



Court has supplemental jurisdiction over the claims pursuant to 28 U.S.C. §1367

2. Venue is authorized in this district by 28 U.S.C. 754, which allows a receiver to sue in the district in which he was appointed to enforce claims anywhere in the United States.

**II**  
**FACTS APPLICABLE TO ALL COUNTS**

3. Heartland Financial Services, Inc., (“Heartland”), and JMS Investment Group LLC, (“JMS”), and their various alter egos subsidiaries, and related entities are companies (“the Heartland Companies”) organized by Kenneth R. Payne (“Payne”), Daniel Danker (“Danker”) and their associates. A list of the Heartland Companies is attached as Exhibit “A.”

4. Each of the Heartland Companies was an alter ego of Heartland and/or JMS.

5. The Heartland Companies were organized to perpetuate various illegal schemes involving racketeering, wire and mail fraud, money laundering, Ponzi schemes and securities law violations. The schemes violated several federal statutes including 18 U.S.C. § 1341 (mail fraud), 18 U.S.C. § 1343 (wire fraud), 18 U.S.C. § 1344 (fraud against a financial institution), 18 U.S.C. § 1503, 1510 and 1511 (obstruction of justice), 18 U.S.C. § 1956 and 1957 (money laundering) and 18 U.S.C. § 1961 (securities fraud.) The illegal activities resulted in investor losses which will likely exceed thirty million dollars (\$30,000,000.00.)

6. Each of the Defendants is believed to have received property from Payne, Danker or the Heartland Companies without paying reasonably equivalent value.

7. Some Defendants received property directly from corporate accounts and others received property through Payne or Danker.

8. All of the property that was acquired by Payne, Danker and the Heartland Companies was

the result of violation of the federal statutes described in Paragraph 5.

9. The Heartland Companies were insolvent at the time each of the transfers to Defendants were made.

10. Each of the transfers was made with the intent to defraud creditors.

11. Each of the transfers unjustly enriched the Defendant receiving the transferred property.

12. On August 21, 2000, the United States District Court for the Southern District of Indiana entered Orders appointing James A. Knauer as Receiver for Heartland Financial Services, Inc. and JMS Investments Group, LLC. Copies are attached as Exhibit "B."

13. On September 15, 2000, the Receiver and Payne entered into an Agreed Stipulation which allows the Receiver to take possession and sell all personal property, boats, motorcycles, and vehicles titled to Kenneth R. Payne and Doris Payne. A copy is attached as Exhibit "C."

**COUNT I**  
**VALERIE CORK AND JOHN DOES 1 THROUGH 3**  
**AND JANE DOES 1 THROUGH 3**

14. Plaintiff realleges and incorporates by reference Rhetorical Paragraphs 1 through 13 of his Complaint as if set forth in their entirety herein in Count I.

15. Valerie Cork, hereinafter ("Cork"), was employed by Heartland Financial Corporation or Kenneth R. Payne at all times relevant to this lawsuit as a receptionist and Payne's personal assistant.

16. In 2000, Cork's duties consisted primarily of managing Payne's home during his frequent and lengthy travels.

17. Cork possessed keys to Payne's home when he fled the country in August 2000.

18. Cork moved household goods and furnishings from Payne's home into storage, sold the

property to friends and relatives and used the proceeds to purchase an automobile and pay her living expenses.

19. All or substantially all of the property removed from Payne's home, (the "Property"), was an asset of the Heartland Companies and/or was purchased with funds wrongfully diverted from the Heartland Companies.

20. The last sale of the Property taken from Payne's home occurred on or about September 29, 2000, days after Cork had verbally agreed to allow the Receiver to take possession of those items of the property that remained in her possession.

21. Cork fraudulently conveyed the Property to herself and others and received the proceeds of her conveyances of the property to others.

22. The purchasers were Cork's relatives who are identified herein as John Does 1 through 3 and Jane Does 1 through 3.

23. Each of John Does 1 through 3 and Jane Does 1 through 3 received property from Payne or the Heartland Companies and paid nothing or far less than its fair value.

24. Cork was unjustly enriched through her use, sale of, and fraudulent conveyance of the Property.

25. Cork has represented that Payne transferred the Property to her immediately before he fled the country to escape prosecution.

**COUNT II**  
**RICHARD M. PAYNE**

26. Plaintiff realleges and incorporates by reference Rhetorical Paragraphs 1 through 25 of his Complaint as if set forth in their entirety herein in Count 2.

27. Richard M. Payne is the son of Kenneth R. Payne.

28. Richard M. Payne is the title holder of a 1999 Millennium model 2130 M pontoon boat, HIN FRUA2378G999, (the "Boat"), which was purchased with assets of the Heartland Companies. A copy of the Certificate of Title is attached as Exhibit "D."

