

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND

APPENDIX KK

IN RE: CUMBERLAND
INVESTMENT CORPORATION

CA. NO. 89-11051

MOTION IN OBJECTION TO MOTION TO STRIKE BY
THE CHAPTER 7 TRUSTEE, JASON D. MONZACK

Now comes Petitioner, Harold F. Chorney, pro se, a petitioner with property interests and an interested party in the above captioned matter and objects to the Motion to Strike and 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.

and states for cause those arguments contained in the attached Memorandum
of Law.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Harold F. Chorney".

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

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IN RE: CUMBERLAND
INVESTMENT CORPORATION

CA. NO. 89-11051

MEMORANDUM IN SUPPORT OF

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BACKGROUND:

1. 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.”

2. At a Hearing held on 2/24/04, Jason Monzack reported to the court that certiorari in the Supreme Court case (*Appeals of the motions listed in paragraph 10 f. and 10 g. below was presented to the District Court for the District of Rhode Island, the First Circuit Court of Appeals as well as the Supreme Court of the United States*) 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.

3. On March 8, 2004, Petitioner Harold F. Chorney filed a MOTION AND MEMORANDUM IN SUPPORT OF PETITIONER’S MOTION TO CLARIFY THE CLASS ACTION AWARD FROM THE LAWSUIT

AGAINST CHRISTIES AND SOTHEBY'S AND REQUEST CHAPTER 7
TRUSTEE PROVIDE A COMPLETE AND DETAILED ACCOUNTING
OF ESTATE ASSETS.

4. On March 18, 2004, a Continued Hearing was held. Mr. Monzack stated that there were some 28 claims, claiming to be secured creditors and that he would be objecting to them. He also told the court of Petitioner's motion requesting clarification and an accounting of the assets.

5. During the 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?" Mr. Monzack indicted that he was looking into prior orders of the court. The Judge asked Mr. Monzack when he was going to object to Petitioner's motions and was told that day or the following day.

6. The Motion to Strike, refers to the July 3, 1991, ORDER, which states in part the following in paragraph 2,

"That henceforth, Chorney and Aubin will no longer be permitted to intervene or otherwise participate in proceeding relating to sales or other disposition of estate assets, and are not entitled to any notice other than that received by general creditors."

7. Mr. Monzack has for reasons unknown not provided the court with a complete copy of the July 3, 1991, ORDER in the Motion to Strike. The section that he has omitted states:

“1. The Court will rule upon, the Examiner’s pending fee application without further input from Chorney, whose standing is as an alleged general creditor only, and whose interests as such are adequately represented by the Trustee.”

8. Petitioner asserts now, as he has continuously maintained during appeals to the District Court for the District of Rhode Island, and the First Circuit Court of Appeals in Ca. No. 92-1780, in page 5, Brief of Appellant:

“In view of the fact that the Examiner was double billing (the estate of Cumberland Investment Corporation with other estates that Mr. Weingarten was either the Examiner or Trustee), such practice lends credence to the fact that the Appellant (Chorney) was intentionally excluded in the plan as to how to sell the assets.”

9. Petitioner asserts now, as he has continuously maintained before and since the bankruptcy, in December 1989, that there were sufficient assets to cover all debt in the estate of Cumberland Investment Corporation.

10. 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, dated December 12, 1990, for several years without success, because all the motions listed below were denied:

- a. Petitioner's Request for Clarification and Accounting of Estate Property Sold on December 7, 1999 by Spink America
- b. Petitioner's Request to Have Chapter 7 Trustee Provide an Accountability of Assets of the Estate and to Produce Requested Documents and Videotapes 1/23/00
- c. Petitioner's Motion to Compel Production of Requested Documents from Chapter 7 Trustee 11/28/00
- d. Petitioner's Motion in Objection to Chapter 7 Trustee's Motion to Strike Motion to Compel Production of Requested Documents from Chapter 7 Trustee 12/16/00
- e. Motion in Objection to Trustee's Motion to Strike 12/21/00
- f. Motion in Objection to Abandoning Assets without Accountability of Assets by the Chapter 7 Trustee, Jason D. Monzack 1/2/02
- g. Motion in Objection to Trustee's Motion to Strike 2/17/02
- h. Motion to Recuse Judge Votolato with Memorandum in Support of Motion to Recuse Judge Votolato. 2/15/02

