

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
TOPEKA DIVISION

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SECURITIES AND EXCHANGE COMMISSION,	:
	:
Plaintiff,	:
	:
vs.	:
	:
DAVID TANNER, Individually, and d/b/a	:
CAPITAL ENHANCEMENT CLUB, ROCKY	:
D. SPENCER, MARROC CORP., and	:
RICHARD P. KRINGEN,	:
	:
Defendants,	:
	:
and	:
	:
MARGARET F. SPENCER, OMNIBUS LLC,	:
VECTRA RESOURCES LLC, and DYNAMIC	:
ENVIRONMENTAL SOLUTIONS, INC.,	:
	:
Relief Defendants.	:
-----X	:

Civil Action No. 05-4057-SAC

MOTION OF DEFENDANT DAVID TANNER FOR A PROTECTIVE ORDER

COMES NOW Defendant David Tanner (“Mr. Tanner”), by and through his undersigned counsel, and for this Motion for a Protective Order pursuant to Fed. R. Civ. P. 26(c)(3), respectfully states as follows:

1. On July 25, 2005, Plaintiff issued a notice of deposition demanding Mr. Tanner’s appearance on August 4, 2005, at the Securities and Exchange Commission, 801 Cherry Street, Fort Worth, Texas. Plaintiff also served a subpoena with the notice of deposition. (Notice of Deposition attached hereto as Exhibit 1.)

2. Mr. Tanner seeks a protective order, to prevent undue burden and expense, because he should be deposed upon written questions pursuant to Fed. R. Civ. P. 31.

3. Plaintiff has alleged that Mr. Tanner resides outside the United States. Complaint ¶ 9. Requiring Mr. Tanner to travel to the United States for a deposition would cause undue burden and expense because counsel has repeatedly advised Plaintiff that Mr. Tanner will assert his Fifth Amendment right against self-incrimination in response to Plaintiff's questions. The same can just as easily be accomplished through a deposition by written questions pursuant to Fed. R. Civ. P. 31. Although Plaintiff is not harmed in any way by deposing Mr. Tanner by written questions, they refuse this accommodation.

WHEREFORE, David Tanner respectfully requests that the Court enter a protective order and require Plaintiff to depose Mr. Tanner upon written questions.

CERTIFICATE

Robert L. Herskovits, counsel for the moving party, David Tanner, and Timothy P. Davis, plaintiff's counsel, have conferred prior to the filing of this motion to attempt to resolve the issue. Pursuant to D. Kan. Rule 37.2, this reasonable effort to resolve this issue was unsuccessful.

Respectfully submitted,

/s/ Thomas D. Haney

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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of August, 2005, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system which will send a notice of electronic filing to the following:

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