

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

-----X  
SECURITIES AND EXCHANGE COMMISSION :

*Plaintiff,*

vs.

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

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

*Defendants,*

LYNN A. SMITH and  
NANCY MCGINN,

*Relief Defendants. and*

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

*Intervenor.*

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

PLEASE TAKE NOTICE that upon the Sixteenth 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 **December 17, 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 four-month period from June 1, 2020 through September 30, 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](http://www.nynd.uscourts.gov)), or at the website of the Receiver ([www.mcginnsmithreceiver.com](http://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: November 10, 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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LAUREN T. SMITH, and NANCY McGINN, :

*Defendants,* :

LYNN A. SMITH and :  
NANCY McGINN, :

*Relief Defendants. and* :

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

*Intervenor.* :

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**FACE SHEET PURSUANT TO LOCAL RULE 2016-1  
FOR SIXTEENTH 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 June 1, 2020 through September 30, 2020

AMOUNT OF COMPENSATION SOUGHT FOR FEES FROM JUNE 1, 2020 THROUGH SEPTEMBER 30, 2020 \$55,420.17 (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 JUNE 1, 2020 THROUGH SEPTEMBER 30, 2020 \$795.90

Dated: November 10, 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

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*Plaintiff,*

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*Defendants,*

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*Relief Defendants. and*

GEOFFREY R. SMITH, Trustee of the  
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Trust U/A 8/04/04,

*Intervenor.* :

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**SIXTEENTH 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 four-month period from June 1, 2020 through September 30, 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 June 1, 2020 to September 30, 2020 (“Sixteenth 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 2020 hourly rate of \$510 per hour, again per prior agreement with the SEC.

4. As a result, legal services at full value in this Sixteenth Interim Period total \$55,511.00, while the amount to be paid less the 7.5% discount if this Application is approved is \$51,347.67. The Receiver’s services at full value of \$510 per hour in this Sixteenth Interim Period total \$9,231.00, while the amount to be paid if this Application is granted are \$4,072.50 at \$225 per hour. This makes the total amount sought pursuant to this Application to be \$55,420.17 in fees and \$795.90 in disbursements.

**CASE STATUS**

5. As of October 26, 2020, there is \$ 14,342,190.00 on hand in Receiver accounts, with approximately \$7,211,811.68 having been distributed to investors with allowed claims through the Sixty-Fifth and Final Payment Schedule of First Investor Distribution (not all checks having cleared). The process of issuing first distribution checks representing 10% of allowed claim amounts to investors has ended, and the second round of distributions also representing another 10% of allowed claim amounts to investors commenced on October 2, 2020 with the filing of the First Payment Schedule of Second Investor Distribution and Second Payment Schedule of Second Investor Distribution (Collateral Recovery Investors).<sup>1</sup> First through Tenth motions to expunge duplicate paper claims and otherwise objectionable claims have also been filed and decided. 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 additional turnover orders on the

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<sup>1</sup> \$3,205,951.64 has already been distributed to investors with allowed claims in the second distribution round through the Fourth Payment Schedule (Docket No. 1157).



judgments to collect frozen David Smith, Lynn Smith, Geoffrey 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. Net claims appear to be in the range of \$113,973,685. 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). Since the Tenth Claims Objection Motion (Docket No. 1100) and the Receiver's Motion for an Order in Aid of Administration to Approve a Procedure for Notice and Abandonment of Claims of Lost Investors and Investors with Incomplete Claims, etc. (Docket No. 1090) have been decided by the Court, the Receiver is (a) proceeding to make second distributions of 10 percent to investors, and (b) beginning to wrap-up and conclude the estate subject to the Court deciding the Receiver's Motion to do so at Docket No 1133.

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

**SUMMARY OF ACTIVITIES DURING SIXTEENTH INTERIM PERIOD**

10. While the legal, non-legal and quasi-legal functions and services performed during the Sixteenth 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 May 29, 2020 totaled \$15,751,904.00, and at October 2, 2020, the balance was \$15,529,681.00. 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, and turnover orders relating to Community Bank, John Hancock, National Financial Services LLC and Bank of America.

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

13. First distribution checks have been issued to investors, or IRA custodians on behalf of investors. The checks represented 10% of allowed claim amounts. Second distribution checks are being issued to investors, or IRA custodians on behalf of investors. These checks also represent 10% of allowed claim amounts. As stated previously on the Receiver's website ([www.mcginnsmithreceiver.com](http://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 Sixteenth 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 National Financial Services 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 \$102.00, and no disbursement expense:

<u>ATTORNEY</u>	<u>HOURS</u>	<u>RATE</u>	<u>TOTAL</u>
William J. Brown	0.20	510.00	102.00

B. Claims Administration and Objections

Category B relates to numerous and continuous communications with multiple investors respecting issues involving their specific claims; dealing with the administration and follow up as to lost and incomplete investor claims and multiple communications regarding same; review of Orders entered granting the Ninth and Tenth claims motions and research regarding requirements for service of same; preparation and filing of the Fifty-Eighth through Sixty-Fifth and Final Payment Schedules of First Investor Distribution, attend to mailing of fist investor distribution checks to investors, work on preparation of distribution schedules for preferred investors and the related extensive mathematical computations; 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 \$36,182.00, plus \$602.04 in disbursement expense:

<u>ATTORNEY</u>	<u>HOURS</u>	<u>RATE</u>	<u>TOTAL</u>
William J. Brown	18.50	510.00	9,435.00
Catherine N. Eisenhut	111.30	240.00	26,712.00
Kawczynski, Karen	0.20	175.00	35.00

C. Asset Disposition

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

D. Business Operations

No services were charged to or rendered by Phillips Lytle in Category D during the Sixteenth 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 and Five Star 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 \$10,812.00, and \$188.11 in disbursement expense:

<u>ATTORNEY</u>	<u>HOURS</u>	<u>RATE</u>	<u>TOTAL</u>
William J. Brown	21.20	510.00	10,812.00

F. Employee Benefits/Pensions

Category F relates to the 401K plan of Timothy McGinn and communications with U.S. Bank regarding closing of same; communications with Pension Works 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 \$765.00, and no disbursement expense:

<u>ATTORNEY</u>	<u>HOURS</u>	<u>RATE</u>	<u>TOTAL</u>
William J. Brown	1.50	510.00	765.00

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 Sixteenth Interim Period.

H. Fee/Employment Objections

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

I. Accounting/Auditing

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

J. Business Analysis

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

K. Corporate Finance

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

L. Data Analysis

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

M. Status Reports

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

N. Litigation Consulting

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

O. Forensic Accounting

No services were charged to or rendered by Phillips Lytle in Category O during the Sixteenth 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;

review of McGinn Smith Holdings notices and communications regarding payment of same; numerous communications regarding tax questions on distributions and steps to finalize final tax returns, receive and review IRS notices regarding PrimeVision entities and communications with financial professionals regarding same trust 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 \$1,479.00, and \$5.75 in disbursement expense:

<u>ATTORNEY</u>	<u>HOURS</u>	<u>RATE</u>	<u>TOTAL</u>
William J. Brown	2.90	510.00	1,479.00

Q. Valuation

No services were charged to or rendered by Phillips Lytle in Category Q during the Sixteenth 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 \$9,231.00, the discounted amount to be paid is \$4,072.50. All of the Receiver's travel time is charged to this category and, thus, is at a substantially reduced rate.

The daily time entries reveal the Receiver's almost daily involvement with the various Receiver entities identified in the various descriptions including for this Application Period almost daily communications with investors to answer questions about assets recovered, the claims process, asset distributions to creditors, weekly review, processing and approval of payments to vendors and other third parties for services rendered to Receiver operating companies, review and authorization of payroll, review of communications from investors and

SEC regarding various and ongoing matters, review of bank statements and accounts, review and deal with NFS statements and Dinosaur Securities statements; maintenance of website and updating of same, review of National Life Insurance annual reports, dealings with and review of statements from M&T Bank, KeyBank and Five Star Bank in connection with the Receivership estate account maintenance, the review of checks and invoices for payment on a weekly basis for those various operating businesses, conferences with third parties regarding claims and related issues, 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 \$9,231.00, and no disbursement expense:

<u>ATTORNEY</u>	<u>HOURS</u>	<u>RATE</u>	<u>TOTAL</u>
William J. Brown	18.10	510.00	\$9,231.00 (to be billed and paid at \$4,072.50)

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

Category S consists of services related to legal involvement in the SEC's action against McGinn, Smith & Co., Inc. and other parties including review of pleadings, communications with SEC regarding lost and abandoned claims process; preparation, drafting and conferences regarding omnibus motion for closing of case; 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 \$6,171.00, and no disbursement expense:

<u>ATTORNEY</u>	<u>HOURS</u>	<u>RATE</u>	<u>TOTAL</u>
William J. Brown	12.10	510.00	6,171.00

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 Sixteenth Interim Period.

U. Sale of McGinn Niskayuna Property

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

V. Sale of Smith Vero Beach Property

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

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

No services were charged to or rendered by Phillips Lytle in Category X during the Sixteenth 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 Sixteenth 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 Sixteenth 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 Sixteenth 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 \$55,420.17, and reimbursement of expenses in the amount of \$795.90, for a total of \$56,216.07 for the period of June 1, 2020 through September 30, 2020; and (ii) granting such other and further relief as is just and proper.

