

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

-----X  
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.*  
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**NOTICE OF TWENTY-FIRST INTERIM  
APPLICATION OF PHILLIPS LYTLE LLP AND THE  
RECEIVER FOR ALLOWANCE OF COMPENSATION  
AND REIMBURSEMENT OF EXPENSES**

PLEASE TAKE NOTICE that upon the Twenty-First Interim Application of Phillips Lytle LLP and the Receiver for Allowance of Compensation and Reimbursement of Expenses (“Application”), Phillips Lytle LLP (“Phillips Lytle”) 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, Albany, New York 12207-2924, on a date to be scheduled by the Court, seeking an Order to be entered

approving the Application of Phillips Lytle and the Receiver for interim compensation and reimbursement of expenses for the six-month period from February 1, 2022 through July 31, 2022 in connection with legal services performed for William J. Brown, Esq., the Receiver for the McGinn Smith Entities and the services of the Receiver. No oral argument is requested.

PLEASE TAKE FURTHER NOTICE that attached is the cover sheet for the Application, indicating the nature and dates of the services rendered by Phillips Lytle and the Receiver, as well as the total amount sought by Phillips Lytle and the Receiver for interim compensation and reimbursement of expenses. The complete Application of Phillips Lytle is filed with the United States District Court and will be available for review electronically at the Office of the Clerk, United States District Court, Northern District of New York, James T. Foley U.S. Courthouse, 445 Broadway, Room 509, Albany, New York 12207-2924 or online, at the Court's website ([www.nynd.uscourts.gov](http://www.nynd.uscourts.gov)), or at the website of the Receiver ([www.mcginnsmithreceiver.com](http://www.mcginnsmithreceiver.com)). Copies can also be obtained upon written request to Phillips Lytle.

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: October 17, 2022

PHILLIPS LYTLE 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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*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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**FACE SHEET PURSUANT TO LOCAL RULE 2016-1  
FOR TWENTY-FIRST INTERIM APPLICATION BY ATTORNEYS  
FOR RECEIVER AND THE RECEIVER FOR ALLOWANCE OF  
COMPENSATION AND REIMBURSEMENT OF EXPENSES**

APPLICANT'S NAME: Phillips Lytle LLP and William J. Brown, as  
Receiver

APPLICANT'S ADDRESS: Omni Plaza  
30 South Pearl Street  
Albany, New York 12207

DATE APPLICANT APPOINTED:	April 20, 2010
NATURE OF SERVICES RENDERED:	Legal services rendered for William J. Brown, Receiver, with respect to McGinn, Smith & Co., Inc., et al. and for Receiver services and expenses for the period from February 1, 2022 through July 31, 2022
AMOUNT OF COMPENSATION SOUGHT FOR FEES FROM FEBRUARY 1, 2022 THROUGH JULY 31, 2022	\$32,949.30 (including Phillips Lytle and Receiver's fees at pre-arranged discounted hourly rates) at 7.5% for Phillips Lytle and \$225 rather than \$540.00 per hour for the Receiver
AMOUNT OF COMPENSATION SOUGHT FOR EXPENSES FROM FEBRUARY 1, 2022 THROUGH JULY 31, 2022	\$104.82

Dated: October 17, 2022

PHILLIPS LYTLE LLP

By /s/ William J. Brown  
William J. Brown (Bar Roll #601330)  
Catherine N. Eisenhut (Bar Roll #520849)  
Attorneys for the Receiver  
Omni Plaza  
30 South Pearl Street  
Albany, New York 12207  
Telephone No. (518) 472-1224

and

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Doc #10655651.1

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*Defendants,*

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Case No. 1:10-CV-457  
(GLS/CFH)

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**TWENTY-FIRST INTERIM APPLICATION OF PHILLIPS LYTLE LLP  
AND THE RECEIVER FOR ALLOWANCE OF  
COMPENSATION AND REIMBURSEMENT OF EXPENSES**

Phillips Lytle LLP (“Phillips Lytle”) submits this application (“Fee Application”) for allowance of interim compensation and reimbursement of expenses for the six-month period from February 1, 2022 through July 31, 2022 pursuant to Section XIV of this Court’s Preliminary Injunction Order (Docket No. 96). Attached as **Exhibit A** is the Declaration of William J. Brown, Esq. in support of the Fee Application. Phillips Lytle respectfully represents as follows:

## **INTRODUCTION**

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 on August 3, 2011 and Docket No. 334 on June 8, 2011), and the Preliminary Injunction Order was entered on July 22, 2010 appointing William J. Brown as the permanent Receiver.

2. During the period from February 1, 2022 to July 31, 2022 (“Twenty-First Interim Period”), Phillips Lytle performed extensive legal services for the Receiver, and the Receiver performed extensive non-legal or quasi-legal functions, which are each more particularly described below and itemized in the detailed time and disbursement records attached as **Exhibit B**.

3. As a public service discount, the legal fees incurred in this case are being performed with a current 7.5% discount on the hourly rates of Phillips Lytle pursuant to a prior agreement with the SEC. Similarly, the Receiver’s hourly rate for this engagement is \$225 per hour rather than his 2022 hourly rate of \$540 per hour, again per prior agreement with the SEC.

4. As a result, legal services at full value in this Twenty-First Interim Period total \$31,656.00, while the amount to be paid less the 7.5% discount if this Application is approved is \$29,281.80. The Receiver’s services at full value of \$540 per hour in this Twenty-First Interim Period total \$8,802.00, while the amount to be paid if this Application is granted are \$3,667.50 at \$225 per hour. This makes the total amount sought pursuant to this Application to be \$32,949.30 in fees and \$104.82 in disbursements.

**CASE STATUS**

5. As of September 30, 2022, there is \$1,654,330.94 on hand in Receiver accounts, with approximately \$21,753,960.68 having been distributed to investors with allowed claims through the completed First, Second and Third Investor Distribution process. The cash on hand does not reflect uncashed investor distribution checks and vendor checks. The process of issuing first distribution checks representing payment of 10% of allowed claim amounts to investors concluded on October 2, 2020, the second round of investor distributions also representing another 10% of allowed claim amounts to investors concluded on May 11, 2021, and the third round of investor distributions representing 3.84% of allowed claim amounts commenced on May 17, 2021 and is also virtually complete. All post-Receiver obligations are current and paid on a current basis other than the amounts sought in professional fee applications. The monies held in the Receiver's accounts are unencumbered. When this estate was commenced in April 2010, there was \$485,491.63 on hand. Based on the recent recovery of a previously undisclosed escheated asset, the Receiver intends to make a fourth distribution of approximately \$1,395,876 or 1.264%, which would bring total distributions to investors with allowed claims to 25.104%.

6. Currently, the investor and creditor claims bar date and the equity claims bar dates have passed following the successful administration of claims notice procedures. Judgments in favor of the SEC in its action against David L. Smith, Lynn Smith, the Smith Trust, Geoffrey Smith, Lauren Smith and Timothy McGinn were entered in June and July 2015. The Second Circuit upheld those judgments in a decision on April 18, 2016.

7. There are approximately \$124,123,595 in investor claims, some of which have been subject to objection or various grounds. Net claims appear to be in the range of \$111,128,066.92. At present, it appears likely that relatively small additional collections to



further increase investor recoveries are possible, although they remain subject to negotiations and serious contingencies, and other primarily equity positions are worthless.

8. A Plan of Distribution was filed on December 30, 2015 (Docket No. 847), and a Memorandum-Decision and Order approving the Plan of Distribution was entered on October 31, 2016 (Docket No. 904).

9. The Receiver began the process of preparing to formally close the receivership portion of this case in 2020 by filing on July 24, 2020 the Motion for Approval of Destruction of Files, etc. (Docket No. 1133) which was approved by the Court on November 11, 2020 (Docket No. 1165), in addition to the Receiver's earlier steps to file final tax returns for many receivership entities. Additionally, in early 2021, many Certificates of Dissolution were filed with various states seeking to dissolve inactive receivership entities.

10. On June 3, 2021, however, defendant David L. Smith filed his motion ("Motion to Vacate") (Docket No. 1195) to vacate the final civil judgment against him six years prior for disgorgement of more than \$87 million in profits from his Ponzi scheme plus prejudgment interest. He also sought return of over \$4 million in fraudulent proceeds. Both the SEC and the Receiver filed Responses to the Motion to Vacate asserting that Smith is not entitled to any such relief and, in addition, the Receiver's distributions to investors with allowed claims are substantially complete so that there is no relief available to Smith since those monies are now in the hands of the defrauded investors with allowed claims. On February 10, 2022, the Court denied the Motion to Vacate (Docket No. 1222). Smith has appealed that decision to the Second Circuit. The SEC's reply brief is due to be filed by October 20, 2022.

11. The SEC's Standard Fund Accounting Reports are attached to this Application as **Exhibit C**.

**SUMMARY OF ACTIVITIES DURING TWENTY-FIRST INTERIM PERIOD**

12. While the legal, non-legal and quasi-legal functions and services performed during the Twenty-First Interim Period are described in greater detail below and in the detailed time and disbursement records attached as Exhibit B, this executive summary is provided to highlight some of the activities and accomplishments during this period.

13. From a cash perspective, the beginning balance of the Receiver's accounts as of February 4, 2022 totaled \$633,777, and at July 29, 2022, the balance was \$1,682,074. The successful sales of various businesses previously operated by the Receiver took place in prior periods. Interest income contributed to some extent to the maintenance of account values and to pay operating expenses of the Receivership in this period. Account balance decreases are due primarily to investor distributions. The account balance increase at July 29, 2022 is due primarily to the recent recovery of undisclosed escheated assets mentioned above.

14. First, second and third distribution checks have been issued to investors, or IRA custodians on behalf of investors. The checks represented 23.84% of allowed claim amounts. A limited number of investor payment checks have not been cashed.

15. Beginning with the Twentieth Payment Schedule of First Investor Distributions (Docket No. 968), Investors who received collateral recoveries had their claim files reviewed for eligibility for first distribution payments, and collateral recovery investors began receiving first distribution checks.

16. Also during the Application Period, the Receiver and his staff continued the dissolution and wind-up of the various partnerships, limited liability corporations, and c corps comprising the Receivership estate, consistent with the filing of final tax returns, which has been underway for several years. The dissolution process is ongoing with regard to a few entities.

17. As is true in all periods, the Receiver continues to deal with various day-to-day issues involving the operation of the estate, the review, calculation and allowance of investor claims, responding to numerous investor claims and questions, and the collection of remaining assets.

### **COMPENSATION FOR LEGAL SERVICES**

18. The legal services rendered by Phillips Lytle during the Twenty-First Interim Period have been categorized into twenty-two (23) separate categories (Categories A through W), as described below:

A. **Asset Analysis and Recovery**

Category A relates to communications with the New York Comptroller regarding the recovery of escheated funds, drafting of correspondence and schedule of escheated funds, preparation of W-9s and Statement of Receiver to forward to Office of Unclaimed Funds (“OUF”), follow-up with OUFG regarding receipt of documents and status of payment, receipt and review of unclaimed funds check, and numerous conferences and communications regarding same.

