

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

PLEASE TAKE NOTICE that upon the Twentieth 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 a date to be scheduled by the Court, 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 October 1, 2021 through January 31, 2022 in connection with legal services performed for William J. Brown, Esq., the Receiver for the McGinn Smith Entities and the services of the Receiver. No oral argument is requested.

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

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

Dated: March 17, 2022

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

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.* :

-----  
**FACE SHEET PURSUANT TO LOCAL RULE 2016-1  
FOR TWENTIETH 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 October 1, 2021 through January 31, 2022

AMOUNT OF COMPENSATION SOUGHT FOR FEES FROM OCTOBER 1, 2021 THROUGH JANUARY 31, 2022 \$14,601.62 (including Phillips Lytle and Receiver's fees at pre-arranged discounted hourly rates) at 7.5% for Phillips Lytle and \$225 rather than \$540.00 per hour for the Receiver

AMOUNT OF COMPENSATION SOUGHT FOR EXPENSES FROM OCTOBER 1, 2021 THROUGH JANUARY 31, 2022 \$128.14

Dated: March 17, 2022

PHILLIPS LYTLE LLP

By /s/ William J. Brown  
William J. Brown (Bar Roll #601330)  
Catherine N. Eisenhut (Bar Roll #520849)  
Attorneys for the Receiver  
Omni Plaza  
30 South Pearl Street  
Albany, New York 12207  
Telephone No. (518) 472-1224

and

One Canalside  
125 Main Street  
Buffalo, New York 14203  
Telephone No.: (716) 847-8400

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

**TWENTIETH 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 October 1, 2021 through January 31, 2022 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 October 1, 2021 to January 31, 2022 (“Twentieth 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 2021-2022 hourly rate of \$540 per hour, again per prior agreement with the SEC.

4. As a result, legal services at full value in this Twentieth Interim Period total \$12,745.00, while the amount to be paid less the 7.5% discount if this Application is approved is \$11,789.12. The Receiver’s services at full value of \$525 per hour in this Twentieth Interim Period total \$6,750.00, while the amount to be paid if this Application is granted are \$2,812.50 at \$225 per hour. This makes the total amount sought pursuant to this Application to be \$14,601.62 in fees and \$128.14 in disbursements.

**CASE STATUS**

5. As of February 4, 2022, there is \$633,776 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 ("Motion to Vacate") (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 sought return of over \$4 million in fraudulent proceeds. Both the SEC and the Receiver filed Responses to the Motion to Vacate 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. On February 10, 2022, the Court denied the Motion to Vacate (Docket No. 1222). Consequently, the Receiver is recommencing wind-down efforts to close the Receivership estate.

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

#### **SUMMARY OF ACTIVITIES DURING TWENTIETH INTERIM PERIOD**

12. While the legal, non-legal and quasi-legal functions and services performed during the Twentieth 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 October 1, 2021 totaled \$702,264, and at February 4, 2022, the balance was \$633,776. 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. 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.

15. 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.

16. 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. The dissolution process is ongoing with regard to a few entities.

17. 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**

18. The legal services rendered by Phillips Lytle during the Twentieth 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, and research on the so-called INCAP investment.

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 \$180.00, and \$51.97 in disbursement expense:

| <u>ATTORNEY</u>       | <u>HOURS</u> | <u>RATE</u> | <u>TOTAL</u> |
|-----------------------|--------------|-------------|--------------|
| Catherine N. Eisenhut | 0.60         | 300.00      | 180.00       |

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 of investor claims and multiple communications regarding same, 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 \$2,130.00, plus \$52.69 in disbursement expense:

| <u>ATTORNEY</u>       | <u>HOURS</u> | <u>RATE</u> | <u>TOTAL</u> |
|-----------------------|--------------|-------------|--------------|
| Catherine N. Eisenhut | 7.10         | 300.00      | 2,130.00     |

C. Asset Disposition

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

D. Business Operations

No services were charged to or rendered by Phillips Lytle in Category D during the Twentieth 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 \$2,616.00, and \$23.48 in disbursement expense:

| <u>ATTORNEY</u>       | <u>HOURS</u> | <u>RATE</u> | <u>TOTAL</u> |
|-----------------------|--------------|-------------|--------------|
| William J. Brown      | 1.40         | 540.00      | 756.00       |
| Catherine N. Eisenhut | 6.20         | 300.00      | 1,860.00     |

F. Employee Benefits/Pensions

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

H. Fee/Employment Objections

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

I. Accounting/Auditing

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

J. Business Analysis

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

K. Corporate Finance

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

L. Data Analysis

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

M. Status Reports

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

N. Litigation Consulting

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

O. Forensic Accounting

No services were charged to or rendered by Phillips Lytle in Category O during the Twentieth 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 TDM Cable Funding notices and communications with taxing authorities and tax accountants regarding payment of 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 \$378.00, and no disbursement expense:

| <u>ATTORNEY</u>  | <u>HOURS</u> | <u>RATE</u> | <u>TOTAL</u> |
|------------------|--------------|-------------|--------------|
| William J. Brown | .70          | 540.00      | 378.00       |

Q. Valuation

No services were charged to or rendered by Phillips Lytle in Category Q during the Twentieth 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 (if any) 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, 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 \$6,750.00, and no disbursement expense:

| <u>ATTORNEY</u>  | <u>HOURS</u> | <u>RATE</u> | <u>TOTAL</u>                                     |
|------------------|--------------|-------------|--|
| William J. Brown | 12.50        | 540.00      | \$6,750.00 (to be billed and paid at \$2,812.50) |

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

Category S consists of services related to legal involvement in the SEC's action against McGinn, Smith & Co., Inc. and other parties including 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 \$7,441.00, and no disbursement expense:

| <u>ATTORNEY</u>    | <u>HOURS</u> | <u>RATE</u> | <u>TOTAL</u> |
|--------------------|--------------|-------------|--------------|
| William J. Brown   | 3.10         | 540.00      | 1,674.00     |
| Catherine Eisenhut | 19.10        | 300.00      | 5,730.00     |
| Karen Kawczynski   | 0.20         | 185.00      | 37.00        |

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 Twentieth Interim Period.



