

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA

FILED  
U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA

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

JULIE L. BRIGGS  
OF INDIANA  
LARRA A. BRIGGS  
CLERK

Plaintiff,

CAUSE NO.

v.

KENNETH R. PAYNE,  
DANIEL G. DANKER, CONSTANCE  
BROOKS-KIEFER, JOHANN M. SMITH,  
AERO TECHNOLOGIAS, Ltd.,  
ATLAS INCOME FUND, LLC,  
BMC INVESTMENT GROUP,  
LLC, CARRIBEAN FEDERAL TRUST, Ltd.,  
CARRIBEAN FEDERAL TRUST SERVICES,  
Ltd., CARRIBEAN FINANCIAL SERVICES,  
CARRIBEAN INVESTMENTS  
INTERNATIONAL, Ltd. ,  
CELTIC CENTRE II,  
Ltd., CHARMAR, Ltd.,  
DOLPHIN INTERNATIONAL  
DEVELOPMENT, Ltd., DOLPHIN  
PENINSULA PARTNERS, FIRST FIDELITY  
TRUST, Ltd., FIRST INTERNATIONAL  
LIMITED, HEARTLAND  
INTERNATIONAL TRUST SERVICES, Ltd.,  
HEARTLAND MONEY MANAGEMENT OF  
FLORIDA, INC., INTERNATIONAL  
LEISURE CENTERS, INC., KJL, Ltd. OF  
BELIZE, LINCOLN FIDELITY ESCROW  
SERVICES, MDS INVESTMENTS, Ltd.,  
PMK, Ltd., PROVIDENT BANK,  
RMP, Ltd., TERENS, Ltd.,  
21<sup>ST</sup> CENTURY BANKING GROUP. Ltd.,  
21<sup>ST</sup> CENTURY INTERNATIONAL BANK  
& TRUST, Ltd. OF GRENADA,  
21<sup>ST</sup> CENTURY INTERNATIONAL  
ADVISORS, INC., 21<sup>ST</sup> CENTURY  
INTERNATIONAL ADVISORS OF  
BERMUDA, Ltd., 21<sup>ST</sup> CENTURY  
INTERNATIONAL ADVISORS OF

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~~B/S~~  
T/G

IRELAND, Ltd., 21<sup>ST</sup> CENTURY )  
PERSONNEL, LLC, UNIVERSAL )  
FINANCIAL SERVICES, LTD. and )  
JOHN DOES 1-20, )  
) )  
Defendants. )  
\_\_\_\_\_ )

**COMPLAINT**

Plaintiff, James A. Knauer, as the Court-Appointed Receiver for Heartland Financial Services, Inc., and JMS Investment Group, LLC, by counsel, alleges the following:

**PROCEDURAL HISTORY AND PARTIES**

1. On or about August 10, 2000, the United States Securities and Exchange Commission filed a complaint in United States District Court in the Southern District of Indiana requesting, among other things, that the Court appoint a receiver for Heartland Financial Services, Inc., and JMS Investment Group, LLC.

2. Plaintiff, James A. Knauer (the "Receiver"), is the receiver for Heartland Financial Services, Inc. ("Heartland"), and JMS Investment Group, LLC ("JMS") appointed by the United States District Court for the Southern District of Indiana on August 21, 2000.

3. Defendant, Kenneth R. Payne ("Payne") is a resident of Indianapolis, Indiana. At times relevant to this action, he was a majority shareholder, officer, and director of Heartland and a member of JMS.

4. Defendant Daniel G. Danker ("Danker"), upon information and belief, is a resident of Indianapolis, Indiana. At times relevant to this action, he was an officer and employee of Heartland.

5. Defendant Constance Brooks-Kiefer ("Brooks-Kiefer"), upon information and

belief, is a resident of Indianapolis, Indiana. At times relevant to this action, she was an officer and employee of Heartland and/or JMS.