In rendering the services in Category A, the following attorneys and paralegals at Phillips Lytle expended the time represented below at the hourly rates represented below for a total value of \$3,384.00, and \$57.91 in disbursement expense:

<u>ATTORNEY</u>	<u>HOURS</u>	<u>RATE</u>	<u>TOTAL</u>
William J. Brown	0.60	540.00	324.00
Catherine N. Eisenhut	10.20	300.00	3,060.00

B. **Claims Administration and Objections**

Category B relates to the numerous and continuous communications with multiple investors respecting issues involving their specific claims; dealing with the administration and

follow up of investor claims and multiple communications regarding same, and attending to ongoing review and updating of McGinn Smith Receiver's website, considerations regarding a potential fourth distribution to investors with allowed claims, preparation and filing of Receiver's Motion for Authority to Use Unclaimed Funds and to Make De Minimis Distributions ("Motion") (Docket No. 1229), and review of Order approving Motion (Docket No. 1230).

In rendering the services in Category B, the following attorneys and paralegals at Phillips Lytle expended the time represented below at the hourly rates represented below for a total value of \$15,487.00, and no disbursement expense:

<u>ATTORNEY</u>	<u>HOURS</u>	<u>RATE</u>	<u>TOTAL</u>
Catherine N. Eisenhut	51.50	300.00	15,450.00
Karen A. Kawczynski	0.20	185.00	37.00

C. Asset Disposition

No services were charged to or rendered by Phillips Lytle in Category C during the Twenty-First Interim Period.

D. Business Operations

No services were charged to or rendered by Phillips Lytle in Category D during the Twenty-First Interim Period.

E. Case Administration

Category E is a "catch all" category consisting of services performed by Phillips Lytle in connection with this action and primarily consists of services performed which do not fit within one of the other 22 specific categories.

During this time period, this category consists of essentially all of the day-to-day work for the Receiver and his professionals and the handling of the legal affairs of the 82 entities which were initially placed into Receivership by this Court's Preliminary Injunction Order

(Docket No. 96). The detailed descriptions attached include communications and correspondence regarding dealing with various business issues arising in the ordinary course of business, matters relating to financial statements, various legal inquiries and questions raised by the SEC concerning the Receivership and SFAR report, dealing with insurance issues and questions; preparation, communications with M&T Bank regarding existing accounts, communications with investors on legal questions, continued review and updating of McGinn Smith Receiver website, drafting and mailing of uncashed check letters and follow-up, preparation of wind-down checklist and revisions to same, discussions regarding fourth distribution analysis, communications regarding HSK status and potential recovery from CMS, extensive communications with register.com to preserve alarmtraders.com website, review of dissolution documents returned by the New York Department of State, communications regarding records retention and storage.

In rendering the services in Category E, the following attorneys and paralegals at Phillips Lytle expended the time represented below at the hourly rates represented below for a total value of \$8,173.00, and \$46.91 in disbursement expense:

<u>ATTORNEY</u>	<u>HOURS</u>	<u>RATE</u>	<u>TOTAL</u>
William J. Brown	11.90	540.00	6,426.00
Catherine N. Eisenhut	5.70	300.00	1,710.00
Karen A. Kawczynski	0.20	185.00	37.00

F. Employee Benefits/Pensions

No services were charged to or rendered by Phillips Lytle in Category F during the Twenty-First Interim Period.

G. Fee/Employment Applications

No reimbursement is sought at this time for services charged to or rendered by Phillips Lytle in Category G during the Twenty-First Interim Period.

H. Fee/Employment Objections

No services were charged to or rendered by Phillips Lytle in Category H during the Twenty-First Interim Period.

I. Accounting/Auditing

No services were charged to or rendered by Phillips Lytle in Category I during the Twenty-First Interim Period.

J. Business Analysis

No services were charged to or rendered by Phillips Lytle in Category J during the Twenty-First Interim Period.

K. Corporate Finance

No services were charged to or rendered by Phillips Lytle in Category K during the Twenty-First Interim Period.

L. Data Analysis

No services were charged to or rendered by Phillips Lytle in Category L during the Twenty-First Interim Period.

M. Status Reports

No services were charged to or rendered by Phillips Lytle in Category M during the Twenty-First Interim Period.

N. Litigation Consulting

No services were charged to or rendered by Phillips Lytle in Category N during the Twenty-First Interim Period.

O. Forensic Accounting

No services were charged to or rendered by Phillips Lytle in Category O during the Twenty-First Interim Period.

P. Tax Issues

Category P consists of services related to conversations and investigations in connection with tax issues related to Plan distributions, tax return preparation and certain financial statement issues, review of McGinn Smith Holdings LLC notices and communications with taxing authorities and tax accountants regarding payment of same.

In rendering the services in Category P, the following attorneys and paralegals at Phillips Lytle expended the time represented below at the hourly rates represented below for a total value of \$1,728.00, and no disbursement expense:

<u>ATTORNEY</u>	<u>HOURS</u>	<u>RATE</u>	<u>TOTAL</u>
William J. Brown	3.20	540.00	1,728.00

Q. Valuation

No services were charged to or rendered by Phillips Lytle in Category Q during the Twenty-First Interim Period.

R. William J. Brown, as Receiver Function

Category R consists of services related to the function of William J. Brown, as Receiver in his capacity as Receiver. These services, per prior agreement with the SEC, are rendered at \$225 per hour. Thus, while the accrued amount would otherwise be \$8,802.00, the discounted amount to be paid is \$3,667.50. All of the Receiver's travel time (if any) is charged to this category and, thus, is at a substantially reduced rate.

The daily time entries reveal the Receiver's almost daily involvement with the various Receiver entities identified in the various descriptions including for this Application Period, the claims process, distributions to creditors, weekly review, processing and approval of payments to vendors and other third parties for services rendered to Receiver operating companies, review, approval and signing of remaining Third Distribution checks and replacement checks, review and authorization of payroll, review of communications from investors and SEC regarding various and ongoing matters, review of bank statements and

accounts, dealings with and review of statements from M&T Bank in connection with the Receivership estate account maintenance, review of NFS account statement to confirm account closure, numerous investor communications both by phone, in writing and e-mail, attending to various investor letters, review of e-mails regarding abandoned property and New York State's list of potential escheated assets and consideration of approaches and alternatives, communications with SEC regarding potential Fourth Distribution, e-mails regarding status of NYS asset escheatment and receipt of funds, receipt and review of four NYS escheatment checks and consider course of action, communications regarding month-to-month lease considerations, and communications with NYS regarding INCAPS shares and lack of value thereof.

In rendering the services in Category R, the Receiver expended the time represented below at the hourly rates represented below for a total value of \$8,802.00, and no disbursement expense:

<u>ATTORNEY</u>	<u>HOURS</u>	<u>RATE</u>	<u>TOTAL</u>
William J. Brown	16.30	540.00	\$8,802.00 (to be billed and paid at \$3,667.50)

S. SEC vs. McGinn, Smith & Co., Inc., et al.

Category S consists of services related to legal involvement in the SEC's action against McGinn, Smith & Co., Inc. and other parties including further review of SEC opposition to David Smith motion to vacate judgment; review David Smith Notice of Appeal; prepare and revise motion dealing with unclaimed property; communications with SEC regarding potential Fourth Distribution; and review of David Smith appellate brief.



In rendering the services in Category S, the following attorneys and paralegals at Phillips Lytle expended the time represented below at the hourly rates represented below for a total value of \$2,884.00, and no disbursement expense:

<u>ATTORNEY</u>	<u>HOURS</u>	<u>RATE</u>	<u>TOTAL</u>
William J. Brown	3.40	540.00	1,836.00
Catherine Eisenhut	3.00	300.00	900.00
Karen Kawczynski	0.80	185.00	148.00

T. W.J. Brown, as Receiver of McGinn Smith & Co., Inc. vs. Thomas E. Livingston

No services were charged to or rendered by Phillips Lytle in Category T during the Twenty-First Interim Period.

U. Sale of McGinn Niskayuna Property

No services were charged to or rendered by Phillips Lytle in Category U during the Twenty-First Interim Period.

V. Sale of Smith Vero Beach Property

No services were charged to or rendered by Phillips Lytle in Category V during the Twenty-First Interim Period.

W. David L. & Lynn A. Smith Irrevocable Trust

No services were charged to or rendered by Phillips Lytle in Category W during the Twenty-First Interim Period.

X. USA vs. McGinn, Smith & Co. Inc.

No services were charged to or rendered by Phillips Lytle in Category X during the Twenty-First Interim Period.

Y. William J. Brown, as Receiver for Third Albany Income Notes, LLC vs. David Kennedy and Stephen I. Willis

No services were charged to or rendered by Phillips Lytle in Category Y during the Twenty-First Interim Period.

**REIMBURSEMENT OF EXPENSES**

19. Photocopies made by Phillips Lytle are billed by Phillips Lytle at \$.10 per page, which is based upon Phillips Lytle's costs. Telefax charges are \$1.00 per page for outgoing documents, with no charge for incoming documents. Long distance telephone charges and overnight courier charges are billed at cost. Overnight courier charges are incurred only when necessary as determined by either the Receiver or Phillips Lytle. In addition, there are the usual disbursements of such items as long distance telephone charges, duplicating charges, and UPS charges for checks received and sent to Receivership businesses.

20. Phillips Lytle incurred out-of-pocket expenses for secretarial overtime in connection with this case. These amounts have been written off and no claim for reimbursement of such expenses is being sought herein.

**PARTICULAR EXPENDITURES**

21. During the Twenty-First Interim Period, there were no substantial charges to report.

**CONCLUSION**

22. All of the services for which Phillips Lytle now seeks compensation were performed on behalf of the Receiver. No services were performed by Phillips Lytle in any capacity other than as counsel to the Receiver.

23. Phillips Lytle has provided the SEC with copies of Phillips Lytle's and the Receiver's billing statements attached as Exhibit B. Following its pre-filing review of this Fee Application, the SEC has notified Phillips Lytle and the Receiver the SEC has no objection to the amounts sought by Phillips Lytle or the Receiver pursuant to this Fee Application.

24. As the record in this action clearly indicates, Phillips Lytle has worked persistently and efficiently during the Twenty-First Interim Period to handle various issues for

the Receiver, the resolution of which will, to varying degrees, enhance the fair and equitable distribution of the McGinn Smith Entities' proceeds to its creditors. This action has mandated a considerable expenditure of Phillips Lytle resources.

25. Based upon the foregoing, Phillips Lytle and the Receiver represent that they are entitled to the interim compensation and reimbursement of expenses sought herein.

26. Phillips Lytle and the Receiver believe that this Fee Application substantially complies with the substantive requirements of the guidelines for fee applications adopted by the SEC.

### **NOTICE**

27. 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](http://www.mcginnsmithreceiver.com)) for all investors and creditors to see. Phillips Lytle and the Receiver submit that no other or further notice need be given.

