

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

JEROME JENSON, BETTY TAIT, EILEEN
HORTON and JOSEPH RISSE, Individually and
On Behalf of All Others Similarly Situated,

Plaintiffs,

v.

FIRST TRUST CORPORATION, and DOES 1-
10, inclusive,

Defendants.

CASE NO. 05-CV-03124-ABC-CT

**NOTICE OF PENDENCY AND
SETTLEMENT OF CLASS ACTION AND
SETTLEMENT HEARING**

**TO: ALL PERSONS WHO INVESTED IN THE FRAUDULENT INVESTMENT SCHEME
OPERATED BY D.W. HEATH & ASSOCIATES AND WHO RECEIVED IN RETURN
LESS MONEY THAN THEY INVESTED**

**Your legal rights are affected whether you act or do not act.
Read this Notice carefully.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

**SUBMIT PROOF OF CLAIM
AND RELEASE FORM:**

The only way to get a payment from this Settlement.

EXCLUDE YOURSELF:

Get no payment. This is the only option that allows you to commence or participate in another lawsuit against Defendant relating to the legal claims in this case.

OBJECT:

You may write to the Court if you don't like this Settlement.

GO TO THE HEARING:

You may ask to speak in Court about the fairness of this Settlement.

DO NOTHING:

Get no payment; forfeit the right to sue in another action.

These rights and options - **and the deadlines to exercise them** - are explained in this Notice.

The Court in charge of this case must decide whether to approve the Settlement. Payments will be made if the Court approves the Settlement and, if there are any appeals, after appeals are resolved. Please be patient.

A federal court authorized this Notice to be sent to you. This is not a solicitation from a lawyer. You or someone in your family may have purchased fraudulent investments offered by the financial advising firm D.W. Heath & Associates ("Heath") between 1995 and 2004 (the "Heath Investments"). A class action lawsuit on behalf of all persons or entities that lost money in these Heath Investments (the "Class") is currently pending in the United States District Court for the Central District of California and is entitled, *Jenson et al. v. First Trust Corporation*, Case No. 05-cv-3124-ABC (the "Litigation"). The

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persons who sued are called the Plaintiffs, and the company Plaintiffs sued, First Trust Corporation (n/k/a Fiserv Trust Company or “Fiserv”), is the Defendant.

Class Members: The Class is defined as: all individuals and entities who invested in the fraudulent investment scheme operated by Heath and who received in return less money than they invested. The Subclass consists of all members of the Class who invested in Heath with funds held in Individual Retirement Accounts (“IRAs”) administered through Fiserv.

Settlement Fund: The Settlement Fund consists of \$8,500,000 in cash. Your recovery will depend on the amount of Heath Investments you purchased, as well as whether you purchased your Heath Investments with funds held in an Individual Retirement Account (“IRA”) administered by Fiserv (i.e., whether you are a Subclass Member). Your recovery will also depend on the number of eligible Class and Subclass Members who participate in the Settlement. See Question 9 in the Basic Information section for additional information concerning, among other things, the allocation of the Settlement Fund based on the relative strength of the claims of the Class and the Subclass.

Reasons for Settlement: Settlement at this time provides for a substantial dollar recovery while avoiding the costs and risks associated with continued Litigation, including the danger of no recovery.

If the Case Had Not Settled: Continuing with the case could have resulted in dismissal or loss at trial. The two sides do not agree on the amount of money that could have been won if Plaintiffs prevailed at trial. The parties disagree about: (1) whether, and the extent to which, Fiserv had knowledge with respect to Heath’s fraudulent activities; (2) whether, and the extent to which, Fiserv assisted Heath’s fraudulent activities; (3) whether Fiserv breached any fiduciary or contractual duties it owed to its customers with respect to its administration of any Heath Investments; (4) whether Fiserv aided and abetted a violation of any state securities laws with respect to its administration of any Heath Investments; (5) whether, and the extent to which, exculpatory language contained in Fiserv’s customer account establishment documents could preclude recovery; (6) whether, and the extent to which, the lack of a direct contractual relationship with Class Members could preclude recovery; and (7) whether, and the extent to which, any of Fiserv’s alleged actions resulted in damage to any members of the Class.

Fees and Expenses: Plaintiffs' Counsel have not received any payment for their substantial work investigating the facts, conducting this Litigation and negotiating the Settlement on behalf of Plaintiffs and the Settlement Class. Plaintiffs' Counsel will ask the Court for attorneys' fees not to exceed 33% of the Settlement Fund and reimbursement of actual out-of-pocket expenses reasonably incurred, not to exceed \$550,000, to be paid from the Settlement Fund.

