never owed a duty, and who are committed to dismembering Brown's estate plan a second time. In a lengthy footnote on page 2, Respondents then assert that Appellant has been untruthful for 7 years about the events at the May 29, 2013 status hearing.

The claims in the motion are baseless and unwarranted. The motion should be denied.

The Events of the May 29, 2013 Meeting Happened and Are Undisputed

Respondents' April 10, 2020 claim that the statements made by Appellant since 2013 about the May 29, 2013 statement of counsel for Tommie Rae and Louis Levenson, Esq., were "concocted long after the fact" is both incorrect and troublesome. It is especially so because two attorneys for Respondents were present at the May 29, 2013 hearing, and at least two others have

known about the what happened at the May 29, 2013 hearing, and not challenged what happened, since at least July 2013.

On May 29, 2013, one day after the remittitur was handed down in *Wilson v. Dallas*, counsel for Tommie Rae and Levenson, speaking for most Richland 4900 Plaintiffs, announced to Judge Early at a status hearing in Barnwell their plan to disregard *Wilson v. Dallas* and reinstate the AG's 2008 settlement.

As confirmed by one of the reporters present, and the entire record since, the facts about the Levenson/Tommie Rae announcement and other acts have been widely recorded undisputed for years. See Affidavit Summer, Ex. A.¹

Persons Attending the May 29, 2013 Status Hearing and Their Significant Actions

The May 29, 2013 status hearing was the first clear indication that neither the AG nor Bauknight had any intention of following the Supreme Court's mandate in *Wilson v. Dallas*. A summary of the important testimony follows.

A letter of Appellant to the AG dated December 29, 2014, recounted how Appellant, as a private citizen, was motivated by the Tommie Rae/Levenson announcement to work *pro bono publico* from 2013 until June 10, 2015 to try to persuade both the AG and later SA/ST David Sojourner, Esq., not to allow the announced second dismembering of Brown's music empire to take place. Exhibits E is the last of the many efforts Appellant made to persuade the AG not to allow the Tommie Rae/Levenson plan to be put in place.

¹ This affidavit, executed in May 2020, is necessitated by Respondents' suggestion that Appellant, who is a member of the South Carolina Bar in good standing, and her counsel have made an intentional misrepresentation to this Court. Both Appellant and the undersigned take very seriously the suggestion that either has lacked candor with any Court. Respondents, nonetheless, seem never to hesitate to hurl allegations against Appellant and her counsel which, in addition to being sanctionable if true, could be actionable under the Rules of Professional Conduct.

The Announced Plan of Counsel for Tommie Rae and Levenson at the May 29 Hearing

The joint announcement of Levenson and Alan Medlin, Esq., one of Tommie Rae's attorneys, was not a surprise. While Tommie Rae had not filed a petition for rehearing in *Wilson v. Dallas*, her son James had done so. In an attempt to justify the claimed Afterman \$4.7 million "professional valuation" James had also shared its details for the first time.

James revealed that Afterman had valued the 900 Copyrights at \$23.7 million and everything else in the music empire at zero, or near zero. Afterman then reduced the \$23.7 million by \$19 million for Brown's debt to the New York Teachers' Assn. (TAA), a \$3 million overstatement. This produced the absurd \$4.7 million claimed value for the music empire which brought in over \$5 million a year when Buchanan and Pope served as PR/Trustees between 2007 and 2009.

Levenson's joint request with Tommie Rae's counsel at the May 29 status hearing was consistent with his Supreme Court petition for rehearing in *Wilson v. Dallas*. Levenson told the Supreme Court his clients would continue Richland 4900, which seeks to uphold the AG's 2008 settlement deal, despite the AG's statement to the Court that the AG would be withdrawing from Richland 4900.

Two of Levenson's clients, Deanna Brown-Thomas and Yamma Brown, were at the May 29 hearing with their counsel. In a media interview after the hearing, Thomas said she would fight for ten years longer if necessary.

By 2016, however, all of Levenson's clients had terminated him. All now claim that Tommie Rae was not Brown's spouse; was not entitled to the \$1 million a year and quarter of Brown's charity the AG wanted her to have in the 2008 settlement. All assert that Tommie Rae

does not have any termination rights under the U.S. Copyright Act.

The Statements and Actions of Bauknight and his Counsel at the May 29 Hearing

In his March 2013 petition for rehearing in *Wilson v. Dallas* Bauknight had assured the Supreme Court that he could defend the estate plan of James Brown he had sought for four years to dismember. He did not prove able to do so.

By May 10, 2013, two days after *Wilson v. Dallas* decision, the AG, Tommie Rae and the Levenson clients had put Bauknight back in control of Brown's fortune, and he continued to serve them in Richland 4900 with funds advanced by Brown's charity.²

Two attorneys for Bauknight appeared at the May 29, 2013 hearing, David Black, Esq., and William Newsome, Esq. Black joined Tommie Rae and the Levenson clients in asking the court to exclude Buchanan and Appellant from any participation in James Brown hearings.

Immediately after the conclusion of the hearing Newsome, identified by Bauknight at the Aiken 1337 trial as Bauknight's probate claims counsel, served Appellant with the "Disallowance" which required her to file Aiken 1337, rather than have her claim resolved with a *Wilson v. Dallas* remand hearing as Buchanan would in October 2013.

The position and vitriolic tone of Bauknight's counsel at the May 29 hearing; the Disallowance; and the immediate actions taken by Bauknight made clear that he joined in the announced Tommie Rae/Levenson plan, even though he did not say so at the May 29 hearing.

Bauknight made his position clear at an August 2013 deposition where he defended the AG's 2008 settlement and claimed Appellant (and apparently Buchanan) had "raped" Brown's estate.

² By 2020 it was clear that neither the AG nor Bauknight would seek any of the termination rights proceeds Tommie Rae and the other owner-beneficiaries had put in the Legacy Trust to pay the costs of 10 years of Wingate litigation in Richland 4900.

For the next two years Bauknight and his counsel bitterly attacked Appellant's *pro bono publico* efforts to stop the second dismembering; correct the Afterman \$79 million devaluation; and protect the "I Feel Good" charity's 900 copyrights from unnecessary dissipation Afterman was carrying out for Tommie Rae and James. Bauknight and his counsel characterized these efforts to persuade the AG to save Brown's charity as "officious intermeddling."

Appellant's efforts to persuade the AG to prevent the second dismembering of the "I Feel Good" Charity ended abruptly on June 10, 2015. Respondents, through Wingate and Aiken 1337 counsel, however, continued unabated their efforts to damage Appellant with sanctions and make Aiken 1337 more costly. Their attacks continue today.³

The Statements of David Bell, Esq., for Forlando and Terry Brown

David Bell, Esq., advised the circuit court that his clients, Terry Brown and Forlando Brown, were pleased with the decision in *Wilson v. Dallas*. This was consistent with the public statements of both Terry Brown and his son Forlando Brown that they supported Brown's estate plan. Their actions in Richland 4900, where the complaint seeks to enforce the AG's 2008 settlement, were just the opposite. Such inconsistencies had been the hallmark of Forlando Brown and other Bell clients since 2007, and would continue to be so. By 2019 Terry would secure a ruling from this Court that he had never challenged Brown's estate plan.

Statements of the Attorney General, through AG Jones, at the May 29 Hearing

After hearing the statements of Levenson, counsel for Tommie Rae and counsel for Bauknight, Sr. Asst. AG Havird "Sonny" Jones expressed the AG's pleasure that Bauknight had

³ The Court is asked to take judicial notice, for example, of the pending 2020 request for sanctions by Bauknight, Tommie Rae and others, through Wingate, in the estate of Venisha Brown, and the separate 2019 requests of Levenson and Deanna Brown-Thomas for sanctions in the same estate. [Aiken County Case 2019-CP-02-0320]

been reinstated. The AG's pleasure with Bauknight was surprising in light of the discussions Appellant had with the AG, Chief Deputy AG and Solicitor General on March 6, 2013 and which she and her counsel also had with the Chief Deputy and Solicitor General within a week after the March 6 meeting.

The AG expressed satisfaction with Bauknight even though he knew from the meetings and the James petition for rehearing that there was no basis whatsoever for the \$1 million a year and nearly 1/3 (31%) of Brown's charity that Bauknight, by the Afterman \$4.7 million valuation, had shifted from Brown's charity to the family trust.

At the May 29 hearing, the AG also knew that the \$4.7 million valuation and other tax problems could have been easily corrected by anyone other than Bauknight as a natural consequence of the Supreme Court's decision. The AG knew that the *Wilson v. Dallas* decision had not corrected the tax problems and loss to the charity by Bauknight's \$4.7 million value and IRS filings. The AG also knew that Bauknight had never properly accounted for the millions that had passed through his hands.

The AG would continue to support the announced plan of Tommie Rae and Levenson to disregard *Wilson v. Dallas* for seven years, even adopting the 2020 brief of Tommie Rae and the other beneficiary-owners of the Legacy Trust in Appellate Case No. 2019-002229, one of two pretrial appeals in Richland 4900.

The Circuit Court's Reaction to the May 29 Announced Plan to Disregard *Wilson v. Dallas*

In the footnote on page 2, Respondents refer to the Levenson/Tommie Rae announcement as the "supposed attempt to reinstate the 2008 settlement" rather than what it actually was. They then assert that Appellant must not be telling the truth because, Appellant, "most tellingly" did not mention the announced Levenson Plan in her complaint filed in this case, Aiken 1337, on June 10,

2013. They assert that what happened on May 29, 2013 was “concocted long after the fact” in “yet another of her continued attempts to involve herself in the resolution of the Estate and Trust....”

Respondents’ statements are incorrect, and inconsistent with the public record Respondents seek to rewrite. The explanation for the Levenson/Tommie Rae announcement’s not being mentioned in the June 10, 2013 complaint in Aiken 1337 is simple: Nothing Judge Early did on May 29, 2013, or before June 13, indicated that he had any intention of doing what Tommie Rae’s counsel and Levenson proposed that the circuit court do.

Tommie Rae’s counsel and Levenson asked Judge Early to hear *in camera* the reasons why he should reinstate the AG’s 2008 settlement. The Judge’s statements about the Supreme Court’s decision that day appeared to support the Supreme Court’s decision. The first indication that the Aiken Court would lend support to the Tommie Rae/Levenson announced place to disregard *Wilson v. Dallas* came 3 days after Aiken 1337 was filed.

The June 13, 2013 Administrative Orders Show the Court’s Support for the May 29 Plan

Three days *after* Aiken 1337 was filed, the Aiken Court gave its first indication of support for the Tommie Rae/Levenson plan to disregard *Wilson v. Dallas* and reinstate the AG’s 2008 settlement. In administrative orders, one of which made specific reference to the Aiken 1337 complaint filed just three days earlier, the Aiken Court excluded Buchanan and Appellant from any participation in James Brown cases and directed the Clerk of Court to return any attempted filing by either of them in any James Brown matter other than their own claims cases.

