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**FOLLOWING DISMISSAL OF CRIMINAL CHARGES, COURT DROPS SEC'S CIVIL
SUIT AGAINST FORMER KMART EXECUTIVE JOSEPH HOFMEISTER**

WASHINGTON, February 12, 2004 – A federal judge in Detroit has dismissed a lawsuit filed by the U.S. Securities and Exchange Commission (SEC) against former **Kmart** merchandising executive **Joseph Hofmeister**, three months after federal prosecutors in Detroit withdrew the government's criminal securities fraud and conspiracy case against Hofmeister and colleague Tony Montini, Jr., announced Morgan, Lewis & Bockius LLP, Hofmeister's defense counsel.

“The dismissal of the SEC action lifts the last legal cloud hanging over Joe Hofmeister, an innocent man and an honest man who devoted his entire professional life to Kmart,” said Mark A. Srere, a litigation practice partner at Morgan Lewis who headed the defense team in one of America's most widely publicized recent cases of alleged criminal corporate wrongdoing. “The SEC's decision to dismiss the action on their own motion further demonstrates Mr. Hofmeister's innocence, which had been our contention from the outset of this prosecution.”

The SEC civil complaint against the two former Kmart executives was based largely on the government's evidence in the criminal case. Prosecutors alleged that Mr. Hofmeister and Mr. Montini intentionally conspired to withhold information from Kmart auditors and accountants regarding the reporting of a \$42.3 million payment from a greeting card company for the exclusive right to sell cards in Kmart stores over a five-year period. The government contended that Kmart, through the actions of the defendants, deceived investors by understating its second quarter 2001 losses by six cents a share, or 32 %, as a result of inflating the one-time value of the greeting card transaction revenue.

The government's criminal case against Mr. Hofmeister and Mr. Montini imploded on November 7, 2003, when, in a rare action during trial, the government, on its own motion, dismissed the criminal indictment. The dismissal followed an extraordinary cross-examination by Mr. Srere of the government's key Kmart witness, an accounting division vice president who reviewed the greeting card vendor transaction. The witness admitted that she may have made a mistake, that she thought Mr. Hofmeister did nothing wrong and that she was aware of relevant facts about the matter that she previously claimed under oath were concealed by the defendants.

In its motion to dismiss, the government said that it could no longer ethically and in good conscience proceed with the prosecution. Top Department of Justice officials, as well as the United States Attorney for the Eastern District of Michigan, agreed to the dismissal.

"This is one of the most visible cases in the current era of alleged corporate scandals, and one in which we are proud to have been involved," said James D. Pagliaro, leader of the Morgan Lewis global litigation practice. "Mark's superb cross-examination of the government's key witness not only demonstrates the caliber of the trial lawyers in our global litigation practice, but also exemplifies the commitment with which we defend our clients."

Amy J. Conway, an attorney in the Morgan Lewis global litigation practice worked with Mr. Srere to lead the team that defended Mr. Hofmeister. Both attorneys focus on corporate investigations and criminal defense within the Morgan Lewis global litigation practice. Mr. Montini was represented by Jonathan P. Graham, a partner at Williams & Connolly.

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