

198. With knowledge of the order freezing Heartland's account at Bank One Payne nevertheless withdrew more than \$300,000 from the account on August 10 and 11, 2000.

199. In July, 2000, with knowledge of the impending legal actions about to be taken against himself and Heartland, Payne purchased more than \$100,000 in diamonds stones in preparation to flee and avoid prosecution.

200. In August, 2000 Payne purchased an additional \$45,000 in diamonds.

201. On information and belief, in early August, 2000, with knowledge of the ongoing investigation against them involving Heartland, Payne, Smith and Brooks-Kiefer engaged in the systematic destruction of records and the secreting of property of Heartland.

202. In early August, 2000, numerous records were deleted from Heartland's computers, passwords were altered and many important records were removed or destroyed.

203. Throughout the summer of 2000 Payne engaged in a comprehensive effort to fraudulently transfer and hide Heartland's assets.

204. In furtherance of the Heartland scheme, Payne obtained a falsified passport and identity documents and fled the country.

205. On information and belief, Payne fled the country by using assets stolen from Heartland.

206. On or about September 29, 2000, Payne was apprehended and returned to Indianapolis, Indiana.

207. Danker remains at large.

Count I - Violation of 18 U.S.C. §§ 1962(c) and 1962(d)

208. Plaintiff brings this claim against defendants Payne, Danker, Smith, Brooks-Kiefer, and the Heartland Alter Ego Entities.

209. Plaintiff incorporates paragraphs 1 through 208 as if fully repeated herein.

210. At all times relevant to this complaint, Heartland was an association-in-fact enterprise as defined by 18 U.S.C. § 1961(4) that was and is engaged in, and whose activities affect, interstate or foreign commerce.

211. The common purpose of the association-in-fact enterprise is the transfer of the assets of Heartland to the Heartland Principals and foreign entities and locations and to establish and carry out business activities outside the United States, including the legitimate conduct of a Belize Resort and the Grenada Bank. Each member of the association-in-fact played an important role in effecting the purposes of the enterprise: Payne, Danker, Smith and Brooks-Kiefer devised and executed the overall plan for transferring the assets of Heartland, and provided the over-arching framework and organization; Payne enlisted and directed the activities of Heartland, Danker, Smith, Brooks-Kiefer and the Heartland Alter Ego Entities; Smith provided legal services to the Enterprise, enabling it to establish numerous legal entities; the Heartland Alter Ego Entities functioned as the conduit for the funds of Heartland. As such, the above association-in-fact enterprise has a continuity of structure and personnel, as well as a structure distinct from the pattern of racketeering activity conducted by certain members of the Enterprise.

212. The above-named defendants knowingly and willfully associated with the association-in-fact enterprise, and conducted and participated in the conduct of the enterprise's affairs, directly and indirectly, through a pattern of racketeering activity, in violation of 18 U.S.C. § 1962(c), including, but not limited to committing, attempting to commit, conspiring to commit, or aiding and abetting in the commission of the following:

- a. Fraud in relation to identification documents in violation of 18 U.S.C. § 1028;
- b. Mail fraud in violation of 18 U.S.C. § 1341;
- c. Wire fraud in violation of 18 U.S.C. § 1343;
- d. Financial institution fraud in violation of 18 U.S.C. § 1344;
- e. Obstruction of justice in violation of 18 U.S.C. §§ 1503, 1510 and 1511;
- f. Giving a false statement in application for a passport in violation of 18 U.S.C. § 1542;
- g. Forgery of a passport in violation of 18 U.S.C. § 1543;
- h. Misuse of a passport in violation of 18 U.S.C. § 1544;
- i. Money laundering in violation of 18 U.S.C. §§ 1956 and 1957; and
- j. Fraud in the sale of securities within the meaning of 18 U.S.C. § 1961.

213. The pattern of activity has included repeated acts of the above listed offences within a ten-year period.

214. The Defendants' repeated and continuing violations of the foregoing statutes extended over a period of years and involved a number of episodes or events and distinct

and independent acts. These events and acts were neither isolated nor sporadic, but involved the regular and repeated violation of law to accomplish the Defendants' desired goals in the enterprise. These acts were related by virtue of (a) common participants, (b) common investor and corporate victims, (c) common methods of commission via phony securities schemes; and (d) the common purpose and result of defrauding the investors and Heartland and of enriching the Defendants at the expense of Heartland and Heartland's investors while concealing the Defendants' fraudulent activities. As such, the Defendants conduct constitutes a "pattern of racketeering activity" within the meaning of 18 U.S.C. § 1961(1).

215. The pattern of racketeering activity engaged in by the defendants involved the separate but related actions alleged in paragraphs 42 through 208, was carried out from at least early 1991, is currently ongoing, and is directed at Heartland and numerous other victims.

