

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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**RESPONSE OF WILLIAM J. BROWN, AS RECEIVER, IN OPPOSITION TO  
DAVID L. SMITH'S RULE 60(b) MOTION**

William J. Brown, as Receiver (“Receiver”) of McGinn, Smith & Co., Inc., et al. (“MS & Co.”), by his counsel Phillips Lytle LLP, respectfully submits this Response in Opposition to David L. Smith’s Rule 60(b) Motion filed June 3, 2021 (Docket No. 1195) (“Motion”).

## **PRELIMINARY STATEMENT**

Defendants David L., Smith and Timothy M. McGinn together were responsible for defrauding over 861 innocent investors out of over one hundred million dollars through their elaborate Ponzi scheme, the profits of which they used to perpetuate the scheme and support their lavish lifestyles. Now, more than six years after this Court entered the Order holding David Smith liable for disgorgement, and after the Receiver has substantially concluded all distributions to those defrauded investors pursuant to the Plan of Distribution approved by this Court in October 2016, David Smith demands that the Court's Order entered against him be voided and that the Receiver return over \$4 million to him. Even if this Court were to void its Order, substantially all Receivership funds have been distributed to investors. Simply put, there is not \$4 million left in the Receivership to give back to David Smith. David Smith's request should be denied as equitably moot because, even if it were possible for the Receiver to reclaim those distributed amounts, the equities favor leaving undisturbed the distributions made to compensate the defrauded investors of MS & Co.

## **RESPONSE**

### **A. Background and Timeline**

On March 30, 2015, the Court entered a Memorandum Decision and Order (Docket No. 816) ("Order") holding, among other things, that David Smith and Timothy McGinn were jointly and severally liable for the payment of \$87,433,218 in disgorgement, plus prejudgment interest. Order at 27. The Order was appealed by David Smith, along with other members of his family, and was affirmed by the United States Circuit Court of Appeals for the Second Circuit on April 18, 2016. *See S.E.C. v. Smith*, 646 Fed. Appx. 42 (2d Cir. 2016).

On June 25, 2015, the Court entered the Final Judgment as to Defendant David L. Smith (Docket No. 835) (“Smith Judgment”) pursuant to which David Smith was ordered to pay to the Receiver \$99,101,350, representing disgorgement of \$87,433,218 and prejudgment interest of \$11,668,132. Judgment at 6. The Receiver was ordered to place all amounts received in a fund for distribution pursuant to the terms of a plan of distribution. *Id.* at 9.

Following entry of the Order and the Smith Judgment, on December 30, 2015, the Receiver filed the proposed Plan of Distribution (Docket No. 847) (“Plan”) providing for the distribution of the liquidated assets of MS & Co., its affiliated entities, and the defendants in this action, including David Smith, to defrauded investors. The Court entered an Order approving the Plan on October 31, 2016 (Docket No. 904) (“Distribution Plan Order”).

Since entry of the Distribution Plan Order, the Receiver has diligently pursued reconciliation of thousands of investor claims, including the filing of ten claim objection motions, which claims reconciliation process concluded in October 2020. As a result, there are 861 investors with allowed claims of \$110,467,889. Dec’l ¶6.<sup>1</sup> During the past four years, concluding in May 2021, the Receiver completed three rounds of distributions to those investors with allowed claims, all in accordance with the terms of the Plan and the Distribution Plan Order. As set forth below, and as previously publicly announced on the Receiver’s website at <https://www.mcginnsmithreceiver.com/> (“Website”), the Third and Final Distribution of approximately \$4,108,475 was substantially completed in May 2021, prior to the date that the Motion was filed. *Id.* By October 2020, the Receiver had distributed approximately \$7,181,010 in the First Distribution, and by January 2021, the Receiver had distributed approximately \$10,449,495 in the Second Distribution. Distributions to investors are now substantially

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<sup>1</sup> “Dec’l. ¶ \_\_\_” refers to the Declaration of William J. Brown dated June 24, 2021 filed in support of the Response.

complete but for reissuance of certain checks in *de minimis* amounts due to changed circumstances of individual investors, such as new addresses or deaths. *Id.*

Now, with distributions substantially completed, the Receiver is winding up and preparing to close the Receivership estates, undertaken as described in the Receiver’s Omnibus Motion for Approval of (I) Destruction of Files, Recycling of Computers and Other Wind-Up Activities, (II) Continuation of Receivership to Accomplish Foregoing, and (III) Termination of the Receivership and Discharge of the Receiver filed on July 24, 2020 (Docket No. 1133), and as approved by an Order of the Court entered on November 11, 2020 (Docket No. 1165) (“Wind-Up Order”). Dec’l ¶7.

