

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND**

**IN RE: CUMBERLAND
INVESTMENT CORPORATION**

CA. NO. 89-11051

MOTION TO RECUSE JUDGE VOTOLATO

Now comes Petitioner, Harold F. Chorney, pro se, in the above entitled matter, appearing without the assistance of counsel, and hereby requests that Judge Votolato recuse himself for the reasons set forth in the attached memorandum of law.

Furthermore, Plaintiff respectfully submits that he is a layman of the law, and therefore requests the Honorable Court to construe most liberally all issues set forth in the attached memorandum of law herein by the spirit of Haines vs Kerner, 404 US 519, 92 SCt. 597, et al.

Respectfully submitted,



Harold F. Chorney
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CERTIFICATION

I hereby certify that on this 15th day of February 2002, I sent a copy of the above by first class mail to the following:

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HAROLD F. CHORNEY

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INVESTMENT CORPORATION**

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**MEMORANDUM IN SUPPORT OF MOTION TO
RECUSE JUDGE VOTOLATO**

Now comes Petitioner, Harold F. Chorney, pro se, in the above entitled matter, appearing without the assistance of counsel, and hereby requests that Judge Votolato recuse himself and states for cause the following:

1. According to 28 U.S.C. §§ 455(a), "any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

2. The well-established test in this circuit is an objective one. U.S. v Cowden, 545 F2d 257, 265, 1st cir., 1976. states:

"Whether the charge of lack of impartiality is grounded on facts that would create a reasonable doubt concerning the judges impartiality, not in the mind of the judge himself or even necessarily in the mind of the litigant filing the motion under 28 U.S.C. § 455, but rather in the mind of a reasonable man."

BACKGROUND

1. Cumberland Investment Corporation was petitioned into a Bankruptcy in Federal Bankruptcy Court in the District of Rhode Island on December 5, 1989.

2. On August 17, 1990, a Chapter 11 Trustee, seized the assets of Cumberland Investment Corporation. Since the seizure, Petitioner has not been able to obtain an accounting of those assets seized, those assets sold and those assets remaining. The Court did not cooperate with Petitioner in his attempts to obtain the records asked for. In fact, it appears as if the Court has hindered Petitioner in his quest to obtain said accounting.

3. On August 14, 1991, Petitioner attempted to have Judge Votolato recuse himself for the first time during the proceedings in this case. Subsequently there were other attempts to recuse Judge Votolato.

4. July 3, 1992, Petitioner was fined \$200,000 for obstruction of the bankruptcy court administration. In the eyes of the Petitioner, Petitioner was seeking an accountability of the assets of Cumberland Investment Corporation. These assets from the possessory collateral appeared to be switched and mishandled both prior to and subsequent to the August 17, 1990 seizure by the Chapter 11 Trustee. Prior to the August, 17, 1990,

The Court, in a flippancy manner ordered the court appointed Examiner to open the sealed tubes that contained the coins of Mr. Taft and other redemption clients of Cumberland Investment Corporation. (1.) When Petitioner objected to this, Judge Votolato stated, "If your clients have a problem with this, just tell them that some crazed judge said it would be OK."

Subsequent to the August 17, 1990 seizure, the in-house inventory and the redemption client coins were co-mingled. The court appointed Examiner, later hired by the Trustee, knew the above fact and did nothing.

5. In an attempt to locate assets, on May 17, 1995, the Bankruptcy Court ordered the Chapter 7 Trustee, Mr. Monzack to contact various parties in order to located assets through establishing a chain of custody for Debtor's assets. (See Exhibit A.) The Court did not follow up the results of its order requiring the Trustee to present documents to Mr. Taft concerning

¹ The assets of Cumberland Investment Corporation were divided into different inventories. Located at Eastland Bank in Woonsocket were 7,826 silver dollars, under the custody and control of the bank, that was collateral for a \$2.5 million dollar loan. Also at Eastland Bank in Woonsocket was 2,066 silver dollars located in Safe Deposit Box No. 945. Located at 141 Main Street, and 325 Main Street, Woonsocket, R.I. were the in-house inventory of silver dollars and other assets as well as coins that Cumberland Investment Corporation did not own that were called redemption client coins.

the chain of custody of the assets of the estate. An unbiased judge and any reasonable man would have insisted upon an accounting of the results of his order.

