

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----X
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.

**NOTICE OF TWELFTH INTERIM
APPLICATION OF PHILLIPS LYTLE LLP AND THE
RECEIVER FOR ALLOWANCE OF COMPENSATION
AND REIMBURSEMENT OF EXPENSES**

PLEASE TAKE NOTICE that upon the Twelfth Interim Application of Phillips Lytle LLP and the Receiver for Allowance of Compensation and Reimbursement of Expenses (“Application”), Phillips Lytle LLP (“Phillips Lytle”) 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, Albany, New York 12207-2924, on **September 19, 2019 at 9:30 a.m.**, seeking an Order to be entered approving the

Application of Phillips Lytle and the Receiver for interim compensation and reimbursement of expenses for the six-month period from July 1, 2018 through December 31, 2018 in connection with legal services performed for William J. Brown, Esq., the Receiver for the McGinn Smith Entities and the services of the Receiver. No oral argument is requested.

PLEASE TAKE FURTHER NOTICE that attached is the cover sheet for the Application, indicating the nature and dates of the services rendered by Phillips Lytle and the Receiver, as well as the total amount sought by Phillips Lytle and the Receiver for interim compensation and reimbursement of expenses. The complete Application of Phillips Lytle is filed with the United States District Court and will be available for review electronically at the Office of the Clerk, United States District Court, Northern District of New York, James T. Foley - U.S. Courthouse, 445 Broadway, Room 509, Albany, New York 12207-2924 or online, at the Court's website (www.nynd.uscourts.gov), or at the website of the Receiver (www.mcginnsmithreceiver.com). Copies can also be obtained upon written request to Phillips Lytle.

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: August 6, 2019

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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Defendants, :

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Relief Defendants. and :

GEOFFREY R. SMITH, Trustee of the :
David L. and Lynn A. Smith Irrevocable :
Trust U/A 8/04/04, :

Intervenor. :

**FACE SHEET PURSUANT TO LOCAL RULE 2016-1
FOR TWELFTH INTERIM APPLICATION BY ATTORNEYS
FOR RECEIVER AND THE RECEIVER FOR ALLOWANCE OF
COMPENSATION AND REIMBURSEMENT OF EXPENSES**

APPLICANT'S NAME: Phillips Lytle LLP and William J. Brown, as
Receiver

APPLICANT'S ADDRESS: Omni Plaza
30 South Pearl Street
Albany, New York 12207

DATE APPLICANT APPOINTED: April 20, 2010

NATURE OF SERVICES RENDERED: Legal services rendered for William J. Brown, Receiver, with respect to McGinn, Smith & Co., Inc., et al. and for Receiver services and expenses for the period from July 1, 2018 through December 31, 2018

AMOUNT OF COMPENSATION SOUGHT FOR FEES FROM JULY 1, 2018 THROUGH DECEMBER 31, 2018 \$57,225.30 (including Phillips Lytle and Receiver's fees at pre-arranged discounted hourly rates) at 7.5% for Phillips Lytle and \$225 rather than \$500.00 per hour for the Receiver

AMOUNT OF COMPENSATION SOUGHT FOR EXPENSES FROM JULY 1, 2018 THROUGH DECEMBER 31, 2018 \$586.02

Dated: August 6, 2019

PHILLIPS LYTLE LLP

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

and

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LAUREN T. SMITH, and NANCY MCGINN,

Defendants,

LYNN A. SMITH and
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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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**TWELFTH INTERIM APPLICATION OF PHILLIPS LYTLE LLP
AND THE RECEIVER FOR ALLOWANCE OF
COMPENSATION AND REIMBURSEMENT OF EXPENSES**

Phillips Lytle LLP (“Phillips Lytle”) submits this application (“Fee Application”) for allowance of interim compensation and reimbursement of expenses for the six-month period from July 1, 2018 through December 31, 2018 pursuant to Section XIV of this Court’s Preliminary Injunction Order (Docket No. 96). Attached as **Exhibit A** is the Declaration of William J. Brown, Esq. in support of the Fee Application. Phillips Lytle respectfully represents as follows:

INTRODUCTION

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 on August 3, 2011 and Docket No. 334 on June 8, 2011), and the Preliminary Injunction Order was entered on July 22, 2010 appointing William J. Brown as the permanent Receiver.

2. During the period from July 1, 2018 to December 31, 2018 (“Twelfth Interim Period”), Phillips Lytle performed extensive legal services for the Receiver, and the Receiver performed extensive non-legal or quasi-legal functions, which are each more particularly described below and itemized in the detailed time and disbursement records attached as **Exhibit B**.

3. As a public service discount, the legal fees incurred in this case are being performed with a current 7.5% discount on the hourly rates of Phillips Lytle pursuant to a prior agreement with the SEC. Similarly, the Receiver’s hourly rate for this engagement is \$225 per hour rather than his 2018 hourly rate of \$500 per hour, again per prior agreement with the SEC.

4. As a result, legal services at full value in this Twelfth Interim Period total \$55,176.00, while the amount to be paid less the 7.5% discount if this Application is approved is \$51,037.80. The Receiver’s services at full value of \$500 per hour in this Twelfth Interim Period total \$13,615.00, while the amount to be paid if this Application is granted are \$6,187.50 at \$225 per hour. This makes the total amount sought pursuant to this Application to be \$57,225.30 in fees and \$586.02 in disbursements.

CASE STATUS

5. As of July 25, 2019, there is \$15,126,642 on hand in Receiver accounts, with approximately \$6,578,150.28 having been distributed to investors with allowed claims through the Forty-Sixth Payment Schedule of Investor Distributions (not all checks having cleared). The process of issuing first distribution checks representing 10% of allowed claim amounts to investors is continuing as investors provide missing information or signed documents as requested by the Receiver. First through Seventh motions to expunge duplicate paper claims and otherwise objectionable claims have also been filed. All post-Receiver obligations are current and paid on a current basis other than the amounts sought in professional fee applications. The monies on account in the Receiver's accounts are unencumbered. When this estate was commenced in April 2010, there was \$485,491.63 on hand.

6. Currently, the investor and creditor claims bar date and the equity claims bar dates have passed following the successful administration of claims notice procedures. Judgments in favor of the SEC in its action against David L. Smith, Lynn Smith, the Smith Trust, Geoffrey Smith, Lauren Smith and Timothy McGinn were entered in June and July 2015. The Second Circuit upheld those judgments in a decision on April 18, 2016.

7. There are approximately \$124,123,595 in investor claims, some of which have been or will be subject to objection or various grounds. If the objections are sustained, net claims appear to be in the range of \$100,506,405 subject to final Court approval. At present, it appears likely that relatively small additional collections to further increase investor recoveries are possible, although they remain subject to negotiations and serious contingencies.

8. A Plan of Distribution was filed on December 30, 2015 (Docket No. 847), and a Memorandum-Decision and Order approving the Plan of Distribution was entered on October 31, 2016 (Docket No. 904).

9. The SEC's Standard Fund Accounting Reports are attached to this Application as **Exhibit C**.

SUMMARY OF ACTIVITIES DURING TWELFTH INTERIM PERIOD

10. While the legal, non-legal and quasi-legal functions and services performed during the Twelfth Interim Period are described in greater detail below and in the detailed time and disbursement records attached as Exhibit B, this executive summary is provided to highlight some of the activities and accomplishments during this period.

11. From a cash perspective, the beginning balance of the Receiver's accounts as of June 29, 2019 totaled \$15,304,128, and at the end of the period (December 28, 2018), the balance was \$15,068,802. The successful sales of various businesses previously operated by the Receiver took place in prior periods. Interest income contributed to the maintenance of account values and to pay operating expenses of the Receivership in this period. Account balance differences are due primarily to investor distributions.

12. On February 15, 2018, the Receiver filed the Second Motion Disallowing Paper Claims (Docket No. 974). This Motion was successfully resolved by Order dated April 13, 2018 (Docket No. 990).

13. On March 19, 2018, the Receiver filed a Third Motion to Disallow Certain Claims (Broker Claims) (Docket No. 984). The Motion was opposed by one broker. A decision is awaited.

14. During the Application Period, the Receiver filed three Distribution Payment Schedules as reflected on the Docket of the Court, and paid those Scheduled amounts to investors.

15. First distribution checks are being issued to investors, or IRA custodians on behalf of investors. The checks represent 10% of allowed claim amounts, and that process is continuing as investors provide additional missing information or signed documents as requested by the Receiver. As stated previously on the Receiver's website (www.mcginnsmithreceiver.com), it is estimated that total distributions to investors with allowed claims will range between approximately 13.5 to 21.7 percent.

16. Beginning with the Twentieth Payment Schedule of First Investor Distributions (Docket No. 968), Investors who received collateral recoveries had their claim files reviewed for eligibility for first distribution payments, and collateral recovery investors began receiving first distribution checks.

17. Oral argument was held on August 15, 2017 in the appeal of the SEC's administrative action against certain former McGinn Smith brokers. As reported in the Fourth Written Status Report of the Receiver filed on October 12, 2018, the broker decision needed to be retried pursuant to the U.S. Supreme Court's decision in Lucia v. Securities and Exchange Commission. In December 2018, the Commission accepted the brokers' offers of settlement which, among other things, resulted in over \$286,591 being paid to the Receiver for the benefit of defrauded investors.

18. As is true in all periods, the Receiver continued to deal with various day-to-day issues involving the operation of the estate, the review, calculation and allowance of

investor claims, responding to numerous investor claims and questions, and the collection of remaining assets.

COMPENSATION FOR LEGAL SERVICES

19. The legal services rendered by Phillips Lytle during the Twelfth Interim Period have been categorized into twenty-two (23) separate categories (Categories A through W), as described below:

A. Asset Analysis and Recovery

No services were charged to or rendered by Phillips Lytle in Category A during the Twelfth Interim Period.

B. Claims Administration and Objections

Category B relates to numerous and continuous communications with multiple investors respecting issues involving their specific claims; preparation and causing mailing of investor letters, Investor Questionnaires and W-9 forms to investors; receipt and cataloging of returned Investor Questionnaire packets; ongoing review of received Investor Questionnaires for approval process; extensive research regarding basis to object to investor claims and procedure therefor; preparation and filing of the Fortieth through Forty-Second Payment Schedules of First Investor Distribution, some of which were for Collateral Recovery Investors, attend to mailing of first investor distribution checks to investors, and attend to ongoing review and updating of McGinn Smith Receiver's website.

In rendering the services in Category B, the following attorneys and paralegals at Phillips Lytle expended the time represented below at the hourly rates represented below for a total value of \$37,010.00, plus \$286.94 in disbursement expense:

<u>ATTORNEY</u>	<u>HOURS</u>	<u>RATE</u>	<u>TOTAL</u>
William J. Brown	25.00	492.80	12,320.00
Kevin J. English	0.20	415.00	83.00
Catherine N. Eisenhut	115.40	208.17	24,023.00
Karen A. Kawczynski (P)	0.20	165.00	33.00
Jason J. Schroeder (P)	2.90	190.00	551.00

C. Asset Disposition

Category C relates to efforts in conjunction with the SEC relating to e-mails and telephone conferences in connection with the sale of the Smith Saratoga home.

In rendering the services in Category C, the following attorneys and paralegals at Phillips Lytle expended the time represented below at the hourly rates represented below for a total value of \$4,328.00, and no disbursement expense:

<u>ATTORNEY</u>	<u>HOURS</u>	<u>RATE</u>	<u>TOTAL</u>
William J. Brown	8.20	497.07	4,076.00
Pamela C. Kepfer	1.40	180.00	252.00

D. Business Operations

No services were charged to or rendered by Phillips Lytle in Category D during the Twelfth Interim Period.

E. Case Administration

Category E is a “catch all” category consisting of services performed by Phillips Lytle in connection with this action and primarily consists of services performed which do not fit within one of the other 22 specific categories.

During this time period, this category consists of essentially all of the day-to-day work for the Receiver and his professionals and the handling of the legal affairs of the 82 entities which were initially placed into Receivership by this Court’s Preliminary Injunction Order (Docket No. 96). The detailed descriptions attached include communications and

correspondence regarding dealing with various business issues arising in the ordinary course of business, matters relating to financial statement and insurance issues, various legal inquiries and questions raised by the SEC concerning the Receivership and SFAR reports; dealing with insurance issues and questions; research regarding Plan objections; preparation, revisions to and filing of Receiver’s Fourth Written Report, communications with M&T Bank, KeyBank, Kinderhook Bank regarding existing accounts; extensive communications with investors on legal questions, and continued review and updating of McGinn Smith Receiver website; review of returned Investor Questionnaires; preparation of Payment Schedules and review, approval and distribution of distribution checks to investors.

