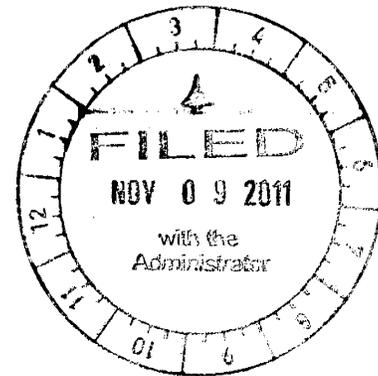


STATE OF OKLAHOMA  
DEPARTMENT OF SECURITIES  
THE FIRST NATIONAL CENTER  
120 NORTH ROBINSON, SUITE 860  
OKLAHOMA CITY, OKLAHOMA 73102



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' MOTION FOR PRECLUSION ORDER AND ORDER  
STRIKING DEPARTMENT WITNESSES (BANK OF UNION DIRECTORS) AND  
EXHIBIT (BANK OF UNION DIRECTORS' AFFIDAVIT)**

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 Motion to request that the Hearing Officer issue a preclusion order and an order (A) striking and prohibiting any testimony from six witnesses listed on the Department's Amended Final List of Witnesses as "Members of Bank of Union's Board of Directors" (the "BOU Directors")<sup>1</sup>; and (B) striking as an exhibit and prohibiting any attempt to introduce, refer to or rely on an affidavit signed by the BOU Directors.

**I. PRELIMINARY STATEMENT.**

This Motion is based on the actions and inactions of a non-parties (the BOU Directors) and their counsel that expose the Geary Respondents to unfair prejudice and deprivation of their rights to discovery, due process and fundamental fairness in this proceeding. The Department

---

<sup>1</sup> The BOU Directors include Jeff Wills, Ray Evans, Earl Mills, Eldon R. Ventris, Steve Ketter and David Tinsley. See, Department's Amended Final Witness List (filed March 28, 2011).

purportedly filed this enforcement action, in part, to redress alleged violations of securities laws in connection with the offer and sale of one security to Bank of Union. As is detailed in Section II below, The Geary Respondents have made numerous attempts to obtain discovery information from the BOU Directors through the means expressly authorized by the Department's Rules for an extended period of time. The BOU Directors' refusal to participate in discovery warrants the relief requested by this Motion.

**II. BRIEF STATEMENT OF FACTS RELEVANT TO THIS MOTION.**

**A. The BOU Directors' Role in this Enforcement Action.**

1. The Enforcement Division's "Recommendation" represents the charges being brought against the Respondents. The charges fall into two factual categories: (1) the Geary Respondents' involvement in a resecuritization project that led to the purchase of securities (one each) by BOU and Timothy Headington in September of 2009 (the "CEMP Charges"); and (2) Respondent Geary Securities' compliance with the net capital rule in May 2009 and February 2010 (the "Net Capital Charges").

2. The Recommendation contains allegations concerning the Geary Respondents' dealings with Bank of Union and contends that material misrepresentations and omissions and unethical securities practices were employed in connection with the offer and sale of one security to Bank of Union.

4. The Department identified the BOU Directors as witnesses in its Final and Amended Final Lists of Witnesses filed March 15 and 28, 2011.

5. The Department initially refused to produce to the Geary Respondents an affidavit the Department and provided to the BOU Directors to sign. The Department ultimately provided

the executed affidavit to the Geary Respondents on April 14, 2011, and advised that it intended to use it as an exhibit at the hearing on the merits.

**B. The Geary Respondents' Unsuccessful Efforts to Obtain Discovery from the BOU Directors.**

6. In response to a request made by the Geary Respondents, on April 4, 2011 counsel for the BOU Directors agreed to voluntarily produce for depositions the BOU Directors who executed the affidavit and committed to identify available deposition dates.<sup>2</sup>

7. Between April and August 2011 the parties to this action were involved in briefing and presenting various discovery disputes to the Hearing Officer and District Court.

