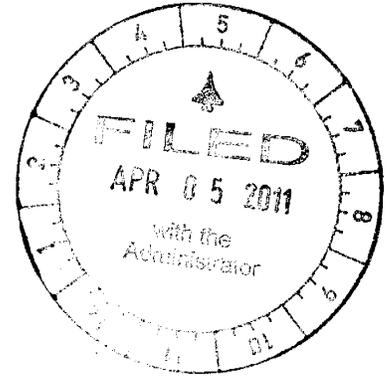


STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
THE FIRST NATIONAL CENTER
120 NORTH ROBINSON, SUITE 860
OKLAHOMA CITY, OKLAHOMA 73102



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

**RESPONDENTS' JOINT UNOPPOSED APPLICATION FOR MODIFICATION
OF SCHEDULING ORDER DEADLINES IN LIGHT OF PENDING DISCOVERY
MOTIONS AND APPLICATION FOR JUDICIAL ENFORCEMENT OF
SUBPOENAS PURSUANT TO ORDER DATED MARCH 21, 2011**

Pursuant to the express terms of the Agreed Amended Scheduling Order (the "Scheduling Order"), the Respondents jointly and respectfully request that the Hearing Officer issue an Order modifying certain of the current scheduling order deadlines as follows:

1. The Scheduling Order states that "no date set by this Order can be changed except by agreement of all parties or for good cause and upon written order of the Hearing Officer." Agreed Amended Scheduling Order, p. 2.
2. This Joint Application requests modification of the deadlines set forth in Paragraphs 2 through 8 of the Scheduling Order, for the reasons set forth and discussed below.
3. Counsel for the Respondents has discussed the proposed modification of deadlines with the Department's counsel. The Department's has no objection to

Respondents' request to modify the deadlines set forth in Paragraphs 2 through 8 of the Scheduling Order.¹

4. As is demonstrated below, good cause exists for modification of the Scheduling Order deadlines. Moreover, this Joint Application is made in good faith and not for the purpose of delay. Rather, the Respondents seek to preserve and protect their rights under the Department's Rules and applicable statutes to conduct discovery and be fully prepared to present their positions at the time of a Hearing in this matter.

5. **Overall Case Readiness and Status of Discovery.** The Department initiated this action on September 22, 2010. This matter is currently scheduled for hearing commencing May 17, 2011. The Department's "Recommendation," if accepted, would have dire consequences for the Respondents including, but not limited to, being barred from the securities industry, forced to close their business, lay off employees, and face substantial monetary fines. Consistent with the discovery, due process and fundamental fairness rights afforded to them by the Department's Rules, applicable statutes and caselaw, and the Oklahoma Constitution, the Respondents have attempted to investigate the Department's charges and prepare their defenses in this action. As is set forth in more detail below, the Respondents have encountered obstacles that continue to interfere with and impair their rights and ability to fully investigate and defend against the charges made against them. The Department has listed 24 separate witnesses in this action, 6 of which are the Respondents or employees of a Respondent. The Department has deposed all 6 witnesses. The Respondents have yet to conduct a deposition in this action,

¹ The Department has advised Respondents' counsel that it has no objection to extending the deadlines, as long as the deadline for dispositive motions is extended. This Motion seeks the extension of all deadlines, including the dispositive motion deadline.

notwithstanding their extensive efforts to do so.² The Department has requested and received responsive documents from the Respondents. As is discussed below, Respondents have requested, but received less than all responsive documents from the Department. Respondents have invoked the procedures set forth in the Department's Rules to obtain by subpoena pertinent documents from non-party witnesses listed by the Department; however, not a single document has been produced by the non-party witnesses. Unfortunately, due to the complications referenced above and discussed below, this action is not ready for a Hearing as scheduled without materially prejudicing and depriving the Respondents of their discovery, due process, and fundamental fairness rights.

