

# Docket no. 03-5023

## UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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**Richard Cordero,**  
Cross and Third party plaintiff-Appellant

v.

**Kenneth Gordon,**  
Cross defendant-Appellee  
and (no. 03-cv-6021L)

**David Palmer,**  
Third party defendant-Appellee  
(no. 03-MBK-6001L)

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### **Appeal** from the **United States District Court** for the Western District of New York

Opening brief and addendum  
for and by

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Richard Cordero,  
Cross and Third party plaintiff-Appellant

v.

OPENING BRIEF  
OF APPELLANT PRO SE  
RICHARD CORDERO

Kenneth Gordon,  
Cross defendant-Appellee  
and (no. 03-cv-6021L)

David Palmer,  
Third party defendant-Appellee  
(no. 03-MBK-6001L)

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**I. Preliminary Statement**

[SPA-1-91=A:1379-1475]

The two orders appealed from were issued on March 27, 2003, (SPA-9&19, below) by the Hon. David G. Larimer, U.S. District Judge of the U.S. District Court for the Western District of New York. Underlying them were an order entered on December 30, 2002, (SPA-1) and a recommendation of February 4, 2003, (SPA-11-15) for an order submitted to the District Court by the Hon. John C. Ninfo, II, U.S. Bankruptcy Judge of the U.S. Bankruptcy Court for the Western District of New York.

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# Part 3. APPENDIX

(in a separate volume) [A-1-429]

## SUMMARY

- A. Designated items in the record**, copied, and submitted under FRBkrP 8006 to the Bankruptcy Court by Dr. Richard Cordero on January 23, 2003, for his appeal to the District Court, WDNY, from the dismissal by Bankruptcy Judge John C. Ninfo, II, of his cross-claims against Trustee Kenneth Gordon in *Pfuntner v. Trustee Gordon et al.*, no. 02-2230, WBNY, adversary proceeding deriving from *In re Premier Van Lines*, no. 01-20692, WBNY .....1 [A:1]
- B. Redesignated items in the record**, copied, added to those previously designated, and submitted pursuant to FRAP Rule 6(b)(2)(B)(i) to the District Court, WDNY, by Dr. Cordero on May 5, 2003, for his appeal to the Court of Appeals for the Second Circuit from the orders of District Court David G. Larimer, denying his motions in *Cordero v. Trustee Gordon*, 03cv6021L, and *Cordero v. Palmer*, 03mbk6001L, WDNY..... 153
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## **IV. Jurisdictional Statement**

[SPA-1-91=A:1379-1475]

### **A. Jurisdiction of the district court**

1. Within a bankruptcy case (dkt. no.01-20692), an adversary proceeding was filed in bankruptcy court by a non-party to this appeal. The court ordered Dr. Cordero's cross-claims against Trustee Kenneth Gordon dismissed (SPA-1). Dr. Cordero appealed to the district court (SPA-3) under 28 U.S.C. §158(a) (SPA-85).
2. In that adversary proceeding, Dr. Cordero, as a third party plaintiff, applied to the bankruptcy court for default judgment against Third-party defendant David Palmer (SPA-10). The court ordered the application transmitted to the district court (SPA-11) pursuant to P.L. 98-353 (The Bankruptcy Amendments and Federal Judgeship Act of 1984). It made its recommendation thereon to the district court (SPA-11-15) under 28 U.S.C. §157(c)(1). Dr. Cordero moved in district court on March 2, under Rule 8011(a) F.R.Bkr.P. to enter default judgment and withdraw the adversary proceeding under 28 U.S.C. §157(d) (SPA-85).

### **B. Basis of appellate jurisdiction**

3. This appeal from the two district court's orders of March 27 (SPA-9&19), is founded on 28 U.S.C. §§158(d) and 1291 (SPA-84), both of which apply to bankruptcy appeals, *Connecticut National Bank v. Germain*, 112 S.Ct. 1146, 503 U.S. 249, 117 L.Ed.2d 391 (1992).

### **C. Filing dates and timeliness of the appeal**

4. The motions for rehearing in *Cordero v. Gordon* and *Cordero v. Palmer* were both denied by the district court on March 27, 2003 (SPA-9&19). From that date began to run under Rule 6(b)(2)(A) F.R.A.P. (SPA-81) the 30 days provided under Rule 4(a)(1)(A) F.R.A.P. (SPA-80) for filing a notice of appeal to the circuit court. That notice was timely filed on April 25, 2003 (SPA-21).

### **D. Appeal from final orders**

5. The district court's March 27 order in *Cordero v. Gordon* (SPA-9) was final in dismissing Dr. Cordero's notice of appeal and, consequently, his cross-claims against Trustee Gordon.
6. The March 27 order in *Cordero v. Palmer* (SPA-19) was final in denying Dr. Cordero's right to default judgment for a sum certain against Defaulted party Palmer and stating that the bankruptcy court should conduct an inquest in which Dr. Cordero would be required to demonstrate damages as a precondition to his recovery of an uncertain sum.

## **V. Statement of Issues Presented for Review**

### **A. In *Cordero v. Gordon***

7. Do the complete-on-mailing and the three-additional-days provisions of Rule 9006(e) and (f) F.R.Bkr.P, respectively (SPA-69), apply to Rule 8002 F.R.Bkr.P.

so that a notice of appeal timely mailed just as a motion to extend time to appeal timely mailed must be considered also timely filed even after the conclusion of the 10-day period or the 30-day period, respectively?

8. Did the court err when before any discovery whatsoever it summarily dismissed the cross-claims against Trustee Gordon of defamation as well as negligence and reckless performance as trustee, whereby the court failed to apply the standards for determining the legal sufficiency of the complaint, which though written by a pro se litigant it did not liberally construe, and went on to pass judgment on the merits while disregarding the genuine issues of material fact raised by the complaint?

**B. In *Cordero v. Palmer***

9. Did the district court err in disregarding the objective and outcome determinative fact under Rule 55 F.R.Civ.P. (SPA-76) that the default judgment applied for was for a sum certain and instead imposed on Dr. Cordero the obligation to demonstrate recoverable loss although such obligation is not only nowhere to be found in Rule 55, but also contradicts its clear language of automaticity of entry of default judgment for a sum certain where a defendant has been found in default for failure to appear?

### **C. As to court officers at the district and the bankruptcy courts**

10. Does the participation of bankruptcy and district court officers in a series of events of disregard of facts, procedural rules, and the law that consistently affect Dr. Cordero to his detriment and cannot be explained away as mere coincidences, but instead form a pattern of intentional and coordinated activity, create in the mind of a reasonable person the appearance of bias and prejudice sufficient to raise the justified expectation that Dr. Cordero will likewise not get an impartial and fair trial by those officers in those courts so as to warrant the removal of the case to a neutral court, such as the District Court for the Northern District of New York?

### **VI. Statement of the Case**

11. The bankruptcy case of a moving and storage company spawned an adversary proceeding in bankruptcy court, where Dr. Cordero, a former client of the company, was named, together with the trustee, Kenneth Gordon, Esq., and others, defendant. Appearing pro se, Dr. Cordero cross-claimed to recover damages from Trustee Gordon for defamation as well as negligent and reckless performance as trustee. The Trustee moved to dismiss and the court summarily dismissed the cross-claims before disclosure or discovery had taken place and although other parties' similar claims were allowed to stand. Dr. Cordero timely

mailed his notice of appeal, but on the Trustee's motion, the District Court dismissed it as untimely filed.

12. Dr. Cordero served the Debtor's owner, Mr. David Palmer, with a summons and a third party complaint, but he failed to answer. Dr. Cordero timely applied on December 26, 2002, for default judgment for a sum certain. Only belatedly and upon Dr. Cordero's request to take action, did the bankruptcy court make a recommendation on February 4, 2003, namely, that the district court not enter default judgment because 'Cordero has failed to demonstrate any loss and upon inspection it may be determined that his property is in the same condition as when delivered for storage in 1993.' Dr. Cordero moved the district court to enter default judgment despite the bankruptcy court's prejudgment of the case. Making no reference to that motion, the district court accepted the recommendation because Dr. Cordero "must still establish his entitlement to damages since this matter does not involve a sum certain." Dr. Cordero moved the district court to correct its mistake since the application did involve a sum certain. The district court summarily denied the motion.

## VII. Statement of Facts

### **A. In search for his property in storage, Dr. Cordero is repeatedly referred to Trustee Gordon, who provides no information and to avoid a review of his performance and fitness to serve, files false and defamatory statements about Dr. Cordero with the court and his U.S. trustee supervisor**

13. A client –here Appellant Dr. Cordero- who resides in NY City, had entrusted his household and professional property, valuable in itself and cherished to him, to a Rochester, NY, moving and storage company in August 1993 and since then paid its storage and insurance fees. In early January 2002 he contacted Mr. David Palmer, the owner of the company storing his property, Premier Van Lines, to inquire about it. Mr. Palmer and his attorney assured him that his property was safe and in his warehouse at Jefferson-Henrietta, in Rochester (A-18). Only months later, after Mr. Palmer disappeared, did his assurances reveal themselves as lies, for not only had his company gone bankrupt –Debtor Premier-, but it was already in liquidation. Moreover, Dr. Cordero’s property was not found in that warehouse and its whereabouts were unknown.

14. In search for his property, Dr. Cordero was referred to the Chapter 7 trustee– here Appellee Trustee Gordon– (A-38). The Trustee had failed to give Dr. Cordero notice of the liquidation although the storage contract was an income-producing asset of the Debtor. Worse still, the Trustee did not provide Dr. Cordero with any information about his property and merely bounced him back to the same parties

that had referred Dr. Cordero to him (A-16,17).

15. Eventually Dr. Cordero found out from third parties (A-45,46;108, ftnts-5-8;352) that Mr. Palmer had left Dr. Cordero's property at a warehouse in Avon, NY, owned by Mr. James Pfunter. However, the latter refused to release his property lest Trustee Gordon sue him and he too referred Dr. Cordero to the Trustee. This time not only did the Trustee fail to provide any information or assistance in retrieving his property, but even enjoined Dr. Cordero not to contact him or his office anymore (A-1).
16. Dr. Cordero applied to the bankruptcy judge in charge of the bankruptcy case, the Hon. John C. Ninfo, II, for a review of the Trustee's performance and fitness to serve (A-7). The judge took no action save to refer the application to the Trustee's supervisor, an assistant U.S. Trustee (A-29).
17. Subsequently, in October 2002, Mr. Pfunter brought an adversary proceeding (A-21,22) against Trustee Gordon, Dr. Cordero, and others. Dr. Cordero, appearing pro se, cross-claimed against the Trustee (A-70,83,88); who moved to dismiss (A-135). Before discovery had even begun or any initial disclosure had been provided by the other parties -Dr. Cordero provided numerous documents with his pleadings (A-11,45,62,90,123,414)- and before any meeting whatsoever, the judge dismissed the cross-claims by order entered on December 30, 2002 and mailed from Rochester (SPA-1).

18. Upon its arrival in New York City after the New Year's holiday, Dr. Cordero timely mailed the notice of appeal on Thursday, January 9, 2003 (SPA-3). It was filed in the bankruptcy court the following Monday, January 13. The Trustee moved to dismiss it as untimely filed (A-156) and the district court dismissed it (SPA-6,9).

**B. David Palmer abandons Dr. Cordero's property and defrauds him of the fees; then fails to answer Dr. Cordero's complaint; yet, the courts deny Dr. Cordero's application for default judgment although for a sum certain, prejudice a happy ending to his property search, and impose on him a Rule 55-extraneous duty to demonstrate loss.**

19. Dr. Cordero joined as third party defendant Mr. Palmer, who lied to him about his property's safety and whereabouts while taking in his storage and insurance fees. Mr. Palmer, as Debtor (SPA-25-entry-13,12), was already under the bankruptcy court's jurisdiction, yet failed to answer the complaint of Dr. Cordero, who timely applied under Rule 55 F.R.Civ.P. for default judgment for a sum certain (SPA-12;A-294). But disregarding Rule 55, never mind the equities between the two parties, both courts denied Dr. Cordero and spared Mr. Palmer default judgment under circumstances that have created the appearance of bias and prejudice, as shown next.



**C. Bankruptcy and district court officers have participated in a series of events of disregard of facts, rules, and law so consistently injurious to Dr. Cordero as to form a pattern of non-coincidental, intentional, and coordinated acts from which a reasonable person can infer their bias and prejudice and can fear their determination not to give him a fair and impartial trial**

1. The bankruptcy court excused Trustee Gordon's defamatory statements as merely **"part of the Trustee just trying to resolve these issues"**

20. Trustee Gordon submitted statements, some false and others disparaging of Dr. Cordero's character, to the bankruptcy court in his attempt to dissuade it from undertaking the review of his performance and fitness as trustee requested by Dr. Cordero. The latter brought this to the court's attention (A-32,41). Far from showing any concern for the integrity and fairness of proceedings, the court did not even try to ascertain whether Trustee Gordon had made false representations to the court in violation of Rule 9011(b)(3) F.R.Bkr.P.

21. On the contrary, it excused the Trustee in open court when at the hearing of the motion to dismiss it stated that:

"I'm going to grant the Trustee's motion and I'm going to dismiss your cross claims. First of all, with respect to the defamation, quite frankly, these are the kind of things that happen all the time, Dr. Cordero, in Bankruptcy court...it's all part of the Trustee just trying to resolve these issues." (A-274-275)

22. When the court approves of the use of defamation by an officer of the court trying to avoid review, what will it use itself to avoid having its rulings reversed on appeal? How much fairness would an objective observer expect that court to show the appellant?

2. The court disregarded facts and the law concerning genuine issues of material fact when dismissing Dr. Cordero's cross-claims of negligence and recklessness against Trustee Gordon

23. It was Mr. Pfuntner, not Dr. Cordero, who first sued Trustee Gordon claiming that:

“17. In August 2002, the Trustee, upon information and belief, caused his auctioneer to remove one of the trailers without notice to Plaintiff and during the nighttime for the purpose of selling the trailer at an auction to be held by the Trustee on September 26, 2002,” (A-24)

24. Does it get any more negligent and reckless than that? While the Trustee denied the allegation, it raised an issue of fact to be determined at trial. So how could the court disregard similar genuine issues of material fact raised by Dr. Cordero's cross-claims of negligence and reckless performance as trustee and before any discovery or meeting whatsoever merely dismiss them, thereby disregarding the legal standard for determining a motion to dismiss?

3. The court disregarded the Trustee's admission that Dr. Cordero's motion to extend time to file notice of appeal had been timely filed, and surprisingly finding that it had been untimely filed, denied it

25. After Dr. Cordero timely mailed his notice of appeal and Trustee Gordon moved to dismiss it as untimely filed, Dr. Cordero timely mailed a motion to extend time to file the notice. Although Trustee Gordon himself acknowledge in his brief in apposition that the motion had been timely filed on January 29 (A-235), the judge surprisingly found that it had been untimely filed on January 30. Trustee Gordon checked the filing date of the motion to extend just as he had checked that of the notice of appeal: to escape accountability through a timely-mailed/untimely-filed technical gap. He would hardly make a mistake on such a critical matter. Thus, who changed the filing date and on whose orders?<sup>1</sup> Why did the court disregard the factual discrepancy and rush to deny the motion? Do court officers manipulate the docket to attain their objectives? There is evidence that they do (paras.36 below).

4. The court reporter tries to avoid submitting the transcript

26. To appeal from the court's dismissal of his cross-claims, Dr. Cordero contacted Court Reporter Mary Dianetti on January 8, 2003, to request the transcript of the

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<sup>1</sup> Dr. Cordero stands ready to submit to the Court of Appeals upon its request an affidavit containing more facts and analysis on this issue.

hearing. After checking her notes, she called back and told Dr. Cordero that there could be some 27 pages and take 10 days to be ready. Dr. Cordero agreed and requested the transcript (A-261).

27. It was March 10 when Court Reporter Dianetti finally picked up the phone and answered a call from Dr. Cordero asking for the transcript. After telling an untenable excuse, she said that she would have the 15 pages ready for...“You said that it would be around 27?!” She told another implausible excuse after which she promised to have everything in two days ‘and you want it from the moment you came in on the phone.’ What an extraordinary comment! She implied that there had been an exchange between the court and Trustee Gordon before Dr. Cordero had been put on speakerphone and she was not supposed to include it in the transcript (A-283,286).

28. The confirmation that she was not acting on her own was provided by the fact that the transcript was not sent on March 12, the date on her certificate (A-282). Indeed, it reached Dr. Cordero only on March 28 and was filed only on March 26 (SPA-45, entry 71), a significant date, namely, that of the hearing of one of Dr. Cordero’s motions concerning Trustee Gordon. Somebody wanted to know what Dr. Cordero had to say before allowing the transcript to be sent.

29. The Court Reporter never explained why she failed to comply with her obligations under either 28 U.S.C. §753(b) (SPA-86) on “promptly” delivering

the transcript “to the party or judge” –certainly she did not send it to the party- or Rule 8007(a) F.R.Bkr.P. (SPA-65) on asking for an extension.

30. Reporter Dianetti also claims that because Dr. Cordero was on speakerphone, she had difficulty understanding what he said. As a result, the transcription of his speech has many “unintelligible” spots and it is difficult to make out what he said. If she or the court speakerphone regularly garbled what the person on speakerphone said, would either last long in use? Or was she told to disregard Dr. Cordero’s request for the transcript; and when she could no longer do so, to garble his speech and submit her transcript for vetting by a higher-up court officer before mailing a final version to Dr. Cordero? Do you trust court officers that so handle, or allow such handling of, transcripts? Does this give you the appearance of fairness and impartiality?

**5. The bankruptcy court disregarded facts and prejudged issues to deny Dr. Cordero’s application for default judgment**

31. The bankruptcy court recommended denial of the default judgment application by prejudging that upon inspection Dr. Cordero would find his property in the same condition as he had delivered it for storage 10 years earlier in 1993 (SPA-13). For that bold assumption it not only totally lacked evidentiary support, but it also disregarded contradicting evidence available. Indeed, as shown in subsection 2 above, Mr. Pfuntner had written that property had been removed without his

authorization and at night from his warehouse premises. Moreover, the warehouse had been closed down and remained out of business for about a year. Nobody was there paying to control temperature, humidity, pests, or thieves. Thus, Dr. Cordero' property could also have been stolen or damaged. Forming an opinion without sufficient knowledge or examination, let alone disregarding the only evidence available, is called prejudice. From one who forms anticipatory judgments, would you expect to receive fair treatment or rather rationalizing statements that he was right?

32. Moreover, the court dispensed with even the appearance of impartiality by casting doubt on the recoverability of "moving, storage, and insurance fees ...especially since a portion of [those] fees were [sic] paid prior to when Premier became responsible for the storage of the Cordero Property," (SPA-14). How can the court prejudge the issue of responsibility, which is at the heart of the liability of other parties to Dr. Cordero, since it has never requested disclosure of, let alone held an evidentiary hearing on, the storage contract, or the terms of succession or acquisition between storage companies, or storage industry practices, or regulatory requirements on that industry? Such a leaning of the mind before considering pertinent evidence is called bias. Would you expect impartiality if appearing as a pro se litigant in Dr. Cordero's shoes before a biased court?

33. The court also protected itself by excusing its delay in making its recommendation to the district court. So it stated in paragraph “10. The Bankruptcy Court suggested to Cordero that the Default Judgment be held until after the opening of the Avon Containers...” (SPA-14). But that suggestion was never made and Dr. Cordero would have had absolutely no motive to accept it if ever made. What else would the court dare say to avoid review on appeal?

6. The Bankruptcy Clerk and the Case Administrator disregarded their obligations in the handling of the default application

34. Clerk Paul Warren had an unconditional obligation under Rule 55 F.R.Civ.P.: “**the clerk shall enter** the party’s default,” (emphasis added; SPA-76 upon receiving Dr. Cordero’s application of December 26, 2002 (SPA-10). Yet, it was only on February 4, 41 later and only at Dr. Cordero’s instigation (SPA-15), that the clerk entered default, that is, certified a fact that was such when he received the application, namely, that Mr. Palmer had been served but had failed to answer. The Clerk lacked any legal justification for his delay.

35. It is not by coincidence that he entered default on February 4, when the bankruptcy court made its recommendation to the district court. Thereby the recommendation appeared to have been made as soon as default had been

entered.<sup>2</sup> It also gave the appearance that Clerk Warren was taking orders in disregard of his duty.

36. Likewise, his deputy, Case Administrator Karen Tacy (kt), failed to enter on the docket (EOD) Dr. Cordero's application upon receiving it. Where did she keep it until entering it out of sequence on "EOD 02/04/03" (SPA-42-entry-51;43-entries-46,49,50,52,53). Until then, the docket gave no legal notice to the world that Dr. Cordero had applied for default judgment against Mr. Palmer.<sup>3</sup> Does the docket, with its arbitrary entry placement, numbering, and untimeliness, give the appearance of manipulation or rather the evidence of it? (25 above).

37. It is highly unlikely that Clerk Warren, Case Administrator Tacy, and Court Reporter Dianetti were acting on their own. Who coordinated their acts in detriment of Dr. Cordero and for what benefit?

**7. The district court repeatedly disregarded an outcome-determinative fact and the rules to deny the application for default judgment**

38. The district court accepted the recommendation and in its March 11 order denied entry of default judgment on the grounds that it did not involve a sum certain (SPA-16). To do so, it disregarded five papers stating that it did involve a sum certain:

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<sup>2</sup> See footnote 1.

<sup>3</sup> See footnote 1.



- 1) the Affidavit of Amount Due (A-294);
- 2) the Order to Transmit Record and Recommendation (SPA-12);
- 3) the Attachment to the Recommendation (SPA-14);
- 4) the March 2 motion to enter default judgment (A-314,327), and
- 5) the motion for rehearing re implied denial of the earlier motion (A-342,344-para.6).

39. Dr. Cordero moved the district court to enter default judgment notwithstanding such prejudgment of the outcome of a still sine die inspection (A-314). The district court did not acknowledge that motion in any way whatsoever, but instead accepted the bankruptcy court's recommendation. Moreover, it stated that Dr. Cordero "must still establish his entitlement to damages since the matter does not involve a sum certain [so that] it may be necessary for [sic] an inquest concerning damages before judgment is appropriate...the Bankruptcy Court is the proper forum for conducting [that] inquest," (SPA-16).

40. Dr. Cordero moved the district court for a rehearing (A-342) of his motion, denied by implication, so that it would correct its outcome-determinative error because the matter did involve a sum certain and because when Mr. Palmer failed to appear and Dr. Cordero applied for default judgment for a sum certain his entitlement to it became perfect pursuant to the plain language of Rule 55.

Likewise, a bankruptcy court that showed such prejudgment could not be the “proper forum” to conduct any inquest (A-342). The district court curtly denied the motion “in all respects,” (SPA-19). From a district court merely rubberstamps the bankruptcy court’s recommendation without paying attention to its facts, let alone reading papers submitted by a pro se litigant who spent countless hours researching, writing, and revising, would you expect the painstaking effort necessary to deliver justice?

8. The bankruptcy court disregarded Mr. Pfunter’s and his attorney’s contempt for two orders, reversed its order on their ex-parte approach, showed again no concern for disingenuous submissions to it, but targeted Dr. Cordero for strict discovery orders

41. At the only meeting ever held in the adversary proceeding, the pre-trial conference on January 10, 2003, the court orally issued only one onerous discovery order: Dr. Cordero must travel from New York City to Rochester and to Avon to inspect at Plaintiff Pfunter’s warehouse the storage containers that bear labels with his name. Dr. Cordero had to submit three dates therefor. The court stated that within two days of receiving them, it would inform him of the most convenient date for the other parties. Dr. Cordero submitted not three, but rather six by letter of January 29 to the court and the parties (A-365,368). Nonetheless, the court never answered it or informed Dr. Cordero of the most convenient date.

42. Dr. Cordero asked why at a hearing on February 12, 2003. The court said that it was waiting to hear from Mr. Pfuntner's attorney, David MacKnight, Esq., who had attended the pre-trial conference and agreed to the inspection. The court took no action and the six dates elapsed.
43. However, when Mr. Pfuntner wanted to get the inspection over with to clear and sell his warehouse and be in Florida worry-free, Mr. MacKnight contacted the court on March 25 or 26 ex parte –in violation of Rule 9003(a) F.R.Bkr.P. (A-372). Reportedly the court stated that it would not be available for the inspection and that setting it up was a matter for Dr. Cordero and Mr. Pfuntner to agree mutually.
44. Dr. Cordero raised a motion on April 3 to ascertain this reversal of the court's position and insure that the necessary transportation and inspection measures were taken (A-378). On April 7, the same day of receiving the motion (SPA-46-entries-75,76) and thus, without even waiting for a responsive brief from Mr. MacKnight, the court wrote to Dr. Cordero denying his request to appear by telephone at the hearing—as he had on four previous occasions- and requiring that Dr. Cordero travel to Rochester to attend a hearing in person to discuss measures to travel to Rochester (A-386).
45. Then Mr. MacKnight raised a motion (A-389). It was so disingenuous that, for example, it was titled “Motion to Discharge Plaintiff from Any

Liability...” and asked for relief under Rule 56 F.R.Civ.P. without ever stating that it wanted summary judgment while pretending that Plaintiff had not brought that motion before “as an accommodation to the parties.” Yet, it was Plaintiff who sued parties even without knowing whether they had any property in his warehouse, nothing more than their names on labels (A-364). Dr. Cordero analyzed in detail the motion’s mendacity and lack of candor (A-400). Despite its obligations under Rule 56(g) (SPA-78) to sanction a party proceeding in bad faith, the court disregarded Mr. MacKnight’s disingenuousness, just as it had shown no concern for Trustee Gordon’s false statements submitted to it. How much commitment to fairness and impartiality would you expect from a court that exhibits such ‘anything goes’ standard for the admission of dishonest statements? If that is what it allows outside officers of the court to get away with, what will it allow or ask in-house court officers to engage in?

46. Nor did the court impose on Plaintiff Pfuntner and Mr. MacKnight any sanctions, as requested by Dr. Cordero, for having disobeyed the first discovery order. On the contrary, as Mr. Pfuntner wanted, the court order Dr. Cordero to carry out the inspection within four weeks or it would order the containers bearing labels with his name removed at his expense to any other warehouse anywhere in Ontario, that is, whether in another county or another country.

9. The bankruptcy court's determination not to move the case forward

47. Although the adversary proceeding was filed on September 27, 2002, the court has failed to comply with Rule 16(b) F.R.Civ.P., (SPA-75) which provides that it "shall...enter a scheduling order..." When the court disregard its procedural obligations and allows a case to linger for lack of management, would you expect it to care much for your rights as a pro se litigant who lives hundreds of miles away?

## **VIII. Summary of the Argument**

### **A. Timely mailing and filing of the notice of appeal**

48. Dr. Cordero's timely mailed notice of appeal from the dismissal of his cross-claims against Trustee Gordon should be deemed timely filed in bankruptcy court pursuant to the coherent and consistent scheme generated by the plain language of the Bankruptcy Rules for time-limited notices and papers. The scheme provides thus:

- 1) under Rule 9006(f), (SPA-69) when a notice sent by mail triggers a period of time in which to respond with a notice or paper, that period is extended by three days in order to compensate for the time lost during the mail transit of the triggering notice or paper so that the responder may have more time to better prepare his response;

- 2) under Rule 9006(e), (SPA-69), when that notice or paper is mailed, its service is complete; and
- 3) since these provisions are found in Part IX-General Provision, and consequently are applicable to the whole Bankruptcy Code and Rules, they take precedence over the filing-within-filing-period exception of Rule 8008(a), (SPA-66), which applies narrowly to some papers served on the district court or the bankruptcy appellate panel, not the bankruptcy court, where the notice of appeal must be filed under Rule 8002 (SPA-64).

**B. Failure to apply the legal standards for a dismissal motion**

49. Dr. Cordero's cross-claims against Trustee Gordon for defamation as well as negligent and reckless liquidation of Debtor Premier were dismissed without the court applying the legal standards for adjudicating a motion under Rule 12(b)(6) F.R.Civ.P., (SPA-90). Thereunder it should have considered only the legal sufficiency of the complaint –and done so liberally since it was submitted by a pro se litigant- taking its allegations as true and examining them in the light most favorable to the non-movant.

50. Far from it and despite the fact that no discovery had occurred, the court conducted a trial on the merits in light of its own experience on the bench, applied its own notions of defamation rather than the standard of what a reasonable person would consider injurious to the reputation of another person, and

disregarded genuine issues of material fact concerning the Trustee's negligent and reckless liquidation raised not only by Dr. Cordero, but also by the Plaintiff. Given such triable issues of fact, the court could not have dismissed the cross-claims as a matter of law under Rule 56 F.R.Civ.P.

**C. Default judgment denied after compliance with statutory requirements**

51. Dr. Cordero timely applied for default judgment for a sum certain against Mr. Palmer, whose default was entered by the court clerk. Thereby all the requirements under Rule 55 were fulfilled. Nevertheless, the bankruptcy court recommended that the application be denied and that Dr. Cordero be required to demonstrate his loss. That requirement has no basis in law, for it contradicts the Rule's plain language, and negates the purpose of the warning in the summons.
52. Moreover, the equities favored Dr. Cordero, who had been defrauded by Mr. Palmer. By contrast, the latter, as the Debtor's owner, was already under the court's jurisdiction, having invoked his right under the bankruptcy law only to evade his obligation thereunder to answer a complaint. In addition, Mr. Palmer had a remedy at law under Rule 60(b), (SPA-78) to set aside the judgment. Under those circumstances, there was no justification for the court to become its advocate.
53. Nor can a court interpret and apply a legal provision in a way that contradicts its

plain language and defeats the reasonable expectations to which it gives rise. That would amount to usurping Congress' legislative role and depriving people of notice of what the law requires in order to be entitled to its rights.

54. The district court based its acceptance of the recommendation on the clearly erroneous fact that the application did not involve a sum certain. In addition, it charged the bankruptcy court with conducting an inquest into damages. In an adversarial system and a default case where the defendant has not appeared by choice rather than by membership in a class to be protected by the courts, no court can conduct an inquest, which would require it to play multiple conflicting roles; least of all a court that has prejudged the outcome of the inquest, for it cannot be the proper forum to conduct it fairly and impartiality.

**D. Court officers' pattern of bias requires removal to impartial court**

55. Both the bankruptcy and the district court together with court clerks, court assistants, and the court reporter have participated in such a long series of events of disregard of facts, law, and rules that so consistently work to the detriment of Dr. Cordero, the pro se litigant that lives hundreds of miles away, that such events cannot be explained as mere coincidence. Rather they must form a pattern of intentional and coordinated wrongdoing. Hard evidence is not legally required to create the appearance of partiality that in the minds of reasonable persons gives



rise to the inference of the court officials' bias and prejudice toward Dr. Cordero. That is enough to warrant recusal.

56. However, given the participation of so many court officers and the coordinated nature of their wrongdoing, disqualification must encompass not only the judges, but also the other court officers; otherwise the reasonable fear of unfair and prejudicial administrative treatment could not be eliminated. Thus, this case should be removed to an impartial district court, such as that of the Northern District of New York.

## **IX. The Argument**

### **A. The notice of appeal from the dismissal of the cross-claims against Trustee Gordon was timely mailed and should have been deemed timely filed**

1. The Supreme Court requires the respect of the plain language of a consistent and coherent statutory scheme such as that formed by the rules on notice of appeal

57. The U.S. Supreme Court stated in its landmark case in the area of timely filing under the Bankruptcy Code, that is, *Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership*, 13 S.Ct. 1489, 509 U.S. 380, 123 L.Ed.2d 74 (1993):

“Rule 9006 is a general rule governing the computation, enlargement, and reduction of periods of time prescribed in other bankruptcy rules.”

58. Likewise, the Supreme Court stated the following rule of statutory construction precisely in another bankruptcy case, namely, *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 240, 103 L. Ed. 2d 290, 109 S. Ct. 1026 (1989):

“[A]s long as the statutory scheme is coherent and consistent, there generally is no need for a court to inquire beyond the plain language of the statute.”

59. There is such a coherent and consistent scheme of Rules for the construction of what a timely notice of appeal is. It is based on the Rules’ plain language. To justly construe the periods for mailing and filing, one must read the rules of the F.R.Bkr.P as well as them and those of the F.R.Civ.P. as forming a whole, as a scheme. Dr. Cordero read them so and reasonably relied on their scheme. This is it:

2. Service of notice of appeal under Rule 8002(a) is complete on mailing under Rule 9006(e) and timely if timely mailed although filed by the bankruptcy clerk subsequently

60. Part IX of the F.R.Bkr.P. is titled General Provisions and contains rules of general applicability. Thus, they apply to the rules of Part VIII, which is titled Appeals to District Court or Bankruptcy Appellate Panel. Therein included is Rule 8002(a) with its ten-day period for filing a notice of appeal.

61. The Advisory Committee confirms this plain language scope of application in its Note to Rule 9006(a) (SPA-67)

“This rule is an adaptation of Rule 6 F.R.Civ.P. It governs the time for acts to be done and proceedings to be had in cases under the [Bankruptcy] Code and any litigation arising therein.”

62. Just as Rule 6 covers all Civil Rules, so does rule 9006 with respect to all Bankruptcy Rules. Hence, not only Part IX, but also specifically Rule 9006 and its computation of time provisions apply to Rule 8002 and its ten-day period to give notice of appeal.

63. One of those provisions is found in 9006(e). It provides that “service of...a notice by mail is complete on mailing,” (SPA-69).

64. The bankruptcy court entered its order dismissing Dr. Cordero’s cross-claims against Trustee Gordon on December 30, 2002. In turn, Dr. Cordero mailed his notice of appeal on January 9, 2003. Consequently, the service of that notice was complete on that day. It should also be deemed timely filed on that day.

65. To consider a timely mailed notice of appeal also timely filed is consistent and coherent with Rule 8002(a). This is so because it provides “if a notice of appeal is mistakenly filed with the district court or the bankruptcy appellate panel, [their clerks] shall note thereon the date on which it was received and transmit it to the clerk and it shall be deemed filed with the clerk on the date so noted.” Hence, a notice can be deemed filed in the bankruptcy court on a date prior to the date of actual filing by the

bankruptcy clerk.

3. The three additional days provision of Rule 9006(f) applies to the notice of appeal

66. There is also Rule 9006(f), which provides that ‘when there is a right to do an act within a prescribed time and the paper is served by mail, “three days **shall** be added to the prescribed period,”’ (emphasis added; SPA-69)
67. The right here in question is that under Rule 8001(a) Appeal as of right. It is to be exercised, pursuant to Rule 8002(a), within 10 days from the entry of the order appealed from.
68. When the order arrived in New York City after the holiday, Dr. Cordero undisputedly mailed his notice timely on Thursday, January 9, 2003. It is submitted that pursuant to the plain language of Rule 9006(e), his mailing of the notice of appeal completed service on that date.
69. What is more, because the dismissal order had been “served by mail,” Rule 9006(f) had added three days to the prescribed ten-day period to appeal from it, to January 12. But since that was a Sunday, under Rule 9006(a) ‘the act to be done of filing the notice ran until the end of the next day.’ Consequently, by operation of that rule too, Dr. Cordero’s notice was also timely filed on Monday, January 13.

4. A coherent and consistent construction of R.9006(a) and (f) does not allow their application to time-from-service provisions but not to time-from-entry-of-order ones

70. This result fulfills Rule 9006(f)'s purpose, which flows from its heading "Additional time after service by mail." It is to compensate a party for time lost in transit when a paper is "served by mail" so that a shorter time does not prejudice the party in the exercise of its right "within the prescribed period" by comparison with a party that is served personally.

71. This purpose is consistent with the broadly worded method of Rule 9006(a) for computing "**any** period of time prescribed or allowed", and that regardless of the nature of "the **act, event, or default** from which the designated period of time begins to run," (emphasis added).

72. Hence, the three additional days provision of 9006(f) applies also to periods that begin to run from the entry of an order, for what matters under it is not whether the paper is entered or served, but rather whether it has been mailed and, thus, time has been lost for which the recipient must be compensated.

73. The inclusion of Rule 8002's ten-day period within the scope of application of Rule 9006(a), (e), and (f) is compelled by the fact that it is not expressly excluded. Indeed, when Rule 9006 wanted to exclude totally or partially any Rule, it did so expressly, as in "(b)(2), Enlargement not permitted," "(b)(3), Enlargement limited," and "(c)(2) Reduction not permitted." It should

be noted that both (b)(3) and (c)(2) make express reference to Rule 8002.

74. Therefore, it would be neither coherent nor consistent to restrict the application of Rule 9006 to other Rules, including 8002, when 9006 expressly provides therefor, and even exclude those Rules altogether from subdivisions (e) and (f) when 9006 does not require to do that at all. As the Supreme Court observed:

"It is generally presumed that Congress acts intentionally and purposely when it includes particular language in one section of a statute but omits it in another;" *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 537, 128 L. Ed. 2d 556, 114 S. Ct. 1757 (1994).

75. From this analysis flows the conclusion that Rule 9006 applies to every Rule that it does not exclude expressly. This proposition too is consistent with the statement of the Supreme Court in *Pioneer*, footnote 4:

"The time-computation and time-extension provisions of Rule 9006, like those of Federal Rule of Civil Procedure 6, are generally applicable to any time requirement found elsewhere in the rules unless expressly excepted."

5. Rule 8002(a)'s ten-day period benefits from Rule 9006(f)'s three-additional-days to avoid penalizing parties that must prepare their notice of appeal

76. That Rule 8002(a) must be within Rule 9006(f)'s scope flows from their purpose and plain language. Thus, the Advisory Committee Note for Rule 9006 states that:

“This rule is an adaptation of Rule 6 F.R.Civ.P. It governs the time for acts to be done and proceedings to be had in **cases** under the Code and **any** litigation arising therein (emphasis added).

77. In turn, Rule 6 states in its Note for the 1985 Amendment (SPA-74) that parties “should not be penalized” when they cannot file because of factors, such as weather conditions or non-business days, that reduce their time to act within a prescribed period. The extension of time is needed because:

“...parties bringing motions under **rules with 10-day periods** could have as few as 5 working days to prepare their motions. This **hardship** would be **especially acute in** the case of **Rules** 50(b) [Renewing Motion for Judgment After Trial; Alternative Motion for New Trial] and (c)(2) [New Trial Motion], 52(b) [on motion for the court to amend its findings], and 59(b), (d), and (e) [on motions for new trial and to alter or amend judgment], **which may not be enlarged** at the discretion of the court...(emphasis added).

