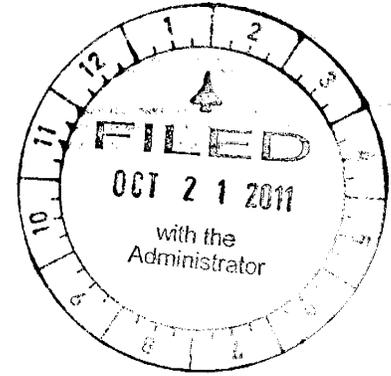


STATE OF OKLAHOMA  
DEPARTMENT OF SECURITIES  
THE FIRST NATIONAL CENTER  
120 NORTH ROBINSON, SUITE 860  
OKLAHOMA CITY, OKLAHOMA 73102



**In the Matter of:**

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

**Respondents.**

**File No. 09-141**

**ORDER DENYING RESPONDENTS' MOTION FOR RECUSAL  
OF HEARING OFFICER BRUCE R. KOHL**

This matter having come before the hearing Officer on the Respondents' Motion for Recusal of Hearing Officer Bruce R. Kohl, and the Hearing Officer having considered said motion, and further the Department's Objection to Motion for Recusal of Hearing Officer Bruce R. Kohl and Brief in Support, and the Geary Respondent's Reply to Department's Objection to Motion for Recusal and Request for Hearing, hereby enters the following order.

1. The Respondents have sought recusal of the Hearing Officer primarily on the grounds of an *ex parte* communication that the Hearing Officer had with legal counsel for the third party Bank of Union ("BOU") on Monday, September 26, 2011.

2. Such *ex parte* communication with counsel for the BOU third parties occurred as a result of telephone message left for the Hearing Officer at his home on the afternoon of September 26<sup>th</sup> by attorney John Schirger.<sup>1</sup> In his message Mr. Schirger indicated that he needed to speak with the Hearing Officer immediately on an emergency matter, and asked that the

---

<sup>1</sup> Mr. Schirger's telephone call to Mr. Kohl's home was taken by his wife.

Hearing Officer return the call to his cell phone that evening. Out of an abundance of common courtesy, upon returning home the Hearing Officer called Mr. Schirger at approximately 6:07 pm CDT, prepared to inform Mr. Schirger that he couldn't speak to him about the pending administrative action.

3. In the telephone call Mr. Schirger indicated that depositions of his clients were scheduled for Thursday and Friday, September 29<sup>th</sup> and 30<sup>th</sup>, and that as an out-of-state attorney he wished to be allowed to associate with local counsel in the administrative proceeding in order to represent such clients at the depositions. He further indicated that he had been admitted to associate with local counsel by the District Court of Oklahoma County in the subpoena enforcement action brought by the Oklahoma Department of Securities ("ODS") to enforce subpoenas issued by the Hearing Officer against the BOU third parties. Finally, Mr. Schirger represented to the Hearing Officer that he had spoken to a representative of the Oklahoma Bar Association concerning the authority of an out-of-state attorney to appear in an Oklahoma state government administrative proceeding, and had been advised by such representative to contact the hearing officer in the administrative proceeding to determine the proper procedure to be allowed to appear on behalf of his clients.

4. The Hearing Officer advised Mr. Schirger that he would have to file a motion in this administrative proceeding in order to seek authority from the Hearing Officer to associate with local counsel to be allowed to appear on behalf of his clients. The call, which lasted a total of three minutes and fourteen seconds, then ended with no further discussion of the case.

5. The following morning on September 27<sup>th</sup>, the Hearing Officer received an e-mail from Mr. Matthew W. Lytle, an associate of Mr. Schirger, along with a Motion for Temporary Admission and Entry of Appearance seeking permission of the Hearing Officer for himself and

Mr. Schirger to associate with local counsel to appear in this administrative proceeding, and including supporting documents showing compliance with Oklahoma law concerning the temporary admission of out-of-state counsel. Copies of the e-mail and motion had also been simultaneously transmitted by Mr. Lytle to counsel for the Respondents and for the ODS.

6. Upon receiving the motion from BOU counsel, and being cognizant of the immediacy of the upcoming scheduled depositions of certain BOU witnesses later that week, the Hearing Officer immediately sent an e-mail to all counsel of record indicating his inclination to grant the request to allow BOU counsel to temporarily appear in the administrative proceeding but asking all counsel if they had any objection to the motion, and further indicating that if any objections were had that a telephonic hearing would be scheduled for Wednesday, September 28<sup>th</sup> to hear arguments and objections to the motion. During Tuesday September 27<sup>th</sup> counsel for all Respondents sent e-mails to the Hearing Officer indicating that they had no objection to the motion made by Mr. Lytle, and on the following morning counsel for the ODS indicated that the department had no objection to such motion. See the attached e-mail chain denoted as Exhibit A.