Deadlines:

Submit Proof of Claim and Release:	Postmarked by August 9, 2008
Request Exclusion:	Postmarked by May 19, 2008
File Objection:	Filed by May 19, 2008
Court Hearing on Fairness of Settlement:	June 9, 2008 at 10:00 a.m.

More Information:

Claims Administrator:

Jenson v. Fiserv Litigation
c/o Claims Administrator
The Garden City Group, Inc.
P.O. Box 9245
Dublin, Ohio 43017-4645
Toll-Free: 1 (888) 205-7866

Plaintiffs’ Counsel:

GLANCY BINKOW & GOLDBERG LLP
Kevin F. Ruf or Kara M. Wolke
1801 Avenue of the Stars, Suite 311
Los Angeles, CA 90067
Telephone: (310) 201-9150

BASIC INFORMATION

1. Why Did I Get This Notice Package?

The Court sent you this Notice because you have a right to know about a proposed Settlement of the Litigation, and about all of your options, before the Court decides whether to approve the Settlement. If the Court approves it and after any objections or appeals are resolved, the Claims Administrator appointed by the Court will make the payments that the Settlement allows. This package explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

2. What Is This Lawsuit About?

This case was filed as a potential class action by investors who lost money as a result of the purchase of Heath Investments. The Securities and Exchange Commission filed charges against Heath in April 2004, seized its assets and files, and installed a court-appointed Receiver, Robb Evans, to garner and distribute available funds to injured investors. This action does not concern the monies amassed and distributed by the SEC Receiver. Your receipt of funds from the SEC Receiver does not affect your membership and/or participation as a Class Member in this Settlement.

Defendant Fiserv serves as directed trustee and custodian for self-directed IRA accounts, including those of the Subclass, as defined below. Plaintiffs Jerome Jenson, Eileen Horton and Joseph Risse filed their class action complaint on April 27, 2005, against Defendant. These three Plaintiffs, along with Plaintiff Betty Tait (collectively the "Class Representatives"), filed a First Amended Complaint on December 12, 2005. Plaintiffs allege that Fiserv breached contractual and fiduciary duties to its customers in the purchase and administration of Heath Investments. Plaintiffs also allege that Fiserv aided and abetted Heath's alleged fraud and breach of fiduciary duty with respect to all Heath investors. Fiserv denies that it breached any duties to its customers, and Fiserv also denies that it knew about or substantially assisted Heath's fraudulent investment scheme.

On February 5, 2007, the Court certified this Action to proceed as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure. The Class is defined as: all individuals and entities who invested in the fraudulent investment scheme operated by D.W. Heath & Associates and who received in return less money than they invested. The Subclass consists of all members of the Class who invested in Heath with funds held in IRAs administered through Fiserv.

The Court has ruled that the Class and Subclass can assert the following claims: common law aiding and abetting breach of fiduciary duty, common law aiding and abetting fraud, and two statutory claims for aiding and abetting violations of state securities laws. The Court has ruled that the Subclass also can assert the following additional claims: breach of fiduciary duty and breach of contract.

Fiserv has asserted numerous defenses to each of the claims brought on behalf of the Class and the Subclass. Among other things, Fiserv contends that: (i) its customers signed documents in which they accepted sole responsibility for deciding how to invest their money, (ii) its customers executed agreements stating that Fiserv is not liable for the result of any such investment decision, (iii) it has no legal relationship whatsoever to any of the Class members who never were Fiserv customers, (iv) it fulfilled any and all of its legal obligations to all of its customers, which are narrowly and exclusively defined under its customer agreements, and (v) any damages incurred by members of the Class and/or Subclass were caused solely by the conduct of Heath and Heath's principals. Fiserv asserts that the allegations of the complaint are without merit. Fiserv denies that it did anything wrong, and contends that if the case were to proceed to trial, it would prevail.

3. Why Is This a Class Action?

In a class action, one or more people called Class Representatives (in this case, Jerome Jenson, Betty Tait, Eileen Horton, and Joseph Risse) sue on behalf of people who have similar claims. Here, all these people, together, are called a Settlement Class or Settlement Class Members. In a class action, one court resolves the issues for all Settlement Class Members at the same time, except for those who

voluntarily exclude themselves from the Settlement Class. The Honorable Audrey B. Collins, District Court Judge for the Central District of California, is in charge of this class action.

