



Phillips Lytle LLP

Via CM/ECF

October 14, 2019

Hon. Gary L. Sharpe
Senior U.S. District Judge
James T. Foley U.S. Courthouse
445 Broadway, Room 112
Albany, New York 12207

Re: Securities and Exchange Commission vs. McGinn, Smith & Co., Inc., et al.
Case No. 1:10-cv-00457-GLS-CFH
Eighth Claims Motion of William J. Brown, as Receiver, for an Order (A)
Disallowing or Equitably Subordinating the Smith Claims or (B) Offsetting the
Judgment Obligations with Smith Claim Distributions, and (C) Expunging
Smith Paper Claims (Docket No. 1067) ("Motion")

Dear Judge Sharpe:

On September 12, 2019, William J. Brown, as Receiver ("Receiver"), by his counsel, Phillips Lytle LLP, filed the above-referenced Motion. The deadline to respond to the Motion, as extended by the Court, is October 14, 2019, and the return date of the Motion is October 31, 2019.

Attached to this letter is a proposed Order ("Order") resolving the Motion as to the Lauren Smith Claims, as defined in the Motion, which Order has been agreed to by the Receiver and the Smiths. The Order does not address or resolve the relief requested by the Receiver in the Motion as to the Lynn Smith Claims or the Geoffrey Smith Claims, each as defined therein.

We respectfully request that the Court enter the Order at its convenience. Please feel free to contact us if you have any questions.

Very truly yours,

Phillips Lytle LLP

By

Catherine N. Eisenhut

CNEht
Attachment
Doc #4491547.1

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ATTORNEYS AT LAW



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cc: Geoffrey Smith
Lynn Smith
Lauren Smith
David Stoelting, Esq.
Kevin McGrath, Esq.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

vs.

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

McGINN, SMITH & CO., INC.,
McGINN, SMITH ADVISORS, LLC
McGINN, SMITH CAPITAL HOLDINGS CORP.,
FIRST ADVISORY INCOME NOTES, LLC,
FIRST EXCELSIOR INCOME NOTES, LLC,
FIRST INDEPENDENT INCOME NOTES, LLC,
THIRD ALBANY INCOME NOTES, LLC,
TIMOTHY M. McGINN, AND
DAVID L. SMITH, GEOFFREY R. SMITH,
Individually and as Trustee of the David L. and
Lynn A. Smith Irrevocable Trust U/A 8/04/04,
LAUREN T. SMITH, and NANCY McGINN,

Defendants,

LYNN A. SMITH and
NANCY McGINN,

Relief Defendants. and

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

Intervenor.
-----X

**CONSENT ORDER RESOLVING EIGHTH CLAIMS MOTION OF WILLIAM J.
BROWN, AS RECEIVER, AS TO LAUREN SMITH CLAIMS**

Upon the Eighth Motion of William J. Brown, as Receiver, for an Order (A)
Disallowing or Equitably Subordinating the Smith Claims or (B) Offsetting the Judgment
Obligations with Smith Claim Distributions, and (C) Expunging Smith Paper Claims, dated

September 12, 2019 (Docket No. 1067) (“Motion”)¹; and notice of the Motion having been given to the Securities and Exchange Commission, each of the Smiths listed on Exhibit A to the Motion, who have consented to the entry of this Order, by first class mail, and all parties who have filed a Notice of Appearance in this action by ECF, 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; it is therefore

ORDERED that the Lauren Smith Claims shall be allowed in the amounts set forth on Exhibit A to this Order and that Lauren Smith shall receive distributions on account of the Lauren Smith Claims in accordance with the terms of the Plan of Distribution, and it is further

ORDERED that each of the Paper Claims filed by Lauren Smith and listed on Exhibit A to this Order is expunged, and it is further

ORDERED that this Order does not resolve or address the relief requested by the Receiver as to the Lynn Smith Claims and the Geoffrey Smith Claims, as set forth in the Motion;

ORDERED that the rights of the Receiver to object on any other basis to the claims of all investors or claimants is expressly preserved, and it is further

ORDERED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Consent Order, and for all other purposes.

SO ORDERED:

Dated: _____, 2019

UNITED STATES DISTRICT JUDGE
GARY L. SHARPE

¹ Capitalized terms used but not defined herein shall have the meaning assigned to them in the Motion.

EXHIBIT A

Claim Number	Description of Investment or Nature of Claim	Amount of Allowed Claim	Amount of Filed Paper Claim
6496	McGinn Smith Transaction Funding Corp.	\$25,000	\$25,000
6494	Firstline Trust 07 B Junior Contract Certificates 11% due 10/01/12	\$19,839.23	\$19,839.23
6495	Fortress Trust 08	\$19,911.10	\$19,911.10
6497	TDM Verifier Trust 07R Contract Certificates	\$25,000	\$25,000
6498	TDM Verifier Trust 08R Contract Certificate 9%	\$10,000	\$10,000