

IN RE:

PREMIER VAN LINES, INC.,

Debtor.

CASE NO. 01-20692

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JAMES PFUNTNER,

Plaintiff,

vs.

A.P. NO. 02-2230

KENNETH W. GORDON, as Trustee,  
RICHARD CORDERO, ROCHESTER  
AMERICANS HOCKEY CLUB, INC.  
and M&T BANK,

Defendants.

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RICHARD CORDERO,

Third-Party Plaintiff,

vs.

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

Third-party Defendants.

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**ORDER DENYING RECUSAL AND REMOVAL  
MOTIONS and OBJECTION OF RICHARD CORDERO  
TO PROCEEDING WITH ANY HEARINGS AND A  
TRIAL ON OCTOBER 16, 2003**

WHEREAS, on August 11, 2003, Richard Cordero ("Cordero") filed a Notice of Motion and a Motion for the Honorable John C. Ninfo, II to recuse himself from this Adversary Proceeding pursuant to 28

Order denying Recusal and Removal Motions (con't)

U.S.C. § 455(a) (the "Recusal Motion") and to remove this Adversary Proceeding to the District Court for the Northern District of New York pursuant to 28 U.S.C. § 1412 (the "Removal Motion"); and

**WHEREAS**, the Recusal and Removal Motions having been heard by the Court on October 16, 2003; and

**WHEREAS**, Cordero also objected at the hearing (the "Objection") to the Court proceeding with any hearings or a trial as directed by its July 15, 2003 Order, a copy of which is attached;

**WHEREAS**, after hearing Cordero, David D. MacKnight, Esq., on behalf of James Pfuntner, Karl S. Essler, Esq., on behalf of David Dworkin and Jefferson Henrietta Associates, and Michael J. Beyma, Esq., on behalf of M&T Bank and David Delano, and after due deliberation, it is hereby

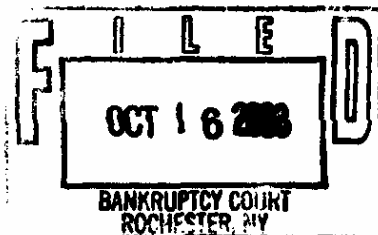
**ORDERED**, that the Recusal and Removal Motions are both in all respects denied and the Objection is in all respects overruled for the reasons placed on the record by the Court at the October 16, 2003 hearing, which are as set forth on the attached written decision but as they may have been slightly modified when read into the record.

**SO ORDERED.**

**DATED: October 16, 2003**

  
HON. JOHN C. NINFO, II

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**CORDERO ORAL DECISION**

**OCTOBER 16, 2003**

The motions of Dr. Richard Cordero pursuant to 28 U.S.C. § 455(a) for me to recuse myself from this Adversary Proceeding and pursuant to 28 U.S.C. § 1412 to remove the Adversary Proceeding to the District Court for the Northern District of New York are both denied for the following reasons:

1. With regard to the recusal motion, I do not believe that any reasonable person, fully familiar with the facts and circumstances of this Adversary Proceeding, and the related pleadings, proceedings and correspondences, including any statements and decisions made by me, would or could question my impartiality or believe that I was biased against or prejudiced towards Dr. Cordero. Although Dr. Cordero may believe that I am biased against him, based upon various decisions and statements I have made in connection with this Adversary Proceeding, whether orally or in writing, I do not believe that a reasonable person would conclude that any of them demonstrate any actual bias, prejudice or impartiality, or even the appearance of such.

2. With regard to the dismissal of Dr. Cordero's counterclaims against the Chapter 7 Trustee of Premier Van Lines, Kenneth W. Gordon:

A. I properly referred Dr. Cordero's written complaint concerning Trustee Gordon's administration of the Debtor's estate to the Office of the United States Trustee which, I informed Dr. Cordero, has been charged by Congress with the administration of the bankruptcy system and specifically the oversight of panel trustees. It is the Court's role only to decide controversies in connection with the administration of an estate, not to oversee its administration. As I have stated, Congress has given that responsibility to the Office of the United States Trustee.

B. In a report made back to the Court by Kathleen Schmitt of the Office of the U.S. Trustee, she indicated after reviewing the matter that there was no improper administration of

the Debtor's estate. As I have acknowledged to Dr. Cordero in the past, a different Chapter 7 trustee may have voluntarily gone more out of his way and been more proactive than Mr. Gordon was in attempting to locate and assist Dr. Cordero in getting his stored property back, if Dr. Cordero had fully cooperated with him. However, Mr. Gordon's failure to be so voluntarily proactive does not constitute improper administration, as confirmed by the Office of the U.S. Trustee. In deciding the Motion to Dismiss Dr. Cordero's Counterclaim against Mr. Gordon, my review of the pleadings presented and the opinion of Ms. Schmitt resulted in my granting the Motion to Dismiss to the extent that it alleged improper administration.

C. Furthermore, after reading the correspondence in question, and considering all of the facts and circumstances presented, I did not find that anything contained in Mr. Gordon's correspondence to Dr. Cordero was defamatory as a matter of fact or law, and I granted the Motion to Dismiss to that it alleged defamatory statements.

D. Dr. Cordero failed to file a timely Notice of Appeal of the Court's decision to grant Mr. Gordon's Motion to Dismiss Dr. Cordero's Counterclaims, and also failed to timely file a Motion to Extend the Time to File an Appeal of that decision. Those are simple and undisputable facts as confirmed by the Court's docket and an examination of the receipts by the Clerk's Office of the relevant pleadings.

E. It is irrelevant that Mr. Gordon incorrectly assumed that any of Dr. Cordero's pleadings in connection with the Appeal were timely filed based upon when he received a copy or when they were dated. Trustee Gordon later admitted that he never actually checked the Court's records to determine when any of the relevant pleadings were filed, but simply assumed that one or more was timely filed. His incorrect assertion with regard to the those pleadings could not cure the fact that they were not timely filed.

F. This Court's denial of Dr. Cordero's Motion to Extend the Time to File a Notice of Appeal of the decision to dismiss his counterclaims against Mr. Gordon has been affirmed by the District Court and is now on appeal to the United States Court of Appeals for the Second Circuit.

G. In my opinion, none of the above facts, circumstances, decisions, events or statements would result in a reasonable person concluding that I was biased against or prejudiced towards Dr. Cordero, or would be other than impartial in hearing and addressing further issues in this Adversary Proceeding.

3. With respect to my recommendation to the District Court that a Default Judgement not be entered against David Palmer, a third-party defendant in one of Dr. Cordero's counterclaims in the Adversary Proceeding, and my subsequent concern regarding improper service:

A. Dr. Cordero's counterclaim against David Palmer is a non-core proceeding, so that I can only make recommendations for any disposition to the District Court.

B. Dr. Cordero at Paragraph 3 of his Recusal Motion admits that he never served David Palmer, but only served "David Stilwell, Esq." (the attorney's name is actually Raymond Stilwell), who he alleges was Palmer's attorney of record. To this Court's knowledge, Mr. Stilwell never agreed to accept service for Mr. Palmer in this Adversary Proceeding, and he never made a general appearance for Mr. Palmer. Mr. Stilwell represented the corporate debtor in the Chapter 11 and 7 cases, not Mr. Palmer. It would have been a conflict of interest for him to have represented both. He may have been the attorney of record for the corporate debtor but he was not the attorney of record for Mr. Palmer. (See Attorney Stilwell's February 11, 2003 letter)

C. In the initial stages of this Adversary Proceeding, I believed that once there was a full and complete inspection of the property stored at Mr. Pfuntnner's Avon warehouse that most, if not all, of the issues in controversy would be resolved, or could easily be decided at trial,

and that the inspection would demonstrate whether there was any damage or loss to Dr. Cordero's stored property.

D. When Dr. Cordero prior to the inspection of the Avon warehouse stored property applied for a Default Judgment against Palmer, the Court suggested that he wait until the inspection to determine if in fact there was any loss or damage to his property that either Premier Van Lines or Mr. Palmer, individually, might be responsible for.

E. When Dr. Cordero refused to wait to complete the inspection, and insisted that his Default Judgment request be processed, I recommended to the District Court that the Default Judgment not be entered because Dr. Cordero had not demonstrated that there was any actual damage or loss to his stored property that either Premier Van Lines or David Palmer, individually, was responsible for.

F. District Judge David Larimer agreed with my recommendation.

G. It seems that Dr. Cordero does not understand that just because a party may default, the Court is not required to enter relief against that defaulting party if the plaintiff or moving party has not demonstrated a fundamental right to relief.

H. After the failed inspection of the stored property at the Avon warehouse, when it appeared that this Adversary Proceeding and all related matters would most likely have to be fully litigated, since none of the parties were negotiating or moving towards a settlement, I encouraged Dr. Cordero to refile his Motion for a Default Judgment against David Palmer. This was not an indication that I would grant the Motion, since the failed inspection of the stored property did not result in the development of sufficient facts, circumstances and evidence to demonstrate a fundamental right to a default judgment, since there was no evidence that David Palmer was individually responsible for any loss or damage, or that there was any real loss or damage, but was an attempt by me to move matters towards decision, or in the case of a the default judgment motion,

a recommendation to the District Court. I felt that in connection with any renewed motion for a default judgment perhaps Dr. Cordero would now first take the steps necessary to determine whether his stored property was lost, stolen or damaged.

I. In connection with Dr. Cordero's renewed Motion for Default Judgment, when it became doubtful that any of the issues in this Adversary Proceeding involving Dr. Cordero were going to be settled, the Court focused on all aspects of the request for a default judgment, and specifically on the issue of proper service. At the return date of the renewed motion, I advised Dr. Cordero that since we were going to have to have a hearing on damages, as directed by Judge Larimer, we would also address the matter of adequate service for purposes of any recommendation to the District Court.

J. Although Dr. Cordero continues to be under the impression that he is able to obtain a default judgment against a party for whatever amount he requests, since what he requests is a sum certain, even without demonstrating a fundamental right to relief, and that he has somehow been ambushed by the issue of service, it is Dr. Cordero who continues to be determined, notwithstanding my recommendation to him that he seek legal counsel, to represent himself in these proceedings, which has resulted in his interpreting many of the above facts, circumstances, decisions and statements as he has.

K. Although some courts would find that improper service, and a resulting lack of jurisdiction, are matters for a motion to dismiss in connection with the enforcement of a default judgment, I believe that I must raise the service issue in connection with any further recommendation I make to the District Court on this non-core issue.

L. In my opinion, none of the above facts, circumstances, decisions, events or statements would result in a reasonable person concluding that I was biased against or prejudiced

towards Dr. Cordero, or would be other than impartial in hearing and addressing further issues in this Adversary Proceeding.