6. **Inability to Conduct and Complete Discovery of the BOU Non-Parties.** The Hearing Officer is well aware of the difficulties encountered by the Geary Respondents in attempting to exercise their right to conduct discovery concerning certain non-party witnesses (the "BOU Non-Parties") listed by the Department on its preliminary, final and amended final witness lists.³ Pursuant to the Hearing Officer's Order, the Geary Respondents applied to the Department on March 24, 2011 to seek judicial enforcement of the document and deposition subpoenas previously served on, but ignored by, the

² Respondents are scheduled to depose one Department employee who is listed as a witness on April 7, 2011.

³ See, Order Denying Motion to Quash and for Protective Order; Geary Respondents' Notice of Application for Judicial Enforcement of Subpoenas Pursuant to Order Dated March 21, 2011; Geary Respondents' Motion for Preclusion Order Striking Witnesses from Department's Final Witness List Based on Department's Non-Compliance with Agreed Amended Scheduling Order; Geary Respondents' (1) Motion for Preclusion Order and Order Striking Witnesses and Allegations, and (2) Alternative Motion to Compel Production of Responsive Documents Wrongfully Withheld by Department; Geary Respondents' Objection to Amended Final List of Witnesses Filed Out of Time and Renewed Request for Hearing.

BOU Non-Parties. On March 28, 2011, counsel for the Geary Respondents contacted the Department's counsel concerning the application for judicial enforcement. The Department's counsel (Ms. Bonnell) advised the Geary Respondents that another Department attorney who is not otherwise involved in this action would be assigned to pursue judicial enforcement of the subject subpoenas. The Geary Respondents asked to be notified when action was taken by the Department on the request for judicial enforcement. Having heard nothing from the Department on the issue of judicial enforcement, the Geary Respondents followed up with the Department by letter dated April 1, 2011 (Exhibit 1 hereto). On April 4, 2011, the Department's counsel (Ms. Bonnell) responded, advising that "I have forwarded your letter to the Department's Administrator, Irving Faught" (Exhibit 2 hereto).⁴ As of the filing of this Joint Application, the Respondents have complied with each and every procedural requirement and action necessary to obtain discovery from the BOU Non-Parties; however, they have not been able to conduct any such discovery as provided by the Department's Rules and applicable statutes. For these reasons, "good cause" exists to grant this Joint Application.

7. **The Department's Refusal to Produce Admittedly Responsive Documents.**

The Geary Respondents currently have a motion pending concerning the Department's refusal to produce documents that it admits are responsive to document requests served on the Department. *See*, Geary Respondents' (1) Motion for Preclusion Order and Order Striking Witnesses and Allegations, and (2) Alternative Motion to Compel Production of Responsive Documents Wrongfully Withheld by Department (filed March 28, 2011)

⁴ Respondents' counsel were notified during the day on April 4th that a telephonic hearing with the Administrator, counsel for the parties, and out-of-state counsel for the BOU Non-Parties will be conducted on April 5th.

(which is expressly adopted and incorporated herein by reference). The pendency and unresolved status of the discovery issues related to the Department's refusal to produce admittedly responsive documents constitutes "good cause" for granting this Joint Application.

8. **The Department's Addition of 7 Witnesses in its Non-Compliant Final Witness List.** On March 24, 2011, the Department filed its Final List of Witnesses in this action.⁵ At the time the Department submitted its final list, 20 business days remained before the deadline for completion of discovery on April 22, 2011. The Department's final list identified, for the first time in this action, 6 individuals who are believed to be members of BOU's board of directors (Messrs. Wills, Evans, Mills, Ventris, Ketter, and Tinsley) and a BOU employee (Betty Pettijohn). These 7 witnesses are included in the scope of the Geary Respondents' pending motions seeking preclusion orders. As a precaution in the event such witnesses are not stricken and precluded from testifying, counsel for the Geary Respondents contacted counsel for BOU during the week of March 28th and inquired whether counsel would commit to voluntarily produce each of the 7 individuals for depositions by April 22nd. The Geary Respondents requested a response to this inquiry by April 1st. On March 31st, BOU's counsel notified the Geary Respondents that he would not be able to respond by April 1st, but would do so by noon on April 4th. At 12:02 p. m. on April 4th, another attorney with BOU's counsel's law firm notified the Geary Respondents that BOU would agree to produce for

⁵ The Department's Final List of Witnesses and its subsequent Amended Final Witness List (filed March 28, 2011) are the subjects of the Geary Respondents' pending Motions for Preclusion Order (filed March 28, 2011) based on the Department's non-compliance with the requirements of the Agreed Amended Scheduling Order.

