



Since 1898

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June 7, 2010

Hon. David R. Homer
James T. Foley U.S. Courthouse
445 Broadway
Albany, New York 12207

Re: SEC v. McGinn, Smith & Co., Inc., et al
1:10-cv-00457-GLS-DRH
Our File No. CR-878

Dear Judge Homer:

I am advised by Mike Koenig that David Stoelting has told him that he intends to call Mr. McGinn and Mr. Smith on June 9, 2010 at a hearing on the plaintiff's motion for a preliminary injunction order. In a follow-up e-mail to Mr. Koenig, Mr. Stoelting offered an alternative to live testimony in the form of a declaration from Mr. McGinn and Mr. Smith in which each would invoke their constitutional privileges as to the allegations.

It is Mr. Stoelting's position that Your Honor's order entered on May 25, 2010 staying the testimony of Mr. McGinn and Mr. Smith applied only to the depositions scheduled for May 26 and 27, 2010 and does not apply to their testimony at the preliminary injunction hearing.

I respectfully submit that that position violates the spirit of Your Honor's order and is an unjustifiably narrow reading of our application and opposition to the testimony of Mr. McGinn and Mr. Smith in any civil proceeding during the pendency of the federal criminal investigation.

I don't believe it should be necessary to make a further stay application in connection with the preliminary injunction testimony as the arguments and principles advanced earlier are equally relevant to any testimony sought now by Mr. Stoelting.

I respectfully request a conference call with Mr. Stoelting, Mr. Koenig, Mr. Dreyer, myself and Your Honor at the court's convenience, and obviously prior to Wednesday.

Page 2

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June 7, 2010

I am available at any time today other than from approximately 2:00 p.m. to 2:45 p.m., and any time tomorrow other than from 7:45 a.m. to 8:45 a.m., and 11:45 a.m. to approximately 1:15 p.m. However, Sara Spain Holt is available from 11:45 a.m. to 1:15 p.m.

Respectfully yours,

E. STEWART JONES, PLLC

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ESJ, JR./ml