

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

PLEASE TAKE NOTICE that upon the Nineteenth 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 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 three-month period from July 1, 2021 through September 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: October 20, 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 :
NANCY McGINN, :

Relief Defendants. and :

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

Intervenor. :

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

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

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

DATE APPLICANT APPOINTED: April 20, 2010

NATURE OF SERVICES RENDERED: Legal services rendered for William J. Brown, Receiver, with respect to McGinn, Smith & Co., Inc., et al. and for Receiver services and expenses for the period from July 1, 2021 through September 30, 2021

AMOUNT OF COMPENSATION SOUGHT FOR FEES FROM JULY 1, 2021 THROUGH SEPTEMBER 30, 2021 \$9,305.70 (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 JULY 1, 2021 THROUGH SEPTEMBER 30, 2021 \$609.24

Dated: October 20, 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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Individually and as Trustee of the David L. and :
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LAUREN T. SMITH, and NANCY McGINN, :

Defendants,

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Relief Defendants. and

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

Intervenor. :

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**NINETEENTH 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 three-month period from July 1, 2021 through September 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 July 1, 2021 to September 30, 2021 (“Nineteenth 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 Nineteenth Interim Period total \$7,044.00, while the amount to be paid less the 7.5% discount if this Application is approved is \$6,515.70. The Receiver’s services at full value of \$525 per hour in this Nineteenth Interim Period total \$6,510.00, while the amount to be paid if this Application is granted are \$2,790.00 at \$225 per hour. This makes the total amount sought pursuant to this Application to be \$9,305.70 in fees and \$609.24 in disbursements.

CASE STATUS

5. As of October 15, 2021, there is \$697,431 on hand in Receiver accounts, with approximately \$21,742,815.68 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 (Docket No. 1195) 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. On September 8, 2021, the Court entered a Text Order (Docket No. 1210) rescinding the Orders approving the Eighteenth Interim and Fifteenth Interim Fee Applications of Phillips Lytle LLP and the Receiver and of Chiampou Travis, respectively, pending a review of certain Responses in connection with David Smith's Motion (Docket No. 1145) to set aside his judgment.

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

SUMMARY OF ACTIVITIES DURING NINETEENTH INTERIM PERIOD

13. While the legal, non-legal and quasi-legal functions and services performed during the Nineteenth 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.

14. From a cash perspective, the beginning balance of the Receiver's accounts as of July 2, 2021 totaled \$912,568, and at October 15, 2021, the balance was \$697,431. 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.

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. A limited number of investor payment checks have not been cashed.

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 continued the dissolution and wind-up 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 drafting the certificates and other papers necessary to effectuate dissolution and communicating with the state authorities. The dissolution process is ongoing.

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 Nineteenth 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 communications with the New York Comptroller regarding the recovery of escheated funds, and the drafting of correspondence and statement regarding same.

In rendering the services in Category A, the following attorneys and paralegals at Phillips Lytle expended the time represented below at the hourly rates represented below for a total value of \$1,372.50, and no disbursement expense:

<u>ATTORNEY</u>	<u>HOURS</u>	<u>RATE</u>	<u>TOTAL</u>
William J. Brown	0.30	525.00	157.50
Catherine N. Eisenhut	4.50	270.00	1,215.00

B. Claims Administration and Objections

Category B relates to the 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, attending to mailing of 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 \$1,122.00, plus \$579.24 in disbursement expense:

<u>ATTORNEY</u>	<u>HOURS</u>	<u>RATE</u>	<u>TOTAL</u>
William J. Brown	0.80	525.00	420.00
Catherine N. Eisenhut	2.60	270.00	702.00

C. Asset Disposition

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

D. Business Operations

No services were charged to or rendered by Phillips Lytle in Category D during the Nineteenth 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 regarding existing accounts;

communications with investors on legal questions, continued review and updating of McGinn Smith Receiver website; drafting and mailing of uncashed check letters and follow-up; review of dissolution documents returned by the Department of State and review status of remaining entities to be dissolved; review of file regarding Pine Street lease details at request of landlord.

