

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

10 Civ. 457
(GLS/DRH)

McGINN, SMITH & CO., INC.,
McGINN, SMITH ADVISORS LLC,
McGINN, SMITH CAPITAL HOLDINGS CORP.,
FIRST ADVISORY INCOME NOTES, LLC,
FIRST EXCELSIOR INCOME NOTES, LLC,
FIRST INDEPENDENT INCOME NOTES, LLC,
THIRD ALBANY INCOME NOTES, LLC,
TIMOTHY M. MCGINN; AND
DAVID L. SMITH,

Defendants, and

LYNN A. SMITH,

Relief Defendant.

SUPPLEMENTAL DECLARATION OF ROSEANN DANIELLO

I, Roseann Daniello, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I submit this declaration in further support of the plaintiff Securities and Exchange Commission's motion for a preliminary injunction, and to supplement my declaration dated April 19, 2010.

2. I have reviewed bank and brokerage records for the following accounts:

Account Name	Institution	Statements Reviewed	
David L. and Lynn A. Smith Irrevocable Trust	Bear Stearns/NFS/RMR Capital Management	October 2004 to April 2010	"Trust Account"
Lynn A. Smith	NFS/ RMR Capital Management	December 2005 to April 2010	"Stock Account"
Lynn A. Smith	NFS/ RMR Capital Management	January 2006 to April 2010	"IRA Account"
Lynn A. Smith	Bank of America	July 2009 to April 2010	"Checking Account"

3. Attached as Exhibit 1 is a chart showing the transfers in and out of the Trust Account.
4. Attached as Exhibit 2 is a chart showing the transfers in and out of the Stock Account.
5. Attached as Exhibit 3 is a chart showing the transfers in and out of the Checking Account.
6. Attached as Exhibit 4 is a chart showing the transfers in and out of the IRA Account.
7. The reference to David Smith on the attached exhibits refers to accounts David Smith had at M&T Bank and NFS.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 2, 2010
New York, New York


Roseann Daniello

DEPOSITS AND WITHDRAWALS FROM THE DAVID AND LYNN SMITH IRREV. TRUST ACCOUNT

DATE	TRANSACTION TYPE	PAYER ACCOUNT / SOURCE ACCOUNT	DEPOSITS	WITHDRAWALS	DESCRIPTION FROM ACCOUNT STATEMENTS OR WIRE TRANSFER RECORDS
12/27/2004	Wire Transfer	Pine Street Capital Partners		(100,000.00)	To purchase Pine Street Capital Partners
4/1/2005	Deposit	Oube St Capital PTNS 00 BS M&T BK PSCP Interest	2,100.00		Oube St Capital PTNS 00 BS M&T BK PSCP Interest
4/11/2005	Wire Transfer	Pine Street Capital Partners		(300,000.00)	Pine Street Capital Partners, 30% Capital Commitment
4/18/2005	Check Paid	David Smith		(2,300.00)	
6/30/2005	Deposit	Pine Street Capital Partners	8,250.00		PSCP Int. Pine St Cap Pt 00 BS D Smith & Lynn M&T Pine St Cap Ptn LP 00 BS FBO DL Smith M&T BK PSCP INT a/c 10/3
10/4/2005	Deposit	Pine Street Capital Partners	9,000.00		
12/30/2005	Check Rec'd		9,000.00		PSCP Int
3/31/2006	Check Rec'd		9,000.00		PSCP Int
4/18/2006	Wire Transfer	David Smith		(92,105.00)	
6/30/2006	Check Rec'd		9,000.00		PSCP Int
6/30/2006	Check Paid			(83,830.00)	
9/29/2006	Check Rec'd		9,000.00		PSCP Int
12/20/2006	Wire Transfer	Pine Street Capital Partners		(129,678.00)	55,576 Sept 2006 Call - 74,102 Dec 2006
12/29/2006	Check Rec'd		9,000.00		PSCP Int
3/30/2007	Check Rec'd		9,000.00		Pine St Int
6/29/2007	Check Rec'd		8,163.26		Pine St Int
9/25/2007	Check Rec'd		18,504.26		PSCP Dist
10/1/2007	Check Rec'd		7,326.52		PSCP Int
12/31/2007	Check Rec'd		7,326.52		PSCP Int
3/31/2008	Check Rec'd		7,326.52		PSCP Int
3/31/2008	Check Rec'd		25,793.27		PSCP Int
3/31/2008	Check Rec'd		55,782.82		PSCP Ptn
4/15/2008	Wire Transfer	David Smith		(110,636.00)	
6/30/2008	Check Rec'd		6,071.40		PSCP Int
9/30/2008	Check Rec'd		6,071.40		PSCP Int
12/31/2008	Check Rec'd		5,429.90		Pine St Int
1/16/2009	Check Rec'd		27,891.00		Pine St Rtn Invd Cap
1/16/2009	Check Paid		74,377.00	(32,987.00)	
4/13/2009	Check Paid			(8,570.00)	
4/13/2009	Check Paid			(95,000.00)	
4/15/2010	Wire Transfer	Smith, Lynn			

TRANSFERS TO AND FROM THE STOCK ACCOUNT

DATE	TRANSACTION TYPE	PAYEE ACCOUNT / SOURCE ACCOUNT	FUNDS FROM LYNN SMITH	FUNDS TO LYNN SMITH	LYNN SMITH'S ACCOUNT	DESCRIPTION FROM ACCOUNT STATEMENTS OR WIRE TRANSFER RECORDS
9/3/2004	Transfer	David Smith	(\$5,000)		Stock Account	
10/8/2004	Transfer	David Smith	(\$10,000)		Stock Account	
12/27/2004	Transfer	David Smith	(\$30,000)		Stock Account	
4/13/2005	Transfer	David Smith	(\$50,000)		Stock Account	
1/12/2006	Check received	David Smith		\$10,000.00	Stock Account	
1/12/2006	Check received			\$6,301.00	Stock Account	
2/6/2006	Check received			\$4,246.58	Stock Account	
2/13/2006	Transfer	ExchangeBlvd.com	(\$200,000)		Stock Account	
2/17/2006	Check paid		(\$15,000)		Stock Account	
3/3/2006	Transfer	McGinn Smith & Company		\$20,000.00	Stock Account	
3/7/2006	Check paid		(\$10,000)		Stock Account	
3/27/2006	Check paid		(\$15,000)		Stock Account	
4/12/2006	Transfer	David Smith	(\$17,000)		Stock Account	
5/26/2006	Transfer	David Smith	(\$15,000)		Stock Account	
6/22/2006	Transfer	David Smith	(\$10,000)		Stock Account	
9/1/2006	Check paid		(\$20,000)		Stock Account	
9/25/2006	Transfer	David Smith	(\$15,000)		Stock Account	
10/4/2006	Check received	McGinn, Timothy		\$65,000.00	Stock Account	
12/27/2006	Check paid		(\$15,700)		Stock Account	

Exhibit 2

TRANSFERS TO AND FROM THE STOCK ACCOUNT

DATE	TRANSACTION TYPE	PAYEE ACCOUNT / SOURCE ACCOUNT	FUNDS FROM LYNN SMITH	FUNDS TO LYNN SMITH	LYNN SMITH'S ACCOUNT	DESCRIPTION FROM ACCOUNT STATEMENTS OR WIRE TRANSFER RECORDS
12/27/2006	Check paid		(\$10,350)		Stock Account	
1/10/2007	Check received			\$26,000.00	Stock Account	
5/14/2007	Check received	McGinn, Timothy		\$100,000.00	Stock Account	
5/14/2007	Check received			\$4,200.00	Stock Account	
7/30/2007	Transfer	McGinn Smith Holdings LLC	(\$150,000)		Stock Account	
11/29/2007	Transfer	McGinn Smith Funding LLC	(\$375,000)		Stock Account	
12/20/2007	Check received	David Smith		\$380,000.00	Stock Account	
12/27/2007	Transfer	David Smith	(\$80,450)		Stock Account	
3/10/2008	Transfer	M&S Partners	(\$200,000)		Stock Account	
4/15/2008	Transfer	Smith, Lynn IRA	(\$5,000)		Stock Account	
4/15/2008	Transfer	David Smith	(\$5,000)		Stock Account	
4/15/2008	Transfer	Smith, Geoffrey Roth IRA	(\$4,000)		Stock Account	
4/15/2008	Transfer	Smith, Lauren Roth IRA	(\$4,000)		Stock Account	
7/8/2008	Transfer	David Smith	(\$20,000)		Stock Account	
8/4/2008	Transfer	David Smith	(\$20,000)		Stock Account	
11/6/2008	Transfer	David & Lynn Smith		\$580.10	Stock Account	
12/9/2008	Transfer	McGinn Smith Advisors LLC	(\$554,437)		Stock Account	To subscribe for 754,996 Pine Street Capital Partners LLC
12/24/2008	Transfer	McGinn Smith Advisors LLC	(\$683,157)		Stock Account	
12/29/2008	Transfer	McGinn Smith & Company	(\$100,000)		Stock Account	

Exhibit 2

TRANSFERS TO AND FROM THE STOCK ACCOUNT

DATE	TRANSACTION TYPE	PAYEE ACCOUNT / SOURCE ACCOUNT	FUNDS FROM LYNN SMITH	FUNDS TO LYNN SMITH	LYNN SMITH'S ACCOUNT	DESCRIPTION FROM ACCOUNT STATEMENTS OR WIRE TRANSFER RECORDS
1/16/2009	Check received	Pine St Prtn		\$166,020.00	Stock Account	
1/16/2009	Check received	Pine St Rin Invd Cap		\$62,257.00	Stock Account	
2/4/2009	Transfer	Capital Center Credit Corp.		\$38,430.46	Stock Account	
2/20/2009	Transfer	David Smith	(\$15,000)		Stock Account	
2/20/2009	Transfer	David Smith		\$326,304.11	Stock Account	
3/11/2009	Transfer	David Smith	(\$10,000)		Stock Account	
4/6/2009	Transfer	David Smith	(\$12,000)		Stock Account	
4/30/2009	Transfer	David Smith	(\$100,000)		Stock Account	
5/6/2009	Transfer	David Smith	(\$15,000)		Stock Account	
6/5/2009	Transfer	R Community Services LLC	(\$50,000)		Stock Account	
6/5/2009	Transfer	Shutts & Bowen LLP Escrow	(\$316,000)		Stock Account	
6/9/2009	Transfer	David Smith	(\$10,000)		Stock Account	
6/10/2009	Transfer	TDDM Cable Funding		\$160,800.00	Stock Account	
7/30/2009	Transfer	TDDM Cable Jr. Trust 09		\$175,000.00	Stock Account	
8/5/2009	Transfer	David Smith	(\$10,000)		Stock Account	
8/19/2009	Transfer	Mobile Search Security LLC	(\$50,000)		Stock Account	
10/27/2009	Transfer	David Smith	(\$40,000)		Stock Account	
10/30/2009	Transfer	TDDM Benchmark Trust 09	(\$300,000)		Stock Account	
11/13/2009	Transfer	Smith, Lynn	(\$15,000)		Stock Account	

Exhibit 2

TRANSFERS TO AND FROM THE STOCK ACCOUNT

DATE	TRANSACTION TYPE	PAYEE ACCOUNT / SOURCE ACCOUNT	FUNDS FROM LYNN SMITH	FUNDS TO LYNN SMITH	LYNN SMITH'S ACCOUNT	DESCRIPTION FROM ACCOUNT STATEMENTS OR WIRE TRANSFER RECORDS
11/16/2009	Transfer	David Smith	(\$40,000)		Stock Account	
12/4/2009	Transfer	David Smith	(\$25,000)		Stock Account	
12/11/2009	Transfer	McGinn, Timothy	(\$15,000)		Stock Account	
12/28/2009	Transfer	David Smith	(\$35,000)		Stock Account	
1/5/2010	Check received			\$525.00	Stock Account	
1/5/2010	Check received			\$708.33	Stock Account	
1/5/2010	Check received			\$1,329.17	Stock Account	
1/29/2010	Transfer	David Smith	(\$25,000)		Stock Account	
2/16/2010	Transfer	Smith, Lynn	(\$20,000)		Stock Account	
3/16/2010	Transfer	TDDM Cable Funding	(\$100,000)		Stock Account	
3/18/2010	Transfer	McGinn Smith Funding LLC	(\$20,000)		Stock Account	
3/18/2010	Transfer	TDDM Cable Funding		\$100,000.00	Stock Account	
3/25/2010	Transfer	Smith, Lynn	(\$25,000)		Stock Account	
4/5/2010	Transfer	McGinn Smith Firstline Funding LLC	(\$300,000)		Stock Account	

TRANSFERS TO AND FROM THE CHECKING ACCOUNT

DATE	TRANSACTION TYPE	PAYEE ACCOUNT / SOURCE ACCOUNT	FUNDS FROM LYNN SMITH	FUNDS TO LYNN SMITH	LYNN SMITH'S ACCOUNT	DESCRIPTION FROM ACCOUNT STATEMENTS OR WIRE TRANSFER RECORDS
7/1/2009	Check	David & Lynn Smith		\$250.00	Checking Account	
7/15/09	Check paid	McGinn Smith Payroll, David Smith		\$7,896.60	Checking Account	
8/3/2009	Transfer	McGinn Smith Payroll, David Smith		\$7,896.60	Checking Account	
8/14/2009	Transfer	McGinn Smith Payroll, David Smith		\$7,896.60	Checking Account	
9/2/2009	Transfer	McGinn Smith Payroll, David Smith		\$7,896.60	Checking Account	
9/15/2009	Transfer	McGinn Smith Payroll, David Smith		\$8,234.85	Checking Account	
10/2/2009	Transfer	McGinn Smith Payroll, David Smith		\$8,888.56	Checking Account	
10/15/2009	Transfer	McGinn Smith Payroll, David Smith		\$8,888.56	Checking Account	
10/28/2009	Check	David Smith		\$4,000.00	Checking Account	
11/5/2009	Transfer	McGinn Smith Payroll, David Smith		\$8,888.56	Checking Account	
11/13/2009	Transfer	Smith, Lynn		\$15,000.00	Checking Account	
11/18/2009	Check	David Smith		\$200.00	Checking Account	
12/4/2009	Check	David Smith		\$2,000.00	Checking Account	
12/7/2009	Check	David Smith		\$2,500.00	Checking Account	
12/17/2009	Transfer	McGinn Smith Payroll, David Smith		\$8,888.56	Checking Account	
12/31/2009	Transfer	McGinn Smith Payroll, David Smith		\$8,888.56	Checking Account	
1/12/2010	Transfer	McGinn Smith Advisors LLC		\$5,000.00	Checking Account	
1/13/2010	Check	McGinn Smith Advisors LLC	(\$5,000)		Checking Account	
1/15/2010	Transfer	McGinn Smith Payroll, David Smith		\$6,775.38	Checking Account	

Exhibit 3

TRANSFERS TO AND FROM THE CHECKING ACCOUNT

DATE	TRANSACTION TYPE	PAYEE ACCOUNT / SOURCE ACCOUNT	FUNDS FROM LYNN SMITH	FUNDS TO LYNN SMITH	LYNN SMITH'S ACCOUNT	DESCRIPTION FROM ACCOUNT STATEMENTS OR WIRE TRANSFER RECORDS
1/29/2010	Transfer	McGinn Smith Payroll, David Smith		\$6,775.39	Checking Account	
2/16/2010	Transfer	Smith, Lynn		\$20,000.00	Checking Account	
2/16/2010	Transfer	McGinn Smith Payroll, David Smith		\$6,775.38	Checking Account	
3/2/2010	Transfer	McGinn Smith Payroll, David Smith		\$6,775.39	Checking Account	
3/25/2010	Transfer	Smith, Lynn		\$25,000.00	Checking Account	
4/8/2010	Transfer	McGinn Smith Payroll, David Smith		\$17,731.08	Checking Account	

TRANSFERS TO AND FROM THE IRA ACCOUNT

DATE	TRANSACTION TYPE	PAYEE ACCOUNT / SOURCE ACCOUNT	FUNDS FROM LYNN SMITH	FUNDS TO LYNN SMITH	LYNN SMITH'S ACCOUNT	DESCRIPTION FROM ACCOUNT STATEMENTS OR WIRE TRANSFER RECORDS
4/13/2006	Check received	David Smith		\$4,500.00	IRA Account	Cash Contribution prior yr IRA
4/9/2007	Check received	David Smith		\$5,000.00	IRA Account	Cash Contribution prior yr IRA

