

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' SUPPLEMENT TO MOTION FOR PRECLUSION ORDER  
AND ORDER STRIKING DEPARTMENT'S EXHIBIT 27  
(PURPORTED HEADINGTON GUARANTY AGREEMENT)**

Respondents Geary Securities, Inc. (formerly known as Capital West Securities, Inc.), Keith D. Geary, and CEMP, LLC (the "Geary Respondents") respectfully submit this Supplement to the Geary Respondents' previously-filed Motion for Preclusion Order and Order Striking Department's Exhibit 27 (Purported Headington Guaranty).

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 Geary Respondents' Motion is based on Mr. Headington's refusal to cooperate in discovery authorized by the Department's Rules. As is discussed below, it has become abundantly clear that Mr. Headington does not view himself as a "victim" who needs or wants the aid and protection of the Department through this enforcement action. This

Supplement is provided to update the Hearing Officer concerning Mr. Headington's further efforts to resist and avoid discovery since the Geary Respondents' Motion was filed.

**A. Mr. Headington's Continuing Efforts to Resist and Avoid the Department's Deposition Subpoena.**

As discussed in the Geary Respondents' Motion, Mr. Headington has gone to great lengths to avoid the Geary Respondents' efforts to obtain his deposition. Mr. Headington's resistance now extends to the Department's efforts to obtain his deposition. On November 29, 2011, the Department asked the Hearing Officer to issue a subpoena for Mr. Headington's deposition on January 18, 2012 in Dallas, Texas.<sup>1</sup> The Hearing Officer issued the requested subpoena the same day. On December 16, 2011, The Department filed a Motion in the District Court of Oklahoma County asking the Court to issue a writ and commission in connection with the deposition of Mr. Headington to be taken in Texas.

The Department's Motion was scheduled for hearing on January 4, 2012 in the District Court. On January 3, 2012, Mr. Headington filed his Opposition and Motion to Quash, objecting to the Department's request. At the January 4, 2012 hearing, Mr. Headington (through counsel) argued that the District Court proceeding should be dismissed and the Department should be required to file a separate subpoena enforcement proceeding in Oklahoma County District Court in connection with the subject subpoena. Mr. Headington additionally contended that the Department is seeking his deposition without a valid basis. The District Court continued the hearing to April 6, 2012, and requested additional briefing from the Department and Mr.

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<sup>1</sup> The Department's request for Mr. Headington's deposition was a reaction to the Geary Respondents filing their preclusion order related to Mr. Headington on November 14, 2011. Prior to that time, the Department had refused to assist the Geary Respondents in their efforts to obtain Mr. Headington's deposition. See, for example, Order dated August 4, 2011 (denying the Geary Respondents' request that the Administrator reconsider his decision not to assist the Geary Respondents in obtaining Mr. Headington's deposition).

Headington in the interim. Mr. Headington has made clear he will continue to object and resist all efforts to obtain his deposition, whether in the District Court or ultimately in a Texas court.

**B. Mr. Headington's Attempts to Intimidate the Department and the Geary Respondents.**

The Geary Respondents' efforts to obtain Mr. Headington's deposition date back to February 2011 and are well chronicled. In addition to his evasive game of procedural keep-away, Mr. Headington has now launched misguided attacks on the Department and the Geary Respondents in an effort to intimidate both, stating that Mr. Headington intends to seek sanctions and pursue claims for abuse of process. Examples of Mr. Headington's recent threats and intimidation tactics are submitted as Exhibits 1 and 3 hereto.<sup>2</sup> The Geary Respondents' responses to such threats are submitted for reference purposes as Exhibits 2 and 4 hereto, and incorporated herein by reference.

It is abundantly clear that Mr. Headington intends to use his vast financial resources<sup>3</sup> to continue to avoid all discovery efforts in this action. Mr. Headington will undoubtedly continue to resist the Department's efforts through the District Court at its next scheduled hearing on April 6, 2012. If and when the Department obtains the relief it seeks from the District Court, one can safely assume that Mr. Headington will attempt to pursue any available appellate relief, as well as initiate evasive tactics when the Department proceeds to a Texas court for assistance in serving a deposition subpoena on Mr. Headington.

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<sup>2</sup> Counsel for the Geary Respondents has conferred with counsel for the Administrator (Shaun Mullins) and confirmed that the Department received an identical letter, dated January 9, 2012, as that attached hereto as Exhibit 1.

