



## Phillips Lytle LLP

**Via Electronic Filing**

November 10, 2021

Hon. Christian F. Hummel  
United States Magistrate Judge  
James T. Foley U.S. Courthouse  
445 Broadway, Room 441  
Albany, New York 12207

Re: Securities and Exchange Commission v. McGinn, Smith & Co., Inc., et al.  
Case No. 1:10-CV-00457 (GLS/CFH)  
Reply to Letter Opposing Interim Fee Applications (Docket No. 1213)

Dear Judge Hummel:

We are counsel to William J. Brown as Receiver of McGinn Smith & Co., Inc. We write in response to the letter filed on behalf of David Smith on November 8, 2021 (Docket No. 1213) (“Letter”) requesting that the Court deny or hold in abeyance (1) the Nineteenth Interim Application of Phillips Lytle LLP and Receiver for Allowance of Compensation and Reimbursement of Expenses filed on October 20, 2021 (Docket No. 1211) and (2) the Sixteenth Interim Application of Chiampou Travis Besaw & Kershner LLP for Approval of Fees filed on October 20, 2021 (Docket No. 1212).

While Smith has previously objected to approval of the Eighteenth Interim Application of Phillips Lytle LLP and Receiver for Allowance of Compensation and Reimbursement of Expenses and the Fifteenth Interim Application of Chiampou Travis Besaw & Kershner LLP for Approval of Fees (*see* Docket No. 1207), Smith has not applied for or received a stay of the Receiver’s activities while Smith’s Rule 60(b) Motion (Docket No. 1195) is pending before the Court.

Consequently, the Receiver has continued to administer and preserve the estate in good faith as directed by the Court’s Preliminary Injunction Order (Docket No. 96). To satisfy his duties and obligations under the Preliminary Injunction Order, the Receiver must continue to pay the ordinary course expenses of administering the estate,

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including, but not limited to, the fees and expenses of the professionals engaged by the Receiver. The Receiver was, prior to the filing of Smith's Motion, in the process of preparing to formally close the Receivership, as authorized by the Court in the Order approving, among other things, the Receiver's undertaking certain wind-up activities (Docket No. 1165). These efforts have now as a practical matter been substantially curtailed.

Accordingly, as there is no stay of the Receiver's activities in furtherance of his obligations under the Preliminary Injunction Order to administer the estate (nor could Smith obtain one), the Receiver respectfully requests that the Court deny Smith's request in the Letter and enter (1) an Order approving the Eighteenth Interim Application of Phillips Lytle LLP and Receiver for Allowance of Compensation and Reimbursement of Expenses, (2) an Order approving the Nineteenth Interim Application of Phillips Lytle LLP and Receiver for Allowance of Compensation and Reimbursement of Expenses, (3) an Order approving the Fifteenth Interim Application of Chiam pou Travis Besaw & Kershner LLP for Approval of Fees, and (4) an Order approving the Sixteenth Interim Application of Chiam pou Travis Besaw & Kershner LLP for Approval of Fees.

Very truly yours,

Phillips Lytle LLP

*/s/ Catherine N. Eisenhut*

By

Catherine N. Eisenhut

CNE