7. An order permitting the temporary admission of Messrs. Schirger and Lytle to temporarily appear in this administrative action on behalf of the BOU third parties was subsequently entered by the Hearing Officer.

8. It is the opinion of the Hearing Officer that the telephone communication had with BOU counsel Mr. Schirger on the evening of September 26<sup>th</sup> was inconsequential in nature, and did not reflect any bias on the part of the Hearing Officer. Nothing concerning the substance of this case was discussed in the call, with the Hearing Officer merely suggesting a procedure for dealing with Mr. Schirger's issue which would allow all parties to this proceeding to be heard on

the issue. While it is true that the Hearing Officer did not notify counsel for the Respondents and the ODS of the existence of this telephone call, he felt that it was unnecessary as the call was in his view so inconsequential.

9. The telephone call between the Hearing Officer and Mr. Schirger on September 26<sup>th</sup> did not in the opinion of the Hearing Officer create or demonstrate either an appearance of impropriety or any lack of impartiality on behalf of the Hearing Officer, and further did not in any manner undermine the integrity of this administrative proceeding.

10. The e-mails communications between the Hearing Officer and counsel for the ODS as cited in Respondents' motion all relate to administrative matters pertaining to the conduct of this administrative proceeding, and in the opinion of the Hearing Officer do not create or demonstrate either an appearance of impropriety or any lack of impartiality on behalf of the Hearing Officer, and further did not in any manner undermine the integrity of this administrative proceeding.

11. While this administrative proceeding has been delayed due to disputes between the parties concerning discovery issues, with the limited authority that the Hearing Officer has to enforce compliance with discovery orders as to third parties, such delay does not in the opinion of the Hearing Officer show any lack of impartiality on behalf of the Hearing Officer, and further do not in any manner undermine the integrity of this administrative proceeding.

12. Respondents have shown no grounds that would in the opinion of the Hearing Officer justify his recusal in this proceeding.

13. The issues raised by Respondents' motion were thoroughly discussed in a telephonic hearing at which the parties to the administrative proceeding were present<sup>2</sup> held on

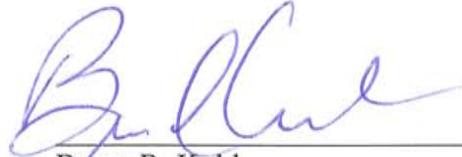
---

<sup>2</sup> Mr. Donald Pape representing Respondent Norman Frager was not present for the September 30th telephonic hearing, but had previously indicated that he would not be present and that the hearing could proceed without him.

Friday, September 30, 2011, and as presented in the pleadings of the parties, so the Hearing Officer sees no need at this time for a further hearing on this motion.

Based on the foregoing, Respondents' Motion for Recusal of Hearing Officer Bruce R. Kohl is hereby DENIED.

Dated this 19<sup>th</sup> day of October, 2011.



---

Bruce R. Kohl  
Hearing Officer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 21st day of October, 2011, a true and correct copy of the above and foregoing *Order Denying Respondents' Motion for Recusal of Hearing Officer Bruce R. Kohl* was emailed and mailed, with postage prepaid, to:

Mr. Bruce R. Kohl  
201 Camino del Norte  
Santa Fe, NM 87501  
[Bruce.kohl09@gmail.com](mailto:Bruce.kohl09@gmail.com)

*Hearing Officer*

Joe M. Hampton, Esq.  
Amy J. Pierce, Esq.  
A. Ainslie Stanford II, Esq.  
Corbyn Hampton, PLLC  
211 North Robinson, Suite 1910  
Oklahoma City, OK 73102  
[JHampton@Corbynhampton.com](mailto:JHampton@Corbynhampton.com)

*Attorney for Respondents Geary Securities, Inc., Keith D. Geary,  
and CEMP, LLC*

Donald A. Pape, Esq.  
Donald A. Pape, PC  
401 W. Main, Suite 440  
Norman, OK 73069  
[don@dapape.com](mailto:don@dapape.com)

and

Susan E. Bryant  
Bryant Law  
PO Box 596  
Camden, ME 04843  
[sbryant@bryantlawgroup.com](mailto:sbryant@bryantlawgroup.com)

