

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.

**DECLARATION OF JILL A. DUNN IN OPPOSITION TO
PLAINTIFF'S MOTION TO INTERVENE**

I, JILL A. DUNN, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury, the following:

1. Attached hereto as Exhibit A is an uncorrected transcript of the deposition testimony given by Thomas J. Urbelis on June 1, 2010. Although I do not have the opportunity to correct the transcript, I noted that it incorrectly indicates that I appeared at the deposition on behalf of the witness. I specifically entered my appearance on behalf of "Intervenor David Wojeski as Trustee" as I sought to avoid any confusion with the

status of the witness, the former trustee, who was not represented by counsel at his deposition. Mr. Urbelis began a trial today and did not have time to review the transcript in its entirety or make any corrections, but he did ask me to bring this error to the Court's attention.

2. Yesterday, I sought and obtained a one-day extension of time to file Intervenor's reply papers in order to obtain the transcript of the deposition testimony of Timothy Welles and submit it in support Intervenor's reply. Despite numerous calls to Alliance Reporting Services yesterday and today, the transcript has not been received as of the signing of this declaration. Although I included very limited references to his testimony based on my notes, I am unable to cite to the transcript pages or submit the transcript at this time. The transcript will be produced as soon as it is available, and Mr. Welles has been served with a trial subpoena through his counsel in the event that we cannot obtain his transcript in time for the hearing.
3. Attached hereto as Exhibit B are records received from M&T Bank containing copies of checks showing the payment of the Trust's taxes by David Smith.

WHEREFORE, I respectfully request that the Court deny the plaintiff's motion for a preliminary injunction as to the Trust.

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
Fax (518) 935-9353
Email: JDunn708@nycap.rr.com

Exhibit A

Certified Copy

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

-against-

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

-and-

LYNN SMITH,
Relief Defendant.

Index No.
10 CIV.457
(GLS)(DRH)

EXAMINATION BEFORE TRIAL OF

THOMAS URBELIS

June 1, 2010
12:20 p.m.

30 South Pearl Street
Albany, New York

Reported by: George Malinowski



Telephone: 212.687.8010
Toll Free: 800.944.9454
Facsimile: 212.557.5972

One Penn Plaza
Suite 4715
New York, N.Y. 10119

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----X

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff, index No.
10 CIV.457
-against- (GLS) (DRH)

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

Defendants,

-and-

LYNN SMITH,
Relief Defendant.

-----X

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.



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1
2 APPEARANCES:

3 UNITED STATES SECURITIES EXCHANGE &
4 COMMISSION

5 Attorneys for Plaintiff
6 3 World Financial Center
7 New York, New York 10281

8 BY: LARA S. MEHRABAN, ESQ.
9 -and-
10 DAVID STOELTING, ESQ.

11 FEATHERSTONHAUGH WILEY & CLYNE, LLP
12 Attorneys for Relief Defendant,
13 Lynn Smith
14 99 Pine Street
15 Albany, New York 12207

16 BY: JAMES D. FEATHERSTONHAUGH, ESQ.

17 GREENBERG TRAUIG, LLP
18 Attorneys for Timothy McGinn and
19 David L. Smith
20 54 State Street
21 Albany, New York 12207

22 BY: EMILY P. FEYRER, ESQ.

23 THE DUNN LAW FIRM, PLLC
24 Attorneys for the Witness
25 99 Pine Street, suite 210
Albany, New York 12207

BY: JILL A. DUNN, ESQ.



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S T I P U L A T I O N S

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.

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.

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.



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1 T. Urbelis
2 T H O M A S U R B E L I S,
3 having been first duly sworn by a
4 Notary Public, was examined and
5 testified as follows:

6 MS. MEHRABAN: My name is Lara S.
7 Mehraban. I represent the plaintiff,
8 Securities and Exchange Commission.
9 With me is my colleague, David
10 Stoelting.

11 MS. MEHRABAN: If I could have
12 everyone's appearance for the record,
13 please.

14 MR. FEATHERSTONHAUGH: James
15 Featherstonhaugh from Featherstonhaugh,
16 Wiley & Clyne. Attorneys for relief
17 defendant, Lynn Smith.

18 MS. FEYRER: Emily Feyrer, from
19 the law firm of Greenberg Traurig. I am
20 here on behalf of the defendants,
21 Timothy McGinn and David L. Smith.

22 MS. DUNN: Jill Dunn from The Dunn
23 Law Firm. I am the attorney for the
24 witness, Thomas Urbelis.

25 EXAMINATION BY



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T. Urbelis

MS. MEHRABAN:

Q Would you please state your name for the record.

A Thomas Urbelis.

Q Would you please state your current home address.

A 6 Eastman Road, Andover, Massachusetts 01810.

Q Can you tell me your educational background after high school, please.

A I graduated from Union College in 1967. I graduated from the University of Rochester, Graduate School of Management in 1969. I graduated from Boston College Law School in 1978, and I've attended professional education courses since then.

Q Can you walk me through your professional experience after you graduated from law school?

A You mean?

Q As a lawyer.

A In practices?

Q Yes.

A I started, after I graduated from law



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2 school, I started with a firm in Boston called
3 Withington, Cross, Park & Groden, I worked
4 there as an associate, and I became partner in
5 1983. In 1990, four of the partners including
6 myself spun off and started our own firm in
7 Boston. Over the years, one or two would drop
8 out, and I'm not exactly sure which years they
9 were, but currently I'm partner with Urbelis &
10 Fieldsteel.

11 Q What type of law do you practice?

12 A I primarily practice in the area of
13 municipal law, I represent cities and towns.
14 I'm town counsel, that's C-O-U-N-S-E-L that's
15 counsel in the form of Government, for towns.
16 I perform special legal services for other
17 towns. I do quite a bit of land court
18 litigation resulting from that because of
19 decisions that one of the regulatory boards
20 might make, like, I don't know what you call
21 it here, but the planning board or zoning
22 board of appeals or conservation commission of
23 the Board of Health. So I'll represent the
24 communities in those mostly land court and
25 administrative-type of litigations. I also



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2 serve as special counsel on occasion to
3 municipalities with regard to civil rights
4 defense, where the municipality or its
5 employees or officers are sued for civil
6 rights violations; so I'll participate in the
7 defense of those. That's how my practice has
8 evolved as to what I pretty much do now.

9 (Plaintiff's Exhibit 16, subpoena
10 to serve on deposition marked for
11 identification as of today's date.)

12 Q This is the subpoena I sent you on
13 Friday. Your appearance today is pursuant to
14 the subpoena.

15 A Yes, it is.

16 Q When did you first meet David Smith?

17 A Approximately '56, '57. Well, 50 years
18 ago.

19 Q How?

20 A We grew up in the same town and went to
21 the same schools.

22 MR. FEATHERSTONHAUGH: May I
23 interject about Exhibit 16?

24 MS. MEHRABAN: Sure.

25 MR. FEATHERSTONHAUGH: Exhibit 16



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2 I think asks for, in addition for the
3 witness' appearance, for various
4 documents, and I wonder if any documents
5 were produced in response to the
6 subpoena, and if they have been if we
7 might have copies of them?

8 MS. MEHRABAN: Sure. My
9 understanding is that the only documents
10 that were produced to me were produced
11 to Ms. Dunn.

12 A Let me clarify that. There is one
13 letter that Ms. Dunn had asked me for, it's
14 the letter that Dave sent me that we talked
15 about, which I sent over the weekend. So
16 that's one that you don't have.

17 MS. MEHRABAN: So I can get you
18 copies of all those documents, but most
19 of them are exhibits.

20 A But what I sent is exactly what I sent
21 to Ms. Dunn.

22 MR. FEATHERSTONHAUGH: Okay.

23 A Can I clarify that's not total, I mean I
24 haven't --

25 Q You haven't completed your search for



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2 documents?

3 A As I explained to you, you know, I got
4 the subpoena at 2 o'clock, Friday. And my
5 office was closing early, and, you know, I
6 offered to send her the documents to have
7 copies of the documents that I had sent to Ms.
8 Dunn, and I was leaving right then for the
9 holiday weekend, Memorial Day weekend, out of
10 state and I haven't done anything since. I
11 got a phone call or we got a phone call Sunday
12 night.

13 Q Do you want to go off the record?

14 A My daughter was --

15 MS. MEHRABAN: Let's go off the
16 record.

17 (Whereupon, an off the record
18 discussion was held.)

19 MS. MEHRABAN: Back on the record.

20 Q I believe you just explained to me how
21 you knew David Smith.

22 A Yes, we been friends more than 50 years,
23 we met in junior high.

24 Q Would the answer be the same with
25 respect to Lynn Smith?



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2 A Same.

3 Q How did you become trustee with the
4 David L. and Lynn A. Smith Trust?

5 A I don't know if it was Dave calling me
6 or Lynn -- probably Dave, I don't remember --
7 and asked me to be the trustee for the
8 children's trust.

9 Q Prior to that time, had you been a
10 trustee for any trust for David Smith or Lynn
11 Smith?

12 A I am a trustee of a life insurance trust
13 on Dave's life; that's it.

14 Q How long have you been a trustee for
15 that trust?

16 A Maybe 20 years.

17 Q Have you ever represented David Smith or
18 Lynn Smith in your capacity as an attorney?

19 A I never represented Lynn. In 1980 when
20 Dave and Tim McGinn were starting their firm,
21 they asked me if I knew any lawyers in Boston,
22 and one of the partners in the firm that was
23 associated with us did that kind of work; so
24 he worked with them in setting up their
25 company and getting the appropriate regulatory



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2 approvals.

3 Q And were you involved in that
4 representation?

5 A No. There was another time in the early
6 '80s, '84, '85, '86, around there, where there
7 was some litigation that McGinn, Smith was
8 involved in with regard to I believe a real
9 estate developer and the case was in
10 Massachusetts and I represented the company
11 and the case was settled, but ever since then,
12 since that, I've -- no, I haven't represented
13 them as an attorney. I never represented any
14 of them.

15 Q As a trustee for this trust, what did
16 you do?

17 A Well, I -- let me tell you what I took
18 as my duties as I saw them. My very first
19 duty obviously was to make sure the kids were
20 okay.

21 Jeff and Lauren, I've known them since
22 they were born. And I think that's -- I don't
23 know if I'm speculating -- that might be one
24 of the reasons besides knowing me, they might
25 have wanted someone who knew the kids and what



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2 their personalities were and needs and things
3 like that; so I've known Jeff and Lauren ever
4 since they were born. So, my first duty as I
5 saw it was if they needed money or some kind
6 of assistance was to provide it.

7 Another consideration for me was I
8 wanted to make sure in a situation like this
9 that the taxes got paid, so I wanted an
10 assurance that I was not going to be
11 responsible for preparing tax returns, and I
12 make no bones about it, I have an accountant
13 that does mine and I don't understand it. So
14 I have an accountant that does that, and I
15 wanted the same professional expertise to deal
16 with the tax returns. I wanted to make sure I
17 had an assurance that they were going to get
18 done on a timely basis and they were going to
19 get paid.

20 With regard to the investments and the
21 trust, I did not see my duties as making the
22 trust double, triple, quadruple over time. I
23 wanted the money to be fairly secure for, if
24 and when the kids needed it. And I looked to
25 Dave to provide advice to me with regard to



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2 the prudent investment or appropriate
3 investments to make in the trust.

4 Q Were you compensated in your position as
5 trustee?

6 A No.

7 Q Do you have any background in investing?

8 A Not really, no, I don't have time to.

9 Q Did you make any investment decisions as
10 trustee of the trust that were not based on
11 recommendations from David Smith?