WHEREFORE, Phillips Lytle and the Receiver respectfully request that this Court enter an order allowing and approving Phillips Lytle's and the Receiver's Application for (i) interim compensation in the amount of \$32,949.30, and reimbursement of expenses in the amount of \$104.82 for a total of \$33,054.12 for the period of February 1, 2022 through July 31, 2022; and (ii) granting such other and further relief as is just and proper.

Dated: October 17, 2022

PHILLIPS LYTLE LLP

By /s/ William J. Brown  
William J. Brown (Bar Roll #601330)  
Catherine N. Eisenhut (Bar Roll #520849)  
Attorneys for the Receiver  
Omni Plaza  
30 South Pearl Street  
Albany, New York 12207  
Telephone No. (518) 472-1224

and

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# ***Exhibit A***

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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*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 WILLIAM J. BROWN IN SUPPORT OF TWENTY-FIRST  
INTERIM APPLICATION OF PHILLIPS LYTTLE LLP AND THE RECEIVER FOR  
ALLOWANCE OF COMPENSATION AND REIMBURSEMENT OF EXPENSES**

Pursuant to 28 U.S.C. §1746, William J. Brown declares, under penalty of  
perjury, as follows:

1. I am a former partner and Of Counsel with the law firm of Phillips Lytle LLP (“Phillips Lytle”) and am also the Receiver (“Receiver”) appointed in this action for certain of the Defendants and other entities.

2. I make this declaration in support of the Twenty-First Interim Application of Phillips Lytle and of the Receiver for Allowance of Compensation and Reimbursement of Expenses (“Application”) in connection with Phillips Lytle’s representation of the Receiver in this Case and the Receiver’s services.

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 Phillips Lytle in connection with the Application are those which were customarily charged by Phillips Lytle 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. Pursuant to prior agreement, in my capacity as Receiver, I agreed in 2010 to charge an hourly rate of \$225 rather than my 2010 hourly rate of \$425, which hourly rate in 2022 is \$540.

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

6. The Interim Compensation sought by Phillips Lytle and the Receiver 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. Phillips Lytle and the Receiver believe they are entitled to Interim Compensation based on the considerable expenditures of Phillips Lytle and Receiver resources incurred since the onset of this action.

8. Phillips Lytle and the Receiver have no agreement directly or indirectly and no understanding exists with any other person or entity for the sharing of compensation to be received for legal or other services rendered in this action, except as such compensation may be shared by and among the attorneys of Phillips Lytle.

Phillips Lytle and the Receiver respectfully request that this Court authorize the allowance of the Interim Compensation sought pursuant to the Application.

Dated: October 17, 2022

/s/ William J. Brown

William J. Brown

Doc #10654755.1

# ***Exhibit B***



# **CATEGORY A**

## **ASSET ANALYSIS & RECOVERY**



## Phillips Lytle LLP

Attorneys at Law  
One Canalside  
125 Main Street  
Buffalo, NY 14203-2887  
Telecopier # (716) 852-6100  
(716) 847-8400  
FED I.D. #16-0505790

William J. Brown, Esq.  
Phillips Lytle LLP  
One Canalside  
125 Main Street  
Buffalo, NY 14203

Invoice Number 1072069  
Invoice Date 10/05/22  
Client Number 33474  
Matter Number 00000  
W J Brown

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### Re: ASSET ANALYSIS & RECOVERY

FOR PROFESSIONAL SERVICES RENDERED THROUGH JULY 31, 2022:

<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
03/03/22	CNE	Follow up on status on claim to recover escheated FIIN claim	0.3
03/04/22	WJB	Review report regarding Incaps escheatment and telephone conference with CNE regarding same	0.2
03/04/22	CNE	Email WJB and B Shea regarding discussion with Comptroller's office regarding FIIN escheated assets	0.2
03/08/22	CNE	Review email and materials sent by Comptroller's Office regarding escheated assets; Email WJB and B Shea regarding materials received from Comptroller's Office; Research regarding NDNY procedure for certified copies	0.5
03/09/22	CNE	Call Northern District of New York Clerk's Office regarding obtaining certified copy of order	0.5
03/10/22	WJB	Review B Shea abandoned property analysis and consider legal implications and prepare reply for necessary clarifications	0.2

33474 Brown, William J. as Receiver of McGinn,  
 Smith & Co., Inc., et al  
 00000 Asset Analysis & Recovery  
 October 5, 2022

Invoice Number 1072069

Page 2 of 4

<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
03/10/22	CNE	Email J Orfan (NYS Comptroller) regarding other escheated assets of receivership entities	0.1
03/11/22	CNE	Draft schedule of escheated claims to send to Office of Unclaimed Funds	0.6
03/14/22	CNE	Emails with B Shea regarding potential escheated assets; Finalize schedule of Receivership claims from Office of Unclaimed Funds database; Email J Ofran (Office of Unclaimed Funds) regarding Receivership claims	0.4
03/21/22	WJB	Review CNE e-mail regarding EIN numbers for escheated funds and respond to B Shea regarding same	0.1
03/21/22	CNE	Review materials circulated by NYS Office of Unclaimed Funds; Email State attorney regarding paperwork needed to claim funds	0.3
03/22/22	CNE	Work on forms for submission to NY Office of Unclaimed Funds	0.4
03/23/22	WJB	Review information request for W9 from CNE regarding escheated assets and situation with Capitol Center Credit and prepare reply regarding same	0.1
03/23/22	CNE	Email B Shea regarding additional info for NYS Office of Unclaimed Funds paperwork	0.1
03/24/22	CNE	Work on W9s for Office of Unclaimed Funds	0.1
03/25/22	CNE	Work on forms for Office of Unclaimed Funds	1.0
03/28/22	CNE	Update and finalize forms for Office of Unclaimed Forms and email to WJB for signature	0.6
03/29/22	CNE	Draft statement from WJB as Receiver claiming funds	1.2
03/30/22	CNE	Correspondence with Office of Unclaimed Funds attorney regarding claim documents and timing; Draft letter regarding OUF documents	0.4

33474 Brown, William J. as Receiver of McGinn,  
 Smith & Co., Inc., et al  
 00000 Asset Analysis & Recovery  
 October 5, 2022

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
03/31/22	CNE	Prepare executed claim documents for submission to NY Office of Unclaimed Funds	0.9
04/05/22	CNE	Email NYS attorney regarding transfer of escheated stock	0.2
04/12/22	CNE	Email Office of Unclaimed Funds attorney regarding status of claim documents; Email WJB, B Shea regarding OUF question on W9s	0.2
04/13/22	CNE	Email WJB regarding OUF response regarding W9s; Email OUF attorney regarding form W9s	0.2
04/20/22	CNE	Follow-up with state attorney regarding approval of payment of escheated claims	0.1
04/25/22	CNE	Email WJB regarding update from Office of Unclaimed Funds regarding escheated assets	0.3
05/09/22	CNE	Submit Office of Unclaimed Funds self-audit form	0.2
05/16/22	CNE	Review check received from NY Office of Unclaimed Funds	0.2
05/23/22	CNE	Review checks received from NYS Office of Unclaimed Funds; Communications with WJB and KML regarding checks	0.3
06/01/22	CNE	Email WJB and B Shea regarding recovered escheated amounts; Review records regarding escheated amounts; Email NYS Office of Unclaimed Funds regarding Incaps shares	0.8
06/02/22	CNE	Email WJB re status of inquiry to NYS Office of Unclaimed Funds re INCAPS share value	0.1

CURRENT FEES

\$3,384.00

33474 Brown, William J. as Receiver of McGinn,  
Smith & Co., Inc., et al  
00000 Asset Analysis & Recovery  
October 5, 2022

Invoice Number 1072069

Page 4 of 4

FOR COSTS ADVANCED AND EXPENSES INCURRED:

Certified Copy(ies) PAYEE: Clerk - U.S. District Court; REQUEST#: 730955; DATE: 3/9/2022. - Certified Copy of Order CCR - 14343	11.00
Overnight Courier CCervone - Fedex to William J. Brown, Esq. - Re: Asset Recovery	46.91
CURRENT EXPENSES	<hr/> 57.91

TOTAL AMOUNT OF THIS INVOICE	\$3,441.91
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\*\*\*PAYMENT DUE UPON RECEIPT\*\*\*

# **CATEGORY B**

## **CLAIMS ADMINISTRATION AND OBJECTIONS**



Attorneys at Law  
 One Canalside  
 125 Main Street  
 Buffalo, NY 14203-2887  
 Telecopier # (716) 852-6100  
 (716) 847-8400  
 FED I.D. #16-0505790

William J. Brown, Esq.  
 Phillips Lytle LLP  
 One Canalside  
 125 Main Street  
 Buffalo, NY 14203

Invoice Number 1072070  
 Invoice Date 10/05/22  
 Client Number 33474  
 Matter Number 00001  
 W J Brown

---

**Re: CLAIMS ADMINISTRATION & OBJECTIONS**

FOR PROFESSIONAL SERVICES RENDERED THROUGH JULY 31, 2022:

<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
02/07/22	CNE	Review affidavit received from investor	0.1
03/14/22	CNE	Confer with KML5 regarding timing of a potential fourth distribution; Review prior distribution schedules; Consider timing of a potential fourth distribution	1.0
03/15/22	CNE	Emails with B Shea regarding potential fourth distribution; Call with WJB and KML5 to discuss logistics regarding potential fourth distribution	0.6
03/16/22	CNE	Consider budgeting for potential fourth distribution; Confer with KML5 regarding IRA investor distributions; Emails with B Shea regarding IRA investor distributions	0.9
03/17/22	CNE	Emails with KML and B Shea regarding dealing with IRA investors in potential 4th distribution; Work on draft motion regarding de minimis investor distributions	1.2
03/18/22	CNE	Confer with KML5 and B Shea regarding logistics for a fourth distribution; Email to WJB regarding fourth distribution and dealing with IRA investors	1.0

33474 Brown, William J. as Receiver of McGinn,  
 Smith & Co., Inc., et al  
 00001 Claims Administration & Objections  
 October 5, 2022

Invoice Number 1072070

Page 2 of 4

<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
03/21/22	CNE	Work on draft motion regarding de minimis distributions/unclaimed funds	2.2
03/23/22	CNE	Work on draft motion regarding unclaimed funds	2.5
03/25/22	CNE	Work on draft motion regarding de minimis distributions	1.7
03/29/22	CNE	E-mail WJB regarding classification of claim in 9th Claims Objection Motion; Work on draft motion regarding de miinimis distributions	3.4
03/30/22	CNE	Work on draft motion for de minimis distributions; email WJB re draft motion	1.0
04/04/22	CNE	Revise draft motion regarding de minimis distributions/uncashed checks per WJB comments; Call with B Shea regarding third distribution amounts; Confer with KML5 regarding uncashed checks list; Draft letter to investor regarding motion regarding de minimis distributions/uncashed checks	5.0
04/05/22	CNE	Review investor files and third distribution schedules; Work on reconciling third distribution amounts; Confer with KML5 regarding third distribution amounts; Review files of investors with unclaimed funds; Revise draft motion for de minimis distributions	6.1
04/06/22	CNE	Call with B Shea regarding third distribution reconciliation; Work on third distribution reconciliation; Update draft motion for de minimis distributions; Call with WJB regarding reconciliation, motion updates; Review NDNY procedures regarding seeking shortened notice; Update draft letter to investors with unclaimed distributions	4.2
04/07/22	CNE	Revise draft motion regarding de minimis payments; Research regarding NDNY procedures to obtain expedited hearing; Call with NDNY clerk regarding obtaining expedited hearing; Email WJB regarding NDNY procedures for Order to Show Cause	3.4



