

UNITED STATES BANKRUPTCY COURT
DISTRICT OF RHODE ISLAND

In Re * Case No. 89-11051 (ANV)
 *
CUMBERLAND INVESTMENT * Providence, Rhode Island
CORPORATION, * March 27, 2008
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 Debtor. *
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TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE ARTHUR N. VOTOLATO
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

- | | |
|-----------------------------|--|
| For Edwards & Angell: | EDWARD J. BERTOZZI, ESQ.
Edwards & Angell
2800 Financial Plaza
Providence, RI 02903 |
| For the Chapter 7 Trustee: | JASON D. MONZACK, ESQ.
Kirshenbaum & Kirschenbaum
888 Reservoir Avenue
Cranston, RI 02910 |
| For the Petitioner, Pro Se: | MR. HAROLD CHORNEY
16 Spring Drive
Johnston, RI 02919 |
| For the U.S. Trustee: | GARY L. DONAHUE, ESQ.
U.S. Trustee's Office
10 Dorrance Street, Room 910
Providence, RI 02903 |

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

APPEARANCES: (Cont'd.)

Also Present:

MR. JOHN F. CULLEN
Historic Charlestown Navy Yard
C-3
Shipway Place
Boston, MA 02129

Court Recorder:

MS. JENNIFER WATTS

1 (Proceedings commenced at 11:25 a.m.)

2 THE COURT: Cumberland Investment Corporation. Fee
3 applications and a motion by Harold Chorney to clarify the
4 fee application of Edwards and Angel, Palmer, et cetera.
5 There's a response to that and we have several fee
6 applications prior to that.

7 MR. CHORNEY: Good morning, Your Honor. Harold
8 Chorney for petitioner. There was a --

9 THE COURT: We're just calling this case now.
10 Okay.

11 MR. CHORNEY: I beg your pardon, Your Honor?

12 THE COURT: What are you about to say? What's your
13 --

14 MR. CHORNEY: What am I about to say? Well, first
15 of all, I'm here on a motion to clarify. First --

16 THE COURT: Okay. Why -- go ahead. I'm sorry.

17 MR. CHORNEY: A first and final fee petition was
18 put in by Mr. Bertozzi and Bertozzi and Edwards and Angel in
19 July of 2007. A motion to clarify was put in by petitioner
20 in August of 2007.

21 Since that point in time, petitioner has obtained a
22 copy of the missing billing that Mr. Bertozzi stated that he
23 wasn't going to bill for; some \$39,000 in fees for a specific
24 time period.

25 Also, in October of 2007 Mr. Cullen appeared before

1 this court requesting the ability to refile his billings in
2 this case 14 years after he had performed some duties.

3 Petitioner has also acquired copies of Mr. Cullen's
4 original billings from September of 1991 and has prepared
5 today a motion and a memorandum to assist and help the court
6 concerning the first and final application for fees and
7 expenses of Edwards and Angel, Palmer and Dodge, LLP and
8 would like to present that to the court at this point in
9 time.

10 MR. BERTOZZI: Your Honor, I object. Edward
11 Bertozzi --

12 THE COURT: Step up to the mic, please.

13 MR. BERTOZZI: Edward Bertozzi of Edwards, Angell,
14 Palmer and Dodge.

15 Your Honor, my understanding is that I should be
16 allowed to present my application first. Mr. Chorney's
17 motion is really an objection to my application.

18 So I would respectfully ask Your Honor that I be
19 allowed to present my application first and then would it be
20 in order for Mr. Chorney to be heard, except that he doesn't
21 have standing.

22 The first thing would be if I could please present
23 my application, then at least we would all know what is at
24 issue.

25 THE COURT: Well, that's what I was trying to get

1 at with Mr. Chorney when he started to speak, but he got his
2 foot in the door before you -- I should have been a little
3 more less polite, okay, but here we are.

4 Are we okay, Mr. Chorney? You're going to be
5 allowed a chance to speak, but you were trying to do it out
6 of turn.

7 MR. CHORNEY: Yes, I'd like to present this to the
8 court at this time.

9 THE COURT: In good time, okay.

10 MR. CHORNEY: Okay. Surely.

11 THE COURT: Go ahead, Mr. Bertozzi.

12 MR. BERTOZZI: Thank you very much, Your Honor.
13 Your Honor, we're here today on --

14 THE COURT: You can have a seat, Mr. Chorney. Make
15 yourself comfortable.

16 MR. CHORNEY: Okay.

17 THE COURT: You can sit at counsel table, if you
18 like, right next to Mr. Monzack. How's that?

19 MR. CHORNEY: Thank you very much.

20 MR. BERTOZZI: Your Honor, we're here today on the
21 first and final application for fees and expenses of Edwards,
22 Angell, Palmer and Dodge, LLC, which is the successor to
23 Edwards and Angell.

