

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

THIRD PARTY DIRECTORS' BRIEF IN SUPPORT
OF MOTION TO QUASH AND FOR PROTECTIVE ORDER

Third parties Jeff Wills, Steve Ketter, David Tinsley, Ray Evans, Earl Mills, and Eldon Ventris, all of whom are directors of The Bank of Union ("Bank") (collectively, the "Third Party Directors"), by and through undersigned counsel, and pursuant to Rule 660:2-9-4(d), and the procedures established by the Hearing Officer on February 23, 2012, hereby move the Hearing Officer for his Order quashing the subpoenas issued on February 21, 2012, or for a protective order limiting their scope. In support of this Motion, the Third Party Directors state as follows:

INTRODUCTION

Respondents' stated purpose in seeking the depositions of the Third Party Directors is to inquire about the substance of an Affidavit they signed on March 17, 2011.¹ Only five paragraphs long, the entire substance of the Affidavit fits on less than one sheet of paper. Given the Affidavit's brevity, Respondents have already obtained ample discovery about its content and substance.

¹ A true and correct copy of the Affidavit is attached hereto as Exhibit A and incorporated and restated as though fully set forth herein.

In the five months since Respondents unilaterally cancelled previously scheduled depositions of the Third Party Directors, and refused to recognize the protections against undue burden afforded them as non-parties to this proceeding, Respondents deposed three other third party witnesses. Respondents deposed Mike Braun, the Bank's CFO, Betty Pettijohn, the Bank's corporate secretary, and John Shelley, the Bank's president and a member of the board *who signed the Affidavit*. Each of these witnesses testified to the content of the Affidavit, the representations Respondent Keith Geary made at a September 22, 2009 board meeting in particular. Requiring the Third Party Directors to also testify to the same facts would be unreasonably cumulative and duplicative, unduly burdensome, and harassing.

If their true purpose in seeking the depositions of the Third Party Directors is to obtain legitimate discovery about the content of the Affidavit, Respondents should have asked about it when they had the chance, during the deposition of Mr. Shelley. He is, after all, one of the board members who signed it. Respondents' failure to mark the affidavit as an exhibit to his deposition, or to even ask Mr. Shelley directly about it, leaves only one conclusion. Respondents' current efforts are meant for no other purpose than to harass the Bank and its directors, marking yet another chapter in the desperate witch hunt Respondents launched against the Bank, its officers, directors, and shareholders more than one year ago.

Enough is enough. Respondents have no legitimate purpose for seeking to depose the Third Party Directors. The subpoenas should be quashed in their entirety.

Even if the Hearing Officer determines otherwise, a protective order should issue limiting the scope of the depositions to Respondents' stated purpose for seeking them; the substance of the one page, five paragraph Affidavit, and the September 22, 2009, board meeting to which it refers.

FACTUAL BACKGROUND²

1. On February 11, 2011, Respondents caused subpoenas *duces tecum* to be issued to the Bank, John Shelley, the Bank's president, Mike Braun, the Bank's CFO, and Timothy Headington, one of the Bank's shareholders.

2. On March 3, 2011,³ the Bank and Messrs. Shelley, Braun, and Headington moved the Hearing Officer for his order quashing the subpoenas on the grounds that they: a) were overbroad; b) were unduly burdensome; c) sought discovery of information protected from disclosure by the attorney-client privilege and work product doctrine; d) were meant to harass the third parties to which they were directed; and e) sought to obtain deposition testimony that the Respondents were otherwise precluded from obtaining in the FINRA arbitration proceeding brought against the Respondents by the Bank and Mr. Headington. The Hearing Officer entered his order denying the motion to quash and for protective order on March 21, 2011.

3. Thereafter, on March 25, 2011, Respondents applied to the Administrator of the Oklahoma Department of Securities (the "Department" or "ODS") to take "immediate" action to obtain judicial enforcement of the subpoenas issued to the Bank and Messrs. Shelley, Braun, and Headington.

4. On April 6, 2011, the ODS filed in the District Court of Oklahoma County its Application for Order Enforcing Subpoenas in the action styled *Oklahoma Department of*

² The Third Party Directors recognize that the below Factual Background is lengthy, but the detail provided is necessary to provide the Hearing Officer a true picture of the abuse and harassment to which the Bank, its officers, directors, and shareholders have been subjected by Respondents.

³ Ironically, the Bank and Messrs. Shelley, Braun, and Headington filed their motion to quash in these proceedings fully one year ago, to the day. Respondents' intentions are no more legitimate today, indeed they are less so, than they were on March 3, 2011.

Securities ex rel. Irving L. Faught, Administrator v. The Bank of Union, John Shelley, Mike Braun, and Timothy Headington, Case No. CJ-2011-2277 (the “District Court Proceeding”).

5. On May 5, 2011, the Court heard argument on the ODS’s Application and the motion to quash or for protective order filed in opposition by the Bank and Messrs. Shelley, Braun, and Headington.

6. Contrary to the Hearing Officer’s March 21st Order, on July 25, 2011, the Court entered its Order: a) DENYING the ODS’s application with respect to the deposition of Mr. Headington; b) GRANTING the application with respect to the ODS’s application as it related to the production of documents by the Bank and Mr. Headington, but *also* GRANTING the motion for protective order *limiting the scopes of the subpoenas* 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;” and c) GRANTING the ODS’s application with respect to the depositions of Messrs. Shelley and Braun, but *also* GRANTING the motion for protective order *limiting the scopes of those depositions*, and any future depositions of the Bank’s officers, directors, employees, or representatives 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.” A true and correct copy of the Court’s July 25th Order is attached hereto as Exhibit B, and incorporated and restated as though fully set forth herein.

7. Pursuant to the Court's July 25th Order, the Bank and Mr. Headington produced all responsive documents, and neither Respondents nor the ODS have ever suggested otherwise.

8. On July 13, 2011, Respondents filed their Motion for Reconsideration of Administrator's Refusal to Proceed with Subpoena Enforcement, seeking that the Administrator take action to enforce the subpoenas issued to Mr. Headington in the Texas courts. The Administrator denied the motion on August 4, 2011, finding that Respondents had not made effective service of the subpoenas on Mr. Headington.

9. On August 16, 2011, at Respondents' request, the Hearing Officer issued a second deposition subpoena for Mr. Headington. Pursuant to the subpoena, the deposition was to be taken on October 6, 2011, in Dallas, Texas. Respondents then purported to have the subpoena issued and served not by a Texas court as required under Texas law, but by a Texas *notary public*. Respondents, therefore, failed to comply with Texas law and procedure for the issuance of the subpoena, and otherwise failed to affect proper service on Mr. Headington. As a result, Mr. Headington's deposition did not proceed on October 6th.

10. In a letter dated August 12, 2011, counsel for Respondents requested that the Third Party Directors, those directors who signed the Affidavit, be made available for deposition. A true and correct copy of counsel's August 12th letter is attached hereto as Exhibit C, and incorporated and restated as if fully set forth herein.

11. On August 16, 2011, again at Respondents' request, the Hearing Officer issued deposition subpoenas and subpoenas *duces tecum* to each of the Third Party Directors, according to which the depositions were to take place on September 13 and 14, 2011. By agreement between counsel for Respondents and counsel for the Third Party Directors, however, the depositions of the Third Party Directors were rescheduled for September 29 and 30, 2011.

