

CBS Studios, Inc. objected to the document attached as Exhibit E to Plaintiff's Response to Motion for Final Summary Judgment, claiming that it was not properly authenticated in that the DVD from which the transcription was made was not included in the exhibit and was not properly identified. Plaintiff therefore asks leave to submit Exhibit I, attached, as summary judgment evidence. Exhibit I includes a DVD of the Entertainment Tonight broadcast cited by Plaintiff in her Response to Motion for Final Summary Judgment which was produced by CBS Studios, Inc. to Plaintiff in the federal litigation,¹ but which CBS inexplicably withheld when it filed its summary judgment motion in this case. As part of Exhibit I, Arthur is filing a certified transcription of the relevant broadcast contained on the DVD and an affidavit by counsel setting out the chain of custody of the DVD.

WHEREFORE PREMISES CONSIDERED, Plaintiff prays that this Court grant her leave to late-file the summary judgment evidence attached hereto as Exhibit I and deem Exhibit I admissible in this proceeding.

Respectfully submitted,

THE O'QUINN LAW FIRM

By: 

Neil C. McCabe
State Bar No. 13335300
M. Michael Meyer
State Bar No. 13993850
Jonathan Stoger
State Bar No. 00797504
440 Louisiana, Suite 2300
Houston, Texas 77002
713-223-1000 (telephone)
713-222-6903 (fax)
**ATTORNEYS FOR
PLAINTIFF**

¹ Civil Action No. 4:07-cv-03742; *Virgie Arthur v. Howard K. Stern, CBS Studios, Inc.*; in the United States District Court for the Southern District of Texas; Houston Division.

CERTIFICATE OF CONFERENCE

I contacted all counsel and *pro se* parties by email to confer about this Motion on November 19, 2009. I received the following replies.

Attorney Amanda Bush stated that Defendants CBS Studios and Art Harris are opposed.

Defendant Nelda Turner is unopposed.

A handwritten signature in black ink, appearing to read "N. McCabe", written over a horizontal line.

NEIL MCCABE

CERTIFICATE OF SERVICE

On the 19th day of November 2009, Plaintiff served the foregoing Motion for Leave to Late-File Summary Judgment Evidence as follows.

Via Email and Fax
Mr. Harry Susman
Mr. Richard Hess
Susman Godfrey LLP
1000 Louisiana, 51st Floor
Houston, Texas 77002
(713) 651-9366
Fax: (713) 654-6666

Via Email and Fax
Mr. L. Lin Wood
Mr. Luke Lantta
Powell Goldstein
Bryan Cave
2200 Ross Avenue, Suite 3200
Dallas, Texas 75201
Fax: (214) 721-8100

Via Email and Fax
Mr. Charles Babcock
Ms. Amanda Bush
Ms. Nancy Hamilton
Jackson Walker
1401 McKinney, Suite 1900
Houston, Texas 77010
(713) 752-4200
Fax: (713) 752-4221

Via Email and Fax
Ms. Diana Marshall
Marshall & Lewis, LLP
1010 Lamar, Suite 450
Houston, Texas 77002
(713) 655-0300
Fax: (713) 655-0130

Via Certified Mail
Ms. Teresa Stephens
5022 Cloyce Court
North Richland Hills, Texas 76180

Via Email and Certified Mail
Ms. Bonnie Stern
269 S. Beverly Dr., No. 1247
Beverly Hills, CA 90212

Via Email and Certified Mail
Ms. Lyndal Harrington
8318 Burning Hills Dr.
Houston, TX 77071

Via Email and U.S. Mail
Mrs. Nelda Turner
13348 County Road 3111
Gladewater, Texas 75647



Neil McCabe

Tab I

CAUSE NO. 2008-24181

VIRGIE ARTHUR,
PLAINTIFF,

v.

HOWARD K. STERN, BONNIE STERN,
LYNDAL HARRINGTON, ART HARRIS,
NELDA TURNER, TERESA STEPHENS,
LARRY BIRKHEAD, HARVEY LEVIN,
TMZ PRODUCTIONS, INC., and
CBS STUDIOS, INC.

DEFENDANTS.

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IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS

80th JUDICIAL DISTRICT

AFFIDAVIT OF NEIL MCCABE

BEFORE ME, the undersigned authority, personally appeared Neil McCabe, who is personally known to me. Upon his oath, he deposed and said:

1. My name is Neil McCabe. I am over the age of eighteen (18) years and am competent to make this affidavit. I am an attorney licensed to practice in the State of Texas, and I serve as lead plaintiff's counsel in the above-styled cause of action. I also served as lead plaintiff's counsel in the federal litigation styled Civil Action No. 4:07-cv-03742; *Virgie Arthur v. Howard K. Stern, CBS Studios, Inc.*; in the United States District Court for the Southern District of Texas; Houston Division.