12 A I don't think so. There really weren't
13 that many. I mean, over the six or seven
14 years, six years, there really -- I think if
15 you look at other investments, there really
16 weren't that many transactions. I mean, there
17 were a couple big ones, but I mean it wasn't
18 like there were six or seven, continually six
19 or seven transactions. I mean, there were
20 some, it was mostly talking to Dave.

21 I felt a couple of things. One, this
22 trust in my mind was kind of unique because
23 the person who was one of the donors was in
24 the business of investments, so it's not like
25 the person who was the donor was a dentist or



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2 a musician or athlete, and I had to go pay
3 somebody to get advice. The person, it was,
4 if you will, an in-house expert right there.

5 Secondly, it was somebody who I had
6 invested money with. So, obviously if it was
7 good enough for me to consult with Dave to get
8 his advice for my personal investments, it was
9 good enough to ask him about his trust.

10 And another thought in my mind has
11 always been is this is his children's money
12 and who else will you give advice to, but
13 someone who is dealing with your children's
14 money? So I felt very comfortable with regard
15 to the investment side of what I was doing to
16 consult with Dave, and Mr. Simons was the
17 certified public accountant who was doing the
18 taxes.

19 Q And where was Mr. Simons employed?

20 A He has an accounting firm in Syracuse.

21 Q Is it Piaker & Lyons?

22 A Yes.

23 Q Were any distributions ever made by the
24 trust to the beneficiaries of the trust?

25 A I don't think so.



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2 Q You said that your first goal in being
3 the trustee was to make sure the children were
4 okay.

5 A Right.

6 Q How did you do that?

7 A Well, I knew what the kids were up to.
8 I mean, my wife and I are very good friends
9 with Dave and Lynn. And again, we have kids
10 that are fairly close to the same ages of Jeff
11 and Lauren, and my wife and Lynn raised a
12 couple of teenagers at the same time. So we
13 had a lot of conversations about what the kids
14 are up to and which kid is doing what, and
15 just that I knew about what they were doing
16 and whether they needed money.

17 So, I mean, obviously if I knew one of
18 them was in a tough spot, I would have stepped
19 in, but that was never brought to my attention
20 or I never became aware of it.

21 Q Did you have conversations with Jeff
22 Smith?

23 A Yeah, I've talked to Jeff.

24 Q How often?

25 A Probably, well, probably more often.



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2 You mean about the trust?

3 Q Yes.

4 A I recall -- I think -- I'm just trying
5 to recall -- as I was driving up here and I
6 think about when the trust was created, I
7 joked with both of them.

8 I said, you guys better be nice to me
9 because you may want me at some point. We
10 joked about it, and I really haven't had any
11 substantive conversations with Lauren about
12 it.

13 Jeff, I had a recent conversation with
14 Jeff, he called me. I think it was April 15th
15 this year and said that, you know, it was tax
16 time. So every year around April 15th, I'd
17 transfer money, make sure that taxes got paid.
18 And he was also, for a period of time, the
19 account representative on the trust, he was
20 not just the beneficiary, he was the actual
21 representative.

22 Q And your understanding is that the money
23 that was transferred was to pay taxes on the
24 trust?

25 A Pay taxes, yes, that was my



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2 understanding.

3 Q Did Jeff send you or anyone send you any
4 documents of what the tax liabilities were on
5 the trust?

6 A Well, I received a document from a
7 gentleman, I think, Brian Maher in New York
8 who -- I'm not exactly sure who he is. He's
9 with the clearinghouse, RMR.

10 Jeff had called me and said, all right,
11 we'll fax up the document to sign to transfer
12 the money, and Jeff, they tried a couple of
13 times and it didn't come through the fax
14 machines.

15 So I called Mr. Maher, and he e-mailed
16 me the form that they prepared for me to sign
17 to transfer the funds.

18 Q Did you ever see any documents prior to
19 authorizing the transfer showing how much the
20 taxes were for the trust?

21 A For this year?

22 Q For any given year.

23 A Well, I can tell you I didn't this year,
24 I haven't reviewed all the documents, I don't
25 know.



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2 Q The trust only made a few distributions
3 over the years; is that correct?

4 MS. DUNN: Objection to the form
5 of the question.

6 A The trust, yeah, well, it depends on
7 what you mean by the distributions. Money
8 going out of the trust?

9 Q That's what I mean.

10 A Correct, that was for taxes.

11 Q Do you recall distributions other than
12 for taxes?

13 A No.

14 Q I'm going to show you some documents.
15 (Plaintiff's Exhibit 17, letter
16 marked for identification of today's
17 date.)

18 Q I'm handing you Plaintiff's 17. If you
19 can take a look at it and let me know what it
20 is?

21 A Yes, Exhibit 17 is a letter that I
22 received from Dave Smith. I assume that this
23 is the attachment that's attached, although, I
24 don't have any independent memory. I just
25 assume that this is the trust that was



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2 referenced, it seems to make sense that it's
3 dated the same date.

4 Q I represent to you that this is a
5 document that you sent me.

6 A Again, I'm assuming that's what it was.
7 It looks like there is a delivery slip here.
8 Yeah, this is a letter that Dave Smith sent to
9 me.

10 Q And it's attaching the declaration of
11 trust?

12 A Right. Is this the one that I signed?
13 Well, that's what I mean, so I don't think he
14 sent me this one with my signature, so, I mean
15 I may have just stapled it together to keep
16 the signed one with the letter. It doesn't
17 make sense that he sent me one, but maybe he
18 did.

19 No, actually, I think the handwriting
20 where it says August 4th, looks like my
21 handwriting on the first paragraph, so I'm not
22 exactly sure what the sequence was, but as I
23 say, this is a signed one. I think I also
24 sent you a blank one or one that wasn't signed
25 by me, if I recall, so that may be what was



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2 included in the letter.

