

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

-----X  
SECURITIES AND EXCHANGE COMMISSION :

*Plaintiff,* :

vs. :

Case No. 1:10-CV-457  
(GLS/DRH)

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

*Defendants,* :

LYNN A. SMITH and :  
NANCY McGINN, :

*Relief Defendants. and* :

GEOFFREY R. SMITH, Trustee of the :  
David L. and Lynn A. Smith Irrevocable :  
Trust U/A 8/04/04, :

*Intervenor.* :

-----X

**STATEMENT OF RECEIVER WITH RESPECT TO PARTIAL  
SATISFACTION OF DISGORGEMENT OBLIGATIONS**

William J. Brown, Esq., as Receiver, respectfully reports to the Court that pursuant to the Memorandum-Decision and Order dated July 20, 2011 (“MDO”) (Docket No. 342), the Receiver has received from Defendants Dunn and Wojeski \$5,355 and \$13,834, respectively, as described below in satisfaction of their respective disgorgement obligations pursuant to the MDO.

Defendant Dunn's disgorgement obligation was satisfied by the Receiver's receipt of an uncashed \$5,355 check dated July 31, 2010 issued by the David L. and Lynn Smith Irrevocable Trust to The Dunn Law Firm, PLLC. Defendant Wojeski's disgorgement obligation was satisfied by the Receiver's receipt of a \$13,834 check dated August 31, 2011 issued by Wojeski & Company CPAs, P.C. payable to the Receiver. The latter check has been deposited into a Receiver's interest bearing account.

Dated: October 4, 2011

PHILLIPS LYTLE LLP

By /s/ William J. Brown

William J. Brown (Bar Roll #601330)

Todd A. Ritschdorff (Bar Roll #512601)

Counsel for Receiver

Omni Plaza

30 South Pearl Street

Albany, New York 12207

Telephone No. (518) 472-1224

and

3400 HSBC Center

Buffalo, New York 14203

Telephone No.: (716) 847-8400