

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION :

*Plaintiff,* :

vs. :

10 Civ. 00457 (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, AND :  
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,* :

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 8/04/04, :

*Intervenor.* :

-----X

**MEMORANDUM OF LAW IN SUPPORT OF  
THE REQUEST TO RELEASE CERTAIN ASSETS BY  
DEFENDANTS TIMOTHY M. MCGINN AND DAVID L. SMITH**

**TABLE OF CONTENTS**

	<u>Page</u>
PRELIMINARY STATEMENT .....	2
FACTS .....	3
ARGUMENT	
I. The Court Should Release David Smith’s ERISA Qualified 401(K) Plan From The Asset Freeze Because It Is Not Subject To Pre Or Post Judgment Attachment.....	4
A. David Smith’s ERISA qualified 401(k) Plan is not properly subject to the PI Order pursuant to the anti-alienation provision of ERISA .....	4
B. David Smith’s ERISA qualified 401(k) Plan is not properly subject to the PI Order pursuant to NYCPLR § 5205 .....	7
C. Disbursements from David Smith ERISA qualified 401(k) plan are not subject to an action for money judgment pursuant to NYCPLR § 5205.....	8
II. The Court Should Release Frozen Assets To Preserve The Equity In Timothy McGinn’s Florida Home .....	9
A. The Court should release funds to pay for the mortgage, taxes, and maintenance of Timothy McGinn’s Florida home to prevent foreclosure on that property and preserve the asset for purposes of disgorgement should the SEC prevail in the instant action. ....	9
CONCLUSION.....	12

**TABLE OF AUTHORITIES**

Bd. of Ed. of the City of NY v. Tryball,  
86 A.D.2d 639 N.Y.S.2d 417 (Second Dept. 1982).....8

Guidry v. Sheet Metal Workers Nat’l Pension Fund,  
493 U.S. 365 S.Ct. 680 (1990).....6

Helmsley-Spear, Inc. v. Winter,  
74 A.D.2d 195 426 N.Y.S.2d 778 (First Dept. 1980).....7, 8, 9

In re Bank of America Corp. Securities, Derivative, and ERISA Litigation,  
No. 09 MD 2058(PKC), 2010 WL 3448197(S.D.N.Y. Aug. 27, 2010).....5

Kickham Hanley P.C. v. Kodack Retirement Income Plan,  
558 F.3d 204, 210 (2d Cir. 2009).....6

Lauder v. Jacobs,  
No. 11611/04, 2005 (Surrogates Ct., Westchester Co. Nov. 10, 2005).....7

SEC v. Schiffer,  
No. 97 Civ. 5853 (RO), 1998 (S.D.N.Y. June 11, 1998).....9

U.S. v. All Funds Distributed to Weiss,  
345 F.3d 49 (2d Cir. 2003).....6

**STATUTES**

NYCPLR § 5205 ..... 7, 8, 9

26 C.F.R. § 1.401(a)-13(c)(ii).....6

29 U.S.C. § 1002(2)(A). .....5

29. U.S.C. § 1056(d)(1) .....5

Defendants Timothy M. McGinn and David L. Smith (“Defendants”), by and through their undersigned attorneys, move the Court as follows:

**PRELIMINARY STATEMENT**

The Court should grant Defendants’ request to unfreeze David Smith’s ERISA qualified 401(k) plan because the inclusion of the plan in the Preliminary Injunction Order (“PI Order”) is prohibited by federal and New York State statutes. The release of Mr. Smith’s ERISA qualified 401(k) plan is statutorily required pursuant to ERISA’s anti-alienation provision and NYCPLR § 5205. Under the anti-alienation provision of ERISA, the plan itself may not be frozen while the funds are in the hands of the administrator. NYCPLR § 5205 sets forth a similar provision which protects funds held in trust by a plan administrator for the benefit of the plan’s beneficiary. Moreover, NYCPLR § 5205 further protects funds from an asset freeze or attachment once the funds have been disbursed to the beneficiary. Therefore, the Securities and Exchange Commission’s (“SEC”) inclusion of the plan in the asset freeze is entirely improper since it may not access those funds should it ultimately prevail and obtain a judgment. Including the 401(k) plan in the PI Order in this case does not serve to benefit the public interest, and only unfairly deprives the Defendants of assets they might use to pay living expenses while the PI Order is in effect.

In addition, the Court should unfreeze assets sufficient to preserve the value of Timothy McGinn’s Florida property to prevent it from being foreclosed upon. The Florida property is also the subject of the PI Order’s asset freeze and is a potential source of security for the SEC. It is in the interest of all parties to release funds to ensure that Mr. McGinn’s Florida property does not become subject to foreclosure, tax liens, or other encumbrances which would negatively impact the property’s equity.

## **FACTS**

### **The John Hancock Account**

The Defendants have been enjoined from accessing their assets since April 2010. *See* Docket No. 5. On or about April 30, 2010, the Defendants filed with the Court a list of their assets in redacted form (the SEC also received an un-redacted version of the same documents). *See* Docket Nos. 17 and 18. Mr. Smith disclosed in that filing that he had an incentive savings plan administered by John Hancock (the “401(k) Plan”). *See* Docket No. 17. The 401(k) Plan is ERISA qualified pursuant to the summary plan description. *See* Declaration of Alison B. Cohen, dated November 5, 2010 (“Cohen Decl.”), ¶¶ 2-5, Exhibits A-D.

In addition, Defendants’ counsel provided the SEC with the summary plan description and other documents relating to Mr. Smith’s 401(k) Plan. *See Id.* At or about the time the Defendants’ counsel provided the SEC with these documents, they discussed the propriety of including the 401(k) Plan in the PI Order. *See id.* at ¶ 6. Defendants’ counsel also discussed with the SEC the authority on which Defendants’ were asserting their position. *See id.* Nevertheless, the SEC would not agree to exclude the 401(k) Plan from the PI Order. *See id.*

### **The Florida Property**

Since this action was commenced, Defendants’ businesses have been put into receivership and they have lost their jobs. The mortgage and homeowner’s association fees on Mr. McGinn’s Florida property are now in arrears. *See id.* at ¶¶ 7-9, 12, Exhibits E-G. In addition, basic maintenance on the property (which includes electricity, insurance, pest control, and property taxes), remains unpaid. *See id.* at ¶¶ 16-20, Exhibits J-N. In fact, as a result of Mr. McGinn’s default on the mortgage on the Florida property, it has already become the subject of a possible foreclosure action which will result in a substantial devaluation of the Florida property

and leave fewer funds available for disgorgement should the SEC prevail in its action. *See id.* at ¶ 10, Exhibit F.

On or about September 7, 2010, Defendants' counsel submitted a letter to the Court seeking leave to file a motion requesting the release of certain of Defendants' assets. *See* Docket No. 138. On or about September 8, 2010, the Court held a pre-motion conference and granted Defendants leave to file their motion to request the release of certain assets. *See* Docket No. 140.

### **ARGUMENT**

#### **1. THE COURT SHOULD RELEASE DAVID SMITH'S ERISA QUALIFIED 401(K) PLAN FROM THE ASSET FREEZE BECAUSE IT IS NOT SUBJECT TO PRE OR POST JUDGMENT ATTACHMENT**

The Court should grant Defendants' motion and exclude the 401(k) Plan from the PI Order. The ERISA qualified 401(k) Plan is protected from the asset freeze and disgorgement by the SEC pursuant to both the federal ERISA statute and the applicable New York State statute. In particular, ERISA's anti-alienation provision shields funds which are held by the plan administrator. The New York CPLR provides similar protections. In addition, the New York CPLR further protects retirement funds by safeguarding all distributions from the retirement plan made to the beneficiary. Since the 401(k) Plan cannot be attached for purposes of collecting on a judgment— whether they are held by the plan administrator or distributed to Mr. Smith — the Court should exclude the 401(k) Plan from the PI Order.

##### **A. David Smith's ERISA qualified 401(k) Plan is not properly subject to the PI Order pursuant to the anti-alienation provision of ERISA**

The Court should grant Mr. Smith's request to release his ERISA qualified 401(k) Plan from the asset freeze because the plan itself cannot be attached. ERISA defines pension plans or employee pension benefit plans as:

“any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program--

(i) provides retirement income to employees, or

(ii) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond,

regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan.

29 U.S.C. § 1002(2)(A). Generally, 401(k) plans fall within ERISA’s definition of “pension plans.” *See generally, In re Bank of America Corp. Securities, Derivative, and ERISA Litigation*, Master File No. 09 MD 2058(PKC), 2010 WL 3448197 \*7 (S.D.N.Y. Aug. 27, 2010) (“It is undisputed that the BofA 401(k) Plan is an “employee pension benefit plan,” as defined by § 3(2)(A) of ERISA.”) Here, there is no dispute that Mr. Smith’s plan is ERISA qualified and, therefore, is subject to ERISA’s statutory framework. The documents defining the 401(k) Plan clearly state as much. *See Cohen Decl.* ¶ 3, Exhibit B.

Pension plans which fall under the provisions of ERISA may not be “assigned or alienated.” 29. U.S.C. § 1056(d)(1) (“Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated.”). Alienation or assignment is defined as “[a]ny direct or indirect arrangement (whether revocable or irrevocable) whereby a party acquires from a participant or beneficiary a right or interest enforceable against the plan in, or any part of a plan benefit payment which is, or may become, payable to the participant or beneficiary.” 26 C.F.R. § 1.401(a)-13(c)(ii). Thus, pension plan benefits are not the proper subject of an asset freeze. *See*

generally, *Guidry v. Sheet Metal Workers Nat'l Pension Fund*, 493 U.S. 365, 110 S.Ct. 680 (1990) (holding that a constructive trust for the benefit of the union was an impermissible assignment or alienation of pension benefits under ERISA where a former trustee of the pension plan was convicted of embezzling union funds); *see also U.S. v. All Funds Distributed to Weiss*, 345 F.3d 49, 56 (2d Cir. 2003) (“pension benefits may not be ‘assigned or alienated’ while the money is held by the plan administrator.”) (citing, *Robbins v. DeBuono*, 218 F.3d 197, 203 (2d Cir. 2000)).

The Second Circuit “has observed that a principal rationale behind ERISA’s anti-alienation provision is the ‘prohibition of involuntary levies by third party creditors on vested plan benefits.’” *Kickham Hanley P.C. v. Kodack Retirement Income Plan*, 558 F.3d 204, 210 (2d Cir. 2009) (holding that pursuant to ERISA’s anti-alienation provisions, a law firm could not draw attorneys fees from undistributed vested pension benefits) (quoting, *Ellis Nat'l Bank of Jacksonville v. Irving Trust Co.*, 786 F.2d 466, 470 (2d Cir. 1986)). Accordingly, ERISA explicitly protects retirement plans from becoming subject to a judgment such as the one the SEC seeks in this case.

It would be a *per se* violation of ERISA if the SEC attempted to attach the 401(k) Plan for the payment of a disgorgement or money penalty the SEC may be entitled should it prevail in this action. Mr. Smith’s 401(k) Plan is ERISA qualified and as a result, is subject to the anti-alienation provision of the ERISA statute. Pursuant to ERISA, vested pension benefits held in the 401(k) Plan cannot be subject to any judgment related attachment. If the 401(k) Plan is protected from a judgment levy, it simply does not make any sense to allow the SEC to hold Mr. Smith’s 401(k) Plan hostage to the asset freeze. No legitimate purpose is served by freezing an asset which is statutorily precluded from being attached. Accordingly, the 401(k) Plan is not an



asset which is properly subject to the PI Order and the Court should grant Defendants' motion for its release from the freeze.

**B. David Smith's ERISA qualified 401(k) Plan is not properly subject to the PI Order pursuant to NYCPLR § 5205.**

The Court should release the 401(k) Plan from the PI Order because it also is protected from any type of asset freeze pursuant to New York statutory provisions. Section 5205 of the NYCPLR prohibits the 401(k) Plan from inclusion in the PI Order. The 401(k) Plan is exempt from any pre-judgment attachment pursuant to the statute's "trust exemption," which provides:

Except as provided in paragraphs four and five of this subdivision, *all property while held in trust for a judgment debtor*, where the trust has been created by, or the fund so held in trust has proceeded from, a person other than the judgment debtor, is *exempt from application to the satisfaction of a money judgment*.

NYCPLR § 5205(c)(1) (emphasis added); *see also Helmsley-Spear, Inc. v. Winter*, 74 A.D.2d 195, 198-199, 426 N.Y.S.2d 778, 781 (First Dept. 1980) (holding that NYCPLR § 5205(c) exempts from application to the satisfaction of a money judgment "the principal of the [t]rust."); *see also Lauder v. Jacobs*, No. 11611/04, 2005 WL 3115332 \*3 (Surrogates Ct., Westchester Co. Nov. 10, 2005) ("Pursuant to CPLR 5205(c), assets held in certain "trusts" are exempt from the normal remedies available to creditors seeking either pre-judgment attachment and/or post-judgment enforcement of money judgments."). Under the clear statutory provisions and New York precedent, benefits held by John Hancock (the plan administrator) in "trust" for the benefit of David Smith pursuant to his 401(k) Plan cannot be subject to the PI Order. Therefore, the Court should grant Defendants' motion and release from the asset freeze the funds held in the 401(k) Plan by John Hancock for the benefit of Mr. Smith.

**C. Disbursements from David Smith ERISA qualified 401(k) plan are not subject to an action for money judgment pursuant to NYCPLR § 5205.**

Defendants' motion should be granted because the disbursements from the 401(k) Plan also cannot be attached should the SEC prevail in its enforcement action and be granted the relief it requests. It is improper (let alone illogical) to freeze the 401(k) Plan itself because any payments from the plan made to Mr. Smith (or any other beneficiary) are exempt under NYCPLR § 5205 from a claim of money judgment that the SEC may seek.

The NYCPLR treats the distributions paid from the pension plan to the beneficiary as a "trust" for purposes of protection from attachment. It provides in relevant part that "all *payments* from, either any trust or plan . . . which is qualified under section 401 of the United States Internal Revenue Code of 1986, as amended . . . shall be considered a trust which has been created by or which has proceeded from a person other than the judgment debtor." NYCPLR § 5205 (c)(2) (emphasis added). These payments or distributions from a 401(k) Plan are entirely exempt from a creditor's application for a money judgment. *See* NYCPLR § 5205(d)(1) ("any income or payment made from . . . assets or interests established as part of an individual retirement account plan . . . retirement or other plan described in paragraph two of subdivision (c) of this section . . . [the] exclusion of this paragraph shall become a *one hundred percent exclusion*." (emphasis added); *see also Bd. of Ed. of the City of NY v. Tryball*, 86 A.D.2d 639, 640, 446 N.Y.S.2d 417, 418 (Second Dept. 1982) (holding that pension funds distributed to a beneficiary are exempted from an order of attachment); *see also Helmsley-Spear, Inc.*, 74 A.D.2d at 199, 426 N.Y.S.2d at 781 (holding that income payments from a pension plan are exempt from an order of attachment, even in the case of tort creditors). Therefore, NYCPLR § 5205 protects from judgment not only the vested plan benefits held by the plan administrator, but also the distributions of those benefits to the retiree (here, Mr. Smith).

Section 5205 of the New York CPLR clearly provides that the income distributions Mr. Smith is entitled to receive from his 401(k) Plan are protected from the current asset freeze and any judgment the SEC may be able to obtain should it prevail in this action. There is no reason to freeze assets which cannot be attached at a later date. Moreover, pursuant to NYCPLR § 5205 it is proper for Mr. Smith to take distributions from the 401(k) Plan to live now even with the PI Order currently in place. Accordingly, the Defendants' motion should be granted and the 401(k) Plan, and any distributions paid to David Smith therefrom should be excluded from the PI Order.

**2. THE COURT SHOULD RELEASE FROZEN ASSETS TO PRESERVE THE EQUITY IN TIMOTHY MCGINN'S FLORIDA HOME**

**A. The Court should release funds to pay for the mortgage, taxes, and maintenance of Timothy McGinn's Florida home to prevent foreclosure on that property and preserve the asset for purposes of disgorgement should the SEC prevail in the instant action.**

The Court should grant the Defendants' motion and release funds from the asset freeze for the purposes of preventing Mr. McGinn's Florida property from going into foreclosure. Federal courts in New York have released funds from an injunctive order for the purpose of maintaining equity in assets which may become subject to an order of disgorgement. *See generally, SEC v. Schiffer*, No. 97 Civ. 5853 (RO), 1998 WL 307375 \*7 (S.D.N.Y. June 11, 1998) (releasing funds from an asset freeze order to "those necessary to maintain assets subject to ultimate liquidation and disgorgement."). If funds are not released, there is a substantial risk of a foreclosure action and a devaluation of the property value which may leave little if no equity in the property.