EXHIBIT NO.	DESCRIPTION
1	Proposed Preliminary Injunction Order
2	Transcript of Deposition of Lynn Smith on May 27, 2010
3	Letter from Jim Featherstonhaugh to David Stoelting dated May 5, 2010 enclosing Lynn Smith's Statement of Net Assets (Plaintiff's Exhibit ("PX") 3, marked at Lynn Smith Deposition)
4	Promissory Note dated June 5, 2009 (PX 5, marked at Lynn Smith Deposition)
5	Email from David Smith to Timothy McGinn dated January 14, 2009 (PX 10, marked at Lynn Smith Deposition)
6	David and Lynn Smith Financial Statement dated August 2008 (PX 11, marked at Lynn Smith Deposition)
7	Letter from Piaker & Lyons dated November 4, 2008 concerning Statement of Financial Condition of David and Lynn Smith as of August 31, 2008 (PX 12, marked at Lynn Smith Deposition)
8	Handwritten Financial Statement for David and Lynn Smith, dated December 31, 2000 (PX 13, marked at Lynn Smith Deposition)
9	Series of emails from regarding transfers into and out of Lynn Smith accounts (PX 14, marked at Lynn Smith Deposition)
10	Excerpt from account statement for Lynn Smith's checking account (PX 15, marked at Lynn Smith Deposition)
11	Transcript of Deposition of Thomas Urbelis on June 1, 2010
12	Letter from David Smith to Thomas Urbelis dated August 4, 2004 enclosing Declaration of Trust for David L. and Lynn A. Smith Irrevocable Trust (the "Trust") (PX 17, marked at Thomas Urbelis Deposition)

- 13 Letter from Patty Sicluna to Thomas Urbelis dated December 21, 2004
(PX 18, marked at Thomas Urbelis Deposition)
- 14 Fax from Patty Sicluna to Thomas Urbelis enclosing documents for signature
(PX 19, marked at Thomas Urbelis Deposition)
- 15 Information Form regarding Trust signed February 25, 2005
(PX 20, marked at Thomas Urbelis Deposition)
- 16 Letter from David Smith to Thomas Urbelis dated March 1, 2005
(PX 21, marked at Thomas Urbelis Deposition)
- 17 Letter from Thomas Urbelis to McGinn Smith & Co. dated March 25
(PX 22, marked at Thomas Urbelis Deposition)
- 18 Letter from David McQuade to Thomas Urbelis dated April 12, 2005, and other documents
(PX 23, marked at Thomas Urbelis Deposition)
- 19 Fax from David Smith to Thomas Urbelis dated May 9, 2005 regarding documents to sign
(PX 24, marked at Thomas Urbelis Deposition)
- 20 Fax from David Smith to Thomas Urbelis dated May 9, 2005 containing signature page
(PX 25, marked at Thomas Urbelis Deposition)
- 21 Fax from Thomas Urbellis to David Smith dated June 7, 2005 regarding Deerfield Triarc Capital Corp.
(PX 26, marked at Thomas Urbelis Deposition)
- 22 Fax from David Smith to Thomas Urbellis dated April 17, 2006 enclosing wire transfer authorization letter
(PX 27, marked at Thomas Urbelis Deposition)
- 23 Signed wire transfer authorization letter from Thomas Urbelis to David Smith dated April 17, 2006
(PX 28, marked at Thomas Urbelis Deposition)
- 24 Fax from David McQuade to Thomas Urbelis dated February 23, 2007 requesting Urbelis's signature on behalf of Trust
(PX 29, marked at Thomas Urbelis Deposition)

- 25 Wire transfer authorization letter from Thomas Urbelis regarding wire transfer from Trust account to David Smith account (PX 30, marked at Thomas Urbelis Deposition)
- 26 Indemnity Agreement dated November 10, 2008 (PX 31, marked at Thomas Urbelis Deposition)
- 27 Transfer of Assets Form and Alternative Investments Addendum and Custody Agreement Form (PX 32, marked at Thomas Urbelis Deposition)
- 28 Email from David McQuade to David Smith dated April 13, 2009 attaching letter of authorization for Thomas Urbelis's signature regarding payment of taxes (PX 33, marked at Thomas Urbelis Deposition)
- 29 Letter from Thomas Urbelis to David and Lynn Smith regarding Resignation as Trustee of Trust (PX 34, marked at Thomas Urbelis Deposition)
- 30 Email from Brian Mayer to Thomas Urbelis dated April 15, 2010 (PX 35, marked at Thomas Urbelis Deposition)
- 31 Page 6 of Trust account statement for June 2006 (PX 36, marked at Thomas Urbelis Deposition)
- 32 Letter from David Smith to Thomas Urbelis dated May 2, 2010 (PX 37, marked at Thomas Urbelis Deposition)
- 33 Letter from Thomas Urbelis to David Smith dated May 10, 2010 (PX 38, marked at Thomas Urbelis Deposition)
- 34 Trustee Appointment dated May 17, 2010 (PX 39, marked at Thomas Urbelis Deposition)
- 35 RMR Wealth Management LLC account statement for Lynn Smith for the period from March 1, 2010 to March 31, 2010
- 36 RMR Wealth Management LLC account statement for David L. and Lynn A. Smith Irrevocable Trust for the period from March 1, 2010 to March 31, 2010
- 37 RMR Wealth Management LLC account statement for NFS/FMTC IRA FBO Lynn A. Smith for the period from March 1, 2010 to March 31, 2010

- 38 Letter from Timothy McGinn to investor dated January 11, 2010 regarding Firstline
- 39 Letter from Timothy McGinn to investor dated March 1, 2010 regarding Firstline
- 40 Letter from Joseph B. Carr to investor dated March 25, 2010 regarding Firstline
- 41 Letter from attorney to Timothy McGinn dated April 2, 2010 with handwritten responsive notes regarding Firstline
- 42 PPM for McGinn, Smith Firstline Funding, LLC, dated March 25, 2010 (without exhibits or appendices)

I declare under penalty of perjury that the foregoing is true and correct.

Executed: New York, New York
June 3, 2010



Lara Shalov Mehraban

EXHIBIT 1

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

10 Civ. 457 (GLS) (DRH)

MCGINN, SMITH & CO., INC.;
MCGINN, SMITH ADVISORS LLC;
MCGINN, SMITH CAPITAL HOLDINGS CORP.;
FIRST ADVISORY INCOME NOTES, LLC;
FIRST EXCELSIOR INCOME NOTES, LLC;
FIRST INDEPENDENT INCOME NOTES, LLC;
THIRD ALBANY INCOME NOTES, LLC;
TIMOTHY M. MCGINN; AND
DAVID L. SMITH,

Defendants, and

LYNN A. SMITH,

Relief Defendant.

PRELIMINARY INJUNCTION ORDER

The Securities and Exchange Commission (“Commission”) having filed a Complaint on April 20, 2010; and the Commission that same day having filed an Order to Show Cause seeking emergency relief; and the Court having entered an Order dated April 20, 2010 granting a temporary restraining order; asset freeze and other relief against defendants McGinn, Smith & Co., Inc. (“MS & Co.”); McGinn, Smith Advisors LLC (“MS Advisors”); McGinn, Smith Capital Holdings Corp. (“MS Capital”); First Advisory Income Notes, LLC (“FAIN”); First Excelsior Income Notes, LLC (“FEIN”); First Independent Income Notes, LLC (“FIIN”); Third Albany Income Notes, LLC (“TAIN”); Timothy M. McGinn (“McGinn”); David L. Smith (“Smith”) (collectively, the “Defendants”) and Lynn A. Smith (“Relief Defendant”); and

appointing a temporary Receiver over MS & Co., MS Advisors, MS Capital, FAIN, FEIN, FIIN and TAIN, and all other entities McGinn or Smith control or have an ownership interest in, including but not limited to the entities listed on Exhibit A (collectively, the "MS Entities").

Defendants and the Relief Defendant each having (1) entered a general appearance; (2) consented to the Court's jurisdiction over Defendants and Relief Defendant and the subject matter of this action; (3) consented to entry of this Preliminary Injunction Order (the "Order"), without admitting or denying the allegations of the Complaint, and reserving all rights to answer or otherwise respond to the Complaint; (4) waived findings of fact and conclusions of law for the purposes of this Order only; (5) waived any right to appeal from this Order; and (6) reserved their rights to apply to this Court at any time for a modification of this Order.

The Court has considered: (1) the Complaint filed by the Commission on April 20, 2010; (2) the Declaration of Israel Maya, executed on April 19, 2010; (3) the Declaration of Roseann Daniello, executed on April 19, 2010; (4) the Declaration of Lara Shalov Mehraban, executed on April 19, 2010; (5) the Appendix of Exhibits in Support of Emergency Application; and (6) the Memorandum of Law in support of the Commission's application, dated April 20, 2010.

Based on the foregoing, the Court finds that a proper showing, as required by Section 20(b) of the Securities Act of 1933 ("Securities Act"), Section 21(d) of the Securities Exchange Act of 1934 ("Exchange Act"), Section 209(d) of the Investment Advisers Act of 1940 ("Advisers Act"), and Section 42(d) of the Investment Company Act of 1940 ("Company Act") has been made for the relief granted herein.

NOW, THEREFORE,

I.

IT IS HEREBY ORDERED that the Commission's Motion for a Preliminary Injunction is GRANTED.

II.

IT IS HEREBY ORDERED that, pending a final disposition of this action, MS & Co., MS Capital, FAIN, FEIN, FIIN, TAIN, McGinn and Smith, and each of their agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile service or otherwise, are preliminarily restrained and enjoined from violating, directly or indirectly, Sections 5(a) and 5(c) of the Securities Act of 1933 (the "Securities Act"), 15 U.S.C. §§ 77e(a) and 77e(c).

III.

IT IS FURTHER ORDERED that, pending a final disposition of this action, MS & Co., MS Advisors, MS Capital, McGinn and Smith, and each of their agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile service or otherwise, are preliminarily restrained and enjoined from violating, directly or indirectly, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a) and Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78j(b) and Exchange Act Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

IV.

IT IS FURTHER ORDERED that, pending a final disposition of this action, MS & Co., MS Advisors, McGinn and Smith, and each of their agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile service or otherwise, are preliminarily restrained and enjoined

from violating, directly or indirectly, Sections 206(1), 206(2), and 206(4) of the Investment Advisers Act of 1940 (“the Advisers Act”), 15 U.S.C. §§ 80b-6(1) and (2), and Rule 206(4)-8 thereunder, 17 C.F.R. §275.206(4)-8.

V.

IT IS FURTHER ORDERED that, pending a final disposition of this action, MS & Co., each of its agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile service or otherwise, are preliminarily restrained and enjoined from violating, directly or indirectly, Section 15(c)(1)(A) of the Exchange Act, 15 U.S.C. § 78(o)(1), and Smith and McGinn, and each of their agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile service or otherwise, are preliminarily restrained and enjoined from, directly or indirectly, aiding and abetting a violation of Section 15(c)(1)(A) of the Exchange Act, 15 U.S.C. § 78(o)(1).

VI.

IT IS FURTHER ORDERED that, pending a final disposition of this action, FAIN, FEIN, FIIN and TAIN, and each of their agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile service or otherwise, are preliminarily restrained and enjoined from violating, directly or indirectly, Section 7(a) of the Company Act, 15 U.S.C. § 80a-7.

VII.

IT IS FURTHER ORDERED that, pending a final disposition of this action, the Defendants and the Relief Defendant, and each of their financial and brokerage institutions,

officers, agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile service or otherwise, and each of them, hold and retain within their control, and otherwise prevent, any withdrawal, transfer, pledge, encumbrance, assignment, dissipation, concealment or other disposal of any assets, funds, or other property (including money, real or personal property, securities, commodities, choses in action or other property of any kind whatsoever) of, held by, or under the direct or indirect control of the Defendants and Relief Defendant, including but not limited to, the MS Entities, whether held in any of their names or for any of their direct or indirect beneficial interest wherever situated, in whatever form such assets may presently exist and wherever located within the territorial jurisdiction of the United States courts, and directing each of the financial or brokerage institutions, debtors and bailees, or any other person or entity holding such assets, funds or other property of the Defendants and Relief Defendant to hold or retain within its, his or her control and prohibit the withdrawal, removal, transfer or other disposal of any such assets, funds or other properties including but not limited to, all assets, funds, or other properties held in the accounts listed on Exhibit B, as well as all real property owned directly or indirectly by the MS Entities.

VIII.

IT IS FURTHER ORDERED that, pending final disposition of this action, William J. Brown, Esq., who was appointed Temporary Receiver by the Court's order dated April 20, 2010, shall serve as Receiver over the MS Entities, pending the final disposition of this action to (i) preserve the *status quo*, (ii) ascertain the extent of commingling of funds among the MS Entities; (iii) ascertain the true financial condition of the MS Entities and the disposition of investor funds; (iv) prevent further dissipation of the property and assets of the MS Entities and all

entities they control or have an ownership interest in; (v) prevent the encumbrance or disposal of property or assets of the MS Entities and the investors; (vi) preserve the books, records and documents of the MS Entities; (vii) be available to respond to investor inquiries; and (viii) determine whether the MS Entities should undertake bankruptcy filings.

To effectuate the foregoing, the Receiver is empowered to:

- (a) Take and retain immediate possession and control of all of the assets, including but not limited to all books, records and documents, of the MS Entities, and assume all the rights and powers of these assets with respect thereto including the powers set forth in the applicable management agreements, by-laws, LLC agreements or any other controlling agreements;
- (b) Have exclusive control of, and be made the sole authorized signatory for, all accounts at any bank, brokerage firm or financial institution that has possession or control of any assets or funds of the MS Entities;
- (c) Pay from available of any MS Entity the funds necessary business expenses required to preserve the assets and property of the MS Entities, including the books, records, and documents of the MS Entities and all entities they control or have an ownership interest in, notwithstanding the asset freeze imposed by paragraph VII, above;
- (d) Succeed to all rights to manage all properties owned or controlled, directly or indirectly, by the MS Entities, pursuant to applicable management agreements, by-laws, LLC agreements, or other controlling agreements relating to each entity;
- (e) Take steps to locate assets that may have been conveyed to third parties or otherwise concealed;

- (f) Take steps to ascertain the disposition and use of funds obtained by the Defendants resulting from the sale of securities issued by MS Entities;
- (g) Engage and employ persons, including accountants, attorneys and experts, to assist in the carrying out of the Receiver's duties and responsibilities hereunder;
- (h) Establish a cash management system by closing, transferring, consolidating and opening bank accounts and securities accounts, so long as records are kept of the sources and uses of all funds;
- (i) Invest all cash of the MS Entities in U.S. government securities or U.S. government guaranteed securities having remaining maturities of up to two years and in money market accounts maintained by financial institutions having net worths of no less than \$50 billion;
- (j) Discharge his duties as Receiver by making and authorizing in the ordinary course payments and disbursements from the funds and assets under his control, incurring expenses, and entering into agreements, including loan agreements and credit facilities, all as reasonably necessary or advisable under the circumstances;
- (k) Investigate, prosecute, defend, intervene in, and otherwise participate in, compromise and adjust actions in any state, federal, administrative, or foreign tribunal of any kind, or any potential actions or claims, as the Receiver believes in his sole discretion advisable or proper to collect, conserve, or otherwise recover the assets of the MS Entities, or entities they own or control;
- (l) Notwithstanding the terms of this Order, borrow monies and encumber assets of the MS Entities, or the entities they own or control, to the extent such actions are deemed necessary by the Receiver based on his own experience and input from

his advisors to be most beneficial to preserving enterprise value for one or more of the MS Entities and those entitled to proceeds; provided that encumbrances in excess of \$100,000 shall first require at least four (4) business days' written notice (unless shortened by court order) to the Commission, McGinn and Smith (such notice to be given to McGinn and Smith via ECF, facsimile, e-mail, and/or hand delivery to their respective counsel of record), and such other MS Entity investors having filed notices of appearance in the above-captioned case; provided further that the Receiver may apply for an order under seal or a hearing *in camera*, as circumstances require;

- (m) Use, lease, sell, and convert into money all assets of the MS Entities, either in public or private sales or other transactions on terms the Receiver reasonably believes based on his own experience and input from his advisors to be most beneficial to the MS Entities and those entitled to the proceeds; provided, however, all leases and sales of property appraised for or having a cost basis of \$100,000 or more shall only be consummated with prior court approval on at least four (4) business days' written notice (unless shortened by court order) to the Commission, McGinn and Smith (such notice to be given to McGinn and Smith via ECF, facsimile, e-mail, and/or hand delivery to their respective counsel of record), and creditors or MS Entity investors who have filed notices of appearance in the appearance in the above-captioned case; provided further that the Receiver may apply for an order under seal or *in camera*, as circumstances require;
- (n) Take all necessary steps to gain control of the Defendants' interests in assets in

foreign jurisdictions, including but not limited to taking steps necessary to repatriate foreign assets; and

- (n) Take such further action as the Court shall deem equitable, just, and appropriate under the circumstances upon proper application of the Receiver.

