

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

INDEPENDENT TRUST CORP.)	
)	
v.)	
)	No.
LAURENCE W. CAPRIOTTI;)	
JACK L. HARGROVE; ALAN)	
L. HURWICK; ITI)	
ENTERPRISES, INC.;)	
and, WHOLESALE REAL)	
ESTATE SERVICES INC.)	
(formerly known as)	
INTERCOUNTY TITLE CO.)	
OF ILLINOIS))	

COMPLAINT

The plaintiff, Independent Trust Corporation, through its receiver PricewaterhouseCoopers LLP and counsel, alleges and complains against defendants as follows:

PARTIES

1. Independent Trust Corporation (Intrust®) is an Illinois corporation with its principal place of business at 15255 94th Ave., Suite 303, Orland Park, Illinois. Intrust serves as a trustee for various types of trust accounts. The majority of the accounts are individual retirement accounts. On April 14, 2000, pursuant to Article VI of the Illinois Corporate Fiduciary Act, 205 ILCS 620/6-1 et seq., the Illinois Commissioner of Banks and Real Estate took control of Intrust and placed it in receivership. Pursuant to section 6-9 of the Illinois Corporate Fiduciary Act, the Commissioner appointed PricewaterhouseCoopers LLP (PWC®) as receiver for the purpose of liquidating Intrust through receivership. On April 14, 2000, this Court issued an Order of Administration with respect to the PWC receivership of Intrust. Among other things, the Court's Order of Administration

authorized PWC Ato take all measures to protect, preserve, collect and recover any assets and property of [AIntrust@] and debts and claims held by [AIntrust@], and to deal with the same in its own name as Receiver or in the name of [AIntrust@], and to file, prosecute and defend any suit or suits heretofore or hereafter filed by or against [AIntrust@] or the Receiver with respect to the affairs, assets, debts, and causes of action of [AIntrust@]@

2. During the time period relevant to this complaint, defendants Capriotti and Hargrove were the registered corporate officers and owners of several businesses that they operated as interchangeable entities from offices at 120 W. Madison St., Chicago, Illinois. These business included defendants Wholesale Real Estate Services, Inc. (formerly known as Intercounty Title Company of Illinois) and ITI Enterprises, Inc..

3. Wholesale Real Estate Services, Inc. (AWholesale@) is an Illinois corporation with its principal place of business at 120 W. Madison St., 8th Fl., Chicago, Illinois. Defendant Laurence Capriotti is the President of Wholesale. Defendant Jack L. Hargrove is the Secretary of the company. From 1973 until August 1, 1997, the registered name for Wholesale was Intercounty Title Company of Illinois. Even after Intercounty Title Company of Illinois changed its name to Wholesale, however, defendants Capriotti, Hargrove, and Hurwick continued to do business with Intrust using the name of Intercounty Title Company of Illinois or the name of various affiliated businesses such as ITI Enterprises, Inc. and Intercounty Title Company. For this reason, both Wholesale and Intercounty Title Company of Illinois are referred to herein as Intercounty Title Company of Illinois.

4. Defendant ITI Enterprises, Inc. (AITI Enterprises@) is an Illinois corporation that was incorporated on December 20, 1994. Upon information and belief, ITI Enterprises owns Intercounty Title Company of Illinois, and Hargrove and Capriotti own ITI Enterprises. ITI Enterprises has the same registered officers as Intercounty Title Company of Illinois: Capriotti is registered as the

President of ITI Enterprises, and Hargrove is registered as the Secretary of the company. ITI Enterprises also has the same registered place of business as Intercounty Title Company of Illinois: 120 W. Madison St., 8th Fl., Chicago, IL 60602. Upon information and belief, Capriotti and Hargrove have operated ITI Enterprises and Intercounty Title Company of Illinois without regard to the corporate form or the corporate distinctions between the entities. For example, as described below, ITI Enterprises participated directly in Intercounty Title Company of Illinois=perpetration of fraud against Intrust.

5. As stated previously, defendant Laurence Capriotti is a registered corporate officer and an owner of various affiliated businesses located at 120 W. Madison St., Chicago, IL 60602. These businesses include Intercounty Title Company of Illinois and ITI Enterprises. In addition, during the time period relevant to this complaint, Capriotti was a director of Intrust. Capriotti is a resident of Franklin Park, Illinois.

6. Like defendant Capriotti, defendant Hargrove is a corporate officer and an owner of ITI Enterprises, Intercounty Title Company of Illinois, and various affiliated businesses. In addition, during the time period relevant to this complaint, Hargrove was the Chairman of Intrust's Board of Directors and the owner of Intrust through Intrust's parent company, Madison Avenue Investments (also headquartered at 120 W. Madison St., Chicago, IL). Hargrove is a resident of Florida.

7. Upon information and belief, there is a unity of interest among defendants Capriotti, Hargrove, Intercounty Title Company of Illinois and ITI Enterprises. Under these circumstances, it would sanction a fraud and promote an injustice to observe the fiction of a separate corporate existence for defendants Intercounty Title Company of Illinois and ITI Enterprises.

8. Upon information and belief, defendant Alan Hurwick was the Chief Financial Officer of various affiliated companies owned and controlled by Capriotti and Hargrove. Hurwick, for

example, represented himself to be the Chief Financial Officer of ITI Enterprises. Upon information and belief, Hurwick is a resident of Cook County, Illinois.

JURISDICTION AND VENUE

9. Pursuant to the Illinois Code of Civil Procedure, 735 ILCS 5/2-101 et seq., this Court has jurisdiction and venue over this action. The defendants conduct business within Cook County, Illinois, and the causes of action asserted herein arose in Cook County, Illinois.

10. In addition, this Court has jurisdiction over this matter pursuant to the Illinois Corporate Fiduciary Act. That Act vests the Receivership Court with jurisdiction to hear and determine all issues and matters pertaining to or connected with the Commissioner's possession and control of [a] corporate fiduciary ... and such further issues and matters pertaining to or connected with the Commissioner's possession and control as may be submitted to such Court@ 205 ILCS 620/6-4(a). This suit is directly connected to the receivership of Intrust. As contemplated in this Court's Order of Administration, it involves the receiver's efforts to collect and recover [] assets and property of Independent@.

NATURE OF THE ACTION

11. This is an action for breach of contract, fraud, breach of fiduciary duty, conversion, and for an accounting stemming from the defendants' breaches of their fiduciary duties to Intrust. Intrust is a trust company that serves as a trustee for individual retirement and other accounts. In some circumstances, when Intrust holds funds in a beneficiary's account, Intrust deposits those funds into a secure interest-bearing account so that the beneficiary receives a return on his or her funds.

12. At all times relevant to this complaint, Capriotti and Hargrove owned and operated Intercounty Title Company of Illinois and its affiliated businesses. Capriotti and Hargrove also

served on the board of Intrust. In December 1990, Capriotti and Hargrove caused Intrust to enter into an Escrow Agreement with Intercounty Title Company of Illinois (the Escrow Agreement). Under the Escrow Agreement, Intrust agreed to deposit funds with Intercounty Title Company of Illinois. Intercounty Title Company of Illinois, in turn, pledged that it would hold Intrust's funds in an interest-bearing account at the LaSalle National Bank (the Original Escrow Account), unless and until it was specifically authorized by Intrust to remove the funds. Pursuant to the Escrow Agreement, during the period December 1990 through April 1999, Intrust deposited over \$50 million dollars of its account holders' funds with Intercounty Title Company of Illinois.

13. In violation of the Escrow Agreement and their fiduciary obligations to Intrust, Intercounty Title Company of Illinois and its officers and agents stole the money that Intrust deposited into the escrow account. In order to induce Intrust to continue depositing money into the escrow account and in order to conceal the continuing theft of funds deposited by Intrust, Intercounty Title Company of Illinois (together with its affiliated companies and through Capriotti and Hurwick) falsely represented to Intrust that Intrust's deposits were secure and that Intercounty Title Company of Illinois had not removed any funds from the escrow account. Among other things, Capriotti and Hurwick created fictitious LaSalle Bank statements, which they presented to Intrust in an effort to conceal the fraud. Through this action, Intrust seeks to recover the funds it deposited with Intercounty Title Company of Illinois, the interest owed Intrust under the terms of the Escrow Agreement, and other damages.