In rendering the services in Category E, the following attorneys and paralegals at Phillips Lytle expended the time represented below at the hourly rates represented below for a total value of \$6,213.00, and \$6.00 in disbursement expense:

<u>ATTORNEY</u>	<u>HOURS</u>	<u>RATE</u>	<u>TOTAL</u>
William J. Brown	12.50	497.04	6,213.00

F. Employee Benefits/Pensions

Category F relates to the 401K plan of David Smith and conferences and communications with the SEC and David Smith with regard to required minimum distribution and the forms associated therewith.

In rendering the services in Category F, the following attorneys and paralegals at Phillips Lytle expended the time represented below at the hourly rates represented below for a total value of \$1,994.00, and no disbursement expense:

<u>ATTORNEY</u>	<u>HOURS</u>	<u>RATE</u>	<u>TOTAL</u>
William J. Brown	3.90	500.00	1,950.00
David H. Kernan	0.10	440.00	44.00

G. Fee/Employment Applications

No reimbursement is sought at this time for services charged to or rendered by Phillips Lytle in Category G during the Twelfth Interim Period.

H. Fee/Employment Objections

No services were charged to or rendered by Phillips Lytle in Category H during the Twelfth Interim Period.

I. Accounting/Auditing

No services were charged to or rendered by Phillips Lytle in Category I during the Twelfth Interim Period.

J. Business Analysis

No services were charged to or rendered by Phillips Lytle in Category J during the Twelfth Interim Period.

K. Corporate Finance

No services were charged to or rendered by Phillips Lytle in Category K during the Twelfth Interim Period.

L. Data Analysis

No services were charged to or rendered by Phillips Lytle in Category L during the Twelfth Interim Period.

M. Status Reports

No services were charged to or rendered by Phillips Lytle in Category M during the Twelfth Interim Period.

N. Litigation Consulting

No services were charged to or rendered by Phillips Lytle in Category N during the Twelfth Interim Period.

O. Forensic Accounting

No services were charged to or rendered by Phillips Lytle in Category O during the Twelfth Interim Period.

P. Tax Issues

Category P consists of services related to conversations in connection with tax issues related to Plan distributions, tax return preparation and certain financial statement issues; communications and conferences regarding trust tax issues and review and signing of trust tax returns; conferences and communications regarding the issuance of K-1's; Seton Hall tax returns; and a substantial amount of time in this category relates to the review and approval of a significant number of IRS and New York State tax returns, various other tax forms and dealing with tax and financial professionals on tax issues.

In rendering the services in Category P, the following attorneys and paralegals at Phillips Lytle expended the time represented below at the hourly rates represented below for a total value of \$5,298.00, and \$293.08 in disbursement expense:

<u>ATTORNEY</u>	<u>HOURS</u>	<u>RATE</u>	<u>TOTAL</u>
William J. Brown	10.60	493.68	5,233.00
Kelly E. Marks	0.20	325.00	65.00

Q. Valuation

No services were charged to or rendered by Phillips Lytle in Category Q during the Twelfth Interim Period.

R. William J. Brown, as Receiver Function

Category R consists of services related to the function of William J. Brown, as Receiver in his capacity as Receiver. These services, per prior agreement with the SEC, are rendered at \$225 per hour. Thus, while the accrued amount would otherwise be \$13,615.00, the discounted amount to be paid is \$6,187.50. All of the Receiver's travel time is charged to this category and, thus, is at a substantially reduced rate. Travel time is also charged at one-half of the total time travelled unless work associated with these estates is being conducted at that time.

The daily time entries reveal the Receiver's almost daily involvement with the various Receiver entities identified in the various descriptions including for this Application Period almost daily communications with investors to answer questions about assets recovered, the claims process, asset distributions to creditors, weekly review, processing and approval of payments to vendors and other third parties for services rendered to Receiver operating companies, review and authorization of payroll, review of communications from investors and SEC regarding various and ongoing matters, review of bank statements and accounts, review and deal with NFS statements and Dinosaur Securities statements; maintenance of website and updating of same, review of National Life Insurance annual reports, dealings with and review of statements from M&T Bank, KeyBank and Five Star Bank in connection with the Receivership estate account maintenance, the review of checks and invoices for payment on a weekly basis for those various operating businesses, conferences with third parties regarding claims and related issues, review and deal with Mass Mutual statements, attend to weekly review of payroll requests and substantiation for same, numerous investor communications both by phone, in writing and e-mail, attending to various investor letters.

In rendering the services in Category R, the Receiver expended the time represented below at the hourly rates represented below for a total value of \$13,615.00, and no disbursement expense:

<u>ATTORNEY</u>	<u>HOURS</u>	<u>RATE</u>	<u>TOTAL</u>
William J. Brown	27.50	495.09	\$13,615.00 (to be billed and paid at \$6,187.50)

S. SEC vs. McGinn, Smith & Co., Inc., et al.

Category S consists of services related to legal involvement in the SEC's action against McGinn, Smith & Co., Inc. and other parties including review of pleadings, communications from and to the SEC in connection with Receiver Declaration regarding losses in four funds.

In rendering the services in Category S, the following attorneys and paralegals at Phillips Lytle expended the time represented below at the hourly rates represented below for a total value of \$333.00, and no disbursement expense:

<u>ATTORNEY</u>	<u>HOURS</u>	<u>RATE</u>	<u>TOTAL</u>
William J. Brown	0.60	498.33	299.00
Karen Kawczynski (P)	0.20	170.00	34.00

T. W.J. Brown, as Receiver of McGinn Smith & Co., Inc. vs. Thomas E. Livingston

No services were charged to or rendered by Phillips Lytle in Category T during the Twelfth Interim Period.

U. Sale of McGinn Niskayuna Property

No services were charged to or rendered by Phillips Lytle in Category U during the Twelfth Interim Period.

V. Sale of Smith Vero Beach Property

No services were charged to or rendered by Phillips Lytle in Category V during the Twelfth Interim Period.

W. David L. & Lynn A. Smith Irrevocable Trust

No services were charged to or rendered by Phillips Lytle in Category W during the Twelfth Interim Period.

X. USA vs. McGinn, Smith & Co. Inc.

No services were charged to or rendered by Phillips Lytle in Category X during the Twelfth Interim Period.

Y. William J. Brown, as Receiver for Third Albany Income Notes, LLC vs. David Kennedy and Stephen I. Willis

No services were charged to or rendered by Phillips Lytle in Category Y during the Twelfth Interim Period.

REIMBURSEMENT OF EXPENSES

20. Photocopies made by Phillips Lytle are billed by Phillips Lytle at \$.10 per page, which is based upon Phillips Lytle's costs. Telefax charges are \$1.00 per page for outgoing documents, with no charge for incoming documents. Long distance telephone charges and overnight courier charges are billed at cost. Overnight courier charges are incurred only when necessary as determined by either the Receiver or Phillips Lytle. In addition, there are the usual disbursements of such items as long distance telephone charges, duplicating charges, and UPS charges for checks received and sent to Receivership businesses.

21. Phillips Lytle incurred out-of-pocket expenses for secretarial overtime in connection with this case. These amounts have been written off and no claim for reimbursement of such expenses is being sought herein.

PARTICULAR EXPENDITURES

22. During the Twelfth Interim Period, there were no substantial charges to report.

CONCLUSION

23. All of the services for which Phillips Lytle now seeks compensation were performed on behalf of the Receiver. No services were performed by Phillips Lytle in any capacity other than as counsel to the Receiver.

24. Phillips Lytle has provided the SEC with copies of Phillips Lytle's and the Receiver's billing statements attached as **Exhibit B**. Following its pre-filing review of this Fee Application, the SEC has notified Phillips Lytle and the Receiver the SEC has no objection to the amounts sought by Phillips Lytle or the Receiver pursuant to this Fee Application.

25. As the record in this action clearly indicates, Phillips Lytle has worked persistently and efficiently during the Twelfth Interim Period to handle various issues for the Receiver, the resolution of which will, to varying degrees, enhance the fair and equitable distribution of the McGinn Smith Entities' proceeds to its creditors. This action has mandated a considerable expenditure of Phillips Lytle resources.

26. Based upon the foregoing, Phillips Lytle and the Receiver represent that they are entitled to the interim compensation and reimbursement of expenses sought herein.

27. Phillips Lytle and the Receiver believe that this Fee Application substantially complies with the substantive requirements of the guidelines for fee applications adopted by the SEC.

NOTICE

28. 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*) for all investors and creditors to see.

Phillips Lytle and the Receiver submit that no other or further notice need be given.

WHEREFORE, Phillips Lytle and the Receiver respectfully request that this Court enter an order allowing and approving Phillips Lytle's and the Receiver's Application for (i) interim compensation in the amount of \$57,225.30, and reimbursement of expenses in the amount of \$586.02, for a total of \$57,811.32 for the period of July 1, 2018 through December 31, 2018; and (ii) granting such other and further relief as is just and proper.

Dated: August 6, 2019

PHILLIPS LYTLE LLP

By /s/ William J. Brown

William J. Brown (Bar Roll #601330)

Catherine N. Eisenhut (Bar Roll #520849)

Attorneys for the 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

Doc #01-3634129.1

Exhibit A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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LAUREN T. SMITH, and NANCY McGINN, :

Defendants, :

LYNN A. SMITH and :
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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 IN SUPPORT OF TWELFTH INTERIM
APPLICATION OF PHILLIPS LYTLE LLP AND THE RECEIVER FOR ALLOWANCE
OF COMPENSATION AND REIMBURSEMENT OF EXPENSES**

Pursuant to 28 U.S.C. §1746, William J. Brown declares, under penalty of perjury,

as follows:

1. I am a partner with the law firm of Phillips Lytle LLP (“Phillips Lytle”) and am also the Receiver (“Receiver”) appointed in this action for certain of the Defendants and other entities.

2. I make this declaration in support of the Twelfth Interim Application of Phillips Lytle and of the Receiver for Allowance of Compensation and Reimbursement of Expenses (“Application”) in connection with Phillips Lytle’s representation of the Receiver in this Case and the Receiver’s services.

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 Phillips Lytle in connection with the Application are those which were customarily charged by Phillips Lytle 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. Pursuant to prior agreement, in my capacity as Receiver, I agreed to charge an hourly rate of \$225 rather than my 2018 hourly rate of \$500.

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

6. The Interim Compensation sought by Phillips Lytle and the Receiver 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. Phillips Lytle and the Receiver believe they are entitled to Interim Compensation based on the considerable expenditures of Phillips Lytle and Receiver resources incurred since the onset of this action.

8. Phillips Lytle and the Receiver have no agreement directly or indirectly and no understanding exists with any other person or entity for the sharing of compensation to be received for legal or other services rendered in this action, except as such compensation may be shared by and among the attorneys of Phillips Lytle.

Phillips Lytle and the Receiver respectfully request that this Court authorize the allowance of the Interim Compensation sought pursuant to the Application.

Dated: August 6, 2019

/s/ William J. Brown
William J. Brown

Doc #01-3634196.1

Exhibit B

CATEGORY B

CLAIMS ADMINISTRATION AND OBJECTIONS



Phillips Lytle LLP

Attorneys at Law
 One Canalside
 125 Main Street
 Buffalo, NY 14203-2887
 Telecopier # (716) 852-6100
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 FED I.D. #16-0505790

William J. Brown, Esq.
 Phillips Lytle LLP
 One Canalside
 125 Main Street
 Buffalo, NY 14203

Invoice Number 984226
 Invoice Date 08/06/19
 Client Number 33474
 Matter Number 00001
 W J Brown

Re: CLAIMS ADMINISTRATION & OBJECTIONS

FOR PROFESSIONAL SERVICES RENDERED THROUGH DECEMBER 31, 2018:

<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
07/03/18	WJB	Telephone call from E Finlan re estate of E Halsey amount and need for administration	0.1
07/05/18	WJB	Continue work on revisions to Fisher and preferred investor motion and related documents	0.9
07/06/18	WJB	Review and revise near final versions of Motion, Declaration and proposed Order regarding preferred investors including Fisher claim objections	1.6
07/06/18	WJB	Review and authorize filing of preferred investor	0.3
07/06/18	WJB	Review files for name and identity of Fisher family attorney who previously contacted receiver; Prepare email to Brad Gallagher at Barclay Damon with courtesy copy of preferred investor claim objection motion	0.4
07/06/18	WJB	Conference CNE re revisions to claim objection motion and briefing	0.2

