

UNITED STATES BANKRUPTCY COURT
DISTRICT OF RHODE ISLAND

IN THE MATTER OF:

Case No. 89-11051

CUMBERLAND INVESTMENT
CORPORATION

Providence, Rhode Island

Debtor.

January 8, 1992

MOTION OF HAROLD F. CHORNEY TO COMPEL TRUSTEE TO
FORWARD PERSONAL MAIL
TRUSTEE'S OBJECTION TO MOTION TO FORWARD PERSONAL MAIL
MOTION OF HAROLD F. CHORNEY TO VACATE ORDER PROHIBITING
CONTACTING OF DEBTOR'S CUSTOMERS

APPEARANCES:

For Harold F. Chorney:

HAROLD F. CHORNEY, pro se

Trustee:

JOHN CULLEN, ESQ.

For the Trustee:

By: EDWARD BERTOZZI, ESQ.

For U.S. Attorney:

By: SEYMOUR POSNER, ESQ.

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I N D E X

<u>Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Monica Shea by Mr.Chorney	5			
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Exhibits

	<u>Ident.</u>	<u>Evid.</u>
C-1 Document signed by M. Shea, 4/9/91		7

THE COURT: Good morning. Okay. In the matter of Cumberland Investment Corporation, Motion by Harold Chorney to Compel the Trustee to Forward Personal Mail, Trustee's objection to that request, and Chorney's Motion to Vacate an Order Prohibiting the cancella -- Contacting of Debtor's Customers.

MR. CHORNEY: Good morning, Your Honor. If I can give you a short summary in relationship to the direction of the mail. On the 20th of August Mr. Cullen, the Trustee in the case, put in a motion to have Cumberland's mail redirected, based upon monies and correspondence in relationship to the case being forwarded to him. This Court put in an order dated the 20th of August granting the redirection of the mail, and in that order it stated that all personal mail of Harold Chorney, Lou Chorney, Gerald Aubin, would not be affected by that said order. Since that time we have not met with Mr. Cullen once, none of the parties, in order to review the mail in order to see whether or not any of the mail was of a personal nature. Since that time we have received notification that personal mail has been signed for. In fact, a default judgment was placed in Superior Court as a result of the Trustee's office signing for personal mail which I never received any notification of, and that's one of the reasons why we're here is to get the personal mail, Your Honor. Do you want me to limit it to this first part right

over here and we'll go on to the other one afterwards?

THE COURT: Yeah, we'll do one at a time.

MR. CHORNEY: Yes, Your Honor.

THE COURT: Mr. Bertozzi, or --

MR. BERTOZZI: Your Honor, Mr. Cullen is here and he can explain his arrangements for the mail, and the -- also there's an affidavit I want to present from -- well, through Mr. Cullen from one of his -- his paralegal who handled the mail to explain how the mail has been handled, and that in fact Mr. Cullen does not have any personal mail. And we object to Mr. Chorney being able to review all the mail that has come into Cumberland and the Trustee, and the reason is that the company is not operating, Mr. Chorney has no legitimate reason to want to see that mail, and what he really -- the real reason why he wants to see it is that he knows he's under criminal investigation and he wants to see what's in there that the government might have. And Mr. Posner is here from the U.S. Attorney's office to speak to that, also.

THE COURT: Okay. Do you want to examine anybody, Mr. Chorney?

MR. CHORNEY: Yes, I would. I would like to call Monica Shea to the stand first, Your Honor, and --

THE COURT: All right. I'm going to limit you, Mr. Chorney, because -- just because, without going into the whole background of this case, but how much time do you

intend to use this morning for your purposes?

MR. CHORNEY: For this -- for the first part, I would think it would take no more than a half an hour.

THE COURT: We'll finish the entire Chorney/CIC matter by eleven o'clock, okay?

MR. CHORNEY: Fine.

THE COURT: So that you'll know what -- Do you object to the examination of this witness?

