

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' (1) MOTION FOR PRECLUSION ORDER AND ORDER STRIKING WITNESSES AND ALLEGATIONS, AND (2) ALTERNATIVE MOTION TO COMPEL PRODUCTION OF RESPONSIVE DOCUMENTS WRONGFULLY WITHHELD BY THE DEPARTMENT**

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: (1) issue a preclusion order and an order striking certain witnesses listed by the State of Oklahoma Department of Securities (the "Department") and allegations relating to such witnesses; or (2) alternatively, immediately issue an Order compelling the Department to produce responsive documents it has wrongfully withheld, as well as award the Geary Respondents additional relief appropriate under these circumstances.

**I. PRELIMINARY STATEMENT.**

The Geary Respondents file this Motion to address and obtain remedies for the Department's failure to cooperate in discovery in this action; specifically, the Department's wrongful refusal to produce documents that are admittedly responsive to the Geary Respondents' document requests. By filing this Motion, the Geary Respondents do not waive or in any manner

relinquish the request for relief made by their separately-filed “Motion for Preclusion Order Striking Witnesses from Department’s Final Witness List Based on Department’s Non-Compliance with Agreed Amended Scheduling Order” (filed on March 28, 2011).

The categories of documents being withheld by the Department include: (1) emails communications between the Department and non-party witness Bank of Union (“BOU”) and record of telephone interview with BOU witnesses; (2) emails and telephone records of non-party Pershing (Respondent’s clearing firm); (3) communications between the Department and its expert witness; and (4) a memorandum prepared by the Oklahoma State Banking Department.

The Department has focused this proceeding on the Geary Respondents’ involvement in a re-securitization project that led to the purchase of securities (one each) by BOU and Timothy Headington in September of 2009. In light of this focus, the Geary Respondents properly exercised their discovery rights by requesting that the Department produce certain categories of documents related to the Department’s charges. Rather than fully comply, the Department has wrongfully withheld documents it admits are responsive, but claims are protected from discovery when, in fact, no such protection applies.

The Hearing Officer is well aware of the fact that certain non-parties who are material witnesses for the Department (the “BOU Non-Parties”<sup>1</sup>) have failed and refused to comply with document and deposition subpoenas issued by the Hearing Officer. The Department’s refusal to cooperate and comply with the Geary Respondents’ discovery requests further prejudices the rights of the Geary Respondents and warrants issuance of the relief requested herein.

The Department is engaged in evasive discovery tactics that its own Rules are designed to discourage and remedy. The Department clearly initiated this administrative proceeding in an

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<sup>1</sup> The BOU Non-Parties include the BOU, John Shelley, Mike Braun, and Timothy Headington.

effort to put Geary Securities, Inc. and Keith Geary out of business. The Department's own Rules, as well as applicable statutory and case law, provide the Respondents with certain discovery rights, as well as due process and fundamental fairness rights. The Department's refusal to cooperate in discovery justifies and requires immediate action to protect and preserve the Geary Respondents' rights including, but not limited to, a preclusion order or, alternatively, an immediate and meaningful order compelling production of all responsive documents being withheld by the Department.

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

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. During the Department's investigation of the Respondents prior to filing this proceeding, the Department interviewed and obtained documents from BOU personnel and, presumably, Mr. Headington (the majority shareholder in BOU) relating to the CEMP Charges. The Department has listed BOU personnel (officers John Shelley and Mike Braun) as witnesses in connection with the CEMP Charges. The Department has also listed as an expert witness David Paulukaitis (an expert the Department has used on multiple occasions).

3. Pursuant to and in complete compliance with the Department's Rules, the Geary Respondents served document requests on the Department. A copy of the Geary Respondents'

First Request for Production of Documents is attached as Exhibit 1. A copy of the Geary Respondents' Third Request for Production of Documents is attached as Exhibit 2.

4. The Department is withholding documents that it admits are responsive to the Geary Respondents' requests. The withheld documents are responsive to the Geary Respondents' First Requests [Request Nos. 1 (b)-(g), 2(a), 4 (b)-(g), 5, 6, and 7] and Third Requests [Request Nos. 9, 10]. A copy of the Department's Amended Response to the Geary Respondents' First Requests is attached as Exhibit 3. A copy of the Department's Response to the Geary Respondents' Third Requests is attached as Exhibit 4.

5. Counsel for the Geary Respondents requested and conducted a discovery conference with counsel for the Department on March 18, 2011 to discuss and attempt to resolve the issues addressed by this Motion related to the Geary Respondents' First Requests. On March 22, 2011, the Department served its Responses and Objections to the Geary Respondents' Third Requests. Counsel for the Geary Respondents requested and conducted a discovery conference with counsel for the Department on March 22, 2011 to discuss and attempt to resolve the issues addressed by this Motion related to the Geary Respondents' Third Requests. As of the filing of this Motion, the discovery issues addressed herein have not been resolved. In light of the current deadlines, the Geary Respondents have proceeded to file this Motion.

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

a. An Order striking the names of John Shelley, Michael Braun, and David Paulukaitis as witnesses and precluding the Department from calling them at the time of the Hearing;

b. An Order striking all claims and allegations by the Department related to the CEMP Charges and any other subject matter sought to be addressed by the stricken witnesses and precluding the Department from asserting and pursuing such claims and allegations at the time of the Hearing;

c. Alternatively, an Order compelling the Department to immediately produce all responsive documents it has withheld from production, and awarding additional relief as appropriate under these circumstances including, but not limited to, awarding the Geary Respondents their costs, including attorney's fees, in pursuing these discovery issues.

### III. ARGUMENT AND AUTHORITY.

#### A. **THE DEPARTMENT'S EVASIVE DISCOVERY TACTICS 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.*

In the instant matter, the Department is forcing the Geary Respondents to attempt to defend themselves “blind folded” and completely “in the dark” with respect to certain witness and claims by improperly withholding responsive documents based on misplaced claims of privilege and/or work product. As set forth below, there is no legitimate claim of privilege or work product doctrine with respect to the admittedly responsive documents being wrongfully withheld by the Department.

**B. THE DEPARTMENT’S WRONGFUL REFUSAL TO PRODUCE ALL RESPONSIVE DOCUMENTS.**

**1. The Work Product Doctrine under Oklahoma Law.**

The work product doctrine is codified by the Oklahoma Discovery Code, 12 Okla. Stat. 3226(B)(3), which clearly provides as follows:

First, the discovery request must be within the scope of permissible discovery under Section 3226(B)(1) – “any matter, not privileged, which is relevant to the subject matter involved in the pending action...if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” There is no dispute on this point – the Geary Respondents’ discovery requests are within the scope of permissible discovery.

Second, ODS can only avoid producing relevant information if the documents represent either attorney-client communications or contain an attorney’s mental impressions or conclusions, commonly referred to as “work product.” There are two types of work product: (1) communications and things prepared in anticipation of litigation or for trial by or for another party or by or for the representative of that other party, etc., that *may* be discoverable and (2) the mental impressions, conclusions, opinions or legal theories of an attorney or other representative of a party concerning the litigation, of which a court shall protect against disclosure. 12 O.S.2001

§ 3226(B)(2). Ordinary work product prepared in anticipation of litigation or trial is discoverable if the party seeking the materials makes the required showing, but opinion work product prepared in anticipation of litigation or for trial is not discoverable except in extraordinary circumstances. *Ellison v. Gray*, 1985 OK 35, 702 P.2d 360, 363; 12 O.S.2001 § 3226(B)(2). The Department bears the burden of establishing whether the documents at issue are protected by the work product doctrine. *Scott v. Peterson*, 2005 OK 84, 126 P.3d 1232, 1235.

The Department cannot claim “opinion work product” in the instant matter as the communications between a Department witness and a Department attorney would not be the “mental impressions or conclusions of an attorney.” 12 Okla.Stat. § 3226.

