

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----X
SECURITIES AND EXCHANGE COMMISSION :

Plaintiff,

vs.

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

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

Defendants,

LYNN A. SMITH and
NANCY MCGINN,

Relief Defendants. and

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

Intervenor.

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

PLEASE TAKE NOTICE that upon the Eighteenth Interim Application of Phillips Lytle LLP and the Receiver for Allowance of Compensation and Reimbursement of Expenses (“Application”), Phillips Lytle LLP (“Phillips Lytle”) will move before the Hon. Christian F. Hummel, United States Magistrate Judge, United States District Court for the Northern District of New York, James T. Foley - U.S. Courthouse, 445 Broadway, Albany, New York 12207-2924, on **September 16, 2021 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 March 1, 2021 through June 30, 2021 in connection with legal services performed for William J. Brown, Esq., the Receiver for the McGinn Smith Entities and the services of the Receiver. No oral argument is requested.

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

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

Dated: August 10, 2021

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 :
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Relief Defendants. and :

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

Intervenor. :

**FACE SHEET PURSUANT TO LOCAL RULE 2016-1
FOR EIGHTEENTH 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 March 1, 2021 through June 30, 2021

AMOUNT OF COMPENSATION
SOUGHT FOR FEES FROM
MARCH 1, 2021 THROUGH
JUNE 30, 2021 \$41,202.86 (including Phillips Lytle and Receiver's fees at pre-arranged discounted hourly rates) at 7.5% for Phillips Lytle and \$225 rather than \$525.00 per hour for the Receiver

AMOUNT OF COMPENSATION
SOUGHT FOR EXPENSES FROM
MARCH 1, 2021 THROUGH
JUNE 30, 2021 \$994.18

Dated: August 10, 2021

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

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Doc #9782579.1

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SECURITIES AND EXCHANGE COMMISSION :

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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.

:

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**EIGHTEENTH 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 March 1, 2021 through June 30, 2021 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 March 1, 2021 to June 30, 2021 (“Eighteenth 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 2021 hourly rate of \$525 per hour, again per prior agreement with the SEC.

4. As a result, legal services at full value in this Eighteenth Interim Period total \$33,208.50, while the amount to be paid less the 7.5% discount if this Application is approved is \$30,30,717.86. The Receiver’s services at full value of \$525 per hour in this Eighteenth Interim Period total \$24,465.00, while the amount to be paid if this Application is granted are \$10,485.00 at \$225 per hour. This makes the total amount sought pursuant to this Application to be \$41,202.86 in fees and \$994.18 in disbursements.

CASE STATUS

5. As of July 9, 2021, there is \$869,660 on hand in Receiver accounts, with approximately \$21,738.980 having been distributed to investors with allowed claims through the completed First, Second and Third Investor Distribution process. The cash on hand does not reflect uncashed investor distribution checks and vendor checks. The process of issuing first distribution checks representing payment of 10% of allowed claim amounts to investors concluded on October 2, 2020, the second round of investor distributions also representing another 10% of allowed claim amounts to investors concluded on May 11, 2021, and the third round of investor distributions representing 3.84% of allowed claim amounts commenced on May 17, 2021 and is also virtually complete. 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.

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 \$111,128,066.92. 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 are 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).

9. The Receiver began the process of preparing to formally close the receivership portion of this case in 2020 by filing on July 24, 2020 the Motion for Approval of Destruction of Files, etc. (Docket No. 1133) which was approved by the Court on November 11, 2020 (Docket No. 1165), in addition to the Receiver's earlier steps to file final tax returns for many receivership entities. Additionally, in early 2021, many Certificates of Dissolution were filed with various states seeking to dissolve inactive receivership entities.

10. On June 3, 2021, however, defendant David L. Smith filed his motion to vacate the final civil judgment against him six years prior for disgorgement of more than \$87 million in profits from his Ponzi scheme plus prejudgment interest. He also seeks return of over \$4 million in fraudulent proceeds. Both the SEC and the Receiver filed Responses to the Motion asserting that Smith is not entitled to any such relief and, in addition, the Receiver's distributions to investors with allowed claims are substantially complete so that there is no relief available to Smith since those monies are now in the hands of the defrauded investors with allowed claims.

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

SUMMARY OF ACTIVITIES DURING EIGHTEENTH INTERIM PERIOD

12. While the legal, non-legal and quasi-legal functions and services performed during the Eighteenth 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.

13. From a cash perspective, the beginning balance of the Receiver's accounts as of March 5, 2021 totaled \$5,116,707, and at July 2, 2021, the balance was \$912,568. 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.

14. During the Application Period, the Receiver filed five Distribution Payment Schedules to investors as reflected on the Docket of the Court, and paid those Scheduled amounts to investors. The Third and Final Distribution Schedules were filed after the Receiver and his legal and tax professionals concluded an extensive process of assessing future actual and potential estate liabilities so as to calculate the available Third and Final Distribution percentage to investors with allowed claims.

15. First, second and third distribution checks have been issued to investors, or IRA custodians on behalf of investors. The checks represented 23.84% of allowed claim amounts.

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

17. Also during the Application Period, the Receiver and his staff commenced preparation for the dissolution of the various partnerships, limited liability corporations, and c corps comprising the Receivership estate, consistent with the filing of final tax returns, which has been underway for several years. These preparations included researching the status of the various entities comprising the Receivership estate and the applicable state laws and procedures

governing dissolution of such entities, as well as drafting the certificates and other papers necessary to effectuate dissolution. The dissolution process is ongoing, with dissolution papers having been filed for several entities, while others are awaiting approval for dissolution from the relevant tax authorities or further wind-down of activity of the Receivership estate.

18. As is true in all periods, the Receiver continues to deal with various day-to-day issues involving the operation of the estate, the review, calculation and allowance of investor claims, responding to numerous investor claims and questions, and the collection of remaining assets.

COMPENSATION FOR LEGAL SERVICES

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

A. Asset Analysis and Recovery

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

B. Claims Administration and Objections

Category B relates to analysis, communications and discussions regarding third distribution model, 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; the preparation and filing of the Twenty-First and Revised Twenty-First Schedules of Second Investor Distribution and First through Third Schedules of Third and Final Distribution, attending to mailing of second and third investor distribution checks to investors, and attending 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 \$4,149.00, plus \$913.90 in disbursement expense:

<u>ATTORNEY</u>	<u>HOURS</u>	<u>RATE</u>	<u>TOTAL</u>
William J. Brown	0.60	525.00	315.00
Catherine N. Eisenhut	14.20	270.00	3,834.00

C. Asset Disposition

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

D. Business Operations

No services were charged to or rendered by Phillips Lytle in Category D during the Eighteenth 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 statements, various legal inquiries and questions raised by the SEC concerning the Receivership and SFAR reports; dealing with insurance issues and questions; preparation, communications with M&T Bank, KeyBank and Five Star Bank

regarding existing accounts; communications with investors on legal questions, continued review and updating of McGinn Smith Receiver website; 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 \$10,914.00, and \$74.68 in disbursement expense:

<u>ATTORNEY</u>	<u>HOURS</u>	<u>RATE</u>	<u>TOTAL</u>
William J. Brown	19.40	525.00	10,185.00
Catherine N. Eisenhut	2.70	270.00	729.00

F. Employee Benefits/Pensions

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

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 Eighteenth Interim Period.

H. Fee/Employment Objections

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

I. Accounting/Auditing

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

J. Business Analysis

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

K. Corporate Finance

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

L. Data Analysis

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

M. Status Reports

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

N. Litigation Consulting

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

O. Forensic Accounting

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

P. Tax Issues

Category P consists of services related to conversations and investigations in connection with tax issues related to Plan distributions, tax return preparation and certain financial statement issues; review of McGinn Smith Holdings and TDM Cable Funding notices and communications with taxing authorities and tax accountants regarding payment of same; numerous communications regarding tax questions on distributions and steps to finalize final tax

returns, receive and review IRS and NYS notices regarding McGinn Smith Holdings and TDM Cable Funding and numerous conferences and communications with financial and tax professionals regarding tax issues and any potential tax liabilities and planning for same.

