

12-2022

Pop & Perjury: the IRS Valuation War with the Estate of Michael Jackson

Beckett Cantley

Geoffrey Dietrich

Follow this and additional works at: https://scholars.unh.edu/unh_lr



Part of the [Civil Procedure Commons](#), [Entertainment, Arts, and Sports Law Commons](#), [Estates and Trusts Commons](#), and the [Taxation Commons](#)

Repository Citation

Beckett Cantley & Geoffrey Dietrich, Pop & Perjury: The IRS Valuation War with the Estate of Michael Jackson, 21 U.N.H. L. Rev. 93 (2022).

This Article is brought to you for free and open access by the University of New Hampshire – Franklin Pierce School of Law at University of New Hampshire Scholars' Repository. It has been accepted for inclusion in The University of New Hampshire Law Review by an authorized editor of University of New Hampshire Scholars' Repository. For more information, please contact sue.zago@law.unh.edu.



Beckett Cantley & Geoffrey Dietrich

Pop & Perjury: the IRS Valuation War with the Estate of Michael Jackson

21 U.N.H. L. Rev. 93 (2022)

ABSTRACT. When Michael Jackson died unexpectedly in Los Angeles, California, on June 25, 2009, his career and earnings were nearing an all-time low. Plagued by past sexual abuse allegations, scandals, and questionable health, Michael Jackson's personal finances were purported to be in complete disarray. However, following his unexpected death, the value of his estate, which was reported to be near to nothing, swelled as the world remembered his beloved contributions to the world and began to purchase accordingly. Sales of Michael Jackson's music began to soar high. The estate's value soared even higher as it signed licensing agreements and released new feature films and theatrical material of Michael Jackson.

Not surprisingly, the Internal Revenue Service ("IRS") and the estate disagreed over the amount of estate tax owed. The IRS also remembered how beloved Michael Jackson had been and decided to take issue with the valuation used on the estate's tax return. There were three primary points of valuation disagreement, all of which involve intellectual property rights: (1) the estate's image and likeness rights; (2) the estate's share of the Sony/ATV music catalog; and (3) the estate's interest in Mijac Music, a music publishing catalog owning copyrights to many compositions written by Michael Jackson and other artists. With neither side willing to budge on its valuations, the dispute was to be settled in the U.S. Tax Court of Judge Mark Holmes.

One would think that with the outcome of such a high-profile case resting almost exclusively on the testimony of valuation experts, the IRS would take great care with any experts selected to testify since any error on the part of an expert would have a damning effect on the entire case. However, one would be disappointed. The IRS's sole expert witness perjured himself in court testimony. In its opinion, the court reasoned that the expert's credibility "suffered greatly at trial" and his lack of credibility "affected our factfinding throughout [the case]."

The article discusses: (1) the rise and fall of Michael Jackson during his life; (2) the details of the valuation battle with the IRS that took place after his death over various intellectual property; and (3) Judge Holmes' reasoning for his conclusion, including the perjury committed by the IRS' expert.

AUTHORS. Prof. Beckett Cantley (University of California, Berkeley, B.A. 1989; Southwestern University School of Law, J.D. cum laude 1995; and University of Florida, College of Law, LL.M. in Taxation, 1997), teaches International Taxation at Northeastern University and is a shareholder in

Cantley Dietrich, P.C. Prof. Cantley would like to thank Melissa Cantley and his law clerk, Reed Green, for their contributions to this article.

Geoffrey Dietrich, Esq. (United States Military Academy at West Point, B.S. 2000; Brigham Young University Law School, J.D. 2008) is a shareholder in Cantley Dietrich, P.C.

I.	INTRODUCTION	95
II.	EARLY LIFE	96
III.	THE RISE OF MICHAEL JACKSON	97
	<i>A. Off the Wall</i>	<i>97</i>
	<i>B. Thriller</i>	<i>98</i>
	<i>C. Victory</i>	<i>99</i>
	<i>D. Bad</i>	<i>99</i>
	<i>E. Dangerous</i>	<i>100</i>
IV.	THE FALL	101
V.	THE COLLAPSE	102
	<i>A. Bashir Documentary and Child Molestation Case</i>	<i>102</i>
	<i>B. Financial Troubles</i>	<i>104</i>
VI.	JACKSON'S DEATH	105
	<i>A. Final Months</i>	<i>105</i>
	<i>B. Executors Take Control</i>	<i>107</i>
VII.	DISPUTE	108
	<i>A. The Audit</i>	<i>108</i>
	<i>B. Assets at Issue</i>	<i>109</i>
	<i>C. IRS's Valuations</i>	<i>112</i>
VIII.	THE CASE	113
	<i>A. Background</i>	<i>113</i>
	<i>B. Decision</i>	<i>114</i>
IX.	CONCLUSION	115

I. INTRODUCTION

Estate taxes are both a revenue stream for the IRS and can be quite an expensive burden on parties tasked with paying the taxes. Originally used to tax earnings that were left for future generations, the modern-day estate tax works to tax any death-induced property transfer over a certain maximum threshold (\$5.45 million for the year 2016, as adjusted by Congress through to 2021).¹ Preparing an estate tax return can be a complicated process. Unsurprisingly, this complicated process commonly results in a differing of opinion and asset valuation between the IRS and the estate, which in turn often leads to a potential tax court dispute.

Michael Jackson died on June 25, 2009, in Los Angeles, California.² At the time of his death, thanks to various sexual abuse allegations haunting him in his later years, Michael Jackson was far from the peak of his popularity, and his personal finances seemed to be in disarray.³ However, despite this purported turmoil, the Michael Jackson estate would grow far beyond the wildest of expectations in the years following Michael's death.⁴ The growth, spurred on by ventures such as a film, amusement parks, and merchandising, both increased the estate's value and the IRS's interest in auditing the estate.⁵

Following the filing of the estate's tax return, the IRS opened an audit investigation into the Michael Jackson estate.⁶ Due to the magnitude and complexity of the estate, the audit took many years and many likely taxpayer dollars to complete.⁷ At the conclusion of the audit, the estate and the IRS were at an

¹ *Federal Estate Taxes*, Economic Research Service, U.S. Department of Agriculture (Apr. 15, 2022), <https://www.ers.usda.gov/topics/farm-economy/federal-tax-issues/federal-estate-taxes/> [https://perma.cc/F4FU-EG4H].

² *"King of Pop" Michael Jackson Dies at Age 50*, HISTORY (Nov. 13, 2009), <https://www.history.com/this-day-in-history/king-of-pop-michael-jackson-dies-at-age-50> [https://perma.cc/9LSL-9JU5].

³ *See* Billboard Staff, *Michael Jackson Died Deeply in Debt*, BILLBOARD (June 26, 2009), <https://www.billboard.com/articles/news/268276/michael-jackson-died-deeply-in-debt> [https://perma.cc/MUE3-LH55].

⁴ *See* Bernadette Giacomazzo, *Here's A Look at How the Legendary Michael Jackson's Estate Has Grown Over the Years*, AFROTECH (Aug. 22, 2021), <https://afrotech.com/michael-jackson-net-worth-estate-updates> [https://perma.cc/D543-SQJF].

⁵ *See* Steven Chung, *Tax Court Substantially Reduces Michael Jackson's Tax Bill Because The IRS Inflated The Value Of His Assets*, Above the Law (May 12, 2021, 2:48 PM), <https://abovethelaw.com/2021/05/tax-court-substantially-reduces-michael-jacksons-tax-bill-because-the-irs-inflated-the-value-of-his-assets/?rf=1> [https://perma.cc/ZXU3-3FRS].

⁶ *See* Giacomazzo, *supra* note 4.

⁷ *See id.*

impasse due to their hefty differences in asset valuation.⁸ The three primary points of valuation disagreement were the worth of the estate's image and likeness rights, its New Horizon Trust II, and its New Horizon Trust III.⁹ With neither side willing to budge on its valuations, the dispute was to be settled in the U.S. Tax Court of Judge Mark Holmes.¹⁰

The overall purpose of this article is to give a general overview of *Estate of Jackson v. Commissioner of Internal Revenue*. Specifically, Part II of this article discusses the early life of Michael Jackson and his path to becoming a childhood star. Part III of this article recounts the rise of Michael Jackson through his solo career. Part IV and V of this article discuss the fall of Michael Jackson caused by his extensive child molestation charges and legal troubles. Part VI of this article discusses Michael's death and the actions taken by his estate's executors. Part VII of this article provides insight into the assets at issue in the case. Lastly, Part VIII of this article looks at the *Estate of Jackson* case itself and Judge Holmes' reasoning for his conclusion.

II. EARLY LIFE

The celebrity life for Michael Jackson began extremely early when, at the tender age of six, he joined his family in forming the Jackson Brothers band (soon to be the Jackson 5).¹¹ The band consisted of Michael and his brothers Tito, Jackie, Jermaine, and Marlon.¹² After initially joining the band as a backup musician, Michael soon began sharing lead vocalist duties with Jermaine.¹³ With the band's popularity steadily growing, the family decided to move from their home in Gary, Indiana, to Los Angeles, California.¹⁴ This relocation helped the group grow its fan base even

⁸ See Chung, *supra* note 5.

⁹ *Id.*

¹⁰ See Jeffery Leon, *IRS Overvalued Michael Jackson Estate by \$370M*, *Tax Court Rules* (1), BLOOMBERG TAX (May 3, 2021, 6:30 PM), <https://news.bloombergtax.com/daily-tax-report/irs-overvalued-michael-jackson-estate-by-370m-tax-court-rules> [<https://perma.cc/KZ9L-BZ3M>].

¹¹ Stephen Thomas Erlewine, *Michael Jackson*, ALLMUSIC, <https://www.allmusic.com/artist/michael-jackson-mn0000467203/biography> [<https://perma.cc/S7G4-PD4P>] (last visited Aug. 19, 2022).

¹² *The Early Life of The King of Pop*, THROUGH EDUCATION (Dec. 9, 2020), <https://www.througheducation.com/the-early-life-of-the-king-of-pop/> [<https://perma.cc/523V-N4NW>].

¹³ *Id.*

¹⁴ *Id.*

further by allowing them to appear regularly on live national television.¹⁵ In 1970, the band recorded its first Hot 100 single “I Want You Back.”¹⁶ Over the next ten years, the group recorded 16 top 40 singles and received three Grammy Nominations.¹⁷

Although the life of a child prodigy would seem like a dream to most, this was not the case for young Michael. He, along with some of his brothers, was often physically and mentally abused by their father, Joe Jackson.¹⁸ For instance, during Jackson 5 rehearsals, Joe would beat any band member that made a mistake.¹⁹ As the youngest, Michael would often receive the harshest of punishments from his father.²⁰ According to Michael, his childhood was “lonely and isolated,” and it is likely that these childhood abuses played a role in Michael’s future mental state.²¹

III. THE RISE OF MICHAEL JACKSON

A. *Off the Wall*

After spending eight years exclusively with the Jackson 5, Michael gradually ventured out on his own by recording his solo albums *Got to Be There*, *Ben*, *Music & Me*, and *Forever Michael*.²² While these albums were moderately successful, Michael’s true breakout came with the release of his solo album *Off the Wall*.²³ The album was the number one record in the USA for some time and contained four top

¹⁵ *See id.*

¹⁶ Marc Hirsh, *Jackson Had 13 No. 1 Hits — Here Are the Best*, TODAY (June 26, 2009, 9:55 AM), <https://www.today.com/popculture/jackson-had-13-no-1-hits-here-are-best-wbna31565506> [https://perma.cc/2NF3-7M2Y]; *I Want You Back by The Jackson 5*, SONGFACTS, <https://www.songfacts.com/facts/the-jackson-5/i-want-you-back> [https://perma.cc/BZW3-9ZBC], (last visited Sept. 27, 2022).

¹⁷ THROUGHEDUCATION, *supra* note 12.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *See id.*

²¹ *Id.*

²² *See* Barbie Bertisch, *The Story of Michael Jackson ‘Off the Wall’*, CLASSIC ALBUM SUNDAYS, <https://classicalbumsundays.com/album-of-the-month-michael-jackson-off-the-wall/> [https://perma.cc/B6DT-VL98] (last visited Aug. 19, 2022).

²³ *See id.*

10 charted songs.²⁴ *Off the Wall* won three American Music Awards honors and vaulted Michael Jackson to the peak of the music industry.²⁵

B. Thriller

Michael Jackson's follow-up project, *Thriller*, was released in 1982.²⁶ With the decline of disco-music popularity, Michael intended for the album to signal his move into the new musical directions of pop, rock, and funk.²⁷ Due to this new directional focus, it took Michael and his team eight months to create the album.²⁸ This extensive recording period allowed Michael to spend lengthy amounts of time on every song of the album, which in turn helped him ensure that every song on the album "was a killer."²⁹ The album was made up of seven singles such as "Billie Jean," "Beat It," "The Girl is Mine," and "Thriller."³⁰ Upon release, the album sold millions of copies per week.³¹ The album went on to be the best-selling album in the U.S. in both 1983 and 1984, and became the highest-selling U.S. album of all time.³² As the winner of a record-setting eight Grammy Awards, *Thriller* is still to this day one of the most popular albums of all time.³³

²⁴ Ken Simmons, *Michael Jackson's Classic 1979 'Off the Wall' Album*, LIVEABOUT (Mar. 18, 2017), <https://www.liveabout.com/michael-jacksons-off-the-wall-album-2851669> [https://perma.cc/LV3F-9LEZ].

²⁵ *Id.*

²⁶ See Alan Light, *'Thriller': How Michael Jackson and Quincy Jones Made the Bestselling Album of All Time*, ROLLING STONE (Oct. 30, 2009), <https://www.rollingstone.com/feature/thriller-how-michael-jackson-and-quincy-jones-made-the-bestselling-album-of-all-time-199391/> [https://perma.cc/KF9M-VNQU].

²⁷ *See id.*

²⁸ *See id.*

²⁹ See Roger Cormier, *21 Thrilling Facts About Michael Jackson's Thriller*, MENTAL FLOSS (Nov. 30, 2017), <https://www.mentalfloss.com/article/71786/21-thrilling-facts-about-michael-jacksons-thriller> [https://perma.cc/42LX-TJHB].

³⁰ *See* Light, *supra* note 26.

³¹ Jay Cocks, *Why He's a Thriller*, TIME (Monday, Mar. 19, 1984), <http://content.time.com/time/subscriber/article/0,33009,950053,00.html> [https://perma.cc/V3ZM-3VE9].

³² *Id.*; Rhian Daly, *Michael Jackson's 'Thriller' Is No Longer the Best-Selling Album of All Time in the US*, NME (Aug. 20, 2018), <https://www.nme.com/news/music/michael-jackson-thriller-best-selling-album-2368877> [https://perma.cc/8EMY-FP6G].

³³ Tim Mcphate, *Michael Jackson: 'Thriller' Reaches Billboard Chart Milestone*, GRAMMY (Aug. 11, 2017, 4:23 PM), <https://www.grammy.com/grammys/news/michael-jackson-thriller-reaches-billboard-chart-milestone> [https://perma.cc/NZD6-2QVA].

C. *Victory*

In 1976, following the decline in popularity of The Jackson 5, the group rebranded itself as the Jacksons.³⁴ Despite their various solo engagements, the Jacksons consisted of all six of the Jackson brothers, the second youngest of whom was Michael. Initially, the Jacksons were only somewhat popular, with the exception of the single, “Shake Your Body” a more popular hit.³⁵ However, the group’s popularity grew exponentially following Michael’s release of *Thriller* in 1982. Soon after the 1984 release of Michael’s iconic solo album, the Jacksons released an album titled *Victory*.³⁶ Although initially spurred on by the individual success of Michael, the album became the group’s biggest achievement of that time, selling nearly seven million copies and going double platinum.³⁷ Following the release of the album, the group undertook a North American tour in hopes of promoting *Victory*.³⁸ However, in reality, the tour was treated as more of a *Thriller* tour, with no songs from the *Victory* album ever actually performed during the tour.³⁹ The tour ended up being Michael’s last as a member of the Jacksons. Soon after the end of the tour, he quit the group to focus on his solo career.⁴⁰

D. *Bad*

Following the release of *Thriller*, Michael Jackson spent time in conflict with both his family and the media.⁴¹ This time and those conflicts caused Michael’s popularity to take a slight hit. He spent nearly all of 1985 out of the public limelight.⁴²

³⁴ *The Jackson 5/The Jacksons*, ENCYCLOPEDIA, <https://www.encyclopedia.com/education/news-wires-white-papers-and-books/jackson-5the-jacksons> [https://perma.cc/W2RF-KNB4] (last visited Aug. 20, 2022).

³⁵ *See id.*

³⁶ *See id.*

³⁷ Steve Lansdale, *Michael Jackson’s Victory Tour Glove to Sparkle in Spotlight at Heritage Auctions*, HERITAGE AUCTIONS, <https://blog.ha.com/michael-jacksons-victory-tour-glove-to-sparkle-in-spotlight-at-heritage-auctions/> [https://perma.cc/SR5S-EATD] (last visited Aug. 20, 2022).

³⁸ *See id.*

³⁹ *Id.*

⁴⁰ *See id.*

⁴¹ *See 20/20: Barbara Walters interviews Michael Jackson* (ABC television broadcast Sept. 12, 1997).

⁴² *See id.*

However, in 1987, Michael was back again with his seventh solo album, *Bad*.⁴³ The album debuted at number one in the country and stayed there for over a month and a half.⁴⁴ Although to most artists, *Bad* would have seemed like a resounding success, with hit songs "Man in the Mirror" and "Smooth Criminal," Michael Jackson felt the album seemed to be a flop since it underperformed compared to *Thriller*.⁴⁵ Despite this "lukewarm" reception, twenty-five million copies of *Bad* sold by 1991, making it the second most popular album of all time, second only to *Thriller*.⁴⁶ Michael promoted *Bad* with both a tour and a film. The film, *Moonwalker*, consisted of music videos for each of the songs on *Bad*.⁴⁷ The same year of the album's release, Michael embarked on a solo world tour.⁴⁸ It spanned four continents and was the highest-grossing concert tour ever for quite some time.⁴⁹

E. Dangerous

In 1991, after re-signing with Sony for a record-breaking \$65 million, Michael released his eighth solo album, *Dangerous*.⁵⁰ The album was completely different from anything Michael previously created. Many of the songs referenced well-known global problems and included new underground sounds and trends.⁵¹ Hits

⁴³ See Ed Christman, *How Michael Jackson's 'Bad' Became the First Album to Notch Five Billboard Hot 100 No. 1s*, BILLBOARD, <https://www.billboard.com/articles/columns/pop/7948954/michael-jackson-bad-hot-100-five-number-one-hits> [https://perma.cc/8EPS-KU2G] (last visited Aug. 20, 2022 12:05 PM).

⁴⁴ See *id.*

⁴⁵ See *id.*

⁴⁶ See Richard Stevenson, *A "Dangerous" Career Move*, TAMPA BAY TIMES (Oct. 14, 2005), <https://www.tampabay.com/archive/1991/11/10/a-dangerous-career-move/> [https://perma.cc/CUN7-E2KR].

⁴⁷ Dennis Hunt, *VIDEO REVIEW: 'Moonwalker': A Stroll Through a Super Ego*, LA TIMES, <https://www.latimes.com/archives/la-xpm-1989-01-10-ca-310-story.html>.

⁴⁸ *A Michael Jackson Timeline*, NPR (Jun. 26, 2009), <https://www.npr.org/templates/story/story.php?storyId=4702126> [https://perma.cc/6G5S-HGGC].

⁴⁹ See Koimoi.com Team, *When Michael Jackson Made History With \$125 Millions' Bad World Tour!*, KOIMOI.COM (Aug. 31, 2020), <https://www.koimoi.com/hollywood-news/when-michael-jackson-made-history-with-125-millions-bad-world-tour/> [https://perma.cc/J57L-T5U7].

⁵⁰ Billboard Staff, *Michael Jackson Died Deeply in Debt*, BILLBOARD (June 26, 2009), <https://www.billboard.com/articles/news/268276/michael-jackson-died-deeply-in-debt> [https://perma.cc/MUE3-LH55].

⁵¹ See Joe Vogel, *Michael Jackson's 'Dangerous' and the Reinvention of Pop*, POP MATTERS (Sept.

on the album included “Black or White,” “Will You Be There,” and “Who Is It.”⁵² The album debuted at number one.⁵³ Generally, the album was well-regarded. It received sold more than thirty million copies worldwide.⁵⁴ The tour to promote the album was also successful.

IV. THE FALL

Throughout Michael Jackson’s career, he was involved in many issues with friends and family. Unfortunately, the law was no different. Michael’s legal troubles first began in the mid-1990s when he reportedly settled a child molestation lawsuit for \$23 million.⁵⁵ The combination of the stress from the legal proceedings and the intense pain from a severe scalp burn after an accident on a Pepsi commercial set made Michael heavily reliant on painkillers.⁵⁶ Michael had to cancel the remainder of the *Dangerous* tour.⁵⁷ Soon after canceling the tour, Michael married Elvis Presley’s only child, his daughter, Lisa Marie Presley.⁵⁸ However, a little over a year later, the couple separated.⁵⁹ In 1995, with child abuse allegations still swirling around him, Michael was admitted to a hospital for a stress-induced panic attack.⁶⁰

Michael married a dermatology nurse named Debbie Rowe in 1997.⁶¹ Together they welcomed two children, a son, Prince Michael Jackson born in 1997, and a

27, 1991), <https://www.popmatters.com/michael-jackson-reinvention-of-pop-2495948728.html> [https://perma.cc/UC7T-P88A].

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Jackson Paid \$23 Million to 1993 Accuser*, TODAY (June 15, 2004, 2:58 PM), <https://www.today.com/popculture/jackson-paid-23-million-1993-accuser-wbna5217378> [https://perma.cc/R2AB-MB6S].

⁵⁶ Rachel Goldsmith, *Michael Jackson Suffered Panic Attacks*, EZINEARTICLES (Aug. 31, 2009), <https://ezinearticles.com/?Michael-Jackson-Suffered-Panic-Attacks&id=2849174>.

⁵⁷ *See id.*

⁵⁸ *See A Timeline of Michael Jackson's Life and Career, From the Jackson 5 to 'Leaving Neverland'*, SIOUX CITY JOURNAL (Sept 22, 2019), https://siouxcityjournal.com/entertainment/music/a-timeline-of-michael-jacksons-life-and-career-from-the-jackson-5-to-leaving-neverland/collection_3b769b93-2bef-5doa-a7f5-f7772e2df111.html#1 [https://perma.cc/9FNJ-KXV8].

⁵⁹ *Id.*

⁶⁰ *See* Goldsmith, *supra* note 56.

⁶¹ NPR, *supra* note 48.

daughter, Paris-Michael Katherine Jackson, born in 1998.⁶² Michael and Debbie Rowe divorced in 1999, with Michael maintaining custody of the two children.⁶³ Michael courted controversy once again with the birth of his second son and youngest child, Prince Michael Jackson II, whose mother is not listed on the boy's birth certificate⁶⁴ and still remains unknown. In 2002, Michael received intense scrutiny when he held his youngest child, affectionately known as Blanket, over a hotel balcony in Berlin.⁶⁵

V. THE COLLAPSE

A. *Bashir Documentary and Child Molestation Case*

Michael Jackson was followed and interviewed as part of a documentary, being produced by Martin Bashir, which aimed to show different aspects of his life.⁶⁶ The documentary began at his ranch, Neverland.⁶⁷ Throughout the documentary, Michael recounted traumatic events greatly affecting his childhood, such as the abuse from his father.⁶⁸ Much of the later portions of the documentary are littered with questions about whether Michael had undergone any operations to change his skin color, chin structure, or eyelids.⁶⁹ Michael denied them all.⁷⁰ Additionally, at various points in the documentary, Michael is asked about his close relationships

⁶² Sioux City Journal, *supra* note 58.

⁶³ Richard Gerda & Lee Hoffman, *Debbie Rowe: Why She Had Jackson's Children*, ABC NEWS (July 7, 2009, 12:59 PM), <https://abcnews.go.com/Primetime/MichaelJackson/story?id=8023028&page=1> [<https://perma.cc/JP6D-TTG8>].

⁶⁴ *See Prince II's Birth Certificate – No Mother Listed*, TMZ (June 30, 2009, 9:00 AM), <https://www.tMZ.com/2009/06/30/prince-iis-birth-certificate-michael-jackson-surrogate-debbie-rowe/> [<https://perma.cc/F8UP-NWWN>].

⁶⁵ Jennifer Vineyard, *Michael Jackson Calls Baby-Dangling Incident A 'Terrible Mistake'*, MTV (Nov. 20, 2002, 4:58 PM), <http://www.mtv.com/news/1458799/michael-jackson-calls-baby-dangling-incident-a-terrible-mistake/> [<https://perma.cc/4AVV-QQBX>].

⁶⁶ *See* Alessandra Stanley, *Television Review: A Neverland World of Michael Jackson*, NEW YORK TIMES (Feb. 6, 2002), <https://www.nytimes.com/2003/02/06/arts/television-review-a-neverland-world-of-michael-jackson.html> [<https://perma.cc/H9CU-28TS>].

⁶⁷ *Id.*

⁶⁸ *See* Martin Bashir, *Living with Michael Jackson*, VIMEO, <https://vimeo.com/699044993> (Original ITV broadcast Feb. 3, 2003).

⁶⁹ *Id.*

⁷⁰ *See id.*

with various young children.⁷¹ When answering, Michael denied any sexual motivation for spending time with young children but admitted that he had close relationships with many children.⁷² In response to what he considered to be an unfair portrayal in the Bashir documentary, Michael published a rebuttal video.⁷³ This video contained omitted footage that showed Michael in a more positive light and contained interviews with individuals who all gave positive reviews of Michael's character.⁷⁴

Soon after the documentary's airing, police in Santa Barbara County arrested Michael on seven counts of child molestation and two counts of intoxicating a minor.⁷⁵ Throughout the legal process, Michael continuously denied any wrongdoing.⁷⁶ At his arraignment, he pled not guilty to all charges and then danced on the roof of his car outside the courthouse.⁷⁷ His trial began on February 28, 2005, and the verdict was returned in June.⁷⁸ As expected, the trial was extremely stressful for Michael and did significant damage to his public image.⁷⁹ In the end, Michael was acquitted of all charges.⁸⁰ Following the verdict, Michael moved out of Neverland and stated he would never return.⁸¹

⁷¹ *Id.*

⁷² *Id.*

⁷³ Merope Mills, *Jackson Exacts Revenge on Bashir in Two-Hour TV Rebuttal*, THE GUARDIAN (Feb. 21, 2003, 7:01 PM), <https://www.npr.org/templates/story/story.php?storyId=4702126> [<https://perma.cc/2YXF-E7H4>].

⁷⁴ *See id.*

⁷⁵ Ben Sisario, *What We Know About Michael Jackson's History of Sexual Abuse*, NEW YORK TIMES (Jan. 31, 2019), <https://www.nytimes.com/2019/01/31/arts/music/michael-jackson-timeline-sexual-abuse-accusations.html> [<https://perma.cc/Z95H-2FJG>].

⁷⁶ *Id.*

⁷⁷ *Jackson Pleads Not Guilty, Then Gives Fans a Thrill*, CNN (Jan. 18, 2004, 1:02 PM), <https://www.cnn.com/2004/LAW/01/16/jackson.arraignment/> [<https://perma.cc/2BYG-C97H>].

⁷⁸ Sisario, *supra* note 75.

⁷⁹ *See id.*

⁸⁰ Stefan Kyriazis, *How Michael Jackson FLED from Neverland and Never Went Back*, THE EXPRESS (Aug. 31, 2020, 12:26 AM), <https://www.express.co.uk/entertainment/music/1329239/Michael-Jackson-Neverland-children-court-home-house-fans-death-innocent-Guilty-child-abuse> [<https://perma.cc/87V3-S4JA>].

⁸¹ *Id.*

B. Financial Troubles

Despite amassing around \$500 million in earnings through his musical achievements, as early as 1993 Michael Jackson was nearly \$30 million in debt.⁸² This debt came primarily from his lavish lifestyle, which included buying zoo animals, Neverland rides, luxury cars, antique furniture, and clothing shopping sprees.⁸³ For example, just the staff salaries of Neverland totaled over \$2.5 million per year.⁸⁴ Additionally, his later concert tours only seemed like resounding successes. The concerts were actually a large drain on his bank account. For instance, his 1997 *HISTORY* tour ended up costing the singer nearly \$12.⁸⁵ Though lavish spending and a fall in popularity contributed greatly to Michael's financial issues, the biggest cause of distress was Michael's inability to keep up with loan payments.⁸⁶ This inability to repay eventually caused his initial \$30 million debt to increase by nearly 300% over the following five years.⁸⁷ To avoid foreclosure on Neverland, Michael had to reach an agreement with his creditors in which an investment bought the loan on the property.⁸⁸ After losing Neverland to foreclosure, Michael was forced to sell off various personal items.⁸⁹ However, despite spending the majority of his last few years of life making payments as large as \$30 million, it is estimated that Michael was around \$450 million in debt when he passed away in 2009.⁹⁰

⁸² See Lucy Needham, *How Michael Jackson Blew \$500M Fortune on Cars, Houses and Zoo Animals and Died Broke*, THE MIRROR (June 25, 2022, 10:00 AM), <https://www.mirror.co.uk/3am/celebrity-news/how-michael-jackson-blew-500m-22509677> [https://perma.cc/4DCQ-434E]; Jeff Gotlieb, *Michael Jackson Trial: Pop Star Was 'Tapped Out,' Millions in Debt*, LOS ANGELES TIMES (Aug. 12, 2013, 12AM), <https://www.latimes.com/local/lanow/la-xpm-2013-aug-12-la-me-ln-michael-jackson-debt-20130812-story.html#:~:text=As%20early%20as%201993%2C%20Jackson,to%20%24500%20million%2C%20Ackerman%20testified> [https://perma.cc/C26U-RXHT].