78. Such is Rule 8002(a), whose ten day period for filing the notice of appeal cannot be enlarged. Under it the factor that can cause ‘acute hardship’ is the one dealt with by Rule 9006(f), to wit, that the notice triggering the running of a prescribed period has been served by mail, thereby shortening the party’s time within which to prepare to act. To compensate for the lost time, 9006(f) adds

three days.

79. That Advisory Committee Note makes it quite clear how the 8002(a) notice of appeal comes within the purview of the 9006(f) three-additional-days provision, which is intended in particular for 1) rules with ten-day periods; 2) with no possibility of enlargement at the court's discretion; 3) yet subject to being reduced to as few as 5 working days; and 4) concerning appeals for new trial or 5) to alter or amend judgment.

80. Dr. Cordero, a pro se appellant, was filing a notice of appeal for the first time ever. He had less than 5 working days before the 10-day period, triggered by the entry of the dismissal order on December 30 and including the New Year's Day, ran out on Thursday, January 9. But before he could prepare to act, the order had to arrive in the mail from Rochester. No doubt this constituted the kind of acute hardship that Rule 6 intends to prevent and that Rule 9006(f) lessens by adding three days to the prescribed period. How much more of an acute hardship it would have been if Dr. Cordero had had to mail the notice from New York City so that it would arrive back in Rochester by Thursday the 9<sup>th</sup>?

6. Since the notice of appeal is to be filed in the bankruptcy court, not the district court or BAP, it is deemed filed when mailed so that the 8008(a) filing-within-filing-period exception is not applicable to it

81. Part IX General Provisions does not contain the notion that a notice must be filed



strictly within the period for filing. It comes from a subdivision of Rule 8008

“Rule 8008(a) Papers required or permitted to be filed with **the clerk of the district court or the clerk of the bankruptcy appellate panel** may be filed by mail addressed to the clerk, but filing is not timely unless the papers are received by the clerk within the time fixed for filing, except that briefs are deemed filed on the day of mailing.” (emphasis added)

82. Wait a moment! The notice of appeal is not “required or permitted to be filed with **the clerk of the district court or the clerk of the bankruptcy appellate panel,**” as follows from the last sentence of Rule 8002(a), which considers it a mistake to do so. The filing-within-filing-period requirement of Rule 8008(a) is an exception!

83. Indeed, if the general rule of the F.R.Bkr.P. were that the timeliness of a filing was determined by whether the clerk received and docketed a notice or paper within the fixed filing time, then it would be superfluous for Rule 8008(a) to restate the obvious, for how else could it be?

84. The limited scope of application of the filing-within-filing-period exception is underscored by the fact that it contains an exception within itself: “except that briefs are deemed filed on the day of mailing.” As an exception, it must be construed restrictively and applied only when a Rule expressly calls therefor;

otherwise, the exception would gut one of F.R.Bkr.P. “Part IX-General Provisions,” namely “Rule 9006. Time.” Hence, its provisions on time computation, complete-on-mailing, and three-additional-days are the ones applicable to a notice of appeal from a bankruptcy court order, which is to be both mailed to and filed in bankruptcy court.

85. This exception is further weakened by scooping out of it another exception. Thus, the Advisory Committee Notes state for Rule 8008 as a whole, rather than just its exception, that, “This rule is an adaptation of F.R.App.P. Rule 25.” Appellate Rule 25 further narrows the exception by applying the complete-on-mailing provision to the filing of appendixes. Its Notes for 1967 Adoption provide the rationale that supports the rule of general applicability:

An exception is made in the case of briefs **and appendixes** in order to afford the parties the maximum time for their preparation,” (emphasis added).

86. That’s the rationale for the provision’s limited scope: It reduces the necessary time for adequate research and writing as well as sound decision making. All that for no good reason at all. Hasty filings under the duress of time constraints unjustified by law or practice only produce appeals that are ill considered by both counsel and client and that end up clogging the judicial system. That can certainly not be the intent of the judges that administer that system or the drafters in the

Judicial Conference and Advisory Committee, let alone Congress, which would have to provide more funds to run a system overwhelmed by appeals filed just to beat the clock. Under those circumstances, does it sound fair to brand such appeals “superfluous” and sanction counsel for having filed them?

87. Consequently, the ten-day period for filing the notice of appeal with the bankruptcy court under Rule 8002 is not subject to the filing-within-filing-period exception, which applies only to filing with the district court or bankruptcy appellate panel under Rule 8008(a). Instead, it is subject to and benefits from the complete-on-mailing and three-additional-days provisions of Rule 9006, which the Supreme Court in *Pioneer* recognized to be “a general rule” in the bankruptcy context. Since Dr. Cordero mailed his notice within the 10-day period, its filing thereafter by the bankruptcy clerk should have been deemed timely.

7. On the same grounds as well as on factual and equitable grounds, the motion to extend time to file the notice of appeal should have been found timely

88. This Court of Appeals stated in *In re Bell*, 225 F.3d 203, 209 (2d Cir. 2000), that in an appeal from a district court's review of a bankruptcy court ruling, the Court of Appeals' review of the bankruptcy court is "independent and plenary."

89. Thus, the Court should review the order of the bankruptcy court of February 18, 2003 (SPA-9a,22) denying Dr. Cordero's motion to extend the time to file notice

of appeal under Rule 8002(c)(2).

90. Dr. Cordero raised that motion timely on January 27 (A-214) and in addition in the bankruptcy court, not in the district court, he reasonably applied to it both the complete-on-mailing and the three-additional-days provisions of Rule 9006(e) and (f), respectively. Thus, as a matter of law based on the grounds discussed above for the notice of appeal, it should have been held timely filed too.

91. But also as a matter of fact, for even the opposing party, Trustee Gordon, admitted in his brief in opposition to the extension that Dr. Cordero's motion had been timely filed on January 29 (A-235).

92. Yet, the bankruptcy court surprisingly found it to have been filed on January 30, and thereby untimely by one day (SPA-9a). However, the discrepancy between the Trustee's admission against his legal interest and an unreliable docket,<sup>4</sup> created factual doubt that the court should have resolved on equitable grounds in favor of granting the extension, thereby upholding 1) the courts' policy of adjudicating controversies on the merits, and 2) parties' substantial right in having their day in court rather than dismissing both controversies and parties on procedural considerations.

93. This Court has an additional equitable ground to set aside the finding that the filing occurred on January 30, namely, that as part of the pattern of court officers'

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<sup>4</sup> See footnote 1.

disregard for facts, law, and rules laid out in para.-20 et seq. above, that finding is suspect and must not stand because “refusal to take such action appears to the court inconsistent with substantial justice,” as provided under Rule 61 F.R.Civ.P., applicable under Rule 9005 F.R.Bkr.P.

94. Applying that principle is particularly pertinent in the case of pro se litigants because as this Court has stated:

"A party appearing without counsel is afforded extra leeway in meeting the procedural rules governing litigation, and trial judges must make some effort to protect a party so appearing from waiving a right to be heard because of his or her lack of legal knowledge." *Enron Oil Corp. v. Diakuhara*, 10 F.3d 90, 96 (2d Cir. 1993).

“...pro se litigants are afforded some latitude in meeting the rules governing litigation,” *Moates v. Barkley*, 147 F. 3d 207, 209 (2d Cir.1998).

95. This is all the more pertinent in the case of Dr. Cordero because if he “fail[ed] to follow a rule of procedure [it] was a mistake made in good faith” since he relied on the plain language of the Rules and the coherent and consistent scheme that they form and showed respect for the court and the Rules by timely mailing both the notice of appeal and the motion to extend. Hence, the Court should hold that the mistake was made through excusable neglect; otherwise, to dismiss his notice and deny the motion would frustrate his reasonable

expectation, which “would bring about an unfair result;” *Enron Oil, id.*, at 96.

**B. The court disregarded the standards of law applicable to Trustee Gordon’s motion to dismiss Dr. Cordero’s cross-claims for defamation as well as negligent and reckless performance as trustee**

96. In response to Dr. Cordero cross-claims, Trustee Gordon claimed that even if true, “such claims are not legally sufficient and must be dismissed” (A-137), and the bankruptcy court dismissed them (SPA-1).

97. Whether this dismissal under Rule 12(b)(6) F.R.Civ.P. was improper is reviewed de novo by this Court, *O’Brien v. Alexander*, 101 F.3d 1479 (2d Cir. 1996) and it will affirm it “only if it appears **beyond doubt** that the plaintiff can prove no set of facts in support of her claim which would entitle her to relief” (emphasis added) *Legnani v. Alitalia Linee Aeree Italiane, S.P.A.*, 274 F.3d 683 (2d Cir. 2001).

98. Citing *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957), the O’Brien Court recognized that the standard for deciding a 12(b)(6) motion is that the factual allegations contained in the complaint are accepted as true and all permissible inferences are drawn in plaintiff’s favor.

99. The emphasis added to “**beyond doubt**” is particularly important because it highlights how little the plaintiff is required to show at that early stage of the

proceeding in order to survive a motion to dismiss. Consequently, this Court has stated that a claim must not be dismissed merely because the trial court doubts the plaintiff's allegations or suspects that the pleader will ultimately not prevail at trial, *Leather v. Eyck*, 180 F3d. 420, 423, n.5 (2d Cir. 1999).

### 1. The claim of defamation

100. Dismissal in a case of defamation is particularly inappropriate because any alleged privilege against an action in defamation is defeated by a showing of malice and a defamatory motive, which are elements involving state of mind. Without development of the facts through discovery, state-of-mind cases are unsuitable for a 12(b)(6) motion to dismiss, *Pryor v. National Collegiate Athletic Ass'n*, 299 F3d. 548, 565 (3d Cir. 2002).

101. For the reasons discussed above (para.-30), Court Reporter Dianetti's transcription of Dr. Cordero's statements at the hearing of the dismissal motion is "unintelligible" (SPA-262). By contrast, her transcription of the court's statements is comprehensible and readily reveal that the court made no effort whatsoever to apply these standards before it opened with its conclusion that "First of all, I'm going to grant the Trustee's motion and I'm going to dismiss your cross claims" (A-274), in bulk fashion, before any analysis.

102. What the court stated in its next breath is even more indefensible, for it constitutes the denial of the fundamental purpose of a system of law:

First of all, with respect to the defamation, quite frankly, these are the kind of things that happen all the time, Dr. Cordero, in Bankruptcy court.

103. UNBELIEVABLE! A judge that says that because everybody makes defamatory statements, another one does not make any difference so the plaintiff just has to take it and be dismissed. What kind of legal system would we have, not to mention the society we would end up with, if just because everybody commits torts, the courts need not take action to provide redress to a victim?
104. The court's statement is all the more reprehensible because here Trustee Gordon made defamatory statements about...you!, the reader, here in New York City, inquiring about the property that you left in storage hundreds of miles away in Rochester, and for which you have paid fees, including insurance, for almost 10 years, but you are lied to by the people that are supposed to store your property, for it turns out that they do not even know where it is, so they send you to the Trustee, who throws you back at them, and when you find your property through your efforts in another warehouse, the owner will not release it because the Trustee can sue him and he tells you to go get it from the Trustee, except that the Trustee won't even take your calls or answer your letters, and on the third time you call to record a message or ask the secretary, he sends you a letter improper in its tone and unjustified in its content that enjoins you not to call his office any



more and to fend for yourself, so you ask the judge, the one overseeing the Trustee's liquidation of the one who took your money and lost your property, to review the Trustee's performance and fitness as trustee, only to find out that the Trustee writes to the court alleging that you have made more "more than 20 telephone calls" to the Trustee's staff, and you became "very angry" and "belligerent," "became more demanding and demeaning to [the Trustee's] staff" because due to your "poor understanding" you just don't get it that the Trustee has nothing to do with your property, "Accordingly, [the Trustee] do not think that it is necessary for the Court to take any action on [your] application," and the Trustee then sends copies of that description about you to his supervisor at the U.S. Trustee and to other professionals in Rochester.

105. What is your state of mind now? Would you agree with the Court of Appeals that such description of you

"**may** "induce an evil opinion of [you] in the minds of right-thinking persons," *Dillon v. City of New York*, 261 A.D.2d 34, at 38, 704 N.Y.S.2d 1, at 5 (1st Dep't 1999)...and are therefore **capable** of a defamatory meaning," *Albert v. Loksen*, dkt. no. 99-7520 (2d Cir. February 2, 2001)?, (emphasis added).

106. If you just "may" prove that, then you must survive the dismissal motion given

that:

“the court need only determine that the contested statements “are reasonably susceptible of defamatory connotation.” If any defamatory construction is possible, it is a question of fact for the jury whether the statements were understood as defamatory. *Purgess v. Sharrock*, 33 F.3d 134, 140 (2d Cir. 1994),” *Albert*, id.

107. But the court failed to apply that legal standard...or any acceptable standard since it instead condoned the Trustee’s submission to it of defamatory and false statements intended to dissuade it and the his supervisor from reviewing his conduct because “it’s all part really of the Trustee just trying to resolve these issues,” (A-11,lines-10-12).

## 2. Negligence and reckless performance as trustee

108. In deciding a 12(b)(6) motion, “The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims,” *Scheuer v. Rhodes*. 416 U.S. 232, 236, 94 S.Ct. 1683, 1686, 40 L.Ed.2d 90 (1974).

109. Here it was all the more necessary for the court to allow discovery precisely because the Trustee, who was appointed in December 2001, to liquidate Premier, the moving and storage company, had failed even to identify the contracts between Premier and its clients as income-producing assets of the estate, which

for him to liquidate, he had to inform the clients. Moreover, when the other parties referred Dr. Cordero to the Trustee, the latter provided no information and limited himself to volleying him back to them by his letters of June 10 and September 23, 2002 (A-16,1).

110. Therefore, it was contrary to the facts for the court to state that “the paper work that I read indicated to me he gave you a heads up on that very early on,” (A-278,lines-7-8). What paperwork? Is the court referring to the Trustee’s letter of June 10 (A-16), sent six months after his appointment and only because Dr. Cordero had called the Trustee, left messages for him, and then wrote asking him to provide the information?

111. Then the court goes on to make an astonishing statement:

“Here I think you had warning that you need to get real proactive about this, not necessarily from a distance. It would have been nice if you had someone on board here in Rochester for a couple of days really kind of seeing this thing through...” (A-278,lines 18-23).

112. This statement is astonishing because it flies in the face of the facts. Indeed, for all those months during which Mr. Palmer, Premier’s owner, and Mr. Dworkin, the manager/owner of the Jefferson-Henrietta warehouse used by Mr. Palmer, lied to Dr. Cordero about his property being safe in that warehouse without ever mentioning that Premier was bankrupt, let alone in liquidation, and once Mr.

Dworkin referred Dr. Cordero to M&T Bank's David Delano and the latter assured Dr. Cordero that he had seen containers with his name in the Jefferson-Henrietta warehouse, what reason was there in the court's mind for Dr. Cordero to go to Rochester? Likewise, after Mr. Dworkin and Mr. Delano referred Dr. Cordero to the Trustee, but the latter would neither take his calls nor answer his letters, what was Dr. Cordero supposed to do in Rochester? And once these characters admitted that they did not know where Dr. Cordero's property was, how did the court expect Dr. Cordero to look for it by going to Rochester?

113. The court's blaming Dr. Cordero for not having gone to Rochester or hire a lawyer there is most astonishing because it knows that the containers labeled with his name were found not even in Rochester, but rather in a close down warehouse in Avon. Its owner is Mr. James Pfuntner, known to the court since...(SPA-26-entry 19)...

114. Does this sound like the discussion of the court's legal standard for deciding a 12(b)(6) motion to dismiss? Of course not!, for the court was instead conducting a trial, one in which Dr. Cordero would not be allowed to engage in discovery or present evidence on issues like:

1) Why Trustee Gordon failed to perform his duties? Under 11 U.S.C. §704(4), he had to "investigate the financial affairs of the debtor." For its part, the U.S. Trustee Manual, Chapter 7 Case

Administration, §2-2.2.1 requires that “A trustee must also ensure that...records and books are properly turned over to the trustee.” One obvious use of those “records and books” is to find out where debtor’s assets may be located, such as income-producing contracts. Was the Trustee negligent in not locating them, and if he did, was he reckless in abandoning them to Jefferson-Henrietta Associates (SPA-17,18;34-entry-98), in not liquidating them for the creditors’ benefit, and in not contacting Dr. Cordero, a contractual party and “party in interest”?

2) Whether the Trustee discharged his duty under §2-2.1. of the Trustee Manual, which requires that “the trustee should consider whether sufficient funds will be generated to make a meaningful distribution to creditors, **prior to administering the case as an asset case;**” (emphasis added).

Was the Trustee negligent or reckless in qualifying Premier as an asset case, only to end up issuing a No Distribution Report? (SPA-31-entries-70-71;34-entries-95,98;36-entry-107;

3) Was Trustee Gordon negligent or reckless in failing to examine Premier’s docket (SPA-26-entry-19), which would have led him to discover Premier’s use of Mr. Pfunter’s warehouse, and in failing to examine

Premier's records, whereby he would have found out -as did Mr. Carter of Champion (A-48,49;109, ftnts-5-8;352)- that Premier had assets in Mr. Pfuntner's warehouse, including containers covered by storage contracts, such as Dr. Cordero's?

115. In light of these and other genuine issues of material fact, the bankruptcy court could not properly have converted the 12(b)(6) motion into one for summary judgment under Rule 56 F.R.Civ.P., (SPA-90,77) nor did it apply any law whatsoever to justify rendering judgment for the Trustee as a matter of law, *White v. ABCO Engineering Corp.*, 221 F.3d 293 (2d Cir. 2000). Was it for having failed to realize or having tolerated Trustee Gordon's negligence and recklessness that the court dismissed the cross-claims against him, has not required disclosure, and has failed to issue a 16(b) scheduling order, thus leaving the case without management for 10 months?

116. As this Court has stated, in a motion to dismiss, the 'court's clear focus is on the pleadings, not the evidence submitted;<sup>5</sup> *Manning v. Utilities Mut. Ins. Co., Inc.*, 254 F.3d 387 (2d Cir. 2001). It reviews the dismissal *de novo*, *Weeks v. New York State (Div. of Parole)*, 273 F.3d 76 (2d Cir. 2001), and not only does it construe the complaint liberally in the light most favorable to the plaintiff, *Connolly v.*

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<sup>5</sup> None in this case since discovery had not even started and till this day the court has issued no scheduling order.

*McCall*, 254 F.3d 36 (2d Cir. 2001), but in the case of a pro se litigant, as is Dr. Cordero, this Court also ‘applies “a more flexible standard to evaluate the complaint’s sufficiency than it would when reviewing a complaint submitted by counsel,”’ *Lerman v. Board of Elections*, 232 F.3d 135, *certiorari denied NYS Bd. of Elections v. Lerman*, 121 S.Ct. 2520, 533 U.S. 915, 150 L.Ed.2d 692 (2d Cir. 2000).

117. It is respectfully submitted that Dr. Cordero’s complaint would have been found sufficient if the lower court had ‘merely assessed it for the “legal feasibility”’ of the claim that Trustee Gordon had been negligent and reckless in liquidating Premier, instead of improperly using the occasion “to assay the weight of the evidence which might be offered in support thereof,” *Sims v. Artuz*, 230 F.3d 14 (2d Cir. 2000).

118. The likelihood of establishing the Trustee’s negligence and recklessness is all the greater in light of his comment in his memorandum opposing the motion to extend time to appeal (A-238), that, “As the Court is aware, the sum total of compensation to be paid to the Trustee in this case is \$60.00.” There it is! Trustee Gordon had no financial incentive to do his job...nor did he have any sense of duty! What does it reveal about the court, which he knows from his prior appearance before it, that he deemed the court would excuse his hack job on Premier if only it were reminded that he would be paid little, even though he

himself qualified Premier as an asset case?

**C. Palmer, owner of the bankrupt Debtor in liquidation, was served, but failed to appear, yet the application for default judgment for a sum certain was denied**

1. The coherent and consistent scheme for taking default judgment

119. Rules 7004 F.R.Bkr.P. and 4 F.R.Civ.P. (SPA-64,71) provides that the summons must inform the defendant that his “failure to [appear and defend] **will result** in a judgment by default against” him (emphasis added).

120. The summons issued by the bankruptcy court bore this boldface warning across the page:

**IF YOU FAIL TO RESPOND TO THIS SUMMONS, *YOUR FAILURE WILL BE DEEMED TO BE YOUR CONSENT TO ENTRY OF A JUDGMENT BY THE BANKRUPTCY COURT AND JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT*** (emphasis added)

121. For their part, Rules 7055 F.R.Bkr.P. and 55 F.R.Civ.P., (SPA-64,76) provide that if a party fails to appear and that fact is established, “the clerk **shall** enter the party’s default” (emphasis added). Moreover, “[w]hen the plaintiff’s claim against the defendant is for a sum certain...” and the plaintiff submits an “affidavit of the amount due [the clerk] shall enter judgment for that amount.”

122. Only “In all other cases,” that is, when the amount is not “for a sum certain or for a sum which can by computation be made certain,” or



when the defendant has appeared in the action, would the clerk be unable to enter judgment or carry it into effect. For those cases, Rule 55(b)(2) provides that “the **party entitled** to a judgment by default shall apply to the court therefor,” (emphasis added).

123. What is in question is not the plaintiff’s entitlement to default judgment, but rather the clerk’s ability to enter or carry it into effect because he cannot make the sum certain even by computation. But if the fact of defendant’s non-appearance is established and the sum of the judgment is certain, the request for default judgment never gets to the court. The clerk has no margin for discretion, for he “shall enter judgment for that amount.”

124. If a non-appearing party has been defaulted, only he can reach the court to oppose default judgment. There he can either show good cause for setting aside the entry of default under Rule 55(c) or, if default judgment has already been entered, contest it under Rule 60(b) (SPA-77).

125. A non-appearing party does not automatically become a member of a class, such as that of infants or incompetent persons, requiring the protection of the court against entry of default judgment. Such party knew that his non-appearance “will result in a judgment by default” and ‘he is deemed to have consented to its entry.’ By contrast, the plaintiff is “the party entitled to [that] judgment” against him.

126. Congress chose to approve this coherent and consistent scheme in plain language; 28 U.S.C. §§2074(a) and 2075 (SPA-87). Hence in the words of the Supreme Court in *Ron Pair Enterprises*, para.-58 above, there is “no need for a court to inquire beyond the plain language of the statute.”

2. The legal scheme for default judgment does not allow a court to thwart a plaintiff’s right to default judgment for a sum certain with the requirement that he demonstrate damages

127. Therefore, once the plaintiff has fulfilled his obligations as expressed by the plain language of the law, he is entitled to the right that the law has promised him. A court has no power to frustrate his reasonable expectation to his entitlement by substituting itself for Congress in order to unfairly surprise him with an additional obligation of which he received no notice. While the law holds that ignorance of the law is no excuse, the converse is that knowledge of the law and compliance with it is sufficient to obtain the benefit of the law. A court cannot require knowledge of jurisprudence too, much less of that which distorts the scheme of the law.

128. Mr. Palmer failed to answer. Dr. Cordero applied for default judgment against him on December 26, 2002, for the sum certain of \$24,032.08 (A-294). Bankruptcy Clerk Paul Warren, though belatedly, entered his default on February 4, 2003. Under the plain language of that warning in the summons and the terms

of Rule 55, all the requirements for the vesting in Dr. Cordero of his right to default judgment against Mr. Palmer were met.

129. Yet, the bankruptcy court, without citing any legal basis whatsoever, recommended to the district court that it not enter default judgment, but rather,

“since Cordero has failed to demonstrate that he has incurred the loss for which he requests a Default Judgment, in this Court’s opinion, the entry of the Default Judgment would be premature,” (SPA-14-para.-9).

130. The District Court accepted the recommendation and compounded the disregard of the law by disregarding the fact that the application was for a sum certain:

“Even if the adverse party failed to appear or answer, third-party plaintiff must still establish his entitlement to damages since the matter does not involve a sum certain” (SPA-16).

131. However, this reason for denying default judgment implicitly contains the grounds for its grant: If the matter involved a sum certain, the plaintiff would have established his entitlement to damages. Well, it is for a sum certain! The court’s finding is clearly erroneous and prejudicial, for it is outcome determinative. It constitutes a reviewable abuse of discretion under *Sussman v. Bank of Israel*, 56 F.3d 450, 456 (2d Cir.), cert. denied, 516 U.S. 916 (1995).

132. Moreover, the requirement that Dr. Cordero demonstrate damages is a question of law, which, even if mixed with facts, this Court reviews *de novo*, *Davis v. NYV Housing Authority*, 278 F.3d 64, certiorari denied 122 S.Ct. 2357 (2d Cir. 2002).

3. The equities are in favor of Dr. Cordero obtaining default judgment against Mr. Palmer

133. In this case there are also equitable grounds for enforcing the plain language of the law in favor of Dr. Cordero. For one thing, Mr. Palmer has dirty hands for not appearing in bankruptcy court, under whose jurisdiction he is since he sought its protection under the Bankruptcy Code (SPA-24-entry-3;25-entries-12-13) and where he was represented by counsel, Raymond Stilwell, Esq. (SPA-23). Mr. Palmer lied to Dr. Cordero about the safety and whereabouts of his property, which he abandoned, although he kept cashing his storage fees and defrauded him of his insurance fees by providing no insurance coverage. He concealed from Dr. Cordero that Premier was bankrupt and, in fact, already in liquidation, thereby depriving him of an opportunity to take care of his property as appropriate; then, he disappeared. Why should the courts spare him default judgment by denying it to Dr. Cordero, who has complied with all legal requirements for it? This Court can reach this question on review because, as it stated in *In re Nextwave Personal Communications, Inc.*, 200 F.3d 43, 50 (2d Cir. 1999), “Our review of the district court's decision affirming the bankruptcy court orders is

plenary."

4. There is no legal basis for the district court to require an inquest into damages nor the procedural set up or practical means for the bankruptcy court to conduct it

134. The district court invoked no basis in law for its appointment of the bankruptcy court to conduct an inquest into damages. There can hardly be any. Indeed, ours is an adversarial system of justice and this is a civil proceeding for default judgment in bankruptcy court, where by definition there is no defendant, no prosecutor, and no jury. Nor is there a written statement on how to conduct the inquest or what standard of 'demonstration' Dr. Cordero must meet, which deprives him of his constitutional right to notice of what the government and its officers require of him and those similarly situated.

135. In practice, with what means would Dr. Cordero prove damages? The court has for the ten months of this case failed to require the parties to provide even initial disclosure –Dr. Cordero disclosed numerous documents with his pleadings and motions- and has not issued even a Rule 16(b) scheduling order for discovery (SPA-75), only two oral orders requiring Dr. Cordero to travel to Rochester to inspect storage containers, while allowing Mr. Pfunter not to comply with them.

136. When examining whatever it is that Dr. Cordero may be required to submit, the bankruptcy court would have but two choices: approve it, that is, if he can lay his hands on the required evidence; or question it, in which case the court plays

simultaneously the roles of opposing counsel, defendant's expert witness, regulator that makes and applies rules and standards as it goes, fact finder, and judge. That is an impossible role for a court to play efficiently, let alone for these two lower courts to perform impartially and fairly in light of the bias and prejudice with which they have so far treated Dr. Cordero (para.-20 above) The legal basis for freeing him from further abuse at their hands is discussed next.

**D. The court officers' pattern of intentional and coordinated acts supporting the reasonable inference of bias and prejudice warrants removal to an impartial court, such as the district court for the Northern District of New York**

137. Public confidence in those that administer justice is the essence of a system of justice. Thus, this Court has adopted the test of objective appearance of bias and prejudice: Whether "an objective, disinterested observer fully informed of the underlying facts [would] entertain significant doubt that justice would be done absent recusal." *United States v. Lovaglia*, 954 F.2d 811, 815 (2d Cir. 1992).

138. If this objective test for judicial disqualification is met, recusal of the judge is mandated under 28 U.S.C. §455(a), which requires disqualification "in any proceeding in which [the judge's] impartiality **might** reasonably be questioned" (emphasis added; SPA-86). It follows that to disqualify a judge, an opinion based on reason, not certainty based on hard evidence of

partiality, is all that is required and what provides the objectivity element of the test. This is so because, as the Supreme Court has put it, “[t]he goal of section 455(a) is to avoid even the appearance of partiality...to a reasonable person...even though no actual partiality exists because the judge...is pure in heart and incorruptible,” *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 860 (1988).

139. The Supreme Court’s construction derives from the legislative intent for §455(a), which Congress adopted on the grounds that “Litigants ought not have to face a judge where there is a reasonable question of impartiality,” S. Rep. No. 93-419, at 5 (1973); H.R. Rep. No. 93-1453 (1974), *reprinted in* 1974 U.S.C.C.A.N. 6351, 6355. Thus, Congress provided for recusal when there is ““reasonable fear” that the judge will not be impartial, *id.*

140. The test is reasonably easy to meet because more important than keeping the judge in question on the bench is preserving the trust of the public in the system of justice. Whether the judge is aware of his bias or prejudice is immaterial given that “[s]cienter is not an element of a violation of §455(a),” since the “advancement of the purpose of the provision -- to promote public confidence in the integrity of the judicial process -- does not depend upon whether or not the judge actually knew of facts creating an appearance of impropriety, so long as the public might

reasonably believe that he or she knew." *Liljeberg*, at 859-60.

141. The facts stated in 20 above are apt to raise the inference of lack of impartiality and fairness, which is at the heart of justice. Moreover, a reasonable person can well doubt the coincidental nature of such a long series of instances of disregard of facts, law, and rules of procedure, all of which consistently harm Dr. Cordero and spare the other parties of the consequences of their wrongful acts. If these court officers had through mere incompetence failed to proceed according to fact and law, then all the parties would have shared and shared alike the negative and positive impact of their mistakes.

142. The sharing here has been in the bias and prejudice shown by the bankruptcy judge, the court reporter, the clerk of court, the district judge, and even the assistant clerks. Indeed, the latter's participation in one event cannot possibly, let alone reasonably, be explained away by coincidence. Judge for yourself:

143. Dr. Cordero knew that to perfect this appeal, he had to comply with Rule 6(b)(2)(B)(i) F.R.A.P. (SPA-81) (SPA-81) by submitting his Redesignation of Items on the Record and Statement of Issues on Appeal. He was also aware of the suspected manipulation of the filing date of his motion to extend time to file the notice of appeal, which so conveniently prevented him from refiling his notice of appeal to the district court (para.-23 above). Therefore, he wanted to make sure of mailing his Redesignation and Statement to the right court. To that end, he



phoned both Bankruptcy Case Administrator Karen Tacy and District Appeals Clerk Margaret (Peggy) Ghysel. Both told him that his original Designation and Statement submitted back in January (A-ii;1-152) was back in bankruptcy court; hence, his Redesignation and Statement was supposed to be sent to the bankruptcy court, which would combine both for transmission to the district court, upstairs in the same building.

144. But just to be extra safe, Dr. Cordero mailed on May 5 an original of the Redesignation and Statement to each of the court clerks. What is more, he sent one attached to a letter to District Clerk Rodney Early (SPA-61).

145. It is apposite to note that in the letter to Mr. Early, Dr. Cordero pointed out a mistake, that is, that in the district court's acknowledgement of his notice of appeal to this Court, the district court had referred to each of Dr. Cordero's actions against Trustee Gordon and Mr. Palmer as *Cordero v. Palmer*. (Was it by pure accident that the mistake used the name Palmer, who disappeared and cannot be found now, rather than that of Gordon, who can easily be located?)

146. Imagine the shock when Dr. Cordero found out on May 24 that the Court of Appeals docket for his appeal, the record of which the district court had transferred to it on May 19, showed no entry for his Redesignation and Statement. Worse still, he checked the lower courts' dockets and neither had entered it or even the letter to Clerk Early (SPA-47,55)! He scrambled to send a copy to

Appeals Court Clerk Roseann MacKechnie (SPA-60). Even as late as June 2, her Deputy, Mr. Robert Rodriguez, confirmed to Dr. Cordero that the Court had received no Resignation and Statement or docket entry for it from either the bankruptcy or district courts. Dr. Cordero had to call both lower courts to make sure that they would enter this paper on their respective dockets. His May 5 letter to Clerk Early was entered only on May 28 (SPA-62).

147. The excuse that these court officers gave as well as their superiors, Bankruptcy Clerk Paul Warren and District Deputy Rachel Bandyh, that they just did not know how to handle a Resignation and Statement, is simply untenable. Dr. Cordero's appeal cannot be the first one ever from those courts to this Court; those officers must know that they are supposed to record every event in their cases by entering each in their dockets; and 'certify and send the Resignation and Statement to the circuit clerk,' as required under Rule 6(b)(2)(B) (SPA-81). Actually, it was a ridiculous excuse!

148. No reasonable person can believe that these omissions in both courts were merely coincidental accidents. They furthered the same objective of preventing Dr. Cordero from appealing. The officers must have known that the failure to submit the Resignation and Statement would have been imputed to Dr. Cordero and could have caused this Court to strike his appeal.

149. But there is more. Rules 4(a)(1)(A) and 28(a)(C) F.R.A.P. (SPA-80,82) consider

jurisdictionally important that the dates of the orders appealed from and the notice of appeal establish the appeal's timeliness. This justifies the question whether the following omissions could have derailed Dr. Cordero's appeal to this court and, if so, whether they were intentional. Indeed, as of last May 19, the bankruptcy court docket no. 02-2230 for the adversary proceeding *Pfuntner v. Gordon et al* did not carry an entry for the district court's March 27 denial "in all respects" of Dr. Cordero's motion for reconsideration in *Cordero v. Gordon*. By contrast, it carries such an entry for the district court's denial, also of March 27, of Dr. Cordero motion for reconsideration in *Cordero v. Palmer* (SPA-46-entries-69,66). Also on May 19, the district court certified the record on appeal, but did it fail to send copies of either of the March 27 decisions that Dr. Cordero is appealing from and which determine his appeal's timeliness? The fact is that this Court's docket for this case, no. 03-5023, as of July 7, 2003 (SPA-62), does not have entries for copies of either of the March 27 decisions, although it carries entries for the earlier decisions of March 11 and 12 that Dr. Cordero had moved the district court to reconsider. However, Dr. Cordero's notice of appeal to this Court (SPA-21) makes clear that the March 27 orders are the principal orders that he is appealing from (SPA-9,19).

150. Is this evidence that the bankruptcy and district court officers enter in their dockets and send to this Court just the notices and papers that they want? Does

this show how they could have manipulated the filing date of Dr. Cordero's motion to extend time to file notice of appeal (para.-25 above) and omit entering and sending his Resignation of Items and Statement of Issues (para.-143 above)? If those court officers dare tamper with the record that they must submit to the Court of Appeals, what will they not pull in their own courts on a black-listed pro se party living hundreds of miles away? Will you let them get away with it?

## **X. Relief sought**

151. ...if not, you may grant what Dr. Cordero respectfully requests of this Court:

- 1) To open an investigation into these court officers' pattern of coordinated and abusive conduct in order to determine the officers' impact on this case in particular and on their cases in general and then deal with them in a way that will enhance public confidence in those courts and our system of justice;
- 2) To transfer this case to another court unrelated to the parties in this case, unfamiliar with the officers in these two courts, and at a distance from all of them, such as the District Court for the Northern District of New York; which can pick up the case at almost its beginning where it has lingered without management since its filing back in September 2002;
- 3) To vacate the dismissal of Dr. Cordero's cross-claims against Trustee

Gordon and of his notice of appeal from that dismissal, and allow those claims to proceed to discovery and trial; otherwise, to vacate the denial of Dr. Cordero's motion to extend time to file notice of appeal and grant it so that the notice may be filed in the court of transfer;

- 4) To grant Dr. Cordero's application for default judgment against David Palmer;
- 5) To grant Dr. Cordero any other relief that to the Court may appear just and fair.

## **XI. Certificate of Compliance with Rule 32(a) F.R.A.P.**

### **A. Type-volume limitation**

This brief complies with the type-volume limitation of F.R.A.P. 32(a)(7)(B) because it contains 13,990 words, excluding the parts of the brief exempted by F.R.A.P. 32(a)(7)(B)(iii).

### **B. Typeface and type style requirements**

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2002 in 14 point normal Times New Roman with quotes in 14 point normal Bookman.

Respectfully submitted on

July 9, 2003,

59 Crescent Street  
Brooklyn, NY 11208

*Dr. Richard Cordero*

Dr. Richard Cordero  
Appellant pro se  
tel. (718) 827-9521

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UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

IN RE:

PREMIER VAN LINES, INC,

Debtor

JAMES PFUNTER,

Plaintiff,

vs.

KENNETH W. GORDON, AS TRUSTEE IN  
BANKRUPTCY FOR PREMIER VAN LINES, INC.,  
RICHARD CORDERO, ROCHESTER AMERICANS  
HOCKEY CLUB, INC. AND M&T BANK,

Defendants.

RICHARD CORDERO,

Third Party Plaintiff,

vs.

DAVID PALMER, DAVID DWORKIN,  
DAVID DELANO AND JEFFERSON HENRIETTA  
ASSOCIATES,

Third Party Defendants

Chapter 7

Case No: 01-20692

AP No.: 02-2230

**ORDER TO  
DISMISS CROSS-CLAIM  
AGAINST TRUSTEE IN  
AN ADVERSARY  
PROCEEDING**

TAKE NOTICE OF THE ENTRY  
OF THIS ORDER ON 12/30/02  
PAUL R. WARREN, CLERK  
U.S. BANKRUPTCY COURT

BY: [Signature]  
Deputy Clerk

DATE: 12/30/02

The Chapter 7 Trustee, Kenneth W. Gordon, having moved this Court by Notice of Motion dated December 5, 2002 for an Order dismissing cross-claims against the trustee and having submitted to the Court his affirmation dated December 5, 2002 in support of the motion and upon hearing the Chapter 7 Trustee, Kenneth W. Gordon, in support of the Trustee's Motion and Dr. Richard Cordero, having submitted his Affirmation with attached exhibits dated December 10, 2002 in opposition to the Trustee's motion and upon hearing Dr. Cordero in opposition to the motion and the Court having reviewed that all papers and proceedings had herein, and after due deliberation it is hereby

**ORDERED**, that the Trustee's Motion to Dismiss Cross-Claims Against the Trustee is

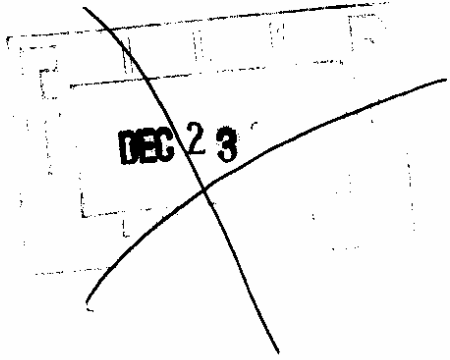
granted and that Dr. Cordero's cross-claims against the Trustee are hereby dismissed.