6. Defendant, Johann M. Smith ("Smith"), upon information and belief, is a resident of Indianapolis, Indiana. At times relevant to this action, he was an officer and employee of Heartland and/or JMS.

7. Defendant, Aero Technogias, Ltd. ("Aero"), upon information and belief, is a Belizean corporation which wrongfully received and retained funds of Heartland and is an alter ego of Heartland.

8. Defendant Atlas Income Fund, LLC ("Atlas"), upon information and belief, is an Indiana limited liability company with its principal place of business formerly at 8060 Knue Road, Indianapolis, Indiana, which wrongfully received and retained funds of Heartland and is an alter ego of Heartland.

9. Defendant BMC Investment Group, LLC ("BMC"), upon information and belief, is an Indiana limited liability company with its principal place of business formerly at 8060 Knue Road, Indianapolis, Indiana which wrongfully received and retained funds of Heartland and is an alter ego of Heartland.

10. Defendant, Carribean Federal Ltd. ("Carribean"), upon information and belief, is an Indiana limited liability company formed by Heartland, Payne, Danker, Smith, Brooks-Kiefer and others to ostensibly operate a banking institution of the same name in the country of Belize. Carribean wrongfully received and retained funds of Heartland and is an alter ego of Heartland.

11. Defendant, Carribean Federal Trust, Ltd., upon information and belief, is a Belizean corporation which wrongfully received and retained funds of Heartland and is an alter ego of Heartland.

12. Defendant, Carribean Federal Trust Services, Ltd., upon information and belief, is a Belizean corporation which wrongfully received and retained funds of Heartland and is an alter ego of Heartland.

13. Defendant, Carribean Financial Services ("Carribean Financial-FL"), upon information and belief, is a Florida corporation which wrongfully received and retained funds of Heartland and is an alter ego of Heartland.

14. Defendant, Carribean Investments International Ltd. ("Carribean Investments"), upon information and belief, is a Belizean corporation which wrongfully received and retained funds of Heartland and is an alter ego of Heartland.

15. Defendant, Celtic Centre II, Ltd. ("Celtic Centre"), upon information and belief, is an Irish corporation with its principal place of business in Dublin, Ireland which wrongfully received and retained funds of Heartland and is an alter ego of Heartland.

16. Defendant, CharMar, Ltd., ("CharMar"), upon information and belief, is a Bahamian corporation whose representatives have represented that its principal place of business is Cash, Fountain, Armstrong Street, P.O. Box N476, Nassau, Bahamas which wrongfully received and retained funds of Heartland and is an alter ego of Heartland.

17. Defendant, Dolphin International Development, Ltd. ("Dolphin International"), upon information and belief, is a Belizean corporation which wrongfully received and retained funds of Heartland and is an alter ego of Heartland.

18. Defendant, Dolphin Peninsula Partners ("Dolphin PP"), upon information and belief, is an entity which wrongfully received and retained funds of Heartland and is an alter ego of Heartland.

19. Defendant, First Fidelity Trust, Ltd. ("First Fidelity"), upon information and belief,

is a Nevis corporation, located in Charleston, Nevis West Indies which wrongfully received and retained funds of Heartland.

20. Defendant, First International Limited ("First International"), upon information and belief, is a Belizean corporation which wrongfully received and retained funds of Heartland.

21. Defendant, Heartland International Trust Services, Ltd. ("Heartland International"), upon information and belief, is a corporation which wrongfully received and retained funds of Heartland and is an alter ego of Heartland.

22. Defendant, Heartland Money Management of Florida, Inc. ("HMM"), upon information and belief, is a Florida corporation which wrongfully received and retained funds of Heartland and is an alter ego of Heartland.

23. Defendant, International Leisure Centers, Ltd. ("International"), upon information and belief, is a Belizean corporation with an address of P.O. Box 72, San Pedro Town, Belize which wrongfully received and retained funds of Heartland and is an alter ego of Heartland.

