

See Declaration of Arthur Leed, pg.2, ¶3(B) & pg.3, ¶4. Document B is a communication from Professor Warren to Ms. Patricia Guilday, an assistant attorney general with the Georgia Attorney General's Office. *See* Declaration of Arthur Leed, pg.2-3, ¶3(D) & pg.3, ¶4. Ms. Jones had initially responded on behalf of Professor Warren to a cease and desist letter from the NABP's attorneys asserting that Professor Warren had allegedly used NABP copyrighted material. *See* Declaration of Arthur Leed, pg.2, ¶3(B). Subsequently, at the request of the Board of Regents of the University System of Georgia, the Georgia attorney general assigned Ms. Patricia Guilday, an assistant attorney general, to represent Professor Warren and the University of Georgia in connection with these claims. *See* Declaration of Arthur Leed, pg.2, ¶3(D).

Document A and Document B were sent by Professor Warren to Ms. Jones and Ms. Guilday with the understanding that they were acting as his attorneys. *See* Declaration of Flynn Warren, Jr., pg.3, ¶5. At the time these communications were sent, Professor Warren considered that they were confidential communications to his attorneys. *See* Declaration of Flynn Warren, Jr., pg.3, ¶5. Professor Warren has asserted, and hereby asserts, his attorney-client privilege with respect to both documents. *See* Declaration of Flynn Warren, Jr., pg.3, ¶6. Clearly, the two

communications were privileged communications from Professor Warren to his attorneys, and no waiver of that privilege exists.

ARGUMENT AND CITATION OF AUTHORITY

Attorney-client privilege promotes confidential communications. “Its purpose is to encourage full and frank communication between attorneys and their clients, and thereby promote broader public interests in the observance of law and administration of justice.” *International Brominated Solvents Assoc. v. American Conference of Governmental Industrial Hygienists, Inc.*, slip copy, 2007 WL 1964062, *2 (M.D. Ga., June 29, 2007), citing *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981). In its most basic form, the attorney-client privilege attaches to confidential communications made between parties that have established an attorney-client relationship. *Id.* The Eleventh Circuit articulated the following elements that must be proven to claim the attorney-client privilege at the federal level:

- (1) the asserted holder of the privilege is or sought to become a client;
- (2) the person to whom the communication was made (a) is [the] member of a bar of a court, or his subordinate and (b) in connection with this communication is acting as a lawyer;
- (3) the communication relates to a fact of which the attorney was informed (a) by his client (b) without the presence of strangers (c) for the purpose of securing primarily either (i) an opinion on law or (ii) legal services or (iii) assistance in some legal proceeding, and not (d) for the

purpose of committing a crime or tort; and (4) the privilege has been (a) claimed and (b) not waived by the client.

In re Grand Jury Proceedings 88-9(MIA), 899 F.2d 1039, 1042 (11th Cir. 1990).

Professor Warren is the asserted holder of the privilege. Professor Warren was represented in connection with the earlier controversy with the NABP by Ms. Jones, initially, and subsequently by assistant attorney general Patricia Guilday. Both Ms. Guilday and Ms. Jones are and were attorneys at the time of the communications. See Declaration of Arthur Leed, pg.2, ¶3(B) & ¶3(D). The communications relate directly to Ms. Jones and Ms. Guilday's representation of Professor Warren and the University of Georgia, and were considered by Professor Warren, Ms. Jones, and Ms. Guilday to be privileged communications. The communication was specific to the threatened litigation. Professor Warren has not waived his privilege with regard to these communications, and has asserted his privilege.

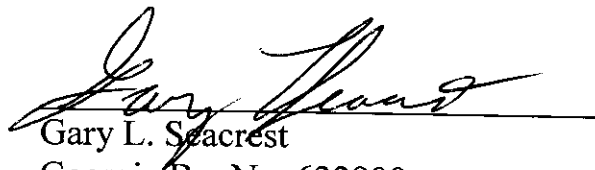
Clearly, the attorney-client privilege attaches to the documents submitted for *in camera* inspection by the court, and no waiver or other matter abridging the privileged status of those communications exists.

CONCLUSION

For the reasons set forth herein, Professor Warren respectfully requests that this court find and determine that the communications submitted for review are privileged attorney-client communications, not subject to production or use in this action or otherwise.

This 18th day of October, 2007.

Respectfully submitted,



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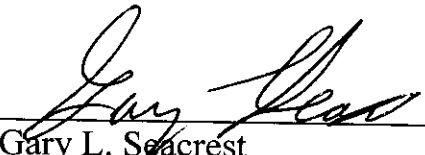
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