



Phillips Lytle LLP

Via Electronic Filing

September 3, 2021

Hon. Christian F. Hummel
United States Magistrate Judge
James T. Foley U.S. Courthouse
445 Broadway, Room 441
Albany, New York 12207

Re: Securities and Exchange Commission v. McGinn, Smith & Co., Inc., et al.
Case No. 1:10-CV-00457 (GLS/CFH)
Reply to Letter Opposing Interim Fee Applications (Docket No. 1207)

Dear Judge Hummel:

We are counsel to William J. Brown as Receiver of McGinn Smith & Co., Inc. We write in response to the letter filed on behalf of David Smith on September 1, 2021 (Docket No. 1207) (“Letter”) requesting that (1) the Order approving the Eighteenth Interim Application of Phillips Lytle LLP and Receiver for Allowance of Compensation and Reimbursement of Expenses entered on September 1, 2021 (Docket No. 1206) be rescinded and (2) the Fifteenth Interim Application of Chiampou Travis Besaw & Kershner LLP for Approval of Fees (Docket No. 1205) be held in abeyance.

First, Smith did not timely file an opposition to the interim fee application submitted by Phillips Lytle LLP and the Receiver (Docket No. 1204).

Second, Smith has not applied for, nor has he received, a stay of the Receiver’s activities while Smith’s Rule 60(b) Motion (Docket No. 1195) is pending before the Court. The Receiver has proceeded in good faith to administer and preserve the estate as directed by the Court’s Preliminary Injunction Order (Docket No. 96). To satisfy his duties and obligations under the Preliminary Injunction Order, the Receiver must continue to pay the ordinary course expenses of administering the estate, including, but not limited to, the fees and expenses of the professionals engaged by the Receiver. The Receiver is presently winding up the estate in preparation to close the Receivership, as authorized

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by the Court in the Order approving, among other things, the Receiver's undertaking certain wind-up activities (Docket No. 1165).

Accordingly, as there is no stay of the Receiver's activities in furtherance of his obligations under the Preliminary Injunction Order to administer the estate (nor could Smith obtain one), the Receiver respectfully requests that the Court deny Smith's requests in the Letter and enter an Order approving the Fifteenth Interim Application of Chiam pou Travis Besaw & Kershner LLP for Approval of Fees.

Very truly yours,

Phillips Lytle LLP

/s/ Catherine N. Eisenhut

By

Catherine N. Eisenhut

CNE