FACTUAL ALLEGATIONS

The Escrow Agreement

14. On December 4, 1990, Intrust entered into the Escrow Agreement with Intercounty Title Company of Illinois. Pursuant to the Escrow Agreement, Intrust deposited trust funds through Intercounty Title Company of Illinois. In turn, the agreement obligated Intercounty Title Company of Illinois to deposit the trust funds into an escrow account at the LaSalle National Bank of Chicago. The agreement also obligated Intercounty Title Company of Illinois to pay Intrust a minimum rate of interest on the money deposited by Intrust. Under the terms of the agreement, only Intrust was able to authorize withdrawals of Intrust deposits from the escrow account at LaSalle National Bank. Among other things, the agreement provided as follows:

- A. The purpose of this Strict Sole Order Escrow is to serve as an investment vehicle for the daily cash investment and management of Independent Trust Corporation's Self-Directed Retirement Plan Accounts, and other Trust Accounts, if any, from time to time, and to provide accounting services and support by Escrow Agent [Intercounty Title Company of Illinois] to Principal [Intrust].
 - 1) Funds may be deposited and withdrawn on a daily basis and from time to time by Principal upon its sole order to Escrow Agent.
 - 2) Funds deposited into this escrow by Principal shall be deposited by Escrow Agent into an account number 2132728 at LaSalle National Bank of Chicago, as the Escrow Depository.
 - a) The LaSalle National Bank of Chicago, as Escrow Depository, shall invest on a daily basis the escrow deposits and escrow balances in direct U.S. Government Obligations (overnight repurchase agreements or ~~overnight repo~~s.®).
 - b) LaSalle National Bank of Chicago shall calculate on a daily basis and shall credit and accrue on a daily basis the net interest income earned on the escrow funds directly to this escrow account. ...

Funds may be withdrawn from this escrow account upon the sole order of Independent Trust Corporation pursuant to written direction to Escrow Agent or by telephone redemption.

Funds so withdrawn shall be credited to Independent Trust's Operating Transaction Account Number 1046416 at the Northern Trust BankBDu Page pursuant to the Telephone Redemption Authorization Form, attached hereto and made a part hereof as Rider AB.@

See Escrow Agreement at Rider A. (The Escrow Agreement is attached to the complaint and attached hereto as Exhibit One.)

15. Under the terms of the Escrow Agreement, Intrust retained no direct control over the Original Escrow Account. Instead, Intrust depended upon Intercounty Title Company of Illinois as escrow agent to follow Intrust's directions with respect to the operation of the Original Escrow Account. For example, Intrust was not a signatory on the Original Escrow Account. Accordingly, it lacked the ability to remove money from the account. It could only do so through Intercounty Title Company of Illinois.

16. An individual named Michael Thyfault signed the agreement as the Chief Financial Officer of Intercounty Title Company of Illinois. An individual named Gary Irwin signed the agreement as the President of Intrust. Upon information and belief, Gary Irwin worked as President of Intrust from November 1990 through January 1992. Upon information and belief, during this period, Irwin also worked for defendants Capriotti and Hargrove at Intercounty Title Company of Illinois. In addition, Irwin worked for Intercounty Title Company of Illinois both before and after his tenure as President of Intrust. Upon information and belief, during the period of Irwin's employment at Intrust, Intercounty Title Company of Illinois rather than Intrust paid Irwin's salary. Upon information and belief, Capriotti directed Irwin in his role as President of Intrust to enter into the Escrow Agreement and thereby move Intrust deposits from an Intrust account into an account controlled by Intercounty Title Company of Illinois.

17. On January 18, 1991, Capriotti and Hargrove as directors of Intrust voted to approve the Escrow Agreement and the transfer of Intrust deposits into Intercounty Title Company of Illinois=

control. At that time, upon information and belief, Capriotti and Hargrove owned and operated Intercounty Title Company of Illinois.

Intrust=s Deposits Pursuant to Escrow Agreement

18. In December 1990, after entering into the Escrow Agreement, Intrust deposited funds in the amount of \$16,582,098.78 with Intercounty Title Company of Illinois. Specifically, on December 5, 1990, Capriotti and Hargrove as directors of Intrust (as well as a third director, Susan Pelozza) signed instructions for a wire transfer of \$16,582,098.92 into the Original Escrow Account.

19. During subsequent years, Intrust continued to deposit funds with Intercounty Title Company of Illinois pursuant to the Escrow Agreement. Intrust also withdrew money on occasion. By the end of 1991, based on the history of Intrust=s deposits, withdrawals, and interest earnings, the balance of funds on deposit with Intercounty Title Company of Illinois should have been more than \$18,000,000. By the end of 1992, Intrust should have had a balance of more than \$17,000,000. By the end of 1993, the balance should have been in excess of \$26,000,000. By the end of 1994, the balance should have exceeded \$33,000,000. By the end of 1995, the balance should have exceeded \$46,000,000. By the end of 1996, the balance should have exceeded \$53,000,000. The balance of the Intrust deposits should have exceeded \$52,000,000 by the end of 1997. It should have exceeded \$55,000,000 by the end of 1998. It should have exceeded \$67,000,000 by the end of 1999 and \$68,000,000 by the end of January 2000. Upon information and belief, defendant Capriotti and businesses controlled by Capriotti and Hargrove began misappropriating Intrust money shortly after Intrust began depositing funds into the Original Escrow Account in December 1990.

20. From the inception of the Escrow Agreement in December 1990 until January 2000, Intercounty Title Company of Illinois and ITI Enterprises did not provide Intrust with copies of LaSalle bank statements for the escrow funds. Instead, they provided Intrust with monthly

spreadsheets prepared by Intercounty Title Company of Illinois or ITI Enterprises, which purported to show the balances of Intrust deposits being held by Intercounty Title Company of Illinois on Intrust's behalf at the LaSalle National Bank. Upon information and belief, the monthly spreadsheets contained false information because the monthly spreadsheets did not disclose that Intercounty Title Company of Illinois through its officers and directors and affiliated companies had misappropriated Intrust deposits. Instead, the monthly spread sheets included false balances designed to reflect the amount of money that Intercounty Title Company of Illinois should have had, but did not have, on deposit for Intrust pursuant to the terms of the Escrow Agreement.

21. On October 7, 1992, together with another Intrust director, Capriotti and Hargrove as directors of Intrust wrote a letter to Intrust's auditing firm. In the letter, Capriotti and Hargrove assured Intrust's auditors that "[t]o the extent that trust assets have been intermingled with assets held by other entities, we have taken such steps as are necessary to determine that those assets belonging to our trusts do in fact exist and are available to the demands of the Company and its trust customers. We are not aware of any facts or circumstances which might lead to a conclusion that any loss or misappropriation of such assets has occurred." On September 2, 1993, together with another Intrust director, Capriotti and Hargrove as directors of Intrust wrote another letter to Intrust's auditing firm. In the letter, the defendants again assured the auditors of the following: "[t]o the extent that trust assets have been intermingled with assets held by other entities, we have taken such steps as are necessary to determine that those assets belonging to our trusts do in fact exist and are available to the demands of the Company and its trust customers. We are not aware of any facts or circumstances which might lead to a conclusion that any loss or misappropriation of such assets has occurred."