24. Defendant, KJL, Ltd. of Belize ("KJL"), upon information and belief, is a is a Belizean corporation with an address of P.O. Box 72, San Pedro Town, Belize which wrongfully received and retained funds of Heartland and is an alter ego of Heartland.

25. Defendant, Lincoln Fidelity Escrow Services ("Lincoln"), upon information and belief, is an unincorporated entity which wrongfully received and retained funds of Heartland and/or JMS and is an alter ego of Heartland.

26. Defendant, MDS Investment Group, LLC a/k/a MDS Investments, Ltd. ("MDS"), upon information and belief, is an Indiana limited liability company with its principal place of business formerly at 8060 Knue Road, Indianapolis, Indiana which wrongfully received and retained funds of Heartland and is an alter ego of Heartland.

27. Defendant, PMK, Ltd. ("PMK"), upon information and belief, is a corporation which wrongfully received and retained funds of Heartland and is an alter ego of Heartland.

28. Defendant, Provident Bank ("Provident"), upon information and belief, is a Belizean corporation which wrongfully received and retained funds of Heartland.

29. Defendant, RMP, Ltd. ("RMP"), upon information and belief, is a Bahamian corporation whose representatives have represented that its principal place of business is Cash, Fountain, Armstrong Street, P.O. Box N476, Nassau, Bahamas which wrongfully received and retained funds of Heartland and is an alter ego of Heartland.

30. Defendant, Terens, Ltd. ("Terens"), upon information and belief, is a Bahamian corporation which wrongfully received and retained funds of Heartland and is an alter ego of Heartland.

31. Defendant, 21<sup>st</sup> Century Banking Group, Ltd. ("21<sup>st</sup> CBG-Grenada"), upon information and belief, is a Grenadian corporation which wrongfully received and retained funds of Heartland and is an alter ego of Heartland.

32. Defendant, 21<sup>st</sup> Century International Bank & Trust of Grenada ("21<sup>st</sup> IBT-Grenada"), upon information and belief, is a Grenadian corporation which wrongfully received and retained funds of Heartland and is an alter ego of Heartland.

33. Defendant, 21<sup>st</sup> Century International Advisors, Inc. ("21<sup>st</sup> CIA-US"), upon information and belief, is an Indiana corporation with its principal place of business formerly at 8060 Knue Road, Indianapolis, Indiana which wrongfully received and retained funds of Heartland and is an alter ego of Heartland.

34. Defendant, 21<sup>st</sup> Century International Advisors of Bermuda, Ltd. ("21<sup>st</sup> CIA-Bermuda"), upon information and belief, is a corporation which wrongfully received and retained

funds of Heartland and is an alter ego of Heartland.

35. Defendant, 21<sup>st</sup> Century International Advisors of Ireland, Ltd. ("21<sup>st</sup> CIA-Ireland), upon information and belief, is a corporation which wrongfully received and retained funds of Heartland and is an alter ego of Heartland.

36. Defendant, 21<sup>st</sup> Century Personnel, LLC ("21<sup>st</sup> Personnel), upon information and belief, is a corporation which wrongfully received and retained funds of Heartland and is an alter ego of Heartland.

37. Defendant, Universal Financial Services, Ltd. ("Universal"), upon information and belief, is a Belizean corporation which wrongfully received and retained funds of Heartland and is an alter ego of Heartland.

38. Defendants John Does 1 through 20 are the ultimate transferees of the assets of Heartland and/or JMS who, because of the schemes alleged in this complaint, are currently unknown to the plaintiff, but upon discovery will be identified and specifically named as defendants. Upon information and belief, these transferees include persons and/or entities controlled by Payne, Danker, Smith, Brooks-Kiefer and/or other defendants, co-conspirators or joint venturers.

#### **JURISDICTION AND VENUE**

39. This court has subject matter jurisdiction over certain claims herein pursuant to 18 U.S.C. § 1964, and pursuant to 28 U.S.C. § 1331 because they arise under the laws of the United States, and has jurisdiction over all other claims herein pursuant to 28 U.S.C. § 1367.