8. On August 12, 2011, the Geary Respondents contacted counsel for the BOU Directors to follow up on the April 4<sup>th</sup> commitment to voluntarily present the BOU Directors for deposition. The Geary Respondents proposed deposition dates of September 20 and 21, 2011, for the 6 BOU Directors – 3 depositions per day. A response was requested by August 16, 2011.

9. On August 15, 2011, counsel for the BOU Directors responded and stated that he would respond by August 19<sup>th</sup> concerning the proposed deposition dates and also agreed to accept service of deposition subpoenas for the BOU Directors.

10. On August 16, 2011, the Geary Respondents submitted proposed Subpoenas Duces Tecum and Deposition Subpoenas for the BOU Directors to the Hearing Officer. The Hearing Officer granted the request and returned the Subpoenas.

---

<sup>2</sup> The undersigned counsel for the Geary Respondents verifies the accuracy of the facts set forth in Section II. Counsel has not burdened the record with copies of all communications that relate to such facts. Upon request by the Hearing Officer, counsel will gladly provide any or all supporting documentation.

11. On August 19, 2011, counsel for the BOU Directors advised the Geary Respondents that the proposed deposition dates (September 20 and 21) were unacceptable, but offered September 29 and 30 as alternative dates. The same day (August 19<sup>th</sup>) the Geary Respondents responded and advised that September 29 and 30 were acceptable.

12. On August 22, 2011, the Geary Respondents sent the Subpoenas for the BOU Directors to their counsel, and offered to modify the document production deadline (to September 9<sup>th</sup>) and the deposition dates per counsel's previous communications (to September 29 and 30). The Geary Respondents also offered to adjust the designated order of the 6 depositions if needed and requested.

13. On August 29, 2011, counsel for the BOU Directors and Geary Respondents discussed the BOU Directors' Subpoenas and agreed to revise the scope of the document subpoenas. Counsel for the Geary Respondents revised the Exhibit "A" to the document subpoenas and sent it to counsel for the BOU Directors on August 29<sup>th</sup>, and requested confirmation of the modified document production deadline of September 9<sup>th</sup> and modified deposition dates of September 29<sup>th</sup> and 30<sup>th</sup>.

14. On August 31, 2010, counsel for the BOU Directors proposed a document production deadline of September 16<sup>th</sup> (rather than September 9<sup>th</sup>) and also agreed to provide a privilege log and identification of bates numbers of previously produced documents (if relied on as being responsive to the BOU Directors' subpoenas) by September 16<sup>th</sup>. Counsel for the Geary Respondents confirmed their agreement on August 31, provided the BOU Directors not object to the revised (by agreement) document subpoenas other than on the basis of attorney-client privilege and work product. Counsel for the BOU Directors agreed to these terms on August 31<sup>st</sup>.

15. The BOU Directors did not produce any documents, privilege log or identification of previously-produced documents by bates range on the September 16, 2011 deadline. Instead, one of the attorneys for the BOU Directors (Matthew Lytle) advised that the other attorney (John Shirger) was handling the gathering of responsive documents from the BOU Directors, but was travelling at the time.

16. On September 20, 2011, the Geary Respondents followed up with counsel for the BOU Directors and inquired about the status of document production, requesting that the documents be produced no later than September 22<sup>nd</sup> to allow adequate review time prior to the depositions on September 29<sup>th</sup> and 30<sup>th</sup>. The Geary Respondents also requested that counsel advise them of the order of the witnesses on September 29<sup>th</sup> and 30<sup>th</sup>.