24 And, Your Honor, Mr. John Cullen was appointed
25 Chapter 11 trustee in this case, Cumberland Investment

1 Corporation, back on August 16, 1990.

2 And Mr. Cullen hired Edwards and Angell on August
3 23 of 1990 to be his counsel, and filed an application for
4 approval of hiring Edwards and Angell as his counsel on
5 August 23, 1990, which the court approved on September 19,
6 1990.

7 So this application is for fees and expenses for
8 the period of August 23, 1990 through August 29, 1991.

9 And the services, just to summarize them, Your
10 Honor, that were performed by myself and my firm during that
11 approximately one-year period were as follows: We assisted
12 the trustee in obtaining possession of the debtor's assets
13 and records and information with respect to the debtor and
14 the debtor's operations.

15 We analyzed and evaluated claims and liens of
16 secured creditors, primarily Eastland Bank and People's Bank,
17 and negotiated and litigated with respect thereto.

18 We analyzed and evaluated the claims of so-called
19 redemption coin claimants and took action with respect
20 thereto. We negotiated and obtained a financing order from
21 the court with regard to Eastland Bank to fund the trustee's
22 activities in securing and liquidating the debtor's assets.

23 We assisted the trustee in analyzing and evaluating
24 the appropriate methods of liquidating the debtor's assets
25 and we performed the above services in the face of continuing

1 and very strong opposition by the debtor, directed by its
2 principal, Harold Chorney.

3 Attached to our -- well, let me summarize, Your
4 Honor. We're seeking for services for this period the amount
5 of \$45,953.75 and expenses in the amount of \$3,764.47. The
6 total hours that we spent on this matter during the period in
7 question were 258.5 hours and the blended hourly rate was
8 approximately \$175.

9 I worked 190 hours during this period on this
10 matter and my rate at that time ranged between \$190 to \$210.
11 It changed midway.

12 I had three associates; Ted McCarsky, Andrea
13 Cocoran, and Gail Erlich (ph), who worked a total of 68.5
14 hours and Mr. McCarsky's rate for this 13 hours was \$125.
15 Ms. Cocoran's rate for her 45.75 hours was \$125 and Ms.
16 Erlich's rate for her 9.75 hours was \$135.

17 Now, attached to my application are bills which are
18 basically printouts from our computer, Your Honor, for the
19 time period in question; that is to say, between August 23 of
20 1990 up through August 29 of 1991.

21 And these bills, which as I say are basically
22 printouts right from the computer into which we had entered
23 the time, show the date of the task done, they show the name
24 of the person performing the task, a narrative description of
25 the task and then the amount of time spent on that particular

1 task.

2 And I submit, Your Honor, that these are certainly
3 -- conform to the practice at the time as to explaining what
4 was done, who was involved and by reading these, I think one
5 gets a good idea of the work that was put in.

6 I can try to explain further, but this time was in
7 1990 and, frankly, my memory for the minutia is very dim at
8 this point. I can remember some of the basic things that we
9 went through; that is to say Mr. Cullen and myself.

10 Essentially, it's just as I just as I described in
11 my outline of the services. We were trying to get our hands
12 around the assets of the debtor and find out what they were
13 worth and liquidate them. The company was not operating under
14 Mr. Cullen.

15 Now, Mr. -- I'd like to address Mr. Chorney's
16 motion for clarification. It's really an objection and kind
17 of a discovery request and the first thing I would like to
18 say is, Your Honor, I really object to it on the ground that
19 Mr. Chorney doesn't have standing and he has cost my firm a
20 lot of money for which we're not expecting to get very much
21 payment at all and he's just continuing it.

22 And that seems to be how he gets his satisfaction
23 in all of this. And that's all well and good. It's a free
24 country. But he needs to have standing to be objecting to
25 this fee application and as I understand it, and I think a

1 filing by the trustee, Mr. Monzack, confirmed, there are
2 millions of dollars of claims ahead of him. He's the
3 shareholder, as I understand it, in this company. So he's not
4 in the money.

5 What Your Honor decides with respect to my
6 application will not mean one dime to Mr. Chorney. And there
7 are other people who have reviewed my application who are in
8 a much better position, actually, to comment on it and make
9 objections, if their objections are in order, and that would
10 be the trustee, whose duty it is to review my application,
11 and the U.S. Trustee, who I understand will be reviewing it
12 and reporting to the court on it as well.

13 And I would submit that that would be sufficient
14 guidance, or -- my point is just that Mr. Chorney does not
15 have standing to object to this application and it shouldn't
16 be considered.

