

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

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UNITED STATES SECURITIES)
AND EXCHANGE COMMISSION,)
)
Plaintiff,)
KENNETH R. PAYNE,)
JOHANN M. SMITH,)
DANIEL G. DANKER, CONSTANCE)
BROOKS-KIEFER,)
HEARTLAND FINANCIAL SERVICES,)
INC., AND JMS INVESTMENT)
GROUP, LLC.)
)
Defendants.)

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
LAURA A. BRIGGS
Civil Action No. IP00-1265 C -T/G

SECOND MOTION FOR ORDER DIRECTING TURNOVER OF FUNDS

James A. Knauer, the Receiver for Heartland Financial Services, Inc., ("Heartland") and JMS Investment Group, Inc., ("JMS"), by counsel, in support of his motion, states:

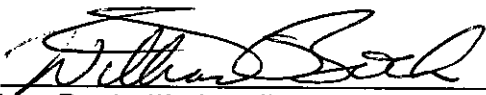
1. The Court previously entered an Order (the "Freeze Order") in this case on the 10th day of August, 2000, freezing certain institutional depository accounts of the defendants Heartland, JMS and other affiliated companies, namely 21st Century Banking, Ltd., Caribbean Federal, Ltd., and Lincoln Fidelity Escrow Fund, LLC (the "Company Defendants") as well as accounts of the individual defendants Kenneth Payne, Johann Smith, Daniel Danker and Constance Brooks Kiefer (the "Individual Defendants").
2. In its Order appointing the Receiver, the Court directed the Receiver to open bank accounts within which funds of the Company Defendants could be deposited.
3. The Order appointing the Receiver did not explicitly direct the institutions holding depository accounts in the name of the Individual Defendants to turn over those funds to the Receiver.
4. At the time that the Court entered the Freeze Order, one of the Individual Defendants, namely, Daniel Danker had absented himself from this jurisdiction and has not, to this date, been located.

5. The Receiver has also discovered several instances in which a financial institution has failed to honor the Freeze Order (the Receiver is discussing these circumstances with the affected institutions).
6. On the very day that the Freeze Order was entered, Defendant Kenneth Payne, notwithstanding his knowledge of the existence of the Freeze Order, appeared at the bank in which the principal depository account of the Defendant Heartland Financial Services, Inc. was maintained and withdrew over three hundred thousand dollars (\$300,000.00) in cash and cashiers checks and, as the court is aware, thereafter fled this jurisdiction to avoid prosecution.
7. Also, on the date of entry of the Freeze Order, Defendant Payne used his personal account to launder at least twenty thousand dollars (\$20,000) in additional funds that had been paid to him by several investors.
8. In some instances, charges are being made against the accounts of the Individual Defendants for returning checks and monthly maintenance charges by the financial institutions.
9. In light of the actions of several of the Individual Defendants, as well as the possibility of additional errors by the financial institutions controlling the frozen funds of the Individual Defendants, the Receiver believes that, until such time as this court determines whether the Heartland Receivership estate is entitled to recover the funds held in the names of the Individual Defendants pursuant to the Freeze Order, that such funds could best be protected from further loss or diminution by being placed under the control of the Receiver.
10. The Receiver has also determined that some funds of Heartland were transferred outside of the United States to Nassau, Bahamas to accounts utilizing the names of KJL, Ltd. [an acronym for Ken (Payne), Johann (Smith) and (Sherri) Larsen], RMP, Ltd. (an acronym for Ken Payne's son Richard Matthew Payne) and Char-Mar, Ltd.
11. The Receiver believes that these companies were mere alter ego's of Heartland and the funds on deposit in their accounts are traceable to

Heartland. The Receiver requests that court issue an order authorizing the Receiver to assume control of funds held to the credit of KJL, Ltd., RMP, Ltd. and Char-Mar, Ltd.

THEREFORE, the Receiver requests that the Court supplement its prior Order by issuing a supplemental Order directing all institutions or other entities or persons holding funds to the credit of Kenneth R. Payne, Daniel Danker, Johann Smith or Constance Brooks-Kiefer, Char-Mar, Ltd., RMP, Ltd., KJL, Ltd., Heartland Financial Services, Inc., JMS Investment Group, LLC, Lincoln Fidelity Escrow Fund, LLC, Caribbean Federal, Ltd., 21st Century Banking Group, Ltd, or 21st Century Investment Advisors to turn over such funds to the Receiver.

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

By: 
William Bock, III, Atty # 14777-49
Attorneys for Receiver, James A. Knauer

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing has been served upon the following parties by placing a copy of the same in the United States Mail, first class postage pre-paid, on this 17th day of October, 2000:

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