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
07/06/18	WJB	Prepare e-mail D Stoelting, K McGrath at SEC with preferred investor claim objection motion and rationale for same	0.2
07/06/18	CNE	[Fishers] Finalize and prepare memorandum of law, motion, declaration and related documents for filing	3.2
07/13/18	WJB	Prepare letter to B Kogan re claim status, forthcoming objection to claims and rationale for same	0.2
07/13/18	WJB	Revise letter to B Kogan re status of claim and objection	0.2
07/19/18	WJB	Telephone call from B Gallagher at Barclay Damon re preferential investor claims objection, explanation of claim numbers and organization of motion and relief sought	0.3
07/19/18	WJB	Review letter from B Gallagher re authorization to release claim numbers; Prepare e-mail CNE to follow-up on same	0.2
07/19/18	CNE	Redact schedules for investor's counsel and email same	0.5
07/24/18	WJB	Review e-mail from Barclay Damon re Fourth Claim Objection, new client authorizations and request list identifying clients; Prepare e-mail re same and conference CNE re same	0.2
07/24/18	WJB	Conference CNE re dealing with Barclay Damon questions re Fourth Claim Objection	0.1
07/24/18	WJB	Telephone call from B Gallagher at Barclay Damon re request for extension of time to respond to Fourth Claims Objection; Conference CNE to organizing timing and propose response dates subject to Court approval	0.2
07/24/18	CNE	[Fishers] Review redacted schedules for Fisher attorney; Email same to Fisher attorney; Consider scheduling issues; Confer with WJB regarding scheduling and potential adjournment	0.9
07/25/18	WJB	Prepare reply to B Gallagher re request for providing pleadings on behalf of Palazzo interests and suggestion that he file Notice of Appearance in case	0.1

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
07/25/18	WJB	Conference CNE re B Gallagher at Barclay Damon and providing website claims access and prepare e-mail on claims explanation	0.2
07/25/18	CNE	[Fishers] Respond to email from Fisher counsel	0.5
07/26/18	WJB	Review e-mail and letter from Fisher's for duplicate password and conference CNE re issuing same	0.1
07/26/18	WJB	Fisher: Conference CNE re supplying dates as requested by Fisher attorney in claims objection	0.1
07/26/18	K-K	Docket deadline to respond to motion to disallow preferred investor claims	0.2
07/26/18	CNE	[Fishers] Work on response to Fisher counsel question on motion	1.5
07/27/18	WJB	Review Fisher accounting information received from CNE; Prepare reply re removing no date information from certain payments, consider same	0.5
07/27/18	WJB	Review B Gallagher e-mail for Fisher accounting and further questions re claims objection	0.2
07/27/18	WJB	Fisher: Prepare e-mail CNE on how to respond to B Fisher inquiry concerning no date payments and involvement of B Shea to obtain information re same	0.1
07/27/18	WJB	Review e-mail from CNE to B Shea requesting further investigation on certain Fisher payments as stated in claims objection	0.1
07/27/18	CNE	[Fishers] Prepare accounting for Fisher counsel	1.3
07/29/18	WJB	Prepare e-mail B Shea expanding on why additional Fisher due diligence and information is necessary in order to anticipate defenses to be raised by Fishers	0.2

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
07/30/18	WJB	Fisher: Conference CNE re how to respond and review of data requested by Fisher attorney	0.3
07/30/18	CNE	[Fishers] Confer with WJB regarding response to Fisher counsel; Work on preparing accounting of Fisher preferential payments for Fisher counsel	1.1
07/31/18	WJB	Review claims of M DeLuca and family following her call to inquire and prepare letter re Twenty-Sixth Payment Schedule, collateral recovery calculation to respond to questions	0.3
07/31/18	CNE	[Fishers] Prepare accounting requested by Fisher counsel; Email accounting to Fisher counsel	0.3
08/01/18	CNE	[Fisher] Review correspondence from Fisher counsel	0.1
08/02/18	WJB	Review and respond to CNE re B Gallagher, Esq. call	0.2
08/02/18	CNE	Respond to questions from Fisher counsel regarding preferential payments	0.4
08/03/18	WJB	Fishers: Conference CNE re dealing with 11:30 a.m. call with B Gallagher, Esq.	0.1
08/03/18	WJB	Prepare e-mail to B Shea re basis of knowledge re Fisher conduct in connection with claims objection	0.1
08/03/18	WJB	Telephone call from B Shea re Fisher conduct in connection with preferential payments, participation in meeting with Fishers, proving dates of payments including conference CNE re missing dates to be provided by B Shea re certain payments	1.4
08/03/18	CNE	[Fishers] Call with Fisher counsel regarding questions on preferential payments analysis; Confer with WJB and B Shea regarding same; Review emails pulled by B Shea	1.4
08/09/18	WJB	Telephone call from B Gallagher with additional questions on how certain claims alleged to be preferential were calculated; Prepare heads-up e-mail to B Shea to anticipate additional written questions	0.2

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
08/09/18	WJB	Prepare e-mail B Shea with B Gallagher further questions re preferential payments and consider approach re same	0.2
08/09/18	WJB	Review B Gallagher request for extension of further time for Fishers to reply to claim objection, assess same, nature of pending questions and prepare reply re Receiver's historical response to answers, timing and agreement to provide one final adjournment re same	0.5
08/10/18	WJB	Review 2008 accounting for McGinn Smith Transaction Funding for J Fisher payments received from B Shea	0.1
08/13/18	WJB	Conference CNE re reconciliation of B Gallaher assertions re motion	0.1
08/13/18	CNE	[Fishers] Review preferential payments records, spreadsheets to prepare response to Fishers' counsel inquiries; Confer with B Shea regarding back-up for preferential payments	6.7
08/14/18	WJB	Fishers: Conference CNE re dates and information to support responses to B Gallagher	0.2
08/14/18	WJB	Fishers: Review CNE draft reply with information requested by B Gallaher on behalf of Fishers and revise same	0.4
08/14/18	WJB	Fishers: Prepare further revisions to reply to B Gallagher concerning data assembly to respond to his questions concerning Fourth Claims Objection Motion and conference CNE re same	0.5
08/14/18	WJB	Fishers: Conference CNE re follow-up on Receiver directions on how to respond to B Gallagher	0.1
08/14/18	CNE	[Fishers] Call with B Shea re reconciling Fisher claims in response to Fisher attorney inquiries; Review investment records regarding same	0.9
08/15/18	CNE	[Fishers] Prepare response to Fisher attorney questions regarding motion; Emails with B Shea regarding same	3.1

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
08/16/18	WJB	Conference with CNE re dealing with form of responses to Fishers' attorney and course of action re same	0.2
08/16/18	CNE	[Fishers] Review B Shea response regarding claim question; Consider alternatives for treatment of claim; Confer with WJB regarding same; Review MS investment records	1.5
08/17/18	WJB	Fisher: Review B Shea reply re \$310,000 claim and whether accrued interest should be deducted consistent with other claims	0.2
08/17/18	CNE	[Fishers] Review filed objection to motion to disallow preferential payments	0.5
08/18/18	WJB	Review e-mail from B Shea on searching e-mail database for purposes of responding to Fisher objection	0.1
08/19/18	CNE	[Fishers] Prepare accounts list for B Shea	1.0
08/20/18	WJB	Conference with CNE re further discussion of assembly of evidence as demanded by Fishers in objection in preparation for drafting of Reply	0.2
08/20/18	CNE	[Fishers] Review past account statements and MSTF 2008 binder for evidence in support of claims motion	7.7
08/21/18	WJB	Conference CNE re result of Fisher e-mail search in preparation of Fisher response, next steps and deciding what missing information to use; Review SEC e-mail re binders and ability to search SEC database; Prepare reply e-mail re what is needed	0.4
08/21/18	CNE	[Fishers] Review account statements for evidence of preferential payments; Prepare exhibit of account statements; Confer with B Shea regarding status; Email to SEC regarding retrieval of bank account materials; Draft reply to Fisher objection	9.1

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
08/22/18	WJB	Conference CNE to review evidence of checks made payable to Fishers concerning preferential payments and assessing whether all such evidence will be available and how to assemble and organize for response for filing with Court	0.3
08/22/18	CNE	[Fishers] Review historical accounting statements regarding support for preferential payments; Search historical emails for support for preferential payments; Confer with B Shea regarding same; Draft reply to Fisher objection	9.9
08/22/18	JJS3	Conference with CNE regarding search terms required for review of electronic items; Creating search term syntax and promoting results to reviewer mode in hosted database	1.4
08/23/18	WJB	Conference CNE re format and organization of reply to Fisher objection	0.2
08/23/18	WJB	Review and consider format of draft claims response to Fisher objection and consider how to deal with open points and newly found evidence and responding to allegations	0.5
08/23/18	CNE	[Fishers] Review accounting records regarding reply to Fisher objection; Draft reply; Draft schedules to reply; Search historical emails for additional supporting information; Call with B Shea regarding accounting records	10.6
08/23/18	JJS3	running search terms on loaded items in hosted review database and promoting results to attorney review team	0.7
08/24/18	WJB	Fishers: Conference CNE re how to file McGinn Smith brokerage statements relevant to responding to Fisher objection	0.2
08/24/18	WJB	Review and consider use of brokerage statements in reply to Fisher objection including conference with KJE re production alternatives, consider and prepare form of e-mail to Fisher attorney re same and conference CNE on how to notify Fisher attorney re intention to use brokerage statements	0.5
08/24/18	WJB	Prepare e-mail CNE re follow-up with SEC staff re missing statements	0.1

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
08/24/18	WJB	Fishers: Prepare comments to first draft of reply to Fisher claim objection	0.9
08/24/18	CNE	[Fishers] Review and revise draft reply; Draft WJB and CNE declarations; Update exhibits to Reply	8.5
08/24/18	JJS3	Running search and date filters on electronic data; Promoting data to review platform for CNE	0.8
08/25/18	WJB	Fishers: Review and revise Receiver and CNE Declarations in connection with Reply to Fisher Objection	0.2
08/25/18	WJB	Review Fisher Reply to Fourth Claims Objection as to no liability claims	0.1
08/25/18	CNE	[Fishers] Revise draft reply and draft WJB declaration; Draft CNE declaration; Review exhibits for accuracy	3.0
08/26/18	WJB	Fishers: Review and revise with comments to Receiver's Reply to Fisher Response objecting to Fourth Claims Objection Motion including review and revisions to Declarations of Receiver and CNE	1.2
08/26/18	WJB	Fishers: Make final revisions to Fourth Claims objection response and prepare e-mail CNE re comments	0.3
08/26/18	CNE	[Fishers] Review exhibits for accuracy; Revise exhibits	2.0
08/27/18	WJB	Fishers: Review final edits and exhibits to reply to Fisher objection to claims objection motion in preparation for filing	0.3
08/27/18	KJE	(McGinn Smith / Claim Objections) (8/24/18) Fisher's claim - Conference re need to redact information	0.2
08/27/18	CNE	[Fishers] Revise Reply and Declarations; Review and audit exhibits to Reply and Brown Declaration; Revise exhibits to Reply and Brown Declaration; Finalize Reply, Declarations and exhibits for filing; Coordinate filing	6.5

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
08/29/18	CNE	Review records and bank statements of Preferential Payments for Fifth Claims Motion	2.0
08/30/18	CNE	Review OCC, Burton Fisher preferential payments; Email to WJB regarding drafting questions	1.4
08/31/18	CNE	Work on draft OCC preferential payments motion	1.7
09/04/18	CNE	Work on draft OCC preferential payment motion	1.1
09/06/18	CNE	Confer with KML5 regarding claims reconciliation	0.1
09/07/18	CNE	Draft claims objection to OCC preferential payments	2.5
09/12/18	WJB	Review E Halsey claim file re voluntary administrator	0.2
09/24/18	WJB	Review A Rosen IRA check and review facts from Neuberger Berman with instructions and prepare letter A Rosen to confirm request to follow those instructions for reissuance of check	0.3
09/25/18	WJB	Review Claim 5853, compare to database and prepare letter to investor to complete IRA information on Investor Questionnaire	0.2
09/25/18	WJB	Telephone call from B Hallett re claim inquiry, investigation and return phone call re same	0.3
09/25/18	WJB	Prepare letters to R/B Hallett re inquiry re claim status	0.2
09/25/18	WJB	Telephone call from B Hallett re need for duplicate Investor Questionnaires and process same	0.1
09/26/18	WJB	Telephone call from N Klein for J Klein estate and discussion of small estate process and various other questions	0.2
09/28/18	WJB	Telephone call from L O'Brien, Esq. re potential transfer of W Lex claims to settle judgment, discussion of why Receiver precluded from doing so and Receiver objection to W Lex claims	0.3

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
10/01/18	WJB	Review returned Investor Questionnaire and W-9 for Claim No. 5858, process and approve	0.1
10/05/18	WJB	Review claim number 5858, check on clearing of prior check and authorize payment on claim	0.2
10/05/18	CNE	Work on draft One City Center motion to reduce distributions	2.3
10/08/18	WJB	Review letter from A Rosen re Neuberger check direction authorization and reissue check with directions	0.2
10/09/18	CNE	Revise draft motion to avoid preferential payments to OCC and prepare exhibits	1.9
10/10/18	CNE	Revise motion and related documents regarding preferential payments to One City Center	0.5
10/12/18	WJB	Review and revise draft Fifth Claims Objection Motion and Memorandum of Law and revise same, conference CNE re same	0.7
10/12/18	CNE	Revise draft memorandum of law and declaration regarding OCC preferential payments; Confer with WJB regarding same; Update exhibits in support of OCC preferential payments motion	1.1
10/14/18	CNE	Review and revise draft motion, memorandum of law and declaration regarding OCC preferential payments; Draft notice of motion	1.0
10/15/18	WJB	Review Fifth Claims Objection Motion	0.2
10/15/18	WJB	Prepare revisions to Fifth Claims Objection Motion and Memorandum of Law re same and finalize same	1.4
10/15/18	CNE	Prepare and finalize OCC preferential payment motion for filing	0.7
10/17/18	WJB	Telephone call from B Hallett re claim process status	0.1
10/18/18	CNE	Call with B Gallagher regarding OCC motion	0.1