4. With regard to the failed inspection at the Avon warehouse:

A. As previously stated, I was of the opinion that once there was a full and complete inspection of the property stored at the Avon warehouse that the parties could easily resolve most, if not all, of the issues in controversy, and that the Court could then conduct whatever hearings would be necessary to decide any remaining issues or make its recommendation to the District Court on non-core matters.

B. It was never my intention to become involved in the actual inspection, but only to attempt to facilitate an inspection, since it did not appear that the parties were fully cooperating with each other, nor were they attempting to negotiate a resolution of the issues presented.

C. Admittedly and unfortunately, many of the concerns that Dr. Cordero had expressed prior to traveling to Rochester to make the inspection came true because of what appeared to be a lack of attention paid to the details of the inspection by Mr. Pfunter and/or his attorney, Mr. MacKnight. It was for that reason that I indicated to Dr. Cordero that he should bring a sanction motion to allow the Court, after it heard all of the facts and circumstances of why the inspection process broke down, to consider whether Pfunter should be required to compensate Dr. Cordero to some degree for the costs and expenses he incurred in connection with the failed inspection.

D. Dr. Cordero's Motion for Sanctions asking for in excess of \$30,000.00 was inappropriate in that it did not even provide details and receipts as to any actual out-of-pocket expenses, and it requested compensation at \$250.00 an hour for his time in preparing the motion, without any showing that the time spent was reasonable or necessary. Had Dr. Cordero retained an



attorney, he would have known that a 100 page plus motion was not reasonable or necessary, especially if he expected to be compensated for it.

E. As inappropriate as the request was, I did not deny it outright, but indicated that the matter would be set down for a hearing at which the Court would hear evidence with respect to:

i. Mr. Pfuntner's and Mr. MacKnight's reasons for not taking the necessary steps to insure that the inspection could and would be fully completed; and

ii. Any actual out-of-pocket expenses and other damages that Dr. Cordero may have suffered in connection with the failed inspection.

F. In my opinion, none of the above facts, circumstances, decisions, events or statements would result in a reasonable person concluding that I was biased against or prejudiced towards Dr. Cordero, or would be other than impartial in hearing and addressing further issues in this Adversary Proceeding.

5. With regard to the scheduling of discrete hearing dates for the trial of this Adversary Proceeding and any and all related motions and other proceedings:

A. In the wake of the failed inspection of the stored property at the Avon warehouse, when it became more and more clear that the parties were not working towards a resolution of any of the issues in this Adversary Proceeding, nor even cooperating with each other, I determined that it was time to start to have evidentiary hearings and to decide causes of action, motions and related issues, issue by issue, in concentrated blocks of time, so that decisions and recommendations could be made as efficiently as possible. Therefore, I:

i. Set the matters down for discrete hearings, which for Dr. Cordero's information are not secret hearings, but separate hearings where there are no other matters on the Court's docket so that the Court can give its full attention to the matters.

ii. Set the initial hearings and trials down for October and November, in order to afford the parties an opportunity to complete any required discovery, attempt one last time to settle any of the issues presented, and to afford Dr. Cordero time to consult with an attorney and obtain legal representation, if he chose to (Dr. Cordero has chosen not be represented by counsel, notwithstanding the Court's recommendation.)

iii. Indicated to Dr. Cordero that I would not allow him to appear telephonically. Although the Court often allows attorneys and litigants to appear telephonically, it is usually in connection with fairly routine motions and arguments or as follow-ups where the attorney or party resides out-of-town but has previously appeared in connection with the matter, or where there is also local counsel for the party that the attorney appearing telephonically represents. It has been my experience that all of Dr. Cordero's motions are relatively complex because of the extent of his arguments, and that it is difficult for me and the court reporter to hear Dr. Cordero telephonically, because he does have an accent and he tends not to listen to and talks over the Court. I believe that anyone who had been in Court and listened to Dr. Cordero appearing by telephone would agree that it was ineffective, and could fully understand why his presence for any further hearings would be required.

B. Because practice in Bankruptcy Court in Rochester has, like in most bankruptcy courts have, become regional, we generally start our hearings and trials at 9:30 a.m., rather than at an earlier time as many courts do. By starting at 9:30 a.m., attorneys from the Southern Tier, Buffalo and Syracuse can easily travel to Court that morning, and even attorneys from other cities such as New York, Boston and Washington can get early flights from those cities and be in Court by 9:30.

C. In my opinion, none of the above facts, circumstances, decisions, events or statements would result in a reasonable person concluding that I was biased against or prejudiced

towards Dr. Cordero, or would be other than impartial in hearing and addressing further issues in this Adversary Proceeding.

D. With respect to Dr. Cordero's allegations that I advised him that he had provide proof beyond a reasonable doubt to meet his burden on any of his motions or counterclaims, that is simply untrue. I advised him that he needed to present evidence to meet his burden of proof and in explaining that concept used criminal cases as an example of burden of proof since from television and the newspapers most individuals are familiar with criminal trials and a prosecutor's burden. Again, Dr. Cordero has elected not to be represented by counsel which has resulted in more than one of his misunderstandings. His misunderstandings do not result in bias, prejudice or impartiality or the appearance of such.

6. With regard to Dr. Cordero's allegations that any of the acts of any of the clerks of the Bankruptcy or District Court in the Western District of New York, Rochester Division, or Judge Larimer or myself or the Court's contract reporter, indicate a pattern of non-coincidental, intentional and coordinated acts from which a reasonable person can infer that they are biased against and prejudiced towards Dr. Cordero, I disagree wholeheartedly. I believe, as I have stated above, that any reasonable person fully familiar with all of the facts, circumstances, events, proceedings, statements, correspondence and decisions made by the clerks and judicial officers of this district in connection with this Adversary Proceeding do not indicate any bias, prejudice or impartiality towards Dr. Cordero, but indicate that all of such clerks and judicial officers and reporters have proceeded properly and in a reasonable manner.

7. With respect to the Motion for Removal to the District Court for the Northern District of New York, such removal would not be in the best interests of or serve the convenience of the parties, would not serve the interest of judicial economy, or otherwise be in the interests of justice. What would be in the best interests of the parties is for this Court to begin its hearings and trials of

the various issues presented in this Adversary Proceeding so that it can decide the core issues and make any necessary recommendations for the determination of the non-core issues by the District Court, which is what we will begin to do after a short recess, at least as to the Plaintiff's claims in the Adversary Proceeding. In connection with these hearings and trial, I am overruling Dr. Cordero's objections to the hearings and trial, except we will discuss his demand for a jury trial in connection with his counterclaims and cross-claims after we try the Plaintiff's claim. I have explained the concept of discrete hearings; the Court's July 15, 2003 Order scheduled the hearings and trial for October so that Dr. Cordero could do any discovery he felt was necessary and appropriate; I have explained that Dr. Cordero would not have a burden of proof of beyond a reasonable doubt in connection with any of his counterclaims; and there is no basis to not have the Court's contract reporter perform her duties in connection with today's hearings and trial.

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

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IN RE:

PREMIER VAN LINES, INC.,

Debtor.

CASE NO. 01-20692

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JAMES PFUNTNER,

Plaintiff,

vs.

A.P. NO. 02-2230

KENNETH W. GORDON, as Trustee,  
RICHARD CORDERO, ROCHESTER  
AMERICANS HOCKEY CLUB, INC.  
and M&T BANK,

Defendants.

---

RICHARD CORDERO,

Third-Party Plaintiff,

vs.

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

Third-party Defendants.

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**ORDER**

WHEREAS, on September 27, 2002, James Pfuntner ("Pfuntner") commenced an adversary proceeding against Kenneth W. Gordon, Esq., as trustee ("Gordon"), Richard Cordero ("Cordero"), Rochester Americans Hockey Club, Inc. ("Rochester Hockey") and M&T Bank ("M&T") (the "Adversary Proceeding"); and

**WHEREAS**, the Adversary Proceeding sought to have the Court determine: (1) the rights of the various parties, if any, in property (the "Stored Property") which Premier Van Lines, Inc. (the "Debtor") had stored, pursuant to a lease (the "Lease") with Pfuntner at his property at 2140 Sacket Road, Avon, New York ("Sacket Road"); (2) that Pfuntner had no liability, or that he should otherwise be indemnified for any adverse claims to the Stored Property; (3) that the unpaid monthly rental due under the Lease, or reasonable storage charges for the Stored Property, be paid by the Debtor to Pfuntner as Chapter 11 and 7 administrative expenses; (4) that the Court vacate the automatic stay so as to permit Pfuntner to: (a) evict the Debtor and those claiming under the Debtor from Sacket Road in New York State Court; (b) remove the goods left at Sacket Road by the third parties; and (c) collect from those responsible such fair use and occupancy fees as may be determined by a New York State Court; and (5) various other requests for relief; and

**WHEREAS**, in this non-core proceeding, in November 2002, Cordero filed an Answer and Counterclaim, and Crossclaims against David Palmer ("Palmer"), the principal shareholder of the Debtor, Gordon, Pfuntner, David Dworkin ("Dworkin"), the owner or manager of the Jefferson-Henrietta Warehouse formerly utilized by the Debtor, and David Delano ("Delano"), an officer of M&T Bank, which held a security interest in the personal property assets of the Debtor; and

**WHEREAS**, on December 23, 2002, this Court granted Gordon's Motion to Dismiss Cordero's Crossclaims against him, which was appealed to and affirmed by the United States District Court for the Western District of New York (the "District Court"), and is now

on appeal to the United States Court of Appeals for the Second Circuit; and

**WHEREAS**, on February 4, 2003, for various reasons, including that Cordero had failed to provide satisfactory evidence that would demonstrate that he had incurred damages of \$14,000.00, the Bankruptcy Court recommended to the District Court in this non-core matter that the default judgment requested by Cordero not be entered against Palmer; and

**WHEREAS**, in March 2003, the District Court determined that it was not appropriate to enter a default judgment in favor of Cordero and against Palmer, and referred Cordero's request for a default judgment back to the Bankruptcy Court for a determination of damages; and

**WHEREAS**, a trip by Cordero to Sacket Road did not result in: (1) a satisfactory inspection of all of the property stored by the Debtor at Sacket Road, including the property of Cordero that was at one time stored with the Debtor; (2) the ability of Cordero to fully determine whether there was any damage to his stored property, and, if there was, whether any of the various entities that had stored his property for him over approximately the last ten years might be responsible for any such damage, and if so, which entities; (3) Cordero's ability to remove his stored property; and (4) this matter being satisfactorily resolved by all of the interested parties; and

**WHEREAS**, as a result of: (1) Pfuntner and his representatives having failed to take the necessary steps for Cordero to accomplish at least the first three of the items set forth in the preceding paragraph; and (2) the Court advising Cordero that it would

entertain a motion for reasonable reimbursement in connection with his trip to Sacket Road, in June 2003, Cordero filed a motion for sanctions and compensation to be paid by Pfuntner and his attorney (the "Sanction Motion"); and

