IN THE UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

IN RE: CUMBERLAND INVESTMENT CORPORATION

ON APPEAL FROM A JUDGMENT OF

THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF RHODE ISLAND

CA NO. 89-11051

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DATED: NOVEMBER 1, 2007

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TABLE OF AUTHORITIES CITED

CONSTITUTION OF THE UNITED STATES

For purposes of this pleading Petitioner claims the information used, where the Source is from the October 9, 2007, Billing, to be **Newly Discovered evidence.

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

IN RE: CUMBERLAND
INVESTMENT CORPORATION

PETITIONER'S MOTION AND MEMORANDUM

IN SUPPORT OF MOTION TO APPEAL AND/OR AMEND

BANKRUPCY ORDER, DATED NOVEMBER 3, 2004

Now comes Harold F. Chorney, pro se, a petitioner with property interests and an interested party in the above captioned matter and requests this court amend the bankruptcy order dated November 3, 2004. (See Exhibit A.) This order, reverts back to court orders dated July 3, 1991, and July 2, 1992. Whether final or interlocutory the November 3, 2004, court order has had a final and irreparable effect on the Petitioner's rights resulting in preclusion to access to the courts. This order spotlights one method by which Petitioner is being denied evidence necessary to establish facts in dispute by officers of the court.

Jurisdiction

A. The Courts of Appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the District Courts of the United States….28 U.S.C.A. §1291 and interlocutory orders of the District Courts… 28 U.S.C.A. §1292, when they have a final and irreparable affect on the rights of the parties. See **Cohen v. Beneficial Industrial Loan Corporation**, 69 S.Ct. 1221, 1225, 1949.

B. Question of Finality of November 3, 2004, order

There is some question concerning the finality of the November 3, 2004, court order in this instant case, but there is no question concerning the irreparable effect on the rights of the parties in this eighteen year old case. According to the docket 914a, dated 10/05/2005, allegedly the bankruptcy court modified the November 3, 2004, order allowing Petitioner to file objections to Trustee Motion for Examination. This was *after* ordering Petitioner to testify in court on

October 5, 2005. On October 28, 2005, Petitioner filed objections to Trustee's Motions for Examination. However, Petitioner never received any written notification of a modified court order.

C. Challenges to the Bankruptcy Order

> "The finality of the bankruptcy order mandates that …any future challenges to that order will be either in the form of appeal or amendment of the judgment." Cert. denied, 498 U.S. 819, 111 S. Ct. 64, 112 L.Ed. 2d 39 (1990), an appeal of **Hendrick v. Avent**, 891 F.2d 583, Fifth Cir.

According to F.R.C.P., Rule 60(b), "Upon motion and upon such terms as are just, the court may relieve a party …from a final judgment, order, proceeding for the following reasons…Rule 60(b)2 newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); Rule60(b)(3)fraud….misrepresentation, or other misconduct of the adverse party; Rule 60(b)(6)any other reason justifying relief from the operation of the judgment.

I. STATEMENT OF THE ISSUES

A. Whether the sanctions of the November 3, 2004 order as applied fall within the purview of

F.R.C.P. Rule 60(b)(6) in that the imposition of sanctions preclude Petitioner of access to the courts.

B. Whether the history of failure by officers of the court to disclose or produce materials in civil and related criminal discovery so that Petitioner can present his case, can constitute misconduct within the purview of Rule 60(b)(3). See **Anderson v. Cryovac, Inc.**, 862 F2d 910, 923. (1st Cir. 1988.)

C. Whether Judge Votolato has engaged in conduct prejudicial to the effective and expeditious administration of the case thus committing wrongs against the institutions set up to protect and safeguard the public.

D. Whether Petitioner can obtain a fair hearing and be granted due process and equal protection under the law with Judge Votolato presiding over this case.

II. BACKGROUND

Petitioner has been involved with two related groups of proceedings before this court. There have been appeals related to a civil bankruptcy case, 89-11051ANV, and a related criminal case 92-099P. A lengthy Designation of the Record was presented to this court in relation to the last appeal, Ca. No. 02-1976, which Petitioner wishes to incorporate into this pleading.

Appeal No. 02-1976 was denied by the Circuit Court and an appeal of this decision was not granted certiorari by the Supreme Court of the United States.

Many of the events, related to the sanctions of November 3, 2004, imposed upon Petitioner refer to events ruled upon in these past appeals.

III. STATEMENT OF THE CASE FOR FIRST ISSUE

Whether the sanctions of the November 3, 2004 order as applied fall within the purview of F.R.C.P. Rule 60(b)(6) in that the imposition of sanctions preclude Petitioner of access to the courts.

A. TRAVEL AND FACTS:

1. On November 3, 2004, the Bankruptcy Court for the District of Rhode Island issued an order: ORDERS: (1) GRANTING MOTION TO STRIKE AND (2.) IMPOSING ADDITIONAL SANCTIONS. (See Exhibit A.) This order refers to ORDER, dated July 3, 1991. (See Exhibit B.) and ORDER, dated July 2, 1992. (See Exhibit C.)

2. On July 26, 2007, Petitioner received a 38 page document entitled FIRST AND FINAL APPLICATION FOR FEES AND EXPENSES OF EDWARDS ANGELL PALMER & DODGE LLP. (See Exhibit D.) The certificate of service is dated July 20, 2007. The other two parties serviced electronically were Jason D. Monzack, Trustee and Leonard DePasquale, U.S. Trustee.

3. On July 30, 2007, Petitioner received Notice of final application for fees and expenses of Edwards Angell Palmer & Dodge LLP, a one page document, dated 7/23/07, which was sent to all creditors and interested parties. (See Exhibit E.) See Docket 931-932. According to this document, "PURSUANT TO R.I. LBR 1005-1(d), within TEN (10) days of

service of this NOTICE, *any party* who objects to the fees and expenses sought in the referenced Application shall serve and file with the Clerk of Court, with copies to the local office of the United States Trustee and interested parties, an Objection/Response to said Application.

4. On August 3, 2007, Petitioner sent a package (See Exhibit F.) to the Judge which included a letter to Judge Votolato, with two attachments –PETITIONER'S MOTION TO CLARIFY FIRST AND FINAL APPLICATION FOR FEES AND EXPENSES OF EDWARDS ANGELL PALMER & DODGE LLP, AND PETITIONER'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO CLARIFY FIRST AND FINAL APPLICATION FOR FEES AND EXPENSES OF EDWARDS ANGELL PALMER & DODGE LLP. Certification to Mr. Monzack, Trustee, Mr. DePasquale, AUST, and to Edward J. Bertozzi, Jr. was included with the Motion and Memorandum to Clarify the First and Final Application for Fees and Expenses of Edwards Angell Palmer & Dodge LLP. The package containing the letter to the court requesting authorization to send the attachments to the appropriate parties. The package was sent by certified mail.

5. Several times per day Petitioner would check on line to see when the package was signed for. Even though Petitioner was out of town, he still checked to see if anyone had signed for the package. When Petitioner returned to town he went to the Providence Post Office to find out what had happened. Virtually everyone said that if the package was not returned, that they probably received it. Petitioner met with John Clark, Consumer Affairs Representative, who

contacted the court and then issued a letter to Petitioner, dated August 20, 2007.

6. On August 20, 2007, Petitioner picked up the letter from Mr. Clark in person and then sent a second package to Judge Votolato, by Restricted Delivery that same day. (See Exhibit G.) The package was signed for on August 21, 2007.

7. On September 6, 2007, a Hearing was held at the bankruptcy court in which Mr. Monzack, when asked the status of the case, said he was waiting for the professions to file their billings. Mr. Monzack said that Mr. Bertozzi is revising his billing and Mr. Cullen is on the verge of filing. Mr. Monzack asked for a 30 day continuance to file the final report, which was granted. Judge Votolato stated to file the final report regardless of receiving the Bertozzi or Cullen billings. The next hearing was scheduled for October 4, 2007.

8. On October 4, 2007, a Hearing was held in the bankruptcy court in which Mr. Monzack and Mr. Cullen testified. Mr. Cullen said he was going to file a Supplemental Billing and that he had not filed a billing for the last two years he was trustee because he did not think there was any money in the estate. The judge gave Mr. Cullen until October 26, 2007, to file the Supplemental Billing. (See EXHIBIT V, Billing, E-247 to E-255 with Chronological Detail, dated 9/26/91.)

9. No notice to the creditors or other parties was given that Mr. Cullen would be testifying on October 4, 2007, nor as to the nature of the hearing.

10. No mention was made of the billing of Mr. Bertozzi at the October 4, 2007. Hearing.

11. On October 11, 2007, Petitioner received Notice of Final Report of Trustee, Jason Monzack.

12. On October 11, 2007, Petitioner prints copy of the Chapter 7, Trustee billing, a 47 page document from his Pacer account.

13. On October 16, 2007, Petitioner, who was reviewing the billing records of Trustee, Monzack, telephoned Mr. Monzack's office and spoke to Crystal, Monzacks secretary to obtain a copy of Mr. Monzack's billing because there are areas in the printout which are blank or incomplete. Crystal said she would mail me a copy of the billing.

14. On Oct. 22, 2007, having not received a copy of the billing, Petitioner telephone Mr. Monzack's office at 401 946-3200 at 10:00 A.M. Crystal told Petitioner, "I have to look at the pleading first, I have not sent it yet."

15. To date, Petitioner has received no response to the contents of this August 20, 2007, package, Exhibit G.

16. On Oct. 26, 2007, Petitioner received copy of Monzack Billing of 10/11/07. Incomplete areas still existed in this billing.

B. DISCUSSION:

Petitioner, who has presented documentation to this court concerning his service connected stress

disorder, cannot recall why the Nov. 3, 2004, order was not appealed, although he felt overwhelmed with the situation subsequent to the Supreme Court not granting certiorari. However, by not appealing the Nov. 3, 2004 Court Order, Petitioner should have no expectation that the court would ignore and/or not respond to his motions submitted to chambers, thus precluding him from access to the courts.

Petitioner was in good faith seeking clarifications of the Bertozzi billings. Some of the information in the Bertozzi and Monzack billings have not been previously available to Petitioner in the last 18 years.

C. ARGUMENT:

1. Due to the lack of response to the August 20, 2007, package, Petitioner is now precluded from asking and receiving a clarification of the billing of Mr. Bertozzi and other professionals, like Mr. Monzack, and possibly the billings of Mr. Cullen and Mr. Boyajian.