Mortgage payments have not been made on Mr. McGinn's home located in Boca Raton, Florida since the time the Defendants' assets were frozen. The principal balance on that mortgage is \$361,953.51. *See* Cohen Decl. ¶ 7, Exhibit E. The monthly payment of principal

and interest on the mortgage is \$3,538.80. *See id.* at ¶ 8. The last payment on the mortgage was made in April, 2010 and the amount in arrears is approximately \$21,957.32, which includes past due amounts of the principal and interest, unpaid late charges, and other fees.<sup>1</sup> *See id.* at ¶7-9, Exhibit E. To bring the account to date and stop the foreclosure proceedings which have already commenced, the Defendants requests a release of \$21,957.32. In addition, the Defendants request the release of \$3,538.80 per month for the duration of the instant litigation to ensure there is no further risk of foreclosure.

Additional minimal funds are required for certain other payments of obligations necessary to maintain the value of Mr. McGinn's Florida property. There is a monthly homeowner's association fee of \$520.56 that has not been paid since April 2010. *See id.* at ¶¶ 12-13, Exhibit G. The homeowners association has recorded a Claim of Lien against the property for the payment of the association fees and has recorded the lien in the Palm Beach County public records. *See id.* at ¶ 12. The total amount owed in late assessments, late fees, interest, and attorney's fees and costs is \$3,335.96 for the period of May 2010- September 2010. *See id.* at ¶ 14, Exhibit H. In an effort to settle with the homeowners association and bring his past due maintenance assessments current, Mr. McGinn entered into a payment plan and made the first payment of \$525.00 pursuant to the plan on or about September 17, 2010. *See id.* Thereafter, the amount of \$520.56 for the October 2010 assessment became due and remains unpaid. *See id.* at ¶ 15, Exhibit I. Accordingly, Defendants request that the Court releases \$3,970.96 (which includes the unpaid assessments from May 2010-October 2010, interest, late fees, attorney's fees and costs) from the frozen assets to pay the outstanding homeowners

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<sup>1</sup> It should be noted that the last mortgage statement available is dated July 19, 2010. *See id.* at ¶ 7, Exhibit E. The mortgagor has forwarded the account to its attorney to commence foreclosure proceedings, and therefore, is unable to provide a more recent account statement which specifically demonstrates the amounts in arrears. *See Cohen Decl.* ¶ 10-11, Exhibit F.

association assessment. In addition to the funds necessary to pay for this outstanding amount, Mr. McGinn requests that the Court release the amount of \$520.56 per month to pay for the association fee going forward through the duration of this litigation in order to avoid any further encumbrance on the property.

To avoid the imposition of a tax lien on the property, Mr. McGinn also requests that the Court release frozen funds to pay for taxes on the Florida residence. Taxes in the amount of \$6,099.50 will be due in March 2011. *See id.* at ¶ 16, Exhibit J. Defendants request that the Court set aside that amount from the frozen assets for the upcoming tax assessment to ensure that the property remains current on its tax payments.

In addition to the amounts requested above to cover the mortgage, homeowner's association fees and taxes, Mr. McGinn requests the release of funds to pay for the minimum upkeep of the home to avoid any negative impact on the property's value. Mr. McGinn requests that the Court release funds to pay for the monthly electric bill for the purpose of minimal air conditioning, which upon information and belief, is necessary to avoid the growth of mold and mildew and preserve the property. *See id.* at ¶ 17, Exhibit K. The monthly electric bill is approximately \$149.69 per month. *See id.* Mr. McGinn also requests that the Court release \$188.91 to pay the amounts owed in arrears to Florida Power & Light Company. *See id.* In addition, Mr. McGinn requests that the Court release funds to pay for pest control services in order to prevent insect infestation and resultant damage to the property. The monthly cost for such pest control is \$32.66 per month. *See id.* at ¶ 18, Exhibit L. Finally, Mr. McGinn requests that the Court releases funds to pay for the insurance on the Florida home. There were insurance renewals due in June 2010 which remain unpaid in the total amount of \$1,629. *See id.* at ¶¶ 19-20, Exhibits M-N.

In sum, Mr. McGinn requests a release of \$33,845.69 to pay for the mortgage payments in arrears on his Florida home, as well as the amount in arrears on the home owners association fees, the 2011 taxes, the amount in arrears on the electric statement, and the insurance renewal payments. In addition, for the duration of the instant litigation (or until such time that Mr. McGinn may earn sufficient income to pay for such costs), Mr. McGinn requests a monthly release of \$4,241.71, which represents the costs of the monthly mortgage payments, home owners association payments, monthly electric and pest control bills.

In the event the Court determines not to release the funds requested above relating to Mr. McGinn's Florida property, Defendants respectfully request that the Court modify the existing PI Order or issue a new preliminary injunction order to prevent devaluation of the property. Specifically, Defendants request that the Court enjoin the mortgage holder on Mr. McGinn's Florida property from commencing foreclosure action. The Defendants also request that the Court enjoin the home owners association, the Florida state and local tax authorities, the electric company, and the insurers from asserting a lien on Mr. McGinn's Florida property, terminating services based on non-payment, or engaging in any other action which would result in an encumbrance on Mr. McGinn's Florida property.

#### **CONCLUSION**

For the foregoing reasons, Defendants Timothy M. McGinn and David L. Smith respectfully request that the Court grant their motion in its entirety.

Dated: New York, New York  
November 8, 2010

**GUSRAE, KAPLAN, BRUNO &  
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By: /s/Alison B. Cohen

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*Attorneys for defendants Timothy M.*

*McGinn and David L. Smith*

**CERTIFICATE OF SERVICE**

I, Alison B. Cohen, hereby certify that on this 8<sup>th</sup> day of November 2010, I served a copy of Defendants' foregoing motion by CM/ECF upon the following:

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/s/Alison B. Cohen

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*Attorneys for Defendants Timothy M.  
McGinn and David L. Smith*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION

*Plaintiff,*

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*Defendants,*

LYNN A. SMITH, and  
NANCY MCGINN,

*Relief Defendants, and*

DAVID M. WOJESKI, Trustee of the David L.  
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*Intervenor.*  
-----X

**DECLARATION OF ALISON B. COHEN, ESQ.  
IN SUPPORT OF THE REQUEST BY DEFENDANTS  
TIMOTHY M. MCGINN AND DAVID L. SMITH TO RELEASE CERTAIN ASSETS**

I, Alison B. Cohen, Esq., declare the following:

1. I am an associate of the firm of Gusrae, Kaplan, Bruno & Nusbaum PLLC, attorneys for defendants David L. Smith and Timothy M. McGinn (the "Defendants"). I am admitted to

practice in the State of New York and the United States District Court in the Northern District of New York. I have personal knowledge of the matters set forth herein, except for those matters set forth upon information and belief.

2. On or about October 1, 2010, I sent an email to Lara Mehraban of the SEC regarding Mr. Smith's incentive savings plan administered by John Hancock (the "401(k) Plan"). A true and complete copy of the October 1, 2010 email is annexed hereto as Exhibit A.

3. I attached a copy of the summary plan description for David Smith's ERISA qualified 401(k) Plan to my October 1, 2010 email to Ms. Mehraban. A true and complete copy of the summary plan description for the McGinn Smith Incentive Savings Plan that was attached to the October 1, 2010 email is annexed hereto as Exhibit B.

4. I sent Ms. Mehraban a second email that same day about Mr. Smith's 401(k) plan. A true and complete copy of the October 1, 2010 email to Lara Mehraban is annexed hereto as Exhibit C.

5. I attached to my second email to Ms. Mehraban additional documents relating to the 401(k) Plan. A true and complete copy of the attachment to the second October 1, 2010 email is annexed hereto as Exhibit D.

6. At or about that same time, Defendants' counsel had a conversation with the SEC regarding the 401(k) Plan and the propriety of including that plan in the preliminary injunction order that is in place in this action. Specifically, Defendants' counsel cited to some of the same authority relied upon in the Defendants' instant motion in support of their contention that the 401(k) Plan should not be subject to the injunction. Even in light of the authority presented, the SEC would not agree to exclude the 401(k) Plan from the asset freeze.

7. The principal mortgage balance due to M&T Bank on Mr. McGinn's Florida property is \$361,953.51. A true and complete copy of the most current and available mortgage statement dated July 19, 2010 is annexed hereto as Exhibit E.
8. The monthly payment of principal and interest on the mortgage is \$3,538.80. *See* Exhibit E.
9. The last mortgage payment was made in April 2010. *See* Exhibit E.
10. On or about September 16, 2010, M&T Bank notified Mr. McGinn that it referred the mortgage on Mr. McGinn's Florida property to its attorneys to commence foreclosure proceedings. A true and complete copy of the September 16, 2010 foreclosure notification is annexed hereto as Exhibit F.
11. Upon information and belief, M&T Bank will not provide mortgage statements for the months of August, September, October and November 2010 once it has referred an account to its attorneys for foreclosure proceedings.
12. On or about August 20, 2010, the attorneys for the homeowner's association for Mr. McGinn's Florida property filed a Claim of Lien against the property for failure to pay the homeowners association fees since April 2010. A true and complete copy of the August 20, 2010 notice of the Claim of Lien is annexed hereto as Exhibit G.
13. The monthly homeowners association assessment is \$520.56. *See* Exhibit G.
14. On or about September 17, 2010, Mr. McGinn entered into a payment plan with the homeowners association and paid the amount of \$525.00. A true and complete copy of the payment plan is annexed hereto as Exhibit H.
15. On or about October 13, 2010, I received a letter from the attorneys for the homeowners association for Mr. McGinn's Florida property which stated the total amount due for the unpaid

assessments from May 2010 through October 2010, including interest, late fees and attorney's fees and costs was \$3,970.96. A true and complete copy of the October 13, 2010 letter is annexed hereto as Exhibit I.

16. Upon information and belief, taxes on Mr. McGinn's Florida property are due in March 2011. The amount due at that time will be approximately \$6,099.50. A true and complete 2010 notice of proposed property taxes for Mr. McGinn's Florida property is annexed hereto as Exhibit J.

17. Upon information and belief, it is necessary to run air conditioning on Mr. McGinn's Florida property at all times to prevent mold and mildew from developing. The monthly electric bill for Mr. McGinn's Florida property is approximately \$149.89. The amount owed in arrears is \$188.91. A true and complete copy of the September 2010 statement from Florida Power & Light Company for Mr. McGinn's Florida property is annexed hereto as Exhibit K.

18. The monthly cost for pest control on Mr. McGinn's Florida property is approximately \$32.66. A true and complete copy of a quarterly statement from Terminix is annexed hereto as Exhibit L.

19. An annual insurance renewal was due in June 2010 in the amount of \$363.00 on Mr. McGinn's Florida property. A true and complete copy of the insurance renewal statement from Citizens Property Insurance Corporation is annexed hereto as Exhibit M.

20. An annual homeowner insurance renewal was due in June 2010 in the amount of \$1,266.00 on Mr. McGinn's Florida property. A true and complete copy of the insurance renewal statement from Federated National Insurance Company is annexed hereto as Exhibit N.

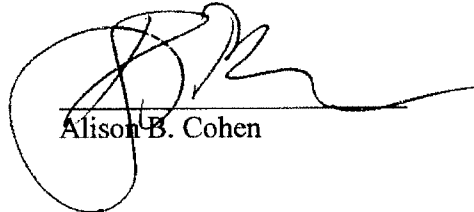
21. A true and complete copy of the opinion in the case captioned *In re Bank of America Corp. Securities Derivative, and ERISA Lit.*, No. 09-2058 (PKC), 2010 WL 3448197 (S.D.N.Y. Aug. 27, 2010) is annexed hereto as Exhibit O.

22. A true and complete copy of the opinion in the case captioned *Lauder v. Jacobs*, No. 11611/04, 2005 WL 3115332 (Surrogates Ct., Westchester Co. Nov. 10, 2005) is annexed hereto as Exhibit P.

23. A true and complete copy of the opinion in the case captioned *SEC v. Schiffer*, No. 97 Civ. 5853 (RO), 1998 WL 307375 (S.D.N.Y. June 11, 1998) is annexed hereto as Exhibit Q.

24. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 8, 2010.

  
Alison B. Cohen

## EXHIBIT A

**Alison Cohen**

---

**From:** Alison Cohen [acohen@gkblaw.com]  
**Sent:** Friday, October 01, 2010 3:30 PM  
**To:** 'Mehraban, Lara'  
**Cc:** 'mrusso@gkblaw.com'; 'Martin Kaplan'; 'Stoelting, David'; 'McGrath, Kevin'  
**Subject:** SEC v. McGinn Smith  
**Attachments:** 20101001151914895.pdf, 20101001151936524.pdf

Lara,

Attached please find information regarding David Smith's Florida property, including a mortgage statement, property tax assessment, letters from the property association, and a list of area comparables. Based on the real estate comps attached, the estimated value of the property is approximately \$1.9M.

We are gathering similar information relating to the McGinn property and will provide it to you once we receive it.

I am also attaching the summary plan description for Mr. Smith's ERISA qualified 401(k) plan.

Regards,  
Alison

**Alison B. Cohen, Esq.**  
Gusrae, Kaplan, Bruno & Nusbaum PLLC  
120 Wall Street, 11th Floor  
New York, New York 10005  
(212) 269-1400

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**EXHIBIT B**

**SUMMARY PLAN DESCRIPTION  
FOR  
McGinn Smith Incentive Savings Plan**

**McGinn Smith Incentive Savings Plan**

**Summary Plan Description**

**Table of Contents**

<b>DESCRIPTION</b>	<b>PAGE</b>
<b>INTRODUCTION</b>	<b>1</b>
<b>GENERAL INFORMATION</b>	<b>1</b>
<b>PARTICIPATION IN YOUR PLAN</b>	<b>2</b>
What individuals may become participants?	2
Who is considered an employee?	2
What individuals are not eligible for the Plan?	2
What types of contribution are available in the Plan?	2
What are the requirements to be eligible to make Salary Deferrals?	3
What are the requirements to be eligible for Employer Profit Sharing Contributions?	3
What are the requirements to be eligible for Matching Contributions?	3
How do I start contributing Salary Deferrals?	3
What Compensation will be used for my Contributions in the Plan?	3
How are Hours of Service determined?	3
What is a Year of Service for Eligibility purposes?	3
What is a Break in Service for Eligibility Purposes?	4
<b>CONTRIBUTIONS</b>	<b>4</b>
<b>YOUR CONTRIBUTIONS TO THE PLAN:</b>	<b>4</b>
What are Pre-Tax Salary Deferrals?	4
What are Roth Salary Deferrals?	4
Are there limits to how much I can contribute?	4
What are Catch-Up Contributions?	5
When can I expect my Salary Deferrals to be deposited?	5
When can I change my Salary Deferral Election?	5
What happens if I am contributing to another plan from a different Employer?	5
Can I roll money into the Plan?	5
<b>YOUR COMPANY CONTRIBUTIONS TO THE PLAN:</b>	<b>5</b>
What are Matching Contributions?	6
What Salary Deferrals are eligible to receive Matching Contributions?	6
Are there requirements to receive the Matching Contributions?	6
How is the Matching Contribution determined?	6
When can I expect the Matching contributions to be allocated?	6
What are Profit Sharing Contributions?	6
Are there requirements to receive a Profit Sharing Contribution?	6
What happens if I die, retire or become disabled during the Plan Year?	6
How is the Profit Sharing Contribution determined?	6
When can I expect the Employer Profit Sharing Contributions to be allocated?	7
When can I expect the Employer Contributions to be deposited?	7
When is a Plan top heavy?	7
What happens if the Plan becomes top heavy?	7
<b>VESTING</b>	<b>7</b>
What is a Year of Service for vesting purposes?	7
What is a Break in Service for vesting purposes?	7

Is any of my service excluded?	7
How much will I be entitled to receive from my Employer Accounts if I leave before retirement?	8
What is the Top Heavy Vesting Schedule?	8
What about my Salary Deferral and Rollover accounts?	8
What are my Beneficiaries entitled to if I die?	8
What am I entitled to if I become disabled?	8
What happens to the account balance that I am not vested in?	8
<b>PARTICIPANT ACCOUNTS</b>	<b>9</b>
Can I take a loan from my accounts?	9
What investments are used?	9
How do my accounts receive a gain or loss due to the investments?	9
Does my Plan offer life insurance?	9
What are the Plan Expenses?	9
<b>DISTRIBUTIONS</b>	<b>10</b>
Does my Plan allow hardship distributions?	10
Does the Plan allow for In-Service distributions?	10
May I take a distribution of my Roth Deferrals?	10
What are Normal Retirement Benefits?	10
When will I receive my Normal Retirement Benefits?	10
Does the Plan have Disability Benefits?	10
What benefits will I receive upon Termination?	11
What are distributions due to a Domestic Relations Order?	11
How will I receive my distribution?	11
Will the Plan automatically distribute any of my benefit?	12
What is a Required Minimum Distribution?	12
How will my Distributions be taxed?	12
<b>LOAN PROCEDURES</b>	<b>12</b>
<b>OTHER IMPORTANT INFORMATION</b>	<b>15</b>
Are my benefits protected?	15
Can the Plan be amended or terminated?	15
<b>PARTICIPANT RIGHTS UNDER ERISA</b>	<b>16</b>

**SUMMARY PLAN DESCRIPTION  
FOR  
McGinn Smith Incentive Savings Plan**

**INTRODUCTION**

Effective January 1, 1987, McGinn, Smith & Co. Inc. established McGinn Smith Incentive Savings Plan to recognize your hard work and good efforts. The plan is for the exclusive benefit of all eligible employees and their beneficiaries with the intention to provide a measure of retirement security for your future.