IX.

IT IS FURTHER ORDERED that the Receiver and all persons who may be engaged or employed by the Receiver to assist him in carrying out his duties and obligations hereunder, or any of their partners, officers, directors, members, employees, or agents, shall be immune from liability for all actions or omissions within the scope of the Receiver's authority. This provision shall apply to claims based on conduct during the term of any agreement entered into between the Receiver and any other person who may be engaged or employed by the Receiver hereunder, even if such claims are filed after the termination of any such agreement.

X.

IT IS FURTHER ORDERED that if in accordance with this order the Receiver determines that any of the MS Entities, should undertake a bankruptcy filing, the Receiver be, and hereby is, authorized to commence cases under title 11 of the United States Code for such entities in this district, and in such cases the Receiver shall prosecute the bankruptcy petitions in accordance with title 11 subject to the same parameters and objectives as a chapter 11 trustee and shall remain in possession, custody, and control of the title 11 estates subject to the rights of any party in interest to challenge such possession, custody, and control under 11 U.S.C. § 543 or to request a determination by this Court as to whether the Receiver should be deemed a debtor in possession or trustee, at a hearing, on due notice to all parties in interest, before the undersigned. Before taking action under this paragraph, however, at least two (2) business days' written notice

(unless shortened by court order) stating that the Receiver is contemplating action under title 11 must be provided to the Commission, McGinn and Smith (such notice to be given to the McGinn and Smith via ECF, facsimile, e-mail, and/or hand delivery to their respective counsel of record), and such other MS Entity investors who request such notice; provided further that the Receiver may apply for an order under seal or a hearing *in camera* as circumstances require.

XI.

IT IS FURTHER ORDERED that to facilitate efficient coordination in one district of all bankruptcies of MS Entities and the entities they own or control, the Northern District of New York shall be the Receiver's principal place of business for making decisions in respect of operating and disposing of each of the MS Entities and entities they own or control, and their respective assets.

XII.

IT IS FURTHER ORDERED that in lieu of providing retainers to the Receiver and his advisors, all payments made pursuant to the foregoing procedures prior to the initiation of any voluntary or involuntary petition for relief under the United States Bankruptcy Code, or foreign insolvency proceeding, shall be deemed payments made according to ordinary business terms and incurred in the ordinary course of business or financial affairs of the transferees and the MS Entities and not subject to avoidance as a preferential payment.

XIII.

IT IS FURTHER ORDERED that no person or entity, including any creditor or claimant against any of the Defendants or the Relief Defendant, or any person acting on behalf of such creditor or claimant, shall take any action without further order of the Court to interfere with the taking control, possession or management of the assets, including but not limited to the

filing of any lawsuits, liens or encumbrances or bankruptcy cases to impact the property and assets subject to this order.

XIV.

IT IS FURTHER ORDERED that the Defendants and the MS Entities are jointly and severally liable for the the reasonable costs, fees and expenses of the Receiver incurred in connection with the performance of his duties as described herein, including but not limited to, the reasonable costs, fees and expenses of all person who may be engaged or employed by the Receiver to assist him in carrying out his duties and obligations. All applications for costs, fees and expenses of the Receiver and those employed by him shall be made by application to the Court setting forth in reasonable detail the nature of such costs, fees and expenses, with notice to all parties and an opportunity to be heard.

XV.

IT IS FURTHER ORDERED that, pending final disposition of this action, the Defendants, the Relief Defendant, and any person or entity acting at their direction or on their behalf, or any other person, including but not limited to any investor, who receives actual notice of this Order by personal service or otherwise, are (1) restrained and enjoined from destroying, altering, concealing or otherwise interfering with the access of Commission and the Receiver to any and all documents, books and records, that are in the possession, custody or control of the Defendants, the Relief Defendant, and each of their officers, agents, employees, servants, accountants, financial or brokerage institutions, attorneys-in-fact, subsidiaries, affiliates, predecessors, successors and related entities, including but not limited to, the MS Entities, that refer, reflect or relate to the allegations in the Complaint, including, without limitation, documents, books, and records referring, reflecting or relating to the Defendants' and the Relief

Defendant's finances or business operations; and (2) ordered to provide all reasonable cooperation to the Receiver in carrying out his duties set forth herein.

XVI.

IT IS FURTHER ORDERED that this Order shall be, and is, binding upon the Defendants and Relief Defendant and each of their respective officers, agents, servants, employees, attorneys-in-fact, subsidiaries, affiliates and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile service, or otherwise.

Dated: _____, 2010
Albany, New York

UNITED STATES MAGISTRATE JUDGE

EXHIBIT 2

Page 1

ROUGH ASCII & UNCERTIFIED TRANSCRIPT
 UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF NEW YORK

-----X
 SECURITIES AND EXCHANGE COMMISSION,
 Plaintiff, Index No.
 10Civ 457
 -against- (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 MCGINN and DAVID L. SMITH;

Defendants.
 -----X

EXAMINATION BEFORE TRIAL of LYNN SMITH,
 RELIEF DEFENDANT, taken by the Plaintiff,
 pursuant to Court Order, held at the office of
 Phillips Lytle, 30 South Pearl Street, Albany,
 New York, on May 27, 2010, at 11:36 a.m.,
 taken before George Malinowski, a Notary
 Public of the State of New York.

Page 2

1
 2 APPEARANCES:
 3
 4 ***ROUGH ASCII & UNCERTIFIED TRANSCRIPT***
 5 UNITED STATES SECURITIES EXCHANGE &
 6 COMMISSION
 7 Attorneys for Plaintiff
 8 3 World Financial Center
 9 New York, New York 10281
 10 BY: DAVID STOELTING, ESQ.
 11 LARA S. MEHRABAN, ESQ.
 12
 13 FEATHERSTONHAUGH WILEY & CLYNE, LLP
 14 Attorneys for Witness
 15 99 Pine Street
 16 Albany, New York 12207
 17 BY: JAMES D. FEATHERSTONHAUGH, ESQ.
 18
 19 GREENBERG TRAUIG, LLP
 20 Attorneys for Timothy McGinn and David L.
 21 Smith
 22 54 State Street
 23 Albany, New York 12207
 24 BY: MICHAEL KOENIG, ESQ.
 25 EMILY P. FEYRER, ESQ.

Page 3

1
 2
 3 STIPULATIONS
 4 IT IS HEREBY STIPULATED AND AGREED by
 5 and between the attorneys for the respective
 6 parties herein, that filing, sealing and
 7 certification be and the same are hereby
 8 waived.
 9 IT IS FURTHER STIPULATED AND AGREED
 10 that all objections, except as to the form of
 11 the question shall be reserved to the time of
 12 the trial.
 13 IT IS FURTHER STIPULATED AND AGREED
 14 that the within deposition may be signed and
 15 sworn to before any officer authorized to
 16 administer an oath, with the same force and
 17 effect as if signed and sworn to before the
 18 Court and that a copy of this examination
 19 shall be furnished without charge to the
 20 attorney representing the witness testifying
 21 herein.
 22
 23
 24
 25

Page 4

1
 2 LYNN SMITH,
 3 having been first duly sworn by a
 4 Notary Public, was examined and testified
 5 as follows:
 6 EXAMINATION BY
 7 MR. STOELTING:
 8 Q Would you please state your name for the
 9 record.
 10 A Lynn Smith
 11 Q Where do you reside?
 12 A [REDACTED], Saratoga Springs,
 13 New York 12866.
 14 MR. STOELTING: Would counsel in
 15 the room please identify themselves.
 16 MR. FEATHERSTONHAUGH: Jim
 17 Featherstonhaugh from Featherstonhaugh,
 18 Wiley & Clyne, counsel for the relief
 19 defendant Lynn Anne Smith.
 20 MR. KOENIG: Michael Koenig and
 21 Emily Feyrer from Greenberg & Traurig.
 22 We represent the individual defendants,
 23 Tim McGinn and David Smith.
 24 I'm here today specifically -- I'd
 25 like to put this on the record after the

Page 5

1
2 SEC counsel identifies himself.
3 MR. STOELTING: David Stoelting
4 and Lara Mehraban for the plaintiff.
5 MR. KOENIG: I'm here in the
6 capacity as Mr. Smith's attorney in this
7 case. Mr. Smith is not waiving any
8 spousal privilege that might exist to
9 any questions that might be pertinent to
10 his wife, Lynn Smith, during the course
11 of their what I believe is their 38-year
12 marriage where any spousal privilege
13 might apply. She's free to answer
14 questions and on a case-by-case basis,
15 we may ask for -- I may grant a limited
16 waiver or something to that effect.
17 This may not be an issue at all,
18 however I want to make the SEC aware
19 there may be times that I do call
20 spousal privilege or I may grant a
21 waiver but as a general matter, this is
22 what I want the record to be clear on as
23 a general matter that Mr. Smith is not
24 waiving for any future purposes his
25 spousal privilege.

Page 6

1 L. Smith
2 MR. STOELTING: Are you also
3 representing Mr. Mc Ginn?
4 MR. KOENIG: In this capacity, yes
5 this is a deposition of Lynn Smith and
6 as far as I know Lynn Smith has no
7 spousal privilege with Timothy Mc. Ginn,
8 I don't expect that to be an issue.
9 MR. FEATHERSTONHAUGH: As far as
10 we know.
11 MR. KOENIG: I represent both of
12 them thus far, and as I made clear
13 before, I still have a limited
14 appearance on this case on behalf of the
15 individual defendants. To that extent I
16 am here for Mr. McGinn but I don't want
17 any bearing on this or my role on this
18 particular deposition.
19 THE WITNESS: It's 42 years, not
20 38.
21 MR. FEATHERSTONHAUGH: Remember
22 what I told you about volunteering.
23 MR. STOELTING: Counsel, are we
24 agreed that all objections except as to
25 form are reserved.

Page 7

1 L. Smith
2 MR. FEATHERSTONHAUGH: Yes.
3 Q Good morning Mrs. Smith. Can you
4 describe your educational background after
5 high school?
6 A Yes, I attended Russel Sage State
7 College I was a fine arts/elementary education
8 major. And then I got an -- at that time you
9 could get 30 hours or a masters in education
10 to have a permanent teaching certificate.
11 Q By the way, let me mention a few ground
12 rules which are to speak clearly so the court
13 reporter can hear you, please wait for me to
14 finish my questions before you respond and if
15 you want to speak to your attorney at any
16 time, you can but I would ask that you not do
17 that with a question pending.
18 A Okay.
19 Q What year did you graduate college?
20 A 1968.
21 Q Did you begin working?
22 A Yes.
23 Q You began teaching; is that correct?
24 A I began teaching third grade in
25 Amsterdam, New York at the 5th Ward School.

Page 8

1 L. Smith
2 Q What was your last year of teaching?
3 A I taught for 11 years, so.
4 Q 1970?
5 A Yes.
6 Q I'm sorry 1980?
7 A Yes, 1980.
8 Q So, around 1980?
9 A That's when I stopped.
10 Q After 1980, did you work at any jobs?
11 A No, I was a homemaker.
12 Q Have you obtained any educational
13 degrees other than the degree from Russell
14 Sage?
15 A No.
16 (Plaintiff's Exhibit 1, notice to
17 take deposition dated May 17, 2010
18 marked for identification, as of this
19 date.)
20 Q I'm putting before you what's been
21 marked as Plaintiff's Exhibit 1, it's a notice
22 of deposition, dated May 17th, 2010. Have you
23 seen this before?
24 A Yes.
25 Q Do you understand that you're appearing

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1 L. Smith
2 here today pursuant to this notice?
3 A Yes.
4 (Plaintiff's Exhibit 2, document
5 request marked for identification, as of
6 this date.)
7 Q Plaintiff's 2 is a document request
8 dated May 10th, 2010 for the production of
9 documents of defendant Lynn Smith, and you can
10 take your time and look at it but my question
11 will be have you seen it before today?
12 A Yes.
13 Q Did you do any search for documents in
14 response to this request?
15 A I don't have any documents, most of it,
16 everything was taken from my home.
17 Q Okay, that wasn't my question, my
18 question -
19 A Then I didn't understand it.
20 Q I'll repeat it. Did you do a search for
21 documents in response to this document
22 request?
23 A Yes.
24 Q Can you tell me where you searched?
25 A I searched - well, I guess I was

Page 10

1 L. Smith
2 presented by the SEC with what documents you
3 had, those are the only documents I had which
4 I got from my lawyer.
5 Q Did you understand that this request
6 asked you to look for documents wherever you
7 may keep documents to see if there is any
8 documents that are responsive?
9 A Yes.
10 Q Did you do that?
11 A There are no documents, I looked.
12 Q That's my question.
13 A No.
14 Q My question is where you looked?
15 A I have no - our checking account, that
16 was taken, all of our stock account
17 information was taken, we don't have savings
18 accounts, so, I guess I don't understand your
19 question.
20 Q Let me repeat it.
21 MR. FEATHERSTONHAUGH: Try
22 listening to the question carefully,
23 where you looked.
24 Q Did you look for documents in the house
25 in Saratoga Springs?

Page 11

1 L. Smith
2 A Yes.
3 Q Did you look for documents in the Vero
4 Beach house?
5 A Yes.
6 Q Did you look for documents in any other
7 locations?
8 A No.
9 Q Do you typically maintain documents in
10 any other locations other than the Vero Beach
11 and the Saratoga Springs house?
12 A No.
13 Q Did you find documents in Vero Beach or
14 Saratoga Springs that were responsive to this
15 request?
16 A No.
17 Q Do you understand that your attorney
18 produced a box of documents to the SEC in
19 response to this request?
20 A Yes.
21 Q Do you know where your attorney found
22 those documents?
23 A No, I don't.
24 Q Did you provide them to him?
25 A No.