U. Sale of McGinn Niskayuna Property

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

V. Sale of Smith Vero Beach Property

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

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

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

**REIMBURSEMENT OF EXPENSES**

19. 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.

20. 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**

21. During the Twentieth Interim Period, overnight courier charges were incurred to ensure delivery of several remaining investor distribution checks.

**CONCLUSION**

22. 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.

23. 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.

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

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

26. 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**

27. 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](http://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 \$14,601.62, and reimbursement of expenses in the amount of \$128.14, for a total of \$14,729.76 for the period of October 1, 2021 through January 31, 2022; and (ii) granting such other and further relief as is just and proper.

Dated: March 17, 2022

PHILLIPS LYTLE LLP

By /s/ William J. Brown  
William J. Brown (Bar Roll #601330)  
Catherine N. Eisenhut (Bar Roll #520849)  
Attorneys for the Receiver  
Omni Plaza  
30 South Pearl Street  
Albany, New York 12207  
Telephone No. (518) 472-1224

and

One Canalside  
125 Main Street  
Buffalo, New York 14203  
Telephone No.: (716) 847-8400

Doc #10215664.1

# *Exhibit A*

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

**DECLARATION OF WILLIAM J. BROWN IN SUPPORT OF TWENTIETH 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 Twentieth 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 2021-2022 is \$540.

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: March 15, 2022

/s/ William J. Brown

William J. Brown

Doc #10215789.1

# ***Exhibit B***



# **CATEGORY A**

## **ASSET ANALYSIS & RECOVERY**



## Phillips Lytle LLP

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

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

Invoice Number 1056090  
 Invoice Date 02/15/22  
 Client Number 33474  
 Matter Number 00000  
 W J Brown

---

**Re: ASSET ANALYSIS & RECOVERY**

FOR PROFESSIONAL SERVICES RENDERED THROUGH JANUARY 31, 2022:

| <u>Date</u>  | <u>Tkpr</u> |  | <u>Hours</u> |
|--------------|-------------|--|--------------|
| 10/13/21     | CNE         | Email KML regarding executed documents regarding INCAPs investment, exhibits to print              | 0.2          |
| 10/15/21     | CNE         | Review paperwork to be submitted to NYS to claim escheated asset                                   | 0.2          |
| 11/30/21     | CNE         | Email B Shea regarding status of application to recover escheated asset                            | 0.1          |
| 12/30/21     | CNE         | Review status of claim for escheated asset on NYS Comptroller website and email WJB regarding same | 0.1          |
| CURRENT FEES |             |  | \$180.00     |

33474 Brown, William J. as Receiver of McGinn,  
Smith & Co., Inc., et al  
00000 Asset Analysis & Recovery  
February 15, 2022

Invoice Number 1056090

Page 2 of 2

FOR COSTS ADVANCED AND EXPENSES INCURRED:

|  |             |
|--|-------------|
| Certified Copy(ies) The UPS Store - 10/11/2021 -<br>INCAPS Notary Fee Receipt / McGinn Smith | 20.00       |
| Overnight Courier C Eisenhut - Fedex to Office of<br>Unclaimed Funds - Re: Asset Recovery    | 31.97       |
| CURRENT EXPENSES   | <hr/> 51.97 |
| TOTAL AMOUNT OF THIS INVOICE   | \$231.97    |

\*\*\*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 1056091  
 Invoice Date 02/15/22  
 Client Number 33474  
 Matter Number 00001  
 W J Brown

---

### Re: CLAIMS ADMINISTRATION & OBJECTIONS

FOR PROFESSIONAL SERVICES RENDERED THROUGH JANUARY 31, 2022:

| <u>Date</u> | <u>Tkpr</u> |  | <u>Hours</u> |
|-------------|-------------|--|--------------|
| 10/01/21    | CNE         | Review investor claim file and return investor call regarding documentation needed for distribution  | 0.3          |
| 10/11/21    | CNE         | Review investor inquiry regarding distributions made to date and confer with KML regarding same; Review prior correspondence with investor regarding documents required for distribution | 0.5          |
| 10/12/21    | CNE         | Communications with KML regarding investor inquiry and paperwork needed; Respond to investor inquiry regarding distributions made  | 0.4          |
| 11/03/21    | CNE         | Prepare letter to investor returning original DC, requesting additional documents  | 0.3          |
| 11/08/21    | CNE         | Review David Smith objection to fee applications   | 0.2          |
| 11/24/21    | CNE         | Communications with investor regarding paperwork received for file   | 0.5          |

33474 Brown, William J. as Receiver of McGinn,  
Smith & Co., Inc., et al  
00001 Claims Administration & Objections  
February 15, 2022

Invoice Number 1056091

Page 2 of 3

| <u>Date</u> | <u>Tkpr</u> |   | <u>Hours</u> |
|-------------|-------------|---|--------------|
| 12/03/21    | CNE         | Review investor correspondence; Calls with investors regarding status of file review, missing documents; Correspondence with investors regarding documents received | 0.8          |
| 12/06/21    | CNE         | Review documentation provided by investors regarding claims; Communications with investors regarding claim documentation  | 0.5          |
| 12/08/21    | CNE         | Confer with KML regarding open investor files, processing documents   | 0.3          |
| 12/10/21    | 趙次牢         | Call with investor regarding claim documentation  | 0.3          |
| 12/17/21    | CNE         | Call investor regarding documentation   | 0.1          |
| 12/21/21    | CNE         | Review affidavit submitted by investor and state law regarding same; Email WJB regarding affidavit and Illinois estates law   | 1.0          |
| 01/03/22    | CNE         | Email KML regarding investor inquiry  | 0.2          |
| 01/11/22    | CNE         | Correspondence with investor re issuing distribution check  | 0.4          |
| 01/19/22    | CNE         | Call investor regarding tax treatment inquiry   | 0.1          |
| 01/26/22    | CNE         | Email WJB regarding investor documentation question; Email investor regarding follow-up to documentation received   | 0.7          |
| 01/27/22    | CNE         | Draft declaration of lost Affidavit for investor signature  | 0.5          |

