

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

PLEASE TAKE NOTICE that upon the Fifteenth 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 **August 20, 2020 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 five-month period from January 1, 2020 through May 31, 2020 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: July 8, 2020

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, :

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. :

**FACE SHEET PURSUANT TO LOCAL RULE 2016-1
FOR FIFTEENTH 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 January 1, 2020 through May 31, 2020

AMOUNT OF COMPENSATION
SOUGHT FOR FEES FROM
JANUARY 1, 2020 THROUGH
MAY 31, 2020 \$30,340.72 (including Phillips Lytle and Receiver's fees at pre-arranged discounted hourly rates) at 7.5% for Phillips Lytle and \$225 rather than \$510.00 per hour for the Receiver

AMOUNT OF COMPENSATION
SOUGHT FOR EXPENSES FROM
JANUARY 1, 2020 THROUGH
MAY 31, 2020 \$111.37

Dated: July 8, 2020

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
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Doc #8021751.1

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NORTHERN DISTRICT OF NEW YORK

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vs.

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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. :

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**FIFTEENTH 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 five-month period from January 1, 2020 through May 31, 2020 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 this 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 January 1, 2020 to May 31, 2020 (“Fifteenth 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 2019 hourly rate of \$510 per hour, again per prior agreement with the SEC.

4. As a result, legal services at full value in this Fifteenth Interim Period total \$28,617.00, while the amount to be paid less the 7.5% discount if this Application is approved is \$26,470.72. The Receiver’s services at full value of \$510 per hour in this Fifteenth Interim Period total \$8,772.00, while the amount to be paid if this Application is granted are \$3,870.00 at \$225 per hour. This makes the total amount sought pursuant to this Application to be \$30,340.72 in fees and \$111.37 in disbursements.

CASE STATUS

5. As of June 19, 2020, there is \$15,754,046.00 on hand in Receiver accounts, with approximately \$6,891,444.45 having been distributed to investors with allowed claims through the Fifty-Seventh 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 and while claims objection motions filed by the Receiver remain pending. First through Tenth motions to expunge duplicate paper claims and otherwise objectionable claims have also been filed. The Receiver anticipates that the Tenth Claims Objection Motion (Docket No. 1100) is the final claims objection motion to be filed. All post-Receiver obligations are current and paid on a current basis other than the amounts sought in professional fee applications. The monies held 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. The SEC, with the Receiver's assistance, has recently filed and obtained turnover orders on the judgments to collect frozen David Smith, Lynn Smith and Smith Trust assets aggregating more than \$848,162, and Timothy McGinn aggregating \$9,381.17.

7. There are approximately \$124,123,595 in investor claims, some of which have been subject to objection or various grounds. If all the claim 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, and other primarily equity positions may be worthless.

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). With the filing on December 20, 2019 of the Tenth Claims Objection Motion (Docket No. 1100), the Receiver plans to (a) proceed to make final distributions to investors once the Court decides the remaining pending Ninth and Tenth Claims Objection Motions and the Motion for an Order in Aid of Administration dealing with lost and abandoned investor claims (Docket No. 1090), and (b) begin to wrap-up and conclude the estate.

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

SUMMARY OF ACTIVITIES DURING FIFTEENTH INTERIM PERIOD

10. While the legal, non-legal and quasi-legal functions and services performed during the Fifteenth 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 December 27, 2019 totaled \$15,690,359.00, and at June 19, 2020, the balance was \$15,754,046.00. 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, the Timothy McGinn turnover order (Docket No. 1063), proceeds from the sale of the Smith Saratoga residence (Docket No. 1114), the Lynn

Smith stock account turnover order (Docket No. 1089), and the Smith Trust stock account (Docket No. 1089).

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

13. 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.

14. 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.

15. 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

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

A. Asset Analysis and Recovery

Category A relates to the recovery of miscellaneous assets including Community Bank and John Hancock, Bank of America and Pine Street proceeds, and communications with SEC regarding the same.

In rendering the services in Category A, the following attorneys and paralegals at Phillips Lytle expended the time represented below at the hourly rates represented below for a total value of \$1,836.00, and no disbursement expense:

| <u>ATTORNEY</u> | <u>HOURS</u> | <u>RATE</u> | <u>TOTAL</u> |
|------------------|--------------|-------------|--------------|
| William J. Brown | 3.60 | 510.00 | 1,836.00 |

B. Claims Administration and Objections

Category B relates to numerous and continuous communications with multiple investors respecting issues involving their specific claims; review of Orders entered granting Sixth, Seventh and Eighth claims motions and research regarding requirements for service of same; preparation and filing of the Fifty-Sixth and Fifty-Seventh Payment Schedules of First Investor Distribution, attend to mailing of first investor distribution checks to investors, work on preparation of distribution schedule for preferred 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 \$10,920.00, plus \$35.28 in disbursement expense:

| <u>ATTORNEY</u> | <u>HOURS</u> | <u>RATE</u> | <u>TOTAL</u> |
|------------------|--------------|-------------|--------------|
| William J. Brown | 3.20 | 510.00 | 1,632.00 |

| | | | |
|-----------------------|-------|--------|----------|
| Catherine N. Eisenhut | 38.70 | 240.00 | 9,288.00 |
|-----------------------|-------|--------|----------|

C. Asset Disposition

Category C relates to efforts in conjunction with the SEC relating to the sale of the Smith Saratoga home including numerous e-mails and telephone conferences in connection with same, communications with realtor and buyer's attorney regarding details for closing, and attend to post-closing matters.

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 \$3,621.00, plus \$30.48 in disbursement expense:

| <u>ATTORNEY</u> | <u>HOURS</u> | <u>RATE</u> | <u>TOTAL</u> |
|------------------|--------------|-------------|--------------|
| William J. Brown | 7.10 | 510.00 | 3,621.00 |

D. Business Operations

No services were charged to or rendered by Phillips Lytle in Category D during the Fifteenth 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, communications with M&T Bank, KeyBank, Community Bank f/b/a 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 \$2,856.00, and \$41.61 in disbursement expense:

| <u>ATTORNEY</u> | <u>HOURS</u> | <u>RATE</u> | <u>TOTAL</u> |
|------------------|--------------|-------------|--------------|
| William J. Brown | 5.60 | 510.00 | 2,856.00 |

F. Employee Benefits/Pensions

Category F relates to the 401K plan of David Smith and communications with the SEC with regard to required minimum distribution, Pension Works, John Hancock 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 \$1,173.00, and no disbursement expense:

| <u>ATTORNEY</u> | <u>HOURS</u> | <u>RATE</u> | <u>TOTAL</u> |
|------------------|--------------|-------------|--------------|
| William J. Brown | 2.30 | 510.00 | 1,173.00 |

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 Fifteenth Interim Period.

H. Fee/Employment Objections

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

I. Accounting/Auditing

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

J. Business Analysis

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

K. Corporate Finance

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

L. Data Analysis

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

M. Status Reports

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

N. Litigation Consulting

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

O. Forensic Accounting

No services were charged to or rendered by Phillips Lytle in Category O during the Fifteenth 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 TDM Cable Funding tax return issues and returns; and review and approval of various IRS and New York State tax returns, miscellaneous 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 \$3,570.00, and \$4.00 in disbursement expense:

| <u>ATTORNEY</u> | <u>HOURS</u> | <u>RATE</u> | <u>TOTAL</u> |
|------------------|--------------|-------------|--------------|
| William J. Brown | 7.00 | 510.00 | 3,570.00 |

Q. Valuation

No services were charged to or rendered by Phillips Lytle in Category Q during the Fifteenth 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 \$8,772.00, the discounted amount to be paid is \$3,870.00. 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, Community Bank 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, 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 \$8,772.00, and no disbursement expense:

| <u>ATTORNEY</u> | <u>HOURS</u> | <u>RATE</u> | <u>TOTAL</u> |
|------------------|--------------|-------------|---|
| William J. Brown | 17.20 | 510.00 | \$8,772.00 (to be billed and paid at \$3,870.00) |

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, communication with SEC regarding David Smith 401K decision; deal with issues regarding Lynn Smith IRA and communications with Geoffrey Smith regarding same; preparation, drafting

and conferences regarding abandoned claims motion; communications with SEC regarding turnover orders and information on accounts involved.

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 \$4,641.00, and no disbursement expense:

| <u>ATTORNEY</u> | <u>HOURS</u> | <u>RATE</u> | <u>TOTAL</u> |
|------------------|--------------|-------------|--------------|
| William J. Brown | 9.10 | 510.00 | 4,641.00 |

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 Fifteenth Interim Period.

U. Sale of McGinn Niskayuna Property

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

V. Sale of Smith Vero Beach Property

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

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

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

REIMBURSEMENT OF EXPENSES

17. 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.

18. 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

19. During the Fifteenth Interim Period, there were no substantial charges to report.

CONCLUSION

20. 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.

21. 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.

22. As the record in this action clearly indicates, Phillips Lytle has worked persistently and efficiently during the Fifteenth 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.

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

24. 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

25. 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 \$30,340.72, and reimbursement of expenses in the amount of \$111.37, for a total of \$30,452.09 for the period of January 1, 2020 through May 31, 2020; and (ii) granting such other and further relief as is just and proper.

Dated: July 8, 2020

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 #8021622.1

Exhibit A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION :

Plaintiff, :

vs. :

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Individually and as Trustee of the David L. and :
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LAUREN T. SMITH, and NANCY MCGINN, :

Defendants, :

LYNN A. SMITH and :
NANCY MCGINN, :

Relief Defendants. and :

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

Intervenor. :

-----X
**DECLARATION OF WILLIAM J. BROWN IN SUPPORT OF FIFTEENTH 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 Fifteenth 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 2020 hourly rate of \$510.

