

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FILED
U.S. DISTRICT COURT
INDIANAPOLIS DIVISION

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SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

JAMES A. KNAUER as the Court Appointed)
Receiver for HEARTLAND)
FINANCIAL SERVICES, INC., and JMS)
INVESTMENT GROUP, LLC,)

Plaintiff,)

v.)

CAUSE NO.: IP 01-1168-C-~~TK~~^{KLT}

JONATHON ROBERTS FINANCIAL)
GROUP, INC.,)
ALLIANCE CAPITAL MANAGEMENT)
CORP.,)
ANDOVER SECURITIES INC.,)
FSC SECURITIES CORPORATION, and)
FFP SECURITIES, INC.,)

Defendants.)

CASE MANAGEMENT PLAN

I. Parties and Representatives

- A. James A. Knauer as the Court Appointed Receiver for Heartland Financial Services, Inc. and JMS Investment Group, LLC - William Bock, III, and Reynolds B. Brissenden, KROGER, GARDIS & REGAS, LLP, 111 Monument Circle, Suite 900, Indianapolis, IN 46204-5125, telephone: 317-692-9000
- B. Jonathon Roberts Financial Group, Inc. and Alliance Capital Management Corp. - Thomas E. Wheeler, II, LOCKE REYNOLDS, LLP, 201 N. Illinois Street, Suite 1000, P.O. Box 44961, Indianapolis, IN 46244-0961, telephone: 317-237-3810
- C. Andover Securities Corp. - they are not currently represented and have not been served.
- D. FSC Securities Corp. - William L. O'Connor, Kightlinger & Gray, LLP, Market Square Center, Suite 600, 151 N. Delaware Street, Indianapolis, IN 46204, telephone: 317-638-4521

40000

- E. FFP Securities, Inc. - James W. Riley, Jr., RILEY BENNETT & EGLOFF, LLP
One American Square, Box 82035, Indianapolis, IN 46282, telephone: 317-636-8000. Leo Asaro and Thomas Wack, Bryan Cave, LLP, 211 N. Broadway Suite 3600, St. Louis, MO 63102-2750.

II. Synopsis of Case

- A. **Plaintiff's Statement of Relevant Facts:** Kenneth Payne and Daniel Danker were licensed as securities registered representatives with Defendants at various times and held themselves out as licensed securities registered representatives to investors. Kenneth Payne and Daniel Danker were able to lure investors into a false sense of security through their associations with the Defendants and by their ability to advertise NASD membership and SIPC protection. Kenneth Payne and Daniel Danker induced investors to pay them millions of dollars through the fraudulent sale of securities, and operated a Ponzi scheme. Kenneth Payne and Daniel Danker would not have been able to successfully carry out their fraudulent Ponzi scheme without their status as licensed agents of the Defendants. Defendants had a duty to inquire into the background of Kenneth Payne and Daniel Danker before giving them a license to sell securities. Had the Defendants made appropriate inquiries they would have learned of information that should have led them to not grant securities licenses to Mr. Payne and Mr. Danker. Defendants had a duty to reasonably monitor and oversee the activities of Mr. Payne and Mr. Danker and failed to fulfill these duties thereby allowing Payne and Danker to use securities licenses granted by the Defendants to bilk investors out of millions of dollars.

Legal Theories of Plaintiffs, Including Basis for Federal Subject Matter

Jurisdiction: The Court has subject matter jurisdiction over the claims in this dispute pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1332 and 28 U.S.C. § 1367. The Plaintiff is entitled to recovery under the Securities & Exchange Act of 1934, the Indiana Securities Act, common law breach of fiduciary duties, common law negligence, the doctrine of respondeat superior, and the Indiana Civil Action by Crime Victim Statute.

- B. **Defendants' Statement of Facts and Defenses:** Plaintiff, as receiver for Heartland Financial Services ("Heartland") and JMS Investment Group ("JMS"), seeks to recover funds lost by individuals who made securities investments through Heartland and JMS. The investors' money was lost in a Ponzi scheme masterminded by the corporations' top executives, Kenneth Payne and Daniel Danker, who induced investors to invest in securities issued or promoted by Heartland and JMS. Plaintiff seeks to hold defendant brokerage firms liable for investors' losses on the grounds that Payne and Danker were, during portions of the relevant time period, also employed by defendants as registered representatives (stockbrokers).