CURRENT FEES

\$2,130.00

33474 Brown, William J. as Receiver of McGinn,  
Smith & Co., Inc., et al  
00001 Claims Administration & Objections  
February 15, 2022

Invoice Number 1056091

Page 3 of 3

FOR COSTS ADVANCED AND EXPENSES INCURRED:

|  |             |
|--|-------------|
| Overnight Courier WJB - Fedex to Michael Sack (c/o<br>Bradley Fisher) - Re: Claims | 52.69       |
| CURRENT EXPENSES   | <hr/> 52.69 |

TOTAL AMOUNT OF THIS INVOICE \$2,182.69

\*\*\*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 1056092  
 Invoice Date 02/15/22  
 Client Number 33474  
 Matter Number 00004  
 W J Brown

---

### Re: CASE ADMINISTRATION

FOR PROFESSIONAL SERVICES RENDERED THROUGH JANUARY 31, 2022:

| <u>Date</u> | <u>Tkpr</u> |  | <u>Hours</u> |
|-------------|-------------|--|--------------|
| 10/01/21    | CNE         | Follow-up call with Delaware Secretary of State regarding certificate of status for McGinn, Smith Capital Management   | 0.2          |
| 10/11/21    | WJB         | Review proposed documents to submit to NYS to recover escheated INCAP account including identifying EIN number and prepare reply e-mail to CNE with comments | 0.3          |
| 10/11/21    | WJB         | Review completed INCAPS escheated application forms, execute and deliver same  | 0.3          |
| 10/11/21    | WJB         | Review third quarter SFAR for SEC received from B Shea and forward to staff with instructions  | 0.3          |
| 10/11/21    | CNE         | Email WJB regarding questions on claim form regarding escheated assets   | 0.2          |
| 10/25/21    | CNE         | Review notices received; Email Chiampou regarding IRS notice received  | 0.4          |
| 10/27/21    | CNE         | Email WJB regarding mail received; Email Chiampou regarding tax notices received   | 0.5          |

33474 Brown, William J. as Receiver of McGinn,  
Smith & Co., Inc., et al  
00004 Case Administration  
February 15, 2022

Invoice Number 1056092

Page 2 of 3

| <u>Date</u> | <u>Tkpr</u> |   | <u>Hours</u> |
|-------------|-------------|---|--------------|
| 11/01/21    | CNE         | Review status of dissolved entities, escheated claim; Confer with WJB regarding status of dissolved entities and wind-down  | 0.6          |
| 11/02/21    | CNE         | Attend to administrative matters  | 0.3          |
| 11/03/21    | CNE         | Arrange for deposit of TDM Cable check to operating account; Review mail  | 0.5          |
| 11/08/21    | CNE         | Draft letter to NYS regarding termination of McGinn Smith Capital Management; Draft email to SEC regarding status of entity dissolution and potential fourth distribution | 0.9          |
| 11/09/21    | CNE         | Email Chiam pou regarding tax notice received   | 0.1          |
| 11/10/21    | CNE         | Revise draft email to SEC regarding status of certain Receivership items  | 0.2          |
| 11/15/21    | CNE         | Review bank statements, investor correspondence, notification from comptroller's office regarding escheated claim   | 0.3          |
| 11/16/21    | CNE         | Revise draft update to SEC per WJB comments; Wmail CAM3 regarding posting for website; Respond to K McGrath questions regarding update, November 1 hearing                | 0.7          |
| 11/30/21    | CNE         | Attempt to contact NYS regarding dissolution of limited partnership entities  | 0.2          |
| 12/01/21    | CNE         | Call NY Department of State regarding dissolution of limited partnerships   | 0.1          |
| 12/03/21    | CNE         | Draft and file amended notice of appearance; Email CAM3 regarding updating receivership website   | 0.8          |
| 12/07/21    | CNE         | Review entities preparing tax returns   | 0.1          |
| 01/11/22    | CNE         | Email WJB and B Shea re correspondence received from Comptroller's office re FIIN escheated asset   | 0.1          |

33474 Brown, William J. as Receiver of McGinn,  
Smith & Co., Inc., et al  
00004 Case Administration  
February 15, 2022

Invoice Number 1056092

Page 3 of 3

| <u>Date</u>  | <u>Tkpr</u> |  | <u>Hours</u> |
|--------------|-------------|--|--------------|
| 01/17/22     | WJB         | Prepare e-mail B Shea regarding preparation of memorandum on necessary steps and timeline to wind up receivership including considerations of issues dealing with D Smith motion | 0.2          |
| 01/20/22     | WJB         | Review draft fourth quarter 2021 SFAR and consider revisions   | 0.3          |
| CURRENT FEES |             |  | \$2,616.00   |

