

STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
THE FIRST NATIONAL CENTER
120 NORTH ROBINSON, SUITE 860
OKLAHOMA CITY, OKLAHOMA 73102



In the Matter of:

Geary Securities, Inc. *fka* Capital West Securities, Inc.;
Keith D. Geary; Norman Frager; and CEMP, LLC,

Respondents.

ODS File No. 09-141

**GEARY RESPONDENTS' RESPONSE TO THIRD PARTY DIRECTORS'
MOTION TO QUASH AND FOR PROTECTIVE ORDER**

Respondents Geary Securities, Inc., Keith Geary and CEMP, LLC (collectively the "Geary Respondents") respectfully respond as follows to the Motion to Quash and for Protective Order filed by Jeff Wills, David Tinsley, Ray Evans, Earl Mills and Eldon Ventris (the "BOU Directors") on March 5, 2012. The BOU Directors ask the Hearing Officer to quash deposition subpoenas he previously issued or, alternatively, enter a protective order severely limiting the scope of the BOU Directors' depositions. The BOU Directors' Motion should be denied for the following reasons:

1. The District Court has already issued an Order that expressly governs the scope and conduct of the BOU Directors' depositions. The BOU Directors' Motion describes the District Court's Order as "limiting the scopes of those depositions, *and any future depositions of the Bank's officers, directors, employees, or representatives....*" Motion, p. 4, paragraph 6 (emphasis added).

2. On February 23, 2012, the Hearing Officer stated that he would “strongly encourage the parties to be as cooperative as possible to try to work out a reasonable resolution of this request.” The Geary Respondents took the Hearing Officer’s directive seriously and the same day advised BOU’s counsel that they are ready, willing and able to proceed in accordance with the terms and provisions of the District Court’s Order. See, letter dated February 23, 2012 (attached hereto as Exhibit 1). Counsel for the BOU Directors ignored the Geary Respondents’ proposal and did not respond, other than to summarily dismiss it as part of their Motion as “too little too late.” Motion, page 12, paragraph 27.
3. The District Court’s Order was based on the objection and protective order request submitted by counsel for the BOU Directors. Counsel’s attempt to now avoid the application and effect of the protective order they sought and obtained is misplaced and should be rejected.
4. The Hearing Officer lacks the jurisdiction and authority to vacate, modify or otherwise interfere with the District Court’s Order.
5. The BOU Directors have not asked the District Court to vacate or modify the Order they previously requested and obtained.
6. The BOU Directors’ account of the events related to the Geary Respondents’ previous attempt to conduct their depositions is materially incomplete, misleading, and irrelevant in light of the unavoidable fact that the District Court has already addressed and decided the issue presented by the BOU

Directors' Motion. Rather than reiterate factual events previously presented, the Geary Respondents expressly adopt and incorporate herein by reference the contents of Part II(B) of the Geary Respondents' Motion for Preclusion Order Striking Department Witnesses (BOU Directors)(filed November 9, 2011), as previously presented to by the Hearing Officer. In addition, the Geary Respondents point out one, among many, conspicuous and material omissions in the BOU Directors' inaccurate version of the "facts." Counsel for the BOU Directors never once unequivocally committed to present all six BOU Directors for depositions under any terms, conditions or circumstances. Instead, less than three days prior to the scheduled depositions, Mr. Lytle advised that Mr. Shirger – the only attorney with decision-making authority – was occupied in other matters and unavailable, but that Mr. Lytle would discuss the possibility of arranging to present some of the BOU Directors by agreement, at an unspecified time, in an unspecified order, pursuant to unspecified terms, and without committing to name which BOU Directors would and would not be presented. Counsel's subsequent attempt to re-create history is transparent and ineffective.

7. The Geary Respondents' decision to exercise its rights under the ODS Rules to seek a preclusion order related to the BOU Directors is not a basis for denying their right to now depose the BOU Directors pursuant to the District Court's Order. The Geary Respondents promptly filed their preclusion motion after the BOU Directors' depositions were cancelled and their counsel unequivocally stated they would not entertain or discuss rescheduling. The

Hearing Officer – not the Geary Respondents – controlled the timing of hearing and ruling on the preclusion motion.

8. The BOU Directors’ belated attempt (after the District Court has already ruled on the issue) to avoid entirely or severely limit the scope of their depositions is misplaced and should be denied.
 - a. The BOU Directors’ contention that the Geary Respondents have already obtained “ample discovery” related to the BOU Directors is directly contrary to the Hearing Officer’s previous ruling, the District Court’s Order, and the facts.
 - b. All six of the BOU Directors are listed as witnesses by ODS. The ODS Rules grant the Geary Respondents the right to conduct depositions of witnesses prior to the hearing on the merits. The BOU Directors’ request, in addition to violating the District Court’s Order, encourages the Hearing Officer to violate and deprive the Geary Respondents of their due process and fundamental fairness rights under the ODS Rules, Oklahoma statutes, and Oklahoma Constitution.
 - c. The fact that three other listed witnesses have given depositions concerning the alleged facts does not alter or avoid the Geary Respondents’ right to depose each of the six BOU Directors in accordance with the District Court’s Order.
 - d. The BOU Directors’ reference to Mr. Shelley’s deposition is misplaced and wholly ineffective. As counsel is well aware (since they attended the deposition), Mr. Shelley was questioned concerning Mr. Geary’s alleged

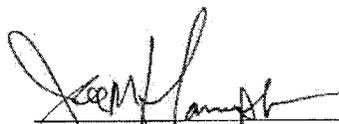
participation in discussions with BOU's Board and others concerning the subject securities transactions. Whether the subject affidavit was or was not marked as a deposition exhibit has no bearing on the Geary Respondents' right to proceed with the BOU Directors' depositions in accordance with the District Court's Order and ODS Rules.

