

EXHIBIT 3

May. 5. 2010 4:21PM

No. 0028 P. 1



**FEATHERSTONHAUGH,
WILEY & CLYNE, LLP**
ATTORNEYS AND COUNSELLORS AT LAW

99 PINE STREET
ALBANY, NEW YORK 12207

WEBSITE: FWC-LAW.COM

PHONE: (518) 436-
FAX: (518) 427-

FACSIMILE LEAD SHEET

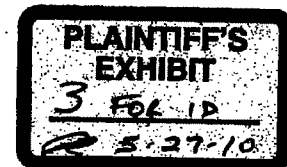
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TO: David Stoelting
FAX NO.: (212) 336-1324
FROM: James D. Featherstonhaugh
DATE: May 5, 2010
RE: Securities and Exchange Commission v. McGinn, Smith & Co., Inc. et al.
Case No: 1:10-CV-457 (GLS/DRH)

NO. OF PAGES TO FOLLOW: 3

CALL Christine at (518) 436-0786 IF MATERIAL IS NOT LEGIBLE

{WD029583.1}



May. 5. 2010 4:21PM

No. 0028 P. 2



**FEATHERSTONHAUGH,
WILEY & CLYNE, LLP**
ATTORNEYS AND COUNSELLORS AT LAW

99 PINE STREET
ALBANY, NEW YORK 12207
WEBSITE: FWC-LAW.COM

JAMES D. FEATHERSTONHAUGH
jdf@fwo-law.com

PHONE: (518) 436-0786
FAX: (518) 427-0452

May 5, 2010

Via Facsimile Transmission (212) 336-1324

David Stoelting
Senior Trial Counsel
U.S. Securities and Exchange Commission
Three World Financial Center
New York, New York 10281

RE: SEC v. McGinn, Smith & Co., Inc., et al., 10-CV-447 (GLS/DRH)
Case No: 1-CV-457

Dear Mr. Stoelting:

Attached is the individual accounting requested in paragraph III of the current Consent Order. Please note that the statement does not detail current miscellaneous bills which had been received by Mrs. Smith since the imposition of the asset freeze which she currently estimates to total \$20,000.

Very Truly Yours,

Featherstonhaugh, Wiley & Clyne, LLP

A handwritten signature in black ink that reads 'James D. Featherstonhaugh'.

James D. Featherstonhaugh

JDF:cr
Enclosure

cc: Michael Koenig, Esquire

{WD029619.1}

May. 5. 2010 4:22PM

No. 0028 P. 3

Lynn A. Smith
Statement of Net Assets
As of March 31, 2010

	Market Value
Cash	
Checking (BOA # [REDACTED] 5287) (as of 3/25/10)	\$ 1,878
Individual Retirement Account	
RMR Wealth Management, LLC (# [REDACTED]) (account held at Dinosaur Securities, LLC)	\$ 29,279 (3)
Investment Accounts	
RMR Wealth Management, LLC (# [REDACTED])	\$ 2,118,511
CMET Financial Holdings, Inc	\$ 600,000 (1) (3)
First Virtual Communications, Inc	0 (1) (3)
Loans Receivable	
T. McGinn (\$900,000 face value)	\$ 0 (2)
T. McGinn (\$15,000 face value)	\$ 0 (2)
Unpriced Investments/Loans Receivable	
Coventry Carelink	\$ 150,000 (3)
Mobil Security	\$ 25,000 (3)
Benchmark Trust	\$ 160,000 (3)
Real Property	
Primary Residence (held jointly-50% value shown): [REDACTED] Saratoga Springs, New York 12866	\$ 308,000 (3) (4)
Residence: [REDACTED] Vero Beach, Florida 32963	\$ 829,000 (3) (5)
Camp: Bator Road Broadalbin, New York	\$ 600,000 (3)
Personal Property	
Furniture (\$50,000), jewelry (\$150,000), artwork (\$15,000)	\$ 215,000 (3)
Total Estimated Value of Net Assets	\$ 5,024,468

Notes:

- (1) Held at Dinosaur Securities LLC, but not priced within statement
- (2) Assumed worthless as of 3/31/10
- (3) Estimated fair market values provided by owner
- (4) Net of 50% of mortgage debt totaling \$388,000 or \$194,000
- (5) Net of mortgage debt of \$871,000

(WD029618.1)

May. 5. 2010 4:22PM

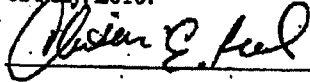
No. 0028 P. 4

VERIFICATION

I, Lynn A. Smith have reviewed a document dated as of March 31, 2010 prepared as a compilation by John D'Aleo, CPA as noted in his attached letter dated May 3, 2010. I provided the information to Mr. D'Aleo to assist him in his preparation of this document and I have personally reviewed the document and believe that it fairly represents my own personal assets, liabilities and general financial condition as of March 31, 2010.


LYNN A. SMITH

Sworn to before me this 5th day
of May, 2010.



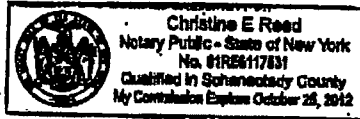


EXHIBIT 4

PROMISSORY NOTE

June 5, 2009

\$366,000.00

Albany, New York

For value received, the undersigned, TDMM Cable Funding, LLC, a Florida limited liability company (the "Borrower"), promises to pay to the order of Lynn Smith, (the "Lender"), the principal amount of Three Hundred Sixty Six Thousand and 00/100 Dollars (\$366,000.00) on or July 6, 2009 (the "Maturity Date"), as set forth below, together with interest from the date hereof on the unpaid principal balance from time to time outstanding until paid in full.

The interest rate shall be fixed at twenty-four percent (24.0%) per annum (the "Interest Rate").

Principal and interest shall be payable at 2 Rolling Brook Drive, Saratoga Springs, New York 12866, or at such other place as the Lender may designate in writing, in immediately available funds in lawful money of the United States of America without set-off, deduction or counterclaim. Interest shall be calculated on the basis of actual number of days elapsed in a 360-day year.

There shall be no prepayment premium in the event of any prepayment. In the event of a prepayment the Borrower shall pay interest to the Lender in the amount of one-half of one percent (0.5%) per week for each week, or any part of any week, that this Note remains unpaid.

At the option of the Lender, this Note shall become immediately due and payable without notice or demand upon the occurrence at any time of any of the following events of default (each, an "Event of Default"): (1) default of any liability, obligation or undertaking of the Borrower to the Lender, hereunder or otherwise, including failure to pay in full and when due any installment of principal or interest, or of any endorser or guarantor of any liability, obligation or undertaking, hereunder or otherwise, to the Lender, or default under any other loan document delivered by the Borrower, any endorser or guarantor, or in connection with the loan evidenced by this Note and the continuance thereof for ten (10) days after the due date; (2) failure of the Borrower to maintain aggregate collateral security value satisfactory to the Lender and the Borrower fails to cure such failure within ten (10) days after written notice is given to the Borrower by the Lender; (3) default of any material liability, obligation or undertaking of the Borrower or of any endorser or guarantor hereof to any other party and the Borrower fails to cure such default within ten (10) days after written notice is given to the Borrower by the Lender; (4) if any statement, representation or warranty heretofore, now or hereafter made in connection with the loan evidenced by this Note, or in any supporting financial statement of the Borrower or of any endorser or guarantor hereof shall be determined by the Lender to have been false in any material respect when made; (5) if the Borrower or any endorser or guarantor is a corporation, trust, partnership or limited liability company, the liquidation, termination or dissolution of any such organization, or the merger or consolidation of such organization into another entity, or its ceasing to carry on actively its present business or the appointment of a receiver for its property; (6) the death of the Borrower or of any endorser or guarantor hereof and, if any of the Borrower or any endorser or guarantor hereof is a partnership or limited liability company, the death of any partner or member; (7) the institution by or against the Borrower or any endorser or guarantor hereof of any proceedings under the Bankruptcy Code 11 USC §101 *et seq.* or any other law in which the Borrower or any endorser or guarantor hereof is alleged to be insolvent or unable to pay its debts as they mature, or the making by the Borrower or any endorser or guarantor hereof of an assignment for the benefit of creditors or the granting by the Borrower or any endorser or guarantor hereof of a trust mortgage for the benefit of creditors; (8) the service upon the Lender of a writ in which the Lender is named as trustee of the Borrower or of any endorser or guarantor hereof; (9) a judgment or judgments for the payment of money shall be rendered against the Borrower or any endorser or guarantor hereof, and

Exhibit A



any such judgment shall remain unsatisfied and in effect for any period of thirty (30) consecutive days without a stay of execution; (10) any levy, seizure, attachment, execution or similar process shall be issued or levied on any of the property of the Borrower or any endorser or guarantor hereof which shall remain unsatisfied and in effect for any period of ten (10) consecutive days without a stay of execution; (11) the termination of any guaranty hereof; (12) the occurrence of such a material adverse change in the condition or affairs (financial or otherwise) of the Borrower or of any endorser, guarantor or other surety for any obligation of the Borrower to the Lender, or the occurrence of any other event or circumstance, such that the Lender, in its sole discretion, deems that it is insecure or that the prospects for timely or full payment or performance of any obligation of the Borrower or any endorser or guarantor hereof to the Lender has been or may be impaired.

Any payments received by the Lender on account of this Note shall, at the Lender's option, be applied first, to any costs, expenses or charges then owed to the Lender by the Borrower; second, to accrued and unpaid interest; and third, to the unpaid principal balance hereof. Notwithstanding the foregoing, any payments received after the occurrence and during the continuance of an Event of Default shall be applied in such manner as the Lender may determine. The Borrower hereby authorizes the Lender to charge any deposit account which the Borrower may maintain with the Lender for any payment required hereunder without prior notice to the Borrower.

If pursuant to the terms of this Note, the Borrower is at any time obligated to pay interest on the principal balance at a rate in excess of the maximum interest rate permitted by applicable law for the loan evidenced by this Note, the applicable interest rate shall be immediately reduced to such maximum rate and all previous payments in excess of the maximum rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder.

The Borrower represents to the Lender that the proceeds of this Note will not be used for personal, family or household purposes or for the purpose of purchasing or carrying margin stock or margin securities within the meaning of Regulations U and X of the Board of Governors of the Federal Reserve System, 12 C.F.R. Parts 221 and 224.

The Borrower and each endorser and guarantor hereof grant to the Lender a continuing lien on and security interest in any and all deposits or other sums at any time credited by or due from the Lender to the Borrower and each endorser or guarantor hereof and any cash, securities, instruments or other property of the Borrower and each endorser and guarantor hereof in the possession of the Lender, whether for safekeeping or otherwise, or in transit to or from the Lender (regardless of the reason the Lender had received the same or whether the Lender has conditionally released the same) as security for the full and punctual payment and performance of all of the liabilities and obligations of the Borrower and any endorser and guarantor hereof to the Lender and such deposits and other sums may be applied or set off against such liabilities and obligations of the Borrower or any endorser or guarantor hereof to the Lender at any time, whether or not such are then due, whether or not demand has been made and whether or not other collateral is then available to the.

No delay or omission on the part of the Lender in exercising any right hereunder shall operate as a waiver of such right or of any other right of the Lender, nor shall any delay, omission or waiver on any one occasion be deemed a bar to or waiver of the same or any other right on any future occasion. The Borrower and every endorser or guarantor of this Note, regardless of the time, order or place of signing, waives presentment, demand, protest, notice of intent to accelerate, notice of acceleration and all other notices of every kind in connection with the delivery, acceptance, performance or enforcement of this Note and assents to any extension or postponement of the time of payment or any other indulgence, to any substitution, exchange or release of collateral, and to the addition or release of any other party or person primarily or secondarily liable and waives all recourse to suretyship and guarantor defenses generally,

including any defense based on impairment of collateral. To the maximum extent permitted by law, the Borrower and each endorser and guarantor of this Note waive and terminate any homestead rights and/or exemptions respecting any premises under the provisions of any applicable homestead laws.

The Borrower and each endorser and guarantor of this Note shall indemnify, defend and hold the Lender and her heirs, administrators, personal representatives, assigns and attorneys harmless against any claim brought or threatened against the Lender by the Borrower, by any endorser or guarantor, or by any other person (as well as from attorneys' reasonable fees and expenses in connection therewith) on account of the Lender's relationship with the Borrower or any endorser or guarantor hereof (each of which may be defended, compromised, settled or pursued by the Lender with counsel of the Lender's selection, but at the expense of the Borrower and any endorser and/or guarantor), except for any claim arising out of the gross negligence or willful misconduct of the Lender.

The Borrower and each endorser and guarantor of this Note agree to pay, upon demand, costs of collection of all amounts under this Note including, without limitation, principal and interest, or in connection with the enforcement of, or realization on, any security for this Note, including, without limitation, to the extent permitted by applicable law, reasonable attorneys' fees and expenses. Upon the occurrence and during the continuance of an Event of Default, interest shall accrue at a rate per annum equal to the aggregate of 4.0% plus the rate provided for herein. If any payment due under this Note is unpaid for 10 days or more, the Borrower shall pay, in addition to any other sums due under this Note (and without limiting the Lender's other remedies on account thereof), a late charge equal to 5.0% of such unpaid amount.

This Note shall be binding upon the Borrower and each endorser and guarantor hereof and upon their respective heirs, successors, assigns and legal representatives, and shall inure to the benefit of the Lender and its successors, endorsees and assigns.

The liabilities of the Borrower and any endorser or guarantor of this Note are joint and several; provided, however, the release by the Lender of the Borrower or any one or more endorsers or guarantors shall not release any other person obligated on account of this Note. Any and all present and future debts of the Borrower to any endorser or guarantor of this Note are subordinated to the full payment and performance of all present and future debts and obligations of the Borrower to the Lender. Each reference in this Note to the Borrower, any endorser, and any guarantor, is to such person individually and also to all such persons jointly. No person obligated on account of this Note may seek contribution from any other person also obligated, unless and until all liabilities, obligations and indebtedness to the Lender of the person from whom contribution is sought have been satisfied in full. The release or compromise by the Lender of any collateral shall not release any person obligated on account of this Note.

The Borrower and each endorser and guarantor hereof each authorizes the Lender to complete this Note if delivered incomplete in any respect. A photographic or other reproduction of this Note may be made by the Lender, and any such reproduction shall be admissible in evidence with the same effect as the original itself in any judicial or administrative proceeding, whether or not the original is in existence.

This Note shall be governed by the laws of the State of New York.

The Borrower and each endorser and guarantor of this Note each irrevocably submits to the nonexclusive jurisdiction of any Federal or state court sitting in New York over any suit, action or proceeding arising out of or relating to this Note. Each of the Borrower and each endorser and guarantor irrevocably waives, to the fullest extent it may effectively do so under applicable law, any objection it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that the same has been brought in an inconvenient forum. Each of the Borrower

and each endorser and guarantor hereby consents to any and all process which may be served in any such suit, action or proceeding, (i) by mailing a copy thereof by registered and certified mail, postage prepaid, return receipt requested, to the Borrower's, endorser's or guarantor's address shown below or as notified to the Lender and (ii) by serving the same upon the Borrower(s), endorser(s) or guarantor(s) in any other manner otherwise permitted by law, and agrees that such service shall in every respect be deemed effective service upon the Borrower or such endorser or guarantor.