MR. BERTOZZI: No, Your Honor.

THE COURT: Okay.

M O N I C A S H E A, WITNESS, SWORN

CLERK: Would you state your name and spell your last name.

THE WITNESS: My name is Monica Shea, S-H-E-A.

DIRECT EXAMINATION

BY MR. CHORNEY:

Q. Hi. Good morning.

A. Hi.

Q. Monica, have you -- is this your signature right over here, or a copy of it?

A. Yes, it is.

Q. Okay. And that was dated on the 9th of April, '91, is that not correct?

A. That's right.

Q. Okay. And when you signed for this, basically what were

you signing for?

A. Anything that comes to our office. Any bankruptcy mail gets transferred to our office under Jack's name.

Q. I see.

A. I just sign --

Q. And you sign all the registered --

A. I sign every registered mail that comes in our office. I don't even take notice of it.

Q. You sign every one, you don't take notice of who it's for or anything else? You just --

A. No.

Q. Do you have any recollection of signing other certified or registered mail for Cumberland Investment Corporation or Harold F. Chorney?

A. I would have no idea. We have -- every day we have certified mail coming in on bankruptcies.

Q. Okay. So you have no knowledge of --

A. No.

Q. You would just sign this, period, and that's it.

A. Yeah. I would just -- that's what's my job.

Q. What would you do with it after you signed for it?

A. It gets transferred to the paralegal --

Q. And when you sign --

A. -- all the mail. She gave an affidavit that she opens up the mail.

Q. Okay. When you say paralegal, who would that be?

A. Denise Gallo.

Q. Denise Gallo, okay. So basically she would review the information that was contained in there?

A. Correct.

Q. Do you know whether or not she conferred with Mr. Cullen as far as what information was inside of any correspondence?

MR. BERTOZZI: I object, Your Honor.

THE COURT: Well, if she knows whether there was -- you can answer yes or no, or if you don't know, just tell us that.

BY THE WITNESS:

A. No.

Q. You don't know?

A. No. I just hand her all the mail.

Q. Okay, fine.

MR. CHORNEY: I have no other questions. Can I have this as an exhibit for the record, Your Honor?

THE COURT: Sure. Any objection?

MR. BERTOZZI: No, Your Honor.

THE COURT: Okay. That's Chorney's Exhibit #1.

CHORNEY'S EXHIBIT #1 MARKED AND RECEIVED IN EVIDENCE

THE COURT: Any questions?

MR. BERTOZZI: No, Your Honor.

THE COURT: Step down. Thank you.

MR. CHORNEY: I wonder if I can call John Cullen to the stand, please?

J O H N F. C U L L E N, WITNESS, SWORN

CLERK: State your name and spell your last name.

THE WITNESS: John F. Cullen, C-U-L-L-E-N, the Trustee.

DIRECT EXAMINATION

BY MR. CHORNEY:

Q. Mr. Cullen, in relationship to the information in Exhibit #1 over here, did you get to review that?

A. No. First time I saw it was probably, I think when you filed the motion it was attached to the --

Q. Okay.

A. -- subsequent pleadings.

Q. Have you reviewed any of the mail sent to Cumberland or --

THE COURT: Since when, please?

BY MR. CHORNEY:

Q. Have you reviewed any of the mail that was addressed Harold F. Chorney or Harold Chorney, President, Cumberland Investment Corporation?

THE COURT: Well, do you consider that personal mail?

MR. CHORNEY: Well, I would say that --

THE COURT: Let's get this straight right away.

MR. CHORNEY: -- yes. This specific --

THE COURT: Well, let me tell you what I consider personal mail and the intent and the spirit of that order when it was signed.

MR. CHORNEY: Surely.

THE COURT: It would be mail that got to the address at -- was it 41 Main Street?

MR. CHORNEY: 141 Main Street.

THE COURT: -- 141 Main Street --

MR. CHORNEY: Yes.