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 \$4,132.50, and \$5.60 in disbursement expense:

<u>ATTORNEY</u>	<u>HOURS</u>	<u>RATE</u>	<u>TOTAL</u>
William J. Brown	7.50	525.00	3,937.50
Marks, Kelly E.	0.50	390.00	195.00

Q. Valuation

No services were charged to or rendered by Phillips Lytle in Category Q during the Eighteenth 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 \$24,465.00, the discounted amount to be paid is \$10,485.00. 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, approval and signing all Third and Final Distribution checks and replacement

checks, review and authorization of payroll, review of communications from investors and SEC regarding various and ongoing matters, review of bank statements and accounts, 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, communications and discussions regarding records destruction.

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 \$24,465.00, and No disbursement expense:

<u>ATTORNEY</u>	<u>HOURS</u>	<u>RATE</u>	<u>TOTAL</u>
William J. Brown	46.60	525.00	\$24,465.00 (to be billed and paid at \$10,485.00)

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

Category S consists of services related to legal involvement in the SEC's action against McGinn, Smith & Co., Inc. and other parties including review of David Smith motion to vacate judgment, analyze same and communications with parties regarding response to same; draft, revise and file Receiver's Response and Declaration and telephone conferences with SEC regarding inclusions to same; review of SEC opposition to David Smith motion.

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 \$14,013.00, and no disbursement expense:

<u>ATTORNEY</u>	<u>HOURS</u>	<u>RATE</u>	<u>TOTAL</u>
William J. Brown	11.40	525.00	5,985.00
Karen A. Kawczynski	0.20	180.00	36.00
Catherine Eisenhut	29.60	270.00	7,992.00

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 Eighteenth Interim Period.

U. Sale of McGinn Niskayuna Property

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

V. Sale of Smith Vero Beach Property

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

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

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

REIMBURSEMENT OF EXPENSES

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

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

PARTICULAR EXPENDITURES

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

CONCLUSION

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

24. Phillips Lytle has provided the SEC with copies of Phillips Lytle's and the Receiver's billing statements attached as Exhibit B. Following its pre-filing review of this Fee

Application, the SEC has notified Phillips Lytle and the Receiver the SEC has no objection to the amounts sought by Phillips Lytle or the Receiver pursuant to this Fee Application.

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

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

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

NOTICE

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

WHEREFORE, Phillips Lytle and the Receiver respectfully request that this Court enter an order allowing and approving Phillips Lytle's and the Receiver's Application for (i) interim compensation in the amount of \$41,202.86, and reimbursement of expenses in the amount of \$994.18, for a total of \$42,197.04 for the period of March 1, 2021 through June 30, 2021; and (ii) granting such other and further relief as is just and proper.

Dated: August 10, 2021

PHILLIPS LYTLE LLP

By /s/ William J. Brown

William J. Brown (Bar Roll #601330)

Catherine N. Eisenhut (Bar Roll #520849)

Attorneys for the Receiver

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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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**DECLARATION OF WILLIAM J. BROWN IN SUPPORT OF EIGHTEENTH
INTERIM APPLICATION OF PHILLIPS LYTTLE 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 Eighteenth 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 in 2010 to charge an hourly rate of \$225 rather than my 2010 hourly rate of \$425, which hourly rate in 2021 is \$525.

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

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

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

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

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

Dated: August 10, 2021

/s/ William J. Brown

William J. Brown

Doc #9782531.1

Exhibit B

CATEGORY B

CLAIMS ADMINISTRATION AND OBJECTIONS



Phillips Lytle LLP

Attorneys at Law
 One Canalside
 125 Main Street
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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 1040392
 Invoice Date 07/14/21
 Client Number 33474
 Matter Number 00001
 W J Brown

Re: CLAIMS ADMINISTRATION & OBJECTIONS

FOR PROFESSIONAL SERVICES RENDERED THROUGH JUNE 30, 2021:

<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
03/01/21	CNE	E-mail KML5 regarding current tally of lost investors	0.1
03/03/21	CNE	Communications with WJB, B Shea, and KML5 regarding third distribution model and second distribution "lost" investors	0.7
03/08/21	CNE	Confer with KML5 regarding payee for investor checks; Review updated third distribution model circulated by B Shea	0.5
03/10/21	CNE	Review B Shea proposed budget, updated third distribution model; Confirm preferred investor recoveries in third distribution model	2.1
03/12/21	CNE	Call with WJB and KML5 regarding third distribution model	0.2
03/16/21	WJB	Revise letter to J Lukens regarding delivery issues, forwarding by courier and approve final letter and send same with re-issued checks	0.3

33474 Brown, William J. as Receiver of McGinn,
Smith & Co., Inc., et al
00001 Claims Administration & Objections
July 14, 2021

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
03/18/21	WJB	Review e-mail from M Anthony regarding status of his second distribution checks, investigate same and prepare reply regarding same as being forwarded to IRA custodian and respond to question regarding IRA custodian and continued service as being a matter between investor and IRA custodian	0.3
03/22/21	CNE	Respond to investor inquiry regarding distribution checks	0.5
03/25/21	CNE	Review website announcement regarding third claims distribution and provide comments	0.2
03/26/21	CNE	Attend to investor correspondence	0.2
04/05/21	CNE	E-mail investor regarding status of claims administration; Call with KML5 regarding distribution checks	0.3
04/06/21	CNE	E-mail KML5 regarding third round distribution schedules	0.2
04/16/21	CNE	Respond to investor query regarding original letters testamentary	0.1
04/27/21	CNE	Review draft distribution schedule; E-mail B Shea and KML5 regarding preparation of third distribution schedules	0.2
05/04/21	CNE	Communications with KML5 regarding preparation of third distribution schedules	0.1
05/05/21	CNE	Work on third distribution schedules for preferred investors	1.2
05/06/21	CNE	Prepare third distribution schedules for preferred investors; Communications with WJB regarding preferred investor schedules	1.1
05/07/21	CNE	Respond to B.Shea questions regarding preferred investor distributions	0.4
05/08/21	CNE	Respond to B.Shea questions regarding investor distributions	0.2

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>
05/10/21	CNE	Review draft third distribution schedules; Call with B Shea regarding draft third distribution schedule; Revise draft third distribution schedule for collateral recoveries	0.8
05/11/21	CNE	Updated draft preferential investor schedules per B Shea comments; Prepare preferred investor schedules for filing; Review revised third distribution schedule	1.7
05/12/21	CNE	Review final distribution schedules for filing	0.3
05/21/21	CNE	Review investor file regarding payee for third distribution claims; Call with investor regarding additional documentation required	0.4
05/24/21	CNE	Review documentation provided regarding deceased investor and e-mail WJB regarding same	0.3
05/25/21	CNE	Respond to WJB question regarding investor trust documents; Draft investor declaration regarding trust documents; Draft letter to investor regarding trust documents	1.4
05/27/21	CNE	Draft letter to investor regarding returned documents; Communications with KML5 regarding investor letter	0.4
05/28/21	CNE	Call investor regarding returned claim documentation	0.1
06/03/21	CNE	Review motion to avoid judgment	0.3
06/07/21	CNE	Respond to KML5 question regarding investor distribution check	0.2

CURRENT FEES

\$4,149.00

33474 Brown, William J. as Receiver of McGinn,
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FOR COSTS ADVANCED AND EXPENSES INCURRED:

Overnight Courier WJB - Fedex to Jan Lukens - Re: Claims	31.97
Duplicating A1, 289 Page(s)	28.90
Duplicating A1, 240 Page(s)	24.00
Duplicating A1, 807 Page(s)	80.70
Duplicating A1, 434 Page(s)	43.40
Duplicating A1, 258 Page(s)	25.80
Duplicating A1, 545 Page(s)	54.50
Postage WJB - Postage to Various (300) - Re: Claims	153.00
Overnight Courier WJB - Fedex to Jan Lukens - Re: Claims	31.97
Postage WJB - Postage to Various (500 pieces) - Re: Claims	255.00
Postage WJB - Postage to Various (200 pieces) - Re: Claims	100.00
Overnight Courier CEisenhut - Fedex to Bruce Coffin - Re: Claims	31.97
Overnight Courier WJB - Fedex to Forge Trust fka IRA Services Company - Re: Claims	52.69
CURRENT EXPENSES	<hr/> 913.90