2. A legal standard for granting Petitioner's Motion to Amend the November 3, 2004, court order is contained in a Fifth Circuit decision where "the imposition of sanctions must *not* result in total, or even significant, preclusion of access to the courts". **Thomas v. Capital Sec. Servs., Inc.**, 836 F.2d 866, 882 n.23 (5th Cir. 1988) (en banc)

3. There can be little doubt that the November 3, 2004, court order, as applied, has denied Petitioner preclusion of access to the courts, since Petitioner has received no

response to his letters dated August 3, 2007, and August 21, 2007.

4. Preclusion of access to the courts, not only results in an unlevel playing field, the lack of response has had a chilling effect upon Petitioner, fearful to participate in any manner in this case.

5. To tie and gag one of the few parties with the knowledge and ability to question the billing of professionals in this 18 year old case, because of his overall continuity of events, seems manifestly unfair and unjust.

D. CONCLUSION:

This court should grant Petitioner's Motion within the purview of F.R.C.P. Rule 60(b)(6) and amend the November 3, 2004, court order and any other remedy that is just.

IV. STATEMENT OF THE CASE FOR THE SECOND ISSUE

Whether the history of failure by officers of the court to disclose or produce materials in discovery so that Petitioner can present his case, can constitute misconduct within the purview of Rule 60(b)(3). See **Anderson v. Cryovac, Inc.**, 862 F2d 910, 923. (1st Cir. 1988.)

There are two distinct areas of non disclosure. One area involves the non disclosure of evidence in preparation for a criminal trial, including ongoing discovery, and the other involves the non disclosure of evidence at all stages of a civil bankruptcy. The civil area involves a history of failure to disclose billing information of the financial

professionals, and secondly involves a history of failure to provide documentary and other evidence, related to an accounting of the assets of the estate of Cumberland Investment Corporation. Both civil and criminal areas are interrelated and the chronology of events is being presented together.

A. TRAVEL AND FACTS

1. Petitioner, Harold F. Chorney, was the President of a company named Cumberland Investment Corporation. (CIC) CIC obtained a series of loans from Eastland Bank ultimately totaling $2,500,000 in 1989. To obtain these loans, Cumberland pledged uncirculated Mint State Silver Dollars and other assets as collateral. The number of coins held by Eastland Bank during this period was 7,826 silver dollars in May 1989.

2. In 1989, Eastland Bank, claiming an interest in all the assets of CIC, hired Sotheby's Auction House to appraise the collateral held by the bank. The Sotheby's appraisal was dramatically lower than the face value of the loan prompting an involuntary petition of CIC into bankruptcy and eventually criminal proceedings against Petitioner.

3. On December 1989, Judge Votolato appointed Michael Weingarten as Examiner in the bankruptcy case in which Petitioner was the Debtor in Possession.

4. On August 17, 1990, Petitioner was fired and the business was taken over by a Chapter 11, Trustee, John F. Cullen. By *warrantless* search, the assets and documents of CIC were seized and removed. (See Par. 33, 115 below.)

5. At a bankruptcy court hearing dated May 7, 1991, Petitioner, represented by attorney Oster, was seeking information concerning the billing practices of Michael Weingarten, Examiner in the Cumberland Investment Corporation case. (See Exhibit B-1.) Mr. Oster had taken the deposition of Mr. Weingarten, indicating that there were some double billings between Mr. Weingarten's other cases, where he served as Examiner or Trustee, and the Cumberland Investment case. Mr. Oster had requested documents, which were not produced by either Mr. Weingarten or his attorney Mr. Bertozzi for deposition.

6. A proposed order, related to the May 7, 1991 Hearing, was drawn up by Mr. Bertozzi concerning the production of documents. (See Exhibit B-2, Letter dated June 20, 1991 and ORDER.)

7. At hearing of May 22, 1991, MOTION OF PEOPLE'S LOAN & TRUST TO ADJUDGE TRUSTEE IN CONTEMPT OR TO COMPEL TRUSTEE TO COMPLY WITH PRIOR COURT ORDER OR FOR RELIEF FROM AUTOMATIC STAY MOTION OF EXAMINER TO SELL MOTION OF HAROLD CHORNEY TO ADJUDGE EXAMINER IN CONTEMPT BEFORE THE HONORABLE ARTHUR N. VOTOLATO, JUSBC, Judge Votolato vacates the order concerning production and no further discovery concerning billing was received by Petitioner. (See Exhibit B-3, pages 17-19 of May 22, 1991.)

8. On June 5, 1991, Letter from Weingarten of Cambridge Meridian Group to Bertozzi, his attorney at Edwards and Angell, on page 5 states that an employee of the Examiner, "Per Baverstam has already largely sorted through

the remaining inventory with stamp and coin experts, and we have removed most, if not all, of the high-value inventory."

9. Subsequently, Petitioner is criminally indicted on referrals from the Examiner and Eastland Bank. The U.S. Attorney supplied a handwritten list of items in his possession.

NOTE: Handwritten list of 78 items supplied by US Attorney to the Defendant did not include the yellow inventory notebooks.

10. On January 8, 1992, Mr. Posner testifies at a bankruptcy court hearing attended by Petitioner, Trustee Cullen and his attorney Mr. Bertozzi. Petitioner had been enjoined from contacting witnesses by the bankruptcy court. Mr. Posner tells Judge Votolato,

"I don't think, from a criminal standpoint, legally it would be appropriate for Mr. Chorney to be precluded from contacting potential witnesses in a criminal case.. . . I think it would almost be unconstitutional."

"THE COURT: Okay. Before we leave this, if you decide, for whatever reasons, that there's no more U.S. Attorney or grand jury involvement and we're back to strictly civil, let me know, because then we'll go back to civil—…"

11. On July 14, 1992, FBI Agent Truslow tells the Grand Jury that 170 coins from the possessory collateral had been sold.

"Now going back to that group that Chorney looked at, that 4,000 coins, of which Chorney pulled out 575 coins, Augustine looks at those coins, but at this point in time, there only

exists 405 of them. Some of them were sold off." (G.J. Testimony, July 14, 1992, pg 35.)

12. On December 12, 1992, Eastland Bank fails and is taken over by FDIC, which also asserts an interest in all the assets of CIC.

13. On January 14, 1993, Donald Etnier and Barbara A. Quinn, of FDIC inspected the collateral being held in the 9 Safe Deposit Boxes at the Woonsocket office of Eastland Savings Bank and made an "approximate count" of the silver dollar inventory. According to a partial release from the FDIC, dated December 29, 2000, in response to an FOIA from Petitioner.

14. April 7, 1993, Memo from John F. Brophy, FDIC to Barbara Quinn and Frank Cadigan, FDIC that states, "Barbara: I have just received a very strong call from Assistant U.S. Attorney Sy Posner relative to the scheduled coin appraisals, and stated that he was going to federal court to seek a Protective Order against FDIC of his evidence…Sy was very explicit, once again, that coins are sealed and must stay sealed. . . Sy asked that the appraisals would be postponed until after the trial…"

Yet on April 26, 1993, Memo's between Barbara Quinn and John F. Brophy in Legal FDIC Franklin says: Brophy, Subject Chorney/Cumberland: Any FDIC Inventory Ever Performed? Monday, April 26, 1993 7:55:44 EDT "B: As above; was there ever any Inventory of the coins ever performed by FDIC at closing: No appraisal as yet, of course; but ever an inventory?"

"John, **An inventory of the coins was done both in Woonsocket and Cranston.** Not every coin was counted. Our numbers are approximate. I have a copy if you would like to see it. Barbara" dated Monday, April 26, 1993 8:00:09 EDT (FOIA from FDIC, dated December 28, 2000.)

15. On May 14, 1993, a subpoena was issued by Scott Lutes, defense attorney to FDIC requesting inventories of collateral and non collateral coins held at Eastland Bank, Woonsocket, R.I.

16. In response to the subpoena, FDIC produced a one page undated EASTLAND SAVINGS BANK, GENERAL INVENTORY OF SAFTEY DEPOSIT BOXES, indicating that 7 separate Safe Deposit Boxes, 960, 853, 946, 16, 606, 849, and 12 contained 6,721 silver dollars instead of 7,826 silver dollars from the possessory collateral. Also that box 945 contained 1,755 silver dollars instead of 2,066 silver dollars. Another box contained currency. (*If FDIC inventory count was exact, the possessory collateral would be short by over 1,100 coins and box 945 would be short some 311 coins prior to and at the time of trial.)*

17. At trial government represented that the possessory collateral was intact. The Examiner, Michael Weingarten and his employee, Per Baverstam both testified to that affect. Mr. Leidman, government appraiser also testified that the collateral coins for the bank loan were in Woonsocket. See Exhibit H, CR. NO. 96-1187, Brief of Appellant, June 14, 1996 pages 16-17.

18. Subsequent to his criminal conviction of a false statement to an FDIC insured institution, on May 26, 1993, Petitioner discovered several items which, according to his trial attorney, Scott Lutes, if known at the time of trial, would have radically altered the theory of defense and may very well have resulted in an acquittal. One of these items was a transcript of the removal of the assets of the estate under the direction of John F. Cullen. (See Exhibit H), CR. NO. 96-1187, Brief of Appellant, June 14, 1996.

19. **The 8/18/93 entry by Barbara Quinn, FDIC is whited out.** The 8/17/93 entry states that arrangements have been made to relocate the contents of the vault located at 1000 Park Avenue, Cranston, RI to 25 Cummings Way, Woonsocket, RI. The inventory will be moved to the vault on the 2nd floor of the building at Cummings Way...FBI Agent (redacted) will also be on hand to oversee the move. (FDIC FOIA, 12/28/00.)

20. "8. …Nine hundred fifty-three (953) possessory collateral coins that were held up until August 18, 1993, in Cranston had been moved earlier to Cranston from the collateral in Woonsocket by the bankruptcy examiners, Mike Weingarten and Per Baverstam, in order to test the value of the collateral by having them examined and graded….On August 18, 1993, these 953 collateral coins were returned to Woonsocket." Aff. Truslow 11/8/95.

The Truslow affidavit is contrary to all trial testimony, stating the possessory collateral was intact at Eastland Bank in Woonsocket prior to trial in May 1993.

21. The 8/15 Inventory (undated as to year, upon information and belief is August, 15, 1993.) It indicates that 1,113 silver dollars from the possessory collateral was located at Eastland Bank in Cranston. **The 8/15/93 inventory shows the possessory collateral as co-mingled prior to trial. Note: 1,113 coins is 160 coins more than the 953 coins sworn to by Agent Truslow in his 11/8/95 Affidavit. With 1,113 coins at Cranston and 6,877 coins from the possessory collateral at Eastland Bank, for a total of 7,990 coins instead of 7,826 coins.** (See EXHIBIT B-5.)

