

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA

FILED  
U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
09 DEC 20 PM 4:34  
LAURA A. BRIGGS  
CLERK

UNITED STATES SECURITIES )  
AND EXCHANGE COMMISSION, )  
 )  
Plaintiff, )  
 )  
KENNETH R. PAYNE, )  
JOHANN M. SMITH, )  
DANIEL G. BANKER, CONSTANCE )  
BROOKS-KIEFER, )  
HEARTLAND FINANCIAL SERVICES, )  
INC., AND JMS INVESTMENT )  
GROUP, LLC. )  
 )  
Defendants. )

Civil Action No.  
IP00-1265 C - T/G

**RECEIVER'S MOTION TO APPROVE SETTLEMENT OF CLAIMS AGAINST  
CERTAIN INVESTORS IN THE HEARTLAND COMPANIES WHO RECEIVED  
PAYMENTS IN EXCESS OF THEIR INVESTMENTS**

James A. Knauer, the Receiver for Heartland Financial Services, Inc. ("Heartland") and JMS Investment Group, Inc. ("JMS"), in support of his motion states:

1. The Receiver, was appointed in this case on August 21, 2000.
2. Heartland, JMS and all of their related legal entities (hereafter referred to as the "Heartland Companies") were engaged in a "Ponzi Scheme" which sought to defraud investors by misrepresenting that monies deposited for investment would receive high yield returns or would be invested in initial public offering securities not normally available to the general investing.
3. Since the date of his appointment the receiver, using the services of the court approved receivership accountants, Birk Gross Bell & Coulter, has completed a reconciliation of the accounts of all of the investors in the Heartland Companies.
4. As a consequence of the accountants reconciliation, the Receiver has determined that the holders of approximately 139 investor accounts received payments from the Heartland Companies which exceeded their investments

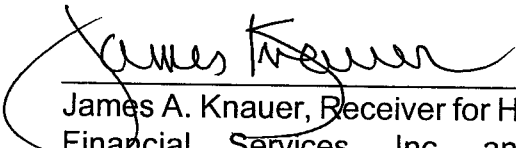
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in the Heartland Companies.

5. Pursuant to the reasoning set forth by the 7<sup>th</sup> Circuit Court of Appeals in the case of *Scholes V. Lehmann* , 56 F.3d 750 (7th Cir. 1995), payments to investors in a Ponzi Scheme that exceed the amount of their aggregate principal investment ("Excess Payments") are recoverable by the Receiver for the benefit of the Receivership, since in a Ponzi Scheme there are no 'profits' to distribute and the monies received by investors represent nothing more than transfers of the monies of their fellow investors.
6. On November 16, 2000, the Receiver sent a letter to approximately 139 investors who received Excess Payments from the Heartland Companies. A copy of the letter is attached hereto as Exhibit "A".
7. The Receiver's letter sought to induce investors who had received Excess Payments to enter into a settlement agreement with the Receiver by the terms of which the investor would agree to pay to the Receivership eighty-five per cent (85%) of the Excess Payments that they had received.
8. The Receiver's letter provides that any such settlement accepted by the investor is subject to the approval of this court.
9. The Receiver believes that the settlement proposal represents a fair and reasonable offer when weighed against the costs of litigation with each individual investor to recover upon the claims for receipt of the Excess Payments.
10. The Receiver did not seek to extend the settlement proposal to those investors who received the largest Excess Payments because he believes that the applicable law is well settled and the costs of litigation with those investors, although significant, will not approach the 15% discount that has been proposed to be extended to the investors listed herein.

THEREFORE, for the reasons set forth in the foregoing Motion, the Receiver requests that he be authorized to enter into a settlement agreement with each investors who timely accepted the Receiver's offer to settle the claim of the Receivership against

such investor for the receipt of Excess Payments, and, to the extent deemed necessary by the Receiver, to grant to each such investor, a general release of all claims of the Receivership against them.