11. In a letter dated September 13, 1994, a partial listing of missing or unaccounted for assets involving hundreds of thousands of dollars 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 by Harold F. Chorney, Petitioner. One group of assets, more fully described in

paragraphs Numbered 14, 15 and 16 below, were part of the list supplied in the September 13, 1994 letter. No one ever responded to these letters.

12. Federal judges have approved settlement in class action lawsuits in which Christies and Sotheby's, accused of collusion in fixing commission rates, were the Defendants, both domestically and abroad. Following some of the civil actions, criminal charges were brought against A. Alfred Taubman, Chairman of Sotheby's.

13. Newly discovered evidence from the Trustee's report on February 24, 2004, indicates that \$11,000 from the settlement of a class action lawsuit against Christies and Sotheby's. The terms of the settlement agreement seem to indicate that approximately 1.1 Million, (\$1,100,000) dollars in assets from the estate of Cumberland Investment Corporation were sold by either Christies or Sotheby's and that a proof of claim was filed by the trustee on behalf of the estate.

14. 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, recorded in the transcript, were removed. One of these of recorded assets was a group of Pre-Columbian jewelry, artwork produced before the year 1492 by the Native Indians of the

Americas, in the form of amulets of frogs and other topics made of tumbaga gold.

15. 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.”

16. This same Pre-Columbian artwork, as referenced in paragraphs 14 and 15 above, are also referenced in both a sales proposal by Christies, dated December 27, 1990, and the Examiner’s Report, dated June 5, 1991, would have a current value in the tens of thousands of dollars.

17. Newly discovered evidence from the Trustee’s verbal report on February 24, 2004, and at the continued Hearing, held on March 18, 2004, indicate that in excess of 28 creditors, claimed to be secured creditors.

18. Republic Credit Corporation I, has made representations to the the District Court for the District of Rhode Island, the First Circuit Court of Appeals, and the Supreme Court of the United States, of the following:

“The Trustee has, with the permission of this court, liquidated almost all remaining assets of the Debtor. The Trustee presently holds the sum of \$224,748.00 (the “Secured Creditor Fund”) for the benefit of secured creditors following the auctions of the coins and stamps by Spink. As the sole remaining secured creditor, Republic is entitled to the Secured Creditor Fund as previously ordered by the Bankruptcy Court.” (emphasis added)

19. On December 18, 2001, Republic and the Trustee jointly moved to distribute to Republic the Secured Creditor Fund of \$224,778.00 and to abandon those assets which Spink continued to hold in full satisfaction of all claims of Republic. Republic agreed to be responsible for any fees or charges of Spink regarding those assets which Spink continued to hold.

20. In response to the Joint Motion, Petitioner, Mr. Chorney, filed MOTION IN OBJECTION TO ABANDONING ASSETS WITHOUT AN ACCOUNTABILITY OF ASSETS BY THE CHAPTER 7 TRUSTEE, JASON D. MONZACK and MOTION FOR CONTINUANCE. On March 14, 2001, Judge Votolato entered the following Order: (Docket 738)

1. That the Joint Motion for Approval of Distribution of the Proceeds of the Sale of Secured Creditor's Collateral and To Abandon Certain Assets to Secured Creditor (the "Joint Motion") filed by Jason D. Monzack, Trustee (the "Trustee"), and Republic Credit Corporation I ("Republic") is granted;
2. That the Motion in Objection to Abandoning Assets Without an Accountability of Assets by the Chapter 7 Trustee, Jason D. Monzack (the "Motion in Objection"), filed by Harold F. Chorney ("Mr. Chorney") is denied;
3. That the Trustee's Motion to Strike Mr. Chorney's Motion in Objection is granted;
4. That the Motion and Memorandum for Continuance filed by Mr. Chorney is denied, and the Objection thereto filed by Republic is sustained; and
5. That the Court deems that Mr. Chorney has filed a Motion for Stay

of the Order pending appeal, and that said Motion for Stay is denied.