Page 12

1 L. Smith
2 Q Do you know who did?
3 A No.
4 Q Are you aware of any documents that were
5 not given to your attorney in response to this
6 request?
7 A No.
8 Q Are you aware of any documents that were
9 responsive to this request that were
10 destroyed?
11 A No.
12 Q Did you do a search of electronic files?
13 A No.
14 Q Why didn't you do a search for
15 electronic files or documents?
16 A Because because they were all taken from
17 our home. Our computer was taken in Vero
18 Beach, and as well as all the records in
19 Saratoga.
20 Q At the time the case was filed on April
21 20th, you were in Vero Beach, correct?
22 A Correct.
23 Q When did you travel down to Vero Beach?
24 A I traveled down around - close - I
25 don't know the exact date in January, it was

Page 13

1 **L. Smith**
2 **around Martin Luther King week.**
3 **Q So you had been down there since**
4 **January?**
5 **A Yes.**
6 **Q And when you went down, what was your**
7 **intention -- when was it your intention to**
8 **travel back to New York?**
9 **A May 15th, or so.**
10 **Q Did you have a return ticket?**
11 **A No, I drove to Vero Beach.**
12 **Q You came back shortly after April 20th?**
13 **A I came back right after the FBI came to**
14 **Vero Beach.**
15 **Q How did you get back to New York?**
16 **A I drove back.**
17 **Q How did you pay for gas?**
18 **A With a speed pass, or what do you call**
19 **that Mobil something or other.**
20 **Q Credit card?**
21 **A Yeah, it was a credit card.**
22 **Q You understand that the order entered**
23 **with the court on April 20th froze your assets**
24 **and your assets and your husband's assets?**
25 **A Yes.**

Page 14

1 **L. Smith**
2 **Q How have you been able to --**
3 **A Live?**
4 **Q Live since then?**
5 **A Well, I have a lot of good friends who**
6 **have invited us for dinner, loaned me some**
7 **money, paid for my haircuts, done my line**
8 **service, my son has cashed in stock of his own**
9 **to pay some of these mortgages as well as my**
10 **daughter has cashed in her stock account.**
11 **Q Have you spent any of your own assets**
12 **since April 20th?**
13 **A No.**
14 **Q Are you aware of your husband spending**
15 **any of his assets or your joint assets since**
16 **April 20th?**
17 **A No.**
18 **Q Do you recall that the court order**
19 **entered on April 20th required you to provide**
20 **a list of assets and liabilities?**
21 **A Yes.**
22 **Q Do you recall preparing that list?**
23 **A Yes.**
24 **(Plaintiff's Exhibit 3, four-page**
25 **document marked for identification, as**

Page 15

1 **L. Smith**
2 **of this date.)**
3 **Q Plaintiff's 3 is a four-page document**
4 **with a fax cover sheet dated May 5th, 2010.**
5 **The second page is a letter from Mr.**
6 **Featherstonhaugh to me and then the third and**
7 **fourth pages, the third page is the Lynn A.**
8 **Smith of net assets and the fourth page is a**
9 **verification. Have you seen this before**
10 **today?**
11 **MR. FEATHERSTONHAUGH: I take your**
12 **time and look at all four pages before**
13 **you answer.**
14 **THE WITNESS: I am.**
15 **Q Okay. Have you seen the third page, the**
16 **statement of net assets before today?**
17 **A Yes.**
18 **Q On the fourth page, is that your**
19 **signature?**
20 **A Yes.**
21 **Q Did you prepare this statement of net**
22 **assets?**
23 **A No.**
24 **Q Did Mr. D'Aleo prepare it?**
25 **A Yes.**

Page 16

1 **L. Smith**
2 **Q Does this statement accurately reflect**
3 **your net assets?**
4 **A Yes.**
5 **Q Do you see where it says loans**
6 **receivable?**
7 **A Yes.**
8 **Q It says T. McGinn?**
9 **A Yes.**
10 **Q Is that Timothy McGinn?**
11 **A Yes.**
12 **Q What does that refer to?**
13 **A Well, I made two loans to Tim McGinn.**
14 **One, the first one was for some alarm stock as**
15 **well as the purchase of his home in Niciuna,**
16 **and the other one was just a loan.**
17 **Q When was the \$900,000 loan?**
18 **A 2003, I believe.**
19 **Q Why did Mr. McGinn need \$900,000?**
20 **A He wanted to purchase alarm stock which**
21 **he was president of an alarm company that had**
22 **gone public and he also needed a loan to**
23 **purchase a home.**
24 **Q Why did he come to you for the money?**
25 **A Because he's been a partner of my**

Page 17

1 L. Smith
 2 husband's for 20-odd years and a good friend,
 3 and frankly I had the money and he did not.
 4 Q Where did you get the money?
 5 A My stock account.
 6 Q When was the \$15,000 loan?
 7 A I cannot recall the exact date because
 8 we don't have a date down here, but that was a
 9 little later on.
 10 Q Why did Mr. McGinn need \$15,000?
 11 A I do not know.
 12 Q Has he paid back any of those loans?
 13 A Yes, he's paid two payments on these
 14 loans.
 15 Q How much of the payments has he paid
 16 back?
 17 A He's paid me \$85,000 I believe and
 18 \$100,000.
 19 Q Why hasn't he paid back more? Do you
 20 have an understanding of why you haven't been
 21 paid back more?
 22 A He hasn't paid back more because I don't
 23 believe he has the funds to pay that back
 24 right now.
 25 Q Has he had any ability to pay you back

Page 18

1 L. Smith
 2 during the six years since he borrowed the
 3 \$900,000?
 4 A I don't know.
 5 Q Have you made a demand on him for
 6 payment during the last six years?
 7 A No.
 8 Q Why not?
 9 A As I mentioned before, he's a friend and
 10 a partner and I had the funds and he did not;
 11 so when he asked to borrow the money, I felt
 12 good loaning it to him.
 13 Q Could you afford to loan it to him and
 14 not be paid back?
 15 MR. FEATHERSTONHAUGH Objection
 16 to the form of that question.
 17 A I could afford to, but I do want it paid
 18 back.
 19 Q When these loans were made, the \$00,000
 20 and the \$5,000, did Mr. McGinn come to you
 21 directly and ask you?
 22 A No.
 23 Q What happened?
 24 A He asked his partner, who is my husband,
 25 and my husband discussed it with me. I felt

Page 19

1 L. Smith
 2 we had enough money to loan the money to Tim;
 3 so I said okay.
 4 Q So, the communications went through your
 5 husband?
 6 A Yes.
 7 Q And it says they're assumed worthless as
 8 of 3/31/10, the loans receivable from Mr.
 9 McGinn, when did you determine they were
 10 worthless?
 11 A When you basically took their business
 12 away a month ago.
 13 Q This says worthless of 3/31/10, that was
 14 three weeks before we filed our case.
 15 A I don't recall.
 16 Q Do you recall before the SEC case was
 17 filed that you believe that Mr. McGinn would
 18 never pay you back?
 19 A Could you repeat that?
 20 MR. STOELTING: Could you read
 21 back the last question.
 22 MR. FEATHERSTONHAUGH Objection
 23 to form of the question. If you can, go
 24 ahead and answer.
 25 A No.

Page 20

1 L. Smith
 2 Q Does that mean before the SEC case was
 3 filed you thought you would be paid?
 4 A I thought I would be paid, yes.
 5 Q Do you know if your husband ever asked
 6 Tim if he would pay you back?
 7 A Yes.
 8 Q He did do that?
 9 A Yes.
 10 Q And what was the answer?
 11 A When he had the funds.
 12 Q How frequently did Mr. Smith ask Mr.
 13 McGinn to pay back you?
 14 A I do not know that.
 15 Q How do you know those conversations
 16 occurred between your husband and Mr. McGinn?
 17 A Because he's my husband and he discussed
 18 it with me.
 19 Q Then there is some residence listed,
 20 [REDACTED]
 21 A Yes.
 22 Q And the value is 50 percent value
 23 because it's jointly held with your husband?
 24 A Yes.
 25 Q The value of the Orchid Point Way house,

Page 21

1 L. Smith
2 \$892,000, is that house in your name?
3 A Yes, it is.
4 Q How long has it been held in your name?
5 A One year.
6 Q Whose name was it before?
7 A It was joint.
8 Q Do you know why it went from being held
9 jointly with your husband to solely in your
10 name?
11 A Yes. I demanded that he put the house
12 solely in my name because I funded the
13 purchase of the house.
14 Q When was the house purchased?
15 A Nine years ago.
16 Q Why didn't you demand that it be in your
17 name at any time from the point of purchase
18 until eight years later?
19 A Can you repeat that again?
20 Q Sure, you bought the Vero Beach House
21 nine years ago, and you said you bought it
22 with your money, why didn't you demand that it
23 be in your name then?
24 A I don't know, it should have been.
25 Q Why did you wait until one year ago?

Page 22

1 L. Smith
2 A In light of what was going on in the
3 economy, I wanted the house in my name to
4 protect it. I paid for the house, and as I
5 said, I demanded to have it put back in my
6 name. In fact, when we bought the house, when
7 we were doing an estate planning, our estate
8 lawyer, I wanted it put in my name then which
9 was four years earlier and he convinced us to
10 leave it in jointly and then a year ago I
11 decided that I wasn't going to follow that
12 advice and wanted it in my name.
13 Q Were you aware of McGinn Smith & Company
14 being investigated by a securities regulator
15 called FINRA?
16 MR. KOENIG: At what point in
17 time?
18 Q At the time the house was moved from
19 joint ownership to when the house was moved to
20 your name, were you aware of the
21 investigation?
22 A I was aware that it was a FINRA audit as
23 there was I believe four years in a row.
24 Q And was the fact of a FINRA audit, did
25 that have anything to do with a decision to

Page 23

1 L. Smith
2 put the house solely in your name?
3 A No, it did not.
4 Q What's listed as the camp. [REDACTED]
5 [REDACTED], Broadalbin, New York, is that property
6 solely in your name?
7 A Yes.
8 Q These figures for the furniture, jewelry
9 and artworks, how were those figures
10 determined, those numbers?
11 A Well, we just we had some information in
12 that, but those were taken so we kind of just
13 tried to go through what we have.
14 Q Have you sold any of those items since
15 April 20th?
16 A No.
17 Q You're aware of something called the
18 David and Lynn Irrevocable Trust?
19 A Yes.
20 Q And why isn't the trust listed on here?
21 A I have no idea.
22 Q When you looked at this --
23 A I didn't think the trust had anything to
24 do with this, it's not our money.
25 Q Did have you any conversations with

Page 24

1 L. Smith
2 anyone about whether or not the trust should
3 be listed on your statement of net assets?
4 A No.
5 (Plaintiff's Exhibit 4, 14-page
6 document called affidavit of relief
7 marked for identification, as of this
8 date.)
9 Q Plaintiff's Exhibit 4 is a 14-page
10 document called affidavit of relief,
11 defendant, Lynn Smith.
12 A Yes.
13 Q Is that your signature on the last page?
14 A Yes.
15 Q When did you buy the [REDACTED]
16 [REDACTED] house?
17 A About eight years ago.
18 Q Do you remember how much you paid for
19 it?
20 A No, I don't.
21 Q Do you remember where the money came
22 from to buy that house?
23 A Yes.
24 Q Where?
25 A It came from our stock account.

Page 25

1 L. Smith
2 Q Is that your stock account?
3 A Yes, my stock account.
4 Q I don't know if you remember the account
5 number, but it ended with 916.
6 A No, I don't remember the account number.
7 Q Did you sell some securities from that
8 account to --
9 A Yes, as well as we sold our house, our
10 other house so.
11 Q Where was the other house?
12 A Clifton Park, New York.
13 Q Was [REDACTED] a bigger house than
14 the Clifton Park house?
15 A A little bigger, not quite.
16 Q Do you know the square footage --
17 A No, I'm not good at that.
18 Q If could you wait until I complete my
19 question before you respond, I'd appreciate
20 it.
21 A Okay.
22 Q You and your husband have lived in the
23 [REDACTED] house since it was
24 purchased?
25 A Yes.

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1 L. Smith
2 Q And that's your primary residence?
3 A Yes.
4 Q How much property or how much land is
5 the house on?
6 A It's on a two and-a-half acre lot.
7 Q Do you have any staff, anyone helping
8 you with the household chores?
9 A I have had a cleaning woman every two
10 weeks because I have chronic arthritis in my
11 hands and in my legs. I've already had a hip
12 replacement, so I have had a cleaning lady
13 every two weeks and with two and-a-half acres
14 we have had a lawn service for the summer
15 months, once a week. That's about it.
16 Q Anything else?
17 A No.
18 Q Do you take a vacation typically?
19 A No, my vacation is going to Florida.
20 Q In last ten years, have you taken any
21 vacations overseas?
22 A In ten years, I went two years ago to
23 Holland on a trip with my daughter and her
24 sorority sister during the tulip fest, it was
25 through Empire State College, it was a very

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1 L. Smith
2 reasonable trip, we did a mother/daughter trip
3 and then about five years ago, I went on a
4 similar trip to Italy through the Saratoga
5 Arts Council with ten of my friends for seven
6 days.
7 Q Any other overseas trips?
8 A Within the last ten years, overseas, no,
9 not that I recall.
10 Q How are those trips paid, out of one
11 account?
12 A How were those trips paid for?
13 Q Yes, which account, do you remember?
14 A I don't know if it was the stock account
15 or the checking account, I do not recall.
16 Q Which account was the normal for
17 day-to-day paying bills?
18 A My checking account.
19 Q Was that Bank of America?
20 A Yes.
21 Q It was not a joint account?
22 A It was, but then it was changed to a
23 single account.
24 Q We'll get to those accounts a little
25 later, but how many cars have you you had in

Page 28

1 L. Smith
2 the last ten years?
3 A Two, I mean one each.
4 Q Do you keep separate cars in Florida,
5 too, or do you --
6 A No.
7 Q What cars do you currently have?
8 A I have a SUV Lexus and my husband has a
9 compact Infiniti.
10 Q Are those leased?
11 A Yes.
12 Q Who pays the lease bills?
13 A We do, now.
14 Q I mean before April 20th, who paid them?
15 A McGinn Smith & Company.
16 Q How long had McGinn Smith & Company paid
17 for the cars that you and your husband drove?
18 A I do not recall.
19 Q Looking at your declaration on pages 4
20 and 5, paragraphs 14 and 18, in 14 you
21 referred to a brokerage account that you
22 opened with \$60,000.
23 A Yes, that was an account that was left
24 to me when my father died.
25 Q Looking at the next page, and see where

Page 29

1 L. Smith
 2 it says then you bought a small home in
 3 Clifton Park; is that the same house?
 4 A Where are you?
 5 Q I'm sorry, on paragraph 15, is that the
 6 same house you sold when you bought the
 7 Saratoga house?
 8 A No.
 9 MR. FEATHERSTONHAUGH: let him
 10 finish the question.
 11 Q Was there another house in between this
 12 house and the Saratoga house?
 13 A Yes.
 14 Q How many?
 15 A One.
 16 Q When did you sell this house, the small
 17 home in Clifton Park?
 18 A 1982, maybe.
 19 Q Where was the next house, located?
 20 A In Clifton Park.
 21 Q And that's the house you kept until
 22 Saratoga?
 23 A Yes.
 24 Q How did you pay for the second Clifton
 25 Park house?

Page 30

1 L. Smith
 2 A With the proceeds from the sale of the
 3 first house as well as from what we always
 4 went to which was the stock account.
 5 Q Your stock account?
 6 A Yes.
 7 Q When you say we always went to it, what
 8 do you mean?
 9 A I paid for my children's college and for
 10 the home.
 11 Q Anything else?
 12 A No.
 13 Q And then paragraph 16 says, my husband
 14 and I maintained a joint checking account into
 15 which we deposited both of our paychecks and
 16 from which we paid our household bills.
 17 Q That was true from the beginning of the
 18 marriage and throughout?
 19 A Yes.
 20 Q And the reference to the joint checking
 21 account, was that the Bank of America account?
 22 A Yes.
 23 Q Looking back at paragraph 15, where you
 24 say we bought a small home in Clifton Park for
 25 which I provided the down payment from my

Page 31

1 L. Smith
 2 inheritance, when you say my inheritance,
 3 you're referring to the \$60,000?
 4 A Yes.
 5 Q Do you remember how much the down
 6 payment was?
 7 A No, but I know the house was \$40,000.
 8 Q Then on paragraph 16, you said that you
 9 maintained a joint checking account from which
 10 you paid the household bills, does that mean
 11 pretty much all the household bills during all
 12 those years?
 13 A Yes. I paid all of those but sometimes
 14 David would pay, he had a checking account
 15 also and he would pay the mortgage, if I
 16 couldn't.
 17 Q He had a separate account?
 18 A Yes.
 19 Q But other than the occasionally paying
 20 the mortgage, all the household bills were
 21 paid out of the joint account?
 22 A Yes, but it's not a joint account now.
 23 Q When did it become not a joint account?
 24 A I wanted my own account a year ago.
 25 Q Why did you want your own account?

