

IN THE SUPREME COURT OF  
THE STATE OF ILLINOIS

BRUCE C. FREIMUTH and )  
TERRY G. BOMMER, individually and as )  
Custodian for Joshua C. Bommer and Emily E. )  
Bommer, minors, and BARBARA DAVIDSON, )

Plaintiffs, )

v. )

Cause Number \_\_\_\_\_ )

THE HONORABLE SIDNEY A. JONES, III, )  
and PRICEWATERHOUSECOOPERS, LLP, )  
as Receiver of Independent Trust Corporation, )

Defendants. )

MOTION FOR LEAVE TO FILE A COMPLAINT FOR A WRIT OF MANDAMUS

Pursuant to Supreme Court Rule 381, Plaintiffs move this Court for an Order granting them leave to file their Complaint For a Writ of Mandamus (“Complaint”) and establishing a schedule for briefing the issues to the Court. As grounds for their motion, Plaintiffs state:

1. Each Plaintiff is an individual and the beneficial owner of mutual fund shares owned of record and held in trust for Plaintiffs’ separate accounts by The Independent Trust Corporation, an Illinois trust company now in receivership (“Intrust”).
2. Defendant PricewaterhouseCoopers, LLP, was appointed as the Receiver of Intrust and is currently serving in that capacity.
3. The Receiver’s actions are being supervised by Defendant, the Honorable Sidney A. Jones, III, in a proceeding pending in the Chancery Division of the Circuit Court for Cook County, Illinois (the “Trial Court”) entitled *In the Matter of the Possession and Control of the Commissioner of Banks and Real Estate of Independent Trust Corporation a/k/a Intrust, Cook County, Illinois Cause No. 00CH05905* (“the Receivership Proceedings”).

4. Plaintiffs' accounts with Intrust contain assets purchased for Plaintiffs' accounts pursuant to Plaintiffs' (or their agents') instructions, using assets Plaintiffs deposited with Intrust as a corporate fiduciary for safekeeping under a custodial agreement (the "Assets"). The Assets consist of shares of mutual funds beneficially owned by Plaintiffs but held of record by the Receiver.

5. Pursuant to 205 ILCS 620/6-10(5), each Plaintiff made written demand upon the Receiver that it return his or her Assets left with Intrust, but the Receiver failed and refused to do so.

6. Plaintiffs then asked the Trial Court to order the Receiver to comply with its obligations prescribed by 205 ILCS 620/6-10(5) and surrender the Assets to Plaintiffs. The Trial Court has entered an Interlocutory Order approving the Receiver's denial of Plaintiffs' requests for surrender of Plaintiffs' Assets.

7. The Trial Court and the Receiver have no discretion under 205 ILCS 620/6-10(5) when a demand for the surrender of trust assets is made, but have only to perform the ministerial act of returning the assets to the rightful owner thereof—the Plaintiffs.

8. The Receiver has proposed to the Trial Court, and the Trial Court has agreed, that an as yet indeterminate portion of Plaintiffs' Assets and the non-cash assets of certain other Intrust customers now held in trust by the Receiver (estimated to be not less than 6.5% of the value of those assets as of April 30, 2000) should be "allocated" to satisfy a \$68.1 million shortage that is an obligation of the Receivership estate to various unsecured, general creditors of Intrust. Under the plan proposed by the Receiver, the Receiver will liquidate a portion of Plaintiffs' and other Intrust account holders' investments and distribute the proceeds to other Intrust account holders whose cash funds were misappropriated by Intrust or its employees.

9. The Complaint presents purely legal issues: Whether the Receiver of a corporate fiduciary and the Court supervising the activities of the Receiver may properly refuse a demand made pursuant to 205 ILCS 620/6-10(5)?

10. The issues presented in the Complaint are of great public importance because the Receiver presently holds approximately \$1.7 billion worth of assets in trust accounts established at Intrust by approximately 17,000 customers. The account holders' access to their assets held in trust is being blocked by the Receiver and the Trial Court. Public confidence in Illinois' regulation of trust companies and, in particular, in receivership proceedings for such trust companies pursuant to the Illinois Corporate Fiduciaries Act, 205 ILCS 620/1 *et seq.*, is threatened:

- a. by the Receiver's refusal to obey the law requiring the return of trust assets to their owners upon written demand to the Receiver;
- b. by the Receiver's attempt to satisfy Receivership estate's obligations to Intrust's to general unsecured creditors using Plaintiffs' and other Intrust customers' trust account assets; and
- c. by the Trial Court's acquiescence in the Receiver's actions and planned actions.

11. This Court's ruling on this Complaint could have an impact extending to hundreds and perhaps thousands of similarly situated Intrust account holders.

12. Plaintiffs' Assets held in trust by the Receiver as successor to Intrust are threatened by the Receiver's plan to use those Assets to satisfy a portion of the Receivership estate's \$68.1 million in unsecured obligations to Intrust's general creditors.

13. Plaintiffs also have been damaged by the imposition upon their Assets of extraordinary charges assessed against all Intrust accounts for the express purpose of funding the Receiver's fees and expenses for services being rendered subsequent to the time when the Receiver refused to surrender the Assets to Plaintiffs and close Plaintiffs' Intrust accounts. Plaintiffs' Assets are further threatened by the specter of future, additional charges by the Receiver.

14. Plaintiffs have no adequate remedy on appeal after the Receiver liquidates part of their account and distributes it among the numerous unsecured general creditors of Intrust. At a hearing on October 4, 2000, the Trial Court informed the participants in the Receivership proceedings that it intended to permit the Receiver to effect the "allocation" of Intrust's \$68.1 million cash shortage against Plaintiffs' accounts pursuant to non-appealable, interlocutory orders which will not be certified for appeal. Once such "allocation" has been effected, it is expected that all Intrust account holders -including those accountholders whose accounts have been replenished with Plaintiffs' assets, will be permitted to withdraw their assets from their Intrust accounts. After such a distribution, Plaintiffs' only prospect for recovery of their assets would be through a new and separate class action lawsuit against all such creditors for recovery of amounts that would be *de minimis* per creditor.

15. At a hearing conducted November 3, 2000, the Trial Court established December 8, 2000, as a target date by which to complete the steps necessary to begin implementation of the Receiver's plan.

16. In these circumstances, Plaintiffs submit that it would be appropriate for the Court to establish an abbreviated briefing schedule. Plaintiffs suggest that their brief be due seven days after their Motion for Leave to File Their Complaint is granted, that Defendants'

brief be due within seven days of the filing of Plaintiffs' brief, and Plaintiff's reply brief be due seven days after the filing of Defendants' brief.

17. Plaintiffs supply the Court herewith their Complaint, Suggestions in Support thereof and their Appendix of relevant documents, as well as a Proposed Order.

WHEREFORE, Plaintiffs respectfully request that the Court enter its Order sustaining Plaintiffs' Motion for Leave To File Their Complaint For a Writ of Mandamus, establishing a briefing schedule as set forth in ¶ 16 above, and for such other, additional relief as this Court may deem proper and just under the circumstances.

Of Counsel  
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