17. The BOU Directors did not produce any documents (or privilege log or bates numbers), and did not communicate with the Geary Respondents by September 22, 2011. Instead, on September 23<sup>rd</sup>, counsel (Matthew Lytle) advised the Geary Respondents "*there are no additional documents to be produced by the directors, thus, you currently have all documents in your possession.*" Counsel also advised that they were "*still working to confirm the order of witnesses.*"

18. On September 23, 2011, the Geary Respondents' counsel responded and reminded counsel of the need to identify bates numbers of previously produced documents that are responsive to the document subpoenas served on the 6 BOU Directors. Counsel requested that the bates numbers be provided by September 26<sup>th</sup> at the latest. Counsel also requested that the specific order and times for the depositions of each of the BOU Directors be provided by September 26<sup>th</sup>.

19. On September 26, 2011, counsel for the BOU Directors responded and advised the Geary Respondents that:

- Contrary to previous communications and agreement (see paragraph 14 above), counsel took the position there was no requirement that bates numbers of previously-produced documents be provided; and
- Rather than produce the 6 BOU Directors for depositions on September 29<sup>th</sup> and 30<sup>th</sup> (pursuant to the subpoenas and counsel's subsequent communications and agreement), only 4 of the 6 BOU Directors would be produced for deposition on September 29<sup>th</sup> and 30<sup>th</sup> and "[w]e can discuss rescheduling the other 2, if necessary."

20. On September 26, 2011, counsel for the Geary Respondents contacted counsel for the BOU Directors on these issues. Counsel's e-mail is self-explanatory and attached as Exhibit 1 for reference purposes. Among other things, counsel reiterated the Geary Respondents' intent to depose all 6 BOU Directors listed as witnesses by the Department and requested confirmation that all 6 BOU Directors would be produced for depositions on September 29<sup>th</sup> and 30<sup>th</sup>.

21. Counsel for the Geary Respondents attempted to follow up with counsel for the BOU Directors throughout the day on September 27, 2011, and requested a call to discuss the unresolved issues. Counsel for the Geary Respondents contacted counsel for the Department and Respondent Frager to check their schedules and availability for such a call. Mr. Lytle responded and advised that he needed Mr. Shirger to participate in the proposed call, but that Mr. Shirger was unavailable. The undersigned counsel for the Geary Respondents and Mr. Lytle ultimately had a call during the afternoon of September 27<sup>th</sup>. Mr. Shirger did not participate. No resolution of issues was reached. As a result and with the deposition date less than 2 days away, the undersigned counsel reluctantly cancelled the depositions and proposed a call with all

counsel to attempt to resolve the issues. A copy of the undersigned counsel's confirming September 27<sup>th</sup> e-mail is attached for reference purposes as Exhibit 2.

22. Counsel for the BOU Directors declined to participate in the proposed call with all counsel to attempt to resolve the issues related to the BOU Directors' depositions. Instead, counsel for the BOU Directors notified the Geary Respondents that "*we consider the subpoenas expired and will entertain no further negotiations about scheduling the directors' depositions.*"

### **III. ARGUMENT AND AUTHORITY.**

The scope of requested relief sought by the Geary Respondents includes the following:

- An Order striking as an exhibit the affidavit signed by the 6 BOU Directors and precluding its offer, admission or reference in any pleadings, depositions, and at the hearing on the merits in this proceeding; and
- An Order precluding the 6 BOU Directors from testifying at the hearing on the merits in this proceeding.

As is discussed below, the requested relief is authorized by the Department's own Rules and is warranted under the facts and circumstances detailed herein.

#### **A. THE BOU DIRECTORS' REFUSAL TO PARTICIPATE IN DISCOVERY AND ATTEMPTS TO KEEP THE GEARY RESPONDENTS "IN THE DARK" ARE CONTRARY TO APPLICABLE LAW.**

Oklahoma law recognizes that, even in administrative proceedings, a litigant is entitled to know the grounds upon which the other party bases their contentions. In *State ex rel. Protective Health Services v. Billings Fairchild Center, Inc.*, 158 P.3d 484, 489 (Okla.Civ.App. Div. 4,2006)(involving an administrative process pursued by the Protective Health Services of the

