

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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**NOTICE OF EIGHTH INTERIM APPLICATION OF  
CHIAMPOU TRAVIS BESAW & KERSHNER LLP  
FOR APPROVAL OF FEES**

PLEASE TAKE NOTICE that upon the Eighth Interim Application of Chiam pou

Travis Besaw & Kershner LLP (“Chiam pou”) for Approval of Fees (“Application”), Phillips

Lytle LLP as counsel to William J. Brown, Receiver, on behalf of the Application of Chianpou will move before the Hon. Christian F. Hummel, United States Magistrate Judge, United States District Court for the Northern District of New York, James T. Foley U.S. Courthouse, 445 Broadway, Room 441, Albany, New York 12207, on **September 20, 2018 at 9:30 a.m.**, seeking an Order approving the Application of Chianpou for interim compensation and reimbursement of expenses in connection with accounting, tax and consulting services performed for William J. Brown, as Receiver for the McGinn Smith Entities in this action. No oral argument is requested.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the relief requested in the Application must be made in writing in accordance with the Federal Rules of Civil Procedure and the Local Rules for the United States District Court for the Northern District of New York.

Dated: Buffalo, New York  
August 3, 2018

PHILLIPS LYTLE LLP

By /s/ William J. Brown  
William J. Brown (Bar Roll #601330)  
Catherine N. Eisenhut (Bar Roll #520849)  
Attorneys for Receiver  
Omni Plaza  
30 South Pearl Street  
Albany, New York 12207  
Telephone No. (518) 472-1224

and

One Canalside  
125 Main Street  
Buffalo, New York 14203  
Telephone No.: (716) 847-8400

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Trust U/A 8/04/04,

*Intervenor.*

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**EIGHTH INTERIM APPLICATION OF CHIAMPOU TRAVIS BESAW  
& KERSHNER LLP FOR APPROVAL OF FEES**

Chiampou Travis Besaw & Kershner LLP (“Chiampou”), accountants for William J. Brown, as Receiver, submits this application (“Application”) for an order approving interim fees pursuant to Section XIV of this Court’s Preliminary Injunction Order (Docket No. 96) for the 8-month period from April 19, 2017 through December 31, 2017 (“Application Period”). In support of this Application, Chiampou respectfully represents:

1. The Securities and Exchange Commission (“SEC”) commenced an action against McGinn Smith & Co., Inc., et al. in the United States District Court for the Northern District of New York on April 20, 2010 wherein William J. Brown, Esq. was appointed as

temporary Receiver for certain of the defendants and other entities in the action (“Receiver”) (Docket No. 5). The SEC’s Complaint was subsequently amended (Docket No. 100), and the Preliminary Injunction Order was entered on July 22, 2010 appointing William J. Brown as the permanent Receiver.

2. Prior to the Petition Date, Chiampou did not provide accounting or tax services to McGinn Smith. Chiampou was selected by the Receiver following due diligence and interviews with several accounting and tax preparation firms.

3. Based on Chiampou’s expertise and the Declaration of Stephen R. Brady dated August 3, 2018, a copy of which is attached to this Application as **Exhibit A**, Chiampou was retained by the Receiver to provide primarily tax but also some minimal accounting and consulting services on behalf of the Receiver.

4. Specifically, Chiampou was retained to prepare the necessary tax and information returns needed to be filed by the Receivership which included not only pre-receivership periods for which no returns had been filed but also all post-Receivership periods.

5. Chiampou commenced its post-petition services to the Receiver in May 2010 in connection with advice on accounting and bank account procedures and thereafter has worked to analyze the trust entities and their termination from a tax perspective throughout the Application Period.

6. All services for which compensation is sought herein were rendered by Chiampou to the Receiver solely in connection with this action and not on behalf of the creditors, individual equity holders or other person.

