



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

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July 24, 2013

BY ECF

The Honorable Christian F. Hummel
United States Magistrate Judge
United States District Court
Northern District of New York
United States Courthouse
Albany, New York 12207

Re: SEC v. McGinn, Smith & Co., Inc., et al., 10 CV 457 (GLS)(DRH)

Dear Judge Hummel:

I write to bring to the Court's attention new information relevant to David and Lynn Smith's pending "Joint Motion for Modification of the July 22, 2010 Preliminary Injunction Order to Release Assets to Pay Taxes Due and Owing," filed June 17, 2013. The Smiths' motion argues that "the IRS, being the first creditor to conclusively establish entitlement to restitution, has established itself as 'first in line' and is therefore entitled to payment out of frozen assets." Smiths Br. at 4, Dkt. 576-2.

In a brief filed today, the US Attorney's Office stated that:

The restitution amount is \$30,233,514.98. **The victims have priority over the IRS.** 18 U.S.C. § 3664(i) ("In any case in which the United States is a victim, the court shall ensure that all other victims receive full restitution before the United States receives any restitution.").

Government Sentencing Memorandum filed July 24, 2013, at 12, in *United States v. David Smith and Timothy McGinn*, 12-cr-28 (DNH) (N.D.N.Y.) (Dkt. 193) (emphasis added).

Respectfully submitted,

A handwritten signature in blue ink that reads "David Stoelting".

David Stoelting

cc (by e-mail and ECF): All counsel
Nancy McGinn