4. Why Is There a Settlement?

The Court did not decide in favor of Plaintiffs or Defendant. Instead, both sides agreed to a Settlement based on a compromise of the claims and defenses. That way, they avoid the cost and risk of a trial, and eligible Settlement Class Members who make a valid claim will get compensation. The Settlement was arrived at through arms-length negotiations, with the periodic assistance of two separate experienced mediators. The Class Representatives and Plaintiffs' Counsel agreed to the Settlement after considering the results of their factual and legal investigation of the claims of the Settlement Class.

Based on their investigation and discovery of the claims, the experience that Plaintiffs' attorneys have in litigating similar complex actions, the procedural protections provided by the Settlement, and the valuable consideration that the Settlement Class can obtain from the Settlement, the Class Representatives and their attorneys think the Settlement is best for all Settlement Class Members.

WHO IS IN THE SETTLEMENT

To see if you will get money from this Settlement, you first have to determine if you are a Settlement Class Member.

5. How Do I Know If I Am Part of the Settlement?

The Settlement Class includes all persons who invested in the fraudulent investment scheme operated by Heath, and who received in return less money than they invested. The Subclass consists of all members of the Class who invested in Heath with funds held in IRAs administered through Fiserv. All Members of the Class and Subclass may participate in the Settlement, except: (i) those Persons who opt out of the Settlement Class; (ii) those Persons who are/were plaintiffs in *Adams et al. v. Schlarmann et al.*, No. GIC837421, filed in the Superior Court of the State of California in the County of San Diego (the "Adams Action"), if the dismissal with prejudice of the Adams Action against Fiserv has been upheld on appeal and all appeals have been exhausted at the time that the Order and Judgment of Dismissal becomes Final; (iii) those Persons, if any, who have filed, commenced, prosecuted, intervened in, or participated (as class members or otherwise) in any other lawsuit, arbitration, or other proceeding in any jurisdiction based on or relating to the claims and causes of action, or the facts and circumstances relating thereto, in this Litigation and/or the Released Claims, and whose claims have resulted in a release of Fiserv or a judgment that is no longer appealable at the time that the Order and Judgment of Dismissal becomes Final; and (iv) those Persons and entities that are specifically excluded, as described immediately below.

6. What Are the Exceptions to Being Included?

The following individuals or entities are specifically excluded from the Settlement Class: (i) D.W. Heath & Associates, Daniel Heath, Larre Schlarmann, Denis O'Brien, John Heath, Martin Duffield, Raul Jordan, Rick Caporale, William Dowdell, Denis McGilvery, and any past or present firm, trust, corporation, parent, subsidiary, or other individual or entity in which any of the foregoing individuals has a controlling interest or any present or past entity that is related to or affiliated with any of the foregoing individuals; and (ii) Defendant; all individuals who are either current officers and/or directors of Defendant, or who served as officers or directors of Defendant at any time from 1995 to the present; any of Defendant's parents or subsidiaries; any person, firm, trust, corporation, officer, director, or other individual or entity in which Defendant has a controlling interest or any present or past entity that is related to or affiliated with Defendant.

7. I'm Still Not Sure if I Am Included.

If you are still not sure whether you are included, you can ask for free help. You can call the Claims Administrator, The Garden City Group, Inc., at 1 (888) 205-7866 for more information. If you are or were a plaintiff in a separate action against Fiserv, and you believe that separate action may have been based on the same facts and events that form the basis for this Litigation, please call your lawyer.

QUESTIONS? CALL TOLL-FREE 1 (888) 205-7866

THE SETTLEMENT BENEFITS - WHAT YOU GET

8. What Does the Settlement Provide?

Defendant has agreed to pay \$8.5 million in cash in settlement of this case. These funds will be distributed to eligible Settlement Class Members who send in valid Proof of Claim and Release forms, after payment of court-approved legal fees and attorney and Class Representatives' expenses and the costs of claims administration, including the costs of printing and mailing this Notice and the cost of publishing newspaper notice.

9. How Much Will My Payment Be?

Your share of the funds will depend on (a) the number of Settlement Class Members who participate in the Settlement by sending in the Proof of Claim and Release (the fewer the number of Settlement Class Members who choose to participate in the Settlement, the larger will be the recovery for each participating Settlement Class Member), and (b) whether you are a member of the Subclass, i.e., whether you purchased Heath Investments with funds held in an Individual Retirement Account ("IRA") administered by Fiserv. Subclass members will recover based upon 100% of their Initial Claim. Other Class members will recover based upon 20% of their Initial Claim. Once the base claims for purposes of this Settlement are determined in accordance with the Plan of Allocation described above, the Net Settlement Fund will be divided pro-rata among all Class Members.