Department of Health in which the State moved to compel interrogatories from the respondent), the Oklahoma Court of Appeals held:

Civil trials no longer are to be conducted in the dark. Discovery, consistent with recognized privileges, provides for the parties to obtain the fullest possible knowledge of the issues and facts before trial. *Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1346 (5th Cir.1978). "The aim of these liberal discovery rules is to 'make a trial less a game of blind man's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent.' "

*Id.*

As a result of the evasive discovery tactics employed by the BOU Directors and their counsel, the Geary Respondents are having to attempt to defend themselves "blind folded" and completely "in the dark" with respect to the Department's allegations and statements contained in the subject affidavit that was drafted by the Department and signed by the 6 BOU Directors.

**B. THE DEPARTMENT'S RULES AUTHORIZE THE RELIEF REQUESTED BY THE GEARY RESPONDENTS.**

It is clear the Geary Respondents were entitled, under the Department's own Rules, to pursue discovery from, among others, the BOU Directors. *See*, ODS Rule 660:2-9-4(a). The Geary Respondents' right and opportunity to respond to the Department's charges and present evidence and argument "on all issues involved" is expressly granted and guaranteed by Oklahoma statute. 75 Okla.Stat. § 309(C)(Okla. Admin. Procedures Act). In recognition of this absolute right, the Department's Rules provide for deposition and document discovery to obtain information on issues that may be presented by the Department. *See*, Rule 600:2-9-3(b) and 2-9-4(a). Depriving the Geary Respondents of their absolute right to pursue and obtain information

from the BOU Directors concerning the Department's charges in this matter constitutes an impermissible denial of due process. *See Anadarko Petroleum Corp. v. Corp. Commission*, 1993 OK CIV APP 139, 859 P.2d 535 (failure to afford applicant opportunity and notice to respond to protestor's argument, which Commission treated as evidence, constituted denial of due process, requiring that order of Commission be vacated); *Cyphers v. United Parcel Service*, 3 S.W.3d 698, 703 (Commission's failure to subpoena and require attendance of independent medical examiner who prepared a report relied upon at hearing denied a claimant her due process right of cross examination).

When a person or entity fails to participate in a hearing or the discovery process, the Department's Rules expressly contemplate and provide consequences for such failure. The BOU Directors' persistent refusal to comply with authorized discovery requests constitutes a failure and refusal to participate in good faith in the discovery process, triggering application of the remedies provided by the Rules. *See*, Rule 660:2-9-3 (f). The fact that this Motion is directed at the BOU Directors' refusal to comply with discovery – rather than the Department's refusal – is of no consequence. The result is the same – the Geary Respondents are being denied the opportunity to exercise their discovery rights and fully defend themselves against the Department's charges related to Bank of Union.

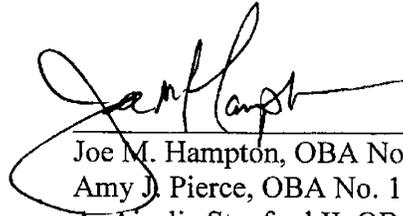
The sanctions provided by the Rule include “striking of any pleading” and “a preclusion order.” *See*, Rule 660: 2-9-3 (f) (1) and (2). Under these circumstances, granting this Motion and the remedies expressly authorized by the Department's own Rules is appropriate.

#### IV. CONCLUSION.

Based on the foregoing discussion, argument and authorities, the Geary Respondents respectfully request that the Hearing Officer:

- A. Issue an Order striking as an exhibit the affidavit signed by the 6 BOU Directors and precluding its offer, admission or reference in any pleadings, depositions, and at the hearing on the merits in this proceeding; and
- B. Issue an Order precluding Jeff Wills, Ray Evans, Earl Mills, Eldon R. Ventris, Steve Ketter and David Tinsley from testifying at the hearing on the merits in this proceeding.

