

1
UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND

2 In re:

3 CUMBERLAND INVESTMENT CORP.,

4 Debtor

BK No. 89-11051

Providence, Rhode Island
May 7, 2008

5 TRANSCRIPT OF TRIAL
6 BEFORE THE HONORABLE ARTHUR N. VOTOLATO
7 UNITED STATES BANKRUPTCY JUDGE

8 A P P E A R A N C E S :

9 For the Debtor: **HAROLD F. CHORNEY**
10 16 Spring Drive
11 Johnston, Rhode Island 02919

12 For the Chapter 7 **JASON D. MONZACK, ESQ.**
13 Trustee: 888 Reservoir Avenue
14 Cranston, Rhode Island 02910

15 For the U.S. Trustee: **GARY L. DONAHUE, ESQ.**
16 Office of the U.S. Trustee
17 10 Dorrance Street
18 Providence, Rhode Island 02903

19 For Edwards, Angell,
20 Palmer & Dodge: **EDWARD J. BERTOZZI, JR., ESQ.**
21 Edwards, Angell, Palmer & Dodge
22 2800 Financial Plaza
23 Providence, Rhode Island 02903

24 Transcription Service: Elite Transcription
25 (479) 872-2639

Email: Elite-Transcription@cox.net

INDEX

1 WITNESSES DIRECT CROSS REDIRECT RECROSS

2 No Witnesses

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10 EXHIBITS DESCRIPTION MARKED RECEIVED

10 No documents

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1 THE COURT: -- involves Cumberland Investment
2 Corporation, a number of matters that were started for hearing,
3 and I guess back in March, March 27, and continued to today.
4 There were fee applications, objections, responses by the U.S.
5 Trustee, a motion by Harold Chorney to clarify the fee
6 application of Edwards & Angell, a response to that by E&A, and
7 a supplemental response by the trustee, and then supplements by
8 Chorney, to the motion to clarify, and a supplement by Chorney
9 regarding the issue of standing. We have responses to that by
10 Edwards & Angell and the U.S. Trustee.

11 I'm going to take hopefully a couple of minutes before
12 we start that. And we won't take a recess; we'll just use up
13 the time. Relax in the meantime.

14 | (Pause in proceedings)

15 THE COURT: Okay, we're ready to go ahead on the
16 various applications and pending matters. I think the way I
17 would plan to go ahead would be to -- we have the papers filed
18 by Mr. Chorney, they're extensive. I'm going to hear the
19 responses first, to Mr. Chorney's positions this morning, and
20 then to the extent that they're appropriate I'm going to hear
21 Mr. Chorney, in response to what we hear from the objectors.
22 Okay? Yes, Mr. Monzack.

23 MR. MONZACK: If Your Honor please, Jason Monzack, the
24 Chapter 7 Trustee. In response to Mr. Chorney's filings with
25 the Court I have submitted three separate submissions to the

1 Court. And if I may summarize what's in those three
2 submissions, generally. My purpose in submitting those
3 documents to the Court was to show, through Mr. Chorney's own
4 language in matters that he submitted to this Court, to a matter
5 pending in the 1st Circuit as we stand and sit here today, in a
6 matter that was disposed by the 1st Circuit in 2002, in an order
7 from the 1st Circuit in 1993, in a proof of claim that summarizes
8 Mr. Chorney's conduct from 1984 to 1990, so it spans a period of
9 time from 1984 to 2007, that other than the very narrow issue of
10 Mr. Bertozzi's fee, there are other issues that Mr. Chorney is
11 seeking to raise and all of those issues have been raised
12 numerous times before this Court and appellate courts and have
13 been disposed of by this Court and appellate courts, due to both
14 a lack of standing of Mr. Chorney and the barring effect of
15 final orders and judgments of numerous courts.

16 I have submitted a copy of a nonpublished 1st Circuit
17 decision of 1993 with my most recent submission that gives a
18 history of the case through 1993. And in 1993 it talks about
19 the number of submissions and appeals and docket entries pending
20 in this Court. And from 1993 to today there are -- the number
21 of docket entries now in this case exceeds 1,000. At that point
22 I think it was about 300. Some of the language used by this
23 Court and other courts to describe Mr. Chorney's behavior and
24 his allegations are, "totally unsupportable," "fabricated," "out
25 of touch with reality," "frivolous," "bad faith,"

1 "obstructionist," "ludicrous," "incomprehensible." And Mr.
2 Chorney continues to file, as he has in this case, pleadings
3 seeking to raise issues that have been many times considered and
4 disposed of by this Court and other courts.

