

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

IN THE MATTER OF THE POSSESSION)
AND CONTROL OF THE COMMISSIONER) Case No. 00CH05905
OF BANKS AND REAL ESTATE OF) Judge Jones
INDEPENDENT TRUST CORPORATION)
a/k/a INTRUST, an Illinois corporate fiduciary.)

MOTION OF BRUCE AND KARI FRANKENBERG TO EXCLUDE
ACCOUNTS FROM THE ALLOCATION OF THE DEFICIENCY IN
THE TRUST ASSETS OF INDEPENDENT TRUST CORPORATION

BRUCE and KARI FRANKENBERG, Account Holders with Independent Trust Corporation, a/k/a Intrust (“Intrust”), by and through their Attorneys, make their motion to exclude their accounts from the allocation of the deficiency in the trust assets of Intrust; and in support thereof, state as follows:

Introduction

1. On April 14, 2000, the Commissioner of Banks and Real Estate of the State of Illinois (“Commissioner”) took possession and control of Intrust pursuant to applicable provisions of the Illinois Corporate Fiduciary Act. The basis for the Commissioner’s action was the existence of an unexplained cash shortage of trust funds which Intrust was holding for the benefit of its account holders (“Shortage”). The actual Shortage is estimated to be an amount in excess of \$68,000,000.00.

2. On April 14, 2000, the Commissioner appointed PricewaterhouseCoopers LLP as Receiver (“Receiver”) to liquidate Intrust.

3. On or about June 23, 2000, the Receiver filed the Receiver’s Report wherein the Receiver requested that this Court enter an Order directing him to:

- Implement a process whereby the Receiver allocates the identified \$68.1 million Shortage to all currently existing Holders of record who were Account Holders as of April 30, 1999, except that the allocation not apply to accounts in existence as of April 30, 1999, if the accounts were of the type otherwise described in paragraphs 24 and 26

of this Report as accounts that are to be excluded. If this Recommendation is not acceptable, the Receiver asks the Court to designate some other allocation formula. In either event, authorize the Receiver to take such actions as the Receiver may reasonably deem appropriate to give effect to this allocation among the effected account holders and issue such orders as the Receiver may reasonably request to aid in the implementation of an allocation.

- Allocate the Shortage to Account Holders based upon estimated April 14, 2000 account balances. Such balances are to be based on April 30, 2000 information, where appropriate, in order to expedite and cost-effectively execute the allocation process.
- Provide to the Court for its further consideration a report reflecting the results of the allocation process, recovery efforts, and proposed claims resolution process.

4. On July 13, 2000, Bruce and Kari Frankenberg (the “Frankenbergs”) timely filed their Objection to the Receiver’s Report. A copy of the Frankenberg’s Objection to the Receiver’s Report is attached to this Motion as **Exhibit A**.

5. On July 28, 2000, this Court commenced a hearing relating to the Receiver’s Report and Objections filed thereto (“July 28 Hearing”).¹ Counsel to the Frankenbergs appeared at the July 28 Hearing and presented the Frankenberg’s Objections to the Receiver’s Report.

6. At the July 28 Hearing, this Court heard and ruled upon, among other things, the numerous objections to the Receiver’s proposed allocation of the Shortage.

7. This Court’s ruling was to accept the allocation of the Shortage proposed by the Receiver. However, in rendering this ruling, this Court stated as follows:

“And for those persons who have the highly unusual fact scenarios, I again invite you to file a specific motion for a ruling on your objections. I assume that because there are only 300 objections out of 17,000 account-holders that that approximates the number of account-

¹ On information and belief, approximately 300 people expended their time, effort and resources to file and prosecute Objections to the Receiver’s Report.

holders who feel they have such significant circumstances and/or such unusual circumstances. And 300 out of 1,000 is an easy number for the Court to wrestle with. So that will be the order on that.”

A copy of that portion of the transcript from the July 28 Hearing setting forth this Court’s ruling on the issue of the allocation of the Shortage is attached to this Motion as **Exhibit B**.

8. Thereafter, on August 2, 2000, this Court entered an Order relating to its ruling on the issue of the allocation of the Shortage. In this Order, this Court, again, expressly states that the Court will consider excluding accounts from the allocation of the Shortage upon the filing of a timely motion wherein it can be established that the particular circumstances warrant such exclusion. A copy of this Court’s Order of August 2, 2000, is attached to this Motion as **Exhibit C**.