**Intercounty=s Alleged Creation of a
Segregated Account Holding Intrust Deposits**

22. As part of its regulatory function, the Illinois Office of Banks and Real Estate (AOBRE@¹ conducts examinations of trust companies within Illinois. In its February 28, 1994 report on Intrust, the OBRE commented on the escrow arrangement between Intrust and Intercounty Title Company of Illinois. Like Intrust, the OBRE was not aware that Intercounty Title Company of Illinois had been misappropriating Intrust deposits because the OBRE also relied on the fraudulent spreadsheets sent to Intrust by Intercounty Title Company of Illinois on a monthly basis. OBRE, however, noted that the funds deposited by Intrust through Intercounty Title Company of Illinois into the Original Escrow Account at LaSalle National Bank were commingled with other Intercounty Title Company of Illinois funds. In its report, the OBRE stated A[c]ommingling trust assets with that of an affiliate violates trust common law principles. One of the fundamental duties of a fiduciary is to keep trust property separate.@ The State directed Intrust to ensure that the Intrust deposits for which Intercounty Title Company of Illinois served as the escrow agent be segregated into a separate account.

23. At an April 7, 1995 board meeting, Capriotti and Hargrove stated that they agreed with Intrust President Gary Bertacchi that the Intrust deposits purportedly being held by Intercounty Title Company of Illinois should be segregated from other Intercounty Title Company of Illinois funds. At the time, Hargrove and Capriotti were the owners and directors of Intercounty Title Company of Illinois. Neither Hargrove nor Capriotti informed Bertacchi that Intercounty Title Company of Illinois

¹For part of the time-period relevant to this complaint, the OBRE was known as the Illinois Office of Banks and Trust Companies.

had already misappropriated millions of dollars in Intrust deposits from the Original Escrow Account.

24. On May 2, 1995, the State issued another report. This report noted that the Intrust escrow funds had not been placed in a segregated account. Among other things, the report stated that the escrow account is in the name of Intercounty Title Company of Illinois, an affiliated entity, and in addition to trust cash, also holds Intercounty funds. Additionally, Independent does not receive statements directly from the bank on this account; instead, it relies on spreadsheets supplied by Intercounty. This results in a commingling of funds and constitutes a breach of fiduciary duty. The Restatement 3rd of Trusts enumerates 17 duties a trustee owes to the beneficiaries of a trust. Paramount among these is the duty not to commingle trust assets with other assets. It is recommended that Independent Trust Corporation establish a separate trust account containing only cash which is the property of the various trusts.@

25. On July 25, 1995, the Intrust Board of Directors held another meeting. At that meeting, Capriotti responded to the OBRE report by stating that he would contact the finance department at Intercounty Title Company of Illinois and make sure that Intrusts deposits were segregated from other funds. Capriotti fraudulently concealed Intercounty Title Company of Illinois= continuing misappropriation of Intrust deposits.

26. On January 1, 1996, the OBRE issued another report that again directed the segregation of Intrust money from other Intercounty Title Company of Illinois funds. In response, Capriotti stated that he would have the funds segregated into a separate LaSalle account in the name of Intrust prior to the next OBRE examination. Capriotti again fraudulently concealed that companies controlled by Capriotti and Hargrove had misappropriated Intrust deposits.

27. On May 20, 1996, the Intrust Board of Directors held a meeting. Again, in response to the OBRE's directive regarding the segregation of Intrust escrow funds, Capriotti stated that he was going to have the funds segregated into a separate account at the LaSalle Bank in the name of Intrust. Capriotti again fraudulently concealed that he and companies controlled by Capriotti and Hargrove had already misappropriated much of Intrust's deposits.

28. On June 18, 1996, Bertacchi wrote a memorandum to Capriotti in which Bertacchi again asked Capriotti to segregate the Intrust deposits and put the funds into an account under Intrust's name and control. Capriotti never complied with this request, and no funds were transferred.

29. On September 10, 1996, Bertacchi wrote another memorandum to Capriotti. In this memorandum, Bertacchi stated: "You need to have the total amount of funds deposited by Intrust, (\$52 million +) segregated into an account solely in the name of and controlled by Independent Trust Corporation. We will establish the account at LaSalle and then your office will have to authorize a transfer of the amount due Intrust at that time from the existing account." Neither Capriotti nor anyone else from Intercounty Title Company of Illinois or its affiliated companies complied with this direction and transferred money into an Intrust account.

30. On December 4, 1996, January 22, 1997, and March 5, 1997, Bertacchi wrote additional memoranda to Capriotti urging Capriotti to segregate Intrust's deposits from other funds held by Intercounty Title Company of Illinois.

31. In the Spring of 1997, Intercounty Title Company of Illinois through its agents and employees falsely represented to Intrust that Intercounty Title Company of Illinois was transferring funds deposited by Intrust into a segregated account. For example, at a March 28, 1997 meeting of the Intrust Board of Directors, Capriotti stated that he was in the process of making sure that the funds deposited by Intrust into the Original Escrow Account were segregated into a new account established

at LaSalle. Capriotti said that he expected the segregation of such funds to be complete by the end of 1997's second quarter. Capriotti again fraudulently concealed that he and companies controlled by Capriotti and Hargrove had already misappropriated most of Intrust's deposits.

32. On June 6, 1997, the Intrust Board of Directors held another meeting. During the meeting, Capriotti said he was finalizing the process of segregating the Intrust trust funds held at LaSalle National Bank through the Intercounty Title Company Escrow Agreement into the new account established at LaSalle pursuant to the Commissioner of Bank's audit comment. Capriotti represented again that the segregation process would be completed prior to the end of the second quarter of 1997. Again, Capriotti fraudulently concealed that he and companies controlled by Capriotti and Hargrove had misappropriated Intrust deposits. Upon information and belief, Capriotti and his codefendants never intended to segregate Intrust's deposits into a separate account because to do so would have revealed their ongoing theft of Intrust deposits.

33. Upon information and belief, in the Spring of 1997, Intercounty Title Company of Illinois through its officers and agents did open a new bank account at the LaSalle National Bank of Chicago. The account was entitled Intercounty Title Co. as Escrowee for Independent Trust Corporation Trust Funds and bore account no. 5800065178 (referred to herein as the Second Escrow Account). Upon information and belief, Intercounty Title Company of Illinois never transferred the Intrust deposits that were suppose to be in the Original Escrow Account into the Second Escrow Account. Instead, Intercounty Title Company of Illinois, its affiliated companies, and Capriotti himself misappropriated more of Intrust's deposits.

34. As with the Original Escrow Account, Intercounty Title Company of Illinois did not include Intrust as a signatory on the segregated escrow account at LaSalle. As a result, Intrust still lacked direct control over its deposits and did not receive LaSalle bank statements. As they had done

prior to the opening of the segregated escrow account, Intercounty Title Company of Illinois and ITI Enterprises continued to send Intrust fraudulent spreadsheets that falsely reported the balance of Intrust deposits being held by Intercounty Title Company of Illinois.

35. In addition, on June 27, 1997, ITI Enterprises, through Capriotti and another individual, sent a fraudulent LaSalle Bank statement to Intrust. The bank statement sent by ITI Enterprises purported to be a statement for the Second Escrow Account. This bank statement showed a balance in the account of \$54,894,943.00. Upon information and belief, this bank statement was a forgery. It was never issued by the LaSalle Bank. Defendant ITI Enterprises sent the fictitious bank statement to Intrust in order to conceal the ongoing theft of Intrust deposits.

Intrust's Efforts to Take Control of the Account

36. Once Intercounty Title Company of Illinois had established the Second Escrow Account, which purportedly contained the segregated Intrust deposits, Intrust attempted to gain control of the account. To prevent this from happening, and to conceal the continuing misappropriation of Intrust deposits, Intercounty Title Company of Illinois and its affiliated companies, through defendants Capriotti and Hurwick, made repeated misrepresentations about the status of the account and the amount of funds held in the account.

