

Pierre and Beverly Conti
8 West Mill Road
Flourtown, PA. 19031
September 22, 2012

10-CV-457

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED

SEP 27 2012

LAWRENCE K. BAERMAN, CLERK
ALBANY

Honorable Christian Hummel
Federal magistrate Judge
445 Broadway Room 411
Albany, NY. 12207

Dear Judge Hummel,

We are writing to you as two of the nearly 1,000 investors who were defrauded by McGinn, Smith & Co. [re: SEC v. McGinn, Smith & Co., Inc., et al., 10 CV 457 (GLS)(DRH)] of approximately \$136 Million.

As you know the process to address our grievances is now in its 3rd year and we have tried to follow the proceedings through the website provided us (www.mcguinnessmithreceiver.com). What my wife and I have learned from accessing this website is that McGinn Smith & Co have been found guilty of fraud and are currently facing criminal charges; that as of June 8, 2012 the receiver had collected \$12,048,000.91 to be available, I assume, to disperse to the defrauded investors, although an additional \$508,946.81 has been paid for legal services (dockets #519,520, and 521) since that date; approximately \$376,109.84 in legal fees have been paid prior to June 8, 2012 (dockets #255,399,430) as well as additional fees granted without the dollar amounts recorded (dockets# 323-326 and 502-504); that the Receiver has approved and closed the process for administrating our claims; and our opportunity to get reimbursed through the SIPC route appears to be slipping away without some direct action from your bench.

We have asked and received support from a number of members of Congress urging Commissioner Schapiro to approve SIPC coverage of the McGinn Smith victims. (see attached) Defrauded investors from other states have received similar support from Congressional members of their respective states.

We understand, based on a letter from Mr Stoelting, Senior Trial Counsel for the SEC, to The Honorable David R. Homer, (attached) that the SEC has the power to file an application in Federal District Court (your court?) to require SIPC to initiate a liquidation proceeding to protect us and failing that to authorize the Division of Enforcement to compel SIPC to bring a liquidation proceeding. We ask that you support that action.

We have suffered long enough. We need your help and support in getting our lives back.

Respectfully,

Pierre and Beverly Conti

Pierre A. Conti
Cc: David P. Stoelting, Esq.

Beverly Conti



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

New York Regional Office
Three World Financial Center
New York, NY 10281

DIVISION OF
ENFORCEMENT

David Stoelting
Senior Trial Counsel
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(212) 336-1324 (fax)

May 22, 2012

BY ECF

The Honorable David R. Homer
United States Magistrate Judge
United States District Court
Northern District of New York
United States Courthouse
Albany, New York 12207

Re: *SEC v. McGinn, Smith & Co., Inc., et al.*, 10 CV 457 (GLS)(DRH)

Dear Judge Homer:

I write regarding the issue of coverage by the Securities Investor Protection Act of 1970 (SIPA) of the losses suffered by the victims of the McGinn Smith investment fraud. SIPA created the Securities Investor Protection Corporation (SIPC), which, subject to supervision by the Securities and Exchange Commission, maintains a fund for customer protection.

On September 30, 2011, I wrote to Your Honor and stated that we would advise the Court if the Commission made any determination regarding SIPA coverage. *See* Docket No. 391 (attached). At that time, the Commission had referred to SIPC another investment fraud involving the Stanford Group Company (SGC). Since then, several significant events have transpired.

After SIPC failed to take any action regarding SGC, on December 12, 2011, the Commission filed an Application, an Ex Parte Motion for an Order to Show Cause why the Application should not be granted, and related documents, in the United States District Court for the District of Columbia, Misc. No. 11-MC-678-RLW. The Commission requested that the court enter an order requiring SIPC to file an application for a protective decree with the federal district court for the Northern District of Texas pursuant to Section 5(a)(3) of SIPA with respect to SGC and to otherwise discharge SIPC's obligations under SIPA. The Application was filed seeking to compel SIPC to act in accordance with the Commission's conclusion that, based on the totality of the facts and circumstances, SGC failed to meet its obligations to its customers and that there are SGC customers in need of SIPA protection.

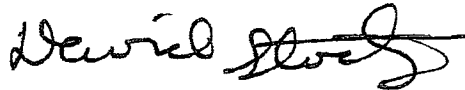
Following a hearing, on February 9, 2012, the district court granted the Commission's Ex parte Motion for an Order to Show Cause and denied SIPC's Motion to Strike. The court stated that it will evaluate the Commission's Application in a summary proceeding. The court noted that it will evaluate the Commission's Application with the understanding that the proceeding will only determine whether SIPC should be compelled to file an application for a protective decree in the Texas federal court; the Texas federal court would then determine whether such a decree should be granted. The court held a

The Honorable David R. Homer
May 22, 2012
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hearing on the merits of the Commission's Application on March 5, 2012. The court took the matter under advisement, and we are awaiting a decision.