This Summary Plan Description reflects the plan options as of January 1, 2009.

This Summary Plan Description is a brief description of your plan and your rights and benefits under the plan and is not intended to cover every plan provision. This Summary Plan Description is not meant to interpret or change the provisions of your plan. A copy of your plan is on file at your employer's office and may be read by you, your beneficiaries, or your legal representatives at any reasonable time. This plan is subject to the provisions of the Employee Retirement Income Security Act of 1974 (ERISA). If you have any questions regarding either your plan or this Summary Plan Description, you should ask your plan administrator. If any discrepancies exist between this Summary Plan Description and the actual provisions of the plan, the plan shall govern.

**GENERAL INFORMATION**

<b>Plan Name:</b>	McGinn Smith Incentive Savings Plan
<b>Employer:</b>	McGinn, Smith & Co. Inc. 99 Pine Street 5th Floor Albany, NY 12207 (518) 449-5131
<b>Employer Tax ID:</b>	14-1620471
<b>Three Digit Plan Number:</b>	001
<b>Type of Plan:</b>	Cash or Deferred Profit Sharing Plan
<b>Administration Type:</b>	Plan Administrator
<b>Plan Administrator:</b>	McGinn, Smith & Co. Inc. 99 Pine Street 5th Floor Albany, NY 12207 (518) 449-5131
<b>Plan Administrator ID Number:</b>	14-1620471
<b>Legal Agent:</b>	McGinn, Smith & Co. Inc. 99 Pine Street 5th Floor Albany, NY 12207 (518) 449-5131

Service of legal process may also be made upon a plan trustee or the plan administrator as listed herein.

**Trustees:** Timothy M. McGinn  
David L. Smith

**Funding Arrangement:** Trust

**Trust Tax ID Number:** 03-0311232

**Plan Year:** January 1st to December 31st

**Limitation Year:** January 1st to December 31st

**Anniversary Date:** December 31st

**Valuation Date:** Daily

### **PARTICIPATION IN YOUR PLAN**

In order to take advantage of the opportunities provided by your plan you must participate in the plan. There may be certain restrictions to your eligibility and participation. Following is information about how you can participate in the plan.

#### **What individuals may become participants?**

As an employee of McGinn, Smith & Co. Inc. you may participate in the plan, once you have met the eligibility requirements.

This also includes employees of McGinn, Smith Alarm Trading LLC. A detailed list of the employers sponsoring this plan and their addresses may be requested in writing to your plan administrator.

#### **Who is considered an employee?**

An employee is an individual who performs services for the employer as a common law employee, a self-employed individual who is treated as an employee, or a leased employee.

#### **What individuals are not eligible for the Plan?**

The following individuals are not eligible for participation in the plan:

1. Members of a collective bargaining unit; and
2. Non-resident aliens.

#### **What types of contributions are available in the Plan?**

There are 3 different contribution types available in the plan:

1. Employer Non-Elective: This is also known as a profit sharing contribution. Your employer will, at its discretion make a contribution to the plan.
2. Elective Deferrals: This type of contribution is also known as 401(k) Contributions or Salary Deferral Contributions.

3. **Employer Matching:** In order to receive these contributions you must be making salary deferrals to the plan. The employer makes these contributions based on the salary deferrals contributed by the participant.

**What are the requirements to be eligible to make Salary Deferrals?**

To be eligible to make a salary deferral contribution you must have attained age 21.0 and completed one (1) year of service. This requirement is satisfied upon working 1,000 hours during a consecutive 12-month period. Once you have met this requirement, you will enter the plan the first day of each calendar month of the plan year, coincident with or next following satisfaction of the eligibility requirements.

**What are the requirements to be eligible for Employer Contributions?**

To be eligible to receive an employer Non-Elective contribution you must have attained age 21.0 and completed one (1) year of service. This requirement is satisfied upon working 1,000 hours during a consecutive 12-month period. Once you have met this requirement, you will enter the plan the first day of each calendar month of the plan year, coincident with or next following satisfaction of the eligibility requirements.

**What are the requirements to be eligible for Matching Contributions?**

To be eligible to receive a matching contribution you must have attained age 21.0 and completed one (1) year of service. This requirement is satisfied upon working 1,000 hours during a consecutive 12-month period. Once you have met this requirement, you will enter the plan the first day of each calendar month of the plan year, coincident with or next following satisfaction of the eligibility requirements.

**How do I start contributing Salary Deferrals?**

To contribute to your plan, your employer will ask you to complete a Salary Deferral Agreement. It is here that you tell your employer how much of your income you wish to defer to your plan. These contributions will be deducted from your paycheck on a pre-tax or after-tax basis. You do not have to complete an enrollment form to receive an employer profit sharing contribution.

**What Compensation will be used for my Contributions in the Plan?**

The compensation used to calculate your contributions will be based on your W-2 wages, including compensation due to SEP deferrals (section 402(h)(1)(B)), Cafeteria deferrals under Section 125, Deemed Section 125 Compensation, transportation compensation (Section 132(f)(4)), 401(k) and 403(b) deferrals (Section 402(e)) and 457(b) deferrals.

The first year you are a participant your compensation will be from the entry date as a participant.

**How are Hours of Service determined?**

You are credited with the actual hours you work, and for hours for which you are paid but not at work, such as paid vacation or paid sick leave.

However, if records of your hours are not maintained, you are credited with 45 hours for each week in which you work at least one hour, as a backup method of crediting you with hours of service.

**What is a Year of Service for Eligibility purposes?**

You will earn a year of service for purposes of eligibility if you are credited with 1000 hours of service during the eligibility computation period. The "Eligibility Computation Period" is the 12-month period that begins with the date you were hired. Thereafter the eligibility computation period becomes the plan year

and begins the first day of the plan year that began in your initial eligibility computation period. Each subsequent period is the plan year.

**What is a Break in Service for Eligibility Purposes?**

When you fail to complete more than 500 hours during the plan year, you incur a break in service. Thus, in any year in which you work less than 500 hours, you will incur a break in service.

However, in certain circumstances, your plan is required to credit you with 500 hours, even though you didn't actually work 500 hours. This is primarily if you take time off to have, adopt or care for a child for a period immediately following the birth or adoption. You will receive this credit only for the purpose of determining whether you have incurred a break in service and not for receiving additional credit for a contribution or for vesting.

**CONTRIBUTIONS**

As a plan participant, you can contribute a part of your pay on a tax-deferred basis (that is, before federal and state income taxes are deducted) or on an after-tax basis (that is, after both federal and state income taxes are deducted). Your employer may also make contributions to the plan.

**YOUR CONTRIBUTIONS TO THE PLAN:**

When you enroll in the plan, you decide whether to make your contributions on a pre-tax basis, an after-tax basis or a combination of the two. You will also select the percentage or dollar amount of your pay to be deducted as a pre-tax or an after-tax contribution. Your employer will deduct the amount you've elected from your paycheck in accordance with procedures established by your employer.

**What are Pre-Tax Salary Deferrals?**

Pre-tax salary deferrals are deducted from your pay before federal income taxes are calculated. This reduces your taxable income by the amount you have elected to save under the plan. Since your taxable income is reduced, you pay less in current federal income taxes. This money is accumulated on a tax deferred basis until it is distributed from the plan. You should consult your plan administrator or tax advisor regarding treatment of salary deferrals for purposes of state and local taxes. See "Distributions for additional information on tax consequences when you withdraw your money from the plan.

**What are Roth Salary Deferrals?**

All employees who are eligible to make pre-tax salary deferrals can also make after-tax salary deferrals. These contributions are also known as Roth Deferral Contributions. This means that you will be taxed on the money when it is withheld from your paycheck. You can contribute all or a portion of salary deferral as a Roth deferral. There are certain withdrawal restrictions for Roth deferral contributions. See "Distributions from Roth Deferral Accounts" in the distribution section of this SPD.

**Are there limits to how much I can contribute?**

There are no plan imposed limits on the amount you may defer.

The IRS limits the maximum amounts that can be contributed on a pre-tax or after-tax salary deferral basis. For 2009, that limit is \$16,500.

If you are age 50 or older, you may be able to contribute in excess of this limit. See Catch-Up Contributions below.



**What are Catch-Up Contributions?**

All employees who are eligible to make salary deferrals under this plan and who have attained age 50 before the close of a plan year, shall be eligible to make catch-up contributions. The catch-up contribution will be made in addition to the regular salary deferrals mentioned above. The IRS limits the amount that can be contributed as a catch-up contribution. For the 2009 tax year, that limit is \$5,500. For future tax years, the limit is subject to cost-of-living increases as published by the IRS.

**When can I expect my Salary Deferrals to be deposited?**

Salary deferrals are deposited in the trust as soon as reasonably possible, following guidelines issued by the Department of Labor.

**When can I change my Salary Deferral Election?**

You may make an election, or change an election at any time.

You may revoke your Salary Deferral Election at any time.

**What happens if I am contributing to another plan from a different Employer?**

If you participate in two or more deferred compensation plans (which include 401(k), Simplified Employee Pensions and 403(b) plans), your total deferrals to all plans could exceed IRS limits for the year. To avoid paying excise taxes if excess contributions have to be returned, you may want to designate which plan is to return any excess contributions to you.

If you elect to have this plan return any excess, you should notify the plan administrator so that the excess can be returned to you, along with any earnings, before April 15th following the year in which the deferrals were withheld.

**Can I roll money into the Plan?**

Rollovers are permitted only if you are a participant.

Direct transfer rollovers are permitted from a qualified plan described in Code sections 401(a) or 403(a), excluding after-tax employee contributions, an eligible plan under Code section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, and an Individual Retirement Account or Annuity described in Code sections 408(a) or (b) or 408A that is eligible to be rolled over and would otherwise be includible in gross income.

You may rollover an eligible distribution from a qualified plan described in Code sections 401(a) or 403(a), excluding after-tax employee contributions, an eligible plan under Code section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, and an Individual Retirement Account or Annuity described in Code sections 408(a) or (b) that is eligible to be rolled over and would otherwise be includible in gross income.

In-kind rollovers are not permitted.

**YOUR COMPANY CONTRIBUTIONS TO THE PLAN:**

In addition to your salary deferrals, your employer may make other types of contributions to the plan such as profit sharing contribution or a matching Contribution.

**What are Matching Contributions?**

As an incentive to make salary deferrals to the plan your employer may contribute a certain percentage or dollar amount each year. This additional employer contribution is known as a matching contribution.

**What Salary Deferrals are eligible to receive Matching Contributions?**

Pre-tax salary deferral contributions, Roth deferral contributions, and Catch-up salary deferral contributions will be matched at the same rate.

**Are there requirements to receive the Matching Contributions?**

You will be eligible to receive an allocation of matching contribution regardless of the hours you work during the plan year.

**How is the Matching Contribution determined?**

The amount of the match depends on your salary deferrals. Each year, your employer may at their discretion contribute a set matching percentage that is allocated proportionate to the amount of your salary deferrals. This amount may be a flat dollar amount or tiered formula as the employer elects each year. There are no additional limits imposed on the matching contributions.

**When can I expect the Matching contributions to be allocated?**

The matching contributions made by your employer will be allocated to your matching contribution account as of the last day of the pay period.

**What are Profit Sharing Contributions?**

The company may make a profit sharing contribution to the plan each year and in such amount, if any, as it may determine.

**Are there requirements to receive a Profit Sharing Contribution?**

To be eligible to receive an allocation of the discretionary employer profit sharing contributions you must complete 1000 hours of service during the plan year and be employed the last day of the plan year.

**What happens if I die, retire or become disabled during the plan year?**

If you die during the plan year, you will receive a contribution regardless of the hours you worked during the plan year. If you retire during the plan year, you will receive a contribution regardless of the hours you worked during the plan year. If you become totally disabled during the plan year, you will receive a contribution regardless of the hours you worked during the plan year.

**How is the Profit Sharing Contribution determined?**

Your share of the discretionary contribution is based on the relationship of your compensation to the total compensation for all participants. For example, if your compensation is \$20,000 and if the total compensation is \$1,000,000, your share would be 2% of the total discretionary contribution. In our example, if the discretionary contribution is \$30,000, your share would be:

$$\begin{aligned} \$30,000 \times (\$20,000/\$1,000,000) &= \$600 \text{ or} \\ \$30,000 \times .02 \text{ (2\%)} &= \$600 \end{aligned}$$

**When can I expect the Employer Profit Sharing Contributions to be allocated?**

The profit sharing contributions made by your employer will be allocated to your profit sharing account as of the last day of the plan year.

**When can I expect the Employer Contributions to be deposited?**

The employer contributions to the trust are normally paid by the company directly to the Trust either during the plan year or after the close of the plan year (within the time during which the Company has to file its federal tax return).

**When is a Plan top heavy?**

The plan becomes top heavy if more than 60% of the account balances are attributable to "key employees". Key employees are certain highly compensated officers or owner/shareholders.

Each year, the plan administrator will make a top heavy determination.

**What happens if the Plan becomes top heavy?**

If the plan becomes top heavy in any plan year, participants who are not "Key Employees" must receive a minimum contribution for such plan year. This amount is based on the amount of contribution that the key employees receive and may be zero. There may also be a change to the vesting schedule for that year. See "What is the Top Heavy Vesting Schedule?"

Members of a collective bargaining agreement are not eligible for the contribution.

**VESTING**

Vesting is the non-forfeitable balance of your employer contribution account(s) that you will be entitled to receive after your employment with the company ends. If you terminate employment before you meet the requirements for retirement, the distribution from your employer contribution account(s) will be limited to the vested portion. Your vesting percentage grows with your years of vesting service.

**What is a Year of Service for vesting purposes?**

You will earn a year of service for purposes of vesting if you are credited with 1000 hours of service during the plan year. You cannot earn more than one year of vesting service during the plan year.

**What is a Break in Service for vesting purposes?**

When you fail to complete more than 500 hours during the plan year, you incur a break in service. If you have incurred a break in service, your vesting percentage will not increase for the plan year in which the break occurs.

However, in certain circumstances, your plan is required to credit you with 500 hours, even though you didn't actually work 500 hours. This is primarily if you take time off to have, adopt or care for a child for a period immediately following the birth or adoption. You will receive this credit only for the purpose of determining whether you have incurred a break in service and not for receiving additional credit for a contribution or for vesting.

**Is any of my service excluded?**

No, all years of vesting service with your employer except those excluded due to a break in service will be included in determining your vested account balance.

**How much will I be entitled to receive from my Employer Accounts if I leave before retirement?**

If you leave employment due to termination, your employer account along with earnings you are entitled to will be based on the following schedules:

Vesting Schedule for Employer Profit Sharing:

<u>Years of Vesting Service</u>	<u>Percent Vested</u>
Less than 2	0.000%
2 but less than 3	20.000%
3 but less than 4	40.000%
4 but less than 5	60.000%
5 but less than 6	80.000%
6 or more	100.000%

Vesting Schedule for Employer Matching:

<u>Years of Vesting Service</u>	<u>Percent Vested</u>
Less than 2	0.000%
2 but less than 3	20.000%
3 but less than 4	40.000%
4 but less than 5	60.000%
5 but less than 6	80.000%
6 or more	100.000%

**What is the Top Heavy Vesting Schedule?**

When the plan is top heavy, your contributions will be vested according to the following top heavy vesting schedule:

The top heavy vesting schedule for the employer profit sharing is the same as listed above.

**What about my Salary Deferral and Rollover accounts?**

Salary deferrals (including any catch-up contributions) and rollover accounts along with those earnings associated with these accounts are always 100% vested.