17 Now --

18 THE COURT: Before you -- you're going to leave the
19 standing issue now, or --

20 MR. BERTOZZI: No -- I was going to leave the
21 standing issue.

22 THE COURT: Okay. Before you -- okay. Let's
23 interrupt you then right here. I'd like to hear from the
24 trustee and the U.S. Trustee regarding this standing issue.

25 MR. MONZACK: If Your Honor please, Jason Monzack,

1 Chapter 7 Trustee.

2 After the filing of Mr. Bertozzi's fee application,
3 the court issued an order requesting my position with regard
4 to Mr. Chorney's motion to clarify the that he filed in
5 response to Mr. Bertozzi's fee application. I submitted that
6 position to the court.

7 I won't go through in detail what my position said,
8 but it did recite a history of the case, the history of this
9 court's prior orders and a history of Mr. Chorney's actions,
10 although summarized in a brief fashion in this case.

11 In the position that I filed with the court, I also
12 stated that I did not believe that Mr. Chorney has any
13 standing to argue against Mr. Bertozzi's fees, as he's not a
14 creditor, he didn't file a claim and Mr. Bertozzi is quite
15 correct that the accounting that's been submitted to the U.S.
16 Trustee's Office shows that certainly there will be no funds
17 going back to stockholders of Cumberland Investment
18 Corporation.

19 In fact, there were a series of auctions that were
20 conducted during the administration of this case. In those
21 auctions of coins and stamps, this court approved carve outs
22 pursuant to each auction as to a certain amount of the funds
23 were designated for administrative expenses and a certain
24 amount of the funds were designated for unsecured creditors.

25 So the unsecured creditors also will not be

1 affected by any of the orders entered by this court, as there
2 is a sum, approximately \$60,000, that pursuant to the
3 formulas that were approved by this court with regard to each
4 auction, that sum is designated for unsecured creditors and
5 will not be invaded by administrative expenses.

6 Then there's a separate sum of money which the
7 estate is holding designated, pursuant to those prior orders,
8 for administrative expenses. The Chapter 11 administrative
9 expenses that have been filed greatly exceed that amount of
10 money.

11 So in fact, any decision that the court makes with
12 regard to fee applications will change the allocation of
13 funds amount Chapter 11 administrative expenses. That's the
14 group that will be affected and albeit, in that group are
15 some redemption coin holders who purchased coins from the
16 debtor during the administration of the Chapter 11. Again,
17 Mr. Chorney is not one of those.

18 And so that's the group that will be affected by
19 this court's orders regarding the fee applications.

20 The prior orders that this court has entered with
21 regard to Mr. Chorney's prior filings essentially set up a
22 screening process by which the court would determine whether
23 or not a pleading would be accepted.

24 And that was justified based upon the whole history
25 of Mr. Chorney's involvement in this case.

1 As sort of an aside and to further illustrate the
2 point, in my position I did make reference to the pleading
3 that Mr. Chorney recently filed in the First Circuit. My
4 interpretation of his pleading was to seek a review of an
5 order entered by this court in November of '04.

6 That pleading is currently subject to an order to
7 show cause why that submission to the First Circuit should
8 not be dismissed and Mr. Chorney has filed significant
9 filings in the First Circuit regarding that.

10 But again, it appears that Mr. Chorney filed that
11 and probably has no standing or the court has no jurisdiction
12 to hear such a matter, but the pleading that Mr. Chorney
13 filed in this case appears to me to continue the long history
14 of Mr. Chorney's filings in this case, which has served to
15 impede the administration of the case, and regardless of the
16 decision that the court makes regarding the various fee
17 applications that are pending before the court, will not have
18 any effect on Mr. Chorney and in my opinion, Mr. Chorney has
19 no standing to assert these positions before the court.

20 THE COURT: Thank you. Mr. Donahue.

21 MR. DONAHUE: Good morning, Your Honor. Gary
22 Donahue for the United States Trustee addressing the court's
23 question regarding standing.

24 Obviously, there's two types of standing; there's
25 traditional motions of standing. One must have an economic

1 interest in the outcome of the proceeding before the court
2 and the statutory standing, I stand here with statutory
3 standing pursuant to 11 U.S.C. Section 307 and 28-586.

4 Mr. Chorney has no such statutory standing that I
5 am aware of and as the trustee has artfully articulated, he
6 has no interest in the economic outcome of the case.

7 Just because someone is curious or feels interested
8 in a proceeding does not give them standing to address the
9 court on pending matters and I would suggest Mr. Chorney does
10 not have economic standing for the reasons articulated by the
11 trustee.

