

**Robert L. Gilbert**

1701 Huntsman Drive Aiken, South Carolina 29803-5239

Phone: (803) 649-4543 Facsimile: (404) 806-6239 gil@informationsecurity.org

February 21, 2012

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

**RECEIVED**  
FEB 23 2012

DAVID R. HOMER  
UNITED STATE MAGISTRATE JUDGE  
ALBANY, NEW YORK

Dear Judge Homer:

Re: McGinn Smith -- Case 1:10-cv-00457-GLS -DRH

I see that Defendants David Smith and Timothy McGinn requested leave of the Court to file motions to release assets for the payment of counsel fees in a related criminal case.

I believe that it would be wholly inappropriate, and an affront to those who have suffered financially at the hands of Messrs. Smith and McGinn, for you to take any action on this matter, other than to summarily dismiss their request.

I do have two suggestions as to how the Defendants' legal counsel situation could be resolved, without further diminishing the meager assets which are now potentially available to compensate, in a small way, their victims.

My first suggestion:

Attorneys for Smith and McGinn have loudly and vociferously proclaimed that their clients are not guilty of the charges. Therefore, those attorneys should be most willing to provide their services on a contingency basis. That is, when they prevail at the bar of justice -- as they have said that they surely will -- they can collect their fees from Smith and McGinn; since the assets will be unfrozen when Smith and McGinn are found to be innocent in the criminal and civil proceedings.

*Letter to Judge David R. Homer from Robert Gilbert – 02/21/2012*

My second suggestion:

Should the attorneys for Smith and McGinn be unwilling to put their “fees where their mouths are,” there is another viable solution. Smith and McGinn could avail themselves of the services of public defenders. This would be particularly appropriate, since this is the course that so many of their defrauded investors would have to take, should they find themselves the subject of a criminal prosecution.

I hope that you, Smith and McGinn will find my suggestions to be helpful.

Sincerely,

A handwritten signature in cursive script that reads "Robert L. Gilbert". The signature is written in black ink and has a long horizontal flourish extending to the right.

P.S. Since Receiver Brown and his staff have been on this case for 22 months, it would seem appropriate and timely that an accounting of the expenditure of investors' funds by that group should be issued.