**What are my Beneficiaries entitled to if I die?**

If you die while still an employee, your employer profit sharing account, and employer matching account will become 100% vested. Your beneficiary will be entitled to receive 100% of your account.

**What am I entitled to if I become disabled?**

You will be entitled to 100% of your employer profit sharing account, and employer matching account.

**What happens to the account balance that I am not vested in?**

The non-vested portion of your account will be forfeited and used to offset plan expenses or may be used to reduce the employer or matching contribution.

A forfeiture will be deemed to have occurred as of the end of the plan year in which the earlier of the

following occurs:

- 1) You incur five (5) consecutive breaks-in-service; or
- 2) You receive a distribution of your entire vested account balance.

If you are reemployed after incurring five consecutive breaks in service, all your years of service after such breaks in service shall apply for the purposes of vesting in your employer-derived account balance that accrued before such breaks, but both pre-break and post-break service shall count for the purposes of vesting the employer-derived account balance that accrues after such breaks.

If you terminate employment and are later rehired by the employer, your years of service after reemployment may be added to the years of service you had accumulated when you left. In order for the two periods of service to be added together, you must return to work within 5 years of your termination date.

If you are entitled to a restoration of your account balance that was forfeited, the plan will first use any forfeitures arising in the year of restoration. If that amount is not enough, the employer will make an additional contribution specifically allocated to your account.

## **PARTICIPANT ACCOUNTS**

Under McGinn Smith Incentive Savings Plan, the money you deposit and any employer contributions are placed into investment accounts, which are credited with gains and losses at each valuation date.

Separate accounts are set up for each different type of money, for example: 401(k) deposits, matching, discretionary, rollover, employer contributions (if any) and qualified non-elective contributions because there are different plan and IRS rules for each type of contribution.

### **Can I take a loan from my accounts?**

Your plan permits loans. See the Participant Loan section for the loan procedures.

### **What investments are used?**

The contributions to the plan are deposited into investment accounts that are credited with gains and losses. You may direct the plan on how you want all of your accounts to be invested. It is intended that your plan meet the requirements of ERISA section 404(c) by providing you with sufficient information for you to make informed investment choices. This information will be provided by the financial institutions managing the investment options.

### **How do my accounts receive a gain or loss due to the investments?**

Each investment account is credited with investment gain or loss as of each valuation date. The total value of your account varies with the value of its investments and your account may go up or down on a(n) (annual, daily, quarterly, etc) basis.

### **Does my plan offer life insurance?**

No life insurance policies shall be purchased.

### **What are the Plan Expenses?**

This policy shall be effective for expenses allocated on or after January 1, 2009.

Reasonable administrative expenses of the plan and trust may be paid by the plan to the extent not paid

by the employer. Administrative expenses attributable to terminated participants shall be allocated among the terminated participants by charging each particular expense to the account balance of the terminated participant responsible for the expense. Administrative expenses attributable to active participants shall be allocated among the active participants by charging each particular expense to the account balance of the active participant responsible for the expense.

Investment expenses of the plan and trust may be paid by the plan to the extent not paid by the employer.

## **DISTRIBUTIONS**

### **Does my plan allow hardship distributions?**

Hardship distributions of your pre-tax salary deferrals and Roth deferrals are not permitted.

### **Does the plan allow for In-Service distributions?**

An in-service distribution is one that you receive while you are actively employed. The primary purpose of the plan is to provide benefits to you upon your retirement; however, you may request an in-service distribution of all or a portion of some of your accounts as listed below:

#### **Salary Deferrals:**

You may receive an in-service distribution of your salary deferral account after you have reached age 59.5.

#### **Other Accounts:**

You may receive an in-service distribution of your accounts other than salary deferral amounts after you have reached age 59.5. You may receive an in-service distribution of amounts attributable to rollover contributions or voluntary after-tax contributions at any time, without restriction.

In-service distributions may be taken from all of your accounts.

### **May I take a distribution of my Roth Deferrals?**

There are certain restrictions that apply to receiving a distribution from your Roth deferral account. If any deferral contribution designated as a Roth deferral is withdrawn prior to the five (5) taxable year period beginning with the taxable year in which the Roth account is first established or prior to age 59-1/2 your distribution will consist of a pro-rata share of Roth earnings and Roth deferral. The earnings will be included in your gross income. To avoid a tax on the earnings of Roth deferral accumulated amounts, including earnings the withdrawal must be made after the fifth taxable year that your Roth account is first established and after age 59-1/2 or on account of your death or disability.

### **What are Normal Retirement Benefits?**

You will reach the plan's normal retirement age when you reach age 65.

Your normal retirement date is the first day of the month coincident with or next following the date you reach normal retirement age.

At your normal retirement age, you will be fully vested in your employer contribution account.

### **When will I receive my Normal Retirement Benefits?**

Payment of your benefits will begin as soon as practicable following your retirement.

### **Does the Plan have Disability Benefits?**

Should you become permanently disabled while a participant under this plan, you will receive 100% of your account balance.

You will be considered disabled if you suffer from a medically determinable physical or mental disability that is expected to result in death or to last a continuous period of 12 months that renders you incapable of performing your job duties. A determination of disability will be made by the plan administrator in a uniform, nondiscriminatory manner on the basis of medical evidence. You will also be considered disabled if the Social Security Administration has determined that you are eligible to receive Social Security disability benefits.

If it is determined you are disabled, your payments will begin as soon as practicable following your disability retirement.

**What benefits will I receive upon Termination?**

If your employment is terminated for any reason other than those set out above, you will be entitled to that portion of your employer accounts in which you are vested.

"Vesting" refers to the percentage of your account balance you are entitled to at any point in time. For each year you remain a participant in the plan, you may become vested with a higher percentage of your employer account balance. See the Vesting Section for more information.

Payment of your benefits will begin within a reasonable period following your termination of employment.

**What are distributions due to a Domestic Relations Order?**

In general, contributions made by you or your employer for your retirement are not subject to alienation. This means they cannot be sold, used as collateral for a loan, given away or otherwise transferred. They are not subject to the claims of your creditors. However, they may be subject to claims under a Qualified Domestic Relations Order (QDRO).

The administrator may be required by law to recognize obligations you incur as a result of court ordered child support or alimony payments. The administrator must honor a "Qualified Domestic Relations Order," which is defined as a decree or order issued by a state court (or other state authorized body) that obligates you to pay child support or alimony, or otherwise allocates all or a portion of your assets in the plan to "an alternate payee" such as your spouse, child or other dependent. If a QDRO is received by the administrator, all or portions of your benefits may be used to satisfy the obligation. It is the plan administrator's responsibility to determine the validity of a QDRO.

Distributions pursuant to a Qualified Domestic Relations Order are permitted on or after the date a Domestic Relations Order is determined to be a Qualified Domestic Relations Order, even if the participant continues to be employed and has not attained the "earliest possible retirement age" pursuant to section 414(p) of the Internal Revenue Code.

For this purpose, the "earliest possible retirement age" under the plan means the earlier of: (a) the date on which the participant is entitled to a distribution under the plan, or (b) the later of the date the participant attains age 50, or the earliest date on which the participant could begin receiving benefits under the plan if the participant separated from service.

Participants and beneficiaries can obtain, from the plan administrator, without charge, a copy of the plan's procedures governing Qualified Domestic Relations Orders.

**How will I receive my distribution?**

Your plan provides for a lump sum distribution.

**Will the plan automatically distribute any of my benefit?**

The plan may elect to make a mandatory distribution of account balances that are up to \$5,000.00. The distribution will be made as soon as administratively feasible. Any account balance that is from a rollover will not be used in the determination of the total balance for distributions that are made after December 31, 2001 and for participants that have separated from service after December 31, 2001. The plan will make the distribution as a direct rollover for any amounts greater than \$1,000.00.

**What is a Required Minimum Distribution?**

Under certain circumstances, the law requires that your distributions begin no later than April 1 of the year following the date you reach age 70-1/2 (the date six months after your 70th birthday) if you are an owner of the company. All participants that still have a vested account balance after reaching 70-1/2 and are terminated are required to take these distributions. You or your beneficiaries may elect the 5 year rule for distributions if you die before the required distributions begin. Your plan administrator will contact you if you are affected by this requirement.

**How will my Distributions be taxed?**

The benefits you receive from the plan will be subject to ordinary income tax in the year in which you receive the payment, unless you defer taxation by a "rollover" of your distribution into another qualified plan or an IRA. Also, in certain situations, your tax may be reduced by special tax treatment such as "10-year forward averaging."

VERY IMPORTANT NOTE: Under most circumstances, if you receive a distribution from this plan, twenty percent (20%) of your distribution will be withheld for federal income tax purposes, unless you instruct the trustees of this plan to transfer your distribution DIRECTLY into another qualified plan or an IRA. You must give these instructions to the trustees no more than 180 days before the date you receive the payment. Also, the trustees must wait at least 30 days after receiving your instructions before making the payment, to allow you time to change your decision, unless you waive the waiting period in writing.

In addition to ordinary income tax, you may be subject to a 10% tax penalty if you receive a "premature" distribution. If you receive a distribution upon terminating employment before age 55 and you don't receive the payment as a life annuity, you will be subject to the 10% penalty unless you roll over your payment. But, there is no penalty for payments due to your death or disability.

As the rules concerning "rollovers" and the taxation of benefits are complex, please consult your tax advisor before making a withdrawal or requesting a distribution from the plan. As required by law, the plan administrator will provide you with a brief explanation of the rules concerning "rollovers."

**LOAN PROCEDURES**

Pursuant to the terms of McGinn Smith Incentive Savings Plan and McGinn Smith Incentive Savings Plan, the plan administrator has adopted a participant loan program as part of such Plan and Trust. The program is intended to comply with Labor Regulation 2550.408b-1, and Treasury Regulation sec 1.72(p)-1. Loans will be made pursuant to the terms of the Plan and Trust and the following provisions of this Participant Loan Program.

**Administration of Program**

The following person ("the Loan Administrator") is responsible for the administration of the loan program. All loan requests and other inquiries should be delivered to:



McGinn, Smith & Co. Inc.  
99 Pine Street  
5th Floor  
Albany, NY 12207  
(518) 449-5131

**Application Procedure**

1. Obtain and complete a loan application form as provided by the Loan Administrator.
2. Submit the completed loan application to the Loan Administrator at least 15 days before the date the loan is to be made.
3. Loan applications will be reviewed by the Loan Administrator for completeness. Incomplete applications will be returned to the applicant for completion.
4. Approved loans will be processed on an ongoing, timely basis no later than 15 days after application.

**Basis for Approvals**

Loans are available to all actively employed participants without regard to any individual's race, color, religion, sex, age or national origin. Each application will be reviewed on a nondiscriminatory basis but will be assessed on the applicant's credit worthiness, financial need, and the purpose and terms of the loan. An individual may be denied future loans if he or she defaulted on any previous loan.

**Limitations**

**1. Limitations on Types of Loans**

Subject to the limitations on the amount of any loan, loans will be approved if the loan proceeds are to be used for any purpose.

**2. Limitations on Amounts of Loans**

- The minimum amount of any loan is \$1,000.
- The maximum amount of any loan is the lesser of \$50,000 or 50% of the vested interest of the participant in the plan. The \$50,000 maximum amount will be reduced by the participant's highest outstanding loan balance in the previous twelve months, even if amounts have been repaid.
- Loans are limited to the vested interest of the participant in the following accounts:
  - All sources will be used to determine the maximum loan available. The loan may be processed from all sources except the Roth 401(k) source.
- A participant may have no more than 1 loan outstanding at any one time.

**3. Prior to funding a Participant Loan**

The Loan Administrator shall select the fund or funds from which the amount necessary to fund the participant loan shall be taken in a nondiscriminatory manner.

The loan shall be transferred to a segregated account. During the term of the participant loan, this segregated account shall be maintained, and repayment of principal and interest shall be made to this segregated account. This segregated account shall not share in any gains or losses credited to the plan that do not directly relate to the participant loan.

**Interest**

The interest rate will be determined from time to time by the Trustee with the intention of providing the plan with a return commensurate with the interest rates charged by persons in the business of lending money for loans which would be made under similar circumstances.

Until otherwise determined by the Trustee, the interest rate will be the prime rate of interest published by US major banks as pub. in the Wall St. Journal as of the date of the loan plus 1 percent. The rate of interest will be constant throughout the term of the loan.

To cover the added administrative costs associated with a participant loan under the plan, you will be charged a \$100 loan origination fee.

**Collateral or Other Security**

All loans must be adequately secured. No more than 50 percent of the present value of a participant's vested interest in the plan may be considered by the plan as security for the outstanding balance of all plan loans made to the participant.

**Repayment Terms**

All loans are required to be repaid within 5 years of the date of the loan. All loans will be due on the termination of service of the participant. If the participant notifies the Loan Administrator in writing that the entire proceeds of the loan will be used to acquire a dwelling unit that will, within a reasonable time, be used as the principal residence of the participant, the loan will be required to be repaid within 30 years of the original date of the loan. Loans are to be repaid on the basis of substantially level amortization over the term of the loan with payments made through salary reduction each pay period.

Loan payments shall be suspended during a leave of absence of up to one year, if the participant's pay from the Employer is insufficient to service the loan. But the loan must none the less be repaid within 5 years as provided by Internal Revenue Code section 72(p)(2)(B).

If the leave of absence is on account of the participant performing service in the uniformed services (as defined in chapter 43 of title 38 United State Code), whether or not qualified military service, such suspension shall not be taken into account for purposes of meeting requirements of sections 72(p), 401(a) or 4975(d)(1) of the Internal Revenue Code, and the participant is entitled to reemployment rights under such chapter with respect to such service. For example, if the loan was due in 5 years, the 5 year period would be calculated by extending the period by the length of the leave of absence.

**Default**

A loan is in default when a scheduled installment payment has not been received by the last day of the calendar quarter following the calendar quarter in which the last scheduled installment payment was due. If payment has not been made within 10 days of the installment due date, the Loan Administrator will notify the participant in writing that the loan will be in default at the end of the applicable calendar quarter following the calendar quarter in which it was due. If payment is not received within such stipulated time period, the following will take place:

1. The entire unpaid balance on a defaulted loan will be considered to be in default as of the date the last payment was due.
2. At the discretion of the Trustee exercised in a uniform and nondiscriminatory manner, the loan will be renegotiated and payments will be made through payroll withholding. If the loan is not renegotiated in a manner acceptable to the Trustee, if permitted in the plan, the loan will be deemed an in-service withdrawal. Such withdrawal will be subject to personal income and possible penalty taxes. Form 1099R will be timely issued to the participant and the IRS showing such withdrawal.
3. If the participant fails to make provisions for repayment reasonably acceptable to the Trustee, at the election of the Trustee, exercised in a uniform and nondiscriminatory manner, the remaining principal on the loan shall be declared due and payable as of the date the last payment was due.
4. The amount of any uncured default will be considered as having been received in a taxable event, subject to personal income and penalty taxes. Such tax consequences do not affect the participant's obligation to repay the loan. Form 1099R will be timely issued to the participant and the IRS; however, the loan will not be charged against the participant's vested account balance until he or she terminates service, retires, dies, becomes disabled, or reaches the earliest date distribution is permitted under the plan.

**OTHER IMPORTANT INFORMATION**

**Are my benefits protected?**

Except for the requirements of a Qualified Domestic Relations Order, your plan benefits are not subject to claims, indebtedness, execution, garnishment or other similar legal or equitable process. Also, you cannot voluntarily (or involuntarily) assign your benefits under this plan.

**Can the Plan be amended or terminated?**

The employer has reserved the right to amend or terminate the plan. However, no amendment can take away any benefits you have already earned. If your plan is terminated, you will be entitled to the full amount in your account as of the date of termination, regardless of the percent you are vested at the time of termination.

**Pension Benefit Guaranty Corporation:**

The benefits provided by this plan are not insured by the Pension Benefit Guaranty Corporation (PBGC). Such insurance is only required under Title IV of the Employee Retirement Income Security Act (ERISA) for defined benefit pension plans.

**Claim for Benefits:**

When you request a distribution of all or any part of your account, you will contact the plan administrator who will provide you with the proper forms to make your claim for benefits.

Your claim for benefits will be given a full and fair review. However, if your claim is denied, in whole or in part, the plan administrator will notify you of the denial within 90 days of the date your claim for benefits was received, unless special circumstances delay the notification. If a delay occurs, you will be given a written notice of the reason for the delay and a date by which a final decision will be given (not more than 180 days after the receipt of your claim.)

