

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

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SECURITIES AND EXCHANGE COMMISSION

*Plaintiff,*

vs.

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

**Case No.: 1:10-CV-457**

**(GLS/DRH)**

*Defendants,*

LYNN A. SMITH and NANCY McGINN,

*Relief Defendants, and*

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

*Intervenor.*

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**CERTIFICATE OF SERVICE**

I, WILLIAM J. DREYER, of DREYER BOYAJIAN LLP, hereby certify that on the 10<sup>th</sup>  
day of February, 2012, I caused the **NOTICE OF MOTION** and **MEMORANDUM OF LAW**  
**IN SUPPORT OF DEFENDANT DAVID L. SMITH'S MOTION TO MODIFY THE**  
**JULY 22,2010 PRELIMINARY INJUNCTION ORDER** to be electronically filed with the

Clerk of the U.S. District Court, Northern District of New York, using the CM/ECF system which sent notification of such filing to the following:

1. Alison B. Cohen (Terminated) [acohen@gkblaw.com](mailto:acohen@gkblaw.com)
2. Benjamin Zelermyer [bzlaw@optonline.net](mailto:bzlaw@optonline.net), [steincav@aol.com](mailto:steincav@aol.com)
3. Benjamin W. Hill [bhill@dreyerboyajian.com](mailto:bhill@dreyerboyajian.com), [glentini@dreyerboyajian.com](mailto:glentini@dreyerboyajian.com)
4. Craig H. Norman [cnorman@coopererving.com](mailto:cnorman@coopererving.com), [jbugos@coopererving.com](mailto:jbugos@coopererving.com)
5. David P. Stoelting [stoeltingd@sec.gov](mailto:stoeltingd@sec.gov), [mcgrathk@sec.gov](mailto:mcgrathk@sec.gov),  
[mehrabanl@sec.gov](mailto:mehrabanl@sec.gov), [paleym@sec.gov](mailto:paleym@sec.gov), [wbrown@phillipslytle.com](mailto:wbrown@phillipslytle.com)
6. E. Stewart Jones, Jr. [bessetca@esjlaw.com](mailto:bessetca@esjlaw.com), [sangerki@esjlaw.com](mailto:sangerki@esjlaw.com)
7. Erin K. Higgins [EHiggins@ckrpf.com](mailto:EHiggins@ckrpf.com)
8. Fred N. Knopf [fred.knopf@wilsonelser.com](mailto:fred.knopf@wilsonelser.com)
9. Haimavathi V. Marlier [marlierh@sec.gov](mailto:marlierh@sec.gov)
10. Jack Kaufman [kaufmanja@sec.gov](mailto:kaufmanja@sec.gov)
11. James D. Featherstonhaugh [jdf@fwc-law.com](mailto:jdf@fwc-law.com), [cr@fwc-law.com](mailto:cr@fwc-law.com), [sbh@fwc-law.com](mailto:sbh@fwc-law.com),  
[shm@fwc-law.com](mailto:shm@fwc-law.com), [sje@fwc-law.com](mailto:sje@fwc-law.com)
12. James P. Lagios [jlagios@icrh.com](mailto:jlagios@icrh.com), [mlohman@icrh.com](mailto:mlohman@icrh.com),  
[tmantica@icrh.com](mailto:tmantica@icrh.com)
13. Joshua M. Newville [newvillej@sec.gov](mailto:newvillej@sec.gov)
14. Kevin P. McGrath [mcgrathk@sec.gov](mailto:mcgrathk@sec.gov)
15. Lara S. Mehraban [mehrabanl@sec.gov](mailto:mehrabanl@sec.gov), [marlierh@sec.gov](mailto:marlierh@sec.gov),  
[newvillej@sec.gov](mailto:newvillej@sec.gov)
16. Martin P. Russo (Terminated) [mrusso@gkblaw.com](mailto:mrusso@gkblaw.com)
17. Michael J. Murphy [mmurphy@carterconboy.com](mailto:mmurphy@carterconboy.com), [abell@carterconboy.com](mailto:abell@carterconboy.com),  
[mlypka@carterconboy.com](mailto:mlypka@carterconboy.com)
18. Scott J. Ely [sje@fwc-law.com](mailto:sje@fwc-law.com)
19. Terri L. Reicher [Terri.Reicher@finra.org](mailto:Terri.Reicher@finra.org)

20. Thomas E. Peisch [TPeisch@ckrpf.com](mailto:TPeisch@ckrpf.com), [apower@ckrpf.com](mailto:apower@ckrpf.com)
21. William J. Brown [wbrown@phillipslytle.com](mailto:wbrown@phillipslytle.com), [khatch@phillipslytle.com](mailto:khatch@phillipslytle.com)

*/s/ William J. Dreyer*  
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William J. Dreyer (Bar Roll No. 101539)