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BEFORE THE ARIZONA CORPORATION COMMISSION

2011 MAY 27 P 1:39

COMMISSIONERS

GARY PIERCE, Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

AZ CORP COMMISSION
DOCKET CONTROL

In the matter of:

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, L.L.C., an Arizona limited liability company;

3 GRINGOS MEXICAN INVESTMENTS, L.L.C., an Arizona limited liability company;

Respondents.

DOCKET NO. S-20600A-08-0340

SECURITIES DIVISION'S
OBJECTION TO AND MOTION TO
QUASH RESPONDENT
BOSWORTH'S SUBPOENA DUCES
TECUM

(Assigned to the Honorable Marc E. Stern)

Arizona Corporation Commission
DOCKETED

MAY 27 2011

DOCKETED BY [Signature]

On May 20, 2011, Respondent Bosworth caused a Subpoena Duces Tecum to be issued and delivered to Special Investigator Michael Brokaw ("Brokaw Subpoena"). The Brokaw Subpoena requires Investigator Brokaw to appear for testimony and to produce documents on June 1, 2011. The Securities Division objects to the Brokaw Subpoena. Specifically, the requirement that Investigator Brokaw produce the items outlined in the Exhibit A attached to the subpoena.

1 Pursuant to A.A.C. R14-3-109(O), a witness is to be served a subpoena by exhibiting the original subpoena and providing a copy of the subpoena to the witness. In this case, the original subpoena was given to Investigator Brokaw. To the Securities Division's knowledge, no return was delivered to the Commission as required by rule.

1 Respondent Bosworth did not provide sufficient grounds pursuant to R14-3-109(O)² to support
2 issuance of the subpoena. In addition, the Brokaw Subpoena is unreasonable, oppressive and
3 unnecessary in light of prior exchange of the list of witnesses, exhibits and transcripts for the prior
4 hearing dates. As a result, the Brokaw Subpoena should be quashed.

5 **A. The Application Does Not Specify In A Clear Manner The Documents Requested.**

6 Pursuant the Arizona Administrative Code Rule 14-3-109(O), in order to obtain a
7 subpoena requiring the production of documents, an application for a subpoena duces tecum
8 “must specify, as **clearly** as possible,” the documents desired (emphasis added). Respondent
9 Bosworth declares that he wants Investigator Brokaw to produce all documents from all
10 Divisions within the Arizona Corporation Commission, in some instances, with no limitation to
11 the case at hand or to the Securities Division. Further, the Brokaw Subpoena does not identify
12 the timeframe for the documents are being requested. Respondent Bosworth’s request does not
13 **clearly** outline the documents he requested.

14 **B. The Brokaw Subpoena is Unreasonable, Oppressive and Unnecessary.**

15 The Exhibit A to the Brokaw Subpoena requests production of the following:

16 All documents, data or information in your possession, in any type of form,
17 including paper documents, internal communications, all notes from entire
18 investigation of this case, complaints or request for investigation from any source
19 including any governmental or regulatory agencies, results of any investigations
20 or audits, electronic or other ledgers, databases.

21 All copies of ACC’s written policies and any form of press releases including
22 persons and resources used for such services in the normal course of business and
23 any associated costs. All photographs in any format. All recordings including
24 audio or video or other, (analog or digital), transcriptions, digital files (in any
25 format, including “.pdf,” “Word”, “Wordperfect”, or the like), relating to this
26 matter and/or specifically the following persons or entities:

All alleged investors involved in this complaint
STEPHEN G. VAN CAMPEN
ROBERT BORNHOLDT
MICHAEL J. SARGENT
BARBARA BROYLES

² Respondent Bosworth cited A.A.C. R14-3-210(B) as authority for the issuance of the Brokaw Subpoena. The cited Rule applies to Rules of Practice and Procedure Before Power Plant and Transmission Line Siting Committee.

1 ALAN BYWATER
ALAN L. DAVIS
2 BERNIE FLEMMING
GREG DAWSON
3 BOSWORTH OCMmercial INC.
HOME AMERICA PROPERTY MANAGEMENT, LLC
4 MARK BOSWORTH & ASSOCIATES, LLC
3 GRINGOS MEXICAN INVESTMENTS, LLC
5 MARK W. BOSWORTH
LISA BOSWORTH
6 RUSSELL BOSWORTH
GORENTER
7 GORENTER.COM
THE MARK BOSWORTH COMPANIES
8 TRAVIS RICHEY
CASTLE ARCH INVESTMENT ET AL...

9 The Exhibit A to the Brokaw Subpoena requests Investigator Brokaw to produce all
10 requested documents on June 1, 2011, at the resumption of the evidentiary hearing. This request
11 is unreasonable and oppressive since the Brokaw Subpoena encompasses the Commission as a
12 whole ("All copies of ACC's written policies and any form of press releases . . . All photographs
13 in any format.") and does not provide any limitation as to the timeframe requested. Even
14 assuming that the Division understood exactly what documents are being requested, the staff time
15 and costs necessary to compile the document would be oppressive.

16 In addition, the Brokaw Subpoena is unnecessary. The Division's witness and exhibit list
17 were provided well in advance of the original hearing. An updated witness and exhibit list were
18 provided in January 2011. Respondent Bosworth also received a copy of the transcripts from the
19 previous hearing dates, including Investigator Brokaw's two days of testimony. The Securities
20 Division stated, at the February 9, 2011, Procedural Conference, it will be recalling Investigator
21 Brokaw. Respondent Bosworth has had the opportunity to review Investigator Brokaw's prior
22 testimony to prepare for any cross-examination he will conduct. Respondent Bosworth will be
23 able to cross-examine Investigator Brokaw. The Brokaw Subpoena is unnecessary since
24 Investigator Brokaw will be available for questioning.

25 The Brokaw Subpoena is unreasonable, oppressive and unnecessary and should be
26 quashed.

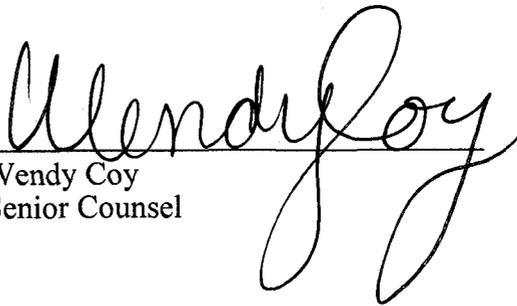
1 **C. Conclusion.**

2 The Brokaw Subpoena is unreasonable, oppressive and unnecessary since Respondent
3 Bosworth seeks almost every document within the Commission and all its Divisions. The
4 Securities Division has provided Respondent Bosworth with copies of all exhibits and the
5 transcripts for the testimony of all witnesses called to date.

6 Based on the foregoing, the Division respectfully requests that the Brokaw Subpoena be
7 quashed.

8 RESPECTFULLY SUBMITTED this 27th day of May 2011.

9
10 ARIZONA CORPORATION COMMISSION
SECURITIES DIVISION

11
12 
13 Wendy Coy
14 Senior Counsel

15
16 **ORIGINAL and 8 COPIES** of the foregoing filed
this 27th day of May 2011 with:

17 Docket Control
18 Arizona Corporation Commission
1200 W. Washington St.
19 Phoenix, AZ 85007

20 **COPY** of the foregoing hand delivered
this 27th day of May 2011 to:

21 The Honorable Marc E. Stern
22 Hearing Division
Arizona Corporation Commission
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Phoenix, AZ 85007
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COPY of the foregoing mailed/e-mailed
this 27^h day of May 2011 to:

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