## FOR COSTS ADVANCED AND EXPENSES INCURRED:

|  |        |
|--|--------|
| Filing Fee Cancellation of: PAYEE: New York Department of State; REQUEST#: 721034; DATE: 2/17/2021. - Filing Fee - 74 State Capital, L.P. CCR - 12961  | -60.00 |
| Filing Fee Cancellation of: PAYEE: New York Department of State; REQUEST#: 721035; DATE: 2/17/2021. - Filing Fee - FGF Partners, L.P. CCR - 12962  | -60.00 |
| Filing Fee Cancellation of: PAYEE: New York Department of State; REQUEST#: 721038; DATE: 2/17/2021. - Filing Fee - McGinn, Smith Capital Management LLC CCR - 12965                            | -60.00 |
| Postage WJB - Postage Various (8 pieces) - Re: Case Administration   | 20.48  |
| Fee for Certificate of State from Delaware Secretary of State  | 50.00  |
| Filing Fee PAYEE: New York Department of State; REQUEST#: 727995; DATE: 11/9/2021. - Filing Fee for McGinn, Smith Capital Management LLC's termination of existence with the State CCR - 13981 | 60.00  |
| Professional Services PAYEE: Hannah F. Cavanaugh; REQUEST#: 728697; DATE: 12/7/2021. - Court Reporter Fees for Transcript CCR - 14073  | 73.00  |
| CURRENT EXPENSES   | 23.48  |

|                              |            |
|------------------------------|------------|
| TOTAL AMOUNT OF THIS INVOICE | \$2,639.48 |
|------------------------------|------------|

\*\*\*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 1056093  
 Invoice Date 02/15/22  
 Client Number 33474  
 Matter Number 00015  
 W J Brown

---

## Re: TAX ISSUES

FOR PROFESSIONAL SERVICES RENDERED THROUGH JANUARY 31, 2022:

| <u>Date</u> | <u>Tkpr</u> |  | <u>Hours</u> |
|-------------|-------------|--|--------------|
| 10/19/21    | WJB         | Review 2014, 2015 and 2016 IRS notices confirming removal of penalties and liability at zero balance, prepare e-mail Chiampou Travis regarding same              | 0.2          |
| 10/21/21    | WJB         | Review Form 1065 for 2008 TDM tax return re-filing as prepared by accountants and approve same   | 0.2          |
| 11/03/21    | WJB         | Review Internal Revenue Service check representing refund for TDM and make arrangements for deposit and crediting of same  | 0.1          |
| 12/05/21    | WJB         | Review B Shea 12/3 e-mail on multiple tax return preparation, consider same and prepare reply with approval  | 0.1          |
| 12/13/21    | WJB         | Check on status of payment to NYS Department of Taxation and Finance and review negotiated check paid to Department of Taxation and Finance to confirm clearance | 0.1          |

CURRENT FEES \$378.00

TOTAL AMOUNT OF THIS INVOICE \$378.00

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

# **CATEGORY R**

**WILLIAM J. BROWN, AS RECEIVER FUNCTION**



## Phillips Lytle LLP

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

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

Invoice Number 1056094  
 Invoice Date 02/15/22  
 Client Number 33474  
 Matter Number 00017  
 W J Brown

---

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

FOR PROFESSIONAL SERVICES RENDERED THROUGH JANUARY 31, 2022:

| <u>Date</u> | <u>Tkpr</u> |  | <u>Hours</u> |
|-------------|-------------|--|--------------|
| 10/01/21    | WJB         | Review, approve and prepare e-mail regarding payroll   | 0.1          |
| 10/02/21    | WJB         | Review weekly cash report  | 0.1          |
| 10/02/21    | WJB         | Review B Shea e-mail regarding Valentine claim 6753 and replacement check  | 0.1          |
| 10/04/21    | WJB         | Prepare e-mail staff regarding accounts payable and preparation of payments  | 0.1          |
| 10/07/21    | WJB         | Review B Shea e-mail regarding outstanding checks and prepare reply  | 0.1          |
| 10/11/21    | WJB         | Prepare revised letter to M&T Bank regarding \$5,000 account transfer to distribution account to fund investor checks  | 0.2          |
| 10/11/21    | WJB         | Review e-mail from L Sharkey Esq. regarding Estate of James Schmitt and closing of estate in relationship to distribution checks and forward to CNE for handling | 0.2          |

33474 Brown, William J. as Receiver of McGinn,  
Smith & Co., Inc., et al  
00017 W.J. Brown, as Receiver Function  
February 15, 2022

Invoice Number 1056094

Page 2 of 6

| <u>Date</u> | <u>Tkpr</u> |  | <u>Hours</u> |
|-------------|-------------|--|--------------|
| 10/11/21    | WJB         | Review M&T Bank Alarm Traders account, investment account and distribution account statements and forward to B Shea for reconciliation and posting | 0.2          |
| 10/11/21    | WJB         | Review outstanding checks list for investor distributions, analyze and communicate with staff regarding same                                       | 0.1          |
| 10/11/21    | WJB         | Review weekly bank account cash report   | 0.1          |
| 10/11/21    | WJB         | Deal with uncashed checks, replacement checks to investors and e-mails with B Fisher regarding M Sack uncashed checks                              | 0.2          |
| 10/12/21    | WJB         | Review, sign and finalize third quarter 2021 SFAR and forward to SEC   | 0.2          |
| 10/12/21    | WJB         | Execute final version of INCAPS escheatment recovery documents and forward to CNE  | 0.2          |
| 10/12/21    | WJB         | Review, approve and sign vendor checks and forward to B Shea   | 0.4          |
| 10/12/21    | WJB         | Respond to various questions concerning M&T bank balances and transfers  | 0.1          |
| 10/13/21    | WJB         | Review, approve and sign replacement checks 7515-7520 for M Sack and courier same to staff for delivery to B Fisher                                | 0.7          |
| 10/13/21    | WJB         | Review revised letter to L Leary at M&T regarding bank transfers   | 0.3          |
| 10/15/21    | WJB         | Review and approve payroll and forward to B Shea   | 0.1          |
| 10/19/21    | WJB         | Prepare e-mail Chiam pou Travis regarding D Smith motion to vacate judgment and impact upon pending professional fee applications                  | 0.1          |
| 10/20/21    | WJB         | Review professional fee bills and deal with approving and filing   | 0.5          |
| 10/27/21    | WJB         | Review New York State Notice on TDM assessment and IRS TDM refund check and provide instructions regarding same                                    | 0.2          |



33474 Brown, William J. as Receiver of McGinn,  
Smith & Co., Inc., et al  
00017 W.J. Brown, as Receiver Function  
February 15, 2022