33474 Brown, William J. as Receiver of McGinn,  
 Smith & Co., Inc., et al  
 00001 Claims Administration & Objections  
 October 5, 2022

Invoice Number 1072070

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
04/11/22	CNE	Revise draft motion regarding de minimis distributions/unclaimed funds; Update draft letter to accompany motion; Draft WJB declaration in support of motion regarding de minimis distributions/unclaimed funds	2.3
04/13/22	CNE	Revise draft motion, supporting declaration; Prepare Exhibit B to motion	2.3
04/14/22	CNE	Further revise Unclaimed Funds motion and supporting declaration per B Shea and WJB comments; Finalize exhibits to Unclaimed funds motion; Draft notice of motion; Confer with KML5 regarding preparing certificate of service; Finalize Unclaimed Funds motion, declaration, related documents for filing	2.7
04/15/22	CNE	Review draft posting regarding Unclaimed Funds motion	0.1
04/19/22	K-K	Docket Deadline to respond to motion re unclaimed funds	0.2
05/24/22	CNE	Review letter to investor regarding claims distributions	0.2
05/25/22	CNE	Email B Shea regarding distributions and accounting records	0.2
07/15/22	CNE	Review Order granting motion to use de minimis funds; Call with WJB regarding fourth distribution and next steps; Consider open issues to address prior to fourth distribution	0.8
07/18/22	CNE	Emails with KML5 and B Shea regarding status of unclaimed funds investors; Consider next steps for potential fourth distribution; Draft explanatory letter to unclaimed funds investors to accompany Order; Research regarding effect of pending appeal on potential future distributions	3.7
07/19/22	CNE	Research regarding effect of pending appeal on fourth distribution; Email WJB regarding results of research; Confer with KML5 regarding service of Unclaimed Funds Order; Review draft certificate of service for Unclaimed Funds order	2.1

33474 Brown, William J. as Receiver of McGinn,  
 Smith & Co., Inc., et al  
 00001 Claims Administration & Objections  
 October 5, 2022

Invoice Number 1072070

Page 4 of 4

<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
07/21/22	CNE	Review Smith judgment, distribution plan and order provisions; Review Receiver responses to fee application objection and rule 60(b) motion; Draft letter to Smith counsel regarding 4th distribution	2.8

CURRENT FEES \$15,487.00

TOTAL AMOUNT OF THIS INVOICE \$15,487.00

\*\*\*PAYMENT DUE UPON RECEIPT\*\*\*

# **CATEGORY E**

## **CASE ADMINISTRATION**



## Phillips Lytle LLP

Attorneys at Law  
One Canalside  
125 Main Street  
Buffalo, NY 14203-2887  
Telecopier # (716) 852-6100  
(716) 847-8400  
FED I.D. #16-0505790

William J. Brown, Esq.  
Phillips Lytle LLP  
One Canalside  
125 Main Street  
Buffalo, NY 14203

Invoice Number 1072072  
Invoice Date 10/05/22  
Client Number 33474  
Matter Number 00004  
W J Brown

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### Re: CASE ADMINISTRATION

FOR PROFESSIONAL SERVICES RENDERED THROUGH JULY 31, 2022:

<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
02/11/22	WJB	Prepare investor update regarding Court ruling denying D Smith motion to vacate judgment and cross-reference to Court's decision and earlier investor report regarding same	0.3
02/11/22	WJB	Mark-up and revise checklist for wind down efforts including records, various business accounts, tax records and other matters	0.4
02/14/22	WJB	Review and further revise wind down checklist based upon additional thoughts, circumstances and events	0.4
02/14/22	CNE	Email SMG regarding question on records retention	0.2
02/15/22	CNE	Research regarding SEC requirements for receivership record retention	0.7
02/17/22	CNE	Confer with SMG regarding best practice for retaining Receivership records	0.2

33474 Brown, William J. as Receiver of McGinn,  
Smith & Co., Inc., et al  
00004 Case Administration  
October 5, 2022

Invoice Number 1072072

Page 2 of 6

<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
02/21/22	WJB	Review e-mail from CNE regarding status of case law and other guidance regarding Receiver's obligation for record retention in addition to tax return requirements and follow-up with record keeper regarding additional advice, prepare reply e-mail regarding finalization of same	0.2
02/21/22	CNE	Email WJB regarding status update on records retention research	0.2
02/23/22	CNE	Confer with SMG regarding retention of Receivership records; Review federal regulations regarding record retention for FDIC receiverships; Email WJB regarding retention of Receivership records	1.1
02/24/22	WJB	Review CNE e-mail summary of record retention requirements and policy regarding same, consider same and prepare reply regarding approval	0.3
02/28/22	WJB	Prepare further revisions to winddown checklist and assignment of responsible persons for each task	0.4
02/28/22	WJB	Prepare e-mail CNE and B Shea regarding revised task list for wind down tasks	0.1
03/12/22	WJB	Plan: Review distribution plan terms for dealing with undistributed assets and minimum amount to distribute to investors including review of docket no. 847, and prepare analysis e-mail regarding same to B Shea in light of potential escheated assets recently located	0.4
03/13/22	WJB	Review B Shea e-mail regarding server back-up to external drive, consider alternatives, risks and implications and prepare reply requesting review by Esozo	0.3
03/13/22	WJB	Plan: Prepare e-mail CNE regarding fourth distribution analysis and possible issues and discussion	0.1
03/13/22	WJB	Review B Shea potential fourth distribution issues and prepare reply regarding status of D Smith appeal possibility	0.2

33474 Brown, William J. as Receiver of McGinn,  
Smith & Co., Inc., et al  
00004 Case Administration  
October 5, 2022

Invoice Number 1072072

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
03/14/22	WJB	Review B Shea e-mail and photos regarding external drive and prepare reply regarding precautions and process regarding same	0.2
03/15/22	WJB	Plan: Outline steps for next stages towards completion and closure of estate in dealing with unclaimed funds, IRAs which have been closed by investors and recently located escheated assets	0.4
03/16/22	WJB	Prepare e-mail CNE regarding assessing how to handle investor IRA addresses if accounts are closed and alternatives to same and dealing with current Plan terms regarding under \$50 distributions	0.3
03/18/22	WJB	Review CNE e-mail summary on IRA recipients and possible alternatives regarding same and prepare follow-up e-mail regarding same with other suggestions	0.2
03/20/22	WJB	Review DMP recommendation regarding server storage and going forward process and forward to B Shea with structure for bid to eSozo concerning new equipment	0.2
03/21/22	WJB	Review e-mail from DMP regarding cloud storage negative and positive features, setup and forward to B Shea with instructions including instructions regarding use of server and transfer of data using eSozo	0.2
03/22/22	WJB	Review B Shea annotated answers to questions on server and cloud storage and prepare e-mail to DMP regarding same for further advice on long-term storage structure	0.1
03/22/22	WJB	Review DMP cost estimate for server and related equipment and forward to B Shea and exchange e-mails regarding number of computers on system for evaluation of best storage approach	0.2
03/25/22	WJB	Review e-mail reports regarding inability to obtain EIN for distant entity and respond regarding Capital Center Holdings regarding same	0.1



33474 Brown, William J. as Receiver of McGinn,  
 Smith & Co., Inc., et al  
 00004 Case Administration  
 October 5, 2022

Invoice Number 1072072

Page 4 of 6

<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
03/28/22	WJB	Review CNE email regarding escheated asset forms, complete same, execute same and forward to CNE for processing and delivery	0.3
03/29/22	WJB	Research B Kaufman investment and stock pledge in preparation for call with H Levine, Esq. regarding HSK Associates loan to 107th Associates, including preparation of e-mail to CNE regarding claims objection regarding same	0.4
03/29/22	WJB	Telephone conference with H Levine regarding HSK status and B Kaufman estate and potential recovery from CMS	0.2
03/29/22	WJB	Review B Shea eSozo proposal for cloud storage and implementation platform, consider and prepare e-mail approval regarding same	0.3
03/30/22	WJB	Prepare e-mail H Rittberg providing 2017 consent letter to pursue recovery against CMS and dealing with stock pledge issues and Receiver's right to recovery and also to provide contact information for CMS	0.2
04/06/22	WJB	Conference CNE regarding funds for possible investor Fourth Distribution, plan for issuing checks and discussion of Plan of Distribution provisions concerning de minimis distributions and contemplation of motion	0.3
04/11/22	WJB	Review electronic files for register.com login information to preserve website domain, identify same and prepare e-mail B Shea regarding same	0.2
04/13/22	WJB	Plan: Revise motion to deal with escheated funds and de minimis distributions, prepare comments and forward to CNE	0.9
04/14/22	WJB	Plan: Review revised draft of motion to escheat funds and deal with de minimis distributions and send comments to CNE for inclusion	0.3
04/14/22	WJB	Plan: Review final version of escheatment and de minimis distribution motion and prepare final comments and authorize filing of same	0.7

33474 Brown, William J. as Receiver of McGinn,  
 Smith & Co., Inc., et al  
 00004 Case Administration  
 October 5, 2022

Invoice Number 1072072

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
04/15/22	WJB	Prepare legal description of motion for escheatment of funds and de minimis distributions for investor website	0.1
04/21/22	WJB	Spend extensive time dealing with register.com to preserve Alarmtraders.com website, locate domain information for re-registration purposes, review same and prepare email B Shea regarding same	0.9
04/22/22	WJB	Review email from B Shea regarding register.com and successful login and renewal of domain website	0.1
05/02/22	CNE	Communications with WJB and KML5 regarding NY OUF reporting	0.1
05/03/22	CNE	Review reporting form requested by Office of Unclaimed Funds and prepare responses	0.6
05/04/22	WJB	Review CNE draft escheated asset reporting form for NYS and prepare reply email regarding issue consideration for dealing with NYS on this issue	0.2
05/04/22	CNE	Work on Office of Unclaimed Funds audit form	0.5
05/05/22	CNE	Update draft Office of Unclaimed Funds audit form; Email WJB regarding draft audit form	0.3
05/09/22	WJB	Review and revise NYS Voluntary Compliance Self-Audit checklist for potential escheated funds and forward to CNE	0.3
05/09/22	WJB	Review first quarter 2022 SFAR form and prepare e-mail to SEC regarding same	0.4
06/09/22	K-K	Docket date for expiration of Pine Street lease	0.2
07/15/22	WJB	Prepare explanatory email B Shea regarding court decision on Plan distribution and Smith appeal	0.1
07/18/22	WJB	Draft website description updating investors on Court decision allowing escheated funds and use of funds for potential fourth distribution	0.2