6. Mr. Taft, in an attempt to locate his coins, objected to the sale of some 8500 silver dollars. This sale was scheduled to occur on June 3, 1996. The objection was based upon the fact that the inventories that the Trustee indicated were in existence did not check out with the physical inventory. Yet, the Court ordered that the sale take place.

7. On December 7, 1999, a sale of 7,491 silver dollars was scheduled to take place over the objection of Mr. Taft to this court. Mr. Taft's objection was based upon the fact that the inventories of the silver dollars of the estate scheduled for sale did not check out with those coins in the alleged physical inventory. The Court ignored the arguments in Taft's objection and the sale went on. Subsequent to the sale the Trustee admitted that there were over 8,000 coins in the sale but could not show what the coins were or why there were over 500 more coins in this auction than was scheduled for auction.

8. On November 9, 2001, Republic Credit Corporation I (Republic), filed a motion for the Trustee to turn over certain assets to the secured creditor, to order remaining assets sold and to account for and distribute

proceeds of the sale of secured creditor's collateral.

9. On December 18, 2001, Jason Monzack, Trustee and Republic filed a joint motion regarding the distribution of the proceeds of the December 7, 1999, sale referred to in paragraph 7 above. In addition this motion asks the court to approve the abandoning of certain assets to the secured creditor, Republic.

10. On January 2, 2002, after receiving 'late service', Petitioner filed a MOTION IN OBJECTION TO ABANDONING ASSETS WITHOUT AN ACCOUNTABILITY OF ASSETS BY THE CHAPTER 7 TRUSTEE, JASON D. MONZACK.

11. On January 11, 2002, Jason Monzack, Trustee, filed a MOTION TO STRIKE, which indicates that during the past two years that Mr. Taft and Mr. Chorney, Petitioner, had filed five (5) different motions, seeking an accounting of the assets of the estate.

12. On January 18, 2002, Petitioner filed MOTION IN OBJECTION TO TRUSTEE'S MOTION TO STRIKE.

13. On January 23, 2002, while hospitalized at the VA Hospital in West Haven, CT, having had three (3) heart operations since December 4, 2001, Petitioner had a MOTION FOR CONTINUANCE, concerning a Hearing scheduled for February 7, 2002, filed on his behalf.

14. On February 5, 2002, Petitioner mailed REQUEST FOR ADMISSIONS to Jason Monzack, which were signed for on February 6, 2002.

15. On February 7, 2002, a Hearing was held at the Bankruptcy Court in the District of Rhode Island concerning the MOTION FOR CONTINUANCE, THE MOTION TO STRIKE, THE JOINT MOTION TO DISTRIBUTE ASSETS AND ABANDON PROPERTY.

DISCUSSION

1. On May 26, 1994, Mr. Monzack the Chapter 7 Trustee, supplied an undated 14 page FDIC inventory to Petitioner. No explanation was given to Petitioner as why the document was undated. This is the same 14 page inventory presented to the court by Mr. Taft at a hearing held on February 15, 1996, when Mr. Taft objected to the sale of the 8500 silver dollars. This undated 14 page inventory was marked for identification at the February 15, 1996 hearing. Below is some of the testimony contained in the February 15, 1996 transcript.

"MR TAFT: Can these (the 14 page undated inventory) be placed in as an exhibit, your Honor?"

"THE COURT: Negative. It's not authenticated. The dates that were attributed to it came from Mr. Lutes, apparently originally from Mr. Chorney. It's totally unreliable." ¹

Petitioner asserts that the Court in fact hindered the authentication of the documents. This 14 page undated inventory came from Mr. Monzack, Chapter 7 Trustee and Mr. Cadigan, Attorney for F.D.I.C. (See Exhibit B, Monzack Letter.) Both Mr. Monzack and Mr. Cadigan were present at this February 15, 1996 hearing. Judge Votolato ruled that the June 3, 1996 sale go forward notwithstanding that Mr. Taft's coins may have been mixed in with these 8500 silver dollars when the court appointed Examiner, Michael Weingarten and the Chapter 11 Trustee, John F. Cullen co-mingled the in-house inventory and redemption client coins removed by the Trustee in a reckless manner on August 17, 1990. This was not the first time that there were discrepancies while the inventory was under the control of Mr. Weingarten and others. On May 15, 1990, an inventory of 202 silver dollars was performed by a Russell Augustine. He graded the vast majority of coins to be Mint State (MS) 63 or better. On May 17, 1990, allegedly these same 202 silver dollars were graded by Thomas Cauldwell to be of a lower MS grading or quality. Now there are only 201 coins and some of the years and