Invoice Number 1056094

Page 3 of 6

| <u>Date</u> | <u>Tkpr</u> |   | <u>Hours</u> |
|-------------|-------------|---|--------------|
| 10/29/21    | WJB         | Review and approve payroll; Prepare email B Shea regarding same   | 0.1          |
| 10/30/21    | WJB         | Review, sort, review status and file 2015, 2016, 2017, 2018 and 2019 correspondence   | 0.9          |
| 10/30/21    | WJB         | Review, sort and respond to various 2020 and 2021 correspondence and plan action steps  | 0.5          |
| 11/01/21    | WJB         | Review weekly bank account balances   | 0.1          |
| 11/01/21    | WJB         | Review J Capece questions on fourth distribution Forge Trust and status of third distribution   | 0.2          |
| 11/01/21    | WJB         | Conference CNE regarding status of recovery of New York State escheated funds; Dissolution of entity status; Fourth distribution possibility and issues with IRAs; Other issues regarding plan of distribution and discussion of preparation of report to SCC | 0.3          |
| 11/03/21    | WJB         | Review vendor checks received from B Shea; Approve and prepare receipt for same   | 0.1          |
| 11/04/21    | WJB         | Sign and forward vendor checks for payments   | 0.3          |
| 11/11/21    | WJB         | Review, approve and forward email regarding payroll   | 0.1          |
| 11/16/21    | WJB         | Prepare reply by email to CNE on status of dissolution of entities and for position with New York State on partnerships   | 0.1          |
| 11/16/21    | WJB         | Review status of monetary reserves in Receivership, amount and purpose and incorporate into report to SEC and forward to CNE  | 0.5          |
| 11/24/21    | WJB         | Review email from M Lawson regarding missing check and proof and prepare email regarding follow up regarding same   | 0.1          |
| 11/28/21    | WJB         | Review and approve payroll  | 0.1          |

33474 Brown, William J. as Receiver of McGinn,  
Smith & Co., Inc., et al  
00017 W.J. Brown, as Receiver Function  
February 15, 2022

Invoice Number 1056094

Page 4 of 6

| <u>Date</u> | <u>Tkpr</u> |  | <u>Hours</u> |
|-------------|-------------|--|--------------|
| 11/30/21    | WJB         | Review status of upcoming court hearing on December 1 and preparation for same   | 0.1          |
| 12/03/21    | WJB         | Review CNE and M Lawson e-mails regarding expired distribution check and steps to process in order to resolve  | 0.3          |
| 12/03/21    | WJB         | Review voicemail from B Barats regarding return of Death Certificate and Letters Testamentary  | 0.1          |
| 12/05/21    | WJB         | Review weekly bank account summary report  | 0.2          |
| 12/05/21    | WJB         | Prepare e-mail regarding preparation of payables checks and prepare letter to Chiampou Travis regarding same   | 0.1          |
| 12/07/21    | WJB         | Review M&T multiple bank statements and send to B Shea including statement for Distribution Account  | 0.1          |
| 12/07/21    | WJB         | Review NYS disability insurance policy renewal materials and forward to B Shea together with Hartford Insurance renewal papers and prepare e-mail regarding same | 0.2          |
| 12/07/21    | WJB         | Review and sign payable checks and attend to return of same  | 0.2          |
| 12/10/21    | WJB         | Attend to vendor payments and analysis regarding same  | 0.1          |
| 12/13/21    | WJB         | Review Hartford Insurance premium check, approve and sign same and forward for payment   | 0.1          |
| 12/15/21    | WJB         | Review final version of revised Certificate of Completion with attachments and prepare e-mail to K Worthman at FTC regarding same                                | 0.1          |
| 12/15/21    | WJB         | Review M&T account analysis and forward to B Shea  | 0.1          |
| 12/15/21    | WJB         | Review e-mail from J Hertzberg on final check for investor distribution and prepare two replies regarding same   | 0.1          |
| 12/15/21    | WJB         | Analyze missing Zuchero Death Certificate and replacement cost and communicate with CNE regarding same   | 0.2          |

33474 Brown, William J. as Receiver of McGinn,  
Smith & Co., Inc., et al  
00017 W.J. Brown, as Receiver Function  
February 15, 2022

Invoice Number 1056094

Page 5 of 6

| <u>Date</u> | <u>Tkpr</u> |   | <u>Hours</u> |
|-------------|-------------|---|--------------|
| 12/20/21    | WJB         | Review M&T bank account report and forward to B Shea  | 0.1          |
| 12/21/21    | WJB         | Review e-mail from M Lawson for T Lawson estate, prepare e-mail CNE regarding analysis regarding same   | 0.1          |
| 12/26/21    | WJB         | Review, approve and forward payroll and prepare e-mail B Shea regarding same  | 0.1          |
| 12/28/21    | WJB         | Review weekly account balance report  | 0.1          |
| 01/01/22    | WJB         | Review B Shea e-mail regarding T McGinn life insurance policy values and recommendation to include an SFAR given circumstances and prepare reply regarding same | 0.1          |
| 01/01/22    | WJB         | Review weekly bank account balance report   | 0.1          |
| 01/02/22    | WJB         | Review B Shea e-mail response regarding reasons to include life insurance policy in SFAR report, consider same and prepare reply with directions to include     | 0.2          |
| 01/03/22    | WJB         | Review letter from T Kenney regarding questions concerning two missing distributions and forward for action   | 0.1          |
| 01/09/22    | WJB         | Review Alarm Traders domain registration and prepare e-mail approval to B Shea to renew   | 0.1          |
| 01/10/22    | WJB         | Prepare reply e-mail to B Shea regarding registering Alarm Traders domain and continuation of same  | 0.1          |
| 01/10/22    | WJB         | Review M&T Bank monthly bank account report and forward to B Shea   | 0.1          |
| 01/11/22    | WJB         | Review email from M Lawson regarding estate distribution claim and prepare email CNE regarding status   | 0.1          |
| 01/12/22    | WJB         | Review, approve, sign and mail vendor checks  | 0.4          |
| 01/17/22    | WJB         | Review T McGinn life insurance values and consider course of action regarding treatment and handling of life insurance policy                                   | 0.2          |