5 With regard to -- I'll just say this, that I think Mr.
6 Chorney's intent can be seen from his most recent submission to
7 this Court in which he says for apparently the first time since
8 this case began, and in my memo I point out in the 18 1/2 years
9 that this case has been pending, and some 14 years since Mr.
10 Chorney received this transcript of the removal of assets by the
11 Chapter 11 Trustee, Mr. Chorney is now apparently saying that
12 some of these assets were personal assets and not corporate
13 assets, which I maintain shows the implicit recognition by Mr.
14 Chorney that he has no standing and that all of these issues
15 that he has sought to raise have been disposed of on prior
16 occasions.

17 He's now coming up with what apparently is a new
18 theory, that he has standing, and he's raising new issues
19 because he's now claiming that some of these assets were
20 personal property, which he acknowledges in his pleading that
21 he's raised these issues many times in his so-called corporate
22 capacity, but now apparently he's raising these in his personal
23 capacity.

24 I believe that the submissions that I've made to the
25 Court, the copies of prior orders of this and appellate courts

1 that have been submitted, the summaries of the submissions that
2 Mr. Chorney has made to this Court and to the appellate courts
3 from the early 1990s until 2007 show that he repeatedly raises
4 the same issues over and over again, that this Court should not
5 consider these issues that he's raising at this time because of
6 the prior effect of orders from this and other courts.

7 And on the one narrow issue of Mr. Bertozzi's fees and
8 the appropriateness of his fees I don't disagree from the U.S.
9 Trustee's position that it submitted to the Court which would
10 accept that fee application, and the actual amount of fees being
11 paid to Mr. Bertozzi is going to be significantly less than was
12 contained in his fee application. He has not submitted all of
13 his time to this Court and is not seeking compensation for all
14 of his time. Whatever award is made to Mr. Bertozzi and his law
15 firm will be greatly discounted because of the other expenses
16 involved with this case, including my own expenses, Your Honor.

17 I would point out that since I submitted my last
18 application, as a supplement to my final report, on December 17,
19 '07, I have devoted an additional 46 hours to this case since
20 that time, dealing almost entirely or most significantly with
21 the submissions made by Mr. Chorney. So the Chapter 7
22 administrative expenses continue to escalate in this case.

23 And I believe that Mr. Chorney's motion, his many
24 responses, should be denied by this Court or dismissed, based on
25 the fact that the issues that Mr. Chorney seeks to raise, and if

1 you look behind the platform he uses, that is to object to Mr.
2 Bertozzi's fees, the true intent of Mr. Chorney's pleadings
3 appears to be to raise these issues over and over again. And
4 therefore, I believe that, one, Mr. Chorney doesn't have
5 standing, based upon the reasons submitted to this Court, by my
6 submissions and by other parties' submissions, but on the merits
7 of his pleadings they should be denied and dismissed because
8 they've been disposed of previously, on numerous occasions.

9 THE COURT: Thank you.

10 MR. BERTOZZI: Your Honor, Edward Bertozzi, for
11 Edwards, Angell, Palmer & Dodge. Your Honor, Mr. Monzack has
12 eloquently set forth everything that I would say.

13 THE COURT: Okay. Thank you.

14 MR. DONAHUE: Good morning, Your Honor. Gary Donahue
15 for the United States Trustee. As I see it, Your Honor, we're
16 here on two distinct matters, the application for compensations
17 of Edwards, Angell, Palmer & Dodge, and the most ironically
18 styled pleading, Petitioner's Motion to Assist and Help the
19 Court Concerning the First and Final Application for Fees and
20 Expenses of Edwards, Angell, Palmer & Dodge, LLP.

21 Your Honor, I say that not to be flip, but the
22 function today is to determine and liquidate the amount of the
23 claim of Edwards, Angell, Palmer & Dodge, LLP. I have reviewed
24 it on behalf of my client, the United States Trustee, Your
25 Honor. We have no objection to the instant fee application. I

1 note that Mr. Bertozzi has exceptional skill and his integrity
2 is beyond question in my personal opinion, Your Honor. I think
3 the instant fee request is quite modest. As I've set forth it
4 totals \$45,953.75 for hours spent in the years 1990 and 1991.
5 It implicitly waives \$35,921 in fees because they can't
6 reproduce the time records in detail, although they have a
7 summary.