TOTAL AMOUNT OF THIS INVOICE \$5,062.90

PAYMENT DUE UPON RECEIPT

CATEGORY E

CASE ADMINISTRATION



Phillips Lytle LLP

Attorneys at Law
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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 1040393
Invoice Date 07/14/21
Client Number 33474
Matter Number 00004
W J Brown

Re: CASE ADMINISTRATION

FOR PROFESSIONAL SERVICES RENDERED THROUGH JUNE 30, 2021:

<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
03/01/21	CNE	Prepare dissolution certificates for mailing	0.6
03/03/21	WJB	Plan: Review third distribution model and prepare e-mail regarding comments to same	0.2
03/08/21	WJB	Plan: Review B Shea budget forecast and Plan distribution model for third investor distribution including review of prior versions, prepare e-mail B Shea regarding expense comparison and prepare e-mail staff regarding professional fee model, consider same and develop overall approach to cost of wind down and third investor distribution	1.0
03/09/21	WJB	Plan: Continue review and updating third distribution model analysis and e-mail revisions to B Shea	0.6
03/10/21	WJB	Plan: Review revised third distribution and wind down budget from 3/9 and prepare e-mail with comments to B Shea	0.5
03/11/21	CNE	Review WJB e-mails regarding resolving potential tax liabilities	0.2
03/12/21	WJB	Prepare e-mail CNE regarding status of dissolution of entities	0.1

33474 Brown, William J. as Receiver of McGinn,
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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
03/12/21	WJB	Plan: Further review of revised cash flow analysis including conference with B Shea regarding increasing investor distribution amount and decreasing reserve	0.5
03/12/21	WJB	Plan: Finalize cash flow analysis and wind down budget and prepare e-mail to relevant parties regarding approval to proceed with third investor distribution and basis for same	0.7
03/12/21	WJB	Plan: Revise cash flow approval e-mail and third investor distribution	0.2
03/16/21	WJB	Analyze status of T McGinn life insurance policy and review initial response from insurance company regarding policy attributes and prepare further direction to B Shea regarding same	0.3
03/19/21	CNE	Check dissolution status of NY entities	0.2
03/21/21	WJB	Assemble facts and details for Receiver's final report	0.9
03/22/21	WJB	Work on details concerning draft Receiver's final report	0.7
03/22/21	WJB	Plan: Telephone call with staff regarding preparations for third investor distribution	0.1
03/24/21	WJB	Prepare reply e-mail B Shea regarding cataloging records to be destroyed and prepare e-mail B Shea regarding providing answers to S Garner for records destruction	0.2
03/24/21	WJB	Prepare e-mail staff regarding plan to secure distribution checks for third investor distribution in locked cabinet	0.1
03/24/21	WJB	Prepare website update on third investor distribution	0.3
03/25/21	WJB	Review and revise Receiver's website update on third investor distribution including checking background facts, revise via track changes and e-mail staff regarding same	0.8
03/25/21	WJB	Prepare e-mail report to SEC on status of receivership, final investor third distribution and amount of same, plan for destruction of records, filing of tax returns and wind-up of estate	0.7

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
03/26/21	WJB	Prepare e-mail webmaster regarding website revisions based upon mathematical computations	0.2
03/26/21	WJB	Review e-mail from SEC regarding T McGinn release from prison and other matters and prepare reply regarding same	0.4
03/28/21	WJB	Review e-mail from B Shea regarding third distribution check delivery, tracking of same and prepare reply	0.1
04/06/21	WJB	Review D Smith 1099 form received from John Hancock, consider process and prepare letter to D Smith regarding same	0.3
04/09/21	CNE	Review investor file regarding information request; Review draft letter in response to investor information request	0.3
04/12/21	CNE	Review status of NYS entities to be dissolved	0.1
04/19/21	WJB	Consider preparation of claims paid report for Final Receiver Report to be filed with Court and format of same	0.1
04/19/21	WJB	Review draft chart of claims paid and prepare comments to same	0.1
04/28/21	WJB	Review Twenty-First second distribution notice and schedule of final second distribution due to late received Letters Testamentary and prepare reply inquiring as to any other pending investor claims	0.3
04/30/21	WJB	Attention to filing of Twenty-First Final Second Distribution Schedule	0.1
05/04/21	WJB	Revise Third Distribution letter to investors including consideration of legal disclosures necessary for collateral recovery investors	0.5
05/04/21	WJB	Prepare investor update for commencement of third distribution	0.2
05/04/21	WJB	Prepare investor update for Fifth Written Status Report filing and location on website	0.2
05/04/21	WJB	Prepare e-mail B Shea regarding status of uncashed checks	0.1

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
05/04/21	WJB	Work on Fifth Written Status Report of Receiver	0.1
05/05/21	CNE	Check status of entities to be dissolved	0.2
05/06/21	WJB	Review e-mail from S Garner and prepare e-mail B Shea regarding Pine Street logistics in accordance with Order for closing case	0.2
05/06/21	WJB	Prepare follow-up e-mail B Shea regarding Pine Street storage in accordance with Order approving closing of case	0.1
05/06/21	WJB	Plan: Review e-mail from CNE regarding preferred investor schedule and respond regarding formula used for same	0.2
05/07/21	WJB	Prepare Receiver website updates describing issuance of third distribution checks and status report, revise same	0.3
05/07/21	WJB	Revise investor third distribution letter including review of prior letters and legal implications regarding same	0.5
05/07/21	WJB	Revise Fifth Receiver's Report	1.0
05/07/21	WJB	Prepare further revisions to website updates on investor distribution and check issuance	0.2
05/07/21	WJB	Prepare final revisions to third distribution letter	0.1
05/07/21	WJB	Prepare final revisions to Receiver's Fifth Status Report	0.4
05/07/21	WJB	Prepare status report to SEC on issuance of third distribution checks to investors and Fifth Status Report of Receiver	0.1
05/08/21	WJB	Review B Shea e-mail on check dating and timing of mailing of third investor distribution checks, analyze instructions in two prior e-mails regarding dating and distribution of investor checks, consider negotiation time as to dating of checks and post office likely process and prepare e-mail regarding instructions for mailing of third investor distribution checks	0.8
05/09/21	WJB	Review proposed schedules for payments to investors	0.2
05/10/21	WJB	Review third investor distribution schedules and prepare e-mail requesting redline	0.2

33474 Brown, William J. as Receiver of McGinn,
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 00004 Case Administration
 July 14, 2021

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
05/11/21	WJB	Review and approve Notice of Filing and Schedules for third investor distribution	0.2
05/11/21	WJB	Review new third investor distribution schedules and prepare e-mail staff regarding need for numeric order	0.2
05/11/21	WJB	Review three third investor payment schedules for filing including ordinary payments, collateral review payments and preferred payments and approve same	0.5
05/11/21	WJB	Review status of third investor distributions and conference staff regarding progress and any apparent issues	0.2
05/12/21	WJB	Review proposed investor schedules of payments by individual investor for filing, compare to prior schedules, discuss same and approve for filing and posting	0.7
05/13/21	WJB	Review and finalize all communications regarding third distribution and file same	0.3
05/13/21	CNE	Check status of entities to be dissolved; Attempted calls to Department of State to check status	0.4
05/14/21	CNE	Call NY Corporations Division regarding status of entities to be dissolved	0.1
05/25/21	WJB	Review CNE e-mail regarding Coffin Trust Agreement and amendments and proposed approach regarding reviewing and dealing with claims based upon same and prepare reply regarding same	0.3
05/27/21	WJB	Prepare draft letter to IRA Services regarding IRA valuation based upon final and third distribution and prepare website posting announcement regarding same	0.3
05/27/21	WJB	Revise letter to IRA Services regarding IRA valuations based upon third and final distribution, approve, sign and send same	0.4
05/27/21	WJB	Telephone conference B Shea and SMG2 regarding destruction process and arrangements for final records, computers and files	0.3