7. Prior to the filing of this Application, Chiampou made first, second, third, fourth, fifth, sixth and seventh interim applications for compensation and expense reimbursement for professional services provided in conjunction with services provided to the Receiver in the above referenced action. Orders were entered on May 16, 2011 approving the first interim fee application of Chiampou in the amount of \$56,949.02, on December 27, 2011 approving the

second interim fee application of Chiampou in the amount of \$29,885.37, on August 22, 2012 approving the third interim fee application of Chiampou in the amount of \$57,339.23, on October 2, 2013 approving the fourth interim fee application of Chiampou in the amount of \$70,351.23, on January 5, 2016 approving the fifth interim fee application of Chiampou in the amount of \$109,947.90, on November 28, 2016 approving the sixth interim fee application of Chiampou in the amount of \$16,828.39, and on September 21, 2017 approving the seventh interim fee application of Chiampou in the amount of \$16,086.03.

8. During the Application Period, Chiampou received no payment or promises for payment from any source for services rendered or to be rendered in any capacity whatsoever in connection with this action, and there is no agreement or understanding between Chiampou and any other person, other than members of the firm, for the sharing of compensation to be received for services rendered in this action.

9. Chiampou performed its responsibilities in a cost-effective manner commensurate with providing the high quality professional advice required by the Receiver.

10. Chiampou's professional fees and expenses are broken down into monthly invoices summarized as follows and which are set forth by day, professional, and task as evidenced in attached **Exhibit B**.

<u><i>Invoice #</i></u>	<u><i>Invoice Date</i></u>	<u><i>Period Covered</i></u>	<u><i>Amount</i></u>
10407196	5/2/2018	4/19-17 - 12/31/17	\$ 541.20
<b>TOTAL</b>			<b><u>\$ 541.20</u></b>

11. Chiampou maintains records of the time expended by person as well as the actual out-of-pocket expenses incurred. Chiampou prepared and rendered this fee application describing activities performed by day by professional.

12. Upon Chiampou's knowledge and belief, the compensation sought for approval herein is commensurate with the customary compensation charged by comparably skilled accountants . The hourly fees charged to clients are dependent upon the experience of the individuals assigned to the engagement.

13. The amounts requested by Chiampou are fair and reasonable given:  
(a) the complexity of the matters; (b) the actual time expended; (c) the nature and extent of services rendered; and (d) the value of such services.

14. Chiampou believes this request for compensation is justified given the complexity of this case and the commensurate value of Chiampou's professional fees for the Application Period. Phillips Lytle has provided the SEC with a copy of this Application.

15. Chiampou accordingly makes this Application to the Court for compensation.

#### **NOTICE**

16. Notice of this Fee Application is being served on the SEC and all parties who have filed a Notice of Appearance in this action. Additionally, it has been posted on the Receiver's website ([www.mcginnsmithreceiver.com](http://www.mcginnsmithreceiver.com)) for all investors and creditors to see. The Receiver submits that no other or further notice need be given.

WHEREFORE, Chianpou respectfully requests compensation of \$541.20 for fees during the Application Period, and for such other and further relief as is proper.

Dated: August 3, 2018

CHIAMPOU TRAVIS BESAW & KERSHNER LLP

By /s/ Stephen R. Brady  
Stephen R. Brady  
45 Bryant Woods North  
Amherst, New York 14228  
Telephone No. (716) 630-2400

Dated: August 3, 2018

PHILLIPS LYTLE LLP

By /s/ William J. Brown  
William J. Brown (Bar Roll #601330)  
Catherine N. Eisenhut (Bar Roll #520849)  
Attorneys for Receiver  
Omni Plaza  
30 South Pearl Street  
Albany, New York 12207  
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and

One Canalside  
125 Main Street  
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Telephone No.: (716) 847-8400

Doc #01-3119286.1

# ***Exhibit A***



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LAUREN T. SMITH, and NANCY MCGINN, :

*Defendants,* :

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Trust U/A 8/04/04, :

*Intervenor.* :

-----X

**DECLARATION OF STEPHEN R. BRADY IN SUPPORT OF EIGHTH INTERIM  
APPLICATION OF CHIAMPOU TRAVIS BESAW & KERSHNER LLP  
FOR ALLOWANCE OF COMPENSATION**

Pursuant to 28 U.S.C. § 1746, Stephen R. Brady declares, under penalty of  
perjury, as follows:

1. I am a partner with the accounting and consulting firm of Chiampou Travis Besaw & Kershner LLP (“Chiampou”).

2. I make this declaration in support of the Eighth Interim Application of Chiampou for Allowance of Compensation (“Application”) in connection with Chiampou’s services for the Receiver in this action.