THE BORROWER, EACH ENDORSER AND GUARANTOR AND THE LENDER EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AND AFTER AN OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL, (A) WAIVES ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING IN CONNECTION WITH THIS NOTE, ANY OF THE OBLIGATIONS OF THE BORROWER, EACH ENDORSER AND GUARANTOR TO THE LENDER, AND ALL MATTERS CONTEMPLATED HEREBY AND DOCUMENTS EXECUTED IN CONNECTION HEREWITH AND (B) AGREES NOT TO SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CAN NOT BE, OR HAS NOT BEEN, WAIVED. THE BORROWER, EACH ENDORSER AND GUARANTOR AND THE LENDER EACH CERTIFIES THAT NEITHER THE LENDER NOR ANY OF ITS REPRESENTATIVES, AGENTS OR COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE LENDER WOULD NOT IN THE EVENT OF ANY SUCH PROCEEDING SEEK TO ENFORCE THIS WAIVER OF RIGHT TO TRIAL BY JURY.

Executed as an instrument under seal on the date first above written.

Witness:

Borrower:
TDMM Cable Funding, LLC

By: Timothy M. McGinn
Title: Managing Member

EXHIBIT 5

Mehraban, Lara

From: Smith, David

Sent: Wednesday, January 14, 2009 11:56 AM

To: McGinn, Timothy

Tim,

I need two pieces of information from you by tomorrow morning if possible:

- 1) current balance of Lynn's loan-- I have a pretty good handle on this so if you are unable to get to this that is ok.
- 2) my value for Mr. Cranberry- this has to be quite accurate as I am meeting with my estate attorney tomorrow afternoon and Lynn and I have to shift money around between us, and our respective net worths are critical in determining that number.

I also need this information for my financial statement for the insurance departments and CVoentry is crawling up my ass.

Thanks,
Dave

5/11/2010



EXHIBIT 6

DAVID L. SMITH
LYNN A. SMITH

FINANCIAL STATEMENT
August 2008

ASSETS:	
Cash & Securities	\$7,170,262
Investments:	
McGinn, Smith & Company, Inc.	\$1,000,000
Retirement Accounts	\$332,653
Loan Receivables	\$1,303,000
Real Estate Investments	
Vero Beach, FL	\$2,400,000
Lake Front Adirondack Park	<u>700,000</u>
	\$3,100,000
Residence	\$1,000,000
Cash Value Life Insurance	\$141,000
	<hr/>
TOTAL ASSETS:	<u>\$14,046,915</u>
LIABILITIES:	
Mortgage on Residence	\$445,120
Mortgage on real estate Vero Beach	\$902,786
	<hr/>
TOTAL LIABILITIES	<u>\$1,347,906</u>
NET WORTH	\$12,699,009



Brokerage Accounts

Dave and Lynn Smith
██████████ 4353 \$558.17

David L. Smith
Lifetime QTIP TR.
██████████ 0892 669,386.20

David L. Smith and Lynn Smith
IRREV. TR. ██████████ 9671
McGinn, Smith 3,370,427.80
Pine St. Capital Partners 576,328.00
3,946,755.80

Lynn Smith
██████████ 0916 \$1,557,149.14
CMET 150,000.00
1,707,149.14

Capital Center Credit Corp.
100% owned by David L. Smith 346,413.00

Other Investments
Mr. Cranberry 500,000.00

\$7,170,262.00

Loan Receivables

Loans:	Tom Livingston	\$15,000
	Tim McGinn	818,000
	McGinn Smith & Co., Inc.	115,000
	Coventry Resources	160,000
	McGinn, Smith Capital Holdings	20,000
	FICC	75,000
	TMM (Part of MS Partners)	100,000
		<hr/>
		\$1,303,000

EXHIBIT 7



David L. and Lynn A. Smith
2 Rolling Brook Drive
Saratoga Springs, NY 12866

We have compiled the accompanying statement of financial condition of David L. and Lynn A. Smith as of August 31, 2008, in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants. The statement of financial condition is intended to present the assets of David L. and Lynn A. Smith at estimated current values and their liabilities at estimated current amounts.

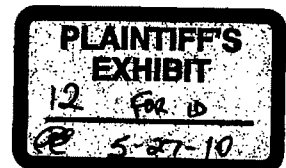
A compilation is limited to presenting in the form of financial statements information that is the representation of the individuals whose financial statements are presented. We have not audited or reviewed the accompanying statement of financial condition and, accordingly, do not express an opinion or any other form of assurance on it. However, we did become aware of a departure from generally accepted accounting principles that is described in the following paragraph.

Generally accepted accounting principles require that personal financial statements include a provision for estimated income taxes on the differences between the estimated current values of assets and the estimated current amounts of liabilities and their tax bases. The accompanying statement of financial condition does not include such a provision, and the effect of this departure from generally accepted accounting principles has not been determined.

David L. and Lynn A. Smith have elected to omit substantially all of the disclosures required by generally accepted accounting principles. If the omitted disclosures were included in the statement of financial condition, they might influence the user's conclusions about the financial condition of David L. and Lynn A. Smith. Accordingly, this statement of financial condition is not designed for those who are not informed about such matters.


PIAKER & LYONS

Syracuse, New York
November 4, 2008



DAVID L. AND LYNN A. SMITH
STATEMENT OF FINANCIAL CONDITION
AUGUST 31, 2008

ASSETS

Cash	\$ 4,960,000
Securities	1,710,000
Cash Value – Life Insurance	141,000
Retirement Plan Accounts	333,000
Business Interests:	
McGinn, Smith & Co., Inc. – 50% Ownership Interest	1,000,000
Mr. Cranberry, LLC – 10% Ownership Interest	500,000
Residence – Saratoga Springs, New York	1,000,000
Real Estate – Vero Beach, Florida	2,400,000
Real Estate – Lake Front Adirondack Park	700,000
Loans Receivable	<u>1,303,000</u>
	\$ <u>14,047,000</u>

LIABILITIES AND NET WORTH

Liabilities	
Mortgage Debt – Saratoga Springs, New York	\$ 445,000
Mortgage Debt – Vero Beach, Florida	<u>903,000</u>
	1,348,000
Net Worth	<u>12,699,000</u>
	\$ <u>14,047,000</u>

SEE ACCOUNTANTS' COMPILATION REPORT

DAVID and LYNN SMITH
2 ROLLING BROOK DRIVE
SARATOGA SPRINGS, NY 12866

COPY

November 4, 2008

Piaker & Lyons, CPA's
572 South Salina Street
Syracuse, New York 13202

We are providing this letter in connection with your compilation of the statement of financial condition of David and Lynn Smith as of August 31, 2008. We confirm that we are responsible for the fair presentation in the statements of financial condition in conformity with generally accepted accounting principles. All assets are presented at their estimated current values and all liabilities are presented at their estimated current amounts, which have been determined in accordance with guidelines promulgated by the American Institute of Certified Public Accountants. (Because of our limited expertise with generally accepted accounting principles, including financial statement disclosures, we have engaged you to advise us in fulfilling that responsibility).

Certain representations in this letter are described as being limited to matters that are material. Items are considered material, regardless of size, if they involve an omission or misstatement of accounting information that, in light of surrounding circumstances, makes it probable that the judgment of a reasonable person using the information would be changed or influenced by the omission or misstatement.

We confirm, to the best of our knowledge and belief, as of November 4, 2008, the following representations made to you during your compilation.

1. The financial statements referred to above are fairly presented in conformity with generally accepted accounting principles.
2. We have made available all financial records and related data available to you. We have not knowingly withheld from you any financial records or related data that in our judgment would be relevant to your compilation.
3. There are no material transactions that have not been properly recorded in the accounting records underlying the financial statements.
4. We acknowledge our responsibility to prevent and detect fraud.
5. We have no knowledge of any fraud or suspected fraud affecting us that could have a material effect on the financial statements, including any communications from others.
6. We have no plans or intentions that may materially affect the carrying amounts or classification of assets and liabilities.

Page Two

7. There are no:
 - a. Violations or possible violations of laws or regulations whose effects should be considered for disclosure in the financial statements or as a basis for recording a loss contingency.
 - b. Other material liabilities or gain or loss contingencies that are required to be accrued or disclosed.
8. We have satisfactory title to all owned assets, and there are no liens or encumbrances on such assets nor have any assets been pledged.
9. We have complied with all aspects of contractual agreements that would have a material effect on the financial statements in the event of noncompliance.
10. The following have been properly recorded in the financial statements:
 - a. Related party transactions and related amounts receivable or payable, including sales, purchases, loans, transfers, leasing arrangements, and guarantees. We understand that related parties include members of my family as well as business entities in which we, or members of our family, have an investment that allows the exercise of control or significant influence.
 - b. Guarantees, whether written or oral, under which we are contingently liable.
11. We are in agreement with any adjustments, if any, you have recommended.
12. We have not retained an attorney for matters that may involve current or prospective litigation, and we are not aware of any pending or threatened litigation, claims, or assessments that should be disclosed in the financial statements.
13. No events have occurred subsequent to the date of the statement of financial condition and through the date of this letter that would require adjustment to, the financial statements.
14. We have responded fully and truthfully to all inquiries made to us by you during the engagement.

X _____
David L. Smith

X _____
Lynn A. Smith

Dave & Lynn Smith Personal Financial Statements

		December 31, 2007	December 31, 2008
McGinn, Smith Holdings, LLC			
loan dated July 7, 2007			
Principle		\$ 150,000	\$ 100,000
Accrued Interest	9.00%	<u>5,738</u>	<u>2,675</u>
		155,738	102,675
Thomas E Livingston Loan			
interest rate	6.00%	23,171	12,264
McGinn, Smith Capital Holdings, Inc			
loan dated 1/20/2004			
Principle		20,000	20,000
Accrued Interest	7.50%	<u>6,004</u>	<u>7,529</u>
		26,004	27,529
Century Same Day Surgery			
loan dated 12/1/2005			
Principle		32,166	32,166
Accrued Interest	7.50%	<u>5,093</u>	<u>7,545</u>
		37,258	39,711
McGinn, Smith & Co., Inc.			
Preferred Stock purchased 5/16/2006			
Cost basis		75,000	75,000
Accrued Dividend		<u>1,494</u>	<u>1,164</u>
		76,494	76,164
Pine Street Capital Partners, LP			
Irrevocable Trust			
Note		327,582	184,306 based upon mgmt. est.
Capital Acct.		<u>250,873</u>	<u>393,606</u> K-1 to be finalized 2/15/09
		578,455	577,912
QTIP Trust			
Note		107,795	220,788 based upon mgmt. est.
Capital Acct.		<u>82,089</u>	<u>459,052</u> K-1 to be finalized 2/15/09
		189,884	679,840
Lynn Smith			
Note		N/A	414,397 based upon mgmt. est.
Capital Acct.		N/A	<u>826,197</u> K-1 to be finalized 2/15/09
			1,240,594
Mr. Cranberry, LLC			
-see attached K-1		493,717	493,717 unavailable, 2007 value used
Total		<u>\$ 1,580,721</u>	<u>\$ 3,250,407</u>

EXHIBIT 8

David L. Smith
Lynn A. Smith

Financial Statement
December 31, 2007

Assets:

Cash & Securities

1.	David L. Smith	\$ 3,974,567	MS Brokinge
	Lynn A. Smith	<u>578,455</u>	Pine St. Cap. P
	Irrev Tr w/ A 2/4/04		
	[REDACTED] 9671		<u>4,453,022</u>

2.	Lynn A. Smith	1,785,550	MS Brokinge
	[REDACTED] 0916	<u>150,000</u>	CME T
			1,935,550

3.	David L. Smith		
	QTIP Tr		553,390
	[REDACTED] 892		

4.	Capital Center Cr. Cap.		
	100% assigned to David Smith		412,106
	[REDACTED] 178		<u>75,000 MS p/</u>
			487,106

5.	M. Cranberry / DL Smith		<u>493,717</u>
	[REDACTED] 0427		
	10% interest, plus loan receivable		



Investments

McGinn, S.M. & Co 1,000,000
 Dewell S.M. & Co
 Securities LI buyout

Retirement accounts

David L. Smith 401K 235,138
 David Smith IRA 39,061
 Lynn Smith IRA 24,446
 297,645

Loan Receivables:

To David L. Smith:

Thomas Livingston 23,166

~~Tim McGinn 791,998~~

McGinn, S.M. & Co. 155,738

Country Resources 165,750

McGinn, S.M. & Co 26,004

CSDS *

~~35,000~~ 59,258

Tim McGinn (to MS Partners) 100,000

To Lynn A. Smith 507,916

Tim McGinn 991,388

Road Estate Investments
 New Beach, FL 2,400,000
 Letter to - Broadbeach, by 700,000
3,100,000

Residence 1,000,000

Cash value LI 140,000

TOTAL ASSETS 14,759,734

LIABILITIES:

Mortgage a residence 465,137
 Mortgage on New Beach 913,173
1,378,310

Total liabilities 1,378,310

Net worth \$ 13,381,424

EXHIBIT 9

Stoelting, David

From: McQuade, David
Sent: Wednesday, June 10, 2009 10:37 AM
To: Tim McGinn
Subject: Wire instructions per your request
Importance: High

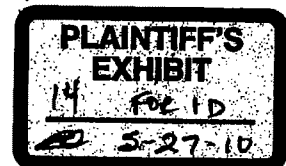
Tim,

Here are the wire instructions to Lynn's account:

Bank: JP Morgan Chase, 1 Chase Plaza NY, NY 10081
ABA# [REDACTED] 0021
For Credit to:
National Financial Services, 200 Liberty St. NY, NY 10281
Acct# [REDACTED] 6-221
For Further Credit to:
Lynn A. Smith
Acct# [REDACTED] 0916

David C. McQuade
Operations Manager
McGinn, Smith & Co., Inc.
Phone: 518-348-0060
Fax: 518-348-0107

5/12/2010



Stoelting, David

From: Sicluna, Patricia
Sent: Friday, February 20, 2009 8:56 AM
To: Mcquade, David
Subject: RE: Wire Approval

done

From: Mcquade, David
Sent: Friday, February 20, 2009 8:52 AM
To: Sicluna, Patricia
Subject: Wire Approval
Importance: High

Patty,

Please approve wire on system for DLS:

\$15,000.00

██████████0916 Lynn A. Smith

To: M & T Bank

ABA# ██████████0046

Acct# ██████████9965

Name: David L. Smith

Disb# ██████████2802

Thanks,

David C. McQuade
Operations #20 Manager
McGinn, Smith & Co., Inc.
Phone: 518-348-0060
Fax: 518-348-0107

5/12/2010

Stoelting, David

From: Sicluna, Patricia
Sent: Wednesday, March 11, 2009 12:32 PM
To: McQuade, David
Subject: RE: Wire Approval

done

From: McQuade, David
Sent: Wednesday, March 11, 2009 12:04 PM
To: Sicluna, Patricia
Subject: Wire Approval
Importance: High

Hi Patty,

Please approve wire request for DLS:

Disb# [REDACTED] 0969
\$10,000.00
[REDACTED] 0916 Lynn A. Smith
To: M&T Bank
ABA# [REDACTED] 0046
For credit to:
David L. Smith
Acct# [REDACTED] 9965

Thank you,

David C. McQuade
Operations =20 Manager
McGinn, Smith & Co., Inc.
Phone: 518-348-0060
Fax: 518-348-0107

5/12/2010

Mehraban, Lara

From: Cooper, Brian [cooperb@mcginnsmith.com]
Sent: Monday, May 04, 2009 10:44 AM
To: Tricia Trombley
Cc: Shea, Brian
Subject: Check Needed

Please issue a check payable to National Financial Services for \$100,000.