33474 Brown, William J. as Receiver of McGinn,  
 Smith & Co., Inc., et al  
 00004 Case Administration  
 October 5, 2022

Invoice Number 1072072

Page 6 of 6

<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
07/19/22	WJB	Plan: Review letter to investors, prepare instructions on uncashed investor checks, and review list of contacts for investors following court decision on motion	0.6
07/19/22	WJB	Review and revise letter to investors with uncashed checks and escheated funds, review in light of approved motion and order and approve final form of letter	0.2
07/25/22	CNE	Review NYS rules for dissolving a foreign LLC	0.5
07/26/22	CNE	Review NY statutes regarding dissolution of foreign entity and form requirements; Draft certificate of surrender of authority for McGinn Smith Capital Management	1.3

CURRENT FEES

\$8,173.00

FOR COSTS ADVANCED AND EXPENSES INCURRED:

Overnight Courier WJB - Fedex to William J. Brown - 46.91  
 Re: Case Administration

CURRENT EXPENSES

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46.91

TOTAL AMOUNT OF THIS INVOICE

\$8,219.91

\*\*\*PAYMENT DUE UPON RECEIPT\*\*\*

# **CATEGORY P**

## **TAX ISSUES**



# Phillips Lytle LLP

Attorneys at Law  
One Canalside  
125 Main Street  
Buffalo, NY 14203-2887  
Telecopier # (716) 852-6100  
(716) 847-8400  
FED I.D. #16-0505790

William J. Brown, Esq.  
Phillips Lytle LLP  
One Canalside  
125 Main Street  
Buffalo, NY 14203

Invoice Number 1072073  
Invoice Date 10/05/22  
Client Number 33474  
Matter Number 00015  
W J Brown

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## Re: TAX ISSUES

FOR PROFESSIONAL SERVICES RENDERED THROUGH JULY 31, 2022:

<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
02/10/22	WJB	Review FIVE Star Bank 1099 received from Five Star Bank	0.1
02/28/22	WJB	Review Chiampou Travis e-mail on 2021 tax returns and prepare reply regarding delivery arrangements	0.1
03/02/22	WJB	Review and consider asset values for remaining assets for inclusion in 2021 income tax returns	0.1
03/03/22	WJB	Review and respond to e-mails concerning asset values for 2021 income tax returns	0.2
03/03/22	WJB	Review B Shea e-mail regarding Incaps value and asset value for tax return preparation	0.1
03/04/22	WJB	Review S Curry e-mail on preparation of tax return extensions in light of different asset values and prepare e-mail B Shea regarding same	0.1
03/06/22	WJB	Download tax filing extension for multiple returns and e-file authorization requests as received from Chiampou Travis	0.3
03/07/22	WJB	Sign NYS e-file extension and IRS extension for McGinn Smith Holdings LLC, First Independent Income Notes LLC, and McGinn Smith Alarm Trading LLC and attend to filing fee payment forms and prepare e-mail S Curry regarding same	0.5

33474 Brown, William J. as Receiver of McGinn,  
 Smith & Co., Inc., et al  
 00015 Tax Issues  
 October 5, 2022

Invoice Number 1072073

Page 2 of 2

<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
03/14/22	WJB	Review B Shea e-mail on values for remaining assets and their use in 2021 tax returns and prepare reply	0.1
03/21/22	WJB	Review S Curry e-mail with McGinn Smith Holdings IRS and NYS 2021 tax package and forward instructions to B Shea	0.1
03/21/22	WJB	Review B Shea question regarding D Smith and T McGinn information for issuance of K-1s for 2021 taxes, consider same and prepare reply	0.1
03/23/22	WJB	Review B Shea e-mail authorizing McGinn Smith Holdings 2021 tax returns	0.1
03/25/22	WJB	Prepare e-mail Chiampou and B Shea regarding receipt of McGinn Smith Holdings 2021 tax returns and preliminary review of same	0.1
03/25/22	WJB	Prepare e-mail B Shea regarding potential tax implications of escheated funds and review reply regarding analysis regarding same	0.2
03/27/22	WJB	Review McGinn Smith Holdings 2021 IRS and NYS tax returns and related documents including signing of e-file authorizations and send to tax accountants	0.9
03/28/22	WJB	Review and respond to S Livingston regarding delivery of K-1 for Thomas Livingston	0.1

CURRENT FEES \$1,728.00

TOTAL AMOUNT OF THIS INVOICE \$1,728.00

\*\*\*PAYMENT DUE UPON RECEIPT\*\*\*

# **CATEGORY R**

**WILLIAM J. BROWN, AS RECEIVER FUNCTION**



## Phillips Lytle LLP

Attorneys at Law  
One Canalside  
125 Main Street  
Buffalo, NY 14203-2887  
Telecopier # (716) 852-6100  
(716) 847-8400  
FED I.D. #16-0505790

William J. Brown, Esq.  
Phillips Lytle LLP  
One Canalside  
125 Main Street  
Buffalo, NY 14203

Invoice Number 1072075  
Invoice Date 10/05/22  
Client Number 33474  
Matter Number 00017  
W J Brown

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**Re: W.J. BROWN, AS RECEIVER FUNCTION**

FOR PROFESSIONAL SERVICES RENDERED THROUGH JULY 31, 2022:

<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
02/02/22	WJB	Review e-mail from M Lawson regarding Lawson small estate affidavit and requested declaration concerning original document	0.1
02/04/22	WJB	Review payroll request, approve same and prepare e-mail B Shea regarding same	0.1
02/04/22	WJB	Review B Shea e-mail concerning vacation request and consider same and prepare reply regarding approval	0.1
02/04/22	WJB	Review B Shea question on Five Star Bank 1099 and prepare reply with instructions for obtaining same from Five Star Bank	2.0
02/04/22	WJB	Telephone call from O Capece regarding Forge Trust and ability to withdraw IRA monies having been told by Forge Trust that it must wait completion of Receivership and advice regarding inaccuracy of that statement and recommended next steps	0.3
02/05/22	WJB	Review weekly bank account report and consider same	0.1

33474 Brown, William J. as Receiver of McGinn,  
 Smith & Co., Inc., et al  
 00017 W.J. Brown, as Receiver Function  
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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
02/07/22	WJB	Review CNE e-mail to M Lawson regarding confirmation of receipt of notarized affidavit and processing of estate distribuion	0.1
02/10/22	WJB	Review instructions to void Check No. 6049 and reissue new distribution check to Lawson estate	0.1
02/10/22	WJB	Review e-mail from B Shea regarding handling of Lawson estate distribution check and prepare reply regarding same	0.1
02/11/22	WJB	Prepare e-mail B Shea regarding receipt of vendor checks and plan for disposition	0.1
02/11/22	WJB	Prepare e-mail M Schaffstall and S Curry regarding denial of D Smith motion to vacate judgment and next steps regarding completion of Receivership and pro	0.1
02/12/22	WJB	Review, approve and sign vendor checks and mail same	0.3
02/15/22	WJB	Review January 2022 additional M&T bank account statement and bank account analysis statement and forward to B Shea for review and reconciliation	0.1
02/16/22	WJB	Review notice from NYSIF of new mailing address effective immediately and forward to B Shea for administration purposes	0.1
02/16/22	WJB	Review e-mail from M Lawson regarding status of distribution check and prepare reply	0.1
02/19/22	WJB	Review weekly bank account report and consider treatment of T McGinn life insurance policy	0.1
02/22/22	WJB	Sign and return Lawson estate distribution letter as revised	0.1
02/23/22	WJB	Review payroll, approve same and prepare e-mail B Shea regarding same	0.1



33474 Brown, William J. as Receiver of McGinn,  
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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
02/25/22	WJB	Review e-mail from M Lawson regarding status of replacement distribution check and prepare reply including verification with staff	0.1
02/26/22	WJB	Review bank account weekly report	0.1
02/27/22	WJB	Review voicemail message from E O'Connell regarding possibility of further distributions based upon other information and provide instructions to staff regarding response	0.1
03/02/22	WJB	Review NYS unemployment insurance report and send to b shea	0.1
03/02/22	WJB	Review B Shea e-mail regarding website necessary corrections concerning Smith motion decision and attend to same	0.2
03/06/22	WJB	Review and approve payroll and forward to B Shea	0.1
03/07/22	WJB	Review vendor checks received from B Shea	0.1
03/07/22	WJB	Approve, sign and mail vendor checks to B Shea and others	0.3
03/07/22	WJB	Review M&T Distribution account statement and forward to B Shea for reconciliation and posting	0.1
03/08/22	WJB	Review abandoned property e-mail regarding Sandler assets from B Shea and CNE e-mail regarding NYS list of potential escheated assets and report on call with NYS attorney general; Prepare e-mail to team regarding recovery of same after considering approaches and alternatives	0.3
03/09/22	WJB	Prepare e-mail to B Shea requesting review of names on New York State escheatment list to search for further assets	0.1
03/09/22	WJB	Review B Shea e-mail on list of escheated assets and prepare e-mail regarding follow-up actions	0.1
03/12/22	WJB	Review Chiampou February 2022 statement and forward to B Shea for review and approval	0.1



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 00017 W.J. Brown, as Receiver Function  
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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
03/15/22	WJB	Review B Shea IRA notification e-mail and prepare reply to confirm withdrawal and closure	0.1
03/20/22	WJB	Review and approve payroll and forward to B Shea	0.1
03/26/22	WJB	Review weekly cash report including new contingent funds	0.1
03/30/22	WJB	Review e-mail from CNE regarding timeline for NYS to provide escheated funds and consider same in connection with subsequent timing	0.1
04/02/22	WJB	Review and approve payroll and forward to B Shea	0.1
04/04/22	WJB	Prepare and revise email to SEC regarding potential Fourth Distribution based upon newly-found funds	0.3
04/06/22	WJB	Review vendor and computer payable checks and bills, approve same and attend to payment	0.4
04/11/22	WJB	Prepare e-mail B Shea regarding calculating Plan distribution amount and supplies for potential fourth distribution	0.1
04/12/22	WJB	Review three M&T Bank March 2022 bank statements and forward to B Shea	0.1
04/12/22	WJB	Consider EINs requested by NYS regarding escheated assets and prepare reply to CNE regarding same	0.2
04/14/22	WJB	Prepare email B Shea, CNE regarding no delay in pursuing escheatment motion irrespective of D Smith appeal	0.1
04/14/22	WJB	Attend to review, approval and execution of professional fee checks and distribute same	0.3
04/22/22	WJB	Review National Life bill for T McGinn life insurance policy and forward to B Shea	0.1
04/23/22	WJB	Review weekly bank account report	0.1