12 What we have is the trustee's final report, report
13 on claims and proposed distribution pending with my office
14 for review.

15 My sister responded to the court's order for a
16 written position that we would like an additional 30 days to
17 respond to the pending fee applications, Your Honor, because
18 our hope is I'll file a trustee's final report, along with
19 the fee applications and a certification either that we have
20 no objection or we object for the following reasons, all at
21 once and the case can move to closing.

22 If we do that 30-day period, hopefully, the circuit
23 will dispose of whatever that pleading is or paper that has
24 been filed with the circuit.

25 I would simply point out as to the fee application,

1 which had been addressed by Mr. Bertozzi that he's requested
2 \$45,000. My understanding of the final report proposed
3 distribution as it stands now, we're looking at 37 percent at
4 the Chapter 11 level. So we're talking roughly \$15,000,
5 maybe \$16,000 for work that was performed 17 years ago.

6 It won't affect our outcome to the unsecured
7 creditors because that's subject to a specific
8 (indiscernible) and it won't affect Mr. Chorney in any way
9 that I'm aware of.

10 So unless he can articulate how his economic
11 interests are affected, it would seem that he lacks standing,
12 Your Honor, and I would just reiterate my sister's request in
13 our pleading be allowed 30 days.

14 We'll file the entire final report at once and
15 we'll either file it with an objection of a certification
16 that it's appropriate to close it, Your Honor.

17 THE COURT: Thank you.

18 Okay. Mr. Chorney, I'm going to hear you now and
19 I'm going to make it very clear that you're restricted, as
20 were the people who preceded you, to address the issue of
21 standing. Do you understand that?

22 MR. CHORNEY: Strictly the issue of standing.

23 THE COURT: Right.

24 MR. CHORNEY: Okay. I'm a layman of the law, Your
25 Honor. I can't argue that point as eloquently as the people

1 that came before me, but I do have property interests in this
2 case.

3 THE COURT: What are they?

4 MR. CHORNEY: There were lists of items that I sent
5 in letters to Mr. Monzack going back many years. It lists
6 some gold frogs and those items have never been sold.
7 They've never appeared anywhere. Yet they appear on a
8 transcript of August of 1990 of items that were removed from
9 the premises at 141 Main Street.

10 THE COURT: Okay. These are gold frogs now?

11 MR. CHORNEY: Yes. Yes.

12 THE COURT: Okay. Mr. Monzack --

13 MR. CHORNEY: That's pre-Colombian --

14 THE COURT: -- we're going to address these things
15 one at a time now. What do you say? You know, we're going
16 to try to dispose of this thing in an orderly way.

17 MR. MONZACK: I never had possession of any gold
18 frogs. I became the trustee in 1993 and Mr. Chorney's
19 referring to an August, 1990 transcript, but I can say
20 categorically I never had in my possession any gold frogs.

21 THE COURT: Okay. What's the origin of these
22 documents that Mr. Chorney's referring to that supposedly
23 establish the existence of that stuff?

24 MR. MONZACK: I'm not really sure what Mr. Chorney
25 is referring to. I know there was --

1 THE COURT: Do you have the transcript with you?

2 MR. CHORNEY: I don't have the transcript with me,
3 Your Honor, but it has been presented to this court. It's
4 from Allied Court Reporters. It was obtained by my --

5 THE COURT: Do you want me to go find it for you?

6 MR. CHORNEY: I beg your pardon?

7 THE COURT: Is that what you're saying? You would
8 like me to find that reference to these items?

9 MR. CHORNEY: No, sir. I can produce that very
10 easily, if you'd like it, but it's been produced to this
11 court before. Mr. Cullen's aware of it.

12 On his fee application he puts down that every one
13 of the removals of assets had three video people there and
14 also a transcript of it was taken, even though these videos
15 were never produced when Mr. Monzack, in May of 1995, asked
16 for production of videos and transcripts.

17 THE COURT: Let me interrupt you again, and I
18 probably do this more than you like --

19 MR. CHORNEY: Surely.

20 THE COURT: -- but Mr. Cullen, what do you -- I'm
21 going to ask you to respond to this allegation about the
22 specific items that Mr. Chorney just referenced to establish
23 his alleged interest in property and, therefore, his standing
24 in this case.

25 MR. CULLEN: Your Honor, with reference to the

1 specific pieces of properties that he's articulated, I have
2 no knowledge.

3 It is true that all of the property that was taken
4 out was inventoried in three ways; by videotape, by a
5 stenographer that was there, as each part was moved, it went
6 into an armored car with the Rhode Island State Police and
7 the local police. But I don't have any knowledge of those two
8 items.

