

Affadavit in Support of Motion to Strike Examiners Report #2 as a Sham and Deceit upon this Court

Harold F. Chorney after being sworn deposes and says that:

- 1) The valuation of Cumberland Investment Corporation's inventory has been compiled by third party graders hired by CIC, the auditors and/or Eastland Bank since 1981 (See attached exhibit #1 and #1A)
- 2) The Silver Dollar portion of the inventory of CIC is listed in two pools, either MS-65 or better and non MS-65 silver dollars
- 3) These pools are constantly being revised as grading standards change
- 4) The value of the inventory is noted in the company's financials as the lower of cost or appraised value at over \$23 million. (See exhibit 1B)
- 5) I am informed and believe the Examiner's Report #2 refers to the existence of only one pool while stating that "In our initial interview with Chorney, he stated that all of Cumberlands' coins were MS-65 or higher....
- 6) I am informed and believe neither Chorney nor CIC agents have ever alleged that all of their coins are MS-65
- 7) Purchases and sales of non MS-65 coins as well as MS-65 coins are part of the daily operations of CIC
- 8) Since late 1987 or early 1988 a large percentage of coins sold and shipped to clients have been graded and encapsulated (slabbed) by third party independent groups in the coin industry
- 9) I am informed and believe that the misinformation of the Examiner's Report #2 is a result of a lack of due diligence, or an attempt to defame Chorney and attack his credibility with the Court. (See exhibit 1C)
- 10) I am informed and believe the inconsistent valuation of the coins may be the result of the Examiners lack of impartial graders or switched coins, or both.
- 11) I have personal knowledge that the "confidential" or unidentified appraiser, chosen by the Examiner, is a convicted felon
- 12) This "confidential" appraiser is the brother-in-law of the grader of the purported "purchaser" in the "bulk sale"
- 13) The "confidential" appraiser is part of the purchaser dealer network (See exhibit #2)
- 14) The initial 50 coin offering to the bulk sale purchaser resulted in this purchaser being the "high bidder" on 20 of the 50 coins

- 15) I am informed and believe that the "high bidder" placed a grade on each of the 20 coins that would have a wholesale value of about \$12,000 on the said 20 coins. (See exhibit # 3)
- 16) The 50 coins under the control of the Examiner were sent out for third party independent grading.
- 17) Upon return of the 50 coins from the grading services, the "high bidder" changed his bid to only \$2,000 on the lot of 20 coins.
- 18) I have personal knowledge that the Examiner found nothing wrong with the disparaging change of bid , or the cost of the process. In fact, at a meeting with the Examiner, he insisted on doing things "his way". (See exhibit #4)
- 19) The Examiner then pressed ahead to offer this same "high bidder" a lot of 575 coins.
- 20) The independent brother-in-law qualified only 175 of these coins as "making the grade".
21. The "high bidder" then offered a bid that was within very small percentage differences of the independent brother-in-law.
- 22) I am informed and believe that the Examiner attempted to pressure me into making a sale since the prices of the independent grader and the purchaser were close and CIC's values were "overinflated". The preconditions of the sale allowed only 1½ hours to review the bids and make a decision placing all under undue pressure. I am also advised that this process is not "commercially resonable" and does not protect the collateral, creditors, Bank or the shareholders of Wescap. (See exhibit #5).
- 23) My attorney on several occasions warned me that if a large percentage of coins were not sold that a trustee would be appointed.
- 24) As DIP I vetoed the sale of these 175 coins. . . .
- 25) I was asked to keep "good will" with this "high bidder" by selling him something.
- 26) Ten of the 175 coins were sold at reduced prices to "pay for expenses". In retrospect I feel that was a bad decision on my part.
- 27) It is my belief that this whole process set up by the Examiner, who located both the purchaser and the "independent" grader is a kin to letting a wolf both count and grade the sheep to his own tastes.
- 28) The Duck Book exhibit in the Examiner's Report #2 is slanderous. (See exhibit #6)
- 29) For the Court's information, Cumberland and Harold F. Chorney filed suit in Boston against Duck Book Communications.
- 30) An out of court settlement was paid to Cumberland and Harold F. Chorney.
- 31) A retraction was printed in the Duck Book as part of the settlement agreement.