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1 L. Smith
 2 A Because I was the only person using it,
 3 and most couples today have separate checking
 4 accounts, and I wanted one.
 5 Q Did it have anything to do with a desire
 6 to separate your assets or to move assets into
 7 your name from your husband's name?
 8 A No.
 9 Q The next paragraph, there is a reference
 10 to the real estate, paragraph 17, the real
 11 estate on Sacandaga Lake, that real estate
 12 wasn't listed on the assets?
 13 A Yes, it was.
 14 Q Is that the same as Braudo?
 15 A Yes.
 16 MR. FEATHERSTONHAUGH: just so you
 17 know, Sacandaga is the lake, and Braudo
 18 again is the town.
 19 Q Now, on paragraph 18, the last sentence
 20 says, by the late 1990 I have accumulated
 21 upwards of 6 million in my account. Is that
 22 the same account that started with the \$60,000
 23 minus the down payment?
 24 A Yes.
 25 Q Were there additional deposits of

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1 L. Smith
 2 capital or cash in that account during that
 3 period of time?
 4 **MR. FEATHERSTONHAUGH** I'm going
 5 to object to the form of that question.
 6 If you can answer it that way, you're
 7 free to try.
 8 I think it's really two questions,
 9 Mr. Stoelting, it might be easier to
 10 understand if you bifurcate it.
 11 Q Between the start of the account with
 12 the \$60,000 minus the down payment back in
 13 1969 up until the late 1909s when it becomes
 14 \$6,000,000, can you just, broadly speaking,
 15 how did the \$60,000 minus the down payment
 16 become 6 million by the late '90s?
 17 A By the late '90s, the \$60,000 actually
 18 went down to \$10,000 at one point, but my
 19 husband was a stockbroker and he brought it
 20 back up again and then he bought some All Bank
 21 stock, and that stock was the stock that went
 22 up to -- I believe \$4,000,000.
 23 Q Okay. But what I'm wondering is whether,
 24 between 1969 and the late '90s, there was
 25 another chunk of cash that went into your

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1 L. Smith
 2 account or whether it was all results from an
 3 investment?
 4 A It resulted from all good investing.
 5 Q So the principal remained the same, is
 6 that what you're saying?
 7 A Yes.
 8 Q Were those investment decisions made by
 9 you or your husband?
 10 A Most decisions were made by my husband.
 11 He was a financial advisor and husband.
 12 Q Did he have discretionary authority on
 13 the account?
 14 A Yes.
 15 Q What do you understand that to mean?
 16 A I mean he would, if it was something
 17 that was you know substantial, we would
 18 discuss it, but a lot of brokers have
 19 discretionary accounts with their regular
 20 customers, I am his wife, of course he had
 21 some discretion on my account.
 22 Q I guess what I meant was could he buy
 23 and sell securities without asking you first,
 24 did he have that authority on the account?
 25 A To run my stock account?

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1 L. Smith
 2 Q Yes.
 3 A Yes.
 4 Q On paragraph 20, the last sentence says
 5 on occasions, I agreed with his suggestions
 6 and on occasions I disagreed. When I disagreed
 7 with a proposed investment, the transaction
 8 was not undertaken.
 9 Do you recall any times that you
 10 disagreed?
 11 A I can recall disagreeing, but I cannot
 12 give you specifics, we're talking about 40
 13 years here, so.
 14 Q On the next page, paragraph 22. You say
 15 the only times I used my stock account was for
 16 the benefit of our children, such as making a
 17 down payment on a house, buying a ski condo in
 18 the mid '80s and paying for their college
 19 tuition.
 20 My question is about the ski condo,
 21 where was that?
 22 A That was in Killington, Vermont.
 23 Q What happened to it, do you still own
 24 it?
 25 A Oh, no, we sold it.

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1 L. Smith
 2 Q When did you sell it?
 3 A About ten years ago.
 4 Q So, you bought it in the mid '80s?
 5 A Yes, mid '80s.
 6 Q Until ten years ago, in the year 2000?
 7 A Yes.
 8 Q So, what kind of place was that, how
 9 many bedrooms and such?
 10 A It was a four-bedroom condo, townhouse.
 11 Q Do you remember how much you paid for it
 12 in the mid '80s?
 13 A I think, yes, about \$125,000, give or
 14 take.
 15 Q And you used your stock account to buy
 16 that?
 17 A Yes.
 18 Q And how much did you sell it for?
 19 A About \$150,000.
 20 Q When did you buy the Vero Beach house,
 21 I'm sorry, if I asked that already?
 22 A I've had it nine years.
 23 Q That's right. Is there any other real
 24 estate that you have bought and sold during
 25 your marriage or your husband either jointly

1 L. Smith
 2 or separately or together that isn't
 3 referenced here?
 4 We have the [REDACTED] house,
 5 we have the [REDACTED] house, Vero Beach,
 6 the lake house and the ski condo; is there any
 7 other?
 8 A I sold a two-family house in Amsterdam
 9 that my parents lived in which I kept for 35
 10 years allowing my brother-in-law and
 11 sister-in-law to live in, one flat fee, in the
 12 house with kind of a deal where they would
 13 maintain the property at a lower rent.
 14 Q When was the house sold?
 15 A That was sold in 2006, maybe.
 16 Q Is there any other real estate
 17 transactions other than the ones we mentioned?
 18 A No.
 19 Q Okay. And in paragraph 23 it mentions
 20 the trust and there is a reference to Tom
 21 Urbelis, can you just tell me how Mr. Urbelis
 22 came to, is he the trustee or --
 23 A He was the trustee, he is not --
 24 Q Can you just tell me how you know him?
 25 A Yes, he's been one of my husband's and

1 L. Smith
 2 my best friend since about 7th grade.
 3 Q What is Mr. Urbelis's profession?
 4 A He's a lawyer.
 5 Q Do you know what kind of legal practice
 6 he has?
 7 A No.
 8 Q Where does he live?
 9 A Andover, Massachusetts.
 10 Q How long has he lived there?
 11 A 30 years.
 12 Q You say in paragraph 23 that the trust
 13 has been managed since its inception by Thomas
 14 Urbelis; does he manage it on his own?
 15 A Yes.
 16 Q What does he do to manage it?
 17 A He pays the -- well, he signs some
 18 things so we can pay the taxes on the trust,
 19 and I don't think there is anything else he
 20 does.
 21 Q And what are the assets of the trust?
 22 A The All Bank stock.
 23 MR. FEATHERSTONHAUGH Currently,
 24 is that the question?
 25 Q Well, or since its creation what has the

1 L. Smith
 2 trust had in assets?
 3 MR. FEATHERSTONHAUGH Object to
 4 the form. Answer if you can.
 5 A It had the stock, the \$6 million worth
 6 of All Bank stock.
 7 Q What is your understanding, do you
 8 understand there is a written document that
 9 governs the administration of the trust, have
 10 you ever seen anything called a declaration of
 11 trust?
 12 A Well, we had an estate planner, a
 13 lawyer, and Marty Finn, and I'm sure I
 14 probably have seen it, but I won't say that I
 15 can recall exactly that I've seen it.
 16 Q Okay. Let me just ask you, what is your
 17 understanding of the purpose of the trust?
 18 A The trust, the purpose of the trust was
 19 our children are 27 and 30 years old.
 20 Presently, we started this about four years
 21 ago, this particular trust and I wanted them
 22 to be able to have an opportunity to if they
 23 wanted to start a business, own a home, I
 24 wanted them to have the rewards, reap the
 25 rewards of my husband's business and so we

1 L. Smith
 2 both agreed on putting that in the trust.
 3 Q I thought the trust started with your
 4 money?
 5 A It did.
 6 Q How is that reaping the rewards of your
 7 husband's business?
 8 A Well, I guess his knowledge on buying
 9 the All Bank is what gave us the 6 million.
 10 When I say reaping the rewards of his
 11 business, that's what I'm referring to, not
 12 McGinn Smith & Company, I'm talking about his
 13 knowledge as to being a broker.
 14 Q Was it also that because his business
 15 was earning money, you could have that stock
 16 account sitting there and, you know, not being
 17 used because you're living off the money your
 18 husband earned from his business?
 19 MR. FEATHERSTONHAUGH Object as
 20 to form. You can go ahead and answer.
 21 A Yes.
 22 Q So, the trust was created, you would
 23 agree, for your children not for you and your
 24 husband?
 25 A Exactly.

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1 L. Smith
2 Q Do you understand that you have the
3 ability to take money out of the trust if you
4 want to?
5 MR. FEATHERSTONHAUGH: Object to
6 the form.
7 MR. KOENIG: I object as well.
8 A We cannot take money out of the trust.
9 MR. STOELTING: Let me mark some
10 other exhibits.
11 Off the record.
12 (Plaintiff's Exhibit 5, promissory
13 note marked for identification, as of
14 this date.)
15 (Plaintiff's Exhibit 6, one-page
16 document marked for identification, as
17 of this date.)
18 (Plaintiff's Exhibit 7, document
19 bearing eight transactions, transfers of
20 funds marked for identification, as of
21 this date.)
22 MR. STOELTING: Back on the
23 record.
24 Q Mrs. Smith, we were looking at what we
25 marked as Plaintiff's 4 and if you'd just turn

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1 L. Smith
2 back for a second to paragraph 27.
3 There is a reference to payments from
4 your account to TDMM Cable, why don't you take
5 a minute and read through that.
6 How did you happen to make a loan to
7 TDMM Cable?
8 A TDMM Cable, my husband's - McGinn Smith
9 was involved with alarm companies and cable
10 companies, and I consented to a loan for the
11 \$335,000. As it states there were two
12 payments that were paid back, and I usually
13 would get some interest on the loan.
14 Q Okay.
15 MR. FEATHERSTONHAUGH: I don't
16 think that that had anything to do with
17 his question. You need to listen to the
18 question then respond to it, not read
19 the document.
20 THE WITNESS: He told me to read
21 it.
22 Q My question was, and I think you were a
23 little responsive, my question was how it came
24 to be that you loaned \$335,000 to TDMM Cable
25 in 2009?

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1 L. Smith
2 A Is your question why I lent it, is that
3 what you're saying I don't understand?
4 Q Why, how?
5 A Why, how? I had the money and it was my
6 husband's company and it wasn't like I wasn't
7 getting it right back.
8 Q Who asked you about it?
9 A Dave, my husband.
10 Q Did he say why he was asking you rather
11 than going to a bank or some other lending
12 source?
13 A No.
14 Q Did you have any understanding yourself
15 as to why he was asking you rather than
16 going to a bank or another lender?
17 A I thought it made all the sense in the
18 world to ask me rather than going to a bank.
19 Q Why?
20 A I had the money and I was able to, if he
21 needed it for a quick loan for a closing or
22 something, why not?
23 Q You say here in the third sentence of
24 paragraph 27, I have made similar particular
25 loans to provide bridge financing to

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1 L. Smith
2 facilitate the closing of various transactions
3 that McGinn Smith has handled over the course
4 of many years.
5 Just tell us the similar loans that
6 you've given.
7 A Sir, you realize he has been in business
8 for 29 years. Are you asking me to just come
9 up what all these different loans without
10 showing me a piece of paper or something?
11 Q To the best of your recollection, which
12 ones do you recall?
13 A They were usually to alarm companies or
14 to these cable companies.
15 Q Did they occur over the last 40 years?
16 A No. More so in the probably last 15
17 years, maybe.
18 Q And the source of the loans was your
19 stock account; is that right?
20 A Correct.
21 Q How did the loans happen, would your
22 husband come to you and say we need another
23 loan?
24 MR. KOENIG: This may be one of
25 those limited type things if she can

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1 L. Smith
 2 answer without what her husband said to
 3 her.
 4 Q Let me ask it a different way. Did you
 5 make these loans following a request of some
 6 sort from your husband?
 7 A Yes.
 8 Q Did Mr. McGinn ever come to you in need
 9 for a loan?
 10 MR. FEATHERSTONHAUGH Other than
 11 the ones we just talked about.
 12 Q Let me clarify. Your loans to Mr.
 13 McGinn the \$900,000 and the \$15,000, were they
 14 connected to the business Ms & Co., Inc.?
 15 A No.
 16 Q They were of a personal nature?
 17 A Yes.
 18 Q And did Mr. McGinn use the funds in any
 19 way for business ventures, as far as you know?
 20 A No, he didn't, no.
 21 Q Do you know what he did with the money?
 22 A I do not know. Wait I minute, I thought
 23 I already answered that before that he used it
 24 for his home and he used it for the alarm
 25 company stock.

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1 L. Smith
 2 Q That's right. So I think you said that
 3 the loans increased in frequency in the last
 4 15 years, but they occurred, they started
 5 longer ago than 15 years, is that right?
 6 A I don't recall.
 7 Q What was the frequency of the loans and
 8 just broadly speaking, was it every month,
 9 every week or, you know, once a year or a
 10 couple of times a year?
 11 MR. FEATHERSTONHAUGH Could we
 12 have a time frame?
 13 Q Let's focus on the last 15 years when
 14 you said they became more frequent?
 15 A Well, when I said they became more
 16 frequent, I'm going back to when they started
 17 getting into the alarm business and the cable
 18 business. Those weren't there in the very
 19 beginning of McGinn Smith so -- and how
 20 frequent, I can't recall.
 21 Q Do you ever remember years going by in
 22 between loans?
 23 A No.
 24 Q What was your understanding about the
 25 terms of the loans, the repayment terms?

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1 L. Smith
 2 A My understanding was that I would get a
 3 little bit of interest on a loan that was
 4 made.
 5 Q What do you mean by a little bit?
 6 A I don't know what I mean by a little
 7 bit. I mean it wasn't a lot of money, but if
 8 it -- if it helped close a deal and it
 9 happened to take place in two days, there was
 10 no reason not to do it.
 11 Q Were there loan agreements executed?
 12 A Yes.
 13 Q Were the loan agreements executed every
 14 single time?
 15 A Yes.
 16 Q Do you remember any times that the loan
 17 agreements were not executed?
 18 A No.
 19 Q Let's narrow the period to the last
 20 three years, let's say, '07, '08, '09; do you
 21 remember any other loans other than the one to
 22 TDMM Cable?
 23 A What years are you doing?
 24 Q The last three years.
 25 A TDMM Cable, in the last three years,

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1 L. Smith
 2 there may have been a loan to Coventry. I
 3 don't know if it was within the last three
 4 years, I don't recall.
 5 Q Was there ever a time that you refused a
 6 request to make a loan from your husband?
 7 A Yes.
 8 Q When?
 9 A I refused to loan him some money for
 10 McGinn Smith & Company to meet payrolls, et
 11 cetera
 12 Q When did do you that?
 13 A Within the last year.
 14 Q How much was that loan request?
 15 A That was for maybe \$200,000.
 16 Q Why did you refuse that?
 17 A Because we were happening to go through
 18 the deepest --
 19 MR. KOENIG: I just want to make
 20 sure I'm going to object to the form and
 21 invoke spousal privilege, only to the
 22 extent your answer asks for any
 23 conversations she may have had with her
 24 husband about it.
 25 Do you understand the objection

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1 L. Smith
2 I'm raising?
3 THE WITNESS: Yes.
4 MR. KOENIG: You can answer, the
5 question. Don't say specifically any
6 conversations you had with your husband
7 on that, don't quote that, don't say he
8 told me X, for example.
9 A No one had to tell me, I read the paper,
10 I watch the news, I watched Lehman Brothers
11 and how many other companies go under in New
12 York City, and I didn't want to put any of our
13 personal money into McGinn Smith.
14 Q Do you remember when that request
15 occurred?
16 A No, I don't.
17 Q Why were you willing to put money into
18 TDMM Cable, but not into McGinn Smith &
19 Company?
20 MR. FEATHERSTONHAUGH'll object
21 to the form of that question, but go
22 ahead and try and answer it if you can.
23 A Alright. Let's see, can you repeat
24 that? There are so many initials in this
25 whole thing, TDMM, what was that one again,

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1 L. Smith
2 the cable one?
3 Q Yes. Please, read back the last
4 question.
5 (Whereupon, the record was
6 read back by the Reporter.)
7 A Why did I put into that, that was just a
8 loan that was going to be repaid with
9 interest.
10 Q Did you have an understanding that the
11 payroll to McGinn Smith & Co. would be repaid
12 with interest?
13 A Repeat that.
14 Q Sure. Did you have an understanding
15 that the request to you was to pay \$200,000 of
16 McGinn Smith & Co.'s payroll?
17 A I didn't say it was payroll. I said it
18 was a request to keep things running; payroll
19 is part of that, but not all of it.
20 Q I thought you said payroll.
21 A Maybe I did.
22 Q But I guess my question is the \$200,000
23 that you were being asked to lend to the
24 business, was that going to be repaid or was
25 that something that was not going to be