We believe the following to be undisputed: Defendants did not participate in, assist, or have knowledge of the fraud of Payne and Danker. The investments in question were not made through brokerage accounts maintained by defendants but through Heartland and JMS accounts. None of the defendants had any kind of relationship, contractual or otherwise, with Heartland or JMS. None of the monies in questions were ever in the possession or control of defendants.

A threshold issue in this case is whether plaintiff-receiver has standing to assert the claims of the individual investors. As set forth in motions to dismiss filed by defendants in October 2001, the receiver only has standing to assert claims on behalf of the corporations in receivership. In the present case, the receiver is not asserting any such claims but is attempting to assert claims on behalf of persons who invested in the corporations. Accordingly, the receiver's claims must be dismissed for lack of standing

III. Pretrial Pleadings and Disclosures

- A. The parties shall serve their Fed. R. Civ. P. 26 initial disclosures on or before February 25, 2002, and shall at that time file a notice with the Court that such disclosures have been served.
- B. Plaintiff(s) shall file preliminary witness and exhibit lists on or before March 10, 2002.
- C. Defendant(s) shall file preliminary witness and exhibit lists on or before April 10, 2002 or within thirty days of when Plaintiff files its preliminary witness and exhibit list, whichever is later.
- D. All motions for leave to amend the pleadings and/or to join additional parties shall be filed on or before April 20, 2002.
- E. Plaintiff(s) shall serve Defendant(s) (but not file with the Court) a statement of special damages, if any, and make a settlement demand, on or before May 10, 2002. Defendant(s) shall serve on the Plaintiff(s) (but not file with the Court) a response thereto within 15 days after receipt of the demand.
- F. Plaintiff(s) shall disclose the name, address, and vita of all expert witnesses, and shall serve the report required by Fed. R. Civ. P. 26(a)(2)(B) on or before September 10, 2002. However, if Plaintiff uses expert witness testimony at the summary judgment stage, such disclosures must be made no later than 60 days prior to the summary judgment deadline.
- G. Defendant(s) shall disclose the name, address, and vita of all expert witnesses, and shall serve the report required by Fed. R. Civ. P. 26(a)(2)(B) within 30 days after Plaintiff(s) serves its expert witness disclosure; or if none, Defendant(s) shall make its expert disclosure on or before October 10, 2002. However, if Defendant uses expert witness testimony at the summary judgment stage, such disclosures must be made no later than 30 days prior to the summary judgment deadline.
- H. Any party who wishes to preclude expert testimony at trial shall file any such objections by December 10, 2002. Any party who wishes to preclude expert witness testimony at the summary judgment stage shall file any such objections with their responsive brief within the briefing schedule established by Local Rule 56.1.
- I. All parties shall file and serve their final witness and exhibit lists on or before October 10, 2002.

- J. Any party who believes that bifurcation of discovery and/or trial is appropriate with respect to any issue or claim shall notify the Court as soon as practicable.

IV. Discovery and Dispositive Motions

- A. Does any party believe that this case may be appropriate for summary judgment or other dispositive motion?

The Defendants have already filed motions to dismiss which should be dispositive of this cause of action. The Defendants believe that dispositive motions will be filed, if necessary after discovery, on grounds of statute of limitations, principal/agent, reliance and respondeat superior issues.

- B. Select the track that best suits this case:

XX Track 4: Dispositive motions shall be filed by December 10, 2002; non-expert discovery shall be completed by January 15, 2003; expert witness discovery shall be completed by November 30, 2002.

The parties believe that this case, because of the large amount of claimed damages and the very large number of witnesses (investors), is very likely to take more discovery, trial and motions time than other complex litigation.

V. Pre-Trial/Settlement Conferences

Not applicable at this time.

VI. Trial Date

The presumptive trial date is April 10, 2003. The trial is by jury and is anticipated to take 30 days. The parties believe a later trial date may be more appropriate but the motion and discovery process will have bearing on this issue.

VII. Referral to Magistrate Judge

At this time, all parties do not consent to refer this matter to the Magistrate Judge pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 73 for all further proceedings including trial.