22. On September 30, 1993, Frank Cadigan, attorney for FDIC sent letter to Mr. Lutes stating,

"The items used as evidence in your client's criminal case have been segregated and is under FBI seal. These items have not been inventoried or appraised by the FDIC and we have no plans to appraise these items."

23. On October 13, 1993, letter from John Brophy, FDIC to Dennis Jenkins, Probation Officer states, "None of the collateral has been liquidated….."

24. On December 10, 1993, FDIC MEMO TO TINA L. BEAUCHEMIN:

"We were previously under the impression that the coin inventory list produced to criminal defense by subpoena was composed by

the account officer at the closing of NESB (Don Etnier) from an original document in a safe deposit box; that Don just extracted coin inventory and grading info from the original list and produced a clean copy for the closing records.

It now appears that this is NOT the case. We finally got in touch directly with Don and he advises that HE created the inventory and graded the coins.

I have asked Don to contact Assistant U.S. Attorney Sy Posner in Providence without delay, and have confirmed that Don has called Sy (… that Sy can avoid submitting an erroneous motion to the Court.)
UPDATE:
Don has now advised us that he has talked with the prosecutor (AUSA Sy Posner) and corrected the earlier data…..”(FOIA Dec. 28, 2000, FDIC.)

25. On December 13, 1993, Government Memorandum, in response to Mr. Lutes questioning the possessory collateral being intact, states that when Mr. Etnier, took the inventory at Eastland Bank with another employee of FDIC, that he did only an approximate count in 2-3 hours and that he could easily have been off by 1100 coins or so.(*Yet it was a not a he that took the count, and a video of this probably exists and is in the possession of Jason Monzack.)*

Newly discovered: Fredrick Fishe, attorney for FDIC, FOIA Section indicated to Petitioner that the count was supposed to be exact when the assets of a bank are taken over.

26. On March 18, 1994, discussion between Monzack and Lutes about availability of inventory records, according to October 9, 2007 billing.

27. Attempts by Petitioner and others to obtain copies of seized corporate inventory records, including yellow inventory notebooks, and an accounting of the assets and other discovery from parties in the bankruptcy case were mostly denied. The court upheld the trustee's objection of April 26, 1994, where John F. Cullen, filed an objection to providing an accounting of estate assets. (See Exhibit I.) In this motion on page 4, Mr. Cullen states of records to G.J. on 2/14/91:

> "When the Movant speaks to video tapes or other reports, again he is vague and knows full well that those items, if any, are in the possession of the United States Grand Jury."
>
> At a Hearing in the bankruptcy court on October 4, 2007, **Mr. Cullen reiterates that boxes containing videotapes were given to the Grand Jury.**

The Billing Records of John F. Cullen, dated October 26, 2007, do not show any involvement with the Grand Jury on February 14, 1991, or that Mr. Cullen, Mr. Blais and Mr. Daugherty of Eastland Bank were at 141 Main St. Woonsocket with Petitioner and removed the yellow notebooks and other records on either Aug. 15 or Aug. 16, 1990. However, the October 26, 2007, billing records do show that Mr. Cullen was in the possession of the videotapes, and

stenographic copy of the removal of the assets from CIC on August 17, 1990. Yet, in Exhibit I, on page 1. Trustee Cullen states that the motion is "vague,. . . and that all records directly related to all items in the possession of the Chapter 11 Trustee were available for inspection and have been inspected on numerous occasions." Mr. Cullen then states:

"The Movant, although alleging that there are questions concerning the whereabouts of certain valuable items which were allegedly in the possession of the Chapter 11, Trustee, does not give any details as to what items are allegedly missing or what items were originally on the premises in 1990 that are not currently available."

28. On May 9, 1994, Monzack discussion with FDIC for OK to release inventory to Chorney. (Source: October 9, 2007, Billing.)

29. On May 26, 1994, Mr. Monzack, in a letter states that FDIC has authorized him to disclose a 14 page inventory list previously supplied to him by the FDIC. (See Exhibit I-1.) This inventory list was produced one year after Petitioner was convicted. (See paragraph 15 above, where FDIC produces only a one page listing.)

The billing of October 9, 2007, indicates that there was no billing for May 26, 1994. However, on May 25, 1994, Monzack dictates correspondence as to what he classifies as "what assets may be unaccounted for and what documents are in the possession of the U.S. Attorney's office."

30. On June 8, 1994, comment: Postal Inspector had inventories no one knows where they are now, according to October 9, 2007, Billing.

31. On June 10, 1994, Petitioner sent to Mr. Monzack a listing of assets believed to be missing or unaccounted for from memory. (See Exhibit J.) On September 1994, a follow up letter to the June 1994 letter, concerning assets unaccounted for and missing assets was sent to Mr. Monzack. (See Exhibit K.) A copy of the June and September correspondence was sent to the Clerk of Courts to go into Petitioner's case file (See Exhibit L.), and other copies were sent to the U.S. Trustee in Providence(See Exhibit M.), and the U.S. Trustee in Boston (See Exhibit N). Petitioner supplied Mr. Monzack with a copy of a transcript of the removal of the assets, a post trial discovery obtained through the efforts of Petitioner, indicating that the assets Petitioner claimed were missing in June 1994 were on the premises when Mr. Cullen, the then Chapter 11 Trustee, removed them in 1990.

32. On July 12, 1994, Monzack requested appraisals from Joseph DiOrio, Esq. representing Fleet National Bank, successor to Eastland Bank, according to October 9, 2007, Billing.

NEWLY DISCOVERED: *This is the first indication to Petitioner that Fleet National Bank had conducted any appraisals.*

33. On or about August 1994, Petitioner had obtained, on his own from Allied Court Reporters, a transcript of the removal of the Cumberland Investment Corporation assets by

Mr. Cullen on August 17, 1990. The transcript that the removal of the assets was conducted "in the context of both civil and criminal investigations. TR 8/17/90, pg. 3.

34. On September 13, 1994, a copy of the Allied Court Reporters transcript of the removal of the assets was sent to Jason Monzack, with a letter.

35. On December 28, 1994, Mr. Monzack held a meeting at his office in Cranston, Rhode Island. It was at this meeting that he admitted that over $300,000 in assets was indeed missing. (See Exhibit O), the Nacu Letter and Attachments.) and (See Exhibit P.)response from the Office of Professional Responsibility.

36. Sometime after the December 1994 meeting, Judge Votolato ordered Mr. Monzack to obtain missing documents and other items for Mr. Taft. Mr. Taft was a shareholder of Wescap, the parent company of Cumberland. He was also a client of Cumberland Investment Corporation. His assets were removed by Mr. Cullen in 1990, and were missing. As a result of Mr. Taft complaining about his missing assets, a letter was issued by Mr. Monzack on May 17, 1995, to various parties involved in the bankruptcy case concerned with finding different documents and videotapes. (See Exhibit Q.)

37. January 12, 1995, Brief of Appellee, "1. The prosecutor asked the bankruptcy trustee (private attorney John F. Cullen) for any videotapes, and gave defendant the only videotape that Mr. Cullen produced."

38. January 19, 1995, Amended Brief of Appellee, “The videotapes were made solely at the direction of the bankruptcy trustee, John F. Cullen….Defense counsel claims he “was orally informed that this tape constituted the only videotape of which the Trustee or anyone on his behalf were aware” (Br. 26)…”on or about January 15, 1993, AUSA Seymour, in the presence of FBI Special Agent John Tuslow, telephoned defense counsel Scott Lutes and told him that a paralegal at Eastland’s private law firm had just provided several additional videotapes that he trustee had made regarding the coins seized from Cumberland. Pg 26, Mr. Lutes did not take advantage of this opportunity. Should defendant file a new trial claim, AUSA Posner and Agent (sic) Lutes are prepared to give affidavits to this effect.” Pg 26.

39. “On April 21, 1995, the possessory collateral now belonging to FDIC was removed from the bank premises in Woonsocket to FBI premises by myself and two other employees of the FBI, at my direction. I had the collateral removed for security purposes in order to do a physical inventory of the collateral…..” Aff. Agent Truslow 11/8/95.

40. May 15, 1995, **missing section in billing, on page no 11. Sequence would suggest that Christina DeCellio from the Monzack’s office** witnessed a physical inventory by the FDIC, and/or FBI Agent Truslow, which may have included the possessory collateral, according to October 9, 2007, Billing. Possible that something here contradicts par. 39 above.

41. May 17, 1995, Monzack drafts letters to Chapter 11 Trustee, AUSA, Fleet, Examiner, Postal Inspector and FBI concerning documenting the chain of custody of Debtor's assets, according to October 9, 2007 Billing.

42. May 17, 1995, Monzack drafts letter to FBI agent Truslow concerning assets in his possession, according to October 9, 2007 Billing.

43. May 17, 1995, letter, the U.S. Attorney's office notified Mr. Monzack concerning some video tapes and that a viewing of these tapes in the U.S. Attorney's office would be arranged and that Mr. Taft could bring counsel.

44. On June 7, 1995, Mr. Monzack is told by AUSA Posner that he cannot locate the yellow notebooks, the inventory records of Cumberland Investment Corporation. (See Exhibit Q-1, Billing of Jason Monzack, dated October 9, 2007.)

45. On June 14, 1995, the redemption client coins of John D'Angelo, seized by the Examiner on August 17, 1990 and subsequently opened, were inventoried and appraised by Robert Moffatt. One of the rolls listed under bearer number 5143 should have contained 20 coins dated 1880-S. Instead Mr. D'Angelo's roll now contained 17 coins dated 1880-S and 3 coins dated 1887. The coins sold to Mr. D'Angelo were sealed in the presence of Mr. D'Angelo, Mr. Timmons and Petitioner at the date of purchase.

46. On July 21, 1995, Mr. Taft received a letter from Mr. Monzack stating that Mr. Posner will cancel any meeting to view documents an or videotapes should anyone attend meeting at U.S. Attorney's Office who has represented Mr. Chorney in his pending criminal matter. (See Exhibit Q-2.)

47. On August 11, 1995, Mr. Taft attends meeting at the U.S. Attorney's office in Providence, R.I. The only items produced by A.U.S.A. Posner were of videotapes of the August 17, 1990 and August 23, 1990, removal of the assets from Cumberland Investment Corporation.

48. Despite all these parties allegedly looking for documents and videotapes, no other party produced another single item requested by Mr. Taft.

49. On November 8, 1995, government files an objection to Petitioner's Motion for a New Trial. Attached is the Affidavit of Agent Truslow, dated 11/8/95. It states that he is thoroughly familiar with records from case, including those subpoenaed by the Grand Jury from Eastland Bank, John Cullen, U.S. Trustee in Bankruptcy, various banks in the state of R.I. Yet on page 3, Agent Truslow admits that, "This is the first I learned of the existence of such stenographic records."