8 So effectively, Judge, based on the draft final report
9 I have in my office, it looks like it's going to be 44.71
10 percent of whatever fees you allow. That, by my calculation,
11 will pay Mr. Bertozzi's firm a grand total of \$16,060, if you
12 allow him the total of \$45,953. Candidly, that's a very modest
13 award. I know there are some specific objections raised in Mr.
14 Chorney's papers. I think they're addressed in the response by
15 Mr. Bertozzi. And simply stated, it's a very, very reasonable
16 fee request, from my position. So I would think that the
17 application should be approved.

18 The petitioner's motion to assist and help the Court,
19 issue number one, does Mr. Chorney have standing; I believe he
20 does not. Because whether or not you allow the fee application
21 in total or deny it in total it will not affect his economic
22 interest at all. However, we don't need to give Mr. Chorney
23 another platform whether or not he has standing or not. I think
24 you can consider it, I know other judges frequently do this in
25 standing issues, consider it for what it's worth.

1 You should take it from whence it comes, Your Honor,
2 attribute it to the weight of it, take it as an offer of proof,
3 for its probative value, which I would suggest to you is little.
4 It's not well presented and it perhaps would fall in the
5 category of the other pleadings that the 1st Circuit and this
6 Court have previously found to be obstructionist in nature.

7 Its stated purpose is to help and assist you in
8 liquidating the fees of Edwards, Angell; you should consider it.
9 And then you should award the appropriate fees and we should
10 move forward. My office sent a detailed letter to Mr. Monzack
11 on May 1st. There's still some little ticking and tying we want
12 cleaned up on the TFR. He tells me he'll have the trustee's
13 final report amended to me in a week. We'll be back again, I'm
14 sure, with comments and objections, and hopefully we'll actually
15 get some creditors paid some day. But once he gets that
16 amendment to me, Judge, we'll take the next step. I'll be able
17 to certify the final report to you and we'll have a final
18 hearing on this case, which I don't think will be final. That
19 might be an ironic name as well.

20 THE COURT: Do you have any position, I believe also
21 on for hearing is the application of the Chapter 11 Trustee,
22 John Cullen.

23 MR. DONAHUE: Your Honor, I did not review that prior
24 to today's hearing. I did not appreciate that that was on
25 calendar. That is my mistake.

1 THE COURT: Okay.

2 MR. DONAHUE: May I suggest that we put that on with
3 the final hearing. The normal practice and my experience has
4 been that all fee applications are considered at the time of the
5 final hearing, especially since this -- even if you liquidate it
6 or allow it today it's not going to be paid until the final
7 report is approved. And that's why I'm saying it's estimated.
8 And one of the things is -- you know there's a couple of dollars
9 here or there need to be ticked and tied on interest earned,
10 accrual of fees.

11 I gave you what I estimated -- if you approve the fee
12 at 45 grand, I gave you an estimate that 16 grand will actually
13 be paid, that's because I don't know the total yet, because Mr.
14 Monzack is going to have a supplement, fees are going to
15 continue to churn because of litigation in this case. So I
16 would simply suggest -- I can't stand here and tell you I looked
17 at it, I didn't. I didn't appreciate it. That's my mistake.

18 But I think it should be on for the final hearing and
19 you should consider what was said and deny all the other relief
20 in the motion to assist the Court, as quite frankly, under issue
21 of preclusion, res judicata, collateral estoppel. I think
22 you've heard this all before, but if there's something
23 new in there that helps you in your deliberative process,
24 by all means you should consider it.

25 THE COURT: Okay, thank you. Mr. Chorney. And

1 because, as you're fully aware, your opposition here has
2 come down heavily on the notion that much of what you are
3 trying to raise here is repetition of material that has
4 been long ago heard, considered, disposed of, the Court
5 also intends to keep a pretty tight reign on you as far
6 as any attempts that I see to reopen stuff that even over
7 your objection, and I recognize that you have objections
8 to pretty much everything that happens in this court, I
9 just want to forewarn you that I intend to keep a sharp
10 eye, as sharp as I can keep it, on addressing the issues
11 before us this morning, and you will not be allowed to
12 kind of deviate from that. I can respectfully say that
13 to you and hope that you can go along with that.