Instead, the issue is whether or not the subject documents constitute ordinary work product. However, even **IF** the responsive documents are considered ordinary work product (the Geary Respondents dispute this is work product at all), the Geary Respondents can still discover the documents by showing a “substantial need of the materials in preparation of his case and that he is unable, without undue hardship, to obtain the substantial equivalent of the materials by other means.” § 3226 (B)(3).

The law recognizes that a party cannot avoid producing responsive documents by claiming work product protection to avoid the disclosure of **facts**. See, *Upjohn v US*, 449 US 383, 396-396 (1981); *EEOC v Outback Steakhouse*, 2008 WL 2410415 (D. CO 6/11/08); *State of Oklahoma v Tyson*, 262 FRD 617, 628 (ND OK 2009). Thus, while the work product doctrine will generally protect a document prepared by an attorney, it does not protect the underlying facts that are contained in the same document. *Resolution Trust Corp. v. Dabney*, 73 F.3d 262, 266 (10<sup>th</sup> Cir. 1995).

Each category of responsive documents being withheld by the Department is described and addressed in parts III(A)(2)-(7) below. In the case of each category, the application or non-application of the work product doctrine is addressed. In the case of each category, the Department's refusal to produce the admittedly responsive documents is improper.

**2. E-mail chain between BOU President/Department Witness John Shelley and Counsel for the Department.**

The Geary Respondents' First set of Requests included a request that the Department produce documents it obtained from third parties which relate to this action and/or the Respondents. See, Ex. 1, Request No. 1. The Department responded by producing some responsive documents, but acknowledged it is intentionally withholding other responsive documents. Namely, the Department is withholding "a chain of emails in which counsel for the Department asked John Shelley (one of the BOU Non-Parties and a witness listed by the Department) to clarify certain facts in anticipation of litigation and John Shelley, or someone on his behalf, responded" (the "Shelley Email Chain"). See, Ex. 3, Response No. 1(b).<sup>2</sup>

In the course of the March 18th discovery conference, the Department confirmed the Shelley Email Chain exists and the Department's refusal to produce such documents based on the "work product" doctrine. The Geary Respondents expressed their view, with supporting authority, that the work product doctrine does not protect the Shelley Email Chain from discovery. The Department continues to withhold and refuse to produce these admittedly responsive documents.

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<sup>2</sup> On March 24, 2011, the Department served its Second Amended Response to the Geary Respondents' First Request for Production of Documents. The Department's Second Amended Response appears to delete the Shelley Email Chain from the list of withheld documents. However, the Department's Second Amended Response was not accompanied by production of the Shelley Email Chain.

The Shelley Email Chain does not meet the definition of work product/trial materials in Section 3226 (B)(3), as discussed above. The Department's own description of the Shelley Email Chain reveals that it consists of "*facts*" which, under the authorities cited above, are not protected from discovery.

Even if someone could misconstrue the Shelley Email Chain as somehow qualifying as work product, the Shelley Email Chain is nevertheless discoverable because the Geary Respondents easily satisfy the additional requirement of substantial need and inability to obtain the substantial equivalent. The Geary Respondents clearly have a substantial need to discover all facts relating to the Department's charges and efforts to put them out of business. As the Hearing Officer and all counsel are clearly aware, the Geary Respondents have no ability to discover these facts from John Shelley, a witness listed by the Department. A party seeking to overcome a discovery privilege may demonstrate undue hardship if a witness will be unavailable for deposition. *In re Grand Jury Subpoena*, 81 F.R.D. 691 (S.D.N.Y. 1979).

The Geary Respondents have spent more than six weeks invoking and following the procedures set forth in the Department's own Rules to obtain documents and deposition testimony from the BOU Non-Parties, including John Shelley. Notwithstanding the fact that subpoenas were issued without a single concern, complaint or objection by the Department or Hearing Officer, the BOU Non-Parties have been allowed to blatantly ignore and refuse to comply with the subject subpoenas. Having again complied with the Department's own Rules, the extent of relief afforded to the Geary Respondents at this point consists of (1) a request that the BOU Non-Parties' counsel advise counsel for the parties whether the BOU Non-Parties intend to comply with the subpoenas they have already ignored, and (2) an invitation to the BOU Non-Parties to seek rehearing of the denial of their motion to quash and/or file yet another

motion to quash or motion for protective order. Meanwhile, the Geary Respondents' rights to discovery, due process and fundamental fairness continue to be ignored and materially prejudiced.

**3. E-mails and telephone recordings with Pershing and documents created by Pershing and provided to the Department.**

The Geary Respondents' First Requests also request production of all documents that memorialize any communication between ODS and any third party that relates to this action and/or the Respondents. See, Ex. 1, Request No. 4. The Department responded by producing some responsive documents, but acknowledged that it is intentionally withholding other responsive documents, including "emails between representatives of the Department and Pershing, LLC, prepared at the direction of the Department's counsel in anticipation of litigation and containing work product" See, Ex. 3, Response No. 1(c). The Department also is withholding "a document prepared by Pershing/The Bank of New York Mellon Corporation at the direction of counsel for the Department in anticipation of litigation." See, Ex. 2, Response No. 1(d). In response to the Geary Respondents' Request No. 4, the Department acknowledged it has in its possession, but is withholding, "one or more recordings of telephone interviews of representatives of Pershing, LLC, conducted by or at the direction of counsel for the Department in anticipation of litigation." See, Ex. 3, Response No. 4(e).<sup>3</sup>

During the March 18<sup>th</sup> discovery conference the Department confirmed the documents and recordings existed and the Department's refusal to produce said documents and recordings

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<sup>3</sup> In the course of the March 18<sup>th</sup> discovery conference it was learned that the Department's counsel recorded one or more telephone conversations with Pershing representatives, but did not advise Pershing of the recording or furnish a copy of the recordings to Pershing. As a result, it is not possible for the Geary Respondents to have a document subpoena issued to Pershing to obtain the subject call recordings which are in the exclusive possession of the Department's counsel.

based on the “work product” doctrine. The Geary Respondents reiterated their position that the subject documents and recordings are not protected from discovery. The Department continues to withhold and refuse to produce these admittedly responsive recordings and documents.

The Department is withholding email communications between non-lawyer Department personnel and Pershing that relate to the Respondents and/or the Charges (the “Pershing Emails”). The Pershing Emails do not meet the statutory definition of work product/trial materials. Even if the Pershing Emails were misconstrued as work product, The Geary Respondents clearly have a substantial need to discover all facts concerning the Department’s allegations and efforts to put them out of business. Likewise, the Geary Respondents do not have the ability to obtain the “substantial equivalent” from Pershing – an out-of-state non-party – without, at a minimum, undue hardship. The Pershing Emails are discoverable and are being improperly withheld by the Department.

The Department is also apparently withholding a responsive document that Pershing prepared pursuant to a request made by counsel for the Department (the “Pershing Document”).<sup>4</sup> The Pershing Document does not meet the statutory definition of work product/trial materials because, among other reasons, Pershing is not a representative of the Department. Even if the Pershing Document was misconstrued as work product, The Geary Respondents clearly have a substantial need to discover all facts concerning the Department’s allegations and efforts to put them out of business. Likewise, the Geary Respondents do not have the ability to obtain the “substantial equivalent” from Pershing – an out-of-state non-party – without, at a minimum,

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<sup>4</sup> On March 24, 2011, the Department served its Second Amended Response to the Geary Respondents’ First Request for Production of Documents. The Department’s Second Amended Response appears to delete the Pershing Document from the list of withheld documents. While the Department’s Second Amended Response was accompanied by production of one document without any explanation or other identification, it is unclear whether, in fact, the Pershing Document has now been produced.

undue hardship. The Pershing Document is discoverable and is apparently being improperly withheld by the Department.