¹ According to the first page of this undated 14 inventory, some 1,100 silver dollars have been removed from Eastland Bank's possessory collateral in Woonsocket.

mint marks of the coins are different than just 2 days earlier. (See Exhibit C)

2. The Court was apprised of the facts in paragraph 1 above in PETITIONER'S REQUEST TO HAVE CHAPTER 7 TRUSTEE PROVIDE AN ACCOUNTABILITY OF ASSETS OF THE ESTATE AND TO PRODUCE REQUESTED DOCUMENTS AND VIDEOS, dated June 23, 2000. This court earlier denied Petitioner the videotapes on June 12, 2000.

3. There was a hearing at Bankruptcy Court concerning an accountability of the assets of the estate in reference to a sale of assets by Christies on December 7, 1999. Mr. Monzack at this hearing stated,

"...a third group of coins was that group of coins that were separately segregated at the insistence of Eastland Bank when they had some doubts about the financial stability of Cumberland Investment, and it was set aside in a separate vault taken control of, by the U.S. Attorney's office. That's the group of coins that were shipped to Christie's."

(See Exhibit D, Bankruptcy Court TR 4/6/00, page 12.)

The Trustee goes on to say that this group now contains 7,998 silver dollars and 8,004 were placed in auction. Bnk TR 4/6/00 page 8. The Trustee was requested to make an accounting for these and other discrepancies by Mr. Taft on April 6, 2000 since the Trustee's petition to sell coins stated approximately 7,491 silver dollars. The judge did not order the Trustee to provide the necessary information.

4. At this hearing on April 6, 2000, concerning the discrepancies

with the inventories of the assets listed for sale and those actually sold, the Court reasoned that spending estate assets to have the Trustee research and produce documents related to the discrepancies would be equivalent to throwing good money after bad. The end result of this hearing was that the Trustee simply supply Mr. Taft with the letters written to Christies and a response to these letter(s). The judge thwarted discovery in a prejudicial manner, thus creating and demonstrating bias.

5. On April 20, 2000 and June 7, 2000, Mr. Taft sent letters to Mr. Monzack to get information concerning the coins sold at the December 7, 1999 Christies Auction. To date Mr. Taft has received no response from Mr. Monzack. A copy of the April 20, 2000, and June 7, 2000, letters were in the court pleadings file, yet, there was no response by the court.

6. On June 12, 2000, Petitioner appeared before the Bankruptcy Court in reference to a levy of the \$200,000 fine referred to in paragraph 3 of the Background section of this pleading. During this hearing, Petitioner requested that Mr. Monzack produce some videotapes that he had in his possession according to F.D.I.C. Judge Votolato again denied Petitioner's reasonable request without any justification. At this June 12, 2000, hearing, Mr. Monzack stated that after the criminal trial of the Petitioner, Seymour Posner, U.S. Attorney gave Mr. Monzack all the records

from the trial. It appears as if Mr. Monzack has all the records that Petitioner has been seeking through FOIA's over the last three and one half years. Mr. Monzack, who is not subject to an FOIA, is being protected by the bankruptcy judge so that Petitioner cannot get at these records. This entire situation would give the appearance to a reasonable man that the Judge Votolato is not only bias and prejudicial toward Petitioner, but also has a vested interest in this case.

7. On February 7, 2002, Petitioner appeared at a hearing seeking a continuance and the court's assistance in obtaining an accountability of what assets remained, an accountability of the moneys spent in a super priority Agreement, where the Petitioner was a signatory, and to obtain certain videotapes, believed to be in the possession of Mr. Monzack. Judge Votolato denied the continuance, granted the motion to strike and granted the joint motion for distribution of assets, without requiring any accountability of the Trustee in this 12 year old case.