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1 L. Smith
2 repaid?
3 A In my -- that was something that would
4 be repaid, but I did not want us to be --
5 there were three partners and I didn't want to
6 put the money in just us from my account.
7 Q Was it because you thought the other two
8 partners should put money in also if you were
9 going to put in money?
10 A Yes.
11 Q And the other partners were Mr.
12 Livingston and Mr. McGinn?
13 A Yes.
14 Q Did you ever talk with Mr. McGinn or Mr.
15 Livingston about the possibility of you
16 putting money into the business?
17 A No.
18 Q Those discussions were with your
19 husband?
20 A Yes.
21 Q The TDMM Cable, and let me just put
22 before you the note and I'll hand it out.
23 It's been marked as Exhibit 5. Exhibit 5 is a
24 promissory note, it's a document that was
25 filed with the court with Mr. Smith's

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1 L. Smith
2 declaration, and this is referenced in
3 paragraph 27. This is the same note that's
4 referenced in paragraph 27.
5 A Yes.
6 Q This is the loan \$366,000 that you
7 loaned to TDMM Cable, correct?
8 A Yes.
9 Q Was that kind of in the ballpark of what
10 the typical loan was from you to these
11 companies?
12 MR. FEATHERSTONHAUGH Objection
13 to form. Go ahead.
14 A No.
15 Q In terms of dollar amount?
16 A No.
17 Q Were the other ones bigger or smaller?
18 A Smaller.
19 Q Do you remember the range of the other
20 loans, generally?
21 A No, I don't, but there weren't all that
22 many. This is a large one.
23 Q What do you mean there weren't all that
24 many?
25 A I, from time to time made loans, it

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1 L. Smith
 2 wasn't --
 3 Q Do you remember how many?
 4 A No.
 5 Q And this document, this Exhibit A, it's
 6 not signed, correct?
 7 A Correct.
 8 Q Do you remember seeing this document
 9 before you gave the loan?
 10 A No.
 11 MR. FEATHERSTONHAUGH Just for
 12 purposes of the record, he's referring
 13 to it as Exhibit A, but for the purposes
 14 of this deposition, it's Exhibit 5.
 15 Q That's right, we should refer to the
 16 promissory note as Exhibit 5, as it was marked
 17 in the deposition. It was marked Exhibit A to
 18 the declaration, but you saw this promissory
 19 note before you gave the loan?
 20 A No.
 21 Q When was the first time you saw this
 22 promissory note?
 23 A In my lawyer's office.
 24 Q The first time you saw it was when your
 25 lawyer showed it to you?

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1 L. Smith
 2 A Yes.
 3 Q Do you know when it was prepared?
 4 A I know when this was prepared.
 5 Q Yes.
 6 A I'm looking at June 5th, I'm assuming
 7 that's when it was prepared.
 8 Q But what is that based on, are you just
 9 reading the date?
 10 A Yes.
 11 Q Do you know one way or another when this
 12 document was actually prepared?
 13 A No.
 14 Q It says, the interest rate in the second
 15 paragraph shall be fixed at 24 percent; do you
 16 see that at the top?
 17 A Yes.
 18 Q Do you recall that you would receive a
 19 24 percent interest on the amount that you
 20 loaned?
 21 A No.
 22 Q Do you recall, was that consistent with
 23 the rates of interest that you were paid on
 24 the loans?
 25 A I do not know.

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1 L. Smith
 2 Q Was it higher or lower than the typical
 3 loan?
 4 A I don't know.
 5 Q Sitting here now, does it strike you as
 6 a high rate of interest?
 7 MR. FEATHERSTONHAUGH Objection
 8 as to form. Go ahead and answer.
 9 A I don't know.
 10 Q I think you just testified that the
 11 first time you saw this was in your lawyer's
 12 office.
 13 A Yes.
 14 Q Which lawyer is that?
 15 A Mr. Featherstonhaugh.
 16 Q When was that, when did that occur?
 17 A We've been together a lot, let's see, I
 18 don't know.
 19 Q Was it after the SEC case was filed?
 20 A Yes.
 21 Q Did you know anything about the business
 22 of TDMM Cable?
 23 A I knew a slight bit about it, and I just
 24 knew it was a -- I guess it was described to
 25 me as a junior Time Warner, a discount cable

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1 L. Smith
 2 company in Florida.
 3 Q The information that you had about TDMM
 4 Cable, did it all come from your husband?
 5 A Yes.
 6 Q Did you do any kind of due diligence on
 7 your own?
 8 A No.
 9 Q Did you go down to Florida and look at
 10 their offices and look around?
 11 A Absolutely not.
 12 Q Do you know why it's called TDMM, what
 13 does TDMM stand for?
 14 A Yes, I think it stands for Tim Dave
 15 Matthew, something like that.
 16 Q Who is Matthew?
 17 A He is Matthew Rodgers, he's one of the
 18 people that runs that business in Florida.
 19 Q There is another M at the end, do you
 20 know who that is?
 21 A No.
 22 Q What we marked as Exhibit 6 is a
 23 one-page document that that was Exhibit B to
 24 Mrs. Smiths declaration, and I'm referring to
 25 paragraph 32 so you just want to go through

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1 L. Smith
 2 it.
 3 So according to 32- A, so 32-A, say that
 4 is rows 1, 2, 3, 8, 11, 12 and 13, you cannot
 5 remember the reasons for the transfers?
 6 A That's correct.
 7 MR. FEATHERSTONHAUGH: While you
 8 were looking, I was going to ask Mr.
 9 Stoelting a question. Might I make an
 10 inquiry about this?
 11 MR. STOELTING: Yes.
 12 MR. FEATHERSTONHAUGH: I asked one
 13 of my folks sometime during last night's
 14 turmoil if they could send you an e-mail
 15 asking if we could get copies of those
 16 checks. I wonder if, first of all, if
 17 they did that and --
 18 MR. STOELTING: I think somebody
 19 did that and I did send some checks and
 20 I was trying to locate other checks and
 21 I think I sent a couple of checks,
 22 but --
 23 MR. FEATHERSTONHAUGH: The only
 24 reason I asked is if we could get them
 25 sometime before this hearing, I assume

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1 L. Smith
 2 if you have them we would have some
 3 prospect of knowing what they were.
 4 MR. STOELTING: Everything we have
 5 is available to you, I can say we don't
 6 have all the backup from all the
 7 transactions because it has to be
 8 requested, especially from the banks,
 9 but we will, it is coming in and we'll
 10 make an effort before the hearing to get
 11 all the checks that we have to you right
 12 away.
 13 MR. FEATHERSTONHAUGH: Okay. I
 14 didn't mean to distract you, but it just
 15 reminded me.
 16 Q Have you been able to recall those
 17 transactions 1, 2, 3, 8, 11, 12, and 13?
 18 A No.
 19 Q And B says it appears to be a cash
 20 contribution to my IRA which came from the
 21 funds of David Smith.
 22 A Yes.
 23 Q It's \$4,500, what do you mean by the
 24 funds of David Smith?
 25 A I mean he put -- in order for me to get

Page 59

1 L. Smith
 2 an IRA, I had to get a small paycheck from
 3 McGinn Smith as far as -- and Dave put that in
 4 for me, but I did a repayment for a bill, I
 5 did a lot of decorating in their offices, and
 6 I also opened our home up several times for
 7 different parties for the firm and I maybe got
 8 a \$2,000 check or something for that and then
 9 I had an IRA opened up.
 10 Q So, you're saying the \$4,500 was a
 11 payment for services that you rendered?
 12 A I'm saying that Dave took it from his
 13 account and put it into mine for my IRA;
 14 that's all I know.
 15 Q My question was, whether he did that as
 16 just a straight transfer or whether you did
 17 any, you know, you did something to earn it,
 18 whether you worked in the office or did
 19 something or whether it was just a transfer
 20 into the account?
 21 A No decorators are expensive, as well as
 22 charterers, I did a little bit if he needed
 23 help with something, yes.
 24 Q But my question specifically on that
 25 transfer, that was that payment for your

Page 60

1 L. Smith
 2 decorating services in the office?
 3 A I don't know.
 4 Q Do you know of any documents that would
 5 say, you know, this is payment to Lynn for
 6 decorating or other services in the office?
 7 A I don't know.
 8 Q And then transaction 5, it says it's a
 9 loan payment from Tim McGinn, that's \$85,000.
 10 A Yes.
 11 Q Do you know where Mr. McGinn obtained
 12 that \$85,000 that he paid back to you?
 13 A No.
 14 Q And then 6 is a check from the mortgage
 15 lending entity GPV, \$26,000. Why did you get
 16 a check from a mortgage lending entity?
 17 A Because they, that was something called
 18 Grand Park Village, as it says here it's been
 19 in existence since 1982, and that's what we
 20 received in January.
 21 Q The GPV investment is holding your stock
 22 account?
 23 A Yes.
 24 Q Do you know when that was purchased, the
 25 GPV?

Page 61

1 L. Smith
 2 A It says here since 1982, and that's what
 3 I remember.
 4 Q Number 7, cash contribution, \$5,000 and
 5 you don't remember the source?
 6 A No. Or back to the IRA thing, my
 7 husband has had a business for 29 years that
 8 he did earn a salary and maybe it was a gift
 9 to my IRA, I don't know.
 10 Q 9 is another repayment --
 11 MR. FEATHERSTONHAUGH:That's
 12 paragraph F now.
 13 MR. STOELTING:Paragraph F.
 14 Q -- is another repayment from Mr. McGinn?
 15 A Yes.
 16 Q So, that \$185,000, is that all that he's
 17 repaid you?
 18 A Yes.
 19 Q And G, transaction number 10, \$380,000,
 20 a bridge loan to MS Funding in November of
 21 2007, do you remember the circumstances of
 22 that bridge loan?
 23 A Where are you again?
 24 Q I'm sorry, it's paragraph G on page 11.
 25 A I forgot the question.

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1 L. Smith
 2 Q Do you see paragraph G, refers to
 3 transaction 10, which is \$380,000, and it says
 4 it's the repayment of a bridge loan made by me
 5 to MS Funding.
 6 A Yes.
 7 Q What were the circumstances of that
 8 bridge loan?
 9 A I don't know.
 10 Q Do you remember why you made a bridge
 11 loan to MS Funding?
 12 A No.
 13 Q What was your understanding of what MS
 14 Funding was at the time?
 15 A MS Funding, I don't know.
 16 Q Okay, and then the rest, you said you
 17 don't remember, so let's turn to Exhibit C
 18 which we've marked as Plaintiff's 7. Exhibit
 19 C is eight transactions.
 20 MR. FEATHERSTONHAUGH:Shouldn't
 21 we call it Exhibit 7, again for the
 22 record?
 23 Q Exhibit 7 is eight transactions, and
 24 let's see if we can quickly go through them.
 25 Transfer of funds earned by David Smith in the

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1 L. Smith
 2 late '90s and held in the Capital Center
 3 Credit Corp account; what was that account?
 4 A That was an old account, I think that
 5 may have had something to do with the
 6 integrated alarm company that they were
 7 working on.
 8 Q Your recollection is that that money of
 9 \$38,000 was a gift to you?
 10 A Yes.
 11 Q And B, it's a transfer of \$20,000 and
 12 then it's a loan, it's a reference to a
 13 loan;so you're saying that that \$20,000 is the
 14 repayment of a loan?
 15 A Yes.
 16 Q In March 2006, do you recall which
 17 entity you made the loan to?
 18 A No.
 19 Q That would have been another loan out of
 20 your stock account?
 21 A Yes.
 22 Q And then transactions 3 and 4 are
 23 payments from Pine Street Capital Partnership.
 24 A Yes.
 25 Q Why did you invest in Pine Street

Page 64

1 L. Smith
 2 Capital?
 3 A There were two very bright guys that
 4 were starting up a fund, and the way I
 5 understood it, the fund would lend money to
 6 small private businesses and then you would
 7 get back a little share of stock sometimes as
 8 well as some interest on your loan. And Dave
 9 trusted these guys, Tim Wells and Mike Lasche,
 10 and likewise they thought very highly of him.
 11 And that was the business venture which we
 12 talked about and he decided to do.
 13 Q Your understanding of how the Pine
 14 Street fund would work, did that come from
 15 discussions with Wells and Lasche?
 16 A No.
 17 Q It was based on discussions with your
 18 husband?
 19 MR. KOENIG:I'm going to put
 20 espousal privilege on that to the extent
 21 if she can answer the question without
 22 having to violate any spousal
 23 privileges.
 24 Q Going back to paragraph D, which is
 25 transaction number 5. Referring to

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1 L. Smith
 2 transaction 5, a transfer to your account of
 3 \$326,000 and it says it represents the return
 4 to my account of funds used to fund a QTIP
 5 trust established as estate planning work.
 6 What do you recall about why there was a
 7 return of funds to your account of about
 8 \$326,000?
 9 A Well, we had been to an estate planning
 10 lawyer, I think I mentioned to him before
 11 Marty Finn, and I think what happened was he
 12 had instructed Dave to put this amount in my
 13 account rather than his, and then we were
 14 going to put that into the fund, the trust
 15 fund.
 16 Q So the \$326,000 was previously in an
 17 account, Mr. Smith, it was under your
 18 husband's control?
 19 A Yes.
 20 Q Why was the QTIP trust established?
 21 A I don't know, I don't even know. I'm
 22 having a hard time dealing of what a QTIP is,
 23 honestly. I've been trying to figure that one
 24 out for four years, but I'm just going along
 25 with what our estate planning lawyer told us

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1 L. Smith
 2 to do, and Dave did it and it shows up here.
 3 Q Do you have an understanding of why the
 4 estate planning lawyer directed \$326,000 be
 5 moved from your husband's account to your
 6 account?
 7 A No.
 8 Q Paragraph E refers to 6 and 8 -
 9 MR. STOELTING:Off the record.
 10 (Whereupon, an off the record
 11 discussion was held.)
 12 MR. STOELTING:Back on the
 13 record.
 14 Q Mrs. Smith, going back to paragraph F
 15 that refers to transaction number 7 in what we
 16 marked as Exhibit 7, it says, repayment of a
 17 loan I made to TDMM Benchmark on March 16th,
 18 2010 of \$100,000; do you recall what the
 19 amount of the loan was?
 20 A It would be \$100,000.
 21 Q Do you recall why you made that loan?
 22 A Yes. I was making the loans, those
 23 three loans to TDMM of -- again, with the
 24 understanding that I would be getting the
 25 money back very shortly, which I got back.

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1 L. Smith
 2 Q That understanding was based on
 3 conversations with your husband?
 4 A Yes.
 5 MR. KOENIG:I'm going to invoke a
 6 privilege in the extent you said you're
 7 asking for conversations with her
 8 husband. He's not, again, just so it's
 9 clear, and we took a break and we're now
 10 back on, Mr. Smith is not waiving
 11 spousal privilege.
 12 Q On line 7, do you see where it says,
 13 TDMM Cable funding?
 14 MR. FEATHERSTONHAUGH:Could you
 15 just tell me what you're looking at
 16 you're looking at Exhibit 7 now and line
 17 7.
 18 THE WITNESS:Yes.
 19 MR. STOELTING:Yes.
 20 Q Your description of transaction 7 in
 21 your declaration says that the loan was to
 22 TDMM Benchmark, but the exhibit says that the
 23 payment came from TDMM Cable funding, do you
 24 know why you made -- why you say in the
 25 declaration that the loan was to TDMM

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1 L. Smith
 2 Benchmark but the loan came from TDMM Cable
 3 funding?
 4 A No.
 5 Q Do you remember any other times you
 6 loaned money to Benchmark?
 7 A No.
 8 Q Did you ever talk to the people that
 9 actually run Benchmark?
 10 A No.
 11 Q Did you talk to anyone about that loan
 12 other than your husband?
 13 A No.
 14 (Plaintiff's Exhibit 8, one-page
 15 document marked for identification, as
 16 of this date.)
 17 Q And then I'll just take that from you,
 18 thank you. This is what we've marked as
 19 Exhibit 8. Exhibit 8 is a one-page document
 20 that was originally Exhibit D to Mr. Smith's
 21 declaration.
 22 Do you see the payments into your
 23 account that began on July 15th, 2009?
 24 A Yes.
 25 Q And those were your husband's payroll

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1 L. Smith
 2 accounts -- I'm sorry, payroll payments?
 3 A Yes.
 4 Q Why were those payments being made into
 5 your account beginning on July 15th, 2009?
 6 A Because I paid the household bills with
 7 it.
 8 Q But didn't you pay the household bills
 9 before July 15th, 2009?
 10 A Yes.
 11 Q Where were your husband's payroll
 12 payments being made to before July 15th, 2009?
 13 A We had a joint checking account.
 14 Q Do you have an understanding of why his
 15 paychecks in July, 2009 were being shifted
 16 from the joint account to the account in your
 17 name?
 18 A Yes.
 19 Q What is that understanding?
 20 A I closed the joint account and opened an
 21 account of my own.
 22 Q Why did you do that?
 23 A He had his own checking account, he
 24 never used the one we're speaking of and I
 25 wanted my own checking account.