The Department is also withholding one or more recordings of telephone interviews the Department conducted of Pershing personnel (the "Pershing Recordings"). The Pershing Recordings do not meet the statutory definition of work product/trial materials. Even if the recordings were misconstrued as work product, The Geary Respondents clearly have a substantial need to discover all facts concerning the Department's allegations and efforts to put them out of business. Likewise, the Geary Respondents do not have the ability to obtain the "substantial equivalent" from Pershing – an out-of-state non-party – without, at a minimum, undue hardship. In fact, it is likely impossible to obtain the functional equivalent of the Pershing Recordings because the Pershing representative(s) were unaware the calls were being recorded and have not been provided with copies of the recordings by the Department. The Pershing Recordings are discoverable and are being improperly withheld by the Department.

**4. Communications between Department Expert Witness David Paulukaitis and Counsel for the Department.**

The Geary Respondents requested production of all communication between the Department and its listed expert on any topic including Respondents or the allegations herein. See, Ex. 1, Request No. 5. The Department acknowledges that it is withholding a responsive "email chain between David Paulukaitis and counsel for the Department containing the legal opinion of counsel for the Department" (the "Expert Email Chain"). See, Ex. 3, Response No. 5. At the March 18<sup>th</sup> discovery conference the Department confirmed that the Expert Email Chain exists and the Department continues to refuse to produce such documents based on the "work product" doctrine.

The Department's refusal to produce the Expert Email Chain is directly contrary to the following Oklahoma statutory provision: "if any documents are provided to such disclosed expert witnesses, the documents *shall not be protected from disclosure by privilege or work product protection and they may be obtained through discovery.*" 12 Okla. Stat. 3226 (B)(4)(a)(2)(emphasis added).

#### **5. Internal Memorandum of Oklahoma State Banking Department.**

The Geary Respondents requested production of all documents the Department provided to its listed expert that related to the Respondents or the allegations herein. See, Ex. 1, Request No. 6. The Department is withholding a responsive "internal memorandum of the Oklahoma State Banking Department that was inadvertently provided by the Department to David Paulukaitis" (the "OSBD Memorandum") (See Ex. 2, Response No. 6). The Department goes on to advise it has sought the permission of the Banking Department to produce the document. At the March 18th discovery conference the Department confirmed the document exists, advised it had not made any progress with the Banking Department<sup>5</sup>, and refuses to produce such documents.

As stated above, the OSBD memorandum was provided by the Department to its expert witness and is, therefore, "*not be protected from disclosure by privilege or work product protection and they may be obtained through discovery.*" 12 Okla. Stat. 3226 (B)(4)(a)(2)(emphasis added).

#### **6. Attachments to Email Communications Produced by the Department.**

The Geary Respondents have requested production of all documents that reflect

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<sup>5</sup> On March 23, 2011, counsel for the Department advised the Geary Respondents that the Banking Department will not grant permission for the Department to produce the document.

communications between the Department and the BOU Non-Parties and/or their counsel. See, Ex. 2 (Request No. 9). In response, the Department produced two e-mails from counsel for the Department to counsel for the BOU Non-Parties.<sup>6</sup> Both e-mails, as sent, had attachments that were draft affidavits for BOU's board of directors, prepared by counsel for the Department (the "BOU Email Attachments"). The Department has withheld production of the attachments. The Department advised counsel in the course of the March 23<sup>rd</sup> discovery conference that it is relying on a claim of work product to withhold production of the BOU Email Attachments.

The BOU Email Attachments withheld by the Department do not meet the statutory definition of work product/trial materials. Even if the BOU Email Attachments were misconstrued as work product, the Geary Respondents clearly have a substantial need to discover all facts concerning the Department's allegations and efforts to put them out of business. Likewise, the Geary Respondents do not have the ability to obtain the "substantial equivalent" from the BOU Non-Parties, for all of the obvious reasons discussed above. The BOU Email Attachments are discoverable and are being improperly withheld by the Department.

#### **7. Record of the Department's Telephone Interviews with the BOU Non-Parties.**

As stated above, the Geary Respondents have requested production of all documents that reflect communications between the Department and the BOU Non-Parties and/or their counsel. See, Ex. 2 (Request No. 9). In response, the Department produced two voice messages from counsel for the BOU Non-Parties to counsel for the Department, including a message confirming the Department's telephone interviews of John Shelley and Mike Braun on March 14, 2011. In

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<sup>6</sup> Copies of the two e-mails are included as Exhibit 5. It is interesting to note that both e-mails were sent by the Department's counsel on March 14, 2011, after it was known that the BOU Non-Parties were refusing to comply with the subpoenas previously issued and served by the Geary Respondents.

the course of the March 23<sup>rd</sup> discovery conference, counsel for the Department confirmed that the interviews were conducted and advised that notes of the interviews were generated by Terra Bonnell and Melanie Hall, both of whom are Department employees (the “BOU Interview Notes”).<sup>7</sup> Counsel for the Department confirmed that the Department is withholding production of the BOU Interview Notes based on a claim of work product.

The BOU Interview Notes do not meet the statutory definition of work product/trial materials. Even if the BOU Interview Notes were misconstrued as work product, the Geary Respondents clearly have a substantial need to discover all facts concerning the Department’s allegations and efforts to put them out of business. Likewise, the Geary Respondents do not have the ability to obtain the “substantial equivalent” from the BOU Non-Parties, for all of the obvious reasons discussed above. The BOU Interview Notes are discoverable and are being improperly withheld by the Department.

**C. THE DEPARTMENT’S REFUSAL TO PRODUCE ADMITTEDLY RESPONSIVE DOCUMENTS WARRANTS ISSUANCE OF A PRECLUSION ORDER AND ORDER STRIKING WITNESSES AND ALLEGATIONS.**

It is clear the Geary Respondents were entitled, under the Department’s own Rules, to issue document requests to the Department. *See*, ODS Rule 660:2-9-3(b). It is equally clear that the Department has in its possession documents that it admits are responsive, but refuses to produce. As discussed in Part III(A) above, the Department is refusing to produce the responsive

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<sup>7</sup> During the March 23<sup>rd</sup> discovery conference counsel for the Department advised that the telephone interviews of John Shelley and Mike Braun were not recorded, an interesting departure from the Department’s prior act of recording its telephone interviews with Pershing personnel. The only difference appears to be that the BOU interviews –on March 14, 2011 – were conducted after the Department had received discovery requests that called for the production of, among other things, call recordings.

documents based on a misplaced argument that the withheld documents are protected from discovery by the work product doctrine.

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 document discovery to obtain information on issues that may be presented by the Department. *See*, Rule 600:2-9-3(b). Depriving the Geary Respondents of their absolute right to obtain responsive documents 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 Department's refusal to produce admittedly responsive documents 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 sanctions provided by the Rule include "striking of any pleading" and "a preclusion order." *See*, Rule 660: 2-9-3 (f) (1) and (2). The Department has made the bold and aggressive decision to willfully deprive the Geary Respondents of their discovery rights under the

Department's own Rules and Oklahoma law. Under these circumstances, bold and meaningful remedies in the form of those expressly authorized by the Department's own Rules should be imposed as follows:

1. The Hearing Officer should issue an Order striking John Shelley, Mike Braun, and David Paulukaitis from the Department's Final Witness List and preclude them from offering any testimony in this action; and
2. The Hearing Officer should also issue an Order striking all paragraphs in the Recommendation that concern, refer or relate to the CEMP Charges<sup>8</sup> and any other subject matter sought to be addressed by the stricken witnesses, and preclude the Department from proceeding with such charges and allegations as part of this action.