The June 13 orders, while not exhibiting hostility or retaliation against Buchanan and Appellant at that stage, clearly provided support for the announced plan to Tommie Rae and the Levenson clients to reinstate the AG’s 2008 settlement.

Both Buchanan and Appellant were aware of the deficiencies in the claimed \$4.7 million

valuation, and Appellant had acquired substantial expertise in the interplay of Copyright Act termination rights and state probate law. To exclude them from being witnesses or experts gave Tommie Rae, the Levenson Will contestants and Respondents a boost they needed.

By May 2015, when the Aiken Court issued the status report to the Supreme Court, the circuit court's position had changed from mere support for the position to Tommie Rae and the Levenson clients to support for the retaliation that the AG and Bauknight had lodged against Buchanan and Appellant since filing Richland 4900 in 2010.

The Supreme Court's order of June 10, 2015 abruptly ended Appellant's efforts as a private citizen to persuade the AG to protect the "I Feel Good" Charity.

The Failure of the Court Reporter to Transcribe the May 29, 2013 Hearing

Respondents assert that because there is no transcript of the May 29, 2013 status hearing the Tommie Rae/Levenson announced plan to disregard *Wilson v. Dallas* did not take place. This is incorrect. The circumstances of the lack of a transcript are, however, unusual.

Since a dispute over what happened at a November 2007 hearing which resulted in a motion for Judge Early to recuse himself, Judge Early had been meticulous in assuring that there was a transcript of all James Brown proceedings, including status conferences and hearings. Court reporter Lisa Davenport was present at the May 29, 2013 hearing. When Daryl Williams, Esq., Appellant's counsel in a federal matter, requested the transcript immediately after the hearing, however, he was informed that, although present, Davenport had not made a transcript of the hearing. This fact has been known by Aiken 1337 counsel since at least July 2013. The email chain related to the request of Daryl Williams is attached hereto as Exhibit B.

On July 29, 2013 Appellant wrote Davenport in connection with an appeal of the June 13, 2013 orders. Her letter confirmed the "earlier inquiry" [by Williams] and the fact that there was

no transcript made. The July 29, 2013 letter was copied to Court Administration, AG Wilson, Levenson, three attorneys for Bauknight, a Wingate firm attorney, who represents Respondent and Bauknight in various capacities, and numerous others. Both Newsome and Black were copied on the letter.

Numerous other communications with the AG and others confirm the May 29, 2013 announced plan of Tommie Rae and the Levenson clients to reinstate the AG's 2008 settlement. Some are attached as Exhibits D through I to this return. Except in the 2015 status report, which contained many other inaccuracies as well, the facts surrounding the Levenson/Tommie Rae announced plan to disregard *Wilson v. Dallas* and reinstate the AG's settlement were never challenged until Respondents' 2020 motion.

On December 4, 2014, for example, Appellant emailed Judge Early, Judge Manning, Bauknight's counsel William Newsome, Esq., AG Jones and others. Appellant stated on page 2:

On May 29, 2013 Mr. Levenson and counsel for Tommie Rae announced their intention to reinstate the AG's 2008 settlement which dismembered the "I Feel Good" Foundation; its 800+ copyrights; and the \$285,000 Trusts of 7 grandchildren...

On June 2, 2015, Appellant sent an email to AG Wilson, Chief Deputy AG McIntosh, Solicitor General Cook, John Beach, Esq., and 5 attorneys for Tommie Rae. It stated in part:

On May 29, 2013 Mr. Levenson and counsel for Tommie Rae announced their intention to reinstate the 2008 agreement.

On December 29, 2014 the first paragraph of Appellant's letter to the AG asserts that a recent ruling "provides hope that the "I Feel Good" Foundation can be save from the announced intention of Louis Levenson and Tommie Rae Hynie to dismember both the "I Feel Good" Trust and its 800+ copyrights a second time..."

In a Supplemental Response to Motion of AG Alan Wilson filed in this case, on page 4, Appellant states:

On May 29, 2013, Bauknight served Pope with the Disallowance. The Same day counsel for Tomirae announce her intention to reinstate the McMaster settlement. AG Wilson expressed confidence in Bauknight.

In a motion of Appellant filed in Aiken 1337 on August 4, 2017 seeking to exempt the AG and others from physical appearance at trial, Appellant stated on page 4:

On May 29, 2013 Tomirae and Levenson announced to Judge Early In open court their intention to reinstate the McMaster settlement. That day Plaintiff was served with the Disallowance which is the subject of this case. In the Notice of Disallowance Defendant Estate repeated the claim that Plaintiff had overstated the value of Brown's assets to get a big commission.

On page 1 of her Motion to Alter, Amend or Reconsider the January 16, 2019 order Appellant stated, in part:

1. The Court overlooked or misapprehended that on May 29, 2013 Tommie Rae Brown and others announced to the Honorable Doyet A. Early, III...their intention to disregard the May 8 2013 decision....

On Page 8 of Appellant's Petition for Order Lifting Stay filed January 22, 2019 in Richland 4900, but related to 2018-2229, Appellant stated, in part:

On May 29, 2013 Tommie Rae, through counsel, and counsel for Plaintiffs Venisha, Tonya, Yamma and Larry Brown, and Deanna Thomas, and their Children/Plaintiffs, announced to Judge Early in open court their intention to reinstate the AG's 2008 settlement....

In January 2020 Appellant filed a Return in Aiken 2018-002229 which stated on page 6:

The purpose of Richland 4900 is the same as the May 29, 2013 announced intention of Tommie Rae and the Levenson clients to the Aiken Circuit Court to disregard *Wilson v. Dallas* and reinstate The AG's 2008 settlement which gave stipulated "heirs" more than half of the assets and \$2 million a year in exchange for their termination rights ... [Return., 1/16/20, p. 6]

The voluminous record in Aiken 1337 and Richland 4900 make clear that it is Respondents' 2020 theories about the nonexistence May 29, 2013 Tommie Rae/Levenson announced plan -- not statements by Pope -- which were "concocted."

Levenson's 2017 Deposition and Subsequent Sworn Statements are Unreliable and Biased

Respondents' motion asserts that "Attorney Louis Levenson, who was present at the May 29 hearing, has given sworn testimony that he does not recall any attempt to reinstate the AG's 2008 settlement." This is a troublesome overstatement of Levenson's actual deposition testimony.

In the one-day deposition, taken in this case on November 1, 2017, Levenson stated under oath at least 55 times that he did not remember a date or an event. There were more instances in which he claimed not to recall an event or date. As for the May 29, 2013 hearing, Levenson did not even know in 2017 whether it had been a hearing or a phone call.

Levenson's lack of memory, and his changes of sworn testimony should be taken in context.

By 2017 all of Levenson's 6 original clients from 2007, and their children, had terminated Levenson. All 6 had turned their backs, in part or entirely, on the May 29, 2013 Tommie Rae/Levenson announced plan to reinstate the AG's 2008 settlement.

Deanna Thomas and Yamma Brown had both testified in depositions in Richland 4900 in 2017 that they had known before their father died that he was not married to Tommie Rae. All stated that Tommie Rae was not entitled to the \$1 million a year and quarter of Brown's charity the AG's 2008 settlement and the Richland 4900 complaint proposed to give her in exchange for her termination rights. All claimed she had no termination rights.

Levenson, however, had filed suit seeking from Respondents a share of the "common fund" he asserted he had secured for Brown's estate, even though his 2007 contract called for attempts

to dismember Brown's estate, rather than build it up. Levenson became a witness in Aiken 1337 and other cases to try to justify the AG's 2008 settlement and Richland 4900.

Levenson's position in Richland 4900 was especially problematic because he had signed the 40% Wingate contingency fee contract for about a dozen Plaintiffs, including a number of former clients who did not even know they were parties to Richland 4900. Most knew nothing about Bauknight serving "on behalf of" them. Most knew nothing about Wingate's motion for them to intervene in a FOIA suit to prevent release of the Wingate 40% contract they had not signed, or to seek sanctions against Appellant.

One troublesome aspect of the Levenson's deposition was not his loss of memory of the events, but his clear recollection that he had reviewed the Afterman \$4.7 million valuation years earlier. When Appellant used Levenson's sworn testimony to void the claimed confidentiality designation for the Afterman \$4.7 million valuation, Respondents sought sanctions against Appellant and supported their sanctions request with an affidavit of Levenson recanting his sworn testimony. Levenson's affidavit even suggested that Appellant's counsel had tricked Levenson into answering the question improperly.

After testifying in Aiken 1337 in 2017 that Buchanan and Pope had no duty to defend the estate plan, Levenson moved to Venisha's estate.

Wingate, Levenson and Bauknight had prevented the incarcerated Venisha, a Plaintiff in Richland 4900 for 8 years before her death, from having a GAL, even though she had no valid POA. Levenson had signed the Wingate 40% contract for her in 2010.

In 2019 Levenson, based on the January 2019 order in Aiken 1337 which is part of this appeal, asked the Honorable Clifton Newman to impose contempt sanctions on Appellant Pope for answering a complaint served on her by Deanna Brown-Thomas in connection with Venisha

Brown's estate. By 2020 Brown-Thomas and the Wingate firm, purporting to speak for the AG, Bauknight "on behalf of" the AG, and others, had joined in the sanctions request in Venisha's estate in 2020.⁴

In short, Levenson's failure to remember his statements made at the May 29, 2013 hearing, in light of both his lack of memory of these events and his hostility and bias, does nothing to change what he said on May 29, 2013. Respondents' attempt to use Levenson's defective testimony as proof that the May 29, 2013 events did not happen says volumes about its accuracy. Some of his failure to remember events is demonstrated in Exhibit C, portions of his November 2017 deposition (with emphasis).

Respondents' Analysis of Appellate Case No. 2019-002229 is Inaccurate and Irrelevant

On pages 2 – 4 of the supplemental motion Respondents produce an incorrect, and undocumented, litany of the perceived motives of Appellant and her counsel, as well as an incorrect analysis of Richland 4900 and one of the two pretrial appeals from Richland 4900, Case No. 2019-002229. Respondents analyze not only the actions and filings of Appellant, but those of the AG as well.

Respondents begin with the wholly inaccurate claim that Richland 4900 is a "maladministration" case related to Appellant's duty to Respondents. This is incorrect. Richland 4900 was brought against Buchanan and Appellant in 2010 solely for the benefit of the Legacy Trust and its owner-beneficiaries, to whom neither Buchanan nor Pope never owed any duty. It has become abundantly clear in 2020 that the Legacy Trust, at least since 2013, has not even

⁴ The Court is asked to take judicial notice of the entire file of *Deanna Brown Thomas v. Venisha Armaa Brown*, Aiken County Case 2019-CP-02-0320 in which Respondents, through Wingate, are seeking contempt sanctions against Appellant for answering the complaint served on her by Brown Thomas and seeking the appointment of a PR for Venisha's estate who will protect the substantial claims of creditors of Venisha's estate.

pretended to have a public or charitable purpose. Richland 4900 was not a breach of duty case. It was an inappropriate but inadequate attempt to do whatever it took to stop the appeal which became *Wilson v. Dallas*.