DISCUSSION:

1. This case is some 15 years old.
2. According to Title 11, Section 704(1)

“The trustee 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;

3. According to Title 11, Section 704(2)

“The trustee shall be accountable for all property received.”

Historical and Revision Notes, Section 704, Duties of trustee: The Notes of Committee on the Judiciary, Senate Report No. 95-989, states that,

“The trustee is responsible to furnish such information concerning the estate and its administration as is requested by a party in interest.”

4. 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.”

5. According to 11 U.S.C. Section 1109(b);

“a party in interest, including...a creditor may raise and appear and be heard on any issue in a case under this chapter.”

6. According to the guidelines set up in the U.S. Trustee Manual, Chapter

5-7, entitled "ALLEGATION INVOLVING LOSS OF ESTATE ASSETS BY A PRIVATE TRUSTEE OR AN EMPLOYEE OR AGENT OF A PRIVATE TRUSTEE", indicates that when assets of an estate are reported missing or there is the "inability to account for estate assets" the procedure is to have a prompt investigation when assets of an estate are reported missing.

7. The public should have access to bankruptcy records. According to 11 U.S.C. Section 107, Public access to papers.

- (a) Except as provided in subsection (b) of this section, a paper filed in a case under this title and the dockets of a bankruptcy court are public records and open to examination by an entity at reasonable times without charge.
- (b) On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may-
 - (1) protect an entity with respect to a trade secret or confidential research, development or commercial information; or
 - (2) protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title.

ARGUMENT:

1. Harold F. Chorney, Petitioner, has standing to seek an accounting because he has both property interests as well as pecuniary interests in the bankruptcy case that are directly affected by the bankruptcy proceeding and is a party in interest. Petitioner's property interests and pecuniary interests include but are not limited to the following:

- a. Petitioner was the former President and 97 percent share owner of Cumberland Investment Corporation, a wholly owned subsidiary of a public entity, in which Petitioner was the C.E.O. and owned 97 percent of the outstanding shares of said public company.
- b. Petitioner has been held personally responsible in any shortfall in the value of the assets to the secured creditor, Eastland Bank, and their successors, F.D.I.C. and Republic Credit Corporation, I., in the form of a restitution in Ca. No. 92-099P, in the District Court in the District of Rhode Island.
- c. Petitioner has always claimed that when the assets were removed from the premises of Cumberland Investment Corporation by the Chapter 11, trustee, John F. Cullen on August 17, 1990 and August 23, 1990, that assets not belonging to Cumberland Investment Corporation were also seized.
- d. Petitioner has been held responsible for "compensatory payment" of parties in the bankruptcy, while seeking an accountability of the assets of the estate, and was fined some \$200,000, yet to date no accounting of the assets of the estate has been given to Petitioner.
- e. The books and records of Cumberland Investment Corporation, contain specific assets owned by the corporation. These books and records were also seized by John F. Cullen. Specific assets seized by the Trustee, and not the property of Cumberland Investment Corporation, belong to Petitioner and to other parties.

2. 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.

3. 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:

- A. Petitioner has notified the Trustee that assets of the estate involving hundreds of thousands of dollars are missing and unaccounted for.
- B. 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.
- C. 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 the Pre-Columbian assets were listed as part of the corporate inventory or not.
- D. Notice to the creditors and other parties of a class action settlement with the estate is conspicuously missing.

4. The Trustee has never claimed any exemption under title 107 of the code and should supply those documents requested.

5. The Trustee has never supplied any breakdown of the numbers used in his petition as to where the funds in the secured creditor's fund and those in the unsecured creditors fund are derived from.

6. The Trustee and Republic Credit Corporation I, filed a joint motion to Abandon Assets held by Spink, and for Distribution of Proceeds of the Sale of Secured Creditor's Collateral on December 2001. (See Docket 724.)

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.

Respectfully submitted,



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