This is for deposit into Lynn Smiths NFS account per Dave Smith.

Thank you,

*Brian J. Cooper
McGinn Smith & Co. Inc.
99 Pine Street, Suite 5
Albany, NY 12207
Phone 518-449-5131 ext 232
Fax 518-449-4894
Toll Free 1-800-724-3330*

5/11/2010

Stoelting, David

From: McQuade, David
Sent: Wednesday, May 06, 2009 9:18 AM
To: Siduna, Patricia
Subject: RE: Wire approval

Thanks Patty...I'll try to give you ALL of the info for any future wires...

David C. McQuade
Operations Manager
McGinn, Smith & Co., Inc.
Phone: 518-348-0060
Fax: 518-348-0107

From: Siduna, Patricia
Sent: Wednesday, May 06, 2009 9:17 AM
To: McQuade, David
Subject: RE: Wire approval

15,000
done

From: McQuade, David
Sent: Wednesday, May 06, 2009 8:52 AM
To: Siduna, Patricia
Subject: Wire approval
Importance: High

Patty,

Please approve wire from Lynn's account [REDACTED] 0916 to:

M&T Bank
ABA# [REDACTED] 0046
For Credit to:
David L. Smith
Acct# [REDACTED] 9965

Disb# [REDACTED] 9740

Thank you,

David C. McQuade
Operations Manager
McGinn, Smith & Co., Inc.
Phone: 518-348-0060
Fax: 518-348-0107

5/12/2010

Mehraban, Lara

From: McGinn, Timothy
Sent: Wednesday, June 10, 2009 11:07 AM
To: Dixon, Joan A.; Van Brocklin, Katherine
Subject: tax id & wires

Ladies,

The tax id number for TDMM Cable Funding LLC is: [REDACTED]3996.

Please execute the following wires from TDMM Cable Funding LLC:

1) \$160,800 to:

JP Morgan Chase
ABA #: [REDACTED]0021
Account #: [REDACTED]6-221
Account Name: National Financial Services, 200 Liberty St. NY, NY 10281
Further Credit to: Acct #: [REDACTED]0916
Account Name: Lynn A. Smith

2) \$25,000 to:

Citibank, N.A.
Yamato Rd, Boca Raton, FL
ABA #: [REDACTED]6554
Account #: [REDACTED]9958
Account Name: Matthew Rogers

3) \$24,000 to:

M & T Bank
Buffalo, NY
ABA #: [REDACTED]0046
Account #: [REDACTED]9965
Account Name: David L. Smith

4) \$24,000 to:

M & T Bank
Buffalo, NY
ABA #: [REDACTED]0046
Account #: [REDACTED]2675
Account Name: Timothy M. McGinn

Thank you,

Timothy M. McGinn
Managing Member

5/11/2010

Stoelting, David

From: McQuade, David
Sent: Tuesday, June 09, 2009 3:13 PM
To: Sicuna, Patricia
Subject: WIRE APPROVAL
Importance: High

Patty,

Please approve wire from Lynn Smith's account [REDACTED] 0916 to M&T Bank for \$10,000.00:

M&T Bank
ABA# [REDACTED] 0046
Credit to: David L. Smith
Acct# [REDACTED] 9965

Disb# [REDACTED] 3733

Thanks,

David C. McQuade
Operations Manager
McGinn, Smith & Co., Inc.
Phone: 518-348-0060
Fax: 518-348-0107

5/12/2010

Stoelting, David

From: McGinn, Timothy
Sent: Thursday, July 30, 2009 3:23 PM
To: Dixon, Joan A.; Birnbach, Denise; Van Brocklin, Katherine
Cc: Smith, David
Subject: wire transfer

Ladies,

Please wire \$175,000 from TDMM Cable Jr Trust 09 to:

JP Morgan Chase
1 Chase Plaza
New York, NY 10081
ABA #: [REDACTED]0021
Acct #: [REDACTED]3-221
Acct Name: National Financial Services

For Further Credit to:

Acct #: [REDACTED]0916
Acct Name: Lynn A. Smith

Thank you,

Timothy M. McGinn
Managing Member

5/12/2010

Stoelting, David

From: Sicluna, Patricia
Sent: Wednesday, August 19, 2009 1:10 PM
To: McQuade, David
Subject: RE: Wire approval

done

From: McQuade, David
Sent: Wednesday, August 19, 2009 1:06 PM
To: Sicluna, Patricia
Subject: Wire approval

Patty,

You're still signed on...please approve wire:

\$50,000.00 from [REDACTED] 0916 – Lynn A. Smith
To: Bank of America
ABA# [REDACTED] 9583
For Credit to:
Mobile Search Security LLC
Acct# [REDACTED] 2414

Thank you,

David C. McQuade
Operations =20 Manager
McGinn, Smith & Co., Inc.
Phone: 518-348-0060
Fax: 518-348-0107

5/12/2010

Stoelting, David

From: William Spear
Sent: Monday, December 07, 2009 11:28 AM
To: 'Smith, David'
Subject: Mobile Search Security
Attachments: Investor Letter - Smith 11.16.09.doc

Dear Mr. Smith,

As part of the process to convert your investment in MSS from a bridge note to a membership interest, a few weeks ago I sent Lynn a letter (copy attached) requesting the return of the Convertible Bridge Note we sent out in September. This e-mail is a quick follow up as I have not received a response to the letter. If the Note is not conveniently available to be mailed to me, I can e-mail you an affidavit stating that the actual Note is missing. I can then submit the affidavit to the attorneys in lieu of the Note.

Please let me know if the Note will be coming back to me, or if you want me to send you the affidavit.

Thank you for your assistance in this matter.

Regards,

Bill Spear

William Spear, CFO
Mobile Search Security LLC
3010 Westchester Avenue, Suite 305
Purchase, NY 10577
t. 914-253-8596 m. 207-756-0766

This e-mail was sent to you from Mobile Search Security LLC. If labeled 'confidential' in the subject line the message content and any attachments constitute confidential information whether subject to a Non-Disclosure Agreement or not. Such confidential information should not be used, disseminated, or published, without the express written consent of the company. If you suspect that you are not the intended recipient, or have received this e-mail in error, please delete it and notify us as soon as possible.

5/12/2010



3010 Westchester Avenue, Suite 305, Purchase, NY 10577

November 16, 2009

Mrs. Lynn A. Smith
2 Rolling Brook Drive
Saratoga Springs, NY 12866

Dear Mrs. Smith;

Pursuant to the terms of the Convertible Bridge Note you hold with MSS, the final execution date for conversion of the note into an ownership interest in MSS was October 31st 2009. We have begun the administrative process of the note conversion, and, accordingly request that you return the original executed MSS Convertible Bridge Note to us at this time in the accompanying postage paid envelope. (Feel free to make a copy of the note for your records)

Once we have received the original notes from all of the investors we will be sending each investor a copy of the amended Company Agreement showing their membership interest in MSS, and a payment for the full interest amount owed.

If you have any questions regarding the conversion process, please feel free to contact me either on my cell phone at 207-756-0766, or by e-mail at wspear@mobilesearchsecurity.com.

Sincerely yours

William T. Spear, CFO
Mobile Search Security LLC

Stoelting, David

From: William Spear
Sent: Monday, December 14, 2009 11:44 AM
To: 'Smith, David'
Subject: RE: Mobile Search Security

Mr. Smith,

Thanks for your follow up. I'll look forward to seeing the note next week then. As I work out of an office up in Maine, please make sure that you send the note to the following address:

Mobile Search Security LLC
c/o WDN
392 Fore Street
Portland ME 04101

Thank you for your assistance in this matter.

Bill Spear

William Spear, CFO
Mobile Search Security LLC
3010 Westchester Avenue, Suite 305
Purchase, NY 10577
t. 914-253-8596 m. 207-756-0766

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From: Smith, David [mailto:smithd@mcginnsmith.com]
Sent: Sunday, December 13, 2009 9:33 AM
To: William Spear
Subject: RE: Mobile Search Security

Bill,

Sorry for the late response, but I was in an arbitration all last week in Philadelphia. Same for the first three days of this week. I have the certificate and will take care of it at the end of this week. Thanks for your patience.

Regards,
Dave Smith

From: William Spear [mailto:wspear@mobilesearchsecurity.com]
Sent: Mon 12/7/2009 9:27 AM
To: Smith, David
Subject: Mobile Search Security

Dear Mr. Smith,

As part of the process to convert your investment in MSS from a bridge note to a membership interest, a few weeks ago I sent Lynn a letter (copy attached) requesting the return of the Convertible Bridge Note we sent out in September. This e-mail is a quick follow up as I have not received a response to the letter. If the Note is not conveniently available to be mailed to me, I can e-mail you an affidavit stating that the actual Note is missing. I can then submit the affidavit to the attorneys in lieu of the Note.

5/12/2010

Please let me know if the Note will be coming back to me, or if you want me to send you the affidavit.

Thank you for your assistance in this matter.

Regards,

Bill Spear

William Spear, CFO
Mobile Search Security LLC
3010 Westchester Avenue, Suite 305
Purchase, NY 10577
t. 914-253-8596 m. 207-756-0766

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5/12/2010

Stoelting, David

From: McQuade, David
Sent: Tuesday, October 27, 2009 12:26 PM
To: Sicluna, Patricia
Subject: RE: Wire Approval

Thank you Patricia.

David C. McQuade
Operations Manager
McGinn, Smith & Co., Inc.
Phone: 518-348-0060
Fax: 518-348-0107

From: Sicluna, Patricia
Sent: Tuesday, October 27, 2009 12:07 PM
To: McQuade, David
Subject: RE: Wire Approval

done

From: McQuade, David
Sent: Tuesday, October 27, 2009 12:04 PM
To: Sicluna, Patricia
Subject: Wire Approval
Importance: High

Patty,

Please approve wire from Lynn's account [REDACTED] 0916 to M&T Bank:

Bank: M&T Bank
ABA# [REDACTED] 0048
For Credit to:
David L. Smith
Acct# [REDACTED] 9965

WIRE DISBURSEMENT # [REDACTED] 8130

Thanks,

David C. McQuade
Operations Manager
McGinn, Smith & Co., Inc.
Phone: 518-348-0060
Fax: 518-348-0107

5/12/2010

Stoelting, David

From: Sicluna, Patricia
Sent: Thursday, November 05, 2009 3:20 PM
To: Smith, David
Subject: RE: Lynn's TDMM Benchmark -

9% due 11/1/11 - \$70,000
10% due 11/1/12 - \$85,000
11% due 11/1/13 - \$145,000

From: Smith, David
Sent: Thursday, November 05, 2009 3:10 PM
To: Sicluna, Patricia
Subject: RE: Lynn's TDMM Benchmark -

Send to Albany what maturities did Tim give you?

From: Sicluna, Patricia
Sent: Thursday, November 05, 2009 2:34 PM
To: Smith, David
Subject: Lynn's TDMM Benchmark -

Dave,

Where should I send Lynn's TDMM Benchmark certificates, to Albany or to your house?

Also, do you have her subscription agreements?

Patricia Sicluna
McGinn, Smith & Co., Inc.
6 Executive Park Drive
Clifton Park, NY 12065
Phone: 518-348-0060 ext. 273
Fax#: 518-348-0107

5/12/2010

Stoelting, David

From: Sicluna, Patricia
Sent: Friday, December 04, 2009 11:41 AM
To: Mcquade, David
Subject: RE: WIRE APPROVAL

done

From: Mcquade, David
Sent: Friday, December 04, 2009 10:06 AM
To: Sicluna, Patricia
Subject: WIRE APPROVAL
Importance: High

Patty,

Please approve wire in the amount of \$25,000.00 from Lynn Smith's account [REDACTED] 0916 to:

M&T Bank
ABA# [REDACTED] 0046
For Credit to:
David L. Smith
Acct# [REDACTED] 9985

Disb# [REDACTED] 9320

Thank you,

David C. McQuade
Operations =20 Manager
McGinn, Smith & Co., Inc.
Phone: 518-348-0080
Fax: 518-348-0107

5/12/2010

Stoelting, David

From: McQuade, David
Sent: Friday, December 11, 2009 9:42 AM
To: McGinn, Timothy
Subject: RE: Wire

Tim,

This wire has been set up and I show it leaving Lynn's account. I don't have a FED Reference number yet but I'd think this should be in your account by 11am.

Thanks,

David C. McQuade
Operations Manager
McGinn, Smith & Co., Inc.
Phone: 518-348-0060
Fax: 518-348-0107

-----Original Message-----

From: McGinn, Timothy
Sent: Friday, December 11, 2009 9:32 AM
To: David McQuade
Subject: Wire

David,

Wire instructions for \$15,000 wire from Lynn's acct to me:

M & T Bank
Buffalo, NY
ABA #: [REDACTED]0046
Account #: [REDACTED]2675
Account Name: Timothy McGinn

David will authorize this wire. If he has not already done so, he can -20 be reached at 369-3307.

Please expedite this and notify me when the wire has been sent.