Due to similar issues raised in the McGinn Smith and SGC cases, the coming decision of the U.S. District Court for the District of Columbia will have relevance to the McGinn Smith case. Consequently, we now anticipate that the Commission will consider whether to request that SIPC initiate a liquidation proceeding for the benefit of McGinn Smith investors, or to seek any relief under SIPA, after the court renders a decision in the SGC matter. At the time of any Commission determination, we will advise the Court and investors accordingly.

Respectfully submitted,



David Stoelting

cc (by e-mail and ECF):

All counsel
Nancy McGinn

Fred Rissinger
210 Butchershop Road
Duncannon, Pa. 17020
Tel: (717)834-4845

May 23, 2012

Dear Fellow McGinn Smith Investor:

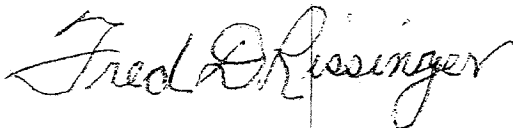
I wanted to share a letter with you that 17 legislators in Pennsylvania and 3 legislators in Delaware sent to the SEC requesting SIPC (Securities Investors Protection Corporation) coverage. As I understand, SIPC was established to reimburse securities investors when their money was stolen. It appears, from everything that the SEC has published on their website, our money was stolen by McGinn and Smith. I firmly believe the only way we, the investors, will be fully indemnified is if SIPC covers our claims. Again, as I understand, SIPC covers \$500,000 per person.

The letters that Pennsylvania and Delaware legislators sent were a result of calls and letters that people like me wrote imploring them to contact the SEC. I think if residents of other states demand their legislators follow the example of Delaware and Pennsylvania, then it will be very hard for SIPC to deny coverage. If we were fortunate enough, a dozen or more states will follow the Pennsylvania and Delaware example. For reference, SIPC has covered the Madoff victims and the Jon Corzine/MF Global victims.

Additionally, flood victims in Louisiana were given \$500,000 homes even though they did not have federal flood insurance.

Thank you for taking the time to read my letter. Hopefully you will be instrumental in getting your representative and senators to follow the Pennsylvania and Delaware examples.

Sincerely,



P.S. It certainly wouldn't hurt for you to write to other McGinn Smith investors and ask them to do the same thing with their legislators.

Congress of the United States

Washington, DC 20515

February 7, 2012

The Honorable Mary Schapiro
Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549


Dear Ms. Schapiro:

We write to you today regarding the status of the Securities and Exchange Commission's (Commission) investigation of the McGinn Smith fraud. In April 2010, the Commission filed a civil complaint against Timothy McGinn and David Smith alleging an ongoing fraud totaling \$136 million against nearly 1,000 investors, including more than 100 Pennsylvanians. Since filing its complaint, the Commission has not issued a final decision on whether it will refer the McGinn Smith case to the Securities Investor Protection Corporation (SIPC) for coverage. We encourage the Commission to give prompt attention to this case, particularly in terms of SIPC coverage.

The stories of ordinary Pennsylvanians who have been affected by this swindle are troubling. Many are elderly or retired, and some lost their entire retirement savings. Hundreds of thousands of dollars are owed to Pennsylvania investors who have lost not only their financial security but also their peace of mind. Any further delay in the Commission's investigation only compounds the distress of those who have no other legal recourse.

We respectfully request that the Commission provide a status report to us on this case and move expeditiously in every way legally possible in order to ensure that these investors are made whole. We along with the McGinn Smith investors eagerly await your response.

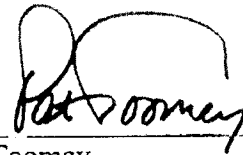
Sincerely,



Robert P. Casey, Jr.
United States Senator



Jason Altmire
Member of Congress



Pat Toomey
United States Senator



Lou Barletta
Member of Congress

M S Critz

Mark S. Critz
Member of Congress

Charles W Dent

Charles W. Dent
Member of Congress

Mike Doyle

Michael F. Doyle
Member of Congress

Chaka Fattah

Chaka Fattah
Member of Congress

Mike Fitzpatrick

Michael G. Fitzpatrick
Member of Congress

Jim Gerlach

Jim Gerlach
Member of Congress

Tim Holden

Tim Holden
Member of Congress

Mike Kelly

Mike Kelly
Member of Congress

Tom Marino

Tom Marino
Member of Congress

Patrick Meehan

Patrick Meehan
Member of Congress

Joseph R. Pitts

Joseph R. Pitts
Member of Congress

Allyson Y. Schwartz

Allyson Y. Schwartz
Member of Congress

Bill Shuster

Bill Shuster
Member of Congress

Vincent R. Gentile, Diana S. Gentile
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RCVD 1-11-12
USMS Homer's
Chambers (LAD)

11 JAN 2012

ATT: David P. Stoelting, Esq.

