

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/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

**NOTICE OF FIFTEENTH INTERIM APPLICATION OF
CHIAMPOU TRAVIS BESAW & KERSHNER LLP
FOR APPROVAL OF FEES**

PLEASE TAKE NOTICE that upon the Fifteenth Interim Application of
Chiampou Travis Besaw & Kershner LLP (“Chiampou”) for Approval of Fees (“Application”),
Phillips Lytle LLP as counsel to William J. Brown, Receiver, on behalf of the Application of

Chiampou 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, Room 441, Albany, New York 12207, on **September 16, 2021 at 9:30 a.m.**, seeking an Order approving the Application of Chiampou for interim compensation and reimbursement of expenses in connection with accounting, tax and consulting services performed for William J. Brown, as Receiver for the McGinn Smith Entities in this action. 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
August 11, 2021

PHILLIPS LYTTLE 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

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Intervenor.

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**FIFTEENTH INTERIM APPLICATION OF CHIAMPOU TRAVIS BESAW
& KERSHNER LLP FOR APPROVAL OF FEES**

Chiam pou Travis Besaw & Kershner LLP (“Chiam pou”), accountants for William J. Brown, as Receiver, submits this application (“Application”) for an order approving interim fees pursuant to Section XIV of this Court’s Preliminary Injunction Order (Docket No. 96) for the five-month period from March 1, 2021 through June 30, 2021 (“Application Period”). In support of this Application, Chiam pou respectfully represents:

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), and the Preliminary Injunction Order was entered on July 22, 2010 appointing William J. Brown as the permanent Receiver.

2. Prior to the Petition Date, Chiampou did not provide accounting or tax services to McGinn Smith. Chiampou was selected by the Receiver following due diligence and interviews with several accounting and tax preparation firms.

3. Based on Chiampou’s expertise and the Declaration of Michael Schaffstall dated April 7, 2021, 2020, a copy of which is attached to this Application as **Exhibit A**, Chiampou was retained by the Receiver to provide primarily tax but also some minimal accounting and consulting services on behalf of the Receiver.

4. Specifically, Chiampou was retained to prepare the necessary tax and information returns needed to be filed by the Receivership which included not only pre-receivership periods for which no returns had been filed but also all post-Receivership periods.

5. Chiampou commenced its post-petition services to the Receiver in May 2010 in connection with advice on accounting and bank account procedures. During the Application Period, Chiampou has worked preparing the annual 2020 tax returns. Chiampou has also prepared notice responses for various entities and completed research regarding the filing of final returns for various entities and estimated final tax liabilities. During the Application Period, Chiampou has responded to two New York State notices and ten IRS notices related to previously filed returns.

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

7. Prior to the filing of this Application, Chiampou made thirteen interim applications for compensation and expense reimbursement for professional services provided in conjunction with services provided to the Receiver in the above referenced action. Orders were entered on May 16, 2011 approving the first interim fee application of Chiampou in the amount of \$56,949.02, on December 27, 2011 approving the second interim fee application of Chiampou in the amount of \$29,885.37, on August 22, 2012 approving the third interim fee application of Chiampou in the amount of \$57,339.23, on October 2, 2013 approving the fourth interim fee application of Chiampou in the amount of \$70,351.23, on January 5, 2016 approving the fifth interim fee application of Chiampou in the amount of \$109,947.90, on November 28, 2016 approving the sixth interim fee application of Chiampou in the amount of \$16,828.39, on September 21, 2017 approving the seventh interim fee application of Chiampou in the amount of \$16,086.03, on October 2, 2018 approving the eighth interim fee application of Chiampou in the amount of \$541.20, on September 20, 2019 approving the ninth interim fee application of Chiampou in the amount of \$37,661.63, on December 30, 2019 approving the tenth interim fee application of Chiampou in the amount of \$22,385.51, on April 21, 2020 approving the eleventh interim fee application of Chiampou in the amount of \$17,505.26, on August 21, 2020 approving the twelfth interim fee application of Chiampou in the amount of \$27,364.55, on December 17, 2020 approving the thirteenth interim fee application of Chiampou in the amount of \$514, and on May 7, 2021 approving the fourteenth interim fee application of Chiampou in the amount of \$18,630.06.