9 All of the stuff that was removed that night was
10 removed consistent with the policies and procedures to
11 protect each and every asset that was removed from the
12 building, and it was removed to a vault --

13 THE COURT: Only -- I ask this question from a
14 different perspective. This is not new news going back what;
15 18 years now? The allegations that property has been
16 disappearing under the auspices of the court and that much
17 property has been unaccounted for, haven't these issues been
18 raised and litigated and disposed of someplace, sometime,
19 usually beginning in this court and ending up somewhere else?

20 MR. CULLEN: Yes. All the way up to the First
21 Circuit. This has already been disposed of.

22 Mr. Chorney raised this question at his criminal
23 trial with Judge Bateen(Phonetic). He raised them on issues
24 that I had allowed property of the estate to be dissipated or
25 otherwise removed or defalcated. He made that a serious

1 issue.

2 Judge Bateen then ordered me to court on those
3 issues to testify so Mr. Chorney could cross examine me. I
4 went down. Judge Bateen came on the bench promptly at 1
5 o'clock at Mr. Chorney's request. I took the stand. I wanted
6 20 minutes. Judge Bateen said "What questions do you have,
7 counsel, of Mr. Cullen with reference to the allegations your
8 client is making?" "We have no questions."

9 He's raised this every time he possibly can, okay,
10 in any situation. It's always that something's removed,
11 something's missing, something's lost. He never speaks to
12 the -- all of the creditors in this case that he defalcated
13 and went to jail for, including the false documents that he
14 filed with Eastland Bank.

15 THE COURT: Okay. You're going a little bit beyond
16 my question --

17 MR. CULLEN: I know I am, but I'm saying at the same
18 point in time, I think the record is absolutely clear, he's
19 accused Mr. Monzack, the United States Trustee's Office, this
20 court, everybody, of acts that never occurred. And the first
21 -- when you made the ruling --

22 THE COURT: We're talking about gold frogs right
23 now.

24 MR. CULLEN: Never saw them.

25 THE COURT: All right. But my main question is

1 haven't these same questions been raised, litigated,
2 adjudicated and been done with in the past?

3 MR. CULLEN: That's correct, Your Honor. And in
4 terms of the -- you made a ruling and a judgement on some of
5 the dilatory tactics and you awarded me \$200,000 for the
6 dilatory tactics that was raised then and went up to the
7 First Circuit. The First Circuit affirmed your judgement and
8 that was all raised in there.

9 THE COURT: Mr. Monzack?

10 MR. MONZACK: If Your Honor please, to be honest, I
11 don't recall if the two gold frog issues has been
12 specifically raised before or not, but numerous issues akin
13 to that have been raised. There have been numerous judicial
14 proceedings.

15 These issues have been disposed of by this court
16 and by other courts. In fact, when I first got involved, I
17 went over -- I visited with the U.S. Attorneys Office and the
18 U.S. Attorney's Office did whatever investigation that they
19 did with regard to claims that both Mr. Chorney had made and
20 Mr. Taft, I believe, was involved. We went over and viewed
21 all the assets that they were holding.

22 They had videotapes that were made available for
23 additional review by Mr. Taft and Mr. Chorney, and every
24 issue that Mr. Chorney had raised in the past was referred to
25 somebody for investigation and none of those bodies, be it

1 this court, be it the U.S. Attorneys Office, be it the FBI,
2 has ever reported back to me and said that there was any
3 grounds for these claims that were being made.

4 THE COURT: All right. Mr. Chorney.

5 MR. CHORNEY: May I be heard?

6 THE COURT: Yes.

7 MR. CHORNEY: Your Honor, I sent a letter to both
8 Mr. Monzack, the court and to the U.S. Trustee listing out
9 those items that were conspicuously missing.

10 Since I've sent those letters out, no one has come
11 forward and said here's the item; it was sold on such and
12 such a date for such and such a price because there has been
13 no accounting of the assets taken, the assets sold and they
14 do appear on the transcript of August -- I believe it's
15 August 17th of 1990, Your Honor, that specifically lists
16 these items out and there's no proof by any of the officers
17 of this court that those items were sold and for how much,
18 despite whatever is being said right now.

19 And also listed was some 500 in thousand dollar
20 bills, including the serial numbers of those bills were
21 listed specifically in the transcript.

22 THE COURT: But you admit that you have raised
23 these issues to -- numerous over a long period of time.

24 MR. CHORNEY: Yes, Your Honor, I have raised these
25 issues. Absolutely have.

1 THE COURT: Okay.

2 MR. CHORNEY: Yes.

3 THE COURT: Now, you understand that I'm not a cop,
4 don't you?

5 MR. CHORNEY: Yes, Your Honor.

6 THE COURT: And it's not my job to investigate your
7 allegations. They've been reported to the U.S. Attorney,
8 according to Mr. Monzack. They've been reported to other
9 authorities. Your inquiries, your complaints and your
10 allegations have been looked at and dealt with and are
11 history.