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: July 8, 2020

/s/ William J. Brown
William J. Brown

Doc #8021812.1

Exhibit B

CATEGORY A

ASSET ANALYSIS & RECOVERY



Phillips Lytle LLP

Attorneys at Law
 One Canalside
 125 Main Street
 Buffalo, NY 14203-2887
 Telecopier # (716) 852-6100
 (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 1012441
 Invoice Date 07/06/20
 Client Number 33474
 Matter Number 00000
 W J Brown

Re: ASSET ANALYSIS & RECOVERY

FOR PROFESSIONAL SERVICES RENDERED THROUGH MAY 31, 2020:

| <u>Date</u> | <u>Tkpr</u> | | <u>Hours</u> |
|-------------|-------------|--|--------------|
| 01/29/20 | WJB | Review Turnover Order regarding Community Bank accounts as entered by Court and process instructions for receipt of proceeds when received | 0.1 |
| 01/29/20 | WJB | Review e-mail from SEC for Community Bank contact information, locate same and prepare reply e-mail D Stoelting regarding same | 0.1 |
| 01/29/20 | WJB | Saf T Loc: Review stock certificate received from NFS and prepare e-mail B Shea regarding same and investigating value | 0.1 |
| 02/12/20 | WJB | Check on status of Smith house closing | 0.1 |
| 02/12/20 | WJB | Review and prepare comments to SEC draft turnover order and prepare reply e-mail to D Stoelting regarding same | 0.4 |

| <u>Date</u> | <u>Tkpr</u> | | <u>Hours</u> |
|-------------|-------------|--|--------------|
| 02/20/20 | WJB | Review John Hancock e-mail requesting turnover form completion in connection with court-ordered turnover served by SEC, consider course of action, prepare e-mail SEC regarding intentions and prepare reply to John Hancock regarding no need for form and strictly comply with Court turnover order | 0.2 |
| 02/20/20 | WJB | Review and reply to D Stoelting on why Plan trustee consent not required for John Hancock to comply and explanation of same | 0.2 |
| 02/20/20 | WJB | Telephone call from K Saez, Esq. at John Hancock regarding compliance with SEC turnover order and reasons why Plan trustee and Receiver will not complete voluntary turnover orders as requested and resolution by agreement on Order consenting to compliance with SEC turnover order and prepare draft letter regarding same | 0.3 |
| 02/21/20 | WJB | John Hancock: Revise letter to John Hancock regarding no objection by Receiver to compliance by John Hancock with SEC turnover order for 401K assets of Messrs. McGinn and Smith | 0.3 |
| 02/25/20 | WJB | Community Bank: Review deposit materials of turnover order proceeds from Community Bank | 0.1 |
| 03/11/20 | WJB | Assemble data regarding recent recoveries and assemble information | 0.3 |
| 04/07/20 | WJB | Review G Smith e-mail to SEC regarding judgment credit amounts, review D Smith judgment and review Pine Street receipts and prepare e-mail T Wells regarding confirmation of accounting | 0.3 |
| 04/07/20 | WJB | Review and locate Vero Beach and Sacandaga residence net sale receipts for use in judgment calculation and forward to D Stoelting at SEC | 0.4 |
| 04/07/20 | WJB | Finalize and Vero Beach and Pine Street recoveries and prepare e-mail D Stoelting at SEC regarding proceeds and judgment | 0.3 |

33474 Brown, William J. as Receiver of McGinn,
Smith & Co., Inc., et al
00000 Asset Analysis & Recovery
July 6, 2020

Invoice Number 1012441

Page 3 of 3

| <u>Date</u> | <u>Tkpr</u> | | <u>Hours</u> |
|-------------|-------------|--|--------------|
| 04/07/20 | WJB | Review Pine Street calculations received from T Wells and forward to SEC for judgment calculations | 0.3 |
| 04/23/20 | WJB | Reply to SEC regarding Bank of America closing of account and process for same | 0.1 |

CURRENT FEES \$1,836.00

TOTAL AMOUNT OF THIS INVOICE \$1,836.00

PAYMENT DUE UPON RECEIPT

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
 (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 1012442
 Invoice Date 07/06/20
 Client Number 33474
 Matter Number 00001
 W J Brown

Re: CLAIMS ADMINISTRATION & OBJECTIONS

FOR PROFESSIONAL SERVICES RENDERED THROUGH MAY 31, 2020:

| <u>Date</u> | <u>Tkpr</u> | | <u>Hours</u> |
|-------------|-------------|--|--------------|
| 01/03/20 | CNE | Draft letter to unsecured claimant | 1.2 |
| 01/06/20 | CNE | Work on letter responses to investors regarding paper claims and collateral recoveries | 1.3 |
| 01/07/20 | CNE | Review preferred investor allowed claims in preparation for allowance/distributions; Draft letters to investors regarding paper claim inquiries; Review orders entered by Court granting Sixth, Seventh and Eighth Claims Motions; Review Local and Federal Rules regarding requirements for service | 5.1 |
| 01/08/20 | WJB | Conference CNE regarding treatment and amount of claims for Palazzo's and Fisher's with respect to disallowed claims | 0.3 |
| 01/08/20 | WJB | Review paper claim of J Zazzel as litigation trustee regarding alleged fraudulent conveyance and revise letter to litigation trustee regarding treatment of claim and review of docket in bankruptcy case regarding closure | 0.5 |

| <u>Date</u> | <u>Tkpr</u> | | <u>Hours</u> |
|-------------|-------------|--|--------------|
| 01/08/20 | CNE | Review entered orders and update investor database pursuant to orders; confer with WJB regarding preferred investor files; Research regarding question regarding service of orders | 4.3 |
| 01/09/20 | CNE | Research regarding service question; Revise draft letter to paper claimant regarding status and treatment of claim; Draft letter to preferred investor regarding distributions and allowance of claims | 5.1 |
| 01/10/20 | CNE | Prepare letter to investor regarding disputed unsecured claim; Prepare letter to preferred investor claimant regarding missing information | 1.5 |
| 01/14/20 | CNE | Review and dispose of claims 5548, 5556-5561; Confer with WJB regarding service of claims objection motion orders; Review investor paper claim and basis therefor | 1.2 |
| 01/15/20 | CNE | Prepare letter for service of Order granting Eighth Claims objection motion | 0.6 |
| 01/17/20 | CNE | Return investor phone call and draft memo to file describing the same; Prepare letter to investor regarding paper claims | 1.1 |
| 01/21/20 | WJB | Review L Hillman letter of administration and death certificate and prepare reply letter regarding same | 0.2 |
| 01/21/20 | WJB | Review L Hillman file regarding documents received and process claims file forward to send Investor Questionnaire | 0.2 |
| 01/21/20 | WJB | Check on status of B Fisher claims and resolution of amounts | 0.1 |
| 01/21/20 | CNE | Update letter to preferred investor regarding allowed claims and distributions | 0.3 |
| 01/22/20 | CNE | Review paper claims in response to investor inquiry | 0.7 |
| 01/24/20 | CNE | Review materials regarding collateral recoveries submitted by investor | 1.5 |

33474 Brown, William J. as Receiver of McGinn,
Smith & Co., Inc., et al
00001 Claims Administration & Objections
July 6, 2020

Invoice Number 1012442

Page 3 of 5

| <u>Date</u> | <u>Tkpr</u> | | <u>Hours</u> |
|-------------|-------------|---|--------------|
| 01/29/20 | WJB | Review S Ellsworth Death Certificate and Letters Testamentary for processing and review claims file and prepare letter to Executor regarding return of original documents and processing further claims | 0.2 |
| 01/31/20 | CNE | Consider distributions to be made to preferred investors and draft sample distribution schedule | 1.6 |
| 02/05/20 | WJB | Telephone call from Wells Fargo trust officer regarding Ellsworth claim re-registration and prepare memo to file regarding same | 0.2 |
| 02/05/20 | WJB | Review and approve Fifty-Sixth Payment Schedule for filing with Court | 0.2 |
| 02/05/20 | WJB | Conference CNE regarding Palazzo claims allocation | 0.1 |
| 02/05/20 | WJB | Conference CNE on how to set up Fisher claim payment chart following entry of Order approving offsets | 0.1 |
| 02/05/20 | CNE | Confer with WJB regarding preparation of distribution schedule for preferred investors; Review correspondence with investor regarding collateral recoveries received | 0.5 |
| 02/10/20 | CNE | Review investor claim file | 0.1 |
| 02/17/20 | CNE | Work on preferred investor distribution schedule | 1.2 |
| 02/26/20 | WJB | Telephone call from S Hillman regarding L Hillman claim and completion of investor questionnaire form and various questions regarding same | 0.2 |
| 03/10/20 | WJB | Review overall status of claims, amounts and payment given pending Court Orders | 0.1 |
| 03/11/20 | WJB | Review and allow Claim 5290 | 0.1 |
| 03/11/20 | WJB | Review claims 4236 and 4237 and allow same | 0.1 |

33474 Brown, William J. as Receiver of McGinn,
Smith & Co., Inc., et al
00001 Claims Administration & Objections
July 6, 2020

Invoice Number 1012442

Page 4 of 5

| <u>Date</u> | <u>Tkpr</u> | | <u>Hours</u> |
|-------------|-------------|--|--------------|
| 03/17/20 | WJB | Prepare reply letter to J Keebler regarding value of F Keebler claims for Surrogate's Court small claims purposes, assess file and calculate | 0.3 |
| 03/25/20 | WJB | Review letter from counsel for Estate of Thomas Dott and review enclosed documents, prepare reply letter to counsel concerning need to modify Certificate of Voluntary Administration | 0.2 |
| 04/02/20 | CNE | Draft email to KML regarding dealing with expunged/withdrawn claims in claims database | 0.3 |
| 04/09/20 | CNE | Prepare distribution schedule for preferred investors showing preferential offsets, collateral recoveries; Prepare distribution schedule for preferred investors (investment fund recovery recipients) | 4.2 |
| 04/13/20 | CNE | Work on preferred investor distribution schedule | 4.7 |
| 04/14/20 | CNE | Work on preferred investor distribution schedules | 0.6 |
| 04/30/20 | WJB | Telephone call from W Hajjar regarding SAI Trust and interpretation of letter received in Fall 2019 regarding same, investigate file | 0.1 |
| 05/15/20 | CNE | Work on preferred investor distribution schedule | 1.6 |