12. In a September 26, 2011 email, counsel for the Third Party Directors responded as follows to an inquiry about the order of witnesses from counsel for Respondents:

“... given that there will be three sets of counsel questioning the directors, it seems unlikely that all 6 depositions will be completed in 2 days. Rather than having the Bank’s directors wait around for hours to be deposed, we will produce 2 directors on September 29th and 2 on September 30th We can discuss rescheduling the other 2, if necessary, when we are all together later this week.”

A true and correct copy of counsel’s September 26th email is attached hereto as Exhibit D, and incorporated and restated as if fully set forth herein. Counsel for Respondents objected to this proposed schedule and insisted that Respondents depose all of the Third Party Directors on September 29th and 30th.

13. In an effort to resolve the scheduling dispute, counsel for the Third Party Directors conferred with counsel for Respondents on September 27, 2011. In the spirit of compromise, counsel for the Third Party Directors offered to consider producing three of the Third Party Directors on September 29th, and the other three on September 30th, if counsel for Respondents would agree to limit the duration of the depositions in a way that would allow their orderly scheduling and completion. But rather than work cooperatively to schedule the depositions in a manner that would reduce the burden on the Third Party Directors, while still allowing Respondents to obtain discovery about the Affidavit, counsel for Respondents unilaterally cancelled the depositions.⁴

14. In the almost five months that have passed since refusing to cooperate in scheduling the Third Party Directors’ depositions in a manner that recognized the protections against undue burden afforded them under the law as non-parties to this proceeding, Respondents

⁴ Counsel for the Third Party Directors documented this offer, and counsel for Respondents’ refusal in an email dated September 28, 2011, a true and correct copy of which is attached hereto as Exhibit E, and incorporated and restated as if fully set forth herein.

went silent on the issue. They did not return to seek any form of relief from the Hearing Officer. They did not apply to the Administrator for judicial enforcement of the subpoenas. Instead, knowing that any effort to enforce the Third Party Directors' subpoenas would be inconsistent with their then pending motion to preclude the Third Party Directors' testimony and the introduction of the Affidavit at any hearing, Respondents made the strategic decision not to pursue those depositions.

15. In those intervening months, however, Respondents did obtain further discovery from the Bank, certain of its officers, and even one of the directors who signed the Affidavit.

16. On November 15, 2011, pursuant to a subpoena issued by the Hearing Officer at the ODS's request, and the July 25th Court Order, Respondents deposed Mike Braun. With respect to the September 22, 2009, meeting of the Bank's board of directors, and Respondent Keith Geary's representations at that meeting, both of which form the substance of the Affidavit, Mr. Braun testified as follows:

Q. Do you recall any other communications with Mr. Geary concerning the A-2 Notes?

A. Well, the A-2 Notes, on September 22nd, at the board meeting, when he was talking to us about the CEMP, he asked John if Tim would be interested in buying the A-2s, and John told him, no, he wouldn't.

And he kept -- you know, he gave us the sales pitch, and John asked him then if he would be willing to guarantee that transaction. Because Keith stated that if Tim would buy the A-2, he just needed him to hold them until September 31st, and he would get them taken out. And then Tim would have a sizeable profit.

Q. Okay. So that was on September 22nd, that this conversation took place?

A. That's correct.

Q. And it sounds like you were present at the meeting.

A. I was.

(Ex. F⁵ at 48:23-49:21).

17. Likewise, on November 16, 2011, Respondents deposed John Shelley who, in addition to being the Bank's president, is also a member of the board of directors, and signed the Affidavit. With respect to the September 22, 2009, meeting of the Bank's board of directors, and Respondent Keith Geary's representations at that meeting, Mr. Shelley testified as follows:

Q. When did Mr. Geary make these representations to you that he would – that the buyer of the A2s would only have to hold them for three months and wouldn't [*sic*] be able to make a \$2 million profit?

A. The 24th. Around the 24th of September.

Q. Were these representations made by Mr. Geary in any board of director meetings around that time?

A. We had a board of directors meeting September the 22nd, at which point in time we were discussing alternatives as to how to expose – how to extricate ourselves from the private labels, which we wanted to do. The discussion with Mr. Headington's A2 purchase was discussed, but not the intricacy or the conditions.

Q. Do you recall what was said about the A2 purchases during that meeting?

A. Just that Mr. Headington had been asked about the possibility of buying the A2s.

Q. Did Mr. Geary, did he participate in the September 22nd meeting in any way?

A. Telephonically, I believe.

Q. Were there any representations to your memory regarding how long the A2 buyer would have to hold them during the meeting?

A. Yes. It would be less than three months or until December.

⁵ True and correct copies of excerpts from the November 15, 2011, Deposition of Michael Braun are attached hereto as Exhibit F and incorporated and restated as if fully set forth herein.

A. May I correct myself?

Q. Sure.

A. I believe that the – I am getting my meetings messed up. At the 22nd meeting, the board of directors meeting, I believe that the profit was discussed at that meeting.

Q. In detail?

A. Two million dollar profit and that it would be held for less than three months, that is correct.

Q. Who was it agreed upon?

A. It was agreed upon between – it emanated from a telephonic discussion that was held with the board and Mr. Geary relative to the A2 transaction. Well, actually the A1 and A2 transaction, but specifically the A2 transaction. I remember I had asked in a very professional yet stern manner – not stern, but professional manner, Mr. Geary, if you are sure that this is going to happen and you're sure that these transactions are as purported as you say they are, would you be willing to personally guarantee this transaction and he said yes. And he stated that in front of the entire board.

Q. Do you recall when Mr. Geary made that statement?

A. It was at our board meeting and I believe it was on the 22nd of September. And all of the board, the entire board was there, as well as the advisory directors.

(Ex.G⁶ at 38:18-22; 39:3-19; 40:5-9; 41:9-18; 47:11-48:4).

18. Moreover, on December 14, 2011, Respondents deposed Betty Pettijohn, the Bank's senior vice president of human resources and corporate secretary. With respect to the September 22, 2009, meeting of the Bank's board of directors, and Respondent Keith Geary's representations at that meeting, Ms. Pettijohn testified as follows:

⁶ True and correct copies of excerpts from the November 16, 2011, Deposition of John Shelley are attached hereto as Exhibit G and incorporated and restated as if fully set forth herein.

Q. And were you present in any meeting of the board where Mr. Geary made any comments concerning the offering or selling the CEMP 2009-1 notes?

A. Yes.

Q. How many different board meetings did Mr. Geary speak on that topic? I'm just trying to find out if it came up in conversation at one or more than one board meeting.

A. More than one, less than five.

Q. Okay, can you identify any of the board meetings by date?

A. Just the September one.

Q. And that would have been of what year?

A. 2009.

Q. And I take it you were present?

A. Yes.

Q. And if you would, just take your time and in your own words tell me everything you recall Mr. Geary saying in the course of the September 2009 board meeting about the offer and sale of the CEMP notes.