3 MR. FEATHERSTONHAUGH: Could I
4 impose on you just for the clarity of
5 the record to actually describe the
6 document.

7 MS. MEHRABAN: Sure. Plaintiff's
8 Exhibit 17 is an 11-page document dated
9 August 4th, 2004. The first page is a
10 letter from David Smith to Thomas
11 Urbelis. The second page through the
12 tenth page is the signed declaration of
13 trust and the last page is an Airborne
14 Express receipt.

15 MR. FEATHERSTONHAUGH: Thank you.
16 Q I'm going to direct your attention to
17 the letter, the first paragraph of the letter,
18 the fifth sentence.

19 A Yeah.

20 Q It says:
21 "You and I will be able to consult
22 on investments, but I am not eligible to
23 exercise any direct control over the
24 trust or its investments."

25 What's your understanding as to what



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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.



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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



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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'Leary
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?



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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



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2 Exhibit 18 is a two-page document?

3 MS. MEHRABAN: I think it's fine,
4 let's leave it.

5 Q What are the first two pages of Exhibit
6 18?

7 A It's a letter from Ms. Sicluna. It
8 looks like -- well, the first paragraph
9 relates to the David and Lynn Smith Trust.
10 The other paragraphs relate to investments
11 that I or my wife had made, and I'd rather not
12 get into that.

13 The first paragraph relates to the fact
14 that Dave had recommended that the trust
15 invest in Pine Street Capital Partners LP, and
16 Patty was sending me the documents to sign.

17 Q What did you and David discuss about the
18 investment of Pine Street Capital?

19 A I don't remember the details. I just
20 don't remember exactly what we talked about.

21 Q Did you discuss the investment of Pine
22 Street Capital with the beneficiaries of the
23 trust at all?

24 A No.

25 Q Before agreeing to invest in Pine Street



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2 Capital, did you determine that investing in
3 Pine Street Capital would meet the goals of
4 the trustee of the trust?

5 A Yeah, I did do that because it was also
6 something that I was considering investing in,
7 personally.

8 Q How did you do that?

9 MS. DUNN: Objection to the form
10 of the question.

11 MR. FEATHERSTONHAUGH: Objection
12 to the form of the question.

13 A I talked to Dave.

14 Q Can I just ask who William Camisa is?

15 A That's my nephew.

16 Q I don't have any other questions about
17 this document.

18 (Plaintiff's Exhibit 19, an
19 eight-page document marked for
20 identification of today's date.)

21 Q Exhibit 19 is an eight-page document.
22 The first page is a fax and the second page is
23 a subscription agreement for Deerfield Tri Arc
24 Capital Corp.

25 MR. FEATHERSTONHAUGH: Can I ask



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2 if I can have a second to look at it,
3 too?

4 MS. MEHRABAN: Sure.

5 Q What is this document?

6 A This was something, again, that Patty
7 Sicluna had sent to me to effectuate the
8 investment that's shown.

9 Q How did the trust come to be invested in
10 Deerfield Tri Arc Capital Corp.?

11 A Dave and I talked about it.

12 Q What did you discuss?

13 A I don't recall the exact discussion, but
14 I -- he explained to me what it was and I
15 mean, I really don't remember the details of
16 it.

17 Q Did you discuss the investment in
18 Deerfield Tri Arc with the beneficiaries of
19 the trust?

20 A No.

21 Q I don't have any other questions about
22 that.

23 (Plaintiff's Exhibit 20, a
24 one-page document marked for
25 identification of today's date.)



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2 Q Exhibit 20 is a one-page legal size
3 document.

4 MR. FEATHERSTONHAUGH: The title
5 of mine is cut off, is it cut off on
6 every document?

7 MS. MEHRABAN: It's cut off on all
8 of them.

9 A The one I sent you I think is also cut
10 off.

11 Q Can you tell us what this document is?

12 A This looks like -- I think this was a
13 Bear Stearns. Bear Stearns was going to be
14 doing the clearing for the investments, and
15 this was something I had to sign as the
16 trustee to have Bear Stearns do it.

17 Q Who filled out the document?

18 A I didn't, I don't know who did.

19 Q You did not check the box "Real Estate"?

20 A No.

21 Q Or "Private Placements"?

22 A No, I just -- it doesn't look like any
23 of my handwriting, it does look like my
24 signature, though.

25 Q Okay. I don't have any other questions



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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



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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



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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



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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,



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2 if I look -- well, it doesn't say that, so I'd
3 just be guessing.

4 Q Did you discuss these documents with
5 David Smith before you signed them?

6 A I can't say I discussed each page of
7 every document, but we did discuss the
8 investment.

9 Q What does this document relate to with
10 respect to the investment?

11 MS. DUNN: I'm going to object to
12 the form of the question. He said he
13 doesn't recognize Exhibit 25 other than
14 his signature.

15 MS. MEHRABAN: I'm sorry, I was
16 referring to Exhibit 24.

17 A Well, Exhibit 24 represents the
18 documents -- it relates to documents with the
19 Deerfield Tri Arc Capital Corp. acquisition.

20 Q Just to take you back to Exhibit 19, the
21 investment for Deerfield Tri Arc was made in
22 December '04?

23 A I don't know the dates.

24 MS. DUNN: Was that a question?

25 MS. MEHRABAN: Yes.



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2 A Exhibit 19, it says we received it in
3 December of '04. As to follow-up documents,
4 they both look like 50,000 shares.

5 MR. FEATHERSTONHAUGH: So when you
6 say both, can you just tell me which
7 exhibits?

8 THE WITNESS: I'm talking about
9 Exhibits 19 and 24.

10 A So I don't know the exact time frame on
11 these, but I'm not just guessing. It looks
12 like they both talk about 50,000 shares.
13 Well, it discusses the acquisition, I don't
14 recall the sequence of these, I'm sorry.