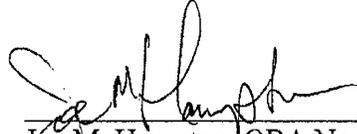
depositions the directors “that executed the affidavit,”⁶ but cannot commit to do so by April 22nd. *See*, Exhibit 3 hereto. The aforementioned e-mail response ignored the Geary Respondents’ request related to deposing BOU employee Betty Pettijohn. Notwithstanding the foregoing efforts, the Geary Respondents’ attempts to exercise their discovery rights under the Department’s Rules and applicable statutes have been thwarted. Under these circumstances, “good cause” exists to grant the relief requested by this Joint Application.

Based on the foregoing, Respondents respectfully request that the Hearing Officer (A) schedule and conduct a Hearing to consider and rule on this Joint Application, and (B) revise the current Scheduling Order deadlines (item nos. 2-8⁷) in a manner necessary and appropriate to fully protect and preserve all parties’ rights to discovery, due process, and fundamental fairness.

⁶ The Respondents’ frustration with the Department’s refusal to produce all documents responsive to their requests is compounded by the discovery – through an April 4th e-mail from counsel for the BOU Non-Parties – that the 6 BOU directors listed on the Department’s final witness list have, in fact, executed an affidavit that was originally drafted by the Department’s counsel, but which the Department has refused to produce in discovery. Ex. 3. The Department’s refusal in this regard is one of many issues addressed by the “Geary Respondents’ (1) Motion for Preclusion Order and Order Striking Witnesses and Allegations, and (2) Alternative Motion to Compel Production of Responsive Documents Wrongfully Withheld by Department” (filed March 28, 2011), Part III(B)(6). The Respondents’ frustration level with the Department’s evasive discovery tactics is particularly high because, in the course of a purported good faith discovery counsel with all counsel, the Department’s counsel stated that while the Department was refusing to produce drafts of the affidavit on work product grounds, it would produce any affidavit that was actually executed. No such production has occurred.

⁷ Item 2 of the Scheduling Order requires the Respondents to file their final list of witnesses on April 5, 2011. Respondents are filing their “Final Witness List Subject to and Without Waiving Joint Application for Modification of Scheduling Order Deadlines,” to make clear they are not in any manner waiving or diminishing the relief requested by this Joint Application.

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

apierce@corbynhampton.com

astanford@corbynhampton.com

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



Donald A. Pape
Donald A. Pape, P.C.
Of counsel to Phillips Murrah PC
401 W. Main Street, Suite 440
Norman, OK 73069
(405) 364-3346
(405) 364-4666 fax
Email: don@dapape.com

and

Susan E. Bryant OBA No. 5842
Bryant Law
A Professional Corporation
39 ½ Main Street
P.O. Box 596
Camden, ME 04843
Telephone (207) 230-0066
Facsimile: (207) 230-0077
Email: sbryant@bryantlawgroup.com

**ATTORNEYS FOR RESPONDENT
NORMAN FRAGER**

CERTIFICATE OF SERVICE

I hereby certify that on April 5, 2011, a copy of the foregoing document was served on the following by electronic mail:

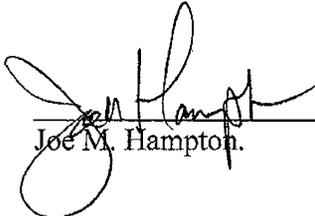
Hearing Officer Bruce Kohl, Esq.
201 Camino del Norte
Santa Fe, NM 87501

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



Joe M. Hampton.



