

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA

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U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
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L. J. ...  
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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. )

Civil Action No. IP00-1265 C -T/G

**RECEIVER'S FIRST INVENTORY AND APPRAISAL**

James A. Knauer, by counsel, submits to the court the *Receiver's First Inventory and Appraisal* pursuant to the court's order of August 21, 2000.

**BACKGROUND**

1. The Receiver was appointed on August 21, 2000 as the Receiver for Heartland Financial Services, Inc. and JMS Investment Group, Inc.
2. Upon his appointment, the Receiver began to take possession of the assets of the Heartland Companies. To assist him in this endeavor he engaged, with the court's approval, the accounting firm of Birk, Gross, Bell and Coulter and the law firm of Kroger Gardis & Regas.
3. The Receiver was also granted the power to take possession of the assets of several affiliated companies, namely Lincoln Fidelity Escrow Fund, 21 st Century Banking Group, Ltd., Caribbean Federal, Ltd (collectively all of the foregoing entities are hereafter referred to as the "Heartland Companies").
4. The Court issued an order on August 10<sup>th</sup>, 2000 directing financial institutions to freeze all bank accounts of the individual defendants in this action, namely

51

Kenneth R. Payne, Johann M. Smith, Daniel G. Danker and Constance Brooks-Kiefer (the "Individual Defendants").

5. On August 10, 2000 the court issued an order, enjoining and restraining, among other things, the Individual Defendants from:  

*"transferring selling, assigning, pledging dissipating, concealing or otherwise disposing of in any manner, any funds, assets, accounts, or other property belonging to Defendants or in their possession, custody or control, wherever located."*
6. Since no judgment has been entered in these proceedings against the Individual Defendants, the Receiver is not presently serving as a Receiver over any of the Individual Defendants or their property, except in limited instances in which the Receiver has requested court approval or received the consent of one of the Individual Defendants to do so in order to protect or preserve property which might eventually constitute an asset of this Receivership.
7. Given the evidence amassed by the Receiver since his appointment, the Receiver deems it likely that all of the assets of the Individual Defendants will become a part of this Receivership either as the proceeds of a succession of fraudulent conveyances or as the result of execution upon a judgment entered in these proceedings against the Individual Defendants or as a consequence of a judgment entered in a separate action against the Individual Defendants and others which the Receiver is preparing to file.
8. Prior to the date of the court's various freeze orders, the Defendant Danker had concealed his whereabouts, ostensibly to avoid service of process or to avoid prosecution.
9. Subsequent to the issuance of the various freeze orders, the Defendant Payne fled the United States and was only recently returned to this jurisdiction and is presently in jail.
10. About August 12, 2000 Payne vacated his personal residence and, presumably, secreted or destroyed his personal records as part of his

plan to flee this jurisdiction and conceal assets of the Heartland Companies. Thus the Receiver has encountered considerable difficulty in locating records pertaining to Payne.

11. As earlier noted, Defendant Danker had fled the jurisdiction prior to the appointment of the Receiver and most records pertaining to Danker are also missing.
12. The accountants for the Receivership have spent many hours at the former offices of the Heartland Companies attempting to piece together records that will assist the Receiver in locating missing assets of the Heartland Companies or the Individual Defendants. The accountants have also been required to "bring up to date" the records of the Heartland Companies records in order that the Receiver will be able to review the claims of investors in these proceedings. A preliminary report of the accountants detailing some of their activities is attached hereto as Exhibit "I" (without exhibits, some of which have been withheld for litigation purposes).
13. The Receiver has previously made application to the court to take possession of or liquidate various assets of the Heartland Companies or the Individual Defendants.

#### **THE INVENTORY**

14. Attached to this Report are various schedules that detail assets of both the Heartland Companies that have been identified by the Receiver as well as assets of the Individual Defendants.
15. The assets have been divided into several categories:
  - A. "*Liquidated Assets*" refers to assets that are the property of the Heartland Companies and have been reduced to cash in the possession of the receiver.
  - B. "*Unliquidated Assets*" refers to assets that have not been sold, but are in the possession of the Receiver.
  - C. "*Frozen Assets*" refers to assets which are being held by a third

party pursuant to the freeze orders, but are not in the possession of the Receiver, either because such assets are the property of one of the Individual Defendants or because such assets are located outside the United States and the Receiver has not yet been able to take possession of the asset.

- D. *"Missing Assets"* refers to assets of either the Heartland Companies or one of the Individual Defendants that Receiver has identified, but has been unable to locate or possess.
- E. *"Claims"* refers to an asset that consists of a claim for recovery against a third party based upon the Receiver's good faith belief from facts presently known that a cause of action exists to recover money or property for the Receivership. The identification of a claim does not necessarily mean that the Receiver has knowledge that such a claim can be actually collected, even if the receivership prevails in obtaining a judgment on the claim.