15 (Plaintiff's Exhibit 26, fax to
16 David Smith from Thomas Urbelis marked
17 for identification of today's date.)

18 Q Exhibit 26 is a fax to David Smith from
19 you, a 26-page fax, and it's dated June 7th,
20 2005.

21 A This was, I did say that Dave called me
22 on this. I think I was confused with all
23 these documents because I had signed something
24 in December, and then I had signed something
25 and I don't know if it was the last exhibit,



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2 it was May or something. And then I got this
3 and I just didn't understand what all the
4 documents represented, why there were further
5 documents.

6 Q Did Dave call you in response to your
7 fax?

8 A I don't have a specific recollection,
9 but he must have because he always did when I
10 asked him to talk about one of the
11 investments, especially this one, it seemed to
12 me, from my standpoint, a little confusing as
13 to what was going on.

14 Q You don't recall anything about your
15 discussion?

16 A No, it was five years ago. I don't know.

17 (Plaintiff's Exhibit 27, a
18 three-page compilation of faxes from
19 David Smith to Thomas Urbelis marked for
20 identification of today's date.)

21 Q This is a three-page compilation, it's a
22 fax from David to you and then the fax
23 transmittal confirmation and then a signed
24 authorization.

25 A Did the second page come from me? I



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2 don't think any of these three pages came from
3 me. Oh, I don't recognize it. I don't
4 recognize the second page here.

5 Q Do you recognize the first page and the
6 third page?

7 A I --

8 Q Let me give you another document that
9 might clarify your recollection.

10 MR. FEATHERSTONHAUGH: Could we
11 let him finish his answer?

12 A I don't really know on Exhibit 27 here.

13 Q Let me give you another document that
14 might refresh your recollection.

15 (Plaintiff's Exhibit 28, document
16 marked for identification of today's
17 date.)

18 A Yeah, Exhibit 28 is my signature. To
19 compare it, it looks the same as Exhibit 27.

20 Q Did you discuss with David Smith the
21 wire of \$92,105 prior to you signing the
22 authorization?

23 A I don't remember. I mean it was here,
24 as I said when I first started the deposition,
25 every April I would send money for taxes.



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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.



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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.)



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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



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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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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



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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



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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



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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



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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.



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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



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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



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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?



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1 T. Urbelis

2 A I don't recall, but I certainly I must
3 had, April comes tax time, I just don't
4 recognize this document.

5 (Plaintiff's Exhibit 34, a
6 three-page document, marked for
7 identification of today's date.)

8 Q Exhibit 34 is a three-page document.
9 The first page is a letter and the second two
10 pages are related to shipping.

11 Do you recognize this document?

12 A Yes.

13 Q What is it?

14 A It's a copy of a letter that I sent to
15 Dave and Lynn.

16 Q It's a resignation letter; is it not?

17 A Yes.

18 Q And it's dated April 22nd, 2010.

19 A Yes.

20 Q Why did you resign on April 22nd, 2010?

21 A I resigned because of this lawsuit. I
22 was made aware that there was a lawsuit and I
23 read the Albany Times Union articles and
24 according to that, 80 or 90 million dollars
25 that McGinn Smith had allegedly received from



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1 T. Urbelis

2 investors, that there was only \$500,000 left
3 and since I and my family and the trust were
4 investors, \$500,000 from 90 million, I think
5 that was the number that was in the paper,
6 something in that range, it was very
7 disconcerting.

8 I was told by a friend that Dave could
9 not speak with any of the investors and Dave
10 or Lynn could not speak with any of the
11 investors. And at that time, there was a
12 great deal of turmoil for me.

13 I came to the conclusion that because I
14 and my family were investors, that I could not
15 really fulfill my fiduciary duty with regard
16 to the trust and the kids, where the trust was
17 an investor and I also was an investor.

18 So it just in my mind I couldn't talk to
19 anybody, I couldn't talk to Dave or Lynn about
20 it, to my understanding. There was no way
21 that I could continue in a fiduciary capacity,
22 so I resigned.

23 I just thought I was clearly, in my
24 mind, because of the lawsuit and the
25 allegations that were in there, and if not, an



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2 actual conflict of interest, but certainly an
3 appearance of a conflict of interest, and I
4 really didn't want to continue that.

5 Q And if I understand, is it correct that
6 that was because you were a personal investor
7 as well?

8 A I and my family, yes. So when all of
9 those things added up, I couldn't -- I could
10 not in good faith continue my duties. I'm
11 sure I certainly wouldn't do anything to hurt
12 the kids, but I didn't want to have any kind
13 of appearance of impropriety.

14 Q Did you speak to the beneficiaries of
15 the trust before resigning?

16 A No.

17 Q And the resignation shall take effect on
18 May 27th, 2010, is that because of the terms
19 of the declaration of trust?

20 A Yeah, according the trust I had to give
21 30 days notice.

22 Q I have no other questions about that.
23 Let's take a five-minute break.

24 (Whereupon, a five minute recess
25 took place.)



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2 Q I'm going to ask you to look at again
3 Plaintiff's Exhibit 28.

4 A Okay.

5 Q This is a wire authorization, correct?

6 A Yes.

7 Q And it's your signature on the bottom; I
8 believe you testified to that earlier.

9 A Yes.

10 Q And this wire went to David Smith; is
11 that correct?

12 A Yeah, I think what happened, and I
13 didn't get into the details of these things
14 with the accountant, but I think I just
15 assumed the money went kind of, like we talked
16 about 2004, 2005, it came out of the -- out of
17 their account and he had or Mr. Simons, who
18 was making sure that the taxes get paid and
19 filed, I just assumed that there was a way,
20 you know, that either he brought the check to
21 Mr. Simons or Mr. Simons got the check or Dave
22 wrote the check to the IRS. I didn't care as
23 long as I wasn't getting notices from the IRS
24 that the State of New York -- that the taxes
25 weren't getting paid.



