

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION :

Plaintiff, :

vs. :

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

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

Defendants, :

LYNN A. SMITH and :
NANCY McGINN, :

Relief Defendants. and :

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

Intervenor. :

**NOTICE OF RECEIVER’S INTENT TO
ABANDON AND DESTROY CERTAIN RECORDS**

PLEASE TAKE NOTICE that William J. Brown, Esq., the Receiver in this
action, intends to abandon and cause to be destroyed by commercial shredding certain non-

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material documents which are described on the attached Schedules commencing December 20, 2011. The reasons for this decision are as follows:

Introduction

1. The Securities and Exchange Commission (“SEC”) commenced an 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.’

The Stored Records

2. A number of the presently and formerly operated businesses in the Receivership stored a substantial number of records in portions of their Albany, New York business premises prior to the commencement of the Receivership which were not rented by the landlord of the building to those entities.

3. The landlord, as part of a building renovation program, has identified that those business records are stored in locations in the building for which no rent is paid. The landlord has notified the Receiver that all items in storage in areas for which the Receiver does not pay rent must be promptly removed or storage space arranged at the Receiver’s expense.

4. The Receiver and his staff have generally examined the records listed on the attached Schedules and have concluded that they do not warrant retention under the

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circumstances. The Receiver has no alternative storage site, and, in any event, the cost to move or to store these “ancient” records is not warranted.

5. In essence, the records listed on Schedule 1 consist of pre-2001 terminated alarm contracts, pre-1999 to 2005 McGinn Smith and related entities financial and business records dating back many years which are no longer needed or useful to the Receiver. The Receiver has notified the office of the United States Attorney for the Northern District of New York and the Securities and Exchange Commission of the existence of these records and his intention to abandon and destroy them.

6. As to the Schedule 2 records, those appear to relate to a building in Latham, New York in which an imaging and a separate out-patient surgery center were previously operated. Those businesses have been shut down for many years. Because those records may contain confidential customer information, they will also be shredded. Schedule 2 contains an image of the information contained on the side of each of those 50 boxes including the dates of the records and a general description of the contents. The Receiver and his staff have not verified all of the contents. Most of the boxes appear to contain files which relate to insurance payments, payables, and other financial information. Other boxes contain correspondence and presumably insurance contracts.

Notice and Objection Process

7. The Receiver is giving notice of the intended destruction to certain former employees of the McGinn Smith entities including, but not limited to, David Smith, Timothy McGinn, Geoff Smith and Matthew McGinn. The Receiver understands that one or more of them may have been responsible, at least at one time, for the custody and care of records relating

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to the imaging and surgery businesses. The Receiver has not, however, been provided any actual information in that respect. The Receiver is also providing notice to the New York State Department of Health and the Albany County Department of Management and Budget, which at one time expressed an interest in certain of imaging center files, at least those located at the former premises in Latham, New York.

8. The Receiver is also giving notice of his intention with respect to this matter to all parties who have appeared in the action entitled *Securities and Exchange Commission v. McGinn, Smith & Co., Inc., et al.*, Case No. 10-CIV-457.

9. In addition to mailing this Notice to the parties listed on the attached Certificate of Service, the Receiver is filing this Notice with the Court and posting it on the Receiver's website (www.mcginnsmithreceiver.com).

10. Any person who wishes to assert any objection or comment to the proposed process must do so to be received by December 19, 2011 by sending written notice to William J. Brown, Receiver, 3400 HSBC Center, Buffalo, NY 14203. Any objection must set forth in writing the specific basis therefor.

11. If no timely objection is received by the Receiver in the manner set forth above, the Receiver intends to proceed with the file destruction process as described in this Notice.

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12. The Receiver is not destroying any other records at this time, although the Receiver continues to dispose of stored and unused furniture and office equipment which is of little or no value to the Receivership estates since the Receiver has been paying storage charges for much of this furniture since the commencement of the action.

Dated: December 9, 2011

PHILLIPS LYTTLE LLP

By /s/ William J. Brown

William J. Brown (Bar Roll #601330)

Todd A. Ritschdorff (Bar Roll #512601)

Attorneys for Receiver

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and

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Doc # 01-2533424.1

SCHEDULE 1

Middle Left Shelves (Middle shelf McGinn Smith):

- 43 Boxes – All 1999 or before containing collection/cash receipt material

Back Wall Shelves (Last shelf on right McGinn Smith):

- 23 Boxes – Conrad collections documents (collection agency accounts), Soloman and Soloman documents (collection agency accounts), Home & Family, All-Safe, and Systems Technologies Inc. Financing Agreements (all pre-1998).
- 5 binders – 1999 Payment info for Systems Technologies, Key Purchase, and Home and Family)

Middle Right Shelves (All McGinn Smith)

- Back Shelf: 32 Boxes – 1999-2001 Lockbox Collection Reports
- Middle-back Shelf: 28 Boxes – 2001-2002 Lockbox Collection Reports
- Middle-front Shelf: 31 Boxes – 2002-2003 Lockbox Collection Reports and Bank Rec's.
- Front Shelf: Miscellaneous Broker files (Primarily Dick Feldman), Box with old scanner.