40. Venue is proper in this district pursuant to 28 U.S.C. § 754, 28 U.S.C. § 1391, and 18 U.S.C. § 1965.

## THE HEARTLAND FRAUDULENT SCHEME

41. The Receiver brings this action against the above-named defendants for violations of the federal and Indiana RICO statutes, for fraud, conversion, breach of fiduciary duty, negligence, attorney malpractice, and for the return of Heartland's and JMS's property fraudulently transferred and preferentially received. The Receiver also seeks disgorgement of all assets wrongfully transferred to any defendant.

42. From at least January of 1991 to the present, Payne, Smith, Danker, Brooks-Kiefer and others engaged in a Ponzi scheme and in a number of other illegal and fraudulent ventures in which they used Heartland, JMS and a host of alter ego entities (collectively the "Heartland Alter Ego Entities") to fraudulently obtain over \$69,000,000.00 from investors in Heartland.

### Involvement of Payne, Danker, Smith and Brooks-Kiefer

#### Ken Payne

43. Payne, age 51, resides in Fishers, Indiana.

44. Prior to 1983, Payne was an attorney licensed in Indiana.

45. In 1983, the Indiana Supreme Court disbarred Payne, for a period of five years.

46. Payne is a registered representative of Jonathan Roberts Financial Group ("Jonathan Roberts"), a brokerage firm registered with the United States Securities and Exchange Commission.

47. Before his association with Jonathan Roberts, Payne was a registered representative of several other brokerage firms.

48. Payne at all times relevant to this complaint was the president and owner of Heartland.

49. Heartland was created by Payne for the ostensible purpose of acting as a brokerage, insurance and estate-planning firm.

50. Payne's primary responsibilities as President of Heartland were to solicit investors and to assist in directing all phases of the Heartland operation.

51. From September of 1996 until the present Payne, Danker, Smith and Brooks-Kiefer wrongfully converted to their own use and personal benefit or to the own use and personal benefit of their conspirators or converted for use in maintaining the fraudulent scheme at least \$29 million in Heartland funds.

52. On information and belief Payne used Heartland funds to purchase automobiles and other assets in the names of friends and relatives and had assets purchased with Heartland funds titled in the name of friends and relatives in order to conceal Payne's control over those assets.

53. Payne is jointly and severally liable along with his co-conspirators for the conversion of at least \$29 million in Heartland funds.

**Daniel Danker**

54. At times relevant to this complaint Danker, age 52, resided in Indianapolis, Indiana.

55. In or about 1987, Danker's license to practice law in Colorado was suspended.

56. Danker was the vice president and office manager of Heartland.

57. Danker maintained Heartland's books and records.

58. Danker was a registered representative of Jonathon Roberts until on or about March 27, 2000.

59. In April of 2000 Danker claimed to resign from Heartland.

60. Danker's resignation was preceded by inquiries regarding his activities by the United States Securities and Exchange Commission.

61. On information and belief, Danker has fled Indiana, taking many of Heartland's records and assets with him.

62. Danker's current whereabouts are unknown.

63. Danker is jointly and severally liable along with his co-conspirators for the conversion of at least \$29 million in Heartland funds.

**Johann Smith**

64. Smith, age 42, resides in Indianapolis, Indiana.

65. Smith is an attorney licensed to practice law in the State of Indiana.

66. Smith served as an officer of Heartland and as an escrow agent for investments made through Heartland and the Heartland Alter Ego Entities.

67. For instance, Smith was listed on promotional materials as the founder and manager of JMS.

68. Smith made investment decisions for JMS and recommended securities purchases to Heartland and JMS investors.

69. In addition to his involvement with Heartland, since 1985 Smith has operated his own law practice, Johann M. Smith, Inc.