Mr. Truslow, states that the yellow notebooks "have been available to defendant in the United States Attorney's office since the CIC

records were obtained from the United States Trustee." (See EXHIBIT R, page 4.)

Although the objection, signed by A.U.S.A. Posner states, on page 5 that, "Neither the prosecutor nor Agent Truslow was aware until defendant filed his motion for a new trial that a stenographic transcript had been made of the removal of the CIC assets on August 17, 1990." Nevertheless, part of Mr. Posner's conclusion in his Memorandum, pg. 25, was, "The videotapes, the stenographic transcripts, and the still pictures which defendant claims were unknown and unavailable to him at the time of trial were in fact known to him and available to him before trial, particularly the videotapes."

50. On January 4, 1996, a Hearing was held concerning a Joint Petition for Instructions concerning the Notice of Intended Sale filed by Jason Monzack Trustee and Frank Cadigan, Attorney for F.D.I.C. Mr. Monzack made representations that, .. "We have a detailed inventory from Christie's by year and mint mark as to every coin that they have." TR pg. 15. At this hearing Phil Dunleavy, creditor, objected to the sale of the 8,600 silver dollars because the inventories of the coins shipped to Christies did not match the inventories that were made by Ramapo Coin Exchange only one year earlier. TR pg. 31.

51. On January 12, 1996, the Affidavit of Agent Truslow, FBI indicates that 953 coins from the possessory collateral moved to Cambridge, MA for grading purposes were then moved to Eastland Bank in Cranston, R.I.

52. On February 12, 1996, newly discovered, a **61 coin appraisal discrepancy** according to Frank Cadigan, FDIC. "Christies does show 61 more coins than Ramapo…." Billing Oct.9, 07.

53. The Affidavit of Theresa Ryan Tosches, FDIC dated February 13, 1996 indicates in paragraph 4. That "In totaling up the number of silver dollars listed in the RAMAPO appraisal against the total number of silver dollars listed in Spink America manuscripts, there is a 14 coin discrepancy. It appears at this time that Spink America is showing 14 additional coins in its inventory."

54. On February 15, 1996, a Hearing was held. Mr. Taft presented evidence that the coins offered for sale by Christies contained major inconsistencies with the coins inventoried by Ramapo. The FDIC admitted that there was a 14 coin count difference. TR. pg. 87. Rather than the court demanding that the inventories be reconciled prior to any auction, the sale was approved over the objection of Mr. Taft and others. Even though Monzack and FDIC compiled a list prior to shipping the coins, the only list available to Mr. Brodsky and Mr. Taft is the list of coins in the possession of Christies according to Christies auction lists. MR. MONZACK: …. "We gave Mr. Taft the complete list of coins in the possession of Christie's. That's what he uses the basis for his objection he filed with the Court. Nobody's trying to hide anything from anyone." See TR pg. 71.

55. At the February 15, 1996 Hearing, Mr. Monzack represented that, "nobody knows if the coins that were originally in there were

matched up with the description." TR pg. 17. This is not true. Mr. D'Angelo's coins were sealed in the presence of Mr. Timmons, Mr. Duggan, Mr. Cadoret and Petitioner. (See par. #45 above.) Upon information and belief, there were many CIC clients, whose coins were sealed in the presence of multiple parties.

56. At the February 15, 1996 Hearing, Mr. Monzack states, "….so-called yellow pad that admittedly was in the hands of the U.S. Attorney at one point, and the U.S. Attorney can't find it anymore. That's part of—of—we went over there and met with the U.S. Attorney, and probably Mr. Lutes is more familiar with that than I am, but there are certain documents that existed that were in the possession of, for instance, the U.S. Attorney. …….I'm told—it's all hearsay, but I'm told that this yellow pad that Mr. Chorney had was at one time in the possession of the U.S. Attorney and at the present time they have been unable to locate it." THE COURT: Yeah, but do they acknowledge that they ever had it? MR. MONZACK: I think they do." TR pg. 18. The Truslow Affidavit of November 8, 1995 in paragraph 49 above is contradictory to the fact that the yellow notebooks were not available in response to the May 17, 1995 letter from Monzack, in par. 36 above and contradictory to par. 44 above.

57. At the February 15, 1996 Hearing Mr. Monzack states, "We have a list that was done jointly by myself and FDIC before we let Christies take the coins." TR pg. 68

58. At the February 15, 1996 Hearing Attorney Brodsky, Special Master appointed by Superior Court in R.I. appeared to oversee Mr. Smith's cases. Mr. Brodsky states that he "had on two occasions had to prod FDIC for a list of names with corresponding bearer number, never got the response from Mr. Monzack when I wrote to him during this interval between January 4 and today." TR pg 27.

59. On February 23, 1996, Petitioner goes to prison.

60. On March 25, 1996, Mr. Monzack sends a FAX to the U.S. Attorney, Seymour Posner requesting an inventory of the records of Cumberland Investment Corporation. Monzack references a March 11, 1996 letter from Mr. Posner.

61. On March 26, 1996, Mr. Monzack sends another FAX to Mr. Posner concerning picking up the records on April 5, 1996.

62. On March 26, 1996, Mr. Monzack sends another FAX to Mr. Lutes, Attorney for Petitioner, asking Mr. Lutes if he wants the records.

63. On various dates in April 1996, attempts are made by Mr. Lutes, Mr. Searles and others to pick up the records from Mr. Monzack. There is no meeting to pick up the records after numerous attempts.

64. On April 18, 1996, Monzack meets with *someone for 4.5 hours* (source, Oct 9, 2007, billing.)

65. On May 2, 1996, Monzack talks with Cadigan, FDIC, re: indemnification of Trustee by FDIC, with limit of $1,500,000 in the sale of silver dollars. Source, October 9, 2007, Billing records.

66. On May 20, 1996, Mr. Lutes requests a list of the coins (as stated on page 68 of the February 15, 1996 hearing) that Monzack and Cadigan had inventoried prior to shipping them to Christies. Mr. Monzack did not respond.

67. May 24, 1996, A.U.S.A. Posner receives records from Postal Inspector. Source, October 9, 2007, Billing records.

68. On June 14, 1996, Petitioner, through his attorney Scott Lutes filed Brief of the Appellant, an appeal from a denial of a Motion for New Trial upon the grounds of newly discovered evidence. (See Exhibit H.)

69. The government had objected to the appeal in District Court in Case No. 92-099P. The GOVERNMENT'S MEMORANDUM OF LAW IN SUPPORT OF ITS OBJECTION TO DEFENDANT'S MOTION FOR NEW TRIAL states: "Defendant argues that he sent a letter to the prosecutor on January 5, 1993 seeking videotapes of August 17, 1990…. . The prosecutor was unaware of any videotapes at the time the letter was sent." Pg. 3

"Bear in mind that the possessory collateral held by and in the bank was never part of the assets removed by the Trustee on August 17, 1990. Those coins were in the bank vault and with the exception of coins they were removed to the Cranston office of the bank by the Examiner for testing and grading purposes and later returned to the bank vault in Woonsocket, the possessory collateral was never in the care, custody or control of the United States Trustee." Pg 13.

"In addition, representatives of the FDIC inventoried the bank's collateral on January 27, 28, and February 4, 1993. . . The FDIC inventory did not contain the coins that were auctioned off by Christies and Bowers & Merena, Inc. ..long before the FDIC inventoried CIC's assets." Pgs.20-22. (Par. 13 above indicates an inventory on 1/14/93, unless others were done.)

70. June 20, 1996, Monzack meeting with computer expert Peter Lawson re: retrieving information on computer disk provided by U.S. Postal Inspector via Sy Posner at U.S. Attorney's Office. Source, October 9, 2007, Billing records.

71. July 5, 1996, records from Postal Inspector contain names, addresses and bearer numbers of redemption coin clients given to Irving Brodsky, special master. (Petitioner was accused of concealing these records by the Examiner and others.) Source, October 9, 2007, Billing records.

72. On July 25, 1996, Mr. Lutes made additional requests to pick up the records and a second reminder concerning the list of coins made by Monzack and Cadigan. Mr. Monzack did not respond to this letter either.

73. On September 1, 1996, Petitioner requested an accounting of the assets from Mr. Monzack. Mr. Monzack did not respond to this letter.

74. November 19, 1996, Christies coin appraiser, Russell Kaye, backs out of purchase of miscellaneous items at private sale. Source, October 9, 2007, Billing records.

75. On October 17, 1998, Petitioner sent a letter to Mr. Monzack concerning pickup of the records in his possession. This letter was never answered.

76. On November 23, 1998, Trustee Monzack filed a STATUS REPORT that states, “Additional coins which were held by the U.S. Attorney regarding the criminal prosecution of Harold Chorney are now being prepared for turnover to the Chapter 7 Trustee for their sale at auction, pursuant to an agreement with the FDIC whereby the bankruptcy estate would sell the coins and share in the proceeds upon the same terms and conditions as the previous sales. Pursuant to previous discussions with Frank Cadigan of the FDIC it is expected that the remaining coins would be turned over to the Chapter 7 Trustee within the next thirty (30) days.

77. On December 4, 1998, Mr. Lutes sent a letter to Mr. Monzack concerning pickup of the records in his possession. This letter was never answered.

78. On January 8, 1999, Agent Truslow receipts coins and currency to Frank Cadigan at FDIC. The receipt shows two listings of silver dollars, one for 7,809 U.S. Silver Dollars and a second for 183 Silver Dollars. Mr. Monzack gave Petitioner this receipt subsequent to bankruptcy court hearing April 6, 2000. Mr. Taft and Petitioner questioned the number of silver dollars from possessory collateral, which supposed to have contained 7,826 silver dollars in proposed sale, instead of the 7,992 number of silver dollars listed for sale. (See par. 21 above.)

79. On August 27, 1999, Trustee Monzack filed a STATUS REPORT that states, “Coins which were held by the U.S. Attorney regarding criminal prosecution of Harold Chorney have been turned over to the Chapter 7 Trustee for their sale at auction. Coins are presently held by Christies/Spink’s in New York and are being prepared for sale at auction subject to terms to be agreed upon by FDIC and subject to approval of the Bankruptcy Court. Upon sale of the remaining coins Trustee’s Final Report and Account Before Distribution will be prepared. Expect sale at Christies/Spinks next major sale of coins which is Dec. 1999. Projected date for filing TFR: 1/00-3/00.

