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Arizona Corporation Commission

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David R. Jordan, #013891
Christopher D. Lonn, #015166
TITUS, BRUECKNER & BERRY, P.C.
Scottsdale Centre, Suite B-252
7373 North Scottsdale Road
Scottsdale, Arizona 85253-3527
(480) 483-9600
Attorneys for the Respondents

ARIZONA CORPORATION COMMISSION
DOCUMENT CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

_____)
WILLIAM A. MUNDELL, Chairman; JIM)
IRVIN, Commissioner; MARC L. SPITZER,)
Commissioner;)
In the Matter of:)
_____)
THE CHAMBER GROUP, INC.; CHAMBER)
FINANCIAL GROUP, CHAMBER FINANCIAL,)
JOSEPH L. HILAND, TYSON J. HILAND AND)
TRAVIS D. HILAND,)
Respondents.)
_____)

DOCKET NO. S-03438A-00-0000

**RESPONSE IN OPPOSITION TO
MOTION TO ALLOW
TELEPHONIC TESTIMONY**

Respondents hereby respond and oppose the Division's motion to allow telephonic testimony.

The foundation of Respondents' opposition to this motion rests on their fundamental and constitutional right to cross-examine the witnesses against them. As Administrative Law Judge Stern noted at the recent conference, this case involves millions of dollars. Careers are in jeopardy, and the Division seeks huge fines and restitution orders. It is fundamentally unfair, and would deny Respondents' due process, for the Respondents to be deprived of the opportunity to affectively cross-examine the witnesses called against them.

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LAW OFFICES
TITUS, BRUECKNER & BERRY
A PROFESSIONAL CORPORATION
SUITE B-252, SCOTTSDALE CENTRE
7373 NORTH SCOTTSDALE ROAD
SCOTTSDALE, ARIZONA 85253-3527
TELEPHONE 480.483.9600 FAX 480.483.3215

