



DREYER BOYAJIAN LLP
ATTORNEYS AT LAW

William J. Dreyer
wdreyer@dreyerboyajian.com
(518) 463-7784 Ext. 239

December 27, 2010

William J. Brown, Esq.
Phillips Lytle, LLP
Omni Plaza
30 South Pearl Street
Albany, New York 12207

Re: *SEC v. David Smith, et al*
10-CV-457 (GLS/DRH)

Dear Mr. Brown:

Last week, this firm was substituted in the above entitled matter for the firm of Gusrae, Kaplan, Bruno & Nusbaum, PLLC and will represent David Smith in the above-captioned matter. Mr. Jones will serve as counsel to Mr. McGinn in the same case. We have received and reviewed the answer you have filed on behalf of the McGinn Smith entities which you purport to represent. Also, we have reviewed Mr. Jones' letter to you, dated December 23, 2010, requesting that the answer be withdrawn. We hereby join in Mr. Jones' letter and ask that you withdraw the answer immediately.

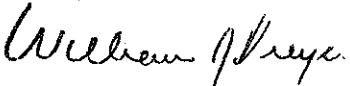
We believe that in your role as receiver you have a fiduciary relationship to the entities you purportedly represent. However, you were appointed to the position of Receiver at the behest of the SEC, which is the plaintiff in the above matter. In our view, your answer prejudices fundamental rights of the remaining parties and those you represent and "admits" allegations which are contested and unsubstantiated. An investigation of the background and facts of this matter should prompt an attorney to aver at most lack of sufficient information and knowledge to admit or deny the allegations contained in the complaint.

Mr. Jones and I stand ready to meet with you to discuss this matter. However, preliminarily we urge you to withdraw the answer to the complaint and if necessary, seek leave of the court to answer in such a way as to avoid a default of the named parties. I believe that my suggestion that you lack sufficient knowledge or information to so

answer at this juncture accomplishes that result and protects the rights of the entities which you represent.

Very truly yours,

DREYER BOYAJIAN LLP

By: 

William J. Dreyer

WJD/lab

J:\WJD\Smidav-10110\Correspondence\Ltr to Wm. Brown 12-27-2010.doc