

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

MAR 25 2013

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

S.C. Supreme Court

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

Case No. 2008-CP-02-1647

Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Daryl J. Brown, on behalf of his minor children, Lindsey B. and Janise B.; Deanna J. Brown Thomas, on behalf of her minor child, Jason L.; Yamma N. Brown, on behalf of her minor children, Sydney L., Carrington L., and Tonya B.; Vanisha Brown; Larry Brown; Tommie Rae Hynie Brown; and James B., through his Guardian ad Litem, Respondents,

v.

Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust; Adele J. Pope and Robert L. Buchanan, Jr., Personal Representatives of The Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust; Terry Brown; Romunzo Brown; Forlando Brown; Cinnamon N.M. Paris; LaRhonda Pettitt; Jeanette Mitchell; and Russell L. Bauknight, as Special Administrator and Special Trustee for The Estate of James Brown and the James Brown 2000 Irrevocable Trust, Defendants,

of whom Robert L. Buchanan, Jr., and Adele J. Pope, as Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust are, Appellants,

and Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust; Terry Brown; Romunzo Brown; Forlando Brown; Cinnamon N.M. Paris; LaRhonda Pettitt; Jeanette Mitchell; and Russell L. Bauknight, as Special Administrator and Special Trustee for The Estate of James Brown and The James Brown 2000 Irrevocable Trust are, Respondents.

In re: The Estate of James Brown and The James Brown 2000 Irrevocable Trust u/a/d August 1, 2000

Appellate Case No. 2009-142286

RETURN TO PETITIONS FOR REHEARING

Pursuant to Rule 240(e) SCACR, Respondent Alan Wilson, in his capacity as Attorney General of South Carolina, submits this Return to the Petitions for Rehearing of Appellant Pope and Respondents who filed a Petition for Rehearing. As stated in our Petition for Rehearing (pp. 25-27), we advised this Court that it was our plan to withdraw from the suit against Appellants for breach of fiduciary duty, leaving it to the Trustee to protect the interest of the charitable beneficiaries. (This is 2210-CP-40-4900). Attached herein is a copy of our Motion, filed today, for that purpose.

Regarding the case at hand, we would further emphasize that this Court has repeatedly recognized that the Attorney General "is the proper party to protect the interests of the public at large in the matter of administering or enforcing charitable trusts." *Epworth Children's Home v. Beasley*, 365 S.C. 157, 163, n. 3, 616 S.E.2d 710, 713, n. 3 (2005), referencing *Furman Univ. v. McLeod*, 238 S.C. 475, 482, 120 S.E.2d 865, 868 (1961). And, as Bogert states, "[t]he public benefits arising from the charitable trust justify the selection of some public official for its enforcement. Since the Attorney General protects the rights of the people of the state, he has been chosen as the protector, supervisor, and enforcer of charitable trusts, both in England ... and in the several states." Bogert, *The Law of Trusts and Trustees*, § 411. Moreover, as this Court stated in *Kalber v. Redfearn*, 215 S.C. 224, 237, 54 S.E.2d 791, 796 (1949), the Attorney General "occupies a quasi judicial position." Here, both the General Assembly, in § 1-7-130, as well as the common law, have bestowed broad discretion upon the Attorney General to protect charitable beneficiaries. In this regard, the Attorney General is entitled to the presumption that he performed his duties correctly and fully on behalf of the charitable trust by participating in the settlement of this action. See, *In Re Ditz' Estate*, 117

N.W.2d 825 (Iowa 1962) [court assumes Attorney General performed his duty on behalf of charitable trust]. For the reasons below, that presumption should stand.

In this case, the Attorney General properly intervened to protect and preserve the charitable trust created by James Brown to provide scholarships to needy children. The three original trustees who, under the guise of friendship, sought to bilk the Brown estate and trust, were properly removed. One of those trustees, Cannon, was prosecuted by the Office of Attorney General.

The Attorney General initially opposed settlement of this action, standing upon the four corners of the Brown will and trust. But it increasingly became clear to us, particularly with the filing by Appellants of the cunning, artifice, or undue influence litigation against the original trustees, that the charitable trust was in considerable peril. The Brown trust was at risk of being enervated, if not decimated, by litigation. In our judgment, a trust, created by a music legend for one of the most noble of purposes, was at risk of receiving nothing. Ironically, our dilemma was this: to ensure that the needy children James Brown sought to endow with scholarships actually received those scholarships, the Attorney General, in upholding the trust, would have to rely upon witnesses who were the very individuals who had long sought to defraud James Brown of the assets designed to benefit those children.

Thus, in order to protect the trust, settlement became at least a possibility, so long as the terms of any settlement remained protective of the charity. We proposed a leading mediator in South Carolina, Tom Wills, to guide settlement discussions. Negotiations, conducted throughout the day in Augusta, were tense, hard-fought and adversarial, ending at around 11P.M. that night. There were numerous highs and lows, but the long

day came to a close with an agreement in principle among the parties. In light of the risks facing the charitable trust going into the negotiations, the fact that the valuable music rights of James Brown were given to the trust in order to educate needy children was, to us, a tremendous plus. Yet, at the same time, the negotiations, conducted under the auspices of the mediator's capable leadership and guidance, were fair and at arm's length. No one party, including the Attorney General, took advantage of any other party. No one party dominated or subjugated any other.

Furthermore, the Attorney General insisted upon circuit court review of the negotiated settlement because it is the court of equity which ultimately must protect a charitable trust. See, *Dept. of Mental Health v. McMaster*, 372 S.C. 175, 642 S.E.2d 552, 556 (2007) [The "ultimate control of the trust rests in the court"]. In order to protect a charitable trust, the court of equity possesses the power to approve a compromise settlement, even where it departs from the literal terms of the will, and whether or not the Attorney General approves. See, *In re Kearns Will*, 38 A.D.2d 808, 329 N.Y.S.2d 1 (1972). As was said by the Supreme Court of Michigan, in *In the Matter of the Estate of Reeder*, 380 Mich. 655, 158 N.W.2d 451 (1968), with respect to a charitable trust, the Attorney General is akin to "a supervisory trustee," but no officer, including the Attorney General, may in any equity proceeding "effectively substitute his or its judgment of what by way of compromise is best done on behalf of the beneficially interested persons or parties thus represented, for the judgment of the equity court itself." 158 N.W.2d at 663.

This is precisely the role the circuit court fulfilled here. In the circuit court's review and approval of the settlement, there was, following seven intensive days of

hearings, no evisceration of the charitable trust, nor abdication of the responsibility to protect it. As the circuit court determined, there was instead a good faith dispute among the various parties and a settlement which was fair and reasonable. The Attorney General dutifully performed his responsibility to protect the needy children to whom James Brown desired to bestow scholarships. The valuable James Brown music rights, obtained in the settlement for the charitable trust, was a boon in effectuating Brown's laudable purpose. The circuit court served as the ultimate protector of that desire which was so important to Mr. Brown. The circuit court correctly realized that, without the music rights, Mr. Brown's long held purpose of assisting needy children receive an education might well be illusory.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

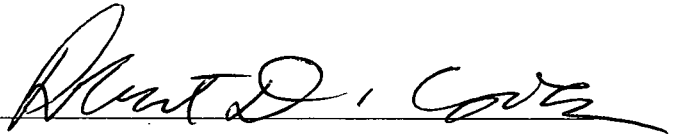
ROBERT D. COOK
Deputy Attorney General

C. HAVIRD JONES, JR.
Assistant Deputy Attorney General

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Columbia, South Carolina 29211
Telephone: (803) 734-3970

By:  _____

By:  _____

Attorneys for Respondent Alan Wilson.

March 25, 2013.

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v.

Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust; Adele J. Pope and Robert L. Buchanan, Jr., Personal Representatives of The Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust; Terry Brown; Romunzo Brown; Forlando Brown; Cinnamon N.M. Paris; LaRhonda Pettitt; Jeanette Mitchell; and Russell L. Bauknight, as Special Administrator and Special Trustee for The Estate of James Brown and the James Brown 2000 Irrevocable Trust, Defendants,

of whom Robert L. Buchanan, Jr., and Adele J. Pope, as Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust are, Appellants,

and Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust; Terry Brown; Romunzo Brown; Forlando Brown; Cinnamon N.M. Paris; LaRhonda Pettitt; Jeanette Mitchell; and Russell L. Bauknight, as Special Administrator and Special Trustee for The Estate of James Brown and The James Brown 2000 Irrevocable Trust are, Respondents.

In re: The Estate of James Brown and The James Brown 2000 Irrevocable Trust u/a/d August 1, 2000

Appellate Case No. 2009-142286

Certificate of Service

I hereby certify that this 25th day of March, 2013, I served a copy of the within

Return to Petitions for Rehearing on all counsel of record by depositing a copy in the U.S.

Mail and addressed as follows:

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1229 Lincoln Street
Columbia, South Carolina 29201

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Asheville, North Carolina 28802

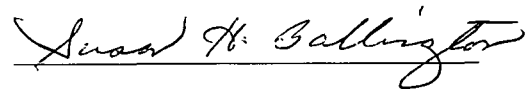
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Susan H. Ballinger

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

) FIFTH JUDICIAL CIRCUIT

Russell L. Bauknight, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of 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

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

RICHLAND COUNTY
FILED
2013 MAR 25 PM 4:10
JEANETTE W. MCBRIDE
C.C.P. & G.S.

**ATTORNEY GENERAL ALAN
WILSON'S MOTION TO BE
DROPPED AS A PARTY**

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,

) Plaintiffs,

) vs.

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

) Defendants.

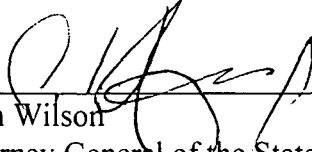
PLEASE TAKE NOTICE THAT Attorney General Alan Wilson (“Attorney General”) through undersigned counsel, will move before the Court of Common Pleas for Richland County within ten (10) days of the date hereof or thereafter at such other time and place as the Court determines, for an Order pursuant to Rule 21, SCRPC, dropping the Attorney General as a party to this action. Rule 21 states that “[p]arties may be dropped or added by order of the court of motion of any party or of its own initiative at any stage of the action and on such terms as are just.”

This Motion is based upon the May 18, 2010, from Attorney General McMaster to Russell Bauknight, attached as Exhibit A; the recent South Carolina Supreme Court decision in Wilson et al. v. Dallas et al., 2013 WL 697042 (filed February 27, 2013); the Attorney General’s Petition for Rehearing in that case, along with the Attorney General’s Motion to Supplement the Record, both attached as Exhibit B; and S.C. Code §62-7-405(c). In the Attorney General’s Petition for Rehearing, the Attorney General advised the Supreme Court that he would be shortly moving to have himself removed as a party to this case and that any further action in the case to protect the charitable beneficiaries would be pursued by the Trustee. See Petition for Rehearing, page 26-27.

This Motion shall be made pursuant to statutory and case law of the State of South Carolina and other grounds which may be presented to the Court.

Rule 11 Certification: I certify that consultation with the other parties would serve no useful purpose based upon the decision by the Surpeme Court in Wilson v. Dallas and the four rehearing requests that have been filed in that case.

Respectfully Submitted,



Alan Wilson
Attorney General of the State of South Carolina
John W. McIntosh
Chief Deputy Attorney General
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March 25, 2013
Columbia, South Carolina

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

) FIFTH JUDICIAL CIRCUIT

Russell L. Bauknight, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of 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

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) Plaintiffs,

) vs.

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

) Defendants.

RICHLAND COUNTY
FILED
2013 MAR 25 PM 4:10
JEANETTE W. MCBRIDE
C.C.P. & G.S.

Certificate of Service

I hereby certify that this 25th day of March, 2013, I served a copy of the
within **Attorney General Alan Wilson's Motion to be Dropped as a Party** on all
counsel of record by depositing a copy in the U.S. Mail and addressed as follows:

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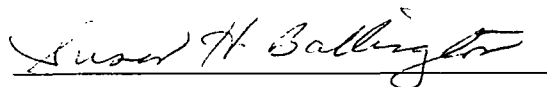
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Shahid Law Office, LLC
89 Broad Street
Charleston, SC 29401



Susan H. Ballinger

EXHIBIT A



HENRY McMASTER
ATTORNEY GENERAL

May 18, 2010

Mr. Russell Bauknight
Bauknight, Pietras & Stormer, P.A.
1517 Gervais Street
Post Office Box 1330
Columbia, South Carolina 29202

Re: James Brown Litigation

Dear Mr. Bauknight:

I have met with Ken Wingate and Everett Kendall of Sweeney Wingate & Barrow of Columbia, South Carolina, regarding the action to be filed against Adele J. Pope and Robert L. Buchanan, Jr., in the Richland County Probate Court in connection with the James Brown Estate and Trust. I am writing to confirm our understanding that you will be retaining Mr. Wingate and Mr. Kendall to file this action on behalf of the beneficiaries of the James Brown Estate and Trust, including the charitable interests. As you know, by law this office has a duty to protect charitable trusts. Also, per your conversation with Senior Assistant Attorney General C.H. Jones, Jr., in connection with the charitable trust portion of this matter, you have agreed to use the terms and conditions as outlined in the attached "Agreement for Legal Services" which references and incorporates the Attorney General's standard Litigation Retention Agreement. Of course, this office has no authority over your agreement with Messrs. Wingate and Kendall concerning the other portions of this matter.

Yours very truly,

A handwritten signature in cursive script that reads "Henry McMaster".

Henry McMaster

Enclosures

HMCM/mfj

THE STATE OF SOUTH CAROLINA
In The Supreme Court

EXHIBIT B

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

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MAR 14 2013

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

S.C. Supreme Court

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In re: The Estate of James Brown and The James Brown 2000 Irrevocable Trust u/a/d August 1, 2000

Appellate Case No. 2009-142286

PETITION FOR REHEARING

Introduction

Respondent Alan Wilson, in his capacity as Attorney General of the State of South Carolina, respectfully requests, pursuant to Rule 221, SCACR, a rehearing of the decision of the Court rendered on February 27, 2013. We emphasize at the outset that we have nothing but the greatest respect for the Court and that the Petition is not intended in any way to detract from that respect. But we must file this Petition, nevertheless, because, based upon the decision as written, we do not believe the Court had the full story concerning the Attorney General's role in the Brown settlement or the Office's part or lack thereof in any administration of the charitable trust.

We had thought that in our Brief and at oral argument we had provided the Court with the information it needed to accurately assess the part the Attorney General played in this settlement. Assuming we did not, however, this Petition is presented to ensure the Court now has all the facts and the applicable law. Specifically, based upon the information presented herein, we seek to have the Court modify its Opinion consistent with what we believe is a more accurate depiction of the role of the Attorney General in this case. Such modification is important because, otherwise, we fear the decision will have a lasting adverse impact upon the credibility of the Office of Attorney General, which this Court has recognized as the executive office designated to protect charitable trusts and defend the public interest. *See, State ex rel. Condon v. Hodges*, 349 S.C. 232, 239, 562 S.E.2d 623, 628 (2002) ["(a)s the chief law officer of the State, (the Attorney General) may ... exercise all such power and authority as public interests may from time to time require, and may institute, conduct and maintain all such suits and proceedings as he deems necessary for the enforcement of the laws of the State, the preservation of order

and the protection of public rights." *See also, City of Cola. v. Tatum*, 174 S.C. 366, 177 S.E. 541, 546 (1934) ["It is doubtless due to the insistence of the Attorney General that the rights of the public have been so carefully guarded"].