THE COURT: -- that would be addressed to Harold Chorney, personal or personal and confidential, or things like that. Anything with CIC or Copper Connection or anything else that deals with the business, Mr. Chorney, was not intended to be your property or subject to inspection by you or anything like it. Okay? Do we have an understanding?

MR. CHORNEY: Yes, Your Honor. In fact, even though this was addressed "Harold F. Chorney, care of Cumberland Investment Corporation", it was Harold F. Chorney, sole defendant in a case in Superior Court, and had absolutely nothing to do with Cumberland listed --

THE COURT: Okay. Well, you can go into that.

MR. CHORNEY: Beg your pardon?

THE COURT: You can go into that. I just wanted to kind of establish at least what I think is a guideline for

the rest of the hearing.

MR. CHORNEY: Yes, Your Honor. Okay. That's fine. I would think that mail which would list the sole defendant down there of Harold F. Chorney would certainly be personal mail, especially if the default judgment --

THE COURT: Do you have any reason why this matter was allowed to be defaulted? Any --

MR. CULLEN: I don't, Your Honor. I don't have any idea.

MR. CHORNEY: Let me show you --

BY THE COURT:

Q. Well, let me ask you another question. Does -- I don't know if there are any other lawsuits or -- what would happen to this when you saw it? Did you examine it or your para-legal?

A. I didn't see it until actually after Mr. Chorney filed the plea.

Q. After he filed the motion.

A. I can explain it. Normally what happens in, in a case where I'm the Trustee and it's a standard procedure that there is a court action pending in a state court or another federal court with regard to the principal of the corporation we file a suggestion of bankruptcy with the court so the court is aware, if they weren't, as well as the parties that there is a bankruptcy case and I'm the Trustee. So a sugges-

1 tion of bankruptcy is normally filed.

2 Q. Okay. Would that have been done in this case?

3 A. I have no record that it was done in this case, Your
4 Honor.

5 THE COURT: Do you have a copy of any of the legal
6 pleading -- the receipt that was signed here --

7 MR. CHORNEY: I have the judgment that was entered.
8 It wasn't until I received that judgment that I knew that it
9 even existed, Your Honor.

10 THE COURT: What -- do you know what the nature of
11 this suit is?

12 MR. CHORNEY: Yes, I do. It's funds alleged to be
13 owed by myself for legal fees involving another litigation.
14 Since then --

15 MR. CULLEN: Is this -- can I ask, is this the
16 litigation which involved the federal court and the FTC?

17 MR. CHORNEY: With the Federal Trade Commission?

18 MR. CULLEN: Yeah.

19 MR. CHORNEY: No.

20 MR. CULLEN: Your Honor, I think that there's been
21 a number of -- if I might, there has been a number of litiga-
22 tions over a long period of time before I became the Trustee
23 that Mr. Chorney's been involved in. If you recall, we knew
24 of no -- Mr. Chorney never would testify to the Trustee as to
25 what was going on with any of the cases. There's a case we

found out a long time ago with the FTC, so we didn't know any of this thing, and he never provided any information.

MR. CHORNEY: Your Honor, I object to --

THE COURT: Yeah. Well, we're pretty much confining it to this litigation right here.

MR. BERTOZZI: Your Honor, I think that judgment has been vacated by Judge Krause of the Rhode Island Superior Court. I was over in Superior Court when Mr. Chorney was there. So if any harm was done it has been --

THE COURT: It has been vacated?

MR. CHORNEY: Yes.

THE COURT: Okay.

MR. CHORNEY: Your Honor, I put in a motion and it has been vacated by Judge Gagnon.

MR. BERTOZZI: Excuse me.

MR. CHORNEY: And I had a hearing before him in relationship to it. Part of my concern, Your Honor, is without reviewing what's out there I don't know what's out there.

THE COURT: Okay.

