

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF RHODE ISLAND

IN RE: CUMBERLAND  
INVESTMENT CORPORATION

CA NO. 89-11051

**PETITIONER'S OFFER OF PROOF CONCERNING STANDING**

Now comes Harold F. Chorney, pro se, a petitioner with property interests and an interested party in the above captioned matter and presents this instant OFFER OF PROOF as to why Petitioner has standing to participate in hearings and pleadings involving the FIRST AND FINAL APPLICATION FOR FEES AND EXPENSES OF EDWARDS ANGELL PALMER & DODGE LLP; THE FEE PETITION OF JOHN F. CULLEN; and the fees and expenses of other professionals in this case..

**OFFER OF PROOF CONCERNING PROPERTY INTERESTS OF  
PETITIONER**

**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, stored in Eastland Bank vaults, as collateral. The number of coins held by Eastland Bank during this period was 7,826 silver dollars in May 1989.

2. On October 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. In addition to the "possessory" collateral, stored at Eastland Bank in Woonsocket, R.I., non possessory assets were stored at 141 Main Street and 325 Main Street in Woonsocket, R.I. Petitioner also resided at 141 Main Street.

5. 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, Wescap Enterprises Limited, Financial Privacy Consultants, Inc. and others were seized and removed from 141 Main Street, Woonsocket, R.I. and from 325 Main Street Woonsocket, R.I. on August 23, 1990. Also seized at this same time were assets and documents personally belonging to Petitioner.

6. Petitioner could not remember from memory each and every asset which belonged to him personally or to others which was seized.

7. Petitioner made several attempts to obtain copies of the yellow notebooks containing the inventory of Cumberland Investment Corporation, in part to assist him in finding out which assets were removed which were not part of the certified inventory of Cumberland Investment Corporation. Petitioner was unsuccessful in obtaining copies of the corporate inventory contained in yellow notebooks from the U.S. Attorney, Chapter 11 Trustee and Chapter 7 Trustee. Upon information and belief, documentary evidence of ownership of assets by Petitioner and others was seized by the Trustee.

8. On May 26, 1994, Mr. Monzack sent a letter to Petitioner stating,

“As you requested, and as has been authorized by the FDIC, enclosed please find the 14 page inventory list previously supplied to me by FDIC.

As we also discussed, should you have any documentation substantiating your claims that there may be assets of Cumberland Investment Corp. which are not currently stored at Fleet National Bank in Woonsocket, RI, you will provide me with copies of any such documentation so that I may further look into the matter.” (See Exhibit 1.) (E-119.)

9. On June 10, 1994, subsequent to reviewing the 14 page inventory supplied by Mr. Monzack, Petitioner sent a letter to Mr. Monzack which included, from memory, a list of possible missing items, which included the

Pre Columbian amulets such as the gold frogs. (See Exhibit 2.) (E 120-E 121.)

10. Petitioner and others have sought an accounting of the assets of the estate of C.I.C. On August 26, 1994 JOHN F. CULLEN'S OPPOSITION TO THE MOTION OF WARREN TAFT AND OTHERS FOR COMPLETE ACCOUNTING BY JOHN CULLEN, TRUSTEE OF ASSETS WHICH WERE UNDER HIS CONTROL FROM AUGUST 1990 UNTIL THE SAME WERE TURNED OVER TO THE SUCCESSOR TRUSTEE, JASON MONZACK was made. In this pleading, Mr. Cullen states that,

"The Movant, although alleging that there are questions concerning the whereabouts of certain valuable items which were allegedly in 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." (See Exhibit 3.)

(E 113-E 118.)

11. 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 describes Mr. Weingarten, court appointed Examiner stating that, "This would appear to be some expensive costume jewelry, maybe ancient, couple of frogs; the price on it says \$1750, lots of frogs." TR 8/17/90, pg. 36. (See Exhibit 4.) (E 372.)

12. On September 13, 1994, a copy of the Allied Court

(E 307-E349.)

Reporters transcript of the removal of the assets (See Exhibit 4.) was

sent to Jason Monzack, with a letter (See Exhibit 5.) in response to the May

(E 122.)

26, 1994, letter from Mr. Monzack .

13. The September 13, 1994, letter lists possible personal and corporate items missing or sold but not accounted for. The September 13, 1994 letter refers to number 8 of the June 10, 1994 letter. The June 10, 1994 list, number 8., indicates that there were some 25 gold frogs and other pre-Columbian amulets. (See Exhibits 2 and 5.)

