

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

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SOUTHERN DISTRICT  
OF INDIANA  
CLERK'S OFFICE

JAMES A. KNAUER, as the Court )  
Appointed Receiver for Heartland )  
Financial Services in JMS Investment )  
Group, LLC., )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
VALERIE CORK, et al., )  
 )  
Defendants. )

IP 00-1862-C-T/K

CASE MANAGEMENT ORDER

**I Parties and Representatives**

A. Plaintiff: James A. Knauer, Receiver;

Defendants: Valerie Cork Richard M. Payne, Daniel C. Danker, Kenneth R. Payne a/k/a Doris Payne, Wayne Gainey, Benjamin Steinberg, Gary May and Bradley Bytheway.

B. Plaintiff Samuel Hodson and Brett R. Fleitz, KROGER GARDIS & REGAS, LLP, 111 Monument Circle, Suite 900, Indianapolis, Indiana 46204

Defendant Valerie Cork: John Moss, Jr., MOSS & MOSS, LLP, 510 Jefferson Plaza, One Virginia Avenue, Indianapolis, Indiana 46204.

**II Factual Synopsis**

A. Plaintiff's Statement of Relevant Facts: Kenneth Payne, Daniel Danker and their associates operated a Ponzi Scheme using Heartland Financial Services, Inc. and its related entities to solicit and convert over \$30 million from investors. The Securities and Exchange Commission filed a complaint to enjoin the operation of the Heartland Companies and recover its assets for the benefit of those who were defrauded. On August 21, 2000 the Court appointed James A. Knauer as Receiver. On September 15, 2000 the Court entered an order authorizing Knauer to seize all assets of

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Heartland Financial Services, Inc., JMS Investments Group LLC, Kenneth Payne and Doris Payne. The order was amended to include Daniel Danker and Johann Smith. The Defendants have all received property from Payne, Danker and the Heartland Companies. At the time that the transfers were made, the Heartland Companies, Payne and Danker were insolvent. The transfers were made with the intention to defraud creditors. None of the Defendants paid adequate consideration for the property he or she received.

- B. Defendant's Responsive Statement of Relevant Facts: Defendant Valerie Cork was an employee of Plaintiff, Kenneth R. Payne. Valerie Cork did not commit fraud.

### **III Legal Theories**

A. **Legal Theories of Plaintiff's, Including Basis for Federal Subject Matter Jurisdiction:**

The Court has subject matter jurisdiction over the claims in this dispute pursuant to 18 U.S.C. § 1964, 28 U.S.C. § 1331 and 28 U.S.C. § 1367. The Plaintiff is entitled to recovery under Indiana's Uniform Fraudulent Transfer Act, common law unjust enrichment, common law conversion and the Indiana Civil Action by Crime Victim statute.

B. **Legal Theories of Defendant's, Including Basis for Federal Subject Matter Jurisdiction:**

Defendant, Valerie Cork, committed no unlawful act. Valerie Cork did not commit fraud. Valerie Cork has no property of the Plaintiff. This action should be dismissed as against Valerie Cork.

### **IV Discovery Schedule**

- A. Discovery shall be completed on or before March 1, 2002.
- B. On or before January 15, 2002:
1. Preliminary Witness and Exhibit Lists, which Plaintiff shall promptly supplement by letter or fax to all other parties upon discovering any additional witnesses or exhibits; and
  2. A Statement of Preliminary Contention (including references to statutory, constitutional and/or common law bases for theories and a brief statement of facts supporting the same), which Plaintiff shall promptly amend or delete by letter or fax to all other parties upon discovering a factual or legal basis for

the amendment or deletion.

On or before January 25, 2002:

1. Preliminary Witness and Exhibit Lists, which Defendant shall promptly supplement by letter or fax to all other parties upon discovering any additional witnesses or exhibits; and
  2. A Statement of Preliminary Contentions (including references to statutory, constitutional and/or common law bases for theories and a brief statement of facts supporting the same), which Defendant shall promptly amend or delete by letter or fax to all other parties upon discovering a factual or legal basis for the amendment or deletion.
- D. Plaintiff shall file and serve an itemized statement of damages (divided by categories, or types of damages, such as medical bills, lost wages, pain and suffering, etc.) And make a written settlement demand directly to opposing counsel, on or before February 1, 2002. Defendant shall respond thereto within **15 days** after receipt of the demand.
- E. Plaintiff(s) shall disclose the name, address and vita of all expert witnesses, and shall provide the report required by Fed. R. Civ. P. 26(a)(2)(B) on or March 1, 2002.
- F. Defendant(s) shall disclose the name, address and vita of all expert witnesses, and shall provide the report required by Fed. R. Civ. P. 26(a)(2)(B) on or before March 10, 2002.
- G. Plaintiff(s) shall file a statement of final contentions, final witness list and final exhibit list on or before March 10, 2002.
- H. Defendant(s) shall file a statement of final contentions, final witness list and final exhibit list on or before March 20, 2002.
- I. Discovery disputes shall be resolved by motion only if compliance with the provisions of Local Rule 37.1 does not result in agreement. Motions for enlargement of time or to otherwise alter the schedules or procedures established in the CMP will be altered only on a showing of good cause. The schedule established by the CMP must necessarily be complied with in order for the case to be tried on the schedule sought by the parties.

