

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

IN THE MATTER OF THE POSSESSION)
AND CONTROL OF THE COMMISSIONER)
OF BANKS AND REAL ESTATE OF) Cause No. 00 CH 05905
INDEPENDENT TRUST CORPORATION) Judge Sidney A. Jones, III
a/k/a INTRUST, an Illinois Corporate fiduciary)

Motion of Peter J. Connaughton and Jeanine Connaughton

**To Exclude Intrust Account Nos. 840093 (IRA#34780), 840094 (IRA#43781), 985013 From
Any Allocation Of The Cash Shortage Referred To
In The Receiver's Recommendation Dated June 23, 2000**

Now Come Peter J. Connaughton and Jeanine Connaughton, and pursuant to the Court's comments at the July 28, 2000 hearing in this matter, move the Court to enter an Order precluding the Receiver from allocating any portion of the Intrust cash shortage to movants' accounts. As grounds for this motion, and in support thereof, Peter J. Connaughton and Jeanine Connaughton state:

1. Peter J. Connaughton established accounts with Intrust on or about June 17, 1996 and June 4, 1998, which accounts were assigned account numbers 840094 (IRA#34781) and 985013, respectively. Jeanine Connaughton established an account with Intrust on or about June 19, 1996, which account was assigned account number 840093 (IRA#34780).

2. On or about July 2, 2000, Peter J. Connaughton and Jeanine Connaughton served on the Receiver's attorney, and caused to be filed with this Court, Objections to the Receiver's Recommendation concerning the allocation of Intrust cash shortages. A true and correct copy of that objection is annexed hereto as Exhibit 1.

3. Peter J. Connaughton and Jeanine Connaughton continue to object to any allocation of the Intrust cash shortage to Intrust account numbers 840093 (IRA #34780), 840094

(IRA #34781) and 985013 on the grounds set forth in the objection, and those stated and further explained in the suggestions of Terry Bommer and Bruce Freimuth in support of their objections to the Receiver's Recommendation, all of which are incorporated herein by reference.

4. Peter J. Connaughton and Jeanine Connaughton have been informed by the Receiver or the Receiver's counsel, and, therefore, believe, that the cash shortage identified in the Receiver's report and recommendation can be traced to one or more transfers of cash from Intrust to Intercounty Title. Peter J. Connaughton and Jeanine Connaughton are further informed and believe that such transfer occurred only on the dates listed in the document labeled as Schedule of Intrust Cash Transfers to Intercounty Title.

5. A review of the undersigned's records relating to Intrust account numbers 840093 (IRA #34780), 840094 (IRA #34781) and 985013 shows that none of the cash transfers reflected on the Schedule of Intrust Cash Transfers to Intercounty Title occurred at a time when Intrust held any cash or cash equivalents on behalf of Peter J. Connaughton and Jeanine Connaughton for account numbers 840093 (IRA #34780), 840094 (IRA #34781) and 985013.

6. Attached hereto as Exhibit 2 is a complete copy of Peter J. Connaughton and Jeanine Connaughton's account statements for Intrust account numbers 840093 (IRA #34780), 840094 (IRA #34781) and 985013 from the inception of those accounts to and including June 30, 1999.

7. As attested to in the Affidavit of Bruce Freimuth, filed with this Court in support of Mr. Freimuth's and Mr. Bommer's motions to exclude their accounts from any allocation of the Intrust cash shortage, it was Intrust's practice, upon receipt of funds for deposit in accounts managed by Financial Timing Services to report the receipt of such funds to Financial Timing Services immediately after the funds became available to Intrust for investment pursuant to the instructions of Financial Timing Services (acting as the agent of Peter J. Connaughton and Jeanine Connaughton). Thus, deposits into account numbers 840093 (IRA #34780), 840094 (IRA

#34781) and 985013 made by check were reported to Financial Timing Services by Intrust at such time as the check cleared; deposits made to Intrust account numbers 840093 (IRA #34780), 840094 (IRA #34781) and 985013 via wire transfer were reported to Financial Timing Services upon receipt of the wire transfer.

8. As attested to in Mr. Freimuth's affidavit, upon receipt of receipt of notice from Intrust that funds deposited by a Financial Timing Services customer were available for investment, Financial Timing Services would issue instructions to Intrust to transmit the funds to one or more mutual fund families, for investment in particular mutual funds.

9. Upon receipt of such instruction from Peter J. Connaughton and Jeanine Connaughton's investment advisor, Financial Timing Services, Inc., Intrust would wire funds to the designated mutual fund for Peter J. Connaughton and Jeanine Connaughton's accounts. Attached hereto as Exhibit 2 is a schedule of deposits and investments made for account numbers 840093 (IRA #34780), 840094 (IRA #34781) and 985013.

10. Comparison of the period during which Intrust actually held funds for account numbers 840093 (IRA #34780), 840094 (IRA #34781) and 985013 in cash (Exhibit 2), and the points in time in which Intrust was transferring cash to Intercounty Title demonstrates at no time did Intrust simultaneously hold cash for account numbers 840093 (IRA #34780), 840094 (IRA #34781) and 985013 and transfer cash into Intercounty Title.

11. As a result of this lack of overlap between the transfers from Intrust to Intercounty Title and Intrust's handling of cash for account numbers 840093 (IRA #34780), 840094 (IRA #34781) and 985013, it is clear that none of the funds ultimately misappropriated from Intrust were funds deposited at Intrust for the accounts of Peter J. Connaughton and Jeanine Connaughton in account numbers 840093 (IRA #34780), 840094 (IRA #34781) and 985013.

WHEREFORE, Peter J. Connaughton and Jeanine Connaughton request that this Court enter an order directing the Receiver to exclude account numbers 840093 (IRA #34780), 840094 (IRA #34781) and 985013 from any allocation of the Intrust cash shortages.

Respectfully submitted

Maureen B. Connaughton, #6210190
Attorney for Objectors,
Peter J. Connaughton
and Jeanine Connaughton
3902 Riverlook Parkway
Marietta, Georgia 30067