

**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)	No. 00 CH 5905
INDEPENDENT TRUST CORPORATION)	Judge Sidney A. Jones III
Illinois Corporate Fiduciary.)	
)	

ORDER

This Court having held hearings on July 28, 2000, August 2, 2000, and August 9, 2000 regarding the Receiver's Recommendation Regarding Allocation of Trust Fund Shortage ("Allocation Recommendation") and the Receiver's Recommendation Regarding Implementation And Collection Of The Cash Trust Fund Shortage ("Implementation Recommendation") filed by PricewaterhouseCoopers LLP as receiver of Intrust ("Receiver") and having also heard and fully considered objections and other considerations of the account holders and other parties in interest to the Allocation Recommendation and the Implementation Recommendation, and entered an Order dated August 2, 2000 addressing some of the issues raised during the July 28, 2000 hearing, it is hereby ORDERED:

1. The Court finds that the notice of and opportunity for hearing was reasonable, adequate, and sufficient under the circumstances and complies with the requirements of the Illinois Corporate Fiduciary Act and other applicable law.
2. The Court's August 2, 2000 Order is incorporated herein. However, to the extent that there are differences between the August 2, 2000 Order and this Order, the terms of this Order shall be controlling.
3. A further hearing regarding the Allocation Recommendation and the Implementation Recommendation is continued until September 12, 2000 at 1:00 p.m. The Receiver shall prepare a proposed Order dealing with all remaining matters involving the allocation of the Shortage, and

the implementation and the collection of the Shortage, other than the proposed amount of the allocation percentage, for the Court's consideration of entry of such Order at the hearing set for September 12, 2000 at 1:00 p.m. to resolve those matters. The Receiver shall post that proposed Order on the Intrust website by September 5, 2000.

4. The Court finds that there is a deficiency in the trust assets of Independent Trust Corporation ("Intrust") as of April 14, 2000, of approximately \$68.1 million (the "Shortage"), that Intrust is unable to meet its obligations to its account holders, and that it is therefore necessary to allocate the Shortage to the certain accounts at Intrust as already ordered by this Court or as to be ordered in the future by this Court.

5. The Court finds that pursuant to the Illinois Corporate Fiduciary Act it has the authority to allocate the Shortage.

EXCLUSION OF ACCOUNTS FROM ALLOCATION

6. The following accounts shall be EXCLUDED from allocation of the Shortage:
- (a) Any account which opened after April 23, 1999 (except as provided in Paragraph 7 of this Order);
 - (b) Any account which is an Illinois land trust (except as provided in Paragraph 8 of this Order);
 - (c) The approximately 216 accounts for which Intrust performs bookkeeping tasks only, for which Intrust was not the trustee, and for which Intrust did not, at any time, receive funds for deposit into its trust cash account; and
 - (d) Any account which contained double counted assets (excluding the duplicative assets only).

Exclusion of an account from allocation of the Shortage pursuant to this Paragraph 6 shall be automatic and without further action by the account holder.

7. Notwithstanding the provisions of Paragraph 6(a) of this Order, accounts opened after April 23, 1999 and open as of April 14, 2000 shall be authorized to be included in the allocation of the Shortage if: (a) such accounts were funded from assets held in an Intrust account prior to April 23, 1999; (b) the pre-April 23, 1999 account was not subject to exclusion from allocation of the Shortage; and (c) the account is not excluded pursuant to the provisions of Paragraph 10 of this Order.

8. Notwithstanding the provisions of Paragraph 6(b) of this Order, an account consisting of an Illinois land trust shall be authorized to be included in the allocation if: (a) the Receiver determines that the account had a cash balance before April 23, 1999; or (b) the account is the proceeds of another account at Intrust that is not subject to exclusion.

9. On or before August 31, 2000, the Receiver shall post on Intrust's website: (a) the account numbers of all accounts it has identified as meeting the requirements of Paragraph 6(a) of this Order; and (b) the account number of all accounts it has identified as meeting the requirements of Paragraph 7 of this Order.