Thanks

Tim
Sent from my iPhone

EXHIBIT 10

LYNN A SMITH

Page 3 of 10
 Statement Period
 03-25-10 through 04-23-10
 B I S O B P F B 15 0081609
 Account Number: ██████████5217

MyAccess Checking Additions and Subtractions

Date Posted	Amount(\$)	Resulting Balances(\$)	Transactions
04-13	2.00-	19,643.67	Publix Super M 04/13 #000004659 W/tdrwl 9621 N US Hwy 1 Sebastian FL Fee
04-14	17.50-	19,628.17	Check # 810
04-15	95,000.00+	114,628.17	Wire Type:Wire IN Date: 100415 Time:1508 Et Trn:2010041500260064 Seq:8579900105FT/007572 Orig:Thomas Urbells Ttes ID:Rmr0696711 Snd Bkt:Jpmo Rgan Chase Bank, NA ID:021000021 Fmt Dat:Swf Of 10 /04/15
04-15	12.00-	114,616.17	Wire Transfer Fee
04-16	50.00-	114,566.17	Check # 775
04-19	66,500.00-	48,066.17	Check # 819
04-19	422.99-	47,643.18	Check # 829
04-19	347.75-	47,295.43	Check # 816
04-19	285.35-	47,010.08	Ppl Payment Ctr Des:Bill Pymt Check #:834 Indn:1563056074 Co ID:Lbr025576 Arc
04-19	201.95-	46,808.13	Food Bag # 04/17 #000277145 Withdrwl 5830 N US Route 1 Sebastian FL
04-19	120.86-	46,687.27	Check # 818
04-19	2.00-	46,685.27	Food Bag # 04/17 #000277145 Withdrwl 5830 N US Route 1 Sebastian FL Fee
04-20	595.47-	46,089.80	Nissan Motor Acc Des:Phg - Leas Check #:0828 Indn:29009464455 Co ID:8881893568 Arc
04-20	594.72-	45,495.08	Check # 830
04-20	201.95-	45,293.13	Food Bag # 04/20 #000365976 Withdrwl 5830 N US Route 1 Sebastian FL
04-20	201.95-	45,091.18	Food Bag # 04/20 #000365129 Withdrwl 5830 N US Route 1 Sebastian FL
04-20	201.95-	44,889.23	Food Bag # 04/20 #000364461 Withdrwl 5830 N US Route 1 Sebastian FL
04-20	85.00-	44,804.23	Check # 826
04-20	75.00-	44,729.23	Check # 825
04-20	25.95-	44,703.28	Banfield Pet Hosp Des:Banfid Pet ID:2064090 Indn:Lynn A. Smith Co ID:0000158927 Tel
04-20	2.00-	44,701.28	Food Bag # 04/20 #000365976 Withdrwl 5830 N US Route 1 Sebastian FL Fee
04-20	2.00-	44,699.28	Food Bag # 04/20 #000365129 Withdrwl 5830 N US Route 1 Sebastian FL Fee
04-20	2.00-	44,697.28	Food Bag # 04/20 #000364461 Withdrwl 5830 N US Route 1 Sebastian FL Fee
04-23	44,325.44-	371.84	Legal Order, Lts U042110000091
04-23	100.00-	271.84	Legal Order Fee, Lts U042110000091

Checks Posted in Numerical Order

Check #	Posting Date	Amount(\$)	Check #	Posting Date	Amount(\$)	Check #	Posting Date	Amount(\$)
775	04-16	50.00	805	04-07	281.20	815*	04-19	681.51
793*	03-26	201.41	807*	04-06	43.42	816	04-19	347.75
796*	04-01	594.72	808	04-05	374.00	818*	04-19	120.86
798*	03-29	350.00	809	04-06	100.00	819	04-19	66,500.00
799	04-06	4,667.00	810	04-14	17.50	825*	04-20	75.00
802*	04-06	620.15	811	04-06	144.00	826	04-20	85.00
803	04-12	810.92	812	04-07	49.62	829*	04-19	422.99
804	04-05	6,186.15	813	04-12	138.24	830	04-20	594.72

PLAINTIFF'S EXHIBIT
 15 FEB 10
 2-27-10

EXHIBIT 11

<p style="text-align: center;">1</p> <p>UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK</p> <p>-----X</p> <p>SECURITIES AND EXCHANGE COMMISSION, Plaintiff, index No. 10 CIV.457 (GLS) (DRH)</p> <p>-against-</p> <p>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;</p> <p>Defendants, -and- LYNN SMITH, Relief Defendant.</p> <p>-----X</p> <p>EXAMINATION BEFORE TRIAL of THOMAS URBELIS, a Non-Party Witness, taken by the plaintiff, pursuant to Court order, held at the office of Philips Lytle, 30 South Pearl Street, Albany, New York, on June 1, 2010, at 12:20 p.m. taken before George Malinowski, a Notary Public of the State of New York.</p>	<p style="text-align: center;">3</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">STIPULATIONS</p> <p>IT IS HERE BY STIPULATED AND AGREED by and between the attorneys for the respective parties herein, that filing, sealing and certification be and the same are hereby waived.</p> <p>IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question shall be reserved to the time of the trial.</p> <p>IT IS FURTHER STIPULATED AND AGREED that the within deposition may be signed and sworn to before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the Court and that a copy of this examination shall be furnished without charge to the attorney representing the witness testifying herein.</p>
<p style="text-align: center;">2</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>APPEARANCES: UNITED STATES SECURITIES EXCHANGE & COMMISSION Attorneys for Plaintiff 3 World Financial Center New York, New York 10281 BY: LARA S. MEHRABAN, ESQ. -and- DAVID STOELTING, ESQ.</p> <p>FEATHERSTONHAUGH WILEY & CLYNE, LLP Attorneys for Relief Defendant, Lynn Smith 99 Pine Street Albany, New York 12207 BY: JAMES D. FEATHERSTONHAUGH, ESQ.</p> <p>GREENBERG TRAUIG, LLP Attorneys for Timothy McGinn and David L. Smith 54 State Street Albany, New York 12207 BY: EMILY P. FEYRER, ESQ.</p> <p>THE DUNN LAW FIRM, PLLC Attorneys for the Witness 99 Pine Street, suite 210 Albany, New York 12207 BY: JILL A. DUNN, ESQ.</p>	<p style="text-align: center;">4</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">T. Urbelis THOMAS URBELIS, having been first duly sworn by a Notary Public, was examined and testified as follows:</p> <p>MS. MEHRABAN: My name is Lara S. Mehraban. I represent the plaintiff, Securities and Exchange Commission. With me is my colleague, David Stoelting.</p> <p>MS. MEHRABAN: If I could have everyone's appearance for the record, please.</p> <p>MR. FEATHERSTONHAUGH: James Featherstonhaugh from Featherstonhaugh, Wiley & Clyne. Attorneys for relief defendant, Lynn Smith.</p> <p>MS. FEYRER: Emily Feyrer, from the law firm of Greenberg Traurig. I am here on behalf of the defendants, Timothy McGinn and David L. Smith.</p> <p>MS. DUNN: Jill Dunn from The Dunn Law Firm. I am the attorney for the witness, Thomas Urbelis.</p> <p>EXAMINATION BY</p>



<p style="text-align: center;">5</p> <p>1 T. Urbelis</p> <p>2 MS. MEHRABAN:</p> <p>3 Q Would you please state your name for the</p> <p>4 record.</p> <p>5 A Thomas Urbelis.</p> <p>6 Q Would you please state your current home</p> <p>7 address.</p> <p>8 A 6 Eastman Road, Andover, Massachusetts</p> <p>9 01810.</p> <p>10 Q Can you tell me your educational</p> <p>11 background after high school, please.</p> <p>12 A I graduated from Union College in 1967.</p> <p>13 I graduated from the University of Rochester,</p> <p>14 Graduate School of Management in 1969. I</p> <p>15 graduated from Boston College Law School in</p> <p>16 1978, and I've attended professional education</p> <p>17 courses since then.</p> <p>18 Q Can you walk me through your</p> <p>19 professional experience after you graduated</p> <p>20 from law school?</p> <p>21 A You mean?</p> <p>22 Q As a lawyer.</p> <p>23 A In practices?</p> <p>24 Q Yes.</p> <p>25 A I started, after I graduated from law</p>	<p style="text-align: center;">7</p> <p>1 T. Urbelis</p> <p>2 serve as special counsel on occasion to</p> <p>3 municipalities with regard to civil rights</p> <p>4 defense, where the municipality or its</p> <p>5 employees or officers are sued for civil</p> <p>6 rights violations; so I'll participate in the</p> <p>7 defense of those. That's how my practice has</p> <p>8 evolved as to what I pretty much do now.</p> <p>9 (Plaintiff's Exhibit 16, subpoena</p> <p>10 to serve on deposition marked for</p> <p>11 identification as of today's date.)</p> <p>12 Q This is the subpoena I sent you on</p> <p>13 Friday. Your appearance today is pursuant to</p> <p>14 the subpoena.</p> <p>15 A Yes, it is.</p> <p>16 Q When did you first meet David Smith?</p> <p>17 A Approximately '56, '57. Well, 50 years</p> <p>18 ago.</p> <p>19 Q How?</p> <p>20 A We grew up in the same town and went to</p> <p>21 the same schools.</p> <p>22 MR. FEATHERSTONHAUGH: May I</p> <p>23 interject about Exhibit 16?</p> <p>24 MS. MEHRABAN: Sure.</p> <p>25 MR. FEATHERSTONHAUGH: Exhibit 16</p>
<p style="text-align: center;">6</p> <p>1 T. Urbelis</p> <p>2 school, I started with a firm in Boston called</p> <p>3 Withington, Cross, Park & Groden, I worked</p> <p>4 there as an associate, and I became partner in</p> <p>5 1983. In 1990, four of the partners including</p> <p>6 myself spun off and started our own firm in</p> <p>7 Boston. Over the years, one or two would drop</p> <p>8 out, and I'm not exactly sure which years they</p> <p>9 were, but currently I'm partner with Urbelis &</p> <p>10 Fieldsteel.</p> <p>11 Q What type of law do you practice?</p> <p>12 A I primarily practice in the area of</p> <p>13 municipal law, I represent cities and towns.</p> <p>14 I'm town counsel, that's C-O-U-N-S-E-L that's</p> <p>15 counsel in the form of Government, for towns.</p> <p>16 I perform special legal services for other</p> <p>17 towns. I do quite a bit of land court</p> <p>18 litigation resulting from that because of</p> <p>19 decisions that one of the regulatory boards</p> <p>20 might make, like, I don't know what you call</p> <p>21 it here, but the planning board or zoning</p> <p>22 board of appeals or conservation commission of</p> <p>23 the Board of Health. So I'll represent the</p> <p>24 communities in those mostly land court and</p> <p>25 administrative-type of litigations. I also</p>	<p style="text-align: center;">8</p> <p>1 T. Urbelis</p> <p>2 I think asks for, in addition for the</p> <p>3 witness' appearance, for various</p> <p>4 documents, and I wonder if any documents</p> <p>5 were produced in response to the</p> <p>6 subpoena, and if they have been if we</p> <p>7 might have copies of them?</p> <p>8 MS. MEHRABAN: Sure. My</p> <p>9 understanding is that the only documents</p> <p>10 that were produced to me were produced</p> <p>11 to Ms. Dunn.</p> <p>12 A Let me clarify that. There is one</p> <p>13 letter that Ms. Dunn had asked me for, it's</p> <p>14 the letter that Dave sent me that we talked</p> <p>15 about, which I sent over the weekend. So</p> <p>16 that's one that you don't have.</p> <p>17 MS. MEHRABAN: So I can get you</p> <p>18 copies of all those documents, but most</p> <p>19 of them are exhibits.</p> <p>20 A But what I sent is exactly what I sent</p> <p>21 to Ms. Dunn.</p> <p>22 MR. FEATHERSTONHAUGH: Okay.</p> <p>23 A Can I clarify that's not total, I mean I</p> <p>24 haven't --</p> <p>25 Q You haven't completed your search for</p>



<p style="text-align: center;">9</p> <p>1 T. Urbelis</p> <p>2 documents?</p> <p>3 A As I explained to you, you know, I got</p> <p>4 the subpoena at 2 o'clock, Friday. And my</p> <p>5 office was closing early, and, you know, I</p> <p>6 offered to send her the documents to have</p> <p>7 copies of the documents that I had sent to Ms.</p> <p>8 Dunn, and I was leaving right then for the</p> <p>9 holiday weekend, Memorial Day weekend, out of</p> <p>10 state and I haven't done anything since. I</p> <p>11 got a phone call or we got a phone call Sunday</p> <p>12 night.</p> <p>13 Q Do you want to go off the record?</p> <p>14 A My daughter was –</p> <p>15 MS. MEHRABAN: Let's go off the</p> <p>16 record.</p> <p>17 (Whereupon, an off the record</p> <p>18 discussion was held.)</p> <p>19 MS. MEHRABAN: Back on the record.</p> <p>20 Q I believe you just explained to me how</p> <p>21 you knew David Smith.</p> <p>22 A Yes, we been friends more than 50 years,</p> <p>23 we met in junior high.</p> <p>24 Q Would the answer be the same with</p> <p>25 respect to Lynn Smith?</p>	<p style="text-align: center;">11</p> <p>1 T. Urbelis</p> <p>2 approvals.</p> <p>3 Q And were you involved in that</p> <p>4 representation?</p> <p>5 A No. There was another time in the early</p> <p>6 '80s, '84, '85, '86, around there, where there</p> <p>7 was some litigation that McGinn, Smith was</p> <p>8 involved in with regard to I believe a real</p> <p>9 estate developer and the case was in</p> <p>10 Massachusetts and I represented the company</p> <p>11 and the case was settled, but ever since then,</p> <p>12 since that, I've – no, I haven't represented</p> <p>13 them as an attorney. I never represented any</p> <p>14 of them.</p> <p>15 Q As a trustee for this trust, what did</p> <p>16 you do?</p> <p>17 A Well, I – let me tell you what I took</p> <p>18 as my duties as I saw them. My very first</p> <p>19 duty obviously was to make sure the kids were</p> <p>20 okay.</p> <p>21 Jeff and Lauren, I've known them since</p> <p>22 they were born. And I think that's – I don't</p> <p>23 know if I'm speculating – that might be one</p> <p>24 of the reasons besides knowing me, they might</p> <p>25 have wanted someone who knew the kids and what</p>
<p style="text-align: center;">10</p> <p>1 T. Urbelis</p> <p>2 A Same.</p> <p>3 Q How did you become trustee with the</p> <p>4 David L. and Lynn A. Smith Trust?</p> <p>5 A I don't know if it was Dave calling me</p> <p>6 or Lynn – probably Dave, I don't remember –</p> <p>7 and asked me to be the trustee for the</p> <p>8 children's trust.</p> <p>9 Q Prior to that time, had you been a</p> <p>10 trustee for any trust for David Smith or Lynn</p> <p>11 Smith?</p> <p>12 A I am a trustee of a life insurance trust</p> <p>13 on Dave's life; that's it.</p> <p>14 Q How long have you been a trustee for</p> <p>15 that trust?</p> <p>16 A Maybe 20 years.</p> <p>17 Q Have you ever represented David Smith or</p> <p>18 Lynn Smith in your capacity as an attorney?</p> <p>19 A I never represented Lynn. In 1980 when</p> <p>20 Dave and Tim McGinn were starting their firm,</p> <p>21 they asked me if I knew any lawyers in Boston,</p> <p>22 and one of the partners in the firm that was</p> <p>23 associated with us did that kind of work; so</p> <p>24 he worked with them in setting up their</p> <p>25 company and getting the appropriate regulatory</p>	<p style="text-align: center;">12</p> <p>1 T. Urbelis</p> <p>2 their personalities were and needs and things</p> <p>3 like that; so I've known Jeff and Lauren ever</p> <p>4 since they were born. So, my first duty as I</p> <p>5 saw it was if they needed money or some kind</p> <p>6 of assistance was to provide it.</p> <p>7 Another consideration for me was I</p> <p>8 wanted to make sure in a situation like this</p> <p>9 that the taxes got paid, so I wanted an</p> <p>10 assurance that I was not going to be</p> <p>11 responsible for preparing tax returns, and I</p> <p>12 make no bones about it, I have an accountant</p> <p>13 that does mine and I don't understand it. So</p> <p>14 I have an accountant that does that, and I</p> <p>15 wanted the same professional expertise to deal</p> <p>16 with the tax returns. I wanted to make sure I</p> <p>17 had an assurance that they were going to get</p> <p>18 done on a timely basis and they were going to</p> <p>19 get paid.</p> <p>20 With regard to the investments and the</p> <p>21 trust, I did not see my duties as making the</p> <p>22 trust double, triple, quadruple over time. I</p> <p>23 wanted the money to be fairly secure for, if</p> <p>24 and when the kids needed it. And I looked to</p> <p>25 Dave to provide advice to me with regard to</p>