A. Mr. Geary usually joined the meetings telephonically, occasionally he would come out in person, like once a quarter, but it was telephonically. And he was talking about the CEMP and things that were over my head about selling it and all that. But there was a – he seemed under pressure, almost desperate to get this deal done and was willing to do anything to accomplish it. It created a tense board meeting, which our board meetings are usually pretty not tense.

And at some point, whatever Keith was – Mr. Geary was asking for, Mr. Shelley said, would you be willing to sign a guaranty, because he had talked about how it would be sold within a certain amount of time, promised that it would be and that there would be a large profit from that sale. And Mr. Shelley asked would he be willing to sign a guaranty and he said yes.

(Ex. H⁷ at 24:4-25:17).

⁷ True and correct copies of excerpts from the December 14, 2011, Deposition of Betty Anita Pettijohn are attached hereto as Exhibit H and incorporated and restated as if fully set forth herein.

19. On December 1, 2011, the Hearing Officer, purportedly at the request of Respondents, issued yet another subpoena for the deposition of Mr. Headington to be taken in Dallas, Texas, on January 18, 2012.

20. On December 16, 2011, again at the purported request of Respondents, the ODS filed in the District Court Proceeding a motion for writ and commission to take deposition out of state. On January 3, 2012, Mr. Headington filed his opposition and motion to quash.

21. The Court heard argument on the ODS's motion and Mr. Headington's opposition on January 4, 2012, at which time the Court set a schedule for further briefing by the parties. In both the pleadings it filed, and its arguments at the hearing, the ODS represented to the Court that it sought the subpoena, and was pursuing the writ or commission, at Respondents' request.

22. Despite the ODS's representations to the contrary, shortly after the January 4th hearing, counsel for Respondents confirmed twice, in writing, that Respondents did not request either the issuance of the subpoena for Mr. Headington's deposition, or that the ODS seek a writ or commission from the Court.

23. On January 24, 2012, after being confronted with the fact that Respondents' counsel was disavowing any request by Respondents for a subpoena or a writ or commission, the ODS withdrew its motion for writ or commission to take deposition out of state and the motion to add a necessary party that was filed contemporaneously therewith.

24. Thereafter, on February 2, 2012, the Court approved the joint stipulation of the parties to the District Court Proceeding, and entered its order closing the case.

25. On February 1, 2012, Respondents Keith Geary, The Geary Companies, Inc., and Geary Securities, Inc., together with Geary Advisors, LLC, filed a Petition against, among others, the Bank, and Messrs. Shelley, Braun and Wills, in the District Court of Oklahoma

County, in the action styled *Keith Geary, et al. v. John Shelley, et al.*, Case No. CJ-2012-613. On information and belief, Joe Hampton, Respondents' counsel in this proceeding, authored the baseless Petition but, recognizing that he is undoubtedly a witness in that case, did not file the Petition on behalf of Respondents.

26. On February 21, 2012, after they made the strategic decision not to pursue the depositions of the Third Party Directors that they unilaterally cancelled some five months before, and more than three months after making the strategic decision not to introduce the Affidavit as an exhibit in the deposition of Mr. Shelley, one of the Affidavit's signatories, Respondents are back, and the witch hunt continues.

27. Finally, in a February 23, 2012, letter to counsel for the Third Party Directors, counsel for Respondents, in what five months ago would have been an abrupt about face, proposed limiting the duration of the depositions to three hours.⁸ Counsel's offer is too little too late. Respondents were given ample opportunity to depose the Third Party Directors, if only they had agreed to the same proposal by counsel for the Third Party Directors in September. They did not.

ARGUMENT

THE SUBPOENAS SHOULD BE QUASHED; THEY ARE UNREASONABLE, OPPRESSIVE, AND UNDULY BURDENSOME.

The Department's authority to issue subpoenas stems from the Oklahoma Administrative Procedures Act, specifically Okla. Stat. title 75 § 315. Under this statute, the Department may issue subpoenas for deposition "in the same manner as is provided by law for the taking of depositions in civil actions in courts of record." Okla. Stat. title 75 § 315A.2. Consistent with this legislative grant of authority, the Oklahoma Uniform Securities Act, specifically Okla. Stat.

⁸ A true and correct copy of counsel's February 23, 2012, letter is attached hereto as Exhibit I.

title 71 § 1-602.B., provides that the Hearing Officer as the Administrator's "designated officer," may subpoena witnesses to provide testimony that is "relevant or material to the investigation or proceeding." Under Okla. Admin. Code 660:2-9-4, however, a subpoena should either not be issued, or should be issued "only upon such conditions as fairness requires," if the Hearing Officer "determines that the subpoena or any of its terms is unreasonable, oppressive, excessive in scope, unduly burdensome or not relevant." *See* Okla. Admin. Code 660:2-9-4(a).

The subpoenas issued to the Third Party Directors are unreasonably cumulative and duplicative, oppressive, unduly burdensome, and harassing. Fairness requires they be quashed in their entirety.

The depositions Respondents seek are needlessly cumulative and duplicative.

The issuance of subpoenas in a civil action is governed by Okla. Stat. title 12 § 2004.1, which provides, in relevant part, as follows:

C. PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

3. a. On timely motion, the court by which a subpoena was issued *shall* quash or modify the subpoena if it:

(4) subjects a person to *undue burden*, or

(5) requires production of books, papers, documents or tangible things that fall outside the scope of discovery permitted by Section 3226 of this title.

Okla. Stat. title 12 § 2004.1 C.3.a. (emphasis added). Under Okla. Stat. title 12 § 3226 B.2.c., "[o]n motion or on its own, the court *shall* limit the frequency or extent of discovery otherwise allowed if it determines that: (1) the discovery sought is *unreasonably cumulative or duplicative* ..., [or] (2) the party seeking discovery has had *ample opportunity to obtain the information* by discovery in the action." (emphasis added).

The Affidavit is five paragraphs long – less than one page. In those five paragraphs, the Third Party Directors, and Mr. Shelley, swore only that: they were members of the board of directors on September 22, 2009; a board meeting was held on that date; they were present at the meeting; and they heard Respondent Keith Geary represent to the board “that if Timothy Headington purchased the CEMP Class A-2 notes, he (Keith Geary) would be able to sell the Class A-2 notes within 90 days at a profit,” and that Respondent Keith Geary would personally guarantee the transaction. *See Ex. A.* The three witnesses Respondents have already deposed all testified, under oath, that: a board meeting was held on September 22, 2009; they were present at the meeting; and they heard Respondent Keith Geary represent to the board that if Mr. Headington purchased the Class A-2 notes, Mr. Headington would only have to hold them for 90 days, that Respondent Keith Geary would have the Class A-2 notes sold within that time, at a profit to Mr. Headington, and that Respondent Keith Geary would personally guarantee the transaction. Because Respondents have already deposed three witnesses who testified about the full substance of the one page Affidavit, the depositions of the Third Party Directors would be unreasonably cumulative AND duplicative. But this does not end the inquiry.

Respondents have also had ample opportunity to obtain the information about the Affidavit by discovery in this proceeding. Not only do they have the sworn testimony of three witnesses, Respondents were also given the opportunity to depose four of the six Third Party Directors on September 29th and 30th, and the opportunity to reschedule the other two at a later time if Respondents felt the depositions were still necessary. Respondents refused.