Dated: November 10, 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

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Telephone No.: (716) 847-8400

Doc #9162486.1

# *Exhibit A*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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LAUREN T. SMITH, and NANCY McGINN, :

*Defendants,* :

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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 SIXTEENTH 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 Sixteenth 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: November 10, 2020

/s/ William J. Brown

William J. Brown

Doc #9162491.1



# ***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 1020335  
Invoice Date 10/29/20  
Client Number 33474  
Matter Number 00000  
W J Brown

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**Re: ASSET ANALYSIS & RECOVERY**

FOR PROFESSIONAL SERVICES RENDERED THROUGH SEPTEMBER 30, 2020:

<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
08/25/20	WJB	Review and identify \$262.64 NFS check regarding T McGinn and prepare e-mail SEC regarding receipt and arrange for deposit	0.2

CURRENT FEES \$102.00

TOTAL AMOUNT OF THIS INVOICE \$102.00

\*\*\*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 1020336  
 Invoice Date 10/29/20  
 Client Number 33474  
 Matter Number 00001  
 W J Brown

---

### Re: CLAIMS ADMINISTRATION & OBJECTIONS

FOR PROFESSIONAL SERVICES RENDERED THROUGH SEPTEMBER 30, 2020:

<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
07/08/20	CNE	Review research regarding service of order on parties in interest; Draft letter to Rabinovich counsel regarding courtesy copy of order; Review lost/incomplete investor list for posting	1.9
07/13/20	CNE	Call with Rabinovich counsel regarding Order granting ninth claims motion	0.2
07/15/20	CNE	Review Order Granting Ninth Claims Motion; Email WJB regarding ruling set forth in Order Granting Ninth Claims Motion; Review and revise draft omnibus motion to wind-down receivership; Review and revise draft declaration in support of omnibus motion to wind-down receivership	6.1
07/16/20	WJB	Deal with J Graber questions and respond regarding same	0.1
07/16/20	WJB	Review B Gold claims inquiry, look up on database and reply regarding same	0.1

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
07/16/20	CNE	Review entered claim objection orders and update master disputed claims spreadsheet per rulings; Further revise omnibus motion to wind-down receivership per WJB comments	5.6
07/17/20	WJB	Follow-up with CNE regarding missing investors	0.1
07/17/20	WJB	Attend to issues with M Rusilas for deceased mother, N Rusilas	0.1
07/17/20	K-K	Docket last day for Lost and Incomplete Investors to return information requests	0.2
07/17/20	CNE	Further revise omnibus motion for discharge; Review additional contact information regarding lost investors; Review investor claims	4.2
07/20/20	CNE	Revise draft omnibus motion for discharge per SEC comments; Revise draft declaration in support of omnibus motion; Draft proposed order granting omnibus motion for discharge; Review and dispose of claim numbers 4806-4813, 4827 - 4876, 4908, 5814-5823, 5977-5994, 6319 - 6329, 6330-6337, 6341-6347	6.2
07/21/20	WJB	Review H Smith inquiry and prepare instructions to staff regarding same	0.1
07/21/20	WJB	Review R Wikert claim situation and course of action regarding Trust	0.1
07/21/20	CNE	Further revise draft omnibus motion for discharge and supporting declaration per WJB comments; Review investor correspondence in response to abandoned claims notices; Call with investor counsel regarding contact information; Call with investor counsel regarding potential settlement	2.6
07/22/20	WJB	Review R Wikert claim and N Wikert communications regarding lost trust agreement and letters testamentary, prepare reply letter with instructions on how to follow-up processing of claims	0.3

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
07/22/20	WJB	Evaluate R Wikert claim and revise letter regarding evaluation and need for letters testamentary	0.2
07/22/20	WJB	Review claims of O Ahmed and approve payment including verification of address	0.2
07/22/20	WJB	Prepare letter to N Bloom Crucetti regarding A Bloom claim and need for completion of forms	0.2
07/22/20	CNE	Update omnibus motion and declaration per comments received from WJB and B Shea; Review investor claim files regarding settlement offer; Email WJB regarding investor settlement offer; Further revise omnibus motion, declaration and proposed order; Review disallowed claims and confirm database updates	4.2
07/23/20	CNE	Email WJB regarding revised motion documents; revise draft omnibus motion for discharge and supporting declaration per WJB comments; Respond to KML5 regarding inquiry on investor claim file; Review Ninth Claims Order and motion papers filed in connection with Ninth Claims Motion; Email WJB regarding reaction to investor settlement offer	3.5
07/24/20	CNE	Prepare omnibus motion for discharge, supporting declaration and exhibits for filing; Work on finalizing preferential investor distribution schedule	2.9
07/27/20	WJB	Rabinovich: Review settlement proposal from Mr. Glavin, consider same and e-mail CNE regarding considerations and factors	0.2
07/27/20	WJB	Review draft settlement matrix in response to Mr. Glavin proposal, evaluate same, review claims and prepare e-mail CNE regarding assessment of settlement proposal and proposed response by Receiver	0.7
07/27/20	CNE	Analysis regarding disputed claims and potential settlement outcomes; Review investor correspondence and responses to abandoned claims posting; Draft settlement offer regarding certain disputed investor claims; Finalize preferential investor distribution schedule	2.8

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
07/28/20	WJB	Review H Glavin e-mail regarding Rabinovich's regarding call request and prepare e-mail CNE regarding recommendations regarding same	0.1
07/28/20	WJB	Review motion for approval of Plan of Distribution, objections by Rabinovich's and others to same in connection with assessment of Mr. Glavin comments to allowance and payment of Rabinovich claims	0.3
07/28/20	CNE	Prepare response to questions posed by investor counsel; Review terms of plan of distribution; consider collateral recovery and settlement outcomes	1.3
07/29/20	WJB	Review CNE information and response on dealing with E Angelucci claim and approve same	0.1
07/29/20	WJB	Telephone call from K Drum regarding N Cohen and spouse, e-mail CNE regarding contacting Harris Beach regarding same	0.2
07/29/20	CNE	Attend to investor correspondence; review materials sent in response to abandoned claims posting; review and update investor claim files; telephone calls with investors re missing documentation; draft letter to investor re missing documentation; work on distribution schedules for other preferential investors	4.4
07/30/20	CNE	Review preferred investor distribution schedules and consider database updates	0.5
07/31/20	WJB	Review NFS recovery sheet for Rabinovich claims and CNE e-mail regarding analysis	0.1
07/31/20	CNE	Email WJB re preferential investor recovery, potential settlement; draft letter to investor re missing information; attend to investor correspondence	0.8



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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
08/03/20	WJB	Rabinovich: Review settlement offer and make assessment, prepare comments to draft e-mail reply including review of Docket Nos. 1075, 1094 and 1097 and e-mail CNE regarding same	0.8
08/03/20	WJB	Rabinovich: Review final version of draft reply regarding settlement offer	0.2
08/03/20	WJB	Rabinovich: Conference with CNE regarding further proposed revisions to settlement offer and alternative relief	0.2
08/03/20	WJB	M Reilly: Conference with CNE regarding claims of M Reilly, preference offset and how to describe same	0.2
08/03/20	WJB	Review CNE e-mail with Excel treatment of Fisher claims for collateral recoveries	0.1
08/03/20	WJB	Conference CNE as to how Fisher and Palazzo allocations regarding collateral recoveries and offsets was calculated	0.1
08/03/20	CNE	Attend to investor correspondence; emails with WJB re potential settlement offer with preferred investor; respond to investor counsel re potential settlement offer; call with investor counsel re missing IQs; update preferred investor distribution schedule; review and dispose of claims 5065-5070, 5071-5072, 4569-4570, 5154-5156	5.7
08/04/20	WJB	Dr. Chang: Review e-mail from R Marquardt regarding Gilbert Abramson, Esq. letter to Dr. Chang regarding collateral recovery and judgment, consider same	0.2
08/04/20	WJB	Dr. Chang: Telephone call from R Marquardt regarding explanation and discussion of what is judgment and effect upon collateral recovery, request copy of any judgment and confirmation that no collateral recovery is or will be pursued and discussion of reasons for same	0.6
08/04/20	WJB	Dr. Chang: Review R Marquardt multiple e-mails regarding judgment and collateral recovery and consider course of action regarding same	0.4

33474 Brown, William J. as Receiver of McGinn,  
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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
08/04/20	WJB	Review status of lost and incomplete investors and contemplate next steps	0.2
08/04/20	CNE	Respond to investor inquiries	0.2
08/05/20	WJB	Review Fidelity Investments letter returning D Jones-Taylor letter, and February 2017 Memo to File; Prepare e-mail B Shea regarding tracking down claim holder and review claims database in attempt to locate investor	0.2
08/05/20	WJB	Review Seventh and Ninth Claims Objection Orders regarding offsets including Fishers and discuss charts with CNE including method of process for calculation	0.4
08/05/20	WJB	Final review of Fisher and Palazzo offset schedules	0.1
08/05/20	CNE	Meet with WJB regarding referred investor distribution schedules; Meet with WJB and kml5 regarding lost/incomplete investor status; Review investor file and additional documentation	0.9
08/06/20	WJB	Reply to R Marquardt regarding need to review status of judgment and evaluate response	0.1
08/06/20	CNE	Call with investor counsel regarding necessary documentation; Draft form letter regarding follow-up to lost/incomplete investors; Email kml5 regarding preferred investor distribution schedules	1.2
08/07/20	WJB	Review and revise CNE draft letter to incomplete investors regarding August 31 deadline	0.4
08/07/20	CNE	Draft form follow-up letter to lost/incomplete investors; Revise form letter per WJB comments; Confer with KML5 regarding status of preferential investor distribution schedules; Attend to investor correspondence; Review remaining preferential offsets	2.1
08/10/20	CNE	Attend to investor correspondence; Review and dispose of claims 4452-4453, 6205	0.4