**D. ALTERNATIVELY, AT A MINIMUM THE GEARY RESPONDENTS ARE ENTITLED TO AN ORDER COMPELLING THE DEPARTMENT TO IMMEDIATELY PRODUCE THE WITHHELD DOCUMENTS.**

As discussed above in Part III (A) above, the Department is wrongfully withholding documents it admits are responsive and, under Oklahoma law, are not protected from discovery. As set forth in Part III (B) above, the Hearing Officer should impose the remedies expressly provided authorized by the Department's own Rules. Failure to impose such remedies compounds and facilitates the ongoing denial of the Geary Respondents' rights to discovery, due process and fundamental fairness.

In the event the Hearing Officer refuses to impose the remedies expressly provided by the Department's own Rules, the Geary Respondents alternatively request that the Department be compelled to immediately produce the withheld documents identified herein without further delay, notwithstanding the fact that such alternative relief – if granted – will not eliminate or avoid the ongoing prejudice to and deprivation of the Geary Respondents' rights to discovery,

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<sup>8</sup> The following paragraphs relate to the CEMP Charges and/or the BOU Non-Parties and should be stricken: (a) "Findings of Fact" paragraphs 5, 6, 8-17, 21, 33-35, 40-94, 107-119; and (b) "Conclusions of Law" paragraphs 1, 2, 4 (b) – (g) and (j), 5, 6.

due process and fundamental fairness. In addition, the Hearing Officer should require the Department to reimburse all costs, including attorney's fees, incurred by the Geary Respondents in pursuing these discovery issues, as authorized by Rule 660:2-9-3(f)(5).

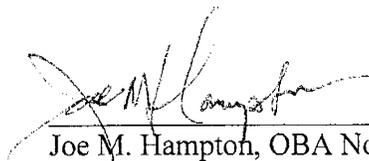
#### IV. CONCLUSION.

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

A. Enter an Order (a) striking the names of John Shelley, Mike Braun, and David Paulukaitis from the Department's witness list and precluding those individuals from providing any testimony in this proceeding, including at the time of the Hearing, (b) striking "Findings of Fact" paragraphs 5, 6, 8-17, 21, 33-35, 40-94, 107-119, and "Conclusions of Law" paragraphs 1, 2, 4 (b) – (g) and (j), 5, 6, of the Enforcement Division Recommendation and precluding the Department from attempting to introduce any evidence and seeking any relief in connection with the CEMP Charges and any additional subject matter sought to be addressed by the stricken witnesses; or

B. Alternatively, immediately issue an Order compelling the Department to produce all documents responsive to the Geary Respondents' request for production including but not limited to those specifically addressed herein, and award the Geary Respondents their costs, including reasonable attorney's fees, incurred in pursuing this discovery issue.

Respectfully submitted,



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

**CERTIFICATE OF SERVICE**

I hereby certify that on March 28, 2011, a copy of the foregoing document was served on the following via electronic mail:

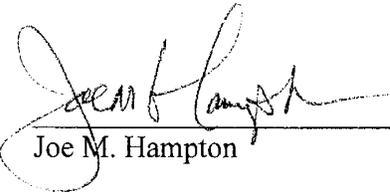
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OKLAHOMA CITY, OKLAHOMA 73102

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

**RESPONDENT GEARY SECURITIES, INC.'S FIRST REQUEST FOR  
PRODUCTION OF DOCUMENTS TO  
OKLAHOMA DEPARTMENT OF SECURITIES**

Respondent Geary Securities, Inc. ("Geary Securities"), pursuant to 660:2-9-3 (b) of the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities (as amended on July 1, 2007) (the "Rules"), respectfully requests that the Oklahoma Department of Securities ("ODS") produce, within fifteen (15) days, the documents requested below that are in the possession, custody or control of ODS. ODS is requested to respond and produce copies of all documents responsive to Geary Securities' First Request for Production of Documents (the "Discovery Requests") at the offices of Geary Securities' counsel, CORBYN HAMPTON, PLLC, 211 North Robinson, Suite 1910, Oklahoma City, Oklahoma 73102.

**INSTRUCTIONS**

1. These Discovery Requests are directed to all information known or available to ODS and its attorneys, including information contained in the records and documents in their custody or control or available to them upon reasonable inquiry. Where these Discovery Requests cannot be answered in full, they shall be answered as



completely as possible, and incomplete answers shall be accompanied by a specification of the reasons for the incompleteness of the answer and of whatever knowledge, information or belief is possessed with respect to each unanswered or incompletely answered Discovery Request.

2. These Discovery Requests are continuing in nature and require the supplementation of answers if additional information is acquired between the time the answers are served and the time of hearing.

3. In the event you fail or refuse to respond, in whole or in part, to a Discovery Request on the ground that the information sought involves a document or communication that you contend is privileged or otherwise protected from disclosure, state in detail: (a) the portion of the Discovery Request that seeks privileged information; (b) the identification of the document or information claimed to be privileged, as defined below; (c) the general subject matter of the subject document or communication; (d) the author and all recipients of the subject document, and all persons involved in the subject communication; (e) the identity of any other persons having knowledge of the subject document or communication involved; (f) the nature of the privilege claimed; and (g) every fact you rely on for your claim of privilege.

#### DEFINITIONS

1. "ODS" or "You" or "Your" means the Oklahoma Department of Securities and its attorneys, representatives, agents, servants, employees, officers, directors, consultants, and its Administrator.

2. Whenever a noun appears, it shall be construed either to be singular or plural in order to bring within the scope of these Discovery Requests any information that may be otherwise construed to be outside their scope.

3. "And" as well as "or" shall be construed either disjunctively or conjunctively in order to bring within the scope of these Discovery Requests any information that might otherwise be construed to be outside their scope.

4. "Document" means a written, printed, typed or graphic matter, electronic facsimile, computer storage device, or any other media, of any kind or description, in its entirety, including records and other data compilations from which information can be obtained or translated (if necessary) through detection devices into usable form, and further including any addenda, supplements, amendments, revisions, exhibits and appendices thereto, in their original form (or copies thereof where originals are unavailable), together with any copies thereof bearing notations, memoranda or other written information not on the original. The term "document" means any tangible thing, recording, or reproduction made in any manner, any visual or auditory data in your possession, custody, or control including without limiting the generality of its meaning, correspondence, electronic mail ("e-mail"), instant messages, text messages, memoranda, pleadings, briefs, transcripts, photographs, journals, diaries, calendars, stenographic or handwritten notes, studies, evaluations, analyses, reports, accounting records, reviews, working papers, books, charts, telegrams, pamphlets, pictures, video or audit tapes, voice recordings, computer tapes, printout or cards, microfilming, microfiche, and any papers on which words and numbers have been written, printed, typed, or otherwise affixed, and shall mean a copy where the original is not in your possession, custody, or control and

shall mean every copy of every document where any such copy is not an identical copy of the original. Designated documents shall be taken to include all attachments and enclosures.

5. The terms "identify," "identity" or "identification," when used in reference to a natural person, requires statement of the person's full name, last known home and business addresses, home and business telephone numbers, and present business affiliation and position. Where used with a person other than a natural person, these terms require statement of the full name, form of organization, and present and last known address. When used with reference to a document, these terms require the title or character of the document (such as "letter," "memorandum" or "receipt"); the author and every person signing the document; every recipient of the document; the date the document was prepared, executed and transmitted; a description of the general subject matter of the document; and the identification of every person in whose custody the document is now being kept. When used in reference to a meeting, conference, conversation or other communication, these terms require a statement of the date and time, the identification of each person involved and the location of each party to the conference or communication.

6. The term "describe," when used in connection with an oral statement, means to provide the identity of the speaker, the identities of those to whom the statement was directed, the precise words spoken or, if that is not possible, the substance of the statement, the identities of all individuals present, and the precise time, date and location at which the statement was made.