8. During the Application Period, Chiampou 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 action, and there is no agreement or understanding between Chiampou and any other person, other than members of the firm, for the sharing of compensation to be received for services rendered in this action.

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

10. Chiam pou's professional fees and expenses are broken down into monthly invoices summarized as follows and which are set forth by day, professional, and task as evidenced in attached **Exhibit B**.

<u>Period Covered</u>	<u>Amount</u>
03/01/21 - 03/31/21	\$1,164.96
04/01/21 - 04/30/21	<i>No services provided</i>
05/01/21 - 05/31/21	\$ 166.00
06/01/21 - 06/30/21	<u>\$ 891.00</u>
TOTAL	<u>\$2,221.96</u>

11. Chiam pou maintains records of the time expended by person as well as the actual out-of-pocket expenses incurred. Chiam pou prepared and rendered this fee application describing activities performed by day by professional.

12. Upon Chiam pou's knowledge and belief, 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.

13. The amounts requested by Chiam pou are fair and reasonable given: (a) the complexity of the matters; (b) the actual time expended; (c) the nature and extent of services rendered; and (d) the value of such services.

14. Chiam pou believes this request for compensation is justified given the complexity of this case and the commensurate value of Chiam pou's professional fees for the Application Period. Phillips Lytle has provided the SEC with a copy of this Application. Following its pre-filing review of this Application, the SEC has notified Phillips Lytle and the Receiver that the SEC has no objection to the amounts sought by Chiam pou pursuant to this Application.

Exhibit A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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DAVID L. SMITH, GEOFFREY R. SMITH, :
Individually and as Trustee of the David L. and :
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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 MICHAEL SCHAFFSTALL IN SUPPORT OF FIFTEENTH
INTERIM APPLICATION OF CHIAMPOU TRAVIS BESAW & KERSHNER LLP
FOR ALLOWANCE OF COMPENSATION**

Pursuant to 28 U.S.C. § 1746, Michael Schaffstall declares, under penalty of
perjury, as follows:

1. I am a partner with the accounting and consulting firm of Chiampou Travis Besaw & Kershner LLP (“Chiampou”).

2. I make this declaration in support of the Fifteenth Interim Application of Chiampou for Allowance of Compensation (“Application”) in connection with Chiampou’s services for the Receiver in this action.

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 Chiampou in connection with the Application are those which were customarily charged by Chiampou 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.

5. The compensation and reimbursement of expenses (“Interim Compensation”) for which allowance is sought by Chiampou is reasonable and is sought for actual and necessary services rendered by Chiampou, together with actual and necessary expenses advanced by Chiampou, on behalf of the Receivership entities.

6. The Interim Compensation sought by Chiampou 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. Chiampou believes it is entitled to Interim Compensation based on the considerable expenditures of Chiampou’s resources incurred since the onset of its engagement.

8. Chiampou has no agreement with any other person or entity for the sharing of compensation to be received for accounting or other services rendered in this action,

except as such compensation may be shared by and among the accountants and consultants of Chiampou.

9. Chiampou respectfully requests that this Court authorize the allowance of the Interim Compensation sought pursuant to the Application in the amount of \$2,221.96.

Dated: August 11, 2021

/s/ Michael Schaffstal
Michael Schaffstal

Doc #9782758.1

Exhibit B



McGinn Smith & Co., Inc.

Attn: Mr. William J. Brown
c/o Phillips Lytle LLP
One Canalside
125 Main Street
Buffalo, NY 14203

Invoice No. 10421927
Date 3/31/2021
Client No. 7148.0

Invoice

For professional services rendered from March 1, 2021 through
March 31, 2021 per detailed attachment

1,164.96

BALANCE DUE

\$1,164.96

Payable when rendered. Make checks payable to Chiampou Travis Besaw & Kershner LLP.
Please include invoice number on all correspondence and checks.