Respondents purported analysis of Appellant’s motives and the actions of the AG in Appellate Case No. 2019-002229 also misses the mark. The Court is asked to take judicial notice that in that appeal it was Respondents – not Appellant – who introduced the Aiken 1337 order and trial into their brief.

The suggestion that Appellant has inappropriately “rushed” with the 10-year-old tort suit filed against Buchanan and Appellant or this appeal, related to her unpaid 11-year-old claim, is wholly without merit.

None of the 17 Richland 4900 Plaintiff/Respondents, including the AG, has asserted that the announcement was not made.

Conclusion

For the reasons set out herein, Respondents’ supplemental motion to strike the ROA should be denied.

Respectfully submitted,

s/Adam T. Silvernail
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Counsel for Appellant Adele J. Pope

May 6, 2020


Exhibit A

- 8. I was in attendance at that status conference, held in Barnwell, South Carolina, before Judge Doyet Early. My contemporaneous notes reflect what happened during that status conference, and my notes are consistent with my memory of events.
- 9. Attached as Exhibit A are several excerpts from my notes of May 29, 2013. Several highlighted portions are references to a new settlement deal by: a) Louis Levenson, attorney for several Brown children who contested the will; b) Alan Medlin (to whom Judge Early referred as "the Professor") attorney for Tomirae Hynie, Brown's long-time companion whose spousal claim was then in question and has yet to be decided by the Supreme Court; and Judge Early.
- 10. Based on the nine highlighted references to settlement in my contemporaneous notes, the attorneys appeared to be in agreement on a new settlement.
- 11. Another point of agreement among attorneys representing will contestants, the Attorney General, and trustee Russell Bauknight (whose appointment had been voided by Wilson v Dallas) was that former trustee Adele Pope must not be part of future hearings. David Black, attorney for the trustee, argued, "Dovetailing what Louis Levenson said, we need to determine parties...Pope is not a proper party...We don't need Adele Pope's assistance on this."
- 12. After the status conference, I learned that hearings related to James Brown would not be placed on the court docket, despite a long-standing tradition of open courts in South Carolina. I contacted two legislators about my concern and was instructed to call Judge Early's administrative assistant at the beginning of each week to learn about hearings.

FURTHER DEPONENT SAYETH NOT.



 Susan D. Summer

SWORN TO BEFORE ME This 20 Day
 of April, 2020 

 Notary Public for South Carolina
 My Commission expires: 5/20/2024

EXHIBIT A

Status Conference, 29 May 2013
Reporter's Notes: Sue Summer

Barnwell County Courthouse
References to renewed settlement, highlighted.

Judge Early:

The Supreme Court remittitur was received yesterday. Remanded back with specific instructions to me. Want to move forward with administration of this estate...

Court disagreed with my ruling and overturned settlement agreement. Had various competing parties claim undue influence. Spousal claim of Tomi Rae Hynie, young child's claim. Assume we'll continue those claims—not sure—tell me where you stand with your assertions. Will you pursue that in light of the Supreme Court's language ... found no reasonable basis for undue influence claim.

... Likewise with spousal claim, Supreme Court, prenuptial agreement, will against her. With that language in the Supreme Court order, are you going to pursue the claim? If so, needs to be on an expedited track. Likewise with children.

... Welcome any comments ... my goal of bringing all matters to a timely, efficient conclusion while administering the estate. Appoint PR based on estate plan documents. Also allows me to keep present PR, Bauknight...

"Professor" Alan Medlin, attorney for Tomi Rae Hynie (claimed wife of James Brown)

Possibility of another settlement? Court didn't say agreement overturned. Why prenup not valid, undue influence. Interested persons may want to consider settlement, speedy administration.

Judge Early:

Language in the opinion pretty harsh ... Supreme Court found settlement not just and reasonable, total dismemberment of JB's carefully crafted estate plan. Critical of me, not having ... DNA evidence, etc.

Take thorough discovery of this case before I would consider a settlement. Strong opinion. I'm not in a position to think about that until you develop claims on undue influence, etc.

Medlin:

If you would entertain a settlement, evidence could be introduced during the settlement negotiation. I'm going to suggest we chose not to introduce a lot of information re Mrs. Brown because we didn't think it was necessary...to not denigrate the memory of Mr. Brown...

Early:

I respect the Supreme Court's decision, perhaps we were not diligent enough in developing the record on these claims. Will take the hurdles much higher now. Must develop facts.

Medlin:

... Should be common knowledge this estate has trouble doing business with third parties... Will get worse if we can't conclude this quickly. The original agreement, family members included termination rights. Family members tired of being generous. I don't know if those rights are here now. Main concern, charity.

... We rigorously oppose Mrs. Pope's involvement. More contentious... less likely we'll reach settlement more beneficial to the charity.

Family members and the charity can reach a settlement we can justify with sufficient evidence, that would be more efficient.

Judge Early:

Not just and reasonable.

Medlin:

As a professor, I get to disagree with Supreme Court rulings. I won't hide my disagreement with this ruling. We didn't show enough evidence to support the settlement as just and reasonable, but I don't want to foreclose that option.

Judge Early:

My goal is to make sure the estate is administered in an orderly fashion in the best interest, beneficial of the trust. If that happens to include a new settlement, it won't keep me from listening, but I have a different road map now.

Sonny Jones and Mary Frances Jowers, Office of Attorney General.

Jones:

In Sept. 07 we moved to intervene. With the appointment of Pope and Buchanan, our position was they were improperly appointed. We felt it was appropriate to stay in the litigation because of Pope/Buchanan's authority to act.

... Unless there are abuses/allegations, we should not be involved on an ongoing basis. We will file a motion to be removed as a party of this case. Monitor hearings, can move back in based on circumstances that may occur.

Louis Levenson:

(Attorney for Brown children who contested will)

Seconding what Alan Medlin said. Having read both opinions, I would say the fault of the failure of the settlement is mine, not your honor's. ...

I'm not saying the parties have a signed contract among themselves, you don't know what you don't know because we didn't give it to you....

The purpose of the law is to encourage compromise. Sometimes more than mere allegations is required. I know what the evidence is.

Judge Early:

"We find no reasonable evidence" – they're clear. (referring to Supreme Court decision)

Levenson:

Not disrespectful for litigants to disagree with decision. Not much case law about the settlement agreement.

Judge Early:

I can promise you, whoever is trying for settlement must present evidence, detailed and factual, for consideration. Should have made that happen before. We're not sitting on our hands. Getting to discovery, developing a sufficient record to convince me, more than an assertion.

Levenson:

I don't doubt you believe you were criticized. You had less than what you needed. I won't try my case today. I do think it's in everyone's interest to reconsider pursuing a settlement.

Circling back to what Prof. Medlin said, ... my clients didn't want to impair James Brown's reputation. I take most of the responsibility ... We could have presented evidence, witnesses. We have a bona fide controversy.

Judge Early:

My goal is to move in an efficient manner with the end in sight, decided by a jury.

...

Exhibit B

Adele Pope

From: Daryl Williams <dwilliams@jeterandwilliams.com>
Sent: Tuesday, June 04, 2013 9:59 AM
To: Adele Pope
Subject: Fw: James Brown - May 29th status Conference

Adele:

Tried to forward below from Lisa Davenport to you from my phone yesterday.
This is just to be sure you get it.

Daryl L. Williams
Jeter & Williams, P.A.
1204 Main Street, Suite 200 (29201)
P.O. Box 7425
Columbia, SC 29202
Telephone: 803-765-0600
Facsimile: 803-765-0619

IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice that may be contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding any penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to any other party any transaction(s) or tax related matter(s) that may be addressed herein.

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

From: "Davenport, Lisa" <ldavenport@sccourts.org>
To: "Daryl Williams" <dwilliams@jeterandwilliams.com>; "Early, Doyet A. Law Clerk (Adam C. Ness)" <dearylc@sccourts.org>
Sent: Monday, June 03, 2013 8:18 PM
Subject: RE: James Brown - May 29th status Conference

Daryl,

I just realized which hearing you were talking about. Status conferences aren't on the record. I wasn't stenographically taking this down. Judge Early indicated to me earlier in the day that if something needed to be on the record he would let me know.

Lisa

Lisa H. Davenport, RPR
Post Office Box 5485
Aiken, SC 29804

From: Daryl Williams [dwilliams@jeterandwilliams.com]
Sent: Thursday, May 30, 2013 2:33 PM

To: Early, Doyet A. Law Clerk (Adam C. Ness); Davenport, Lisa
Cc: Early, Doyet A. Law Clerk (Adam C. Ness)
Subject: Re: James Brown - May 29th status Conference

Oh, you clever Gen X'er.

Lisa, I wrote you already asking for an expedited copy of yesterday's transcript. Let me know if you need a deposit.

Thanks.

Daryl L. Williams
Jeter & Williams, P.A.
1204 Main Street, Suite 200 (29201)
P.O. Box 7425
Columbia, SC 29202
Telephone: 803-765-0600
Facsimile: 803-765-0619

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

From: "Early, Doyet A. Law Clerk (Adam C. Ness)" <dearlylc@sccourts.org>
To: "Daryl Williams" <dwilliams@jeterandwilliams.com>; "Davenport, Lisa" <ldavenport@sccourts.org>
Cc: "Early, Doyet A. Law Clerk (Adam C. Ness)" <dearlylc@sccourts.org>
Sent: Thursday, May 30, 2013 2:30 PM
Subject: Re: James Brown - May 29th status Conference

Like this....

Ms. Lisa:

Please see the message below from Mr. Williams.

Sincerely,

Adam C. Ness, Esq.
Law Clerk to the Honorable D.A. Early, III The Circuit Court of the 2nd Judicial Circuit PO Box 90<x-apple-data-detectors://0/0> Bamberg, SC 29003<x-apple-data-detectors://0/0>
Telephone: 803.245.4004<tel:803.245.4004>
Fax: 803.245.2983<tel:803.245.2983>
dearlylc@sccourts.org<mailto:dearlylc@sccourts.org>

On May 30, 2013, at 12:34 PM, "Daryl Williams"

<dwilliams@jeterandwilliams.com<mailto:dwilliams@jeterandwilliams.com>>

wrote:

Adam:

How do I contact the court reporter for yesterday's Brown hearing to order a transcript?

Thanks.