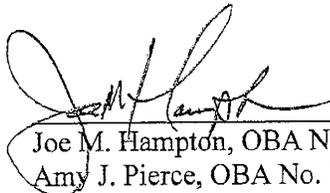
7. The term "Communication" when used in these Requests includes all forms of communication, discussion and discourse – whether written, oral, electronic or otherwise.

**DISCOVERY REQUESTS.**

1. All Documents ODS has obtained from any non-party or third party that relate in any way to any of the named Respondents or the allegations contained in the *Enforcement Division Recommendation* filed in this proceeding (the "ODS Charges").
2. Transcripts of all interviews, affidavits, declarations, statements and depositions ODS has conducted or obtained from any person or representative of any private, public, governmental or quasi-governmental entity that relate in any way to any of the named Respondents or the ODS Charges.
3. All Documents Identified in items 1-89 of the "Document and Exhibit List" section of ODS Preliminary List of Witnesses and Exhibits filed on December 22, 2010.
4. All Documents that reflect, memorialize or relate to any form of communication between ODS and any third party or non-party (including, but not limited to, any representative, agent, attorney or employee of Frontier State Bank, Washita State Bank, Yukon National Bank, Bank of Union, Timothy Headington, Chris Martin, Mesirow Financial, the Oklahoma State Banking Department, Pershing, LLC, FINRA, or FDIC) that relate in any way to any of the named Respondents or the allegations contained in the ODS Charges.

5. All Documents that reflect, memorialize or relate to any form of communication between ODS and any representative of Mainstay Capital Markets Consultants, Inc. (including, but not limited to, David Paulukaitis) on any topic or subject matter including, but not limited to, any of the named Respondents or the allegations contained in the ODS Charges.
6. All Documents provided by ODS to any representative of Mainstay Capital Markets Consultants, Inc. (including, but not limited to, David Paulukaitis) concerning any of the named Respondents or the allegations contained in the ODS Charges.
7. All Documents that reflect, memorialize or relate to any form of communication between ODS and Bruce R. Kohl on any topic or subject matter including, but not limited to, any of the named Respondents or the ODS Charges.

Respectfully submitted,



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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  
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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**

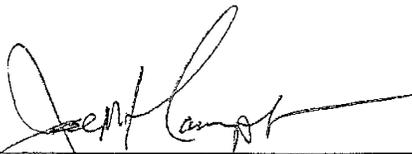
**CERTIFICATE OF SERVICE**

I hereby certify that on December 23 2010, a copy of the foregoing document was served on the following by e-mail:

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

  
\_\_\_\_\_  
Joe M. Hampton

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

**RESPONDENT GEARY SECURITIES, INC.'S THIRD REQUEST FOR  
PRODUCTION OF DOCUMENTS TO  
OKLAHOMA DEPARTMENT OF SECURITIES**

Respondent Geary Securities, Inc. ("Geary Securities"), pursuant to 660:2-9-3 (b) of the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities (as amended on July 1, 2007) (the "Rules"), respectfully requests that the Oklahoma Department of Securities ("ODS") produce, within fifteen (15) days, the documents requested below that are in the possession, custody or control of ODS. ODS is requested to respond and produce copies of all documents responsive to Geary Securities' Third Request for Production of Documents (the "Discovery Requests") at the offices of Geary Securities' counsel, CORBYN HAMPTON, PLLC, 211 North Robinson, Suite 1910, Oklahoma City, Oklahoma 73102.

**INSTRUCTIONS**

1. These Discovery Requests are directed to all information known or available to ODS and its attorneys, including information contained in the records and documents in their custody or control or available to them upon reasonable inquiry. Where these Discovery Requests cannot be answered in full, they shall be answered as



completely as possible, and incomplete answers shall be accompanied by a specification of the reasons for the incompleteness of the answer and of whatever knowledge, information or belief is possessed with respect to each unanswered or incompletely answered Discovery Request.

2. These Discovery Requests are continuing in nature and require the supplementation of answers if additional information is acquired between the time the answers are served and the time of hearing.

3. In the event you fail or refuse to respond, in whole or in part, to a Discovery Request on the ground that the information sought involves a document or communication that you contend is privileged or otherwise protected from disclosure, state in detail: (a) the portion of the Discovery Request that seeks privileged information; (b) the identification of the document or information claimed to be privileged, as defined below; (c) the general subject matter of the subject document or communication; (d) the author and all recipients of the subject document, and all persons involved in the subject communication; (e) the identity of any other persons having knowledge of the subject document or communication involved; (f) the nature of the privilege claimed; and (g) every fact you rely on for your claim of privilege.

#### DEFINITIONS

1. "ODS" or "You" or "Your" means the Oklahoma Department of Securities and its attorneys, investigators, representatives, agents, servants, employees, officers, directors, consultants, and its Administrator.

2. Whenever a noun appears, it shall be construed either to be singular or plural in order to bring within the scope of these Discovery Requests any information that may be otherwise construed to be outside their scope.

3. "And" as well as "or" shall be construed either disjunctively or conjunctively in order to bring within the scope of these Discovery Requests any information that might otherwise be construed to be outside their scope.

4. "Document" means a written, printed, typed or graphic matter, electronic facsimile, computer storage device, or any other media, of any kind or description, in its entirety, including records and other data compilations from which information can be obtained or translated (if necessary) through detection devices into usable form, and further including any addenda, supplements, amendments, revisions, exhibits and appendices thereto, in their original form (or copies thereof where originals are unavailable), together with any copies thereof bearing notations, memoranda or other written information not on the original. The term "document" means any tangible thing, recording, or reproduction made in any manner, any visual or auditory data in your possession, custody, or control including without limiting the generality of its meaning, correspondence, electronic mail ("e-mail"), instant messages, text messages, memoranda, pleadings, briefs, transcripts, photographs, journals, diaries, calendars, stenographic or handwritten notes, studies, evaluations, analyses, reports, accounting records, reviews, working papers, books, charts, telegrams, pamphlets, pictures, video or audit tapes, voice recordings, computer tapes, printout or cards, microfilming, microfiche, and any papers on which words and numbers have been written, printed, typed, or otherwise affixed, and shall mean a copy where the original is not in your possession, custody, or control and

shall mean every copy of every document where any such copy is not an identical copy of the original. Designated documents shall be taken to include all attachments and enclosures.

5. The terms "identify," "identity" or "identification," when used in reference to a natural person, requires statement of the person's full name, last known home and business addresses, home and business telephone numbers, and present business affiliation and position. Where used with a person other than a natural person, these terms require statement of the full name, form of organization, and present and last known address. When used with reference to a document, these terms require the title or character of the document (such as "letter," "memorandum" or "receipt"); the author and every person signing the document; every recipient of the document; the date the document was prepared, executed and transmitted; a description of the general subject matter of the document; and the identification of every person in whose custody the document is now being kept. When used in reference to a meeting, conference, conversation or other communication, these terms require a statement of the date and time, the identification of each person involved and the location of each party to the conference or communication.

6. The term "describe," when used in connection with an oral statement, means to provide the identity of the speaker, the identities of those to whom the statement was directed, the precise words spoken or, if that is not possible, the substance of the statement, the identities of all individuals present, and the precise time, date and location at which the statement was made.

7. The term "Communication" when used in these Requests includes all forms of communication, discussion and discourse – whether written, oral, electronic or otherwise.

**DISCOVERY REQUESTS.**

**REQUEST FOR PRODUCTION NO. 9:** Produce each and every Document that constitutes, reflects or refers to every Communication between (1) any employee, agent, investigator, attorney and/or administrator of ODS, and (2) Bank of Union, John Shelley, Michael Braun, Timothy Headington, Chris Martin, and/or any representative, agent or attorney for such individuals and/or institution, from January 1, 2009 to the date of your response to this interrogatory that concerns, refers, or relates to:

- a. Any named Respondent in this action;
- b. Any aspect of this action;
- c. The document and deposition subpoenas requested, issued and served on Bank of Union, John Shelley, Michael Braun and Timothy Headington in this action; and/or
- d. The Motion to Quash and Motion for Protective Order in this action filed and served by counsel for Bank of Union, John Shelley, Michael Braun and Timothy Headington on or about March 3, 2010.

