

## AFFIDAVIT OF HAROLD F. CHORNEY

Harold F. Chorney deposes and states the following:

1. I currently reside at 16 Spring Drive in Johnston, Rhode Island.
2. On or about April 18, 2008, Appellant sent PETITIONER'S OFFER OF PROOF CONCERNING STANDING to Judge Votolato.
3. Upon information and belief, on August 1990, Judge Votolato and officers of the court, having visited the premises at 141 Main Street in Woonsocket R.I. on June 1990, were well aware that Appellant resided at 141 Main Street, Woonsocket, R.I. in the same bank building where Cumberland Investment Corporation, Financial Privacy Consultants, Inc. and Wescap Enterprises Limited and other businesses were located.
4. On August 16, 1990, Trustee Cullen sought "an order that the Debtor [Harold F. Chorney] and his personal property be physically removed from the Premises located at 141 Main Street, Woonsocket, R.I." (See E468-E470, bnk docket #137.) Appellant had put aside this document to question Appellees at the hearing on May 7, 2008, concerning personal assets removed on 8/17/90. For unknown reasons Mr. Cullen did not attend the May 7, 2008 hearing. Although the 8/16/90 court order was not granted, Appellant has personal knowledge that all assets contained in the vaults at the premises at 141 Main Street, Woonsocket, R.I., including the personal assets of Appellant were removed under the direction of Mr. Cullen. The assets were never returned to Appellant and no accounting has been supplied to Appellant.
5. The Offer of Proof in paragraph 2. above did not include the information in paragraph 4. above.
6. Appellant has personal knowledge that on August 17, 1990, Trustee Cullen removed from the premises at 141 Main Street, Woonsocket, R.I., by a *warrantless* search, both corporate and non corporate assets and documents while Appellant was out of town for a social event.

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7. Appellant has personal knowledge that on August 17, 1990, the clearly marked offices of Wescap Enterprises Limited and Financial Privacy Consultants were entered and some documents and assets were removed.
8. Appellant has personal knowledge that Mr. Weingarten, court appointed Examiner, represented by Mr. Bertozzi, and one of Mr. Weingarten's associates, Mr. Baverstam, made inventories of Cumberland Investment Corporation assets, located in the vaults at 141 Main Street, Woonsocket, R.I. and then the vaults at 141 Main Street Woonsocket, R.I. were sealed for weeks prior to the August 17, 1990 search and seizure.
9. Appellant has personal knowledge that some non-corporate and personal assets were segregated in the vaults at 141 Main Street on June 1, 1990 prior to the inventory of assets. On May 31, 1990, John Boyajian, Esq., corporate attorney for C.I.C. faxed Appellant a letter he had received from Edward Bertozzi, concerning requests from Appellant, related to an inventory and segregation of assets. (See E472.) See Addendum Travel and Facts, 3a. in Supplemental Brief of Appellant in Ca No. 08-0189ML, dated 12/27/08. (See E356.) Mr. Bertozzi's statement on March 27, 2008, that "We assisted the trustee in obtaining possession of the debtor's assets and records...."
10. Upon information and belief Mr. Weingarten, court appointed examiner was aware of the fact that not all of the assets located at 141 Main Street, Woonsocket, R.I. were assets of Cumberland Investment Corporation, especially subsequent to the June 1, 1990 inventory and notes of other contents performed by Mr. Baverstam.
11. On August 17, 1990, Mr. Weingarten admits during the removal of the assets that there are non-corporate assets located at the premises. "We have lots of other things that have not been inventoried by me." (See Exhibit Z, E-336.)
12. Upon information and belief, Mr. Cullen, Judge Votolato and the other officers of the court were aware that the premises contained both corporate and non corporate assets after visiting the premises.

13. Appellant cannot recall all of the non-corporate assets and documents which were at the premises of 141 Main Street, Woonsocket, R.I. on August 17, 1990, but can recall the Pre-Columbian golden frogs.
14. A record of some of the assets removed by the Trustee, such as the golden frogs, was obtained by Appellant from Allied Court Reporter and contained in the Transcript of the Removal of the CIC Assets, dated August 17, 1990. (See Exhibit Z, page E-342.)
15. Upon information and belief, all assets of Cumberland Investment Corporation were listed in "yellow inventory notebooks."
16. Upon information and belief said "yellow inventory notebooks" were removed from the premises at 141 Main Street, Woonsocket, R.I. by Trustee Cullen and Lee Blais on or about August 15, 1990.
17. As a direct result of personal assets being seized with corporate assets, my attorney David N. Cicilline contacted Mr. Cullen on both August 24, 1990 and September 13, 1990, concerning the personal assets seized. (See E401-E402.)
18. Mr. Cullen did not respond to the letters in paragraph 17. above from Mr. Cicilline.
19. The information concerning Mr. Cicilline's letters to Mr. Cullen, contained in paragraphs 17. and 18. above was not part of the Offer of Proof to the Bankruptcy Court, but was part of the record presented to the District Court.
20. Appellant has personal knowledge that Jonathan Oster, an attorney, who represented the interests of Appellant, requested documents concerning corporate and personal assets, including the golden frogs, which were seized by Trustee Cullen on August 1990. (Mr. Oster is deceased and Appellant cannot verify Mr. Oster's communications with Mr. Cullen, Mr. Weingarten, Mr. Bertozzi and others concerning the golden frogs by means of an Affidavit by Mr. Oster or possibly by other documents from Mr. Oster.)
21. Appellant's notes indicate that Mr. Oster wanted Appellant to supply a list of assets, seized by Trustee Cullen, belonging to him personally.