Daryl L. Williams
Jeter & Williams, P.A.
1204 Main Street, Suite 200 (29201)
P.O. Box 7425
Columbia, SC 29202
Telephone: 803-765-0600
Facsimile: 803-765-0619

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----- Original Message ----- From: "Early, Doyet A. Law Clerk (Adam C. Ness)" <dearlyc@sccourts.org<mailto:dearlyc@sccourts.org>>
To: "Daryl Williams"
<dwilliams@jeterandwilliams.com<mailto:dwilliams@jeterandwilliams.com>>
Cc: "Early, Doyet A. Law Clerk (Adam C. Ness)"
<dearlyc@sccourts.org<mailto:dearlyc@sccourts.org>>
Sent: Tuesday, May 28, 2013 11:34 AM
Subject: Re: James Brown - May 29th status Conference

Of course. Never crossed my mind.

Adam C. Ness, Esq.
Law Clerk to the Honorable D.A. Early, III The Circuit Court of the 2nd Judicial Circuit PO Box 90<x-apple-data-detectors://0/0> Bamberg, SC 29003<x-apple-data-detectors://0/0>
Telephone: 803.245.4004<tel:803.245.4004>
Fax: 803.245.2983<tel:803.245.2983>
dearlyc@sccourts.org<mailto:dearlyc@sccourts.org><mailto:dearlyc@sccourts.org>

On May 24, 2013, at 12:02 PM, "Daryl Williams"
<dwilliams@jeterandwilliams.com<mailto:dwilliams@jeterandwilliams.com>><mailto:dwilliams@jeterandwilliams.com>
>
wrote:

Thanks. You do know, I hope, that I wasn't fussing at you.

See you Wednesday.

Exhibit C

Louis Levenson
November 01, 2017

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IN THE COURT OF COMMON PLEAS

CASE NO. 2013-CP--02-1337

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
ADELE J. POPE,

Plaintiff,

vs.

ESTATE OF JAMES BROWN AND THE
JAMES BROWN 2000 IRREVOCABLE TRUST,

Defendants.

DEPOSITION OF LOUIS LEVENSON, ESQ.

WEDNESDAY, NOVEMBER 1, 2017

10:00 A.M.

LAW OFFICE OF LOUIS LEVENSON

125 BROAD STREET, SW

ATLANTA, GEORGIA 30303

Chanetta L. Sinkfield, RMR, CCR #6389-2855-8646-8864

U.S. LEGAL SUPPORT, INC.
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Suite 220, Peachtree Palisades
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APPEARANCES OF COUNSEL

On behalf of the Plaintiff:

ADAM SILVERNAIL, ESQ.
LAW OFFICE OF ADAM SILVERNAIL, LLC
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COLUMBIA, SOUTH CAROLINA 29202
803-779-1770
adam@silvernaillawfirm.com

On behalf of the Defendants:

BURL F. WILLIAMS, ESQ.
NEXSEN PRUET, LLC
POST OFFICE DRAWER 2426
COLUMBIA, SOUTH CAROLINA 29202
864-282-1165
bwilliams@nexsenpruet.com

ALSO PRESENT:

ADELE J. POPE, ESQ.
adele@popelawfirm.com

1 cases?

2 A. I do not recall.

3 Q. And do you recall that he issued such an
4 order at the request of you, Alan Medlin, and
5 Russell Bauknight?

6 A. Yes.

7 Q. And does June 2013 sound incorrect?

8 A. No, it does not. If your question is, do
9 I recall the date, then, Adam, the answer is no, I
10 don't. But I know there was an order at some point.

11 Q. And that you on behalf of the client you
12 represented then were one of the folks who had
13 requested it?

14 A. Yes.

15 Q. And do you recall that that request was
16 made in May of 2013?

17 A. No.

18 Q. Do you recall that there was a hearing the
19 day after the remitted tour was issued from the Wilson
20 versus Dallas decision?

21 A. I do not recall that either. And let me
22 say, I am trying to listen carefully to your question
23 so if your question calls upon me to remember a date,
24 it's probably -- there are some dates I do remember,
25 but there are a vast number that I do not.

1 Q. Well, and I will continue to try to see if
2 you recall the date, and if not to try to see if you
3 recall the event more generally.

4 A. Certainly.

5 Q. Do you recall that at a status conference
6 shortly after Wilson versus Dallas was decided that
7 Judge Early announced an intent to appoint
8 Russell Bauknight as special administrator?

9 A. Yes.

10 Q. Or let me correct that to say his personal
11 representative and trustee?

12 A. Yes. I -- I do think there was some
13 issuance of the nomenclature of this point, that he
14 was the appointee following the second version of
15 the -- I believe it was May 2013 of the
16 Supreme Court's opinion.

17 Q. And do you recall that that occurred at a
18 status conference that turned into a hearing without
19 much notice?

20 A. I do not recall that.

21 Q. Had you and your clients been working with
22 the attorney general's office and Russell Bauknight
23 and Alan Medlin to get Russell reappointed?

24 A. No.

25 Q. Did you on behalf of your clients voice

1 reappointed by the court, the answer is yes.

2 Q. And do you recall there being exchange of
3 e-mails among David Black, Alan Medlin, you, and maybe
4 others about that issue?

5 A. No. I don't recall.

6 Q. Now, do you recall that before Russell's
7 reappointment came up after Wilson versus Dallas was
8 decided, that your clients and David Bell's clients
9 and Attorney General Wilson had all asked to stay the
10 4900 case.

11 And let me know if the 4900 case is not a
12 label that makes sense to you.

13 A. Well, for the record, why don't you tell
14 me what that is because I -- I think I know what it
15 is, but I want to make sure I am answering the right
16 question.

17 Q. That would be the Richland County case
18 2010 CP 40-4900 filed in May of 2010 against
19 Adele Pope and Robert Buchanan by the parties to the
20 2008 settlement.

21 A. Okay. And your question is, did I what?

22 Q. Did you -- did your clients, the
23 Attorney General, and David Bell's clients ask to stay
24 that case after the --

25 A. I don't recall.

1 Q. Now after the Wilson versus Dallas
2 decision was issued, did you tell me earlier you did
3 remember there being a status conference in that same
4 time period with Judge Early?

5 A. I don't think I said that. I have the
6 vaguest recollection that we convened maybe on the
7 telephone, maybe in person, to ascertain what the next
8 steps would be.

9 Q. Tell me what you mean by the next steps.

10 A. How the judge would interpret what I call
11 the second version of the Supreme Court's opinion
12 issued in May of 2013.

13 Q. And David Bell is a Georgia lawyer who is
14 not admitted to practice in South Carolina, correct?

15 A. I don't know what Mr. Bell's status is.

16 Q. Is it correct that at that time he
17 represented Forlando Brown, Terry Brown, and Romunzo
18 Brown?

19 A. At that time you mean the 2013 period?

20 Q. Yes, sir.

21 A. I believe that's correct. Yes, sir.

22 Q. And you, Russell Bauknight, Alan Medlin,
23 and David Bell were the people who had signed the
24 contingency fee agreement to engage Ken Wingate for
25 the -- what became the 4900 lawsuit?

1 A. Yes, sir. Did I know at that time?

2 Q. Intended to take the position that
3 Mrs. Pope should be paid nothing under the
4 January 8th, 2008, order?

5 A. I did not know that. And I -- and I did
6 not know it because I don't think I was ever privy to
7 any conversation that sounded like that, at that time
8 or any other.

9 Q. Before 2013, had you reviewed the Philpott
10 Ball and Werner appraisal of James Brown's assets?

11 A. Yes.

12 Q. And that was the appraisal that valued his
13 music assets at about \$4.7 million?

14 A. I don't know the number, but -- I don't
15 remember the number.

16 Q. Does that sound right?

17 A. It does not. I don't know.

18 Q. But you had seen the appraisal itself?

19 A. Yes, sir. I believe it was some point
20 copied to me early in -- in that time frame.

21 Q. And are you aware that when a claimant
22 against an estate in South Carolina is served with a
23 notice of disallowance of claim, that they must file
24 suit within 30 days or allow a permanent total bar to
25 their claim?

1 hearings, I believe those were?

2 A. I was present at every hearing, so the
3 answer would be yes. I just don't remember all the
4 dates.

5 Q. Do you recall the presentation by the then
6 special administrators of a method of value the estate
7 of James Brown?

8 A. A negative value you say?

9 Q. A method to value with?

10 A. No. I don't remember if that was
11 presented. I mean, I am not saying it wasn't. I just
12 don't remember.

13 Q. That method being 12 and a half to 14
14 times the annual income stream of the royalties for
15 the royalty interest?

16 A. I have seen that in some documents, yes.

17 Q. Do you recall that being aired at a
18 hearing when Judge Early said if anybody has a problem
19 with that, let me know?

20 MR. WILLIAMS: Object to form.

21 A. I don't remember Judge Early saying that,
22 no. Again, I am not saying it did not happen, just
23 don't remember.

24 Q. (BY MR. SILVERNAIL:) Do you believe the
25 TIAA debt was about \$15 million when Brown died?

1 But if you want to ask me about it for the
2 next two and a half hours and waste your time, go
3 right ahead.

4 Q. The Grammy issue, do you recall where that
5 first sprang up?

6 A. No, I don't. I knew it came up in
7 New York. I don't know where it came from.

8 Q. Do you recall there being a story
9 published on the law firm called Kilpatrick Stockton's
10 website?

11 A. No, I do not.

12 Q. About their stopping of the Grammy sale?

13 A. No, sir. I mean, a law firm represented
14 the Grammy people somehow got involved in the process
15 when they heard that the Grammy was being offered for
16 auction. I don't remember much more than that. And
17 then there was conversations and threats over the
18 phone or something, and the decision was made not to
19 offer the Grammy itself for sale.

20 Q. You were present for that conversation in
21 New York, weren't you?

22 A. You know, people have asked me that and I
23 think Burl asked me that, I really don't remember if I
24 was present. I was in the area, I mean, I was at the
25 Christie's auction place when all the hubbub occurred

1 about it. But I don't think I was in the room
2 necessarily.

3 I could have been. I just don't recall.
4 All I remember is, it's, the Grammy, is not going to
5 be sold, it's being withdrawn from the sale. And I
6 said, okay, fine. You know, I am not a music lawyer,
7 I don't know what's appropriate or not appropriate to
8 be sold. And I had been the, you know, lawyer for the
9 estate and I got a call from Kilpatrick Stockton. I
10 was, like, okay, let's withdraw it from the sale and
11 we'll argue about the legality of it later. Why get
12 involved in a fight over it?

13 And then, so, I don't know what happened.
14 All I know is final decision was to withdraw. And I
15 don't know if that was Ms. Pope's decision or the
16 Christie's decision or whose it was.

17 Q. Now, do you recall in 2007 Robert Rosen
18 telling Judge Early in open court that the royalties
19 alone might be worth \$100 million?

20 A. I do not remember.

21 Q. But you were present at every James Brown
22 hearing?

23 A. I was present at every James Brown hearing
24 until Judge Early -- until the last hearing where he
25 approved the settlement on the -- under the influence

1 Toberoff to get everyone involved under his -- under
2 his umbrella, including half sisters of my clients, my
3 then clients, Cinnamon -- sorry, I can't remember.

4 Q. La Rhonda?

5 A. Laronda P.

6 Q. Janette.

7 A. Thank you. Janette Mitchell.

8 And I had, for a time, brought them under
9 the fold with Toberoff as part of my getting all the
10 heirs together to put them in an arrangement with
11 Toberoff and me, and there was just a lot of stuff
12 going on. And conflict that I didn't feel comfortable
13 with as between the clients.

14 Whether Tommie -- the question is, whether
15 Tommie Rae was represented by Toberoff, I think an
16 effort was made by Toberoff to represent Tommie Rae,
17 but I don't believe that ever happened.

18 Q. Do you remember any discussion or
19 exchanges with Alan Medlin about by valuing the right
20 of publicity to zero?

21 A. No. I don't remember.

22 Q. Or about the date of death value of the
23 TIAA debt?

24 A. No. I don't remember that either.

25 Q. But you have reviewed the Philpott Ball

1 represents them doesn't automatically make them
2 entitled. You know, they are either going to qualify
3 or they're not. And if you don't believe Tommie Rae
4 is going to qualify as the spouse under state law,
5 then Afterman's termination rights will fail and yours
6 will succeed because you have all taken DNA tests --
7 you meaning the four clients, well, my clients and the
8 three ladies who were the add-ons afterwards.

9 Q. Do you remember during the settlement
10 hearings held in early part of 2009, regarding
11 approval or disapproval of the 2008 settlement
12 agreement, Russell Bauknight testifying?

13 A. No. I don't remember. I am not saying it
14 did not happen, Adam. I just don't remember. I
15 remember me testifying. No. No, I didn't testify.

16 Q. That was a different hearing.

17 A. No. I remember Adele testifying, the
18 examining Adele. But I don't think I testified. I
19 testified at a later hearing, yes.

20 Q. So you don't recall Mr. Bauknight saying
21 he did not know anything about the value but he had
22 heard \$80 million?

23 A. No, I don't.

24 Q. And you do not remember him saying he did
25 not know anything about federal copyright termination

1 rights?

2 A. No, sir. I don't remember.

3 Q. You do not remember him coming back in
4 March saying he had learned some things about federal
5 copyright termination rights?

6 A. I do not remember.

7 Q. Had Mr. Bauknight already been selected
8 trustee for the James Brown legacy trust when the
9 settlement hearings began?

10 A. You mean the settlement hearings approving
11 the settlement that was reached in --

12 Q. '08?

13 A. -- in '08? I think so, yeah. I think he
14 had. I think a decision had been made to nominate
15 him, yeah.

16 Q. Do you remember who suggested him?

17 A. No.

18 Q. Or did you know Mr. Bauknight prior to
19 that time?

20 A. No.

21 Q. Do you remember anything you were told by
22 him by whoever brought him to the table?

23 A. No.

24 Q. Now, the James Brown legacy trust, do you
25 agree with me that Tommie Rae and the Attorney General

1 daughters, I believe. Janise and --

2 Q. Lindsay.

3 A. Lindsay. Thank you.

4 Who were minors when we started and, I
5 believe, were subsequent -- who are now or have been
6 for some time adults. And one of them, the daughters,
7 may have contacted me about whether they would be
8 eligible for any educational benefits or reimbursement
9 of educational benefits. They may not have gone to
10 school, but they may have wanted to go to school.
11 College or something. I cannot remember the
12 specifics.

13 So sometime before Daryl denounced the
14 position he had previously taken and now supported the
15 opposite, there was a conversation about how to
16 execute or to help him to remedy the situation with
17 what, at that time, would be Russell as the PR.

18 And beyond that I really do not have much
19 recollection. I don't think they ever got any money
20 or any reimbursement, and I don't know even if they
21 ever applied for money or reimbursement to be honest.
22 I just know that I felt that this is something they
23 ought to be aware of. And if there were funds
24 available, they ought to try to get them if they were
25 qualified.

1 And shortly after that, I think I received
2 both notice that I was no longer needed and that Daryl
3 had gone out in public and -- website or TV or
4 something saying he was now supporting his father's
5 will and was renouncing his previous position in the
6 caveat, I think.

7 I remember we met at the Dunkin' Donuts on
8 Washington Road and I told him several times.

9 Q. Do you remember a letter from 2010 from
10 Daryl Brown firing you and urging the Attorney General
11 to do the right thing?

12 A. No, but -- no. I don't remember.

13 Q. Now, you attended the Richland County 4900
14 case mediation in 2012 on behalf of your then clients?

15 A. Yes.

16 Q. And by that represented that you had full
17 authority to settle for those clients?

18 A. Yes.

19 Q. At least the ones who are not personally
20 in attendance to the pleadings?

21 A. Yes. That was a requirement, I believe.
22 Yes.

23 Q. And in the lead-up to that, did you
24 authorize the Wingate firm to represent to
25 Judge Manning that you would be present with full

1 Toberoff to get everyone involved under his -- under
2 his umbrella, including half sisters of my clients, my
3 then clients, Cinnamon -- sorry, I can't remember.

4 Q. La Rhonda?

5 A. Laronda P.

6 Q. Janette.

7 A. Thank you. Janette Mitchell.

8 And I had, for a time, brought them under
9 the fold with Toberoff as part of my getting all the
10 heirs together to put them in an arrangement with
11 Toberoff and me, and there was just a lot of stuff
12 going on. And conflict that I didn't feel comfortable
13 with as between the clients.

14 Whether Tommie -- the question is, whether
15 Tommie Rae was represented by Toberoff, I think an
16 effort was made by Toberoff to represent Tommie Rae,
17 but I don't believe that ever happened.

18 Q. Do you remember any discussion or
19 exchanges with Alan Medlin about by valuing the right
20 of publicity to zero?

21 A. No. I don't remember.

22 Q. Or about the date of death value of the
23 TIAA debt?

24 A. No. I don't remember that either.

25 Q. But you have reviewed the Philpott Ball

1 and Werner appraisal, which considered a date of death
2 value for the TIAA debt?

3 A. Yes. Well, I mean, you asked me earlier
4 what did I think it was, 15 million or something, and
5 I think it was something in that range.

6 Q. How long ago did you first see the
7 Philpott Ball appraisal?

8 A. I believe it was '07, early '08 maybe. I
9 would be guessing. That's not fair for me to just
10 guess about it.

11 Q. But quite a while ago?

12 A. Yes.

13 Q. Do you recall being included in an
14 exchange about the timing of presenting the reduced
15 valuation to the Supreme Court?

16 A. I don't understand that question.

17 Q. Well, in May 2011, the respondents asked
18 to supplement the record with, among other things, the
19 inventory and appraisal filed by Bauknight first
20 concerning that \$4.7 million value?

21 A. Okay.

22 Q. Do you recall that attempt to supplement
23 the record?

24 A. No.

25 Q. Do you recall any discussion about the

1 the right existed. I know there was something.

2 Q. But that there was a right of first
3 refusal to Terry?

4 A. Yes.

5 Q. Do you recall you, Mr. Medlin, and others
6 assuring Judge Early that any sale would be a fair
7 market value?

8 A. I don't recall that. No.

9 Q. And does it your fit your recollection
10 that Russell Bauknight's amended filings with the IRS
11 reflecting the \$4.7 million valuation were made in
12 late 2010?

13 A. I don't recall that.

14 Q. Do you remember there being an update to
15 the IRS after that appraisal came in?

16 A. Yes.

17 Q. Do you remember that the amendment that we
18 just discussed regarding right of first refusal and an
19 assignment of Terry Brown's interest to her Forlando
20 were distributed by Sonny Jones?

21 A. I don't remember that either.

22 Q. Do you remember an assignment of Terry
23 Brown's rights to Forlando?

24 A. Yes. Just because -- and the observation
25 is Terry Brown would not -- when I represented

1 attorney for James B?

2 A. No. I -- you know, I was -- for a time, I
3 was involved in every aspect of the case, then I feel
4 that I went on a need to know basis. And that's where
5 I have been for some many years now. I don't think I
6 was on a need to know basis about that.

7 Q. Were you aware that Shahid on James B's
8 behalf claimed that James Brown's music empire was
9 only worth \$4.7 million?

10 A. No.

11 Can I ask you a question? Do you know the
12 date of the order that Shahid was awarded \$700,000?

13 Q. I do not.

14 A. But you are saying there's an order out
15 there on that.

16 Q. I am.

17 (Off record discussion.)

18 Back on the record.

19 Q. (BY MR. SILVERNAIL:) Now, I -- I think
20 you made reference to this earlier that one component
21 of that settlement in 2008 was that part of Tommie
22 Rae's share would go to James B; is that correct?

23 A. Yes. Either in the initial arrangement or
24 in the amended arrangement. I can't remember. I
25 think it was the initial.

1 Q. Do you recall in August 2010 a filing by
2 the respondents in the Wilson versus Dallas appeal
3 advising the court they expected an appraisal would
4 show that James Brown's assets were worth less than
5 \$12 million?

6 A. No.

7 Q. Would you disagree with me if I told you
8 were among the signatories to this document?

9 A. No. No. Very often I was asked to sign
10 documents, joining my co-litigants in this matter, and
11 I was, you know -- to a certain extent, I was a client
12 of the firm on behalf of my clients. So if I was
13 advised to do something, I did it.

14 Q. But in that appeal, unlike in the 4900
15 case, you were your clients only -- your clients only
16 representative, correct?

17 A. Meaning the -- in the -- in the appeal of
18 the settlement?

19 Q. Yes.

20 A. Oh, yes. But I thought you were asking me
21 about that -- okay. If it was a consolidated pleading
22 I was asked to sign it, then I don't remember it.

23 Q. Okay. And then the Philpott Ball
24 appraisal arrives around September 2010?

25 A. Okay.

1 A. No.

2 Q. Did you know also -- and that he reported
3 or overstated by two million dollars what would have
4 ended up in the charity?

5 A. No.

6 Q. Do you recall that January 2011 is also
7 when Alan Wilson took office as Attorney General?

8 A. I did not know that either.

9 Q. And that office took on, potentially, the
10 rights Attorney General McMaster had under the
11 settlement?

12 A. That would make sense.

13 Q. Were you aware in March of 2013 that
14 Mrs. Pope and her counsel met with the
15 Attorney General to urge them to quietly and
16 reasonably correct the statements Bauknight had made
17 to the IRS?

18 A. No.

19 Q. Did you know that a petition for rehearing
20 in March of 2015 -- 2013, excuse me, that James B's
21 Guardian ad Litem revealed an overstatement of the
22 charitable and other deductions of about \$5 million?

23 A. No.

24 Q. You do recall that in May of 2013 the
25 Supreme Court finally decided Wilson versus Dallas?

1 A. Well, it cites to the record at 287928808
2 so I don't know what that is. Something in the record
3 presumably they were referencing.

4 Q. It continues, "if the valuation of the
5 assets asserted by the appellants' falls, then their
6 fee petition and credibility falls with it."

7 So --

8 A. That's what it says.

9 Q. The respondents believed that if Pope and
10 Buchanan's valuation was incorrect that both their fee
11 petition and their credibility would be hurt by that,
12 right?

13 A. That's what this says.

14 Q. And the AG along with them, and they are
15 saying this in the context of asking the court to
16 accept Russell Bauknight's \$4.7 million valuation?

17 MR. WILLIAMS: Object to form.

18 Q. (BY MR. SILVERNAIL:) Correct?

19 A. Well, to the extent I cannot authenticate
20 this document because I don't recollect seeing it, but
21 if you tell me that's what it is, with the acceptance
22 of a supplement to the record on the valuation, I
23 will -- will be happily willing to accept that.

24 Q. It bears a filing stamp from the
25 Supreme Court, doesn't it?

Exhibit D

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND	)	Aiken County Case No. 2013-CP-02-1337
)	
Adele J. Pope,)	
)	
Plaintiff,	)	PLAINTIFF'S OPPOSITION TO MOTION OF
	)	ATTORNEY GENERAL ALAN WILSON
v.	)	FOR PROTECTIVE ORDER AS TO
Estate of James Brown and The	)	DEPOSITION OF
James Brown 2000 Irrevocable Trust,	)	SR. ASST. AG HAVIRD "SONNY" JONES
)	
Defendants.)	
)	

Summary of Relief Requested

In June 2016 Attorney General Alan Wilson ("AG Wilson") told the Honorable Doyet A. Early, III discovery in this case ("Aiken 1337") is just another side of the coin of discovery in Richland 4900."¹

The deposition of the AG's Sr. Assistant, Havird "Sonny" Jones was taken on May 4 and continued May 5, 2016, Mr. Jones either was directed by the AG, or acted himself, to evade virtually every answer to questions asked about the facts set out herein. This interruption to the deposition was compounded by scores of objections by both the AG and Defendants' Nexsen Pruet (NP) counsel.

The AG and Jones claim a 5-year Common Interest with Tomirae Hynie; clients of Louis Levenson, Esq.; and Terry Brown between 2008 and 2013. During this period all were seeking to dismember Brown's "I Feel Good" Charity. The AG/AG Jones also claim a 7+-year continuing Common Interest privilege with Russell Bauknight and his dozen NP lawyers, beginning in 2009. The AG does so despite the fact that Bauknight

¹ *Russell L. Bauknight et al. and Alan Wilson et al. vs. Robert L. Buchanan, Jr., and Adele J. Pope* was filed on May 19, 2010 in the Richland County Probate Court; removed to the Richland County Circuit Court; and assigned Richland County Case No. 2010-CP-40-4900.

Brown's spouse, that Brown's music empire was worth \$4.7 MM; and that the TPP was worth only \$.5MM were not corrected, the 900 copyrights and the entire "I Feel Good" Charity would be threatened.

When AG Wilson left the meeting, he said he was having lunch with an NP lawyer – but it was not about Brown's "I Feel Good" Charity.

In March 2013 AG Wilson called Pope to say he was seeking to be dropped as a party to Richland 4900. At the same time, he asked Jg. Manning NOT to hear the Motion to be Dropped which he told the Supreme Court he was filing, and failed to support the "I Feel Good" Charity in his Petition for Rehearing.

Between May 8 and 29, 2013 AG Jowers and AG Jones were actively involved in the re-appointment of Bauknight as Brown's fiduciary, with actual knowledge that Bauknight continued to serve as fiduciary for Tomirae & the Levenson Will contestants, and NP as counsel for the AG's Legacy Trust.

On May 29, 2013 Levenson & Tomirae announced to Jg. Early in open court their intent to reinstate the McMaster settlement deal; AG Wilson, through AG Jones, asserted his satisfaction with Bauknight; and Levenson, Tomirae and NP all urged Jg. Early to exclude Buchanan & Pope from the James Brown Aiken proceedings. Bauknight/NP delivered a Notice of Disallowance claiming Buchanan/Pope were not entitled to any payment for their services. The Disallowance repeated the false claim that they had overstated Brown's assets.

On June 13, 2013 Jg. Early excluded Buchanan and Pope from Aiken cases, as requested.

In August 2013, Tomirae and her son filed defective Termination Rights

Exhibit E

From: [Adele Pope](#)
To: jdotsbach@donsbachking.com; scott@k5law.com
Cc: [Alan Wilson](#); [John McIntosh](#); [Mary Frances Jowers](#); [Sonny Jones](#); John.Beach@arlaw.com
Subject: SAVING THE JAMES BROWN "I FEEL GOOD" FOUNDATION
Date: Wednesday, June 10, 2015 10:22:03 AM

Dear John and Scott:

Your clients Terry and Forlando Brown could play an important role in helping the Supreme Court, the Attorney General and Dave Sojourner explore how to minimize loss to the "I Feel Good" Foundation from the exercise of (and fair contracts not to exercise) Federal Copyright Act Termination Rights.

"Please, Please, Please" and "Try Me" are now ripe to serve as examples of how the "I Feel Good" Foundation, by use of the "splitting heirs" technique, can provide maximum protection to the Copyrights to these two songs now, and to 890 more as the years go by.

Here's the quick chronology:

August 2008 - AG McMaster, with no understanding of Copyright Act Termination Rights, agrees to stipulate that Tommie Rae is Brown's spouse; James B. his son; and DNA testing should be stopped.

January 2009 - DNA-proven and acknowledged daughters La Rhonda, Jeanette and Nicole drop out of Case 1647 on promise of AG McMaster, others, their federal rights will not be impaired.

Spring 2009 - All Settling Parties represent they have placed their Termination Rights in the James Brown Legacy Trust ("Legacy Trust").

May 19, 2010 - AG McMaster, the Legacy Trust, others, file Case 4900.

October 2010 - AG, Tommie Rae, Terry, others, seek relief from default as to counterclaims of Bob and Adele after SWB fails to timely respond to counterclaims. [Still pending.]

January 2011 - Legacy Trust amended by Terry, AG McMaster & others. Terry assigns ROFR and other assets to Forlando.

April 2011 - Jeffrey Smith and AJP circulate draft "Private Foundation, Copyright Heirs and Musical Millionaires: why the James Brown "I Feel Good" Trust doesn't..." Promotes "splitting heirs."

Nov. 1, 2011 - Russell's lawyer, Wilson v. Dallas oral arguments says:

"As far as Mrs. Brown is concerned she certainly had a serious claim as omitted spouse and certainly a slam dunk claim as an elective share."

AND "James Brown copyrighted over 800 songs. He sold those copyrights to various publishers. The publishers in return agreed to pay him 50 cents on the dollar of every royalty collected. He bundled up those agreements and went to New York and he borrowed \$26

million dollars, pledging those, 50% of those royalties in payment of the debt. ...

AND Lemme tell you what they [the settling parties] gave up. That is. Mrs. Brown and the children.. There's also a provision in the Copyright Law called Termination Rights. Prior to the expiration ...many years prior to the expiration of the copyright, the artist, in this case James Brown, can exercise Termination Rights which means he notifies the publisher "I terminate the copyright." "I want it back." And he gets it back by operation of law, automatically. And that means he's entitled to 100% of the royalties. Well, of course, James Brown died. But under law when that happened the right is vested in Mrs. Brown and the children...

So, what we have, and if I can use an example, one of his first famous hits, was a song called "Please, Please, Please." And he copyrighted that song February 27, 1956. The copyright was to expire two thousand fifty-two, in 2052. But the ex..., Termination Rights ripen next year. So next year, when those Termination Rights are exercised, Mrs. Brown and the children will get the copyright a hundred percent. And be entitled to 100% of the royalties...

So you've got the Estate up here, getting those royalties, now since the debt has been paid off, since last Friday. But when they exercise those Termination Rights, the Estate doesn't get the royalties anymore, so it goes down. . . And as every song is terminated, it keeps going like this, until finally, in about 20 years, the Estate gets nothing. And Mrs. Brown and the children got it all...

So, when you look at it in the big scale of the Termination Rights, which is really, all of the ...all this Estate is about, Mrs. Brown and the children gave up a great deal...when they reached the settlement.

.....

AND [if Tommie Rae were not not the spouse]: "If That's a given, the children get it all. They get 100%. And there's no question about that. If she's not entitled to it, they get it all. But as a spouse, she gets 50% and they get 50%. So let's take her out of the picture. The children get it all. The charitable trust gets nothing. In about 20 years.

Then Attorney General Wilson, through Sonny, added:

“But the important thing about the settlement, for the AG’s office, is that along with the settling, we got the Termination Rights for those parties. Now, those Termination Rights are very valuable. I will be the first one to represent to this Court I didn’t know how valuable they were... But ... Let me tell yo what it means today. And that’s where we are.

AND: Well, uh, research into Termination Rights in situations like James Brown, who wrote most of his songs, is that they'll start terminating because of James Brown’s starting in the fifties..... But if we had gone through and won everything, starting in our income starts dropping off. And by 2025 we’ve lost 75% of our income. We have nothing. If we litigate this thing to 2015 and come – this is a factor with us, one of the factors – and come back before this Court with Tommie Rae Hynie Brown, ... with undue influence, ... with the omitted child, we win. And what do we get? In 2015 we have no money left. And we only have 6 or 7 years to get any money... So, if this thing is sent back, and we litigate this thing, in 2023 - 25 we have nothing...

2012 - Gurnick and Grinblat publish "Nine Ways to Avoid Copyright Termination", Part 1 and

"Nine Ways to Avoid Copyright Termination," Part 2. Like "Private Foundations...", these articles discuss some of the many strategies available to the "I Feel Good" Trust to protect the 892 Copyrights from termination attempts.

May 8, 2013 - Supreme Court voids AG's 2008 settlement.

June 10, 2013 - Adele files suit, in part to remove Russell Bauknight as fiduciary of James Brown, because of his continued fiduciary service to Tommie Rae, and as James B's agent, without GAL.

May 29, 2013 - Tommie Rae's counsel and Louis Levenson announce their intention to reinstate AG McMaster's 2008 Settlement. Deanna and Yamma tell the press they will fight for 10 yrs., if necessary.

June 13, 2013 Judge Early, (no notice/hearing) issues "June 13 Orders" excludes Adele, supporters of "I Feel Good" Foundation and its 892 copyrights from Aiken JB cases. Adele appeals [2013-001649]

September, 2013 -- Toberoff accuses Peter Afterman of assisting Tommie Rae and James B. of filing Copyright Act Termination Notices, presumably for "Please, Please, Please," "Try Me" and others.

January 2014 - Judge Early dismisses Adele's suit to remove Bauknight for cause, etc. Adele appeals. This becomes Appellate Case No. 2014-000250. [See C-Track]

October 22, 2014 - Adele files Amended Brief of Appellant in Appellate Case No. 2013-001649, the appeal of the June 13 Orders.

November 22, 2014 -- Respondents Terry, Forlando, James B., Cannon, Dallas, and Tommie Rae fail to file Brief in June 13 Orders appeal, 2013-001649. [See C-Track, pp. 2-5 of Brief].

November 2014 - Judge Early hears Tommie Rae's spousal Summary Judgment without discovery, and without hearing order to release Hynie "diary."

January 13, 2015 - Judge Early declares Tommie Rae to be Brown's spouse.

February 2015 -- Journalist, media re-publish Hynie's "diary" despite 2008 gag orders. Confirm what all have known. Tommie Rae knew she was not Brown's spouse.

January 16, 2015 - Attorney General Alan Wilson asserts to Supreme Court that State/AG should not be made a party to 2013-001649 (June 13 Orders Appeal). Claims Legacy Trust doesn't exist at this time.

February, 2015 - S.C. Supreme Court stops Aiken/Tommie Rae proceedings, and asks for Orders since May 8, 2013 Wilson decision.

April 2015 - S. C. Supreme Court asks Judge Early to file Status Report

May, 2015 - Judge Early files status report. Tonya Brown, Terry Brown, children of La

Rhonda and others file objections to Jg. Early's Status Report.

We will soon be approaching the 2-year period for the various attempted Federal Copyright Act Terminations. This would include both those filed by Tommie Rae and those Marc Toberoff said he would shortly (2013) file for certain others. It is a great time for those who have watched the Termination Rights issue come to the forefront see if there is a way to accomodate their respective goals.

Without downplaying the Publicity Rights, which the original tax attorney and others valued at \$46 million in 2007, and which are not subject to the Termination Rights, it seems that the next few months provide a great opportunity to explore how the "I Feel Good" Foundation and its 892 Copyrights can be protected while appropriate credit is given to some heirs holding Termination Rights.

Scott knows a lot about this area. I hope we will have an opportunity to exchange views. And, as always, I hope Dave and Attorney General Wilson will join in.

Best,
Adele Pope
June 10, 2015

Exhibit F

Esq.; AG auditor Sandra Matthews; Solicitor General Robert Cook; former Chief Deputy AG John McIntosh; Defendants' copyright expert Roger Miller; Wm. Jeffrey Smith; and others, Defendants' motion should be denied.

The *Wilson* decision and the June 10, 2015 Order, do not control the outcome of this case which was filed in 2013 after the disallowance of a 2009 claim. In fact, *Wilson*, issued May 8, 2013, remanded the matter for a determination of Plaintiff's entitlement and found that Plaintiff was the prevailing party. That remand was interrupted by a May 29, 2013, Notice of Disallowance with Impending Bar (the "Disallowance") which forced Plaintiff to file this suit.

The Disallowance was delivered to Plaintiff the same day Tomirae's lawyer and an attorney for certain Will contestants announced to the Honorable Doyet A. Early, III, ("Judge Early") in open court, their intention to reinstate the 2008 settlement deal brokered by Attorney General Henry McMaster (AG McMaster) on August 10, 2008.

On that same day Defendants, with their fiduciary still serving as a fiduciary for the AG and Tomirae under the so-called James Brown Legacy Trust ("Legacy Trust"), joined Tomirae and the Will contestants in a request that Judge Early ban Buchanan and Pope from participation in any James Brown Aiken Case. Judge Early did so on June 13, 2013.

Wilson found that the settlement Tomirae and the Will contestants told Judge Early they wanted to reinstate dismembered James Brown's noble estate plan which gave the bulk of Brown's to the "I Feel Good" Charity to educate needy students of all races in South Carolina and Georgia.

Under the Summary Judgment standard, Defendants are bound by their admissions of October 8, 2013, and Judge Early's findings on that day, that the work of

Exhibit G

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND	)	Aiken County Case No. 2013-CP-02-1337
	)	MOTION AND MEMORANDUM
Adele J. Pope,	)	TO EXEMPT GOVERNOR HENRY McMASTER,
	)	ATTORNEY GENERAL ALAN WILSON, SOLICITOR
Plaintiff,	)	GENERAL ROBERT COOK, FORMER CHIEF DEPUTY
	)	JOHN McINTOSH, DAVID SOJOURNER, JR., RITA
v.	)	CULLUM, W. STEVEN JOHNSON, ESQ., WILLIAM
Estate of James Brown and The	)	SELLERS, CPA, MARY JO COLE, CPA, SR ASST..HAVIRD “
James Brown 2000 Irrevocable Trust,	)	SONNY” JONES,ESQ., WM. JEFFREY SMITH, ESQ.;
	)	AND OTHERS FROM REQUIRED PHYSICAL APPEARANCE
Defendants.	)	AT TRIAL AND FOR RELATED RELIEF

TO: DEFENDANTS AND THEIR COUNSEL:

YOU WILL PLEASE TAKE NOTICE that at the hearing to be held at 9:30 on August 15, 2017, at the Bamberg County Courthouse, or as soon thereafter as she may be heard, Plaintiff will move before the Honorable Doyet A. Early, III, (“Judge Early”) for an Order as follows:

1. Exempting the persons named above and each current and former employee or contract service provider to Defendant Estate of James Brown, Defendant James Brown 2000 Irrevocable Trust, the Office of the Attorney General of South Carolina and/or Office of the Governor who has been deposed in this case, from physical appearance at trial be held September 5, 2017.
2. To the extent his health prevents appearance at trial, RussellL. Bauknight may appear by deposition.
3. This does not prevent any witness from appearing and giving live testimony.

The Grounds of this Motion are:

1. Compelling the personal appearance of all of the persons deposed in this case at trial, all of whom are material witnesses – but many short -- would be burdensome .
2. Judicial economy will be served because the testimony of many witnesses, including the Attorney General and Governor , is, unique and necessary, but brief.
3. Defendants have designated only 3 fact witnesses, one of whom is Bauknight.
4. Defendants have declined reasonable hardship requests by some deponents.
5. Some deposition testimony of most persons deposed in this case is important to show:

- a. Robert Buchanan and Plaintiff properly valued James Brown’s Music Empire at \$99 Million less a debt to the New York Teachers of approximately \$15 Million.
- b. The service of Buchanan and Plaintiff as PR/Trustees was made extraordinary by the Attorney General’s unauthorized attacks on them which began November 21, 2007, and continued until May 8, 2013. Defendants joined in those attacks by 2010.
- c. The defense of James Brown’s noble estate plan became more difficult on August 10, 2008 when the Attorney General proposed to put himself and Tomirae in 75% control of James Brown’s assets.
- d. The 4-year appeal which saved James Brown’s “I Feel Good” Charity and its 900 copyrights for needy students became increasingly difficult after Tomirae, the Attorney General, the AG’s Legacy Trust, and Defendants sued Buchanan and Pope.
- e. Defendant Estate’s intentional devaluation of James Brown’s music empire to \$4.7 Million in IRS filings; its ill-gotten “refund”; and the use of the ill-gotten refund and false representations about Federal Copyright Act Termination Rights by the Attorney General and Defendants to mislead the Supreme Court, made Buchanan’s and Plaintiff’s work to save the “I Feel Good” Trust even more difficult.
- f. The false representations of David Bell, Esq., and his clients to Judge Early and others, including the planted false Grammy © claim, made Buchanan’s and Plaintiff’s work to save the “I Feel Good” Trust more difficult.

This motion is supported by the Exhibit 1 A – F filed herewith; the depositions on file in this case; such additional documents and evidence as shall be presented to the Court prior to the hearing on this matter; and the following Memorandum.

MEMORANDUM

At 3:04 p.m. on December 17, 2010 Defendants, with the \$4.7 million “ Philpott, Ball Werner (“PBW”) appraisal” of James Brown’s IP assets in hand since September, were preparing to tell the Supreme Court in their initial brief in *Wilson v. Dallas* that: “In contrast, one of Russell Bauknight’s first official acts as personal representative of Mr. Brown’s estate was to engage an investment banking firm to conduct an appraisal of the estate’s value.” Explaining the decision of the Defendants and the

Attorney General to withhold the PBW appraisal from the Supreme Court for what would be 8 months, Defendants' counsel said among themselves:

Nonetheless, I understand the importance of the appraisal and the significance of the value it places on Mr. Brown's estate. **Further, I believe it is critical to our appeal. Thus I propose that after the appraisal is accepted by the IRS for tax purposes (which I understand is very likely to occur), we file an amended appraisement with the probate court attaching to it the appraisal as an exhibit. After that time we will petition the Supreme Court to take judicial notice of the IRS's acceptance of the appraisal and appraisement to which it is an exhibit.**

I believe this is the proper course of action for two reasons 1) It is consistent with the rules and 2) **It will highlight this important issue for the court at a time of our choosing after Pope and Buchanan have filed their reply brief.** [Email Wilkins, to Black, Kingsmore.]

Six minutes later, at 3:10 p.m. Defendants' lawyer Black sent the above email to Sr. Assistant AG Sonny Jones, Assistant AG Mary Frances Jowers and Tomirae's lawyer Medlin saying of the Wilkins email:

Please see attached. I have also reached the conclusion that this is the best strategy. We do not want to lose credibility with the Court...

Although the devaluation scheme was hatched in 2009 by Tomirae's lawyers, it was embraced and enhanced by Defendants. Defendants knew in 2010 that concealed in the PBW appraisal was a false claim that Brown's TIAA debt was \$19 million when he died. It was not. It was closer to \$15 Million when Brown died. And it had been reduced to \$11 Million on May 26, 2009 when Buchanan and Plaintiff turned Brown's assets over to Bauknight.

Defendants also knew that Bauknight was representing to the IRS, that month, that James Brown's estate was entitled to a \$2.8 Million Federal Estate Tax Charitable Deduction, when, under the McMaster deal only \$.8 Million was going to the charity the Attorney General was creating.

Defendant's intentional devaluation of the music empire, along with false claims Defendants made to the Supreme Court about Termination Rights and Tomirae's status and Bell's plant of the false Grammy © claim, would become the central theme of the attack on Buchanan and Plaintiff.

On May 8, 2013 the Supreme Court voided Bauknight's appointment and the McMaster settlement.

On May 29, 2013 Tomirae and Levenson announced to Judge Early in open court their intention to reinstate the McMaster settlement. That day Plaintiff was served with the Disallowance which is the subject of this case. In the Notice of Disallowance Defendant Estate repeated the claim that Plaintiff had overstated the value of Brown's assets to get a big commission.

On August 20, 2013 Bauknight was deposed in Federal Case 3:08-cv-00014-WOB. Through him, Defendants continued vitriolic attacks on Buchanan and Plaintiff. He said, in part:

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3 [H]e fully
4 agreed that the value that we had placed, based
5 on the professional evaluation work that we did
6 that no one else had done on this estate, but
7 based on the professional evaluation that we
8 did through Philpott Ball and Werner, was
9 reasonable.

10 Q: It was -- I'm sorry.

11 A: Was reasonable.

...

11 Q: Can you ballpark for me the annual income that
12 the estate has earned since you took over as PR
13 trustee in May of 2009?

14 A: No.

15 Q: You don't remember or ---

16 A: Well, the numbers change.

17 Q: Well, I know.

18 A: I just don't know what they are off the top of
19 my head.

20 Q: Has it been as high as \$10 million one or more
21 years?

22 A: You know, that's, I think, some fantasy that
23 Adele Pope put out there. But where she would
24 come up with something like that, I have no

Exhibit H

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	Case No. 2013-CP-02-01337
COUNTY OF AIKEN)	
Adele J. Pope,	)	SUPPLEMENTAL RETURN & MEMORANDUM
Plaintiff,	)	OPPOSING DEFENDANTS' MOTION FOR SUMMARY
	)	JUDGMENT AND MOTIONS TO EXCLUDE TESTIMONY
v.	)	OF GOVERNOR HENRY McMASTER,
Estate of James Brown and The	)	ATTORNEY GENERAL ALAN WILSON,
James Brown 2000 Irrevocable Trust,	)	& OTHERS; & IN SUPPORT OF PLAINTIFF'S
	)	MOTION FOR PARTIAL SUMMARY JUDGMENT
Defendants.)	
)	
)	
)	

Plaintiff opposes all Motions seeking to exclude or limit the admission (either in person or by deposition) in this case ("Aiken 1337") of Governor Henry McMaster, Attorney General Alan Wilson, former Chief Deputy John McIntosh, Solicitor General Robert Cook and all other persons deposed in Aiken 1337 (except certain experts of Defendants).

Plaintiff is entitled to the use of, and has proffered to the Court for purposes of both Summary Judgment and trial, the deposition testimony and deposition exhibits of Governor McMaster, Attorney General Wilson, Former Chief Deputy McIntosh, Solicitor General Bob Cook, Sr. Assistant Attorney General Havird "Sonny" Jones; Asst. Attorney General Mary Frances Jowers ("AG Jowers"), Sandra Matthews ("AG Matthews"), Sr. Asst. Attorney General Creighton Waters ("AG Waters"), Kenneth Wingate, Esq. ("Wingate") and Everett Kendally, Esq. ("Kendall"). The following Memorandum confirms the importance of this testimony.

Testimony of the Governor, Attorney General & Others Show That the *Wilson* Statements, Judge Early's Status Report & the June 10 Orders Were Based on Russell's False Representations to the IRS and Court, Joined in or Condoned by the Attorney General.

Purpose of Aiken 1337

The purpose of Aiken 1337, set for a Day Certain Jury Trial on September 5, 2017, is to determine the proper payment to Plaintiff (“Adele”) for her services to the Estate of entertainer James Brown, his estate plan, and his “I Feel Good” Charity from March 7, 2007 through April 8, 2013. At all times Adele served jointly with Robert Buchanan, Jr. (“Bob”).

The Attorney General and Bob’s and Adele’s SA Service

In 2008 Judge Early found that Bob’s and Adele’s SA service was difficult, ethical, and appropriate. The Attorney General’s early support of Brown’s original trustees would, however, make their work more difficult, as described below.

On **Christmas Day 2006** James Brown, an entertainment icon, died leaving a Will and Trust executed in 2000. Brown gave the bulk of his fortune to his “I Feel Good” Charity to provide scholarships for needy students. Brown’s Personal Representatives and the Trustees of his 2000 Trust (“PR/Trustees”) were David Cannon, Albert Dallas and Alfred Bradley.

By **March, 2007**, Cannon was planning to retire on Roatan Island by the end of 2008. [Brief, RESP dtd. 12/30/08; Dallas/Bradley Appeal]. Within a year Bob and Adele would discover that Cannon had taken \$17 Million from Brown.

On **March 5, 2007**, Dallas, Cannon and Bradley met in Atlanta with attorney Joel Katz and Frank Copsidas. They secretly voted to allow the Trust to be run by a majority of Cannon, Dallas, Katz, Copsidas and Bradley. (Dallas/Bradley Appeal Tr. 3/7/08, pp. 54-55; R. pp. 1308-1309) This purported transfer of authority to Katz and Copsidas was not authorized by the Trust and not disclosed to Judge Doyet A. Early, III (“Judge Early”), who was presiding over James

Attorney General, instead of correcting the problem, has spent 4 years with Defendants and Bauknight attempting to conceal it.

On **May 8, 2013** the Supreme Court issued the final *Wilson* decision.

By **May 29, 2013** the Attorney General, through Sonny and AG Jowers, had sought to stay all proceedings in the Wingate Suit; helped have Russell reinstated by Judge Early

On **May 29, 2013** Tomirae and Levenson announced to Judge Early their intention to reinstate the McMaster Settlement; and Medlin, Levenson and Russell asked Judge Early to exclude Bob and Adele from participating in any of his James Brown cases. After the hearing Defendant Estate, through Russell, served Adele with a Notice of Disallowance with Impending Bar (the "Disallowance"). The Disallowance required Adele to file suit within 30 days or not be paid for her long service to Brown's Estate, 2000 Trust and "I Feel Good" Charity.

Case 1337

But for Russell's continued conflict, Case 1337, also, would have been routine. Like the *Wilson* dicta, the June 10, 2015 Orders were a direct result of the Attorney General's and Defendants' fraud on the Court. Plaintiff, however, lacked standing to correct it. The Attorney General did not. The following is a brief summary.

On **June 10, 2013** filed the Complaint in Case 1337. The Disallowance, referring to Bob's 2009 \$2.1 Million claim and Adele's \$2.8 Million claim for their dedicated service had claimed:

There is no way that \$4,993,151.00 in fees and commission could

have been legitimately earned. The affidavits you submitted to substantiate your claim describing the hours you spent in these Roles confirm this. Further, your claim is based on an overinflated, unsubstantiated and self-serving valuation of the probate estate as of the date of Mr. Brown's death. [Emphasis supplied.]

On **June 13, 2013**, Judge Early issued Administrative Orders which blocked Bob and Adele from participating in any Aiken County James Brown cases except their own claims.

On **July 8, 2013** Judge Early accepted an *ex parte* "ethics opinion" of Nathan Crystal, Esq –one of Defendants' experts in this case which both the Court and Defendant have declined to disclose.

On **July 9, 2013**, Judge Early stated in Court that the Crystal opinion had given him comfort that Russell had no conflicts of interest.

On **July 29, 2013** Bob and Adele filed reports of their service and payments as mandated by Wilson. Russell did not file a report.

On **August 20, 2013** Russell was deposed in Federal Dist. Ct. Case 3:08-cv-00014-WOB.

On **August 27, 2013**, Tomirae, aided by Peter Afterman, filed public Termination Notices seeking royalties from 90 of the "I Feel Good" Trust's 900 copyrights (2015 -2023)

On **September 4, 2013**, Russell, nominated by Levenson clients to be PR/Trustee told Judge Early he had reduced Brown's TIAA debt from \$14 Million; Adele was seeking a \$5 Million commission; and that he had successfully resolved the Estate Tax "audit."

On **October 1, 2013** Russell was appointed PR/Trustee. Dave Sojourner, Esq. ("Sojourner") was appointed Limited SA/ST.

Exhibit I

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

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. 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 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. 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, Respondents,

v.

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

Of whom Adele J. Pope is Appellant

PETITION FOR ORDER LIFTING STAY

TO: THE HONORABLE DOYET A. EARLY, III, CIRCUIT JUDGE:

trying to defeat since 2009.

The final *Wilson v. Dallas* decision voided Bauknight's appointments as Brown's PR/Trustee; voided the AG's settlement; but did not address the Legacy Trust.

On May 10, 2013, just two days after *Wilson*, Wingate asked the Richland 4900 Court to stay all of the FOIA matters and Richland 4900 until Judge Early completed his work in the James Brown matters in Aiken County. A *de facto* stay, but for a *sua sponte* mediation ordered by Judge Manning and Judge Early, was in place until 2016.

On May 29, 2013 Tommie Rae, through counsel, and counsel for Plaintiffs Venisha, Tonya, Yamma, and Larry Brown, and Deanna Thomas, and their Children/Plaintiffs, announced to Judge Early in open court their intention to reinstate the AG's 2008 settlement which gave them \$2 million a year and half of the "I Feel Good" Trust's assets. They, and Bauknight, requested that Buchanan and Pope be excluded from all Aiken County cases, and they were on June 13, 2013.

On May 29, 2013, after the announcement of the intention of the Richland 4900 Plaintiffs to disregard *Wilson v. Dallas*, one of Bauknight's dozen lawyers served Plaintiff with a Notice of Disallowance with Notice of Impending Bar, claiming that she was not entitled to any PR/Trustee commission, and that she and Buchanan has intentionally overstated the value of Brown's assets. This required Appellant, rather than having a *Wilson v. Dallas* remand hearing like

STATE OF SOUTH CAROLINA
In the Court of Appeals

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May 07 2020

SC Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
The Honorable Doyet A. Early, III Circuit Court Judge

Appellate Case No. 2019-000362

Adele J. Pope, Appellant,

v.

Estate of James Brown and The James Brown 2000 Irrevocable Trust, Respondents.

PROOF OF SERVICE

The undersigned counsel for Appellant certifies that he has served a copy of the Return to Supplemental Motion to Strike Record on Appeal on all Respondents on the date shown below, by emailing a copy to their counsel, addressed as follows:

J. David Black (Bar No. 68499)
Kirsten E. Small (Bar No. 75681)
NEXSEN PRUET, LLC
1230 Main Street, Suite 700
Columbia, South Carolina 29201
(803) 771-8900
dblack@nexsenpruet.com
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Counsel for Respondents

s/Adam T. Silvernail
Adam T. Silvernail

May 6, 2020



Adam Silvernail <adam@silvernaillawfirm.com>

Pope v. Estate of James Brown, Case No. 2019-00362

1 message

Adam Silvernail <adam@silvernaillawfirm.com>

Wed, May 6, 2020 at 5:00 PM

To: "DBlack@nexsenpruet.com" <dblack@nexsenpruet.com>, "Brown, Creston W" <CBrown@nexsenpruet.com>, "Small, Kirsten E." <KSmall@nexsenpruet.com>

Cc: Adele Pope <adele@popelawfirm.com>

Counsel:

Attached and served on you in accordance with Chief Justice Beatty's March 20, 2020 Order is our Return to the Supplemental Motion to Strike Record on Appeal.

A copy of this email will be filed with the Proof of Service.

Best,
Adam

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Law Office of Adam T. Silvernail, LLC

1905 Marion Street (29201)

Post Office Box 7995

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803/779-1770

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May 07 2020

SC Court of Appeals



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