Respectfully submitted,



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

**CORBYN HAMPTON PLLC**  
One Leadership Square  
211 North Robinson, Suite 1910  
Oklahoma City, Oklahoma 73102  
Telephone: (405) 239-7055  
Facsimile: (405) 702-4348  
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 November 9, 2011, a copy of the foregoing document was served on the following via electronic mail:

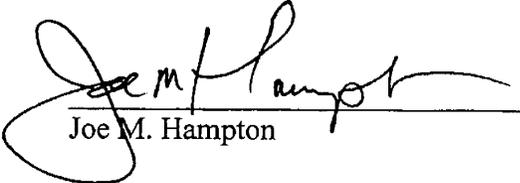
Mr. Bruce R. Kohl  
Hearing Officer  
201 Camino del Norte  
Santa Fe, NM 87501  
E-mail: [bruce.kohl09@gmail.com](mailto:bruce.kohl09@gmail.com)

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

**Joe M. Hampton**

---

**Subject:** FW: BOU / Geary ODS matter - subpoenas to Directors

**From:** Joe M. Hampton  
**Sent:** Monday, September 26, 2011 4:44 PM  
**To:** 'Matthew W. Lytle'  
**Cc:** Ainslie Stanford; 'John J. Schirger'  
**Subject:** RE: BOU / Geary ODS matter - subpoenas to Directors

Matt:

I do not understand your contention that “[e]ven if the directors had responsive documents to produce, there is nothing requiring that they be identified in the manner you request.” We requested and the Hearing Officer issued document subpoenas to each of the six Directors. If they have responsive documents, I believe they are required to produce them per the subpoenas. Your e-mail last Friday gave me the impression there were responsive documents, but they have previously been produced – presumably by BOU.

Further on the issue of responsive documents, are any being withheld based on a claim of attorney-client privilege or attorney work product? If so, please provide a privilege log promptly. See, your e-mail dated 8/31/11 (agreement to provide a privilege log by 9/16/11).

On the issue of the Directors’ depositions, we requested and the Hearing Officer approved the issuance of deposition subpoenas for all 6 Directors over two days at specific times. When John advised that the two selected dates were problematic, he (John) proposed two alternative dates – September 29 and 30. See, John’s e-mail dated 8/19/11. We polled the other counsel and accommodated John’s rescheduling request. Nothing was mentioned on August 19<sup>th</sup> or since then about a need or desire to spread the Directors’ depositions out over more than two days. As recently as last Friday you advised me that you were “still working to confirm the order of witnesses.” See, your e-mail dated 9/23/11.

We have previously accommodated requests for two different dates (September 29 and 30) and we have agreed to limit the scope of the document subpoenas as requested. However, we are not willing to make a last-minute change and depose 4 Directors on September 29 and 30, then debate whether and when the other two Directors will be deposed. ODS has listed as an exhibit an affidavit signed by six Directors and we intend to depose all six. We believe it is more efficient for all of the Directors to be deposed on consecutive days without intervening gaps in time that often create additional testimonial issues and challenges.

I am interpreting your e-mail as notification that you are declining to produce all six Directors for depositions on September 29 and 30. If I am mistaken, please advise and confirm your commitment to produce all six Directors on September 29 and 30, and provide specific times for each on each day. Otherwise, I suggest we schedule a call tomorrow and attempt to find a solution to this problem. In addition, we need to discuss my pending request for available deposition dates for John Shelley and Michael Braun. With a little advance notice I can arrange my schedule for tomorrow to be available between 8:30-9:30 a.m. and between noon-5:30 p.m. Let me know what time works for you.

Thanks,

Joe

---

**From:** Matthew W. Lytle [mailto:MLytle@millerschirger.com]  
**Sent:** Monday, September 26, 2011 4:02 PM  
**To:** Joe M. Hampton  
**Cc:** Ainslie Stanford; John J. Schirger  
**Subject:** RE: BOU / Geary ODS matter - subpoenas to Directors

Joe:

Because the directors have no responsive documents, there is nothing to identify by bates number. Even if the directors had responsive documents to produce, there is nothing requiring that they be identified in the manner you request.

