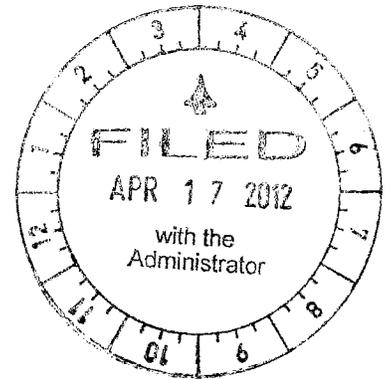


STATE OF OKLAHOMA  
DEPARTMENT OF SECURITIES  
THE FIRST NATIONAL CENTER  
120 NORTH ROBINSON, SUITE 860  
OKLAHOMA CITY, OKLAHOMA 73102



In the Matter of:

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

Respondents.

ODS File No. 09-141

**GEARY RESPONDENTS' RESPONSE TO HEARING OFFICER'S  
RULING ON MOTION FOR RECONSIDERATION DATED APRIL 13, 2012**

The Geary Respondents respond as follows to the Hearing Officer's *Ruling on Third Party Directors' Motion for Reconsideration of Motion to Quash Deposition Subpoenas* dated April 13, 2012 (the "4/13/12 Ruling").

As set forth herein, the Hearing Officer held that the Geary Respondents are required to submit *on the record* a detailed summary of those topics they intend to cover in the BOU Directors' Deposition. The Geary Respondents' respectfully object to this determination because: (1) the District Court has already ruled on the scope of the BOU Directors' depositions; and (2) requiring the Geary Respondents to submit an outline of the deposition topics they intend to cover with the BOU Directors is effectively removing immunity of the Geary Respondent's counsel's work product from discovery. Such a holding effectively strips the Geary Respondents' counsel of the right to have their work product protected from disclosure.

The sequence of events giving rise to the 4/13/12 Ruling can be summarized as follows:

- The Geary Respondents requested issuance of deposition subpoenas for six members of the Bank of Union's Board of Directors (the "BOU Directors");
- The Hearing Officer issued the requested deposition subpoenas;
- The BOU Directors filed a Motion to Quash and for Protective Order, seeking to avoid the depositions, and the Department subsequently joined in the Motion;
- The Hearing Officer conducted a hearing on the BOU Directors' Motion and denied the Motion, ordering the depositions to be completed within 45 days;
- The Department filed a Second Amended Witness List, dropping the BOU Directors as witnesses;
- The Geary Respondents filed their Endorsement of the BOU Directors as potential witnesses;
- The BOU Directors filed their Motion for Reconsideration, asking the Hearing Officer to reverse his ruling and grant their Motion to Quash, preventing the Geary Respondents from taking their depositions; and
- The Hearing Officer issued his 4/13/12 Ruling. As part of the 4/13/12 Ruling, the Hearing Officer directed the Geary Respondents to file a written statement that is, in reality, a deposition outline, by April 17, 2012 – 2 business days after issuance of the 4/13/12 Ruling.<sup>1</sup>

The Geary Respondents object to the requirement of publicly filing the functional equivalent of a deposition outline, because imposition of such a requirement is not authorized by the Department's Rules, the Oklahoma Discovery Code, or any provision of applicable law. Subject to and without waiving the foregoing objection, the Geary Respondents provide the following reasons why they remain entitled to depose the BOU Directors.

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<sup>1</sup> The Hearing Officer's requirement consists of a "written statement...of the **specific details** of any additional issues or topics that they would propose to question each of the Third Party Directors about in the discovery depositions" (emphasis added). See, 4/13/12 Ruling, p. 4.

1. The Department seeks to impose extremely harsh discipline in this action against the Geary Respondents. The Department seeks to permanently deprive Mr. Geary of his ability to earn a living and support his family and, by imposition of an excessive fine, the Department seeks to bankrupt and destroy his family. This is not a plea for sympathy; rather, it is a simple statement of factual reality. While the rights of non-parties such as the BOU Directors certainly should be considered, doing so to the exclusion and deprivation of the Geary Respondents' rights is improper.
2. The 4/13/12 Ruling acknowledges that a party has the right to depose "any person who may arguably have information concerning the issues in the case." See, 4/13/12 Ruling, p. 2.
3. As expressly noted in the 4/13/12 Ruling (at page 3), ODS Rule 660:2-9-4(a) provides as "a condition to issuance of a subpoena the Hearing Officer may require that party seeking the subpoena show the general relevance and reasonable scope of the testimony being sought" (emphasis added). Both requirements have already been satisfied and found to exist.
4. The 4/13/12 Ruling concedes that "(t)he testimony of the Third Party Directors is relevant" (emphasis added). See, 4/13/12 Ruling, p. 2.
5. The 4/13/12 Ruling finds that the Geary Respondents' depositions of the BOU Directors "would not be oppressive or unduly burdensome...and **would not be irrelevant**" (emphasis added). See, 4/13/12 Ruling, p. 3.
6. The 4/13/12 Ruling identifies the sole remaining issue as whether depositions of the BOU Directors would be "unreasonable and/or excessive in scope." See,

