



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

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DIVISION OF
ENFORCEMENT

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October 21, 2010

BY ECF

The Honorable David R. Homer
United States Magistrate Judge
United States District Court
Northern District of New York
United States Courthouse
Albany, New York 12207

Re: *SEC v. McGinn, Smith & Co., Inc., et al.*, 10 CV 457 (GLS)(DRH)

Dear Judge Homer:

I write to correct the record with regard to briefs recently filed by the SEC and by David M. Wojeski, Trustee of the David L. and Lynn A. Smith Irrevocable Trust (the "Trust").

First, on October 8, 2010, the SEC filed a brief opposing Lynn Smith's request for a carve-out (Docket # 151). In footnote 2 of this brief, referring to a John Hancock retirement account held by David Smith, the SEC stated that "plaintiff was previously unaware of the existence of the John Hancock account." This account, however, was identified on a list of accounts provided by Mr. Smith's counsel on April 30, 2010.

Second, a brief filed by the Trust on October 7, 2010 (Docket # 149) refers that the fact that the SEC has received documents from the U.S. Attorney's Office ("USAO") that were obtained by the USAO pursuant to search warrants. The Trust then states on page 7 that "no defendant has been afforded access to the documents obtained by the U.S. Attorney," and that the "defendants have been denied access" to the search warrant documents the SEC received from the USAO.

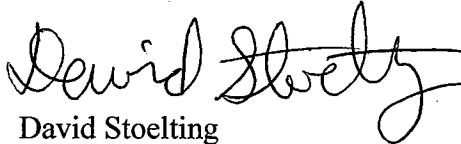
These representations are not correct. In fact, the SEC has made available or provided (without charge) the documents it has received from the USAO. For example, in a letter dated May 18, 2010, before the Trust intervened, the SEC informed the defendants that "the SEC has received documents . . . from the U.S. Attorney's Office from the Northern District of New York. These documents are available at our offices for your inspection and copying."

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In addition, on June 1, 2010, at the deposition of Mr. Urbelis, the SEC provided to Ms. Dunn, counsel for the Trust, and the other counsel, three folders of documents that the SEC had received from the USAO relating to the Trust and the Smiths' financial condition. A fourth folder was sent to Ms. Dunn and the other counsel on June 3, 2010, and an email to Ms. Dunn and the other counsel made clear that these documents were received from the USAO.

Finally, on September 2, 2010, the SEC provided to counsel for Messrs. Smith and McGinn four hard drives containing copies of all of the electronic data that was seized pursuant to the search warrants. In an email sent September 24, 2010, the SEC advised Ms. Dunn to make arrangements with the lawyers for Messrs. Smith and McGinn if she wanted access to these hard drives.

Respectfully submitted,

A handwritten signature in black ink that reads "David Stoelting". The signature is written in a cursive style with a long horizontal stroke at the end.

David Stoelting

cc: Martin Russo, Esq.
James Featherstonhaugh, Esq.
Jill Dunn, Esq.