

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

vs.

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

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

Defendants,

LYNN A. SMITH and
NANCY McGINN,

Relief Defendants. and

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

Intervenor.
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LIMITED OPPOSITION TO THE MOTION OF WILLIAM J.
BROWN, AS RECEIVER, FOR AN ORDER (I) APPROVING PLAN
OF DISTRIBUTION OF ESTATE ASSETS AND (II)
AUTHORIZING INTERIM DISTRIBUTIONS

Kevin Laurilliard, an attorney at law, hereby affirms under penalty of perjury that:

1. I am an attorney duly admitted to practice law in this court and am a shareholder of the law firm of McNamee, Lochner, Titus & Williams, P.C. ("MLTW"). MLTW represents JAT Construction Co., Inc. Defined Benefit Pension Plan, Joseph Allegretta and Suzanne Allegretta


("Allegrettas"). The Allegrettas hereby submit this limited opposition to the Receiver's Motion ("Motion") [Docket number 847].

2. The Allegrettas filed Proofs of Claim ("Claims") in this case. A copy of the Claims is attached hereto as Exhibit "A".

3. The proposed Plan of Distribution does not clearly state whether the attached Claims will be paid under the distribution being proposed in the Receiver's Motion. The Receiver's Motion further fails to state the percentage of any such distribution to the attached Claims.

WHEREFORE, the Allegrettas respectfully requests that the Court deny the Receiver's motion until such time as the Plan is amended to provide greater specificity as to the distribution being proposed for the attached Claims, along with such other and further relief as the Court deems just and proper.

Dated: January 29, 2016



Kevin Laurilliard, Esq.
McNamee, Lochner, Titus & Williams, P.C.
Attorneys for Allegrettas
677 Broadway, P.O. Box 459
Albany, New York 12201-0459

Exhibit A

Exhibit A

McNamee, Lochner, Titus & Williams, P.C.

ATTORNEYS AT LAW

KENNETH L. GELLHAUS

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June 18, 2012

Via Federal Express

Jourdan L. Stevenson, Esq.
Phillips, Lytle, LLP
3400 HSBC Center
Buffalo, New York 14203

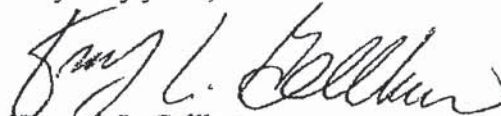
Re: McGinn, Smith & Co., Inc., Thomas McGinn, David Smith, et al
Case No. 10-cv-00457-GLS-DRH
Proof of Claim: Joseph and Suzanne Allegretta; JAT Construction Co.,
Inc. Defined Benefit Pension Plan

Dear Ms. Stevenson:

As you know from our several conversations and my emails, this law firm represents claimants Joseph Allegretta, Suzanne Allegretta and JAT Construction Co., Inc. Defined Benefit Pension Plan relative to the above. With this letter, we enclose and deliver the federally mandated claim form for these two individuals, as well as The Plan.

Please contact my law firm with any questions or concerns relative to the above.

Very truly yours,

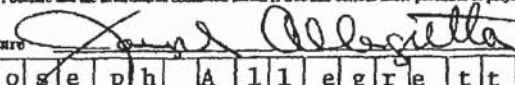


Kenneth L. Gellhaus

KLG/dr

Encs.

cc w/encs.: Joseph & Suzanne Allegretta
JAT Construction Co., Inc. Defined
Benefit Pension Plan

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK		CLAIM FORM
Name of Debtor: (check box next to the entity you are making a claim against): McGinn, Smith & Co. Inc., et al.	Case Number: 1:10-cv-00457-GLS-DRH	
Name of Creditor (The person or other entity to whom the debtor owes money or property): Joseph Allegretta,	<input type="checkbox"/> Check box to indicate that this claim amends a previously filed claim. Claim Number: (If known) Filed On: / / 	
Name and address where notices should be sent: c/o McNamee, Lochner, Titus & Williams, P.C. Attn: Kenneth L. Gellhaus, Esq. 677 Broadway, Suite 500 Albany, New York 12207 TEL: 5 1 8 4 4 7 - 3 2 7 0 Email Address: <u>gellhaus@mltw.com</u>		
Name and address where payment should be sent (if different from above): Name: _____ Address 1: _____ Address 2: _____ Address 3: _____ Address 4: _____ Address 5: _____ TEL: - Email Address: _____	<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach a copy of statement giving particulars.	
Carefully read instructions included with this Claim Form before completing. In order to have your claim considered for payment, complete ALL applicable questions. The original of this Claim Form must be sent to: Phillips Lytle LLP, Attn: Jourdan L. Stevenson, 3400 HSBC Center, Buffalo, New York 14203. In order for the claim to be processed, it must be received on or before JUNE 19, 2012 at 5:00 p.m. B.S.T.		
1. Amount of Claim or Investment: \$ 1,292,978.00 Please list total amount of claim or investment. <input type="checkbox"/> Please check this box if claim includes amount other than investment (interest or other charges in addition to the principal amount invested). Attach an itemized statement detailing additional amounts.		
2. Please provide last four digits of social security number: 4578 and/or account number which identifies creditor to debtor: 405-95300		
3. Total Payments Received: \$ 00.00 Please list the total amount of payments received from the MS Entity during the period of investment. A separate claim must be filed for each claim or investment held.		
4. Documentation. Please attach all evidence which supports your claim. Please include copies of items such as cancelled checks, brokerage statements, promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments and security agreements. You may also attach a summary describing your claim and cataloging attached documents. DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain.		THIS SPACE IS FOR COURT USE ONLY
Date: 0 6 / 1 5 / 2 0 1 2		
Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.		
I assert this claim against the entity whose name is on the documents I am attaching. I understand and agree that all of my claims will be adjudicated by the Court presiding in this matter. I declare that the information contained herein is true and correct under penalties of perjury.		
Signature:  <div style="display: flex; justify-content: space-between;"> Joseph Allegretta </div> <div style="display: flex; justify-content: space-between;"> Printed Name Title </div>		

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