

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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,

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

Defendants, and

LYNN A. SMITH,

Relief Defendant.

**INTERVENOR'S INITIAL DISCLOSURE OF
POTENTIAL WITNESSES AND EXHIBITS**

PLEASE TAKE NOTICE that, at a hearing on the Plaintiff's motion for a preliminary injunction, the Intervenor, through his attorneys, may call the following witnesses and may rely upon the following exhibits:

Potential Witnesses

Lynn Smith
David Wojeski
Geoffrey Smith
John D'Aleo
Thomas Urbelis
Timothy R. Welles

Potential Exhibits

Deposition Transcripts of Lynn A. Smith, Timothy R. Welles and Thomas J. Urbelis and all exhibits referred to therein and all documents produced in response to deposition subpoenas
Trust Declaration dated August 4, 2004
Trustee Appointment dated May 17, 2010
August 4, 2004 letter from David Smith to Thomas Urbelis
Trust Brokerage Account Statements – September 2004 to April 2010
Summary Chart of Trust Brokerage Account Transactions
Form 1065 Schedule K-1s issued from Pine Street Capital Partners to Trust 2004-2009
Trust Tax Returns 2004 – 2008
Letters of Authorization of Transfers from Trust Account
Cancelled Checks showing payments of Trust's tax liability
Account Transcripts of Trust's tax liabilities and payments

PLEASE TAKE FURTHER NOTICE that Intervenor reserves the right to rely upon and offer into evidence any document in the possession of the Plaintiff or which has been disclosed to the Plaintiff by any party to this litigation. Intervenor will also rely upon all documents previously filed with the Court in this matter. Intervenor reserves the right to supplement this disclosure and to call such additional witnesses and to offer such additional exhibits as is necessary, depending on the proof offered at the hearing by the Plaintiff and other parties.

Dated: June 8, 2010

s/Jill A. Dunn
Jill A. Dunn (Bar Roll No. 506942)
Attorney for Proposed Intervenor
THE DUNN LAW FIRM PLLC
99 Pine Street, Suite 210
Albany, New York 12207-2776
Telephone (518) 694-8380
Email: JDunn708@nycap.rr.com

TO: David Stoelting
Attorney for Plaintiff
Securities and Exchange Commission
3 World Financial Center, Room 400
New York, NY 10281
Tel: (212) 336-0174

James D. Featherstonhaugh, Esq.
Attorneys for Relief Defendant,
Lynn A. Smith
99 Pine Street, Suite 207
Albany, NY 12207
Tel: (518) 436-0786

Michael Koenig, Esquire
Greenberg Traurig LLP
54 State Street, 6th Floor
Albany, NY 12207
Tel: (518) 689-1400