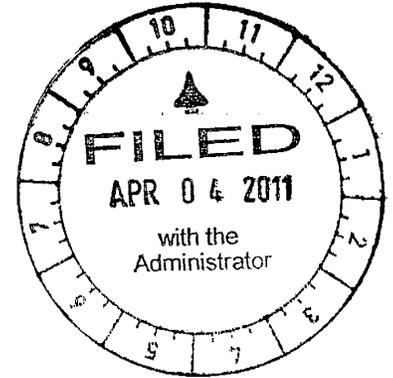


STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
THE FIRST NATIONAL CENTER
120 NORTH ROBINSON, SUITE 860
OKLAHOMA CITY, OKLAHOMA 73102



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

Respondents Geary Securities, Inc. (formerly known as Capital West Securities, Inc.), Keith D. Geary, and CEMP, LLC (the "Geary Respondents") respectfully submit this Reply to the Department's April 1, 2011 Objection and Response to the Geary Respondents' March 28, 2011 (1) Motion for Preclusion Order Striking Witnesses from Department's Final List of Witnesses Based on the Department's Non-Compliance with the Agreed Amended Scheduling Order, and (2) Objection to Amended Final List of Witnesses Filed Out of Time. As stated below and in the Geary Respondents' March 28, 2011 filings, the Hearing Officer should issue the requested preclusion order and additionally strike the Department's Amended Final List of Witnesses:

1. The Department attempts to avoid the express, mandatory consequence of its non-compliance with the requirements of the Agreed Amended Scheduling Order by contending that (a) the Department complied with the requirements of Paragraph 2,

and (b) the purpose behind Paragraph 2 was fulfilled, notwithstanding the Department's non-compliance. Neither contention is accurate.

- a. Paragraph 2 required disclosure of *the witness's* name, address and telephone number. Paragraph 2 did not provide for the unilateral substitution of the name, address and telephone number of *a witness's representative*. Putting aside for the moment the issue of whether *the witness's* residential or business address and telephone number was disclosed and listed, the Department's March 28, 2011 Final List of Witnesses did neither; instead, with respect to the non-party witnesses at issue, the Department **only** provided information for the *witness's representative*. Simply stated, the Department did not comply with the requirements of Paragraph 2.
- b. The Department speculates – in the face of its own non-compliance – that the purpose behind Paragraph's 2 disclosure requirement was to allow for “a means of contacting the witness.” The Department conspicuously ignores and fails to respond in any manner to the fact that counsel for the Geary Respondents previously notified the Department that its Preliminary List of Witnesses did not comply with the requirements of the scheduling order and specifically expressed concerns regarding the inability to serve subpoenas on non-party witnesses listed by the Department when the Department failed to provide contact information for the non-party witnesses. The Department's response was that it did not have the contact information for the non-party witnesses, only their counsel. The Department is well aware of the resistance and difficulties the Geary Respondents have encountered in attempting to exercise their discovery rights concerning non-

party witnesses in this action. The Department's misplaced attempt to justify its non-compliance with the requirements of Paragraph 2 of the Agreed Amended Scheduling Order further reveals and confirms the Department's efforts to impair the Geary Respondents' rights to discovery, due process and fundamental fairness in this action.

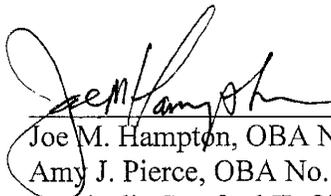
2. The Department attempts to avoid the express, mandatory consequence of its non-compliance with the requirements of the Agreed Amended Scheduling Order by contending that the Geary Respondents should have required more specific language in the scheduling order, notwithstanding the Department's statement that it "realizes now that the language of the Amended Scheduling Order should have been drafted more specifically." The language of Paragraph 2 was and is sufficiently precise and specific – it required the Department to include the name, address and telephone number *of each witness* listed by the Department. The Department's attempt to justify its non-compliance based on the preliminary witness list submitted by Respondent Norman Frager is also misplaced. Frager's list identified two named *parties* (Frager himself and Keith Geary) and three employees of Respondent Geary Securities, Inc. (Althea Roberts, Denise Hintze and Karen Coker). As *represented parties* or *employees of represented parties*, identification of counsel is appropriate, particularly when the Department's own Rules allow depositions of *parties* to be commanded by Notice, rather than Subpoena. Unlike the Department's preliminary and final witness lists, Frager's list did not include any *non-party witnesses*.
3. The Department attempts to avoid the express, mandatory consequence of its non-compliance with the requirements of the Agreed Amended Scheduling Order by

