

UNITED STATES TAX COURT
WASHINGTON, DC 20217

PA

ESTATE OF MICHAEL J. JACKSON,)
DECEASED, JOHN G. BRANCA, CO-)
EXECUTOR AND JOHN MCCLAIN, CO-)
EXECUTOR,)
)
)
Petitioner(s),)
)
v.) Docket No. 17152-13.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)
)
)

ORDER

This case was on the Court's November 17, 2014 trial calendar for Los Angeles, California, but was continued and is now set for a special session next week. There are three pending pretrial motions from petitioners. The first, to shift the burden of proof, will be held under advisement until after trial. The remaining two, to exclude the expert-witness report and testimony of one of respondent's experts or to strike parts of it, were sufficiently meritorious to warrant a response, which the Court has now received.

The motions seek to bar the admission of the testimony and expert report of Weston Anson as to the value of Michael Jackson's name and likeness, and the value of New Horizon Trust III (whose major asset is publishing rights to many of Jackson's songs).

In their motion *in limine* to exclude Anson's report and testimony, petitioners argue that it is based on flawed assumptions -- so flawed as to render it irrelevant and unreliable under FRE 702. Part of this is because Anson included in his estimation of value what petitioners consider to be possible values for extremely speculative and unlikely ventures -- for example, a Michael Jackson theme park. This objection is based on quite literally a difference of opinion about

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what a hypothetical buyer would include in his estimation of the value of Jackson's name and likeness. It is not something the Court will reach a conclusion on before trial.

A second objection is to what petitioners call Anson's "consideration of the special characteristics of the Estate." Petitioners see some of Anson's valuation as an effort to incorporate into the value of Jackson's name and likeness, and his catalog of publishing rights, the value of other assets that Jackson owned at the time of his death -- his trademarks, copyrights in his music, his own right to receive royalties as a performer. They argue that such mashups of different rights in computing the value of one item in the Estate violate 26 C.F.R. § 20.2031-1(b)'s requirement that every item of property includable in the decedent's gross estate be valued separately.

This is an especially interesting legal question. In a world without transaction costs, it wouldn't matter if publishing rights, performance royalties, trademarks, etc were valued separately because a rational buyer would value them as if they could be put together in the most profitable way even if they were bought separately. But it is entirely possible that trial will show that these separate rights would be more valuable if used together. If so, and if the Estate owned these separate rights, it might well be the case that they are worth more together than they would be if summed separately.

This is a legal question that the Court has not ruled on. But it means that it would be relevant to ask if such synergies had an effect on the properties' values and, if so, what that effect would be. Petitioners argue this uncertainty makes Anson's testimony and report "patently unreliable." The Court disagrees -- it may turn out to be unreliable, but at most latently unreliable.

Petitioners' second motion is to strike portions of one of Anson's reports. The portions that they seek to strike are those that include in his estimate of the value of New Horizon Trust III's assets some rights whose value the parties have already agreed on. In petitioners' view, Anson is giving an opinion inconsistent with those settlements, specifically the settlements of the value of Jackson's master recordings and joint venture income.

One possibility is that this is simply a mistake -- one that will be sure to be highlighted in cross-examination and lead to a recalculation by Anson or the reallocation to the value of another asset of the Estate or its simple subtraction from Anson's bottom line. But another is that Anson is including in his estimate of

value the value to the Estate of owning separate rights whose aggregate value is increased by being owned in common. *See, e.g., Ahmanson Found. v. United States*, 674 F.2d 761, 770 (9th Cir. 1981). This is plausible at this point and Anson's testimony would be helpful to the Court if this legal argument turns out to be persuasive.

It is therefore

ORDERED that petitioners' January 21, 2017 motion *in limine* to exclude the expert report and proposed testimony of Weston Anson is denied. It is also

ORDERED that petitioners' January 21, 2017 motion to strike is denied.

(Signed) Mark V. Holmes
Judge

Dated: Washington, D.C.
February 3, 2017