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *See id.*

⁸⁸ Hector Becerra, *Jackson Avoids Losing Neverland Ranch*, LOS ANGELES TIMES (May 12, 2008, 12:00 AM), <https://www.latimes.com/la-me-michael-jackson-neverland-colony-12-may-08-story.html> [https://perma.cc/W9VF-K4EZ].

⁸⁹ See Ben Sisario, *Shuttering Neverland: Michael Jackson's Effects Go to Auction*, NEW YORK TIMES (Apr. 13, 2009), <https://www.nytimes.com/2009/04/14/arts/music/14jack.html> [https://perma.cc/YL5X-SYGZ].

⁹⁰ Needham, *supra* note 82.

VI. JACKSON'S DEATH

A. *Final Months*

In the late 2000s, Michael Jackson and his team announced plans for a series of comeback tours.⁹¹ These tours, while primarily meant to alleviate some of the superstar's debt, were advertised as an opportunity for fans across the globe to experience a Michael Jackson show one final time.⁹² The This Is It tour was going to be Michael's first world tour since his *HIStory* tour in 1997. Initially, the tour was announced as a ten concert residency in London's O2 Centre; but after rabid fan response, forty extra dates were added spanning from the summer of 2009 to the fall of 2010.⁹³ Fan support was so robust that nearly one million tickets were sold within the first four hours of tickets sales, and the entire fifty concert residency sold out within five hours of its general sale to the public.⁹⁴ Not only did the tour announcement bring in large amounts of revenues through ticket sales, but the ensuing frenzy also caused Michael's album sales to nearly quadruple.⁹⁵ In total, for the first ten shows alone, it was expected that Michael was going to profit around \$30 million⁹⁶

In preparation for the concert series, Michael and the crew moved to Los Angeles for dress rehearsals.⁹⁷ While there, on June 25, 2009, roughly three weeks before the This Is It tour was scheduled to begin, Michael Jackson died of cardiac arrest.⁹⁸ Autopsies revealed that the cardiac issue stemmed from an overdose of

⁹¹ See *Michael Jackson Could Play World Tour After London Dates*, NME (Mar. 6, 2009), <https://www.nme.com/news/music/michael-jackson-338-1319988> [<https://perma.cc/7U2J-83LA>].

⁹² See Daniel Kreps, *Michael Jackson's "This Is It!" Tour Balloons to 50-Show Run Stretching Into 2010*, ROLLING STONE (Mar. 12, 2009), <https://www.rollingstone.com/music/music-news/michael-jacksons-this-is-it-tour-balloons-to-50-show-run-stretching-into-2010-80233/> [<https://perma.cc/8JVP-DNSR>].

⁹³ *Id.*

⁹⁴ *750,000 Tickets For Jackson Concerts Sell In 4 Hours*, CNN, <https://www.cnn.com/2009/SHOWBIZ/Music/03/13/michael.jackson.concerts.tickets/index.html> [<https://perma.cc/3RRX-66U8>] (last visited Sep. 19, 2022).

⁹⁵ *Id.*

⁹⁶ *Michael Jackson's 'This Is It' Tour Would Have Gone Global, Court Told*, BILLBOARD (July 17, 2013), <https://www.billboard.com/articles/news/2347771/michael-jacksons-this-is-it-tour-would-have-gone-global-court-told> [<https://perma.cc/U5MS-NCCA>].

⁹⁷ Gil Kaufman, *Michael Jackson's Final Days: A Look Back One Year Later*, MTV, (June 18, 2010, 3:13 PM), <https://www.mtv.com/news/4kaslq/michael-jacksons-final-days-a-look-back-one-year-later> [<https://perma.cc/HB6A-MGK2>].

⁹⁸ HISTORY, *supra* note 2.

Propofol (a powerful anesthetic).⁹⁹ Not long after Michael's death, authorities in Los Angeles opened a homicide investigation into his personal doctor, Dr. Conrad Murray.¹⁰⁰ The investigation uncovered that Dr. Murray had, in fact, administered a lethal dose of Propofol to Michael Jackson to help the singer fall asleep.¹⁰¹ Following this discovery, police charged Dr. Murray with involuntary manslaughter.¹⁰² Although Dr. Murray maintained his innocence throughout the trial, he was found guilty of all charges and sentenced to four years in prison.¹⁰³

Following the death of Michael, the promoters of the This Is It tour had to cancel the tour. This cancellation was extremely problematic. The promotion company faced nearly \$500 million in liabilities (primarily from tickets already sold), plus an unavoidable 18-month contracted residency agreement with the O2 Centre.¹⁰⁴ Assumably, to help soften the financial blow, the promotion company and Columbia Pictures released a documentary titled Michael Jackson's This Is It. The movie, created from never-before-seen rehearsal footage from the This Is It tour preparations, broke multiple film and box office records upon its release.¹⁰⁵ Worldwide, the film netted over \$250 million, making it the most profitable documentary of all time.¹⁰⁶

⁹⁹ *Id.*

¹⁰⁰ Gina Sunseri, Vic Walter, & Brian Ross, *Michael Jackson's Doctor Under Investigation on Possible 'Manslaughter' Charges*, ABC NEWS (July 22, 2009), <https://abcnews.go.com/Blotter/MichaelJackson/story?id=8146206&page=1> [<https://perma.cc/ZAA5-2MGT>].

¹⁰¹ Kelly Wynne, *How Did Michael Jackson Die? Everything You Need to Know About the Drug That Killed the King of Pop*, NEWSWEEK (Mar. 4, 2019, 7:00 PM), <https://www.newsweek.com/how-did-michael-jackson-die-everything-you-need-know-about-drug-killed-king-1349463> [<https://perma.cc/A3T3-UF9J>].

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ Adam Sherwin, *O2 Arena Counts Costs as Curtain Closes on the Greatest Show of All Time*, THE TIMES (June 26, 2009, 3:36 AM), <https://www.thetimes.co.uk/article/o2-arena-counts-cost-as-curtain-closes-on-the-greatest-show-of-all-fhfn8vnmgr3> [<https://perma.cc/LW2X-3HVX>].

¹⁰⁵ *Judge Oks Jackson Performance Film Deal*, TODAY (Aug. 10, 2009, 12:27 PM), <https://www.today.com/popculture/judge-oks-jackson-performance-film-deal-wbna32360110> [<https://perma.cc/T2WG-LUFN>].

¹⁰⁶ *Michael Jackson's This Is It (2009)*, THE NUMBERS, <https://www.the-numbers.com/movie/Michael-Jacksons-This-Is-It#tab=summary> [<https://perma.cc/ULG2-MGG3>] (last visited Sep. 19, 2022).

B. Executors Take Control

Upon Michael Jackson's sudden death, there was much confusion regarding whether a last will and testament existed and who would control the estate. Initially, Michael's mother, Katherine, was given estate administrator power.¹⁰⁷ It was eventually discovered that Michael had a valid will naming John Branca and John McClain as executors.¹⁰⁸ Branca and McClain were close friends and business advisors to Michael.¹⁰⁹ The will, created in 2002, left 40% of his assets to his children, 40% of his assets to his mother, and the remaining 20% to various children's charities.¹¹⁰ At the time of his death, Michael's estate was worth around \$236 million, but this amount was complicated by the large amounts of Michael's debt.¹¹¹ Of all the assets Michael owned, by far the most valuable was his 50% stake in the Sony/ATV music publishing catalog.¹¹² The catalog, which contains various Beatles and Michael Jackson hits, was the estate's most valuable asset at the time of Michael's death.¹¹³

As executors, Branca and McClain made multiple successful business decisions which both preserved and expanded the Jackson estate. One such profitable posthumous decision was the decision to partner with Canadian entertainment company Cirque du Soleil for the creation of a series of Michael Jackson-themed

¹⁰⁷ *Jackson Estate Executors Named*, CHICAGO TRIBUNE (July 07, 2009, 12:00 AM), <https://www.chicagotribune.com/news/ct-xpm-2009-07-07-0907060566-story.html> [https://perma.cc/YG5N-K7J3].