33474 Brown, William J. as Receiver of McGinn,  
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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
08/11/20	WJB	Rabinovich: Check status of Rabinovich claim calculation and potential appeal and prepare email CNE regarding status of any notice of appeal	0.1
08/11/20	WJB	Review prior letters regarding J Klein estate, incomplete investor file and respond to N Klein regarding next steps	0.2
08/11/20	WJB	Dr. Chang: Review FINRA decision respecting Dr. Chang and prepare e-mail R Marquardt and J Malecki regarding existence of judgment	0.3
08/11/20	WJB	Prepare reply to M Anthony regarding CMS alleged fraud claim	0.2
08/11/20	CNE	Respond to KML5 question regarding lost/incomplete investor follow-up mailing	0.2
08/12/20	WJB	Review Letters Testamentary for G Forgea and prepare letter requesting original Death Certificate	0.1
08/12/20	CNE	Meet with WJB and KML5 to discuss status of database updating; Draft email to B Shea regarding collateral recovery and preferential offsets; Review remaining preferential offsets; Email KML5 regarding updates to database for abandoned claims	1.5
08/13/20	CNE	Email B Shea regarding offsets and calculating second distribution; Call with B Shea regarding calculating second distribution	0.4
08/14/20	WJB	Follow-up regarding processing and direction regarding status of Brommel Resources claims as having no basis and no basis to assert claim	0.1
08/14/20	CNE	Email WJB regarding investor inquiry regarding abandoned claim; Review claim file regarding abandoned claim; Respond to investor inquiry regarding abandoned claim; Review and dispose of claims 6122-6123; Review 60, 61 distribution schedules in preparation for filing	2.2

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
08/17/20	WJB	Brommel Resources: Review e-mail from M. Alleby requesting no expungement of claim and prepare reply after reviewing prior communications with proper addressee and provide response regarding expungement pursuant to Court Order	0.4
08/17/20	WJB	John Ruch: Review claim arriving on August 15 which was expunged, consider next steps and prepare reply to Mr. Ruch's Executor without waiting rights	0.2
08/18/20	WJB	Review J & D Gargiulo Trust, D Gargiulo claim and multiple individual claims and analyze purpose and form of Trust and prepare response regarding claims	0.4
08/18/20	WJB	Revise letter to Gargiulo family regarding claims and send same	0.1
08/18/20	WJB	Review and reply to A O'Shea letter regarding IRA termination	0.2
08/19/20	WJB	T Dott: Telephone call from F Altman Esq. regarding need to amend voluntary administration order to include McGinn Smith assets and discussion of how to accomplish same, value of claim and prepare memo to file regarding same	0.2
08/19/20	WJB	T Dott: Follow-up telephone call from F Altman regarding Surrogate's Court request, discussion of same, analysis and course of action and prepare memo to file regarding voluntary administration	0.3
08/20/20	WJB	Peter Cheese: Review e-mail from P Cheese regarding expunged claims, review database, review lost investor list and prior service of process and prepare reply regarding expunged claim	0.5
08/24/20	WJB	Deal with investor offset distribution check letter and claim of E Angelucci	0.2
08/24/20	WJB	Review three newly-identified lost and incomplete investors, analyze circumstances and prepare e-mail with individual courses of action regarding same	0.4

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
08/24/20	CNE	Review and dispose of claim 4139; Review claims files, status of lost/abandoned investor claims; Prepare letters to certain investors regarding missing IQs; Call investor regarding missing IQ and status	3.9
08/25/20	WJB	Review and approve claim 4140 and authorize payment	0.2
08/25/20	CNE	Review status of lost IQ; Call investor to discuss lost IQ and need for letters testamentary	0.5
08/26/20	CNE	Emails with B Shea and KML5 regarding second distribution calculation; Communications with lost/incomplete investors regarding completing claims paperwork	1.6
08/27/20	CNE	Communications with lost/incomplete investors regarding lost paperwork; Confer with KML5 regarding database reports for calculating second distribution; Audit claims in investor database; Review initial report of remaining claims to be paid	4.0
08/28/20	WJB	Review expanded Powers Testamentary received regarding Dott claim and forward same	0.1
08/28/20	WJB	Review Harold Alvin Smith claim file and issues regarding failure to contact Receiver and conversations with staff and CNE regarding necessary follow-up	0.2
08/28/20	WJB	Review Amended Certificate of Voluntary Administration as amended and approve same for Estate of Thomas Dott	0.1
08/28/20	CNE	Confer with KML5 regarding status of investor paperwork; Respond to investor queries; Email WJB regarding status of database audits; Audit database regarding all unscheduled investor claims; Review and dispose of claims 5634-5641; Meet with WJB and KML5 regarding status of investor paperwork; Test database and total scheduled claims	4.8
08/31/20	WJB	Review e-mail from CNE regarding status and documents for Smith Family trust claim and prepare reply regarding necessary trust documents needed after considering same	0.2

33474 Brown, William J. as Receiver of McGinn,  
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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
08/31/20	WJB	Review e-mail from CNE regarding Forgea, Parker and White claim status and proposed method of handling and reply with comments to each of same	0.3
08/31/20	WJB	Review e-mail from CNE regarding Dr. Harold Alvin Smith refusal to file Investor Questionnaires, reasons for same, assess course of action and respond to same	0.1
08/31/20	CNE	Review investor correspondence; Review paperwork submitted by lost/abandoned investors; Email WJB regarding additional paperwork submitted and next steps; Multiple calls with investors regarding defects in submitted paperwork; Draft letters to investors regarding defects in submitted paperwork and need to submit completed paperwork	6.5
09/01/20	CNE	Email WJB regarding second distribution recommendation from B Shea; Phone call with investor regarding status of paperwork	0.7
09/02/20	WJB	Review Gargiulo information and consider how to treat same in dealing with lack of authorized signatory and conference CNE regarding same	0.3
09/02/20	WJB	Discuss Parker and Smith Family Trust incomplete claims with CNE and decide on next steps	0.2
09/02/20	CNE	Correspondence and phone calls with investors regarding incomplete claims paperwork; Call with WJB regarding status of investor files	2.9
09/03/20	CNE	Phone calls with investors regarding claims paperwork	0.3
09/04/20	CNE	Calls with investors; Review paperwork submitted by investors; Review and dispose of claims 4924-4925, 6833-6834	0.9
09/08/20	CNE	Email KML5 regarding lost/complete investors who missed Aug. 31 deadline	0.1

33474 Brown, William J. as Receiver of McGinn,  
Smith & Co., Inc., et al  
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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
09/09/20	CNE	Review paperwork submitted in connection with lost/abandoned claims; Email WJB regarding paperwork submitted for lost/abandoned claims; Email WJB regarding status of incomplete investor files	2.1
09/10/20	WJB	Gargiulo: Review Trust A recently revealed terms and whether McGinn Smith assets are contained in Trust	0.1
09/10/20	WJB	Further review new Gargiulo documents received by CNE and explanation regarding same and extended telephone conference with CNE regarding same and course of action regarding Notre Dame University	0.5
09/10/20	WJB	Conference CNE regarding Palmer and Smith Family Trust investments and course of action regarding same	0.2
09/10/20	CNE	Calls with investors regarding paperwork needed for incomplete claims; Call with WJB regarding status of incomplete/abandoned claims; Draft letters to investors regarding incomplete/abandoned claims and deadline to complete paperwork	3.0
09/11/20	CNE	Meet with KML5 regarding preparation of schedules for second distribution; Communications with investors regarding status of paperwork; Review distribution schedule	2.2
09/14/20	CNE	Call with investor regarding potential claim; Attend to investor correspondence and review submitted paperwork	0.9
09/15/20	CNE	Work on draft supplement to abandoned claims list; Review investor correspondence	1.1
09/16/20	WJB	Review CNE e-mail regarding confusion and issues surrounding claims of H Albert Smith and H Alvin Smith, communications with both and prepare reply on procedure to reconcile all claims	0.4
09/16/20	WJB	Continue review of Smith Family Trust claims and distinguishing between them and prepare summary reply to H Smith and CNE regarding course of action	0.6

33474 Brown, William J. as Receiver of McGinn,  
Smith & Co., Inc., et al  
00001 Claims Administration & Objections  
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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
09/16/20	CNE	Review file regarding investor query regarding claims; Email WJB and KML5 regarding investor query regarding claims; Draft letters to investor regarding ownership of claims and how to proceed	3.0
09/17/20	WJB	Conference with CNE regarding Smith Trust and Dr. Smith claims in terms of expungement and follow-up process and use of Plan provisions regarding same	0.3
09/17/20	CNE	Review draft website update; email WJB regarding investors with incomplete paperwork; call with WJB regarding incomplete investors; draft letters to incomplete investors; call with investor regarding status of claim paperwork	2.1
09/18/20	WJB	Prepare e-mails CNE regarding letters to Dr. Smith regarding claims	0.1
09/18/20	CNE	Review investor correspondence; Communications with investors regarding necessary paperwork	1.2
09/21/20	WJB	Evaluate proposed notice of abandoned claims list and conference with CNE regarding same	0.2
09/21/20	CNE	Attend to investor correspondence re completing paperwork; Email WJB regarding status update on investor paperwork; Call with investor regarding IRA account information	0.8
09/22/20	WJB	Review revised Notice of Filing of Abandoned Claims list and provide additional comments and forward same to CNE	0.3
09/22/20	CNE	Call with beneficiary of trust investor regarding claim	0.2
09/23/20	CNE	Review investor submitted paperwork; Draft letter to investor regarding submitted documents	0.7
09/24/20	CNE	Revise abandoned claims list per WJB comments	0.4
09/25/20	CNE	Review investor files; Email WJB regarding status report on unresolved claims	0.9



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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
09/28/20	CNE	Review and dispose of claims 6486-6487; 6490-6491; 6478-6479; 5009, 5011, 5007-5008	0.7
09/29/20	WJB	Review limbo investors status and prepare e-mail staff and CNE regarding Gargiulo and Smith Family Trust and process and status of same	0.2
09/29/20	WJB	Review treatment of Smith Family Trust claims in light of termination of trust and of purported beneficiaries, review CNE reports regarding same, review Docket No. 1075 and final notice procedure and work on final notice list	0.5
09/29/20	WJB	Revise First Supplemental expunged claims list and notice of filing	0.2
09/29/20	WJB	Follow-up on Smith Family Trust and decide on how to deal with claim and review Exhibit C to motion and prepare instructions to CNE regarding same	0.3
09/29/20	WJB	Multiple e-mails with CNE regarding revised supplemental expunged list and review proposed letters to Smith Family Trust beneficiaries and trustee	0.5
09/29/20	WJB	Conference staff on collateral recoveries treatment in second distribution	0.2
09/29/20	WJB	Review revised supplemental expunged claims list and finalize comments to same and forward to CNE	0.3
09/29/20	CNE	Confer with KML5 regarding investor mailing recipients; Correspondence with WJB regarding claims status; Revise notice of filing of supplemental abandoned claims list per WJB comments; Draft letters to investors regarding abandoned claims	2.2
09/30/20	WJB	Review and further revise supplemental list of expunged claims and prepare reply e-mail with comments	0.3
09/30/20	WJB	Review and revise Smith Family Trust expungement letter	0.2