33474 Brown, William J. as Receiver of McGinn,  
Smith & Co., Inc., et al  
00017 W.J. Brown, as Receiver Function  
February 15, 2022

Invoice Number 1056094

Page 6 of 6

| <u>Date</u> | <u>Tkpr</u> |  | <u>Hours</u> |
|-------------|-------------|--|--------------|
| 01/19/22    | WJB         | Review M&T bank account statement and forward to B Shea  | 0.1          |
| 01/20/22    | WJB         | Review M&T bank account report and forward to B Shea   | 0.1          |
| 01/20/22    | WJB         | Review Chiam pou Travis tax accountant December statement and forward to B Shea for approval   | 0.1          |
| 01/26/22    | WJB         | Deal with H Lawson estate issues regarding original signature to Illinois estate form and prepare reply to M Lawson regarding timeline for decision after analysis | 0.2          |
| 01/26/22    | WJB         | Prepare e-mail CNE regarding lost affidavit preparation for Lawson estate to deal with missing original signature  | 0.2          |
| 01/27/22    | WJB         | Deal with further issues concerning Lawson estate and form of lost signature affidavit for resolution of distribution of claim                                     | 0.2          |

CURRENT FEES \$6,750.00

TOTAL AMOUNT OF THIS INVOICE \$6,750.00

\*\*\*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 1056095  
 Invoice Date 02/15/22  
 Client Number 33474  
 Matter Number 00018  
 W J Brown

---

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

FOR PROFESSIONAL SERVICES RENDERED THROUGH JANUARY 31, 2022:

| <u>Date</u> | <u>Tkpr</u> |   | <u>Hours</u> |
|-------------|-------------|---|--------------|
| 11/05/21    | CNE         | Email B Shea regarding bank statements received   | 0.1          |
| 11/08/21    | WJB         | Review J Weddle letter to court objecting to payment of professional fee applications pending the termination on D Smith motion and prepare email CNE regarding same  | 0.2          |
| 11/09/21    | CNE         | Draft letter response to Smith objection to Phillips Lytle, Chiampou fee applications   | 6.0          |
| 11/10/21    | WJB         | Revise draft letter to court responding to Smith objection to payment of professional fees; Review prior letter to court and docket entries   | 0.3          |
| 11/10/21    | CNE         | Revise letter response to fee application objection per WJB comments; Supervise filing of letter response to fee application objection; Email letter response to fee application objection to D Stoelting and K McGrath | 0.9          |
| 11/15/21    | WJB         | Review court order to appear for hearing on fee applications and discuss same and course of action with CNE   | 0.2          |

33474 Brown, William J. as Receiver of McGinn,  
Smith & Co., Inc., et al  
00018 SEC v McGinn Smith & Co., Inc., et al  
February 15, 2022

Invoice Number 1056095

Page 2 of 3

| <u>Date</u> | <u>Tkpr</u> |   | <u>Hours</u> |
|-------------|-------------|---|--------------|
| 11/15/21    | CNE         | Research regarding NDNY hearing procedures regarding hearing on fee applications  | 0.2          |
| 11/16/21    | WJB         | Prepare reply comments to CNE on SEC update   | 0.4          |
| 11/16/21    | WJB         | Prepare for conference with CNE regarding December 1 court hearing and conference CNE regarding same  | 0.4          |
| 11/16/21    | K-K         | Docket hearing date on approval of attorney fees  | 0.2          |
| 11/16/21    | CNE         | Call with WJB regarding preparation for December 1 hearing  | 0.2          |
| 11/17/21    | CNE         | Email Brian Shea regarding info needed for Decemeber 1 hearing prep   | 0.1          |
| 11/19/21    | CNE         | Review preliminary injunction standard in preparation for 12/1 hearing  | 0.5          |
| 11/22/21    | CNE         | Review filed fee applications, David Smith motion in preparation for 12/1 hearing   | 1.1          |
| 11/28/21    | WJB         | Prepare email to SEC regarding appearance at December 1 court hearing   | 0.1          |
| 11/28/21    | CNE         | Review pleadings, caselaw, case background in preparation for 12/1 hearing  | 2.0          |
| 11/29/21    | WJB         | Telephone conference CNE regarding further preparation for December 1 hearing   | 0.4          |
| 11/29/21    | WJB         | Review emails from court regarding instructions for appearance at December 1 hearing and discuss with CNE   | 0.1          |
| 11/29/21    | WJB         | Telephone conference K McGrath of SEC and CNE regarding December 1 hearing  | 0.3          |
| 11/29/21    | CNE         | Call with WJB regarding preparation for 12/1 hearing;<br>Review notes, expenses, pleadings regarding 12/1 hearing;<br>Attend call with K McGrath and WJB regarding 12/1 hearing | 2.3          |

33474 Brown, William J. as Receiver of McGinn,  
Smith & Co., Inc., et al  
00018 SEC v McGinn Smith & Co., Inc., et al  
February 15, 2022

Invoice Number 1056095

Page 3 of 3

| <u>Date</u> | <u>Tkpr</u> |   | <u>Hours</u> |
|-------------|-------------|---|--------------|
| 11/30/21    | CNE         | Prepare for 12/1 hearing  | 1.5          |
| 12/01/21    | WJB         | Prepare for and attend court hearing before Judge Hummel on allowance of professional fee applications and hearing on objections of D Smith thereto | 0.6          |
| 12/01/21    | WJB         | Follow-up conversation with CNE regarding Judge Hummel hearing on professional fee applications and implications including ordering of transcript   | 0.1          |
| 12/01/21    | CNE         | Prepare for hearing on Smith objection to fee applications; Review NDNY procedure for ordering transcript of proceeding                             | 1.7          |
| 12/02/21    | CNE         | Call Chambers regarding correction to fee application order   | 2.0          |
| 12/03/21    | CNE         | Draft and file transcript order for 12/1 hearing  | 0.5          |