- e. The BOU Directors' reference to, and inaccurate and baseless speculation concerning, a separate district court lawsuit involving the Geary Respondents has no bearing on the right to depose the BOU Directors in this administrative action. Motion, pp. 11-12, paragraph 25.
- f. Each of the six BOU Directors has stated -under oath in an affidavit -that certain statements were made and topics discussed in the course of a BOU Directors' meeting. The BOU Directors now seek to limit the scope of their depositions to one paragraph in an affidavit, without any discussion of background, context or detail, in direct violation of the District Court's Order. The BOU Directors' request is particularly misplaced in light of the fact that BOU blatantly destroyed the only contemporaneous business record that existed of the subject discussions between Respondent Geary and BOU and its Directors. BOU employee and corporate secretary Betty Pettijohn and BOU Chairman John Shelley both testified that Ms. Pettijohn, acting at the direction of Chairman Shelley, maintained verbatim shorthand notes of the discussions in the BOU Directors' meeting that involved Respondent Geary and the CEMP securities, and then intentionally destroyed the verbatim notes such that no record exists of the actual meeting discussion. This **destruction of**

evidence is particularly troubling and problematic in light of the fact that the BOU Directors' minutes of such meeting do not reflect, in any manner, the statements ODS alleges were made by Respondent Geary. Under these highly questionable circumstances, the BOU Directors' request invites the Hearing Officer to commit a blatant violation of the Geary Respondents' due process and fundamental fairness rights.

WHEREFORE, The Geary Respondents respectfully request that the Hearing Officer issue an Order denying the BOU Directors' Motion to Quash and For Protective Order and enforce the previously-issued deposition subpoenas without further delay.

Respectfully submitted,



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**ATTORNEYS FOR RESPONDENTS
GEARY SECURITIES, INC., KEITH D.
GEARY, AND CEMP, LLC**

CERTIFICATE OF SERVICE

I hereby certify that on March 9th, 2012, a copy of the foregoing document was served on the following by e-mail:

Mr. Bruce R. Kohl
Hearing Officer
201 Camino del Norte
Santa Fe, NM 87501
E-mail: bruce.kohl09@gmail.com

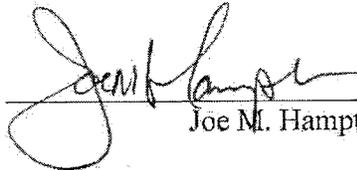
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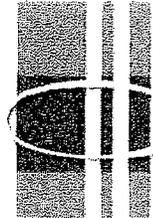
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Joe M. Hampton

EXHIBIT

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February 23, 2012

VIA EMAIL AND FIRST CLASS MAIL

John Schirger
Matthew Lytle
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Kansas City, MO 64111
Email: jschirger@millerschirger.com

Re: *In the matter of Geary Securities, Inc. fka Capital West Securities, Inc.; Keith D. Geary; Norman Frager; and CEMP, LLC; ODS File No. 09-141*

Dear Counsel:

This letter concerns the Geary Respondents' request to conduct the depositions of six Bank of Union directors pursuant to the subpoenas issued by the Hearing Officer on February 21, 2012. In an effort to resolve any and all issues related to such depositions, the Geary Respondents propose the following agreement:

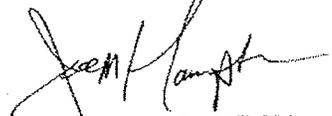
1. The terms of Section 3, pages 3-4 of the District Court Order dated July 25, 2011, apply to and govern the scope of examination for the BOU directors' depositions;
2. The deposition duration limits set forth in 12 Okla. Stat. 3230(A)(3) (6 hours) are modified to a maximum of 3 hours for each BOU director; and
3. The depositions will occur on the following dates and times:

<u>Witness</u>	<u>Date*</u>	<u>Time*</u>
David Tinsely		
Earl Mills		
Eldon Ventris		
Ray Evans		
Steve Ketter		
Jeff Wills		

 - Note: Please propose dates in March 2012 that work for you and the witnesses.
4. The depositions will be conducted at the offices of the Oklahoma Department of Securities in Oklahoma City, Oklahoma;
5. The deposition subpoenas issued by the Hearing Officer will be revised to incorporate the foregoing terms, dates and times; and
6. The BOU Directors waive their right to move to quash the deposition subpoenas, as modified, or seek a protective order to avoid compliance with the foregoing terms and modified subpoenas.

Please advise whether you are agree with the terms set forth above and provide proposed dates and times by the close of business on February 29, 2012.

Very truly yours,



JOE M. HAMPTON
For the Firm

cc: Oklahoma Department of Securities – Melanie Hall, Terra Bonnell
Norman Frager – Donald Pape, Susan Bryant