33474 Brown, William J. as Receiver of McGinn,  
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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
09/30/20	WJB	Review e-mail from CNE regarding Palmer claim and prepare reply regarding same	0.1
09/30/20	CNE	Finalize supplemental abandoned claims list; Draft investor letters regarding claim paperwork status	1.6

CURRENT FEES

\$36,182.00

FOR COSTS ADVANCED AND EXPENSES INCURRED:

Postage WJB - Postage to Various (151 pieces) - Re: Claims	181.20
Overnight Courier WJB - Fedex to Jan Lukens (c/o Lukens Stables) - Re: Claims	30.48
Overnight Courier CEisenhut - Fedex to Werner Feibes - Re: Claims	30.48
Overnight Courier CEisenhut - Fedex to Christine Palmer - Re: Claims	30.48
Overnight Courier CEisenhut - Fedex to Harold Smith - Re: Claims	30.48
Overnight Courier WJB - Fedex to Werner Feibes (c/o Walter Feibes) - Re: Claims	38.90
Postage CEisenhut - Postage to Smith Family Trust - Re: Claims	5.90
Overnight Courier CEisenhut - Fedex to Smith Family Trust - Re: Claims	30.48
Overnight Courier CEisenhut - Fedex to Smith Family Trust (c/o Nancy Eaton, Trustee) - Re: McGinn Smith & Co., Inc.	30.48
Overnight Courier CEisenhut - Fedex to Harold Alvin Smith - Re: Claims	30.48
Overnight Courier CEisenhut - Fedex to Walter Feibes - Re: McGinn Smith	38.90
Overnight Courier WJB - Fedex to James Gargiulo - Re: Claims	42.44

33474 Brown, William J. as Receiver of McGinn,  
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Overnight Courier WJB - Fedex to University of Notre Dame du Lac (Attn: John A. Sejdinaj, VP of Finance) - Re: Claims	38.90
Overnight Courier WJB - Fedex to Marita A. Tretter - Re: Claims	42.44

CURRENT EXPENSES	<hr/> 602.04
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TOTAL AMOUNT OF THIS INVOICE	\$36,784.04
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\*\*\*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 1020337  
 Invoice Date 10/29/20  
 Client Number 33474  
 Matter Number 00004  
 W J Brown

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### Re: CASE ADMINISTRATION

#### FOR PROFESSIONAL SERVICES RENDERED THROUGH SEPTEMBER 30, 2020:

<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
06/09/20	WJB	Review draft first quarter 2020 SFAR, prepare e-mail D Stoelting regarding same and e-mail same to SEC as required	0.3
06/09/20	WJB	Review issues with alarmtraders.com registration with register.com in connection with web hosting and transfer of same, prepare inquiry e-mail to B Shea regarding same	0.2
06/09/20	WJB	Telephone conference with B Shea regarding web hosting and alarmtraders.com registration, review eSozo e-mail with details regarding same	0.1
06/17/20	WJB	Telephone conference with DMP of IT staff regarding alarmtraders.com domain name in dealing with register.com regarding same in order to deal with cloud services	0.2
06/17/20	WJB	Prepare e-mail B Shea regarding K Maughs e-mail account formally at Alarm Traders in order to deal with register.com transfer	0.1

33474 Brown, William J. as Receiver of McGinn,  
Smith & Co., Inc., et al  
00004 Case Administration  
October 29, 2020

Invoice Number 1020337

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
06/17/20	WJB	Deal with completion of register.com form and prepare extended explanatory letter regarding appointment of Receiver and control of alarmtraders.com website necessary to transfer cloud services	0.9
06/18/20	WJB	Exchange e-mails with B Shea on register.com user account for cloud services	0.1
06/18/20	WJB	Review and revise letter and application to register.com for Alarmtraders.com domain transfer	0.5
06/25/20	WJB	Review e-mail from B Shea on registration.com re-registration and possible identification of relevant e-mail address for security purposes and reply	0.1
06/25/20	WJB	registration.com: Review e-mail confirming change of registration per Receiver's letter and attend to changing password and establishing security questions and forward to B Shea to enable change to cloud service	0.2
07/06/20	WJB	Prepare e-mail SEC regarding administrative claims and fee applications for review and approval	0.1
07/07/20	WJB	Review Five Star Bank dormancy notice for bank account, sign and return same to Five Star Bank	0.2
07/07/20	WJB	Prepare draft investor update for Receiver website based upon Court decisions at Docket Nos. 1128, 1129 and 1130	0.3
07/08/20	WJB	Prepare legal descriptions of abandoned and lost investor claims motion and order for posting on Receiver's website	0.5
07/08/20	WJB	Revise website description and notice regarding lost and abandoned claims and compare to requirements of Order and approve same	0.3
07/08/20	WJB	Review and revise lost and incomplete investor list for posting on website in accordance with Order	0.3
07/08/20	WJB	Telephone call from P Weinmer regarding various questions, distribution process	0.2

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
07/08/20	WJB	Review further revisions to Receiver's website as to compliance with lost and abandoned investor notice and finalize	0.5
07/09/20	WJB	Review and approve final version of website posting for lost and abandoned claim investors in accordance with Court Order	0.2
07/09/20	WJB	Finalize revisions to website posting of investor list for names of investors approved by Court to be posted regarding lost and abandoned claims	0.3
07/10/20	WJB	Review corrections to lost investor list following approval of lost investor motion	0.2
07/10/20	WJB	Review broker payment amounts and prior communications including 12/19/19 e-mail regarding F Chiappone payments as being timely completed and forward two confirming e-mails to SEC at their request	0.3
07/10/20	WJB	Follow-up with staff and B Shea on lost investors	0.1
07/14/20	WJB	Plan: Review B Shea 9/11/19 e-mail regarding notifying brokers when lost and incomplete investor motion is approved by Court and prepare e-mail B Shea with materials to notify brokers	0.3
07/21/20	WJB	Plan: Prepare outline of steps necessary to continue movement towards final distribution and closing of case and prepare e-mail regarding same	0.4
07/21/20	WJB	Revise e-mail on wind-up process to Receiver team	0.3
07/22/20	WJB	Review second quarter 2020 SFAR report and prepare e-mail to SEC regarding same	0.4
07/23/20	WJB	Plan: Review reserve budget prepared by Controller, review prior professional fees for 2018 and 2019 in connection of evaluation of reserve budget and prepare e-mail controller regarding same	0.3

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
07/28/20	WJB	Prepare draft investor letter in anticipation of second investor distribution to investors with allowed claims, review prior first distribution letter, review applicable court orders	0.7
07/28/20	WJB	Prepare further revisions to draft second investor distribution letter	0.2
07/29/20	WJB	Plan: Review B Shea comments to proposed Plan timeline for second and final distributions, prepare reply regarding mechanism to finish first distribution and commence second distribution and reconciliation of same	0.5
07/29/20	WJB	Plan: Follow-up e-mail on offset claims	0.1
08/04/20	WJB	Plan: Review Seventh and Ninth Claims Objection results for Pine Street offsets and proposed creditor offsets and resulting claims and review same for Fisher and related offsets as allowed by Order of Court and approve same	0.8
08/04/20	WJB	Plan: Review collateral recovery and preferential offset recovery charts	0.1
08/05/20	WJB	Review C Gustafson letter to Receiver as filed with Court and prepare and revise reply letter	0.4
08/05/20	WJB	Review M Anthony detailed e-mail regarding direct claim in CMS file with multiple legal questions, review CMS direct investor file and prepare reply e-mail to M Anthony	0.5
08/05/20	WJB	Plan: Conference CNE and staff regarding status of incomplete and undeliverable investor letters and number of investors who have contacted since lost and incomplete investor order was entered, discuss next steps and preparations to gather as many completed claims as possible	0.3
08/05/20	WJB	Finalize and file with Court Gustafson reply letter	0.1
08/07/20	WJB	Plan: Review Fifty-Eighth and Fifty-Ninth Distribution Schedules, approve and verify approval of Lex claim in accordance with Order	0.3



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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
08/11/20	WJB	Prepare additional revisions to letter to incomplete investors providing one last opportunity to complete claim file by August 31, 2020 and prepare e-mail CNE and staff regarding letter and lost and incomplete investor list	0.4
08/11/20	WJB	Consider status of lost investors and additional inquiry received last evening and prepare reply to staff on providing IQ	0.2
08/11/20	WJB	Review and revise lost and abandoned investor pleading, review Court Order regarding same and complete	0.3
08/11/20	WJB	Prepare website update on legal issues respecting expunged claims and establish August 31 date for remaining incomplete investors	0.2
08/12/20	WJB	Plan: Review, sign and distribute checks 2838 through 2848 to investors pursuant to recent payment schedules filed with Court	0.3
08/12/20	WJB	Review Declaration of Service regarding letter to incomplete investors served on August 11	0.1
08/12/20	WJB	Revise Notice of Filing of Abandoned Claims List	0.3
08/12/20	WJB	Review letter from Johnson & Cohen regarding divorce action of Silverman vs. Silverman and Subpoena, review Docket No. 96 and prepare e-mail B Shea for any documents responsive to account information	0.2
08/12/20	WJB	Revise website posting for incomplete and lost investors	0.1
08/12/20	WJB	Conference staff regarding filing list of expunged creditors	0.1
08/13/20	WJB	N Hoffman: Review letter and purported NYS Subpoena for information relevant to divorce and prepare letter M Cohen, Esq. rejecting Subpoena and providing prior information as provided to N Hoffman	0.4