45 Bryant Woods North | Amherst, NY 14228 | Phone 716.630.2400 | Fax 716.630.2401 | ctbk.com

Tax Identification number 16-1468002

Thank you

McGinn Smith - WIP Detail - 03/01/2021 - 03/31/2021

	Date		Hours	Billing Price	Billing Price Total
Phillips Lytle					
Andrews, Jill	3/3/2021	Prepare responses for NYS notices for M&S Partners 2011 & TDMM Cable Funding 2011	0.80	150.00	120.00
	3/4/2021	Discussion with Suzanne Curry regarding NYS notices for M&S Partners and TDMM Cable Funding 2011 penalties and writing the responses to NYS.	2.60	150.00	390.00
Curry, Suzanne	3/1/2021	Meeting with Mike Schaffstall to discuss outstanding NYS notices.	0.25	165.00	41.25
	3/4/2021	Call with Jill Andrews to discuss response to outstanding NYS notices.	0.50	165.00	82.50
	3/24/2021	Reviewing responses to 2011 notices for M&S Partners and TDMM Cable Funding LLC.	1.00	165.00	165.00
	3/26/2021	Preparing Power of Attorney and contacting IRS regarding status of 2008 and 2009 notices for McGinn Smith Holdings LLC.	1.50	165.00	247.50
			<u>6.65</u>		<u>1,046.25</u>
McGinn Smith Holdings, LLC					
Curry, Suzanne	3/2/2021	Call with Mike Schaffstall. Return assembly review.	0.35	165.00	57.75
	3/8/2021	Updating files for 2009 notice response from IRS requesting additional time to review response previously provided.	0.25	165.00	41.25
Schaffstall, Michael	3/24/2021	NYS Notice - M&S Partners	0.5	335.00	167.50
			<u>1.10</u>		<u>266.50</u>
McGinn Smith & Co. Inc.					
Curry, Suzanne	3/2/2021	Call with Mike Schaffstall. Updating 2020 return. Return assembly review.	0.40	165.00	66.00
			<u>0.40</u>		<u>66.00</u>
TOTAL FEES INCURRED					\$ 1,378.75
Less Discount					(275.75)
Mail & Courier Services					61.96
TOTAL INVOICE AMOUNT					<u>\$ 1,164.96</u>

Rec'd 6/11/21



McGinn Smith & Co., Inc.
 Attn: Mr. William J. Brown
 c/o Phillips Lytle LLP
 One Canalside
 125 Main Street
 Buffalo, NY 14203

Invoice No. 10423125
 Date 5/31/2021
 Client No. 7148.0

Invoice

For professional services rendered from May 1, 2021 through May 31, 2021 per detailed attachment

166.00

BALANCE DUE **\$166.00**

Payable when rendered. Make checks payable to Chiam pou Travis Besaw & Kershner LLP.
 Please include invoice number on all correspondence and checks.

45 Bryant Woods North | Amherst, NY 14228 | Phone 716.630.2400 | Fax 716.630.2401 | ctbk.com

Tax Identification number 16-1468002

Thank you

McGinn Smith - WIP Detail - 05/01/2021 - 05/31/2021

	Date	Hours	Billing Price	Billing Price Total
Phillips Lytle				
Curry, Suzanne				
	5/20/2021	0.25	165.00	41.25
	5/25/2021	0.25	165.00	41.25
	5/26/2021	0.25	165.00	41.25
		<u>0.75</u>		<u>123.75</u>
McGinn Smith Holdings, LLC				
Schaffstall, Michael				
	5/21/2021	0.25	335.00	83.75
		<u>0.25</u>		<u>83.75</u>
TOTAL FEES INCURRED			\$	207.50
Less Discount				(41.50)
TOTAL INVOICE AMOUNT			\$	<u>166.00</u>



McGinn Smith & Co., Inc.

