

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

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, GEOFFREY R. SMITH,  
Individually and as Trustee of the David L. and  
Lynn A. Smith Irrevocable Trust U/A 8/04/04,  
LAUREN T. SMITH, and NANCY MCGINN,

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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**RECEIVER'S MOTION TO FILE DECLARATION  
CONTAINING CONFIDENTIAL INFORMATION UNDER SEAL**

William J. Brown, as Receiver ("Receiver"), by his counsel, Phillips Lytle LLP,  
moves for leave to file under seal a Confidential Declaration of William J. Brown, as  
Receiver, With Respect to Objections of Certain Investors and Stephen Fowler as to

Collateral Recoveries dated March 9, 2016 (“Declaration”), prepared in connection with the Receiver’s to be filed Omnibus Reply to Objections to Motion for an Order (I) Approving Plan of Distribution of Estate Assets and (II) Authorizing Interim Distributions, and respectfully represents as follows:

1. On February 16, 2016, the so called Certain Investors and Stephen Fowler filed their Objections (the “Objections”) at Docket Nos. 878 and 865, respectively, to the Receiver’s Motion to approve the proposed Plan of Distribution (Docket No. 847).

2. Certain information in the Objections has been filed under seal pursuant to Orders of this Court at Docket Nos. 877 and 866.

3. The two page Declaration contains information which was filed under seal so as to separate the confidential information in a separate pleading from the Receiver’s to be filed Omnibus Reply.

4. The Receiver requests an Order in the form attached allowing him to file the two page Declaration under seal consistent with the Court’s prior Orders respecting the Objections, while serving the Declaration upon the parties who are to maintain its confidentiality.

WHEREFORE, the Receiver respectfully requests that the Court enter an Order for leave to file the Declaration under seal while serving the Declaration upon the parties who are to maintain its confidentiality and for such other relief as is appropriate.

Dated: March 9, 2016

PHILLIPS LYTTLE LLP

By /s/ William J. Brown  
William J. Brown (Bar Roll #601330)  
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- and -

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Attorneys for the Receiver

Doc #01-2933621.1

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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LAUREN T. SMITH, and NANCY McGINN,

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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**ORDER TO FILE DECLARATION UNDER SEAL**

Upon the March 9, 2016 Motion of the Receiver to file Declaration Under  
Seal ("Motion"), it is hereby:

ORDERED that the Motion is granted;

IT IS FURTHER ORDERED that the Receiver shall serve the Confidential Declaration of William J. Brown, as Receiver, dated March 9, 2016, upon the parties; and

IT IS FURTHER ORDERED that the parties shall maintain the confidentiality of the information filed under seal.

Dated: March \_\_\_\_, 2016

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Hon. Gary L. Sharpe  
United States District Judge

Doc #01-2933719.1

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION :

*Plaintiff,* :

vs. :

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

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, GEOFFREY R. SMITH, :  
Individually and as Trustee of the David L. and :  
Lynn A. Smith Irrevocable Trust U/A 8/04/04, :  
LAUREN T. SMITH, and NANCY MCGINN, :

*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, Sinead A. Tyrone, being at all times over 18 years of age, hereby certify that on March 9, 2016, a true and correct copy of the Receiver’s Motion to File Declaration Containing Confidential Information Under Seal (“Motion”) was caused to be served by e-mail upon all parties who receive electronic notice in this case pursuant to the Court’s ECF filing system, as follows:

- **William J. Brown** wbrown@phillipslytle.com, khatch@phillipslytle.com
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- **Benjamin Zelermyer** bzlaw@optonline.net,steincav@aol.com

And, I hereby certify that on March 9, 2016, I mailed, via first class mail using the United States Postal Service, a copy of the Motion to the individuals listed below:

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Dated: March 9, 2016

/s/ Sinead A. Tyrone  
Sinead A. Tyrone

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