SO ORDERED THIS \_\_\_\_\_  
DAY OF \_\_\_\_\_, 200\_\_\_\_.  
12/23/02



HONORABLE JOHN C. NINFO, II  
U.S. BANKRUPTCY JUDGE

DEC 23





UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

In Re:

PREMIER VAN LINES, INC.,

Debtor

Chapter 7  
Case No: 01-20692

JAMES PFUNTER,

Plaintiff

Adversary Proceeding  
Case No: 02-2230

-vs-

KENNETH W. GORDON, as Trustee in Bankruptcy  
for Premier Van Lines, Inc., RICHARD CORDERO,  
ROCHESTER AMERICANS HOCKEY CLUB, INC.,  
and M&T BANK,

Defendants

**CORDERO'S  
NOTICE OF APPEAL  
from  
ORDER OF DISMISSAL**

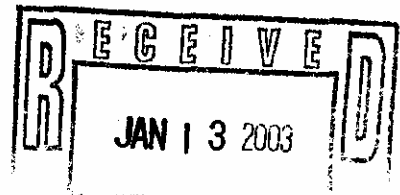
RICHARD CORDERO

Third party plaintiff

-vs-

DAVID PALMER, DAVID DWORKIN, DAVID DELANO,  
JEFFERSON HENRIETTA ASSOCIATES,

Third party defendants



**NOTICE OF APPEAL**

Dr. Richard Cordero, co-defendant, appeals under 28 U.S.C. § 158(a) from the order of the Hon. Judge John C. Ninfo, II, granting Trustee Kenneth Gordon's motion to dismiss Dr. Cordero's cross-claims against him, which was entered in this adversary proceeding on December 30, 2002.

The names, addresses, and telephone numbers of Trustee Gordon -there is no information about any attorney representing him- and of the other parties to the Chapter 7 case and the adversary proceeding are as follows:

Kenneth W. Gordon, Esq., Appellee  
Chapter 7 Trustee  
Gordon & Schaal, LLP  
100 Meridian Centre Blvd., Suite 120  
Rochester, New York 14618  
tel. (585) 244-1070

Premier Van Lines, Inc, Debtor,  
Raymond C. Stilwell, Esq.  
Adair, Kaul, Murphy, Axelrod &  
Santoro, LLP  
300 Linden Oaks, Suite 220  
Rochester, NY 14625-2883  
tel. (585) 248-3800

page 1 of 3

David Palmer, Third-party defendant,  
1829 Middle Road  
Rush, New York 14543  
last attorney known:  
Raymond C. Stilwell, Esq.  
Adair, Kaul, Murphy, Axelrod &  
Santoro, LLP  
300 Linden Oaks, Suite 220  
Rochester, NY 14625-2883  
tel. (585) 248-3800

James Pfuntner, Plaintiff,  
David D. MacKnight, Esq.  
Lacy, Katzen, Ryen & Mittleman, LLP  
130 East Main Street  
Rochester, New York 14604-1686  
tel. (585) 454-5650

Rochester Americans Hockey Club,  
Co-defendant  
Office of the President  
100 Exchange Blvd.  
Rochester, New York 14614  
(phone number or attorney not known)

M&T Bank, Co-defendant and  
David Delano, Third-party defendant,  
Michael J. Beyma, Esq.  
Underberg & Kessler, LLP  
1800 Chase Square  
Rochester, NY 14604  
tel. (585) 258-2890

David Dworkin and  
Jefferson Henrietta Associates, Third-party  
defendants,  
Karl S. Essler, Esq.  
2 State Street, Suite 1400  
Rochester, NY 14614  
tel. (585) 232-1660

Kathleen Dunivin Schmitt, Esq.  
Assistant U.S. Trustee  
100 State Street, Room 6090  
Rochester, New York 14614  
tel. (585) 263-5706

Together with this Notice, Dr. Cordero is filing attached hereto a separate Statement of Election to state that he elects the district court as the body to hear this appeal. Ten copies of that Statement and of this Notice are enclosed.

Payment of the prescribed \$105 filing fee is attached hereto.

Dated: January 9, 2003

Appellant

Dr. Richard Cordero

59 Crescent Street  
Brooklyn, NY 11208-1515  
tel. (718) 827-9521

If a Bankruptcy Appellate Panel Service is authorized to hear this appeal, each party has a right to have the appeal heard by the district court. The appellant may exercise this right only by filing a separate statement of election at the time of the filing of this notice of appeal. Any other party may elect, within the time provided in 28 U.S.C. § 158(c), to have the appeal heard by the district court.  
(Added Aug. 1, 1991; and amended Mar. 1995; Oct. 1, 1997.)

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

In Re:

PREMIER VAN LINES, INC.,

Debtor

Chapter 7  
Case No: 01-20692

JAMES PFUNTER,

Plaintiff

Adversary Proceeding  
Case No: 02-2230

-vs-

KENNETH W. GORDON, as Trustee in Bankruptcy  
for Premier Van Lines, Inc., RICHARD CORDERO,  
ROCHESTER AMERICANS HOCKEY CLUB, INC.,  
and M&T BANK,

Defendants

**CORDERO'S  
STATEMENT OF ELECTION**

RICHARD CORDERO

Third party plaintiff

-vs-

DAVID PALMER, DAVID DWORKIN, DAVID DELANO,  
JEFFERSON HENRIETTA ASSOCIATES,

Third party defendants

**STATEMENT OF ELECTION**

Dr. Richard Cordero, appellant, hereby states, pursuant to 28 U.S.C. §158(c)(1)(A), his election to have the district court hear his appeal from the order of the Hon. Judge John C. Ninfo, II, granting the motion brought by Kenneth Gordon, Esq., Trustee, to dismiss Dr. Cordero's cross-claims against him, which was entered on December 30, 2002.

Dated: January 9, 2003

Appellant

*Dr. Richard Cordero*

Appellant

59 Crescent Street  
Brooklyn, NY 11208-1515  
tel. (718) 827-9521

page 3 of 3

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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RICHARD CORDERO,

Appellant,

DECISION AND ORDER

v.

03-CV-6021L

KENNETH W. GORDON, ESQ.,

Appellee.

---

Richard Cordero ("Cordero") appeals from an order of United States Bankruptcy Judge John C. Ninfo, II, entered December 30, 2002. Cordero filed a notice of appeal on January 13, 2003.

The Trustee-Appellee moved to dismiss the appeal by Cordero on the grounds that it is untimely, having been filed more than ten days after entry of the order appealed from (Dkt. #2). Appellant, Cordero, submitted a brief in opposition to the motion to dismiss (Dkt. #6).

The motion to dismiss is granted. Rule 8002(a) of the Federal Rules of Bankruptcy Procedure provides that a "notice of appeal shall be filed with the clerk within 10 days of the date of entry of the judgment, order, or decree appealed from." Cordero's notice of appeal was therefore filed three days too late.

There are no other provisions in the Bankruptcy Rules that will excuse this untimeliness. Rule 8002(c) provides that "[t]he *bankruptcy* judge may extend the time for filing the notice of appeal" in certain circumstances (emphasis added), but it gives the district court no power to extend the ten-day period of subsection (a). *See In re Bond*, 254 F.3d 669, 675 n. 3 (7<sup>th</sup> Cir. 2001) (even if appellant had requested extension of time from district court, she would have been in

#7

error, since Rule 8002(c) only allows the bankruptcy court to grant extensions of time for filing notice of appeal). In addition, Cordero did not move for an extension in the bankruptcy court within the time for doing so under subsection (c), so that provision could not apply in any event.

Rule 9006, dealing with computation of prescribed time periods, also does not help Cordero. First, although there were four weekend days and one federal holiday (New Year's Day) in the period between the entry of Judge Ninfo's order and the time that Cordero filed his notice of appeal, those days were not excluded from the ten-day period of Rule 8002(a). Rule 9006(a) states that Saturdays, Sundays, and legal holidays are excluded from computation only "[w]hen the period of time prescribed or allowed is less than 8 days." Since Rule 8002(a) sets forth a ten-day period, this provision of Rule 9006(a) is inapplicable.<sup>1</sup> *Williams v. EMC Mortgage Corp.*, 216 F.3d 1295, 1297 (11<sup>th</sup> Cir. 2000).

Rule 9006(b) also provides for enlargement of prescribed time periods in certain circumstances, but it expressly states that "[t]he court may enlarge the time for taking action under Rule[] ... 8002 ... only to the extent and under the conditions stated in [that] rule[]." As stated, Cordero failed to meet the conditions for obtaining an extension of time under Rule 8002.

Subsection (f) of Rule 9006 provides for an automatic three-day extension in certain cases, but that provision applies only when a time period begins running from the date of service of an order or judgment. The ten-day period in Rule 8002(a) for appealing an order of the bankruptcy court is not such a period, however, since it begins to run from the time of *entry* of the judgment, *not* service. See *In re Arbuckle*, 988 F.2d 29, 31 (5th Cir. 1993).

Finally, the fact that Cordero may have mailed the notice of appeal before the ten days had

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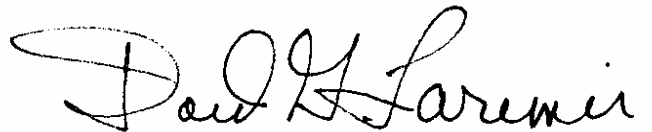
<sup>1</sup>I also note that Rule 9006(a) states that if the last day of a prescribed time period falls on a Saturday, a Sunday, or a legal holiday, "the period runs until the end of the next day which is not one of the aforementioned days." Here, the ten-day period of Rule 8002(a) expired on Tuesday, January 10, which was not a holiday.

expired is inconsequential. “[A] notice of appeal is filed as of the date it is actually received [by the court], not as of the date it is mailed.” *Id.* (quoting *Matter of Robinson*, 640 F.2d 737, 738 (5th Cir. 1981)). Cordero’s notice of appeal was received and filed by the court thirteen days after the entry of the bankruptcy court’s order, and it is therefore untimely.

### CONCLUSION

The Trustee’s motion to dismiss the appeal (Docket #2) is granted, and the appeal is dismissed.

IT IS SO ORDERED.

A handwritten signature in cursive script, reading "David G. Larimer". The signature is written in black ink and is positioned above a horizontal line.

DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
March 12, 2003.

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

RICHARD CORDERO,

Appellant,

v.

KENNETH W. GORDON, ESQ.,

Appellee.

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FILED

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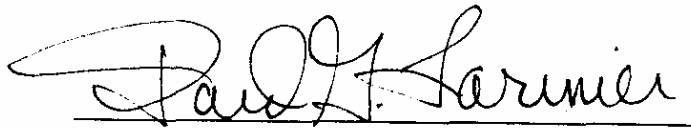
U.S. DISTRICT COURT  
W.D. N.Y. ROCHESTER

DECISION AND ORDER

03-CV-6021L

Richard Cordero moves for a rehearing or reconsideration of this Court's Decision and Order entered March 12, 2003 (Dkt. #7). The motion is in all respects denied.

IT IS SO ORDERED.



---

DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
March 27, 2003.

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK  
IN RE:

PREMIER VAN LINES, INC,

Debtor

JAMES PFUNTER,

Plaintiff,

vs.

BANKRUPTCY FOR PREMIER VAN LINES, INC.,  
RICHARD CORDERO, ROCHESTER AMERICANS  
HOCKEY CLUB, INC. AND M&T BANK,

Defendants.

RICHARD CORDERO,

Third Party Plaintiff,

vs.

DAVID PALMER, DAVID DWORKIN,  
DAVID DELANO AND JEFFERSON HENRIETTA  
ASSOCIATES,

Third Party Defendants

Chapter 7  
Case No: 04-20692

AP No.: 02-2230

**ORDER DENYING  
CORDERO'S MOTION  
TO EXTEND TIME TO  
FILE NOTICE OF APPEAL**

TAKE NOTICE OF THE ENTRY  
OF THIS ORDER ON 2/18/03  
PAUL R. WARREN, CLERK  
U.S. BANKRUPTCY COURT

BY: *Mark S. Terry*  
Deputy Clerk

DATE: 2/18/03

Richard Cordero, having moved this Court by Notice of Motion dated January 27, 2003 for an extension of time under Bankruptcy Rule 8002(c)(2) to file his Notice of Appeal of this Court's Order dismissing his cross-claims against the Trustee, and Richard Cordero having submitted in support thereof his affirmation dated January 27, 2003, and the Trustee having submitted in opposition to the motion a Memorandum of Law dated February 5, 2003, and this matter having come on before the Court on February 12, 2003, and Richard Cordero having appeared in support telephonically and Kenneth W. Gordon having appeared in opposition, and the Court having reviewed all of the papers and proceeding had herein the Court hereby:



**FINDINGS OF FACT AND CONCLUSION OF LAW**

1. Finds and determines that the last date to file the Notice of Appeal of the Order dismissing Cordero's crossclaims against the Trustee was January 9, 2003;
2. Finds and determines that the Notice of Appeal was filed in the Bankruptcy Court Clerk's Office on January 13, 2003, and thereby was not timely filed;
3. Finds and determines that the Notice of Appeal was placed in the U.S. mail by Richard Cordero on January 9, 2003;
4. Finds and determines that the provisions of Bankruptcy Rules 9006(e) and 9006(f) do not apply to extend the time limited for filing of the Notice of Appeal under Bankruptcy Rule 8002(a);
5. Finds and determines that the last date for Richard Cordero to file a motion seeking an extension under Bankruptcy Rule 8002(c)(2) of his time to file his Notice of Appeal was January 29, 2003;
6. Finds and determines that the instant motion by Richard Cordero seeking an extension under Bankruptcy Rule 8002(c)(2) of his time to file his Notice of Appeal was not filed with the Bankruptcy Court Clerk until January 30, 2003 and was

therefor not timely filed.

*jm*  
7. *A motion to dismiss the appeal is pending in the District Court*  
**IT IS HEREBY ORDERED**, based on the above findings of fact and conclusions of law, that *Court*

Richard Cordero's motion, seeking an extension under Bankruptcy Rule 8002(c)(2) of his time to file his Notice of Appeal of this Court's Order dismissing his cross-claims against the Trustee, is hereby denied.

Dated: February 18, 2003

**RECEIVED**

FEB 18 2003

**BANKRUPTCY COURT  
ROCHESTER, NY**

*[Signature]*  
Hon. John C. Ninfa, II  
Bankruptcy Court Judge

**UNITED STATES BANKRUPTCY COURT**  
**Western District of New York**

In Re:

APPLICATION FOR ENTRY  
OF DEFAULTPREMIER VAN LINES, INC

Bankruptcy Case No. 01-20692

DebtorRichard Cordero  
59 Crescent Street  
Brooklyn, NY 11208

Adversary Proceeding No. 02-2230

Third-party Plaintiff,

v.

David Palmer  
1829 Middle Road  
Rush, New York 14543  
Raymond Stilwell, Esq.  
Adair, Kaul, Murphy, Axelrod & Santoro, LLP  
300 Linden Oaks, Suite 220  
Rochester, NY 14625-2883,  
tel. (585) 248-3800Third-party Defendant

1. On November 22, 2002, a copy of the summons and complaint was served on David Palmer, the above named Defendant, and the certificate of service of process was filed in this Court on the same date.
2. Defendant, David Palmer, has failed to plead or otherwise defend in this action, and the time to plead or otherwise defend expired on December 16, 2002.  
 Defendant has appeared in this action.  
 Defendant has not appeared in the Adversary proceeding No. 02-2230, and the time to appear has expired.
3. The Defendant is not an infant or incompetent person.
4. Debtor  is  is NOT the Defendant. If debtor is Defendant, a default judgment motion was properly brought and served in accordance with Rule 55 and Fed.R.Bankr.P. Rule 7055.
5. It is requested that the Clerk enter default of the Defendant pursuant to Bankruptcy Rule 7055 and Rule 55(a) of the F.R.C.P.
6. I, Dr. Richard Cordero, third-party plaintiff appearing pro se, declare under penalty of perjury that the foregoing is true and correct.

Executed: December 26, 2002 |Dr. Richard Cordero

SUGGESTED FORM D-2

**CLERK'S CERTIFICATE OF DEFAULT**

The default of the Defendant, David Palmer, is hereby entered according to law.

Dated: February 4, 2003
  
 PAUL R. WARREN, Clerk of Court

Page 1 of 6

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**UNITED STATES BANKRUPTCY COURT**  
**Western District of New York**

In Re:

**ORDER TO TRANSMIT RECORD  
TO DISTRICT COURT**

PREMIER VAN LINES, INC

Bankruptcy Case No. 01-20692

Debtor

Richard Cordero  
59 Crescent Street  
Brooklyn, NY 11208

Adversary Proceeding No. 02-2230

Third-party Plaintiff,

v.

David Palmer  
1829 Middle Road  
Rush, New York 14543  
Raymond Stilwell, Esq.  
Adair, Kaul, Murphy, Axelrod & Santoro, LLP  
300 Linden Oaks, Suite 220  
Rochester, NY 14625-2883,  
tel. (585) 248-3800

Third-party Defendant

**ORDER TO TRANSMIT RECORD IN NON-CORE PROCEEDING TO DISTRICT  
COURT, COMBINED WITH FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
RECOMMENDATION REGARDING PLAINTIFF'S REQUEST FOR ENTRY  
OF DEFAULT JUDGMENT**

The Clerk of Bankruptcy Court is directed to transmit this Adversary Proceeding to the District Court for consideration of the following, pursuant to P.L. 98-353 (The Bankruptcy Amendments and Federal Judgeship Act of 1984)

**TO THE DISTRICT COURT:**

Having examined the record in this Adversary Proceeding and having found it to be a non-core proceeding, the Bankruptcy Court is without authority to enter a final or dispositive order or judgment. (See, §157(c), Title 28 United States Code). Plaintiff has requested entry of default judgment against David Palmer, the above named Defendant.

No hearing was necessary.

A hearing was necessary, which hearing was held on \_\_\_\_\_

at \_\_\_\_\_, on notice to \_\_\_\_\_

at which hearing there appeared \_\_\_\_\_

\_\_\_\_\_, who was heard.

FINDINGS

This Court now finds that the Third-party Complaint was filed by the Plaintiff on November 22, 2002, that an affidavit of service was filed on the same date attesting to service of the Summons and a copy of the Complaint; that the Defendant failed to plead or otherwise defend within the time prescribed by law and rule; that the Plaintiff has duly and timely requested entry of judgment by default, by application or affidavit filed in this Court on December 26, 2002, and that the Clerk certified and entered the Fact of Default on 2/4/2003.

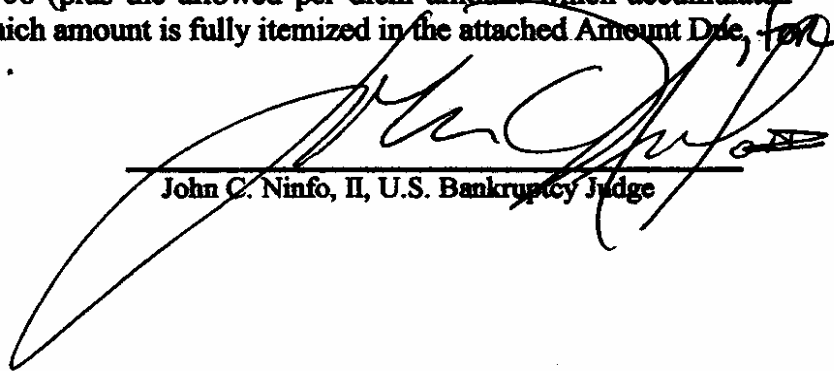
CONCLUSIONS

The Plaintiff is <sup>NOT</sup> entitled under applicable law to entry of judgment by default.

RECOMMENDATION

Wherefore, it is <sup>NOT</sup> recommended that the District Court award default judgment to the Plaintiff in the amount of \$24,032.08 (plus the allowed per diem amount which accumulated since the application for default), which amount is fully itemized in the attached Amount Due, <sup>for</sup> The Attached Reasons.

Date: 2/4/03

  
\_\_\_\_\_  
John C. Ninfo, II, U.S. Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK**  
**IN RE:**

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**PREMIER VAN LINES, INC.,**

**CASE NO. 01-20692**

**Debtor.**

---

**RICHARD CORDERO,**

**Third-Party Plaintiff,**

**vs.**

**A.P. NO. 02-2230**

**DAVID PALMER,**

**Third-party Defendant.**

---

**ATTACHMENT TO RECOMMENDATION OF THE  
BANKRUPTCY COURT THE DEFAULT JUDGMENT  
NOT BE ENTERED BY THE DISTRICT COURT**

1. In 1993 the Third-party Plaintiff, Richard Cordero ("Cordero"), stored various items of personal property with a storage company (the "Cordero Property");
2. Premier Van Lines, Inc. ("Premier"), of which David Palmer was a principal, was a successor storage company of the Cordero Property;
3. In 2001, Premier filed a Chapter 11 case, which was subsequently converted to a Chapter 7 case;
4. On September 27, 2002, an Adversary Proceeding was commenced by James Pfunter to have the Court determine proper ownership and responsibilities for various storage containers previously stored by Premier, of which James Pfunter was the successor storage entity;
5. At least one of the storage containers now under the control of James Pfunter and located at the Sackett Road warehouse in Avon, New York, bears Cordero's name, and there is at least one other container that is not labeled (the "Avon Containers");
6. As part of the Adversary Proceeding, within the next month the Avon Containers will be opened in the presence of Cordero, at which point it may be determined that Cordero has incurred no loss or damages, because all of the Cordero Property is accounted for and in the same condition as when delivered for storage in 1993;

**ATTACHMENT TO RECOMMENDATION (con't)**

7. Cordero has not yet demonstrated that he has incurred the \$14,000.00 in damages requested in the Default Judgment;
8. In addition, Cordero has not yet demonstrated that moving, storage and insurance fees previously paid, are recoverable, especially since a portion of the moving, storage and insurance fees were paid prior to when Premier became responsible for the storage of the Cordero Property;
9. Therefore, since Cordero has failed to demonstrate that he has incurred the loss for which he requests a Default Judgment, in this Court's opinion, the entry of the Default Judgment would be premature;
10. The Bankruptcy Court suggested to Cordero that the Default Judgment be held until after the opening of the Avon Containers, but Cordero, pursuant to his attached January 30, 2003 letter, as a pro se litigant, has respectfully requested that the Court forward his Default Judgment Application to the District Court.

**DATED: February 4, 2003**



HON. JOHN C. NINES, II  
CHIEF U.S. BANKRUPTCY JUDGE

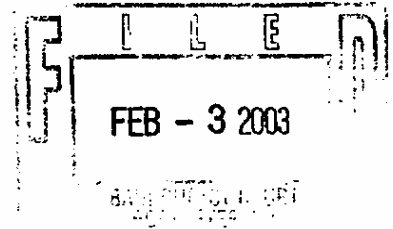
**Dr. Richard Cordero**

Ph.D., University of Cambridge, Eng 1  
M.B.A., University of Michigan Business School  
D.E.A., La Sorbonne, Paris

59 Crescent Street  
Brooklyn, NY 11208-1515  
tel. (718) 827-8521; CorderoRic@yahoo.com

January 30, 2003

Hon. Judge John C. Ninfo, II  
United States Bankruptcy Court  
1400 United States Courthouse  
100 State Street  
Rochester, NY 14614



Re: Premier Van Lines, bankruptcy case no. 01-20692; Adversary proceedings case no. 02-2230

Dear Judge Ninfo,

Over a month ago, on December 26, I filed all the forms necessary to take a default judgment against Mr. David Palmer. Upon finding out that no recommendation for the entry of such judgment has been forwarded to the District Court, I called the Bankruptcy Court. There I was informed that you consider the issue of damages premature until I go to Rochester to inspect my property.

I fail to see the connection between the default judgment and such visit. I filed for default judgment because Mr. Palmer did not care to respond to my complaint. Thus, his failure to comply with the legal requirement, stated in the summons, of answering the complaint under pain of being subjected to default judgment for the amount sued for gives rise to my right to such judgment. Why should the court protect the interest of a party such as Mr. Palmer who has shown so much contempt for the court and for legal requirements?

This is not even the first time that Mr. Palmer shows contempt. To begin with, he showed contempt for his clients, such as me, to whom he gave no notice that his company, Premier Van Lines, was in bankruptcy. He even concealed from me, during our telephone conversations, that his company was in liquidation. What is more, he affirmed that my property was safely in storage at the Jefferson Henrietta warehouse, just as he affirmed so to his own lawyer, who wrote that to me. But, as you know, my property was not even there. Yet, he had been billing me for its storage as well as for its insurance; I paid those bills from him; and he took the money. For a person that has shown no consideration for others or for the court for that matter, why should the court be concerned about sparing him the payment of default judgment? It is Mr. Palmer's turn to pay.

Indeed, there is evidence that Mr. Palmer would not even care to see default judgment entered against him. As I indicated in my December 26 letter to you: "I was told by M&T Bank and its attorneys at Underberg & Kessler, that M&T Bank -a co-defendant in this adversarial proceeding and lienholder of Mr. Palmer's company, the Debtor in the bankruptcy case- had obtained a judgment against Mr. Palmer that they could not enforce because unable to find him. This tallies with Mr. Stilwell's refusal to put me in direct contact with Mr. Palmer."

If Mr. Palmer can come up with a reason why default judgment should not be entered against him, he should take the trouble to go to District Court and argue his case himself. By contrast, I have made a lot of sacrifice to comply with all legal requirements, spending an enormous amount of time writing the pleadings and finding and completing all the default judgment forms. Of the two of us, I should be the beneficiary of the court's consideration. Therefore, I respectfully request that the court forward my application to the District Court; otherwise, that it state in writing why it rules against doing so.

Yours sincerely, *Dr. Richard Cordero*

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

TESTE A TRUE C  
U.S. DISTRICT COURT  
RODNEY C. EARLY, C

By Melita C. Gray  
Deputy Clerk

(Original Filed) 3/11/03

IN RE PREMIER VAN LINES, INC.,

Debtor.

RICHARD CORDERO,

Third-Party Plaintiff,

DECISION AND ORDER

03-MBK-6001L

v.

DAVID PALMER,

Third-Party Defendant.

FILED  
U.S. DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK  
MARCH 11 2003

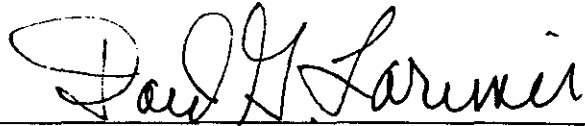
Judge John C. Ninfo, II, Chief United States Bankruptcy Judge, has transmitted the Bankruptcy Court record to the District Court for a determination in a non-core proceeding. The transfer relates to Cordero's request to enter default judgment. In the transmittal, Bankruptcy Judge Ninfo recommended that the District Court deny entry of default judgment.

I concur in the Bankruptcy Judge's determination that judgment is not appropriate in this case. Even if the adverse party failed to appear or answer, third-party plaintiff must still establish his entitlement to damages since the matter does not involve a sum certain. In other words, it may be necessary for an inquest concerning damages before judgment is appropriate. Furthermore, it



would appear that the Bankruptcy Court is the proper forum for conducting an inquest concerning damages and the matter is referred to the Bankruptcy Court for that purpose.

IT IS SO ORDERED.

A handwritten signature in cursive script, reading "David G. Larimer". The signature is written in black ink and is positioned above a horizontal line.

DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
March // , 2003.

UNITED STATES DISTRICT court  
WESTERN DISTRICT OF NEW YORK

---

IN RE: PREMIER VAN LLINES, INC.

RICHARD CORDERO,

Plaintiff(s),

- vs -

DAVID PALMER,

6:03-MBK-6001L

Defendant(s),

---

Take notice of an Order filed on 3/11/03, of which is a copy, and entered in the office of the Clerk of the United States District Court, Western District of New York, on 3/12/03 upon the official docket in this case.

Dated: Rochester, New York  
3/12/03

RODNEY C. EARLY, Clerk  
U. S. District Court  
Western District of New York  
282 U. S. Courthouse  
Rochester, New York 14614

TO:  
Richard Cordero  
David Palmer  
Raymond Stilwell, Esq.

David Palmer  
1829 Middle Rd.  
Rush, NY 14543

Raymond Stilwell, Esq.  
Adair, Kaul Murphy...  
300 Linden Oaks Ste. 220  
Rochester, NY 14625

Richard Cordero  
59 Cresent St.  
Brooklyn, NY 11208

MARCH 27 2003 3:36

IN RE PREMIER VAN LINES, INC.,

Debtor.

RICHARD CORDERO,

Third-Party Plaintiff,

DECISION AND ORDER

03-MBK-6001L

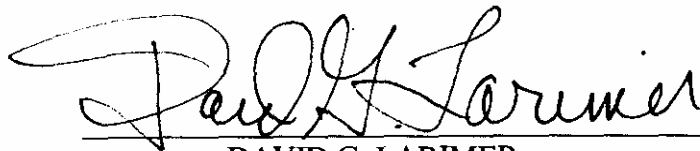
v.

DAVID PALMER,

Third-Party Defendant.

Richard Cordero moves for a rehearing or reconsideration of this Court's Decision and Order entered March 11, 2003 (Dkt. #56). The motion is in all respects denied.

IT IS SO ORDERED.



DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
March 27, 2003.

#58

UNITED STATES DISTRICT court  
WESTERN DISTRICT OF NEW YORK

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CORDERO,

Plaintiff(s),

- vs -

PALMER,

Defendant(s),

6:03-MBK-6001L

---

Take notice of an order filed on 3/27/03, of which is a copy, and entered in the office of the Clerk of the United States District Court, Western District of New York, on 3/27/03 upon the official docket in this case.

Dated: Rochester, New York  
3/27/03

RODNEY C. EARLY, Clerk  
U. S. District Court  
Western District of New York  
282 U. S. Courthouse  
Rochester, New York 14614

TO:  
Cordero  
Palmer  
Bankruptcy Court

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

In re:

PREMIER VAN LINES, INC.,  
Debtor

case no: 01-20692

JAMES PFUNTNER,  
Plaintiff

-vs-

Adversary proceeding 02-2230

KENNETH W. GORDON, as Trustee in Bankruptcy for  
Premier Van Lines, Inc., ROCHESTER AMERICANS  
HOCKEY CLUB, INC, RICHARD CORDERO, and M&T BANK

Defendants

RICHARD CORDERO,  
Third party plaintiff

-vs-

DAVID PALMER, DAVID DWORKIN, DAVID DELANO,  
and JEFFERSON HENRIETTA ASSOCIATES,

Third party defendants

RICHARD CORDERO  
Appellant

-vs-

KENNETH W. GORDON and

DAVID PALMER  
Appellees

ORIGINAL WAS RECEIVED AND FILED

BY:



APR 25 2003

UNITED STATES DISTRICT COURT CLERK  
WESTERN DISTRICT OF NEW YORK

**NOTICE OF APPEAL  
TO THE U.S. COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

in Case no: 03-CV-6021L

and Case no.03-MBK-6001L

Dr. Richard Cordero, cross-defendant and third party plaintiff, appeals to the United States Court of Appeals for the Second Circuit from the final orders of the United States District Court for the Western District of New York, both entered in this court on March 27, 2003, and both denying in all respects his motions for rehearing:

- 1) of the order of March 12, 2003, docket #7 in case 03-CV-6021L, granting Trustee Kenneth Gordon's motion to dismiss as untimely filed Dr. Cordero's appeal from the dismissal of his cross-claims against the Trustee; and
- 2) of the order of March 11, 2003, in case 03-MBK-6001L, denying the motion to enter default judgment against D. Palmer and to withdraw proceeding.

Notice is hereby also given of Dr. Cordero's appeal from

a) the order dated April 4, 2003, in Adversary proceeding 02-2230, of the Bankruptcy Court

page 1 of 2

- denying Dr. Cordero's motion for relief from  
b) the order dated February 18, 2003, of the Bankruptcy Court denying Dr. Cordero's motion for an extension of time to file notice of appeal.

The April 4 order states that it is based on the Bankruptcy Court's findings of fact and conclusions of law, one of which is that the order of the District Court of March 12, 2003, is the law of the case establishing that Richard Cordero's appeal was not timely filed. Hence, the March 12 order of the District Court, which is being appealed from, rendered moot an appeal to the District Court of the Bankruptcy Court's order of April 4.

The parties to the orders appealed from and the names and addresses of their respective known attorneys as well as those of the parties in the Adversary Proceeding are as follows:

Kenneth W. Gordon, Esq., Co-defendant  
Chapter 7 Trustee  
Gordon & Schaal, LLP  
100 Meridian Centre Blvd., Suite 120  
Rochester, New York 14618  
tel. (585) 244-1070

David Palmer, Third-party defendant,  
1829 Middle Road  
Rush, New York 14543

Raymond C. Stilwell, Esq.  
Adair, Kaul, Murphy, Axelrod & Santoro, LLP  
300 Linden Oaks, Suite 220  
Rochester, NY 14625-2883  
tel. (585) 248-3800  
for Premier Van Lines, Inc,  
Debtor, owned by David Palmer

David D. MacKnight, Esq.  
Lacy, Katzen, Ryen & Mittleman, LLP  
130 East Main Street  
Rochester, New York 14604-1686  
tel. (585) 454-5650  
for James Pfuntner, Plaintiff

Rochester Americans Hockey Club, Co-defendant  
Office of the President  
100 Exchange Blvd.  
Rochester, New York 14614  
(attorney and phone number not known)

Michael J. Beyma, Esq.  
Underberg & Kessler, LLP  
1800 Chase Square  
Rochester, NY 14604  
tel. (585) 258-2890  
for M&T Bank, Co-defendant, and  
David Delano, Third-party  
defendant

Karl S. Essler, Esq.  
2 State Street, Suite 1400  
Rochester, NY 14614  
tel. (585) 232-1660  
for Jefferson Henrietta Associates,  
and David Dworkin, Third-party  
defendants

Kathleen Dunivin Schmitt, Esq.  
Assistant U.S. Trustee  
100 State Street, Room 6090  
Rochester, New York 14614  
tel. (585) 263-5706

Dated: April 22, 2003

Appellant pro se

*Dr. Richard Cordero*

Dr. Richard Cordero  
59 Crescent Street  
Brooklyn, NY 11208-1515  
tel. (718) 827-9521

# U.S. Bankruptcy Court

Western District of New York (Rochester)

- *Bankruptcy Petition #:* 01-20692 *Date filed:* 3/5/01
- *Assigned to:* Hon. John C. Ninfo, II
- Chapter 7, voluntary, no asset

| * Parties *   | * Attorneys *   |
|---|---|
| <p><b>PREMIER VAN LINES, INC., A CORPORATION</b><br/>                     dba<br/>                     North American Van Lines<br/>                     c/o 1829 Middle Road<br/>                     Rush, NY 14543<br/>                     Tax ID: 16-1542181<br/>                     * debtor *</p> | <p><b>Raymond C. Stilwell</b><br/>                     The Law Center at Williamsville<br/>                     17 Beresford Court<br/>                     Williamsville, NY 14221<br/>                     716-565-2000</p> |
| <p><b>KENNETH W. GORDON</b><br/>                     Chapter 7 Trustee<br/>                     100 Meridian Centre Blvd.<br/>                     Suite 120<br/>                     Rochester, NY 14618<br/>                     * trustee *</p>  |   |
| <p><b>BONADIO &amp; CO. LLP</b><br/>                     Corporate Crossings<br/>                     171 Sully's Trail<br/>                     Suite 201<br/>                     Pittsford, NY 14534-4557<br/>                     * Accountant *</p>  |   |
| <p><b>WILLIAM E. BRUECKNER</b><br/>                     Ernstrom &amp; Drete, LLP<br/>                     2000 Winton Road South<br/>                     Building One, Suite 300<br/>                     Rochester, NY 14618-3922<br/>                     * Attorney for Trustee *</p>                |   |
| <p><b>ROY TEITSWORTH</b><br/>                     6502 Barber Hill Road<br/>                     Geneseo, NY 14454<br/>                     * Auctioneer *</p>  |   |

## Docket Proceedings

| Date    | Doc. No. | Docket Entry  |
|---------|----------|---|
| 3/5/01  | 1        | Voluntary petition; [1-1] missing documents: Schedule A - J Exhibit A List of Equity Security Holders Statement of <i>Affairs</i> : business Statement of Executory Contracts Disclosure statement of counsel Summary of debts & property <i>Documents due</i> : 3/20/01 (gw) [EOD 03/07/01] [01-20692] |
| 3/5/01  | 2        | Filing fee paid; Receipt No.: 22039647 [2-1] (gw) [EOD 03/07/01] [01-20692]   |
| 3/7/01  | 3        | Deficiency Notice and Designation of David J. Palmer as principal. [3-1] (gw) [01-20692]  |
| 3/7/01  | 4        | Clerk's Note: DIP Information Sheet mailed to debtor and attorney and Chapter 11 Monograph mailed to Debtor's Attorney (gw) [01-20692]  |
| 3/8/01  | 5        | Notice of Section 341 Meeting [5-1] 2:00 4/3/01 at Rochester Room 6080 (gw) [01-20692]  |
| 3/8/01  | 6        | Order authorizing method of compensation or remuneration to debtor or insider of debtor for 30 days from date of Order for Relief and requiring Court approval for any compensation after 30 days; [6-1] Notices Mailed: 3 on 3/9/01 (gw) [EOD 03/09/01] [01-20692]                                     |
| 3/10/01 | 7        | Court's BNC Certificate of Service re: Ch. 11 341 notice [5-1] . # of Notices: 38 were sent. (auto) [EOD 03/12/01] [01-20692]   |
| 3/16/01 | 8        | Letter to debtor's attorney re returned 341 notices; 1 return [8-1] NYS Workers Compensation Board (gw) [01-20692]  |
| 3/20/01 | 9        | Filed [9-1] missing documents: Summary of debts & property Schedule A - I Statement of affairs: non-business Disclosure statement of counsel. Case caption: dba. Supp. mailing matrix. Fee paid: #22040006. (rh) [01-20692]   |
| 3/22/01 | 10       | US Trustee statement [10-1] re: Inability to Appoint Committee of   |



|         |    |   |
|---------|----|---|
|         |    | Unsecured Creditors. (gw) [01-20692]  |
| 4/2/01  | 11 | Order and Application to Employ Raymond C. Stilwell, Adair Law Firm, as Attorney for the DIP [11-1] (gw) [EOD 04/04/01] [01-20692]<br>INTERNAL USE ONLY:  |
| 4/3/01  | 12 | Notice of Motion for approval of salary to David Palmer, President [12-1] Hearing date and time: 9:30 4/11/01 at Rochester Courtroom. Filed by: Raymond Stilwell, Atty for DIP. Affidavit of service: Not Filed (gw) [EOD 04/04/01] [01-20692]  |
| 4/3/01  | 13 | MINUTES [13-1] Section 341 Meeting - Adj. to 10:30 7/10/01 at Rochester Room 6080. Debtor, David Palmer, Pres. and atty for debtor appeared. D.L. Rasmussen for Primus Automotive Finance appeared. Debtor sworn & examined. Need to amend for pre-petition taxes IRS; Schedule E. Need to resolve landlord claims & reduce rental costs to turn to profitability. No plan available until tenancy issues are crystalized. (gw) [EOD 04/04/01] [01-20692] |
| 4/5/01  | 14 | Affidavit of US Trustee's Office in Opposition [14-1] re: motion for approval of salary to David Palmer, President [12-1] (gw) [01-20692]   |
| 4/11/01 | 15 | Minutes [15-1] re: motion for approval of salary to David Palmer, President - granted. Order to be submitted. Appearances: Raymond Stilwell, Atty. for Debtor; Trudy Nowak, U.S. Trustee, objections withdrawn. (lp) [01-20692]   |
| 4/11/01 | 16 | Notice of Motion To employ Accounting Firm of Bonadio & Co., LLP [16-1] Hearing date and time: 9:30 4/18/01 at Rochester Courtroom Filed by: Raymond Stilwell, atty for deb Affidavit of service: filed (pz) [EOD 04/12/01] [01-20692]  |
| 4/11/01 | 17 | Notice of Motion for turnover of property from Jim Pfutner, punishment for contempt of Court; injunction against continued efforts to collect a debt in violation of the automatic stay [17-1] Hearing date and time: 9:30 4/18/01 at Rochester Courtroom Filed by: Raymond Stilwell, atty for debtor. Affidavit of service: filed (pz) [EOD 04/12/01] [01-20692]   |
| 4/12/01 | 18 | Affidavit of Mailing re: motion for approval of salary to David Palmer, President [12-1] [18-1] (pz) [EOD 04/16/01] [01-20692]  |

|         |    |  |
|---------|----|--|
| 4/16/01 | 19 | Affidavit filed by David MacKnight for James Pfunter in Opposition [19-1] re: motion for turnover of property from Jim Pfunter, for contempt of Court; injunction against continued efforts to collect a debt in violation of the automatic stay [17-1] (gw) [EOD 04/17/01] [01-20692]<br>INTERNAL USE ONLY:   |
| 4/17/01 | 20 | Order [20-1] granting motion for approval of salary to David Palmer, President. ORDERED that provided debtor is current on all other post-petition payables at the time of issuance of payroll, said debtor may compensate David Palmer in the sum of \$334 per week pending further Order of this Court. [12-1] (pz) [01-20692]   |
| 4/18/01 | 21 | Order [21-1] granting motion for turnover of property from Jim Pfunter no later than 4/18/01 @8:00 pm, punishment for contempt of Court; injunction against continued efforts to collect a debt in violation of the automatic stay [17-1] (gw) [01-20692]  |
| 4/18/01 | 22 | Minutes [22-1] motion To employ Accounting Firm of Bonadio & Co., LLP [16-1] Adj. to 9:30 4/26/01 at Rochester Courtroom. If there is no objection to the motion by the U.S. Trustee, the motion will be granted and will be removed from the calendar. (lp) [EOD 04/19/01] [01-20692]   |
| 4/18/01 | 23 | Minutes [23-1] Turnover of property and contempt: Motion granted. Restraints on the property are to be removed by today. Reserve on the request for attorney's fees. Order to be submitted. NOTICE OF ENTRY TO BE ISSUED. Appearances: Raymond Stilwell, Atty. for Debtor. Appearing in opposition: David MacKnight, Atty. for James Pfunter. (lp) [EOD 04/19/01] [01-20692] |
| 4/18/01 | 24 | Amendment [24-1] re: Schedules D, E and G. Supplemental Matrix filed. FEE PAID #22040750 (gw) [EOD 04/19/01] [01-20692]  |
| 4/19/01 | 25 | Notice of motion for relief from stay (Sec. 362) re: leaseshold property at 10 Thruway Park, West Henrietta [25-1] Hearing Date and Time: 9:30 5/2/01 at Rochester Courtroom; Filed by: Ingrid Palermo, Atty for Harry & Gretchen Voss; Receipt No.: 22040773. Affidavit of Service Filed. (gw) [01-20692]   |
| 4/26/01 | 26 | Minutes [26-1] motion To employ Accounting Firm of Bonadio & Co., LLP [16-1] Adj. prior to calendar call to 9:30 5/2/01 at Rochester Courtroom. No appearances. (lp) [01-20692]  |

|         |    |  |
|---------|----|--|
| 4/30/01 | 27 | Letter filed by Raymond Stilwell confirming adjournment to 5/2/01 [27-1] re: motion To employ Accounting Firm of Bonadio & Co., LLP [16-1] (gw) [01-20692] INTERNAL USE ONLY:  |
| 5/2/01  | 28 | Minutes [28-1] re: motion for relief from stay (Sec. 362) re: leaseshold property at 10 Thruway Park, West Henrietta - granted effective on the close of business on 5/11/01 provided that the rent, pro-rated taxes and utilities for ten days are paid by the close of business on 5/3/01. If they are not paid the stay will be lifted. Order to be submitted. NOTICE OF ENTRY TO BE ISSUED. Appearances: John Weider of counsel to Ingrid Palermo, Atty. for Harry and Gretchen Voss.; Trudy Nowak, US Trustee. Appearing in opposition: Raymond Stilwell, Atty. for Debtor. (lp) [EOD 05/03/01] [Edit date 05/04/01] [01-20692] |
| 5/2/01  | 29 | Minutes [29-1] re: motion To employ Accounting Firm of Bonadio & Co., LLP - granted. A statement that Harry and Gretchen Voss are not taking a position on the motion is to be in the order. Order to be submitted. Appearances: Raymond Stilwell, Atty. for Debtor; John Weider, Atty. for Harry and Gretchen Voss; Trudy Nowak, U.S. Trustee. (lp) [EOD 05/03/01] [01-20692]   |
| 5/7/01  | 30 | Order [30-1] granting motion To employ Accounting Firm of Bonadio & Co., LLP [16-1] (gw) [EOD 05/09/01] [01-20692]   |
| 5/11/01 | 31 | Order [31-1] granting motion for relief from stay (Sec. 362) re: leaseshold property at 10 Thruway Park, West Henrietta [25-1] (see order for details) NOTICE OF ENTRY ISSUED TO: John Weider, Raymond Stilwell and US Trustee on 5/14/01 (gw) [EOD 05/14/01] [01-20692]   |
| 7/11/01 | 32 | MINUTES [32-1] Section 341 Meeting - Adj. to 1:00 10/2/01 at Rochester Room 6080. Debtor appeared and examined - Dave Palmer. Atty for Debtor appeared. Debtor has effectuated move, will save considerable expense (\$9K). O/S Financials and UST fees to be paid by 7/17/01 or UST to move to convert. Dentor expects plan to be filed in late fall. (gw) [01-20692]   |
| 7/12/01 | 33 | Address change for Debtor (gw) [01-20692]  |
| 7/12/01 | 37 | Application for payment of professional fees to Raymond C. Stilwell as Attorney for DIP in the amount of \$9,176.44 plus disbursements of \$895.84 for the period 1/26/01 - 7/10/01 [37-1] Filed by: Raymond Stilwell (gw) [EOD 07/19/01] [01-20692]   |

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| 7/12/01 | 39 | Application for payment of professional fees to Bonadio & Co. as Accountants to DIP in the amount of \$1,923.00 for the period 5/15/01 - 6/19/01 [39-1] Filed by: Raymond Stilwell, Atty for DIP. (gw) [EOD 07/19/01] [01-20692]  |
| 7/16/01 | 34 | Monthly report of operation for March 2001 [34-1] (gw) [01-20692]<br>INTERNAL USE ONLY:   |
| 7/16/01 | 35 | Monthly report of operation for April 2001 [35-1] (gw) [01-20692]   |
| 7/16/01 | 36 | Monthly report of operation for May 2001 [36-1] (gw) [01-20692]   |
| 7/19/01 | 38 | Notice to creditors [38-1] re: motion for payment of professional fees to Raymond C. Stilwell as Attorney for DIP in the amount of \$9,176.44 plus disbursements of \$895.84 [37-1] : Last day to file objections: 8/13/01 ; (gw) [01-20692]  |
| 7/19/01 | 40 | Notice to creditors [40-1] re: motion for payment of professional fees to Bonadio & Co. as Accountants to DIP in the amount of \$1,923.00 [39-1] : Last day to file objections: 8/13/01 ; (gw) [01-20692]   |
| 7/21/01 | 41 | Court's BNC Certificate of Service re: default notice [38-1] . # of Notices: 50 were sent. (auto) [EOD 07/23/01] [01-20692]   |
| 7/21/01 | 42 | Court's BNC Certificate of Service re: default notice [40-1] . # of Notices: 50 were sent. (auto) [EOD 07/23/01] [01-20692]   |
| 7/24/01 | 43 | Amended Notice to creditors [43-1] re: motion for payment of professional fees to Raymond C. Stilwell as Attorney for in the amount of \$9,176.44 plus disbursements of \$895.84 [37-1]: Last day to file objections: 8/13/01; (Amended to clearly identify name of Attorney) (gw) [01-20692] |
| 7/25/01 | 44 | Affidavit of US Trustee's Office Supporting motion for payment of professional fees to Bonadio & Co. as Accountants to DIP in the amount of \$1,923.00 [39-1] (gw) [01-20692]   |
| 7/25/01 | 45 | Affidavit of U.S. Trustee's Office Supporting motion for payment of professional fees to Raymond C. Stilwell as Attorney for DIP in the amount of \$9,176.44 plus disbursements of \$895.84 [37-1] (gw) [01-  |

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|          |    | 20692]  |
| 7/27/01  | 46 | Certificate of mailing from BNC with original notice re: Amended default notice [43-1] ; [46-1] (gw) [EOD 07/30/01] [01-20692]  |
| 9/17/01  | 47 | Monthly report of operation for June 2001 [47-1] (gw) [01-20692]  |
| 10/2/01  | 56 | MINUTES [56-1] Section 341 Meeting - Adjourned to 10/23/01 @1:00 Room 6080. Hearing canceled. (gw) [EOD 11/09/01] [01-20692]<br>INTERNAL USE ONLY:  |
| 10/11/01 | 48 | Order [48-1] granting motion for payment of professional fees to Raymond C. Stilwell as Attorney for DIP in the amount of \$9,176.44 plus disbursements of \$895.84 [37-1] (gw) [EOD 10/12/01] [01-20692]   |
| 10/11/01 | 49 | Order [49-1] granting motion for payment of professional fees to Bonadio & Co. as Accountants to DIP in the amount of \$1,923.00 [39-1] (gw) [EOD 10/12/01] [01-20692]  |
| 10/22/01 | 50 | Ex Parte Application & Order [50-1], shortening time for hearing on sale of debtor's base business and to employ its principal Returnable 10/29/01 @ 11:00 am Rochester Courtroom. (gw) [01-20692]  |
| 10/23/01 | 51 | MINUTES [51-1] Section 341 Meeting - Adj. to 1:00 10/30/01 at Rochester Room 6080. No appearances. Counsel for debtor requested adjournment. (gw) [EOD 10/24/01] [01-20692]   |
| 10/29/01 | 52 | Minutes [52-1] Sale of property outside the ordinary course of business for the debtor's base of business: Motion withdrawn. The buyer does not want to go forward. Appearances: Raymond Stilwell, Atty. for Debtor; David MacKnight, Atty. for James Pfuntner, landlord; Trudy Nowak, U.S. Trustee. (lp) [EOD 11/01/01] [01-20692]                           |
| 11/6/01  | 55 | MINUTES [55-1] Section 341 Meeting - Adj. to 1:00 2/26/02 at Rochester Room 6080. Debtor, David Palmer, appeared and examined. Atty for Debtor appeared. Business ceased trucking operations. F/S not filed. UST fees not current. Debtor to consent to conversion upon UST motion unless buyer can be located in the interim. (gw) [EOD 11/08/01] [01-20692] |

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| 11/8/01  | 53 | Motion re: for conversion to Chapter 7 and in the alternative, for dismissal of case Returnable 12/20/01 @9:30 Rochester Courtroom [53-1] Filed by: US Trustee's Office. No Fee Required. (gw) [01-20692]   |
| 11/8/01  | 54 | Letter to debtor and debtor's attorney advising that they must both appear on the return date of the Motion to Dismiss or Convert in the event written opposition is filed. [54-1] (gw) [01-20692]  |
| 11/13/01 | 57 | Certificate of mailing from BNC with original notice re: motion for conversion to Chapter 7 and in the alternative, for dismissal of case [53-1] ; [57-1] (gw) [EOD 11/14/01] [01-20692]  |
| 12/18/01 | 58 | Affidavit of Ingrid Palermo, Atty for Harry and Gretchen Voss in Support [58-1] of motion for conversion to Chapter 7 and in the alternative, for dismissal of case [53-1] (gw) [01-20692] INTERNAL USE ONLY:   |
| 12/18/01 | 59 | Affidavit of Mailing re: affidavit/in support of motion to Dismiss or Convert [58-1] [59-1] (gw) [01-20692]   |
| 12/20/01 | 60 | Order [60-1] granting motion for conversion to Chapter 7 [53-1] (gw) [01-20692]   |
| 12/21/01 | -- | Utility event to update the Estimated Number of Employees, Estimated Number of Equity Security Holders and the Small Business fields after conversion to a Chapter 7 . (gw) [01-20692]  |
| 12/21/01 | 61 | Clerk's Note: Copy of petition, schedules and amendments sent to US Trustee's office on 12/21/01 [61-1] (gw) [01-20692]   |
| 12/27/01 | 62 | Order [62-1] directing debtor to file final report and account within 15 days; and directing the attorney for debtor to file a fee application within 60 days (See Order for further details.) Copy mailed to Debtor, Debtor's Attorney and U.S. Trustee. (cc) [01-20692] |
| 12/28/01 | 63 | Notice of Sec. 341 Meeting : Meeting set for: 11:00 1/24/02 at Rochester Room 6080 Government Claim Deadline: 7/1/02 Last day to file claims: 4/24/02 . Kenneth Gordon appointed trustee (asf) [01-20692]   |
| 12/30/01 | 64 | Court's BNC Certificate of Service re: 341 notice [63-1] . # of Notices: 51 were sent. (auto) [EOD 12/31/01] [01-20692]   |

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| 1/14/02 | 65 | Letter to debtor's attorney re returned 341 notices; 1 returns [65-1]Premier Van Lines Inc. (pf) [01-20692]   |
| 1/18/02 | 66 | Order [66-1], to extend time to file DIP Final Report and account Time extended to:1/22/02 (pf) [EOD 01/22/02] [01-20692]   |
| 1/24/02 | 67 | Final report and account [67-1] with statement as to additional creditors. Amendment cover sheet filed also Amending Schedule E. (pf) [EOD 01/25/02] [01-20692]   |
| 1/25/02 | 68 | Administrative Claims Bar Notice under Rule 1019: [68-1] Administrative Claims Deadline: 3/29/02 (pf) [01-20692]  |
| 1/26/02 | 70 | MINUTES [70-1] 341 Mtg. - Adj. to: 2:00 2/8/02 at Rochester Courtroom. Asset Case. Need Completer List of all assets at both locations. Payroll info and W2, Corp. Tax return for 2000., Revenue & Expense reports and disk masters and bank records. Accts Receivable details and Closeout Corp. accts. (pf) [EOD 01/30/02] [01-20692]   |
| 1/27/02 | 69 | Court's BNC Certificate of Service re: administrative claims bar notice [68-1] . # of Notices: 39 were sent. INTERNAL USE ONLY: (auto) [EOD 01/28/02] [01-20692]  |
| 2/6/02  | -- | Debtor's home address:Premier Van Lines c/o 1829 Middle Road, Rush, NY 14543 (pf) [01-20692]  |
| 2/8/02  | 71 | MINUTES [71-1] 341 Mtg. - Debtor(s) sworn,examined; MC; Tr, db atty appeared. Debtor to produce 1999 and 2000 Corp. Tax Returns, Receipts for expenses not shown in Quicken, Registration information for vehicles, invoices for A/R and details on jobs still needing invoicing, info on \$4000.00 security deposit held by Ryder, Franchise agreement from Jeff Rd. and Quicken printout, CNB register and M & T Equity Loan by 2/28/02. ASSET CASE. Appearance by debtor and President of Corporation David Palmer. (pf) [EOD 02/14/02] [01-20692] |
| 2/28/02 | 73 | Application re: for payment of professional fees to Raymond C. Stilwell, Esq. as atty for debtor-in-Possession in the amount of 3957.92 [73-1] Filed by: Raymond C. Stilwell, Esq. Afdt of service filed. Period of Services: 7/16/01-2/26/02. (pf) [EOD 03/05/02] [Edit date 04/05/02] [01-20692]  |



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| 3/4/02  | 72 | Order [72-1], To employ Attorney for Trustee William E. Brueckner (pf) [01-20692]  |
| 3/8/02  | 74 | Notice to creditors [74-1] re: motion for payment of professional fees to Raymond C. Stilwell, Esq. as atty for debtor-in-Possession in the amount of \$3957.92 [73-1] : Period of services 7/16/01-2/26/02 Last day to file objections: 4/1/02 ; (pf) [01-20692]  |
| 3/10/02 | 75 | Court's BNC Certificate of Service re: default notice [74-1] . # of Notices: 91 were sent. (auto) [EOD 03/11/02] [01-20692]  |
| 3/19/02 | 76 | Objection - No hearing requested. Filed by Kenneth W. Gordon, chapter 7 t opposing motion for payment of professional fees to Raymond C. Stilwell, Esq. as atty for debtor-in-Possession in the amount of 3957.92 [73-1] (pf) [EOD 03/21/02] [Edit date 03/21/02] [01-20692]                             |
| 3/20/02 | 77 | Statement of the United States Trustee regarding Application for Fees filed by Trudy Nowak, UST not opposing motion for payment of professional fees to Raymond C. Stilwell, Esq. as atty for debtor-in-Possession in the amount of \$3957.92 [73-1] (pf) [EOD 03/21/02] [Edit date 04/05/02] [01-20692] |
| 3/25/02 | 78 | Application for payment of professional fees to Bonoadio & Co as Accountants in the amount of \$4699.50 [78-1]for the period 7/1/02-12/20/01. Filed by: Raymond C. Stilwell as atty for debtor (pf) [EOD 04/03/02] [01-20692] INTERNAL USE ONLY:   |
| 3/29/02 | 80 | Motion re: Request for payment to pay landlords the sum of \$40,001.32Sec. 503 (b) [80-1] Filed by: John Weider, Esq. (Clerk's note: called atty to send in Notice of Motion to set hearing date). (pf) [EOD 04/05/02] [01-20692]  |
| 4/3/02  | 79 | Notice to creditors [79-1] re: motion for payment of professional fees to Bonoadio & Co as Accountants in the amount of \$4699.50 [78-1] : Last day to file objections: 4/26/02 ; (pf) [01-20692]  |
| 4/5/02  | 81 | Court's BNC Certificate of Service re: default notice [79-1] . # of Notices: 91 were sent. (auto) [01-20692]   |
| 4/8/02  | 82 | Certificate of mailing from BNC with original notice re: motion for payment of professional fees to Bonoadio & Co as Accountants in the  |



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|         |    | amount of \$4699.50 [78-1] ; [82-1] (pf) [EOD 04/10/02] [01-20692]  |
| 4/10/02 | 83 | Statement of the United States Trustee regarding Application of Fees filed by, Trudy Nowak, Esq, supporting motion for payment of professional fees to Bonoadio & Co as Accountants in the amount of \$4699.50 [78-1] No objection. (pf) [01-20692]   |
| 4/15/02 | 84 | Notice of Motion Sec. 503 (b) directing payment of an administrative expense for base rent, taxes, and interest related to Premier Van Lines Inc. occupancy of 10 Thruway Park, West Henrietta, NY for landlords Harry F & Gretchen A. Voss. [84-1] Hearing date and time: 9:30 5/8/02 at Rochester Courtroom Filed by: John R. Weider, Esq. Affidavit of service: filed. (Clerk's note: called atty to amend time to 11:00 a.m.). (pf) [EOD 04/17/02] [01-20692] |
| 4/29/02 | 85 | Amended Notice [85-1] re: Motion for an Order pursuant to Sec. 503(b) directing payment of an administrative expense for base rent, taxes and interest related to Premier Van Lines, Inc.'s occupancy of 10 Thruway Park, West Henrietta, NY [84-1] Hearing Date & Time: 11:00 5/8/02 at Rochester Courtroom. Filed by John R. Weider, Atty for Harry F. and Gretchen A. Voss. Affidavit of service filed. (cc) [01-20692]  |
| 5/8/02  | 86 | Minutes [86-1] re: motion Sec. 503 (b) directing payment of an administrative expense - granted. Order to be submitted. Appearances: John Weider, Atty. for Harry & Gretchen Voss; Kenneth Gordon, Trustee. (lp) [EOD 05/09/02] [01-20692] INTERNAL USE ONLY:   |
| 5/8/02  | 87 | Motion re: by Manufacturers and Traders Trust Company for relief from stay (Sec. 362) re: Accounts, inventory, equipment and general intangibles (excluding titled vehicles) [87-1] Filed by: Timothy P. Johnson, Esq of Underberg & Kessler. Affidavit of service: Filed. FEE PAID #22049708. Returnable 5/15/02 at 11:30, Rochester Courtroom. (asf) [EOD 05/09/02] [01-20692]  |
| 5/10/02 | 88 | Order [88-1] granting motion Sec. 503 (b) directing payment of an administrative expense [84-1] (pf) [EOD 05/13/02] [01-20692]  |
| 5/17/02 | 89 | Order [89-1] granting motion by Manufacturers and Traders Trust Company for relief from stay (Sec. 362) re: Accounts, inventory, equipment and general intangibles (excluding titled vehicles) [87-1] (cc) [EOD 05/20/02] [01-20692]  |

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| 5/29/02 | 90 | Order [90-1] granting motion for payment of professional fees to Bonoadio & Co as Accountants in the amount of \$4699.50 [78-1] (pf) [01-20692]  |
| 6/13/02 | 91 | Notice to creditors [91-1] re: Trustee's Intent to abandon Property: All assets of Premier Van Lines, Inc. ; Deadline for objections: 7/2/02 Scheduled date: 7/3/02 at 11:00, Rochester Courtroom. (asf) [EOD 06/14/02] [01-20692]   |
| 6/18/02 | 92 | Certificate of mailing from BNC with original notice re: abandonment notice [91-1] ; [92-1] (asf) [01-20692]   |
| 6/18/02 | 93 | Affidavit of Mailing re: order [89-1] [93-1] (pf) [EOD 06/24/02] [01-20692]  |
| 7/23/02 | 94 | Notice to creditors [94-1] re: Trustees Intent to Sell "Public Sale" 1984 Kentucky Trailer, 1983 Kentucky Trailer, 1979 Kentucky trailer, 1985 Freightliner truck tractor, 1985 International tractor, 1983 Ford Van truck and 1980 Kentucky trailer ; Deadline for objections: 8/16/02. Returnable: 8/28/02 11:00 a.m.at Rochester Courtroom. (pf) [01-20692]   |
| 7/24/02 | 95 | Letter from trustee stating that this is now an asset case and notice should be sent to all creditors. [95-1] (Clerk's note: did not issue asset notice since asset was determined when the 341 notice was sent out and claims bar date already set). (pf) [01-20692]  |
| 7/26/02 | 96 | Certificate of mailing from BNC with original notice re: sale notice [94-1] ; [96-1] (pf) [EOD 08/12/02] [01-20692]  |
| 8/28/02 | 97 | Order [97-1], To employ Auctioneer Roy Teitsworth (pf) [EOD 08/29/02] [01-20692] INTERNAL USE ONLY:  |
| 9/26/02 | 98 | Notice to creditors [98-1] re:Trustee's Intent to Abandon Property; Assets at Jefferson Road location; Assets in Avon location; Accounts receivable are also liened by M & T Bank ; Trustee plans to abandon the previously turned over balance of approximately \$139.00 for the DIP acct. The balance of the goods in storage belong to customers of debtor and are not property of the bankruptcy estate. Deadline for objections: 10/15/02. Returnable: 10/16/02 @ 11:00 a.m. @ Rochester Courtroom. (pf) [01-20692] |

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| 9/27/02  | --  | Complaint filed to (AP Dkt. 02-2230) James Pfuntner vs. Kenneth W. Gordon, Trustee; Richard Cordero, Rochester Americans Hockey Club, Inc; and M&T Bank to obtain a declaratory judgment relating to any of foregoing causes of action [1-1]FEE NOT PAID, CALLED D. Macknight's office, and will send check on Monday. (kt) [02-2230]   |
| 9/30/02  | 99  | Letter [99-1]from Dr. Cordero re: his concerns about his assets in storage, and other matters in this case. SEE LETTER FOR FURTHER DETAILS. (kt) [EOD 10/03/02] [01-20692]  |
| 9/30/02  | 101 | Certificate of mailing from BNC with original notice re: abandonment notice [98-1] ; [101-1] (pf) [EOD 10/07/02] [01-20692]   |
| 10/3/02  | 100 | Letter [100-1]in response to Dr. Richard Cordero's letter of filed 9/30/02. SEE LETTER FOR FURTHER DETAILS. (kt) [EOD 10/04/02] [01-20692]  |
| 10/8/02  | 102 | Letter [102-1]to Dr. Richard Cordero, in response to his letter of 9/27/02, requesting that the Court make a determination as to whether the Chapter 7 Trustee, is satisfactorily administering this estate. The Court advised Dr. Cordero that the appointment of a Chapter 7 trustee is a function of the Department of Justice, Office of the U.S. Trustee. Accordingly, any concerns that Dr. Cordero may have regarding the Chapter 7 Trustee in this case should first be addressed to Kathleen Dunivin Schmitt, Esq.,Assistant U.S. Trustee. SEE LETTER FOR FURTHER DETAILS. (kt) [01-20692] |
| 10/10/02 | 103 | Letter [103-1]from Kathleen Dunivin Schmitt, U.S. Trustee, advising that the Office of the U.S. Trustee is currently conducting an investigation re: the allegations made by Dr. Cordero of the Trustee. SEE LETTER FOR FURTHER DETAILS. (kt) [01-20692]  |
| 10/17/02 | 104 | Letter [104-1]from Dr. Richard Cordero, Esq., regarding the matter with Kenneth Gordon, Tr. SEE LETTER FOR FURTHER DETAILS. (kt) [EOD 10/23/02] [01-20692] INTERNAL USE ONLY:   |
| 10/23/02 | 105 | Letter [105-1]from Kathleen Dunivin Schmitt, U.S. Trustee, to Dr. Richard Cordero, Esquire, in response to Dr. Cordero's concerns re: regaining possession of items that he paid to store with the debtors and various parties involved in this matter. SEE LETTER FOR FURTHER DETAILS. (kt) [EOD 10/24/02] [01-20692]  |

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| 11/5/02  | 106 | Order [106-1] granting motion for payment of professional fees to Raymond C. Stilwell, Esq. as atty for debtor-in-Possession in the amount of \$2,380.92 for services between 7/16/01 and December 21, 2001 as a Chapter 11 administrative expenses; and the sum of \$1577.00 for service between January 1, 2002 and February 26, 2002 as a Chapter 7 administrative expense, for a total of 3957.92 [73-1] (kt) [EOD 11/06/02] [01-20692] |
| 11/18/02 | --  | Third Pary Complaint and Crossclaim filed to (AP Dkt. 02-2230)James Pfunter, Plaintiff vs. Kenneth Gordon, Tr., Richard Cordero, Rochester Americans Hockey Club, Inc., M&T Bank, defendants, cross-defendants; Richard Cordero, defendant and third party plaintiff, vs. David Palmer, David Dworkin, Jefferson Henrietta Associates and David Delano. [0-0] (kt) [EOD 11/21/02] [Edit date 11/26/02] [02-2230]                            |
| 12/16/02 | 107 | Trustee's report of no assets (kt) [EOD 12/18/02]   |
| 1/13/03  | --  | Notice of appeal Richard Cordero re: order of 12/23/02. [30-1] . Receipt No.: 22055167 (kt) [02-2230]   |

### Report Criteria

**Case Num:** 01-20692

**Filed between:** 01/01/31 and 03/21/03

### End of Report

U.S. Bankruptcy Court  
Western District of New York (Rochester)

Adversary Proceeding #: 02-2230

Date filed: 9/27/02

Assigned to: Hon. John C. Ninfo, II

Related Bankruptcy Case #: 01-20692

In Re: Premier Van Lines, Inc., a Corporation,

Demand: \$20,000

Nature of Suit: 456

=====

\* Attorneys \*

JAMES PFUNTNER  
\* plaintiff \*

David D. MacKnight  
Lacy, Katzen etal  
130 East Main St.  
Rochester, NY 14604  
585-454-5650

v.

KENNETH W. GORDON, As Trustee  
100 Meridian Centre Blvd.  
Suite 120  
Rochester, NY 14618  
\* defendant \*

Kenneth W. Gordon  
Gordon & Schaal  
100 Meridian Centre Blvd.  
Suite 120  
Rochester, NY 14618  
585-244-1070

RICHARD CORDERO  
\* defendant \*

ROCHESTER AMERICANS HOCKEY  
CLUB, INC.  
\* defendant \*

M & T BANK  
\* defendant \*

Michael J. Beyma  
Underberg & Kessler  
1800 Lincoln First Tower  
Rochester, NY 14604  
585-258-2890

v.

RICHARD CORDERO  
59 Crescent Street  
Brooklyn, NY 11208  
\* third party plaintiff \*

v.

Docket as of May 19, 2003 2:14 pm

Page 1 NON-PUBLIC

INTERNAL USE ONLY: Events between 1/1/31 and 5/19/03.  
02-2230 James Pfuntner v. Kenneth W. Gordon, et al

DISMIS

DAVID J. PALMER  
\* 3rd party defendant \*

DAVID DWORKIN  
\* 3rd party defendant \*  
Karl S. Essler  
Fix, Spindelman, Brovitz, Turk,  
Himelein  
500 Crossroads Building  
2 State Street  
Rochester, NY 14614  
585-232-1660

JEFFERSON HENRIETTA ASSOCIATES  
\* 3rd party defendant \*  
Karl S. Essler  
(See above)

DAVID DELANO  
\* 3rd party defendant \*  
Michael J. Beyma  
Underberg & Kessler  
1800 Lincoln First Tower  
Rochester, NY 14604  
585-258-2890

INTERNAL USE ONLY: Events between 1/1/31 and 5/19/03.

02-2230 James Pfuntner v. Kenneth W. Gordon, et al DISMIS

9/27/02 1 Complaint filed to (AP Dkt. 02-2230) James Pfuntner vs. Kenneth W. Gordon, Trustee; Richard Cordero, Rochester Americans Hockey Club, Inc; and M&T Bank to obtain a declaratory judgment relating to any of foregoing causes of action [1-1] FEE NOT PAID, CALLED D. Macknight's office, and will send check on Monday. (kt) [02-2230]

10/1/02 2 Filing fee paid; Receipt No.: 22052838 [2-1] re: adversary proceeding. (kt) [EOD 10/03/02] [02-2230]

10/3/02 3 Summons issued. [3-1] Answer due: 11/4/02 for M & T Bank, for Rochester Americans Hockey Club, Inc., for Richard Cordero, for Kenneth W. Gordon (kt) [02-2230]

10/8/02 4 Affidavit of Mailing re: summons [3-1], complaint to obtain a declaratory judgment relating to any of foregoing causes of action [1-1] [4-1] Clerk's Note: Defendant, M&T Bank was not served, per D. MacKnight's office, will serve and send in an Affidavit of Service. (kt) [EOD 10/09/02] [02-2230]

10/9/02 5 Answer filed on behalf of Kenneth W. Gordon [5-1] by Kenneth W. Gordon, Esq. (kt) [02-2230]

10/15/02 6 Affidavit of Mailing re: summons [3-1], complaint to obtain a declaratory judgment relating to any of foregoing causes of action [1-1] [6-1] served on: M & T Bank, attn: David DeLano, Assistant Vice President. (pf) [EOD 10/16/02] [02-2230]

10/17/02 7 Letter [7-1] from Dr. Richard Cordero, advising that he has not yet been served in this matter. SEE LETTER FOR FURTHER DETAILS. (kt) [EOD 10/23/02] [02-2230]

10/25/02 8 Waiver of Service of Summons and Petition for Clarification of Richard Cordero, Pro Se [8-1] (kt) [EOD 11/05/02] [02-2230]

11/1/02 9 Clerk's Note: Richard Cordero called to inquire when his answer was due; he was advised that the date certain is 11/4/02; he said that he will mail out his answer. Further on 10/31/02, Mr. Cordero was advised that an extension of time for the answer would need to be stipulated to, or a motion may be brought, but an extension of time to answer cannot be done ex-parte. 9-1] (kt) [EOD 11/05/02] [02-2230]

11/6/02 10 Answer filed on behalf of Richard Cordero, Defendant. Filed by R. Cordero, pro se defendant. [10-1] by , Esq. (kt) [02-2230]

11/6/02 11 Answer filed on behalf of M & T Bank [11-1] by Michael J. Beyma, Esq. (kt) [02-2230]

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INTERNAL USE ONLY: Events between 1/1/31 and 5/19/03.  
02-2230 James Pfuntner v. Kenneth W. Gordon, et al DISMIS

11/12/02 12 Plaintiff's Reply to Richard Cordero's Counterclaim, filed by David MacKnight, Atty. [12-1] (kt) [02-2230]

11/12/02 13 Affidavit of Mailing re: Reply filed by D. MacKnight, Atty. [12-1] [13-1] (kt) [02-2230]

11/18/02 -- Third Pary Complaint and Crossclaim filed to (AP Dkt. 02-2230)James Pfunter, Plaintiff vs. Kenneth Gordon, Tr., Richard Cordero, Rochester Americans Hockey Club, Inc., M&T Bank, defendants, cross-defendants; Richard Cordero, defendant and third party plaintiff, vs. David Palmer, David Dworkin, Jefferson Henrietta Associates and David Delano. [0-0] (kt) [EOD 11/21/02] [Edit date 11/26/02] [02-2230]

11/19/02 14 Third Party Summons issued. [14-1] Answer due: 12/19/02 for David Delano, for Jefferson Henrietta Associates, for David Dworking, for David J. Palmer (kt) [EOD 11/21/02] [02-2230]

11/25/02 17 Affidavit of Mailing re: [17-1]third party complaint and summons. Served on essential parties. (kt) [EOD 12/09/02] [02-2230]

11/25/02 18 Amended Answerwith cross-claims filed by Richard Cordero, Pro Se Defendant. [18-1] (kt) [EOD 12/09/02] [02-2230]

12/2/02 19 Copy of Appeal filed with the U.S. Trustee's office by Richard Cordero, Pro Se Defendant. [19-1] (kt) [EOD 12/09/02] [02-2230]

12/5/02 15 Notice of Motion for dismissal of cross-claim against trustee in an adversary proceeding [15-1] Hearing date and time: 9:30 12/18/02 at Rochester Courtroom Filed by: Kenneth Gordon, Esq. Affidavit of service: filed (pf) [EOD 12/06/02] [02-2230]

12/6/02 16 Letter [16-1]dated 12/5/02 from David MacKnight, Esq. to the Court that it might be helpful that the Trustee provide a listing from the debtors records of whose property debtor placed in the Henrietta location and whose property debtor placed in the Avon property. SEE LETTER FOR MORE DETAILS. (pf) [02-2230]

12/9/02 20 Letter [20-1] to Plaintiff's attorney to expedite prosecution of AP; matter will be set on trial calendar for 9:00 1/22/03 Deadline to file documents: 12/19/02 ; (kt) [02-2230]

12/10/02 21 Letter [21-1]from K. Gordon, Tr., re:records of stored property by debtor. SEE LETTER FOR FURTHER TERMS AND CONDITIONS. (kt) [EOD 12/11/02] [02-2230]



INTERNAL USE ONLY: Events between 1/1/31 and 5/19/03.

02-2230 James Pfuntner v. Kenneth W. Gordon, et al DISMIS

- 12/12/02 22 Memorandum of Law in opposition, filed by Dr. Richard Cordero, Defendant, and Third Party Plaintiff(Pro Se) [22-1] re: motion for dismissal of cross-claim against trustee in an adversary proceeding [15-1] . (kt) [02-2230]
- 12/13/02 23 Letter [23-1]from Amber Barney, Atty., advising that Underberg & Kessler will not be representing David Dworkin a party in this action, but are requesting an extension of time to answer from Dr. Cordero. (kt) [EOD 12/16/02] [02-2230]
- 12/17/02 24 Answer filed on behalf of M&T Bank David Delano, Third Party Defendant [24-1] by Michael J. Beyma, Esq. (kt) [EOD 12/18/02] [02-2230]
- 12/17/02 26 Letter [26-1]from K. Gordon to Dr. Cordero, advising that he does not consent to an adj. in this matter. (kt) [EOD 12/18/02] [02-2230]
- 12/18/02 25 Notice of Pre-trial Conference: [25-1] 10:00 1/10/03 at Rochester - Judge's Chambers; sent to David MacKnight, Atty; Kenneth Gordon, Tr.; Michael Beyma, Atty; Richard Cordero, Pro Se; Raymond Stilwell, Atty., and U.S. Trustee. (kt) [02-2230]
- 12/18/02 27 Minutes [27-1] re: motion for dismissal of cross-claim against trustee in an adversary proceeding - granted. The Court finds that Mr. Gordon's letters were not defamatory and that he was not negligent. Order to be submitted. NOTICE OF ENTRY TO BE ISSUED. Appearances: Kenneth Gordon, Trustee/Defendant; and in opposition: Dr. Richard Cordero, Pro Se Third Party Plaintiff (by telephone). (kt) [EOD 12/19/02] [02-2230]
- 12/19/02 28 Copy of Letter from Dr. Cordero to Underberg and Kessler, conditionally granting extension of time to file answer to 12/31/02, on behalf of David Dworkin and Jefferson Henrietta Associates, third party defendants, subject to certain conditions required by Dr. Cordero. [28-1] (kt) [EOD 12/20/02] [02-2230]
- 12/23/02 29 Letter [29-1]from Raymond Stilwell, Atty., advising that he is unable to attend the 1/10/03 pretrial as he has a conflict. Mr. Stilwell further advises that his appearance may not be necessary. SEE LETTER FOR FURTHER DETAILS. (kt) [EOD 12/24/02] [02-2230]
- 12/23/02 30 Order [30-1] granting motion for dismissal of cross-claim against trustee in an adversary proceeding, and that Dr. Cordero's cross-claims against the Trustee are hereby dismissed. [15-1]Notice of Entry Issued To: Kenneth Gordon, Atty; Dr. Richard Cordero, Defendant/Third Party Plaintiff; and U.S. Trustee. (kt) [EOD 12/30/02]

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02-2230

James Pfuntner v. Kenneth W. Gordon, et al

DISMIS

[02-2230]

- 12/26/02 51 Affidavit of Mailing re: [51-1]Default Judgment in a Non-Core Matter. Filed by Dr. Richard Cordero. (kt) [EOD 02/04/03] [02-2230]
- 12/30/02 31 Answer filed on behalf of David Dworkin, Jefferson Henrietta Associates [31-1] by Karl S. Essler, Esq. (kt) [02-2230]
- 12/30/02 32 Letter [32-1]from Dr. Cordero, requesting that he appear by telephone for the 1/10/03 pretrial(submitted the pre-trial option form). (kt) [02-2230]
- 12/30/02 33 Letter [33-1] from Michael Beyma, Atty., advising that he does not have an objection to Dr. Cordero appearing by telephone for the 1/10/03 pretrial. (kt) [02-2230]
- 1/2/03 34 Clerk's Note: Advised R. Stilwell, Atty., that his appearance will not be necessary at the 1/10/03 Pretrial. [34-1] (kt) [02-2230]
- 1/2/03 35 Affidavit of Mailing re: [35-1]filed by Dr. Richard Cordero, Defendant/Third Party Plaintiff, re: pt option form and application to enter a default judgment against David Palmer. (kt) [EOD 01/03/03] [02-2230]
- 1/3/03 36 Order [36-1], that Dr. Richard Cordero, Defendant and Third Party Plaintiff may appear by telephone for the 1/10/03 pretrial (kt) [EOD 01/06/03] [02-2230]
- 1/6/03 37 Pre-Trial option form Order of 1/3/03 was mailed to Dr. Richard Cordero, Defendant; Michael Beyma, Esq. Kenneth Gordon, Esq.; David MacKnight, Esq., and delivered to the U.S. Trustee. [37-1] (kt) [02-2230]
- 1/6/03 38 Copy of Letter [38-1]from K. Gordon, Tr., to Dr. Cordero, Defendant/Third Party Defendant, advising that he has no objection to Dr. Cordero appearing by telephone re: the pretrial. (kt) [02-2230]
- 1/13/03 39 Notice of appeal Richard Cordero re: order of 12/23/02. [30-1] . Receipt No.: 22055167 (kt) [02-2230]
- 1/13/03 40 Civil Cover Sheet filed. [40-1] (kt) [02-2230]
- 1/14/03 41 Letter [41-1]to Dr. Richard Cordero, Defendant/Third Party Plaintiff, advising him that his designation of items on appeal are due on or before 1/27/03. Copy of letter served on essential parties. (kt) [02-2230]
- 1/15/03 42 Notice of Appeal and Certified copy transmitted to District Court. Civil Case #03-cv-6021L [42-1] (kt) [EOD 01/17/03] [02-2230]

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SPA-42

Special Appendix to Dr. Cordero's brief of 7/9/3 in *Premier Van et al.*, 03-5023, CA2

A:1422

INTERNAL USE ONLY: Events between 1/1/31 and 5/19/03.

02-2230 James Pfuntner v. Kenneth W. Gordon, et al DISMIS

1/27/03 43 Appellant's designation by Richard Cordero of Contents for Inclusion in Record on Appeal. (kt) [EOD 01/29/03] [02-2230]

1/27/03 54 Letter [54-1] from Dr. Richard Cordero, re: transcript of hearing of 12/18/02. SEE LETTER FOR FURTHER DETAILS. (kt) [EOD 02/05/03] [02-2230]

1/29/03 44 Affidavit of Mailing re: appellant designation [43-1] by Richard Cordero [44-1] (kt) [02-2230]

1/30/03 47 Notice of Motion to extend time to of time to file Notice of Appeal [47-1] Hearing date and time: 9:30 2/12/03 at Rochester Courtroom Filed by: Richard Cordero, Defendant Affidavit of service: not filed (kt) [EOD 02/03/03] [02-2230]

1/31/03 45 Letter [45-1] from Dr. Cordero re: his available travel dates to come to Rochester to inspect his property in storage. SEE LETTER FOR FURTHER DETAILS. (kt) [02-2230]

2/3/03 46 Letter [46-1] from Dr. Richard Cordero, Defendant, Third Party Plaintiff, re: entry of a default judgment. SEE LETTER FOR FURTHER DETAILS. (kt) [02-2230]

2/3/03 48 Letter [48-1] from K. Gordon, Tr., advising that he will not be attending the inspection of Dr. Cordero's personal property in storage in Avon, NY. (kt) [02-2230]

2/4/03 49 Clerk's Certificate of Default [49-1] (kt) [02-2230]

2/4/03 50 Affidavit of Dr. Richard Cordero [50-1] re: Non-Military Service. (kt) [02-2230]

2/4/03 52 Order [52-1], to Transmit Record to District Court, re: non-core default judgment, with attachment to Recommendation of th eBankruptcy Court The Default Judgment Not Be Entered By the District Court (kt) [02-2230]

2/4/03 53 Letter [53-1] to District Court enclosing the required Documents re: Non Core Default Application for Default. Clerk's Note: Proposed original order submitted to District Court. (kt) [02-2230]

2/6/03 55 Memorandum of Law [55-1] re: motion to extend time to of time to file Notice of Appeal [47-1] . (kt) [02-2230]

- 2/12/03 56 Minutes [56-1] re: motion to extend time to of time to file Notice of Appeal - denied; This motion was not filed timely as required by Rule 8002(a). Appearances: Dr. Richard Cordero, Defendant/Third Party Plaintiff (appeared by telephone); in opposition: Kenneth Gordon, Tr., Defendant. Mr. Gordon will submit Order. NOTICE OF ENTRY TO BE ISSUED. (kt) [EOD 02/14/03] [02-2230]
- 2/12/03 58 Letter [58-1] from Raymond Stilwell, Atty., re: various issues in this matter, and that he does not represent David Palmer in this matter. SEE LETTER FOR FURTHER DETAILS. (kt) [EOD 02/19/03] [02-2230]
- 2/18/03 57 Order [57-1] denying motion to extend time to file Notice of Appeal [47-1] that the Notice of Appeal was filed in the Bankruptcy Court Clerk's Office on 1/13/03; and thereby not timely filed; that the provisions of Bankruptcy Rule 9006(e) and 9006(f) do not apply to extend the time limited for filing of the Notice of Appeal under Bankruptcy Rule 8002(a); that the last date for Richard Cordero, Defendant and Third Party Plaintiff, to file a motion seeking an extension under Bankruptcy Rule 8002(c) of his time to file his Notice of Appeal was 1/29/03; that the motion to extend was not filed with the Bankruptcy Court Clerk' until 1/30/03; and that a motion to dismiss the appeal is pending in the District Court. NOTICE OF ENTRY ISSUED TO: Dr. Richard Cordero, Third Party Plaintiff; Ken Gordon, Defendant and U.S. Trustee. (kt) [02-2230]
- 2/21/03 59 Letter [59-1] from M. Beyma, Atty., for M&T Bank, advising that M&T Bank has not yet decided whether someone from the bank will attend at the warehouse opening. SEE LETTER FOR FURTHER DETAILS. (kt) [EOD 02/24/03] [02-2230]
- 2/27/03 60 Notice of Motion for relief from order denying motion to extend time to file notice of appeal [60-1] Hearing date and time: 9:30 3/12/03 at Rochester Courtroom Filed by: Dr. Richard Cordero, Defendant Affidavit of service: filed. Clerk's Note: Advised Dr. Cordero that 3/12/03 is not a motion date, he will re-notice the motion for 3/19/03 or 3/26/03, and submit an amended affidavit of mail. (kt) [EOD 03/04/03] [02-2230]
- 3/4/03 61 Letter of Opposition filed by K. Gordon, Defendant [61-1] re: motion for relief from order denying motion to extend time to file notice of appeal [60-1] Clerk's Note: Advised Mr. Gordon that the date of 3/12/03 is not a hearing date, and that an amended notice if forthcoming. (kt) [02-2230]

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3/10/03 62 Amended Notice of Motion, re: the amended date of hearing to 3/26/03 at 9:30 at Rochester Courtroom filed by Dr. Richard Cordero, Defendant [62-1] re: motion for relief from order denying motion to extend time to file notice of appeal [60-1]Affidavit of Service filed. (kt) [EOD 03/11/03] [02-2230]

3/10/03 63 Letter [63-1]of Dr. Richard Cordero, Defendant, re: default of David Palmer. (kt) [EOD 03/11/03] [02-2230]

3/11/03 65 Copy of Letter [65-1]from Dr. Richard Cordero to Hon. David Larimer, re: default judgment against D. Palmer. (kt) [EOD 03/13/03] [02-2230]

3/11/03 66 Copy of Decision and Order by U.S. District Judge David G. Larimer; concurring in the Bankruptcy Judge's determination that judgment is not appropriate in this case, and that furthermore, it would appear that the Bankruptcy Court is the proper forum for conducting an inquest concerning damages and the matter is referred to the Bankruptcy Court for that purpose. SEE ORDER FOR FURTHER TERMS AND CONDITIONS. [66-1] (kt) [EOD 03/13/03] [02-2230]

3/12/03 64 Letter [64-1]to Dr. Richard Cordero, sent by Paul Warren, Clerk of the Court, re: the application for the entry of default against David Palmer. SEE LETTER FOR FURTHER TERMS AND CONDITIONS. (kt) [EOD 03/13/03] [02-2230]

3/13/03 67 Decision and Order of the Hon. David G. Larimer, U.S. District Judge, re:Notice of Appeal filed on 1/13/03, re: the Decision and Order dated 12/30/02, of the Hon. John C. Ninfo, II, Chief U.S. Bankruptcy Judge. ORDERED THAT the Trustee's motion to dismiss the appeal is granted, and the appeal is dismissed. [67-1] (kt) [EOD 03/14/03] [02-2230]

3/26/03 70 Minutes [70-1] denying motion for relief from order denying motion to extend time to file notice of appeal [60-1]Ms. Schaal to submit order. The Court reserves the right to supplement the order. NOTICE OF ENTRY TO BE ISSUED. Appearances: Dr. Richard Cordero, Defendant and Third Party Plaintiff (by telephone); in opposition: Deborah Schaal of counsel to K. Gordon, Trustee, and David MacKnight, Atty. for James Pfunter. (kt) [EOD 03/28/03] [02-2230]

3/26/03 71 Transcript [71-1] of proceedings held 12/18/03. (kt) [EOD 03/28/03] [02-2230]

3/27/03 68 Copy of Letter [68-1]from David MacKnight, Atty., to Dr. Richard Cordero, Defendant, advising of the available inspection dates: 4/23/03, 4/24/03, or 4/25/03, or earlier if Dr. Cordero would like. SEE LETTER FOR FURTHER DETAILS. (kt) [02-2230]

- 3/27/03 69 Copy of Decision and Order [69-1], executed by David G. Larimer, U.S. District Judge re: Richard Cordero moves for a rehearing or reconsideration of this Court's Decision and Order enter 3/11/03. The motion is in all respects denied. (kt) [EOD 03/28/03] [02-2230]
- 4/2/03 72 Copy of Letter [72-1] from Dr. Richard Cordero to Court Reporter. (kt) [02-2230]
- 4/4/03 73 Order [73-1] denying Defendant, Third Party Plaintiff, Dr. Richard Cordero's motion for relief from order denying motion to extend time to file notice of appeal [69-2], that based on the findings of fact and conclusions of law, that Richard Cordero's motion for relief from the order dated 2/18/03 denying his motion for extension of time for filing a notice to appeal is hereby denied. NOTICE OF ENTRY ISSUED TO Debra Schall, of counsel to Kenneth Gordon, Atty., Dr. Richard Cordero, Defendant, and David MacKnight, Atty. (kt) [EOD 04/07/03] [02-2230]
- 4/7/03 74 Notice of entry issued to U.S. Trustee [74-1] re: Order of 4/4/03. (kt) [02-2230]
- 4/7/03 75 Notice of Motion for Measures relating to trip to Rochester and Inspection of Property [75-1] Hearing date and time: 9:30 4/16/03 at Rochester Courtroom Filed by: Dr. Richard Cordero, Pro Se, Defendant, and Third Party Plaintiff. Affidavit of service: filed. Clerk's Note: Dr. Cordero is advised by letter that 4/16/03 is not a scheduled date, and to please re-notice his motion for 4/23/03, or for one of the Court's motion dates that accommodates his schedule. (kt) [EOD 04/08/03] [02-2230]
- 4/7/03 76 Letter [76-1] to Dr. Richard Cordero, advising that due to the complexity of the legal issues that he has now raised and re: notice of motion for measures relating to trip to Rochester, the Court denies Dr. Cordero's request to appear by telephone in this matter. SEE LETTER FOR FURTHER DETAILS. (kt) [EOD 04/08/03] [02-2230]
- 4/11/03 77 Notice of Motion for an Order pursuant to FRBP 7056 and Federal Rules of Civil Procedure 56 and Federal Rules of Bankruptcy Procedure 7022 and Federal Rules of Civil Procedure 22 for an Order discharging James Pfuntner from any liability to any of the parties to this adversary proceeding [77-1] Hearing date and time: 9:30 4/23/03 at Rochester Courtroom Filed by: David MacKnight, Atty. Affidavit of service: not filed (kt) [EOD 04/14/03] [02-2230]

INTERNAL USE ONLY: Events between 1/1/31 and 5/19/03.

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4/21/03 78 Brief of Dr. Richard Cordero, Pro Se [78-1] re: motion for an Order pursuant to FRBP 7056 and Federal Rules of Civil Procedure 56 and Federal Rules of Bankruptcy Procedure 7022 and Federal Rules of Civil Procedure 22 for an Order discharging James Pfunter from any liability to any of the parties to this adversary proceeding [77-1] Affidavit of Mailing filed. (kt) [02-2230]

4/21/03 79 Letter [79-1] from Mary Dianetti, Bankruptcy Court Reporter, in response to Dr. Cordero's letter. SEE LETTER FOR FURTHER DETAILS. (kt) [EOD 04/22/03] [02-2230]

4/23/03 81 Minutes [81-1] motion for an Order pursuant to FRBP 7056 and Federal Rules of Civil Procedure 56 and Federal Rules of Bankruptcy Procedure 7022 and Federal Rules of Civil Procedure 22 for an Order discharging James Pfunter from any liability to any of the parties to this adversary proceeding [77-1] Adj. to 9:30 5/21/03 at Rochester Courtroom. The court directed Dr. Cordero to inspect the goods by 5/21/03. Appearances: David MacKnight, Atty. for J. Pfunter, Plaintiff; in opposition: Dr. Richard Cordero, Defendant, and Third Party Plaintiff (by telephone). (kt) [EOD 04/29/03] [02-2230]

4/29/03 80 Clerk's Note: Appeal filed transmitted to District Court, for purposes of filing in the Second Circuit. [80-1] (kt) [02-2230]

5/5/03 82 Copy of Letter [82-1] from Dr. Cordero to James Pfunter, confirming that Dr. Cordero will be arriving in Rochester on May 21, 2003 at 10:45, to inspect his property in Avon. Affidavit of Service filed. (kt) [02-2230]

5/7/03 83 Letter [83-1] from Dr. Richard Cordero, Defendant, re: his travel arrangements for the inspection in Avon, NY., on 5/19/03. SEE LETTER FOR FURTHER DETAILS. (kt) [02-2230]

5/13/03 84 Copy of Letter [84-1] from J. Pfunter to Dr. Cordero, confirming that the inspection of the property at Sackett Road will take place on 5/19/03. SEE LETTER FOR FURTHER DETAILS. (kt) [02-2230]

5/15/03 85 Letter [85-1] from Dr. Richard Cordero, Defendant, advising that he will be in Rochester on 5/19/03. SEE LETTER FOR FURTHER DETAILS. (kt) [EOD 05/16/03] [02-2230]

Office Of The Clerk  
**United States District Court**

Western District Of New York  
2120 U.S. Courthouse  
100 State Street  
Rochester, New York 14614-1387  
(585) 263-6263 / Fax (585) 263-3178

**Rodney C. Early**  
Clerk

May 19, 2003

Roseann MacKechnie, Clerk  
United States Court of Appeals  
for the Second Circuit  
U.S. Courthouse  
Foley Square  
New York, NY 10007

RE: 03-cv-6021 (USCA# 03-5023) - CORDERO VS GORDON

Dear Ms MacKechnie,

We are transmitting herewith the Record on Appeal in regards to the above mentioned action along with a Clerk's Certificate and a certified copy of a current docket sheet for your information as requested by your Court..

If I can be of any further assistance, please do not hesitate to call.

Very truly yours,

  
MARGARET GHYSEL  
Deputy Clerk

Enclosures

CC Richard Cordero, Dr.  
Kenneth W. Gordon, Esq.



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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RICHARD CORDERO, DR.,

Appellant,

vs

03 - CV - 6021 L  
USCA#03-5023

KENNETH GORDON, ESQ.,

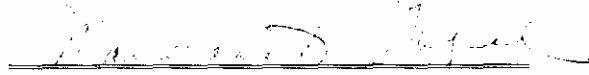
Appellee.

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I, RODNEY C. EARLY, Clerk of the United States District Court for the Western District of New York, do hereby certify that the copy of docket entries A through C together with the index numbered 1 through 11 constitute the Index to the Record on Appeal.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Rochester, New York, this 19<sup>th</sup> day of May, 2003.

FOR: RODNEY C. EARLY, CLERK



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INDEX TO RECORD ON APPEAL  
CIVIL DOCKET FOR CASE #: 03-CV-6021  
Cordero v. Gordon  
(USCA# 03-5023)

A - <sup>1</sup> DOCKET ENTRIES.

- 1/15/03 1     BANKRUPTCY RECORD on appeal received (to)
- 1/16/03 3     ORDER, that appellant shall file and serve its brief within 20 days after entry of this order; appellee shall serve its brief within 20 days after service of appellants brief ( signed by Chief USDJ David G. Larimer ) Notice and copy of order sent to Kenneth W. Gordon, Richard (to)
- 1/17/03 2     MOTION by Kenneth Gordon to Dismiss appeal court to set return date (to) [Entry date 01/17/03]
- 1/22/03 4     ORDER, Response to Motion set to 2/14/03 for [2-1] motion to Dismiss appeal ( signed by Chief USDJ David G. Larimer ) Notice and copy of order sent to Kenneth W. Gordon, Richard Cordero (to) [Entry date 01/22/03]
- 1/24/03 5     ORDER, Vacating [3-1] order that appellant shall file and serve its brief within 20 days after entry of this order; appellee shall serve its brief within 20 days after service of appellants brief all dates in the 1/22/03 order remain in full force and effect ( signed by Chief USDJ David G. Larimer ) Notice and copy of order sent to Kenneth W. Gordon, Richard Cordero (to) [Entry date 01/27/03]
- 2/14/03 6     REPLY BRIEF by Richard Cordero Re: [2-1] motion to Dismiss appeal by Kenneth Gordon (to) [Entry date 02/14/03]
- 3/12/03 7     ORDER granting [2-1] motion to Dismiss appeal, to Dismiss action ( signed by USDJ David G. Larimer ) Notice and copy of order sent to Kenneth W. Gordon, Richard Cordero (to) [Entry date 03/12/03]
- 3/12/03 8     JUDGMENT for Kenneth Gordon against Richard Cordero ( signed by Clerk ). Notice and copy of judgment sent to Kenneth W. Gordon, Richard Cordero (to)

- 3/21/03 9 MOTION by Richard Cordero for Reconsideration of [8-1] judgment order, [7-1] order to Dismiss action (to)
- 3/27/03 10 ORDER denying [9-1] motion for Reconsideration of [8-1] judgment order, [7-1] order to Dismiss action ( signed by USDJ David G. Larimer ) Notice and copy of order sent to Kenneth W. Gordon, Richard Cordero (to)
- 4/25/03 11 NOTICE OF APPEAL by Richard Cordero . Fee Status: 105.00 (Also appealing 03-mbk-6001) (mg) [Entry date 04/28/03]

Office Of The Clerk  
**United States District Court**

Western District Of New York  
2120 U.S. Courthouse  
100 State Street  
Rochester, New York 14614-1387  
(585) 263-6263 / Fax (585) 263-3178

**Rodney C. Early**  
Clerk

May 19, 2003

Roseann MacKechnie, Clerk  
United States Court of Appeals  
for the Second Circuit  
U.S. Courthouse  
Foley Square  
New York, NY 10007

RE: 03-mbk-6001 (USCA# 03-5023) - CORDERO VS PALMER

Dear Ms MacKechnie,

We are transmitting herewith the Record on Appeal in regards to the above mentioned action along with a Clerk's Certificate and a certified copy of a current docket sheet for your information as requested by your Court..

If I can be of any further assistance, please do not hesitate to call.

Very truly yours,

  
MARGARET GHYSEL  
Deputy Clerk

Enclosures

CC Richard Cordero, Dr.  
David Palmer  
Raymond Stilwell, Esq.

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

RICHARD CORDERO, DR.,

Appellant,

vs

03 - MBK - 6001L  
USCA#03-5023

DAVID PALMER,

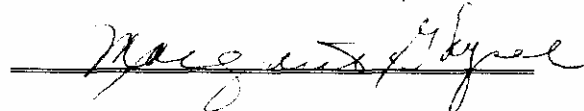
Appellee.

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I, RODNEY C. EARLY, Clerk of the United States District Court for the Western District of New York, do hereby certify that the copy of docket entries A through B together with the index numbered 1 through 6 w/exhs. constitute the Index to the Record on Appeal.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Rochester, New York, this 19<sup>th</sup> day of May, 2003.

FOR: RODNEY C. EARLY, CLERK

  
\_\_\_\_\_

MISCELLANEOUS DOCKET  
UNITED STATES DISTRICT COURT

Docket  
No. 03-mbk-6001

| Title of Case  | Attorneys   |
|--|---|
| IN RE: Premier Van Lines, Inc.<br><br>RICHARD CORDERO<br><br><br>DAVID PALMER<br><br><i>Sucepto Ro A</i><br><i>USCA# 03-5023</i> | For Plaintiff:<br>Richard Cordero, Dr.<br>59 Cresent St.<br>Brooklyn, NY 11208<br><br>For Defendant:<br>1829 Middle Rd.<br>Rush, NY 14534<br><br>Raymond Stilwell, Esq.<br>300 Linden Oaks, Roch., ny 14625 |

| Memoranda | Date | Name or Receipt No. | Received | Disbursed |
|-----------|------|---------------------|----------|-----------|
|           |      |                     |          |           |

| Date    | Proceedings  | Date Order or Judgement Noted |
|---------|--|-------------------------------|
| 2/4/03  | 1- #54 Non-core proceeding of Bankruptcy Court re: plaintiff's request for default judgment  |                               |
| 3/5/03  | 1- #55 Motion fo motion to enter default judgment against David Palmer and withdraw proceeding by Richard Cordero  |                               |
| 3/11/03 | 3- #56 Decision and Order denying request for default judgment; that judgment is not appropriated in this case; furthermore it would appear that the Bankruptcy court is the proper forum for conducting an inquest concerning damages and the matter is referred to the Bankruptcy Court for that purpose (DGL)<br><br>Case Closed-file sent back to bankruptcy court |                               |
| 3/21/03 | 4- #57 Motion for rehearing re: implied denial of motion to enter default judgment and with-draw proceeding  |                               |
| 3/27/03 | 5- #58 Order denying request for a rehearing and reconsideration (#57)   |                               |

| Date     | Proceedings   | Date Order or<br>Judgement<br>Noted |
|----------|---|-------------------------------------|
| 4/25/03  | 6 - #59 Filed certified copy of Notice of Appeal - IN RE -3/11/03 order. (Also filed NOA in 03-cv-6021 case - CORDERO VS GORDON)                    |                                     |
| 4/28/03  | Transmitted NOA along with 03-cv-6021 w/ certified copy of both docket sheets   |                                     |
| 5/19/03  | Certified and transmitted ROA to USCA, Second Circuit: (also sending ROA of 03-cv-6021) along with certified copies of both cases - (USCA# 03-5023) |                                     |
| EXHIBITS |   |                                     |
| A.       | Cordero's Designation of Items and Statement Issues on Appeal filed 1/27/03 in Bankruptcy Court   |                                     |

GENERAL DOCKET FOR  
Second Circuit Court of Appeals

Court of Appeals Docket #: 03-5023  
Nsuit: 3422 STATUTES-Bkrup Appeals 801  
In Re: Premier Van, et al v.  
Appeal from: U.S. District Court WDNY

Filed: 5/2/03

-----  
Case type information:

- 1) Bankruptcy
- 2) dc
- 3) none

-----  
Lower court information:

District: 0209-06: 03-cv-6021 and 03-MBK-6001L, see attached copy  
 Trial Judge: David G. Larimer of letter to Clerk Rodney C. Early  
 Date Filed: 1/15/03  
 Date order/judgment: 3/27/03  
 Date NOA filed: 4/25/03

-----  
Fee status: paid

-----  
Prior cases:

None

Current cases:

None

-----  
Panel Assignment:



Proceedings include all events.  
03-5023 In Re: Premier Van, et al v.

Re: PREMIER VAN LINES  
Debtor

-----  
RICHARD CORDERO  
Third-Party-Plaintiff -  
Appellant

Richard Cordero  
718-827-9521  
[COR LD NTC]  
59 Crescent St.  
Brooklyn, NY 11208-1515

-----  
KENNETH W. GORDON, Esq.  
Trustee - Appellee

Kenneth W. Gordon, Esq.  
585-244-1070  
Suite 120  
[COR LD NTC]  
Gordon & Schaal, LLP  
100 Meridian Centre Blvd.  
Rochester, NY 14618

v.

DAVID PALMER  
Third-Party-Defendant -  
Appellee

David Palmer  
[COR LD NTC]  
1829 Middle Rd.  
Rush, NY 14543

Proceedings include all events.  
03-5023 In Re: Premier Van, et al v.

Official Caption 1/  
-----

Docket No. [s] : 03-5023

IN RE: PREMIER VAN LINES, INC.,  
Debtor.

-----  
RICHARD CORDERO,  
Third-Party-Plaintiff - Appellant

v.  
KENNETH W. GORDON, Esq.,  
Trustee - Appellee,

DAVID PALMER  
Third-Party-Defendant - Appellee.

-----  
Authorized Abbreviated Caption 2/  
-----

-----  
Docket No. [s] : 03-5023

In Re: Premier Van Lines, Inc.,  
-----

-----  
1/ Fed. R. App. P. Rule 12 [a] and 32 [a].  
2/ For use on correspondence and motions only.

Docket as of May 16, 2003 4:09 pm

Page 3

Proceedings include all events.  
03-5023 In Re: Premier Van, et al v.

/03 Copy of notice of appeal and district court docket entries on behalf of Appellant Richard Cordero filed. [03-5023] "Fee Paid #64514". (ra)

5/2/03 Note: This appeal was PRO SE when filed. (ra)

5/2/03 Copy of decision and order dated March 11, 2003 (03-MBK-6001L), endorsed by Hon. David G. Larimer, United States District Judge, RECEIVED. [03-5023] (ra)

5/2/03 Copy of decision and order dated March 12, 2003, endorsed by Hon. David G. Larimer, United States District Judge, RECEIVED. (03-cv-6021L). [03-5023] (ra)

5/2/03 Copy of judgment dated March 12, 2003, endorsed by Deputy Clerk, RECEIVED. [03-5023] (ra)

Docket as of May 16, 2003 4:09 pm

Page 4

**Dr. Richard Cordero**

Ph.D., University of Cambridge, England  
M.B.A., University of Michigan Business School  
D.E.A., La Sorbonne, Paris

59 Crescent Street  
Brooklyn, NY 11208-1515  
tel. (718) 827-9521; CorderoRic@yahoo.com

May 24, 2003

Ms. Roseann B. MacKechnie  
Clerk of Court  
United States Court of Appeals for the Second Circuit  
Thurgood Marshall United States Courthouse  
40 Foley Square, Room 1802  
New York, NY 10007

**Re: Redesignation of Items in the Record and Statement of Issues on Appeal**  
for USCA 03-5023

Dear Ms. MacKechnie,

Thank you for your Docketing Letter of May 16, 2003. Please find herewith my acknowledgment letter with corrections and other forms that I have filled out as requested.

I would like to bring to your attention the fact that in the copy of neither the docket that I requested from the bankruptcy court or received unrequested from the district court is there any entry for the Redesignation of Items in the Record and Statement of Issues on Appeal that I submitted not only to the bankruptcy court, but also to the district court on May 5, 2003. That may explain why in docket 03-5023 there is no such entry either. I would appreciate it if you would explain the significance of that omission and how it could have occurred. Since some very odd events –to put it mildly- have occurred in those courts in Rochester, I wonder whether this is another one of them.

In any event, to be on the safe side I have enclosed a copy of that Redesignation and Statement. They concern the two cases involved in my appeal, namely:

Cordero v. **Gordon**, case no. 03-CV-6021L  
Cordero v. **Palmer**, case no.03-MBK-6001L

Please also note what I already brought to the attention of the clerk of the District Court, Mr. Rodney C. Early, to wit, that I have collected each of the items listed in that Redesignation, including those initially submitted to the bankruptcy court back on January 23; sequentially numbered their pages, printed and bound them. I stand ready to submit that record to the Court of Appeals upon receiving leave from you to do so. This Redesignation is certainly more comprehensive than the record on appeal in the dockets that I have received from the bankruptcy and district courts.

I look forward to hearing from you and remain,

sincerely,  
*Dr. Richard Cordero*

**Dr. Richard Cordero**

Ph.D., University of Cambridge, England  
M.B.A., University of Michigan Business School  
D.E.A., La Sorbonne, Paris

59 Crescent Street  
Brooklyn, NY 11208-1515  
tel. (718) 827-9521; CorderoRic@yahoo.com

May 5, 2003

Mr. Rodney C. Early, Clerk  
United States District Court  
2120 U.S. Courthouse  
100 State Street  
Rochester, NY 14614-1387

Dear Mr. Early,

I am a party in adversary proceeding 02-2230 in bankruptcy court. Matters therein were referred to the district court, and you assigned to it the following case numbers:

Cordero v. **Gordon**, case no. **03-CV-6021L**  
Cordero v. Palmer, case no.03-MBK-6001L

I have appealed from those orders to the Court of Appeals for the Second Circuit and in my notice of appeal, filed last April 25, I used those names and case numbers. However, the statement that thereupon your deputy, Ms. Margaret Ghysel, sent me on April 28, bears the following subject line:

Re: 03-cv-6021L – Cordero vs Palmer  
03-MBK-6001 –Cordero vs Palmer

Obviously, there is a mistake since the defendant in 03-cv-6021L is Gordon, that is, Trustee Kenneth Gordon, not Palmer, or David Palmer, the defaulted defendant in the miscellaneous bankruptcy case. I kindly request that you correct this mistake promptly so that it does not lead to problems later on and that you let me know the course of action that you take to do so.

I spoke with yours Appeals Clerk Peggy, who indicated that I could submit to the district court my Redesignation of Items and Statement of Issues on Appeal, which I must prepare pursuant to FRAP Rule 6(b)(2)(B)(i). Hence, please find herewith a copy of it for good measure.

In this context, please note that I have collected each of the items listed in that Redesignation, including those initially submitted to the bankruptcy court back on January 23; sequentially numbered their pages, printed and bound them. I stand ready to submit that record either to you, if you request it in writing, or what is more inexpensive and practical, submit it upon your written instruction to the Court of Appeals directly. I believe that in this way I comply with FRAP 6(b)(2)(C)(ii), which provides that “all parties must do whatever else is necessary to enable the clerk to assemble and forward the record.”

I look forward to hearing from you and remain,

sincerely,

*Dr. Richard Cordero*

US Court of Appeals for the Second Circuit  
Case Summary

Court of Appeals Docket #: 03-5023  
Nsuit: 3422 STATUTES-Bkrup Appeals 801  
In Re: Premier Van, et al v.  
Appeal from: U.S. District Court WDNY

Filed: 5/2/03

Lower court information:

District: 0209-06: 03-cv-6021  
Trial Judge: David G. Larimer

5/2/03 Copy of decision and order dated March 11, 2003 (03-MBK-6001L), endorsed by Hon. David G. Larimer, United States District Judge, RECEIVED. [03-5023] (ra)

5/2/03 Copy of decision and order dated March 12, 2003, endorsed by Hon. David G. Larimer, United States District Judge, RECEIVED. (03-cv-6021L). [03-5023] (ra)

5/2/03 Copy of judgment dated March 12, 2003, endorsed by Deputy Clerk, RECEIVED. [03-5023] (ra)

5/22/03 Record on appeal filed. (Original papers of district court.) Number of volumes: 1. Also included is the record from the bankruptcy court which is a separate volume. (ra)

5/28/03 Scheduling order #1 filed. Record on appeal due on 6/9/03. Appellant's brief and appendix due on 7/9/03. Appellee's brief due on 8/8/03. Argument as early as week of 9/22/03. (ra)

5/28/03 Notice to counsel regarding scheduling order #1 filed on 5/28/03. (ra)

5/28/03 Notice of appeal acknowledgment letter from Richard Cordero for Appellant Richard Cordero received. (ps30)

5/28/03 Letter dated 5-5-03 from appellant pro se Dr. Cordero to the district court requesting that the district court correct the mistake listed on the district court docket received (ps30)

5/28/03 Notice of appearance form on behalf of Richard Cordero, Esq., filed. (Orig in acco, copy to Calendar) (ps30)

5/28/03 Resignation of items in the record and statement of issues on appeal from Appellant Richard Cordero received. (ps30)

6/2/03 Notice of appeal acknowledgment letter from Kenneth W. Gordon for Appellee Kenneth W. Gordon received. (ps30)

6/5/03 Record on appeal received in records room from team. (reg)

6/5/03 1st supplemental index on appeal filed. (ps37)

6/13/03 Record on appeal received in records room from team. (reg)

**PACER Service Center**

**Transaction Receipt**

|                        |             |                     |         |
|------------------------|-------------|---------------------|---------|
|                        |             |                     |         |
|                        |             |                     |         |
| 07/07/2003 12:52:11    |             |                     |         |
| <b>PACER Login:</b>    |             | <b>Client Code:</b> |         |
| <b>Description:</b>    | dkt summary | <b>Case Number:</b> | 03-5023 |
| <b>Billable Pages:</b> | 1           | <b>Cost:</b>        | 0.07    |

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### III. Rules of Procedure

#### **A. Federal Rules of Bankruptcy Procedure**

##### **Rule 7004. Process; Service of Summons, Complaint**

###### **(a) Summons, service; proof of service**

Rule 4(a)...F.R.Civ.P. applies in adversary proceedings...

##### **Rule 7055. Default**

Rule 55 F.R.Civ.P. applies in adversary proceedings.

##### **Rule 8001. Manner of Taking Appeal; Voluntary Dismissal**

###### **(a) Appeal as of right; how taken**

An appeal from a judgment, order, or decree of a bankruptcy judge to a district court or bankruptcy appellate panel as permitted by 28 U.S.C. § 158(a)(1) or (a)(2) shall be taken by filing a notice of appeal with the clerk within the time allowed by Rule 8002. An appellant's failure to take any step other than timely filing a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the district court or bankruptcy appellate panel deems appropriate, which may include dismissal of the appeal...

##### **Rule 8002. Time for Filing Notice of Appeal**

###### **(a) Ten-day period**

The notice of appeal shall be filed with the clerk within 10 days of the date of the entry of the judgment, order, or decree appealed from...If a notice of appeal is mistakenly filed with the district court

or the bankruptcy appellate panel, the clerk of the district court or the clerk of the bankruptcy appellate panel shall note thereon the date on which it was received and transmit it to the clerk and it shall be deemed **filed with the clerk** on the date so noted (emphasis added).

...

**(c) Extension of time for appeal.**

**(1)** The bankruptcy judge may extend the time for filing the notice of appeal by any party...

**(2)** A request to extend the time for filing a notice of appeal must be made by written motion filed before the time for filing a notice of appeal has expired, except that such a motion filed not later than 20 days after the expiration of the time for filing a notice of appeal may be granted upon a showing of excusable neglect. An extension of time for filing a notice of appeal may not exceed 20 days from the expiration of the time for filing a notice of appeal otherwise prescribed by this rule or 10 days from the date of entry of the order granting the motion, whichever is later.

**Rule 8007. Completion and Transmission of the Record;  
Docketing of the Appeal**

**(a) Duty of reporter to prepare and file transcript**

If the transcript cannot be completed within 30 days of receipt of the request the reporter shall seek an extension of time from the clerk or the clerk of the bankruptcy appellate panel and the action of the clerk shall be entered in the docket and the parties notified. If the reporter does not file the transcript within the time allowed, the

clerk or the clerk of the bankruptcy appellate panel shall notify the bankruptcy judge.