REF: S.I.P.C. & McGinn, Smith & Co. case# 1:10_cv_00457_GLS_DRH

Honorable David R. Homer
U.S. District Court of Northern
445 Broadway, Room 441
Albany, NY 12207

Re: 10cv 457

Your Honor:

Please note the letter sent to David P. Stoelting, Esq. on 11 JAN 2011

Dear Mr. Stoelting:

This letter to you is a follow up to our 23 SEP 2011 correspondence concerning the McGinn Smith Case. Your response on 9/30/2011 made us aware of SIPA's rules and the pending investigation.

It is now the tenth of January 2012 and AGAIN we are respectfully urging you to immediately apply for SIPC coverage in our case. We understand that SIPC has already paid investors losses in the Bernard Madoff case and it has rushed in to assume losses in the bankruptcy of the commodities firm MF Global. There are many charges, in the Stanford case, that seem almost verbatim to the McGinn Smith case (except for the off shore banking issue) and most recently the SEC has filed suit to compel SIPC to cover those losses. We have contacted our elected officials i.e. U.S. Congressman Chris Gibson, Senators for NY State Charles E. Schumer and Kirsten Gillibrand as well on 23 SEP 2011 but to no avail.

We respectfully request that you, now more than ever, as legal counsel for the SEC initiate the action necessary to compel a SIPA liquidation that hopefully & ultimately lead to SIPC protection.

Respectfully yours,

Vincent R. & Diana S. Gentile

Vincent R. & Diana S. Gentile

- cc: Honorable David R. Homer
- cc: William J. Brown, Esq. Receiver
- cc: Congressman Chris Gibson
- cc: Senatore Charles E. Schumer
- cc: Senator Kirsten Gillibrand
- cc: Brandan Lyons, Times Union: Senior Staff Writer



DIVISION OF
ENFORCEMENT

UNITED STATES
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ATTACHMENT

David Stoelting
Senior Trial Counsel
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(212) 336-1324 (fax)

September 30, 2011.

BY ECF

The Honorable David R. Homer
United States Magistrate Judge
United States District Court
Northern District of New York
United States Courthouse
Albany, New York 12207

Re: *SEC v. McGinn, Smith & Co., Inc., et al.*, 10 CV 457 (GLS)(DRH)

Dear Judge Homer:

I write in connection with the letter from Diana and Vincent Gentile to Your Honor and to the Receiver dated September 23, 2011 (Dkt. 389). The Gentiles' letter concerns coverage for victims of the McGinn Smith investment fraud by the Securities Investor Protection Act ("SIPA"), 15 U.S.C. §§ 78aaa *et seq.*, which is administered by the Securities Investor Protection Corporation ("SIPC"), a nonprofit, membership corporation funded by its members. As the question of SIPC coverage is of interest to all the victims in this case, I would like to make several points.

In general, SIPA provides narrow protections for customer assets held by failed broker-dealers. SIPA is not the equivalent of the FDIC, and it does not provide blanket coverage for investment losses. Under SIPA, the Commission has the power to file an application in federal district court to require SIPC to initiate a liquidation proceeding to protect customers of an insolvent broker-dealer. If the Board of Directors of SIPC fails to take such action, the Commission can authorize the Division of Enforcement to compel SIPC to bring a liquidation proceeding. Only the Commission has standing to initiate an action to compel a SIPA liquidation. Neither a private plaintiff nor a Court can independently take such action.

The issue of when the Commission will make a referral to SIPC depends on the facts and circumstances of each case. The question of whether a liquidation is appropriate under the SIPA involves a complex factual inquiry which considers, *inter alia*, the nature of the securities purchased, the type of fraudulent conduct involved, whether securities were custodied at the broker-dealer and the broker-dealer's relationship with affiliated unregistered entities.

The Commission staff takes the concerns of the McGinn Smith victims very seriously, and our focus in this litigation is to hold the wrongdoers accountable and to work with the Receiver to maximize recovery of assets. We are investigating closely the victims' status under SIPA, especially in light of the Commission's recent decision to refer the Stanford matter to SIPC (to date, the SIPC Board has not

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The Honorable David R. Homer
September 30, 2011
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indicated whether it will take action). See Press Release 2011-129, SEC Concludes That Certain Stanford Ponzi Scheme Investors Are Entitled to Protections of SIPA, available at www.sec.gov (June 15, 2011). We anticipate that the Commission will make a determination regarding these issues and will advise the Court and the investors accordingly.

Respectfully submitted,

/s
David Stoelting

cc (by e-mail and ECF): All counsel
Nancy McGinn