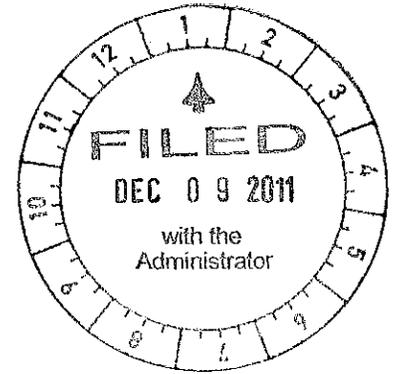


STATE OF OKLAHOMA  
DEPARTMENT OF SECURITIES  
THE FIRST NATIONAL CENTER  
120 NORTH ROBINSON, SUITE 860  
OKLAHOMA CITY, OKLAHOMA 73102



In the Matter of:

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

Respondents.

ODS File No. 09-141

**GEARY RESPONDENTS' REPLY TO DEPARTMENT'S RESPONSE TO MOTION  
FOR PRECLUSION ORDER AND ORDER STRIKING DEPARTMENT'S EXHIBIT 27  
(PURPORTED HEADINGTON GUARANTY AGREEMENT)**

Pursuant to Rule 660:2-9-3(c) of the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities (the "Rules"), Respondents Geary Securities, Inc. (formerly known as Capital West Securities, Inc.), Keith D. Geary, and CEMP, LLC (the "Geary Respondents") respectfully submit this Reply to the Department's Response to the Geary Respondents' previously-filed Motion (the "ODS Response"). The Geary Respondents' Motion requests that the Hearing Officer: (a) issue an Order striking Department Exhibit 27 and precluding its offer, admission or reference in any pleadings, depositions, and at the hearing on the merits in this proceeding; (b) issue an Order precluding Timothy Headington, or any representative on his behalf, from testifying at the hearing on the merits in this proceeding; and (c) issue an Order precluding the Department from attempting to introduce any evidence concerning the allegations contained in the Recommendation concerning Mr. Headington.

The Department's position in response to the Motion is that the Geary Respondents are not entitled to full knowledge of the issues and facts prior to the hearing, but must accept that fact and proceed to the hearing having been deprived – at least partially – of the discovery rights

expressly granted to them by the Department's own Rules. The Department's position on this issue is wholly inconsistent with the notions of due process and fundamental fairness. The Department's Response attempts to avoid the application and impact of its own express Rule authorizing the relief requested by the Geary Respondents by contending that:

- The Geary Respondents' Motion is premature, suggesting that they must wait indefinitely to seek the relief authorized by ODS Rule 660:2-9-3(f) despite the absence of any such timing requirement or limitation in such Rule;
- Service of the second subpoena served on Hr. Headington was invalid, contradicting the observations voiced by counsel for the Administrator;
- Mr. Headington – one of two investors identified by the Department's Recommendation – is “not a necessary witness” and adds no information to the record; an astounding position now taken by the Department in stark contrast to the allegations in its Recommendation;
- The Geary Respondents' Motion lacks credibility; and
- Punishment of the Department is not warranted or authorized.

The Geary Respondents respectfully offer the following comments in response to statements made and positions taken by the Department in its Response.

1. The Department's contention that the Geary Respondents' Motion is premature (Response, p. 3) is misplaced. The ODS Rule [660:2-9-3(f)] that authorizes a preclusion motion does not in any manner designate or limit the timing of filing such a motion. This action has been pending for more than 15 months. Previously-scheduled hearing dates have been stricken based solely on the discovery problems attributable to the actions and inactions of Bank of Union, its officers, directors and Mr. Headington. Those discovery problems have not been

resolved; rather, they have continued and intensified to the point where the preclusive relief sought by the Geary Respondents' Motion is both appropriate and necessary.