Your production of responsive Documents should include, but not necessarily be limited to, e-mails, voice messages, telephone messages, handwritten or electronic notes, correspondence and internal memoranda and messages concerning the referenced Communications.

**REQUEST FOR PRODUCTION NO. 10:** Produce each and every Document that constitutes, reflects or refers to any Communication involving any employee, agent, investigator, attorney and/or administrator of ODS concerning the posting and publishing on the Department's website the Motion to Quash and Motion for Protective Order filed and served on or about March 3, 2010 in this action by counsel for Bank of Union, John Shelley, Michael Braun and Timothy Headington. Your production of responsive Documents should include, but not necessarily be limited to, e-mails, voice messages, telephone messages, handwritten or electronic notes, correspondence and internal memoranda and messages concerning the referenced Communications.

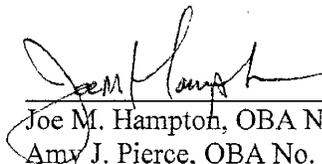
**REQUEST FOR PRODUCTION NO. 11:** Produce each and every Document that constitutes, reflects or refers to ODS policies, procedures, and/or practices concerning posting and publishing on the ODS website filings made in administrative and/or court proceedings.

**REQUEST FOR PRODUCTION NO. 12:** Produce each and every Document that reflects on how many occasions prior to March 3, 2011, ODS posted and published on its website any information or documentation that referred to a pending, non-public arbitration proceeding involving an individual or entity that was, at the time of the posting on the ODS website, a party to a pending administrative or court proceeding involving ODS. Your production should include, but not necessarily be limited to, copies of all such postings.

**REQUEST FOR PRODUCTION NO. 13:** Produce each and every Document that constitutes, reflects or refers to ODS policies, procedures, and/or practices concerning the

ability of attorneys not licensed to practice law in the State of Oklahoma to participate in ODS administrative proceedings by, among other things, filing pleadings.

Respectfully submitted,



Joe M. Hampton, OBA No. 11851

Amy J. Pierce, OBA No. 17980

A. Ainslie Stanford II, OBA No. 18843

**CORBYN HAMPTON PLLC**

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

**CERTIFICATE OF SERVICE**

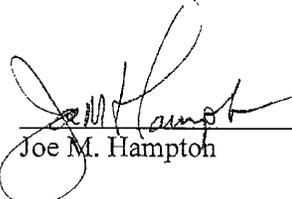
I hereby certify that on March 7, 2011, a copy of the foregoing document was served on the following by e-mail:

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



Joe M. Hampton

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. *aka* Capital West Securities, Inc.;  
Keith D. Geary; Norman Frager; and CEMP, LLC,

Respondents.

File No. 09-141

DEPARTMENT'S AMENDED RESPONSE TO  
RESPONDENT GEARY SECURITIES, INC.'S, FIRST REQUEST  
FOR PRODUCTION OF DOCUMENTS

The Oklahoma Department of Securities ("Department") submits the following responses and objections to Respondent Geary Securities, Inc.'s, First Request for Production of Documents to Oklahoma Department of Securities, served on December 23, 2010 ("Document Requests").

**GENERAL OBJECTIONS**

1. The Department objects to the Document Requests to the extent they are overly broad, unduly burdensome, or not reasonably calculated to lead to discovery of admissible evidence.
2. The Department objects to the Document Requests to the extent that they seek information protected by the attorney-client privilege, work-product doctrine, deliberative process privilege, Section 1-607 of the Oklahoma Uniform Securities Act of 2004 ("Act"), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2009), or any other applicable privilege or protection.
3. The Department objects to the Document Requests to the extent Respondent Geary Securities, Inc., attempts to impose obligations on the Department other than those imposed by the Act and the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities ("Rules").
4. The Department objects to the Document Requests to the extent Respondent Geary Securities, Inc., requires production of documents not in the Department's possession, custody, or control.



5. The Department responds to the Document Requests based upon information and documentation available as of the date hereof and reserves the right to supplement and amend its responses.

6. The Department reserves all objections as to the competence, relevance, materiality, admissibility, or privileged or protected status of any information provided in response to the Document Requests, unless the Department specifically states otherwise.

7. The Department's General Objections are incorporated into each of the following responses, shall be deemed continuing as to all requests, and are not waived, nor in any way limited by the following responses.

### **SPECIFIC OBJECTIONS AND RESPONSES**

**REQUEST NO. 1:** All Documents ODS has obtained from any non-party or third party that relate in any way to any of the named Respondents or the allegations contained in the *Enforcement Division Recommendation* filed in this proceeding (the "ODS Charges").

**RESPONSE TO REQUEST NO. 1:** The Department objects to Request No. 1 on the grounds that it is unlimited as to time frame and calls for the production of documents protected by attorney work-product doctrine, the deliberative process privilege, and Section 1-607 of the Act. The Department is withholding the following documents:

- (a) all responsive documents that relate to the Department's previous investigations and/or examinations of the activities of Capital West Securities, Inc., and/or representatives or clients thereof, that do not relate to the ODS Charges;
- (b) a chain of emails in which counsel for the Department asked John Shelley to clarify certain facts in anticipation of litigation and John Shelley, or someone on his behalf, responded;
- (c) emails between representatives of the Department and Pershing, LLC, prepared at the direction of the Department's counsel in anticipation of litigation and containing work product;
- (d) a document prepared by Pershing/The Bank of New York Mellon Corporation at the direction of counsel for the Department in anticipation of litigation;
- (e) documents obtained from UMB relating to one or more accounts in the name of persons other than Respondents;
- (f) correspondence between the Department and other regulatory and governmental agencies; and
- (g) documents provided by other regulatory and governmental agencies to the Department, except those produced on Friday, January 7, 2011, in response to Request No. 3.

Subject to and without waiving the foregoing objections, the Department is producing the remaining responsive documents currently in its possession except those documents produced on Friday, January 7, 2011, in response to Request No. 3.

**REQUEST NO. 2:** Transcripts of all interviews, affidavits, declarations, statements and depositions ODS has conducted or obtained from any person or representative of any private, public, governmental or quasi-governmental entity that relate in any way to any of the named Respondents or the ODS Charges.

**RESPONSE TO REQUEST NO. 2:** The Department objects to Request No. 2 on the grounds that it is unlimited as to time frame and calls for the production of documents protected from disclosure by the work-product doctrine, the attorney-client and deliberative process privilege, and/or Section 1-607 of the Act. The Department is withholding the following documents:

- (a) all responsive documents obtained from other regulatory and governmental agencies, except those produced on Friday, January 7, 2011, in response to Request No. 3;
- (b) all responsive documents that relate to the Department's previous investigations and/or examinations of the activities of Capital West Securities, Inc., and/or representatives or clients thereof, that do not relate to the ODS Charges.

Subject to and without waiving the foregoing objections, the Department produced responsive documents on Friday, January 7, 2011, in response to Request No. 3, and is producing the remaining responsive documents currently in its possession.

**REQUEST NO. 3:** All Documents Identified in items 1-89 of the "Document and Exhibit List" section of ODS Preliminary List of Witnesses and Exhibits filed on December 22, 2010.