12 And that's the point that I'm trying to make now on
13 your issue of I am -- you know, I have standing here because
14 I have property rights in items that are still out there and
15 unaccounted for. I don't see anything that is not accounted
16 for that hasn't been dealt with. Maybe improperly, in your
17 view, but done with. Do you get it?

18 MR. CHORNEY: Well, I heard what you said, but I
19 don't feel any accounting of that has been provided, Your
20 Honor.

21 THE COURT: Okay. Go ahead with your presentation
22 on standing only.

23 MR. CHORNEY: Strictly on standing.

24 THE COURT: Absolutely.

25 MR. CHORNEY: Well, Your Honor --

1 THE COURT: Not an inch beyond that. Okay?

2 MR. CHORNEY: I don't know whether or not I have
3 the standing to give the court help and assistance in
4 relationship to missing billings by both Mr. Cullen and Mr.
5 Bertozzi. Would the court like to have those? I have them
6 with me.

7 MR. BERTOZZI: It's irrelevant. Your Honor, I'm
8 not seeking --

9 THE COURT: Do you understand --

10 MR. BERTOZZI: I'm not seeking fees for the --

11 THE COURT: Okay. Have a seat.

12 Your point regarding missing billing information by
13 Mr. Bertozzi for a period of -- what is it; August through
14 October?

15 MR. BERTOZZI: Yes, Your Honor.

16 THE COURT: His point is that we don't have those
17 billing records; therefore, we're not going to charge for
18 those. So it's none of my business; it's none of yours.

19 MR. CHORNEY: You are going to charge for Mr.
20 Cullen's billings for the same time period and they're
21 contradictory.

22 THE COURT: What's contradictory?

23 MR. CHORNEY: The billings of Mr. Bertozzi and the
24 billings of Mr. Cullen for the same time period. The missing
25 billings of Mr. Bertozzi, as well as the billings that he

1 presented to this court have contradictions --

2 THE COURT: And how do you know they're
3 contradictions? You have these billings?

4 MR. CHORNEY: Yes, I do. And it's part of this
5 package that I want to present to the court.

6 MR. BERTOZZI: It's not relevant to my application.
7 It may be relevant to Mr. Cullen's application.

8 MR. MONZACK: I have to assert the same position,
9 Mr. Bertozzi, that he has no standing.

10 THE COURT: I'm going to take your package. I'm
11 going to look at it, as we say in some circles, in camera.

12 MR. CHORNEY: Sure.

13 THE COURT: They're not an exhibit. I'm not
14 accepting them except to look at them and to try to make my
15 own determination of what it is you say you're submitting to
16 me. Okay?

17 MR. CHORNEY: Surely, Your Honor. Thank you. Can I
18 approach and give them to this gentlemen here?

19 THE COURT: Yes. By the way, what are the time
20 constraints here as far as your travel, Mr. Bertozzi?

21 MR. BERTOZZI: Well, Your Honor, I really have to
22 leave by 1:00.

23 THE COURT: Okay.

24 MR. BERTOZZI: Thank you.

25 MR. CHORNEY: Your Honor, I can provide the court

1 with extra copies if needed.

2 THE COURT: Thank you. Okay. I probably got what
3 I asked for. And just after a quick look at these, they look
4 like they're applications that have been filed here;
5 affidavits.

6 I'm going to return these to you, Mr. Chorney, and
7 have you point out whatever contradictions you're alleging
8 and you're going to -- by the way, you're going to proceed
9 from now on at the same risk that every other party appearing
10 before the court.

11 If it turns out that the court determines after
12 giving you what I hope is a full hearing that you were
13 behaving in either a frivolous or obstructionist or any
14 improper way, you're going to subject yourself to some more
15 sanctions. I realize that that doesn't mean much to you these
16 days. We've had serious issues like this in the past.

17 But as I say, I'm going to return these to you. I'm
18 going to ask you to separate out of that pile of papers the
19 specific items that you say are contradictory. That's your
20 job.