<sup>3</sup> Mr. Headington's wealth is no secret. He is a fixture on the *Forbes 400 List of the Richest People in America*, most recently at number 139 with a reported net worth of \$2.7 billion.

The Geary Respondents have no interest in harassing Mr. Headington. The Geary Respondents only interest has been in exploring Mr. Headington's knowledge concerning the security at issue and the alleged misrepresentations and omissions attributable to Mr. Geary by the Department in connection with such security.<sup>4</sup> The Department's Rules provide the Geary Respondents with discovery rights that they have attempted to exercise. Mr. Headington has refused to cooperate with the Geary Respondents' attempts. The same is now true with respect to the Department's belated attempt to obtain Mr. Headington's deposition. All signs indicate that the Department and the Geary Respondents will likely endure at least another 9-12 months or more of opposition and delay in the efforts to obtain Mr. Headington's deposition. The ongoing discovery battles with Mr. Headington will, in turn, continue to delay the hearing on the merits of the CEMP Claims. The Geary Respondents' Motion was filed in light of this outlook for continuing delay.

Fortunately, the Department's Rules provide a solution; specifically, Rule 660:2-9-3(c). Granting the preclusive relief requested by the Geary Respondents will not "punish" the Department. The Department can and will proceed to a hearing on the merits on the CEMP Claims that relate to the security purchased by the Bank of Union. Mr. Headington clearly does not view himself as a "victim" who needs the aid and protection of the Department through this

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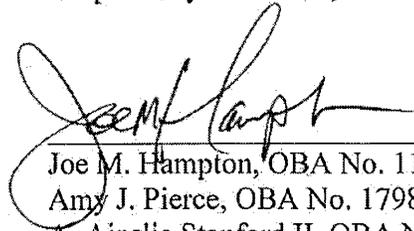
<sup>4</sup> Mr. Headington's counsel is attempting to avoid the Department's efforts on the basis that the Department has previously stated that it will not call Mr. Headington as a witness and his testimony would add nothing to the record. Counsel ignores the allegations contained in the Department's Recommendation concerning Mr. Headington. Counsel also ignores the fact that Mr. Headington's FINRA arbitration demand against the Geary Respondents, based on the identical facts, contains numerous express allegations that Geary made material misrepresentations to Mr. Headington and Mr. Headington relied on such representations in making his decision to purchase the CEMP security.

enforcement action.<sup>5</sup> Simply stated, enough is enough. The requested preclusive relief is appropriate under these circumstances.

Based on the discussion, argument and authorities previously presented, the Geary Respondents respectfully request 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. 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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<sup>5</sup> Mr. Headington is a named Claimant in a pending FINRA Arbitration case against the Geary Respondents based on the identical facts as those alleged by the Department in this administrative action. The Claimants in the FINRA case have now initiated two delays of the hearing date, which is now scheduled for September, 2012. The Claimants' lack of interest in pursuing their arbitration claims is understandable in light of the fact that the subject CEMP securities are performing well and, in the case of the security held by Mr. Headington, has appreciated significantly in value.

**CORBYN HAMPTON PLLC**  
One Leadership Square  
211 North Robinson, Suite 1910  
Oklahoma City, Oklahoma 73102  
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Email: [jhampton@corbynhampton.com](mailto:jhampton@corbynhampton.com)  
[apierce@corbynhampton.com](mailto:apierce@corbynhampton.com)  
[astanford@corbynhampton.com](mailto:astanford@corbynhampton.com)

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

**CERTIFICATE OF SERVICE**

I hereby certify that on January 16, 2012, a copy of the foregoing document was served on the following via electronic mail:

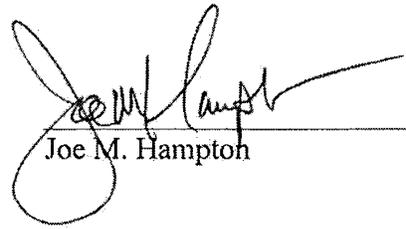
Mr. Bruce R. Kohl  
Hearing Officer  
201 Camino del Norte  
Santa Fe, NM 87501  
E-mail: [bruce.kohl09@gmail.com](mailto:bruce.kohl09@gmail.com)

Brenda London, Oklahoma Department of Securities  
120 North Robinson, Suite 860  
Oklahoma City, OK 73102; and