29. Richard M. Payne is the title holder of a 1998 Harley Davidson model FLHR motorcycle, VIN 1HD1FDL14WY632300, (the "1998 Harley"), which was purchased with assets of the Heartland Companies. A copy of the Certificate of Title is attached as Exhibit "E."

30. The Boat and the 1998 Harley were fraudulently conveyed to Richard M. Payne within the meaning of I.C. 32-2-7-14, et. seq.

31. Richard M. Payne was unjustly enriched through conveyances of the Boat and the 1998 Harley to him.

**COUNT III**  
**DANIEL G. DANKER**

32. Plaintiff realleges and incorporates by reference Rhetorical Paragraphs 1 through 31 of his Complaint as if set forth in their entirety herein in Count III.

33. Daniel G. Danker, ("Danker") was a business associate of Payne and an officer and employee of one or more of the Heartland Companies.

34. Danker is the title holder of a 1991 Harley Davidson, model 1BLL motorcycle, VIN 1HD1BLL11MY019697, hereinafter (the "1991 Harley"), which was purchased with assets of the Heartland Companies. A copy of the Official Indiana Title and Lien Record is attached as Exhibit "F."

35. The 1991 Harley was fraudulently conveyed to Daniel G. Danker within the meaning of I.C. 32-2-7-14, et. seq.

36. Danker was unjustly enriched by the conveyance of the 1991 Harley.

**COUNT IV**  
**WAYNE GAINEZ**

37. Plaintiff realleges and incorporates by reference Rhetorical Paragraphs 1 through 36 of his Complaint as if set forth in their entirety herein in Count IV.

38. Wayne Gainez, ("Gainez"), sold to Payne, either directly or through one of Payne's associates, two personal watercrafts. The titles were not transferred from his name.

39. Gainez is the title holder of a 1996 Yamaha model RA 700BU watercraft, HIN YAMA2150G596, (the "Yamaha Watercraft"). The Yamaha Watercraft was purchased with assets of the Heartland Companies. A copy of the Certificate of Title is attached as Exhibit "G."

40. Gainez is the title holder to a 1995 Kawasaki model JH750A4 watercraft, HIN KAW16655K495, (the "Kawasaki Watercraft"). The Kawasaki Watercraft was purchased with assets of the Heartland Companies. A copy of the Certificate of Title is attached as Exhibit "H."

41. Gainez is named as a Defendant in order to answer regarding any interest he may have in the Yamaha Watercraft and the Kawasaki Watercraft.

42. Any interest Gainez may have in the Yamaha Watercraft and/or Kawasaki Watercraft is inferior to that of the Receiver.

**COUNT V**  
**KENNETH R. PAYNE A/K/A DORIS C. PAYNE**

43. Plaintiff realleges and incorporates by reference Rhetorical Paragraphs 1 through 42 of his Complaint as if set forth in their entirety herein in Count V.

44. Doris C. Payne was the mother of Kenneth R. Payne and she died on March 3, 1998.

45. Kenneth R. Payne purchased a 1992 Lincoln model LM81, VIN 1LNLM81W7NY605852, (the "1992 Lincoln"), with the assets of the Heartland Companies, and caused the title to be placed in the name of his mother, Doris Payne. A copy of the Official Indiana Title and Lien Record is attached as Exhibit "I."

46. Kenneth R. Payne purchased a 1994 GMC truck model EC16, VIN 1GKEC16KORJ736511, (the "1994 GMC Truck"), with the assets of the Heartland Companies, and caused the title to be placed in the name of Doris C. Payne. A copy of the official Indiana Title and Lien Record is attached as Exhibit "J."

47. Kenneth R. Payne purchased a 1995 Cadillac model KD52, VIN 1G6KD52B3SU274090, (the "1995 Cadillac"), with the assets of the Heartland Companies, and caused the title to be placed in the name of Doris C. Payne. A copy of the Official Indiana Title and Lien Record is attached as Exhibit "K."

48. Doris C. Payne did not drive and never possessed the vehicles described in paragraphs 45, 46 and 47 above.

49. Kenneth R. Payne was the owner of the vehicles and used his mother's name as an alias for the purpose of registering the vehicles in a manner to defraud his creditors and to conceal the fraudulent transfer of the assets of the Heartland Companies.

50. The September 15, 2000 Stipulation entitles the Receiver to collect and liquidate the vehicles.

**COUNT VI**  
**BENJAMIN STEINBERG AND GARY MAY**

51. Plaintiff realleges and incorporates by reference Rhetorical Paragraphs 1 through 50 of his Complaint as if set forth in their entirety herein in Count VI.

52. Kenneth R. Payne purchased a 1997 Lincoln Model M81, VIN 1LNLM81W3VY647810, (the "1997 Lincoln"), with the assets of the Heartland Companies, and caused the vehicle to be titled in the name of Gary May.