ARGUMENT

1. Judge Votolato indicated that the information that Petitioner was seeking was not germane to the hearing of June 12, 2000. This is not true. The Petitioner has tried to obtain an accounting of the estate assets since the inception of the bankruptcy as well as subsequent to the seizure of the assets

by John Cullen, Chapter 11 Trustee, on August 17, 1990. The vast majority of Petitioner's objections to the administration of the bankruptcy case involve the need to have a proper accounting of the estate assets in various inventories as well as an accounting of estate assets being spent for various administrative costs and the need to sell the assets of the estate in a "commercially reasonable manner". Some of Petitioner's objections involved the Trustee billing for hours when he was not present on August 15, 1990. Other objections were in reference to the court appointed examiner double billing the estate. More objection were made for not receiving an accounting of the assets spent by the Trustee in a 364 Agreement in which the Petitioner was a signatory. In fact, it was upon Petitioner's own motion to hold the Examiner in contempt for not abiding by the terms and conditions of the 364 agreement, that the Petitioner was held by this court to be in contempt. This was a bias and prejudicial action by Judge Votolato. In addition the videotapes that Petitioner was seeking at this June 12, 2000 hearing are very germane to the assets of the estate. These videotapes would show those assets that were in existence after Eastland Bank failed as they were being inventoried. The importance of these videotapes increases for several reasons. Firstly, the yellow notebooks, that contained the inventory records of Cumberland Investment Corporation,

have been misplaced or concealed by the Trustee and or U.S. Attorney since they were removed from the Cumberland premises on August 17, 1990.

(Although the Petitioner has not seen these yellow notebooks since they were removed on August 1990, the Government claims that they are in Price Waterhouse Box 31.) See Exhibit E, the Affidavit of Agent John Truslow, FBI, dated 11/5/95, that lists the yellow notebooks as being located in PW 31. Secondly, these videotapes should have been produced back in response to the 5/17/95 letter from Mr. Monzack to various parties. See Exhibit A. Thirdly, these yellow notebooks, as well as the videotapes referred to above, were not produced for the Petitioner's trial and sentencing by the U.S. Attorney in violation of the Brady Law concerning exculpatory information.

2. On June 12, 2000, the record will show that the Court allowed Petitioner to testify under oath at a hearing without the assistance of counsel even after the Court was notified by the Petitioner that he was taking psychotropic medication.

3. Petitioner obtained a letter from his doctor dated June 19, 2000. This letter describes the ability of the Petitioner to testify. (See Exhibit F.) To continue this hearing proves a bias and prejudice by the presiding judge with an inhumane respect for Petitioner and a relentless pursuit of prosecution.

4. The Court has not ordered Mr. Monzack to produce the discovery sought by Mr. Taft and Petitioner. This showing either proves bias and prejudice by the presiding justice or that he has a vested interest in this case. In addition, the mere fact that the court has allowed Mr. Monzack to expend estate assets to examine Petitioner, yet not allow Trustee to expend funds to research records indicating estate discrepancies, indicates that Judge Votolato is partial to one of the parties in this case and demonstrates Petitioner's above statement.

5. Petitioner filed a Motion for Continuance on June 23, 2000, concerning the hearing for July 6, 2000. Typical of this court is the lack of notification as to whether the hearing would indeed be held on July 6, 2000. Petitioner did not receive a written response to his motion for a continuance, nor did he receive a telephone call regarding whether the hearing would be held, nor did he receive any written requests for production of documents as the court had ordered Mr. Monzack to do two weeks before the hearing scheduled for July 6, 2000. The only thing that Petitioner was told, after contacting the court by telephone on several occasions and having a friend check the docket concerning the hearing, was that the Judge was taking it under consideration and that the hearing was still on.

6. Petitioner filed a REQUEST TO HAVE CHAPTER 7 TRUSTEE

PROVIDE AN ACCOUNTABILITY OF ASSETS OF THE ESTATE AND TO PRODUCE REQUESTED DOCUMENTS AND VIDEOTAPES on June 23, 2000. Typical in this court is the lack of service to the response to this motion which was filed with the court on July 3, 2000 at 4:00 P.M. Petitioner has been serviced at obsolete addresses even though he has given his current address to the clerk of courts on more than one occasion.

