

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' RESPONSE TO THIRD PARTY DIRECTORS'
MOTION FOR RECONSIDERATION**

Respondents Geary Securities, Inc., Keith Geary and CEMP, LLC (collectively the "Geary Respondents") respectfully respond as follows to the Motion for Reconsideration filed by Jeff Wills, David Tinsley, Steve Ketter, Ray Evans, Earl Mills and Eldon Ventris (the "BOU Directors") on April 4, 2012. The BOU Directors ask the Hearing Officer to reconsider his March 15, 2012 ruling, grant the BOU Directors' previously-denied motion to quash, and prevent the Geary Respondents from deposing the BOU Directors. The BOU Directors' Motion should be denied for the following reasons:

1. The BOU Directors' legally flawed reconsideration request is based on the Department's filing of an amended witness list on March 30, 2012, which omits the BOU Directors as witnesses.
2. The timing of the Department's decision to amend its witness list and drop the BOU Directors is, at best, curious. The Department previously made the BOU Directors purportedly key figures in this case by listing them as

witnesses, obtaining an affidavit signed by them, and aggressively – and unsuccessfully – attempting to avoid the need to comply with discovery requests to produce drafts of the affidavit prepared by the Department for the BOU Directors.¹ The Department previously demonstrated its bias by supporting the BOU Directors’ unsuccessful attempt to quash the deposition subpoenas. See, Department’s Response, filed March 7, 2012 (stating the Department “*does not object and concurs with*” the BOU Directors’ request to quash the deposition subpoenas). In so doing, the Department apparently hoped to avoid the BOU Directors from being deposed and potentially providing testimony harmful to the Department’s case. The Department’s commitment to avoiding pre-hearing deposition testimony from the BOU Directors was confirmed when the Department dropped the BOU Directors as witnesses after the Hearing Officer ruled that they must appear for their depositions by April 30, 2012.

3. Prior to the filing of the BOU Directors’ Motion for Reconsideration, the Geary Respondents advised counsel for the Department (by telephone) and counsel for the BOU Directors (by e-mail attached hereto as Exhibit 1) that they still want to depose the BOU Directors notwithstanding the Department’s decision to drop them as witnesses. Pursuant to ODS Rules, the Geary Respondents have submitted a request to the Administrator to seek enforcement of the deposition subpoenas in light of the BOU Directors’

¹ In the course of the March 15, 2012 hearing the Hearing Officer ruled that the Department’s objection to producing the draft affidavits for the BOU Directors was “*not well founded.*”

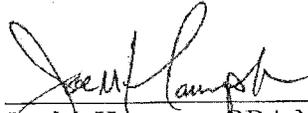
apparent refusal to comply. *See*, Notice of Application for Judicial Enforcement of Subpoenas Pursuant to Order Dated March 16, 2012 (filed April 2, 2012).

4. The Geary Respondents' witness lists have consistently included a category of "[A]ll witnesses identified by other parties, to the extent such witnesses' testimony is relevant, admissible, and not objected to by the Geary Respondents." As a result, the Geary Respondents have preserved their right to call the BOU Directors as witnesses at the hearing on the merits. The Geary Respondents confirmed this fact by filing – one business day after the Department filed its amended witness list – their "Endorsement of Previously-Identified Witnesses" (filed April 2, 2012), which expressly identified each of the six individual BOU Directors as potential witnesses.
5. The Geary Respondents continue to have the right under the ODS Rules to conduct discovery in the form of deposing the BOU Directors to discover what information they have that may be relevant in this enforcement action, particularly in the context of the Department's allegations and representations.
6. The BOU Directors' Motion for Reconsideration invites the Hearing Officer to deprive the Geary Respondents of their rights to discovery, due process and fundamental fairness in this proceeding. The BOU Directors' Motion accuses the Geary Respondents of pursuing a strategy to delay this proceeding and harass third parties. Motion, p. 2, paragraph 5. Nothing could be farther from the truth. Faced with the Department's request for unreasonably harsh and disproportionate sanctions and discipline that amount to a "professional death

sentence,” the Geary Respondents have consistently attempted to exercise their rights – granted and guaranteed by the Department’s own Rules and Oklahoma’s Constitution and statutes – to defend themselves.

WHEREFORE, The Geary Respondents respectfully request that the Hearing Officer issue an Order denying the BOU Motion for Reconsideration.

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 April 4, 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

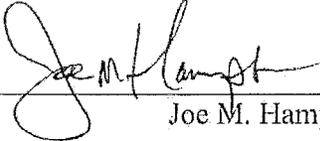
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Joe M. Hampton

EXHIBIT 1

Joe M. Hampton

From: Joe M. Hampton
Sent: Monday, April 02, 2012 12:36 PM
To: 'John J. Schirger'
Cc: 'Matthew W. Lytle'; 'Terra Bonnell (tshamas@securities.ok.gov)'; 'Melanie Hall' (mhall@securities.ok.gov); 'Donald A. Pape' (don@dapape.com); 'Susan Bryant' (sbryant@bryantlawgroup.com)'
Subject: RE: Geary - ODS proceeding / Bank of Union Director depositions

Dear John:

This confirms that my clients continue to wish to depose the six BOU Directors, pursuant to the previously-issued deposition subpoenas. Please advise at your earliest convenience whether you intend to comply and produce them in accordance with the Hearing Officer's Order.

The Department's 3/30/12 amended witness list also identifies Mike Shelley and Chris Martin as witnesses. Please advise whether you represent Mike Shelley for purposes of this administrative action and, if so, whether you are willing to voluntarily produce him for deposition. Likewise, please advise of your willingness to voluntarily produce Mr. Martin for deposition. Ms. Bonnell and I discussed the issue of Mr. Martin's deposition last week. While we both recall Ms. Bonnell providing you with available dates for Mr. Martin's deposition earlier this year, we did not recall any response. We remain willing to conduct Mr. Martin's deposition in Dallas on a mutually agreeable date. Please advise.

Thank you,

Joe Hampton

From: John J. Schirger [<mailto:JSchirger@millerschirger.com>]
Sent: Monday, April 02, 2012 10:37 AM
To: Joe M. Hampton
Cc: Matthew W. Lytle
Subject: Geary - ODS proceeding / Bank of Union Director depositions
Importance: High

Mr. Hampton – we obtained a copy of the Department's recently filed **Second Amended Final List of Witnesses**. The Department has removed from its witness list the Bank Directors who were the subject of the Hearing Officer's Order dated March 16, 2012. Please confirm that your client no longer wishes to depose these particular Directors. Thank you.

John

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