CURRENT FEES \$7,441.00

TOTAL AMOUNT OF THIS INVOICE \$7,441.00

\*\*\*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 10/1/2021 TO 12/31/2021

**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 10/1/21 to 12/31/21

| FUND ACCOUNTING (See Instructions): |   |               |               |               |
|-------------------------------------|---|---------------|---------------|---------------|
|                                     |   | Detail        | Subtotal      | Grand Total   |
| Line 1                              | Beginning Balance (As of 9/30/2021):                                  | 703,172       | 703,172       | 703,172       |
|                                     | <b>Increases in Fund Balance:</b>                                     |               |               |               |
| Line 2                              | Business Income   |               | -             | -             |
| Line 3                              | Cash and Securities   |               |               |               |
| Line 4                              | Interest/Dividend Income  | 12            | 12            | 12            |
| Line 5                              | Business Asset Liquidation  |               | -             | -             |
| Line 6                              | Personal Asset Liquidation  |               |               |               |
| Line 7                              | Third-Party Litigation Income   |               | -             | -             |
| Line 8                              | Miscellaneous - Other   | 14,396        | 14,396        | 14,396        |
|                                     | <b>Total Funds Available (Lines 1 - 8):</b>                           | <b>14,408</b> | <b>14,408</b> | <b>14,408</b> |
|                                     | <b>Decreases in Fund Balance:</b>                                     |               |               |               |
| Line 9                              | Disbursements to Investors  | 8,145         | 8,145         | 8,145         |
| Line 10                             | <b>Disbursements for Receivership Operations</b>                      |               |               |               |
| Line 10a                            | Disbursements to Receiver or Other Professionals                      | 54,936        | 54,936        | 54,936        |
| Line 10b                            | Business Asset Expenses   | 14,396        | 14,396        | 14,396        |
| Line 10c                            | Personal Asset Expenses   |               |               |               |
| Line 10d                            | Investment Expenses   |               |               |               |
| Line 10e                            | Third-Party Litigation Expenses                                       |               |               |               |
|                                     | 1. Attorney Fees  |               |               |               |
|                                     | 2. Litigation Expenses  |               |               |               |
|                                     | <b>Total Third-Party Litigation Expenses</b>                          |               |               |               |
| Line 10f                            | Tax Administrator Fees and Bonds                                      |               |               |               |
| Line 10g                            | Federal and State Tax Payments  |               |               |               |
|                                     | <b>Total Disbursements for Receivership Operations</b>                | <b>69,332</b> | <b>69,332</b> | <b>69,332</b> |
| Line 11                             | <b>Disbursements for Distribution Expenses Paid by the Fund:</b>      |               |               |               |
| Line 11a                            | <b>Distribution Plan Development Expenses:</b>                        |               |               |               |
|                                     | 1. Fees:  |               |               |               |
|                                     | Fund Administrator.....   |               |               |               |
|                                     | Independent Distribution Consultant (IDC).....                        |               |               |               |
|                                     | Distribution Agent.....   |               |               |               |
|                                     | Consultants.....  |               |               |               |
|                                     | Legal Advisers.....   |               |               |               |
|                                     | Tax Advisers.....   |               |               |               |
|                                     | 2. Administrative Expenses  |               |               |               |
|                                     | 3. Miscellaneous  |               |               |               |
|                                     | <b>Total Plan Development Expenses</b>                                |               |               |               |
| Line 11b                            | <b>Distribution Plan Implementation Expenses:</b>                     |               |               |               |
|                                     | 1. Fees:  |               |               |               |
|                                     | Fund Administrator.....   |               |               |               |
|                                     | IDC.....  |               |               |               |
|                                     | Distribution Agent.....   |               |               |               |
|                                     | Consultants.....  |               |               |               |
|                                     | Legal Advisers.....   |               |               |               |
|                                     | Tax Advisers.....   |               |               |               |
|                                     | 2. Administrative Expenses  |               |               |               |
|                                     | 3. Investor Identification:   |               |               |               |
|                                     | Notice/Publishing Approved Plan.....                                  |               |               |               |
|                                     | Claimant Identification.....  |               |               |               |
|                                     | Claims Processing.....  |               |               |               |
|                                     | Web Site Maintenance/Call Center.....                                 |               |               |               |
|                                     | 4. Fund Administrator Bond  |               |               |               |
|                                     | 5. Miscellaneous  |               |               |               |
|                                     | 6. Federal Account for Investor Restitution (FAIR)                    |               |               |               |
|                                     | Reporting Expenses  |               |               |               |
|                                     | <b>Total Plan Implementation Expenses</b>                             |               |               |               |
|                                     | <b>Total Disbursements for Distribution Expenses Paid by the Fund</b> |               |               |               |
| Line 12                             | <b>Disbursements to Court/Other:</b>                                  |               |               |               |
| Line 12a                            | Investment Expenses/Court Registry Investment System (CRIS) Fees      |               |               |               |
| Line 12b                            | Federal Tax Payments  |               |               |               |
|                                     | <b>Total Disbursements to Court/Other:</b>                            |               |               |               |

**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 10/1/21 to 12/31/21**

|          |   |  |  |            |
|----------|---|--|--|------------|
| Line 13  | Total Funds Disbursed (Lines 9 – 11):     |  |  | 640,103    |
|          | Ending Balance (As of 12/31/2021):        |  |  |            |
| 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 |  |  | \$ 640,103 |