33474 Brown, William J. as Receiver of McGinn,
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July 14, 2021

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
05/30/21	WJB	Review follow-up concerning B Shea close-out idea regarding remaining funds and prepare reply explaining issues regarding receivership estate and equity considerations	0.3
06/01/21	WJB	Review proposed first quarter SFAR	0.1
06/02/21	WJB	Review draft SFAR for First Quarter 2021, revise same and prepare e-mail SEC regarding same	0.3
06/07/21	CNE	Review filing receipts for dissolved entities and update tracker chart	0.2
06/14/21	CNE	Review filing receipts received from NY DOS	0.2
06/25/21	WJB	Prepare draft update to website regarding D Smith motion and responses of Receiver and SEC so as to keep investors informed	0.2
06/25/21	WJB	Revise website update regarding legal issues concerning D Smith motion to vacate judgment	0.2
06/25/21	CNE	Review dissolution receipts received from NYS	0.2

CURRENT FEES

\$10,914.00

FOR COSTS ADVANCED AND EXPENSES INCURRED:

Overnight Courier WJB - Fedex to William J. Brown 74.68
(Vero Beach, FL) - Re: Case Admin

CURRENT EXPENSES

74.68

TOTAL AMOUNT OF THIS INVOICE

\$10,988.68

PAYMENT DUE UPON RECEIPT

CATEGORY P

TAX ISSUES



Phillips Lytle LLP

Attorneys at Law
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 FED I.D. #16-0505790

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

Invoice Number 1040394
 Invoice Date 07/14/21
 Client Number 33474
 Matter Number 00015
 W J Brown

Re: TAX ISSUES

FOR PROFESSIONAL SERVICES RENDERED THROUGH JUNE 30, 2021:

<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
03/01/21	WJB	Review Chiampou tax conclusions concerning Receivership estate, potential tax liabilities in order to prepare budget for wrap-up period in third distribution to investors and prepare reply to Chiampou with additional questions	0.2
03/03/21	WJB	Review S Curry 2020 c corp returns and B Shea comments regarding same and final reply regarding apportionment schedules and terminated entities	0.3
03/05/21	WJB	Review, approve and sign 2020 McGinn Smith & Co Inc. and McGinn Smith Holdings LLC NYS and IRS tax returns and e-file authorizations	0.5
03/08/21	WJB	Review IRS response regarding 9/1/2020 letter and prepare e-mail tax accountants regarding issue raised by letter including payment of \$102.78 and review Chiampou reply	0.2
03/10/21	WJB	Review 2015 IRS approval and release letter for consideration in connection with third investor distribution	0.2

33474 Brown, William J. as Receiver of McGinn,
Smith & Co., Inc., et al
00015 Tax Issues
July 14, 2021

Invoice Number 1040394

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
03/11/21	WJB	Continue review of Department of Justice letter regarding Receivership estate, prepare multiple e-mails B Shea regarding treatment of net operating losses per prior KEM e-mails and prepare e-mail KEM regarding interpretation of Department of Justice letter	1.2
03/11/21	WJB	Review Chiampou Travis e-mail regarding no tax liability following third investor distribution and forward to KEM for analysis	0.2
03/11/21	WJB	Prepare for and participate in conference call with KEM regarding overall review of tax situation and potential tax liabilities in anticipation of third investor distribution, discussion of Chiampou analysis and Department of Justice letter, risks, analysis and courses of action	0.6
03/11/21	KEM	Review materials sent by WJB and conference with WJB regarding same	0.5
03/12/21	WJB	Continue review of open items regarding potential tax liabilities including further review and analysis of Chiampou 2/28/21 e-mail regarding tax liability summary and prepare e-mail to B Shea and staff and CNE regarding sign-off on no tax liability and commencement of third investor distribution and revise same	1.6
03/16/21	WJB	Review and finalize assessment of tax memoranda concerning final distribution	0.1
03/22/21	WJB	Review IRS refund notice regarding 12/2009 McGinn Smith Holdings tax return and prepare e-mail Chiampou Travis regarding whether this constitutes conclusion of issues surrounding tax return	0.2
03/26/21	WJB	Review IRS notice regarding dissolution and forward to Champeau Travis for information	0.2
03/26/21	WJB	Review McGinn Smith Holdings LLC IRS tax notice, forward to Champeau Travis and complete power of attorney and forward to Champeau Travis	0.5
05/12/21	WJB	Telephone from Dimas at NYS Dept of Taxation and Finance regarding status of McGinn Smith Receivership and discussion of same	0.3

33474 Brown, William J. as Receiver of McGinn,
Smith & Co., Inc., et al
00015 Tax Issues
July 14, 2021

Invoice Number 1040394

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
05/25/21	WJB	Review 2014, 2015 and 2016 IRS TDM Cable Funding LLC proposed penalties, review history and prepare e-mail Chiampou Travis regarding same	0.3
05/26/21	WJB	Review Chiampou Travis letter to IRS regarding 2014, 2015 and 2016 TDM penalty, release of same and prepare e-mail B Shea regarding same	0.2
06/02/21	WJB	Review NYS acknowledgment notice regarding December 31, 2011 TDM Cable abatement request	0.1
06/16/21	WJB	Review 12/31/08 IRS penalty for TDM Cable and forward to Chiampou for action and resolution	0.2
06/28/21	WJB	Review IRS notice of intent to levy regarding years 2014-2016 for McGinn Smith entity and forward to Chiampou with email regarding advice concerning next steps	0.2
06/29/21	WJB	Review IRS notice concerning MS Holdings, review history regarding 2/2021 check and prepare email Chiampou regarding disposition and handling of same	0.2

CURRENT FEES

\$4,132.50

FOR COSTS ADVANCED AND EXPENSES INCURRED:

Duplicating A1, 56 Page(s)

5.60

CURRENT EXPENSES

5.60

TOTAL AMOUNT OF THIS INVOICE

\$4,138.10

PAYMENT DUE UPON RECEIPT

CATEGORY R

WILLIAM J. BROWN, AS RECEIVER FUNCTION



Phillips Lytle LLP

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

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

Invoice Number 1040395
Invoice Date 07/14/21
Client Number 33474
Matter Number 00017
W J Brown

Re: W.J. BROWN, AS RECEIVER FUNCTION

FOR PROFESSIONAL SERVICES RENDERED THROUGH JUNE 30, 2021:

<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
03/01/21	WJB	Telephone conference with W Steinkirchner regarding questions concerning IRA rollover	0.2
03/03/21	WJB	Attend to issues surrounding currier package with distribution checks for investors	0.1
03/05/21	WJB	Prepare e-mail B Shea regarding reissuance of checks and respond to same	0.1
03/08/21	WJB	Review staff e-mail on claims 6865, 6866, 5758 and 5759 as to new addresses and voiding prior checks and prepare reply regarding same	0.1
03/09/21	WJB	Telephone call from J Lukens and investigate potential for FedEx pick-up sites in light of prior issues with deliveries and e-mail staff regarding same	0.2
03/09/21	WJB	Review, sign and approve 10 distribution checks 5013-5022	0.3
03/09/21	WJB	Begin preparation of Receiver's final report	0.3

33474 Brown, William J. as Receiver of McGinn,
 Smith & Co., Inc., et al
 00017 W.J. Brown, as Receiver Function
 July 14, 2021

Invoice Number 1040395

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
03/09/21	WJB	Telephone call with staff regarding Lukens check delivery and investor questionnaire history in preparation for follow-up call with J Lukens	0.1
03/09/21	WJB	Telephone call J Lukens regarding procedure and e-mail staff regarding setting up for same including voiding checks and reissuing and sending to designated street address with prior advice to J Lukens	0.3
03/10/21	WJB	Prepare e-mail BJJ regarding FedEx experience with delayed checks	0.1
03/12/21	WJB	Review and prepare reply to G Smith e-mail regarding clams website and access to same	0.1
03/12/21	WJB	Review B Shea e-mail on medical absences and consider effects of same and planning for same	0.2
03/12/21	WJB	Prepare e-mail S Garner regarding record destruction planning for Albany location, quantity and type of material and timing for same	0.2
03/12/21	WJB	Telephone conference with CNE and KML5 regarding planning and timing for third investor distribution in light of B Shea's schedule	0.1
03/12/21	WJB	Telephone call with S Garner regarding file destruction following third investor distribution	0.2
03/15/21	WJB	Prepare reply e-mail to S Garner on answers to questions regarding planned file destruction for June 2021	0.1
03/15/21	WJB	Prepare e-mail B Shea regarding 99 Pine Street inventory and describing process for removal and destruction	0.2
03/15/21	WJB	Review, approve and sign vendor checks and investor replacement checks and return for processing	0.6
03/16/21	WJB	Review, approve and sign B Shea 3/11 expense report and forward same	0.2