10. In addition to those accounts described in Paragraph 6 of this Order, the Court will also consider excluding an account from allocation of the Shortage if:

- (a) The account satisfies any *one* of the following requirements:
 - (1) The account never contained cash;
 - (2) The account balance on April 23, 1999 was zero or *de minimus*;
 - (3) Substantially all cash in the account was not subject to risk; and

(b) The individual account holder of that account files a motion with the Court on or before August 31, 2000 (which date is substituted for the August 9, 2000 deadline in the Court's August 2, 2000 Order) requesting the exclusion of his or her account from allocation. All documentation necessary to substantiate the movant's claim that one of the requirements of subsection (a) of this Paragraph 10 is satisfied must be attached to the motion.

11. All motions for exclusion from allocation of the Shortage filed on or before the date of this Order and pursuant to the Court's August 2, 2000 Order shall be treated as having been filed pursuant to Paragraph 10 of this Order.

12. All motions brought pursuant to Paragraph 10 of this Order, including all supporting documentation, shall also be sent to counsel for the Receiver and must be received by close of business on August 31, 2000. Delivery of motions shall be in accordance with the terms of Paragraph 23 of this Order.

13. Any account holder seeking to have its account excluded from allocation of the Shortage pursuant to Paragraph 10 of this Order shall bear the burden of proving that its account may properly be excluded.

14. Motions brought pursuant to Paragraph 10 of this Order will be scheduled for briefing and hearing as follows:

(a) The Receiver will identify those motions that it believes present issues of law and/or fact common to some or all of the motions filed pursuant to Paragraph 10 of this Order (the "Exemplar Motions"). On or before September 8, 2000, the Receiver will: (a) post copies of the Exemplar Motions, excluding any exhibits or supporting documentation attached thereto on the Intrust website; and (b) provide notice to those account holders, and their counsel, if applicable, that their motions have been selected as Exemplar Motions.

(b) On September 12, 2000 at 1:00 p.m., the Court will hold a scheduling conference for all Exemplar Motions. Hearings on these motions will be held beginning September 25, 2000 at 2:00 p.m. and continuing at 2:00 p.m. from day to day thereafter that week.

(c) All persons filing a motion pursuant to Paragraph 10 of this Order, but whose motion is not selected as an Exemplar Motion, shall be entitled to attend the hearing of any Exemplar Motion. The hearing and resolution of any Exemplar Motion shall be without prejudice to the rights of any other account holder filing a motion pursuant to Paragraph 10 of this Order.

15. Notwithstanding the provisions of Paragraph 14 of this Order, the motion for exclusion from the allocation of the Shortage filed by Edward Toptani, Esq., Toptani Law Offices, 127 East 59th St., New York, NY on behalf of Intrust account holder Joseph Umbach (the “Umbach motion”) shall be heard by the Court on September 25, 2000 commencing at 2:00 p.m. On or before August 31, 2000, the Receiver may identify additional motions brought pursuant to Paragraph 10 of this Order to be heard by the Court at the same time as the Umbach motion. The Receiver may file a response to the Umbach motion and any other motions that it wishes to be heard therewith on or before August 31, 2000. Mr. Umbach, and any other moving party to which the Receiver has filed a response in accordance with this paragraph, may file a reply in support of his motion on or before September 11, 2000.

16. The Court received and considered various objections to the Receiver’s Allocation Recommendation and Implementation Recommendation, including but not limited to requests that the Receiver be directed to surrender assets held for particular customer accounts to the customers pursuant to Section 620/6-10(5) of the Illinois Corporate Fiduciary Act. Except to the extent that the Court has incorporated those objections herein, all such objections and requests are overruled.

ALLOCATION OF SHORTAGE

17. Except for accounts excluded from allocation of the Shortage pursuant to Paragraphs 6 and 10 of this Order, the Shortage shall be allocated among all accounts (including, without limitation, custodial, brokerage, and other accounts) for which Intrust served as trustee, custodian and/or administrator as of April 14, 2000 (“Eligible Accounts”).