70. From 1992 Smith provided legal advice to Heartland and Heartland's officers and acted as Heartland's legal counsel.

71. Smith is jointly and severally liable along with his co-conspirators for the conversion of at least \$29 million in Heartland funds.

**Constance Brooks-Kiefer**

72. Brooks-Kiefer, age 47, resides in Indianapolis, Indiana.

73. Brooks-Kiefer was employed by Heartland from in or about February 1993 until she resigned in mid-July 2000.

74. Her responsibilities at Heartland and with various related entities included, among other things, preparing and issuing checks, depositing investor funds, preparing and issuing confirmations and account statements to Heartland customers, and serving as a contact person for Heartland customers with questions about their accounts.

75. Brooks-Kiefer also maintained the books and records for JMS and various other entities affiliated with Heartland.

76. Brooks-Kiefer is jointly and severally liable along with her co-conspirators for the conversion of at least \$29 million in Heartland funds.

#### **Nature of the Heartland Ponzi Scheme**

77. Payne, Danker, Smith, Brooks-Kiefer and others who acted with knowledge of the fraudulent schemes described in this complaint are referred to as the "Heartland Principals."

78. The Heartland Principals represented to potential investors that Heartland was a securities brokerage firm.

79. In order to open a brokerage account with Heartland, customers were required to fill out a new account application with information regarding their financial background and investment history and objectives.

80. Payne, Danker, Smith, Brooks-Kiefer and others recommended securities investments to Heartland customers and offered the services of Heartland as a means of investing in such securities.

81. Investors were told that their investment in Heartland and/or related entities would be used to purchase securities and investors were promised a high rate of return on their

investments.

82. In reality, only a small portion of investor funds were used to purchase securities.

83. Most investor funds were spent on lavish lifestyles for Heartland's Principals, were used to pay off claims of prior investors or were wrongfully diverted to other schemes and purposes.

84. Investors in Heartland and the Heartland Alter Ego Entities were fraudulently told that their investments were earning exemplary returns.

85. To perpetuate the scheme, the Heartland Principals, including Brooks-Kiefer, sent false confirmations and monthly account statements on letterhead of Heartland and/or the various Heartland Alter Ego Entities through the United States mail detailing the customers' investments and the purported values of their supposed securities holdings.

86. Such statements claimed that the investments made by investors were earning high rates of return.

87. Each such false account statement and/or confirmation which was sent through the United States mail constituted a separate act of mail fraud in violation of 18 U.S.C. § 1341.

88. The acts of mail fraud in furtherance of the Heartland scheme are too numerous to recite in total, but include:

- a. regularly soliciting phony investments through false and fraudulent representations contained in investment descriptions, securities offering materials and other sales literature;
- b. distribution of phony "profits" and phony interest payments;
- c. mailing statements containing false representations of phony interest earnings and phony profits;

- d. the use of the mails to fraudulently convey investor funds to foreign countries; and
- e. the use of the mails to assist in the creation of undercapitalized and fictitious companies.

89. To conceal their scheme the Heartland Principals would attempt to persuade investors not to cash in their investments.

90. If an investor requested to cash in, the investor was typically solicited to roll over his or her current investment into a new investment with Heartland or a related entity.

91. In the event an investor insisted on a cash payment the Heartland Principals simply diverted cash from other investors to pay off the claim.

#### Solicitation of Investors

92. Heartland's Principals targeted senior citizens and wealthy individuals for solicitation.

93. A favorite technique of Heartland's Principals was to conduct seminars promoting, among other things, investment opportunities in offshore banks and domestic financial institutions as well as estate and tax planning.

94. Heartland promoted the seminars through advertisements in The Senior Beacon and in buildings in Fort Wayne and Indianapolis.

95. Heartland also sent invitations through the United States mail and via facsimile to Heartland investors asking them to attend the seminars and attracted attendees through phone solicitations.

96. Each such solicitation contained materially false statements that were knowingly made or authorized to be made with knowledge of their falsity and an intent that

