

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

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

Plaintiffs,)

v.)

Cause No.: IP01-1168-C-T/K

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

Defendants.)

**MOTION TO COMPEL PLAINTIFF TO ORDER TRANSCRIPT OF HEARING
FOR APPEAL**

Defendant, FSC Securities Corporation, by counsel, and pursuant to F.R.A.P. 10(3)(C) hereby requests that the Plaintiff be required to order and submit as a part of the record on appeal the transcript of the December 19, 2002 hearing on Plaintiffs Motion to Supplement the Record. In support of this Motion the Defendant FSC states that:

1. Pursuant to F.R.A.P. 10(3)(C) an Appellee may move to require the Appellant to order a transcript in the record for appeal.
2. Pursuant to F.R.A.P. 10 the Appellees motion to require the partial transcript to be ordered and supplemented by the Appellant must be made within ten (10) days after the Appellants designation.

3. The appellants designation would not have been clear until after the Court's entry granting the Plaintiff's Motion to Supplement the Record which was made on December 24, 2002.

4. Pursuant to F.R.C.P. 6, FSC has until January 9, 2003 in which to file this request. Thus, this Motion is timely.

5. The transcript of the December 19, 2002 hearing is necessary because counsel for the Plaintiff made statements on the record stating that the documents used to supplement the record were used solely for a illustrative or argument purposes and not used as evidence.

6. It will be important at the appellate level to have this clarification.

7. In the alternative FSC submits the 7th Circuit Transcript Information Sheet for the purposes of ordering and paying for the transcript of the hearing itself as opposed to requiring it to be done by the Plaintiff. If the Court does not see fit to require Plaintiff to so supplement the record then FSC requests that the transcript be prepared at its order and cost.

WHEREFORE, the Defendant FSC respectfully requests that the Court enter an Order requiring James A. Knauer as receiver for Heartland Financial Services, Inc. and JMS Investment Group, LLC to order the transcript of the December 19, 2002 hearing as a part of the record on appeal.

Respectfully submitted,

DANN PECAR NEWMAN & KLEIMAN,
Professional Corporation

By: 

William L. O'Connor, Attorney No. 14925-22

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 9, 2003, a copy of the foregoing was
duly served by first class United States mail, postage prepaid, upon the following:

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William L. O'Connor

SEVENTH CIRCUIT TRANSCRIPT INFORMATION SHEET

PART I — Must be completed by party or party's attorney pursuant to Rule 10(b) of the Federal Rules of Appellate Procedure and Rule 11(a) of the Circuit Rules. The appellant must file this form with the court reporter within 10 days of filing the notice of appeal, whether transcript is being ordered or not. (FRAP 10(b)(1)) "Satisfactory arrangements with the court reporter for payment of the costs of the transcripts" must also be made at that time. (FRAP 10(b)(4)) (Note: Appellees as well as appellants are expected to use this form when ordering transcripts.)

Short Title <i>James A. Kneuer, Receiver</i> v. <i>Jonathan Roberts Financial Group, Inc.</i> <i>et al</i>	District <i>Southern Indiana</i>	D.C. Docket No. <i>FP01-1168-C-K/T</i>
District Judge <i>John D. Tinder</i>		Court Reporter <i>Glen Cunningham</i>

<input checked="" type="checkbox"/> I am ordering transcript. <input type="checkbox"/> I am not ordering transcript, because: <input type="checkbox"/> The transcript has been prepared.	Sign below and return original and one copy to court reporter. Distribute remaining copies to Clerk of the District Court and opposing party, retaining one copy for yourself.
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Indicate proceedings for which transcript is required. Dates must be provided:

	Date(s)
<input checked="" type="checkbox"/> Pre-trial proceedings. Specify: <i>Transcript of Hearing on FSC Motion to Reconsider Supplementation of Record</i>	<i>12/19/2002</i>
<input type="checkbox"/> Voir Dire	
Trial or hearing. Specify: _____	
<input type="checkbox"/> Opening statement	
<input type="checkbox"/> Instruction conference	
<input type="checkbox"/> Closing statements	
<input type="checkbox"/> Court instructions	
<input type="checkbox"/> Post-trial proceedings. Specify: _____	
<input type="checkbox"/> Sentencing	
<input type="checkbox"/> Other proceedings. Specify: _____	

Method of Payment: <input type="checkbox"/> Cash	<input checked="" type="checkbox"/> Check or Money Order	<input type="checkbox"/> C.J.A. Voucher
Status of Payment: <input type="checkbox"/> Full Payment	<input type="checkbox"/> Partial Payment	<input checked="" type="checkbox"/> No Payment Yet
Signature: <i>William L. O'Connor</i>	Telephone No. <i>317 632-3232</i>	
Address: <i>Dana Peter Newman & Kleiman, P.C.</i> <i>One American Square, Box 87001</i> <i>Indianapolis, IN 46282</i>	Date: <i>11/8/2002</i>	

PART II — Must be completed by Court Reporter pursuant to Rule 11(b) of the Federal Rules of Appellate Procedure. By signing this Part II, the Court Reporter certifies that *satisfactory arrangements for payment* have been made.

U.S.C.A. Docket No.	Date Order Received	Estimated Completion Date	Estimated Length
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Signature of Court Reporter: _____ Date: _____

NOTICE: The Judicial Conference of the United States, by its resolution of March 11, 1982, has provided that a penalty of 10 percent must apply, unless a waiver is granted by the Court of Appeals' Clerk, when a "transcript of a case on appeal is not delivered within 30 days of the date ordered and payment received therefor." The penalty is 20 percent for transcript not delivered within 60 days.

WHITE - COURT REPORTER; YELLOW - COURT REPORTER, THEN SENT TO U.S.C.A. CLERK; BLUE - SERVICE COPY (reproduce additional copies, if necessary.); PINK - DISTRICT COURT CLERK; GOLD - PARTY/COUNSEL ORDERING TRANSCRIPT.