**WHEREAS**, the Sanction Motion included: (1) a request for compensation for Cordero at the rate of \$250.00 per hour for the hours he spent on various matters involved in the Adversary Proceeding, including preparing and researching the Sanction Motion; and (2) the reimbursement of undocumented travel expenses, for a total request of \$36,075.00; and

**WHEREAS**, in connection with the Sanction Motion, Cordero's only justification for requesting compensation for his time at \$250.00 per hour is that Pfuntner advised him that this was the amount he paid his attorney, however, there is no proof of that in the record, and there is no other justification in the record for compensating a *pro se* litigant at that rate, so that the compensation issue and the undocumented expenses will be the subject of inquiry at the upcoming hearings; and

**WHEREAS**, the Court, in recently reviewing Cordero's renewed motion for a default judgment against Palmer, has focused on the Affidavit of Service of the Crossclaim, which does not indicate that Palmer was properly personally served by mail in accordance with the Federal Rules of Civil Procedure, so that this service issue will be the subject of inquiry at the upcoming hearings; and

**WHEREAS**, although the Court has allowed Cordero to appear by telephone in connection with a number of pretrial proceedings and motions in this Adversary Proceeding, in the Court's opinion few of



those telephone appearances have resulted in an accurate and comprehensive record; and

**WHEREAS**, the Court believes that setting this Adversary Proceeding down for discrete hearing dates in October and November, when the Court will not have any other matters before it and Cordero can appear in person, will: (1) afford the interested parties a sufficient amount of time to meet and negotiate to determine whether this matter, which should be able to be settled, can be settled without the need for further hearings and proceedings; (2) complete any discovery which they believe may be required; (3) afford Cordero, who has represented himself *pro se* in this Adversary Proceeding, the opportunity to consult with an attorney: (a) to discuss substantive legal, factual and other relevant matters involved in the Adversary Proceeding; and (b) to advise him how to properly prepare and present evidence at the upcoming hearings should Cordero continue to elect not to be represented by counsel; (4) afford the parties sufficient time to finally complete an inspection of the Stored Property at Sacket Road, and attempt to assess: (a) the ownership of the Property; (b) any damages to the Property; and (c) whether any parties to the Adversary Proceeding are responsible for any such damage; and (5) afford the Court the opportunity to focus more fully on this non-core Adversary Proceeding so that at the discreet hearings it can make the necessary findings, conclusions and rulings, based upon a full and complete record, that will finalize the matter; and, therefore,

For the above reasons, and in order to: (1) ensure that there is a full and complete record created in this Adversary Proceeding; and (2) ensure that the Court can effectively manage the numerous issues that have been raised and assist the parties in concluding

the matter, this matter, and all related hearings, motions and proceedings, are set down for a discrete hearing at 9:30 a.m. in the Rochester Courtroom on October 16, 2003, at which time the Court will address the matters chronologically as they have appeared in connection with this Adversary Proceeding, beginning with Pfuntner's Complaint and proceeding forward, and if necessary, continue the hearing at any available times on October 17, 2003, a Chapter 13 day for the Court, and if necessary for further hearings on November 14, 2003 at 9:30 a.m. in the Rochester Courtroom.

**SO ORDERED.**

**DATED: July 15, 2003**

**\_\_\_\_\_/s/\_\_\_\_\_  
HON. JOHN C. NINFO, II  
CHIEF U.S. BANKRUPTCY JUDGE**

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UNITED STATES BANKRUPTCY COURT  
Western District of New York  
100 State Street  
Rochester, NY 14614  
[www.nywb.uscourts.gov](http://www.nywb.uscourts.gov)

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In Re:

Premier Van Lines, Inc., a Corporation  
dba North American Van Lines

SSN/Tax ID: 16-1542181

Debtor(s)

Case No.: 2-01-20692-JCN  
Chapter: 7

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James Pfuntner

Plaintiff(s)

A.P. No.: 2-02-02230-JCN

v.

Kenneth W. Gordon

Defendant(s)

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### NOTICE OF ENTRY

**PLEASE TAKE NOTICE** of the entry of an Order, duly entered in the within action in the Clerk's Office of the United States Bankruptcy Court, Western District of New York on October 17, 2003 . The undersigned deputy clerk of the United States Bankruptcy Court, Western District of New York, hereby certifies that a copy of the subject Order was sent to all parties in interest herein as required by the Bankruptcy Code, The Federal Rules of Bankruptcy Procedure.

Dated: October 17, 2003

Paul R. Warren  
Clerk, U.S. Bankruptcy Court

By: P. Finucane  
Deputy Clerk

Form noticeofentry  
Dec 130

**3**

SUN-39103 0209-2 ntcentry 02-02230  
Western District of New York  
U.S. Bankruptcy Court  
100 State Street  
Rochester, NY 14614

001123 1123 4 MB 0.975 11208 3 4 4254-3-1129



Richard Cordero  
59 Crescent Street  
Brooklyn, NY 11208

001123 39103-1123-24949

Bkr Clerk Warren's notice of entry of 10/17/3 of J Ninfo's 10/16 order denying Dr. Cordero's recusal mtg A:753

IN RE:

PREMIER VAN LINES, INC.,

Debtor.

CASE NO. 01-20692

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JAMES PFUNTNER,

Plaintiff,

vs.

A.P. NO. 02-2230

KENNETH W. GORDON, as Trustee,  
RICHARD CORDERO, ROCHESTER  
AMERICANS HOCKEY CLUB, INC.  
and M&T BANK,

Defendants.

---

RICHARD CORDERO,

Third-Party Plaintiff,

vs.

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

Third-party Defendants.

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**ORDER DISPOSING OF CAUSES OF  
ACTION**

WHEREAS, on September 27, 2002, James Pfuntner ("Pfuntner"), as plaintiff, filed an Interpleader Complaint to determine certain rights in property and for other relief, a copy of which is attached, (the "Complaint"); and

Order Disposing of Causes of Action (con't)

**WHEREAS**, on October 16, 2003, after the Court overruled the objection of Richard Cordero ("Cordero"), a defendant and third-party plaintiff, to the holding of any hearings on the claims set forth in the Complaint; and

**WHEREAS**, after having heard Cordero, David D. MacKnight, Esq., on behalf of James Pfuntner, Karl S. Essler, Esq., on behalf of David Dworkin and Jefferson Henrietta Associates, and Michael J. Beyma, Esq., on behalf of M&T Bank and David Delano, and after due deliberation, it is hereby

**ORDERED**, that:

1. In connection with the claims set forth in Paragraph 31 of the Complaint, the Court determines that the property set forth at Paragraph 8 (the "Property") of the Complaint, which is or has been stored by Premier Van Lines, Inc. (the "Debtor") at 2140 Sacket Road, Avon, New York ("Sacket Road"), is owned by the Debtor, except for the contents of any property stored for customers in the storage boxes or containers, including two (2) containers which are identified with Cordero's name, because:

A. the Chapter 7 Trustee, Kenneth W. Gordon (the "Trustee"), pursuant to a September 26, 2002 Notice, abandoned any interest in the Property, as confirmed by his October 9, 2002 Answer to the Complaint; and

B. M&T Bank ("M&T"), which had a perfected security interest in the Property, in its Answer to the Adversary Proceeding filed on November 6, 2002, released and abandoned any security

Order Disposing of Causes of Action (con't)

interest it had in the Property and indicated that it claimed no interest in the Property;

2. The Court determined that any property contained within the two storage containers marked with the name of the defendant and third-party plaintiff, Cordero, is owned by Cordero;

3. In connection with the fair use and occupancy claims set forth in Paragraphs 32 and 35 of the Complaint, Pfuntner has waived any right to fair use and occupancy charges from the Debtor, Cordero or any other defendant in connection with the Property;

4. In connection with the claims set forth in Paragraphs 33 and 34 of the Complaint, Pfuntner has waived any right to an allowance of an administrative claim for unpaid storage charges due from the Debtor, either in the Chapter 11 or Chapter 7 case;

5. In connection with the remaining claim set forth in Paragraph 35 of the Complaint, the Court finds that there is no stay under Section 362, or any stay is hereby terminated with regard to eviction actions against:

A. the Debtor, because the Trustee abandoned the estate's interest in all of the Property and Pfuntner has otherwise met his burden under Section 362(d) to show that there is cause for any stay under Section 362 to be terminated, however, the Court finds that there is no stay; and

B. Cordero, since there is no stay under Section 362 or otherwise in the bankruptcy case which would prevent the eviction of Cordero and/or his stored property located at Sacket Road in a proper State Court proceeding;

6. In connection with the claim set forth in Paragraph 36 of the Complaint, Pfuntner has confirmed that the Trustee has abandoned the estate's interest in any of the Property;

7. In connection with the claim set forth at Paragraph 37 of the Complaint, Pfuntner has confirmed that in his opinion the

Order Disposing of Causes of Action (con't)

Trustee has made every reasonable effort to identify the owners of any property stored by the Debtor at Sacket Road;

8. In connection with the claim set forth at Paragraph 38 of the Complaint, with respect to whether Pfuntner has any lien on any of the Property or its contents stored by customers, including Cordero, Pfuntner has withdrawn that claim;

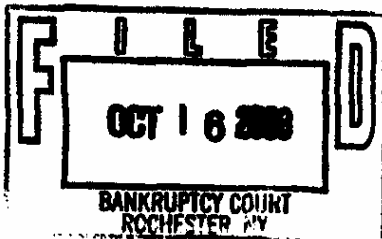
9. In connection with the claim set forth at Paragraph 39 of the Complaint, Pfuntner has withdrawn any claim with respect to the stored vehicle;

10. In connection with the claim set forth at Paragraph 32 of the Complaint, that the Court determine and decree that Pfuntner is discharged from any and all liability to Cordero, that claim shall be tried in connection with the trial of Cordero's counterclaims, cross-claims, third-party claims and related motions and proceedings in this Adversary Proceeding, however, in the interest of judicial economy, nothing in this Order shall prevent the State Court from hearing this claim and, if appropriate, granting this requested relief to Pfuntner in connection with the aforesaid eviction proceedings;

11. In connection with the claim set forth at Paragraph 32 of the Complaint for Pfuntner to recover reasonable attorney's fees and other expenses, that claim shall be tried in connection with the trial of Cordero's counterclaims, cross-claims, third-party claims and related motions and proceedings in this Adversary Proceeding.

SO ORDERED.