There is an exception to the above rules if your claim is for disability benefits. The plan administrator shall notify you or your beneficiary within a reasonable period of time, but not later than 45 days after the date your claim was received.

The plan administrator may extend this deadline by up to 30 days if there are special circumstances beyond the control of the plan that require additional time to process the claim. If a delay occurs, you will be notified in writing before the end of the initial 45-day period.

If, prior to the end of the first 30-day extension period, the plan administrator determines that, due to matters beyond the control of the plan, a decision cannot be made within that extension period, the period for making the determination may be extended for up to an additional 30 days, provided that the plan administrator notifies you or your beneficiary, prior to the expiration of the first 30-day extension period, of the circumstances requiring the extension and the date as of which the plan expects to render a decision.

In the case of any extension under a claim for disability benefits, the notice of extension will specifically explain the standards on which entitlement to a benefit is based, the unresolved issues that prevent a decision on your claim, and the additional information needed to resolve those issues. Further, you will be given at least 45 days within which to provide the specified information.

Notification of a denial of claims will include:

- the specific reason(s) for the denial,
- reference(s) to the plan provision(s) on which the denial is based,
- a description of any additional material necessary to correct your claim and an explanation of why the material is necessary, and
- an explanation of the steps to follow to appeal the denial, including notification that you (or your beneficiary) must file your appeal within 60 days of the date you receive the denial notice.

If you or your beneficiary do not file an appeal within the 60-day period, the denial will stand. If you do file an appeal within the 60 days, your employer will review the facts and hold hearings, if necessary, in order to reach a final decision. Your employer's decision will be made within 60 days of receipt of the notice of your appeal, unless an extension is needed due to special circumstances. In any event, your employer will make a decision within 120 days of the receipt of your appeal.

### **PARTICIPANT RIGHTS UNDER ERISA**

As a participant in McGinn Smith Incentive Savings Plan you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974 (ERISA).

#### **Receive information about your Plan and your benefits:**

ERISA provides that all plan participants shall be entitled to:

- \* Examine, without charge, at the plan administrator's office all documents governing the plan and a copy of the latest annual report filed by the plan with the U.S. Department of Labor.
- \* Obtain copies of all plan documents and other plan information upon written request to the plan administrator (the administrator may make a reasonable charge for the copies),
- \* Receive a summary of the plan's annual financial report. The plan administrator is required by law to furnish each participant with a copy of this summary annual report.
- \* Obtain a statement telling you whether you have a right to receive a benefit at normal retirement age and if so, what your benefits would be at normal retirement age if you stop working under the plan now. If you do not have a right to a benefit, the statement will tell you how many more years you have to work to get a right to a benefit. This statement must be requested in writing and is not required to be given more than once a year. The plan must provide the statement free of charge.

**Actions by Plan Fiduciaries:**

In addition to creating rights for plan participants, ERISA imposes duties upon the people who are responsible for the operation of the plan. The people who operate your plan, called "fiduciaries" of the plan, have a duty to do so prudently and in the interest of you and other plan participants and beneficiaries.

No one, including your employer may fire you or otherwise discriminate against you in any way to prevent you from obtaining a retirement benefit or exercising your rights under ERISA.

**Enforcing your rights:**

If your claim for a benefit is denied in whole or in part, you have the right to know why this was done and to obtain copies of documents relating to the decision without charge, and to appeal any denial, all within certain time schedules.

Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request written materials from the plan and do not receive them within 30 days, you may file suit in a federal court. In such a case, the court may require the plan administrator to provide the materials and pay you up to \$110 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the administrator.

**Assistance with your questions:**

If you have a claim for benefits which is denied or ignored, in whole or in part, you may file suit in a state or Federal court. In addition, if you disagree with the plan's decision or lack thereof concerning the qualified status of a domestic relations order or a medical child support order, you may file suit in Federal court.

If it should happen that plan fiduciaries misuse the plan's money, or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a federal court. The court will decide who should pay court costs and legal fees. If you are successful, the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds your claim is frivolous.

If you have questions about your plan, you should contact the plan administrator. If you have any questions about this statement or your rights under ERISA, or if you need assistance in obtaining documents from the plan administrator, you should contact the nearest office of the Employee Benefits Security Administration, U.S. Department of Labor, listed in your telephone directory or the Division of Technical Assistance and Inquiries, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210. You may also obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the Employee Benefits

Security Administration.

**McGinn Smith Incentive Savings Plan**  
**SUMMARY OF MATERIAL MODIFICATIONS**

**To:** Participants of McGinn Smith Incentive Savings Plan  
**From:** McGinn Smith & Company, Inc.  
**Date:** October 5<sup>th</sup>, 2009

This is a summary of recent changes to your Plan.

Please file this "Summary of Material Modifications" with your Summary Plan Description (the booklet that explains your Plan). If you would like to see the full text of the changes, you may inspect the Plan Document or receive a copy of the changes as explained in the "ERISA Rights" section of your Summary Plan Description.

Effective October 5<sup>th</sup>, 2009 the plan will allow in-service withdrawals from all sources upon attainment of age 59.5.

You should attach this document to your current Summary Plan Description for future reference.

Sincerely,

McGinn, Smith & Co. Inc.  
EIN: 14-1620471  
PN: 001  
October 2009

## EXHIBIT C



**Alison Cohen**

---

**From:** Alison Cohen [acohen@gkblaw.com]  
**Sent:** Friday, October 01, 2010 3:50 PM  
**To:** 'Mehraban, Lara'  
**Cc:** 'Stoelting, David'; 'McGrath, Kevin'; 'mrusso@gkblaw.com'; 'Martin Kaplan'  
**Subject:** SEC v. McGinn Smith  
**Attachments:** 20101001154925349.pdf

Lara,

Attached please find additional documents regarding Mr. Smith's 401(k) plan.

Regards,  
Alison

**Alison B. Cohen, Esq.**

Gusrae, Kaplan, Bruno & Nusbaum PLLC  
120 Wall Street, 11th Floor  
New York, New York 10005  
(212) 269-1400

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## EXHIBIT D

*John Hancock*

MCGINN SMITH & COMPANY  
ATTN: BRIAN E. SHEA  
99 PINE STREET  
ALBANY, NY 12207

THE TRUSTEES OF MCGINN SMITH  
INCENTIVE SAVINGS PLAN

Contract Number 81561

Retirement Account

Your retirement account value as of 06/30/2010  
**\$305,155.97**

April 01, 2010 - June 30, 2010



REDACTED

**Your personal rate of return**

This period	0.53%
For last 12 months	1.68%
Since your account inception (Annualized)	3.15%

**This period**

Beginning balance	\$302,059.94
Money in	
Employee money	1,500.00
Net change	1,596.03
Ending balance	\$305,155.97

Please review your retirement account as your contributions continue to be allocated to the default investment option approved by your plan's Trustee or John Hancock New York has pro-rated the allocation instructions you provided to equal 100%. **IF YOU WISH TO CHANGE THIS, YOU MUST PROVIDE NEW ALLOCATION INSTRUCTIONS.** Please refer to the "What investment options make up your account" section of your statement to view your existing allocation. To make a change to your account, call us at 1-800-395-1113 (English) or 1-800-363-0530 (Español), or go online at [www.jhny pensions.com](http://www.jhny pensions.com).

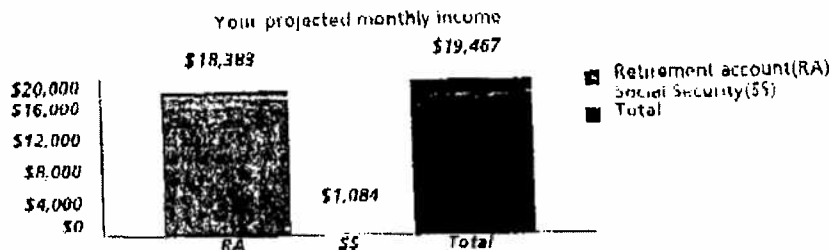
**Looking ahead**

Your year of birth is 1980. If you retire at 67 in 2047, your projected retirement account value will be **\$3,298,087.21** in today's dollars (net of inflation). Based on the projected balance, we have calculated the monthly income in today's dollars you can reasonably expect your account to generate until age 86. **The Social Security benefit shown is the average Social Security benefit paid to retirees today, your benefit will likely be a different amount.**

**Your projected monthly income**

Retirement account	\$18,383.14
Social Security	\$1,084.00
<b>Total monthly income</b>	<b>\$19,467.14</b>

Want some ideas on how to set aside more for your retirement while still looking after those other financial needs? Check out [www.jhny pensions.com](http://www.jhny pensions.com). You'll find a variety of financial and retirement planning information offered in conjunction with CNNMoney™, under Personal finance topi



Projections are based on contributions made over the last 12 months and your current account value. They assume you are following a balanced investment strategy (60% stocks, 40% bonds) growing at an assumed average rate of 4.66%, after an adjustment for inflation of 3.1% and consider your years to retirement. This chart is for illustrative purposes only and does not guarantee future account value or future performance. For details, call the number below.

**Looking for help?**

**Important:** Any inaccuracies in this statement must be reported to John Hancock New York within 45 days. See last page for details. For questions about your account with John Hancock New York, visit [www.jhny pensions.com](http://www.jhny pensions.com) or 1-800-395-1113 (1-800-363-0530 Espanol) Monday - Friday, 8am - 8pm ET

**Changing jobs or retiring?** Call 1-888-695-4472 if you have questions about your distribution options.



Retirement account of:  
DAVID SMITH

**Retirement Account**  
April 01 2010 - June 30 2010  
Contract Number **81561**

**Your profile at a glance**

*Your current portfolio allocation*

Your current portfolio is following a conservative strategy. This strategy emphasizes security and may be appropriate if you are nearing retirement age or simply prefer taking less risk. Your portfolio profile description may change as the value of some of your investment options change over time or if you change your strategy. Check your account profile periodically to help ensure that your current portfolio and your ongoing contributions are allocated in line with your desired investment strategy. Reviewing your strategy can be especially important if your financial circumstances or your life stage change. To make a change to your account, please call us at 1 800 395-1113 (English) or 1-800-363-0530 (Spanish), or go online at [www.jhnpensions.com](http://www.jhnpensions.com)

	Account value	% of Account
Conservative	\$305,155.97	100.00%
<b>Total account value</b>	<b>\$305,155.97</b>	

Current

*Your ongoing contribution allocation*

Your ongoing contributions are following conservative strategy. This strategy emphasizes security and may be appropriate if you are nearing retirement age or simply prefer taking less risk. Your portfolio profile description may change as the value of some of your investment options change over time or if you change your strategy.

% of ongoing contributions
100.00%

Ongoing

**What investment options make up your account**

	Current portfolio	Ongoing instructions <sup>11</sup>	Units held as of		Unit value as of		Value as of	
			04/01/10	06/30/10	04/01/10	06/30/10	04/01/10	06/30/10
<b>Conservative</b>								
John Hancock Stable Val	100.00%	100.00%	244,550.0594	245,586.4902	\$1,235.166	\$1,242.560	\$302,059.94	\$305,155.97
<b>Total account</b>	<b>100.00%</b>	<b>100.00%</b>					<b>\$302,059.94</b>	<b>\$305,155.97</b>

<sup>11</sup> Your allocation instructions, as of 06/30/2010, are shown above.

+ A unit value is the value of a unit in a sub-account (or Fund). Contributions to a sub-account purchase units of that fund. A unit represents a portion of the sub-account's total assets.

You are allowed a maximum of two exchanges per month. After the exchange limit, you may move 100% of your account to a money market or stat value fund where it must remain for 30 days. Trading can resume only once the 30 days have expired. Also, additional restrictions may be imposed if determined that any exchange activity may disrupt or be potentially disruptive to an investment option, even though in compliance with our policy. For more information, visit [www.jhnpensions.com](http://www.jhnpensions.com). Also check with your Plan Administrator for additional restrictions that may be imposed by your plan. It is important for your long-term retirement security that your portfolio be well-balanced and diversified. If you invest more than 20% of your portfolio in any one industry or company, your savings may not be properly diversified. Market or other economic conditions generally have different impacts on different asset categories. Although it is not a guarantee against loss, diversification among different types of investments can help you manage investment risk. In deciding how to invest your retirement savings, you should take into account all your assets and other factors, such as your financial goals, time horizons, and risk tolerance. It is also important to periodically review your investment portfolio, your investment objectives, and the investment options under the Plan to help ensure that your retirement savings will meet your retirement goals. For more information on individual investing and diversification, visit the Department of Labor's website at [www.dol.gov/ebsa/investing.html](http://www.dol.gov/ebsa/investing.html). Investment options added after the start of the reporting period show a unit value of 0.00 at the start of the reporting period.

(cont'd)



July 19, 2010

REDACTED

Re: Notice of Distribution Options available to you from the McGinn Smith Incentive Savings Plan

Dear David

We have been contacted by Brian Shea at McGinn Smith & Co. Inc. to inform you that you are now eligible to receive a distribution of your vested balance from the McGinn Smith Incentive Savings Plan.

The following documents are enclosed:

- **Special Tax Notice Regarding Plan Payments** - is a layman's explanation of the distribution options available to you and the applicable tax consequences. You are advised to read the form in its entirety and consult a tax advisor for more specific information, if necessary. This notice is yours to keep and should not be returned to Pension Works, Inc.
- **John Hancock Withdrawal - Eligible for Rollover** - Please complete the highlighted sections of the form and return to me at the address listed below. Please be sure to sign and date the form where indicated.

If you do not return your completed form by 8/18/2010 the Trustee(s) of the McGinn Smith Incentive Savings Plan are authorized to issue you a benefit payment if you have a vested balance that is less than \$1,000. If your vested account balance is between \$1,000 and \$5,000, your account balance will be automatically rolled over to an Individual Retirement Account. If your vested account balance is greater than \$5,000 your distribution cannot be processed without your consent and you may keep your money in the McGinn Smith Incentive Savings Plan.

Also enclosed is a list of frequently asked questions. Please refer to this page if you have questions when completing the distribution form. Please include your telephone number when returning your distribution form so I can call you should I have questions prior to processing your distribution.

Thank you.

*Renee Lauziere Fitzgerald*

Enclosures

Return completed forms to:

Pension Works, Inc.  
382 Hercules Drive, Suite 101, Webster, Vermont 05446  
Tel: (802) 846-1860 or (877) 633-2241 Fax: (802) 846-1861

**DISTRIBUTION FREQUENTLY ASKED QUESTIONS**

**PLEASE NOTE:** If you are requesting a CASH distribution, Federal Tax Withholding is **MANDATORY** and you may not elect out of Federal tax withholding. If you live in the state of Arkansas, California, Delaware, Iowa, Kansas, Maine, Maryland, Massachusetts, Nebraska, North Carolina, Oklahoma, Oregon, Vermont or Virginia, State Tax Withholding is **MANDATORY** in addition to the Federal Tax Withholding and you may not elect out of State tax withholding. Should you elect "no withholding" on a cash distribution, your election will be disregarded and the appropriate Federal and State tax withholding will be withheld prior to you receiving a check for your distribution.

**Q: What is my account balance?**

**A:** Your account balance changes daily. To obtain your most current balance, please call John Hancock at (800) 395-1113 or visit [www.jhancockpensions.com](http://www.jhancockpensions.com). **PLEASE NOTE:** Pension Works does not handle your money or produce distribution checks.

**Q: How long will it take for the money to arrive?**

**A:** It takes anywhere from 10 and 20 business days from the time we receive your completed election forms. Forms with inaccurate or incomplete information will delay the completion process.

**Q: How do I fill out this form?**

**A:** We have completed portions of the form for you. Please pay close attention to the highlighted sections.

**Q: How do I set up an IRA?**

**A:** Contact your bank or financial advisor. Once that is in place, your account balance with your previous employer can be rolled into your new IRA.

**Q: How do I rollover to my new employer's Plan?**

**A:** Contact your new employer's Human Resource representative for details.

**Q: Where do I send the completed forms?**

**A:** Send these forms back to Pension Works, Inc. at 382 Hercules Drive, Suite 1, Colchester, VT 05446

**PLEASE NOTE: DUE TO THE ACCURACY REQUIRED IN PROCESSING YOUR DISTRIBUTION, IT COULD TAKE ANYWHERE FROM 10 TO 20 BUSINESS DAYS FOR THE PROCESS TO BE COMPLETE FROM THE TIME WE RECEIVE YOUR FORMS.**



# Withdrawal - Eligible for Rollover

### Important information about this form

- As the participant, you complete page 1 and 2 of this form and return it to your Plan Representative.
- As the Plan Representative, you review page 1 and 2 and complete page 3 of this form.
- Your plan may require you to provide supporting documents or additional information before your requests will be processed.
- A 1099R form will be issued by January 31 of the following year.