Each development and update in the Receiver’s claims reconciliation and distribution process, including the commencement and conclusion of each of the three rounds of investor distributions, was announced publicly on the Website, the established means of communication between the Receiver and the investors and other parties in interest. The Receiver also filed on the docket of the above-captioned case (“Case”) claims distribution schedules listing payments to be made to investors in accordance with the terms of the Plan and the Distribution Plan Order, as well as regular written status reports. Dec’l ¶8. Set forth below is a timeline of significant events related to investor distributions in this Case, as such events were announced on the Website and/or filed on the docket of this Case:

<b>January 1, 2015 through December 31, 2015: Court Orders Disgorgement</b>	
March 30, 2015	The Court entered the Memorandum Decision and Order holding David Smith liable for disgorgement. <i>See</i> Mar. 30, 2015 Website Announcement.
June 25, 2015	The Court entered the Final Judgment ordering David Smith to disgorge \$99,101,350 to the Receiver. <i>See</i> June 25, 2015 Website Announcement.

December 30, 2015	The Receiver filed the proposed Plan of Distribution. <i>See</i> Docket No. 847; Dec. 30, 2015 Website Announcement;
<b>January 1, 2016 through December 31, 2016: Circuit Court Affirms Disgorgement and Plan of Distribution is Approved</b>	
April 18, 2016	The Second Circuit Court of Appeals affirmed entry of the Memorandum Decision and Order holding David Smith liable for disgorgement. <i>See</i> Apr. 18, 2016 Website Announcement.
October 31, 2016	The Court entered the Order approving the Distribution Plan. <i>See</i> Oct. 31, 2016 Website Announcement.
<b>January 1, 2017 through December 31, 2017: Receiver Commences the Claims Reconciliation Process and the First Distribution</b>	
February 2017	The Receiver mailed investor questionnaires to commence the claims reconciliation process. <i>See</i> Feb. 6, 2017 Website Announcement.
May 2, 2017	The Receiver filed the First Payment Schedule of Investor Distributions listing payments to be made to investors in accordance with the terms of the Plan and the Distribution Plan Order. <i>See</i> Docket No. 919.
August 2017	The Receiver commenced mailing First Distribution checks to investors. <i>See</i> Aug. 31, 2017 Website Announcement; Revised Fourth Written Status Report of the Receiver. <i>See</i> Docket No. 1026.
<b>January 1, 2018 through December 31, 2019: The Claims Reconciliation Process and the First Distribution Continues</b>	
September 12, 2019	The Receiver filed the Eighth Claims Motion for an Order (A) Disallowing or Equitably Subordinating the Smith Claims or (B) Offsetting the Judgment Obligations with Smith Claim Distributions and (C) Expunging Smith Paper Claims. <i>See</i> Docket No. 1067.

<b>January 1, 2020 through December 31, 2020: The Receiver Concludes the First Distribution and Commences the Second Distribution</b>	
July 24, 2020	The Receiver filed the Omnibus Motion for approval of wind-up activities. <i>See</i> Docket No. 1133.
October 2, 2020	The Receiver filed the Sixty-Fifth and Final Payment Schedule of First Investor Distribution (Docket No. 1153), as well as the First and Second Payment Schedules of Second Investor Distribution. <i>See</i> Docket Nos. 1154, 1155.
October 8, 2020	The Receiver mailed the final distribution checks for the First Distribution. <i>See</i> Oct. 13, 2020 Website Announcement. The Receiver also posted a final listing of all filed schedules of investor distributions for the First Distribution on the Website. <i>See</i> October 2, 2020 Website Announcement
October 9, 2020	The Receiver commenced mailing Second Distribution checks to investors. <i>See</i> October 13, 2020 Website Announcement.
November 11, 2020	The Court entered an Order approving the Receiver's Omnibus Motion for approval of wind-up activities. <i>See</i> Docket No. 1165.
<b>January 1, 2021 through Present: The Receiver Concludes the Second Distribution and Substantially Completes the Third and Final Distribution</b>	
January 15, 2021	The Receiver mailed the final distribution checks for the Second Distribution, except for a small number of investors whose files remained under review for completeness. <i>See</i> Feb. 2, 2021 Website Announcement.
February 2, 2021	The Receiver commenced reviewing the availability of funds for a Third and Final Distribution to investors. <i>See</i> Feb. 2, 2021 Website Announcement.
May 11, 2021	The Receiver filed the Revised Twenty-First and Final Payment Schedule of Second Investor Distributions concluding the Second Distribution. <i>See</i> Docket No. 1184. The Receiver also posted a final listing of all filed