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2 I did get something in 2009 that they
3 lost one of the returns or something. So that
4 as to how the mechanics of how the taxes were
5 getting paid, I left that up to Mr. Simons.

6 Q Do you know what David Smith did with
7 these funds?

8 A Do I know what he did with them, no.

9 Q Did you ever discuss with the
10 beneficiaries of the trust any payments from
11 the trust?

12 A Well, yeah, I talked to Jeff this past
13 month.

14 Q What did you talk to him about?

15 A He called me, he said -- I think I
16 testified about that.

17 MR. FEATHERSTONHAUGH: I think he
18 already testified to this, but.

19 Q Refresh my recollection.

20 A Jeff called me, and I signed the thing
21 for Mr. Maher. That was Jeff's initiation.

22 Q Was that the only time you talked to
23 Jeff Smith regarding the payments from the
24 trust?

25 A I think so.



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1 T. Urbelis

2 Q In the past year, did David Smith ask
3 you to loan any funds from the trust to McGinn
4 Smith & Company?

5 A To McGinn Smith, not that I recall.

6 Q What about to any other entity related
7 to McGinn Smith?

8 A I don't recall that, no.

9 (Plaintiff's Exhibit 35, an e-mail
10 marked for identification of today's
11 date.)

12 A Yes, this is the e-mail that he received
13 from Mr. Maher this year.

14 Q This is what you were just describing to
15 us?

16 A Yes.

17 Q So, the letter of authorization relates
18 to the payment of taxes?

19 A Yes.

20 Q At least that was your understanding?

21 A That was my understanding.

22 Q Thank you.

23 (Plaintiff's Exhibit 36, one page
24 of an account statement, marked for
25 identification of today's date.)



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1 T. Urbelis

2 Q Unfortunately, we have one page. This
3 is one page of an account statement, and I'm
4 going to ask you about the transaction on June
5 30th, 2006.

6 A 2006? Is this the trust account?

7 Q Yes.

8 MR. FEATHERSTONHAUGH: Could I
9 ask, maybe it's here and -- does this
10 say whose account statement is it part
11 of, an account statement?

12 MS. MEHRABAN: It's page 6, the
13 account number is listed at the top and
14 that's the trust account. I don't have
15 the complete account statement, so I'll
16 just show you page 6.

17 Q I'm going to direct you to the transfer
18 of a check for \$83,830 on June 30th of 2006;
19 do you recall what that was for?

20 A No, I don't, I'm sorry.

21 (Plaintiff's Exhibit 37, a letter
22 marked for identification of today's
23 date.)

24 Q What is this document?

25 MR. FEATHERSTONHAUGH: I haven't



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1 T. Urbelis
2 had a chance, this is the first time
3 I've seen it, may I have a couple
4 minutes to read it, please.

5 MS. MEHRABAN: Sure. Off the
6 record.

7 (Whereupon, a discussion off the
8 record was held.)

9 MS. MEHRABAN: Back on the record.

10 Q Mr. Urbelis, what is this document?

11 A It's a letter dated May 2, 2010 which I
12 received from Dave Smith.

13 Q Can you read the first sentence?

14 A "I understand from a comment that you
15 made to Jim Featherstonhaugh that you have
16 lost a great deal of money through McGinn
17 Smith."

18 Q What comment did you make to Jim?

19 A I told him that I lost a great deal of
20 money through my accounts at McGinn Smith.

21 Q How did you speak to him?

22 A Mr. Featherstonhaugh, he called me.

23 Q Did you respond to this letter?

24 A Yes, I did, I think you have it.

25 (Plaintiff's Exhibit 38, a letter



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T. Urbelis

from Thomas Urbelis to David Smith,
marked for identification of today's
date.)

Q What is Exhibit 38?

A It's a letter I wrote to Dave Smith.

Q Who is Timmy?

A Tim Cioche, yeah, a mutual friend.

Q Did you meet with Dave Smith as a result
of this letter?

A No.

Q Did you speak to him after writing this
letter?

A Yes.

Q When?

A It was the -- whatever date this is, I
think this is the middle of the week, I talked
with Dave that Saturday, briefly, and I talked
to him again I believe it was -- he called and
I couldn't -- I know something was going on at
the house. I couldn't talk to him and then he
called me, I believe it was either that next
Monday or Tuesday.

Q Tell me about that conversation.

A He called me and like I said in my



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2 letter, I thought that they couldn't -- Dave
3 couldn't talk to us but that's obviously some
4 kind of a miscommunication, and I wanted to
5 let him know I resigned as trustee.

6 Well, let me back up. The very first
7 thing I said when I called was, how's Lynn.
8 He told me she wasn't doing well. I talked
9 about that with him and expressed to her, my
10 wife, and my concern about Lynn. So we talked
11 about that for a bit, and I told him I wanted
12 to explain why I didn't have the opportunity,
13 I didn't think I could talk to them, so I
14 wanted to explain to him the reason. I did
15 it, it was obviously I thought based upon what
16 I saw in the papers that I had a potential if
17 not actual conflict of interest and also I was
18 trying to carry out my duties as trustee;
19 that's the same thing I told you a little
20 while ago.

21 And then we talked about that and then
22 he talked further about what he had told me in
23 the letter about our investments and explained
24 those to me, and told me to give Tim Wells a
25 call if I had further questions or wanted more



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1 T. Urbelis

2 substantiation regarding to the actuality of
3 what was going on with Pine Street Capital
4 Limited Partners, something like that.

5 He said that, you know, my investments
6 were still good, substantially good, he didn't
7 know exactly the exact numbers and asked me if
8 I had obviously seen the newspapers about the
9 lawsuit, and I expressed concern to him, hoped
10 he and Lynn were okay.