## 1 General Information

The Trustee of McGinn Smith Incentive Savings Plan

Plan (the "Plan") 81561

Control Holder Name

REDACTED

Control Holder Address

REDACTED

REDACTED

## 2 What is the reason for your withdrawal?

**TE** Termination date: 10/22/10  
Month: 10 Day: 22 Year: 10

**IR** - Withdrawal of employee rollover only  
(Must complete Section 3)

**OI** - Disability

**RE** Retirement date: \_\_\_\_\_  
Month: \_\_\_\_\_ Day: \_\_\_\_\_ Year: \_\_\_\_\_

**VC** - Employee Voluntary Money  
(Must complete Section 4)

**PD** - Pre Retirement

### Information about Deferred Distributions

- Section 1102 of the Pension Protection Act of 2006 requires plans to notify participants that they have the right to defer distributions as well as the consequences of making that choice. The investment options available under your group annuity contract as well as the fees related to the investment options are part of this consideration.
- For a description of the investment options available under your group annuity contract, including fees:
  - Log onto [www.jhpensions.com](http://www.jhpensions.com) (in New York, [www.jhny pensions.com](http://www.jhny pensions.com))
  - Select "Your contract reports - investments - Contract investment options and view Selected investment options only"
 Alternatively, participants may obtain this information by calling our toll free service line at 1-800-305-1114.
- You should also review your plan's Summary Plan Description (SPD) which may contain special provisions that may materially affect your decision to defer a distribution. For a copy of the SPD, please contact your Plan Sponsor.

## 3 How much do you want to withdraw?

For **TOTAL** withdrawals, proceed to Section 4.

A **TOTAL** withdrawal will be processed unless the section below is completed.

**Withdraw only a portion of the funds in my plan as follows:**

Tell us how much to withdraw from each eligible money type (Amount or percentage). Completing the Investment Fund Code is not mandatory. If the Investment Fund Code is left blank, John Hancock Retirement Plan Services' standard withdrawal order will be used.

Money Type (Mandatory)	Investment Fund Code (Optional)	\$ %	Amount or Percentage
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**4 What do you want to do with your money? - Complete either option A, B OR C**

To split your withdrawal into multiple options, check here and complete a separate form for each option

Federal law requires that 20% of the taxable amount of an eligible rollover distribution be withheld and it pays for U.S. taxes. The withheld amount is not included in your taxable income. The amount withheld may not prevent your entire tax bill. The above mandatory tax will be applied regardless of whether the withdrawal distribution is being rolled over to a Roth IRA. The rollover will be reported to the IRS and you are responsible for the payment of the tax on the amount that apply in connection with the rollover. Please refer to the Special Tax Notice provided by your Plan Administrator that is included in this tax distribution for more information or contact your tax advisor or Plan Administrator if you have any questions.

**A - Direct Rollover to John Hancock IRA** (minimum \$2500 balance required)

Other IRA

Financial Institution Name

Financial Institution Address

**Options - Check one option only and provide IRA Account Number**

- All funds to my Traditional IRA Account (applicable only if your distribution contains only non-Roth funds)
- All funds to my Roth IRA (both Roth and non-Roth funds as applicable)
- Split of (provide both account numbers)

IRA Account Number

**AND** My non-Roth funds to my Traditional IRA  
My Roth funds to my Roth IRA

**B - Direct Rollover to Qualified Plan**

The trustee of

Plan Name

Financial Institution Name

Financial Institution Address

**C - Payment directly to me**

**Federal Tax** The distribution is subject to 20% mandatory minimum federal tax withholding for a U.S. person (including a U.S. resident alien). To request a higher tax rate, specify a whole number above 20% (refer to DOL Field Assistance Bulletin 2004-02 for details).

**OR** I am not a U.S. person (including a U.S. resident alien). Unless I have attached a complete Form W-8BEN, withholding federal tax of 30% will apply.

**State Tax Withholding Instructions**

State of Residence: Enter state of residence at time of withdrawal if state tax withholding should be taken for a state other than the state provided to us.

State of Residence

AR DE IA IL IN MA MD ME MI MN NY

OK VA VT

CA OR

AL CO CT DC FL GA HI ID IL IN KY

LA MI MN MO MS MT ND NJ

NM NY OH PA RI SC TN UT WV WI

**Options for State Tax Withholding**

You may not opt out since your distribution was subject to federal income tax. The state's applicable minimum amount must be met. Mandatory state withholding based on the state's applicable minimum amount must be met.

You may opt out of the mandatory state withholding by electing to have:

You may elect voluntary state income tax withholding by providing a percentage of dollar amount to be applied for state tax withholding here % or \$

**5 How would you like the funds to be sent?**

If you have selected a direct rollover to a John Hancock IRA you do not need to complete this section.

**Electronic Fund Transfer** - Mandatory for distribution amounts over \$50,000

**OR** Direct Deposit - If this is a payment directly to me, my personal bank account is  Checking **OR**  Savings

Wire - Verify with receiving bank if they accept wires and/or charge a fee

To

Bank Name

Bank Address (street address)

Bank Account No.

**OR** Check - Only available for distribution amounts less than \$50,000 (Allow 5 - 7 business days for postal service delivery)

**6 Participant Signature**

For participants under a contract issued by John Hancock Life Insurance Company of New York, any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim, containing any materially false information, or conceals for the purpose of misleading information concerning any fact material thereto, commits a fraudulent insurance act which is a crime and shall also be liable to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation. For all other states civil penalties may apply. Under penalty of perjury, I certify that: 1. The number shown on this form is my correct Taxpayer Identification Number (or Social Security Number) and I am a U.S. person (including a U.S. resident alien) unless indicated otherwise in section 4.

David L. Smith  
Name

Form JHC-100 (01/09/2010)  
CP547905 (01/09/2010)



This page to be completed by Plan Representative

7 Withdrawal Details

Has the final contribution been submitted for this participant?

Yes

No. If No, what is the final payroll ending date?

Month Day Year

Plan Representative Name Title

IRS Distribution Code

The applicable IRS distribution code will be based on the type of distribution and/or age of the participant.

If the early distribution exception code applies check here (Code 2 will be applied)

Code B will be included with the applicable code if the distribution includes Debitaged Roth contributions and/or combinations thereof.

If a loan is active at time of distribution, we will apply the applicable age dependent loan distribution code.

Vesting percentage(s)

Vesting is mandatory for partial and total termination, retirement, disability and pre-retirement withdrawals.

The unvested money will be forfeited using instructions given in the Employer Unvested Money section, for all other withdrawals vesting is not required.

100.00% for ALL Employer money types

OR

Vesting varies by money type as indicated below

Table with columns: Money Type, %, Other ER Money, %.

Employer Unvested Money

If no box is selected, any unvested money will remain in the Participant's account with current investment instructions.

Transfer to Cash Account

Pay outstanding John Hancock Retirement Plan Services Charges

Refund to Plan Trustee

Leave in Participant account and transfer to default fund

8 Third Party Administrator (TPA) Withdrawal Fee

\$ 80.00

Flat Fee Amount

OR

% Net Amount of Invested Balance

John Hancock Retirement Plan Services is not responsible for any uncollected fee amounts as a result of insufficient funds. These shortages will be reported on the transaction and summary confirmations.

No Fee will be applied if this section is not completed.

9 Authorized Plan Representative Signature

If the participant fails to sign Section 6 - Participant Signature (page 2 of this form), the Authorized Plan Representative below certifies under penalties of perjury that based on the plan sponsor's record, (i) the number shown on this form is the correct taxpayer identification number (Social Security Number) of the participant, and that the participant is a U.S. person (including a U.S. resident alien) unless indicated otherwise in Section 4 C.

I certify that all the above information is complete and correct, that the required Participant elections and consent and, if applicable, spousal consent for married participants as required by IRC Sec. 417, have been properly obtained, and that the funds being withdrawn are not for the purpose of prohibited transactions as defined in IRC Sec. 4975. I also certify that all necessary and applicable information required to be furnished to the Participant under IRC Sec. 417 and an explanation of the direct rollover option and related tax rules required by IRC Sec. 402 have been provided. I also certify that, if applicable under the terms of the Plan, the Participant has waived the 30-day waiting period.

I hereby direct John Hancock Retirement Plan Services to pay to the Third Party Administrator currently on record (the above referenced fee if applicable). I understand that the fee will be deducted from the participant's account balance at the time of the distribution using standard withdrawal protocol and will be held in the general business account of John Hancock Retirement Plan Services until paid to the Third Party Administrator. I hereby represent that the fee is in accordance with the fee schedule that has been approved by the plan's trustee or named fiduciary as reasonable and authorized under the terms of the plan.

On behalf of the Plan sponsor, the Plan and its related trust and the Plan Trustee, or named Fiduciary, I further agree to indemnify and hold harmless John Hancock Retirement Plan Services, its employees, agents, directors and officers from any liability, penalties and taxes that may be incurred as a result of the requested distribution giving rise to one or more prohibited transactions or for implementing requests (including, if applicable, a direct rollover request) based solely on the instruction(s) provided on this form or if any of the certifications provided on this form are incorrect.

Brian Shea

Name

Signature of Authorized Plan Representative

GPR17905 (03/2010)

Both John Hancock Life Insurance Company (U.S.A.) and John Hancock Life Insurance Company of New York, Inc. (JHNY) are equal opportunity employers. All services and products are provided by John Hancock Life Insurance Company (U.S.A.) and John Hancock Life Insurance Company of New York, Inc. All services and products are provided by John Hancock Life Insurance Company of New York, Inc. All services and products are provided by John Hancock Life Insurance Company of New York, Inc. All services and products are provided by John Hancock Life Insurance Company of New York, Inc.

**SUPPLEMENTAL NOTICE REGARDING PLAN PAYMENTS**  
**Plans Containing Automatic Rollover Distributions**

This notice explains what will happen to your Plan Benefits if you do not respond to the Plan Administrator's request for direction on the distribution of your Plan Benefits in the McGinn Smith Incentive Savings Plan and contains important information you will need before you decide about how to receive your Plan benefits.

This notice is provided to you by McGinn Smith & Company, Inc. (your "Plan Administrator") because all or part of the payment that you will soon receive from the Plan may be eligible for rollover by you or your Plan Administrator to a traditional IRA or an eligible employer plan. A rollover is a payment by you or the Plan Administrator of all or part of your benefit to another plan or IRA that allows you to continue to postpone taxation of that benefit until it is paid to you. Your payment cannot be rolled over to a Roth IRA, a SIMPLE IRA, or a Coverdell Education Savings Account (formerly known as an education IRA). An "eligible employer plan" includes a plan qualified under section 401(a) of the Internal Revenue Code, including a 401(k) plan, profit-sharing plan, defined benefit plan, stock bonus plan, and money purchase plan; a section 403(a) annuity plan; a section 403(b) tax-sheltered annuity; and an eligible section 457(b) plan maintained by a governmental employer (governmental 457 plan).

A more detailed explanation of the tax treatment of the distribution of your Plan Benefits can be found in the 402(f) Safe Harbor Notice provided by the Plan Administrator. This notice is intended to provide an explanation of the automatic rollover requirements that may apply to a mandatory distribution that you may receive.

**MANDATORY DISTRIBUTIONS**

A mandatory distribution is a distribution that is made without your consent and that is made to you before you attain the later of age 62 or normal retirement age. A distribution to a surviving spouse or alternate payee is not a mandatory distribution for purposes of the automatic rollover requirements.

**AUTOMATIC ROLLOVER**

Automatic rollover requirements apply to mandatory distributions of Plan benefits that exceed \$1,000. To satisfy the automatic rollover requirements of the Internal Revenue Code, a plan must provide that when making a mandatory distribution that is an eligible rollover distribution in excess of \$1,000, the distribution will be paid in a direct rollover to an individual retirement plan unless you elect to receive a mandatory distribution directly or have it paid in a direct rollover to an eligible retirement plan after receiving this Notice.

Mandatory distribution rules apply to Plan Benefits attributable to employer contributions with a present value of \$5,000 or less. Automatic rollover provisions apply without regard to the amount of the distribution as long as the amount exceeds \$1,000.00.

The automatic rollover will be invested in an investment product designed to preserve principal and provide a reasonable rate of return and liquidity, whether or not such return is guaranteed, consistent with liquidity.

The automatic rollover described in this notice shall be made to:

Trustee or Custodian

**Hand Benefits & Trust Company**  
**6 Rhoads Drive**  
**Suite 7**  
**Utica, NY 13502-6374**  
**(315) 292-6900**

Fees: Set up Fee \$0.00

Annual Fee \$1.50 - \$4.50 per month based on account balance

Fees Paid by: Fees will be taken from the Participant's rollover

If you have additional questions after reading this Notice, you can contact your Plan Administrator at (518) 449-5131

**HOW TO OBTAIN ADDITIONAL INFORMATION**

This notice summarizes only the federal (not state or local) tax rules that might apply to your payment. The rules described above are complex and contain many conditions and exceptions that are not included in this Notice. Therefore, you may want to consult with the Plan Administrator or a professional tax advisor before you take a payment of your benefits from your Plan. Also, you can find more specific information on the tax treatment of payments from qualified employer plans in IRS Publication 575, Pension and Annuity Income, and IRS Publication 590, Individual Retirement Arrangements. These publications are available from your local IRS office, on the IRS's Internet Web Site at [www.irs.gov](http://www.irs.gov), or by calling 1-800-TAX FORMS.

**SPECIAL TAX NOTICE REGARDING PLAN PAYMENTS**  
*(Alternative to IRS Safe Harbor Notice - For Participant)*

This notice explains how you can continue to defer federal income tax on your retirement plan payments in the Plan and contains important information you will need before you decide how to receive your Plan benefits. All references to "the Code" are references to the Internal Revenue Code of 1986, as amended. This notice summarizes only the federal (not state or local) tax rules which apply to your distribution. Because these rules are complex and contain many conditions and exceptions which we do not discuss in this notice, you may need to consult with a professional tax advisor before you receive your distribution from the Plan.

### A. TYPES OF PLAN DISTRIBUTIONS

**Eligibility for rollover.** The Code classifies distributions into two types: (1) distributions you may roll over ("eligible rollover distributions") and (2) distributions you may not roll over. See "Distributions not eligible for rollover" below. You also may receive a distribution under which part of the distribution is an eligible rollover distribution and part is not eligible for rollover. A rollover is a payment by you or the Plan Administrator of all or part of your benefit to another plan or IRA that allows you to continue to postpone taxation of that benefit until it is paid to you (except for a rollover from a pre-tax account to a Roth IRA, described in the last paragraph of Section B below). The Plan Administrator will assist you in identifying which portion of your distribution is an eligible rollover distribution and which portion is not eligible for rollover.

**Plans that may accept a rollover.** You may roll over an eligible rollover distribution (other than Roth 401(k) plan deferrals and earnings) either to a Roth IRA (provided for distributions before January 1, 2010, your adjusted gross income for the taxable year of the distribution does not exceed \$100,000 and you are not married filing a separate income tax return), to a traditional IRA or to an eligible employer plan that accepts rollovers. An "eligible employer plan" includes a plan qualified under Code §401(a), including a 401(k) plan, profit sharing plan, defined benefit plan, stock bonus plan (including an ESOP) or money purchase plan; a §403(a) annuity plan; a 403(b) plan; and an eligible §457(b) plan maintained by a governmental employer (governmental 457 plan). Special rules apply to the rollover of after-tax contributions and of Roth 401(k) deferrals. See "After-tax contributions and Roth 401(k) plan deferrals" below. **YOU MAY NOT ROLL OVER ANY DISTRIBUTION TO A SIMPLE IRA OR A COVERDLE EDUCATION SAVINGS ACCOUNT (FORMERLY KNOWN AS AN EDUCATIONAL IRA).**

**Deciding where to roll over a distribution.** An eligible employer plan is not legally required to accept a rollover. Before you decide to roll over your payment to another employer plan, you should find out whether the plan accepts rollovers and, if so, the types of distributions it accepts as a rollover. Even if a plan accepts rollovers, it might not accept rollovers of certain types of distributions, such as after-tax amounts. If this is the case, and your distribution includes after-tax amounts, you may wish instead to roll your distribution over to an IRA or to split your rollover amount between the employer plan in which you will participate and an IRA. You also should find out about any documents you must complete before a receiving plan or IRA sponsor will accept a rollover. If an employer plan accepts your rollover, the plan may restrict subsequent distributions of the rollover amount or may require your spouse's consent for any subsequent distribution. A subsequent distribution from the plan that accepts your rollover also may be subject to different tax treatment than distributions from this Plan. Check with the administrator of the plan that is to receive your rollover regarding subsequent distributions and taxation of the amount you will roll over, prior to making the rollover.

