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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS:

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

2010 MAY 26 A 9:36
AZ CORP COMMISSION
DOCKET CONTROL

In the matter of:

Docket No. S-20600A-08-0340

MARK W. BOSWORTH and LISA A. BOSWORTH, husband and wife;

STEPHEN G. VAN CAMPEN and DIANE V. VAN CAMPEN, husband and wife;

MICHAEL J. SARGENT and PEGGY L. SARGENT, husband and wife;

ROBERT BORNHOLDT and JANE DOE BORNHOLDT, husband and wife;

MARK BOSWORTH & ASSOCIATES, LLC, an Arizona limited liability company;

3 GRINGOS MEXICAN INVESTMENTS, LLC, an Arizona limited liability company;

Respondents.

**RESPONDENTS
MICHAEL J. SARGENT
AND PEGGY L. SARGENT'S**

**RESPONSE TO THE SECURITIES
DIVISION'S MOTION TO ALLOW
TELEPHONIC TESTIMONY**

Arizona Corporation Commission
DOCKETED

MAY 26 2010

DOCKETED BY *MM*

Respondents Michael J. Sargent ("Mr. Sargent") and Peggy L. Sargent (collectively, the "Sargents") respectfully respond in opposition to the Securities Division's (Division) motion to allow telephonic testimony of witness Robert Borhnoldt. The Division correctly notes that telephonic testimony is allowed and that the Commission has allowed telephonic testimony in some prior cases. But telephonic testimony is not appropriate for every witness. Typically, telephonic testimony is appropriate for minor witnesses or witnesses whose testimony is uncontested.

In contrast, telephonic testimony is generally inappropriate for significant witnesses or witnesses dealing with contested issues. The physical presence of the witness provides the opportunity to observe the witness's demeanor, facial expressions and body language. This is important to the Administrative Law Judge in weighing the credibility of testimony. The

1 opportunity to observe the witness is also important for an effective cross-examination. It alerts
2 counsel to follow-up when the witnesses, while answering, gives physical cues that might indicate
3 uncertainty, confusion, evasion, or untruth. It also enables counsel to present the exhibits directly
4 to the witness and to direct the witness's attention to specific parts or statements. And given the
5 huge number of exhibits in this case, a telephonic witness will not have ready access to all of them.
6 And even if the witness has a copy, the chance for confusion or miscommunication is reduced
7 when the witness is physically present at the hearing. Further, the absence of the witness prevents
8 counsel from impeaching the witness with new documents. Moreover, without the presence of the
9 witness, there will be no "face to face" communication between counsel and the witness during
10 cross-examination – thus preventing counsel from developing rapport with the witness, and as well
11 as control over the rhythm of the cross-examination.

12 Thus, Commission Administrative Law Judges have denied motions for telephonic
13 testimony for important witnesses. For example, Judge Martin denied a motion to allow telephonic
14 testimony when the testimony was from the applicant's only witness.¹ Likewise, Judge Kinsey
15 denied a motion to allow telephonic testimony where the witness was needed to address specific
16 issues of concern, as well as to "generally support the application and provide additional
17 information or clarification."²

18 Here, the Division describes Mr. Bornholdt as a "central witness" in this case who will
19 provide "highly probative testimony."³ This is exactly the type of witness that should not be
20 allowed to testify telephonically. If Mr. Bornholdt is an important witness, he should be present in
21 person, so that he can be cross-examined in person by the Sargents' counsel, and so that the
22 Administrative Law Judge can observe his demeanor, facial expressions and body language.

23 Accordingly, the Sargents' oppose the Division's motion to allow Mr. Bornholdt to testify
24 by telephone. In addition, the Sargents' note that Mr. Bornholdt's unavailability further supports

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26 ¹ Procedural Order dated February 24, 2009 in Docket No. T-03446A-08-0055.

27 ² Procedural Order dated September 24, 2007 in Docket No. T03228A-06-0800.

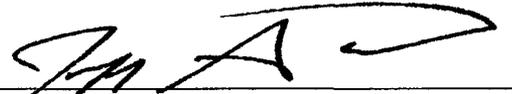
³ Division Motion at 2:3-4.

1 the Sargents' motion for a continuance.

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RESPECTFULLY SUBMITTED this 26th day of May, 2010.

ROSHKA DeWULF & PATTEN, PLC

By 

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1 ORIGINAL and thirteen copies of the foregoing
filed this 26th day of May, 2010 with:

2 Docket Control
3 Arizona Corporation Commission
1200 West Washington Street
4 Phoenix, Arizona 85007

5 Copy of the foregoing hand-delivered
this 26th day of May, 2010 to:

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9 Phoenix, Arizona 85007

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13 Copy of the foregoing mailed
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