Argument

The Court is absolutely correct that the Attorney General was substantially involved in the Brown settlement because of his longstanding common law and statutory duty "as the protector, supervisor and enforcer of charitable trusts[.]" 2013 WL 697042. *Op.* at 18. But equally involved were the numerous other parties in this case. This was not a situation where the Attorney General's Office directed anyone or anything. Of course, the Attorney General's legal authority concerns only the charitable beneficiaries, not private parties or interests. *See* S.C. Code Ann. § 1-7-130 (1986). Here, all other Respondents had widely divergent interests and adverse positions to each other. Those positions were each represented vigorously by well-respected counsel. A settlement of such complexity and magnitude cannot be arrived at by Attorney General fiat. Thus, in no sense, did the Attorney General "broker," nor could he have, the terms of the settlement. Nor did he "direct[] a compromise which ultimately resulted in the AG obtaining virtual control over Brown's estate," as this Court found. *Op.* at 19.

Instead, consummation of the Settlement was a hard-fought, hotly-contested process and agreed to at arms-length by the parties with the assistance of one of the most highly respected mediators in this State, Tom Wills. Contrary to the Court's implication throughout its decision, the Attorney General is not a dictator, and he did not dictate the terms of this settlement. This settlement arrived at was fair, reasonable, and was approved by a highly regarded circuit judge after seven strenuous, hard fought days of

hearings. And, this was a circuit judge who vowed on the record that he would not be "ramrodded" by anyone, but would reach his own independent determination as to the settlement's merits. *Supplement* at 5. [The Court: "So it (the settlement) won't be ramrodded by any stretch of the imagination. It will only be approved or disapproved by a very thoughtful discussion by everybody and everybody having an opportunity to present to me their pros and cons. So, ramrod – I take issue with that description."] Thus, as this Court correctly recognized, "... it was the circuit court, not the AG which gave final approval to the compromise agreement submitted by the parties." *Op.* at 10. That is what the law requires of a court of equity and that is what occurred in this case.

While we certainly disagree with the Court's conclusion voiding this settlement, a settlement which was carefully thought out and thoroughly reviewed, we fully respect the Court's judgment based upon the applicable legal standard that the settlement must be "just and reasonable." However, to the extent that the Court's opinion is premised upon the Attorney General's having effected a "total takeover of Brown's estate" or his having "highjacked the proceedings here," the Court is mistaken. That is not at all what happened here. Based upon this incorrect premise, and to avoid a future adverse impact which this decision, as written, will inevitably cause to the Office of the Attorney General as the protector and enforcer of charitable trusts, we respectfully seek to have the Court reconsider these portions of its Opinion and to correct its assessment of the Attorney General's role here. In our view, any finding that the settlement is not just and reasonable, although we disagree with such conclusion, can and should stand separate and apart from any opinion of the Court that the Attorney General "commandeered" these proceedings. He did not.

As the Court readily acknowledges, "no one disputes the propriety of the AG's initial intervention [in this case] amidst allegations of fraud by the original trustees" *Op.* at 24. And, as the Court correctly observes, in 2011, one of the trustees – Cannon – "entered a plea under *North Carolina v. Alford*, 400 U.S. 25 (1970) to charges of taking money from Brown, for which he was sentenced to house arrest." *Op.* at Footnote 2. Restitution for Cannon's misdeeds is currently being sought; an Order has been issued granting a restitution hearing. That matter is presently pending. This is consistent with the Attorney General's longstanding role concerning charitable trusts.

In other words, in view of the current financial soundness of the estate and trust, we believe that the role of the Attorney General, as "an overseer of charities representing the public, the ultimate beneficiary of the charitable trust" and as the officer to "remedy abuses in the trust management," has now been largely fulfilled. The charitable trust is in the hands of an able circuit judge, exercising his equitable powers, and one who, in the Court's own words, has done "a commendable job in attempting to sort out this difficult situation." *Op.* at 20.

Accordingly, we now advise this Court that, it is our plan that, having completed our function in intervening in this case, the Attorney General will, upon the appointment of a new trustee, assume a posture of monitoring the action, as we typically do in many charitable trust matters. Chief Justice Toal is correct that "the AG's involvement [is] no longer necessary to stave off maladministration of the Charitable Trust." In this monitoring posture, we will be available to assist the court, if required, but any active role by the Attorney General is no longer necessary, now that the Court has directed that the lower court appoint a new trustee. Moreover, in light of this Court's ruling in the separate

action against Ms. Pope and Mr. Buchanan in Richland County, which will be discussed more thoroughly below, we will withdraw from that action completely and leave the new trustee the task of protecting the charitable beneficiaries in that action.

Having said that, we turn to the settlement and the part which the Attorney General's Office played in it, as well as to the Court's incorrect assessment that the Attorney General has enmeshed himself in the day-to-day operations of this charitable trust. We believe we have professionally and capably carried out our legal responsibilities to protect this charity. If we had not, Judge Early, who is an experienced and able trial judge, would not have concluded that in protecting the charitable trust, "the diligent efforts of the Attorney General's Office [have resulted in making] ... the assets to fund the trust ... [now] available." *Record* at 45. This Office stands by Judge Early's assessment.

As the Court readily acknowledges, "[t]he law generally favors an agreement of compromise among family members to avoid a will contest or to promote the settlement and distribution of an estate." *Op.* at 18, citing *Duncan v. Alewine*, 273 S.C. 275, 255 S.E.2d 841 (1979); *Dibble v. Dibble*, 248 S.C. 165, 149 S.E.2d 355 (1966). Moreover, "[a]s a general matter, the more complex, time consuming and expensive the future litigation, the more beneficial settlement becomes as a matter of efficiency to the parties and to the Court." *See, McBean v. City of New York*, 233 F.R.D. 377, 385 (S.D.N.Y. 2006). Further, as this Court recognized in its Opinion, "a court may decline to approve or enforce a settlement agreement which does not settle a 'good faith contest or controversy ...'" *Op.* at 16. *See also, Cooley v. Tax Comm.*, 204 SC 10, 28 S.E.2d 445, 451 (1943). ["the Attorney General of a state 'may enter into compromises and

settlement of suits in which the state is an interested party, which will be binding on the State, where there is doubt and an honest dispute as to the State's rights, and the compromise or settlement is a bona fide one"(quoting 5 Am. Jur. p. 240).]. We thus agree with the Court, based upon our reading of *Cooley*, that "something more than a subjective belief or a mere allegation is necessary to avoid the potential for collusion" *Op.* at 12.

Thus, in any evaluation of a settlement, the court must determine that the settlement is not the product of collusion or coercion. *See*, 15A CJS, *Compromise and Settlement*, § 25 ["... a settlement should not be approved ... if it is the product of fraud, or overreaching by, or collusion among the negotiating parties."] In order to make that determination, there must be an evaluation of the negotiation process. As one court has put it, the court must "determine whether the compromise was the result of arms-length bargaining between the parties." *Ingram v. Coca-Cola Co.*, 200 F.R.D. 685, 693 (N.D.Ga. 2001). Important in such a determination is that the case "has been adversarial, featuring a high level of contention between the parties throughout the litigation, the mediation, and the arbitration and drafting of the Settlement Agreement." *Id.*

All of these elements were met here, but the Court did not examine these. While the Court may disagree with the settlement on its merits, our reasonable, good faith belief that there existed a contest or controversy in this matter, and that a settlement was in the best interest of the charitable trust, cannot be questioned. Nor did the Court examine the settlement negotiations and how settlement came about. Indeed, Appellants' attorney, Mr. Bailey, candidly told the lower court "that Mr. Buchanan and Mrs. Pope aren't opposed to settlement," just the terms of the settlement. *Supplement* at 16-17. Thus,

Appellants themselves appear to have acknowledged that a controversy existed and that they favored settlement. *See, Supplement* at 18. [Mr. Bailey in questioning by the court, recognized that a finding that Tommie Rae Brown (hereinafter "Ms. Brown") was Brown's wife would "diminish what goes into the trust."] It is further noted that Wayne Byrd, attorney for former Trustee Dallas, also advised the Court that in his opinion the controversy was genuine but there needed to be an adjustment as to the percentage going to the charitable trust. *Supplement* at 19-20. Ms. Pope told the lower court at the hearings that "nobody wants more than Mr. Buchanan and me to see this case properly settled." *Supplement* at 6. In fact, Appellants proposed their own settlement to the circuit court. *Record* at 2935-2939. Thus, to conclude that a good faith controversy may have been lacking is incorrect. To the contrary, while there was strong disagreement as to what a settlement would entail, there was virtually no dissent that a settlement should be had.

Moreover, it is worth noting that in its past decisions, this Court has not taken the Attorney General to task for participating in the negotiation of an arm's length settlement based upon a reasonably arrived at, honest, good faith assessment that litigation carries considerable risk and that settlement is in the public interest. Indeed, in *Cooley v. S.C. Tax Comm.*, 204 S.C. 10, 28 S.E.2d 445 (1943), the Court had no issue with a complex inheritance and income tax settlement in which the Attorney General participated on behalf of the State. As here, there was in *Cooley* a vigorous attack upon the settlement. The *Cooley* settlement was questioned by the State Tax Commission, which evidently believed settlement would, in essence, forfeit large sums to the taxpayer. As the Court stated, the settlement was challenged in part, because "the amount to be paid in said

settlement is less by several hundreds of thousands of dollars than the amount of taxes due by said estate if the decedent was in fact domiciled in South Carolina" 28 S.E.2d at 449.

But it is important to observe that in approving the *Cooley* settlement, this Court did not find that the Attorney General – because he favored settlement in order to dispose of costly litigation and to protect the public interest – engaged in overreaching or was unnecessarily forfeiting assets, as he carried out his constitutional and statutory duties. As the Court well knows, any settlement must give up something to get something. In the public arena, any settlement less than what was originally sought (like any plea agreement) can be second guessed or subject to criticism as being too little or not nearly enough. However, as the Court stated in *Cooley*, in a passage which could be deemed virtually applicable to the circumstances in this case:

[L]imiting ourselves to the precise question presented by the peculiar facts of this case, we find the situation to be that the State of South Carolina, acting by counsel for whom provision is made in the Constitution and statutes of the State, ... came to the conclusion that the best interests of the State lay in the settlement of the litigation. Its counsel had before him a settlement proposal which represented substantially more than fifty percent. [¹] of the amount he deemed to be involved and he was dealing with contentions on the part of the State involving matters of law and fact about which he believed there was serious doubt. Presumably his judgment was affected by the fact that the Commission had dealt with the estate as that of a nonresident in thus acting upon the detailed factual representations of the attorneys for the executors as to the domicile of the testatrix, and that this course of dealing on the part of the Commission had represented its considered judgment based upon full investigation of available sources of information.

Nowhere in the record is there the slightest suggestion of fraud on the part of the executors or their attorneys in the course pursued by them, or in the representations made by them; nor under the motion challenging

¹ It is our understanding that the charity will get substantially more than fifty percent here, also. With the renewal and termination rights being a part of the settlement, the revenue stream for scholarships to needy children can continue for at least another 40 years longer than it would have without these rights.

the settlement in question, and in the petition made in support thereof, is it suggested that any of the factual considerations which the executors presented and the Commission and the Attorney General acted upon are erroneous.

And finally the record is clear that the Attorney General has not acted otherwise than in good faith, or with any other purpose than to serve the best interests of the State. (emphasis added).

Id.

In other words, the Court in *Cooley* did not characterize the Attorney General's role in participating in the settlement as one of overreaching, commandeering, or abdication even though the settlement was hotly contested, and even though there were those contending that the Attorney General gave up too much in settling the case. For the Attorney General to advocate a position on behalf of the State or on behalf of the charitable beneficiaries that a matter should be settled is not, absent proof thereof in the Record, overstepping our authority or abdicating our responsibility. Importantly, no such proof exists in this case. Here, as in *Cooley*, the Attorney General participated in hard-nosed settlement negotiations and agreed to compromise when faced with a good faith controversy. The fact that it is the Office of Attorney General involved in the settlement negotiations does not *ex proprio vigore* mean that the Office "brokered" the settlement and thus the settlement will be voided. *See also, Duncan, supra* [Court disapproved of family settlement, in which Attorney General participated, but Court did not single out role of Attorney General]. If it did, the Court would be tying the hands of the Attorney General in resolving cases for the best interest of the State.

Originally, in this case, the Office of the Attorney General did not favor settlement at all and was prepared to litigate the matter to the fullest. We believed that we could prevail completely, based upon the four corners of the will. *Record*, at 1853.

["Mr. Jones: ... the position of our office is we don't settle [W]e're satisfied it is a four corners case."]; *Record* at 1990 [Mr. Jones: ... in the first three or four months it looks like the AG doesn't want to settle or he's not in the mode to settle. [His] ... is a scorched-earth type of situation because [of] how vigorously we were opposing."]. However, as time went on, we became convinced that the trust was losing value rapidly because it was being overwhelmed by lawsuits and family strife. The "cunning, artifice or undue influence" litigation,² brought by the Appellants, as well as the continued family strife, thereby insuring lengthy, expensive litigation, thus made settlement more attractive to the Attorney General even though it had not been before. As the Court itself notes, "the parties remained at odds over the handling of Brown's estate matters." *Op.* at 19.

More specifically, in February, 2008, Appellants sued Cannon, Dallas, Bradley, et al., alleging that "[b]eginning on or before January 1, 1999, the Defendants Cannon, Dallas and Bradley entered into a civil conspiracy to defraud James Brown and his related interests and entities which continued up to the date of his death and thereafter." *Record* at 1201, 1237. This "cunning, artifice, or undue influence" lawsuit is markedly different from the claims of "undue influence" which are addressed in this Court's opinion. Our focus turned to the body of evidence that was building in support of James Brown being swindled over a period of time, not the facts and circumstances surrounding the signing of the trust document.

In that regard, what the Court overlooks is the substantial impact which the Appellants' "cunning, artifice, or undue influence" litigation had upon our decision to seek settlement. Appellants' suit asserts that James Brown was being "bilked" by those

² This initial complaint was filed on February 5, 2008. (R at 1194-1229). The Amended Complaint was filed on March 18, 2008. (*Record* at 1230-1271)

closest to him for almost a decade during his life. Appellants' complaint alleges this scheme had "Defendants Cannon, Dallas and Bradley began or continued a scheme under which excessive and exorbitant fees and commissions were charged and collected against income generated by Mr. Brown from the performance of tours and concerts throughout the world[.]" *Record* at 1201-1201, 1237-1238. Appellants further assert that David Cannon funneled more than one million dollars of funds to himself, his entity DGC Associates, and Albert H. Dallas. This lawsuit seeks actual, as well as punitive, damages. *Record* at 1224-1229, 1264-1270. Moreover, the Complaint further alleges that pursuant to the conspiracy, Dallas, Cannon and Bradley undertook to procure Brown's signature by undue influence, fraud or forgery and fraudulently concealed these acts from Brown.³ *Record* at 1201, 1237.

In other words, once this litigation was filed in February, 2008, we realized that not only did Dallas, Cannon and Bradley seek to defraud James Brown during his lifetime; they also sought to play upon his passion to educate needy children by placing themselves in charge of the charitable trust so that they could bilk Brown after his death.

Appellants' lawsuit, and the allegations contained therein, are discussed extensively in our Brief to this Court at pp. 24-26. There, we noted that "the controversy whether Brown's former handlers and confidants took advantage of and unduly influenced him has a good-faith basis." *Respondents' Brief* at 25-26.