MR. CHORNEY: And part of the Court's order was that we would get to review the mail. I have other examples here of mail that is being or has been redirected and certainly has nothing whatsoever to do with Cumberland, even though Cumberland appears as part of the address. In other

words --

THE COURT: Ask some questions. Go ahead.

MR. CHORNEY: And that's --

BY MR. CHORNEY:

Q. Mr. Cullen, if you saw a package come in that was addressed like such -- and this is addressed to Mr. Harold Chorney, President, Cumberland Investment Corporation in the same manner that most of the mail sent to myself personally at 141 Main Street was addressed -- would you consider that personal or corporate mail?

A. First of all, you're asking me whether I ever saw this?

Q. Sure. Have you ever seen it?

A. No.

Q. Okay. Well --

A. Did you get this from my office?

Q. No, I did not.

A. Okay.

Q. No.

A. So you have the --

Q. I'm kind of here to ask you the questions right now.

A. I'm sorry. Go ahead.

Q. I'll switch positions later on if you'd like to. But you've never seen this before or anything like it?

A. No, you asked -- I've never seen this.

Q. Okay. And have there been other things addressed to

Harold Chorney, President, Cumberland Investment Corporation of a similar nature to that, that you're aware of?

A. I think at the outset of the case when I was at the Postal Service when this order was entered there was some mail we went through with the Postmaster that was marked Cumberland with your name on it.

Q. And was any of it marked personal and confidential?

A. No, sir.

Q. Well, what would your opinion be concerning -- would you consider that to be personal mail or would you consider that corporate property, in your opinion?

A. It would appear to be corporate property. It lists you as president, Cumberland Investment Corporation. That would be my opinion, sir.

Q. Okay.

MR. CHORNEY: I think part of the problem, Your Honor, is the Trustee has taken a position that any mail that has Cumberland marked on it is the property of the estate and it's my position that if it's of a personal nature, which I believe something from the Republican National Committee concerning re-election of the president, something like that, would certainly not have anything to do with Cumberland but with myself personally. And there's many exam --

THE COURT: You may be correct, but if your position here was correct, if every former principal of a debtor

corporation was entitled to go through all the mail, I don't know how long the system would last, and I think -- I'm willing to make a policy judgment right now that you're not entitled to review every piece of mail that comes in, especially campaign literature or the likes of it. And it's an inconvenience that you may be suffering, and I think on balance, in the circumstances of this case, especially, with other agency involvement, that the burden is almost on you to show that, "I'm expecting a piece of personal mail. It's important. It's -- it consists of such and such. And Mr. Cullen has not turned it over to me. I want to find out if he has it." I don't think you're entitled to go through junk mail and to stay involved in the company. You were removed forcibly and physically, I believe, for what I still consider excellent reasons, and I'm not sure what you're looking for. If you have anything specific in mind this Court will assist you.

MR. CHORNEY: Surely. There's plenty of membership dues that -- applications that apply to me personally which were never received. There's personal --

THE COURT: Okay. Instead of taking up a federal court's time, trustees, lawyers, and we'll hear more about this in a document that's going to be filed pretty soon, why don't you get in touch with these people and say, "How much --"

MR. CHORNEY: I wrote to Mr. Cullen --

THE COURT: No, no. I mean the people you owe dues to. Why don't you just send them a check instead of --

MR. CHORNEY: Because there --

THE COURT: -- going through this exercise?

MR. CHORNEY: There is some correspondence which is not as easily handled as that, Your Honor. I have --

THE COURT: Well, for instance, I'm asking you to specify -- I'm going to take the step of placing the burden on you to explain to the Court what specific mail you feel you have not gotten, because we're not going to sort out junk mail and we're not going to sort out magazine subscriptions and things like that to find out if they only apply to you personally. You know, if you subscribe to Prevention that might not be company business, but --

MR. CHORNEY: No, Your Honor. We're here for correspondence that's of a personal nature.

THE COURT: Okay. You tell me about it.