80. On October 19, 1999, subsequent to serving 19 months in Federal Prison, Petitioner obtained 19 videotapes, each two hours long, of the removal of the assets on August 17, 1990 and August 23, 1990, from the Executive

Office of U. S. Attorneys (EOUSA). These videotapes, which corroborate the transcript of the removal of the assets on August 17, 1990 and confirm different items that Petitioner claimed were missing were indeed there on the premises when the Trustee removed them. Videos were specifically requested prior to trial and not produced.

81. On October 29, 1999, Jason Monzack filed a MOTION FOR ORDER AUTHORIZING SALE NOTICE FOR APPROXIMATELY 7,491 SILVER DOLLARS (the collateral coins.) This is 501 coins less than the aggregate of the 7,809 and 183 silver dollars.

82. On November 17, 1999, Mr. Taft objected to the sale stating that the sale had not been in any numismatic publications and since he had not seen any catalog, he could not tell if the coins were being offered in large group lots in a commercially unreasonable manner or not.

83. On December 1, 1999, just six days prior to the sale, there is a court hearing. Taft indicates to the court that he does not want to stop the sale, but he is concerned on how the items are being cataloged for sale and that the items are being grouped together and that this may not be a “commercially reasonable” sale. The court overrules Taft’s objection and orders the sale to continue.

84. On December 3, 1999, Petitioner receives copy of auction catalog.

85. On December 7, 1999, the auction contains 8,004 silver dollars and not 7,491 silver dollars according to the auction catalog. This is 12 more than the 7,992 and 513 more than the 7,491 silver dollars.

86. On December 14, 1999, Frank Cadigan of FDIC states that "I talked to FBI agent John Truslow in Providence. All records connected with Cumberland Investment, including video tapes, inventory lists and everything Chorney is seeking is with the Office of the United States Attorney at 50 Kennedy Plaza, Providence, RI. We have none of that stuff. Some video tapes are with Hinkley Allen in Providence. Jason Monzack may have some video tapes of inventories we did after the bank closed but FDIC has nothing." (Response to FOIA to FDIC, Dec. 2000.)

87. On March 9, 2000, Warren Taft files MOTION TO COMPEL TRUSTEE TO PROVIDE ACCOUNTING OF ESTATE PROPERTY SOLD ON 12/7/99 AND REQUEST FOR CLARIFICATION as to why the sale contained some 8,000 silver dollars instead of 7,491 silver dollars.

88. On March 14, 2000, the FDIC files a RESPONSE BY FDIC TO PETITIONER'S REQUEST FOR CLARIFICATION AND ACCOUNTING OF ESTATE PROPERTY SOLD ON DECEMBER 7, 1999 BY SPINK AMERICA.

89. On April 3, 2000, Warren Taft seeks a Continuance of the Hearing Scheduled for April 6, 2000 since more questions are being raised than answered in RESPONSE OF CHAPTER 7 TRUSTEE TO PETITIONER'S REQUEST FOR CLARIFICATION AND ACCOUNTING OF ESTATE

PROPERTY SOLD ON DECEMBER 7, 1999. In addition, Mr. Taft was seeking to obtain a copy of the inventory performed by Mr. Cadigan and Mr. Monzack prior to the coins being shipped to Christies as stated on page 68 of the Transcript of the February 15, 1996 Hearing.

90. On April 6, 2000, there is a Hearing concerning an accounting of the assets sold on December 7, 1999. As a result of this hearing, Mr. Taft did not get any explanation as to why there were 8,004 coins in the December 7, 1999 sale, nor did he get any breakdown of the 1128 silver dollars. The 1128 silver dollars were grouped in a manner so that a reconciliation of the inventory could not be done. See TR pg. 8.
NOTE: Silver dollars are not of equal value. It is possible to have 500 coins that are valued at $10.00 each as Christies evaluated the 1128 coins, be worth less that just one silver dollar like an 1896-0 that was missing from the inventory of Cumberland Investment Corporation.

91. On April 6, 2000, Mr. Monzack states,

"…a third group of coins was that group of coins that were separately segregated at the insistence of Eastland Bank when they had some doubts about the financial stability of Cumberland Investment, and it was set aside in a separate vault taken control of by the U.S. Attorney's office. That group of coins that were shipped directly to Christies." Tr. Page 12 of April 6, 2000. See paragraph 4, above.

92. At the April 6, 2000 Hearing Mr. Taft states that Mr. Monzack does not respond to his letters. "He could have—we wouldn't even be in court. I asked him to just send me some documentation in January, we wouldn't be wasting the Court's time at this point. Unless he wants to send me a letter saying I'm not going to do anymore, if he wants to, that's fine, and I won't bother him anymore, Your Honor." Basically, the court found that Mr. Monzack had clarified Mr. Taft's questions and would give Mr. Taft the response from Christies when he got it. TR. pg. 15.

93. On April 20, 2000, after receiving a copy of the transcript of April 6, Warren Taft writes to Jason Monzack concerning the assets in the December 7, 1999 sale. Mr. Monzack did not reply.

94. On May 23, 2000, Mr. Burgess of F.D.I.C. indicates to Petitioner that Mr. Monzack may have videotapes of the appraisals conducted when Eastland failed.

If Mr. Monzack, who was the receiver for Eastland Bank as well as the Chapter 7, Trustee in the Cumberland Bankruptcy case, has the videotapes in his possession, Eastland Bank and their successors FDIC, who accused Petitioner of a crime that he was convicted of, are the same parties that withheld evidence concerning the alleged crime itself in order to cover up the fact that some assets of Cumberland that were

stored at Eastland as collateral, were missing or tampered with.

95. On June 7, 2000, Mr. Taft wrote to Mr. Monzack concerning the assets of the estate in the December 7, 1999 sale. Mr. Monzack did not respond.

96. On June 12, 2000, Petitioner was the sole sworn witness at a hearing. Petitioner asked the Trustee about whether or not he had videotapes of the assets of Eastland Bank being inventoried when the bank failed. **Judge Votolato stated that Petitioner could raise those issues at another time.** Mr. Monzack indicated that when the criminal matter was over the U.S. Attorney gave him the records and videotapes concerning Cumberland Investment Corporation.

97. On July 3, 2000, Mr. Monzack filed MOTION TO STRIKE MOTION TO COMPEL CHAPTER 7 TRUSTEE TO PROVIDE ACCOUNTING OF ASSETS AND TO PRODUCE REQUESTED DOCUMENTS AND VIDEOTAPES.

98. On July 14, 2000, Petitioner sent a letter to Mr. Monzack requesting a time to get together to go through the records in Mr. Monzack's possession in order to locate documents that Mr. Monzack requested at the July 6, 2000 Hearing.

99. On September 8, 2000, the court issued an order denying as moot Petitioner's MOTION TO COMPEL CHAPTER 7 TRUSTEE TO PROVIDE ACCOUNTING OF ASSETS AND TO PRODUCE REQUESTED DOCUMENTS AND VIDEOTAPES.

100. On February 6, 2002, Mr. Monzack signs for FIRST REQUEST FOR ADMISSIONS by Petitioner.

101. On February 7, 2002, Mr. Monzack at a hearing stated that there were actually 20 videotapes and not 19.

102. On November 14, 2003, A STATUS REPORT, docket #759, was issued by the Chapter 7 Trustee, Jason Monzack stating,

> ""The trustee has not received notification from the U.S. Supreme Court regarding its disposition of Chorney's petition for Writ of Certiorari. All funds to be paid to secured creditors have been disbursed. There remains $258,108.27 to be disbursed to unsecured creditors and for administrative expenses. The Trustee expects that disputes regarding claims will be resolved within the next sixty (60) days and this case may be closed within six (6) month, provided that there are no legal proceedings pending in the U.S. Supreme Court."

103. At a Hearing dated February 24, 2004, Jason Monzack reported to the court that certiorari in the Supreme Court case was denied and that there was a settlement in a class action lawsuit against Sotheby's and Christies six months ago and that subsequent to a submission of a claim, $11,000 was awarded to the estate as well as a certificate usable up to May 2007, and that this was the last asset in the estate.

104. On March 8, 2004, Petitioner filed a MOTION AND MEMORANDUM IN SUPPORT OF PETITIONER'S MOTION TO CLARIFY THE CLASS ACTION AWARD FROM THE LAWSUIT AGAINST CHRISTIES AND SOTHEBYS AND REQUEST CHAPTER 7 TRUSTEE PROVIDE A COMPLETE AND DETAILED ACCOUNTING OF ESTATE ASSETS.

105. At March 18, 2004, Hearing, Judge Votolato asked Mr. Monzack, “Are you looking into the standing of Mr. Chorney to file such motions at this point?” The Judge then asked Mr. Monzack when he was going to object to Petitioner’s motions and was told by Mr. Monzack that day or the following day.

106. On March 19, 2004, MOTION TO STRIKE MOTION TO CLARIFY CLASS ACTION AWARD, by Trustee Monzack.

107. On April 9, 2004, Petitioner filed MOTION AND MEMORANDUM IN SUPPORT OF MOTION IN OBJECTION TO MOTION TO STRIKE BY THE CHAPTER 7 TRUSTEE, JASON D. MONZACK

108. On April 30, 2004, a SECOND REQUEST FOR ADMISSIONS was sent by Petitioner to Mr. Monzack. (See Exhibit S.)

109. On May 7, 2004, the Trustee filed a MOTION TO STRIKE SECOND REQUEST FOR ADMISSIONS.

110. At a May 13, 2004, Hearing Petitioner was prepared to call Mr. Monzack to the witness stand and present documents to him concerning the REQUEST FOR ADMISSIONS, but was unable to do so. At the Hearing, while Petitioner was on the witness stand:

CHORNEY: “..but the jurisdiction that you do have, your honor, is over the trustee to respond to Request for Admissions concerning these assets…..”

COURT: “Not from you, not from you sir…and I’m referring you to the proper authorities”

111. On July 28, 2004, MOTION TO STRIKE SECOND REQUEST FOR ADMISSIONS is filed by Trustee.

112. On November 3, 2004, court grants MOTION TO STRIKE CLARIFICATION OF LAWSUIT AGAINST CHRISTIES & SOTHEBYS and grants MOTION TO STRIKE SECOND REQUEST FOR ADMISSIONS.

Additionally, Petitioner is sanctioned: "EFFECTIVE IMMEDIATELY, THE CLERK OF COURT SHALL DECLINE TO ACCEPT ANY FILINGS FROM HAROLD CHORNEY, UNLESS SUCH FILING HAS FIRST BEEN PRESENTED TO CHAMBERS AND IS SPECIFICALLY AUTHORIZED BY THE COURT FOR FILING."