37. On August 31, 1998, the OBRE issued a report in which it noted that Intrust neither held signatory authority over the new segregated escrow account nor received bank statements from LaSalle. The report stated that A[t]his situation continues to present a serious lapse in internal control and appears to violate the basic trust rule that the trustee take possession of and hold all trust property for the benefit of the beneficiaries. No sound reason was offered as to why these funds are in the name of Intercounty. Further, because official [sic.] of Intercounty are also on the Board of Directors of Independent and both entities are closely associated, an argument could be made that the corporate

fiduciary is indirectly benefitting from the trust funds, again a violation of basic trust principles.® In a December 10, 1998 written response to the OBRE's statement, Intrust replied A[t]he Board of Directors has carefully considered this comment. As a result therefrom, board member Larry Capriotti has indicated he would take the necessary steps to appropriately have this situation resolved to the satisfaction of the state auditors prior to the next annual audit.® No transfer of control of the account to Intrust took place, however. Instead, Capriotti fraudulently concealed that Capriotti and businesses controlled by Capriotti and Hargrove had already misappropriated the vast majority of Intrust deposits.

38. On or about August 31, 1998, Intercounty Title Company of Illinois presented another fictitious LaSalle bank statement to Intrust. The bank statement was a forgery; the LaSalle Bank did not issue it. The fraudulent bank statement purported to show the balance as of August 31, 1998 for the segregated escrow account--the account entitled AIntercounty Title Co. as Escrowee for Independent Trust Corporation Trust Funds® and bearing account number 5800065178. The fraudulent bank statement showed a balance of \$54,840,466.02. This amount corresponded to the amount of money reflected on the monthly spreadsheets sent Intrust by Intercounty Title Company of Illinois; it represented the approximate amount of money that Intercounty Title Company of Illinois should have had on deposit in the segregated escrow account based on Intrust's history of deposits and withdrawals and the account's interest rate. In actuality, as of August 31, 1998, the segregated escrow account (number 5800065178) only held \$45,949.24.

39. On September 15, 1998, ITI Enterprises, through Hurwick as Chief Financial Officer of ITI Enterprises, wrote a letter to Bertacchi. In the letter, Hurwick falsely stated the following: APlease be advised that Intercounty Title Company is holding \$54,832,735.26 in funds belonging to Independent Trust Corporation as of August 31, 1998.® In actuality, upon information and belief, the

segregated escrow account (the account into which Intercounty Title Company of Illinois represented it had placed all of Intrust's deposits) held less than \$50,000 as of September 15, 1998.

40. On April 6, 1999, Bertacchi wrote a memorandum to Capriotti. Bertacchi sent a copy of the memorandum to Hargrove. In the memorandum, among other things, Bertacchi stated ~~AI haven't~~ made any progress with [Hurwick] in terms of getting control of the account, duplicate statements, internet and/or modem access to the account or otherwise. ... Is there anything we can do to make this problem go away? After the memorandum was sent, neither Capriotti, Hurwick nor anyone else from Intercounty Title Company of Illinois informed Intrust that almost all of the Intrust deposits had been misappropriated.

41. In late April 1999, the Intrust Board of Directors met. Bertacchi and Capriotti attended in person. Hargrove participated by way of telephone. During the meeting, rather than acknowledging that Intercounty Title Company of Illinois and its affiliated companies had misappropriated the vast majority of Intrust deposits, Capriotti suggested that Intrust deposit an additional ten million dollars into the segregated escrow account. Because of Intrust's continuing inability to gain control of the segregated escrow account and its deposits, Bertacchi opposed the transfer of the additional ten million dollars. Hargrove, however, supported the transfer. Pursuant to Capriotti and Hargrove's directions, Intrust personnel then wire-transferred \$9.2 million dollars in additional deposits to the segregated escrow account because Capriotti and Hargrove as a majority of the Board of Directors had voted to move the additional money to an account over which Intrust had no control.

42. At the time of the \$9.2 million transfer, Capriotti and Hargrove owned Intercounty Title Company of Illinois and its affiliated companies. Hargrove and Capriotti justified the \$9.2 million wire-transfer on the ground that the transfer would benefit Intercounty Title Company of Illinois rather

than Intrust. Hargrove and Capriotti told Bertacchi that Intercounty Title Company of Illinois would itself receive more favorable interest rates on loans that Intercounty Title Company of Illinois held with the LaSalle Bank if Intercounty Title Company of Illinois increased the balance of Intrust deposits that Intercounty Title Company of Illinois held for Intrust at LaSalle. Hargrove and Capriotti told Bertacchi that the funds would be returned to Intrust by the end of April 1999.

43. In direct breach of the Escrow Agreement, Intercounty Title Company of Illinois through its employees and agents withdrew the \$9.2 million deposited by Intrust into the segregated escrow account almost immediately after Intrust wire-transferred the funds. For example, on April 21, 1999, Intrust wire-transferred 3.5 million dollars into the segregated escrow account. Intercounty Title Company of Illinois wire-transferred 3.5 million dollars out of the segregated escrow account on the same day. This left a balance in the account of \$45,949.24. Later, on April 23, 1999, Intrust wire-transferred 5.7 million dollars into the escrow account. That same day, Intercounty Title Company of Illinois wire-transferred 5.7 million dollars out of the escrow account. As a result, the balance remaining in the account returned to \$45,949.24.

44. On May 6, 1999, Bertacchi wrote a memorandum to Hargrove. Bertacchi informed Hargrove that Intercounty Title Company of Illinois had not returned Intrust's \$9.2 million in deposits by the end of April 1999, as Hargrove and Capriotti had promised. Bertacchi asked for Hargrove's help in securing the return of the funds. The money was never returned.

45. On May 12, 1999, Bertacchi and James Binkowski, a Vice-President of Intrust, wrote a letter to Hurwick. In the letter, Bertacchi and Binkowski directed Hurwick to wire-transfer \$15,000,000 from the escrow account into an Intrust account at Cole Taylor Bank. Bertacchi and Binkowski provided Hurwick with account information so that Hurwick would be able to accomplish this transaction. Bertacchi and Binkowski further requested that Hurwick contact Intrust by May 14,

1999 if Hurwick was unable for any reason to complete the transfer. Bertacchi and Binkowski sent copies of the letter to Capriotti and Hargrove. Neither Hurwick nor anyone else from Intercounty Title Company of Illinois or any of its affiliated companies transferred the money as directed by Bertacchi and Binkowski. Nor did anyone inform Bertacchi and Binkowski that the vast majority of the funds deposited by Intrust had been misappropriated.

46. On May 19, 1999, Bertacchi sent a memorandum to Capriotti. In this memorandum, Bertacchi stated A[o]bviously, we are waiting anxiously for the return of the \$9+ million which was guaranteed to be done by April 30. Please give me an update on when we can expect the funds returned. ... You may wire the funds either to our Cole Taylor account or to the new Harris account.@ Capriotti did not return the money nor did he inform Intrust that companies controlled by Capriotti and Hargrove had misappropriated the 9.2 million dollars.

47. On June 3, 1999, Bertacchi wrote another memorandum to Capriotti. In the memorandum, Bertacchi wrote ALarry, I need an update as to what is going on with the LaSalle situation. Specifically, when the \$9.2 million will be wired back either to our account at Cole Taylor or the new account at Harris. It has been five weeks now since the transfer was made and ... over a month since it was supposed to have been returned. I need to hear something on this prior to Tuesday of next week.@ Bertacchi also stated A[a]lso, as a reminder, I need to have the LaSalle account either split up, or >unlinked= as you put it, as we talked about a couple of weeks ago. The State is expected in any time now, so your immediate attention to this problem would be appreciated.@ Despite Bertacchi=s instructions, Intercounty Title Company of Illinois did not return any Intrust deposits nor transfer Intrust deposits to an Intrust controlled account.

48. On June 7, 1999, Bertacchi wrote another memorandum to Capriotti in which Bertacchi demanded that Capriotti transfer control of the Intrust deposits to Intrust. Capriotti did not transfer

the funds to Intrust's control nor did Capriotti inform Intrust that companies controlled by Capriotti and Hargrove had misappropriated Intrust deposits.

49. On June 8, 1999, Bertacchi sent another letter to Hurwick. In that letter, Bertacchi directed Hurwick to wire-transfer \$10,000,000 from the segregated escrow account into an Intrust account at the Cole Taylor Bank. Bertacchi also provided Hurwick with the account information needed to make this transaction. The letter requested that Hurwick contact Bertacchi by June 11, 1999 if Hurwick for any reason was unable to complete the wire transfer. Bertacchi sent copies of the letter to Capriotti and Hargrove. Neither Hurwick nor anyone else from Intercounty Title Company of Illinois or its affiliated companies transferred the money as directed by Bertacchi. Neither Hurwick nor anyone else from Intercounty Title Company of Illinois or its affiliated companies informed Intrust that almost all of the Intrust deposits had been taken from the escrow account.

50. On August 3, 1999, Bertacchi sent a letter to Hurwick. Among other things, the letter stated as follows:

Pursuant to our previous discussions, please deliver to our office the following:

Acknowledgment directly from LaSalle National Bank that James Binkowski and myself have been added to the signature cards at LaSalle National Bank on account number #5800065178 and that no withdrawals may be made without the written authorization of authorized officers of Independent Trust Corporation.

A recent printout (this is needed directly from LaSalle) as to the balance held in the above referenced account. A letter from authorized Intercounty officers giving Jim Binkowski or myself authority to go to LaSalle and request the printout of the account will also suffice.

A copy of the written repurchase agreement document that Intercounty maintains with LaSalle for the benefit of investing the funds held in the escrow account.

As an alternative to the above request, we hereby request the total escrow amount (\$66M+) be put into an account at LaSalle in the name of Independent Trust Corporation Trust Funds@and

that the account be solely under the control of authorized officers of Independent Trust Corporation. Jim and I will be happy to go to LaSalle to make whatever arrangements are necessary to facilitate the request.

If the above documents cannot be provided to our office by Wednesday August 11, 1999, or if the alternative situation, that being the establishment of the new account with LaSalle in the name of Independent Trust and all escrow funds deposited therein, cannot be completed by your office on or before Wednesday, August 11, 1999, then in accordance with Section VIII, Paragraph A of the Escrow Agreement # A0029838, dated 12/4/90 between Independent Trust Corporation and Intercounty Title Company, Independent Trust Corporation hereby requests termination [sic.] the escrow arrangement with Intercounty Title. We request that the total amount of funds held in the escrow are wired to the company's Cole Taylor trust account

The letter then provided Hurwick with wire-transfer instructions and requested Hurwick to provide a written explanation if Hurwick was unable to comply with the demands in the letter by August 13, 1999. Neither Hurwick nor anyone else from Intercounty Title Company of Illinois complied with the demands of the Intrust letter. Nor did Hurwick or anyone else from Intercounty Title Company of Illinois inform Intrust that the vast majority of Intrust deposits had been misappropriated.

51. Instead, on August 10, 1999, ITI Enterprises, through Hurwick, replied in writing to Bertacchi's letter. In the reply, ITI Enterprises falsely claimed that Hurwick had not acted on the directives contained in Bertacchi's letter because Hurwick had been advised that no action can be taken on these matters until they are brought up for discussion and a vote at an Independent Trust Corporation Board of Directors meeting. Authority to act on these matters resides solely on the Independent Trust Corporation Board of Directors and a course of action will be determined and implemented as voted upon.@ Again, neither Hurwick nor anyone else from ITI Enterprises informed Intrust that Intercounty Title Company of Illinois and its affiliated companies had already misappropriated the vast majority of funds deposited by Intrust into the original and segregated escrow accounts.

52. Also on August 10, 1999, the OBRE issued another report. Among other things, the OBRE report stated A[o]ne issue that has been an area of concern in the trust examinations for many years is the Escrow Agreement the trust company has with Intercounty Title Company. The central issue with this arrangement is the trust company's duty as fiduciary to take and keep control of trust account assets. ... [M]anagement should take immediate action to dissolve the Escrow Agreement with Intercounty Title Company, take control of trust assets and properly account for trust assets. It is requested that Independent Trust Company respond in writing to this Agency, not later than August 31, 1999, that the Escrow Agreement has been terminated, the trust company has control of all trust assets, and that all assets are properly accounted for on the trust accounting system.@

53. On August 19, 1999, Capriotti spoke with a representative of the OBRE. In explaining the escrow account, Capriotti stated that the Intrust Escrow Agreement with Intercounty Title Company of Illinois benefitted Intercounty Title Company of Illinois (a company owned by defendants Capriotti and Hargrove). Capriotti said that Intercounty Title Company of Illinois received more favorable treatment from the LaSalle Bank if Intercounty Title Company of Illinois also had Intrust account holder funds on deposit at LaSalle. Capriotti did not disclose that Intercounty Title Company of Illinois and affiliated companies had already misappropriated over \$60 million dollars of Intrust deposits.

54. On August 24, 1999, Bertacchi called an Intrust board meeting. At the board meeting, Capriotti stated that he had determined that the funds in the escrow account at LaSalle National Bank should be transferred to Intrust's control. Capriotti said that Intrust should open a new account at LaSalle National Bank of Chicago in its own name. Capriotti stated that the funds would be moved to the Intrust account as soon as Intrust established an account at the LaSalle National Bank of Chicago.

Capriotti again falsely concealed his knowledge that Intercounty Title Company of Illinois and its affiliated companies had already misappropriated the vast majority of Intrust's deposits.

55. On August 31, 1999, Bertacchi and Binkowski went to the LaSalle National Bank headquarters in downtown Chicago. Bertacchi and Binkowski went to the bank for the purpose of establishing a LaSalle National Bank account in Intrust's name so that the funds from the escrow account could be transferred to an account over which Intrust would have exclusive control. At this meeting, officials at the LaSalle National Bank informed Bertacchi and Binkowski that Intercounty Title Company of Illinois and its affiliated companies had transferred their bank accounts to another bank.

56. Also on August 31, 1999, after being told by officials at the LaSalle Bank that Intercounty Title Company of Illinois had transferred its accounts from the LaSalle Bank, Bertacchi and Binkowski went to the headquarters of Capriotti and Hargrove's various affiliated businesses: 120 West Madison Street, Chicago. At that location, Bertacchi and Binkowski attempted to speak with Capriotti but were told that Capriotti was unavailable. Bertacchi and Binkowski were able to speak with Hurwick, however. In that conversation, even though Hurwick had communicated with Intrust for years about the deposits supposedly being held for Intrust's benefit by Intercounty Title Company of Illinois, Hurwick falsely claimed to the Intrust officials that he had nothing to do with the Intrust escrow account.

57. On September 1, 1999, Bertacchi sent a letter to Hurwick. In the letter, Bertacchi again directed Hurwick to wire transfer the full amount of funds from the Intrust escrow account into an Intrust account at the Cole Taylor Bank. Bertacchi again provided Hurwick with wiring instructions for this transfer. Neither Hurwick nor anyone else wired the money as directed. Nor did

Hurwick or anyone else from Intercounty Title Company of Illinois or its affiliated companies inform Intrust that the vast majority of Intrust deposits had been misappropriated.

58. After the officers at Intrust had been informed that Intercounty Title Company of Illinois had moved its LaSalle Bank accounts, Bertacchi finally spoke with Capriotti after numerous attempts to reach him. On or about September 3, 1999, Capriotti falsely informed Bertacchi that Intercounty Title Company of Illinois had moved the Intrust deposits into an account at ABN AMRO International, the parent bank of LaSalle. Capriotti falsely assured Bertacchi that Capriotti would direct Hurwick to transfer the funds from Intrust's escrow account into an Intrust account at the Cole Taylor Bank. Capriotti assured Bertacchi that the wire-transfer would occur on September 7, 1999. Upon information and belief, none of the Intrust escrow funds had ever been transferred into an account at ABN AMRO International. Capriotti made this false representation in an attempt to conceal Intercounty Title Company of Illinois's theft of over \$60 million dollars in Intrust deposits.

59. On September 7, 1999, Bertacchi sent wire transfer instructions to Hurwick. In these instructions, Bertacchi recounted for Hurwick his September 3, 1999 conversation with Capriotti. Bertacchi directed Hurwick to wire transfer all of Intrust's deposits from the supposed ABN AMRO account into an Intrust account at the Cole Taylor Bank. Despite Capriotti's representations on September 3, 1999 and Bertacchi's directions to Hurwick on September 7, 1999, no such wire transfer ever occurred. Further, neither Hurwick nor anyone else informed Intrust that Intrust's deposits had been misappropriated.

60. On September 15, 1999, the OBRE issued a Corrective Action Order. In this order, the OBRE stated that A[t]he Corporation shall terminate the escrow account arrangement with Intercounty Title Company of Illinois, take control of the trust assets subject to that arrangement@ Despite the order, Capriotti and others continued to conceal the misappropriation of Intrust deposits.

61. On September 30, 1999, the directors of Intrust held a board meeting. Bertacchi, Capriotti, and Hargrove attended the meeting. At the meeting, Capriotti falsely stated that the funds being held by Intercounty in the escrow were not in any danger and that Intercounty is audited not only by their own auditors, the title insurance company they deal with and also by their reinsurer who in turn is audited by the DFI [the Illinois Department of Financial Institutions] and that their escrow accounts are fully audited and in full compliance.

62. Also on September 30, 1999, Capriotti together with the other Intrust directors sent a document to the OBRE entitled 9/30/99 Progress Report to Office of Banks and Real Estate Bureau of Banks and Trust Companies Examiner Assessments/Corrective Order. The document stated pursuant to the instruction of Larry Capriotti, an Intrust board member and President of Intercounty Title Company with whom the trust funds are deposited, the trust funds described in the corrective order will be placed under the direction and control of the officers and directors of Independent Trust Corporation no later than October 15, 1999. Capriotti fraudulently failed to disclose to Intrust or the OBRE that Intercounty Title Company of Illinois together with affiliated companies had already misappropriated the great majority of Intrust deposits.

63. In the Fall of 1999, as part of his continuing effort to conceal the theft of Intrust deposits, Capriotti told Bertacchi that he wanted the funds from the escrow account to be wire-transferred into either an account at the Old Kent Bank or an account at Bank One rather than an account at the Cole Taylor Bank. As a result, on October 5, 1999, Bertacchi wrote a letter to Capriotti with wiring instructions for the transfer of the escrow funds into an Intrust account at Bank One. Bertacchi also offered to open immediately an account at the Old Kent Bank if opening the account would facilitate the transfer of the escrow funds. Despite Capriotti's statements at the Board meeting and the directive sent

to Capriotti by Bertacchi, no money was wire transferred into any Intrust account. Nor did anyone inform Intrust of the misappropriation of Intrust deposits.

64. On or about October 12, 1999, Capriotti spoke with representatives of the OBRE. In this conversation, Capriotti fraudulently assured the personnel from the OBRE that Intercounty would transfer the Intrust escrow funds into an account controlled by Intrust within a couple of days. Again, Capriotti concealed the misappropriation of Intrust deposits from the OBRE.

65. On November 4, 1999, a meeting of the Intrust Board of Directors took place. During the meeting, as part of his effort to keep control of the escrow account from which his companies had misappropriated Intrust deposits, Capriotti moved to create a new position at Intrust: Officer for Regulatory Compliance. This officer was to be responsible for overseeing Intrust's response to the OBRE compliance orders, including the order that Intrust take control of the escrow account. After Hargrove seconded Capriotti's motion and the position was created, Capriotti was elected to fill the position. Also at the November 4, 1999 board meeting, Capriotti said that he would personally make sure that Intrust deposits were transferred to Intrust's control during the next week. Neither Capriotti nor anyone else transferred the Intrust deposits during the next week or at any time.

66. On November 9, 1999, another meeting of the Intrust Board of Directors occurred. Bertacchi, Capriotti and Hargrove participated in the meeting. Officials from the OBRE also attended the meeting. During the meeting, Capriotti acknowledged that the escrow account was his responsibility. Capriotti further said that he would direct the LaSalle Bank to send to the OBRE by facsimile a copy of the signature card on the escrow account and bank statements for the previous six months. Capriotti pledged that he would make sure that the segregated escrow account was closed and the Intrust deposits returned to Intrust by November 20, 1999. At the time he made these statements,

Capriotti knew them to be false; as Capriotti was aware, companies controlled by Capriotti and Hargrove had already misappropriated the vast majority of Intrust deposits.

67. On November 17, 1999, Capriotti, officials from the OBRE and other State officials met in Springfield, Illinois. During this meeting, Capriotti falsely pledged that he would close the escrow account and transfer the escrow funds on that day. Capriotti did not close the escrow account nor transfer funds from the account, however; as Capriotti knew at the time he made the false statements, the vast majority of the Intrust deposits had already been misappropriated.

68. On December 13, 1999, ITI Enterprises, through Capriotti, sent by facsimile to the OBRE a signature card for an account at LaSalle National Bank entitled ~~A~~Independent Trust Corporation as Trustee~~@~~. Upon information and belief, no such account was ever opened at LaSalle National Bank.

Hurwick signed this purported signature card on behalf of the Independent Trust Corporation as trustee, even though Hurwick held no position at Intrust and has never held any position at Intrust.

69. On December 15, 1999, ITI Enterprises sent by facsimile to the OBRE a document that purported to be a corporate resolution of Intrust and a note stating that Capriotti and Hurwick would be working with the LaSalle Bank to address remaining questions concerning the escrow account. The corporate resolution was addressed to the LaSalle Bank. Upon information and belief, the LaSalle Bank never received the corporate resolution, and Intrust never approved the corporate resolution. The fraudulent corporate resolution purported to inform the LaSalle Bank as to the signatory authority regarding an Intrust account at the LaSalle Bank entitled ~~A~~Independent Trust Corporation as Trustee~~@~~. As stated earlier, upon information and belief, no such account was ever opened at LaSalle Bank. Although he held no position at Intrust, Hurwick purported to sign the corporate resolution on behalf of Intrust and falsely represented on the fictitious corporate resolution that he was the Assistant Secretary of Intrust.

70. In January and February 2000, in speaking with Bertacchi, Capriotti continued to conceal the misappropriation of Intrust deposits. Rather than acknowledging that the funds had been misappropriated, Capriotti falsely stated that the delay in transferring the funds into an account controlled by Intrust was attributable to delays in establishing a new account at the LaSalle Bank.

71. On January 19, 2000, ITI Enterprises, through Capriotti, wrote a letter to the OBRE. In this letter, ITI Enterprises stated that Intrust is performing well, has excellent net worth, strong earnings and a good future.⁶ Rather than acknowledging that the funds in the escrow account had been misappropriated, ITI Enterprises falsely stated that the delay in transferring the funds into an account controlled by Intrust was attributable to delays occasioned by the unavailability of Intrust's President.

72. Also in January 2000, despite Intercounty Title Company of Illinois' repeated refusals to return Intrust money, Hargrove and Capriotti as directors of Intrust instructed Bertacchi to deposit additional funds in the Intercounty Title Company of Illinois Second Escrow Account. Hargrove and Capriotti said that an additional transfer was necessary because Intercounty Title Company of Illinois would benefit from an increased balance of Intrust deposits at the LaSalle Bank. At first, Capriotti demanded that an additional deposit of \$13 million dollars be made. After Bertacchi refused to transfer the money, Hargrove told Bertacchi to transfer \$10 million. After Bertacchi refused to transfer those funds, Hargrove told Bertacchi to transfer \$7 million. After Bertacchi threatened to resign rather than make the transfer, no transfer of funds occurred.

