

STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
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

DEPARTMENT'S OBJECTION AND RESPONSE TO (1) GEARY RESPONDENTS' MOTION FOR PRECLUSION ORDER STRIKING WITNESSES FROM DEPARTMENT'S FINAL WITNESS LIST BASED ON THE DEPARTMENT'S NON-COMPLIANCE WITH THE AGREED AMENDED SCHEDULING ORDER, AND (2) GEARY RESPONDENTS' OBJECTION TO AMENDED FINAL LIST OF WITNESSES FILED OUT OF TIME AND RENEWED REQUEST FOR HEARING ON MOTION FOR PRECLUSION ORDER STRIKING WITNESSES FROM DEPARTMENT'S FINAL WITNESS LIST

The Oklahoma Department of Securities ("Department") respectfully submits this objection and response to (1) *Geary Respondents' Motion for Preclusion Order Striking Witnesses from Department's Final Witness List based on the Department's Non-compliance with the Agreed Amended Scheduling Order* ("Motion for Preclusion Order"), filed on March 28, 2011, and (2) *Geary Respondents' Objection to Amended Final List of Witnesses Filed Out of Time and Renewed Request for Hearing on Motion for Preclusion Order Striking Witnesses from Department's Final Witness List Based on the Department's Non-Compliance with the Agreed Amended Scheduling Order* ("Objection to Amended Final Witness List"), filed on March 28, 2011.

I. GEARY RESPONDENTS' MOTION FOR PRECLUSION ORDER SHOULD BE DENIED.

Department's Final List of Witnesses ("Final Witness List"), filed on March 25, 2011, complied with paragraph 2 of the *Agreed Amended Scheduling Order* ("Amended Scheduling Order"), filed on February 14, 2011. The requirement of identifying a witness by "name, address, and telephone number" was intended to serve the purpose of identifying the witness and providing all parties with a means of contacting the witness. Paragraph 2 does not state that the witness's residential and/or business address and telephone number must be provided. Providing the address and telephone number of the witness's counsel provides all parties with an identification of the witness and a means of contacting the witness.

The Department has been informed that each of the witnesses at issue¹ is represented by the identified counsel for purposes of the above-captioned proceeding.² Since that time, the Department's communications, if any, with the witnesses at issue have been directed through each witness's counsel as should the communications of Respondents' counsel.

The Department realizes now that the language of the Amended Scheduling Order should have been drafted more specifically. However, the Department circulated the Amended Scheduling Order, and prior versions containing the same requirement, to opposing counsel for review and approval on multiple occasions. Counsel for the Geary Respondents had notice that the requirement did not specify a witness's residential and/or business address and telephone number and had ample opportunity to request language that required the disclosure of a witness's residential and/or business address and telephone number. In support of the reasonableness of

¹ The Geary Respondents have moved to strike the following witnesses from the Department's Final Witness List: Mike Shelley, John Shelley, Mike Braun, Chris Martin, Jeff Wills, Ray Evans, Earl Mills, Eldon R. Ventris, Steve Ketter, David Tinsely, Betty Pettijohn, Bill Haycraft, Joseph D. McKean, Jr., and Karen Hooley.

² The Department misunderstood William C. McMurrey, Esq., to represent Joseph D. McKean, Jr.

the Department's interpretation of the relevant language in paragraph 2 of the Amended Scheduling Order, is the fact that Respondent Norman Frager's counsel provided the address and telephone number of counsel for the witnesses listed on *Respondent Norman Frager's Preliminary List of Witnesses and Exhibits*, under the original scheduling order which contained the exact same language.³

The Geary Respondents have not been materially prejudiced by the Department's Final Witness List nor has their right to discovery, due process and/or "fundamental fairness" been deprived. The Geary Respondents are trying to strike and exclude the testimony of fourteen of the Department's witnesses. Seven of those witnesses were on the Department's preliminary witness list: Mike Shelley, John Shelley, Mike Braun, Chris Martin, Bill Haycraft, Joseph D. McKean, Jr., and Karen Hooley. The Geary Respondents surely have the residential address of Mike Shelley in light of the fact that he was an employee of the Geary Securities until recently. The Geary Respondents know that John Shelley and Mike Braun are employed by the Bank of Union and have already served subpoenas upon them utilizing their business addresses. The Geary Respondents know that Chris Martin works for a company owned by Tim Headington whose website provides Chris Martin's business address. The Geary Respondents know that Bill Haycraft is employed by Frontier State Bank, a customer of Geary Securities. The Geary Respondents also know that Karen Hooley is employed by Yukon National Bank, another customer of Geary Securities. In addition, Joseph D. McKean Jr. is a customer of Geary Securities and a friend of Keith Geary. Keith Geary has visited Joseph D. McKean Jr. at his residence.

³ The Geary Respondents did not identify any witness by name, address or telephone number on their preliminary witness list.

The seven witnesses that were not on the Department's preliminary witness list were Jeff Wills, Ray Evans, Earl Mills, Eldon R. Ventris, Steve Ketter, David Tinsley, and Betty Pettijohn. The Geary Respondents know that Betty Pettijohn is an employee of Bank of Union and know her business address – the same address where they served subpoenas on John Shelley and Mike Braun. The remaining witnesses are directors of the Bank of Union. Their residential and/or business addresses and telephone numbers, along with those of the other witnesses at issue, were provided to the Geary Respondents when the *Department's Amended Final List of Witnesses* ("Amended Final Witness List") was filed on Monday, March 28, 2011. The Geary Respondents would not have been able to get subpoenas issued to any of these witnesses on the Saturday or Sunday following the Department's filing of its Final Witness List on Friday, March 25, 2011. Again, the Geary Respondents were not prejudiced.

For the foregoing reasons, the Department respectfully requests that the Geary Respondents' Motion for Preclusion Order be denied.

II. GEARY RESPONDENTS' OBJECTION TO AMENDED FINAL WITNESS LIST SHOULD BE DENIED.

The Department's Final Witness List complied with the Amended Scheduling Order; however, the Department filed its Amended Final Witness List in an attempt to save the time and resources to be spent by the parties and the Hearing Officer over the Geary Respondents' Motion for Preclusion Order. The Department's Amended Final Witness List identified the exact same witnesses that were on its Final Witness List and included residential and/or business addresses and telephone numbers for the witnesses at issue, in addition to the addresses and telephone numbers of their counsel. As indicated in a footnote to the Geary Respondents' Objection to Amended Final Witness List, the Department offered to obtain and provide the residential and/or

business addresses and telephone numbers to the Geary Respondents' counsel prior to the filing of their Motion for Preclusion Order. In light of the Geary Respondents' rejection of the Department's offer and the filing of their Objection to Amended Final Witness List, it is clear that the Geary Respondents are not interested in obtaining addresses and telephone numbers but, again, are trying to avoid the substantive allegations made against them and/or delay the proceeding.

The Geary Respondents' have not been prejudiced by the filing of the Department's Amended Final Witness List. The amended list identified the exact same witnesses as the Final Witness List and was filed one business day after the filing of the Final Witness List and eight days before the deadline for the filing of the Respondents' final witness lists.

For the foregoing reasons, the Department respectfully requests that the Geary Respondents' Objection to Amended Final Witness List be denied.



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 1st day of April, 2011, a true and correct copy of the above and foregoing was emailed and mailed by first-class mail with postage prepaid thereon, to the following:

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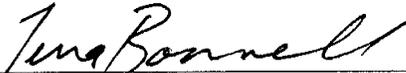
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