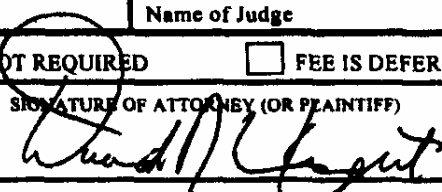
DATED: October 16, 2003



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

Page -4-



<b>B 104 ADVERSARY PROCEEDING COVER SHEET</b> (Rev. 2/92) (Instruction on Reverse)		<b>ADVERSARY PROCEEDING NUMBER</b> (Court Use Only) 02-2230	
<b>PLAINTIFFS</b> JAMES PFUNTER		<b>DEFENDANT</b> Kenneth Gordon, as Trustee in Bankruptcy of Premier Van Lines, Inc., Richard Cordero, Rochester Americans Hockey Club, Inc. and M&T Bank	
<b>ATTORNEYS (Firm Name, Address, and Telephone No.)</b> Lacy, Katzen, Ryan & Mittleman, LLP 130 East Main Street, Rochester, New York David D. MacKnight, Esq. Tele.: 585-454-5650		<b>ATTORNEYS (If Known)</b> Kenneth W. Gordon, Esq., 100 Meridian Center, Rochester, New York 14618 Michael Beyma, Esq.,	
<b>PARTY</b> (Check one box only) <input checked="" type="checkbox"/> 1. U.S. PLAINTIFF <input type="checkbox"/> 2. U.S. DEFENDANT <input type="checkbox"/> 3. U.S. NOT A PARTY			
<b>CAUSE OF ACTION</b> (Write a Brief Statement of Cause of Action, Including All U.S. Statutes Involved) Action to determine adverse claims to property in Plaintiff's warehouse and to determine responsibility for administrative and storage expense 11U.S.C. 503(b).			
<b>NATURE OF SUIT</b> (Check the most appropriate box only)			
<input type="checkbox"/> 454 To Recover Money or Property  <input type="checkbox"/> 435 To Determine Validity, Priority, or Extent of a Lien or Other Interest in Property  <input type="checkbox"/> 458 To obtain approval for the sale of both the interest of the estate and of a co-owner in property  <input type="checkbox"/> 424 To object or to revoke a discharge 11 U.S.C. §727		<input type="checkbox"/> 455 To revoke an order of confirmation of a Chap. 11, Chap. 12, or Chap. 13 Plan  <input type="checkbox"/> 426 To Determine the dischargeability of a debt 11 U.S.C. §523  <input type="checkbox"/> 434 To obtain an injunction or other equitable relief  <input type="checkbox"/> 457 To subordinate any allowed claim or interest except where such subordination is provided in a plan	
		<input checked="" type="checkbox"/> 456 To obtain a declaratory judgment relating to any of foregoing causes of action  <input type="checkbox"/> 459 To determine a claim or cause of action removed to a Bankruptcy Court  <input type="checkbox"/> 498 Other (specify)	
<b>ORIGIN OF PROCEEDINGS (CHECK ONE BOX ONLY)</b> <input checked="" type="checkbox"/> 1. Original Proceeding <input type="checkbox"/> 2. Removed Proceeding <input type="checkbox"/> 3. Reinstated or Reopened <input type="checkbox"/> 4. Transferred from Another Bankruptcy Court			<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
<b>DEMAND</b> \$ 20,000.00	<b>NEAREST THOUSAND</b> \$ 20,000.00	<b>OTHER RELIEF SOUGHT</b> Interleader	<input type="checkbox"/> JURY DEMAND
<b>BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES</b>			
<b>NAME OF DEBTOR</b> PREMIER VAN LINES, Inc.		<b>BANKRUPTCY CASE NO.</b> 01-20692	
<b>District in Which Case is Pending</b> Western District of New York	<b>Divisional Office</b> Rochester, New York	<b>Name of Judge</b> Hon. John C. Ninfo	
<b>RELATED ADVERSARY PROCEEDING (IF ANY)</b>			
<b>PLAINTIFF</b> N/A	<b>DEFENDANT</b>	<b>ADVERSARY PROCEEDING NO.</b>	
<b>District</b>	<b>Divisional Office</b>	<b>Name of Judge</b>	
<b>FILING FEE</b> (Check one box only) <input checked="" type="checkbox"/> FEE ATTACHED <input type="checkbox"/> FEE NOT REQUIRED <input type="checkbox"/> FEE IS DEFERRED			
<b>DATE</b> 9/26/02	<b>PRINT NAME</b> DAVID D. MACKNIGHT	<b>SIGNATURE OF ATTORNEY (OR PLAINTIFF)</b> 	

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK**

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In Re:

B01-20692

**PREMIER VAN LINES, INC.,**

**Debtor.**

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**JAMES PFUNTNER,**

**Plaintiff,**

**Adversary Proceeding  
Case No.: 02-2730**

**-vs-**

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

**Defendants.**

---

**INTERPLEADER COMPLAINT TO DETERMINE RIGHTS IN  
PROPERTY OF THE DEBTOR AND IN PROPERTY IN THE  
DEBTOR'S POSSESSION, TO GRANT PLAINTIFF AND  
COMPEL THE TRUSTEE TO PAY ADMINISTRATIVE  
EXPENSES OR OTHERWISE DETERMINE THE LIABILITY  
OF THOSE FOUND TO HOLD AN INTEREST IN THE  
DEBTOR'S PROPERTY OR PROPERTY IN POSSESSION OF  
THE DEBTOR FOR THE USE AND OCCUPANCY OF THE  
PLAINTIFF'S REAL PROPERTY, AND TO VACATE THE  
AUTOMATIC STAY OF ACTIONS**

**TO: HON. JOHN C. NINFO, II, Chief United States Bankruptcy Judge:**

1. The filing of this Complaint commences an Adversary Proceeding pursuant to  
**Federal Rules of Bankruptcy Procedure 7001.**

**Pfuntner/1772-B.DDM**

2. Heretofore the above-named Debtor filed a Petition for relief pursuant to the provisions of Chapter 11 of the Bankruptcy Code. An Order for relief was entered.

3. Thereafter, the case was converted to a case under the provisions of Chapter 7 of the Bankruptcy Code. Plaintiff is a creditor of the above-named Debtor and the estate. Plaintiff's the holder of both Chapter 11 and Chapter 7 administrative expense claims arising out of a lease between Plaintiff and Debtor in respect to 2140 Sackett Road, Avon, New York (the "Property").

4. Kenneth Gordon is made a party hereto in his capacity as the duly appointed Trustee in bankruptcy in the above-captioned case.

5. M&T Bank is a national banking association with its principal place of business in the Western District of New York.

6. Richard Cordero, upon information and belief, resides in the Borough of Brooklyn located in the Eastern District of New York.

7. Rochester Americans Hockey Club, Inc. is a New York corporation with a principal place of business at 100 Exchange Boulevard, Rochester, New York in the Western District of New York.

8. Upon information and belief, the Trustee through the bankruptcy estate, M&T Bank, Richard Cordero, Rochester Americans Hockey Club, Inc. and possibly others have, or claim to have, interests in or own property of the estate or in the possession of the estate consisting of three over-the-road trailers, two over-the-road tractors, a straight truck, shipping containers and storage boxes, the contents, if any, of the shipping containers, and miscellaneous scrap, all located in or on the Property.

Pfuntner/1772-B.DDM

9. This Court has jurisdiction of this Adversary Proceeding pursuant to 28 U.S.C. 1334 and 28 U.S.C. 157(b)(2).

10. Venue is properly place in this Court in which the above-captioned case is pending pursuant to 28 U.S.C. 1409.

#### **STATEMENT OF RELEVANT FACTS**

11. Plaintiff repeats paragraphs 1 through 9, inclusive, as if set forth at length.

12. Before the filing of the Debtor's Petition in reorganization, Plaintiff and Debtor entered into a lease providing for monthly rent of \$2,170 in respect to the Property.

13. The Debtor occupied the Property and stored shipping containers and storage boxes inside the warehouse. The Debtor parked or stored numerous trucks and trailers, as well as items that the Plaintiff now considers to be junk on the Property outside the warehouse.

14. Debtor defaulted in making monthly payments before the filing of its Petition.

15. After the filing of the Petition, Debtor made one payment of \$2,170 to Plaintiff and then defaulted in further payments.

16. From the time of the filing of the Debtor's Petition through August 2002, the Debtor had shipping containers and storage boxes stored inside the Plaintiff's warehouse and five trailers, two tractors, a straight truck, and miscellaneous items parked outside of the warehouse on the Property.

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.

Pfuntner/1772-B.DDM

18. Upon information and belief, the Trustee's Notice of Sale disclosed that certain of the other trailers would also be sold at the Trustee's scheduled auction.

19. In August 2002, M&T Bank, which claimed it held a security interest in Debtor's storage equipment, upon information and belief, sold certain of the shipping containers stored in Plaintiff's warehouse to a Rochester moving company, which moving company removed the shipping containers, leaving four open-sided storage boxes and four sealed shipping containers.

20. Except for the property specified above as having been removed, the balance of the Debtor's property remains on and in the Property.

21. Upon information and belief, at various times during the summer of 2002, Cordero made numerous demands upon M&T Bank for access to what he claims to be property in which he has an ownership interest and which is stored in the warehouse. Plaintiff notes that the name "Cordero" appears on the outside of one of the shipping containers.

22. Rochester Americans Hockey Club, Inc. claims that it owns certain personal property which the Debtor stored for it in Plaintiff's warehouse.

23. Plaintiff has been advised by Rochester American Hockey Club, Inc. that it has paid rent to the Debtor by checks, which checks were cashed by the Debtor. Plaintiff notes that a shipping container has the hockey club's name on the outside.

24. Plaintiff does not know and has never had access to the contents of any of the shipping containers and has no knowledge of who has a claim in or may claim the contents of any of the shipping containers.

25. M&T Bank continues to assert a security interest in the shipping containers and storage boxes. The Plaintiff does not know whether Defendant Cordero has paid any storage

Pfuntner/1772-B.DDM

charge to anyone since the beginning of the Debtor's case or the amount that is due to the Debtor.

26. Upon information and belief, Rochester Americans Hockey Club, Inc. has neglected to pay all of the sums due to the Debtor and Trustee, the amount of which Plaintiff has no knowledge.

27. Heretofore Plaintiff, by his attorneys, requested M&T Bank and the Trustee to agree upon and arrange for the payment of the fair use and value of the Property until the Debtor's property had been removed. The Trustee and M&T Bank have neglected, or have declined, to pay for the fair use and occupancy of the premises in any measure.

28. Plaintiff has no means to determine the ownership, or interests in the property left in or on the Property.

29. Plaintiff has demanded \$2,170 per month as compensation for the use and occupancy of the premises in that the fair and reasonable storage charge for motor vehicles of the nature and description of those owned by the Debtor runs between \$20 and \$50 per vehicle per day depending upon the length of the vehicle. Thus, \$2,170, the stipulated rent, is smaller than the storage charge for each lot or parcel of the Debtor's property and third-party property stored by the Debtor, if charged by the item.