In order to recover money in this Settlement, you must have suffered an actual monetary loss on your Heath Investment(s) and have been determined to have an allowed claim in the action *Securities & Exchange Commission v. D.W. Heath & Associates, et al.*, 2:04-cv-02949-JFW-E, United States District Court for the Central District of California, Western Division, as such allowed claims were calculated by Robb Evans & Associates and approved by Judge John Walter, the Judge presiding over that action.

The payment you get will reflect your pro rata share of the amount in the relevant Settlement Fund (as a fraction, your initial claim divided by the total of all allowed claims for the relevant fund) after deduction of court-approved fees and expenses. The number of Claimants who participate in settlements varies widely from case to case.

HOW YOU GET A PAYMENT - SUBMITTING A PROOF OF CLAIM AND RELEASE

10. How Will I Get a Payment?

To qualify for payment, you must be an eligible Settlement Class Member and you must send in a Proof of Claim and Release. A Proof of Claim and Release is enclosed with this Notice. Read the instructions carefully, fill out the form, sign it, and mail it in the enclosed envelope postmarked no later than August 9, 2008.

11. When Will I Get My Payment?

The Court will hold a hearing on June 9, 2008, at 10:00 a.m. to decide whether to approve the Settlement. If Judge Collins approves the Settlement, there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps several years. Everyone who sends in a Proof of Claim and Release will be informed of the determination with respect to the actual amount of their claim. Please be patient.

12. What Am I Giving Up to Get a Payment or Stay in the Settlement Class?

Unless you exclude yourself, you are staying in the Settlement Class, and that means that you cannot sue, continue to sue, or be part of any other lawsuit against Defendant about the same legal and factual issues in this case. It also means that all of the Court's orders will apply to you and legally bind you and, in return for your participation in the Settlement, you will release your claims in this case against Defendant. The terms of the release are included in the Proof of Claim and Release that is enclosed.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want a payment from this Settlement, but you want to keep the right to sue or continue to sue Defendant on your own about the same legal and factual issues in this case, then you must take steps to get out of the Settlement Class. This is called excluding yourself from, or is sometimes referred to as opting out of, the Settlement Class.

13. How Do I Get Out of the Settlement Class?

To exclude yourself from the Settlement Class, you must send a letter by mail stating that you want to be excluded from *Jerome Jenson et al. v. First Trust Corporation*, Case No. 05-cv-3124-ABC. You must include your name, address, telephone number, your signature, and the date and amount of Heath Investment(s) you purchased. You must mail your exclusion request postmarked no later than May 19, 2008 to:

Jenson v. Fiserv Litigation
c/o Claims Administrator
The Garden City Group, Inc.
P.O. Box 9245
Dublin, Ohio 43017-4645

You cannot exclude yourself on the phone or by e-mail. If you ask to be excluded, you are not eligible to get any settlement payment, and you cannot object to the Settlement. You will not be legally bound by anything that happens in this lawsuit.

14. If I Do Not Exclude Myself, Can I Sue Defendant for the Same Thing Later?

No. Unless you exclude yourself, you give up any right to sue Defendant for the claims resolved by this Settlement. If you have a pending lawsuit against Defendant, speak to your lawyer in that case immediately. Remember, any request for exclusion must be postmarked by May 19, 2008.

15. If I Exclude Myself, Can I Get Money from This Settlement?

No. If you exclude yourself, do not send in a Proof of Claim and Release. But, you may sue, continue to sue, or be part of a different lawsuit against Defendant.

THE LAWYERS REPRESENTING YOU

16. Do I Have a Lawyer in This Case?

The Court appointed the law firm of Glancy Binkow & Goldberg, LLP to represent you and other Settlement Class Members. These lawyers are called Plaintiffs' Counsel. You will not be charged for these lawyers' work. If you want to be represented by your own lawyer, you may hire one at your own expense.

17. How Will the Lawyers Be Paid?

Plaintiffs' Counsel will ask the Court for attorneys' fees not to exceed 33% of the Settlement Fund and for reimbursement of actual out-of-pocket expenses reasonably incurred, not to exceed \$550,000, which were advanced in connection with the Litigation. Such sums as may be approved by the Court will be paid from the Settlement Fund. Settlement Class Members are not personally liable for any such fees or expenses.