14 MR. CHORNEY: Thank you, Your Honor. Harold
15 Chorney, representing himself, petitioner in this case.
16 Your Honor has given responses to documents filed by
17 Harold F. Chorney, as ordered by the Court on May 1,
18 2008, today between 10:00 and 10:15, and I'd like to give
19 an uninterrupted, roughly five-minute response to the
20 written material that comes from these gentlemen present
21 here today.

22 In reviewing the various responses by the other
23 parties petitioner finds, concerning the issue of
24 standing, rather than standing on their own two feet and
25 addressing the issue of the missing yellow inventory

1 notebooks and the Pre-Columbian gold frog amulets, which
2 are of great value to me and personal assets of mine --

3 MR. DONAHUE: Objection, Your Honor. I
4 understand that he has -- and I'm going to object because
5 candidly that's not on for hearing today. He may request
6 that he be uninterrupted; however, it's this Court's
7 duty, responsibility, and authority, to control how and
8 when it takes argument and/or evidence. And simply
9 stated, Your Honor, I object to going there. We're here
10 today on a fee application and I think we should focus on
11 that.

12 MR. CHORNEY: Your Honor, it started off today
13 where the trustee, Monzack, read his position of
14 paperwork filed with you. I'm just responding to it.
15 And I feel it's appropriate.

16 THE COURT: No, we're here this morning because
17 the last time we were here you attempted to hand up
18 information regarding Edwards & Angell's fee
19 application --

20 MR. CHORNEY: That's exactly correct, Your
21 Honor.

22 THE COURT: -- and John Cullen's fee
23 application.

24 MR. CHORNEY: Right.

25 THE COURT: And I gave you permission, probably

1 unwittingly, but I did it, I told you to file whatever
2 you had, with the Court, and you have. Partial response
3 to that, by Edwards & Angell, was because of what they
4 describe as a computer failure or malfunction; it
5 couldn't recover the time entries for August 30 through
6 December 22 -- well, August '90 through December 22, '93.
7 And as a result of that, E&A waived its right to seek
8 compensation for that period. As far as I'm concerned
9 that takes that issue off the table, in the amount of
10 \$35,921.

11 You're next comparing Mr. Chorney's
12 reconstructed records, where they conflict in 20
13 instances with the Edwards & Angell time records, showing
14 that allegedly, and then let's take it that maybe your
15 facts are not in dispute, where Mr. Cullen says he's with
16 Edward Bertozzi and according to Edward Bertozzi's
17 records he was doing something else. I believe that
18 those conflicts, and I may have to defer or ask Mr.
19 Bertozzi what his position is on this, do those alleged
20 conflict dates, without resolving them one way or the
21 other right now, cover the amount for the time period
22 where you're waiving any claim for compensation. I'd say
23 if you can't answer that question just tell me that.

24 MR. BERTOZZI: Your Honor, right, I'd have to go
25 back and take a look. However, I believe that Mr. Cullen

1 was reconstructing his records, right?

2 THE COURT: Right.

3 MR. BERTOZZI: That was my understanding.

4 THE COURT: Yes.

5 MR. BERTOZZI: And the records that I did
6 submit, for which I'm asking compensation, I did provide
7 the itemized narrative descriptions, and I entered those
8 descriptions pretty much on the day I did it or maybe the
9 morning after, that kind of thing. You know it's been my
10 practice over the years -- well, I remember when this
11 whole practice started in this court, of requiring
12 itemized narratives for each task done, and I think I
13 would ask Your Honor to take judicial notice that over 30
14 years I have faithfully done my best to be accurate in my
15 narrative entries.

16 And I don't remember Your Honor, I can't
17 remember Your Honor ever finding fault or berating me for
18 not doing it correctly in all this time. So what I would
19 say is what's different now? In other words, what I'm
20 saying is, Your Honor, Your Honor is familiar with my
21 activities in this respect, in terms of keeping my time
22 charges. And the fact that Mr. Cullen's time charge
23 might not be exactly what I said -- or conform exactly to
24 what I said I was doing on the day, well we'd have to ask
25 Mr. Cullen. I did my best, and I believe I did, within

1 all reasonable bounds, enter my time correctly.

2 THE COURT: The quick question answer is,
3 though, that you're not able to tell me that it wouldn't
4 make any difference, because whatever discrepancies are
5 alleged by Mr. Chorney, after he reviews Cullen's
6 records, they don't all fall within the period of time
7 that you're waiving compensation. You can say that this
8 morning.