30. Plaintiff believes that he cannot protect himself from possible conflicting and, multiple claims in the Debtor's property in the contents of the shipping containers because he has no means of determining the ownership of the contents of the shipping containers.

## STATEMENT OF CLAIMS

31. The Court should determine the ownership and interests in the Debtor's property located on the Property or stored by the Debtor on the Property.

32. The Court should determine and decree that Plaintiff shall be discharged from any and all liability and be indemnified for defending against adverse claims to the property in issue or any portion thereof together with the reason attorneys fees and other expense for bringing this proceeding. 28 U.S.C. 1335. That the Court determine the fair use and occupancy of the leased premises, determine which of the Defendants are liable for the fair use and occupancy and determine the amount for which each Defendant is liable.

33. To the extent that Plaintiff is entitled to a Chapter 11 administrative expense, that the Trustee be directed to pay such Chapter 11 administrative expense, along with all other Chapter 11 administrative expenses pursuant to Bankruptcy Code §503.

34. To the extent that the Trustee is liable for storage charges after the conversion of the case to Chapter 7, that the Court direct that such storage charges be allowed as an administrative expense of this superseding Chapter 7 case and paid with other Chapter 7 administrative expenses.

35. That the Court vacate the stay of actions to permit Plaintiff to evict the Debtor and those claiming under the Debtor from the premises, to remove the goods left in the Property by third parties, and to collect from those responsible for the fair use and occupancy such sums as a state court may allow therefor.

36. That this Court direct the Trustee to forthwith abandon such property as he does not intend to administer and give Plaintiff notice of the effected of such abandoned property.

Pfuntner/1772-B.DDM

37. That in respect to such property stored by the Debtor on account of its customers, that the Court direct the Trustee to make reasonable efforts to identify those who have an interest in or a claim upon property not belonging to one of the Defendants and if owners or interest holders in such property cannot be identified, that the Trustee treat the property as abandoned property under the New York Abandoned Property Law.

38. That this Court determine the extent of any lien that Plaintiff may have pursuant to the New York Lien Law §§180 through 200 and declare and fix such liens upon the property and give Plaintiff leave to enforce such liens as the Court may find.

39. In the event that the Court determines that Plaintiff had a lien upon the stored motor vehicles, that the Court direct that after a prorata share of the proceeds of sale at the Trustee's auction, that the Trustee forthwith pay the unpaid balance of such lien to Plaintiff before any other use is made of such money.

WHEREFORE, Plaintiff requests the Court grant the leave set forth above, the costs and disbursements of this action, reasonable attorneys' fees for Plaintiff bringing this action, money judgments or administrative expense claims against the estate and each of the other Defendants for such portion of the fair use and occupancy of the leased premises as to the Court seems just and proper, together with interest, and for such other and further relief as to the Court seems just and proper.

DATED: Rochester, New York  
September 20, 2002

  
LACY, KATZEN, RYEN & MITTLEMAN, LLP  
David D. MacKnight, Esq., of Counsel  
Attorneys for Plaintiff  
Office and Post Office Address  
The Granite Building  
130 East Main Street  
Rochester, New York 14604-1686  
Telephone: (585) 454-5650

Pfuntner/1772-B.DDM



UNITED STATES BANKRUPTCY COURT  
Western District of New York  
100 State Street  
Rochester, NY 14614  
[www.nywb.uscourts.gov](http://www.nywb.uscourts.gov)

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In Re:

Premier Van Lines, Inc., a Corporation  
dba North American Van Lines

SSN/Tax ID: 16-1542181

Debtor(s)

Case No.: 2-01-20692-JCN  
Chapter: 7

---

James Pfuntner

Plaintiff(s)

v.

Kenneth W. Gordon

Defendant(s)

A.P. No.: 2-02-02230-JCN

---

**NOTICE OF ENTRY**

**PLEASE TAKE NOTICE** of the entry of an Order, duly entered in the within action in the Clerk's Office of the United States Bankruptcy Court, Western District of New York on October 17, 2003 . The undersigned deputy clerk of the United States Bankruptcy Court, Western District of New York, hereby certifies that a copy of the subject Order was sent to all parties in interest herein as required by the Bankruptcy Code, The Federal Rules of Bankruptcy Procedure.

Dated: October 17, 2003

Paul R. Warren  
Clerk, U.S. Bankruptcy Court

By: P. Finucane  
Deputy Clerk

Form noticeofentry  
Doc 129

001123 39103-1123-24933

Clerk Warren's notice of entry of 10/17/3 of J Ninfo's order disposing of causes/actn at 10/16 *Pfuntner* hearing A:767

IN RE:

PREMIER VAN LINES, INC.,

CASE NO. 01-20692

Debtor.

---

JAMES PFUNTNER,

Plaintiff,

vs.

A.P. NO. 02-2230

KENNETH W. GORDON, as Trustee,  
RICHARD CORDERO, ROCHESTER  
AMERICANS HOCKEY CLUB, INC.  
and M&T BANK,

Defendants.

---

RICHARD CORDERO,

Third-party Plaintiff,

vs.

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

Third-party Defendants.

---

**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**

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

**WHEREAS**, at the October 16 Hearings the Court signed an Order Denying the Recusal and Removal Motions filed by Richard Cordero ("Cordero") and Overruling his Objections to proceeding with a trial and any hearings, a copy of which is attached; and

**WHEREAS**, on October 16, 2003 the Court also signed an Order Disposing of Causes of Action (the "Pfundner Order"), a copy of which is attached, which resolved all of the claims of James Pfuntner ("Pfundner") with the exception of his claims as set forth in Paragraph 32 of his Complaint that: (1) the Court determine and decree that he was discharged from any and all liability to Cordero; and (2) he recover reasonable attorney's fees and expenses in connection with his interpleader action (collectively, the "Remaining Pfuntner Claims"); and

**WHEREAS**, as a result, the only claims to be determined in this Adversary Proceeding are the non-core: (1) Remaining Pfuntner Claims; (2) counterclaims, cross-claims and third-party claims of Cordero (collectively, the "Cordero Claims"); and (3) any related motions and proceedings in connection with the Remaining Pfuntner Claims and Cordero Claims; and

**WHEREAS**, at the October 16 Hearing Cordero asserted that he had a right to a trial by jury of the Remaining Pfuntner Claims and the Cordero Claims, and the Court heard oral argument regarding Cordero's request for a trial by jury; and

**WHEREAS**, pursuant to the attached October 23, 2003 Decision & Order, this Court has determined that Cordero waived any right to a trial by jury and otherwise has refused to exercise its discretion to order such a trial by jury; and

**WHEREAS**, at the October 16 Hearing, the Court received the input of the parties in connection with a scheduling order to be entered to govern the prosecution of the remaining matters in this Adversary Proceeding, all of which are non-core matters, and all of which will result in this Court making recommendations to the United States District Court for the Western District of New York after conducting the necessary trial and related hearings;

**WHEREAS**, on December 23, 2002, this Court entered an Order granting the motion by Kenneth W. Gordon ("Gordon") to dismiss Cordero's cross-claims and other claims against him, and on February 18, 2003, the Court entered an Order denying Cordero's motion to extend the time to file a notice of appeal in connection with the dismissal of his claims against Gordon, which was appealed by Cordero; and

**WHEREAS**, the Orders dismissing Cordero's claims against Gordon and denying his motion to extend his time to appeal that Order, were ruled upon by the United States District Court for the Western District of New York (the "District Court"), and are now on appeal to the United States Court of Appeals for the Second Circuit (the "Second Circuit"); and

**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").

**NOW, THEREFORE**, it is **ORDERED** that:

1. Within ninety-five (95) days after any and all appeals of the Gordon Orders to the Second Circuit or the United States Supreme Court have been decided, and no orders have been issued within that time by those courts or the District Court that would result in this Court not having jurisdiction over the remaining claims and matters in this Adversary Proceeding, Cordero shall take the necessary steps to initiate the conference contemplated by Rule 26(f), which may be conducted telephonically, and he shall be charged with preparing and submitting to the Court, as required by Rule 26(f), the report of the conference, along with a proposed scheduling order.

2. If the proposed scheduling order has been consented to by all of the parties, the Court will enter the same.

3. In the event that the proposed scheduling order has not been consented to by all of the parties, Cordero shall file it with the Court, as set forth above, and afford any objecting parties ten (10) business days written notice within which they may file written objections to the proposed scheduling order and/or an alternative proposed scheduling order, and thereafter the Court will set a conference to finalize a scheduling order.

4. Nothing in this Order shall prevent any party from conducting voluntary discovery, by interrogatory or deposition.

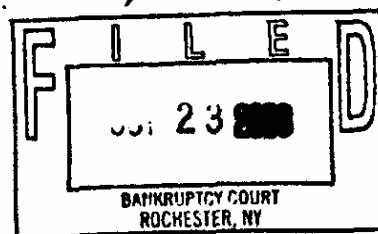
5. Nothing in this Order shall prevent any party from making a motion for summary judgment on any or all of the remaining claims, matters or issues in this Adversary Proceeding.

SO ORDERED.

DATED: October 23, 2003



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



UNITED STATES BANKRUPTCY COURT  
Western District of New York  
100 State Street  
Rochester, NY 14614  
[www.nywb.uscourts.gov](http://www.nywb.uscourts.gov)

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In Re:

Premier Van Lines, Inc., a Corporation  
dba North American Van Lines

SSN/Tax ID: 16-1542181

Debtor(s)

Case No.: 2-01-20692-JCN  
Chapter: 7

---

James Pfuntner

Plaintiff(s)

A.P. No.: 2-02-02230-JCN

v.

Kenneth W. Gordon

Defendant(s)

---

**NOTICE OF ENTRY**

**PLEASE TAKE NOTICE** of the entry of an Order, duly entered in the within action in the Clerk's Office of the United States Bankruptcy Court, Western District of New York on October 23, 2003 . The undersigned deputy clerk of the United States Bankruptcy Court, Western District of New York, hereby certifies that a copy of the subject Order was sent to all parties in interest herein as required by the Bankruptcy Code, The Federal Rules of Bankruptcy Procedure.

Dated: October 23, 2003

Paul R. Warren  
Clerk, U.S. Bankruptcy Court

By: K. Tacy  
Deputy Clerk

**Form noticeofentry**  
Doc 138

SAT-39710 0209-2 ntcenry 02-02230  
Western District of New York  
U.S. Bankruptcy Court  
100 State Street  
Rochester, NY 14614

000477 477 2 MB 0.534 11208 2 2 4261-2-486



Richard Cordero  
59 Crescent Street  
Brooklyn, NY 11208

000477

**39710000478083**



UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

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IN RE:

PREMIER VAN LINES, INC.,

Debtor.

CASE NO. 01-20692

---

JAMES PFUNTNER,

Plaintiff,

vs.