9. Based upon this Court’s Order of August 2, 2000, and in light of the fact that the Frankenbergs filed a timely objection to the Receiver’s Report, the Frankenbergs are required to file this Motion on or before August 9, 2000, if they intend to assert special circumstances establishing a basis for exclusion from the Court-ordered allocation of the Shortage.

10. The Frankenbergs assert that the particular facts and circumstances relating to their accounts warrant exclusion of their accounts from the allocation of the Shortage ordered by this Court.

**Relevant Background Pertaining
To the Frankenbergs**

11. The Frankenbergs assert that there exists a unique set of facts pertaining to them that render the allocation of the Shortage as ordered by this Court patently unfair and unreasonable as to their specific interests.

12. On April 19, 1999, **four days before** the Exclusion Date suggested by the Receiver,² the Frankenbergs opened accounts at Intrust through International Equity Advisors in Wilmington, North Carolina.

13. The Frankenbergs opened their accounts (on April 19, 1999) at Intrust with an opening deposit of \$440,000.00 (“Opening Deposit”). The Opening Deposit was then divided and deposited into two (2) separate accounts at Intrust. Immediately thereafter, the funds in these accounts were transferred to purchase various specific investments by the Frankenbergs. Therefore, the cash in the Frankenbergs’ accounts was not subject to risk.

14. As evidence of their Opening Deposit, the timing thereof, and the fact that their cash was not at risk, the Frankenbergs attach the following Exhibits to this Objection:

- **Exhibit D** consists of two (2) letters from Intrust to the Frankenbergs dated April 19, 1999, acknowledging the establishment of the Frankenbergs’ accounts at Intrust;

² The “Exclusion Date” is defined in this Objection as April 23, 1999. The Exclusion Date is established in paragraphs 24 and 26 of the Receiver’s Report as the last date that funds comprising a portion of the Shortage were transferred from Intrust to Intercounty Title Company of Illinois. Therefore, according to the Receiver, accounts opened after the Exclusion Date should not share in any allocation of the Shortage.

- **Exhibit E** consists of two (2) Custody Agreements from Intrust establishing a leveraged account and an unleveraged account at Intrust in favor of the Frankenbergs; and
- **Exhibit F** consists of two (2) Account Summary Statements from Intrust to the Frankenbergs for the month of April, 1999, wherein the Opening Deposits are acknowledged as having been received by Intrust on April 19, 1999.

Basis for Exclusion From Allocation of Shortage

15. According to the Receiver's own conclusions drawn from his investigation, no more than \$9,200,000.00 of the Shortage arose from the point of the Frankenbergs' Opening Deposit.³

16. In fact, it is unclear from the Receiver's Report that any of the \$9,200,000.00 portion of the Shortage in April, 1999, arose after the Frankenberg's Opening Deposit.

17. Despite these facts, a portion of the overall Shortage is being allocated to the Frankenbergs. Furthermore, as evidenced by the documents appended to this Motion, the Frankenbergs' cash was never at risk. The result of the Court-ordered allocation, as to the Frankenbergs, is unfair and unreasonable.

Conclusion

18. The Frankenbergs, as with other Account Holders, are certainly unfortunate to become saddled with the financial consequences of the misconduct of Intrust. However, unlike most other depositors, the Frankenbergs were clients of Intrust for no more than four (4) days of the years of

³ Attached to this Objection as Exhibit G is Exhibit III from the Receiver's Report. This Exhibit clearly indicates that, in April, 1999, \$9,200,000.00 was "wire deposited" thereby increasing the overall Shortage to approximately \$68,100,000.00. However, no specific date of this "wire deposit" has been provided by the Receiver.

misconduct. Importantly, their cash was never at risk. Fairness and equity dictate that the Frankenbergs are entitled to treatment other than that established in this Court's Order of August 2, 2000.

19. For these reasons, the Frankenbergs' request that this Court exclude their accounts from the Court-ordered allocation of the Shortage.

WHEREFORE, BRUCE and KARI FRANKENBERG, Account Holders with Intrust, pray for the entry of an Order as follows:

- A. Excluding their Accounts from the allocation of the Shortage ordered by this Court at the July 28 Hearing and as set forth in this Court's Order of August 2, 2000; and
- B. Granting such other relief as may be just and appropriate.

Respectfully submitted,

BRUCE AND KARI FRANKENBERG

By: _____
One of Their Attorneys

FRANKENBERGS' COUNSEL:

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