### **Rule 8008. Filing and Service**

#### **(a) Filing**

Papers required or permitted to be filed with **the clerk of the district court or the clerk of the bankruptcy appellate panel** may be filed by mail addressed to the clerk, but filing is not timely unless the papers are received by the clerk within the time fixed for filing, except that briefs are deemed filed on the day of mailing... (emphasis added)

#### **Advisory Committee Notes**

This rule is an adaptation of F.R.App.P. Rule 25.

### **Rule 8009. Briefs and Appendix; Filing and Service**

#### **(a) Briefs**

Unless the district court or the bankruptcy appellate panel by local rule or by order excuses the filing of briefs or specifies different time limits:

...

(3)...No further briefs may be filed except with leave of the district court or the bankruptcy appellate panel.

### **Rule 8011. Motions**

#### **(a) Content of motions; response; reply**

A request for an order or other relief shall be made by filing with

the clerk of the district court or the clerk of the bankruptcy appellate panel a motion for such order or relief with proof of service on all other parties to the appeal...

### **Rule 9003. Prohibition of Ex Parte Contacts**

#### **(a) General prohibition**

Except as otherwise permitted by applicable law, any examiner, any party in interest, and any attorney, accountant, or employee of a party in interest shall refrain from ex parte meetings and communication with the court concerning matters affecting a particular case or proceeding.

### **Rule 9005. Harmless Error**

Rule 61 F.R.Civ.P. applies in cases under the Code. When appropriate, the court may order the correction of any error or defect or the cure of any omission which does not affect substantial rights.

### **Rule 9006. Time**

#### **(a) Computation**

In computing **any period** of time prescribed or allowed by **these rules** or by the Federal **Rules of Civil Procedure** made applicable by these rules, by the **local rules**, by **order of court**, or by **any applicable statute**, the day of the **act, event, or default** from which the designated period of time begins to run shall not be included.... The last day of the period so computed shall be

included, unless it is a Saturday, a **Sunday**, or a legal holiday,...in which event the period runs until the end of the next day which is not one of the aforementioned days (emphasis added).

**(b) Enlargement.**

**(1) In general.**

Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

**(2) Enlargement not permitted.**

The court may not enlarge the time for taking action under Rules 1007(d) , 1017(b)(3) , 2003(a) and (d) , 7052 , 9023 , and 9024.

**(3) Enlargement limited.**

The court may enlarge the time for taking action under Rules 1006(b)(2), 1017(e), 3002(c), 4003(b), 4004(a), 4007(c), 8002, and 9033, only to the extent and under the conditions stated in those rules.



**(c) Reduction.**

**(1) In general.**

Except as provided in paragraph (2) of this subdivision, when an act is required or allowed to be done at or within a specified time by these rules or by a notice given thereunder or by order of court, the court for cause shown may in its discretion with or without motion or notice order the period reduced.

**(2) Reduction not permitted.**

The court may not reduce the time for taking action pursuant to Rules 2002(a)(7), 2003(a), 3002(c), 3014, 3015, 4001(b)(2), (c)(2), 4003(a), 4004(a), 4007(c), 8002, and 9033(b).

**(e) Time of service**

Service of process and service of any paper other than process or of notice by mail is complete on mailing.

**(f) Additional time after service by mail or under Rule 5(b)(2)(C) or (D) F.R.Civ.P.**

When there is a right or requirement to do some act or undertake some proceedings within a prescribed period after service of a notice or other paper and the notice or paper other than process is served by mail or under Rule 5(b)(2)(C) or (D) F.R.Civ.P., three days shall be added to the prescribed period.

...

**ADVISORY COMMITTEE NOTES**

**Subdivision (a).** This rule is **an adaptation of Rule 6 F.R.Civ.P.** It governs the time for acts to be done and proceedings to be had in cases

under the Code and **any** litigation arising therein (emphasis added).

**Subdivision (b)** is patterned after Rule 6(b) F.R.Civ.P. and Rule 26(b) F.R.App.P.

Paragraph (1) of this subdivision confers on the court discretion generally to authorize extensions of time for doing acts required or allowed by these rules or orders of court. **The exceptions** to this general authority to extend the time **are contained in paragraph (2) and (3)** (emphasis added).

**Rule 9011. Signing of Papers; Representations to the Court; Sanction; Verification and Copies of Papers**

...

**(b) Representations to the court**

By presenting to the court (whether by signing, filing, submitting, or later advocating,) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,-

**(1)** it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation

...

**(3)** the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further information or discovery;

## **B. Federal Rules of Civil Procedure**

### **Rule 4. Summons**

**(a) Form.** The summons shall be signed by the clerk, bear the seal of the court, identify the court and the parties, be directed to the defendant, and state the name and address of the plaintiff's attorney or, if unrepresented, of the plaintiff. It shall also state the time within which the defendant must **appear** and defend, and notify the defendant that **failure** to do so **will result in a judgment by default** against the defendant for the relief demanded in the complaint. The court may allow a summons to be amended.  
(emphasis added)

### **Rule 5. Serving and Filing Pleadings and Other Papers**

...

#### **(b) Making Service.**

...

**(2)** Service under Rule 5(a) is made by:

...

**(B)** Mailing a copy to the last known address of the person served. **Service by mail is complete on mailing** (emphasis added).

**(C)** If the person served has not known address, leaving a copy with the clerk of the court.

**(D)** Delivering a copy by any other means, including

electronic means, consented to in writing by the person served. Service by electronic means is complete on transmission; service by other consented means is complete when the person making service delivers the copy to the agency designated to make delivery. If authorized by local rule, a party may make service under this subparagraph (D) through the court's transmission facilities.

**(3)** Service by electronic means under Rule 5(b)(2)(D) is not effective if the party making service learns that the attempted service did not reach the person to be served.

## **ADVISORY COMMITTEE NOTES**

### **2001 Amendments**

...

Rule 6(e) is amended to allow additional time to respond when service is made under 5(b)(2)(D). The additional time does not relieve a party who consents to service under Rule 5(b)(2)(D) of the responsibilities to monitor the facility designated for receiving service and to provide prompt notice of any address change.

Paragraph (3) addresses a question that may arise from a literal reading of the provision that service by electronic means is complete on transmission. Electronic communications is rapidly improving, but lawyers report continuing failures of transmission, particularly with respect to attachments. Ordinarily the risk of non-receipt falls on the person being served, who has consented to this form of service. But the risk should not extend to situations in which the

person attempting service learns that the attempted service in fact did not reach the person to be served. Given actual knowledge that the attempt failed, service is not effected. The person attempting service must either try again or show circumstances that justify dispensing with service.

...

### **Changes Made After Publication and Comments**

...

#### **Rule 6(e)**

The Advisory Committee recommended that no change be made in Civil Rule 6(e) to reflect the provisions of Civil Rule 5(b)(2)(D) that, with the consent of the person to be served, would allow service by electronic or other means. Absent change, service by these means would not affect the time for acting in response to the paper served. Comment was requested, however, on the alternative that would allow an additional 3 days to respond. The alternative Rule 6(e) amendments are cast in a form that permits ready incorporation in the Bankruptcy Rules. Several of the comments suggest that **the added three days should be provided**. Electronic transmission is not always instantaneous, and may fail for any of a number of reason. It may take three days to arrange for transmission in readable form. Providing added time to respond will not discourage people from asking for consent to electronic transmission, and may encourage people to give consent. The more who consent, the quicker will come the improvements that will make electronic service ever more attractive. **Consistency with the Bankruptcy Rules will be a good thing, and the Bankruptcy**

**Rules Advisory Committee believes the additional three days should be allowed** (emphasis added).

## **Rule 6. Time**

...

**(e) Additonal Time After Service under Rule 5(b)(2)(B), (C), or (D).** Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party under Rule 5(b)(2)(B), (C), or (D), 3 days shall be added to the prescribed period.

### **ADVISORY COMMITTEE NOTES**

...

#### **1985 Amendment**

Rule 6(a) is amended to acknowledge that weather conditions or other events may render the clerk's office inaccessible one or more days. **Parties who are obliged to file something with the court during that period should not be penalized if they cannot do so...**(emphasis added).

The Rule also is amended to extend the exclusion of intermediate Saturdays, Sundays, and legal holidays to the computation of time periods less than 11 days. Under the current version of the Rule, **parties bringing motions under rules with 10-day periods could have as few as 5 working days to prepare their motions.** This **hardship** would be **especially acute in the case of Rules 50(b)**

[Renewing Motion for Judgment After Trial; Alternative Motion for New Trial] and (c)(2) [New Trial Motion], 52(b) [on motion for the court to amend its findings], and 59(b), (d), and (e) [on motions for new trial and to alter or amend judgment], **which may not be enlarged** at the discretion of the court....(emphasis added).

## **Rule 16. Pretrial Conferences; Scheduling; Management**

[made applicable by Rule 7016 F.R.Bkr.P.]

...

**(b) Scheduling and Planning.** Except in categories of actions exempted by district court rule as inappropriate, the district judge, or a magistrate judge when authorized by district court rule, **shall**, after receiving the report from the parties under Rule 26(f) or after consulting with the attorneys for the parties and any unrepresented parties by a scheduling conference, telephone, mail, or other suitable means, **enter a scheduling order** that limits the time

**(1)** to join other parties and to amend the pleadings;

**(2)** to file motions; and

**(3)** to **complete discovery**.

The scheduling order also may include

**(4)** modifications of the times for disclosures under Rules 26(a) and 26(e)(1) and of the extent of discovery to be permitted;

**(5)** the date or dates for conferences before trial, a final pretrial conference, and trial; and

**(6)** any other matters appropriate in the circumstances of the case.

The **order shall issue** as soon as practicable but in any event within 90 days after the appearance of a defendant and **within 120 days after the complaint has been served on a defendant**. A schedule shall not be modified except upon a showing of good cause and by leave of the district judge or, when authorized by local rule, by a magistrate judge. (emphasis added)

**Rule 55 Default** [made applicable by R. 7055 F.R.Bkr.P.]

**(a) Entry.** When a party...has failed to plead or defend as provided by these rules and that fact is made to appear by affidavit or otherwise, **the clerk shall enter** the party's default. (emphasis added)

**(b) Judgment.** Judgment by default may be entered as follows:

**(1) By the Clerk. When** the plaintiff's claim against a defendant is **for a sum certain** or for a sum which can by computation be made certain, the **clerk** upon request of the plaintiff and upon affidavit of the amount due **shall enter judgment** for that amount and costs against the defendant, if the defendant has been defaulted for failure to appear and is not an infant or incompetent person. (emphasis added)

**(2) By the Court.** In **all other cases** the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared therein. If the party against whom judgment



by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the United States. (emphasis added)

**(c) Setting Aside Default.** For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).

## **Rule 56. Summary Judgment**

[made applicable by Rule 7056 F.R.Bkr.P.]

...

**(c) Motion and Proceedings Thereon.** The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is

entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

...

**(g) Affidavits Made in Bad Faith.** Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, **the court shall** forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt. (emphasis added)

## **Rule 60. Relief From Judgment or Order**

...

**(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc.** On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse

party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C., § 1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

### **Rule 61. Harmless Error**

[made applicable by Rule 9005 F.R.Bkr.P.]

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless **refusal to take**

**such action appears to the court inconsistent with substantial justice.** The court at every stage of the proceeding **must disregard any error or defect** in the proceeding which does **not affect the substantial rights** of the parties; (emphasis added).

#### **Rule 79. Books and Records kept by the Clerk and Entries Therein**

##### **(a) Civil Docket**

...**All papers** filed with the clerk, all process issued and returns made thereon, all appearances, **orders**, verdicts, and judgments **shall be entered** chronologically in the civil docket on the folio assigned to the action and shall be marked with its file number. These entries shall be brief but shall **show the nature of each paper** filed or writ issued **and the substance of each order** or judgment of the court and of the returns showing execution of process. The **entry of an order** or judgment **shall show the date the entry** is made... (emphasis added)

### **C. Federal Rules of Appellate Procedure**

#### **Rule 4. Appeal as of Right-When Taken**

##### **(a) Appeal in a Civil Case.**

##### **(1) Time for Filing a Notice of Appeal.**

**(A)** In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must

be filed with the district clerk within 30 days after the judgment or order appealed from is entered.

**Rule 6. Appeal in a Bankruptcy Case From a Final Judgment, Order, or Decree of a District Court or Bankruptcy Appellate Panel**

...

**6(b)(2)(B) The record on appeal.**

(i) Within 10 days after filing the notice of appeal, the appellant must file with the clerk possessing the record assembled in accordance with Bankruptcy Rule 8006 — and serve on the appellee — a statement of the issues to be presented on appeal and a designation of the record to be **certified and sent to the circuit clerk**” (emphasis added)

**TITLE VII. GENERAL PROVISIONS**

**Rule 25. Filing and Service**

**(a) Filing.**

**(1) Filing with the Clerk.** A paper required or permitted to be filed in a court of appeals must be filed with the clerk.

**(2) Filing: Method and Timeliness.**

**(A) In general.** Filing may be accomplished by mail addressed to the clerk, but filing is not timely unless the clerk receives the papers within the time fixed for filing.

**(B) A brief or appendix.** A brief or appendix is timely filed, however, if on or before the last day for filing, it is:

(i) mailed to the clerk by First-Class Mail, or other class of mail that is at least as expeditious, postage prepaid; or

(ii) dispatched to a third-party commercial carrier for delivery to the clerk within 3 calendar days

## **Advisory Committee Notes**

### **1967 Adoption**

The rule that filing is not timely unless the papers filed are received within the time allowed is the familiar one [in the Court of Appeals]...An **exception** is made in the case of briefs **and appendices** in order to afford the parties the maximum time for their preparation, (emphasis added).

#### **Rule 28. Briefs**

##### **(a) Appellant's Brief...**

(4) a jurisdictional statement, including:

...

(C) the filing dates establishing the timeliness of the appeal or petition for review;...

#### **Rule 31. Serving and Filing Briefs**

##### **(a) Time to Serve and File a Brief.**

(1) The appellant must serve and file a brief within 40 days after the record is filed. The appellee must serve and file a brief within 30 days after the appellant's brief is served. The appellant may serve and file a reply brief within 14 days after service of the

appellee's brief but a reply brief must be filed at least 3 days before argument, unless the court, for good cause, allows a later filing.

(2) A court of appeals that routinely considers cases on the merits promptly after the briefs are filed may shorten the time to serve and file briefs, either by local rule or by order in a particular case.

## IV. Statutes

### 11 U.S.C. §704. Duties of trustee

The trustee shall-

- (1) **collect and reduce** to money the property of the estate for which he serves, and close such estate **as expeditiously** as is compatible with the best interests of **parties in interest**;
- (2) be accountable for all property received;
- (3) ensure that the debtor shall perform his intention [“as to the retention or surrender of property of the estate that secures consumer debts,” added in same entry quoted in 2-2.2.3 of Chapter 2-2 Administration of Chapter 7 Estates of the Trustee Manual] as specified in section 521(2)(B) of this title;
- (4) **investigate** the financial affairs of the debtor;
- (5) if a purpose would be served, examine proofs of claims and object to the allowance of any claim that is improper;

- (6) if advisable, oppose the discharge of the debtor [(but not the discharge of a particular debt since only the creditor to whom it is owed may do so)”, 2-2.2.6, id.];
- (7) unless the court orders otherwise, **furnish such information** concerning the estate and the estate’s administration **as is requested by a party in interest**;
- (8) if the business of the debtor is authorized to be operated, file with the court, with the United State trustee, and with any governmental unit charged with the responsibility for collection or determination of any tax arising out of such operation, periodic reports and summaries of the operation of such business, including a statement of receipts and disbursements, and such other information as the court or the United States Trustee requires; and
- (9) make a final report [(TFR), 2-2.2.9, id.] and file a final account [(TDR), 2-2.2.9, id.] of the administration of the estate with the court and with the United States trustee.

## **28 U.S.C. §157. Procedures**

...

**(c)(1)** A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge’s proposed



findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

**(d).** The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

## **28 U.S.C. §158. Appeals**

**(a)** The district courts of the United States shall have jurisdiction to hear appeals

**(1)** from final judgments, orders, and decrees;

...

and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving.

...

**(d)** The courts of appeals shall have jurisdiction of appeals from all final decisions, judgments, orders, and decrees entered under subsection (a) and (b) of this section.

**28 U.S.C. §455(a) Disqualification of justice, judge, or magistrate judge**

(a) Any justice, judge, or magistrate in the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

**28 U.S.C. §753. Reporters**

...

(b) ...

...Upon the request of any party to any proceeding which has been so recorded who has agreed to pay the fee therefor, or of the judge of the court, the reporter...shall **promptly** transcribe the original records of the requested parts of the proceedings and attach to the transcript his official certificate, and deliver the same to the party or judge making the request. [emphasis added]

**28 U.S.C. §1291. Final decisions of district courts**

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court....

**28 U.S.C. §2074. Rules of procedure and evidence;  
submission to Congress; effective date**

(a) The Supreme Court shall transmit to the Congress not later than May 1 of the year in which a rule prescribed under section 2072 is to become effective a copy of the proposed rule. Such rule shall take effect no earlier than December 1 of the year in which such rule is so transmitted unless otherwise provided by law...

**28 U.S.C. §2075. Bankruptcy rules**

The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure in cases under title 11

Such rules shall not abridge, enlarge, or modify any substantive right.

The Supreme Court shall transmit to the Congress not later than May 1 of the year in which a rule prescribed under this section is to become effective a copy of the proposed rule. Such rule shall take effect no earlier than December 1 of the year in which such rule is so transmitted to Congress unless otherwise provided by law.

V. Trustee Manual Volume 2:

**CHAPTER 7 CASE ADMINISTRATION**

**CHAPTER 2-2: ADMINISTRATION OF CHAPTER 7 ESTATES**

**2-2.1 INTRODUCTION**

Pursuant to 28 U.S.C. § 586(a), the United States Trustee must

supervise the actions of trustees in the performance of their responsibilities. **The principal duty** of the trustee is to **collect and liquidate** the property of the estate and to distribute the proceeds to creditors. The trustee is a **fiduciary** charged with **protecting** the interests of **the various parties** in the estate. (emphasis added)

A chapter 7 case should be administered to **maximize and expedite dividends to creditors** and facilitate a fresh start for the debtors entitled to a discharge. A trustee should not administer an estate or an asset in an estate where the proceeds of liquidation will primarily benefit the trustee or the professionals, or unduly delay the resolution of the case. Chapter 7 trustees must be guided by this fundamental principle when acting as trustee. Accordingly, the United States Trustee must verify that a trustee considers whether sufficient funds will be generated to make a meaningful distribution to creditors **before** administering a case **as an asset case**. (emphasis added)

...

### **2-2.2.1 Collection and Liquidation of Assets, § 704(1)**

**A trustee has a duty** to ensure that a **debtor files** all schedules and statements required under § 521 and Fed. R. Bankr. P. 1007. A trustee must also ensure that a debtor surrenders non-exempt property of the estate to the trustee, **and that records and books are properly turned over to the trustee**. (emphasis added)

The trustee should be familiar with the definition of property of the estate as set forth in § 541. Under § 541, all legal and equitable

interests of the debtor, wherever located and by whomever held, are property of the estate. Property of the estate also includes any property that the debtor acquires or becomes entitled to acquire within 180 days after the petition date by way of inheritance, property settlement or divorce decree, or life insurance.

Property of the estate is defined more broadly in chapter 13 cases under § 1306 to include property and earnings acquired postpetition. However, if a chapter 13 case is converted to a chapter 7 case, the § 1306 definition does not apply. Upon conversion, property of the chapter 7 estate consists of property of the estate, as of the date of the chapter 13 petition, that remains in the possession of or is under the control of the debtor on the date of conversion, unless the case was converted in bad faith. § 348(f).

In reviewing the schedules, the trustee should make a preliminary determination as to whether there appear to be assets in the case or areas warranting further inquiry at the section 341 meeting. The trustee should not rely upon the designation by the clerk of the bankruptcy court as to whether the case is an asset or no-asset case. The trustee should conduct an independent investigation to make this determination. A trustee should refrain from administering an estate where the proceeds of liquidation will solely benefit the trustee and the trustee's professionals, i.e., the trustee should consider whether sufficient funds will be generated to make a meaningful distribution to creditors, prior to administering the case as an asset case.

A trustee performs the duty of collecting and reducing to money property of the estate in a variety of ways. For example, the trustee may object to improper exemptions, seek disgorgement of unreasonable attorney fees paid to the debtor's counsel, compel the turnover of non-exempt property, and use the avoidance powers of § 544, *et seq.*, to recover assets. After a trustee has collected all assets of an estate, the assets must be reduced to cash for eventual distribution to creditors under § 726.

Addendum

**F.R.Civ.P. Rule 12. Defenses and Objections-When and How Presented-By Pleading or Motion-Motion for Judgment on Pleadings**

**(b) How Presented.** Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: ...(6) failure to state a claim upon which relief can be granted,...

PART 3. APPENDIX: in a separate volume

## Proof of Service

I, Dr. Richard Cordero, hereby certify under penalty of perjury that I served by United States Mail a copy of my brief and special addendum on the following parties:

---

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Dated: July 9, 2003  
59 Crescent Street  
Brooklyn, NY 11208-1515

*Dr. Richard Cordero*

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Dr. Richard Cordero, pro se  
tel. (718) 827-9521

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# 03-5023

UNITED STATES COURT OF APPEALS  
SECOND CIRCUIT

IN RE: PREMIER VAN LINES, INC,

Debtor.

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RICHARD CORDERO,

Third-Party Plaintiff - Appellant,

vs.

KENNETH W. GORDON, Esq.,

Trustee - Appellee

DAVID PALMER

Third-Party-Defendant - Appellee.

---

## **TRUSTEE-APPELLE'S BRIEF**

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## ISSUE ON APPEAL

Was Appellant's appeal to District Court timely where the Notice of Appeal was mailed to the Clerk on the last day for filing the Notice of Appeal?

The Court below answered this question in the negative.

The above issue is the only issue on appeal properly before this Court that relates to Appellee-Trustee. Although Appellant has attempted to raise before this Court on appeal issues relating to the Bankruptcy Court's April 4, 2003 order denying permission to extend the time within which to file his Notice of Appeal, that order was never appealed to District Court, and is thus not properly before this Court. Moreover, appellant's effort to argue the merits of the dismissal of his claim against the Trustee is misplaced as those issues have not been reviewed at the District Court level because appellant's appeal was dismissed as untimely. Thus, the merits are also not properly before this Court. Accordingly, Appellee-Trustee's brief addresses only the issue of the untimeliness of appellant's Notice of Appeal to District Court as that is the only issue properly before this Court which relates to Appellee-Trustee.<sup>1</sup>

---

<sup>1</sup> Appellee-Trustee's brief is submitted in memorandum form as it does not exceed ten pages. It is presumed that to the extent that Appellant's brief exceeded the maximum page limitation, the Court has disregarded the excess pages.

## STATEMENT OF THE CASE

By Notice of Motion dated December 5, 2002, the Appellee-Trustee sought dismissal of the cross-claims asserted by Appellant against the Trustee. (See A-133-140)<sup>2</sup> Bankruptcy Court ruled from the bench on December 18, 2002 that the cross-claims against the Trustee would be dismissed. (A-281) The written Order dismissing the cross-claims was entered in the Bankruptcy Court Clerk's Office on December 30, 2002, and notice of its entry together with the Order itself was mailed to Appellant and the Trustee. (See A-151-152) Appellant filed a Notice of Appeal with the Bankruptcy Court Clerk on January 13, 2003, fourteen days after the entry of the Order appealed from. (See, SPA-42) District Court (Larimer, J.) issued an order dated March 12, 2003 dismissing Appellant's District Court appeal as untimely. (See A-200-202.) This appeal has ensued.

---

<sup>2</sup> References in parenthesis to "(A-###)" are to Appellant's Appendix and references to "(SPA-##)" are to the documents appended to Appellant's Brief as a Special Appendix. No separate or additional Appendix is submitted herewith.

## **THE TIME LIMITS OF 8002 MUST BE STRICTLY APPLIED**

Bankruptcy Rule 8002(a) provides that “[t]he notice of appeal shall be filed with the clerk within 10 days of the date of the entry of the judgment, order, or decree appealed from.” It is well settled that the ten day rule is jurisdictional and requires strict compliance with its terms. Twins Roller Corp. v. Roxy Roller Rink Joint Venture, 70 B.R. 308, 310 (USDC SDNY 1987). Strict adherence to the ten day requirement serves the dual purpose of assuring prompt appellate review and providing a definite point at which, in the absence of a notice of appeal, litigation will come to and end. In re Mowers, 160 B.R. 720, 724 (USBC NDNY 1993). Appellant’s notice of appeal was filed fourteen days after the Bankruptcy Court Order appealed from was entered. As such, it was filed late.

Appellant argues that Rule 9006(f) extended his time for filing by an additional three days because the Court order was mailed to him. Rule 9006(f) applies only when a time period begins running from the date of service of an order or judgment. The ten day period in Rule 8002(a) for appealing an order of the Bankruptcy Court is not such a period since it begins to run from the time of entry of the order, not service. See, In re Arbuckle, 98 F2d 29, 31 (5<sup>th</sup> Cir. 1993). “The fact that the order is served by mail does not entitle the parties to any additional time.” In re Schmidt, 34 B.R. 284, 286 (USBC MN 1983). See also, In re Sanders, 59 B.R. 414, 416 (USDC MT, 1986).

Appellant also argues that because he mailed his Notice of Appeal on the last day to file, it should be deemed timely filed. Appellant appears to confuse the concept of service of a document, which can be complete upon mailing, with the concept of filing a document, which is complete when the Clerk of the Court actually receives the document. “[A] notice of appeal is filed as of the date it is actually received [by the clerk of the court], not as of the date it is mailed.” In re Arbuckle, supra. Acceptance of Appellant’s argument that the Notice of Appeal should be deemed filed when it is mailed would be tantamount to judicially amending Rule 8002(a) by inserting ‘mailed to’ for ‘filed.’ See, In re Schmidt, supra.

Appellant’s professed ignorance or mistake as a pro se debtor is equally unavailing. The fact that a party is pursuing a matter pro se does not constitute excusable neglect under Bankruptcy Rule 8002. In re Ghosh, 47 B.R. 374, 375 (USDC EDNY 1984). Under Bankruptcy Rule 8002, it is well established that the misreading, ignorance or misinterpretation of a procedural rule does not constitute “excusable neglect” for the purpose of allowing a late filed notice of appeal under Rule 8002. Id.

Appellant chose to mail the notice of appeal to the Court, and then did not even mail the notice of appeal until January 9, 2003, the day on which his right of appeal expired. He could have had no reasonable expectation that his notice of

appeal would be timely filed. Appellant simply failed to follow the requirements of the Bankruptcy Rules.

**CONCLUSION**

Appellant filed his Notice of Appeal too late. The order appealed from should be affirmed to the extent that it dismissed Appellant's appeal against the Appellee-Trustee.

DATED: Rochester, New York  
August 7, 2003

KENNETH W. GORDON

A handwritten signature in black ink, appearing to read "Ken W. Gordon", is written over a horizontal line.

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docket no.03-5023

**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

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|   |   |                    |
|---|---|--------------------|
| Richard Cordero,                          | } |                    |
| Cross and Third party plaintiff-Appellant | } |                    |
|   | } |                    |
| v.  | } |                    |
|   | } |                    |
| Kenneth Gordon,                           | } | (n0. 02-2230N)     |
| Cross defendant-Appellee                  | } |                    |
| and                                       | } | (no. 03-cv-6021L)  |
|   | } |                    |
| David Palmer,                             | } |                    |
| Third party defendant-Appellee            | } |                    |
|   | } | (no. 03-MBK-6001L) |

---

**Appeal**  
from the  
**United States District Court**  
for the Western District of New York

Reply Brief  
for and by

**Dr. Richard Cordero**  
Appellant pro se  
59 Crescent Street  
Brooklyn, NY 11208  
tel. (718) 827-9521

**Docket no. 03-5023**

**United States Court of Appeals**  
for  
the Second Circuit

---

Richard Cordero,  
Cross and Third party plaintiff-Appellant

v.

**REPLY**  
**OF APPELLANT PRO SE**  
**RICHARD CORDERO**

Kenneth Gordon,  
Cross defendant-Appellee  
and (no. 03-cv-6021L)

David Palmer,  
Third party defendant-Appellee  
(no. 03-MBK-6001L)

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Dr. Richard Cordero states under penalty of perjury the following:

1. Appellee-Trustee Kenneth Gordon, Esq., has submitted his Response to argue that under Rule 8002 F.R.Bkr.P. the notice of appeal must be filed strictly within a ten-day period from the entry of the order appealed from. His argument runs to fewer than two pages and two lines. Its shortness is accounted for by two main reasons: He ignored pertinent legal authority while relying on inappropriate cases and failed to bring to this Court's attention what his duty of candor toward the Court required him to.

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# I. Analysis of the unsupported and conclusory nature of Appellee's response brief

## **A. Trustee Gordon relies only on four pre-Pioneer cases and two non-CA2 cases**

2. For all authority for his position the Trustee relies on only six cases. Out of the six, four pre-date *In re Pioneer*, 507 U.S. 380, 123 L. Ed. 2d 74, 113 S. Ct. 1489 (March 24, 1993), the Supreme Court case that deals squarely with Rule 9006 F.R.Bkr.P. and its time-computation and -extension provisions.
3. The Supreme Court says what the law of the land is; consequently, lower courts must not ignore its pronouncements. Contrary to Trustee Gordon, the courts that he cited did not intentionally ignore the Supreme Court, certainly not in *Pioneer*, decided on March 24, 1993, and thus before four of those courts wrote their opinions, one as much as 10 years earlier! Hence, their opinions, namely,

In re Schmidt, 34 B.R. 284 (USBC MN 1983)

In re Ghosh, 47 B.R. 374 (USDC EDNY 1984)

In re Sanders, 59 BR. 414 (USDC MT, 1986)

Twins Roller Corp. v. Roxy Roller Rink Joint Venture, 70 B.R. 308 (USDC SDNY 1987)

are in principle superseded and of no weight without their propounder, Trustee Gordon, analyzing them against *Pioneer* to establish any remaining precedential relevance, particularly since certiorari was granted “[b]ecause of the conflict in

the Courts of Appeals”, *Pioneer*, footnote 3 and referring text.

4. One of the two remaining cases is the only one from a court of appeals, but it so happens that it is for another circuit, the Fifth, and is equally irrelevant because having been decided on April 13, 1993, only days after *Pioneer*, *In re Arbuckle*, 98 F.2d 29 (5th Cir. 1993) did not even mention *Pioneer*. On the contrary, it relied on even older cases than those that Trustee Gordon expressly cited, namely, *Matter of Robinson*, 640 F.2d 737 (5th Cir.1981), citing *Matter of Bad Bubba Racing Prods., Inc.*, 609 F.2d 815 (1980). In fact, they are so old that the court stated that “Moreover, Debtors note, no equivalent to Rule 9006(f) was in force at the time of our decisions in *Robinson* and *Bad Bubba*.” Hence, Trustee Gordon’s citation of *Arbuckle* is equally inappropriate and unpersuasive.

**B. The Trustee cites his sixth case for a proposition that Rule 8002(a) expressly contradicts**

5. The remaining case on which the Trustee relies is only from a bankruptcy court and also 10 years old:

*In re Mowers*, 160 B.R. 720 (USBC NDNY 1993)

6. The Trustee cites *Mowers* after stating that:

Strict adherence to the ten day requirement serves the dual purpose of assuring prompt appellate review and providing a definite point at which, in the absence of a notice of appeal, litigation will come to an end. (Response-3)

1. How Rule 8002(a) allows a delayed appellate review and an indeterminate point at which litigation comes to an end

7. Rule 8002(a) F.R.Bkr.P. does not expressly require either “prompt appellate review” or “a definite point at which...litigation will come to an end.” Instead, it expressly provides for a mechanism for curing filing mistakes that brings about a valid delayed appellate review that renders indeterminate the end point for litigation.

### **Rule 8002. Time for Filing Notice of Appeal**

#### **(a) Ten-day period**

The notice of appeal shall be filed with the clerk within 10 days of the date of the entry of the judgment, order, or decree appealed from...

8. The Rule makes it clear that the “clerk” it refers to is the clerk of the bankruptcy court. Thus, the last sentence provides that:

...If a notice of appeal is mistakenly filed with the district court or the bankruptcy appellate panel, the clerk of the district court or the clerk of the bankruptcy appellate panel shall note thereon the date on which it was received and transmit it to the clerk and it shall be deemed filed with the clerk on the date so noted.

9. It follows from this mechanism for curing a filing mistake that there is nothing sacrosanct about filing with the bankruptcy clerk within ten days. The filing is not invalid even if the notice of appeal is filed with either of two wrong clerks in either of two wrong courts.

10. Nor is there a practical imperative that commands that the filing be strictly within

the ten-day period. Legal uncertainty notwithstanding, the parties that won the appealable order or judgment cannot absolutely rely on asking the bankruptcy clerk or checking the docket on the tenth day and finding out that no entry of a notice of appeal has been filed. Even under those circumstances, parties must still allow for the possibility that the notice may have been entered mistakenly but validly in either of two other courts.

11. Moreover, there is no time limit by which those winning parties can be absolutely certain that the filing period has elapsed without any notice having been filed. Rule 8002(a) does not require of any party or court officer to discover the mistake by a certain time, or transmit the mistakenly filed notice by a certain time, or ensure that the transmitted notice reaches the bankruptcy clerk by a certain time, not even that such clerk enter the transmitted notice by a certain time.

12. What is more, the mistake, and consequently, the delay, in filing can be compounded without affecting the filing's validity:

(a) if the appellant mistakenly files his notice with the clerk of the bankruptcy appellate panel,

(b) and the panel clerk in turn mistakenly transmits it to the clerk of the district court,

(c) and the district clerk for his part mistakenly sends it back to the panel clerk,

(d) and the panel clerk then transmits it to the bankruptcy clerk,

- (e) and the bankruptcy clerk instead mistakenly refuses to file it because it has the wrong heading for the bankruptcy appellate court or did not reach him within ten days and sends it back to the appellant,
- (f) and the appellant reads Rule 8002(a) and sends it correctly to the bankruptcy clerk, pointing out that under that Rule his notice of appeal “shall be deemed filed with the clerk on the date so noted” on the notice by the panel clerk,
- (g) and if the panel clerk mistakenly failed to date-stamp the notice, but the appellant shows or the panel clerk acknowledges that the notice was received timely,
- (h) then regardless of how long after the entry of the order appealed from, “[the notice] shall be deemed filed with the clerk”,
- (i) and no matter how long the appellees ceased checking the docket and began considering that litigation had come to an end, they must nonetheless realize that a timely notice of appeal was given and that litigation has not ended at all.

**2. Even subparagraph (b) of 8002 allows a delayed appellate review and an indeterminate point at which litigation comes to an end**

13. The scenario described above is by no means the only one under Rule 8002 that can prevent prompt appellate review of an order or judgment or render the end

point for litigation indeterminate. Right after subdivision (a) of Rule 8002, (b) provides as follows:

**8002(b) Effect of motion on time for appeal**

If any party makes a timely motion of a type specified immediately below, the time for appeal for all parties runs from the entry of the order disposing of the last such motion outstanding.

14. This subdivision does not even expressly state what it considers to be “timely” for such a motion. Far from it, under its subparagraph (1) it provides for a motion under Rule 7052 F.R.Bkr.P., which in turn limits itself to making Rule 52 F.R.Civ.P. applicable. It is Rule 52(b) that sets forth a 10 day limit after entry of judgment for filing the motion. Subparagraphs (2) and (3) do likewise, providing for a motion under Rule 9023 F.R.Bkr.P., which then refers to Rule 59 F.R.Civ.P., which under its subparagraphs (b) and (e) provide for a ten-day period for the motion. Also 8002(b)(4) makes a reference, to wit, to Rule 9024 F.R.Bkr.P., which in turn refers to Rule 60 F.R.Civ.P., but unlike the other subparagraphs, it expressly provides that thereunder a “motion [must be] filed no later than 10 days after the entry of judgment.”

15. The contrast between these subparagraphs shows that Rule 8002(b) considers it a matter of only relative importance to assure a prompt appellate review or a definite end point for litigation: It allows another set of rules, that is, the F.R.Civ.P., which can be amended independently of the F.R.Bkr.P., to prescribe

the period during which the filing of a motion can render indeterminate the time for such review or for litigation to end. What is more, 8002(b) takes into account this indetermination and even aggravates it inasmuch as it does not provide for the motion to be heard within any given period, let alone require the court to decide it by a certain time. The non-movant just has to be patient and wait for the ruling on the motion to come down. Even if he benefits from the moving party losing the motion, the non-movant is by no means assured of anything because after the entry of the order denying any of the (b)(1)-(4) motions, the ten-day period begins within which the moving party can file notice of appeal. However, even the end of such period assures the non-movant of nothing, for he can only hope that filing mistakes by the appellant or the panel clerk or the district clerk or the bankruptcy clerk may not trigger the curing mechanism of 8002(a) that can render an appellate review anything but prompt and an end of litigation anything but definite. But even this is not all.

3. Subparagraph (c) of 8002 also belies Trustee Gordon's allegation of any **"strict adherence to the ten day requirement"** for filing notice of appeal

16. For a third time Rule 8002 irrefutably makes it clear, in subparagraph (c), that there is absolutely nothing strict in the observance of a ten-day period for filing notice of appeal, for it explicitly provides not for one, but rather for two ways of extending that period:



### **8002(c) Extension of time for appeal**

**(1)** The bankruptcy judge may extend the time for filing the notice of appeal by any party,...

**(2)**...by written motion filed before the time for filing a notice of appeal has expired...

[and] by such a motion filed not later than 20 days after the expiration of the time for filing...and a showing of excusable neglect.