73. On February 4, 2000, Hurwick wrote a letter to the President of Intrust. In the letter, Hurwick falsely stated "[p]lease be advised that Intercounty Title Company is holding \$67,817,367.99 in funds belonging to Independent Trust Corporation as of December 31, 1999."⁷

74. Also on February 4, 2000, Capriotti spoke with a representative of the OBRE. In conformity with the fraudulent Intrust corporate resolution signed by Hurwick as Assistant Secretary of

Intrust and previously sent to the OBRE by ITI Enterprises, Capriotti falsely stated that Hurwick had been the Assistant Treasurer of Intrust for two years. In actuality, Intrust never employed Hurwick; Hurwick worked for Capriotti and Hargrove at Intercounty Title Company of Illinois and affiliated companies.

75. None of the defendants has returned Intrust's deposits to Intrust. Nor has any of the Defendants provided Intrust with an accounting of the misuses to which the money was put. As of the time of the April 2000 receivership, Intrust's Second Escrow Account (the account in which Intercounty Title Company of Illinois had said it had placed Intrust's deposits) held no money.

COUNT ONE
BREACH OF CONTRACT
(Against all Defendants except Defendant Hurwick)

1. Intrust realleges and incorporates paragraphs one through 76 of its complaint as if fully contained herein.

2. On December 4, 1990, Intrust and Intercounty Title Company of Illinois entered into a valid and enforceable contract as evidenced by the signed Escrow Agreement attached to this complaint.

3. Intrust fully performed its obligations under the Escrow Agreement. From the period December 1990 through April 1999, on a net basis, Intrust deposited over \$51 million dollars with Intercounty Title Company of Illinois pursuant to the terms of the Escrow Agreement.

4. Intercounty Title Company of Illinois breached the agreement by withdrawing funds from the escrow account without Intrust's consent and by failing to return Intrust deposits when Intrust demanded.

5. With the exception of defendant Hurwick, the other defendants are liable to Intrust for Intercounty Title Company of Illinois' breach of its contract with Intrust. Defendants Capriotti, Hargrove and ITI Enterprises owned and operated Intercounty Title Company of Illinois (now known as Wholesale Real Estate Services, Inc.) without regard for its corporate form. Because of the unity of interest among defendants Capriotti, Hargrove, Intercounty and ITI Enterprises, it would sanction a fraud and promote an injustice to observe the fiction of a separate corporate existence for defendants Intercounty Title Company of Illinois and ITI Enterprises.

6. As a result of the breach of contract, Intrust has suffered damages.

WHEREFORE, Plaintiff Intrust Corporation respectfully requests that this Court enter an order granting the following relief:

- A. A judgment of compensatory damages in the amount of \$68,096,551.78, an amount corresponding to the total of the net Intrust escrow deposits together with the interest owed Intrust through January 31, 2000 under the terms of the Escrow Agreement.
- B. As of the date of the judgment, any additional interest owed Intrust pursuant to the terms of the Escrow Agreement.
- C. An award of all attorney fees and additional costs associated with the prosecution of this suit.
- D. A judgment for such other relief (including equitable relief) as this Court deems reasonable, necessary and just.

COUNT TWO
FRAUD
(Against all Defendants)

1. Plaintiff realleges and incorporates paragraphs one through 76 of its complaint as if fully set forth herein.

2. As stated herein, Intercounty Title Company of Illinois through its employees and agents made numerous false and misleading statements to Intrust regarding the status of the Intrust escrow funds. As stated herein, defendant Capriotti individually made false statements regarding the status of the escrow account. Defendant Hurwick individually made similar false statements. Defendant ITI Enterprises also made false statements to Intrust regarding the status of the escrow account.

3. Upon information and belief, the defendants knew the statements to be false and untrue when the defendants made the statements.

4. Upon information and belief, the defendants made the false statements with the intent to deceive and defraud Intrust. The statements were made with the intent to induce Intrust to deposit funds into the original and segregated escrow accounts and with the intent to conceal the ongoing fraud so that the defendants would not be required to return Intrust's deposits to Intrust.

5. Believing the statements to be true, Intrust relied on the false statements when it deposited and kept funds in the escrow accounts.

6. An award of exemplary damages based on the defendants' fraud is appropriate because the fraud committed by defendants Capriotti, Hurwick, ITI Enterprises, and Intercounty Title Company of Illinois involved the violation of a duty stemming from a relation of trust and confidence: specifically, the defendants' violation of duties imposed upon them by virtue of Intercounty Title Company of Illinois' status as escrow agent and trustee for Intrust.

7. This count names defendant Hargrove because Hargrove (as well as Capriotti) is liable for the fraud committed by defendants Intercounty Title Company of Illinois and ITI Enterprises. Defendants Capriotti, Hargrove and ITI Enterprises owned and operated Intercounty Title Company of Illinois without regard for its corporate form. Because of the unity of interest among defendants Capriotti, Hargrove, Intercounty Title Company of Illinois and ITI Enterprises, it would sanction a fraud and promote an injustice to observe the fiction of a separate corporate existence for defendants Intercounty Title Company of Illinois and ITI Enterprises.

WHEREFORE, Intrust respectfully requests that this Court order the following relief:

A. Award Intrust compensatory damages in an amount of \$68,096,551.78, an amount corresponding to the total of the net Intrust escrow deposits together with the interest owed Intrust through January 31, 2000 under the terms of the Escrow Agreement.

- B. As of the date of the judgment, any additional interest owed Intrust pursuant to the terms of the Escrow Agreement.
- C. An award of all attorney fees and additional costs associated with the prosecution of this suit.
- C. An award of exemplary damages.
- E. A judgment for such other relief (including equitable relief) as this Court deems reasonable, necessary and just.

**COUNT THREE
DEFENDANT CAPRIOTTI-S
AND DEFENDANT HARGROVE-S
BREACH OF FIDUCIARY DUTY
AS INTRUST DIRECTORS**

(Against Defendants Capriotti and Hargrove)

1. Plaintiff realleges and incorporates paragraphs one through 76 of its complaint as if fully set forth herein.

2. At all times material to this complaint, defendant Capriotti was an Intrust director, and defendant Hargrove was Chairman of Intrust's Board of Directors. By virtue of these positions, Capriotti and Hargrove owed a fiduciary duty to Intrust and to the Intrust account holders who deposited their funds with Intrust. This fiduciary duty obligated Capriotti and Hargrove to exercise their best care, skill, and judgment in managing Intrust's business solely for the benefit of Intrust. The fiduciary duty prevented Capriotti and Hargrove from using Intrust assets for the benefit of any entity other than Intrust.

3. As set forth in this complaint, defendants Capriotti and Hargrove violated that fiduciary duty by using the assets of Intrust for the benefit of Intercounty Title Company of Illinois and other

entities owned and controlled by defendants Capriotti and Hargrove. For example, Capriotti and Hargrove violated their fiduciary duties by voting in April 1999 to transfer \$9.2 million of Intrust deposits into the segregated escrow account controlled by Intercounty Title Company of Illinois. Capriotti and Hargrove voted to transfer the funds under circumstances in which the transfer of additional Intrust deposits into the escrow account was clearly against Intrust's interests and could only have benefitted Intercounty Title Company of Illinois and affiliated entities owned by Capriotti and Hargrove.

4. An award of exemplary damages based on the defendants' breach of fiduciary duty is appropriate because the defendants acted willfully or with such gross negligence as to indicate a wanton disregard for Intrust and its trust-holders.

WHEREFORE, based upon the defendants' breach of fiduciary duty, Intrust respectfully requests that this Court order the following relief:

- A. Award Intrust compensatory damages in an amount of \$68,096,551.78, an amount corresponding to the total of the net Intrust escrow deposits together with the interest owed Intrust through January 31, 2000 under the terms of the Escrow Agreement.
- B. As of the date of the judgment, any additional interest owed Intrust pursuant to the terms of the Escrow Agreement.
- C. An award of all attorney fees and additional costs associated with the prosecution of this suit.
- D. An award of exemplary damages.
- E. A judgment for such other relief (including equitable relief) as this Court deems reasonable, necessary and just.