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
10/23/18	CNE	Review and dispose of claims 5188-5192	0.1
11/06/18	WJB	Kogan: Review claims file and prepare letter re basis for objection to claim following up prior letter re same	0.5
11/07/18	WJB	Review and allow Claim Nos. 6063 and 6064 including collateral recovery calculation	0.1
11/08/18	WJB	Review and approve distribution schedules 40 and 41	0.1
11/13/18	WJB	Review, approve and distribute distribution checks 2677-2686	0.2
12/05/18	CNE	Review and dispose of claims 6045, 5796-5801	0.4
12/11/18	WJB	Review 42nd payment schedule and checks received in connection with claims 5596-5801 and 6045 and prepare e-mail B Shea confirming same	0.2
12/18/18	WJB	Review claim of J Schmitt and prepare reply to questions including on second distribution	0.2
12/21/18	WJB	Piaker: Review distribution status in light of deadline for filing of petition for writ of certiorari, issue instructions to process Piaker claims for January 29, 2019 and e-mail CNE re same	0.2
12/21/18	WJB	Prepare e-mail B Shea, CNE re SEC consent order on brokers and follow-up steps re broker claim objection	0.2
12/21/18	WJB	Telephone call from T Cotton CPA re investors M/A DeLuca, explain distribution process, IRA Services and collateral rule recovery	0.3
12/26/18	WJB	Brokers: Conference CNE re broker decision on stipulated agreement, grounds for claims objection in light of same and need for revised pleading and section 17 research	0.2

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
12/26/18	WJB	Review P Meijer e-mail re first distribution schedule, check schedule of checks sent and allowance of claim, prepare reply re payments to IRA	0.2
12/26/18	CNE	Review new SEC order regarding brokers; Research regarding securities law	3.3
12/27/18	WJB	Brokers: Conference CNE re case law re Section 17(a) of the Securities Law	0.1
12/27/18	CNE	Research regarding securities receiverships and Securities Act provisions; Draft supplement to broker claims motion	4.1
12/28/18	WJB	Brokers: Conference CNE re negligence standard in relation to subordination	0.1
12/28/18	WJB	Review settlement between brokers and SEC focusing on impact on prior broker claims objection motion, review prior claims objection motion and conference CNE re treatment of broker payments, applicable law re modified findings, analysis, risks and courses of action	1.5
12/28/18	CNE	Research regarding standards for disallowance and equitable subordination; Work on draft supplement to broker claims motion	4.9
12/31/18	CNE	Work on draft supplement to broker claims motion	4.0
		CURRENT FEES	\$37,010.00

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FOR COSTS ADVANCED AND EXPENSES INCURRED:

Postage WJB - Postage to Various (32 pieces) - Re: Claims	253.20
Postage CEisenut - Postage to Various (8 pieces) - Re: Claims	16.40
Postage CEisenhut - Postage to Nancy McGinn, Thomas J. Urbelis (Urbelis & Fieldsteel, LLP), Michael L. Koenig, Esq. (Greenberg Traurig, LLP), Martin H. Kaplan, Esq., David G. Newcomb and Judith A. Newcomb, RBS Citizen, N.A. (Cooper Erving & Savage LLP) and Iseman, Cunningham, Riester & Hyde, LLP - Re: Fifth Claims Motion	17.34
CURRENT EXPENSES	<hr/> 286.94
TOTAL AMOUNT OF THIS INVOICE	\$37,296.94

PAYMENT DUE UPON RECEIPT

CATEGORY C

ASSET DISPOSITION



Phillips Lytle LLP

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 (716) 847-8400
 FED I.D. #16-0505790

William J. Brown, Esq.
 Phillips Lytle LLP
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 125 Main Street
 Buffalo, NY 14203

Invoice Number 984227
 Invoice Date 08/06/19
 Client Number 33474
 Matter Number 00002
 W J Brown

Re: ASSET DISPOSITION

FOR PROFESSIONAL SERVICES RENDERED THROUGH DECEMBER 31, 2018:

<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
07/10/18	WJB	Revise e-mail to Asst. U.S. Attorney re sale of house and release of Justice Department restitution judgment to allow sale	0.3
07/10/18	WJB	Revise e-mail to Asst. U.S. Attorney re restitution judgment lien	0.1
08/13/18	WJB	Revise and send e-mail to Asst. U.S. Attorney re why restitution judgment should be released	0.2
08/15/18	WJB	Saratoga Residence: Exchange e-mails with Asst. U.S. Attorney on restitution judgment lien release	0.1
08/15/18	WJB	Prepare e-mail bank counsel re ability to list property given August 15 notification from U.S. Attorney's Office that restitution judgment will be released	0.1
08/15/18	WJB	Saratoga Residence: Prepare e-mail Asst. U.S. Attorney re release of judgment and directions on where to send same; Prepare e-mail bank lawyer re same	0.1

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
08/15/18	WJB	Saratoga Residence: Prepare e-mail M King, as realtor, re Listing Agreement and process of sale given developments with U.S. Attorney's Office	0.1
08/16/18	WJB	Saratoga Residence: Review e-mail from M King, as realtor, and prepare reply re Listing Agreement and timing of same	0.1
08/17/18	WJB	Saratoga Residence: Review release of judgment lien from US Attorney's office and prepare confirming e-mail confirming receipt	0.1
08/17/18	WJB	Saratoga Residence: Prepare e-mail to real estate broker for timing and dates for listing and showings	0.1
08/23/18	WJB	Saratoga Residence: Review e-mail with Listing Agreement and prepare reply to realtor re review of same	0.2
08/27/18	WJB	Saratoga Residence: Review and revise Listing Agreement, review and calculate proforma result; Prepare e-mail realtor re revised terms and conditions	0.4
08/28/18	WJB	Saratoga Residence: Prepare follow-up e-mail to M King, realtor, re agreement on Listing Agreement changes made by Receiver as to Saratoga residence	0.1
09/20/18	WJB	Saratoga Residence: Telephone call to realtor for Saratoga property regarding sales activity and prepare e-mail report to M Kornstein regarding sale status of Saratoga house	0.2
09/24/18	WJB	Prepare e-mail M King, as realtor, for open house report	0.1
09/24/18	WJB	Prepare e-mail to realtor re disappointing market results and next steps re efforts at sale	0.1
10/12/18	WJB	Prepare e-mail M King requesting regular status updates on sale efforts	0.1
10/16/18	WJB	Review M King report on showing and forward to SEC	0.1

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
10/30/18	WJB	Saratoga Residents: Review broker report on California buyer not pursuing contract and one other interested party; Prepare email regarding listing price	0.1
12/16/18	WJB	Saratoga Residence: Review contract of sale for Garry R. White with no financing contingency and compare against comparables and listing agreement, prepare e-mail M King to set up call to discuss same	0.4
12/16/18	WJB	Saratoga Residence: Telephone call from M King to discuss proposed contract of sale at length including review of comments by others visiting property, property conditions, buyer characteristics and status of other offers, communications with L Smith	0.5
12/17/18	WJB	Review two reports from M King regarding property and prep reply to reach out to L Smith regarding offer	0.1
12/17/18	WJB	Assess various expenses to Gary House for extended period if offer is not accepted, prepare calculations and forward to broker	0.4
12/17/18	WJB	Saratoga Residence: Prepare status report to M Kornstein, D Stoelting re sale of Saratoga residence status	0.1
12/17/18	WJB	Saratoga Residence: Telephone conference with G Smith re process for sale of Saratoga residence, values and course of action	0.2
12/18/18	WJB	Saratoga Residents: Prepare email G Smith regarding value, review comparable home analysis and forward to SEC	0.5
12/18/18	WJB	Saratoga Residents: Review email from D Stoelting regarding Receivers' authority to sell, prepare reply and prepare pro forma closing statement	0.4
12/18/18	WJB	Saratoga Residence: Prepare e-mail M King to confirm no other interest in house following other showings; Telephone call to G Smith	0.1

33474 Brown, William J. as Receiver of McGinn,
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00002 Asset Disposition
August 6, 2019

Invoice Number 984227

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
12/18/18	WJB	Saratoga Residence: Prepare e-mail G Smith re authority of Receiver based upon sale order	0.2
12/18/18	WJB	Saratoga Residence: Review G Smith rebuttal to Receiver's authority and price comparisons and valuation	0.3
12/18/18	WJB	Saratoga Residence: Prepare e-mail reply to G Smith re approach to sale	0.2
12/18/18	WJB	Saratoga Residence: Prepare e-mail reply to M King with instructions on counteroffer	0.1
12/19/18	WJB	Review email from G Smith requesting reset on communications and prepare reply regarding availability for conference call	0.1
12/19/18	WJB	Telephone conference with M King as Realtor re status of offer	0.1
12/19/18	WJB	Saratoga Residence: Extended telephone conference with M King, realtor, re offer, range of value, compare properties and prepare e-mail authorizing counteroffer	0.6
12/19/18	WJB	Saratoga Residence: Follow-up telephone call from M King re counteroffer and G Smith reaction to same; Prepare e-mail G Smith re Receiver's authority to make counteroffer and substantiation of same	0.5
12/19/18	WJB	Saratoga Residence: Review two e-mails from M King re offer to be reviewed with wife over Christmas holiday, review cash accounts	0.2
12/19/18	PCK	Review contract and obtain current tax information	0.5
12/20/18	WJB	Saratoga Residence: Review D Stoelting e-mail re G Smith and Court Order and prepare reply with "reset" e-mail from G Smith	0.2
12/20/18	WJB	Saratoga Residence: Telephone call from G Smith on procedures for dealing with offers made on house, value and agreed facts	0.3

33474 Brown, William J. as Receiver of McGinn,
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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
12/20/18	PCK	Prepare draft closing statement (2 Rollingbrook Drive); Froward same to WJB	0.9

CURRENT FEES \$4,328.00

TOTAL AMOUNT OF THIS INVOICE \$4,328.00

PAYMENT DUE UPON RECEIPT

CATEGORY E

CASE ADMINISTRATION



Phillips Lytle LLP

Attorneys at Law
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William J. Brown, Esq.
 Phillips Lytle LLP
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 125 Main Street
 Buffalo, NY 14203

Invoice Number 984228
 Invoice Date 08/06/19
 Client Number 33474
 Matter Number 00004
 W J Brown

Re: CASE ADMINISTRATION

FOR PROFESSIONAL SERVICES RENDERED THROUGH DECEMBER 31, 2018:

<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
07/02/18	WJB	Telephone call from D Stoleting re administrative law judge decision by Supreme Court and effect upon claims objection consequences	0.3
07/06/18	WJB	Prepare legal description for website regarding Motion to Object to Claims of preferred investors including Fishers	0.4
07/09/18	WJB	Review NYS Workers Compensation payroll report, analyze same and forward to B Shea for online completion	0.2
07/23/18	WJB	Allegretta: Review letter from State Supreme Court requesting status of McGinn Smith Receivership and Allegretta State Court action	0.1
07/24/18	WJB	Prepare and revise letter to NYS Supreme court re status of McGinn Smith Receivership and Allegretta lawsuit and fact that Allegrettas have not responded to resolution of claims objections	0.3

33474 Brown, William J. as Receiver of McGinn,
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00004 Case Administration
August 6, 2019

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
07/26/18	WJB	Telephone call from W O'Brien, Esq. on behalf of Dr. Weinar re victory in W Lex lawsuit and intent to levy upon any distributions to W Lex, discussion of claims objection	0.3
09/10/18	WJB	Review Piaker & Lyons Second Circuit decision dismissing action and e-mail SEC re same	0.4
09/10/18	WJB	Listen to Piaker & Lyons action oral argument before Second Circuit	0.4
09/12/18	WJB	Review J Burke e-mail on dismissal of Piaker litigation by Second Circuit and prepare reply re Receiver's position re same pending appeal	0.2
09/21/18	WJB	Telephone call to D Stoelting of SEC regarding course of action in broker lawsuit following Supreme Court decisions, ways to potentially resolve and discussions of impact upon receivership including prior settlement with Livingston	0.5
09/26/18	WJB	Review e-mail from B Bertoglio re e-mail to request address change; Review prior correspondence on same subject; Prepare re prior notification that address change requests must be in writing and containing all prior addresses	0.2
09/27/18	WJB	Telephone call from D Stoelting at SEC re potential settlement with brokers, terms of same, discussion of payment terms and how to effect same	0.4
10/05/18	WJB	Prepare Receiver's Fourth Written Status Report including review of prior activities and data and incorporate into report	0.8
10/10/18	WJB	Prepare revisions to Receiver's Fourth Written Report	0.4
10/10/18	WJB	Review motion calendar for filing date of next set of motions	0.1
10/12/18	WJB	Prepare revisions and additions to Receiver's Fourth Written Report including calculation of collateral recovery amounts	0.6
10/12/18	WJB	Work with staff on calculating collateral recovery amounts from distribution schedules and prepare exhibits to Receiver's Fourth Report, revise report and file same with court	1.2