Corbyn Hampton, PLLC
One Leadership Square, Suite 1910
211 North Robinson
Oklahoma City, OK 73102-7115
(405) 239-7055
Fax: (405) 702-4348
Website: www.corbynhampton.com

March 25, 2011

VIA E-MAIL

STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
Attention: Terra Shamas Bonnell, Enforcement Attorney
120 North Robinson, Suite 860
Oklahoma City, OK 73102

Re: *ODS v. Geary Securities, Inc., et al*; ODS File No. 090141

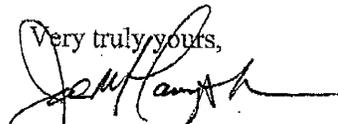
Dear Terra:

This is to follow up on my March 25th letter to you and the Geary Respondents' Notice of Application for Judicial Enforcement of Subpoenas in the referenced action.

You advised me on March 28th that the Department would assign another attorney to handle the judicial enforcement process in Oklahoma County District Court. I have not heard anything more from the Department on this issue since I called you Monday morning, March 28th. As the Department is fully aware, time is of the essence. The Department's delay in seeking judicial enforcement of the Subpoenas further deprives the Geary Respondents of their rights to discovery, due process and fundamental fairness.

Please provide me the name of the attorney at the Department who is responsible for seeking judicial enforcement of the Subpoenas. This also reiterates my request that we be copied on all action taken by the Department to seek judicial enforcement.

Very truly yours,


JOE M. HAMPTON
For the Firm

cc: Bruce Kohl, Hearing Officer (via e-mail)
Donald A. Pape, Esq. (via e-mail)



From: Terra Bonnell [mailto:tbonnell@securities.ok.gov]
Sent: Monday, April 04, 2011 7:41 AM
To: Joe M. Hampton
Cc: Bruce Kohl; Melanie Hall; don@dapape.com; Susan Bryant; Ainslie Stanford
Subject: RE: In the Matter of Geary Securities, Inc., et al

Joe:

I have forwarded your letter to the Department's Administrator, Irving Faught.

Terra Shamas Bonnell
Enforcement Attorney
Oklahoma Department of Securities
Direct Phone: 405.280.7715
Fax: 405.280.7742
tbonnell@securities.ok.gov

From: Joe M. Hampton [mailto:JHampton@Corbynhampton.com]
Sent: Friday, April 01, 2011 4:48 PM
To: Terra Bonnell
Cc: 'Bruce Kohl'; Melanie Hall; 'don@dapape.com'; 'Susan Bryant'; Ainslie Stanford
Subject: In the Matter of Geary Securities, Inc., et al

Dear Terra:

Please see attached correspondence.

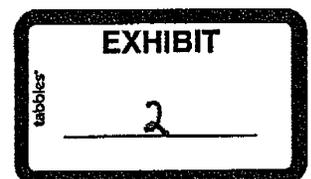
Thanks,

Joe



Joe M. Hampton
Corbyn Hampton, PLLC
One Leadership Square, Suite 1910
211 North Robinson
Oklahoma City, OK 73102-7115
(405) 230-7055
Direct: (405) 702-4346
Fax: (405) 702-4348
jhampton@corbynhampton.com
www.corbynhampton.com

The information contained in this email may be confidential and/or legally privileged. It has been sent for the sole use of the intended recipient(s). If the reader of this message is not an intended recipient, you are hereby notified that any unauthorized review, use, disclosure, dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please contact the sender by reply email and destroy all copies of the original message.



From: Matthew W. Lytle [mailto:MLytle@millerschirger.com]
Sent: Monday, April 04, 2011 12:02 PM
To: Joe M. Hampton
Cc: John J. Schirger
Subject: Depositions

Joe:

I have spoken with John Schirger and the Bank of Union will agree to produce for deposition those members of the board that executed the affidavit. Because we have not yet confirmed their schedules, however, we cannot commit to having their depositions completed by April 22nd. We are working to gather scheduling information and will get back to you as soon as possible.

Best regards,

Matt Lytle

Matthew W. Lytle
MILLER SCHIRGER, LLC
4520 Main Street, Suite 1570
Kansas City, MO 64111
(816) 561-6500 - General
(816) 561-6510 - Direct
(816) 419-2249 - Cell
(816) 561-6501 - Fax
www.millerschirger.com
mlytle@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 mlytle@millerschirger.com and promptly destroy the original transmission. Thank you for your assistance.

