

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

10 Civ. 457 (GLS)
(DRH)

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, DAVID L. SMITH,
LYNN A. SMITH, DAVID M. WOJESKI, Trustee of
the David L. and Lynn A. Smith Irrevocable
Trust U/A 8/04/04, GEOFFREY R. SMITH,
LAUREN T. SMITH, and NANCY MCGINN,

Defendants, and

LYNN A. SMITH, and
NANCY MCGINN,

Relief Defendants and:

DAVID M. WOJESKI, Trustee of the
David L. and Lynn A. Smith Irrevocable
Trust U/A 0/04/04,

Intervenor.

**NOTICE OF HEARING ON FINAL APPLICATION OF
BROUSSARD, POCHE, LEWIS & BREAU, L.L.P.
FOR APPROVAL OF FEES AND EXPENSES**

PLEASE TAKE NOTICE that upon the Final Application of Broussard, Poche, Lewis & Breau, L.L.P. (“Broussard”) for Approval of Fees and Expenses (“Application”), Phillips Lytle LLP as counsel to William J. Brown, as Receiver, on behalf of the Application of Broussard will appear (unless otherwise directed by the Court) before the Hon. David R. Homer, United States Magistrate Judge, United States District Court for the Northern District of New York, James T. Foley U.S. Courthouse, 445 Broadway, Room 441, Albany, New York 12207, on

May 19, 2011 at 9:30 a.m., or as soon thereafter as they can be heard, seeking an Order to be entered approving the Application of Broussard for final compensation and reimbursement of expenses in connection with 2010 tax preparation services performed for William J. Brown, as Receiver of Benchmark Communications LLC, one of the Receivership estates. No oral argument is requested.

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: Buffalo, New York
March 28, 2011

PHILLIPS LYTLE LLP

By /s/ William J. Brown
William J. Brown (Bar Roll #601330)
Todd A. Ritschdorff (Bar Roll #512601)
Counsel for Receiver
Omni Plaza
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and

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Buffalo, New York 14203
Telephone No.: (716) 847-8400

Doc # 01-2448524.2

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**FINAL APPLICATION OF BROUSSARD, POCHE,
LEWIS & BREAUX, L.L.P. FOR
APPROVAL OF FEES AND EXPENSES**

Broussard, Poche, Lewis & BreauX, L.L.P. (“Broussard”), tax accountants to William J. Brown, as Receiver (“Receiver”) of Benchmark Communications LLC, one of the Receivership estates (“Benchmark”) in the above-referenced action, submits this application (“Application”) for an order pursuant to Section XIV of this Court’s Preliminary Injunction Order (Docket No. 96) approving fees incurred for the preparation of Benchmark’s 2010 business tax returns. In support of this Application, Broussard respectfully represents:

1. On April 20, 2010, William J. Brown was appointed Receiver of McGinn, Smith & Co., Inc., et al., which included Benchmark as one of the Receivership estates.

2. Subsequently, on February 3, 2011, the Receiver retained Broussard, pursuant to a written engagement letter, to prepare Benchmark's 2010 tax returns as they had historically done for Benchmark.

3. All services for which compensation is sought herein were rendered by Broussard to Benchmark solely in connection with this case and not on behalf of the creditors, individual equity holders or other person.

4. Prior to the filing of this Application, Broussard neither made an application nor received prior allowances for compensation or expense reimbursement for professional services provided in conjunction with this case.

5. Broussard received no payment or promises for payment from any source for services rendered or to be rendered in any capacity whatsoever in connection with this case, and there is no agreement or understanding between Broussard and any other person, other than members of the firm, for the sharing of compensation to be received for services rendered in this case.

6. Broussard performed its responsibilities in a cost-effective manner commensurate with providing the high quality professional advice required by the Receiver.

7. Broussard performed the 2010 tax preparation services for Benchmark for fees totalling \$1,060.00.

8. A copy of Broussard's invoice for services rendered is attached as **Exhibit A**.

9. The compensation sought for approval herein is commensurate with the customary compensation charged by comparably skilled accountants. The hourly fees charged to clients are dependent upon the experience of the individuals assigned to the engagement.

10. The amounts requested by Broussard are fair and reasonable given: (a) the complexity of the case; (b) the actual time expended; (c) the nature and extent of services rendered; (d) the value of such services; and (e) the costs of comparable services.

11. Broussard believes this request for compensation is justified given the value of Broussard's professional fees.

12. Broussard does not expect to provide any additional services to the Receiver unless specifically requested by the Receiver.

NOTICE

13. 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 will be contemporaneously posted on the Receiver's website (www.mcginnsmithreceiver.com) for all investors and creditors to see. Broussard submits that no other or further notice need be given.

WHEREFORE, Broussard respectfully requests compensation of \$1,060.00 in fees for the Application, and for such other and further relief as is just and proper.

Dated: Lafayette, Louisiana
March 28, 2011

BROUSSARD, POCHE, LEWIS & BREAUX, L.L.P.

By /s/ Scott J. Broussard
Scott J. Broussard
Accountants for Benchmark Communications LLC
4112 West Congress
P.O. Box 61400
Lafayette, Louisiana 70596-1400
Telephone No.: (337) 988-4930

PHILLIPS LYTTLE LLP

By /s/ William J. Brown
William J. Brown (Bar Roll #601330)
Todd A. Ritschdorff (Bar Roll #512601)
Attorneys for Receiver
Omni Plaza
30 South Pearl Street
Albany, New York 12207
Telephone No. (518) 472-1224

and

3400 HSBC Center
Buffalo, New York 14203
Telephone No.: (716) 847-8400

Exhibit A

Rec'd 3/7/11
WJB



BROUSSARD, POCHÉ, LEWIS & BREAUX, L.L.P.
CERTIFIED PUBLIC ACCOUNTANTS

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www.bplb.com

BENCHMARK COMMUNICATIONS LLC
3400 HSBC CENTER
BUFFALO, NY 14203

Invoice No. 179140
Date 02/28/2011
Client No. 0200319

PREP. OF BUSINESS TAX RETURNS

\$ 1,060.00

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Defendants, and

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Relief Defendants and:

DAVID M. WOJESKI, Trustee of the
David L. and Lynn A. Smith Irrevocable
Trust U/A 0/04/04,

Intervenor.

**ORDER APPROVING FINAL APPLICATION
OF BROUSSARD, POCHE, LEWIS & BREAU, L.L.P.
FOR APPROVAL OF FEES AND EXPENSES**

Upon the Final Application of Broussard, Poche, Lewis & Breau, L.L.P. (“Broussard”) for Approval of Fees and Expenses dated March 28, 2011 (“Application”) for an order approving tax preparation fees and 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 compensation for services rendered in the amount of \$1,060.00 is allowed as a final allowance; and it is further

ORDERED, that the Receiver is authorized and directed to pay the amounts as allowed pursuant to this Order.

Dated: April __, 2011

Hon. David R Homer
United States Magistrate Judge

Doc # 01-2453529.1

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CERTIFICATE OF SERVICE

I, Karen M. Hatch, being at all times over 18 years of age, hereby certify that on March 29, 2011, a true and correct copy of the Notice of Hearing and Final Application of Broussard, Poche, Lewis & Breaux, L.L.P. for Approval of Fees and Expenses 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:

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Dated: March 29, 2011

/s/ Karen M. Hatch
Karen M. Hatch