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
10/12/18	WJB	Finalize and file Receiver's Fourth Written Report with Court	0.2
10/12/18	WJB	Prepare website descriptions for Fourth Written Report of Receiver and update on distribution status	0.2
10/23/18	WJB	Review John Hancock 401K letter re abandonment and authorize B Shea to execute same	0.3
10/31/18	WJB	Telephone Shoolon and Koplovits re Setan Hall Equity final tax return, timing and tax treatment and responses to same	0.3
10/31/18	WJB	Piakar: Review Second Circuit notice of dismissal of petition for rehearing and review docket	0.2
10/31/18	WJB	Telephone call from T Kalogerakis, Esq. of Kang Associates re timing on distributions to Piaker plaintiffs	0.1
11/02/18	WJB	Prepare e-mail T Kalogerakiss, Esq. at Kang Law Firm re collateral recoveries in Piaker matter	0.2
11/02/18	WJB	Revise e-mail Kang Law Firm re collateral recovery and Receiver procedures	0.2
11/05/18	WJB	Prepare description for website update describing Piaker & Lyons dismissal at Second Circuit and denial of hearing en banc for investors in Piaker action relating to collateral recoveries	0.4
11/05/18	WJB	Prepare revisions to website update re collateral recoveries relating to Piaker & Lyons action	0.3
11/07/18	WJB	Telephone call from J Burke on Order of Dismissal in Piaker case and discussion of allowing and reviewing collateral recovery claims following same	0.2
11/07/18	WJB	Review Piaker en banc decision, tickle appeal date and consider course of action	0.2

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
11/08/18	WJB	Telephone call from D Stoelting at SEC re claims objections, broker request for intervention, discuss same and review Chiappone objection in connection with settlement of broker case at SEC level	0.4
11/08/18	WJB	Review e-mail from D Stoelting re facts to confirm re status of Receivership in connection with SEC broker potential settlement	0.3
11/16/18	WJB	Telephone call from D Urbahn of IRA Services re processing of checks for IRA investments by McGinn Smith investors, notification requirement to close IRAs and Receiver position on right of investors to close IRAs and receive distribution	0.3
11/19/18	WJB	Prepare website update on appeal timing for Piaker & Lyons plaintiffs	0.1
11/20/18	WJB	Review Receiver website description update re appeal period for Piaker & Lyons plaintiffs	0.1
11/26/18	WJB	Review letter from M/M Morrison re role as plaintiffs in Piaker & Lyons and prepare reply letter re timing of distribution pending appeal deadline	0.2
11/28/18	WJB	Telephone call from G Esbino of IRA Services re ability to withdraw IRA's by McGinn investors and steps needed to accomplish same	0.3
11/28/18	WJB	Telephone call from J Bingham of IRA Services re follow-up on distributions to investors and needed information re valuation and discuss same	0.2
12/17/18	WJB	Telephone conference with District Court Chambers re pending docket nos. 984, 1009, 1023 and 1025 and search docket for same	0.2
12/19/18	WJB	Prepare and revise email to SEC re status of four pending motions before District Court	0.3

33474 Brown, William J. as Receiver of McGinn,
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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
12/21/18	WJB	Review status of broker proceeding and search for approval by Commission of settlement, locate same and review settlement agreement	0.4
12/26/18	WJB	Prepare e-mail B Shea re upcoming date concerning appeal period in Piaker action and intention to review all Piaker claims for potential first distribution following passing of appeal date	0.1

CURRENT FEES \$6,213.00

FOR COSTS ADVANCED AND EXPENSES INCURRED:

Duplicating A1, 58 Page(s)	5.80
Duplicating A1, 2 Page(s)	0.20
CURRENT EXPENSES	6.00

TOTAL AMOUNT OF THIS INVOICE \$6,219.00

PAYMENT DUE UPON RECEIPT

CATEGORY F

EMPLOYEE BENEFITS/PENSIONS



Phillips Lytle LLP

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William J. Brown, Esq.
 Phillips Lytle LLP
 One Canalside
 125 Main Street
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Invoice Number 984229
 Invoice Date 08/06/19
 Client Number 33474
 Matter Number 00005
 W J Brown

Re: EMPLOYEE BENEFITS / PENSIONS

FOR PROFESSIONAL SERVICES RENDERED THROUGH DECEMBER 31, 2018:

<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
12/20/18	WJB	Review required minimum distribution for D Smith from McGinn Smith 401K Plan and message to SEC re same	0.2
12/21/18	WJB	Review 2019 disclosure for McGinn Smith Incentive Savings Plan and send to D Smith and T McGinn as required	0.2
12/21/18	WJB	Prepare e-mail A Allen at pension administrator re required minimum distribution questions for D Smith	0.1
12/21/18	WJB	Review Pension Works answer re authority to sign for D Smith, role as Plan administrator, telephone call to D Stoelting at SEC re same	0.2
12/21/18	WJB	Conference with DHK re discussion of D Smith required minimum distribution and forms for same in relation to ERISA law	0.1
12/21/18	WJB	Review form and prepare draft letter D Smith re required minimum distribution	0.2

33474 Brown, William J. as Receiver of McGinn,
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00005 Employee Benefits / Pensions
August 6, 2019

Invoice Number 984229

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
12/21/18	WJB	Telephone call from D Stoelting at SEC re December 2010 decision at Docket No. 221 re D Smith and 401K Plan	0.2
12/21/18	WJB	Telephone call from D Stoelting re follow-up on assertion of claim against D Smith required minimum distribution, legal analysis re same	0.4
12/21/18	WJB	Review letter from SEC re D Smith required minimum distribution and Receiver's role in collecting for investors, review cited case law re same	0.5
12/21/18	DHK	Office conference re payment of required minimum distributions	0.1
12/26/18	WJB	Review letter from SEC re judgment versus D Smith and request for turnover of required minimum distribution funds to satisfy judgment and payment to investors	0.2
12/27/18	WJB	Review letter from SEC re D Smith required minimum distribution and disgorgement judgment, prepare letter to D Smith re Receiver's intention to effect required minimum distribution and providing opportunity to assert objection	0.6
12/27/18	WJB	Revise letter D Smith re required minimum distribution and Receiver's intention, review case law re same and issue letter	0.8
12/28/18	WJB	D Smith: Prepare e-mails B Shea and SEC for D Smith birth date for required minimum distribution forms, review and complete forms	0.2
		CURRENT FEES	\$1,994.00
		TOTAL AMOUNT OF THIS INVOICE	\$1,994.00

PAYMENT DUE UPON RECEIPT

CATEGORY P

TAX ISSUES



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Invoice Number 984230
 Invoice Date 08/06/19
 Client Number 33474
 Matter Number 00015
 W J Brown

Re: TAX ISSUES

FOR PROFESSIONAL SERVICES RENDERED THROUGH DECEMBER 31, 2018:

<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
07/06/18	WJB	Review letter from Dept of Taxation and Finance re status report request and prepare reply letter	0.2
07/20/18	WJB	Prepare letter B Shea re PrimeVision IRS letters and approach re assessment	0.2
07/24/18	WJB	Review three additional IRS letters re PrimeVision tax returns and prepare e-mail B Shea re same	0.1
08/02/18	WJB	Review B Shea draft IRS letter for use with PrimeVision IRS letters	0.1
08/02/18	WJB	Prepare multiple letters to IRS concerning penalty for late filing of partnership returns seeking remission based upon equitable factors due to Receivership, including telephone conference with KEM re appeal process	0.8
08/02/18	KEM	Teleconference with WJB re abatement request	0.1

33474 Brown, William J. as Receiver of McGinn,
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00015 Tax Issues
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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
08/03/18	WJB	Work on preparation of 16 letters to IRS requesting abatement of penalties assessed against PrimeVision tax returns filed in partnership basis, finalize and send by certified mail to IRS	2.2
08/06/18	WJB	Telephone conference with R Lankes at Chiampou to discuss PrimeVision partnership return penalty letter	0.1
08/08/18	WJB	Re-send Shoma K-1's to Shoma	0.1
08/22/18	WJB	Review, sign and file 20 federal tax returns for 2008-2012 for PrimeVision Communications of Cutler Cay, LLC, PrimeVision Facilities of Cutler Cay, LLC, PrimeVision Facilities of Keys Cove, LLC, and PrimeVision Communications of Keys Cove, LLC	1.4
08/28/18	WJB	PrimeVision: Review sixteen IRS letters; Telephone call to K Martin, IRS Agent, re pending request to abate penalty and Section 504(b) notices and advice to ignore same for approximately 60 days; Prepare Memo to File re same	0.6
09/25/18	WJB	Review B Shea e-mail for trust termination dates for tax return preparation, locate same and forward to B Shea	0.2
09/26/18	WJB	Review B Shea e-mail report recommending preparation of additional final tax returns and review 2018 prior analysis on same subject; Prepare e-mail to Chiampou Travis with Receiver recommendations	0.3
09/26/18	WJB	Review W-3 and W-2's for 2015 received from SurePayroll and e-mail confirming filing of same with social security; Prepare letter to IRS Agent D Wisniewski enclosing W-2's in order to provide abatement of penalty	0.3
09/26/18	KEM	Email with WJB and B Shea re tax returns for terminated trusts	0.1
09/27/18	WJB	Review and finalize two abatement request letters to IRS agent	0.1
10/03/18	WJB	Review Chiampou e-mail on 2018 final tax returns and prepare reply authorizing Chiampou to proceed	0.1

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
10/03/18	WJB	Review B Shea e-mail with Seton Hall letter re final tax returns and preliminary review of same	0.1
10/03/18	WJB	Review Chiampou e-mail with filing dates for terminated trusts and reply with instructions on proceeding re preparation of returns in order to meet filing dates	0.2
10/03/18	WJB	Review and revise letter to Seton Hall investors re final tax returns	0.1
10/04/18	WJB	Prepare e-mail B Shea re PrimeVision and identification of Leon Stevens	0.1
10/05/18	WJB	Revise tax letter to Seton Hall equity investors re final tax returns and forward to B Shea for distribution	0.3
10/05/18	WJB	Prepare final revisions to Seton Hall equity holder tax letter and send to B Shea for distribution	0.1
10/17/18	WJB	Review notices from IRS re five PrimeVision entities concerning Section 6698(a)(1) penalty letters	0.3
10/17/18	WJB	Prepare e-mail R Lankes at Chiampou re professional services	0.1
10/22/18	WJB	Prepare e-mail R Lakes at Chiampou re Chiampou portal	0.1
10/24/18	WJB	Review completed letters to limited partners re final tax return process of Seton Hall and attend to distribution of same	0.2
11/12/18	WJB	Review Chiampou Travis e-mails on finalization of Integrated Excellence Jr. Trust 08 final return, TDM Verifier Trust 09, Integrated Excellence Sr. Trust 08, Fortress Trust 08	0.2
11/12/18	WJB	Prepare reply e-mail B Shea re additional entities for final tax return eligibility	0.1
11/15/18	WJB	Review, approve and file Integrated Excellence Jr. Trust 08 2018 final NYS and IRS tax returns	0.4

33474 Brown, William J. as Receiver of McGinn,
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00015 Tax Issues
August 6, 2019

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
11/15/18	WJB	Review, approve and file Integrated Excellence Sr. Trust 08 2018 final NYS and IRS tax returns	0.3
11/15/18	WJB	Review accountant's invoices for preparation of taxes, approve and pay same and prepare letter N Harris for final 2018 tax preparation	0.1
11/28/18	WJB	Review Chiampou fee bill for period 1/1/18 - 9/30/18 and forward to B Shea for review	0.2
12/19/18	WJB	Reply to B Shea re 2008 TDM Cable Funding LLC potential penalty and interest	0.1
12/20/18	WJB	Review files and background history re question of whether there was any change in ownership of TDM Cable Funding in order to report to accountants in preparation of tax returns re same; Prepare e-mail Chiampou Travis, B Shea re same	0.5
12/21/18	WJB	Telephone call to B Shea to discuss Mr. Rogers' ownership of TDM Cable for purposes of tax return filing	0.2
12/21/18	WJB	Prepare e-mail Chiampou Travis on no change in TDM ownership for purposes of completion of tax returns	0.1
CURRENT FEES			\$5,298.00