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 \$1,654.50, and \$21.50 in disbursement expense:

<u>ATTORNEY</u>	<u>HOURS</u>	<u>RATE</u>	<u>TOTAL</u>
William J. Brown	1.30	525.00	682.50
Catherine N. Eisenhut	3.60	270.00	972.00

F. Employee Benefits/Pensions

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

H. Fee/Employment Objections

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

I. Accounting/Auditing

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

J. Business Analysis

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

K. Corporate Finance

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

L. Data Analysis

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

M. Status Reports

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

N. Litigation Consulting

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

O. Forensic Accounting

No services were charged to or rendered by Phillips Lytle in Category O during the Nineteenth 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; review, execution and use of Power of Attorney to deal with tax claim issues; 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 \$1,312.50, and \$8.5 in disbursement expense:

<u>ATTORNEY</u>	<u>HOURS</u>	<u>RATE</u>	<u>TOTAL</u>
William J. Brown	2.50	525.00	1,312.50

Q. Valuation

No services were charged to or rendered by Phillips Lytle in Category Q during the Nineteenth 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 \$6,510.00, the discounted amount to be paid is \$2,790.00. 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 and 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 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 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, review of NFS account statement to confirm account closure, conferences with third parties regarding claims and related issues, attend to 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 \$6,510.00, and no disbursement expense:

<u>ATTORNEY</u>	<u>HOURS</u>	<u>RATE</u>	<u>TOTAL</u>
William J. Brown	12.40	525.00	\$6,510.00 (to be billed and paid at \$2,790.00)

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 further review of SEC opposition to David Smith motion to vacate judgment; review of David Smith objection to payment of professional fees; draft, revise and file response to objection to payment of professional fees.

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 \$1,582.50, and no disbursement expense:

<u>ATTORNEY</u>	<u>HOURS</u>	<u>RATE</u>	<u>TOTAL</u>
William J. Brown	.70	525.00	367.50
Catherine Eisenhut	4.50	270.00	1,215.00

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 Nineteenth Interim Period.

U. Sale of McGinn Niskayuna Property

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

V. Sale of Smith Vero Beach Property

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

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

No services were charged to or rendered by Phillips Lytle in Category X during the Nineteenth 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 Nineteenth 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 Nineteenth Interim Period, substantial overnight courier charges were incurred to ensure delivery of several remaining investor distribution checks.

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 Nineteenth 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 \$9,305.70, and reimbursement of expenses in the amount of \$609.24, for a total of \$9,914.94 for the period of July 1, 2021 through September 30, 2021; and (ii) granting such other and further relief as is just and proper.

Dated: October 20, 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
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and

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Exhibit A

UNITED STATES DISTRICT COURT
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LAUREN T. SMITH, and NANCY McGINN, :

Defendants, :

LYNN A. SMITH and :
NANCY McGINN, :

Relief Defendants. and :

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

Intervenor. :

-----X
**DECLARATION OF WILLIAM J. BROWN IN SUPPORT OF NINETEENTH 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 Nineteenth 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: October 20, 2021

/s/ William J. Brown

William J. Brown

Doc #9982672.1

Exhibit B

CATEGORY A

ASSET ANALYSIS & RECOVERY



Phillips Lytle LLP

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

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

Invoice Number 1047742
 Invoice Date 10/18/21
 Client Number 33474
 Matter Number 00000
 W J Brown

Re: ASSET ANALYSIS & RECOVERY

FOR PROFESSIONAL SERVICES RENDERED THROUGH SEPTEMBER 30, 2021:

<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
08/31/21	WJB	Review emails concerning Escheated account and forward five relevant emails with materials to CNE for execution	0.3
09/13/21	CNE	Draft letter to NY Comptroller regarding recovery of escheated funds; Review account statements and email correspondence regarding same	1.8
09/16/21	CNE	Work on cover letter regarding escheated account	0.3
09/17/21	CNE	Work on WJB statement regarding claim for escheated asset; Call with B Shea regarding escheated account	1.9
09/20/21	CNE	Work on draft statement regarding recovery of escheated asset; Email WJB regarding draft documents for escheated asset	0.5
		CURRENT FEES	\$1,372.50
		TOTAL AMOUNT OF THIS INVOICE	\$1,372.50

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 1047743
 Invoice Date 10/18/21
 Client Number 33474
 Matter Number 00001
 W J Brown

Re: CLAIMS ADMINISTRATION & OBJECTIONS

FOR PROFESSIONAL SERVICES RENDERED THROUGH SEPTEMBER 30, 2021:

<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
07/07/21	CNE	Confer with KML5 regarding distribution question	0.1
07/08/21	CNE	Review investor file regarding investor inquiry	0.2
07/09/21	CNE	Draft letter to investor regarding documents needed to process claim	0.3
07/26/21	CNE	Review file, records regarding abandoned claims; Return investor call regarding abandoned claims	0.6
08/03/21	WJB	Review issues surrounding claims of J Spiro estate including review of Surrogate's Court letter and prepare letter to estate attorney regarding claims held and necessary documentation to pay claims and process for same	0.3
08/03/21	CNE	Draft letter to investor regarding expunged claims	0.5
08/16/21	WJB	Review letters testamentary and death certificate for estate of J Spiro, prepare return letter to estate attorney and to executor regarding status and processing of claims	0.3

33474 Brown, William J. as Receiver of McGinn,
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October 18, 2021

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
08/16/21	WJB	Review efforts to locate investors with uncashed checks and conference with staff regarding same and prepare two letters to Rensselaer County Surrogate's Court Clerk regarding status of estates to identify person to pay claims	0.2
08/17/21	CNE	E-mail KML5 regarding investor query	0.1
09/01/21	CNE	Review Smith letter regarding objection to fee applications	0.2
09/24/21	CNE	Email WJB regarding investor inquiry on future distributions; Draft email response to investor inquiry	0.2
09/27/21	CNE	Email investor counsel regarding distribution inquiry; Confer with KML regarding distribution status	0.4

CURRENT FEES

\$1,122.00

FOR COSTS ADVANCED AND EXPENSES INCURRED:

Fees PAYEE: Albany County Surrogate's Court; REQUEST#: 724725; DATE: 7/12/2021. - Information on Executor of Estate CCR - 13486	30.00
Overnight Courier WJB - Fedex to Elizabeth McKinley - Re: Claims	21.18
Overnight Courier WJB - Fedex to Asset Mark Trust Co. - Re: Claims	22.11
Overnight Courier WJB - Fedex to Clare Friedland - Re: Claims	31.45
Overnight Courier WJB - Fedex to Barbara Forgea - Re: Claims	21.18
Overnight Courier WJB - Fedex to Howard Lee Traub and Sharyn Traub - Re: Claims	21.18
Overnight Courier WJB - Fedex to Clare Sohr - Re: Claims	21.18
Overnight Courier WJB - Fedex to Eliseo Saldivar - Re: Claims	21.18
Overnight Courier WJB - Fedex to Scott and Heather Rogers - Re: Claims	21.18
Overnight Courier WJB - Fedex to Ann L. Higgins, Executor - Re: Claims	21.18

33474 Brown, William J. as Receiver of McGinn,
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 00001 Claims Administration & Objections
 October 18, 2021

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Overnight Courier WJB - Fedex to Judith Barley - Re: Claims	25.16
Overnight Courier WJB - Fedex to Forge Trust - Re: Claims	35.82
Overnight Courier WJB - Fedex to Ellen VanHoesen - Re: Claims	21.18
Overnight Courier WJB - Fedex to Questmont - Re: Claims	21.18
Overnight Courier WJB - Fedex to Laura Matson - Re: Claims	21.18
Overnight Courier WJB - Fedex to Robert A. Harris - Re: Claims	21.18
Overnight Courier WJB - Fedex to Joan Graber - Re: Claims	21.18
Overnight Courier WJB - Fedex to Marita Tretter, Executor - Re: Claims	31.45
Overnight Courier WJB - Fedex to Michael Sack - Re: Claims	35.82
Overnight Courier WJB - Fedex to Laura Matson - Re: Claims	21.18
Overnight Courier WJB - Fedex to Forge Trust - Meyer - Re: Claims	35.82
Overnight Courier WJB - Fedex to Scott Sprio, Executor - Re: Claims	21.18
Overnight Courier WJB - Fedex Macon Nixon - Re: Claims	35.09
CURRENT EXPENSES	579.24

TOTAL AMOUNT OF THIS INVOICE \$1,701.24

Summary of Account Receivable:

<u>DATE</u>	<u>INV#</u>	<u>AMOUNT</u>	<u>PAYMENTS</u>	<u>BALANCE</u>
07/14/21	1040392	5,062.90	0.00	5,062.90
				5,062.90
				TOTAL BALANCE DUE UPON RECEIPT
				\$6,764.14

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 1047744
 Invoice Date 10/18/21
 Client Number 33474
 Matter Number 00004
 W J Brown

Re: CASE ADMINISTRATION

FOR PROFESSIONAL SERVICES RENDERED THROUGH SEPTEMBER 30, 2021:

<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
07/06/21	WJB	Review and revise uncashed check letters to investors for uncashed third distribution checks and follow-up steps	0.2
07/06/21	WJB	Prepare legal update to website regarding Forge Trust investor distribution valuation	0.2
07/19/21	CNE	Review dissolution documents returned by DOS	0.3
07/20/21	CNE	Review returned dissolution documents; Review foreign entity status	0.6
07/26/21	CNE	Review status of entities to be dissolved	0.5
07/27/21	WJB	Conference CNE regarding status of dissolution of McGinn Smith entities and response received from NYS, next steps concerning limited partnerships where NYS is asserting need for signing by general partner	0.1
07/27/21	CNE	Confer with WJB regarding status of dissolved entities	0.2
07/30/21	CNE	Research regarding ordering Delaware certificate of status	0.4

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>
08/03/21	CNE	E-mail ZDM regarding dissolution of NY limited partnerships; Order certificate of cancellation regarding DE entity	0.7
08/24/21	WJB	Review case files for historical documents confirming terms of Pine Street lease in response to landlord request and prepare three e-mails to B Shea with 2014 and 2016 documents evidencing lease terms and interpretation of same	0.8
09/01/21	CNE	Review procedures for recovering escheated accounts	0.5
09/29/21	CNE	Review dissolution status of DE entity	0.2
09/30/21	CNE	Check on status of DE certificate of status order	0.2
CURRENT FEES			\$1,654.50

FOR COSTS ADVANCED AND EXPENSES INCURRED:

Duplicating A1, 46 Page(s)	4.60
Duplicating A1, 35 Page(s)	3.50
Duplicating A1, 28 Page(s)	2.80
Fees VENDOR: HSBC CC Bankruptcy/8563; INVOICE#: 8563/072321; DATE: 7/23/2021	10.00
Duplicating A1, 3 Page(s)	0.30
Duplicating A1, 3 Page(s)	0.30
CURRENT EXPENSES	21.50

TOTAL AMOUNT OF THIS INVOICE \$1,676.00

33474 Brown, William J. as Receiver of McGinn,
Smith & Co., Inc., et al
00004 Case Administration
October 18, 2021

Invoice Number 1047744

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Summary of Account Receivable:

<u>DATE</u>	<u>INV#</u>	<u>AMOUNT</u>	<u>PAYMENTS</u>	<u>BALANCE</u>
07/14/21	1040393	10,988.68	0.00	10,988.68
				<u>10,988.68</u>
				TOTAL BALANCE DUE UPON RECEIPT
				\$12,664.68

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 1047745
 Invoice Date 10/18/21
 Client Number 33474
 Matter Number 00015
 W J Brown

Re: TAX ISSUES

FOR PROFESSIONAL SERVICES RENDERED THROUGH SEPTEMBER 30, 2021:

<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
07/01/21	WJB	Review two emails from S Curry at Chiampou regarding IRS Power of Attorney and report on June 30 call with IRS confirming closeout of one matter and prepare reply for status report on all NYS and IRS tax matters	0.1
07/02/21	WJB	Review IRS power of attorney received from Chiampou Travis, execute and return same for assistance in conversations with IRS by Chiampou Travis	0.3
07/06/21	WJB	Review IRS and NYS tax status report received from tax accountants at Chiampou, research February 11, 2021 letter referenced by IRS and prepare reply e-mail to Chiampou Travis regarding same	0.3
07/08/21	WJB	Review McGinn Smith Holdings February 11, 2021 letter to IRS and forward to Chiampou so that they can deal with IRS inquiry	0.1
08/10/21	WJB	Review TDM Cable IRS penalty notices for 2009-2013 and send to Chiampou Travis	0.1

33474 Brown, William J. as Receiver of McGinn,
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00015 Tax Issues
October 18, 2021

Invoice Number 1047745

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
08/24/21	WJB	Review pending matter NYS and IRS tax files and identify open issues	0.5
08/27/21	WJB	Review IRS notice regarding relief from penalty for TDM for multiple years and forward to Chiampou Travis	0.1
08/31/21	WJB	Review IRS notice of denial of 2006 \$600 claim and prepare email Chiampou Travis regarding same and course of action	0.3
08/31/21	WJB	Review email from S Curry regarding status of IRS issues following response from IRS regarding removal of penalties	0.1
09/16/21	WJB	Review S Curry 9/14 e-mail regarding paying TDM IRS penalty on denial of refund, prepare reply and e-mail B Shea for issuance of check	0.2
09/21/21	WJB	TDM: Review payment check for IRS interest payment following relief of all penalties, approve and sign same and prepare e-mail Chiampou Travis regarding same	0.2
09/28/21	WJB	Review IRS TDM Cable Funding letter regarding 2008 return requesting additional information and prepare e-mail Chiampou Travis regarding same for assistance	0.2
CURRENT FEES			\$1,312.50