53. Gary May has denied any interest in the vehicles and has represented to the Receiver that he is willing to execute the title to the vehicle in favor of the Receiver.

54. Benjamin Steinberg paid Payne \$10,000.00 for the vehicle just before Payne fled the country. The price was substantially below the fair market value of the vehicle. A copy of the Official Title and Lien Record is attached as Exhibit "L."

55. Bank One, Indianapolis NA loaned Steinberg the money for the vehicle but has not perfected its security interest.

56. The Receiver has entered into an agreement with Steinberg providing for the sale of the vehicle, satisfaction of the Bank One claim, if possible, from the proceeds of the sale with the balance of the proceeds being paid to the Receiver. A copy of the agreement is attached as Exhibit "M."

**COUNT VII**  
**BRADLEY BYTHEWAY**

57. Plaintiff realleges and incorporates by reference Rhetorical Paragraphs 1 through 56 of his Complaint as if set forth in their entirety herein in Count VII.

58. Upon information and belief, Bradley Bytheway is a friend, former roommate, and business associate of Richard M. Payne.

59. Kenneth R. Payne purchased a 1997 Dodge truck, model HC16, VIN 1B7HC16Z9VS109784, (the "1997 Dodge Truck"), with the assets of the Heartland Companies, and caused the vehicle to be titled in the name of Gary May.

60. Gary May has denied any interest in the 1997 Dodge Truck and has represented to the Receiver that he is willing to execute the title to the vehicle in favor of the Receiver.

61. Bradley Bytheway received the 1997 Dodge Truck from Kenneth R. Payne on or about August 1, 2000. A copy of the Official Title and Lien Record is attached as Exhibit "N."

**WHEREFORE**, the Receiver prays for a judgment: 1) finding that each item of tangible personal property described in the foregoing complaint is, in fact, property of Heartland Financial Services, Inc.; 2) finding that each Defendant in possession of each item of tangible personal property described in the foregoing complaint received each such item of property by means of a fraudulent conveyance; 3) finding that each Defendant in possession of each item of tangible personal property described in the foregoing complaint should be ordered and directed to surrender such property to the Receiver; 4) against each Defendant in possession of each item of tangible personal property described in the foregoing complaint who has sold or disposed, damaged or destroyed any such item of tangible personal property in an amount sufficient to compensate the

Heartland Receivership Estate for such loss or diminution in value as a consequence of such Defendant's actions.

Respectfully submitted,

KROGER, GARDIS & REGAS, L.L.P.

By. 

William Bock, III, #14777-49

Samuel D. Hodson, #10842-41

William Bock, III  
Samuel D. Hodson  
KROGER, GARDIS & REGAS, L.L.P.  
111 Monument Circle, Suite 900  
P.O. Box 44941  
Indianapolis, Indiana 46244-0941  
(317) 692-9000

EXHIBIT "A"

THE HEARTLAND COMPANIES

Aero Technolgies Ltd.  
Atlas Income Fund, LLC  
BMC Investment Group, LLC  
Carribean Federal Trust, Ltd.  
Carribean Federal Services, Ltd.  
Carribean Financial Services  
Carribean Investments International, Ltd.  
Celtic Centre II, Ltd.  
Charmar, Ltd.  
Dolphin International Development, Ltd.  
Dolphin Peninsula Partners  
First Fidelity Trust, Ltd.  
First International Limited  
Heartland Financial Services, Inc.  
Heartland International Trust Services, Ltd.  
Heartland Money Management of Florida, Inc.  
International Leisure Centers, Inc.  
JMS Investment Group, LLC  
KJL Ltd. of Belize  
Lincoln Fidelity Escrow Services  
MDS Investment, Ltd.  
PMK, Ltd.  
Terens, Ltd.  
21<sup>st</sup> Century Banking Group, Ltd.  
21<sup>st</sup> Century International Bank & Trust, Ltd. of Grenada  
21<sup>st</sup> Century International Advisors, Inc.  
21<sup>st</sup> Century International Advisors of Bermuda, Ltd.  
21<sup>st</sup> Century International Advisors of Ireland, Ltd.  
21<sup>st</sup> Century Personnel, LLC  
Universal Financial Services, Ltd.

**EXHIBIT "B"**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA

UNITED STATES SECURITIES  
AND EXCHANGE COMMISSION,

Plaintiff,

v.

KENNETH R. PAYNE, JOHANN M. SMITH,  
DANIEL G. DANKER, CONSTANCE  
BROOKS-KIEFER, HEARTLAND  
FINANCIAL SERVICES, INC., and  
JMS INVESTMENT GROUP, LLC.

Defendants.