Case 1:10-cv-00457-GLS-CFH Document 1131-3 Filed 07/15/20 Page 10 of 48

CURRENT FEES

\$10,920.00

FOR COSTS ADVANCED AND EXPENSES INCURRED:

| | |
|--|-------|
| Overnight Courier WJB - Fedex to Michael L. Kinum, Esq. - Re: Asset Disposition | 30.48 |
| Duplicating A1, 48 Page(s) | 4.80 |

CURRENT EXPENSES

35.28

33474 Brown, William J. as Receiver of McGinn,
Smith & Co., Inc., et al
00001 Claims Administration & Objections
July 6, 2020

Invoice Number 1012442

Page 5 of 5

TOTAL AMOUNT OF THIS INVOICE

\$10,955.28

PAYMENT DUE UPON RECEIPT

CATEGORY C

ASSET DISPOSITION



Phillips Lytle LLP

Attorneys at Law
One Canalside
125 Main Street
Buffalo, NY 14203-2887
Telecopier # (716) 852-6100
(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 1012443
Invoice Date 07/06/20
Client Number 33474
Matter Number 00002
W J Brown

Re: ASSET DISPOSITION

FOR PROFESSIONAL SERVICES RENDERED THROUGH MAY 31, 2020:

| <u>Date</u> | <u>Tkpr</u> | | <u>Hours</u> |
|-------------|-------------|---|--------------|
| 01/07/20 | WJB | Saratoga Residence: Review M King two e-mails with rotting wood estimates and background facts as well as mold estimates and remediations and timeline as might affect sale | 0.1 |
| 01/07/20 | WJB | Saratoga Residence: Review mold inspection letter and report, review radon report and review home inspection report generally | 0.2 |
| 01/08/20 | WJB | Saratoga Residence: Review G Smith expense reimbursement request for air conditioning unit and forward to SEC and prepare reply | 0.4 |
| 01/09/20 | WJB | Saratoga Residence: Review G Smith e-mail regarding deposit for mold report and request for reimbursement and prepare reply regarding same | 0.1 |
| 01/14/20 | WJB | Saratoga Residence: Prepare extensive reply to G Smith on Receiver's rationale for not reimbursing L Smith for purchase of new air conditioning unit in response to his multiple e-mails regarding same | 0.4 |

33474 Brown, William J. as Receiver of McGinn,
Smith & Co., Inc., et al
00002 Asset Disposition
July 6, 2020

Invoice Number 1012443

Page 2 of 6

| <u>Date</u> | <u>Tkpr</u> | | <u>Hours</u> |
|-------------|-------------|---|--------------|
| 01/14/20 | WJB | Saratoga Residence: Prepare reply e-mail to M Kinum, Esq. regarding allocation of costs and reimbursement of charges for rotting wood remediation and mold remediation and how to allocate same in house closing proceeds | 0.2 |
| 01/14/20 | WJB | Saratoga Residence: Telephone call from M Kinum, Esq. regarding mold, wood rot and closing statement and procedures | 0.2 |
| 01/14/20 | WJB | Saratoga Residence: Final revision to extensive e-mail to G Smith regarding Receiver rationale concerning reimbursement request for air conditioning unit and denial of same | 0.1 |
| 01/14/20 | WJB | Saratoga Residence: Review e-mail from M King regarding status of mold repair and buyer appraisal and prepare e-mail reply including to M Kinum, Esq. regarding same | 0.1 |
| 01/14/20 | WJB | Saratoga Residence: Review G Smith 1-1/4 page rebuttal to Receiver analysis of no reimbursement for air conditioning unit | 0.1 |
| 01/15/20 | WJB | Saratoga Residence: Prepare reply to G Smith providing multiple reasons why there will be no reimbursement of air conditioner purchase price to L Smith including occupancy and use of home, non payment of mortgage and real property taxes and other reasons | 0.2 |
| 01/15/20 | WJB | Saratoga Residence: Review G Smith response threatening to affect status of sale for failure of Receiver to reimburse for cost of air conditioning unit previously purchased, forward to SEC and prepare reply to G Smith regarding request to be copied on any threatening e-mails sent to third parties and Receiver taking over sale in accordance with sealed Court Order | 0.3 |
| 01/15/20 | WJB | Telephone call from M Kinum, Esq. regarding closing arrangements for Smith contracts, how to handle mold and rotten wood remediation requests from buyer, discussion of local practices, analysis, risks and courses of action | 0.2 |

33474 Brown, William J. as Receiver of McGinn,
Smith & Co., Inc., et al
00002 Asset Disposition
July 6, 2020

Invoice Number 1012443

Page 3 of 6

| <u>Date</u> | <u>Tkpr</u> | | <u>Hours</u> |
|-------------|-------------|--|--------------|
| 01/23/20 | WJB | Saratoga Residence: Review M King report and communication from buyers' broker regarding second mold remediation estimate and communication between closing attorneys regarding resolving same and prepare reply to same | 0.1 |
| 01/23/20 | WJB | Saratoga Residence: Review e-mail from M Kinum regarding negotiations over sale contract; Telephone conference with M Kinum to finalize economic terms regarding mold remediation | 0.1 |
| 01/28/20 | WJB | Saratoga Residence: Prepare e-mail M Kinum, Esq. on closing arrangements and prepare reply to his e-mail regarding same; Prepare e-mail M Kornstein regarding need for bank release of mortgage; Prepare letter to M Kinum with escrow for United States satisfaction of mortgage and prepare reply M Kinum regarding closing arrangements | 0.4 |
| 01/28/20 | WJB | Saratoga Residence: Prepare e-mail to L Smith, G Smith, SEC, J Hacker requesting consent to release confidentially sale order to title insurance company insuring title insurance for sale of house | 0.3 |
| 01/29/20 | WJB | Saratoga Residence: Prepare e-mail M Kinum regarding original discharge and escrow letter | 0.1 |
| 01/29/20 | WJB | Saratoga Residence: Prepare follow-up e-mail to L Smith, G Smith and J Hacker to provide consent to providing title insurance company with sale Order | 0.1 |
| 01/29/20 | WJB | Saratoga Residence: Prepare e-mail M Kinum regarding delivery to title company of sealed Order and prepare letter to A Adang, Esq. regarding escrow terms of delivery of sale Order | 0.4 |
| 01/29/20 | WJB | Saratoga Residence: Review C Barton e-mail regarding discrepancy in broker commission and prepare reply regarding instructions regarding same | 0.1 |
| 02/01/20 | WJB | Saratoga Residence: Review M Kinum e-mail regarding closing statement and payment of latest real estate taxes by bank, review M Kornstein reply | 0.1 |

| <u>Date</u> | <u>Tkpr</u> | | <u>Hours</u> |
|-------------|-------------|--|--------------|
| 02/01/20 | WJB | Saratoga Residence: Review e-mail from M Kinum regarding broker statement calculation and prepare reply regarding buyer credits so as to adjust broker commission | 0.1 |
| 02/04/20 | WJB | Saratoga Residence: Review draft sale closing documents received from attorney, review and approve proceeds allocation and prepare e-mail M Kinum with closing instructions on behalf of Receiver and prepare e-mail M Kornstein and SEC with closing documents consistent with Sale Order | 0.8 |
| 02/04/20 | WJB | Saratoga Residence: Review mortgage lender and M Kinum exchange of e-mails regarding closing details and process for release of bank mortgage | 0.1 |
| 02/04/20 | WJB | Saratoga Residence: Finalize and send escrow letter to title company attorney with Sale Order which is filed under seal | 0.1 |
| 02/04/20 | WJB | Saratoga Residence: Review M Kornstein e-mail on legal fee payee change for closing statement and prepare e-mail M Kinum authorizing change in how closing proceeds are distributed to bank | 0.1 |
| 02/11/20 | WJB | Saratoga Residence: Review closing status and follow-up e-mail to M Kinum on date and date and timing of closing, revise closing statement and review reply | 0.1 |
| 02/11/20 | WJB | Telephone call from M Kinum regarding closing allocations on expenses with Smiths | 0.1 |
| 02/11/20 | WJB | Saratoga Residence: Review final closing statements received from M Kinum and prepare e-mail M Kinum regarding sign-off on closing statements for actual closing of sale of house | 0.3 |
| 02/11/20 | WJB | Saratoga Residence: Review e-mail from M Kinum regarding release of lien extension of escrow agreement and prepare reply consenting to same | 0.1 |

33474 Brown, William J. as Receiver of McGinn,
Smith & Co., Inc., et al
00002 Asset Disposition
July 6, 2020

Invoice Number 1012443

Page 5 of 6

| <u>Date</u> | <u>Tkpr</u> | | <u>Hours</u> |
|-------------|-------------|---|--------------|
| 02/18/20 | WJB | Review and revise final version of statement of sale of Saratoga property and reconcile new numbers given delay in closing; Review draft letter to Judge requesting unsealing of Order and letter to counsel regarding same | 0.2 |
| 02/19/20 | WJB | Saratoga Residence: Prepare e-mail M Kinum regarding status of closing inspection of house and review reply regarding status of closing | 0.1 |
| 02/20/20 | WJB | Review M Kinum, M Kornstein e-mails and closing checks and prepare reply regarding deposits | 0.2 |
| 02/20/20 | WJB | Saratoga Residence: Prepare report to SEC with house closing calculations in anticipation of receipt of proceeds | 0.2 |
| 02/21/20 | WJB | John Hancock: Attend to distribution of letters to John Hancock regarding 401K asset consent | 0.2 |
| 02/25/20 | WJB | Saratoga Residence: Review closing documents and evidence and preapre e-mail SEC with closing documentation and deposit slip | 0.1 |