A.P. NO. 02-2230

KENNETH W. GORDON, as Trustee,  
RICHARD CORDERO, ROCHESTER  
AMERICANS HOCKEY CLUB, INC.  
and M&T BANK,

Defendants.

DECISION & ORDER  
FINDING A WAIVER  
OF A TRIAL BY JURY

---

RICHARD CORDERO,

Third-Party Plaintiff,

vs.

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

Third-party Defendants.

---

**BACKGROUND**

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

Page 1

At the October 16 Hearings, Richard Cordero ("Cordero") asserted that he had a right to a trial by jury of the non-core claims: (1) of the Plaintiff, James Pfuntner ("Pfuntner"), against him; and (2) he had set forth in his cross-claims, counterclaims and third-party claims against Pfuntner, David Palmer ("Palmer"), David Dworkin ("Dworkin"), David Delano ("Delano") and Jefferson Henrietta Associates ("Associates") (collectively, the "Cordero Claims").

During the October 16 Hearing, I advised the parties, including Cordero, that I believed that Cordero may have waived any such right to a trial by jury, because he had failed to comply with the provisions of Rule 38(b) of the Federal Rules of Civil Procedure ("Rule 38"), as made applicable by Rule 9015 of the Rules of Bankruptcy Procedure. I further advised the parties that they should be prepared to argue Cordero's right to a trial by jury and possible waiver after a lunch recess.

At oral argument, Cordero: (1) acknowledged that he had not included a demand for a trial by jury in his November 6, 2002 Answer to Pfuntner's Complaint; (2) acknowledged that he had not included a demand for a trial by jury in his November 18, 2002 third-party complaint and cross-claim or in his November 25, 2002 Amended Answer with Cross-Claim; (3) acknowledged that no other party to the Adversary Proceeding had filed or served a written demand for or consented to a trial by jury of any issue in the Adversary Proceeding; (4) acknowledged that his first written request for a trial by jury was contained in his September 12, 2003 Mandamus Petition to the United States Court of Appeals for the Second Circuit (the "Second Circuit"), which he had renewed in an October 15, 2003 Addendum to his Motion for a Default Judgment

**Page 2**

against Palmer filed with this Court; (5) acknowledged that the last responsive pleading filed in connection with the Cordero Claims was the answer of Dworkin filed with the Court on December 30, 2002, but then asserted that, within the meaning and intent of Rule 38(b)(1), since Palmer had defaulted and not answered, and even though Cordero had filed two separate motions for the entry of a default judgment against Palmer, Palmer might at sometime in the future serve an answer, so that the time-frame set forth in Rule 38(b), ten (10) days after the service of the last pleading directed to such issue, had not yet run; (6) asserted that the same ten (10) day time-frame had not yet run because the Bankruptcy Court might require the filing of further pleadings in connection with the Cordero Claims or Pfuntner's remaining claims against him; (7) asserted that, as set forth in Rule 38(a), his right to a trial by jury was inviolate, and, notwithstanding the specific provisions of Rule 38(b) and Rule 38(d), it could not be deemed to be waived; (8) asserted that he had not demanded a trial by jury of any relevant issues prior to September 2003 because it wasn't until that time that he was certain that U.S. Bankruptcy Judge John C. Ninfo, II was biased against him, prejudiced toward him, and unable to be impartial in deciding or making recommendations to the District Court in connection with the issues involving Cordero in the Adversary Proceeding, so he then realized that he needed a trial by jury to insure an impartial result; (9) asserted that the Court should find that his failure to comply with the provisions of Rule 38(b) was harmless error, within the meaning and intent of Rule 9005 of the Rules of Bankruptcy Procedure; and (10) asserted that because his failure to comply with the provisions of Rule 38(b) was the result of excusable neglect, in accordance with Rule

9006 of the Rules of Bankruptcy Procedure, the Court should enlarge the ten (10) day period provided for by Rule 38(b) and allow his demand for a trial by jury to be effective.

At oral argument: (1) the attorney for Delano asserted that there was no excusable neglect that would warrant the Court exercising its discretion to extend the time for Cordero to make a written demand for a trial by jury, and that because Cordero had not removed his stored property from Pfuntner's Avon warehouse in fourteen months, he was not acting in good faith in connection with the Adversary Proceeding; and (2) the attorney for Dworkin and Associates asserted that: (a) Dworkin's December 30, 2002 Answer was the pleading from which the ten (10) day period provided for in Rule 38(b) must be measured, especially in view of the fact that Cordero had consistently asserted that Palmer was in default and could not timely interpose an Answer; and (b) the excusable neglect standard under Rule 9006 was never intended to be applicable to a failure to make a timely demand for a trial by jury, and, in fact, there had been no excusable neglect because Cordero, by his own admission, never intended to demand a trial by jury before the expiration of the time-frame provided for by Rule 38(b).

#### DISCUSSION

I find that Cordero has waived his right to a trial by jury of any issue in connection with the Cordero Claims and in connection with any remaining claims that Pfuntner may have against Cordero, and, further, I otherwise decline to exercise my discretion under Rule 39(b) of the Federal Rules of Civil Procedure ("Rule 39") to

order a trial by jury of any such issues, for the following reasons:

1. as set forth in an Order Disposing of Causes of Action, dated October 16, 2003 and entered on October 17, 2003, a copy of which is attached, the only remaining claims of Pfuntner in the Adversary Proceeding (the "Remaining Pfuntner Claims") are the non-core claims set forth in Paragraph 32 of his Complaint, that:

A. the Court determine and decree that Pfuntner is discharged from any and all liability to Cordero; and

B. Pfuntner, in his Interpleader action, recover reasonable attorney's fees and other expenses from the defendants, including Cordero;

2. in accordance with an October 16, 2003 Order Denying Recusal and Removal Motions and Objection of Cordero to proceeding with a trial and any hearings, a copy of which is attached, the Court has:

A. denied Cordero's Recusal Motion;

B. denied Cordero's Removal Motion, that requested that the Adversary Proceeding be removed to the United States District Court for the Northern District of New York; and

C. overruled his various objections to proceeding with a trial and hearings in this Court;

3. Cordero did not include a request for a trial by jury in any of the Cordero Claims when they were filed and served;

4. the Answer Dworkin filed and served on December 30, 2002 was the last pleading addressed to either Pfuntner's Complaint or the Cordero Claims, and, under Rule 38(b), January 9, 2003, ten (10) days after the service of that Answer, was the last date that Cordero could serve a written demand on the parties for a trial by

jury of any of the issues in the Adversary Proceeding, including those set forth in the Cordero Claims;

5. Cordero did not serve any of the parties or the Court with a written demand for a trial by jury on or before January 9, 2003, so that pursuant to Rule 38(d), he has waived a trial by jury of all issues in the Adversary Proceeding, including those set forth in the Cordero Claims;

6. The right to a trial by jury in civil cases is limited by the requirements and provisions of Rules 38(b) and 38(d);

7. Cordero's failure to comply with the requirements of Rule 38(b) is not a harmless error as contemplated under Rule 9005, and that failure, whether he terms it as an omission or otherwise, does affect the substantial rights of the parties;

8. Cordero's failure to comply with the requirements of Rule 38(b) was not the result of excusable neglect, within the meaning and intent of Rule 9006(b)(2), or any cases that have decided issues of excusable neglect, including *Pioneer Investment Services Company v. Brunswick Associates Limited Partnership, et al.*, 507 U.S. 380 (1993) ("Pioneer"), because:

A. by his own admission, Cordero never intended to demand a trial by jury within the time-frame established by Rule 38(b), he simply changed his mind at a later date when he decided that he then wanted a trial by jury;

B. Because Cordero never intended to request a trial by jury within the time-frame established by Rule 38(b), there was no neglect, since there was no failure through carelessness or because of inadvertence, mistake or miscalculation as required by Rule 9006(b) and *Pioneer*; and

C. there is otherwise no basis for me to exercise my discretion in connection with Rule 9006(b) where:

i. the other parties do not wish a trial by jury;  
ii. Cordero has already caused: (a) the other parties to this Adversary Proceeding to expend an inordinate amount of time and expense 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 no attempt to negotiate a settlement of these issues; and

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 and involve property stored ten years ago with an approximate value then of \$14,000.00, and possibly some minor associated costs and expenses; (b) there is no evidence to date that such property has been either lost or substantially damaged; and (c) there is no evidence to date that any of the Cordero Claims defendants are individually responsible or liable for any possible loss or damage if proved;

9. for the reasons set forth in the preceding subparagraph, I also decline to exercise any discretion under Rule 39(b) to order any of the Remaining Pfuntner Claims or the Cordero Claims to be tried by a jury.

#### CONCLUSION

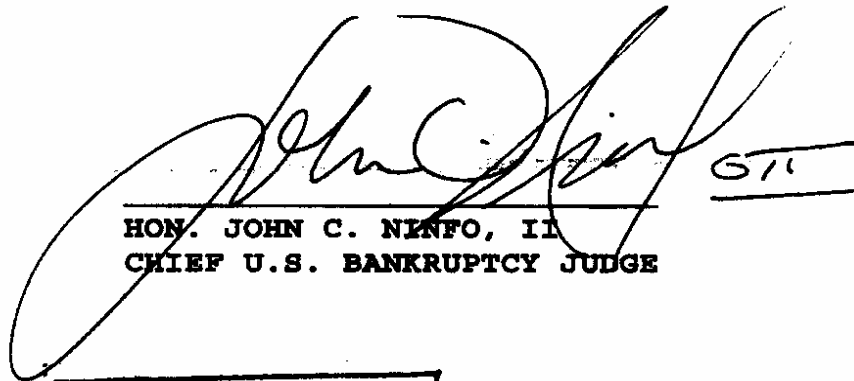
Cordero has waived a trial by jury of any of the issues remaining in this Adversary Proceeding, including issues set forth in the Cordero Claims. Cordero's requests that the Court extend

his time to serve a demand for a trial by jury pursuant to Rule 9006, and to find his failure to be harmless error under Rule 9005, are denied. This Court declines to exercise any discretion under Rule 39 to otherwise order a trial by jury of the remaining issues in this Adversary Proceeding.

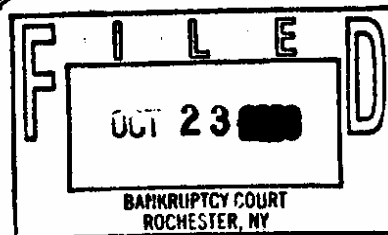
By separate Order, being simultaneously signed with this Decision & Order, a copy of which is attached, the Court has provided for the future prosecution of the remaining issues in this Adversary Proceeding.

SO ORDERED.

