

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. Knauer 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:

- A. Commencing, prosecuting, continuing or enforcing any suit or proceeding against Heartland property, except that such actions may be filed to toll any statutes of limitations;
- B. Using self-help or executing or issuing or causing the execution or issuance of any court attachment, subpoena, replevin, execution, or other process for the purpose of impounding or taking possession of or interfering with or creating or enforcing a lien upon any property owned by or in the possession of Heartland or the Receiver, where ever situated;
- C. Attempting to modify, cancel, terminate, call, extinguish, revoke or accelerate (the due date), of any lease, loan, mortgage, indebtedness, security agreement or other agreement with Heartland; and
- D. Doing any act to interfere with the taking control, possession, or management, by the Receiver, of Heartland property and assets and assets owned, controlled, or in the possession of the Receiver, or to in any way interfere with or harass the Receiver, or to interfere in any manner with the exclusive jurisdiction of this Court over Heartland property.

**IT IS ORDERED.**

**John Daniel Tinder**  
Honorable John D. Tinder  
United States District Judge

Dated: August 21, 2000.

The undersigned parties consent to the entry of the Agreed Order Appointing a Receiver For Heartland Financial Services, Inc:

Counsel for Securities & Exchange  
Commission

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Kenneth R. Payne

Kenneth R. Payne 227-49  
*Kenneth R. Payne*  
*Attorney for Heartland Financial Services*

Kenneth R. Payne, individually  
and on behalf of Heartland  
Financial Services, Inc.



**HEARTLAND**  
FINANCIAL SERVICES, INC.

Securities offered through Alliance Capital Management Corporation. Member NASD/SIPC

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