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<p style="text-align: center;">13</p> <p>1 T. Urbelis</p> <p>2 the prudent investment or appropriate</p> <p>3 investments to make in the trust.</p> <p>4 Q Were you compensated in your position as</p> <p>5 trustee?</p> <p>6 A No.</p> <p>7 Q Do you have any background in investing?</p> <p>8 A Not really, no, I don't have time to.</p> <p>9 Q Did you make any investment decisions as</p> <p>10 trustee of the trust that were not based on</p> <p>11 recommendations from David Smith?</p> <p>12 A I don't think so. There really weren't</p> <p>13 that many. I mean, over the six or seven</p> <p>14 years, six years, there really -- I think if</p> <p>15 you look at other investments, there really</p> <p>16 weren't that many transactions. I mean, there</p> <p>17 were a couple big ones, but I mean it wasn't</p> <p>18 like there were six or seven, continually six</p> <p>19 or seven transactions. I mean, there were</p> <p>20 some, it was mostly talking to Dave.</p> <p>21 I felt a couple of things. One, this</p> <p>22 trust in my mind was kind of unique because</p> <p>23 the person who was one of the donors was in</p> <p>24 the business of investments, so it's not like</p> <p>25 the person who was the donor was a dentist or</p>	<p style="text-align: center;">15</p> <p>1 T. Urbelis</p> <p>2 Q You said that your first goal in being</p> <p>3 the trustee was to make sure the children were</p> <p>4 okay.</p> <p>5 A Right.</p> <p>6 Q How did you do that?</p> <p>7 A Well, I knew what the kids were up to.</p> <p>8 I mean, my wife and I are very good friends</p> <p>9 with Dave and Lynn. And again, we have kids</p> <p>10 that are fairly close to the same ages of Jeff</p> <p>11 and Lauren, and my wife and Lynn raised a</p> <p>12 couple of teenagers at the same time. So we</p> <p>13 had a lot of conversations about what the kids</p> <p>14 are up to and which kid is doing what, and</p> <p>15 just that I knew about what they were doing</p> <p>16 and whether they needed money.</p> <p>17 So, I mean, obviously if I knew one of</p> <p>18 them was in a tough spot, I would have stepped</p> <p>19 in, but that was never brought to my attention</p> <p>20 or I never became aware of it.</p> <p>21 Q Did you have conversations with Jeff</p> <p>22 Smith?</p> <p>23 A Yeah, I've talked to Jeff.</p> <p>24 Q How often?</p> <p>25 A Probably, well, probably more often.</p>
<p style="text-align: center;">14</p> <p>1 T. Urbelis</p> <p>2 a musician or athlete, and I had to go pay</p> <p>3 somebody to get advice. The person, it was,</p> <p>4 if you will, an in-house expert right there.</p> <p>5 Secondly, it was somebody who I had</p> <p>6 invested money with. So, obviously if it was</p> <p>7 good enough for me to consult with Dave to get</p> <p>8 his advice for my personal investments, it was</p> <p>9 good enough to ask him about his trust.</p> <p>10 And another thought in my mind has</p> <p>11 always been is this is his children's money</p> <p>12 and who else will you give advice to, but</p> <p>13 someone who is dealing with your children's</p> <p>14 money? So I felt very comfortable with regard</p> <p>15 to the investment side of what I was doing to</p> <p>16 consult with Dave, and Mr. Simons was the</p> <p>17 certified public accountant who was doing the</p> <p>18 taxes.</p> <p>19 Q And where was Mr. Simons employed?</p> <p>20 A He has an accounting firm in Syracuse.</p> <p>21 Q Is it Piaker & Lyons?</p> <p>22 A Yes.</p> <p>23 Q Were any distributions ever made by the</p> <p>24 trust to the beneficiaries of the trust?</p> <p>25 A I don't think so.</p>	<p style="text-align: center;">16</p> <p>1 T. Urbelis</p> <p>2 You mean about the trust?</p> <p>3 Q Yes.</p> <p>4 A I recall -- I think -- I'm just trying</p> <p>5 to recall -- as I was driving up here and I</p> <p>6 think about when the trust was created, I</p> <p>7 joked with both of them.</p> <p>8 I said, you guys better be nice to me</p> <p>9 because you may want me at some point. We</p> <p>10 joked about it, and I really haven't had any</p> <p>11 substantive conversations with Lauren about</p> <p>12 it.</p> <p>13 Jeff, I had a recent conversation with</p> <p>14 Jeff, he called me. I think it was April 15th</p> <p>15 this year and said that, you know, it was tax</p> <p>16 time. So every year around April 15th, I'd</p> <p>17 transfer money, make sure that taxes got paid.</p> <p>18 And he was also, for a period of time, the</p> <p>19 account representative on the trust, he was</p> <p>20 not just the beneficiary, he was the actual</p> <p>21 representative.</p> <p>22 Q And your understanding is that the money</p> <p>23 that was transferred was to pay taxes on the</p> <p>24 trust?</p> <p>25 A Pay taxes, yes, that was my</p>



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<p style="text-align: center;">17</p> <p>1 T. Urbelis</p> <p>2 understanding.</p> <p>3 Q Did Jeff send you or anyone send you any</p> <p>4 documents of what the tax liabilities were on</p> <p>5 the trust?</p> <p>6 A Well, I received a document from a</p> <p>7 gentleman, I think, Brian Maher in New York</p> <p>8 who -- I'm not exactly sure who he is. He's</p> <p>9 with the clearinghouse, RMR.</p> <p>10 Jeff had called me and said, all right,</p> <p>11 we'll fax up the document to sign to transfer</p> <p>12 the money, and Jeff, they tried a couple of</p> <p>13 times and it didn't come through the fax</p> <p>14 machines.</p> <p>15 So I called Mr. Maher, and he e-mailed</p> <p>16 me the form that they prepared for me to sign</p> <p>17 to transfer the funds.</p> <p>18 Q Did you ever see any documents prior to</p> <p>19 authorizing the transfer showing how much the</p> <p>20 taxes were for the trust?</p> <p>21 A For this year?</p> <p>22 Q For any given year.</p> <p>23 A Well, I can tell you I didn't this year,</p> <p>24 I haven't reviewed all the documents, I don't</p> <p>25 know.</p>	<p style="text-align: center;">19</p> <p>1 T. Urbelis</p> <p>2 referenced, it seems to make sense that it's</p> <p>3 dated the same date.</p> <p>4 Q I represent to you that this is a</p> <p>5 document that you sent me.</p> <p>6 A Again, I'm assuming that's what it was.</p> <p>7 It looks like there is a delivery slip here.</p> <p>8 Yeah, this is a letter that Dave Smith sent to</p> <p>9 me.</p> <p>10 Q And it's attaching the declaration of</p> <p>11 trust?</p> <p>12 A Right. Is this the one that I signed?</p> <p>13 Well, that's what I mean, so I don't think he</p> <p>14 sent me this one with my signature, so, I mean</p> <p>15 I may have just stapled it together to keep</p> <p>16 the signed one with the letter. It doesn't</p> <p>17 make sense that he sent me one, but maybe he</p> <p>18 did.</p> <p>19 No, actually, I think the handwriting</p> <p>20 where it says August 4th, looks like my</p> <p>21 handwriting on the first paragraph, so I'm not</p> <p>22 exactly sure what the sequence was, but as I</p> <p>23 say, this is a signed one. I think I also</p> <p>24 sent you a blank one or one that wasn't signed</p> <p>25 by me, if I recall, so that may be what was</p>
<p style="text-align: center;">18</p> <p>1 T. Urbelis</p> <p>2 Q The trust only made a few distributions</p> <p>3 over the years; is that correct?</p> <p>4 MS. DUNN: Objection to the form</p> <p>5 of the question.</p> <p>6 A The trust, yeah, well, it depends on</p> <p>7 what you mean by the distributions. Money</p> <p>8 going out of the trust?</p> <p>9 Q That's what I mean.</p> <p>10 A Correct, that was for taxes.</p> <p>11 Q Do you recall distributions other than</p> <p>12 for taxes?</p> <p>13 A No.</p> <p>14 Q I'm going to show you some documents.</p> <p>15 (Plaintiff's Exhibit 17, letter</p> <p>16 marked for identification of today's</p> <p>17 date.)</p> <p>18 Q I'm handing you Plaintiff's 17. If you</p> <p>19 can take a look at it and let me know what it</p> <p>20 is?</p> <p>21 A Yes, Exhibit 17 is a letter that I</p> <p>22 received from Dave Smith. I assume that this</p> <p>23 is the attachment that's attached, although, I</p> <p>24 don't have any independent memory. I just</p> <p>25 assume that this is the trust that was</p>	<p style="text-align: center;">20</p> <p>1 T. Urbelis</p> <p>2 included in the letter.</p> <p>3 MR. FEATHERSTONHAUGH: Could I</p> <p>4 impose on you just for the clarity of</p> <p>5 the record to actually describe the</p> <p>6 document.</p> <p>7 MS. MEHRABAN: Sure. Plaintiff's</p> <p>8 Exhibit 17 is an 11-page document dated</p> <p>9 August 4th, 2004. The first page is a</p> <p>10 letter from David Smith to Thomas</p> <p>11 Urbelis. The second page through the</p> <p>12 tenth page is the signed declaration of</p> <p>13 trust and the last page is an Airborne</p> <p>14 Express receipt.</p> <p>15 MR. FEATHERSTONHAUGH: Thank you.</p> <p>16 Q I'm going to direct your attention to</p> <p>17 the letter, the first paragraph of the letter,</p> <p>18 the fifth sentence.</p> <p>19 A Yeah.</p> <p>20 Q It says:</p> <p>21 "You and I will be able to consult</p> <p>22 on investments, but I am not eligible to</p> <p>23 exercise any direct control over the</p> <p>24 trust or its investments."</p> <p>25 What's your understanding as to what</p>



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<p style="text-align: center;">21</p> <p>1 T. Urbelis 2 that means? 3 A That I could consult with Dave on 4 investments, but obviously I'm the only one 5 that can sign a transfer or acquisition or 6 disposition of any of the investments. He 7 couldn't do it on his own. 8 I mean I'm on the board of trustees of a 9 charitable organization, where our accountant 10 or our investment advisor buys and sells stock 11 and every year gives us a report. 12 My experience with that led me to 13 conclude in my mind that that wasn't going to 14 happen here, based on that sentence, that our 15 investment advisor for this charitable 16 organization, which I sit on the board, has 17 given authority to the investment advisor 18 during the year to sell IBM, buy GE, to do 19 whatever you think is best, and then tell us 20 at the end of the year, give us a report as to 21 what you have done. 22 Q In other words, is it fair to say that 23 you -- 24 MS. DUNN: Objection to the form 25 of the question.</p>	<p style="text-align: center;">23</p> <p>1 T. Urbelis 2 time a fee for your services? 3 A Yes, I did. 4 Q What was that discussion? 5 A Dave said, you know, we want to pay you. 6 We want to see you get fairly compensated 7 based upon what other trustees handling this 8 kind of a trust get compensated. So let me 9 know what you think is fair. 10 I said, I'm not going to bother, I'm not 11 going to take anything. 12 Q Why did you say that? 13 A Because they're my friends. 14 Q The next paragraph refers to someone 15 named Bruce Hoover of Sullivan & O'letheros 16 (phonetic) in Buffalo, did you ever speak to 17 Bruce Hoover? 18 A No, not that I recall. 19 Q The final sentence says: 20 "The trust was drawn at the 21 direction of Daniel Blake of Buffalo." 22 Did you ever speak to Daniel Blake? 23 A I don't think so. 24 Q If you turn the page, please, this is 25 the actual declaration of trust; is it not?</p>
<p style="text-align: center;">22</p> <p>1 T. Urbelis 2 MR. FEATHERSTONHAUGH: Objection 3 to the form of the question. 4 MS. MEHRABAN: I'll rephrase the 5 question. 6 Q In other words, David Smith did not have 7 discretionary authority over the account? 8 A I didn't think so. 9 Q The next sentence, "We will discuss some 10 options to accomplish that at a later date," 11 what does the "that" refer to? 12 MS. DUNN: Objection to the form 13 of the question. 14 A To consult on investments. 15 Q What options did you discuss with David 16 Smith about how to accomplish investments? 17 A I don't recall. I don't recall any 18 discussion. 19 Q What other options would there have 20 been? 21 A I don't know. 22 Q The last sentence says, "We will discuss 23 a fee for your services at that time, also." 24 A Right. 25 Q Did you discuss with David Smith at any</p>	<p style="text-align: center;">24</p> <p>1 T. Urbelis 2 A Yes, it looks like it is; if it's got my 3 signature on it, that's the one. Yeah, this 4 is it. 5 Q I don't have any other questions on 6 that. 7 (Plaintiff's 18, a three-page 8 document marked for identification of 9 today's date.) 10 Q This is a three-page document, the first 11 two pages are a letter from Patty Sicluna to 12 you, Mr. Urbelis, and the third page appears 13 to be -- I'm not exactly sure. 14 A The third page doesn't belong there. I 15 some how I misplaced that. I just copied 16 everything that was in it; so you got 17 something that means nothing to you, it has no 18 effect on anything. 19 Q So, we'll just talk about the first two 20 pages then of Exhibit 18. If you can take a 21 look at it and let me know what it is. 22 MR. FEATHERSTONHAUGH: Might I ask 23 for the clarity of the record, if all 24 counsel agreed, that it would be better 25 just to remove the third page, so that</p>