¹⁰⁸ *Michael Jackson's Will*, NEW YORK TIMES, <https://www.nytimes.com/interactive/projects/documents/michael-jacksons-will> [https://perma.cc/XV3K-9XQZ] (last visited Sep. 19, 2022).

¹⁰⁹ *Id.*

¹¹⁰ Jane Clark, *4 Estate-Planning Lessons From Michael Jackson*, KIPLINGER (Sep. 28, 2011), <https://www.kiplinger.com/article/retirement/t021-c000-s001-4-estate-planning-lessons-from-michael-jackson.html#:~:text=Write%20a%20will.&text=Had%20Jackson%20been%20similarly%20remiss,%2C%20and%2020%25%20to%20charity> [https://perma.cc/BM75-SJWR].

¹¹¹ *Michael Jackson Net Worth: MJ Was Highest Paid Dead Celebrity in 2018, Estate Made \$2B*, WEALTH ADVISOR (June 30, 2020), <https://www.thewealthadvisor.com/article/michael-jackson-net-worth-mj-was-highest-paid-dead-celebrity-2018-estate-made-2b> [https://perma.cc/5B2D-24BS].

¹¹² Elizabeth Blair, *Sony Buys Michael Jackson's Stake in Lucrative Music Catalog*, NAT'L PUB. RADIO (Mar. 15, 2016, 9:59 PM), <https://www.npr.org/sections/thetwo-way/2016/03/15/470537451/sony-buys-michael-jacksons-stake-in-lucrative-music-catalog> [https://perma.cc/ET4R-WCRV].

¹¹³ *Id.*

shows.¹¹⁴ The first of these shows, Michael Jackson: The Immortal World Tour, began in 2011 and ran for a total of three years.¹¹⁵ Overall, the tour visited a total of 141 cities and amassed nearly \$380 million in revenues.¹¹⁶ Following the conclusion of The Immortal World Tour, the next in the series of Michael Jackson-themed Cirque du Soleil shows was Michael Jackson: One. One began in the summer of 2013 and was a permanent residency show at the Mandalay Bay in Las Vegas, Nevada.¹¹⁷ Also part of the \$4 billion in revenues earned since his death are two posthumous albums the estate released, *Michael* and *Xscape*.¹¹⁸ Additionally, the estate executors decided to sell the estate's most valuable asset, the Sony/ATV music catalog, worth an estimated \$100 million at Michael's death, sold in 2016 for \$750 million.¹¹⁹

VII. DISPUTE

A. *The Audit*

As is the case with some estates, an estate tax return became due for the Michael Jackson estate following his death. Estate taxes are taxes on the right to transfer property from the deceased to the beneficiaries.¹²⁰ When calculating the taxable amount, the fair market value of the assets is used, not the basis.¹²¹ According to treasury regulations, fair market value is the price the property would be worth when changing hands between a willing buyer and a willing seller.¹²² When

¹¹⁴ *Michael Jackson: The Immortal World Tour*, DBPEDIA, https://dbpedia.org/page/Michael_Jackson:_The_Immortal_World_Tour [https://perma.cc/3B2C-DYGE] (last visited Sep. 19, 2022).

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Cirque du Soleil and the Estate of Michael Jackson Present MICHAEL JACKSON ONE*, CIRQUE DU SOLEIL (July 29, 2013), <https://www.cirquedusoleil.com/press/news/2013/mj-one-june29> [https://perma.cc/CB9X-VMQA].

¹¹⁸ Nicholas Hautman, *Every Project Michael Jackson's Estate Has Released Since His Death*, US NEWS (June 25, 2020), <https://www.usmagazine.com/entertainment/pictures/every-project-michael-jacksons-estate-released-after-his-death/> [https://perma.cc/WUV9-NS4N].

¹¹⁹ Sophie Norris, *Sony Buys Out Michael Jackson's ATV Music Publishing for \$750m*, THE GUARDIAN (Mar. 15, 2020, 3:47 PM), <https://www.theguardian.com/business/2016/mar/15/sony-michael-jackson-atv-music-publishing-750m> [https://perma.cc/B33A-DBME].

¹²⁰ Estate Tax, INTERNAL REVENUE SERV., <https://www.irs.gov/businesses/small-businesses-self-employed/estate-tax> [https://perma.cc/KA6Q-VZ56] (last visited Sep. 19, 2022).

¹²¹ *Id.*

¹²² Treas. Reg. § 20.2031-1(b) (as amended in 1986).

calculating the final value of an estate, the gross estate is the total of all owned assets. This amount is reduced by deductions (such as mortgages or debts) to calculate the net estate amount.¹²³ Typically, most estates do not require an estate tax return filing because returns are only required when the value of the estate meets a certain threshold.¹²⁴ For 2009, the year of Michael's death, the threshold was \$3.5 million.¹²⁵

Since the Michael Jackson estate was clearly over the \$3.5 million threshold, the estate filed an estate tax return.¹²⁶ In 2009, the estate tax rate was forty-five percent.¹²⁷ As a result, the estate was very careful when preparing the return. The estate's return would have listed assets Michael owned at the time of his death and the value of each of those assets. These assets included not only typical personal assets like cars, homes, and bank accounts, but also endorsement deals, music catalogs, and image/likeness rights.¹²⁸ Of all the assets valued by the estate, the three the IRS took the most issue with were Michael's image and likeness rights, his New Horizon Trust II, and his New Horizon Trust III.

B. Assets at Issue

To aid in the valuing of the image and likeness rights, Michael's estate employed a large accounting firm, Moss Adams.¹²⁹ The firm used the income approach to valuation.¹³⁰ Also known as the income capitalization approach, it works by converting expected benefits such as cash flows and reversions into a particular value.¹³¹ Although the approach is most often used to evaluate income-producing properties, it was likely used in this situation because Michael Jackson's image and

¹²³ INTERNAL REVENUE SERV., *supra* note 120.

¹²⁴ *See* 26 U.S.C. § 2010 (2017).

¹²⁵ INTERNAL REVENUE SERV., *supra* note 120.

¹²⁶ Scott Weingust & Aaron M. Stumpf, *Michael Jackson's Estate Moonwalks Past the IRS in Tax Court Battle*, WEALTH PLANNING (June 1, 2021), <https://www.wealthmanagement.com/estate-planning/michael-jackson-s-estate-moonwalks-past-irs-tax-court-battle> [https://perma.cc/F79U-JVEB].

¹²⁷ *Federal Estate and Gift Tax Rates, Exemptions, and Exclusions, 1916–2014*, TAX FOUND. (Feb. 4, 2014), <https://taxfoundation.org/federal-estate-and-gift-tax-rates-exemptions-and-exclusions-1916-2014/> [https://perma.cc/3Z7P-8REM].

¹²⁸ *Id.*

¹²⁹ Estate of Jackson v. Comm'r, T.C. Memo. 2021-48, at 49, 121 T.C.M. (CCH) 1320 (2021).