Respondents were also offered the opportunity to depose all six of the Third Party Directors on September 29th and 30th, three depositions on each day, if they would agree to limit their duration such that they could be scheduled with some certainty, thereby lessening the

burden on each of the Third Party Directors. Respondents refused. In what has become par for the course, Respondents were unwilling to make any concession for the protection of third parties to this proceeding and, instead, unilaterally cancelled the depositions. Having turned their back on the opportunity to depose the Third Party Directors, Respondents cannot now be heard to complain.

In addition, Respondents had ample opportunity to obtain information about the Affidavit directly from one of the board members who signed it. Respondents deposed Mr. Shelley. But for what can only be strategic reasons, Respondents opted not to mark the Affidavit as an exhibit to Mr. Shelley's deposition, or even to ask him directly about the document itself. Despite not marking the Affidavit as an exhibit, however, Mr. Shelley was questioned and testified about the substance of the Affidavit, i.e., the September 22, 2009, board meeting, and Mr. Geary's representations at that meeting.

Having already deposed three third party witnesses, all of whom testified about the September 22nd board meeting and Respondent Keith Geary's representations to the board, and one of whom is a director that signed the Affidavit, Respondents cannot now suggest that the depositions of the Third Party Directors would be anything but unreasonably cumulative and duplicative, or that they have not had ample opportunity to obtain the information they seek. No legitimate reason exists for the depositions, and the subpoenas should be quashed.

Allowing the depositions would expose the Third Party Directors to undue burden and harassment.

Given that Respondents have either: a) already obtained substantial information about the Affidavit from the depositions of three other third parties; or b) been given ample opportunity to obtain the information through discovery, requiring the Third Party Directors to appear for deposition would expose them to undue burden and harassment. *See Nicholas v. Wyndham*

Intern., Inc., 373 F.3d 537, 543 (4th Cir. 2004) (affirming entry of protective order precluding document discovery and third party deposition on grounds that party seeking discovery had already obtained information from depositions of others, and finding district court was “well within its discretion to conclude that the additional discovery ... was cumulative, duplicative, unduly burdensome, and harassing.”)

Alternatively, if the Hearing Officer does not quash the subpoenas, a protective order should issue limiting their scope.

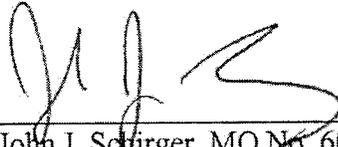
In the event the Hearing Officer does not conclude the depositions would be unreasonably cumulative and duplicative, and quash the subpoenas in their entirety, he should enter a protective order narrowly limiting the scope of the depositions. Under Oklahoma law, “[a]dministrative subpoenas are to be ‘sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome.’” *State ex rel. Oklahoma Bar Assoc. v. Gasaway*, 863 P.3d 1189, 1199 (Okla. 1993). Here, even the narrowed scope set forth in the Court’s July 25th Order is too broad. Respondents’ stated purpose for seeking the depositions of the Third Party Directors is to inquire about the content of the five paragraph, one page Affidavit. *See* Ex. C. In the event the subpoenas are not quashed, therefore, a protective order should issue limiting the scope of the depositions to Respondents’ stated purpose for seeking them; the substance of the one page, five paragraph Affidavit, and the September 22, 2009, board meeting to which it refers.

WHEREFORE, the Third Party Directors respectfully request that a protective order be entered quashing the subpoenas in their entirety and precluding the discovery sought by Respondents, or in the alternative, that a protective order be entered limiting the scope of the depositions to only the content and substance of the Affidavit, and the September 22, 2009, board meeting to which it refers.

Dated: March 2, 2012.

Respectfully submitted,

MILLER SCHIRGER, LLC



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Matthew W. Lytle, MO No. 59145

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ATTORNEYS FOR THE THIRD PARTY
DIRECTORS

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of March, 2012, a copy of the foregoing document with exhibits was served on the following by facsimile and email:

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John J. Schirger

AFFIDAVIT

STATE OF OKLAHOMA)
)
COUNTY OF CANADIAN) ss:

Each undersigned person, being first duly sworn, upon oath states as follows:

1. I was a member of the Board of Directors (the "Board") of The Bank of Union (the "Bank"), located in El Reno, Oklahoma, on September 22, 2009, and have remained on the Board of the Bank since that time.
2. On September 22, 2009, the Board held a meeting in which Keith Geary participated telephonically (the "Meeting").
3. I was present at the Meeting.
4. During the Meeting, Keith Geary represented to the Board that if Timothy Headington purchased the CEMP Class A-2 notes, he (Keith Geary) would be able to sell the Class A-2 notes within 90 days at a profit. Keith Geary further represented that he would personally guarantee the transaction.
5. I heard Keith Geary make the foregoing representations to the Board during the Meeting.

FURTHER AFFIANT SAITH NOT.

Earl D. Mills
Earl D. Mills, Member of Board

Ray Evans
Ray Evans, Member of Board

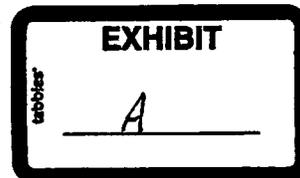
Jeff Wills
Jeff Wills, Member of Board

Eldon R. Ventris
Eldon R. Ventris, Member of Board

Steve Ketter
Steve Ketter, Member of Board

David Tinsley
David Tinsley, Member of Board

John Shelley
John Shelley, Member of Board



Subscribed and sworn to before me this 17 day of March, 2011, by Earl D. Mills, Ray Evans, Jeff Wills, Eldon R. Ventris, Steve Ketter, David Tinsley, and John Shelley.

Kirsten Hayden
Notary Public

My Commission No.:
My Commission Expires:
(SEAL)



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

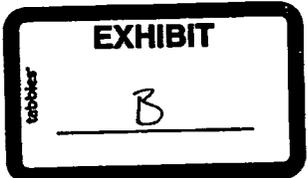
Oklahoma Department of Securities,)
ex rel. Irving L. Faught,)
Administrator,)
)
Plaintiff,)
)
)
v.)
)
The Bank of Union, John Shelley, Mike Braun,)
and Timothy Headington,)
)
Defendants.)

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. *aka* 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.

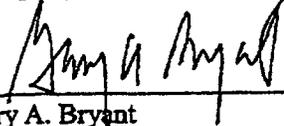
Dated this 21st day of July, 2011.



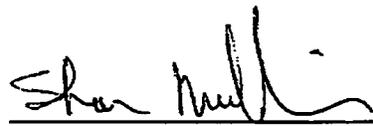
Hon. W. Mike Warren
Associate District Judge

Prepared and submitted by:

**Mock, Schwabe, Waldo, Elder, Reeves &
Bryant, A Professional Limited Liability
Company**



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-And-

Miller Schirger, LLC

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TIM HEADINGTON

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DEPARTMENT OF SECURITIES *ex rel.*
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August 12, 2011

VIA E-MAIL AND FIRST CLASS MAIL

John Schirger, Esq.
Matthew Lytle, Esq.
MILLER SCHIRGER LLC
4520 Main Street, Suite 1570
Kansas City, MO 64111

Re: *ODS v Geary Securities, Inc., et al*; ODS No. 09-141

Dear Counsel:

This letter is to follow up on Matt Lytle's April 4th email (included below for reference purposes, with emphasis added) and commitment to voluntarily produce for depositions the following Bank of Union Directors who executed an affidavit that ODS has included on its exhibit list in the referenced action: Earl Mills, Ray Evans, Jeff Wills, Eldon Ventris, Steve Kotter, and David Tinsley. John Shelley also executed the subject affidavit; however, scheduling his deposition will be handled separately as he has already been served with a subpoena.