MR. CHORNEY: Okay. Fine. National Center for Financial Education has been sending me literature which I have not received which has absolutely nothing whatsoever to do with Cumberland, even though it may be addressed Cumberland Investment Corporation, Harold F. Chorney, President.

THE COURT: Okay. Why don't you contact that company and say, "From now on send mail to me at Harold Chorney

--" wherever you live now.

MR. CHORNEY: That's easily said for the ones that you know, but what about the ones that you don't know?

THE COURT: The ones you don't know, frankly, we can't solve everything here. Now if there are -- if you have anything specific in mind, as I said, I'll be glad to try to help you.

MR. CHORNEY: All I'm trying to do, Your Honor, is in the court order itself, it had as item number eight, it says:

"Any mail directed to 141 Main Street which is not identified as property or could be property of Cumberland Investment Corporation shall be held or redirected to the Trustee."

THE COURT: Right.

MR. CHORNEY: Basically, without --

THE COURT: You've received nothing, you said, ever, from --

MR. CHORNEY: That's correct.

THE COURT: Okay.

MR. CHORNEY: Nor has there been any attempt on the part of the Trustee to contact any other parties to say that some of this mail may not be that of Cumberland. And considering the information presented today, I think it's warranted that some information is of a personal nature and just has

not been received by any of the parties. To think that, for instance, that --

THE COURT: I'm going to ask the Trustee to review whatever mail is in his possession, either through his own efforts or his paralegal's or clerical assistance, whatever. I'm going to ask you to go through that because I think we have one obvious omission here. This lawsuit apparently dropped through the cracks. Can we agree to that?

MR. CULLEN: Sure. Yes.

THE COURT: Okay?

MR. CULLEN: I've done that already, Your Honor, and I have with me some mail that -- that she pulled out. So we've already gone through the whole file so I have what we have with me this morning.

THE COURT: Okay. Stuff you haven't shown to Mr. Chorney yet?

MR. CULLEN: Yes. There's -- I think there's two pieces. You've got to remember that the original order that -- when the Court entered the order I went with the United States Postal Service and we set up three boxes in the Woonsocket office which were available to Mr. Aubin, Mr. Chorney. And it was the postmaster who suggested and we kept it there for a while before anything, that they come and sort it out. He made it convenient for them. If you remember, there was a memorandum with reference to the Postal Service's

position with reference to personal mail. We followed that. He never went to the post office to set up a box.

MR. CHORNEY: We were never notified of any of these procedures, Your Honor.

THE COURT: Mr. Chorney, do you want to go the post office yourself and file a change of address card for mail that should come to you personally?

MR. CHORNEY: I have a post office box over there, Your Honor.

THE COURT: All right.

MR. CHORNEY: Also a residence of 141 Main Street that has not changed since the inception of this case.

MR. CULLEN: This gets into the same problem, Your Honor, we had with the addresses.

THE COURT: Oh, are you still living at 141 Main Street?

MR. CHORNEY: That's correct, Your Honor.

THE COURT: Oh, that's right. The company moved and you stayed there.

MR. CHORNEY: That's correct, Your Honor.

THE COURT: That's right. Okay. This is a crazy way to do this. I refuse to have a trial about your political mail, okay? I'm going to ask you to confer with Mr. Cullen and with Mr. Bertozzi. Give them your specific requests as to any mail that you say you're not getting. If

1 you don't work it out informally like that I'll --

2 MR. CHORNEY: I tried to do that, Your Honor, and
3 that's why I put the motion to compel in. I have received
4 absolutely no response from the Trustee or his agents.

5 THE COURT: Okay. We're here. I'm going to ask
6 them to sit down and confer with you. This is stuff that
7 should be able to be worked out without a courtroom full of
8 people waiting to see how it comes out. Okay. I'd ask the
9 parties to report back to me as soon as you can.

