

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            )        Case No. 00CH05905  
INDEPENDENT TRUST CORPORATION        )  
a/k/a INTRUST, an Illinois corporate        )        Honorable Sidney A. Jones, III  
fiduciary                                        )

**MOTION OF N.G.N.G., INC., TO EXCLUDE INTRUST ACCOUNT # 985564  
FROM ANY ALLOCATION OF THE CASH SHORTAGE  
AS REFERENCED IN THE RECEIVER’S RECOMMENDATION**

COMES NOW N.G.N.G., Inc., (“Claimant”), by and through its attorneys, Blumenfeld, Kaplan & Sandweiss, P.C., and for its Motion to Exclude Intrust Account # 985564 from any Allocation of the Cash Shortage as Referenced in the Receiver’s Recommendation, states to the Court as follows:

**STATEMENT OF FACTS**

1. Funds were transferred from Independent Trust Corporation (“Intrust”) to Intercounty Title Insurance Company (“Intercounty”) between December 5, 1990 and April 23, 1999. See Independent Trust Corporation Preliminary Detailed Listing of Transactions with Intercounty Title Company of Illinois For the Period December 1990 through February 2000, which is attached hereto, marked as Exhibit 1 and incorporated herein by reference.

2. Approximately \$68.1 million dollars has been misappropriated from Intercounty leaving a cash shortage.

3. Claimant opened and funded a trust account with Intrust, numbered 985564, on March 26, 1999. See Claimant’s Account Statements from inception through January 2000, which are attached hereto, marked as Exhibit 2 and incorporated herein by reference.

4. Claimant deposited two million dollars (\$2,000,000.00) into the account on March 26, 1999 which was Claimant's only deposit prior to April 23, 1999. See Intrust Account Statement for March 1999 which is attached hereto, marked as Exhibit 3 and incorporated herein by reference.

5. The Receiver's Recommendation was to apportion the estimated \$68.1 million dollar shortage among all Intrust account holders (except land trusts) that had open accounts prior to April 23, 1999 and continued to have accounts as of the date Intrust entered into Receivership.

6. Claimant timely filed its objection to the Receiver's Recommendation on July 14, 2000.

7. Claimant continues to object to any allocation of the shortage to its account on the grounds set forth in the previously filed objection and the reasons stated further herein.

8. The Court has ordered that it will consider excluding an account from allocation of the Shortage, if the individual account holder filed a timely objection to the Receiver's Recommendation and either the account balance on April 23, 1999 was de minimus or there is evidence that substantially all cash in the account was not subject to the risk of misappropriation from the Intercounty Account.

## ANALYSIS

**CLAIMANT'S ACCOUNT MUST BE EXCLUDED FROM THE SHORTAGE ALLOCATION PLAN BECAUSE (1) CLAIMANT FILED A TIMELY OBJECTION TO THE RECEIVER'S RECOMMENDATION; AND (2) AT NO TIME WAS ANY OF CLAIMANT'S CASH SUBJECT TO RISK OF MISAPPROPRIATION FROM THE INTERCOUNTY ACCOUNT BECAUSE CLAIMANT'S CASH INVESTMENT IN ITS INTRUST ACCOUNT WAS IMMEDIATELY TRANSFERRED IN AND DIRECTLY TO MUTUAL FUNDS OR MONEY MARKET ACCOUNTS.**

9. A transfer of funds from Intrust to Intercounty occurred on July 29, 1996. See Exhibit 1.

10. The next transfer of funds from Intrust to Intercounty occurred on April 21, 1999 and then again, for the last time, on April 23, 1999. See Exhibit 1.

11. Upon information and belief, it was the practice of Independent Trust Corporation ("Intrust"), upon receipt of funds for deposit in accounts managed by International Equity Advisors, L.L.C. ("IEA") to report the receipt of such funds to IEA immediately after the funds became available to Intrust for investment pursuant to the instructions of IEA (acting as the agent for the account holder).

12. Upon information and belief, deposits into accounts made by check were reported to IEA by Intrust at such time as the check cleared and deposits made to Intrust accounts via wire were reported to IEA upon receipt of the wire transfer.

