

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

IN RE: CUMBERLAND **CA NO. 07-8038**
INVESTMENT CORPORATION

PETITIONER'S SUPPLEMENTAL MEMORANDUM OF LAW

IN RESPONSE TO MOTION TO SHOW

CAUSE WHY THIS APPEAL SHOULD NOT BE DISMISSED

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 'de novo' rule on the merits of this appeal.

In order to further argue why this appeal should not be dismissed, and to assist the Court in fully understanding issues raised by Petitioner, Petitioner seeks the Court's permission to supplement the record concerning his response to WHY THIS APPEAL SHOULD NOT BE DISMISSED with exhibits concerning an OFFER OF PROOF, related to the issue of standing and a Transcript of the Hearing of March 27, 2008, in the Bankruptcy Court for the District of Rhode Island and the issues raised.

Petitioner will show that he has been denied access to the Bankruptcy Court by orders that were based on either ignorance of or presentation to said court of fraudulent misrepresentation when the court states,

"And it is not my job to investigate your allegations. They've been reported to the U.S. Attorney, according to Mr. Monzack. They've been reported to other authorities. Your inquiries, your complaints

and your allegations have been looked at and dealt with and are history.” (See E-371)

Petitioner avers those orders were infected and that infection could only be removed by seeking remedy by a direct appeal to this Court for jurisdiction.

Petitioner avers that if this Court does not accept jurisdiction of this matter, petitioner has no forum available to correct wrongs and injustices in this matter since the Bankruptcy Court has denied petitioner access to that court for relief regardless of whether Petitioner has property rights or not.

THE COURT: And that's the point that I'm trying to make now on your issue of I am—you know, I have standing here because I have property rights in items that are still out there and unaccounted for. I don't see anything that is not accounted for that hasn't been dealt with. Maybe improperly, in your view, but done with. Do you get it?”

EXHIBIT Z, 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. In 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 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. (1.)

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 E-119.)

(1.) The first page only on this 14 page document was produced by FDIC in response to the May 14, 1993, subpoena in the criminal trial. (See Appellant Brief, page 15.)

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 E-120-121.)

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 E113-118)

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 APPENDIX IV, E-342.)

12. On September 13, 1994, a copy of the Allied Court Reporters transcript of the removal of the assets (See E-307-E-349.) was sent to Jason Monzack, with a letter in response to the May 26, 1994, letter from Mr. Monzack (See E-119, par #8 above.)

13. The September 13, 1994, letter lists possible personal and corporate items missing or sold but not accounted for. Number 8 on this list indicates that there were some 25 gold frogs and other pre-Columbian amulets. (See E-120-122.)

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 E-126-146.)

- 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. were missing.

16. On January 4, 1995, Scott Lutes, Esq., attorney for Petitioner contacted Mr. Monzack in order to obtain an inventory and detailed disposition of the assets of the estate of C.I.C. (See E-158.)

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. (See E162.) 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, E-350.) Petitioner did not obtain the 19 videotapes until October 1999, in response to an F.O.I.A to Executive Office of U.S. Trustees (EOUST).

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 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 E120-125) 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. (See E-164., Billing of Jason Monzack, dated October 9, 2007.)

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.

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 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.

**EXHIBIT AA, TRANSCRIPT OF MARCH 27, 2008
BANKRUPTCY COURT HEARING**

The representations by both the Chapter 11 and the Chapter 7 Trustees at this hearing is quite different from that presented in the OFFER OF PROOF. Both Trustees deny any knowledge of any gold frogs. When Mr. Cullen is asked about the gold frogs, Mr. Cullen states, "Never saw them." (See E-368.) (1.) Mr. Monzack states that,

"I don't recall if the two gold frog issues has been specifically raised before or not, but numerous issues akin to that have been raised. There have been numerous judicial proceedings. These issues have been disposed of by this court and by other courts. In fact, when I first got involved, I went over—I visited with the U.S. Attorneys Office and the U.S. Attorney's Office did whatever investigation that they did with regard to claims that both Mr. Chorney had made and Mr. Taft, I believe, was involved. We went over and viewed all the assets that they were holding. They had videotapes that were made available for additional review by Mr. Taft and Mr. Chorney, and every issue that Mr. Chorney had raised in the past was referred to somebody for investigation and none of those bodies, be it this court, be it the U.S. Attorney Office, be it the FBI, has ever reported back to me and said that there was any grounds for these claims that were being made." See E-369 to E-370.)

The letters of June 10, 1994, and September 13, 1994, from Petitioner to Mr. Monzack did specifically raise the issues of gold frogs. (See E-120 to E-122.) Despite the fact that Mr. Monzack states that every issue that Mr.

(1.) Mr. Weingarten, the court appointed Examiner was not at this hearing. He was the court official who handled the gold frogs when seized by the Trustee and may be involved with their disposition or have knowledge of their location.

Chorney had raised in the past was referred to somebody for investigation, when Petitioner placed an F.O.I.A. request to the Executive Office of United States Trustees concerning an investigation of missing assets in accordance with procedures set up in the Trustee's Manual Volume 5, Chapter 5-7, Petitioner was told that no investigation was performed since no claim of missing assets was made. (See E-373, letter from Martha Davis, E.O.U.S.T.)

Furthermore, the statement above that Mr. Chorney had available videotapes to view is contrary to the information contained in Mr. Monzack's letter (See page E-250.) where neither Mr. Chorney nor Mr. Lutes could view the tapes.

WHICH REPRESENTATION IS TRUE?

The representation in the offer of proof shows assets such as gold frogs and \$500 bills with the serial numbers listed as seized by Mr. Cullen on August 17, 1990 are missing. (See E-342.) Neither the gold frogs nor the \$500 or \$1000 bills and other items in the June 10, 1994 and September 13, 1994, letters to Mr. Monzack, are part of any inventory lists of assets contained in the 14 page inventory of FDIC or of any of the auction sales of assets of the estate.

In contrast, Mr. Monzack represents that the assets are intact since "none of those bodies, be it this court, be it the U.S. Attorneys Office, be it

the FBI, has ever reported back to me and said that there was any grounds for these claims that were being made.” (See E-369, E-370.) The representation of Trustee Monzack is that agencies have investigated the “missing” assets, yet Mr. Monzack produces no written report concerning these assets. Mr. Monzack’s billing records do not indicate asking for any report concerning “missing” assets. Furthermore, no report concerning missing assets of Cumberland Investment Corporation has been filed with the Executive Office of United States Trustees in accordance with their regulation in Volume 5, Chapter 5-7 by the Examiner, Michael Weingarten; the Chapter 11 Trustee, John F. Cullen, or his successor, the Chapter 7 Trustee, Jason D. Monzack. (See UST Manual, Chapter 5-7,

ALLEGATIONS INVOLVING LOSS OF ESTATE ASSETS BY A PRIVATE TRUSTEE OR AN EMPLOYEE OR AGENT OF A PRIVATE TRUSTEE, E-384 to E386.)

How does Mr. Monzack justify the fact that Mr. Nacu, Petitioner and others heard Mr. Monzack state that \$300,000 to \$400,000 in assets were missing? How does the Petitioner compel Mr. Monzack or anyone in this case to act in accordance with statute. According to Title 11, Section 704(2), the Trustee is accountable for all property received. In addition, “the trustee is responsible to furnish such information concerning the estate and

its administration as is required by a party in interest.” Although responsible to account for all property received, no detailed accounting has been performed.

The bankruptcy court has turned a ‘blind’ eye to Petitioner, seeking an accounting of the assets. Once again this demonstrates how Petitioner and others are denied “due process” of law and discovery from those accountable for the assets according to statute, while maintaining that Petitioner will be granted a full hearing. Judge Votolato states, (See E-374.)

“If it turns out that the court determines after giving you what I hope is a full hearing that you were behaving in either a frivolous or obstructionist or any improper way, you’re going to subject yourself to some more sanctions. I realize that that doesn’t mean much to you these days. We’ve had serious issues like this in the past.”

It should be noted that Petitioner’s Motions to the Bankruptcy Court for the District of Rhode Island, sent directly to Judge Votolato have not all been docketed, thus denying Petitioner the ability to inform others of his intent and what he is trying to do. The policy of the court to pick and choose those pleadings that they wish to appear seems inherently unfair.

The court stated, (See E-373.)

“I’m going to take your package. I’m going to look at it, as we say in some circles, in camera. . . .They’re not an exhibit. I’m not accepting them except to look at them; and to try to make my own determination of what it is you say you’re submitting to me. Okay?”

Petitioner presented to the bankruptcy court at the March 27, 2008, Hearing,
PETITIONER'S MOTION TO ASSIST AND HELP THE COURT
CONCERNING THE FIRST AND FINAL APPLICATION FOR FEES
AND EXPENSES OF EDWARDS, ANGELL PALMER & DODGE LLP,
(See E-387 to E-399) with Exhibits to match Exhibits X, W, D, T, U and V
in Brief of Appellant and Appellant's Response to Show Cause Motion as to
Why Appeal Should Not Be Dismissed.

In addition, on March 30, 2007, Petitioner received a package from
the Deputy Clerk of the Bankruptcy Court for the District of Rhode Island,
returning one of his motions. Also returned was Appellant's Response to
Show Cause Motion, which was serviced to Judge Votolato and not
presented to the Bankruptcy Court to be docketed. (See E-400.)
So where does Petitioner turn to for justice, except to this Honorable Court.

WHEREFORE, Petitioner prays that this court accepts jurisdiction of this
matter to correct wrongs and injustices and to maintain the integrity of the
institutions in which the public relies upon.

Respectfully Submitted,

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CERTIFICATION

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

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