10 MR. CULLEN: No problem, Your Honor.

11 THE COURT: Okay?

12 MR. CULLEN: Yes.

13 THE COURT: Let's do the next matter for a little
14 while.

15 MR. CULLEN: Do you want me to stay here, Mr.
16 Chorney?

17 MR. CHORNEY: Your might as well, sure. Secondly,
18 Your Honor --

19 THE COURT: No, no, no, no. I'm going to ask you
20 to do that now. I'm going to interrupt this proceeding. I'm
21 going to ask you gentlemen to get together like big boys and
22 work this out, okay?

23 MR. CHORNEY: Okay. And then we're going to come
24 back for the second portion, about the motion for relief?
25 Thank you.

(The Court hears other matters.)

THE COURT: In the Chorney matter do you want to report anything or are we just waiting to get back to where we were?

MR. BERTOZZI: I think I can report, Your Honor. And I think -- I think we're in agreement, or very nearly there. And it will only take me a couple of minutes to explain it. With regard to the mail, basically what's going to happen is that Mr. Chorney is going to speak further to Denise Gallo, the paralegal that opens all the mail and reviews the mail. This is mail that says Cumberland Coin Company on it. It may say attention Mr. Chorney, President, or whatever. With regard to mail which is opened and is clearly personal and doesn't deal with the business, doesn't deal with CIC, then that will be turned over to Mr. Chorney. Okay. And he's going to help identify that mail by giving us a list of all these organizations and things like that that he's interested in. With regard to mail that is -- that we think is -- Denise and Jack Cullen think are clearly business, we're not going to turn that over and we're not going to let Mr. Chorney see it, and we're not going to give him an index to it, either; that is to say a list of all the senders and their addresses and the dates and a general description of the piece of mail and so forth. The gray area stuff, Denise will let Mr. Chorney take a look at it. Okay. Now in

addition there are things that would be public record, meaning suit pleadings, summonses, things like that, and with regard to the stuff in which Mr. Chorney is the defendant and Cumberland Coin is not a defendant that's going to be in that personal category and will be turned over -- the originals of that will be turned over to Mr. Chorney. With regard to things where Mr. Chorney is not a defendant -- excuse me, where Mr. Chorney is a defendant and Cumberland is a defendant, we'll give Mr. Chorney a copy. With regard to other things where Mr. Chorney is not a defendant but it's still public record, that is a piece of paper that's been filed in a court, we'll give Mr. Chorney a copy, okay, because he says he's -- might be interested in it.

THE COURT: All right.

MR. BERTOZZI: Fine. Now Mr. Chorney is going to speak to Denise further to see if there are any other items or lists or guidance or things like that that would be helpful that we can agree on. But basically I think that's where we are on that issue right now. So I think it would be best if Mr. Chorney get his list together and so forth, and then we would do an order -- agree on an order.

MR. CHORNEY: I think --

THE COURT: What about the motion to vacate the order prohibiting contacting the debtor's customers?

MR. BERTOZZI: Okay. On that, we've been talking

about that with Mr. Posner. Basically, we don't want -- we basically are in agreement that the portion of the order that says he cannot talk to people about the business can be changed and modified to the extent that there is no objection to his discussing business before the -- of CIC with these customers before the Trustee took over, as long as he does not lead people to think he's speaking for Cumberland.

THE COURT: Why do you have to talk to customers, Mr. Chorney?

MR. CHORNEY: Basic --

THE COURT: Because if I had my druthers, I'd rather not have you in touch with them.

MR. CHORNEY: Basically, Your Honor, I'm being accused of various things and I'm not being given the opportunity to defend myself.

THE COURT: So you want to contact CIC customers to defend yourself?

MR. CHORNEY: Yes. And I'm certainly not approaching them as currently representing CIC and would be very glad to tell them as of the 15th of August that a trustee is representing CIC, which each and every one that has contacted me has already been told.

MR. POSNER: May I address the Court, Your Honor?

THE COURT: Mr. Posner.