CURRENT FEES

\$3,621.00

Case 1:10-cv-00457-GLS-CFH Document 1131-3 Filed 07/15/20 Page 17 of 48

FOR COSTS ADVANCED AND EXPENSES INCURRED:

| | |
|---|-------|
| Overnight Courier WJB - Fedex to Anthony P. Adang, Esq. (King Adang & Arpey, LLP) - Re: Asset Disposition | 30.48 |
|---|-------|

CURRENT EXPENSES

30.48

TOTAL AMOUNT OF THIS INVOICE

\$3,651.48

33474 Brown, William J. as Receiver of McGinn,
Smith & Co., Inc., et al
00002 Asset Disposition
July 6, 2020

Invoice Number 1012443

Page 6 of 6

PAYMENT DUE UPON RECEIPT

CATEGORY E

CASE ADMINISTRATION



Phillips Lytle LLP

Attorneys at Law
 One Canalside
 125 Main Street
 Buffalo, NY 14203-2887
 Telecopier # (716) 852-6100
 (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 1012444
 Invoice Date 07/06/20
 Client Number 33474
 Matter Number 00004
 W J Brown

Re: CASE ADMINISTRATION

FOR PROFESSIONAL SERVICES RENDERED THROUGH MAY 31, 2020:

| <u>Date</u> | <u>Tkpr</u> | | <u>Hours</u> |
|-------------|-------------|--|--------------|
| 01/07/20 | WJB | Review Orders approving Sixth, Seventh and Eighth claims objection motions | 0.3 |
| 01/07/20 | WJB | Prepare e-mail B Shea with decisions on claim objection motions as entered by Court | 0.1 |
| 01/07/20 | WJB | Prepare e-mail CNE regarding service of Orders on certain creditors and investors | 0.1 |
| 01/21/20 | WJB | Review and finalize Fourth Quarter 2019 SFAR including e-mail to B Shea with questions concerning deposits and prepare draft e-mail SEC with final form of report | 0.4 |
| 01/29/20 | WJB | Prepare and revise letter to Judge Hummel for authorization to release sealed Order regarding sale of 2 Rolling Brook in absence of consent from Smiths including review of prior docket entries regarding submission and sealing of Order (Letter not sent) | 0.4 |

33474 Brown, William J. as Receiver of McGinn,
Smith & Co., Inc., et al
00004 Case Administration
July 6, 2020

Invoice Number 1012444

Page 2 of 3

| <u>Date</u> | <u>Tkpr</u> | | <u>Hours</u> |
|-------------|-------------|--|--------------|
| 02/10/20 | WJB | Review two e-mails from W Dreyer as criminal counsel for D Smith regarding restitution judgment repayment and information regarding contacts and information from U.S. Attorney's Office, review files regarding same and prepare reply e-mail with U.S. Attorney's office contact information | 0.4 |
| 02/18/20 | WJB | Plan: Review, approve and sign Distribution check nos. 2824-2830 | 0.1 |
| 02/18/20 | WJB | Assemble and prepare factual information for Fifth Written Status Report of Receiver | 1.3 |
| 03/11/20 | WJB | Plan: Review and approve Fifty-Seventh Payment Schedule for filing with Court | 0.1 |
| 03/12/20 | WJB | Review D Stoelting e-mail regarding status and questions on closing of Receivership case and prepare reply regarding prior reports as to same and process | 0.2 |
| 03/17/20 | WJB | Plan: Receive distribution checks 2831 through 2833 and prepare e-mail B Shea confirming receipt and process same for investors | 0.1 |
| 03/18/20 | WJB | Pine Street: Review SEC request for Pine Street accounting and locate series of e-mails and accounting statements from 2011 to 2013 dealing with D Smith carried interest and forward to B Shea for reconciliation and cross-reference | 0.9 |
| 03/18/20 | WJB | Review e-mails from U.S. Bank regarding authority to honor turnover order concerning D Smith, T McGinn 401K and prepare response, prepare follow-up response providing turnover order | 0.2 |
| 03/31/20 | WJB | Prepare follow-up e-mail SEC based upon G Smith inquiry concerning IRA, review prior correspondence and prepare reply e-mail G Smith regarding status of IRA and turnover order | 0.1 |
| 03/31/20 | WJB | Prepare status update for investors including review of docket for relevant cross-references, revise same and post to Receiver website | 0.5 |

33474 Brown, William J. as Receiver of McGinn,
Smith & Co., Inc., et al
00004 Case Administration
July 6, 2020

Invoice Number 1012444

Page 3 of 3

| <u>Date</u> | <u>Tkpr</u> | | <u>Hours</u> |
|-------------|-------------|--|--------------|
| 04/21/20 | WJB | Review Borough of Prisons information and prepare posting on status of D Smith release from prison | 0.2 |
| 05/05/20 | WJB | Review letter from Hoffman Financial Services on behalf of J Moser and prepare reply letter regarding incorrect statements of IRS Services, current facts and additional information | 0.2 |

| | |
|--------------|------------|
| CURRENT FEES | \$2,856.00 |
|--------------|------------|

FOR COSTS ADVANCED AND EXPENSES INCURRED:

| | |
|--|-------|
| Overnight Courier REH - Fedex to William J. Brown - Re: Checks received from Community Bank and A. Uriychuck | 41.61 |
|--|-------|

| | |
|------------------|-------------|
| CURRENT EXPENSES | <hr/> 41.61 |
|------------------|-------------|

| | |
|------------------------------|------------|
| TOTAL AMOUNT OF THIS INVOICE | \$2,897.61 |
|------------------------------|------------|

PAYMENT DUE UPON RECEIPT

CATEGORY F

EMPLOYEE BENEFITS/PENSIONS



Phillips Lytle LLP

Attorneys at Law
 One Canalside
 125 Main Street
 Buffalo, NY 14203-2887
 Telecopier # (716) 852-6100
 (716) 847-8400
 FED ID. #16-0505790

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

Invoice Number 1012445
 Invoice Date 07/06/20
 Client Number 33474
 Matter Number 00005
 W J Brown

Re: EMPLOYEE BENEFITS / PENSIONS

FOR PROFESSIONAL SERVICES RENDERED THROUGH MAY 31, 2020:

| <u>Date</u> | <u>Tkpr</u> | | <u>Hours</u> |
|-------------|-------------|---|--------------|
| 02/11/20 | WJB | Review Form 5500, authorize same and prepare e-mail to Pension Works regarding same | 0.3 |
| 02/12/20 | WJB | Reply to two A Allen e-mails at Pension Works regarding need for additional copy of Form 5500 and questioning how to handle required minimum distributions and prepare reply regarding SEC turnover order for McGinn and Smith pension plan assets | 0.3 |
| 02/12/20 | WJB | Review Docket No. 1066 decision on Smith pension plan assets | 0.1 |
| 02/19/20 | WJB | Review e-mail from B Shea regarding receipt of voluntary turnover form received from John Hancock in response to SEC turnover order, review form and prepare e-mail SEC with intention not to provide form but rather simple consent and reasons for same | 0.3 |
| 02/19/20 | WJB | Prepare e-mail reply to B Shea regarding John Hancock complying with SEC turnover order without completing voluntary forms and review D Stoelting reply to same | 0.2 |

33474 Brown, William J. as Receiver of McGinn,
Smith & Co., Inc., et al
00005 Employee Benefits / Pensions
July 6, 2020

Invoice Number 1012445

Page 2 of 2

| <u>Date</u> | <u>Tkpr</u> | | <u>Hours</u> |
|-------------|-------------|--|--------------|
| 03/04/20 | WJB | Review request from Pension Works to provide 2017 documents, review prior e-mail folders for same regarding authorization to re-state plan | 0.3 |
| 03/11/20 | WJB | Review file and 2017 Pension Works forms and reply to Amy at Pension Works with 2017 approval documents | 0.3 |
| 03/11/20 | WJB | Prepare e-mail A Allen at Pension Works regarding 2017 signature page per her request | 0.1 |
| 04/02/20 | WJB | Prepare e-mail SEC regarding receipt of Required Minimum Distribution uncashed checks, review checks and arrange for deposit | 0.1 |
| 04/02/20 | WJB | Prepare e-mail B Shea regarding T McGinn uncashed Required Minimum Distribution check | 0.1 |
| 04/15/20 | WJB | Review John Hancock contract termination form received from B Shea and approve same | 0.2 |

CURRENT FEES

\$1,173.00

Case 1:10-cv-00457-GLS-CFH Document 1131-3 Filed 07/15/20 Page 25 of 48

TOTAL AMOUNT OF THIS INVOICE

\$1,173.00

PAYMENT DUE UPON RECEIPT

CATEGORY P

TAX ISSUES



Phillips Lytle LLP

Attorneys at Law
 One Canalside
 125 Main Street
 Buffalo, NY 14203-2887
 Telecopier # (716) 852-6100
 (716) 847-8400
 FED ID. #16-0505790

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

Invoice Number 1012446
 Invoice Date 07/06/20
 Client Number 33474
 Matter Number 00015
 W J Brown

Re: TAX ISSUES

FOR PROFESSIONAL SERVICES RENDERED THROUGH MAY 31, 2020:

| <u>Date</u> | <u>Tkpr</u> | | <u>Hours</u> |
|-------------|-------------|---|--------------|
| 02/04/20 | WJB | Review NYS Income Tax denial of abatement request for TDM Cable assessment and forward to Chiampou Travis for guidance | 0.1 |
| 02/05/20 | WJB | Review draft letter to NYS Department of Taxation regarding TDM Cable Funding prepared by Chiampou and prepare e-mail B Shea regarding consent to proceed | 0.2 |
| 02/11/20 | WJB | Review, approve and sign 2006, 2007 Amended, 2008-2018 TDM Cable Funding Partnership returns and provide to Chiampou Travis | 1.1 |
| 02/11/20 | WJB | Continue additional review of TDM Cable Funding Partnership returns and send e-File authorizations to Chiampou | 0.5 |
| 02/12/20 | WJB | Review issues surrounding possible dissolution of entities for whom final tax returns have been filed | 0.2 |
| 02/19/20 | WJB | Review, approve and sign 2019 McGinn Smith & Co. Inc. IRS and NYS tax returns | 0.3 |

