

UNITED STATES COURT BANKRUPTCY  
COURT FOR THE DISTRICT OF RHODE ISLAND

IN RE: CUMBERLAND

CA. NO. 89-11051

INVESTMENT CORPORATION

MEMORANDUM IN SUPPORT OF  
PETITIONER'S MOTION TO CLARIFY  
THE CLASS ACTION AWARD FROM THE LAWSUIT AGAINST  
CHRISTIES AND SOTHEBY'S AND REQUIRE CHAPTER 7  
TRUSTEE PROVIDE A COMPLETE AND DETAILED  
ACCOUNTING OF THE ESTATE ASSETS

Now comes Harold F. Chorney, pro se, a petitioner with property interests and an interested party in the above captioned matter and requests the court to require the Chapter 7 Trustee, Jason Monzack, to provide a clarification of the basis of the \$11,000 received in the estate of Cumberland Investment Corporation in settlement of a class action lawsuit against Sotheby's and Christies and require the Trustee to provide a complete and detailed accounting of the following:

1. assets seized from the estate of Cumberland Investment Corporation,
2. assets sold from the estate of Cumberland Investment Corporation, by Christies, Sotheby's and others,
3. assets remaining in the estate of Cumberland Investment Corporation subsequent to the sales in paragraph 2 above.

BACKGROUND:

1. On August 17, 1990, the Chapter 11 Trustee, and the court appointed Examiner removed assets from the premises of Cumberland Investment Corporation in Woonsocket, R.I. A transcript of the removal of the assets reveals that certain assets were removed. One of these assets was a group of Pre-Columbian jewelry and amulets of frogs and other topics made of tumbaga gold.

2. During the removal of these assets, Mr. Weingarten, Examiner, in the August 17, 1990, Transcript of the removal of the assets, taken by Allied Court Reporters, on page 36, stated:

“This would appear to be some expensive costume jewelry, maybe ancient, couple of frogs, the price on it says \$1750, lots of frogs.”

3. These same assets are referenced in a sales proposal by Christies, dated December 27, 1990, and the June 5, 1991, Examiner’s Report, would have a current value in the tens of thousands of dollars.

4. Petitioner and former clients of the petitioner, whose assets were seized but never recovered, repetitively have indicated to the court that assets under the custody and control of Eastland Bank and the trustees in bankruptcy, were missing and/or unaccounted for. Both Petitioner and a former client, and interested party, named Warren Taft, sought to obtain an

accounting of the assets, seized on August 17, 1990, and the use of funds from the 364 Agreement, for several years, without success.

5. In a letter dated September 13, 1994, a partial listing of missing or unaccounted for assets was sent to the clerk of the United States Bankruptcy Court for the District of Rhode Island, Jason D. Monzack, Chapter 7 Trustee, John Fitzgerald, Assistant United States Trustee at the Boston Regional Office, and Sheryl Serreze, United States Trustee at the Providence, Rhode Island Office.

6. Federal judges have approved settlements in class action lawsuits in which Christies and Sotheby's, accused of collusion in fixing commission rates, were the Defendants, both domestically as well as abroad. Upon information and belief, under the terms of the agreement, sellers, like the estate of Cumberland Investment Corporation, who consigned property for auction, will be entitled to compensation amounting to 1 percent of the original hammer price.

7. Following some of the civil actions, criminal charges were brought against A. Alfred Taubman, chairman of Sotheby's. Mr. Taubman was convicted of conspiracy to fix prices.

8. On November 14, 2003, A STATUS REPORT, docket #759, was issued by the Chapter 7 Trustee 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 proceeding pending in the U.S. Supreme Court.”

9. 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.

#### DISCUSSION:

It is not clear to petitioner which assets may have been sold domestically or abroad. The STATUS REPORT (Docket Number 759), allegedly the subject of the HEARING on February 24, 2004, that parties were noticed in a document dated 1/27/04, makes no reference to proceeds from the result of the class action lawsuit..

The docket summary, dated 2/24/04 makes no reference to the class action lawsuit and states the following: 762

“Hearing held and Continued re 759 Report filed by Trustee Jason D. Monzack. APPEARANCES: Monzack. Monzack gave details of recent activity in the court. He needs to object to claims filed as secured, which trustee feels are not secured. Court required objection to claim to be filed within two weeks. Hearing continued for 3/18/04 at 9:30 AM at 6<sup>th</sup> Floor Courtroom. (Lannie, Christine) (Entered 02/24/2004)

A Notice of Continued Hearing, dated 2.24/04, referencing Document

Number: 762—759, was sent to the parties. This document states:

***Hearing Held and Continued re (739) Report filed by Trustee Jason D. Monzack. Hearing continued for 3/28/2004 at 09:30 AM at 6<sup>th</sup> Floor Courtroom.***

This hearing notice, dated 2/24/2004, likewise makes no reference to the settlement of a class action lawsuit with the estate of Cumberland Investment Corporation by Christies and Sotheby's.

#### **ARGUMENT:**

This case is some 15 years old. According to Title 11, Section 704 (7), one of the duties of the trustee is,

“unless the court orders otherwise, furnish such information concerning the estate and the estate's administration as is requested by a party in interest.”

The Chapter 7 Trustee has a fiduciary duty to provide a complete and detailed accounting of the assets of the estate, especially in light of the fact that the two major auction companies involved in the class action settlement are also the same firms involved with evaluating the assets of the estate of

Cumberland Investment Corporation. In addition, there may be an appearance of impropriety by the Trustee in the non disclosure of a detailed and complete accounting of the assets, especially in light of these facts:

1. Petitioner has notified the Trustee that assets of the estate involving hundreds of thousands of dollars are missing and unaccounted for.
2. The Trustee has never produced any records indicating that assets like the Pre-Columbian artwork, seized by the Chapter 11 Trustee, on August 17, 1990, and listed in a transcript of the removal of the assets, have been indeed sold, yet these same assets are referenced in a letter attached to a sales proposal of Christies, dated December 27, 1990.
3. Since the yellow covered asset inventory books of Cumberland Investment Corporation have been misplaced, while in the possession and control of court appointed officials, Petitioner does not have any memory as to whether these assets were listed as part of the corporate inventory or not.
4. Notice to the creditors and other parties of a class action settlement with the estate is conspicuously missing.

#### CONCLUSION:

It is now time for a complete, detailed and honest accounting of the assets of the estate, prior to the Trustee issuing a final report, and closing this case.

**WHEREFORE**, Petitioner prays that this court require the Trustee to Clarify the \$11,000 class action award by providing a copy of the proof of claim and other documents and to provide an accounting of estate assets.

Respectfully submitted,



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## CERTIFICATION

I hereby certify that on this 8th day of March 2004, I sent a copy of the above by first class mail to the following:

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