

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK  
Hearing on Motion for Preliminary Injunction  
Friday, June 11, 2010 at ~~9:15~~ AM  
10:15**

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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,  
*Defendants, and*  
LYNN A. SMITH,  
*Relief Defendant.***

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

**CR: Bonnie Buckley  
CRD: Cindy Mezzoff**

Appearances:

**David P. Stoelting  
Kevin P. McGrath  
Lara Mehraban**

**Securities and Exchange Commission**

**Michael Koenig**

**Timothy M. McGinn  
David Smith**

**James Featherstonhaugh**

**Lynn A. Smith**

**Jill A. Dunn**

**David M. Wojeski  
as Trustee of David L.  
and Lynn A. Smith  
Irrevocable Trust U/A  
8/04/04**

SEC v. McGinn, 6-11-2010  
10-CV-457

10:10 AM Continuation of Defense Witness John D'Aleo

Cross Exam by Kevin McGrath

10:19 AM Intervenor Ex 10 shown to witness D'Aleo

10:28 AM Intervenor Ex. 3 shown to D'Aleo

10:35 AM Re-Direct by Jill Dunn

Ex. 11 shown to D'Aleo

10:43 AM Intervenor ex 14 (pltf's ex but ex # unknown) shown to D'Aleo

10:47 AM McGrath continues and shows witness Ex. 14

10:49 AM witness leaves stand

Featherstonhaugh – no further witness

INTERVENOR WITNESS JEFFREY SMITH

10:50 AM Jeffrey Smith sworn in by clerk

10:51 AM Direct Exam – Jill Dunn

10:56 AM Intervenor Ex. 7 shown to J. Smith

11:45 AM: Re-Direct, Jill Dunn

11:50 AM: Recess for 10 minutes

12:00 PM: Court.

WITNESS FOR INTERVENOR  
DAVID M. WOJESKI

12:28 PM: Intervenor rests.

Plaintiff offers exhibits 1 - 131

Featherstonhaugh objects to 3 declarations, exhibits 121, 122, & 123.

Jill Dunn objects to 121, 122, 123 & 131.

Stoelting argues for admission of 131.

Court rules there is no foundation to 131 and it will not be admitted.

Plaintiff's exhibits 1 - 130 are received.

Michael Koenig objects to document 117.

Court receives plaintiff's 117.

Plaintiff has no objection to relief deft exhibits 1- 15

Plaintiff has no objection to intervenors exhibits 1-15.

Relief defendant and intervenor defendants exhibits 1 - 15 are received.

As to briefing on adverse inference-

Plaintiff, SEC has until June 16<sup>th</sup>, 2010

Relief deft & intervenor will file their brief on June 18<sup>th</sup>.

Recess until 1:45 pm.

1:45 PM: David Stoelting - Closing

2:22 PM: James Featherstonhaugh- Closing

Jill Dunn- Closing

3:15 PM: Witness William Brown is heard regarding the TRO. Requesting receiver commence litigation for recovery of assets. Receiver has consent of all parties. Request is granted.

TRO remains in effect until motion for prelim. injunction.