

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

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JAMES A. KNAUER as the Court Appointed)
Receiver for HEARTLAND)
FINANCIAL SERVICES, INC., JMS)
INVESTMENT GROUP, LLC,)

) DISTRICT COURT
) CASE NO. IP-01-1168-C T/K

Plaintiff/Appellant,)

vs.)

JONATHON ROBERTS FINANCIAL)
GROUP, INC., ALLIANCE CAPITAL)
MANAGEMENT CORP., ANDOVER)
SECURITIES, INC., FSC SECURITIES)
CORPORATION AND FFP SECURITIES,)
INC.,)

Defendants/Appellees.)

**RECEIVER'S RESPONSE TO FSC SECURITIES CORPORATION'S
MOTION TO RECONSIDER AND OBJECTION TO
PLAINTIFF'S MOTION TO SUPPLEMENTAL THE RECORD**

Plaintiff/Appellant, James A. Knauer, Receiver for Heartland Financial Services, Inc. and JMS Investment Group, LLC, by counsel, sets forth the following in response to FSC Securities Corporation's ("FSC") Motion to Reconsider and Objection to Plaintiff's Motion to Supplement the Record.

1. FSC contends in its motion to reconsider that Fed. R. App. P. 10 does not allow the record to be supplemented with any papers or exhibits unless actually file-stamped by the District Court or unless offered and/or admitted into evidence during trial.

2. However, the Seventh Circuit Court of Appeals has set forth in Cir. Rule 10(a) a broad definition of the terms "received or offered" by defining those terms as

that which is, “tendered to the District Court in support of a brief or motion . . .”

3. This broad and plain language of Circuit Rule 10(a) does not set a formal requirement that an exhibit be offered and/or admitted or be individually file stamped by the District Court before it can be submitted to the Seventh Circuit Court of Appeals as a part of the record.

4. Despite FSC’s argument to the contrary, it is evident from the transcript of the hearing that exhibits were tendered to the Court in support of the parties’ briefs or motions and that the Power Point Slides were exhibited to the Court as an essential and inseparable part of counsel’s argument. Interestingly, FSC does not deny that the transcript of the hearing is neither coherent nor complete without the exhibits and Power Point Slides being made a part of transcript.

5. Most importantly, the very fact that counsel for FSC objected to the use of the exhibits and Power Point Slides during the hearing in and of itself constitutes a clear recognition by FSC’s counsel that the Receiver’s exhibits were being tendered to the Court in support of his response brief. In fact, it was only after the Court had reviewed the documents and after the Receiver’s counsel had completed his Power Point presentation to the Court that counsel for FSC during his rebuttal argument lodged an objection and stated that FSC objected to the “new brief filed by way of power point presentation.” (Transcript of Hearing, pg. 81). This statement, albeit inaccurate in its characterization, demonstrates that counsel for FSC believed the exhibits and Power Point Slides were being tendered to the Court.

6. Therefore, FSC’s current position before the Court, that the documents were, “not tendered or received or even contemplated as being part of the record” (see

paragraph 9 of FSC's Motion to Reconsider) is directly contradicted by FSC's objection during the hearing. Why else would counsel for FSC have objected if he didn't think the exhibits were being tendered to the Court?

7. Although counsel for FSC contends that the Receiver cannot procedurally rely upon Fed. R. App. P. 10 as a means to file a motion to supplement the record, Circuit Rule 10(b) specifically states that a motion to correct or modify the record pursuant to Rule 10(e) shall be presented first to the District Court. In turn, Fed. R. App. P. 10(e) specifically states that if anything material to either party is omitted from the record by error or accident, the omission may be corrected by the District Court before or after the record has been forwarded. Clearly, these Rules provide a procedural mechanism upon which a party may file such a motion and the Receiver has done such in this instance.

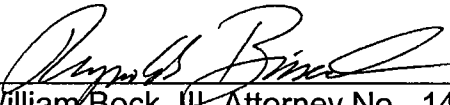
8. The Receiver's Motion to Supplement the Record was filed in a timely manner. Counsel for the Receiver at the hearing did tender the exhibits to the District Court's Court Reporter during the hearing. The Receiver reasonably believed these exhibits would be a part of the transcript and the record. It was not until counsel for the Receiver received a copy of the transcript from the Court Reporter on or about November 14, 2002 that counsel learned of the need to supplement the record.

9. FSC has failed to demonstrate how it would be prejudiced in any way by the Court supplementing the record with the exhibits that were used by all parties during oral argument and by the inclusion of the Power Point Slides reviewed and discussed by all parties and the Court at that hearing.

WHEREFORE, the Receiver, James A. Knauer, by counsel, respectfully request

the Court to deny FSC Securities Corporation's Motion to Reconsider.

Respectfully submitted,



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**Attorneys for Appellant, James A. Knauer,
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CERTIFICATE OF SERVICE

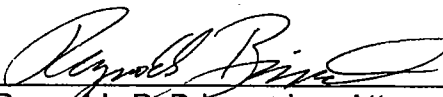
The undersigned hereby certifies that on the 12th day of December, 2002, a true and accurate copy of the above and foregoing pleading was served by depositing the same in the United States mail, first class, postage prepaid to:

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