  
James A. Knauer, Receiver for Heartland  
Financial Services, Inc. and JMS  
Investment Group, Inc.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing has been served on the following counsel of record by placing a copy in the United States Mail, first class, postage pre-paid, this 20 day of December, 2000:

Paul A. Montoya  
United States Securities and Exchange  
Commission  
500 West Madison Street  
Suite 1400  
Chicago, Illinois 60661

Jeannette L. Lewis  
United States Securities and Exchange  
Commission  
500 West Madison Street  
Suite 1400  
Chicago, Illinois 60661

Kara M. Washington  
United States Securities and Exchange  
Commission  
500 West Madison Street  
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Chicago, Illinois 60661

Fred D. Scott  
Attorney at Law  
55 Monument Circle  
Suite 814  
Indianapolis, Indiana 46204

  
William Bock

**KROGER, GARDIS & REGAS, L.L.P.**  
P.O. Box 44941  
111 Monument Circle, Suite 900  
Indianapolis, IN 46244-0941  
(317) 692-9000

November 16, 2000

## **SAMPLE LETTER**

Re: *Heartland Financial Services*

Dear

This letter is being written to you in my capacity as the Receiver appointed by the United States District Court for the Southern District of Indiana in proceedings initiated by the United States Securities and Exchange Commission against Heartland Financial Services, Inc., JMS Investment Group, LLC and numerous affiliated companies (the "Heartland Companies") which were founded and managed by, Kenneth R. Payne, Johann Smith, Daniel Danker and others.

As you may now be aware from news stories, for much of their existence, the Heartland Companies were little more than a "Ponzi Scheme" in which investors who received payments of purported "profits" were actually paid money derived from investment funds received from later investors.

According to the records compiled by the accountants for the Receiver, you actually received more in payments from the Heartland Companies than you invested. Notwithstanding what may have been reported to you by the Heartland Companies, your funds were not invested and there were no profits. The amounts paid to you from the Heartland companies were simply other peoples' money. The law is well established that in cases of Ponzi Schemes the excess of the amounts received by investors over the amounts which they actually paid in are recoverable by a Receiver.

Attached to this letter is a schedule from the records of the Heartland Companies showing amounts that have been attributed to your account for receipts and disbursements. Although the accountants have strived to be accurate, we recognize in some circumstances your records may disagree

**Exhibit**

A

November 16, 2000

Page 2

with these figures and we will be happy to review your disbursement and deposit records to arrive at a correct figure.

One of my duties as Receiver is to recover funds paid to investors in excess of their investments. In order to induce you to settle this claim with the Receiver and avoid the costs of litigation, the Receiver is willing to accept, subject to the approval of the court, 85% of the amount of the claim against you. In order to accept the Receiver's settlement offer, you must contact the undersigned within fifteen days of the date of this letter, after which time the foregoing settlement offer will be automatically withdrawn and the Receiver reserves the right to commence litigation to recover the amounts due to the Heartland Receivership.

While the offer of a discount contained in this letter is designed to encourage settlement and reduce litigation costs (for both you and the Receiver), nevertheless, in order to assess the Receiver's claim and the likelihood of success in pursuing it, you may wish to consult your counsel. We encourage review of the case of *Shoals vs. Lehman* 56 F. 3d 750 (7<sup>th</sup> Cir. 1995). This case was an action in which a federal receiver for a Ponzi Scheme sought, among other things, to recover funds from an investor who had received payments in excess of his investment. We believe it is the definitive law of the 7<sup>th</sup> Circuit on the types of claims which are being asserted by the Heartland receiver against you and it is derived from a set of facts remarkably similar to the Heartland cases.

I regret the law requires me to write you this letter. Nevertheless, it is my responsibility as the court appointed Receiver to help insure that funds wrongfully transferred as the result of the Ponzi Scheme are returned to their rightful owners and distributed proportionately in the fairest manner possible.

Sincerely,

James A. Knauer

JAK:hns  
enclosure