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BEFORE THE ARIZONA CORPORATION COMMISSION
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Arizona Corporation Commission
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IN THE MATTER OF THE APPLICATION OF
ARIZONA WATER COMPANY TO EXTEND
ITS CERTIFICATE OF CONVENIENCE AND
NECESSITY IN CASA GRANDE, PINAL
COUNTY, ARIZONA

DOCKET NO. W-01445A-03-0559

**MOTION FOR PROTECTIVE ORDER
QUASHING THE DEPOSITIONS OF
MESSRS. GERSTMAN AND ROBSON**

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Pursuant to Rule 26(c), ARIZ. R. CIV. PROC., Cornman Tweedy 560 LLC ("Cornman Tweedy") hereby moves the Arizona Corporation Commission ("Commission") for a protective order quashing the depositions that have been scheduled for Peter Gerstman and Edward Robson filed by Arizona Water Company ("AWC") on October 23, 2013. In accordance with Rule 26(g), ARIZ. R. CIV. PROC., this motion is supported by the separate statement of counsel undersigned, attached hereto as Attachment 1, certifying that, after personal consultation and good faith efforts to do so, counsel have been unable to satisfactorily resolve this matter.

I. INTRODUCTION.

On October 23, 2013, AWC filed Amended Notices of Deposition for Peter Gerstman and Edward Robson scheduling depositions to be taken on November 6, 2013, and November 7, 2013, respectively. Mr. Robson is the Chief Executive Officer, Chairman of the Board and one of two directors of Arlington Property Management Company, which is the Manager of Cornman Tweedy. He also is an officer and director of a number of other companies, including but not limited to, Robson Communities, Inc. ("Robson Communities"). Mr. Gerstman is General Counsel of Robson Communities. Robson Communities does not own or control Cornman Tweedy. Rather, Robson Communities provides payroll, human resources, accounting, computer and other functions, which often includes legal counsel, to other

1 companies affiliated with (*i.e.*, under common control with) Robson Communities. On that
2 basis, Mr. Gerstman has provided legal counsel to Cornman Tweedy. Mr. Gerstman is neither
3 an officer nor a director of Arlington Property Management Company and holds no position with
4 Cornman Tweedy.

5 Previously, AWC has taken the depositions of Cornman Tweedy's two expert witnesses
6 in this case, Fred Goldman and Paul Hendricks. Mr. Goldman's deposition was taken on
7 September 6, 2012, at the offices of Bryan Cave, LLP. The deposition commenced at 9:30 AM
8 and concluded at 2:29 PM, with one intervening lunch break and other brief breaks. Mr.
9 Hendricks' deposition was taken on September 7, 2012, at the offices of Bryan Cave, LLP. The
10 deposition commenced at 9:37 AM and concluded at 2:41 PM, with one intervening lunch break
11 and other brief breaks. Each of the depositions lasted a full four hours as permitted under Rule
12 30(d), ARIZ. R. CIV. P., and Messrs. Goldman and Hendricks provided answers to all of the
13 questions posed by counsel for AWC during the depositions.

14 In addition, AWC has previously taken the deposition of Steve Soriano, the designated
15 representative for Cornman Tweedy who is substituting as a witness in this case in place of the
16 late Jim Poulos. Like Jim Poulos before his passing, Steve Soriano is a Vice President of
17 Arlington Property Management Company, the Manager of Cornman Tweedy. Mr. Soriano also
18 is Vice President of the developers of the other Robson Resort Communities and of the Robson-
19 affiliated utility companies that provide water and sewer service to certain of the Robson Resort
20 Communities. Mr. Soriano's deposition was taken on June 22, 2012, at the offices of Bryan
21 Cave, LLP. The deposition commenced at 9:05 AM and concluded at 3:05 PM, with one
22 intervening lunch break and other brief breaks. Mr. Soriano's deposition lasted a full our hours
23 as permitted under Rule 30(d), ARIZ. R. CIV. P., and he provided answers to all of the questions
24 posed by counsel for AWC during the deposition. AWC questioned Mr. Soriano on a very broad
25 variety of topics, including but not limited to, questions about the Cornman Tweedy property,
26 the operations of the various utility companies owned by Robson family members or their
27 affiliates, the operations of the various Robson Resort Communities, the relationships of the
28 various companies, and the political contributions made by Robson family members.