**Distributions not eligible for rollover.** An eligible rollover distribution means any distribution to you of all or any portion of your account balance under the Plan except: (1) a distribution which is part of a series of substantially equal periodic payments; (2) a required minimum distribution; (3) a hardship distribution; (4) an ESOP dividend; (5) a corrective distribution; or (6) a loan treated as a distribution.

*Substantially equal periodic payments.* You may not roll over a distribution if it is part of a series of substantially equal payments made at least once a year and which will last for: (1) your lifetime (or your life expectancy), (2) your lifetime and your beneficiary's lifetime (or life expectancies), or (3) a period of 10 years or more.

*Required minimum distributions.* Beginning in the year in which occurs the later of your retirement or your attainment of age 70½, the Code may require the Plan to make "required minimum distributions" to you. You may not roll over the required minimum distributions. Special rules apply if you own more than 5% of the Employer.

*Hardship distributions.* A hardship distribution is not eligible for rollover.

*ESOP dividends.* Cash dividends paid to you on employer stock held in an employee stock ownership plan cannot be

rolled over.

**Corrective distributions.** A distribution from the plan to correct a failed nondiscrimination test or because legal limits on certain contributions were exceeded cannot be rolled over.

**Loans treated as taxable "deemed" distributions.** The amount of a plan loan that becomes a taxable deemed distribution because of a default cannot be rolled over. However, a loan offset amount is eligible for rollover, as discussed in Part C below. Ask the Plan Administrator if distribution of your loan qualifies for rollover treatment.

#### After-tax Contributions and Roth 401(k) plan deferrals.

**After-tax rollover into an IRA.** You may roll over your after-tax contributions to an IRA (including, for distributions after December 31, 2009, a Roth IRA) either directly or indirectly. For distributions before January 1, 2010, you may roll over your after-tax contributions to a Roth IRA, provided your adjusted gross income for the taxable year of the distribution does not exceed \$100,000 and you are not married filing a separate income tax return. The Plan Administrator will assist you in identifying how much of your payment is the taxable portion and how much is the after-tax portion. If you roll over after-tax contributions to an IRA, it is your responsibility to keep track of, and report to the IRS on the applicable forms, the amount of these after-tax contributions. This will enable you to determine the nontaxable amount of any future distribution from the IRA. Once you roll over your after-tax contributions to an IRA, you may NOT later roll over those amounts to an employer plan, but may roll over your after-tax contributions to another IRA.

**After-tax rollover into an employer plan.** You may DIRECTLY roll over after-tax contributions from the Plan to another qualified plan (including a defined benefit plan) or to a 403(b) plan if the other plan will accept the rollover and provides separate accounting for amounts rolled over, including separate accounting for the after-tax contributions and earnings on those contributions. You may NOT roll over after-tax contributions from the Plan to a 403(a) annuity plan or to a governmental 457 plan. If you want to roll over your after-tax contributions to an employer plan that accepts these rollovers, you cannot have the after-tax contributions paid to you first. You must instruct the Plan Administrator to make a direct rollover on your behalf. Also, you may not first roll over after-tax contributions to an IRA and then roll over that amount into an employer plan.

**Roth 401(k) plan deferrals.** You may roll over an eligible rollover distribution that consists of Roth deferrals and earnings (whether or not it is a "qualified" Roth distribution) either: (1) by a direct rollover to another Roth 401(k) plan, or to a Roth 403(b) plan, provided the Roth 401(k) plan or the Roth 403(b) plan will accept the rollover; or (2) by a direct or 60-day rollover to a Roth IRA. Alternatively, you can roll over the taxable portion of a non-qualified Roth distribution by a 60-day rollover to a Roth 401(k) plan or to a 403(b) plan. See Section C, "Taxation of Roth deferrals," and "60-day rollover option" below.

**30-Day Notice Period/Waiver.** After receiving this notice, you have at least 30 days to consider whether to receive your distribution or have the distribution directly rolled over. If you do not wish to wait until this 30-day notice period ends before your election is processed, you may waive the notice period by making an affirmative election indicating whether or not you wish to make a direct rollover. Your distribution then will be processed in accordance with your election as soon as practical after the Plan Administrator receives your election.

## B. DIRECT ROLLOVER

**Direct rollover process.** You may elect a direct rollover of all or any portion of an eligible rollover distribution. If you elect a direct rollover, the Plan Administrator will pay the eligible rollover distribution directly to your IRA or to another eligible employer plan (or, in the case of a distribution of Roth deferrals, to a Roth IRA, a Roth 401(k) plan, or a Roth 403(b) plan) which you have designated. Alternatively, for the cash portion of your distribution, if any, the Plan Administrator may give you a check negotiable by the trustee or custodian of the recipient eligible employer plan or IRA. To complete the direct rollover, you must deliver the check to that trustee/custodian. A direct rollover amount is not subject to taxation at the time of the rollover, unless the direct rollover is from a pre-tax account to a Roth IRA. Except for a direct rollover of a pre-tax amount to a Roth IRA, the taxable portion of your direct rollover will be taxed later when you take it out of the IRA or the eligible employer plan. Depending on the type of plan, the later distribution may be subject to *different tax treatment* than it would be if you received a taxable distribution from this Plan. If you elect a direct rollover, your election form must include identifying information about the recipient IRA or plan.

**Treatment of periodic distributions.** If your Plan distribution is a series of payments over a period of less than ten years, each payment is an eligible rollover distribution. Your election to make a direct rollover will apply to all payments unless you advise

the Plan Administrator of a change in your election. The Plan might not let you choose a direct rollover if your distributions for the year are less than \$200. The \$200 limit may apply separately to Roth distributions and pre-tax distributions.

**Splitting a distribution/small distributions.** If your distribution exceeds \$500, you may elect a direct rollover of only a part of your distribution, provided the portion directly rolled over is at least \$500. If your distribution is \$500 or less, you must elect either a direct rollover of the entire amount or payment of the entire amount.

**Change in tax treatment resulting from a direct rollover.** The tax treatment of any payment from the eligible employer plan or IRA receiving your direct rollover might be different than if you received your benefit in a taxable distribution directly from the Plan. For example, if you were born before January 1, 1936, you might be entitled to ten-year averaging or capital gain treatment, as explained below. However, if you roll over your benefit to a 403(b) plan, a governmental 457 plan, or an IRA, your benefit no longer will be eligible for that special treatment. See the sections below entitled "10% penalty tax if you are under age 59½" and "Special tax treatment if you were born before 1936."

**Taxation of direct rollover of pre-tax distribution to Roth IRA.** If you directly roll over a pre-tax distribution to a Roth IRA, the taxable portion of the distribution is subject to taxation for the taxable year in which the distribution occurs (except that a special taxation rule applies to distributions during 2010 that you roll over to a Roth IRA, under which the distribution can be subject to taxation ratably during 2011 and 2012). For distributions before January 1, 2010, you may not roll over a distribution from a pre-tax account to a Roth IRA if your adjusted gross income for the taxable year exceeds \$100,000. However, the adjusted gross income limit on direct rollovers from a pre-tax account to a Roth IRA does not apply to distributions after December 31, 2009.

### C. DISTRIBUTIONS YOU RECEIVE

**Taxation of eligible rollover distributions.** The taxable portion of an eligible rollover distribution which you elect to receive is taxable to you in the year you receive it unless, within 60 days following receipt, you roll over the distribution to an IRA or to another eligible employer plan.

**Taxation of Roth deferrals.** If your distribution includes Roth (after-tax) 401(k) plan deferrals, the taxation of the Roth deferrals depends on whether or not the distribution is a qualified distribution. For a distribution of Roth deferrals to be a qualified distribution, you must have satisfied two requirements: (1) the distribution must occur on or after the date you attain age 59½, on or after the date of your death, or on account of your being disabled; and (2) the distribution must occur after the end of the 5<sup>th</sup> calendar year beginning with the first calendar year for which you made Roth deferrals to the Roth 401(k) plan. If the distribution of Roth deferrals is a qualified distribution, then neither the deferrals nor the earnings distributed on the deferrals will be taxable to you. If the distribution is not a qualified distribution, then the portion of the distribution representing your Roth deferrals will not be taxable to you, but the portion of the distribution representing earnings on the Roth deferrals will be taxable to you in the year you receive the distribution, unless you elect a direct rollover as described in Section B above, or within 60 days following receipt, you roll over the distribution to a Roth IRA, or you roll over the earnings on the Roth deferrals to a qualified plan or to a 403(b) plan, as explained under "60-day rollover option" below.

**Withholding on eligible rollover distributions.** The taxable portion of your eligible rollover distribution is subject to 20% federal income tax withholding. You may not waive this withholding. For example, if you elect to receive a taxable eligible rollover distribution of \$5,000, the Plan will pay you only \$4,000 and will send to the IRS \$1,000 in income tax withholding. You will receive a Form 1099-R from the Plan reporting the full \$5,000 as a distribution from the Plan. The \$1,000 withholding amount applies against any federal income tax you may owe for the year. The direct rollover is the *only* means of avoiding this 20% withholding. Note that taxes and penalties with regard to the distribution may exceed the 20% withheld.

**60-day rollover option.** The direct rollover explained in Section B above is not the only way to make a rollover. If you receive payment of an eligible rollover distribution, you still may roll over all or any portion of the distribution to an IRA (including a Roth IRA, subject to the limitations described in Section A) or to another eligible employer plan that accepts rollovers, except to the extent the distribution consists of Roth deferrals and earnings on the Roth deferrals. You may roll over the Roth deferrals and earnings on the Roth deferrals to a Roth IRA, or you may roll over only the taxable earnings (if any) on the Roth deferrals (but not the Roth deferrals) to a Roth 401(k) plan or to a 403(b) plan. If you decide to roll over the distribution, *you must make the rollover within 60 days of your receipt of the payment.* The portion of your distribution which you elect to roll over generally is not subject to taxation until you receive distributions from the IRA or eligible employer plan. However, see "Taxation of direct rollover of pre-tax distribution to Roth IRA," above.

You may roll over 100% of your eligible rollover distribution even though the Plan Administrator has withheld 20% of the distribution for income tax withholding. If you elect to roll over 100% of the distribution, you must obtain *other money* within the 60-day period to contribute to the IRA or eligible employer plan to replace the 20% withheld. If you elect to roll over only the 80% which you receive, the 20% withheld will be subject to taxation.

*Example:* Assume the taxable portion of your eligible rollover distribution is \$5,000, and you do not elect a direct rollover. The Plan pays you \$4,000, withholding \$1,000 for income taxes. However, assume, within 60 days after receiving the \$4,000 payment, you decide to roll over the entire \$5,000 distribution. To make the rollover, you will roll over the \$4,000 you received from the Plan and you will contribute \$1,000 from other sources (your savings, a loan, etc.). In this case, you will not have any tax liability with respect to the Plan distribution. The Plan will report a \$5,000 distribution for the year and you will report a \$5,000 rollover. When you file your income tax return, you may receive a refund of the \$1,000 withheld. If you roll over only the \$4,000 paid from the Plan, the \$1,000 you do not roll over is taxable. In addition, the \$1,000 you do not roll over may be subject to a 10% penalty tax. See "10% penalty tax if you are under age 59½" below. When you file your income tax return, you still may receive an income tax refund, but the refund likely will be smaller because \$1,000 of the distribution is taxable.

**Withholding on distributions not eligible for rollover.** The 20% withholding described above does not apply to any taxable portion of your distribution that is *not* an eligible rollover distribution. You may elect whether to have federal income tax withholding apply to that portion. If you do not wish to have any income taxes withheld on that portion of your distribution, or if you wish to have an amount other than 10% withheld, you will need to sign and date IRS Form W-4P, checking the box opposite line 1. The Plan Administrator will provide you Form W-4P if your distribution includes an amount that does not constitute an eligible rollover distribution. If you do *not* return the Form W-4P to the Plan Administrator prior to the distribution, the Plan Administrator will treat the failure to return the form as an *affirmative election* to have 10% withholding apply.

**10% penalty tax if you are under age 59½.** If you receive a distribution from the Plan before you reach age 59½ and you do not roll over the distribution, the taxable portion of your distribution is subject to a 10% penalty tax in addition to any federal income taxes unless an exception applies. For example, the 10% penalty tax does not apply if you separate from service with the Employer during or after the calendar year in which you attain age 55, and then receive a distribution. See IRS Form 5329 for more information on the 10% penalty tax.

If you directly roll over a pre-tax distribution to a Roth IRA, the 10% penalty will not apply to the taxable portion of the distribution. However, if a taxable amount you rolled over into a Roth IRA from a pre-tax account is distributed within five years, the 10% penalty will apply to the distribution as if the distribution were includable in gross income.

The 10% penalty tax will not apply to distributions from a governmental 457 plan, except to the extent the distribution (including earnings) is attributable to an amount you rolled over to that plan from another type of eligible employer plan or IRA. Any amount rolled over from a governmental 457 plan to another type of eligible employer plan or to a traditional IRA will become subject to the additional 10% tax if it is distributed to you before you reach age 59½, unless one of the exceptions applies.

**Special tax treatment if you were born before 1936.** If your distribution is a "lump sum distribution," and you were born before 1936, you may elect special treatment, but only if you do not roll over any part of the lump sum distribution. If you roll over only a portion of your distribution to an IRA, a governmental 457 plan, or a 403(b) plan, this special tax treatment is not available for the rest of the payment. A lump sum distribution is a distribution, within one calendar year, of your entire vested account balance (including any nontaxable portion of your distribution) under the Plan (and certain similar plans maintained by the Employer). If you are not a self-employed individual, the distribution must occur after you attain age 59½ or after you have separated from service with the Employer. If a self-employed individual, a lump sum distribution must occur after the self-employed individual attains age 59½ or becomes disabled.

**Ten-year averaging.** If you receive a lump sum distribution and you were born before 1936, you can make a one-time election to figure the tax on the lump sum distribution under "10-year averaging" using 1986 tax rates. Ten-year averaging often reduces the tax you owe.

**Capital gain treatment.** If you receive a lump sum distribution, you were born before 1936 *and* you were a participant in the Plan before 1974, you may elect to have the part of your lump sum distribution attributable to your pre-1974 participation taxed as long-term capital gain at a rate of 20%.

**Special tax treatment election and limitations.** You must have completed at least five years of active participation in the Plan for special tax treatment to apply to the lump sum distribution election. You may elect special tax treatment (ten-year averaging or capital gain treatment) by filing IRS Form 4972 with your income tax return. The instructions to Form 4972 provide further details regarding the reporting of your lump sum distribution and describe the rules for determining whether a distribution qualifies as a lump sum distribution. As a general rule, you may not elect special tax treatment for a lump sum distribution if you elected ten-year (or previously available five-year) averaging with respect to a prior lump sum distribution you received after December 31, 1986, or after you had attained age 59½. You may not elect this special tax treatment if you rolled amounts into this Plan from a 403(b) plan, from a governmental 457 plan or from an IRA not originally attributable to a qualified employer plan. You also may not elect special tax treatment if you previously rolled over another distribution from the Plan. Finally, you may not elect special tax treatment if you roll over your distribution to an IRA, a governmental 457 plan or a 403(b) plan, and then take a distribution from the IRA, plan or annuity.

**Repayment of participant loans.** If you have an outstanding participant loan when you separate from service with the Employer, the Employer may reduce ("offset") your account balance by the outstanding loan balance. The loan offset is a distribution and is taxable to you unless you roll over the amount of the offset within 60 days of the date of the offset. Withholding does not apply if the loan offset is your only distribution. If you receive a distribution of cash or property in addition to the offset, withholding will apply to the entire distribution, but the withholding amount will not exceed the amount of cash or property (other than employer securities) you receive in addition to the offset. You may not roll over the amount of a defaulted plan loan that is a taxable *direct* distribution.

**Government publications.** IRS Publication 575 and IRS Publication 590 provide additional information about the tax treatment of plan distributions and rollovers. These publications are available from your local IRS office, on the IRS's Internet Web site at [www.irs.gov](http://www.irs.gov), or by calling 1-800-TAX-FORMS.

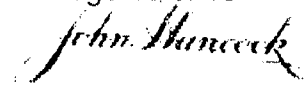
**Employer Securities.** The Code provides a special rule for a distribution which includes Employer securities (*i.e.* stock of the Employer). In order to take advantage of this special rule: (1) the distribution must qualify as a lump sum distribution, or (2) the Employer stock must be attributable to after-tax employee contributions. Under this special rule, you have the option of not paying the tax on the "net unrealized appreciation" of the stock until you sell the stock. Net unrealized appreciation generally is the increase in the value of the Employer stock while the Plan held the stock. For example, if the Employer contributed Employer stock to your account when the stock was worth \$500 but the stock is worth \$800 when you receive it, you could elect not to pay the tax on the \$300 increase in value until you later sold the stock.