FOR COSTS ADVANCED AND EXPENSES INCURRED:

Duplicating A1, 85 Page(s)	8.50
CURRENT EXPENSES	<u>8.50</u>
TOTAL AMOUNT OF THIS INVOICE	\$1,321.00

33474 Brown, William J. as Receiver of McGinn,
Smith & Co., Inc., et al
00015 Tax Issues
October 18, 2021

Invoice Number 1047745

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Summary of Account Receivable:

<u>DATE</u>	<u>INV#</u>	<u>AMOUNT</u>	<u>PAYMENTS</u>	<u>BALANCE</u>
07/14/21	1040394	4,138.10	0.00	4,138.10
		PRIOR BALANCE DUE		<u>4,138.10</u>
		TOTAL BALANCE DUE UPON RECEIPT		\$5,459.10

PAYMENT DUE UPON RECEIPT

CATEGORY R

WILLIAM J. BROWN, AS RECEIVER FUNCTION



Phillips Lytle LLP

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

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

Invoice Number 1047746
 Invoice Date 10/18/21
 Client Number 33474
 Matter Number 00017
 W J Brown

Re: W.J. BROWN, AS RECEIVER FUNCTION

FOR PROFESSIONAL SERVICES RENDERED THROUGH SEPTEMBER 30, 2021:

<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
07/06/21	WJB	Review B Shea e-mail regarding uncashed checks list and prepare instructions to staff for follow-up letter to investors	0.1
07/06/21	WJB	Telephone call from V Gentile regarding Forge Trust valuation of IRAs, request for assistance and discussion of prior Receiver efforts to communicate with Forge Trust and scope of letter sent to them regarding IRA values given third and final investor distribution	0.2
07/06/21	WJB	Deal with J Loffredo missing check, report of same and locating it	0.1
07/06/21	WJB	Prepare e-mail Forge Trust with prior Receiver letter concerning investment valuation based upon reports from investors and review Forge Trust e-mail regarding same	0.4
07/08/21	WJB	Deal with Gold family uncashed checks and lack of receipt of same by Goldman Sachs	0.2
07/08/21	WJB	Review e-mail from T Lawson regarding estate and prepare e-mail CNE regarding legal processing regarding same	0.2

33474 Brown, William J. as Receiver of McGinn,
Smith & Co., Inc., et al
00017 W.J. Brown, as Receiver Function
October 18, 2021

Invoice Number 1047746

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
07/09/21	WJB	Prepare e-mail B Shea regarding preparation of second quarter 2021 SFAR report	0.1
07/11/21	WJB	Review, approve and forward e-mail for payroll approval	0.1
07/11/21	WJB	Review B Shea e-mail regarding federal express for forwarding of 1/3 of outstanding checks	0.1
07/13/21	WJB	Review, approve and sign accounts payable checks	0.2
07/13/21	WJB	Review July 10 bank account report	0.1
07/13/21	WJB	Review various professional fee statements and approve same	0.1
07/13/21	WJB	Review and approve and forward to SEC second quarter 2021 SFAR report	0.3
07/13/21	WJB	Review, approve and sign replacement third distribution checks 7435-7468	0.5
07/13/21	WJB	Review, approve and sign two investor letters for third distribution check replacements	0.1
07/15/21	WJB	Review E Valentine check reissue and review folder regarding same regarding Forge Trust	0.2
07/26/21	WJB	Review voicemail from Dr. Vassalluzzo and e-mails regarding same regarding lost and abandoned claim and course of action regarding same	0.2
07/27/21	WJB	Review and sign July 27, 2021 distribution letter to investors and review, sign and approve Check Nos. 7469-7474 as replacement checks	0.2
07/27/21	WJB	Review e-mail from Dr. Chris Vasselluzzo regarding change of address and abandoned and lost claims and prepare reply regarding requirement for written letter and follow-up regarding same	0.2