Civil Action No.  
IP00-1265 C

Judge J.D. Tinder

**AGREED ORDER APPOINTING RECEIVER  
FOR HEARTLAND FINANCIAL SERVICES, INC.**

The Plaintiff, Securities and Exchange Commission (Commission) and Defendants, Kenneth R. Payne (Payne) and Heartland Financial Services, Inc. (Heartland), agree and stipulate as follows:

1. That the Court appoint a Receiver for the benefit of investors to marshal, conserve, protect, hold funds, operate and, with the approval of the Court, dispose of any wasting assets, wherever those assets may be found, of Heartland.
2. The Commission, Payne and Heartland submit for the Court's consideration as Receiver the following attorneys and consent to the appointment of any of them as Receiver over Heartland: Douglass G. Boshkoff, James A. Knauer, James M. Carr, Stephen W. Terry and Edmund M. Mahern. Copies of their qualifications are attached as

Exhibit A. Accordingly, the Court appoints James A. Krause as Receiver over Heartland in this matter.

3. The Receiver shall have the following powers and duties to fulfill his obligations:
  - A. Oversee the operations of Heartland.
  - B. Use reasonable efforts to determine the nature, location, and value of all assets and property owned by or in possession of Heartland.
  - C. Use reasonable efforts to determine the identity of all investors, amounts invested by investors, and payouts to investors in Heartland or persons who invested through Heartland, and communicate, as necessary, with the investors.
  - D. Engage and employ necessary professionals (Retained Personnel), with the approval of the Court, as the Receiver deems necessary to assist in his duties.
  - E. Take such action as necessary and appropriate to prevent the dissipation or concealment of any funds and assets or for the preservation of any such funds and assets of Heartland.
  - F. The Receiver shall have the authority to issue subpoenas to compel testimony of persons or production of records in a manner consistent with the Federal Rules of Civil Procedure and the Rules of the Court concerning any subject matter relating to the identification, preservation, collection or liquidation of assets of Heartland, and;
  - G. The Receiver may bring such legal actions based on law or equity in any state or federal court as he deems necessary or appropriate in discharging

his duties as Receiver.

4. In accordance with Local Rule 66.1(b), the Receiver shall file an inventory and appraisal of all property and assets in his possession or in the possession of others who hold possession as his agent, and in a separate schedule, an inventory of the property and assets of the estate not reduced to possession by him but claimed and held by others within sixty (60) days of his appointment as Receiver.
5. In accordance with Local Rule 66.1(c), within thirty (30) days after the filing of the inventory, and at regular intervals of three (3) months thereafter until discharged, the Receiver shall file reports of his acts and transactions in his official capacity as Receiver.
6. The Receiver and Retained Personnel are entitled to reasonable compensation and expense reimbursement from Heartland and related companies', including JMS Investment Group, Inc. (JMS) and Lincoln Fidelity Escrow Fund, LLC (Lincoln), assets. Such compensation shall be in amounts commensurate with the services performed by the Receiver and Retained Personnel and shall be subject to the approval of the Court. The Receiver and Retained Personnel shall apply to the Court for such compensation and expense reimbursement monthly and such amounts shall be paid from the Heartland, JMS and Lincoln funds and assets frozen by the Court's Order Preserving Funds and Other Assets and Order to Financial Institutions Freezing Accounts of Defendants, dated August 10, 2000.
7. The Receiver shall not be required to post bond or give an undertaking of any type in connection with his fiduciary duties and obligations in this matter unless and until this Court so orders.

8. The Receiver and Retained Personnel are entitled to rely on all outstanding rules of law and Court orders and shall not be liable to anyone for their own good faith compliance with any order, rule, law, judgment, or decree. In no event shall the Receiver or Retained Personnel be liable to anyone for their good faith compliance with their duties and responsibilities as Receiver or Retained Personnel, nor shall the Receiver or Retained Personnel be liable to anyone for any actions taken or omitted by them except upon a finding by the Court that they acted or failed to act as a result of misfeasance, bad faith, gross negligence, or in reckless disregard of their duties.
9. The Receiver shall establish a bank account or accounts to deposit Heartland, JMS and Lincoln frozen funds and any other funds recovered by the Receiver. The Receiver shall use such funds for any legitimate purpose consistent with the Receiver's powers and duties and this Order, including paying fees and expenses of the Receiver and Retained Personnel, as approved by the Court.
10. Payne and Heartland and its employees, are required to assist the Receiver in fulfilling his duties and obligations. As such, they must respond promptly and truthfully to all requests for information and documents from the Receiver. However, this requirement does not impinge on the Defendants' rights to assert any applicable privilege.
11. All investors, creditors, and other persons, and all others acting on behalf of any such investor, creditor or other persons, including sheriffs, marshals, other officers, deputies, servants, agents, employees and attorneys, are stayed from:

