

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 FIRST INTERM APPLICATION
OF DAVID J. BOLAND, CPA CTP FOR
APPROVAL OF FEES AND EXPENSES**

PLEASE TAKE NOTICE that upon the First Interim Application of David J. Boland, CPA CTP, for Approval of Interim Fees and Expenses (“Application”), Phillips Lytle LLP, as counsel to William J. Brown, as Receiver, on behalf of the Application of David J. Boland, CPA CTP (“D.J. Boland”) 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,

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LAUREN T. SMITH, and NANCY MCGINN,

Defendants, and

LYNN A. SMITH, 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.

**APPLICATION OF DAVID J. BOLAND, CPA CTP
FOR APPROVAL OF FEES AND EXPENSES**

David J. Boland, CPA CTP (“D.J. Boland”), consultant to William J. Brown, as Receiver for White Glove Cruises, LLC, one of the Receivership estates (“White Glove”) in the above-referenced action, submits this application (“Application”) for an order approving interim compensation and reimbursement of expenses pursuant to Section XIV of this Court’s Preliminary Injunction Order (Docket No. 96) incurred in connection with consulting services performed for White Glove. In support of this Application, D.J. Boland respectfully represents:

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

2. Subsequently, on January 10, 2011, the Receiver retained D.J. Boland to perform a financial review of White Glove and to assist in the development of a cash flow model and in negotiations to support the Receiver's sale of White Glove pursuant to a written engagement letter. Mr. Boland's hourly rate for this engagement is \$250.

3. I have over 45 years of business experience, the last 25 of which was focused on dealing with financially challenged companies. During the span of my 45-year professional career, I have held various high level positions with internationally recognized accounting and consulting firms including: Partner-in-charge of Coopers & Lybrand's bankruptcy and litigation services in its New York and Dallas offices; Partner with Arthur Andersen's New York Corporate Recovery Services; BDO Seidman's Managing Director in charge of bankruptcy services in the state of Texas; and, Senior Manager with Price Waterhouse's Litigation Services Group. Additionally, I have significant operating and financial experience across a broad array of industries including as the Chief Financial officer of a publically traded manufacturing company and the Chief Operating Officer of an international distributor. Since retiring from BDO, I have started my own professional service practice to enable me to devote 100% of my time to clients seeking to supplement their capabilities with a professional skilled in operational and financial issues facing troubled companies. I am responsible for all aspects of this engagement including financial analyses, administration and reporting.

4. All services for which compensation is sought herein were rendered by D.J. Boland to White Glove solely in connection with this case and not on behalf of the creditors, individual equity holders or other person.

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

6. D.J. Boland 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 D.J. Boland and any other person for the sharing of compensation to be received for services rendered in this case.

7. D.J. Boland performed his responsibilities in a cost-effective manner commensurate with providing the high quality professional advice required by the Receiver.

8. D.J. Boland performed consulting services for White Glove for fees totalling \$4,325.00.

9. A copy of D.J. Boland's invoice for services rendered is attached as **Exhibit A**.

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

11. The amounts requested by D.J. Boland 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.

12. D.J. Boland believes this request for compensation is justified given the value of D.J. Boland's professional fees.

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

WHEREFORE, D.J. Boland respectfully requests compensation of \$4,325.00 in fees for the Application and for such other and further relief as is proper.

Dated: March 28, 2011

/s/ David J. Boland
David J. Boland, CPA CTP
Consultant for White Glove Cruises, LLC
4608 Pine Valley Drive 4112 West Congress
P.O. Box 61400
Lafayette, Louisiana 70596-1400

PHILLIPS LYTTLE LLP

By /s/ William J. Brown
William J. Brown (Bar Roll #601330)
Todd A. Ritschdorff (Bar Roll #512601)
Counsel 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

**DAVID J. BOLAND
4608 PINE VALLEY DRIVE
FRISCO, TX 75034**

March 2, 2011

Phillips Lytle LLP
ATTN: William J. Brown
3400 HSBC Center
Buffalo, NY 14203-8400

Invoice # DJB-1

Professional Services rendered as per agreement dated January 10, 2010, between David J. Boland and William J. Brown of Phillips Lytle LLP as Receiver for White Glove Cruises, LLC:

For the time period through March 2, 2011:

Fees:

David J. Boland	17.3 hours @ \$400 per hour	\$4,325.00
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Total Fees:		\$4,325.00
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Expenses		\$ 0.00
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Total For This Invoice		\$4,325.00
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**Phillips Lytle LLP
ATTN: William J. Brown
3400 HSBC Center
Buffalo, NY 14203-8400**

Please remit payment to:

**DAVID J. BOLAND
4608 PINE VALLEY DRIVE
FRISCO, TX 75034**

Invoice # DJB-1

REMITTANCE ADVICE

(Please return this REMITTANCE ADVICE with your payment)

Professional Services rendered as per agreement dated January XX 2010, between David J. Boland and William J. Brown of Phillips Lytle LLP as Receiver for White Glove Cruises, LLC:

Current Invoice # DJB-1	\$4,325.00
Previous Balance Outstanding	\$ ----
TOTAL OUTSTANDING BALANCE DUE TO DATE:	\$4,325.00