**Election against special rule.** You may elect not to have the special rule apply to net unrealized appreciation. If you elect not to apply the special rule, your net unrealized appreciation is taxable in the year of distribution, unless you roll over the stock. You may roll over the stock to an IRA or to another eligible employer plan in a direct rollover or a 60-day rollover. Generally, you no longer will be able to use the special rule for net unrealized appreciation if you roll the stock over to an IRA or to another eligible employer plan.

**Withholding requirements.** If you receive only Employer stock in a distribution that is eligible for rollover, withholding will not apply to the distribution. If you receive cash or property other than Employer stock, as well as Employer stock, in a distribution that is eligible for rollover, the plan will base the 20% withholding amount on the entire taxable amount paid to you (including the value of the Employer stock determined by excluding the net unrealized appreciation). However, the amount withheld will not exceed the cash or property (excluding Employer stock) paid to you.

**Income averaging.** If you receive Employer stock in a distribution which qualifies as a lump sum distribution, the income averaging election also may apply. See IRS Form 4972 for additional information on these rules.

Retirement account of:  
DAVID SMITH



**Retirement Account**  
April 01, 2010 June 30, 2010  
Contract Number **81561**

**Your summary of activity**

If this option is available to your contract, your account transaction activity can be downloaded from our Web site using the Quicken® or Microsoft® Money personal finance software. Log on to [www.jhnpensions.com](http://www.jhnpensions.com) for details.

<b>Total Value on 04/01/2010</b>	<b>\$302,059.94</b>		
<b>Employee money</b>			
	<b>This period</b>	<b>Year-to-date since 01/01/2010</b>	<b>Since your account inception</b>
<b>Beginning balance</b>	<b>\$238,206.52</b>	<b>\$231,056.87</b>	<b>\$0.00</b>
Pre-tax contributions			
EL ELECTIVE DEFERRAL	1,500.00	7,500.00	108,500.00
Transfers into the plan	0.00	0.00	104,781.52
Net change	1,765.56	2,415.21	27,690.56
<b>Balance of employee money</b>	<b>\$240,972.08</b>		
<b>Employer money</b>			
<b>Beginning balance</b>	<b>\$63,853.42</b>	<b>\$63,548.44</b>	<b>\$0.00</b>
Employer contributions			
SAFE HARBOR NON-ELECTIVE CONTR	0.00	0.00	10,500.00
Transfers into the plan	0.00	0.00	44,761.07
Net change	330.47	635.45	8,922.82
<b>Balance of employer money</b>	<b>\$64,183.89</b>		
<b>Total Value on 06/30/2010</b>	<b>\$305,155.97</b>		

**Investment options and performance**

Listed below are historical returns as of June 30, 2010 for your selected investment options in your group annuity contract. Past performance is no guarantee of future results. Historical returns may be helpful as a planning tool. Your actual results may vary. For more information, including the historical returns of all the investment options available to your group annuity contract, log on to [www.jhnpensions.com](http://www.jhnpensions.com).

Ongoing instructions	Fund code	Investment options	Percentage compound average annual returns				
			3 Months	1 Year	3 Years	5 Years	10 Years
100.00%	18U	Conservative John Hancock Stable Val	0.60	1.97	4.07	N/A	N/A

Investment options and performance are as of June 30, 2010.  
+ Performance data for a sub-account for any period prior to the date introduced is hypothetical based on the performance of the underlying portfolio. All other performance data is actual. Returns for any period greater than one year are annualized. Performance data reflects changes in the prices of investments, reinvestment of any dividends and capital gains, and deductions for the Annual Investment Charge. Performance does not reflect any contract-level or participant recordkeeping charges, which would otherwise reduce the total return for an account. Past performance is no guarantee of future results. An investment in a sub-account will fluctuate in value to reflect the investment results of the underlying portfolio and, when redeemed, may be more or less than original cost.  
Performance of John Hancock New York Funds prior to 1998 is hypothetical and is derived from the historical performance information of the underlying fund.

**Bulletin board**

Help determine how much you might need to save for retirement with our goal setting tool. Just three easy steps to a personalized retirement action plan. Visit [www.jhnpensions.com](http://www.jhnpensions.com) today.





### Retirement Account

April 01, 2010 - June 30, 2010

Contract Number **81561**

Retirement account of:

DAVID SMITH

### Your vesting details

	Balance on (06/30/2010)	Vested % (as of 12/31/2007)	Estimated vested balance (based on vested %)
EFFEKTIVE DEFERRAL	\$240,972.08	100.000	\$240,972.08
FR MATCHING CONTRIB	51,810.74	100.000	51,810.74
FR PROFIT SHARING	857.13	100.000	857.13
SAFE HARBOR NON ILLECTIVE CONTR	11,516.02	100.000	11,516.02
<b>Total</b>	<b>\$305,155.97</b>		<b>\$305,155.97</b>

Your vesting information is provided based on information received from your plan administrator. If the vesting information is even not complete, or if you have any questions, please contact your administrator. Refer to your plan's Summary Plan Description for additional details and the plan's vesting schedule.

Your Estimated vested balance is based on the market value of the account for the Balance on date shown above and upon information provided by your plan administrator on an ongoing basis. Accordingly, your estimated vested balance and vested % may be greater or smaller than the stated amount and percentage, depending on whether the information provided to John Hancock New York is up to date, accurate or correct as of the statement production date. John Hancock New York is not, and cannot be held responsible, for the accuracy or correctness of the vesting information shown on this statement.

Leaving your company or retiring? Call 1 888 695 4472. Our rollover education specialist can help answer your 401(k) distribution questions or introduce you to your plan's financial representative.

Review this statement to ensure it accurately reflects your balances, investments, and any transactions during the period covered. You should report any discrepancies or inaccuracies to John Hancock New York within 45 days of the production date of this Statement. If you do not, you will be deemed to have approved of the accuracy of the Statement. John Hancock New York will not be responsible for any claimed damage resulting from a purported failure to carry out your investment instructions that is not brought to our attention within this 45 day period.

Group annuity contracts and any separate administrative services agreement are issued by John Hancock Life Insurance Company of New York, 100 Summit Lake Drive, Valhalla, New York 10595. © 2007 John Hancock Life Insurance Company New York. All rights reserved.

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NOT FDIC INSURED | MAY LOSE VALUE | NOT BANK GUARANTEED | NOT INSURED BY ANY GOVERNMENT AGENCY

(Jul 02, 2010)/Combo Summary Statement (R)

**EXHIBIT E**



RETURN SERVICE ONLY  
 Please do not send mail to this address  
 P.O. Box 619063  
 Dallas, TX 75261-9063



6-750-48501-0067128-014-1-100-010-000-000

REDACTED

**Mortgage Statement**

**Contact Us**

General Customer Service: 1-800-724-2224  
 Automated Service: 7:30am - 9:00pm EST Mon - Fri  
 8:00am - 6:00pm EST Sat  
 Representatives Available: 8:30am - 7:00pm EST Mon - Fri  
 Fax Payoff Requests: 1-866-409-2653  
 Fax All Other Customer Service Requests: 1-866-409-4642  
 Property Tax Questions: 1-866-409-0949  
 Flood and Homeowners Insurance Questions: 1-888-882-1847

Correspondence Address:  
 PO BOX 1288  
 BUFFALO, NY 14240-1288  
 www.mtb.com



Statement Date 07/19/10

**Payment Summary**

CURRENT DUE DATE 08/01/10

**PAYMENT FACTORS**

Principal & Interest \$3,538.80  
 PAYMENT DUE 08/01/10 \$3,638.80  
 Past Due Amount(s) \$10,815.80  
 Unpaid Late Charge(s) \$630.79  
 Return Item / Other Fee(s) \$12.00

TOTAL PAYMENT DUE 08/01/10 \$14,897.79  
 \* IF PAID AFTER 08/19/10, PAY \$14,874.12  
 Includes late charge

**Account Information**

ACCOUNT NUMBER  
 PROPERTY ADDRESS REDACTED

INTEREST RATE 6.125%  
 MATURITY DATE 07/2022

**BALANCES**  
 Principal\* \$361,853.51  
 Escrow \$0.00  
 Unapplied Funds\*\* \$0.00

\* This is NOT a payoff figure. To obtain the full amount required to pay off your loan, please call us at 1-800-724-2224 or fax your request to 1-866-409-2653.  
 \*\* This figure (if any) represents funds received from you that have not yet been applied. You may deduct this amount from your total due now.

**YEAR TO DATE**  
 Interest Paid \$7,478.01  
 Property Taxes Paid \$0.00  
 Principal Paid \$6,853.32

SEE REVERSE SIDE FOR ADDITIONAL IMPORTANT INFORMATION

**Transaction Activity Since Last Statement**

TRANSACTION DESCRIPTION	DATE	TRANSACTION DATE	TOTAL RECEIVED	PRINCIPAL	INTEREST	ESCROW	PROPERTY TAXES	SUBSIDY	SUSPENSE	FEES
Late Fee Assessed	08/20	07/16/10								176.99

**IMPORTANT MESSAGES**

Are you experiencing financial difficulties?  
 Let M&T help.

Recently you've fallen behind in making your mortgage payments. This may be due to financial difficulties beyond your control. We want to help you avoid damaging your credit and the possible loss of your home. We may be able to offer you special assistance during this difficult time. Call M&T today to find out more at 1-800-724-1653.

\*\*\*Please note, there is currently \$542.79 in fees outstanding on your M&T mortgage account. To pay this fee balance in full along with your next regular monthly payment, please remit the amount listed under "Total Amount Due" on the attached coupon.

750-1006-0408F

CPB

DETACH AND RETURN BOTTOM PORTION WITH YOUR PAYMENT

**EXHIBIT F**



1

September 16, 2010

REDACTED

RE: Loan No.: 0012272761  
Property:

REDACTED

Dear Mortgage Customer(s):

This is to advise you that your mortgage documents have been forwarded to our attorney's office for foreclosure proceedings.

All communications concerning the mortgage must now be directed to the following attorney office:

David J Stern Esq  
900 South Pine Island Rd  
Suite 400  
Plantation FL 33324  
(954)233-8000

If you wish to retain your home, we urge you to contact our attorneys at once.

Sincerely,

Foreclosure Department  
Residential Mortgages

XF012

## EXHIBIT G

**DICKER, KRIVOK & STOLOFF, P.A.**

----- ATTORNEYS AT LAW -----  
1818 AUSTRALIAN AVENUE SOUTH  
SUITE 400  
WEST PALM BEACH, FLORIDA 33409

EDWARD DICKER  
JAMES N. KRIVOK  
SCOTT A. STOLOFF

TELEPHONE  
(561) 615-0123

-----  
LAURIE G. MANOFF  
JOHN R. SHEPPARD, JR.

-----  
FAX  
(561) 615-0128

August 20, 2010

**CERTIFIED - RETURN RECEIPT REQUESTED**

Timothy M. McGinn

REDACTED

Re: **THE ROYAL POINCIANA PROPERTY OWNERS ASSOCIATION, INC. / Notice of Intent to Foreclose Claim of Lien / Our File #20101675**

Dear Mr. McGinn:

Neither this firm nor our client has received payment in full of assessments and related charges owing to THE ROYAL POINCIANA PROPERTY OWNERS ASSOCIATION, INC., as set forth in our previous letter to you. The Association has therefore directed the firm to file a Claim of Lien against your property.

Enclosed is a copy of the Claim of Lien against your property, which we are recording in the PALM BEACH County Public Records. The amount that is claimed due includes assessments, interest, late fees to the extent they are authorized by the Association documents, together with attorney fees, and costs incurred by the Association. The amount due reflects a credit for any partial payments you have made to the Association or to the Firm. The total the Association claims is now due and owing is \$2,656.77, as follows:

I. Assessments & Late Fees:

<u>DUE DATE</u>	<u>ASSESSMENT</u>	<u>LATE FEES</u>
May 01, 2010	\$520.56	\$25.00
June 01, 2010	\$520.56	\$25.00
July 01, 2010	\$520.56	\$25.00
August 01, 2010	\$520.56	\$25.00

II. Interest	\$49.53
III. Administration Fee	\$0.00
IV. Attorney Fees & Costs (includes our fees of \$275.00 for this letter)	\$425.00
V. Less payment received	(\$0.00)
VI. <b>TOTAL OWED AS OF THE DATE OF THIS NOTICE</b>	<b>\$2,656.77</b>

Please note that the amount shown above does not include any assessments or other charges that may come due after the date of this letter. You must pay any assessments or other charges that come due after the date of this letter directly to the Association.

Please note that pursuant to law, payments made are applied first to interest, then to late fees, then to costs and attorney's fees, and then to the delinquent assessment. Thus, even though you may have made payments for the installments listed above, the assessment installments shown above

August 20, 2010  
 Timothy M. McGinn

constitute the outstanding balance owed on your account after applying any payments first to interest, then to late fees, then to costs and attorney's fees, and then to your oldest delinquent assessment installment.

If full payment in the amount of \$2,656.77, payable to the order of Dicker, Krivok & Stoloff, P.A., Trust Account, is not received in this office by October 06, 2010, the Association may bring legal action to foreclose the lien and to obtain a judgment against you personally. If legal action is taken, the Association's governing documents and/or Florida Statutes provide that the prevailing party is entitled to an award of reasonable costs and attorneys' fees.

Please note that only payment in full of the amount shown as due above will prevent the filing of a foreclosure action. Your making a partial payment will not prevent or delay the enforcement of this demand by initiating a foreclosure action. If we are directed to take such action, it will be done without further advance notice to you.

Your payment and any telephone inquiries should be directed to the firm's legal assistant, Janet Savoy, who handles this matter on the Association's behalf. You may reach her between the hours of 9:00 a.m. and 3:00 p.m., Monday through Friday. As we previously informed you, a telephone call to our office will not extend the time within which you must pay in full.

The Association is required by the governing documents to take timely action to collect overdue assessments. Please eliminate the need for further legal action by paying the full amount due so that your payment is received at this office by October 06, 2010.

Very Truly Yours,  
 DICKER, KRIVOK & STOLOFF, P.A.

  
 SCOTT A. STOLOFF, ESQ.  
 For the Firm

SAS:tm  
 Enclosure  
 cc: Addressee by First Class Mail  
 Association  
 Z581.20101675.dem3

**THIS IS AN ATTEMPT TO COLLECT A DEBT  
 ANY INFORMATION PROVIDED WILL USED FOR THAT PURPOSE**



Will Call Box 165 (Palm Beach County Only)  
DICKER, KRIVORE & STOLOFF, P.A.  
1818 Australian Avenue South, Suite 400  
West Palm Beach, Florida 33409  
(561) 615-0123

STATE OF FLORIDA

CLAIM OF LIEN

COUNTY OF PALM BEACH

ss

BEFORE ME, the undersigned authority, personally appeared Scott A. Stoloff, Esquire, who, after being duly sworn, says that he is the attorney for THE ROYAL POINCIANA PROPERTY OWNERS ASSOCIATION, INC. (the "Association"), Post Office Address: 1818 Australian Avenue South, Suite 400, West Palm Beach, Florida 33409, and that pursuant to Amended and Restated Declaration of Restrictions for The Royal Poinciana Property Owner Association, Inc., the Association is owed the following assessments for common expenses:

<u>Due</u>	<u>Amt</u>	<u>Due</u>	<u>Amt</u>
May 01, 2010	\$520.56	June 01, 2010	\$520.56
July 01, 2010	\$520.56	August 01, 2010	\$520.56

In addition, a lien for legal fees and costs is claimed, together with interest at the rate of 18% per annum and further additional maintenance and special assessments which have come due or will come due subsequent to the last due date listed herein above, interest as it accrues, late fees and costs of collection including attorneys' fees after said due date, up to and including the date of payment and release of this Claim of Lien.

The Lienor claims this lien on the following described property in PALM BEACH County, Florida:

REDACTED

currently owned by TIMOTHY M. MCGINN.

Signed, sealed and delivered in the presence of: THE ROYAL POINCIANA PROPERTY OWNERS ASSOCIATION, INC.

Christine Leyva  
Janet Savoy

By: Scott A. Stoloff, Authorized Agent

The foregoing instrument was acknowledged before me on this 20 day of August, 2010, by Scott A. Stoloff, Esquire, who is personally known to me and who did take an oath.

Notary Public, State of Florida at Large.  
My commission expires:

20101675.12