113. On July 26, 2007, Petitioner received a 38 page document, FIRST AND FINAL APPLICATION FOR FEES AND EXPENSES OF EDWARDS ANGELL PALMER & DODGE LLP. (See Exhibit B.) This document states that,

"EAPD is not seeking payment for $35,921.36 in fees for services rendered to the Trustee during the period August 30, 1991 through December 22, 1993 because, due to a glitch in transferring data to a new computer, EAPD cannot recover the data as to individual time entries for that period, although the computer does show the data to the aggregate amount of fees for said period."

114. Mr. Monzack testified at 9/6/07 Status Hearing that he was waiting for the professionals to file their billings. When queried by the court about the professionals,

Mr. Monzack said, (1.)

"Mr. Bertozzi, is revising his billing, and Mr. Cullen is on the verge of filing." (Mr. Cullen has not been a Trustee on this case since December 22, 1993, when replaced by Mr. Monzack.) The Judge continued the hearing hearing until October 4, 2007, and said to Mr. Monzack to file the final report regardless of receiving the Bertozzi or Cullen billings.

Upon information and belief, the only parties, who Petitioner saw present at this hearing other than himself were attorneys

(1.)Mr. Monzack has testified at several hearings concerning completion of The Final Report. On August 27, 1999, he said, "Projected date for filing TFR: 1/00-3/00." On February 7, 2007, Mr. Monzack stated that he would have The Final Report in two weeks. For one reason after another Jason Monzack, the Chapter 7 Trustee, on the Cumberland case, with approval of the court and apparently with the blessings of the U.S. Trustee's Office, continued not to present the required submission of the Trustee's Final Report. It goes back a lot further, but check this pattern over the last two years: back on May 2005, according to Docket #904, dated 05/31/2005, "Notice to Trustee re: Case's Appearance on 6 month Inactivity Report Status Check Due by : 6/30/2005 followed by Docket #907, an Order Requesting Updated Status Report, dated 7/7/05. Subsequent to the Trustee's unsuccessful attempt to collect the $200,000.00 contempt of court fine against Chorney, Docket #919 states, Notice to Trustee re: Case's Appearance on 6 month Inactivity Report Status Check Due by: 9/25/2006.
Despite continuous case inactivity, The Final Report to close this case was never filed. For instance Docket #922, is an ORDER FOR UPDATED STATUS REPORT, dated 10/2/06, from the Court which states, "…Jason D. Monzack, is hereby ORDERED to submit an updated status report and is also hereby ORDERED to file said report no later than 11/1/2006 with proper certification to all interested parties."

Monzack, Chapter 7 Truste; John Boyajian, representing Cumberland Investment

Corporation; and Matthew McGowan, representing the Creditors'Committee. No one other than Mr. Monzack testified.

115. On October 26, 2007, Petitioner obtained a copy of FINAL APPLICATION OF FORMER CHAPTER 11 TRUSTEE, JOHN F. CULLEN FOR ALLOWANCE OF COMPENSATION AND REIMBURSEMENT OF EXPENSE from his Pacer account. This billing shows that Mr. Cullen "utilized three video and still photographers, as well as a stenographer, each of whom assisted the Trustee in keeping detailed records Memorializing the transfer of estate assets."

"The Applicant also coordinated two other transfers of estate assets in the same manner above-described." (This paragraph is newly discovered. No video or transcript of other transfers have ever been produced.)

116. On October 29, 2007, Petitioner discovers that the Billing of Mr. Cullen on October 26, 2007 does not match the billing of Mr. Cullen on Sept. 26, 1991. (See EXHIBITS T, U & V.)

B.DISCUSSION:

1.CIVIL AND CRIMINAL CASES INTER-RELATED

On or about August 1994, Petitioner had obtained, on his own from Allied Court Reporters, a transcript of a warrantless search, involving the removal of the Cumberland Investment Corporation assets and documents by Mr. Cullen, Chapter 11 Trustee, on August 17, 1990. The transcript stated that the removal of the assets was conducted "in the context of both civil and criminal investigations. TR 8/17/90, pg. 3. Mr. Cullen was represented by Attorney Bertozzi at that time.

At Hearing, January 8, 1992, Judge Votolato stated to Mr. Posner, A.U.S.A. in the presence of Mr. Cullen, "..if you decide, for whatever reasons, that there's no more U.S. Attorney or Grand Jury involvement and we're back to strictly civil, let me know, because then we'll go back to civil--, MR POSNER: Understood." At one point Judge Votolato speaks of modifying a bankruptcy court order saying, "I'll leave the amended language up to the parties, the U.S. Attorney, the Trustee and Mr. Chorney, all right?" TR January 8, 1992, pgs 24-6. (See Exhibit B-4.)

The 10/26/07 "sanitized" Billing just filed by Mr. Cullen, mostly references 10/90 to 12/92, and states Cumberland Farms Investment Corporation instead of Cumberland Investment Corporation. Part B pages E-225 to E-238, has no mention of target of probes or of investigations or meeting with Eastland Bank officials.

However in the 9/26/91 Billing, contemporaneously done during the same time period, there is mention of conferences Re: investigation and target of probe; trips to Washington DC, re: investigation of background and schemes; as well as meetings with U.S. Attorney, Postal Inspector, D.E.A., I.R.S. and Grand Jury and meetings with Eastland Bank officials, executives and chairman of the board. See E-247 to E-255.)

Note: *The "missing" Bertozzi Billing, overlaps the same time period. (See paragraph 113 above.)*

2. ADMINISTRATION AND ACCOUNTABILITY OF THE CIC ESTATE

Petitioner and/or his counsel from the onset of the bankruptcy in 1989, has filed motions and appeals concerning the administration of the bankruptcy estate and an accountability of the assets of CIC. One area questioned was the double billing of the estate by the Examiner, Michael Weingarten, who was also represented by Mr. Bertozzi. Discovery was eventually denied by the

court, questioning the motives of the Petitioner, subsequent to a showing of the double billing practices of Mr. Weingarten. (See Exhibit B-1.) where the court states, "…let's be blunt and call it a waste of the Court's time, parties, expense to the estate. I was not disappointed……It is my intention right now to terminate Mr. Chorney's participation..from now on he's an alleged general creditor…his standing is nothing more than a general creditor in this case..the Trustee is representing the interest of general creditors in this case..any prior orders that I've signed inconsistent with what I'm saying..are vacated as of right now." This was all followed by a court Order. (See Exhibit C.)

3. NON PRODUCTION AND SUPRESSION OF DOCUMENTS

Disclosure and production of materials from the Examiner and Chapter 11, Trustee, John F. Cullen were requested for both criminal and bankruptcy matters. Incomplete production occurred in the criminal case, while there was little production of documents requested by Petitioner in the bankruptcy case. Virtually all motions to obtain documents were Denied. Appeals of these motions to the District and First Circuit were then further Denied. The results being that Petitioner lacked the information necessary to present his case.

4. PETITIONER PLEADS A FRAUD ON THE COURT

Petitioner and others have requested disclosure and production of materials from Mr. Cullen's successor, the Chapter 7 Trustee in Bankruptcy, Jason D. Monzack on several occasions, virtually without success. The corruption of the Bankruptcy Court's impartiality, perpetrated by officers of the court, have resulted in a situation where the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication. See **United**

States v. Zinner, No. 95-0048, 1998, E.D. Pa. Feb 9, 1998, pages 2-3.

For example, on May 17, 1995, a letter was issued to court officers, governmental agencies and to the other *parties* in the case for the production of documents, virtually without any success. (See EXHIBIT Q.) Despite these requests for videotapes, photographs and yellow notebooks (containing company inventories) sign in and out cards from the bank vaults, no one has produced them, at least not to Mr. Taft or Petitioner. It appears that during the entire process, there seems to be constant doubt in the mind of the court that events and evidence, claimed by Petitioner to be true are indeed true. Finally, at the February 15, 1996, Hearing, the Judge infers the non existence of the records sought, despite Mr. Monzack stating that he believes the records were there. (See Par. 54 above.)

5. LACK OF DISCOVERY IS OF NO FAULT OF PETITIONER

Petitioner continues to seek documents in both cases. To date he has obtained through efforts of his own, a transcript of the removal of the assets, under the direction of John F. Cullen, performed on 8/17/90.

On October 19, 1999, Petitioner obtained 19 videotapes of the removal of the assets by John F. Cullen on August 17, 1990 and August 23, 1990, through an F.O.I.A., some six years subsequent to his criminal trial, 92-099P, and three years subsequent to the BRIEF OF APPELLANT, An Appeal from a denial of a Motion for New Trial upon the ground of newly discovered evidence in CR NO. 96-1187. In addition, Petitioner filed F.O.I.A.'s to the EOUSA, FBI, EOUST and others.

C. ARGUMENT:

Both the criminal case and the bankruptcy case are interrelated and replete with examples of non production of materials requested. The non production or lack of acknowledgment of the existence of evidence hamstrings Petitioner in presenting or even preparing his case. The lack of information and evidence prevented counsel for Petitioner from preparing a defense based upon Petitioner's claims of missing, switched and mishandled assets in the criminal case.

The history of failure to disclose or produce materials in discovery can constitute misconduct within the purview of Rule 60(b)(3). See **Anderson v. Cryovac, Inc.**, 862 F2d 910, 923. (1st Cir. 1988.)

"Where one party wrongfully denies another the evidence necessary to establish a fact in dispute, the court must draw the strongest allowable inferences in favor of the aggrieved party." **Anderson v. Cryovac, Inc.** 925.

> ***In this instant case, the misconduct is being conducted by officers of the court, who are failing to disclose or produce materials in discovery so that Petitioner can present his case.***

Fed.R.Civ.P. 60(b). The Rule requires that motions pursuant to the above grounds

"shall be made within a reasonable time, and . . . not more than one year after the judgment, order, or proceeding was entered or taken." Id.

At the same time, the Rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, . . . or to set aside a judgment for fraud upon the court.

See **Reintjes v. Stoker**, Ca. No. 95-1552, December 13, 1995, 1st Cir. Petitioner avers that the information in paragraphs 1-116 above show that the fraud in the criminal case is "extrinsic" or collateral to the fraud in the bankruptcy action and justify an untimely relief, especially since billing documents in an eighteen year old case are still coming to light. The result of continuous and substantial fraud on the court is that "a wrong to institutions set up to protect and safeguard the public" has and continues to occur.

1. EXTRINSIC FRAUD IN THE CRIMINAL CASE WAS COLLATERAL TO THE FRAUD IN THE BANKRUPTCY CASE

One fact in dispute, in both cases involving the Petitioner, the bankruptcy case 89-11051 and CR 92-099P, deals with the inventory of the assets in the estate. Contested was the value of the assets of the estate of Cumberland Investment Corporation as well as the content of the assets both prior to and subsequent to Mr. Cullen removing the assets. Petitioner has continuously maintained that there was enough value in the assets to cover all debt of Cumberland Investment Corporation but that something happened to these assets.