Far Right Shelves (All McGinn Smith)

- Back Shelf: 87 Binders – Dealer Due Diligence and Deal Binders (including company information and financing agreements) – all 2001 or prior. 6 Boxes – 1996-1997 Collection Reports.
- Middle-back Shelf: 99 Binders – Phase 1 financing agreements, Dealer Due Diligence. 6 Boxes – Old Trust cash receipts reports (1994-1995), 1996-1998 Trust statements.
- Middle-front Shelf: 136 Binders – Phase 1 financing agreements. 5 boxes – Phase 1 sub-dealer due diligence folders.
- Front Shelf – 17 Binders – Phase 1 dealer binders.

Front Shelves (All McGinn Smith)

- 18 Boxes – Miscellaneous Broker Files (Mostly Joe Windbeil (deceased) and Dick Feldmann).

1. Fisch machine
2. Surgery Center Plans
3. Extra Wall paper
4. Holiday decorations
5. Large box of: surgery center documents; 2003 McGinn, Smith correspondence; McGinn, Smith customer statements; old discretionary account list; other
6. Unopened box from Surgical Synergies – Surgery Center related
7. Trust investors 94-97
8. July 93 purged accounts
9. 1997 purged accounts
10. 1999 transmittal sheet; 94-98 documents
11. 2008 customer statements
12. Bc/cpd/jal subscription agreements
13. New accounts 84-95 and Firm accounts 87-01 microfiche
14. M&M Trust; other 1997; Ron Simons tax info for 1997
15. Payne; KTW
16. MAM – corp. record books (old)
17. IAS – IRS's 3 year
18. Payne
19. 2002 Syndicate
20. 2002 monthly cash/transmittal/refunds
21. JV associates 1999-2002
22. Customer Statements 2002 Jan – June
23. 1998 Changes, refund worksheet, EB Trust
24. Alex Brow Case; Nathan Littauer; Bennett Funding; Lawrence Group; Albany International; Vanchainck Marina, etc.

25. Pasadena Partners
26. 2003 Continuing Education
27. UNB Corp
28. Pixel Litigation
29. Wake Robin;THA
30. 2000 Draft Copies
31. Ann Bowen
32. Sub Agreements
33. 2001-2002 before emails tapes, primarily for Cicconi case
34. 1996 McGinn, Smith paid bills N-Z
35. 1993 Purged accounts
36. Keith Cicconi
37. 2002 Draft Copies
38. 1993 purged accounts
39. 1999 purged accounts
40. 1993 July purged accounts
41. 2001 MGS August – Dec monthly accounting
42. 2002 MGS monthly accounting
43. 2002 Trusts
44. 1997 purged accounts
45. 2001 MGS monthly accounting reports
46. 2000 & 2001 Syndicate
47. 2001 payroll
48. 1999-2001 M&S, LDA, FGF, Pointe Capital
49. 2005 Syndicate Jan-Aug

Alarm Files to be destroyed (all pre-2001)

1. King Acq. Dealer files
2. Home & Family Security dealer files
3. Detek Security dealer files
4. STI dealer files
5. Care Club dealer files
6. Home & Family dealer files
7. Sentry Detection dealer files
8. Phase I dealer files
9. Alarm Tech dealer files
10. Digitech Care Club – Security Consultants dealer files
11. Phase I dealer files
12. Care Club dealer files
13. Samples (16 of 19) – old customer files (copies)
14. Ratte – Saloma (15 of 19) – old customer files (copies)

SCHEDULE 2

Medical Building Files

1

From: 1-1-07

No: 2 of 2

Thru: 12-31-07

Contents: DDS

△ P files

Destroy: 12-31-14

Mi - Z

2

From:

No: 1 of 2

Thru:

Contents: 2005

CSDS Payables

Destroy: 2013

A – Medi

3

From: CSDS

No: 2 of 2

Thru: 2008

**Contents: A/P &
voided checks**

Destroy:

Mo – Z

4

From: 6-21-04

No: CSDS Denial

Thru: 8-5-05

Contents: Folders

Destroy:

5

From: 1-1-05

No:

Thru: 12-31-08

Contents: CSDS

Correspondence

Destroy: 12-31-15

6

From: 2006

No: Box 1 of 2

Thru:

Contents: CSDS

Payables

Destroy:

A – Medi

7

From:

No: 2 of 2

Thru:

Contents: CSDS

Contracts

Destroy:

8

From: 6-15-04

No:

Thru: 3-9-06

Contents: CSDS

Refund folders

Destroy:

9

From: 3-7-07

No:

Thru: 2-2-08

Contents: CSDS

Payment Posting

Destroy:

10

From: 1-26-05

No:

Thru: 8-30-05

Contents: CSDS

Payments

Destroy: 9-1-12

11

From: 4-4-06

No:

Thru: 10-5-06

Contents: CSDS

Payments

Destroy: 11-1-13

12

From: 2004

No:

Thru:

Contents: CSDS

Financials

Destroy:

13

From: 1-14-05

No:

Thru: 5-31-05

Contents:

Destroy:

14

From: 8-31-05

No:

Thru: 3-3-06

Contents: Payments

Destroy: 4-1-13

15

From: 5-20-05

No:

Thru: 10-28-05

Contents: CSDS

Ins. Folders

Destroy:

16

From: 3-07

No: 2 of 3

Thru: 3-08

Contents: CSDS

Financials

Destroy:

17

From: No: Box 2 of 2

Thru: Contents: P.O.'s
2005 Financials

Destroy: 12-31-12 CSDS Aug – Dec

18

From: No: 2 of 2

Thru: Contents: 2005
CSDS Payables

Destroy: 2013
Meg – Z
Misc & voided

19

From:

No: 1 of 2

Thru:

Contents: CSDS

2008 A/P

Destroy:

A – Mi

20

From: 1-1-06

No:

Thru: 12-31-06

Contents: CSDS

Financials

Destroy: 12-31-13

21

From:

No:

Thru:

**Contents: CSDS
Mail, 2008 & 2009
Payroll, & MISC**

Destroy:

22

From:

No: 2 of 2

Thru:

Contents: CSDS

2004 Payables

Destroy:

23

From: 5-6-04

No:

Thru: 11-22-04

Contents: CSDS

Ins. Folders

Destroy:

24

From: 11-23-04 No:

Contents: CSDS

Thru: 5-19-05

Ins. Folders

Destroy:

25

From:

No:

Thru:

Contents:

Destroy:

26

From: 2-24-06

No:

Thru: 10-16-06

Contents: CSDS

Am -

Destroy:

27

From: 4-08

No: 3 of 3

Thru: 12-08

Contents: CSDS

Financials/

Pool Tax Info

Destroy:

28

From: 1-1-05

No:

Thru: 12-31-08

Contents: CSDS

Correspondence

Destroy: 12-31-15

29

From:

No: 1 of 2

Thru:

Contents: CSDS

2004 Payables

Destroy:

30

From:

No: Box 1 of 2

Thru:

Contents: CSDC

2005 Financials

Destroy: 12-31-12

Jan – July

31

From:

No:

Thru:

Contents: Century

Save Day

Destroy:

401 (K)

32

From: 9-1-04

No:

Thru: 1-12-05

**Contents: Coding
Folders**

Destroy:

33

From: 7-2-06

No:

Thru: 11-20-06

Contents: Coding

Destroy: 12-1-13

34

From: 11-21-06

No:

Thru: 3-22-07

Contents: CSDS

Coding

Destroy: 4-1-13

35

From: 3-23-07

No:

Thru: 8-6-07

Contents: CSDS

Change Folder

Destroy:

36

From: 6-22-04

No:

Thru: 6-20-05

Contents: CSDS

AM Folders

Destroy:

37

From: 5-1-04

No:

Thru: 8-31-04

Contents:

Destroy:

38

From: 8-07

No:

Thru: 12-19-07

**Contents: Charge
Folder**

Destroy:

39

From: 5-12-04

No:

Thru: 1-24

Contents: CSDS

Payments

Destroy: 2-1-12

40

From: 6-10-08

No:

Thru: 2-6-08

Contents: CSDS

Coding Folders

Destroy:

41

From: 11-1-05

No:

Thru: 3-16-06

Contents: CSDS

Ins. Folders

Destroy:

42

From: 1-2007

No: 1 of 3

Thru: 7-2007

Contents: CSDS

Destroy:

43

From:

No: 1 of 2

Thru:

Contents: CSDS

Contracts

Destroy:

44

From: 1-1-07

No: 1 of 2

Thru: 12-31-07

Contents: DDS

△ P files

Destroy: 12-31-14

A – Mi

45

From: 10-2-08

No:

Thru: 3-30-09

Contents: CSDS

Account Manager

Destroy:

46

From: 3-7-06

No:

Thru: 7-11-06

Contents: CSDS

Coding

Destroy: 8-1-13

47

**From: 12-20-07 No: Contents: CSDS
Thru: 6-9-08 Charge Folders
Destroy:**

48

From: 10-17-06

No:

Thru: 12-31-07

Contents: CSDS

Folders

Destroy: 1-1-15

49

From: 6-21-05

No:

Thru: 2-23-06

Contents: CSDS

Am –

Destroy:

50

From: 10-9-06

No:

Thru: 5-30-07

Contents: Payments

Destroy: 6-1-14

UNITED STATES DISTRICT COURT
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McGINN, SMITH & CO., INC., :
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Individually and as Trustee of the David L. and :
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LAUREN T. SMITH, and NANCY McGINN, :

Defendants, :

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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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CERTIFICATE OF SERVICE

I, Karen M. Ludlow, being at all times over 18 years of age, hereby certify that on December 9, 2011, a true and correct copy of the Notice of Receiver’s Intent to Abandon and Destroy Certain Records 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:

- **Alison B. Cohen** - acohen@gkblaw.com
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December 9, 2011

/s/ Karen M. Ludlow
Karen M. Ludlow