This Court has recognized the doctrine of "cunning, artifice or undue influence" to

³ A snapshot of one of these schemes to bilk James Brown is Exhibit G that is attached to the February, 2008, complaint. Exhibit G addresses the payout of a refinancing of the Pullman bond that had an outstanding balance of \$20,100,000 for a refinance amount of \$25,200,000. That refinance would leave a net proceed of \$5,100,000. However, with the payment of fees to Cannon and Dallas, among others, the net result would be James Brown *owing* over \$1 million in addition to the bond increasing by \$5 million. *Supplement* at 22.

void the acts of a person where that person "has not exercised a deliberate judgment, but that he has been imposed upon, circumvented or overcome by cunning, artifice or undue influence." *Gaston v. Bennett*, 30 S.C. 467, 9 S.E. 515 (1889). *See also Dubose v. Kell*, 90 S.C. 196, 71 S.E. 371 (1911) [Court found no undue influence because the deed was not procured or induced by any undue influence, fraud, cunning, duress or artifice].

As we argued in our *Brief* to this Court, "[u]nfortunately, at the end of the day, Cannon, Dallas, and Bradley's undue influence over Mr. Brown appears to have prevailed." *Brief* at 26-27. Thus, the primary witnesses we would use to uphold the charitable trust – Cannon, Bradley and Dallas – stood accused of fraud and Herring was in prison. As Mr. Medlin told the circuit court, "[t]his is exactly what Mrs. Pope and Mr. Buchanan accused those three gentlemen of doing during Mr. Brown's lifetime – that – to be gross about it, that they cheated and tricked him." *Record* at 1967.

The circuit court recognized the importance of the "cunning, artifice, or undue influence" litigation upon the decision to settle. Questioning Mr. Bailey, the court stated that "you will acknowledge there is a serious challenge to those based on undue influence and for no other reason for the fees that were allowed under those documents to be paid to Bradley, Dallas and Buchanan (sic) up to 50% of the gross?" *Record* at 1399. And, in its Order, the circuit clearly focused on this litigation brought by Appellants:

[o]n behalf of the estate and trust, Ms. Pope and Mr. Buchanan have brought an action against Messrs. Cannon, Dallas and Bradley, alleging inter alia that Messrs. Cannon, Dallas, and Bradley practiced undue influence on Mr. Brown and used various entities controlled by them to syphon off his assets, effectively order the guise of management expenses. Ms. Pope testified that Mr. Cannon told her he could get half of Mr. Brown's estate, if he wanted

Furthermore, the credibility of four principal witnesses to the validity of the 2000 will and trust is questionable. Mr. Herring is in jail

for murder. The accuracy and veracity of the testimony in this matter by Messrs. Cannon, Dallas and Bradley is suspect and at times contradictory.... The questionable credibility of the four witnesses most involved with the preparation and execution of the 2000 will and trust certainly supports the good faith basis of the contestants' claims.

Record at 24-25.

The Court also had concerns about the impact of the prenuptial agreement. This provides further basis for there to have been a good faith controversy, thereby leading to settlement. From our review of the briefs, the agreement is mentioned only once – in footnote 24 of the Appellant's Final Brief. In our view, there may be a reason for this: The Attorney General also did his due diligence as to this issue. From the information represented to us, the prenuptial document in November 2001 was presented to Mrs. Brown by one of the Trustees without legal representation for Mrs. Brown. Additionally, there was no evidence that we found that Mrs. Brown was provided information, of a general and approximate nature, concerning Mr. Brown's net worth. *See Geddings v. Geddings*, 319 S.C. 213, 460 S.E.2d 376 (1995) ("Fair disclosure contemplates that each spouse should be given information, of a general and approximate nature, concerning the net worth of the other. Each party has a duty to consider and evaluate the information received before signing an agreement."). Mr. Brown could not have informed Ms. Brown of his financial situation, even if he had wanted to, because he did not know it himself. In fact, the value is still in dispute today.

Second, a view of the document itself reflects facial defects of the prenuptial agreement *Record* at 2641-2647. The first page states the document is an Aiken document, while the signature page indicates it was executed in Georgia. *Record* at 2641, 2647. The handwriting on the first page purports that it was signed on November

19, 2001, while the signature page purports to be signed on November 27 2001. *Record* at 2641, 2647. Further, the two purported witnesses do not include the notary or the witness swearing before the notary, yet the witness swearing before the notary claims that she along with the "other witness" signing above saw the signatures. *Record* at 2647.

These issues – the lawsuit alleging cunning, artifice or undue influence, and the potential invalidity of the prenuptial agreement – together with the other litigation brought by family members, thus caused us to seriously rethink our position of "no settlement." The trust could well end up with "zero," as we saw it. *Supplement* at 9. [Mr. Bauknight (who was then functioning as court advisor): "If the will contests that were being litigated were successful, the Attorney General's Office would see absolutely nothing going into the charitable trust unless ultimately something was found to have already been funded into a trust."] It was in this light that attorneys for other parties in this litigation approached the Office of Attorney General, suggesting mediation and possible settlement. We did not push these settlement talks, but they were proposed to us. The Attorney General, recognizing the obstacles facing us, gave his approval to enter these settlement negotiations. We did not know whether settlement was even possible, but we agreed to give it a try. *Record* at 1992-1993. We suggested Tom Wills, a leading mediator in the State, in an effort to mediate the matter. The site for mediation was agreed by all to be held in Augusta. While the Court found that Appellants did not receive notice of the mediation, we had been advised and believed in good faith that they had received notice. *Supplement* at 9-14.

The atmosphere in Augusta was one of high tension, due to family members being at odds with one another. A draft skeletal outline for settlement had been prepared by an

attorney for one of the other parties. After considerable negotiation, the ratio of 50-25-25 was agreed upon, together with the inclusion of the renewal and termination rights. This proposal seemed more than fair from the standpoint of the trust, particularly given the value of these music rights.

With regard to those music rights, to their credit, the children and Ms. Brown strongly believed that James Brown truly desired needy children to have scholarships and it was they who offered the renewal and termination rights to the trust. This would give the trust a value far beyond where it then stood.

Such renewal and termination rights, provided a very valuable asset to the Trust. Even if the Trust litigated the matters and won on every point, the Trust *would not have this significant asset.*

As Peter Afrasiabi's article explains, using the example of "Superman," authors and their families possess rights under federal copyright law to terminate a previous assignment of a copyright. The article states that "[t]his termination-recapture right that exists for authors and their families is immensely valuable." *Record*, at 2308, 2313.

It was our position that these rights being made a part of the Trust was a huge gain for the Trust, and that the parties at that time recognized that the value of this asset was uncertain. *Record* at 1326. [Mr. Jones: "The renewal and termination rights being included within the settlement was a major factor for us and what we consider[ed] a bonus ..."]. As the contribution agreement states: "The parties hereunder recognize that it may be difficult at this time to value accurately the interests and rights being contributed hereunder to the Legacy Trust. However, the parties are reasonably informed that a large portion of the value of the assets and interests contributed hereunder resides

in the rights granted to heirs under the federal copyright laws. Accordingly, the parties recognize that the beneficial interests received hereunder by Ms. Brown and/or by the Levenson clients *may be of lesser value than the interests they are contributing to the Legacy Trust pursuant to this Agreement.*" *Record* at 513. (emphasis added)

Following day-long negotiations in a contentious atmosphere, early that evening, we believed a settlement had been achieved. However, due to internal family strife, the settlement agreement then appeared to collapse. After some considerable effort by the mediator, the family strife was resolved and an agreement to settle in principle was finally reached after 11:00 p.m. that evening. The settlement agreement was signed in August, 2008, about 10 months after the Attorney General had intervened in the action. *Record* at 171-172, 506.

That did not end the matter, however. The other Respondents took the position that no court approval of the settlement agreement was necessary, but that such agreement was a private family settlement. *See* S.C. Code Ann. § 62-3-912 (2009). Notwithstanding this position, the Attorney General insisted as a condition of any settlement that court approval would be necessary and should be sought pursuant to section 62-3-1102. *Record* at 1321 ["Mr. Jones: ... while the Attorney General is the – is the chief legal officer of this state and the protector by statute and common law of charitable trusts, ... this court, the court of equity would also protect the charitable trusts and charitable fiduciaries"; *Record* at 1725 ["Mr. Jones: ... but in the charitable trust the executive branch, the chief legal officer in this state protects the interest of the charitable trust under supervision of a court of equity – not under any supervision of any PR or trustee."]; *Record* at 1725 [Mr. Jones: The Attorney General takes a little different

position. Mr. Medlin and I have gone back and forth about this, but in a trust we feel, your Honor, *that the resolution we have must be presented to you*] (emphasis added). This was consistent with our longstanding policy, that because a charitable trust was involved, court approval is required. *Id. See also*, 14 C.J.S. *Charities*, § 40 ["The ultimate control over [a charitable] ... trust rests in the court."].

Seven days of hearings were held by the circuit court before the settlement was finally approved. As Chief Justice Toal recognized in her separate opinion, "[t]he fact that the AG has agreed to the settlement is of no consequence as the court is the ultimate arbiter of the merits of any settlement agreement devolving from a testator's express intent." *Op.* at 22. We agree with that statement completely. A court of equity is the ultimate protector of a charitable trust. That is why we were insistent that court approval must occur.

At the March 25, 2009 settlement hearing, we were asked bluntly by the circuit court whether we "have ... diligently examined all the possible outcomes? Have you examined all the documents and pleadings and affidavits and court orders and case law and statutes? And having done that, are you of the opinion that the settlement agreement is in the best interest of these needy children?" Our response, by Mr. Jones, was: "without a doubt, your Honor. The Attorney General, as I have mentioned to you earlier on, has not restricted me on any resources in my office that are necessary at my beck and call to do the work we needed to do." *Record* at 1726-1727.

In short, the Court is in error in concluding that the Attorney General "brokered" this settlement. What we did was prudently and reasonably weigh in good faith the pros and cons of the settlement versus that of litigation and to make a reasoned judgment that

settlement was in the best interest of the "ultimate, unspecified, and indefinite charitable beneficiaries mentioned in the decedent's will[.]" *Op.* at 9, citing with approval *In re Estate of Smith*, 75 Misc.2d 895, 349 N.Y.S.2d 281 (Surrog. Ct. 1973). That is what this Court's decision in *Cooley* requires.

We negotiated on behalf of our client, the charitable beneficiaries, in good faith and at arms-length with the other Respondents, who represented different interests. By any objective measure, our belief that there was a good faith controversy here was entirely reasonable. *Record* at 1326. [Mr. Jones: ... based upon the arguments and the hurdles we had to overcome including what witnesses we would have had to have called to present our case and the credibility of those witnesses that it was appropriate, reasonable, and at the part of doing our due diligence to enter into this settlement agreement and that it's reasonable and fair.]. Together, with the assistance of an able mediator, involved in the negotiation process every step of the way, we ultimately all reached a compromise, and the Attorney General insisted upon circuit court review thereof. Intensive review by the circuit court occurred and the settlement was ultimately approved by it. In our judgment, this was proper and in accordance with the law. We understand and respect fully that this Court does not agree with the settlement which was reached. But we strongly disagree that we overstepped our authority or our bounds with respect to the settlement.

We also take considerable issue with the Court's conclusion that "[t]he settlement provisions allowing the AG to select the trustee and his continued influence over the trust overreaches his statutory authority, as there is no provision allowing an AG to become involved in the day-to-day operations of a trust." We never have sought such a role

involving us in day-to-day operations, there is no evidence to that effect, and it would be inappropriate to involve ourselves therein. The Attorney General fully accepts and understands his role as protector of charitable trusts. The Court's conclusion, moreover, is legally erroneous because it overlooks the fundamental point that it is not the Attorney General who makes the ultimate decision in this regard, but the circuit court functioning as a court of equity. We repeatedly emphasized that point to the circuit judge.

It is first important to point out that in the settlement negotiations, the other Respondents came to us with the proposal that the Attorney General – as the neutral protector of charitable trusts – should possess the authority to appoint the trustee. The Court should know that the Attorney General did not seek out this authority, but that it was agreed by the other Respondents as a neutral and detached entity, acting in a quasi-judicial capacity, that we assume that responsibility.

Secondly, contrary to the Court's finding, statutory law authorizes the Attorney General to play a significant role in the appointment of a trustee for a charitable trust. Section 62-7-704(d)(2) states the order of priority for filling a vacancy in a trusteeship of a charitable trust, providing that the vacancy may be filled by (2) ... a person selected by the charitable organizations expressly designated to receive distributions under the terms of the trust *[if the attorney general] concurs in the selection*" (emphasis added) The Comments to Subsection (d) provide that "a successor trustee may be selected by the charitable organizations expressly designated to receive distributions in the terms of the trust but only if the Attorney General concurs in the selection." However, if the Attorney General does not concur, or if the trust does not designate a charitable organization to receive distributions [as this one did not], "the vacancy may be filled only by the court."

With these provisions in mind, and particularly the fact that there was no "charitable organization" involved here, authority is not lacking for the Attorney General to have been given the authority to select the trustee as part of the settlement. But even so, the Attorney General took the position that this provision of the settlement, like all others, must be approved by the circuit court.

Third, as a provision of the settlement agreement, such provision regarding the Attorney General's appointment of the trustee was reviewed by the circuit court and approved. The circuit court is the ultimate authority in this regard and at the point that provision of the settlement was presented for approval, we viewed the provision as a means for the Attorney General to recommend a trustee to be considered and approved by the circuit court. Such provision could have been altogether rejected by the circuit court or even revised, but it was not. Further, as we advised the circuit court, if a conflict developed with Mr. Bauknight, "we can appoint somebody else to handle that issue." Of course, any new trustee would ultimately be approved by the circuit court. *Record* at 1998.

Fourth, even after approval of the settlement containing that provision, the circuit court as a court of equity stands as the ultimate protector of the charitable trust with respect to any abuses by the Attorney General or by the trustee. As this Court recognized in *S.C. Dept. of Mental Health v. McMaster*, 372 S.C. 175, 642 S.E.2d 552, 556 (2007), "supervision of charitable trusts is an inherent judicial function." The "ultimate control over the trust rests in the court." 14 C.J.S. *Charities*, § 40. As the United States Supreme Court has noted:

When a charitable trust has been fully constituted, and the funds have been passed out of the hands and control of donors, and into the hands of the

proper institution or organization, intended for its administration the Court of Chancery, or some analogous jurisdiction, becomes its legal guardian and protector, and will take care that the objects of the trust are duly pursued and the funds rightfully appropriated.

American Printing House v. Trustees, 104 U.S. 711, 727 (1881). Furthermore, the "jurisdiction of courts of equity over charitable trusts is a continuing jurisdiction over the safeguarding, supervision and control of such trusts." 15 Am.Jur.2d, *Charities* § 123.

Thus, whether the question is one of approval of the provision bestowing upon the Attorney General the power to appoint and/or replace the trustee or the implementation of this settlement provision over the course of time, the answer is the same: the circuit court, as a court of equity, is the ultimate protector of charitable trusts and its powers clearly trump the authority of the Attorney General in this regard. That is what we told this Court in the *McMaster* case, and it is likewise why we insisted upon taking this settlement in the Brown case to the court for its review. As we stated to the circuit court, "in a trust, we feel, your Honor, that the resolution that we have must be presented to you[.]" *Supplement* at 2.

