

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

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)
INDEPENDENT TRUST CORPORATION)
a/k/a INTRUST, an Illinois corporate)
fiduciary)
) Case No. 00 CH 05905
) Honorable Sidney A. Jones, III

MOTION TO EXCLUDE ACCOUNT OF WILLIAM E. McDONNELL
FROM THE ALLOCATION OF SHORTAGE

NOW COMES CARMELLA McDONNELL by and through her attorney, E. PAUL LANPHIER of LANPHIER & KOWALKOWSKI, LTD. and for and as her Motion requesting his Court to exclude the Account of William E. McDonnell from the Allocation of the ‘Shortage’ states as follows:

I.

Background

CARMELLA L. McDONNELL is the surviving spouse of William E. McDonnell who died a resident of the State of Illinois, County of Cook on February 22, 2000. A copy of Mr. McDonnell’s Death Certificate is attached hereto as Exhibit A. Prior to his death, Mr. McDonnell maintained an Individual Retirement Trust Account (IRA) with Independent Trust Corporation, Intrust for the benefit of William McDonnell. William McDonnell named his wife, CARMELLA McDONNELL as beneficiary of all of the IRA trust proceeds.

Currently William McDonnell is the titled account holder for a self-directed IRA with INTRUST as trustee with a value in excess of \$800,000.00.

Mr. McDonnell's IRA account contains mutual funds, stocks, bonds and cash. A copy of Mr. McDonnell's March 2000 Account Summary is attached hereto and marked as Exhibit B. To the best of CARMELLA McDONNELL'S knowledge, none of her husband's IRA assets was ever deposited or escrowed with Intercounty Title Company.

Since her husband's death CARMELLA McDONNELL and her agents contacted Intrust giving them authorization to transfer and roll over the IRA accounts into the name of CARMELLA McDONNELL. Numerous telephone conversations were had with an Intrust representative by the name of Janice (708-873-5300, Ext. 308) who as late as April 11, 2000 advised representatives of CARMELLA McDONNELL that the paperwork was complete and that the transfer would be accomplished. Because of the Emergency Order of April 14, 2000 Intrust now refuses to complete the transfer.

On May 26, 2000 CARMELLA McDONNELL filed with this Court a "Motion to Enforce Compliance" with respect to her accounts and to direct the Commissioner of Banks to release certain funds. That matter had been entered and continued for hearing before this Court on July 28, 2000 at 11:00 a.m. Thereafter the Motion was entered and continued for hearing on August 9, 2000 at 1:00 p.m.

On July 13, 2000 CARMELLA McDONNELL filed "Objection and Response to Receiver's Recommendation with Respect to Allocation of Cash Trust Fund Shortage"

On August 2, 2000 this Court entered an Order providing in part that:

"The Court will consider excluding an Account from Allocation of Shortage if:

- a. The individual account holder of that account filed a timely Objection to the Receiver's recommendation in accordance with the Court's Order setting hearing and directing method of Notice on Allocation of Cash Trust Fund Shortage With Notice Thereof; and
- b. (3) Substantially all cash in the account was not subject to the risk."

II.

Argument

As demonstrated by the attached Exhibits the cash, if any, in the Account of Mr. McDonnell was not subject to risk and should be excluded from the Allocation of the Shortage.

Mr. McDonnell established a Self-Directed IRA with INTRUST on or about June 17, 1987. The funds used to establish this Account were represented by a lump sum distribution of Retirement Benefit from Mr. McDonnell's previous employer. The funds were represented and deposited by a draft from the Financial Institution's Retirement Fund payable to Mr. McDonnell in the amount of \$120,540.00. This INTRUST initial Adoption Agreement was dated June 17, 1987 is Exhibit C. A copy of the check used to open this Account is Exhibit D. Once the TRUST Account was established assets were purchased with the deposited funds. Thereafter, the primary assets in Mr. McDonnell's Account were common stock and a real estate mortgage. After the purchase of the assets the overage of approximately \$7,000.00 in the Account was laced in an INTRUST Designated Money Market Account. All subsequent INTRUST

statements and Accounts are attached to this Motion and marked as Group Exhibit E. The first TRUST Report of Receipts and Distribution reflects Mr. McDonnell's total contributions and the allocation thereof. All funds were used to purchase common stock and a real estate mortgage. The balance of \$7,127.28 was placed in a "Intrust Designated Money-Market Balance". Thereafter, with further contributions and cash dividends the cash in INTRUST was the following amounts for the following years:

- (1) 12/31/88 - \$13,700.98
- (2) 12/31/89 - \$31,715.93
- (3) 12/31/90 - \$1,239.38
- (4) 12/31/91 - \$10,689.35
- (5) 12/31/92-\$16.16
- (6) 12/31/93 - \$44,508.90
- (7) 12/31/94-\$104,174.11
- (8) 12/31/95 - \$904.03
- (9) 12/31/96 - \$3,786.58
- (10) 12/31/97 - \$33,256.83
- (11) 12/31/98 - \$29,700.63
- (12) 12/31/99 - \$4,382.54

As of March 31, 1999 the amount in the Money Market Account was \$34,030.44 and as of June 30, 1999 the INTRUST Money Market Account was \$34,721.49.

