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BEFORE THE ARIZONA CORPORATION COMMISSION

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WILLIAM A. MUNDELL  
Chairman  
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Arizona Corporation Commission

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AZ CORP COMMISSION  
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In the matter of:

DAVID R. KRIZMAN  
3620 N. Lynford Place  
Tucson, AZ 85749

DOCKET NO. S-03486A-02-0000

MOTION TO ALLOW FOR  
TELEPHONIC TESTIMONY

Respondent.

The Securities Division ("Division") of the Arizona Corporation Commission hereby moves for leave to allow telephonic testimony by prospective Division witnesses Elaine Haber, Lupe Cardenas and Russell LeBlanc during the scheduled hearing in the above-referenced matter or in the alternative, to reschedule the hearing to a later date to be held in Tucson, Arizona.

I.

FACTS

The Division anticipates calling Elaine Haber ("Haber"), Lupe Cardenas ("Cardenas") and Russell LeBlanc ("Leblanc") as integral witnesses to this hearing. Haber, Cardenas and LeBlanc, Krizman's clients, can provide probative testimony as to several of the Division's allegations in this matter.

Specifically, Haber, Cardenas and LeBlanc can testify as to the circumstances surrounding the offer and their subsequent purchase of The Alpha Capital Group viatical settlement contracts through Respondent Krizman. Haber and Cardenas are retired persons living in Tucson. Neither of them travel long distances by automobile and traveling to and from Phoenix will result in their driving four to five hours on the hearing date.

LeBlanc is currently scheduled to undergo surgery on December 5, 2002. Thus, it is

1 uncertain as to whether he will be sufficiently recovered to travel to and from Phoenix.  
2 However, Haber, Cardenas and LeBlanc will have access to a telephone to provide telephonic  
3 testimony during this hearing.

## 4 II.

### 5 ARGUMENT

6 The purpose of administrative proceedings is to provide for the fair, speedy and cost  
7 effective resolution of administratively justiciable matters. To effectuate that purpose, the  
8 legislature provided for streamlined proceedings and relaxed application of the formal rules of  
9 evidence. Specifically, A.R.S. § 41-1062(A)(1) provides for informality in the conduct of  
10 contested cases. The evidence submitted in an administrative hearing need not rise to the level of  
11 formality required in a judicial proceeding, as long as it is "substantial, reliable and probative."  
12 In addition, the Commission promulgated rules of practice and procedure to ensure just and  
13 speedy determination of all matters presented to it for consideration. *See, e.g.,* A.A.C. R-14-3-  
14 101(B); R14-3-109(K). Allowing Haber, Cardenas and LeBlanc to testify by telephone retains  
15 all indicia of reliability and preserves Respondent's right to cross-examination.

16 Courts in other states have acknowledged that telephonic testimony in administrative and  
17 civil proceedings is permissible and consistent with the requirements of procedural due process.  
18 *See Babcock v. Employment Division*, 72 Or. App. 486, 696 P.2d 19 (1985) (court approved  
19 Oregon Employment Division's procedure to conduct entire hearing telephonically); *W.J.C. v.*  
20 *County of Vilas*, 124 Wis. 2d 238, 369 N.W. 2d 162 (1985) (court permitted expert testimony in  
21 commitment hearing). Both of these courts concluded that fundamental fairness weighed in  
22 favor of permitting telephonic testimony.

23 Finally, it is the Division's understanding that neither Respondent's counsel or  
24 Respondent intend on appearing for the hearing. To the best of the Division's knowledge,  
25 Respondent's Counsel has not complied with Rule 33(d) of the Arizona Supreme Court. Thus,  
26

1 the Division anticipates this will be an expedited hearing. Public policy considerations also  
2 militate towards allowing Haber, Cardenas and LeBlanc to testify telephonically. Through this  
3 form of testimony, the Division can better allocate its limited resources to better serve and protect  
4 the Arizona investing public. However, even if Respondent's counsel or Respondent appears,  
5 telephone testimony will not prejudice Respondent as he will have opportunity to cross examine  
6 the witnesses.

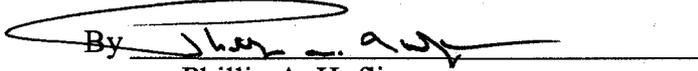
7 **III.**

8 **CONCLUSION**

9 Permitting Haber, Cardenas and LeBlanc to testify telephonically at the hearing allows  
10 the Division to present relevant witness evidence that is expected to be reliable and probative, is  
11 fundamentally fair, and does not compromise Respondents' due process rights. Therefore, the  
12 Division respectfully requests that its motion for leave to present the telephonic testimony of  
13 Haber, Cardenas and LeBlanc be granted or in the alternative, that the hearing be rescheduled to  
14 be held at a Tucson location on a later date.

15 Respectfully submitted this 20<sup>th</sup> day of November, 2002

16  
17 JANET NAPOLITANO  
18 Attorney General  
19 Consumer Protection and Advocacy Section

20 By   
21 Phillip A. Hofling  
22 Special Assistant Attorney General  
23 Moira McCarthy  
24 Assistant Attorney General  
25 Attorneys for the Securities Division of the  
26 Arizona Corporation Commission

1 ORIGINAL AND THIRTEEN (13) COPIES of the foregoing  
2 filed this 20<sup>th</sup> day of November 2000, with:

3 Docket Control  
4 Arizona Corporation Commission  
5 1200 West Washington  
6 Phoenix, AZ 85007

7 COPY of the foregoing hand-delivered  
8 this 20<sup>th</sup> day of November 2002, to the office of:

9 Mr. Marc Stern  
10 Hearing Officer  
11 Arizona Corporation Commission/Hearing Division  
12 1200 West Washington  
13 Phoenix, AZ 85007

14 COPY of the foregoing faxed and mailed  
15 this 20<sup>th</sup> day of November, 2002, to:

16 Walter L. Baumgardner, Esq.  
17 Musilli, Baumgardner & Parnell, P.C.  
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20 Attorney for Respondent Krizman

21 By 