E-413

- 32) I am informed and believe that without knowledge of #28, 29, or 30 that the Examiner has knowingly or unknowingly shown bias and prejudice.
- 33) I have personal knowledge of countless coins that were stored under the complete control of Eastland Bank that have been switched. All of a sudden, CIC has a credibility problem, and insufficient collateral to justify the loan. (See exhibit #7)
- 34) These switched coins are of inferior quality than those originally placed under the bank's "safe keeping". Since the Examiner's reports are primarily based upon a sampling of the switched inventory, it is not possible to obtain a fair and accurate value of CIC's holdings.
- 35) Some of the coins are not even the same date or mint mark as recorded by the bank's own appraisers Sotheby's in September, 1989. Obviously, something has happened to the collateral. Some of the dates and mint marks are different since the Sotheby's appraisal.
- 36) Some of the coins, by quantity alone, where quality is not an issue, are different from audits of previous years.
- 37) The Examiner was informed by my attorney that coins had been switched in a letter dated March 21, 1990. (See exhibit #8)
- 38) I am informed and believe that on March 23, 1990, that a letter was sent to Michael Weingarten concerning the switched coins. (See exhibit # 9)
- 39) On April 4, another letter was sent to my attorney concerning switched coins. (See exhibit #10)
- 40) On April 5, 1990 the Examiner agreed to not have any coins sold from the 8000 coins stored at Eastland Bank and at Cambridge Trust. I then personally proceeded to seal the remainder of the coins left in the safety deposit boxes at Eastland bank. (See exhibit #11)
- 41) It was my understanding that all coins under the control of the bank, as well as an additional 2000 coins under dual control at Eastland Bank and those coins held under the control of the Examiner would be sealed.
- 42) At the insistence of the DIP, coins were shipped to a third party grading service by the name of P.C.G.S. to get an independent grade on 68 of the 175 coins referred to in 24)
- 43) When I asked for funds to get all 175 coins independently graded (cost is \$28 per coin) I was told by the Examiner that I should have sold more coins to the bulk sale purchaser.
- 44) I am informed and believe that this bulk sale to that purchaser was not commercially reasonable and not in the best interest of the bank, all the creditors, and the shareholders of Wescap.
- 45) I am informed and believe that Eastland Bank had advanced \$10,000 to the Examiner for the cost of the process of having the so called independent appraiser evaluate the 575 coins.
- 46) I am informed and believe that the proceeds of the sale of the 10 coins for around \$4900 should have been applied to the grading of the other 165 coins.

E-414

- 47) On April 16, 1990 I was handed the Examiner's Report #2 in the bankruptcy court at 9:00 A.M. and was told by my attorney that a trustee would be appointed.
- 48) Upon disclosure of the "confidential" appraiser, I appraised our attorney that this appraiser was a convicted felon.
- 49) The appraiser is also the brother-in-law of the grader who works for the bulk sale purchaser. The appraiser is also part of the purchaser's dealer network. (See exhibit #2)
- 50) I am informed and believe that this report is now sealed.
- 51) I am informed and believe that in this report that the blame for lack of a bulk sale is based upon an "overevaluation" and Cumberland "misrepresentation" as to coin value according to the Examiner.
- 52) I am informed and believe that the Examiner seems to be preoccupied in justifying his own theories, "We also indicated that a successful reorganization of Cumberland as an ongoing concern required a bulk sale of a (hopefully) valuable inventory".
- 53) I am informed and believe that the Examiner wants to have a bulk sale whether or not it is commercially reasonable and in the best interest of all the creditors.
- 54) The fact of matter is had Harold F. Chorney, DIP not vetoed the sale of the coins offered in the bulk sale, the Examiner would have sold these coins to the bulk purchaser.
- 55) On the same day, April 16, 1990 that the attorney for the Creditor's Committee asked for an extension of the powers of the Examiner that was shown to me by my attorney at noon on April 16, 1990. (See exhibit #12)
- 56) At a meeting at my attorney's office on May 4, 1990, I was informed of another grading to be conducted by the Examiner on Monday, May 7, 1990. (See exhibit #13)
- 57) On Sunday May 6 I informed my attorney that I felt it would not be in the best interest of Cumberland to have this appraisal since we were intitled to know the name of the appraiser to determine the independence of the new appraiser. The Examiner did not want to disclose his name. (See exhibit #14)
- 58) When I asked my attorney to call the Examiner and postpone the grading on Monday, he withdrew as attorney for Cumberland.
- 59) I personally feel that the Examiner's Report #2 is a sham and deception upon this court.
- 60) If the Examiner were truly interested in protecting the assets of all the creditors, that he would spend more time and energy finding out what happened to the coins stored at Eastland Bank instead of attacking the credibility of the DIP.
- 61) I have asked my attorney several times for all contracts between the Examiner and these "related parties" the independent appraiser and the purchaser, and to this date have received none.