FOR COSTS ADVANCED AND EXPENSES INCURRED:

Duplicating A1, 1552 Page(s)	155.20
Postage WJB - Postage to Internal Revenue Service (16 envelopes @ \$6.58 each) - Re: Tax Issues	105.28
Postage WJB - Postage to Various (20 pieces) - Re: Taxes	32.60

CURRENT EXPENSES	293.08
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TOTAL AMOUNT OF THIS INVOICE	\$5,591.08
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PAYMENT DUE UPON RECEIPT

CATEGORY R

WILLIAM J. BROWN, AS RECEIVER FUNCTION



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Invoice Number 984231
 Invoice Date 08/06/19
 Client Number 33474
 Matter Number 00017
 W J Brown

Re: W.J. BROWN, AS RECEIVER FUNCTION

FOR PROFESSIONAL SERVICES RENDERED THROUGH DECEMBER 31, 2018:

<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
07/02/18	WJB	Review, approve and forward payroll to B Shea	0.1
07/02/18	WJB	Review e-mail from J Zuchlewski at M&T Bank with table of selected investments for investment; Prepare e-mail confirming placement of investment	0.3
07/02/18	WJB	Review Distribution Account statement and forward to B Shea for posting and reconciliation	0.1
07/02/18	WJB	Review M&T treasury purchase confirmation and forward to B Shea for verification	0.1
07/02/18	WJB	Telephone call from Kelly and Morgan Stanley re Dr. G Palmer claim and need for possible small claims administration process	0.2
07/02/18	WJB	Review Chiampou accounting statement fees	0.1
07/03/18	WJB	Review Five Star business checking statement and forward to B Shea for reconciliation and posting	0.1

33474 Brown, William J. as Receiver of McGinn,
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00017 W.J. Brown, as Receiver Function
August 6, 2019

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
07/05/18	WJB	Review Five Star \$1 million receipt for investment and forward to B Shea for posting and reconciliation	0.1
07/06/18	WJB	Review Chiampou fee invoices and status of fees	0.2
07/06/18	WJB	Review KeyBank statement and forward to B Shea for reconciliation and posting	0.1
07/06/18	WJB	Review Dept of Commerce survey and consider legal requirements and prepare e-mail B Shea re same; Review NFS statements, M&T MS Holdings statement and M&T Alarm Traders statement and forward all to B Shea	0.2
07/09/18	WJB	Review M&T Securities confirmation for investment and for treasury bills and forward to B Shea for reconciliation and posting	0.1
07/09/18	WJB	Review Five Star CDARS statement and forward to B Shea for reconciliation and posting	0.1
07/09/18	WJB	Review Kinderhook Bank business money market tiered savings account statement and forward to B Shea for reconciliation and posting	0.1
07/09/18	WJB	Review Kinderhook Bank checking account statement and forward to B Shea for reconciliation and posting	0.1
07/10/18	WJB	Review e-mails from J Markowitz re HControl request concerning PrimeVision	0.1
07/12/18	WJB	Review M&T Bank account analysis statement and forward to B Shea	0.1
07/13/18	WJB	Review Five Star Bank statement concerning CDARS and forward to B Shea for reconciliation and posting	0.1
07/13/18	WJB	Telephone call from B Kogan re status of claims and discussion of objection to follow including review of database and listening to her concerns concerning claims and investments	0.3

33474 Brown, William J. as Receiver of McGinn,
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00017 W.J. Brown, as Receiver Function
August 6, 2019

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
07/13/18	WJB	Review Five Star Bank statement with potential wrong rate information and telephone conference F Hornung re same	0.2
07/13/18	WJB	Send notice of new CDARS account information to B Shea	0.1
07/13/18	WJB	Prepare email F Horning re potential rate mistake on new CDARS investment	0.1
07/16/18	WJB	Review and approve payroll and forward to B Shea	0.1
07/16/18	WJB	Review returned PrimeVision K-1 to F Silva at Shoma and determine why returned and resend with modified address	0.1
07/16/18	WJB	Review M&T distribution account statement; Prepare e-mail E Donnelly at M&T re reason for e-mailed statements in order to close books timely	0.2
07/20/18	WJB	Review Gufstafson family letter to District Court	0.1
07/23/18	WJB	Review T McGinn National Life invoice for life insurance policy and forward to B Shea	0.1
07/24/18	WJB	Review John Hancock statement and forward to B Shea	0.1
07/25/18	WJB	Telephone call from M DeLuca with multiple questions concerning distribution process, collateral recovery, credits and discussion of payment schedule	0.3
07/25/18	WJB	Prepare notes on call with M DeLuca concerning explanation of claims treatment	0.1
07/25/18	WJB	Work on calculations to prepare letter to M DeLuca re claims	0.2
08/01/18	WJB	Review payroll, approve and prepare e-mail B Shea re same	0.1
08/01/18	WJB	Review e-mail from B Gallagher re no website accessible and follow-up with IT re same	0.1
08/01/18	WJB	Prepare e-mail D Stoelting re status of broker litigation in light of recent Supreme Court decision	0.1

33474 Brown, William J. as Receiver of McGinn,
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00017 W.J. Brown, as Receiver Function
August 6, 2019

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
08/01/18	WJB	Telephone call from A Formel re bank account and transfer of investor rules for second distribution	0.2
08/02/18	WJB	Telephone call from M DeLuca re status of letter already sent re McGinn Smith checks and her amount exceeding what most investors have received because of collateral recoveries	0.2
08/03/18	WJB	Review status of accrued liabilities in connection with administration of case	0.1
08/08/18	WJB	Prepare e-mail B Shea with M&T Bank July Distribution Account statement and review same	0.1
08/08/18	WJB	Review Five Star Bank CDARS statement and forward to B Shea for review and posting	0.1
08/08/18	WJB	Review Dinosaur Securities statement and forward to B Shea for review and posting	0.1
08/09/18	WJB	Telephone call from W Matthews re assertion of questions re whether he has claim in McGinn Smith case based upon receipt of isolated check possibly relating to IASG but uncertain re same; Review records and prepare e-mail B Shea re same	0.3
08/10/18	WJB	Telephone call from H Glavin, Esq. re status of Rabinovich claims	0.1
08/10/18	WJB	Review NYS Workers Compensation Board review and inspection request as part of routine process and forward to B Shea for compliance	0.1
08/10/18	WJB	Review NFS statement and forward to B Shea for reconciliation and posting	0.1
08/13/18	WJB	Telephone call from M Weinar re his legal victory vs W Lex, discussion of collateral recovery rule and implications re any recoveries he may recover from W Lex; Prepare Memo to File re same	0.3

33474 Brown, William J. as Receiver of McGinn,
Smith & Co., Inc., et al
00017 W.J. Brown, as Receiver Function
August 6, 2019

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
08/13/18	WJB	Review daily bankruptcy report re relevant case	0.1
08/13/18	WJB	Look at uncashed check report and e-mail staff re follow-up	0.1
08/13/18	WJB	Review account analysis statement from M&T and forward to B Shea for reconciliation	0.1
08/14/18	WJB	Deal with non-cashed distribution checklist and dispose of by letter to investors re voiding of checks and steps to assemble potential list of checks to escheat	0.2
08/14/18	WJB	Telephone call from S Morgan re asserted two missing checks, review database and provide instructions to staff re follow-up	0.2
08/15/18	WJB	Review draft letter to investors with uncashed checks and revise same	0.1
08/16/18	WJB	Review, sign and approve checks for administrative costs and send to B Shea	0.2
08/16/18	WJB	Telephone call from J Meyer, as investor, re reason and timing of second distribution	0.1
08/16/18	WJB	Saratoga Residence: Prepare e-mail SEC re status of listing Agreement and timing of sal	0.1
08/16/18	WJB	Conference with staff re investor missing two Questionnaires (S Morgan) and course of action re same	0.1
08/18/18	WJB	Review 4/1/18-6/30/18 SFAR Report received from B Shea	0.1
08/18/18	WJB	Work on e-mail hard drive to search e-mails and prepare e-mail IT staff re same	0.2
08/18/18	WJB	Telephone conference with B Shea re sources of data to respond to Fisher objection to Receiver claim objection motion, use of brokerage account statements and e-mails	0.2
08/18/18	WJB	Prepare e-mail to SEC with second quarter 2018 SFAR Report	0.1

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
08/20/18	WJB	Review McGinn Smith Transaction Funding Mercantile Bank binder received from B Shea in order to deal with Fisher objection	0.2
08/20/18	WJB	Attention to issues with recovering McGinn Smith e-mails from hard drive and use in database for Fisher objection	0.1
08/21/18	WJB	Exchange e-mails with IT staff re accessing hard drive, password difficulties and searching for prior password provided by SEC	0.3
08/21/18	WJB	Prepare e-mail to Asst. U.S. Attorney at criminal trial for missing binders and locate name and contact information for same	0.3
08/23/18	WJB	Fisher Claims Objection: Prepare reply e-mail to B Shea re SAI notices re cessation of payments to Fishers and others and looking for Smith letters re wind down of SAI	0.4
08/23/18	WJB	Review National Life T McGinn annual statement for value and cash surrender value	0.1
08/24/18	WJB	Review B Shea analysis on SAI allocations re Fishers and their claims and objection to Receiver's motion	0.1
08/24/18	WJB	Telephone call from W Matthews re assertion of McGinn Smith claim, attempt to identify check sent to him by third party and request him to send statements substantiating McGinn Smith account	0.2
08/27/18	WJB	Review, approve and forward to B Shea payroll	0.1
08/28/18	WJB	Prepare reply e-mail to W Myers at the U.S. Attorney's Office re obtaining information for Fisher reply	0.1
08/28/18	WJB	Prepare reply letter to C Gustafson concerning claim and course of action	0.1
09/10/18	WJB	Review payroll, approve same and forward to B Shea	0.1

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
09/10/18	WJB	Review M&T Bank Alarm Traders statement; Review Five Star Bank CDARS business checking statement; Review Dinosaur NFS statement for McGinn Smith Capital Holdings	0.2
09/10/18	WJB	Prepare letter to US Department of Commerce re 2017 annual business survey with information that Alarm Traders business has ceased along with requirement to file report	0.2
09/10/18	WJB	Review Five Star Bank CDARS statement, Kinderhook Bank tiered savings statement and KeyBank statement and forward to B Shea for reconciliation and posting	0.2
09/10/18	WJB	Telephone call from J Burke re information concerning Second Circuit Piaker dismissal and collateral recovery rules	0.2
09/11/18	WJB	Review M&T Bank Distribution Account statement and forward to B Shea for reconciliation and posting	0.1
09/11/18	WJB	Review Kinderhook Bank checking accounts statement and forward to B Shea for reconciliation and posting	0.1
09/13/18	WJB	Review, sign, approve and return to B Shea administrative check payments	0.2
09/17/18	WJB	Review three NYS WCB audit letters, payroll requests and processing documents and forward to B Shea for completion and review	0.1
09/17/18	WJB	Review and forward to B Shea NYS WCB policy	0.1
09/19/18	WJB	Telephone call from B Karpowski re second distribution timing	0.1
09/20/18	WJB	Attend to reissuance of two checks to K Bernardo as voluntary administrator for two allowed claims	0.1
09/25/18	WJB	Telephone call from D Daly re estate of Wm Howard and status of claim; Review database and discuss same re additional distributions	0.2

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
09/25/18	WJB	Review e-mail from S Kohl re second distribution and prepare reply	0.1
09/25/18	WJB	Telephone message from J Barley re distribution and place return voicemail message to her re same	0.2
09/25/18	WJB	Review e-mail from D Newcomb re receipt of all pleadings, complaint re same and prepare reply re D Newcomb having filed Notice of Appearance with Court	0.2
09/25/18	WJB	Review weekly bank balance report	0.1
09/25/18	WJB	Review voicemail from E Larsen with questions for Receiver and leave voicemail message with answers re same	0.2
09/25/18	WJB	Deal with B Bertoglio address change e-mail request and prepare reply	0.1
09/25/18	WJB	Prepare e-mail to B Bertoglio re need for letter changing address as previously advised	0.2
09/25/18	WJB	Telephone call from J Storz re D Storz claim and distribution process	0.1
09/25/18	WJB	Review distribution Plan terms for unclaimed distributions	0.1
09/28/18	WJB	Begin preparation of Receiver's Fourth Report	0.1
10/01/18	WJB	Review M&T Distribution Account statement and forward to B Shea for reconciliation and posting	0.1
10/02/18	WJB	Prepare e-mail B Shea with professional fee allowance orders as allowed by court and arrangements re payment by KeyBank check	0.2
10/02/18	WJB	Review lost Investor Questionnaire form returned from investor and discuss with staff	0.1
10/02/18	WJB	Exchange e-mails with KeyBank re bank account withdrawals	0.1