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
08/14/20	WJB	Plan: Review Sixty and Sixty-First Payment Schedules and investors with claims and amounts for same involving offsets and collateral recoveries and conference with staff regarding corrections	0.3
08/18/20	WJB	Plan: Review staff e-mail regarding final payment schedules, consider same and respond to same	0.2
08/19/20	WJB	Plan: Review Rabinovich claim calculations following court decision	0.1
08/19/20	WJB	N Silverman: Further review of M Cohen Esq. letter and Subpoena regarding N Silverman divorce and prepare supplemental letter regarding no intention to respond to Subpoena given information already provided and in light of Receivership Order	0.2
08/19/20	WJB	Review and send letter to M Cohen, Esq.	0.2
08/24/20	WJB	Plan: Review and approve filing of Sixty-Second and Sixty-Third payment schedules and notices regarding same for filing with Court	0.2
08/25/20	WJB	Plan: Consider and work on circumstances and treatment of three additional lost and incomplete investors identified on August 24, review prior e-mails, review website list, facts and arrange for posting of additional names and discussion of steps to take to make extraordinary efforts to track down investors	0.5
08/25/20	WJB	Plan: Review, approve and distribute distribution checks to investors on Sixtieth and Sixty-First payment schedules	0.2
09/01/20	WJB	Plan: Prepare e-mail CNE regarding B Shea 10% proposal and collateral offset implications and calculations for second round of distributions to investors	0.2
09/01/20	WJB	Plan: Work on Plan and second investor distribution process	0.3

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
09/10/20	WJB	Plan: Review e-mail from staff on next payment schedules and timing of commencement of second distribution, prepare reply regarding designated dates for final first distribution schedule and commencement of second distributions based upon limbo investors	0.2
09/11/20	WJB	Plan: Review and approve Sixty-Fourth Payment Schedule and prepare e-mail staff and CNE regarding approval and filing with Court	0.2
09/14/20	WJB	Plan: Deal with Second Distribution question as to how to handle collateral recoveries when IRA's are involved and respond requesting IRA form of letter and consider same	0.2
09/16/20	WJB	Initial draft of website update on second distribution and lost and expunged claims	0.4
09/16/20	WJB	Further revisions to website update on second distribution and expunged claims and forward for posting	0.5
09/17/20	WJB	Consider further revisions to website update on second distribution	0.1
09/18/20	WJB	Revise web posting to Receiver's website and forward to staff for final posting	0.3
09/28/20	WJB	Plan: Review and approve distribution checks to investors on First Distribution	0.2
09/29/20	WJB	Plan: Review and sign distribution checks and forward to staff for mailing	0.2
09/29/20	WJB	Plan: Communicate with staff on timing of last first distribution and commencement of second distributions on October 2	0.1
09/29/20	WJB	Plan: Review and revise letter to investors with IRAs and collateral recoveries concerning restorative payments made under second distribution	0.3

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
09/30/20	WJB	Plan: Consider methodology for distribution in second distribution round involving IRAs and prepare e-mail regarding same	0.2
09/30/20	WJB	Plan: Prepare e-mail B Shea regarding cash transfer at M&T and second distribution timing schedule	0.2
09/30/20	WJB	Plan: Review comments received on October 2 first distribution date for second round of distributions and prepare reply regarding reasoning and selection of October 2 date	0.2
09/30/20	WJB	Plan: Prepare e-mail requesting second distribution list letters and schedules	0.1
09/30/20	WJB	Plan: Deal with questions on collateral recovery treatment and restorative payments in second distribution round	0.1
09/30/20	WJB	Plan: Review and approve two second distribution letters, two second distribution schedules and two notices of filing for second distribution and send comments regarding same to staff	0.8
CURRENT FEES			\$10,812.00

FOR COSTS ADVANCED AND EXPENSES INCURRED:

Receivership Website Maintenance	168.91
Overnight Courier WJB - Postage to Various (12 pieces) - Re: Case Administration	19.20
CURRENT EXPENSES	188.11

TOTAL AMOUNT OF THIS INVOICE	\$11,000.11
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\*\*\*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 I.D. #16-0505790

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

Invoice Number 1020338  
 Invoice Date 10/29/20  
 Client Number 33474  
 Matter Number 00005  
 W J Brown

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**Re: EMPLOYEE BENEFITS / PENSIONS**

FOR PROFESSIONAL SERVICES RENDERED THROUGH SEPTEMBER 30, 2020:

<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
06/23/20	WJB	T McGinn: Review secure e-mail from U.S. Bank regarding closing of T McGinn 401K investment account and final statement, review same	0.2
08/18/20	WJB	Review e-mails with Pension Works regarding pension documentation and consider same	0.1
08/18/20	WJB	Review Pension Works documentation, execute authorization	0.4
08/25/20	WJB	Review Pension Works final report and forward to B Shea for review and approval	0.1
09/01/20	WJB	Review and sign 2019 Form 5500 and review and sign authorization and Form 8955 SSA and send to A Allen at Pension Works for filing	0.5
09/02/20	WJB	Review e-mail from A Allen with filing receipt for filed Form 5500, review same	0.2

CURRENT FEES \$765.00

TOTAL AMOUNT OF THIS INVOICE \$765.00

\*\*\*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 I.D. #16-0505790

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

Invoice Number 1020339  
 Invoice Date 10/29/20  
 Client Number 33474  
 Matter Number 00015  
 W J Brown

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### Re: TAX ISSUES

#### FOR PROFESSIONAL SERVICES RENDERED THROUGH SEPTEMBER 30, 2020:

<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
06/16/20	WJB	Review NYS assessment cancellation for McGinn Smith Holdings LLC ending in #91-7	0.2
06/16/20	WJB	Review M Schaffstall e-mail on IRS collection notice from Performant Recovery, review history and prepare reply	0.2
06/18/20	WJB	Communications with B Shea regarding check preparation for IRS for McGinn Smith Holdings payment	0.1
06/25/20	WJB	Prepare letter to U.S. Treasury regarding McGinn Smith Holdings LLC and asserted penalties	0.1
06/26/20	WJB	Deal with issues regarding payment of amount due to IRS for McGinn Smith Holdings for 2008 and 2009 including research regarding prior notices	0.4
07/23/20	WJB	Prepare e-mail B Shea regarding final tax returns and wrap-up process for communication with accountants	0.1
07/29/20	WJB	Review Chiampou Travis and B Shea e-mails on what final returns need to be done and process for same	0.2



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October 29, 2020

Invoice Number 1020339

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
07/29/20	WJB	Telephone call from B Shea regarding tax questions on distribution, steps to finalize final tax returns to the extent possible	0.2
07/29/20	WJB	Revise e-mail to Chaiampou Travis for B Shea regarding final tax returns	0.1
08/25/20	WJB	Review two new IRS McGinn Smith Holdings 2008 and 2009 1065 Taxes Due Notice and prepare e-mail Chaiampou Travis for handling and follow-up	0.2
08/25/20	WJB	Prepare letter N Harris CPA with material for preparation of final tax return	0.1
08/27/20	WJB	Review IRS McGinn Smith Holdings letter regarding abatement of 2018 penalty and forward to Chaiampou Travis and B Shea	0.2
09/04/20	WJB	Review IRS PrimeVision Communications of Keys notice	0.1
09/16/20	WJB	Review PrimeVision Power of Attorney for IRS response and respond to same	0.1
09/18/20	WJB	PrimeVision: Execution IRS Power of Attorney and prepare e-mail to Chaiampou with same	0.2
09/29/20	WJB	Review IRS notice regarding PrimeVision assignment to collector and prepare e-mail Chaiampou regarding same	0.2
09/29/20	WJB	Telephone call from Steve at NYS Department of Taxation and Finance on status of open receivership and whether taxes due and prepare memo to file regarding same	0.2

CURRENT FEES

\$1,479.00

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FOR COSTS ADVANCED AND EXPENSES INCURRED:

Postage WJB - Fedex to United States Treasury (IRS)	5.75
- Re: Tax Issues	
CURRENT EXPENSES	<hr/> 5.75

TOTAL AMOUNT OF THIS INVOICE	\$1,484.75
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\*\*\*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  
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 FED I.D. #16-0505790

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

Invoice Number 1020661  
 Invoice Date 11/05/20  
 Client Number 33474  
 Matter Number 00017  
 W J Brown

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**Re: W.J. BROWN, AS RECEIVER FUNCTION**

FOR PROFESSIONAL SERVICES RENDERED THROUGH SEPTEMBER 30, 2020:

<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
06/02/20	WJB	Review M&T Bank Distribution account statement and forward to B Shea for reconciliation and posting	0.1
06/08/20	WJB	Review Five Star CDARS bank account statement and NYSIF invoice and forward to B Shea	0.1
06/09/20	WJB	Telephone call from W Hajjar regarding SAI claim and no distribution on same and reasons therefor	0.1
06/09/20	WJB	Telephone call from G Cohen regarding Receivership status and instructions on how to review website	0.1
06/09/20	WJB	Review daily cash account reports for three-month period in connection with review of SFAR	0.2
06/15/20	WJB	Review e-mail from S Kohl regarding update and prepare reply regarding reference to website and description of recent events	0.1
06/16/20	WJB	Review checks received from B Shea, review, approve and process same	0.2

