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UNITED STATES BANKRUPTCY COURT
DISTRICT OF RHODE ISLAND

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IN RE: . Case No. 89-11051
CUMBERLAND INVESTMENT CORP. . Providence, Rhode Island
January 4, 1996

Debtor. .

* * * * *

TRANSCRIPT OF PETITION FOR INSTRUCTIONS
BEFORE THE HONORABLE ARTHUR N. VOTOLATO, J.U.S.B.C.

APPEARANCES:

Special Master, RISC: IRVING BRODSKY, ESQ.
For the FDIC: FRANK CADIGAN, ESQ.
Chapter 7 Trustee: JASON MONZACK, ESQ.
For the U.S. Trustee: SHERYL SERREZE, ESQ.
For Redemption Clients: PHILIP DUNLEAVY, ESQ.
For the Class: DAVID CAMPBELL, ESQ,
(Co-counsel)
For Fleet Bank: JASON D'ORIO, ESQ.
For Hal Chorney: HAL CHORNEY, Pro Se

Electronic Sound Recording Operator: Richard VanWie

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1 (At Tape #1, Index #939)

2 THE COURT: The matter of Cumberland Investment
3 Corporation, the Trustee and FDIC's petition for instructions.

4 THE CLERK: Appearances for the record, please.

5 MR. CADIGAN: Good morning, Your Honor. Frank
6 Cadigan, Federal Deposit Insurance Corporation, receiver of
7 Eastland Bank.

8 MR. MONZACK: Jason Monzack, Chapter 7 Trustee of the
9 debtor.

10 MR. D'ORIO: Joseph D'Orio on behalf of Fleet
11 National Bank.

12 MR. BRODSKY: Irving Brodsky, Special Master under
13 the Supreme Court appointment.

14 MR. CAMPBELL: David Campbell, co-counsel for the
15 class.

16 MR. DUNLEAVY: Good morning, Your Honor.
17 Redemption, Philip Dunleavy, of some of the clients.

18 MR. MONZACK: If Your Honor, please, we're here
19 this morning on the joint motion filed by the FDIC and the
20 Chapter 7 Trustee in an effort to dispose of those coins that
21 are presently in the possession of Christie's in New York.
22 There was a prior notice of intended sale of those coins
23 filed with this court several months go. That notice notice
24 was mooted out. After several objections, the notices were
25 filed, and the FDIC and myself filed the joint motion, which

1 is before the Court this morning, seeking to have some sort
2 of prior approval as to how to proceed with regard to those
3 coins prior to a notice being sent out, because at the time a
4 notice is sent out, there's a relatively narrow time window
5 for Christie's to prepare their auction catalog to go ahead
6 and auction the coins.

7 THE COURT: What was the basis or what happened on
8 the last notice of sale that made it moot?

9 MR. MONZACK: This motion for instruction is filed
10 by the FDIC.

11 THE COURT: Yeah. What -- the objections, did we
12 resolve anything?

13 MR. MONZACK: No, there were hearings on the
14 objections.

15 THE COURT: Mm-hmm.

16 MR. MONZACK: The notice was filed with the court;
17 objections were filed to that notice. There was no action
18 taken with regard to that notice. There was a -- well, I
19 shouldn't say that. There was -- together with that notice
20 of intended sale, there was a motion to shorten time, because
21 Christie's had set some deadlines by which they had to know
22 they could go ahead with the sale. There was an objection
23 filed to the motion to shorten time, I believe by Mr.
24 Brodsky. This Court granted the objection to the motion to
25 shorten time. Without the time being shortened, the sale

1 could not go through because there wasn't sufficient time to
2 have a hearing on the notice, and so after that motion to
3 shorten time was denied, the motion for instructions is
4 before the Court today, was filed, so that the next time we
5 try to go through this procedure it will go through as
6 quickly as possible in enough time, and the Court will make a
7 determination -- have the opportunity to make a determination
8 whether or not we can go ahead and sell the coins in the
9 manner in which has been proposed.

10 THE COURT: Okay.

11 MR. MONZACK: The notice of intended sale, followed
12 up by the motions before the Court today, really raises
13 several points, some of which were raised by Mr. Brodsky and
14 some of the other objector, some of which were raised by the
15 Court in correspondence directed to me. Some of the issues
16 was why the proposed fee schedule for Christie's was more
17 than that provided by the local rule.