11 He said that he didn't do anything
12 wrong, that he's not liable for any of the
13 allegations that were caused. He said, you
14 know, once all the information comes out, you
15 know, it's unfortunate that it's gotten to
16 this, but he said once the information comes
17 out, he said it will show that he is not
18 liable, that he did nothing wrong, that's what
19 he said.

20 He said Lynn and he were having trouble
21 paying their bills because of the freeze on
22 the accounts, so that was making it difficult
23 for them. That's about all I can remember at
24 this point.

25 Q Do you remember any other discussions



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1 T. Urbelis

2 regarding the trust?

3 A No, I would just -- it was why I
4 resigned, nothing subsequent about the trust,
5 it was just why I resigned.

6 Q Okay. I have nothing further on this
7 document.

8 (Plaintiff's Exhibit 39, document
9 for the appointment of new trustee to
10 the trust, marked for identification of
11 today's date.)

12 Q Have you seen this document before?

13 A Yes, I have.

14 Q What is it?

15 A It's the appointment of a new trustee
16 for the trust, to my understanding.

17 Q Do you know David Wojesky?

18 A No.

19 Q Did you have any involvement in who was
20 appointed as the trustee for the trust?

21 A No. I don't think -- I know I may have
22 met him, but I don't recall.

23 Q Do you remember a transfer of \$95,000
24 from the trust to Lynn Smith in April of this
25 year?



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T. Urbelis

A Yeah, that's the one that Jeff called me about and Mr. Maher sent me the form, I think.

Q What was your understanding of what that was for?

MR. FEATHERSTONHAUGH: I believe he testified to that three times now.

MS. MEHRABAN: I believe the answer wasn't quite clear.

(Continued on the next page to accommodate jurat.)



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Thomas Urbelis

June 1, 2010

62

1 T. Urbelis

2 A Taxes for the trust.

3 Q For the trust?

4 A Yes.

5 MS. MEHRABAN: I don't have any
6 other questions. Thank you very much.

7 MR. FEATHERSTONHAUGH: I have no
8 questions for Mr. Urbelis on behalf of
9 the relief defendant.

10 MS. DUNN: I have no questions.

11 THE WITNESS: Thank you very much.

12 -oOo-

13 (Whereupon, the deposition of THOMAS
14 URBELIS was concluded at 2:08 p.m.)

15

16

17 -----
THOMAS URBELIS

18 Subscribed and sworn to

19 Before me, this ____ day

20 of _____, 2010.

21

22

NOTARY PUBLIC

23

24

25



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I N D E X

WITNESS	EXAMINATION BY	PAGE
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THOMAS URBELIS	MS. MEHRABAN	4
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EXHIBITS

PLAINTIFF'S	DESCRIPTION	PAGE
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17	Letter	18
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18	Three-page document	24
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19	Eight-page document	26
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20	One-page document	27
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21	One-page document	29
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22	One-page document	29
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23	Four-page document	29
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24	Documents	32
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25	Documents	32
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26	Fax	34
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27	Three-page compilation Of faxes	35
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28	Document	36
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29	Three-page compilation Of Documents	37
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30	Two-page document	38
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31	Two-page document	41
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32	Five-page document	43
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33	Two-page document	47
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Of		
EXHIBITS		
(Continued)		
PLAINTIFF'S	DESCRIPTION	PAGE
34	Three-page document	49
35	E-Mail	54
36	Account statement	54
37	Letter	55
38	Letter	56
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June 1, 2010

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Our Assignment No. 310714

Case Caption: SEC vs. MCGINN, SMITH & CO.,

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my Deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

Signed on the _____ day of

_____, 20__.

THOMAS URBELIS



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C E R T I F I C A T E

I, GEORGE MALINOWSKI, a shorthand reporter and Notary Public within and for The State of New York, do hereby certify:

That the witness whose testimony is hereinbefore set forth was duly sworn by me, and the foregoing transcript is a true record of the testimony given by such witness(es).

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

George Malinowski
GEORGE MALINOWSKI

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Exhibit B

DAVID L. SMITH 90 PINE ST ALBANY, NY 12207		1742
DATE <u>4/17/06</u>		
PAY TO THE ORDER OF <u>M. S. Treasary</u>	\$16,000.00	
<u>Sixteen Thousand and 00/100</u>	DOLLARS	
		
MPVICT <u>Paul 2006 Est. mattel</u> <u>[Signature]</u>		
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03747 082 042006 CR US TREAS 318/9972 TaxP LBK


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1300018804

BANK OF AMERICA NA ATL
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04/20/06

0200950372

Posting Date 2006 Apr 21
Bank # 096
Branch # 02056
Research Seq # 1300018804
Account # ⑆9965
Dollar Amount \$16,000.00
Check/Store 1742
DB/CR DB
Entry Number 2517
RTABA 02200004
Record Type # 01

DAVID L. SMITH 89 PINE ST ALBANY, NY 12207		10-4 2054 220	1743
DATE <u>4/12/06</u>			
PAY TO THE ORDER OF	<u>New York State Income Tax</u>	\$	<u>4600.00</u>
<u>Four thousand six hundred and no/100</u>		DOLLARS	@ <u>100</u>
 M&T Bank <small>Member FDIC</small>			
MEMO <u>2nd CG Estimated</u>		<u>David L. Smith</u>	
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Posting Date	2006 Apr 24
Bank #	096
Branch #	02056
Research Seq #	1300182957
Account #	██████████9965
Dollar Amount	\$4,600.00
Check/Store	1743
DB/CR	DB
Entry Number	2341
RTABA	02200004
Record Type #	01

DAVID L. SMITH 99 PINE ST. ALBANY, NY 12207		10-4 220 2056 DATE <u>4/17/06</u>	1744
PAY TO THE ORDER OF <u>U.S. Treasury</u>		\$55,268.00	
<u>Fifty Five Thousand Two Hundred Sixty-eight</u>		DOLLARS <u>00/100</u>	
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05012006
ENT=4071 TRC=4071 PK=02