- 62) If the court ordered a full investigation of the coins "escrowed" at Eastland Bank, their findings will corroborate the switched and missing coins and stamps alledged above.
- 63) Furthermore, I beg the court to allow Cumberland to submit a plan to pay the creditors of the corporation and to operate as an ongoing business.
- 64) In the interest of all creditors, the court should lift the orders to seal the vaults at 141 Main Street (I have never seen this written authorization), but bank personnel have sealed vaults.
- 65) I beg the court to lift any restraining order in fairness to the creditors.

I declare under oath that the statements made in 1-65 are based on my personal knowledge or on information and belief which I believe to be true.

Harold F. Chorney
Harold F. Chorney

Sworn to me this 10th day of
MAY, 1990.

Agiz H. Madrodo
Notary Public of this State

E-416

Addendum

- 66) In reviewing the appraisal and auditor reports through the years, it was always our belief that there was sufficient collateral held by the bank to justify and satisfy the loan, and any/all obligations including redemption of coins from clients. Since Sotheby's evaluation it has come to our attention that coins were in fact switched in both collateral held by the bank under their control as well as those under dual control in box #945.
- 67) I beg the court to allow Cumberland not to be restrained from the sale of redemption coins or the return of said coins which are not assets of the corporation, but are owned by third parties, whom we are acting in an agency status, who are being harmed as a result of the sealing of the vaults at 141 Main St. by Eastland Bank. (See exhibit # 15)
- 68) Should the vaults remain sealed, we request that Eastland Bank post a bond equal to the value of the coins that have been held improperly, (Examiners estimate of value at 4.4 million) in order to protect the interest of the harmed parties.
- 69) As the president of CIC and the CEO of Wescap, I have to give progress reports to the shareholders according to securities laws as well as having the proper back-up documentation for corporate auditors. It's difficult to make reports based upon verbal court orders as per my attorney, such as TRO and extensions of TRO's, vault sealing, and non-filing of a bond. (See exhibits 16, 17, 18)
- 70) I am informed and believe that fraudulent filings were used to place Cumberland Investment Corporation into both a Receivership and a Chapter 7. (See exhibits 19, 20)
- 71) I am informed and believe that the main reliance document that Eastland Bank used to place Cumberland into a receivership was the Sotheby's Appraisal. (See exhibits 21 and 22) which states (iv) "is not to be used or relied upon in connection with any transaction involving the property".
- 72) On or about May 30, 1989, CIC renewed a note with Eastland Bank. The security for the promissory note (See exhibit #23) was a pledge and Security agreement dated September 30, 1988 (See exhibit #24) as well as the guarantee of myself, Harold F. Chorney. Both parties agreed on 30 May, 1989, to the fact that the collateral in the possession of the bank having been evaluated by a third party for Ernst & Whinney and Laventhol & Horwath was the in excess of the 2.5 million dollar loan. In addition, it was the understanding between both parties that in the case of default on the loan that 1) the collateral would be liquidated in a commercially reasonable manner, and 2) that the bank would move against the collateral in their possession before moving against any other collateral. (See exhibit #25)

E-417