3. I have reviewed the Application and, to the best of my knowledge, information and belief, the facts set forth therein are true and correct.

4. The billing rates being charged by Chiampou in connection with the Application are those which were customarily charged by Chiampou during the time periods in question and are comparable to those charged by other firms of comparable size and experience in this geographic area for the prosecution of matters similar to this action.

5. The compensation and reimbursement of expenses (“Interim Compensation”) for which allowance is sought by Chiampou is reasonable and is sought for actual and necessary services rendered by Chiampou, together with actual and necessary expenses advanced by Chiampou, on behalf of the Receivership entities.

6. The Interim Compensation sought by Chiampou is based upon the nature, the extent and the value of the services rendered. These matters are detailed more particularly in the time itemizations attached to the Application as Exhibit B.

7. Chiampou believes it is entitled to Interim Compensation based on the considerable expenditures of Chiampou’s resources incurred since the onset of its engagement.

8. Chianpou has no agreement with any other person or entity for the sharing of compensation to be received for accounting or other services rendered in this action, except as such compensation may be shared by and among the accountants and consultants of Chianpou.

9. Chianpou respectfully requests that this Court authorize the allowance of the Interim Compensation sought pursuant to the Application in the amount of \$541.20.

Dated: August 3, 2018

/s/ Stephen R. Brady  
Stephen R. Brady

Doc #01-3119290.1

# ***Exhibit B***

WPB



**McGinn Smith & Co., Inc.**

Attn: Mr. William J. Brown  
c/o Phillips Lytle LLP  
One Canalside  
125 Main Street  
Buffalo, NY 14203

Invoice No. 10407196  
Date 5/2/2018  
Client No. 7148.0

**Invoice**

1031768 Business Tax Dec 2017

For professional services rendered from April 19, 2017 through  
December 31, 2017 per detailed attachment

541.20

**BALANCE DUE**

**\$541.20**

Payable when rendered. Make checks payable to Champou Travis Besaw & Kershner LLP.

Please include invoice number on all correspondence and checks.

45 Bryant Woods North | Amherst, NY 14228 | Phone 716.630.2400 | Fax 716.630.2401 | ctbk.com

Tax Identification number 16-1468002

Thank you

**McGinn Smith et al 4/19/17 - 12/31/17**

<u>Entity</u>	<u>Total Hours</u>	<u>Total Amount</u>
TDM Verifier Trust 07	2.40	672.00
Alarm Trading, LLC	0.05	4.50

INVOICE SUBTOTAL	<u>676.50</u>
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DISCOUNT - 20%	<u>(135.30)</u>
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INVOICE TOTAL	<u><u>541.20</u></u>
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See detailed time description per attached WIP Detail

## McGinn Smith - WIP Detail 4/19/17 - 12/31/17

Description	Hours	Billing Price	Billing Price Total
<b>TDM Verifier Trust 07</b>			
Brady, Stephen: 12/28/2017; research, telephone conversation with Brian Shea to review 2008 through 2016 Forms 1041. Research 108(a)(1)(B) at Trust or Beneficiary Level. Telephone conversation with Brian Shea regarding research. Additional research regarding non-grantor trust code section 108 impact and respond to email group regarding same.	2.40	280.00	672.00
<b>TMD Verifier Trust 07 Total</b>	<u><b>2.40</b></u>		<u><b>672.00</b></u>
<b>Alarm Trading, LLC</b>			
Burke, Kathryn: 10/31/17; preparation, roll forward Form 1099 dates in template for preparation of required Form 1099 reporting for calendar year 2017	0.05	90.00	4.50
<b>Alarm Trading, LLC Total</b>	<u><b>0.05</b></u>		<u><b>4.50</b></u>
<b>INVOICE SUBTOTAL</b>			<u><b>676.50</b></u>
<b>DISCOUNT - 20%</b>			<u><b>(135.30)</b></u>
<b>INVOICE TOTAL</b>			<u><u><b>541.20</b></u></u>