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

Joe:

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

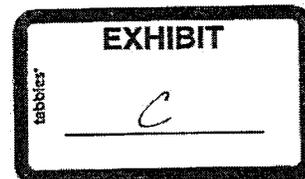
Best regards,

Matt Lytle

Matthew W. Lytle

MILLER SCHIRGER, LLC

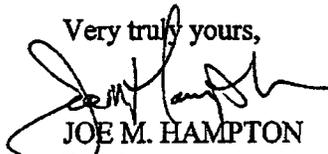
Please advise by 5 p.m. on Tuesday, August 16th whether you can commit to produce the Directors identified above for depositions on September 20 and 21, 2011 (3 Directors' depositions per day), in Oklahoma City. These proposed dates assume that



BOU, John Shelley and Michael Braun fully comply with their document production obligations under the District Court's July 25, 2011 Order (and any subsequently-issued enforcement order) prior to such deposition dates, allowing reasonable time for review and analysis of all documents produced. In the event we are unable to agree on deposition dates by 5 p.m. on Tuesday, August 16th, we will proceed in accordance with the ODS Rules and will request the issuance and service of deposition subpoenas on dates we select. Our preference is to avoid any scheduling inconveniences for the Directors, if possible.

Thank you for your prompt attention and response.

Very truly yours,



JOE M. HAMPTON
For the Firm

cc: Terra Shamas Bonnell and Melanie Hall, Counsel for ODS
Donald A. Pape and Susan Bryant, Counsel for Respondent Norman Frager

Matthew W. Lytle

From: Matthew W. Lytle
Sent: Monday, September 26, 2011 4:02 PM
To: 'Joe M. Hampton'
Cc: Ainslie Stanford; John J. Schirger
Subject: RE: BOU / Geary ODS matter - subpoenas to Directors

Joe:

Because the directors have no responsive documents, there is nothing to identify by bates number. Even if the directors had responsive documents to produce, there is nothing requiring that they be identified in the manner you request.

As for the order of witnesses, given that there will be three sets of counsel questioning the directors, it seems unlikely that all 6 depositions will be completed in 2 days. Rather than having the Bank's directors wait around for hours to be deposed, we will produce 2 directors on September 29th and 2 others on September 30th, with depositions beginning at 9:30 a.m. and 1:30 p.m. each day. We can discuss rescheduling the other 2, if necessary, when we are all together later this week.

Regards,

Matt Lytle

(816) 561-6510 - Direct
(816) 419-2249 - Cell
mlytle@millerschirger.com

From: Joe M. Hampton [mailto:JHampton@Corbynhampton.com]
Sent: Friday, September 23, 2011 10:57 AM
To: Matthew W. Lytle
Cc: Ainslie Stanford; John J. Schirger
Subject: RE: BOU / Geary ODS matter - subpoenas to Directors

Matt:

Please bear in mind that document subpoenas were issued and served on the six individual Bank of Union Directors. Consistent with what has transpired in the past, please identify by bates numbers those documents that have been previously produced that are responsive to the specific items identified and requested by the document subpoenas issued and served on the Bank of Union Directors. In order for the depositions to be conducted in an efficient manner, we need to have the bates numbers as soon as possible and no later than Monday 9/26/11. In addition, please bear in mind there are two other lawyers involved in this case – counsel for ODS and counsel for Respondent Frager – so it is important that the same information and the specific order, dates and times for each of the Directors be confirmed as soon as possible.

I look forward to hearing further from you on these issues no later than Monday, and hopefully before. If I am not available, please contact Ainslie. If for some reason you are not able to communicate with us by Monday, please let us know in advance so we are not left in the dark with no communication.

Thanks,



Matthew W. Lytle

From: Matthew W. Lytle
Sent: Wednesday, September 28, 2011 7:29 PM
To: Joe M. Hampton
Cc: Bruce R. Kohl (bruce.kohl09@gmail.com); John J. Schirger; Ainslie Stanford; 'Terra Bonnell' (tbonnell@securities.ok.gov); 'Donald A. Pape' (don@dapape.com)
Subject: RE: In the Matter of Geary Securities, Inc., et al; ODS No. 09-141

Joe:

Our responses to the issues raised in your September 26th email are, in the order raised, as follows:

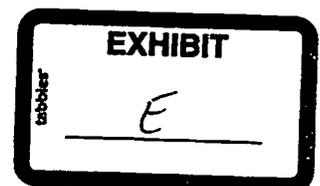
1. The individual directors you subpoenaed have no responsive documents. Therefore, no documents were produced. Your "impression" from my prior email that "there were responsive documents" is incorrect.
2. Because the individual directors had no responsive documents, no documents were withheld on the basis of privilege.
3. As you know, the law provides certain protections against unreasonable burden on witnesses who are not parties to a proceeding. Considering the fact that potentially three sets of counsel would be questioning each director, it appeared unlikely that six depositions could be completed over the course of two days. Upon further reflection on our part, attempting to jam six depositions into two eight hour days would have required that the Bank's directors sit waiting in limbo, possibly for hours, while you completed each deposition. This approach would have provided no certainty to the directors such that they could schedule their other affairs around their depositions. As third parties to the ODS proceeding, you certainly cannot expect the directors to bear such an unreasonable burden.

In an effort to provide some scheduling certainty and minimize the burden on the third-party witnesses, we proposed that you depose two directors on September 29th and two directors on September 30th, with the remaining two depositions to be rescheduled to coincide with the depositions of John Shelley and Mike Braun. You will recall that during our September 27th conversation, I suggested that we would consider proceeding with three depositions on each day, if you would consider agreeing to limit their duration in a way that would allow their orderly scheduling and completion. But rather than work cooperatively to schedule the depositions in a manner that would reduce the burden on the third-party deponents, while still allowing you the opportunity to get the discovery you want, you opted to unilaterally cancel the depositions. Your decision to cancel the depositions as opposed to taking them in a manner that would have benefited all parties and counsel involved clearly demonstrates your intent to unnecessarily and unreasonably inconvenience the directors and not to obtain any meaningful discovery. As a result of your decision, we consider the subpoenas expired and will entertain no further negotiations about scheduling the directors' depositions.

With respect to the depositions of John Shelley and Mike Braun, they have been willing to comply with the Court's Order. As previously requested to avoid unnecessary back-and-forth communications about dates, it would be more convenient and efficient if you will provide dates upon which counsel for all of the parties to the ODS proceeding are available so that we can coordinate those dates with our clients' schedules. We look forward to receiving those dates from you.

We have limited availability for a call tomorrow, but if you will provide times when counsel for all parties to the ODS proceeding are available, we will confirm our availability.