Appellant cannot locate any such list. However, Appellant, an interested party, has been denied the opportunity to obtain discovery or to question Mr. Bertozzi about verbal or written communications with Mr. Oster, Mr. Cicilline and others concerning missing assets. (See E72-E73 from Appellant's Memorandum in Support of Motion to Clarify First and Final Application for Fees & Expenditures of Edwards Angell Palmer & Dodge LLP, where "Petitioner withholds objection for fees and expenses, conditioned upon receipt or clarification and the production of billing records related to money borrowed from the estate of Cumberland Investment Corporation and/or missing assets of the estate.")

22. Upon information and belief, neither Mr. Bertozzi, Mr. Cullen nor Mr. Weingarten, nor anyone else ever responded to Mr. Oster concerning any of the personal assets seized.
23. On June 10, 1994 and September 13, 1994, Appellant sent letters to Trustee Monzack with a cc. to the clerk of the bankruptcy court, AUST John Fitzgerald, and AUST Sheryl Serreze concerning assets, seized by Mr. Cullen, which were possibly missing. (See E-120-125.) (No distinction between corporate and personal assets seized were made on lists of assets since Appellant could not recall from memory which assets, stored in vaults at 141 Main Street, Woonsocket, R.I., were listed in the "yellow inventory notebooks.")
24. Appellant has received no response to the letters sent in paragraph 23. above.
25. On September 13, 1994, Appellant provided Mr. Monzack a transcript of the removal of the assets from the premises at 141 Main Street, Woonsocket, R.I. on August 17, 1990. (E307-E349.) Said transcript contains excerpts (See E342.) indicating that some of the assets, including the golden frogs, listed on E-121 were indeed on the premises on August 17, 1990. The golden frogs were removed under the direction of Mr. Cullen, assisted by Mr. Weingarten, both of whom were represented by Mr. Bertozzi.
26. On December 28, 1994, Appellant, Mr. Nacu, and Mr. Dunleavy met with Mr. Monzack at his offices in Cranston, R.I. It was at this meeting that Mr. Monzack admitted to the following:

- a. Certain records, including the yellow notebooks could not be located by the U.S. Attorney.
  - b. Mr. Monzack was attempting to obtain the records, inventories, documents, videos and still photographs of the seized assets as they were being removed from the building.
  - c. Some \$300,000 to \$400,000 in assets seized by John F. Cullen, Esq., was missing.
27. On January 4, 1995, Scott Lutes, Esq., criminal attorney for Appellant contacted Mr. Monzack in order to obtain an inventory and detailed disposition of the assets of the estate of C.I.C. (See E158; E148-E150.) from the billing records of Chapter 7 Trustee Records dated October 9, 2007.) Mr. Monzack made no response to Mr. Lutes requests.
28. Appellant and others have asked for an accounting of the assets seized, sold and remaining at various points in time during the bankruptcy case. All of these requests have been denied by the bankruptcy court. Requests for accountability, appealed to the District Court and the First Circuit Court of Appeals, have been denied.
29. 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 E148-E150.) The production was virtually without success, with exception of Mr. Taft being "allowed" to view some 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, E350.) Appellant did not obtain a copy of the 19 videotapes until October 1999, in response to an F.O.I.A to Executive Office of U.S. Attorneys.
30. On February 1996, Appellant went to prison where on December 28, 1996, he sustained a traumatic brain injury resulting in both memory loss, and a reoccurrence of his service connected Post Traumatic Stress Disorder.