33474 Brown, William J. as Receiver of McGinn,
Smith & Co., Inc., et al
00015 Tax Issues
July 6, 2020

Invoice Number 1012446

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| <u>Date</u> | <u>Tkpr</u> | | <u>Hours</u> |
|-------------|-------------|---|--------------|
| 02/19/20 | WJB | Review, approve and sign 2019 McGinn Smith Capital Holdings Corp. IRS and NYS tax returns and prepare e-mail B Shea with payment voucher for check | 0.4 |
| 02/19/20 | WJB | Review, approve and sign 2019 McGinn Smith Transaction Funding Corp. IRS and NYS tax returns | 0.3 |
| 02/19/20 | WJB | Review, approve and sign 2019 M&S Partners IRS and NYS tax returns | 0.3 |
| 02/19/20 | WJB | Review, approve and sign 2019 McGinn Smith Firstline Funding LLC IRS and NYS tax returns and send e-filing authorization to Chiampou | 0.4 |
| 02/19/20 | WJB | Review, approve and sign 2019 Mr. Cranberry LLC IRS and NYS tax returns and send e-filing receipt to Chiampou | 0.3 |
| 02/19/20 | WJB | Review, approve and sign 2019 TDMM Cable Funding LLC IRS and NYS tax returns and send e-file authorization to Chiampou | 0.3 |
| 02/25/20 | WJB | Review, sign and return to Chiampou Travis sixteen 2019 forms IT-204 for McGinn Smith Holdings and related disregarded entities and Cruise Charter Ventures and related disregarded entries including Mr. Cranberry, TDM Cable Funding, TDMM Cable Funding and McGinn Smith Firstline Funding | 0.9 |
| 03/03/20 | WJB | Review administrative expense liability notice from NYS regarding McGinn, Smith & Co., Inc., et al. and forward to Chiampou Travis for advice | 0.2 |
| 03/03/20 | WJB | Review NYS notice regarding 2017 and 2018 TDM Cable late filing notice and forward to Chiampou Travis for advice | 0.1 |
| 03/03/20 | WJB | Review NYS tax letter regarding dissolution request for McGinn Smith Capital Holdings and forward to Chiampou Travis to question triggering event | 0.1 |

33474 Brown, William J. as Receiver of McGinn,
Smith & Co., Inc., et al
00015 Tax Issues
July 6, 2020

Invoice Number 1012446

Page 3 of 4

| <u>Date</u> | <u>Tkpr</u> | | <u>Hours</u> |
|-------------|-------------|--|--------------|
| 03/10/20 | WJB | Review Power of Attorney received from Chiampou in order to allow for them to deal with NYS on various tax notices recently received | 0.1 |
| 03/11/20 | WJB | Review 2019 McGinn Smith Holdings IRS and NYS tax returns, approve and sign same and sign e-file authorizations and send to Chiampou Travis | 0.4 |
| 03/11/20 | WJB | Review TDM Cable Funding notice from NYS Department of Taxation and forward to Chaiampou Travis | 0.1 |
| 03/13/20 | WJB | TDM Cable: Review NYS notice of 2008, 2009 tax due and forward to Chiampou for analysis and action | 0.1 |
| 03/20/20 | WJB | Review \$50 NYS 2019 McGinn Smith tax payment notice to be paid in connection with filing, review filed return and payment issued at that time and consider course of action | 0.1 |
| 03/23/20 | WJB | Review IRS 2008 and 2009 notices regarding referral to collection agency and forward to Chiampou for evaluation and response | 0.1 |
| 03/25/20 | WJB | Review NYS Department of Taxation 2019 TDM notice of abatement and forward to Chiampou Travis for advice | 0.1 |
| 04/29/20 | WJB | Review proposed reply letter to NYS Taxation and Finance regarding 2006 Mr. Cranberry penalty when return was timely filed and penalty arises from amended return for which no penalty should exist and approve same | 0.1 |
| 04/29/20 | WJB | Review McGinn Smith Holdings IRS questionnaire and send to IRS | 0.2 |

CURRENT FEES

\$3,570.00

33474 Brown, William J. as Receiver of McGinn,
Smith & Co., Inc., et al
00015 Tax Issues
July 6, 2020

Invoice Number 1012446

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FOR COSTS ADVANCED AND EXPENSES INCURRED:

Duplicating A1, 40 Page(s)

4.00

CURRENT EXPENSES

4.00

TOTAL AMOUNT OF THIS INVOICE

\$3,574.00

PAYMENT DUE UPON RECEIPT

CATEGORY R

WILLIAM J. BROWN, AS RECEIVER FUNCTION



Phillips Lytle LLP

Attorneys at Law
 One Canalside
 125 Main Street
 Buffalo, NY 14203-2887
 Telecopier # (716) 852-6100
 (716) 847-8400
 FED ID. #16-0505790

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

Invoice Number 1012447
 Invoice Date 07/06/20
 Client Number 33474
 Matter Number 00017
 W J Brown

Re: W.J. BROWN, AS RECEIVER FUNCTION

FOR PROFESSIONAL SERVICES RENDERED THROUGH MAY 31, 2020:

| <u>Date</u> | <u>Tkpr</u> | | <u>Hours</u> |
|-------------|-------------|--|--------------|
| 01/07/20 | WJB | Review December 2019 statements from KeyBank, Five Star Bank, Community Bank and forward to B Shea for reconciliation and posting | 0.2 |
| 01/07/20 | WJB | Review NYS Insurance Fund letter requesting payroll information and forward to B Shea for completion and response | 0.1 |
| 01/07/20 | WJB | Review December M&T Bank statement, Dinosaur statement, McGinn Smith Holdings account at NFS and verify certain deposit amounts with B Shea and forward for reconciliation and posting | 0.2 |
| 01/07/20 | WJB | Review C Parker claim file and telephone conference with M Pappin regarding claim and prepare memo to file regarding same | 0.1 |
| 01/07/20 | WJB | Review CCI Group Inc. shares certificate from NFS and prepare e-mail B Shea regarding same | 0.2 |
| 01/08/20 | WJB | Review, approve and sign checks and return to B Shea | 0.1 |

33474 Brown, William J. as Receiver of McGinn,
Smith & Co., Inc., et al
00017 W.J. Brown, as Receiver Function
July 6, 2020

Invoice Number 1012447

Page 2 of 11

| <u>Date</u> | <u>Tkpr</u> | | <u>Hours</u> |
|-------------|-------------|--|--------------|
| 01/08/20 | WJB | Review John Hancock reply regarding uncashed 401K checks and e-mail B Shea regarding resolution of issue concerning 401K's of McGinn and Smith | 0.1 |
| 01/10/20 | WJB | Review B Shea distribution account e-mail and prepare e-mail M&T Bank requesting December statement for distribution account, review same and forward to B Shea | 0.1 |
| 01/14/20 | WJB | Review two CDARS confirmation and allocation statements and forward to B Shea for reconciliation and posting; Send TDM IRS notice to Chianpou Travis | 0.1 |
| 01/14/20 | WJB | Prepare reply e-mail to K Riell regarding 1099 issuance | 0.1 |
| 01/14/20 | WJB | Review claim of R Williams | 0.1 |
| 01/17/20 | WJB | Prepare e-mail B Shea regarding status of TDM final tax returns and review response concerning final issues being resolved | 0.1 |
| 01/21/20 | WJB | Review KeyBank 2019 1099 and forward to B Shea for tax information | 0.1 |
| 01/22/20 | WJB | Telephone call from D Dichiara as former McGinn Smith broker regarding status of McGinn Smith Notes and discussion of Receiver website and information regarding status of claims | 0.2 |
| 01/25/20 | WJB | Prepare e-mail to National Life Insurance regarding T McGinn life insurance policy annual statement information and review and approve payroll and forward e-mail to B Shea regarding same | 0.1 |
| 01/28/20 | WJB | Review request from 2 Rolling Brook sale counsel for D Smith's signature, locate same and forward filed pleading with same for use by title company and determining Power of Attorney authenticity | 0.2 |

33474 Brown, William J. as Receiver of McGinn,
Smith & Co., Inc., et al
00017 W.J. Brown, as Receiver Function
July 6, 2020

Invoice Number 1012447

Page 3 of 11

| <u>Date</u> | <u>Tkpr</u> | | <u>Hours</u> |
|-------------|-------------|--|--------------|
| 01/29/20 | WJB | Deal with misdirected Federal Express discharge of lien for restitution judgment and attend to correcting same; Provide SEC with Community Bank contact information | 0.4 |
| 01/29/20 | WJB | Telephone call from R Blazina regarding change of address, process for same, website and updates, process for Death Certificate and Letters Testamentary and general discussion of status and instructions | 0.3 |
| 01/29/20 | WJB | Review e-mail from W Dreyer, Esq. regarding probation officer for D Smith and inquiry regarding same, prepare reply regarding restitution amount and contact information | 0.1 |
| 02/04/20 | WJB | Review National Life Tim McGinn policy values, consider sale and forward to B Shea, review Five Star Bank 1099 and forward to B Shea | 0.2 |
| 02/04/20 | WJB | Review R/S Blazina letter regarding three address changes and approve | 0.1 |
| 02/05/20 | WJB | Prepare e-mail B Shea regarding Saratoga Smith residence closing and deposit location; Reply to G Smith on splitting of \$250 inspection fee | 0.1 |
| 02/05/20 | WJB | Review Chiampou Travis statement without detail, status and consider preparation of tax return status and telephone message to M Schaffstall at Chiampou regarding same | 0.1 |
| 02/05/20 | WJB | Telephone call from M Schaffstall at Chiampou regarding terms of engagement and details to be provided in billings | 0.1 |
| 02/05/20 | WJB | Review and edit Chiampou and prepare e-mail S Curry and M Schaffstall regarding same | 0.2 |
| 02/05/20 | WJB | Reply to B Shea regarding sale proceeds from Smith Saratoga residence | 0.1 |
| 02/11/20 | WJB | Review Hartford Insurance check and e-mail B Shea regarding question on origin | 0.1 |