4/13/12 Ruling, p. 3. However, the Hearing Officer never addressed “unreasonableness” or “excessive scope.” Instead, the Hearing Officer adopted the argument made by the BOU Directors’ counsel that the Directors’ depositions would be “duplicative and redundant.” See, 4/13/12 Ruling, p. 3.

7. In response to the Hearing Officer’s challenge and directive (“If the Geary Respondents can demonstrate that there are other relevant topics to be addressed...”), the Geary Respondents would refer the Hearing Officer to the express Order of the District Court, which has already disposed of these issues and dictated what can be covered in the Directors’ depositions:

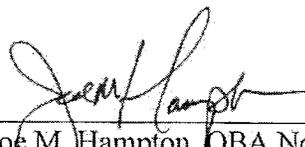
The scope of examination for those depositions, and any subsequent depositions of any other of The Bank of Union’s... directors,... **shall be limited to only those facts and documents relating to the 2009 transactions involving The Bank of Union and Timothy Headington’s purchases of the Mortgage Resecuritization Notes, Series 2009-1, Class A-1 and/or A-2, issued by CEMP Resecuritization Trust 2009-1, and the 2008 transactions involving The Bank of Union’s purchases of certain private label mortgage backed securities.**” See 7/15/2011 District Court Order, attached hereto as Exhibit 1, p. 4 (emphasis added).

8. The 4/13/12 Ruling appears to be erroneously based on an inaccurate assumption “that the scope of the intended depositions is only to confirm the attendance of the Third Party Directors at the subject BOU board meeting, and to confirm what was set forth in the Affidavit concerning the statements of Respondent Geary.” See, 4/13/12 Ruling, p. 3. The Geary Respondents are not sure where this misplaced assumption comes from, but nothing could be further from reality.
9. In Response to the 4/13/12 Ruling, the Geary Respondents advise the Hearing Officer and counsel that they will thoroughly cover each and every issue included within the scope of the District Court’s Order in the course of the Directors’

depositions. However, the Geary Respondents' counsel respectfully objects and declines the Hearing Officer's requirement that the Geary Respondents identify and set forth the other additional specific relevant topics to be addressed. If the Geary Respondents are required to set out in the record the exact scope of the deposition topics, this would be tantamount to a waiver of the work product immunity from disclosure, as it would cause counsel to disclose mental impressions, strategies and tactics for doing their job. If necessary, the Geary Respondents are agreeable to submitting additional details to the Hearing Officer *in camera* (and, if they wish to participate, counsel for Respondent Frager).

WHEREFORE, the Geary Respondents request that the Hearing Officer vacate the 4/13/12 Ruling and direct the BOU Directors to comply with the previously-issued deposition subpoenas without further delay.

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

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

CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2012, a copy of the foregoing document was served on the following by electronic mail:

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

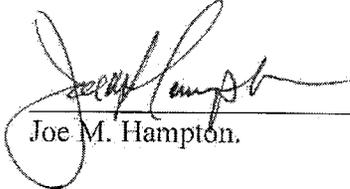
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\_\_\_\_\_  
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EXHIBIT

1

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT  
OKLAHOMA COUNTY, OKLA.

JUL 25 2011

PATRICIA PRESLEY, COURT CLERK  
by \_\_\_\_\_  
DEPUTY

Oklahoma Department of Securities, )  
ex rel. Irving L. Faught, )  
Administrator, )  
 )  
Plaintiff, )  
 )  
 )  
v. )  
 )  
The Bank of Union, John Shelley, Mike Braun, )  
and Timothy Headington, )  
 )  
Defendants. )

Case No. CJ-2011-2277

**ORDER**

On May 5, 2011, at 2:00 p.m., this matter came before the Court for hearing on Plaintiff Oklahoma Department of Securities *ex rel.* Irving L. Faught's ("Plaintiff") Application for Order Enforcing Subpoenas (the "Application"), and Defendants The Bank of Union, John Shelley, Mike Braun, and Timothy Headington's ("Defendants") Motion to Quash or For Protective Order (the "Motion"). Plaintiff appeared through counsel Shaun Mullins, and Defendants appeared through counsel Gary Bryant, John Schirger, and Matthew Lytle.