33474 Brown, William J. as Receiver of McGinn,  
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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
04/23/22	WJB	Prepare email CNE regarding status of NYS escheatment receipt of funds and review reply	0.1
04/25/22	WJB	Review email from CNE regarding status of communications with NYS Office of Unclaimed Funds and tax clearance regarding same	0.1
04/25/22	WJB	Review Memorandum to File regarding E Saldivar uncashed check and next steps regarding contact with executor of estate	0.1
04/26/22	WJB	Review and approve payroll and forward to B Shea	0.1
04/27/22	WJB	Review email from B Shea regarding basis for D Smith appeal regarding his motion to vacate judgment and prepare reply regarding nature of federal appeal and next steps	0.1
04/30/22	WJB	Review weekly bank account report	0.1
05/02/22	WJB	Review mailing from NYS concerning escheated funds and forward to CNE	0.1
05/06/22	WJB	Prepare email B Shea regarding historical use of McGinn Smith Capital Holdings in connection with NYS request for completion of form regarding potential escheated assets	0.1
05/06/22	WJB	Prepare email B Shea regarding mailing of vendor checks and delivery of same	0.1
05/08/22	WJB	Review, approve and forward payroll to B Shea	0.1
05/14/22	WJB	Review weekly cash report	0.1
05/16/22	WJB	Review M&T Bank April 2022 distribution account statement and forward to B Shea	0.1
05/16/22	WJB	Review two checks received from NYS escheatment and consider course of action regarding same	0.1
05/16/22	WJB	Review M&T Bank April 2022 account analysis statement and forward to B Shea	0.1

33474 Brown, William J. as Receiver of McGinn,  
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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
05/16/22	WJB	Prepare email staff and CNE regarding deposit instructions for escheatment check	0.1
05/21/22	WJB	Review weekly cash report	0.1
05/23/22	WJB	Review two additional escheatment checks from NYS, consider course of action and prepare reply with instructions to deposit	0.2
05/23/22	WJB	Review CNE reply regarding escheatment checks, consider same and prepare reply with instructions on deposit and dealing with Capital Centercorp check	0.1
05/27/22	WJB	Review and approve payroll and forward to B Shea	0.1
05/28/22	WJB	Review weekly cash report and question regarding treatment of escheated check amounts	0.1
06/01/22	WJB	Review CNE email regarding Capital Center escheatment check and prepare reply regarding same and procedure on accounting for same	0.2
06/01/22	WJB	Review CNE email on escheated asset recovery and necessary follow-up with NYS on INCAPS share value	0.1
06/05/22	WJB	Prepare email B Shea regarding lease renewal structure in reply to his 6/2 email on month-to-month lease	0.1
06/05/22	WJB	Review weekly bank account report	0.1
06/05/22	WJB	Review, approve, sign and return vendor checks	0.3
06/05/22	WJB	Analyze new lease terms for storage property, consider same and prepare final reply to B Shea regarding same taking into account pending motion before District Court and appeal of Smith motion	0.2
06/06/22	WJB	Prepare reply email to B Shea regarding considerations on extension of storage lease given nature of building	0.1

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
06/06/22	WJB	Review W Stauffer inquiry on D Smith motion and additional potential distribution and prepare reply regarding same	0.2
06/06/22	WJB	Review M&T Bank Distribution account statement and forward to B Shea for reconciliation and posting	0.1
06/06/22	WJB	Review NYS disability insurance premium bill and deposit slip and prepare email B Shea regarding same and review response	0.1
06/07/22	WJB	Review M&T Bank Alarm Traders statement and forward to B Shea for reconciliation and posting	0.1
06/07/22	WJB	Review M&T money market account statement and forward to B Shea for reconciliation and posting and verify NYS deposit evidence	0.1
06/08/22	WJB	Telephone call from Amsterdam NY investor regarding request from accountant and confirmation of payments and prepare email staff regarding same regarding response	0.1
06/09/22	WJB	Review and organize emails on various subjects and prepare follow-up completion list	0.4
06/09/22	WJB	Review signed storage lease and tickle expiration date	0.1
06/10/22	WJB	Review check and deposit evidence for Capital Center Credit Corp check	0.1
06/11/22	WJB	Review, approve and prepare email B Shea regarding payroll	0.1
06/11/22	WJB	Review weekly bank account cash report	0.1
06/12/22	WJB	Review, approve and sign NYSIF premium payment check and forward to B Shea	0.1
06/17/22	WJB	Telephone call from A Hayes and D Landrio at CPA firm regarding treatment of investor payments for tax purposes	0.2
06/18/22	WJB	Review weekly bank account report	0.1

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
06/25/22	WJB	Review, approve and forward payroll to B Shea	0.1
07/06/22	WJB	Review vendor payments, approve same, sign and distribute checks	0.4
07/08/22	WJB	Review Chiampou Travis account statement and forward to B Shea for review and approval and review reply	0.1
07/08/22	WJB	Prepare email B Shea regarding operating checks, dating same and receipt	0.1
07/10/22	WJB	Review payroll, approve same and forward to B Shea	0.1
07/18/22	WJB	Review and revise draft letter to uncashed check investors	0.1
07/19/22	WJB	Review, sign and send revised escheatment funds letter	0.2
07/19/22	WJB	Review State Insurance Fund invoice and forward to B Shea	0.1
07/19/22	WJB	Review CNE email with NYS response on lack of value for Incaps shares	0.1
07/21/22	WJB	Review W Stauffer inquiry on Fourth distribution following approval of motion regarding administration by Court, consider issue and prepare reply	0.3
07/21/22	WJB	Prepare email to staff regarding calculation of professional fees	0.1
07/25/22	WJB	Review T McGinn insurance policy bill and forward to B Shea	0.1
07/25/22	WJB	Review, approve and distribute vendor checks	0.3
07/25/22	WJB	Review, approve and sign distribution checks 5051-5054	0.2
07/25/22	WJB	Review weekly bank cash report	0.1
07/27/22	WJB	Prepare email B Shea and staff regarding receipt and signing of vendor checks	0.1

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
07/27/22	WJB	Review T McGinn life insurance policy bill and forward to B Shea	0.1
07/27/22	WJB	Review, approve and sign investor checks and email B Shea regarding distribution of same	0.2
07/30/22	WJB	Review staff email recounting history and communications with D Hain concerning father's estate, review background facts and prior memoranda, consider course of action and prepare email with instructions	0.2
07/30/22	WJB	Review weekly cash report	0.1

CURRENT FEES \$8,802.00

TOTAL AMOUNT OF THIS INVOICE \$8,802.00

\*\*\*PAYMENT DUE UPON RECEIPT\*\*\*

# **CATEGORY S**

**SEC vs. MCGINN SMITH & CO., INC., ET AL.**



## Phillips Lytle LLP

Attorneys at Law  
One Canalside  
125 Main Street  
Buffalo, NY 14203-2887  
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William J. Brown, Esq.  
Phillips Lytle LLP  
One Canalside  
125 Main Street  
Buffalo, NY 14203

Invoice Number 1072076  
Invoice Date 10/05/22  
Client Number 33474  
Matter Number 00018  
W J Brown

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### Re: SEC V MCGINN SMITH & CO., INC., ET AL

FOR PROFESSIONAL SERVICES RENDERED THROUGH JULY 31, 2022:

<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
02/10/22	WJB	Review Court Order denying D Smith motion to vacate judgment and cross-reference to and review Receiver Response and SEC response to motion which forms basis of Court decision	0.3
02/24/22	K-K	Docket deadline for D Smith to appeal denial of motion	0.2
03/15/22	WJB	Check on status of any appeal filed by D Smith to denial of motion and prepare e-mail CNE regarding same	0.1
03/15/22	WJB	Prepare e-mail SEC regarding no appeal filed by D Smith to denial of motion	0.1
03/15/22	CNE	Review case docket and emails with WJB regarding deadline to appeal Order denying Smith Motion	0.3
03/31/22	WJB	Review draft motion dealing with unclaimed property and approving distribution of de minimis amounts including preparation of e-mail to CNE regarding status of any uncashed checks for first through third distributions	0.5



33474 Brown, William J. as Receiver of McGinn,  
 Smith & Co., Inc., et al  
 00018 SEC v McGinn Smith & Co., Inc., et al  
 October 5, 2022

Invoice Number 1072076

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
04/04/22	WJB	Review and revise draft Motion to escheat uncashed checks to pay other investors and deal with de minimis distributions, email to CNE	0.9
04/08/22	CNE	Review D Smith notice of appeal; Review Fed Rules of Appellate Procedure regarding filing appeals; Email D Stoelting and K McGrath regarding notice of appeal; Research regarding interlocutory appeals	1.5
04/11/22	WJB	Prepare e-mail SEC regarding requested telephone conference to discuss D Smith appeal and outline issues regarding same and preparation for same	0.2
04/11/22	WJB	Review December 1, 2021 hearing transcript for remarks made by D Smith counsel concerning Plan distributions and authority for same	0.3
04/11/22	WJB	Telephone conference with K McGrath, D Stoelting regarding D Smith appeal, potential fourth distribution, motion to escheat funds, risks, analysis and course of action and follow-up with CNE regarding same	0.0
04/11/22	CNE	Call with WJB regarding Smith appeal, next steps	0.2
06/10/22	K-K	Docket deadline to file Appellant's brief with the Second Circuit	0.2
06/16/22	CNE	Review 60(b) motion appeal docket	0.2
07/15/22	WJB	Review court decision on Receiver's Motion for potential fourth distribution and escheated funds, prepare email B Shea, CNE regarding same	0.3
07/15/22	WJB	Conference CNE regarding research concerning Plan distribution	0.2
07/19/22	K-K	Docket last day to file notice of appeal for order granting unclaimed funds motion	0.2
07/21/22	WJB	Review D Smith appeal brief to Second Circuit and distribute to team	0.4

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 October 5, 2022

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<u>Date</u>	<u>Tkpr</u>		<u>Hours</u>
07/22/22	WJB	Review CNE email on briefing date for Second Circuit appeal and reply regarding tickling	0.1
07/22/22	WJB	Consider Appellate issues and potential Receiver's response regarding same regarding Smith Appeal	0.0
07/22/22	CNE	Review Smith appeal brief; research regarding timing for SEC reply brief	0.8
07/25/22	K-K	Docket deadline for SEC to file their reply brief	0.2

CURRENT FEES \$2,884.00

TOTAL AMOUNT OF THIS INVOICE \$2,884.00

\*\*\*PAYMENT DUE UPON RECEIPT\*\*\*

# ***Exhibit C***

WILLIAM J. BROWN, ESQ  
RECEIVER

PHILLIPS LYTLE LLP  
125 MAIN STREET  
BUFFALO, NY 14203  
PHONE 716 847 7089

# STANDARDIZED FUND ACCOUNTING REPORT

CIVIL DISTRIBUTION FUND

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MCGINN, SMITH & CO. INC. ET. AL.  
CIVIL COURT DOCKET No.  
10-CV-457(GLS/CFH)

REPORTING PERIOD 1/1/2022 TO 3/31/2022

**STANDARDIZED FUND ACCOUNTING REPORT for McGinn, Smith Co. Co. Et. Al. - Cash Basis**

Receivership; Civil Court Docket No. 10-CV-457(GLS/CFH)