33474 Brown, William J. as Receiver of McGinn,
Smith & Co., Inc., et al
00017 W.J. Brown, as Receiver Function
July 6, 2020

Invoice Number 1012447

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| <u>Date</u> | <u>Tkpr</u> | | <u>Hours</u> |
|-------------|-------------|--|--------------|
| 02/11/20 | WJB | Review Distribution Account statement and account for check follow-up for uncashed checks | 0.1 |
| 02/12/20 | WJB | Review and organize files on Smith Saratoga house and division of proceeds | 0.2 |
| 02/12/20 | WJB | Review pending e-mails with B Shea regarding open matters and follow-up on same | 0.3 |
| 02/12/20 | WJB | Telephone call from J Lawson regarding status | 0.1 |
| 02/12/20 | WJB | Review and update e-mails on investor claims database and related matters | 0.3 |
| 02/18/20 | WJB | Review, approve, sign and return checks to B Shea | 0.2 |
| 02/18/20 | WJB | Review status of various investments and telephone message A Bard at M&T regarding status of account | 0.1 |
| 02/19/20 | WJB | Review Chiampou statements for tax return preparation, review and assemble same and follow-up with Chiampou regarding same | 0.5 |
| 02/19/20 | WJB | Prepare e-mail S Curry at Chiampou on December 2019 and January 2020 statement and need to separate same | 0.2 |
| 02/19/20 | WJB | Telephone call to A Bard at M&T regarding McGinn deposits and interest rate proposal | 0.1 |
| 02/19/20 | WJB | Telephone conference M&T bankers regarding proposed rates and terms of deposits and investments | 0.4 |
| 02/19/20 | WJB | Telephone call from A Bard regarding proposed M&T investment bank rates | 0.1 |
| 02/21/20 | WJB | Attend to Community Bank asset recovery deposit at KeyBank | 0.1 |
| 02/21/20 | WJB | Telephone call from A Bard at M&T Bank regarding new account terms and interest rates | 0.1 |

33474 Brown, William J. as Receiver of McGinn,
Smith & Co., Inc., et al
00017 W.J. Brown, as Receiver Function
July 6, 2020

Invoice Number 1012447

Page 5 of 11

| <u>Date</u> | <u>Tkpr</u> | | <u>Hours</u> |
|-------------|-------------|--|--------------|
| 02/22/20 | WJB | Prepare e-mail B Shea regarding M&T Bank and KeyBank deposits and potential aggregation movement with proposed rates and terms | 0.1 |
| 02/25/20 | WJB | Review investment rates of various McGinn Smith investments in order to compare with proposed M&T new rates, prepare e-mail B Shea regarding deposits and authority letter for M&T | 0.6 |
| 02/26/20 | WJB | Revise e-mail to M&T regarding new accounts and rates | 0.1 |
| 02/26/20 | WJB | Prepare Receiver letter to M&T regarding current effectiveness of Preliminary Injunction Order for opening of new account | 0.1 |
| 02/26/20 | WJB | Prepare e-mail to M&T Securities regarding maturity of T-bill and disposition of proceeds | 0.2 |
| 02/26/20 | WJB | Telephone call from A Bard at M&T regarding confirmation of treatment of investments and prepare e-mail to confirm regarding same | 0.2 |
| 02/27/20 | WJB | M&T: Review and reply to A Bucella regarding new account documents and Receiver rather than Agent status requesting correction | 0.1 |
| 02/27/20 | WJB | Review and sign revised M&T new account documents received from A Bucella and e-mail back to M&T for opening of new account | 0.4 |
| 03/03/20 | WJB | Telephone call from investor, J Rostron, regarding status, claims and course of action | 0.2 |
| 03/03/20 | WJB | Prepare letter A Bucella at M&T regarding deposits for new McGinn Smith Alarm Trading account and how to handle deposits and allocations | 0.2 |
| 03/03/20 | WJB | Attend to correction of draft website posting and conference staff regarding same | 0.1 |

33474 Brown, William J. as Receiver of McGinn,
Smith & Co., Inc., et al
00017 W.J. Brown, as Receiver Function
July 6, 2020

Invoice Number 1012447

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| <u>Date</u> | <u>Tkpr</u> | | <u>Hours</u> |
|-------------|-------------|---|--------------|
| 03/03/20 | WJB | Telephone call to KeyBank branch to prepare withdrawal for transfer to M&T Bank and arrangements for same | 0.1 |
| 03/03/20 | WJB | Review Five Star business checking account statement and forward to B Shea and review M&T Securities statement redemption notice and forward to B Shea | 0.1 |
| 03/03/20 | WJB | Telephone call from KeyBank Larkin branch regarding arrangements for withdrawal of money to transfer to M&T Bank and work out arrangements for same | 0.1 |
| 03/03/20 | WJB | Meet with officer in charge of KeyBank Larkin branch regarding withdrawal of sizable amount for transfer to new M&T account at better rate, provide authorizations and arrange for and receive withdrawal check | 0.8 |
| 03/03/20 | WJB | Review B Shea e-mail on L Smith returned mail to Court and implications for D Smith 401K; Prepare reply regarding K-1s at late date following move and relocation so that K-1s should be okay | 0.2 |
| 03/03/20 | WJB | Telephone call from S Tormas regarding R Tormas investor claim, status and follow-up | 0.1 |
| 03/04/20 | WJB | Prepare e-mail A Bucella at M&T for screenshot of recent transactions | 0.1 |
| 03/04/20 | WJB | Review KeyBank 2/2020 statement and forward to B Shea for reconciliation and posting | 0.1 |
| 03/05/20 | WJB | Prepare e-mail SEC with G Smith request concerning IRA account regarding judgment efforts | 0.1 |
| 03/05/20 | WJB | Review and respond to e-mail from SEC regarding G Smith social security number, locate same and provide | 0.1 |
| 03/10/20 | WJB | Review, approve, sign and return checks to B Shea | 0.1 |
| 03/10/20 | WJB | Review Dinosaur, Alarm Traders M&T account and M&T Distribution account statements and forward to B Shea for reconciliation and posting | 0.1 |

33474 Brown, William J. as Receiver of McGinn,
Smith & Co., Inc., et al
00017 W.J. Brown, as Receiver Function
July 6, 2020

Invoice Number 1012447

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| <u>Date</u> | <u>Tkpr</u> | | <u>Hours</u> |
|-------------|-------------|--|--------------|
| 03/10/20 | WJB | Review Five Star CDARS, Community Bank checking and money and market and Dinosaur accounts and M&T Securities statements and identify Community Bank payments which were short-changed by bank | 0.3 |
| 03/11/20 | WJB | Telephone call from A Bard at M&T Bank regarding change of rates in light of financial climate | 0.1 |
| 03/11/20 | WJB | Prepare e-mail B Shea regarding M&T interest rates and T-bill maturity based upon A Bard call | 0.1 |
| 03/12/20 | WJB | Prepare e-mail B Shea requesting accounting of Pine Street proceeds | 0.1 |
| 03/13/20 | WJB | Review letter from C Benderson-Lighter regarding IRA Services and consider response | 0.1 |
| 03/13/20 | WJB | Telephone call from J Keebler regarding estate of F Keebler, small claims Surrogate's Court process, request for calculation of amounts and prepare memo to file regarding same | 0.2 |
| 03/17/20 | WJB | Prepare e-mail M&T Securities for account balance in March 2020, prepare e-mail B Shea regarding D Smith carried interest in Pine Street for purposes of calculation for SEC | 0.2 |
| 03/17/20 | WJB | Telephone call from J Delaney regarding report on Smith being released from prison, halfway house, and explanation of Rabinovich claim objection | 0.3 |
| 03/17/20 | WJB | Review C Benderson Lighter letter regarding IRA Services and prepare reply | 0.1 |
| 03/18/20 | WJB | Prepare e-mail SEC regarding D Smith release from prison | 0.1 |
| 03/23/20 | WJB | Review e-mail from M&T Securities with T-Bill maturity notice; Prepare e-mail A Bard regarding M&T rates as alternative and review response | 0.1 |

33474 Brown, William J. as Receiver of McGinn,
Smith & Co., Inc., et al
00017 W.J. Brown, as Receiver Function
July 6, 2020