#### **COMMENTS CONCERNING THE INVENTORY**

- 16. The Receiver offers the following comments concerning some of the listed assets:
  - A. *Misc. Bank Acct.* This Receiver has identified 148 bank accounts located across the United States, virtually all of which are titled in the names of Messrs. Payne or Danker (some are in the names of third parties) and each of which may contain small balances generally ranging between \$100 and \$1,000. These accounts are identified on Exhibits "A" and "B" of the assets of Payne and Danker. The Receiver is in the process of verifying the account balances and has received the proceeds of some of these accounts, others are held by the institution and still others have not yet reported to the Receiver after receipt of his inquiry.

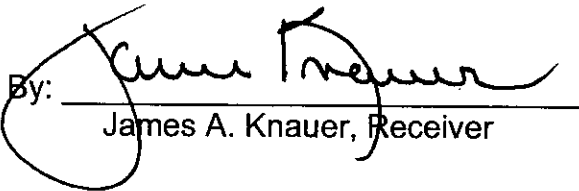
- B. *21<sup>st</sup> Century Banking Group, Ltd. (Grenada Bank)*. Heartland controlled 21<sup>st</sup> Century Banking Group in the country of Grenada. This bank was closed shortly after it opened. A certificate is on deposit to secure the Bank's performance with the government of Grenada in the amount of \$268,000. The value of the Bank is presently unknown. Any sale of the Bank would have to be approved by the government of Grenada. If the Bank is not saleable, some or all of the proceeds may be recoverable, however, the Receiver believes that at least one claim of approximately \$100,000 may be asserted against the bank as result of its start up costs. There may also be claims from investors purporting to be stockholders/ The receiver has valued the Bank at \$125,000 which he believes is a reasonable, worst case, value subject to possible claims and assuming the bank is not saleable. The actual value may be substantially higher.
- C. *Freeze Order Violations*. Notwithstanding receipt of the freeze orders issued by the court, the procedural requirements of at least one banking institution delayed the placement of a hold on one of the Heartland Companies accounts which allowed Payne to withdraw \$326,061.19 late on August 10, 2000. Payne also managed to launder \$20,000.00 of investor money through his personal account that same day. While all of these actions were done by Payne in direct contravention of the freeze order, the Receiver (as well as the SEC) believe that the bank upon which the freeze order was served has some liability for failing to promptly initiate the account hold ordered by the court. A demand for an explanation has been made by the both the Receiver and the SEC and the bank states that it is conducting an investigation.

- D. *Recoverable Payments.* Not every investor in the Heartland companies suffered a loss. The Receiver's accountants have identified investors who, within the period of the applicable statute of limitations, received payments from the Heartland Companies totaling \$5,000,000 in excess of their investments. Under well established law in the both the State of Indiana and the 7<sup>th</sup> Circuit, applicable to Ponzi Schemes, payments to investors in excess of their actual investment are recoverable as fraudulent conveyances since there were no real profits and the payments received by these individuals were nothing more than the monies of other investors.
17. The Receiver anticipates the filing of an updated inventory containing more accurate asset and claim values as part of his quarterly reporting to the court pursuant to Local Rule 66.

#### **LIABILITIES AND DISBURSEMENTS**

18. Few disbursements have been made to date by the Receiver, however attached hereto as Exhibit "G" is a listing of the deposits and payments made to date by the Receiver.
19. Attached hereto as Exhibit "H" is a tentative listing of the liabilities of Heartland that existed as of the date of the Receivership and that have arisen since the appointment of the Receiver. The figures on the pre-receivership liabilities are preliminary; the post- receivership liabilities are, in large part estimated and remain subject to final approval of the court.

THEREFORE the Receiver requests that the court approve his First Inventory and Appraisal and for all other proper relief.

By:   
James A. Knauer, Receiver

**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 20 day of October, 2000:

Paul A. Montoya  
United States Securities and Exchange Commission  
500 West Madison Street  
Suite 1400  
Chicago, Illinois 60661

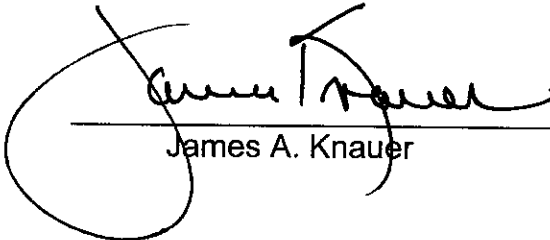
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