Case law vividly illustrates this important principle regarding the supervisory power of the Court. In *McMaster, supra*, this Court concluded that "[p]roperty subject to a charitable trust may not be terminated or altered by the General Assembly, but rather, must be approved by the Court As a court of equity, the court possesses the authority to carry out the intent of the donor of a charitable trust." 372 S.C. at 183-184, 642 S.E.2d at 556.

And, in *In re Wilson*, 361 N.E.2d 1281 (Mass. 1977), the Court stated that while it "is true that the Attorney General is charged with representing the interest of the public in the administration of charitable trusts," still, the Court maintains its traditional discretion

with respect to such trusts, including the appointment of a trustee. Likewise, it was said in *In the Matter of the Trusts Under the Will of Crabtree*, 795 N.E.2d 1157, 1169 (Mass. 2003), that "[a] judge is not bound by a settlement reached between acting trustees and the Attorney General ... or obligated to appoint a nominee proposed by the Attorney General." (citing *Matter of Trust Under Will of Fuller*, 636 N.E.2d 1333 (Mass. 1994); *In re Wilson*, *supra*).

Moreover, the Michigan Supreme Court's decision in *In the Matter of Reeder*, 158 N.W.2d 451 (Mich. 1968) is instructive. There, the Court concluded that the court of chancery is the ultimate authority with respect to a charitable trust. In the Court's judgment, the Attorney General was entitled to appear on behalf of the beneficiaries and to assert that a settlement is not in the best interest of the beneficiaries, but in no sense could the Attorney General "forbid the judgment of the chancellor" *Id.* at 456. As the Court emphasized:

[t]he attorney general, standing before the court in this case as an appointed legal representative of the people and of that class of charitable beneficiaries contemplated by the various statutory provisions upon which he relies, is no less amenable to the judgment of equity than are other appointed legal representatives of persons unknown or indefinite, or under legal disability or otherwise requiring representation.

Id.

Nor was Mr. Bauknight under the direction and control of the Attorney General as the Court's opinion implies. Mr. Bauknight is a well-respected professional fiduciary. Further, the circuit court utilized him as the court's advisor before he was appointed trustee. To suggest he is under the control of the Attorney General, further suggests that the circuit court did not consider his qualifications or credentials objectively either as its own advisor or as trustee. We call to the Court's attention the conclusion of the Court of

Appeals in its Order granting the Motion to Substitute Mr. Bauknight:

It is, however, unquestionable that Bauknight, as the court-appointed PR/Trustee, does have an interest in ensuring the proper management of the Estate and Trust. At the same time the circuit court relieved Pope and Buchanan of their duties, it also placed upon Bauknight the fiduciary duty to manage and control the Estate and Trust. Thus, Bauknight should be substituted because the liability for mismanagement of the Estate or the Trust now falls on him.

Record at 76-77.

In summary, the Court, in rejecting the settlement on the grounds that the Attorney General placed himself in control of the trust, through the authority to appoint and remove the trustee, overlooks the fact that it is the court of equity which ultimately approved that provision, as it did the remainder of the settlement. Again, it was the insistence of the Attorney General which resulted in court review. And, it is the circuit court which possesses a continuing jurisdiction over the trust to supervise it and look after its welfare and best interests regardless of the role of the Attorney General to protect the trust. The circuit court made its own decision to appoint Mr. Bauknight independently of the Attorney General.

Finally, we take issue with the Court's statement in footnote 29 of its Opinion which reads as follows:

[f]urther, the AG, with Bauknight's knowledge and cooperation, allegedly entered into contingency-fee agreements with outside counsel, Kenneth Wingate, for Wingate to sue Appellant Pope on behalf of the State, Bauknight, and others while also representing private plaintiffs in the suit. The suit sought damages to Brown's estate allegedly arising during Pope's appointment. Despite FOIA requests, the AG has refused to publicly release all of the documents pertaining to this purported arrangement. These matters should be considered by the circuit court in the first instance and any fees found to be inappropriately incurred should be disgorged and returned to the trust in light of our finding that the compromise is void and the AG has exceeded his authority by, among other things, effectively controlling the charitable trust through the appointment of Bauknight, who

serves at the AG's pleasure.

This recount of what happened is incorrect.

First of all, the Attorney General has not "refused to publicly release all of the documents pertaining to this purported arrangement." The Attorney General is a strong believer in FOIA and routinely advises public officials that "when in doubt, disclose." In this instance, we have released everything in our possession which we legally can release. One document is the subject of a Motion for a Protective Order, pending before Judge Manning. We certainly have no objection to the release of that document and have so advised the Court that we stand ready and willing to turn that document over once the Court so rules. We hope to have resolution of this issue in the near future.

With respect to the lawsuit brought against Appellants for breach of their fiduciary duty, we advise the Court candidly that the Attorney General did not want to have that suit brought because he is opposed philosophically to suing fellow attorneys.

In this instance, the Attorney General was particularly hesitant to sue because Appellants Pope and Buchanan enjoy a superb reputation throughout the legal community. Appellant Buchanan serves as a part-time federal magistrate and is a long time member of the South Carolina Bar. He is an experienced trial attorney with a diverse practice and is highly regarded. Appellant Pope has, for more than thirty years in South Carolina, been an outstanding attorney in the field of trust and estate matters. She is considered by the legal community to be an exceptional attorney.

After much deliberation, the Attorney General was advised that the statute of limitations was about to expire and that it would be a breach of the Attorney General's own fiduciary duty in protecting charitable trusts if an action was not brought on behalf

of the charity. The Attorney General's intent not to bring the action on behalf of the Attorney General's Office is fully demonstrated clearly by a letter, dated May 18, 2010, to Mr. Bauknight in which he stated that it was the Attorney General's "understanding that *you* (Mr. Bauknight) will be retaining Mr. Wingate and Mr. Kendall to file this action on behalf of the beneficiaries of the James Brown Estate and Trust, including the charitable interests." *Supplement* at 37. (emphasis added). The letter from the Attorney General to Mr. Bauknight further confirmed that with respect to "the charitable trust portion of this matter," Bauknight had "agreed to use the terms and conditions in the attached 'Agreement for Legal Services' which references and incorporates the Attorney General's Standard Litigation Retention Agreement." Thus, the contingent fee agreement was between Mr. Bauknight and Mr. Wingate, not with the Attorney General's Office.

Accordingly, the Attorney General's Office was particularly reluctant to have this action brought on behalf of the charity against Appellants by Mr. Bauknight, but in light of the one-year statute of limitations' imminent expiration and the duty of the Office vis-à-vis charitable trusts, did not object to the Trustee's doing so. The action on behalf of the charitable beneficiaries was thus filed on the very last day possible. *See* S.C. Code Ann. § 62-7-1005(a) (2009).⁴ The accounting in question was filed on May 20, 2009. *Supplement* at 23-36. The lawsuit was filed on May 19, 2010, at 1:11 p.m., almost the last instant possible. From the standpoint of the Attorney General, in light of this Court's

⁴ 62-7-1005(a)-(b) states as follows:

(a) Unless previously barred by adjudication, consent, or limitation, a **beneficiary may not commence a proceeding against a trustee for breach of trust more than one year** after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust.

(b) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows of the potential claim or should have inquired into its existence.

(emphasis added)

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

Conclusion

In summary, we would submit to this Court that we have diligently pursued the protection of the charitable trust in this case. The Court may disagree with the terms of the settlement which was reached, and we fully respect the Court's ruling. However, in light of the challenges facing us to uphold the trust, particularly the credibility of those we would need to call as witnesses in that regard, we thought settlement was the most prudent course. These were the very individuals who stood accused of fraud and with the promotion of a scheme of cunning and artifice, by Appellants' lawsuit. Clearly, as the circuit court found, there was a good faith controversy and we believed the terms of the settlement were fair and reasonable. 81 A.L.R. 124 (citing *State v. Southern R. Co.*, 82 S.C. 12, 62 S.E. 116 (1908) [court possesses discretion to refuse Attorney General's motion to discontinue]. We still believe that today. We respectfully request that the Court modify its Opinion accurately to reflect the Attorney General's role in the settlement, consistent with the facts and arguments set forth above.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

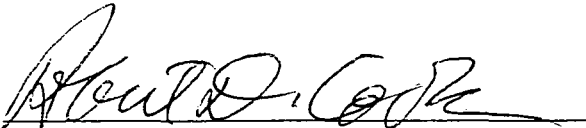
ROBERT D. COOK
Deputy Attorney General

C. HAVIRD JONES, JR.
Assistant Deputy Attorney General

MARY FRANCES JOWERS
Assistant Attorney General

J.C. NICHOLSON, III
Assistant Attorney General

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Rembert C. Dennis Building
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Telephone: (803) 734-3970

By: _____

By: _____

Attorneys for Respondent Alan Wilson.

March 14, 2013.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

MAR 14 2013

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

S.C. Supreme Court

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

Case No. 2008-CP-02-1647

Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Daryl J. Brown, on behalf of his minor children, Lindsey B. and Janise B.; Deanna J. Brown Thomas, on behalf of her minor child, Jason L.; Yamma N. Brown, on behalf of her minor children, Sydney L., Carrington L., and Tonya B.; Vanisha Brown; Larry Brown; Tommie Rae Hynie Brown; and James B., through his Guardian ad Litem, Respondents,

v.

Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust; Adele J. Pope and Robert L. Buchanan, Jr., Personal Representatives of The Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust; Terry Brown; Romunzo Brown; Forlando Brown; Cinnamon N.M. Paris; LaRhonda Petitt; Jeanette Mitchell; and Russell L. Bauknight, as Special Administrator and Special Trustee for The Estate of James Brown and the James Brown 2000 Irrevocable Trust, Defendants,

of whom Robert L. Buchanan, Jr., and Adele J. Pope, as Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust are, Appellants,

and Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust; Terry Brown; Romunzo Brown; Forlando Brown; Cinnamon N.M. Paris; LaRhonda Petitt; Jeanette Mitchell; and Russell L. Bauknight, as Special Administrator and Special Trustee for The Estate of James Brown and The James Brown 2000 Irrevocable Trust are, Respondents.

In re: The Estate of James Brown and The James Brown 2000 Irrevocable Trust u/a/d August 1, 2000

Appellate Case No. 2009-142286

**MOTION TO SUPPLEMENT THE RECORD PURSUANT TO
RULE 212(b), SCACR, OR IN THE ALTERNATIVE, TO TAKE JUDICIAL
NOTICE OF TRANSCRIPTS AND RECORDS**

TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE
SOUTH CAROLINA SUPREME COURT:

Respondents respectfully request that this Court supplement the Record of this appeal to include the following: (1) Transcript of Record, September 28, 2008, pages 15-16; (2) Transcript of Record, November 25, 2008, pages 10 and 29; (3) Transcript of Record, January 30, 2009, pages 104-105 and 149-152; (4) Transcript of Record, April 6, 2009, pages 186-188 and 196-197; (5) Exhibit G to C/A No. 2008-CP-02-322, *Pope et al v. Cannon et al.*; (6) Interim Accounting #1A, filed May 20, 2009; and (7) Letter dated May 18, 2010. The proposed Supplement is attached as *Exhibit A*. In the alternative, this Court may take judicial notice of these documents as they are transcripts of hearings held in the circuit court, Exhibit G is to a Complaint that is part of the Record, the Interim Accounting is also part of the James Brown matter and has been submitted to this Court in another appeal, and the letter is related to James Brown matters pending in the circuit court.

This is an appeal of a complex matter. There were numerous transcripts and documents included in the Record on Appeal, which consists of over 2,900 pages, seven volumes, and a supplement. To include every word of every transcript was not an appropriate course. Similarly, every exhibit to every pleading was not included. The Attorney General and other parties included only the relevant materials. In the Attorney General's review of this matter following the Court's opinion of February 27, 2013, there are a few transcript pages that are especially relevant to his Petition for Rehearing; the Attorney General believes these transcript pages and

other documents will further show that he diligently pursued the protection of the charitable trust in this case.

As to the transcripts, the Attorney General requests that additional pages of transcripts already in the record be included. As to the November 25, 2008 transcript, pages 4 and 5 are already part of the Record on Appeal. (R. at 1295-1297). In this Motion, the Attorney General requests that two additional pages be added to the Record on Appeal. As to the January 30, 2009, transcript, pages 5-6, 9, 11, 13, 13-17, 19-26, 31-32, 36-39, 46, 55, 62-63, 91-95, 122-138, 140, 145, 148, and 156-186 are already part of the Record on Appeal. (R. 1298-1388). In this Motion, the Attorney General requests that six additional pages be added to the Record on Appeal from the January 30, 2009, transcript. As to the April 6, 2009 transcript, pages 4-7, 12, 14, 18, 21-51, 54-59, 65, 70, 76, 78-86, 95-96, 98-99, 101-173, 183-185, and 197 are already part of the Record on Appeal. (R. 1874-2017). The Attorney General requests that three additional pages from the April 6, 2009 transcript be added to the Record on Appeal. While the September 28, 2008, transcript was not included as part of the Record on Appeal, it involves a hearing before Judge Early in the James Brown matter and was held the month after the parties reached a settlement.

As to Exhibit G, this is an exhibit to a Complaint that is already part of the Record on Appeal. (R. 1194-1229). Exhibit G itself is referenced in the Complaint (R. 1213). The Attorney General asks that Exhibit G also be included as part of the Record on Appeal, as this document provides additional background information to relevant issues. As to the Accounting, it was filed by the Appellants and is a part of the James Brown matter; it has been submitted to the appellate court as Exhibit P attached to the Motion to Dismiss of Stay Appeal, or for Extension of Time to File Respondents' Initial Brief, filed by counsel for Tommie Rae Brown on

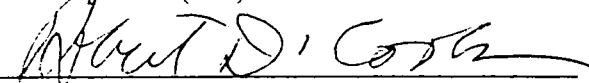
September 13, 2012. As to the letter dated May 18, 2010, this is related to James Brown matters and is relevant to issues before this Court.

Alternatively, in the event that the Court declines to include the documents as part of the Record on Appeal, the Attorney General would respectfully request that this Court take judicial notice of these records, as the transcripts are from hearings which are part of this case, and the Exhibit, Accounting, and letter are relevant to this matter. *See* 31A C.J.S., *Evidence*, § 96 (“A court may take judicial notice of pleadings filed in a case.”); *see also Padgett v. Sun News*, 278 S.C. 26, 32, 292 S.E.2d 30, 33 (1982) (internal citation omitted) (“Traditionally court records have been public records, generally open for public inspection.”).

Respectfully submitted,

ALAN WILSON
Attorney General
JOHN W. McINTOSH
Chief Deputy Attorney General
ROBERT D. COOK
Deputy Attorney General
C. HAVIRD JONES, JR.
Assistant Deputy Attorney General
MARY FRANCES JOWERS
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Post Office Box 11549
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Telephone: (803) 734-3970

By: 

By: 

Attorneys for Respondent Alan Wilson.

March 14, 2013.

EXHIBIT A

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

COURT OF COMMON PLEAS
07-CP-02-122

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

TRANSCRIPT OF RECORD

SEPTEMBER 28, 2008
AIKEN, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DOYET A. EARLY, III, JUDGE.