As for the order of witnesses, given that there will be three sets of counsel questioning the directors, it seems unlikely that all 6 depositions will be completed in 2 days. Rather than having the Bank's directors wait around for hours to be deposed, we will produce 2 directors on September 29<sup>th</sup> and 2 others on September 30<sup>th</sup>, with depositions beginning at 9:30 a.m. and 1:30 p.m. each day. We can discuss rescheduling the other 2, if necessary, when we are all together later this week.

Regards,

Matt Lytle

(816) 561-6510 - Direct  
(816) 419-2249 - Cell  
[mlytle@millerschirger.com](mailto:mlytle@millerschirger.com)

---

**From:** Joe M. Hampton [mailto:JHampton@Corbynhampton.com]  
**Sent:** Friday, September 23, 2011 10:57 AM  
**To:** Matthew W. Lytle  
**Cc:** Ainslie Stanford; John J. Schirger  
**Subject:** RE: BOU / Geary ODS matter - subpoenas to Directors

Matt:

Please bear in mind that document subpoenas were issued and served on the six individual Bank of Union Directors. Consistent with what has transpired in the past, please identify by bates numbers those documents that have been previously produced that are responsive to the specific items identified and requested by the document subpoenas issued and served on the Bank of Union Directors. In order for the depositions to be conducted in an efficient manner, we need to have the bates numbers as soon as possible and no later than Monday 9/26/11. In addition, please bear in mind there are two other lawyers involved in this case – counsel for ODS and counsel for Respondent Frager – so it is important that the same information and the specific order, dates and times for each of the Directors be confirmed as soon as possible.

I look forward to hearing further from you on these issues no later than Monday, and hopefully before. If I am not available, please contact Ainslie. If for some reason you are not able to communicate with us by Monday, please let us know in advance so we are not left in the dark with no communication.

Thanks,

Joe

---

**From:** Matthew W. Lytle [mailto:MLytle@millerschirger.com]  
**Sent:** Friday, September 23, 2011 10:44 AM  
**To:** Joe M. Hampton  
**Cc:** Ainslie Stanford; John J. Schirger  
**Subject:** RE: BOU / Geary ODS matter - subpoenas to Directors

Joe:

I was traveling earlier this week, and was unable to confer with John about the status of the production of documents by the Bank's directors until this morning. There are no additional documents to be produced by the directors, thus, you currently have all documents in your possession.

We are still working to confirm the order of witnesses.

Regards,

Matt Lytle

(816) 561-6510 - Direct  
(816) 419-2249 - Cell  
[mlytle@millerschirger.com](mailto:mlytle@millerschirger.com)

---

**From:** Joe M. Hampton [mailto:JHampton@Corbynhampton.com]  
**Sent:** Tuesday, September 20, 2011 4:39 PM  
**To:** Matthew W. Lytle  
**Cc:** Ainslie Stanford; John J. Schirger  
**Subject:** BOU / Geary ODS matter - subpoenas to Directors

Matt:

Please give me an update at your earliest convenience concerning production of documents by the BOU Directors. We previously agreed on a 9/16/11 production date. You advised me on 9/16/11 that John was handling gathering the responsive documents, but was travelling at that time. We need to have all documents responsive to the revised subpoenas produced by Thursday of this week so that we and our clients have adequate time to review prior to the BOU Directors' depositions.

Please also advise the order of witnesses (BOU Directors) for Sept. 29<sup>th</sup> and 30<sup>th</sup>.

Thanks,

Joe

---

**From:** Matthew W. Lytle [mailto:MLytle@millerschirger.com]  
**Sent:** Wednesday, August 31, 2011 3:23 PM  
**To:** Joe M. Hampton  
**Cc:** Ainslie Stanford; John J. Schirger  
**Subject:** RE: BOU / Geary ODS matter - subpoenas to Directors

Joe:

We will agree that the BOU directors will not lodge any objections to the revised document subpoenas on the basis of overbreadth or undue burden, all other objections including attorney-client privilege and work product being reserved.