Evidence necessary to establish the disputed fact(s) could have been obtained by an accounting of the assets seized, those sold and those remaining or missing at various stages of the bankruptcy. A lengthy history of Petitioner and others, requesting documents and receiving little or no production in the criminal and civil cases are documented, in part, by paragraphs 1-116 listed above. Documents sought in both the civil case and the criminal case concerning an accounting of the assets of the estate were not supplied or even responded to by the Chapter 11 Trustee. Minimal, incomplete, and possibly misleading information was

supplied by FDIC, all further complicated by perhaps the perjures information from government.

2. EXISTENCE OF PERJURY

Either the U.S. Attorney and the FBI Agent or the court officers in the bankruptcy court committed perjury. Regardless as to whether the perjured information comes from court officials in the criminal case, the civil case or both (See paragraphs 11, 17, 20, 21, 23, 76 concerning the collateral intact, or paragraphs 14, 16, 25, 30, 37, 38, 86, 115 concerning production of documents both prior to and subsequent to the criminal trial) the Chapter 7 Trustee, as did his predecessor the Chapter 11 Trustee, continued this pattern of non disclosure in bankruptcy court. In addition it can easily be established that Petitioner and others have been refused these documents. The bankruptcy court ironically refused to give Petitioner documents under the guise of "willful interference with the orderly and economic administration of the estate…".

3. FRAUD ON THE COURT SUBVERTS THE INTEGRITY OF THE COURT

As troublesome as the Petitioner seeking documents and not receiving any production is the fact that court officials, seeking information on the case also failed to produce the documents sought thus producing a species of fraud which actually subverts the integrity of the court.

On May 17, 1995, Mr. Monzack issued a letter to the parties concerning missing documents, allegedly without any response. (See Exhibit Q.) One document sought was the yellow inventory notebooks. They not only contained lists of redemption coins, but also a detailed list of all of the assets of Cumberland Investment Corporation. Without these specific records, Petitioner could only use memory to indicate

which assets of the estate were missing in letters to the Trustee on June and September 1994.(EXHIBITS J & K)

All copies of these CIC records were not available to Petitioner. Copies in the possession of CIC accountant Peter Lockey were taken by the FBI and not returned, and the Trustee in Bankruptcy, claiming ownership, would not allow the accountant firm of Thorne, Earnst & Whinney to produce these documents for Petitioner.

The significance of the disappearance of the "yellow covered notebooks" is that they would indicate that the in-house assets have been tampered with since they were seized by the Trustee in August 17, 1990 and that assets of CIC under custody and control of John Cullen, Trustee and Eastland Bank were missing. Without these yellow notebooks, both cases became reliant upon the production of counts and inventory produced under the direction of FDIC, the Examiner and Trustees in Bankruptcy, Eastland Bank and their successor Fleet Bank versus those conducted under the certified audit conditions of a big eight accountant firm.

This May 17, 1995, letter (See Exhibit Q.) went to the U.S. Attorney, the FBI and other parties involved with both the criminal and the civil aspects of the Cumberland/Chorney cases. Not one party found any of the documents listed, except the videotapes produced by the U.S. Attorney's office.

The recent Monzack Billing of October 9, 2007, entry dated 6/7/95, states, "Telephone discussion with Sy Posner, Esq., he will appear at tomorrow's hearing in Bankruptcy Court ***cannot locate yellow notebooks*** (emphasis added), *does have receipts has videos, some inventories, some sign in and out cards." Yet six months later, the FBI Agent states that these yellow notebook records are at the U.S. Attorney's office in boxes that Defendant failed to see them. See Affidavit of Mr. Truslow, dated November 8, 1995, page 4 where*

Mr. Truslow states that the yellow notebooks "have been available to defendant in the United States Attorney's office since the CIC records were obtained from the United States Trustee."

4. ONE CONTRADICTARY STATEMENT AFTER ANOTHER

Back in 1994, Mr. Cullen stated on page 4 of Exhibit I that "When Movant speaks to video tapes or other reports, again he is vague and knows full well that those items, if any, are in the possession of the Grand Jury." As recently as October 4, 2007, Mr. Cullen stated to the Bankruptcy Court that he was going to file a Supplemental Billing for the last two years he was Trustee. In addition he stated that he delivered 100 and possible 200 boxes of documents to the Grand Jury and that these boxes included boxes of videotapes.

Both the 1994 statements and the 2007 statements contradict the Government's Brief of January 19, 1995 at pg 25-6, which states how the videotapes were obtained in the first place.

> "On or about January 15, 1993, AUSA Seymour Posner, in the presence of FBI Special Agent John Truslow, telephoned defense counsel Scott Lutes and told him that a paralegal at Eastland's private law firm had just provided several additional videotapes that the trustee had made regarding the coins seized from Cumberland….." (See paragraphs 37, 38 above.)

The Posner/Truslow rendition can only be fabricated if as Mr. Cullen states that the videotapes were all given to the Grand Jury on or about February 14, 1991 even if Eastland Bank or their successors may have had a second set of videotapes. It appears as if the G.J. and/or the prosecutor may have been mislead when Mr. Cullen on Feb. 14, 1991 testified that, "During the process, we used

> a photographer, still photographer and a video camera to trace the process of leaving the vault, to the armored cars and then to Marquette." TR. 2/14/91 page 3. When contrasting the information in the October 26, 2007 billing, it shows that Mr. Cullen "utilized three video and still photographers, as well as a stenographer, each of whom assisted the Trustee in keeping detailed records Memorializing the transfer of estate assets."

Either way, it is possible that the second Grand Jury, which indicted Petitioner, never saw or even knew of the existence of all 19 videotapes.

Petitioner could never obtain a chain of custody of these tapes, when requested in an F.O.I.A. with the Executive Office of U.S. Attorneys. The reason for this is either Mr. Cullen lied in that these videotapes were never given to the Grand Jury, or that the FBI and US Attorney lied as to when and how they were acquired.

Either way, if Eastland bank and or their successors FDIC had the videotapes in May 1995, they ignored the bankruptcy court order dated May 17, 1995 asking for (4.) video, photographs, stenographic records….plus.

5.MORE MISSING INFORMATION:

The detailed billing of EADP's involvement with both the criminal and civil cases concerning Petitioner are conspicuously missing, regardless as to whether the entries are a result of computer glitches or the failure to disclose is the result of an accidental omission or otherwise. See **Nation-Wide Check Corp. v. Forrest Hills Distributors, Inc.** 692 F.2d 214, 217-219 (1st Cir. 1982)(deliberate nonproduction or destruction of relevant document is "evidence that the party which

has prevented production did so out of the well-founded fear that the contents would harm him.")

Petitioner avers that discovery material, such as inventories and appraisals, has been deliberately suppressed and has inhibited the unearthing of further admissible evidence adverse to the withholder and that this evidence substantially interfered with trial preparation in both the criminal and civil arenas.

Attorney for Petitioner in the criminal action stated, "The Defendant contends that this information was within the control of the United States Government, that it was improperly withheld from him, that the information constitutes exculpatory evidence and that had the existence of this information been known prior to trial much more attention would have been paid by Counsel to client's claim that the assets of his company had been altered, switched or mishandled."

According to **Commercial Ins. Co. v. Gonzalez**, 512 F2d. 1307, 1314 (1st Cir.)as stated in **Anderson v. Cryovac, Inc.** pg. 925, "It seems equally logical that where discovery material is deliberately suppressed, its absence can be presumed to have inhibited the unearthing of further admissible evidence adverse to the withholder, that is to have substantially interfered with the aggrieved party's trial preparation." For instance, Videotape #2, once in the possession of Mr. Cullen and then allegedly in the possession of the FBI and U.S. Attorney would have had a substantial influence on the jury during the criminal trial.

When the "non possessory" assets were being removed from Petitioner's store at 325 Main Street, Woonsocket to Eastland Bank in Cranston, Mr. Weingarten was asked the value of the silver dollars on one of the armored

trucks. Mr. Weingarten's response, recorded on videotape, "two to three million." August 23, 1990, 9:57 tape 2. This statement would have been contrary to all of the government witnesses' testimony concerning the value of CIC inventory from a court appointed official charged with valuing the inventory.

> **Note:** On May 30, 1990, the Criminal Referral Form to Executive Office of U.S. Trustees was made by Mr. Weingarten, who upon information and belief was advanced money by Eastland Bank. No accounting of the 11 U.S.C. §364 Agreement has been made available to Petitioner, a signatory to this Agreement, despite several requests.

In light of the argument that Eastland Bank was claiming a security interest in all the coins and other assets of Cumberland Investment Corporation, the information contained in the videotapes and the fact that the stenographic record shows both the context of criminal and civil investigations, would certainly have changed the strategy used by Petitioner at trial.

CONCLUSION: The aggregate of the information withheld from the Petitioner at all stages of the criminal and civil proceedings was deliberate, continuous and substantial. Petitioner, who was C.E.O. of a public entity with certified audits by big-eight accounting firms, was blamed for concealing records in the possession of those who removed the records from his premises. It is now seventeen years since the Trustee in bankruptcy has removed the records of the company and all copies of said records in the possession of others have fallen under the custody and control of the government. Critical information was withheld concerning the possessory collateral, when it was

inventoried by Barbara Quinn and Don Etnier, of FDIC, after Eastland Bank failed; the removal of assets by the Examiner; and the disappearance of the inventory records of Cumberland Investment Corporation subsequent to Mr. Cullen removing them from the CIC premises.

Petitioner concludes, and the record supports, that **Mr. Monzack, who was the receiver for Eastland Bank as well as the Chapter 7, Trustee in the Cumberland Bankruptcy case, has the videotapes of when the Eastland Bank was taken over in his possession. Eastland Bank and their successors, FDIC, who accused Petitioner of a crime that he was convicted of, are the same parties that withheld evidence concerning the alleged crime itself in order to cover up the fact that some assets of Cumberland, that were stored at Eastland as collateral, were missing or tampered with.**

The record will show that the Petitioner was denied a myriad of information in both the civil and criminal cases necessary to defend himself and to best present his case, thus being denied due process and equal protection under the law by the suppression of these records and other information.

Furthermore, the record will show that officers of the court, including Judge Votolato, have engaged in conduct prejudicial to the effective and expeditious administration of this case.