	schedules of investor distributions for the Second Distribution on the Website. <i>See</i> May 11, 2021 Website Announcement; Fifth Written Status Report of the Receiver. <i>See</i> Docket No. 1187.
May 12, 2021	The Receiver filed the First, Second, and Third Payment Schedules of Third and Final Investor Distribution, commencing the Third Distribution. <i>See</i> Docket Nos. 1189, 1190, 1191. The Receiver also posted a listing of all filed schedules of investor distributions for the Third Distribution on the Website. <i>See</i> May 12, 2021 Website Announcement.
May 24, 2021	The Receiver substantially completed mailing Third Distribution checks to investors. <i>See</i> May 7, 2021 Website Announcement.
June 3, 2021	David Smith filed the Motion seeking return of \$4,372,508. <i>See</i> Docket No. 1195.

**B. The Relief Requested by David Smith Should be Denied as Equitably Moot**

David Smith’s request for the Receiver to return to him \$4,372,508 should be denied under the principles of equitable mootness. The doctrine of equitable mootness is a “prudential doctrine” under which a court may dismiss a bankruptcy appeal even if effective relief could be fashioned if implementation of such relief would be inequitable. *In re Charter Commcn’s, Inc.*, 691 F.3d 476, 481 (2d Cir. 2012). Specifically, the doctrine of equitable mootness is concerned with whether a particular remedy can be granted without unjustly upsetting a debtor’s court-approved plan of reorganization. *Id.*; *see also S.E.C. v. Wealth Management LLC*, 628 F.3d 323, 331 (7th Cir. 2010) (“[The doctrine of equitable mootness] derives from the principle that ‘in formulating equitable relief a court must consider the effects of the relief on innocent third parties.’”).

A bankruptcy appeal is presumed equitably moot when a chapter 11 plan is substantially consummated (meaning that distributions have commenced and substantially all property has

been transferred). This presumption may be overcome if it is shown that, among other factors, such relief will not unravel intricate transactions so as to knock the props out from under the authorization for every transaction that has taken place and create an unmanageable, uncontrollable situation for the bankruptcy court. *Charter Commcn's, Inc.*, 691 F.3d at 482.

Federal courts have considered the doctrine of equitable mootness in federal receivership cases when dismissing challenges to a receiver's distribution plan. For example, in *Duff v. Central Diagnostics, LLC*, 801 F.3d 833 (7th Cir. 2015), the Seventh Circuit Court of Appeals considered a receiver's invocation of the doctrine of equitable mootness to deny a claimant's appeal of a completed distribution plan and request for clawback of distributed funds. Although the Circuit Court ultimately found the appeal frivolous on the merits, the Circuit Court suggested in dicta that the appeal would likely be equitably moot due to the significant reliance interests of the other claimants who received distributions (many of whom were elderly and badly harmed by the fraud). *Id.* at 840. The Court also noted that, notwithstanding that the number of claimants, the sum of money at stake and the size of the distribution were relatively small, the difficulty of unwinding the transaction from both an equitable and practical perspective counseled in favor of preserving the status quo. *Id.* at 841.

The equities here undoubtedly support denial of the relief requested by David Smith in the Motion. First, the Distribution Plan, having been approved over four years ago, has been substantially consummated: prior to the filing of the Motion, the Receiver commenced and substantially completed three distributions to investors in the substantial aggregate amount of approximately \$21,738,980. Dec'1 ¶6. The Receiver estimates that, once all investor distribution checks are cleared, and after payment of operating expenses and professional fees, approximately \$225,000 will remain in the Receivership accounts to pay administrative costs, including any potential tax liabilities, to complete the wind-up of the Receivership, as approved by the Wind-Up Order. Dec'1 ¶9. Under the Plan, all excess, undistributed funds will be transferred to the United States Treasury. *See* Plan Art. X.



Second, the investors defrauded by David Smith have significant reliance interests on the substantially consummated Plan. These investors have waited over ten years since the Receivership was commenced to receive a return of their investment and, with the Third and Final Distribution, will have recovered only 23.84% of their original investments. Dec'1 ¶10. Many of these investors are elderly and lost significant amounts of money due to David Smith's fraud. *Id.* At this stage of the receivership, with the Plan being substantially consummated and distributions substantially completed, it would be grossly inequitable to seek to claw back from innocent investors who have relied on the Plan the partial recoveries that they have waited so long to receive.

Third, David Smith was well aware, or should have been aware, of the status of the claims reconciliation and distribution process as it has progressed over the past several years. By accessing the public Website or reviewing the public docket for this Case, David Smith would have known that, prior to the filing of the Motion, substantially all three investor distributions had been completed by the Receiver by May 2021 and that the Receiver was in the process of winding up the Receivership. Indeed, in September 2019, the Receiver filed a claims objection motion with respect to Geoffrey Smith's, Lynn Smith's, and Lauren Smith's own investor claims (Docket No. 1067).<sup>2</sup> Notwithstanding that the status and completion of investor distributions was well publicized, David Smith waited until after the conclusion of the Third and Final Distribution to file the Motion.

Finally, retrieving the distributed funds at this stage would be virtually impossible, as approximately \$21,738,980 has been distributed to 861 investors over the course of the three rounds of investor distributions. Even if possible, which as a practical matter is unlikely given

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<sup>2</sup> The Receiver also exchanged multiple emails with David Smith in August 2020 regarding his change of address, indicating that David Smith knew the Receivership was pending and knew how to get in touch with the Receiver. Dec'1 ¶11.

the relatively small amounts distributed to the majority of investors, some of whom are now deceased, such a task would be extremely onerous and costly not only for the Receivership, but for the innocent investors who would be forced to return what they have recovered under the terms of the Plan and the Distribution Plan Order and who would be forced to bear the costs of the Receivership to complete such a process. Dec'1 ¶12. The equities here strongly support denial of the relief requested by David Smith.

**CONCLUSION**

The Receiver requests that the Court (i) deny the relief requested in the Motion as equitably moot and (ii) grant such other and further relief as the Court deems just and proper.

Dated: June 24, 2021

PHILLIPS LYTTLE LLP

By  /s/ William J. Brown

William J. Brown (Bar Roll #601330)

Catherine N. Eisenhut (Bar Roll #520849)

Attorneys for Receiver

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Albany, New York 12207

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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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**DECLARATION OF WILLIAM J. BROWN, AS RECEIVER, IN SUPPORT OF  
RESPONSE IN OPPOSITION TO DAVID L. SMITH'S RULE 60(b) MOTION**

William J. Brown, as Receiver, declares, under the penalty of perjury, pursuant to 28

U.S.C. § 1746, as follows:

1. I am the Receiver of McGinn, Smith & Co. Inc., et al. (“MS & Co.”) appointed by the Court in this action pursuant to the Preliminary Injunction Order dated July 26, 2010 (Docket No. 96).

2. I make this Declaration in support of the Response (“Response”) to David L. Smith’s Rule 60(b) Motion filed June 3, 2021 (Docket No. 1195) (“Motion”).

3. On March 30, 2015, the Court entered a Memorandum Decision and Order (Docket No. 816) (“Order”) holding, among other things, that David Smith and Timothy McGinn were jointly and severally liable for the payment of \$87,433,218 in disgorgement, plus prejudgment interest. Order at 27. The Order was appealed by David Smith, along with other members of his family, and was affirmed by the United States Circuit Court of Appeals for the Second Circuit on April 18, 2016. *See S.E.C. v. Smith*, 646 Fed. Appx. 42 (2d Cir. 2016).

4. On June 25, 2015, the Court entered the Final Judgment as to Defendant David L. Smith (Docket No. 835) (“Smith Judgment”) pursuant to which David Smith was ordered to pay to the Receiver \$99,101,350, representing disgorgement of \$87,433,218 and prejudgment interest of \$11,668,132. Judgment at 6. The Receiver was ordered to place all amounts received in a fund for distribution pursuant to the terms of a plan of distribution. *Id.* at 9.

5. Following entry of the Order and the Smith Judgment, on December 30, 2015, I filed the proposed Plan of Distribution (Docket No. 847) (“Plan”) providing for the distribution of the liquidated assets of MS & Co., its affiliated entities, and the defendants in this action, including David Smith, to defrauded investors. The Court entered an Order approving the Plan on October 31, 2016 (Docket No. 904) (“Distribution Plan Order”).

6. Since entry of the Distribution Plan Order, I have diligently pursued reconciliation of thousands of investor claims<sup>1</sup>, including the filing of ten claim objection motions, which claims reconciliation process concluded in October 2020. As a result, there are 861 investors with allowed claims of \$110,467,889. During the past four years, concluding in May 2021, I completed three rounds of distributions to those investors with allowed claims, all in accordance with the terms of the Plan and the Distribution Plan Order. As previously publicly announced in the May 7, 2021 Investor Update on the Receiver's website at <https://www.mcginnsmithreceiver.com> ("Website"), the Third and Final Distribution of approximately \$4,108,475 was substantially completed in May 2021, prior to the date that the Motion was filed. By October 2020, I distributed approximately \$7,181,010 in the First Distribution, and by January 2021, I distributed approximately \$10,449,495 in the Second Distribution. Distributions to investors are now substantially complete but for reissuance of certain checks in *de minimis* amounts due to changed circumstances of individual investors, such as new addresses or deaths.

7. Now, with distributions substantially completed, I am winding up and preparing to close the Receivership estates, undertaken as described in the Receiver's Omnibus Motion for Approval of (I) Destruction of Files, Recycling of Computers and Other Wind-Up Activities, (II) Continuation of Receivership to Accomplish Foregoing, and (III) Termination of the Receivership and Discharge of the Receiver filed on July 24, 2020 (Docket No. 1133), and as approved by an Order of the Court entered on November 11, 2020 (Docket No. 1165) ("Wind Up Order").

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<sup>1</sup> Many of the defrauded investors held multiple claims.

8. Each development and update in the claims reconciliation and distribution process, including the commencement and conclusion of each of the three rounds of investor distributions, was announced publicly on the Website, the established means of communication between the Receiver and the investors and other parties in interest. I also filed on the docket of the above-captioned case (“Case”) claims distribution schedules listing payments to be made to investors in accordance with the terms of the Plan and the Distribution Plan Order, as well as regular written status reports. See Investor Update - May 12, 2021: Payment Schedules of Third and Final Investor Distributions, and Update - May 7, 2021: The Receiver’s Fifth Written Status Report Has Been Filed.

9. I estimate that, once all investor distribution checks are cleared, and after payment of operating expenses and professional fees, approximately \$225,000 will remain in the Receivership accounts to pay administrative costs, including any potential tax liabilities, to complete the wind-up of the Receivership, as approved by the Wind-Up Order. Under the Plan, all excess, undistributed funds will be transferred to the United States Treasury. *See* Plan Art. X.

10. The investors in MS & Co. will recover approximately 23.84% of their original investments. Many of these investors are elderly and lost significant amounts of money due to David Smith’s fraud.

11. In August 2020, I exchanged emails with David Smith regarding his change of address. Copies of those emails are attached to this Declaration as Exhibit A.

12. Retrieving the distributed funds at this stage would be virtually impossible, as approximately \$21,738,980 has been distributed to more than 861 investors over the course of the three rounds of investor distributions. Even if possible, which as a practical matter is unlikely given the relatively small amounts distributed to the majority of investors,

some of whom are now deceased, such a task would be extremely onerous and costly not only for the Receivership, but for the innocent investors who would be forced to return what they have recovered under the terms of the Plan and the Distribution Plan Order and who would be forced to bear the costs of the Receivership to complete such a process.

Dated: June 24, 2021

By           /s/ William J. Brown            
                  William J. Brown

Doc #9746816.5

# *Exhibit A*



**Karen M. Ludlow**

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**From:** William J. Brown  
**Sent:** Friday, June 4, 2021 8:22 AM  
**To:** Catherine N. Eisenhut  
**Subject:** FW: New address

-----Original Message-----

From: David Smith <davidsmith2307@gmail.com>  
Sent: Friday, August 7, 2020 3:54 PM  
To: William J. Brown <WBrown@phillipslytle.com>  
Subject: New address

External Email: Use Caution.