33474 Brown, William J. as Receiver of McGinn,
 Smith & Co., Inc., et al
 00017 W.J. Brown, as Receiver Function
 July 14, 2021

Invoice Number 1040395

Page 3 of 10

<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
03/17/21	WJB	Review B Shea e-mail regarding first batch of third distribution checks and prepare reply regarding approval to forward same and timing of signing	0.1
03/19/21	WJB	Review, approve and forward B Shea payroll	0.1
03/19/21	WJB	Review two batches of third distribution checks received from B Shea and prepare e-mail with acknowledgment	0.1
03/21/21	WJB	Prepare e-mail B Shea regarding status of weekly bank report	0.1
03/23/21	WJB	Review, approve and sign investor third distribution checks 5061-5349 including reviewing claims website regarding same	2.2
03/24/21	WJB	Review, approve and sign third distribution checks 5350-5686 including multiple references to claims database concerning checks including checks 5663 and 5666 regarding proper payee and transmitting checks to staff	3.7
03/26/21	WJB	Review e-mail from Five Star Bank regarding upcoming maturity and prepare reply e-mail to Five Star regarding handling of funds upon maturity and review B Shea instructions	0.2
03/29/21	WJB	Prepare e-mail staff regarding Five Star Bank withdrawal and deposit into M&T Bank distribution account upon maturity	0.2
03/31/21	WJB	Review, approve and sign replacement checks 5035 and 5036	0.2
03/31/21	WJB	Review, approve and sign third distribution checks 5687 through 6153 and administer transmission to staff for preparation for distribution to investors	4.2
04/01/21	WJB	Exchange e-mails with CNE to track shipment of third round distribution checks and confirm receipt	0.2
04/05/21	WJB	Telephone call from investor regarding payment information request and instructions regarding how to obtain same	0.1

33474 Brown, William J. as Receiver of McGinn,
 Smith & Co., Inc., et al
 00017 W.J. Brown, as Receiver Function
 July 14, 2021

Invoice Number 1040395

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
04/05/21	WJB	Prepare e-mail staff regarding third round investor distribution checks and reporting data in database	0.1
04/05/21	WJB	Review, approve and sign second distribution letter for replacement checks	0.2
04/06/21	WJB	Review staff e-mail on two check voids and re-issuance to investor	0.1
04/06/21	WJB	Review Five Star 3/30/21 money market CDARS statements and check CDARS maturity and forward to B Shea with message regarding operational transfer pending with staff	0.3
04/07/21	WJB	Review status of investor distribution check shipment	0.1
04/07/21	WJB	Review, approve and sign investor distribution checks 6154 through portion of 6363	0.8
04/08/21	WJB	Review, approve and sign remainder of checks 6154-6363 for third investor distribution round and ship same	5.4
04/12/21	WJB	Review weekly cash report	0.1
04/12/21	WJB	Review two M&T bank statements and forward to B Shea for review and reconciliation	0.1
04/13/21	WJB	Review, approve and sign vendor checks	0.3
04/13/21	WJB	Telephone call from investor regarding father's Will and estate	0.1
04/13/21	WJB	Review final Five Star bank statement preceding closing account and forward to B Shea	0.1
04/14/21	WJB	Review B Shea e-mail on Five Star bank statement and prepare reply regarding check written to withdraw final funds	0.1
04/19/21	WJB	Review, approve and sign replacement checks 5037 and 5038	0.1

33474 Brown, William J. as Receiver of McGinn,
 Smith & Co., Inc., et al
 00017 W.J. Brown, as Receiver Function
 July 14, 2021

Invoice Number 1040395

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
04/19/21	WJB	Review, approve and sign third distribution checks 6570-6827 and attend to delivering same	3.1
04/20/21	WJB	Review S Shapiro executor letter regarding requested information concerning claims and prepare reply with claims information	0.2
04/24/21	WJB	Review weekly bank account analysis report	0.1
04/26/21	WJB	Review B Shea e-mail regarding checks to pay professional expenses and e-mail staff regarding same	0.1
04/26/21	WJB	Prepare e-mail B Shea, CNE regarding status of mail receipt effective April 30, 2021	0.1
04/27/21	WJB	Review National Life Insurance bill for T McGinn and prepare e-mail B Shea regarding same	0.1
04/27/21	WJB	Review e-mail from investor, R MacFarlan, regarding address change and prepare reply regarding proper procedure to accomplish same	0.1
04/30/21	WJB	Review original Death Certificate and Voluntary Administration Certificate and return to T Reilly	0.1
04/30/21	WJB	Review, approve and sign Schedule 3 checks Nos. 7373 and 7374 for preferred recovery investors	0.2
04/30/21	WJB	Review, approve and sign Third Distribution checks 6828 through 7372 as final checks for third investor distribution	5.9
05/03/21	WJB	Review status of Fifth Receiver report	0.1
05/03/21	WJB	Telephone message from Ms. Shapiro regarding date of death value and prepare e-mail reply regarding same	0.2
05/03/21	WJB	Consider timing of check issuance and prepare reply e-mail to staff regarding same	0.1
05/04/21	WJB	Conference staff regarding third distribution check mailing program and remaining uncashed checks	0.2

33474 Brown, William J. as Receiver of McGinn,
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 00017 W.J. Brown, as Receiver Function
 July 14, 2021

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
05/07/21	WJB	Review, approve and sign Check Nos. 5039-5042 for second distribution replacement checks	0.2
05/07/21	WJB	Review, approve and sign vendor checks	0.1
05/07/21	WJB	Review April 29 Five Star bank statement and e-mail B Shea regarding same and prepare e-mail F Hornung at Five Star to close account	0.1
05/11/21	WJB	Review first payment schedule of investor distributions	0.3
05/11/21	WJB	Review collateral recovery schedule and prepare comments to same	0.2
05/11/21	WJB	Telephone conference with B Shea regarding records removal in Albany, NY and third investor schedules filing and payment	0.4
05/12/21	WJB	Review e-mail with forms of letter for distribution with third investor checks and prepare reply	0.1
05/13/21	WJB	Review, approve and sign multiple investor distribution letters with varying dates to accompanying mailed checks on various dates for third investor distribution	0.3
05/13/21	WJB	Prepare letter to M&T Bank requesting transfer to distribution account from other account funds in order to fund third investor distribution and prepare e-mail B Shea regarding intentions concerning bank transfer	0.3
05/13/21	WJB	Review and sign letter to M&T Bank regarding funds transfer for investor distribution	0.1
05/13/21	WJB	Review, approve and sign May 17 and May 21 distribution letters to investors	0.2
05/14/21	WJB	Review B Shea operating account proposal and prepare reply regarding available funds to pay third distribution and review status of distribution account	0.5

33474 Brown, William J. as Receiver of McGinn,
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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
05/14/21	WJB	Prepare e-mail following up on Five Star check from balance of account	0.1
05/17/21	WJB	Prepare reply to M Doyle regarding IRA transfer instructions	0.2
05/17/21	WJB	Review and sign second distribution letter for replacement checks	0.1
05/17/21	WJB	Review and sign letter to M&T Bank regarding transfer of money to fund third investor distribution	0.1
05/17/21	WJB	Sign additional third distribution checks for mailing to investors	0.5
05/17/21	WJB	Review, sign and approve replacement checks to investors	0.5
05/19/21	WJB	Telephone call from Amerifirst investment advisor regarding received checks and identifying IRA account	0.1
05/19/21	WJB	Telephone call from unpaid investor regarding whether claims were allowed for her claim and identification of investor	0.1
05/21/21	WJB	Return telephone call to P Shah regarding abandoned claim following research and identification of Order and prepare memo to file regarding same	0.4
05/21/21	WJB	Prepare e-mail CNE regarding B Coffin Trust Agreement and applicability to allowance of claim	0.2
05/26/21	WJB	Telephone call from C Loffredo regarding locating missing check on claim 5594 and prepare memo to file regarding same	0.1
05/26/21	WJB	Telephone call from V Gentile regarding IRA trustee change after final payment and valuation of IRA at IRA Services	0.2
05/30/21	WJB	Review weekly cash and bank balance report and consider check clearing process for third distribution checks	0.1
06/02/21	WJB	Review letter from S Mintzer requesting reissuance of check and prepare reply letter	0.2