Reporting Period 1/1/22 to 3/31/22

<b>FUND ACCOUNTING (See Instructions):</b>				
		<b>Detail</b>	<b>Subtotal</b>	<b>Grand Total</b>
Line 1	Beginning Balance (As of 12/31/2021):	640,103	640,103	640,103
	<b>Increases in Fund Balance:</b>			
Line 2	Business Income		-	-
Line 3	Cash and Securities			
Line 4	Interest/Dividend Income	6	6	6
Line 5	Business Asset Liquidation		-	-
Line 6	Personal Asset Liquidation			
Line 7	Third-Party Litigation Income		-	-
Line 8	Miscellaneous - Other		-	-
	<b>Total Funds Available (Lines 1 - 8):</b>	<b>6</b>	<b>6</b>	<b>6</b>
	<b>Decreases in Fund Balance:</b>			
Line 9	Disbursements to Investors		-	-
Line 10	Disbursements for Receivership Operations			
Line 10a	Disbursements to Receiver or Other Professionals		-	-
Line 10b	Business Asset Expenses	21,911	21,911	21,911
Line 10c	Personal Asset Expenses			
Line 10d	Investment Expenses			
Line 10e	Third-Party Litigation Expenses			
	1. Attorney Fees			
	2. Litigation Expenses			
	<b>Total Third-Party Litigation Expenses</b>			
Line 10f	Tax Administrator Fees and Bonds			
Line 10g	Federal and State Tax Payments			
	<b>Total Disbursements for Receivership Operations</b>	<b>21,911</b>	<b>21,911</b>	<b>21,911</b>
Line 11	Disbursements for Distribution Expenses Paid by the Fund:			
Line 11a	Distribution Plan Development Expenses:			
	1. Fees:			
	Fund Administrator.....			
	Independent Distribution Consultant (IDC).....			
	Distribution Agent.....			
	Consultants.....			
	Legal Advisers.....			
	Tax Advisers.....			
	2. Administrative Expenses			
	3. Miscellaneous			
	<b>Total Plan Development Expenses</b>			
Line 11b	Distribution Plan Implementation Expenses:			
	1. Fees:			
	Fund Administrator.....			
	IDC.....			
	Distribution Agent.....			
	Consultants.....			
	Legal Advisers.....			
	Tax Advisers.....			
	2. Administrative Expenses			
	3. Investor Identification:			
	Notice/Publishing Approved Plan.....			
	Claimant Identification.....			
	Claims Processing.....			
	Web Site Maintenance/Call Center.....			
	4. Fund Administrator Bond			
	5. Miscellaneous			
	6. Federal Account for Investor Restitution (FAIR) Reporting Expenses			
	<b>Total Plan Implementation Expenses</b>			
	<b>Total Disbursements for Distribution Expenses Paid by the Fund</b>			
Line 12	Disbursements to Court/Other:			
Line 12a	Investment Expenses/Court Registry Investment System (CRIS) Fees			
Line 12b	Federal Tax Payments			
	<b>Total Disbursements to Court/Other:</b>			
	<b>Total Funds Disbursed (Lines 9 - 11):</b>			
Line 13	Ending Balance (As of 3/31/2022):			<b>618,198</b>



**STANDARDIZED FUND ACCOUNTING REPORT for McGinn, Smith Co. Co. Et. Al. - Cash Basis**  
**Receivership; Civil Court Docket No. 10-CV-457(GLS/CFH)**  
**Reporting Period 1/1/22 to 3/31/22**

<b>Line 14</b>	<b>Ending Balance of Fund – Not Assets:</b>			
Line 14a	Cash & Cash Equivalents			
Line 14b	Investments			
Line 14c	Other Assets or Uncleared Funds			
	<b>Total Ending Balance of Fund – Not Assets</b>			<b>\$ 618,198</b>

  

OTHER SUPPLEMENTAL INFORMATION:				
		Detail	Subtotal	Grand Total
	<b>Report of Items NOT To Be Paid by the Fund:</b>			
<b>Line 15</b>	<b>Disbursements for Plan Administration Expenses Not Paid by the Fund:</b>			
Line 15a	Plan Development Expenses Not Paid by the Fund			
	1. Fees:			
	Fund Administrator			
	IDC			
	Distribution Agent			
	Consultants			
	Legal Advisers			
	Tax Advisers			
	2. Administrative Expenses			
	3. Miscellaneous			
	<b>Total Plan Development Expenses Not Paid by the Fund</b>			
Line 15b	Plan Implementation Expenses Not Paid by the Fund			
	1. Fees:			
	Fund Administrator			
	IDC			
	Distribution Agent			
	Consultants			
	Legal Advisers			
	Tax Advisers			
	2. Administrative Expenses			
	3. Investor Identification:			
	Notice/Publishing Approved Plan			
	Claimant Identification			
	Claims Processing			
	Web Site Maintenance/Call Center			
	4. Fund Administrator Bond			
	5. Miscellaneous			
	6. FAIR Reporting Expenses			
	<b>Total Plan Implementation Expenses Not Paid by the Fund</b>			
Line 15c	<b>Tax Administrator Fees &amp; Bonds Not Paid by the Fund</b>			
	<b>Total Disbursements for Plan Administration Expenses Not Paid by the Fund</b>			
<b>Line 16</b>	<b>Disbursements to Court/Other Not Paid by the Fund:</b>			
Line 16a	Investment Expenses/CRIS Fees			
Line 16b	Federal Tax Payments			
	<b>Total Disbursements to Court/Other Not Paid by the Fund:</b>			
<b>Line 17</b>	<b>DC &amp; State Tax Payments</b>			
<b>Line 18</b>	<b>No. of Claims:</b>			
Line 18a	# of Claims Received This Reporting Period			
Line 18b	# of Claims Received Since Inception of Fund			2,781
<b>Line 19</b>	<b>No. of Claimants/Investors:</b>			
Line 19a	# of Claimants/Investors Paid This Reporting Period			10
Line 19b	# of Claimants/Investors Paid Since Inception of Fund			4,820

Receiver:

By:

(signature)

WILLIAM J. DROWN

(printed name)

Receiver

(title)

Date:

5/9/2022

WILLIAM J. BROWN, ESQ  
RECEIVER

PHILLIPS LYTTLE LLP  
125 MAIN STREET  
BUFFALO, NY 14203  
PHONE 716 847 7089

# STANDARDIZED FUND ACCOUNTING REPORT

CIVIL DISTRIBUTION FUND

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MCGINN, SMITH & CO. INC. ET. AL.  
CIVIL COURT DOCKET No.  
10-CV-457(GLS/DRN)

REPORTING PERIOD 4/1/2022 TO 6/30/2022

**STANDARDIZED FUND ACCOUNTING REPORT for McGinn, Smith Co. Co. Et. AL - Cash Basis**  
**Receivership; Civil Court Docket No. 10-CV-457(GLS/CFH)**  
**Reporting Period 4/1/22 to 6/30/22**

FUND ACCOUNTING (See Instructions):				
		Detail	Subtotal	Grand Total
Line 1	Beginning Balance (As of 3/31/2022):	618,198	618,198	618,198
	<b>Increases in Fund Balance:</b>			
Line 2	Business Income	-	-	-
Line 3	Cash and Securities	-	-	-
Line 4	Interest/Dividend Income	135	135	135
Line 5	Business Asset Liquidation	1,103,342	1,103,342	1,103,342
Line 6	Personal Asset Liquidation	-	-	-
Line 7	Third-Party Litigation Income	-	-	-
Line 8	Miscellaneous - Other	-	-	-
	<b>Total Funds Available (Lines 1 - 8):</b>	<b>1,103,477</b>	<b>1,103,477</b>	<b>1,103,477</b>
	<b>Decreases in Fund Balance:</b>			
Line 9	Disbursements to Investors	804	804	804
Line 10	Disbursements for Receivership Operations			
Line 10a	Disbursements to Receiver or Other Professionals	16,974	16,974	16,974
Line 10b	Business Asset Expenses	17,168	17,168	17,168
Line 10c	Personal Asset Expenses			
Line 10d	Investment Expenses			
Line 10e	Third-Party Litigation Expenses			
	1. Attorney Fees			
	2. Litigation Expenses			
	<b>Total Third-Party Litigation Expenses</b>			
Line 10f	Tax Administrator Fees and Bonds			
Line 10g	Federal and State Tax Payments			
	<b>Total Disbursements for Receivership Operations</b>	<b>34,142</b>	<b>34,142</b>	<b>34,142</b>
Line 11	Disbursements for Distribution Expenses Paid by the Fund:			
Line 11a	Distribution Plan Development Expenses:			
	1. Fees:			
	Fund Administrator.....			
	Independent Distribution Consultant (IDC).....			
	Distribution Agent.....			
	Consultants.....			
	Legal Advisers.....			
	Tax Advisers.....			
	2. Administrative Expenses			
	3. Miscellaneous			
	<b>Total Plan Development Expenses</b>			
Line 11b	Distribution Plan Implementation Expenses:			
	1. Fees:			
	Fund Administrator.....			
	IDC.....			
	Distribution Agent.....			
	Consultants.....			
	Legal Advisers.....			
	Tax Advisers.....			
	2. Administrative Expenses			
	3. Investor Identification:			
	Notice/Publishing Approved Plan.....			
	Claimant Identification.....			
	Claims Processing.....			
	Web Site Maintenance/Call Center.....			
	4. Fund Administrator Bond			
	5. Miscellaneous			
	6. Federal Account for Investor Restitution (FAIR) Reporting Expenses			
	<b>Total Plan Implementation Expenses</b>			
	<b>Total Disbursements for Distribution Expenses Paid by the Fund</b>			
Line 12	Disbursements to Court/Other:			
Line 12a	Investment Expenses/Court Registry Investment System (CRIS) Fees			
Line 12b	Federal Tax Payments			
	<b>Total Disbursements to Court/Other:</b>			
	<b>Total Funds Disbursed (Lines 9 - 11):</b>			
Line 13	Ending Balance (As of 6/30/2022):			<b>1,686,729</b>



**STANDARDIZED FUND ACCOUNTING REPORT for McGinn, Smith Co. Co. Et. Al. - Cash Basis**  
**Receivership; Civil Court Docket No. 10-CV-457(GLS/CFH)**  
**Reporting Period 4/1/22 to 6/30/22**

Line 14	<b>Ending Balance of Fund – Net Assets:</b>			
Line 14a	Cash & Cash Equivalents			
Line 14b	Investments			
Line 14c	Other Assets or Uncleared Funds			
	<b>Total Ending Balance of Fund – Net Assets</b>			<b>\$ 1,686,729</b>

  