2. The Department's contention that Mr. Headington has not been served with a valid subpoena (Response, pp. 3-4) is interesting in light of the fact counsel for the Administrator has stated, on multiple occasions, that he cannot say that service of the second deposition subpoena on Mr. Headington was invalid.<sup>1</sup> It is conspicuous that Enforcement Counsel for the Department only took their position on validity of the Headington subpoena *after* the Geary Respondents filed their Motion. It is likewise conspicuous that only *after* the Geary Respondents' Motion was filed did the Department seek to obtain Mr. Headington's deposition by requesting that the Hearing Officer issue yet another subpoena for Mr. Headington's deposition. The Department's belated action in this regard is clearly and solely an attempt to avoid the risk posed by the Geary Respondents' Motion. The Hearing Officer should not delay or defer acting on the Geary Respondents Motion based on the Department's belated subpoena request because there is no indication, much less a commitment, that Mr. Headington will comply and submit to a deposition. On a separate note, the Hearing Officer inquired in the course of a hearing more than 6 months ago whether the Department had sought assistance from the Texas Department of Securities in connection with obtaining Mr. Headington's deposition. The answer was "no" 6 months ago, and presumably remains "no."

3. The Department's contention that Mr. Headington is "not a necessary witness" (Response, p. 4) is an astounding statement and a desperate attempt to avoid the risk of issuance of the preclusion order requested by the Geary Respondents' Motion. The Department challenges the Geary Respondents to demonstrate that Mr. Headington's testimony "would add

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<sup>1</sup> The Geary Respondents obtained input from Texas counsel prior to service of the subject deposition subpoenas.

something to the information in the record” (Response, p. 4). Challenge accepted. The Geary Respondents need look no further than the following:

- a. The Department alleges that the Geary Respondents committed violations of the securities law by offering and selling two securities to two investors: one to the Bank of Union; and one to Mr. Headington.
- b. The Department’s Recommendation expressly alleges that:
  - Respondent Geary convinced Mr. Headington to purchase the CEMP Class A-2 notes by promoting the purchase as a way for Mr. Headington to assist Bank of Union (“BOU”) in its effort to divest itself of other securities that were potentially subject to regulatory scrutiny [Recommendation, p. 12, para. 85];
  - Respondent Geary convinced Mr. Headington to purchase the CEMP Class A-2 notes by representing that Mr. Headington would be out of the CEMP investment by the end of 2009 and would realize a profit on the investment [Recommendation, p. 12, para 85];
  - Respondent Geary convinced Mr. Headington to purchase the CEMP Class A-2 notes by providing Mr. Headington with a written “Guaranty Agreement” [Recommendation, p. 12, para 86];
  - Respondents Geary and Geary Securities made untrue statements of material facts and omissions to Mr. Headington in connection with the offer and sale of CEMP Class A-2 notes [Recommendation, p.20, para 1-2];
  - Respondents Geary and Geary Securities engaged in unethical securities practices by inducing Mr. Headington’s purchase of the CEMP Class A-2 notes by manipulative and deceptive means and by guaranteeing against losses in the securities transaction [Recommendation, p. 21, para 4(d) and (e)].
- c. Bank of Union Chairman and CEO John Shelley has testified, in clear and unambiguous terms, that Mr. Headington’s investment decision was made by Mr. Headington alone, not by Mr. Shelley or anyone else acting on his behalf. Mr. Shelley dismissed the Department’s suggestion that perhaps Mr. Shelley made the

decision pursuant to trading authorization granted to Mr. Shelley in Mr. Headington's account documents at Geary Securities:

Q. (By Ms. Bonnell) Does this document help you remember whether you had trading authorization over any of Mr. Headington's accounts?

A. No, because I would not do anything without his approval....It obviously says that, but I---from a professional standpoint, I would not do anything without his approval.

...