COUNT FOUR
BREACH OF FIDUCIARY DUTY
AS ESCROW AGENT

(Against all Defendants)

1. Plaintiff realleges and incorporates paragraphs one through 76 of its complaint as if fully set forth herein.

2. When it entered into the Escrow Agreement with Intrust, Intercounty Title Company of Illinois explicitly agreed to serve under the terms of the agreement as the escrow agent and trustee for Intrust. By virtue of this agreement, Intercounty Title Company of Illinois and its owners and officers (including defendants Capriotti, Hargrove, ITI Enterprises, and Hurwick) owed a fiduciary duty to Intrust. That duty obligated the defendants to exercise great care in the managing of Intrust's deposits and to act only according to the terms of the Escrow Agreement. The fiduciary duty also obligated the defendants fully and completely to disclose all material facts when dealing with Intrust.

3. As set forth in this complaint, the defendants violated that fiduciary duty by not managing Intrust's deposits according to the terms of the Escrow Agreement and by misleading Intrust as to the misappropriation of Intrust deposits.

4. An award of exemplary damages is appropriate in this case because the defendants intentionally and consciously disregarded the trust imposed in them by Intrust and exploited that trust for unwarranted gain.

5. Defendants Capriotti, Hargrove, and ITI Enterprises are liable for any damages imposed pursuant to this count on Intercounty Title Company of Illinois. Because of the unity of interest among defendants Capriotti, Hargrove, Intercounty Title Company of Illinois and ITI Enterprises, it would

sanction a fraud and promote an injustice to observe the fiction of a separate corporate existence for defendants Intercounty Title Company of Illinois and ITI Enterprises.

WHEREFORE, based upon the defendants' breach of fiduciary duty, Intrust respectfully requests that this Court order the following relief :

- A. Award Intrust compensatory damages in an amount of \$68,096,551.78, an amount corresponding to the total of the net Intrust escrow deposits together with the interest owed Intrust through January 31, 2000 under the terms of the Escrow Agreement.
- B. As of the date of the judgment, any additional interest owed Intrust pursuant to the terms of the Escrow Agreement.
- C. An award of all attorney fees and additional costs associated with the prosecution of this suit.
- D. An award of exemplary damages.
- E. A judgment for such other relief (including equitable relief) as this Court deems reasonable, necessary and just.

COUNT FIVE
CONVERSION

(Against all Defendants except Defendant Hurwick)

- 1. Plaintiff realleges and incorporates paragraphs one through 76 of its complaint as if fully set forth herein.
- 2. Despite repeated demands, the defendants have failed to return Intrust's escrow deposits in accordance with the Escrow Agreement.
- 3. The value of the funds taken is \$68,096,551.78, which corresponds to the net total of Intrust deposits and the amount of interest required to be paid Intrust through January 31, 2000 under the

terms of the Escrow Agreement. By reason of the taking, Intrust has been damaged in that amount together with the additional interest that will be owing to Intrust at the time judgment is entered.

4. As set forward in this complaint, the defendants converted Intrust deposits willfully and maliciously or with such gross negligence as to indicate a wanton disregard for the rights of Intrust and its account holders. As a result, an award of exemplary damages is appropriate pursuant to this count.

5. Defendants Capriotti, Hargrove, and ITI Enterprises are liable for any damages imposed pursuant to this count on Intercounty Title Company of Illinois. Because of the unity of interest among defendants Capriotti, Hargrove, Intercounty Title Company of Illinois and ITI Enterprises, it would sanction a fraud and promote an injustice to observe the fiction of a separate corporate existence for Intercounty Title Company of Illinois and ITI Enterprises.

WHEREFORE, Intrust respectfully requests that this Court order the following relief:

- A. Award Intrust compensatory damages in an amount of \$68,096,551.78, an amount corresponding to the total of the net Intrust escrow deposits together with the interest owed Intrust through January 31, 2000 under the terms of the Escrow Agreement.
 - a. As of the date of the judgment, any additional interest owed Intrust pursuant to the terms of the Escrow Agreement.
- B. An award of all attorney fees and additional costs associated with the prosecution of this suit.
- C. An award of exemplary damages.
- D. A judgment for such other relief (including equitable relief) as this Court deems reasonable, necessary and just.

COUNT SIX
ACTION FOR AN ACCOUNTING

(Against all Defendants)

1. Plaintiff realleges and incorporates paragraphs one through 76 of its complaint as if fully set forth herein.

2. As stated previously, under the express terms of the Escrow Agreement between Intercounty Title Corporation of Illinois and Intrust, Intercounty Title Company of Illinois became the escrow agent and trustee for Intrust deposits. As a result, Intercounty Title Company of Illinois and its agents owed a fiduciary duty to Intrust.

3. Rather than honoring that fiduciary duty, Intercounty Title Company of Illinois by and through the other named defendants violated that duty and misappropriated Intrust deposits.

4. Upon information and belief, Intercounty Title Company of Illinois commingled Intrust deposits with other Intercounty Title Company of Illinois funds. Upon information and belief, Intercounty Title Company of Illinois used Intrust deposits for various unauthorized purposes, including the financing of affiliated businesses operated by defendants Capriotti and Hargrove and the personal expenses of defendant Capriotti.

5. An accounting in this case is needed for two purposes. First, an accounting is necessary to identify any Intrust deposits that might be recoverable; it will be a complicated task in this case to identify the possible location of any Intrust deposits. Second, if Intrust deposits were misappropriated and then used for business ventures that produced profit, Intrust is entitled to that profit: it would be unjust for the defendants to retain any profits stemming from Intercounty Title Company of Illinois breach of fiduciary duty as escrow agent and trustee. An accounting is necessary so that the receiver and the Court will be able identify the uses to which the misappropriated funds were put.

6. Previously, and prior to the commencement of this action, plaintiff has unsuccessfully demanded that Intercounty Title Company of Illinois pay over to the plaintiff the amounts due plaintiff under the Escrow Agreement. In addition, although required to do so under the Escrow Agreement, Intercounty Title Company of Illinois has never provided Intrust with an accounting of the uses to which its deposits were put. At this point, any further demand would be futile.

7. The remedies sought under this Court should not only be imposed against Intercounty Title Company of Illinois but also against the remaining Defendants. Upon information and belief, ITI Enterprises rather than Intercounty Title Company of Illinois is in possession of the records necessary to render an accounting. In addition, the Court should order defendants Capriotti, Hargrove, and Hurwick to assist in the accounting because these defendants are presumably aware of the uses to which the Intrust deposits were put and the location of the records needed to accomplish the accounting.

8. Given the complexity of the account and the need to trace the uses to which Intrust deposits were put, Plaintiff has no adequate remedy at law.

WHEREFORE, Intrust respectfully requests that this Court order the following relief:

- A. An order requiring the defendants to provide Intrust with an accounting of the uses to which the Intrust deposits were put, including an accounting of any deposits attributable to the defendants=unauthorized use of Intrust deposits.
- B. Award Intrust compensatory damages in an amount of \$68,096,551.78, an amount corresponding to the total of the net Intrust escrow deposits together with the interest owed Intrust through January 31, 2000 under the terms of the Escrow Agreement.
- C. As of the date of the judgment, any additional interest owed Intrust pursuant to the terms of the Escrow Agreement.

- D. An award of all attorney fees and additional costs associated with the prosecution of this suit.
- E. An award of exemplary damages.
- F. A judgment for such other relief (including equitable relief) as this Court deems reasonable, necessary and just.

RESPECTFULLY SUBMITTED,

KIRKLAND & ELLIS
(Firm I.D. # 90443)
JAMES H.M. SPRAYREGEN
JOHN F. HARTMANN
JONATHAN C. BUNGE
ADAM P. MERRILL
200 East Randolph Drive
Chicago, Illinois 60601
(312) 861-2000

Attorneys for the Receiver
PRICEWATERHOUSECOOPERS