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
10/02/18	WJB	Prepare letter to S Brady at Chiampou with check for professional fees	0.1
10/03/18	WJB	Receive checks from KeyBank and distribute to Chiampou Travis and Phillips Lytle	0.2
10/03/18	WJB	Telephone call from J Burke re report on Piaker dismissal at Second Circuit and consequences for him re collateral recovery	0.1
10/04/18	WJB	Review D Stoelting question on payment and prepare reply re investor comment re W Lex taking compensation	0.2
10/04/18	WJB	Review Five Star CDARS business checking account statement, M&T Bank statements and forward to B Shea for reconciliation	0.1
10/04/18	WJB	Review and file records	0.1
10/05/18	WJB	Review Kinderhook Bank savings and checking statements, KeyBank statement and forward to B Shea for reconciliation and posting	0.1
10/05/18	WJB	Review NYS Insurance Fund Workers Compensation invoice and forward to B Shea for payment	0.1
10/06/18	WJB	Review, approve and forward to B Shea payroll request	0.1
10/06/18	WJB	Review e-mail from W Stauffer and reply with update re distribution status and upcoming Receiver's Report	0.1
10/08/18	WJB	Review uncashed checks report received from B Shea, prepare e-mail staff with observations and course of action	0.1
10/08/18	WJB	Conference staff re uncashed checks and direction to issue stop payment order to B Shea	0.1
10/08/18	WJB	Review Five Star CDARS statement and e-mail to B Shea for reconciliation and posting	0.2

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
10/08/18	WJB	Review McGinn Smith NFS statement and forward to B Shea for reconciliation and posting	0.1
10/08/18	WJB	Review McGinn Smith Capital Holdings NFS statement and forward to B Shea for reconciliation and posting	0.1
10/08/18	WJB	Telephone call from B Rosenberg re status of second distribution and claims objection process	0.2
10/09/18	WJB	Review checks received from B Shea, authorize and return checks to B Shea	0.2
10/09/18	WJB	Review M&T Securities statements and forward to B Shea for reconciliation and posting	0.1
10/09/18	WJB	Review Dinosaur Securities statement and forward to B Shea for reconciliation and posting	0.1
10/15/18	WJB	Identify error date in Notice of Motion for professional fees and attend to correcting same	0.1
10/15/18	WJB	Review and approve replacement checks for A Rosen distribution with correction to proper account at pension fund	0.2
10/17/18	WJB	Review conditional renewal notice from Hartford Insurance; Prepare e-mail B Shea re unnamed aircraft renewal and relevancy to policy	0.2
10/22/18	WJB	Review and approve payroll and forward to B Shea	0.1
10/22/18	WJB	Telephone call from B Shea re secure e-mail received and discussion of topic	0.1
10/23/18	WJB	Telephone call from D Jaspan procedure to change address	0.1
10/23/18	WJB	Review National Life Insurance payment notice for T McGinn policy and forward to B Shea	0.1
10/23/18	WJB	Review letter from J Lawson re change of address, review prior distribution status and process	0.2

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
10/24/18	WJB	Prepare e-mail B Shea re Seton Hall clarification on equity holders vs claim investors	0.1
10/31/18	WJB	Review letter from D Jaspan re change of address and authorize same	0.1
10/31/18	WJB	Review email from J Spurrier re dismissal of Piakar and Lyons appeal and prepare reply with process and court order	0.4
11/02/18	WJB	Telephone call from J Mayberry re investor questions	0.2
11/02/18	WJB	Telephone call from A Rogers, investor, with questions	0.2
11/05/18	WJB	Review e-mail from Chiampou re monthly bills for professional fees and prepare reply re same with copy of October 17 e-mail requesting monthly fee bills and forward to B Shea	0.3
11/05/18	WJB	Telephone call from P Meijer re moving back from Europe and change of address and prepare reply e-mail re Plan and change of address procedures, check Extranet database	0.3
11/06/18	WJB	Telephone call from J Delaney, investor, re tax questions, IRA and timing	0.3
11/07/18	WJB	Review e-mail from D Spurrier re Piaker dismissal and prepare reply	0.2
11/07/18	WJB	Review Information Questionnaire from V Pelletier and send Investor Questionnaire	0.2
11/09/18	WJB	Review M&T account statements, NFS statements, M&T Distribution Account statement, and Five Star account statements and forward to B Shea for analysis and posting	0.5
11/12/18	WJB	Review KeyBank statement for 10/2018 and forward to B Shea for reconciliation and posting	0.1
11/12/18	WJB	Prepare letter F Meijer requesting driver's license for ID purposes	0.1

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
11/13/18	WJB	Review, approve and send checks to B Shea	0.2
11/19/18	WJB	Review letter from M/M Trainor re dismissal from Piaker lawsuit and prepare reply re dismissal from Piaker lawsuit and prepare reply re need for Court Order or having to wait for appeal time to expire	0.2
11/21/18	WJB	Telephone call from investor on address change procedure	0.1
11/26/18	WJB	Review NYS Insurance Fund premium refund check and send to B Shea for deposit information, review NYS Insurance Fund policy and forward to B Shea	0.2
11/27/18	WJB	Telephone call from R Tormas and S Tormas re required information for PA re value of investments in IRA, suggestions re same and referral to website while providing percentage recoveries and suggestions re IRA Services	0.3
12/02/18	WJB	Review Alarm Traders payroll, approve same and forward to B Shea	0.1
12/03/18	WJB	Review e-mail from DMP re obtaining certificate for Receiver's website in order to present website as safe and secure under new software implementation by various web browsers, prepare reply	0.1
12/03/18	WJB	Review NYS disability benefits notices, evaluate and prepare letter B Shea re same re paid family leave and billing format from NYS	0.2
12/04/18	WJB	Review Hartford Insurance bill and forward to B Shea for payment for insurance coverage	0.1
12/04/18	WJB	Review letter from D Urbahn re IRA Services and further distributions	0.2
12/05/18	WJB	Telephone call from D Ayers re Piaker & Lyons, change of address, dismissal order and appeal period terminating on 1/29/19	0.2

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
12/05/18	WJB	Telephone call from W Peters re why only having received one check, review electronic database and pull file to review	0.2
12/06/18	WJB	Review KeyBank and M&T McGinn Smith Holdings and Alarm Traders bank accounts and forward to B Shea	0.2
12/06/18	WJB	Review M&T Distribution account statement and forward to B Shea for reconciliation and posting	0.1
12/07/18	WJB	Telephone call to W Peters re one versus two checks and payment having been considered as collateral recovery given prior Piaker & Lyons involvement; Prepare memo to file	0.2
12/07/18	WJB	Review two Kinderhook Bank statements, review Five Star CDARS statement and forward all to B Shea for reconciliation and posting	0.2
12/10/18	WJB	Review Chiampou October 2018 bill without detail, prepare e-mail R Lankes for needed information	0.1
12/10/18	WJB	Review Dinosaur Securities statement and forward to B Shea for reconciliation and posting	0.1
12/10/18	WJB	Review Five Star Bank CDARS statement and e-mail to B Shea for reconciliation and posting	0.1
12/11/18	WJB	Review e-mail from B Bertoglio re claim inquiry and check status of claims	0.1
12/11/18	WJB	Review checks received from B Shea, approve and sign same	0.2
12/11/18	WJB	Telephone call from A O'Shea re further distributions	0.2
12/12/18	WJB	Review B Bertoglio investor communications e-mail and prepare reply letter re falsity of same and chronology of communications, necessary next steps	0.3
12/13/18	WJB	Review B Bertoglio letter reply re communications	0.1

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
12/14/18	WJB	Telephone call from A/M DeLuca re 7/31/18 letter, review letter and return phone call with message; Telephone call from B Mountain re IRA Trust Services and interpretation of Form 1099; Prepare letter sending copy of letter per request	0.6
12/14/18	WJB	Review NYS disability insurance bill, M&T account analysis, M&T Distribution Account statement and NFS Capital statement and forward to B Shea for reconciliation and posting	0.1
12/14/18	WJB	Review B Bertoglio letter, process, change of address and send Investor Questionnaire packet	0.1
12/19/18	WJB	Conference F Hornung re Five Star CDARS maturity date and renewal options	0.2
12/21/18	WJB	Check on status of D Smith and T McGinn prison locator addresses for various notifications	0.2
12/21/18	WJB	Review prior correspondence with John Hancock re non-abandonment of investment	0.1
12/21/18	WJB	Prepare reply e-mail to K Reill re father's claim in Surrogate's Court	0.1
12/26/18	WJB	Prepare e-mail B Shea re M&T investment rates for turnover of investment	0.1
12/26/18	WJB	Review Five Star maturity date notice for \$1,021,000 and \$3,054,000 CDARS maturing	0.2
12/27/18	WJB	Review e-mails from Five Star Bank and M&T Bank on investment rate renewals	0.2
12/27/18	WJB	Prepare e-mail M&T Bank with instructions on renewing \$2,019,000 T-Bill investment and to Five Star Bank re renewing \$1,021,000 and \$3,054,000 investments at revised rates and terms	0.4

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
12/28/18	WJB	Deanna Ayers: Review letter re change of address, removal from Piaker lawsuit, visual impairment and assess fact that investor questionnaires were not previously received; Prepare letter confirming address change and distributing investor questionnaires	0.3
12/31/18	WJB	Review and approve payroll and forward to B Shea	0.1
12/31/18	WJB	Review T-Bill purchase confirmation from M&T and forward to B Shea	0.2
12/31/18	WJB	Review bank account report received from B Shea	0.1
CURRENT FEES			\$13,615.00
TOTAL AMOUNT OF THIS INVOICE			\$13,615.00

PAYMENT DUE UPON RECEIPT

CATEGORY S

SEC vs. MCGINN SMITH & Co., INC., ET AL.



Phillips Lytle LLP

Attorneys at Law
 One Canalside
 125 Main Street
 Buffalo, NY 14203-2887
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 (716) 847-8400
 FED I.D. #16-0505790

William J. Brown, Esq.
 Phillips Lytle LLP
 One Canalside
 125 Main Street
 Buffalo, NY 14203

Invoice Number 984236
 Invoice Date 08/06/19
 Client Number 33474
 Matter Number 00018
 W J Brown

Re: SEC V MCGINN SMITH & CO., INC., ET AL

FOR PROFESSIONAL SERVICES RENDERED THROUGH DECEMBER 31, 2018:

<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
07/25/18	WJB	Review two Notices of Appearance filed by Barclay and Damon re appearances in Fourth Claims Objection and request for extension of time to respond	0.1
10/19/18	WJB	Review D Stoelting question on losses in four funds and prepare reply	0.1
10/23/18	WJB	Locate 2015 WJB Declaration re losses in four funds at request of SEC and forward same	0.4
11/08/18	K-K	(Ayers v. Piaker & Lyons) Docket deadline to file petition for writ of certiorari	0.2
CURRENT FEES			\$333.00
TOTAL AMOUNT OF THIS INVOICE			\$333.00

PAYMENT DUE UPON RECEIPT

Exhibit C

WILLIAM J. BROWN, ESQ
RECEIVER

PHILLIPS LYTTLE LLP
125 MAIN STREET
BUFFALO, NY 14203
PHONE 716 847 7089

STANDARDIZED FUND ACCOUNTING REPORT

CIVIL DISTRIBUTION FUND

MCGINN, SMITH & CO. INC. ET. AL.
CIVIL COURT DOCKET No.
10-CV-457(GLS/CFH)

REPORTING PERIOD 7/1/2018 TO 9/30/2018

STANDARDIZED FUND ACCOUNTING REPORT for McGinn, Smith Co. Co. Et. Al. - Cash Basis
 Receivership; Civil Court Docket No. 10-CV-457(GLS/CFH)
 Reporting Period 7/1/18 to 9/30/18