Q. But are you saying, despite that, you would not do anything on Mr. Headington's account without his approval?

A. **Absolutely not. We've been friends too long. I would never do that.**

*See, Exhibit 1 hereto (excerpts from John Shelley Depo., p.44)(emphasis added).<sup>2</sup>*

- d. ODS attempts to answer its own challenge by contending that Mr. Headington's testimony "will add nothing to the information in the record regarding the A-2 Notes transaction." Response, p. It is a mystery how the Department can predict, with such confidence and certainty, what Mr. Headington's testimony would be in light of the fact the Department has denied having any communications with Mr. Headington. The Geary Respondents are not mind-readers and do not know what Mr. Headington's testimony would be. For that

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<sup>2</sup> The Department's Response contains selective and incomplete references to Mr. Shelley's deposition testimony, thereby creating the impression that Mr. Headington authorized Mr. Shelley to act on his behalf in connection with Mr. Headington's account at Geary Securities. Response, p. 6. This information appears to be intended to create the additional impression that Mr. Shelley exercised such authorization and did, in fact, act on Mr. Headington's behalf in connection with the investment decision at issue. As noted and quoted above, Mr. Shelley made clear that did not happen. As a result, the Geary Respondents view the testimony of the actual decision maker – Mr. Headington – to "add something to the information in the record."

very reason, the Geary Respondents exercised their right under ODS Rules to conduct discovery, including a deposition of Mr. Headington.

- e. There is a significant distinction between “will add nothing” and “will add nothing *helpful to the Department’s case.*” The Department knows full well that Mr. Headington’s involvement will only hurt, not help, its case against the Geary Respondents. No one remotely familiar with the facts of this case could conceivably characterize Mr. Headington as a “victim.” The evidence at the time of the hearing will be clear, compelling and indisputable on these points. Mr. Headington did not rely, justifiably or otherwise, on the alleged representations of the Geary Respondents. Mr. Headington has not suffered any loss as a result of the security he purchased. Rather, Mr. Headington (who occupies number 139 on the most recent *Forbes’* list of richest Americans with an estimated net worth of \$2.7 billion) has experienced significant appreciation in value of such security. Mr. Headington has had multiple opportunities to divest himself of the subject security over the past 26 months, but has declined to do so because of the increasing profit potential associated with the security.
- f. The Department also inaccurately contends that Mr. Headington has no financial stake or interest in whether the Respondents are sanctioned in this matter. Response, p. 6. The Department is well aware that Mr. Headington is a named claimant in a pending FINRA arbitration case that closely mirrors the allegations made by the Department in this case. The Claimants, including Mr. Headington, have now delayed the FINRA arbitration hearing on two occasions, clearly in an

effort to have this enforcement action completed first so they can benefit from any findings or rulings adverse to the Respondents.<sup>3</sup>

g. In a further attempt to somehow take the spotlight off Mr. Headington (after having thrust him into the spotlight by its Recommendation and Preliminary Witness List), the Department points out that it has decided it will not call Mr. Headington as a witness. Response, p. 4. To the extent this retreat and retraction was intended to discourage the Geary Respondents from continuing their pursuit of discovery from Mr. Headington, that is not the case. The Department's retreat and retraction has the exact opposite effect. It is easy to speculate on why Mr. Headington abruptly dropped out of the picture in this enforcement action. The Geary Respondents' discovery requests were designed to convert speculation to confirmed fact and evidence that can be presented at the hearing on the merits.

4. The Department's contention that the Geary Respondents' Motion lacks credibility (Response, p. 6) is misplaced. The fact that The Geary Respondents finally had the opportunity to depose two officers of BOU - 4 months after the District Court's Order enforcing the deposition subpoenas (originally issued in February 2011) - does not change the fact that they have been deprived of their right to depose Mr. Headington.

5. The Department's contention that punishing it by the issuance of a preclusion order is not authorized or warranted ignores the plain language of the Department's own Rule. The Department's view of the relief authorized by its own Rule is, at best, confusing. On one hand, the Department concedes that Rule 660:2-9-3(f) "does indeed authorize the imposition of 'sanctions' for certain failures." See, Response, p. 8. On the other hand, the Department

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<sup>3</sup> The FINRA arbitration hearing is now scheduled for September 2012.

