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February 4, 2011

VIA ECF and UPS

Hon. Gary L. Sharpe, *U.S.D.J.*
James T. Foley – U.S. Courthouse
445 Broadway
Albany, NY 12207

Re: *Securities and Exchange Commission v. McGinn, Smith & Co., Inc.*, 10 Civ. 457 (GLS) (DRH)

Dear Judge Sharpe:

We represent Jill A. Dunn, Esq., in connection with a motion by plaintiff Securities and Exchange Commission (“SEC”), for monetary sanctions against Ms. Dunn and others, and seeking an evidentiary hearing (preceded by document discovery) to determine whether sanctions should also be sought against another attorney. The purpose of this letter is to request a conference with the Court in order to address two procedural issues that arise from the SEC’s motion.

First, while Ms. Dunn represented three parties to the underlying action, David M. Wojeski, Trustee of the David L. and Lynn A. Smith Irrevocable Trust U/A 8/4/04 (“Trust”), and the beneficiaries of the Trust, Geoffrey R. Smith and Lauren T. Smith, she was not a party to the action prior to the filing of the SEC’s motion on January 31, 2011 [Document 261]. Likewise, Thomas Urbelis, Mr. Wojeski’s predecessor as Trustee of the Trust and another subject of the SEC’s motion for sanctions, was not a party to the SEC’s action. We believe that Ms. Dunn and Mr. Urbelis are additional parties to this action, or at least to the SEC’s motion, who have not consented to the exercise of jurisdiction by Magistrate Judge David R. Homer under Local Rule 72.2(b). Accordingly, we seek a determination whether the SEC’s motion should be heard and decided by your Honor or Magistrate Judge Homer.

Second, the SEC’s motion seeks document discovery and an evidentiary hearing concerning communications between Ms. Dunn and Mr. Wojeski [Document 261, p. 2].

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We believe that any such discovery and any such hearing should precede, rather than follow, briefing and determination of the SEC's motion. Accordingly, we request a threshold determination regarding the necessity for discovery and an evidentiary hearing and, if the SEC's requests are granted, a reasonable briefing schedule thereafter.

This morning I spoke with David Stoelting, Esq., the principal attorney for the SEC and described the subjects of this letter. Mr. Stoelting stated that he had no objection to my request for a conference with the Court regarding these matters.

Respectfully,



Benjamin Zelermyer
Bar Roll No. 516663

Cc: Hon. David R. Homer, *U.S.M.J.* (via ECF and UPS)

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