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
06/02/21	WJB	Review B Shea e-mail to SMG regarding timing of June 11 records destruction	0.1
06/02/21	WJB	Prepare letter M&T Bank senior officer regarding distribution process	0.3
06/02/21	WJB	Telephone call from A Rosen regarding Neuberger check reissuance required for NFS processing	0.2
06/02/21	WJB	Review weekly cash report	0.1
06/03/21	WJB	Prepare e-mail M&T officer for May distribution account statement	0.1
06/05/21	WJB	Review list from B Shea of outstanding checks and prepare e-mail staff regarding treatment of same	0.1
06/06/21	WJB	Prepare e-mail B Shea regarding payroll records and consider retention of same in light of D Smith motion to vacate judgment and prepare reply to define scope of retention to B Shea	0.2
06/07/21	WJB	Telephone call from B Shea to discuss scope of records destruction in light of D Smith motion to vacate judgment	0.2
06/07/21	WJB	Review and forward Five Star, two M&T, Workers Compensation and NYS Tax correspondence to B Shea for processing and posting	0.2
06/07/21	WJB	Review and sign two investor distribution replacement checks	0.1
06/07/21	WJB	Telephone call from G VonGlinow regarding current status of Coventry investment and intentions regarding same	0.5
06/09/21	WJB	Prepare emails B Shea, S Garner on postponing records destruction in light of D Smith motion	0.2

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 July 14, 2021

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
06/16/21	WJB	Review email from C Benderson-Lighter regarding non-receipt of two of three third distribution checks, review claims database and prepare reply suggesting to check IRA deposits	0.3
06/16/21	WJB	Review email from F Meijar regarding change of address	0.1
06/16/21	WJB	Review e-mail from J Lawson with question concerning residual amount	0.1
06/17/21	WJB	Telephone call from J Hurtt regarding return of checks and instructions to staff regarding same	0.2
06/17/21	WJB	Prepare further reply to J Lawson regarding contingency fund including review and references to paragraph 14 and Exhibit A in Docket No. 1133	0.5
06/18/21	WJB	Voicemail from C Taylor regarding alleged missing second distribution checks and refer to staff regarding follow-up on same	0.1
06/19/21	WJB	Review e-mail from B Shea with investor count and allowed claims and forward to SEC to respond their prior request	0.1
06/21/21	WJB	Review weekly bank account report	0.1
06/21/21	WJB	Telephone call from E Bennett on behalf of J Lukens regarding voided checks and consult with staff regarding same	0.2
06/25/21	WJB	Review, approve and forward payroll	0.1
06/25/21	WJB	Review and reply to P Keenan regarding calculating amount invested	0.2
06/26/21	WJB	Review bank cash report and prepare email B Shea regarding remaining dollars following negotiation of all investor checks and review B Shea reply regarding same	0.2
06/29/21	WJB	Review, approve and sign replacement Check Nos. 7426-7434 and accompanying transmittal letters	0.3

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
06/29/21	WJB	Conference with staff regarding uncashed checks and prepare e-mail B Shea regarding same	0.1
06/29/21	WJB	Review 5/20/21 distribution account statement from M&T and email A Bucella requesting June statement ASAP in order to identify uncashed checks	0.2
06/29/21	WJB	Review status of professional fee applications and invoices and status of payments	0.1
06/29/21	WJB	Read NYLJ article on Liu v. SEC respecting implications concerning D Smith motion to vacate	0.2
06/29/21	WJB	Prepare email L Leary at M&T Bank in A Bucella's absence regarding distribution account statement	0.1
06/29/21	WJB	Review Receiver files on various topics and assemble same for wind-up of case and determination of appropriateness for retention	1.8

CURRENT FEES \$24,465.00

TOTAL AMOUNT OF THIS INVOICE \$24,465.00

PAYMENT DUE UPON RECEIPT

CATEGORY S

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



Phillips Lytle LLP

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FED I.D. #16-0505790

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

Invoice Number 1040396
Invoice Date 07/14/21
Client Number 33474
Matter Number 00018
W J Brown

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

FOR PROFESSIONAL SERVICES RENDERED THROUGH JUNE 30, 2021:

<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
03/23/21	WJB	Review NDNY court website to locate prior section providing Judge's calendar dates and motion dates and discover same no longer exists and consider course of action regarding same and prepare e-mail staff regarding contacting Chambers	0.2
04/18/21	WJB	Review B Shea e-mail on excess plan funds, if any, and consider alternative proposals and prepare reply regarding scope of request and necessary steps to consider	0.2
06/03/21	WJB	Review D Smith motion to vacate judgment and return \$4 million, analyze same, preliminary research and e-mail CNE and SEC regarding same	0.7
06/04/21	WJB	Prepare e-mail CNE regarding strategy and preliminary outline in response to D Smith motion to vacate judgment and return monies, forward relevant e-mails and prepare e-mail B Shea regarding information needed to defend motion	0.8
06/04/21	K-K	Docket response and reply deadlines to D Smith's motion to set aside judgment	0.2

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
06/04/21	CNE	E-mail WJB regarding preparation for response to Smith motion to vacate judgment; Review Northern District New York rules regarding response deadlines; Work on outline for receiver's response to Smith motion	1.4
06/07/21	WJB	Telephone message to SEC regarding plan for records destruction in light of D Smith motion to vacate judgment	0.1
06/07/21	CNE	Work on outline for receiver's statement in response to Smith motion	0.9
06/08/21	WJB	Prepare scope of Receiver Response to D Smith motion to vacate judgment to CNE regarding mootness defense	0.2
06/08/21	WJB	Review CNE research analysis concerning D Smith motion to vacate judgment on mootness grounds and other grounds	0.5
06/08/21	CNE	Research regarding defenses to Smith motion to avoid judgment	5.4
06/09/21	WJB	Prepare for and attend telephone conference with CNE and SEC regarding D Smith motion to vacate judgment	0.5
06/09/21	WJB	Follow-up conference CNE regarding outline and structure of Receiver's Response to D Smith motion to vacate judgment	0.2
06/09/21	CNE	Call with D Stoelting and K McGrath regarding Smith motion to void judgment; Call with WJB to discuss form of receiver's response to Smith motion; Work on draft response to Smith motion to void judgment	2.4
06/10/21	CNE	Work on draft response to Smith motion to void judgment	3.4
06/11/21	CNE	Confer with WJB regarding response to Smith motion; Work on draft response to Smith motion	3.0
06/14/21	CNE	Work on draft response to D Smith motion to void judgment	3.9
06/15/21	CNE	Work on draft response to D Smith motion to void judgment	1.7
06/16/21	WJB	Review and edit draft response to D Smith motion to vacate judgment	0.7

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
06/16/21	CNE	Work on draft response to D Smith motion to void judgment; Revise draft response per WJB comments; E-mail D Stoelting and K McGrath regarding draft response	3.0
06/17/21	WJB	Review SEC email regarding judgment amount and forfeiture amount in reference to D Smith motion to vacate judgment and prepare e-mail SEC regarding recollection regarding same including prior process to demonstrate to US Attorney's Office that required amount had been distributed to victims in the criminal case in order to obtain satisfaction of judgment to sell Smith Saratoga residence	0.6
06/18/21	WJB	Review revised Receiver Response to D Smith motion and prepare comments to CNE regarding same	0.3
06/18/21	WJB	Review request from K McGrath of SEC regarding information concerning criminal restitution and other matters, locate prior e-mails concerning communications with US Attorney's Office and prepare reply	1.3
06/18/21	CNE	Update and revise draft response to Smith Motion	2.2
06/19/21	WJB	Review e-mails from K McGrath, D Stoelting regarding questions concerning investor claims and amount paid, criminal restitution, calculations regarding same, research and reply to same	0.3
06/20/21	WJB	Prepare e-mails SEC regarding allowed claims amount for victims with allowed claims and various calculations regarding same and forward to SEC	0.3
06/21/21	WJB	Locate information requested by SEC in connection with D Smith motion to vacate judgment and forward to SEC	0.3
06/21/21	WJB	Review and revise Receiver's Response and Declaration in opposition to D Smith motion to vacate judgment, review statistical numbers and history of same with staff	1.9
06/21/21	WJB	Prepare e-mail SEC with updated versions of Receiver's Response and Declaration	0.2