33474 Brown, William J. as Receiver of McGinn,
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00017 W.J. Brown, as Receiver Function
October 18, 2021

Invoice Number 1047746

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
07/27/21	WJB	Review and sign July 29 distribution letter to investors with replacement Check Nos. 7475-7489	0.3
07/27/21	WJB	Conference with CNE regarding communications with Dr. Chris Vasselluzzo and format of response regarding process concerning striking of lost and abandoned claims	0.2
07/27/21	WJB	Review follow-up e-mail from Chris Vasselluzzo requesting mailing address and prepare reply with information already possessed and providing contact information again	0.2
07/29/21	WJB	Review eSozo 2021 1099 and forward to B Shea for tax records	0.1
08/03/21	WJB	Review weekly cash report	0.1
08/03/21	WJB	Review uncashed check report as of July 31, 2021 and calculate amounts remaining in Receiver's accounts	0.2
08/03/21	WJB	Deal with E Stettner check and redirecting returned check	0.1
08/03/21	WJB	Review and revise draft of report of distributions to investors for final report inclusion and review Plan regarding details to include in report of distributions to investors	0.5
08/05/21	WJB	Prepare e-mail M&T Bank for copy of July 2021 Distribution Account statement	0.1
08/05/21	WJB	Telephone call from R Hain regarding claims of deceased husband, verification of Receiver information, whereabouts of Receiver business location and efforts to satisfy her regarding validity of Receivership and Receiver's website, discussion of necessary legal documents and efforts to make payments to decedent's estate, course of action and prepare memo to file regarding same	0.5
08/10/21	WJB	Prepare follow-up e-mail to D Stoelting regarding professional fee application status review by SEC	0.1
08/10/21	WJB	Review, approve and sign vendor checks	0.3

33474 Brown, William J. as Receiver of McGinn,
Smith & Co., Inc., et al
00017 W.J. Brown, as Receiver Function
October 18, 2021

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
08/10/21	WJB	Review, sign and approve revised investor Check Nos. 7490-7501 and review and sign distribution letter to investors	0.2
08/10/21	WJB	Attend to issues concerning replacement investor checks	0.2
08/10/21	WJB	Review weekly bank account report	0.1
08/16/21	WJB	Review weekly outstanding checks list and review staff analysis and B Shea list regarding same	0.2
08/16/21	WJB	Review files in preparation for closing of case and dealing with issues regarding same	0.5
08/16/21	WJB	Continue review of files for closing of case and allocations of same	0.4
08/16/21	WJB	Review M&T account analysis statement and forward to B Shea	0.1
08/16/21	WJB	Review Chiampou Travis July invoice and forward to B Shea for approval	0.1
08/16/21	WJB	Review and sign three uncashed check letters to investors	0.1
08/17/21	WJB	Review e-mails concerning requests by landlord for Pine Street lease documents and recover files regarding same	0.3
08/21/21	WJB	Review and approve payroll	0.1
08/24/21	WJB	Review, approve and sign replacement investor checks 7502-7507	0.2
08/24/21	WJB	Telephone call from Dr. K Patel and return telephone call regarding same	0.1
08/24/21	WJB	Review Rensselaer County Surrogate Court clerk letter regarding whereabouts of executor for Jane Harris estate and prepare letter to Executor regarding uncashed checks	0.2

33474 Brown, William J. as Receiver of McGinn,
Smith & Co., Inc., et al
00017 W.J. Brown, as Receiver Function
October 18, 2021

Invoice Number 1047746

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
08/24/21	WJB	Review various correspondence including as to NFS account ending in 35734 to confirm account closure and research same and forward B Tyler e-mail to B Shea regarding account closures	0.3
08/24/21	WJB	Review L Smith various correspondence on taxes	0.1
08/27/21	WJB	Review NYS disability insurance notice and forward to B Shea	0.1
08/31/21	WJB	Review email from B Coffin regarding Forge trust withdrawal; Prepare reply regarding possibility of further distribution and referral to D Smith motion	0.1
09/01/21	WJB	Review distribution checks 7511-7513 and prior voided check message and prepare e-mail B Shea regarding same	0.3
09/01/21	WJB	Conference CNE regarding status of records destruction, monies on hand and Vassaluzzo claim treatment	0.1
09/01/21	WJB	Review M&T distribution account statement for August 2021 and forward to B Shea	0.1
09/07/21	WJB	Review three sets of final distribution checks and prepare distribution letter for same	0.1
09/07/21	WJB	Review two M&T Bank account statements for August and forward to B Shea for reconciliation and posting	0.1
09/07/21	WJB	Deal with potential stoppage of payment of professional and other expenses in Receivership estate given developments concerning D Smith motion	0.1
09/07/21	WJB	Work on issues surrounding open issues and catalog same	0.3
09/14/21	WJB	Review M&T Bank account analysis statement and forward to B Shea for review	0.1
09/16/21	WJB	Review, authorize and sign vendor checks and forward to B Shea	0.3