**RESPONSE TO REQUEST NO. 3:** Items 81 and 83 through 89 of the Department's preliminary exhibit list are not being produced at this time because such items are either unknown, not yet created, have already been sent to Respondents in the ordinary course of this proceeding, and/or are accessible on the Department's website, [www.securities.ok.gov](http://www.securities.ok.gov), or FINRA's website, [www.finra.org](http://www.finra.org). Subject to and without waiving the foregoing objections, the Department is producing certain emails obtained from Geary Securities, Inc., on an enclosed CD. Subject to and without waiving the foregoing objections, the Department produced the remaining responsive documents currently in its possession on Friday, January 7, 2011, in response to this request, and on Thursday, January 13, 2011, in response to Request No. 8.

**REQUEST NO. 4:** All Documents that reflect, memorialize or relate to any form of communication between ODS and any third party or non-party (including, but not limited to, any representative, agent, attorney or employee of Frontier State Bank, Washita State Bank, Yukon National Bank, Bank of Union, Timothy Headington, Chris Martin, Mesirov Financial, the Oklahoma State Banking Department, Pershing, LLC, FINRA, or FDIC) that relate in any way to any of the named Respondents or the allegations contained in the ODS Charges.

**RESPONSE TO REQUEST NO. 4:** The Department objects to Request No. 4 on the grounds that it is unlimited as to time frame and calls for the production of documents protected from disclosure by the work-product doctrine, the attorney-client and deliberative process privilege, and/or Section 1-607 of the Act. The Department is withholding the following documents:

- (a) all responsive documents that relate to the Department's previous investigations and/or examinations of the activities of Capital West Securities, Inc., and/or representatives or clients thereof, that do not relate to the ODS Charges;
- (b) a chain of emails in which counsel for the Department asked John Shelley to clarify certain facts in anticipation of litigation and John Shelley, or someone on his behalf, responded;
- (c) a document prepared by Pershing/The Bank of New York Mellon Corporation at the direction of counsel for the Department in anticipation of litigation;
- (d) emails between representatives of the Department and Pershing, LLC, prepared at the direction of the Department's counsel in anticipation of litigation and containing work product;
- (e) one or more recordings of telephone interviews of representatives of Pershing, LLC, conducted by or at the direction of counsel for the Department in anticipation of litigation;
- (f) correspondence between the Department and other regulatory and governmental agencies; and
- (g) all internal communications, memoranda, and notes responsive to this request.

Subject to and without waiving the foregoing objections, the Department is producing the remaining responsive documents currently in its possession that have not already been produced in response to another request.

**REQUEST NO. 5:** All Documents that reflect, memorialize or relate to any form of communication between ODS and any representative of Mainstay Capital Markets Consultants, Inc. (including, but not limited to, David Paulukaitis) on any topic or subject matter including, but not limited to, any of the named Respondents or the allegations contained in the ODS Charges.

**RESPONSE TO REQUEST NO. 5:** The Department objects to Request No. 5 on the grounds that it is unlimited as to subject matter and time frame and calls for the production of documents protected from disclosure by the work-product doctrine, the deliberative process privilege, and Section 1-607 of the Act. The Department is withholding responsive documents concerning one or more investigations and/or proceedings not relating in anyway to Respondents or the ODS Charges, responsive internal communications and notes, and an email chain between David Paulukaitis and counsel for the Department containing the legal opinion of counsel for the Department. Subject to and without waiving the foregoing objections, the Department is producing the remaining responsive documents currently in its possession.

**RESPONSE NO. 6:** All Documents provided by ODS to any representative of Mainstay Capital Markets Consultants, Inc. (including, but not limited to, David Paulukaitis) concerning any of the named Respondents or the allegations contained in the ODS Charges.

**RESPONSE TO REQUEST NO. 6:** The Department provided David Paulukaitis with the emails produced in electronic format by Geary Securities, Inc., to the Department, in connection with the Department's investigation into the activities of Keith Geary and Geary Securities, Inc. Those emails were produced by the Department to Geary Securities, Inc., on Friday, January 7,

2011, in response to Request No. 3. The Department is withholding an internal memorandum of the Oklahoma State Banking Department that was inadvertently provided by the Department to David Paulukaitis. Pursuant to the Department's memorandum of understanding with the Oklahoma State Banking Department, the Department is currently seeking authorization of the Oklahoma State Banking Department to produce such document pursuant to this request. Subject to and without waiving the foregoing objections, the Department is producing the remaining responsive documents currently in its possession.

**REQUEST NO. 7:** All Documents that reflect, memorialize or relate to any form of communication between ODS and Bruce R. Kohl on any topic or subject matter including, but not limited to, any of the named Respondents or the ODS Charges.

**RESPONSE TO REQUEST NO. 7:** The Department objects to Response No. 7 on the ground that it is unlimited as to subject matter and time frame and calls for the production of documents protected by the attorney work-product doctrine, the deliberative process privilege, and Section 1-607 of the Act. Certain employees of the Department may have sent emails to, or received emails from, Mr. Kohl through the North American Securities Administrators Association ("NASAA") list serve that provides a forum for discussion among the various state securities regulatory agencies. These communications would not have specifically related to Respondents or this proceeding. The Department is not producing these communications at this time but will produce these communications to the extent they are non-privileged, at the request of counsel for Respondent Geary Securities, Inc. Subject to and without waiving the foregoing objections, the Department is producing the remaining responsive documents for the time period January 1, 2009, through the present.

Respectfully submitted,



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Melanie Hall  
Director of Enforcement  
Terra Shamas Bonnell  
Enforcement Attorney  
Oklahoma Department of Securities  
120 North Robinson, Suite 860  
Oklahoma City, OK 73102  
Telephone: (405) 280-7700  
Facsimile: (405) 280-7742

**CERTIFICATE OF SERVICE**

I hereby certify that on January 19, 2011, the foregoing document was hand-delivered to the following:

Joe M. Hampton  
Corbyn Hampton, PLLC  
211 North Robinson, Suite 1910  
Oklahoma City, OK 73102

*Attorney for Respondents Geary Securities, Inc.,  
Keith D. Geary, and CEMP, LLC*

  
\_\_\_\_\_  
Terra Shamas Bonnell

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.;  
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Respondents.

File No. 09-141

**DEPARTMENT'S RESPONSE TO RESPONDENT GEARY SECURITIES, INC.'S,  
THIRD REQUEST FOR PRODUCTION OF DOCUMENTS**

The Oklahoma Department of Securities ("Department") submits the following responses and objections to Respondent Geary Securities, Inc.'s, Third Request for Production of Documents to Oklahoma Department of Securities, served on March 7, 2011 ("Document Requests").

**GENERAL OBJECTIONS**

1. The Department objects to the Document Requests to the extent they are overly broad, unduly burdensome, or not reasonably calculated to lead to discovery of admissible evidence.
2. The Department objects to the Document Requests to the extent that they seek information protected by the attorney-client privilege, work-product doctrine, deliberative process privilege, Section 1-607 of the Oklahoma Uniform Securities Act of 2004 ("Act"), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2009), or any other applicable privilege or protection.



3. The Department objects to the Document Requests to the extent that Respondent Geary Securities, Inc., attempts to impose obligations on the Department other than those imposed by the Act and the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities ("Rules").

4. The Department responds to the Document Requests based upon information and documentation available as of the date hereof and reserves the right to supplement and amend its responses.

5. The Department reserves all objections as to the competence, relevance, materiality, admissibility, or privileged or protected status of any information provided in response to the Document Requests, unless the Department specifically states otherwise.

6. The Department's General Objections are incorporated into each of the following responses, shall be deemed continuing as to all requests, and are not waived, nor in any way limited, by the following responses.