OTHER SUPPLEMENTAL INFORMATION:				
		Detail	Subtotal	Grand Total
	<b>Report of Items NOT To Be Paid by the Fund:</b>			
Line 15	<b>Disbursements for Plan Administration Expenses Not Paid by the Fund:</b>			
Line 15a	Plan Development Expenses Not Paid by the Fund:			
	1. Fees:			
	Fund Administrator.....			
	IDC.....			
	Distribution Agent.....			
	Consultants.....			
	Legal Advisers.....			
	Tax Advisers.....			
	2. Administrative Expenses			
	3. Miscellaneous			
	<b>Total Plan Development Expenses Not Paid by the Fund</b>			
Line 15b	Plan Implementation Expenses Not Paid by the Fund:			
	1. Fees:			
	Fund Administrator.....			
	IDC.....			
	Distribution Agent.....			
	Consultants.....			
	Legal Advisers.....			
	Tax Advisers.....			
	2. Administrative Expenses			
	3. Investor Identification:			
	Notice/Publishing Approved Plan.....			
	Claimant Identification.....			
	Claims Processing.....			
	Web Site Maintenance/Call Center.....			
	4. Fund Administrator Bond			
	5. Miscellaneous			
	6. FAIR Reporting Expenses			
	<b>Total Plan Implementation Expenses Not Paid by the Fund</b>			
Line 15c	<b>Tax Administrator Fees &amp; Bonds Not Paid by the Fund</b>			
	<b>Total Disbursements for Plan Administration Expenses Not Paid by the Fund</b>			
Line 16	<b>Disbursements to Court/Other Not Paid by the Fund:</b>			
Line 16a	Investment Expenses/CRIS Fees			
Line 16b	Federal Tax Payments			
	<b>Total Disbursements to Court/Other Not Paid by the Fund:</b>			
Line 17	<b>DC &amp; State Tax Payments</b>			
Line 18	<b>No. of Claims:</b>			
Line 18a	# of Claims Received This Reporting Period.....			
Line 18b	# of Claims Received Since Inception of Fund.....			2,781
Line 19	<b>No. of Claimants/Investors:</b>			
Line 19a	# of Claimants/Investors Paid This Reporting Period.....			
Line 19b	# of Claimants/Investors Paid Since Inception of Fund.....			4,820

Receiver:

By:

(signature)

(printed name)

(title)

Date:

WILLIAM J. BROWN, ESQ  
RECEIVER

PHILLIPS LYTTLE LLP  
125 MAIN STREET  
BUFFALO, NY 14203  
PHONE 716 847 7089

# STANDARDIZED FUND ACCOUNTING REPORT

CIVIL DISTRIBUTION FUND

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MCGINN, SMITH & CO. INC. ET. AL.  
CIVIL COURT DOCKET No.  
10-CV-457(GLS/DRN)

REPORTING PERIOD 7/1/2022 TO 9/30/2022

**STANDARDIZED FUND ACCOUNTING REPORT for McGinn, Smith Co. Co. Et. Al. - Cash Basis**

Receivership; Civil Court Docket No. 10-CV-457(GLS/CFH)

Reporting Period 7/1/22 to 9/30/22

<b>FUND ACCOUNTING (See Instructions):</b>				
		<b>Detail</b>	<b>Subtotal</b>	<b>Grand Total</b>
Line 1	<b>Beginning Balance (As of 6/30/2022):</b>	1,686,729	1,686,729	1,686,729
	<b>Increases in Fund Balance:</b>			
Line 2	Business Income		-	-
Line 3	Cash and Securities			
Line 4	Interest/Dividend Income	62	62	62
Line 5	Business Asset Liquidation		-	-
Line 6	Personal Asset Liquidation			
Line 7	Third-Party Litigation Income		-	-
Line 8	Miscellaneous - Other		-	-
	<b>Total Funds Available (Lines 1 – 8):</b>	<b>62</b>	<b>62</b>	<b>62</b>
	<b>Decreases in Fund Balance:</b>			
Line 9	Disbursements to Investors	9,682	9,682	9,682
Line 10	<b>Disbursements for Receivership Operations</b>			
Line 10a	Disbursements to Receiver or Other Professionals		-	-
Line 10b	Business Asset Expenses	16,651	16,651	16,651
Line 10c	Personal Asset Expenses			
Line 10d	Investment Expenses			
Line 10e	Third-Party Litigation Expenses			
	1. Attorney Fees			
	2. Litigation Expenses			
	<b>Total Third-Party Litigation Expenses</b>			
Line 10f	Tax Administrator Fees and Bonds			
Line 10g	Federal and State Tax Payments			
	<b>Total Disbursements for Receivership Operations</b>	<b>16,651</b>	<b>16,651</b>	<b>16,651</b>
Line 11	<b>Disbursements for Distribution Expenses Paid by the Fund:</b>			
Line 11a	<b>Distribution Plan Development Expenses:</b>			
	1. Fees:			
	Fund Administrator.....			
	Independent Distribution Consultant (IDC).....			
	Distribution Agent.....			
	Consultants.....			
	Legal Advisers.....			
	Tax Advisers.....			
	2. Administrative Expenses			
	3. Miscellaneous			
	<b>Total Plan Development Expenses</b>			
Line 11b	<b>Distribution Plan Implementation Expenses:</b>			
	1. Fees:			
	Fund Administrator.....			
	IDC.....			
	Distribution Agent.....			
	Consultants.....			
	Legal Advisers.....			
	Tax Advisers.....			
	2. Administrative Expenses			
	3. Investor Identification:			
	Notice/Publishing Approved Plan.....			
	Claimant Identification.....			
	Claims Processing.....			
	Web Site Maintenance/Call Center.....			
	4. Fund Administrator Bond			
	5. Miscellaneous			
	6. Federal Account for Investor Restitution (FAIR) Reporting Expenses			
	<b>Total Plan Implementation Expenses</b>			
	<b>Total Disbursements for Distribution Expenses Paid by the Fund</b>			
Line 12	<b>Disbursements to Court/Other:</b>			
Line 12a	Investment Expenses/Court Registry Investment System (CRIS) Fees			
Line 12b	Federal Tax Payments			
	<b>Total Disbursements to Court/Other:</b>			
	<b>Total Funds Disbursed (Lines 9 – 11):</b>			
Line 13	<b>Ending Balance (As of 9/30/2022):</b>			<b>1,660,458</b>



**STANDARDIZED FUND ACCOUNTING REPORT for McGinn, Smith Co. Co. Et. Al. - Cash Basis**

Receivership; Civil Court Docket No. 10-CV-457(GLS/CFH)

Reporting Period 7/1/22 to 9/30/22

<b>Line 14</b>	<b>Ending Balance of Fund – Net Assets:</b>			
Line 14a	Cash & Cash Equivalents			
Line 14b	Investments			
Line 14c	Other Assets or Uncleared Funds			
	<b>Total Ending Balance of Fund – Net Assets</b>			<b>\$ 1,660,458</b>

  

OTHER SUPPLEMENTAL INFORMATION:				
		Detail	Subtotal	Grand Total
<b>Report of Items NOT To Be Paid by the Fund:</b>				
<b>Line 15</b>	<b>Disbursements for Plan Administration Expenses Not Paid by the Fund:</b>			
Line 15a	Plan Development Expenses Not Paid by the Fund:			
	1. Fees:			
	Fund Administrator.....			
	IDC.....			
	Distribution Agent.....			
	Consultants.....			
	Legal Advisers.....			
	Tax Advisers.....			
	2. Administrative Expenses			
	3. Miscellaneous			
	<b>Total Plan Development Expenses Not Paid by the Fund</b>			
Line 15b	Plan Implementation Expenses Not Paid by the Fund:			
	1. Fees:			
	Fund Administrator.....			
	IDC.....			
	Distribution Agent.....			
	Consultants.....			
	Legal Advisers.....			
	Tax Advisers.....			
	2. Administrative Expenses			
	3. Investor Identification:			
	Notice/Publishing Approved Plan.....			
	Claimant Identification.....			
	Claims Processing.....			
	Web Site Maintenance/Call Center.....			
	4. Fund Administrator Bond			
	5. Miscellaneous			
	6. FAIR Reporting Expenses			
	<b>Total Plan Implementation Expenses Not Paid by the Fund</b>			
Line 15c	<b>Tax Administrator Fees &amp; Bonds Not Paid by the Fund</b>			
	<b>Total Disbursements for Plan Administration Expenses Not Paid by the Fund</b>			
<b>Line 16</b>	<b>Disbursements to Court/Other Not Paid by the Fund:</b>			
Line 16a	Investment Expenses/CRIS Fees			
Line 16b	Federal Tax Payments			
	<b>Total Disbursements to Court/Other Not Paid by the Fund:</b>			
<b>Line 17</b>	<b>DC &amp; State Tax Payments</b>			
<b>Line 18</b>	<b>No. of Claims:</b>			
Line 18a	# of Claims Received This Reporting Period.....			
Line 18b	# of Claims Received Since Inception of Fund.....			2,781
<b>Line 19</b>	<b>No. of Claimants/Investors:</b>			
Line 19a	# of Claimants/Investors Paid This Reporting Period.....			
Line 19b	# of Claimants/Investors Paid Since Inception of Fund.....			4,828

Receiver:

By:

(signature)

William J. Brown, Receiver

(printed name)

(title)

Date:

10/18/2022

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

-----X  
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

**ORDER APPROVING TWENTY-FIRST INTERIM APPLICATION OF  
PHILLIPS LYTLE LLP AND THE RECEIVER FOR ALLOWANCE OF  
COMPENSATION AND REIMBURSEMENT OF EXPENSES**

Upon the Twenty-First Interim Application of Phillips Lytle LLP (“Phillips Lytle”) and the Receiver (“Receiver”) for Allowance of Compensation and Reimbursement of Expenses dated October 17, 2022 (“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 February 1, 2022 and July 31, 2022 ("Twenty-First Interim Period") in the amount of \$32,949.30 is allowed as an interim allowance, and (ii) reimbursement of expenses advanced by Phillips Lytle during the Twenty-First Interim Period in the amount of \$104.82 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: \_\_\_\_\_, 2022

---

HON. CHRISTIAN F. HUMMEL

Doc #10654640.1

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

-----X  
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

**CERTIFICATE OF SERVICE**

I, Karen M. Ludlow, being at all times over 18 years of age, hereby certify that on October 18, 2022, a true and correct copy of the Notice and Twenty-First Interim Application of Phillips Lytle LLP and the Receiver for Allowance of Compensation and Reimbursement of Expenses ("Twenty-First Interim 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 , IV** hglavin@glavinandglavin.com
- **Bonnie R. Golub** bgolub@weirpartners.com
- **Erin K. Higgins** EHiggins@ckrpf.com
- **Benjamin W. Hill** bhill@dreyerboyajian.com, jcantoni@dreyerboyajian.com, coconnell@dreyerboyajian.com
- **E. Stewart Jones , Jr** esjones@joneshacker.com, mleonard@joneshacker.com, pcampione@joneshacker.com,kjones@joneshacker.com
- **Edward T. Kang** ekang@khflaw.com, mlagoumis@khflaw.com, jarcher@khflaw.com, mmoyes@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,rlaport@icrh.com
- **Kevin Laurilliard** laurilliard@mltw.com,chandler@mltw.com
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- **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 October 18, 2022, I caused to be mailed, via first class mail using the United States Postal Service, a copy of the Twenty-First Interim 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

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

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

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

Dated: October 18, 2022

/s/ Karen M. Ludlow  
Karen M. Ludlow