Attn: Mr. William J. Brown
c/o Phillips Lytle LLP
One Canalside
125 Main Street
Buffalo, NY 14203

Invoice No. 10423394
Date 6/30/2021
Client No. 7148.0

Invoice

1046410 Business Tax Dec 2020

For professional services rendered from June 1, 2021 through June 30, 2021 per detailed attachment 891.00

BALANCE DUE \$891.00

Payable when rendered. Make checks payable to Chiampou Travis Besaw & Kershner LLP.
Please include invoice number on all correspondence and checks.

45 Bryant Woods North | Amherst, NY 14228 | Phone 716.630.2400 | Fax 716.630.2401 | ctbk.com

Tax Identification number 16-1468002

Thank you

McGinn Smith - WIP Detail - 06/15/2021 - 06/30/2021

	Date		Hours	Billing Price	Billing Price Total
Phillips Lytle					
Curry, Suzanne					
	6/15/2021	McGinn Smith & Co 2009 letter from IRS	0.25	165.00	41.25
	6/16/2021	Preparing response to 2008 IRS notice for TDM Cable Funding LLC.	0.75	165.00	123.75
	6/28/2021	Reviewing letter from IRS regarding 2009 letter for McGinn Smith & Co. Inc. Discussion with Mike Schaffstall about response to recent IRS notices for TDM Cable Funding, LLC.	0.25	165.00	41.25
	6/29/2021	Call to IRS Taxpayer Advocate Office to request assistance with notices for TDM Cable Funding, LLC.	3.00	165.00	495.00
	6/30/2021	Call TAO for TDM Cable Funding, LLC. Preparing Power of Attorney to respond to letter from IRS for McGinn Smith & Co. Inc.	2.50	165.00	412.50
			<u>6.75</u>		
		TOTAL FEES INCURRED			\$ 1,113.75
		Less Discount			(222.75)
		TOTAL INVOICE AMOUNT			<u>\$ 891.00</u>

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Defendants, :

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NANCY McGINN, :

Relief Defendants. and :

GEOFFREY R. SMITH, Trustee of the :
David L. and Lynn A. Smith Irrevocable :
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Intervenor. :

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**ORDER APPROVING FIFTEENTH INTERIM APPLICATION
OF CHIAMPOU TRAVIS BESAW & KERSHNER LLP
FOR APPROVAL OF FEES**

Upon the Application of Chiampou Travis Besaw & Kershner LLP (“Chiampou”) for Approval of the Fifteenth Interim Application for Fees dated August 11, 2021 (“Application”) for an order approving accountant’s 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 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 between March 1, 2021 through June 30, 2021 in the amount of \$2,221.96 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: _____, 2021

Hon. Christian F. Hummel
United States Magistrate Judge

Doc #9782755.1

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Relief Defendants. and

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Intervenor.

-----X

CERTIFICATE OF SERVICE

I, Karen M. Ludlow, being at all times over 18 years of age, hereby certify that on August 11, 2021, a caused to be served a true and correct copy of the Fifteenth Interim Application of Chaimpou Travis Besaw & Kershner LLP for Approval of Fees (“Chiamppou Fifteenth Fee 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** , IVhglavin@glavinandglavin.com
- **Bonnie R. Golub** bgolub@weirpartners.com
- **James E. Hacker** jhacker@joneshacker.com, sfebus@joneshacker.com, thiggs@joneshacker.com
- **Erin K. Higgins** EHiggins@ckrpf.com
- **Benjamin W. Hill** bhill@dreyerboyajian.com, cjoy@dreyerboyajian.com, coconnell@dreyerboyajian.com
- **E. Stewart Jones** , resjones@joneshacker.com, mleonard@joneshacker.com, pcampione@joneshacker.com, kjones@joneshacker.com
- **Edward T. Kang** ekang@khflaw.com, mlagoumis@khflaw.com, jarcher@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
- **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 August 11, 2021, I caused to be mailed, via first class mail using the United States Postal Service, a copy of the Chiam pou Fifteenth Fee 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

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

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

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

Dated: August 11, 2021

/s/ Karen M. Ludlow

Karen M. Ludlow

Doc #9782726.1