

UNITED STATES COURT OF APPEALS
SEVENTH CIRCUIT COURT

JAMES A. KNAUER as the Court Appointed)
Receiver for HEARTLAND)
FINANCIAL SERVICES, INC., JMS)
INVESTMENT GROUP, LLC,)
) APPEAL NO. 02-3926
Appellant/Plaintiff,)
)
vs.)
)
JONATHON ROBERTS FINANCIAL)
GROUP, INC., ALLIANCE CAPITAL)
MANAGEMENT CORP., ANDOVER)
SECURITIES, INC., FSC SECURITIES)
CORPORATION AND FFP SECURITIES,)
INC.,)
)
Appellees/Defendants.)

**MOTION FOR EXTENSION OF TIME WITHIN WHICH TO FILE
APPELLANT'S BRIEF AND APPENDIX**

Appellant, James A. Knauer, Receiver for Heartland Financial Services, Inc. and JMS Investment Group, LLC, by counsel, files this Motion for Extension of Time pursuant to Fed. R. App. P. 26(b) and Circuit Rule 26 and in support of such Motion sets forth as follows:

1. On October 29, 2002, the Appellant filed a Notice of Appeal in the United States District Court, Southern District of Indiana, Indianapolis Division pertaining to Case No. IP01-1168-C T/K.
2. On November 6, 2002, this Court issued a Notice of Docketing Appeal which pursuant to Fed. R. App. P. 31(a) set forth that the Appellant's brief must be filed by December 16, 2002.
3. At this time, Appellant's brief and appendix remains due on December

10
Appeal

16, 2002 and no prior extensions of time have been granted.

4. This matter is not currently scheduled for oral argument.

5. Appellant at this time seeks an extension of time on the grounds that Appellant's counsel is engaged in other litigation and state administrative matters resulting from one recount and two election contests arising from the November 6, 2002 general election in Indiana the details about which are set forth in the Affidavit of William Bock, III, a copy of which is attached hereto as *Exhibit A*.

6. As demonstrated in the Affidavit of William Bock, III, such other litigation and administrative matters requires counsel to give priority to those matters, particularly because Indiana law requires that all recounts and election contests involving candidates for the Indiana House of Representatives be resolved by December 19, 2002.

7. The current deadline of December 16, 2002 would create an extreme hardship upon counsel to devote the necessary amount of time to properly brief the issues given the counsel's engagement in other litigation.

8. Counsel for the Appellant has contacted counsel for the Appellees to ascertain whether Appellees object to the extension requested and Counsel for the Appellant is authorized to represent to the Court that Counsel for the Appellees will not be filing an objection and do not object to the Court granting Appellant additional time.

WHEREFORE, for these reasons and based upon the facts set forth in the Affidavit of William Bock, III, the Appellant, James A. Knauer, Receiver for

Heartland Financial Services and JMS Investment Group, LLC, respectfully requests an extension of sixty (60) days from December 16, 2002 in which to file Appellant's Brief and Appendix.

Respectfully submitted,



William Bock, III, Attorney No., 14777-49
Reynolds B. Brissenden, Attorney No. 19989-49
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Indianapolis, Indiana 46204-5125

**Attorneys for Appellant, James A. Knauer,
As Court Appointed Receiver for Heartland
Financial Services, Inc. and JMS Investment
Group, LLC**

PROOF OF SERVICE

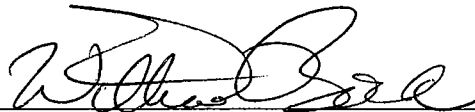
The undersigned hereby certifies that on the 4th day of December, 2002, a true and accurate copy of the above and foregoing pleading was served by depositing the same in the United States mail, first class, postage prepaid to:

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Exhibit A

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AFFIDAVIT OF WILLIAM BOCK, III

Comes now William Bock, III, and being duly sworn upon his oath, deposes and states as follows:

1. That I am a partner with the law firm of KROGER GARDIS & REGAS, LLP and am counsel for the Appellant, James A. Knauer, Receiver.
2. That I have personal knowledge of the facts stated herein and am competent to testify to the facts at a hearing.
3. I am requesting from the Court an extension of time to prepare and file Appellant's Brief due to my current engagement in other litigation and given the current due date for Appellant's Brief.
4. Currently, I am lead counsel in *Keeler, et al. v. Orentlicher* before the Indiana State Recount Commission, which is an election recount and contest

proceeding related to the recent election of the Indiana State Representative for House District 86, which is ongoing and statutorily must be completed by December 19, 2002. Currently, hearings are scheduled in this recount and contest on December 11 and December 17, 2002 and a brief must be filed in this proceeding by December 9, 2002.

5. I am lead counsel in *Baranowski v. Lehe* before the Indiana State Recount Commission which is an election contest proceeding relating to the recent election of the Indiana State Representative for House District 15, which is ongoing and statutorily must be completed by December 19, 2002. Currently, a hearing is scheduled in this contest on December 6, 2002 and a brief must be filed in this proceeding on December 4, 2002.

6. I am lead counsel in *FDL, Inc. v. Simmons Company and United Sleep Products Denver, Inc.*, Cause No. IP01-1872-C T/K pending in the United States District Court for the Southern District of Indiana, Indianapolis Division. Summary judgment briefs are due in this matter on December 10, 2002. Additionally, five (5) full days of depositions are currently scheduled in this matter on or before December 19, 2002.

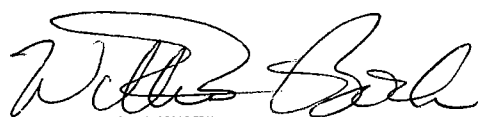
7. I am lead counsel in the *Matter of Petitioner Phillip C. Borst*, in his individual capacity and as the president of the Indianapolis City-County Council before the Marion County Superior Court en banc, in Cause No. 49D04-0210-MI-001844. Currently, I have a brief in response to Intervener's Motion to Dismiss in this matter due on December 11, 2002. This case involves redistricting for the

Indianapolis City-County Council for which offices a primary election is currently scheduled for May 6, 2003.

8. Along with associate, Reynolds B. Brissenden, I am co-counsel in the *Berdita L. Bailey, et al. v. Wal-Mart Stores, Inc. et al.*, Cause No. 49D05-0008-CT-1177, a case pending before the Marion County Superior Court in which counsel are conducting depositions and continuing to schedule additional depositions of current and former employees of Wal-Mart in preparation for a class certification hearing scheduled before the Court on February 28, 2003.

9. Rather than seeking a thirty (30) day extension of time, I am requesting a extension of sixty (60) days in order to avoid having the briefing schedule fall during the upcoming holiday season during which time I am scheduled to be out of the state from December 21, 2002 through January 7, 2003.

FURTHER AFFIANT SAYETH NOT.

By 
William Bock, III

STATE OF INDIANA)
)SS:
COUNTY OF MARION)

Subscribed and sworn to before me a Notary Public in and for said county
and state, this 4th day of December, 2002.

Jimmy J. Baker

My County of Residence: Marion

My Commission Expires: 3-15-09