

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----X
SECURITIES AND EXCHANGE COMMISSION :

Plaintiff, :

vs. :

Case No. 1:10-CV-457
(AMN/PJE)

McGINN, SMITH & CO., INC., :
McGINN, SMITH ADVISORS, LLC :
McGINN, SMITH CAPITAL HOLDINGS CORP., :
FIRST ADVISORY INCOME NOTES, LLC, :
FIRST EXCELSIOR INCOME NOTES, LLC, :
FIRST INDEPENDENT INCOME NOTES, LLC, :
THIRD ALBANY INCOME NOTES, LLC, :
TIMOTHY M. McGINN, AND :
DAVID L. SMITH, GEOFFREY R. SMITH, :
Individually and as Trustee of the David L. and :
Lynn A. Smith Irrevocable Trust U/A 8/04/04, :
LAUREN T. SMITH, and NANCY McGINN, :

Defendants, :

LYNN A. SMITH and :
NANCY McGINN, :

Relief Defendants. and :

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

Intervenor. :

-----X

**NOTICE OF FINAL APPLICATION OF
CHIAMPOU TRAVIS BESAW & KERSHNER LLP
FOR APPROVAL OF FEES AND EXPENSES**

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

Application of Chiampou will move before the Hon. Paul J. Evangelista, United States Magistrate Judge, United States District Court for the Northern District of New York, James T. Foley U.S. Courthouse, 445 Broadway, Room 441, Albany, New York 12207, on a date to be scheduled by the Court, seeking an Order approving the Final Application of Chiampou for final compensation and reimbursement of expenses in connection with accounting, tax and consulting services performed for William J. Brown, as Receiver for the McGinn Smith Entities in this action. No oral argument is requested.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the relief requested in the Final Application must be made in writing in accordance with the Federal Rules of Civil Procedure and the Local Rules for the United States District Court for the Northern District of New York.

Dated: Buffalo, New York
March 17, 2025

PHILLIPS LYTTLE LLP

By /s/ William J. Brown

William J. Brown (Bar Roll #601330)

Catherine N. Eisenhut (Bar Roll #520849)

Attorneys for Receiver

Omni Plaza

30 South Pearl Street

Albany, New York 12207

Telephone No. (518) 472-1224

and

One Canalside

125 Main Street

Buffalo, New York 14203

Telephone No.: (716) 847-8400

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----X
SECURITIES AND EXCHANGE COMMISSION :

Plaintiff,

vs.

Case No. 1:10-CV-457
(AMN/PJE)

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

**FINAL APPLICATION OF CHIAMPOU TRAVIS BESAW
& KERSHNER LLP FOR APPROVAL OF FEES AND EXPENSES**

Chiampou Travis Besaw & Kershner LLP (“Chiampou”), accountants for William J. Brown, as Receiver, submits this application (“Final Application”) for an order approving final fees and expenses pursuant to Section XIV of this Court’s Preliminary Injunction Order (Docket No. 96) for the eleven-month period from March 1, 2024 through January 31, 2025 (“Final Application Period”). In support of this Final Application, Chiampou respectfully represents:

The Securities and Exchange Commission (“SEC”) commenced this action against McGinn Smith & Co., Inc., et al. in the United States District Court for the Northern

District of New York on April 20, 2010 wherein William J. Brown, Esq. was appointed as temporary Receiver for certain of the defendants and other entities in the action (“Receiver”) (Docket No. 5). The SEC’s Complaint was subsequently amended (Docket No. 100), and the Preliminary Injunction Order was entered on July 22, 2010 appointing William J. Brown as the permanent Receiver.

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

Based on Chiampou’s expertise and the Declaration of Michael Schaffstall dated March 17, 2025, a copy of which is attached to this Final Application as **Exhibit A**, Chiampou was retained by the Receiver to provide primarily tax but also some minimal accounting and consulting services on behalf of the Receiver.

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

Chiampou commenced its post-petition services to the Receiver in May 2010 in connection with advice on accounting and bank account procedures. During the Final Application Period, Chiampou prepared, drafted, revised and filed the final 2024 income tax returns for McGinn Smith Holdings, LLC including the annual NY IT-204-LL filings, and provided limited asset disposition advice.