A P P E A R A N C E S:

LOUIS LEVENSON, ESQ.
ATTORNEY FOR THE THE HEIRS

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

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

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

STEPHEN M. SLOTCHIVER, ESQ.
GUARDIAN AD LITEM

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

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

12 NOW, THE THOUGHT WOULD BE IF --

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

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

1 I MIGHT BE OVERSTATING THAT, BUT THE OTHER THOUGHT
2 ABOUT IT IS, YOUR HONOR, SUPPOSE THAT LITIGATION CONTINUES
3 AND WE HAVE SOME RIGHTS THAT THESE INDIVIDUALS -- LOUIS
4 LEVENSON'S CLIENTS AND MR. MEDLIN AND ROSEN'S CLIENT HAVE
5 PUT IN FOR THE ATTORNEY GENERAL THAT WE COULD LOSE. SO,
6 WE HAVE A STAKE IN THIS, BUT SUPPOSE THAT MR. BELL
7 PROCEEDS, AND THEN THAT LIGHTS BACK UP MR. ROSEN AND IT
8 LIGHTS BACK UP LOUIS LEVENSON, AND WE PROCEED ON WITH
9 LITIGATION AND WE GET A GOOSE EGG FOR THE CHARITY. OKAY.
10 WHO IS TRYING TO REPRESENT THE ATTORNEY GENERAL THEN?
11 THEY CAN WALK AWAY AND WE'RE SITTING THERE WITH OUR PALMS
12 TO THE SKY. SO, THERE IS NO QUESTION, YOUR HONOR, THAT IT
13 IS VERY IMPORTANT THAT WE REACH A RESOLUTION THAT WE THINK
14 IS IMPORTANT AND WILL PRESENT TO THE COURT.

15 I THINK MR. BELL HAS DONE A GOOD JOB. YOU'VE SEEN
16 HOW THINGS MOVED THROUGH HERE THAT HE STOOD BY THE
17 CHARITABLE TRUST AND THAT'S WHAT WE'VE DONE, AND WHAT
18 WE'VE DONE IS MAKE A RESOLUTION THAT GOING INTO THE
19 MEDIATION I DIDN'T THINK WE POSSIBLY COULD GET, AND WE'RE
20 VERY SATISFIED WITH IT.

21 THERE IS ANOTHER ISSUE THAT I WANT TO BRING TO THE
22 COURT'S ATTENTION IS THAT BEFORE THE MEDIATION STARTED --
23 AND WE FILED A PLEADING ON THIS TODAY, YOUR HONOR, THAT I
24 UNDERSTAND THAT THE PROBATE JUDGE ROE IS NOT IN, AND, SO,
25 SHE'LL BE SENDING IT UP TO YOU -- IS THAT MR. BELL SAID

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

COURT OF COMMON PLEAS
08-CP-02-1647

HENRY DARGAN MCMASTER, ET)
AL.,)
PLAINTIFFS)
VS.)
ALBERT H. DALLAS, ET AL.,)
DEFENDANTS)

TRANSCRIPT OF RECORD

NOVEMBER 25, 2008
AIKEN, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DOYET A. EARLY, III, JUDGE.

A P P E A R A N C E S:

LOUIS LEVENSON, ESQ.
LORI CHRISTMAN, ESQ.
ATTORNEYS FOR THE THE HEIRS

ROBERT N. ROSEN, ESQ.
DAVID L. MICHEL, ESQ.
T. HEYWARD CARTER, ESQ.
S. ALAN MEDLIN, ESQ.
ATTORNEYS FOR THE TOMI RAE HYNIE BROWN

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

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

1 IT'S FRIGHTENING. THE PROBLEM THAT WE SEE IS BY
2 APPOINTING A SPECIAL ADMINISTRATOR, A SPECIAL TRUSTEE, THE
3 SOLE PURPOSE IS TO RAMROD THIS SETTLEMENT THROUGH AND --

4 THE COURT: WELL, MR. BAILEY, I TAKE ISSUE WITH YOUR
5 TERMINOLOGY OF RAMROD THE SETTLEMENT THROUGH. THE
6 SETTLEMENT IS NOT GOING TO BE RAMRODDED THROUGH ANYBODY.
7 WHAT WE'RE TRYING TO DO IS OFFER EVERYBODY AN OPPORTUNITY
8 TO REVIEW THE WRITTEN DOCUMENT AND THEN COME BACK INTO
9 COURT TO SEEK APPROVAL AT WHICH TIME YOU CAN EXPRESS ANY
10 OBJECTIONS TO IT THAT YOU WISH.

11 IT MAY BE THAT WE WOULD HAVE TO SEE WHETHER WE'RE
12 GOING TO HEAR THAT REQUEST TO APPROVE THE SETTLEMENT
13 BEFORE WE HAVE THE EVIDENTIARY DUE PROCESS HEARING ON THE
14 PETITION FOR REMOVAL. IT WOULD CERTAINLY BE AN
15 OPPORTUNITY FOR MR. BELL TO ARGUE AND PRESENT HIS CASE ON
16 THE ISSUES THAT HE RAISED IN CHAMBERS, I.E., WHETHER OR
17 NOT A SETTLEMENT CAN BE APPROVED WITHOUT HIS CLIENTS'
18 INVOLVEMENT.

19 SO, IT WON'T BE RAMRODDED BY ANY STRETCH OF THE
20 IMAGINATION. IT WILL ONLY BE APPROVED OR DISAPPROVED
21 AFTER A VERY THOUGHTFUL DISCUSSION BY EVERYBODY AND
22 EVERYBODY HAVING AN OPPORTUNITY TO PRESENT TO ME THEIR
23 PROS AND CONS. SO, RAMROD -- I TAKE ISSUE WITH THAT
24 DESCRIPTION.

25 MR. BAILEY: WELL, YOUR HONOR, I VIEW IT AS

1 MRS. POPE: THROUGH DECEMBER 8 AND TODAY EXCEPT FOR
2 AN HOUR TOMORROW AND ONE PRESCHEDULED MEETING IS MY LAST
3 DAY IN THE OFFICE AND MY OFFICE WILL BE ESSENTIALLY CLOSED
4 UNTIL THE EIGHTH.

5 THE COURT: I AM CERTAINLY GOING TO GRANT THAT.

6 MRS. POPE: THANK YOU, JUDGE.

7 THE COURT: IT WOULDN'T WANT YOU SHOOTING ME.
8 ASSUMING AFTER DECEMBER 8 -- WE GOT CHRISTMAS. WOULD 30
9 DAYS AFTER THAT DECEMBER 8 BE PALATABLE?

10 MRS. POPE: WELL, JUDGE, I AM RETIRING FROM THE
11 PRACTICE OF LAW ON DECEMBER 31 AND I HAVE A TRIAL
12 SCHEDULED -- A WEEK-LONG SCHEDULE FOR DECEMBER 15 IN
13 ORANGEBURG, AND, SO, I'M CONCERNED THAT WE DON'T HAVE THE
14 PARTIES JOINED, AND, SO, I WOULD THINK 30 DAYS AFTER THE
15 PARTIES ARE JOINED, AND WE AGAIN -- WE HAVE CONCERNS ABOUT
16 THAT WHICH WE MAY HAVE TO RAISE IN SOME OTHER WAY BY
17 RECONSIDERATION OR OTHERWISE, BUT, JUDGE, NOBODY WANTS
18 MORE THAN MR. BUCHANAN AND ME TO SEE THIS CASE PROPERLY
19 SETTLED. WE ARE CONSIDERING WHETHER TO REPRESENT
20 OURSELVES PRO SE SINCE WE'VE BEEN SUED INDIVIDUALLY, BUT
21 WE WANT MORE THAN ANYONE THAT IF IT IS SETTLED THAT IT BE
22 SETTLED WITH PROPER DUE PROCESS AND WE HAVE GRAVE CONCERNS
23 ABOUT THAT.

24 SO, I WOULD SAY 30 DAYS AFTER ALL -- AFTER THE COURT
25 HAS DETERMINED WHO ARE THE NECESSARY PARTIES AND THOSE

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF AIKEN

2008-CP-02-1647

HENRY DARGAN MCMASTER, ET AL. :

-VS-

TRANSCRIPT OF RECORD

RUSSELL L. BAUKNIGHT, ET AL. :

JANUARY 30, 2009

AIKEN, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DOYET A. EARLY, III, JUDGE.

A P P E A R A N C E S:

LOUIS LEVENSON, ESQUIRE
LORI CHRISTMAN, ESQUIRE
ATTORNEYS FOR THE HEIRS

ROBERT N. ROSEN, ESQUIRE
DAVID L. MICHEL, ESQUIRE
T. HEYWARD CARTER, ESQUIRE
S. ALAN MEDLIN, ESQUIRE
ATTORNEYS FOR TOMMIE RAE HYNIE BROWN

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

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

1 TO ENTER INTO THE AGREEMENT.

2 IN ADDITION, THE ATTORNEY GENERAL'S OFFICE WAS
3 CONSIDERING THAT THEY WOULD, ONCE ENTERED INTO THIS
4 AGREEMENT, BECOME A PARTY TO SOME POTENTIAL RIGHTS UNDER THE
5 FEDERAL COPYRIGHT LAW THAT THEY MAY NOT HAVE RECEIVED ANY
6 PORTION OF WITHOUT ENTERING INTO THE AGREEMENT. SO WHEN
7 PUTTING TOGETHER THE LESS THAN 100 PERCENT PORTION FROM THE
8 ESTATE OR TRUST THAT'S THERE NOW PLUS THE FACT THAT THEY
9 WOULD SHARE IN FUTURE RIGHTS CREATED UNDER THE FEDERAL
10 COPYRIGHT LAW, THEY FELT THEY WERE MAKING A FAIR AND
11 REASONABLE SETTLEMENT OF THEIR CASE.

12 Q. AND IN RECEIVING THE INFORMATION FROM THE SOUTH CAROLINA
13 ATTORNEY GENERAL'S OFFICE, YOU PERCEIVED REAL CONCERNS FROM
14 THE REPRESENTATIVES THAT YOU SPOKE TO THAT THEY WERE WORRIED
15 THAT ULTIMATELY THE OUTCOME OF THESE LAWSUITS MIGHT RESULT IN
16 THEM RECEIVING LESS THAN THE AGREED AMOUNT?

17 A. WELL, THE SPECIFIC CONCERNS AND EXAMPLES THAT THEY
18 RAISED WITH RESPECT TO HOW THEY MIGHT NOT RECEIVE 100 PERCENT
19 OF FUNDING FOR THE CHARITABLE TRUSTS WERE IF MR. ROSEN'S
20 CLIENT WERE TO PREVAIL AND THAT HIS CLIENT RECEIVE A 50
21 PERCENT OR ONE-THIRD INTEREST IN THE ASSETS, THEN THE
22 CHARITABLE TRUST WOULD OBVIOUSLY RECEIVE LESS THAN 100
23 PERCENT FUNDING.

24 IF MR. SHAHID'S CLIENT WERE TO PREVAIL AS AN OMITTED
25 CHILD, THE ATTORNEY GENERAL'S OFFICE WOULD END UP WITH A

1 SITUATION WHERE THE CHARITABLE TRUST WAS FUNDED WITH LESS
2 THAN 100 PERCENT.

3 IF THE WILL CONTESTS THAT WERE BEING LITIGATED WERE
4 SUCCESSFUL, THE ATTORNEY GENERAL'S OFFICE WOULD SEE
5 ABSOLUTELY NOTHING GOING INTO THE CHARITABLE TRUST UNLESS
6 ULTIMATELY SOMETHING WAS FOUND TO HAVE ALREADY BEEN FUNDED
7 INTO A TRUST. THERE YOU HAVE TO LOOK AT WHAT -- HOW THAT
8 LITIGATION WITH RESPECT TO THE VALIDITY OF THE TRUST ITSELF
9 TURNED OUT. SO THERE WERE MANY SITUATIONS WHERE I WAS GIVEN
10 EXAMPLES WHERE THE CHARITABLE TRUST WOULD RECEIVE MUCH LESS
11 FUNDING THAN 100 PERCENT.

12 Q. WHAT INFORMATION DID YOU RECEIVE FROM MR. ROSEN'S
13 CLIENT'S REPRESENTATIVE THAT LED TO YOUR RECOMMENDATION?

14 A. WELL, THE COMMON THEME AMONGST THE SETTLING PARTIES WAS
15 SIMILAR TO WHAT THE ATTORNEY GENERAL PUT FORTH, THE RISKS AND
16 HAZARDS ASSOCIATED WITH LITIGATION AS WELL AS THE COPYRIGHT
17 BENEFITS UNDER FEDERAL COPYRIGHT LAW DOWN THE ROAD IN THE
18 FUTURE. MR. ROSEN'S CLIENT CERTAINLY HAD THE SIMILAR RISKS
19 OF LITIGATION. HIS CLIENT POSSIBLY WOULD NOT PREVAIL IN
20 EFFORTS TO SHOW THAT THE MARRIAGE WAS VALID, MAY NOT PREVAIL
21 IN GETTING EITHER THE ONE-THIRD OR 50 PERCENT SHARE SO THAT
22 THE POTENTIAL FOR GETTING NOTHING FOR MR. ROSEN'S CLIENT WAS
23 OUT THERE.

24 IN ADDITION, THAT SAME ISSUE WOULD AFFECT THE BENEFITS
25 RECEIVED UNDER THE FEDERAL COPYRIGHT LAW AND WHETHER OR NOT

1 **MR. MEDLIN:** LOUIS?

2 **THE COURT:** NO, I'M ASKING YOU.

3 **MR. MEDLIN:** WE WOULD LIKE TO CALL MS. POPE TO THE
4 STAND.

5 **THE COURT:** OKAY.

6 ADELE J. POPE, AFTER BEING DULY SWORN, TESTIFIED AS
7 FOLLOWS:

8 **THE CLERK:** PLEASE HAVE A SEAT AND STATE YOUR FULL NAME
9 FOR THE RECORD.

10 **THE WITNESS:** MY NAME IS ADELE JEFFORDS POPE.

11 **THE COURT:** MS. POPE, SPEAK UP A LITTLE BIT LOUDER OR
12 GET CLOSER TO THE MICROPHONE, PLEASE.

13 DIRECT EXAMINATION

14 BY MR. LEVENSON:

15 Q. MRS. POPE, DO YOU RECALL YOU AND I BEING IN THE STREET
16 OUT HERE IN FRONT OF THE COURTHOUSE IN THE SUMMER OF 2008
17 WHERE WE TOLD YOU THAT WE WERE GOING TO A SETTLEMENT MEETING
18 WHERE ALL PARTIES WHO HAVE NOW SETTLED WERE TO ATTEND?

19 A. MR. LEVENSON, WE---

20 Q. MAY I RESPECTFULLY GET A YES OR NO ANSWER?

21 **THE COURT:** WE'RE NOT -- WE'RE BOTH GOING TO BE CIVIL TO
22 EACH OTHER. YOU CAN ANSWER IT YES OR NO AND EXPLAIN.

23 **THE WITNESS:** NOT SPECIFICALLY.

24 BY MR. LEVENSON:

25 Q. OKAY. DO YOU HAVE AN EXPLANATION YOU'D LIKE TO GIVE

1 THEN NOW?

2 A. RIGHT. YOU'VE MENTIONED THAT MEETING TO ME. I'VE HAD
3 ACTUALLY STREET-CORNER DISCUSSIONS WITH YOU, WITH MR. ROSEN,
4 AND WITH OTHERS, THE STREET CORNER JUST OUTSIDE OF THE
5 COURTHOUSE. IT SEEMS TO BE A GATHERING PLACE AFTER THE
6 HEARINGS. I'VE ALSO HAD CONFERENCES WITH YOU IN THE NOOK OUT
7 THERE. SO I -- WE COULD TALK ABOUT THE SUBSTANCE OF IT, BUT
8 I CAN'T SAY THAT I ABSOLUTELY REMEMBER A PARTICULAR
9 CONVERSATION ON A PARTICULAR---

10 Q. IT'S THE VENUE THAT YOU'RE CONFUSED ABOUT. ALL RIGHT.
11 LET ME TRY TO HELP REFRESH YOU. CIGARS WERE INVOLVED.

12 **THE COURT:** WHOA, WHOA, WHOA.