*Attorneys for Respondent Norman Frager*

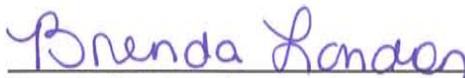
  
\_\_\_\_\_  
Brenda London, Paralegal



EXHIBIT A

Bruce Kohl <bruce.kohl09@gmail.com>

**ODS File No. 09-141**

5 messages

Matthew W. Lytle <MLytle@millerschirger.com>

Tue, Sep 27, 2011 at 7:48 AM

To: "Bruce R. Kohl (bruce.kohl09@gmail.com)" <bruce.kohl09@gmail.com>

Cc: "ifaught@securities.ok.gov" <ifaught@securities.ok.gov>, Melanie Hall <mhall@securities.ok.gov>, "gbryant@mswerb.com" <gbryant@mswerb.com>, "Joe M. Hampton" <JHampton@corbynhampton.com>, Ainslie Stanford <AStanford@corbynhampton.com>, "don@dapape.com" <don@dapape.com>, "John J. Schirger" <JSchirger@millerschirger.com>

Mr. Kohl:

Attached please find a Motion for Temporary Admission and Entry of Appearance of Out of State Counsel in the above referenced matter. Please let me know if you have any questions. Thank you.

Best regards,

Matt Lytle

**Matthew W. Lytle**

**Miller Schirger**

INTELLIGENT DIRECTION

4520 Main Street

Suite 1570

Kansas City, Mo 64111

P: 816-561-6510 (Direct)

F: 816-561-5601

E: mlytle@millerschirger.com

www.millerschirger.com

\*\*\*\*\*PRIVATE AND CONFIDENTIAL\*\*\*\*\*

This electronic message transmission and any files transmitted with it are a communication from Miller Schirger LLC. This message contains

information protected by the attorney/client privilege and is confidential or otherwise the exclusive property of the intended recipient of Miller Schirger LLC. This information is solely for the use of the individual or entity that is the intended recipient. If you are not the designated recipient, please be aware that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this electronic transmission in error, please notify the sender by telephone at 816-561-6500, collect, or by electronic mail at [mlytle@millerschirger.com](mailto:mlytle@millerschirger.com) and promptly destroy the original transmission. Thank you for your assistance.

 scanner\_millerschirger\_com\_20110927\_095702.pdf  
571K

**Bruce Kohl <bruce.kohl09@gmail.com>** **Tue, Sep 27, 2011 at 9:52 AM**  
To: "Matthew W. Lytle" <MLytle@millerschirger.com>, Melanie Hall <mhall@securities.ok.gov>, "Joe M. Hampton" <JHampton@corbynhampton.com>, Ainslie Stanford <AStanford@corbynhampton.com>, "Donald A. Pape" <don@dapape.com>, "John J. Schirger" <JSchirger@millerschirger.com>  
Cc: "ifaught@securities.ok.gov" <ifaught@securities.ok.gov>, "gbryant@mswerb.com" <gbryant@mswerb.com>

To All Parties:

This morning I received a Motion for Temporary Admission and Entry of Appearance of Out of State Counsel submitted by attorneys Mathew W. Lytle and John Schirger, as out of state counsel for the third party Bank of Union and certain third party individuals associated therewith. They are specifically requesting permission to appear as counsel for such third parties at depositions scheduled for this Thursday and Friday. Due to the shortness of time until the scheduled depositions, they have not fully complied with all formal requirements for the temporary admission of out of state counsel specifically in this administrative proceeding, but have previously been so admitted by the District Court of Oklahoma County to represent such third parties in proceedings relating to enforcement of certain administrative subpoenas in this action. Additionally, I had previously granted Mr. Schirger permission to enter his appearance in this administrative proceeding for the limited purpose of filing motions for such third parties contesting the issuance and scope of certain subpoenas.

Accordingly, I am inclined to grant their motion for the limited purpose of permitting them to represent such third parties in the depositions scheduled for this week. Their further representation of such third parties in this administrative proceeding would depend on subsequent compliance with all requirements of Oklahoma law concerning the temporary admission of out of state counsel. If any of the parties object please so advise me before the close of business today, and I will schedule a telephonic hearing for tomorrow morning. If you do not object I would also appreciate being so advised as soon as possible. If no objections are made I will issue the requested order granting Messrs. Lytle and Schirger permission to appear to represent the third parties in the depositions scheduled for this Thursday and Friday.

Thank you for your prompt attention.

Bruce R. Kohl  
Hearing Officer

[Quoted text hidden]

**Joe M. Hampton <JHampton@corbynhampton.com>** **Tue, Sep 27, 2011 at 2:01 PM**  
To: Bruce Kohl <bruce.kohl09@gmail.com>, Melanie Hall <mhall@securities.ok.gov>, Ainslie Stanford <AStanford@corbynhampton.com>, "Donald A. Pape" <don@dapape.com>, "Terra Bonnell" (tbonnell@securities.ok.gov) <tbonnell@securities.ok.gov>  
Cc: "gbryant@mswerb.com" <gbryant@mswerb.com>, "John J. Schirger" <JSchirger@millerschirger.com>, "Matthew W. Lytle" (MLytle@millerschirger.com) <MLytle@millerschirger.com>

Dear Mr. Kohl:

The Geary Respondents have no objection.