18 THE COURT: I understand that that's because
19 Christie's says the way -- that's the way it is.

20 MR. MONZACK: That's right.

21 THE COURT: Okay.

22 MR. MONZACK: And I guess the question is, and it's
23 really mostly the FDIC's money that we're --

24 THE COURT: Mm-hmm.

25 MR. MONZACK: -- playing with here, they made the

1 determination that the benefit achieved by having a
2 nationally and internationally known auction house, have the
3 sale in New York more than offsets the fee structure --

4 THE COURT: Mm-hmm.

5 MR. MONZACK: -- as proposed by Christie's --

6 THE COURT: Okay.

7 MR. MONZACK: -- which seems to be a similar fee
8 structure for Christie's or Sotheby's or similarly situated
9 auction houses. The primary issue that appears to be raised
10 by Mr. Brodsky in his objection to the motion for
11 instructions is that there should be -- that notice should
12 not be limited as has been requested by the Trustee and the
13 FDIC, and essentially, the request for limitation of notice
14 is that notice only be given to those parties or others
15 interested in this action who have filed objections to the
16 prior notice of intended sale, the premise being that if
17 someone did not file notice of -- an objection to the prior
18 notice of intended sale, they were not objecting to the sale
19 of the coins by Christie's. There were a fair amount of
20 objections filed, and therefore, if the sale is noticed out
21 again, that that notice only go to those parties that have
22 previously objected. Mr. Brodsky, as I understand his
23 objection, says that because those redemption coin holders as
24 a whole group are not represented, they all should get notice
25 again.

1 The FDIC and myself take issue with that
2 representation saying that Mr. Campbell -- though Mr. Smith
3 is no longer co-counsel for the redemption coin holder class,
4 Mr. Campbell was his co-counsel, and so Mr. Campbell is still
5 counsel for the redemption coin holders. They're properly
6 represented, and there's no reason to give notice to any
7 individual redemption coin holder who did not file an
8 objection to the prior notice because he only received
9 notice --

10 THE COURT: How many --

11 MR. MONZACK: -- of the prior.

12 THE COURT: How many notices are at issue here? In
13 other words, if you don't prevail on your limited notice, how
14 many extra notices do you have to send out?

15 MR. MONZACK: Four hundred.

16 THE COURT: Yeah. Is that really onerous so that
17 we ought to bog down on it and maybe create appealable issue
18 or anything?

19 MR. MONZACK: It's the FDIC who's --

20 THE COURT: Yeah.

21 MR. MONZACK: -- bearing the cost. And the FDIC
22 states --

23 THE COURT: Okay. Let me ask Mr. Cadigan.

24 MR. MONZACK: -- that, you know, it's costing about
25 \$2,000 per mailing.

1 MR. CADIGAN: Frank Cadigan, Your Honor, for the
2 FDIC. The FDIC has -- undertook the notice in the past.
3 We've used our own staff. We've fronted the money for
4 postage and envelopes. The last time we did notice, it took
5 us six hours, and we were running four Xerox machines for
6 three hours. The cost exceeded \$2,000, and we would like to
7 avoid those kinds of charges. And certainly if we do it in
8 the future, we're going to have to be assured that we're
9 going to get reimbursed, which our position is that we're
10 going to get our money back for this anyway, but it's just
11 very costly to us to do this.

12 THE COURT: You're not undersecured?

13 MR. CADIGAN: We're woefully undersecured, Your
14 Honor.

15 THE COURT: Okay. So where will you get your money
16 back from?

17 MR. CADIGAN: Hopefully from the sale of the coins.
18 We'd like to get our costs back up front --

19 THE COURT: Mm-hmm.

20 MR. CADIGAN: -- from the sale of this inventory.
21 If this inventory is not sold, we don't get paid, or paid
22 back --

23 THE COURT: Yeah. Mm-hmm.

24 MR. CADIGAN: -- nor does any other creditor.

25 THE COURT: All right. Thank you. Were you

1 finished, Mr. Monzack?

2 MR. MONZACK: I believe that's the principal issue
3 raised by Mr. Brodsky --

4 THE COURT: Mm-hmm.

5 MR. MONZACK: -- is the limitation of the notice.

6 THE COURT: Okay. Mr. Brodsky.

7 MR. BRODSKY: May it please Your Honor, the Court
8 is familiar with my role here, and I want to indicate to the
9 Court that the number of notices that perhaps may be
10 addressed to the various redemption coin holders should not
11 be any bar to that due process hearing. I'm not here
12 prepared to indicate what the gross sales might amount to
13 with reference to the sale of these coins, but they would be
14 hundreds and hundreds of thousands of dollars as against
15 whatever has been estimated as to the cost for sending out
16 notices.

17 My principal concern, if Your Honor please, is
18 this: if in fact there is a co-counsel of record, I submit to
19 this Court that that co-counsel should come forward to this
20 Court and indicate on record that that co-counsel is prepared
21 to represent the redemption coin holders. And until that is
22 done, the notice addressed to me as a special master, who is
23 here only to protect the interests, is not being completed
24 unless the coin holders themselves are going to receive
25 notice of this impending sale, because the several coin

1 holders who have already contacted me have indicated fears
2 and in some instances made defensive statements that perhaps
3 some of their redemption coins may be in the possession of
4 the liquidating agency who is attempting now to sell it. And
5 so I ask this Court, therefore, since co-counsel is here in
6 court, and -- to be assured that these coin holders are being
7 properly represented by this co-counsel, and if so, then at
8 least my role in attempting to protect the interests of the
9 coin holders is being satisfied with Your Honor's approval.