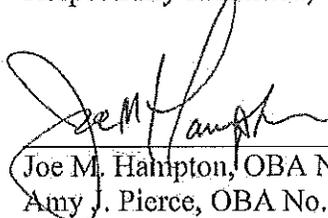
contends that the Rule does not authorize the imposition of sanctions against the Department for the failure of third party witnesses to comply with subpoenas. *Id.* The Department ignores the fact that its own Rule does not restrict in any manner the imposition of sanctions. The Department's attempt to re-write its Rule to serve its advantage and purpose in this case should be rejected. The Department chose to include allegations in its Recommendation concerning Mr. Headington and include his investment decision within the scope of this enforcement action. The Department chose to identify Mr. Headington as a witness in its preliminary witness list filed nearly a year ago. If the Department's former witness refuses to cooperate in discovery, it is logical and entirely consistent with the plain purpose of the Rule to issue a preclusion order that prohibits that witness or any of his purported representatives from testifying at the hearing and precludes the Department from pursuing any issue or charge related to such witness/investor as part of its case. Any other result would render the Rule meaningless and deprive the Geary Respondents of their rights to discovery, due process and fundamental fairness.

6. The Department's final contention takes issue with authority cited by the Geary Respondents for the general proposition that they are entitled to full knowledge of the issues and facts prior to a hearing on the merits in this enforcement action. The Department contends that the cited authorities are factually distinguishable from this case. Response, p. 9. So, the Department's point must be that the Geary Respondents are not entitled to full knowledge of the issues and facts prior to the hearing, but must accept that fact and proceed to the hearing having been deprived – at least partially – of the discovery rights expressly granted to them by the Department's own Rules. The Department's contention and position on this issue is wholly inconsistent with the notions of due process and fundamental fairness.

Based on the foregoing reply, together with the discussion, argument and authorities previously presented, the Geary Respondents respectfully request that the Hearing Officer schedule and conduct a hearing on the Geary Respondents' Motion and:

- A. Issue an Order striking Department Exhibit 27 and precluding its offer, admission or reference in any pleadings, depositions, and at the hearing on the merits in this proceeding;
- B. Issue an Order precluding Timothy Headington, or any representative on his behalf, from testifying at the hearing on the merits in this proceeding; and
- C. An Order precluding the Department from attempting to introduce any evidence concerning the allegations contained in the Recommendation concerning Mr. Headington.

Respectfully submitted,



Joe M. Hampton, OBA No. 11851  
Amy J. Pierce, OBA No. 17980  
A. Ainslie Stanford II, OBA No. 18843

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

**CERTIFICATE OF SERVICE**

I hereby certify that on December 9, 2011, a copy of the foregoing document was served on the following via electronic mail:

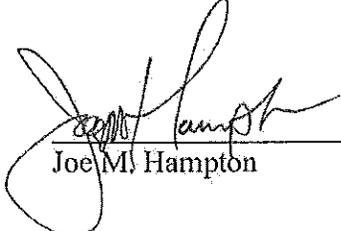
Mr. Bruce R. Kohl  
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\_\_\_\_\_  
Joe M. Hampton

# EXHIBIT 1

John Shelley  
November 16, 2011

In Re: Geary Securities vs.  
Case No. 09-141

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

DEPOSITION OF JOHN SHELLEY

TAKEN ON BEHALF OF THE DEPARTMENT OF SECURITIES

IN OKLAHOMA CITY, OKLAHOMA

ON NOVEMBER 16, 2011

REPORTED BY: JODI D'VOREE HORVATH, CSR, RPR

Word for Word Reporting, LLC  
405-232-9673 (OKC) 918-583-9673 (Tulsa) 918-426-1122 (McAlester)