9 MR. BERTOZZI: That's correct, Your Honor. I'd
10 have to go back and look.

11 THE COURT: Okay. Then that brings us back to,
12 then, Mr. Donohue's and the Court's request. I'm not
13 sure if I made the assumption that the John Cullen
14 application was on for this morning. And you say that
15 you weren't aware that it was, Mr. Donohue?

16 MR. DONAHUE: Your Honor, I simply rely on the
17 calendar that's published on the Court's web page.
18 Whether or not there was a specific notice given, I don't
19 know. I went by that calendar, Judge.

20 THE COURT: Okay.

21 MR. DONAHUE: But I personally did not prepare
22 it and I take responsibility for that.

23 THE COURT: Okay.

24 MR. DONAHUE: But I would simply suggest to you
25 that we consider it when we consider the final report,

1 because I have a feeling there'll be a hearing.

2 THE COURT: Is there anything we can do to
3 verify yes or no, whether it was on this morning's
4 calendar and --

5 COURT CLERK: Yes, Judge.

6 (Pause in proceedings)

7 COURT CLERK: It is there. I could print it.

8 MR. DONAHUE: Okay. No, I accept that it's
9 there, Your Honor. I just didn't see it there.

10 THE COURT: Okay. All right. In that case
11 then, Mr. Cullen is not here. I don't know the reason
12 for that. And as this case, consistently as it goes, I
13 think becomes another impediment to putting everything --
14 or as much duress at rest as possible, as far as getting
15 by these various issues.

16 So I think that we have no alternative but to
17 follow Mr. Donohue's suggestion that Mr. Cullen's
18 application be considered at the final hearing on
19 applications and whatever else is left at that -- what
20 did you call that hearing, Mr. Donohue?

21 MR. DONAHUE: I call it the final hearing. The
22 hearing on the trustee's final report for purposes
23 of distribution, Your Honor.

24 THE COURT: Okay.

25 MR. CHORNEY: Your Honor, I'd still like to

1 respond to the pleadings that I received a little over an
2 hour ago, that Your Honor requested from the parties
3 present, and they've already testified in relationship to
4 it.

5 THE COURT: Okay. But you're not going into
6 artifacts and things that I don't see were properly
7 raised when you asked for this time to submit these
8 additional documents.

9 MR. CHORNEY: Your Honor, may I just be heard,
10 and then if you want to strike it afterwards, I feel like
11 there's continuity to an argument that I'm going to
12 present to the Court.

13 THE COURT: Okay. And we're still -- that
14 doesn't mean, though, that you can go wherever you like.
15 Okay?

16 MR. CHORNEY: Your Honor, I received documents
17 today, I've written out a response to it, and I'd like to
18 give the Court that response.

19 THE COURT: Go ahead.

20 MR. CHORNEY: Thank you, sir.

21 And rather than addressing the yellow inventory
22 notebooks and the Pre-Columbian gold frog amulets, and
23 later -- which are of great value to me, and also
24 clarifying the billing questions that I raise, the
25 responses are riding piggyback on prior orders and

1 judgments of this Court, issued years ago. The validity
2 of my current claims, as to the personal assets and
3 billing questions, should not be prejudiced by
4 continually citing those prior orders. Copies of the old
5 notebooks have --

6 THE COURT: Why not, Mr. Chorney? Let me ask
7 you, why shouldn't practically everything that you raise
8 be affected by prior orders, which have covered I believe
9 every possible issue that either was, could, or should
10 have been raised. You can't just continuously think of
11 new things as time goes by.

12 Now that happens to be the law, at least as I
13 see it, and which is the law of this case that you may be
14 stuck with, like it or not. So I interrupt you at that
15 point to say why shouldn't the prior orders bind you,
16 sooner or later? Much later obviously, we're still
17 talking about it.

18 MR. CHORNEY: This prejudicial language involved
19 with it, Your Honor, I feel like it's really unnecessary.

20 THE COURT: What language is unnecessary? And
21 what's prejudicial?

22 MR. CHORNEY: Your Honor, may I continue to give
23 the rest of this, and then if you want to get back to
24 this item I'd be very glad to do it.

25 THE COURT: Well, it's kind of a simple

1 question. If the answer --

2 MR. CHORNEY: I feel I've answered you to the
3 best of my ability, Your Honor.

4 THE COURT: I haven't heard it.

5 MR. CHORNEY: I have a condition where I don't
6 want to get sidetracked from what I'm doing, and that's
7 why I'm trying to get through this without being
8 sidetracked.