10 THE COURT: Thank you.

11 MR. CAMPBELL: Your Honor, I would reluctantly
12 agree with the characterization of me as co-counsel for the
13 redemption coin holders. I've been before the Court on
14 previous occasions to inform the Court of my current dilemma
15 in this matter. I'd also note for the record that I'm a gate
16 crasher at this particular hearing. I didn't receive Mr.
17 Brodsky's objection, nor did I receive notice from the court
18 of the hearing, and I think that's partially due to the fact
19 that my firm is still -- or should be still on record as
20 counsel for the redemption coin holders.

21 THE COURT: Okay. Now which firm is that?

22 MR. CAMPBELL: Visconte & Associates (phonetic).

23 THE COURT: Okay. And put your name just so that
24 we get all the --

25 MR. CAMPBELL: David Campbell.

1 THE COURT: Right.

2 MR. CAMPBELL: Joe Reially (phonetic) was the prior
3 counsel of record for the redemption coin holders, and back,
4 I think it was three years ago, Mark Hagopian with Mr. Smith
5 had the class certified and entered his appearance. My
6 involvement with this case has been very limited. And in
7 terms of determining what sort of notice should be sent out,
8 I don't really know if I'm in a position to suggest to the
9 Court what should be done by the FDIC and by the Chapter 7
10 Trustee.

11 I feel that there are two classes that we're
12 involved with here: Those that opted out, who I don't think
13 I represent as I stand here today, and those that are part of
14 the class still that agreed to the consent order that was
15 entered, and with regard to them, Your Honor, I have received
16 three notices. Most -- if Mr. Brodsky has received more, I
17 don't know about them. I believe Mr. Brodsky knows that I am
18 co-counsel. I have received notice from a Mr. Walker, a Mr.
19 Kearns, and a Mr. Glasser, and I received notice from Mr.
20 Kearns and Mr. Walker from Mr. Cadigan. I received notice
21 from Mr. Glasser directly, and I believe Mr. Glasser has
22 copied everything to Mr. Brodsky. With regard to those three
23 specific parties, they have provided invoices and have said
24 they haven't gotten back their coins and they have reason to
25 believe their coins are part of the group of coins that are

1 maintained by Mr. Brodsky.

2 I'd be more than willing to work with Mr. Brodsky
3 to identify the coins that have been noted by these three
4 parties and get them back to the parties if they're there.
5 With regard to the rest of the class, I would leave it to the
6 Court with regard to notices.

7 THE COURT: Okay. Are there any objection, serious
8 specific objection, by anybody who's in court with an
9 interest regarding the reimbursement of -- I'll be with you
10 in a second -- whatever expense is required to be borne by
11 the FDIC if we take the conservative road and require notices
12 to everybody?

13 MR. D'ORIO: Your Honor, Joe D'Orio on behalf of
14 Fleet Bank. We're really a stakeholder with respect to this
15 as well, and I'll say that if we know what the cost is, and
16 if it's \$2,000, we don't have an objection to that.

17 THE COURT: Yeah.

18 MR. D'ORIO: And the reason we're a stakeholder is,
19 we -- Fleet holds approximately 160, \$170,000 loan that was a
20 post-petition Chapter 11 administrative priority through a
21 secured loan that was made during the Chapter 11, and we are
22 at odds with the FDIC as to whether we get the proceeds or
23 they get them so -- but for the \$2,000, Your Honor, we don't
24 have a problem.

25 THE COURT: Okay.

1 MR. DUNLEAVY: Good morning, Your Honor. My name
2 is Philip Dunleavy. I'm a redemption client. I'm usually
3 here with Mr. Warren Taft. Unfortunately, he's sick today.
4 I just want for the record, again we are the victims, as we
5 feel. And to make note, that's on October 6 of 1995, a
6 motion was set forth by Mr. Taft to this Court. A
7 notification was made to Attorney Brodsky and also to Mr.
8 Monzack. Again, this court. The objection -- the motion was
9 the objection of a sale of the debtor's coins by Christie's.
10 The reason we believe is Mr. Taft's coins are missing.
11 Basically, there was an inventory by Ratherbow (phonetic) in
12 1994. Christie's then did one in 1995, and there seems to
13 be, we feel, some discrepancies as far as the matching of the
14 coins. So again, we would be -- brought forth the objection
15 of a sale. And again we're the victims, the redemption
16 clients, so we'd like to see everything squared away, but we
17 do have some questions, not only ourselves, but other
18 redemption clients, Your Honor. Thank you.

19 THE COURT: Thank you. Is this still an open
20 question, the ownership of the coins or is that -- hasn't
21 that been decided at this point?

22 MR. MONZACK: If Your Honor please, the main
23 difficulty arises from the fact. And with Mr. Brodsky taking
24 over possession of the coins, some of the problems are --
25 have gotten a little bit stretched out, I think, but from the

1 redemption coins, those coins that were grouped together as
2 redemption coins in the vault since the beginning of this
3 case, those coins that were turned over to Mr. Smith had
4 various identifying numbers attached to them that were given
5 by Cumberland Investment Corp., four-digit identifying
6 numbers.

7 THE COURT: Right. But have these issues been
8 resolved either by default or by some --

9 MR. MONZACK: Well, the issue of that these are the
10 redemption coins that had been given back over to the
11 redemption coin holders through their --

12 THE COURT: Yeah. Mm-hmm. Right or wrong, right?

13 MR. MONZACK: -- representative co-counsel, that's
14 it. Yeah.

15 THE COURT: Yeah.

16 MR. MONZACK: They're over there.

17 THE COURT: Yeah.

18 MR. MONZACK: In an abundance of caution, the FDIC
19 had agreed, after speaking with Mr. Taft -- as you may
20 recall, we had numerous meetings with Mr. Taft and he viewed
21 video tapes and other documents -- that in an effort just to
22 get some of these -- most of these coins liquidated, and I
23 believe that's the term in the prior notice of intended sale,
24 that if Mr. Taft would provide, and if any other redemption
25 coin holder, would provide a detailed list of their coins by

1 mint mark and date, and if any of those coins that were in
2 Christie's possession matched those coins by mint mark and
3 date, then those specific coins would be pulled out of this
4 auction, not conceding that they were the redemption coin
5 holders' coins because as the Court points out, this issue
6 was resolved through the class action suit in which
7 essentially the Trustee abandoned his interest in these coins
8 and the FDIC conceded that those coins identified as
9 redemption coin holders -- as redemption coins should go back
10 to their counsel.

11 I'm not sure if there are existing coins in Mr.
12 Brodsky's possession, though they don't match up by
13 identifying four-digit number as redemption coin holders --
14 might not match up by year and mint mark there -- and there
15 may be coins there that could be returned back to the
16 redemption coin holders, and that's really an issue between
17 their counsel and redemption coin holders consistent with the
18 prior order of this court. But in an effort to get over this
19 particular issue and let these coins be liquidated, a
20 condition of the sale was that if a list was provided by any
21 redemption coin holder as to year and mint mark, those
22 particular coins would be pulled from the auction sale.

23 MR. CADIGAN: That's correct.

24 THE COURT: Have you received any identification?

25 MR. MONZACK: We've received some lists from some

1 redemption coin holders --

2 THE COURT: Mm-hmm.

3 MR. MONZACK: -- both Mr. Cadigan and myself. I'm
4 not sure if I've received from Mr. Taft his -- I know he was
5 in the process of putting that list together at various
6 times. I don't believe I received a detailed list from Mr.
7 Taft as to what his coins were because the sale really became
8 mooted out when the motion to shorten time was denied. But
9 we have a detailed inventory from Christie's by year and mint
10 mark as to every coin that they have.

11 THE COURT: Right.

12 MR. MONZACK: So that was our effort to deal with
13 this problem, at least for the time being.

14 THE COURT: So is it your intention, if it's
15 allowed, to go through with the sale, and that anybody who
16 has possible rights to the coins, those rights will attach to
17 whatever proceeds there is or I imagine FDIC doesn't agree to
18 that?

19 MR. MONZACK: No. That was the reason why that if
20 there were any coins that matched by year and mint mark --

21 THE COURT: Yeah.

22 MR. MONZACK: -- they would be pulled out of the
23 auction.

24 THE COURT: Yeah. You're saying you're not sure
25 whether you have received such?

1 MR. MONZACK: We've received some lists.

2 THE COURT: Yeah. Have you then pulled coins?

3 MR. MONZACK: Well, we haven't really done anything
4 because we don't really have a sale going forward. We have
5 provided those lists to Christie's, who have reviewed the
6 coins that they have. I think most of the coins in the list
7 that we've been provided have not matched up with the coins
8 that are in the possession of Christie's, by year and mint
9 mark. As I said, I don't believe I've received a list from
10 Mr. Taft. We're prepared to pull coins that match year and
11 mint mark --

12 THE COURT: Yeah. Okay.

13 MR. MONZACK: -- from Mr. Taft's coins and any
14 other redemption coin holders.

15 THE COURT: Estimating on the high side, if say
16 everybody who filed a list got their coins removed, how much
17 of the sale would disappear?

18 MR. MONZACK: It's hard to say. I believe that
19 there were about seven thousand coins turned over to Mr.
20 Smith. I believe about two-thirds of those coins were
21 actually returned to redemption coin holders, so that would
22 take out about five, in round numbers, about five thousand of
23 the seven thousand redemption coins should already have been
24 returned.