Melanie Hall, Director of Enforcement  
Terra Shamas Bonnell, Enforcement Attorney  
Oklahoma Department of Securities  
120 North Robinson, Suite 860  
Oklahoma City, OK 73102;

Donald A. Pape, Esq.  
Donald A. Pape, P.C.  
401 West Main Street, Suite 440  
Norman, OK 73069;

Susan Bryant  
[sbryant@bryantlawgroup.com](mailto:sbryant@bryantlawgroup.com)



Joe M. Hampton

EXHIBIT

1

# Miller Schirger

JOHN J. SCHIRGER  
(816) 561-6504 Direct  
jschirger@millerschirger.com

January 9, 2012

**VIA E-MAIL ([jhampton@corbynhampton.com](mailto:jhampton@corbynhampton.com)) and  
CERTIFIED MAIL –  
RETURN RECEIPT REQUESTED**

Joe Hampton  
Corbyn Hampton, PLLC  
One Leadership Square, Suite 1910  
211 North Robinson  
Oklahoma City, OK 63102-7115

RE: Deposition of Tim Headington

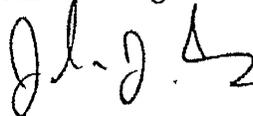
Dear Joe:

Your efforts to depose Mr. Headington are well-detailed, and your lack of a good faith basis to do so is obvious. We have made you aware, both verbally and through court papers, what our position is in this regard. The purpose of this letter is to put you on notice that should you continue your efforts to depose Mr. Headington, and thereby continue to subject him to harassment, undue expenses and abuse of process, that Mr. Headington will avail himself of all remedies, including seeking sanctions and pursuing counterclaims for abuse of process.

If you wish to discuss this matter again, please contact me. Otherwise, please consider yourself on notice.

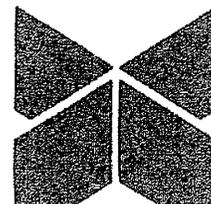
Very truly yours,

Miller Schirger LLC



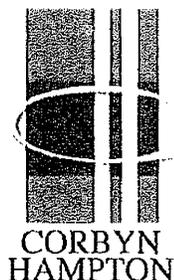
John J. Schirger

JJS:tlm



EXHIBIT

2



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Fax: (405) 702-4348

Website: [www.corbynhampton.com](http://www.corbynhampton.com)

January 10, 2012

**VIA EMAIL AND FIRST CLASS MAIL**

John Schirger, Esq.  
MILLER SCHIRGER LLC  
4520 Main Street, Suite 1570  
Kansas City, MO 64111  
Email: [jschirger@millerschirger.com](mailto: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 John:

This letter responds to your January 9<sup>th</sup> letter that accuses us of lacking a good faith basis for attempting to obtain Mr. Headington's deposition and purports to place us "on notice." Please be advised of the following:

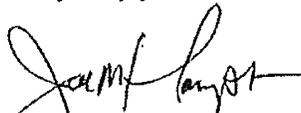
1. You are well aware that the Oklahoma Department of Securities ("ODS") initiated the referenced administrative enforcement action in September 2010. You are aware that ODS, in its publicly-filed Recommendation, specifically alleges that my clients violated securities laws and standards of conduct by offering and selling a security to Mr. Headington in September 2009, and that such alleged violations included misrepresentations and omissions by my clients to Mr. Headington.
2. You are well aware that, in December 2010, ODS filed a preliminary witness list that included Mr. Headington.
3. You are well aware that the applicable ODS Rules allow my clients to seek and obtain depositions prior to a hearing on the merits.
4. You are well aware that the Hearing Officer, appointed by the ODS Administrator, previously approved and issued depositions for Mr. Headington's deposition.
5. You have never made us "verbally" aware of any purported lack of a good faith basis for our clients to pursue Mr. Headington's deposition in this action. To the contrary, you advised us on one occasion that you anticipated Mr. Headington would resist efforts to obtain his deposition, without further explanation or reason.
6. Other than your unsuccessful Motion to Quash and For Protective Order (filed March 3, 2011, denied by Order dated March 24, 2011), you have never filed a "court paper"

directed to my clients' attempts to obtain Mr. Headington's deposition. Moreover, the one court paper you did file – your unsuccessful Motion to Quash – did not argue that my clients lacked a good faith basis for pursuing Mr. Headington's deposition. Rather, your lone argument concerning the deposition was that it was precluded by FINRA Arbitration Rules and, therefore, not permissible in the ODS action. The Hearing Officer found your argument unpersuasive, rejecting it by his Order dated March 24, 2011.