14. Mr. Monzack made no response to the June 10, 1994, or the September 13, 1994 letters.

15. On December 28, 1994, Mr. Nacu, Mr. Dunleavy and Petitioner met with Mr. Monzack at his offices in Cranston, R.I. It was at this meeting that Mr. Monzack admitted the following: (See Exhibit 6.) (E 126-E127.)

- a. Certain records, including the yellow notebooks could not be located by the U.S. Attorney.
- b. Mr. Monzack was attempting to obtain the records, inventories, documents, videos and still photographs of the seized assets as they were being removed from the building.
- c. Some \$300,000 to \$400,000 in assets seized by John F. Cullen, Esq., was missing.

16. On January 4, 1995, Scott Lutes, Esq., attorney for Petitioner contacted Mr. Monzack in order to obtain an inventory and detailed

(E158.) (E148-E150.)  
disposition of the assets of the estate of C.I.C. (See Exhibit 9, page 8 from

the billing records of Chapter 7 Trustee, dated October 9, 2007.)

17. On May 17, 1995, a letter was sent by Mr. Monzack to Mr. Cullen, Mr. Bertozzi, Mr. Weingarten, the Postal Inspector, the U.S. Attorney, the FBI, Fleet Bank, the FDIC and others, seeking inventories and other documents. (E148-E150.) (See Exhibit 8.) The production was virtually without success, with exception of the production of 19 videotapes of the removal of the assets on August 17 and August 23, 1990. Only Mr. Taft was "allowed" to view these videotapes. Petitioner and his attorney were forbidden to view these videotapes. (See July 21, 1995 letter from Mr. Monzack to Mr. Taft, Exhibit 9.) Petitioner did not obtain the 19 videotapes until October 1999, in response to an F.O.I.A to Executive Office of U.S. Attorneys.

18. On February 1996, Petitioner went to prison where on December 28, 1996, Petitioner sustained a traumatic brain injury resulting in both memory loss, and a reoccurrence of his service connected Post Traumatic Stress Disorder.

19. Subsequent to the December 1999, auction sales of assets of the estate, Mr. Monzack on 2/7/02 stated that there were no assets remaining. It was at this time that Petitioner finally realized that the gold frogs and other assets had totally disappeared without any accounting.

20. To date, Petitioner has not been able to obtain a copy of the yellow inventory books of Cumberland Investment Corporation.

21. To date, Petitioner has not been able to obtain any accounting of the assets of the estate which were taken, sold or remaining.

22. To date, Petitioner has not been able to obtain any accounting concerning the sale of the pre-Columbian gold frogs, other antiquities and gemstones, which Petitioner has an interest in.

#### **B. DISCUSSION:**

It is difficult for the Petitioner to prove all those items belonging to Petitioner or to others, which were removed from the premises of Cumberland Investment Corporation by the Chapter 11, Trustee because the Petitioner has never received a detailed listing of those items seized, those sold and those remaining. In good faith, Petitioner supplied Mr. Monzack, the U.S. Trustee and the Clerk of the Bankruptcy Court a listing of items which were conspicuously missing (See Exhibits 2 and 5) from those items allegedly sold from the estate.

In addition, the detailed inventory lists of corporate assets, compiled under the aegis of the corporate accountants of Thorne, Ernst and Whinney,

removed by the Chapter 11 Trustee, have disappeared. 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. (E164.) (See Exhibit 10., Jason Monzack Billing, dated October 9, 2007, page 14.)

Other copies of the inventory records of Cumberland Investment Corporation, in the possession of Ernst and Whinney, were claimed to be "owned" by the Chapter 11 Trustee in bankruptcy and Ernst and Whinney would not release them to Petitioner or to his attorney Scott Lutes when requested. A third set of these yellow notebooks was given to Special Agent Truslow by C.I.C. accountant, Peter Lockey. A copy of these records were supposed to be made and given back to Mr. Lockey, by the F.B.I. Mr. Lockey never received a copy back from the F.B.I.

Consequently, the Petitioner was at a "dead end" to reconcile assets using corporate records. Petitioner and others had to use and rely on lists made up by Bankruptcy Court parties versus those prepared over time by Thorne Ernst & Whinney. Consequently a corporate list of assets could not be used by Petitioner or others to reconcile those assets seized, those sold and those remaining either for the civil or criminal action.