¹³⁰ *Id.*

¹³¹ *Income Approach to Value (Income Capitalization Approach)*, READY RATIOS, https://www.readyratios.com/reference/appraisal/income_approach_to_value.html [https://perma.cc/2G66-44MK] (last visited Sep. 19, 2022).

likeness were thought of as an asset that would almost certainly produce future income.¹³² When valuing the image and likeness rights, the firm exclusively viewed the rights as amounts that could be earned from licensing/merchandising deals and did not take into consideration cash flows resulting from the use of Michael's copyrighted music.¹³³ Throughout the process of valuing the image and likeness rights, the firm relied heavily on outside factors such as the Davie-Brown index and the net amount that Michael Jackson made from his image and likeness in the years just prior to his death.¹³⁴ The index, often cited as an authority on public reputation perception, showed Michael Jackson as an extremely recognizable celebrity, but not one that was trustworthy.¹³⁵ Trustworthiness of a celebrity is thought to have a direct relation to licensing/brand deals.¹³⁶ Michael made a total of \$0 in years 2006, 2007, and 2008 from his image and likeness rights.¹³⁷ Again, this lack of income was likely due in part to the lack of trust the public had for Michael, likely because of the molestation allegations which had troubled him throughout his career. In the end, based on their calculations, and with the outside factors in mind, Moss Adams valued Michael's image and likeness rights at a grand total of \$2,105 on his estate tax return.¹³⁸

Another continuous asset valuation came from Michael Jackson's New Horizon Trust II, located in Delaware, which held the estate's share of the Sony/ATV music catalog.¹³⁹ When valuing the trust, the estate relied primarily on the income method.¹⁴⁰ Using this method, the estate first valued Sony as a whole and then valued Michael Jackson's interest in the company through the catalog.¹⁴¹ Then, after finally determining that the Sony/ATV catalog was worth around \$508 million in total, this amount was further reduced by the lack of marketability of Michael's interest stemming from his lack of catalog control.¹⁴² With this discount in mind,

¹³² *Id.*

¹³³ Estate of Jackson v. Comm'r, T.C. Memo. 2021-48, at 100-01, 121 T.C.M. (CCH) 1320 (2021).

¹³⁴ *Id.* at 101.

¹³⁵ *Id.* at 101-02.

¹³⁶ *See id.* at 101.

¹³⁷ *Id.*

¹³⁸ *Id.* at 102.

¹³⁹ *Id.* at 150.

¹⁴⁰ *Id.* at 50.

¹⁴¹ *Id.* at 54-55.

¹⁴² *Id.* at 176-77.

the estate calculated Michael's interest in the catalog was worth \$165 million.¹⁴³ In order to provide a true valuation of New Horizon Trust II, the estate felt Michael's interest must be further reduced by the number of net liabilities relating to the trust, such as debts and other liabilities encumbering the asset.¹⁴⁴ Therefore, after deducting the nearly \$320 million in liabilities, the estate calculated the trust's total net value as negative \$140 million.¹⁴⁵ According to the estate, the asset was valueless at the time of Michael's death, and therefore, the estate valued the trust at \$0 on its estate tax return.¹⁴⁶

The next most significant asset appraisal was the Michael Jackson estate's valuation of its New Horizon Trust III. The trust held Michael's interest in Mijac Music, a music publishing catalog owning copyrights to many compositions Michael Jackson wrote, as well as compositions written by other artists.¹⁴⁷ Of all assets belonging to the estate, this trust was undoubtedly the most difficult to value since it derived its income from different groups of songs which produce income from various different types of sources.¹⁴⁸ For example, the different song groups included: songs composed and performed by Michael Jackson, songs composed by Michael but performed by someone else, and major/minor works composed by other artists.¹⁴⁹ To help in the valuation of the trust, the Jackson estate again used the accounting firm Moss Adams.¹⁵⁰ The firm, in their valuation of the New Horizon Trust III, decided to use a Discounted Cash Flow ("DCF") analysis as their method of valuation.¹⁵¹ A DCF analysis is a valuation method often used to estimate the value of an asset based on its expected future cash flows.¹⁵² These future cash flow expectations typically come from projections or previously recorded data.¹⁵³ Thus, because much of the method relies on projections, it is quite possible for the estimated future cash flows to be grossly inaccurate. Regardless of accuracy, once

¹⁴³ *Id.* at 179.

¹⁴⁴ *Id.* at 180.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ Chung, *supra* note 5.

¹⁴⁸ *Id.*

¹⁴⁹ Estate of Jackson v. Comm'r, T.C. Memo. 2021-48, at 197-98, 121 T.C.M. (CCH) 1320 (2021).

¹⁵⁰ *Id.* at 251.

¹⁵¹ *Id.* at 198-99.

¹⁵² Jason Fernando, *Discounted Cash Flow (DCF)*, INVESTOPEDIA (Aug. 10, 2022), <https://www.investopedia.com/terms/d/DCF.asp> [<https://perma.cc/2EDL-KAFS>].

¹⁵³ *Id.*

the future cash flows are estimated, the method then requires that these future cash flows be discounted to the present value of the asset using a discount rate, which is usually the weighted average cost of capital.¹⁵⁴ After applying the DCF method to the extensive list of groups and sources that make up the New Horizon Trust III, Moss Adams calculated the value of the trust at around \$2.2 million.¹⁵⁵

C. IRS's Valuations

Overall, the Michael Jackson estate valued itself at only \$7 million.¹⁵⁶ Needless to say, the IRS did not agree. Thus, following the filing of the estate tax return, the IRS charged the estate with a tax deficiency in the amount of \$702 million.¹⁵⁷ The majority of this tax discrepancy resulted from differing opinions regarding: (1) the value of Michael Jackson's image and likeness rights, which the estate valued at \$2,105 and the IRS valued at \$434 million; (2) the New Horizon Trust II, which the estate valued at \$0 and the IRS valued at \$469 million; and (3) the New Horizon Trust III, which the estate valued at \$2.2 million and the IRS valued the trust at \$58 million.¹⁵⁸

When valuing the image and likeness rights, the IRS used the income approach, as the Michael Jackson estate did, but used vastly different numbers for both the discount rate and projected future revenue streams.¹⁵⁹ Additionally, when valuing the New Horizon Trust II, the IRS used both the income and market methods, instead of the income method the estate had used.¹⁶⁰ Lastly, while both parties used a DCF analysis when analyzing the New Horizon Trust III, each party disagreed on the impact of post-death interest on the trust and its music catalog.¹⁶¹

¹⁵⁴ *Id.*

¹⁵⁵ Estate of Jackson v. Comm'r, T.C. Memo. 2021-48, at 131, 121 T.C.M. (CCH) 1320 (2021).

¹⁵⁶ Anousha Sakoui, *Michael Jackson's Estate Wins Court Battle with the IRS*, LOS ANGELES TIMES (May 3, 2021, 8:49 PM), <https://www.latimes.com/entertainment-arts/business/story/2021-05-03/michael-jackson-estate-taxes-irs-lawsuit> [<https://perma.cc/387j-EBG6>].

¹⁵⁷ Estate of Jackson v. Comm'r, T.C. Memo. 2021-48, at 51, 121 T.C.M. (CCH) 1320 (2021).

¹⁵⁸ *Id.* at 50–52.

¹⁵⁹ *Id.* at 57–58.

¹⁶⁰ *Id.* at 58.

¹⁶¹ *Id.* at 198–99.