Invoice Number 1012447

Page 8 of 11

| <u>Date</u> | <u>Tkpr</u> | | <u>Hours</u> |
|-------------|-------------|--|--------------|
| 03/24/20 | WJB | Review e-mail from M&T Securities regarding maturity and prepare e-mail M&T Bank regarding alternative rates following maturity, review replies and consider course of action | 0.2 |
| 03/24/20 | WJB | Review L Levy letter and e-mail and prepare interim reply to same | 0.1 |
| 03/24/20 | WJB | Review check from John Hancock representing David Smith 401K proceeds, prepare e-mail B Shea regarding possible additional funds and draft e-mail to John Hancock regarding same | 0.2 |
| 03/24/20 | WJB | Review check from Community Bank for balance of Smith Trust funds and deal with same including e-mail to SEC and B Shea regarding deposit | 0.1 |
| 03/25/20 | WJB | Review L Levy letter, check database and other materials | 0.1 |
| 03/25/20 | WJB | Review Five Star Bank maturity date notice, forward to B Shea and prepare e-mail Five Star Bank for new indicative rates | 0.1 |
| 03/25/20 | WJB | Prepare reply letter to L Levy regarding her letter concerning Covid-19 situation in United States and payment of second distribution to creditors with allowed claims | 0.1 |
| 03/25/20 | WJB | Attend to deposit at M&T Bank of John Hancock 401K David Smith check proceeds and Community Bank remaining Smith Trust proceeds | 0.1 |
| 03/27/20 | WJB | Review necessary balance transfers from securities account, prepare e-mail A Bucella incorporating data and request for transfer of recent M&T Securities deposits to Alarm Trading account | 0.3 |
| 03/30/20 | WJB | Five Star Bank: Review Notice from F Hornung at Five Star Bank of maturity of CDARS investment, review rollover alternatives, select same and prepare e-mail to F Hornung regarding rollover selection | 0.1 |

33474 Brown, William J. as Receiver of McGinn,
Smith & Co., Inc., et al
00017 W.J. Brown, as Receiver Function
July 6, 2020

Invoice Number 1012447

Page 9 of 11

| <u>Date</u> | <u>Tkpr</u> | | <u>Hours</u> |
|-------------|-------------|---|--------------|
| 03/31/20 | WJB | Prepare e-mail D Stoelting with Pine Street proceeds accounting | 0.1 |
| 03/31/20 | WJB | Telephone call from R Hoffman as financial advisor to J Moser, answer various public questions and reference to website | 0.1 |
| 03/31/20 | WJB | Prepare reply e-mail to SEC inquiry on bank account closures and bank balances in light of Pine Street proceeds review | 0.1 |
| 03/31/20 | WJB | Telephone call to R Hoffman regarding J Moser and prepare memo to file regarding need for follow-up call from investor | 0.1 |
| 03/31/20 | WJB | Telephone call to J Moser in response to her voicemail regarding IRA Services, quarterly fee, method to instruct Receiver to send distribution checks to different account or address, and inability to provide tax or pension advice | 0.1 |
| 04/02/20 | WJB | Review M&T Bank Distribution Account statement and forward to B Shea for reconciliation and posting | 0.1 |
| 04/05/20 | WJB | Review weekly payroll, approve same and forward to B Shea | 0.1 |
| 04/06/20 | WJB | Review Five Star Bank checking account statement and forward to B Shea for reconciliation and posting and review letter from and to investor, H Graham James | 0.1 |
| 04/07/20 | WJB | Review and send two M&T Bank Alarm Traders statements to B Shea for reconciliation and posting | 0.1 |
| 04/09/20 | WJB | Review letter from J Moser regarding new IRA address and prepare instructions regarding same, review two Community Bank statements and forward to B Shea for reconciliation and posting | 0.1 |
| 04/09/20 | WJB | Review and approve two letters to Community Bank requesting closing of accounts | 0.1 |
| 04/14/20 | WJB | Review vendor checks, approve same and forward to B Shea | 0.1 |

33474 Brown, William J. as Receiver of McGinn,
Smith & Co., Inc., et al
00017 W.J. Brown, as Receiver Function
July 6, 2020

Invoice Number 1012447

Page 10 of 11

| <u>Date</u> | <u>Tkpr</u> | | <u>Hours</u> |
|-------------|-------------|---|--------------|
| 04/14/20 | WJB | Review G Smith request for identification of what year's taxes were paid for L Smith and prepare reply regarding same | 0.1 |
| 04/21/20 | WJB | Telephone call from R Mazda regarding dates for tax reasons for Ponzi Scheme recovery | 0.2 |
| 04/21/20 | WJB | Review phone message from K Patel and return call with message regarding website update | 0.1 |
| 04/21/20 | WJB | Telephone message from J Lawson regarding D Smith and prepare reply e-mail regarding same | 0.1 |
| 04/22/20 | WJB | Review D Stoelting e-mail draft to G Smith on asset recovery and prepare reply | 0.1 |
| 04/22/20 | WJB | Telephone call from A Bucella and discussion with staff regarding M&T Alarm Traders new account and issuing checks on same | 0.1 |
| 05/05/20 | WJB | Review weekly checks, approve same and forward to B Shea | 0.2 |
| 05/05/20 | WJB | Review letter from L Sharkey regarding Estate of J Schmitt and prepare reply letter regarding updates existing on Receiver's website regarding questions asked and respond to question | 0.2 |
| 05/05/20 | WJB | Telephone call to W Hajjar regarding no claims other than SAI claim and consequences of same, prepare memo to file | 0.2 |
| 05/08/20 | WJB | Review e-mail regarding status of undecided motions from J Delaney, prepare reply regarding status and reference to website updates and plans to make final distribution once motions are decided | 0.2 |
| 05/11/20 | WJB | Review KeyBank and M&T bank statements and forward to B Shea for reconciliation and posting | 0.1 |
| 05/13/20 | WJB | Review voicemail message from J Perkins regarding Receivership questions and forward to staff for handling | 0.1 |

33474 Brown, William J. as Receiver of McGinn,
Smith & Co., Inc., et al
00017 W.J. Brown, as Receiver Function
July 6, 2020

Invoice Number 1012447

Page 11 of 11

| <u>Date</u> | <u>Tkpr</u> | | <u>Hours</u> |
|-------------|-------------|--|--------------|
| 05/27/20 | WJB | Review voicemail from investor, R Blazina, and forward to staff for processing | 0.1 |
| 05/31/20 | WJB | Review payroll, approve same and forward to B Shea | 0.1 |

CURRENT FEES \$8,772.00

TOTAL AMOUNT OF THIS INVOICE \$8,772.00

PAYMENT DUE UPON RECEIPT

CATEGORY S

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



Phillips Lytle LLP

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 FED I.D. #16-0505790

William J. Brown, Esq.
 Phillips Lytle LLP
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Invoice Number 1012448
 Invoice Date 07/06/20
 Client Number 33474
 Matter Number 00018
 W J Brown

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

FOR PROFESSIONAL SERVICES RENDERED THROUGH MAY 31, 2020:

| <u>Date</u> | <u>Tkpr</u> | | <u>Hours</u> |
|-------------|-------------|--|--------------|
| 01/09/20 | WJB | | 0.0 |
| 01/09/20 | WJB | Review CNE analysis on service of Court approved Orders | 0.1 |
| 01/14/20 | WJB | Review FRCP regarding service of Court Orders and review docket entries regarding same | 0.4 |
| 01/14/20 | WJB | Prepare e-mail CNE regarding service of claim objection Order on L/G Smith | 0.1 |
| 01/15/20 | WJB | Prepare follow-up e-mail to SEC on status of turnover orders for 401K assets and former Kinderhook Bank assets | 0.1 |
| 01/28/20 | WJB | Review SEC proposed form of Turnover Order for Community Bank accounts, prepare revisions to same following review of two December 31, 2019 bank statements for balances and prepare e-mail S Stoelting regarding same | 0.8 |

33474 Brown, William J. as Receiver of McGinn,
Smith & Co., Inc., et al
00018 SEC v McGinn Smith & Co., Inc., et al
July 6, 2020

Invoice Number 1012448

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| <u>Date</u> | <u>Tkpr</u> | | <u>Hours</u> |
|-------------|-------------|---|--------------|
| 01/28/20 | WJB | Investigate reference to D Smith IRA in case history including payment of his legal expenses to determine whether there is a separate IRA in response to questions raised by SEC and prepare e-mail SEC regarding same | 0.3 |
| 02/04/20 | WJB | Review L Smith letter filed with Court regarding Required Minimum Distributions under IRA and request for newly-issued order | 0.1 |
| 02/12/20 | WJB | Telephone call from D Stoelting regarding process to cause turnover of 401K assets, follow-up on Community Bank contact information, locate and send two prior e-mails with 401K and Community Bank service information to D Stoelting of SEC | 0.4 |
| 02/12/20 | WJB | Prepare draft Notice of Sale for filing with District Court following closing of Smith residence house sale | 0.2 |
| 02/12/20 | WJB | Revise Receiver's statement upon sale of Smith residence, prepare draft letter to Judge Hummel requesting unsealing of sale order and prepare draft letter M Kinum and A Adang regarding unsealed sale order | 0.3 |
| 02/18/20 | WJB | Review John Hancock turnover order regarding 401K plans of D Smith, T McGinn and prepare e-mail A Allen at Pension Works regarding process for turnover | 0.2 |
| 02/20/20 | WJB | Review and respond to e-mails from NFS regarding attempts to locate D Smith IRA and provide information regarding same | 0.1 |
| 03/02/20 | WJB | Review draft letter to Court regarding NFS turnover order for David Smith IRA; Review turnover order and prepare reply email to David Stoelting at SEC regarding same | 0.1 |
| 03/04/20 | WJB | Prepare e-mail SEC on resolving John Hancock request to modify Order regarding John Hancock entity name | 0.1 |
| 03/05/20 | WJB | John Hancock: Prepare e-mail John Hancock regarding contacting SEC regarding required form of Turnover Order | 0.1 |

| <u>Date</u> | <u>Tkpr</u> | | <u>Hours</u> |
|-------------|-------------|--|--------------|
| 03/10/20 | WJB | Review amended John Hancock turnover order as filed on docket and arrange to post to website | 0.1 |
| 04/02/20 | WJB | Prepare e-mails SEC regarding G Smith judgment calculations and approach to same | 0.1 |
| 04/03/20 | WJB | Locate and forward stock account and IRA information to SEC in connection with amount and calculation of credits for G Smith judgment | 0.3 |
| 04/03/20 | WJB | Telephone conference with D Stoelting regarding G Smith IRA in connection with judgment collection | 0.1 |
| 04/07/20 | WJB | Telephone call from D Stoelting at SEC to review application of judgment amounts from various sources including Pine Street proceeds, Vero Beach and Sacandaga house, interpretation of judgment and review prior e-mails and accounting regarding same | 0.6 |
| 04/09/20 | WJB | Review SEC inquiry regarding payment of L Smith and Smith Trust taxes in respect of judgment collection, research history regarding same and prepare reply with information and interpretation of Receiver as to reasons why judgment creditor taxes are not paid | 0.5 |
| 04/14/20 | WJB | Prepare e-mail G Smith regarding list of assets collected and applied to judgments | 0.1 |
| 04/30/20 | WJB | Telephone conference with D Stoelting regarding letter from lawyer for G Smith regarding application of recoveries to L, G and D Smith judgments | 0.2 |
| 05/04/20 | WJB | Review letter from Weddle Law Firm regarding application of payments to L/G Smith judgment, review prior Orders and judgments regarding same and source of proceeds, participate in conference call with D Stoelting, K McGrath regarding same, analyze legal claims, judgments, sources of funds, analysis, risks and courses of action | 1.8 |

