

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

FILED  
DISTRICT COURT  
INDIANAPOLIS  
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CLERK  
LAURA A. BRIGGS  
CLERK

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

Plaintiff/Appellant, )

vs. )

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

Defendants/Appellees. )

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

**PLAINTIFF'S MOTION TO SUPPLEMENT THE RECORD**

The Plaintiff, James A. Knauer, Receiver for Heartland Financial Services, Inc. and JMS Investment Group, LLC, files his motion to supplement the record pursuant to Fed. R. App. P. 10(e) and Circuit Rule 10(b) and in support of such motion sets forth as follows.

1. On September 4, 2002 this Court conducted a hearing on the Defendant's motions to dismiss at which time parties presented oral argument addressing the issues contained in the motions and briefs.

2. During the course of the oral arguments, counsel for Defendants and counsel for Plaintiff used and referred to exhibits before the Court in support their motions and briefs.

3. These exhibits were also referred to by counsel and in some instances were not only the basis for counter-arguments but also the basis for discussion by counsel and

the Court.

4. These exhibits were tendered to the Court and received by the Court both physically and visually during the course of the hearing.

5. Recently, the Court Reporter prepared a transcript of the hearing for purposes of an appeal to the United States Court of Appeals, Seventh Circuit.

6. However, the exhibits that were referred to and discussed during the course of the hearing were not included as exhibits to the transcript and therefore not included as part of the record.

7. Circuit Rule 10(a) sets forth in pertinent part the following:

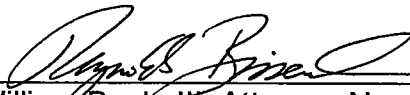
**(a) Record Preparation Duties.** The clerk of the district court shall prepare within 14 days of filing the notice of appeal the original papers, transcripts filed in the district court **and exhibits received or offered in evidence ...., and an exhibit is "received or offered," to the extent that it is tendered to the district court in support of a brief or motion, whether or not the rules of the district court treat the ...exhibits as part of the record.** These materials may be designated as part of the record on appeal without the need for a motion under Fed. R. App. P. 10(e). [emphasis added]

8. Upon reviewing the transcript, it is apparent that it is neither coherent nor complete without the exhibits being a part of the record.

9. The United States Court of Appeals should have available before it all forms of communication that were made by counsel during their oral arguments and these exhibits were no less a form of communication to the Court than verbal argument.

WHEREFORE, the Plaintiff, James A. Knauer, Receiver for Heartland Financial Services, Inc. and JMS Investment Group, L.L.C., respectfully requests the Court to supplement the record by designating as a part of the record all exhibits referred to and discussed by counsel during oral argument at the hearing conducted on September 4, 2002.

Respectfully submitted,



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**Attorneys for Appellant, James A. Knauer,  
As Court Appointed Receiver for Heartland  
and JMS Investment Group, LLC**

**CERTIFICATE OF SERVICE**

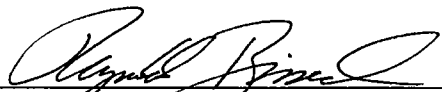
The undersigned hereby certifies that on the 22<sup>nd</sup> day of November, 2002, a true and accurate copy of the above and foregoing pleading was served by depositing the same in the United States mail, first class, postage prepaid to:

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