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Trust U/A 8/04/04, :

*Intervenor.* :

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**ORDER APPROVING EIGHTH INTERIM APPLICATION  
OF CHIAMPOU TRAVIS BESAW & KERSHNER LLP  
FOR APPROVAL OF FEES**

Upon the Application of Chiampou Travis Besaw & Kershner LLP (“Chiampou”) for Approval of the Eighth Interim Application for Fees dated August 3, 2018 (“Application”) for an order approving accountant’s fees and expenses; and notice of the Application having been given to the Securities and Exchange Commission and all parties who have filed a Notice of



Appearance in this action and other parties in interest via the Receiver's website, which notice is deemed good and sufficient notice; and the Court having determined that sufficient cause exists; it is therefore

ORDERED, that the Application is approved such that compensation for services rendered between April 19, 2017 and December 31, 2017 in the amount of \$541.20 is allowed as an interim allowance, and it is further

ORDERED, that the Receiver is authorized and directed to pay the amounts as allowed pursuant to this Order.

Dated: \_\_\_\_\_, 2018

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Hon. Christian F. Hummel  
United States Magistrate Judge

Doc #01-3119285.1

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-----X  
**CERTIFICATE OF SERVICE**

I, Karen M. Ludlow, being at all times over 18 years of age, hereby certify that on August 3, 2018, a true and correct copy of the Eighth Interim Application of Chaiampou Travis Besaw & Kershner LLP for Approval of Fees (“Chaiampou Seventh Fee Application”) 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
- **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, jsn@fwc-law.com, cr@fwc-law.com, shm@fwc-law.com

- **Brad M. Gallagher** bgallagher@barclaydamon.com
- **James H. Glavin** , IVhglavin@glavinandglavin.com
- **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
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- **Andrew Park** apark@weirpartners.com, imarciniszyn@weirpartners.com
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- **Terri L. Reicher** Terri.Reicher@finra.org
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- **Sheldon L. Solow** sheldon.solow@kayescholer.com, kenneth.anderson@kayescholer.com
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- **Charles C. Swanekamp** cswanekamp@bsk.com, mhepple@bsk.com
- **Walter Weir** ww@weirpartners.com, smorris@weirpartners.com
- **Bryan M. Westhoff** bryan.westhoff@kayescholer.com
- **Benjamin Zelsermyer** bzlaw@optonline.net, steincav@aol.com

And, I hereby certify that on August 3, 2018, I mailed, via first class mail using the United States Postal Service, a copy of the Chiampou Eighth Fee Application to the individuals listed below:

Nancy McGinn  
426-8th Avenue  
Troy, NY 12182

Thomas J Urbelis  
Urbelis & Fieldsteel, LLP  
155 Federal Street  
Boston, MA 02110-1727

Michael L. Koenig, Esq.  
Greenberg Traurig, LLP  
54 State Street, 6th Floor  
Albany, NY 12207

Charles C. Swanekamp, Esq.  
Bond, Schoeneck & King PLLC  
Avant Building - Suite 900  
200 Delaware Avenue  
Buffalo, NY 14202-2107

Iseman, Cunningham, Riester & Hyde, LLP  
9 Thurlow Terrace  
Albany, NY 12203

Martin H. Kaplan, Esq.  
Gusrae, Kaplan, Bruno & Nusbaum PLLC  
120 Wall Street  
New York, NY 10005

RBS Citizen, N.A.  
Cooper Erving & Savage LLP  
39 North Pearl Street  
4th Floor  
Albany, NY 12207

David G. Newcomb  
Judith A. Newcomb  
224 Independence Way  
Mount Bethel, PA 18343

Dated: August 3, 2018

Doc #01-3058793.1

/s/ Karen M. Ludlow  
Karen M. Ludlow