1 Messrs. Hendricks, Goldman and Soriano are the only witnesses that Cornman Tweedy
2 intends to call in the above-captioned case.

3 **II. ARGUMENT.**

4 **A. The Depositions of Messrs. Gerstman and Robson Are Outside the Scope of**
5 **Discovery Set by the Administrative Law Judge at the Procedural Conference**
6 **held October 5, 2011.**

7 At the procedural conference held on October 5, 2011, AWC stated its desire to take the
8 depositions of Peter Gerstman and Ed Robson, Cornman Tweedy opposed that request, and the
9 administrative law judge (“ALJ”) rejected that request in the following exchange between the
10 ALJ and counsel for the parties:

11 ACALJ NODES: Should Arizona Water be able to depose witnesses that you
12 have previously presented on the issue of integration in
13 order for Arizona Water to effectively rebut the claims in
14 that testimony?

15 MR. CROCKETT: I think that probably is consistent with their discovery
16 rights.

17 ACALJ NODES: Okay. Well, and we will go to the exact discovery requests
18 in question, but, Mr. Hirsch, is that something that you
19 believe would – you seemed to indicate that that could help
20 narrow the scope of what is in dispute as far as the exact
21 discovery requests.

22 MR. HIRSCH: Right. The witnesses I was specifically thinking of were
23 Mr. Robson and probably Mr. Gerstman or Mr. Soriano.
24 We need some further elucidation about who within the
25 Robson enterprise is in charge of and strategizes the
26 transference of groundwater rights and extinguishment of
27 rights from one development to the other.

28 The problem here is to hide behind the fact that, you know,
it is just this one Cornman Tweedy 560, LLC that’s at issue
is the entire corporate makeup, and this isn’t unique to
Robson Communities, but is designed to have different
subsidiary entities controlled by the parent so that these
various transferences can exist. What we are entitled to see
is if there is a means and mechanism, even though a parent
entity controls Picacho Water Company and Picacho Utility
Company and is – sewer company rather – and is being,
you know, heavily portrayed by these experts and in its
own testimony is being integrated, integrated, integrated,

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we need to be allowed to test that and determine whether or not the, you know, paper assertion of the fact that these utilities are integrated is really the case and is really effecting water conservation on the ground in areas where they are providing service, which they aren't yet in Cornman Tweedy. And that entails no only inquiry to the experts that were named but inquiry that goes to what the data requests are getting to as to what the interworkings are of water rights within the various developments controlled by Robson Communities, of which Cornman Tweedy is one, and how that relates to what type of water is being sprayed on golf courses and what type of water could be sprayed on golf courses in this 1,120 acres under a so-called integrated utility model. That goes to the essence of reasonable service.

ACALJ NODES: Okay. Mr. Crockett.

MR. CROCKETT: And, Your Honor, we have moved from depositions of experts, which is one thing, to depositions of Mr. Gerstman, who is an attorney with Robson, and Mr. Soriano and Mr. Robson himself. I believe we are going far afield of the narrow issue in this case, which is this 1,130 acres.

There is no golf course planned for this property. I mean that's one of the facts of the case. And Arizona Water should be entitled to cross-examine or even depose, if that's what they want to do here, our witnesses in this case with respect to the Cornman Tweedy property. But I don't see that other developments located in other places of the state are relevant for the inquiry here. This is a different development and it is just different.

ACALJ NODES: Okay. Well, here is the – after this we are going to go to the specific discovery requests, but I agree with Mr. Crockett. I think, Mr. Hirsch, you should be entitled to conduct discovery on testimony that is submitted by Cornman Tweedy's witnesses in this case. However, I don't think it is appropriate to expand the scope beyond that.

I mean you are obviously still going to be able to present your own witnesses in a direct case of Arizona Water's particular circumstances with regard to the Cornman Tweedy property and the issue specifically that was remanded by the Commission.