31. Subsequent to the December 1999, auction sales of assets of the estate, Mr. Monzack on 2/7/02 stated that there were no assets remaining. It was at this time that Petitioner finally realized that the gold frogs and other assets had totally disappeared without any accounting.
32. To date, Petitioner has not been able to obtain a copy of the yellow inventory books of Cumberland Investment Corporation.
33. To date, Petitioner has not been able to obtain any accounting of the assets of the estate which were taken, sold or remaining.
34. 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 Appellant has an interest in.
35. On March 27, 2008, at a bankruptcy court hearing, Mr. Monzack denies knowledge of the August 17, 1990 transcript and the existence of the golden frogs (TR 3/17/08, page 15, E-365.) The documents in paragraphs 23. and 25. above belie Mr. Monzack's March 27, 2008 statements of denial of any knowledge concerning the golden frogs and the August 17, 1990 Allied Court Transcript.
36. When Mr. Cullen is asked by the court "to respond to this allegation about the specific items that Mr. Chorney just referenced to establish his alleged interest in property and, therefore, his standing in the case," Mr. Cullen denies any knowledge of the golden frogs. (TR 3/27/08, page 16-18, E366-E368.)
37. Appellant, upon information and belief, believes that he has been denied due process by not having the opportunity through the bankruptcy court to question witnesses such as Mr. Cullen, Mr. Monzack, Mr. Weingarten or Mr. Bertozzi concerning the seizure and possible sale of Appellant's personal property and/or why there is no record of these assets and other assets listed on page E-121 being sold.

38. To date, no party has produced to Appellant a list of the assets seized, sold or remaining from the August 17, 1990 and August 23, 1990 seizures from Cumberland Investment Corporation.
39. Upon information and belief, one of the bases for the bankruptcy court to claim that Appellant has no standing in its May 7, 2008 bench decision in denying Appellant's Motion to Clarify is Appellees' misrepresentation, that Appellant has "only recently begun to argue that he has some personal interest in the estate, though the bankruptcy estate has been pending since 1989."
40. The bankruptcy court adopted the Appellee's arguments in their entirety. The District Court's ruling, dated December 18, 2008 and Denial for Reconsideration on January 8, 2009, is based upon the District Court agreeing with the Bankruptcy Court's findings that Appellant is not a person aggrieved for purposes of this appeal.
41. Appellant has personal knowledge that he has argued personally and through his attorneys since 1990, as represented by letters from Mr. Cicilline to Mr. Cullen, and then through letters to Mr. Monzack requesting "yellow inventory notebooks" and inventories of assets seized on August 17, 1990 and August 23, 1990 by Mr. Cullen, that personal assets such as the golden frogs are missing as well as corporate assets such as Lot #412 in the Christies Auction, consisting of 84 silver dollars dated 1896 are missing and unaccounted for.
42. The record will show and Appellant has personal knowledge that he has spent much more time arguing about missing corporate assets than personal assets. He has argued personally and through his attorneys since 1989 to officers of the bankruptcy court including Mr. Weingarten, Mr. Cullen and then to Mr. Monzack primarily about missing corporate assets because of their very large valuation in comparison the Appellant's personal assets. These missing corporate assets include both assets from the in-house assets after the seizure on August 17, 1990 and August 23, 1990, as well as assets under the custody and control of Eastland Bank and their successors from the so called "possessory" collateral.
43. The determinations of the Bankruptcy Court and the District Court that Appellant lacks standing pertaining to the appeal of the May 8,

2008 order and the bench decision of May 7, 2008, constitutes clear error for the reasons stated above, which clearly demonstrate that these court decisions are based upon misrepresentations of the Appellees at hearing involving no witnesses and no documents placed into evidence.

44. Appellees aver they have no knowledge of Appellant claiming that he has personal assets, such as the golden frogs, which were seized on August 1990, and which are missing. Appellees state that any of these claims of Appellant have been made only recently.
45. The statements of Appelles misrepresent the truth concerning the personal assets of Appellant.
46. The statements of Appellees misrepresent the truth concerning the corporate and non corporate assets. Both the Chapter 11 and Chapter 7 Trustees have consistently presented the argument to civil and criminal courts, that the "possessory" collateral was intact. Trustees also argue that any assets missing from the "in-house" inventory or the coins belonging to the so called "redemption" clients of C.I.C., all seized and removed from the premises of C.I.C. on August 17, 1990, were probably missing prior to the seizure, while in the possession of the Appellant.
47. The Government and their trial witnesses adopted the Trustee's same argument at the criminal trial of Appellant. The misrepresentation of the Appellees resulted in the conviction of the Appellant and a resultant restitution.
48. The misrepresentations of Appelles have resulted in Appellant losing his property while being denied due process.

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49. The Appellant is an "aggrieved party" and should not be denied standing to question his adversaries concerning issues of missing personal assets especially since these missing corporate assets are directly related to guilt or punishment.

I swear that the statements in 1-49 above are true, or based upon information and belief that I believe to be true.

*Harold F. Chorney*

Harold F. Chorney  
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Sworn to me on this 5<sup>th</sup> day of February 2009

*James M. Brailsford*  
Notary of the State of Rhode Island  
JAMES M BRAILS FORD  
Com Exp: 5-29-2010



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