9 THE COURT: And I guess the alternative is to
10 sidetrack me, but we'll do it your way.

11 MR. CHORNEY: Well, just a five-minute deal,
12 Your Honor, and then you can ask me whatever you would
13 like. Okay?

14 Copies of the yellow notebooks have always been
15 within the grasp of the trustee in this case. Thorne,
16 Ernst & Whinney specifically stated that these records
17 were the property of the trustee and they would not give
18 them to the petitioner. Even though Mr. Cullen claims
19 that he's never seen these yellow notebooks, somehow or
20 other Thorne, Ernst & Whinney feel they're the property
21 of the Chapter 11 Trustee in this case.

22 Attorney Bertozzi's response, not once but
23 twice, makes an unnecessary sarcastic comment that
24 Chorney attempts to, quote, "to harass and damage the
25 court officers who were unfortunate enough to serve in

1 the case," unquote. I feel that such comments, just like
2 the previous deal that Your Honor brought up, are
3 uncalled for, especially in light of the fact that
4 petitioner has produced for the Court an exhibit of this
5 so-called missing billing, as Exhibit Number 3 to
6 Petitioner's Motion to Assist and Help the Court
7 Concerning the First and Final Application for Fees and
8 Expenses of Edwards, Angell, Palmer & Dodge, LLP. I did
9 produce that to the Court, Your Honor.

10 THE COURT: Do you understand, Mr. Chorney, why,
11 in the face of the questions you raise, why the fact that
12 Edwards & Angell has withdrawn any possible claim for
13 compensation regarding that --

14 MR. CHORNEY: Yes, Your Honor, and I'm going to
15 address that in just a little while.

16 THE COURT: A little while.

17 MR. CHORNEY: Yes, sir.

18 THE COURT: Okay, well you started out with a
19 five-minute representation and I --

20 MR. CHORNEY: Well, I said in or about, but I
21 got interrupted several times, Your Honor.

22 THE COURT: Okay. And you're getting credit for
23 the Court's time interrupting you, plus other objections.

24 MR. CHORNEY: So I'm saying petitioner was not
25 responsible for the loss of the yellow inventory

1 notebooks, in the handling of the estate. Petitioner was
2 not responsible for the loss of the gold frogs and other
3 personal items, in the handling of the estate.

4 The petitioner was not responsible for a glitch
5 in transferring data to a new computer, resulting in non-
6 pursuit of \$35,921.36 in fees, for services rendered to
7 the trustee. Petitioner was not responsible for the
8 inability to recover data as to individual time entries.

9 THE COURT: Now you have it written down, so I
10 don't feel guilty interrupting you. Why do you harp on
11 this stuff when the claim for any of that -- for services
12 is waived? Do you understand what the word irrelevant or
13 moot means?

14 MR. CHORNEY: Well, somehow or other I feel like
15 I'm being blamed for these actions over here and I'm just
16 giving a position, Your Honor.

17 THE COURT: Okay.

18 MR. CHORNEY: Okay? You've had a written
19 position from three other parties. I feel that it's only
20 fair that I be able, in the eleventh hour --

21 THE COURT: Just cut it out now. Answer my
22 question.

23 MR. CHORNEY: What's that, sir?

24 THE COURT: I asked you a question. When
25 there's no claim pending, for this \$35,000 that you

1 insist on talking about --

2 MR. CHORNEY: Right.

3 THE COURT: -- I'm finding that that's
4 irrelevant and it's moot, because any claim is withdrawn.
5 Would you acknowledge that that is a fact? Why do you
6 want to keep talking about it if nobody is claiming any
7 right to that \$35,000?

8 MR. CHORNEY: I'm only addressing what's been
9 given to me in paperwork, Your Honor. Okay? So if I
10 address it, it's because other people have addressed it.

11 THE COURT: Go ahead. Finish up.

12 MR. CHORNEY: Incidentally, it's not without the
13 realm of possibility, that missing billing data, such as
14 the Monzack billing of May 15th, 1995, which is page 11
15 of his billing, and it's page E-161, would have given
16 some clues as to the missing yellow notebooks, golden
17 frogs, or even perhaps missing corporate coin collateral.