33474 Brown, William J. as Receiver of McGinn,
Smith & Co., Inc., et al
00017 W.J. Brown, as Receiver Function
October 18, 2021

Invoice Number 1047746

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
09/18/21	WJB	Consider and prepare e-mail to B Shea regarding potential fourth distribution to investors and calculation of potential amount	0.1
09/24/21	WJB	Review draft e-mail to Mr. Arpy, Esq. regarding potential for distribution, revise same and forward to CNE	0.1
09/27/21	WJB	Review weekly cash report and analyze same	0.1
09/27/21	WJB	Review B Shea e-mail with question on check preparation for E Valentine claim (6753) and respond to same	0.1
09/27/21	WJB	Review NYS disability insurance credit report and forward to B Shea	0.1
09/28/21	WJB	Review, approve and sign distribution letter for E Valentine check	0.1
09/29/21	WJB	Review Valentine check for final distribution as replacement, sign and distribute same and prepare e-mail B Shea regarding same	0.2
09/29/21	WJB	Review e-mail from M Lawson regarding authorized capacity and request regarding distribution check, prepare e-mail staff regarding same and review prior letter concerning claim disposition and analyze same	0.3
09/30/21	WJB	Review follow-up correspondence regarding M Lawson request	0.1
		CURRENT FEES	\$6,510.00
		TOTAL AMOUNT OF THIS INVOICE	\$6,510.00

33474 Brown, William J. as Receiver of McGinn,
Smith & Co., Inc., et al
00017 W.J. Brown, as Receiver Function
October 18, 2021

Invoice Number 1047746

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Summary of Account Receivable:

<u>DATE</u>	<u>INV#</u>	<u>AMOUNT</u>	<u>PAYMENTS</u>	<u>BALANCE</u>
07/14/21	1040395	24,465.00	0.00	24,465.00
		PRIOR BALANCE DUE		24,465.00
		TOTAL BALANCE DUE UPON RECEIPT		\$30,975.00

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
 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 1047747
 Invoice Date 10/18/21
 Client Number 33474
 Matter Number 00018
 W J Brown

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

FOR PROFESSIONAL SERVICES RENDERED THROUGH SEPTEMBER 30, 2021:

<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
07/02/21	CNE	Review D Smith reply to SEC opposition brief	0.3
09/01/21	WJB	Review attorney fee and accountant fee letter from Waddle Law Firm with objection to payment and request for reconsideration and respond to SEC question regarding same	0.3
09/02/21	WJB	Consider whether to file reply with District Court concerning D Smith motion and payment of professional fees and discuss with CNE	0.1
09/02/21	CNE	Work on response to Smith letter in opposition to fee application	2.8
09/03/21	WJB	Further review of D Smith reply letter to District Court regarding professional fees and prepare e-mail SEC regarding same following analysis	0.3
09/03/21	CNE	Revise draft letter response regarding fee apps per WJB comments; Email D Stoelting and K McGrath regarding draft letter response to fee applications; File draft letter response to fee applications	1.4
CURRENT FEES			\$1,582.50
TOTAL AMOUNT OF THIS INVOICE			\$1,582.50

33474 Brown, William J. as Receiver of McGinn,
Smith & Co., Inc., et al
00018 SEC v McGinn Smith & Co., Inc., et al
October 18, 2021

Invoice Number 1047747

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Summary of Account Receivable:

<u>DATE</u>	<u>INV#</u>	<u>AMOUNT</u>	<u>PAYMENTS</u>	<u>BALANCE</u>
07/14/21	1040396	14,013.00	0.00	14,013.00
				<u>14,013.00</u>
				TOTAL BALANCE DUE UPON RECEIPT
				\$15,595.50