FUND ACCOUNTING (See Instructions):				
		Detail	Subtotal	Grand Total
Line 1	Beginning Balance (As of 6/30/2018):	15,287,776	15,287,776	15,287,776
	Increases in Fund Balance:			
Line 2	Business Income		-	-
Line 3	Cash and Securities			
Line 4	Interest/Dividend Income	22,839	22,839	22,839
Line 5	Business Asset Liquidation		-	-
Line 6	Personal Asset Liquidation			
Line 7	Third-Party Litigation Income		-	-
Line 8	Miscellaneous - Other	17,127	17,127	17,127
	Total Funds Available (Lines 1 – 8):	39,966	39,966	39,966
	Decreases in Fund Balance:			
Line 9	Disbursements to Investors	71,260	71,260	71,260
Line 10	Disbursements for Receivership Operations			
Line 10a	Disbursements to Receiver or Other Professionals		-	-
Line 10b	Business Asset Expenses	16,442	16,442	16,442
Line 10c	Personal Asset Expenses			
Line 10d	Investment Expenses			
Line 10e	Third-Party Litigation Expenses			
	1. Attorney Fees			
	2. Litigation Expenses			
	Total Third-Party Litigation Expenses			
Line 10f	Tax Administrator Fees and Bonds			
Line 10g	Federal and State Tax Payments			
	Total Disbursements for Receivership Operations	16,442	16,442	16,442
Line 11	Disbursements for Distribution Expenses Paid by the Fund:			
Line 11a	Distribution Plan Development Expenses:			
	1. Fees:			
	Fund Administrator.....			
	Independent Distribution Consultant (IDC).....			
	Distribution Agent.....			
	Consultants.....			
	Legal Advisers.....			
	Tax Advisers.....			
	2. Administrative Expenses			
	3. Miscellaneous			
	Total Plan Development Expenses			
Line 11b	Distribution Plan Implementation Expenses:			
	1. Fees:			
	Fund Administrator.....			
	IDC.....			
	Distribution Agent.....			
	Consultants.....			
	Legal Advisers.....			
	Tax Advisers.....			
	2. Administrative Expenses			
	3. Investor Identification:			
	Notice/Publishing Approved Plan.....			
	Claimant Identification.....			
	Claims Processing.....			
	Web Site Maintenance/Call Center.....			
	4. Fund Administrator Bond			
	5. Miscellaneous			
	6. Federal Account for Investor Restitution (FAIR) Reporting Expenses			
	Total Plan Implementation Expenses			
	Total Disbursements for Distribution Expenses Paid by the Fund			
Line 12	Disbursements to Court/Other:			
Line 12a	Investment Expenses/Court Registry Investment System (CRIS) Fees			
Line 12b	Federal Tax Payments			
	Total Disbursements to Court/Other:			
	Total Funds Disbursed (Lines 9 – 11):			
Line 13	Ending Balance (As of 9/30/2018):			15,240,040

STANDARDIZED FUND ACCOUNTING REPORT for McGinn, Smith Co. Co. Et. Al. - Cash Basis
Receivership; Civil Court Docket No. 10-CV-457(GLS/CFH)
Reporting Period 7/1/18 to 9/30/18

Line 14	Ending Balance of Fund – Net Assets:			
Line 14a	Cash & Cash Equivalents			
Line 14b	Investments			
Line 14c	Other Assets or Uncleared Funds			
	Total Ending Balance of Fund – Net Assets			\$ 15,240,040

OTHER SUPPLEMENTAL INFORMATION:				
		Detail	Subtotal	Grand Total
	Report of Items NOT To Be Paid by the Fund:			
Line 15	Disbursements for Plan Administration Expenses Not Paid by the Fund:			
Line 15a	<i>Plan Development Expenses Not Paid by the Fund:</i>			
	1. Fees:			
	Fund Administrator.....			
	IDC.....			
	Distribution Agent.....			
	Consultants.....			
	Legal Advisers.....			
	Tax Advisers.....			
	2. Administrative Expenses			
	3. Miscellaneous			
	<i>Total Plan Development Expenses Not Paid by the Fund</i>			
Line 15b	<i>Plan Implementation Expenses Not Paid by the Fund:</i>			
	1. Fees:			
	Fund Administrator.....			
	IDC.....			
	Distribution Agent.....			
	Consultants.....			
	Legal Advisers.....			
	Tax Advisers.....			
	2. Administrative Expenses			
	3. Investor Identification:			
	Notice/Publishing Approved Plan.....			
	Claimant Identification.....			
	Claims Processing.....			
	Web Site Maintenance/Call Center.....			
	4. Fund Administrator Bond			
	5. Miscellaneous			
	6. FAIR Reporting Expenses			
	<i>Total Plan Implementation Expenses Not Paid by the Fund</i>			
Line 15c	<i>Tax Administrator Fees & Bonds Not Paid by the Fund</i>			
	Total Disbursements for Plan Administration Expenses Not Paid by the Fund			
Line 16	Disbursements to Court/Other Not Paid by the Fund:			
Line 16a	Investment Expenses/CRIS Fees			
Line 16b	Federal Tax Payments			
	Total Disbursements to Court/Other Not Paid by the Fund:			
Line 17	DC & State Tax Payments			
Line 18	No. of Claims:			
Line 18a	# of Claims Received This Reporting Period.....			
Line 18b	# of Claims Received Since Inception of Fund.....			2,781
Line 19	No. of Claimants/Investors:			
Line 19a	# of Claimants/Investors Paid This Reporting Period.....			24
Line 19b	# of Claimants/Investors Paid Since Inception of Fund.....			1,768

Receiver: _____
 By: William J. Brown
 (signature)
William J. Brown
 (printed name)
Receiver
 (title)
 Date: 3/26/19

WILLIAM J. BROWN, ESQ
RECEIVER

PHILLIPS LYTTLE LLP
125 MAIN STREET
BUFFALO, NY 14203
PHONE 716 847 7089

STANDARDIZED FUND ACCOUNTING REPORT

CIVIL DISTRIBUTION FUND

MCGINN, SMITH & CO. INC. ET. AL.
CIVIL COURT DOCKET No.
10-CV-457(GLS/CFH)

REPORTING PERIOD 10/1/2018 TO 12/31/2018

STANDARDIZED FUND ACCOUNTING REPORT for McGinn, Smith Co. Co. Et. Al. - Cash Basis
Receivership; Civil Court Docket No. 10-CV-457(GLS/CFH)
Reporting Period 10/1/18 to 12/31/18

FUND ACCOUNTING (See Instructions):				
		Detail	Subtotal	Grand Total
Line 1	Beginning Balance (As of 6/30/2018):	15,240,040	15,240,040	15,240,040
	Increases in Fund Balance:			
Line 2	Business Income		-	-
Line 3	Cash and Securities			
Line 4	Interest/Dividend Income	45,539	45,539	45,539
Line 5	Business Asset Liquidation		-	-
Line 6	Personal Asset Liquidation			
Line 7	Third-Party Litigation Income		-	-
Line 8	Miscellaneous - Other		-	-
	Total Funds Available (Lines 1 – 8):	45,539	45,539	45,539
	Decreases in Fund Balance:			
Line 9	Disbursements to Investors	49,947	49,947	49,947
Line 10	Disbursements for Receivership Operations			
Line 10a	Disbursements to Receiver or Other Professionals	127,230	127,230	127,230
Line 10b	Business Asset Expenses	9,935	9,935	9,935
Line 10c	Personal Asset Expenses			
Line 10d	Investment Expenses			
Line 10e	Third-Party Litigation Expenses			
	1. Attorney Fees			
	2. Litigation Expenses			
	Total Third-Party Litigation Expenses			
Line 10f	Tax Administrator Fees and Bonds			
Line 10g	Federal and State Tax Payments			
	Total Disbursements for Receivership Operations	137,165	137,165	137,165
Line 11	Disbursements for Distribution Expenses Paid by the Fund:			
Line 11a	Distribution Plan Development Expenses:			
	1. Fees:			
	Fund Administrator.....			
	Independent Distribution Consultant (IDC).....			
	Distribution Agent.....			
	Consultants.....			
	Legal Advisers.....			
	Tax Advisers.....			
	2. Administrative Expenses			
	3. Miscellaneous			
	Total Plan Development Expenses			
Line 11b	Distribution Plan Implementation Expenses:			
	1. Fees:			
	Fund Administrator.....			
	IDC.....			
	Distribution Agent.....			
	Consultants.....			
	Legal Advisers.....			
	Tax Advisers.....			
	2. Administrative Expenses			
	3. Investor Identification:			
	Notice/Publishing Approved Plan.....			
	Claimant Identification.....			
	Claims Processing.....			
	Web Site Maintenance/Call Center.....			
	4. Fund Administrator Bond			
	5. Miscellaneous			
	6. Federal Account for Investor Restitution (FAIR) Reporting Expenses			
	Total Plan Implementation Expenses			
	Total Disbursements for Distribution Expenses Paid by the Fund			
Line 12	Disbursements to Court/Other:			
Line 12a	Investment Expenses/Court Registry Investment System (CRIS) Fees			
Line 12b	Federal Tax Payments			
	Total Disbursements to Court/Other:			
	Total Funds Disbursed (Lines 9 – 11):			
Line 13	Ending Balance (As of 9/30/2018):			15,098,467

STANDARDIZED FUND ACCOUNTING REPORT for McGinn, Smith Co. Co. Et. Al. - Cash Basis
Receivership; Civil Court Docket No. 10-CV-457(GLS/CFH)
Reporting Period 10/1/18 to 12/31/18

Line 14	Ending Balance of Fund – Net Assets:			
Line 14a	Cash & Cash Equivalents			
Line 14b	Investments			
Line 14c	Other Assets or Uncleared Funds			
	Total Ending Balance of Fund – Net Assets			\$ 15,098,467
OTHER SUPPLEMENTAL INFORMATION:				
		Detail	Subtotal	Grand Total
Line 15	Report of Items NOT To Be Paid by the Fund:			
	Disbursements for Plan Administration Expenses Not Paid by the Fund:			
Line 15a	<i>Plan Development Expenses Not Paid by the Fund:</i>			
	1. Fees:			
	Fund Administrator.....			
	IDC.....			
	Distribution Agent.....			
	Consultants.....			
	Legal Advisers.....			
	Tax Advisers.....			
	2. Administrative Expenses			
	3. Miscellaneous			
	<i>Total Plan Development Expenses Not Paid by the Fund</i>			
Line 15b	<i>Plan Implementation Expenses Not Paid by the Fund:</i>			
	1. Fees:			
	Fund Administrator.....			
	IDC.....			
	Distribution Agent.....			
	Consultants.....			
	Legal Advisers.....			
	Tax Advisers.....			
	2. Administrative Expenses			
	3. Investor Identification:			
	Notice/Publishing Approved Plan.....			
	Claimant Identification.....			
	Claims Processing.....			
	Web Site Maintenance/Call Center.....			
	4. Fund Administrator Bond			
	5. Miscellaneous			
	6. FAIR Reporting Expenses			
	<i>Total Plan Implementation Expenses Not Paid by the Fund</i>			
Line 15c	<i>Tax Administrator Fees & Bonds Not Paid by the Fund</i>			
	Total Disbursements for Plan Administration Expenses Not Paid by the Fund			
Line 16	Disbursements to Court/Other Not Paid by the Fund:			
Line 16a	Investment Expenses/CRIS Fees			
Line 16b	Federal Tax Payments			
	Total Disbursements to Court/Other Not Paid by the Fund:			
Line 17	DC & State Tax Payments			
Line 18	No. of Claims:			
Line 18a	# of Claims Received This Reporting Period.....			
Line 18b	# of Claims Received Since Inception of Fund.....			2,781
Line 19	No. of Claimants/Investors:			
Line 19a	# of Claimants/Investors Paid This Reporting Period.....			6
Line 19b	# of Claimants/Investors Paid Since Inception of Fund.....			1,774

Receiver: _____
 By: William J. Brown
 (signature)
William J. Brown
 (printed name)

 (title)
 Date: 3/25/19

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----X
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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**ORDER APPROVING TWELFTH INTERIM APPLICATION OF
PHILLIPS LYTLE LLP AND THE RECEIVER FOR ALLOWANCE OF
COMPENSATION AND REIMBURSEMENT OF EXPENSES**

Upon the Twelfth Interim Application of Phillips Lytle LLP (“Phillips Lytle”) and the Receiver (“Receiver”) for Allowance of Compensation and Reimbursement of Expenses dated August 6, 2019 (“Application”) for an order approving the allowance of compensation and reimbursement of 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 all creditors of the McGinn Smith Entities 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 (i) compensation for legal and Receiver services rendered between July 1, 2018 and December 31, 2018 ("Twelfth Interim Period") in the amount of \$57,225.30 is allowed as an interim allowance, and (ii) reimbursement of expenses advanced by Phillips Lytle during the Twelfth Interim Period in the amount of \$586.02 is allowed as an interim disbursement payment; and it is further

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

Dated: _____, 2019

HON. CHRISTIAN F. HUMMEL

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF NEW YORK

-----X
 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, Karen M. Ludlow, being at all times over 18 years of age, hereby certify that on August 9, 2019, a true and correct copy of the Notice and Twelfth Interim Application of Phillips Lytle LLP and the Receiver for Allowance of Compensation and Reimbursement of Expenses (“Twelfth Interim 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

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- **Bryan M. Westhoff** bryan.westhoff@kayescholer.com
- **Benjamin Zelsermyer** bzlaw@optonline.net,steincav@aol.com

And, I hereby certify that on August 9, 2019, I mailed, via first class mail using the United States Postal Service, a copy of the Twelfth Interim Application to the individuals listed below:

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Bond, Schoeneck & King PLLC
Avant Building - Suite 900
200 Delaware Avenue
Buffalo, NY 14202-2107

Dated: August 9, 2019

/s/ Karen M. Ludlow
Karen M. Ludlow