

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**

**THIRD PARTY DIRECTORS' REPLY TO GEARY RESPONDENTS' RESPONSE TO  
HEARING OFFICER'S RULING ON MOTION FOR RECONSIDERATION**

The Third Party Directors, by and through undersigned counsel, for their Reply to the Geary Respondents' Response to Hearing Officer's Ruling on Motion for Reconsideration, state as follows:

The Hearing Officer should enter his Order quashing the subpoenas issued for the depositions of the Third Party Directors. The Order granting the Third Party Directors' Motion for Reconsideration (the "Order") does not, as the Geary Respondents argue it does, "concede that "(t)he testimony of the Third Party Directors is relevant." Response, p. 3, ¶4. The Order states only that "[t]he testimony of the Third Party Directors is relevant regarding **certain statements that were alleged to have been made by Respondent Keith Geary at a meeting of the Board of Directors of the Bank of Union ('BOU') held on September 22, 2009, at which the Third Party Directors were present.**" Order, p. 2. Indeed, beyond these statements and the September 22, 2009, Board Meeting, "the Geary Respondents have not submitted any additional explanation supporting the issuance of the subpoenas or the issues to be addressed with the deponents, or further defining the scope of the proposed depositions." *Id.*, n. 2.

Although the Hearing Officer provided them the opportunity to do so, the Geary Respondents failed to “present a written statement ... of the specific details of any additional issues or topics that they would propose to question each of the Third Party Directors about in the discovery depositions.” See Order, p. 4. Instead, the Geary Respondents revert to their mantra that the “express Order of the District Court ... has already disposed of” the issues of “whether depositions of the [Third Party] Directors would be ‘unreasonable and/or excessive in scope.’” Response, pp. 3-4. But the Third Party Directors were not parties to the District Court proceeding and, therefore, the Order does not apply. See *Taylor v. Sturgell*, 553 U.S. 880, 884 (2008) (“It is a general application in Anglo-American jurisprudence that one is not bound by a judgment *in personam* in a litigation in which he is not designated as a party or to which he has not been made a party by service of process.”).

The Geary Respondents clearly intend to depose the Third Party Directors about topics and issues beyond what they represented to the Hearing Officer as the basis for their subpoena request, i.e., “to confirm the attendance of the Third Party Directors at the subject BOU board meeting, and to confirm what was set forth in the Affidavit concerning the statements of Respondent Geary.” Order, p. 3. As the Hearing Officer found, the depositions as proposed by the Geary Respondents when requesting the subpoenas in the first place would be “redundant and unnecessary.” Given the Geary Respondents’ dogged pursuit of these depositions, therefore, their clear intent is to harass the Third Party Directors.

The Geary Respondents’ intent is evidenced by a review of the Department’s Recommendation and witness list, coupled with the absence of any filings, at least those that are publicly available, related to any effort by the Geary Respondents to obtain deposition discovery from any third parties other than, The Bank of Union and its officers and directors. The

Department's Recommendation alleges misconduct by the Geary Respondents directed toward 5 other third parties including Frontier State Bank and "Bank A," Joseph D. McKean, Jr., their owner and chairman, "Bank B," and "Customer D." The Department's witness list, which no longer includes the Third Party Directors, lists Billie N. Haycraft, and Joseph D. McKean, Jr., as witnesses expected to testify regarding Frontier State Bank and The Eagle Sky Foundation, Inc.'s PL-CMO transactions and communications relating to the offering of the CEMP notes. Yet, there are no filings, at least not publicly available, indicating any effort by the Geary Respondents to obtain deposition discovery from any of these other third parties, even those included on the Department's witness list.

On April 10, 2012, counsel for the Third Party Directors wrote to counsel for the Geary Respondents noting these, at best, curious facts, and seeking to clarify the Geary Respondents true intent. *See* Ex. A. "Because it is relevant to the Third Party Directors' position that the Geary Respondents are pursuing a strategy to 'harass third parties,'" counsel was asked to "please respond by stating the efforts the Geary Respondents have undertaken to depose Messrs. Haycraft and McKean, as well as any officer and directors of Frontier State Bank, Bank A, Bank B, and Customer D." Ex. A, p. 1. Tellingly, although counsel did reply to the letter, he did not respond to the question. Ex. B.

