

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

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IN THE MATTER OF THE POSSESSION
AND CONTROL OF THE COMMISSIONER
OF BANKS AND REAL ESTATE OF
INDEPENDENT TRUST CORPORATION
a/k/a INTRUST, an Illinois Corporate
fiduciary

Cause No. 00CH05905

MOTION TO OPPOSE USE OF MARCH 1999 STATEMENTS AS A BASIS FOR
ALLOCATION OF CASH TRUST FUND SHORTAGE

Now come David Terris and Arlene L. Terris, as account holders and state as follows:

1. In a MOTION FOR ENTRY OF A FINAL ALLOCATION OF CASH TRUST FUND SHORTAGE dated January 26, 2001 the Receiver has recommended an allocation percentage of 8.69% and use of March 1999 statements as the primary basis for determining the allocation amount.
2. On February 1, 2001 the Court ordered that any opposition to the Receiver's Motion For Entry Of A Final Cash Trust Fund Shortage or Objections to Receiver's Report of Calculation Of Final Allocation Percentage And Use of March 1999 Statements shall be filed and served by February 13, 2001.
3. We as account holders object to the use of March 1999 Statements as a basis for the allocation for the following reasons:
4. Between March 31, 1999 and April 14, 2000 accounts have been opened, closed, added to and withdrawn from. The Receiver has already recommended and the Court ordered that accounts opened after April 23, 1999 be excluded from the allocation. Also, funds added to certain accounts after April 23, 1999 are being excluded.
5. However, it is also true that accounts closed after March 31, 1999 are excluded from the allocation by reason of the fact that the monies are no longer available to INTRUST and cannot be used to fund the shortage.


6. But under Receiver's proposal, funds withdrawn between March 1999 and April 14, 2000 from accounts which remain open are unfairly still subject to the allocation. These withdrawn funds are also no longer available to INTRUST, they may no longer even exist and they should not be included in the allocation.
7. As an example of the unfairness, if an account holding \$100,000 was closed in the March 1999—April 2000 interval, that money is completely free and clear of the allocation. But if only \$50,000 were withdrawn and the account remained open, the entire \$100,000, rather than the remaining \$50,000 would be subject to the allocation. In effect the account holder is being assessed at double the 8.69% allocation percentage on his account.
8. Early in this case many allocation proposals were submitted to the Court. Many suggested that the allocation be prorated according to the status of accounts at the various times between 1990 and 1999 that funds were sent from INTRUST to Intercounty Title Company. The Receiver argued that it was too complicated and difficult to research and implement this type of allocation procedure and that with just a few exceptions the fairest way to allocate the shortage was to assess all account holders equally.
9. Now, however, the Receiver recommends just such a proration procedure involving the status of accounts at various dates, some accounts as of March 1999, some as of December 1998 and some as of April 14, 2000. This does not constitute equal treatment as originally argued by the Receiver.
10. Furthermore, in Paragraphs 39 and 40 of "RECEIVER'S RECOMMENDATION REGARDING ALLOCATION OF CASH TRUST FUND SHORTAGE," June 23, 2000, the Receiver himself argued forcefully against the use of any date prior to April 14, 2000 as the basis for the allocation. The lack of complete historical information and other factors

were cited as reasons why it would be difficult to use dates prior to April 14, 2000 as a valid basis for allocation.

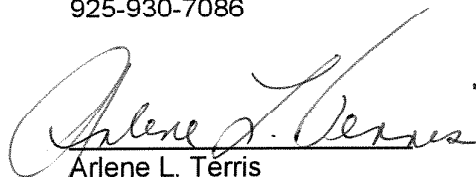
11. The funds available to pay for the cash shortage are those that existed on April 14, 2000. It is grossly unfair to ask account holders to pay for the shortage with funds that had been previously withdrawn and were not available to INTRUST on April 14, 2000.
12. Furthermore, current account holders already are expected to subsidize previous account holders whose money is no longer available to help support the shortage.
13. We move the Court reject the Receiver's motion and order that the allocation be based on the status of all included accounts as they existed on April 14, 2000.

Dated: February 6, 2001

Respectfully submitted,



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