docket no. 03-5023

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Richard Cordero,
Cross and Third party plaintiff-Appellant

v.

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

and

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

OPENING BRIEF
OF APPELLANT PRO SE
RICHARD CORDERO

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, both submitted to the District Court by the Hon. John C. Ninfo, II, U.S. Bankruptcy Judge of the U.S. Bankruptcy Court, WBNY.

Part 1. BRIEF

II. TABLE OF CONTENTS

III. TABLE OF AUTHORITIES (page numbers as in the original)

A. CASES

B. STATUTES

C. RULES

1. Federal Rules of Bankruptcy Procedure

2. Federal Rules of Civil Procedure

3. Federal Rules of Appellate Procedure

D. **OTHER AUTHORITIES**

Part 2. SPECIAL APPENDIX (SPA-)

(Second half of the bound volume containing the opening brief to the Court of Appeals, Cir. 2, not included in this petition to the Supreme Court.) [SPA-1-91 at A:1379-1475.]

I. Orders appealed from and notices of appeal

A. *Cordero v. Gordon* (dismissal of cross-claims between defendants in *Pfuntner v. Trustee Gordon et al*, adversary proceeding, dkt. no. 02-2230, derived from *In re Premier Van Lines*, dkt. no. 01-20692, in the U.S. Bankruptcy Court, WBNY)

B. *Cordero v. Palmer* (denial of default judgment application by third party plaintiff against third party defendant as in A. above, that is, in *Pfuntner v. Trustee Gordon et al*,

adversary proceeding, dkt. no. 02-2230, derived from *In re Premier Van Lines*, dkt. no. 01-20692, WBNY)

II. Dockets

A. U.S. Bankruptcy Court:

B. U.S. District Court:

III. Text of Authorities [A:1445]

Part 3. APPENDIX* [A:1-429]

SUMMARY

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*The Appendix of Redesignated Items in the Record is a separate volume accompanying the opening brief submitted to the Court of Appeals for the Second Circuit and served on the parties on July 9, 2003, to *In re Premier Van et al.*, 03-5023, CA2. At that time it consisted of 430 pages. It was later supplemented to support Dr. Cordero's petition of September 12, 2003, to CA2 for a writ of mandamus. It is referred to in this petition to the Supreme Court as (A-#), where # stands for the page number. That volume is available to this Court upon its request. [See the A:# pages herewith.]

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 negligent 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 Pfuntner. 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. Pfuntner 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, prejudge 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 acknowledged 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?[1] 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 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

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

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 speaker-phone 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.[2] 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.[3] 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

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[2]. See footnote 1.

[3] See footnote 1.

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:

    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 that 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. Pfuntner'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 Pfuntner'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 "as an accommodation to the parties" Plaintiff had not brought that motion before. 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 ordered 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 con-

trast, 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 9th?

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 appendices** 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,[4] 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' 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

[4] See footnote 1.

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. Pfuntner'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;'[5] *Manning v. Utilities Mut. Ins, Co., Inc., 254 F.3d 387 (2d Cir. 2001)*. It

[5] None in this case since discovery had not even started and till this day the court has issued no scheduling order.

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. 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) provide 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 inability 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. Pfuntner 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 are 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) 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 refilling 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 Redesignation and Statement or docket entry for it from either the bankruptcy or the district court. 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 Bandych, that they just did not know how to handle a Redesignation 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 Redesignation 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 Redesignation 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. Trustee 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 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 Redesignation 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, Dr. Richard Cordero

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Brooklyn, NY 11208

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Blank

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

PREMIER VAN LINES, INC., Chapter 7
Case no: 01-20692

Debtor

JAMES PFUNTER, Adversary Proceeding
Case no: 02-2230

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

NOTICE OF MOTION FOR RECUSAL AND REMOVAL

RICHARD CORDERO

Third party plaintiff

-vs-

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

Third party defendants

Madam or Sir,

PLEASE TAKE NOTICE, that Dr. Richard Cordero will move this Court at the United States Courthouse on 100 State Street, Rochester, New York, 14614, at 9:30 a.m. on August 20, 2003, or as soon thereafter as he can be heard, for the Hon. John C. Ninfo, II, to recuse himself from this adversary proceeding under 28 U.S.C. §455(a) on the grounds that the bias and prejudice that he has manifested against Dr. Cordero reasonably cast into question his impartiality; and to remove this proceeding under 28 U.S.C. §1412 from this court, where he and other court officers in both the Bankruptcy and the District Courts have engaged in a pattern of non-coincidental, intentional, and coordinated acts of disregard of the law, rules, and facts, to the District Court for the Northern District of New York, located in Albany.

Notice is hereby given that Dr. Cordero is not able to appear in person and has requested the court to accord him the same opportunity to appear by phone as the court continues to accord other parties

to proceedings before it. Thus, the parties may wish to ascertain with Case Administrator Karen Tacy if, and if so how, the hearing will be conducted; they should confirm so before going to court on the return date.

Dated: August 8, 2003

Dr. Richard Cordero

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UNITED STATES BANKRUPTCY COURT
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MOTION FOR RECUSAL AND REMOVAL

RICHARD CORDERO
Third party plaintiff

-vs-

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

Third party defendants

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

1. This court, the Hon. John C. Ninfo, II, presiding, and 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 against Dr. Cordero.

2. Therefore, Dr. Cordero moves for Judge Ninfo to recuse himself from this adversary proceeding under 28 U.S.C. §455(a), which provides that:

> Any justice, judge, or magistrate of the United States **shall** disqualify himself in any proceeding in which his impartiality might reasonably be questioned; (emphasis added).

3. The court officers in this court as well as in the District Court, located in the same building upstairs, that have participated in such a pattern of wrongful conduct have thus far deprived Dr.

Cordero of rights, forced him to shoulder oppressive procedural burdens, and exposed him to grave procedural risks. They have given rise to the reasonable fear that due to their bias and prejudice they will in the future likewise disregard facts, rules, and law in both courts and thereby subject Dr. Cordero to similar judicial proceedings, including eventually a trial, that will be tainted with unfairness and partiality.

4. To prevent this from happening and this court and other court officers from causing Dr. Cordero further waste of time, effort, and money as well as even more emotional distress, it is necessary that this case be removed to a district court in another district where it can be reasonably expected that Dr. Cordero will be afforded the fair and impartial judicial proceedings to which he is legally entitled.

TABLE OF CONTENTS

I. Statement of facts illustrating a pattern of non-coincidental, intentional, and coordinated acts of this court and other court officers from which a reasonable person can infer their bias and prejudice against Dr. Cordero

5. Systematically the court has aligned itself with the interests of parties in opposition to Dr. Cordero. Sua sponte it has become their advocate, whether they were absent from the court because in default, as in Mr. Palmer's case, or they were in court and very much capable of defending their interests themselves, as in the cases of Trustee Gordon, Mr. Pfuntner, and Mr. MacKnight.

A. The court has tolerated Trustee Gordon's submission to it of false statements as well as defamatory statements about Dr. Cordero

6. Dr. Cordero -who resides in NY City, entrusted his household and professional property, valuable in itself and cherished to him, to a Rochester, NY, moving and storage company in August 1993. From then on he paid 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 his property. Mr. Palmer and his attorney, Raymond Stilwell, Esq., assured him that it was safe and in his warehouse at Jefferson-Henrietta, in Rochester). 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.

7. In search of his property in storage with Premier Van Lines, Dr. Cordero was referred to Kenneth Gordon, Esq., the trustee appointed for its liquidation. 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.

8. Eventually Dr. Cordero found out from third parties that Mr. Palmer had left Dr. Cordero's property at a warehouse in Avon, NY, owned by Mr. James Pfuntner. 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 in a letter of September 23, 2002, improper in its tone and unjustified in its content, he also enjoined Dr. Cordero not to contact him or his office anymore.

9. Dr. Cordero applied to this court, to whom the Premier case had been assigned, for a review of the Trustee's performance and fitness to serve.

10. In an attempt to dissuade the court from undertaking that review, Trustee Gordon submitted to it false statements as well as statements disparaging of the character and competence of Dr. Cordero. The latter brought this matter to the court's attention. However, the court did not even try to ascertain whether the Trustee had made such false representations in violation of Rule 9011(b)(3) F.R.Bkr.P.. Instead, it satisfied itself with just passing Dr. Cordero's application to the Trustee's supervisor, an assistant U.S. Trustee, who was not even requested and who had no obligation to report back to the court.

11. By so doing, the court failed in its duty to ensure respect for the conduct of business before it by an officer of the court and a federal appointee, such as Trustee Gordon, and to maintain the integrity and fairness of proceedings for the protection of injured parties, such as Dr. Cordero. The court's handling of Dr. Cordero's application to review Trustee Gordon's performance, even before they had become parties to this adversary proceeding, would turn out to be its first of a long series of manifestations of bias and prejudice in favor of Trustee Gordon and other parties and against Dr. Cordero.

1. The court dismissed Dr. Cordero's counterclaims against the Trustee before any discovery, which would have shown how it tolerated the Trustee's negligent and reckless liquidation of the Debtor for a year, and with disregard for the legal standards applicable to a 12(b)(6) motion

12. In October 2002, Mr. Pfuntner served the papers for this adversary proceeding on several defendants, including Trustee Gordon and Dr. Cordero.

13. Dr. Cordero, appearing pro se, cross-claimed against the Trustee, who moved to dismiss. Before discovery had even begun or any initial disclosure had been provided by the other parties –only Dr. Cordero had disclosed numerous documents with his pleadings- and before any conference of parties or pre-trial conference under Rules 26(f) and 16 F.R.Civ.P., respectively, had taken place, the court summarily dismissed the cross-claims at the hearing on December 18, 2002. To do so, it disregarded the genuine issues of material fact at stake as well as the other standards applicable to motions under Rule 12(b)(6) F.R.Civ.P., both of which Dr. Cordero had brought to its attention.

2. The court excused Trustee Gordon's defamatory and false statements as merely "part of the Trustee just trying to resolve these issues," thereby condoning the Trustee's use of falsehood and showing gross indifference to its injurious effect on Dr. Cordero

14. At the December 18 hearing, the court excused the Trustee in open court when 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. (Transcript, pp.10-11)

15. Thereby the court approved of the use of defamation and falsehood by an officer of the court trying to avoid review of his performance. By thus sparing Trustee Gordon's reputation as trustee at the expense of Dr. Cordero's, the court justified any reasonable observer in questioning its impartiality. Moreover, by blatantly showing its lack of ethical qualms about such conduct, the court also laid the foundation for the question whether it had likewise approved the Trustee's negligent and reckless liquidation of Premier, which would have been exposed by allowing discovery. In the same vein, the court's approval of falsehood as a means 'to resolve issues' warrants the question of what means it would allow court officers to use to resolve matters at issue, such as its own reputation.

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

16. The order dismissing Dr. Cordero's crossclaims was entered on December 30, 2002, and mailed from Rochester. 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. It was filed in the bankruptcy court the following Monday, January 13. The Trustee moved in district court to dismiss it as untimely filed. it.

17. Dr. Cordero timely mailed a motion to extend time to file the notice under Rule 8002(c)(2) F.R.Bkr.P. Although Trustee Gordon himself acknowledged on page 2 of his brief in apposition that the motion had been timely filed on January 29, this court surprisingly found that it had been untimely filed on January 30!

18. 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 have made a mistake on such a critical matter. Nevertheless, the court disregarded the factual discrepancy without even so much as wondering how it could have come about, let alone ordering an investigation into whether somebody and, if so, who, had changed the filing date and on whose order. The foundation for this query is provided by evidence of how court officers mishandled docket entries and the record for Dr. Cordero's cases (paras. 32 belowand 97 below). Instead, the court rushed to deny the motion to extend, which could have led to the review of its dismissal of Dr. Cordero's cross-claims.

4. The court reporter tried to avoid submitting the transcript and submitted it only over two and half months later and only after Dr. Cordero repeatedly requested it

19. 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 December 18 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.

20. 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.

21. There is further evidence supporting the implication of Reporter Dianetti's comment and giving rise to the concern that at hearings and meetings where Dr. Cordero is a participant the court engages in exchanges with parties in Dr. Cordero's absence. Thus, on many occasions the court has cut off abruptly the phone communication with Dr. Cordero, in contravention of the norms of civility and of its duty to afford all parties the same opportunity to be heard and hear it.

22. It is most unlikely that without announcing that the hearing or meeting was adjourned or striking its gavel, but simply by just pressing the speakerphone button to hang up unceremoniously on Dr. Cordero, the court brought thereby the hearing or meeting to its conclusion and the parties in the room just turned on their heels and left. What is not only likely but in fact certain is that by so doing, the court, whether by design or in effect, prevented Dr. Cordero from bringing up any further subjects, even subjects that he had explicitly stated earlier in the hearing that he wanted to discuss; and denied him the opportunity to raise objections for the record. Would the court have given by such conduct to any reasonable person at the opposite end of the phone line cause for offense and the appearance of partiality and unfairness?

23. The confirmation that Reporter Dianetti was not acting on her own in avoiding the submission of the transcript was provided by the fact that the transcript was not sent on March 12, the date on her certificate. Indeed, it was filed two weeks later on March 26, 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 to him. Thus, the transcript reached him only on March 28.

24. 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" –was she even the one who sent it to the party?- or Rule 8007(a) F.R.Bkr.P. (SPA-65) on asking for an extension.

25. 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" notations and passages so that it is difficult to make out what he said. If she or the court speakerphone regularly garbled what the person on speakerphone said, it is hard to imagine that either would last long in use. But no imagination is needed, only an objective

assessment of the facts and the applicable legal provisions, to ask whether the Reporter was 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 to a higher-up court officer to be vetted before mailing a final version to Dr. Cordero. When a court officer or officers so handle a transcript, which is a critical paper for a party to ask on appeal for review of a court's decision, an objective observer can reasonably question in what other wrongful conduct that denies a party's right to fair and impartial proceedings they would engage to protect themselves.

B. The bankruptcy and the district courts denied Dr. Cordero's application for default judgment although for a sum certain by disregarding the plain language of applicable legal provisions as well as critical facts

26. 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 for years. Mr. Palmer, as president of the Debtor, was already under the bankruptcy court's jurisdiction. Nonetheless, he failed to answer Dr. Cordero's summons and complaint. Hence, Dr. Cordero timely applied under Rule 55 F.R.Civ.P. for default judgment for a sum certain on December 26, 2002. But nothing happened for over a month during which Dr. Cordero had no oral or written response from the court to his application.

27. Dr. Cordero called to find out. He was informed by Case Administrator Karen Tacy that the court had withheld his application until the inspection of his property in storage because it was premature to speak of damages. Dr. Cordero indicated that he was not asking for damages, but rather for default judgment as a result of Mr. Palmer's failure to appear. Ms. Tacy said that Dr. Cordero could write to the court if he wanted.

28. Dr. Cordero wrote to the court on January 30, 2003, to request that the court either grant his application or explain its denial.

29. Only on February 4, did the court take action, or Clerk of Court Paul Warren, or Clerk Tacy, for that matter. In addition, when Dr. Cordero received a copy of the papers file by the court, what he read was astonishing!

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

30. Clerk Paul Warren had an unconditional obligation under Rule 55 F.R.Civ.P.: "**the clerk shall enter** the party's default," (emphasis added) upon receiving Dr. Cordero's application of December 26, 2002. Yet, it was only on February 4, 41 days later and only at Dr. Cordero's instigation), 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. He had to certify the fact of default to the court so that the latter could take further action on the application. It was certainly not for the Clerk to wait until the court took action.

31. It is not by coincidence that Clerk Warren entered default on February 4, the date on the bankruptcy court's Recommendation to the district court. Thereby the Recommendation appeared to have been made as soon as default had been entered. It also gave the appearance that Clerk Warren was taking orders in disregard of his duty.

32. 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" (docket entries no. 51, 43, 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. Does the docket, with its arbitrary entry placement, numbering, and untimeliness, give the appearance of manipulation or rather the evidence of it?

33. 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?

2. The court disregarded the available evidence in order to prejudge a happy ending to Dr. Cordero's property search

34. In its Recommendation of February 4, 2003, to the district court, the bankruptcy court characterized the default judgment application as premature because it boldly forecast that:

> …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.

35. The court wrote that on February 4, but the inspection did not take place until more than 3 three

months later on May 19; it was not even possible to open all containers; the failure to enable the opening of another container led to the assumption that other property had been lost; and the single container that was opened showed that property had been damaged. (paras. 63 below).

36. What a totally wrong forecast! Why would the court cast aside all judicial restraint to make it? Because it was in fact a biased prejudgment. It sprang from the court's need to find a pretext to deny the application. Such denial was pushed through by the court disregarding the provisions of Rule 55, which squarely supported the application since it was for judgment for Mr. Palmer's default, not for damage to Dr. Cordero's property; Mr. Palmer had been found in default by Clerk of Court Warren; and it requested a sum certain. .

37. What is more, for its biased prejudgment, the court not only totally lacked evidentiary support, but it also disregarded contradicting evidence available. Indeed, the storage containers with Dr. Cordero's property were said to have been left behind by Mr. Palmer in the warehouse of Mr. Pfuntner. The latter had written in his complaint that property had been removed from his warehouse premises without his authorization and at night. 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.

38. Forming an opinion without sufficient knowledge or examination, let alone disregarding the only evidence available, is called prejudice. From a court who forms anticipatory judgments, a reasonable person would not expect to receive fair and impartial treatment, much less a fair trial because at trial the prejudiced court could abuse his authority to show that its prejudgments were right.

3. The court prejudged issues of liability, before any discovery or discussion of the applicable legal standards, to further protect Mr. Palmer at the expense of Dr. Cordero

39. In the same vein, the court cast 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." On what evidence did the court make up its mind on the issue of responsibility, which is at the heart of

the liability of other parties to Dr. Cordero? The court has never requested disclosure of, not to mention scheduled discovery or 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.

40. Such a leaning of the mind before considering pertinent evidence is called bias. From such a biased court, a reasonable person would not expect impartiality toward a litigant such as Dr. Cordero, who as pro se may be deemed the weakest among the parties; as the only non-local, and that for hundreds of miles, may be considered expendable; and to top it off has challenged the court on appeal.

4. The court alleged in its Recommendation that it had suggested to Dr. Cordero to delay the application, but that is a pretense factually incorrect and utterly implausible

41. The court also protected itself by excusing its delay in making its recommendation to the district court. So it stated in its Recommendation of February 4, 2003, that:

> 10. The Bankruptcy Court suggested to Cordero that the Default Judgment be held until after the opening of the Avon Containers…

42. However, that suggestion was never made. Moreover, Dr. Cordero would have had absolutely no motive to accept it if ever made: Under Rule 55 an application for default judgment for a sum certain against a defaulted defendant is not dependent on proving damages. It is based on the defendant's failure to heed the stark warning in the summons that if he fails to respond, he will be deemed to consent to entry of judgment against him for the relief demanded. Why would a reasonable person, such as Dr. Cordero, ever put at risk his acquired right to default judgment in exchange for aleatory damages that could not legally be higher than the sum certain of the judgment applied for? What fairness would a disinterested observer fully informed of the facts underlying this case expect from a court that to excuse its errors puts out such kind of untenable pretense?

C. The district court repeatedly disregarded the outcome-determinative fact that the application was for a sum certain

43. The district court, the Hon. David G. Larimer presiding, accepted the bankruptcy court's February 4 Recommendation and in its order of March 11, 2003, denied entry of default

judgment. Its stated ground therefor was 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. (emphasis added)

44. What an astonishing statement!, for in order to make it, the district court had to disregard five papers stating that the application for default judgment did involve a sum certain:

    1) Dr. Cordero's Affidavit of Amount Due; ;

    2) the Order to Transmit Record and Recommendation; ;

    3) the Attachment to the Recommendation; ;

    4) Dr. Cordero's March 2 motion to enter default judgment; and

    5) Dr. Cordero's March 19 motion for rehearing re implied denial of the earlier motion.

45. The district court made it easy for itself to disregard Dr. Cordero's statement of sum certain, for it utterly disregarded his two motions that argued that point, among others.

46. After the district court denied without discussion and, thus, by implication, the first motion of March 2, Dr. Cordero moved that court for a rehearing so that it would correct its outcome-determinative error since the matter did involve a sum certain. However, the district court did not discuss that point or any other at all. Thereby it failed to make any effort to be seen if only undoing its previous injustice, or at least to show a sense of institutional obligation of reciprocity toward the requester of justice, a quid pro quo for his good faith effort and investment of countless hours researching, writing, and revising his motions. It curtly denied the motion "in all respects" period!

47. Also with no discussion, the district court disregarded Dr. Cordero's contention that 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.

48. By making such a critical mistake of fact and choosing to proceed so expediently, the district court gave rise to the reasonable inference that it did not even read Dr. Cordero's motions, thereby denying him the opportunity to be heard, particularly since there was no oral argument. Instead, it satisfied itself with just one party's statements, namely the bankruptcy court's February 4 Recommendation. If so, it ruled on the basis of what amounted to the ex parte

approach of the bankruptcy court located downstairs in the same building. It merely rubberstamped the bankruptcy court's conclusion…after mistranscribing its content, a quick job that did justice to nobody. Would such conduct give to an objective observer the appearance of unfairness toward Dr. Cordero and partiality in favor of the colleague court?

1. The district court disregarded Rule 55 to impose on Dr. Cordero the obligation to prove damages at an "inquest" and dispensed with sound judgment by characterizing the bankruptcy court as the "proper forum" to conduct it despite its prejudgment and bias

49. The equities of this case show that Mr. Palmer had such dirty hands that he did not even dare come to court to answer Dr. Cordero's complaint. Yet, both courts spared him the consequences of his default and instead weighed down Dr. Cordero's shoulders with the contrary-to-law burden of proving damages at an inquest. The latter necessarily would have to be conducted by the bankruptcy court playing the roles of the missing defendant, its expert witness, the jury, and the judge. For a court to conduct an inquest under such circumstances would offend our adversarial system of justice, and all the more so because the court has demonstrated to have already prejudged the issues at stake and its outcome. Would an objective observer reasonably expect the bankruptcy court to conduct a fair and impartial inquest or the district court to review with any degree of care its findings and conclusions?

2. The bankruptcy court asked Dr. Cordero to resubmit the default judgment application only to deny the same application again by alleging that Dr. Cordero had not proved how he had arrived at the amount claimed or that he had served Mr. Palmer properly, issues that it knew about for six or more months

50. Pursuant to court order, Dr. Cordero flew to Rochester on May 19 and inspected the storage containers said to hold his stored property at Mr. Pfuntner's warehouse in Avon. At a hearing on May 21, he reported on the damage to and loss of property of his. Thereupon, the court sua sponte asked Dr. Cordero to resubmit his application for default judgment against Mr. Palmer. Dr. Cordero resubmitted the same application and noticed a hearing for June 25 to discuss it.

51. At that hearing, the court surprised Dr. Cordero and how! The court alleged that it could not grant the application because Dr. Cordero had not proved how he had arrived at the sum claimed. Yet, that was the exact sum certain that he had claimed back on December 26, 2002! So why did the court ask Dr. Cordero to resubmit the application if it was not prepared to grant

it anyway? But this was not all.

52. At a hearing the following week, on July 2, Dr. Cordero brought up again his application for default judgment. The court not only repeated that Dr. Cordero would have to prove damages, but also stated that he had to prove that he had properly served Mr. Palmer because it was not convinced that service on the latter had been proper. What an astonishing requirement!

53. And so arbitrary: Dr. Cordero served Mr. Palmer's attorney of record, David Stilwell, Esq., who has proceeded accordingly; Dr. Cordero certified service on him to Clerk of Court Warren and the service was entered on the docket on November 21, 2002; subsequently Dr. Cordero served the application on both Mr. Palmer and Mr. Stilwell on December 26. What is more, Clerk Warren defaulted Mr. Palmer on February 4, 2003, thus certifying that Mr. Palmer was served but failed to respond. Hence, with no foundation whatsoever, the court cast doubt on the default entered by its own Clerk of Court.

54. Likewise, with no justification it disregarded Rule 60(b), which provides an avenue for a defaulted party to contest a default judgment. Instead of recommending the entry of such judgment under Rule 55 and allowing Mr. Palmer to invoke 60(b) to challenge service if he dare enter an appearance in court, the court volunteered as Mr. Palmer's advocate in absentia. In so doing, the court betrayed any pretense of impartiality. Would a reasonable person consider that for the court to protect precisely the clearly undeserving party, the one with dirty hands, it had to be motivated by bias and prejudice against Dr. Cordero or could it have been guided by some other interest?

3. The court intentionally misled Dr. Cordero into thinking that it had in good faith asked him to resubmit with the intent to grant the application

55. If the court entertained any doubts about the validity of the claim or proper service although it had had the opportunity to examine those issues for six and eight months, respectively, it lacked any justification for asking Dr. Cordero to resubmit the application without disclosing those doubts and alerting him to the need to dispel them. By taking the initiative to ask Dr. Cordero to resubmit and doing so without accompanying warning, it raised in him reasonable expectations that it would grant the application while it could also foresee the reasonable consequences of springing on him untenable grounds for denial: It would inevitably disappoint

those expectations and do so all the more acutely for having put him through unnecessary work. It follows that the court intentionally inflicted emotional distress on Dr. Cordero by taking him for a fool! Would a reasonable person trust this court at all, let alone trust it to be fair and impartial in subsequent judicial proceedings?

D. The bankruptcy court has allowed Mr. Pfuntner and Mr. MacKnight to violate two discovery orders and submit disingenuous and false statements while charging Dr. Cordero with burdensome obligations

1. After the court issued the first order and Dr. Cordero complied with it to his detriment, it allowed Mr. Pfuntner and Mr. MacKnight to ignore it for months

56. 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 the storage containers that bear labels with his name at Plaintiff Pfuntner's warehouse. 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. Nonetheless, the court neither answered it nor informed Dr. Cordero of the most convenient date.

57. 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, Mr. MacKnight, who had attended the pre-trial conference and agreed to the inspection. The court took no action and the six dates elapsed. But Dr. Cordero had to keep those six dates open on his calendar for no good at all and to his detriment.

2. When Mr. Pfuntner needed the inspection, Mr. MacKnight approached ex part the court, which changed the terms of the first order

58. Months later Mr. Pfuntner wanted to get the inspection over with to clear his warehouse, sell it, and be in Florida worry-free to carry on his business there. Out of the blue he called Dr. Cordero on March 25 and proposed dates in one week. When Dr. Cordero asked him whether he had taken the necessary preparatory measures discussed in his January 29 letter, Mr. Pfuntner claimed not even to have seen the letter.

59. Thereupon, Mr. MacKnight contacted the court on March 25 or 26 ex parte –in violation of

Rule 9003(a) F.R.Bkr.P.. 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.

3. The court requires that Dr. Cordero travel to Rochester to discuss measures on how to travel to Rochester

60. Dr. Cordero raised a motion on April 3 to ascertain this change of the terms of the court's first order and insure that the necessary transportation and inspection measures were taken beforehand. The court received the motion on April 7, and on that very same day, 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, That this was an illogical pretext is obvious and that it was arbitrary is shown by the fact that after that the court allowed Dr. Cordero to appear four more times by phone. Unable to travel to Rochester shortly after that surprising requirement, Dr. Cordero had to withdraw his motion.

4. The court showed no concern for the disingenuous motion that Mr. MacKnight submitted to it and that Dr. Cordero complained about in detail, whereby the court failed to safeguard the integrity of judicial proceedings

61. Meantime Mr. MacKnight raised his own motion. Therein he was so disingenuous that, for example, he pretended that Mr. Pfuntner had only sued in interpleader and should be declared not liable to any party, while concealing the fact that Trustee Gordon and the Bank had stated in writing, even before the law suit had started, that they laid no claim to any stored property. So there were no conflicting claims and no basis for interpleader at all. Mr. MacKnight also pretended that Mr. Pfuntner had abstained from bringing that motion before "as an accommodation to the parties," while holding back that it was Mr. Pfuntner, as plaintiff, who had sued them to begin with even without knowing whether they had any property in his warehouse, but simply because their names were on labels affixed to storage containers…some 'accommodation' indeed! Mr. MacKnight also withheld the fact that now it suited Mr. Pfuntner to drop the case and skip to sunny Florida, so that he was in reality maneuvering to strip the parties of their claims against him through the expedient of a summary judgment while leaving

them holding the bag of thousands and thousands of dollars in legal fees and shouldering the burden of an enormous waste of time, effort, and aggravation. . Dr. Cordero analyzed in detail for the court Mr. MacKnight's mendacity and lack of candor, to no avail.

62. Although the court has an obligation under Rule 56(g) to sanction a party proceeding in bad faith, it 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 a reasonable person 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?

5. The court issued at Mr. Pfuntner's instigation its second order imposing on Dr. Cordero an onerous obligation that it never imposed on any of the other parties and then allowed Mr. Pfuntner and Mr. MacKnight to flagrantly disobey it as they did the first one

63. Nor did the court impose on Mr. Pfuntner or 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.

64. Pursuant to the second court order Dr. Cordero went all the way to Rochester and on to Avon on May 19 to inspect at Mr. Pfunter's warehouse the containers said to hold his property. However, not only did both Mr. Pfunter and his warehouse manager fail even to attend, but they had also failed to take any of the necessary preparatory measures discussed since January 10 and which Mr. MacKnight had assured the court at the April 23 hearing had been or would be taken care of before the inspection.

65. At a hearing on May 21 Dr. Cordero reported to the court on Mr. Pfuntner's and Mr. MacKnight's failures concerning the inspection and on the damage to and loss of his property. Once more the court did not impose any sanction on Mr. Pfuntner or Mr. MacKnight for their disobedience of the second discovery order and merely preserved the status quo.

6. The court asked Dr. Cordero to submit a motion for sanctions and compensation only to deny granting it even without Mr. Pfuntner and Mr. MacKnight responding or otherwise objecting to it

66. But the court was not going to make it nearly that easy for Dr. Cordero. At that May 21 hearing Dr. Cordero asked for sanctions against and compensation from Mr. Pfuntner and Mr. MacKnight for having violated to his detriment both of the discovery orders. The court asked that he submit a written motion. Dr. Cordero noted that he had already done so. The court said that he should do so in a separate motion and that in asking him to do so the court was trying to help him.

67. Dr. Cordero wrote a motion on June 6 for sanctions and compensation under Rules 37 and 34 F.R.Civ.P., made applicable in adversary proceedings by Rules 7037 and 7034 F.R.Bkr.P., respectively, to be imposed on Mr. Pfuntner and Mr. MacKnight. It was not only a legal document that set out in detail the facts and the applicable legal standards, but also a professionally prepared statement of account with exhibits to demonstrate the massive effort and time that Dr. Cordero had to invest to comply with the two discovery orders and deal with the non-compliance of the other parties. To prove compensable work and its value, it contained an itemized list more than two pages long by way of a bill as well as a statement of rates and what is more, it provided more than 125 pages of documents to support the bill.

68. All in all the motion had more than 150 pages in which Dr. Cordero also argued why sanctions too were warranted: Neither Mr. Pfuntner, Mr. MacKnight, nor the warehouse manager attended the inspection and none of the necessary preparatory measures were taken. Worse still, they engaged in a series of bad faith maneuvers to cause Dr. Cordero not to attend the inspection, in which case they would ask the court to find him to have disobeyed the order and to order his property removed at his expense from Mr. Pfuntner's warehouse; and if Dr. Cordero nevertheless did attend, to make him responsible for the failure of the inspection, for the fact is that Mr. Pfuntner never intended for the inspection to take place. It was all a sham!

69. Yet, Mr. Pfuntner and Mr. MacKnight had nothing to worry about. So much so that they did not even care to submit a brief in opposition to Dr. Cordero's motion for sanctions and compensation. Mr. MacKnight did not even object to it at its hearing on June 25. The court did it for them at the outset, volunteering to advocate their interests just as it had advocated Mr. Palmer's to deny Dr. Cordero's application for default judgment.

7. The court's trivial grounds for denying the motion showed that it did not in good faith ask Dr. Cordero to submit it for it never intended to grant it

70. The court refused to grant the motion alleging that Dr. Cordero had not presented the tickets for transportation –although they amount to less than 1% of the total- or that that he had not proved that he could use Mr. MacKnight's hourly rate –even though that is the legally accepted lodestar method for calculating attorney's fees-.But these were just thinly veiled pretexts. The justification for that statement is that the court did not even impose any of the non-monetary sanctions. It simply was determined to protect Mr. Pfuntner and Mr. MacKnight from any form of punishment for having violated two of its own orders, its obligation to safeguard the integrity of the judicial process notwithstanding.

71. The court was equally determined to expose Dr. Cordero to any form of grief available. Thus, it denied the motion without giving any consideration to where the equities lay between complying and non-complying parties with respect to its orders; or to applying a balancing test to the moral imperative of compensating the complying party and the need to identify a just measuring rod for the protection of the non-complying parties required to compensate; or to the notion of substantial compliance when proving a bill for compensation; let alone the applicable legal standards for imposing sanctions. Even a court's intent can be inferred from its acts: Once more, this court had simply raised Dr. Cordero's expectations when requiring him to submit this motion because 'I'm trying to help you here' while it only intended to dash them after Dr. Cordero had done a tremendous amount of extra work. Once more, the court took Dr. Cordero for a fool and thereby intentionally inflicted emotional distress on him! Is this not the way for a court to impress upon a reasonable person the appearance of deep-seated prejudice and gross unfairness?

E. The court has decided after 11 months of having failed to comply with even the basic case management requirements that starting on the 13th month it will build up a record over the next nine to ten months during which it will maximize the transactional cost for Dr. Cordero, who at the end of it all will lose anyway

72. The June 25 hearing was noticed by Dr. Cordero to consider his motion for sanctions and compensation as well as his default judgment application. However, the court had its own agenda and did not allow Dr. Cordero to discuss them first. Instead, it alleged, for the first time, that it could hardly understand Dr. Cordero on speakerphone, that the court reporter also had problems understanding him, and that he would have to come to Rochester to attend hearings in

person; that the piecemeal approach and series of motions were not getting the case anywhere and that it had to set a day in October and another in November for all the parties to meet and discuss all claims and motions, and then it would meet with the parties once a month for 7 or 8 months until this matter could be solved.

73. Dr. Cordero protested that such a way of handling this case was not speedy and certainly not inexpensive for him, the only non-local party, who would have to travel every month from as far as New York City, so that it was contrary to Rules 1 F.R.Civ.P. and 1001 F.R.Bkr.P.

74. The court replied that Dr. Cordero had chosen to file cross-claims and now he had to handle this matter that way; that he could have chosen to sue in state court, but instead had sued there, and that all Mr. Pfuntner wanted was to decide who was the owner of the property; that instead Dr. Cordero had claimed $14,000, but the ensuing cost to the court and all the parties could not be justified; that the series of meetings was necessary to start building a record for appeal so that eventually this matter could go to Judge Larimer.

75. The court's statements are mind-boggling by their blatant bias and prejudice as well as disregard of the facts and the law. To begin with, it is just inexcusable that the court, which has been doing this work for over 30 years, has mismanaged this case for eleven months since September 2002, so that it has:

    a) failed to require even initial disclosure under Rule 26(a);
    b) failed to order the parties to hold a Rule 26(f) conference;
    c) failed to demand a Rule 26(f) report;
    d) failed to hold a Rule 16(f) scheduling conference;
    e)failed to issue a Rule 16(f) scheduling order;
    f) failed to demand compliance with its first discovery order by not requiring Mr. MacKnight as little as to choose one of Dr. Cordero's six proposed dates for the Rochester trip and inspection;
    g) failed to insure execution by Mr. Pfuntner and Mr. MacKnight of its second and last discovery order.

76. It is only now that the court wants to 'start building a record'…what a damning admission that it has not built anything for almost a year! However, it wants to build it at Dr. Cordero's expense by requiring him to travel monthly to Rochester for an unjustifiably long period of

seven to eight months after the initial hearings next October and November. This is not so much an admission of incompetence as it is an attempt to further rattle Dr. Cordero and maximize the transactional cost to him in terms of money and inconvenience, just as the court put Dr. Cordero through the extra work of resubmitting the default judgment application (paras. et seq. 50 above) and writing a separate sanctions and compensation motion (paras. 66 above) only to deny both of them on already known or newly concocted grounds.

1. The court will in fact begin in October, not with the trial, but with its series of hearings, or rather "discrete hearings," whatever those are

77. At the June 25 hearing to the court proposed a slate of dates for the first hearings in October and November and asked the parties to state their choice at a hearing the following week.

78. At the July 2 hearing, Dr. Cordero again objected to the dragged-out series of hearings. The court said that the dates were for choosing the start of trial. Nevertheless, Dr. Cordero withheld his choice in protest.

79. But the court has just issued an order dated July 15 where there is no longer any mention of a trial date. The dates in October and November are for something that the court designates as "discrete hearings." Dr. Cordero has been unable so far to find in either the F.R.Bkr.P. or the F.R.Civ.P. any provision for "discrete hearings," much less an explanation of how they differ from a plain "hearing." Therefore, Dr. Cordero has no idea of how to prepare for a "discrete hearing."

80. In any event, the point is this: There is no trial, just the series of hearings announced by the court at the June 25 hearing, which will be dragged out for seven to eight months after those in October and November. There is every reason to believe that the court will in fact drag out this series that long, for it stated in the order that at the "discrete hearings" it will begin with Plaintiff Pfuntner's complaint. Thereby it admitted by implication that after more than a year of mismanagement the court has not gotten this case past the opening pleading. Given the totality of circumstances relating to the way the court has treated Dr. Cordero, would an objective observer reasonably fear that by beginning at that elemental stage of the case, the court will certainly have enough time to teach Dr. Cordero a few lessons of what it entails for a non-local pro se to come into its court and question the way it does business with Trustee Gordon or the

other locals?

2. The court is so determined to make Dr. Cordero lose that at a hearing it stated that it will require him to prove his motions' evidence beyond a reasonable doubt

81. At the July 2 hearing Dr. Cordero protested the court's denial of his motion for sanctions and compensation and his default judgment application. The court said that if he wanted, he could present his evidence for his motions in October. However, it warned him that he would have to present his evidence properly, that it was not enough to have evidence, but that it also had to be properly presented to meet the burden of proof beyond a reasonable doubt, and that on television sometimes the prosecutor has the evidence but he does not meet the burden of reasonable doubt and he ends losing his case, and that likewise at trial Dr. Cordero would have to be prepared to meet that burden of proof.

82. What an astonishing statement! It was intended to shock Dr. Cordero and it did shock him with the full impact of its warning: It did not matter if he persisted in pursuing his motions, the court would hold the bar so high that the he would be found to have failed to clear it. It was not just a warning; it was the announcement of the court's decision at the end of trial, the one that had not yet started!

83. But the shock was even greater when Dr. Cordero, a pro se litigant, realized that he could not be required to play the role of a prosecutor, that this is an adversary proceeding and as such a civil matter, not a criminal case. Upon further research and analysis, Dr. Cordero became aware of the fact that to prove something beyond a reasonable doubt is the highest of three standards of proof, and that there are two lower ones applied to civil matters, namely proof by a preponderance of the evidence and the one requiring clear and convincing evidence. Moreover, there is not compelling reason why Dr. Cordero should not be allowed to prove his claims against Mr. Palmer, Mr. Pfuntner, and Mr. MacKnight by a preponderance of the evidence, the lowest standard. The court's warning was just intended to further rattle Dr. Cordero and intentionally inflict on him even more emotional distress. There is further evidence supporting this statement.

3. The court latched on to Mr. MacKnight's allegation that he might not have understood Dr. Cordero and that it might be due to his appearances by phone so as to justify its denial of further phone

appearances that it nevertheless continues to allow in other cases

84. It was Mr. MacKnight who in a paper dated June 20 alleged that:

> The undersigned has been unable to fully understand all Cordero's presentations when he appears by telephone means, though the undersigned believes though is by no means certain that he has understood the substance of Cordero's arguments. [sic]

85. From this passage it becomes apparent that the source of Mr. MacKnight's inability to understand does not reside in Dr. Cordero, regardless of how he appears in court. Nonetheless, the court rallied to Mr. MacKnight's side and picked up his objection to make it its own. Requiring Dr. Cordero to appear in person in court will run up his expenses excessively and wreak havoc with his calendar, for the court will require him to be in court at 9:30 a.m. so that he will have to leave New York City on Tuesday and stay at a hotel in order to be in court on time the next morning.

86. Indeed, the court's objective at the end of this dragged-out process is not to achieve a just and equitable solution to the controversy among the parties. Rather, it already knows that the record will be that of a case so unsatisfactorily decided that it will be appealed; it even knows that the appeal will land in Judge Larimer's hands. Could an objective observer who knew how receptive Judge Larimer was to the court's recommendation to deny Dr. Cordero's default judgment application (paras. 43 above) reasonably infer from the court's comment that the court was letting Dr. Cordero know that he could be as dissatisfied with its rulings and object as much as he liked, an appeal would again get him nowhere?; and thus, that Dr. Cordero is doomed to lose, they will make sure of it?

4. The court blames Dr. Cordero for being required now to travel to Rochester monthly because he chose to sue and to do so in federal rather than state court, whereby the court disregards the law and the facts and penalizes Dr. Cordero for exercising his rights

87. The court blames Dr. Cordero for having to travel now to Rochester monthly since he chose to sue in federal court. This statement flies in the face of the facts. At the outset is the fact that Mr. Palmer had the bankruptcy and liquidation of his company, Premier Van Lines, dealt with in federal court under federal law. Then Mr. Pfuntner brought his adversary proceeding in federal court and under federal law. He sued not only Dr. Cordero, but also Trustee Gordon, a federal appointee, and other parties. He claims from them $20,000 and has asked for contribution from

all of them.

88. Contrary to the court's misstatement, Mr. Pfuntner did not only want to determine who owned what in his warehouse. He also sued for administrative and storage fees. What is more, no two parties were adverse claimants to the same property in Mr. Pfuntner's warehouse. Far from it, Trustee Gordon and the Bank have let the court know in writing that neither lays claim to Dr. Cordero's property and that they encourage Mr. Pfuntner to release that property to him. Thus, Mr. Pfuntner's claim in interpleader is bogus. All Mr. Pfuntner wanted was to recoup somehow the lease fees that Mr. Palmer owes him. To that end, he sued everybody around, even the Hockey Club, which has stated not to have any property in the warehouse at all, but whose name Mr. Pfuntner found on a label.

89. If Dr. Cordero had filed his counter-, cross-, and third-party claims in state court, he would still have had to travel to Rochester, so what difference does it make whether he has to travel to Rochester to attend proceedings in a state court in Rochester or in a federal court in Rochester? If Dr. Cordero had filed his claims in state court, whether in New York City or in Rochester, Mr. Pfuntner and the other parties could have removed them to federal court under 28 U.S.C. §1452(a) if only for reasons of judicial economy, assuming that the state court had agreed to exercise jurisdiction at all given that property of the Premier estate was involved, e.g. the storage containers and vehicles, over which the federal court has exclusive jurisdiction under 28 U.S.C. §1334(e).

5. The court already discounted one of Dr. Cordero's claim against one party and ignores his other claims against the other parties

90. The court asserts that Dr. Cordero sued for $14, 000. This amount is only one item of Dr. Cordero's claim against only one party, namely, Mr. Palmer. The total amount of that claim appears in Dr. Cordero's application for default judgment against that party, to wit, $24,032.08. The reason for the court asserting that the claim is only $14,000 is that in its Recommendation of February 4, 2003, for the district court to deny the application, the court cast doubt on the recoverability of "moving, storage, and insurance fees" (para. 39 above), never mind that to do so it had to indulge in a prejudgment before having the benefit of disclosure, discovery, or a defendant given that Mr. Palmer has not showed up to challenge either the claim or the application.

91. Since that February 4 prejudgment, the court's prejudice against Dr. Cordero has intensified to the point that now the court has definitely discounted the amount in controversy, although it legally remains valid until disposition of the claim at trial or on appeal. What is more, the court has already dismissed Dr. Cordero's claims against the other parties, for example, the claim for $100,000 against Trustee Gordon for defamation and the claim for the Trustee's reckless and negligent liquidation of Premier, claims that the court dismissed but that are on appeal and can be reinstated, unless the court presumes to prejudge the decision of the Court of Appeals for the Second Circuit. Likewise, the court's prejudice has already dismissed Dr. Cordero's claims against Mr. Dworkin, Jefferson Henrietta Associates, Mr. Delano, and the Bank for their fraudulent, reckless, or negligent conduct in connection with Dr. Cordero's property as well as those for breach of contract, not to mention the request for punitive damages. And why would the court ignore Dr. Cordero's claims against Mr. MacKnight's client, Mr. Pfuntner, for compensation, among other things, for denying his right to access, inspect, remove, and enjoy his property?

92. This set of facts warrants the question whether a court that reduces a party's claim to a minimal expression even before a trial date is anywhere in the horizon and loses sight altogether of other claims can give the appearance of either impartiality or knowing what it is talking about. Would an objective observer reasonably question whether the court twists the facts because due to incompetence it ignores even the basic facts of a case that has been before it for almost a year or rather because its bias and prejudice against Dr. Cordero prompts it to make any statement, however ill-considered or contrary to the facts, so long as it is to Dr. Cordero's detriment? Is it not quite illogical for the court, on the one hand, to blame Dr. Cordero for having run up excessive costs for the court and the parties given that his claim is only for $14,000, and on the other hand, to drag out this case for the next 9 to 10 months?

6. The court gave short notice to Dr. Cordero that he had to appear in person, the cost to him notwithstanding, to argue his motion for sanctions for the submission to it of false representations by Mr. MacKnight -who had not bothered even to file a response-, thus causing Dr. Cordero to withdraw the motion

93. There must be no doubt that the court intends to maximize Dr. Cordero's transactional cost of prosecuting this case: On June 5 Mr. MacKnight submitted representations to the court concerning Dr. Cordero's conduct at the inspection. Whereas Mr. MacKnight did not attend,

Dr. Cordero did and he knows those representations to be objectively false. After the appropriate request for Mr. MacKnight to correct them and the lapse of the safe heaven period under Rule 9011 F.R.Bkr.P., Dr. Cordero moved for sanctions on July 20. Mr. MacKnight must have received from the court such an unambiguous signal that he need not be afraid of the court imposing any sanctions requested by Dr. Cordero that again he did not even bother to oppose the motion.

94. Instead, the court had Case Administrator Karen Tacy call Dr. Cordero near noon on Thursday, July 31, to let him know that it had denied his request to appear by phone and that if he did not appear in person, it would deny the motion; otherwise, he could contact all the parties to try to obtain their consent to its postponement until the hearing in October.

95. The court waited until only 6 days before the hearing's return date of August 6 to let him know. Moreover, it knows because Dr. Cordero has brought it to its attention that Mr. MacKnight has ignored the immense majority of his letters and phone calls, and has even challenged the validity of Mr. Pfuntner's written agreement to the May 19 inspection. Dr. Cordero could not risk being left waiting by Mr. MacKnight only to play into his hands given the foreseeable consequences. He withdrew the motion.

96. To appear in person would have cost Dr. Cordero an enormous amount of money, for he would have had to buy flight and hotel tickets at the highest, spot price and cut to pieces two weekdays on very short notice. And what for? To be in court at 9:30 a.m. for a 15 to 20 minutes hearing. Would an objective person who knew about the court's indifference to the submission of falsehood to it have expected the court to give more importance to imposing sanctions for the sake of the court's integrity than to denying them to make Dr. Cordero's trip for naught in order to keep wearing him down financially and emotionally?

F. Bankruptcy and district court officers to whom Dr. Cordero sent originals of his Redesignation of Items in the Record and Statement of Issues on Appeal neither docketed nor forwarded this paper to the Court of Appeals, thereby creating the risk of the appeal being thrown out for non-compliance with an appeal requirement

97. Dr. Cordero knew that to perfect his appeal to the Court of Appeals he had to comply with Rule 6(b)(2)(B)(i) F.R.A.P. 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 surprisingly prevented him from refiling his notice of appeal to the district court (paras. 16 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 in January 2003 was back in bankruptcy court; hence, he was supposed to send his Redesignation and Statement to the bankruptcy court, which would combine both for transmission to the district court, upstairs in the same building.

98. 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 cover letter to District Clerk Rodney Early.

99. 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 the notice of appeal to the Court of Appeals, 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?

100. The district court transferred the record on May 19 to the Court of Appeals. The latter, in turn, acknowledged the filing of the appeal by letter to Dr. Cordero. When he received it on May 24, imagine his shock when he found out that the Court's docket showed no entry for his Redesignation and Statement! Worse still, he checked the bankruptcy and the district courts' dockets and neither had entered it or even the letter to Clerk Early! Dr. Cordero scrambled to send a copy of his Redesignation and Statement to Appeals Court Clerk Roseann MacKechnie. Even as late as June 2, her Deputy, Mr. Robert Rodriguez, confirmed to Dr. Cordero that the Court had received no Redesignation and Statement or docket entry for it from either the bankruptcy or the district court. 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.

101. The excuse that these court officers gave as well as their superiors, Bankruptcy Clerk Paul Warren and District Deputy Rachel Bandych, that they just did not know how to handle a

Redesignation 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 Redesignation and Statement to the circuit clerk,' as required under Rule 6(b)(2)(B). Actually, it was a ridiculous excuse!

102. 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 Redesignation and Statement would have been imputed to Dr. Cordero and could have caused the Court to strike his appeal. But there is more.

1. Court officers also failed to docket or forward the March 27 orders, which are the main ones appealed from, thus putting at risk the determination of timeliness of Dr. Cordero's appeal to the Court of Appeals

103. Rules 4(a)(1)(A) and 28(a)(C) F.R.A.P. 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 the Court and, if so, whether they were intentional.

104. 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 did carry such an entry for the district court's denial, also of March 27, of Dr. Cordero's motion for reconsideration in Cordero v. Palmer.

105. Also on May 19, the district court certified the record on appeal to the Court of Appeals, but it failed to send to the Court 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 the Court's docket for this case as of July 7, 2003, did not have entries for copies of either of the March 27 decisions, although it carried 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 the Court made it clear that the March 27 orders were the main orders from which he was appealing since it is from them that the timeliness of his notice of appeal would be determined.

106. Is this further evidence that bankruptcy and district court officers, in general, enter in their dockets and send to the Court of Appeals just the notices and papers that they want and, in particular, that their failure to enter and send Dr. Cordero's Redesignation of Items and Statement of Issues was intentionally calculated to adversely affect his appeal? If those court officers dare tamper with the record that they must submit to the Court, what will they not pull in their own courts on a black-listed pro se party living hundreds of miles away? This evidence justifies the question whether they manipulated the filing date of Dr. Cordero's motion to extend time to file notice of appeal (paras. 16 above) in order to bar his appeal from this court's dismissal of his cross-claims against Trustee Gordon. If so, what did they have to gain therefrom and on whose orders did they do it?

II. Recusal is required when to a reasonable person informed of the circumstances the judge's conduct appears to lack impartiality

107. Section §455(a) of 28 U.S.C. provides for judicial disqualification "in any proceeding in which [the judge's] impartiality **might** reasonably be questioned" (emphasis added; para. 2 above). This is a test based on reason, not on the certainty provided by hard evidence of partiality. A reasonable opinion is all that is required and what affords the test's element of objectivity. Whenever the test is met, recusal of the judge is mandated.

108. 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).*

109. 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.

110. Recognizing that public confidence in those that administer justice is the essence of a system of justice, the Court of Appeals for this circuit has adopted this 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).

111. 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. Thus, the petitioner of recusal need not prove that the judge is aware of his bias or prejudice 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. All is needed is that the petitioner be "a reasonable person, [who] knowing all the circumstances, would believe that the judge's impartiality could be questioned;" In Re: International Business Machines, 618 F.2d 923, at 929 (2d Cir.1980).

112. The facts stated in Part I (paras. 5 et seq. above) are apt to raise the inference of lack of impartiality and fairness, both of which are critical characteristics 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. However, the sharing here has been in the bias and prejudice shown by this court, the court reporter, the clerk of court, the district judge, and assistant clerks. The facts bear this out and provide the basis for their impartiality to be questioned. That is more than is required for recusal; for "what matters is not the reality of bias or prejudice but its appearance"; Liteky v. United States, 510 U.S. 540, 549, 127 L. Ed. 2d 474, 114 S. Ct. 1147 (1994).

A. Recusal should be granted because equity demands it in the interest of justice

113. Even in the absence of actual bias, disqualification of a judge is required to ensure that "justice

must satisfy the appearance of justice", In re Murchison, 349 U.S. 133, 136 (1955). How much more strongly recusal is required in the presence of evidence of bias!

114. This court has shown disregard for facts, rules, and laws; tolerance for parties' submissions of false and disingenuous statements and disobedience to its orders; and misleading and injurious inconsistency in its positions. Through its disrespect for truth and legality it has breached its duty to maintain the integrity of the judicial process. Instead of promoting legal certainty it has indulged in arbitrariness that has irreparably impaired the trust that a litigant must have in its good judgment and precluded his reliance on its sense of justice. That is what an objective §455 inquiry would reveal if "made from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances"; In re Drexel Burnham Lambert, Inc., 861 F.2d 1307, 1309 (2d Cir. 1988).

115. The bias and prejudice that the court has exuded has permeated the atmosphere that other court officers in both the bankruptcy and the district court have breathed. By failing to exhibit an unwavering commitment to upholding the high ethical standards that should guide the administration of justice, it has fostered a permissive environment. In it the performance of administrative tasks, critical for the judicial process to follow its proper course, is vitiated by disregard for the rules and facts as well as lack of candor. This breeds unpredictability and unreliability, which are inimical to due process; cf. William Bracy, Petitioner v. Richard B. Gramley, Warden 520 U.S. 899; 117 S. Ct. 1793; 138 L. Ed. 2d 97 (1997). Also these court officers have allowed their conduct to give the appearance of bias and prejudice against Dr. Cordero.

116. By contrast, Dr. Cordero can with clean hands protest to being the target of this bias and prejudice. He has no other fault than being in the unfortunate position of having paid storage and insurance fees for almost ten years to store his property and upon searching for it to have found a pack of mendacious characters who handled it negligently, recklessly, and fraudulently and bounced him between themselves until they threw him into this court. Here Dr. Cordero has made his best effort to comply conscientiously and at a high professional level with all his legal obligations and court rules.

117. "Justice should not only be done, but should manifestly and undoubtedly be seen to be done;" Ex parte McCarthy, [1924] 1K. B. 256, 259 (1923). However, what Dr. Cordero has

seen is acts and omissions done by the court and court officers that have so consistently worked to his detriment and the others parties' benefit that they cannot reasonably be explained away as a coincidental series of mistakes of incompetence. Rather, to an "objective, disinterested observer," In re: Certain Underwriter Defendants, In re Initial Public Offering Securities Litigation, 294 F.3d 297 (2d Cir. 2002), those acts and omissions would look like a pattern of intentional and coordinated wrongs targeted on him, a pro se party living hundreds of miles away whom these court and officers have deemed weak enough to treat as expendable. Dr. Cordero should not be subjected to the same abuse at their hands for the many months that the court has already stated it will drag out this case. Equity should not tolerate that to happen. Enough is enough! From now on, "Justice must satisfy the appearance of justice," as the Supreme Court reaffirmed recently in Aetna Life Insurance Co. v. Lavoie et al., 475 U.S. 813; 106 S. Ct. 1580; 89 L. Ed. 2d 823 (1986).

B. Recusal should be carried out in the interests of judicial economy

118. The adversarial proceeding should be removed from this court because a wrongful denial of a §455(a) motion to recuse for bias and prejudice is likely to result in the vacatur of any judgment entered by the judge in question and the consequent need to retry the entire case. United States v. Brinkworth, 68 F.3d 633, 639 (2d Cir. 1995). That would cause a considerable waste of judicial resources, particularly in a multiparty case like this, as well as of the parties' effort, time, and money.

III. To provide for a fair and impartial judicial process, this case should be removed to the District Court for the Northern District of New York, held at Albany

119. On equitable and judicial economy considerations, this case should be removed to a court that is likely unfamiliar with any of the parties, neutral to their interests, and not under the influence of any of the court officers in question. Only such a court can reasonably be expected to conduct a fair and impartial judicial process, including eventually a trial, for all the parties. Consequently, this adversarial proceeding should be transferred in its entirety to the District Court for the Northern District of New York, held at Albany, which meets these criteria and is fairly equidistant from all the parties.

120. Such removal can be carried out under 28 U.S.C. §1412, which provides as follows:

> A district court may transfer a case or proceeding under title 11 to a district court for another district, **in the interest of justice** or for the convenience of the parties; (emphasis added).

1. To avoid further injury through bias and prejudice, removal should be carried out forthwith, so that this motion must be decided now

121. Retaining the proceeding in this court would subject Dr. Cordero to further bias and prejudice from the part of the court and its officers. It will amount to intentionally inflicting on him even more emotional distress as well as causing him additional waste of time, effort, and money. Therefore, to avoid this result, the removal must be carried out forthwith. It follows that this motion must be decided now. The court must neither put off deciding it nor cause its postponement until October as it has done with three other motions of Dr. Cordero, which has redounded to his detriment and to the benefit of other parties.

122. Hence, the court should not discriminatorily deny Dr. Cordero's request to appear by phone to argue this motion while it allows the continued use of the speakerphone in its courtroom. Nor should the court require that Dr. Cordero spend hundreds of dollars to travel to Rochester and stay overnight in a hotel there and thus disrupt two days so that he can appear in person at a 20 minutes hearing. That would constitute an additional act of disregard of Rules 1001 F.R.Bkr.P. and 1 F.R.Civ.P. requiring that proceedings be conducted speedily, inexpensively, and justly.

IV. Relief Sought

123. Dr. Cordero respectfully requests that:

1) the Hon. John C. Ninfo, II, recuse himself from this adversarial proceeding, namely, In re Premier Van Lines, Inc., dkt. no. 02-2230;
2) this adversarial proceeding be transferred in its entirety to the District Court for the Northern District of New York, held at Albany;
3) the court ask the Director of the Administrative Office of the United States Courts and the judicial council of the second circuit to conduct an investigation into the pattern of wrongful acts complained about here and of the court and court officers that so far appear to have participated in it;

4) Dr. Cordero be allowed to present his arguments by phone given that requiring that he appear in person at the hearing of this motion would cause him unjustifiable hardship in terms of cost and time;

5) the court not cut abruptly the phone communication with Dr. Cordero, but instead allow him to raise his objections for the record and participate in the hearing until it is definitely concluded for all the parties so that Dr. Cordero may be afforded the same opportunity that it affords to the other parties to be heard and hear its comments;

6) the court grant Dr. Cordero any other relief that is just and fair.

Dated: August 8, 2003

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
MOTION INFORMATION STATEMENT

Caption [use short title]

Docket Number(s): 03-5023 In re: Premier Van Lines

Motion for: Leave to introduce an updating supplement on the issue of the (WDNY) Bankruptcy Court's bias against Petitioner Dr. Richard Cordero evidenced in its order of October 23, 2003, denying Dr. Cordero's request for a jury trial, which Dr. Cordero submitted to and is under consideration by this Court of Appeals

Statement of relief sought:

That this Court:

1) admit into evidence that court's October 23 decision as an extension of the same nucleus of operative facts evidencing bias against Appellant Dr. Cordero and which were submitted on appeal to this Court together with the substantive issues to which those facts give rise;

2) review that decision together with that court's July 15 decision already submitted and decide whether the court's vested interest in not allowing a jury to consider its participation in a pattern of non-coincidental, intentional, and coordinated wrongful activity makes it a party with an interest in the outcome of Dr. Cordero's request for a jury trial and disqualifies it from being impartial in its denial of the request; and

3) grant any other proper and just relief.

MOVING PARTY: Dr. Richard Cordero
Petitioner Pro Se
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OPPOSSING PARTY: Hon. John C. Ninfo, II
US Court House
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Court-Judge/Agency appealed from: Hon. John C. Ninfo, II

Has consent of opposing counsel:
A. been sought? No respondent known

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL

Is oral argument requested? Yes

Has argument date of appeal been set? No

Signature of Moving Petitioner Pro Se:

Dr. Richard Cordero

Has service been effected? Yes; proof is attached

Date: October 31, 2003

ORDER

IT IS HEREBY ORDERED that the motion is **GRANTED** **DENIED.**

FOR THE COURT:
ROSEANN B. MacKECHNIE, Clerk of Court

Date: _____ **By:** _____

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

In re: Premier Van Lines — Case no.: 03-5023

MOTION FOR LEAVE TO FILE UPDATING SUPPLEMENT OF EVIDENCE OF BIAS

In re PREMIER VAN LINES, INC., Debtor — Bankruptcy case, W. Bankruptcy N.Y., Case no: 01-20692, Ninfo

JAMES PFUNTER, Plaintiff — Adversary Proceeding, W. Bankruptcy N.Y., Case no: 02-2230, Ninfo

v.

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

v.

DAVID PALMER, DAVID DWORKIN, DAVID DELANO, JEFFERSON HENRIETTA ASSOCIATES, Third party defendants

RICHARD CORDERO, Cross-plaintiff — Appeal, W. District N.Y., Case no. 03-CV-6021, Larimer

v.

KENNETH W. GORDON, Trustee, Cross-defendant

RICHARD CORDERO, Third party-plaintiff — Appeal, W. District N.Y., Case no. 03-MBK-6001, Larimer

v.

DAVID PALMER, Third party defendant

1. On October 23, 2003, the U.S. Bankruptcy Court for the Western District of New York, the Hon. John C. Ninfo, II, presiding, (hereinafter the bankruptcy court or the court) issued its Decision & Order Finding a Waiver of a Trial by Jury together with a Scheduling Order in Connection with the Remaining Claims of the Plaintiff, James Pfuntner, and the Cross-Claims, Counterclaims and Third-Party Claims of the Third-Party Plaintiff, Richard

Cordero (below-22 et seq.) Therein it denied Dr. Cordero's request to hold a trial by jury, after denying at the October 16 hearing his motion of August 8, 2003, to recuse itself due to bias and prejudice and remove the case to the U.S. District Court for the Northern District in Albany for a jury trial (Mandamus Brief=MandBr-38).

2. Dr. Cordero already requested in his Opening Brief (OpBr) of July 9, 2003, and in his Reply Brief (ReBr) of August 25, 2003, to this Court the disqualification of the court due to bias and prejudice against him, a pro se litigant and the only non-local party, and the removal of the entire case to the District Court in Albany for a jury trial. Consequently, the court's October 23 decision denying Dr. Cordero's request for a jury trial and the evidence contained therein of the court's bias against Dr. Cordero pertain to the nucleus of operative facts and substantive issues already submitted for review to this Court. Thus, the request for its introduction and review in the appeal should be considered proper and granted.

TABLE OF CONTENTS

I. The court's bias in denying the request for a jury trial springs from its self-interest in preventing that a jury consider issues now on appeal that will color all further proceedings below, and all the more so if the appeal is successful and the issues are remanded

3. The court has a vested interest in not letting a jury be influenced by:

a) whether the court has engaged, and affirmatively recruited other court officers, or created the atmosphere of disrespect for duty and other people's rights that has led such officers, to participate, in a series of acts of disregard of law, rules, and fact so numerous, precisely targeted on, and detrimental to, Dr. Cordero as to reveal a pattern of non-coincidental, intentional, and coordinated wrongdoing (OpBr-9 et seq.;54 et seq.; cf. MandBr-25,paras.56-58);

b) whether the court's motive in dismissing Dr. Cordero's cross-claims against Trustee Kenneth Gordon was to prevent discovery of evidence that would reveal its failure to detect or its knowing tolerance of, the Trustee's negligent and reckless liquidation of Debtor Premier (OpBr-6 et seq.;38 et seq.); and

c) whether the court has been motivated by bias and self-interest in denying twice Dr. Cordero's application for default judgment against Mr. David Palmer, the owner of Debtor Premier Van Lines and as such under the court's jurisdiction, and in even taking up the defense of Mr. Palmer sua sponte despite his continued absence from the adversary proceedings (OpBr-8; 48

et seq.):

1) the first time, in its Recommendation of February 4, 2003 (A-306), by disregarding the fact that the Clerk of Court Paul Warren had entered default against Mr. Palmer (A-303) and that the application was for a sum certain (A-294), thus fulfilling the requirements of Rule 55 F.R.Civ.P.; and
2) the second time, in its decision of July 15, 2003 (MandBr-35), although the court itself had requested Dr. Cordero to resubmit the application, only to refuse to grant it on the ground of improper service of Mr. Palmer, thereby disregarding its own Order to Transmit Record to the District Court of February 4, 2003 (A-304), where in its own Findings it stated that it had reviewed not only Dr. Cordero's Complaint against Mr. Palmer, but also his Affidavit of Service on Mr. Palmer and concluded that Dr. Cordero "has duly and timely requested entry of judgment by default".

II. The blatant bias of the court, which makes any argument so long as it is to Dr. Cordero's detriment, and its sheer inconsistency, which shows its incapacity to keep track of its own previous decisions, are demonstrated once more in its October 23 decision and July 15 order.

4. The court's bias and inconsistency render its pronouncements on the substantive issue of the request for a jury trial suspect. This is particularly so because it has allowed self-interest to determine its exercise of the ample margin of discretion that it has to grant a jury trial under Rule 39(b) F.R.Civ.P. –made applicable by Rule 9015(a) F.R.Bkr.P.-, which provides thus:

> …notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by a jury of any or all issues.

5. The court's bias and inconsistency and its self-interest in denying the jury trial request warrant this Court's review de novo of the October 23 decision as well as the July 15 order, referred to therein by the court itself and already submitted to this Court (MandBr-32). The review should encompass not only their text, but also their context, for the totality of circumstances will enable this Court to check the statements in those decisions against the facts and convince itself of the court's disqualifying flaws. In turn, their ascertainment will provide further indication of

the prejudicial and erratic way in which the court would proceed if this Court were to allow it to continue with this adversary proceeding, let alone if it were to let its denial of the jury trial request to stand.

A. The court's contrary-to-fact and misleading statement that trial begun

6. The October 23 decision opens with a misleading statement that is contrary to the facts. It states that:

> WHEREAS, on October 16, 2003 the Court began the trial and related hearings in the Adversary Proceeding, as set forth in its July 15, 2003 Order, supplemented by an August 14, 2003 letter (the "October 16 Hearings"); and

7. The fact is that neither the court's July 15 order nor its August 14 letter (MandBr-32,79) have any reference whatsoever to a trial or a date to begin a trial, let alone that the trial would begin on October 16. The July 15 order only makes reference to 'discrete discrete hearings' that not only would begin on October 16 and could be extended into October 17, but that could also be continued on November 14 (MandBr-37). However, Rule 7016 of the WDNY Local Bankruptcy Rules makes the distinction between pre-trial motions and discovery and "(6) the time when the case will be ready for trial", and requires that "an order will be entered by the Bankruptcy Court setting the time within which all pre-trial motions and discovery are to be completed". The July 15 order does not set such time. On the contrary, it acknowledges that even discovery is still to be commenced.
8. Hence, the court's pretense that "trial" begun on October 16 should not deter this Court from removing this case to the U.S. District Court in Albany, as requested by Dr. Cordero. Far from wasting any judicial resources by so doing, this Court would be saving them by removing the case from a court with a vested interest in dragging it out until wearing down Dr. Cordero -the only non-local party, whom the July 15 order requires to travel from New York City to Rochester for every hearing- to an impartial court competent enough to provide adequate case management in compliance with its obligation under Rule 1001 F.R.Bkr.P. and Rule 1 F.R.Civ.P. to ensure 'just, speedy, and inexpensive' resolution of every action.

B. The court's implicit acknowledgment that it has proceeded without regard to the Rules of Procedure

9. The court's disregard for the law, rules, and facts is a constant in its conduct and provides one of the principal grounds for Dr. Cordero to challenge on appeal its decisions. Now the October 23 decision acknowledges unwittingly such disregard, for there the court writes (below-24):

> WHEREAS, Cordero has insisted that in connection with the remaining matters in this Adversary Proceeding the parties comply with the provisions of Rule 26(f) of the Rules of Civil Procedure ("Rule 26"), requiring that the parties have a conference and issue a report to the Court, so that the Court can then issue a scheduling order in accordance with Rule 16(b) of the Federal Rules of Civil Procedure ("Rule 16").

10. UNBELIVABLE! The court complies with the Rules of Procedure only because Dr. Cordero insists on it; otherwise, it would just handle "matters" its own home-grown way. Yet, what Rules 16 and 26 provide is not an optional, alternative way of going about discovery. Far from it, their provisions states what the court and the parties "shall" do as well as the periods and deadlines within which they must proceed. But the court ignores that, which explains why it could state at the October 16 hearing that it did not know what it was supposed to do under those rules and then asked Dr. Cordero to explain them to the court! No wonder it has mismanaged this case for fourteen months, so that it has:

    1) failed to require even initial disclosure under Rule 26(a);
    2) failed to order the parties to hold a Rule 26(f) conference;
    3) failed to demand a Rule 26(f) report;
    4) failed to hold a Rule 16(b) scheduling conference;
    5) failed to issue a Rule 16(b) scheduling order.

C. Instead of the Rules of Procedure and the law, the court applies the law of close personal relationships with the local parties, which leads it to be biased against the only non-local party, Dr. Cordero

11. If this Court remanded this case to the court, the latter would not apply anymore than it has up to now the laws and rules of Congress or the case law of the courts hierarchically above it. Rather, it would apply the laws of close personal relation-ships, those developed by frequency of contact between interdependent people with different degrees of power, whereby the person

with greater power is inte-rested in his power not being challenged and those with less power are interested in being in good terms with him so as to receive benefits and/or avoid retaliation.

12. Frequency of contact is only available to the local parties; the court's website – www.nywb.uscourts.gov- shows its extent. It offers access to court's records through Pacer, which in turns allows queries under a person's name and the capacity of the person's appearance. This is what a series of queries shows:

Table 1. Number of Cases of the Local Parties Before the 3-Judge Bankruptcy Court

NAME	# OF CASES AND CAPACITY IN WHICH APPEARING SINCE					
	since	trustee	since	attorney	since	party
Kenneth W. Gordon	04/12/00	3,092	09/25/89	127	12/22/94	75
Kathleen D.Schmitt	09/30/02	9				
David D. MacKnight			04/07/82	479	05/20/91	6
Michael J. Beyma			01/30/91	13	12/27/02	1
Karl S. Essler			04/08/91	6		
Raymond C. Stilwell			12/29/88	248		

13. These numbers are impressive and all the more so when one realizes that there are only three judges in the Bankruptcy Court for the Western District of NY. The importance for these locals to mind the law of relationships over the laws and rules of Congress or the facts of their cases becomes obvious upon realizing that the court's Chief Judge is none other than the Hon. John C. Ninfo, II. Thus, the locals have a most powerful incentive not to 'rock the boat' by antagonizing the key judge and the one before whom they have to appear all the time. Indeed, for the single morning of Wednesday, October 15, 2003, Judge Ninfo's calendar includes the following entries:

Table 2. Entries on Judge Ninfo's calendar for the morning of Wednesday, October 15, 2003

NAME	# of APPEARANCES	NAME	# of APPEARANCES
Kenneth Gordon	1	David MacKnight	3
Kathleen Schmitt	3	Raymond Stilwell	2

14. It is not only these locals who appear before Judge Ninfo or the other two judges, but also all the other members of their law firms or offices. There are ways for the court to know of such membership other than by the attorneys stating their appearance for the record. Thus, the court's website states about Judge Ninfo that "At the time of his appointment to the bench in 1992 he was a partner in the law firm of Underberg and Kessler in Rochester, New York." Underberg and Kessler is precisely the firm in which is also a partner Michael Beyma, Esq., attorney for cross-defendant M&T Bank and third-party defendant David Delano, one of the Bank's officers in charge of Debtor Premier's account.

D. The court's and locals' disregard for the prohibition on ex-parte contacts to the detriment of non-local Dr. Cordero

15. So frequently do these people appear before Judge Ninfo that acquaintanceship, if not friendship, develops among them. Among people who disregard the law, rules, and facts, that relationship is likely to trump the express injunction of Rule 9003(a) F.R.Bkr.P.:

> 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 communications with the court concerning matters affecting a particular case or proceeding.

16. But do people who have known each other for years, if not decades, and deal with each other all the time really have to respect that rule of Congress, oh! so far away in Washington, D.C., rather than the law of their close personal relationship? The facts can answer this question: At the October 16 hearing, Judge Ninfo, after hearing Dr. Cordero present his motion for recusal and removal (MandBr-38), asked the parties if they thought that he was biased against Dr. Cordero. The three opposing attorneys present, namely, Attorneys Beyma, Essler, and MacKnight, stated, of course, that he was nothing but fair and impartial. Att. MacKnight, however, went further by stating that 'as I told you yesterday, I believe that you have been fair.' The day before the hearing, that was an ex-parte contact!
17. Who initiated it? Was it Att. MacKnight to reassure the judge that he was satisfied with how things were going? Or was it the court to assure itself of the answer before asking in open court the question about its impartiality? Either way, the court should not have allowed a contact expressly prohibited by the Rules of Procedure. Yet, it has engaged in, and thereby encouraged, them.

18. Thus, on March 25 or 26, 2003, Att. MacKnight contacted the court ex-parte because Mr. Pfuntner wanted to get the inspection at his warehouse over with. 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 (A-372) The facts show that the court indeed thereby reversed its own oral order issued at the pre-trial conference of January 10, 2003, whereby Dr. Cordero would submit dates for his trip to Rochester and inspection -which he did by letter of January 29 (A-365)- and within two days of its receipt the court would deter-mine the most suitable date for all the parties and inform thereof Dr. Cordero. But neither the court nor Att. MacKnight or Mr. Pfuntner ever replied to the letter.
19. In light of this precedent, Dr. Cordero would have objected to the court reversing itself had it not done so in an ex-parte contact because what did not happen when the court was supposed to play the key role in setting up the date of the inspection, would not happen when the court was not to play any role at all. That proved true, as shown below (para. 22 et seq.).

E. The court has carved a fiefdom out of the territory of the circuit, wherein it enforces its law of relationship by distributing to its local vassals unfavorable and unfavorable decisions, which they accept in fearful silence together with protection from the attacks of the non-local

20. The court and the locals also applied the law of close relationships at the June 25 hearing. On that occasion, it announced that it was going to hold hearings in October and November and then monthly hearings for the following seven to eight months. Yet, none of the locals protested such an unheard-of dragging out of an already 9-month old case that had so failed to make any progress that the first hearing would begin by examining the Plaintiff's complaint (MandBr-37).
21. Such counter-expectation passivity gives rise to the reasonable inference that the locals know very well that if they challenge the court on a decision that does not go their way on a case now, when they appear on another case 15 or 40 minutes later, or tomorrow or next week, the court can take decisions that could be much worse for them. So the locals abide by, not the rule of vigorously advocating the interests of their clients within the full scope of the law, but rather the rule of submissive dependency in the knowledge that if they take unfavorable decisions without objecting, the lord of the fiefdom will reward them next time with a favorable decision

and thus even out their fortunes in court. Thereby everybody can take it easy and nobody has to rake their brains or waste time doing legal research or writing briefs at a professional level, if at all, whereby all enjoy peace of mind in their relative positions without upsetting relationships with appeals.

22. The facts warrant this analysis: At the May 21 hearing, Dr. Cordero reported on the May 19 inspection and asked for sanctions against and compensation from Mr. Pfuntner and Att. MacKnight. The court told Dr. Cordero that to that end he should write a separate motion and that in asking him to do so the court was trying to help him. Dr. Cordero relied on the court's word and wrote his motion of June 6 (A-510). To prove therein compensable work and its value, he included an itemized list more than two pages long by way of a bill as well as a statement of rates and what is more, he provided more than 125 pages of documents to support the bill. All in all the motion had more than 150 pages in which Dr. Cordero also argued why sanctions too were warranted.
23. Yet, local MacKnight did not even bother to write an answer to it. Nor did he care to answer Dr. Cordero's July 21 motion for sanctions for having submitted false representations to the court (A-500). What is more, at the June 23 hearing to argue the June 6 motion, Att. MacKnight did not even have to open his mouth whether to protest it or deny any of the claims! He dutifully relied on his relation-ship with the court. The latter took up his defense from the beginning and not only refused to order any compensation, but did not impose on Att. MacKnight or Mr. Pfuntner any non-economic sanction either, if only for the sake of letting them know that they could not disobey two of its orders with impunity.
24. Was it through another ex-parte contact with the court that Att. MacKnight became so assured that he had nothing to be afraid of or even to do? Could anybody reasonably imagine that he would proceed with such hands-down assuredness if he had to face a judge that he did not know in the District Court in Albany who was going to decide whether to sanction him and his client and order compensation from both of them?
25. But even if he tried to file an answer, Att. MacKnight would likely fail simply because of lack of practice due to his habit-forming numerous appearances in a court where relationships push vigorous advocacy and legal research and writing to the bottom. This assumption finds painfully solid support in Trustee Gordon. In his answer in this case, the Trustee could do nothing of a higher professional caliber than to submit to a U.S. Court of Appeals an argument

that runs to fewer than two pages and two lines, wherein he relied improperly on cases which he did not vet for any continued precedential value in light of the subsequent and controlling *Pioneer* case of the Supreme Court case, whose existence the Trustee did not even acknowledge despite its having been discussed in Dr. Cordero's Opening Brief (25,30,35), just as the Trustee did not cite a single case of this Court, but merely recycled 6 cases between 10 and 20 years old, 5 from bankruptcy courts and one from the 5th Circuit. The shortness of the Trustee's answer is also due to his omission of what his duty of candor toward this Court required him to state to avoid submitting a misleading argument. Cobbling together such argument also reflects the habit of practicing in a court that tolerates the submission by locals of false and defamatory statements against non-locals.

F. A biased court that distorts the fact by blaming Dr. Cordero of causing inordinate expense and not settling reveals how it would deal with him if trying the case, let alone doing so without a jury

26. One of the most outrageously biased statements in the October 23 decision is this:

> ii. Cordero has already caused: (a) the other parties to this Adversary Proceeding to expend an inordinate amount of time and expense [sic] in connection with these non-core issues; and (b) the Court and the Clerk's Office to expend an inordinate amount of time, while he has made not attempt to negotiate a settlement of these issues; (below-32)

27. In this statement, the court intentionally disregards basic facts which it must by now know. To begin with, there would have been no need to file any Adversary Proceeding at the end of September 2002, if Mr. Pfuntner and Att. MacKnight had replied to Dr. Cordero's letter of August 26, 2002, asking for access to Mr. Pfuntner's warehouse to remove his property therefrom (A-15); or if Mr. Pfuntner had agreed thereto when Dr. Cordero took the initiative to call him and spoke with him on the phone twice on September 16, 2002, but Mr. Pfuntner would not even give him information about his property. Nor did either of these locals reply to Dr. Cordero's letters of October 7 and 17 (A-34,68), or in 2003 to those of January 29 (A-365); April 2 (A-374); and April 30 (A-426). To top it off, neither of them attended the May 19 inspection while Dr. Cordero did travel from New York City to Rochester at his expense of time, money, and effort.

28. Nor would there have been any need for a lawsuit if Mr. Palmer, Mr. Delano, and warehouse manager/owner David Dworkin had not lied and misled Dr. Cordero since January 2002, as to

his property's whereabouts; or if Trustee Gordon had done his job of finding Debtor Premier's income-producing assets, such as the storage contract under which Dr. Cordero was paying monthly fees, and informed Dr. Cordero thereabout or had provided him with such information when Dr. Cordero phoned him on May 16, 2002. Far from it, the Trustee refused to provide that information when Dr. Cordero phoned him again on September 19, 2002, and even enjoined him not to call his office again in his letter of September 23, 2002 (A-1). Based on the facts, who has been unwilling to settle?

29. Moreover, it was the court that by letter of April 7 (A-386) and August 14, 2003 (MandBr-79), deemed it perfectly reasonable to require Dr. Cordero to travel from NYC and be in the Rochester courtroom at 9:30 a.m. just so he could argue a motion for some 20 minutes; and then to make the same trip to be in court for the hearings on October 16 and 17, November 14, and then monthly thereafter for seven to eight months. It is the court who has put and has been willing to put non-local Dr. Cordero, with the silent assent of the locals, to inordinate expense!

30. Neither the court nor the locals deemed these requirements unfair to Dr. Cordero, yet the court, ever protective of its relationship with its locals, states further that:

> iii. it would be unfair to the other parties to burden them with the additional time and costs associated with litigating these issues in a trial by jury where: (a) the issues are not complex… (below-32)

31. If the issues were not complex, why did the court need monthly hearings for nine to ten months, and justified them upon their announcement at the June 25 hearing by alleging that there were numerous and complex issues involved, or as it put it in its letter of April 7 (A-386) "the complexity of the legal issues that you have now raised", or in its July 15 order (MandBr-36) to "ensure that the Court can effectively manage the numerous issues that have been raised". So when the court wants to justify wearing Dr. Cordero down economically and emotionally the issues are complex, but to deny him a jury trial, the issues are not complex. How inconsistent and biased! No doubt, the court will say anything so long as it is to Dr. Cordero's detriment.

III. To remand to a court so blatantly biased and inconsistent would deny Dr. Cordero due process as would upholding the court's denial of his constitutional right to a jury trial

32. The right to a jury trial is so essential that the Seventh Amendment to the Constitution assures

its availability whenever the minimal threshold of $20.00 in controversy is exceeded; *GTFM, LLC v. TKN Sales, Inc., 257 F.3d 235, 239-40 (2d Cir. 2001)*. In fact, the Supreme Court considers that it "is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care." *Beacon Theatres, Inc. v. Westover, 359 U.S. 500, 501 (1959)* (internal quotation and citation omitted). Consequently, there is a strong policy in favor jury trials; id. at 500, so that casual waivers of the constitutionally protected right to a jury trial are not to be presumed, *Garcia-Ayala v. Lederle Parenterals, Inc., 212 F.3d 638, 645 (1st Cir. 2000)*. On the contrary, because it is so fundamental, courts will presume against waiver of the right to a jury trial, *Indiana Lubermens Mutual Ins. Co. v. Timberland Pallet and Lumber Co., Inc., 195 F.3d 368, 374 (8th Cir 1999)* This is all the more pertinent in the case of a pro se litigant, so that it has been held that even participation in a bench trial by a pro se party is not a waiver, *Jennings v. McCormick, 154 F.3d 542, 545 (5th Cir 1998).*

33. That standard is particularly applicable in the instant case, where Dr. Cordero is a pro se defendant. As such, when dragged into this case, he implicitly trusted the court to conduct fair and impartial proceedings only to be utterly baffled and bitterly disappointed by the cumulative evidence of the court's bias against him and toward the locals. That betrayed trust cannot be said –least of all by that court- to amount to a waiver of his right to jury trial. Under those circumstances, it is not because of the absence of strong and compelling reasons to the contrary that a jury trial may be denied, but it is for the presence of such reasons that the request to exercise this fundamental constitutional right should be granted, *Green Construction Co. v. Kansas Power & Light Co., 1 F.3d 1005 (10th Cir. 1993).*
34. There are also practical reasons for granting it. Thus, the trial has not only not begun, but also not even a date has been set for it. Far from it, the court's October 23 decision has suspended proceedings until all appeals to this Court and the Supreme Court have been completed (below-24). The court has imposed the obligation on Dr. Cordero that within 95 days thereafter he be the one to initiate a Rule 26(f) conference and then prepare and submit an order to begin discovery! There is no trial in sight. This belies the court pretext that the parties, meaning the locals, would be burdened by its granting a jury trial. The only burden to the locals and the court would come from losing control of the proceedings to a fair and impartial jury, not to mention the burden of having to justify their conduct before another court that did show due

regard for the law, rules, and facts.

IV. Relief sought

35. Dr. Cordero respectfully reiterates the relief requested in the Motion Information Statement and in harmony therewith requests that this Court:
    a) review the court's decisions of October 23 and July 15, 2003;
    b) hold the court's denial of Dr. Cordero's jury trial request to be null and void as inopportune since the request is under consideration in the appeal to this Court and because it is tainted by the court's bias and self-interest;
    c) disqualify the court for bias and remove the case to a court unrelated to it and the parties, unfamiliar with the case, and capable of adjudicating it fairly and impartially in a jury trial, such as the District Court in Albany (NDNY);
    d) investigate whether the relationship between the court and the locals has impaired the administration of justice and wronged Dr. Cordero;
    e) grant Dr. Cordero any other relief that is just and proper.

Respectfully submitted on

November 3, 2003

Dr. Richard Cordero

Dr. Richard Cordero
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Proof of Service

I, Dr. Richard Cordero, hereby certify under penalty of perjury that I served by United States Postal Service copies of my motion for leave to file updating supplement on the following parties:

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
MOTION INFORMATION STATEMENT

Docket Number(s): 03-5023 **In re: Premier Van Lines**

Motion for: Leave to brief the issue raised by this Court at oral argument concerning its jurisdiction to entertain this appeal

Statement of relief sought: That this Court:

1. take jurisdiction of this action under 28 U.S.C. §455, which does not require that the Court have jurisdiction of any appealed order, let alone a final one,
2. take jurisdiction over the appealed orders:
   a) by exercising pendant jurisdiction in connection with the §455 action, and
   b) by applying the collateral order doctrine to those orders

   vacate the orders, and disqualify the judges for bias;
3. take action on equitable grounds and under 28 U.S.C. §1412 in the interest of justice to:
   a) prevent further and irreparable injury to Dr. Cordero, the only non-local and pro se party, through further litigation at the hands of biased court officers;
   b) avoid the waste of judicial resources through more litigation in a court whose judgment is likely to be appealed as procedurally flawed and tainted with biased;
   c) remove the case now, when it has neither started with disclosure nor scheduled discovery, to the U.S. District Court at Albany for a trial by jury;
4. investigate with the FBI the court officers' disregard of legality that has formed a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing; and
5. grant the relief set out in the accompanying brief and any other proper and just relief.

MOVING PARTY: Dr. Richard Cordero
Petitioner Pro Se
59 Crescent Street
Brooklyn, NY 11208-1515
tel. (718) 827-9521; corderoric@yahoo.com

OPPOSSING PARTY: See caption on first page of brief

Court-Judge/Agency appealed from: Bankruptcy Judge John C. Ninfo II, and District Judge David Larimer

Has consent of opposing counsel been sought? Not applicable

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL

Is oral argument requested? Yes

Argument date of appeal: December 11, 2003

Signature of Moving Petitioner Pro Se:

Dr. Richard Cordero

Has service been effected? Yes; proof is attached

Date: December 28, 2003

ORDER

IT IS HEREBY ORDERED that the motion is **GRANTED** **DENIED.**

FOR THE COURT:
ROSEANN B. MacKECHNIE, Clerk of Court

Date: _____ **By:** _____

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

In re: Premier Van Lines Case no.: 03-5023

MOTION FOR LEAVE TO BRIEF THE ISSUE OF JURISDICTION RAISED AT ORAL ARGUMENT BY THE COURT

In re PREMIER VAN LINES, INC., Debtor	Bankruptcy case W. Bankruptcy N.Y. Case no: 01-20692, Ninfo
JAMES PFUNTER, Plaintiff v. KENNETH W. GORDON, as Trustee in Bankruptcy for Premier Van Lines, Inc., RICHARD CORDERO, ROCHESTER AMERICANS HOCKEY CLUB, INC., and M&T BANK, Defendants	N Adversary Proceeding W. Bankruptcy N.Y. Case no: 02-2230, Ninfo
RICHARD CORDERO Third party plaintiff v. DAVID PALMER, DAVID DWORKIN, DAVID DELANO, JEFFERSON HENRIETTA ASSOCIATES, Third party defendants	
RICHARD CORDERO Cross-plaintiff v. KENNETH W. GORDON, Trustee Cross-defendant	Appeal W. District N.Y. Case no. 03-CV-6021, Larimer
RICHARD CORDERO Third party-plaintiff v. DAVID PALMER Third party defendant	Appeal W. District N.Y. Case no. 03-MBK-6001, Larimer

Dr. Richard Cordero, appellant pro se, states under penalty of perjury as follows:

1. At oral argument last December 11, the Court asked about its jurisdiction to entertain this appeal. For lack of time then, now this brief sets forth considerations that militate in favor of the Court exercising jurisdiction over this appeal.

TABLE OF CONTENTS

I. The Court can take jurisdiction of a complaint about a judge's partiality under 28 U.S.C. §455(a) and decide his disqualification even in the absence of any order issued by the judge, let alone a final one

2. This Court is the steward of the integrity of the judicial system in this circuit, as follows from 28 U.S.C. §351. As such, it has the statutory power and duty to ensure that judges and other court officers maintain "good behavior" and that their conduct is not "prejudicial to the effective and expeditious administration of the business of the courts". Where it has claims of judicial misconduct, it must investigate to establish the facts and act, if need be, to restore respect for legality and the commitment to high ethical standards of those who have been charged with dispensing justice.

3. Substantiated claims are before it (Opening Brief (OpBr)-9, 54; Reply Brief (RepBr)-19; Writ of Mandamus Brief (MandBr)-4; Motion Updating Evidence of Bias-3) that judges and other court officers have so repeatedly disregarded law, rules, and facts, and so consistently to the detriment of one litigant -non-local and pro se to boot- and to the benefit of local attorneys and their clients, as to give rise to a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing. On those claims and the evidence in the record, their "impartiality **might** reasonably be questioned" (emphasis added) under 28 U.S.C. §455(a) (Special Appendix in OpBr (SPA)-86), a provision that does not require this Court to be seized of any order, let alone a final one, to disqualify such judges to the end of ensuring the integrity of judicial process for the claimant in particular and the public in general.

4. Indeed, the Court can disqualify judges for only "creating an appearance of impropriety", *Liljeberg v. Health Servs. Acquisition Corp.,* 486 U.S. 847, at 859-60 (1988). So it is even more strongly justified in undertaking a disqualification where upon review of the evidence it determines that the judges have not only repeatedly shown partiality, but have also engaged in other misconduct "prejudicial to the…business of the courts".

A. In determining whether disqualification is warranted, the Court should review all evidence available for bias and prejudice, including orders of the judge, over which it should take appellate jurisdiction, particularly where it has been formally seized of the orders by even the judge himself

5. However, where the judges whose impartiality is questioned have in the course of their misconduct or wrongdoing issued orders, there arises the reasonable inference that those orders may be tainted by bias and prejudice. As part of its plenary review of the claims of bias and wrongdoing, the Court should take jurisdiction of the orders in the process of deciding whether disqualification is warranted.

6. In the instant case, the Court has before it the

> Order and Decision of October 16, 2003, Denying Recusal and Removal Motions and Objection of Richard Cordero to Pro-ceding with any Hearings and a Trial on October 16, 2003

of WDNY Bankruptcy Judge John C. Ninfo, II. It is final and properly before this Court because Judge Ninfo himself submitted it to the Court by his letter of November 19, 2003. The order is his response to Dr. Cordero's motion of August 8, for his recusal for bias and prejudice and removal of the case to the U.S. District Court for the Northern District of New York in Albany (MandBr-38).

7. Likewise, Judge Ninfo submitted to the Court his:

> a) Order of October 16, 2003, Disposing of Causes of Action;
>
> b) Scheduling Order of October 23, 2003, in Connection with the Remaining Claims of the Plaintiff, James Pfuntner, and the Cross-Claims, Counter-claims and Third-Party Claims of the Third-Party Plaintiff, Richard Cordero; and
>
> c) Decision and Order of October 23, 2003, Finding a Waiver of a Trial by Jury.

8. Hence, these orders are before the Court officially, by submission of the issuing judge himself as his response to Dr. Cordero's motion of November 3, for leave to file updating supplement of evidence of bias, which the Court granted on November 13. Therefore, the Court is seized of this controversy between a litigant and a judge, the former charging the latter with partiality and requesting by motion that he disqualify himself, and the latter denying both the charge and the

motion.

9. Over this controversy the Court can exercise jurisdiction to determine it pursuant to §455(a), made applicable to a bankruptcy judge by FRBkrP Rule 5004(a) so that "if appropriate, [the judge] shall be disqualified from presiding over the case". As a court under Article III of the Constitution, the Court has the inherent judicial power to ensure that the judge in controversy is still among those who "shall hold their Offices during good Behaviour", and to determine, by reviewing all the evidence, whether it is appropriate that the judge "be disqualified".

10. It follows that if the Court can disqualify judges for their bias and prejudice in their conduct or orders, then it can also vacate or otherwise modify the orders, for it would be a contradiction in fact and contrary to the effective administration of justice to exercise judicial power to remove judges motivated by partiality but to leave in force the product of their bias or even wrongdoing.

11. By the same token, the review of a judge under §455(a) must include all orders in the case since all belong to the type of vehicle through which a judge's bias would naturally and most damagingly find expression. This holds true for the orders that Judge Ninfo himself submitted to this Court as well as the others that he has taken in this case or caused to be taken based thereon. Their inclusion is all the more justified because Judge Ninfo himself makes reference to other orders taken by him or by the district court upon their appeal to it by Dr. Cordero, namely:

    1. Judge Ninfo's order dismissing Dr. Cordero's cross-claims against Trustee Kenneth Gordon (Appendix (A)-151);

    2. Judge Ninfo's order denying Dr. Cordero's motion to extend time to file notice of appeal (A-240);

    3. Judge Ninfo's order denying Dr. Cordero's motion for relief from order denying his motion to extend time to file notice of appeal (A-259);

    4. District Judge David Larimer's order granting Trustee Gordon's motion to dismiss of Dr. Cordero's notice of appeal (A-200);

    5. Judge Larimer's order denying Dr. Cordero's motion for rehearing of the grant of Trustee Gordon's motion to dismiss the appeal (A-211);

    1. Judge Ninfo's recommendation to the District Court that Dr. Cordero's application for default judgment against Mr. David Palmer not be entered (A-

306);

2. Judge Larimer's order denying entry of default judgment against Mr. Palmer (A-339); and

3. Judge Larimer's order denying Dr. Cordero's motion for rehearing of the order denying entry of default judgment against Mr. Palmer (A-350).

II. Pendant jurisdiction in connection with the §455 claims allows the Court to review all orders, just as the collateral order doctrine can be applied to the orders disposing of Dr. Cordero's claims against Trustee Kenneth Gordon and Mr. David Palmer

12. Upon taking jurisdiction of Dr. Cordero's claims of bias under §455, the Court can also exercise pendant jurisdiction over all these orders. This is warranted because those submitted by Judge Ninfo in November are inextricably intertwined with the issue of judicial bias. So are those in para. 11 above, which Dr. Cordero included in his notice of appeal (A-429) since they constituted part of the set of circums-tances that prompted this appeal and configure its merits. The Court should review and vacate all of them to prevent that they become the vehicle through which the bias invidiously driving the judges reaches its injurious objectives.

13. The Court can also apply the collateral order doctrine to relax the constraints of appellate jurisdiction under 28 U.S.C. §1291, which requires that the order be final in that it "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Catlin v. United States*, 324 U.S. 229, 233, 89 L. Ed. 911, 65 S. Ct. 631 (1945).

14. However, as this Court has recently reiterated in *Rohman v. New York City Transit Authority (NYCTA)*, 215 F.3d 208 at 214 (2d Cir. 2000):

> under the collateral order doctrine, interlocutory appeals may be taken from determinations of "claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated." Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541, 546, 93 L. Ed. 1528, 69 S. Ct. 1221 (1949).

15. It further stated in *U.S. v. Graham***,** 257 F.3d 143 at 147 (2d Cir. 2001) that:

> To fit within the collateral order exception, the interlocutory order must: "[i] conclusively determine the disputed question, [ii] resolve

> an important issue completely separate from the merits of the action, and [iii] be effectively unreviewable on appeal from a final judgment." (quoting Coopers & Lybrand v. Livesay, 437 U.S. 463, 468, 57 L. Ed. 2d 351, 98 S. Ct. 2454 (1978) (internal quotation marks omitted)

A. The four orders dismissing the notice of appeal and denying the motion to extend time to file it turned on the legal issue of computation of time under the Bankruptcy Rules, the determination of which is not susceptible to change by future litigation

16. These dismissal orders were predicated solely on determinations of issues of law, which this Court is as capable as, if not more than, the lower courts to determine de novo on appeal, *Salve Regina College v. Russell*, 111 S.Ct. 1217, 1225, 499 U.S. 225, 238, 113 L.Ed.2d 190 (1991); *McHugh v. Rubin*, Docket No. 99-6274 (2d Cir. July 11, 2000), namely:

    a) Whether the district court (A-200, 211) correctly dismissed Dr. Cordero's notice of appeal as untimely because filed after the 10 day period following the entry of the bankruptcy court's order dismissing his cross-claims against Trustee Gordon or whether it erred therein because 1) the notice was mailed within that period, 2) so it should be considered filed upon being mailed under Rule 9006(e), and 3) the period was extended by three additional days under Rule 9006(f) and to the next business day under Rule 9006(a).

    b) Whether by applying these same considerations as "the law of the case" (A-260) the bankruptcy court (A-240, 259) erred in dismissing as untimely filed Dr. Cordero's timely mailed motion under Rule 8002(c)(2) to extend time to file notice of appeal.

17. Future litigation cannot change the mailing or filing dates of the notice of appeal or the motion to extend time. Hence, the dismissal orders are separate therefrom and conclusive. Likewise, postponing appellate review until final judgment would so impair further litigation, causing such hardship on Dr. Cordero, a pro se, non-local litigant, as to deprive him of an effective right of review (para. 37 below).

1. The underlying order dismissing as a matter of law the cross-claims against Trustee Gordon is also immune to further litigation

18. Underlying the dismissal orders were Dr. Cordero's cross-claims against Trustee Gordon for negligent and reckless liquidation of Debtor Premier Van Lines, and false and defamatory statements about Dr. Cordero. The bankruptcy court granted the Trustee's motion to dismiss before there had been any disclosure –except by Dr. Cordero- or any pre-trial conference or discovery whatsoever. It treated the motion as one under Rule 12(b)(6) and granted it by finding that as a matter of law the cross-claims failed to provide a basis for further prosecution. As a result, the dismissal orders conclusively keep those claims' out of future litigation, which cannot affect the orders given the legal grounds on which they are predicated.

19. Legal too are the grounds –aside from bias motivation- that Dr. Cordero has invoked to appeal from the dismissal (OpBr-38; RepBr-25): among others, that Judge Ninfo disregarded the standards for disposing of a 12(b)(6) motion, failing not only to afford extra leeway to the pleadings of a pro se litigant, but even to consider his factual allegations in the light most favorable to him as plaintiff, con-ducting instead, as the transcript shows (A-262), a summary trial where the Judge passed judgment on the sufficiency of the evidence as a trier of fact would do.

20. Thus, from a legal as well as a practical point of view, the dismissal orders have sounded the death knell for Dr. Cordero's cross-claims, as would have it, mutatis mutando, the alternative, non-exclusive doctrine under which this Court can also take jurisdiction of an interlocutory order that makes further prosecution of a case –here distinctly separate aspects of it- impossible.

21. Such death knell has become only louder since Plaintiff James Pfunter either settled or dropped his claims against the Trustee, as Judge Ninfo's order of October 16, 2003, disposing of causes of action –among those that he submitted to this Court- has made so clearly audible. That order has trumpeted Trustee Gordon's exit, at least formally, from the scene and underscores in practical terms the finality of the earlier order: With the Trustee out for the remainder of the case, Dr. Cordero's dismissed cross-claims against him are conclusively kept separate from future litigation unless this Court revives them by vacating the dismissal orders.

B. The district court's orders denying Dr. Cordero's application for default judgment against Mr. Palmer and the bankruptcy court's treatment of the

application turned on the legal issues of entitlement to judgment under FRCivP Rule 55 and of service, conclusively separating it from further litigation, at the end of which review would be ineffective

22. Dr. Cordero's third-party complaint against Mr. Palmer was predicated on the latter's fraudulent, negligent, and reckless storage of Dr. Cordero's property and handling of his storage and insurance fees, not on the possibility that he might default by disregarding his duty to answer the complaint. Thus, by definition Dr. Cordero's application for judgment by default due to Mr. Palmer's failure to appear and defend constitutes a separate claim from those in the case.

    1. The order's of Judge Ninfo and Judge Larimer denying the default judgment application do not cite any rule or law and contain outcome-determinative mistakes of fact so that this Court should hold them null and void as their flawed personal opinions with no legal power to deprive a litigant of rights or property

23. After Dr. Cordero applied for default judgment (A-290-5), Judge Ninfo belatedly (A-302) made his recommendation to the district court, stating in his Conclusions that, "The Plaintiff is not entitled under applicable law to entry of judgment by default" (A-305). However, in his "attached reasons" (A-306-7) he did not invoke, let alone discuss as judges do, any rule or law whatsoever for his denial. Worse still, he imposed on Dr. Cordero the obligation to demonstrate damages without citing any authority therefor.

24. His colleague on the floor above in the same federal building, Judge Larimer, accepted his recommendation and added: "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" (A-339). Thereby he showed that he had intentionally disregarded or inexcusably failed to read the statements by Judge Ninfo himself as well as Dr. Cordero indicating that the matter did involve a sum certain, to wit $24,032.08 (A-305, 294, 327, 344, 348).

25. Nor did Judge Larimer cite, let alone analyze, any rule or law setting out the conditions for such "entitlement" or for obtaining judgment for defendant's failure to appear as opposed to compensation for damages. Dr. Cordero moved the district court to reject the recommendation and the obligation to demonstrate damages as he, for a change, analyzed Rule 55 (A-314), which provides that plaintiff is entitled to default judgment where 1) the clerk of court has

entered defendant's default due to its failure to appear, and 2) plaintiff has applied for a sum certain

26. Without even acknowledging that motion, Judge Larimer required that Dr. Cordero prove damages through an "inquest" conducted by the bankruptcy court, for which he similarly failed to cite any rules governing it. (A-340) Dr. Cordero moved the district court to correct its outcome-determinative mistake about the sum certain and reverse his unsupported call for an inquest. (A-342; OpBr-50.2, 53.4) Once more Judge Larimer lazily spared himself any legal analysis by ordering merely that "The motion is in all respects denied" (A-350).

27. That "inquest" was Judge Larimer's way to allow Judge Ninfo to implement the requirement that he had stated in the Attachment to the recommendation that Dr. Cordero demonstrate damages, if any, through an inspection at Plaintiff Pfuntner's warehouse, where some storage containers were thought (A-364) to hold property of Dr. Cordero, after which the application would be decided (A-306). That inspection took place on May 19, 2003, for which Dr. Cordero, the only non-local party, had to travel from New York City to Rochester and to Avon.

28. At a hearing on May 21 before Judge Ninfo, Dr. Cordero reported thereon, including the fact that Mr. Pfuntner, his attorney, David MacKnight, Esq., and his warehouse manager failed not only to attend, but also to take any of the necessary measures for the inspection, which Dr. Cordero had identified as early as January 10, put in writing (A-365, 368), and Att. MacKnight had agreed to at the April 23 hearing when he moved for a second discovery order for that inspection after he and Mr. Pfuntner had disobeyed the first one with impunity (A-374, 378). After Dr. Cordero concluded his report, Judge Ninfo of his own initiative asked him to resubmit his application for judgment by default against Mr. Palmer. Dr. Cordero did so. (MandBr Appendix or Appendix Supplement (MandA/ASup)-472, 479-84) Astonishingly, at the June 25 hearing Judge Ninfo refused to grant the application by this time raising doubts that service on Mr. Palmer had been proper! (cf. Recusal Decision-5.I, Recusal Order-4)

29. However, not only did Dr. Cordero serve the complaint and the default application on Mr. Palmer's attorney of record, Raymond Stilwell, Esq., (A-18, 70; MandA/ASup-99) but also served Mr. Palmer with the application (A-296). It should be noted that Att. Stilwell was at the time representing Mr. Palmer in the voluntary bankruptcy petition (MandA/ASup-431) of which this adversary proceeding is a derivative action. Acknowledging Mr. Stilwell's status as

Mr. Palmer's attorney, the bankruptcy court summoned him to attend the pre-trial conference held on January 10, 2003 (A-362). Moreover, the court has confirmed this status by serving Mr. Stilwell with the court's orders of October 16 (MandA/ASup-552, entry 25; below 25, entry between 138 and 140).

30. What is more, Judge Ninfo had certified in his recommendation Findings that:

> This Court now finds that the Third-party Complaint was filed by the Plaintiff [Dr. Cordero] 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 [Palmer] 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 2/4/03. (A-305)

31. How could Judge Ninfo contradict himself so blatantly without even showing some awareness, let alone explaining away, his previous Findings? Because there is no system to his bias so that he will state anything and its opposite so long as it works against Dr. Cordero. Otherwise, his contradictions reveal disqualifying incompetence to keep track and do legal analysis. Anyway one thing is clear: Judicial decisions that can deprive a person of his property and rights must not be used to write a comedy of errors. When out of bias they are used to intentionally cause a litigant so much waste of time, effort, and money and inflict such tremendous emotional distress as in this case, they become a farce for mocking the law.

32. What kind of judges are these who contradict their own statements, disregard or ignore the law, and are unwilling or unable to perform legal research and writing, but have no qualms about lording it over a litigant's rights and property? They are the Justices of the Peace of the Fiefdom of Rochester, which they have carved out of the judicial system founded on the Constitution and delimitated by Congressional enactments. Therein they no longer pay allegiance to the rule of law, but rather rule by the whims of their personal opinions…or no opinion at all: "The motion is in all respects denied"! (A-211, 350)

33. This Court should take jurisdiction of their orders since they conclusively dis-posed of alleged legal issues concerning the "applicable law" of "entitlement" to damages; their "inquest" to demonstrate such damages took place; and the denial of the resubmitted application relied on

the pretense of legal defects in service. Then the Court should hold them null and void as a matter of the law that they disregard and as the expression of court officers who have chosen to ignore the requirements of their office and their solemn responsibility to avoid giving even the appearance of bias and wrongdoing to those that appeal to them for justice.

C. The orders of Judge Larimer show that he disregarded his statutory duty to review de novo matters objected to by Dr. Cordero, and based his orders on ex parte 'hearings' of the opposite parties, whereby those orders are so procedurally defective and tainted with partiality as to require this Court to review and rescind them

34. Dr. Cordero brought to Judge Larimer's attention his objections to Judge Ninfo's recommendation (A-328, 343). Judge Larimer had a legal obligation under 28 U.S.C. §157(c)(1) to 'review "de novo those matters to which any party has timely and specifically objected".

35. Yet, Judge Larimer did not so much as notice Dr. Cordero's textual analysis of statutory provisions or even Supreme Court cases squarely on point, such as *Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership*, 13 S.Ct. 1489, 509 U.S. 380, 123 L.Ed.2d 74 (1993). In his reluctance or incapacity to pro-vide any legal foundation for his statements, let alone discuss any rule or law, he failed to make even a passing reference to them or to any Supreme Court case or any case of this circuit at all! He even got outcome-determinative facts wrong (para. 26 above; OpBr-16; RepBr-19). Hence, it can reasonably be inferred from his incompetent (A-200, 339) and lazy (A-211, 350) orders that Judge Larimer did not even read Dr. Cordero's motions (A-158, 205, 314, 342), and issued them upon considering only either Trustee Gordon's or Judge Ninfo's submissions.

36. Hence, those orders are fundamentally defective as a matter of law because Judge Larimer proceeded on an ex parte basis, denying Dr. Cordero a constitutional procedural right to be heard and a statutory procedural right to a de novo review. Hence, this Court should exercise appellate jurisdiction to review and vacate them.

III. Postponing review of the appealed orders until final judgment would in practical terms cause the loss of an effective right of review, which

satisfies the unreviewability requirement of the collateral order doctrine and justifies immediate review

37. The Supreme Court has stated that it would depart from a requirement of strict finality "when observance of it would practically defeat the right to any review at all." *Cobbledick v. United States, 60 S.Ct. 540-540-41, 309 U.S. 323, 324-25, 84 L.Ed. 783, 784-85 (1940).* In harmony therewith, this Court stated in *Locurto v. Safir*, 264 F.3d 154, at 162 (2d Cir. 2001), that an erroneous denial of a right, such as that of qualified immunity, which forces a litigant to carry the burdens of discovery and trial otherwise avoidable, renders the order "effectively unreviewable if appeal is delayed until after a final judgment has been entered", so that if the denial turns on a question of law, the order "is immediately appealable". The Locurto Court added that,

> Such a denial also satisfies the requirement of finality, since the district court's legal determination is conclusive with respect to the [litigant]'s entitlement to avoid the burdens of discovery and trial. id.

38. If appellate review were postponed until a final judgment were entered by the same lower courts, Dr. Cordero would be sent back to suffer more of the same disregard of law, rules, and facts at the hands of court officers emboldened in their bias by coming out of the appeal unscathed. How inequitable!

39. If the orders were left in force, but for the reasons set forth before (OpBr-48) Dr. Cordero is already entitled to default judgment as a matter of law under Rule 55, then all future litigation that he would be required to shoulder, with all its extra burden of time, effort, and money expense, felt only more crushing because of his already exhausted pro se, non-local condition, would work irreparable hardship on him economically and emotionally. Not only in moral terms 'justice delayed is justice denied', but also in practical terms: At the end of a future appeal that were successful, there would likely be nobody liable to compensate him for such unjustified toil. Actually, every day that goes by without his having a default judgment to enforce reduces his already slim chances of finding and collecting anything from Mr. Palmer, that irresponsible person who, disregarding his duty to answer process, just disappeared with impunity from Judge Ninfo's court, where he had filed a voluntary bankruptcy petition and from where he received the benefit on October 24, 2003, of having the case of his failed company closed.

40. Similarly, the orders dismissing the notice of appeal, the motion to extend time to file it, and the

underlying cross-claims, allegedly turned on the legal issues of their untimeliness and lack of a cause of action upon which relief can be granted. If these determinations are erroneous, Dr. Cordero has a right now to press his claims against Trustee Gordon. But if they are maintained conclusive on future litigation until final judgment, Dr. Cordero will have to prosecute his claims solely against the remaining parties. Given the obvious key role of the Trustee in the liquidation of the storage company, those parties –warehouse owners, managers, or lenders- will likely do what they have repeatedly done so far: deflect any blame toward the Trustee just as they referred Dr. Cordero to him for information about his property and permission even to inspect it, let alone release it (A-14, 17, 18, 22, 40, 52, 131, OpBr-43). As a result, no matter who wins the final judgment, it will almost certainly be appealed because a key player, liable for compensation or contribution, was 'indiscreetly disjoined' from the case by the courts.

41. What a waste of judicial resources! Similarly, if on appeal it were determined that Judges Ninfo and Larimer erroneously dismissed the Trustee as a cross-claimed party, not to mention if either or both did so out of bias or other wrongdoing, who will compensate pro se, non-local Dr. Cordero? Who will bear his economic and emotional cost of relitigation? A Pyrrhic hollow appellate review is justice denied.

42. In stewarding the integrity of the judicial process, the Court can also take jurisdic-tion of these orders to determine whether the bias found, its appearance, or other considerations warrant that "in the interest of justice" it should under 28 U.S.C. §1412 instruct the lower court to transfer this case to a court in another district.

IV. Relief sought

43. Therefore, Dr. Cordero respectfully requests that the Court:

    a) take jurisdiction and vacate 1) the orders on appeal, listed in para. 11 above, and Judge Ninfo's 2) Order Denying Recusal and Removal Motions and Objection of Richard Cordero to Proceeding with any Hearings and a Trial on October 16, 2003, and 3) Order Finding a Waiver of a Trial by Jury;
    b) disqualify Judge Ninfo and remove this case to the U.S. District Court for the Northern District of New York at Albany for a trial by jury;
    c) hold that Judge Larimer violated Dr. Cordero's constitutional and statutory rights to due

process;

d) investigate with the assistance of the FBI whether judges and other court officers at the WDNY bankruptcy and district courts partcipated in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing;

e) order that Dr. Cordero be compensated for the violation of his rights and award him attorney's fees; and

f) award him any other relief that the Court may deem just and proper.

Respectfully submitted on
December 28, 2003

Dr. Richard Cordero

59 Crescent Street
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Dr. Richard Cordero
Petitioner Pro Se

Docket no. 03-5023

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR PANEL REHEARING
AND
HEARING EN BANC

In re: Premier Van Lines, Inc.
Debtor

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)

Dr. Richard Cordero respectfully petitions that this Court's order of January 26, 2004, (Appendix=A-842, infra) dismissing his appeal from orders issued by the U.S. Bankruptcy and District Courts for the Western District of NY be reviewed by the panel and in banc on the following factual and legal considerations:

I. Why this Court should hear this petition en banc

1. This petition should be heard an banc because : There is abundant material evidence that judges, administrative personnel, and attorneys in the bankruptcy and district courts in Rochester have disregarded the law, rules, and facts so repeatedly and consistently to the detriment of Dr. Cordero, the sole non-local party, who resides in New York City, and the benefit of the local ones in Rochester as to form a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing and of bias against him (A-674, infra).
2. The resulting abuse and that yet to be heaped on remand on Dr. Cordero, a pro se litigant, can

wear him down until he is forced to quit his pursuit of justice (para. 22, infra). The reality that everybody has a breaking point should be factored in by every member of this Court when deciding whether to hear this appeal. It was dismissed on the procedural ground that the appealed orders lack finality. Under these circumstance, the Supreme Court would depart from a requirement of strict finality "when observance of it would practically defeat the right to any review at all," *Cobbledick v. United States, 60 S.Ct. 540, 540-41, 309 U.S. 323, 324-25, 84 L.Ed. 783, 784-85 (1940).* Hence, Dr. Cordero appeals to the commitment to justice and professional responsibility of the Court's members to review this case so that they may relieve him of so much abuse and ensure that he has his day in a court whose integrity affords him just and fair process.

3. If doing justice to one person were not enough to intervene, then this Court should do so to ensure just and fair process for all similarly situated current and future litigants and to protect the trust of the public at large in the circuit's judicial system that this Court is charged with protecting (A-813, infra). Resolving conflicts of law among panels or circuits cannot be a more important ground for a hearing en banc than safeguarding the integrity of the judicial process while aligning itself with Supreme Court pronouncements. Without honest court officers, the judicial process becomes a shell game where the law and its rules are moved around, not by respect for legality and a sense of justice, but rather by deceit, self-gain, and prejudice. To which are you committed?

II. The appealed order dismissing a cross-claim against Trustee Gordon is not just that of the bankruptcy court, but is also the subsequent order of the district court holding that Dr. Cordero's appeal from that dismissal was, although timely mailed, untimely filed, which is a conclusion of law that cannot possibly be affected by any pending proceedings in either court, so that the order is final and appealable

4. Bankruptcy Judge John C. Ninfo, II, dismissed (A-151) the cross-claims against Trustee Kenneth Gordon (A-83) on the latter's Rule 12(b)(6) FRCP motion, while disregarding the genuine issues of material fact that Dr. Cordero had raised (Opening Brief=OpBr-38). This dismissal is final, just as is the dismissal of a complaint unless leave to amend is explicitly granted. *Elfenbein v. Gulf & Western Industries, Inc., 90 F.2d 445, 448 n. 1 (2d Cir. 1978).*

5. Dr. Cordero appealed to the district court (A-153), but the Trustee moved to dismiss alleging

the untimeliness of the filing of the appeal notice, never mind that it was timely mailed. Dr. Cordero moved the district court twice to uphold his appeal (A-158, 205). Twice it dismissed it (A-200, 211). Likewise, twice he appealed to the bankruptcy court to grant his timely mailed motion to extend time to file notice to appeal (A-214, 246). Twice the bankruptcy court denied relief (A-240, 259), alleging that the motion too had been untimely filed, although even Trustee Gordon had admitted that it had been timely *filed* (OpBr-11).

6. Consequently, there is no possibility in law whereby Dr. Cordero could for a fifth time appeal the issue of timelines to either court. Nor is it possible, let alone likely, that either will sua sponte revise their decisions and reverse themselves. As the bankruptcy put it, 'the district court order establishing that Dr. Cordero's appeal was untimely' "is the law of the case" (A-260). Thus, res judicata prevents any such appeal or sua sponte reversal. Similarly, it is not possible for Dr. Cordero, well over a year after the entry in 2002 of the underlying order dismiss-sing his cross-claims, to move the bankruptcy court to review it and reinstate them; nor could that court sua sponte review it and reverse itself.

7. Due to these orders, Trustee Gordon is beyond Dr. Cordero's reach in this case, and since the Trustee settled with the other parties, he is no longer a litigating party. No pending proceedings in the courts below could ever change the legal relation between Dr. Cordero and the Trustee. Each order is final because it "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment", *Catlin v. United States, 65 S.Ct. 631, 633, 324 U.S. 229, 233, 89 L.Ed. 911 (1945)*. Their legal relation can only change if this Court reviews either or both of those orders and determines that they are tainted by bias against Dr. Cordero (OpBr-9, 54); and that they are unlawful because the bankruptcy court disregarded the law applicable to a 12(b)(6) motion (OpBr-10, 38) and to defamation (OpBr-38); and both courts disregarded the Bankruptcy Rules, such as 9006(e) complete-on-mailing and (f) three-additional-days (OpBr-25). What else could possibly be necessary to make an order final and appealable to this Court?

8. This Court can reach the bankruptcy court order (A-151) dismissing the cross-claims because 1) it was included in the notice of appeal to this Court (A-429), and 2) in *In re Bell, 223 F.3d 203, 209 (2d Cir. 2000)* it stated that in an appeal from a district court's review of a bankruptcy court ruling, the Court's review of the bankruptcy court is "independent and plenary." Thus, through its review of the district court order dismissing the appeal for untimeliness, the Court can reach the underlying bankruptcy court order dismissing the cross-claims.

I. The district court order remanding to the bankruptcy court the application for default judgment is:

1) final because the further proceedings ordered by the district court were in fact ordered by the bankruptcy court on April 23 and undertaken on May 19, 2003, and

2) appealable because such proceedings were ordered in disregard of the express provisions of Rule 55 FRCP and without any other legal foundation, an issue of law raised on appeal to, and rehearing in, the district court, and reviewable by this Court since the unlawful obligation imposed on Dr. Cordero to participate in the proceedings and the grounds for it cannot possibly be changed by future developments in those courts

9. Dr. Cordero brought third party claims against Mr. David Palmer, the owner of the moving and storage company Premier Van Lines, for having lost his stored property, concealed that fact, and committed insurance fraud (A-78, 87, 88). Although he was already under the bankruptcy court's jurisdiction as an applicant for bankruptcy, Mr. Palmer failed to answer. Dr. Cordero timely applied for default judgment for a sum certain under Rule 55 FRCP. (A-290, 294) Yet, the court belatedly (A-302) recommended to the district court (A-306) that the default judgment application be denied and that Dr. Cordero be required to inspect his property to prove damages, in total disregard of Rule 55 and without citing any legal basis whatsoever for imposing that obligation on him (OpBr-13).

10. Dr. Cordero submitted to the district court a motion presenting factual and legal grounds why it should dismiss the recommendation and enter default judgment (A-314). However, District Judge David Larimer accepted the recommendation without even acknowledging his motion and required that he "still establish his entitlement to damages since the matter does not involve a sum certain" (A-339). But it did involve a sum certain! (A-294) By making this gross mistake of fact, the district court undercut its own rationale for requiring that Dr. Cordero de-monstrate his entitlement in "an inquest concerning damages" to be conducted by the bankruptcy court. Moreover, it cited no statutory or regulatory provision or any case law whatsoever as source of its power to impose that obligation on Dr. Cordero in contravention of Rule 55, which it did not even mention (OpBr-13).

11. Dr. Cordero discussed that outcome-determinative mistake of fact and lack of legal grounds in a motion for rehearing (A-342; cf. OpBr-16). In disposing of it, the district court not only failed to mention, let alone correct, its mistake, or to provide any legal grounds, but it also failed to

provide any opinion at all, just a lazy and perfunctory "The motion is in all respects denied." (A-350; cf. A-211, 205; Reply Brief=ReBr-19) That is all that was deemed necessary between judges that so blatantly disregard law, rules, and facts (OpBr-9-C; 48-53). They have carved their own judicial fiefdom of Rochester out of the territory of this circuit (A-780, infra), where they lord it over attorneys and parties by replacing the laws of Congress with the law of the locals, based on close personal relations and the fear of retaliation against those who challenge their distribution of favorable and unfavorable decisions (A-804.IV, infra).

12. Although the bankruptcy court recommended to the district court that Dr. Cordero's property in storage be inspected to determine damage, it allowed its first order of inspection to be disobeyed with impunity by Plaintiff James Pfuntner and his Attorney David MacKnight to the detriment of Dr. Cordero and without providing him any of his requested compensation or sanctions (OpBr-18). As a result, the inspection did not take place.

13. Then precisely at the instigation of Mr. Pfuntner and his attorney, it ordered at a hearing on April 23, 2003, that Dr. Cordero travel to Rochester to inspect his property, which Mr. Pfuntner said had been left in his warehouse by his former lessee, Mr. Palmer, the owner of the storage company Premier. Although this ins-pection was the "inquest" for whose conduct by the bankruptcy court the district court denied Dr. Cordero's application for default judgment against Mr. Palmer and remanded, the bankruptcy court allowed this order to be disobeyed too: None of the necessary preparatory measures were taken (A-365) and neither Mr. Pfuntner, nor his attorney or storage manager even showed up at the inspection. Yet, Dr. Cordero did travel to Rochester and the warehouse on May 19, 2003.

14. At a hearing on May 21 attended by Mr. Pfuntner's attorney, Dr. Cordero report-ed on the inspection. It had to be concluded that some of his property was dam-aged and other had been lost (Mandamus Brief-34; Mandamus Appendix= MandA-522-H). Yet, the biased bankruptcy court neither sanctioned the locals that showed but contempt for its orders nor had them compensate Dr. Cordero.

15. It follows that as a matter of fact, the further proceedings for which the case was remanded by the district to the bankruptcy court took place; and as a matter of law, they should never have taken place because requiring them and compelling Dr. Cordero's participation violated Rule 55 FRCP and neither of those courts offered any other legal grounds whatsoever for denying his default judgment application and imposing such requirements. No number of further pro-

ceedings will undo the consequences and cancel the implications of the district and bankruptcy rulings. Both must be considered final and appealable (A-821, infra).

16. How could it be said that this Court was dedicated to dispensing justice if it concerns itself with just operating the mechanics of procedure by delivering Dr. Cordero back into the hands of the district and bankruptcy courts for them to injure him with their bias and deprive him of his rights under the law, the sum certain he sued for, and his emotional wellbeing? Meanwhile, those courts have continued protecting Mr. Palmer, another local party, even after he was defaulted by the Clerk of Court (MandA-479). Thus, he has been allowed to stay away from the proceedings despite being under the bankruptcy court's jurisdiction, whereby he shows nothing but contempt for judicial process. With whom do the equities lie? The procedure of final rulings should not be rolled out if it also allows biased courts to crush Dr. Cordero, for it also crushes the sense of equity that must make this Court recoil at the injustice of this situation. Rather than deliver him to them for further abuse, this Court should take jurisdiction of their rulings to establish that they wronged him and prevent them from doing so again by removing the case to a court unrelated to the parties and unfamiliar with the case.

III. Bankruptcy court orders were appealed for lack of impartiality and disregard for law, rules, and facts to the district court, which was requested to withdraw the case from the bankruptcy court but refused to do so, whereby the district court did review those orders and the issue of bias so that its order of denial is final and appealable to this Court

17. The legal grounds and factual evidence of partiality and disregard for legality on which the district court was requested (A-342, 314) to withdraw the case from the bankruptcy court were swept away with a mere "denied in all respects" without discussion by a district court's order (A-350), one among those appealed to this Court. Hence, Dr. Cordero went back to the bankruptcy court and invoked those grounds and evidence to request that it disqualify itself under 28 U.S.C. §455(a) (A-674, infra). The bankruptcy court denied the motion too.

18. Consequently, there was no justification either in practice or in logic to resubmit the substance of those grounds and evidence in order to appeal that denial to the district court. How counterintuitive it is to expect that what Dr. Cordero's initial attack on the bankruptcy court could not move the district court to do, the bankruptcy court's own subsequent defense, if appealed to its defending district court, would cause the latter to disqualify the bankruptcy

court and remand the case! A reasonable person is expected to use common sense.

19. That reasoning is particularly pertinent because the district court was requested not once, but twice (A-331, 348) to withdraw the case from the bankruptcy court to itself under 28 U.S.C. §157(d) "for cause shown". Yet, it did not even acknowledge the request, let alone discuss it in its "denied in all respect" fiat or its earlier perfunctory order predicated on an outcome-determinative mistake of fact (para. 10, 11, supra). Thus, it would be counterintuitive to expect that if Dr. Cordero appealed to such district court the bankruptcy court's refusal to disqualify itself and remove the case to another district, the district court would roll up its sleeves and write a meaningful opinion to affirm, not to mention reverse, a decision concerning contentions by Dr. Cordero that it has disregarded twice before. And what a waste of judicial resources!, and of Dr. Cordero's time, effort, and money. Does he matter?

20. The counterintuitive nature of this expectation is also supported by practical considerations: The district court showed the same lack of impartiality toward Dr. Cordero and the same disregard for law, rules, and facts that the bankruptcy court had showed so that their conduct formed a pattern of non-coincidental, inten-tional, and coordinated acts of wrongdoing (OpBr-9, 54; ReBr-19). A reasonable person, upon whose conduct the law is predicated, may rightly assume that if after the bankruptcy court refused to recuse itself and remove, Dr. Cordero had appealed to the district court, the latter could not reasonably have been expected to condemn the bankruptcy court, for in so doing it would have inevitably indicted itself; and what could conceivably be even riskier, it would have betrayed its coordination with the bankruptcy court. For that too, an appeal that endangered those vested interests would have been a wasteful exercise in futility.

21. There is no justification in practice for this Court to require a litigant to engage in such futility and endure the tremendous aggravation concomitant with it. The unreflective insistence on procedure should not be allowed to defeat substance and establish itself as the sole guiding principle of judicial action, the adverse consequences to those who appeal for justice to the courts notwithstanding. On the contrary, the Supreme Court sets the rationale for pursuing the objective of justice ahead of operating the mechanics of procedure: "There have been instances where the Court has entertained an appeal of an order that otherwise might be deemed interlocutory, because the controversy had proceeded to a point where a losing party would be irreparably injured if review were unavailing"; *Republic Natural Gas Co. v. Oklahoma, 68 U.S. 972, 976, 334 S.Ct. 62, 68, 92 L.Ed.2d 1212, 1219 (1948).* Those words are squarely applicable

here.

22. Dr. Cordero was drawn into this Rochester case as the only non-local defendant. He must prosecute it pro se because a Rochester attorney would hardly risk, for the sake of a one-time non-local client, antagonizing the judges and officers of the fiefdom of Rochester and it would cost him a fortune that he does not have to hire an NYC attorney. So he performs all his painstakingly conscientious legal research and writing at the expense of an enormous amount of time, money, and effort. Under those circumstances, when courts drag this case out, either intentionally to wear him down or unwittingly by subordinating justice to its procedure, they inflict on him irreparable injury. This effect must be taken into account in deciding whether to hear this appeal because determining finality requires a balancing test applied to several considerations, "the most important of which are the inconvenience and costs of piecemeal review on the one hand and the danger of denying justice by delay on the other", *Dickinson v. Petroleum Conversion Corp., 70 S.Ct. 322, 324, 338 U.S. 507, 511, 94 L.Ed. (1950).*

23. Preventing anymore irreparable injury to Dr. Cordero and ensuring the integrity of its circuit's judicial system are grounds for the Court to take jurisdiction of this appeal by using the inherent power that emanates from the potent rationale behind its diversity of citizenship jurisdiction: the fear that state courts may be partial toward state litigants and against out-of-state ones, thus skewing the process and denying justice to all its participants as well as detracting from the public's trust in the system of justice. Here that fear has materialized in federal courts that favor the locals at the expense of the sole non-local who dared challenge them.

24. Whether the cause of lack of impartiality is diversity of locality or personal animus and self-gain, it has the same injurious effect on the administration of justice. Section 455(a) combats it by imposing the obligation on a judge to disqualify himself whenever "his impartiality might be reasonably questioned". The Supreme Court has interpreted this language to mean that for disqualification under §455(a) it suffices that there be a situation "creating an appearance of impropriety"; *Liljeberg, 486 U.S. 847, at 859-60,* para. 1, supra.

25. Given the high stakes, to wit, a just and fair process, §455(a) sets a very low threshold for its applicability: not proof, not even evidence, just 'a reasonable question'. Yet, Dr. Cordero has presented a pattern of disregard of laws, rules, and facts so consistently injurious to him and protective of the local parties as to prove the bias against him of both courts and court officers

therein. So why would this Court set the triggering point for its intervention at such high levels as an appeal by Dr. Cordero from the bankruptcy to the district court despite the pro-forma character and futility of that exercise under the circumstances?

26. Intervening only at such injury-causing high level contradicts the principle that the Court recognized in *Ginett v. Computer Task Group, Inc., 962 F.2d 1085, 1097 (2d Cir. 1992)*, of avoidance of the hardship that appellant would sustain if review was delayed. Requiring an intervening appeal to the district court is most unwarranted here because the bankruptcy court, who decided not to disqualify itself as requested by Dr. Cordero, submitted sua sponte its decision to this Court on November 19, 2003, whereby it in practice requested its review by the Court.

27. Instead of reviewing it, the Court dismissed Dr. Cordero's appeal. Thereby it has exposed him to more blatant bias from the bankruptcy court and its partner in coordinated acts of wrongdoing, the district court (ReBr-19). Indeed, it is reasonable to fear that those courts will interpret the Court's turning down the opportunity, offered on that November 19 'platter', to review the decision refusing recusal as its condonation of their conduct. Will this Court leave Dr. Cordero even more vulnerable to more and graver irreparable injury from prejudiced courts that disregard legality while applying the law of the locals?

28. This interpretation is all the more likely because to support its refusal to take jurisdiction of Dr. Cordero's appeal and its requirement that he first appeal from the bankruptcy to the district court, this Court could find no stronger precedent than a non-binding decision from another circuit, namely, *In re Smith, 317 F.3d 918, 923 (9th Cir. 2002)*. Its value is even weaker because Dr. Cordero already submitted to the district court grounds and evidence for disqualifying the bankruptcy court and withdrawing the case, but it disregarded them. Thus, it already had its opportunity to review the matter. Now it is this Court's turn.

IV. Relief sought

29. Dr. Cordero respectfully requests that this Court:

a. take jurisdiction of this appeal, vacate the orders tainted by bias or illegality, and "in the interest of justice" remove this case under 28 U.S.C. §1412 to a court that can presumably conduct a just and fair jury trial and is roughly equidistant from all parties, such as the U.S. district court in Albany;

b. launch, with the assistance of the FBI (A-805, infra), a full investigation of the lords of the fiefdom of Rochester and their vassals, guided by the principle 'follow the money' of bankruptcy estates and professional persons fees (11 U.S.C. §§326-331), and intended to bring them back into the fold of legality;

c. award Dr. Cordero costs and attorney's fees and all other just compensation.

Respectfully submitted
under penalty of
perjury,
March 10, 2004

Dr. Richard Cordero

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Brooklyn, NY 11208;
tel. (718) 827-9521

Dr. Richard Cordero
Petitioner Pro Se

CASES

STATUTES

ENTRIES from the Appendix

Proof of Service

I, Dr. Richard Cordero, hereby certify under penalty of perjury that I served by fax or United States Postal Service on the following parties copies of my petition for panel rehearing and hearing en banc:

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
MOTION INFORMATION STATEMENT

Docket Number(s): 03-5023 **In re: Premier Van Lines**

Motion for: the Hon. Chief Judge John M. Walker, Jr., to recuse himself from this case and from considering the pending petition for panel rehearing and hearing en banc

Statement of relief sought:

1. Given Chief Judge Walker's failure to comply with his statutory and regulatory duty, under both 28 U.S.C. §351 and the Rules of the Judicial Council of the Second Circuit Governing Complaints against Judicial Officers, respectively, to take any required action at all, let alone 'promptly and expeditiously', in the more than seven months since Dr. Cordero submitted a complaint about Bankruptcy Judge John C. Ninfo, II, for having "engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts" by disregarding the law, rules, and facts when issuing orders now on appeal in this Court, in particular, and in handling the case, in general,
2. the Chief Judge himself has engaged in such prejudicial conduct and has in effect condoned such disregard of legality so that he cannot reasonably be expected to have due regard for law and rules when considering the pending petition for panel rehearing and hearing en banc or when otherwise dealing with this case.
3. Consequently, Chief Judge Walker should recuse himself from any such consideration.

MOVING PARTY: Dr. Richard Cordero
Petitioner Pro Se
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tel. (718) 827-9521; corderoric@yahoo.com

OPPOSSING PARTY: See next

Court-Judge/Agency appealed from: Hon. John M. Walker, Jr., Chief Judge of the Court of Appeals, 2d Cir.

Has consent of opposing counsel been sought? Not applicable

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL

Is oral argument requested? Yes

Argument date of appeal: December 11, 2003

Signature of Moving Petitioner Pro Se: Dr. Richard Cordero

Has service been effected? Yes; proof is attached

Date: March 22, 2004

ORDER

IT IS HEREBY ORDERED that the motion is **GRANTED** **DENIED.**

FOR THE COURT:
ROSEANN B. MacKECHNIE, Clerk of Court

Date: _____ **By:** _____

UNITED STATES COURT OF APPEALS
FOR
THE SECOND CIRCUIT

MOTION FOR CHIEF JUDGE JOHN M. WALKER, JR.,
TO RECUSE HIMSELF FROM IN RE PREMIER VAN LINES
AND THE PENDING PETITION FOR
PANEL REHEARING AND HEARING EN BANC

In re PREMIER VAN LINES, INC.,
Debtor

RICHARD CORDERO
Third party plaintiff-appellant

v. case no.: 03-5023

KENNETH W. GORDON, Esq.
Trustee appellee

DAVID PALMER,
Third party defendant-appellee

Dr. Richard Cordero, appellant pro se, states under penalty of perjury as follows:

1. On August 11, 2003, Dr. Cordero filed with the Clerk of this Court a complaint about the Hon. John C. Ninfo, II, U.S. Bankruptcy Judge, who together with court officers at the U.S. Bankruptcy Court and the U.S. District Court for the Western District of New York has disregarded the law, rules, and facts so repeatedly and consistently to the detriment of Dr. Cordero, the sole non-local party, who resides in New York City, and to the benefit of the local parties in Rochester as to form a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing and of bias against him. Those wrongful and biased acts included Judge Ninfo's failure to move the case along its procedural stages, the instances of which were identified with cites to the FRCivP. To no avail, for there has been a grave failure to act upon that complaint.

TABLE OF CONTENTS

I. The Chief Judge's failure to comply with duties imposed on him by law and rules shows his capacity to disregard law and rules, which nevertheless must be the basis for administering the business of the courts, such as deciding the petition for panel rehearing and hearing en banc

A. The Chief Judge has a duty under law and rules to handle the complaint 'promptly and expeditiously'

2. Those failures have not been cured yet and the bias has not abated either. Hence, Judge Ninfo has engaged and continues to engage "in conduct prejudicial to the effective and **expeditious** administration of the business of the courts." (emphasis added) Such conduct provides the basis for a complaint under 28 U.S.C. §372.

3. Dr. Cordero's complaint about Judge Ninfo relied thereupon. After being reformatted and resubmitted on August 27, 2003, it invoked the similar provisions found now at 28 U.S.C. §351.

4. Subsection (c)(1) thereof provides that "In the interests of the effective and **expeditious** administration of the business of the courts…the chief judge may, by written order stating reasons therefor, identify a complaint for purposes of this subsection and thereby dispense with filing of a written complaint" (emphasis added). In the same vein, (c)(2) states that "Upon receipt of a complaint filed under paragraph (1) of this subsection, the clerk shall **promptly** transmit such complaint to the chief judge of the circuit…" (emphasis added). More to the point, (c)(3) provides that "After **expeditiously** reviewing a complaint, the chief judge, by written order stating his reasons, may- (A) dismiss the complaint…(B) conclude the proceedings…The chief judge **shall** transmit copies of his written order to the complainant." (emphasis added). What is more, (c)(3) requires that "If the chief judge does not enter an order under paragraph (3) of this subsection, such judge **shall promptly**-(A) appoint…a special committee to investigate…(B) certify the complaint and any other documents pertaining thereto to each member of such committee; and (C) provide written notice to the complainant and the judge…of the action taken under this paragraph" (emphasis added). The statute requires 'prompt and expeditious' handling of such a complaint and even imposes the obligation so to act specifically on the chief judge of the circuit.

5. Rule 3(a) of the Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 U.S.C. §351 et seq., provides, among other things, that "The clerk will **promptly** send copies of the complaint to the chief judge of the circuit…" (emphasis added). Likewise, Rule 4(e) provides that "If the complaint is not dismissed or concluded, the chief judge will **promptly** appoint a special committee" (emphasis added). For its part, Rule 7(a) requires that "The clerk will **promptly** cause to be sent to each member of the judicial council" (emphasis added) copies of certain documents for deciding the complainant's petition for review. The tenor of the Rules of the Second Circuit is that action will be taken expeditiously. The Circuit's chief judge is not only required to enforce those Rules, but as its foremost officer, he is also expected to do so in order to set the most visible example of conduct in accordance with the rule of law.

B. The Chief Judge has failed to take action in more than seven months and would not even keep, let alone answer, a complaint status inquiry

6. Nevertheless, over seventh months have gone by since Dr. Cordero submitted his complaint about Judge Ninfo, but the Chief Judge of the Second Circuit, the Hon. John M. Walker, Jr., has failed to take the action required of him by statute and rules in connection therewith, let alone notify Dr. Cordero of any action taken by him 'promptly and expeditiously'.

7. Far from it! Thus, on February 2, 2004, Dr. Cordero wrote to Chief Judge Walker to ask about the status of the complaint and to update it with a description of subsequent events further evidencing wrongdoing. To Dr. Cordero's astonishment, his letter of inquiry and its four accompanying copies were returned to him immediately on February 4. One can hardly fathom why the Chief Judge, who not only is dutybound to apply the law, but must also be seen applying it, would not even accept possession of a letter inquiring what action he had taken to comply with such duty. Nor can one fail to be shocked by the fact that precisely a complaint charging disregard of the law and rules is dealt with by disregarding the law and rules requiring that it be handled 'promptly and expeditiously'. Nobody is above the law; on the contrary, the higher one's position, the more important it is to set the proper example of respect for the law and its objectives.

C. The Chief Judge failed to appoint a special committee

8. Likewise, there is evidence that Chief Judge Walker has failed to comply with Rule 4(e) of the Rules Governing Complaints requiring that "the chief judge will **promptly** appoint a special committee…to investigate the complaint and make recommendations to the judicial council". (emphasis added) The latter can be deduced from the fact that on February 11 and 13 Dr. Cordero wrote to members of the judicial council concerning this matter. The replies of those that have been kind enough to write back show that they did not know anything about this complaint, much less have knowledge of the Chief Judge appointing any special committee or of any committee recommendations made to them.

D. The Chief Judge is member of the panel that failed even to discuss the pattern of wrongdoing

9. There is still more. The pattern of wrongdoing and bias at the bankruptcy and district courts

has materialized in more than 10 decisions adopted by either Judge Ninfo or his colleague upstairs in the same federal building, the Hon. David G. Larimer, U.S. District Judge. Dr. Cordero challenged those orders in an appeal in this Court bearing docket no. 03-5023. One of the appeal's three separate grounds is that such misconduct has tainted the decisions with bias and prejudice against Dr. Cordero and denied him due process. Yet, the order of January 26, 2004, dismissing the appeal was adopted by a panel including the Chief Judge. It does not even discuss that pattern, not to mention determine how wrongdoing may have impaired the lawfulness of the orders on appeal.

10. If a judge can be disqualified for only "creating an appearance of impropriety", *Liljeberg v. Health Servs. Acquisition Corp.,* 486 U.S. 847, at 859-60 (1988), then the appearance of one of the worst forms of impropriety, that is, perverting judicial judgment through partiality, must be sufficient to at the very least be recognized and considered in any decision. Disregarding bias and prejudice in the process of judicial decision-making that vitiate any alleged substantive grounds for the resulting decision allows the process to become a farce. The Chief Judge, in addition to his responsibility as the chief steward of the integrity of that process in this Circuit, had a statutory duty to act upon a complaint that the process that issued the appealed orders was perverted through a pattern of disregard of legality and of commission of wrongdoing. Yet, the Chief Judge too disregarded the complaint.

E. The Chief Judge failed to bear his heavier responsibility arising from both his superior knowledge of judicial wrongdoing and its consequences on a person as well as from his role as chief steward of the integrity of the courts

11. In so disregarding his duty, the Chief Judge bears a particularly heavy responsibility, for he knows particularly through a complaint transmitted under statute and rule to him for his consideration, as well as generally through all the papers filed by Dr. Cordero and transmitted to the panel, that Judge Ninfo's and others' targeted misconduct and systemic wrongdoing have inflicted upon Dr. Cordero irreparable harm for a year and a half by causing him enormous expenditure of time, effort, and money in, among other things, legal research and writing as well as traveling, aggravated by tremendous emotional distress. Yet, the Chief Judge has knowingly allowed the case to be remanded and thereby permitted Dr. Cordero to be the target of further abuse. Worse still, such abuse is likely to be rendered harsher by a

retaliatory motive and more flagrant by the Chief Judge's failure to take any action on the complaint, let alone condemn the complained-about abuse, which may be construed as his condonation of it…

12. by the Circuit's Chief Judge!, the one reasonably expected to ensure that the foremost business of Circuit courts must be the dispensation of justice through fair and just process. But instead of doing justice and being seeing doing justice, the Chief Justice is seen to be not only blind to the commission of injustice through the disregard of laws and rules at the root of justice by those whom he is supposed to supervise, but also to be insensitive to its injurious consequences on a party…no! no! on Dr. Cordero, a person, a human being whose life has being disrupted in very practical terms by such injustice while his dignity has been trampled underfoot by so much disrespect and abuse.

13. However, if the person suffering those consequences is of no importance, for the human 'element' is not a part of the machinery of appellate decision making, where only the mechanics of judicial process matters and justice is but a by-product of it, not its paramount objective, then one is entitled to insist that at least the rules of that process be 'observed', that is, that they be applied and be seen to be applied. Chief Judge Walker has failed to apply the rules.

II. By disregarding law and rules just as have done the judges that issued the appealed orders, the Chief Judge has an interest in not condemning the prejudicial conduct that he has engaged in too, whereby he has a self-interest in the disposition of the petition that reasonably calls into question his objectivity and impartiality

14. Chief Judge Walker has failed to comply in over seven months with the duty to take specific action imposed upon him by law and rule, and that despite the insistent requirement that he act 'promptly and expeditiously'. Moreover, since he is deemed to know what the law and rules require of him, it must be conclusively stated that he has intentionally failed to comply. Thereby the Chief Judge himself "has [knowingly] engaged in conduct prejudicial to the effective and **expeditious** administration of the business of the courts." (emphasis added) Worse still, he has caused that prejudice by engaging in the same conduct complained about Judge Ninfo, who has acted in his judicial capacity with disregard for the law, rules, and

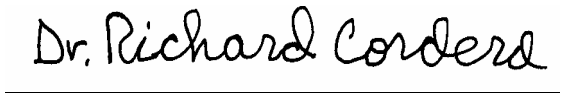
facts. Since both the Chief Judge and Judge Ninfo would hold themselves, and their positions require that they be held, to be reasonable persons, who are deemed to intend the reasonable consequences of their acts and omissions, then both of them must be deemed to have intended to inflict on Dr. Cordero the irreparable harm that would reasonably be expected to result from their failure to comply with their duties under law and rule.

15. Their having engaged in similar conduct has grave implications for the disposition of the pending motion for panel rehearing and hearing en banc as well as any further handling of this case. This is so because Dr. Cordero's petition is predicated, among other grounds, on the unlawfulness of the appealed orders due to Judge Ninfo's and Judge Larimer's participation in a pattern of disregard of the rule of law and the facts in evidence. Therefore, the Chief Judge can reasonably be expected to base his decision, not on law and rules, which he has shown to be capable of disregarding even when they charge him with specific duties, but rather on the extra-judicial consideration of not condemning his own conduct. That constitutes a self interest that compromises his objectivity. Consequently, the Chief Judge cannot be reasonably expected to be qualified to examine impartially, let alone zealously, and eventually find fault with, conduct that he himself has engaged in.

III. Relief requested

16. Therefore, Dr. Cordero respectfully requests that the Chief Judge, the Hon. John M. Walker, Jr., recuse himself from any direct or indirect participation in any current or future disposition of In re Premier Van Lines, docket no. 03-5023, beginning with the pending petition for panel rehearing and hearing en banc.

Respectfully submitted on,
March 22, 2004



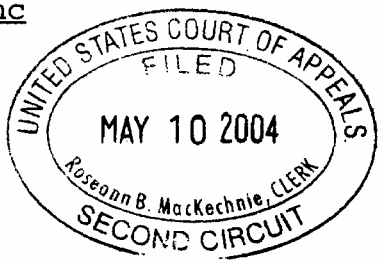
tel. (718) 827-9521

Dr. Richard Cordero
Petitioner Pro Se
59 Crescent Street
Brooklyn, NY 11208

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MOTION INFORMATION FORM

RECUSAL OF CHIEF JUDGE WALKER
from petition for rehearing
and petition for rehearing en banc



AMENDED ORDER

In re: Premier Van Lines

Docket No. 03-5023

Movant:
Richard Cordero
50 Crescent Street
Brooklyn, NY 11208-1515

	Yes	No
Consent sought from adversary (ies)?	/___/	/___/
Consent obtained from adversary (ies)?	/___/	/___/
Is oral argument desired?	/___/	/___/

ORDER

Before: Hon. John M. Walker,Jr., *Chief Judge*, Hon. James L. Oakes,
Hon. Robert A. Katzmann, *Circuit Judges*

IT IS HEREBY ORDERED that the motion be and it hereby is DENIED.

FOR THE COURT:
ROSEANN B. MACKECHNIE, Clerk
by

MAY 10 2004
Date

Arthur M. Heller
Motions Staff Attorney

SCtA.228-250 reserved

[A:1904-1926 reserved]

Dr. Richard Cordero

Ph.D., University of Cambridge, England
M.B.A., University of Michigan Business School
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August 11, 2003

STATEMENT OF FACTS

in support of a complaint under 28 U.S.C. §351 submitted to the Court of Appeals for the Second Circuit concerning the Hon. John C. Ninfo, II, U.S. Bankruptcy Judge and other court officers at the U.S. Bankruptcy Court and the U.S. District Court for the Western District of New York

I. The court's failure to move the case along its procedural stages

The conduct of the Hon. John C. Ninfo, II, is the subject of this complaint because it has been prejudicial to the effective and expeditious administration of the court's business. This is the result of his mismanagement of an adversary proceeding, namely, Pfuntner v. Trustee Kenneth Gordon, et al., dkt. no. 02-2230, which derived from bankruptcy case In re Premier Van Lines, Inc., dkt. no. 01-20692; the complainant, Dr. Richard Cordero, is a defendant pro se and the only non-local party in the former. The facts speak for themselves, for although the adversary proceeding was filed in September 2002, that is, 11 months ago, Judge Ninfo has:

1. failed to require even initial disclosure under Rule 26(a) F.R.Civ.P.;
2. failed to order the parties to hold a Rule 26(f) conference;
3. failed to demand a Rule 26(f) report;
4. failed to hold a Rule 16(b) F.R.Civ.P. scheduling conference;
5. failed to issue a Rule 16(b) scheduling order;
6. failed to demand compliance with his first discovery order of January 10, 2003, from Plaintiff Pfuntner and his attorney, David MacKnight, Esq.; thereafter, the Judge allowed the ordered inspection of property to be delayed for months; (E-29[1])and
7. failed to ensure execution by the Plaintiff and his attorney of his second and last discovery order issued orally at a hearing last April 23 and concerning the same inspection, while Dr. Cordero was required to travel and did travel to Rochester and then to Avon on May 19 to conduct that inspection. (E-33)

Nor will this case make any progress for a very long time given that a trial date is nowhere in sight. On the contrary, at a hearing on June 25, Judge Ninfo announced that Dr. Cordero will have to travel to Rochester (E-42) in October and again in November to attend hearings with the local parties. At the first hearing they will deal with the motions that Dr. Cordero has filed -including an application that he made as far back as December 26, 2002, and that at Judge Ninfo's instigation Dr. Cordero resubmitted on June 16 (A-472)- but that the Judge failed to decide at the hearings on May 21, June 25, and July 2, 2003. At those hearings Dr. Cordero will be required to prove his evidence beyond a reasonable doubt. Thereafter he will be

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[1] This Statement is supported by documents in two separate volumes, namely, one titled Items in the Record, referred to as A-#, where # stands for the page number, and another titled Exhibits accompanying the Statement of Facts, referred to as E-#. [Not included here, but available upon request.]

required to travel to Rochester for further monthly hearings for seven to eight months! (E-37)

The confirmation that this case has gone nowhere since it was filed in September 2002 comes from the Judge himself. In his order of July 15 he states that at next October's first "discrete hearing" –a designation that Dr. Cordero cannot find in the F.R.Bkr.P. or F.R.Civ.P.- the Judge will begin by examining the plaintiff's complaint, thereby acknowledging that he will not have moved the case beyond the first pleading by the time it will be in its 13th month! (E-60)

Nor will those "discrete hearings" achieve much, for the Judge has not scheduled any discovery or meeting of the parties whatsoever between now and the October "discrete hearing". He has left that up to the parties. However, Judge Ninfo knows that the parties cannot meet or conduct discovery on their own without the court's intervention. The proof of this statement is implicit in the above list, items 6 and 7, which shows that even when Judge Ninfo issued not one, but two discovery orders, the plaintiff disregarded them. Not only that, but the Judge has also spared Plaintiff Pfuntner and Mr. MacKnight any sanctions, even after Dr. Cordero had complied with the Judge's orders to his detriment by spending time, money, and effort, and requested those sanctions and even when Judge Ninfo himself requested that Dr. Cordero write a separate motion for sanctions and submit it to him (E-34).

Nor has Judge Ninfo imposed any adverse consequences on a party defaulted by his own Clerk of Court (E-17) or on the Trustee for submitting false statements to him (E-9). Hence, the Judge has let the local parties know that they have nothing to fear from him if they fail to comply with a discovery request, particularly one made by Dr. Cordero. By contrast, Judge Ninfo has let everybody know, particularly Dr. Cordero, that he would impose dire sanctions on him if he failed to comply (E-33). Thus, at the April 23, 2003, hearing, when Plaintiff Pfuntner wanted to get the inspection at his warehouse over with to be able to clear his warehouse to sell it and remain in sunny Florida care free, the Judge ordered Dr. Cordero to travel to Rochester to conduct the inspection within the following four weeks or he would order the property said to belong to Dr. Cordero removed at his expense to any other warehouse in Ontario, that is, whether in another county or another country, the Judge could not care less where.

By now it may have become evident that Judge Ninfo is neither fair nor impartial. Indeed, underlying the Judge's inaction is the graver problem of his bias and prejudice against Dr. Cordero. Not only he, but also court officers in both the bankruptcy and the district court have revealed their partiality by participating in a series of acts of disregard of facts, rules, and the law aimed at one clear objective: to derail Dr. Cordero's appeals from decisions that the Judge has taken for the protection of local parties and to the detriment of Dr. Cordero's legal rights. There are too many of those acts and they are too precisely targeted on Dr. Cordero alone for them to be coincidental. Rather, they form a pattern of intentional and coordinated wrongful activity. (E-9) The relationship between Judge Ninfo's prejudicial and dilatory management of the case and his bias and prejudice toward Dr. Cordero is so close that a detailed description of the latter is necessary for a fuller understanding of the motives for the former.

II. Judge Ninfo's bias and prejudice toward Dr. Cordero explain his prejudicial management of the case

A. Judge Ninfo's summary dismissal of Dr. Cordero's cross-claims against Trustee Gordon

In March 2001, Judge Ninfo was assigned the bankruptcy case of Premier Van Lines, a moving and storage company owned by Mr. David Palmer. In December 2001, Trustee Kenneth

Gordon was appointed to liquidate Premier. His performance was so negligent and reckless that he failed to realize from the docket that Mr. James Pfuntner owned a warehouse in which Premier had stored property of his clients, such as Dr. Cordero. Nor did he examine Premier's business records, to which he had a key and access. (A-48, 49; 109, ftnts-5-8; 352) As a result, he failed to discover the income-producing storage contracts that belonged to the estate; consequently, he also failed to notify Dr. Cordero of his liquidation of Premier. Meantime, Dr. Cordero was looking for his property for unrelated reasons, but he could not find it. Finally, he learned that Premier was in liquidation and that his property might have been left behind by Premier at Mr. James Pfuntner's warehouse. He was referred to the Trustee to find out how to retrieve it. But the Trustee would not give Dr. Cordero any information at all and even enjoined him not to contact his office any more. (A-16, 17, 1, 2)

Dr. Cordero found out that Judge Ninfo was supervising the liquidation and requested that he review Trustee Gordon's performance and fitness to serve as trustee. (A-7, 8) The Judge, however, took no action other than pass the complaint on to the Trustee's supervisor at the U.S. Trustee local office, located in the same federal building as the court. (A-29) The supervisor conducted a pro-forma check on Supervisee Gordon that was as superficial as it was severely flawed. (A-53, 107) Nor did Judge Ninfo take action when the Trustee submitted to him false statements and statements defamatory of Dr. Cordero to persuade him not to undertake the review of his performance requested by Dr. Cordero. (A-19, 38)

Then Mr. Pfuntner brought his adversary proceeding against the Trustee, Dr. Cordero, and others. (A-21) Dr. Cordero cross-claimed against the Trustee (A-70, 83, 88), who countered with a Rule 12(b)(6) motion to dismiss (A-135, 143). The hearing of the motion took place on December 18, almost three months after the adversary proceeding was brought. Without having held any meeting of the parties or required any disclosure, let alone any discovery, Judge Ninfo summarily dismissed Dr. Cordero's cross-claims with no regard to the legitimate questions of material fact regarding the Trustee's negligence and recklessness in liquidating Premier (E-11). Indeed, Judge Ninfo even excused Trustee Gordon's defamatory and false statements as merely "part of the Trustee just trying to resolve these issues", (A-275, E-12) thus condoning the Trustee's use of falsehood and showing gross indifference to its injurious effect on Dr. Cordero.

That dismissal constituted the first of a long series of similar events of disregard of facts, law, and rules in which Judge Ninfo as well as other court officers at both the bankruptcy and the district court have participated, all to the detriment of Dr. Cordero and aimed at one objective: to prevent his appeal, for if the dismissal were reversed and the cross-claims reinstated, discovery could establish how Judge Ninfo had failed to realize or had knowingly tolerated Trustee Gordon's negligent and reckless liquidation of Premier. (E-11) From then on, Judge Ninfo and the other court officers have manifested bias and prejudice in dealing with Dr. Cordero. (E-13)

B. The Court Reporter tries to avoid submitting the transcript of the hearing

As part of his appeal of the court's dismissal of his cross-claims against the Trustee, Dr. Cordero contacted the court reporter, Mary Dianetti, on January 8, 2003, to request that she make a transcript of the December 18 hearing of dismissal. Rather than submit it within the 10 days that she said she would, Court Reporter Dianetti tried to avoid submitting the transcript and submitted it only over two and half months later, on March 26, and only after Dr. Cordero repeatedly requested her to do so. (E-14, A-261)

C. The Clerk of Court and the Case Administrator disregarded their obligations in handling Dr. Cordero's application for default judgment against the Debtor's Owner

Dr. Cordero timely submitted on December 26, 2002, an application to enter default judgment against third-party defendant David Palmer. (A-290) Case Administrator Karen Tacy, failed to enter the application in the docket; for his part, Bankruptcy Clerk of Court Paul Warren, failed to certify the default of the defendant. (E-18) When a month passed by without Dr. Cordero hearing anything from the court on his application, he called to find out. Case Administrator Tacy told him that his application was being held by Judge Ninfo in chambers. Dr. had to write to him to request that he either enter default judgment or explain why he refused to do so. (A-302) Only on the day the Judge wrote his Recommendation on the application to the district court, that is February 4, 2003, did both court officers carry out their obligations, belatedly certifying default (A-303) and entering the application in the docket (A-450, entry 51).

The tenor of Judge Ninfo's February 4 Recommendation was for the district court to deny entry of default judgment. (A-306) The Judge disregarded the plain language of the applicable legal provision, that is, Rule 55 F.R.Civ.P., (A-318) whose requirements Dr. Cordero had met, for the defendant had been by then defaulted by Clerk of Court Warren (A-303) and the application was for a sum certain (A-294). Instead, Judge Ninfo boldly prejudged the condition in which Dr. Cordero would eventually find his property after an inspection that was sine die. To indulge in his prejudgment, he disregarded the available evidence submitted by the owner himself of the warehouse where the property was which pointed to the property's likely loss or theft. (E-20) When months later the property was finally inspected, it had to be concluded that some was damaged and other had been lost. To further protect Mr. Palmer, the one with dirty hands for having failed to appear, Judge Ninfo prejudged issues of liability before he had allowed any discovery whatsoever or even any discussion of the applicable legal standards or the facts necessary to determine who was liable to whom for what. (E-21) To protect itself, the court alleged in its Recommendation that it had suggested to Dr. Cordero to delay the application until the inspection took place, but that is a pretense factually incorrect and utterly implausible. (E-22)

D. District Court David Larimer accepted the Recommendation by disregarding the applicable legal standard, misstating an outcome-determinative fact, and imposing an obligation contrary to law

The Hon. David G. Larimer, U.S. District Judge, received the Recommendation from his colleague Judge Ninfo, located downstairs in the same building, and accepted it. To do so, he repeatedly disregarded the outcome-determinative fact under Rule 55 that the application was for a sum certain (E-23), to the point of writing that "the matter does not involve a sum certain". (A-339) Then he imposed on Dr. Cordero the obligation to prove damages at an "inquest", whereby he totally disregarded the fact that damages have nothing to do with a Rule 55 application for default judgment, where liability is predicated on defendant's failure to appear. Likewise, Judge Larimer dispensed with sound judgment by characterizing the bankruptcy court as the "proper forum" to conduct the "inquest", despite Colleague Ninfo's prejudgment and bias. (E-25)

After the inspection showed that Dr. Cordero's property was damaged or lost, Judge Ninfo took the initiative to ask Dr. Cordero to resubmit his default judgment application. He submitted the same application and the Judge again denied it! The Judge alleged that Dr. Cordero had not proved how he had arrived at the amount claimed, an issue known to the Judge for six months but that he did not raise when asking to resubmit; and that Dr. Cordero had not served

Mr. Palmer properly, an issue that Judge Ninfo had no basis in law or fact to raise since the Court of Clerk had certified Mr. Palmer's default and Dr. Cordero had served Mr. Palmer's attorney of record. (E-26) Judge Ninfo had never intended to grant the application. (E-28)

E. Judge Ninfo has allowed Mr. Pfuntner and Mr. MacKnight to violate his two discovery orders while forcing Dr. Cordero to comply or face severe and costly consequences

Judge Ninfo has allowed Mr. Pfuntner and Mr. MacKnight to violate two discovery orders and submit disingenuous and false statements while charging Dr. Cordero with burdensome obligations. (E-29) Thus, after issuing the first order and Dr. Cordero complying with it to his detriment, the Judge allowed Mr. Pfuntner and Mr. MacKnight to ignore it for months. However, when Mr. Pfuntner needed the inspection, Mr. MacKnight approached ex parte the Judge, who changed the terms of the first order without giving Dr. Cordero notice or opportunity to be heard. (E-30) Instead, Judge Ninfo required that Dr. Cordero travel to Rochester to discuss measures on how to travel to Rochester. (E-30) In the same vein, the Judge showed no concern for Mr. MacKnight's disingenuous motion and ignored Dr. Cordero's complaint about it (E-31), thus failing to safeguard the integrity of the judicial process.

F. Court officers have disregarded even their obligations toward the Court of Appeals

Court officers at both the bankruptcy and the district court have not hesitated to disregard rules and law to the detriment of Dr. Cordero even in the face of their obligations to the Court of Appeals for the Second Circuit. Thus, although Dr. Cordero had sent to each of the clerks of those courts originals of his Redesignation of Items on the Record and Statement of Issues on Appeal neither docketed nor forwarded this paper to the Court of Appeals. (E-49) Thereby they created the risk of the appeal being thrown out for non-compliance with an appeal requirement that in all likelihood would be imputed to Dr. Cordero. Similarly, they failed to docket or forward the March 27 orders, which are the main ones appealed from, thus putting at risk the determination of timeliness of Dr. Cordero's appeal to the Court of Appeals. (E-52)

III. The issues presented

There can be no doubt that Judge Ninfo's conduct, which has failed to make any progress other than in harassing Dr. Cordero with bias and prejudice, constitutes "conduct prejudicial to the effective and expeditious administration of the business of the courts". Actually, his conduct raises even graver issues that should also be submitted to a special committee to investigate:

Whether Judge Ninfo summarily dismissed Dr. Cordero's cross-claims against the Trustee and subsequently prevented the adversary proceeding from making any progress to prevent discovery that would have revealed how he failed to oversee the Trustee or tolerated his negligent and reckless liquidation of Premier and the disappearance of Debtor's Owner Palmer;

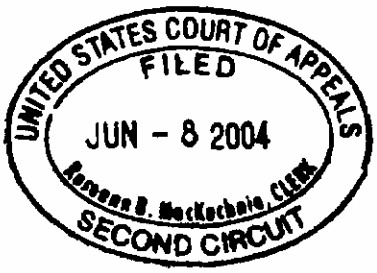
Whether Judge Ninfo affirmatively recruited, or created the atmosphere of disregard of law and fact that led, other court officers to engage in a series of acts forming a pattern of non-coincidental, intentional, and coordinated conduct aimed at achieving an unlawful objective for their benefit and that of third parties and to the detriment of non-local pro se party Dr. Cordero.

Respectfully submitted, under penalty of perjury, on
August 11, 2003, and, after being reformatted, on August 27, 2003

Dr. Richard Cordero

ORIGINAL

JUDICIAL COUNCIL OF THE
SECOND CIRCUIT



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In re:
CHARGE OF JUDICIAL MISCONDUCT

Docket No. 03-8547

----------X

Dennis Jacobs, Acting Chief Judge:

On August 28, 2003, Complainant filed a complaint with the Clerk's Office of the U.S. Court of Appeals for the Second Circuit, pursuant to the Judicial Councils Reform and Judicial Conduct and Disability Act, 28 U.S.C. § 351 (formerly § 372(c)) (the "Act") and the Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers (the "Local Rules"), charging a Bankruptcy Court Judge (the "Judge") of this Circuit with misconduct.

Background

A review of the docket sheet in this case indicates that in September 2002, Complainant, in addition to several others, was named as a defendant in an adversary proceeding in Bankruptcy Court. After his cross-claims against the trustee were dismissed in December 2002, Complainant filed a motion for default judgment as well as a notice of appeal. In February 2003, the Bankruptcy Court denied a motion for an extension of time to file the notice of appeal, and in March 2003, the District Court granted a motion by the trustee to dismiss the appeal. Since that time, Complainant has filed numerous motions, including a motion for reconsideration, a renewed motion for default judgment,

a motion for sanctions, and a motion to recuse. The motion for reconsideration was denied, and it appears from the docket sheet that hearings were scheduled on the other motions. One was conducted in October 2003, after which Complainant's motion for recusal was denied. In addition, the Second Circuit recently denied Complainant's related mandamus petition.

Allegations

The Statement of Facts recites that the Judge "fail[ed] to move the case along its procedural stages." Specifically, Complainant alleges that the Judge failed to hold conferences, issue orders, schedule discovery, rule on motions, "impose[] consequences on a [defaulted] party;" and that the Judge took no action on Complainant's request that the judge review the trustee's performance and fitness to serve. Complainant also alleges that the Judge dismissed his cross-claims "with no regard to the legitimate questions of material fact regarding the [t]rustee's negligence and recklessness[.] Indeed, [the Judge] even excused [the trustee's] defamatory and false statements . . . thus condoning the [t]rustee's use of falsehood and showing gross indifference to its injurious effect on [Complainant]." He also asserts that the Judge has exhibited "bias and prejudice against" him and that the Judge allowed the other parties "to violate two discovery orders and submit disingenuous and false statements while charging [Complainant] with burdensome obligations." He adds that the District Court Judge, who is not named on the complaint form, "totally disregarded the fact that the damages have nothing to do with a Rule 55 application for default judgment where liability is predicated on defendant's failure to appear."

The Statement of Facts further alleges that: the Trustee's performance was "negligent and reckless; the court reporter "tried to avoid submitting the transcript"; the "Clerk of Court and Case

Administrator disregarded their obligations in handling [Complainant's] application for default judgment"; and that the court officers made efforts to "derail" Complainant's appeals "to the detriment of [his] legal rights."

Disposition

Complainant has failed to provide evidence of any conduct "prejudicial to the effective and expeditious administration of the business of the courts." *See* Local Rules 1(b) and 4(c)(1).

Complainant's statements concerning the treatment of motions, the handling of scheduling matters, and various rulings amount to a challenge to the merits of a decision or a procedural ruling. However, "[t]he complaint procedure is not intended to provide a means of obtaining a review of a judge's or magistrate's decision or ruling in a case. The judicial council of this circuit . . . does not have the power to change a decision or ruling. Only a court can do that." Local Rule 1(e); *see* Local Rule 1(b) (the Act does not cover "wrong decisions - even very wrong decisions - in the course of hearings, trials or appeals"). Allegations relating to the merits of the case must be pursued through normal appellate procedures. Similarly, a judicial misconduct complaint may not be used to force the Bankruptcy Judge to rule on Complainant's motions or other aspects of the case. *See* Local Rule 1(e).

Complainant's allegations of bias and prejudice are unsupported and therefore rejected as frivolous. *See* 28 U.S.C. § 352(b)(1)(A)(iii); Local Rule 4(c)(3).

Finally, to the extent that the complaint relies on the conduct or inaction of the trustee, the court reporter, the Clerk, the Case Administrator, or court officers, it is rejected. The Act applies only to judges of the United States courts of appeals, district courts, and bankruptcy courts, as well as

United States magistrate judges. *See* Local Rule 1(c).

For the reasons stated above, the complaint is dismissed. The Clerk is directed to transmit copies of this order to the Complainant and to the Judge.

DENNIS JACOBS
Acting Chief Judge

Signed: New York, New York
June 8, 2004

Dr. Richard Cordero

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

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

July 8, resubmitted on July 13, 2004

Mr. Fernando Galindo
Acting Clerk of Court
U.S. Court of Appeals, 2nd Circuit
40 Foley Square, Room 1802
New York, NY 10007

Dear Mr. Galindo,

I hereby petition the Judicial Council for review of the Chief Judge's order of June 8, 2004, dismissing my judicial misconduct complaint, docket no. 03-8547 (the Complaint).

The dismissal of the Complaint was so out of hand that it did not even acknowledge the two issues presented or how a pattern of non-coincidental, intentional, and coordinated wrongful acts by judicial and non-judicial officers is within the scope of 28 U.S.C. §351 et seq. and this Circuit's Rules Governing Judicial Misconduct Complaints (collectively referred to as the Complaint Provisions) and in need of investigation by a special committee

The dismissal of my complaint is an example of why Supreme Court Chief Justice William Rehnquist appointed Justice Stephen Breyer to head the Judicial Conduct and Disability Act Study Committee and why, when welcoming his appointment, James Sensenbrenner, Jr., Chairman of the House of Representatives Committee on the Judiciary, said: "Since [the 1980s], however, this [judicial misconduct complaint] process has not worked as well, with some complaints being dismissed out of hand by the judicial branch without any investigation" (Exhibits-67, 69[2]).

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[2] The source for this and every other statement made in this letter is contained in a 125-page bound volume of exhibits. When timely submitted on July 8, it was prefaced by my original 10-page petition letter. Nevertheless, both that letter and the exhibits were returned to me with your letter of July 9 emphasizing that I should "resubmit ONLY your petition letter…[i]f your petition letter is not in compliance, it will be considered untimely filed and returned to you with no action taken." Your letter invokes "the authority of Rule 2(b) as a guideline [to] establish the definition of *brief* as applied to the *statement of grounds for petition* to five pages".

However, if this Circuit's Judicial Council had wanted to apply a numeric definition to the term "brief" in Rule 6(e) in the context of petition letters, it would have so provided. By not doing so, it indicated that "brief" is an elastic term to be applied under a rule of reason. It was certainly not unreasonable to submit my original 10-page letter, containing a table of contents, headings, and quotations from §351 et seq., the Rules, and statements by persons to support my arguments and facilitate their reading. Moreover, the July 9 letter is inconsistent in that it applies by analogy to petition letters the Rule 2(b) 5-page limit on complaints but fails to apply also by analogy to the same petitions the authority of Rule 2(d) allowing the submission of documents as evidence supporting a complaint.

It is irrelevant that "It has been the long-standing practice of this court to" limit petition letters to five pages, for the court has failed to give petitioners notice thereof. Yet, this court has had the opportunity to give them notice of its practice in the notification that it is required under Rule 4(f)(1) to give them of the dismissal and their right to appeal; it should have done so in light of the public notice requirement under §358(c). Instead, the court lets petitioners waste their time guessing at the meaning of "brief" and writing for naught a cogent, well-organized, and reasonably long 10-page petition letter. Inconsistency and lack of consideration are defining characteristics of arbitrariness.

Likewise, "Rule 8, Review by the judicial council of a chief judge's order", thus directly applicable here, expressly provides in section 8(e)(2) that the complained-about judge "will be provided with copies of any communications that may be addressed to the members of the judicial council by the complainant". Since the petition letter, though addressed to the Clerk of Court, is intended for the judicial council's members, there is every reason to allow the exhibits to accompany it as one of "any communications" addressed to the members by the complainant. Hence, the 10-page letter and its exhibits should have been filed. They should be available to any judicial council member under

Given that such systematic dismissal of complaints regardless of merits has been recognized as a problem so grave as to warrant action by the top officers of the judicial branch, there is little justification for considering seriously the stock allegations for dismissing my Complaint. The latter is just another casualty added to a phenomenon that defies statistical probabilities: While the 2003 Report of the Administrative Office of the U.S. Courts highlights that another record was set with federal appeals filings that grew 6% to 60,847, and civil filings in the U.S. district courts of 252,962 (E-66), the three consecutive reports of the Judicial Conference for March 2004, and September and March 2003 (E-60), astonishingly indicate that, as the latter report put it, the Conference "has not received any petitions for review of judicial council action, …nor are there any petitions for review pending from before that time" (E-59).

It is shocking that the judicial councils would abuse so blatantly their discretion under §352(c) to deny all petitions for review of chief judges' orders, thus barring their way to the Judicial Conference; (E-59; cf. Rule 8(f)(2)). One can justifiably imagine how each circuit makes it a point of honor not to disavow its chief judge and certainly never refer up its dirty laundry to be washed in the Judicial Conference. It is as if the courts of appeals had the power to prevent each and every case from reaching the Supreme Court and abused it systematically. In that event, instead of the Supreme Court reporting 8,255 filings in the 2002 Term –an increase of 4% from the 7,924 in the 2001 Term (E-66)- the Court would be caused to report 0 filings in a term! (E-60-65) Sooner or later the Justices would realize that such appeals system was what the current operation of the judicial misconduct complaints procedure is: a sham!

This is so evident here because Chief Judge Walker has repeatedly violated unambiguous obligations even under his own Circuit's Rules (E-119). To begin with, the Chief Judge violated his obligation under §352(a) to act "promptly" and "expeditiously" (E-76-77), taking instead 10 months to dispose of the Complaint (E-71) despite the circumstantial and documentary evidence that not even a Rule 4(b) "limited inquiry" was conducted (E-22-24). Secondly, Chief Judge Walker lacked authority under the Complaint Provisions to delegate to Judge Dennis Jacobs, who actually disposed of the Complaint, his obligation under §352(b) and Rule 4(f)(1), to handle such complaints and write reasoned orders to dispose of them. Thirdly, the Chief Judge violated his obligation under Rule 17(a) to make misconduct orders "publicly available", keeping all but those of the last three years, neither in the shelves, nor in a storage room of the Courthouse, nor in an annex, nor in another building in the City of New York, nor in the State of New York, nor elsewhere in the Second Circuit, but rather in the National Archives in Missouri! (E-28, 29, 33)

For violating so conspicuously the Complaint Provisions, the Chief Judge has a personal interest: to facilitate the dismissal of the related complaint against him submitted to Judge Jacob by Dr. Cordero on March 19, 2004, dkt. no. 04-8510 (E-22). If under that complaint the Chief Judge were investigated, the severe §359(a) Restrictions on individuals subject of investigation would be applicable and weigh him down even for years until the complaint's final disposition.

Indeed, if the Complaint, the one about Bankruptcy Judge John C. Ninfo, II, (E-71) were investigated and the special committee determined that Judge Ninfo had, as charged, engaged with other court officers in a pattern of non-coincidental, intentional, and coordinated disregard of the law, rules, and facts, then it would inevitably be asked why Chief Judge Walker too disregarded for 10 months the law imposing on him the promptness obligation, thereby allowing

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Rule 8(c). To that end, I am submitting the exhibits as a separate volume. But if it were to prevent the filing of the petition letter, consider that volume withdrawn, send it back to me, and file the letter, as we agreed on July 12.

the continuation of 'a prejudice "to the administration of the business of the courts"' so serious as to undermine the integrity of the judicial system in his circuit. That question would raise many others, such as what he should have known, as the foremost judicial officer in this circuit; when he should have known it; and how many of the overwhelming majority of complaints, dismissed too without investigation, would have been investigated by a law-abiding officer not biased toward his peers. Similar questions could spin the investigation out of control quite easily.

Therefore, if the Complaint about Judge Ninfo could be dismissed, then the related complaint about the Chief Judge could more easily be dismissed, thus eliminating the risk of his being investigated. What is more, if the Complaint could somehow be dismissed by somebody other than himself, the inference could be prevented that he had done so out of his own interest in having the complaint about him dismissed. The fact is that the Complaint was dismissed by another, that is, Judge Jacobs, who likewise has disregarded his obligation to handle "promptly" and "expeditiously" the complaint of March 19, 2004, about his peer, the Chief Judge (E-22).

The appearance of a self-serving motive for dismissing the Complaint arises reasonably from the totality of circumstances. It is also supported by the axiom that neither a person nor the persons in an institution can investigate themselves impartially, objectively, and zealously. Nor can they do so reliably. Their interest in preventing a precedent that one day could be applied to them if they were complained about as well as their loyalties in the context of office politics will induce or even force insiders to close ranks against an 'attack' from an outsider. Only independent investigators whose careers cannot be affected for better or for worse by those investigated or their friendly peers can be expected to conduct a reliable investigation.

Instead the constant found in Judge Jacobs' dismissal of the Complaint was the sweeping and conclusory statements found in other dismissals ordered in the last three years (E-57):

1) Complainant has failed to provide evidence of any conduct "prejudicial to the effective and expeditious administration of the business of the courts." [Citing a standard and saying that it was not met, without discussing what the requirements for meeting it have been held to be –our legal system is based on precedent, not on 'because I say so'- and how the evidence presented failed to meet it, does not turn a foregone conclusion into a reasoned order.]

2) Complainant's statements…amount to a challenge to the merits of a decision or a procedural ruling. [This is a particularly inane dismissal cop-out because when complaining about the conduct of judges as such, their misconduct is most likely to be related to and find its way into their decisions. The insightful question to ask is in what way the judge's misconduct biased his judgment and colored his decision.]

3) Complainant's allegations of bias and prejudice are unsupported and therefore rejected as frivolous. [Brilliantly concise legal definition and careful application to the facts of the lazy catch-all term 'frivolous'!]

4) Finally, to the extent that the complaint relies on the conduct or inaction of the trustee, the court reporter, the Clerk, the Case Administrator, or court officers, it is rejected. The Act applies only to judges…

That last statement is much more revealing because it shows that Judge Jacobs did not even know what the issues presented were, namely 1) whether Judge Ninfo summarily dismissed Dr. Cordero's cross-claims against the Trustee and subsequently prevented the adversary proceeding from making any progress to prevent discovery that would have revealed how he failed to oversee the Trustee or tolerated his negligent and reckless liquidation of Premier and the disappearance of the Debtor's Owner, namely, David Palmer; and 2) whether Judge Ninfo

affirmatively recruited, or created the atmosphere of disregard of law and fact that led, other court officers to engage in a series of acts forming a pattern of non-coincidental, intentional, and coordinated conduct aimed at achieving an unlawful objective for their benefit and that of third parties and to the detriment of Dr. Cordero, the only non-local and pro se party.

Judge Jacobs failed to recognize the abstract notion of motive and how it could lead Judge Ninfo to take decisions that only apparently had anything to do with legal merits. What is less, he did not even detect, let alone refer to, the concrete and expressly used term "pattern". Had he detected it, he could have understood how acts by non-judges, and thus not normally covered by the Complaint Provisions, could form part of unlawful activity coordinated by a judge, which would definitely constitute misconduct, to put it mildly. But he remained at the superficial level of considering each individual act in isolation and dismissing each singly. How can the dots be connected to detect any pattern of conduct supportive of reasonable suspicion of wrongdoing if the dots are not even plotted on a chart so that they can be looked at collectively?

Circumstantial evidence is so indisputably admitted in our legal system that cases built on it can cause a person to lose his property, his freedom, and even his life. Such cases look at the totality of circumstances. The Complaint describes those circumstances as a whole. It is supported by a separate volume of documentary evidence consisting of more than 500 pages –referred to as A-#– which was discussed in greater detail in another separate 54 page memorandum that laid out the facts and showed how they formed a pattern of activity. This memorandum is referred to as E-# in the 5-page Complaint, which is only its summary. Just the heft of such evidence and its carefully intertwined presentation would induce an unbiased person –one with no agenda other than to insure the integrity of the courts and to grant the complainant a meaningful hearing– to entertain the idea that the Complaint might be a thoughtful piece of work with substance to it that should be read carefully. Judge Jacobs not only failed to make reference to that material, but he did not even acknowledge its existence. Is it reasonable to assume that he did not waste time browsing it if he only intended to write a quick job, pro-forma dismissal?

The totality of circumstances presented in the Complaint is sufficient to raise reasonable suspicion of wrongdoing. There is no requirement that the complainant, who is a private citizen, not a private investigator, build an airtight criminal case ready for submission by the district attorney to the judge for trial. That is the work that a special committee would begin to do upon its appointment by a chief judge or a judicial council concerned by even the appearance of wrongdoing that undermines public confidence in their circuit's judicial system. Unlike the complainant, such committee can conduct a deeper and more extensive investigation because it has the necessary subpoena power.

A more effective investigation can be mounted in cooperation with the FBI through a simultaneous referral to it. Indeed, the FBI has not only subpoena power, but also the required expert manpower and resources to interview and depose large numbers of persons anywhere they may be and cross-relate their statements; engage in forensic accounting and trace bankruptcy debtors' assets from where they were to wherever they may have ended up; and flush out and track down evidence of official corruption, such as bribes. What motives could Chief Judge Walker and Judge Jacobs have had to fail to set in motion either investigation given the stakes?

Had they appointed a special committee, it would have found at least the following:

1) Chapter 7 Trustee K. Gordon was referred to Judge Ninfo for a review of his performance and fitness to serve; then sued for failure to realize that storage contracts were income pro-

ducing assets of the estate, which would have allowed him to find Dr. Cordero's property lost by the debtor. Disregarding the genuine issues of material fact, the Judge dismissed all claims. Was he protecting a well-known Trustee who had no time to find out anything, for according to Pacer[3], the Trustee has *3,383 cases!*, all but one before Judge Ninfo? (E-126)

2) What is more, Chapter 13 Trustee George Reiber has, again according to Pacer, 3,909 *open* cases! He also cannot possibly have the time or the inclination to check the factual accuracy or internal consistency of the content of each bankruptcy petition to ascertain its good faith. So on what basis does he accept petitions and ready them for confirmation of their plans of debt repayment by Judge Ninfo, before whom he appears time and again?

3) A petition for bankruptcy, dated January 26, 2004, was filed by David and Mary Ann DeLano; (E-82 et seq.). Though internally riddled with red flags as to its good faith (E-79), it was accepted by Trustee Reiber without asking for a single supporting financial document; and was readied for confirmation by Judge Ninfo (E-22-24). This is a test case that will blow up the cover of everything that is wrong in that bankruptcy district.

My Complaint too is a test case whether, as expected, this petition is denied, upon which I will submit it to Justice Breyer's Committee; or it is granted and a special committee is appointed. If the latter happens, it is necessary that its investigation appear to be and actually be independent as much as possible. Thus, I respectfully request that:

1) Neither the Chief Judge appoint himself nor Judge Jacobs be appointed to the review panel;

The review panel refer the petition to the full membership of the Judicial Council;

The Judicial Council itself take the "appropriate action" under Rule 5 of appointing a special committee to investigate and that neither Chief Judge Walker nor Judge Jacobs be members of such committee, but its members be experienced investigators unrelated to the Court of Appeals and the WDNY Bankruptcy and District Courts and be capable of conducting an independent, objective, and zealous investigation;

The special committee be charged with conducting an investigation to determine:

the involvement in a pattern of non-coincidental, intentional, and coordinated acts of disregard of the law, rules, and facts on the part of judges, administrative staff, debtors as well as both private and U.S. trustees in WDNY and NYC;

the link between judicial misconduct and a bankruptcy fraud scheme involving the approval for legal and illegal fees of numerous meritless bankruptcy petitions; and

the participation of district and circuit judges in a systematic effort to suppress misconduct complaints in violation of §351 et seq. and this Circuit's Complaint Rules;

This matter be simultaneously referred to the FBI for cooperative investigation; and

This petition together with the Complaint and the documentary evidence submitted with each be referred to the Judicial Conference of the United States; (cf. Rule 14(a) and (e)(2).

Sincerely,

Dr. Richard Cordero

[3] Public Access to Court Electronic Records; ecf.nywb.uscourts.gov; or https://pacer.psc.uscourts.gov.

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March 19, 2004

STATEMENT OF FACTS

Setting forth a COMPLAINT UNDER 28 U.S.C. §351 **ABOUT**

The Hon. John M. Walker, Jr., Chief Judge

of the Court of Appeals for the Second Circuit

addressed under Rule 18(e) of the Rules of the Judicial Council
of the Second Circuit Governing Complaints against Judicial Officers

to the Circuit Judge eligible to become the next chief judge of the circuit

On August 11, 2003, Dr. Richard Cordero filed a complaint about the Hon. John C. Ninfo, II, U.S. Bankruptcy Judge, who together with court officers at the U.S. Bankruptcy Court and the U.S. District Court for the Western District of New York has disregarded the law, rules, and facts so repeatedly and consistently to the detriment of Dr. Cordero, the sole non-local party, who resides in New York City, and to the benefit of the local parties in Rochester as to form a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing and of bias against him. The wrongful and biased acts included Judge Ninfo's and other court officers' failure to move the case along its procedural stages. The instances of failure were specifically identified with cites to the FRCivP. They have not been cured and the bias has not abated yet (5, infra) [4].

Far from it, those failures have been compounded by the failure of the Hon. John M. Walker, Jr., Chief Judge of the Court of Appeals for the Second Circuit, to take action upon the complaint. Indeed, six months after the submission of the complaint, which as requested (11, infra) was reformatted and resubmitted on August 27, 2003 (6, 3, infra), the Chief Judge had still failed to discharge his statutory duty under §351(c)(3) to "**expeditiously**" review the complaint and notify the complainant, Dr. Cordero, "by written order stating his reasons" why he was dismissing it. He had also failed to comply with §351(c)(4), which provides that, in the absence of dismissal, the chief judge "shall **promptly**…(C) provide written notice to the complainant and the judge or magistrate whose conduct is the subject of the complaint of the action taken under the paragraph". (emphasis added)

Consequently, on February 2, 2004, Dr. Cordero wrote to Chief Judge Walker to ask about the status of the complaint (1, infra). To Dr. Cordero's astonishment, his letter of inquiry and its four accompanying copies were returned to him immediately on February 4 (4, infra). One can hardly fathom why the Chief Judge, who not only is dutybound to apply the law, but must also be seen applying it, would not even accept possession of a letter inquiring what action he had taken to comply with such duty.

To make matters worse, there are facts from which one can reasonably deduce that Chief Judge Walker has not even notified Judge Ninfo of any judicial misconduct complaint filed against him. The evidence thereof came to light last March 8. It relates directly to the case in which Dr. Cordero was named a defendant, that is, Pfuntner v. Gordon et al, docket no. 02-

[4] The separate volume of evidentiary documents is not included here.

2230, which was brought and is pending before Judge Ninfo. The facts underlying this evidence are worth describing in detail, for they support in their own right the initial complaint and its call for an investigation of the suspicious relation between Judge Ninfo and the trustees.

After being sued by Mr. Pfuntner, Dr. Cordero impleaded Mr. David DeLano. On January 27, 2004, Mr. DeLano filed for bankruptcy under Chapter 13 of the Bankruptcy Code –docket no. 04-20280- a most amazing event, for Mr. DeLano has been a bank loan officer for 15 years! As such, he must be held an expert in how to retain creditworthiness and ability to repay loans. Yet, he and his wife owe $98,092 to 18 credit card issuers and a mortgage of $77,084, but despite all that borrowed money their equity in their house is only $21,415 and the value of their declared tangible personal property is only $9,945, although their household income in 2002 was $91,655 and in 2003 $108,586. What is more, Mr. DeLano is still a loan officer of Manufacturers & Traders Trust Bank, another party that Dr. Cordero cross-claimed.

Dr. Cordero received notice of the meeting of creditors required under 11 U.S.C. §341 (12, infra). The business of the meeting includes "the examination of the debtor under oath…", pursuant to Rule 2003(b)(1) FRBkrP. After oral and video presentations to those in the room, the Standing Chapter 13 Trustee, George Reiber, took with him the majority of the attendees and left there his attorney, James Weidman, Esq., with 11 people, including Dr. Cordero, who were parties in some three cases. The first case that Mr. Weidman called involved a couple of debtors with their attorney and no creditors; he finished with them in some 12 minutes.

Then Mr. Weidman called and dealt at his table with Mr. DeLano, his wife, and their attorney, Christopher Werner, Esq. Mr. Michael Beyma, attorney for both Mr. DeLano and M&T Bank in the Pfuntner v. Gordon case, remained in the audience. For some eight minutes Mr. Weidman asked questions of the DeLanos. Then he asked whether there was any creditor. Dr. Cordero identified himself and stated his desire to examine the debtors. Mr. Weidman asked Dr. Cordero to fill out an appearance form and to state what he objected to. Dr. Cordero submitted the form as well as his written objections to the plan of debt repayment (14, infra). No sooner had Dr. Cordero asked Mr. DeLano to state his occupation than Mr. Weidman asked Dr. Cordero whether he had any evidence that the DeLanos had committed fraud. Dr. Cordero indicated that he was not raising any accusation of fraud, his interest was to establish the good faith of a bankruptcy application by a bank loan officer. Dr. Cordero asked Mr. DeLano how long he had worked in that capacity. He said 15 years.

In rapid succession, Mr. Weidman asked some three times Dr. Cordero to state his evidence of fraud. Dr. Cordero had to insist that Mr. Weidman take notice that he was not alleging fraud. Mr. Weidman asked Dr. Cordero to indicate where he was heading with his line of questioning. Dr. Cordero answered that he deemed it warranted to subject to strict scrutiny a bankruptcy application by a bank loan expert, particularly since the figures that the DeLanos had provided in their schedules did not match up. Mr. Weidman claimed that there was no time for such questions and put an end to the examination! It was just 1:59 p.m. or so and the next meeting, the hearing before Judge Ninfo for confirmation of Chapter 13 plans, was not scheduled to begin until 3:30. To no avail Dr. Cordero objected that he had a statutory right to examine the DeLanos. After the five participants in the DeLano case left, only Mr. Weidman and three other persons, including an attorney, remained in the room.

Dr. Cordero went to the courtroom. Mr. Reiber, the Chapter 13 trustee, was there with the other group of debtors. When he finished, Dr. Cordero tried to tell him what had happened. But he said that he had just been informed that a TV had fallen to the floor and that, although

no person had been hurt, he had to take care of that emergency. Dr. Cordero managed to give him a copy of his written objections.

Judge Ninfo arrived in the courtroom late. He apologized and then started the confirmation hearing. Mr. Reiber and his attorney, Mr. Weidman, were at their table. When the DeLano case came up, Mr. Reiber indicated that an objection had been filed so that the plan could not be confirmed and the meeting of creditors had been adjourned to April 26. Judge Ninfo took notice of that and was about to move on to the next case when Dr. Cordero stood up in the gallery and asked to be heard as creditor of the DeLanos. He brought to the Judge's attention that Mr. Weidman had prevented him from examining the Debtors by cutting him off after only his second question upon the allegation that there was no time even though aside from those in the DeLano case, only an attorney and two other persons remained in the room.

Judge Ninfo opened his response by saying that Dr. Cordero would not like what he had to say; that he had read Dr. Cordero's objections; that Dr. Cordero interpreted the law very strictly, as he had the right to do, but he had again missed the local practice; that he should have called to find out what that practice was and, if he had done so, he would have learned that the trustee would not allow a creditor to go on asking questions until 8 in the evening, particularly when he had a room full of people.

Dr. Cordero protested because he had the right to rely on the law and the notice of the meeting of creditors stating that the meeting's purpose was for the creditors to examine the debtors. He also protested to the Judge not keeping his comments in proportion with the facts since Dr. Cordero had not asked questions for hours, but had been cut off by Mr. Weidman after two questions in a room with only two other persons.

Judge Ninfo said that Dr. Cordero should have done Mr. Weidman the courtesy of giving him his written objections in advance so that Mr. Weidman could determine how long he would need. Dr. Cordero protested because he was not legally required to do so, but instead had the right to file his objections at any time before confirmation of the plan and could not be expected to disclose his objections beforehand so as to allow the debtors to prepare their answers with their attorney. He added that Mr. Weidman's conduct raised questions because he kept asking Dr. Cordero what evidence he had that the DeLanos had committed fraud despite Dr. Cordero having answered the first time that he was not accusing the DeLanos of fraud, whereby Mr. Weidman showed an interest in finding out how much Dr. Cordero already knew about fraud committed by the DeLanos before he, Mr. Weidman, would let them answer any further questions. Dr. Cordero said that Mr. Weidman had put him under examination although he was certainly not the one to be examined at the meeting, but rather the DeLanos were; and added that Mr. Weidman had caused him irreparable damage by depriving him of his right to examine the Debtors before they knew his objections and could rehearse their answers.

Yet, Judge Ninfo came to the defense of Mr. Weidman and once more said that Dr. Cordero applied the law too strictly and ignored the local practice…

That's precisely the 'practice' of Judge Ninfo together with other court officers that Dr. Cordero has complained about!: Judge Ninfo disregards the law, rules, and facts systematically to Dr. Cordero's detriment and to the benefit of local parties and instead applies the law of the locals, which is based on personal relationships and the fear on the part of the parties to antagonize the judge who distributes favorable and unfavorable decisions as he sees fit without regard for legal rights and factual evidence (20.IV, infra). By so doing, Judge Ninfo and his colleague on the floor above in the same federal building, District Judge David Larimer, have

become the lords of the judicial fiefdom of Rochester, which they have carved out of the territory of the Second Circuit and which they defend by engaging in non-coincidental, intentional, and coordinated acts of wrongfully disregarding the law of Congress in order to apply their own law: the law of the locals. (A-776.C, A-780.E; A-804.IV)

By applying it, Judge Ninfo renders his court a non-level field for a non-local who appears before him. Indeed, it is ludicrous to think that a non-local can call somebody there– who would that be?- to find out what "the local practice" is and such person would have the time, self-less motivation, and capacity to explain accurately and comprehensively the details of "the local practice" so as to place the non-local at arms length with his local adversaries, let alone with the judges and other court officers. Judge Ninfo should know better than to say in open court, where a stenographer is supposed to be keeping a record of his every word, that he gives precedence to local practice over both the written and published laws of Congress and an official notice of meeting of creditors on which a non-local party has reasonably relied, and not any party, but rather one, Dr. Cordero, who has filed a judicial misconduct against him for engaging precisely in that wrongful and biased practice.

But Judge Ninfo does not know better and has no cause for being cautious about making complaint-corroborating statements in his complainant's presence. From his conduct it can reasonably be deduced that Chief Judge Walker has not complied with the requirement of §351(c)(4), that he "shall **promptly**…(C) provide written notice to…**the judge** or magistrate whose conduct is the subject of the complaint of the action taken". (emphasis added) Nor has he complied with Rule 4(e) of the Rules Governing Complaints requiring that "the chief judge will **promptly** appoint a special committee…to investigate the complaint and make recommendations to the judicial council". (emphasis added) The latter can be deduced from the fact that on February 11 and 13 Dr. Cordero wrote to the members of the judicial council concerning this matter (25, infra). The replies of those members that have been kind enough to write back show that they did not know anything about this complaint, let alone that a special committee had been appointed by the Chief Judge and had made recommendations to them.

If these deductions pointing to the Chief Judge's failure to act were proved correct, it would establish that he "has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts." Not only would he have failed to discharge his statutory and regulatory duty to proceed promptly in handling a judicial misconduct complaint, but by failing to do so he has allowed a biased judge, who contemptuously disregards the rule of law (A-679.I), to continue disrupting the business of a federal court by denying parties, including Dr. Cordero, fair and just process, while maintaining a questionable, protective relationship with others, including Trustees Gordon (A-681.2) and Reiber and Mr. Weidman.

If the mere appearance of partiality is enough to disqualify a judge from a case (A-705.II), then it must a fortiori be sufficient to call for an investigation of his partiality. If nobody is above the law, then the chief judge of a circuit, invested with the highest circuit office for ensuring respect for the law, must set the most visible example of abiding by the law. He must not only be seen doing justice, but in this case he has a legal duty to take specific action to be seen doing justice to a complainant and to insure that a complained-about judge does justice too.

Hence, Chief Judge Walker must now be investigated to find out what action he has taken, if any, in the seven months since the submission of the complaint; otherwise, what reason he had not to take any, not even take possession of Dr. Cordero's February 2 status inquiry letter.

Just as importantly, it must be determined what motive the Chief Judge could possibly

have had to allow Judge Ninfo to continue abusing Dr. Cordero by causing him an enormous waste of effort[5], time[6], and money[7], and inflicting upon him tremendous emotional distress[8] for a year and a half. In this respect, Chief Judge Walker bears a particularly heavy responsibility because he is a member of the panel of this Court that heard Dr. Cordero's appeal from the decisions taken by Judge Ninfo and his colleague, Judge Larimer. In that capacity, he has had access from well before the submission of the judicial misconduct complaint in August 2003 and since then to all the briefs, motions, and mandamus petition that Dr. Cordero has filed, which contain very detailed legal arguments and statements of facts showing how those judges disregard legality[9] and dismiss the facts[10] in order to protect the locals and advance their self-interests. Thus, he has had ample knowledge of the solid legal and factual foundation from which emerges the reasonable appearance of something wrong going on among Judge Ninfo[11], Judge Larimer[12], court personnel[13], trustees[14], and local attorneys and their clients[15], an appearance that is legally sufficient to trigger disqualifying, and at the very least investigative, action. Yet, the evidence shows that the Chief Judge has failed to take any action, not only under the spur of §351 on behalf of Dr. Cordero, but also as this circuit's chief steward of the integrity of the judicial process for the benefit of the public at large (A-813.I).

The Chief Judge cannot cure his failure to take 'prompt and expeditious action' by taking action belatedly. His failure is a consummated wrong and his 'prejudicial conduct' has already done substantial and irreparable harm to Dr. Cordero (A-827.III). Now there is nothing else for the Chief Judge to do but to subject himself to an investigation under §351.

The investigators can ascertain these statements by asking for the audio tape, from the U.S. Trustee at (585)263-5706, that recorded the March 8 meeting of creditors presided by Mr. Weidman; and the stenographic tape itself, from the Court, of the confirmation hearing before Judge Ninfo –not a transcript thereof, so as to avoid Dr. Cordero's experience of unlawful delay and suspicious handling of the transcript that he requested (E-14; A-682). Then they can call on the FBI's interviewing and forensic accounting resources to conduct an investigation guided by the principle *follow the money!* from debtors and estates to anywhere and anybody (21.V, infra).

Dr. Cordero respectfully submits this complaint under penalty of perjury and requests that expeditious action be taken as required under the law of Congress and the Governing Rules of this Circuit, and that he be promptly notified thereof.

Dr. Richard Cordero

March 19, 2004

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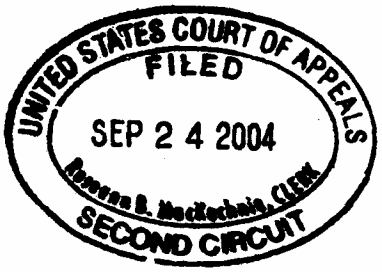
[5] **effort**: Mandamus Brief=MandBr-55.2; ■59.5; ▌=*documents separator*-E-26.2, ■33.5; ▌A-694.6.
[6] **time**: MandBr-60.6; ■ 68.6; ▌E-29.1, ■=*page numbers separator*-34.6, ■47.6; ▌A-695.E.
[7] **money**: MandBr-8.C; ▌E-37.E; ▌A-695.E.
[8] **emotional distress**: MandBr-56.3; ■61.E; ▌E-28.3, ■36.7; ▌A-690.3, ■695.7.
[9] **disregard for legality**: Opening Brief=OpBr-9.2; ■21.9 MandBr-7.B; ■25.A; MandBr-12.E; ■17.G-23.J; ▌E-17.B, ■25.1; ▌E-30.2, ■41.2; ▌A-684.B, ■775.B; ▌6.I.
[10] **disregard for facts**: OpBr-10.2; ■13.5; MandBr-51.2; ■53.4; ■65.4; ▌E-13.3, ■20.2, ■22.4.
[11] **J. Ninfo**: OpBr-11.3; ▌A-771.I, ■786.III.
[12] **J. Larimer**: OpBr-16.7; Reply Brief-19.1; MandBr-10.D; ■53.D; ▌E-23.C; ▌A-687.C.
[13] **court personnel**: OpBr-11.4; ■15.6; ■54.D; MandBr-14.1; ■25.K-26.L; ■69.F; ▌E-14.4, ■18.1, ■49.F; ▌A-703.F.
[14] **trustees**: OpBr-9.1; ■38.B.; ▌E-9; ▌A-679.A
[15] **local attorneys and clients**: OpBr-18.8; ■48.C; MandBr-53.3; ■57.D; ■65.3; ▌E-21.3, ■29.D, ■31.4, ■42.3; ▌A-691.D.

COPY

JUDICIAL COUNCIL OF THE
SECOND CIRCUIT



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In re **Docket No. 04-8510**
CHARGE OF JUDICIAL MISCONDUCT

----------X

DENNIS JACOBS, Acting Chief Judge:

On March 29, 2004, the Complainant filed a complaint with the Clerk's Office for the U.S. Court of Appeals for the Second Circuit pursuant to 28 U.S.C. § 351 (formerly § 372(c)) ("the Act") and the Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers (the "Local Rules"), charging a circuit court judge of this Circuit ("the Judge") with misconduct.

Background and Allegations:

The Complainant alleges that in August 2003, he filed a judicial misconduct complaint against a United States bankruptcy court judge, alleging that the bankruptcy court judge was biased against him and had failed to "move [his] case along its procedural stages." The Complainant alleges that the Judge has failed to take any action on his judicial misconduct complaint.

Disposition:

The Complainant's judicial misconduct complaint was dismissed by order entered June 9, 2004. The instant complaint is therefore dismissed as moot. See 28 U.S.C. § 352(b)(2) (judicial misconduct proceeding may be concluded if "appropriate corrective action has been taken" or "action on the [judicial misconduct] complaint is no longer necessary because of intervening events"). The Clerk is directed to transmit copies of this order to the Complainant and to the Judge.

Dennis Jacobs
Acting Chief Judge

Signed: New York, New York
September 24, 2004

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

October 4, 2004

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

Petition for review re complaint about C.J. Walker, 04-8510

Dear MacKechnie,

I hereby petition the Judicial Council for review of the Chief Judge's order of September 24, 2004, dismissing my judicial misconduct complaint, docket no. 04-8510 (the Complaint).

The Complaint was submitted on March 19, 2004. It states that in violation of 28 U.S.C. §351 et seq. (the Act) and this Circuit's Rules Governing such complaints (the Rules) the Hon. Chief Judge John M. Walker, Jr., failed to act 'promptly and expeditiously' and investigate a judicial misconduct complaint. Indeed, by that time it was already the eighth month since I had submitted my initial complaint of August 11, 2003, docket no. 03-8547, but the Chief Judge had taken no action. That complaint charged that U.S. Bankruptcy Judge John C. Ninfo, II, together with court officers at the U.S. Bankruptcy Court and District Court, WDNY, had disregarded the law, rules, and facts so repeatedly and consistently to my detriment, the sole non-local party, a resident of New York City, and to the benefit of the local parties in Rochester as to form a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing and of bias against me. That initial complaint was dismissed by the Hon. Circuit Judge Dennis Jacobs 10 months after its submission although it was not investigated at all. Judge Jacobs alleges that such dismissal has rendered this Complaint moot and warrants that it be dismissed too.

I. Since nothing wrong under the Misconduct Act or Rules was found in the initial complaint, its dismissal cannot amount to "appropriate corrective action" that would render moot this Complaint, which charges a different kind of misconduct

1. The first remark that follows from the paragraph above is that the initial complaint and this Complaint charge misconduct that is different and independent from each other: The former concerns a pattern of wrongdoing by Judge Ninfo; the latter the disregard for the promptness obligation and the duty to investigate a misconduct complaint by Chief Judge Walker. The dismissal of the former does not negate the misconduct of the latter and, consequently, does not render it moot. The Complaint remains to be determined on its own merits.

2. In addition, who ever heard that dismissing a case or a complaint amounts to taking "appropriate corrective action" under the Act or any other legal provision for that matter? It was Judge Jacobs himself who dismissed the initial complaint on the allegations that **a)** Dr. Cordero "has failed to provide evidence of any conduct 'prejudicial to the effective and expeditious administration of the business of the courts'"; **b)** Dr. Cordero's "statements…amount to a challenge to the merits…however '[t]he complaint procedure is not intended to provide a means of obtaining a review'"; **c)** "the allegations of bias and prejudice are unsupported and therefore rejected as frivolous"; and **d)** "The Act applies only to judges of the United States" rather than to other parties complained-about. Since Judge Jacobs found the counts of the complaint unsubstantiated and frivolous, and its issues and other parties outside the Act's scope, how can he possibly have taken "appropriate corrective action" to correct nothing wrong and in need of no correction!?

3. The dismissal of the Complaint, just as that of the initial complaint, is another glaring example of a quick job rejection of a misconduct complaint where the dismissal grounds have not been given even a substandard amount of reflection. Judge Jacobs not only did not "expeditiously review…and conduct a limited inquiry", as provided under §352(a), much less "promptly appoint…a special committee to investigate the facts and allegations", as provided under §353, but he also did not even review the basis of his instant September 24 dismissal, that is, his own earlier dismissal to the point that he got wrong its date, which is not June 9, but rather June 8.

II. None of the elements of the doctrine of mootness is found in the context of the initial complaint and this Complaint so that the doctrine is inapplicable

4. The quick job dismissal of the Complaint conclusorily jumps to its mootness from the dismissal of the initial complaint without pausing to consider the elements of the doctrine of mootness. It just refers to §352(b)(2) and to "intervening events" without indicating what events those are. Presumably, the dismissal of the initial complaint is meant.

5. However, the earlier dismissal is not final because it is the subject of the petition for review of July 8 -resubmitted on the 13th- to the Judicial Council. That dismissal could be vacated and the mootness allegation would be so fatally undermined that it would fall of its own weight. Thus, it would be utterly premature to allege that the intervening dismissal of the initial complaint has rendered the Complaint moot. The initial complaint is still in play and so is this Complaint.

6. If the Judicial Council calls for an investigation of the initial complaint, it can find that Judge Ninfo and others have engaged in a pattern of non-coincidental, intentional, and coordinated wrongdoing. If so, it would have reason to investigate why Chief Judge Walker failed to conduct even a limited inquiry despite not only the abundant evidence of such wrongdoing, but also the high stakes, namely, the integrity of this circuit's judicial system, which should have caused him as the circuit's foremost steward to take the complaint seriously if only out of prudence.

7. The Council's reason to investigate the Chief Judge would be strengthened by the fact that he had knowledge of the evidence of wrongdoing not only because of his duty to review the initial complaint and the many documents submitted in its support, but also because he is a member of the panel reviewing Dr. Cordero's appeal from Judge Ninfo's decisions and in that capacity he must have reviewed Dr. Cordero's numerous briefs, motions, and writ of mandamus describing the pattern of wrongful acts of Judge Ninfo and others. By so investigating the Chief Judge, the Council would be proceeding in line with the Complaint's request for relief. Since the Council could grant, whether implicitly or formally, that relief, the Complaint that asks for it is not moot.

8. Moreover, no other intervening event has changed the issues of the initial complaint and rendered a decision on the merits on this Complaint meaningless and thereby moot. Far from it, intervening events have only provided more evidence of judicial misconduct. In fact, if the Complaint had been read, it should have been noticed that it described the events that took place on March 8, 2004, seven months after the initial complaint, concerning Judge Ninfo's handling of a different type of case, that is, not an adversary proceeding, but rather a Chapter 13 bankruptcy petition filed on January 27, 2004, over five months after the initial complaint, by David and Mary Ann DeLano, docket no. 04-20280.

9. In this vein, on August 27, 2004, Dr. Cordero sent to each member of the Judicial Council an update to the petition for review of the dismissal of the initial complaint. Its very first paragraph states that:

> …recent events…raise the reasonable suspicion of corruption by the complained about Bankruptcy Judge John C. Ninfo, II. The update points to the force driving the complained-about bias and pattern of non-coincidental, intentional, and coordinated acts of disregard of the law, rules, and facts: lots of money generated by fraudulent bankruptcy petitions. The pool of such petitions is huge: according to PACER, 3,907 *open* cases that Trustee George Reiber has before Judge Ninfo [out of Trustee Reiber's 3,909[16] cases] and the 3,382 that Trustee Kenneth Gordon likewise has [before that Judge out of Trustee Gordon's 3,383[17] cases].

10. Those intervening events have only strengthened the initial complaint by pointing to a powerful motive for the misconduct and bias: money, lots of it generated by *thousands* of cases that each of two trustees has before one judge. If you were a private trustee who is paid a fee percentage from the payments of bankruptcy debtors to their creditors, which means that you are not a federal employee paid by the federal government, could you possibly handle appropriately such an overwhelming workload? Similarly, with whom is it more likely that Judge Ninfo has developed a modus operandi that he would not want to disrupt: with these trustees as well as bankruptcy lawyers that have so many cases before him that they appear before him several times in a single session[18], or with an out of town pro se defendant that dare demand that he apply the law and even challenge his rulings all the way to the Court of Appeals?

11. But Judge Jacobs chose not to read about these events. This is a fact based on the letter of August 30 of Clerk Patricia Chin-Allen, signing for Clerk of Court Roseann MacKechnie, that

> Judge Dennis Jacobs, [sic] has forwarded your unopened letter [sic] to this office for response…Your papers are returned to you without any action taken.

12. This provides factual support to the above statement that in dismissing this Complaint, Judge Jacobs did not bother to read even his earlier order of June 8 dismissing the initial complaint. In forwarding unopened that letter, he disregarded the point made in footnote 1 of the July 8 petition for review of the dismissal of the initial complaint:

> "Rule 8, Review by the judicial council of a chief judge's order", thus directly applicable here, expressly provides in section 8(e)(2) that the complained-about judge "will be provided with copies of any communications that may be addressed to the members of the judicial council by the complainant".

13. Just as Rule 8 entitles a complainant to communicate with the members of the Judicial Council, so it engenders the corresponding obligation for the members to read such communications. Those who read the August 27 update must have realized that it described relevant intervening events that raised definite and concrete facts and issues susceptible of judicial determination in their own right; they also provided further grounds for investigating the initial complaint. Thereby the intervening events precluded any allegation that the initial complaint's dismissal, which is challenged and pending review, had rendered this Complaint moot.

14. Likewise, a judicial determination of the Complaint is still appropriate because Dr. Cordero has neither withdrawn the initial complaint nor reached anything akin to a settlement, whereby action by a party as cause for mootness is eliminated.

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[16] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1 on April 2, 2004.

[17] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl. on June 26, 2004.

[18] Obviously, Judge Ninfo does not acquire immunity under the Misconduct Act or Rules only because he participates in widespread misconduct together with parties outside their scope of application.

15. Nor has mootness resulted from the relief requested becoming impossible. On the contrary, the update linking judicial misconduct to a bankruptcy fraud scheme has only rendered more necessary for the Council to investigate both complaints with FBI assistance, as requested.

16. The cause for misconduct has not ceased either. Far from it, the DeLano case has provided Judge Ninfo with the need to engage in further disregard for legality and more bias against Dr. Cordero, who is one of the DeLanos' creditors and the one who showed their concealment of assets. Hence, the situation that gave rise to the initial complaint is a continuing one that has not only the probability, but also the likelihood of generating subsequent complaints. Since the same misconduct can recur, it prevents the Complaint from becoming moot; *Friends of the Earth, Inc. v. Laidlaw Environmental Servs. (TOC), Inc., 120 S.Ct. 693, 528 U.S. 167, 145 L.Ed.2d 610 (2000)*. Thus, the Judicial Council should decide the two current complaints, just as a court would decide a case despite its apparent mootness if the dispute is ongoing and typically evades review. *Richardson v. Ramirez, 94 S.Ct. 2655, 418 U.S. 24 41 L.Ed.2d 551 (1974)*.

III. The violation of the promptness obligation and the duty to investigate is so capable of repetition that it has been repeated in the handling of this Complaint

17. Indeed, just as Chief Judge Walker disregarded his legal obligation to handle 'promptly and expediently' the initial complaint, which took 10 months to be dismissed without even a limited inquiry, so Judge Jacobs disregarded his by taking over six months to dismiss this Complaint cursorily. There was more than ample time for Judge Jacobs to take action on the Complaint in the three months between its submission on March 19 and the dismissal of the initial complaint on June 8. A circuit judge should not be allowed to disregard a legal obligation on him so as to give rise to a situation that he can then allege exempts him from complying with it.

18. Judge Jacobs's unlawfully tardy dismissal of this Complaint without any investigation is another instance of the systemic disregard in the Second Circuit for the Act and Rules. It shows that disregard for their provisions and complaints thereunder is "capable of repetition". The Council should not evade its review as moot precisely because the Chief Judge's violation of the promptness obligation and failure to investigate the initial complaint, which gave rise to the Complaint, far from having ended, has been repeated by Judge Jacobs in his mishandling of that Complaint. *Roe v. Wade, 93 S.Ct. 705, 712-713, 410 U.S. 113, 124-125, 35 L.Ed.2d 147 (1973)*.

19. That there is systemic mishandling of misconduct complaints by the courts of appeals and the judicial councils is so indisputable that Chief Justice Rehnquist decided to review their repeated misapplication of the Judicial Conduct and Disability Act by setting up a Study Committee; he appointed to chair it Justice Stephen Breyer, who held its first meeting last June 10. Hence, a decision on this issue by this Judicial Council would have precedential effect and work toward correcting that systemic mishandling. It follows that the Complaint is in no way moot.

20. Nor is disregard for the promptness obligation and duty to investigate a mere oversight of legal technicalities. On the contrary, it nullifies the central purpose of the Act as stated in §351(a): to eliminate "conduct prejudicial to the effective and expeditious administration of the business of the courts". What is more, mishandling complaints has severe practical consequences on the complainants and the public's perception of fairness and justice in judicial process and trust in the system of justice. In Dr. Cordero's case, the judges' contempt for these complaints has let him suffer for over two years Judge Ninfo's arbitrariness and bias resulting from his disregard for legal and factual constraints on his judicial action. This has cost Dr. Cordero an enormous

amount of effort, time, and money and inflicted upon him tremendous aggravation. It cannot be fairly and justly held that his suffering and cost have been rendered 'moot' because the Chief Judge and Judge Jacobs chose to treat contemptuously their obligations and duties under the law.

IV. Relief requested

21. Therefore, Dr. Cordero respectfully requests that the Judicial Council treat both complaints and their respective petitions for review as "admitting of specific relief through a decree of conclusive character", cf. *Aetna Life Ins. Co. v. Haworth, 57 S.Ct. 461, 464, 300 U.S. 227, 240-241, 81 L.Ed. 617 (1937)*, and that it:

    a. Appoint a review panel and a special committee to investigate the complaints and petitions and that their members, precluding the Chief Judge and Judge Jacobs, be experienced investigators independent from the Council, the U.S. Trustees, and the WDNY courts;

    b. Include in their scope of investigation:

        1) a) why the Chief Judge disregarded for 10 months the promptness obligation, thus allowing a situation reasonably shown to involve corruption to fester to the detriment of a complainant and the general public;

            b) what he should have known, as the circuit's foremost judicial officer;

            c) when he should have known it; and

            d) how many of the great majority of complaints, also dismissed without investigation, would have been investigated by a law-abiding officer not biased toward his peers; and

        2) why Judge Jacobs also disregarded his obligation to handle promptly and impartially the Complaint about his peer, Chief Judge Walker;

    c. Enhance the investigative capabilities of the panel and the committee to conduct forensic accounting and to interview a large number of persons connected to a large number of bankruptcy cases by making a referral of both complaints under 18 U.S.C. §3057(a) to the U.S. Attorney General and the FBI Director and that both be asked to appoint officers unacquainted with those in their respective offices in Rochester and Buffalo, NY;

    d. Charge the joint team with the investigation of the link between judicial misconduct and a bankruptcy fraud scheme as they are guided by the principle *follow the money!* from debtors and estates to anywhere and anybody;

    e. Take action on the complaints in light of the results of their investigation;

    f. Refer these complaints and the petitions for review to the Judicial Conference and Justice Breyer's Committee as examples of how misconduct complaints are dismissed out of hand despite substantial evidence of a pattern of judicial wrongdoing and of bankruptcy fraud.

Let the Council take the opportunity afforded by these two complaints and petitions to honor its oath of office and apply the law impartially, blind to who the parties are and concerned only with being seen doing justice, as it proceeds, not to protect its peers, but rather to safeguard the integrity of the judicial system for the benefit of the public at large.

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

January 8, 2005

Hon. Judge Carolyn King
Chair of the Executive Committee of the Judicial Conference
Administrative Office of the U.S. Courts
One Columbus Circle, NE, Suite 7-290
Washington, DC 20544

tel. (202)502-4400

Dear Judge King,

Last November 23, as attested by a UPS receipt, I timely filed a petition to the Judicial Conference for review of two denials by the Judicial Council of the Second Circuit of my petitions for review of the dismissal of two related judicial misconduct complaints that I filed under 28 U.S.C. §§351 et seq. with the chief judge of that Circuit's Court of Appeals (E-1, infra). As required, I addressed the five copies of the petition to the Administrative Office of the U.S. Courts and the attention of the General Counsel.

On December 18, I received a letter from Assistant General Counsel Robert P. Deyling, who without even acknowledging, let alone discussing, my specific and detailed jurisdictional argument to the Judicial Conference and after limiting himself to making passing reference to some provisions of §§351 et seq., wrote "…I must therefore advise you that no jurisdiction lies for further review by the Judicial Conference of the United States." (E-31)

I. A clerk lacks authority to pass judgment on and dismiss a petition for review to the Judicial Conference

Mr. Deyling lacks any authority to pass judgment on any argument made to the Judicial Conference in a petition for review, let alone to dismiss the petition. Actually, by doing so he infringed on the duty, not just the faculty, that the law specifically imposes on the Conference or its competent committee to review such petitions:

> The Conference is authorized to exercise the authority provided in chapter 16 of this title [i.e. Complaints Against Judges and Judicial Discipline] as the Conference, or through a standing committee. If the Conference elects to establish a standing committee, it shall be appointed by the Chief Justice and all petitions for review ***shall*** be reviewed by that committee", 28 U.S.C. §331, 4th paragraph (emphasis added).

Likewise, by passing judgment on an argument made to the Conference, Mr. Deyling overstepped the bounds of his function as a clerk of it. Indeed, under the *Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Judicial Council Orders Under the Judicial Conduct and Disability Act* (cf. §358(a)), the Office of the General Counsel performs the clerical functions of a clerk of court. Rule 9 –equivalent to paragraph 9 of the Rules- provides that as soon as the Administrative Office receives a petition that "*appears on its face*…in compliance with these rules", (emphasis added) which are silent on the issue of jurisdiction, and thus, "appropriate for present disposition" because it does not need to be

corrected (cf. Rules of the Supreme Court of the U.S., Rule 14.5),…

> …the Administrative Office shall promptly acknowledge receipt of the petition and advise the chairman of the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders, a committee appointed by the Chief Justice of the United States as authorized by 28 U.S.C. §331.

Under Rule 10, it is that Committee which, unless otherwise directed by the Executive Committee of the Judicial Conference, not a clerk, "shall assume ***consideration*** and disposition of ***all*** petitions for review…" (emphasis added). The clerk has no authority to engage in a consideration of the arguments of the petitioner, much less to dispose summarily of the petition without the deliberation that, under Rule 11, it is for the members of the Committee to engage in. Such deliberation, which necessarily precedes disposition, is to be an informed one that takes into account "the record of circuit council consideration of the complaint", and does that whether there was or was not any investigation by a special committee. The Administrative Office, as the clerk of the Conference and unless otherwise directed by the Committee chairman, disposes of nothing on its own, but rather "shall contact the circuit executive or clerk of the United States court of appeals for the appropriate circuit to obtain the record…for distribution to the Committee".

But not even that suffices to dispose of a petition. Rule 12 authorizes not only the Committee, but also the Conference itself, to determine that "investigation is necessary". Not only "the Conference ***or*** Committee may remand the matter to the circuit council that considered the complaint", but either "may undertake ***any*** investigation found to be required". In addition, Rule 12 provides that "If such investigation is undertaken by the Conference or Committee…(c) the complainant ***shall*** be afforded an ***opportunity to appear*** at any proceedings conducted if it is considered that the complainant could offer substantial new and relevant information." (emphasis added).

This is not all yet, for Rule 13 provides that even if there is no investigation, "the Committee may determine to receive written argument from the petitioner…". This "argument" is a piece of writing qualitatively different from what Rule 5 provides, namely:

> 5. The petition shall contain a short and plain statement of the basic facts underlying the complaint, the history of its consideration before the appropriate circuit judicial council, and the premises upon which the petitioner asserts entitlement to relief from the action taken by the council.

That "argument", which may bear on jurisdiction, is a legal brief and it is for the Committee to request and consider it without being preempted by a clerk's unauthorized 'argument' for disposing of the petition. Hence, it is the Committee that determines that the petition is "amenable to disposition on the face thereof" or that there is a need for a "written argument ***from the petitioner*** and from **any other party to the complaint** proceeding (the complainant or judge/magistrate complained against)", whereby Rule 13 excludes the clerk as the writer of such argument.

Finally, Rule 14 provides that "The decision on the petition ***shall*** be made by written **order** [and] be forwarded by the Committee chairman to the Administrative Office, which shall distribute it as directed by the chairman". A clerk in that Office cannot take it upon himself to write a letter and substitute it for the order of an adjudicating body so as to thereby dispose single-handedly of a petition addressed to the Judicial Conference of the United States.

Hence, Mr. Deyling, as clerk to the Conference, had no authority to determine jurisdiction, let alone arrogate to himself judicial power to pass judgment on a specific legal argument

on jurisdiction. He usurped the roles of the Conference and the Committee by disposing of the petition summarily on his own without holding the required, or receiving the benefit of, any consideration, deliberation, investigation, appearance, or written argument. In so doing, he deprived me of my legal right to have my petition processed according to the procedure in the Rules. If it is true, as he put it, that "It is absolutely necessary that we adhere to the above arrangements…", then neither the Judicial Conference nor its members should countenance his actions.

Therefore, I respectfully request that you, as Chair of the Conference's Executive Committee:

1. declare or cause the Conference to declare Mr. Deyling's letter to be devoid of any effect as ultra vires and withdraw it;
2. have the original and the four copies of my petition, each of which is bound with supporting documents (cf. E-xxv) and in possession of the General Counsel:
   a. forwarded to the Conference for review;
   b. otherwise, provide me with the names and addresses of the members of the Committee to Review Circuit Council Conduct and Disability Orders;
3. consider and take action upon the accompanying Statement of Facts and Request for an Investigation;
4. make a report of the evidence of a judicial misconduct and bankruptcy fraud scheme to the Acting U.S. Attorney General under 18 U.S.C. 3057(a).

I look forward to hearing from you.

Sincerely,

Dr. Richard Cordero

SCtA.280-286 reserved

[A:1956-1962 reserved]

LEONIDAS RALPH MECHAM
Director

CLARENCE A. LEE, JR.
Associate Director

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

WASHINGTON, D.C. 20544

WILLIAM R. BURCHILL, JR.
Associate Director
and General Counsel

July 22, 2004

Dr. Richard Cordero
59 Crescent Street
Brooklyn, New York 11208-1515

Dear Dr. Cordero:

Enclosed, as you requested, are complete copies of the public orders of the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders in docket nos. 82-372-001 and 01-372-001.

I have checked into the fact that docket no. 82-372-005 was missing from the public orders I previously sent to you. I have verified that there is no docket no. 82-372-005. For some reason, when they did the numbering of no. 82-372-006, they inadvertently skipped over no. 82-372-005.

I hope that you will find this helpful.

Sincerely,

Jeffrey N. Barr
Assistant General Counsel

Table of the 15 Memoranda and Orders
of
The Judicial Conference of the United States
Committee to Review Circuit Council Conduct and Disability Orders since 1980
sent to Dr. Cordero from the General Counsel's Office of the Administrative Office of the U.S. Courts and showing how few complaints under 28 U.S.C. §§351 et seq. judicial councils are allowed to reach the Judicial Conference as petitions to review their action

	In re Complaint of	Docket no.	Status	Circuit Council	
1.	George Arshal	82-372-001	Incomplete after p.3	Court of Claims	
2.	Gail Spilman	82-372-002		6th	
3.	Thomas C. Murphy	82-372-003		2nd	
4.	Andrew Sulner	82-372-004		2nd	
5.			-005 missing?		
6.	John A. Course	82-372-006		7th	
7.	Avabelle Baskett, et al.	83-372-001		Court of Claims	
8.	of bankruptcy judge	84-372-001		9th	
9.	Fred W. Phelps, Sr. et al. v. Hon. Patrick F. Kelly	87-372-001		10th	
10	Petition No. 88-372-001	88-372-001		not stated	
11	Donald Gene Henthorn v. Judge Vela and Magistrate Judges Mallet and Garza	92-372-001		5th	
12	In re: Complaints of Judicial Misconduct	93-372-001		10th	
13	In re: Complaints of Judicial Misconduct	94-372-001		D.C. Ct. of Appeals	
14	In re: Complaints of Judicial Misconduct	95-372-001		9th	
15	In re: Complaints of Judicial Misconduct or Disability [Dist. Judge John H. McBryde]	98-372-001		5th	
16	In re: Complaint of Judicial Misconduct	01-372-001	Incomplete after p.3	D.C. Ct. of Appeals	
17	Agenda E-17, Conduct and Disability; March 2003: no petitions for review pending; Committee "is monitoring the status of Spargo v. NYS Comms. on Judicial Conduct, 244 F.Supp.2d 72(NDNY 2003)		p. 2 is missing or p. 1 and 3 are mismatched		
18	Agenda E-17, Conduct and Disability; September 2003: no petitions for review pending; the Committee "has continued to monitor congressional activity in the area of judicial conduct an disability", p.35				
19	Agenda E-17, Conduct and Disability; March 2004: no petitions for review for received or pending				

The Supreme Court of the United States - Caseload Statistics
in the YEAR-END REPORTS ON THE FEDERAL JUDICIARY for 2000-2004

Report for	Statement	Term	Case filings	In forma pauperis	Paid docket	Cases argued	Cases disposed of	Signed opinions
		1998	7,109	5,047	2,061	90	84	75
		1999	7,377	5,282	2,092	83	79	74
2000	The total number of case filings in the Supreme Court increased from 7,109 in the 1998 Term to 7,377 in the 1999 Term - an increase of 3.8%. Filings in the Court's *in forma pauperis* docket increased from 5,047 to 5,282 - a 4.7% rise. The Court's paid docket increased by 31 cases, from 2,061 to 2,092 - a 1.5% increase. During the 1999 Term, 83 cases were argued and 79 were disposed of in 74 signed opinions, compared to 90 cases argued and 84 disposed of in 75 signed opinions in the 1998 Term	2000	7,852	5,897	1,954	86	83	77
2001	The total number of case filings in the Supreme Court increased from 7,377 in the 1999 Term to 7,852 in the 2000 Term -- an increase of 6.4%. Filings in the Court's *in forma pauperis* docket increased from 5,282 to 5,897 -- an 11.6% rise. The Court's paid docket decreased by 138 cases, from 2,092 to 1,954 -- a 6.6% decline. During the 2000 Term, 86 cases were argued and 83 were disposed of in 77 signed opinions, compared to 83 cases argued and 79 disposed of in 74 signed opinions in the 1999 Term.	2001	7,924	6,037	1,886	88	85	76
2002	The total number of case filings in the Supreme Court increased from 7,852 in the 2000 Term to 7,924 in the 2001 Term -- an increase of 1%. Filings in the Court's *in forma pauperis* docket increased from 5,897 to 6,037 -- a 2.4% rise. The Court's paid docket decreased by 68 cases, from 1,954 to 1,886 -- a 3.5% decline. During the 2001 Term, 88 cases were argued and 85 were disposed of in 76 signed opinions, compared to 86 cases argued and 83 disposed of in 77 signed opinions in the 2000 Term.	2002	8,255	6,386	1,869	84	79	71
2003	The total number of case filings in the Supreme Court increased from 7,924 in the 2001 Term to 8,255 in the 2002 Term - an increase of 4 percent. Filings in the Court's *in forma pauperis* docket increased from 6,037 to 6,386 - a 5.8 percent rise. The Court's paid docket decreased by 17 cases, from 1,886 to 1,869 - a 1 percent decline. During the	2003	7,814	6,092	1,722	91	89	73

Report for	Statement	Term	Case filings	In forma pauperis	Paid docket	Cases argued	Cases disposed of	Signed opinions
	2002 Term, 84 cases were argued and 79 were disposed of in 71 signed opinions, compared to 88 cases argued and 85 disposed of in 76 signed opinions in the 2001 Term.							
2004	The total number of case filings in the Supreme Court decreased from 8,255 in the 2002 Term to 7,814 in the 2003 Term -- a decrease of 5.3 percent. Filings in the Court's *in forma pauperis* docket decreased from 6,386 to 6,092 -- a 4.6 percent decline. The Court's paid docket decreased by 147 cases, from 1,869 to 1,722 -- a 7.9 percent decline. During the 2003 Term, 91 cases were argued and 89 were disposed of in 73 signed opinions, compared to 84 cases argued and 79 disposed of in 71 signed opinions in the 2002 Term.	2004						
	TOTALS							
	AVERAGES		**7,722**	**5,790**	**1,936**	**87**	**83**	**74**

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re: David G. DeLano and Mary Ann DeLano

Chapter 13
Case no: 04-20280

Objection to Confirmation of the Chapter 13 Plan of Debt Repayment

1. Dr. Richard Cordero, as a party in interest, objects on the following grounds to the confirmation of the proposed plan in the above-captioned bankruptcy case. Consequently, the plan should not be confirmed. Cf. B.C. §§1324 and 1325(b)(1).

I. The bankruptcy of a loan officer with superior knowledge of the risks of being overextended on credit card borrowing warrants strict scrutiny

2. Mr. David DeLano is a loan officer of a major bank who in his professional capacity examines precisely that: loans and borrowers' ability to repay them. Thus, he has imputed superior knowledge of what being overextended or taking an excessive debt burden means and of when a borrower approaches the limit of his ability to pay. Hence, he was aware of the consequences of his own incurring such excessive credit card debt at the very high interest rate that they attract. His conduct may have been so knowingly irresponsible as to be suspicious.
3. This is particularly so since the DeLanos jointly earned in 2002 $91,655, well above the average American household income. What is more, last year their income went up considerably to $108,586. Yet, their cash in hand and in their checking and savings accounts is only $535.50 (Schedule B, items 1-2). What did Loan Officer DeLano do with his earnings?
4. Likewise, of all the money that they borrowed on credit cards and despite the monthly payments that they must have made to them over the years, they still owe 18 credit card issuers $98,092.91. However, they declare their personal property in the form of goods, the only property that could possibly have been bought on credit cards after excluding their pension and profit sharing plans (Schedule B, item 11), to be only $9,945.50. Where did the goods go and what kind of services did they enjoy through credit card charges so that now they should have so little left to show for the $98,092.91 still owing to their 18 credit card issuers?
5. These figures and facts were set forth by Loan Officer DeLano and his wife themselves with the legal assistance of their bankruptcy filing attorney. Their clash is deafening. Consequently, it is reasonable to conclude that their petition to have their debts discharged in bankruptcy must be strictly scrutinized to determine whether it has been made in good faith and free of fraud. Cf. B.C. §1325(a)(3).

II. The plan fails to require the DeLanos' best effort to repay creditors

6. The DeLanos have declared their current expenditures, including monthly charges of $55 for cable TV, $23.95 for Internet access, and $107.50 for recreation, clubs, and magazines. In addition, they indicate $62 per month for cellular phone "req. for work", which is certainly not the same as 'required by employers'. These are expenditures for a comfortable life with all modern conveniences, but they consume income that is "not reasonably necessary to be expended". Cf. B.C. §1325(b)(2). Indeed, the DeLanos intend to go on living unaffected by their bankruptcy and have used the figure of $2,946.50 current expenditures as their living expenses requirements to be deducted from the projected monthly income of $4,886.50 (Schedules J and I).

7. But that is not enough for them.

$4,886.50	projected monthly income (Schedule I)
-1,129.00	presumably after Mrs. DeLano's current unemployment benefits run out in June (Schedule I)
$3,757.50	net monthly income
-2,946.50	to maintain their comfortable current expenditures (Schedule J)
$811.00	actual disposable income

8. Yet, the Delanos plan to pay creditors only $635.00 per month for 25 months, the great bulk of the 36 months of the repayment period. By keeping the balance of $176 per month = $811 – 635, they withhold from creditors an extra $4,400 = $176 x 25. Is there a reason for this?

9. Without any further explanation, the plan provides that for the last 6 months $960 will be paid monthly. This shows that the current expenditures can be reduced or that the DeLanos can project an increase in income 31 months ahead of time.

10. The bottom line is that all the DeLanos will pay under the plan is $31,335 despite their debt to unsecured creditors of $98,092.91 (Schedule F). However, this does not mean that unsecured creditors will receive roughly 1/3 of their claims and forgo interest, but barely above 1/5, for "unsecured debts shall be paid 22 cents on the dollar and paid pro rata, with no interest if the creditor has no Co-obligors" (Chapter 13 Plan 4d(2)).

11. It is fair to say that this plan makes the unsecured creditors bear the brunt of the DeLanos' bankruptcy while they continue living on their comfortable current expenditures. What is more, or rather, less, is that the plan does not make any provision whatsoever to fund Dr. Cordero's contingent claim. If Dr. Cordero should prevail in court against Mr. DeLano, where would the money come from to pay the judgment? Is Mr. DeLano making himself judgment proof?

12. By contrast, the DeLanos make proof of their goodwill toward their son. They made him a loan of $10,000, which he has not begun to pay and which they declare of "uncertain collectibility" (Schedule B, item 15). There is no information as to when the loan was made, whether it was applied to buy an asset or the son has any other assets which the trustee can put a lien on or take possession of, or whether there is any other way to collect it. Nor is there any hint of where the DeLanos, who have in cash and in their bank accounts the whole of $535.50, got $10,000 to lend to their son. To allow the son not to repay the loan amounts to a preferential transfer. This is all the more so because their son is an insider. Cf. B.C. §101(31)(A)(i). Therefore, the DeLanos' dealings with him must be examined with strict scrutiny for good faith and fairness.

13. It follows that the plan fails to show the DeLanos' willingness to put forth their best effort to repay their creditors, while they spare their comfortable standard of living as well as their son.

III. An accounting is necessary to establish the timeline of debt accumulation and the whereabouts of the goods bought on credit cards in order to determine the good faith and fraudless nature of a bankruptcy petition by Loan Officer DeLano

14. It is reasonable to assume that Mr. DeLano, as a loan officer, has access to the reports of credit reporting bureaus and, more importantly, that he knows how to examine them to determine the risk factor and solvability of a current or potential borrower. Likewise, bank lenders, including the 18 credit card issuers to whom the DeLanos still owe more than $98,000, regularly report to the credit reporting bureaus their cardholders' borrowing balances. They also check their cardholders' reports to assess their total debt burden and repayment patterns in order to determine whether to allow their continued use of their cards or to cancel them.

15. Thus, it is important to find out whether any or all of these 18 credit card issuers requested and examined the DeLanos' credit reports, such as those produced by Equifax, TransUnion, and Experian, and raised any concerns with the DeLanos about their total debt burden. This investigation is warranted because the DeLanos have described 14 credit card claims as "1990 and prior Credit card purchases" (Schedule F). Consequently, there has been ample time for them to have been warned about their total debt burden, not to mention for Loan Officer DeLano to have on his own realized its risks. Otherwise, how does he deal with his Bank's customers in similar situations? These facts beg the question: Is there a history of credit card issuers' announced bankruptcy and of a bankruptcy that the DeLanos were waiting to announce shortly before retirement (bottom of Schedule I)? The answer to this question affects directly the determination of the good faith of the DeLanos' bankruptcy petition.

16. In the same vein, for years the credit card issuers have had the duty and the means to find out, and must have been aware, that the DeLanos' credit card borrowing gave cause for concern. If they took no steps or took only inappropriate ones to secure repayment and even failed to stop the DeLanos from accumulating still more credit card debt, then they must bear some responsibility for this bankruptcy. As parties contributing to the DeLanos' indebtedness, they should be placed in a class of unsecured creditors different from and junior to that of Dr. Cordero, who has nothing whatsoever to do with the DeLanos' bankruptcy. Cf. B.C. §1322(b)(1)-(2). Yet, Dr. Cordero stands the risk of being deprived of any payment at all on a judgment that he may eventually recover against Mr. DeLano for his wrongful conduct precisely as a loan officer. Cf. Pfuntner v. Gordon et al, docket no. 02-2230.

17. In addition to drawing up the DeLanos' timeline of credit card debt accumulation, it is necessary to examine the DeLano's monthly credit card statements for the period in question to establish on what goods and services they spent what amount of money of which more than $98,000 still remains outstanding…plus they carry a mortgage of $77,084.49 on a house in which their equity is only $21,415.51. (Schedule A) This is particularly justified since the DeLanos claim that they have barely anything of any value, a mere $9,945.50 worth of goods. (Schedule B). Where did all that borrowed money go?!

18. The timeline and nature of the DeLanos' credit card use will make it possible to figure out

whether there must be other assets and the repayment plan is not in the best interest of creditors so that consideration must be given to:

a. a conversion of the case to one under Chapter 7; Cf. B.C. §§1307(c) and 1325(a)(4);
b. an extension of the plan from three to five years; Cf. B.C. §§1322(d); or
c. dismissal for substantial abuse and bad faith under the equitable powers of the court to consider the motives of debtors in filing their petitions; Cf. B.C. §§1307(c) and 1325(a)(3).

IV. Trustee's duty to investigate debtor's financial affairs and provide requested information to a party in interest

19. Under B.C. §§1302(b)(1) and 704(4), the Trustee has the duty "to investigate the financial affairs of the debtor". Additionally, B.C. §§1302(b)(1) and 704(7) require him to "furnish such information concerning the estate and the estate's administration as is requested by a party in interest". To discharge these duties so that the interested parties may be able to make an informed decision as to what is in the best interest of creditors and the estate, the Trustee should investigate the matters discussed above, which in brief include the following:

20. Conduct an accounting based on the DeLanos' monthly credit card statements covering the period of debt accumulation. Find out how, when, and who became aware of the DeLanos' risky indebtedness and alerted them to it and with what results.

21. Determine the items and value of the DeLanos' personal property and the whereabouts and value of the goods purchased on credit cards.

22. Find out whether the DeLanos applied to M&T Bank or any other bank for a consolidation loan; if so, what was the response and, if not, why.

23. Determine what expenses are not reasonably necessary to maintain or support the DeLanos. Cf. B.C. §§1325(b)(2) and 584(d)(3).

24. State whether the DeLanos commenced making payments within 30 days of filing the plan. Cf. B.C. §§1302(b)(5) and 1326(a)(1).

25. Establish the circumstances of the DeLanos' $10,000 loan to their son and its alleged uncertain collectibility.

V. Provisions that any modified plan should contain

26. The DeLanos have shown that they do not know how to manage money in spite of the fact that Mr. Delano is a bank loan office. Therefore, their current and future income should not be allowed to be paid to them. Rather, the plan should provide for its submission to the trustee's supervision and control for his handling as is necessary for the execution of the plan. Cf. B.C. §1322(a). Whether under the plan or the order confirming it, the trustee should be the one who makes plan payments to creditors. Cf. B.C. §1326(c). Consequently, the DeLanos' current and future employers and any entity that pays income to them should be ordered to pay all of it to the trustee. Cf. B.C. §1325(c).

27. All the DeLanos' disposable income should be applied to make payments under the plan. Cf. B.C. §1325(b)(1)(B). All income not reasonably necessary to be expended should be recovered

from the DeLano's current expenditures and made available for payment to the creditors. Cf. B.C. §1325(b)(2).

28. The plan should provide for the payment of Dr. Cordero's claim. Cf. B.C. §1325(b)(1)(A).

VI. Notice of claim and request to be informed

29. Dr. Cordero gives notice of his claim to compensation for all the time, effort, and money that the Delanos have through their bankruptcy petition forced him to spend in order to protect his claim, and all the more so if it should be determined that the DeLanos did not incur that debt or file their petition in good faith and free of fraud.

30. Dr. Cordero requests that notice be given to him of every act undertaken in this case.

March 4, 2004

Dr. Richard Cordero

Dr. Richard Cordero
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Brooklyn, NY 11208
tel. (718) 827-9521

CERTIFICATE OF SERVICE

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[A:1972-1976 reserved]

Dr. Richard Cordero

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July 19, 2004

Hon. Judge John C. Ninfo, II
United States Bankruptcy Court
1220 US Court House
100 State Street
Rochester, NY 14614

faxed to (585)613-3299

re: David and Mary Ann DeLano, Chapter 13 case, no. 04-20280

Dear Judge Ninfo,

Please find herewith a proposal for an order to issue upon your decisions at the hearing today of Trustee George Reiber's motion to dismiss the DeLano case. The order is in substance and even its wording practically the same as the relief that I requested in my statement of July 9 in opposition to the motion, except that in compliance with your decisions, I have:

1. eliminated the requests that Trustee Reiber be replaced and that a concurrent referral be made of this case to the FBI,
2. changed the dates for document production to those that you chose; and
3. taken account of Att. Werner's statement that he has already issued some subpoenas.

The removal from the order of the requests in 1. above, is done to abide by your decision and does not mean that I have renounced to those requests. On the contrary, as I stated at the hearing, Trustee Reiber has an insurmountable conflict of interests, does not and cannot represent the creditors' interests, and has shown to be unwilling and unable to conduct an investigation of the DeLanos, let alone an effective one. If he cannot exercise the minimum degree of proper care and due diligence to make copies of documents without missing pages, how can he be reasonably expected to be able to analyze them internally, much less by comparing them with all other documents available, and detect inconsistencies, draw logical inferences, and reach sound conclusions therefrom? Hence, not to replace him will doom whatever currently passes for his investigation to an exercise in futility. Only an independent party, such as the FBI, can conduct an investigation with a reasonable expectation of getting to the bottom of what is going on in this case and its broader context.

Nor is there any need to wait for the production of the requested documents to find out the whereabouts of the DeLanos' earnings of over $291,000 in the last three years, not to mention in the past 15. Wherever that money went, it did not make it into a disclosure in the petition. The absence of that money there, except for the ridiculous trace of two cars worth $6,500, household goods worth $2,910, and cash in accounts or in hand of $535.50, has given rise to the reasonable suspicion of concealment of assets. Not even the appearance of those earnings by a sleight of hand will dispel the suspicion. It is too late for that: The wrong was committed.

Therefore, I will reiterate those requests at an appropriate procedural event in the future. At present, I respectfully submit that the order should issue as is, for the parties had ten days since I faxed my Statement to them on July 10, to study it there and then to raise any objections at the hearing today to its presentation in the form of an order. Consequently, having had but missed that opportunity to object to it, they must be deemed to have consented to all its terms just as they are deemed to be able to prove their statements in court.

Sincerely,

Dr. Richard Cordero

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re: David G. DeLano and Mary Ann DeLano — Chapter 13

Case no: 04-20280

ORDER
FOR PRODUCTION OF DOCUMENTS

Having heard on Monday, July 19, 2004, the motion raised by Chapter 13 Trustee George Reiber on June 15, 2004, to dismiss the above-captioned case, the Court orders the production of documents by the Debtors –the DeLanos–, their Attorney –Christopher Werner, Esq. – and the Trustee, and their submission to the Court, the Trustee, and Creditor Dr. Richard Cordero, by 4:30 p.m. on Wednesday, August 11, 2004, unless otherwise stated hereinafter, as follows:

a) All the pages of the **Equifax' credit reports** of April 26, 2004, for Mr. DeLano and of May 8, 2004, for Ms. DeLano, submitted incomplete on June 14, 2004, by Att. Werner to Trustee Reiber and by the latter to Dr. Cordero;

(1) deadline for submission: by 4:30 p.m. on Wednesday, July 21, 2004.

b) **Financial documents** relating to transactions between the DeLanos and institutions:

(1) **types of documents**:

(a) monthly statements of credit or debit cards, whether the issuers are financial institutions or sellers of goods or services, with all the statements' parts and without redaction, including the names of the entities from whom purchase of goods or services was made and the amount and date of the purchase;

(b) monthly bank statements of all their bank accounts, with all their parts and without redaction;

(c) [see ¶a) above]

(d) copies of their tax filings with the IRS, including 1040 forms;

(e) copies of all instruments attesting to an interest in ownership or the right to the enjoyment of real estate, mobile homes, or caravans, whether in the State of New York or elsewhere;

(f) all materials, including the cover letter(s), sent by MBNA together with the two sets that it produced of copies of statements for the last three years of accounts 5329-0315-0992-1928 and 4313-0228-5801-9530, which sets of copies Att. Werner referred to in his letter to Trustee Reiber of July 12, and in paragraph 5 of his Statement to the Court of July 13, 2004, and which materials Dr. Cordero requested at the hearing without objection from Att. Werner;

(2) **period of coverage**: from the present, that is, the day of fulfillment of the order, to January 1, 1989;

(3) **status of account**: whether open or closed;

(4) **holder of account or interest**: whether in both or either of the DeLanos' names, or

entities whom they control, such as their children, relatives, friends, tenants, their attorney or representative, or holders of trusts for them;

(5) **deadline for submission**:

(a) the deadline applies to the documents themselves for documents **in their possession**, whether in their principal or secondary residence, a storage facility, a safe box, or the place of an entity under their control;

(b) for documents **not in their possession**:

i) the deadline applies to **copies of**:

(A) subpoenas already issued, as stated by Att. Werner at the hearing, as well as those to be issued, returnable within 30 days of issuance, to each entity –which includes a person or an institution- that can reasonably be assumed to have possession of the documents described in ¶b)(1) above and that could not be produced pursuant to ¶b)(5)(a) above, and

(B) each signature confirmation slip[1] affixed to the envelope in which each subpoena is to be mailed or any equivalent mailing confirmation concerning the subpoenas already mailed;

ii) the deadline applies to an affidavit by the DeLanos and Att. Werner attesting to their compliance with the order in ¶b)(5)(b)i) above, and containing:

(A) a complete list of names of all entities and their addresses to whom the subpoenas were issued, whether they were mailed or hand delivered; a description of the documents requested; the account or transaction numbers to which they relate; and the entities' phone numbers; and

(B) a photocopy of all the signature confirmation receipts concerning the subpoenas mailed, clearly indicating their signature confirmation number, which is their tracking number; the signature of the recipient, and the postmark.

c) All financial documents relating to the **loan to their son** referred to in Schedule B of the DeLanos' bankruptcy petition of January 26, 2004, including but not limited to:

(1) The DeLanos' withdrawal order, addressed to the entity from which the DeLanos obtained the funds to be lent to their son, such as a cancelled check or the back-and-front photocopy thereof made by the paying entity;

(2) The instrument used to transfer the funds to the son, such as a cancelled personal or cashier's check, or the instrument's back-and-front photocopy made by the paying entity;

(3) The statement from the paying entity showing the amount withdrawn by the DeLanos for the loan to their son and the date of payment to the DeLanos after the entity processed their withdrawal request;

(4) The contract or promissory note between either or both the DeLanos and their son, or an acknowledgment of receipt of the funds by the son;

(5) An affidavit by the DeLanos attesting to the following:

(a) disbursement of the loan to their son,

(b) amount of the loan,

(c) description of the lending instrument used and its date or, if such instrument was not used, the terms and date of the verbal agreement concerning the loan,

(d) date of payment,

(e) intended purpose of the loan and the actual use of the funds lent,

(f) date and amount of any repayment installment,

(g) outstanding balance, and

(h) current arrangement for repayment;

(6) affidavit by their son attesting to:

(a) his receipt of a loan from the DeLanos; and

(b) the information as in ¶c)(5)(b)-(h) above;

(7) dateline for submission:

(a) the documents themselves for all such documents in the DeLanos' possession;

(b) the DeLanos' affidavit; and

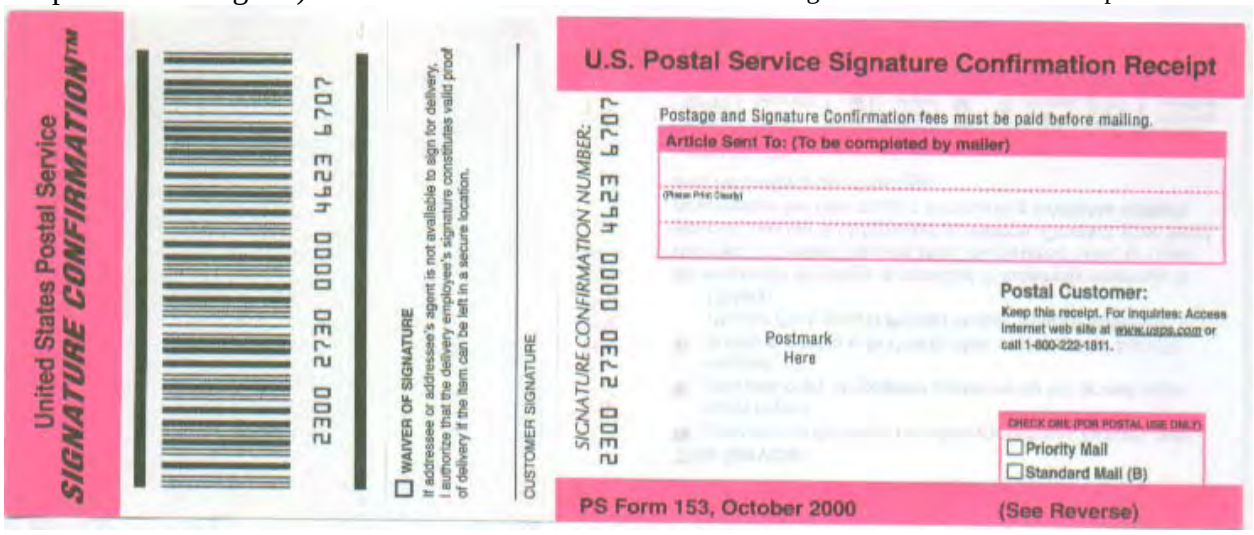
(c) as provided for in ¶b)(5)(b) above, for documents not in their possession;

d) All documents proving Att. Werner's statement that the DeLanos' financial problems began 10 years ago when Mr. DeLano lost his job at First National Bank and had to accept a lower-paying job elsewhere while incurring debts for the their children's education and evidence of such educational debts.

SO ORDERED
THIS DAY OF_____

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

[1] Sample U.S.P.S. signature confirmation slip, with receipt on the right (the dark areas on the fax are pink in the original) ↓U.S. Postal Service Signature Confirmation Receipt↓



↑ ↑bar code and tracking number↑ ↑PS Form 153, October 2000↑

↑United States Postal Service *Signature Confirmation ™*

Dr. Richard Cordero

Ph.D., University of Cambridge, England
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July 21, 2004

Hon. Judge John C. Ninfo, II
1220 US Court House
100 State Street
Rochester, NY 14614

faxed to (585)613-4299

re: David and Mary Ann DeLano, Chapter 13 case, no. 04-20280

Dear Judge Ninfo,

Yesterday I faxed to you the proposed order for document production. It was discussed at the hearing the day before and implements your decision on that occasion. Indeed, after I requested that you grant my request for such order as described in my July 9 Statement Opposing the Motion to Dismiss, you stated that the Court does not prepare orders, but rather issues them on proposal from a party, whereupon I proposed to reformat the text of my requested order into a proposed order. Having already had the opportunity to read that text, you decided that I could do so and gave me your fax number to enable you to receive and issue it immediately so that the parties would have formal notice of their obligation to begin producing certain documents today.

While neither the order has issued nor my proposal has been docketed, a letter by Att. Werner, delivered via messenger to the Court and protesting the breath of my proposal, has already been docketed. As I indicated in the letter accompanying the proposed order, Att. Werner had ten days since I faxed my Statement to him on July 10 to learn the breath of my requested order, yet he failed to object to your decision that I convert it into a proposed order and fax it to you. If, as he stated on Monday, he has been in this business for 28 years, the must know his obligation to raise timely objections. Now it is too late for him to do so.

Nor can he pretend that your recapitulation of what we had to do constituted the total expression of his and the DeLanos' obligation. Your recapitulation was that I would submit the proposed order, that he and Trustee Reiber would submit the missing pages of the credit reports by today, and that the DeLanos would produce other documents by August 11. Its only reasonable purpose was precisely to act as such: as a summary of your decisions and our obligations. Att. Werner cannot distort your intention by casting out the part concerning the order, whose details he already knew, and retaining the part relating to his obligation expressed in the general terms of a recapitulation. If the latter two parts of the decision stated all that Att. Werner and the DeLanos had to do, I trust that you would not have allowed that I waste my time and effort once more in preparing and submitting a document that you were not going to act upon at all.

Nor can Att. Werner presume that you would content yourself with simply asking him to do what is expected of any lawyer, that is, submit complete documents, and of one acting in good faith, which here meant to comply with the Trustee's April and May requests by submitting all the credit card statements for the last three years, rather than pretend that by submitting a single and incomplete statement between 8 and 11 months old for each card he could truthfully "believe that we have complied in all respects to [sic] the Trustee's requests", as he stated to the Court in his July 13 Statement. The issue of the petition's good faith has been properly raised. Thus the proposed order aims to establish the nature of the expenditures and the whereabouts of the assets through pertinent documents, not just those that suit them. Hence, if the Court wants to be taken seriously by them and to justify my reliance on its word, it should issue the order as proposed.

Sincerely,

Dr. Richard Cordero

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re: David G. DeLano and Mary Ann DeLano

Chapter 13
Case no: 04-20280

NOTICE OF MOTION AND SUPPORTING BRIEF FOR DOCKETING AND ISSUE, REMOVAL, REFERRAL, EXAMINATION, AND OTHER RELIEF

Madam or Sir,

PLEASE TAKE NOTICE, that Dr. Richard Cordero will move this Court at the United States Courthouse on 100 State Street, Rochester, NY, 14614, at the next two hearings scheduled in this case for August 23 and 25, 2004, or as soon thereafter as he can be heard, to request the docketing and issue of his proposed order of July 19, 2004, for document production by the Debtors; the docketing of his July 21, 2004; the removal of Trustee George Reiber and Att. James Weidman from this case; the referral of the case to the U.S. Attorney and the FBI; the examination of the Debtors, Trustee Reiber, and Att. Weidman under FRBkrP Rule 2004; and for other relief on the factual and legal grounds stated below.

I, Dr. Richard Cordero, Creditor in this case, state under penalty of perjury the following:

TABLE OF CONTENTS

I. At a hearing on July 19, 2004, Judge Ninfo asked Dr. Cordero to fax to him a proposed order to sign and make it effective for the Debtors to produce documents immediately; Dr. Cordero did so, but Judge Ninfo neither signed it nor had it docketed, and Dr. Cordero's letter of protest of July 21, though acknowledged by a clerk as received and in chambers, weeks later had still not been docketed, and when Dr. Cordero protested, it was claimed never to have been received

1. Trustee George Reiber filed a motion of June 15, 2004, to dismiss this case and I filed a statement of July 9, 2004, to oppose it. My statement contained a detailed request for the issue of an order for production of documents by the Debtors and their attorney, Christopher Werner, Esq. The request specified which documents were to be produced as well as when, how, and by whom.
2. At the hearing of Trustee Reiber's motion on Monday, July 19, I moved for this Court, in the person of the Hon. John C. Ninfo, II, to issue that requested order. Since I had filed it and

served it on the other parties, you, Judge Ninfo, as well as they knew its contents. You told me that the Court does not prepare orders and that I should convert my requested order into a proposed order. Because some documents were to be produced in just two days, on July 21, you authorized me in open court to fax my proposed order to you and gave me the number of your fax machine in chambers. That way you would receive and sign it right away so that it could become effective timely.

3. On Tuesday, July 20, 2004, I faxed to you my requested order formatted as a proposed order and modified only to take into account the dates that you had decided upon for initial and subsequent production of documents. It was accompanied by a cover letter and both were dated July 19, 2004. It should be noted that the fax number that you gave me in open court and for the record, namely, (585)613-3299, was wrong. When my fax did not go through, I had to call the Court and Case Manager Paula Finucane checked and told me that the correct number is (585)613-4299. Hence, after faxing the, I called back to make sure that the fax had gone through and Clerk Finucane acknowledged that my letter and proposed order had been received in chambers. Each page was numbered at the bottom right corner with the number format "page # of 5". I faxed them also to Trustee Reiber, Att. Werner, and Assistant U.S. Trustee Kathleen Dunivin Schmitt. But you failed to sign the proposed order.
4. Hence, on July 21, 2004, I wrote to you to protest that you had not signed the proposed order as agreed, or for that matter issued any production order at all. Yet, by then PACER[1] already contained the description of the hearing on July 19, which included the statement in capital letters:

> Order to be submitted by Dr. Cordero. NOTICE OF ENTRY TO BE ISSUED.

5. On Monday, July 26, I called the Court and asked Clerk Finucane specifically why my faxed letters and proposed order of July 19 and 21, had not been docketed yet. She said that they were in chambers and that she had not received any order to be docketed.
6. Only the following day, July 27, was my July 19 letter docketed, but only it. Indeed, the entry in the docket reads thus:

07/20/2004	53	Letter dated 7/19/04 Filed by Dr. Richard Cordero regarding Proposed Order . (Finucane, P.) (Entered: 07/26/2004)

[1] PACER is the Public Access Court Electronic Records service that allows subscribers to see through the Internet case dockets and to retrieve documents to their computers.

When one clicks on the hyperlink 53, only the letter –page 1 of 5- downloads as an Adobe PDF (Portable Document Format) document, but not the order! Why?!

7. By contrast, the entry for Att. Werner's objection of July 19, 2004, to my claim as creditor of his clients reads thus.

07/22/2004	51	Motion Objecting to Claim No.(s) 19 for claimant: Richard Cordero, Filed by Christopher Werner, atty for Debtor David G. DeLano , Joint Debtor Mary Ann DeLano (Attachments: # 1 Proposed Order # 2 Certificate of Service) (Finucane, P.) (Entered: 07/23/2004)

8. When one clicks on the hyperlinks 51>2 his proposed order disallowing my claim downloads! This is blatant discriminatory treatment.
9. What is more, on July 27 my letter of July 21 to you, Judge Ninfo, protesting your failure to issue the proposed order that you had asked me to fax to you was not docketed.
10. Still by Friday, August 6, neither the proposed order nor the July 21 letter had been docketed. On that day I inquired about it of Deputy Clerk of Court Todd Stickle. He told me that his clerks had not received it for docketing and that he would look into it and consult with Clerk of Court Paul Warren into the possibility of discriminatory treatment.
11. On Monday, August 9, Mr. Stickle informed me that upon asking you and your Assistant, Ms. Andrea Siderakis, he had been told that my July 21 fax never arrived.
12. That explanation for its not being docketed is definitely unacceptable: My fax went through on July 22 and the copy attached hereto of my telephone bill shows that I did fax the letters and proposed order on July 20 and 22 to (585)613-4299. In addition, the receipt of my July 21 letter was acknowledged by Clerk Finucane, as was the place where it was withheld: your chambers.

II. A series of inexcusable instances of docket manipulation form a pattern of non-coincidental, intentional, and coordinated wrongful acts, which now include the non-docketing and non-issue of letters and the proposed order for document production by the DeLanos that Judge Ninfo requested Dr. Cordero to submit

13. This is by no means the first time that I send a paper to the court, but it is not docketed. I have pointed this out to Messrs. Warren and Stickle because it defeats the docket's important purpose and service. The docket is supposed to give notice to the whole world of the events in a

case. Through PACER, the docket serves as a document distribution center. Other parties, such as creditors, as well as non-party entities anywhere can have access to not only the official dates and description of those events, but also to the documents themselves that have been filed and can now be downloaded. But if events are not docketed and documents are not uploaded, they are not available through PACER; and if wrongly entered, they give the wrong idea of what has occurred in the case.

14. In my experience as a non-local party dragged before you, Judge Ninfo, by local parties that appear before you frequently, docket manipulation is a common occurrence and always works to my detriment. Whether the same biased treatment is given to other non-local parties or only to those who, like me, have dare challenge your rulings has yet to be determined, for example, in a multi-non-local party case like this. But the following occurrences already show how docket manipulation has had significant adverse consequences on me:

    a. The most egregious instance of failure to docket concerns case 02-2230, Pfuntner v. Gordon et al, where Debtor David DeLano is a defendant and the bank *loan* officer who made a loan to the original Debtor, David Palmer, another defendant and the one who, after filing for voluntary bankruptcy, as the DeLanos did, just "disappeared" to 1829 Middle Road, Rush, New York 14543, from where you would not bring him back into court. I mailed my application for default judgment against Debtor Palmer on December 26, 2002, but it was not docketed for over 40 days! I had to inquire about it; found out from Case Manager Karen Tacy that it was in chambers; and had to write to you concerning it on January 30, 2003.

    b. Even a paper concerning me but filed by another person has been withheld without docketing: The transcript that I first requested from Court Reporter Mary Dianetti on January 8, 2003, and that in violation of 28 U.S.C. §753(b) she did not deliver directly to me, was filed by her only on March 12, 2003, in violation of FRBkrP Rule 8007(a), and was not entered in docket 02-2230 until March 28, 2003, in violation of FRBkrP Rule 8007(b). Much worse yet, it was not mailed to me until March 26! Who withheld it from me, with whose authorization, and for what purpose?

    c. Moreover, the dates of docketing have been altered: I timely mailed a notice of appeal from your dismissal of my claims against Trustee Kenneth Gordon in case 02-2230, Pfuntner v. Gordon et al, on January 9, 2003. Trustee Gordon moved to dismiss it as

untimely filed and I timely mailed a motion to extend time to file the notice. Although Trustee Gordon himself acknowledged on page 2 of his brief in opposition of February 5, 2003, that my motion had been timely filed on January 29, you surprisingly found at its hearing on February 12, 2003, that it had been untimely filed on January 30! So you denied my motion. You did not want to consider the fact that Trustee Gordon had checked the docket and the filing date of my notice of appeal and had claimed with your approval in disregard of FRBkrP Rules 8001, 8002, and 9006(e) and (f) that my notice, though timely mailed, had been untimely filed. Likewise, Trustee Gordon checked the filing date of my motion to extend for the same purpose of escaping through a technicality accountability for his recklessness and negligence as a trustee. He would hardly have made a mistake in such a critical matter. For your part, you would not investigate the discrepancy. Shedding light on why you would protect him so, PACER replied on page https://ecf.nywb.uscourts.gov/cgi-bin/login.pl to a query on June 26, 2004, of Trustee Gordon as trustee thus: "This person is a party in 3,383 cases". More revealing yet, in all but one of those 3,383 cases you, Judge Ninfo, have been the judge. You and Trustee Gordon go back a long way. When it came time for you to choose between protecting him and ascertaining the facts, I did not stand a chance. No wonder now the docket appears as if I had untimely filed my motion to extend on January 30, 2003.

d. What is more, docketed papers have been withheld: To perfect my appeal to the Court of Appeals in case 02-2230, I had to comply with F.R.A.P Rule 6(b)(2)(B)(i) by submitting my Redesignation of Items on the Record and Statement of Issues on Appeal. Suspicious of another docket manipulation, I sent originals of that critical paper to both your Court and the District Court on May 5, 2003…only to be utterly shocked upon finding out on May 24 that although the District Court had transferred the record on May 19, to the Court of Appeals, the latter's docket for my appeal, no. 03-5023, showed no entry for my Redesignation and Statement. Worse still, I checked the dockets of both the Bankruptcy and the District Court and neither had entered it! The absence of this paper from the docket could have derailed my appeal, for it would have been assumed that I had failed to comply with F.R.A.P requirements. I had to scramble to send a copy of my Redesignation and Statement to Appeals Court Clerk Roseann MacKechnie. Even as late as June 2, 2003, her Deputy, Mr. Robert Rodriguez, confirmed to me that the Court of Appeals had received no

Redesignation and Statement or docket entry for it from either of the lower courts. The Bankruptcy and the District Court had gone as far as physically withholding my paper from the Court of Appeals!

e. Documents filed by me are not docketed although they are clearly intended to be entered and documents produced by others are not entered despite the fact that their existence and importance result from implication: My letter to Deputy Clerk of Court Todd Stickle of January 4, 2004, was not entered in docket 02-2230 although I served it with a Certificate of Service, thereby making clear my intention to file it. Likewise, Mr. Stickle's response to me of January 28, 2004, was not filed. There was no reason for keeping these letters out of that docket. This is especially so since in my letter I had requested information about documents that I described with particularity because they have no entry numbers of their own since they were not entered. However, their existence is confirmed by references to them in other entries as well as by their own nature, i.e., an order authorizing payment to a party and stating the amount thereof must exist. Nevertheless, Mr. Stickle's letter ignored that fact and required that I provide entry numbers before he could process my request for information.

f. Even papers that have been entered on the docket and that appear to be accessible through a hyperlink, have been described perfunctorily and uploaded with missing pages: At the beginning of last April I filed three separate papers in this case for docket no. 04-20280, namely:

    1) Memorandum of March 30, 2004, on the facts, implications, and requests concerning the DeLano Chapter 13 bankruptcy petition, docket no. 04-20280 WDNY

    2) Objection of March 29, 2004, to a Claim of Exemptions

    3) Notice of March 31, 2004, of Motion for a Declaration of the Mode of Computing the Timeliness of an Objection to a Claim of Exemptions and for a Written Statement on and of Local Practice

    However, as of April 13, docket 04-20280 read like this in pertinent part:

04/08/2004	19	Objection to A Claim of Exemptions. Filed by Interested Party Richard Cordero . (Attachments: # 1 Appendix)(Tacy, K.) (Entered: 04/08/2004)
04/09/2004	20	Deficiency Notice (RE: related document(s)19 Objection to Confirmation of the Plan and Notice of Motion for a declaration of the mode of Computing the timeless of an objection to a claim of exempltions and for a written statements on and of Local Practice, filed by Interested Party Richard Cordero) (Finucane, P.) (Entered: 04/09/2004)

These entries have many mistakes and reflected poorly on me as a filer…or as an "Interested Party" although I am a creditor listed as such in Schedule F of the DeLanos' petition and in the Court's Register of Creditors. Was somebody in the Court already prejudging my status after having informally gotten wind of Att. Werner's intention to challenge it in future? I had to write to Clerk of Court Warren on April 13 to point out to him that:

4) the Memorandum was neither an attachment nor an appendix to the Objection to a Claim of Exemptions. It should have been entered in the docket as a separate document with its full title, which appeared in the reference clearly marked as Re:…; otherwise, the title used in 1) above, could be used.

5) Moreover, clicking the hyperlink in # 1 Appendix opened a Memorandum that was truncated of its first five pages; the missing pages there appeared in the document opened by the hyperlink for entry 19, which in turn was truncated of the following 18 pages.

6) For its part, entry 20 contains jarring mistakes:
   a) it is not "timeless", but rather "timeliness";
   b) it is not "exempltions", but rather "exemptions";
   c) it is not "a written statements", but rather "a written statement".

I wrote to Mr. Warren: "I trust you and your colleagues care about how so many mistakes reflect on you and them. I certainly care about how they reflect on me and how much more difficult they render the understanding and consultation of the documents that I filed." Mr. Warren had the mistakes corrected. But the fact remains that there is no

possible justification for truncating my documents and garbling their description, except that they were quite critical of:

7) how you, Judge Ninfo, had defended Trustee Reiber and his attorney, Mr. Weidman, from my complaint in open court on March 8 for their failure to review the DeLano's petition even cursorily;

8) how Trustee Reiber and Att. Weidman had nevertheless readied that petition for submission to you for confirmation of its repayment plan;

9) how Att. Weidman, with the endorsement of Trustee Reiber, had prevented me from examining the DeLanos at the meeting of creditors;

10) how they had brushed aside the need for investigating the DeLanos as I had requested in light of the specific suspiciously incongruous declarations in the petition and my citations to the Bankruptcy Code and Rules contained in my written objections to confirmation; and how they had prejudged any investigation that they might conduct by reaffirming in open court that the DeLanos had filed their petition in good faith; and of course,

11) how you had blatantly disregarded my right under 11 U.S.C. §341, that is, under federal law, to examine the DeLanos, and instead told me in open court that I should have asked around in advance to find out how meetings of creditors are conducted under "local practice" and how I should have had the courtesy to submit to Trustee Reiber and Att. Weidman my questions for the DeLanos in advance…*mindboggling statements indeed!*

12) and so critical are those truncated and misdescribed documents that more than four months later you still have not decided my Objection to the Claim of Exemptions by the DeLanos or declared the mode of computing the timeliness of such objection, let alone stated:

    a) how "local practice" can invalidate federal law,
    b) how a non-local finds out reliably what "local practice" is, and
    c) why I should waste any more time, effort, and money doing legal research that will be trumped by whatever "local practice" is said to be.

15. There is a pattern here. No reasonable person can believe that all these different types of docket manipulation have occurred by pure coincidence or generalized and consistent clerk incompetence. The pattern is one of wrongful acts, and they are intentional and coordinated.
16. Inscribed in that pattern is your failure, Judge Ninfo, to forward for docketing my letter and proposed order faxed and acknowledged as received on July 20. Not until after I called on July 26 was the letter docketed on July 27. But not even then was my proposed order docketed and till this day it has not been docketed as faxed by me. This is a clear violation of FRBkrP Rule 5005(a)(1), which in pertinent part provides thus:

> The judge of that court may permit the papers to be filed with the judge, in which event the filing date shall be noted thereon, and they shall be forthwith transmitted to the clerk.

17. Also inscribed in that pattern is the failure to docket my letter faxed on July 22, which is compounded by the pretense that it was never received, though acknowledged by a clerk to be in chambers and its transmission is recorded on my telephone bill.

III. Judge Ninfo's requests on other occasions of documents, whose contents he knew, to be submitted by Dr. Cordero only to do nothing upon their being submitted show that Judge Ninfo never intended to issue the proposed order for document production by the DeLanos that he requested of Dr. Cordero on July 19, 2004

18. However, if you, Judge Ninfo, ever intended for my fax to go through, although the fax number that you gave me was wrong, you never intended to issue the proposed order that at the July 19 hearing you asked me to fax to you. Yet, you knew the contents of that order since I had requested it from you in my July 9 statement in opposition to Trustee George Reiber's motion to dismiss the DeLanos' petition; whether your knowledge was actual or constructive is indifferent. There can be no doubt that it was to issue because, as already pointed out above, the docket itself states in capital letters: "Order to be submitted by Dr. Cordero. NOTICE OF ENTRY TO BE ISSUED." But doing dishonor to your word and undermining once more the trust that a litigant should be able to put in a federal judge, and a chief judge at that, you did not issue it, actually you would not even transmit it to the clerks for docketing!
19. This is not the first time either that you ask me to prepare and submit a document that you never intended to act upon. Here are the most blatant instances:

a. At the pre-trial conference on January 10, 2003, in case 02-2230, you directed me to submit to you and the other parties three dates on which I could travel from New York City, where I live, to Avon, outside the suburbs of Rochester, to conduct an inspection. You stated that within two days of receiving those dates you would determine the most convenient date for all the parties and inform me thereof. By letter of January 29, 2003, I informed you and all the parties, including Mr. DeLano's attorney in that case, of not just three, but rather six proposed dates. Yet you never acted on them, not even after I brought the issue to your attention at the hearing on February 12, 2003. So at your instigation, I cleared those dates in my schedule and kept them open to travel but through your failure to keep you word it all redounded to my detriment.

b. At a hearing on May 21, 2003, in case 02-2230, I reported on the damage to and loss of my property caused at the outset by Mr. David Palmer and ascertained through physical inspection, which was attended by a representative of Mr. DeLano's attorney in that case. Thereupon you took the initiative to request that I resubmit my application for default judgment against Mr. Palmer. I resubmitted the same application that I had submitted on December 26, 2002. Nevertheless, at the hearing on June 25, 2003, to argue it, you denied it on the pretext that I had not proved how I had arrived at the sum claimed. Yet, that was the exact sum certain that I had claimed back in December! Why ask me to resubmit and get my hopes high if you were going to deny the application on the basis of an element that you had known for six months? Mr. Palmer too had known it for that long, for I had served him with the application. He could have opposed the application if he had only wanted and had complied with his obligation to appear in court as a defendant after he had invoked his right to protection in court as a voluntary bankruptcy petitioner. But you took up voluntarily his defense, preferring to protect a local party already defaulted by Clerk of Court Warren on February 4, 2003, rather than uphold the rights of a non-local party, me, who had complied with every requirement of FRBkrP Rule 7055 and FRCivP Rule 55 and had relied on your word to his detriment.

c. Likewise, at a hearing on May 21, 2003 in case 02-2230, you asked that I submit a separate motion for sanctions on, and compensation from, the plaintiff and his attorney for their disobedience of two orders of yours, including their failure to attend the very inspection of property that they had applied to you for. I submitted the motion on June 6,

2003, meticulously discussing the facts and the applicable law and supported by more than 125 pages documenting my bill for compensation. Yet, that plaintiff and his attorney were so certain that you would not ask them to pay anything at all that they did not even bother to submit a brief in opposition. What is more, that attorney did not even object to my motion at its hearing on June 25. You did it for him and his client by faulting me for not having included a copy of the air ticket, which represented a miniscule portion of the requested compensation. Not only that, but you did not impose even non-monetary sanctions on them, who had shown contempt for your two orders, thereby undermining the integrity of the court that you are sworn to uphold.

20. By your conduct on those occasions you revealed your true intentions, for as you know, the law deems a man to intend the reasonable consequences of his actions: You, Judge Ninfo, intended to wear me down by causing me more waste of effort, time, and money as well as an enormous amount of aggravation to protect the local parties that appear before you so often and teach a lesson to a non-local, me, who thinks that just because he is dragged as a defendant into court before you he can rely on federal law and ignore "local practice" (see para. 14.f.11) and 12)) and challenge your rulings on appeal.
21. Wearing me down was also your intention in requesting that I submit the proposed order. Indeed, if as you stated in your order entered on July 27, "the Case Docket Report properly reflects what the Court ordered at the hearing on July 19, 2004", why did you ask me to convert my requested order into a proposed order at all and fax it to you? You never intended to issue my proposed order!
22. The circumstances of issue and contents of that order of yours entered on July 27 are worth commenting. Since I kept inquiring about your failure to issue my proposed order, you issued your own, but not before a week had gone by, long after the first date had come and gone for the DeLanos and their attorney, Christopher Werner, Esq., to begin producing documents. An objective observer must wonder what would have happened if I had not pursued the matter and, as a result, you had not issued any order. Would you have upheld a claim that Att. Werner and his clients did not have to produce any documents because no order compelled them to do so?

IV. Judge Ninfo's denial of Dr. Cordero's proposed order on the grounds, despite their untimeliness, of Attorney for the DeLanos' "expressed concerns" about it shows Judge Ninfo's bias toward the local parties and renders suspect his own order, which fails to require production by the DeLanos of financial documents that in all likelihood will reveal bankruptcy fraud

23. Att. Werner too knew the contents of the proposed order even before I submitted it given that I had also served him with my July 9 statement, which contained it in the form of a requested order. Yet, at the July 19 hearing he failed to object to it. Only after I served it on him by fax, did he object to it, stating in a letter to you solely that "we believe [it] far exceeds the direction of the Court". That is why your own order states that "to [my proposed order] Attorney Werner expressed concerns in a July 20, 2004, letter". This is an unfortunate hybrid between 'objections to' and 'concerns about'. It is indicative of your awareness that due to untimeliness, he could not have raised valid objections for the first time after the hearing was over.
24. How could untimely "concerns" be anything but a pretext not to issue my proposed order? Evidently, untimeliness is a tool that you only use to dismiss my notice of appeal and my motion to extend the time to appeal (para. 14.c, supra).
25. By contrast, you did not dismiss as untimely Att. Werner's objection to my status as a creditor of Mr. David DeLano, his client, although:
    a. Mr. DeLano has known for almost two years the nature of my claim since I served him with my complaint of November 21, 2002, in case 02-2230;
    b. Att. Werner himself included me among the creditors in the petition for bankruptcy of January 26, 2004;
    c. Att. Werner knew that I was the only creditor to show up at the meeting of creditors on March 8 and that I was determined to pursue my claim as stated in my March 4 Objection to Confirmation of the DeLanos' Plan of Repayment;
    d. Att. Werner objected to my status as creditor in his statement to you, Judge Ninfo, of April 16, which I refuted in my timely reply of April 25, after which he dropped the issue and went on for months treating me as a creditor; and
    e. Att. Werner continued to treat me as a creditor for more than two months after I filed my proof of claim on May 15.

26. It is only now, when my relentless insistence on the production of documents by the DeLanos can provide evidence of bankruptcy fraud, that Att. Werner tries to dismiss me by disallowing my claim. By now, however, Att. Werner's objection to my creditor status is untimely; he is barred by laches. Consequently, I will contest his motion, set for August 25, to disallow my claim…but is there any point in doing so?
27. Will you give my arguments a fair hearing or have you already made up your mind to get rid of me? The foundation for this question is not only the pattern of biased conduct against me, the only non-local party, and toward the locals in case 02-2230, described in the previous sections. There is also the decision made by somebody to denominate me in this case as an "Interested Party" rather than a creditor (see para. 14.f, supra).
28. Moreover, that order of yours is an inexcusably watered down version of mine. Despite the evidence of concealment of assets by the DeLanos presented in my July 9 statement, among other filings of mine, and discussed at the July 19 hearing, your order fails to require them to produce bank or *debit* account statements; documents concerning their undated "loan" to their son; instruments attesting to any interest of ownership in fixed or movable property, such as the caravan admittedly bought with that "loan"; etc. Why? What motive could justify preventing the facts to be ascertained through production of those documents? Dismissing me from this case will be the crowning act in the pattern of bias and disregard of legality that we so hope you undertake![2]

V. Since Judge Ninfo has failed to order production by the DeLanos of necessary documents and to replace Trustee Reiber, who has moved to dismiss the petition rather than investigate it, this case must be referred to or investigated by an independent agency willing and able to pursue the evidence of bankruptcy fraud

29. Trustee George Reiber has tried to dismiss the DeLanos petition. In so doing, he is motivated by self-preservation, for if he were to investigate it effectively, he would uncover evidence of fraud that would also incriminate him for his approval of a patently suspicious petition. In

[2] For other instances of your bias against me and toward the local parties and the description of other acts of disregard of the law, the rules, and the facts that form part of a pattern of non-coincidental, intentional, and coordinated wrongdoing to my detriment, see in docket 02-2230, entry 111, my motion of August 8, 2003, for you to remove that case to a presumably impartial court, such as the U.S. Bankruptcy Court in Albany, and recuse yourself from that case.

addition, the longer he keeps this case in his hands, the more he risks exposure for violating his duties as trustee. This statement is based on factual evidence:

a. Trustee Reiber violated his legal obligation to conduct personally the meeting of creditors held last March 8 in Rochester; cf. 28 CFR §58.6.

b. He supported his attorney, James Weidman, Esq., who conducted that meeting and who violated 11 U.S.C. §341 by preventing me from examining the DeLano Debtors, putting an end to the meeting after I had asked only two questions of the DeLanos and would not reveal what I knew when he asked me –as if I were under examination!- what evidence I had that the DeLanos had committed fraud.

c. He pretended to be investigating the DeLanos, as I had requested that he do in my Objection to Confirmation of March 4, 2004. But when by letter of April 15 I requested that he state in concrete what investigative steps he had taken, he then for the first time asked the DeLanos to provide some financial documents in his letter to Att. Werner of April 20.

d. His request for documents relating to only 8 out of 18 declared credit cards, only if the debt exceeded $5,000, and for only the last three years out of the 15 put in play by the Debtors themselves, who claimed in Schedule F that their financial problems related to "1990 and prior credit card purchases", reveals either his unwillingness to uncover evidence of bankruptcy fraud or his appalling lack of understanding of how credit card fraud works.

e. He waited for months without asking for or receiving any financial documents from the Debtors while at the same time refusing to issue subpoenas to them or their attorney. Then he moved on June 15 to dismiss the petition for their' "unreasonable delay" in producing documents precisely after they had produced some documents on June 14, which he so indisputably failed to even glance at that he did not notice how obviously incomplete and old they were. His conduct demonstrates utter unwillingness to investigate the Debtors and analyze any of their documents.

f. He admitted in our phone conversation on July 6 that he does not even know whether he has the power to issue subpoenas –if so, what does he know?!- and that he has never issued them…yet he has $3,909 *open* cases, according to PACER. Was there never a case in such

a huge number that required him to subpoena documents to determine whether the debtor had filed a petition in good faith? Or given such tremendous workload, did he routinely just dismiss any case likely to consume too much of his time?

g. Whether such tremendous workload caused him to operate by dismissing cases that required investigation, or his failure to give petitions even a cursory review allowed him to rubberstamp such a huge number of cases, the fact is that he failed to detect the glaring indicia that something was wrong with the DeLanos' petition, such as these:

   1) Mr. DeLano has been a bank loan officer for 15 years and still is such at Manufactures & Traders Trust Bank. Thus, he is an expert in detecting and maintaining creditworthiness and ability to repay loans. He is also an insider of the lending industry and must know which credit card issuers assert their bankruptcy claims more or less aggressively and above what threshold of loss.

   2) While a bank officer would be expected to carry the bank's credit card, perhaps even at a preferential rate, the DeLanos did not declare possessing any M&T Bank card, not to mention 'sticking' their employer with a bankruptcy debt.

   3) Mr. DeLano and his working wife declared earnings of $291,470 in only the three years from 2001-2003.

   4) Nevertheless, they declared having only $535.50 in cash or in bank accounts…with M&T and in credit, of course;

   5) two cars worth together merely $6,500;

   6) equity in their house of only $21,415, although people in their 60s, as the DeLanos are, have already paid or are about to finish paying their mortgage, on which by contrast they owe $78,084;

   7) household goods worth only $2,910…that's all they have accumulated throughout their work lives!, although they have earned over a hundred times that amount in only the last three years…unbelievable!

   8) Yet, they have accumulated $98,092 in credit card debt, conveniently spread over 18 issuers so that none has a stake high enough to find it cost-effective to get involved in this case only to receive 22¢ on the dollar; etc., etc.,…

9) Wait a moment! Where did their $291,470 go?

30. Trustee Reiber did not ask that question and when I asked it, he did not want to subpoena, or even just ask for, documents apt to answer it, such as bank accounts that can reveal a trail of money into other assets. He appears not to understand that so long as there is no explanation for the whereabouts of the DeLanos' earnings for at least the 15 years that they have put in play, there is reasonable suspicion of concealment of assets.
31. But if Trustee Reiber did review the DeLanos' documents and did understand the reasonable grounds for believing that a violation of laws of the United States relating to insolvent debtors had been committed, he had a legal duty under 18 U.S.C. §3057(a) to report it to the U.S. Attorney. Yet he failed to do so. Instead, he reported to the Court and the parties his wish to wash his hands of this case through its dismissal before somebody else, like me, uncovers enough to indict his competency or working methods for having approved such a patently suspicious petition.
32. Indisputably, Trustee Reiber has a conflict of interests that disqualifies him as an impartial and potentially effective investigator. Do you, Judge Ninfo, have a conflict of interests that explains why you too would not ask for those documents by signing my proposed order?
33. It follows that Trustee Reiber must be removed and this case referred to the appropriate law enforcement and investigative authorities.

VI. Relief requested

34. Therefore, I respectfully request that the Court, in the person of Judge Ninfo:
    a. enter with the date of July 20, 2004, in entry 53 of docket 04-2230 and upload into that entry of the docket's electronic version the proposed order of July 19, 2004, that with knowledge of its contents you asked me to fax to you and I did fax;
    b. issue that order, modified by the remark that insofar compliance therewith is still owing, the dates of July 21 and August 11, 2004, therein contained are to be understood as two and 10 days, respectively, from the date on which it becomes effective;
    c. enter with the date of July 22, 2004, my letter of July 21, 2004, faxed to you on July 22 and reproduced below;

d. remove Trustee George Reiber from this case under 11 U.S.C. §324; terminate any and all relation of Att. James Weidman to this case, whether as a professional person employed under §327 or otherwise; and prohibit any payment to them or disbursement by them of funds until otherwise ordered by a competent authority;

e. report such removal to the following officers for appointment, after the review, investigation, and reconstruction of this case is completed, of a successor trustee that is unrelated to the parties, unfamiliar with the case, beholden to nobody, and willing and able to conduct a competent, thorough, and zealous investigation of the DeLanos:

1) Mr. Lawrence A. Friedman, Director
2) Donald F. Walton, Acting General Counsel
3) Ms. Debera F. Conlon, Acting Assistant Director for Review & Oversight

Executive Office of the United States Trustees
20 Massachusetts Ave., N.W., Room 8000F
Washington, D.C. 20530

f. report this case to the U.S. Attorney under 18 U.S.C. §3057(a) and the FBI for investigation under 28 U.S.C. §526(a)(1) and into suspected concealment of assets and other indicia of bankruptcy fraud under 18 U.S.C. §152 et seq.;

g. order the following persons to produce and make themselves available for examination by me, whether as creditor or party in interest, and for the official record, in a designated room at the United States Courthouse on 100 State Street, Rochester, New York, 14614, beginning at 9:30 a.m. until 5:00 p.m., with a one hour lunch break, on September 20, and, if necessary for further examination, on September 21, 2004, and in any event, on contiguous dates in September when the examination of each examinee will not be constrained by any other time limitations:

1) the Debtors under 11 U.S.C. §341; and
2) Trustee Reiber and Att. Weidman under FRBkrP Rule 2004(a);

h. enter my opposition to Att. Werner's motion to disallow my claim, against which I will argue on August 25;

i. allow me to present my arguments by phone at the two upcoming hearings; not cut off the phone connection to me until after you declare the hearing concluded; and not allow thereafter any other oral communication between you and any parties to this case until the

next scheduled public event;

j. reply to my motion of March 31, 2004, for a declaration of the mode of computing the timeliness of an objection to a claim of exemptions and for a written statement on and of local practice.

August 14, 2004

Dr. Richard Cordero

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

https://www22.verizon.com/foryourhome/mysmarttouch/statementview/GenerateStatement.aspx

Today is Sun, 1 Aug 2004

verizon

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Online Activity Statement for all your SmartTouch℠ calls and purchases

Account: **718-827-9521**
Statement Period: **Jul1, 2004 - Aug1, 2004**

Important Numbers

If you have any questions about the long distance service provided by Verizon Long Distance, please call 1-888-599-0107.
Thank you for using SmartTouch from Verizon.

New for SmartTouch customers! Make your account even smarter with our new Rapid Recharge feature. We'll automatically "recharge" your account for you from your check card or credit card account .
International calls that terminate to wireless phones may incur additional charges

Summary of SmartTouch Account Activity

Starting Balance	14.80cr
Purchases Activity	20.00cr
Direct Dialed Calls	20.48
Ending Balance	**$14.32cr**

Purchases Activity

no.	*date*	*Description*	*amount*
1.	07/19/2004	SmartTouch Purchases	20.00cr
Total Purchase Activity			**$20.00cr**

Direct Dialed Calls

In-State Calls: 718-827-9521

no	*date*	*time*	*place*	*number*	*min.*	*amount*
2.	07/06/2004	15:14 PM	ROCHESTER NY	585-263-5706	23.0	1.84
3.	07/10/2004	12:53 PM	ROCHESTER NY	585-427-7804	9.0	0.72
4.	07/10/2004	13:02 PM	ROCHESTER NY	585-232-3528	9.0	0.72
5.	07/10/2004	13:12 PM	ROCHESTER NY	585-263-5862	9.0	0.72
6.	07/15/2004	11:54 AM	ROCHESTER NY	585-613-4200	6.0	0.48
7.	07/19/2004	14:25 PM	BUFFALO NY	716-841-4506	1.0	0.08
8.	07/19/2004	15:39 PM	ROCHESTER NY	585-613-4281	1.0	0.08
9.	07/20/2004	09:41 AM	ROCHESTER NY	585-613-4200	2.0	0.16
10.	07/20/2004	09:46 AM	ROCHESTER NY	585-613-4299	5.0	0.40
11.	07/20/2004	10:06 AM	ROCHESTER NY	585-427-7804	5.0	0.40
12.	07/20/2004	10:10 AM	ROCHESTER NY	585-263-5862	5.0	0.40
13.	07/20/2004	10:15 AM	ROCHESTER NY	585-232-3528	5.0	0.40
14.	07/20/2004	13:15 PM	ROCHESTER NY	585-613-4200	3.0	0.24
15.	07/21/2004	07:46 AM	BUFFALO NY	716-841-1207	13.0	1.04
16.	07/21/2004	09:47 AM	BUFFALO NY	716-841-6813	3.0	0.24
17.	07/21/2004	11:55 AM	ROCHESTER NY	585-546-1980	56.0	4.48
18.	07/21/2004	16:14 PM	ROCHESTER NY	585-613-4200	5.0	0.40
19.	07/22/2004	08:41 AM	ROCHESTER NY	585-613-4299	2.0	0.16
20.	07/22/2004	11:25 AM	BUFFALO NY	716-	4.0	0.32
21.	07/26/2004	12:02 PM	ROCHESTER NY	585-613-4200	8.0	0.64

CERTIFICATE OF SERVICE

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
MOTION INFORMATION STATEMENT

Docket Number(s): 03-5023 **In re: Premier Van Lines**

Motion: to quash the Order of August 30, 2004, of WBNY J. John C. Ninfo, II, to sever claim from this case

Statement of relief sought:

1. Judge Ninfo stated at the hearing on August 25 that no motion or paper submitted by Dr. Cordero would be acted upon, so that for Dr. Cordero to request that he stay his Order would be futile; hence, it is requested that the Order be stayed until this motion has been decided and that the period to comply with it, should the Order be upheld, be correspondingly extended; otherwise, that this motion be treated on an emergency basis since the period to comply has started and ends on December 15, 2004;
2. the Order, attached as Exhibit E-149, infra, be quashed;
3. the Premier, the Pfuntner v. Gordon et al., and the DeLano (WBNY dkt. no. 04-20280) cases be referred under 18 U.S.C. §3057(a) to the U.S. Attorney General and the FBI Director so that they may appoint officers unacquainted with those in Rochester that they would investigate for bankruptcy fraud;
4. Judge Ninfo be disqualified from the Premier, Pfuntner, and DeLano cases and, in the interest of justice, order under 28 U.S.C. §1412 the removal of those cases to an impartial court unrelated to the parties, unfamiliar with the officers in the WDNY U.S. Bankruptcy and District Courts, and roughly equidistant from all parties, such as the U.S. District Court in Albany;
5. Dr. Cordero be granted any other relief that is just and fair.

MOVING PARTY: Dr. Richard Cordero
Petitioner Pro Se
59 Crescent Street
Brooklyn, NY 11208-1515
tel. (718) 827-9521

OPPOSSING PARTY: See next

Court-Judge/Agency appealed from: Bankruptcy Judge John C. Ninfo, II, of the Western District of N.Y.

Has consent of opposing counsel been sought? Not applicable

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL
See 1. above

Is oral argument requested? Yes

Argument date of appeal: December 11, 2003

Signature of Moving Petitioner Pro Se:

Dr. Richard Cordero

Has service been effected? Yes; proof is attached

Date: September 9, 2004

ORDER

IT IS HEREBY ORDERED that the motion is _____**GRANTED**_____**DENIED.**

FOR THE COURT:
ROSEANN B. MacKECHNIE, Clerk of Court

Date: _____ **By:** _____

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MOTION TO QUASH
a bankruptcy court's order
to sever a claim from
the case on appeal in this Court
to try it in another bankruptcy case

In re PREMIER VAN LINES, INC.,
Debtor

Case no. 03-5023

JAMES PFUNTER,
Plaintiff

Adversary Proceeding
Case no. 02-2230

-v-

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

-v-

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

Third party defendants

Dr. Richard Cordero, appellant pro se, states under penalty of perjury as follows:

1. This motion has been rendered necessary by another blatant manifestation by WBNY Bankruptcy Judge John C. Ninfo, II, of his disregard for the law, rules, and facts, and his participation with others in the already complained-about pattern of non-coincidental, intentional, and coordinated acts of wrongdoing, which now involves another powerful element: money, lots of it.

2. Requested to be quashed is the Order that Judge Ninfo issued on August 30, 2004, directing Dr. Cordero to undertake discovery of Mr. David DeLano, a party to the Premier case pending before this Court, which stems from Pfuntner v. Gordon et al, dkt. no. 02-2230, an Adversary Proceeding that Judge Ninfo himself suspended 11 months ago until all appeals to and from this Court had been taken. Now Judge Ninfo, without invoking any provision of law or rule, reopens

the case under suspicious circumstances and thereby forestalls the decision that this Court may take, including the removal of the case from him; wears down Dr. Cordero, a pro se litigant, thus rendering an eventual decision by this Court to retry the claim against Mr. DeLano, not to mention the whole Pfuntner case, moot; and makes a mockery of the appellate process.

3. Indeed, Judge Ninfo is reopening now Pfuntner v. Gordon et al. to sever from it Dr. Cordero's claim against Mr. DeLano and have Dr. Cordero try it in another case, that is, Mr. and Mrs. DeLano's bankruptcy case, dkt. no. 04-20280. The foregone conclusion is that the Judge will grant the DeLanos' motion to disallow that claim, which arose from the Pfuntner case, and thus eliminate Dr. Cordero from the bankruptcy case. Judge Ninfo and the DeLanos want to do this now, after treating Dr. Cordero as a creditor for six months, because he is the only creditor that analyzed the DeLanos' January 26 petition and other documents and showed in his July 9 statement evidence of fraud. Consider these few elements, cf. longer list at Exhibit E-page 88 §IV:

    a) Mr. DeLano has been for 15 years and still is a bank *loan* officer and his wife, a Xerox machines specialist, yet they cannot account for $291,470 earned in just the last three years!…but declared in their petition only $535 in hand and on account; and household goods worth merely $2,910 at the end of two lifetimes of work!, while they owe $98,092 on 18 credit cards, but made a $10,000 loan to their son, undated and described as "uncollectible". Does one need to be a lending industry insider, like Mr. DeLano, to recognize that these numbers do not make sense or rather to know how and with whom to pull it off?

4. Evidence that the Order's purpose is to eliminate Dr. Cordero and protect the DeLanos is that Judge Ninfo suspended all proceedings in the DeLano case until the motion to disallow Dr. Cordero's claim has been finally determined at an evidentiary hearing in 2005, or beyond in case of appeals! (E-155¶2) If the Judge did not suspend the DeLano case, **1)** Dr. Cordero would move for Judge Ninfo to force the DeLanos to comply with his pro-forma July 26 order of document production, which he issued at Dr. Cordero's instigation but they disobeyed with impunity (E-95, 105, 107,109); **2)** move to force the DeLanos to comply with his discovery requests, such as production of bank and debit card account statements that can lead to the whereabouts of the concealed assets and thus prove bankruptcy fraud by the DeLanos and others, requests that the DeLanos are likely to respect even less than they did the Judge's order; and **3)** move again for examination of the DeLanos and others under FRBkrP Rule 2004. To ensure that no such action

by Dr. Cordero is effective, Judge Ninfo stated at the August 25 hearing that no paper submitted by him will be acted upon, thus denying him judicial assistance in conducting the ordered discovery of his claim against Mr. DeLano. Judge Ninfo is setting Dr. Cordero up to fail!

5. By not allowing the DeLano case from moving forward concurrently with the motion to disallow, Judge Ninfo excuses the Trustee from resubmitting for confirmation the DeLanos' debt repayment plan so that Dr. Cordero cannot oppose it by introducing any additional evidence of the DeLanos' bankruptcy fraud that he may discover. By so preventing concurrent progress of the case, Judge Ninfo harms all the 21 creditors, who have an interest in repayment beginning immediately, as well as the public at large, who necessarily bears the cost of fraud and wants it uncovered. Hence, Judge Ninfo has issued his Order with disregard for the law and appellate process, in bad faith, and contrary to the interest of the creditors and the public.

TABLE OF CONTENTS

****

I. Judge Ninfo's order to detach one party and one claim from multiple parties in different roles distorts the process of establishing their respective liabilities and makes a mockery of the appellate process

6. The case on appeal in this Court originates in the Adversary Proceeding Pfuntner v. Gordon et al., all of whose parties were affected by the bankruptcy of Premier Van Lines. A moving and storage company, Premier was owned by David Palmer. His voluntary bankruptcy petition under Chapter 11 set in motion a series of events that affected, among others, his warehousers, James Pfuntner, David Dworkin, and Jefferson Henrietta Associates; the lender to his operation, Manufacturers & Traders Trust Bank (M&T Bank) and Bank Loan Officer David DeLano; his clients, including Dr. Cordero; and the Chapter 7 Trustee Kenneth Gordon, who took over Premier to liquidate it after Owner Palmer failed to comply with his bankruptcy obligations -with impunity from Judge Ninfo (E-117¶19b)- and the case was converted to one under Chapter 7.

7. In the presence of so many parties in different roles connected to the same nucleus of operative facts, it follows that they share in common questions of law and fact. They should be tried in a single proceeding for reasons of efficiency and judicial economy; and to arrive at just and consistent results. Hence, Judge Ninfo is not acting in the interest of justice when he orders the severance of Dr. Cordero's claim against Mr. DeLano from the case on appeal before this Court in order to try it in isolation. This is shown by even the grounds invoked by the DeLanos' attorney, Christopher Werner, Esq., for objecting to Dr. Cordero's claim (E-101):

> Claimant apparently asserts a claim relating to a pending Adversary Proceeding in Premier Van Lines (01-20692) relating to M & T Bank, for whom David DeLano acted only as employee and has no individual liability. Further, no liability exists as against M & T Bank.

8. It is quite obvious that M&T Bank cannot be presumed to take responsibility for whatever Mr. DeLano did or failed to do. Likewise, M&T Bank may claim that no liability attaches to it, but rather attaches to the other parties, including Mr. DeLano in his personal capacity. In turn, the other parties could try to unload some of their liability onto Mr. DeLano since he was the M&T Bank officer in charge of the loan to Premier. If after Judge Ninfo finds Mr. DeLano not liable to Dr. Cordero the trial before another judge or jury of the remaining parties upon remand by

this Court finds that considering the totality of circumstances Mr. DeLano was liable, Dr. Cordero could hardly use that finding to reassert his claim against Mr. DeLano, who would invoke collateral estoppel or try to deflect any liability onto the other parties. When would it all end!?

9. The situation would not be better at all if Dr. Cordero were found in the severed proceedings to have a claim against Mr. DeLano in the Pfuntner case on appeal here. When the Court remanded the case for trial, the other parties would try to escape liability by pointing to that finding. Either way, whatever justice could have been achieved through the appellate process would have been intentionally thwarted in anticipation by distorting through piecemeal litigation the dynamics among multiple parties and claims within the same series of transactions.

II. Judge Ninfo has no legal basis for severing Dr. Cordero's claim against Mr. DeLano from the case before this Court because after Dr. Cordero filed proof of claim, a presumption of validity attached to his claim

10. This is how the Bankruptcy Code, at 11 U.S.C., defines a "creditor":

> §101. Definitions
>
> (10) "creditor" means (A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;…
>
> (15) "entity" includes person…

11. In turn, it defines "claim" thus:

> (5) "claim" means (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured;[1]

12. These definitions easily encompass Dr. Cordero's claim against Mr. DeLano. Moreover, FRBkrP Rule 3001(a) provides thus:

> (a) Proof of Claim
>
> A proof of claim is a written statement setting forth a creditor's claim. A proof of claim shall conform substantially to the appropriate Official Form.

13. Dr. Cordero's proof of claim of May 15 was so formally correct that it was filed by the clerk of

[1] This definition of a claim was adopted in *United States v. Connery, 867 F.2d 929, 934 (reh'g denied)(6th Cir. 1989), appeal after remand 911 F.2d 734 (1990).*

court on May 19 (E-75) and entered in the register of claims. As a result, his claim enjoys the benefit provided under FRBkrP Rule 3001(f):

> (f) Evidentiary effect
> A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.

14. Dr. Cordero's claim is now legally entitled to the presumption of validity. Hence, it is legally stronger than when the DeLanos and Att. Werner took the initiative to include it in their January 26 petition (E-3 Schedule F). It follows that to overcome that presumption they had to invoke legal grounds on which to mount a challenge to its validity. However, just as Judge Ninfo disregards law and rules so much that he did not cite any to support his Order, so Att. Werner.

A. Mr. DeLano knew since November 21, 2002 the nature of Dr. Cordero's claim against him and was barred by laches when he filed his untimely objection on July 19, 2004

15. This is all Att. Werner could come up with in his July 19 Objection to a Claim (E-101):

> Claimant sets forth no legal basis substantiating any obligation of Debtors. Claimant apparently asserts a claim relating to a pending Adversary Proceeding in Premier Van Lines (01-20692) relating to M & T Bank, for whom David DeLano acted only as employee and has no individual liability. Further, no liability exists as against M & T Bank. No basis for claim against Debtor Mary Ann DeLano, is set forth, whatsoever.

16. To avoid confusion, it should be noted that neither M&T Bank, nor Mr. DeLano, nor Dr. Cordero is a party to "Premier Van Lines (01-20692)". They are parties to the Adversary Proceeding. Thus, its docket no. 02-2230, is the one relevant because that is the case pending before this Court under docket no. 03-5023. But Att. Werner's citation works as an unintended reminder to this Court that it has jurisdiction to decide this motion because the Proceeding on appeal is being disrupted by arbitrary severance of a claim in it to be dragged into the DeLano case.

17. Contrary to the implication of the quoted paragraph, Mr. DeLano does know –and his knowledge is imputed to his attorney- what the legal basis is for Dr. Cordero's claim against him, namely, the third party claim of Mr. DeLano's negligent and reckless dealings with Dr. Cordero in connection with Mr. DeLano's M&T loan to Mr. David Palmer; his handling of the security interest held in the storage containers bought with the loan proceeds; and the property of Mr. Palmer's clients held in such containers, such as Dr. Cordero's, which ended up lost or damaged. This claim was contained in the complaint that Dr. Cordero served on Mr. DeLano

through his attorney, Michael Beyma, Esq., on November 21, 2002. Consisting of 31 pages with exhibits, the complaint more than enough complied with the notice pleading requirements of FRCivP Rule 8(a) to give "a short and plain statement of the claim". So much so that Att. Beyma deemed it sufficient to answer with just a two-page general denial.

18. When Mr. DeLano and his bankruptcy lawyer, Att. Werner, prepared the bankruptcy petition, they knew the nature of Dr. Cordero's claim, describing it as "2002 Alleged liability re: stored merchandise as employee of M&T Bank –suit pending US BK Ct.". In addition, Att. Beyma accompanied Mr. DeLano and Att. Werner to the meeting of creditors on March 8, 2004. Yet, Mr. DeLano and Att. Werner continued for months thereafter to treat Dr. Cordero as a creditor.

19. It was only after Dr. Cordero's July 9 statement presented evidence of fraud, particularly concealment of assets (E-88§IV), that the DeLanos and Att. Werner conjured up the above-quoted language and wrote it down in the July 19 motion to disallow his claim (E-101). How-ever, other than the realization that they had to get rid of him, on July 19 they had the same knowledge about the nature of his claim as when they filed the petition on January 27. It was upon filing it that they should have filed that motion for the sake of judicial economy and to establish their good faith belief in the merits of their objection (E-127). They should also have filed it then out of fairness to Dr. Cordero so as not to treat him as a creditor for six months, thereby putting him to an enormous amount of expense of effort, time, and money filing, responding to, and requesting papers in their case only to end up with his claim disallowed (E-137).

20. Hence, their motion is barred by laches (E-133§VI). It was also untimely. Untimeliness is a grave fault under the Code, which provides under §1307(c)(1) that "unreasonable delay by the debtor that is prejudicial to creditors" is grounds for a party in interest, who need not even be a creditor, to request the dismissal of the case or even the liquidation of the estate. Att. Werner, who claims 'to have been in this business for 28 years', must be very aware of the gravity of untimeliness. Actually, Trustee Reiber found it so applicable to the DeLanos that he invoked it on June 15 to move to dismiss their case (E-84).

21. If their motion to disallow were nevertheless granted, then the DeLanos and Att. Werner should be required to compensate Dr. Cordero for all the unnecessary expense and aggravation to which they have put him due to their unreasonable delay in objecting to his claim (E-139§II).

B. The opinion of Mr. DeLano's attorney that his client is not liable to Dr. Cordero cannot overcome the presumption of validity of his claim

22. The motion to disallow was also a desperate reaction of the DeLanos and Att. Werner to the detailed list of documents that Dr. Cordero requested Judge Ninfo on July 9 to order them to produce (E-91¶31). Those documents could have put Dr. Cordero and investigators on the trail of **1)** the $291,470 declared by DeLanos in their 1040 IRS forms for 2001-03 but unaccounted for; **2)** titles to ownership interests in real estate and vehicular property; and **3)** their undated loan to their son, which may be a voidable preferential transfer, cf. 11USC §547(b)(4)(B). But that order was not issued (E-109§I) and the DeLanos did not comply with even the watered down order that at Dr. Cordero's insistence the Judge issued on July 26 (E-107, 103).

23. In their desperation, Att. Werner denied Mr. DeLano's liability to Dr. Cordero and even that of his employer, M&T Bank, which is not even a creditor in the DeLano case and is not represented by Att. Werner or his law firm (E-130§III). However, an attorney's opinion on his client's lack of liability does not constitute evidence of anything and rebuts no legal presumption, and all the more so a lay man-like opinion unsupported by any legal authority (E-138§I).

24. Then Att. Werner spuriously alleged that Dr. Cordero did not set forth any claim against Mrs. DeLano. Yet he filled out Schedule F (E-3), which requires the debtor to mark each claim thus:

> If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

25. A bankruptcy claim is perfectly sufficient if only against one of the joint debtors! Att. Werner must have known that. Hence, this allegation was spurious and made in bad faith (E-131§IV).

26. With a denial of knowledge belied by the facts, an irrelevant opinion on non-liability, and a spurious allegation Att. Werner cannot do what the claim objection form in capital letters required him to do (E-101):

> DETAILED BASIS OF OBJECTION INCLUDING GROUNDS FOR OVERCOMING ANY PRESUMPTION UNDER RULE 3001(f)

27. Case law has interpreted this requirement thus:

> The party objecting to the claim has the burden of going forward and of introducing evidence sufficient to rebut the presumption of validity. *In re Babcock & Wilcox Co., 2002 U.S. Dist. LEXIS 15742, at 6 (E.D.La. 2002)*.

28. The objector's evidence must be sufficient to demonstrate a true dispute and must have probative force equal to the contents of the claim. *In re Wells, 51 B.R. 563 (D.Colo. 1985)*; *Matter of Unimet Corp., 74 B.R. 156 (Bankr. N.D. Ohio 1987)*. See also Collier on Bankruptcy, 15 ed. rvd., vol. 9, ¶3001.09[2]. Denial of liability as an employee is not evidence or proof of anything.

C. Judge Ninfo had no legal basis to demand that Dr. Cordero's proof of claim provide more than notice of the claim's existence and amount

29. Dr. Cordero stated a legally sufficient claim against Mr. DeLano in a complaint that satisfied the notice pleading requirements of the FRCivP. The claim also satisfied the Bankruptcy Code, for it requires only that notice essentially of the claim's existence and amount be given. In fact, the Proof of Claim Form B10 provides in 9. Supporting Documents "…If the documents are voluminous, attach a summary." That is precisely what Dr. Cordero did when he mailed his claim against Mr. DeLano on May 15 with three pages out of the 31 pages of the complaint, including the caption page, which was labeled (E-77):

> Summary of document supporting Dr. Richard Cordero's proof of claim against the DeLanos in case 04-20280 in this court

30. That only notice of the claim must be given follows from the fact that even the debtor, the trustee, a codebtor, or a surety can file the claim if the creditor fails to do so timely. None of them have to give notice of how the claim arose and what its legal basis is. Even a contingent and disputed claim is a valid claim under 11 U.S.C.§101(5); (¶11, supra). Judge Ninfo had no justification to pierce, as it were, the presumption of validity of Dr. Cordero's claim against Mr. DeLano in the case on appeal here and drag the claim out and into the DeLano case so that, as Att. Werner put it (¶15), Dr. Cordero 'substantiate an obligation of Debtors' to him. By doing so the Judge showed again his bias against Dr. Cordero and toward the local parties (E-118§IV).

D. The only legal circumstance for estimating a contingent claim is unavailable because the DeLano case is nowhere its closing

31. Section 502(b) of Title 11 provides that if a claim is objected to, the judge:

> …shall determine the amount of such claim…and shall allow such claim in such amount…

32. The obligation that the Code thus puts on the judge is to allow the claim, rather than disallow it. This is in harmony with the presumption of validity under Rule 3001(f) of a filed claim, whose

proof "shall constitute prima facie evidence of the validity and amount of the claim". This makes sense because filing for bankruptcy is not a device for a debtor to cause the automatic impairment of the merits of the claims against him. On the contrary, filing for bankruptcy raises the reasonable inference that the debtor has a motive for casting doubt on those claims for a reason unrelated to their merits, namely, that he is in desperate financial difficulties, in other words, drowning in debt. It is his challenge that is suspect.

33. Accordingly, section 502(b)(1) enjoins the judge not to limit the amount of the claim "because such claim is contingent or unmatured". It is obvious that a contingent claim is uncertain as to whether it will become due and payable, and if so, in what amount. Since the section provides that a claim's contingency is no grounds for limiting its amount, it follows that it is no grounds for disallowing it altogether. A claim in a lawsuit is by definition contingent, for it depends on who wins the lawsuit. The fact that there are arguments against the claim does not authorize a judge to disallow every contingent claim or even question its validity.

34. If the judge cannot determine the claim's amount due to its contingency, he must allow time for such contingency to resolve itself. The debtor must go on carrying the claim on his books as he did before filing for bankruptcy. This construction of §502(b)(1) results from §502(c)(1):

> (c)(1) any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case…shall be estimated.

35. Such estimation of a contingent claim comes into play only when the fixing of its dollar value "would unduly delay the administration of the case". The Revision Notes and Legislative Reports on the 1978 Acts put it starkly by stating that subsection (c) applies to estimate a contingent claim's value when liquidating the claim "would unduly delay the closing of the estate".

36. But the DeLano case is nowhere near its closing; so Judge Ninfo lacks authority to estimate any contingent claim value. Indeed, **1)** the case has not even settled the threshold question whether the debtors filed their petition in good faith, as required under §1325(a)(3); **2)** the adjourned meeting of creditors has not been held yet; **3)** its debt repayment plan has not been confirmed and may never be because **4)** even Trustee Reiber moved on June 15 to dismiss "for unreasonable delay" by the DeLanos in complying with his requests (E-73, 82) for documents, which they have still failed to produce; and **5)** closing the case or even avoiding undue delay in its administration cannot be but a pretense for estimating Dr. Cordero's claim because Judge

Ninfo suspended all proceedings in the DeLano case until the final disposition of the motion to disallow (E-155¶2) rather than use that time to move the case forward concurrently! *What!?*

37. There is no justification for Judge Ninfo so to disregard his obligation under 11 U.S.C. §105(d)(2) "to ensure that the case is handled expeditiously and economically" and under §1325(a)(3), to ascertain whether the DeLanos' 'plan of debt repayment was not proposed in good faith or was proposed by any means forbidden by law'. These are non-discretionary obligations that **1)** take precedence over an optional motion to disallow; **2)** work in the public's interest in bankruptcies free of fraud, which trumps a debtor's private interest in avoiding a claim; and **3)** can and must be complied with concurrently with the motion to disallow, which is defeated the moment the plan turns out to be fraudulent, and thereby filed in bad faith.

38. Judge Ninfo must know that he cannot transfer his obligation to ascertain the petition's good faith filing to the trustee. This is particularly so here, where Trustee Reiber **1)** approved the DeLanos' petition for confirmation; **2)** vouched for its good faith in court on March 8; **3)** was unwilling (E-69,80,83a) and unable (E-90§V) to obtain documents from them; **4)** even denied Dr. Cordero's request that the Trustee subpoena them (E-87§III); and **5)** moved to dismiss. Hence, the Trustee has a conflict of interests (E-52§III): If he investigates, as duty-bound and requested (E-44§IV), and finds fraud by the DeLanos, he indicts his competency (E-88§IV) and lays himself open to an investigation of how many of his 3,909[2] *open* cases he approved that were meritless or fraudulent. Moreover, if Trustee Reiber were removed from the DeLano case, he would be removed from all other cases pursuant to 11 U.S.C. §324(b). What could motivate Judge Ninfo to dismiss this as "an alleged conflict of interest" (E-151¶1) and pretend that the Trustee can conduct "a thorough investigation of the DeLano Case" (E-155)? (Cf. E-47§IV)

39. Intent can be inferred from a person's conduct. From that of Judge Ninfo in court on March 8, July 19, and August 23 and 25, and his orders of July 26 and August 30 (E-107, 149) it can be inferred that he is protecting the DeLanos by not investigating their suspected fraud while they get rid of Dr. Cordero through the subterfuge of the motion to disallow, which will be granted; meantime, the DeLanos will take care of their assets. Judge Ninfo's severance of Dr. Cordero's claim from the case before this Court to try it in his is a sham!

[2] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1 on 4/2/04.

III. Judge Ninfo stated at the August 25 hearing that until the motion to disallow is decided, no motion or other paper filed by Dr. Cordero will be acted upon, thereby denying him access to judicial process and requiring this Court to step in

40. At the same time that Judge Ninfo made that announcement, he imposed on Dr. Cordero the obligation to take discovery of Mr. DeLano to determine at a hearing to be held on December 15, 2004, whether to dismiss Dr. Cordero's claim or set a date in 2005 for an evidential hearing on the motion to disallow (cf. E-156). This means that the Judge has refused in advance any assistance to Dr. Cordero if Mr. DeLano or any other party in the Pfuntner v. Gordon et al. case on appeal before this Court fails to comply with any discovery request made by Dr. Cordero.

41. Yet, Judge Ninfo knows that the DeLanos are all but certain to fail to produce documents to Dr. Cordero because they already failed to do so pursuant to the Judge's own order of July 26, a failure complained about by Dr. Cordero at the August 25 hearing without being contradicted by Att. Werner. Likewise, the DeLanos so much failed to produce documents at the requests (E-73,82) of Trustee Reiber that on June 15 he moved to dismiss. Moreover, the DeLanos already ignored Dr. Cordero's direct requests for documents of March 30 and May 23 (E-64¶80b, 83). Through denial of judicial assistance, the mission to conduct discovery on the claim against Mr. DeLano is made an impossible one: Judge Ninfo has set up Dr. Cordero to fail!

IV. Judge Ninfo's August 30 order shows his prejudgment of issues and his bias toward the DeLanos and against Dr. Cordero

42. Contrary to Judge Ninfo's statements, the issues that Dr. Cordero pursues in the DeLano case are not "collateral and tangential" (E-153): **1)** If the DeLanos have their debt repayment plan confirmed so that they may pay just 22¢ on the dollar (E-35¶4d(2)), any damages that Dr. Cordero may be awarded on his claim will be substantially reduced in value; **2)** if the DeLanos are proved to have concealed at least the $291,470 earned between 2001-03 but unaccounted for, their petition would be denied and if such assets are recovered, more funds would be available to satisfy an award; **3)** if Mr. DeLano has committed fraud, he becomes more vulnerable to the questions **(a)** whether he behaved negligently and recklessly toward Dr. Cordero to protect his client, David Palmer, who also went bankrupt while storing Dr. Cordero's property; **(b)** whether he traded on inside information as a bank loan officer and who else is involved in the bankruptcy scheme; and **(c)** why the attorney for Trustee Reiber, James Weidman, Esq., insisted at

the §341 meeting of creditors on March 8 that Dr. Cordero disclose how much he knew about the DeLanos having committed fraud and when Dr. Cordero would not do so, unlawfully terminated the meeting after Dr. Cordero, the only creditor present out of 21, had asked only two questions, thus depriving him of his right to examine the DeLanos under oath (E-49§§I-II;¶80e).

43. If Judge Ninfo 'is not aware of any evidence demonstrating that Mr. DeLano is liable for any loss or damage to the Cordero Property' (E-150) it is because **1)** the Pfuntner v. Gordon et al. case before this Court, though filed in September *2002,* is barely past the notice pleading stage given that the Judge disregarded his duty under FRCP Rules 16 and 26 to schedule discovery, to the point that he held a hearing on October 16, as he put it on page 6 of his July 15, 2003 order:

> …[to] address the matters chronologically as they have appeared in connection with this Adversary Proceeding, beginning with Pfuntner's Complaint and proceeding forward….

44. Over a year after its filing, Judge Ninfo had not moved the case beyond its complaint!

45. By contrast, Judge Ninfo does have evidence to make him aware of "loss or damage to the Cordero Property" because the Pfuntner complaint of September 27, 2002, stated on page 3 that:

> 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…

46. Since Mr. Pfuntner's warehouse had been closed down and remained out of business for about a year and nobody was there paying to control temperature, humidity, pests, or thieves, Dr. Cordero' property could also have been stolen or damaged.

47. What is more, pursuant to Judge Ninfo's order of April 23, Dr. Cordero inspected his property at that warehouse on May 19 and reported to him at a hearing on May 21, 2003, that it had to be concluded that some property was damaged and other had been lost. This finding was not contradicted by Mr. Pfuntner's attorney at the hearing, David MacKnight, Esq.

48. While Judge Ninfo blames Dr. Cordero for 'not taking possession and securing his property' (E-153), he conveniently forgets that at the hearing on October 16, 2003, Att. MacKnight, in the presence of Mr. Pfuntner, agreed to keep Dr. Cordero's property in the warehouse upon Dr. Cordero's remark that removing the property from there would break the chain of custody before it had been ascertained the respective liabilities of the parties, thus complicating and protracting the resolution of the case enormously.

49. Judge Ninfo's bias against Dr. Cordero and towards the DeLanos is palpable in his order:

> Cordero has elected to be an active participant in the DeLano Case, even though he has never taken the necessary and reasonable steps to have the Court determine, either in the Premier AP or the DeLano Case, that he has a Claim against DeLano…(E-151)

50. Neither the Bankruptcy Code nor the Rules require a creditor to have the court determine the validity of his claim before he can take an active part in the case in question. More to the point, it was the DeLanos who listed Dr. Cordero as a creditor in their January petition and treated him as such for six months until they conjured up the idea to eliminate him with their July 19 motion to disallow, which was returnable on August 25. Before then the DeLanos did not even give Dr. Cordero either notice that he had to prove the validity of his claim or opportunity to do so.

51. By contrast, Judge Ninfo put stock on the fact that "DeLano, through his attorney, has adamantly denied: (1) any knowledge…and (2) any…liability if there has been any loss or damage" to Dr. Cordero's property (E-150¶2). Did Dr. Cordero have to assert "adamantly" the evidence of such loss or damage for the Judge not to cast doubt on it with his formulation "if there in fact has been any loss or damage"?; id.

52. While Dr. Cordero's are "collateral and tangential issues" (E-153), the Judge considers that:

> whether the Debtors are honest but unfortunate debtors who are entitled to a bankruptcy discharge, because they have filed a good faith Chapter 13 case, is to the Court much more important to finally determine than is the Premier AP, which is fundamentally only about personal property which Cordero himself has indicated has a maximum value of $15,000.00…(E-153-154)

53. Is this the way an impartial arbiter talks before having the benefit of the discovery that he is ordering Dr. Cordero to begin to undertake and who has allowed the DeLanos to conceal information by disobeying his July 26 document production order? Why does Judge Ninfo deem it "much more important" to make 21 creditors bear the loss of 4/5 of the $185,462 in liabilities of Mr. DeLano (E-3 Summary of Schedules) than to hold him, a bank loan officer for 15 years, to a higher standard of financial responsibility because of his superior knowledge? Why does Judge Ninfo deny Dr. Cordero the protection to which he is entitled under the Code? Indeed, §1325(b)(1) entitles a single holder of an allowed unsecured claim to block the confirmation of the debtor's repayment plan; and §1330(a) entitles any party in interest, even one who is not a creditor, to have the confirmation of the plan revoked if procured by fraud. What motive does

Judge Ninfo have to disregard bankruptcy law in order to protect the DeLanos?

54. Moreover, Judge Ninfo has already prejudged a key issue in controversy:

> …the Court determined that:…(2) the purpose of filing the Claim Objection was not to remove Cordero from the DeLano Case, but rather it was to have the Court determine that an individual, who the Debtors honestly believe is not a creditor, did or did not have an allowable claim in their Chapter 13 case; (E-154-155)

55. How does Judge Ninfo know that the Debtors believe anything "honestly" since they have never taken the stand? What he knows is that **1)** they disobeyed his July 26 order of document production; **2)** Trustee Reiber moved to dismiss the case "for unreasonable delay" in producing documents; **3)** they had something so incriminating that Att. Weidman would not allow them to speak under oath at the meeting of creditors; and **4)** the Judge suspended all proceedings so that they do not have to take the stand at a confirmation hearing. Since Judge Ninfo knows in some extra-judicial way that the DeLanos are honest, why not skip the charade of the December hearing or the Evidentiary Hearing in 2005 and just disallow Dr. Cordero's claim now?

56. Indeed, how open-minded would you expect the Judge to be when examining the evidence introduced by Dr. Cordero after discovery? If he reversed himself to find that the DeLanos were not honest but instead committed fraud, it would follow that, contrary to his biased statement, they had a motive to remove Dr. Cordero through the subterfuge of the motion to disallow.

57. Do Judge Ninfo's statements comport with even the appearance of impartiality? If you, Reader, were in Dr. Cordero's position, would you after reading his August 30 Order (E-149) like your odds of getting a fair hearing? If you do not, it would be a travesty of justice to allow the DeLano case to proceed before Judge Ninfo, not to mention to let him disrupt the appellate process by severing the claim against Mr. DeLano from the case before this Court.

V. A mechanism for many bankruptcy cases to generate money, lots of it

58. The incentive to approve a case is provided by money: A standing trustee appointed under 28 U.S.C. §586(e) for cases under Chapter 13 is paid 'a percentage fee of the payments made under the plan of each debtor'. Thus, the confirmation of a plan generates a stream of payments from which the trustee takes his fee. Any investigation conducted by the trustee into the veracity of the statements made in the petition would only be compensated -if at all, for there is no specific

provision therefor- to the extent of "the actual, necessary expenses incurred", §586(e)(2)(B)(ii). If the plan is not confirmed, the trustee must return all payments, less certain deductions, to the debtor that has made them, which he must commence to make within 30 days after filing his plan and the trustee must retain those payments while plan confirmation is being decided, 11 U.S.C. §1326(b). This provides the trustee with an incentive to get the plan confirmed because no confirmation means no stream of payments. To insure such stream, he might as well rubberstamp every petition and do what it takes to get it confirmed. Cf. 11 U.S.C. §326(b)

59. Any investigation of a debtor that allows the trustee to require him to pay his creditors another $1,000 will generate a percentage fee for the trustee of $100 (in most cases). Such a system creates the incentive for the debtor to make the trustee skip any investigation in exchange for an unlawful fee of, let's say, $300, which nets him three times as much as if he had to sweat over petitions and supporting documents. For his part, the debtor saves $700. Even if the debtor has to pay $600 to make available money to get other officers to go along with his plan, he still comes ahead $400. To avoid a criminal investigation for bankruptcy fraud, a fraudulent debtor may well pay more than $1,000. After all, it is not as if he were bankrupt and had no money.

60. Dr. Cordero does not know of anybody paying or receiving an unlawful fee in this case and does not accuse anybody thereof. But he does affirm what he knows: Trustee George Reiber, Esq., 1) had 3,909 *open* cases on April 2, 2004 according to PACER; **2)** approved the DeLanos' petition without ever requesting a single supporting document; **3)** chose to dismiss the case rather than subpoena the documents; and **4)** has refused to trace the earnings of the DeLanos'.

61. There is something fundamentally suspicious when a bankruptcy judge **1)** protects bankruptcy petitioners from having to account for $291,470; **2)** allows them to disobey his document production order with impunity; **3)** prejudges in their favor that they are not trying to eliminate the only creditor that threatens to expose bankruptcy fraud; 4) yet shields them from further process.

VI. Relief requested

62. Therefore, Dr. Cordero respectfully requests that this Court:

    a) Quash Judge Ninfo's Order of August 30 (E-149); meantime stay it; if upheld, extend it;
    b) Refer the Premier, the Pfuntner v. Gordon et al., and the DeLano cases under 18 U.S.C. §3057(a) to U.S. Attorney General and the FBI Director so that they may appoint

officers unacquainted with those in Rochester that they would investigate (cf. E-157), such as:

(1) Judge Ninfo for his participation in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing, including the new evidence of protecting from discovery debtors under suspicion of having committed bankruptcy fraud; and

(2) Trustee Reiber and Att. Weidman for their suspicious approval of a meritless bankruptcy petition, unlawful conduct, and failure to investigate the case;

(3) David and Mary Ann DeLano, and others under suspected participation in a bankruptcy fraud scheme;

c) Disqualify Judge Ninfo from the Premier, Pfuntner, and DeLano cases and, in the interest of justice, order under 28 U.S.C. §1412 the removal of those cases to an impartial court unrelated to the parties, unfamiliar with the officers in the WDNY U.S. Bankruptcy and District Courts, and equidistant from all parties, such as the U.S. District Court in Albany.

d) grant Dr. Cordero any other relief that is just and fair.

Respectfully submitted on,
September 9, 2004

Dr. Richard Cordero

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

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
MOTION INFORMATION STATEMENT

ORIGINAL

Docket Number(s): 03-5023 **In re: Premier Van Lines**

Motion: to quash the Order of August 30, 2004, of WBNY J. John C. Ninfo, II, to sever claim from this case

Statement of relief sought:

1. Judge Ninfo stated at the hearing on August 25 that no motion or paper submitted by Dr. Cordero would be acted upon, so that for Dr. Cordero to request that he stay his Order would be futile; hence, it is requested that the Order be stayed until this motion has been decided and that the period to comply with it, should the Order be upheld, be correspondingly extended; otherwise, that this motion be treated on an emergency basis since the period to comply has started and ends on December 15, 2004;
2. the Order, attached as Exhibit E-149, infra, be quashed;
3. the Premier, the Pfuntner v. Gordon et al., and the DeLano (WBNY dkt. no. 04-20280) cases be referred under 18 U.S.C. §3057(a) to the U.S. Attorney General and the FBI Director so that they may appoint officers unacquainted with those in Rochester that they would investigate for bankruptcy fraud;
4. Judge Ninfo be disqualified from the Premier, Pfuntner, and DeLano cases and, in the interest of justice, order under 28 U.S.C. §1412 the removal of those cases to an impartial court unrelated to the parties, unfamiliar with the officers in the WDNY U.S. Bankruptcy and District Courts, and roughly equidistant from all parties, such as the U.S. District Court in Albany;
5. Dr. Cordero be granted any other relief that is just and fair.

MOVING PARTY: Dr. Richard Cordero
Petitioner Pro Se
59 Crescent Street
Brooklyn, NY 11208-1515
tel. (718) 827-9521

OPPOSSING PARTY: See next

Court-Judge/Agency appealed from: Bankruptcy Judge John C. Ninfo, II, of the Western District of N.Y.

Has consent of opposing counsel been sought? Not applicable

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL
See 1. above

Is oral argument requested? Yes

Argument date of appeal: December 11, 2003

Signature of Moving Petitioner Pro Se: Dr. Richard Cordero

Has service been effected? Yes; proof is attached

Date: September 9. 2004

ORDER

Before: Hon. James L. Oakes, Hon. Robert A. Katzmann, *Circuit Judges**

IT IS HEREBY ORDERED that the motion be and it hereby is DENIED.

FOR THE COURT:
ROSEANN B. MACKECHNIE, Clerk
by
Arthur M. Heller, Motions Staff Attorney

OCT 13 2004

* Hon. John M. Walker, Jr., Chief Judge, has recused himself from further consideration of this case. In accordance with Local Rule 0.14(b), the instant motion has been decided by the two remaining panel members.

SCtA.346-374 reserved

[A:2022-2050 reserved]

Western District of New York

United States Bankruptcy Court

04-20280

NOTICE OF
CHAPTER 13 BANKRUPTCY CASE, MEETING OF CREDITORS, AND DEADLINES

You may be a creditor of the debtor(s). **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

Debtor(s) (name(s) and address):	Date Case Filed(or Converted):	Soc Sec/Tax Id Nos:
DAVID G DELANO 1262 SHOECRAFT ROAD WEBSTER, NY 14580 AKA: Joint: MARY ANN DELANO 1262 SHOECRAFT ROAD WEBSTER, NY 14580	January 27, 2004	XXX-XX-3894 XXX-XX-0517

Individual debtors must provide picture identfication and proof of social security number to the trustee at this meeting of creditors. Failure to do so may result in your case being dismissed.

Attorney for Debtor(s) (name and addesss):	Bankruptcy Trustee (name and address):
CHRISTOPHER K WERNER, ESQ BOYLAN, BROWN, ET AL 2400 CHASE SQUARE ROCHESTER, NY 14604-0000 Telephone Number: (716) 232-5300	George M. Reiber 3136 South Winton Road Suite 206 Rochester, NY 14623 Telephone Number: (585) 427-7225

See Reverse Side For Important Explanations.

Meeting of Creditors:

DATE: March 08, 2004
TIME: 01:00 PM
Location: U.S. Trustees Office, 6080 U.S. Courthouse, 100 State Street, Rochester, NY 14614

Deadlines:

Papers must be received by the bankruptcy clerk's office by the following deadlines.

Deadline to File a Proof of Claim:

For all creditors (except a governmental unit): June 07, 2004
For governmental units: July 26, 2004

Deadline to Object to Exemptions:

Thirty (30) days after the conclusion of the meeting of creditors.

Filing of Plan, Hearing on Confirmation of Plan

The debtor has filed a plan. The plan or a summary of the plan is enclosed. The hearing on confirmation will be held:

DATE: March 08, 2004
TIME: 03:30 PM
Location: U. S. Bankruptcy Court, 1400 U.S. Courthouse, 100 State Street, Rochester, NY 14614

Creditors May Not Take Certain Actions:

The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor, debtor's property, and certain codebtors. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.

The plan proposes payments to the Trustee of $1,940.00 MO
With unsecured claims to be paid 22 cents on the dollar.

PLEASE TAKE FURTHER NOTICE THAT ALL CLAIMS, INCLUDING THOSE CLAIMS PURPORTING TO BE A LIEN UPON REAL PROPERTY, MAY BE DEEMED TO BE UNSECURED UNLESS PROOF OF THE DEBT, THE PERFECTION OF THE LIEN AND THE VALUE OF THE SECURITY IS FILED WITH THE COURT AT OR BEFORE THE ABOVE MEETING OF CREDITORS.

A HEARING TO DETERMINE THE VALIDITY AND THE VALUE OF ANY CLAIMED SECURITY INTEREST IN PROPERTY OF THE DEBTOR, AND A HEARING TO DETERMINE VALIDITY OF ANY LIEN OR SECURITY INTEREST CLAIMED AGAINST EXEMPT PROPERTY COVERED BY SEC. 522 F, 11 USC WILL BE HELD AT THE HEARING ON CONFIRMATION.

WRITTEN OBJECTIONS TO CONFIRMATION MAY BE FILED WITH THE COURT AT ANY TIME PRIOR TO CONFIRMATION.

Address of the Bankruptcy Clerk's Office:	Website: http://www.nywb.uscourts.gov
U.S. Bankruptcy Court 100 State St. Rochester, NY 14614	Clerk of the Bankruptcy Court: PAUL R. WARREN DATED: February 03, 2004

Case filing information and deadline dates can be obtained free of charge by calling our Voice Case Information System: (716) 551-5311 or (800) 776-9578. Hours Open 8:00am to 4:30pm

EXPLANATIONS

Filing of Chapter 13 Bankruptcy Case	A bankruptcy case under Chapter 13 of the Bankruptcy Code (Title 11, United States Code) has been filed in this court by the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 13 allows an individual with regular income and debts below a specificied amount to adjust debts pursuant to a plan. A plan is not effective unless confirmed by the bankruptcy court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan [is included with this notice] or [will be sent to you later], and [the confirmation hearing will be held on the date indicated on the front of this notice] or [you will be sent notice of the confirmation hearing]. The debtor will remain in possession of the debtor's property and may continue to operate the debtor's business, if any, unless the court orders otherwise.
Creditors May Not Take Certain Actions	Prohibited collection actions against the debtor and certain codebtors are listed in the Bankruptcy Code §362 and §1301. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. *The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you may not be paid any money on your claim against the debtor in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. Do not file voluminous attachments to your proof of claim. Include only relevant excerpts which are clearly labeled as such. Full versions of excerpted documents must be made available upon request.
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors; even if the debtor's case is converted to Chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side unless otherwise noted. You may inspect all papers filed, including the list of the debtor's property and debts and the list of property claimed as exempt, at the bankruptcy clerk's office.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.
Return Mail	The address of the debtor's attorney will be used as the return address for the Notice of Meeting of Creditors. For returned or undeliverable mailings, debtor's must obtain the intended recipient's correct address, resend the notice and file an affidavit of service with the Clerk's office. The Clerk's office will then update its records for future mailings. Failure to serve all parties with a copy of this notice may adversely affect the debtor.

---Refer To Other Side For Important Deadlines and Notices---

CERTIFICATE OF MAILING

CASE: 0420280 TRUSTEE: 63 COURT: 146
TASK: 02-02-2004.00111358.N13N02 DATED: 02/03/2004

Court		U.S. Bankruptcy Court	100 State St. Rochester, NY 14614
Trustee		George M. Reiber Suite 206	3136 South Winton Road Rochester, NY 14623
Debtor		DAVID C DELANO	1262 SHOECRAFT ROAD WEBSTER, NY 14580
Joint		MARY ANN DELANO	1262 SHOECRAFT ROAD WEBSTER, NY 14580
799	000001	CHRISTOPHER K WERNER, ESQ 2400 CHASE SQUARE	BOYLAN, BROWN, ET AL ROCHESTER, NY 14604-0000
001	000005	AT & T UNIVERSAL CARD	P O BOX 8217 S HACKENSACK, NJ 07606
014	000016	CITICARDS	P O BOX 8116 S HACKENSACK, NJ 07606
015	000018	CITICARDS	P O BOX 8116 S HACKENSACK, NJ 07606
018	000021	DR RICHARD CORDERO	59 CRESCENT STREET BROOKLYN, NY 11208-1515
011	000014	CHASE	P O BOX 1010 HICKSVILLE, NY 11802-0000
021	000023	HSBC BANK USA	SUITE 0627 BUFFALO, NY 14270-0627
020	000004	GENESEE REGIONAL BANK	3670 MT READ BLVD ROCHESTER, NY 14616
003	000007	BANK ONE	P O BOX 15153 WILMINGTON, DE 19886
004	000009	BANK ONE	P O BOX 15153 WILMINGTON, DE 19886
005	000010	BANK ONE	P O BOX 15153 WILMINGTON, DE 19886
022	000024	MBNA AMERICA	P O BOX 15137 WILMINGTON, DE 19886
023	000025	MBNA AMERICA	P O BOX 15137 WILMINGTON, DE 19886
024	000026	MBNA AMERICA	P O BOX 15102 WILMINGTON, DE 19886-0000
016	000019	DISCOVER CARD	P O BOX 15251 WILMINGTON, DE 19886-5251
019	000022	FLEET CREDIT CARD SERVICES	P O BOX 15368 WILMINGTON, DE 19886-5368
006	000008	BANK ONE/FIRST USA BANK RECOVERY DEPT	PO BOX 517 FREDERICK, MD 21705-0517
007	000011	CAPITAL ONE	P O BOX 85147 RICHMOND, VA 23285
008	000013	CAPITAL ONE	P O BOX 85147 RICHMOND, VA 23285
010	000012	CAPITAL ONE BANK	P O BOX 85167 RICHMOND, VA 23285-0000
017	000020	DISCOVER FINANCIAL SERVICES	P.O. BOX 8003 HILLIARD, OH 43026

AFFA

CERTIFICATE OF MAILING

025	000027	SEARS P O BOX 182149	PAYMENT CENTER COLUMBUS, OH 43218
026	000028	SEARS ATTN: BK DEPT	PO BOX 3671 DES MOINES, IA 50322- 000
002	000006	BANK OF AMERICA	P O BOX 531323 PHOENIX, AZ 85072-3132
012	000015	CHASE MANHATTAN BANK USA ATTN: PAYMENT PROCESSING	150 WEST UNIVERSITY DRIVE TEMPE, AZ 85281
013	000017	CITIBANK/CHOICE EXCEPTION PYMT PROCESSING	P O BOX 6305 THE LAKES, NV 88901-6305
027	000029	WELLS FARGO FINANCIAL	P O BOX 98784 LAS VEGAS, NV 89193
009	000003	CAPITAL ONE AUTO FINANCE	P O BOX 93016 LONG BEACH, CA 90809-3016

32 NOTICES

THE ABOVE REFERENCED NOTICE WAS MAILED TO EACH OF THE ABOVE ON 02/03/2004.
I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.
EXECUTED ON 02/03/2004 BY T. Martinez

*CM - Indicates notice served via Certified Mail

United States Bankruptcy Court
Western District of New York

In re David G. DeLano
Mary Ann DeLano
Debtor(s)

Case No.
Chapter 13

CHAPTER 13 PLAN

1. Payments to the Trustee: The future earnings or other future income of the Debtor is submitted to the supervision and control of the trustee. The Debtor (or the Debtor's employer) shall pay to the trustee the sum of $1,940.00 per month for 5 months, then $635.00 per month for 25 months, then $960.00 per month for 6 months.
   Total of plan payments: $31,335.00
2. Plan Length: This plan is estimated to be for 36 months.
3. Allowed claims against the Debtor shall be paid in accordance with the provisions of the Bankruptcy Code and this Plan.
   a. Secured creditors shall retain their mortgage, lien or security interest in collateral until the amount of their allowed secured claims have been fully paid or until the Debtor has been discharged. Upon payment of the amount allowed by the Court as a secured claim in the Plan, the secured creditors included in the Plan shall be deemed to have their full claims satisfied and shall terminate any mortgage, lien or security interest on the Debtor's property which was in existence at the time of the filing of the Plan, or the Court may order termination of such mortgage, lien or security interest.
   b. Creditors who have co-signers, co-makers, or guarantors ("Co-Obligors") from whom they are enjoined from collection under 11 U.S.C. § 1301, and which are separately classified and shall file their claims, including all of the contractual interest which is due or will become due during the consummation of the Plan, and payment of the amount specified in the proof of claim to the creditor shall constitute full payment of the debt as to the Debtor and any Co-Obligor.
   c. All priority creditors under 11 U.S.C. § 507 shall be paid in full in deferred cash payments.
4. From the payments received under the plan, the trustee shall make disbursements as follows:

   a. Administrative Expenses
      (1) Trustee's Fee: 10.00%
      (2) Attorney's Fee (unpaid portion): NONE
      (3) Filing Fee (unpaid portion): NONE

   b. Priority Claims under 11 U.S.C. § 507

Name	Amount of Claim	Interest Rate (If specified)
-NONE-		

   c. Secured Claims
      (1) Secured Debts Which Will Not Extend Beyond the Length of the Plan

Name	Proposed Amount of Allowed Secured Claim	Monthly Payment (If fixed)	Interest Rate (If specified)
Capitol One Auto Finance	5,500.00	Prorata	6.00%

      (2) Secured Debts Which Will Extend Beyond the Length of the Plan

Name	Amount of Claim	Monthly Payment	Interest Rate (If specified)
-NONE-			

   d. Unsecured Claims
      (1) Special Nonpriority Unsecured: Debts which are co-signed or are non-dischargeable shall be paid in full (100%).

Name	Amount of Claim	Interest Rate (If specified)
-NONE-		

      (2) General Nonpriority Unsecured: Other unsecured debts shall be paid 22 cents on the dollar and paid pro rata, with no interest if the creditor has no Co-obligors, provided that where the amount or balance of any unsecured claim is less than $10.00 it may be paid in full.

5. The Debtor proposes to cure defaults to the following creditors by means of monthly payments by the trustee:

Creditor	Amount of Default to be Cured	Interest Rate (If specified)
-NONE-		

6. The Debtor shall make regular payments directly to the following creditors:

Name	Amount of Claim	Monthly Payment	Interest Rate (If specified)
Genesee Regional Bank	77,084.49	0.00	0.00%

7. The employer on whom the Court will be requested to order payment withheld from earnings is:
NONE. Payments to be made directly by debtor without wage deduction.

8. The following executory contracts of the debtor are rejected:

Other Party	Description of Contract or Lease
-NONE-	

9. Property to Be Surrendered to Secured Creditor

Name	Amount of Claim	Description of Property
-NONE-		

10. The following liens shall be avoided pursuant to 11 U.S.C. § 522(f), or other applicable sections of the Bankruptcy Code:

Name	Amount of Claim	Description of Property
-NONE-		

11. Title to the Debtor's property shall revest in debtor on confirmation of a plan.

12. As used herein, the term "Debtor" shall include both debtors in a joint case.

13. Other Provisions:

Date January 26, 2004 Signature /s/ David G. DeLano
David G. DeLano
Debtor

Date January 26, 2004 Signature /s/ Mary Ann DeLano
Mary Ann DeLano
Joint Debtor

(Official Form 1) (12/03)

FORM B1

United States Bankruptcy Court
Western District of New York

Voluntary Petition

Name of Debtor (if individual, enter Last, First, Middle):	Name of Joint Debtor (Spouse) (Last, First, Middle):
DeLano, David G.	DeLano, Mary Ann
All Other Names used by the Debtor in the last 6 years (include married, maiden, and trade names):	All Other Names used by the Joint Debtor in the last 6 years (include married, maiden, and trade names):
Last four digits of Soc. Sec. No. / Complete EIN or other Tax I.D. No. (if more than one, state all): xxx-xx-3894	Last four digits of Soc. Sec. No. / Complete EIN or other Tax I.D. No. (if more than one, state all): xxx-xx-0517
Street Address of Debtor (No. & Street, City, State & Zip Code): 1262 Shoecraft Road Webster, NY 14580	Street Address of Joint Debtor (No. & Street, City, State & Zip Code): 1262 Shoecraft Road Webster, NY 14580
County of Residence or of the Principal Place of Business: Monroe	County of Residence or of the Principal Place of Business: Monroe
Mailing Address of Debtor (if different from street address):	Mailing Address of Joint Debtor (if different from street address):

Location of Principal Assets of Business Debtor (if different from street address above):

Information Regarding the Debtor (Check the Applicable Boxes)

Venue (Check any applicable box)

■ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.

☐ There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.

Type of Debtor (Check all boxes that apply)

- ■ Individual(s)
- ☐ Corporation
- ☐ Partnership
- ☐ Other_____
- ☐ Railroad
- ☐ Stockbroker
- ☐ Commodity Broker
- ☐ Clearing Bank

Chapter or Section of Bankruptcy Code Under Which the Petition is Filed (Check one box)

- ☐ Chapter 7
- ☐ Chapter 9
- ☐ Chapter 11
- ☐ Chapter 12
- ■ Chapter 13
- ☐ Sec. 304 - Case ancillary to foreign proceeding

Nature of Debts (Check one box)

- ■ Consumer/Non-Business
- ☐ Business

Chapter 11 Small Business (Check all boxes that apply)

- ☐ Debtor is a small business as defined in 11 U.S.C. § 101
- ☐ Debtor is and elects to be considered a small business under 11 U.S.C. § 1121(e) (Optional)

Filing Fee (Check one box)

- ■ Full Filing Fee attached
- ☐ Filing Fee to be paid in installments (Applicable to individuals only.) Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form No. 3.

Statistical/Administrative Information (Estimates only)

- ■ Debtor estimates that funds will be available for distribution to unsecured creditors.
- ☐ Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

THIS SPACE IS FOR COURT USE ONLY

Estimated Number of Creditors

1-15	16-49	50-99	100-199	200-999	1000-over
☐	■	☐	☐	☐	☐

Estimated Assets

$0 to $50,000	$50,001 to $100,000	$100,001 to $500,000	$500,001 to $1 million	$1,000,001 to $10 million	$10,000,001 to $50 million	$50,000,001 to $100 million	More than $100 million
☐	☐	■	☐	☐	☐	☐	☐

Estimated Debts

$0 to $50,000	$50,001 to $100,000	$100,001 to $500,000	$500,001 to $1 million	$1,000,001 to $10 million	$10,000,001 to $50 million	$50,000,001 to $100 million	More than $100 million
☐	☐	■	☐	☐	☐	☐	☐

Voluntary Petition
(This page must be completed and filed in every case)

Name of Debtor(s): DeLano, David G.
DeLano, Mary Ann

Prior Bankruptcy Case Filed Within Last 6 Years (If more than one, attach additional sheet)

Location Where Filed:	Case Number:	Date Filed:
- None -		

Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor (If more than one, attach additional sheet)

Name of Debtor:	Case Number:	Date Filed:
- None -		
District:	**Relationship:**	**Judge:**

Signatures

Signature(s) of Debtor(s) (Individual/Joint)

I declare under penalty of perjury that the information provided in this petition is true and correct.
[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.
I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X /s/ David G. DeLano
Signature of Debtor David G. DeLano

X /s/ Mary Ann DeLano
Signature of Joint Debtor Mary Ann DeLano

Telephone Number (If not represented by attorney)

January 26, 2004
Date

Signature of Attorney

X /s/ Christopher K. Werner, Esq.
Signature of Attorney for Debtor(s)

Christopher K. Werner, Esq.
Printed Name of Attorney for Debtor(s)

Boylan, Brown, Code, Vigdor & Wilson, LLP
Firm Name

2400 Chase Square
Rochester, NY 14604
Address

585-232-5300
Telephone Number

January 26, 2004
Date

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.
The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X
Signature of Authorized Individual

Printed Name of Authorized Individual

Title of Authorized Individual

Date

Exhibit A

(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11)

☐ Exhibit A is attached and made a part of this petition.

Exhibit B

(To be completed if debtor is an individual whose debts are primarily consumer debts)

I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter.

X /s/ Christopher K. Werner, Esq. January 26, 2004
Signature of Attorney for Debtor(s) Date
Christopher K. Werner, Esq.

Exhibit C

Does the debtor own or have possession of any property that poses a threat of imminent and identifiable harm to public health or safety?

☐ Yes, and Exhibit C is attached and made a part of this petition.
■ No

Signature of Non-Attorney Petition Preparer

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.

Printed Name of Bankruptcy Petition Preparer

Social Security Number (Required by 11 U.S.C.§ 110(c).)

Address

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

X
Signature of Bankruptcy Petition Preparer

Date

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

United States Bankruptcy Court
Western District of New York

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

Chapter 13

SUMMARY OF SCHEDULES

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts from Schedules D, E, and F to determine the total amount of the debtor's liabilities.

NAME OF SCHEDULE	ATTACHED (YES/NO)	NO. OF SHEETS	AMOUNTS SCHEDULED ASSETS	LIABILITIES	OTHER
A - Real Property	Yes	1	98,500.00		
B - Personal Property	Yes	4	164,956.57		
C - Property Claimed as Exempt	Yes	1			
D - Creditors Holding Secured Claims	Yes	1		87,369.49	
E - Creditors Holding Unsecured Priority Claims	Yes	1		0.00	
F - Creditors Holding Unsecured Nonpriority Claims	Yes	4		98,092.91	
G - Executory Contracts and Unexpired Leases	Yes	1			
H - Codebtors	Yes	1			
I - Current Income of Individual Debtor(s)	Yes	1			4,886.50
J - Current Expenditures of Individual Debtor(s)	Yes	1			2,946.50
Total Number of Sheets of ALL Schedules		16			
		Total Assets	263,456.57		
			Total Liabilities	185,462.40	

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE A. REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a cotenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. (See Schedule D.) If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

Description and Location of Property	Nature of Debtor's Interest in Property	Husband, Wife, Joint, or Community	Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption	Amount of Secured Claim
1262 Shoecraft Road, Webster (value per appraisal 11/23/03)	Fee Simple	J	98,500.00	77,084.49

Sub-Total >	98,500.00	(Total of this page)
Total >	98,500.00	

0 continuation sheets attached to the Schedule of Real Property

(Report also on Summary of Schedules)

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE B. PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property."

	Type of Property	NONE	Description and Location of Property	Husband, Wife, Joint, or Community	Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
1.	Cash on hand		misc cash on hand	J	35.00
2.	Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.		M & T Checking account	J	300.00
			M & T Savings	W	200.00
			M & T Bank Checking	W	0.50
3.	Security deposits with public utilities, telephone companies, landlords, and others.	X			
4.	Household goods and furnishings, including audio, video, and computer equipment.		Furniture: sofa, loveseat, 2 chairs, 2 lamps, 2 tv's 2 radios, end tables, basement sofa, kitchen table and chairs, misc kitchen appliances, refrigerator, stove, microwave, place settings; Bedroom furniture - bed, dresser, nightstand, lamps, 2 foutons, 2 lamps, table 4 chairs on porch; desk, misc garden tools, misc hand tools.	J	2,000.00
			computer (2000); washer/dryer, riding mower (5 yrs), dehumidifier, gas grill,	J	350.00
5.	Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.		misc books, misc wall decorations, family photos, family bible	J	100.00
6.	Wearing apparel.		misc wearing apparel	J	50.00
7.	Furs and jewelry.		wedding rings, wrist watches	J	100.00
			misc costume jewelry, string of pearls	W	200.00
				Sub-Total > (Total of this page)	3,335.50

3 continuation sheets attached to the Schedule of Personal Property

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE B. PERSONAL PROPERTY
(Continuation Sheet)

	Type of Property	NONE	Description and Location of Property	Husband, Wife, Joint, or Community	Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
8.	Firearms and sports, photographic, and other hobby equipment.		camera - 35mm snapshot cameras ((2) purchased for $19.95 each new	J	10.00
9.	Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	X			
10.	Annuities. Itemize and name each issuer.	X			
11.	Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Itemize.		Xerox 401-K $38,000; stock options $4,000; retirement account $17,000 - all in retirment account	W	59,000.00
			401-k (net of outstanding loan $9,642.56)	H	96,111.07
12.	Stock and interests in incorporated and unincorporated businesses. Itemize.	X			
13.	Interests in partnerships or joint ventures. Itemize.	X			
14.	Government and corporate bonds and other negotiable and nonnegotiable instruments.	X			
15.	Accounts receivable.		Debt due from son ($10,000) - uncertain collectibility - unpaid even when employed but now laid off from Heidelberg/Nexpress	J	Unknown
16.	Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			
17.	Other liquidated debts owing debtor including tax refunds. Give particulars.		2003 tax liability expected	J	0.00
18.	Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule of Real Property.	X			

Sub-Total > (Total of this page) 155,121.07

Sheet 1 of 3 continuation sheets attached to the Schedule of Personal Property

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE B. PERSONAL PROPERTY
(Continuation Sheet)

Type of Property	NONE	Description and Location of Property	Husband, Wife, Joint, or Community	Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
19. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	X			
20. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	X			
21. Patents, copyrights, and other intellectual property. Give particulars.	X			
22. Licenses, franchises, and other general intangibles. Give particulars.	X			
23. Automobiles, trucks, trailers, and other vehicles and accessories.		1993 Chevrolet Cavalier 70,000 miles	W	1,000.00
		1998 Chevrolet Blazer 56,000 miles (value Kelly Blue Book average of retail and trade-in - good condition)	H	5,500.00
24. Boats, motors, and accessories.	X			
25. Aircraft and accessories.	X			
26. Office equipment, furnishings, and supplies.	X			
27. Machinery, fixtures, equipment, and supplies used in business.	X			
28. Inventory.	X			
29. Animals.	X			
30. Crops - growing or harvested. Give particulars.	X			
31. Farming equipment and implements.	X			

Sub-Total > (Total of this page) 6,500.00

Sheet 2 of 3 continuation sheets attached to the Schedule of Personal Property

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE B. PERSONAL PROPERTY
(Continuation Sheet)

Type of Property	NONE	Description and Location of Property	Husband, Wife, Joint, or Community	Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
32. Farm supplies, chemicals, and feed.	X			
33. Other personal property of any kind not already listed.	X			

Sub-Total > 0.00
(Total of this page)
Total > 164,956.57

Sheet 3 of 3 continuation sheets attached to the Schedule of Personal Property

(Report also on Summary of Schedules)

A:2064

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE C. PROPERTY CLAIMED AS EXEMPT

Debtor elects the exemptions to which debtor is entitled under:
[Check one box]

☐ 11 U.S.C. §522(b)(1): Exemptions provided in 11 U.S.C. §522(d). Note: These exemptions are available only in certain states.

■ 11 U.S.C. §522(b)(2): Exemptions available under applicable nonbankruptcy federal laws, state or local law where the debtor's domicile has been located for the 180 days immediately preceding the filing of the petition, or for a longer portion of the 180-day period than in any other place, and the debtor's interest as a tenant by the entirety or joint tenant to the extent the interest is exempt from process under applicable nonbankruptcy law.

Description of Property	Specify Law Providing Each Exemption	Value of Claimed Exemption	Current Market Value of Property Without Deducting Exemption
Real Property			
1262 Shoecraft Road, Webster (value per appraisal 11/23/03)	NYCPLR § 5206(a)	20,000.00	98,500.00
Household Goods and Furnishings			
Furniture: sofa, loveseat, 2 chairs, 2 lamps, 2 tv's 2 radios, end tables, basement sofa, kitchen table and chairs, misc kitchen appliances, refrigerator, stove, microwave, place settings; Bedroom furniture - bed, dresser, nightstand, lamps, 2 foutons, 2 lamps, table 4 chairs on porch; desk, misc garden tools, misc hand tools.	NYCPLR § 5205(a)(5)	2,000.00	2,000.00
Books, Pictures and Other Art Objects; Collectibles			
misc books, misc wall decorations, family photos, family bible	NYCPLR § 5205(a)(2)	100.00	100.00
Wearing Apparel			
misc wearing apparel	NYCPLR § 5205(a)(5)	50.00	50.00
Furs and Jewelry			
wedding rings, wrist watches	NYCPLR § 5205(a)(6)	100.00	100.00
Interests in IRA, ERISA, Keogh, or Other Pension or Profit Sharing Plans			
Xerox 401-K $38,000; stock options $4,000; retirement account $17,000 - all in retirment account	Debtor & Creditor Law § 282(2)(e)	59,000.00	59,000.00
401-k (net of outstanding loan $9,642.56)	Debtor & Creditor Law § 282(2)(e)	96,111.07	96,111.07
Automobiles, Trucks, Trailers, and Other Vehicles			
1993 Chevrolet Cavalier 70,000 miles	Debtor & Creditor Law § 282(1)	1,000.00	1,000.00

0 continuation sheets attached to Schedule of Property Claimed as Exempt

Form B6D
(12/03)

In re David G. DeLano,
Mary Ann DeLano
Debtors

Case No. _____

SCHEDULE D. CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests. List creditors in alphabetical order to the extent practicable. If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor", include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated". If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

☐ Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR	Husband, Wife, Joint, or Community H W J C	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION IF ANY
Account No. 5687652 Capitol One Auto Finance PO Box 93016 Long Beach, CA 90809-3016		J	2001 auto lien 1998 Chevrolet Blazer 56,000 miles (value Kelly Blue Book average of retail and trade-in - good condition) Value $ 5,500.00				10,285.00	4,785.00
Account No. Genesee Regional Bank 3670 Mt Read Blvd Rochester, NY 14616		J	fist mortgage 1262 Shoecraft Road, Webster (value per appraisal 11/23/03) Value $ 98,500.00				77,084.49	0.00
Account No. Value $								
Account No. Value $								

0 continuation sheets attached

Subtotal (Total of this page) 87,369.49

Total (Report on Summary of Schedules) 87,369.49

Form B6E
(12/03)

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE E. CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor", include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether husband, wife, both of them or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated". If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotal" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Repeat this total also on the Summary of Schedules.

■ Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets.)

☐ **Extensions of credit in an involuntary case**

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(2).

☐ **Wages, salaries, and commissions**

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to $4,650* per person earned within 90 days immediately preceding the filing of the original petition, or the cessation of business, which ever occurred first, to the extent provided in 11 U.S.C. § 507 (a)(3).

☐ **Contributions to employee benefit plans**

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

☐ **Certain farmers and fishermen**

Claims of certain farmers and fishermen, up to $4,650* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(5).

☐ **Deposits by individuals**

Claims of individuals up to $2,100* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(6).

☐ **Alimony, Maintenance, or Support**

Claims of a spouse, former spouse, or child of the debtor for alimony, maintenance, or support, to the extent provided in 11 U.S.C. § 507(a)(7).

☐ **Taxes and Certain Other Debts Owed to Governmental Units**

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C § 507(a)(8).

☐ **Commitments to Maintain the Capital of an Insured Depository Institution**

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507(a)(9).

*Amounts are subject to adjustment on April 1, 2004, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

0 continuation sheets attached

Form B6F
(12/03)

In re David G. DeLano,
Mary Ann DeLano
Debtors

Case No. _____

SCHEDULE F. CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor", include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community maybe liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated". If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

☐ Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR	Husband, Wife, Joint, or Community H W J C	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No. 5398-8090-0311-9990 AT&T Universal P.O. Box 8217 South Hackensack, NJ 07606-8217		H	1990 and prior Credit card purchases				1,912.63
Account No. 4024-0807-6136-1712 Bank Of America P.O. Box 53132 Phoenix, AZ 85072-3132		H	1990 and prior Credit card purchases				3,296.83
Account No. 4266-8699-5018-4134 Bank One Cardmember Services P.O. Box 15153 Wilmington, DE 19886-5153		H	1990 prior Credit card purchases				9,846.80
Account No. 4712-0207-0151-3292 Bank One Cardmember Services P.O. Box 15153 Wilmington, DE 19886-5153		H	1990 and prior Credit card purchases				5,130.80
						Subtotal (Total of this page)	20,187.06

3 continuation sheets attached

Form B6F - Cont.
(12/03)

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE F. CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	CODEBTOR	Husband, Wife, Joint, or Community H W J C	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No. 4262 519 982 211 Bank One Cardmember Services P.O. Box 15153 Wilmington, DE 19886-5153		H	1990 and prior Credit card purchases				9,876.49
Account No. 4388-6413-4765-8994 Capital One P.O. Box 85147 Richmond, VA 23276		H	2001- 8/03 Credit card purchases				449.35
Account No. 4862-3621-5719-3502 Capital One P.O. Box 85147 Richmond, VA 23276		H	2001 - 8/03 Credit card purchases				460.26
Account No. 4102-0082-4002-1537 Chase P.O. Box 1010 Hicksville, NY 11802		W	1990 and prior Credit card purchases				10,909.01
Account No. 5457-1500-2197-7384 Citi Cards P.O. Box 8116 South Hackensack, NJ 07606-8116		W	1990 and prior Credit card purchases				2,127.08

Sheet no. 1 of 3 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal (Total of this page) 23,822.19

Form B6F - Cont.
(12/03)

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE F. CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	CODEBTOR	Husband, Wife, Joint, or Community H W J C	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No. 5466-5360-6017-7176 Citi Cards P.O. Box 8115 South Hackensack, NJ 07606-8115		H	1990 and prior Credit card purchases				4,043.94
Account No. 6011-0020-4000-6645 Discover Card P.O. Box 15251 Wilmington, DE 19886-5251		J	1990 and prior Credit card purchases				5,219.03
Account No. Dr. Richard Cordero 59 Crescent Street Brooklyn, NY 11208-1515		H	2002 Alleged liability re: stored merchandise as employee of M&T Bank - suit pending US BK Ct.		X	X	Unknown
Account No. 5487-8900-2018-8012 Fleet Credit Card Service P.O. Box 15368 Wilmington, DE 19886-5368		W	1990 and prior Credit card purchases				2,126.92
Account No. 5215-3125-0126-4385 HSBC MasterCard/Visa HSBC Bank USA Suite 0627 Buffalo, NY 14270-0627		H	1990 and prior Credit card purchases				9,065.01
Sheet no. 2 of 3 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims						Subtotal (Total of this page)	20,454.90

Form B6F - Cont.
(12/03)

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE F. CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	CODEBTOR	Husband, Wife, Joint, or Community H W J C	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No. 4313-0228-5801-9530 MBNA America P.O. Box 15137 Wilmington, DE 19886-5137		W	1990 and prior Credit card purchases				6,422.47
Account No. 5329-0315-0992-1928 MBNA America P.O. Box 15137 Wilmington, DE 19886-5137		H	1990 and prior Credit card purchases				18,498.21
Account No. 749 90063 031 903 MBNA America P.O. Box 15102 Wilmington, DE 19886-5102		H	1990 and prior Credit card purchases				3,823.74
Account No. 34 80074 30593 0 Sears Card Payment Center P.O. Box 182149 Columbus, OH 43218-2149		H	1990 - 10/99 Credit card purchases				3,554.34
Account No. 17720544 Wells Fargo Financial P.O. Box 98784 Las Vegas, NV 89193-8784		H	8/03 Credit card purchases				1,330.00

Sheet no. 3 of 3 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal (Total of this page) 33,628.76

Total (Report on Summary of Schedules) 98,092.91

In re David G. DeLano, Mary Ann DeLano, Case No. _____

Debtors

SCHEDULE G. EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser," "Agent," etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described.

NOTE: A party listed on this schedule will not receive notice of the filing of this case unless the party is also scheduled in the appropriate schedule of creditors.

■ Check this box if debtor has no executory contracts or unexpired leases.

Name and Mailing Address, Including Zip Code, of Other Parties to Lease or Contract	Description of Contract or Lease and Nature of Debtor's Interest. State whether lease is for nonresidential real property. State contract number of any government contract.

0 continuation sheets attached to Schedule of Executory Contracts and Unexpired Leases

In re David G. DeLano, Mary Ann DeLano, Case No. _____

Debtors

SCHEDULE H. CODEBTORS

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by debtor in the schedules of creditors. Include all guarantors and co-signers. In community property states, a married debtor not filing a joint case should report the name and address of the nondebtor spouse on this schedule. Include all names used by the nondebtor spouse during the six years immediately preceding the commencement of this case.

■ Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR

0 continuation sheets attached to Schedule of Codebtors

Form B6I
(12/03)

In re David G. DeLano,
Mary Ann DeLano
Debtors

Case No. _____

SCHEDULE I. CURRENT INCOME OF INDIVIDUAL DEBTOR(S)

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by a married debtor in a chapter 12 or 13 case whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.

Debtor's Marital Status:	DEPENDENTS OF DEBTOR AND SPOUSE	
	RELATIONSHIP	AGE
Married	None.	

EMPLOYMENT:	DEBTOR	SPOUSE
Occupation	Loan officer	
Name of Employer	M & T Bank	unemployed - Xerox
How long employed		
Address of Employer	PO Box 427 Buffalo, NY 14240	

INCOME: (Estimate of average monthly income)	DEBTOR	SPOUSE
Current monthly gross wages, salary, and commissions (pro rate if not paid monthly)	$ 5,760.00	$ 1,741.00
Estimated monthly overtime	$ 0.00	$ 0.00
SUBTOTAL	$ 5,760.00	$ 1,741.00
LESS PAYROLL DEDUCTIONS		
a. Payroll taxes and social security	$ 1,440.00	$ 435.25
b. Insurance	$ 414.95	$ 0.00
c. Union dues	$ 0.00	$ 0.00
d. Other (Specify) Retirement Loan (to 10/05)	$ 324.30	$ 0.00
	$ 0.00	$ 0.00
SUBTOTAL OF PAYROLL DEDUCTIONS	$ 2,179.25	$ 435.25
TOTAL NET MONTHLY TAKE HOME PAY	$ 3,580.75	$ 1,305.75
Regular income from operation of business or profession or farm (attach detailed statement)	$ 0.00	$ 0.00
Income from real property	$ 0.00	$ 0.00
Interest and dividends	$ 0.00	$ 0.00
Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above	$ 0.00	$ 0.00
Social security or other government assistance (Specify)	$ 0.00	$ 0.00
	$ 0.00	$ 0.00
Pension or retirement income	$ 0.00	$ 0.00
Other monthly income (Specify)	$ 0.00	$ 0.00
	$ 0.00	$ 0.00
TOTAL MONTHLY INCOME	$ 3,580.75	$ 1,305.75
TOTAL COMBINED MONTHLY INCOME $ 4,886.50	(Report also on Summary of Schedules)	

Describe any increase or decrease of more than 10% in any of the above categories anticipated to occur within the year following the filing of this document:

Wife currently on unemployment thru 6/04. Age 59 - re-employment not expected. Reduces net income by $1,129/month.

Retirement Loan was made to son, who was to re-pay @$200/mon. but has been unable to do so as employed at $10/hr. Potentially uncollectible - due to recent Kodak acquisition of Heidelberg - Nexpress.

Husband will retire in three years at end of plan (extended beyond age 65 to complete three year plan.)

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE J. CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)

Complete this schedule by estimating the average monthly expenses of the debtor and the debtor's family. Pro rate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate.

☐ Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse."

Rent or home mortgage payment (include lot rented for mobile home)	$ 1,167.00
Are real estate taxes included? Yes X No	
Is property insurance included? Yes No X	
Utilities: Electricity and heating fuel	$ 168.00
Water and sewer	$ 30.00
Telephone	$ 40.00
Other Cell Phone $62 (req. for work); cable $55; Internet $23.95	$ 140.95
Home maintenance (repairs and upkeep)	$ 50.00
Food	$ 430.00
Clothing	$ 60.00
Laundry and dry cleaning	$ 5.00
Medical and dental expenses	$ 120.00
Transportation (not including car payments)	$ 295.00
Recreation, clubs and entertainment, newspapers, magazines, etc.	$ 107.50
Charitable contributions	$ 50.00
Insurance (not deducted from wages or included in home mortgage payments)	
Homeowner's or renter's	$ 0.00
Life	$ 0.00
Health	$ 0.00
Auto	$ 110.00
Other	$ 0.00
Taxes (not deducted from wages or included in home mortgage payments)	
(Specify)	$ 0.00
Installment payments: (In chapter 12 and 13 cases, do not list payments to be included in the plan.)	
Auto	$ 0.00
Other reserve for auto	$ 50.00
Other Parking	$ 58.05
Other	$ 0.00
Alimony, maintenance, and support paid to others	$ 0.00
Payments for support of additional dependents not living at your home	$ 0.00
Regular expenses from operation of business, profession, or farm (attach detailed statement)	$ 0.00
Other family gifts - Christmas/Birthdays	$ 20.00
Other Haircuts and personal hygine	$ 45.00
TOTAL MONTHLY EXPENSES (Report also on Summary of Schedules)	$ 2,946.50

[FOR CHAPTER 12 AND 13 DEBTORS ONLY]

Provide the information requested below, including whether plan payments are to be made bi-weekly, monthly, annually, or at some other regular interval.

A. Total projected monthly income	$ 4,886.50
B. Total projected monthly expenses	$ 2,946.50
C. Excess income (A minus B)	$ 1,940.00
D. Total amount to be paid into plan each Monthly (interval)	$ 1,940.00

United States Bankruptcy Court
Western District of New York

In re David G. DeLano
Mary Ann DeLano
Debtor(s)

Case No. _____
Chapter 13

DECLARATION CONCERNING DEBTOR'S SCHEDULES

DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of 17 sheets *[total shown on summary page plus 1]*, and that they are true and correct to the best of my knowledge, information, and belief.

Date January 26, 2004 Signature /s/ David G. DeLano
David G. DeLano
Debtor

Date January 26, 2004 Signature /s/ Mary Ann DeLano
Mary Ann DeLano
Joint Debtor

Penalty for making a false statement or concealing property: Fine of up to $500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§ 152 and 3571.

Form 7
(12/03)

United States Bankruptcy Court
Western District of New York

In re David G. DeLano
Mary Ann DeLano
Debtor(s)

Case No.
Chapter 13

STATEMENT OF FINANCIAL AFFAIRS

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs.

Questions 1 - 18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19 - 25. **If the answer to an applicable question is "None," mark the box labeled "None."** If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

DEFINITIONS

"In business." A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within the six years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed.

"Insider." The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any owner of 5 percent or more of the voting or equity securities of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101.

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1. Income from employment or operation of business

None ☐ State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the **two years** immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT	SOURCE (if more than one)
$91,655.00	2002 joint income
$108,586.00	2003 Income (H) $67,118; (W) $41,468

2. Income other than from employment or operation of business

None ■ State the amount of income received by the debtor other than from employment, trade, profession, or operation of the debtor's business during the **two years** immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT	SOURCE

3. Payments to creditors

None ☐ a. List all payments on loans, installment purchases of goods or services, and other debts, aggregating more than $600 to any creditor, made within **90 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS	AMOUNT PAID	AMOUNT STILL OWING
Genesee Regional Bank 3670 Mt Read Blvd Rochester, NY 14616	monthly mortgage $1,167/mon with taxes and insurance	$5,000.00	$77,082.49
Capitol One Auto Finance PO Box 93016 Long Beach, CA 90809-3016	monthly auto payment $348/mon	$1,044.00	$10,000.00

None ■ b. List all payments made within **one year** immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR AND RELATIONSHIP TO DEBTOR	DATE OF PAYMENT	AMOUNT PAID	AMOUNT STILL OWING

4. Suits and administrative proceedings, executions, garnishments and attachments

None ☐ a. List all suits and administrative proceedings to which the debtor is or was a party within **one year** immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

CAPTION OF SUIT AND CASE NUMBER	NATURE OF PROCEEDING	COURT OR AGENCY AND LOCATION	STATUS OR DISPOSITION
In re Premier Van Lines, Inc; James Pfuntner / Ken Gordon Trustee v. Richard Cordero, M & T Bank et al v. Palmer, Dworkin, Hefferson Henrietta Assoc and Delano	(As against debtor) damages for inability of Cordero to recover property held in storage	US Bankruptcy Court, Western District of NY	pending

None ■ b. Describe all property that has been attached, garnished or seized under any legal or equitable process within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON FOR WHOSE BENEFIT PROPERTY WAS SEIZED	DATE OF SEIZURE	DESCRIPTION AND VALUE OF PROPERTY

5. Repossessions, foreclosures and returns

None ■ List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR OR SELLER	DATE OF REPOSSESSION, FORECLOSURE SALE, TRANSFER OR RETURN	DESCRIPTION AND VALUE OF PROPERTY

6. Assignments and receiverships

None ■ a. Describe any assignment of property for the benefit of creditors made within **120 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF ASSIGNEE	DATE OF ASSIGNMENT	TERMS OF ASSIGNMENT OR SETTLEMENT

None ■ b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CUSTODIAN	NAME AND LOCATION OF COURT CASE TITLE & NUMBER	DATE OF ORDER	DESCRIPTION AND VALUE OF PROPERTY

7. Gifts

None ■ List all gifts or charitable contributions made within **one year** immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than $200 in value per individual family member and charitable contributions aggregating less than $100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON OR ORGANIZATION	RELATIONSHIP TO DEBTOR, IF ANY	DATE OF GIFT	DESCRIPTION AND VALUE OF GIFT

8. Losses

None ■ List all losses from fire, theft, other casualty or gambling within **one year** immediately preceding the commencement of this case **or since the commencement of this case.** (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

DESCRIPTION AND VALUE OF PROPERTY	DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS	DATE OF LOSS

9. Payments related to debt counseling or bankruptcy

None ☐ List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of the petition in bankruptcy within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYOR IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
Christopher K. Werner 2400 Chase Square Rochester, NY 14604	Nov - Dec 2003	$1,350 plus filing fee

10. Other transfers

None ■ List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR	DATE	DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED

11. Closed financial accounts

None ■ List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within **one year** immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF INSTITUTION	TYPE OF ACCOUNT, LAST FOUR DIGITS OF ACCOUNT NUMBER, AND AMOUNT OF FINAL BALANCE	AMOUNT AND DATE OF SALE OR CLOSING

12. Safe deposit boxes

None ☐ List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF BANK OR OTHER DEPOSITORY	NAMES AND ADDRESSES OF THOSE WITH ACCESS TO BOX OR DEPOSITORY	DESCRIPTION OF CONTENTS	DATE OF TRANSFER OR SURRENDER, IF ANY
M & T Bank Webster Branch	debtors	Personal papers	

13. Setoffs

None ■ List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within **90 days** preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATE OF SETOFF	AMOUNT OF SETOFF

14. Property held for another person

None ■ List all property owned by another person that the debtor holds or controls.

NAME AND ADDRESS OF OWNER	DESCRIPTION AND VALUE OF PROPERTY	LOCATION OF PROPERTY

15. Prior address of debtor

None ■ If the debtor has moved within the **two years** immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

ADDRESS	NAME USED	DATES OF OCCUPANCY

16. Spouses and Former Spouses

None ■ If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the **six-year period** immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state.

NAME

17. Environmental Information.

For the purpose of this question, the following definitions apply:

"Environmental Law" means any federal, state, or local statute or regulation regulating pollution, contamination, releases of hazardous or toxic substances, wastes or material into the air, land, soil, surface water, groundwater, or other medium, including, but not limited to, statutes or regulations regulating the cleanup of these substances, wastes, or material.

"Site" means any location, facility, or property as defined under any Environmental Law, whether or not presently or formerly owned or operated by the debtor, including, but not limited to, disposal sites.

"Hazardous Material" means anything defined as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, or contaminant or similar term under an Environmental Law

None ■ a. List the name and address of every site for which the debtor has received notice in writing by a governmental unit that it may be liable or potentially liable under or in violation of an Environmental Law. Indicate the governmental unit, the date of the notice, and, if known, the Environmental Law:

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW

None ■ b. List the name and address of every site for which the debtor provided notice to a governmental unit of a release of Hazardous Material. Indicate the governmental unit to which the notice was sent and the date of the notice.

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW

None ■ c. List all judicial or administrative proceedings, including settlements or orders, under any Environmental Law with respect to which the debtor is or was a party. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.

NAME AND ADDRESS OF GOVERNMENTAL UNIT	DOCKET NUMBER	STATUS OR DISPOSITION

18 . Nature, location and name of business

None ■ a. If the debtor is an individual, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partnership, sole proprietorship, or was a self-employed professional within the **six years** immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within the **six years** immediately preceding the commencement of this case.

If the debtor is a partnership, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within the **six years** immediately preceding the commencement of this case.

If the debtor is a corporation, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within the **six years** immediately preceding the commencement of this case.

NAME	TAXPAYER I.D. NO. (EIN)	ADDRESS	NATURE OF BUSINESS	BEGINNING AND ENDING DATES

None ■ b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. § 101.

NAME	ADDRESS

The following questions are to be completed by every debtor that is a corporation or partnership and by any individual debtor who is or has been, within the **six years** immediately preceding the commencement of this case, any of the following: an officer, director, managing executive, or owner of more than 5 percent of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or otherwise self-employed.

*(An individual or joint debtor should complete this portion of the statement **only** if the debtor is or has been in business, as defined above, within the six years immediately preceding the commencement of this case. A debtor who has not been in business within those six years should go directly to the signature page.)*

19. Books, records and financial statements

None ■ a. List all bookkeepers and accountants who within the **two years** immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

NAME AND ADDRESS | DATES SERVICES RENDERED

None ■ b. List all firms or individuals who within the **two years** immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

NAME | ADDRESS | DATES SERVICES RENDERED

None ■ c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain.

NAME | ADDRESS

None ■ d. List all financial institutions, creditors and other parties, including mercantile and trade agencies, to whom a financial statement was issued within the **two years** immediately preceding the commencement of this case by the debtor.

NAME AND ADDRESS | DATE ISSUED

20. Inventories

None ■ a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

DATE OF INVENTORY | INVENTORY SUPERVISOR | DOLLAR AMOUNT OF INVENTORY (Specify cost, market or other basis)

None ■ b. List the name and address of the person having possession of the records of each of the two inventories reported in a., above.

DATE OF INVENTORY | NAME AND ADDRESSES OF CUSTODIAN OF INVENTORY RECORDS

21 . Current Partners, Officers, Directors and Shareholders

None ■ a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

NAME AND ADDRESS | NATURE OF INTEREST | PERCENTAGE OF INTEREST

None ■ b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting or equity securities of the corporation.

NAME AND ADDRESS | TITLE | NATURE AND PERCENTAGE OF STOCK OWNERSHIP

22 . Former partners, officers, directors and shareholders

None ■ a. If the debtor is a partnership, list each member who withdrew from the partnership within **one year** immediately preceding the commencement of this case.

NAME	ADDRESS	DATE OF WITHDRAWAL

None ■ b. If the debtor is a corporation, list all officers, or directors whose relationship with the corporation terminated within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS	TITLE	DATE OF TERMINATION

23 . Withdrawals from a partnership or distributions by a corporation

None ■ If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other perquisite during **one year** immediately preceding the commencement of this case.

NAME & ADDRESS OF RECIPIENT, RELATIONSHIP TO DEBTOR	DATE AND PURPOSE OF WITHDRAWAL	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY

24. Tax Consolidation Group.

None ■ If the debtor is a corporation, list the name and federal taxpayer identification number of the parent corporation of any consolidated group for tax purposes of which the debtor has been a member at any time within the **six-year period** immediately preceding the commencement of the case.

NAME OF PARENT CORPORATION	TAXPAYER IDENTIFICATION NUMBER

25. Pension Funds.

None ■ If the debtor is not an individual, list the name and federal taxpayer identification number of any pension fund to which the debtor, as an employer, has been responsible for contributing at any time within the **six-year period** immediately preceding the commencement of the case.

NAME OF PENSION FUND	TAXPAYER IDENTIFICATION NUMBER

DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct.

Date January 26, 2004 Signature /s/ David G. DeLano
David G. DeLano
Debtor

Date January 26, 2004 Signature /s/ Mary Ann DeLano
Mary Ann DeLano
Joint Debtor

Penalty for making a false statement: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571

United States Bankruptcy Court
Western District of New York

In re David G. DeLano
Mary Ann DeLano
Debtor(s)

Case No.
Chapter 13

DISCLOSURE OF COMPENSATION OF ATTORNEY FOR DEBTOR(S)

1. Pursuant to 11 U.S.C. § 329(a) and Bankruptcy Rule 2016(b), I certify that I am the attorney for the above-named debtor and that compensation paid to me within one year before the filing of the petition in bankruptcy, or agreed to be paid to me, for services rendered or to be rendered on behalf of the debtor(s) in contemplation of or in connection with the bankruptcy case is as follows:

For legal services, I have agreed to accept	$	1,350.00
Prior to the filing of this statement I have received	$	1,350.00
Balance Due	$	0.00

2. The source of the compensation paid to me was:

■ Debtor ☐ Other (specify):

3. The source of compensation to be paid to me is:

■ Debtor ☐ Other (specify):

4. ■ I have not agreed to share the above-disclosed compensation with any other person unless they are members and associates of my law firm.

☐ I have agreed to share the above-disclosed compensation with a person or persons who are not members or associates of my law firm. A copy of the agreement, together with a list of the names of the people sharing in the compensation is attached.

5. In return for the above-disclosed fee, I have agreed to render legal service for all aspects of the bankruptcy case, including:
   a. Analysis of the debtor's financial situation, and rendering advice to the debtor in determining whether to file a petition in bankruptcy;
   b. Preparation and filing of any petition, schedules, statement of affairs and plan which may be required;
   c. Representation of the debtor at the meeting of creditors and confirmation hearing, and any adjourned hearings thereof;
   d. [Other provisions as needed]
      Negotiations with secured creditors to reduce to market value; exemption planning; preparation and filing of reaffirmation agreements and applications as needed; preparation and filing of motions pursuant to 11 USC 522(f)(2)(A) for avoidance of liens on household goods.

6. By agreement with the debtor(s), the above-disclosed fee does not include the following service:
   Representation of the debtors in any dischargeability actions, judicial lien avoidances, relief from stay actions or any other adversary proceeding.

CERTIFICATION

I certify that the foregoing is a complete statement of any agreement or arrangement for payment to me for representation of the debtor(s) in this bankruptcy proceeding.

Dated: January 26, 2004

/s/ Christopher K. Werner, Esq.
Christopher K. Werner, Esq.
Boylan, Brown, Code, Vigdor & Wilson, LLP
2400 Chase Square
Rochester, NY 14604
585-232-5300

United States Bankruptcy Court
Western District of New York

In re David G. DeLano
Mary Ann DeLano
Debtor(s)

Case No.
Chapter 13

VERIFICATION OF CREDITOR MATRIX

The above-named Debtors hereby verify that the attached list of creditors is true and correct to the best of their knowledge.

Date: January 26, 2004

/s/ David G. DeLano
David G. DeLano
Signature of Debtor

Date: January 26, 2004

/s/ Mary Ann DeLano
Mary Ann DeLano
Signature of Debtor

AT&T Universal
P.O. Box 8217
South Hackensack, NJ 07606-8217

Bank Of America
P.O. Box 53132
Phoenix, AZ 85072-3132

Bank One
Cardmember Services
P.O. Box 15153
Wilmington, DE 19886-5153

Capital One
P.O. Box 85147
Richmond, VA 23276

Capitol One Auto Finance
PO Box 93016
Long Beach, CA 90809-3016

Chase
P.O. Box 1010
Hicksville, NY 11802

Citi Cards
P.O. Box 8116
South Hackensack, NJ 07606-8116

Citi Cards
P.O. Box 8115
South Hackensack, NJ 07606-8115

Citibank USA
45 Congress Street
Salem, MA 01970

Discover Card
P.O. Box 15251
Wilmington, DE 19886-5251

Dr. Richard Cordero
59 Crescent Street
Brooklyn, NY 11208-1515

Fleet Credit Card Service
P.O. Box 15368
Wilmington, DE 19886-5368

Genesee Regional Bank
3670 Mt Read Blvd
Rochester, NY 14616

HSBC MasterCard/Visa
HSBC Bank USA
Suite 0627
Buffalo, NY 14270-0627

MBNA America
P.O. Box 15137
Wilmington, DE 19886-5137

MBNA America
P.O. Box 15102
Wilmington, DE 19886-5102

Sears Card
Payment Center
P.O. Box 182149
Columbus, OH 43218-2149

Wells Fargo Financial
P.O. Box 98784
Las Vegas, NV 89193-8784

Blank

[A:2088-2126 reserved]

U.S. Department of Justice

United States Attorney
Western District of New York

620 Federal Building
100 State Street
Rochester, New York 14614

(585) 263-6760
FAX(585) 263-6226

August 24, 2004

Dr. Richard Cordero
59 Crescent Street
Brooklyn, New York 12208-1515

Dear Dr. Cordero:

We have reviewed the materials sent to us from the Southern District of New York regarding your allegations of bankruptcy fraud and judicial misconduct. Please be advised that we do not believe that the allegations warrant the opening of an investigation, and we will not be doing so. Accordingly, we are returning your original documents to you with this letter.

Sincerely,

MICHAEL A. BATTLE
United States Attorney

By: RICHARD A. RESNICK
Assistant U.S. Attorney

RAR/kmp
Enclosure

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

September 18, 2004

Michael Battle, Esq.
U.S. Attorney for WDNY
U.S. Attorney's Office
138 Delaware Center
Buffalo, NY 14202

tel. (716)843-5700; fax to (716)551-3052

Re: a judicial misconduct and bankruptcy fraud scheme

Dear Mr. Battle,

Last May and June, I submitted to your colleague David N. Kelley, U.S. Attorney for SDNY, files containing evidentiary documents and analyses of a judicial misconduct and bankruptcy fraud scheme. Since it has manifested itself through cases that originated in the U.S. Bankruptcy and District Courts in Rochester, on jurisdictional grounds the files were forwarded to Bradley Tyler, Esq., U.S. Attorney in Charge of the Rochester Office. I am hereby appealing Att. Tyler's decision not to open an investigation and bringing to your attention the questionable circumstances under which that decision was made.

In my conversation with Mr. Tyler on September 15, I requested that he forward to you all the files, that is, those of May 6 and June 29 to Mr. Kelley as well as those to him of August 14 and 31. Each is bound with a plastic spiral comb, like this one, has a cover letter that functions as an executive summary containing page references to the accompanying documents, and lists all such documents in its own Table of Contents or Exhibits. Their combined page count is 275. For your convenience, the cover pages are reproduced below to provide you with an overview of those files.

Since this is an on-going matter, I am submitting to you two of the latest documents. They consist in the order of August 30, 2004, of the judge presiding over the cases in question, namely, U.S. Bankruptcy Judge John C. Ninfo, II, and my motion of September 9, in the Court of Appeals for the Second Circuit to quash that order. The order goes to the judicial misconduct aspect of my complaint and he motion discusses how it provides further evidence of the already-complained about pattern of non-coincidental, intentional, and coordinated acts of wrongdoing by judicial officers and others. The motion also discusses the element that links judicial misconduct and bankruptcy fraud, that is, money, lots of it.

I trust that you will recognize that this complaint concerns a threat to the integrity of the judicial and the bankruptcy systems and that you will treat it accordingly. Therefore, I look forward to hearing from you and respectfully request that before you reach a final decision, you afford me the opportunity to be heard.

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

September 18, 2004

Appeal

to Michael Battle, Esq., U.S. Attorney for WDNY from the decision taken by Bradley Tyler, Esq., U.S. Attorney in Charge of the Rochester Office not to open an investigation into the complaint about a judicial misconduct and bankruptcy fraud scheme and statement of the questionable circumstances under which that decision was made submitted by Dr. Richard Cordero

1. On May 6, followed by an update on June 29, 2004, Dr. Richard Cordero submitted to David N. Kelley, U.S. Attorney for the Southern District of New York, bound files containing evidentiary documents and analyses of a judicial misconduct and bankruptcy fraud scheme. The files pointed out how evidence of such scheme had manifested itself through two cases in the U.S. Bankruptcy Court in Rochester, NY, in which Dr. Cordero is a party, namely, the Adversary Proceeding Pfuntner v. [Chapter 7 Trustee Kenneth] Gordon et al., docket no. 02-2230, on appeal since April 2003 in the Court of Appeals for the Second Circuit, docket no. 03-5023; and the more recent Chapter 13 bankruptcy petition filed by David and Mary Ann DeLano last January 27, docket no. 04-20280-, of whom Dr. Cordero is a creditor. On jurisdictional grounds the files were forwarded to Bradley Tyler, Esq., U.S. Attorney in Charge of the U.S. Attorney's Office in Rochester. These files were updated by the files that Dr. Cordero sent to Att. Tyler on August 14 and 31.

2. Att. Tyler informed Dr. Cordero on August 24, by letter of his assistant, Richard Resnik, Esq., and then in phone conversations on August 31 and September 15, 2004, that Dr. Cordero's "allegations" did not warrant an investigation. This is an appeal from that decision on grounds that to reach it neither Att. Tyler nor Att. Resnik reviewed the files but rather relied unquestioningly on the assessment of their building co-worker and presumably at least an acquaintance, Assistant U.S. Trustee Kathleen Dunivin Schmitt, who is a party with a vested interest in preventing the DeLano case from being investigated, lest she end up being investigated herself.

3. A telling **indication that neither Att. Tyler nor Att. Resnik** has reviewed Dr. Cordero's complaint **files is that neither has shown any awareness that aside from the DeLano case, the files also deal with the Pfuntner v. Gordon et al. case and the judicial misconduct complaint arising therefrom**. Trustee Schmitt's opinion on that complaint carries no special weight since it was filed, not under the Bankruptcy Code, but rather under 28 U.S.C. §351 and involves the disregard for the law, rules, and facts by Bankruptcy Judge John C. Ninfo, II, and other court officers and personnel so repeatedly and consistently to the detriment of Dr. Cordero, the only non-local party[1], as to give rise to a pattern of non-coincidental, intentional, and

[1] Bias against non-local parties by judges is such an undisputed and frequent cause of miscarriage of justice that Congress provided for access to federal courts on the basis of diversity of citizenship. The same bias is found, mutatis mutando, on the part of Judge Ninfo, who has developed a preferential relationship –whether for convenience or gain is to be determined by the investigators- with local parties that appear before him frequently and may have even thousands of cases before him (¶¶6 & 13, infra).

coordinated acts of wrongdoing and bias toward the local parties and against Dr. Cordero.

4. But even if only the DeLano case is considered, **there are enough elements to raise reasonable suspicion that bankruptcy fraud has been committed** and that it may be so widespread as to form a scheme, which only buttresses the need for an investigation. The June 29 and August 14 files discuss those elements and the latter's cover letter (page 9, infra) even refers to the "statement in opposition (23)" that lists them on 26§IV therein. In brief, the listed elements show this:

5. Mr. DeLano has been for 15 years and still is a bank loan officer and his wife, a Xerox machines specialist, yet they cannot account for $291,470 earned in just the last three years!…and declared in their petition only $535 in hand and on account; owe $98,092 on 18 credit cards, spent on what since they declared household goods worth merely $2,910 at the end of two lifetimes of work! However, they made a $10,000 loan to their son, undated and described as "uncollectible" while their home equity is just $21,415 and their outstanding mortgage is $77,084. Did the DeLanos conceal assets? If Att. Tyler had reviewed the files, he should have realized the need for an investigation to determine not only the whereabouts of the $291,470, but also the DeLanos' earnings before 2001.

6. That realization was facilitated by the June 29 file, which discussed how **Mr. DeLano, a lending industry insider, must have known** that under a given threshold of loss credit card issuers will not consider it cost-effective to object to a petition. He may also have counted with no review by **Chapter 13 Trustee George Reiber**, either because the Trustee **is accommodating or has a workload of 3,909**[2] ***open*** **cases**, which rules out his willingness or capacity to ascertain the veracity of each petition. The fact is that if Trustee Reiber uncovered fraud and objected to the debtor's debt repayment plan so that its confirmation by the court were blocked, there would be no stream of payments by the debtor under the plan and, consequently, no percentage fee for the Trustee. Hence, it was in the Trustee's interest to submit for confirmation by Judge Ninfo, before whom the Trustee had 3,907 cases, even a case as suspicious as the DeLanos'…or particularly one as suspicious as theirs. Obviously, debtors such as the DeLanos have so much greater incentive to pay what is needed to secure the confirmation of a plan that provides for their paying just 22¢ on the dollar, not to mention to avoid an investigation. If these elements are not sufficiently suspicious in Mr. Tyler's eyes to warrant an investigation, what is?

7. The above figures come straight from the declarations made by the DeLanos in their bankruptcy petition, a copy of which is contained in the May 6 file, page 38, and the June 29 file, page 95, and from reports contained in PACER Yet, Att. Tyler has shown in his conversations with Dr. Cordero to be unfamiliar with those suspicious elements, referring instead to Dr. Cordero's "allegations" without being able to state concretely what it is that he supposedly 'alleged'. That inability stems from his failure to review the files, as shown by these facts:

    a) Att. Tyler stated on August 11 that he had not yet reviewed the files but would assign them to his assistant, Richard Resnik, Esq.;

    b) Att. Resnik by his own admission had not reviewed them either by mid-afternoon of August 24 when he finally took Dr. Cordero's call and he could not have reviewed their 250 pages while preparing, as he said he was, his next day trip to Washington, D.C., by

[2] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1 on April 2, 2004.

the time that same day when he wrote (pg. 11, infra) to Dr. Cordero that his "allegations" did not warrant an investigation and returned to him all the files (page 12, infra); and

c) Att. Tyler had still not reviewed the files, which after speaking with him on August 31 he agreed that Dr. Cordero could return to him, by September 15 when he finally returned Dr. Cordero's call and repeated conclusorily that they did not warrant an investigation and that Assistant U.S. Trustee Schmitt had told him so and that she had already decided not to investigate the case, and that he relied on her assessment of the case and decision.

8. The fact is that even in that conversation on September 15, Att. Tyler gave the impression to be unaware of what a lawyer, expected to look for and question people's motives, should have realized: **Trustee Schmitt cannot possibly want to have her supervisee, Trustee Reiber**, **found to have rubberstamped the meritless bankruptcy petition of the DeLanos**, let alone to have done so for an unlawful fee. If so, the investigators would then ask how many of Trustee Reiber's 3,909 open cases he also rubberstamped. Were they to uncover other meritless cases, the investigators would not only search for the cause or the incentive for Trustee Reiber to approve them anyway, but also inquire why Trustee Schmitt allowed him to amass such a huge number of cases without suspecting that he could not adequately review each for its merits for relief under, and continued compliance with, the Bankruptcy Code. Soon Trustee Schmitt could go from a supervisor to an investigated party and her career could flash before her eyes.

9. In this context, **another circumstance shows that Att. Tyler did not review the files**. Dr. Cordero told him that his complaint had touched such sensitive vested interests that on September 8 **Agent Paul Hawkins of the FBI** Rochester Office called Dr. Cordero and with a hostile attitude from the outset told him that his complaint would not be investigated and that Dr. Cordero should stop wasting his own and other people's time pursuing this matter. When Dr. Cordero protested his attitude, Agent Hawkins even told him that he should stop harassing people with this matter. Dr. Cordero asked Agent Hawkins to send him a letter confirming those statements and the Agent said that he would think about it. Dr. Cordero has received no letter from Agent Hawkins or any other FBI agent. Since Dr. Cordero has never contacted the Rochester FBI Office with this matter, where did Agent Hawkins come up with this!?

10. Att. Tyler suggested that Trustee Schmitt might have referred Dr. Cordero's complaint to the FBI. Thereby he implied that he had not referred it and also revealed that he had not reviewed the June 29 cover letter (7, infra) or page 4 of that file where Dr. Cordero stated that both Trustee Schmitt and her boss, U.S. Trustee for Region 2 Deirdre A. Martini, had denied his request to investigate Trustee Reiber and that "Trustee Martini has engaged in deception (77-84 [of the June 29 file]) to avoid sending me information that could allow me to investigate this case further". Nor had Att. Tyler read in that file Dr. Cordero's letter to Trustee Martini of May 23 where he would have found this paragraph (page 83 of the June 29 file):

> At the March 8 meeting of creditors, Trustee George Reiber's attorney, James Weidman, Esq., repeatedly asked *me* how much I knew about the DeLanos having committed fraud and when I did not reveal anything, he prevented me from examining the DeLanos. Next day, I asked Assistant Trustee Kathleen Schmitt to remove Trustee Reiber and appoint a trustee unrelated to the parties and unfamiliar with the case; she said she could appoint one from Buffalo. But after consulting with you, she wrote that Trustee Reiber would remain on the case. When I spoke with you on March 17, you were adamant that you had made your decision and that he would remain, that it was up to me to consult a lawyer

> and pursue other remedies, that you wanted me to stop calling your office, and when I noted that I had called you only once and recorded a single message for your Assistant, Ms. Crawford, and that you sounded antagonist toward me, you said that you just wanted "closure". How odd, for the case had just gotten started!

11. **How could Att. Tyler fail to find these officers' attitude and their refusal to investigate suspicious?** (Joining them is Judge Ninfo, who stayed the case until Dr. Cordero is eliminated (pgs. 14, 22, infra). They even prevented, or condoned the prevention of, Dr. Cordero from examining the DeLanos under oath at the Meeting of Creditors held in Rochester on March 8, 2004, al-though such examination is the Meeting's sole purpose under 11 U.S.C. §§341 and 343 and he was the only creditor present so that there was more than ample time for him to ask questions.

12. If Att. Tyler had reviewed the files, he would have learned of Trustee Martini's strong determination to close this matter and of her shooting down Trustee Schmitt's agreement in principle to replace Trustee Reiber and appoint a trustee from Buffalo to conduct an internal investigation under her control. From these facts, he could have reasonably deducted that Trustee Martini would have been most unlikely to refer the matter to an outsider like the FBI, whose investigation would be out of her control from the beginning. By the same token, Trustee Schmitt would have been most unlikely to ignore her boss' decision and refer the matter to the FBI any-way. (Even if she had done so, the FBI would have reported back to Trustees Schmitt or Martini, rather than contacted Dr. Cordero by phone in such unprofessional way as Agent Hawkins'.)

13. In this vein, if Att. Tyler had bothered to read as far as page 4 of the June 29 file, he would have found evidence of Trustee Schmitt's reluctance to investigate another of her supervisees, Chapter 7 Trustee Kenneth Gordon. He also has the suspiciously heavy workload of 3,383[3] cases, 3,382 of them before Judge Ninfo. Although the Judge referred –pro forma?- to Trustee Schmitt Dr. Cordero's complaint about Trustee Gordon's reckless and negligent performance and Trustee Gordon had already been sued under the same set of circumstances in Pfuntner v. Gordon, Trustee Schmitt failed to investigate him. Thus, the fact that Trustee Schmitt refused to investigate Trustee Reiber or the DeLano case is hardly conclusive that she did so strictly upon the merits of those cases and can result from the same vested interest in not investigating one of her supervisees and thereby investigate and incriminate herself.

14. Hence, Att. Tyler's suggestion that FBI Agent Hawkins could have contacted Dr. Cordero upon the referral of his complaint by Trustee Schmitt betrayed his unfamiliarity with the files that he dismissed without reviewing. So did his question **whether Dr. Cordero's files to him** –of August 14 and 31- **duplicated** the documents contained in **the files forwarded by Att. Kelley**–of May 6 and June 29-. Had he reviewed the files (cf. pg. 13¶4, infra), he would know the answer, particularly since each has a cover letter with a theme and its own Table of Contents or Exhibits.

15. Compounding his failure to review the files, **Att. Tyler unquestioningly accepted Trustee Schmitt's statements or failed to reflect before making his own**. When Dr. Cordero told him that the DeLanos cannot account for $291,470 earned between 2001-03, Att. Tyler replied that if debtors declared their earnings in their tax returns, they do not have to account for them in bankruptcy. What an extraordinary comment! Even the man in the street knows that bankruptcy is predicated on the debtor's inability to pay his debts because his assets are not enough to meet

[3] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl. on June 26, 2004.

his liabilities. It follows that he has to prove that state of financial affairs and cannot keep earnings enough to pay his debts while asking the court to confirm his plan to pay merely pennies on the dollar. To have the cake and not let the creditors eat it is fraudulent concealment of assets.

16. Moreover, if Att. Tyler had reviewed Dr. Cordero's Objections, contained in the June 29 file, page 59, to the DeLanos' Debt Repayment Plan, he would have noticed that the provisions of the Bankruptcy Code that he cited there -11 U.S.C. 704- provide that "The trustee shall…(4) investigate the financial affairs of the debtor", and "(7)…furnish such information concerning the estate and the estate's administration as is requested by a party in interest". Under either provision the debtor, upon request, has to account for the whereabouts of his assets and earnings. If assets were exempt from investigation, how could a case for concealment of assets ever be made?

17. If circumstantial evidence can be relied upon to deprive a person of even his life, then it can be relied upon here to find that **neither Att. Tyler nor Att. Resnik reviewed Dr. Cordero's files** before dismissing his complaint. What is more, **they even got rid of the files by returning them** to Dr. Cordero, who instead was expecting Att. Resnik to read them after coming back from Washington, as he had said he would. Returning them revealed how embarrassing they found even their possession. This can hardly be standard practice. If so, how can Mr. Tyler, or any law enforcement officer for that matter, accumulate a sufficient number of complaints so that, if not the substance and evidentiary soundness of any of them, then the sheer weight of the related elements of all of them make it dawn upon him that there is something suspicious enough going on to warrant an investigation? In other words, how can a chart be drawn if the dots are not plotted?

18. This begs the question: Why did Att. Tyler too find the complaint in those files so embarrassing that he could not bear to review them although their captions indicate a stake as high as the integrity of the judicial and the bankruptcy systems? Since Att. Tyler has engaged in questionable conduct and has questions to answer, he is no longer a disinterested party capable of conducting an impartial, unprejudiced, and vigorous investigation. Far from it, as investigator he would have an interest in proving that, while it may have been a mistake not to review Dr. Cordero's files and instead rely only on Trustee Schmitt's assessment, upon his investigation of the complaint it turned out that all the parties were blameless, there was no such fraud, much less a scheme, so that after all he was right to trust Trustee Schmitt and dismiss Dr. Cordero's complaint.

19. Therefore, Dr. Cordero respectfully requests that:

    a) his files be reviewed and the two linked aspects of the complained-about scheme, namely, judicial misconduct and bankruptcy fraud, be investigated;

    b) the investigation be conducted by officers who belong to neither the U.S. Attorney's nor the FBI's Office in Rochester and who instead are unacquainted with those to be investigated, such as officers of the Office of the U.S. Trustees, the U.S. Bankruptcy and the District Courts for WDNY, and the DeLanos and their attorneys; and

    c) Dr. Cordero be informed of the decision on his request for an investigation and, if negative, that this matter be reported to the Attorney General under 18 U.S.C. §3057(b).

Respectfully submitted on

September 18, 2004

Dr. Richard Cordero

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Dr. Richard Cordero
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Dr. Richard Cordero

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October 7, 2004

Ms. Jennie Bowman
Executive Assistant to the US Attorney
U.S. Attorney's Office for WDNY
138 Delaware Center
Buffalo, NY 14202

faxed to (716)551-3051; tel. (716)843-5700

Re: Resubmission to U.S. Att. Battle of appeal from Att. B. Tyler's decision

Dear Ms. Bowman,

Thank you for taking my call a few minutes ago. As agreed, I am faxing a copy of the letter that I sent to Michael Battle, Esq., U.S. Attorney for WDNY, last September 18. You indicated that you would pass it along to Duty Attorney Lynn Eilermann for review. I appreciate that and kindly request that you also bring to Att. Battle's attention the following:

1. My letter to Att. Battle was an appeal from a decision by Bradley Tyler, Esq., U.S. Attorney in Charge of the Rochester Office. It serves no purpose to send it back to Mr. Tyler for him to pass judgment on himself. See ¶18 of the Appeal.

2. My Appeal was accompanied by supporting and updating documents. They should be recovered from Att. Tyler and reviewed. If that cannot be done, let me know and I will send a copy.

3. In addition, there are four files in Att. Tyler's possession that contain supporting evidence of the complained-about judicial misconduct and bankruptcy fraud scheme. When I last spoke with Att. Tyler on September 15, I specifically requested that he forward those files to Att. Battle so that the latter may consider them in the context of my appeal. Indeed, I told Att. Tyler that I wanted to appeal his decision and asked who his supervisor was and he gave me Att. Battle's name and phone number. I also specifically asked Att. Tyler to write to me a letter stating why he had decided not to investigate the case. He said that he would send it to me with copy to Att. Battle. I have received no letter. Now I find out from you that he did not forward the files either. Att. Tyler's questionable conduct in not providing those files to Att. Battle and not sending me the promised letter only adds to his questionable conduct already pointed out in the appeal.

4. This case is not being investigated by Assistant U.S. Trustee Kathleen Dunivin Schmitt in Rochester. Nor can she do so because of her conflict of interests: She cannot want to find her supervisee, Trustee George Reiber, to have rubberstamped the meritless bankruptcy petition of David and Mary Ann DeLano, docket no. 04-20280. If so, she would be confronted with the question how many of Trustee Reiber's 3,909 *open* cases he also rubberstamped. If it were to be uncovered that Trustee Reiber approved other meritless cases, the next question would be not only why and on what incentive, but also why Trustee Schmitt allowed him to amass such a huge number of cases without suspecting that he could not adequately review each for its merits for relief under, and continued compliance with, the Bankruptcy Code. Soon Trustee Schmitt could go from a supervisor to an investigated party and her career could flash before her eyes. Nor can Att. Tyler investigate this case either because he has a vested interest in a certain outcome.

I trust that you realize the seriousness of this matter and will have Att. Battle decide it. Meantime, I look forward to hearing from him.

Sincerely,

Dr. Richard Cordero

Dr. Richard Cordero

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October 19, 2004

Mary Pat Floming, Esq. faxed to (716)551-3052
U.S. Attorney's Office for WDNY
138 Delaware Center
Buffalo, NY 14202

Re: a judicial misconduct and bankruptcy fraud scheme

Dear Ms. Floming,

Thank you for returning my call today in which I inquired about the status of my appeal to U.S. Attorney Michael Battle from the decision of the U.S. Attorney in Charge of the Office in Rochester, Bradley Tyler, Esq. not to investigate my above-referenced complaint. Based on the facts stated in the appeal, it can be concluded that Mr. Tyler did not even read the cover letters of the two files forwarded to him from the office of Mr. David N. Kelley, U.S. Attorney for SDNY, on or around August 5. Instead, he relied on his conversations with one of the parties who could not have an interest in this matter being investigated because she could end up being investigated herself, namely, Assistant U.S. Trustee Kathleen Schmitt. Mr. Tyler and Ms. Schmitt work in the same small federal building in Rochester, where people can easily become acquaintances or friends, their word can be substituted for evidence, and an investigation can constitute betrayal.

It was only because of my repeated calls to Mr. Tyler and submissions of two written updates to him that I found out in a phone conversation with him on September 15 that he would not investigate my complaint. On that occasion, I told him that I would appeal to Mr. Battle and asked that he send me his decision in writing and forward the four files to Mr. Battle. Mr. Tyler agreed to do so. Yet, he has failed to send me any letter. Nor has he forwarded any files to Mr Battle, as stated to me by Mr. Battle's Executive Assistant, Mrs. J. Bowman, and you.

I appealed in writing to Mr. Battle on September 18. Nothing happened. So I called Mr. Battle's office and eventually found out from Mrs. Bowman that my appeal file had been sent back to Mr. Tyler! One need not work at the U.S. Attorney's Office or know 28 U.S.C. §47 – Disqualification of trial judge to hear appeal: No judge shall hear or determine an appeal from the decision of a case or issue tried by him- to realize that an appeal cannot be determined by the person appealed from. I faxed a letter to that effect to Mrs. Bowman on October 7, together with a copy of my appeal so that, as agreed, Mrs. Bowman would bring it to Mr. Battle's attention. On October 12 I found out from her that she had forwarded that material to you. You have stated that is not the case. I have recorded messages for Mrs. Bowman, which have not been replied to.

Something is not right here. You can find out what it is by, as agreed, informing Mr. Battle directly of the complaint and the appeal. While at it, you can do better than that FBI Agent who learned from a flight school instructor that some foreigners wanted to learn just how to fly large airplanes but not how to take them off or land them. The agent just told his superior rather than pursue the matter all the way to the top on the good-sense intuition that something was not right and the stakes were too high to leave it to protocol. He missed his once-in-a-lifetime chance to prevent the 9/11 tragedy and become a hero of moral courage and civic responsibility. This is your chance, Ms. Floming, to become a heroine by finding out why the four complaint files have been kept from Mr. Battle and how widespread bankruptcy fraud has become…as the appeal and the files show, there is so much money to spread around! Rest assured I will pursue this matter.

Sincerely,

Dr. Richard Cordero

Dr. Richard Cordero

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October 25, 2004

Mary Pat Floming, Esq.
U.S. Attorney's Office for WDNY
138 Delaware Center — faxed to (716)551-3052; tel. (716)843-5700
Buffalo, NY 14202

Re: a judicial misconduct and bankruptcy fraud scheme

Dear Ms. Floming,

Thank you for letting me know that you brought to U.S. Att. Michael Battle's attention my appeal from Att. Bradley Tyler's decision not to investigate the misconduct and bankruptcy fraud scheme evidenced in my four files and his failure to forward the latter to Mr. Battle.

This is an update showing Trustee George Reiber's factually and legally untenable allegations for refusing to examine under 11 U.S.C.§341 the DeLanos, who are the debtors in the case (dkt. no. 04-20280) that opens a window into the scheme. His motive for refusing is to prevent the DeLanos' fraud from being established. If it were, it would provide grounds for him to be investigated for having approved without any review a clearly questionable petition, for Mr. DeLano is a bank industry insider who has been for 15 years and still is a bank *loan* officer, and his numbers in the schedules are so incongruous as to red-flag his petition as highly suspicious. This would logically call for determining how many of his 3,909 *open* cases (as of April 2, 2004, according to PACER) Trustee Reiber approved that were also meritless or even fraudulent.

Such an investigation would entail a risk for Trustee Reiber's supervisor, Assistant U.S. Trustee Kathleen Schmitt. Indeed, she could also be investigated for having failed to provide adequate supervision and allowed one trustee to concentrate in his hands such an overwhelming and unmanageable workload. Could you read the petitions, check them against supporting documents, and monitor *monthly* plan repayments of thousands of cases? Bottlenecking thousands of cases through one person is outright questionable. It confers enormous power to control and generates a strong incentive to obey in a symbiotic relationship where supervisor and supervisee derive their respective benefits from prioritizing the approval of petitions and the concomitant unobstructed flow of percentage fees over compliance with Bankruptcy Code requirements.

Consequently, an investigation of the fraud scheme cannot limit itself to asking Trustee Schmitt to give her opinion about the evidence in the files, for she is unlikely to make any self-incriminating admission. The same applies to her supervisor, U.S. Trustee for Region 2 Deirdre A. Martini. In the first and only call that she has ever taken from me or returned, she was adamant that she would keep Trustee Reiber on the case and that she wanted me to stop calling her office because she wanted "closure". How odd, for the case had just started!: It was March 17 and only on March 8 had Trustee Reiber approved the suspicious termination by his attorney, James Weidman, Esq., of the §341 examination of the DeLanos after I, the only creditor present, had asked two questions but would not answer his insistent questions of how much I knew about their having committed fraud. Did Trustee Martini too not want me to examine the DeLanos?

I respectfully request that you share this update with Mr. Battle so that you both may **1)** realize that just as Mr. Tyler cannot investigate my appeal from his decision, neither of Trustees Schmitt, Martini, or Reiber can investigate the bankruptcy fraud scheme; instead, they should be investigated; and **2)** use the influence of your Office with the Executive Office of the U.S. Trustees to replace Trustee Reiber with an independent trustee to hold a §341 examination of the DeLanos. I look forward to hearing from you and receiving Mr. Battle's call.

Sincerely, Dr. Richard Cordero

SCtA.460 Dr. Cordero's letter of October 25, 2004, to US Att Floming: transmit update to Att Battle & contact EOUST

U. S. Department of Justice

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November 4, 2004

Richard Cordero, Ph.D.
59 Crescent Street
Brooklyn, NY 11208-1515

Dear Dr. Cordero:

Upon a careful review of the documentation which you have submitted to my office and in relation to our recent conversation, I find no basis for your claim of bankruptcy fraud. Thank you for bringing this matter to my attention. Best of luck to you.

Very truly yours,

MICHAEL A. BATTLE
United States Attorney
Western District of New York

MAB/jlb

Dr. Richard Cordero

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November 15, 2004

Michael Battle, Esq.
U.S. Attorney for WDNY
U.S. Attorney's Office
138 Delaware Center
Buffalo, NY 14202

faxed (716)551-3052; tel. (716)843-5700

Re: a judicial misconduct and bankruptcy fraud scheme

Dear Mr. Battle,

I am in receipt of your letter of November 4 in which you state that you find no basis for my claim of bankruptcy fraud and have closed this case. However, this is not in keeping with what you told me in our conversation on Monday, November 1, that you would do.

In that conversation you indicated that you had not yet received the files that I sent to the U.S. Attorney in Charge of the Rochester Office, Bradley Tyler, Esq., but that you would ask for them; that that you have very skilled people that would look into whether there was bankruptcy fraud; that it would take them several weeks to complete their review; and that after you reached your conclusion you would let me know and we would discuss them. I believed what you told me, not because I am naïve, but rather because I believe that the word of an attorney of the United States is not given lightly and should be taken seriously. Yet, what you told me that you would do could not have been done between November 1 and 4.

Indeed, you asked me what evidence I had of bankruptcy fraud and I told you that it was documentary evidence contained in the files that I sent to Mr. Tyler. I appealed to you on September 18 precisely because of the evidence that neither he nor his assistant, Richard Resnik, Esq., reviewed them, but instead relied on a building co-worker's assertion that no investigation was needed, that is, Assistant U.S. Trustee Schmitt, who has a vested interest in not having this matter investigated. But even that appeal to you, bound with supporting documents, was sent to Mr. Tyler for him to review an appeal against himself!, a decision that defies common sense and legal practice. So the only material that you could have reviewed was that 5-page appeal without supporting documents that I resubmitted by fax to you and which dealt with the questionable circumstances of Mr. Tyler's decision rather than with the evidence of the judicial misconduct and bankruptcy fraud scheme. So, you did not have the documentation to support your statement that "[You] find no basis for [my] claim of bankruptcy fraud"? No wonder you asked me at the beginning of our conversation to tell you what this was all about and what I wanted you to do.

That you had no other documentation, let alone reviewed it, can be inferred from the facts. Thus, after I sent you my appeal of September 18, I did not hear from your office in Buffalo or Rochester. I had to call you several times but could only speak with your Executive Assistant, Ms. J. Bowman, who eventually found out that the appeal file had been sent to Mr. Tyler. After I faxed her only the appeal and made more calls, her statement that it had been assigned to Mary Pat Floming, Esq., proved inaccurate. I made more calls requesting to speak with you.

Then on Wednesday, October 27, Ms. Bowman called me and said that you wanted to talk to me the next day at 3:00 p.m. I agreed. But on Thursday, that time came and went and you did not call. I called to find out what happened and Ms. Bowman said that you had been called to court urgently. She asked whether the conference could be rescheduled for Friday, at 9:00 a.m. I agreed. But you did not call either. Instead, at 9:42 Ms. Bowman called to say that you were on a

video conference with Washington, and whether you could call me at anytime later that day. I agreed. But you did not call either.

On Monday, November 1, I called and Ms. Bowman said that you had a 9:30 a.m. meeting and asked whether you could call me between 10:30 and 10:45. I agreed. But at about 11:02 she called back to reschedule your call for 11:45 a.m. When you finally called and although our conversation lasted some 12 minutes, you grew impatient toward the end of it, particularly when you asked me what type of evidence I had and I told you that it was the documents in the files and asked whether you had retrieved them from Mr. Tyler. Then you stated what you were going to do and put and end to the conversation.

If somebody told a jury or a fair-minded public servant how you ignored for well over a month an appeal made to you and then how you made appointments to discuss it only to successively ignore or reschedule them, could they reasonably believe that such hands-off treatment and informality revealed, or was intended to send the message of, how unimportant you considered the matter? If the answer is yes, would it be naïve or wishful thinking to expect them to believe that after our conversation on that Monday you dropped everything that you were doing, asked for the files from a person in another city, precisely the one who for over three months failed to deal with the four original files and the appeal, but who nevertheless dropped everything he was doing to send you five files with over 315 pages, which you reviewed and by Thursday you had with due diligence reached the decision that there was no basis for the claim of bankruptcy fraud? You even totally missed the other part of the scheme: judicial misconduct!

You could allow yourself to become hostile toward me because of this statement of facts, but that would be the wrong reaction. For one thing, I am not the suspect of criminal wrong-doing, but rather a responsible citizen appealing for your help. I need it and deserved it because for over two years I have suffered tremendous loss and aggravation at the hands of a group of powerful officers and have meticulously collected and analyzed evidence pointing to their motive therefor, money! Moreover, you are the top law enforcement officer in that area and your decision affects the public at large, for at stake here is the integrity of top judicial and bankruptcy officers and of systems set up for the common good, not for their private gain. In addition, it is not fair for you to ask me for evidence -particularly since you have not looked at what I already presented- since the law, at 18 U.S.C. §3057(a), does not even ask judges for evidence before they can make a report to a U.S. attorney about bankruptcy fraud, but just asks that they have "reasonable grounds for believing…that an investigation should be had in connection therewith".

Therefore, I respectfully request that you:

1. retrieve the five files from Mr. Tyler;
2. entrust them and the investigation of a judicial misconduct and bankruptcy fraud scheme, not to him or his office, for the reasons in my appeal, but as you said, to the very skilled people that you have and were going to assign to it; or request that the Acting Attorney General appoint outside investigators, such as from Washington, D.C., or Chicago; and
3. let me talk to them because both I know a file that now has over 1,500 pages so that I can facilitate their work and this is an ongoing case so that I can provide additional evidence of the abuse and bias that these officers keep heaping on me as they operate their scheme.

Sincerely,

Dr. Richard Cordero

U.S. Department of Justice

United States Attorney
Western District of New York

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November 29, 2004

Dr. Richard Cordero
59 Crescent Street
Brooklyn, New York 11208-1515

Dear Dr. Cordero:

Thank you very much for your letter of November 15, 2004. I am sorry, as you expressed that you feel I did not give adequate review to your claims following our most recent telephone conversation. The fact of the matter is I took what you said and requested very seriously. Immediately after our conversation, I contacted Assistant U.S. Attorney Brad Tyler and met with the other staff from who have had previous involvement with your case. These are all trusted professionals, tasked with the responsibility of representing the people of the United States of America.

During this time, I was provided with a detailed history. A review indicates that you were party to a bankruptcy action which was later appropriately resolved by a bankruptcy judge. From what I can gather, it appears that you are not in agreement with the final legal resolution. I do not, however, find that there was any impropriety in the decision of the court, and quite frankly, it is not within my authority to do so.

Nevertheless, as previously indicated, having more clearly examined your concerns, I do not find there is a legal basis for the challenges that you now raise. The employees of this office have adequately reviewed any and all documentation, including court records of prior proceedings. While you may be unhappy with the result, it is my opinion that the court's decision is unlikely to be disturbed. Litigants and parties who do not get the results they hope for in cases, commonly react the way that you have and that is understandable. You have asked for review and oversight by this office, which I have undertaken, and at this time, I would like to reiterate that I find there to be no impropriety.

Very truly yours,

MICHAEL A. BATTLE
United States Attorney

MAB/sas

SCtA.464 U.S. Att. Battle's letter of 11/29/04 that 'that Dr. Cordero's action was resolved by a bankruptcy judge'

Dr. Richard Cordero

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December 6, 2004

Michael Battle, Esq.
U.S. Attorney for WDNY
138 Delaware Center
Buffalo, NY 14202

faxed to (716)551-3052

Re: a judicial misconduct and bankruptcy fraud scheme

Dear Mr. Battle,

I received your letter of November 29. In your opening paragraph you stated as follows:

> Thank you very much for your letter of November 15, 2004. I am sorry, as you expressed that you feel I did not give adequate review to your claims following our most recent telephone conversation. The fact of the matter is I took what you said and requested very seriously. Immediately after our conversation, I contacted Assistant U.S. Attorney Brad Tyler and met with the other staff from who [sic] had had previous involvement with your case. These are all trusted professionals, tasked with the responsibility of representing the people of the United States of America.

First, your reference to "our most recent telephone conversation" is misleading because in all the months that I have been pursuing this matter, and wrote to you, and made numerous calls to you, and left messages with your Executive Assistant, Mrs. J. Bowman, we have had one single conversation, i.e., the one that you quickly ended on November 1, which from the perspective of your writing on November 29 –triggered only by my message that day- is hardly recent.

Then you stated that you took what I "said and requested very seriously", thereby revealing once more that when we spoke you did not know the facts of my case because you had not read **1)** my Appeal to you of September 18 (E*-139), which despite appealing from the decision under questionable circumstances of Att. Tyler not to open an investigation into the complaint about a judicial misconduct and bankruptcy fraud scheme, you sent back to him so that contrary to common sense and legal practice he could deal with a complaint about himself –which he has failed to do to date- nor had you read **2)** any of the copies of that Appeal that I faxed to you. Had you taken "very seriously" what I "said and requested" in my Appeal, you would have mentioned it at least once and realized how injudicious it was to rely on the word of those complained-about.

Evidence that you did not read the Appeal, let alone any of the four evidentiary files (E-137) that upon my request Att. Tyler agreed on September 15 to forward to you but failed to do so, is your statement that you "met with the other staff from who [sic] have had previous involvement with your case". But my Appeal discusses precisely the evidence that Att. Tyler failed to involve himself with the files because, following your example, he passed them on to an assistant, Att. Richard Resnick, whom the evidence shows not to have had the material possibility (E-136) of reviewing them before he wrote to me on August 24 (E-135) that no investigation would be opened and returned the four files. What they did is what you failed to read in ¶2 of the Appeal: "…neither Att. Tyler nor Att. Resnik reviewed the files but rather relied unquestioningly on the assessment of their building co-worker and presumably at least an acquaintance, Assistant U.S. Trustee Kathleen Dunivin Schmitt, who is a party with a vested interest in preventing the DeLano case from being investigated, lest she end up being investigated herself." Had you taken this matter seriously, you would have known that they did not involve themselves with my evidence and would have tried to determine with what they involved themselves and why.

It was not with the facts that they involved themselves, these "trusted professionals" whose word you accept uncritically. Indeed, you wrote next thus:

> During this time, I was provided with a detailed history. A review indicates that you were party to a bankruptcy action which was later appropriately resolved by a bankruptcy judge. From what I can gather it appears that you are not in agreement with the final legal resolution. I do not, however, find that there was any impropriety in the decision of the court, and quite frankly, it is not within my authority to do so.

What are you talking about?! No action to which I am a party has been "resolved by a bankruptcy judge": The Pfuntner v. Gordon et al., dkt. no. 02-2230, WBNY, has been on appeal in the Court of Appeals for the Second Circuit since April 200*3*, from where it will go to the Supreme Court; and In re D. & M. DeLano, dkt. no. 04-20280, WBNY, has been reduced to the determination of the DeLanos' July 19 motion to disallow my claim (E-73), including all appeals, as stated by Judge John C. Ninfo, II, in his **Interlocutory** Orders of August 30 (E-101) and November 10 (E-244). What "final legal resolution" did your "trusted professionals" or you are referring to? How can you possibly qualify as 'appropriate' a decision that does not yet exit?

Or does it already exist? The implication of so interpreting your gross mistake of fact is that your "trusted professionals" have had direct ex parte or indirect contact with Judge Ninfo and know the outcome of a case still in process. This would confirm what I have asserted (E-109): that the DeLanos' motion, allowed by Judge Ninfo despite being untimely and barred by laches, is a subterfuge that by disallowing my claim against Mr. DeLano will remove me from the DeLano case so that I have no standing to ask for discovery of the DeLanos' documents that will show how their January 27 bankruptcy petition (E-167) is fraudulent (E-57, E-63) but supported by judicial misconduct that forms part of a bankruptcy fraud scheme. No wonder Judge Ninfo has allowed Mr. DeLano, a bank *loan* officer for 15 years who must know too much to be exposed to discovery, to deny me all documents that I requested (E-234-246) and even to disobey his order for document production of July 26 (E-81). The whole process is a sham!…and you have the evidence!

While in order to keep you quiet your "trusted professionals" may have told you that an 'appropriate' "final legal resolution" had been reached, you have constructive knowledge that such could not be the case. You claim that "Immediately after our conversation" on November 1 you talked to Att. Tyler and the others involved with my case and wrote to me on November 4 that "I find no basis for your claim of bankruptcy fraud" (E-147). Yet, on November 15, I wrote to you "let me talk to [outside investigators] because…this is an ongoing case so that I can provide additional evidence of the abuse and bias that these officers keep heaping on me as they operate their scheme". That is the last clause of the last sentence of the letter, which you did not read either!

This much analysis of your letter should suffice to let any fair-minded prosecutor realize how perfunctorily you have treated this matter: The issue that I posed to you was not even whether I was "in agreement with" any decision, let alone a "final legal resolution", but, as stated in the caption, whether there is "a judicial misconduct and bankruptcy fraud scheme". This affects "the people of the United States", not just me. Therefore, if you take "very seriously" that you are "tasked with the responsibility of representing" all of them, I respectfully request that you:

1) refer the accompanying Request* and Exhibits to the Acting U.S. Attorney General for investigation by officers unrelated to the DoJ or FBI staff in Rochester or Buffalo; and **2)** copy me to the referral.

Sincerely,

Dr. Richard Cordero

* Exhibits=E and Request sent by mail

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December 6, 2004

REQUEST

TO Michael A. Battle, Esq.

U.S. Attorney for the Western District of New York

TO REPORT TO THE ACTING U.S. ATTORNEY GENERAL FOR INVESTIGATION THE EVIDENCE OF A JUDICIAL MISCONDUCT AND BANKRUPTCY FRAUD SCHEME

TAB LE OF CONTENTS

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I. The categories of evidence that raises reasonable suspicion of wrongdoing that should be investigated

1. The evidence of judicial wrongdoing linked to a bankruptcy fraud scheme has accumulated for over two years and is contained or described in a file of over 1,500 pages. Of necessity, only a summary of it can be provided here. Likewise, only the most pertinent documents have been

referenced, many of which have already been submitted in five previous files. However, all of those included in the Table of Exhibits (i, infra) but not attached hereto, and those referred to in the ones attached are available on request.

2. Yet, this evidentiary summary should be enough, not to establish the commission of a crime, but rather to satisfy the standard of reasonable suspicion applied to the opening of an official investigation. Then it is for those with the duty as well as the necessary legal authority and resources, to call for an investigation and conduct it. Although intertwined, that evidence can be described in a few principal categories:

    1) U.S. Bankruptcy Judge John C. Ninfo, II, and others have protected from discovery, let alone trial, **a)** a trustee sued for negligence and recklessness who had before the Judge some 3,000 cases! –how many do you have?-; **b)** an already defaulted bankrupt defendant against whom an application for default judgment was brought; **c)** parties who have disobeyed his orders, even those that they sought or agreed to; and **d)** debtors who have concealed assets, all to the detriment of Dr. Cordero and while imposing on him burdensome obligations.

    2) David DeLano –a lending industry insider who has been for 15 years and still is a bank *loan* officer- and Mary Ann DeLano are suspected of having filed a fraudulent bankruptcy petition and of engaging, among other things, in concealment of assets; but they are being protected from examination under oath and from compulsory production of financial documents, all of which could incriminate them and others in the fraud scheme.

    3) Chapter 13 Trustee George Reiber and his attorney, James Weidman, Esq., unlawfully conducted and terminated the meeting of creditors of the DeLanos, and Trustee Reiber, with the support of U.S. Trustees Kathleen Schmitt and Deirdre Martini, has since continued to fail his duty to investigate them, for an investigation could incriminate him for having approved at least a meritless and at worst a known fraudulent bankruptcy petition.

A. Reasonable grounds for believing that Judge Ninfo and others have engaged in a pattern of wrongdoing aimed at preventing incriminating discovery and trial

3. Judge Ninfo failed to comply with his obligations under FRCivP 26 to schedule discovery (Exhibit page 1=E-1) in Pfuntner v. [Chapter 7 Trustee Kenneth] Gordon et al, WBNY docket

no 02-2230, filed on September 27, 200*2*. As a result, over 90 days later the Judge still lacked the benefit of any discovery whatsoever.

4. By that time, Dr. Cordero had cross-claimed against Trustee Gordon for defamation as well as negligent and reckless performance as trustee and the Trustee had moved for summary judgment. Despite the genuine issues of material fact inherent in such types of claims and raised by Dr. Cordero, the Judge issued an order on December 30, 200*2*, summarily granting the motion of Trustee Gordon, a local litigant and fixture of his court. (E-2§II)

   a) Indeed, the statistics on PACER as of November 3, 2003[4,] showed that since April 12, 2000, Trustee Gordon was the trustee in 3,092 cases! However, by June 26, 2004, he had added 291 more cases for a total of 3,383 cases, out of which he had 3,382[5] cases before Judge Ninfo…in addition to the 142 cases prosecuted or defended by Trustee Gordon and 76 cases in which the Trustee was a named party.

5. Could you handle competently such an overwhelming number of cases, increasing at the rate of 1.23 new cases per day, every day, including Saturdays, Sundays, holidays, sick days, and out-of-town days, cases in which you personally must review documents and crunch numbers to carry out and monitor bankruptcy liquidations for the benefit of the creditors, whose individual views and requests you must also take into consideration as their fiduciary? If the answer is not a decisive "yes!", it is reasonable to believe that Judge Ninfo knowingly disregarded the probability that Trustee Gordon had been negligent or even reckless, as claimed by Dr. Cordero, and granted the Trustee's motion to dismiss in order not to disrupt their modus operandi and to protect himself from a charge of having failed to realize or tolerated Trustee Gordon's negligence and recklessness in this case…and in how many others of their thousands of cases? There is a need to investigate what is going on between those two…and the others, (cf. E-3§§B-E; E-86§II).

6. Judge Ninfo denied Dr. Cordero's timely application for default judgment against David Palmer, the owner of Premier, the moving and storage company to be liquidated by Trustee Gordon, WBNY docket no. 01-20692. However, Mr. Palmer had abandoned Dr. Cordero's property; defrauded him of the storage and insurance fees; and failed to answer Dr. Cordero's

[4] https://ecf.nywb.uscourts.gov/cgi-bin/login.pl.
[5] Id.

complaint. In his denial of Dr. Cordero's application for default judgment, Judge Ninfo disregarded the fact that the application was for a sum certain as required under FRCivP 55. Thus, he imposed on Dr. Cordero a Rule 55-extraneous duty to demonstrate loss, requiring him to search for his property and prejudging a successful outcome with disregard for the only evidence available, namely, that his property had been abandoned in a warehouse closed down for a year, with nobody controlling storage conditions because Mr. Palmer had defaulted on his lease, and from which property had been stolen or removed, as charged by Plaintiff Pfuntner!

a) Judge Ninfo would not compel Bankrupt Owner Palmer to answer Dr. Cordero's claims even though his address is known and he submitted himself to the court's jurisdiction when he filed a voluntary bankruptcy petition. Why did the Judge need to protect Mr. Palmer from even coming to court, let alone having to face the financial consequences of a default judgment, although it was for Mr. Palmer, not for the Judge, to contest such judgment under FRCivP 55(c) and 60(b)? Their relation must be investigated as well as that between the Judge and other similarly situated debtors and the aid provided therefor by others (E-4§§C-D).

7. At the instigation of Mr. Pfuntner, who said that property had been found in his warehouse that might belong to Dr. Cordero, Judge Ninfo ordered Dr. Cordero to travel from New York City all the way to Avon, outside Rochester, to conduct an inspection of it within a month or the Judge would order its removal at Dr. Cordero's expense to any warehouse in Ontario…that is, the N.Y. county or the Canadian province, the Judge could not care less!

8. Yet, for months Mr. Pfuntner had shown contempt for Judge Ninfo's first order to inspect that property *in his own warehouse*, and neither attended nor sent his attorney nor his warehouse manager to the inspection nor complied with the agreed-upon measures necessary to conduct it, as provided for in the second order that Mr. Pfuntner himself had requested. Though Mr. Pfuntner violated both discovery orders, Judge Ninfo did not hold him accountable for such contempt or the harm caused to Dr. Cordero thereby. So he denied Dr. Cordero any compensation from Mr. Pfuntner and held immune from sanctions his attorney, David D. MacKnight, Esq., a local whose name appeared as attorney in 479 cases as of November 3, 2003, according to PACER. Why does Judge Ninfo need to protect everybody, except Dr. Cordero? (E-5§E; E-90§III)

9. The underlying motive for such bias needs to be investigated. To that end, the DeLano case is the starting point because it provides insight into what drives such bias and links the activity of the biased participants into a scheme: money, lots of money! So who are the DeLanos?

B. Reasonable grounds for believing that the DeLano Debtors have engaged in bankruptcy fraud, such as concealment of assets

10. David and Mary Ann DeLano filed their bankruptcy petition under Chapter 13 of the Bankruptcy Code, 11 U.S.C., on January 27, 2004; WBNY docket no. 04-20280 (E-167). The values declared in their schedules and the responses provided to required questions are so out of sync with each other that simply common sense, not expertise in bankruptcy law or practice, is enough to raise reasonable suspicion that the petition is meritless and should be reviewed for fraud. (E-57) Just consider the following salient values and circumstances:

    a) Mr. DeLano has been a bank *loan* officer for 15 years! His daily work must include ascertaining the creditworthiness of loan applicants and their ability to repay a loan over its life. He is still employed in that capacity by a major bank, Manufacturers and Traders Trust Bank (M&T Bank). As an expert in the matter of remaining solvent, whose conduct must be held up to scrutiny against a higher standard of reasonableness, he had to know better than to do the following together with Mrs. DeLano, who until recently worked for Xerox as a specialist in one of its machines, and as such is a person trained to pay attention to detail and to think methodically along a series steps and creatively when troubleshooting a problem.

    b) The DeLanos incurred scores of thousands of dollars in credit card debt;

    c) carried it at the average interest rate of 16% or the delinquent rate of over 23% for years;

    d) during which they were late in their monthly payments at least 232 times documented by even the Equifax credit bureau reports of April and May 2004, submitted incomplete;

    e) have ended up owing $98,092 to 18 credit card issuers listed in Schedule F (E-167 et seq.);

    f) owe also a mortgage of $77,084;

    g) but have near the end of their work lives equity in their house of only $21,415;

    h) however, in their 1040 IRS forms declared $291,470 in earnings for just the 2001-03 fiscal years;

    i) yet claim that after a lifetime of work they have only $2,910 worth of household goods!;

j) the rest of their tangible personal property is just two cars worth a total of $6,500;

k) their cash in hand or on account declared in their petition was only $535;

l) but made to their son a $10,000 loan, which they declared uncollectible and failed to date, for it may be a voidable preferential transfer;

m) claim as exempt $59,000 in a retirement account and $96,111.07 in a 401-k account;

n) but offer to repay only 22¢ on the dollar for just 3 years and without accrual of interest (E-199);

o) refused for months to submit any financial statements covering any length of time so that Trustee Reiber moved on June 15, for dismissal for "unreasonable delay" (E-62; E-65§III; cf. 18 U.S.C. § 152(9)).

11. A comparison between the few documents that they produced thereafter, that is, some credit card statements and Equifax reports with missing pages (E-64§II), with their bankruptcy petition and the court-developed claims register and creditors matrix revealed debt underreporting, accounts unreporting, and substantial non-accountability for massive amounts of earned and borrowed money. Dr. Cordero pointed up these indicia of fraud in a statement of July 9, 2004, (E-64§III) opposing Trustee Reiber's motion to dismiss. The DeLanos responded on July 19 by moving to disallow Dr. Cordero's claim. (E-73; E-117§B) How extraordinary! given that:

    a) The DeLanos had treated Dr. Cordero as a creditor for six months;

    b) They were the ones who listed Dr. Cordero's claim in Schedule F (E-167 et seq.)…for good reason because

    c) Mr. DeLano has known of that claim against him since November 21, 200*2*, when Dr. Cordero brought him into Pfuntner v. Gordon et al. as a third-party defendant due to the fact that Mr. DeLano was the loan officer who handled the bank loan to Mr. Palmer for his company, Premier Van Lines, which then went bankrupt! (E-115§A)

12. Extraordinary, for that closes the circuit of relationships between the main parties to the Pfuntner and the DeLano cases. It begs the question: How many of Mr. DeLano's other clients during his long banking career have ended up in bankruptcy and in the hands of Trustees Gordon and Reiber, who as Chapter 7 and 13 *standing* trustees, respectively, are unavoidable? (E-33§II)

13. An impartial observer could reasonably realize that the DeLanos' motion to disallow Dr. Cordero's claim is a desperate attempt to remove belatedly from their case Dr. Cordero, the only

creditor that objected to the confirmation of their repayment plan (E-57; E-199) and that is insisting on their production of financial documents that can show their concealment of assets, among other things (E-75; E-80**;** E-204). But not Judge Ninfo. He agreed with Dr. Cordero at the July 19 hearing and without objection from the DeLanos' attorney, Christopher Werner, Esq., to issue Dr. Cordero's document production order requested on July 9 (E-69¶31; E-76), whose contents all knew. But after Att. Werner untimely objected (E-79; E-92§IV), he refused to even docket it (E-80; E-84§I; 90§III) and only issued a watered down version on July 26 of Dr. Cordero's proposed order (E-76; E-81) that he then allowed the DeLanos to disobey by not producing the documents requested in the Judge's order! If not for leverage, what was it issued for?

14. Dr. Cordero moved (E-83) that the DeLanos be compelled to comply with the production order (E-98) and Judge Ninfo reacted by issuing his order of August 30 that suspends all proceedings in the DeLano case until their motion to disallow Dr. Cordero's claim has been determined, *including all appeals*. (E-107; E-121§III) That could take years! during which the other 20 creditors are prejudiced by not receiving any payments. But that is as inconsequential to Judge Ninfo as is his duty under 11 U.S.C. §1325(a)(3) to determine whether the DeLanos submitted their petition "by any means forbidden by law". Why Judge Ninfo disregards his duty and the interests of creditors and the public so as to protect the DeLanos needs to be investigated.

15. By contrast, Judge Ninfo has denied Dr. Cordero the protection to which he is entitled under §1325(b)(1), which entitles a single holder of an allowed unsecured claim to block the confirmation of the debtor's repayment plan; and under §1330(a), which enables any party in interest, even if not a creditor, to have that confirmation revoked if procured by fraud. But that is precisely what Judge Ninfo cannot allow, for if he lets the DeLanos' case go forward concurrently with the determination of their motion to disallow Dr. Cordero's claim, the DeLanos would have to be examined under oath on the stand and at an adjourned meeting of creditors, and Dr. Cordero, as a creditor or a party in interest, could raise objections and examine them. That is risky because the DeLanos, if left unprotected, could talk and incriminate others. Thus, for extra protection of all those at risk, Judge Ninfo stated at the August 25 hearing that until the motion to disallow is decided, no motion or other paper filed by Dr. Cordero will be acted upon. (cf. E-245¶2) To afford them protection, Judge Ninfo has gone as far as to deny Dr. Cordero access to judicial process! (E-121§§III-IV) The stakes must be very high!

16. Thus, in his August 30 order (E-101) Judge Ninfo required Dr. Cordero to prove his claim against Mr. DeLano, though he cited no legal basis therefor and ignored the legal basis for not doing so. (E-109) Yet, to comply with it, Dr. Cordero requested Mr. DeLano to produce documents (E-204; E-225). Mr. DeLano alleged that they were irrelevant to Dr. Cordero's claim against him and produced none. (E-230). Dr. Cordero raised a motion (E-234) where he discussed the scope of discovery under FRBkrP Rule 7026 and FRCivP Rule 26(b)(1). (E-237§II) He argued that he can request discovery not only to prove his claim against Mr. DeLano, but also to defend against the DeLanos' motion to disallow it by showing that it is a blatant attempt to remove him from the case before he can demonstrate that the DeLanos' petition is fraudulent and masks, among other things, concealment of assets.

17. The response to that motion of November 4 was ever so swift: On November 9, Mr. DeLano filed a response denying production of every document requested, alleging them to be irrelevant or not in his possession (E-242) and on November 10, without any hearing, Judge Ninfo entered an order stating that "The Cordero Discovery Motion is in all respects denied". (E-244) Neither the Judge nor the attorney for Mr. DeLano, Att. Werner, engaged in any legal discussion, much less cited any legal provision, (cf. E-40-42) for why waste time and effort researching and discussing the law, rules, and facts when the judge is on your side and he has no inhibition about resorting to conclusory statements to achieve his objective: to prevent at all costs Dr. Cordero from discovering information that can link judicial misconduct (E-1) to a bankruptcy fraud scheme. Would you feel proud of having written that order or rather, for standing up for your belief that just and fair process and the integrity of the judiciary require that an investigation should be had?

C. Reasonable grounds for believing that Trustee Reiber and Att. James Weidman have violated bankruptcy law

18. Chapter 13 Trustee Reiber violated his legal obligation under 28 CFR §58.6 to conduct personally the meeting of creditors of David and Mary Ann DeLano, held on March 8, 2004 (E-163). Instead, he appointed his attorney, James Weidman, Esq., to conduct it. After all, Trustee Reiber has 3,909[6] *open* cases! He cannot be all the time where he should be.

19. So at the March 8 meeting of creditors, Trustee Reiber's attorney, Mr. Weidman, repeatedly

[6] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1 on April 2, 2004.

asked Dr. Cordero how much he knew about the DeLanos having committed fraud and when he did not reveal anything, Att. Weidman terminated the meeting although Dr. Cordero had asked only two questions and was the only creditor at the meeting so that there was ample time for him to keep asking questions. Later on that very same day, Trustee Reiber ratified in open court and for the record Att. Weidman's decision, vouched for the DeLanos' honesty, and stated that their petition had been submitted in good faith. (E-40-42)

20. But those were just words, for Trustee Reiber had not asked for any supporting documents from the DeLanos despite his duty to "investigate the financial affairs of the debtor" under 11 U.S.C. §704(4); after Dr. Cordero requested under §704(7) that he do so, Trustee Reiber misled him into believing that he was investigating the DeLanos. (E-65§III) Only after Dr. Cordero asked that he state concretely what kind of investigation he was conducting did the Trustee for the first time, on April 20, 2004, ask for documents, pro forma (E-64§II) and perfunctorily (E-66§IV).

21. Thus, Trustee Reiber merely requested documents relating to only 8 out of the 18 credit cards declared by the DeLanos, only if the debt exceeded $5,000, and for only the last three years out of the 15 years put in play by the Debtors themselves, who claimed in Schedule F (E-167 et seq.) that their financial problems related to "1990 and prior credit card purchases". Incredible as it does appear, the Trustee did not ask them to account for the $291,470 earned in just the 2001-03 fiscal years, according to their 1040 IRS forms, despite having declared to have in hand and on account only $535! (E-66§IV; E-167 et seq.)

22. Despite Dr. Cordero's repeated requests that Trustee Reiber hold an adjourned meeting of creditors. (E-201; E-214; E-228**)** The Trustee has refused alleging that Judge Ninfo suspended all "court proceedings" until the DeLanos' motion to disallow Dr. Cordero's claim has been finally determined (E-213). What an untenable pretense! To begin with, his obligation to hold such meeting flows from 11 U.S.C. §341 for the benefit of the creditors and is not subject to the will of the judge. So much so that §341(c) expressly forbids the judge to "preside at, and attend, any meeting under this section including any final meeting of creditors". What the judge cannot even attend, he cannot order not to take place at all. It follows that a meeting of creditors does not fall among "court proceedings" and was not and could not be suspended by Judge Ninfo. (E-215)

23. Trustee Reiber is motivated by self-preservation, not duty, for if the DeLanos' petition were established to be fraudulent, he would be incriminated for having approved it despite its patently

suspicious contents. That could lead to his being investigated to determine how many of his other 3,909 cases are also meritless or even fraudulent. Worse yet, if he were removed from the DeLano case, as Dr. Cordero has repeatedly requested of Judge Ninfo and of the U.S. Trustees Schmitt and Martini (E-71¶32; E-93§V & §VI¶34d; E-224), he would be suspended from all his other cases under §324; cf. UST Manual vol. 5, Chapter 5-7.2.2. No wonder he has been so flagrantly disingenuous in pretending that he cannot hold a §341 examination of the DeLanos because Judge Ninfo's order does not allow him to. (E-215; E-219; cf. E-214)

24. So has been Assistant U.S. Trustee Kathleen Dunivin Schmitt, the supervisor of Private Trustees Reiber and Gordon. Dr. Cordero asked her in writing (E-224) and in messages left on her voice mail and with her assistants that she instruct Trustee Reiber to hold a §341 examination of the DeLanos or state why neither she or he will do so. She has failed to return his calls or write to him. Instead, she had an assistant state that she "is planning to contact George Reiber, Esq., so they can coordinate setting up an adjourned meeting of creditors in the [DeLano case]…and will contact you [when she will be in] the office on November 17 to handle court appearances…or prior to it". (E-227) However, although she has her office in the same small federal building in Rochester as Bankruptcy Judge Ninfo and the U.S. District Court as well as the U.S. Attorney and the FBI (cf. 14§III, infra), and she did appear in court on November 17, according to her assistants, and can get a hold of Trustee Reiber there and on the phone, and summon him to her office, she failed to contact Dr. Cordero on that date, prior to it or thereafter, and will not return his messages.

25. Trustee Schmitt has an interest in not letting that examination take place. If Dr. Cordero, as a creditor, examined the DeLanos and found out that their petition was fraudulent, not to mention that Trustee Reiber knew it, and Trustee Reiber were investigated, she too could be investigated for having allowed her Supervisee Reiber –just as she did her Supervisee Gordon- to accumulate thousands of bankruptcy cases that he cannot possibly handle competently, but from each of which he receives a fee. Why? How does she figure that Trustee Reiber could review the bankruptcy petition of each of those 3,909 cases –and Trustee Gordon his 3,383 cases-, ask for and check supporting documents, and monitor the debtors' compliance with the repayment plan *each month for the three to five years that plans last*? How could she expect those trustees to have time to do anything more than rubberstamp petitions and cash in? (11§IIA, infra) What was she thinking!? Certainly, what she has been doing with those trustees needs to be investigated.

26. So does the kind of supervision that U.S. Trustee for Region 2 Deirdre A. Martini has been or not been exercising over Assistant U.S. Trustee Schmitt. (E-68§V) Dr. Cordero has served on her every paper that he has written in the DeLano case since the unlawful termination of the March 8 meeting of creditors by Trustee Reiber and his attorney, Mr. Weidman; in addition, he has written to her specifically. She has actual and constructive knowledge of the details of this case. In fact, as early as March 17 and without any investigation of the motives for preventing Dr. Cordero from examining the DeLanos, she stated categorically to him that she would not remove Trustee Reiber from the DeLano case, as Dr. Cordero had requested, and that instead she just wanted "closure". How odd, for the case had just gotten started! Then she engaged in deception to avoid sending him information that could allow him to investigate the case on his own. (E-141¶10)

27. More recently, Trustee Martini has failed to state, as requested by Dr. Cordero, whether she will ask Trustee Schmitt to instruct Trustee Reiber to hold an examination of the DeLanos at an adjourned meeting of creditors. She too has failed to write to Dr. Cordero thereon as promised in their phone conversation on November 1, the second one that she has deigned to take from him (E-224; E-247), just as Trustee Schmitt failed to contact Dr. Cordero on that subject, as she let him know she would (E-227).

28. Something is not right here…or rather a lot. Why none of them wants Trustee Reiber to investigate the DeLanos and all have countenanced his failure to do so calls for an investigation. No doubt, Mr. DeLano, a loan officer for 15 years, knows and could say too much under examination.

VI. The Evidence Points to the Operation of A Bankruptcy Fraud Scheme

A. How a bankruptcy fraud scheme works

29. The above-described few elements of the evidence, when reviewed as a 'totality of circumstances' instead of individually, give rise to the reasonable suspicion that these people are acting, not separately, but rather in a coordinated fashion, with judicial misconduct supporting a bankruptcy fraud scheme. (cf. fraudulent intent may be proven circumstantially. *United States v. Goodstein*, 883 F.2d 1362, 1370 (7th Cir. 1989), *cert. denied*, 494 U.S. 1007 (1990)) It is utterly unlikely that they began so to act just because Dr. Cordero is a party in the Pfuntner case and a creditor of the DeLanos. What is utterly likely is that these people have worked together on so

many thousands of cases that they have developed a modus operandi which disregards legality as well as the interests of creditors and the public at large.

30. Thus, as insiders they know that institutional lenders do not participate in bankruptcy proceedings if their respective stake does not reach their threshold of cost-effective participation. This is particularly so if they are unsecured lenders, which explains why the DeLanos distributed their debt over 18 credit card issuers and did not consolidate. Knowing that, they could not have imagined that Dr. Cordero, a pro se and non-local party without anything remotely approaching an institutional lender's resources, would even attend the meeting of creditors, let alone pursue this case any further. Hence, this should have been another garden variety fraudulent bankruptcy within their scheme, with all creditors as losers and the schemers as winners of something.

31. The incentive to engage in bankruptcy fraud is typically provided by the enormous amount of money that an approved debt repayment plan followed by debt discharge can spare the debtor. That leaves a lot of money to play with, for it is not necessarily the case that the debtor is broke.

32. As for a standing trustee, who is a private professional, not a federal employee, she is appointed under 28 U.S.C. §586(e) for cases under Chapter 13 and is paid 'a percentage fee of the payments made under the debt repayment plan of each debtor'. Thus, after receiving a petition, the trustee is supposed to investigate the financial affairs of the debtor to determine the veracity of his statements. If satisfied that he deserves bankruptcy relief from his debt burden, the trustee approves his plan and submits it to the court for confirmation. A confirmed plan generates a stream of payments from which the trustee takes her fee. But even before confirmation, money begins to roll in because the debtor must commence to make payments to the trustee within 30 days after filing his plan and the trustee must retain those payments, 11 U.S.C. §1326(b).

33. If the plan is not confirmed, the trustee must return the money paid, less certain deductions, to the debtor. This provides the trustee with an incentive to approve the plan and get it confirmed by the court because no confirmation means no further stream of payments and, hence, no fees for her. To insure her take, she might as well rubberstamp every petition and do what it takes to get the plan confirmed by every officer that can derail confirmation. Cf. 11 U.S.C. §326(b).

34. The trustee would be compensated for her investigation of the petition -if at all, for there is no specific provision therefor- only to the extent of "the actual, necessary expenses incurred",

§586(e)(2)(B)(ii). An investigation of the debtor that allows the trustee to require him to pay his creditors another $1,000 will generate a percentage fee for the trustee of $100 (in most cases). Such a system creates the incentive for the debtor to make the trustee skip any investigation in exchange for an unlawful fee of, let's say, $300, which nets her three times as much as if she had sweated over the petition and supporting documents. For his part, the debtor saves $700. Even if the debtor has to pay $600 to make available money to get other officers to go along with his plan, he still comes $400 ahead. To avoid a criminal investigation for bankruptcy fraud, a debtor may well pay more than $1,000. After all, it is not as if he really had no money.

B. Reasonable Grounds For Believing That The Parties Are Operating a Bankruptcy Fraud Scheme

35. Dr. Cordero does not know of anybody paying or receiving an unlawful fee in this case in violation of 18 U.S.C. §152(6) and does not accuse anybody thereof. But just as a jury is entitled to "put two and two together" at the time of deciding upon depriving a bankruptcy fraudster of his property or even his freedom (DoJ US Attorneys' Manual, Title 9, Criminal Resources Manual §840), Dr. Cordero too is entitled to use common sense in drawing reasonable inferences from what he does know and affirm:
    a) Trustee Reiber had 3,909 *open* cases on April 2, 2004, according to PACER (¶¶4a and 18, supra;
    b) got the DeLanos' petition ready for confirmation by the court without ever requesting a single supporting document (E-64§I);
    c) chose to dismiss the case rather than subpoena the documents requested but not produced (E-62, E-65§III);
    d) has refused to trace the substantial earnings of the DeLanos' (E-68§V); and
    e) after ratifying the unlawful termination of the meeting of creditors (E-40-42), refuses to hold an adjourned one where the DeLanos would be examined under oath, including by Dr. Cordero (E213, E-215).
36. Moreover, there is something fundamentally suspicious when a bankruptcy judge:
    a) protects bankruptcy petitioners from a default judgment and from having to account for $291,470 (E-234, E-244);
    b) allows the local parties to disobey his orders with impunity (E-234, E-244; ¶8, supra);

c) before any discovery has taken place, prejudges in his August 30 order that their motion to disallow Dr. Cordero's claim is not an effort to eliminate him from the case (E-106), although he is the only creditor that threatens to expose their bankruptcy fraud scheme (E-66¶¶17-20);

d) yet shields them from discovery by suspending all further process until their motion to disallow Dr. Cordero's claim is finally determined (E-107) and agreeing that they may not produce any documents at all, not even those that he had ordered them to produce! (E-81, E-92§IV; E-114§II); cf. 18 U.S.C.§154(2)); and

e) engages and allows other court officers to engage in inexcusable docket manipulation (E-75, E-80, E-84§§I-II) and knowingly makes onerous requests on Dr. Cordero for no purpose at all (E-84§III; ¶6, supra) and disregards the law, the rules, and the facts (E-1; E-40-42; E-114§II) so repeatedly and consistently to the detriment of Dr. Cordero, the only pro se and non-local party, and to the benefit of the local parties (E-121§IV) so that his and their acts form a pattern of non-coincidental, intentional, and coordinated wrongdoing.