13 BY MR. LEVENSON:

14 Q. AND YOU REMEMBER SAYING, "DOESN'T ANYONE SMOKE
15 CIGARETTES ANYMORE?"

16 A. YOU KNOW, CIGARS HAVE BEEN INVOLVED EVERY TIME I'VE SEEN
17 YOU AND MR. JONES---

18 Q. OKAY.

19 A. ---AND MR. MEDLIN TOGETHER IN MONTHS.

20 Q. AND DO YOU REMEMBER ME ASKING YOU IF YOU AND BOB
21 BUCHANAN WANTED TO ATTEND THE MEDIATION THAT WE WERE
22 SCHEDULING SHORTLY AFTER THAT CORNER CONVERSATION?

23 A. I ABSOLUTELY DO NOT.

24 Q. OKAY.

25 A. I WON'T SAY IT DIDN'T HAPPEN. I WON'T SAY IT DIDN'T

1 HAPPEN, BUT I ABSOLUTELY HAVE NO MEMORY OF THAT.

2 Q. DO YOU REMEMBER THAT PROFESSOR MEDLIN, MR. ROSEN, AND
3 GENE LEE WERE PRESENT WHEN WE HAD THE CONVERSATION EVEN IF
4 YOU DON'T REMEMBER WHAT THE SUBSTANCE WAS?

5 A. WELL, EXCUSE ME, MR. LEVENSON. CERTAINLY I REMEMBER YOU
6 TELLING ME MORE THAN ONE TIME THAT I'M GOING TO TRY TO GET
7 TOGETHER WITH ROBERT AND HIS PEOPLE, BUT I MEAN, DO I
8 REMEMBER IT THAT PARTICULAR DAY? DOES IT RELATE TO A
9 SCHEDULED MEDIATION OR ANYTHING LIKE THAT? NO. I MEAN, I
10 CERTAINLY KNEW THAT THROUGHOUT THE PERIOD BEGINNING I GUESS
11 WHEN ALL -- ALL OF YOU BEGAN TO CONTEST THE WILL THAT YOU
12 WERE TRYING TO FIGURE OUT A WAY TO GET TOGETHER. I'VE HAD
13 MANY, MANY CONVERSATIONS.

14 Q. WELL, AGAIN FORGETTING THE VENUE AND THE SPECIFICS, DO
15 YOU RECALL TELLING ME YOU WOULD NOT ATTEND SUCH A MEDIATION
16 BUT WE SHOULD BRING SUCH AN AGREEMENT TO YOU AFTERWARDS?

17 A. THAT WAS NOT MY INTENTION TO SAY. I THINK WHAT I SAID
18 -- AND I DID SAY SOMETHING TO THIS EFFECT: LOOK, WHY DON'T
19 YOU AND ROBERT GO TRY TO -- AND I SEE MR. ROSEN NODDING
20 BECAUSE I HAD SAID THE SUBSTANCE OF THE SAME THING TO HIM.
21 WHY DON'T YOU GUYS GO TRY TO MAKE YOUR PEACE AND THEN COME TO
22 US? THAT WAS CERTAINLY MY INTENTION. I'VE PROBABLY SAID IT
23 A HUNDRED TIMES IN A HUNDRED DIFFERENT VENUES. I AM GOOD AT
24 HELPING WITH SETTLEMENTS.

25 Q. AND DO YOU RECALL ME TELLING YOU OR SAYING WORDS TO THE

1 EFFECT THAT MR. BELL WAS NOT GOING TO BE IN ATTENDANCE AND
2 THAT IF WE SETTLED WITHOUT MR. BELL YOU WOULD, QUOTE, GET MR.
3 BELL TO AGREE, UNQUOTE?

4 A. HUH-UH. NO. I'LL TELL YOU THE SUBSTANCE OF A
5 CONVERSATION THAT I'VE HAD WITH A NUMBER OF PEOPLE. I DEEPLY
6 REGRET, MR. LEVENSON, IF YOU MISUNDERSTOOD MY INTENTION AT
7 THAT OR ANY OTHER CONVERSATION, BUT I WILL TELL YOU THE
8 REPEATED SUBSTANCE IS THIS: WHEN YOU TRY TO REACH A FAIR
9 SETTLEMENT, IT WOULD BE WONDERFUL TO GET EVERYBODY TOGETHER.
10 IF YOU CAN'T GET EVERYBODY TOGETHER, DON'T GIVE UP. PUT
11 GROUPS OF PEOPLE TOGETHER AND SEE WHAT YOU CAN FIND IN
12 COMMON.

13 MY INTENTION WAS -- AND I THOUGHT I EXPRESSED IT
14 CORRECTLY IS -- NOT MR. BELL BECAUSE I DON'T CONSIDER THIS
15 PERSONAL TO MR. BELL. MR. BELL'S CLIENTS MAY OR MAY NOT BE
16 ESSENTIAL TO A SETTLEMENT, DEPENDING ON THE OUTCOME, AND I
17 WILL TELL YOU THAT I NEVER THOUGHT FOR A MINUTE THAT THAT
18 OUTCOME WOULD NOT INCLUDE A RECOMMENDATION FROM ME AND FROM
19 MR. BUCHANAN TO THE COURT THAT THAT SETTLEMENT WAS IN THE
20 VERY BEST INTEREST OF A MAJORITY OF THE PARTIES. SO, YES, I
21 HAVE CERTAINLY INDICATED THAT IF YOU COULDN'T GET EVERYBODY,
22 TRY FOR WHAT YOU COULD GET AND THEN KEEP WORKING AT IT
23 BECAUSE I BELIEVE IN SETTLEMENTS.

24 Q. THE POINT I'M SIMPLY TRYING TO GET AT, MRS. POPE, IS YOU
25 WERE NOT UNAWARE THAT THE PARTIES WHO HAVE NOW MADE A

1 PROPOSAL TO SETTLE WITH THIS COURT WERE IN THE PROCESS OF
2 SETTLING THIS CASE AND INVITED YOU TO PARTICIPATE WHICH YOU
3 CHOSE NOT TO DO.

4 A. NO. I WAS NOT AWARE IN THE SENSE FOR STARTERS THIS CASE
5 HADN'T BEGUN. YOU HAD NEVER ASKED TO REMOVE ME FOR CAUSE
6 UNTIL NOVEMBER OF LAST YEAR. THIS CASE DIDN'T EXIST.

7 Q. I'LL WITHDRAW THE QUESTION. THIS CASE BEING A MOTION
8 BEFORE THE COURT TODAY, THE MATTER BEFORE THE COURT TODAY IS
9 THE MOTION FOR THE APPROVAL OF THE SETTLEMENT. NOW, THE
10 QUESTION: YOU WERE AWARE THAT THE PARTIES WERE ATTEMPTING TO
11 REACH A SETTLEMENT AND THAT YOU AND MR. BUCHANAN WERE INVITED
12 TO PARTICIPATE AND YOU REJECTED THAT INVITATION.

13 A. I ABSOLUTELY DENY THAT.

14 Q. OKAY.

15 A. IF I COULD EXPLAIN.

16 **THE COURT:** YOU MAY. AND HOW IS THIS RELEVANT TO ME
17 TRYING TO DETERMINE WHETHER IT'S JUST AND REASONABLE?

18 **MR. LEVENSON:** WELL, LET ME ASK YOU ANOTHER -- THE
19 ANSWER WILL COME IN MY NEXT QUESTION.

20 **THE WITNESS:** IF I COULD EXPLAIN.

21 **THE COURT:** YOU MAY EXPLAIN. MR. LEVENSON.

22 **MR. LEVENSON:** ALL RIGHT, SIR. VERY WELL, YOUR HONOR.
23 THE POSITION TAKEN BY MS. POPE AND MR. BUCHANAN IS THAT THEY
24 ARE NOT PARTIES TO THE SETTLEMENT AGREEMENT.

25 **THE COURT:** I'M WELL AWARE OF THEIR POSITION.

State of South Carolina)
County of Aiken)

Court of Common Pleas
08-CP-02-1647

Henry McMaster,)
Plaintiff,)
v.)
Russell Bauknight, et al.,)
Defendants.)

Transcript of Record

April 6, 2009
Aiken, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge.

A P P E A R A N C E S:

Louis Levenson, Esq.
Attorney for the the Heirs

Robert N. Rosen, Esq.
David L. Michel, Esq.
T. Heyward Carter, Esq.
S. Alan Medlin, Esq.
Attorneys for Tomi Rae Hynie Brown

Adele J. Pope, Esq.
Robert L. Buchanan, Jr., Esq.
Special Administrators/Personal Representatives

1 What I am trying to figure out is how to reconcile your
2 position with what the statute says.

3 MR. BAILEY: Well, the court -- I would request the
4 court to consider the fact that what the attorney general
5 is asking involves an estate charitable and non-charitable
6 trust and the attorney general doesn't have the authority
7 to act for a non-charitable trust which will be affected
8 by this because the approval of the agreement calls for a
9 change in the grandchildren's trust from the \$2 million as
10 provided in that trust for a specified period of time and
11 then the balance to pour over into the charitable trust.

12 Here they're asking for that trust to be changed to
13 not infinitum but to comply with the rule against
14 perpetuities and would apply not only to the grandchildren
15 but their issue on down the line. So, it changes the
16 entire scope of the Brown Education Family Trust.

17 We were not asked, Your Honor, to provide any input,
18 of course, into the settlement, and, although, Mr. Bell
19 speaks to the offer of judgment that was filed Friday, the
20 offer of judgment is not to be construed.

21 THE COURT: It is actually called an offer of
22 compromise is what your pleadings say.

23 MR. BAILEY: Offer of compromise is intended to
24 demonstrate two things -- that Mr. Buchanan and Mrs. Pope
25 aren't opposed to settlement. They're opposed to an

1 improper settlement.

2 THE COURT: And you define improper by the alleged
3 diminutions of the amount going into the charitable trust?
4 Is that --

5 MR. BAILEY: Well, and it doesn't include all of the
6 necessary parties and we don't know what the tax results
7 are. Some of the grandchildren are not parties to the
8 settling documents. I think it's Jeanette Mitchell. She
9 -- Nicole Paris, Romunzo, Forlando -- they're all not
10 parties to this settlement agreement. The position which
11 was stated many times by both Mr. Buchanan and Mrs. Pope
12 this is not a fair and reasonable division, if you want to
13 say it that way, of Mr. Brown's estate.

14 The issue of due diligence. Mr. Buchanan was on the
15 witness stand for probably a third of the time, if not
16 less, than Mrs. Pope was on the stand, but the settling
17 parties' attorneys made sure they grilled them
18 relentlessly about their due diligence. We have no idea
19 what due diligence the settling parties have engaged in.
20 We have attorneys making statements to the court that we
21 have done due diligence, but they haven't put anybody up
22 to testify as to what is that due diligence that you did.
23 You've made all of these statements, but those are parts
24 of your oral arguments. We believe that the question of
25 due diligence is extremely important in the court's

1 consideration of whether this is reasonable or not.

2 One thing that Mr. Jones said and I agree with him is
3 you can't override the intent that's expressed in the four
4 corners of a document, especially in light of the rules of
5 statutory construction. Under their interpretation of the
6 document it's a valid will. They have no choice but to
7 defend the estate, the will and the trust. If we've
8 called it the estate plan, fine, but that's -- that's
9 where we are required to go. We are to -- We are required
10 to uphold the intent of James Brown as expressed to
11 multiple people before and after the execution of the
12 will, the tape that he left.

13 He did just about the same kinds of things that Judge
14 Russell did in his case to make sure that there was no
15 frivolous lawsuits brought against his estate plan and he
16 had the no contest -- they didn't call it an in terrorem,
17 but they called it a no contest clause. Mr. Brown did the
18 same basic thing.

19 THE COURT: Mr. Bailey, if the court determined that
20 Tomi Rae Hynie Brown was, in fact, his wife and did not
21 find there was any undue influence and upheld the will and
22 trust, how would that affect the distribution? Won't that
23 diminish what goes into that trust?

24 MR. BAILEY: Yes, it would.

25 THE COURT: And if it found that James Brown, II was,

1 of deduction. Yet, under the terms of the settlement they
2 don't take are not subject to that liability and that's
3 where the liability comes from. It's shared by the
4 charitable trust.

5 So, Your Honor, I just don't see how the court can
6 conclude that this is a just and reasonable settlement for
7 that reason.

8 THE COURT: Do I have the authority or the right to
9 modify it to make it just and reasonable or do I have to
10 approve it or just not approve it?

11 MR. BYRD: I don't think, Your Honor. If you reach
12 the point -- and this really may go to what we lawyers
13 sometime talk as arm-twisting, but if you reach the
14 conclusion that you can't approve the settlement as just
15 and reasonable, then that may send the parties back to the
16 negotiating table to work out something that Your Honor
17 could find just and reasonable, but I don't see how in the
18 world that under these circumstances you can get past that
19 point. Thank you, Your Honor.

20 THE COURT: Mr. Byrd, what you're telling me is you
21 think that the controversy is genuine and that there needs
22 to be some adjustment as to the percentage going to the
23 the charitable trust.

24 MR. BYRD: I do, Your Honor.

25 THE COURT: And that's sort of what the offer of

1 compromise suggests, too. They suggest a different amount
2 going to the family members.

3 MR. BYRD: That's true, Your Honor.

4 THE COURT: Thank you. Anybody else? Anything in
5 response, Professor?

6 MR. MEDLIN: Briefly, Your Honor.

7 THE COURT: Briefly.

8 MR. MEDLIN: The Moran case simply proves our point
9 that the trustee can bind the beneficiaries, but, again,
10 it's an apposite because it involves a trustee who did
11 consent and the beneficiary tried to override. It doesn't
12 overturn section 3-1102. In response to your question
13 about 3-1102 and your authority to direct the trustees to
14 respond, Mr. Bailey's response was, well, there is a
15 private educational trust. The attorney general is not
16 trying to represent the grandchildren. He is just trying
17 to represent the charity. So, I don't see how how that's
18 responsive at all. 3-1102 says what it says. The Moran
19 case doesn't overturn it, and the fact that there is a
20 non-charitable trust involved doesn't overturn it. In
21 fact, there is is an impact on the charitable trust in
22 that it lengthens the grandchildren's trust. They do
23 better under the settlement than they do without the
24 settlement, but the attorney general on behalf of the
25 charitable has approved that impact.

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Adele J. Pope and Robert L. Buchanan, Jr.,)
as Personal Representatives of the Estate)
of James Brown, Deceased, and as)
Trustees of the James Brown 2000)
Irrevocable Trust,)
and)
James Brown Enterprises, Inc.)
Plaintiffs,)

CIA #: 2008-CP-02-322

COMPLAINT
(Jury Trial Demanded)

vs.)

David G. Cannon, Albert H. Dallas,)
Judge Alford A. Bradley, Joel A. Katz,)
Greenberg Traurig, LLP and)
Enterprise Bank of South Carolina,)
Defendants.)