21 MR. CHORNEY: Surely. Can I use the overhead over
22 here? Can I use this --

23 THE COURT: Oh, no. You're not going to take our
24 time while you do that.

25 MR. CHORNEY: It's already listed in the pleading,

1 Your Honor.

2 THE COURT: Well, I'm not going to go look for it.
3 You're going to separate it out and present that stuff the
4 same way that Mr. Cullen, or Mr. Monzack or anybody else
5 appearing before this court would have to do it. You are not
6 going to take --

7 MR. CHORNEY: Your Honor, on pages --

8 THE COURT: -- another 18 years while -- settle
9 down and pay attention to what I'm telling you.

10 MR. CHORNEY: I'm listening, Your Honor.

11 THE COURT: You are being ordered to separate out
12 on a separate document now, on separate documents, the items
13 that you just represented were inconsistent between Mr.
14 Cullen's billings and billings that Mr. Bertozzi is not even
15 asking this court to consider.

16 MR. CHORNEY: Yes, Your Honor.

17 THE COURT: So there's a serious question of what
18 those are worth anyway.

19 MR. CHORNEY: Yes.

20 THE COURT: But you made a statement and I'm going
21 to force you to back it up.

22 MR. CHORNEY: And I have them listed on pages 6, 7,
23 and 8 of this pleading that I gave you.

24 THE COURT: 6, 7, and 8 of which document now?

25 MR. CHORNEY: That's on the memorandum, Your Honor.

1 I listed 20 different discrepancies and I can go over each
2 and every one of them with you in relationship to the
3 exhibits that are in this package that I presented to the
4 court.

5 THE COURT: You know what? Go right ahead.

6 MR. CHORNEY: Okay. Would you like this to follow
7 from or not?

8 THE COURT: I beg your pardon?

9 MR. CHORNEY: Would you like this to follow from or
10 not?

11 THE COURT: Is that the only copy of that document
12 --

13 MR. CHORNEY: No, I have other copies, Your Honor.

14 THE COURT: What's he looking at now?

15 MR. CULLEN: I don't know, Your Honor. We've never
16 been served with it. At least I haven't. I don't think it's
17 anything Mr. Donahue or Mr. --

18 MR. CHORNEY: No, I haven't. Part of the service
19 was done here, but I can't serve it to you without court
20 permission, so I've just tried to present it to the court to
21 try assist and aid them in the process.

22 MR. CULLEN: This is, again, the point -- he's
23 asking all of us to operate in he blind, as usual, with him.
24 If he's got to go downstairs and copy them and produce them
25 so that we all have the opportunity to follow his

1 articulation on the criticism, that's fine. But we can't sit
2 here and watch him go through the criticisms without even
3 having the documents before us.

4 MR. CHORNEY: Your Honor, Mr. Cullen was served a
5 copy of this -- these 20 discrepancies or inconsistencies, as
6 well as Your Honor has been served with it. That service was
7 made with the first circuit show cause order. One copy went
8 to Your Honor, one copy to Mr. Cullen, one copy went to Mr.
9 Bertozzi, one copy went to the U.S. Trustee.

10 So for him to say he has no knowledge of it, I
11 think either he hasn't read what has come to him or he's just
12 not telling the truth.

13 MR. CULLEN: Your Honor, there's a separate
14 situation. Mr. Chorney has filed separate documents with the
15 Court of Appeals, which were incorporated in four books.

16 THE COURT: Hold it, please. You know what? This
17 case hasn't changed. People don't change either. And I
18 don't think it's fair to the people who are expecting to have
19 their matters heard this morning while we go through this
20 exercise.

21 I'm going to interrupt the Cumberland Investment
22 Corporation proceeding. I'm going to finish the balance of
23 the calendar. Since Mr. Bertozzi has made his presentation
24 on his fee application, I'm going to excuse him.

25 How long are you going to be away, Mr. Bertozzi, in

1 case we need you back?

2 MR. BERTOZZI: I'll be back on Monday, Your Honor.

3 THE COURT: Okay.

4 MR. DONAHUE: May I just make a suggestion, Your
5 Honor?

6 THE COURT: Your Honor -- and my office filed a
7 pleading requesting 30 days to file comments on the fee
8 applications and, hopefully, by that time we can certify the
9 final report to Your Honor.

10 At that point, I think Mr. -- it might be an
11 appropriate time if the court would just take his pleading
12 today, take the instant fee applications under advisement,
13 because my office has already asked for a few more days to
14 look at them ; allow Mr. Bertozzi to do his travel and I
15 think the appropriate context might be the final hearing on
16 the final report, and you can certainly take Mr. Chorney's
17 submission and for whatever weight you wish to give it and
18 then we'll have the final account and I assume there might be
19 further review of that.

20 But it would seem at this point, this is merely an
21 intermediate dance, if you will, Your Honor. And what we
22 really need to do is to get to the final account, because as
23 to the pending fee apps, it doesn't affect the unsecured --
24 and going back to the standard --

25 THE COURT: I understand.

1 MR. DONAHUE: So if we could just continue the
2 pending fee apps to the final -- because nobody's going to
3 get a penny ways until you prove the final account.