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<p style="text-align: center;">25</p> <p>1 T. Urbelis</p> <p>2 Exhibit 18 is a two-page document?</p> <p>3 MS. MEHRABAN: I think it's fine,</p> <p>4 let's leave it.</p> <p>5 Q What are the first two pages of Exhibit</p> <p>6 18?</p> <p>7 A It's a letter from Ms. Sicluna. It</p> <p>8 looks like -- well, the first paragraph</p> <p>9 relates to the David and Lynn Smith Trust.</p> <p>10 The other paragraphs relate to investments</p> <p>11 that I or my wife had made, and I'd rather not</p> <p>12 get into that.</p> <p>13 The first paragraph relates to the fact</p> <p>14 that Dave had recommended that the trust</p> <p>15 invest in Pine Street Capital Partners LP, and</p> <p>16 Patty was sending me the documents to sign.</p> <p>17 Q What did you and David discuss about the</p> <p>18 investment of Pine Street Capital?</p> <p>19 A I don't remember the details. I just</p> <p>20 don't remember exactly what we talked about.</p> <p>21 Q Did you discuss the investment of Pine</p> <p>22 Street Capital with the beneficiaries of the</p> <p>23 trust at all?</p> <p>24 A No.</p> <p>25 Q Before agreeing to invest in Pine Street</p>	<p style="text-align: center;">27</p> <p>1 T. Urbelis</p> <p>2 if I can have a second to look at it,</p> <p>3 too?</p> <p>4 MS. MEHRABAN: Sure.</p> <p>5 Q What is this document?</p> <p>6 A This was something, again, that Patty</p> <p>7 Sicluna had sent to me to effectuate the</p> <p>8 investment that's shown.</p> <p>9 Q How did the trust come to be invested in</p> <p>10 Deerfield Tri Arc Capital Corp.?</p> <p>11 A Dave and I talked about it.</p> <p>12 Q What did you discuss?</p> <p>13 A I don't recall the exact discussion, but</p> <p>14 I -- he explained to me what it was and I</p> <p>15 mean, I really don't remember the details of</p> <p>16 it.</p> <p>17 Q Did you discuss the investment in</p> <p>18 Deerfield Tri Arc with the beneficiaries of</p> <p>19 the trust?</p> <p>20 A No.</p> <p>21 Q I don't have any other questions about</p> <p>22 that.</p> <p>23 (Plaintiff's Exhibit 20, a</p> <p>24 one-page document marked for</p> <p>25 identification of today's date.)</p>
<p style="text-align: center;">26</p> <p>1 T. Urbelis</p> <p>2 Capital, did you determine that investing in</p> <p>3 Pine Street Capital would meet the goals of</p> <p>4 the trustee of the trust?</p> <p>5 A Yeah, I did do that because it was also</p> <p>6 something that I was considering investing in,</p> <p>7 personally.</p> <p>8 Q How did you do that?</p> <p>9 MS. DUNN: Objection to the form</p> <p>10 of the question.</p> <p>11 MR. FEATHERSTONHAUGH: Objection</p> <p>12 to the form of the question.</p> <p>13 A I talked to Dave.</p> <p>14 Q Can I just ask who William Camisa is?</p> <p>15 A That's my nephew.</p> <p>16 Q I don't have any other questions about</p> <p>17 this document.</p> <p>18 (Plaintiff's Exhibit 19, an</p> <p>19 eight-page document marked for</p> <p>20 identification of today's date.)</p> <p>21 Q Exhibit 19 is an eight-page document.</p> <p>22 The first page is a fax and the second page is</p> <p>23 a subscription agreement for Deerfield Tri Arc</p> <p>24 Capital Corp.</p> <p>25 MR. FEATHERSTONHAUGH: Can I ask</p>	<p style="text-align: center;">28</p> <p>1 T. Urbelis</p> <p>2 Q Exhibit 20 is a one-page legal size</p> <p>3 document.</p> <p>4 MR. FEATHERSTONHAUGH: The title</p> <p>5 of mine is cut off, is it cut off on</p> <p>6 every document?</p> <p>7 MS. MEHRABAN: It's cut off on all</p> <p>8 of them.</p> <p>9 A The one I sent you I think is also cut</p> <p>10 off.</p> <p>11 Q Can you tell us what this document is?</p> <p>12 A This looks like -- I think this was a</p> <p>13 Bear Stearns. Bear Stearns was going to be</p> <p>14 doing the clearing for the investments, and</p> <p>15 this was something I had to sign as the</p> <p>16 trustee to have Bear Stearns do it.</p> <p>17 Q Who filled out the document?</p> <p>18 A I didn't, I don't know who did.</p> <p>19 Q You did not check the box "Real Estate"?</p> <p>20 A No.</p> <p>21 Q Or "Private Placements"?</p> <p>22 A No, I just -- it doesn't look like any</p> <p>23 of my handwriting, it does look like my</p> <p>24 signature, though.</p> <p>25 Q Okay. I don't have any other questions</p>



<p style="text-align: center;">29</p> <p>1 T. Urbelis 2 of this document. 3 (Plaintiff's Exhibits 21 and 22, a 4 one-page document marked for 5 identification as of today's date.) 6 Q They're both one-page documents. You 7 can take a look at them, I think they go 8 together. 9 A Yeah, I think they do, too. They 10 probably do, I don't see any date. 11 Q No, there is no date. 12 A Well, the March 1st up here, the letter 13 on Exhibit 21, and then it looks like I signed 14 Exhibit 22 on March 25th, but I can't tell 15 what year. But in any event, Exhibits 21 and 16 22, they relate to the trust's acquisition of 17 Pine Street Capital Partners LP Investment. 18 Q Was there more than one investment in 19 Pine Street Capital Partners or is this all 20 the same investment? 21 A There may have been two – 22 MS. DUNN: Objection to the form. 23 A There may have been two. I think there 24 were two. 25 (Plaintiff's Exhibit 23, a</p>	<p style="text-align: center;">31</p> <p>1 T. Urbelis 2 think people were rushing to get the taxes 3 paid and this is the way it was done; I think 4 it's the way it went. 5 Where did the check come from? The 6 check came from Dave who then sent it to my 7 law firm, which I wanted it to have absolutely 8 nothing to do with the trust, which is why I 9 said I don't want to do this anymore where it 10 goes on the old interest of trust accounts, 11 which is like an escrow account. So that's 12 the way it was done this year, but it wasn't 13 done like that after, where it goes into my 14 ULTA account, and then I incur a check out of 15 my ULTA account to make sure the taxes got 16 paid. 17 So I said, I don't want to do that 18 anymore, I want to keep my law firm out of it, 19 they're not my clients. 20 Q What about the last page? 21 A The handwritten – I don't know. Oh, 22 I'm sorry, it's on Dave's letterhead. It 23 looks like Dave's handwriting. 24 Q Do you know what it is? 25 A Well, it's got my law firm there, it's</p>
<p style="text-align: center;">30</p> <p>1 T. Urbelis 2 four-page document marked for 3 identification of today's date.) 4 Q Plaintiff's Exhibit 23 is a four-page 5 compilation of documents that I believe you 6 produced stapled. 7 A Okay, that doesn't mean they're all 8 together, that may have been for my 9 bookkeeping convenience. 10 Q Why don't you walk through them and tell 11 me what they are. 12 MS. DUNN: For the record, I'm 13 curious about it, they weren't stapled 14 when I received them. 15 A This is a letter to me from David Quade 16 of McGinn Smith discussing the payment for the 17 2004 taxes. 18 In the beginning, this kind of – this 19 was the first year we kind of stumbled through 20 the method to do this. So this is the way it 21 was done, this was the way it was done which I 22 don't think you'll see anything like that in 23 the other ones. 24 The money was just transferred out of 25 the account after that, but after this, I</p>	<p style="text-align: center;">32</p> <p>1 T. Urbelis 2 got my phone number, overnight, it looks like 3 it says 1800 federal filing, state – I don't 4 know, it must be the calculation for that year 5 or the numbers that were needed to pay the 6 taxes that year. 7 Q But you don't know whether it's part of 8 the same document? 9 A No, I don't know. 10 (Plaintiff's Exhibits 24 and 25, 11 documents marked for identification of 12 today's date.) 13 A Yeah, 24 and 25, I think we talked about 14 this in one of the exhibits, I'm not sure 15 which one, but about the Deerfield Capital. 16 This is just further documents that need to be 17 executed with regard to the acquisitions of 18 this investment. 19 25 is – it's my signature on 25, so it 20 looks like that may be something that – well, 21 I don't know. It looks like – I don't know, 22 but it does look like my signature. 23 Q You don't know what Exhibit 25 relates 24 to? 25 A I think it relates to this investment,</p>



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<p style="text-align: center;">33</p> <p>1 T. Urbelis</p> <p>2 if I look -- well, it doesn't say that, so I'd</p> <p>3 just be guessing.</p> <p>4 Q Did you discuss these documents with</p> <p>5 David Smith before you signed them?</p> <p>6 A I can't say I discussed each page of</p> <p>7 every document, but we did discuss the</p> <p>8 investment.</p> <p>9 Q What does this document relate to with</p> <p>10 respect to the investment?</p> <p>11 MS. DUNN: I'm going to object to</p> <p>12 the form of the question. He said he</p> <p>13 doesn't recognize Exhibit 25 other than</p> <p>14 his signature.</p> <p>15 MS. MEHRABAN: I'm sorry, I was</p> <p>16 referring to Exhibit 24.</p> <p>17 A Well, Exhibit 24 represents the</p> <p>18 documents -- it relates to documents with the</p> <p>19 Deerfield Tri Arc Capital Corp. acquisition.</p> <p>20 Q Just to take you back to Exhibit 19, the</p> <p>21 investment for Deerfield Tri Arc was made in</p> <p>22 December '04?</p> <p>23 A I don't know the dates.</p> <p>24 MS. DUNN: Was that a question?</p> <p>25 MS. MEHRABAN: Yes.</p>	<p style="text-align: center;">35</p> <p>1 T. Urbelis</p> <p>2 it was May or something. And then I got this</p> <p>3 and I just didn't understand what all the</p> <p>4 documents represented, why there were further</p> <p>5 documents.</p> <p>6 Q Did Dave call you in response to your</p> <p>7 fax?</p> <p>8 A I don't have a specific recollection,</p> <p>9 but he must have because he always did when I</p> <p>10 asked him to talk about one of the</p> <p>11 investments, especially this one, it seemed to</p> <p>12 me, from my standpoint, a little confusing as</p> <p>13 to what was going on.</p> <p>14 Q You don't recall anything about your</p> <p>15 discussion?</p> <p>16 A No, it was five years ago. I don't know.</p> <p>17 (Plaintiff's Exhibit 27, a</p> <p>18 three-page compilation of faxes from</p> <p>19 David Smith to Thomas Urbelis marked for</p> <p>20 identification of today's date.)</p> <p>21 Q This is a three-page compilation, it's a</p> <p>22 fax from David to you and then the fax</p> <p>23 transmittal confirmation and then a signed</p> <p>24 authorization.</p> <p>25 A Did the second page come from me? I</p>
<p style="text-align: center;">34</p> <p>1 T. Urbelis</p> <p>2 A Exhibit 19, it says we received it in</p> <p>3 December of '04. As to follow-up documents,</p> <p>4 they both look like 50,000 shares.</p> <p>5 MR. FEATHERSTONHAUGH: So when you</p> <p>6 say both, can you just tell me which</p> <p>7 exhibits?</p> <p>8 THE WITNESS: I'm talking about</p> <p>9 Exhibits 19 and 24.</p> <p>10 A So I don't know the exact time frame on</p> <p>11 these, but I'm not just guessing. It looks</p> <p>12 like they both talk about 50,000 shares.</p> <p>13 Well, it discusses the acquisition, I don't</p> <p>14 recall the sequence of these, I'm sorry.</p> <p>15 (Plaintiff's Exhibit 26, fax to</p> <p>16 David Smith from Thomas Urbelis marked</p> <p>17 for identification of today's date.)</p> <p>18 Q Exhibit 26 is a fax to David Smith from</p> <p>19 you, a 26-page fax, and it's dated June 7th,</p> <p>20 2005.</p> <p>21 A This was, I did say that Dave called me</p> <p>22 on this. I think I was confused with all</p> <p>23 these documents because I had signed something</p> <p>24 in December, and then I had signed something</p> <p>25 and I don't know if it was the last exhibit,</p>	<p style="text-align: center;">36</p> <p>1 T. Urbelis</p> <p>2 don't think any of these three pages came from</p> <p>3 me. Oh, I don't recognize it. I don't</p> <p>4 recognize the second page here.</p> <p>5 Q Do you recognize the first page and the</p> <p>6 third page?</p> <p>7 A I--</p> <p>8 Q Let me give you another document that</p> <p>9 might clarify your recollection.</p> <p>10 MR. FEATHERSTONHAUGH: Could we</p> <p>11 let him finish his answer?</p> <p>12 A I don't really know on Exhibit 27 here.</p> <p>13 Q Let me give you another document that</p> <p>14 might refresh your recollection.</p> <p>15 (Plaintiff's Exhibit 28, document</p> <p>16 marked for identification of today's</p> <p>17 date.)</p> <p>18 A Yeah, Exhibit 28 is my signature. To</p> <p>19 compare it, it looks the same as Exhibit 27.</p> <p>20 Q Did you discuss with David Smith the</p> <p>21 wire of \$92,105 prior to you signing the</p> <p>22 authorization?</p> <p>23 A I don't remember. I mean it was here,</p> <p>24 as I said when I first started the deposition,</p> <p>25 every April I would send money for taxes.</p>



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1 T. Urbelis
 2 Somebody would let me know.
 3 Q Is it your understanding that the
 4 \$92,105 was the tax liability for the trust
 5 for 2005?
 6 A It looks like it, yeah.
 7 Q Did you discuss this wire transfer with
 8 the beneficiaries of the trust before?
 9 A No.
 10 (Plaintiff's Exhibit 29, a
 11 three-page compilation of documents
 12 marked for identification of today's
 13 date.)
 14 Q Exhibit 29 is a three-page compilation
 15 of documents. If you could take a look at it
 16 and tell me what it is, please.
 17 A I don't know if I've seen the third
 18 page. Did I send this to you, I don't recall
 19 it?
 20 Q I'm not 100 percent sure actually, if
 21 not, then I found it in the e-mails.
 22 A Okay, I don't recall the third page.
 23 Q What about the first and second pages?
 24 A Well, the second page has my firm's name
 25 up on top, so I assume I received it.

38

1 T. Urbelis
 2 Q You assume you received or sent it?
 3 A Oh, it's from me to George. Oh, I'm
 4 sorry. Yeah, I guess I sent the second page.
 5 Q And what about the first page?
 6 A It looks like the first page is what I
 7 sent.
 8 Q What is the first page?
 9 A Again, that was with the transactions
 10 with the Deerfield Capital Corp., a conversion
 11 to common shares.
 12 Q Did you discuss this with David Smith
 13 prior to signing it?
 14 A This stuff was confusing to me, so I
 15 needed an explanation.
 16 Q Who did you discuss it with?
 17 A I don't think I ever discussed anything
 18 with anybody other than Dave.
 19 Q Do you recall your discussion with Dave
 20 regarding this letter?
 21 A No, not specifically.
 22 (Plaintiff's Exhibit 30, a
 23 two-page document consisting of a fax
 24 cover and authorization marked for
 25 identification of today's date.)