VIII. Required Pre-Trial Preparation

- A. **TWO WEEKS BEFORE THE FINAL PRETRIAL CONFERENCE**, the parties shall:

1. File a list of witnesses who are expected to be called to testify at trial.

2. Number in sequential order all exhibits, including graphs, charts and the like, that will be used during the trial. Provide the Court with a list of these exhibits, including a description of each exhibit and the identifying designation. Make the original exhibits available for inspection by opposing counsel. Stipulations as to the authenticity and admissibility of exhibits are encouraged to the greatest extent possible.
3. Submit all stipulations of facts in writing to the Court. Stipulations are always encouraged so that at trial, counsel can concentrate on relevant contested facts.
4. A party who intends to offer any depositions into evidence during the party's case in chief shall prepare and file with the Court and copy to all opposing parties either:
 - A. brief written summaries of the relevant facts in the depositions that will be offered. (Because such a summary will be used in lieu of the actual deposition testimony to eliminate time reading depositions in a question and answer format, this is strongly encouraged.); or
 - B. if a summary is inappropriate, a document which lists the portions of the deposition(s), including the specific page and line numbers, that will be read, or, in the event of a video-taped deposition, the portions of the deposition that will be played, designated specifically by counter-numbers.
5. Provide all other parties and the Court with any trial briefs and motions in limine, along with all proposed jury instructions, voir dire questions, and areas of inquiry for voir dire (or, if the trial is to the Court, with proposed findings of fact and conclusions of law).
6. Notify the Court and opposing counsel of the anticipated use of any evidence presentation equipment.

B. ONE WEEK BEFORE THE FINAL PRETRIAL CONFERENCE, the parties shall:

1. Notify opposing counsel in writing of any objections to the proposed exhibits. If the parties desire a ruling on the objection prior to trial, a motion should be filed noting the objection and a description and designation of the exhibit, the basis of the objection, and the legal authorities supporting the objection.
2. If a party has an objection to the deposition summary or to a designated portion of a deposition that will be offered at trial, or if a party intends to offer additional portions at trial in response to the opponent's designation, and the parties desire a ruling on the objection prior to trial, the party shall submit the objections and counter summaries or designations to the Court in writing. Any objections shall be made in the same manner as for proposed exhibits. However, in the case of objections to video-taped depositions, the objections shall be brought to the Court's immediate attention to allow

adequate time for editing of the deposition prior to trial.

3. File objections to any motions in limine, proposed instructions, and voir dire questions submitted by the opposing parties.
4. Notify the Court and opposing counsel of requests for separation of witnesses at trial.

IX. Other Matters

Not applicable.

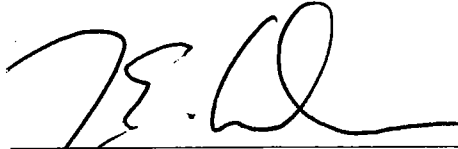
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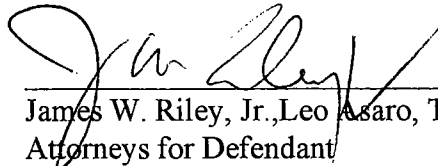
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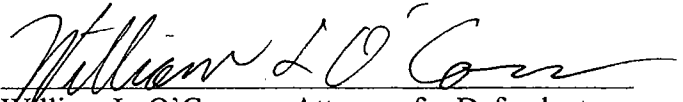


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FSC Securities Corp.

Kightlinger & Gray, LLP
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Indianapolis, IN 46204

APPROVED AS SUBMITTED.

APPROVED AS AMENDED PER SEPARATE ORDER.

APPROVED, BUT ALL OF THE FOREGOING DEADLINES ARE
SHORTENED/LENGTHENED BY _____ MONTHS.

APPROVED, BUT THE DEADLINES SET IN SECTION(S)
_____ OF THE PLAN IS/ARE SHORTENED/LENGTHENED
BY _____ MONTHS.

THIS MATTER IS SET FOR TRIAL BY _____ ON _____
_____. FINAL PRETRIAL CONFERENCE
IS SCHEDULED FOR _____ AT
_____.M., ROOM _____.

A SETTLEMENT/STATUS CONFERENCE IS SET IN THIS CASE FOR
_____ AT _____ .M. COUNSEL
SHALL APPEAR:

_____ IN PERSON IN ROOM _____; OR

_____ BY TELEPHONE, WITH COUNSEL FOR _____
INITIATING THE CALL TO ALL OTHER PARTIES AND ADDING THE
MAGISTRATE AT () _____.

1/11/02
Date

7-136
District/Magistrate Judge
Southern District of Indiana