contending that its non-compliance should be overlooked and excused because the Department does not believe the Geary Respondents have suffered material prejudice as a result of the Department's non-compliance. The Department's contention ignores the fact that the language of Paragraph 2 – as drafted and approved by the Department – is clear and mandatory: “Failure to comply with this paragraph *will result in the exclusion of witnesses at hearing*” (emphasis added). Paragraph 2's mandatory preclusive language does not require a showing of material prejudice and the Hearing Officer is not authorized to re-write the language of the stipulated order to provide an excuse where none exists. In a further attempt to excuse its non-compliance, the Department contends that the Geary Respondents should have already known or could have tracked down contact information for the witnesses themselves. The Department's contention in this regard reveals that the Department had more than enough information to satisfy the requirements of Paragraph 2. The Department's contention also attempts to shift the burden of compliance with the requirements of Paragraph 2 to the Respondents, notwithstanding the fact that time was certainly of the essence when the Department submitted its non-compliant final list, as only 20 business days remained to complete discovery. The Department's submission of its non-compliant witness list made it extremely difficult, if not impossible, to complete all necessary discovery within the allotted time frame, particularly in light of (a) difficulties already encountered with non-party witnesses who have been served with subpoenas but refuse to comply, and (b) the addition of 7 new non-party witnesses as part of the Department's final witness list.

4. The Department attempts to avoid the express, mandatory consequence of its non-compliance with the requirements of the Agreed Amended Scheduling Order by contending that it was entitled to unilaterally file an Amended Final Witness List out of time, blatantly ignoring and in violation of the Agreed Amended Scheduling Order. The Department's attempt to rely on its belated, out-of-time offer to comply with the requirements of Paragraph 2 is similarly misplaced. The Department's offer of belated compliance only occurred after it was advised that the Geary Respondents were filing a motion to enforce Paragraph 2's mandatory language. The Department's offer of belated compliance also confirmed that the Department had always had the ability to comply on a timely basis with Paragraph 2's requirements, but deliberately chose not to comply. Having made its choice, the Department must face and bear the consequences mandated by Paragraph 2 – preclusion of the subject witnesses.
5. Based on the foregoing discussion, together with that previously submitted, the Geary Respondents respectfully request that the Hearing Officer promptly take the following action:
 - a. Schedule and conduct a Hearing on these issues; and
 - b. Enter a preclusion order striking and precluding the following individuals from testifying at the hearing on the merits in this action:
 - Mike Shelley;
 - John Shelley;
 - Mike Braun;
 - Chris Martin;

- Jeff Wills;
- Ray Evans;
- Earl Mills;
- Eldon R. Ventris;
- Steve Ketter;
- David Tinsley;
- Betty Pettijohn;
- Bill Haycraft;
- Joseph D. McKean, Jr.; and
- Karen Hooley.

Respectfully submitted,



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**ATTORNEYS FOR RESPONDENTS GEARY
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CEMP, LLC**

CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2011, a copy of the foregoing document was served on the following via electronic mail:

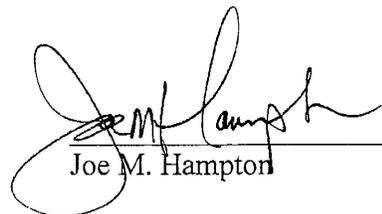
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