MR. POSNER: Good morning. Your Honor, there is

currently a grand jury investigation going on in connection with this matter. I think Mr. Chorney is aware of that. That grand jury matter will probably necessitate using some number of former customers of CIC. I don't think, from a criminal standpoint, legally it would be appropriate for Mr. Chorney to be precluded from contacting potential witnesses in a criminal case.

THE COURT: You think that would hurt your prosecution?

MR. POSNER: I think it would almost be unconstitutional. First of all, these witnesses don't belong to anybody. The Supreme Court and the Circuits have said witnesses don't belong to either side. They're witnesses, and they're free to talk to or not talk to either side. I appreciate what has gone on from what I've been told, and I understand that some of these people may not wish to talk to Mr. Chorney. That is their prerogative. They can talk to him or not talk to him. But to preclude him by court order from at least attempting to talk to these people who may or may not be witnesses, I think down the road could effectively hamper if not completely prejudice the government in its attempt -- either in the investigation or if the investigation culminates in an indictment, in the prosecution of the case. All he has to say is, "Your Honor, I could never talk to these people. I was precluded by a court order of the Bankruptcy

Court from ever talking to these potential witnesses. I have a right to talk to them." And he does have a right to try to talk to them. Whether they will talk to him or not, that's up to them. But I think this order, as it's written, in subsection A prohibits him from talking to them at all. And I -- the only thing I would suggest is that if he does talk to them about historical, in other words, anything that occurred from the time of the appointment of the trustee, going backwards. Anything after that, first of all, we would not be part of, and second of all, that's CIC, not himself, that's the Trustee representing CIC. So I think, from a legal point of view and from our point of view, we would join in the request that A be amended -- not deleted but amended. If Your Honor wishes to put in words about they're not to be harassed, if that was what Your Honor found, anything like that, fine, but he has -- certainly has a right to attempt to speak to them. That's all I would ask the Court to be aware of.

THE COURT: And I -- the Trustee is in agreement with U.S. Attorney's --

MR. BERTOZZI: Yes, Your Honor.

THE COURT: Yeah. All right. I'll leave the amendment language up to the parties, the U.S. Attorney, the Trustee, and Mr. Chorney, all right?

MR. CHORNEY: Fine.

MR. BERTOZZI: Yes, Your Honor.

MR. POSNER: Do you wish us to file an amended order, or an amendment -- an order amending this portion of it?

THE COURT: Right. And --

MR. CHORNEY: Will I get to review that prior --

THE COURT: Oh, yeah. Before it's signed you'll get to see it.

MR. CHORNEY: Let's get back to the mail, also, Your Honor. I think that --

THE COURT: Okay. Before we leave this, if you decide, for whatever reasons, that there's no more U.S. Attorney or grand jury involvement and we're back to strictly civil, let me know, because then we'll go back to civil --

MR. POSNER: Understood.

THE COURT: -- attitudes, okay?

MR. POSNER: Understood. Thank you.

MR. CHORNEY: On the mail, Your Honor, I guess they're going to put it into three categories, which is what I can see, a gray area, which I believe you'll let me review, and then a black area. And I think it's the black area that we're -- we're going to have probably the most disagreements on, because not knowing what's in that area it's difficult for me to say what would or would not have been of a personal nature. And one of the reasons why I subpoenaed the witness

to come this morning with that mail, Your Honor, which I don't believe was done, and I did talk with Mr. Cullen's office and they have approximately a half a box of mail, was to have the Court intercede and see what would reasonably be in one category versus another should that question have arisen, because Mr. Cullen's employee has already stated that any correspondence from clients has already been forwarded to Mr. Posner and it was her opinion that nothing in her possession was not of a nature that I could not see. Later on Mr. Cullen got on the phone with her, stated that in his opinion it was all of a business nature. Well, if this party is making the decision in the first place, what stays and what doesn't stay, to me it's a very confusing situation.