WHITE GLOVE CRUISES, LLC

**TIME SUMMARY FOR SERVICES PERFORMED DURING THE PERIOD OF
NOVEMBER 10, 2010 THROUGH MARCH 2, 2011**

<u>DATE</u>	<u>DESCRIPTION</u>	<u>NAME</u>	<u>HOURS</u>	<u>AMOUNT \$</u>
11/10/2010	Review September and October 2010 financial statements of White Glove	D. Boland	1.1	275.00
11/11/2010	Prepared information request list for White Glove management	D. Boland	0.4	100.00
11/12/2010	Analyzed data pertaining to customer cancellation rates	D. Boland	0.5	125.00
11/15/2010	Reviewed commission receivable rollforward prepared by White Glove	D. Boland	0.3	75.00
11/15/2010	Telephone conference with White Glove management (W. Shaw; E. Castanon) regarding financial condition per the financial statements.	D. Boland	0.5	125.00
11/15/2010	Prepared memo to Receiver summarizing telephone conference with White Glove management.	D. Boland	0.3	75.00
11/15/2010	Reviewed financial information furnished by White Glove pursuant to Receiver's information request.	D. Boland	0.8	200.00
11/16/2010	Telephone conference with White Glove management (W. Shaw; E. Castanon) regarding financial information prepared for the Receiver.	D. Boland	0.4	100.00
11/16/2010	Analyzed updated cancellation analysis prepared by White Glove.	D. Boland	0.4	100.00
11/17/2010	Analyzed amended cash flow prepared by White Glove.	D. Boland	0.3	75.00
11/18/2010	Reviewed revised cancellation analysis report.	D. Boland	0.3	75.00
11/22/2010	Telephone conference with White Glove management (E. Castanon) regarding cancellation rate analysis.	D. Boland	0.2	50.00
11/30/2010	Analyzed 2 year budget and cash flow prepared by White Glove.	D. Boland	1.8	450.00
12/2/2010	Telephone conference with White Glove management (W. Shaw; E. Castanon) regarding budget and cash flow projections.	D. Boland	0.4	100.00
12/3/2010	Reviewed revised budget and cash flow projections.	D. Boland	0.2	50.00
12/6/2010	Prepared buyout template for use by Receiver.	D. Boland	1.6	400.00
1/21/2011	Analyzed cash sweep issues raised by White Glove management (Eli)	D. Boland	0.7	175.00
1/21/2011	Prepared email response to White Glove management and Receiver addressing cash sweep issues raised by Eli.	D. Boland	0.4	100.00
1/24/2011	Participated in telephone conference with Receiver and White Glove management (Eli) to discuss buyout options.	D. Boland	0.8	200.00

WHITE GLOVE CRUISES, LLC

2/2/2011	Telephone conference with Receiver regarding his communications with White Glove management regarding report prepared by Robert Joselyn.	D. Boland	0.2	50.00
2/2/2011	Review and analysis of Joselyn's letter report initiated at the request of White Glove management.	D. Boland	0.8	200.00
2/2/2011	Telephone conference with Receiver regarding observations of the Joselyn letter including possible alternatives.	D. Boland	0.3	75.00
2/3/2011	Telephone conference with Receiver and White Glove management (Eli) regarding Joselyn and transaction between management and Receiver.	D. Boland	0.5	125.00
2/8/2011	Prepared EBITDA analysis requested by the Receiver	D. Boland	0.2	50.00
2/9/2011	Telephone conference with Receiver regarding valuation issues and recovery options.	D. Boland	0.4	100.00
2/19/2011	Reviewed email correspondence between Receiver and White Glove management (Eli) regarding acquisition alternatives.	D. Boland	0.2	50.00
2/19/2011	Prepared analysis of alternative acquisition approach for consideration and use by the Receiver.	D. Boland	0.7	175.00
3/1/2011	Telephone conference with Receiver regarding structure of White Glove management's acquisition alternatives.	D. Boland	0.8	200.00
3/1/2011	Telephone conference with Receiver and White Glove management (Eli) regarding acquisition alternatives.	D. Boland	0.5	125.00
3/2/2011	Reviewed updated cancellation rates prepared by White Glove management.	D. Boland	0.3	75.00
3/2/2011	Prepared analysis for the Receiver regarding acquisition options based on updated cancellation rates.	D. Boland	0.3	75.00
3/2/2011	Telephone conference with Receiver regarding buyout alternatives to be discussed with White Glove Management.	D. Boland	0.2	50.00
3/2/2011	Telephone conference with Receiver and White Glove management (Eli) regarding alternative acquisition options incorporating updated cancellation rates.	D. Boland	0.5	125.00

Total For Services

17.3 4,325.00

PROFESSIONAL

D. Boland

<u>RAT.</u>	<u>HOURS</u>	<u>AMOUNT \$</u>
<u>##</u>	17.3	4,325.00
	<u>17.3</u>	<u>4,325.00</u>

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Relief Defendants and:

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David L. and Lynn A. Smith Irrevocable
Trust U/A 0/04/04,

Intervenor.

**ORDER APPROVING FIRST INTERIM APPLICATION
OF DAVID J. BOLAND, CPA CTP FOR
APPROVAL OF FEES AND EXPENSES**

Upon the First Interim Application of David J. Boland, CPA CTP (“David J. Boland”) for Approval of Fees and Expenses dated March 28, 2011 (“Application”) for an order approving consulting 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 through March 2, 2011 in the amount of \$4,325.00 is allowed as an interim 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 # 01-2453527.1

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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 Application of David J. Boland, CPA CPT 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:

Charles C. Swanekamp
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Michael L. Koenig, Esq.
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Urbelis & Fieldsteel, LLP
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Boston, MA 02110-1727

Jill A. Dunn, Esq.
The Dunn Law Firm PLLC
99 Pine Street, Suite 210
Albany, NY 12207

Dated: March 29, 2011

/s/ Karen M. Hatch
Karen M. Hatch