216. The above-named defendants also conspired to violate 18 U.S.C. § 1962(c) and are therefore liable as conspirators pursuant to 18 U.S.C. § 1962(d).

217. As a direct result of the defendants' violation of 18 U.S.C. § 1962(c) and (d), the Plaintiff has suffered damages to its business and property.

Count II - Violation of 18 U.S.C. § 1962(c) and (d)

218. Plaintiff brings this claim against defendants Payne, Danker, Smith, Brooks-Kiefer and the Heartland Alter Ego Entities.

219. Plaintiff incorporates paragraphs 1 through 218 as if fully repeated herein.

220. At all times relevant to this complaint, Heartland was an enterprise as defined by 18 U.S.C. § 1961(4) that was and is engaged in and whose activities affect interstate or foreign commerce.

221. The above-named defendants knowingly and willfully associated with Heartland, and conducted and participated in the conduct of Heartland's affairs, directly and indirectly, through a pattern of racketeering activity in violation of 18 U.S.C. § 1962(c).

222. The pattern of racketeering activity engaged in by the defendants involves the separate but related actions alleged in paragraphs 42 through 208 was carried out from at least early 1991, is currently ongoing, and is directed at Heartland and numerous other victims.

223. The above-named defendants also conspired to violate 18 U.S.C. § 1962(c) and are therefore liable as conspirators pursuant to 18 U.S.C. § 1962(d).

224. As a direct result of the defendants' violation of 18 U.S.C. § 1962(c) and (d), the plaintiff has suffered damages to its business and property.

Count III - Violation of 18 U.S.C. § 1962(a) and 1962(d)

225. Plaintiff brings this claim against defendants Payne, Danker, Smith, Brooks-Kiefer, the Heartland Alter Ego Entities and John Does 1 through 20.

226. Plaintiff incorporates paragraphs 1 through 225 as if fully repeated herein.

227. A primary purpose of the transfers of the assets of Heartland to offshore accounts, persons, or entities was to enable the above-named defendants to acquire or establish enterprises outside the United States with the assets of Heartland and thereby to conceal Heartland's assets and place them outside the reach of Heartland's creditors. Upon information

and belief, another purpose of the transfers to offshore accounts, persons, or entities was to evade the payment of taxes.

228. Plaintiff does not currently have knowledge of the identity of the ultimate transferees) of the various transfers of Heartland's assets offshore (the John Does 1 through 20 described in paragraph 38 above). However, upon information and belief, those transfers have been used to establish and/or acquire offshore business enterprises which plaintiff denominates for purposes of this count as the Heartland Offshore Enterprise. The Heartland Offshore Enterprise is an enterprise as defined by 18 U.S.C. § 1961(4) which is engaged in, or the activities of which affect interstate or foreign commerce.

229. Defendants, Payne, Danker, Smith, Brooks-Kiefer, the Heartland Alter Ego Entities and John Does 1 through 20, having received income derived directly or indirectly from the pattern of racketeering activity described above, used or invested such income or the proceeds thereof to acquire an interest in or to establish or operate the Heartland Offshore Enterprise, all in violation of 18 U.S.C. § 1962(a).

230. The defendants named in paragraph 225 also conspired to violate 18 U.S.C. § 1962(a) and are therefore liable as conspirators pursuant to 18 U.S.C. § 1962(d).

231. As a direct result of defendants' violation of 18 U.S.C. §§ 1962(a) and (d), plaintiff has suffered damage to its business and property.

Count IV - Violation of 18 U.S.C. §§ 1962 (b) and 1962(d)

232. Plaintiff brings this claim against defendants Payne, Danker, Smith, Brooks-Kiefer, the Heartland Alter Ego Entities and John Does 1 through 20.

233. Plaintiff incorporates paragraphs 1 through 232 as if fully repeated herein.

234. A primary purpose of the transfers of the assets of Heartland to offshore accounts, persons, or entities was to enable the above-named defendants to acquire or establish enterprises outside the United States with the assets of Heartland and thereby to conceal Heartland's assets and place them outside the reach of Heartland's creditors.

235. Upon information and belief, another purpose of the transfers to offshore accounts, persons, or entities was to evade the payment of taxes.

236. Plaintiff does not currently have knowledge of the identity of the ultimate transferee(s) of the wire transfers of Heartland's assets offshore (the John Does 1 through 20 described in paragraph 38 above). However, upon information and belief, those transfers have been used to establish and/or acquire offshore business enterprises which plaintiff denominates for purposes of this count as the Heartland Offshore Enterprise.