In July of 1995 Mr. McDonnell entered into Continuing Investment Direction with INTRUST and Oppenheimer & Company. The initial deposit for the Oppenheimer Account was transfer of funds from the Anthony Tucker Brokerage Account. A copy of this Investment direction is attached and marked as Exhibit F.

In the first quarter of 1998 Mr. McDonnell sold shares of Motorola and

purchased Vanguard Stock Funds.

On or about July 27, 1998 Mr. McDonnell entered into a "Continuing Investment Direction" with INTRUST establishing a separate Brokerage Account with Quick and Reilly, Inc. The initial deposit for the Quick and Reilly Account was:

- A. 1,000 Shares Indymac.
- B. 654 Shares Lucent Technology
- C. 4,066 Shares Walgreen.

These stocks were removed from the INTRUST holding and placed into the Quick and Reilly Account. A copy of this Continuing Investment Direction is attached and marked as Exhibit G.

The Quick and Reilly Account and Oppenheimer Account are still maintained. From July 1998 to January 2000 the holdings in the Quick and Reilly Account were common stock. In January 2000, 5,000 Shares of Walgreen were sold and the proceeds were placed in a Galaxy Money Market Account with Quick and Reilly.

Copies of the Quick and Reilly Statements are attached to this Motion and marked as Group Exhibit H.

III.

Summary

As demonstrated by the above Accounts Mr. McDonnell's INTRUST Portfolio consisted principally of equity holdings, i.e. common stocks. The cash in the Account was nominal and as of April, 1999 the entire Portfolio at INTRUST consisted of the following:

- A. Money Market Account - \$10,592.57.
- B. Mendik Real Estate Limited Partnership, Value - \$2,828.00

- C. Suburban Illinois Bank Corp. Shares, Value - \$36,724.00
- D. Andrew Corporation Shares, Value - \$69,260.62
- E. Electroglass, Inc. Shares, Value - \$12,875.00
- F. Tellabs, Inc. Shares, Value - \$97,750.00
- G. 3 Com Corporation Shares, Value - \$10,187.78.

The remaining Portfolios were held outside of the INTRUST Account under separate Continuing Investment Directions and consisted of the following:

- A. Vanguard Total Stock Market, Value - \$94,948.81 with Oppenheimer
- B. Vanguard Index, Value - \$10,592.00 with Oppenheimer
- C. Quick and Reilly, Value - \$337,978.61.

In 2000 all Shares of Electroglass, 3 Com Corp, Andrew Corp. and the Vanguard Accounts were sold through the Oppenheimer Continuing Investment Direction. Copies of those sale confirmations are attached and marked as Exhibit I.

According to the Receiver's Exhibit III of his "Recommendation Regarding Allocation of Cash Trust Fund Shortage" the funds began to be at "Risk" in January of 1995 and ending in April of 1999. During that time period the only cash in the McDonnell Account that would have been subject to risk at Mr.

McDonnell's INTRUST Account can be summarized as follows:

- (1) 3/1/95 - \$74,860.00
- (2) 6/30/95 - \$82,205.25
- (3) 9/30/95 - \$43,922.23
- (4) 12/31/95 - \$904.03
- (5) 3/31/96-\$1,515.39
- (6) 6/30/96 -\$2,133.11
- (7) 9/30/96 - \$89,652.52
- (8) 12/31/96 - \$3,786.58
- (9) 3/31/97 - \$1,759.24
- (10) 6/30/97 - \$2,337.61

- (11) 9/30/97 -\$67,833.33
- (12) 12/31/97 - \$33,256.83
- (13) 3/31/98 - \$5,096.60
- (14) 6/30/98 - \$87,155.88
- (15) 9/30/98 - \$49,073.37
- (16) 12/31/98 -\$29,700.63
- (17) 3/31/99 - \$34,030.44
- (18) 6/30/99 -\$34,721.49.

During the At Risk Time Period the average Cash Account would be \$35,774.69.

Accordingly, it is Respectfully Submitted that this Court enter an Order determining that all assets in the INTRUST McDonnell Account No. 1604466 except for the amount of \$35,774.69 be excluded from the "Shortage" and that this Court enter an Order instanter requiring INTRUST, pursuant to the previous written demand and written direction of CARMELLA McDONNELL return all said funds and Accounts to her order except for the above amount.

RESPECTFULLY SUBMITTED

CARMELLA McDONNELL

BY: _____
E. PAUL LANPHIER, Counsel