V. STATEMENT OF THE CASE FOR THE THIRD ISSUE

Whether Judge Votolato has engaged in conduct prejudicial to the effective and expeditions administration of the case thus committing wrongs against the institutions set up to protect and safeguard the public?

A. TRAVEL AND FACTS:

1. On or about November 5, 1989, the Cumberland Investment Corporation bankruptcy case was filed in the District of Rhode Island. It has been nearly eighteen years since this filing.

2. The November 3, 2004, court order both grants the Trustee's motion to strike Petitioner's requests for discovery from the trustee and an accountability of the assets of the estate, it also sanctions Petitioner stating, "….instant filings are frivolous and are hindering the Trustee in performing his duty to conclude this case…."

3. It has been nearly three years since the November 3, 2004, court order, and nearly eight years since the last of the assets of the estate were sold in 1999, yet there appears to be no sanctions against any party, for hindering the administration of the case, except the Petitioner seeking an accountability of the assets, in this case.

4. So far, the lack of response to Petitioner's motions to chambers has had a chilling effect upon Petitioner, seeking information and clarifications concerning the October, 2007 billing of Mr. Monzack and Mr. Cullen.

5. A lack of response from the court in addition to a lack of access to an accounting of the assets of the estate as contained in other court orders (See Exhibit B), court order dated July 3, 1991, where Petitioner (seeking an accounting of the assets of the estate) is accused of "willful interference with the orderly and economic

administration of this estate….” makes Petitioner fearful.

B. DISCUSSION:

The record will show that Judge Votolato’s beliefs that Petitioner is willfully interfering with the orderly and economic administration of the estate, may be due in part to representations and misrepresentation from officers of the court. As a direct result, he has engaged in conduct prejudicial to the effective and expeditious administration of the case. Judge Votolato should be recused for the length of time it has taken to close this case and his lack of impartiality as evidenced by no response to motions made to chambers. This case has dragged on for eighteen years while many of Judge Votolato’s decisions have been contrary to statute. Despite the fact that it has been pointed out to the court on several occasions, the bankruptcy court judge has allowed an administration of this case which violates the following statutes:

1. The Trustee according to 11 U.S.C.§327(f) may not employ a person that has served as an examiner in the case. Yet the court has allowed Mr. Cullen to hire Mr. Weingarten to assist him in the sale of the assets of Cumberland Investment Corporation.

2. The Trustee according to 11 U.S.C.§704(1) shall collect and reduce to money the property of the estate for which such trustee serves and close such estate as expeditiously as is compatible with the best interests of parties in interest. Yet the court has allowed the CIC case to remain open and the unsecured creditors unpaid for

eight years after the sale of estate assets and 18 years after the case has commenced.

3. The Trustee according to 11 U.S.C.§704(2) shall be accountable for all property received and is responsible to furnish such information concerning the estate and its administration as is requested by a party in interest. Although Petitioner is a party in interest, being a 95 percent owner of Cumberland Investment Corporation, he has been unable to obtain an accounting of the assets seized, those sold and those which were not sold, but cannot be located because the court is denying him this information on the basis that Petitioner is interfering with the orderly and economic administration of this case.

C. ARGUMENT:

The conduct of Judge Votolato is prejudicial to the effective and expeditious administration of the case. Although some of the professionals on the CIC case knew of their conflicts of interest, it is the court which must determine the actual conflict. Judge Votolato abused his discretion by acting contrary to 11 U.S.C.A. 2014(a). It is for the bankruptcy court, not professionals, to determine whether professional's prior connection with a party in interest rise to level of an actual conflict, or pose threat of potential conflict so that professionals must disclose all of its previous contacts with any party in interest. (See **In Re: Citation Corporation, Debtor vs. Valrey W. Early, III, U.S. Bankruptcy Administratior, Northern District of Alabama, Defendant**, 493 F3d 1313, 1314-5, 11th Cir, 2007.) In **In Re: Citation Corporation**, the matter arising out of a fee application filed by professional, who had violation of his disclosure obligations under Bankruptcy Rule.

In the C.I.C. case, the abuse of discretion is blatant. There is some room for error if one is deciding if Mr. Monzack, receiver for Eastland Bank can act without a conflict by being Chapter 7, Trustee in the CIC case, or whether Mr. Bertozzi and his firm represented Eastland Bank at various stages had a conflict by representing the Examiner and Chapter 11 Trustee. However there can be no doubt of an abuse of discretion to ignore the following statute.

> The Trustee according to 11 U.S.C.§327(f) may not employ a person that has served as an examiner in the case. Yet the court has allowed Mr. Cullen, Trustee to hire Mr. Weingarten, who served as examiner in the case, to assist him in the sale of the assets of Cumberland Investment Corporation.

The decisions of the court contrary to statue, 11 U.S.C.§327(f) as listed above also subverts the integrity of the court itself and thus commits wrongs against the institutions set up to protect and safeguard the public. The inability of the Trustee to close this 18 year old case eight years after all the assets of the estate were sold is in itself proof of the lack of expeditious administration of the estate.

The administration of the case cannot be effective when the system as administrated is corrupted with contradictions. The integrity of the system is broken when a Trustee has been placed in the inevitable situation where in addition to representing the interests of the estate, he allegedly represents the interest of the Petitioner by court order, the interests of other creditors, the interests of Eastland Bank, F.D.I.C., Republic Credit Corporation I, and his predecessor, Mr. Cullen.

As successor to Mr. Cullen, Mr. Monzack becomes the transferee or assignee of the Chapter 11, Trustee, who had custody and control of the documents and assets of CIC in both criminal and civil aspects of two collateral cases. Mr. Monzack also inherits custody and control of documents confirming claims of Petitioner that the assets of the estate have been switched, mishandled and are missing.

D. CONCLUSION:

For the aforementioned reasons, the Judge should recuse himself and the Chapter 7, Trustee should be replaced and the billings of the professionals as well as The Final Report facts and figures should be scrutinized by independent parties appointed by this court and/or any other remedy this court meets just and fair.

VI. STATEMENT OF THE CASE FOR THE FOURTH ISSUE

Petitioner cannot obtain a fair hearing and be granted due process, a Fifth Amendment Right, with Judge Votolato presiding over a case. The end result, being that the Petitioner is denied "equal protection under the law" as guaranteed by the Fourteenth Amendment to the U.S. Constitution.

A. TRAVEL AND FACTS

Petitioner incorporates the travel and facts of Issues I-III inclusive.

B. DISCUSSION:

In this case, the Petitioner has been told that he must submit his motions directly to chambers and

that the Clerk of Courts shall decline to accept any filings from Petitioner unless such filing has first been present to Chambers and specifically authorized by the Court for filing. Petitioner, in good faith, has sought to operate within the confines of the rules set up by the court and submitted a proposed Motion to Clarify to chambers, with no response from the court. It appears as if any party in the case could file Objection/Response to the billing Application, except Petitioner, thus creating a situation where Petitioner is being denied due process as guaranteed by the Fifth Amendment to the U.S. Constitution as well as equal protection under the law as guaranteed by the Fourteenth Amendment to the U.S. Constitution.

C. ARGUMENT:

"When Rule 60(b) is in play, we [circuit court] ordinarily defer to the trial judge's more intimate knowledge of the case." **Anderson v Cryovac, Inc.** page 923. "For us to act, there must be an abuse of discretion." **U.S.v. Ayer**, 857 Fed 881, 886 (1st Cir 1988.) Under this standard, we reverse only if it plainly appears that the court below committed a meaningful error in judgment. See **In re: San Juan Dupont Plaza Hotel Fire Litigation**, 859 F2d 1007, 1019 (1st Cir. 1988)(delineating standard)

When the court seeks to restrict Petitioner's participation, requiring Petitioner to file motions directly to chambers and then not respond to these motions, the court has abused its discretion and Petitioner is denied due process.

Furthermore, when virtually every party in the case is given an option to object or respond to a motion

or not, and where only Petitioner is being denied the ability to respond or object, Petitioner is being denied equal protection under the law to respond and or object.

However, the Petitioner has a duty to protect his own interests, especially when it appears as if the Trustee does not represent his interests at all and the court is not being fair and impartial.

> "In our adversary system of justice, each litigant remains under an abiding duty to take the legal steps that are necessary to protect his or her own interests." **Cotto v. United States**, 993 F.2d. 274, 1st Cir. 1993 at 278.

Although Petitioner failed to appeal the November 3, 2004, decision because at that time he felt overwhelmed with the situation subsequent to the Supreme Court not granting certiorari, Petitioner now appeals to this honorable court because of a change in the circumstances with the governing of this case. Strictly using a "reasonable man" standard, Petitioner cannot obtain a fair hearing and obtain due process when the court refuses to respond to Petitioner.

> "Any justice, judge or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." **28 U.S.C. §§455(a).**

There is little doubt that a "reasonable man" would respond to Petitioner. The well established test in the first circuit is an objective one. See **U.S.**

v Cowden, 545 F2d. 257, 265, 1st Cir., 1976. According to Cowden,

> "Whether the charge of lack of impartiality is grounded on facts that would create a reasonable doubt concerning the judges impartiality, not in the mind of the judge himself or even necessarily in the mind of the litigant filing the motion under 28 U.S.C. §455, but rather in the mind of a reasonable man."

D. CONCLUSION:

Petitioner cannot obtain a fair and just hearing before this judge, who has stated that, Petitioner has obstructed the case, acted in bad faith and has done "intentional harm to this estate". (See EXHIBIT B-3.) Judge Votolato should be recused because of his abuse of discretion and his lack of impartiality towards Petitioner in the eyes of a "reasonable man" as well as his "meaningful errors in judgment". Furthermore, the previous rulings of the bankruptcy court and the fairness of the criminal trial, should be questioned in light of the information contained in the four arguments presented to this court.

Respectfully submitted,

Harold F. Chorney
16 Spring Drive
Johnston, R.I. 02919

401 934-0536

CERTIFICATION

On this ___ day of November, 2007, Petitioner, Harold F. Chorney mailed by first class mail a copy of the Motion and Memorandum to Appeal and/or Amend Bankruptcy Order, dated November 3, 2004 with Exhibits to the following:

Arthur N. Votolato, Judge
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Cranston, R.I. 02910

United States Trustee
Thomas P. O'Neill, Jr.
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Leonard DePasquale, AUST
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_____

Harold F. Chorney
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CERTIFICATION ADDENDUM

On this ___ day of November, 2007, Petitioner, Harold F. Chorney mailed by first class mail a copy of the Motion and Memorandum to Appeal and/or Amend Bankruptcy Order, dated November 3, 2004 with Exhibits to the following:

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_____

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LIST OF EXHIBITS PART I

LIST OF EXHIBITS PART II