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January 17, 2012

Honorable David R. Homer
United States Magistrate Judge
United States District Court – Northern District of New York
James T. Foley U.S. Courthouse
445 Broadway, Room 441
Albany, New York 12207

RE: Securities and Exchange Commission v. McGinn, Smith & Co., Inc., et al.
10-CV-457 (GLS/DRH)

Dear Judge Homer:

Pursuant to Northern District of New York Local Rule 7.1(b)(2), the David L. and Lynn A. Smith Irrevocable Trust U/A August 4, 2004 (the “Trust”) respectfully requests a pre-motion conference. The Trust seeks permission to make a motion seeking to amend the Court’s Preliminary Injunction Order dated November 29, 2011 to authorize the release of necessary funds to enable the Trust to pay certain expenses associated with its administration and its defense of this litigation.

As you know, Geoffrey Smith became Trustee of the Trust well after this Court elected to re-freeze the entire corpus of the Trust including the real estate it purchased in the form of the Great Sacandaga camp from Lynn Smith. As a result of the subsequent freeze, the Trust has been unable to remain current on the property and school taxes associated with the camp the amount of which now due is \$18,319.62. In addition, the Trust expects that income taxes for 2011 will become due in April, 2012 as a result of its Pine Street Capital investment which will need to be paid to avoid incurring additional interest and penalties. The Trust is also indebted to the law firm, Featherstonhaugh, Wiley & Clyne, LLP, in the amount of \$112,863.63 for legal services it has incurred to date and will need additional monies to fund its defense at trial.

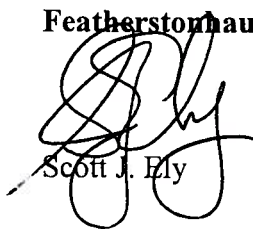
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As Trustee, Geoffrey Smith has a fiduciary duty to preserve the value of the Trust's assets and pay for legitimate expenses associated with its administration and defense. For these reasons, the Trust is respectfully requesting leave to file this application to amend the current preliminary injunction for the limited purposes of satisfying these liabilities.

I have conferred with Mr. Stoelting of the Securities and Exchange Commission as to the Trust's intent to seek such relief and based on those conversations, it does not appear the matter can be resolved without judicial intervention.

Respectfully Submitted,

Featherstonhaugh, Wiley & Clyne, LLP



Scott J. Ely

SJE:cc