13. Upon receipt of notice from Intrust that funds deposited by an IEA customer were available for investment, IEA would issue instructions to Intrust to transmit the funds to one or more mutual fund families, for investment in particular mutual funds.

14. Upon receipt of such instruction from IEA and based upon the instructions previously given to Intrust, Intrust would wire funds to the designated mutual fund for the IEA customer's account.

15. Claimant's cash was not subject to the risk of misappropriation from the Intercounty account because Claimant's investment in its Intrust account occurred on March 26, 1999 and was directly transferred to a Bear Stearns Cash Account on that same day. Therefore, it is clear that

Claimant never had any money invested in or transferred to the Intercounty Account. See Exhibit 3.

16. On April 21, 1999, certain activity was taking place in Claimant's account, but that activity was simply the re-investing of dividends or the exchanging of funds between various mutual funds or money market accounts. See Intrust Account Statement for April 1999 which is attached hereto, marked as Exhibit 4 and incorporated herein by reference.

17. Upon information and belief, the terms "EXCH TO" and "EXCH FROM," as those terms are used in the Intrust account summaries, refer to an exchange of intra-family mutual funds.

18. Upon information and belief, in such exchanges, no cash would pass through the Intrust cash account.

19. Upon information and belief, the terms "DIVIDEND" and "REINVEST" as those terms are used in the Intrust account summaries, refer to a reinvestment of dividends into the same fund or money market account.

20. Upon information and belief, in such a reinvestment, no cash would pass through the Intrust cash account.

21. On April 23, 1999, there was no activity whatsoever in Claimant's account and no activity occurred in that account until five (5) days after the last transfer from Intrust to Intercounty. See Exhibit 4.

22. All of Claimant's account assets consisted of investments in mutual funds or money market accounts on both April 21, 1999 and April 23, 1999; therefore, Claimant's account funds could not have been in the form of cash in the Intrust cash account on either April 21, 1999 or April 23, 1999 and could not have been misappropriated. See Exhibits 3 and 4.

23. Claimant's account should be excluded from the Allocation because Claimant timely filed its objection to the Receiver's Recommendation and at no time was Claimant's cash subject to the risk of misappropriation because Claimant's initial investment on March 26, 1999 was directly

invested in a Bear Stearns Cash Account on that date and Claimant's cash was not in the Intrust cash account on April 21, 1999 or April 23, 1999.

**CLAIMANT'S ACCOUNT MUST BE EXCLUDED FROM THE SHORTAGE ALLOCATION PLAN BECAUSE (1) CLAIMANT FILED A TIMELY OBJECTION TO THE RECEIVER'S RECOMMENDATION; AND (2) CLAIMANT'S ACCOUNT BALANCE ON APRIL 23, 1999 WAS DE MINIMUS.**

24. In April 2000, Claimant estimates that it has an account balance over seven (7) times greater than the account balance on April 23, 1999.

25. The dramatic increase in Claimant's account balance after April 23, 1999 is primarily due to the deposit of funds totaling more than nine million dollars (\$9,000,000.00) into Claimant's account after April 23, 1999. See Exhibit 2, account statements for May 1999, September 1999 and October 1999.

26. Due to the tremendous disparity between the pre-April 23, 1999 and the post-April, 23, 1999 account balances, Claimant's pre-April 23, 1999 account balance is de minimus and should be excluded from the allocation plan.

WHEREFORE, Claimant, N.G.N.G., Inc., respectfully requests that this Court enter an Order directing the Receiver to exclude Intrust Account # 985564 from any allocation of the Intrust cash shortfall and granting such other and further relief as the Court deems necessary and just.

BLUMENFELD, KAPLAN & SANDWEISS, P.C.

By:

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Richard F. Huck, III, # 6184625  
Julia E. Pusateri, # 6231165  
168 N. Meramec, Suite 400  
St. Louis, Missouri 63105  
(314) 863-0800

(314) 863-9388 (fax)

Attorneys for N.G.N.G, Inc.