39

1 T. Urbelis
 2 Q Exhibit 30 is a two-page document, a fax
 3 cover and an authorization.
 4 A Right. It looks like my signature and
 5 again this is tax season. So I'm assuming
 6 that's what this one is, the outline of the
 7 particular memory, but I'm assuming that's
 8 what that one is.
 9 Q Did you have a discussion with David
 10 Smith prior to signing this authorization?
 11 A I don't remember.
 12 Q Is it your understanding –
 13 A Did it come with something?
 14 Q If you flip over the page it's a
 15 two-sided.
 16 A Oh, sorry. I don't remember seeing the
 17 back side of this.
 18 MS. DUNN: For the record,
 19 counsel, can you identify who – did you
 20 receive this document in a back-to-back
 21 format?
 22 MS. MEHRABAN: I did.
 23 MR. FEATHERSTONHAUGH: Could I
 24 ask, for the purposes of the record, Mr.
 25 Urbelis, when you say you're referring

40

1 T. Urbelis
 2 to seeing the back side, could you tell
 3 me which side you're calling the back
 4 side?
 5 THE WITNESS: The front side is
 6 the one with the plaintiff's exhibit on
 7 it.
 8 MR. FEATHERSTONHAUGH: Well I
 9 don't have that, so –
 10 THE WITNESS: The one with my
 11 signature on the bottom, April 11th,
 12 2008 where it looks like I signed it,
 13 April 14th, 2008. That's what I
 14 consider the front side. I don't
 15 believe I've seen the back side.
 16 MS. MEHRABAN: And I do believe I
 17 got it as a double-sided document, but I
 18 don't, off the top of my head I don't
 19 know the source. I'm not sure if it was
 20 in the – I'm not sure I do, that's
 21 correct.
 22 MS. DUNN: So we moved on from the
 23 documents Mr. Urbelis produced in
 24 response to the subpoena?
 25 MR. FEATHERSTONHAUGH: We have a



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<p style="text-align: center;">41</p> <p>1 T. Urbelis 2 couple. 3 MS. MEHRABAN: I have them in 4 chronological order, so it's mixed. 5 Q The \$110,636, is it your understanding 6 that that represents the trust tax liability 7 for 2007? 8 A I -- again, I don't know if how the 9 accounting, I don't know if it was for prior 10 taxes, estimated taxes, but my understanding 11 is it was for taxes, I mean -- 12 Q And taxes related to the trust? 13 A Taxes related to the trust. 14 Q Okay, that's it for that document, 15 thank you. 16 (Plaintiff's Exhibit 31, a 17 two-page document marked for 18 identification for today's date.) 19 Q Exhibit 31 is a two-page document titled 20 "Indemnity Agreement" and the second page is 21 an e-mail from you. 22 A The two documents are totally unrelated, 23 so I don't know how they're stapled together. 24 MS. DUNN: These documents were 25 not stapled together when I received</p>	<p style="text-align: center;">43</p> <p>1 T. Urbells 2 else they won't do it, and it had an indemnity 3 clause in there that I had to sign which I 4 felt very uncomfortable with. 5 And so I called Dave, and I said I 6 really -- I'm really uncomfortable with 7 signing this because even though I'm signing 8 as trustee, it still says that NFS could at 9 some point invoke that in some future 10 circumstance that I can't even predict. I 11 said that I felt very uncomfortable with it. 12 And Dave said, well, why don't you draft 13 something up that Lynn and I could sign that 14 would make you feel comfortable with having 15 you do NFS for the trust; so I did, I drafted 16 this. 17 Q By "this" you mean the first page of 18 Exhibit 31? 19 A Yes. 20 Q Okay, I have no other questions on this 21 document. 22 (Plaintiff's Exhibit 32, a 23 five-page form marked for identification 24 of today's date.) 25 Q Exhibit 32 is a form that's a five-page</p>
<p style="text-align: center;">42</p> <p>1 T. Urbelis 2 them from Mr. Urbelis, so I'm not sure 3 how they got attached. I don't believe 4 they were even together. You know, 5 they're two years apart. 6 MS. MEHRABAN: I believe that I 7 had copied documents in the manner in 8 which I received them, but it's possible 9 there was a mistake. 10 Q So let's talk about the first page. 11 A Sure. The first page is called an 12 indemnity agreement. 13 Q What is this? 14 A It's an indemnity agreement signed by 15 Dave and Lynn Smith in November 10th, 2008. 16 Q Why was this signed on this date? 17 A Because at that time or right around 18 that time, the trust was -- I think that's 19 when they were transferring the National 20 Financial Services as a clearing agent and I 21 had to sign a document that I felt very 22 uncomfortable with. 23 There was an NFS standard form that I 24 assume they make for all of their people for 25 whom they provide clearing services sign or</p>	<p style="text-align: center;">44</p> <p>1 T. Urbelis 2 document. If you could tell me what this 3 relates to? I guess first, if you could tell 4 me if this is your signature on the last page? 5 A Yeah, it looks like it. 6 MR. FEATHERSTONHAUGH: Maybe I 7 have the wrong thing. I have -- my 8 Exhibit 32 is two separate forms, with a 9 total of five pages but they appear to 10 be different. 11 MS. MEHRABAN: I think you're 12 right, there are two forms; the first 13 one is two pages and the second one is 14 three pages. 15 Q Is that your signature on the first page 16 of Exhibit 32 on the bottom? 17 A It looks like it is, although, did I 18 produce this to you? I don't think I did. I 19 just don't recognize it, I don't think I have 20 this in my file. 21 Q But is that your signature? 22 A Yes. 23 Q But do you know what this transfer of 24 assets form relates to? 25 A I don't know, it looks like it's -- I</p>



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<p>45</p> <p>1 T. Urbelis 2 don't know, I'd have to study it, I don't want 3 to give you a misleading answer. 4 MR. FEATHERSTONHAUGH: May I 5 inquire as to where did this document 6 come from? The one I have is not quite 7 legible, but the larger portions are 8 legible. 9 MS. MEHRABAN: It's from the 10 e-mails that McGinn Smith & Company 11 produced to FINRA. 12 MS. DUNN: So is that an 13 attachment to an e-mail? It doesn't 14 appear to be an e-mail. 15 MR. STOELTING: We received 16 production from FINRA that has been 17 available to everyone from the 18 beginning. 19 MS. DUNN: I'm just intervening 20 from last week, so I don't have any of 21 the production that you're referring to. 22 He's testified he doesn't recognize the 23 document, so. 24 MS. MEHRABAN: And that his 25 signature is on it.</p>	<p>47</p> <p>1 T. Urbelis 2 ask so I understand you, are you 3 representing that these two documents 4 are related somehow? 5 MR. STOELTING: Just let her ask 6 the question, please. 7 MR. FEATHERSTONHAUGH: Excuse me, 8 counsel, I doubt your colleague will 9 need your advice, but I'm simply 10 inquiring as to whether you're 11 representing that. 12 MS. MEHRABAN: I believe that 13 they're related, but I'm asking the 14 witness to explain; if he can't explain, 15 he can't explain. 16 A I can't explain. 17 Q Do you recognize the National Financial 18 Services Alternative Investments Addendum and 19 Custody Agreement? 20 A No. 21 (Plaintiff's Exhibit 33, a 22 two-page document marked for 23 identification of today's date.) 24 Q This is a two-page document and I can 25 represent to you that this I printed off our</p>
<p>46</p> <p>1 T. Urbelis 2 MS. DUNN: He recognizes his 3 signature, but I don't know about you 4 getting too far into the document. 5 MS. MEHRABAN: You can interrupt 6 me, if I go too far. 7 Q It's on page three of the document, 8 National Financial Services Alternative 9 Investments Addendum and Custody Agreement. 10 You testified earlier that it is your 11 signature on the third page, Mr. Urbelis. 12 A It looks like it, yes. 13 MS. DUNN: My page 3 doesn't have 14 a signature. 15 MR. FEATHERSTONHAUGH: Neither 16 does mine. 17 MS. MEHRABAN: It's the last page 18 of Exhibit 32. 19 MS. DUNN: It is my third page. 20 MS. MEHRABAN: It is the third 21 page of the National -- 22 MR. FEATHERSTONHAUGH: Could I ask 23 a question, counsel -- 24 MS. MEHRABAN: Let me finish. 25 MR. FEATHERSTONHAUGH: I need to</p>	<p>48</p> <p>1 T. Urbelis 2 e-mail system, which was the e-mail that 3 McGinn Smith & Co. produced to us, but you 4 produced it to me in a different format, it's 5 the exact same e-mail. 6 A This one, Exhibit 33? I doesn't think 7 so. 8 Q It's in a different format, it's just 9 that the type was different. 10 MS. MEHRABAN: Let's go off the 11 record for a second. 12 (Whereupon, an off the record 13 discussion was held.) 14 MS. MEHRABAN: Back on the record. 15 Q Look at the document and if you could 16 let me know if you've seen it before? 17 A This first one, this first page, Exhibit 18 33? 19 Q Yes. 20 A I don't recall seeing this, no. 21 Q What about the second page? 22 A I don't know. 23 Q Do you remember signing something 24 allowing for the payment of taxes in April, 25 2009?</p>



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<p style="text-align: center;">49</p> <p>1 T. Urbelis</p> <p>2 A I don't recall, but I certainly I must</p> <p>3 had, April comes tax time, I just don't</p> <p>4 recognize this document.</p> <p>5 (Plaintiff's Exhibit 34, a</p> <p>6 three-page document, marked for</p> <p>7 identification of today's date.)</p> <p>8 Q Exhibit 34 is a three-page document.</p> <p>9 The first page is a letter and the second two</p> <p>10 pages are related to shipping.</p> <p>11 Do you recognize this document?</p> <p>12 A Yes.</p> <p>13 Q What is it?</p> <p>14 A It's a copy of a letter that I sent to</p> <p>15 Dave and Lynn.</p> <p>16 Q It's a resignation letter; is it not?</p> <p>17 A Yes.</p> <p>18 Q And it's dated April 22nd, 2010.</p> <p>19 A Yes.</p> <p>20 Q Why did you resign on April 22nd, 2010?</p> <p>21 A I resigned because of this lawsuit. I</p> <p>22 was made aware that there was a lawsuit and I</p> <p>23 read the Albany Times Union articles and</p> <p>24 according to that, 80 or 90 million dollars</p> <p>25 that McGinn Smith had allegedly received from</p>	<p style="text-align: center;">51</p> <p>1 T. Urbelis</p> <p>2 actual conflict of interest, but certainly an</p> <p>3 appearance of a conflict of interest, and I</p> <p>4 really didn't want to continue that.</p> <p>5 Q And if I understand, is it correct that</p> <p>6 that was because you were a personal investor</p> <p>7 as well?</p> <p>8 A I and my family, yes. So when all of</p> <p>9 those things added up, I couldn't – I could</p> <p>10 not in good faith continue my duties. I'm</p> <p>11 sure I certainly wouldn't do anything to hurt</p> <p>12 the kids, but I didn't want to have any kind</p> <p>13 of appearance of impropriety.</p> <p>14 Q Did you speak to the beneficiaries of</p> <p>15 the trust before resigning?</p> <p>16 A No.</p> <p>17 Q And the resignation shall take effect on</p> <p>18 May 27th, 2010, is that because of the terms</p> <p>19 of the declaration of trust?</p> <p>20 A Yeah, according the trust I had to give</p> <p>21 30 days notice.</p> <p>22 Q I have no other questions about that.</p> <p>23 Let's take a five-minute break.</p> <p>24 (Whereupon, a five minute recess</p> <p>25 took place.)</p>
<p style="text-align: center;">50</p> <p>1 T. Urbelis</p> <p>2 investors, that there was only \$500,000 left</p> <p>3 and since I and my family and the trust were</p> <p>4 investors, \$500,000 from 90 million, I think</p> <p>5 that was the number that was in the paper,</p> <p>6 something in that range, it was very</p> <p>7 disconcerting.</p> <p>8 I was told by a friend that Dave could</p> <p>9 not speak with any of the investors and Dave</p> <p>10 or Lynn could not speak with any of the</p> <p>11 investors. And at that time, there was a</p> <p>12 great deal of turmoil for me.</p> <p>13 I came to the conclusion that because I</p> <p>14 and my family were investors, that I could not</p> <p>15 really fulfill my fiduciary duty with regard</p> <p>16 to the trust and the kids, where the trust was</p> <p>17 an investor and I also was an investor.</p> <p>18 So it just in my mind I couldn't talk to</p> <p>19 anybody, I couldn't talk to Dave or Lynn about</p> <p>20 it, to my understanding. There was no way</p> <p>21 that I could continue in a fiduciary capacity,</p> <p>22 so I resigned.</p> <p>23 I just thought I was clearly, in my</p> <p>24 mind, because of the lawsuit and the</p> <p>25 allegations that were in there, and if not, an</p>	<p style="text-align: center;">52</p> <p>1 T. Urbelis</p> <p>2 Q I'm going to ask you to look at again</p> <p>3 Plaintiff's Exhibit 28.</p> <p>4 A Okay.</p> <p>5 Q This is a wire authorization, correct?</p> <p>6 A Yes.</p> <p>7 Q And it's your signature on the bottom; I</p> <p>8 believe you testified to that earlier.</p> <p>9 A Yes.</p> <p>10 Q And this wire went to David Smith; is</p> <p>11 that correct?</p> <p>12 A Yeah, I think what happened, and I</p> <p>13 didn't get into the details of these things</p> <p>14 with the accountant, but I think I just</p> <p>15 assumed the money went kind of, like we talked</p> <p>16 about 2004, 2005, it came out of the – out of</p> <p>17 their account and he had or Mr. Simons, who</p> <p>18 was making sure that the taxes get paid and</p> <p>19 filed, I just assumed that there was a way,</p> <p>20 you know, that either he brought the check to</p> <p>21 Mr. Simons or Mr. Simons got the check or Dave</p> <p>22 wrote the check to the IRS. I didn't care as</p> <p>23 long as I wasn't getting notices from the IRS</p> <p>24 that the State of New York – that the taxes</p> <p>25 weren't getting paid.</p>



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<p style="text-align: center;">53</p> <p>1 T. Urbelis</p> <p>2 I did get something in 2009 that they</p> <p>3 lost one of the returns or something. So that</p> <p>4 as to how the mechanics of how the taxes were</p> <p>5 getting paid, I left that up to Mr. Simons.</p> <p>6 Q Do you know what David Smith did with</p> <p>7 these funds?</p> <p>8 A Do I know what he did with them, no.</p> <p>9 Q Did you ever discuss with the</p> <p>10 beneficiaries of the trust any payments from</p> <p>11 the trust?</p> <p>12 A Well, yeah, I talked to Jeff this past</p> <p>13 month.</p> <p>14 Q What did you talk to him about?</p> <p>15 A He called me, he said – I think I</p> <p>16 testified about that.</p> <p>17 MR. FEATHERSTONHAUGH: I think he</p> <p>18 already testified to this, but.</p> <p>19 Q Refresh my recollection.</p> <p>20 A Jeff called me, and I signed the thing</p> <p>21 for Mr. Maher. That was Jeff's initiation.</p> <p>22 Q Was that the only time you talked to</p> <p>23 Jeff Smith regarding the payments from the</p> <p>24 trust?</p> <p>25 A I think so.</p>	<p style="text-align: center;">55</p> <p>1 T. Urbelis</p> <p>2 Q Unfortunately, we have one page. This</p> <p>3 is one page of an account statement, and I'm</p> <p>4 going to ask you about the transaction on June</p> <p>5 30th, 2006.</p> <p>6 A 2006? Is this the trust account?</p> <p>7 Q Yes.</p> <p>8 MR. FEATHERSTONHAUGH: Could I</p> <p>9 ask, maybe it's here and – does this</p> <p>10 say whose account statement is it part</p> <p>11 of, an account statement?</p> <p>12 MS. MEHRABAN: It's page 6, the</p> <p>13 account number is listed at the top and</p> <p>14 that's the trust account. I don't have</p> <p>15 the complete account statement, so I'll</p> <p>16 just show you page 6.</p> <p>17 Q I'm going to direct you to the transfer</p> <p>18 of a check for \$83,830 on June 30th of 2006;</p> <p>19 do you recall what that was for?</p> <p>20 A No, I don't, I'm sorry.</p> <p>21 (Plaintiff's Exhibit 37, a letter</p> <p>22 marked for identification of today's</p> <p>23 date.)</p> <p>24 Q What is this document?</p> <p>25 MR. FEATHERSTONHAUGH: I haven't</p>
<p style="text-align: center;">54</p> <p>1 T. Urbelis</p> <p>2 Q In the past year, did David Smith ask</p> <p>3 you to loan any funds from the trust to McGinn</p> <p>4 Smith & Company?</p> <p>5 A To McGinn Smith, not that I recall.</p> <p>6 Q What about to any other entity related</p> <p>7 to McGinn Smith?</p> <p>8 A I don't recall that, no.</p> <p>9 (Plaintiff's Exhibit 35, an e-mail</p> <p>10 marked for identification of today's</p> <p>11 date.)</p> <p>12 A Yes, this is the e-mail that he received</p> <p>13 from Mr. Maher this year.</p> <p>14 Q This is what you were just describing to</p> <p>15 us?</p> <p>16 A Yes.</p> <p>17 Q So, the letter of authorization relates</p> <p>18 to the payment of taxes?</p> <p>19 A Yes.</p> <p>20 Q At least that was your understanding?</p> <p>21 A That was my understanding.</p> <p>22 Q Thank you.</p> <p>23 (Plaintiff's Exhibit 36, one page</p> <p>24 of an account statement, marked for</p> <p>25 identification of today's date.)</p>	<p style="text-align: center;">56</p> <p>1 T. Urbelis</p> <p>2 had a chance, this is the first time</p> <p>3 I've seen it, may I have a couple</p> <p>4 minutes to read it, please.</p> <p>5 MS. MEHRABAN: Sure. Off the</p> <p>6 record.</p> <p>7 (Whereupon, a discussion off the</p> <p>8 record was held.)</p> <p>9 MS. MEHRABAN: Back on the record.</p> <p>10 Q Mr. Urbelis, what is this document?</p> <p>11 A It's a letter dated May 2, 2010 which I</p> <p>12 received from Dave Smith.</p> <p>13 Q Can you read the first sentence?</p> <p>14 A "I understand from a comment that you</p> <p>15 made to Jim Featherstonhaugh that you have</p> <p>16 lost a great deal of money through McGinn</p> <p>17 Smith."</p> <p>18 Q What comment did you make to Jim?</p> <p>19 A I told him that I lost a great deal of</p> <p>20 money through my accounts at McGinn Smith.</p> <p>21 Q How did you speak to him?</p> <p>22 A Mr. Featherstonhaugh, he called me.</p> <p>23 Q Did you respond to this letter?</p> <p>24 A Yes, I did, I think you have it.</p> <p>25 (Plaintiff's Exhibit 38, a letter</p>