MR. BERTOZZI: Your Honor, that's the purpose of our speaking further with Denise, making up lists of things that are clearly personal, and defining better what's business. Also, for the record, I deal file a motion to quash that subpoena because it was seeking all mail of the Trustee, which we don't want Mr. Chorney to see.

MR. CHORNEY: Excuse me, Your Honor. It was all mail that had the name Hal Chorney or Harold F. Chorney as part of it, and part of that mail was motions from this very Bankruptcy Court that was mailed to me that people claimed that I did not respond to when I didn't get it in the first place. And what I would --

THE COURT: That's one of the unfortunate problems that I don't think courts or trustees or anybody can solve, Mr. Chorney.

MR. CHORNEY: And for the record, I would like to have, if they still have these in their possession, I would like to have the ori -- a copy of the envelope to show what date it was sent and to whom it was addressed in addition to what was on the inside.

THE COURT: I want somewhere in this order my own input that Mr. Chorney should be making specific inquiry. We're not going to go through every piece of mail that comes in and have a trial once a week about what's personal and what isn't. To me this is quicksand, okay? It could -- I don't know -- are you working these days or is this your full time job, Mr. Chorney?

MR. CHORNEY: I've got a full time job defending myself, Your Honor.

THE COURT: Yeah. Okay. So that basically you are occupied still with your dispute with the Trustee and with your involvement with CIC, and that's why we're all here as often as --

MR. CHORNEY: There's a lot at stake, Your Honor, that's correct.

THE COURT: Yeah, there certainly is. Whether it can be reduced to writing or not, I want you to understand

1 that we -- at least this Court does not intend to devote
2 inordinate, which I consider this morning, inordinate amount
3 of court time to this type of mail problem, okay? You have a
4 problem, and I agree that, you know, from the little bit that
5 I have heard the Trustee may have not communicated with you
6 as diligently as he should. And I really don't like it when
7 the Trustee or any other party in this proceeding gives you
8 ammunition that we know you're going to use. It just com-
9 pounds the problem.

10 MR. CHORNEY: Your Honor, we have a half a dozen
11 different letters that we've sent to the Trustee. We have
12 never had one answered.

13 THE COURT: I'm giving you that, okay?

14 MR. CHORNEY: Okay.

15 THE COURT: Okay. And I would like to impress on
16 the Trustee the Court's interest in having a better line of
17 communication, if it's possible, so that we don't have to do
18 this anymore. You know, we've had proceedings that are not
19 concluded yet dealing with how much time Mr. Chorney's ac-
20 tivities and litigation with the Trustee have cost the es-
21 tate, and ultimately the creditors. And I'm just trying to
22 keep that to a minimum; that's my purpose here. And as an
23 alleged creditor, Mr. Chorney, I would hope that you would
24 share the same interest as other, you know, non-insider
25 creditors to save as much as we can here so that if there is

to be a distribution it won't be all eaten up in, you know, this kind of litigation.

MR. CHORNEY: I feel that all the actions I've taken, Your Honor, are in the best interest of the shareholders of Cumberland, which --

THE COURT: Your statement's on the record.

MR. CHORNEY: -- and the redemption clients and all the creditors in general, Your Honor.

THE COURT: I know you've said that.

MR. CHORNEY: That's my position.

THE COURT: I've made findings that I disagree one hundred per cent with that. I'd say ninety-five per cent of your activities have been pouring money down the drain.

MR. CHORNEY: We hope that at the conclusion of the case Your Honor will have a different opinion.

THE COURT: I sincerely hope that you're right and I'm wrong. Can we have an order? Run it by Mr. Chorney before it's presented for entry, okay?

MR. BERTOZZI: Yes, Your Honor.

THE COURT: Thanks.

MR. BERTOZZI: Thank you.

MR. CHORNEY: Thank you very much, Your Honor.

(End of material to be transcribed.)

* * * * *

certify that the foregoing is a true and accurate
transcript of the proceedings electronically sound recorded
the above-entitled matter.

February 12, 1992
Date

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