

Exhibit 5

Mehraban, Lara

From: Mehraban, Lara
Sent: Friday, May 28, 2010 2:18 PM
To: 'tju [REDACTED]'
Cc: Stoelting, David; 'James Featherstonhaugh'; 'koenigm [REDACTED]'; 'jdunn [REDACTED]'
Subject: Subpoena to Thomas J. Urbelis

Mr. Urbelis,

Please see the attached subpoena. I noticed the deposition for Tuesday, June 1, at noon.

Regards,

Lara



Urbelis
subpoena.PDF

Lara Shalov Mehraban
U.S. Securities and Exchange Commission
New York Regional Office
Three World Financial Center
Suite 400
New York, NY 10281-1022
tel. [REDACTED]
fax [REDACTED]

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AO 88A (Rev. 06/09) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of New York

Securities and Exchange Commission)
Plaintiff)
v.) Civil Action No. 10-CV-457 (GLS/DRH)
McGinn, Smith, & Co., Inc., et al.)
Defendant) (If the action is pending in another district, state where:)

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Thomas J. Urbelis, Esq.
Urbelis & Fieldsteel, LLP, 155 Federal St. Boston, MA 02110-1727, 617-338-2200

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is not a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Table with 2 columns: Place (Phillips Lytle, LLP, 30 South Pearl St, Albany, NY) and Date and Time (06/01/2010 12:00 pm)

The deposition will be recorded by this method: Reporter

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

See Attached

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 05/28/2010

CLERK OF COURT

OR

s/ Lara Shalov Mehraban

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Plaintiff, who issues or requests this subpoena, are:

Lara Shalov Mehraban, Senior Counsel
Securities and Exchange Commission, 3 World Financial Center, New York, New York 10281
mehrabanl@sec.gov, (212) 336-0591

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)**(c) Protecting a Person Subject to a Subpoena.**

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

SUBPOENA ATTACHMENT

Thomas J. Urbelis

May 28, 2010

INSTRUCTIONS

1. This Subpoena requires the production of each responsive document in its entirety, including all non-identical copies, drafts, and identical copies containing different handwritten notions, without abbreviation, expurgation, or redaction.
2. Claims of privilege with respect to any document, or portions of any documents, shall be made as required by Rule 45(d)(2) of the Federal Rules of Civil Procedure.
3. If any document sought by this Subpoena once was, but no longer is, within your possession, control or custody, please identify each such document and its present or last known custodian, and state: (a) the reason why the document is not being produced; and (b) the date of the loss, destruction, discarding, theft or other disposal of the document.
4. Unless otherwise indicated, this Subpoena seeks documents from January 1, 2004 onward.
5. This Subpoena is ongoing in nature, and you should continue to produce responsive documents as they are found or created on an ongoing basis.

DEFINITIONS

1. "Communication" means any transmittal of information (in the form of facts, ideas, inquiries, or otherwise) including, but not limited to, e-mail, instant messages, faxes, text messages, notes of meetings, phone logs, and letters.
2. "Concerning" means relating to, referring to, describing, evidencing, or constituting.

3. "Document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a), including without limitation audio files, voicemail messages, electronic spreadsheets and drafts of electronic spreadsheets or other computerized data, including email messages (deleted or otherwise, and whether located at your offices or at your employees' residences or property, or on central or official databases, your servers and backup servers, local databases, internet-based e-mail servers, individual employees' hard drives, discs or personal digital assistants), notes, memoranda, work papers, paper files, desk files, draft workpapers). A draft or non-identical copy is a separate document within the meaning of this term.

4. "Trust" shall refer to the David L. & Lynn A. Smith Irrevocable Trust U/A, dated August 4, 2004.

5. "Your" shall refer to Thomas J. Urbelis and any person or entity acting on his behalf.

DOCUMENTS SUBPOENAED

1. All documents concerning David L. Smith, including but not limited to documents concerning the Trust.

2. All documents concerning communications with David L. Smith, including but not limited to documents concerning the Trust.

3. All documents concerning Lynn A. Smith, including but not limited to documents concerning the Trust.

4. All documents concerning communications with Lynn A. Smith, including but not limited to documents concerning the Trust.

5. All documents concerning the beneficiaries of the Trust, including but not limited to documents concerning the Trust.

6. All documents concerning communications with the beneficiaries of the Trust, including but not limited to documents concerning the Trust.

7. All documents concerning the Trust.

8. All documents concerning your duties and responsibilities as Trustee of the Trust.