57	59
<p>1 T. Urbelis</p> <p>2 from Thomas Urbelis to David Smith,</p> <p>3 marked for identification of today's</p> <p>4 date.)</p> <p>5 Q What is Exhibit 38?</p> <p>6 A It's a letter I wrote to Dave Smith.</p> <p>7 Q Who is Timmy?</p> <p>8 A Tim Cioche, yeah, a mutual friend.</p> <p>9 Q Did you meet with Dave Smith as a result</p> <p>10 of this letter?</p> <p>11 A No.</p> <p>12 Q Did you speak to him after writing this</p> <p>13 letter?</p> <p>14 A Yes.</p> <p>15 Q When?</p> <p>16 A It was the -- whatever date this is, I</p> <p>17 think this is the middle of the week, I talked</p> <p>18 with Dave that Saturday, briefly, and I talked</p> <p>19 to him again I believe it was -- he called and</p> <p>20 I couldn't -- I know something was going on at</p> <p>21 the house. I couldn't talk to him and then he</p> <p>22 called me, I believe it was either that next</p> <p>23 Monday or Tuesday.</p> <p>24 Q Tell me about that conversation.</p> <p>25 A He called me and like I said in my</p>	<p>1 T. Urbelis</p> <p>2 substantiation regarding to the actuality of</p> <p>3 what was going on with Pine Street Capital</p> <p>4 Limited Partners, something like that.</p> <p>5 He said that, you know, my investments</p> <p>6 were still good, substantially good, he didn't</p> <p>7 know exactly the exact numbers and asked me if</p> <p>8 I had obviously seen the newspapers about the</p> <p>9 lawsuit, and I expressed concern to him, hoped</p> <p>10 he and Lynn were okay.</p> <p>11 He said that he didn't do anything</p> <p>12 wrong, that he's not liable for any of the</p> <p>13 allegations that were caused. He said, you</p> <p>14 know, once all the information comes out, you</p> <p>15 know, it's unfortunate that it's gotten to</p> <p>16 this, but he said once the information comes</p> <p>17 out, he said it will show that he is not</p> <p>18 liable, that he did nothing wrong, that's what</p> <p>19 he said.</p> <p>20 He said Lynn and he were having trouble</p> <p>21 paying their bills because of the freeze on</p> <p>22 the accounts, so that was making it difficult</p> <p>23 for them. That's about all I can remember at</p> <p>24 this point.</p> <p>25 Q Do you remember any other discussions</p>
58	60
<p>1 T. Urbelis</p> <p>2 letter, I thought that they couldn't -- Dave</p> <p>3 couldn't talk to us but that's obviously some</p> <p>4 kind of a miscommunication, and I wanted to</p> <p>5 let him know I resigned as trustee.</p> <p>6 Well, let me back up. The very first</p> <p>7 thing I said when I called was, how's Lynn.</p> <p>8 He told me she wasn't doing well. I talked</p> <p>9 about that with him and expressed to her, my</p> <p>10 wife, and my concern about Lynn. So we talked</p> <p>11 about that for a bit, and I told him I wanted</p> <p>12 to explain why I didn't have the opportunity,</p> <p>13 I didn't think I could talk to them, so I</p> <p>14 wanted to explain to him the reason. I did</p> <p>15 it, it was obviously I thought based upon what</p> <p>16 I saw in the papers that I had a potential if</p> <p>17 not actual conflict of interest and also I was</p> <p>18 trying to carry out my duties as trustee;</p> <p>19 that's the same thing I told you a little</p> <p>20 while ago.</p> <p>21 And then we talked about that and then</p> <p>22 he talked further about what he had told me in</p> <p>23 the letter about our investments and explained</p> <p>24 those to me, and told me to give Tim Wells a</p> <p>25 call if I had further questions or wanted more</p>	<p>1 T. Urbelis</p> <p>2 regarding the trust?</p> <p>3 A No, I would just -- it was why I</p> <p>4 resigned, nothing subsequent about the trust,</p> <p>5 it was just why I resigned.</p> <p>6 Q Okay. I have nothing further on this</p> <p>7 document.</p> <p>8 (Plaintiff's Exhibit 39, document</p> <p>9 for the appointment of new trustee to</p> <p>10 the trust, marked for identification of</p> <p>11 today's date.)</p> <p>12 Q Have you seen this document before?</p> <p>13 A Yes, I have.</p> <p>14 Q What is it?</p> <p>15 A It's the appointment of a new trustee</p> <p>16 for the trust, to my understanding.</p> <p>17 Q Do you know David Wojesky?</p> <p>18 A No.</p> <p>19 Q Did you have any involvement in who was</p> <p>20 appointed as the trustee for the trust?</p> <p>21 A No. I don't think -- I know I may have</p> <p>22 met him, but I don't recall.</p> <p>23 Q Do you remember a transfer of \$95,000</p> <p>24 from the trust to Lynn Smith in April of this</p> <p>25 year?</p>



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Thomas Urbelis

June 1, 2010

<p style="text-align: center;">61</p> <p>1 T. Urbelis</p> <p>2 A Yeah, that's the one that Jeff called me</p> <p>3 about and Mr. Maher sent me the form, I think.</p> <p>4 Q What was your understanding of what that</p> <p>5 was for?</p> <p>6 MR. FEATHERSTONHAUGH: I believe</p> <p>7 he testified to that three times now.</p> <p>8 MS. MEHRABAN: I believe the</p> <p>9 answer wasn't quite clear.</p> <p>10</p> <p>11 (Continued on the next page to</p> <p>12 accommodate jurat.)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: center;">63</p> <p>1</p> <p>2 I N D E X</p> <p>3 WITNESS EXAMINATION BY PAGE</p> <p>4 THOMAS URBELIS MS. MEHRABAN 4</p> <p>5 EXHIBITS</p> <p>6 PLAINTIFF'S DESCRIPTION PAGE</p> <p>7 16 Subpoena 7</p> <p>8 17 Letter 18</p> <p>9 18 Three-page document 24</p> <p>10 19 Eight-page document 26</p> <p>11 20 One-page document 27</p> <p>12 21 One-page document 29</p> <p>13 22 One-page document 29</p> <p>14 23 Four-page document 29</p> <p>15 24 Documents 32</p> <p>16 25 Documents 32</p> <p>17 26 Fax 34</p> <p>18 27 Three-page compilation 35</p> <p> Of faxes</p> <p>19</p> <p>20 28 Document 36</p> <p>21</p> <p>22 29 Three-page compilation 37</p> <p> Of Documents</p> <p>23 30 Two-page document 38</p> <p>24 31 Two-page document 41</p> <p>25 32 Five-page document 43</p> <p> 33 Two-page document 47</p>
<p style="text-align: center;">62</p> <p>1 T. Urbelis</p> <p>2 A Taxes for the trust.</p> <p>3 Q For the trust?</p> <p>4 A Yes.</p> <p>5 MS. MEHRABAN: I don't have any</p> <p>6 other questions. Thank you very much.</p> <p>7 MR. FEATHERSTONHAUGH: I have no</p> <p>8 questions for Mr. Urbelis on behalf of</p> <p>9 the relief defendant.</p> <p>10 MS. DUNN: I have no questions.</p> <p>11 THE WITNESS: Thank you very much.</p> <p>12 -oOo-</p> <p>13 (Whereupon, the deposition of THOMAS</p> <p>14 URBELIS was concluded at 2:08 p.m.)</p> <p>15</p> <p>16 _____</p> <p>17 THOMAS URBELIS</p> <p>18 Subscribed and sworn to</p> <p>19 Before me, this ____ day</p> <p>20 of _____, 2010.</p> <p>21</p> <p>22 _____</p> <p>23 NOTARY PUBLIC</p> <p>24</p> <p>25</p>	<p style="text-align: center;">64</p> <p>1</p> <p>2</p> <p>3 I N D E X</p> <p>4 Of</p> <p>5 EXHIBITS</p> <p>6 (Continued)</p> <p>7 PLAINTIFF'S DESCRIPTION PAGE</p> <p>8</p> <p>9 34 Three-page document 49</p> <p>10 35 E-Mail 54</p> <p>11 36 Account statement 54</p> <p>12 37 Letter 55</p> <p>13 38 Letter 56</p> <p>14 39 Document appointment of 60</p> <p> new trustee to the trust</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>



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Toll Free: 800.944.9454
Facsimile: 212.557.5972

Suite 4715
One Penn Plaza
New York, NY 10119
www.esquiresolutions.com

Thomas Urbelis

June 1, 2010

<p style="text-align: center;">65</p> <p style="text-align: center;">1 DEPOSITION ERRATA SHEET</p> <p>2</p> <p>3</p> <p>4 Our Assignment No. 310714</p> <p>5 Case Caption: SEC vs. MCGINN, SMITH & CO.,</p> <p>6</p> <p>7</p> <p style="text-align: center;">8 DECLARATION UNDER PENALTY OF PERJURY</p> <p>9 I declare under penalty of perjury</p> <p>10 that I have read the entire transcript of</p> <p>11 my Deposition taken in the captioned matter</p> <p>12 or the same has been read to me, and</p> <p>13 the same is true and accurate, save and</p> <p>14 except for changes and/or corrections, if</p> <p>15 any, as indicated by me on the DEPOSITION</p> <p>16 ERRATA SHEET hereof, with the understanding</p> <p>17 that I offer these changes as if still under</p> <p>18 oath.</p> <p>19 Signed on the _____ day of</p> <p>20 _____, 20__.</p> <p>21</p> <p>22 _____</p> <p>23 THOMAS URBELIS</p> <p>24</p> <p>25</p>	<p style="text-align: center;">67</p> <p style="text-align: center;">1 DEPOSITION ERRATA SHEET</p> <p>2 Page No. _____ Line No. _____ Change to: _____</p> <p>3 _____</p> <p>4 Reason for change: _____</p> <p>5 Page No. _____ Line No. _____ Change to: _____</p> <p>6 _____</p> <p>7 Reason for change: _____</p> <p>8 Page No. _____ Line No. _____ Change to: _____</p> <p>9 _____</p> <p>10 Reason for change: _____</p> <p>11 Page No. _____ Line No. _____ Change to: _____</p> <p>12 _____</p> <p>13 Reason for change: _____</p> <p>14 Page No. _____ Line No. _____ Change to: _____</p> <p>15 _____</p> <p>16 Reason for change: _____</p> <p>17 Page No. _____ Line No. _____ Change to: _____</p> <p>18 _____</p> <p>19 Reason for change: _____</p> <p>20 Page No. _____ Line No. _____ Change to: _____</p> <p>21 _____</p> <p>22 Reason for change: _____</p> <p>23 _____</p> <p>24 SIGNATURE: _____ DATE: _____</p> <p>25 THOMAS URBELIS</p>
<p style="text-align: center;">66</p> <p style="text-align: center;">1 DEPOSITION ERRATA SHEET</p> <p>2 Page No. _____ Line No. _____ Change to: _____</p> <p>3 _____</p> <p>4 Reason for change: _____</p> <p>5 Page No. _____ Line No. _____ Change to: _____</p> <p>6 _____</p> <p>7 Reason for change: _____</p> <p>8 Page No. _____ Line No. _____ Change to: _____</p> <p>9 _____</p> <p>10 Reason for change: _____</p> <p>11 Page No. _____ Line No. _____ Change to: _____</p> <p>12 _____</p> <p>13 Reason for change: _____</p> <p>14 Page No. _____ Line No. _____ Change to: _____</p> <p>15 _____</p> <p>16 Reason for change: _____</p> <p>17 Page No. _____ Line No. _____ Change to: _____</p> <p>18 _____</p> <p>19 Reason for change: _____</p> <p>20 Page No. _____ Line No. _____ Change to: _____</p> <p>21 _____</p> <p>22 Reason for change: _____</p> <p>23 _____</p> <p>24 SIGNATURE: _____ DATE: _____</p> <p>25 THOMAS URBELIS</p>	<p style="text-align: center;">68</p> <p style="text-align: center;">1 CERTIFICATE</p> <p>2 I, GEORGE MALINOWSKI, a shorthand reporter</p> <p>3 and Notary Public within and for The State of</p> <p>4 New York, do hereby certify:</p> <p>5</p> <p>6 That the witness whose testimony is</p> <p>7 hereinbefore set forth was duly sworn by me,</p> <p>8 and the foregoing transcript is a true record</p> <p>9 of the testimony given by such witness(es).</p> <p>10 I further certify that I am not related to</p> <p>11 any of the parties to this action by blood or</p> <p>12 marriage, and that I am in no way interested</p> <p>13 in the outcome of this matter.</p> <p>14</p> <p>15 _____</p> <p>16</p> <p>17 GEORGE MALINOWSKI</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>



Toll Free: 800.944.9454
 Facsimile: 212.557.5972

Suite 4715
 One Penn Plaza
 New York, NY 10119
www.esquiresolutions.com