237. The Heartland Offshore Enterprise is an enterprise as defined by 18 U.S.C. § 1961(4) which is engaged in, or the activities of which affect interstate or foreign commerce.

238. The above-named defendants acquired or maintained an interest in and/or control of the Heartland Offshore Enterprise through the pattern of racketeering activity described above, all in violation of 18 U.S.C. § 1962(b).

239. The above-named defendants also conspired to violate 18 U.S.C. § 1962(b) and are therefore liable as conspirators pursuant to 18 U.S.C. § 1962(d).

240. As a direct result of defendants' violation of 18 U.S.C. §§ 1962(b) and (d), plaintiff has suffered damage to its business and property.

Count V - Violation of Ind. Code § 35-45-6.2(3)

241. Plaintiff brings this claim against defendants Payne, Danker, Smith, Brooks-Kiefer and the Heartland Alter Ego Entities.

242. Plaintiff incorporates paragraphs 1 through 241 as if fully repeated herein.

243. At all times relevant to this complaint, Payne, Danker, Smith, Brooks-Kiefer and the Heartland Alter Ego Entities were an association-in-fact enterprise as defined by Ind. Code § 35-45-6-1.

244. The common purpose of the association-in-fact enterprise is the transfer of the assets of Heartland to the Heartland Principals and foreign entities and locations and to establish and carry out business activities outside the United States, including the legitimate conduct of a Belize Resort and the Grenada Bank. Each member of the association-in-fact played an important role in effecting the purposes of the enterprise: Payne, Danker, Smith and Brooks-Kiefer devised and executed the overall plan for transferring the assets of Heartland, and provided the over-arching framework and organization; Payne enlisted and directed the activities of Heartland, Danker, Smith, Brooks-Kiefer and the Heartland Alter Ego Entities, provided legal services to the enterprise, enabling it to establish numerous legal entities; the Heartland Alter Ego Entities functioned as the conduit for the funds of Heartland; as such, the above association-in-fact enterprise has a continuity of structure and personnel, as well as a structure distinct from the pattern of racketeering activity conducted by certain members of the Enterprise.

245. The above-named defendants knowingly and willfully associated with the

association-in-fact enterprise, and conducted and participated in the conduct of the enterprise's affairs, directly and indirectly, through a pattern of racketeering activity, in violation of Ind. Code § 35-45-6-2(3), including, but not limited, to committing, attempting to commit, conspiring to commit, or aiding and abetting in the commission of the following:

- a. Theft by knowingly or intentionally exerting unauthorized control over property of Heartland with the intent to deprive Heartland of some or all of the use of the value of the property thus obtained, and by knowingly or intentionally receiving, or retaining, or disposing of the property thus obtained, and by knowingly or intentionally receiving, retaining, or disposing of the property of Heartland that has been the subject of theft in violation of Ind. Code § 35-43-4-2; and
- b. Fraud, by concealing, encumbering or transferring property and by damaging property of Heartland with the intent to defraud Heartland, in violation of Ind. Code §§ 35-43-5-4(8) and (9).

246. The pattern of activity has included repeated acts of the above-listed offenses within a ten-year period.

247. The Defendants' repeated and continuing violations of Ind. Code §§ 35-43-4-2, 35-43-5-4(8) and (9) extended over a period of years and involved a number of episodes or events and distinct independent acts. These events and acts were neither isolated nor sporadic, but involved the regular and repeated violation of law to accomplish the Defendants' desired goals in the enterprise. These acts were related by virtue of (a) common participants; (b) common investor and corporate victims; (c) common methods of commission via phony

securities schemes; and (d) the common purpose and result of defrauding the investors and Heartland and of enriching the Defendants at the expense of Heartland and Heartland's investors while concealing the Defendants' fraudulent activities. As such, the Defendants' conduct constitutes a "pattern of racketeering activity" within the meaning of Ind. Code § 35-45-6-1. Having been associated with the affairs of a fraudulent enterprise through a pattern of racketeering activity, the Defendants violated Ind. Code § 35-45-6-2 by committing "corrupt business influence."

248. The pattern of racketeering activity engaged by the defendants involved the separate but related actions alleged in paragraphs 42 through 208 carried out from at least early 1991 is currently ongoing, and is directed at Heartland and numerous other victims.

249. The above-named defendants conspired to violate Ind. Code § 35-45-6-2 and are therefore liable as conspirators.

250. As a direct result of the defendants' violation of Ind. Code § 35-45-6-2(3), plaintiff has suffered damage to its business and property.

Count VI - Violation of Ind. Code § 35-45-6- (3)

251. Plaintiff brings this claim against defendants Payne, Danker, Smith, Brooks-Kiefer and the Heartland Alter Ego Entities.

