

UNITED STATES BANKRUPTCY COURT
FOR THE
DISTRICT OF RHODE ISLAND

EXHIBIT I

In Re:

CUMBERLAND INVESTMENT CORPORATION

Debtor

Case No. 89-11051
Chapter 7

**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 OF 1990 UNTIL THE SAME WERE TURNED OVER
TO THE SUCCESSOR TRUSTEE, JASON MONZACK**

TO THE HONORABLE ARTHUR N. VOTOLATO, JR., UNITED STATES
BANKRUPTCY JUDGE:

Now comes John F. Cullen, the former Chapter 11 Trustee in the above captioned matter and opposes the motion filed by Warren Taft and other creditors ("Movant") on the grounds that the motion is vague, overburdensome, and that all records directly related to all items in the possession of the Chapter 11 Trustee were available for inspection and have been inspected on numerous occasions.

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.

The history of this case is replete with duplicitous motions that lack specificity. On July 2, 1992, this Court entered a judgment against Harold Chorney finding him to be in contempt

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and ordering him to pay \$200,000.00 in costs to the Chapter 11 Trustee. That case was appealed to the United States Court of Appeals for the First Circuit and this Court's order finding Harold Chorney in contempt was upheld. In the opinion of this Court dated July 2, 1992, this Court spoke with particularity as to the environment the creditors found themselves in when this case began stating that:

At the show cause hearing the Trustee, John Cullen, Esq., described what was unfortunately an already too familiar pattern of obstructionist behavior by Mr. Chorney.² For example: he continued, post-petition to advertise fraudulently after both agreeing to and being order to desist; to cure a glaring security problem, the Trustee moved for and obtained a Court order to physically eject Chorney from the Debtor's business premises (where he was actually living),³ after repeated broken promises to vacate;⁴ CIC records were allegedly concealed and/or destroyed; coin and other inventory values were grossly and fraudulently overstated to the Court, the Trustee, concealed and/or destroyed; coin and other inventory values were grossly and fraudulently overstated to the Court, the Trustee,

² As the result of the many pleadings and ensuing hearings both during and after the debtor-in-possession period, the Court was already acquainted with much of what the Trustee had to say, and we find his testimony to be accurate, but by no means all-inclusive of Chorney's legal and ethical transgressions. A more complete recital of Chorney's misbehavior throughout this case is chronicled in the case docket, annexed as Appendix A.

³ Chorney's apartment was literally surrounded by inventory, allowing a real-life "fox-guarding-the-chicken-coup" scenario. His bed was literally within inches of the vault and its contents.

⁴ The Court order was ignored, however, and the Trustee ended up, instead, moving the assets to another location, at a cost to the estate of approximately \$95,000.

and to creditors; many frivolous pleadings were filed and extensively litigated, with the intent and effect of impeding the administration of an estate already left in shambles by Chorney; information concerning the identity of redemption coin holders was wrongfully withheld on the baseless ground of "confidentiality," even after disclosure was ordered by the Court, and so on.

The most damaging consequence of Chorney's incomprehensible behavior, however, is the incredible amount of needless expense that has been heaped upon the estate, and ultimately, of course, upon the creditors. The Trustee's and the Examiner's duties (and their fees and expenses) have been increased; secured creditors, long-delayed in exercising their rights, have seen the interest part of their claims escalate; and the likelihood of a meaningful distribution to hundreds of unsecured creditors and redemption coin holders has been practically eliminated. All of this waste has been caused unnecessarily by Harold Chorney.

All of the items in the constructive possession of the Chapter 11 Trustee were reported to the Court and the manner in which they were removed from the Debtor's premises and transferred by state police, local police and security personnel to a bank vault in Cranston, Rhode Island. The security surrounding the transfer of those items has been the subject of a previous report to the Court. When the assets were transferred from Cranston, Rhode Island, at the request of the FDIC, the FBI and other agencies supervised the removal and transfer of those assets by armored car. At no time since 1990 has Z. Hershel Smith ever alleged to this Court or to any other agency that there were missing assets. However, Mr. Chorney has blamed everyone else for his troubles and if there were any need for records, the numerous meetings that took place between myself and Hershel Smith in 1991 would have unearthed facts from Mr. Smith which would have caused either myself or this Court to look with particularity at any allegations.

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The assets which were placed in the vault have been the subject of several reports to the Court by the examiner and my counsel in an effort to sell the unencumbered coins. Eastland Bank provided a complete accounting procedure the night the assets were taken from Mr. Chorney's premises. It is well to remember that prior to my entering the premises it was Mr. Chorney who was in charge of the premises with the assets and as Eastland Bank alleged to this Court, there was grave concern about the assets themselves.

On February 14, 1991, in compliance with a Grand Jury Subpoena, I presented to the Grand Jury all the books and records that I had in my possession other than the coins and other items that were located in the vault in Cranston, Rhode Island.

When the Movant speaks to video tapes or other reports, again he is vague and knows full well that those items, if any, are in the possession of the United States Grand Jury.

The Movant talks about the examiner culling through assets and separating them. All of this information is contained within the docket sheet and the records of this Court and has been subject to numerous hearings on the sale of the assets. The assets that were in the vault have been turned to the FDIC and transferred to a bank facility in Woonsocket, Rhode Island, and I filed a report with the Court when that transfer took place.

On February 25, 1994, at 5:40 p.m., I received a Criminal Subpoena to appear at 9:30 a.m., February 28, 1994, in the United States District Court for the District of Rhode Island

before the Honorable Raymond J. Pettine. The subpoena requested a variety of information from Mr. Chorney's sentencing hearing. On February 28, my counsel filed a motion to quash the subpoena and it was allowed. Judge Pettine ordered me to appear at 2:00 p.m., February 28, to testify as requested by the defendant, Harold Chorney, on the very items that are talked about in the Movant's motion. When I arrived at the Court at 1:45 p.m., February 28, I had a discussion with Mr. Chorney's attorney and provided him, orally, with what I had done and the accounting that I had filed with the Court. At precisely 2:00 p.m., Judge Pettine took the bench and called me to the stand. While I was approaching the bench to prepared to testify, Mr. Chorney's counsel asked for a fifteen minute recess so that he could discuss my testimony with his client. Judge Pettine made it absolutely clear that it was the defendant who wanted me to testify and that he had brought me down from Boston for that purpose to make sure that the hearing moved along with dispatch. At 2:15. p.m., Judge Pettine again entered the court room and defense counsel informed Judge Pettine that he did not desire to examine me on my activities. Judge Pettine apologized for bringing me down and I was dismissed.


It is the Movant's counsel, Z. Hershel Smith, who has been in this case since the very outset and has particular knowledge of all the events leading up to my appointment and after my appointment.

WHEREFORE, John F. Cullen, the former Chapter 11 Trustee of Cumberland Investment Corporation, respectfully requests that this Court deny the Motion Of Warren Taft And Others For

Complete Accounting Of Assets for the reasons stated above.

Respectfully submitted,
CUMBERLAND INVESTMENT CORPORATION

By its former Chapter 11 Trustee,



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Dated: 4/26/94