VIII. THE CASE

A. Background

Clearly, the vast valuation differences between these three assets were irreconcilable. With the IRS demanding \$500 million in unpaid taxes and \$200 million in penalties,¹⁶² it was always likely that this dispute would be settled through litigation. This is exactly what happened. The case, *Estate of Jackson v. Commissioner of Internal Revenue*, began in 2013 and concluded in May 2021.¹⁶³ Much of the case revolved around the testimony of experts called by each of the parties to help the court in understanding the correct valuation of each of the estate's assets.¹⁶⁴ In this battle of the experts, the Jackson estate relied on multiple experts from various accounting firms.¹⁶⁵ The IRS relied on only one expert, Weston Anson.¹⁶⁶ In tax cases such as this, the knowledge and creditability of the experts are extremely important because the experts bear the sole responsibility of advocating for their final valuation and providing persuasive testimony for the methods used to calculate that value.¹⁶⁷

With the outcome of cases depending so heavily on the testimony of experts, any error on the part of an expert can have a damning effect on the entire rest of the case. This is exactly what happened to the IRS in the *Estate of Jackson* case. The creditability of the IRS's only expert witness was questioned when the expert perjured himself in court testimony.¹⁶⁸ Specifically, the expert's creditability issues came about when, after being asked whether he or his firm had ever worked for the IRS, he responded by saying, "No. Absolutely not."¹⁶⁹ This was false.¹⁷⁰ Additionally, the expert further perjured himself when he proclaimed that neither he nor his firm

¹⁶² Sylvia Golden, *Tax Court Issues Highly Anticipated Ruling in Michael Jackson Case*, BVR (May 18, 2021), <https://www.bvresources.com/blogs/business-valuation-law-news/2021/05/18/tax-court-issues-highly-anticipated-ruling-in-michael-jackson-case> [https://perma.cc/GJX6-NDN4].

¹⁶³ Estate of Jackson v. Comm'r, T.C. Memo. 2021-48, at 51, 121 T.C.M. (CCH) 1320 (2021).

¹⁶⁴ Mathew Roberts, *The King of Pop, Michael Jackson's, Estate Wins Big at Tax Court*, JD SUPRA (May 14, 2021), <https://www.jdsupra.com/legalnews/the-king-of-pop-michael-jackson-s-6439260/> [https://perma.cc/9395-58FJ].

¹⁶⁵ Weingust, *supra* note 126.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ Roberts, *supra* note 164.

¹⁷⁰ Estate of Jackson v. Comm'r, T.C. Memo. 2021-48, at 59, 121 T.C.M. (CCH) 1320 (2021).

had ever advertised in order to promote their business.¹⁷¹ The court found that the expert had perjured himself and could have chosen to strike all of the expert's testimony.¹⁷² However, rather than leave the IRS without an expert, the court decided to allow the testimony to remain on record but discounted the testimony greatly by giving it less weight than the court normally would have.¹⁷³ In its opinion, the court reasoned that the expert's creditability "suffered greatly at trial" and his lack of creditability "affect[ed] our factfinding throughout [the case]."¹⁷⁴

B. Decision

First, the tax court determined that it agreed more with the estate's \$2,105 valuation of the image and likeness rights rather than the IRS's \$434 million.¹⁷⁵ In its opinion, when valuing the rights at around \$4.1 million, the court choose to lean more towards the estate's valuation because it provided a more accurate representative value for Michael's image and likeness worth at the time of his death.¹⁷⁶ Regarding the IRS's valuation, the issues with Anson's valuation of the image and likeness rights (apart from the fact that all of his testimony was severely discounted) were that he valued incorrect assets and included various unforeseeable events in his valuations.¹⁷⁷ Specifically, when calculating Michael Jackson's image and likeness rights at a whopping total of \$434 million, Anson improperly included assets that were expressly excluded from image and likeness protection under California law.¹⁷⁸ Furthermore, in its opinion, the court stated that Anson made further valuation errors when he used five living celebrities as baseline comparisons for calculating Michael Jackson's potential brand merchandising value.¹⁷⁹ In summing up its decision, the court reasoned that the estate's valuation was more realistic because it accounted for expenses in rehabilitating Michael Jackson's image and used the proper present value discount rate.¹⁸⁰

¹⁷¹ *Id.*

¹⁷² Roberts, *supra* note 164.

¹⁷³ *Id.*

¹⁷⁴ Estate of Jackson v. Comm'r, T.C. Memo. 2021-48, at 59, 61, 121 T.C.M. (CCH) 1320 (2021).

¹⁷⁵ Roberts, *supra* note 164.

¹⁷⁶ Estate of Jackson v. Comm'r, T.C. Memo. 2021-48, at 147-148, 121 T.C.M. (CCH) 1320 (2021).

¹⁷⁷ *Id.* at 133.

¹⁷⁸ *Id.* at 133-34.

¹⁷⁹ *Id.* at 135.

¹⁸⁰ *Id.* at 147.

Next, the court ruled that the estate's \$0 valuation of the New Horizon Trust II was more accurate than the IRS's \$479 million.¹⁸¹ The court's issues with the IRS' valuation primarily stem from the IRS expert's improper characterization of the Sony/ATV music catalog. Specifically, the court stated that Anson miss-valued the Sony/ATV catalog because he treated Sony/ATV just as a catalog, rather than an operating music publishing company.¹⁸² In its finding for the Jackson estate, the court calculated the estate's interest in the trust to be \$227 million, reasoning that the trust had been overly encumbered with over \$315 million of debt liabilities.¹⁸³ Therefore, because creditors would be entitled to the proceeds from the sale of the trust, the court reasoned the trust had no value to the Jackson estate and was correctly valued at \$0 on the estate's return.¹⁸⁴

Lastly, the court addressed the estate's New Horizon Trust III. Since this trust was the most difficult of the assets to value, the court spent much of its time discussing the calculations behind each of the valuations submitted by the parties.¹⁸⁵ In its opinion, the court reasoned that both parties used the proper DCF analysis when valuing the trust; but, because the IRS expert's projections seemed to be the most reasonable, the court ruled in favor of the IRS.¹⁸⁶ Specifically, based on the numbers and the testimony provided by the IRS expert, the court believed that Anson's copyright growth rate and estimated interest-spike projections were more accurate than the numbers provided by the Jackson estate.¹⁸⁷ With these estimations in mind, the court concluded that the New Horizon Trust III was worth \$107 million, almost double the IRS's initial valuation.¹⁸⁸

IX. CONCLUSION

While the court's decision did increase the tax liability for the Michael Jackson estate, the increase was nowhere near the amount for which the IRS had hoped. For instance, although the final amount of the estate tax bill has not been set yet, of the nearly \$500 million of unpaid estate taxes that the IRS claimed were owed, the

¹⁸¹ Chung, *supra* note 5.

¹⁸² Estate of Jackson v. Comm'r, T.C. Memo. 2021-48, at 58, 121 T.C.M. (CCH) 1320 (2021).

¹⁸³ Chung, *supra* note 5.

¹⁸⁴ Estate of Jackson v. Comm'r, T.C. Memo. 2021-48, at 196, 121 T.C.M. (CCH) 1320 (2021).

¹⁸⁵ *Id.* at 197.

¹⁸⁶ *Id.* at 195.

¹⁸⁷ *Id.* at 237–39.

¹⁸⁸ *Id.* at 247.

Michael Jackson estate will likely end up paying only a fraction of that amount.¹⁸⁹ Also, further compounding the IRS's tax court defeat was the court's decision to strike down the nearly \$200 million in penalties the IRS had levied against the estate because the court believed that the tax penalties against the Jackson estate were unreasonable.¹⁹⁰ Thus, with most all of the asset valuations heavily reduced, and all potential penalties whipped away, the holding was a huge victory for both the Jackson estate and the family of Michael Jackson. In the end, despite the majority of the case revolving around the valuation of Michael Jackson's assets, the *Estate of Jackson* case provides an extremely important rule that should be relied on in all estate tax disputes: the value of a decedent's gross estate is the value of the assets at the time of the decedent's death, and not at any point after death.

¹⁸⁹ Golden, *supra* note 162.

¹⁹⁰ *Id.*; see *Estate of Jackson v. Comm'r*, T.C. Memo. 2021-48, at 247–252, 121 T.C.M. (CCH) 1320 (2021).