7. Typical of this court is the fact that the Petitioner is being once again prejudiced by having to prepare for a hearing the subject of which he is unaware, since Petitioner has received no response from either the court or Mr. Monzack concerning his two motions to this court.

8. It is typical for this court to allege that Petitioner's pleadings are frivolous when no accounting of the assets of the estate has been filed to date. It is typical to claim that Petitioner's interests are represented by a Trustee who solicited a bribe of \$1,000,000 from me. It is typical for this court to allege that my interests are being taken care of by a Trustee with a conflict of interest that is attempting to cover up the fact that the assets of the estate do not check out. It is typical of this court to allow a creditors' committee comprised of parties who are not creditors at all.

9. It is typical of the court to allow the Petitioner to appear on July 6, 2000 and to make verbal argument in court while under psychotropic

medication. The Court even made rulings on Mr. Monzack's response to Petitioner's Motion for Continuance without Petitioner having been serviced with said response and without Petitioner being given the opportunity to reply to said response. The actions of the Court places the impartiality of Judge Votolato in question still further and he should disqualify himself.

10. No reasonable man would allow a party with a mental impairment similar to that of the Petitioner, that is confirmed by his doctors, to be tormented and required to appear and make arguments in court after having previous knowledge and notification of this impairment and the affects that the court appearance may have on the Petitioner.

11.No reasonable man would allow a party, fresh off a sick bed, asking for a continuance in which to obtain discovery for an evidentiary hearing to have oral argument before the court, especially in light of the fact the court was notified of Petitioner's mental impairment.

12.No reasonable man would allow Petitioner to be subjected to 'Double Jeopardy' by the Trustee's as a result of the criminal prosecution of Petitioner. The fact of the matter is that Petitioner is seeking discovery from the Trustee related to his property interests as well as the criminal conviction. The lack of production of said discovery by the Trustee, under the biased ruling protection of the Bankruptcy Court, enabled the Trustee not

to produce said discovery. The Trustee's lack of a timely accountability of the assets of the estate, and the production of other documentation in his possession, caused and enhanced the sentence of the Petitioner in the criminal matter.

13.No reasonable man would deny a motion of Petitioner and then ask the Trustee what the information brought up in oral argument meant.

14.No reasonable man would allow a lack of accountability of the assets of a 12 year old case, especially where the financial dealings with estate assets are undisclosed and 'secret' deals have been hidden. A reasonable man would not want the appearance of impropriety to exist.

15.No reasonable man would allow the Trustee to make representations that Mr. Taft was the alter ego of the Petitioner at the February 7, 2002, Hearing without any evidence to substantiate the claim and certainly without the parties being noticed and present.

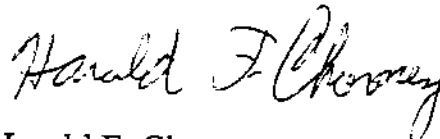
16.No reasonable man would allow a Judge to volunteer to make motions on behalf of the Petitioner, as was done at the February 7, 2002, Hearing, and then to deny these same motions all together, prior to the motions even being filed.

17.Judge Votolato should be disqualified in accordance with 28 U.S.C. §§ 455 for his lack of impartiality and his personal bias towards

Petitioner and for all the reasons stated above.

WHEREFORE, Petitioner prays that Judge Votolato be disqualified for his chronic showings of impartiality and total unfairness towards Petitioner and other parties seeking an accountability of the assets of the estate for over seven years. Petitioner requests that another judge be appointed to this twelve-year old case in the name of justice and fair play.

Respectfully submitted,

A handwritten signature in cursive script, reading "Harold F. Chorney".

Harold F. Chorney
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CERTIFICATION

I hereby certify that on this 15th day of February 2002, I sent a copy of the above by first class mail to the following:

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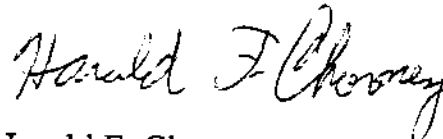
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HAROLD F. CHORNEY

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Respectfully submitted,

A handwritten signature in cursive script, reading "Harold F. Chorney".

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