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OF COUNSEL
LAWRENCE R. HAMILTON
CHRISTOPHER J. WATT*

October 11, 2011

VIA ECF FILING

United States District Court
Northern District of New York
James T. Foley U.S. Courthouse
445 Broadway
Albany, NY 12207-2974

Att: Magistrate Judge David R. Homer
Re: SEC v. McGinn Smith, et al.
Civil Case No. 10-CV-457 GLS/DRH
Our file: 23598

Dear Magistrate Judge Homer:

I am writing on behalf of my client, non-party Thomas J. Urbelis, of Boston, to request a discovery conference pursuant to Local Rule 7.1(d)(3). The Court will recall that Mr. Urbelis was deposed by the Securities and Exchange Commission on June 1, 2010. A transcript of that deposition is on file in connection with the SEC's sanctions motion (c.f. the Court's Memorandum Decision and Order of July 20, 2011, Docket 342). As per the statement of the attorney representing the SEC, that deposition was concluded on that day.

The SEC has now served a Deposition Subpoena purporting to require Mr. Urbelis to appear again and produce a large quantity of documents. The subpoena is attached hereto as Exhibit "1". The subpoena was served on September 23, 2011. Mr. Urbelis objects to being deposed again, as well as to the production of the documents specified in the subpoena.

By letter dated October 6, 2011, counsel stated Mr. Urbelis's objections to the subpoena. A copy of this letter, sent pursuant to Federal Rules of Civil Procedure 45(c)(2)(b) is attached hereto as Exhibit "2".

Following service of that letter, counsel conferred by phone pursuant to Local Rule 7.1(d)(3). That call did not result in any resolution of this dispute.

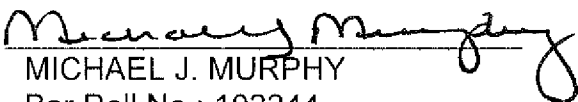


United States District Court
Northern District of New York
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We now respectfully request a conference with the Court as required by Local Rule 7.1(d)(3). We are prepared to submit a letter brief to set forth the legal and factual reasons why we believe a further deposition and document production from Mr. Urbelis should not be permitted. We are also prepared to make a motion for a protective order.

Respectfully submitted,

CARTER, CONBOY, CASE, BLACKMORE,
MALONEY & LAIRD, P.C.

By: 
MICHAEL J. MURPHY
Bar Roll No.: 102244
E-Mail: mmurphy@carterconboy.com

MJM:amb

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Northern District of New York
October 11, 2011
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Northern District of New York
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EXHIBIT "1"

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

UNITED STATES DISTRICT COURT

for the

District of Massachusetts

Securities and Exchange Commission

Plaintiff

v.

McGinn Smith & Co. et al.

Defendant

Civil Action No. 10-CV-457 (GLS/DRH)

(If the action is pending in another district, state where: Northern District of New York)

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Thomas J. Urbelis, Esq.
Urbelis and Fieldsteel LLP 155 Federal Street, Boston, MA 02110-1727

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 (Securities and Exchange Commission, 33 Arch Street, 23rd Fl., Boston, MA 02110-1424) and Date and Time (10/17/2011 9:30 am)

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 Attachment

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: 09/12/2011

CLERK OF COURT

OR

s/Kevin P. McGrath

Signature of Clerk or Deputy Clerk

Attorney's signature

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

Kevin P. McGrath
Securities and Exchange Commission, 3 World Financial Center, N.Y., N.Y. 10281
mcgrathk@sec.gov; (212) 336-0533

AO 88A (Rev. 06/09) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 10-CV-457 (GLS/DRH)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I served the subpoena by delivering a copy to the named individual as follows: _____
_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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
September 12, 2011**

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 September 1, 2003 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.

6. "McGinn Smith Entity" shall include any entity listed in Exhibit A attached hereto.

DOCUMENTS SUBPOENAED

1. All documents concerning David L. Smith, including but not limited to documents concerning the Trust and documents concerning any investments by you in any McGinn Smith Entities or in any other securities, notes, or other investment products offered by McGinn Smith and Co., McGinn Smith Advisors, LLC. or McGinn Smith Capital Holdings Corp.

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

you in any McGinn Smith Entities or in any securities, notes, or other investment products offered by McGinn Smith and Co., McGinn Smith Advisors, LLC. or McGinn Smith Capital Holdings Corp.