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| <u>Date</u> | <u>Tkpr</u> | | <u>Hours</u> |
|-------------|-------------|--|--------------|
| 05/08/20 | WJB | Telephone conference with D Stoelting regarding further discussion on application of proceeds to joint and several judgment of D Smith, L Smith and G Smith, analysis, risks and courses of action including forwarding list of assets recovered | 0.3 |
| 05/18/20 | WJB | Review draft letter to Judge Sharpe regarding L Smith and G Smith judgments and treatment regarding collection of frozen assets, review prior Orders and prepare e-mail with comments to D Stoelting at SEC | 0.7 |
| 05/19/20 | WJB | Preliminary review of D Stoelting e-mail regarding restitution judgment amounts | 0.1 |
| 05/19/20 | WJB | Prepare e-mail D Stoelting with collection numbers and distribution numbers to date for investors under Plan of Distribution | 0.2 |
| 05/19/20 | WJB | Review revised Judge Sharpe draft letter from D Stoelting and prepare response to same | 0.1 |
| 05/23/20 | WJB | Review e-mails from G Smith and L Smith counsel to SEC regarding call to discuss judgment satisfaction; Prepare reply e-mail to D Stoelting regarding participation in conference call | 0.1 |
| 05/31/20 | WJB | Review D Stoelting e-mail regarding prior turnover order requiring application of NFS monies to D Smith judgment, consider proposal and prepare reply regarding how to deal with in letter to Judge Sharpe | 0.2 |
| 05/31/20 | WJB | Review e-mail from SEC concerning report about release of T McGinn, locate on Federal Bureau of Prisons website and prepare Update notice for Receiver's website | 0.2 |

CURRENT FEES

\$4,641.00

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July 6, 2020

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TOTAL AMOUNT OF THIS INVOICE \$4,641.00

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 1/1/2020 TO 3/31/2020

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 1/1/20 to 3/31/20

| FUND ACCOUNTING (See Instructions): | | | | |
|-------------------------------------|---|----------------|----------------|-------------------|
| | | Detail | Subtotal | Grand Total |
| Line 1 | Beginning Balance (As of 12/31/2019): | 15,580,173 | 15,580,173 | 15,580,173 |
| | <i>Increases in Fund Balance:</i> | | | |
| Line 2 | Business Income | | - | - |
| Line 3 | Cash and Securities | | | |
| Line 4 | Interest/Dividend Income | 40,880 | 40,880 | 40,880 |
| Line 5 | Business Asset Liquidation | | - | - |
| Line 6 | Personal Asset Liquidation | | | |
| Line 7 | Third-Party Litigation Income | 238,047 | 238,047 | 238,047 |
| Line 8 | Miscellaneous - Other | | - | - |
| | Total Funds Available (Lines 1 - 8): | 278,927 | 278,927 | 278,927 |
| | <i>Decreases in Fund Balance:</i> | | | |
| Line 9 | Disbursements to Investors | 20,196 | 20,196 | 20,196 |
| Line 10 | Disbursements for Receivership Operations | | | |
| Line 10a | Disbursements to Receiver or Other Professionals | | - | - |
| Line 10b | Business Asset Expenses | 19,140 | 19,140 | 19,140 |
| 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 | 19,140 | 19,140 | 19,140 |
| 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 3/31/2020): | | | 15,819,764 |

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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 1/1/20 to 3/31/20

| | | | | |
|----------------|--|--|--|----------------------|
| 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 | | | \$ 15,819,764 |

| 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 | Plan Development Expenses Not Paid by the Fund: | | | |
| | 1. Fees: | | | |
| | Fund Administrator..... | | | |
| | IDC..... | | | |
| | Distribution Agent..... | | | |
| | Consultants..... | | | |
| | Legal Advisers..... | | | |
| | Tax Advisers..... | | | |
| | 2. Administrative Expenses | | | |
| | 3. Miscellaneous | | | |
| | Total Plan Development Expenses Not Paid by the Fund | | | |
| Line 15b | Plan Implementation Expenses Not Paid by the Fund: | | | |
| | 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 | | | |
| | Total Plan Implementation Expenses Not Paid by the Fund | | | |
| Line 15c | Tax Administrator Fees & Bonds Not Paid by the Fund | | | |
| | 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..... | | | 7 |
| Line 19b | # of Claimants/Investors Paid Since Inception of Fund..... | | | 1,956 |

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Receiver:
 By: William J. Brown, Receiver
 (signature)
William J. Brown, Receiver
 (printed name)
Receiver
 (title)
 Date: 6/9/2020

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. :

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

Upon the Fifteenth Interim Application of Phillips Lytle LLP (“Phillips Lytle”) and the Receiver (“Receiver”) for Allowance of Compensation and Reimbursement of Expenses dated July 8, 2020 (“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 January 1, 2020 and May 31, 2020 ("Fifteenth Interim Period") in the amount of \$30,340.72 is allowed as an interim allowance, and (ii) reimbursement of expenses advanced by Phillips Lytle during the Fifteenth Interim Period in the amount of \$111.37 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: _____, 2020

HON. CHRISTIAN F. HUMMEL

Doc #8021858.1

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. :

-----X
CERTIFICATE OF SERVICE

I, Karen M. Ludlow, being at all times over 18 years of age, hereby certify that on July 15, 2020, a true and correct copy of the Notice and Fifteenth Interim Application of Phillips Lytle LLP and the Receiver for Allowance of Compensation and Reimbursement of Expenses ("Fifteenth 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

- **Scott J. Ely** sely@elylawpllc.com,shm@fwc-law.com
- **James D. Featherstonhaugh** jdf@fwc-law.com,jsm@fwc-law.com,cr@fwc-law.com,shm@fwc-law.com
- **Brad M. Gallagher** bgallagher@barclaydamon.com
- **James H. Glavin , IV** hglavin@glavinandglavin.com
- **Bonnie R. Golub** bgolub@weirpartners.com
- **Erin K. Higgins** EHiggins@ckrpf.com
- **Benjamin W. Hill** bhill@dreyerboyajian.com, jcantoni@dreyerboyajian.com, coconnell@dreyerboyajian.com
- **E. Stewart Jones , Jr** esjones@joneshacker.com, mleonard@joneshacker.com, pcampione@joneshacker.com,kjones@joneshacker.com
- **Edward T. Kang** ekang@khflaw.com, mlagoumis@khflaw.com, jarcher@khflaw.com, mmoyes@khflaw.com,jpark@khflaw.com,golberding@KHFlaw.com
- **Jack Kaufman** kaufmanja@sec.gov
- **Michael A. Kornstein** mkornstein@coopererving.com
- **James P. Lagios** jlagios@icrh.com,rlaport@icrh.com
- **Kevin Laurilliard** laurilliard@mltw.com,chandler@mltw.com
- **James D. Linnan** jdlinnan@linnan-fallon.com,lawinfo@linnan-fallon.com
- **Haimavathi V. Marlier** marlierh@sec.gov
- **Jonathan S. McCardle** jsm@fwc-law.com
- **Kevin P. McGrath** mcgrathk@sec.gov
- **Lara S. Mehraban** mehrabanl@sec.gov,marlierh@sec.gov
- **Michael J. Murphy** mmurphy@carterconboy.com, abell@carterconboy.com, tcozzy@carterconboy.com
- **Joshua M. Newville** newvillej@sec.gov
- **Craig H. Norman** cnorman@chnesq.com,jbugos@coopererving.com
- **Andrew Park** apark@weirpartners.com,imarciniszyn@weirpartners.com
- **Thomas E. Peisch** TPeisch@ckrpf.com,apower@ckrpf.com
- **Terri L. Reicher** Terri.Reicher@finra.org
- **Richard L. Reiter** reiterr@wemed.com,richard.reiter@wilsonelser.com
- **Sheldon L. Solow** sheldon.solow@kayescholer.com, kenneth.anderson@kayescholer.com
- **David P. Stoelting** stoeltingd@sec.gov, mehrabanl@sec.gov, mcgrathk@sec.gov, paleym@sec.gov,wbrown@phillipslytle.com
- **Charles C. Swanekamp** cswanekamp@bsk.com,mhepple@bsk.com
- **Walter Weir** wwair@weirpartners.com,smorris@weirpartners.com
- **Bryan M. Westhoff** bryan.westhoff@kayescholer.com
- **Benjamin Zelsermyer** bzlaw@optonline.net,steincav@aol.com

And, I hereby certify that on July 15, 2020, I mailed, via first class mail using the United States Postal Service, a copy of the Fifteenth Interim Application to the individuals listed below:

Nancy McGinn
426-8th Avenue
Troy, NY 12182

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

Greenberg Traurig, LLP
54 State Street, 6th Floor
Albany, NY 12207

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

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

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

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

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

Dated: July 15, 2020

/s/ Karen M. Ludlow
Karen M. Ludlow