252. Plaintiff incorporates paragraphs 1 through 251 as if fully repeated herein.

253. At all times relevant to this complaint, Heartland was an enterprise as defined by Ind. Code § 35-45-6-1.

254. The above-named defendants knowingly and willfully associated with Heartland,

and conducted and participated in the conduct of Heartland's affairs, directly and indirectly, through a pattern of racketeering activity in violation of Ind. Code § 35-45-6-2.

255. The pattern of racketeering activity engaged in by the defendants involves numerous predicate acts constituting fraud in violation of Ind. Code § 35-43-5-4(8) and (9) and theft in violation of Ind. Code § 35-43-4-2.

256. The above-named defendants conspired to violate Ind. Code § 35-45-6-2 and are therefore liable as conspirators.

257. As a direct result of the defendants' violation of Ind. Code § 35-45-6-2(3), plaintiff has suffered damage to its business and property.

Count VII-Violation of Ind. Code § 35-45-6-2(1)

258. Plaintiff brings this claim against defendants Payne, Danker, Smith, Brooks-Kiefer, the Heartland Alter Ego Entities, and John Does 1 through 20.

259. Plaintiff incorporates paragraphs 1 through 258 as if fully repeated herein.

260. A primary purpose of the transfers of the assets of Heartland to offshore accounts, persons, or entities was to enable the above-named defendants to acquire or establish enterprises inside and outside the United States with the assets of Heartland and thereby to conceal Heartland's assets and place them outside the reach of Heartland's creditors. Upon information and belief, another purpose of the transfers to offshore accounts, persons, or entities was to evade the payment of taxes.

261. Plaintiff does not currently have knowledge of the identity of the ultimate transferees of transfers of Heartland's assets (John Does 1 through 20 described in paragraph ___ above). However, upon information and belief, those transfers have been used to establish and/or acquire

offshore business enterprises which plaintiff denominates for purposes of this count as the Heartland Offshore Enterprise. The Heartland Offshore Enterprise is an enterprise as defined by Ind. Code § 35-45-6-1.

262. The above-named defendants knowingly or intentionally received proceeds directly or indirectly derived from a pattern of racketeering activity and used or invested such proceeds to acquire an interest in property or to establish or operated the Heartland Offshore Enterprise, all in violation of Ind. Code § 35-45-6-2(a).

263. The above-named defendants conspired to violate Ind. Code § 35-45-6-2 and are therefore liable as conspirators.

264. As a direct result of defendants' violation of Ind. Code § 35-45-6-2(1), plaintiff has suffered damage to its business and property.

Count VIII - Violation of Ind. Code § 35-45-6-2(2)

265. Plaintiff brings this claim against defendants Payne, Danker, Smith, Brooks-Kiefer, the Heartland Alter Ego Entities and John Does 1 through 20.

266. Plaintiff incorporates paragraphs 1 through 265 as if fully repeated herein.

267. A primary purpose of the transfers of the assets of Heartland to offshore accounts, persons, or entities was to enable the above-named defendants to acquire or establish trading enterprises outside the United States with the assets of Heartland and thereby to conceal Heartland's assets and place them outside the reach of Heartland's creditors. Upon information and belief, another purpose of the transfers to offshore accounts, persons, or entities was to evade the payment of taxes.

268. Plaintiff does not currently have knowledge of the identity of the ultimate

transferee(s) of the assets of Heartland (John Does 1 through 20 described in paragraph 38 above). However, upon information and belief, those transfers have been used to establish and/or acquire offshore business enterprises which plaintiff denominates for purposes of this count as the Heartland Offshore Enterprise. The Heartland Offshore Enterprise is an enterprise as defined by Ind. Code § 35-45-6-1 which is engaged in, or the activities of which affect interstate or foreign commerce.

269. The above-named defendants, through a pattern of racketeering activity, knowingly or intentionally acquired or maintained, directly or indirectly, an interest in or control of property of the Heartland Offshore Enterprise, all in violation of Ind. Code § 35-45-6-2(2).

270. The above-named defendants conspired to violate Ind. Code § 35-45-6-2 and are therefore liable as conspirators.

271. As a direct result of defendants' violation of Ind. Code § 35-45-6-2(2), plaintiff has suffered damage to its business and property. .

Count IX - Civil Action By Crime Victim

272. Plaintiff brings this claim against defendants Payne, Danker, Smith, Brooks-Kiefer, the Heartland Alter Ego Entities and John Does 1 through 20.

273. Plaintiff incorporates paragraphs 1 through 272 as if fully repeated herein.

274. Defendants intentionally misappropriated the personal property of Heartland by ordering, receiving, and disposing of the funds transferred to each of them in the transactions referred to above, including but not limited to those alleged in paragraphs 42 through 208.