17. To utterly debunk that allegation of “strict adherence” to the ten-day filing period is the leeway that the court has for extending it. Thus, 8002(c) provides as follows:

**(c)(2)**...An extension of time for filing a notice of appeal may not exceed 20 days from the expiration of the time for filing a notice of appeal otherwise prescribed by this rule or 10 days from the date of entry of the order granting the motion, **whichever is later**. (emphasis added)

18. Let’s illustrate how indeterminate that filing period can be.

| Col. 1  | Col. 2  | Col. 3   | Col. 4   | Col. 5  | Col. 6  |
|---|---|--|--|---|---|
| <b>August 31</b><br>Entry of order or judgment to be appealed from                              | <b>September 1-10</b><br>8002(a) Ten-day period   | <b>September 1-10</b><br>8002(c)(2) motion to extend filed on any day within those 10 days | <b>September 30</b><br>Last day for filing after extending for a maximum of 20 days the filing period ending on September 10 |   |   |
|   |   |  |  |   |   |
|   |   |  | Last day for filing an 8002(c)(2) motion to extend and showing excusable neglect; motion noticed for                         | October 8<br>but judge is writing a defensive brief; motion set down for hearing “as soon thereafter” for   | October 15<br>2 <sup>nd</sup> Blackout of 2003 in North America; motion renoticed for                 |
| Col. 7  | Col. 8  | Col. 9   | Col. 10  | Col. 11   | Col. 12   |
| <b>October 22</b><br>1 <sup>st</sup> molar pulled from non-movant’s mouth; motion renoticed for | <b>November 5</b><br>Motion heard, but as so many others, not decided but rather postponed by the judge until | <b>November 19</b><br>Motion denied at the hearing, as expected                            | <b>December 1</b><br>Entry of order denying motion   | <b>December 11</b><br>8002(b)(4) motion for relief under 9024 of denial of motion, filed and noticed for... | Where did “strict adherence to ten day requirement...prompt review...and definite litigation end” go? |

19. It is obvious that in its three subdivisions Rule 8002 allows for the ten-day period for filing notice of appeal to be subject to lax curing of mistakes, period-suspensive events, time extensions, and discretionary decision-making and order-entry timing. These are features that give rise to legal uncertainty for an unforeseeably long time, which flatly contradicts the purpose of Rule 8002 claimed by Trustee Gordon of ‘assuring prompt appellate review and a definite end point for litigation’. Those same intrinsic features provide as a matter of fact for ample flexibility in the functioning of Rule 8002’s ten-day period, which demonstrates as objectively wrong the Trustee’s bold claim that the Rule requires ‘strict adherence to the period’.

20. Nor has the Trustee refuted the applicability to Rule 8002 of the extrinsic, time-extending, flexibility-enhancing provisions within the consistent and coherent statutory scheme of the F.R.Bkr.P. and the F.R.Civ.P., of which that Rule forms part, such as the complete-on-mailing and the additional-three-days of Rule 9006(e) and (f) F.R.Bkr.P., respectively. (Opening brief-IX.A., paras.57 et seq.) He cannot avoid legal analysis by just lazily claiming, in fewer than two pages and two lines of ‘argument’, that the period requires ‘strict adherence’.

21. In brief, by its own content and context, Rule 8002 contradicts the very proposition of “Strict adherence to the ten day requirement” for which Trustee Gordon invoked the remaining case, *Mowers*, (para. 6 above) of the sixth that he

cared to cite. With that case discarded together with the other outdated five, Trustee Gordon is left with no authority for the central point of his response that “The Time Limits of 8002 Must Be Strictly Applied,” which lies exposed as a conclusory claim.

22. Just as Trustee Gordon’s character revealed itself in his negligent and reckless performance as trustee and warranted the cross-claim against him (A-8,70, 83, 88; Opening Brief-para. 114), that character has now manifested itself in his perfunctory and incompetent brief, which has left his baseless claim dangling. In the process, he has also impeached his credibility as a court officer by what he failed to disclose despite his duty of candor toward this Court.

## **II. Trustee Gordon failed to acknowledge to this Court what his duty of candor required him to, whereby he once more indicted his professional character, honesty, and competence**

### **A. The authority imposing the duty of candor**

23. The Courts of Appeals recognize the need for attorneys to be of “good moral and professional character”; Rule 46(a)(1) F.R.A.P. They ensure that attorneys are of such qualifications by adopting means to “discipline an attorney who practices before it for conduct unbecoming a member of the bar,” Rule 46(c) F.R.A.P. To provide guidance as to what constitutes misconduct, this Court has adopted Local Rule 46(h)2., which provides as follows:

Reference on matters of misconduct. The court may refer to the Committee [on Admissions and Grievances] any accusation or evidence of misconduct in respect to any professional matter before this court that allegedly violates **the rules of professional conduct or responsibility in effect in the state or other jurisdiction where the attorney maintains his or her principal office** for such investigation, hearing and report as the court deems advisable. Such matters thus referred may include not only acts of affirmative misconduct but negligent conduct of counsel. The Committee may, in its discretion, refer such matters to an appropriate bar association for preliminary investigation. (emphasis added)

24. In the State of New York, the principles and rules that guide practitioners toward being members of a noble profession entrusted with the search and dispensation of justice are set forth in the New York Code of Professional Responsibility. Its Canons and Disciplinary Rules not only encourage lawyers to rise above minimum standards, but also impose upon them, as guardians of the law, the consequent obligation to maintain the highest standards of ethical conduct. So says the Preamble to the Code.

25. Furthermore, the Code's Disciplinary Rule 7-102, codified at 22 NYCRR 1200.33, lays down a duty that must be as valid when the lawyer represents a client as when he represents himself, for in both case his conduct must remain "within the bounds of the law":

DR-107-102

(a)...a lawyer shall not:

...  
(1) File a suit, assert a position, conduct a defense, delay a trial or take other action on behalf of the client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

26. Trustee Gordon's violation of that rule vitiates his Response and lies at the root of this appeal: In order to avoid the review applied for by Dr. Cordero of his performance as trustee for Debtor Premier, the Trustee submitted to the bankruptcy court, to his supervisor at the U.S. Trustee Program, and to other parties, false statements and statements defamatory of Dr. Cordero. (A-7-12, 38) By maliciously disparaging Dr. Cordero, the Trustee intended to discredit him and detract from the seriousness of his review application so as to sway the court to his position that, "Accordingly, I do not believe that it is necessary for the Court to take any action on Dr. Cordero's application". (A-20)

27. Similarly, to sway this Court to his position that "The order...should be affirmed...that...dismissed Appellant's appeal against the Trustee", (Response-5), the Trustee has submitted to this Court a response brief where he reveals once more his blameworthy character. This time he does it by withholding information that his duty of candor to the Court should have compelled him to disclose. A truthful person, ethically committed to being fair to everybody else, including opposing parties, would have recognized and discharged that duty even without the Code further requiring that:

DR 7-102

(a)...a lawyer shall not:

...

(2) Knowingly advance a claim or defense that is unwarranted under existing law, except that the lawyer may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law.

(3) Conceal or knowingly fail to disclose that which the lawyer is required by law to reveal.

**B. The Trustee failed to disclose even the existence of *Pioneer* and the consequent inapplicability of five pre-*Pioneer* cases that he cited without establishing their remaining precedential relevance**

28. Trustee Gordon failed to disclose even the existence of *Pioneer*. There the Supreme Court stated that:

n4 The time-computation and time-extension provisions of Rule 9006, like those of Federal Rule of Civil Procedure 6, are generally applicable to any time requirement found elsewhere in the rules **unless expressly excepted.** (emphasis added]

29. If that Rule is held applicable to Rule 8002 (Opening Brief- paras. 57 et seq.; A-164 et seq.), then Dr. Cordero's notice of appeal, which was timely mailed, would under Rule 9006(e) have completed its service on the bankruptcy court upon being mailed. That would have completed its filing too, for Rule 8008(a) filing-within-filing-period exception does not apply to 8002(a). (Opening Brief- paras.81 et seq.;A-172-secs.K-N) The notice would also have benefited from Rule 9006(f)'s additional three days, which would likewise have rendered its filing timely.

30. The Trustee could have argued against such an interpretation of *Pioneer* and still be deemed to conduct himself “within the bounds of the law”, but he could not in good faith simply ignore Supreme Court pronouncements potentially dispositive of a key issue before this Court. And it was certainly in bad faith that he belittled Dr. Cordero’s competency by pretending that “[Dr. Cordero] appears to confuse the concept of service...with the concept of filing of a document” (Response-4) in an attempt to mislead this Court into discarding his argument without disclosing that Dr. Cordero had expressly discussed why filing-upon-completing-service is the general rule under F.R.Bkr.P. (cf. A-20,42-sec.III)

**C. The Trustee failed to disclose that he had caused the review by the district court of the issues of the motion to extend time to file notice of appeal so that the April 4 bankruptcy order denying the motion could only be appealed to this Court and indeed were so appealed**

31. Trustee Gordon failed to disclose the facts that refute his allegation that:

Although Appellant has attempted to raise before this Court on appeal issues relating to the Bankruptcy Court’s April 4, 2003 order denying permission to extend the time within which to file his Notice of Appeal, that order was never appealed to District Court, and is thus not properly before this Court. (Response-1)

32. In his April 22 Notice of Appeal to this Court (A-429), Dr. Cordero expressly dealt with that issue by stating that:



Notice is hereby also given of Dr. Cordero's appeal from

- a) the order dated April 4, 2003, in Adversary proceeding 02-2230, of the Bankruptcy Court denying Dr. Cordero's motion for relief from [A-259]
- b) the order dated February 18, 2003, of the Bankruptcy Court denying Dr. Cordero's motion for an extension of time to file notice of appeal. [A-240]

The April 4 order states that it is based on the Bankruptcy Court's findings of fact and conclusions of law, one of which is that the order of the District Court of March 12, 2003, is the law of the case establishing that Richard Cordero's appeal was not timely filed. Hence, the March 12 order of the District Court, which is being appealed from, rendered moot an appeal to the District Court of the Bankruptcy Court's order of April 4. [A-429]

33. The mootness of appealing to the district court, the Hon. David Larimer presiding, becomes starkly evident upon looking at the procedural history of Dr. Cordero's motion to extend time to file notice of appeal:

1. January 27 Dr. Cordero's motion to extend in bkr. ct. (A-214)
2. February 5 Trustee's brief to oppose in bkr. ct. (A-234)
3. February 18 bkr. ct.'s order of denial (A-240)
4. February 26 Dr. Cordero's motion to reconsider in bkr. ct. (A-246)
5. April 4 bkr. ct.'s order of denial (A-259)

34. Now just look at the procedural history of the notice of appeal from the order dismissing Dr. Cordero's cross-claims against Trustee Gordon:

- 6. December 30 bkr. ct. order of dismissal (A-151)
- 7. January 9 Dr. Cordero mailed notice of appeal (A-153)
- 8. January 13 bkr. ct. filed notice (SPA-42)
- 9. January 15 Trustee's motion in dist. ct. to dismiss notice (A-156)
- 10. February 12 Dr. Cordero's brief in dist. ct. opposing mtn. (A-158)
- 11. March 12 dist. ct. order dismissing notice, where District Judge Larimer wrote: (A-200)

In addition, Cordero did not move for an extension in the bankruptcy court within the time for doing so under [8002] subsection (c), so that provision could not apply in any event.

...

As stated, Cordero failed to meet the conditions for obtaining an extension of time under Rule 8002.

35. *Wait a minute!* What's this!? How did the district court know anything about Dr. Cordero's motion to extend in bankruptcy court?

Enter Trustee Gordon!

- 12. February 25 Trustee's submission to dist. ct. of his Feb. 5 brief opposing mtn. to extend in bkr. ct (A-199)
- 13. March 20 Dr. Cordero's motion in dis. ct. to reconsider dist. ct. March 12 dismissal order (A-205)
- 14. March 24 Once more "I [the Trustee] will rely on my previous submission" to dist. ct. of Feb. 5 brief opposing motion to extend (A-210)
- 15. March 27 dist. ct. denial of motion "in all respects" with no findings or conclusions (A-211)

36. *Oh, Irony! How you mock us mortals!...Sisyphus, why do you disdain the lazy so!*

It was the Trustee himself who took the motion to extend on review to the district court, not once but twice! How could he do that? Because the grounds for denying the notice of appeal and the motion to extend time to file that notice were identical: Dr. Cordero had timely mailed both, but allegedly they had been untimely filed in bankruptcy court despite his contention that under *Pioneer*, Rule 9006(e) and (f) complete-on-mailing and additional-three-days provisions, respectively, applied to Rule 8002 to render the filing timely. Since the district court had passed judgment on this issue of law and even made the finding that Dr. Cordero had not timely moved to extend, it was moot to appeal to it from the bankruptcy court's April 4 order denying the motion to reconsider the motion to extend.

37. Trustee Gordon indisputably knew of this identity of contentions concerning both the notice and the motion to extend since he had twice escaped appellate review through the timely mailed-untimely filed technical gap.

38. Moreover, it was the Trustee who wrote the order on April 2 and submitted it for signature to the bankruptcy court. (A-258) Therein he called the district court's March 12 order concerning the notice "the law of the case" and relied upon it as the basis for the bankruptcy court's denial of the motion to reconsider the motion to extend. (A-259) Thereby he also rendered it futile for Dr. Cordero to appeal the April 4 order to the district court; cf. *In re Sheehan*, 253 F.3d 507 (9<sup>th</sup> Cir. 2001),

on the futility of rearguing identical arguments already decided by the bankruptcy court. Consequently, how much more egregious Trustee Gordon's violation of his duty of candor by failing to disclose to this Court what he himself had done to cause the motion to extend to be reviewed by the district court and how he had rendered it appealable only to this Court, not to mention how he failed to disclose that Dr. Cordero had expressly discussed the appealability of the April 4 order in his notice of appeal to this Court.

1. The analysis of the district court's March 12 order reveals how flawed it was for having ignored numerous key factors and its superficiality, and together with its subsequent March 27 "**in all respects denied**" order both show that it was moot to appeal the bankruptcy court's April 4 order to it

39. When ruling on Trustee Gordon's motion to dismiss the notice of appeal and his brief in opposition to Dr. Cordero's motion to extend, the district court ignored Dr. Cordero's contentions. This is shown by the fact that:

- (1) the district court ignored all Supreme Court pronouncements on the issues at bar, even those squarely on point that Dr. Cordero had analyzed in his brief (A-165 et seq.);
- (2) the district court ignored the inapplicability of cases predating the 1993 *Pioneer*, instead citing even a case as old as the 1981 *Robinson* case from the 5<sup>th</sup> Circuit (A-202);

- (3) the district court ignored all Second Circuit cases, whether from this Court or its district or bankruptcy courts;
- (4) the district court ignored the legislative history of the F.R.Bkr.P. and F.R.Civ.P. contained in the Advisory Committee Notes, even those discussed by Dr. Cordero (A-166 et seq.);
- (5) the district court ignored the scheme formed by the Rules and their individual role therein, even though a central point of Dr. Cordero's argument was the "II. Consistent and coherent construction of rules on notice of appeal" (A-164 et seq.);
- (6) the district court ignored one of the two key provisions for extending time to file, namely, the Rule 9006(e) complete-on-mailing provision (A-166);
- (7) the district court ignored, as to the other key time-extending provision, namely, Rule 9006(f), Dr. Cordero's detailed argument, based on the Rules scheme and Advisory Committee Notes, that (f) provides for additional three days to be added when a paper is "served by mail" because its purpose is to compensate for time lost in the mail (A-166 et seq.) and the docket is unreliable to give notice because court officers manipulate it by making entries arbitrarily and untimely (Opening Brief-11,15,56-paras.143 et seq.);

(8) the district court ignored the contextual scheme formed by Rule 8002(a)'s four sentences, inasmuch as without any analysis it merely repeated that "[A] notice of appeal is filed as of the date it is actually received [by the court], not of the date it is mailed" (A-202), and limited itself to 8002(a)'s first sentence by stating that the ten-day period "begins to run from the time of *entry* of the judgment, *not service*" (emphasis in original), whereby it:

- (i) ignored the obvious absence of logical contradiction between entry starting the period and service by mail triggering under 9006(f) the extension of that period;
- (ii) ignored the second sentence of 8002(a), which provides that any other party filing after the first one must have either 10 days to file after the first filing or "the time otherwise prescribed by this rule, whichever period last expires", thus providing for the concern that a party should have at least 10 days to file, if not more, a concern expressed by the Advisory Committee to justify the additional-three-days of Rule 9006(f) as a way to avoid any hardship in filing due to filing time shortened through

mailing (Opening Brief-paras. 76 et seq.; A-paras. 50 et seq.);

(iii) ignored the third sentence providing that

“A notice of appeal filed after the announcement of a decision or order but before entry of the judgment, order, or decree shall be treated as filed after such entry and on the day thereof”

which means that filing itself, let alone “the date it is actually received”, is not the paramount consideration for the functioning of 8002(a),

(iv) ignored the fourth sentence, which provides that the date on which the bankruptcy court actually receives the notice is irrelevant if the notice has been mistakenly sent to and even filed with the bankruptcy appellate panel or the district court (see paras. 12 et seq. above);

(9) instead, the district court dealt with the irrelevant issue of the computation of weekends and holidays, which Dr. Cordero never claimed rendered his notice timely (A-201);

(10) the district court dealt with the issue of whether Dr. Cordero had saved his notice by using a motion to extend time to file it (A-201), an issue that Dr. Cordero had not brought before it, but on which that

court made a finding ex parte based on Trustee Gordon's submissions;

(11) the district court made not one but two time computation mistakes, which further illustrated the general carelessness with which it cobbled together that March 12 order, when it

(i) stated that the order appealed from had been entered on December 30, the notice had been filed on January 13, and it "was therefore filed three days too late," (A-200), whereas if it had correctly computed time, it would have stated 'four days too late'; and

(ii) compounded its mistake by affirming that:

Cordero's notice...was received and filed by the court thirteen days after the entry of the bankruptcy court's order" (A-202)

instead of correctly stating 'fourteen days';

(12) the district court made three more mistakes when asserting that:

Here, the ten-day period of Rule 8002(a) expired on Tuesday, January 10, which was not a holiday." (A-201)

However, the ten-day period ended on January 9, the period ended on a Thursday, and Tuesday was January 7;



(13) the district court failed in that March 12 order to give even a hint that it had looked at Dr. Cordero's brief opposing the motion to dismiss the notice (A-158), let alone his brief supporting the motion for reconsideration (A-205), which it disposed of with a lazy "in all respects denied" fiat (A-211); just as it gave every evidence of not having even looked at Dr. Cordero's motion of March 2 to enter default judgment (A-314, 327), among other papers (Opening Brief-para. 38 et seq.), let alone seen his motion for reconsideration (A-342), which it likewise cast aside with another lazy "in all respects denied" in its fiat order of March 27 (A-350), despite having made outcome-determinative mistakes of fact and disregarded legal rules, none of which it addressed, not to mention corrected, although they were brought to its attention by Dr. Cordero (Opening Brief-16; A-325).

40. Based on this analysis of the district court's March 12 order and reference to the analysis of its March 11 order, one may ask after a court ignores how many key sources of legal authority, deals with how many irrelevant issues, repeats how many non-sensical statements, fails to analyze how many rules, and makes how many mistakes is a litigant, even a fellow judge, entitled within the bounds of respect for the judiciary and the dignified nature of a brief, to call its orders

slipshod cursory jobs unworthy of a member of the bench, an affront to the people that entrusted it with the lofty mission to dispense justice, and evidence of participation in a pattern of intentional and coordinated acts supporting the reasonable inference of bias and prejudice?

41. Would you have any reservation affixing your signature to any of those orders? Would you feel uncomfortable having them submitted in your name for review to the United States Supreme Court? If yes, why should Dr. Cordero, who has shown utmost respect for this Court as well as the lower ones by researching and writing papers aiming at the highest degree of competence and professionalism, be required to appeal once more any order to that district court?

**D. The Trustee failed to disclose that Dr. Cordero had linked the merits of the dismissal of his cross-claims against the Trustee to the court officers' pattern of acts of disregard of facts and law so that the dismissal is properly before this Court**

42. Trustee Gordon failed to disclose any of the statements forming major sections of Dr. Cordero's brief that belie any good faith in the Trustee's allegation that:

Moreover, appellant's effort to argue the merits of the dismissal of his claim against the Trustee is misplaced as those issues have not been reviewed at the District Court level because appellant's appeal was dismissed as untimely. Thus, the merits are also not properly before this Court. (Response-1)

43. Dr. Cordero discussed at length how the dismissal of his cross-claims against

Trustee Gordon constituted the first act by the bankruptcy court, soon joined by court officers in both the bankruptcy and the district court,

of a series of events of disregard of facts, rules, and law so consistently injurious to Dr. Cordero as to form a pattern of non-coincidental, intentional, and coordinated acts from which a reasonable person can infer their bias and prejudice and can fear their determination not to give him a fair and impartial trial (Opening Brief-section C. heading of paras. 20 et seq.; section D. paras. 137 et seq.)

44. Furthermore, Dr. Cordero discussed even the bankruptcy court's possible motive in dismissing the cross-claims:

Was it for having failed to realize or having tolerated Trustee Gordon's negligence and recklessness that the court dismissed the cross-claims against him, has not required disclosure, and has failed to issue a 16(b) scheduling order, thus leaving the case without management for 10 months? (Opening Brief-para. 115)

45. Therefore, Dr. Cordero's discussion of the merits and circumstances of the dismissal was justified to allow this Court to determine whether the dismissal constituted a bankruptcy court's cover up for its failure to supervise the Trustee's liquidation of Debtor Premier. If this Court were to find that it was, then the dismissal would be null and void, not only as an abuse of discretion, but also as an act of wrongdoing.

46. The above-quoted excerpts from Dr. Cordero's brief foreclose the possibility that it escaped the Trustee, unless he admits his incompetence, that Dr. Cordero was

perfectly aware of the reasons that warranted the discussion on appeal to this Court of the bankruptcy court's dismissal of his cross-claims against the Trustee. Hence, when the latter failed to disclose that discussion and instead pretended that Dr. Cordero had made a mistake in discussing the dismissal so that its "merits are also not properly before this Court" (Response-1), the Trustee not only failed his duty of candor, but also intentionally tried to mislead the Court into disregarding that discussion.

**E. The Trustee failed to disclose that Dr. Cordero had complied with the word count while alleging that he had exceeded the page limit so as to mislead this Court into disregarding the excess of pages**

47. The Trustee failed to disclose the fact that would have rendered meaningless his allegation that "Appellant's brief exceeded the maximum page limitation" (Response-1,ftnt.-1). That fact is the F.R.A.P. rule on the length of the brief:

**Rule 32. Form of Briefs, Appendices, and Other Papers**

**(a)(7) Length**

**(A) Page limitation.** A principal brief may not exceed 30 pages, or a reply brief 15 pages, unless it complies with Rule 32(a)(7)(B) and (C).

**(B) Type-volume limitation.**

**(i)** A principal brief is acceptable if:

- it contains no more than 14,000 words;...

48. Dr. Cordero certified that his brief contained 13,990 words. (Opening Brief-61)

49. When Trustee Gordon failed to disclose Dr. Cordero's compliance with the word-

count alternative to the 30 page limitation, he was aiming at misleading the Court into taking a severe sanction against Dr. Cordero, namely, that ‘the Court disregard the excess pages’. Since Dr. Cordero’s brief has 62 pages, the Trustee was hoping that the Court would disregard more than half his brief!, that is, unless the Trustee was not referring to the whole volume containing the brief and the Special Appendix (SPA), which has over 150 pages, in which case the Trustee was angling to induce the Court to chop off more than four fifths of Dr. Cordero’s brief! By failing to read the Rules or check whether the opponent had satisfied them before charging non-compliance and asking the Court to impose a penalty, the Trustee manifested the same conduct that warranted the cross-claims for negligence and recklessness in not checking Premier’s business records and the dockets to find Premier’s assets, including income producing storage contracts, as a third-party actually did. (Opening Brief-45,para.3; A-48,49;109,ftnts-5-8;352)

**F. The Trustee failed to disclose the difficulties he knew Dr. Cordero had to mail the notice while insinuating that he could have handed it in to insure its timely filing**

50. The Trustee also tried to slyly maneuver the Court’s attitude toward Dr. Cordero through indirection by alleging that:

Appellant chose to mail the notice of appeal to the Court, and then did not even mail the notice of appeal until January 9, 2003, the day on which his right of appeal expired. (Response-4)

51. However, the Trustee failed to disclose that:

- (1) Dr. Cordero lives in New York City, hundreds of miles away from the court in Rochester, so he had no choice but to mail the notice, particularly since the court did not accept faxes or e-mails;
- (2) the court mailed its order on December 30, its handling was delayed by the New Year's holiday, and when it arrived in NY City, no notice form was included, so that Dr. Cordero had to call the court to ask that it be mailed to him (A-162-paras.15-17);
- (3) when the form arrived, Dr. Cordero, a pro se litigant who had never dealt with it, scrambled to conduct some necessary research, prepare it, and mail it back *timely*;
- (4) his research reasonably convinced Dr. Cordero that the 9006(e) complete-on-mailing and 9006(f) additional-three-days provisions would extend the ten-day period and ensure the notice's timely filing.

52. Trustee Gordon's Response reflects a person that knowingly employs falsehood to induce the Court into error, just as he submitted false statements and defamatory statements about Dr. Cordero to the bankruptcy court as a ploy to have it disregard Dr. Cordero's request for a review of his performance. The Trustee's conduct warrants that the dismissed cross-claims against him be reinstated so that they may

be adjudicated on the merits. He deserves it and, for the sake of justice, so does Dr. Cordero.

### III. Relief sought

53. Dr. Cordero respectfully reiterates the relief requested in his Opening Brief and further requests that:

- 1) the Court determine whether Trustee Gordon in submitting his Response violated his duty of competent preparation and candor toward this Court, while making affirmative misrepresentations unfair and injurious to an opposing party, and should be subjected to disciplinary proceedings;
- 2) Trustee Gordon be ordered to compensate Dr. Cordero for the cost incurred and work, effort, and time invested, including reasonable attorney's fees, in connection with preparing this Reply to his Response;
- 3) The Court abstain from taking the actions urged by the Trustee in disregard of fact and law;
- 4) The Court determine whether District Judge David Larimer even read or otherwise failed to sufficiently consider any of the four motions that Dr. Cordero submitted to him (A-158,205,314,342) so that the Judge denied him his due process opportunity to be heard and based his orders (A-

200,211;339,350, para.39(13) above) on ex-parte applications, thereby rendering them null and void on constitutional grounds;

- 5) Adversary proceeding 02-2230 be removed from the United States Bankruptcy and District Courts for the Western District of New York and transferred to the United States District Court for the Northern District of New York at Albany, which is likely to conduct a jury trial fairly and impartially and is approximately equidistant from all parties; and;
- 6) Dr. Cordero be awarded any other relief that to the Court may appear just and fair.

#### **IV. Certificate of Compliance with Rule 32(a) F.R.A.P.**

##### **A. Type-volume limitation**

This brief complies with the type-volume limitation of F.R.A.P. 32(a)(7)(B)(ii) because it contains 6,994 words, excluding the parts of the brief exempted by F.R.A.P. 32(a)(7)(B)(iii).

##### **B. Typeface and type style requirements**

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2002 in 14 point normal Times New Roman with quoted paragraphs in 14 point normal Bookman.



## V. Proof of Service

I, Dr. Richard Cordero, hereby certify under penalty of perjury that I served by United States Postal Service copies of my reply brief on the following parties:

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Respectfully submitted

on August 25, 2003,

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**DISMISSED**

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**U.S. Bankruptcy Court  
Western District of New York (Rochester)  
Adversary Proceeding #: 2-02-02230-JCN**

*Assigned to:* Hon. John C. Ninfo II

*Related BK Case:* [01-20692](#)

*Related BK Title:* Premier Van Lines, Inc., a Corporation *Date Filed:* 09/27/02

*Demand:* \$20000

*Nature of Suit:* 456

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V.

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**U.S. Trustee**  
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*TERMINATED: 09/30/2004*

| <b>Filing Date</b> | <b>#</b> | <b>Docket Text</b>   |
|--------------------|----------|--|
| 09/27/2002         | 1        | Complaint filed to (AP Dkt. 02-2230) James Pfuntner vs. Kenneth W. Gordon, Trustee; Richard Cordero, Rochester Americans Hockey Club, Inc; and M&T Bank to obtain a declaratory judgment relating to any of foregoing causes of action [1-1]FEE NOT PAID, CALLED D. Macknight's office, and will send check on Monday. (KST) (Entered: 09/27/2002)                 |
| 10/01/2002         | 2        | Filing fee paid; Receipt No.: 22052838 [2-1] re: adversary proceeding. (KST) (Entered: 10/03/2002)   |
| 10/03/2002         | 3        | Summons issued. [3-1] Answer due: 11/4/02 for M & T Bank, for Rochester Americans Hockey Club, Inc., for Richard Cordero, for Kenneth W. Gordon (KST) (Entered: 10/03/2002)  |
| 10/08/2002         | 4        | Affidavit of Mailing re: summons [3-1], complaint to obtain a declaratory judgment relating to any of foregoing causes of action [1-1] [4-1] Clerk's Note: Defendant, M&T Bank was not served, per D. MacKnight's office, will serve and send in an Affidavit of Service. (KST) (Entered: 10/09/2002)  |
| 10/09/2002         | 5        | Answer filed on behalf of Kenneth W. Gordon [5-1] by Kenneth W. Gordon, Esq. (KST) (Entered: 10/09/2002)   |
| 10/15/2002         | 6        | Affidavit of Mailing re: summons [3-1], complaint to obtain a declaratory judgment relating to any of foregoing causes of action [1-1] [6-1]served on: M & T Bank, attn: David DeLano, Assistant Vice President. (PCF) (Entered: 10/16/2002)   |
| 10/17/2002         | 7        | Letter [7-1]from Dr. Richard Cordero, advising that he has not yet been served in this matter. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 10/23/2002)   |
| 10/25/2002         | 8        | Waiver of Service of Summons and Petition for Clarification of Richard Cordero, Pro Se [8-1] (KST) (Entered: 11/05/2002)   |
| 11/01/2002         | 9        | Clerk's Note: Richard Cordero called to inquire when his answer was due; he was advised that the date certain is 11/4/02; he said that he will mail out his answer. Further on 10/31/02, Mr. Cordero was advised that an extension of time for the answer would need to be stipulated to, or a motion may be brought, but an extension of time to answer cannot be |

|            |    |   |
|------------|----|---|
|            |    | done ex-parte. 9-1] (KST) (Entered: 11/05/2002)   |
| 11/06/2002 | 10 | Answer filed on behalf of Richard Cordero, Defendant. Filed by R. Cordero, pro se defendant. [10-1] by , Esq. (KST) (Entered: 11/06/2002)   |
| 11/06/2002 | 11 | Answer filed on behalf of M & T Bank [11-1] by Michael J. Beyma, Esq. (KST) (Entered: 11/06/2002)   |
| 11/12/2002 | 12 | Plaintiff's Reply to Richard Cordero's Counterclaim, filed by David MacKnight, Atty. [12-1] (KST) (Entered: 11/12/2002)   |
| 11/12/2002 | 13 | Affidavit of Mailing re: Reply filed by D. MacKnight, Atty. [12-1] [13-1] (KST) (Entered: 11/12/2002)   |
| 11/18/2002 |    | Third Pary Complaint and Crossclaim filed to (AP Dkt. 02-2230)James Pfunter, Plaintiff vs. Kenneth Gordon, Tr., Richard Cordero, Rochester Americans Hockey Club, Inc., M&T Bank, defendants, cross-defendants; Richard Cordero, defendant and third party plaintiff, vs. David Palmer, David Dworkin, Jefferson Henrietta Associates and David Delano. [0-0] (KST) (Entered: 11/21/2002) |
| 11/19/2002 | 14 | Third Party Summons issued. [14-1] Answer due: 12/19/02 for David Delano, for Jefferson Henrietta Associates, for David Dworking, for David J. Palmer (KST) (Entered: 11/21/2002)   |
| 11/25/2002 | 17 | Affidavit of Mailing re: [17-1]third party complaint and summons. Served on essential parties. (KST) (Entered: 12/09/2002)  |
| 11/25/2002 | 18 | Amended Answerwith cross-claims filed by Richard Cordero, Pro Se Defendant. [18-1] (KST) (Entered: 12/09/2002)  |
| 12/02/2002 | 19 | Copy of Appeal filed with the U.S. Trustee's office by Richard Cordero, Pro Se Defendant. [19-1] (KST) (Entered: 12/09/2002)  |
| 12/05/2002 | 15 | Notice of Motion for dismissal of cross-claim against trustee in an adversary proceeding [15-1] Hearing date and time: 9:30 12/18/02 at Rochester Courtroom Filed by: Kenneth Gordon, Esq. Affidavit of service: filed (PCF) (Entered: 12/06/2002)  |
| 12/06/2002 | 16 | Letter [16-1]dated 12/5/02 from David MacKnight, Esq. to the Court that it might be helpful that the Trustee provide a listing from the debtors records of whose property debtor placed in the Henrietta location and whose property debtor placed in the Avon property. SEE LETTER FOR   |

|            |    |   |
|------------|----|---|
|            |    | MORE DETAILS. (PCF) (Entered: 12/06/2002)   |
| 12/09/2002 | 20 | Letter [20-1] to Plaintiff's attorney to expedite prosecution of AP; matter will be set on trial calendar for 9:00 1/22/03 Deadline to file documents: 12/19/02 ; (KST) (Entered: 12/09/2002)   |
| 12/10/2002 | 21 | Letter [21-1]from K. Gordon, Tr., re:records of stored property by debtor. SEE LETTER FOR FURTHER TERMS AND CONDITIONS. (KST) (Entered: 12/11/2002)   |
| 12/12/2002 | 22 | Memorandum of Law in opposition, filed by Dr. Richard Cordero, Defendant, and Third Party Plaintiff(Pro Se) [22-1] re: motion for dismissal of cross-claim against trustee in an adversary proceeding [15-1] . (KST) (Entered: 12/12/2002)  |
| 12/13/2002 | 23 | Letter [23-1]from Amber Barney, Atty.,advising that Underberg & Kessler will not be representing David Dworkin a party in this action, but are requesting an extension of time to answer from Dr. Cordero. (KST) (Entered: 12/16/2002)  |
| 12/17/2002 | 24 | Answer filed on behalf of M&T Bank David Delano, Third Party Defendant [24-1] by Michael J. Beyma, Esq. (KST) (Entered: 12/18/2002)   |
| 12/17/2002 | 26 | Letter [26-1]from K. Gordon to Dr. Cordero, advising that he does not consent to an adj. in this matter. (KST) (Entered: 12/18/2002)  |
| 12/18/2002 | 25 | Notice of Pre-trial Conference: [25-1] 10:00 1/10/03 at Rochester - Judge's Chambers; sent to David MacKnight, Atty; Kenneth Gordon, Tr.; Michael Beyma, Atty; Richard Cordero, Pro Se; Raymond Stilwell, Atty., and U.S. Trustee. (KST) (Entered: 12/18/2002)  |
| 12/18/2002 | 27 | Minutes [27-1] re: motion for dismissal of cross-claim against trustee in an adversary proceeding - granted. The Court finds that Mr. Gordon's letters were not defamatory and that he was not negligent. Order to be submitted. NOTICE OF ENTRY TO BE ISSUED. Appearances: Kenneth Gordon, Trustee/Defendant; and in opposition: Dr. Richard Cordero, Pro Se Third Party Plaintiff (by telephone). (KST) (Entered: 12/19/2002) |
| 12/19/2002 | 28 | Copy of Letter from Dr. Cordero to Underberg and Kessler, conditionally granting extension of time to file answer to 12/31/02, on behalf of David Dworkin and Jefferson Henrietta Associates, third party defendants,   |

|            |    |  |
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|            |    | subject to certain conditions required by Dr. Cordero. [28-1] (KST) (Entered: 12/20/2002)  |
| 12/23/2002 | 29 | Letter [29-1]from Raymond Stilwell, Atty., advising that he is unable to attend the 1/10/03 pretrial as he has a conflict. Mr. Stilwell further advises that his appearance may not be necessary. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 12/24/2002)  |
| 12/23/2002 | 30 | Order [30-1] granting motion for dismissal of cross-claim against trustee in an adversary proceeding, and that Dr. Cordero's cross-claims against the Trustee are hereby dismissed. [15-1]Notice of Entry Issued To: Kenneth Gordon, Atty; Dr. Richard Cordero, Defendant/Third Party Plaintiff; and U.S. Trustee. (KST) (Entered: 12/30/2002) |
| 12/26/2002 | 51 | Affidavit of Mailing re: [51-1]Default Judgment in a Non-Core Matter. Filed by Dr. Richard Cordero. (KST) (Entered: 02/04/2003)  |
| 12/30/2002 | 31 | Answer filed on behalf of David Dworkin, Jefferson Henrietta Associates [31-1] by Karl S. Essler, Esq. (KST) (Entered: 12/30/2002)   |
| 12/30/2002 | 32 | Letter [32-1]from Dr. Cordero, requesting that he appear by telephone for the 1/10/03 pretrial(submitted the pre-trial option form). (KST) (Entered: 12/30/2002)   |
| 12/30/2002 | 33 | Letter [33-1] from Michael Beyma, Atty., advising that he does not have an objection to Dr. Cordero appearing by telephone for the 1/10/03 pretrial. (KST) (Entered: 12/30/2002)   |
| 01/02/2003 | 34 | Clerk's Note: Advised R. Stilwell, Atty., that his appearance will not be necessary at the 1/10/03 Pretrial. [34-1] (KST) (Entered: 01/02/2003)  |
| 01/02/2003 | 35 | Affidavit of Mailing re: [35-1]filed by Dr. Richard Cordero, Defendant/Third Party Plaintiff, re: pt option form and application to enter a default judgment against David Palmer. (KST) (Entered: 01/03/2003)   |
| 01/03/2003 | 36 | Order [36-1], that Dr. Richard Cordero, Defendant and Third Party Plaintiff may appear by telephone for the 1/10/03 pretrial (KST) (Entered: 01/06/2003)   |
| 01/06/2003 | 37 | Pre-Trial option form Order of 1/3/03 was mailed to Dr. Richard Cordero, Defendant; Michael Beyma, Esq. Kenneth Gordon, Esq.; David MacKnight, Esq., and delivered to the U.S. Trustee. [37-1] (KST)   |