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

Prior to the filing of this Final Application, Chiampou made twenty interim applications for compensation and expense reimbursement for professional services provided in conjunction with services provided to the Receiver in the above referenced action. Orders were entered on May 16, 2011 approving the first interim fee application of Chiampou in the amount of \$56,949.02, on December 27, 2011 approving the second interim fee application of Chiampou in the amount of \$29,885.37, on August 22, 2012 approving the third interim fee application of Chiampou in the amount of \$57,339.23, on October 2, 2013 approving the fourth interim fee application of Chiampou in the amount of \$70,351.23, on January 5, 2016 approving the fifth interim fee application of Chiampou in the amount of \$109,947.90, on November 28, 2016 approving the sixth interim fee application of Chiampou in the amount of \$16,828.39, on September 21, 2017 approving the seventh interim fee application of Chiampou in the amount of \$16,086.03, on October 2, 2018 approving the eighth interim fee application of Chiampou in the amount of \$541.20, on September 20, 2019 approving the ninth interim fee application of Chiampou in the amount of \$37,661.63, on December 30, 2019 approving the tenth interim fee application of Chiampou in the amount of \$22,385.51, on April 21, 2020 approving the eleventh interim fee application of Chiampou in the amount of \$17,505.26, on August 21, 2020 approving the twelfth interim fee application of Chiampou in the amount of \$27,364.55, on December 17, 2020 approving the thirteenth interim fee application of Chiampou in the amount of \$514, on May 7, 2021 approving the fourteenth interim fee application of Chiampou in the amount of \$18,630.06, on December 3, 2021 approving the fifteenth interim fee application of Chiampou in the amount of \$2,221.96, on December 3, 2021 approving the sixteenth interim fee application of Chiampou in the amount of \$601.65, on March 18, 2022 approving the seventeenth interim fee application of Chiampou in the amount of \$2,244.56, on November 9, 2022 approving the

eighteenth interim fee application of Chaiampou in the amount of \$4,261.19, on June 12, 2023 approving the nineteenth fee application of Chaiampou in the amount of \$3,086.34, and on May 21, 2024 approving the twentieth fee application of Chaiampou in the amount of \$4,810.01.

During the Final Application Period, Chaiampou received no payment or promises for payment from any source for services rendered or to be rendered in any capacity whatsoever in connection with this action, and there is no agreement or understanding between Chaiampou and any other person, other than members of the firm, for the sharing of compensation to be received for services rendered in this action.

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

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

<u><i>Period Covered</i></u>	<u><i>Amount</i></u>
3/1/24 - 3/31/24	<i>No Services Rendered</i>
4/1/24 - 4/30/24	<i>No Services Rendered</i>
5/1/24 - 5/31/24	<i>No Services Rendered</i>
6/1/24 - 6/30/24	<i>No Services Rendered</i>
7/1/24 - 7/31/24	<i>No Services Rendered</i>
8/1/24 - 8/31/24	<i>No Services Rendered</i>
9/1/24 - 9/30/24	\$140.00
10/1/24 - 10/31/24	<i>No Services Rendered</i>
11/1/24 - 11/30/24	\$2,942.75
12/1/24 - 12/31/24	\$1,040.99
1/1/25 - 1/31/25	<i>No Services Rendered</i>
TOTAL	<u><i>\$4,123.74</i></u>

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

Upon Chiampou's knowledge and belief, the compensation sought for approval herein is commensurate with the customary compensation charged by comparably skilled accountants . The hourly fees charged to clients are dependent upon the experience of the individuals assigned to the engagement.

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

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

Chiampou accordingly makes this Final Application to the Court for compensation.

NOTICE

Notice of this Final Application is being served on the SEC and all parties who have filed a Notice of Appearance in this action. Additionally, it has been posted on the Receiver's website (www.mcginnsmithreceiver.com) for all investors and creditors to see. The Receiver submits that no other or further notice need be given.

WHEREFORE, Chiampou respectfully requests compensation of \$3,922.75 in fees and \$200.99 in expenses during the Application Period, and for such other and further relief as is proper.