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November 5, 2020

Invoice Number 1020661

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
06/16/20	WJB	Telephone from Mrs. B Kogan regarding status and explanation on how to use website	0.2
06/22/20	WJB	Telephone call from investor, B Coffin, regarding status and website descriptions	0.1
06/25/20	WJB	Review requested form from M&T Securities for accuracy	0.1
06/25/20	WJB	Two telephone calls from A O'Shea as purported investor, answering questions and identifying how to establish identity in communication with Receiver, review database	0.2
06/25/20	WJB	Telephone call from D Puglisi regarding status of case	0.1
06/26/20	WJB	Review e-mail from purported daughter of G Forgea and analyze action steps regarding claim and provide instructions	0.1
06/26/20	WJB	Review and respond to e-mails and calls from C Schultz regarding Forgea estate and communication that communication must be with investors directly regarding nature of investments	0.3
07/07/20	WJB	Review M&T distribution account statement and send to B Shea, review M&T Alarm Traders statements and send to B Shea for review and posting	0.1
07/07/20	WJB	Review checks, approve and sign same and return to B Shea	0.1
07/08/20	WJB	Review monthly KeyBank statement and forward to B Shea for reconciliation and posting	0.1
07/08/20	WJB	Deal with questions from investor, B Hallet	0.2
07/09/20	WJB	Review letter to Community Bank regarding request to close accounts in light of turnover of monies and send to bank	0.2
07/10/20	WJB	Telephone call from J Delaney regarding distribution status and updates on Receiver's website	0.1

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
07/13/20	WJB	Review and revise letter to S Hillman, as investor, regarding replacement check for non-negotiated investor distribution	0.1
07/13/20	WJB	Review June 2020 monthly statements for Five Star Bank, Dinosaur Securities and NFS and forward to B Shea for reconciliation and posting	0.1
07/14/20	WJB	Review e-mail received in secure fashion from Fidelity to D Stoelting regarding another T McGinn account at RMR subject to escheatment	0.2
07/15/20	WJB	Check on follow-up items regarding Chiampou Travis and prepare e-mail regarding same	0.1
07/15/20	WJB	Review M&T e-mail regarding new website and forward to B Shea for use in connection with financial matters	0.1
07/16/20	WJB	Review inquiry from N Hoffman Silverman regarding divorce proceeding	0.1
07/16/20	WJB	Telephone O Ahmed regarding process and no investor questionnaire	0.1
07/22/20	WJB	Prepare revision to information questionnaire and closure letter so that it reflects new information request, driver's license proof and abandonment risk	0.3
07/23/20	WJB	Prepare reply letter to N Hoffman in response to her letter regarding husband allegation of being McGinn Smith investors, review database and prepare reply letter	0.2
07/23/20	WJB	Consider next steps for second distribution and initial calculation of same	0.2
07/24/20	WJB	Prepare draft reply e-mail to M Anthony e-mail regarding nature of CMS investment including review of files and include information on individual investor versus McGinn Smith CMS investments and background to same	0.2
07/24/20	WJB	Telephone call from R Bellis, ADA, regarding status of D Smith restitution and amounts owed in connection with parole	0.2

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November 5, 2020

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
07/25/20	WJB	Review payroll, approve same and forward to B Shea	0.1
07/28/20	WJB	Telephone call from M Anthony, investor, regarding direct CMS claims, 2004 interest payments and lack of records regarding same, differentiation between direct and non-direct CMS investment, discussion of CMS generally	0.3
07/28/20	WJB	Review C Gustafson letter filed on docket, review letter requesting status and consider reply	0.2
07/28/20	WJB	Telephone call from E Angelucci regarding prior surname, confirmation of address, text from P Sicluna regarding missing investor process, review creditor database and discussion of how to process lost claim	0.4
07/28/20	WJB	Prepare timeline and tasks for second distribution to staff and B Shea	0.4
07/29/20	WJB	Review and revise draft e-mail to M Anthony regarding CMS questions	0.2
07/29/20	WJB	Telephone call from C Richardson regarding IRA Services, investor questionnaire and memo to file regarding same	0.2
08/03/20	WJB	Prepare reply e-mail to M Anthony on additional CMS questions	0.1
08/04/20	WJB	Review M&T Bank distribution account statement for July and forward to B Shea for reconciliation and posting	0.1
08/04/20	WJB	Prepare e-mail Asst. U.S. Attorney R Bellis for D Smith post-incarceration address	0.1
08/04/20	WJB	Telephone call from M Andolino regarding W-9 and forward message to staff regarding handling	0.1
08/05/20	WJB	Further revisions to second distribution letter to investors	0.1
08/05/20	WJB	Review NFS e-mail on final T McGinn account closure and approval of same	0.1

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November 5, 2020

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
08/06/20	WJB	Review KeyBank and Chiam pou Travis statement and forward to B Shea for reconciliation and approval	0.1
08/07/20	WJB	Telephone call from J Gargiulo regarding incomplete claim and e-mail staff regarding same	0.1
08/07/20	WJB	Review M&T Bank statements and forward to B Shea for reconciliation and posting	0.1
08/10/20	WJB	Telephone call from E Forgea regarding M Forgea and recommendation on small estate case in Renssalaer County, prepare memo to file	0.3
08/11/20	WJB	Consider how to deal with any new contacts from investors on lost or incomplete investor list and prepare e-mail with process to staff	0.2
08/11/20	WJB	Follow-up regarding A Parker lost investor status and prepare reply	0.1
08/11/20	WJB	Review Five Star Bank statement for 7/2020 and forward to B Shea for reconciliation and posting	0.1
08/12/20	WJB	Review, approve and sign payables checks and forward to B Shea	0.1
08/12/20	WJB	Telephone conference with A Dawahore regarding Gargiulo file, ex-spouse, Trust Agreements and needed information	0.3
08/12/20	WJB	Conference staff and CNE regarding next steps in process to finalize lost investors and begin second distributions	0.3
08/12/20	WJB	Telephone call from T Gage regarding McGinn Smith claims and distributions and prepare memo to file regarding same	0.3
08/13/20	WJB	Review D Spurrier address change request by e-mail and respond regarding response necessary by mail	0.1
08/13/20	WJB	Prepare reply e-mail D Stoelting regarding missing and lost investors and scope of current actions	0.1



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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
08/13/20	WJB	M Anthony: Review M Anthony supplemental e-mail and prepare reply regarding CMS alleged fraud	0.2
08/13/20	WJB	Review Dr. Change and R Marquardt e-mails and attorney e-mail regarding judgment and stay of same and abandonment of same and prepare reply	0.2
08/13/20	WJB	Telephone call from J Mayberry regarding IRA Services and status of second distribution	0.2
08/14/20	WJB	Review CNE Brommel Resources inquiry regarding expunged claims	0.1
08/14/20	WJB	Telephone call from R Beck regarding second distribution and use of website	0.2
08/18/20	WJB	Attend to various responses to investors regarding various correspondence	0.2
08/18/20	WJB	Telephone call with J Lukens re completion of Receiver documentation, extensive explanation regarding same and IRA and prepare memo to file regarding same	0.4
08/18/20	WJB	Revise letter to J Lukens regarding documentation	0.1
08/19/20	WJB	Telephone call from I Nemeth regarding status of second distribution	0.1
08/20/20	WJB	Ellen Forgea: Telephone call from E Forgea regarding paperwork questions regarding M Forgea, effort to respond to same and discussion regarding same	0.3
08/20/20	WJB	Review e-mail from register.com renewal process and changes to same and forward to B Shea with question regarding same	0.1
08/25/20	WJB	Conference with staff regarding process for second distribution checks and issues with tracking down remaining missing investors	0.1

33474 Brown, William J. as Receiver of McGinn,  
Smith & Co., Inc., et al  
00017 W.J. Brown, as Receiver Function  
November 5, 2020

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
08/25/20	WJB	Review proposed changes to distribution letters to investors with offsets and investors with collateral recoveries taking into account Court Orders and discuss same with staff	0.3
08/25/20	WJB	Prepare e-mail CNE and KML5 on three investor follow-up and activity to find same and review second distribution letter	0.1
08/25/20	WJB	A White: Telephone call from M White as Executor of claim as to how to complete investor forms, questions on dealing with IRA and prepare memo to file regarding same	0.2
08/25/20	WJB	Review follow-up letter and law firm contact on W Fiebes and send letter to him regarding additional claim	0.1
08/25/20	WJB	Prepare reply letter to Duane Morris regarding account for Steen Bruno Hansen	0.1
08/25/20	WJB	Attend to responding to and dealing with various claim correspondence received from multiple investors and third parties and attend to same	0.5
08/26/20	WJB	Work on outline of timing of next steps for completion of first distributions and commencement of second distributions and prepare e-mail CNE and staff regarding same	0.4
08/26/20	WJB	Review CNE e-mail on Palmer claim situation and prepare reply regarding conveying candid assessment but decision remains with Mrs. Palmer	0.1
08/27/20	WJB	Telephone call from M White regarding Investor Questionnaire form, status of receipt of same, check on same, and revert	0.1
08/28/20	WJB	Voicemail message from Dr. W Hajjar regarding information request regarding claims and process request	0.1
08/28/20	WJB	Review, approve and sign distribution checks for Sixty-Second Schedule	0.1
09/01/20	WJB	Prepare e-mail CNE regarding call to investor, Dr. Hajjar, regarding incomplete documents	0.1

33474 Brown, William J. as Receiver of McGinn,  
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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
09/01/20	WJB	Prepare e-mail B Shea regarding remote schedule	0.1
09/01/20	WJB	Review multiple letters from investors and process same for responses	0.3
09/04/20	WJB	Review M&T Bank distribution account statement and forward to B Shea for reconciliation and posting	0.1
09/04/20	WJB	Review payroll, approve same and forward to B Shea	0.1
09/04/20	WJB	Review Five Star business checking statement and forward to B Shea for reconciliation and posting	0.1
09/08/20	WJB	Review Chiampou monthly statement and forward to B Shea for review and approval	0.1
09/09/20	WJB	Review e-mail from CNE with report on Gargiulo claims and consider same	0.1
09/09/20	WJB	Review summary report from CNE on status of all remaining abandoned and lost claims and consider same and prepare reply	0.1
09/10/20	WJB	Review KeyBank statement and forward to B Shea for reconciliation and posting	0.1
09/10/20	WJB	Review Five Star Bank statement and forward to B Shea for reconciliation and posting	0.1
09/11/20	WJB	Deal with delivery of two sets of checks from B Shea for vendors and first distribution	0.1
09/14/20	WJB	Exchange e-mails with B Shea on transfer of money to fund second distribution	0.1
09/16/20	WJB	Review misdirected mail with distribution checks and vendor checks, consider alternatives in light of misdirected envelope and prepare reply regarding course of action	0.2