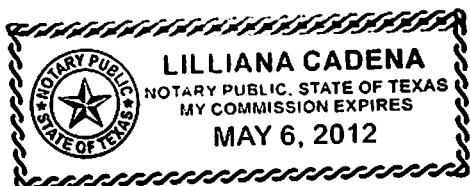
2. The attached is a true and correct copy of a DVD I received from CBS Studios, Inc. in the federal litigation cited above in response to a written request for production. That DVD was labeled CBS 000011, Entertainment Tonight Show #6704.


3. My office provided a true and correct copy of the afore-described DVD to Q&A Reporting and asked them to transcribe the portions that show the CBS Entertainment Tonight broadcast of the interview conducted by Art Harris with Larry Dale Hart in a Texas prison in May 2007. Trevor Causey of Q&A Reporting returned the DVD and a transcript thereof to my office.

FURTHER AFFIANT SAITH NOT.


NEIL MCCABE

SWORN and SUBSCRIBED before me on the 19th day of November, 2009.




NOTARY PUBLIC in and for the
STATE OF TEXAS

ENTERTAINMENT TONIGHT INTERVIEW OF

LARRY DALE HART

MAY 25, 2007

1 INTERVIEW

2 ENTERTAINMENT TONIGHT: Now, new family
3 secrets from Anna Nicole's prison stepbrother. What was
4 it really like growing up with Anna? More of our
5 exclusive jailhouse interview.

6 MR. HARRIS: What kind of mother was Virgie?

7 ENTERTAINMENT TONIGHT: Anna Nicole's
8 stepbrother recalls those years growing up in Virgie's
9 house with his sister he known as Vicki after his own
10 mother was reportedly jailed for bank robbery.

11 MR. HART: She tried to be a good mother.

12 ENTERTAINMENT TONIGHT: In a jailhouse
13 interview, he tells ET special correspondent, Art Harris
14 that Virgie demanded a lot from the kids.

15 MR. HART: We -- We got up, cooked our
16 breakfast, went to school, came home. I had to clean the
17 living room, dining room and the kitchen and cook supper.
18 Vickie never cleaned her room. She just went in there and
19 stood around the whole three or four hours that we would
20 be cleaning house.

21 ENTERTAINMENT TONIGHT: Anna had another
22 brother, Donnie, Jr., who did six years in prison for
23 kidnapping. At just age 3 according to Larry, he was
24 accidentally shot in the head with Virgie's gun.

25 MR. HART: I heard a pow and Virgie was

1 hollering.

2 MR. HARRIS: How did your little brother get
3 ahold of Virgie's pistol?

4 MR. HART: Virgie told me Donald went to
5 climb up on the bed or knocked the purse down and the gun
6 went off inside the purse and went in here, come out here,
7 and lodged in his head and to the brain.

8 MR. HARRIS: Did your sister, Anna Nicole,
9 come out and see her little brother shot with a gun?

10 MR. HART: Yes. Everybody did, yes --
11 everybody.

12 ENTERTAINMENT TONIGHT: Larry says he was
13 heartbroken by Anna's death and wishes he had set a better
14 example for her as a child.

15 (Conclusion of interview.)

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1 STATE OF TEXAS)

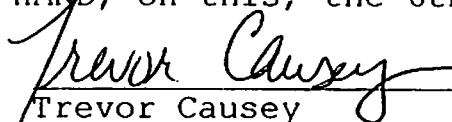
2 COUNTY OF HARRIS)

3

4 I, Trevor Causey, certify that the foregoing is a
5 correct transcription of the broadcast of an interview
6 with Larry Dale Hart contained on the DVD provided to me
7 by Plaintiff and labeled as CBS 000011, Entertainment
8 Tonight Show #6704. Plaintiff's counsel represented to me
9 that this DVD was produced to him by CBS Studios, Inc., in
10 the case styled Civil Action No. 4:07-cv-03742; Virgie
11 Arthur v. Howard K. Stern, CBS Studios, Inc.; in the
12 United States District Court for the Southern District of
13 Texas; Houston Division.

14 I further certify that I am not, in any capacity,
15 a regular employee of the party in whose behalf this
16 transcript was taken, nor in the regular employ of any
17 attorney; and I certify that I am not interested in the
18 cause, nor of kin or counsel to any of the parties.

19 GIVEN UNDER MY HAND, on this, the 6th day of
20 November, 2009.



21 Trevor Causey
22 Notary in and for
The State of Texas
My Commission expires 5/24/2013

23 Q & A Reporting, Inc.
24 10220 Memorial Drive
Houston, Texas 77024
25 713 467-7900 FAX 713 467-7911

CERTIFICATE OF SERVICE

On the 19th day of November 2009, Plaintiff served the foregoing Notice of Submission for Motion for Leave to Late File Summary Judgment Evidence as follows.

Via Email and Fax

Mr. Harry Susman
Mr. Richard Hess
Susman Godfrey LLP
1000 Louisiana, 51st Floor
Houston, Texas 77002
(713) 651-9366
Fax: (713) 654-6666

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1401 McKinney, Suite 1900
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Mrs. Nelda Turner
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Neil McCabe

