

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION :

*Plaintiff,* :

vs. :

Case No. 1:10-CV-457  
(GLS/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, AND :  
DAVID L. SMITH, GEOFFREY R. SMITH, :  
Individually and as Trustee of the David L. and :  
Lynn A. Smith Irrevocable Trust U/A 8/04/04, :  
LAUREN T. SMITH, and NANCY MCGINN, :

*Defendants,* :

LYNN A. SMITH and :  
NANCY MCGINN, :

*Relief Defendants. and* :

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

*Intervenor.* :

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

Upon the Third Interim Application of Phillips Lytle LLP (“Phillips Lytle”) and  
the Receiver (“Receiver”) for Allowance of Compensation and Reimbursement of Expenses  
dated July 5, 2012 (Docket No. \_\_\_\_ ) (“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 January 1, 2011 and December 31, 2011 ("Third Interim Period") in the amount of \$298,991.90 is allowed as an interim allowance, and (ii) reimbursement of expenses advanced by Phillips Lytle during the Third Interim Period in the amount of \$14,157.31 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: August 22, 2012

  
HON. DAVID R. HOMER

Doc # 01-2584203.2