33474 Brown, William J. as Receiver of McGinn,  
Smith & Co., Inc., et al  
00017 W.J. Brown, as Receiver Function  
November 5, 2020

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
09/16/20	WJB	Telephone call from J Delaney regarding second distribution and discussion regarding same	0.2
09/17/20	WJB	Review payroll, approve same and forward to B Shea	0.1
09/18/20	WJB	Review e-mail regarding status of computer repair and prepare reply regarding course of action	0.1
09/18/20	WJB	Prepare e-mail SEC on second distribution and status of claim files	0.2
09/21/20	WJB	Review e-mail from B Shea regarding cable bill and status and prepare reply regarding approval and mailing	0.1
09/22/20	WJB	Review e-mail from B Shea with proposal on computer replacement in light of performance issues of existing equipment, review vendor proposal regarding new Dell computer, review comparable computers available on market and prepare reply regarding cost and options	0.3
09/22/20	WJB	Review vendor reply regarding new computer equipment and pricing and prepare reply to B Shea regarding same	0.1
09/28/20	WJB	Review vendor checks and distribution checks, authorize same and process	0.2
09/29/20	WJB	Review computer vendor bill for new Dell equipment for B Shea, review prior proposal and approve same and forward	0.1
09/29/20	WJB	Exchange e-mails with Five Star Bank officer regarding rate selection for maturing \$1,051,000 CDARS, best rate and time period and consider Plan payments and finalize same	0.3
09/29/20	WJB	Review NYS Insurance Fund credit and prepare e-mail B Shea regarding same	0.1
09/30/20	WJB	Prepare e-mail M&T Bank for transfer of monies to distribution account for payment of second distribution checks	0.1

33474 Brown, William J. as Receiver of McGinn,  
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00017 W.J. Brown, as Receiver Function  
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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
09/30/20	WJB	Revise letter to M&T on account transfer for distribution account and execute and send same	0.2
09/30/20	WJB	Review four letters regarding Smith Family Trust and approve same	0.1
09/30/20	WJB	Review staff e-mail on number of claims and checks to process in second distribution and prepare reply regarding number of claims to include in each payment schedule to complete second distributions by year-end	0.2
09/30/20	WJB	Telephone call from G Canuso regarding unspecified inquiry into treatment of claim per A Guzzetti and prepare e-mail report to staff	0.3
09/30/20	WJB	Telephone call from Mrs. Bajwa regarding status of second distribution since use of computer not available	0.1

CURRENT FEES \$9,231.00

TOTAL AMOUNT OF THIS INVOICE \$9,231.00

\*\*\*PAYMENT DUE UPON RECEIPT\*\*\*

# **CATEGORY S**

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



## Phillips Lytle LLP

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

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

Invoice Number 1020342  
 Invoice Date 10/29/20  
 Client Number 33474  
 Matter Number 00018  
 W J Brown

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

FOR PROFESSIONAL SERVICES RENDERED THROUGH SEPTEMBER 30, 2020:

<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
06/02/20	WJB	Review three turnover orders received from D Stoelting for Bank of America and NFS and release of G Smith IRA and prepare reply with comment to SEC	0.2
06/24/20	WJB	Prepare omnibus motion for closing of case and destruction of records following entry of remaining court decisions	0.6
06/24/20	WJB	Continue preparation of omnibus motion for closing of case	0.6
06/25/20	WJB	Prepare further revisions to revised Omnibus Motion for closing of case	0.4
06/25/20	WJB	Work on edits to motion for omnibus relief to close case	0.1
07/06/20	WJB	Review e-mail question from SEC regarding status of undecided decisions by court and steps to resolve same and prepare reply regarding draft motion to close case and timing for completion of same	0.2
07/07/20	WJB	Review Orders granting relief at Docket Nos. 1128, 1129 and 1130	0.3

33474 Brown, William J. as Receiver of McGinn,  
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October 29, 2020

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
07/07/20	WJB	Read and comprehend decision at Docket No. 1130 regarding overruling of Rabinovich and related claims and disallowance of same	0.3
07/07/20	WJB	Prepare e-mail D Stoelting at SEC regarding next steps in process in light of Court's three decisions	0.1
07/08/20	WJB	Consider service of process issues on entered Orders and prepare e-mail CNE regarding same	0.1
07/08/20	WJB	Review and consider next steps regarding Docket Nos. 1090 and 1128 regarding lost and abandoned claims and prepare e-mail regarding steps to take in preparation for distributing notices and filing same on Receiver's website to notify lost and abandoned investors	0.6
07/08/20	WJB	Review CNE e-mail regarding answers concerning requirement to serve certain Orders as entered and decision to supply courtesy copy to opposing counsel	0.3
07/08/20	WJB	Prepare website update regarding lost and abandoned investors to SEC	0.2
07/09/20	WJB	Prepare e-mail to SEC with final lost and abandoned claims website posting for information regarding lost and abandoned claims	0.2
07/10/20	WJB	Review and revise Declaration of Service regarding service on lost and incomplete investors and attend to filing	0.1
07/14/20	WJB	Prepare first draft of missing and incomplete investor letter to be served upon such investors per Order and revise same	0.6
07/14/20	WJB	Review lost investor steps for assurance and compliance with Order	0.1
07/15/20	WJB	Review report from CNE regarding H Glavin Esq. and Rabinovich claims, analyze recklessness assertion and prepare e-mails CNE regarding same	0.3



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00018 SEC v McGinn Smith & Co., Inc., et al  
October 29, 2020

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
07/16/20	WJB	Begin review of revised omnibus motion for closing of case	0.1
07/16/20	WJB	Prepare further revisions to omnibus motion regarding closing of case and administrative steps	1.0
07/16/20	WJB	Prepare e-mail B Shea regarding preparation of reserve budget for liquidation period and closing of case and guidelines regarding same	0.2
07/17/20	WJB	Continue review and revisions to Omnibus Motion for closing of case and forward to CNE	0.9
07/20/20	WJB	Review D Stoelting e-mail on provision in prior Order on entry of final judgments upon closing of case and prepare reply regarding same	0.1
07/21/20	WJB	Review latest draft of omnibus order to take steps to close case and revise same and forward to CNE	0.7
07/22/20	WJB	Review B Shea comments to omnibus motion regarding steps to close case and prepare reply regarding records and payments and timing of destruction, prepare further comments to motion	0.3
07/22/20	WJB	Prepare two e-mails to B Shea and discuss budget and ECF filing with staff and timing considerations regarding same	0.2
07/22/20	WJB	Conference CNE regarding communications with Rabinovich counsel regarding decision and settlement proposal, analysis regarding same	0.2
07/22/20	WJB	Review B Shea e-mail on budget delivery, comments to motion, second versus final distribution and calculation of reserve budget	0.2
07/22/20	WJB	Review 7/21 revised draft of omnibus motion for closing of case and proposed order and prepare comments to same	0.4
07/22/20	WJB	Review omnibus motion proposed order, consider need for administrative claims bar date and prepare comments to CNE	0.2

33474 Brown, William J. as Receiver of McGinn,  
Smith & Co., Inc., et al  
00018 SEC v McGinn Smith & Co., Inc., et al  
October 29, 2020

Invoice Number 1020342

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
07/23/20	WJB	Review draft reserve budget received from B Shea and consider against annual expenses	0.4
07/23/20	WJB	Prepare revisions to reserve budget and e-mail B Shea with comments and questions regarding same	0.5
07/23/20	WJB	Review latest revised version of Omnibus Motion for closing steps and prepare comments to CNE	0.2
07/23/20	WJB	Review final version of Omnibus Motion for closing steps and prepare final comments to CNE and raise issues on final versus second distribution	0.4
07/23/20	WJB	Review final Declaration for Omnibus Motion, sign Declaration and attend to filing	0.0
07/23/20	WJB	Review revised and final form of Motion for omnibus relief regarding closing of case and e-mail final comments to CNE regarding same	0.3
08/03/20	WJB	Review proposed T McGinn turnover order for NFS account and reply to SEC regarding same	0.1
08/04/20	WJB	Review SEC letter to Judge Sharpe and proposed Order regarding NSF account for T McGinn and reply to SEC regarding same	0.1
08/12/20	WJB	Review three Turnover Orders assigned by court and Order modifying asset freeze	0.2
08/12/20	WJB	Prepare final revision to Notice of Filing of Abandoned Claims list with Court	0.1