Bill,  
I understand from Lauren Owens that you are seeking my new address for the purpose of mailing some tax information. It follows: One 10 Harris, Apt. 314, Basalt, Co. 81621. Hope all is well.

Sincerely,  
Dave Smith

Sent from my iPhone

**Karen M. Ludlow**

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**From:** William J. Brown  
**Sent:** Friday, June 4, 2021 8:21 AM  
**To:** Catherine N. Eisenhut  
**Subject:** FW: new address

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**From:** David Smith  
**Sent:** Tuesday, August 11, 2020 12:31 PM  
**To:** William J. Brown  
**Subject:** new address

**External Email:** Use Caution.

Bill,

Last week I sent you my new address, but I was a bit premature as I have yet to notify the Post Office of the change. I plan to do that today, but if you are sending any mail in the next week or so it is better to send it to the following address, which is my daughter's and where I have been residing for the last three months: David L. Smith, 24 Pine Ridge Rd., Basalt, CO 81621. Sorry for the mistake.

Regards,  
Dave Smith

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SECURITIES AND EXCHANGE COMMISSION :

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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, Karen M. Ludlow, being at all times over 18 years of age, hereby certify that on June 24, 2021, a true and correct copy of the Response of William J. Brown, as Receiver, in Opposition to David L. Smith’s Rule 60(b) Motion together with the Declaration of William J. Brown in support thereof (“Response”) 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, and by First Class Mail to the parties indicated below:

- **William J. Brown** wbrown@phillipslytle.com,khatch@phillipslytle.com
- **Roland M. Cavalier**, rcavalier@oalaw.com
- **Certain McGinn Smith Investors**apark@weirpartners.com
- **Elizabeth C. Coombe** elizabeth.c.coombe@usdoj.gov, paul.condon@usdoj.gov, CaseView.ECF@usdoj.gov,kelly.ciccarelli@usdoj.gov
- **William J. Dreyer** wdreyer@dreyerboyajian.com, bhill@dreyerboyajian.com, lowens@dreyerboyajian.com,coconnell@dreyerboyajian.com
- **Scott J. Ely** sely@elylawpllc.com,shm@fwc-law.com

- **James D. Featherstonhaugh** jdf@fwc-law.com,jsm@fwc-law.com,cr@fwc-law.com,shm@fwc-law.com
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- **Bonnie R. Golub** bgolub@weirpartners.com
- **James E. Hacker** jhacker@joneshacker.com, sfebus@joneshacker.com, thiggs@joneshacker.com
- **Erin K. Higgins** EHiggins@ckrpf.com
- **Benjamin W. Hill** bhill@dreyerboyajian.com, cjoy@dreyerboyajian.com, coconnell@dreyerboyajian.com
- **E. Stewart Jones ,** resjones@joneshacker.com, mleonard@joneshacker.com, pcampione@joneshacker.com,kjones@joneshacker.com
- **Edward T. Kang** ekang@khflaw.com, mlagoumis@khflaw.com, jarcher@khflaw.com, jpark@khflaw.com,golberding@KHFlaw.com
- **Jack Kaufman** kaufmanja@sec.gov
- **Michael A. Kornstein** mkornstein@coopererving.com
- **James P. Lagios** jlagios@icrh.com
- **Kevin Laurilliard** laurilliard@mltw.com,chandler@mltw.com
- **James D. Linnan** jdlinnan@linnan-fallon.com,lawinfo@linnan-fallon.com
- **Haimavathi V. Marlier** marlierh@sec.gov
- **Jonathan S. McCardle** jsm@fwc-law.com
- **Kevin P. McGrath** mcgrathk@sec.gov
- **Lara S. Mehraban** mehrabanl@sec.gov,marlierh@sec.gov
- **Michael J. Murphy** mmurphy@carterconboy.com, abell@carterconboy.com, tcozzy@carterconboy.com
- **Joshua M. Newville** newvillej@sec.gov
- **Craig H. Norman** cnorman@chnesq.com,jbugos@coopererving.com
- **Andrew Park** apark@weirpartners.com,imarciniszyn@weirpartners.com
- **Thomas E. Peisch** TPeisch@ckrpf.com,apower@ckrpf.com
- **Terri L. Reicher** Terri.Reicher@finra.org
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And, I hereby certify that on June 24, 2021, I caused to be mailed, via first class mail using the United States Postal Service, a copy of the Response to the individuals listed below:

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