DATED: October 23, 2003

 511

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





UNITED STATES BANKRUPTCY COURT  
Western District of New York  
100 State Street  
Rochester, NY 14614  
[www.nywb.uscourts.gov](http://www.nywb.uscourts.gov)

---

In Re:

Premier Van Lines, Inc., a Corporation  
dba North American Van Lines

SSN/Tax ID: 16-1542181

Debtor(s)

Case No.: 2-01-20692-JCN  
Chapter: 7

---

James Pfuntner

Plaintiff(s)

v.

Kenneth W. Gordon

Defendant(s)

A.P. No.: 2-02-02230-JCN

---

**NOTICE OF ENTRY**

**PLEASE TAKE NOTICE** of the entry of an Order, duly entered in the within action in the Clerk's Office of the United States Bankruptcy Court, Western District of New York on October 23, 2003 . The undersigned deputy clerk of the United States Bankruptcy Court, Western District of New York, hereby certifies that a copy of the subject Order was sent to all parties in interest herein as required by the Bankruptcy Code, The Federal Rules of Bankruptcy Procedure.

Dated: October 23, 2003

Paul R. Warren  
Clerk, U.S. Bankruptcy Court

By: K. Tacy  
Deputy Clerk

Form noticeofentry  
Doc 138

000477

**39710000478010**

Clerk Warren's notice of entry of 10/23/3 of J Ninfo's 10/23 decision finding jury trial waiver by Dr. Cordero A:783

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**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK**

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In re PREMIER VAN LINES, INC.,

Chapter 7 bankruptcy  
case no. 01-20692

Debtor

---

JAMES PFUNTNER,

Plaintiff

Adversary proceeding  
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

MOTION  
FOR A MORE  
DEFINITE STATEMENT  
OF THE COURT'S  
ORDER AND DECISION

---

RICHARD CORDERO

Third party plaintiff

-v.-

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

Third party defendants

---

PLEASE TAKE NOTICE, that Dr. Richard Cordero on submission moves this Court at the United States Courthouse on 100 State Street, Rochester, New York, 14614, for an order as soon as possible or at the next motion date stating unambiguously which of the Court's "Order Denying Recusal and Removal Motions and Objection of Richard Cordero to Proceeding with any Hearings and a Trial on October 16, 2003", and accompanying Decision is the official version: the one that the Court read into the record on October 16 or the one in hardcopy that was mailed to Dr. Cordero, and presumably to the other parties, together with a notice of entry dated October 17, 2003.

The foundation for this motion lies in the ambiguity of the last paragraph of the Order, which reads thus:

ORDERED, that the Recusal and Removal Motions are both in all respects denied and the Objection is in all respects overruled for the reasons placed on the record by the Court at the October 16,

2003 hearing, which are as set forth on the attached written decision but as they may have been slightly modified when read into the record.

If the version of the Order and Decision read into the record is the official one, Dr. Cordero moves the Court to send him and the parties a copy of it.

Dated: October 23, 2003  
59 Crescent Street  
Brooklyn, NY 11208

*Dr. Richard Cordero*

Dr. Richard Cordero  
tel. (718) 827-9521

## CERTIFICATE OF SERVICE

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UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

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IN RE:

PREMIER VAN LINES, INC.,  
Debtor.

CASE NO. 01-20692

---

JAMES PFUNTNER,  
Plaintiff,

vs.

A.P. NO. 02-2230

KENNETH W. GORDON, as Trustee,  
RICHARD CORDERO, ROCHESTER  
AMERICANS HOCKEY CLUB, INC.  
and M&T BANK,  
Defendants.

---

RICHARD CORDERO,  
Third-Party Plaintiff,  
vs.

DAVID PALMER, DAVID DWORKIN,  
DAVID DELANO, and JEFFERSON  
HENRIETTA ASSOCIATES,  
Third-party Defendants.

---

**ORDER**

The Motion of Richard Cordero for a More Definite Statement of the Court's Order and Decision, a copy of which is attached, is in all respects denied for the following reasons:

As correctly analyzed by the movant, the decision that the Court orally placed on the Court's record on October 16, 2003 is its decision. A copy of the writing that the Court used to place its decision on the record was attached to the October 16, 2003

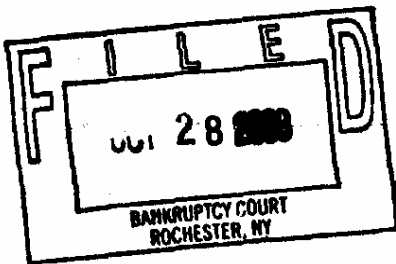
**Order Denying Motion for  
a More Definite Statement**

**Page 2**

Order as a courtesy and for the convenience of the parties. It is the Court's experience that when something written is placed on the Court's record, there are times when words are inadvertently added or deleted, tenses are changed, or other minor modifications result. It is not the Court's obligation under the Bankruptcy Code or the Rules of Bankruptcy Procedure to supply the parties with a transcript of a decision placed on the Court's record.

**SO ORDERED.**

**DATED: October 28, 2003**

A large, stylized handwritten signature in black ink, appearing to read "John C. Ninfo, II".

**HON. JOHN C. NINFO, II  
CHIEF U.S. BANKRUPTCY JUDGE**

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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 et al.

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

**OPPOSSING PARTY:** Hon. John C. Ninfo, II  
US Court House  
100 State Street  
Rochester, NY 14614  
tel. (585) 263-3148

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:**

**Has service been effected?** Yes; proof is attached

Dr. Richard Cordero

**Date:** October 31, 2003

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**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 et al.**

**case no. 03-5023**

MOTION FOR LEAVE TO FILE  
UPDATING SUPPLEMENT  
OF EVIDENCE OF BIAS

---

In re PREMIER VAN LINES, INC.,  
Debtor

Chapter 7 bankruptcy  
case no. 01-20692, Ninfo, WBNY

---

JAMES PFUNTNER,  
Plaintiff

Adversary proceeding  
no. 02-2230, Ninfo, WBNY

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  
no. 03cv6021, Larimer, WDNY

v.

KENNETH W. GORDON, Trustee,  
Cross-defendant

---

RICHARD CORDERO,  
Third party-plaintiff

Appeal  
. no. 03mbk6001, Larimer, WDNY

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.

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**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 FRCivP; 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) FRCivP –made applicable by Rule 9015(a) FRBkrP-, 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 FRBkrP and Rule 1 FRCivP 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 relationships, those developed by frequency of contact between interdependent people

with different degrees of power, whereby the person with greater power is interested 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](http://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) FRBkrP:

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 determine 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 out 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 relationship 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 5<sup>th</sup> 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 (8<sup>th</sup> 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 (5<sup>th</sup> 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 (10<sup>th</sup> 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

59 Crescent Street  
Brooklyn, NY 11208

*Dr. Richard Cordero*

---

Dr. Richard Cordero  
Petitioner Pro Se  
tel. (718) 827-9521

## 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:

---

Kenneth W. Gordon, Esq.  
Chapter 7 Trustee  
Gordon & Schaal, LLP  
100 Meridian Centre Blvd., Suite 120  
Rochester, New York 14618  
tel. (585) 244-1070  
fax (585) 244-1085

Mr. David Palmer  
1829 Middle Road  
Rush, New York 14543

David D. MacKnight, Esq.  
Lacy, Katzen, Ryen & Mittleman, LLP  
130 East Main Street  
Rochester, New York 14604-1686  
tel. (585) 454-5650  
fax (585) 454-6525

---

Michael J. Beyma, Esq.  
Underberg & Kessler, LLP  
1800 Chase Square  
Rochester, NY 14604  
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Karl S. Essler, Esq.  
Fix Spindelman Brovitz & Goldman, P.C.  
2 State Street, Suite 1400  
Rochester, NY 14614  
tel. (585) 232-1660  
fax (585) 232-4791

Kathleen Dunivin Schmitt, Esq.  
New Federal Office Building  
Assistant U.S. Trustee  
100 State Street, Room 6090  
Rochester, New York 14614  
tel. (585) 263-5812  
fax (585) 263-5862

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November 3, 2003

59 Crescent Street  
Brooklyn, NY 11208

*Dr. Richard Cordero*

---

Dr. Richard Cordero  
Petitioner Pro Se  
tel. (718) 827-9521

## 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

November 4, 2003

[fax 585-454-6525; tel. 585-454-5650]

David MacKnight, Esq.  
Lacy, Katzen, Ryen & Mittleman  
130 East Main Street  
Rochester, NY 14604-1686

Dear Mr. MacKnight,

The docket for the Pfuntner v. Gordon et al. case -02-2230- shows an entry for your Motion to Determine Matters Admitted. Its return date is stated as November 25, 2003. However, the motion that I received from you with that title has a return date of October 16; even its amended version only corrects the time from 9:00 a.m. to 9:30a.m. Thus, it appears that this date on the docket is a mistake.

Therefore, I request that you timely correct this situation by amendment or by letter confirming that the date on the docket is mistaken. Given that you have failed to reply to so many of my previous letters, if I have not received from you your amendment or letter by next November 15, I will assume that in fact the date of November 25 that appears on the docket is a mistake and that no motion will be heard on that occasion.

Please note that I already served you and the parties and filed with the Court my reply, dated October 10, 2003, to your motion.

Yours sincerely,

*Dr. Richard Cordero*



## CERTIFICATE OF SERVICE

---

Kenneth W. Gordon, Esq.  
Chapter 7 Trustee  
Gordon & Schaal, LLP  
100 Meridian Centre Blvd., Suite 120  
Rochester, New York 14618  
tel. (585) 244-1070  
fax (585) 244-1085

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Assistant U.S. Trustee  
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Rochester, New York 14614  
tel. (585) 263-5812  
fax (585) 263-5862

NOTICE OF HEARING DATE

SHORT TITLE: In Re: Premier Van v. Palmer  
DOCKET NUMBER: 03-5023  
DATE OF HEARING: Thursday, December 11, 2003  
TIME ALLOTTED FOR ORAL ARGUMENT: Cordero (5 mins) Gordon (5 mins)  
Palmer (On Submission)

The above referenced appeal is scheduled for oral argument on the day indicated in Courtroom 1705 (17th floor), Thurgood Marshall United States Courthouse, 40 Centre Street (at Foley Square), Manhattan, New York City.

Court convenes promptly at 10:00 a.m. Counsel and pro se litigants must be present for argument unless earlier excused. Motions to adjourn argument must be promptly made and will be granted for grave reason only.

Counsel and pro se litigants presenting oral argument must register with the courtroom deputy no later than 9:45 a.m., either by appearance in the courtroom or by phone from the VideoArgument Center, whichever applies.

Counsel and pro se litigants may seek the Court's permission to waive oral argument by submitting a letter request to the Office of Clerk (attention Calendar Deputy) not later than five days before the hearing week.

Counsel and pro se litigants whose panel is sitting in courtroom 1705 may elect to present oral argument from any of the Second Circuit Video-Argument Centers by notifying the Calendar Deputy in writing AS SOON AS POSSIBLE after receipt of this notice. A form is attached for your convenience. A notice regarding the Center is enclosed, and counsel are encouraged to call the Calendar Deputy for further details.