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|            |    | (Entered: 01/06/2003)  |
| 01/06/2003 | 38 | Copy of Letter [38-1]from K. Gordon, Tr., to Dr. Cordero, Defendant/Third Party Defendant, advising that he has no objection to Dr. Cordero appearing by telephone re: the pretrial. (KST) (Entered: 01/06/2003)                       |
| 01/13/2003 | 39 | Notice of appeal Richard Cordero re: order of 12/23/02. [30-1] . Receipt No.: 22055167 (KST) (Entered: 01/13/2003)   |
| 01/13/2003 | 40 | Civil Cover Sheet filed. [40-1] (KST) (Entered: 01/13/2003)  |
| 01/14/2003 | 41 | Letter [41-1]to Dr. Richard Cordero, Defendant/Third Party Plaintiff, advising him that his designation of items on appeal are due on or before 1/27/03. Copy of letter served on essential parties. (KST) (Entered: 01/14/2003)       |
| 01/15/2003 | 42 | Notice of Appeal and Certified copy transmitted to District Court. Civil Case #03-cv-6021L [42-1] (KST) (Entered: 01/17/2003)  |
| 01/27/2003 | 43 | Apellant's designation by Richard Cordero of Contents for Inclusion in Record on Appeal. (KST) (Entered: 01/29/2003)   |
| 01/27/2003 | 54 | Letter [54-1]from Dr. Richard Cordero, re: transcript of hearing of 12/18/02. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 02/05/2003)  |
| 01/29/2003 | 44 | Affidavit of Mailing re: appellant designation [43-1] by Richard Cordero [44-1] (KST) (Entered: 01/29/2003)  |
| 01/30/2003 | 47 | Notice of Motion to extend time to of time to file Notice of Appeal [47-1] Hearing date and time: 9:30 2/12/03 at Rochester Courtroom Filed by: Richard Cordero, Defendant Affidavit of service: not filed (KST) (Entered: 02/03/2003) |
| 01/31/2003 | 45 | Letter [45-1]from Dr. Cordero re: his available travel dates to come to Rochester to inspect his property in storage. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 01/31/2003)  |
| 02/03/2003 | 46 | Letter [46-1]from Dr. Richard Cordero, Defendant, Third Party Plaintiff, re: entry of a default judgment. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 02/03/2003)  |

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| 02/03/2003 | 48 | Letter [48-1]from K. Gordon, Tr., advising that he will not be attending the inspection of Dr. Cordero's personal property in storage in Avon, NY. (KST) (Entered: 02/03/2003)  |
| 02/04/2003 | 49 | Clerk's Certificate of Default [49-1] (KST) (Entered: 02/04/2003)   |
| 02/04/2003 | 50 | Affidavit of Dr. Richard Cordero [50-1] re:Non-Military Service. (KST) (Entered: 02/04/2003)  |
| 02/04/2003 | 52 | Order [52-1], to Transmit Record to District Court, re: non-core default judgment, with attachment to Recommendation of the Bankruptcy Court The Default Judgment Not Be Entered By the District Court (KST) (Entered: 02/04/2003)  |
| 02/04/2003 | 53 | Letter [53-1]to District Court enclosing the required Documents re: Non Core Default Application for Default. Clerk's Note: Proposed original order submitted to District Court. (KST) (Entered: 02/04/2003)  |
| 02/06/2003 | 55 | Memorandum of Law [55-1] re: motion to extend time to of time to file Notice of Appeal [47-1] . (KST) (Entered: 02/06/2003)   |
| 02/12/2003 | 56 | Minutes [56-1] re: motion to extend time to of time to file Notice of Appeal - denied; This motion was not filed timely as required by Rule 8002(a). Appearances: Dr. Richard Cordero, Defendant/Third Party Plaintiff(appeared by telephone); in opposition: Kenneth Gordon, Tr., Defendant. Mr. Gordon will submit Order. NOTICE OF ENTRY TO BE ISSUED. (KST) (Entered: 02/14/2003)   |
| 02/12/2003 | 58 | Letter [58-1]from Raymond Stilwell, Atty., re: various issues in this matter, and that he does not represent David Palmer in this matter. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 02/19/2003)   |
| 02/18/2003 | 57 | Order [57-1] denying motion to extend time to file Notice of Appeal [47-1]that the Notice of Appeal was filed in the Bankruptcy Court Clerk's Office on 1/13/03; and thereby not timely filed; that the provisions of Bankruptcy Rule 9006(e) and 9006(f) do not apply to extend the time limited for filing of the Notice of Appeal under Bankruptcy Rule 8002(a); that the last date for Richard Cordero, Defendant and Third Party Plaintiff, to file a motion seeking an extension under Bankruptcy Rule 8002(c) of his time to file his Notice of Appeal was 1/29/03; that the motion to extend was not filed with the Bankruptcy Court Clerk' until 1/30/03; and that a motion to dismiss the appeal is pending in the District Court. NOTICE OF ENTRY ISSUED TO: Dr. Richard Cordero, Third Party Plaintiff; Ken Gordon, Defendant and U.S. Trustee. (KST) |

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|            |    | (Entered: 02/18/2003)  |
| 02/21/2003 | 59 | Letter [59-1]from M. Beyma, Atty., for M&T Bank, advising that M&T Bank has not yet decided whether someone from the bank will attend at the warehouse opening. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 02/24/2003)  |
| 02/27/2003 | 60 | Notice of Motion for relief from order denying motion to extend time to file notice of appeal [60-1] Hearing date and time: 9:30 3/12/03 at Rochester Courtroom Filed by: Dr. Richard Cordero, Defendant Affidavit of service: filed. Clerk's Note: Advised Dr. Cordero that 3/12/03 is not a motion date, he will re-notice the motion for 3/19/03 or 3/26/03, and submit an amended affidavit of mail. (KST) (Entered: 03/04/2003)                       |
| 03/04/2003 | 61 | Letter of Opposition filed by K. Gordon, Defendant [61-1] re: motion for relief from order denying motion to extend time to file notice of appeal [60-1] Clerk's Note: Advised Mr. Gordon that the date of 3/12/03 is not a hearing date, and that an amended notice if forthcoming. (KST) (Entered: 03/04/2003)   |
| 03/10/2003 | 62 | Amended Notice of Motion, re: the amended date of hearing to 3/26/03 at 9:30 at Rochester Courtroom filed by Dr. Richard Cordero, Defendant [62-1] re: motion for relief from order denying motion to extend time to file notice of appeal [60-1]Affidavit of Service filed. (KST) (Entered: 03/11/2003)   |
| 03/10/2003 | 63 | Letter [63-1]of Dr. Richard Cordero, Defendant, re: default of David Palmer. (KST) (Entered: 03/11/2003)   |
| 03/11/2003 | 65 | Copy of Letter [65-1]from Dr. Richard Cordero to Hon. David Larimer, re: default judgment against D. Palmer. (KST) (Entered: 03/13/2003)   |
| 03/11/2003 | 66 | Copy of Decision and Order by U.S. District Judge David G. Larimer; concurring in the Bankruptcy Judge's determination that judgment is not appropriate in this case, and that furthermore, it would appear that the Bankruptcy Court is the proper forum for conducting an inquest concerning damages and the matter is referred to the Bankruptcy Court for that purpose. SEE ORDER FOR FURTHER TERMS AND CONDITIONS. [66-1] (KST) (Entered: 03/13/2003) |
| 03/12/2003 | 64 | Letter [64-1]to Dr. Richard Cordero, sent by Paul Warren, Clerk of the Court, re: the application for the entry of default against David Palmer. SEE LETTER FOR FURTHER TERMS AND CONDITIONS. (KST)  |

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|            |    | (Entered: 03/13/2003)  |
| 03/13/2003 | 67 | Decision and Order of the Hon. David G. Larimer, U.S. District Judge, re:Notice of Appeal filed on 1/13/03, re: the Decision and Order dated 12/30/02, of the Hon. John C. Ninfo, II, Chief U.S. Bankruptcy Judge. ORDERED THAT the Trustee's motion to dismiss the appeal is granted, and the appeal is dismissed. [67-1] (KST) (Entered: 03/14/2003)   |
| 03/26/2003 | 70 | Minutes [70-1] denying motion for relief from order denying motion to extend time to file notice of appeal [60-1]Ms. Schaal to submit order. The Court reserves the right to supplement the order. NOTICE OF ENTRY TO BE ISSUED. Appearances: Dr. Richard Cordero, Defendant and Third Party Plalintiff(by telephone); in opposition: Deborah Schaal of counsel to K. Gordon, Trustee, and David MacKnight, Atty. for James Pfunter. (KST) (Entered: 03/28/2003)   |
| 03/26/2003 | 71 | Transcript [71-1] of proceedings held 12/18/03. (KST) (Entered: 03/28/2003)  |
| 03/27/2003 | 68 | Copy of Letter [68-1]from David Macknight, Atty., to Dr. Richard Cordero, Defendant, advising of the available inspection dates: 4/23/03, 4/24/03, or 4/25/03, or earlier if Dr. Cordero would like. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 03/27/2003)   |
| 03/27/2003 | 69 | Copy of Decision and Order [69-1],executed by David G. Larimer, U.S. District Judge re: Richard Coredero moves for a rehearing or reconsideration of this Court's Decision and Order enter 3/11/03. The motion is in all respects denied. (KST) (Entered: 03/28/2003)  |
| 04/02/2003 | 72 | Copy of Letter [72-1]from Dr. Richard Cordero to Court Reporter. (KST) (Entered: 04/02/2003)   |
| 04/04/2003 | 73 | Order [73-1] denying Defendant, Third Party Plaintiff, Dr. Richard Cordero's motion for relief from order denying motion to extend time to file notice of appeal [69-2], that based on the findisngs of fact and conclusions of law, that Richard Cordero's motion ofr relief from teh order dated 2/18/03 denying his motion for extension of time for filing a notice to appeal is hereby denied. NOTICE OF ENTRY ISSUED TO Debra Schall, of counsel to Kenneth Gordon, Atty.,Dr. Richard Cordero, Defendant, and David MacKnight, Atty. (KST) (Entered: 04/07/2003) |
| 04/07/2003 | 74 | Notice of entry issued to U.S. Trustee [74-1] re:Order of 4/4/03 . (KST) (Entered: 04/07/2003)   |

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| 04/07/2003 | 75 | Notice of Motion for Measures relating to trip to Rochester and Inspection of Property [75-1] Hearing date and time: 9:30 4/16/03 at Rochester Courtroom Filed by: Dr. Richard Cordero, Pro Se, Defendant, and Third Party Plaintiff. Affidavit of service: filed. Clerk's Note: Dr. Cordero is advised by letter that 4/16/03 is not a scheduled date, and to please re-notice his motion for 4/23/03, or for one of the Court's motion dates that accommodates his schedule. (KST) (Entered: 04/08/2003)  |
| 04/07/2003 | 76 | Letter [76-1]to Dr. Richard Cordero, advising that due to the complexity of the legal issues that he has now raised and re: notice of motion for measures relating to trip to Rochester, the Court denies Dr. Cordero's request to appear by telephone in this matter. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 04/08/2003)  |
| 04/11/2003 | 77 | Notice of Motion for an Order pursuant to FRBP 7056 and Federal Rules of Civil Procedure 56 and Federal Rules of Bankruptcy Procedure 7022 and Federal Rules of Civil Procedure 22 for an Order discharging James Pfunter from any liability to any of the parties to this adversary proceeding [77-1] Hearing date and time: 9:30 4/23/03 at Rochester Courtroom Filed by: David MacKnight, Atty. Affidavit of service: not filed (KST) (Entered: 04/14/2003)  |
| 04/21/2003 | 78 | Brief of Dr. Richard Cordero, Pro Se [78-1] re: motion for an Order pursuant to FRBP 7056 and Federal Rules of Civil Procedure 56 and Federal Rules of Bankruptcy Procedure 7022 and Federal Rules of Civil Procedure 22 for an Order discharging James Pfunter from any liability to any of the parties to this adversary proceeding [77-1]Affidavit of Mailing filed. (KST) (Entered: 04/21/2003)   |
| 04/21/2003 | 79 | Letter [79-1]from Mary Dianetti, Bankruptcy Court Reporter, in response to Dr. Cordero's letter. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 04/22/2003)  |
| 04/23/2003 | 81 | Minutes [81-1] motion for an Order pursuant to FRBP 7056 and Federal Rules of Civil Procedure 56 and Federal Rules of Bankruptcy Procedure 7022 and Federal Rules of Civil Procedure 22 for an Order discharging James Pfunter from any liability to any of the parties to this adversary proceeding [77-1] Adj. to 9:30 5/21/03 at Rochester Courtroom. The court directed Dr. Cordero to inspect the goods by 5/21/03. Appearances: David MacKnight, Atty. for J. Pfunter, Plaintiff; in opposition: Dr. Richard Cordero, Defendant, and Third Party Plaintiff(by telephone). (KST) (Entered: 04/29/2003) |
| 04/29/2003 | 80 | Clerk's Note: Appeal filed transmitted to District Court, for purposes of   |

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|            |    | filing in the Second Circuit. [80-1] (KST) (Entered: 04/29/2003)   |
| 05/05/2003 | 82 | Copy of Letter [82-1]from Dr. Cordero to James Pfunter, confirming that Dr. Cordero will be arriving in Rochester on May 21, 2003 at 10:45, to inspect his property in Avon. Affidavit of Service filed. (KST) (Entered: 05/05/2003)   |
| 05/07/2003 | 83 | Letter [83-1]from Dr. Richard Cordero, Defendant, re: his travel arrangements for the inspection in Avon, NY., on 5/19/03. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 05/07/2003)   |
| 05/13/2003 | 84 | Copy of Letter [84-1]from J. Pfunter to Dr. Cordero, confirming that the inspection of the property at Sackett Road will take place on 5/19/03. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 05/13/2003)  |
| 05/15/2003 | 85 | Letter [85-1]from Dr. Richard Cordero, Defendant, advising that he will be in Rochester on 5/19/03. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 05/16/2003)  |
| 05/19/2003 | 86 | Letter [86-1]from Underberg & Kessler advising that Ms. Mattle will be picking up Dr. Cordero from the Rochester Airport for the inspection of property at 2140 Sackett Road, Avon, NY, and thereafter Ms. Mattle will take Dr. Cordero back to the Rochester Airport. (KST) (Entered: 05/20/2003)   |
| 05/21/2003 | 87 | Copy of Notice of appeal that was received and docketed on 5/2/03 at the United States Court of Appeals. [87-1] (PCF) (Entered: 05/23/2003)  |
| 05/21/2003 | 88 | MINUTES [88-1] denying motion without prejudice. for an Order pursuant to FRBP 7056 and Federal Rules of Civil Procedure 56 and Federal Rules of Bankruptcy Procedure 7022 and Federal Rules of Civil Procedure 22 for an Order discharging James Pfunter from any liability to any of the parties to this adversary proceeding [77-1] NOTICE OF ENTRY TO BE ISSUED. Dr. Cordero can make a motion for sanctions and damages and renew his default motion against David Palmer. Appearances by: David MacKnight, atty for James Pfunter. Appearing in Opposition: Dr. Richard Cordero, defendant and Third Pary Plaintiff (by telephone) (PCF) (Entered: 05/27/2003) |
| 06/03/2003 | 89 | Scheduling Order from the U.S. Court of Appeals, Second Circuit, re: dates certain. SEE ORDER FOR FURTHER DETAILS. [89-1] (KST) (Entered: 06/04/2003)  |

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| 06/09/2003 | 90                  | Letter [90-1]from D. Macknight, re: prospective purchaser of the premises, and Dr. Cordero's items. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 06/09/2003)   |
| 06/11/2003 | 91                  | Notice of Motion for sanctions and compensation for failure to comply with discovery orders. [91-1] Hearing date and time: 9:30 6/25/03 at Rochester Courtroom Filed by: Dr. Richard Cordero, Pro Se Affidavit of service: filed (KST) (Entered: 06/11/2003)  |
| 06/11/2003 | <a href="#">107</a> | Ex-Parte Motion for Default Against David Palmer Filed by 3rd Party Plaintiff Richard Cordero (Attachments: # <a href="#">1</a> Appendix) (Tacy, K.) (Entered: 07/31/2003)  |
| 06/18/2003 | <a href="#">92</a>  | Affidavit Filed by Defendant Richard Cordero , 3rd Party Plaintiff Richard Cordero . (Attachments: # <a href="#">1</a> Exhibit) (Tacy, K.) (Entered: 06/19/2003)  |
| 06/19/2003 | <a href="#">93</a>  | Notice of Amendment of Brief Filed by Defendant Richard Cordero , 3rd Party Plaintiff Richard Cordero (Attachments: # <a href="#">1</a> Exhibit # <a href="#">2</a> Proposed Order) (Tacy, K.) (Entered: 06/19/2003)  |
| 06/19/2003 | <a href="#">94</a>  | Notice to Admit. Filed by David MacKnight, Atty.(Attachments: # <a href="#">1</a> Exhibit)(Tacy, K.) (Entered: 06/23/2003)  |
| 06/23/2003 | <a href="#">95</a>  | Precautioary Response to the Motion Made by Richard Cordero to Enter a Default Judgment. Filed by D. MacKnight, Atty.Plaintiff James Pfuntner . Clerk's Note: The subject Default motion is an ex-parte motion, however it will be addressed at the Court's 6/25/03 9:30 Motion Calendar. (Tacy, K.) (Entered: 06/23/2003)  |
| 06/24/2003 | <a href="#">96</a>  | Letter Filed by Daniel Delaus, Atty . (Tacy, K.) (Entered: 06/24/2003)  |
| 06/25/2003 | 97                  | Hearing Continued (RE: related document(s)[91] Motion for sanctions and compensation: Hearing to be held on 7/2/2003 at 09:30 AM Rochester Courtroom for [91]. The Court advised the parties of the Court's available trial dates for October and November. On the adjourned date, the parties are to advise the Court which of those date they want as trial dates. Appearances: Dr. Richard Cordero, Pro Se Defendant and Third Party Plaintiff (By telephone). Appearing in opposition: David MacKnight, Atty. for James Pfuntner, Plaintiff; Michael Beyma, Atty. for M & T Bank, Defendant and David Delano, Third Party Defendant; Karl Essler, Atty. for Jefferson Henrietta Associates and David Dworkin, Third Party Defendants. (Parkhurst, L.) (Entered: 06/26/2003) |



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| 06/25/2003 | 98                  | Hearing Continued (RE: related document(s) <a href="#">95</a> Ex parte motion to enter default judgment against David Palmer: Hearing to be held on 7/2/2003 at 09:30 AM Rochester Courtroom. Although an ex parte motion, the Court addressed it at this motion calendar. Appearances: Dr. Richard Cordero, Pro Se Defendant and Third part Plaintiff. Appearing in opposition: David MacKnight, Atty. for James Pfuntner, Plaintiff. (Parkhurst, L.) (Entered: 06/26/2003)  |
| 06/25/2003 | <a href="#">99</a>  | Certificate of Service Filed by Plaintiff James Pfuntner (RE: related document(s) <a href="#">94</a> Notice to Creditors). (Tacy, K.) (Entered: 06/27/2003)   |
| 07/02/2003 | 100                 | Hearing Continued (RE: related document(s)[91] Trial to be held on 10/16/2003 at 09:30 AM Rochester Courtroom for [91], Trial may continue into 10/17/03 and 11/14/03 will be held open if any matters still need to be heard. The Court will issue an order. NOTICE OF ENTRY TO BE ISSUED. Appearances: Dr. Richard Cordero, Pro Se Defendant and Third Party Plaintiff (By telephone). Appearing in opposition: David MacKnight, Atty. for James Pfuntner, Plaintiff; Karl Essler, Atty. for Jefferson Henrietta Associates and David Dworkin, Third Party Defendants; Joseph Decoursey, Law Clerk, appeared on behalf of Michael Beyma, Atty. for M & T Bank, Defendant and David Delano, Third Party Defendant, to provide Mr. Beyma's available Trial dates. (Parkhurst, L.) (Entered: 07/09/2003) |
| 07/02/2003 | 101                 | Hearing Continued (RE: related document(s) <a href="#">95</a> Ex parte motion to enter default judgment against David Palmer. Trial to be held on 10/16/2003 at 09:30 AM Rochester Courtroom for <a href="#">95</a> , Trial may continue into 10/17/03 and 11/14/03 will be held open for any matters that still need to be heard. The Court will issue an order. NOTICE OF ENTRY TO BE ISSUED. Appearances: Dr. Richard Cordero, Third Party Plaintiff (By telephone) Appearing in opposition: David MacKnight, Atty. for James Pfuntner(Parkhurst, L.) (Entered: 07/09/2003)  |
| 07/15/2003 | <a href="#">102</a> | Order Re:dates certain. Signed on 7/15/2003 (RE: related document(s)[91] Hearing (Bk Motion) Set, [98] Hearing (Bk Other) Continued, Hearing (Bk Other) Continued). (Tacy, K.) (Entered: 07/15/2003)  |
| 07/17/2003 | <a href="#">103</a> | BNC Certificate of Mailing. Service Date 07/17/2003. (Related Doc # <a href="#">102</a> ) (Admin.) (Entered: 07/18/2003)  |
| 07/17/2003 | <a href="#">104</a> | BNC Certificate of Mailing. Service Date 07/17/2003. (Related Doc # <a href="#">102</a> ) (Admin.) (Entered: 07/18/2003)  |



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| 07/23/2003 | <a href="#">105</a> | Motion For Sanctions Filed by Defendant Richard Cordero , 3rd Party Plaintiff Richard Cordero (Attachments: # <a href="#">1</a> Exhibit) (Tacy, K.) (Entered: 07/23/2003)   |
| 07/23/2003 | <a href="#">106</a> | Reply to Request for Admissions. Filed by Defendant Richard Cordero . (Tacy, K.) (Entered: 07/23/2003)  |
| 07/31/2003 |                     | Clerk's Note: Pursuant to telephone conversation with Dr. Cordero this date: Advised Dr. Cordero that his motion to appear by telephone on August 6, 2003 at 9:30 is denied, but he can appear in person or obtain consent to adj. this matter to 10/16/03 at 9:30 a.m. Dr. Cordero advised that he will withdraw this motion, and make another motion for 10/16/03 at 9:30 a.m. Advised Dr. Cordero to write a letter to the Court and the parties involved confirming his intent. (RE: related document(s) <a href="#">105</a> Motion for Sanctions filed by 3rd Party Plaintiff Richard Cordero, Defendant Richard Cordero) (Tacy, K.) (Entered: 07/31/2003) |
| 08/04/2003 | <a href="#">108</a> | ReNotice of Motion and Notice of Withdrawal Filed by Defendant Richard Cordero (Tacy, K.) (Entered: 08/06/2003)   |
| 08/04/2003 | 109                 | Hearing Set (RE: related document(s) <a href="#">108</a> Generic Motion filed by 3rd Party Plaintiff Richard Cordero, Defendant Richard Cordero) Hearing to be held on 10/16/2003 at 09:30 AM Rochester Courtroom for <a href="#">108</a> , (Tacy, K.) (Entered: 08/06/2003)  |
| 08/06/2003 | 110                 | Hearing Continued (RE: related document(s) <a href="#">105</a> Motion for Sanctions filed by 3rd Party Plaintiff Richard Cordero, Defendant Richard Cordero, <a href="#">108</a> Generic Motion filed by 3rd Party Plaintiff Richard Cordero, Defendant Richard Cordero) Hearing to be held on 10/16/2003 at 09:30 AM Rochester Courtroom for <a href="#">105</a> and for <a href="#">108</a> , Appearing in opposition: David MacKnight, Atty. for James Pfuntner, Plaintiff (Parkhurst, L.) (Entered: 08/07/2003)   |
| 08/11/2003 | <a href="#">111</a> | Motion to Recuse. Filed by Defendant Richard Cordero , 3rd Party Plaintiff (Attachments: # <a href="#">1</a> Exhibit # <a href="#">2</a> Exhibit) (Tacy, K.) (Entered: 08/11/2003)  |
| 08/11/2003 | 112                 | Hearing Set (RE: related document(s) <a href="#">111</a> Generic Application filed by 3rd Party Plaintiff Richard Cordero, Defendant Richard Cordero) Hearing to be held on 8/20/2003 at 09:30 AM Rochester Courtroom for <a href="#">111</a> , (Tacy, K.) (Entered: 08/11/2003)  |
| 08/14/2003 | <a href="#">113</a> | Letter to Dr. Richard Cordero, Defendant and Third Party Plaintiff. Copies sent to Kenneth Gordon, Esq., David Palmer, David MacKnight,   |

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|            |                     | Atty., Michael Beyma, Atty., Karl Essler, Atty., U.S. Trustee. (RE: related document(s) <a href="#">111</a> Application). (Tacy, K.) (Entered: 08/14/2003)  |
| 08/20/2003 | 114                 | Hearing Continued (RE: related document(s) <a href="#">111</a> Generic Application filed by 3rd Party Plaintiff Richard Cordero, Defendant Richard Cordero) Hearing to be held on 10/16/2003 at 09:30 AM Rochester Courtroom for <a href="#">111</a> , Dr. Cordero will renote the motion for 10/16/03. No appearances. (Parkhurst, L.) (Entered: 08/20/2003) |
| 08/21/2003 | <a href="#">115</a> | Renote of Motion for Recusal and Removal. Filed by Defendant Richard Cordero , 3rd Party Plaintiff Richard Cordero (Tacy, K.) (Entered: 08/29/2003)   |
| 08/21/2003 | 116                 | Hearing Set (RE: related document(s) <a href="#">115</a> Generic Motion filed by 3rd Party Plaintiff Richard Cordero, Defendant Richard Cordero) Hearing to be held on 10/16/2003 at 09:30 AM Rochester Courtroom for <a href="#">115</a> , (Tacy, K.) (Entered: 08/29/2003)  |
| 09/17/2003 | <a href="#">117</a> | Copy of Writ of Mandamus. Filed by Defendant Richard Cordero (Finucane, P.) (Entered: 09/18/2003)   |
| 09/20/2003 | <a href="#">118</a> | BNC Certificate of Mailing. Service Date 09/20/2003. (Related Doc # <a href="#">117</a> ) (Admin.) (Entered: 09/21/2003)  |
| 10/07/2003 | <a href="#">119</a> | Notice of objections to Hearings and Withdrawal of Motions Except For Recusal and Removal. Filed by Defendant Richard Cordero , 3rd Party Plaintiff Richard Cordero . (Tacy, K.) (Entered: 10/07/2003)  |
| 10/07/2003 | <a href="#">120</a> | Objection Filed by David Dworkin, Jefferson Henrietta Associates , Notice of Objectons to Hearings and Withdrawal of Motions Except for Recusal and Removal. (Tacy, K.) (Entered: 10/07/2003)   |
| 10/07/2003 | <a href="#">121</a> | Copy of Letter to the Pro Se Unit for Second Circuit. Filed by Karl Essler, Atty., for David Dworkin , and Jefferson Henrietta Associates . (Tacy, K.) (Entered: 10/07/2003)  |
| 10/07/2003 | <a href="#">122</a> | Notice of Motion and Motion to Determine Matters Admitted. Filed by David MacKnight, Atty. for Plaintiff James Pfunter (Tacy, K.) (Entered: 10/07/2003)   |
| 10/07/2003 | 123                 | Hearing Set (RE: related document(s) <a href="#">122</a> Motion filed by Plaintiff James Pfunter) Hearing to be held on 11/25/2003 at 09:30 AM Rochester Courtroom. <a href="#">122</a> , at the time of the Trial. Clerk's Note: D.  |

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|            |                     | MacKnight is to amend the motion papers from 9:00 a.m. to 9:30 a.m. (Tacy, K.) Modified on 11/7/2003. Corrective Entry for purpose of correcting docket text as follows: the return date is to read 10/16/03, and not 11/25/03. The wrong date was inadvertently typed in. (Tacy, K.). (Entered: 10/07/2003) |
| 10/08/2003 | <a href="#">124</a> | Amended Motion (related document(s): <a href="#">122</a> to reflect correct time. Motion filed by Plaintiff James Pfuntner) Filed by Plaintiff James Pfuntner (Tacy, K.) (Entered: 10/09/2003)   |
| 10/14/2003 | <a href="#">125</a> | Reply to Motion to determine Matters Admitted (related document(s): <a href="#">122</a> Motion filed by Plaintiff James Pfuntner) Filed by Defendant Richard Cordero (Attachments: # <a href="#">1</a> Certificate of Service) (Finucane, P.) (Entered: 10/14/2003)  |
| 10/15/2003 | <a href="#">126</a> | Addendum to the Motion for Sanctions and Compensation for Failure to Comply with Discovery Orders. Filed by Defendant Richard Cordero , 3rd Party Plaintiff Richard Cordero . (Tacy, K.) (Entered: 10/15/2003)   |
| 10/15/2003 | 127                 | Hearing Set (RE: related document(s) <a href="#">124</a> Amended Motion filed by Plaintiff James Pfuntner) Hearing to be held on 10/16/2003 at 09:30 AM Rochester Courtroom. This matter will be heard at the Trial. <a href="#">124</a> , (Tacy, K.) (Entered: 10/15/2003)                                  |
| 10/16/2003 | <a href="#">128</a> | Hearing Held. RE: Motion for Recusal and Removal; Complaint to Determine Right of Property; third-party plaintiff's request for jury trial. Notice of Entry be issued. (Finucane, P.) (Entered: 10/17/2003)  |
| 10/16/2003 | <a href="#">129</a> | Order Denying Recusal and Removal Motions and Objection of Richard Cordero to Proceedng with any Hearings and a Trial on 10/16/03 (Related Doc # <a href="#">111</a> ) Signed on 10/16/2003. (Finucane, P.) (Entered: 10/17/2003)  |
| 10/16/2003 | <a href="#">130</a> | Order Disposing of Causes of Action. Signed on 10/16/2003. (Finucane, P.) (Entered: 10/17/2003)  |
| 10/17/2003 | <a href="#">131</a> | Reply to Motion to determine Matters Admitted. (related document(s): <a href="#">122</a> Motion filed by atty for Plaintiff James Pfuntner) Filed by Defendant Richard Cordero (Finucane, P.) (Entered: 10/17/2003)  |
| 10/17/2003 | <a href="#">132</a> | Reply to Atty Essler's Motion letter to the Court. Filed by Defendant Richard Cordero . (Finucane, P.) (Entered: 10/17/2003)   |

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| 10/19/2003 | <a href="#">133</a> | BNC Certificate of Mailing. Service Date 10/19/2003. (Related Doc # <a href="#">129</a> ) (Admin.) (Entered: 10/20/2003)  |
| 10/19/2003 | <a href="#">134</a> | BNC Certificate of Mailing. Service Date 10/19/2003. (Related Doc # <a href="#">130</a> ) (Admin.) (Entered: 10/20/2003)  |
| 10/19/2003 | <a href="#">135</a> | BNC Certificate of Mailing. Service Date 10/19/2003. (Related Doc # <a href="#">129</a> ) (Admin.) (Entered: 10/20/2003)  |
| 10/19/2003 | <a href="#">136</a> | BNC Certificate of Mailing. Service Date 10/19/2003. (Related Doc # <a href="#">130</a> ) (Admin.) (Entered: 10/20/2003)  |
| 10/22/2003 | <a href="#">139</a> | Amended Reply. Filed by Defendant Richard Cordero . (Tacy, K.) (Entered: 10/24/2003)  |
| 10/23/2003 | <a href="#">137</a> | Order Re:Finding A Waiver of A Trial By Jury. Signed on 10/23/2003. (Attachments: # <a href="#">1</a> Appendix # <a href="#">2</a> Appendix # <a href="#">3</a> Appendix) (Tacy, K.) (Entered: 10/23/2003)  |
| 10/23/2003 | <a href="#">138</a> | Order Re:Scheduling Order in Connection with the Remaining Claims of the Plaintiff, James Pfuntner, and the Cross-Claims, Counterclaims and Third-Party Plaintiff, Richard Cordero. Signed on 10/23/2003. (Attachments: # <a href="#">1</a> Appendix # <a href="#">2</a> Appendix # <a href="#">3</a> Appendix) (Tacy, K.) Modified on 10/23/2003 (Tacy, K.). (Entered: 10/23/2003) |
| 10/23/2003 |                     | Clerk's Note : The Orders of 10/23/03 were paper mailed to Raymond Stilwell, Atty.,on behalf of David Palmer, Defendant, with a Notice of Entry re: the 2 Orders. (RE: related document(s) <a href="#">137</a> Order <a href="#">138</a> Order (Tacy, K.) (Entered: 10/24/2003)   |
| 10/25/2003 | <a href="#">140</a> | BNC Certificate of Mailing. Service Date 10/25/2003. (Related Doc # <a href="#">137</a> ) (Admin.) (Entered: 10/26/2003)  |
| 10/25/2003 | <a href="#">141</a> | BNC Certificate of Mailing. Service Date 10/25/2003. (Related Doc # <a href="#">138</a> ) (Admin.) (Entered: 10/26/2003)  |
| 10/25/2003 | <a href="#">142</a> | BNC Certificate of Mailing. Service Date 10/25/2003. (Related Doc # <a href="#">137</a> ) (Admin.) (Entered: 10/26/2003)  |
| 10/25/2003 | <a href="#">143</a> | BNC Certificate of Mailing. Service Date 10/25/2003. (Related Doc # <a href="#">138</a> ) (Admin.) (Entered: 10/26/2003)  |
| 10/27/2003 | <a href="#">144</a> | Motion Filed by Defendant Richard Cordero (Tacy, K.) (Entered:  |

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|            |                     | 10/27/2003)  |
| 10/28/2003 | <a href="#">145</a> | Order Signed on 10/28/2003 (RE: related document(s) <a href="#">144</a> The Motion of Richard Cordero for a More Definite Statement of the Court's Order and Decision, is in all respects denied. (Tacy, K.) (Entered: 10/28/2003)   |
| 10/30/2003 | <a href="#">146</a> | BNC Certificate of Mailing. Service Date 10/30/2003. (Related Doc # <a href="#">145</a> ) (Admin.) (Entered: 10/31/2003)   |
| 11/07/2003 | <a href="#">147</a> | Letter filed by Richard Cordero, Defendant Corrective Entry for purpose of correcting docket text as follows: the return date is to read 10/16/03, and not 11/25/03. The wrong date was inadvertently typed in. (Tacy, K.). (RE: related document(s) <a href="#">122</a> (Tacy, K.) (Entered: 11/07/2003)  |
| 11/19/2003 | <a href="#">148</a> | Letter to United States Court of Appeals for the Second Circuit, enclosing the Court's 10/23/03 Scheduling Order, together with the 10/16/03 Order Denying Recusal and Removal Motions; the 10/16/03 Order Disposing of causes of Action; and the 10/23/03 Decision and Order Finding a Waiver of a Trial by Jury: (Attachments: # <a href="#">1</a> Appendix # <a href="#">2</a> Appendix # <a href="#">3</a> Appendix # <a href="#">4</a> Appendix) (Tacy, K.) (Entered: 11/19/2003) |
| 11/19/2003 |                     | Clerk's Note: (RE: related document(s) <a href="#">148</a> Letter: mailed letter to Roseann B. MacKechnie Clerk of Court, U.S. Court of Appeals for the Second Circuit, and to Richard Cordero, Defendant. (Tacy, K.) (Entered: 11/19/2003)  |
| 01/30/2004 | <a href="#">149</a> | Copy of Summary Order from the USCA, for the Second Circuit. Clerk's Note: This order submitted directly to Chambers. (Tacy, K.) (Entered: 03/12/2004)   |
| 04/28/2004 | <a href="#">150</a> | Letter Filed by Defendant Richard Cordero , 3rd Party Plaintiff Richard Cordero . (Attachments: # <a href="#">1</a> Certificate of Service # <a href="#">2</a> Exhibit # (copy of letter)(3) Exhibit (copy of letter) (Tacy, K.) (Entered: 04/30/2004)   |
| 05/04/2004 | <a href="#">151</a> | Letter dated 5/4/04 from the Clerk of the Court, Paul R. Warren, Esq. to Dr. Richard Cordero regarding search request. (Finucane, P.) (Entered: 05/05/2004)  |
| 05/19/2004 | <a href="#">152</a> | Letter dated 5/16/04 Filed by Richard Cordero. (RE: related document(s) <a href="#">151</a> Letter). (Finucane, P.) (Entered: 05/19/2004)  |
| 05/20/2004 | <a href="#">153</a> | Letter dated 5/20/04 from the Clerk of the Court, Paul R. Warren, Esq.   |

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|            |                     | to Dr. Richard Cordero regarding search fee. (RE: related document(s) <a href="#">152</a> Letter). (Finucane, P.) (Entered: 05/20/2004)  |
| 05/26/2004 | <a href="#">154</a> | Letter Filed by Defendant, Richard Cordero in response to (RE: related document(s) <a href="#">153</a> letter of Paul R. Warren, Clerk of the Court. (Tacy, K.) (Entered: 05/26/2004)  |
| 10/20/2004 | <a href="#">155</a> | Copy of Letter Filed by Defendant Richard Cordero to George Reiber, Trustee. (Tacy, K.) (Entered: 10/20/2004)  |
| 02/24/2005 | <a href="#">156</a> | Letter Filed by Karl Essler, Atty for David Dworkin , Jefferson Henrietta Associates, Defendants, re: 3/1/05 Motion . CLERK'S NOTE: please see bankruptcy case #04-20280 for further details. (Tacy, K.) (Entered: 02/24/2005)   |
| 04/04/2005 |                     | Clerk's Note: On April 4, 2005, the Court entered a Decision & Order in Chapter 13 Case No. 04-20280 (DeLano) which attached the October 23, 2003 Scheduling Order docketed to this A.P. (TEXT ONLY EVENT) (RE: related document(s) <a href="#">138</a> Order (Generic)) (Capogreco, C.) (Entered: 04/04/2005)   |
| 06/23/2005 | <a href="#">157</a> | Statement on the Court's Linkage of this and the DeLano cases. Filed by Defendant Richard Cordero , 3rd Party Plaintiff Richard Cordero . (Attachments: # <a href="#">1</a> Exhibit Copy of Decision and Order# <a href="#">2</a> Exhibit Copy of Designation of Items in the Record and Statement of Issues on Appeal) (Tacy, K.) Modified on 6/23/2005 (Tacy, K.).Clerk's Note: File date verified to original document. (Entered: 06/23/2005) |

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| <b>PACER Service Center</b> |               |                         |  |
| <b>Transaction Receipt</b>  |               |                         |  |
| 05/15/2006 10:12:53         |               |                         |  |
| <b>PACER Login:</b>         |               | <b>Client Code:</b>     |  |
| <b>Description:</b>         | Docket Report | <b>Search Criteria:</b> | 2-02-02230-JCN Fil or Ent: Fil<br>Doc From: 0 Doc To: 99999999<br>Term: y Links: n Format: HTMLfmt |
| <b>Billable Pages:</b>      | 10            | <b>Cost:</b>            | 0.80   |

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