25 THE COURT: Yeah.

1 MR. MONZACK: That would leave on the high side I
2 guess a couple of thousand coins out of about between seven
3 and eight thousand I believe that Christie's currently has.
4 Some of the coins are worth a lot of money; some of the coins
5 aren't worth much money, so it depends on which coins were
6 identified. There's also the possibility, for instance, that
7 redemption coin holders could identify a hundred of the same
8 year and mint mark coin, while Christie's only has ten of
9 those coins, so even though there were a hundred, only ten
10 would actually be pulled from the auction.

11 THE COURT: Mm-hmm. And what is the approximate
12 anticipated sale price at this auction?

13 MR. MONZACK: Of the coins, I believe Christie's
14 has estimated, and they say it's a conservative estimate, but
15 between 150 and \$250,000.

16 THE COURT: That's coins. What else is there?

17 MR. MONZACK: Well, there are also baseball cards,
18 stamps. I mean, there are other --

19 THE COURT: Yeah.

20 MR. MONZACK: Not part of -- the stamps and the
21 coins are what part of this auction.

22 THE COURT: Yeah, okay. Maybe as high as 250?

23 MR. MONZACK: That's right.

24 THE COURT: Mm-hmm. Okay. On the notice issue,
25 I'm going to require the FDIC to notify everybody with the

1 understanding, condition, that you be reimbursed off the top,
2 up front for that cost, not to exceed \$2,000. That's a
3 condition.

4 MR. CADIGAN: We hope it won't, Your Honor.

5 THE COURT: Well, if it does, it's a tough world.
6 You've got your experience. Certainly isn't going to be --
7 it shouldn't be higher because of the cost of noticing or the
8 number of people should all be the same, and we have a good
9 guideline, \$2,000 -- and it's not automatically 2,000. If
10 you can't show that much expense, it's going to be what it
11 is. 2,000 is the cap.

12 MR. CADIGAN: All right, Your Honor.

13 MR. BRODSKY: Your Honor, may I make this request
14 respectfully? The coins that came into my possession from
15 Mr. Smith were all uninventoried. They came into my
16 possession because of the danger of their being in a -- left
17 in an abandoned office. Therefore, I would beseech this
18 Court to have FDIC give me a list of all of the coin holders,
19 the notices of the people to whom they are -- to which the
20 agency will be addressing these notices, and perhaps a
21 further identification of the coins because then I could
22 match them with what I have in my possession. Numbers are of
23 no concern to me unless I have an identification by name, and
24 most of those coins in our -- in my possession do not carry a
25 name, merely a number; and so that I would ask, therefore,

1 that by the direction of this Court that that information be
2 furnished to me. Also --

3 THE COURT: Also, -- let's do one at a time. Do
4 you have a problem with that?

5 MR. CADIGAN: Well, first of all, Your Honor, the
6 FDIC never did an inventory of the redemption coins. We
7 never did an inventory.

8 THE COURT: Right. Mr. Brodsky is just looking for
9 a list of --

10 MR. CADIGAN: The list would be what's on the
11 service list. I mean --

12 MR. BRODSKY: Would be on what I didn't need.

13 MR. CADIGAN: Would be on the service list.

14 MR. BRODSKY: Whatever on the service list or
15 whatever may be in the hands of the auctioneer.

16 MR. CADIGAN: There's nothing in the hands of the
17 auctioneer. We sent --

18 MR. BRODSKY: By number?

19 MR. CADIGAN: We simply went through --

20 MR. BRODSKY: By identification.

21 MR. CADIGAN: We simply went through the eleven
22 volumes of the claim register. There are eleven files in the
23 clerk's office which has every single name of everybody who
24 has ever filed a proof of claim in this case. I don't know
25 whether they're redemption coin holders or not, but they're

1 on the service list and they were getting notice of this.

2 THE COURT: Okay. I'm not sure what you just said
3 or I'm not -- I don't -- I'm not clear on what Mr. Brodsky's
4 looking for either.

5 MR. CADIGAN: I think what Mr. Brodsky thinks we
6 have is a list with the names of every single redemption coin
7 holder on it. We have a list with names on it that we -- but
8 we don't know if they're redemption coin holders or not. I
9 mean, we assume they are.

10 MR. BRODSKY: That list, Your Honor, please, would
11 be helpful because --

12 MR. CADIGAN: It's on the service list.

13 MR. BRODSKY: -- it can then --

14 MR. CADIGAN: I'll just send you the service list.

15 MR. BRODSKY: Very well. If that's what's in the
16 possession of the liquidating agency, that's fine.

17 MR. CADIGAN: Well, it's also in your possession,
18 Mr. Brodsky. You have a copy of the service list, don't you?

19 MR. BRODSKY: I do not.

20 MR. CADIGAN: Well, I'll send you a copy of the
21 service list.

22 THE COURT: Okay. That sounds easy. Does that
23 finish your petition for instructions? Was it all about
24 notice this morning?