## **V Motion Practice**

- A. All motions for leave to amend the pleadings and/or to join additional parties shall

be filed on or before January 25, 2002.

- B. Counsel shall file motions under Fed. R. Civ. P. 12(b) on or before January 15, 2002.
- C. Motions for summary judgment (including partial summary judgments) shall be filed as soon as practicable, but no later than February 1, 2002.

#### **VI Alternative Dispute Resolution/Referral to Magistrate Judge/Bifurcation**

- A. Alternative Dispute Resolution: If the parties are not amendable to considering alternative dispute resolution, they should indicate persuasive reasons why such proceedings would be inappropriate in this case. If the parties desire to have the trial judge or the magistrate judge participate in alternative dispute resolution, submit a written proposal suggesting the preferred method and proposed dates. Proposals agreed to by all the parties are preferred.
- B. Bifurcation: Counsel should indicate whether bifurcation of any issues for trial should occur

#### **VII Trial Considerations**

- A. This case will be ready for trial during the month of June, 2002.
- B. The trial by Court will take 1 day.

#### **VIII Required Pretrial Preparation**

- A. **FOUR WEEKS PRIOR TO THE TRIAL DATE**, the Plaintiff shall serve on all other parties and file with the Court:
  - 1. A list of trial witnesses who will be called at trial.
  - 2. A list of all trial exhibits that will be used during the trial.
  - 3. Proposed findings of fact and conclusions of law if this case is to be tried to the Court.
  - 4. Proposed instructions if this case is to be tried to a jury.
- B. **THREE WEEKS PRIOR TO THE TRIAL DATE**, the Defendant shall serve on all other parties and file with the Court:
  - 1. A list of trial witnesses who will be called at trial.

2. A list of all trial exhibits that will be used during the trial.
3. Propose findings of fact and conclusions of law if this case is to be tried to the Court.
4. Proposed instructions if this case is to be tried by a jury.

**C. TWO WEEKS PRIOR TO THE TRIAL DATE**, the parties shall:

1. Submit all stipulations of facts and stipulations with respect to the admissibility or authenticity of exhibits in writing to the Court. Stipulations are encouraged so that the trial can concentrate on relevant contested facts.
2. A party who intends to read any depositions into evidence during that party's case in chief shall prepare and serve on all other parties and file with the court either:
  - a. Brief written summaries of the relevant facts in the depositions that will be offered. (Because such a summary will eliminate time that is frequently wasted in reading depositions in a question and format, it is strongly encouraged.); or
  - b. If a summary for some reason is inappropriate, a document which lists the deposition(s) including the specific page and line numbers, that will be read.
3. File and serve any trial briefs, motions in limine, voir dire questions, and areas of inquiry for voir dire. Voir dire may or may not be conducted by the Court. If the Court elects to have counsel do the voir dire and suggested areas of inquiry filed. If the Court conducts voir dire, voir dire or prospective jurors may be done only on the suggested questions and proposed areas of voir dire.

**D. ONE WEEK PRIOR TO THE TRIAL DATE**, the parties shall:

1. File and serve all objections to the proposed exhibits. Each objection shall include a description and designation of the exhibit, the basis of the objection, and the legal authorities supporting the objection. All exhibits for which no objections have been filed as required by this Paragraph shall be subject to admission into evidence upon the motion of any party.
2. If a party has no objection to the deposition summary, or to a designated

portion for a deposition that will be offered at trial, or if a party has additional portions which it intends to offer at trial in response to an opponent's designation, that party shall file and serve the objections and counter summaries or designations. Any objections shall be made in the same manner as for proposed exhibits.

3. File objections to any motions in limine, proposed instructions and voir dire questions (or to the proposed findings of fact and conclusions of law) submitted by the opposing parties.


**IX Pretrial Conference(s)**


In approving the CMP and setting the trial date, the court will also schedule a telephone conference to occur about five weeks before trial and a trial preparation conference to occur within a week of the trial. The Court does not anticipate scheduling any other pretrial conferences in this case. If it is later determined that such a conference would be useful, it would be set on an "as needed" basis, with sufficient prior notice to the parties. The parties may also request pretrial conferences as needed to resolve issues in the case.

**X Acknowledgment of Enforceability**

The failure of counsel for any party to comply with the requirements of this CMP may result in the imposition of sanctions, which could include the dismissal of the complaint or the entry of a default judgment.

**Signatures of Counsel (or parties, if pro-se)**

  
\_\_\_\_\_  
Samuel Hodson, Attorney # 10842-41  
Attorney for Plaintiff, James A. Knauer

  
\_\_\_\_\_  
John Moss, Attorney # 523249  
Attorney for Defendant, Valerie Cork

Approved and so ordered this \_\_\_\_\_ day of November, 2001.

\_\_\_\_\_  
Honorable John Tinder  
Judge, U.S. District Court

DISTRIBUTION:

Samuel Hodson  
KROGER GARDIS & REGAS, LLP  
111 Monument Circle, Suite 900  
Indianapolis, Indiana 46204

John Moss  
MOSS & MOSS, LLP  
510 Jefferson Plaza  
One Virginia Avenue  
Indianapolis, Indiana 46204