COPY
ORIGINAL FILED
FEB 05 2008
AIKEN COUNTY
CLERK OF COURT

RESIDENCE OF THE PARTIES

1. Adele J. Pope and Robert L. Buchanan, Jr. are Personal Representatives of the Estate of James Brown, Deceased, and Trustees of the James Brown 2000 Irrevocable Trust appointed by Orders of this Court dated March 7, 2007 and November 20, 2007.

2. Prior to his death on December 25, 2006, James Brown was a resident of Aiken County. His Estate is currently being administered in Aiken County where the beneficiaries and relative interests of the beneficiaries of his Estate and Trust and the ownership of James Brown Enterprises, Inc. are in the process of determination.

3. James Brown Enterprises, Inc. is a South Carolina corporation.

4. David G. Cannon is a resident of Barnwell County, South Carolina, and is, on information and belief, the sole owner of DGC Associates.

Exhibit G

**Calculation of Potential Costs, Fees and Expenses Deductible from the Proceeds of
Greenberg Traurig's Proposed Pullman Group Bond Refinancing Transaction**

Proposed Royal Bank of Scotland Loan	\$25,200,000.00
Less Pullman Group Bond Repayment	<u>20,100,000.00</u>
Net Proceeds	\$ 5,100,000.00

Less Potential Fees and Commissions as Per Exhibits C and D

(a) Pullman Group [Exhibit D, pp. 1-2, ¶ 2]	\$ 637,500.00
(b) Greenberg Traurig [Exhibit C, p. 2, ¶ 6]	265,000.00
(c) David G. Cannon [Exhibit D, p. 2, ¶ 7]	1,459,640.00
[Exhibit D, p. 2, ¶ 4]	255,000.00
(d) Albert H. Dallas [Exhibit D, p. 2, ¶ 6]	549,019.00
[Exhibit D, p. 2, ¶ 9]	255,000.00
(e) Intrigue Music [Exhibit D, p. 2, ¶ 3]	165,000.00
(f) Charles Bobbitt [Exhibit D, p. 2, ¶ 5]	<u>200,000.00</u>
 Total Potential Fees and Commissions	 <u>\$4,386,159.00</u>
 Net Proceeds After Fees and Commissions	 <u>\$ 713,841.00</u>

Less Estimated Expenses and Reserve Fund Based on 1999 Pullman
Group Bond Transaction [Exhibit F]

(a) Legal Fees	\$ 250,000.00
(b) Copyright & Due Diligence	48,000.00
(c) Audit & Valuation	20,000.00
(d) Retainer for Royalty Audit	5,000.00
(e) Retainer for Trust Audit	2,500.00
(f) Rating Agency Fees	150,000.00
(g) Trustee's Commitment Fee & Legal	13,500.00
(h) Trustee's Counsel	8,000.00
(i) Investors Counsel	40,000.00
(j) Bowne Printing	10,000.00
(k) Soundscan	5,000.00
(l) KPMG	10,000.00
(m) Expenses, including overnight, messenger, fax, travel, phone	10,000.00
(n) Reserve Fund	1,260,000.00
 Total Fees, Expenses and Reserve Fund	 <u>\$1,832,000.00</u>

Negative Net Proceeds After Fees, Commissions and Expenses *minus \$1,118,159.00*

EXHIBIT G

MAY 22 2009

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

PROBATE COURT

IN THE MATTER OF ESTATE OF JAMES BROWN
CASE NUMBER 2007-ES-02-0056

ACCOUNTING
(Supplemental and Amended)

[] FINAL
[X] INTERIM #1A

The undersigned Personal Representatives submit this Supplemental and Amended Accounting, which covers the period from November 20, 2007, through May 20, 2009.¹

The attached documentation sets forth a complete accounting for the period specified, which is summarized as follows:

	Income	Principal	Total*
Beginning Balance			\$100,000,000.00
Plus: Receipts			\$ 6,196,325.60
Subtotal			\$106,196,325.60
Less: Disbursements			\$ (6,333,310.58)
Ending Balance			\$ 99,863,015.02

*If a consolidated accounting, use this column.

The Personal Representatives declare that this account has been examined and that its contents represent a correct statement of all receipts and disbursements and are true to the best knowledge and belief of the Personal Representatives.

FORM #360PC (7/87)
SCPC 3-704, 3-1003

PAGE 1 OF 2

¹ This amends and supplements the accounting that covers November 20, 2007 through June 20, 2008.

Filed: 5-20-2009
Sue H. Roe
Jud 274 Probate
By: [Signature]

[Signature]

MAY 22 2009

Signature: Robert L. Buchanan, Jr.

Name: Robert L. Buchanan, Jr.
Address: 212 Newberry Street NW
P.O. Box 463
Aiken, South Carolina 29802-0463
Telephone(O): 803-649-2586

Signature: Adele J. Pope

Name: Adele J. Pope
Address: 1218 Taylor Street
PO Drawer 7125
Columbia, SC 29202-7125
Telephone(O): 803-779-1870

SWORN to before me this
20th day of May, 2009

James D. Eiler (L.S.)
Notary Public for South Carolina
My Commission Expires: 12/10/15

FORM #360PC (7/87)
SCPC 3-704, 3-1003

PAGE 2 OF 2

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OR
Robert L. Buchanan, Jr.

MAY-28-2008

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
2/26/08	Hogan & Hartson, LLP - portion. legal fees, Pullman Litigation (NY) (Ck #1110)		\$ 15,000.00
2/26/08	Buchanan (Office) - partial payment for costs, etc., as per Court Order dtd 1/8/08 (Ck #1111)		\$ 15,000.00
2/26/08	Pope (Office) - partial payment for costs, etc., as per Court Order dtd 1/8/08 (Ck #1112)		\$ 15,000.00
2/26/08	Sizemore, Inc. (Ck #1115) Inv. #148797, 2/24/08 \$ 2,142.01 portion, Inv. #140759, 9/30/07 \$ 857.99		\$ 3,000.00
2/27/08	SCE & G - all 8 accounts (DRAFT)		\$ 1,286.37
2/28/08	D. Washington - w/e 2/29/08 (Ck #1107)		\$ 494.81
2/29/08	US Treasury - Form 940, JBE, Inc., 2007 (Ck #1118)		\$ 351.83
3/02/08	Interest Deposit	\$ 9.97	
3/7/08	D. Washington - w/e 3/08/08 (Ck #1113)		\$ 494.81
3/10/08	Miscellaneous Deposit, SFB #5768	\$ 33.61	
3/11/08	Cheri L. Young, RPR - Transcript for 12/21/07 Hearing (Ck #1116)		\$ 124.35
3/11/08	Augusta Turf & Specialty Vehicles - golf cart battery, labor, parts and servicing (Ck #1117)		\$ 360.95
3/11/08	Deposit - House Insurance Refund (\$598.17) Entertainment Partners (\$20.13)	\$ 618.30	
3/11/08	Deposit - AFTRA, Grammys 50 th Anniv. Special Residual	\$ 812.56	
3/11/08	Deposit - Warner Music Group (\$144.89) BMI (\$58.08)	\$ 202.97	
3/11/08	Cpt. Pounds - Petty Cash (Ck #1121)		\$ 100.00
3/14/08	D. Washington - w/e 3/15/08 (Ck #1114)		\$ 494.81
3/19/08	Deposit - SoundExchange (New JBE, Inc.)	\$ 2,690.41	
3/19/08	Law Office of James D. Bailey, PC (Ck #1145)		\$ 500.00

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MAY 22 2008

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
4/28/08	Sizemore, Inc. (Ck #1155) portion, Inv. #150287, 3/23/08		\$ 1,000.00
4/28/08	Law Office of James D. Bailey, PC - portion, 2/12/08 bill (Ck #1156)		\$ 3,000.00
4/29/08	Lisa Hicklin - Transcript for 3/07/08 hearing (Ck #1149)		\$ 682.50
4/30/08	Laboratory Corporation of America - DNA Testing of James Brown II (Ck #1157)		\$ 300.00
4/30/08	Interest Deposit	\$ 2.45	
5/1/08	Deposit - Enterprise Bank Acct #151000007 (James Brown Irrev. Trust)	\$ 4,140.74	
5/1/08	Deposit - SoundExchange (New JBE, Inc.)	\$ 22,605.31	
5/1/08	D. Washington - w/e 5/2/08 (Ck #1150)		\$ 494.81
5/1/08	Hatcher, Stubbs, Land, Hollis & Rothschild - retainer fee (Ck #1158)		\$ 1,000.00
5/5/08	SCE & G - all 8 accounts (DRAFT)		\$ 619.08
5/6/08	Beech Island Water District (Ck #1166) Accts. #01-3940-00: \$11.92; #01-3942-00: \$11.00		\$ 22.92
5/6/08	Sound Archives - storage of masters, invoice range LP20856 (Ck #1167)		\$ 490.90
5/6/08	US Treasury - Penalty and Interest for JBE, Inc., Form 940, period 12/31/07 (Ck #1168)		\$ 37.91
5/6/08	AT & T (Ck #1175)		\$ 98.51
5/6/08	Law Office of James D. Bailey, PC - (Ck #1176) remainder, 2/12/08 bill \$ 729.45 portion, 3/13/08 bill \$ 2,270.55		\$ 3,000.00
5/6/08	Buchanan (Office) - partial payment for costs, etc., as per Court Order (Ck #1177)		\$ 3,000.00
5/6/08	Pope (Office) - partial payment for costs, etc., as per Court Order (Ck #1178)		\$ 3,000.00
5/9/08	D. Washington - w/e 5/9/08 (Ck #1163)		\$ 494.81

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May 22 2008

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
5/30/08	D. Washington - extra mileage (Ck #1188)		\$ 100.00
5/30/08	Interest Deposit	\$ 3.14	
6/3/08	SCE & G - DRAFT Acct #4-2100-7444-7824 \$24.86 Acct #4-2100-7444-7045 \$67.15 Acct #4-2100-7444-6733 \$ 8.41		\$ 100.42
6/4/08	D. Washington - petty cash (Ck #1192)		\$ 250.00
6/4/08	Buchanan (Office) - partial payment for costs, etc., as per Court Order (Ck #1193)		\$ 3,000.00
6/4/08	Pope (Office) - partial payment for costs, etc., as per Court Order (Ck #1194)		\$ 3,000.00
6/4/08	Law Office of James D. Bailey, PC - portion, 3/13/08 bill (Ck #1195)		\$ 5,000.00
6/4/08	Hogan & Hartson, LLP - portion, legal fees, Pullman Litigation (NY) (Ck #1196)		\$ 3,000.00
6/6/08	D. Washington - w/e 6/7/08 (Ck #1186)		\$ 494.81
6/6/08	D. Washington - extra mileage (Ck #1189)		\$ 100.00
6/9/08	AT & T (Ck #1197)		\$ 113.08
6/9/08	Beech Island Water District (Ck #1198) Accts. #01-3940-00: \$11.00; #01-3942-00: \$11.00		\$ 22.00
6/13/08	Deposit - Entertainment Partners, payable to James Brown ck #68022373 dtd 1/4/08 \$71.79 ck #68418020 dtd 2/29/08 \$44.33	\$ 116.12	
6/13/08	Sound Archives - storage of masters, invoice range LZ88382 (Ck #1199)		\$ 490.90
6/13/08	D. Washington - Extra Mileage (Ck #1190)		\$ 100.00
6/13/08	D. Washington - w/e 6/14/08 (Ck #1187)		\$ 494.81
6/15/08	Royalties received, 1 st Half, 2008	\$ 1,460,887.94	

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MAY 22 2008

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
8/8/08	D. Washington - extra mileage (Ck #1218)		\$ 100.00
8/8/08	D. Washington - w/e 8/09/08 (Ck #1216) (E/T)		\$ 494.81
8/15/08	D. Washington - w/e 8/16/08 (Ck #1235) (E/T)		\$ 494.81
8/15/08	D. Washington - extra mileage (Ck #1236)		\$ 100.00
8/22/08	D. Washington - w/e 8/23/08 (Ck #1237) (E/T)		\$ 494.81
8/22/08	D. Washington - extra mileage (Ck #1238)		\$ 100.00
8/25/08	Deposit - proceeds from Christie's sale (notation: total of \$468,326.12, remainder available 9/10/08)	\$ 5,000.00	
8/25/08	Deposit - proceeds from Christie's sale	\$ 463,326.12	
8/29/08	D. Washington - w/e 8/30/08 (Ck #1239) (E/T)		\$ 494.81
8/29/08	D. Washington - extra mileage (Ck #1240)		\$ 100.00
9/01/08	Interest Deposit	\$ 9.86	
9/2/08	Law Office of James D. Bailey, PC - partial payment, fees and costs (Ck #1241)		\$ 50,000.00
9/2/08	Tressa T. H. Hayes, Esquire - Shipley & Hayes, partial payment appellate matters (Ck #1242)		\$ 10,000.00
9/2/08	Law Office of Sherry T. Barnes - payment towards fees/costs, Georgia Farm Bureau suit (Ck #1243)		\$ 5,000.00
9/2/08	Pope (Office) - partial payment for costs, etc., SA pyt. as per Court Order (Ck #1244)		\$ 100,000.00
9/2/08	Buchanan (Office) - partial payment for costs, etc., SA pyt. as per Court Order (Ck #1245)		\$ 100,000.00
9/2/08	Hogan & Hartson, LLP - portion, legal fees, Pullman Litigation. As per Court Order (NY) (Ck #1246)		\$ 50,000.00
9/2/08	Beech Island Water District (Ck #1255) Accts. #01-3940-00 and #01-3942-00 (T)		\$ 33.56

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MAY 22 2008

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
9/2/08	D. Washington - full sat. admin. claim against Estate (Ck #1268)		\$ 1,392.79
9/3/08	Deposit - Christie's sale	\$ 4,137.00	
9/5/08	D. Washington - w/e 9/6/08 (Ck #1247) (E/T)		\$ 494.81
9/5/08	D. Washington - extra mileage (Ck #1248)		\$ 100.00
9/8/08	SCE & G - DRAFT		\$ 234.18
9/9/08	SC Court of Appeals, Cannon Appeal (Ck #1256)		\$ 100.00
9/12/08	D. Washington - w/e 9/13/08 (Ck #1249) (E/T)		\$ 494.81
9/12/08	D. Washington - extra mileage (Ck #1250)		\$ 100.00
9/12/08	Cruise Security (Ck #1257) - (E/T)		\$ 276.50
9/12/08	Aiken County Circuit Court-filing fee (Ck #1258)		\$ 100.00
9/15/08	D. Washington - petty cash (Ck #1259)		\$ 100.00
9/15/08	D. Washington - petty cash (Ck #1260)		\$ 100.00
9/16/08	Aiken County - Motion filing (Ck #1262)		\$ 25.00
9/17/08	Premium Financing Specialists, Inc. - insurance on house (Ck #1266)		\$ 7,791.86
9/17/08	Security Federal Bank - DEBIT, payoff on loan		\$ 15,122.50
9/19/08	AT & T (Ck #1233)		\$ 108.06
9/19/08	D. Washington - w/e 9/20/08 (Ck #1251) (E/T)		\$ 494.81
9/19/08	D. Washington - extra mileage (Ck #1252)		\$ 100.00
9/22/08	Deposit - soundexchange, Estate of James Brown	\$ 4,674.15	
9/22/08	Deposit - 20 th Century Fox Film, JBE Inc., FSO James C Brown, The New JBE, Inc.	\$ 2.92	
9/22/08	Deposit - secure storage-refund for overpayment	\$ 858.56	