The attorneys' fees and expenses requested, to the extent they are awarded by the Court, will be the only payment to Plaintiffs' Counsel for their efforts in achieving this Settlement and for their risk in undertaking this representation on a wholly contingent basis. To date, Plaintiffs' Counsel have not been paid for their services for conducting this Litigation on behalf of the Class Representatives and the Settlement Class, or for their substantial out-of-pocket expenses. The fee requested, if awarded, will compensate Plaintiffs' Counsel for their work and risk in achieving the Settlement.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you don't agree with the Settlement or some part of it.

18. How Do I Tell the Court that I Don't Like the Settlement?

If you are a Settlement Class Member, you can object to the Settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter saying that you object to the settlement in *Jerome Jenson et al. v. First Trust Corporation*, Case No. 05-cv-3124-ABC. Be sure to include your name, address, telephone number, signature, the date and amount of any purchases of Heath Investments, and the reasons you object to the Settlement. Any objection to the Settlement must be mailed or delivered such that it is received by each of the following no later than May 19, 2008:

(1) The Court, addressed to:

CLERK OF THE COURT
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
Roybal Federal Building, Courtroom 680
255 East Temple Street,
Los Angeles, CA 90012

(2) Plaintiffs' Counsel, addressed to:

GLANCY BINKOW & GOLDBERG LLP
KARA M. WOLKE
1801 Avenue of the Stars, Suite 311
Los Angeles, CA 90067

(3) Defendant's Counsel, addressed to:

GIBSON, DUNN & CRUTCHER LLP
MARCELLUS A. MCRAE
333 South Grand Avenue
Los Angeles, CA 90071-3197
and
MAIER SHOCH LLP
ERIC R. MAIER
633 W. Fifth Street, Suite 5880
Los Angeles, CA 90071-2086

19. What's the Difference Between Objecting and Excluding?

Objecting is simply telling the Court that you don't like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you don't have to.

20. When and Where Will the Court Decide Whether to Approve the Settlement?

The Court will hold a fairness hearing June 9, 2008, at 10:00 a.m. in United States District Court, Central District of California, Courtroom 680, Roybal Federal Building 255 East Temple Street, Los Angeles, California 90012. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. Judge Collins will listen

to people who have asked to speak at the hearing. The Court will also consider how much to pay to Plaintiffs' counsel and the extent to which counsel will be reimbursed for their costs and expenses, and the Incentive Awards to be paid to Class Representatives. The Court may decide these issues at the hearing or take them under consideration and decide them at a later time. We do not know how long these decisions will take.

21. Do I Have to Come to the Hearing?

No. Plaintiffs' Counsel will answer questions Judge Collins may have. But, you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

22. May I Speak at the Hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your intention to appear in *Jerome Jenson et al. v. First Trust Corporation*, Case No. 05-cv-3124-ABC. Be sure to include your name, address, telephone number, signature, the date and amount of any purchases of Heath Investments, and the reasons you object to the Settlement. Your notice of intention to appear must be received no later than May 19, 2008, and be sent to the Clerk of the Court, Plaintiffs' Counsel, and Defendant's counsel, at the three addresses listed in question 18. You cannot speak at the hearing if you exclude yourself from the Settlement Class.

IF YOU DO NOTHING

23. What Happens if I Do Nothing at All?

If you do nothing, you will get no money from this Settlement. But, unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendant about the same legal or factual issues in this case.

GETTING MORE INFORMATION

24. Are There More Details About the Settlement?

This Notice summarizes the proposed Settlement. More details are in the Stipulation of Settlement dated January 24, 2008. You can get a copy of the Stipulation of Settlement from the Clerk's office at the United States District Court, Central District of California, Courtroom 680, Roybal Federal Building 255 East Temple Street, Los Angeles, California 90012, during regular business hours.

25. How Do I Get More Information?

For further information regarding this Settlement you may contact: Kevin F. Ruf or Kara M. Wolke, of Glancy Binkow & Goldberg LLP, 1801 Avenue of the Stars, Suite 311, Los Angeles, California 90067, telephone: (310) 201-9150. Please do not call any representative of Defendant.

DO NOT TELEPHONE THE COURT REGARDING THIS NOTICE

DATED: February 11, 2008

BY ORDER OF THE COURT
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA