No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

HAROLD F. CHORNEY, *Petitioner*

v.

JASON D. MONZACK, CHAPTER 7 TRUSTEE

JOHN F. CULLEN, CHAPTER 11TRUSTEE

UNITED STATES TRUSTEE, *Respondents*

On Petition For A Writ Of Certiorari

To The United States Court Of Appeals

For The First Circuit

PETITION FOR WRIT OF CERTIORARI

HAROLD F. CHORNEY

16 SPRING DRIVE

JOHNSTON, R.I. 02919

(401) 934-0536

QUESTION PRESENTED

The First Circuit Court of Appeals affirmed the interlocutory order of the Bankruptcy Court, dated May 13, 2009, stating that based upon and absence of certification under 28 U.S.C. §158(d)(2) it lacked jurisdiction to entertain appeals directly from the Bankruptcy Court. The District Court summarily ruled that since Petitioner did not file a timely appeal, concerning a different order from the same Hearing, within 10 days as prescribed by 11 U.S.C. Rule 8002(a), that it lacked jurisdiction to rule on the interlocutory appeal since the ten day filing is both "mandatory and jurisdictional."

Whether the bankruptcy courts have pendente lite powers that are subject only to District Court review and bar the Court of Appeals and the Supreme Court of the United States from reviewing interlocutory orders in bankruptcy cases, including those orders which impair the fundamental right to due process of law?

Whether the Executive Office of U. S. Trustees has allowed the administration of a bankruptcy case to operate contrary to statute, bypassing the requirements of the Bankruptcy Code and denying due process to Petitioner thus justifying the Supreme Court of the United States to exercise its supervisory powers and impinge on the prerogatives of the other branches?

LIST OF PARTIES

[x] All parties appear in the caption of the case on the cover page.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner Harold F. Chorney respectfully prays that a writ of certiorari issue to review the judgments below.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the First Circuit dated March 11, 2010, in Ca. No. 09-2017, appears in Appendix C to this petition.

The opinion of the United States Court of Appeals for the First Circuit, dated August 26, 2009, in Ca. No. 09-1117, dated August 26, 2009, appears in Appendix G to this petition.

The opinion of the United States District Court for the District of Rhode Island, dated July 17, 2009 appears in Appendix I to this petition.

The opinions of the United States Bankruptcy Court for the District of Rhode Island, one dated June 9, 2009, appears in Appendix M to this petition and the other opinion appears in the transcript of the hearing, Appendix O-1, dated May 13, 2009 .

JURISDICTION

The Court of Appeals opinion in this matter was filed on March 11, 2010. A timely Motion for Rehearing was filed on March 16, 2010 and denied on April 2, 2010 as appears in Appendix A. This Court's jurisdiction is invoked under Title 28 U.S.C. §1254 (1), and 28 U.S.C. §1651

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment V to the United States Constitution:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; not shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV to the United States Constitution:

Sect. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection under the laws.

*Sect. 5.*The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

STATEMENT OF THE CASE

On May 13, 2009, the Bankruptcy Court entered an order [doc #1059] (Appendix O) denying Petitioner's Motion for authorization to file a motion and memorandum objecting to the trustee's final report and account before distribution. In addition to [doc#1059] the bankruptcy judge made a bench decision that Petitioner was not a party in interest. (See Appendix O-1, Transcript of Hearing.)

Petitioner did not receive order [doc#1059] by mail. NOTE: On May 11, 2009 [Doc #1060] Notice of Hearing on May 13, 2009 was allegedly filed. This Notice of the Hearing [Doc #1060] was filed *after* the Order denying the Motion in Objection to the Final Report [Doc #1059]. One of the bankruptcy court clerks telephoned Petitioner on May 11, 2009 to notify Petitioner of the Hearing on May 13, 2009. (See Appendix F.) (See E769-771.) [1]

Petitioner filed a Notice of Appeal on June 5, 2009 (Appendix N), after he received a copy of the transcript of the hearing (Appendix O-1) he had ordered at the Hearing on May 13, 2009 with a fourteen (14) day delivery.

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[1] (Nine volumes of Exhibits containing 802 pages, each labeled with an "E" page number has been presented to the District Court for the District of Rhode Island. The "E" numbered pages above refer to the "E" page numbers in these nine Volumes of Exhibits.)

Some creditors did not receive Notice of the Hearing [Doc. #1060] until May 15, 2009, two days after the hearing. See Affidavit of Forrest Wallace Cato E795-797.

The First Circuit Court of Appeals decision (Appendix G) and the District Court for the District of Rhode Island decision (Appendix T) affirmed the Bankruptcy Court order [doc #1059] of May 13, 2009, stating that Petitioner did not file a timely appeal within 10 days 1. as prescribed by Fed R. Bank. P. 8002(a) and that the ten day filing is both "mandatory and jurisdictional". On July 2, 2009, Petitioner filed a Motion for Leave to File Interlocutory Appeal of the Bench Order Dated May 13, 2009 (Appendix L), stating that Petitioner was not a "party in interest" in bankruptcy case no. 89-11051. The District Court on July 17, 2009 "Denied [motion] for the reasons set forth in the Response" [of Respondent, dated July 10, 2009](Appendix K) , namely that Petitioner's Motion for Leave to File Interlocutory Appeal is improperly filed with the District Court and the Court's jurisdiction to hear an appeal from the Bankruptcy Court is derived from 28 U.S.C. §158. To invoke the jurisdiction of this Court, a timely appeal must be filed pursuant to Rule 8002 of the Fed R. Bank. P. As a timely appeal was not filed, this Court lacks jurisdiction to consider Petitioner's Motion.[2]

The First Circuit Court of Appeals upheld the District Court ruling that Rule 8002 is both mandatory and jurisdictional and that the untimely appeal deprived both

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[2] Effective December 1, 2009, Amendments to the Federal Rules of Bankruptcy Procedure were made including Rule 8002(a),(b) and (c). Rule 8002. Time for Filing Notice of Appeal (a) Ten-day period in the 2009 Edition of Bankruptcy Code, Rules and Forms. The 2010 Edition of Bankruptcy Code, Rules and Forms reads Rule 8002. Time for Filing Notice of Appeal (a) Fourteen-day period.

the District Court and the Circuit Court of jurisdiction to rule on the interlocutory appeal. (See Appendix C.)

BACKGROUND:

Petitioner was the principal in a company, (C.I.C.) Cumberland Investment Corporation, that was petitioned into bankruptcy in 1989. As of the date of this Supreme Court Appeal the case is still open after twenty-one years and the money in the estate has not been distributed to various parties in the case despite the fact that the last of the assets of the estate were sold over ten years ago on Dec., 1999.

Early in the bankruptcy case, a criminal referral was made by a court appointed Examiner on May 30, 1990. A Chapter 11 Trustee, John F. Cullen was appointed by the court on August 17, 1990, the same date that Mr. Cullen entered the premises of C.I.C *without* a search warrant and removed corporate and non corporate documents and corporate as well as non corporate assets.

On August 24 and September 13, 1990, Attorney for Petitioner, David N. Cicilline sent letters to Trustee Cullen concerning personal assets seized. Mr. Cullen did not respond to either letter. (See Appendix S, page 13, E401-402.)

Subsequently Petitioner was indicted and convicted of a false statement to a financial institution in Cr. No. 92-099P on May 26, 1993. The Examiner and Trustee Cullen testified for the prosecution at Petitioner's trial.

On July 27, 2007, Mr. Bertozzi, the attorney for both Trustee Cullen and the Examiner, Michael Weingarten

submitted billings to the bankruptcy court. Then on October 26, 2007, Mr. Cullen submitted his billings to the bankruptcy court.

When Petitioner compared the billings of Mr. Cullen and Mr. Bertozzi, he discovered that there were twenty different time and place and other discrepancies between the billings. In addition Mr. Bertozzi's July 27, 2007 billing stated that, "[Edwards Angell Palmer & Dodge] EAPD is not seeking payment of $35,921.36 in fees for services rendered to the Trustee[3] during the period August 39, 1991 through December 22, 1993 because due to a glitch in transferring data to a new computer, EAPD cannot recover the data as to individual time entries for that period…"

The so called "missing" Bertozzi billing is not missing at all. It is docket #414 in Ca. No 89-11051. It shows numerous meetings between Mr. Bertozzi and A.U.S.A. Posner. The 9/26/91 Cullen billing, also referencing Petitioner's criminal trial investigation, is quite different from the "sanitized" October 26, 2007 billing. Discussion of Cullen and Bertozzi billings appear in Appendix W.

Mr. Cullen's 2007 billing contained newly discovered evidence, including the existence of additional videotapes

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[3] An Affidavit of Donald C. McQueen, Senior Vice President of Eastland Bank, was made in an effort to increase Petitioner's sentence after his criminal trial. This November 1995 Affidavit indicates that previous payment was made to Mr. Bertozzi. Mc Queen states, "To the best of my recollection over $200,000 was used by the Trustee…..Part of that expenditure by the bank was to pay the fees of the attorney for the Trustee." (See E445-447.)

requested but not produced at trial, about the assets of Cumberland Investment Corporation, relevant to Petitioner's guilt or punishment. These billings were included as part of the administrative expenses for the Final Report to be submitted by Jason D. Monzack, Chapter 7 Trustee, who replaced Mr. Cullen as Trustee in the Cumberland Investment Corporation case subsequent to the criminal trial.

Petitioner and others have requested disclosure and production of materials[4] from Mr. Cullen and his successor, Jason D. Monzack 1. the Chapter 7 Trustee in Bankruptcy, on numerous occasions over the past twenty years, virtually without success. Petitioner sent Mr. Monzack, a list of assets which were conspicuously missing or unaccounted for, seized by Trustee Cullen, including both corporate and personal assets of Petitioner on June and Sept. 1994, but received no response.

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[4] On May 17, 1995, a letter was sent by Mr. Monzack to Mr. Cullen, Mr. Bertozzi, Mr. Weingarten (Examiner), the Postal Inspector, the U.S. Attorney, the FBI, Fleet Bank, the FDIC and others, seeking inventories and other documents. (See E148-E150.) The production was virtually without success, with exception of the production of 19 videotapes of the removal of Cumberland assets on August 17 and August 23, 1990. Only Mr. Taft, a client in search of his missing assets, 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, E350.) Petitioner did not obtain a copy of the 19 videotapes until October 1999, in response to an F.O.I.A to the Executive Office of U.S. Attorneys.

The revelation of the existence of additional videotapes to the 19 videotapes produced on October 1999 after trial were contained in the Cullen billing, dated October 26, 2007.

The history of this case demonstrates that seeking an accounting of the assets and the billing practices in this case seems to result in "retaliation" by officials of the Bankruptcy Court.[5] Many of the events related to the sanctions imposed upon Petitioner, including the November 3, 2004 sanction, refer to events ruled upon in several past appeals in which Appellant was seeking an accounting of the assets seized, those sold and those remaining. This November 3, 2004 court order requires Petitioner to present pleadings to chambers asking for permission to file with the clerk of courts and has resulted in preclusion to access to the courts. NOTE: Petitioner for reasons unknown did not appeal the November 3, 2004 Order. Petitioner surmises that similar to the May 13, 2009 order, he did not receive the November 3, 2004 written order by mail in order to have appealed that order in a timely manner.

Petitioner requested permission to file with the clerk of courts from chambers on August 3, 2007. Petitioner wrote to Judge Votolato requesting a Motion to Clarify the billing of Mr. Bertozzi and sent the motion by certified

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[5] The U.S. Trustee is supposed to protect the integrity of the Federal Bankruptcy system. Their duties include the just, speedy and economical resolution of cases filed under the bankruptcy code to further public interest. They are supposed to monitor the conduct of bankruptcy parties and oversee related administrative functions. Petitioner has serviced the U.S. Trustee in both Providence, R.I. and Boston, MA concerning issues involved with the bankruptcy case, including a list of items, including personal property, which were seized by Mr. Cullen on August 17 and August 23, 1990, which are conspicuously missing or unaccounted for to this date. (See Appendix S, page 15, E120-125.)

mail, return receipt requested to Judge Votolato. When no one signed for this motion, the U.S. Postal Department was notified and a second package was sent to chambers with a "Restricted Delivery" on August 20, 2007. A chronology of events is contained in an Appeal from a Judgment of the United States Bankruptcy Court for the District of Rhode Island Ca. No. 89-11051, dated November 1, 2007, appears in Appendix W of this petition.

This instant appeal to the Supreme Court of the United States concerns these *continuous* due process violations. This appeal demonstrates how Petitioner was once again denied due process when a full and fair hearing was denied to him after the docket was manipulated in a manner designed to deprive Petitioner the opportunity to present his case on May 13, 2009. As a result of this May 13, 2009, hearing, a written JUDGMENT [1059] denying Petitioner's Motion in Objection to the Final Report and Account before Distribution [1050] and a bench decision that Petitioner was "not a party in interest" were made.

On May 13, 2009, Petitioner ordered a copy of the Hearing transcript from a court clerk for a 14 day delivery for appeal purposes. Petitioner did not receive a copy of the bench decision of the bankruptcy judge in the mail and filed a Notice of Appeal when he received the transcript of the Hearing on June 5, 2009.

The Notice of Appeal (E-799), dated June 5, 2009, refers to both the Petitioner's appeal of the bench decision that Petitioner was not a party in interest (E-780) and the final judgment [1059] Order Denying Document (doc

#1050) After Hearing. Both of these decisions were dated May 13, 2009.

On June 9, 2009, the Bankruptcy Court issued an ORDER DISMISSING APPEAL [Doc. #1065], (See E-801.) The dismissal of doc. #1050 was based upon Fed R. Bank. P. 8002(a). [6] This dismissal order did not address the bench decision stating that Petitioner was not a party in interest.

On July 2, 2009, Petitioner filed MOTION FOR LEAVE TO FILE INTERLOCUTORY APPEAL OF THE BENCH ORDER DATED MAY 13, 2009 that Petitioner is not a party in interest to the District Court for the District of Rhode Island in Ca. No. 08-189ML in accord with 28 U.S.C. §158(A)(3) appears as Appendix L.

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[6] Transcripts of other court hearings ordered by Petitioner from the Bankruptcy Court clerk have taken less than two weeks. For instance, [986] Hearing on March 27, 2008. Petitioner ordered a transcript of that hearing at the hearing. The transcript was filed with the court on 4/8/08 [988] and the order denying the Motion to Clarify was issued on 5/8/2008 [1007], and a certificate of mailing was done on 5/10/2008 [1009]. A Notice of Appeal was filed three days later on 5/13/2008, [1012].

On May 13, 2009, Petitioner ordered a transcript of the May 13, 2009 hearing, denying [1050] Motion Petition for Authorization to file Motion (and Memorandum of Law) in Objection to the Final Report. The Order, [1059], was dated May 13, 2009, the same date as the hearing. The certificate of mailing Order [1061] was dated May 15, 2009, and the transcript [1064] was filed with the court on June 5, 2009, the same day that Petitioner received the transcript by email and filed the Notice of Appeal. NOTE: [1062] is missing from the docket entries of the U.S. Bankruptcy Court for the District of R.I.

According to Title 28 §158(a) The district courts of the United States shall have jurisdiction to hear appeals. (1) from final judgments, orders and decrees; (2) from interlocutory orders (3) and with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving.

Petitioner asked the District Court for permission to file this interlocutory appeal since Title 28 §157(A) involved matters concerning the administration of the case.

On July 10, 2009, Mr. Monzack filed RESPONSE TO HAROLD F. CHORNEY'S MOTION FOR LEAVE TO FILE INTERLOCUTORY APPEAL OF THE BENCH ORDER DATED MAY 13, 2009. (See Appendix K.) The arguments listed are:

"A. Mr. Chorney's Motion for Leave to File Interlocutory Appeal is improperly filed with this Court; and B. The Court lacks jurisdiction to consider Mr. Chorney's motion. …To invoke the jurisdiction of this Court, a timely appeal must be filed pursuant to Rule 8002 of the Federal Rules of Bankruptcy Procedure. As a timely appeal was not filed, this Court lacks jurisdiction to consider Mr. Chorney's motion."

On July 16, 2009, Petitioner filed a REPLY TO TRUSTEE MONZACK'S RESPONSE TO MOTION FOR LEAVE TO FILE INTERLOCUTORY APPEAL OF THE BENCH ORDER DATED MAY 13, 2009. (Appendix J) This reply

concludes that using the rationale of Trustee Monzack, because no Notice of Appeal was filed within ten days of the Final Order, then none of the due process violations could be addressed in an interlocutory appeal. If this were true, then the rules as they exist are manifestly unjust concerning the circumstance involved with the May 13, 2009 Hearing.

On July 17, 2009, the District Court denied the MOTION FOR LEAVE TO FILE INTERLOCUTORY APPEAL OF THE BENCH ORDER DATED MAY 13, 2009 (See Appendix I.) for the reasons set forth in the Response above, prior to receiving Appendix J.

On July 20, 2009, Petitioner filed a NOTICE OF APPEAL of the July 17, 2009, District Court denial to the Circuit Court of Appeals for the First Circuit. (See Appendix H.)

A JUDGMENT of the Circuit Court, entered on August 26, 2009 in a related case, CA. No. 09-1117 (Appendix G), the court stated that:

"On a separate matter, appellant has moved "for leave to file interlocutory appeal of the bench order dated May 13, 2009." This court lacks jurisdiction, absent certification under 28 U.S.C.§158(d)(2), to entertain appeals directly from the bankruptcy court. The motion is thus denied, but in light of subsequent developments, such denial is without prejudice to the matter being pursued in Appeal No. 09-2017."

On September 18, 2009 (Appendix F), Petitioner filed a brief with the First Circuit Court of Appeals in Case No. 09-2017. On October 21, 2009 Mr. Monzack filed Brief of Appellee (Appendix E).

On October 30, Petitioner filed Reply Brief of Appellant on Appeal from a Judgment of the District Court for the District of Rhode Island, dated July 17, 2009 (Appendix D).

On March 11, 2010, Judgment of the First Circuit Court of Appeals upheld the decision of the District Court stating that compliance with Fed. R. Bank. Pr. 8002(a) is both mandatory and jurisdictional and that the court lacked jurisdiction to address the substantive arguments (Appendix C).

On March 16, 2010 Petitioner filed a motion for a rehearing (Appendix B).

On April 2, 2010, the petition for rehearing is denied (Appendix A).

B. DISCUSSION:

I. PENDENTE LITE POWERS OF THE BANKRUTPCY COURT

It appears that the bankruptcy courts have pendente lite powers that are subject *only* to District Court review and thus barring the Court of Appeals and the Supreme Court of the United States from reviewing interlocutory orders in bankruptcy cases.

Should there be a situation where the District Court lacks jurisdiction to hear an appeal, then neither the District Court nor the First Circuit Court of Appeals have the jurisdiction to review bankruptcy court decisions.

The Judgment of the District Court in this instant appeal is that they lack jurisdiction to rule upon Petitioner's

Motion for Leave to File Interlocutory Appeal as a timely appeal pursuant to Rule 8002 of the Federal Rules of Bankruptcy Procedure was not filed. As a result, the decision of the bankruptcy court stands without being reviewed by the District Court.

The Judgment of the First Circuit Court of Appeals is that they also lack jurisdiction to rule upon Petitioner's leave to file an interlocutory appeal, absent certification under 28 U.S.C. §158(d)(2). The Appeals Court then stated a controlling decision, In re Abdallah, 778 F. 2d 75, 77 (1st Cir 1985.) Stating that the ten day filing requirement is both "mandatory and jurisdictional." And that the untimely appeal deprived both district court and this court of jurisdiction.

As a result of the District Court claiming they lack jurisdiction to review the bankruptcy decision, the decision of the bankruptcy court stands without being reviewed by either the District Court or the First Circuit Court of Appeals.

II. LACK OF HIGHER COURT REVIEW

By the District Court for the District of Rhode Island claiming a lack of jurisdiction to hear the interlocutory appeal, in a summary decision dated July 17, 2009, the First Circuit Court of Appeals lacked jurisdiction under 28 U.S.C.A. § 1291 to review an interlocutory order of the District Court and the power of review under 28 U.S.C.A. §1292, even when the order has had an irreparable effect on the rights of the parties. (See Cohen v. Beneficial Industrial Loan Corporation, 69 S. Ct. 1221, 1225, 1949.

As a result, the appeals courts were denied the right to combine in one review all stages of the proceeding that effectively may be reviewed and corrected if and when final judgment results.

It appears that if the District Court had jurisdiction that this decision would appear to fall in that small class which finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated.

III. THE RULING OF THE BANKRUPTCY COURT INVOLVES CONFLICTING DECISIONS

The decision of the bankruptcy court, that Petitioner is not a party in interest is contrary to existing law determining what constitutes a party in interest.

According to 11 U.S.C. 1109(b) a "party in interest", including a creditor may raise and may appear and be heard on any issue in a case under this chapter. The bankruptcy court's ruling that Petitioner is not a party in interest deprives Petitioner of this statutory right to be heard.

The history of the bankruptcy case shows that Petitioner was always a "party in interest" from the date of the filing of the bankruptcy until May 12, 2009. Petitioner was always serviced as being a party in interest. He was a shareholder, a creditor and had a pecuniary interest ranging from the Trustee claiming Petitioner owes the

estate over $200,000 resulting from a fine, to Petitioner having personal property being seized by Trustee Cullen on August 1990. Yet on May 13, 2009, Judge Votolato stated, "You've been determined to be not an interested party. And I'm stating that as the law of this case, okay.", appears in Appendix O-1, TR 5/13/09, pg 7, (E780).

In examining the criteria for a party in interest, there can be little doubt that Petitioner is a "party in interest." In re Peachtree Lane Assocs., Ltd., 188 B.R. 815, 824 (N.D. Ill. 1995) (comprehensive examination of the precedent on what satisfies the standard for being a party in interest); accord In re Johns-Manville Corp., 36 B.R. 743, it certainly includes creditors and shareholders….It is "generally understood to include all persons whose pecuniary interests are directly affected by the bankruptcy proceeding. (See Appendix L.)

IV. THE RULINGS OF THE BANKURPTCY COURT SUPERSEDED THE FUNDAMENTAL RIGHTS OF THE PETITIONER

Title 11 U.S.C. §105(a) gives the bankruptcy judge power to issue orders to carry out the provisions of the title…to prevent an abuse of process. Ironically, if the Bankruptcy Court's Order is upheld, the result would have an irreparable effect on the rights of Petitioner including the right to be heard as well as his right to have reviewed a myriad of due process violations contained in Appellant's Motion and Memorandum in Appeal of the Bench Order Dated May 13, 2009, in Ca. No. 09-2017, dated September 18, 2009 as appears in Appendix F.

The lack of review by the appeals courts will cause irreparable harm to the fundamental rights of Petitioner in accord with Cohen v. Beneficial Industrial Loan Corporation, 69 S. Ct. 1221, 1225, 1949.

The Supreme Court in Digital Equipment Corp. v. Desktop Direct, Inc., 511 U.S. 863, 879, stated that the only matters of sufficient importance to merit a collateral appeal were "those originating in the Constitution or statutes."

The ruling of the Bankruptcy Court if upheld will supersede the fundamental rights of the Petitioner as a party in interest to be heard and deny Petitioner equal protection under the law in accordance with the United States Constitution, Amendment XIV, since a creditor may raise and may appear and be heard on any issue in a case under this chapter.

Besides the decision of the District Court that they lack jurisdiction to rule upon the interlocutory appeal is in conflict with the spirit of Cohen v. Beneficial Industrial Loan Corporation and the Digital Equipment Corp v. Desktop Direct. Inc. cases where matters of sufficient importance to merit a collateral appeal exists, namely "those originating in the Constitution or statutes." Petitioner avers that he cannot be heard without proper notice.

V. ADMINISTRATIVE AGENCIES ARE NOT PERFORMING THEIR DUTIES TO OVERSEE THE CASE

Petitioner believes that a major contributing factor to the entire situation is the fact that the U.S. Trustee's Office has failed to perform their duties. In previous pleadings over the past 21 years involving the Cumberland Investment Corporation case, Petitioner has argued that in the administration of this case the following statutes have been circumvented as appears in Appendix D: 11 U.S.C. § 327(f); 364(c)(1); 704(1); 704(2); 704(7); 1109(b); 2012(b)(2); 2013(b); and Rule 2014(a). (See Appendix F.) By circumventing these statutes, Petitioner has been denied an accounting of the assets by the Chapter 11 and Chapter 7 Trustee thus denying Petitioner evidence relative to his guilt or punishment in CR 92-099P.

It appears that the current system exists in which no appeals court, applying the circumstances of this case, is authorized to review these abuses of process?

VI. NEED FOR THE GUARDIAN OF THE CONSTITUTION TO INTERCEDE

If the District Court and the First Circuit Court of Appeals lack jurisdiction to rule upon the substantive issues of this case then the questions of law involving procedural due process and those conflicting decisions concerning due process fail to be ruled upon.

One of the central issues in this case is that there is an interrelationship between the civil and criminal cases as

appears in Appendix W. Petitioner rights are affected by the taking of his possessions by a warrantless search and seizure. Without the Trustees providing a proper accounting of the assets seized, sold and remaining, Petitioner is unable to properly address issues involving both his guilt and punishment in the criminal case. In addition, Petitioner as a party in interest is entitled to be heard in the civil case. In order that Petitioner may enjoy that right, Petitioner must be notified. See Parham v. Cortese, 407 U.S. 67, 92 S. Ct. 1983, 1994, 32 L.Ed. 2d 556.

It appears as if the Executive Office of U.S. Trustee's has not performed their duties in overseeing this case and has systematically violated their own statutes resulting in the denial of my right to be heard. (See Appendix O-1.)

The fundamental rights of Petitioner are being trampled upon and not ruled upon. Without the Guardian of the Constitution, the Supreme Court of the United States having jurisdiction to intercede in a case like this one, with no apparent time limit or urgency to protect the interest of all parties in this twenty-one year old case, will certainly have a chilling effect upon Petitioner and other parties of interest within the bankruptcy court arena.

D. CONCLUSION

If the bankruptcy courts have pendente lite powers that are subjected only to district court review and barring the Court of Appeals and the Supreme Court of the United States from reviewing interlocutory orders in bankruptcy cases, then the Judgments of the Bankruptcy Court which are contrary to statute, case law and

depriving individuals of due process of law and other fundamental protections prevail over the Constitutional and safety net protections. The Supreme Court of the United States, as the Guardian of the Constitution, should intercede in judgments which merit review because these judgments which blatantly deny due process can only have a final and irreparable affect on rights of the parties.

When the Executive Office of U. S. Trustees has allowed the administration of a bankruptcy case to bypass the bankruptcy code and operate contrary to statute, the Supreme Court of the United States is justified and possibly mandated in exercising its supervisory powers and impinging on the prerogatives of the other branches for the public good.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for the following reasons:

When an administrative agency similar to the Executive Office of U.S. Trustees is not performing their fiduciary duties in overseeing the administration of a bankruptcy case and when the laws as written do not allow courts to rule upon the substantive arguments in an appeal from a Defendant or Appellant or any party in a case because the court rules that it lacks jurisdiction to hear said matters, based upon statute, and case law, then where can a Petitioner turn to for justice if not to the Guardian of our Constitution, the Supreme Court of the United States.

If a court of last resorts did not exist, then a case like Petitioner's fraught with due process violations such as manipulations of the docket and lack of adequate notice,

and other violations of due process, including the lack of accountability of the assets and the non-disclosure of evidence in a related criminal case could not be reviewed by an appeals court.

The Bill of Rights, containing the Due Process Clause, was established to protect citizens from government. A legal system, without safeguards to oversee the enforcement of administrative statutes and related case law, would result in a system where the constitutional protections contained in the Bill of Rights would be superseded by these very administrative statutes and related case law.

It would be impossible for an American citizen, like Petitioner to obtain justice in a court system that denies them due process, including manipulation of the docket and lack of adequate notice, and the taking of private property without just compensation and other violations of the Fifth Amendment to the United States Constitution, while sanctioning Petitioner for seeking due process of law while ruling that Petitioner lacks standing to get an accounting of his property and seek discovery.

Petitioner, Harold F. Chorney, respectfully prays that a writ of certiorari be issued to review those laws which prevent appeals courts the latitude and the jurisdiction from having the power to review court orders to prevent an abuse of process; to insure fundamental fairness and equal justice under law in the people's court system.

CONCLUSION

For the aforesaid reasons, the writ of certiorari should be granted to protect the rights of the public from being high-jacked by those both sworn to protect us and also having the fiduciary duty to enforce existing administrative statues. Without due process of law to insure proper notice, a fair hearing and a neutral judge, there will be no confidence and respect in our institutions and in the integrity of our legal system and in those responsible for making public policy. Should this honorable court grant certiorari to Petitioner, oral argument will be presented on behalf of the Petitioner by an attorney qualified for admission to the Bar of the Supreme Court of the United States of America.

Respectfully submitted,

_____

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Date: July 1, 2010