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.

9. All documents concerning communications with David Wojeski.

10. All documents concerning communications with Jill Dunn.

11. All documents concerning communications with any attorney or other individual associated with the law firm Featherstonhaugh, Wiley & Clyne LLP.

12. All documents concerning communications with Piaker & Lyons, including but not limited to all communications with Ronald Simons.

13. All documents concerning any investment by you or any member of your immediate in any McGinn Smith Entity.

14. All documents concerning any loan to or from you or any member of your immediate family to or from any McGinn Smith Entity.

15. All documents concerning any loan to you or to any member of your immediate family from Timothy McGinn, David Smith, Lynn Smith, or any McGinn Smith Entity.

Exhibit A

List of Known Entities Controlled By McGinn and/or Smith

107th Associates LLC Trust 07
107th Associates LLC
74 State Street Capital LP
Acquisition Trust 03
Capital Center Credit Corporation
CMS Financial Services
Cruise Charter Ventures LLC dba YOLO Cruises
Cruise Charter Ventures Trust 08
First Advisory Income Notes LLC
First Commercial Capital Corp.
First Excelsior Income Notes LLC
First Independent Income Notes LLC
FirstLine Junior Trust 07
FirstLine Senior Trust 07
FirstLine Trust 07
Fortress Trust 08
Integrated Excellence Junior Trust
Integrated Excellence Junior Trust 08
Integrated Excellence Senior Trust
Integrated Excellence Senior Trust 08
IP Investors
James J. Carroll Charitable Fund
JGC Trust 00
KC Acquisition Corp.
KMB Cable Holdings LLC
Luxury Cruise Center, Inc.
Luxury Cruise Holdings, LLC
Luxury Cruise Receivables, LLC
M & S Partners
McGinn, Smith & Co.
McGinn, Smith Acceptance Corp.
McGinn, Smith Advisors
McGinn, Smith Alarm Trading
McGinn, Smith Asset Management Corp.
McGinn, Smith Capital Holdings
McGinn, Smith Capital Management LLC
McGinn, Smith Financial Services Corp.
McGinn, Smith FirstLine Funding LLC
McGinn, Smith Funding LLC
McGinn, Smith Group LLC
McGinn, Smith Holdings LLC
McGinn, Smith Independent Services Corp.
McGinn, Smith Licensing Co.

McGinn, Smith Transaction Funding Corp.
Mr. Cranberry LLC
MS Partners
MSFC Security Holdings LLC
NEI Capital LLC
Pacific Trust 02
Pine Street Capital Management LLC
Pine Street Capital Partners LP
Point Capital LLC
Prime Vision Communications LLC
Prime Vision Communication Management Keys Cove LLC
Prime Vision Communications of Cutler Cay LLC
Prime Vision Funding of Cutler Cove LLC
Prime Vision Funding of Key Cove LLC
RTC Trust 02
SAI Trust 00
SAI Trust 03
Security Participation Trust I
Security Participation Trust II
Security Participation Trust III
Security Participation Trust IV
Seton Hall Associates
TDM Cable Funding LLC
TDM Cable Trust 06
TDM Luxury Cruise Trust 07
TDM Verifier Trust 07
TDM Verifier Trust 07R
TDM Verifier Trust 08
TDM Verifier Trust 08R
TDM Verifier Trust 09
TDM Verifier Trust 11
TDMM Benchmark Trust 09
TDMM Cable Funding LLC
TDMM Cable Jr Trust 09
TDMM Cable Sr Trust 09
Third Albany Income Notes LLC
Travel Liquidators, LLC
White Glove Cruises LLC
White Glove LLC

EXHIBIT "2"

CARTER CONBOY

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October 6, 2011

VIA E-MAIL - mcgrathk@sec.gov

U.S. Securities & Exchange Commission
Division of Enforcement
3 World Financial Center, Suite 400
New York, NY 10281-1022

Att: Kevin P. McGrath, Esq.
Re: SEC v. McGinn Smith, et al.
Civil Action No.: 10-CV-457 (GLS/DRH)
Our file: 23598

Dear Mr. McGrath:

As you know, we represent Thomas J. Urbelis, Esq., of Boston. This letter is sent pursuant to Fed. R. Civ. P. 45(c)(2)(B) and constitutes Mr. Urbelis's objections to all aspects of a subpoena dated September 12, 2011 (the "September subpoena") as described in more detail below.