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1 L. Smith
 2 Q But couldn't you have done all of that
 3 without having him have his payroll being made
 4 into the account that you control?
 5 MR. FEATHERSTONHAUGH:Objection
 6 as to form. Additionally, I'm not going
 7 to stop you, Mr. Stoelting, but I think
 8 this is repetitive of an entire line of
 9 questioning you did before.
 10 MR. STOELTING:I say that's a
 11 fair statement.
 12 MR. FEATHERSTONHAUGH:Could I
 13 just ask one question because I seem to
 14 have lost an exhibit, what is Exhibit 4?
 15 MS. FEYRER: It's the affidavit.
 16 MR. FEATHERSTONHAUGH:Thank you.
 17 Q Do you have an understanding of why your
 18 husband didn't decide to direct his paychecks
 19 to his own checking account?
 20 A Yes.
 21 MR. KOENIG:Mr. Smith is not
 22 waiving spousal privilege, if you can
 23 answer the question without violating
 24 any communications you and your husband
 25 had, go ahead.

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1 L. Smith
 2 THE WITNESS:I can answer the
 3 question.
 4 A He had his checking account with which
 5 he paid some of the bigger bills out of. I
 6 had my checking account. I paid the household
 7 bills out of that. He never or very, very
 8 seldom used that account. I wanted my own
 9 checking account. Many couples today have
 10 their own separate checking accounts, and my
 11 job was to pay the household bills. He, his
 12 job was to go to work at 7:30 in the morning
 13 and come home at 8:30 at night, and that's the
 14 way it went. So I paid those bills and they
 15 were in my checking account.
 16 Q Weren't you generally in 2009 moving
 17 assets out of his name and joint ownership
 18 into your name exclusively?
 19 MR. KOENIG:Can you repeat that?
 20 Q In 2009 weren't you and your husband
 21 moving assets out of his name and joint
 22 ownership into your name?
 23 MR. KOENIG:Object to form.
 24 MR. FEATHERSTONHAUGH:I'll join
 25 in that objection. Go ahead and answer.

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1 L. Smith
 2 A In 2009, I believe I answered this
 3 before, I had demanded that he put the house
 4 in Florida in my name because I had paid -- my
 5 funds were what paid for that house. I also
 6 asked to have my own separate checking account
 7 in 2009 which is what I did.
 8 The answer is that -- I think that was
 9 the question. I don't know, I'm not sure what
 10 you said, actually. I think it was that.
 11 Q That's fine. Was there anything
 12 specifically that prompted you to want the
 13 Vero Beach house in your name and the checking
 14 account in your name?
 15 A Was there anything specific?
 16 Q Yes.
 17 A No.
 18 MR. STOELTING:Off the record.
 19 (Whereupon, an off the record
 20 discussion was held.)
 21 (Plaintiff's Exhibit 9, a
 22 three-page document consisting of an
 23 e-mail with a letter attached marked for
 24 identification, as of this date.)
 25 MR. STOELTING:Back on the

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1 L. Smith
 2 record. We've marked as Exhibit 9, a
 3 three-page document that's an e-mail
 4 with a letter attached.
 5 MR. FEATHERSTONHAUGH: Could you
 6 just hold on until I get to finish
 7 reading it too, please.
 8 MR. KOENIG: Off the record.
 9 (Whereupon, an off the record
 10 discussion was held.)
 11 MR. STOELTING: Back on the
 12 record.
 13 Q. Mrs. Smith, have you had a chance to
 14 take a look at the letter dated January 28th,
 15 2009?
 16 A Yes.
 17 Q Is this a letter from Martin Fimm?
 18 A Yes.
 19 Q Was that the estate planning person you
 20 were referring to earlier?
 21 A Yes.
 22 Q Have you ever seen this letter before?
 23 A I don't recall.
 24 Q Does reading the letter refresh your
 25 recollection about generally trying to

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1 L. Smith
 2 transfer assets from David to you last year?
 3 A From David to me or to the trust?
 4 Q Let's just say transfer assets out of
 5 David's name.
 6 MR. FEATHERSTONHAUGH: I'm going
 7 to object to any questions about the
 8 letter itself. I have no understanding
 9 of where this came from, but it is
 10 currently a privileged communication
 11 between counsel and Mr. and Mrs. Smith.
 12 I understand, well if I
 13 understand, I understand the commission
 14 is saying that they believe the
 15 privilege was waived because the matter
 16 was voluntarily produced by Mr. Smith's
 17 lawyer.
 18 MR. STOELTING: That's right.
 19 MR. FEATHERSTONHAUGH: In a FINRA
 20 proceeding and, perhaps, if you could
 21 give me something that would
 22 substantiate that a waiver was made,
 23 you're certainly free to ask her about
 24 these transactions and stuff, but my
 25 objection is directed solely to the

Page 75

1 L. Smith
 2 specifics of this letter which --
 3 MR. KOENIG: I raise the same
 4 objections. I take your representation
 5 in good faith that this was something
 6 that was presented to you by FINRA, I
 7 believe you made a representation to us,
 8 which I take on good faith, your
 9 representation is that FINRA has advised
 10 you that some other counsel to Mr. Smith
 11 has approved the release of this letter
 12 into the FINRA record and that's how you
 13 came into it.
 14 So, with that representation,
 15 taking it into good faith, I have no way
 16 to verify that, not that you're not
 17 making something up in good faith, but I
 18 don't know what occurred prior. So to
 19 that extent I still view it as a
 20 privileged communication and even if
 21 Mr. Smith waived it, even if Mr. Smith
 22 approved it, that's still going to be
 23 attorney/client privilege.
 24 MR. STOELTING: I just won't ask
 25 anymore questions about the letter.

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1 L. Smith
 2 (Plaintiff's Exhibit 10, e-mail
 3 marked for identification, as of this
 4 date.)
 5 Q Now, this is on the same general topic,
 6 but I'm trying to kind of refresh your
 7 recollection about the topic about moving
 8 money around between you and your husband,
 9 specifically out of the moving assets, money,
 10 property, so that it's not any longer in David
 11 Smith's name.
 12 Do you recall that general trend in, you
 13 know, early '09?
 14 MR. KOENIG: Objection to form.
 15 A If you're referring to -- I opened a
 16 checking account, yes, I did, of my own. I
 17 didn't -- we didn't move any money around in
 18 that, that account was exactly the same, it
 19 was the household account to pay bills, his
 20 paycheck went into it. I already mentioned
 21 that I had wanted the house in my name in
 22 Florida. I think I said that three times.
 23 It's the only thing I think you're referring
 24 to, I can't think of anything else.
 25 Q Exhibit 10 is an e-mail and you're not

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1 L. Smith
 2 on the e-mail, but I'm just showing it to you
 3 in the thought that it might refresh your
 4 recollection. So if you could just read it.
 5 A Yes.
 6 Q First of all, have you ever seen this
 7 e-mail before today?
 8 A I don't read other people's e-mails, no.
 9 Q Looking at paragraph 2, where it says
 10 this has to be accurate, my value for Mr.
 11 Cranberry, this has to be accurate as I am
 12 meeting with my estate attorney tomorrow
 13 afternoon, and Lynn and I have to shift money
 14 around between us, and our respective net
 15 worths are critical in determining that
 16 number.
 17 Does that refresh your recollection
 18 about the topic of moving money around and
 19 assets?
 20 MR. KOENIG:Objection to form of
 21 the question.
 22 A I have not seen this e-mail before, but
 23 I know we went to a meeting with our estate
 24 planner -- and I'm not a lawyer, I went -- I
 25 spent the afternoon there and we tried to do

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1 L. Smith
 2 the best we could with setting up this
 3 irrevocable trust for our kids.
 4 Q You just referred to the revocable trust
 5 or irrevocable trust?
 6 A Irrevocable trust.
 7 Q When was that set up?
 8 A Three or four years ago.
 9 Q So, this meeting, the meetings in 2009
 10 with Mr. Finn, do they relate to the
 11 irrevocable trusts that already existed?
 12 A I believe so.
 13 Q Have you ever heard of Mr. Cranberry?
 14 A Of course.
 15 Q What is Mr. Cranberry?
 16 A He's a racehorse that's also a name that
 17 was given to a partnership that my husband was
 18 in.
 19 Q Did you ever loan any money or make any
 20 investments in Mr. Cranberry?
 21 A I don't know.
 22 Q By the way, you talked about your
 23 loaning money to various entities, cable,
 24 Benchmark, did you ever make investments in
 25 those as opposed to loaning money or is there

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1 L. Smith
 2 a difference in your mind?
 3 A Yeah, there is a difference between
 4 loaning and investing. And I don't know if I
 5 invested in any of them. I left that up to my
 6 broker.
 7 Q Your husband?
 8 A Yes.
 9 Q We've talked about the irrevocable
 10 trust. Was that something you thought of as
 11 an asset under your control?
 12 MR. FEATHERSTONHAUGH:I'll object
 13 to the form of the question, but go
 14 ahead and answer it.
 15 A Specifically, under my control?
 16 Q Yes.
 17 A No.
 18 Q Or your joining with your husband?
 19 A No.
 20 Q Why not?
 21 A I thought that the trustee and my two
 22 children would have control of the trust fund.
 23 (Plaintiff's Exhibit 11, a
 24 three-page financial statement dated
 25 August of 2008 marked for

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1 L. Smith
 2 identification, as of this date.)
 3 Q Exhibit 11 is three pages, financial
 4 statement dated August of 2008.
 5 Can you tell me what Exhibit 11 is?
 6 MR. FEATHERSTONHAUGH:If you
 7 know.
 8 A I don't know. It's a financial
 9 statement.
 10 Q Have you ever seen it before today?
 11 A No.
 12 Q Do you see where it says, cash and
 13 securities?
 14 MR. FEATHERSTONHAUGH:On page 1.
 15 A Yes.
 16 Q That says 7.1 million?
 17 A Yes.
 18 Q Do you have an understanding of whether
 19 or not that includes the value of the trust?
 20 MR. FEATHERSTONHAUGH:I think
 21 he's asking you if you have an
 22 understanding independent of that
 23 document. Is that correct, Mr.
 24 Stoelting?
 25 Q Correct, did you have an understanding

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1 L. Smith
 2 of, well --
 3 **A Did I? You're going to have to repeat**
 4 **that one again.**
 5 **Q Sure. Did you have an understanding**
 6 **that somebody was preparing financial**
 7 **statements for you and your husband in 2008?**
 8 **A No.**
 9 **Q Did you regard the trust as being part**
 10 **of your cash and securities assets in 2008?**
 11 **A No.**
 12 **Q Did you ever have any discussions with**
 13 **anyone in 2008 about whether the trust should**
 14 **be included in the joint assets of you and**
 15 **your husband?**
 16 **A No.**
 17 **(Plaintiff's Exhibit 12, five-page**
 18 **document marked for identification, as**
 19 **of this date.)**
 20 **Q Exhibit 12 is a five-page document and**
 21 **the cover page is dated November 4th, 2008, to**
 22 **David and Lynn Smith from Piaker & Lyons.**
 23 **MR. FEATHERSTONHAUGH: Any**
 24 **questions in connection with this?**
 25 **Q I'm sorry, I thought you were still**

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1 L. Smith
 2 reviewing the document. Have you seen Exhibit
 3 12 before today?
 4 **A I don't recall.**
 5 **Q What is Piaker & Lyons?**
 6 **A That's our accountants.**
 7 **Q And how long have they been your**
 8 **accountants?**
 9 **A I don't recall.**
 10 **Q Within the last year, more than the last**
 11 **couple of years?**
 12 **A Yes.**
 13 **Q For a long time?**
 14 **A Yes.**
 15 **Q And they do your taxes?**
 16 **A Yes.**
 17 **Q Do they provide any other services?**
 18 **A No.**
 19 **Q Do you see on the first page of Exhibit**
 20 **12, at the bottom paragraph on the first page**
 21 **of exhibit 12, it says David L. and Lynn A.**
 22 **Smith have elected to omit substantially all**
 23 **of the disclosures required by the generally**
 24 **accepted accounting principles. If the**
 25 **omitted disclosures were included in a**

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1 L. Smith
 2 statement of financial condition, they might
 3 influence the user's conclusions about the
 4 financial condition of David L. and Lynn A.
 5 Smith.
 6 Do you recall deciding to omit the
 7 disclosures required by generally accepted
 8 accounting principles?
 9 **A No.**
 10 **Q Do you ever remember discussing that**
 11 **topic with anyone?**
 12 **A No.**
 13 **Q Did you ever have the understanding that**
 14 **the financial statements that Piaker & Lyons**
 15 **were preparing for you omitted disclosures**
 16 **required by generally accepted accounting**
 17 **principles?**
 18 **A No.**
 19 **Q Could you look on page 2 of Exhibit 12,**
 20 **please. Do you see the cash is listed at 4.96**
 21 **million dollars?**
 22 **A Yes.**
 23 **Q That includes the value of the**
 24 **irrevocable trust, correct?**
 25 **MR. FEATHERSTONHAUGH Objection**

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1 L. Smith
 2 as to form.
 3 You can answer that if you know
 4 the answer.
 5 **A I don't know the answer.**
 6 **Q Well, in August 2008, did you have 4.96**
 7 **million cash?**
 8 **MR. FEATHERSTONHAUGH Are you**
 9 **asking her if she did?**
 10 **Q You and your husband jointly, did you**
 11 **have 4.96 million in cash if you exclude the**
 12 **trust, the irrevocable trust?**
 13 **A I don't know.**
 14 **Q Could you look back at Exhibit 11, and**
 15 **I'm just trying to refresh your recollection**
 16 **here, you see the cash number is 7 on Exhibit**
 17 **11, 7.170262?**
 18 **A Yes.**
 19 **Q Do you see on the second page, do you**
 20 **see the \$7,172,262 as the sum total at the**
 21 **bottom?**
 22 **A Yes.**
 23 **Q Under brokerage accounts. Do you see --**
 24 **MR. FEATHERSTONHAUGH: Mr.**
 25 **Stoelting, I object to this question,**

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1 L. Smith
 2 which is simply to endorse your
 3 conclusion which may or not be correct,
 4 but I understand how you came to that,
 5 but that's not a question of a witness.
 6 Q Can you look on page 2, please, try
 7 again. Do you see that on page 2 of Exhibit
 8 11, that the value of the irrevocable trust is
 9 included in the total as one of the elements
 10 that reach that number at the bottom?
 11 A Yes.
 12 Q And that's the same number that's listed
 13 as the credit card number on page 1 of Exhibit
 14 11, correct, \$7,170,262?
 15 A Yes.
 16 Q And looking back at Exhibit 12 now, does
 17 that refresh your recollection that you and
 18 your husband in your joint statement included
 19 the irrevocable trust as a cash asset under
 20 your control?
 21 A Repeat the question. I don't know.
 22 Q On Exhibit 12, do you see the value of
 23 the Vero Beach house listed as 2.4 million?
 24 A Yes.
 25 Q Earlier, we looked at your statement, it

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1 L. Smith
 2 was marked as Exhibit 3 -- we'll put it before
 3 you again -- you had listed the value of the
 4 Vero Beach house as \$892,000 and with a
 5 footnote, it says, net of the mortgage debt of
 6 \$871,000 but, can you account at all for the
 7 difference in value?
 8 A Yes. The entire Florida housing market
 9 is flat right now. There are probably 50
 10 houses for sale in the community that we live
 11 in, and most of them are, most of the houses
 12 are being sold for a lot less than what they
 13 are worth.
 14 Q My only question on this document,
 15 Exhibit 12, is three pages of handwriting and
 16 my only question is: If you can identify the
 17 handwriting?
 18 A Yes.
 19 Q Whose handwriting is it?
 20 A My husband's.
 21 MR. KOENIG: Where did this
 22 document come from, do you know?
 23 MS. MEHRABAN: This document is
 24 from that pile.
 25 MR. KOENIG: From the attorney's

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1 L. Smith
 2 office, do you know if those documents
 3 were secured to a grand jury subpoena?
 4 MS. MEHRABAN: I don't know.
 5 MR. KOENIG: You don't know how
 6 you got these?
 7 MR. STOELTING: You can ask the
 8 attorney's office.
 9 MR. KOENIG: I'm asking you, you
 10 said you don't know and I take that at
 11 face value.
 12 Off the record.
 13 (Whereupon, an off the record
 14 discussion was held.)
 15 (Plaintiff's Exhibit 14, series of
 16 e-mails marked for identification, as of
 17 this date.)
 18 Q Exhibit 14 is numerous e-mails, mostly
 19 from 2009 and Mrs. Smith, I can tell you that
 20 you are not on any of these e-mails, but they
 21 concern all of them, your account.
 22 If you would just take a moment and flip
 23 through, they reflect various wire
 24 instructions of funds into and out of your
 25 stock account, and my question will be whether

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1 L. Smith
 2 it refreshes your recollection or you can, you
 3 know, discuss any of these transfers.
 4 Does looking at these e-mails on Exhibit
 5 14 refresh your recollection about these
 6 specific transfers?
 7 A I remember signing some things for Dave
 8 McQuade that maybe had to do with some of
 9 these things.
 10 Q When you say signing, you mean an
 11 authorization?
 12 A An authorization, yes.
 13 Q What kind of document would you have to
 14 sign to authorize these?
 15 A Do you have an example of a regular
 16 document like that, I'm not an attorney, I'm
 17 not a broker, I'm just -- I signed a line and
 18 it said I was wiring money, yes.
 19 Q So, when you did those, when you signed
 20 that paper, just describe to me the mechanics
 21 of how that would happen, would somebody from
 22 McQuade come to you and say we need a
 23 transfer, sign this?
 24 A Dave would say what he was going to do,
 25 and I would sign.

