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CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 02-3926

Short Caption: JAMES A. KNAUER v. JONATHON ROBERTS
FINANCIAL GROUP, INC., et al.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement stating the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1. **Each attorney is asked to complete and file a Disclosure Statement with the Clerk of the Court as soon as possible after the appeal is docketed in this Court. Counsel is required to complete the entire statement and to use N/A for any information that is not applicable.**

- (1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):

FFP Securities, Inc.

- (2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Bryan Cave LLP and Riley, Bennett & Egloff LLP

- (3) If the party or amicus is a corporation:

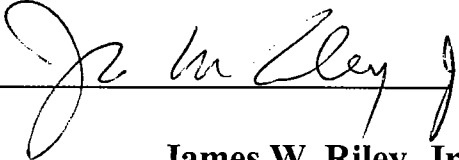
- i) Identify all its parent corporations, if any; and

First Financial Planners, Inc.

- ii) List any publicly held company that owns 10% or more of the party's or amicus' stock:

None

The Court prefers that the disclosure statement be filed immediately following docketing; but the disclosure statement must be filed with the principal brief or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. The attorney furnishing the statement must file an amended statement to reflect any material changes in the required information. The text of the statement (i.e. caption omitted) shall also be included in front of the table of contents of the party's main brief.

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- (1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):

Jonathon Roberts Financial Group, Inc. and Alliance Capital Management Corp.

- (2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Locke Reynolds LLP, Bose McKinney & Evans LLP, Katten Muchin Zavis Rosenman

- (3) If the party or amicus is a corporation:

- i) Identify all its parent corporations, if any; and

Jonathon Roberts Financial Group, Inc. successor in interest to Alliance Capital Management Corp.

- ii) List any publicly held company that owns 10% or more of the party's or amicus' stock:

None

The Court prefers that the disclosure statement be filed immediately following docketing; but the disclosure statement must be filed with the principal brief or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. The attorney furnishing the statement must file an amended statement to reflect any material changes in the required information. The text of the statement (i.e. caption omitted) shall also be included in front of the table of contents of the party's main brief.

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FSC Securities Corporation

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Dann Pecar Newman & Kleiman, P.C.
Kightlinger & Gray, LLP

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

Sun America, Inc.

ii) List any publicly held company that owns 10% or more of the party's or amicus' stock:

American International Group, Inc.

The Court prefers that the disclosure statement be filed immediately following docketing; but the disclosure statement must be filed with the principal brief or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. The attorney furnishing the statement must file an amended statement to reflect any material changes in the required information. The text of the statement (i.e. caption omitted) shall also be included in front of the table of contents of the party's main brief.

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I. JURISDICTIONAL STATEMENT

The Appellant's jurisdictional statement is complete and correct.

II. STATEMENT OF THE ISSUES

1. Whether the District Court erred in finding that the doctrine of *in pari delicto* barred the Receiver from asserting state law claims on behalf of corporations whose entire management perpetrated fraud?
2. Whether the District Court order dismissing the Receiver's state law claims can be affirmed on alternate grounds?

III. STATEMENT OF THE CASE

The Plaintiff-Appellant in this case is the Court Appointed Receiver for Heartland Financial Services, Inc. (hereinafter "Heartland") and JMS Investment Group (hereinafter "JMS"). The principals in Heartland/JMS, Kenneth R. Payne, Daniel G. Danker, Johann M. Smith, and Constance Brooks-Kiefer, used those entities to defraud several hundred investors out of more than Thirty Million dollars (\$30,000,000.00) in a massive Ponzi scheme.

Following the collapse of the scheme and the arrest of the principals, on August 21, 2000, an Agreed Order Appointing Receiver for Heartland Financial Services was entered in SEC v. Kenneth R. Payne, et al., Cause No. IP00-1265-C which provides that the Receiver is, "for the benefit of investors to marshal, conserve,

protect, hold funds, operate, and, with the approval of the Court, dispose of any wasting assets, wherever those assets may be found, of Heartland.” (D. # 1 Complaint, ¶ 3 *citing* IP-00-1265-C and D. #31; 08/21/00 Agreed Order, ¶ 1)

Following his appointment, on August 10, 2001, the Receiver filed the pending action seeking damages on behalf of Heartland/JMS from various brokerage firms with whom Mr. Payne and Mr. Danker were affiliated over the last ten (10) years. As succinctly put by the District Court Judge in granting the Broker/Dealers’ motions to dismiss one year later:

Hundreds of unsuspecting investors placed their trust (and millions of dollars of their savings) in Heartland Financial Services, and some related companies. Unfortunately, their trust was betrayed by the unscrupulous principals of the Heartland entities. This case is part of the debris left behind as a result of the perfidious acts of a handful of scoundrels. Unfortunately for the investors, the legal theories upon which this case is based provide them no relief against the Defendants named in this suit. As will be explained below, the connection between the wrongdoers and these Defendants is slim, too tenuous as a matter of law to require them to repay what the Heartland thieves took.

(D. # 97; 09/30/02 Entry, p. 1-2).

In the Complaint the Receiver relied upon a variety of legal theories set forth in five separate counts. In Count I the Receiver alleged that Mr. Payne and Mr. Danker committed securities fraud in violation of state and federal law with respect to Heartland/JMS investors and sought to hold the Broker/Dealers liable for the