18 Only in the past few months, when newly
19 discovered additional information as to the existence of
20 additional videotapes and transcripts memorializing the
21 transfer of estate assets contained in Mr. Cullen's
22 billing of the 26th of October, 2007, on page 3, or page
23 E-214, in the admission as to further coin discrepancies,
24 the 61 coin discrepancy, as contained in the 9th October,
25 of 2007, billing of Mr. Monzack, on page 25, which is

1 page E-175, the missing gold frogs, the persistence of
2 missing yellow inventory notebooks, once more gave rise
3 to possible negligence, in the handling of the estate.
4 Then the billing glitches and the apparent discrepancies
5 in billing further put light on possible mishandling of
6 items belonging to me personally.

7 The petitioner also objects to Attorney Bertozzi
8 citing Mr. Weingarten and remarking that my position as
9 to the great value of the gold frog amulets is, quote,
10 "an undoubtedly similar," unquote, gross overstatement as
11 to value. That statement is gratuitous and prejudicial
12 to the instant issues. Weingarten was no expert as to
13 such items, and for the Court's information the majority
14 of such Pre-Columbian items, today, reside in museums.

15 I want to thank the Court for the opportunity to
16 speak, and ask that the Court grant my motions. And you
17 can ask whatever questions you would like of me, Your
18 Honor.

19 THE COURT: When you say you want the Court to
20 grant your motions, what are you asking for?

21 MR. CHORNEY: Your Honor, originally when I
22 objected, I didn't really object to Mr. Bertozzi's
23 billing. I asked that it be clarified because there were
24 sections there that I didn't understand. In the interim,
25 Mr. Cullen put in his billing and they don't jibe, and I

1 gave like 20 examples of why they didn't jibe.

2 Then I researched my paperwork and I discovered
3 that I have different billings from Mr. Cullen for the
4 same time period, and also of Mr. Bertozzi, both of which
5 were presented to this Court. And I feel like I'm trying
6 to help and assist the Court, and myself at the same
7 time, Your Honor.

8 THE COURT: Well, you were here earlier. Do you
9 understand that Mr. Cullen's fee application will be
10 scheduled for hearing at a later time?

11 MR. CHORNEY: Well, yes, Your Honor. I saw it
12 like listed on today's docket sheet --

13 THE COURT: I understand that.

14 MR. CHORNEY: -- when I first came here, but not
15 knowing the order of things for the Court, it just
16 started off where the Court asked the parties present to
17 comment on their paperwork that you had ordered them.
18 And after receiving it, I felt like I should be heard on
19 it because that's the last thought that's probably in
20 your head concerning the issues that are before the
21 Court.

22 THE COURT: Okay. Thank you.

23 MR. CHORNEY: Thank you, sir.

24 THE COURT: Any responses? And if not, I would
25 say consistently and predictably, with prior hearings

1 over the last -- I think it's -- only because I
2 haven't -- I don't count the years as they go by, but I
3 understand there are about 18 of them that we've --
4 anniversaries we've had, of the date that this case was
5 filed. The case has taken on a life of its own, as far
6 as Mr. Chorney's exercise of what he considers is his
7 rights to continue to disagree with the administration of
8 the case, the handling of the case, the conduct of the
9 professionals. I doubt that there's a single aspect of
10 this case that Mr. Chorney has not disagreed with.

11 The appeal process has been worked, reworked,
12 overworked. This morning's hearing is basically no
13 different. It's an attempt to rehash things that either
14 were, could, or should have been disposed of years ago,
15 and all of Mr. Chorney's comments to the Court this
16 morning are taken as such, and your objection to my
17 reaction and my ruling, Mr. Chorney, is noted.

18 The application, unfortunately, by John Cullen,
19 correctly, if your understanding was that it was on this
20 morning, it was scheduled and apparently noticed, and as
21 happens in this and other cases, some things somehow fall
22 through the cracks. That doesn't mean it's fallen
23 through the cracks to stay there. It will be scheduled
24 again for a hearing on the application, which will also
25 be heard at the same time as the trustee's final report.

1 You will be given notice and we will hear from you again
2 I'm sure.

3 And again, the Court will be attempting to
4 restrain you from straying beyond the boundaries of a
5 fair examination of Mr. Cullen's report. But there's no
6 water in this case that has not already gone over the
7 dam. Everything that takes place at these repeated
8 hearings, in this Court's view, is an attempt to rehash
9 stuff that has been decided by this Court, ruled upon by
10 appellate courts, and either remanded here, for further
11 action, or terminated on the appeals. I'm not going to
12 go into that. There's no way I could recall the docket
13 entries in this case.