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Page 42	Page 44
<p>1 MR. SCHIRGER: Sure. 2 (Break taken.) 3 Q. (By MS. BONNELL) I am going to hand you 4 what has been marked as Exhibit 21. 5 MR. HAMPTON: This is a new exhibit, right? 6 MS. BONNELL: Yes, this is a new exhibit. 7 Q. (By MS. BONNELL) And would you just take 8 a moment and look at Exhibit 21, please? 9 A. Okay. 10 Q. Mr. Shelley, do you recognize Exhibit 11 Number 21? 12 A. No. It is a new account form for Mr. 13 Headington, but I have never seen it before. 14 Q. I want to ask you to look at page three 15 of the new account form. 16 A. Uh-huh. 17 Q. Does it -- under, let's see, paragraph -- 18 my roman numerals are getting off. I think it is seven, 19 account information? 20 A. Uh-huh. 21 Q. Does it say, "will you be giving 22 discretion over this account to another?" 23 A. Uh-huh. 24 Q. And does it have your name, Mike Braun 25 and John Shelley there?</p>	<p>1 A. August 5th of '08. 2 Q. Does this document help you remember 3 whether you had trading authorization over any of Mr. 4 Headington's accounts? 5 A. No, because I would not do anything 6 without his approval. So I... 7 Q. Okay. So -- 8 A. It obviously says that, but I -- from a 9 professional standpoint, I would not do anything without 10 his approval. 11 Q. Okay. So your testimony is, is that all 12 of the -- although the document -- well, let me rephrase 13 that. Would you agree that the document indicates that 14 you have trading authorization over Mr. Headington's 15 account? 16 A. I would say yes. 17 Q. But are you saying, despite that, you 18 would not do anything on Mr. Headington's account 19 without his approval? 20 A. Absolutely not. We've been friends too 21 long. I would never do that. 22 Q. Do you think that this trading 23 authorization would give you the right to -- or 24 permission to relay communications from Mr. Geary to Mr. 25 Headington?</p>
Page 43	Page 45
<p>1 A. Mike and myself, yes. 2 Q. And then I want to ask you to please look 3 at the page -- let's see, what number is it? It is 4 Bates-stamped at the bottom, BOU 000092. 5 A. Where are you now? 6 Q. At the Bates-stamp number that ends with 7 92. 8 A. Oh, I'm sorry. Next page? 9 Q. Does this indicate that it is a trading 10 authorization and indemnification form? 11 A. Yes. 12 Q. And does it indicate that it is for an 13 account titled Timothy C. Headington? 14 A. Yes, ma'am. 15 Q. Is the account number SKV001203? 16 A. Uh-huh. 17 Q. And on the following page does your name 18 appear as an authorized agent? 19 A. Yes. 20 Q. Does your signature appear on this page? 21 A. Yes. 22 Q. Is it the last signature that is on the 23 page? 24 A. Yes. 25 Q. What is the date next to the signature?</p>	<p>1 MR. HAMPTON: Object to the form of the 2 question. 3 THE WITNESS: I don't know. I don't know. I 4 think -- I am not going to think. I don't know. 5 Q. (By MS. BONNELL) Did -- were you under 6 the impression that you always had Mr. Headington's 7 permission to speak with Mr. Geary? 8 A. Yes. 9 Q. Regarding -- 10 A. Yes. 11 Q. -- the A2 notes? 12 A. Yes. 13 Q. Have you seen Exhibit -- I am going to 14 hand you what is marked as Exhibit Number 6. It is the 15 same exhibit from yesterday. 16 A. Yes, ma'am. 17 Q. Mr. Shelley, have you seen Exhibit Number 18 6 before? 19 A. Yes, ma'am. 20 Q. What is Exhibit Number 6? 21 A. Exhibit Number 6 is titled, guaranty 22 agreement dated the date stated and this is a guaranty, 23 a personal guaranty signed relative to and pertaining to 24 the purchase of the A2 transaction by Mr. Headington. 25 Q. Does your signature appear on Exhibit 6?</p>

12 (Pages 42 to 45)