If the Geary Respondents were truly concerned only about their due process rights to pursue third party discovery, one would think they would have pursued discovery "in the form of deposing' all of the parties named in the Department's Recommendation, or at least those included on the Department's witness list." Ex. A, p. 1. Under the circumstances, the Third Party Directors are left to conclude that the Geary Respondents' strategy is not to harass third parties, generally, but is instead to harass only The Bank of Union and its officers and directors.

The Geary Respondents failed to comply with the Hearing Officer's directive that they "present a written statement ... of the specific details of any additional issues or topics that they would propose to question each of the Third Party Directors about in the discovery depositions." The Hearing Officer should, therefore, enter his Order quashing the subpoenas.

Dated: April 9, 2012.

Respectfully submitted,

**MILLER SCHIRGER, LLC**

/s/ Matthew W. Lytle

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 18th day of April, 2012, a copy of the foregoing document was emailed and mailed, with postage prepaid to:

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# Miller Schirger

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April 10, 2012

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

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RE: In the Matter of: Geary Securities, Inc. *aka* Capital West Securities, Inc., et al.  
ODS File No. 09-141

Dear Mr. Hampton:

In their Response to the Third Party Directors' Motion for Reconsideration, the Geary Respondents state that they "continue to have the right ... to conduct discovery in the form of deposing the BOU Directors ... particularly in the context of the Department's allegations and representations." With respect to the Third Party Directors' position that the Geary Respondents are pursuing a strategy to "harass third parties," the Geary Respondents state that "[n]othing could be further from the truth."

We note that the Department's Recommendation alleges misconduct by the Geary Respondents directed toward Frontier State Bank and Bank A, Joseph D. McKean Jr., their owner and chairman, Bank B, and Customer D. We note, too, that the Department has listed Billie N. Haycraft, and Joseph D. McKean, Jr., as witnesses expected to testify regarding Frontier State Bank and The Eagle Sky Foundation, Inc.'s PL-CMO transactions and communications relating thereto, as well as communications relating to the offering of the CEMP notes. Based on our review of the filings in this matter, however, it does not appear that the Geary Respondents have undertaken any efforts to depose Messrs. Haycraft and McKean, or any of the officers and directors of Frontier State Bank, Bank A, Bank B, or Customer D.

If the Geary Respondents were truly concerned only about their due process rights to pursue discovery, one would think they would have pursued discovery "in the form of deposing" all of the parties named in the Department's Recommendation, or at least those included on the Department's witness list, "particularly in the context of the Department's allegations and representations." Because it is relevant to the Third Party Directors' position that the Geary Respondents are pursuing a strategy to "harass third parties," please respond by stating the efforts the Geary Respondents have undertaken to depose Messrs. Haycraft and McKean, as well as any officers and directors of Frontier State Bank, Bank A, Bank B, and Customer D.

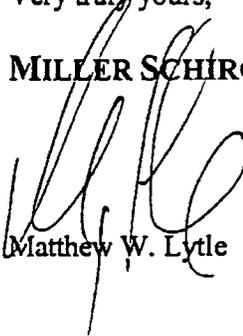


April 10, 2012  
Page Two

If the Geary Respondents are unwilling to provide this information, then perhaps a more precise statement of the Third Party Directors' position is that the Geary Respondents' strategy is to harass The Bank of Union and its officers and directors. We look forward to your reply.

Very truly yours,

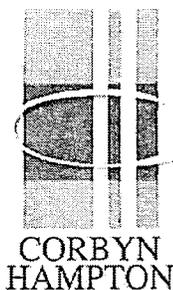
**MILLER SCHIRGER LLC**



Matthew W. Lytle

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April 11, 2012

**VIA EMAIL AND FIRST CLASS MAIL**

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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 Matthew:

This letter responds to your April 10th letter.

Your April 10<sup>th</sup> letter shares your view of the referenced enforcement case and your thoughts on what steps should be taken to represent a party in my clients' position. In light of the fact your clients are not parties to this action and your previous intervention request has been rejected by the Hearing Officer, you are not in a position to pose the functional equivalent of interrogatories (which are not authorized by the ODS Rules) or any other informational request in letter form or otherwise.

I will represent my clients as I deem appropriate under the facts and applicable law. I trust we both have better ways to spend our time and clients' money than engaging in a letter writing campaign that accomplishes nothing. For that reason, I will respectfully decline and refrain from engaging in further communication related to your April 10<sup>th</sup> letter and any similar correspondence in the future.

Very truly yours,

JOE M. HAMPTON  
For the Firm

cc (by e-mail): All Counsel