25 MR. MONZACK: I guess, Your Honor, it was twofold:

1 One, about notice; and two, about setting up some procedure,
2 if we could, in advance, how to deal with the objections that
3 are filed so that they could be resolved in enough time that
4 we could let Christie's know that the sale could go forward
5 and they could have their time to produce their catalog,
6 their advertising.

7 THE COURT: Okay. Now what is that going to
8 involve to resolve these objections? How much time might
9 that take, you know, considering the history of this case?

10 MR. MONZACK: Yeah. I'm not really sure. For
11 instance, when I last spoke to Mr. Taft --

12 THE COURT: We take one step forward and go back
13 two every time we --

14 MR. MONZACK: Yeah.

15 THE COURT: -- get together.

16 MR. MONZACK: I had thought that we had, like, Mr.
17 Taft's issue sort of resolved with the agreement with Mr.
18 Taft that any coins matching up to his coins by year and mint
19 mark would be pulled for the sale. Apparently, it's not
20 resolved.

21 THE COURT: You haven't received anything from him
22 yet, you say?

23 MR. MONZACK: I don't believe I've received --

24 THE COURT: Okay.

25 MR. MONZACK: -- a comprehensive list.

1 THE COURT: All right.

2 MR. DUNLEAVY: Can I make a statement?

3 MR. MONZACK: Sure.

4 MR. DUNLEAVY: Your Honor, Phil Dunleavy again, a
5 redemption client, also representing Mr. Taft. Is there any
6 way we can set up a court date to hear this motion pertaining
7 to we believe the discrepancy in the coins between --

8 THE COURT: Now what motion is he talking about?

9 MR. MONZACK: I'm just going to guess, but I think
10 Mr. Dunleavy is talking about our notice of intended sale or
11 -- okay. He's talking about the motion. It was captioned
12 "Motion by Mr. Taft," which is really an objection to the
13 notice of intent of sale, which is now moot. I guess the
14 question would be, and I guess it could be confusing for some
15 people that are out there, that if they receive another
16 notice of intended sale, do they -- are they going to be
17 under the understanding that their prior objections that were
18 filed are an objection to the new notice of intended sale?
19 We have to file a new objection? I would just like to file
20 the notice. I would really -- Mr. Cadigan advises me that in
21 order to go ahead with the sale in May or June -- May, when
22 the next Christie's sale of this type comes up --

23 THE COURT: Mm-hmm.

24 MR. MONZACK: -- we'd really have to have these
25 issues resolved by March 1 or thereabouts, of 1996.

1 THE COURT: So we're talking about eight weeks now
2 or less than that --

3 MR. MONZACK: Right.

4 THE COURT: -- to do what?

5 MR. MONZACK: The question is one: if we --

6 THE COURT: We have got --

7 MR. MONZACK: -- send out a new notice, would we be
8 allowed to shorten the time if we gave notice to everybody?

9 THE COURT: Shorten the time to do what?

10 MR. MONZACK: Shorten the time to file objections.

11 THE COURT: Yeah.

12 MR. MONZACK: And I guess it would be my proposal
13 that we would move to shorten the time and also to have any
14 objection that was previously filed to the prior notice of
15 intended sale be deemed filed against the new notice of
16 intended sale. Prior redemption coin holders and other
17 creditors had months to file an objection if they chose to
18 the prior notice. We're just trying to find some way to
19 expedite the procedure and not to take away any rights from
20 anybody who wanted to file an objection, but to expedite the
21 procedure so there could be a hearing before this Court with
22 the opportunity for this Court to perhaps render decisions on
23 the various objections prior to March 1.

24 THE COURT: Okay. And the hearings on these
25 objections are going to take the shape of whether Christie's

1 should have some of these coins or whether there's been
2 misapplication of coins as people have coins that aren't
3 entitled to them? You know, what are the issues going to be?

4 MR. DUNLEAVY: Based on our part, Your Honor, the
5 inventory that was done in '94 --

6 THE COURT: Yeah.

7 MR. DUNLEAVY: -- in what Christie's has, there's a
8 big discrepancy. If you're supposed to have A through Z, the
9 first part then given to the second party, and you find out
10 that it's A, B, and C, and D, and everything else is missing,
11 to me that's a big discrepancy.

12 THE COURT: Well, this case is full of
13 discrepancies. You know that better than I do because it's
14 your money.

15 MR. DUNLEAVY: Unfortunately, we're the victims
16 again --

17 THE COURT: All right.

18 MR. DUNLEAVY: -- and we appreciate your
19 understanding, Your Honor.

20 THE COURT: Okay. I'm not sure if you're looking
21 just for answers or coins here. If you want to try to figure
22 out what happened in this case, I think that that's beyond
23 the ability of most people who walk on earth like we do.