4 So I think what we're doing, Your Honor, is simply
5 just playing into that waste of time scenario that has
6 happened in the past in this case.

7 So I move to continue the matter, Your Honor, to
8 the hearing on the final account.

9 THE COURT: Okay. Does anybody find anything wrong
10 with Mr. Donahue's suggestion? Then I guess I'm looking at -
11 -

12 MR. CULLEN: I'm fully in favor, Your Honor.

13 MR. BERTOZZI: I'm in favor, Your Honor.

14 MR. MONZACK: So am I, Your Honor.

15 THE COURT: Mr. Chorney, what's your --

16 MR. CHORNEY: Your Honor, I'm in favor also, but
17 what I would like to do in the interim is have my right to
18 due process to have discovery from both Mr. Cullen and Mr.
19 Bertozzi concerning the fee applications in order to properly
20 prepare myself for any hearing involving them.

21 UNIDENTIFIED: Objection.

22 MR. CHORNEY: Besides the information that's being
23 presented to the court, there's also questions being
24 presented concerning the 364 agreement going back to December
25 of 1990, and whether or not any fees or other monies have

1 been paid out in relationship to that agreement which was
2 signed by Your Honor on December 12 or 13th of 1990. It
3 involves some \$400,000 that were borrowed by Mr. Cullen from
4 the estate for administration of the estate.

5 THE COURT: You know, you're kind of getting out in
6 a very -- kind of walking away from the standing issue that
7 I'm trying to stick to.

8 You want to reopen this whole case, as I understand
9 it. You want to start doing discovery now. I think we've --
10 I'm satisfied and -- that all of your complaints -- every
11 single complaint that you raised over the period since the
12 filing of this case, has been hashed, rehashed and done
13 with. You refuse to let go.

14 If you think you're going to start doing discovery
15 now, based on an order that I gave you to point out to the
16 court these discrepancies between Mr. Bertozzi's billing that
17 he doesn't have records of -- if you have them and he
18 doesn't, something's really wrong here.

19 MR. CHORNEY: They're part of this package, Your
20 Honor.

21 THE COURT: Okay. Well, I'm going to grant the
22 U.S. Trustee's request for a 30-day continuance to review all
23 these applications and including your pleadings.

24 But during that same period of time, I'm
25 instructing you to in writing -- you know, you can't just

1 stand there and start to talk about things that happened and
2 letters you wrote and transcripts that may be here and there
3 -- I'm not going to let you do that anymore. It's much too
4 late to start doing that, but we're going to do it.

5 So what's 30 days from now, Cindy?

6 THE CLERK: April 24th.

7 THE COURT: April 24.

8 MR. BERTOZZI: I think that's the week I'm court
9 excused, Your Honor. So the week before or after. Your
10 Honor's pleasure.

11 THE CLERK: May 8th.

12 THE COURT: Okay. May 8th. Is everybody going to be
13 here? In town, that is?

14 (No audible response.)

15 THE COURT: All right. Ten days prior to May 8th,
16 which is what date?

17 THE CLERK: Ten days prior? April 28th.

18 THE COURT: April 28th I want to have your report,
19 Mr. Chorney, filed with the court and appropriate notices to
20 everybody here who's interested. I don't know if you have a
21 different service list. That's your issue.

22 But the people who are here are going to be
23 entitled to see what you file and it's going to specifically
24 detail the items of inconsistency or discrepancies, as you
25 put them --

1 MR. CHORNEY: Yes, Your Honor.

2 THE COURT: Between Bertozzi and Mr. Cullen.

3 MR. CHORNEY: Your Honor, I have those with me and
4 I can give them to the people that are currently here. It's
5 all contained in this document.

6 THE COURT: You know what you've been ordered to
7 do. I'm not going to go further than that as far as telling
8 you how to do it, what color paper it goes on or anything
9 else.

10 MR. CHORNEY: That's fine, Your Honor.

11 THE COURT: Okay.

12 MR. CHORNEY: Thank you.

13 THE COURT: All right. We've put this away at
14 least for another 40 days, whatever.

15 MR. BERTOZZI: Thank you, Your Honor.

16 MR. CULLEN: Thank you, Your Honor.

17 (Proceeding concluded at 11:35 a.m.)

18 I, CHRISTINE FIORE, court-approved transcriber, certify
19 that the foregoing is a correct transcript from the official
20 electronic sound recording of the proceedings in the above-
21 entitled matter.

22
23 *Christine Fiore*

24 _____ April 4, 2008

25 Christine Fiore