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1 L. Smith
 2 MR. FEATHERSTONHAUGH What Dave?
 3 A My husband, not Dave McQuade.
 4 Q When you did sign the authorizations, it
 5 would be following a discussion with your
 6 husband?
 7 A Yes.
 8 Q Can you tell us why these transfers were
 9 made?
 10 MR. FEATHERSTONHAUGH Are you
 11 asking her to go through them one at a
 12 time?
 13 Q Let's look at the second one on Exhibit
 14 14, see if that refreshes your recollection.
 15 A Yes.
 16 Q Did you know who David McQuade was?
 17 A Yes.
 18 Q Did you know who Patty Sicluna was?
 19 A Yes.
 20 Q McQuade is sending an e-mail, please
 21 approve wire on system for DLS 15,000
 22 16.
 23 Do you understand that to be the account
 24 number on your stock account, 916?
 25 A Yes.

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1 L. Smith
 2 Q 15,000, do you recall this transfer on
 3 February 20th, 2009?
 4 A No.
 5 Q On the next page, March 11th, 2009, the
 6 e-mail refers to a transfer of \$10,000; do you
 7 recall the reason for that?
 8 A I don't recall the reason presently, but
 9 maybe on March 11th, 2009, I would have.
 10 Q The next is an e-mail that says Brian
 11 Cooper, do you know --
 12 A Yes.
 13 Q You have to let me finish the question.
 14 A Sorry.
 15 Q Did you know who Brian Cooper was?
 16 A Yes.
 17 Q He sent you an e-mail saying please
 18 issue a check payable to National Financial
 19 Services for \$100,000. This is for deposit
 20 into Lynda Smith's NFS account per Dave Smith;
 21 do you remember what that transfer was for?
 22 A No.
 23 Q If you could just flip ahead a few
 24 pages, there is an e-mail and a letter to you
 25 from a company called Mobile Search Security,

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1 L. Smith
 2 that's an e-mail from William Spear to David
 3 Smith, and then on the next page there's a
 4 letter that appears to be to you.
 5 If you would just have a look at that
 6 letter. Have you seen this letter before?
 7 A I think I have.
 8 Q Do you know the transaction that it's
 9 referring to, the convertible bridge note that
 10 you hold with Mobile Search Security?
 11 A I can't recall.
 12 Q Did you loan money to Mobile Search
 13 Security?
 14 A I don't recall.
 15 Q Do you recall anything about Mobile
 16 Search Security?
 17 A Very little.
 18 Q What do you recall?
 19 A I think I recall William Spear, and some
 20 conversations possibly that took place with my
 21 husband and Mr. Spear.
 22 Q The three of you?
 23 A No, we were in a car. I -- sometimes
 24 cellphones work that way, I can't remember.
 25 Q Do you remember holding a note issued by

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1 L. Smith
 2 Mobile Search Security?
 3 A Do I remember, no.
 4 Q Could you turn a few more pages, please.
 5 It's actually three pages from the end, it's
 6 an e-mail. There is a reference to Lynn's
 7 TDMM Benchmark, and the bottom is an e-mail
 8 from Sicluna to David Smith; subject: Lynn's
 9 TDMM Benchmark. Dave where should I send
 10 Lynn's TKMM Benchmark certificates?
 11 Did you ever receive any Benchmark
 12 certificates?
 13 A I don't recall, sometimes I don't open
 14 some of those things.
 15 Q Does reading this refresh your
 16 recollection about owning any Benchmark
 17 certificates?
 18 A No.
 19 (Plaintiff's Exhibit 15, one-page
 20 document consisting of a Lynn Smith
 21 accounting statement marked for
 22 identification, as of this date.)
 23 Q Exhibit 15 is a one-page document from
 24 apparently a Lynn Smith account statement.
 25 A Yes.

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1 **L. Smith**
 2 **MR. FEATHERSTONHAUGH**Is there a
 3 date on there somewhere?
 4 **MR. KOENIG**:It's on the top right
 5 corner.
 6 Q And do you see in a list of
 7 transactions? From the top down there is a
 8 wire transfer that it seems to say originated
 9 or ORIG colon, Thomas Urbelis trustee in the
 10 amount of \$95,000?
 11 A Yes.
 12 Q Do you recall the trust making a
 13 transfer of \$95,000 into your account in
 14 March, 2010?
 15 A Yes.
 16 Q Why did that occur?
 17 A My son called the trustee because we
 18 needed to pay tax -- well, we needed to pay
 19 taxes on -- two checks went for the trust fund
 20 and then there were two for us, our own income
 21 tax, a New York State tax, and when he called
 22 for the \$95,000, it was done incorrectly and
 23 it was all put into my account and since it
 24 was getting close to, well, it was the 15th,
 25 income tax time, I wrote the four checks from

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1 **L. Smith**
 2 Florida for those things and was going to
 3 replace the amount we had for our two checks,
 4 and I never got a chance to because then the
 5 FBI came and my account was frozen.
 6 Q Just so I understand, the \$95,000?
 7 A It was a request from my son [redacted] to
 8 Tom Urbelis, so we could pay four tax checks.
 9 Q So, you and your husband could pay your
 10 taxes; is that right?
 11 A Well, no, that is not right. When he
 12 asked for the -- someone screwed up the
 13 \$95,000 and sent it as one lump sum to our
 14 account. We were not -- and we paid all four
 15 of the tax bills.
 16 Q When you say all four, what do you mean?
 17 A Two for the trust account, two for us.
 18 And then we were replacing the money back into
 19 the trust, but it didn't have a chance to,
 20 because, by the time my husband was traveling
 21 and so on and by the time we were going to do
 22 this, I -- our account, our assets were
 23 frozen.
 24 Q Why didn't the trust pay its taxes
 25 directly?

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1 **L. Smith**
 2 A I don't know.
 3 Q In the past, did Mr. Urbelis have the
 4 ability to write checks to pay the taxes due
 5 from the trust?
 6 A I feel like I've paid them, I'm not
 7 sure.
 8 Q Wasn't that his duty as trustee to pay
 9 the taxes?
 10 **MR. FEATHERSTONHAUGH**Objection
 11 as to form. I'm calling for a legal
 12 conclusion of the witness.
 13 Q Let me ask it a different way. To your
 14 recollection it's that you generally would pay
 15 the taxes for the trust?
 16 A That's my recollection.
 17 Q And you would pay them out of which
 18 account?
 19 A I don't understand the question.
 20 Q When you would write a check --
 21 A For my own taxes, it would come out of
 22 my own account, if the trust was a separate
 23 thing. The \$95,000 should not have come
 24 altogether in that lump sum, but that's what
 25 happened.

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1 **L. Smith**
 2 Q What should have happened, how should
 3 the money have been transferred?
 4 A I don't know, maybe, it should have been
 5 -- I don't know. I just recollect that we
 6 were putting back the two checks.
 7 Q Well, you said that you generally paid
 8 the taxes for the trust, is that correct, and
 9 my question was when you write a check to pay
 10 the trust taxes, from which account do you
 11 draw on?
 12 A The trust account to write the trust
 13 taxes. Our own account to write our own
 14 taxes.
 15 Q So, you have a checkbook, a trust
 16 checkbook at home?
 17 A No, no, I don't.
 18 Q How did you write a check to pay the
 19 trust taxes?
 20 A I just paid them.
 21 Q I understand that, but you said that you
 22 use a trust checkbook to do that.
 23 A No, I did not say that, I don't have a
 24 trust checkbook.
 25 Q I thought you said when I said -- which

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1 L. Smith
 2 account do you use to pay the taxes or the
 3 trust, and I thought you said you use the
 4 trust account?
 5 A The money was from the trust account.
 6 Q How is it that you write a check onto
 7 the trust account; is that your testimony?
 8 MR. FEATHERSTONHAUGH: Well, that
 9 was a question, not a testimony, maybe
 10 you could just reask that because I
 11 don't think --
 12 Q Did you understand my question? I just
 13 want to know how the trust taxes get paid, who
 14 does it, who actually writes the check?
 15 I thought I heard you say that you do
 16 it, so I was trying to find out when you do
 17 it, you know, what check do you use to pay
 18 those taxes?
 19 A I'm not sure I always do it. I mean, I
 20 know Mr. Urbelis pays something, maybe it was
 21 as you can see, late in April when we got all
 22 this together to pay these taxes and maybe
 23 that's why I paid the two for the trust. I'm
 24 not saying, I don't know for sure, if I've
 25 done that every single year or if he has

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1 L. Smith
 2 because there is a lot going on here, so the
 3 taxes have been paid. My son made the request
 4 for the money and something with that,
 5 something went wrong, I don't remember what
 6 exactly, but we had to get the taxes in and we
 7 were going to replace that back into the fund.
 8 Q But a portion of the \$95,000 was to pay
 9 you and your husband's taxes; is that correct?
 10 A That's what I just said.
 11 Q What portion, half of the \$95,000?
 12 A Can I look in my checkbook right here?
 13 Q Sure.
 14 A Because I have my checkbook, can I look
 15 in there?
 16 Q There is a check for \$66,500, check 819
 17 underneath that?
 18 A Yeah, I see that.
 19 Q Was that the check to the IRS for you
 20 and your husband's taxes?
 21 A Name three other checks so I can -- I
 22 have to look in my checkbook, there are four
 23 checks, I don't know.
 24 MR. FEATHERSTONHAUGH: Can I just
 25 note for the record and maybe say

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1 L. Smith
 2 sometime afterward, I'm pretty sure that
 3 somewhere along the way I saw some tax
 4 returns for the trust and if they
 5 included the current tax return, you
 6 could just match up the amounts.
 7 MR. STOELTING: Well, I noticed
 8 that you produced the 2008 returns, I
 9 didn't see the '09 returns.
 10 MR. FEATHERSTONHAUGH: We produced
 11 everything we had.
 12 Q Let me ask a different question, do you
 13 understand that the trustee, Mr. Urbelis,
 14 resigned as trustee recently?
 15 A Yes.
 16 Q Do you have an understanding as to why
 17 he resigned?
 18 A No.
 19 Q Did you have a discussion with Mr.
 20 Urbelis about why he resigned?
 21 A No.
 22 Q You have no understanding at all as to
 23 why he resigned?
 24 A I have no understanding at all as to why
 25 he resigned as trustee.

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1 L. Smith
 2 Q The new trustee, how did Mr. -- do you
 3 know his name?
 4 A I've heard it, I can't remember it.
 5 Q Do you know how he became to be
 6 appointed the new trustee?
 7 A Yes, my lawyer helped me find him.
 8 Q Which lawyer?
 9 A Mr. Featherstonhaugh and Ms. Dunn found
 10 him for me.
 11 Q Are you aware of other transfers from
 12 the trust to either you or your husband's
 13 accounts?
 14 A They're -- this is the only one I am
 15 aware of that ever took place.
 16 Q Since the trust was created for the
 17 benefit of your children, did you ever have
 18 any discussions about whether, you know,
 19 transferring money to you to pay your taxes
 20 was consistent with the purposes of the trust?
 21 A No, but if I did need money to pay my
 22 taxes, my son would definitely take it out and
 23 pay them for me as well as my daughter.
 24 Q In this instance, did you direct your
 25 son to transfer money from the trust to you to

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1 L. Smith
 2 pay your taxes?
 3 A He was directed to ask the trustee for
 4 the \$95,000.
 5 Q By who?
 6 A Pardon me?
 7 Q By who, you said he was directed?
 8 A I meant he directed Mr. Urbelis to
 9 withdraw the \$95,000.
 10 Q Why did you have an understanding why
 11 your son did that?
 12 A Because he knew we had to pay the taxes
 13 for the trust and we had our taxes to pay.
 14 Q Earlier you referenced a gas credit
 15 card, mobile something credit card?
 16 MR. FEATHERSTONHAUGH believe
 17 it's a speed pass.
 18 Q Have you been using any other credit
 19 cards since April 20th?
 20 A Yes.
 21 Q Which ones?
 22 A My MasterCard and my Visa card.
 23 Q Do you recall for what uses you've been
 24 using them?
 25 A Yes, food, are we allowed to eat?

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1 L. Smith
 2 Q Does your husband have a credit card?
 3 A No, he has the same credit cards.
 4 MR. STOELTING:Let's take a short
 5 break and then we'll see where we are
 6 and then maybe we'll be close to
 7 finishing.
 8 Off the record.
 9 (Whereupon, an off the record
 10 discussion was held.)
 11 MR. STOELTING:Back on the
 12 record. I just have a few follow ups.
 13 Q I just want to clarify one point where
 14 we talked about the \$60,000 inheritance from
 15 your dad and then a couple of decades later by
 16 the late '90s it had become 6 million, and I
 17 just want to confirm that your understanding
 18 was that it was just all investment returns,
 19 and that there was no additional principal
 20 added to that.
 21 A It was all investment returns, yes.
 22 Q On the credit cards, it says your name
 23 and your husband's name, it's joint?
 24 MR. FEATHERSTONHAUGHWhich
 25 credit cards?

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1 L. Smith
 2 A MasterCard and Visa.
 3 Q MasterCard, Visa and the mobile card
 4 speed pass, do you know which banks they're
 5 with?
 6 A I only have the mobile speed pass I
 7 believe.
 8 Q So the MasterCard and Visa are in your
 9 husband's name?
 10 A Both of our names.
 11 Q Do you know which banks they are?
 12 A Citibank and Chase, I don't know which
 13 is which, I'd have to look at them.
 14 MR. STOELTING:Thank you, Mrs.
 15 Smith, we have no more questions.
 16 (Whereupon, at 2:43 P.m., the
 17 examination of this witness was
 18 concluded.)
 19 _____
 20
 21 ***ROUGH ASCII & UNCERTIFIED TRANSCRIPT***
 22 Subscribed and sworn to before me
 23 This _____ day of _____, 2010.
 24 _____
 25 NOTARY PUBLIC

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