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MAY 22 2008

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
9/23/08	US Treasury - payment towards Estate Taxes (Ck #1234)		\$ 10,000.00
9/26/08	D. Washington - w/e 9/27/08 (Ck #1253) (E/T)		\$ 494.81
9/26/08	D. Washington - extra mileage (Ck #1254)		\$ 100.00
9/29/08	Lisa Hicklin, portion of 8/19/08 transcript (Ck #1277)		\$ 40.00
9/30/08	Interest Deposit	\$ 15.36	
10/3/08	D. Washington - w/e 10/4/08 (Ck #1271) (E/T)		\$ 494.81
10/3/08	D. Washington - mileage (Ck #1274)		\$ 100.00
10/3/08	Adjustment for 0.81 cents not paid to Mr. Washington in Ck 1253	\$ 0.81	
10/6/08	Lisa H. Hicklin, remainder for 8/19/08 transcript (Ck #1267)		\$ 77.00
10/6/08	Zumwalt, Almon & Hayes, PLLC - invoice #10689 (Grammy Museum) (Ck #1269)		\$ 557.50
10/7/08	Lisa H. Hicklin, 9/28/08 transcript (Ck #1270)		\$ 331.50
10/8/08	SCE&G - DRAFT		\$ 287.90
10/10/08	D. Washington - w/e 10/11/08 (Ck #1272) (E/T)		\$ 494.81
10/10/08	D. Washington - mileage (Ck #1275)		\$ 100.00
10/10/08	Aiken County Clerk of Court - Motion to Dismiss, Farr Claim (Ck #1279)		\$ 25.00
10/10/08	Sizemore Security - portion, Inv. #150630 (Ck #1280)		\$ 1,000.00
10/10/08	Vann Appraisal Services - appraisal for estate taxes (Ck #1281)		\$ 3,700.00
10/10/08	Law Office of James D. Bailey, PC - partial payment, fees and costs (Ck #1282)		\$ 15,000.00
10/15/08	Difference in 10/15/08. BMI \$65.40 and Ent. Ptnrs. \$30.68	\$ 96.08	

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Nov 22 2008

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
10/16/08	Ellis Lawhome & Sims, PA - invoice #94077 (Ck #1283)		\$ 625.00
10/16/08	The Law Office of Leon Friedman - Brown v. AC&R v. Polygram, CA #3:92-1195-0 (Ck #1284)		\$ 350.00
10/16/08	Pope (Office) - partial payment for costs, etc., SA pyt., as per Court Order (Ck #1285)		\$ 15,000.00
10/16/08	Buchanan (Office) - partial payment for costs, etc., SA pyt. as per Court Order (Ck #1286)		\$ 15,000.00
10/16/08	Beech Island Water District (Ck #1287) Accts. #01-3940-00: \$13.20; #01-3942-00: \$13.20 (T)		\$ 26.40
10/16/08	Shipley & Hayes, PC, remainder payment through 10/9/08 appellate matters (Ck #1288)		\$ 7,580.00
10/17/08	D. Washington - w/e 10/18/08 (Ck #1273) (E/T)		\$ 494.81
10/17/08	D. Washington - mileage (Ck #1276)		\$ 100.00
10/18/08	Deposit - Soundexchange (Est. of James Brown)	\$ 3,738.26	
10/08	Deposit - Christie's	\$ 60,922.25	
10/21/08	adjustment on ck #1269		\$ 20.00
10/23/08	D. Washington - w/e 10/25/08 (Ck #1291) (E/T)		\$ 494.81
10/23/08	D. Washington - mileage (Ck #1292)		\$ 100.00
10/23/08	Deposit - (Christie's)	\$ 20,192.50	
10/27/08	AT & T (Ck #1295)		\$ 122.88
10/27/08	Sellers DuRant (Ck #1296)		\$ 9,191.00
	10/15 bill, Estate \$8,324.00		
	10/15 bill, "I Feel Good" Trust \$ 394.00		
	10/15 bill, James Brown \$ 473.00 (E)		
10/28/08	Secure storage - invoice range NB73227 (Ck #1297)		\$ 484.84

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10-31-08

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
10/28/08	LOAJP, PC - reimbursement, copies/costs for Cannon and Dallas/Bradley Appeals, 10/14-10/27 (Ck #1299)		\$ 951.24
10/28/08	Beech Island Water District (Ck #1300) Accts. #01-3940-00: \$13.20; #01-3942-00: \$13.20 (T)		\$ 26.40
10/28/08	Aiken County Clerk of Court - motion fee (Ck #1305)		\$ 25.00
10/28/08	Law Office of James D. Bailey, PC - partial payment, fees and costs (Ck #1306)		\$ 5,000.00
10/29/08	US Treasury - Estate of James Brown, Form 941, 3/31/08, EIN 20-7238700 (Ck #1307)		\$ 87.24
10/29/08	SCE&G - DRAFT		\$ 307.93
10/29/08	Hogan & Hartson, LLP - portion, legal fees, NY portion of \$25-\$31 Million claim, Pullman Litigation, as per Court Order (NY); Inv. # 1726701, 1735964, 1743933 (Ck #1298)		\$ 20,079.29
10/30/08	D. Washington - w/e 11/01/08 (Ck #1303) (E/T)		\$ 494.81
10/30/08	D. Washington - mileage (Ck #1304)		\$ 100.00
10/31/08	SC Department of Revenue - Estate of James Brown, WH-1605, 3 rd Qtr (Ck #1309)		\$ 264.55
10/31/08	US Treasury - Estate of James Brown, Form 941, 3 rd Qtr (Ck #1308)		\$ 1,699.62
11/2/08	Interest Deposit	\$ 13.12	
11/5/08	D. Washington - w/e 11/08/08 (Ck #1301) (E/T)		\$ 494.81
11/5/08	D. Washington - mileage (Ck #1302)		\$ 100.00
11/5/08	Beech Island Water District (Ck #1310) Accts. #01-3940-00: \$11.00; #01-3942-00: \$11.00 (T)		\$ 22.00
11/5/08	LOAJP, PC - costs only, 11/4 bill (Ck# 1311)		\$ 894.94
11/6/08	AT & T (Ck #1312)		\$ 116.47
11/6/08	Popo (Office) - partial payment for costs, etc., as per Court Order (Ck #1313)		\$ 10,000.00

Nov 22, 2009

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
11/6/08	Buchanan (Office) - partial payment for costs, etc., SA pyl., as per Court Order (Ck #1314)		\$ 10,000.00
11/6/08	Deposit - Entertainment Partners	\$ 31.20	
11/13/08	SC Dept. Of Revenue - David Washington (Ck #1321)		\$ 500.00
11/13/08	Deposit - Christie's	\$ 500.00	
11/14/08	D. Washington - w/e 11/15/08 (Ck #1315) (E/T)		\$ 494.81
11/14/08	D. Washington - mileage (Ck #1316)		\$ 100.00
11/15/08	Zumwalt, Almon & Hayes, PLLC - invoice #10739 (Ck #1322)		\$ 481.25
11/15/08	Aiken County Treasurer - 2008 Property Taxes (Ck #1323)		\$ 6,945.15
11/21/08	D. Washington - w/e 11/22/08 (Ck #1317) (E/T)		\$ 494.81
11/21/08	D. Washington - mileage (Ck #1318)		\$ 100.00
11/21/08	Secure storage - storage, invoice-range MW56468 (Ck #1325)		\$ 969.68
11/25/08	Law Office of James D. Bailey, PC - partial payment, fees and costs (Ck #1338)		\$ 5,000.00
11/25/08	US Treasury - Notice No., CP171 dtd 11/10/08; Taxpayer ID 57-0929939 (Ck #1337)		\$ 82.71
11/25/08	Secure storage- storage, masters, Inv. NJ75254 dtd. 10/31/08 (Ck #1333)		\$ 484.84
11/25/08	Sellars DuRant - Inv. #2008-1987 accounting services (Ck #1332)		\$ 440.00
11/28/08	D. Washington - w/e 11/29/08 (Ck #1319) (E/T)		\$ 494.81
11/28/08	D. Washington - mileage (Ck #1320)		\$ 100.00
11/30/08	Interest Deposit	\$ 5.96	
12/3/08	SCE&G - DRAFT		\$ 279.89
12/5/08	D. Washington - mileage (Ck #1327)		\$ 100.00

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DMB
7/2/09

MAY 22 2009

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
1/15/09	LOAJP, PC - costs only, 1/15/09 bill (Ck# 1373)		\$ 3,095.43
1/16/09	D. Washington - w/e 1/17/09 (Ck #1361)		\$ 494.81
1/16/09	D. Washington - extra mileage (Ck #1364)		\$ 100.00
1/18/09	Deposit - Entertainment Partners, James Brown	\$ 20.00	
1/20/09	D. Washington - petty cash reimbursement (Ck #1367)		\$ 100.00
1/23/09	D. Washington - w/e 1/24/09 (Ck #1362)		\$ 494.81
1/23/09	D. Washington - extra mileage (Ck #1365)		\$ 100.00
1/27/09	DRAFT - Check Order		\$ 101.25
1/28/09	Lisa Hicklin, transcript for 10/23/08 hearing (Ck #1169)		\$ 523.25
1/29/09	Kane Office Technologies - briefs, Dallas and Bradley Appeal (Ck #1374)		\$ 172.16
1/30/09	D. Washington - w/e 1/31/09 (Ck #1363)		\$ 494.81
1/30/09	D. Washington - extra mileage (Ck #1366)		\$ 100.00
1/30/09	SCB & G - DRAFT		\$ 72.73
2/1/09	Interest Deposit	\$ 3.50	
2/2/09	US Treasury - Fourth Quarter, 2008, Form 941 (Ck #1289)		\$ 1,699.62
2/2/09	SC Department of Revenue - 4 th Quarter, 2008, Form 1606 UH (Ck #1377)		\$ 264.55
2/6/09	Deposit - AFTRA (James Brown)	\$ 36.70	
2/6/09	D. Washington - w/e 2/6/09 (Ck #1170)		\$ 494.81
2/6/09	D. Washington - mileage (Ck #1171)		\$ 100.00
2/9/09	SC Court of Appeals - Bauknight Appeal Notice \$100; Motion \$25 (Ck #1378)		\$ 125.00
2/9/09	Pope (Office) - partial payment for costs, etc., as per Court Order (Ck #1376)		\$ 5,000.00

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MAY 22 2009

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
2/9/09	Buchanan (Office) - partial payment for costs, etc., as per Court Order (Ck #1379)		\$ 5,000.00
2/9/09	Law Office of James D. Bailey, PC - partial payment, fees and costs (Ck #1380)		\$ 5,000.00
2/9/09	Shipley & Hayes, PC - partial payment, appellate matters (Ck #1381)		\$ 5,000.00
2/12/09	D. Washington - w/e 2/12/09 (Ck #1172)		\$ 494.81
2/12/09	D. Washington - mileage (Ck #1173)		\$ 100.00
2/12/09	D. Washington - petty cash (Ck #1174)		\$ 100.00
2/12/09	Chargeback of \$36.70; fee of \$5.00		\$ 41.70
2/20/09	D. Washington - w/e 2/20/09 (Ck #1382)		\$ 494.81
2/20/09	D. Washington - mileage (Ck #1383)		\$ 100.00
2/23/09	Secure Storage - storage, masters, Inv. PG31370 dtd. 1/31/09 (Ck #1386)		\$ 484.84
2/25/09	Lisa Hicklin - transcript of 10/23/08 hearing, for appeal (Ck #1393)		\$ 40.00
2/25/09	Daphne H. Helms - transcript of 1/30/09 hearing (Ck #1390)		\$ 667.75
2/25/09	Ben Franklin plumbing - repairs/ maintenance, Beech Island House (Check #1387)		\$ 300.00
2/27/09	D. Washington - w/e 2/27/09 (Ck #1384)		\$ 494.81
2/27/09	D. Washington - mileage (Ck #1385)		\$ 100.00
2/27/09	Aiken County Clerk (Ck #1398)		\$ 25.00
2/27/09	Ben Franklin - plumbing repairs/maintenance, Beech Island Home (Ck #1394)		\$ 1,863.50
2/27/09	Aiken County Probate Court (Ck #1397)		\$ 33.75
2/27/09	D. Washington - miscellaneous expense, plumbing (Ck #1403)		\$ 100.00
3/01/09	Interest Deposit	\$	2.05

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M. J. 28 2009

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
3/17/09	James D. Bailey - copies of Herring file (Ck #1433)		\$ 105.42
3/18/09	AT&T - (Ck #1425)		\$ 109.74
3/18/09	Secure storage- Invoice Range PR23539 (Ck #1426)		\$ 484.84
3/18/09	Zumwalt, Almon & Hayes, PLLC - Invoice #10863 (Ck #1427)		\$ 577.50
3/20/09	D. Washington - w/e 3/21/09 (Ck #1421)		\$ 494.81
3/20/09	David Washington - mileage (Ck #1422)		\$ 100.00
3/24/09	Aiken County Clerk of Court - file summons and complaint (Ck #1409)		\$ 150.00
3/24/09	Aiken County Clerk of Court - file summons and complaint (Ck #1408)		\$ 150.00
3/27/09	D. Washington - w/e 3/28/09 (Ck #1423)		\$ 494.81
3/27/09	David Washington - mileage (Ck #1424)		\$ 100.00
3/30/09	SCE&G - DRAFT		\$ 88.75
3/30/09	Deposit - Entertainment Partners (James Brown)	\$ 32.96	
3/31/09	Interest Deposit	\$ 1.26	
4/3/09	D. Washington - w/e 4/4/09 (Ck #1410)		\$ 494.81
4/3/09	David Washington - mileage (Ck #1411)		\$ 100.00
4/6/09	Deposit - Entertainment Partners (James Brown)	\$ 4.22	
4/8/09	Harley Ruff, Esquire- deposit for services (Ck #1428)		\$ 1,500.00
4/8/09	Buchanan (Office) - partial payment for costs, etc., as per Court Order (Ck #1429)		\$ 2,000.00
4/8/09	Pope (Office) - partial payment for costs, etc., as per Court Order (Ck #1430)		\$ 2,000.00
4/9/09	D. Washington - w/e 4/11/09 (Ck #1457)		\$ 494.81
4/9/09	David Washington - mileage (Ck #1458)		\$ 100.00

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HENRY McMASTER
ATTORNEY GENERAL

May 18, 2010

Mr. Russell Bauknight
Bauknight, Pietras & Stormer, P.A.
1517 Gervais Street
Post Office Box 1330
Columbia, South Carolina 29202

Re: James Brown Litigation

Dear Mr. Bauknight:

I have met with Ken Wingate and Everett Kendall of Sweeney Wingate & Barrow of Columbia, South Carolina, regarding the action to be filed against Adele J. Pope and Robert L. Buchanan, Jr., in the Richland County Probate Court in connection with the James Brown Estate and Trust. I am writing to confirm our understanding that you will be retaining Mr. Wingate and Mr. Kendall to file this action on behalf of the beneficiaries of the James Brown Estate and Trust, including the charitable interests. As you know, by law this office has a duty to protect charitable trusts. Also, per your conversation with Senior Assistant Attorney General C.H. Jones, Jr., in connection with the charitable trust portion of this matter, you have agreed to use the terms and conditions as outlined in the attached "Agreement for Legal Services" which references and incorporates the Attorney General's standard Litigation Retention Agreement. Of course, this office has no authority over your agreement with Messrs. Wingate and Kendall concerning the other portions of this matter.

Yours very truly,

Henry McMaster

Enclosures

HMCM/mfj