37. These facts and circumstances together with those of the DeLanos (¶10, supra; §IV, infra) support the reasonable suspicion that they have engaged in coordinated conduct aimed at attaining a mutually beneficial objective, that is, a scheme, and that such conduct originates in bankruptcy fraud. Consequently, what the scheme undermines is, not just the legal, economic, and emotional wellbeing of Dr. Cordero…as if anybody cares…but the integrity of judicial process and the bankruptcy system. That constitutes an offense and there are reasonable grounds for believing that it has been committed and that an investigation thereof should be had (cf. 18 U.S.C. §3057(a)). That investigation should be an official one because

> 18 U.S.C. §152 was enacted to serve the important interests of government, not merely to protect individuals who might be harmed by the prohibited conduct [to that end, §152] attempts to cover *all the possible methods* by which a bankrupt *or any other person* may attempt to defeat the Bankruptcy Act through an effort to keep assets from being equitably distributed among creditors, *Stegeman v. United States*, 425 F.2d 984, 986 (9th Cir.), *cert. denied*, 400 U.S. 837 (1970)(citation omitted; emphasis in original).

VII. The need for investigators to be unacquainted with any party that may be investigated

38. If that investigation is to have any hope of finding and exposing all the ramifications of the vested interests that have developed rather than being suffocated by them, it must be carried out

by investigators that do not even know these people. This excludes not only all those that are their colleagues or friends, but also those that are their acquaintances either because they work in the same small federal building, as do the U.S. attorneys and FBI agents, or live in the same small community in Rochester or Buffalo, NY. They too may fear the consequences of admitting that right under their noses such a scheme developed. The evidence contained in letters and conversations between Dr. Cordero and U.S. officers (E-135-152) justifies such request and warrants the following remarks.

39. A competent investigation cannot limit itself to asking officers, whether they be trustees, U.S. attorneys, or FBI agents, to file a report on what they and others have done concerning this matter. It should be quite obvious that they would not write a mea culpa incriminating themselves. Could any reasonable person expect them to do so? Rather, what they will choose to write down, or say upon being questioned or interrogated, will bear the spin that they have put on it in order to make themselves appear to have discharged their trustees duties adequately and their investigative or supervisory functions appropriately. The same goes for what judicial officers have written in their orders or decisions. One must read them between lines, both in the context of everything else in the cases in question and with a basic understanding of what motivates people's conduct. The former provides knowledge of the facts and the latter calls for intuition, common sense, and a feeling for what is just, fair…and you would like done to you.

40. So equipped, a forensic investigator can apply the principle of plausible explanations, which says that if two explanations adequately explain the same set of circumstances and observations, neither can be discarded without further investigation that brings to light new relevant circumstances or observations that show one explanation to be less adequate than the other because, for example, to a substantial degree it is inconsistent with, or incapable of explaining, the new elements. That principle is of such paramount importance in decision making that it provides the foundation of our criminal law in the form of the standard of beyond a reasonable doubt.

41. Thus, one of two plausible explanations for the conduct of people under investigation cannot be preferred over the other because those people are assumed to be honest and competent, if that is precisely what the evidence cast doubt on and what the investigation must determine. To make such assumption and systematically give the benefit of the doubt to them because they are judges or other U.S. officers is to conduct a pro forma exercise guided by a preconceived idea

that they can do no wrong and their word is implicitly truthful and correct. While a person is presumed to be innocent until proven guilty, that is not the same as assuming that he or she is honest, let alone incapable of a lapse of judgment, immune from the temptation of an illegal gain or advantage too good to be missed, and has the integrity not to indulge in abuse of power to obtain it. Such assumption does not lead an investigation to ascertaining the facts, but rather reaches the intended objective of a whitewash.

42. Nor can a competent investigation proceed on the assumption that the complainant is fundamentally dishonest and nothing but a nuisance. That attitude betrays a bias against him, born of the mentality that 'we protect our own from outsiders that attack any of us'. Such way of thinking is inimical to the mentality of a public servant, one who welcomes the opportunity to serve a member of the public. But when the aim is to get rid of any of them, the first thing to go is his credibility, which results in discounting his statements as unreliable. Consequently, his statements are not used to check the reports received from the officers, which are accepted at face value, for why confront the truth and accuracy of "trusted professionals" (E-150) against the mere "allegations" (E-135)-of just 'another unhappy litigant' (E-150)?

43. Such uncritical acceptance of whatever officers say, which arbitrarily ignores the realistic possibility that their statements may be colored by their vested interests (cf. ¶¶4-5, supra), causes the investigator to follow them as if drawn by the nose, unaware of walking over a path strewn with gross mistakes of fact and reasoning, never caught because never searched for because always conceived as non-existent. The infirm conclusions arrived at by going through such motions of an investigation are not only unjust and unfair to the complainant, who is left to suffer even more abuse and bias (E-43 ftnts. 2-5 and related text), but they also protect the officers from being exposed and thereby affords them the sense of security that encourages them to persist in their ways (cf. E-42). If their ways are the twisted ones of wrongdoing and substandard performance, the situation complained-about only worsens until it explodes into a scandal.

44. Hence, an investigation conducted by those so involved with people to be investigated that, at best, they trust them more than the evidence (E-136, E-143¶17), and at worse, they excuse or look the other way for fear of being investigated themselves (E-143¶18), is fundamentally flawed. Let out-of-towners, unrelated to any potential investigative target, conduct all aspects of the investigation.

VIII. Starting points for an investigation into the scheme

45. Such investigation should take into account 18 U.S.C. § 152 and start by:

a) subpoenaing the bank account and *debit* card statements of the DeLanos to establish the flow of their earnings since the date they alleged their financial problems began, that is, "1990 and prior credit card purchases" (E-167 et seq., Scheduled F; cf. 18 U.S.C. §152(9) and DoJ US Attorneys Manual, Title 9, Criminal Resources Manual §867);

b) ascertaining the whereabouts of the $291,407 earned in just the 2001-03 fiscal years according to their 1040 IRS forms (cf. 11 U.S.C. §542(a));

c) establishing the nature and use of $118,000 borrowed from Manufacturers & Traders Trust (MT&T) and ONONDAGA Bank, in two $59,000 charges that, according to the Equifax credit report of May 8, 2004, for Mrs. DeLano, appear on accounts opened in March 1988; were paid in little over 10 years; and are noted by Equifax as "Current status-Pays as agreed". Since the DeLanos have been late in paying their debts more than 232 times, according to that Equifax report and the one for Mr. DeLano of April 26, 2004, this money must have gone into something sufficiently important for the DeLanos not to risk losing it by failing to pay "as agreed". Where did $118,000 go or in which asset(s) is it? It is certainly not accounted for by their mere $21,415 home equity or their meager $2,910 worth of household goods (E-167 et seq., Schedules A and B)…near the end of two lifetimes of work! Will they retire to old-age poverty or to a golden nest?;

d) establishing the circumstances of their $10,000 loan to their son, undated and already declared uncollectible by the DeLanos, none too concerned by their financial security although at the time of their bankruptcy they declared only $535 "cash on hand" and in accounts (E-167 et seq. Schedule B; cf. 18 U.S.C. § 152(7) and Criminal Resources Manual §§858 and 862); and

e) examining the DeLanos under oath, for what a veteran bank loan officer and his technically-oriented wife know could lead to cracking a far-reaching bankruptcy fraud scheme!

IX. Relief requested

46. Therefore, Dr. Cordero respectfully requests that you:

a) report this Request and Exhibits to the Acting U.S. Attorney General (28 U.S.C. §526(a)(1)) for an investigation (cf. 18 U.S.C. § 3057(b)) into the evidence of a judicial misconduct and bankruptcy fraud scheme, which has emerged in connection with the following cases:

   1. Premier Van Lines, CA2 docket no. 03-5023;
   2. Mr. Palmer's Premier Van Lines case, WBNY docket no. 01-20692;
   3. Pfuntner v. Gordon et al., WBNY docket no. 02-2230; and
   4. David and Mary Ann DeLano, WBNY docket no. 04-20280;

b) recommend to the Acting U.S. Attorney General that he appoint experienced investigators who are unrelated to and unacquainted with any of the parties that may be investigated in order to insure that they can conduct a zealous, competent, and exhaustive investigation of the nature and extent of the scheme regardless of who is found to be actively participating in it or looking the other way and that to that end, they be from U.S. Attorney or FBI Offices other than those in Rochester and Buffalo, NY, such as those in Washington, D.C. or Chicago;

c) copy Dr. Cordero to your report and referral letter.

Respectfully submitted on,

December 6, 2004

Dr. Richard Cordero

Dr. Richard Cordero
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Dr. Richard Cordero

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December 27, 2004

Michael Battle, Esq.
U.S. Attorney for WDNY
U.S. Attorney's Office
138 Delaware Center
Buffalo, NY 14202

faxed (716)551-3052

Re: a judicial misconduct and bankruptcy fraud scheme

Dear Mr. Battle,

On 6 instant I faxed you a letter followed by a formal "REQUEST to Michael A. Battle, Esq. U.S. Attorney for the Western District of New York to report to the Acting U.S. Attorney General for investigation the evidence of a judicial misconduct and bankruptcy fraud scheme."

To date I have received no reply from you thereto although your Executive Assistant, Mrs. J. Bowman, has acknowledged receipt of both the letter and the Request. I have also left messages, recorded for you on your Office voice mail and in conversation with Mrs. Bowman, requesting a reply from you. However, I can reasonably expect a reply from you given that in your letter to me of last November 29, you stated the following:

> I am sorry, as you expressed that you feel I did not give adequate review to your claims following our most recent telephone conversation. The fact of the matter is I took what you said and requested very seriously.

If you really did mean this, then you can take only more seriously my letter and Request because not only does evidence of a judicial misconduct and bankruptcy fraud scheme keeps piling up, but also the wrongdoing of the participants in the scheme is now compounded by the statements in your November 29 letter showing, among other things, that your "trusted professionals":

1) gave you factually wrong and misleading information that my case was "resolved by a bankruptcy judge" although I am party to not one, but two cases and both are ongoing;

2) must have had direct ex parte or indirect contact with Judge Ninfo through which they have learned the outcome of a case still in progress, thus turning it into a sham process;

and **3)** have dissuaded you from opening an investigation into the judicial misconduct and bankruptcy fraud scheme that I complained about by pretending that I had complained about a "final legal resolution" that I was not "in agreement with" although there has not been a legal resolution to anything, let alone a final one, so that this matter is very much open and an investigation is very much called for. Anyway, who ever heard that a U.S. Attorney refrains from investigating evidence of bankruptcy fraud just because a judge complained-about for supporting it with his misconduct has "resolved" it?

Therefore, I respectfully reiterate my request that you:

a) reply to my letter and request of December 6;

b) refer the Request and its Exhibits to the Acting U.S. Attorney General for investigation by officers unrelated to the DoJ or FBI staff in Rochester or Buffalo; and

c) copy me to the referral.

Sincerely,

Dr. Richard Cordero

SCtA.486-510 reserved

[A:2162-2186 reserved]

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REQUEST
FOR A JUDICIAL REPORT
TO BE MADE UNDER 18 U.S.C. §3057(a)
TO THE U.S. ATTORNEY GENERAL
THAT AN INVESTIGATION SHOULD BE HAD IN CONNECTION WITH OFFENSES AGAINST UNITED STATES BANKRUPTCY LAWS

TABLE OF CONTENTS

I. Judges' obligation to act on their reasonably grounded belief that an investigation should be had

1. Every United States judge is under an obligation to contribute to the integrity of the judicial

system. This obligation flows, among others, from 18 U.S.C. §3057(a), which provides thus:

> (a) Any judge, receiver, or trustee having reasonable grounds for believing that any violation under chapter 9 of this title or other laws of the United States relating to insolvent debtors, receiverships or reorganization plans has been committed, or that an investigation should be had in connection therewith, ***shall*** report to the appropriate United States attorney all the facts and circumstances of the case, the names of the witnesses and the offense or offenses believed to have been committed….[emphasis added]

2. Judges remain under this obligation regardless of their disposition of an appeal or motion, and thus, regardless of whether they had jurisdiction over the appeal or a non-final order was the subject of the motion. It follows that they must fulfill that obligation independently of their attitude toward the particular appellant or movant before them, for the obligation is not so conditioned and, in any event, the benefit of fulfilling it inures to the general public. Indeed, judges enhance the public's trust in the importance of and respect for the rule of law when they care to act on their reasonable belief that a violation of federal law has been committed and report their grounds for such belief to the U.S. Attorney or his assistants for investigation.

3. In the case at hand there are reasonable grounds for such belief…and that is all the law requires a judge to have in order for him to make such report: not incontrovertible evidence of the commission of a crime; actually, no evidence at all is required, much less that each individual fact or circumstance of the case constitute a violation of the law. Indeed, §3057(a) does not require any violation of the law to be set out, but it is satisfied if the judge simply have "reasonable grounds for believing…that an investigation should be had". Certainly, the section does not demand the objectivity necessary to meet the standard of probable cause, but merely a subjective belief that rests on grounds that are reasonable.

4. That little is what the law requires of judges for a §3057(a) report to the U.S. Attorney, although given their legal training and experience, they could have been used as filters to assess the sufficiency of evidence to support an indictment and asked that they report only evidence that would survive at arraignment. What is more, judges have both authority to compel a person before them to answer questions and power to compel a litigant and even others to produce evidence and witnesses. Nevertheless, §3057(a) only requires judges to have a reasonably grounded belief in order to report that an investigation should be had. If that is all the law requires of judges, why should they impose any other requirement on a litigant, such as that his

claims meet criminal evidence sufficiency standards, let alone that he submit concrete evidence that a crime was committed, before they would even consider granting a litigant's request for a §3057(a) report?

5. It would be all the more incomprehensible and unwarranted to impose a higher than the §3057(a) requirement on Dr. Cordero, for he has complained from the beginning –in the statement of issues on appeal of May 5, 200*3*, and the appeal brief of July 9, 200*3*- and since then in many of his papers submitted to this Court –as in his recent motion to quash of September 9, 2004, an order of Judge Ninfo- that the judges, trustees, parties, and debtors in this case have unjustifiably denied him the discovery and documentary evidence that he is entitled to. Nevertheless, Dr. Cordero has submitted to this Court detailed descriptions, supported by any documents available, of the many instances in which those people have disregarded legality, concealed or misrepresented the facts, and shown bias against him, the only pro se party and a non-local one to boot.

6. The low threshold set by §3057(a) to trigger a judge's obligation to report his belief in the need for an investigation is not an exception for the benefit of the judges to a normally higher requirement imposed on others. Rather, it is a means for the benefit of the public to satisfy the requirement that justice not only must be done, but must also be seen to be done. Hence, when judges do not have all the evidence to do justice, but have reason to belief that injustice may have been done by somebody's offense or violation of the law, they must ask for an investigation that may gather the necessary evidence for justice to be seen to be done.

7. When judges fail to acquit themselves of their §3057(a) reporting obligation and in so doing give even as little as the appearance of partiality, whether toward their peers or against a litigant, then they trigger another obligation: that of disqualifying themselves so as to make room for another judge that will do justice and be seen to do justice.

8. By contrast, for judges that want to acquit themselves of their §3057(a) reporting obligation, this case presents enough grounds from which their belief can reasonably arise that it should be investigated by the U.S. Attorney General. To that end, it should be sufficient for those judges to look in the most favorable light at the following statement of those grounds in order to see how the totality of circumstances support the belief that at least one offense, or even more offenses, may have been committed and warrant investigation. Where §3057(a) only requires

judges to ask for an investigation, judges should not ask a private citizen to submit the results of an investigation. And just as judges hold litigants to their obligations under the law, judges should hold themselves bound by their obligations under the law, such as that under §3057(a) requiring that they "shall" report their belief that an investigation of offenses against bankruptcy laws should be had.

II. The categories of evidence that raises reasonable suspicion of wrongdoing that should be investigated

9. The evidence of judicial wrongdoing linked to a bankruptcy fraud scheme has accumulated for over two years and is contained or described in a file of over 1,500 pages. Of necessity, only a summary of it can be provided here. Likewise, only the most pertinent documents have been referenced, many of which have already been submitted so that only those updating them have been attached hereto as exhibits; however, all of those included in the Table of Exhibits (19, infra) but not attached, and those referred to in the ones attached are available on request.

10. Yet, this evidentiary summary should be enough, not to establish the commission of a crime, but rather to satisfy the standard of reasonable suspicion applied to the opening of an official investigation. Then it is for those with the duty as well as the necessary legal authority and resources, to call for an investigation and conduct it. Although intertwined, that evidence can be described in a few principal categories:

    1) U.S. Bankruptcy Judge John C. Ninfo, II, and others have protected from discovery, let alone trial, **a)** a trustee sued for negligence and recklessness who had before the Judge some 3,000 cases! –how many do you have?-; **b)** an already defaulted bankrupt defendant against whom an application for default judgment was brought; **c)** parties who have disobeyed his orders, even those that they sought or agreed to; and **d)** debtors who have concealed assets, all to the detriment of Dr. Cordero and while imposing on him burdensome obligations.

    2) David DeLano –a lending industry insider who has been for 15 years and still is a bank *loan* officer- and Mary Ann DeLano are suspected of having filed a fraudulent bankruptcy petition and of engaging, among other things, in concealment of assets; but

they are being protected from examination under oath and from compulsory production of financial documents, all of which could incriminate them and others in the fraud scheme.

3) Chapter 13 Trustee George Reiber and his attorney, James Weidman, Esq., unlawfully conducted and terminated the meeting of creditors of the DeLanos, and Trustee Reiber, with the support of U.S. Trustees Kathleen Schmitt and Deirdre Martini, has since continued to fail his duty to investigate them, for an investigation could incriminate him for having approved at least a meritless and at worst a known fraudulent bankruptcy petition.

A. Reasonable grounds for believing that Judge Ninfo and others have engaged in a pattern of wrongdoing aimed at preventing incriminating discovery and trial

11. Judge Ninfo failed to comply with his obligations under FRCivP 26 to schedule discovery (Exhibit page 1=E-1)[1] in Pfuntner v. [Chapter 7 Trustee Kenneth] Gordon et al, WBNY docket no 02-2230, filed on September 27, 200*2*. As a result, over 90 days later the Judge still lacked the benefit of any discovery whatsoever.

12. By that time, Dr. Cordero had cross-claimed against Trustee Gordon for defamation as well as negligent and reckless performance as trustee and the Trustee had moved for summary judgment. Despite the genuine issues of material fact inherent in such types of claims and raised by Dr. Cordero, the Judge issued an order on December 30, 200*2*, summarily granting the motion of Trustee Gordon, a local litigant and fixture of his court. (E-2§II)

a) Indeed, the statistics on PACER as of November 3, 2003[2,] showed that since April 12, 2000, Trustee Gordon was the trustee in 3,092 cases! However, by June 26, 2004, he had added 291 more cases for a total of 3,383 cases, out of which he had 3,382[3] cases before Judge Ninfo…in addition to the 142 cases prosecuted or defended by Trustee Gordon and 76 cases in which the Trustee was a named party.

13. Could you handle competently such an overwhelming number of cases, increasing at the rate of

[1] Exhibits from pages E-1 through E-134 have already been submitted and their titles appear in the Table of Exhibits, at 19, infra; even so, any of them or the whole set is available on demand. However, exhibits E-83 through E-108 just as E-135 et seq. are provided herewith and are easily identifiable because their references are in bold, i.e. (**E-#**).

[2] https://ecf.nywb.uscourts.gov/cgi-bin/login.pl.

[3] Id.

1.23 new cases per day, every day, including Saturdays, Sundays, holidays, sick days, and out-of-town days, cases in which you personally must review documents and crunch numbers to carry out and monitor bankruptcy liquidations for the benefit of the creditors, whose individual views and requests you must also take into consideration as their fiduciary? If the answer is not a decisive "yes!", it is reasonable to believe that Judge Ninfo knowingly disregarded the probability that Trustee Gordon had been negligent or even reckless, as claimed by Dr. Cordero, and granted the Trustee's motion to dismiss in order not to disrupt their modus operandi and to protect himself from a charge of having failed to realize or tolerated Trustee Gordon's negligence and recklessness in this case…and in how many others of their thousands of cases? There is a need to investigate what is going on between those two…and the others, (cf. E-3§B-E; **E-86§II**).

14. Judge Ninfo denied Dr. Cordero's timely application for default judgment against David Palmer, the owner of Premier, the moving and storage company to be liquidated by Trustee Gordon, WBNY docket no. 01-20692. However, Mr. Palmer had abandoned Dr. Cordero's property; defrauded him of the storage and insurance fees; and failed to answer Dr. Cordero's complaint. In his denial of Dr. Cordero's application for default judgment, Judge Ninfo disregarded the fact that the application was for a sum certain as required under FRCivP 55. Thus, he imposed on Dr. Cordero a Rule 55-extraneous duty to demonstrate loss, requiring him to search for his property and prejudging a successful outcome with disregard for the only evidence available, namely, that his property had been abandoned in a warehouse closed down for a year, with nobody controlling storage conditions because Mr. Palmer had defaulted on his lease, and from which property had been stolen or removed, as charged by Plaintiff Pfuntner!

    a) Judge Ninfo would not compel Bankrupt Owner Palmer to answer Dr. Cordero's claims even though his address is known and he submitted himself to the court's jurisdiction when he filed a voluntary bankruptcy petition. Why did the Judge need to protect Mr. Palmer from even coming to court, let alone having to face the financial consequences of a default judgment, although it was for Mr. Palmer, not for the Judge, to contest such judgment under FRCivP 55(c) and 60(b)? (E-4§§C-D) Their relation must be investigated as well as that between the Judge and other similarly situated debtors and the aid provided therefor by others (E-4§§C-D).

15. At the instigation of Mr. Pfuntner, who said that property had been found in his warehouse that might belong to Dr. Cordero, Judge Ninfo ordered Dr. Cordero to travel from New York City all the way to Avon, outside Rochester, to conduct an inspection of it within a month or the Judge would order its removal at Dr. Cordero's expense to any warehouse in Ontario…that is, the N.Y. county or the Canadian province, the Judge could not care less!

16. Yet, for months Mr. Pfuntner had shown contempt for Judge Ninfo's first order to inspect that property *in his own warehouse*, and neither attended nor sent his attorney nor his warehouse manager to the inspection nor complied with the agreed-upon measures necessary to conduct it, as provided for in the second order that Mr. Pfuntner himself had requested. Though Mr. Pfuntner violated both discovery orders, Judge Ninfo did not hold him accountable for such contempt or the harm caused to Dr. Cordero thereby. So he denied Dr. Cordero any compensation from Mr. Pfuntner and held immune from sanctions his attorney, David D. MacKnight, Esq., a local whose name appeared as attorney in 479 cases as of November 3, 2003, according to PACER. Why does Judge Ninfo need to protect everybody, except Dr. Cordero? (E-5§E; **E-90§III**)

17. The underlying motive for such bias needs to be investigated. To that end, the DeLano case is the starting point because it provides insight into what drives such bias and links the activity of the biased participants into a scheme: money, lots of money! So who are the DeLanos?

B. Reasonable grounds for believing that the DeLano Debtors have engaged in bankruptcy fraud, such as concealment of assets

18. David and Mary Ann DeLano filed their bankruptcy petition under Chapter 13 of the Bankruptcy Code, 11 U.S.C., on January 27, 2004; WBNY docket no. 04-20280 (**E-153**). The values declared in their schedules and the responses provided to required questions are so out of sync with each other that simply common sense, not expertise in bankruptcy law or practice, is enough to raise reasonable suspicion that the petition is meritless and should be reviewed for fraud. (E-57) Just consider the following salient values and circumstances:

    a) Mr. DeLano has been a bank *loan* officer for 15 years! His daily work must include ascertaining the creditworthiness of loan applicants and their ability to repay a loan over its life. He is still employed in that capacity by a major bank, Manufacturers and Traders Trust Bank (M&T Bank). As an expert in the matter of remaining solvent, whose conduct

must be held up to scrutiny against a higher standard of reasonableness, he had to know better than to do the following together with Mrs. DeLano, who until recently worked for Xerox as a specialist in one of its machines, and as such is a person trained to pay attention to detail and to think methodically along a series steps and creatively when troubleshooting a problem.

b) The DeLanos incurred scores of thousands of dollars in credit card debt;

c) carried it at the average interest rate of 16% or the delinquent rate of over 23% for years;

d) during which they were late in their monthly payments at least 232 times documented by even the Equifax credit bureau reports of April and May 2004, submitted incomplete;

e) have ended up owing $98,092 to 18 credit card issuers listed in Schedule F (**E-153 et seq.**);

f) owe also a mortgage of $77,084;

g) but have near the end of their work lives equity in their house of only $21,415;

h) however, in their 1040 IRS forms declared $291,470 in earnings for just the 2001-03 fiscal years;

i) yet claim that after a lifetime of work they have only $2,910 worth of household goods!;

j) the rest of their tangible personal property is just two cars worth a total of $6,500;

k) their cash in hand or on account declared in their petition was only $535;

l) but made to their son a $10,000 loan, which they declared uncollectible and failed to date, for it may be a voidable preferential transfer;

m) claim as exempt $59,000 in a retirement account and $96,111.07 in a 401-k account;

n) but offer to repay only 22¢ on the dollar for just 3 years and without accrual of interest (**E-185**);

o) refused for months to submit any financial statements covering any length of time so that Trustee Reiber moved on June 15, for dismissal for “unreasonable delay” (E-62; E-65§III).

19. A comparison between the few documents that they produced thereafter, that is, some credit card statements and Equifax reports with missing pages (E-64§II), with their bankruptcy petition and the court-developed claims register and creditors matrix revealed debt underreporting, accounts unreporting, and substantial non-accountability for massive amounts of earned and borrowed money. Dr. Cordero pointed up these indicia of fraud in a statement of July 9, 2004,

(E-64§III) opposing Trustee Reiber's motion to dismiss. The DeLanos responded on July 19 by moving to disallow Dr. Cordero's claim. (E-73; E-117§B) How extraordinary! given that:

a) The DeLanos had treated Dr. Cordero as a creditor for six months;

b) They were the ones who listed Dr. Cordero's claim in Schedule F (**E-153 et seq**.)…for good reason because

c) Mr. DeLano has known of that claim against him since November 21, 200*2*, when Dr. Cordero brought him into Pfuntner v. Gordon et al. as a third-party defendant due to the fact that Mr. DeLano was the loan officer who handled the bank loan to Mr. Palmer for his company, Premier Van Lines, which then went bankrupt! (E-115§A)

20. Extraordinary, for that closes the circuit of relationships between the main parties to the Pfuntner and the DeLano cases. It begs the question: How many of Mr. DeLano's other clients during his long banking career have ended up in bankruptcy and in the hands of Trustees Gordon and Reiber, who as Chapter 7 and 13 *standing* trustees, respectively, are unavoidable? (E-33§II)

21. An impartial observer could reasonably realize that the DeLanos' motion to disallow Dr. Cordero's claim is a desperate attempt to remove belatedly from their case Dr. Cordero, the only creditor that objected to the confirmation of their repayment plan (E-57; **E-185**) and that is insisting on their production of financial documents that can show their concealment of assets, among other things (E-75; E-80**; E-190**). But not Judge Ninfo. He agreed with Dr. Cordero at the July 19 hearing and without objection from the DeLanos' attorney, Christopher Werner, Esq., to issue Dr. Cordero's document production order requested on July 9 (E-69¶31; E-76), whose contents all knew. But after Att. Werner untimely objected (E-79; **E-92§IV**), he refused to even docket it (E-80; **E-84§I; 90§III**) and only issued a watered down version on July 26 of Dr. Cordero's proposed order (E-76; E-81) that he then allowed the DeLanos to disobey by not producing the documents requested in the Judge's order! If not for leverage, what was it issued for?

22. Dr. Cordero moved that the DeLanos be compelled to comply with the production order (**E-98**) and Judge Ninfo reacted by issuing his order of August 30 that suspends all proceedings in the DeLano case until their motion to disallow Dr. Cordero's claim has been determined, *including all appeals*. (**E-107**; E-121§III) That could take years! during which the other 20 creditors are prejudiced by not receiving any payments. But that is as inconsequential to Judge Ninfo as is his duty under 11 U.S.C. §1325(a)(3) to determine whether the DeLanos submitted their petition "by

any means forbidden by law". Why Judge Ninfo disregards his duty and the interests of creditors and the public so as to protect the DeLanos needs to be investigated.

23. By contrast, Judge Ninfo has denied Dr. Cordero the protection to which he is entitled under §1325(b)(1), which entitles a single holder of an allowed unsecured claim to block the confirmation of the debtor's repayment plan; and under §1330(a), which enables any party in interest, even if not a creditor, to have that confirmation revoked if procured by fraud. But that is precisely what Judge Ninfo cannot allow, for if he lets the DeLanos' case go forward concurrently with the determination of their motion to disallow Dr. Cordero's claim, the DeLanos would have to be examined under oath on the stand and at an adjourned meeting of creditors, and Dr. Cordero, as a creditor or a party in interest, could raise objections and examine them. That is risky because the DeLanos, if left unprotected, could talk and incriminate others. Thus, for extra protection of all those at risk, Judge Ninfo stated at the August 25 hearing that until the motion to disallow is decided, no motion or other paper filed by Dr. Cordero will be acted upon. (**cf. E-231¶2**) To afford them protection, Judge Ninfo has gone as far as to deny Dr. Cordero access to judicial process! (E-121§§III-IV) The stakes must be very high!

24. Thus, in his August 30 order (**E-101**) Judge Ninfo required Dr. Cordero to prove his claim against Mr. DeLano, though he cited no legal basis therefor and ignored the legal basis for not doing so. (E-109) Yet, to comply with it, Dr. Cordero requested Mr. DeLano to produce documents (**E-190; E-211**). Mr. DeLano alleged that they were irrelevant to Dr. Cordero's claim against him and produced none. (**E-216**). Dr. Cordero raised a motion (**E-220**) where he discussed the scope of discovery under FRBkrP Rule 7026 and FRCivP Rule 26(b)(1). (**E-223§II**) He argued that he can request discovery not only to prove his claim against Mr. DeLano, but also to defend against the DeLanos' motion to disallow it by showing that it is a blatant attempt to remove him from the case before he can demonstrate that the DeLanos' petition is fraudulent and masks, among other things, concealment of assets.

25. The response to that motion of November 4 was ever so swift: On November 9, Mr. DeLano filed a response denying production of every document requested, alleging them to be irrelevant or not in his possession (**E-228**) and on November 10, without any hearing, Judge Ninfo entered an order stating that "The Cordero Discovery Motion is in all respects denied". (**E-230**) Neither the Judge nor the attorney for Mr. DeLano, Att. Werner, engaged in any legal discussion, much less

cited any legal provision, (cf. E-40-42) for why waste time and effort researching and discussing the law, rules, and facts when the judge is on your side and he has no inhibition about resorting to conclusory statements to achieve his objective: to prevent at all costs Dr. Cordero from discovering information that can link judicial misconduct (E-1) to a bankruptcy fraud scheme. Would you feel proud of having written that order or rather, for standing up for your belief that just and fair process and the integrity of the judiciary require that an investigation should be had?

C. Reasonable grounds for believing that Trustee Reiber and Att. James Weidman have violated bankruptcy law

26. Chapter 13 Trustee Reiber violated his legal obligation under 28 CFR §58.6 to conduct personally the meeting of creditors of David and Mary Ann DeLano, held on March 8, 2004 (**E-149**). Instead, he appointed his attorney, James Weidman, Esq., to conduct it. After all, Trustee Reiber has 3,909[4] *open* cases! He cannot be all the time where he should be.

27. So at the March 8 meeting of creditors, Trustee Reiber's attorney, Mr. Weidman, repeatedly asked Dr. Cordero how much he knew about the DeLanos having committed fraud and when he did not reveal anything, Att. Weidman terminated the meeting although Dr. Cordero had asked only two questions and was the only creditor at the meeting so that there was ample time for him to keep asking questions. Later on that very same day, Trustee Reiber ratified in open court and for the record Att. Weidman's decision, vouched for the DeLanos' honesty, and stated that their petition had been submitted in good faith. (E-40-42)

28. But those were just words, for Trustee Reiber had not asked for any supporting documents from the DeLanos despite his duty to "investigate the financial affairs of the debtor" under 11 U.S.C. §704(4); after Dr. Cordero requested under §704(7) that he do so, Trustee Reiber misled him into believing that he was investigating the DeLanos. (E-65§III) Only after Dr. Cordero asked that he state concretely what kind of investigation he was conducting did the Trustee for the first time, on April 20, 2004, ask for documents, pro forma (E-64§II) and perfunctorily (E-66§IV).

29. Thus, Trustee Reiber merely requested documents relating to only 8 out of the 18 credit cards declared by the DeLanos, only if the debt exceeded $5,000, and for only the last three years out of the 15 years put in play by the Debtors themselves, who claimed in Schedule F (**E-153 et**

[4] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1 on April 2, 2004.

seq.) that their financial problems related to "1990 and prior credit card purchases". Incredible as it does appear, the Trustee did not ask them to account for the $291,470 earned in just the 2001-03 fiscal years despite having declared to have in hand and on account only $535! (E-66§IV; **E-153 et seq**.)

30. Despite Dr. Cordero's repeated requests that Trustee Reiber hold an adjourned meeting of creditors (**E-187; E-205; E-214)** The Trustee has refused alleging that Judge Ninfo suspended all "court proceedings" until the DeLanos' motion to disallow Dr. Cordero's claim has been finally determined (**E-199**). What an untenable pretense! To begin with, his obligation to hold such meeting flows from 11 U.S.C. §341 for the benefit of the creditors and is not subject to the will of the judge. So much so that §341(c) expressly forbids the judge to "preside at, and attend, any meeting under this section including any final meeting of creditors". What the judge cannot even attend, he cannot order not to take place at all. It follows that a meeting of creditors does not fall among "court proceedings" and was not and could not be suspended by Judge Ninfo. (**E-201**)

31. Trustee Reiber is motivated by self-preservation, not duty, for if the DeLanos' petition were established to be fraudulent, he would be incriminated for having approved it despite its patently suspicious contents. That could lead to his being investigated to determine how many of his other 3,909 cases are also meritless or even fraudulent. Worse yet, if he were removed from the DeLano case, as Dr. Cordero has repeatedly requested of Judge Ninfo and of the U.S. Trustees Schmitt and Martini (E-71¶32; **E-93§V**; **E-210**), he would be suspended from all his other cases under §324; cf. UST Manual vol. 5, Chapter 5-7.2.2. No wonder he has been so flagrantly disingenuous in pretending that he cannot hold a §341 examination of the DeLanos because Judge Ninfo's order does not allow him to. (**E-204; E-205; cf. E-200**)

32. So has been Assistant U.S. Trustee Kathleen Dunivin Schmitt, the supervisor of Private Trustees Reiber and Gordon. Dr. Cordero asked her in writing (**E-210**) and in messages left on her voice mail and with her assistants that she instruct Trustee Reiber to hold a §341 examination of the DeLanos or state why neither she or he will do so. She has failed to return his calls or write to him. Instead, she had an assistant state that she "is planning to contact George Reiber, Esq., so they can coordinate setting up an adjourned meeting of creditors in the [DeLano case]…and will contact you [when she will be in] the office on November 17 to handle court appearances…or prior to it". (**E-213**) However, although she has her office in the same small federal building in Rochester as Bank-

ruptcy Judge Ninfo and the U.S. District Court as well as the U.S. Attorney and the FBI (cf. 16§IV, infra), and she did appear in court on November 17, according to her assistants, and can get a hold of Trustee Reiber there and on the phone, and summon him to her office, she failed to contact Dr. Cordero on that date, prior to it or thereafter, and will not return his messages.

33. Trustee Schmitt has an interest in not letting that examination take place. If Dr. Cordero, as a creditor, examined the DeLanos and found out that their petition was fraudulent, not to mention that Trustee Reiber knew it, and Trustee Reiber were investigated, she too could be investigated for having allowed her Supervisee Reiber –just as she did her Supervisee Gordon- to accumulate thousands of bankruptcy cases that he cannot possibly handle competently, but from each of which he receives a fee. Why? How does she figure that Trustee Reiber could review the bankruptcy petition of each of those 3,909 cases –and Trustee Gordon his 3,383 cases-, ask for and check supporting documents, and monitor the debtors' compliance with the repayment plan *each month for the three to five years that plans last*? How could she expect those trustees to have time to do anything more than rubberstamp petitions and cash in? (14§IIIA, infra) What was she thinking!? Certainly, what she has been doing with those trustees needs to be investigated.

34. So does the kind of supervision that U.S. Trustee for Region 2 Deirdre A. Martini has been or not been exercising over Assistant U.S. Trustee Schmitt. (E-68§V) Dr. Cordero has served on her every paper that he has written in the DeLano case since the unlawful termination of the March 8 meeting of creditors by Trustee Reiber and his attorney, Mr. Weidman; in addition, he has written to her specifically. She has actual and constructive knowledge of the details of this case. In fact, as early as March 17 and without any investigation of the motives for preventing Dr. Cordero from examining the DeLanos, she stated categorically to him that she would not remove Trustee Reiber from the DeLano case, as Dr. Cordero had requested, and that instead she just wanted "closure". How odd, for the case had just gotten started! Then she engaged in deception to avoid sending him information that could allow him to investigate the case on his own. (**E-139¶10**)

35. More recently, Trustee Martini has failed to state, as requested by Dr. Cordero, whether she will ask Trustee Schmitt to instruct Trustee Reiber to hold an examination of the DeLanos at an adjourned meeting of creditors. She too has failed to write to Dr. Cordero thereon as promised in

their phone conversation on November 1, the second one that she has deigned to take from him (**E-210; E-233**), just as Trustee Schmitt failed to contact Dr. Cordero on that subject (**E-213**).

36. Something is not right here…or rather a lot. Why none of them wants Trustee Reiber to investigate the DeLanos and all have countenanced his failure to do so calls for an investigation. No doubt, Mr. DeLano, a loan officer for 15 years, knows and could say too much under examination.

III. The Evidence Points to the Operation of A Bankruptcy Fraud Scheme

A. How a bankruptcy fraud scheme works

37. The above-described few elements of the evidence, when reviewed as a 'totality of circumstances' instead of individually, give rise to the reasonable suspicion that these people are acting, not separately, but rather in a coordinated fashion, with judicial misconduct supporting a bankruptcy fraud scheme. It is utterly unlikely that they began so to act just because Dr. Cordero is a party in the Pfuntner case and a creditor of the DeLanos. What is utterly likely is that these people have worked together on so many thousands of cases that they have developed a modus operandi which disregards legality as well as the interests of creditors and the public at large.

38. Thus, as insiders they know that institutional lenders do not participate in bankruptcy proceedings if their respective stake does not reach their threshold of cost-effective participation. This is particularly so if they are unsecured lenders, which explains why the DeLanos distributed their debt over 18 credit card issuers and did not consolidate. Knowing that, they could not have imagined that Dr. Cordero, a pro se and non-local party without anything remotely approaching an institutional lender's resources, would even attend the meeting of creditors, let alone pursue this case any further. Hence, this should have been another garden variety fraudulent bankruptcy within their scheme, with all creditors as losers and the schemers as winners of something.

39. The incentive to engage in bankruptcy fraud is typically provided by the enormous amount of money that an approved debt repayment plan followed by debt discharge can spare the debtor. That leaves a lot of money to play with, for it is not necessarily the case that the debtor is broke.

40. As for a standing trustee, who is a private professional, not a federal employee, she is appointed under 28 U.S.C. §586(e) for cases under Chapter 13 and is paid 'a percentage fee of the

payments made under the debt repayment plan of each debtor'. Thus, after receiving a petition, the trustee is supposed to investigate the financial affairs of the debtor to determine the veracity of his statements. If satisfied that he deserves bankruptcy relief from his debt burden, the trustee approves his plan and submits it to the court for confirmation. A confirmed plan generates a stream of payments from which the trustee takes her fee. But even before confirmation, money begins to roll in because the debtor must commence to make payments to the trustee within 30 days after filing his plan and the trustee must retain those payments, 11 U.S.C. §1326(b).

41. If the plan is not confirmed, the trustee must return the money paid, less certain deductions, to the debtor. This provides the trustee with an incentive to approve the plan and get it confirmed by the court because no confirmation means no further stream of payments and, hence, no fees for her. To insure her take, she might as well rubberstamp every petition and do what it takes to get the plan confirmed by every officer that can derail confirmation. Cf. 11 U.S.C. §326(b).

42. The trustee would be compensated for her investigation of the petition -if at all, for there is no specific provision therefor- only to the extent of "the actual, necessary expenses incurred", §586(e)(2)(B)(ii). An investigation of the debtor that allows the trustee to require him to pay his creditors another $1,000 will generate a percentage fee for the trustee of $100 (in most cases). Such a system creates the incentive for the debtor to make the trustee skip any investigation in exchange for an unlawful fee of, let's say, $300, which nets her three times as much as if she had sweated over the petition and supporting documents. For his part, the debtor saves $700. Even if the debtor has to pay $600 to make available money to get other officers to go along with his plan, he still comes $400 ahead. To avoid a criminal investigation for bankruptcy fraud, a debtor may well pay more than $1,000. After all, it is not as if he really had no money.

B. Reasonable Grounds For Believing That The Parties Are Operating a Bankruptcy Fraud Scheme

43. Dr. Cordero does not know of anybody paying or receiving an unlawful fee in this case and does not accuse anybody thereof. But he does affirm what he knows:

    a) Trustee Reiber had 3,909 *open* cases on April 2, 2004, according to PACER;

    b) got the DeLanos' petition ready for confirmation by the court without ever requesting a single supporting document;

    c) chose to dismiss the case rather than subpoena the documents requested but not produced;

d) has refused to trace the substantial earnings of the DeLanos'; and

e) after ratifying the unlawful termination of the meeting of creditors, refuses to hold an adjourned one where the DeLanos would be examined under oath, including by Dr. Cordero.

44. Moreover, there is something fundamentally suspicious when:

a) a bankruptcy judge protects bankruptcy petitioners from a default judgment and from having to account for $291,470;

b) allows the local parties to disobey his orders with impunity;

c) before any discovery has taken place, prejudges in his August 30 order of that their motion to disallow Dr. Cordero's claim is not an effort to eliminate him from the case (**E-106**), although he is the only creditor that threatens to expose their bankruptcy fraud scheme (E-121§IV); and

d) yet shields them from discovery by suspending all further process until their motion to disallow Dr. Cordero's claim is finally determined (**E-107**) and agreeing that they may not produce any documents at all, not even those that he ordered them to produce! (E-81)

45. These facts and circumstances support the reasonable suspicion that they have engaged in coordinated conduct aimed at attaining a mutually beneficial objective, that is, a scheme, and that such conduct originates in bankruptcy fraud. Consequently, what the scheme undermines is, not just the legal, economic, and emotional wellbeing of Dr. Cordero…as if anybody cares…but the integrity of judicial process and the bankruptcy system. That constitutes an offense and there are reasonable grounds for believing that it has been committed and that an investigation thereof should be had.

IV. The need for investigators to be unacquainted with any party that may be investigated

46. However, if that investigation is to have any hope of finding and exposing all the ramifications of the vested interests that have developed rather than being suffocated by them, it must be carried out by investigators that do not even know these people. This excludes not only all those that are their colleagues or friends, but also those that are their acquaintances either because they work in the same small federal building, as do the U.S. attorneys and FBI agents, or live in the same small community in Rochester or Buffalo, NY. (**E-135-147**) They too may fear the

consequences of admitting that right under their noses such a scheme developed. Let out-of-towners conduct all aspects of the investigation…starting by subpoenaing the bank account and *debit* card statements of the DeLanos and then examining them under oath, for what a veteran bank loan officer knows could lead to cracking a far-reaching bankruptcy fraud scheme!

V. Relief requested

47. Therefore, Dr. Cordero respectfully requests that you:

a) report for investigation under 18 U.S.C. §3057(a) or any other pertinent provision of law:

1) Premier Van Lines, CA2 docket no. 03-5023;
2) Mr. Palmer's Premier Van Lines case, WBNY docket no. 01-20692;
3) Pfuntner v. Gordon et al., WBNY docket no. 02-2230; and
4) David and Mary Ann DeLano, WBNY docket no. 04-20280;

b) address the report to the Acting U.S. Attorney General with the recommendation that he appoint experienced investigators who are unrelated to and unacquainted with any of the parties that may be investigated in order to insure that they can conduct a zealous, competent, and exhaustive investigation of the nature and extent of the scheme regardless of who is found to be actively participating in it or looking the other way and that to that end, they be from U.S. Attorney or FBI Offices other than those in Rochester and Buffalo, NY, such as those in Washington, D.C. or Chicago.

Respectfully submitted on,

November 29, 2004

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero
tel. (718) 827-9521

Blank

[A:2204-2214 reserved]

Dr. Richard Cordero, Esq.

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

January 21, 2005

Paul D. Clement, Esq.
Acting Solicitor General of the United States
Department of Justice, Room 5614
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Dear Mr. Clement,

Please find herewith the copy that I am serving on you of my appeal to the Supreme Court in In re Premier Van Lines, which involves a federal agency, namely, the United States Trustees.

This case originated in the Bankruptcy Court for the Western District of New York and involves judicial misconduct in support of a bankruptcy fraud scheme. I brought the evidence thereof that has accumulated over the years to the attention of the U.S. Attorney in Charge of the Rochester Office, Bradley Tyler, Esq., who sits in the same small federal building as the trustees and judicial officers involved in this matter. Suspiciously enough, he would not only not open the investigation into it that I requested [SCtA.451, infra], but also would not even review the evidence [SCtA.452 and 453].

I appealed his decision to U.S. Attorney Michael Battle in Buffalo, NY, who in defiance of legal practice and common sense sent my appeal back to Mr. Tyler in Rochester from whom I had appealed [SCtA.458]. Mr. Tyler has to date not cared to communicate with me on that referral, of course. I protested to Mr. Battle such an injudicious way of handling a matter that affects the integrity of the judicial process and the bankruptcy system in Rochester [SCtA.453]. Thereafter, Mr. Battle pretended to have reviewed the documentation and, finding no fraud, closed the matter [SCtA.461]. But his own letter shows that such review was impossible for him to have conducted, for he had not even retrieved the documentation from Rochester and did not know even the basic details of the matter [SCtA.462].

Hence, I questioned his decision of closing an investigation before even having opened the documents containing the evidence calling for it. Mr. Battle sent me a letter in which he justified his decision based on the way the bankruptcy judge hearing my case had resolved it [SCtA.461]. But how can Mr. Battle possibly know the outcome of a case that is still pending before that judge unless Mr. Battle has no idea what he is talking about or the judge already knows how he will decide the case before even discovery has begun, let alone any testimony has been taken? Mr. Battle's statements prove my contention, that is, that the judge's support of the bankruptcy fraud scheme has motivated his misconduct and that of other court officers so that process before him is a sham!

In light of Mr. Battle's suspicious conduct and his refusal to investigate this matter, I hereby formally submit to you my Request of December 6, 2004, [SCtA.467] and respectfully request that you bring this matter to the attention of the Attorney General and cause an investigation of it to be opened.

I also request, on the grounds stated in my brief, that you support my appeal to the Supreme Court. Meantime, I look forward to hearing from you.

Sincerely, Dr. Richard Cordero

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

January 27, 2005

Mr. Richard Cordero
59 Crescent Street
Brooklyn, NY 11208

Re: Richard Cordero
v. Kenneth W. Gordon, Trustee, et al.
No. 04-8371

Dear Mr. Cordero:

The petition for a writ of certiorari in the above entitled case was filed on January 21, 2005 and placed on the docket January 27, 2005 as No. 04-8371.

A form is enclosed for notifying opposing counsel that the case was docketed.

Sincerely,

William K. Suter, Clerk

by Melissa Blalock

Melissa Blalock
Case Analyst

Enclosures

Supreme Court of the United States

Richard Cordero
(Petitioner)

v. No. 04-8371

Kenneth W. Gordon, Trustee, et al.
(Respondent)

To whom it may concern Counsel for Respondent:

NOTICE IS HEREBY GIVEN pursuant to Rule 12.3 that a petition for a writ of certiorari in the above-entitled case was filed in the Supreme Court of the United States on January 21, 2005, and placed on the docket January 27, 2005. Pursuant to Rule 15.3, the due date for a brief in opposition is Monday, February 28, 2005. If the due date is a Saturday, Sunday, or federal legal holiday, the brief is due on the next day that is not a Saturday, Sunday or federal legal holiday.

Unless the Solicitor General of the United States represents the respondent, a waiver form is enclosed and should be sent to the Clerk only in the event you do not intend to file a response to the petition.

Only counsel of record will receive notification of the Court's action in this case. Counsel of record must be a member of the Bar of this Court.

Dr. Richard Cordero

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

NOTE: This notice is for notification purposes only, and neither the original nor a copy should be filed in the Supreme Court.

WAIVER

Supreme Court of the United States

No. 04-8371

Richard Cordero (Petitioner)	v.	Kenneth W. Gordon, Trustee, et al. (Respondent)

I DO NOT INTEND TO FILE A RESPONSE to the petition for a writ of certiorari unless one is requested by the Court.

Please check one of the following boxes:

☐ Please enter my appearance as Counsel of Record for all respondents.

☐ There are multiple respondents, and I do not represent all respondents. Please enter my appearance as Counsel of Record for the following respondent(s):

_____

_____

I certify that I am a member of the Bar of the Supreme Court of the United States (Please explain name change since bar admission):

Signature _____

Date: _____

(Type or print) Name _____

☐ Mr. ☐ Ms. ☐ Mrs. ☐ Miss

Firm _____

Address _____

City & State _____ Zip _____

Phone _____

SEND A COPY OF THIS FORM TO PETITIONER'S COUNSEL OR TO PETITIONER IF *PRO SE*. PLEASE INDICATE BELOW THE NAME(S) OF THE RECIPIENT(S) OF A COPY OF THIS FORM. NO ADDITIONAL CERTIFICATE OF SERVICE IS REQUIRED.

Cc:

Obtain status of case on the docket. By phone at 202-479-3034 or via the internet at http://www.supremecourtus.gov. Have the Supreme Court docket number available.

Supreme Court of the United States

Richard Cordero
(Petitioner)

v. No. 04-8371

Kenneth W. Gordon, Trustee, et al.
(Respondent)

To whom it may concern* Counsel for Respondent:

NOTICE IS HEREBY GIVEN pursuant to Rule 12.3 that a petition for a writ of certiorari in the above-entitled case was filed in the Supreme Court of the United States on January 21, 2005, and placed on the docket January 27, 2005. Pursuant to Rule 15.3, the due date for a brief in opposition is Monday, February 28, 2005. If the due date is a Saturday, Sunday, or federal legal holiday, the brief is due on the next day that is not a Saturday, Sunday or federal legal holiday.

Unless the Solicitor General of the United States represents the respondent, a waiver form is enclosed and should be sent to the Clerk only in the event you do not intend to file a response to the petition.

Only counsel of record will receive notification of the Court's action in this case. Counsel of record must be a member of the Bar of this Court.

February 2, 2005 Dr. Richard Cordero

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

* This notice concerns the following cases:
1. Pfuntner v. Gordon et al., 02-2230, WBNY
2. In re Premier Van Lines, 03-5023, CA2
3. In re David and MaryAnn Deland, 04-20280, WBNY

NOTE: This notice is for notification purposes only, and neither the original nor a copy should be filed in the Supreme Court.

WAIVER

Supreme Court of the United States

No. 04-8371

Richard Cordero (Petitioner) v. Kenneth W. Gordon, Trustee, et al. (Respondent)

I DO NOT INTEND TO FILE A RESPONSE to the petition for a writ of certiorari unless one is requested by the Court.

Please check one of the following boxes:

☐ Please enter my appearance as Counsel of Record for all respondents.

☐ There are multiple respondents, and I do not represent all respondents. Please enter my appearance as Counsel of Record for the following respondent(s):

_____

_____

I certify that I am a member of the Bar of the Supreme Court of the United States (Please explain name change since bar admission):

Signature _____

Date: _____

(Type or print) Name _____

☐ Mr. ☐ Ms. ☐ Mrs. ☐ Miss

Firm _____

Address _____

City & State _____ Zip _____

Phone _____

SEND A COPY OF THIS FORM TO PETITIONER'S COUNSEL OR TO PETITIONER IF *PRO SE*. PLEASE INDICATE BELOW THE NAME(S) OF THE RECIPIENT(S) OF A COPY OF THIS FORM. NO ADDITIONAL CERTIFICATE OF SERVICE IS REQUIRED.

Cc:

Obtain status of case on the docket. By phone at 202-479-3034 or via the internet at http://www.supremecourtus.gov. Have the Supreme Court docket number available.

Dr. Richard Cordero, Esq.

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

February 6, 2005

Paul D. Clement, Esq.
Acting Solicitor General of the United States
Department of Justice, Room 5614
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

re: 04-8371 in the Supreme Court

faxed to (202)514-8844; tel. 514-2217 or 18

Dear Mr. Clement,

Last January 21, I served upon you a copy of my petition to the Supreme Court for a writ of certiorari to the Court of Appeals for the Second Circuit in connection with In re Premier Van Lines, which involves a federal agency, namely, the United States Trustees. As you know, the petition was docketed.

In this context, you may want to know how your call to the Executive Office of the United States Trustees (EOUST) in reference to my petition was dealt with, for it is illustrative of how that Office has dealt with my referral of this matter to it. So late on Friday afternoon, yesterday, a time most suitable for a quick disposal of a chore than for the opening of a serious file, Mr. Larry Walquast at the General Counsel's Office of EOUST, called me to say that you had called his office to request that they give me a call and that he was calling me to see what he could do for me. It struck me as very strange that you would have called them with such an undefined request given **1)** the precise nature of my petition, which discusses the evidence of bankruptcy fraud, among other things, and **2)** my specific request that you refer such evidence to the Attorney General for him to open an investigation; not to mention that **3)** for months I had to write and call EOUST General Counsel Donald F. Walton to request that he open an investigation of bankruptcy fraud in Rochester, NY, on the basis of the evidence that I discussed and submitted to him. Mr. Walton is the boss of Mr. Walquast, who nevertheless appeared to know nothing about any of that.

Nor of much else. Indeed, after I stated that I had written to you to request that you support my petition and open an investigation, Mr. Walquast indicated that the Attorney General does not investigate "judicial fraud", that the Administrative Office of the U.S. Courts does that. I corrected him as to my claim, which is judicial misconduct in support of a bankruptcy fraud scheme, a mistake on his part that shows his foggy notion of even the essence of my letters and supporting files of documents to Mr. Walton, which essence appears so summarized in many of their captions. Then I asked Mr. Walquast what provision of law authorized the Administrative Office to conduct a judicial misconduct investigation. He did not know. Nor did he know that 28 U.S.C. §535 authorizes the Attorney General and the FBI to investigate "any violation of Federal criminal law involving government officers and employees."

I told him about my two judicial misconduct complaints under 28 U.S.C. §§351 et seq., which I pursued all the way to the filing of a petition for review by the Judicial Conference only to have a clerk at the Administrative Office write to me a letter passing judgment on my specific jurisdictional argument and refusing to submit the petition to the Conference (see SCtA.277 in the separate Appendices volume accompanying my petition). Mr. Walquast found nothing more apposite to say than offer me the address of the Administrative Office, whereby he not only revealed that he did not know that such petitions are filed with that Office, but also that he was not integrating my statement that I had received a letter from a clerk in that Office. Mr.

Walquast's title at EOUST is Trial Attorney, like those lawyers that at trial are supposed to pick up on the fly even fragments of statements made by witnesses and opposing counsel and use them competently to determine what to say and not to say next.

Nor did Mr. Walquast know that I had submitted the evidence of bankruptcy fraud first to the EOUST office in Rochester, then to its supervising regional office in NY, and when neither would take any action[1], to Mr. Walton himself in Washington, who limited himself to asking the Rochester office to file a report, thereby violating the common sense principle that neither a complained-about person nor entity can investigate herself or itself. The laid back and you-let-me-know-whatever-you-want attitude revealed in so doing is precisely what Mr. Walquast in turn revealed by calling me so unprepared that he lacked the faintest clue as to what my writ petition and my correspondence with his boss involved and had no more agenda than to dispatch pro forma your request that his office call me. I trust that you would not like either Mr. Walquast or Mr. Walton to represent you.

Indeed, when the top federal office in charge of ensuring the integrity of the bankruptcy system has no better idea of how to deal with an evidence-supported claim of bankruptcy fraud that has become part of a petition for review by the Supreme Court than to call the petitioner to refer him to another office that has no statutory competence to investigate fraud, let alone bankruptcy fraud, one can reasonably question that office's understanding of its own statutory mission and wonder what kind of investigation it would conduct were it to conduct any.

All this goes to buttress my specific request to you in my January 21 letter and in the petition, cf. ¶¶84 and 94, that it be the Attorney General the one to conduct an investigation of all aspects of my complaint of judicial misconduct in support of a bankruptcy fraud scheme. Hence, you will have already noted that the evidentiary support for my contention that the investigation cannot be entrusted either to the offices of the U.S. Attorney or the FBI in Rochester or Buffalo is contained in the appendices listed in section III.E of the Index of Appendices and found at SCtA.451 et seq. of the Appendices volume.

In addition to that request, I also reiterate my request that you support the grant by the Supreme Court of my petition for a writ of certiorari because at stake is a matter, described in detail at SCtA.511, that one must believe is of critical importance to your Office and the Department of Justice, to wit, the integrity of judicial process and of the bankruptcy system. Thus, I look forward to hearing from you and remain,

sincerely yours,

Dr. Richard Cordero

[1] Their inaction was all the more suspect because they had the duty to adopt the diametrically opposite attitude under 28 U.S.C. §586(a)(3)(F), which requires them to take the initiative in "notifying the appropriate United States attorney of matters which may constitute a crime under the laws of the United States…" as well as their own UST Manual vol. 5, Chapter 5-7.6 CRIMINAL REFERRAL, which provides: **"**A criminal referral concerning a trustee or anyone employed by the trustee is a sensitive, high priority matter. It demands communication and close coordination between the United States Trustee, the Executive Office, and the United States Attorney."

U.S. Department of Justice

Executive Office for United States Trustees

Office of the Director

Washington, D.C. 20530

February 16, 2005

Dr. Richard Cordero
59 Crescent Street
Brooklyn, NY 11208-1515

Dear Dr. Cordero:

This letter is in response to your correspondence to the Acting Solicitor General of the United States dated January 21, 2005, and February 6, 2005, as well as your phone calls to personnel in the Solicitor General's office and the Civil Division, regarding your appeal to the Supreme Court for a writ of certiorari in connection with the bankruptcy case *In re Premier Van Lines*. Your communications have all been referred to this office, the Executive Office for United States Trustees, for reply. The United States Trustee Program is the component of the Department of Justice responsible for supervising the administration of bankruptcy cases and private trustees under title 11 of the United States Code.

We note at the outset that you have previously corresponded with our office regarding your concerns of alleged bankruptcy fraud, and we responded in writing on May 16, 2003, and November 30, 2004. A copy of our correspondence is attached for your convenience. After reviewing your most recent letters, we find no grounds to reconsider our previous determination based on the evidence you presented. As we have informed you, our office does not have jurisdiction over the conduct of judges. In so far as you believe that you have evidence of judicial misconduct, you may contact the Administrative Office of the United States Courts, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Washington, DC 20544; telephone: (202) 502-1220. In addition, you may contact your local Federal Bureau of Investigation office if you believe you possess credible evidence of criminal conduct.

We regret that we cannot be of further assistance.

Very truly yours,

Lawrence A. Friedman
Director

Enclosures

WAIVER

Supreme Court of the United States

No. 04-8371

Richard Cordero (Petitioner)	v.	Kenneth W. Gordon, Trustee, et al. (Respondent)

I DO NOT INTEND TO FILE A RESPONSE to the petition for a writ of certiorari unless one is requested by the Court.

Please check one of the following boxes:

☐ **Please enter my appearance as Counsel of Record for all respondents.**

☒ **There are multiple respondents, and I do not represent all respondents. Please enter my appearance as Counsel of Record for the following respondent(s):**

James Pfuntner

I certify that I am a member of the Bar of the Supreme Court of the United States (Please explain name change since bar admission):

Signature _____

Date: February 18, 2005

(Type or print) Name Louis A. Ryen

☒ Mr. ☐ Ms. ☐ Mrs. ☐ Miss

Firm LACY Katzen LLP

Address 130 East Main Street

City & State Rochester, New York **Zip** 14604

Phone 585-454-5650

SEND A COPY OF THIS FORM TO PETITIONER'S COUNSEL OR TO PETITIONER IF *PRO SE*. PLEASE INDICATE BELOW THE NAME(S) OF THE RECIPIENT(S) OF A COPY OF THIS FORM. NO ADDITIONAL CERTIFICATE OF SERVICE IS REQUIRED.

Cc: Please see the Attached list.

Obtain status of case on the docket. By phone at 202-479-3034 or via the internet at http://www.supremecourtus.gov. Have the Supreme Court docket number available.

Kenneth Gordan, Esq.
100 Meridian Center
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Rochester, New York 14618

Michael J. Beyma, Esq.
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United States Trustee
100 State Street
Rochester, New York 14614

Dr. Richard Cordero
59 Crescent Street
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Mr. Jim R. Pfuntner
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Avon, New York 14414

IN THE SUPREME COURT OF THE UNITED STATES

CORDERO, RICHARD

Petitioner

vs.

No: 04-8371

KENNETH W. GORDON, TRUSTEE, ET AL.

WAIVER

The Government hereby waives its right to file a response to the petition in this case, unless requested to do by the court.

Paul D. Clement/a

PAUL D. CLEMENT
Acting Solicitor General
Counsel of Record

February 24, 2005

See Attached List

A:2226 Acting Solicitor Gen Clement's waiver of 2/24/5 of right to file a response in *Cordero v. Tr Gordon et al*

February 24, 2005

Attachment List for Case No. 04-8371

MICHAEL J. BEYMA
UNDERBERG & KESSLER, LLP
1800 CHASE SQUARE
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RICHARD CORDERO
59 CRESCENT STREET
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KARL S. ESSLER
FIX SPINDELMAN BROVITZ & GOLDMAN, P.C.
2 STATE STREET, SUITE 1400
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GORDON & SCHAAL, LLP
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DAVID D. MACKNIGHT
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130 EAST MAIN STREET
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DAVID PALMER
1829 MIDDLE ROAD
RUSH, NY 14543

KATHLEEN DUNIVIN SCHMITT
ASSISTANT U.S. TRUSTEE
100 STATE STREET, ROOM 6090
ROCHESTER, NY 14614

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

March 28, 2005

Mr. Richard Cordero
59 Crescent Street
Brooklyn, NY 11208

Re: Richard Cordero
v. Kenneth W. Gordon, Trustee, et al.
No. 04-8371

Dear Mr. Cordero:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

William K Suter

William K. Suter, Clerk

No. 04-8371
Title: Richard Cordero, Petitioner
v.
Kenneth W. Gordon, Trustee, et al.
Docketed: January 27, 2005
Lower Ct: United States Court of Appeals for the Second Circuit
Case Nos.: (03-5023)
Decision Date: January 26, 2004
Rehearing Denied: October 26, 2004

~~Date~~~	~~~~~~~Proceedings and Orders~~~~~~~~~~~~~~~~~~~~
Jan 21 2005	Petition for a writ of certiorari and motion for leave to proceed in forma pauperis filed. (Response due February 28, 2005)
Feb 3 2005	Waiver of right of respondents David Dworkin, et al. to respond filed.
Feb 24 2005	Waiver of right of respondents Kenneth W. Gordon, Trustee, et al. to respond filed.
Mar 10 2005	DISTRIBUTED for Conference of March 25, 2005.
Mar 28 2005	Petition DENIED.

~~Name~~~~~~~~~~~~~~~~~~~~~~	~~~~~~~~Address~~~~~~~~~~~~~~~~~~~	~~Phone~~~
Attorneys for Petitioner:		
Richard Cordero	59 Crescent Street Brooklyn, NY 11208	(718) 827-9521
Party name: Richard Cordero		
Attorneys for Respondent:		
Paul D. Clement	Acting Solicitor General United States Department of Justice 950 Pennsylvania Avenue, N.W. Room 5614 Washington, DC 20530-0001	(202) 514-2217
Party name: Kenneth W. Gordon, Trustee, et al.		
Norman M. Spindelman	295 Woodcliff Drive, Suite 200 Fairport, NY 14450	(585) 641-8000
Party name: David Dworkin, et al.		