

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

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

**Richard C. McLaurin's Motion
For Exclusion From Cash Shortage Allocation**

Now comes Richard C. McLaurin, by his attorney Donald C. Shine, and moves for the entry of an order excluding him from the allocation of the \$68.1 million cash shortage, and in support thereof states as follows:

1. Richard C. McLaurin ("McLaurin") is an individual account holder at Intrust, as will be more fully described, infra.

2. McLaurin timely filed an objection on July 20, 2000 to the Receiver's Recommendation Regarding Allocation of Cash Shortage and participated, through counsel, at the July 28, 2000 hearing thereon. (A copy of McLaurin's objection, stamped filed, is attached hereto as Exhibit A, and the appearance of counsel filed July 27, 2000 is attached hereto as Exhibit B.)

3. McLaurin established his Self Directed Individual Retirement Account through Intrust, Trust Account #1609743, on December 3, 1996. (The Intrust IRA Adoption Agreement and transmittal letter are attached as Exhibit C.)

4. McLaurin initially funded his Intrust Account on December 30, 1996 with the deposit of \$489,868.90 from his former employer's 401K plan. He then directed that \$300,000 of the funds be forwarded to and deposited with Jack White & Company, a San Diego, California broker/dealer firm. (The Investment Direction to Intrust, Jack White & Company Account Application and a facsimile transmittal form are attached as Exhibit D.)

5. Jack White & Company acknowledged receipt of the \$300,000 initial deposit on January 29, 1997, per the monthly brokerage account statement prepared by Jack White & Company and attached hereto as Exhibit E.

6. McLaurin's account at Jack White & Company is entitled Independent Trust

Corporation, Trustee, for the benefit of Richard C. McLaurin IRA #1609743, dated December 3, 1996. McLaurin has made all investment decisions for the account and has communicated them directly to Jack White & Company.

7. Jack White & Company (and its successors) monthly account statements for McLaurin's self directed IRA Trust Account from inception through June 30, 2000 are in the possession of McLaurin's counsel and may be inspected by the Receiver or his counsel at any mutually convenient time. The statements confirm that there have been no additional deposits of funds, nor have there been any withdrawals or transfers of any kind since the initial deposit.

8. On March 13, 1997 McLaurin signed and sent to Intrust a second Investment Direction. This direction specified that Intrust establish a second IRA Trust Account, this account to be established at E*Trade Securities, Inc., in Palo Alto, California. The investments in this account also were to be and have been self directed by McLaurin. McLaurin contemporaneously instructed Intrust to forward a check in the amount of \$191,000 to E*Trade. (Copies of the direction forms and E*Trade account opening documents are attached hereto as Exhibit F).

9. The E*Trade Securities, Inc. monthly account statement for April 1997 reflects that the above referenced \$191,000 was forwarded and deposited to McLaurin's account at E*Trade on April 7, 1997 (A copy of the April 1997 monthly account statement prepared and sent to McLaurin by E*Trade is attached as Exhibit G).

10. McLaurin's account at E*Trade Securities, Inc. is entitled Independent Trust Corporation for the Benefit of Richard C. McLaurin, Trust #1609743, the same trust number by which the Jack White & Company securities account is carried.

11. McLaurin's IRA trust account at E*Trade Securities, Inc. is self directed, that is, he makes all investment decisions himself in the same fashion as he makes and communicates all investment decisions in the Jack White & Company account.

12. McLaurin's wife, Lana, is the sole beneficiary designated on both the Jack White and E*Trade accounts.

13. E*Trade Securities, Inc. monthly statements from McLaurin self directed IRA trust account from inception through June 30, 2000 are in the possession of McLaurin's counsel and may be inspected by the Receiver or his counsel at any mutually convenient time. The statements confirm that there have been no additional deposits of funds, nor have there been any withdrawals or transfers of any kind since the initial deposit.

14. The Intrust account summary for McLaurin's trust Account #1609743 (which is his only Intrust account) for the period January 1, 2000 to March 31, 2000 reflects, in addition to the E*Trade and Jack White & Company (n/k/a TD Waterhouse Brokerage) balances, a \$1,723.78 balance in a money market account. Presumably this \$1,723.78 line item refers to an Intrust money market account. In any event, it is de minimus when compared with the \$1 million plus that McLaurin currently has on deposit with E*Trade and T D Waterhouse. (a copy of the referenced Intrust quarterly statement is attached as Exhibit H. Further, McLaurin's counsel has possession of Intrust account summaries from

inception through March 31, 2000 and will make them available to the Receiver or his attorney if requested.

15. The deposit by McLaurin and all transfers to his brokerage firm (Jack White & Company and E*Trade) occurred in the period December 30, 1996 through April 7, 1997. This period is within a "gap" acknowledged by the Receivers Recommendation Regarding Allocation Of Cash Trust Fund Shortage, at p. 11, Paragraph 28 and Exhibit III thereto. The Receiver states in pertinent part, "[t]his summary [Exhibit III] indicates that there were transfers between Intrust and Intercounty almost every month between December 1990 and August 1996. There was then a gap until July 1997 and an additional gap until April 1999. There were no known transfers after April 1999."

16. The Affidavit of Richard C. McLaurin attesting to the above stated facts is attached as Exhibit I.

17. Based on the facts set forth above, the vast majority of which are collected from financial records contemporaneously prepared by parties other than Intrust, the flow of McLaurin's funds into and out of Intrust occurred at a time when they, except for the de minimus amount referenced in paragraph 14 above could not have been misdirected to Intercounty by Intrust.

For the above and foregoing reasons the Motion of Richard C. McLaurin for Exclusion From the Cash Shortage Allocation should be granted.

Respectfully submitted,

By: _____
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Richard C. McLaurin

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