33474 Brown, William J. as Receiver of McGinn,
 Smith & Co., Inc., et al
 00018 SEC v McGinn Smith & Co., Inc., et al
 July 14, 2021

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
06/23/21	WJB	Review email from SEC regarding inclusion of amounts paid to investors with allowed claims and investor number and revise Receiver's Declaration based upon same and distribute revised version	0.6
06/24/21	WJB	Prepare e-mail K McGrath with copies of pleadings filed by Receiver in response to D Smith motion	0.1
06/25/21	WJB	Review SEC response to D Smith motion as filed	0.5
06/25/21	CNE	Review SEC opposition to D Smith motion	0.2
06/28/21	WJB	Review SEC description and its response to D Smith motion regarding funds on hand by Receiver and CNE analysis regarding same including review of Docket No. 1133; Conference with CNE regarding same	0.4
06/28/21	WJB	Telephone conference SEC and CNE regarding funds on hand in Receiver accounts following negotiation of all investor checks in relation to SEC response regarding same and suggestion for clarification with court	0.3
06/28/21	WJB	Review draft SEC letter to court regarding Receiver funds on hand and prepare comments to same and discuss with CNE	0.2
06/28/21	CNE	Review SEC brief in opposition to Smith motion regarding citation to receiver's declaration; E-mail WJB regarding SEC opposition brief; Draft e-mail to D Stoelting and K McGrath regarding clarification of footnote; Attend call with D Stoelting and K McGrath regarding SEC opposition brief; Review draft SEC letter correcting footnote 13 in SEC opposition brief and provide comments	2.1

CURRENT FEES \$14,013.00

TOTAL AMOUNT OF THIS INVOICE \$14,013.00

PAYMENT DUE UPON RECEIPT

Exhibit C

WILLIAM J. BROWN, ESQ
RECEIVER

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

STANDARDIZED FUND ACCOUNTING REPORT

CIVIL DISTRIBUTION FUND

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

REPORTING PERIOD 1/1/2021 TO 3/31/2021

STANDARDIZED FUND ACCOUNTING REPORT for McGinn, Smith Co. Co. Et. Al. - Cash Basis

Receivership; Civil Court Docket No. 10-CV-457(GLS/CFH)

Reporting Period 1/1/21 to 3/31/21

FUND ACCOUNTING (See Instructions):				
		Detail	Subtotal	Grand Total
Line 1	Beginning Balance (As of 12/31/2020):	8,926,045	8,926,045	8,926,045
	Increases in Fund Balance:			
Line 2	Business Income		-	-
Line 3	Cash and Securities			
Line 4	Interest/Dividend Income	553	553	553
Line 5	Business Asset Liquidation		-	-
Line 6	Personal Asset Liquidation			
Line 7	Third-Party Litigation Income		-	-
Line 8	Miscellaneous - Other		-	-
	Total Funds Available (Lines 1 - 8):	553	553	553
	Decreases in Fund Balance:			
Line 9	Disbursements to Investors	3,945,440	3,945,440	3,945,440
Line 10	Disbursements for Receivership Operations			
Line 10a	Disbursements to Receiver or Other Professionals		-	-
Line 10b	Business Asset Expenses	17,612	17,612	17,612
Line 10c	Personal Asset Expenses			
Line 10d	Investment Expenses			
Line 10e	Third-Party Litigation Expenses			
	1. Attorney Fees			
	2. Litigation Expenses			
	Total Third-Party Litigation Expenses			
Line 10f	Tax Administrator Fees and Bonds			
Line 10g	Federal and State Tax Payments			
	Total Disbursements for Receivership Operations	17,612	17,612	17,612
Line 11	Disbursements for Distribution Expenses Paid by the Fund:			
Line 11a	Distribution Plan Development Expenses:			
	1. Fees:			
	Fund Administrator.....			
	Independent Distribution Consultant (IDC).....			
	Distribution Agent.....			
	Consultants.....			
	Legal Advisers.....			
	Tax Advisers.....			
	2. Administrative Expenses			
	3. Miscellaneous			
	Total Plan Development Expenses			
Line 11b	Distribution Plan Implementation Expenses:			
	1. Fees:			
	Fund Administrator.....			
	IDC.....			
	Distribution Agent.....			
	Consultants.....			
	Legal Advisers.....			
	Tax Advisers.....			
	2. Administrative Expenses			
	3. Investor Identification:			
	Notice/Publishing Approved Plan.....			
	Claimant Identification.....			
	Claims Processing.....			
	Web Site Maintenance/Call Center.....			
	4. Fund Administrator Bond			
	5. Miscellaneous			
	6. Federal Account for Investor Restitution (FAIR) Reporting Expenses			
	Total Plan Implementation Expenses			
	Total Disbursements for Distribution Expenses Paid by the Fund			
Line 12	Disbursements to Court/Other:			
Line 12a	Investment Expenses/Court Registry Investment System (CRIS) Fees			
Line 12b	Federal Tax Payments			
	Total Disbursements to Court/Other:			
	Total Funds Disbursed (Lines 9 - 11):			
Line 13	Ending Balance (As of 3/31/2021):			4,963,546

6,113,672

STANDARDIZED FUND ACCOUNTING REPORT for McGinn, Smith Co. Co. Et. Al. - Cash Basis

Receivership; Civil Court Docket No. 10-CV-457(GLS/CFH)

Reporting Period 1/1/21 to 3/31/21

Line 14	Ending Balance of Fund – Net Assets:			
Line 14a	Cash & Cash Equivalents			
Line 14b	Investments			
Line 14c	Other Assets or Uncleared Funds			
	Total Ending Balance of Fund – Net Assets			\$ 4,963,546

OTHER SUPPLEMENTAL INFORMATION:				
		Detail	Subtotal	Grand Total
	Report of Items NOT To Be Paid by the Fund:			
Line 15	Disbursements for Plan Administration Expenses Not Paid by the Fund:			
Line 15a	Plan Development Expenses Not Paid by the Fund:			
	1. Fees:			
	Fund Administrator.....			
	IDC.....			
	Distribution Agent.....			
	Consultants.....			
	Legal Advisers.....			
	Tax Advisers.....			
	2. Administrative Expenses			
	3. Miscellaneous			
	Total Plan Development Expenses Not Paid by the Fund			
Line 15b	Plan Implementation Expenses Not Paid by the Fund:			
	1. Fees:			
	Fund Administrator.....			
	IDC.....			
	Distribution Agent.....			
	Consultants.....			
	Legal Advisers.....			
	Tax Advisers.....			
	2. Administrative Expenses			
	3. Investor Identification:			
	Notice/Publishing Approved Plan.....			
	Claimant Identification.....			
	Claims Processing.....			
	Web Site Maintenance/Call Center.....			
	4. Fund Administrator Bond			
	5. Miscellaneous			
	6. FAIR Reporting Expenses			
	Total Plan Implementation Expenses Not Paid by the Fund			
Line 15c	Tax Administrator Fees & Bonds Not Paid by the Fund			
	Total Disbursements for Plan Administration Expenses Not Paid by the Fund			
Line 16	Disbursements to Court/Other Not Paid by the Fund:			
Line 16a	Investment Expenses/CRIS Fees			
Line 16b	Federal Tax Payments			
	Total Disbursements to Court/Other Not Paid by the Fund:			
Line 17	DC & State Tax Payments			
Line 18	No. of Claims:			
Line 18a	# of Claims Received This Reporting Period.....			
Line 18b	# of Claims Received Since Inception of Fund.....			2,781
Line 19	No. of Claimants/Investors:			
Line 19a	# of Claimants/Investors Paid This Reporting Period.....			1,346
Line 19b	# of Claimants/Investors Paid Since Inception of Fund.....			3,392