Regards,



Matt Lytle

(816) 561-6510 - Direct
(816) 419-2249 - Cell
mlytle@millerschirger.com

From: Joe M. Hampton [mailto:JHampton@Corbynhampton.com]
Sent: Tuesday, September 27, 2011 2:58 PM
To: Matthew W. Lytle
Cc: John J. Schirger; Ainslie Stanford; 'Terra Bonnell' (tbonnell@securities.ok.gov); 'Donald A. Pape' (don@dapape.com)
Subject: In the Matter of Geary Securities, Inc., et al; ODS No. 09-141

Matt:

This is to follow up on our call earlier this afternoon. While I appreciated the opportunity to visit with you by phone, the issues raised and questions posed by my 9/26/11 e-mail (below) have not been addressed, much less resolved.

We have no option at this point but to proceed on the basis that you and John are declining to (1) commit to produce all six Directors for depositions on September 29 and 30, 2011, and (2) respond to questions we have posed concerning the production of documents responsive to the document subpoenas and/or provision of a privilege log as previously discussed and agreed.

In light of these unresolved issues, and taking into consideration the respective schedules of counsel and the need for efficiency, we are left with no alternative but to cancel the depositions of on September 29 and 30, 2011. I am notifying counsel in the ODS enforcement action by copy of this e-mail. Notwithstanding this development, we will advise Mr. Kohl today that we have no objection to your Motion for Temporary Admission.

We remain willing to participate in a call to discuss and attempt to resolve the pending discovery issues involving the BOU Directors, as well as BOU officers John Shelley and Mike Braun. Our pending request for deposition dates of Messrs. Shelley and Braun continues to go unanswered. Please advise at your earliest convenience whether you and John are available to participate in a call on these issues on Thursday, September 29th. I will be occupied in depositions out of the office in another case all day tomorrow and, therefore, unavailable for a call in this matter until Thursday. Let me know a good time for a call on Thursday and I will coordinate with other counsel in the case.

Thanks,

Joe

From: Joe M. Hampton
Sent: Monday, September 26, 2011 4:44 PM
To: 'Matthew W. Lytle'
Cc: Ainslie Stanford; 'John J. Schirger'
Subject: RE: BOU / Geary ODS matter - subpoenas to Directors

Matt:

I do not understand your contention that “[e]ven if the directors had responsive documents to produce, there is nothing requiring that they be identified in the manner you request.” We requested and the Hearing Officer issued document subpoenas to each of the six Directors. If they have responsive documents, I believe they are required to

FOR THE STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES

In the matter of:

Geary Securities, Inc., f/k/a, Capital West
Securities, Inc; Keith D. Geary; Norman Frager; and
CEMP, LLC,

ODS#: 09-141

DEPOSITION OF MICHAEL BRAUN
TAKEN ON BEHALF OF THE DEPARTMENT OF SECURITIES
ON NOVEMBER 15, 2011
IN OKLAHOMA CITY, OKLAHOMA



WORD FOR WORD REPORTING, L.L.C.
100 NORTH BROADWAY
SUITE 3250
OKLAHOMA CITY, OKLAHOMA 73102
(405) 232-9673

REPORTED BY: HOLLY PARKER, CSR

COPY

A P P E A R A N C E S

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2
3 For the Oklahoma Department of Securities:

4 MS. TERRA BONNELL
5 Attorney at Law
6 120 North Robinson
7 Suite 860
8 Oklahoma City, Oklahoma 73102

9 For the Respondent Keith Geary, Geary Securities:

10 MR. JOE HAMPTON
11 Attorney at Law
12 One Leadership Square
13 211 North Robinson
14 Suite 1910
15 Oklahoma City, Oklahoma 73102

16 For the witness:

17 MR. JOHN J. SCHIRGER
18 MR. MATTHEW W. LYTLE
19 Attorneys at Law
20 4520 Main Street
21 Suite 1570
22 Kansas City, Missouri 64111

23 Also Present: MS. MELANIE HALL - Director of
24 Enforcement, Oklahoma Department of
25 Securities

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1 looking at that language, do you have reason to
2 believe that this was the e-mail in which you
3 received the Private Placement Memorandum?

4 A. No, there was another in the day that just
5 had the Private Placement Memorandum attached.

6 Q. Okay. Prior to the time that you received
7 the private placement memorandum, on September 30th,
8 did you receive or review any other preliminary copy
9 of the Private Placement Memorandum?

10 A. No, we did not.

11 Q. So it was only on September 30th that you
12 saw any version of the Private Placement Memorandum?

13 A. That's correct, later that afternoon.

14 Q. Are you aware of who purchased CEMP Class
15 A-2 notes?

16 A. Yes, I am.

17 Q. How is it that you're aware of that?

18 A. Mr. Headington is an owner of the bank.

19 Q. Is Mr. Headington the person that purchased
20 the A-2 Notes?

21 A. Yes, he is.

22 Q. Did you have any communications, other than
23 Exhibit No. 4? Do you recall any other
24 communications with Mr. Geary concerning the A-2
25 Notes?

1 A. Well, the A-2 Notes, on September 22nd, at
2 the board meeting, when he was talking to us about
3 the CEMP, he asked John if Tim would be interested in
4 buying the A-2s, and John told him, no, he
5 wouldn't.

6 And he kept -- you know, he gave us the
7 sales pitch, and John asked him then if he would be
8 willing to guarantee that transaction. Because Keith
9 stated that if Tim would buy the A-2, he just needed
10 to hold them until September 31st, and he would get
11 them taken out. And then Tim would have a sizable
12 profit.

13 Q. Okay. So that was on September 22nd, that
14 this conversation took place?

15 A. That's correct.

16 Q. Was the -- and you indicated it was a board
17 meeting?

18 A. That's correct.

19 Q. And it sounds like you were present at the
20 meeting.

21 A. I was.

22 Q. Are you able to recall who else was present
23 at the meeting?

24 A. All the Directors. Do you want me to list
25 them?

C O R R E C T I O N S H E E T

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NAME: MICHAEL BRAUN
CASE: IN RE: GEARY SECURITIES, ET AL
DATE: NOVEMBER 15, 2011
REPORTER: HOLLY PARKER, CSR

PG/LN	CORRECTION	REASON FOR CORRECTION
20/8	<i>we stated</i>	<i>instead of he stated - clarification</i>
41/20	<i>Braver</i>	<i>not braten - clarification</i>
49/10	<i>December</i>	<i>not September - clarification</i>
51/24	<i>December 31st</i>	<i>not September 31st - clarification</i>
56/7	<i>October</i>	<i>not September - clarification</i>
93/5	<i>Federal Home Loan Bank</i>	<i>not online - clarification</i>
174/11	<i>Schirger</i>	<i>not Sherben - clarification</i>
174/12	<i>Schirger</i>	<i>not Sherber - clarification</i>
47/20		

ORIGINAL

John Shelley
November 16, 2011

In Re: Geary Securities vs.
Case No. 09-141

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.