### **C. ARGUMENT:**

It is difficult to prove a negative. How does Petitioner prove which assets were taken that were part of the corporate inventory? It is even more difficult to prove which assets, not part of the corporate inventory, were taken along with the corporate inventory when the copies of the corporate inventory have themselves disappeared and no listing of assets seized, sold or remaining has been supplied to Petitioner.

The Chapter 7 Trustee claims that Petitioner has no standing since he has not filed any Proof of Claim. But how could Petitioner file any claim when the information listed above to completely and accurately substantiate this claim is conspicuously missing? There is no doubt that gold frogs were removed from the premises of Cumberland Investment Corporation as listed in the transcript of the removal of the assets on August 17, 1990 on page 36. Yet, no documentation concerning the sale of these frogs and other items listed in the September 13, 1994, letter has been produced for Petitioner.

Petitioner has an economic interest in the gold frogs, gemstones, antiquities and other items not listed as part of the corporate inventory which were seized by the Chapter 11 Trustee, although he cannot specify what all those items are, or what they are valued at.

**WHEREFORE**, there can be little doubt from the information listed above that Petitioner has "property interests" in some 25 gold pre-Columbian amulets of significant value, and that the information concerning these and

other assets are missing to the extent that Petitioner cannot truthfully and accurately file a Proof of Claim. It is because of his property interests that Petitioner has standing to present his case and question the billing and other practices of Mr. Bertozzi, Mr. Cullen, Mr. Monzack and others.

Respectfully Submitted,



Harold F. Chorney, Pro Se  
16 Spring Drive  
Johnston, R.I. 02903  
(401) 934-0536

### CERTIFICATION

I hereby certify that on this \_\_\_\_\_ day April 2008, I sent a copy of the above by first class mail to the following:

Arthur N. Votolato, Judge  
380 Westminister Mall  
6<sup>th</sup> Floor  
Providence, R.I. 02903

Edward J. Bertozzi, Jr., Esq.  
Edwards Angell Palmer & Dodge LLP  
2800 Financial Plaza  
Providence, R.I. 02903

Jason D. Monzack , Esq.  
Kirshenbaum & Kirshenbaum  
888 Reservoir Avenue  
Cranston, R.I. 02910

Leonard DePasquale, AUST  
Office of the U.S. Trustee  
10 Dorrance Street  
Providence, R.I. 02903

John F. Cullen, Esq.  
Law Office of John F. Cullen, PC  
17 Accord Park Drive, Ste 103  
Norwell, MA 02061

John Fitzgerald, III, Esq.  
United States Trustee  
Thomas P. O'Neill, Jr. Federal Office Bldg.  
10 Causeway Street, Room 472  
Boston, MA 02222-1043

John Boyajian, Esq.  
Boyajian, Harrington & Richardson  
182 Waterman Street  
Providence, R.I. 02906

Matthew J. McGowan, Esq.  
Salter McGowan, Sylvia & Leonard  
321 South Main Street  
Providence, R.I. 02903

Harold F. Chorney  
HAROLD F. CHORNEY

## **LIST OF EXHIBITS FOR OFFER OF PROOF**

Exhibit 1. May 26, 1994, letter from Mr. Monzack to Petitioner (E119.)

Exhibit 2. June 10, 1994, letter from Petitioner to Mr. Monzack. (E120-E121.)

Exhibit 3. April 26, 1994, JOHN F. CULLEN'S OPPOSITION TO MOTION OF WARREN TAFT AND OTHERS FOR COMPLETE ACCOUNTING BY JOHN CULLEN TRUSTEE OF ASSETS WHICH WERE UNDER HIS CONTROL FROM AUGUST OF 1990 UNTIL THE SAME WERE TURNED OVER TO THE SUCCESSOR TRUSTEE, JASON MONZACK (E113-E118.)

Exhibit 4. August 17, 1990, Transcript of the removal of C.I.C. assets (E307-E349.)

Exhibit 5. September 13, 1994, letter from Petitioner to Jason Monzack (E122.)

Exhibit 6. February 10, 1995, letter from creditor Traian Nacu to Office of Professional Responsibility (E126-E127.)

Exhibit 7. October 9, 2007, Billing records of Chapter 7 Trustee, page 8 (E158.)

Exhibit 8. May 17, 1995, letter from Mr. Monzack to parties and Agencies (E148-E150.)

Exhibit 9. July 21, 1995, letter from Mr. Monzack to Mr. Taft (E-350.)

Exhibit 10. October 9, 2007, Billing records of Chapter 7 Trustee, page 14 (E164.)

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