As a side note and partial status update, please be advised that it has unfortunately become necessary to cancel this week's depositions due to unresolved issues related to such depositions. I have suggested that counsel involved in those issues participate in a conference call among counsel on Thursday in an effort to resolve the issues and move forward. Counsel for the parties will submit a further status update to you in the near future.

Thank you,

Joe Hampton

**From:** Bruce Kohl [mailto:[bruce.kohl09@gmail.com](mailto:bruce.kohl09@gmail.com)]  
**Sent:** Tuesday, September 27, 2011 10:53 AM  
**To:** Matthew W. Lytle; Melanie Hall; Joe M. Hampton; Ainslie Stanford; Donald A. Pape; John J. Schirger  
**Cc:** [ifaught@securities.ok.gov](mailto:ifaught@securities.ok.gov); [gbryant@mswerb.com](mailto:gbryant@mswerb.com)  
**Subject:** Re: ODS File No. 09-141

[Quoted text hidden]

---

**Donald A. Pape** <[don@dapape.com](mailto:don@dapape.com)> Tue, Sep 27, 2011 at 2:14 PM  
To: Bruce Kohl <[bruce.kohl09@gmail.com](mailto:bruce.kohl09@gmail.com)>  
Cc: "Matthew W. Lytle" <[MLytle@millerschirger.com](mailto:MLytle@millerschirger.com)>, Melanie Hall <[mhall@securities.ok.gov](mailto:mhall@securities.ok.gov)>, "Joe M. Hampton" <[JHampton@corbynhampton.com](mailto:JHampton@corbynhampton.com)>, Ainslie Stanford <[ASanford@corbynhampton.com](mailto:ASanford@corbynhampton.com)>, "John J. Schirger" <[JSchirger@millerschirger.com](mailto:JSchirger@millerschirger.com)>, "ifaught@securities.ok.gov" <[ifaught@securities.ok.gov](mailto:ifaught@securities.ok.gov)>, "gbryant@mswerb.com" <[gbryant@mswerb.com](mailto:gbryant@mswerb.com)>

On behalf of Respondent Frager, we have no objection to the motion for admission.  
Donald A. Pape

Sent from my iPhone

[Quoted text hidden]

---

**Terra Bonnell** <[tbonnell@securities.ok.gov](mailto:tbonnell@securities.ok.gov)> Wed, Sep 28, 2011 at 7:31 AM  
To: Bruce Kohl <[bruce.kohl09@gmail.com](mailto:bruce.kohl09@gmail.com)>, "Matthew W. Lytle" <[MLytle@millerschirger.com](mailto:MLytle@millerschirger.com)>, "Joe M. Hampton" <[JHampton@corbynhampton.com](mailto:JHampton@corbynhampton.com)>, "Donald A. Pape" <[don@dapape.com](mailto:don@dapape.com)>, "John J. Schirger" <[JSchirger@millerschirger.com](mailto:JSchirger@millerschirger.com)>, Ainslie Stanford <[ASanford@corbynhampton.com](mailto:ASanford@corbynhampton.com)>, Melanie Hall <[mhall@securities.ok.gov](mailto:mhall@securities.ok.gov)>

Mr. Kohl:

The Department has no objection.

Thank you.

**Terra Shamas Bonnell**

Enforcement Attorney

Oklahoma Department of Securities

Direct Phone: [405.280.7715](tel:405.280.7715)

Fax: [405.280.7742](tel:405.280.7742)

[tbonnell@securities.ok.gov](mailto:tbonnell@securities.ok.gov)

---

**From:** Bruce Kohl [mailto:[bruce.kohl09@gmail.com](mailto:bruce.kohl09@gmail.com)]  
**Sent:** Tuesday, September 27, 2011 10:53 AM  
**To:** Matthew W. Lytle; Melanie Hall; Joe M. Hampton; Ainslie Stanford; Donald A. Pape; John J. Schirger  
**Cc:** [ifaught@securities.ok.gov](mailto:ifaught@securities.ok.gov); [gbryant@msverb.com](mailto:gbryant@msverb.com)  
**Subject:** Re: ODS File No. 09-141

To All Parties:

[Quoted text hidden]

-----  
NOTICE: This e-mail message may contain confidential and privileged information and/or litigation work product. This message is intended for the sole use of the addressed recipient (s). Any unauthorized review, use, disclosure, or distribution is prohibited. If you are not the intended recipient, please contact the sender immediately and destroy all copies of the original message.

Visit [InvestEdOK.org](http://InvestEdOK.org) for unbiased investor education resources. InvestEdOK.org is a collaboration between the Oklahoma Securities Commission and the University of Oklahoma OUTREACH.  
-----