File No. 09-141

DEPOSITION OF JOHN SHELLEY

TAKEN ON BEHALF OF THE DEPARTMENT OF SECURITIES

IN OKLAHOMA CITY, OKLAHOMA

ON NOVEMBER 16, 2011



REPORTED BY: JODI D'VOREE HORVATH, CSR, RPR

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APPEARANCES

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ON BEHALF OF THE OKLAHOMA DEPARTMENT OF SECURITIES:

TERRA SHAMAS BONNELL

ATTORNEY AT LAW

&

MELANIE HALL

ADMINISTRATOR

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OKLAHOMA CITY, OK 73102

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ATTORNEY AT LAW

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ON BEHALF OF JOHN SHELLEY:

JOHN SCHIRGER & MATTHEW W. LYTTLE

ATTORNEYS AT LAW

4520 MAIN STREET, SUITE 1570

KANSAS CITY, MO 64111

1 be a profit of approximately \$2 million made on their
2 sale.

3 Q. How is it that you are aware of those
4 conditions?

5 A. Mr. Geary told us.

6 Q. Told you personally?

7 A. Yes, and Mr. Braun as well.

8 Q. Okay. Did you tell Mr. Headington of
9 these condition?

10 A. Yes, I did. And I also told Mr. Chris
11 Martin.

12 Q. Now, other than -- are you aware of
13 whether Mr. Geary told Mr. Headington of these
14 conditions directly?

15 A. No.

16 Q. You are not aware?

17 A. I am not aware.

18 Q. When did Mr. Geary make these
19 representations to you that he would -- that the buyer
20 of the A2s would only have to hold them for three months
21 and wouldn't be able to make a \$2 million profit?

22 A. The 24th. Around the 24th of September.

23 Q. Did he make those representations to you
24 at any time prior?

25 A. No, not that I remember.

1 Q. Do you attend board of director meetings?

2 A. Yes.

3 Q. Were these representations made by Mr.
4 Geary in any board of director meetings around that
5 time?

6 A. We had a board of directors meeting
7 September the 22nd, at which point in time we were
8 discussing alternatives as to how to expose -- how to
9 extricate ourselves from the private labels, which we
10 wanted to do. The discussion with Mr. Headington's A2
11 purchase was discussed, but not the intricacy or the
12 conditions.

13 Q. Do you recall what was said about the A2
14 purchases during that meeting?

15 A. Just that Mr. Headington had been asked
16 about the possibility of buying the A2s.

17 Q. Did Mr. Geary, did he participate in the
18 September 22nd meeting in any way?

19 A. Telephonically, I believe.

20 Q. Did you and Mr. Geary directly have any
21 conversations regarding the A2 notes at that time?

22 A. During the meeting?

23 Q. Yes.

24 A. I can't remember. I can't remember.

25 Q. Was Mr. Braun --

1 A. The answer to that is yes, we talked
2 about it. Yes, we did talk about the whole concept of
3 the CEMP A1 and A2. But the specifics were not talked
4 about.

5 Q. Were there any representations to your
6 memory regarding how long the A2 buyer would have to
7 hold them during that meeting?

8 A. Yes. It would be less than three months
9 or until December.

10 Q. And that was specifically stated during
11 that meeting?

12 A. I believe so.

13 Q. Then when you said that none of the
14 particulars were mentioned during the meeting, what
15 specific -- what were you referring to?

16 A. This profit that was discussed with
17 Chris, Mr. Martin, and I think Mr. Headington. That was
18 not discussed at the meeting.

19 Q. Was there given any reference to profit
20 at the meeting?

21 A. No.

22 Q. Was Mr. Braun present at that meeting?

23 A. Yes.

24 Q. Who else was present at that meeting?

25 A. The board of directors and the advisory

1 directors of the bank.

2 Q. So when you say the board of directors,
3 it would be the same persons that you previously
4 identified?

5 A. Yes, ma'am.

6 Q. Are you on the bank's asset liability
7 committee?

8 A. Yes, ma'am. All of the board members
9 are. I may correct myself. May I correct myself?

10 Q. Sure.

11 A. I believe that the -- I am getting my
12 meetings messed up. At the 22nd meeting, the board of
13 directors meeting, I believe that the profit was
14 discussed at that meeting.

15 Q. In detail?

16 A. Two million dollar profit and that it
17 would be held for less than three months, that is
18 correct.

19 Q. Was there a prior meeting in which it was
20 discussed -- the A2s were discussed but not the profit?

21 A. Yes. That -- we had an asset liability
22 meeting on the 18th and I believe it was discussed as
23 well there.

24 MS. BONNELL: I just -- I want to go off the
25 record for about five to ten minutes.

1 exhibit pursuant to an agreement.

2 Q. Who prepared the Exhibit 6?

3 A. Ms. Pettijohn at our bank. She is a
4 senior vice president administrative assistant.

5 Q. Is that Betty Pettijohn?

6 A. Betty Pettijohn.

7 Q. Did she -- when -- did she type the
8 language that appears in Exhibit G?

9 A. She typed the language that was agreed
10 upon.

11 Q. Who was it agreed upon?

12 A. It was agreed upon between -- it emanated
13 from a telephonic discussion that was held with the
14 board and Mr. Geary relative to the A2 transaction.
15 Well, actually the A1 and A2 transaction, but
16 specifically the A2 transaction. I remember I had asked
17 in a very professional yet stern manner -- not stern,
18 but professional manner, Mr. Geary, if you are sure that
19 this is going to happen and you're sure that these
20 transactions are as purported as you say they are, would
21 you be willing to personally guarantee this transaction
22 and he said yes. And he stated that in front of the
23 entire board.

24 Q. Do you recall when Mr. Geary made that
25 statement?

1 A. It was at our board meeting and I believe
2 it was on the 22nd of September. And all of the board,
3 the entire board was there, as well as the advisory
4 directors.

5 Q. What did you understand this Exhibit 6 to
6 reflect?

7 MR. HAMPTON: Object to the form of the
8 question.

9 THE WITNESS: The -- it would reflect the fact
10 that he would personally guarantee -- he personally
11 guarantees this transaction to take place as he
12 purported as the conditions that we've already talked
13 about and that if it didn't, then he would buy those
14 back personally.

15 Q. (By MS. BONNELL) Do you know whether Mr.
16 Headington was able to sell the Class A2 notes?

17 A. Yeah, two notes are still outstanding.

18 Q. Has Mr. Geary purchased the A2 notes from
19 Mr. Headington to your knowledge?

20 A. No, ma'am.

21 Q. So when you say that the Class A2 notes
22 are still outstanding do you mean that Mr. Headington
23 still owns them?

24 A. Yes, ma'am.

25 MS. BONNELL: I have no further questions.

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NAME: John Shelley

DATE: November 16, 2011

REPORTER: Jodi D'Voree Horvath, CSR, RPR

PG/LN CORRECTION

Mr. John Schirger

John, I would like to be unequivocally clear that the Board of Directors were aware of the \$2 million profit attendant to the sale of the A-2 Class to Timothy Headington. As stated, this was discussed with Keith Geary in a telephonic meeting at the stated Board of Directors' meeting.

John A. Shelley

Signed before me on December 16, 2011 by John A. Shelley.

 BETTY PETTIJOHN
Notary Public
State of Oklahoma
Commission # 00014141 Expires 09/25/12

Betty Pettijohn ORIGINAL

J U R A T

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STATE OF OKLAHOMA)

) ss:

COUNTY OF TULSA)

I, John Shelley, do hereby state under oath that I have read the above and foregoing deposition in its entirety and that the same is a full, true and correct transcription of my testimony so given at said time and place, except for the corrections noted.