By its Application, Plaintiff seeks the Court's Order enforcing, in their entirety, the subpoenas *duces tecum* requesting certain documents from The Bank of Union and Timothy Headington, and the deposition subpoenas issued to John Shelley, Mike Braun, and Timothy Headington, all of which were issued by the Oklahoma Department of Securities in an administrative proceeding Plaintiff initiated against Geary Securities, Inc. *fka* Capital West Securities, Inc., Keith D. Geary, Norman Frager, and CEMP LLC. Defendants' Motion seeks

the Court's Order quashing the subpoenas or, alternatively, a protective order limiting their scope.

Having considered the Application, the Motion and the arguments of counsel, and for good cause shown, the Court finds as follows:

1. Plaintiff's Application for enforcement of the subpoenas *duces tecum* issued to the Bank of Union and Timothy Headington should be and hereby is GRANTED, subject to the terms of the protective order set forth below;

2. Plaintiff's Application for enforcement of the deposition subpoenas issued to John Shelley and Mike Braun should be and hereby is GRANTED, subject to the terms of the protective order set forth below.

3. Defendants' motion to quash the subpoenas in their entirety should be and hereby is DENIED.

4. Defendants' alternative motion for protective order should be and hereby is GRANTED as follows:

- a. The scope of the subpoenas *duces tecum* is limited to only those documents relating to the 2009 transactions involving The Bank of Union and Timothy Headington's purchases of the Mortgage Resecuritization Notes, Series 2009-1, Class A-1 and/or A-2, issued by CEMP Resecuritization Trust 2009-1, and the 2008 transactions involving The Bank of Union's purchases of certain private label mortgage backed securities.

- b. The scope of examination under the deposition subpoenas issued to John Shelley, Mike Braun, and any subsequent deposition subpoenas issued to any other officer, director, employee, or representative of The Bank of Union, shall be limited to only those facts and documents relating to the 2009 transactions involving The Bank of Union and Timothy Headington's purchases of the Mortgage Resecuritization Notes, Series 2009-1, Class A-1 and/or A-2, issued by CEMP Resecuritization Trust 2009-1, and the 2008 transactions involving The Bank of Union's purchases of certain private label mortgage backed securities.

It is, therefore, ORDERED, ADJUDGED and DECREED as follows:

1. With respect to the deposition subpoena issued to Timothy Headington, Plaintiff's Applications is DENIED.
2. Plaintiff's Application is GRANTED with respect to the subpoenas *duces tecum* issued to The Bank of Union and Timothy Headington, as modified by the terms of the protective order set forth herein. Defendants shall, within fourteen (14) days of the date of entry of this Order, produce only those documents relating to the 2009 transactions involving The Bank of Union and Timothy Headington's purchases of the Mortgage Resecuritization Notes, Series 2009-1, Class A-1 and/or A-2, issued by CEMP Resecuritization Trust 2009-1, and the 2008 transactions involving The Bank of Union's purchases of certain private label mortgage backed securities.
3. Plaintiff's Application is GRANTED with respect to the deposition subpoenas issued to John Shelley and Mike Braun, as modified by the terms of the protective order set forth herein, which terms shall apply to any subsequent deposition subpoenas issued to any other of

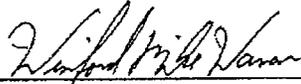
The Bank of Union's officers, directors, employees, or representatives. Messrs. Shelley and Braun shall make themselves available for deposition within forty-five (45) days after the production of documents set forth above is completed. The scope of examination for those depositions, and any subsequent depositions of any other of The Bank of Union's officers, directors, employees, or representatives, shall be limited to only those facts and documents relating to the 2009 transactions involving The Bank of Union and Timothy Headington's purchases of the Mortgage Resecuritization Notes, Series 2009-1, Class A-1 and/or A-2, issued by CEMP Resecuritization Trust 2009-1, and the 2008 transactions involving The Bank of Union's purchases of certain private label mortgage backed securities.

2. Defendants' motion to quash the subpoenas is DENIED.

3. Defendants' alternative motion for protective order is GRANTED as set forth above.

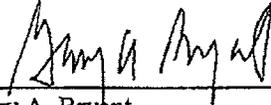
SO ORDERED.

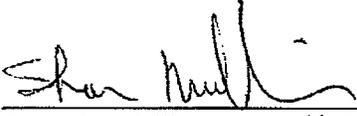
Dated this 21<sup>st</sup> day of July, 2011.

  
\_\_\_\_\_  
Hon. W. Mike Warren  
Associate District Judge

Prepared and submitted by:

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-And-

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