



entire case. In compliance, Plaintiff passed the hearings that were set for Friday, February 6, 2009 and notified all parties that the hearings had been passed and why.

On February 4, 2009, Plaintiff received copies of filings by Defendant Art Harris setting hearings in the case for Friday, February 06, 2009. My office again had contact with the clerk of the 280<sup>th</sup> District Court. The Court Clerk stated that she had conferred with Judge Lindsay and no hearings would be held on February 6, based on the oral notice they had received of Ms. Stern's bankruptcy. The Court Clerk further stated that Ms. Bush, counsel for Art Harris, had been given the same information.

On February 5, 2009, Plaintiff's counsel contacted counsel for Art Harris and inquired as to whether the subpoena would be withdrawn. Plaintiff received no response.

## II.

There is no precedent for Defendant Art Harris to take a special deposition in order to discover the facts underlying a Motion for Leave to Designate a Responsible Third Party. Under Tex. Civ. Prac. & Rem. Code §33.004(g)(1), the only question as to the adequacy of such a motion is whether "the defendant did not plead sufficient facts concerning the alleged responsibility of the person to satisfy the pleading requirement of the Texas Rules of Civil Procedure..." That is purely a legal question for the Court to decide, based on the face of the motion. Factual discovery can add nothing to the Court's analysis of the law and whether sufficient facts were pled in the motion.

WHEREFORE PREMISES CONSIDERED, Plaintiff prays that this Court quash the deposition of Nelda Turner and discovery requests attendant thereto noticed for February 9, 2009. Plaintiff understands that, because this Motion was filed by the third

business day after the service of the notice of deposition, the Motion automatically stays the oral deposition in accordance with Tex. R. Civ. Proc. 199.4

Respectfully submitted,

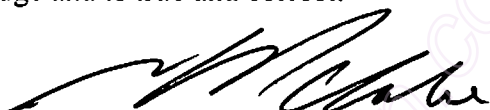
THE O'QUINN LAW FIRM

By: 

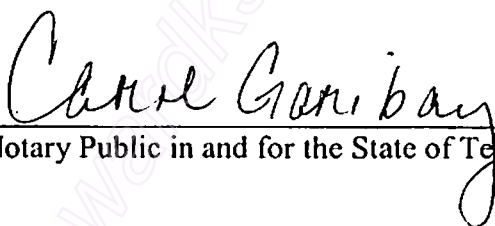
Neil C. McCabe  
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M. Michael Meyer  
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Houston, Texas 77002  
713-223-1000 (telephone)  
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**ATTORNEYS FOR  
PLAINTIFF VIRGIE  
ARTHUR**

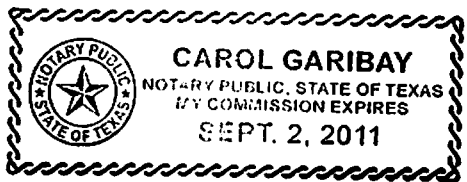
**VERIFICATION**

On this day NEIL MCCABE personally appeared before me, the undersigned Notary Public, and after being duly sworn stated under oath that he is counsel for Plaintiff in this action; that he has read the above motion; and that every statement contained in the motion is within his personal knowledge and is true and correct.

  
\_\_\_\_\_  
Affiant

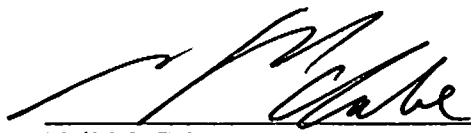
SUBSCRIBED AND SWORN TO BEFORE ME on the 6th day of February, 2009.

  
\_\_\_\_\_  
Notary Public in and for the State of Texas



**CERTIFICATE OF CONFERENCE**

I certify that I emailed Amanda Bush, Charles Babcock, and Nancy Hamilton, counsel for Defendant Art Harris, in an effort to resolve this dispute, and I received no response.

  
\_\_\_\_\_  
Neil McCabe

**CERTIFICATE OF SERVICE**

On the 6th of February, 2009, the undersigned *pro se* Defendant served this Motion to Quash on all counsel of record and *pro se* defendants as follows.

Mr. Harry Susman  
Mr. Richard Hess  
Susman Godfrey LLP  
1000 Louisiana, 51<sup>st</sup> Floor  
Houston, Texas 77002  
*Via Email and Fax*

Ms. Teresa Stephens

*Via Email and Certified Mail, RRR*

Ms. Bonnie Stern

Mr. L. Lin Wood  
Mr. John Patton  
Mr. Luke Lantta  
Powell Goldstein  
One Atlantic Center, 14<sup>th</sup> Floor  
Atlanta, GA, 30309.  
*Via Email and Fax*

*Via Email and Certified Mail, RRR*

Mr. Charles Babcock  
Ms. Amanda Bush  
Ms. Nancy Hamilton  
Jackson Walker  
1401 McKinney, Suite 1900  
Houston, Texas 77010  
*Via Email and Fax*

Ms. Nelda Tuner

Ms. Lyndal Harrington

*Via Email*

*Via Email and Certified Mail, RRR*

  
\_\_\_\_\_  
NEIL MCCABE