As a preliminary matter, Mr. Urbelis was deposed by the SEC at some length on June 1, 2010, on a range of issues related to this case, and Mr. Urbelis answered every question put to him. The deposition was not suspended but rather was concluded. We note that there appears to have been no court order granting leave to re-depose Mr. Urbelis as Fed. R. Civ. P. 30(a)(2)(A) requires. As far as we are aware, there has been no stipulation by the parties as to a re-deposition. In addition, in March of this year, Mr. Urbelis submitted a lengthy affidavit that in some respects expands upon his deposition testimony. As a second preliminary matter, we note that the SEC has obtained all of the relief it sought regarding the Trust in that the Trust's assets have been frozen. Since virtually all aspects of the September subpoena are related to the Trust, the subpoena does not appear to seek anything that is relevant to an issue in the case. Finally, we note that the September subpoena came 16 months after Mr. Urbelis's deposition and 2 months after his vindication by Magistrate Judge Homer as to the SEC's sanctions motion. The provisions of Fed. R. Civ. P. 26(c) plainly apply here. Accordingly, Mr. Urbelis objects to the subpoena in its entirety.



U.S. Securities & Exchange Commission
October 6, 2011
Page 2

Next, the September subpoena is duplicative of requests for documents described in a purported subpoena issued by the SEC on May 28, 2010 (the "May subpoena") as to which Mr. Urbelis provided documents and appeared for testimony despite the subpoena's plain unenforceability. Mr. Urbelis objects to being required to produce these materials anew in response to paragraphs 1-8 of the September subpoena.

In addition to the foregoing objections, Mr. Urbelis objects to each paragraph of the September subpoena for the following additional reasons. First, the time period described in the September subpoena is broad enough to cover materials constituting confidential communications between Mr. Urbelis and our office and/or his Boston counsel. Second, the document requests that expand upon those set forth in the May subpoena are unduly broad and vague and seek materials regarding Mr. Urbelis's investments (and those of his family) that are confidential, and in any event, are already in possession of the SEC, having been acquired in discovery or by means of the search warrants. Finally, the "Instructions" and "Definitions" set forth in the so-called "Subpoena Attachment" are manifestly overly broad, unduly vague, and unduly burdensome.

Each of the foregoing objections is expressly incorporated into the following paragraph-by-paragraph response to the individual paragraphs of the so-called "Documents Subpoenaed" section.

¶ 1-2. As noted, the first portion of these two paragraphs seek the same materials described in the May subpoena. Mr. Urbelis objects on that basis. As to the expanded request, Mr. Urbelis repeats the objections listed above.

¶ 3 – 8. These paragraphs are identical to those in the May subpoena. Mr. Urbelis objects as set forth above.

¶ 9. Subject to, and without waiving any of the foregoing objections, Mr. Urbelis is not in possession of materials related to direct communications with Mr. Wojeski.

¶ 10. The Court has already entered certain rulings as to Ms. Dunn, so materials related to any communications with her are irrelevant.

¶ 11. Mr. Urbelis was questioned during his deposition regarding communication with Mr. Featherstonhaugh.

¶ 12. Subject to, and without waiving any of the foregoing objections, Mr. Urbelis produced documents relating to Mr. Simons, and the SEC had the opportunity to question him about them.

¶ 13. See foregoing general objections.



U.S. Securities & Exchange Commission
October 6, 2011
Page 3

¶ 14-15. Subject to and without waiving any of the foregoing objections, Mr. Urbelis is not in possession of any responsive materials.

By way of summary, Mr. Urbelis objects to all aspects of the September subpoena, including the one requiring him to appear for deposition later this month. I invite you to contact me or Mr. Urbelis's Boston counsel for purposes of a conference regarding a motion for protective order that we are contemplating filing on Mr. Urbelis's behalf. As you know, we are obliged to confer and then involve Magistrate Judge Homer in this process.

Very truly yours,

CARTER, CONBOY, CASE, BLACKMORE,
MALONEY & LAIRD, P.C.

By: *s/MICHAEL J. MURPHY*

MJM:amb

cc: **Via E-Mail - tpeisch@ckrpf.com**

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