1 There are numerous documents involved in this case. The undersigned has only recently
2 involved himself in the matter, but he has already seen a huge amount of documents associated with
3 the various allegations made by the Division. The Division's allegations cover a number of different
4 types of transactions, and involve numerous customers. Obviously, there are going to be several
5 documents that are going to be introduced as evidence in this action.
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7 In a case such as this, the ability to impeach a witness by confronting them with documents is
8 vital. If a witness, for example, signs a disclosure form, only to later deny that he ever received such
9 a disclosure, the existence of a written document bearing their signature would be significant,
10 probative evidence that the witness either did not correctly recall the facts or was not correctly stating
11 the facts. Certainly, the Administrative Law Judge understands the vital interest of Respondents who
12 are answering very serious charges in having the opportunity to effectively cross-examine the
13 witnesses against them.
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15 The case is cited by the Division in their motion to not suggest a contrary conclusion. For
16 example, in *W.J.C. v. County of Vilas*, 124 Wis. 2d 238, 369 N.W. 2d 162 (1985), the Court of
17 Appeals of Wisconsin did indeed refuse to set aside an order because of the use of telephonic
18 testimony. *W.J.C.* is substantially different from the present dispute. Initially, that case involved the
19 testimony of a doctor, and there is no indication whatsoever that there was any documents used in his
20 testimony. The only issue reviewed by the Wisconsin Court of Appeals was whether an
21 Administrative Law Judge could determine credibility over the telephone. The Wisconsin Court of
22 Appeals determined such a determination was difficult, but possible. The issue of confronting the
23 doctor with documents potentially used to impeach him was not at issue in *W.J.C.*
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1 Moreover, the Wisconsin Court carefully weighed the fact that the interest of the inmate at
2 issue was “ultimately served if he is in fact a proper subject for treatment.” In other words, the worst
3 that the inmate faced was six months of treatment. While the Wisconsin Court recognized that that
4 would mean the individual was confined, the Court was also observing that he was confined for his
5 personal betterment. As a result, the interest of the individual was a factor in the decision, but not an
6 overriding factor.
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8 *W.J.C.* is obviously substantially different from the present dispute. The Respondents are not
9 inmates in a prison asking to be released from treatment that might possibly benefit them. They are
10 the targets of an investigation by the Securities Division of Arizona. They have been subject to
11 adverse publicity and they have been damaged in their personal business. Their careers are in
12 jeopardy. If the Division succeeds in finding that they committed fraud, their insurance license, and
13 their livelihood, will be in severe peril. The fines and restitution sought by the Division are huge.
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15 Moreover, this testimony is wholly unlike the doctor who was testifying in the *W.J.C.* case.
16 This is a complicated financial case, not a medical opinion. There are pages and pages of
17 documentary material that explain how these transactions occurred. Some of those documents were
18 signed by investors such as Nancy Dell Valle. The ability to confront investors with direct exhibits
19 during cross-examination is vital to the defense of this case.
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21 The necessity of requiring Kenton Johnson to appear is even more significant. Respondents do
22 not intend to be sticklers about foundation. If the Securities Division will promptly provide the
23 documents to the undersigned, the undersigned would be happy to review the questioned exhibits and
24 to stipulate to foundation wherever possible. In the event the Division refuses to do this, or in the
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1 event that a stipulation cannot be reached, it is difficult to imagine a witness laying foundation for
2 exhibits when the witness is in one state and the exhibits are in another state. The ability to
3 cross-examine that witness with direct regard to the exhibit in question would be vital. Indeed, one
4 could not imagine how one would cross-examine a document custodian without the ability to show the
5 document to the custodian.
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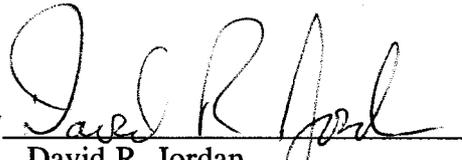
7 *Babcock v. Employment Division*, 72 Or. App. 486, 696 P.2d (App. 1985), deals with a lady
8 who was denied certain unemployment benefits. The issue related to whether or not a telephonic
9 hearing could occur, and the Court determined that under certain circumstances telephonic hearings
10 are not inappropriate. Again, the case did not involve a complicated case where financial fraud was
11 being alleged, and the issue of being able to confront witnesses with exhibits was never raised.
12 Moreover, it is difficult to compare the denial of unemployment benefits with a case in which entire
13 careers are being put in jeopardy by an allegation of financial fraud involving millions of dollars.
14 Certainly the severity of the allegations and the potential impact on the lives of the Respondents
15 dictates in favor of providing substantial due process in determining whether or not they have
16 engaged in the acts about which the Securities Division complains.
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19 In short, due process dictates that Respondents who stand a risk of losing substantial property
20 and rights as a result of the hearing should have the ability to confront witnesses against them
21 directly, and in person, with exhibits that may impact upon the credibility of that witness. The
22 question before the Administrative Law Judge is not a question of resources, as the Division poses it,
23 but a question of justice.
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RESPECTFULLY SUBMITTED this 20th day of March, 2001.

TITUS, BRUECKNER & BERRY, P.C.

By 
David R. Jordan
Christopher D. Lonn
Scottsdale Centre, Suite B-252
7373 North Scottsdale Road
Scottsdale, Arizona 85253-3527
Attorneys for Respondents

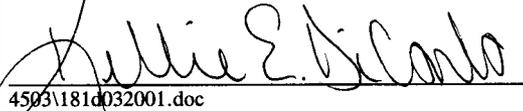
ORIGINAL and ten (10) copies filed this
20th day of March, 2001, with:

Docket Control
Arizona Corporation Commission
1300 W. Washington
Phoenix, Arizona 85007

COPY of the foregoing hand-delivered
this 20th day of March, 2001 to:

Jamie B. Palfai, Esq.
Arizona Corporation Commission
1300 W. Washington
Phoenix, Arizona 85007

Mark Stern
Arizona Corporation Commission
1300 W. Washington
Phoenix, Arizona 85007


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LAW OFFICES
TITUS, BRUECKNER & BERRY
A PROFESSIONAL CORPORATION
SUITE B-252, SCOTTSDALE CENTRE
7373 NORTH SCOTTSDALE ROAD
SCOTTSDALE, ARIZONA 85253-3527
TELEPHONE 480.483.9600 FAX 480.483.3215