Dated: March 17, 2025

CHIAMPOU TRAVIS BESAW & KERSHNER LLP

By /s/ Michael Schaffstall

Michael Schaffstall

45 Bryant Woods North
Amherst, New York 14228
Telephone No. (716) 630-2400

Dated: March 17, 2025

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

Doc #12430232.2

Exhibit A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----X
SECURITIES AND EXCHANGE COMMISSION :

Plaintiff, :

vs. :

Case No. 1:10-CV-457
(AMN/PJE)

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

**DECLARATION OF MICHAEL SCHAFFSTALL IN SUPPORT OF FINAL
APPLICATION OF CHIAMPOU TRAVIS BESAW & KERSHNER LLP
FOR ALLOWANCE OF COMPENSATION**

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

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

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

3. I have reviewed the Final Application and, to the best of my knowledge, information and belief, the facts set forth therein are true and correct.

4. The billing rates being charged by Chiampou in connection with the Final Application are those which were customarily charged by Chiampou during the time periods in question and are comparable to those charged by other firms of comparable size and experience in this geographic area for the prosecution of matters similar to this action.

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

6. The Final Compensation sought by Chiampou is based upon the nature, the extent and the value of the services rendered. These matters are detailed more particularly in the time itemizations attached to the Application as Exhibit B.

7. Chiampou believes it is entitled to Final Compensation based on the considerable expenditures of Chiampou’s resources incurred since the onset of its engagement.

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

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

9. Chiam pou respectfully requests that this Court authorize the allowance of the Final Compensation sought pursuant to the Final Application in the amount of \$4,123.74.

Dated: March 17, 2025

/s/ Michael Schaffstall
Michael Schaffstall

Doc #12430268.1

Exhibit B



**Chiampou
Travis
Besaw &
Kershner LLP**

McGinn Smith & Co., Inc.

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

Invoice No. 10443022
Date 1/13/2025
Client No. 7148.0

Invoice

1067492 Business Tax Oct 2024

For professional services rendered from September 1, 2024 through September 30, 2024 per detailed attachment.

TOTAL FEES INCURRED 175.00

Less Courtesy Discount -35.00

Now accepting VISA and MC credit card payments at <https://secure.cpacharge.com/pages/ctbk/creditcard> and e-checks or ACH at <https://secure.cpacharge.com/pages/ctbk/payments>. A 3% convenience fee will automatically be added to a credit card payments only.

BALANCE DUE \$140.00

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

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

Tax Identification number 16-1468002

Thank you

McGinn Smith - WIP Detail - 09/01/2024 - 09/30/2024

	<u>Date</u>		<u>Hours</u>	<u>Billing Price</u>	<u>Billing Price Total</u>
McGinn Smith Holdings, LLC					
Schaffstall, Michael	9/25/2024	Call with William Brown, Brian Shea and Suzanne Curry to discuss timing of final tax return.	0.25	425.00	106.25
Curry, Suzanne	9/25/2024	Call with William Brown, Brian Shea and Michael Schaffstall to discuss timing of final tax return.	0.25	275.00	68.75
TOTAL FEES INCURRED					<u>\$ 175.00</u>
Less: Discount					(35.00)
TOTAL INVOICE AMOUNT					<u><u>\$ 140.00</u></u>



**Chiampou
Travis
Besaw &
Kershner LLP**

McGinn Smith & Co., Inc.

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

Invoice No. 10443023
Date 1/13/2025
Client No. 7148.0

Invoice

1067492 Business Tax Oct 2024

For professional services rendered from November 1, 2024 through
November 30, 2024 per detailed attachment.

TOTAL FEES INCURRED 3,678.75

Less Courtesy Discount -736.00

Now accepting VISA and MC credit card payments at
<https://secure.cpacharge.com/pages/ctbk/creditcard> and e-checks or
ACH at <https://secure.cpacharge.com/pages/ctbk/payments>. A 3%
convenience fee will automatically be added to a credit card
payments only.