7. My clients have not harassed Mr. Headington or caused him to incur any undue expense, nor have they committed any abuse of process. Your attempt to suggest otherwise lacks any credibility.
8. You are well aware of the fact that ODS, not my clients, is currently pursuing Mr. Headington's deposition through the proceedings in Oklahoma County District Court that you attended on January 4, 2012. My clients did not request or cause ODS to request the deposition subpoena for Mr. Headington that the Hearing Officer issued on or about December 1, 2011. ODS's subpoena request was presumably a reaction to my clients having filed a motion for preclusion order related to Mr. Headington and ODS's allegations related to Mr. Headington.

Your threats of sanctions and counterclaims are misplaced, misdirected and have no impact on my clients' exercise of their rights under the ODS Rules and applicable statutory and common law

Very truly yours,

  
JOE M. HAMPTON  
For the Firm

EXHIBIT

3

# Miller Schirger

JOHN J. SCHIRGER  
(816) 561-6504 Direct  
jschirger@millerschirger.com

January 11, 2012

VIA E-MAIL ([jhampton@corbynhampton.com](mailto:jhampton@corbynhampton.com)) and  
FIRST CLASS MAIL

Joe Hampton  
Corbyn Hampton, PLLC  
One Leadership Square, Suite 1910  
211 North Robinson  
Oklahoma City, OK 73102-7115

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 Joe:

This letter responds to your letter dated January 10, 2012. The numbered paragraphs below respond to the numbered paragraphs set forth in your letter. Please be advised of the following:

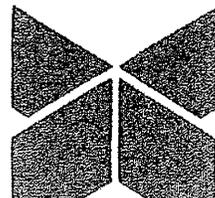
1. You are well aware that your client, Keith Geary, testified by deposition that he has never had any communications with Mr. Headington regarding the securities at issue in the ODS proceeding. You are further well aware that the Final Witness List from the ODS does not include Mr. Headington. You are further well aware that in the Department's Response to Geary Respondents' Motion for Preclusion Order filed in the administrative proceeding on November 28, 2011, the ODS stated it "will not call Mr. Headington as a witness at any hearing on the merits...for the very reason that his testimony will add nothing to the information in the record." Given these facts, it is clear that any efforts to depose Mr. Headington are nothing but harassment and abuse.

2. See paragraph no. 1.

3. You are well aware that the ODS Rules require a good faith basis before subjecting third parties to discovery. It is clear here that there is no good faith basis to depose Mr. Headington.

4. You are well aware that the Hearing Officer has been misled—see paragraph no. 1. We may seek to remedy this problem.

5. You are well aware that we have had such discussions telephonically when the Headington issue first arose months ago. Going forward, please consent to tape recording all of our telephonic discussions.



Joe Hampton  
January 11, 2012  
Page 2

6. You are only demonstrating your inability to stay informed of the filings in the various Geary related matters. As you know, we filed opposition papers on January 3, 2012, which were referenced numerous times at the January 4<sup>th</sup> hearing in your presence.

7. See paragraph no. 1.

8. You are well aware that the subpoena at issue states that it is being issued "On behalf of and pursuant to the previous requests of: [Respondents]." Moreover, in the Department's Motion to Add Necessary Party, the Department represents to the court that "The appearance of Timothy Headington for an oral deposition, in connection with the Administrative Proceeding, is being sought by the Respondents, *not* by the Department." These representations made by the Hearing Officer and the Department, and your position that "My clients did not request or cause ODS to request the deposition subpoena for Mr. Headington that the Hearing Officer issued on or about December 1, 2011," raise many questions, including the following, that I would appreciate a written response to immediately:

- a) Is it your clients' position that the Department made an error in the drafting or misrepresentations in seeking the subpoena at issue?
- b) Will your clients join in any opposition to the Motion for Writ and the Motion to Add Necessary Party?

Please consider the statements in my January 9 letter incorporated by this reference. Your misstatements of fact and attempt to hide behind the ODS are quite transparent, and we are confident that a court will agree.

Thank you for your attention to this matter and for taking the statements in my January 9 letter very seriously.