#### **SPECIFIC OBJECTIONS AND RESPONSES**

**REQUEST FOR PRODUCTION NO. 9;** Produce each and every Document that constitutes, reflects or refers to every Communication between (1) any employee, agent, investigator, attorney and/or administrator of ODS, and (2) Bank of Union, John Shelley, Michael Braun, Timothy Headington, Chris Martin, and/or any representative, agent or attorney for such individuals and/or institution, from January 1, 2009 to the date of your response to this interrogatory that concerns, refers, or relates to:

- a. Any named Respondent in this action;
- b. Any aspect of this action;
- c. The document and deposition subpoenas requested, issued and served on Bank of

Union, John Shelley, Michael Braun and Timothy Headington in this action; and/or

- d. The Motion to Quash and Motion for Protective Order in this action filed and served by counsel for Bank of Union, John Shelley, Michael Braun and Timothy Headington on or about March 3, 2010.

Your production of responsive Documents should include, but not necessarily be limited to, e-mails, voice messages, telephone messages, handwritten or electronic notes, correspondence and internal memoranda and messages concerning the referenced Communications.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 9:** The Department objects to Request No. 9 to the extent it calls for the production of documents protected from disclosure by the work-product doctrine, the attorney-client privilege, and/or the deliberative process privilege. Subject to and without waiving the foregoing objections, the Department is producing all non-protected, non-privileged, responsive documents that have not previously been produced to Geary Securities, Inc., pursuant to a prior request for production.

**REQUEST FOR PRODUCTION NO. 10:** Produce each and every Document that constitutes, reflects or refers to any Communication involving any employee, agent, investigator, attorney and/or administrator of ODS concerning the posting and publishing on the Department's website the Motion to Quash and Motion for Protective Order filed and served on or about March 3, 2010 in this action by counsel for Bank of Union, John Shelley, Michael Braun and Timothy Headington. Your production of responsive Documents should include, but not necessarily be limited to, e-mails, voice messages, telephone messages, handwritten or electronic notes, correspondence and internal memoranda and messages concerning the referenced Communications.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 10:** The Department objects to Request No. 10 to the extent it calls for the production of documents protected from disclosure by the work-product doctrine, the attorney-client privilege, and/or the deliberative process privilege. Subject to and without waiving the foregoing objections, the Department is producing all non-protected and non-privileged documents responsive to this request.

**REQUEST FOR PRODUCTION NO. 11:** Produce each and every Document that constitutes, reflects or refers to ODS policies, procedures, and/or practices concerning posting and publishing on the ODS website filings made in administrative and/or court proceedings.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 11:** The Department objects to Request No. 11 on the grounds that it is unlimited as to time frame and is overly burdensome in that it would require a representative of the Department to review thousands of emails and other documents to determine if any reflect or refer to the Department's policies, procedures, and/or practices concerning posting and publishing filings made in administrative and/or court proceedings, on the Department's website. Subject to and without waiving the foregoing objections, the Department responds that there are no documents that constitute the Department's current policy concerning posting and publishing filings, made in administrative and/or court proceedings, on the Department's website.

**REQUEST FOR PRODUCTION NO. 12:** Produce each and every Document that reflects on how many occasions prior to March 3, 2011, ODS posted and published on its website any information or documentation that referred to a pending, non-public arbitration proceeding involving an individual or entity that was, at the time of the posting on the ODS website, a party to a pending administrative or court proceeding involving ODS. Your production should include, but not necessarily be limited to, copies of all such postings.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 12:** The Department objects to Request No. 12 on the grounds that it is unlimited as to time frame and is overly burdensome in that it would require a representative of the Department to review over 2,900 posted documents to determine which, if any, refer to a pending, non-public arbitration proceeding involving an individual or entity that was, at the time of the posting on the ODS website, a party to a pending administrative or court proceeding involving the Department. Respondent Geary Securities, Inc., and its counsel have access to the Department's website and all documents posted and published thereon and should be able to make their own determination as to how many of the documents in question are posted.

**REQUEST FOR PRODUCTION NO. 13:** Produce each and every Document that constitutes, reflects or refers to ODS policies, procedures, and/or practices concerning the ability of attorneys not licensed to practice law in the State of Oklahoma to participate in ODS administrative proceedings by, among other things, filing pleadings.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 13:** The Department objects to Request No. 13 on the grounds that it is unlimited as to time frame and is overly burdensome in that it would require a representative of the Department to review thousands of emails and other documents to determine which ones, if any, reflect or refer to the Department's policies, procedures, and/or practices concerning the ability of attorneys not licensed to practice law in the State of Oklahoma to participate in Department administrative proceedings. Subject to and without waiving the foregoing objections, the Department is producing all documents that constitute the Department's current policy concerning the ability of attorneys not licensed to practice law in the State of Oklahoma to participate in Department administrative proceedings.

Respectfully submitted,



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Melanie Hall  
Director of Enforcement  
Terra Shamas Bonnell  
Enforcement Attorney  
Oklahoma Department of Securities  
120 North Robinson, Suite 860  
Oklahoma City, OK 73102  
Telephone: (405) 280-7700  
Facsimile: (405) 280-7742

**CERTIFICATE OF SERVICE**

I hereby certify that on March 22, 2011, the foregoing document was hand-delivered to the following:

Joe M. Hampton  
Corbyn Hampton, PLLC  
211 North Robinson, Suite 1910  
Oklahoma City, OK 73102

*Attorney for Respondents Geary Securities, Inc.,  
Keith D. Geary, and CEMP, LLC*

  
Terra Shamas Bonnell

**Terra Bonnell**

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**From:** Terra Bonnell  
**Sent:** Monday, March 14, 2011 2:15 PM  
**To:** 'jschirger@millerschirger.com'  
**Subject:** In the Matter of Geary Securities, Inc., et al.; ODS 09-141  
**Attachments:** AFFIDAVIT for BOU Board.doc  
Mr. Schirger:

Attached is a preliminary draft of an affidavit for Bank of Union's directors.

**Terra Shamas Bonnell**  
Enforcement Attorney  
Oklahoma Department of Securities  
Direct Phone: 405.280.7715  
Fax: 405.280.7742  
[tbonnell@securities.ok.gov](mailto:tbonnell@securities.ok.gov)

3/14/2011



**Terra Bonnell**

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**From:** Terra Bonnell  
**Sent:** Monday, March 14, 2011 3:33 PM  
**To:** 'jschirger@millerschirger.com'  
**Subject:** In the Matter of Geary Securities, Inc., et al.; ODS 09-141  
**Attachments:** AFFIDAVIT for BOU Board.doc  
Mr. Schirger:

Please see a revised draft of the affidavit for Bank of Union's Board of Directors.

**Terra Shamas Bonnell**  
Enforcement Attorney  
Oklahoma Department of Securities  
Direct Phone: 405.280.7715  
Fax: 405.280.7742  
[tbonnell@securities.ok.gov](mailto:tbonnell@securities.ok.gov)

3/14/2011

Melanie Hall

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**From:** John J. Schirger [JSchirger@millerschirger.com]  
**Sent:** Saturday, March 05, 2011 4:01 PM  
**To:** Melanie Hall  
**Subject:** RE: Monday, March 7  
OK. I will see you then. Thanks.

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)

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**From:** Melanie Hall [mailto:mhall@securities.ok.gov]  
**Sent:** Friday, March 04, 2011 12:25 PM  
**To:** John J. Schirger  
**Subject:** RE: Monday, March 7

Sure, 9:00 would be fine.

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**From:** John J. Schirger [mailto:JSchirger@millerschirger.com]  
**Sent:** Friday, March 04, 2011 10:30 AM  
**To:** Melanie Hall  
**Subject:** Monday, March 7

Melanie – could I stop by your office Monday morning around 9 am and say hello? If that time doesn't work, is there a time that would?

John

John J. Schirger  
**MILLER SCHIRGER LLC**  
4520 Main Street, Suite 1570  
Kansas City, MO 64111  
General: 816-561-6500  
Direct: 816-561-6504

3/7/2011

Fax: 816-561-6501  
[jschirger@millerschirger.com](mailto:jschirger@millerschirger.com)

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OUTREACH  
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3/7/2011