Receiver:

By:

(signature)

William T. Brown

(printed name)

Receiver

(title)

Date:

Jan 2, 2021

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 4/1/2021 TO 6/30/2021

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 4/1/21 to 6/30/21

FUND ACCOUNTING (See Instructions):				
		Detail	Subtotal	Grand Total
Line 1	Beginning Balance (As of 3/31/2021):	4,963,546	4,963,546	4,963,546
	<i>Increases in Fund Balance:</i>			
Line 2	Business Income		-	-
Line 3	Cash and Securities			
Line 4	Interest/Dividend Income	176	176	176
Line 5	Business Asset Liquidation		-	-
Line 6	Personal Asset Liquidation			
Line 7	Third-Party Litigation Income		-	-
Line 8	Miscellaneous - Other		-	-
	Total Funds Available (Lines 1 – 8):	176	176	176
	<i>Decreases in Fund Balance:</i>			
Line 9	Disbursements to Investors	3,808,071	3,808,071	3,808,071
Line 10	Disbursements for Receivership Operations			
Line 10a	Disbursements to Receiver or Other Professionals	74,396	74,396	74,396
Line 10b	Business Asset Expenses	13,636	13,636	13,636
Line 10c	Personal Asset Expenses			
Line 10d	Investment Expenses			
Line 10e	Third-Party Litigation Expenses			
	1. Attorney Fees			
	2. Litigation Expenses			
	Total Third-Party Litigation Expenses			
Line 10f	Tax Administrator Fees and Bonds			
Line 10g	Federal and State Tax Payments			
	Total Disbursements for Receivership Operations	88,032	88,032	88,032
Line 11	Disbursements for Distribution Expenses Paid by the Fund:			
Line 11a	Distribution Plan Development Expenses:			
	1. Fees:			
	Fund Administrator.....			
	Independent Distribution Consultant (IDC).....			
	Distribution Agent.....			
	Consultants.....			
	Legal Advisers.....			
	Tax Advisers.....			
	2. Administrative Expenses			
	3. Miscellaneous			
	Total Plan Development Expenses			
Line 11b	Distribution Plan Implementation Expenses:			
	1. Fees:			
	Fund Administrator.....			
	IDC.....			
	Distribution Agent.....			
	Consultants.....			
	Legal Advisers.....			
	Tax Advisers.....			
	2. Administrative Expenses			
	3. Investor Identification:			
	Notice/Publishing Approved Plan.....			
	Claimant Identification.....			
	Claims Processing.....			
	Web Site Maintenance/Call Center.....			
	4. Fund Administrator Bond			
	5. Miscellaneous			
	6. Federal Account for Investor Restitution (FAIR) Reporting Expenses			
	Total Plan Implementation Expenses			
	Total Disbursements for Distribution Expenses Paid by the Fund			
Line 12	Disbursements to Court/Other:			
Line 12a	Investment Expenses/Court Registry Investment System (CRIS) Fees			
Line 12b	Federal Tax Payments			
	Total Disbursements to Court/Other:			
	Total Funds Disbursed (Lines 9 – 11):			
Line 13	Ending Balance (As of 3/31/2021):			1,067,619

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 4/1/21 to 6/30/21

Line 14	Ending Balance of Fund – Net Assets:			
Line 14a	Cash & Cash Equivalents			
Line 14b	Investments			
Line 14c	Other Assets or Uncleared Funds			
	Total Ending Balance of Fund – Net Assets			\$ 1,067,619

OTHER SUPPLEMENTAL INFORMATION:				
		Detail	Subtotal	Grand Total
	Report of Items NOT To Be Paid by the Fund:			
Line 15	Disbursements for Plan Administration Expenses Not Paid by the Fund:			
Line 15a	Plan Development Expenses Not Paid by the Fund:			
	1. Fees:			
	Fund Administrator.....			
	IDC.....			
	Distribution Agent.....			
	Consultants.....			
	Legal Advisers.....			
	Tax Advisers.....			
	2. Administrative Expenses			
	3. Miscellaneous			
	Total Plan Development Expenses Not Paid by the Fund			
Line 15b	Plan Implementation Expenses Not Paid by the Fund:			
	1. Fees:			
	Fund Administrator.....			
	IDC.....			
	Distribution Agent.....			
	Consultants.....			
	Legal Advisers.....			
	Tax Advisers.....			
	2. Administrative Expenses			
	3. Investor Identification:			
	Notice/Publishing Approved Plan.....			
	Claimant Identification.....			
	Claims Processing.....			
	Web Site Maintenance/Call Center.....			
	4. Fund Administrator Bond			
	5. Miscellaneous			
	6. FAIR Reporting Expenses			
	Total Plan Implementation Expenses Not Paid by the Fund			
Line 15c	Tax Administrator Fees & Bonds Not Paid by the Fund			
	Total Disbursements for Plan Administration Expenses Not Paid by the Fund			
Line 16	Disbursements to Court/Other Not Paid by the Fund:			
Line 16a	Investment Expenses/CRIS Fees			
Line 16b	Federal Tax Payments			
	Total Disbursements to Court/Other Not Paid by the Fund:			
Line 17	DC & State Tax Payments			
Line 18	No. of Claims:			
Line 18a	# of Claims Received This Reporting Period.....			
Line 18b	# of Claims Received Since Inception of Fund.....			2,781
Line 19	No. of Claimants/Investors:			
Line 19a	# of Claimants/Investors Paid This Reporting Period.....			1,299
Line 19b	# of Claimants/Investors Paid Since Inception of Fund.....			4,691

Receiver:

By:

(signature)

William J. Brown

(printed name)

(title)

Date:

7/13/2021

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----X
SECURITIES AND EXCHANGE COMMISSION :

Plaintiff, :

vs. :

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

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

Defendants, :

LYNN A. SMITH and :
NANCY MCGINN, :

Relief Defendants. and :

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

Intervenor. :

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

Upon the Eighteenth Interim Application of Phillips Lytle LLP (“Phillips Lytle”) and the Receiver (“Receiver”) for Allowance of Compensation and Reimbursement of Expenses dated August 10, 2021 (“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 March 1, 2021 and June 30, 2021 ("Eighteenth Interim Period") in the amount of \$41,202.86 is allowed as an interim allowance, and (ii) reimbursement of expenses advanced by Phillips Lytle during the Eighteenth Interim Period in the amount of \$994.18 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: _____, 2021

HON. CHRISTIAN F. HUMMEL

Doc #9782583.1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----X
SECURITIES AND EXCHANGE COMMISSION :

Plaintiff, :

vs. :

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

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

Defendants, :

LYNN A. SMITH and :
NANCY McGINN, :

Relief Defendants. and :

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

Intervenor. :

-----X
CERTIFICATE OF SERVICE

I, Karen M. Ludlow, being at all times over 18 years of age, hereby certify that on August 10, 2021, a true and correct copy of the Notice and Eighteenth Interim Application of Phillips Lytle LLP and the Receiver for Allowance of Compensation and Reimbursement of Expenses ("Eighteenth Interim Application") was caused to be served by e-mail upon all parties who receive electronic notice in this case pursuant to the Court's ECF filing system, and by First Class Mail to the parties indicated below:

- **William J. Brown** wbrown@phillipslytle.com, khatch@phillipslytle.com
- **Certain McGinn Smith Investors** apark@weirpartners.com
- **Elizabeth C. Coombe** elizabeth.c.coombe@usdoj.gov, paul.condon@usdoj.gov, CaseView.ECF@usdoj.gov, kelly.ciccarelli@usdoj.gov
- **William J. Dreyer** wdreyer@dreyerboyajian.com, bhill@dreyerboyajian.com, lowens@dreyerboyajian.com, coconnell@dreyerboyajian.com

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

And, I hereby certify that on August 10, 2021, I caused to be mailed, via first class mail using the United States Postal Service, a copy of the Eighteenth Interim Application to the individuals listed below:

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Troy, NY 12182

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

Dated: August 10, 2021

/s/ Karen M. Ludlow
Karen M. Ludlow