Very truly yours,

Miller Schirger LLC

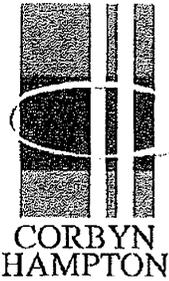


John J. Schirger

JJS:tlm

EXHIBIT

4



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Website: [www.corbynhampton.com](http://www.corbynhampton.com)

January 11, 2012

**VIA EMAIL AND FIRST CLASS MAIL**

John Schirger, Esq.  
MILLER SCHIRGER LLC  
4520 Main Street, Suite 1570  
Kansas City, MO 64111  
Email: [jschirger@millerschirger.com](mailto: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 John:

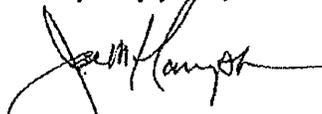
This letter responds to your January 11<sup>th</sup> letter that again misdirects accusations and threats against my clients and me.

1. Your apparent familiarity with Mr. Geary's deposition testimony raises the question of how you gained access to Mr. Geary's deposition transcript. Please advise.
2. Your understanding of Mr. Geary's deposition testimony is inaccurate and incomplete. For example, you are or should be aware of e-mail communications between Mr. Geary and Mr. Headington. Moreover, we had every right to seek to inquire and discover what information was relayed or not relayed to Mr. Headington by others concerning the security at issue.
3. Our interest in Mr. Headington's testimony began with the filing of the ODS Recommendation and continued through the filing of ODS's Preliminary Witness List and beyond the filing of the ODS Final Witness List. The fact that ODS opted to drop Mr. Headington after we began our pursuit of his deposition did nothing to lessen our interest. Statements made by ODS in an attempt to avoid the application and effect of its own Rules in the context of a requested preclusion order have no impact on our view. The allegations, charges and claims asserted by the ODS Recommendation concerning Mr. Headington still stand and have not been withdrawn or abandoned by ODS.
4. As stated in my letter dated January 10<sup>th</sup>, we have done nothing to subject Mr. Headington to harassment and abuse. We are very familiar with the requirements of the ODS Rules and Oklahoma Discovery Code. We are more than satisfied that our previous pursuit of Mr. Headington's deposition complied in all respects.
5. Contrary to your vague accusation, we have not misled the Hearing Officer in any way.

6. We have a clear recollection of the limited discussions that have occurred with you and Matt Lytle on the issue of Mr. Headington's deposition. We have never had any objection to audio recording all telephone conversations with your office.
7. With respect to my ability or inability to stay informed of filings concerning my clients, I encourage you to re-read paragraph 6 of my January 10<sup>th</sup> letter; specifically, my reference to the filing of any "court paper" "*directed to my clients' attempts to obtain Mr. Headington's deposition.*" As you are aware, my clients did not file the Motion for Writ in the District Court on December 16, 2011, nor did my clients request that the Hearing Officer issue the deposition subpoena for Mr. Headington that was the subject of the Motion filed by ODS in the District Court.
8. In response to the question posed by paragraph 8(a) of your January 11<sup>th</sup>, I cannot say what ODS thought or intended at the time it submitted its November 29, 2011 request to the Hearing Officer for the issuance of a deposition subpoena for Mr. Headington. I do know that we did not submit a request to ODS to seek such a subpoena. As you are aware, by that point in time we had filed our motion seeking a preclusion order related to Mr. Headington and the issues related to him. I can only assume that ODS elected to submit its November 29<sup>th</sup> subpoena request to the Hearing Officer as a reaction to our having filed the preclusion motion and/or in view of our prior efforts dating back to February 2011 to obtain Mr. Headington's deposition.
9. In response to the question posed by paragraph 8(b) of your January 11<sup>th</sup> letter, the simple answer is "no." Until such time as the Hearing Officer issues rulings on certain pending motions in the ODS action, my clients intend to continue to monitor the status of the District Court proceeding as non-parties.

I suspect we both have better ways to spend our time other than engaging in a prolonged letter writing campaign that accomplishes nothing. You have stated your position, to which I disagree. Likewise, you have stated your disagreement with my position. In the event you care to discuss potentially more productive issues along the lines we have previously discussed on a very preliminary basis, let me know and we can schedule a call for that purpose.

Very truly yours,



JOE M. HAMPTON  
For the Firm