1 C. Mr. Gerstman is General Counsel of Robson Communities and any
2 Information he May Have Regarding any of the Issues in this Case would be
3 Protected Under the Attorney-Client Privilege.

4 Mr. Gerstman is General Counsel for Robson Communities. On that basis, he has
5 provided legal counsel to Cornman Tweedy and to other companies affiliated with Robson
6 Communities. Although Mr. Gerstman owns a small interest in Cornman Tweedy, he has no
7 management or control rights over Cornman Tweedy. Any information he may have about
8 strategies regarding “the transference of groundwater rights and extinguishment of rights from
9 one development to the other,” or otherwise relating to the matters before the Commission in this
10 case, are based upon the legal services he has provided and would be protected from disclosure
11 under the attorney-client privilege. Moreover, he has not gained personal knowledge of any
12 relevant fact based upon his ownership of an interest in Cornman Tweedy. Finally, Mr.
13 Gerstman has not filed testimony in this case and Cornman Tweedy does not intend to call Mr.
14 Gerstman as a witness. Cornman Tweedy’s motion for a protective order should be granted.

15 D. Mr. Robson is Not the Person Most Knowledgeable with Respect to the
16 Matters at Issue Before the Commission.

17 As stated above, Mr. Robson is the Chief Executive Officer, Chairman of the Board and
18 one of two directors of Arlington Property Management Company, the Manager of Cornman
19 Tweedy. While there is no question that Mr. Robson has the power to make decisions on behalf
20 of Cornman Tweedy, he is not the person most knowledgeable about the issues and questions
21 before the Commission in this case. He has limited knowledge about these issues, having
22 delegated such matters to Mr. Soriano and to legal counsel, including but not limited to Mr.
23 Gerstman and counsel undersigned. Messrs. Soriano, Goldman and Hendricks are the
24 representatives of Cornman Tweedy who are most knowledgeable about the issues and questions
25 before the Commission. Thus, Cornman Tweedy’s motion for protective order should be
26 granted.

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III. CONCLUSION.

For the foregoing reasons, Cornman Tweedy requests that the Commission grant its motion for a protective order and quash the depositions that have been scheduled for Messrs. Gerstman and Robson.

RESPECTFULLY submitted this 1st day of November, 2013.

BROWNSTEIN HYATT FARBER SCHRECK LLP

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ORIGINAL and thirteen (13) copies filed this 1st day of November, 2013, with:

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COPY of the foregoing hand-delivered this 1st day of November, 2013, to:

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COPY of the foregoing sent via e-mail and first class mail this 1st day of November, 2013, to:

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ATTACHMENT 1

**STATEMENT OF MOVING COUNSEL
IN SUPPORT OF MOTION FOR PROTECTIVE ORDER**

1. I am the attorney of record for Cornman Tweedy 560, LLC (“Cornman Tweedy”) in Docket W-01445A-03-0559, *In the Matter of the Application of Arizona Water Company to Extend its Certificate of Convenience and Necessity in Casa Grande, Pinal County, Arizona.*

2. AWC is represented in Docket W-01445A-03-0559 by Steven A. Hirsch of the law firm Bryan Cave LLC.

3. On August 15, 2013, Arizona Water Company (“AWC”), through its legal counsel, filed Notices of Deposition for Peter Gerstman and Edward Robson scheduling their depositions to be taken on September 5, 2013, and September 6, 2013, respectively. Thereafter, on October 23, 2013, AWC filed Amended Notices of Deposition for Messrs. Gerstman and Robson rescheduling their depositions for November 6, 2013, and November 7, 2013, respectively.

4. Cornman Tweedy opposes the depositions of Messrs. Gerstman and Robson for the reasons set forth in the Motion for Protective Order to which this statement is attached.

5. Mr. Hirsch and I have personally consulted in good faith on at least two occasions regarding Cornman Tweedy’s opposition to the depositions of Messrs. Gerstman and Robson, but we have been unable to satisfactorily resolve our disagreement.


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