



**Phillips Lytle** LLP

VIA E-MAIL

November 12, 2013

Hon. Christian F. Hummel  
United States Magistrate Judge  
United States District Court  
Northern District of New York  
United States Courthouse  
445 Broadway  
Albany, NY 12207

Re: Securities and Exchange Commission vs. McGinn, Smith & Co., Inc., et al.  
Case No. 1:10-cv-00457-GLS-CFH

Dear Judge Hummel:

I am writing this letter to point out three important items in the Smith Trust Objections (Docket No. 626) and to make a correction to the Receiver's Report (Docket No. 604), as follows:

1. Smith Trust Objection, page 5 - 134 Betor Road is virtually next door to the Smith Trust property. Conti Appraisal, myself and the broker whose agency (CMK) sold 134 Betor Road physically inspected the exterior of 134 Betor Road on September 18, 2013 during a site visit of the Smith Trust property. The assertion that Conti Appraisal did not discuss the property with the broker is incorrect. I learned today that Mayfair Appraisal Services spoke with the buyer's agent for 134 Betor who is from the same brokerage (CMK) as the seller's agent for 134 Betor. Mayfair was told essentially "the listing was reduced significantly due to the seller building a house, and he was serious about selling. The CMK agent caravan overwhelmingly gave feedback that it should be [listed] under \$400,000. The seller then reduced the price, and a buyer then made an offer". CMK believes 134 Betor Road sold for market value and was not a distressed sale but a market transaction.
2. Geoffrey Smith Affidavit, paragraph 12 - Sophisticated buyers want to view lake property when the lake level is low so that they can determine whether the property

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Hon. Christian F. Hummel  
Page 2

November 12, 2013

elevation leading to the beach and into the lake is level and whether the lake is sandy or stony. The high water mark of spring and summer seasons can typically be easily ascertained even during the winter.

3. Geoffrey Smith Affidavit, paragraph 13 - Mrs. Smith told me in response to a direct question that the property had not been rented.

4. Receiver Report, page 6 - On November 6, 2013, the Receiver obtained a less expensive snowplowing estimate for \$50 per storm, not including walkways or roofs. Thus, it is likely that the \$3,000 estimate previously used in the Receiver's Report could be reduced to an amount equal to one-half or slightly less than the \$3,000 amount in the Receiver's Report.

Finally, I have received an unsolicited written offer for the purchase of the property which I will provide to the Smith Trust and the SEC.

Very truly yours,

Phillips Lytle LLP

By */s/William J. Brown*

William J. Brown

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Doc #01-2729323.1

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