BALANCE DUE \$2,942.75

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

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

Tax Identification number 16-1468002

Thank you

McGinn Smith - WIP Detail - 11/01/2024 - 11/30/2024

	<u>Date</u>	<u>Hours</u>	<u>Billing Price</u>	<u>Billing Price Total</u>
McGinn Smith Holdings, LLC				
Gross, Lynne	11/4/2024 Form 1099 Preparation	0.30	275.00	82.50
		0.30		82.50
Curry, Suzanne	11/5/2024 Meeting with Marny Dowd to discuss preparation of 2024 return and review of documents provided by Brian Shea.	0.50	275.00	137.50
	11/14/2024 Review 2024 workpapers.	2.00	275.00	550.00
	11/25/2024 Reviewing 2024 tax return. Meeting with Michael Schaffstall.	2.00	275.00	550.00
		4.50		1,237.50
Dowd, Marny	11/7/2024 Preparing provision and related workpapers as well as tax return.	6.25	185.00	1,156.25
	11/10/2024 Preparing provision and related workpapers as well as tax return.	2.50	185.00	462.50
	11/17/2024 Continued preparation of tax return and updating related workpapers.	4.00	185.00	740.00
		12.75		2,358.75
TOTAL FEES INCURRED				\$ 3,678.75
Less: Discount				(736.00)
TOTAL INVOICE AMOUNT				\$ 2,942.75



**Chiampou
Travis
Besaw &
Kershner LLP**

McGinn Smith & Co., Inc.

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

Invoice No. 10443024
Date 1/13/2025
Client No. 7148.0

Invoice

1067492 Business Tax Oct 2024

For professional services rendered from December 1, 2024 through December 31, 2024 per detailed attachment.

TOTAL FEES INCURRED	1,050.00
Less Courtesy Discount	-210.00
Return Processing Fee	115.00
Federal Express Corporation - Overnight Courier Service	85.99

Now accepting VISA and MC credit card payments at <https://secure.cpacharge.com/pages/ctbk/creditcard> and e-checks or ACH at <https://secure.cpacharge.com/pages/ctbk/payments>. A 3% convenience fee will automatically be added to a credit card payments only.

BALANCE DUE \$1,040.99

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

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

Tax Identification number 16-1468002

Thank you

McGinn Smith - WIP Detail - 12/01/2024 - 12/31/2024

	<u>Date</u>	<u>Hours</u>	<u>Billing Price</u>	<u>Billing Price Total</u>
McGinn Smith Holdings, LLC				
Schaffstall, Michael	12/4/2024 Review	1.50	425.00	637.50
		1.50		637.50
Curry, Suzanne	12/4/2024 Emailing draft of 10/31/24 tax return.	0.50	275.00	137.50
	12/6/2024 Meeting with Michael Schaffstall. Updating return footnotes.	0.75	275.00	206.25
	12/9/2024 Assembly review and delivery of 2024 tax returns.	0.25	275.00	68.75
		1.50		412.50
TOTAL FEES INCURRED				\$ 1,050.00
Less: Discount				(210.00)
Return Processing Fee				115.00
Federal Express Corporation - Overnight Courier Service				85.99
TOTAL INVOICE AMOUNT				\$ 1,040.99

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----X
SECURITIES AND EXCHANGE COMMISSION :

Plaintiff, :

vs. :

Case No. 1:10-CV-457
(AMN/PJE)

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 FINAL APPLICATION
OF CHIAMPOU TRAVIS BESAW & KERSHNER LLP
FOR APPROVAL OF FEES AND EXPENSES**

Upon the Application of Chiampou Travis Besaw & Kershner LLP (“Chiampou”) for Approval of the final Application for Fees and Expenses dated March 17, 2025 (“Final Application”) for an order approving accountant’s fees and expenses; and notice of the Application having been given to the Securities and Exchange Commission and all parties who

have filed a Notice of Appearance in this action and other parties in interest via the Receiver's website, which notice is deemed good and sufficient notice; and the Court having determined that sufficient cause exists; it is therefore

ORDERED, that the Final Application is approved such that compensation for services rendered between March 1, 2024 through January 31, 2025 in the amount of \$4,123.74 is allowed as a final allowance, and it is further

ORDERED, that the Receiver is authorized and directed to pay the amounts as allowed pursuant to this Order.

Dated: _____, 2025

Hon. Paul J. Evangelista

Doc #12430282.1