Regards,

Matt Lytle

(816) 561-6510 - Direct  
(816) 419-2249 - Cell  
[mlytle@millerschirger.com](mailto:mlytle@millerschirger.com)

---

**From:** Joe M. Hampton [mailto:JHampton@Corbynhampton.com]  
**Sent:** Wednesday, August 31, 2011 3:10 PM  
**To:** Matthew W. Lytle  
**Cc:** Ainslie Stanford; John J. Schirger  
**Subject:** RE: BOU / Geary ODS matter - subpoenas to Directors

Matt:

We can agree to the 9/16/11 document production deadline, provided you are able to confirm that the BOU Directors will not lodge any objections to the revised document subpoenas, other than on the basis of the attorney-client privilege. Let me know at your earliest convenience if this is agreeable.

Thanks,

Joe

---

**From:** Matthew W. Lytle [mailto:MLytle@millerschirger.com]  
**Sent:** Wednesday, August 31, 2011 2:40 PM  
**To:** Joe M. Hampton  
**Cc:** Ainslie Stanford; John J. Schirger  
**Subject:** RE: BOU / Geary ODS matter - subpoenas to Directors

Joe:

While we still believe that Request 4 – 7 are redundant, by striking Request 8 and limiting Request 6 in the manner noted in your redline, we agree that Exhibit A to the subpoenas comports with the Court's July 25, 2011, Order.

As for the dates you proposed, I have confirmed with John that September 29 and 30, 2011, are the dates proposed, and apparently agreed to by all parties, for the depositions. That said, because the depositions are a full month off, we propose the following with respect to the document subpoenas:

9/16/11: Deadline for (1) the BOU Directors' production of documents responsive to the document subpoenas, as revised, (2) delivery of a privilege log related to the BOU Directors' document subpoenas, and (3) identification of the bates range(s) of previously-produced documents responsive to the BOU Directors' document subpoenas (if you elect to rely on previously produced documents).

A September 16<sup>th</sup> production deadline should still allow you sufficient time to review any documents and prepare for the various depositions. Please let me know by 4:00 p.m. today if this date is acceptable. Thank you.

Regards,

Matt Lytle

(816) 561-6510 - Direct  
(816) 419-2249 - Cell  
[mlytle@millerschirger.com](mailto:mlytle@millerschirger.com)

---

**From:** Joe M. Hampton [mailto:JHampton@Corbynhampton.com]  
**Sent:** Monday, August 29, 2011 3:11 PM  
**To:** Matthew W. Lytle  
**Cc:** Ainslie Stanford; John J. Schirger  
**Subject:** RE: BOU / Geary ODS matter - subpoenas to Directors

Matt:

Per our discussion this afternoon, I am attaching redline and clean versions of the revised Exhibit "A" to the BOU Directors' document subpoenas. Please review and confirm your agreement with the revised Exhibit "A."

Here are the dates I previously proposed and would appreciate you confirming:

9/9/11: Deadline for (1) the BOU Directors' production of documents responsive to the document subpoenas, as revised, (2) delivery of a privilege log related to the BOU Directors' document subpoenas, and (3) identification of the bates range(s) of previously-produced documents responsive to the BOU Directors' document subpoenas (if you elect to rely on previously produced documents).

9/29/11 and 9/30/11: Depositions of the BOU Directors (per John's 8/19/11 e-mail).