05/01/06 091
1500171984

Posting Date 2006 May 01
Bank # 096
Branch # 02056
Research Seq # 1500171984
Account # 9965
Dollar Amount \$55,268.00
Check/Store 1744
DB/CR DB
Entry Number 2921
RTABA 02200004
Record Type # 01

DAVID L. SMITH 99 PINE ST. ALBANY, NY 12207		10-4 2056 220 DATE <u>4/17/06</u>	1745
PAY TO THE ORDER OF <u>MY 5 Income Tax</u>		\$16,327.00	
<u>Sixteen thousand three hundred twenty seven</u>		DOLLARS	
M&T Bank		PB0636692367 - PB0636692367 PB0693148793 - PB0693148793	
MLMO <u>TRR</u>		<u>1000049607</u>	
100220000461		9965 1745 10001632700	

CAP4618 FOR DEPOSIT ONLY
WITHOUT PREJUDICE
CONTROLLED STATE OF NY
653 1000049607 4270823100

STATE OF NEW YORK
1000049607 4270823100

1200049607 4270823100

1000049607 4270823100

Posting Date 2006 Apr 21
Bank # 096
Branch # 02056
Research Seq # 1200049607
Account # 9965
Dollar Amount \$16,327.00
Check/Store 1745
DB/CR DB
Entry Number 2322
RTABA 02200004
Record Type # 01

6/3/2010

021305301
01/04/2007
6656161320

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your check. You can use it
the same way you would
use the original check.

01/03/2007
007000104541

DAVID L. SMITH 88 FINE ST. ALBANY, NY 12207		1822
DATE <u>1/26/07</u>		
PAY TO THE ORDER OF <u>U.S. Treasury</u>		\$6500.00
<u>Sixty-five Thousand and 00/100</u>		DOLLARS
M&T Bank 2006 Form 1091ES		
SS-6169631		
0220000454		9965 1822 0006500000

0220000454 9965 1822 0006500000

92 219 003 56803 7 556169631 SMIT 05 200612 0102
52808 008 010307 CR US TREAS 110/3178 TaxP L8X


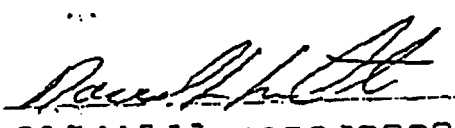
0215-0500-1
01/03/07
01/03/07
2456310333

BANK OF AMERICA
0700104541

021305301* 01/04/2007
6656161320

Do not endorse or write below this line.

Posting Date 2007 Jan 04
Bank # 096
Branch # 02056
Research Seq # 1200053910
Account # 9965
Dollar Amount \$65,000.00
Check/Store 1822
DB/CR DB
Entry Number 1666
RTABA 02200004
Record Type # 01

DAVID L. SMITH 99 PINE ST. ALBANY, NY 12207		10-4 2056	1823
		DATE	12/26/06
PAY TO THE ORDER OF	2145 Income Tax		\$ 20,000.00
	Twenty thousand and 00/100		DOLLARS
			
2006 Form IT-2105			
MEMO	55-6169631		
			
1:022000046: [REDACTED] 9965 1823 000020000000			

PT0757000111 PT0757000111
 BGN LBN >074909962< JPNC BK NND FREE
 200000281 0072 09 010207 123005

022000046 01/04/07
 M&T BANK BUFFALO, NY

01

050 3246 27

0152287
 02194321

1300570363

8770311032

Posting Date 2007 Jan 04
 Bank # 096
 Branch # 02056
 Research Seq # 1300570363
 Account # [REDACTED] 9965
 Dollar Amount \$20,000.00
 Check/Store 1823
 DB/CR DB
 Entry Number 1996
 RTABA 02200004
 Record Type # 01

001305003
 04/24/2007
 6655562777

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 use the original check.

01/24/2007
 0905500290
 1910000500

DAVID L. SMITH
 00 PINE ST
 ALBANY, NY 12207
 1879

Unital States Treasury
 4/2/07
 \$15,019.00
 The State of New York
 M&T Bank
 R.F. Trust
 0020000046 9965 1879 0001501900

0020000046 9965 1879 0001501900

31 2 19 116 57 36 7 56169631 0017 05 200712 0115

117000037 019 042107

001305003
 04/24/2007
 6655562777

(Do not endorse or write below this line)

Posting Date 2007 Apr 25
 Bank # 096
 Branch - 02056
 Research Seq - 1200873099
 Account # 9965
 Dollar Amount \$15,019.00
 Check/Store 1879
 DB CR DB
 Entry Number 1527
 RTABA 02200004
 Record Type # 01

DAVID L. SMITH
 99 P NE ST.
 ALBANY, NY 12207

10-4 2006 1880

DATE 4/17/07

PAY TO THE ORDER OF MYS Income Tax \$ 5073.00

Five thousand seventy three and 00/100 DOLLARS

M&T Bank
 Member FDIC

MEMO QES Trust David L. Smith

⑆022000046⑆ ⑆0000507300⑆

PT0754607361 PT0754607361
 057 LBN 5074909962 JPNC BY NND PRTER
 20000070 0002 09 047907 042107

62201000 04252007
 NET BANK NY 460 NY 01
 1500115242

JP MORGAN CHASE BANK, NA
 4 CH. BKLYN, NY 10240-4407
 421430214 061 2795 03
 8370114175

Posting Date 2007 Apr 25
 Bank 096
 Branch 02056
 Research Seq 1500115242
 Account ⑆0000507300⑆
 Dollar Amount \$5,073.00
 Check Store 1880
 DBCR DB
 Entry Number 1591
 RTABA 01200004
 Record Type 01