18. The Shortage shall be allocated amongst all Eligible Accounts as a percentage of the assets contained within each account, which percentage shall be the same for each Eligible Account and shall be set by the Court after the Receiver provides a recommendation as to such percentage following resolution of the motions for exclusion brought pursuant to Paragraph 10 of this Order.

19. Except for those accounts excluded from the allocation of the Shortage pursuant to Paragraphs 6 and 10 of this Order, Individual Retirement Accounts (“IRAs”) and commodity accounts are hereby determined to be Eligible Accounts and shall be subject to allocation of the Shortage.

20. The Court finds that the cash deposited with Intrust was deposited into a commingled fund. Accordingly, the Court finds that the allocation of the Shortage shall be amongst all of the assets in an Eligible Account, regardless of whether such assets consist of cash, securities, intangibles, or other assets.

21. For purposes of determining the amount of the allocation of the Shortage to be allocated to each Eligible Account, the April 30, 2000 balances, as adjusted back to April 14, 2000 for cash transactions as provided in the Allocation Recommendation, of all Eligible Accounts, shall be used.

22. Eligible Accounts that contain illiquid assets will not be revalued for purposes of determining the amount of the allocation of the Shortage for each such account.

MISCELLANEOUS

23. Motions and pleadings to be filed with the Court shall be filed by delivery of the original paper copy of the motion and pleading, including any exhibits or supporting documentation attached thereto, to the Clerk of the Circuit Court of Cook County, Chancery Division, Room 802, Richard J. Daley Center, 50 West Washington St., Chicago, Illinois, 60602. All pleadings filed on or after the date of this Order, including motions brought pursuant to Paragraph 10 of this Order, shall also be served on counsel for the Receiver as follows:

(a) By sending a paper copy of the motion or other pleading, including copies of all supporting documentation, to Andy Groesch, Legal Assistant, Kirkland & Ellis, 200 E. Randolph Drive, Chicago, Illinois 60601; and

(b) By transmitting an electronic copy of the motion or other pleading, excluding copies of supporting documentation, to the Receiver's counsel. Electronic copies may be sent by mailing a computer disk containing the file to the name and address in subparagraph (a) of this Paragraph 23 or via electronic mail to itrust@kirkland.com. All electronic files must be labeled so as to easily identify the moving account holder and should be in either Microsoft Word or WordPerfect format. The requirements of this Subsection (b) of Paragraph 23 of this Order shall only apply to account holders represented by counsel. Notwithstanding the foregoing, account holders not represented by counsel may, at their election, serve electronic copies of motions and other pleadings, including motions brought pursuant to Paragraph 10 of this Order, on counsel for the Receiver as provided herein.

24. Account holders or other interested parties filing motions, including motions brought pursuant to Paragraph 10 of this Order, or other pleadings need only file copies with the Court and serve copies on counsel for the Receiver. The Receiver will post copies of the

following categories of pleadings, excluding any exhibits or supporting documentation attached thereto, on the Intrust website, provided that such pleadings are served in accordance with the terms of Paragraph 23 of this Order:

(a) All Exemplar Motions;

(b) All motions filed pursuant to Paragraph 10 of this Order and chosen by the Receiver to be heard at the same time as the Umbach motion;

(c) Responses by the Receiver to the Exemplar Motions, the Umbach motion and any motions to be heard with the Umbach motion and any replies filed to any such responses; and

(d) Other motions or pleadings filed by account holders or other interested parties, in the above-captioned case, except for those filed pursuant to Paragraph 10 of this Order.

25. The Receiver shall provide the Court with a courtesy copy of any motion, answer or other response, and any reply to any answer or other response, in accordance with the Court's standing order regarding courtesy copies.

26. All prior Orders of this Court remain in full force and effect, including the Court's April 14, 2000 Order of Administration and June 8, 2000 Order, except as specifically modified hereby.

SO ORDERED.

Date: August 17, 2000

/S/ Sidney A. Jones, III
SIDNEY A. JONES III, Presiding Judge