CURRENT FEES \$6,171.00

TOTAL AMOUNT OF THIS INVOICE \$6,171.00

\*\*\*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

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

REPORTING PERIOD 4/1/2020 TO 6/30/2020

**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 4/1/20 to 6/30/20

<b>FUND ACCOUNTING (See Instructions):</b>				
		<b>Detail</b>	<b>Subtotal</b>	<b>Grand Total</b>
Line 1	Beginning Balance (As of 3/31/2020):	15,819,764	15,819,764	15,819,764
	<b>Increases in Fund Balance:</b>			
Line 2	Business Income		-	-
Line 3	Cash and Securities			
Line 4	Interest/Dividend Income	17,487	17,487	17,487
Line 5	Business Asset Liquidation		-	-
Line 6	Personal Asset Liquidation			
Line 7	Third-Party Litigation Income	61,008	61,008	61,008
Line 8	Miscellaneous - Other		-	-
	<b>Total Funds Available (Lines 1 - 8):</b>	<b>78,495</b>	<b>78,495</b>	<b>78,495</b>
	<b>Decreases in Fund Balance:</b>			
Line 9	Disbursements to Investors		-	-
Line 10	<b>Disbursements for Receivership Operations</b>			
Line 10a	Disbursements to Receiver or Other Professionals	134,817	134,817	134,817
Line 10b	Business Asset Expenses	7,252	7,252	7,252
Line 10c	Personal Asset Expenses			
Line 10d	Investment Expenses			
Line 10e	Third-Party Litigation Expenses			
	1. Attorney Fees			
	2. Litigation Expenses			
	<b>Total Third-Party Litigation Expenses</b>			
Line 10f	Tax Administrator Fees and Bonds			
Line 10g	Federal and State Tax Payments			
	<b>Total Disbursements for Receivership Operations</b>	<b>142,069</b>	<b>142,069</b>	<b>142,069</b>
Line 11	<b>Disbursements for Distribution Expenses Paid by the Fund:</b>			
Line 11a	<b>Distribution Plan Development Expenses:</b>			
	1. Fees:			
	Fund Administrator.....			
	Independent Distribution Consultant (IDC).....			
	Distribution Agent.....			
	Consultants.....			
	Legal Advisers.....			
	Tax Advisers.....			
	2. Administrative Expenses			
	3. Miscellaneous			
	<b>Total Plan Development Expenses</b>			
Line 11b	<b>Distribution Plan Implementation Expenses:</b>			
	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			
	<b>Total Plan Implementation Expenses</b>			
	<b>Total Disbursements for Distribution Expenses Paid by the Fund</b>			
Line 12	<b>Disbursements to Court/Other:</b>			
Line 12a	Investment Expenses/Court Registry Investment System (CRIS) Fees			
Line 12b	Federal Tax Payments			
	<b>Total Disbursements to Court/Other:</b>			
	<b>Total Funds Disbursed (Lines 9 - 11):</b>			
Line 13	Ending Balance (As of 6/30/2020):			<b>15,756,190</b>

**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 4/1/20 to 6/30/20**

<b>Line 14</b>	<b>Ending Balance of Fund – Net Assets:</b>			
Line 14a	Cash & Cash Equivalents			
Line 14b	Investments			
Line 14c	Other Assets or Uncleared Funds			
	<b>Total Ending Balance of Fund – Net Assets</b>			<b>\$ 15,756,190</b>
<b>OTHER SUPPLEMENTAL INFORMATION:</b>				
		<b>Detail</b>	<b>Subtotal</b>	<b>Grand Total</b>
	<b>Report of Items NOT To Be Paid by the Fund:</b>			
<b>Line 15</b>	<b>Disbursements for Plan Administration Expenses Not Paid by the Fund:</b>			
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			
	<b>Total Disbursements for Plan Administration Expenses Not Paid by the Fund</b>			
<b>Line 16</b>	<b>Disbursements to Court/Other Not Paid by the Fund:</b>			
Line 16a	Investment Expenses/CRIS Fees			
Line 16b	Federal Tax Payments			
	<b>Total Disbursements to Court/Other Not Paid by the Fund:</b>			
<b>Line 17</b>	<b>DC &amp; State Tax Payments</b>			
<b>Line 18</b>	<b>No. of Claims:</b>			
Line 18a	# of Claims Received This Reporting Period.....			
Line 18b	# of Claims Received Since Inception of Fund.....			2,781
<b>Line 19</b>	<b>No. of Claimants/Investors:</b>			
Line 19a	# of Claimants/Investors Paid This Reporting Period.....			-
Line 19b	# of Claimants/Investors Paid Since Inception of Fund.....			1,956

Receiver:  
 By: William J. Brown, Receiver  
 (signature)  
William J. Brown  
 (printed name)  
Receiver  
 (title)  
 Date: 7/22/2020

WILLIAM J. BROWN, ESQ  
RECEIVER

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

# STANDARDIZED FUND ACCOUNTING REPORT

CIVIL DISTRIBUTION FUND

---

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

REPORTING PERIOD 7/1/2020 TO 9/30/2020

**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 7/1/20 to 9/30/20

FUND ACCOUNTING (See Instructions):				
		Detail	Subtotal	Grand Total
Line 1	Beginning Balance (As of 3/31/2020):	15,756,190	15,756,190	15,756,190
	<i>Increases in Fund Balance:</i>			
Line 2	Business Income		-	-
Line 3	Cash and Securities			
Line 4	Interest/Dividend Income	8,500	8,500	8,500
Line 5	Business Asset Liquidation		-	-
Line 6	Personal Asset Liquidation			
Line 7	Third-Party Litigation Income		-	-
Line 8	Miscellaneous - Other		-	-
	<b>Total Funds Available (Lines 1 – 8):</b>	<b>8,500</b>	<b>8,500</b>	<b>8,500</b>
	<i>Decreases in Fund Balance:</i>			
Line 9	Disbursements to Investors	213,899	213,899	213,899
Line 10	Disbursements for Receivership Operations			
Line 10a	Disbursements to Receiver or Other Professionals	57,817	57,817	57,817
Line 10b	Business Asset Expenses	10,819	10,819	10,819
Line 10c	Personal Asset Expenses			
Line 10d	Investment Expenses			
Line 10e	Third-Party Litigation Expenses			
	1. Attorney Fees			
	2. Litigation Expenses			
	<b>Total Third-Party Litigation Expenses</b>			
Line 10f	Tax Administrator Fees and Bonds			
Line 10g	Federal and State Tax Payments			
	<b>Total Disbursements for Receivership Operations</b>	<b>68,636</b>	<b>68,636</b>	<b>68,636</b>
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			
	<b>Total Plan Development Expenses</b>			
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			
	<b>Total Plan Implementation Expenses</b>			
	<b>Total Disbursements for Distribution Expenses Paid by the Fund</b>			
Line 12	Disbursements to Court/Other:			
Line 12a	Investment Expenses/Court Registry Investment System (CRIS) Fees			
Line 12b	Federal Tax Payments			
	<b>Total Disbursements to Court/Other:</b>			
	<b>Total Funds Disbursed (Lines 9 – 11):</b>			
Line 13	Ending Balance (As of 9/30/2020):			<b>15,482,155</b>



**STANDARDIZED FUND ACCOUNTING REPORT for McGinn, Smith Co. Co. Et. Al. - Cash Basis**  
**Receivership; Civil Court Docket No. 10-CV-457(GLS/CFH)**  
**Reporting Period 7/1/20 to 9/30/20**

<b>Line 14</b>	<b>Ending Balance of Fund – Net Assets:</b>			
Line 14a	Cash & Cash Equivalents			
Line 14b	Investments			
Line 14c	Other Assets or Uncleared Funds			
	<b>Total Ending Balance of Fund – Net Assets</b>			<b>\$ 15,482,155</b>

OTHER SUPPLEMENTAL INFORMATION:				
		Detail	Subtotal	Grand Total
	<b>Report of Items NOT To Be Paid by the Fund:</b>			
<b>Line 15</b>	<b>Disbursements for Plan Administration Expenses Not Paid by the Fund:</b>			
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			
	<b>Total Plan Development Expenses Not Paid by the Fund</b>			
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			
	<b>Total Plan Implementation Expenses Not Paid by the Fund</b>			
Line 15c	Tax Administrator Fees & Bonds Not Paid by the Fund			
	<b>Total Disbursements for Plan Administration Expenses Not Paid by the Fund</b>			
<b>Line 16</b>	<b>Disbursements to Court/Other Not Paid by the Fund:</b>			
Line 16a	Investment Expenses/CRIS Fees			
Line 16b	Federal Tax Payments			
	<b>Total Disbursements to Court/Other Not Paid by the Fund:</b>			
<b>Line 17</b>	<b>DC &amp; State Tax Payments</b>			
<b>Line 18</b>	<b>No. of Claims:</b>			
Line 18a	# of Claims Received This Reporting Period.....			
Line 18b	# of Claims Received Since Inception of Fund.....			2,781
<b>Line 19</b>	<b>No. of Claimants/Investors:</b>			
Line 19a	# of Claimants/Investors Paid This Reporting Period.....			73
Line 19b	# of Claimants/Investors Paid Since Inception of Fund.....			2,029

Receiver:  
 By: William J. Brown, Receiver  
 (signature)  
WILLIAM J. BROWN  
 (printed name)  
Receiver  
 (title)  
 Date: 10/22/2020

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION :

*Plaintiff,* :

vs. :

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

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

*Defendants,* :

LYNN A. SMITH and :  
NANCY McGINN, :

*Relief Defendants. and* :

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

*Intervenor.* :

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

Upon the Sixteenth Interim Application of Phillips Lytle LLP (“Phillips Lytle”) and the Receiver (“Receiver”) for Allowance of Compensation and Reimbursement of Expenses dated November 10, 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 June 1, 2020 and September 30, 2020 ("Sixteenth Interim Period") in the amount of \$55,420.17 is allowed as an interim allowance, and (ii) reimbursement of expenses advanced by Phillips Lytle during the Sixteenth Interim Period in the amount of \$795.90 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

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HON. CHRISTIAN F. HUMMEL

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF NEW YORK

-----X  
 SECURITIES AND EXCHANGE COMMISSION :

*Plaintiff,* :

vs. :

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

McGINN, SMITH & CO., INC., :  
 McGINN, SMITH ADVISORS, LLC :  
 McGINN, SMITH CAPITAL HOLDINGS CORP., :  
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 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 November 10, 2020, a true and correct copy of the Notice and Sixteenth Interim Application of Phillips Lytle LLP and the Receiver for Allowance of Compensation and Reimbursement of Expenses (“Sixteenth 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
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- **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 November 10, 2020, I mailed, via first class mail using the United States Postal Service, a copy of the Sixteenth Interim Application to the individuals listed below:

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Troy, NY 12182

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

Dated: November 10, 2020

/s/ Karen M. Ludlow  
Karen M. Ludlow