Thanks,

Joe

---

**From:** Matthew W. Lytle [mailto:MLytle@millerschirger.com]  
**Sent:** Monday, August 29, 2011 10:02 AM  
**To:** Joe M. Hampton  
**Cc:** Ainslie Stanford; John J. Schirger  
**Subject:** RE: BOU / Geary ODS matter - subpoenas to Directors

Joe:

An issue has arisen that may prevent John from participating in a call this afternoon. To keep things moving forward, I will handle the call, but have a client meeting at 3:00. Would it be possible to move the time up to 2:00 p.m.? If John is available, he will join from my end, if not we can proceed without him. Please let me know if that time works. Thanks.

Regards,

Matt Lytle

(816) 561-6510 - Direct  
(816) 419-2249 - Cell  
[mlytle@millerschirger.com](mailto:mlytle@millerschirger.com)

---

**From:** Joe M. Hampton [mailto:JHampton@Corbynhampton.com]  
**Sent:** Monday, August 29, 2011 9:07 AM  
**To:** John J. Schirger  
**Cc:** Matthew W. Lytle; Ainslie Stanford  
**Subject:** RE: BOU / Geary ODS matter - subpoenas to Directors

Will try to call around 3 p.m.

---

**From:** John J. Schirger [mailto:JSchirger@millerschirger.com]  
**Sent:** Monday, August 29, 2011 8:11 AM  
**To:** Joe M. Hampton  
**Cc:** Matthew W. Lytle  
**Subject:** BOU / Geary ODS matter - subpoenas to Directors

Joe – I am in all day today. Please give me a call to discuss the subpoenas. I have a problem with them that we should be able to work out over the phone given previous rulings in this case.

John

John J. Schirger  
**MILLER SCHIRGER LLC**  
4520 Main Street, Suite 1570  
Kansas City, MO 64111  
General: 816-561-6500  
Direct: 816-561-6504  
Fax: 816-561-6501  
[jschirger@millerschirger.com](mailto:jschirger@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 [jschirger@millerschirger.com](mailto:jschirger@millerschirger.com) and promptly destroy the original transmission. Thank you for your assistance.

EXHIBIT

2

**Joe M. Hampton**

---

**Subject:** FW: In the Matter of Geary Securities, Inc., et al; ODS No. 09-141

**From:** Joe M. Hampton  
**Sent:** Tuesday, September 27, 2011 2:58 PM  
**To:** 'Matthew W. Lytle' (MLytle@millerschirger.com)  
**Cc:** John J. Schirger; Ainslie Stanford; 'Terra Bonnell' (tbonnell@securities.ok.gov); 'Donald A. Pape' (don@dapape.com)  
**Subject:** In the Matter of Geary Securities, Inc., et al; ODS No. 09-141

Matt:

This is to follow up on our call earlier this afternoon. While I appreciated the opportunity to visit with you by phone, the issues raised and questions posed by my 9/26/11 e-mail (below) have not been addressed, much less resolved.

We have no option at this point but to proceed on the basis that you and John are declining to (1) commit to produce all six Directors for depositions on September 29 and 30, 2011, and (2) respond to questions we have posed concerning the production of documents responsive to the document subpoenas and/or provision of a privilege log as previously discussed and agreed.

In light of these unresolved issues, and taking into consideration the respective schedules of counsel and the need for efficiency, we are left with no alternative but to cancel the depositions of on September 29 and 30, 2011. I am notifying counsel in the ODS enforcement action by copy of this e-mail. Notwithstanding this development, we will advise Mr. Kohl today that we have no objection to your Motion for Temporary Admission.

We remain willing to participate in a call to discuss and attempt to resolve the pending discovery issues involving the BOU Directors, as well as BOU officers John Shelley and Mike Braun. Our pending request for deposition dates of Messrs. Shelley and Braun continues to go unanswered. Please advise at your earliest convenience whether you and John are available to participate in a call on these issues on Thursday, September 29<sup>th</sup>. I will be occupied in depositions out of the office in another case all day tomorrow and, therefore, unavailable for a call in this matter until Thursday. Let me know a good time for a call on Thursday and I will coordinate with other counsel in the case.

Thanks,

Joe