

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

10 Civ. 457 (GLS)
(DRH)

McGINN, SMITH & CO., INC.,
McGINN, SMITH ADVISORS LLC,
McGINN, SMITH CAPITAL HOLDINGS CORP.,
FIRST ADVISORY INCOME NOTES, LLC,
FIRST EXCELSIOR INCOME NOTES, LLC,
FIRST INDEPENDENT INCOME NOTES, LLC,
THIRD ALBANY INCOME NOTES, LLC,
TIMOTHY M. MCGINN, DAVID L. SMITH,
LYNN A. SMITH, DAVID M. WOJESKI, Trustee of
the David L. and Lynn A. Smith Irrevocable
Trust U/A 8/04/04, GEOFFREY R. SMITH,
LAUREN T. SMITH, and NANCY MCGINN,

Defendants, and

LYNN A. SMITH, and
NANCY MCGINN,

Relief Defendants and:

DAVID M. WOJESKI, Trustee of the
David L. and Lynn A. Smith Irrevocable
Trust U/A 0/04/04,

Intervenor.

WAIVER OF SERVICE OF SUMMONS

William J. Brown, as Receiver of defendants McGinn, Smith & Co, Inc., McGinn, Smith Advisors LLC, McGinn, Smith Capital Holdings Corp., First Advisory Income Notes, LLC, First Excelsior Income Notes, LLC, First Independent Income Notes, LLC and Third Albany Income Notes, LLC, acknowledges receipt of the Plaintiff's request that I waive service of Summons in this action and do so by this Waiver but retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the Court except for objections based on a defect in the Summons or in the service of the Summons.

Dated: August 31, 2010

PHILLIPS LYTTLE LLP

By /s/ William J. Brown

William J. Brown (Bar Roll #601330)

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