24 MR. DUNLEAVY: Right. It's just that a paper trail
25 and through these organizations, Christie's, FDIC, you know,

1 it's just saying from A to Z. When you hand something over,
2 in a sense we should have all this, and it looks like it
3 doesn't. I mean, it's very --

4 THE COURT: Well, there's going to be a sale in --

5 MR. DUNLEAVY: -- upsetting.

6 THE COURT: -- May. Do you understand that?

7 MR. DUNLEAVY: Yes, Your Honor.

8 THE COURT: These coins have to be disposed of.

9 When I say "these coins," I know that raises question marks,
10 but coins have to be sold. They probably will be sold by
11 Christie's, hopefully in May.

12 MR. DUNLEAVY: The problem is, how do you
13 compensate the victim? We, the redemption holders?

14 THE COURT: You're not the only victim in this
15 case.

16 MR. DUNLEAVY: Not just myself, everyone else, Your
17 Honor.

18 THE COURT: They're all over the place.

19 MR. DUNLEAVY: Oh, I'm talking about whatever it
20 might be, and, you know, hundreds or whatever.

21 THE COURT: Right.

22 MR. DUNLEAVY: That's -- my main concern is for
23 everybody.

24 MR. MONZACK: Could I just clear up -- have you
25 received some of your coins back, Mr. Dunleavy?

1 MR. DUNLEAVY: No, I haven't.

2 MR. MONZACK: Mr. Brodsky has them?

3 MR. DUNLEAVY: I believe he does. But I'm here
4 representing not just myself, Mr. Taft and other people.

5 THE COURT: Well, this --

6 MR. DUNLEAVY: Well, I believe if we aren't asked
7 what issues are going to be raised on the objections on --

8 THE COURT: Yeah.

9 MR. MONZACK: -- whether the issues are properly
10 raised or not, I think some of the objections are going to
11 raise issues going back to day one in this case. I don't
12 think that's appropriate in response to the notice of
13 intended sale, and perhaps this Court would dispose of those
14 without a hearing, and I don't know what the Court would do,
15 but I think the objections are pretty wide-ranging and don't
16 necessarily go --

17 THE COURT: Yeah. If the objections take the
18 form --

19 MR. MONZACK: -- in order to make the sale.

20 THE COURT: -- of trying to reconstruct what
21 happened in this case and all the things that were done
22 wrong, pre-petition, post-petition, decisions that this Court
23 made that may not have been the most appropriate, I don't
24 know, we're not going to just rehash that and write a book
25 about it. So you file your papers. When objections come in,

1 we'll deal with them. If the pleadings seem to get outside
2 of or if they do exceed the scope of what we should be
3 considering at this stage, I'll just deal with them and cross
4 those bridges as we get to them, but we --

5 MR. DUNLEAVY: Your Honor, if I might just inquire
6 as to the motion to sell. The last time around, we objected,
7 and it was primarily due to the proposed distribution of the
8 proceeds realized from the auction. The estate was going to
9 get so much, the FDIC was going to get so much, and Fleet
10 claims a priority interest. I guess the question is, is this
11 notice going to be the same with the proposed distribution or
12 is it really going to be a 363 with liens to attach, in which
13 case we can resolve claims to the proceeds later? I mean,
14 that's --

15 MR. MONZACK: It's my position that whatever
16 problems that Fleet and the FDIC have will be worked out
17 internally between the FDIC and Fleet.

18 MR. D'ORIO: Very possibly, Your Honor. It hasn't
19 been done yet.

20 THE COURT: Okay. This will be a standard sale
21 then with let's sell the goods, and anybody's rights to the
22 proceeds will remain intact.

23 MR. MONZACK: Well, if I may, Your Honor, I think
24 that -- because there's a separate deal struck between the
25 estate and the FDIC, and I'm not sure what the FDIC would

1 agree to. But on behalf of the estate, I would say that
2 those funds that are destined to come into the estate, part
3 of which is to pay a certain amount of funds for unsecured
4 creditors, a certain amount of funds for administrative
5 claims, that those not be subject to the lien claim of Fleet,
6 but that if there was going to be any lien claim of Fleet, it
7 would attach only to those proceeds that are earmarked for
8 the FDIC.

9 MR. DUNLEAVY: What is the -- do you have the
10 magnitude? Do you know what you're going to be asking for?
11 Is it going to be the same thing as last time?

12 MR. MONZACK: It would be same as was in the prior
13 notice.

14 THE COURT: We're going to take a break in this
15 case. You fellows work that out and get back to me. Okay.

16 MR. MONZACK: Thank you, Judge.

17 THE COURT: I'm going to move on.

18 MR. CAMPBELL: Your Honor, may I just say one last
19 thing for the record, and I don't know if Your Honor can help
20 in any way, but I feel somewhat in a conflict position. If
21 objections come in, I am still co-counsel of record for the
22 Class. I truly believe I worked out a settlement for the
23 Class and everything has been done that possibly can be done.
24 If objections come in, I'm curious as to whether I am bound
25 to come forward with each and every one and argue for that

1 member of the Class, notwithstanding the fact that I feel
2 that a settlement has been reached and everything has been
3 done to identify the coins and return the coins.