John Shelley
John Shelley

Subscribed and sworn to before me, a Notary Public in and for the State Of Oklahoma by said witness
 ll , on this, the 16th day of 2011

Kirstein Haydon

My Commission Expires: _____



ORIGINAL

In the Matter of:

GEARY SECURITIES, INC., fka)
CAPITAL WEST SECURITIES, INC.,)
KEITH D. GEARY; NORMAN)
FRAGER; AND CEMP, LLC,)
Respondents.) File No. 09-141



DEPOSITION OF BETTY ANITA PETTIJOHN

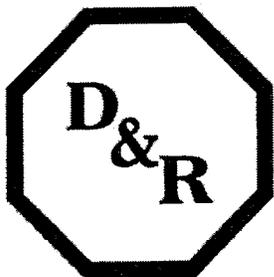
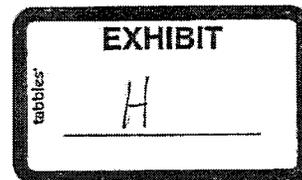
TAKEN ON BEHALF OF THE RESPONDENT

IN OKLAHOMA CITY, OKLAHOMA

ON DECEMBER 14, 2011

REPORTED BY: SUSAN J. FENIMORE, CSR, RPR

COPY



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REPORTING & VIDEO, INC.

A P P E A R A N C E S

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For the Witness:

John J. Schirger
Miller Schirger
4520 Main Street
Suite 1570
Kansas City, Missouri 64111

For the Respondent:

Joe M. Hampton
Corbyn Hampton
211 N. Robinson
Suite 1910
Oklahoma City, Oklahoma 73102

For the State of Oklahoma Department of Securities:

Terra Shamas Bonnell
Attorney at Law
120 N. Robinson
Suite 860
Oklahoma City, Oklahoma 73102

Also present:

Melanie Hall

1 the bank's board in connection with the offer and
2 sale of the CEMP 2009-1 notes, do you see that?

3 A Yes.

4 Q And were you present in any meeting of the
5 board where Mr. Geary made any comments concerning
6 offering or selling the CEMP 2009-1 notes?

7 A Yes.

8 Q How many different board meetings did
9 Mr. Geary speak on that topic? I'm just trying to
10 find out if it came up in conversation at one or more
11 than one board meeting.

12 A More than one, less than five.

13 Q Okay. Can you identify any of the board
14 meetings by date?

15 A Just the September one.

16 Q And that would have been of what year?

17 A 2009.

18 Q And I take it you were present?

19 A Yes.

20 Q And if you would, just take your time and
21 in your own words tell me everything you recall
22 Mr. Geary saying in the course of the September 2009
23 board meeting about the offer and sale of the CEMP
24 notes.

25 A Mr. Geary usually joined the meetings

1 telephonically, occasionally he would come out in
2 person, like once a quarter, but it was
3 telephonically. And he was talking about the CEMP
4 and things that were over my head about selling it
5 and all that. But there was a -- he seemed under
6 pressure, almost desperate to get this deal done and
7 was willing to do anything to accomplish it. It
8 created a tense board meeting, which our board
9 meetings are usually pretty not tense.

10 And at some point, whatever Keith was --
11 Mr. Geary was asking for, Mr. Shelley said, would you
12 be willing to sign a guaranty, because he had talked
13 about how it would be sold within a certain amount of
14 time, promised that it would be and that there would
15 be a large profit from the sale. And Mr. Shelley
16 asked would he be willing to sign a guaranty and he
17 said yes.

18 Q Is that it?

19 A Yes.

20 Q Okay. Do you know as you sit here today
21 whether your shorthand minutes of the September 2009
22 board meeting included any notes about the
23 conversation by Mr. Geary that you just relayed to
24 us?

25 A I can't say for certain.

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J U R A T P A G E

I, BETTY ANITA PETTIJOHN, do hereby state under oath that I have read the above and foregoing deposition in its entirety and that the same is a full, true and correct transcript of my testimony so given at said time and place, except for the corrections noted.

Betty Anita Pettijohn

BETTY ANITA PETTIJOHN

Subscribed and sworn to before me, the undersigned Notary Public in and for the State of Oklahoma, by said witness Betty Anita Pettijohn on this the 9th day of January, 2011.

Kirsten Haydon

Notary Public

My Commission Expires: 3/18/13



SF

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D & R Reporting & Video, Inc.
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Correction Sheet

Witness: Betty Anita Pettijohn Reporter: SF
Attorney: John Schirger Date: 12-14-11
OA: Joe Hampton

Case Style: In the Matter of Geary Securities, Inc.,
et al.

Page	Line	Correction	Reason for Correction
13	12	Anita should be Nita	spelling correction
18	24	Cater should be Ketter	spelling correction



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**CORBYN
 HAMPTON**

February 23, 2012

VIA EMAIL AND FIRST CLASS MAIL

John Schirger
 Matthew Lytle
 MILLER SCHIRGER LLC
 4520 Main Street, Suite 1570
 Kansas City, MO 64111
 Email: jschirger@millerschirger.com

Re: *In the matter of Geary Securities, Inc. fka Capital West Securities, Inc.; Keith D. Geary; Norman Frager; and CEMP, LLC; ODS File No. 09-141*

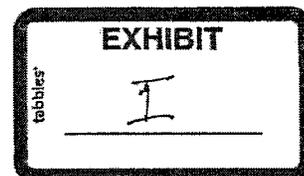
Dear Counsel:

This letter concerns the Geary Respondents' request to conduct the depositions of six Bank of Union directors pursuant to the subpoenas issued by the Hearing Officer on February 21, 2012. In an effort to resolve any and all issues related to such depositions, the Geary Respondents propose the following agreement:

1. The terms of Section 3, pages 3-4 of the District Court Order dated July 25, 2011, apply to and govern the scope of examination for the BOU directors' depositions;
2. The deposition duration limits set forth in 12 Okla. Stat. 3230(A)(3) (6 hours) are modified to a maximum of 3 hours for each BOU director; and
3. The depositions will occur on the following dates and times:

<u>Witness</u>	<u>Date*</u>	<u>Time*</u>
David Tinsely		
Earl Mills		
Eldon Ventris		
Ray Evans		
Steve Ketter		
Jeff Wills		

- Note: Please propose dates in March 2012 that work for you and the witnesses.
4. The depositions will be conducted at the offices of the Oklahoma Department of Securities in Oklahoma City, Oklahoma;
 5. The deposition subpoenas issued by the Hearing Officer will be revised to incorporate the foregoing terms, dates and times; and
 6. The BOU Directors waive their right to move to quash the deposition subpoenas, as modified, or seek a protective order to avoid compliance with the foregoing terms and modified subpoenas.



Please advise whether you are agree with the terms set forth above and provide proposed dates and times by the close of business on February 29, 2012.

Very truly yours,

A handwritten signature in black ink, appearing to read "Joe M. Hampton". The signature is fluid and cursive, with a large initial "J" and "H".

JOE M. HAMPTON
For the Firm

cc: Oklahoma Department of Securities – Melanie Hall, Terra Bonnell
Norman Frager – Donald Pape, Susan Bryant