**OTHER SUPPLEMENTAL INFORMATION:**

|          |  | Detail | Subtotal | Grand Total |
|----------|--|--------|----------|-------------|
| Line 16  | <b>Report of Items NOT To Be Paid by the Fund:</b>                               |        |          |             |
|          | <b>Disbursements for Plan Administration Expenses Not Paid by the Fund:</b>      |        |          |             |
| 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 &amp; Bonds Not Paid by the Fund</i>                   |        |          |             |
|          | <b>Total Disbursements for Plan Administration Expenses Not Paid by the Fund</b> |        |          |             |
| Line 16  | <b>Disbursements to Court/Other Not Paid by the Fund:</b>                        |        |          |             |
| Line 16a | Investment Expenses/CRIS Fees  |        |          |             |
| Line 16b | Federal Tax Payments   |        |          |             |
|          | <b>Total Disbursements to Court/Other Not Paid by the Fund:</b>                  |        |          |             |
| Line 17  | DC & State Tax Payments  |        |          |             |
| Line 18  | <b>No. of Claims:</b>  |        |          |             |
| Line 18a | # of Claims Received This Reporting Period.....                                  |        |          |             |
| Line 18b | # of Claims Received Since Inception of Fund.....                                |        |          | 2,781       |
| Line 19  | <b>No. of Claimants/Investors:</b>   |        |          |             |
| Line 19a | # of Claimants/Investors Paid This Reporting Period.....                         |        |          | 10          |
| Line 19b | # of Claimants/Investors Paid Since Inception of Fund.....                       |        |          | 4,820       |

Receiver:  
 By: William J. Brown, Receiver  
 (signature)  
William J. Brown  
 (printed name)

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

-----X  
SECURITIES AND EXCHANGE COMMISSION :

*Plaintiff,* :

vs. :

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

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

*Defendants,* :

LYNN A. SMITH and :  
NANCY McGINN, :

*Relief Defendants. and* :

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

*Intervenor.* :

-----X

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

Upon the Twentieth Interim Application of Phillips Lytle LLP (“Phillips Lytle”) and the Receiver (“Receiver”) for Allowance of Compensation and Reimbursement of Expenses dated March 17, 2022 (“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 October 1, 2021 and January 31, 2022 ("Twentieth Interim Period") in the amount of \$14,601.62 is allowed as an interim allowance, and (ii) reimbursement of expenses advanced by Phillips Lytle during the Twentieth Interim Period in the amount of \$128.14 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: \_\_\_\_\_, 2022

---

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.* :

-----X

**CERTIFICATE OF SERVICE**

I, Karen M. Ludlow, being at all times over 18 years of age, hereby certify that on March 17, 2022, a true and correct copy of the Notice and Twentieth Interim Application of Phillips Lytle LLP and the Receiver for Allowance of Compensation and Reimbursement of Expenses (“Twentieth Interim Application”) was caused to be served by e-mail upon all parties who receive electronic notice in this case pursuant to the Court’s ECF filing system, and by First Class Mail to the parties indicated below:

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

- **Scott J. Ely** sely@elylawpllc.com,shm@fwc-law.com
- **James D. Featherstonhaugh** jdf@fwc-law.com,jsm@fwc-law.com,cr@fwc-law.com,shm@fwc-law.com
- **Brad M. Gallagher** bgallagher@barclaydamon.com
- **James H. Glavin , IV** hglavin@glavinandglavin.com
- **Bonnie R. Golub** bgolub@weirpartners.com
- **Erin K. Higgins** EHiggins@ckrpf.com
- **Benjamin W. Hill** bhill@dreyerboyajian.com, jcantoni@dreyerboyajian.com, coconnell@dreyerboyajian.com
- **E. Stewart Jones , Jr** esjones@joneshacker.com, mleonard@joneshacker.com, pcampione@joneshacker.com,kjones@joneshacker.com
- **Edward T. Kang** ekang@khflaw.com, mlagoumis@khflaw.com, jarcher@khflaw.com, mmoyes@khflaw.com,jpark@khflaw.com,golberding@KHFlaw.com
- **Jack Kaufman** kaufmanja@sec.gov
- **Michael A. Kornstein** mkornstein@coopererving.com
- **James P. Lagios** jlagios@icrh.com,rlaport@icrh.com
- **Kevin Laurilliard** laurilliard@mltw.com,chandler@mltw.com
- **James D. Linnan** jdlinnan@linnan-fallon.com,lawinfo@linnan-fallon.com
- **Haimavathi V. Marlier** marlierh@sec.gov
- **Jonathan S. McCardle** jsm@fwc-law.com
- **Kevin P. McGrath** mcgrathk@sec.gov
- **Lara S. Mehraban** mehrabanl@sec.gov,marlierh@sec.gov
- **Michael J. Murphy** mmurphy@carterconboy.com, abell@carterconboy.com, tcozzy@carterconboy.com
- **Joshua M. Newville** newvillej@sec.gov
- **Craig H. Norman** cnorman@chnesq.com,jbugos@coopererving.com
- **Andrew Park** apark@weirpartners.com,imarciniszyn@weirpartners.com
- **Thomas E. Peisch** TPeisch@ckrpf.com,apower@ckrpf.com
- **Terri L. Reicher** Terri.Reicher@finra.org
- **Richard L. Reiter** reiterr@wemed.com,richard.reiter@wilsonelser.com
- **Sheldon L. Solow** sheldon.solow@kayescholer.com, kenneth.anderson@kayescholer.com
- **David P. Stoelting** stoeltingd@sec.gov, mehrabanl@sec.gov, mcgrathk@sec.gov, paleym@sec.gov,wbrown@phillipslytle.com
- **Charles C. Swanekamp** cswanekamp@bsk.com,mhepple@bsk.com
- **Walter Weir** 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 March 17, 2022, I caused to be mailed, via first class mail using the United States Postal Service, a copy of the Twentieth Interim Application to the individuals listed below:

Nancy McGinn  
426-8th Avenue  
Troy, NY 12182

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

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

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

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

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

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

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

Dated: March 17, 2022

/s/ Karen M. Ludlow

Karen M. Ludlow