4 THE COURT: You bring that up during this break,
5 and hopefully work that out with you, the Trustee, FDIC,
6 Fleet.

7 (Off the record at Tape #1. Recess)

8 * * * * *

9 (On the record at Tape #2, Index #2962)

10 THE COURT: And Cumberland Investment, if we're
11 thirty seconds from concluding, we'll start with it. If not,
12 we'll take a short recess before we begin it.

13 MR. MONZACK: We're in agreement, Your Honor, with
14 how to proceed from here. Essentially, what's going to
15 happen going forward is that the new notice will be sent out,
16 not requesting any shortening of time, and it will go out to
17 all creditors as previously indicated. The one request we'd
18 make of the Court, however, is that if the Court could set a
19 hearing date for objections to the notice of intended sale,
20 we would indicate the time and date of that hearing in the
21 notice itself, also saying in the notice that any objections
22 that were filed to the prior notice would be heard at this
23 same date and time as would any new objections filed, and
24 that would expedite the process sufficiently so that perhaps
25 this matter could be resolved in sufficient time to beat the

1 March 1, 1996 deadline to have these issues resolved;
2 therefore, I think we'd request, if we could, to have a
3 hearing on any objections filed somewhere perhaps after
4 February 10th, over the next two or three days after that, in
5 that time span, would probably give us sufficient time to
6 have them heard and resolved by the Court.

7 THE COURT: February 15?

8 MR. MONZACK: I think that would be sufficient,
9 Your Honor, yeah.

10 THE COURT: Okay.

11 MR. BRODSKY: At 9:30, Judge?

12 MR. MONZACK: At 9:30 or --

13 THE COURT: Yeah.

14 MR. BRODSKY: Your Honor, in setting February 15th,
15 would Your Honor indicate that date of filing, of amending
16 the notice, should be no less than a certain number of days
17 because many of these people are from -- scattered all over
18 the United States.

19 MR. MONZACK: Well, as I said, Your Honor, the
20 notice will probably go out within the next week. You will
21 have a 20-day time period to object in that notice, which
22 would go out in the normal form that these notices go out.

23 MR. BRODSKY: A 20-day notice would be very
24 adequate, Your Honor.

25 THE COURT: Okay. Is it understood then that the

1 notices will go out by January 11?

2 MR. CADIGAN: Yes, Your Honor.

3 THE COURT: Thank you. All for \$2,000, right?

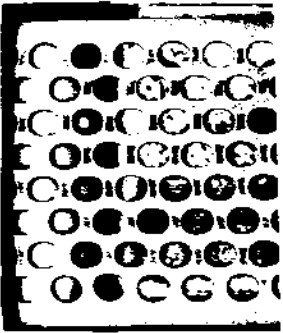
4 MR. MONZACK: You get a lot for \$2,000.

5 MR. CADIGAN: Your Honor, may I say just to wrap it
6 up, I have four items. Again just for the record, Philip.
7 Dunleavy, redemption client, with regards to the motion filed
8 in and around October 1995 by Mr. Taft.

9 In summary, just four things, Your Honor, and I'll
10 close out. Again in 1994, a coin-by-coin inventory was taken
11 by Rampapo (phonetic) Coin Exchange of 8600 coins under the
12 possession of FDIC; two, in June 1995, Christie's inventoried
13 allegedly the same coins; three, there are more than 400
14 coins from the 8600, we believe, that do not match from the
15 Rampapo Ball inventory and the Christie's inventory; and
16 finally, I object for Mr. Taft to the sale of the coins under
17 the this discrepancy. Thank you, Your Honor.

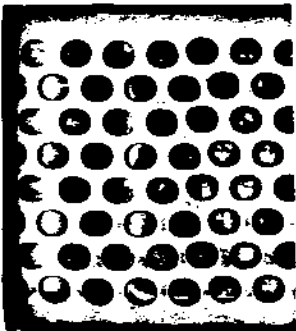
18 THE COURT: Okay. You know, those factual disputes
19 about whether Christie's has coins that they shouldn't have,
20 I'm going to urge you to, you know, make informal contact
21 with whatever parties you need to and see if you can, you
22 know, have your concerns answered that way because I don't
23 envision, you know, a four-day trial on these issues on the
24 15th. Is that it?

25 MR. DUNLEAVY: Yes, Your Honor. Thank you, Your



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Honor.

THE COURT: Okay.

(End at Tape #2, Index #3212. 5:10

* * * * *

I certify that the foregoing is a true and ac
transcript of the proceedings electronically
on the above-entitled matter.

Date

2-5-96

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