PAYMENT DUE UPON RECEIPT

Exhibit C

WILLIAM J. BROWN, ESQ
RECEIVER

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

STANDARDIZED FUND ACCOUNTING REPORT

CIVIL DISTRIBUTION FUND

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

REPORTING PERIOD 7/1/2021 TO 9/30/2021

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 7/1/21 to 9/30/21

FUND ACCOUNTING (See Instructions):				
		Detail	Subtotal	Grand Total
Line 1	Beginning Balance (As of 6/30/2021):	1,067,619	1,067,619	1,067,619
	Increases in Fund Balance:			
Line 2	Business Income		-	-
Line 3	Cash and Securities			
Line 4	Interest/Dividend Income	14	14	14
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):	14	14	14
	Decreases in Fund Balance:			
Line 9	Disbursements to Investors	349,169	349,169	349,169
Line 10	Disbursements for Receivership Operations			
Line 10a	Disbursements to Receiver or Other Professionals	-	-	-
Line 10b	Business Asset Expenses	15,292	15,292	15,292
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	15,292	15,292	15,292
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:			

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 7/1/21 to 9/30/21

Total Funds Disbursed (Lines 9 – 11):				
Line 13	Ending Balance (As of 9/30/2021):			703,172
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			\$ 703,172

OTHER SUPPLEMENTAL INFORMATION:				
		Detail	Subtotal	Grand Total
Report of Items NOT To Be Paid by the Fund:				
Line 15	Disbursements for Plan Administration Expenses Not Paid by the Fund:			
Line 15a	<i>Plan Development Expenses Not Paid by the Fund:</i>			
	1. Fees:			
	Fund Administrator.....			
	IDC.....			
	Distribution Agent.....			
	Consultants.....			
	Legal Advisers.....			
	Tax Advisers.....			
	2. Administrative Expenses			
	3. Miscellaneous			
	<i>Total Plan Development Expenses Not Paid by the Fund</i>			
Line 15b	<i>Plan Implementation Expenses Not Paid by the Fund:</i>			
	1. Fees:			
	Fund Administrator.....			
	IDC.....			
	Distribution Agent.....			
	Consultants.....			
	Legal Advisers.....			
	Tax Advisers.....			
	2. Administrative Expenses			
	3. Investor Identification:			
	Notice/Publishing Approved Plan.....			
	Claimant Identification.....			
	Claims Processing.....			
	Web Site Maintenance/Call Center.....			
	4. Fund Administrator Bond			
	5. Miscellaneous			
	6. FAIR Reporting Expenses			
	<i>Total Plan Implementation Expenses Not Paid by the Fund</i>			
Line 15c	<i>Tax Administrator Fees & Bonds Not Paid by the Fund</i>			
	Total Disbursements for Plan Administration Expenses Not Paid by the Fund			
Line 16	Disbursements to Court/Other Not Paid by the Fund:			
Line 16a	<i>Investment Expenses/CRIS Fees</i>			
Line 16b	<i>Federal Tax Payments</i>			
	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.....			119
Line 19b	# of Claimants/Investors Paid Since Inception of Fund.....			4,810

Receiver: _____
 By: William J. Brown, Receiver
 (signature)
William J. Brown
 (printed name)
Receiver
 (title)
 Date: 10/12/2021

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

Upon the Nineteenth Interim Application of Phillips Lytle LLP (“Phillips Lytle”) and the Receiver (“Receiver”) for Allowance of Compensation and Reimbursement of Expenses dated October 20, 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 July 1, 2021 and September 30, 2021 ("Nineteenth Interim Period") in the amount of \$9,305.70 is allowed as an interim allowance, and (ii) reimbursement of expenses advanced by Phillips Lytle during the Nineteenth Interim Period in the amount of \$609.24 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

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----X
SECURITIES AND EXCHANGE COMMISSION :

Plaintiff, :

vs. :

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

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

Defendants, :

LYNN A. SMITH and :
NANCY MCGINN, :

Relief Defendants. and :

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

Intervenor. :

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CERTIFICATE OF SERVICE

I, Karen M. Ludlow, being at all times over 18 years of age, hereby certify that on October 20, 2021, a true and correct copy of the Notice and Nineteenth Interim Application of Phillips Lytle LLP and the Receiver for Allowance of Compensation and Reimbursement of Expenses (“Nineteenth 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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- **Walter Weir** wweir@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 October 20, 2021, I caused to be mailed, via first class mail using the United States Postal Service, a copy of the Nineteenth 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: October 20, 2021

/s/ Karen M. Ludlow

Karen M. Ludlow