14 But the objections, I would say basically stated
15 by Mr. Monzack in his opening, and as adopted by Mr.
16 Bertozzi, are likewise adopted by this Court, and
17 incorporated into this ruling. Your objections to
18 everything that has happened, that you consider adverse,
19 Mr. Chorney, those objections are noted. And this
20 morning's proceedings are concluded. Especially, and
21 beginning with the standing issue, I agree entirely with
22 what the objectors to your position have stated regarding
23 standing. It's been that way for a long time.

24 And the Court has I think probably excessively
25 overindulged you on hearing you and allowing continued

1 filings to be made, that basically violate the Court's
2 own intentions and rulings long ago. I guess that
3 overindulgence has worked to the Court's disadvantage, as
4 far as time and probably encouraging you to continue with
5 that sort of litigation strategy here. But it is what it
6 is.

7 So as I say, this morning's proceedings are
8 ended. I assume the next thing we hear is going to be a
9 notice of a hearing on the trustee's final report, which
10 will also specifically include Mr. Cullen's application;
11 is that correct?

12 MR. BERTOZZI: Excuse me, Your Honor. Is Your
13 Honor going to make a decision on the Edwards & Angell
14 fee application today or is that going to wait?

15 THE COURT: No, I can do that this morning.
16 Unless there's any reason to -- that anybody I guess --

17 MR. DONAHUE: No, Your Honor, there's no reason not to
18 make your findings on it, it's just that the money won't
19 actually be paid until the final report is approved, because we
20 have to have finite numbers.

21 THE COURT: Okay. Then there's housekeeping then.
22 The trustee's application for a commission, is that \$18,558,
23 there's no objection to that. That may be approved. The
24 application by Kirshenbaum & Kirshenbaum, attorneys to the
25 trustee, fees in the amount of \$29,760.62 and expenses of

1 \$626.43 is approved. Mr. Cullen's application is not dealt with
2 this morning. As we just talked over, that will be heard on the
3 final hearing, on the trustee's final report.

4 Edwards, Angell, Palmer & Dodge, attorney for the
5 Chapter 11 Trustee, fees in the amount of \$45,953.75, expenses
6 of \$3,764.47. That excludes the \$35,000 waiver that we've
7 talked about. That is approved. What about objections by
8 claimant's Michael Miller and Frederick Coor (phonetic)? What's
9 that about?

10 MR. MONZACK: I believe, Your Honor, those in the
11 nature of letters, that the Court has considered those to be
12 objections written by some creditors --

13 THE COURT: Okay.

14 MR. MONZACK: -- that essentially say, "How can other
15 people be paid when I'm not being paid?" I think --

16 THE COURT: Okay.

17 MR. MONZACK: I think that boils those down.

18 THE COURT: All right. To the extent that that's an
19 accurate description of these objections, neither Mr. Miller or
20 Mr. Coor are here, and in light of the response by the U.S.
21 Trustee, to the fee applications, those objections are
22 overruled, and objections are preserved, for Mr. Miller and Mr.
23 Coor.

24 Harold Chorney's motion to clarify the fee application
25 of Edwards & Angell is denied. And then we had supplemental

1 motions by Mr. Chorney. To the motion to clarify and the
2 supplemental filing by Mr. Chorney, regarding the issue of
3 standing, both those motions are denied. Your objections, Mr.
4 Chorney, are noted.

5 I think that finishes the business for this morning.
6 I obviously was trying to get away with it much too easily the
7 first time around, but I think we have touched all the bases.
8 So we'll see you again whenever the application for Mr. Cullen's
9 fee, together with the hearing on the trustee's final report. I
10 think we've got it narrowed down to two issues. I don't know
11 how long that prediction will last but that's it for this
12 morning. Thank you all for your attention.

13 MR. MONZACK: Thank you, Your Honor.

14 MR. DONAHUE: Thank you, Your Honor.

15 (Proceedings concluded)

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CERTIFICATION

3 I, Melissa Smith, certify that the foregoing is a
4 correct transcript from the official electronic sound recording
5 of the proceedings in the above-entitled matter.

7 | Dated: May 15, 2008

Melissa Smith

Signature of Approved Transcriber

Melissa Smith

Typed or Printed Name