Report all settlements to the Calendar Deputy as soon as effected. Ordinarily, and subject to the ruling of the presiding judge, motions or stipulations to withdraw with prejudice will be granted without appearance by counsel, but motions or stipulations to withdraw without prejudice filed within three business days of the argument will be considered at the time of argument, with counsel present and prepared to argue the merits.

ROSEANN B. MACKECHNIE,  
Clerk

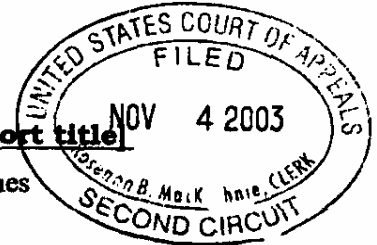
COMPLETE ITEMS BELOW AND RETURN COPY OF ENTIRE FORM TO THE CLERK'S OFFICE

~~NAME OF ATTORNEY~~/PRO SE PRESENTING ARGUMENT: Dr. Richard Cordero  
FIRM NAME (IF APPLICABLE):  
CURRENT TELEPHONE NUMBER: (718) 827-9521  
THE ABOVE NAMED ATTORNEY REPRESENTS:  APPELLANT-PETITIONER  
 APPELLEE-RESPONDENT  
 INTERVENOR  
 AMICUS CURIAE

DATE: November 6, 2002 SIGNATURE: Dr. Richard Cordero

Blank

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



Docket Number(s): 03-5023

Caption [use short title] 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  
59 Crescent Street  
Brooklyn, NY 11208-1515  
tel. (718) 827-9521; corderoric@yahoo.com

**OPPOSING PARTY:** Hon. John C. Ninfo, II  
US Court House  
100 State Street  
Rochester, NY 14614  
tel. (585) 263-3148

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:

Has service been effected? Yes; proof is attached

Dr. Richard Cordero

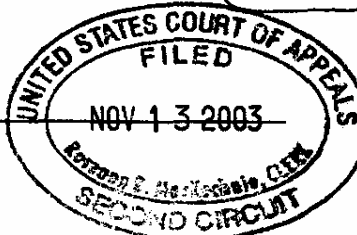
Date: October 31, 2003

**ORDER**

IT IS HEREBY ORDERED that the motion is **GRANTED** ~~denied~~.

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

Date: 11-13-03



By: Ana Vargas  
By: Ana Vargas  
Calendar Deputy Clerk



# Lacy, Katzen, Ryen & Mittleman, LLP

DAVID D. MacKNIGHT, ESQ.  
dmacknight@lacykatzen.com

November 17, 2003

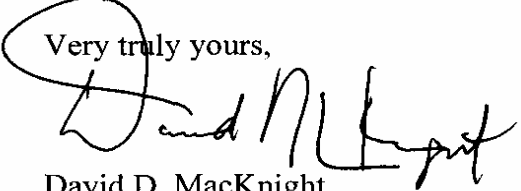
Dr. Richard Cordero  
59 Crescent Street  
Brooklyn, New York 11208-1515

**Re: Docket Entry**

Dear Dr. Cordero:

The docket entry about which you inquired apparently has been corrected. See the attached docket entry #147. I trust this satisfies the concerns stated in your recent letter.

Very truly yours,



David D. MacKnight

DDM/daf

Enclosure

The Granite Building – 130 East Main Street -- Rochester, NY 14604-1686 – Tel. 585-454-5650 – Fax 585-454-6525  
www.lacykatzen.com

Bankruptcy and Debtor Relief • Civil and Criminal Litigation • Collection & Creditor Services • Corporate Banking and Business Law  
Divorce and Family Law • Employment Law • Estates, Trusts and Elder Law Services • Municipal Law  
Personal Injury and Wrongful Death • Real Estate Services • Wills & Estate Planning

A:828 Att. MacKnight's letter of 11/17/3 to Dr. Cordero re the mistaken date on the docket for the Att.'s motion

## Production Database - Docket Report

6090  
Rochester, NY 14614  
(585) 263-5812

Filing Date	#	Docket Text
11/07/2003	<u>147</u>	Letter filed by Richard Cordero, Defendant Corrective Entry for purpose of correcting docket text as follows: the return date is to read 10/16/03, and not 11/25/03. The wrong date was inadvertently typed in. (Tacy, K.). (RE: related document(s)) <u>122</u> (Tacy, K.) (Entered: 11/07/2003)
10/30/2003	<u>146</u>	BNC Certificate of Mailing. Service Date 10/30/2003. (Related Doc # <u>145</u> ). (Admin.) (Entered: 10/31/2003)
10/28/2003	<u>145</u>	Order Signed on 10/28/2003 (RE: related document(s)) <u>144</u> The Motion of Richard Cordero for a More Definite Statement of the Court's Order and Decision, is in all respects denied. (Tacy, K.) (Entered: 10/28/2003)
10/27/2003	<u>144</u>	Motion Filed by Defendant Richard Cordero (Tacy, K.) (Entered: 10/27/2003)
10/25/2003	<u>143</u>	BNC Certificate of Mailing. Service Date 10/25/2003. (Related Doc # <u>138</u> ) (Admin.) (Entered: 10/26/2003)
10/25/2003	<u>142</u>	BNC Certificate of Mailing. Service Date 10/25/2003. (Related Doc # <u>137</u> ) (Admin.) (Entered: 10/26/2003)
10/25/2003	<u>141</u>	BNC Certificate of Mailing. Service Date 10/25/2003. (Related Doc # <u>138</u> ) (Admin.) (Entered: 10/26/2003)
10/25/2003	<u>140</u>	BNC Certificate of Mailing. Service Date 10/25/2003. (Related Doc # <u>137</u> ) (Admin.) (Entered: 10/26/2003)
10/23/2003		Clerk's Note : The Orders of 10/23/03 were paper mailed to Raymond Stilwell, Atty., on behalf of David Palmer, Defendant, with a Notice of Entry re: the 2 Orders. (RE: related document(s)) <u>137</u> Order <u>138</u> Order (Tacy, K.) (Entered: 10/24/2003)
10/23/2003	<u>138</u>	Order Re:Scheduling Order in Connection with the Remaining Claims of the Plaintiff, James Pfunter, and the Cross-Claims, Counterclaims and Third-Party Plaintiff, Richard Cordero. Signed on 10/23/2003. (Attachments: # <u>1</u> Appendix # <u>2</u> Appendix # ( <u>3</u> ) Appendix) (Tacy, K.) Modified on 10/23/2003 (Tacy, K.) (Entered: 10/23/2003)
10/23/2003	<u>137</u>	Order Re:Finding A Waiver of A Trial By Jury. Signed on 10/23/2003. (Attachments: # <u>1</u> Appendix # <u>2</u> Appendix # <u>3</u> Appendix) (Tacy, K.) (Entered: 10/23/2003)

United States Bankruptcy Court  
Western District of New York  
1400 UNITED STATES COURTHOUSE  
ROCHESTER, NEW YORK 14614

Hon. John C. Ninfo, II  
CHIEF UNITED STATES  
BANKRUPTCY JUDGE

November 19, 2003

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

**Re: In re: Premier Van Lines**  
**Docket Number: 03-5023**

Dear Ms. MacKechnie:

Today we received the attached Motion Information Statement in connection with the above matter.

Enclosed please find a copy of this Court's October 23, 2003 Scheduling Order 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, which has attached to it the following additional orders:

1. An October 16, 2003 Order Denying Recusal and Removal Motions and Objection of Richard Cordero to proceeding with any hearings and a trial on October 16, 2003;
2. An October 16, 2003 Order Disposing of Causes of Action; and
3. An October 23, 2003 Decision & Order Finding a Waiver of a Trial by Jury.

Since Dr. Cordero may refer to all or parts of these additional Orders in connection with the above matter, I thought that it would be helpful for the Circuit Court to have copies of them.

Respectfully,

  
Hon. John C. Ninfo, II  
Chief U.S. Bankruptcy Judge

JCN/ams

cc: Dr. Richard Cordero (w/ enc.)



Gordon & Schaal, LLP  
Attorneys at Law

100 Meridian Centre Blvd., Suite 120  
Rochester, New York 14618

Telephone (585) 244-1070  
Facsimile (585) 244-1085

November 5, 2003

United States Court of Appeals  
Second Circuit  
Office of the Clerk  
Attn: Calendar Deputy  
40 Foley Square  
New York, NY 10007

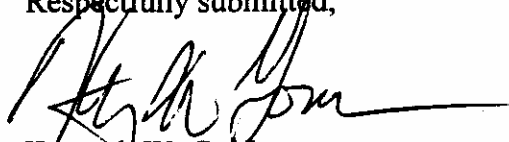
Re: In Re: Premier Van v. Palmer  
Docket Number No. 03-5023  
Date of Hearing: December 11, 2003

Dear Clerk:

I am in receipt of the notice of hearing date in the above referenced matter dated October 22, 2003 which was received in my office on November 5, 2003 enclosed in an envelope from the court of appeals postmarked November 3, 2003. I am submitting this letter to request permission from the court to waive oral argument on my behalf in this matter. The issues before the court are strictly procedural and have been well briefed by both sides. As a chapter 7 bankruptcy trustee in this no asset proceeding, I have been named as a respondent in the appellant's proceeding. It is my belief that the court will be able to resolve the issue on appeal without the need of oral argument from me. Please advise if my request is granted at your earliest convenience.

In the alternative, I am submitting along herewith a video argument request form requesting that if the court requires oral argument by me in this matter, that it allow me to do such by video argument from the Rochester, New York courthouse.

Respectfully submitted,



Kenneth W. Gordon

KWG/kkg  
Enclosure



UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT  
THURGOOD MARSHALL UNITED STATES COURT HOUSE  
40 FOLEY SQUARE  
NEW YORK 10007

JOSEANN B. MACKECHNIE  
CLERK

VIDEO ARGUMENT REQUEST

DATE: October 22, 2003

Short Title: In Re: Premier Van v. Palmer

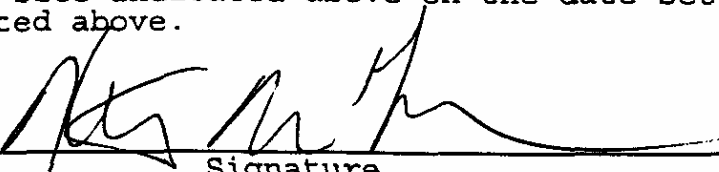
Docket Number: 03-5023

Date of Hearing: December 11, 2003

Party Represented: Kenneth W. Gordon

Remote Site: Rochester, NY

I hereby request approval to argue this appeal from the Remote Site indicated above on the date set by the Court, also indicated above.

  
\_\_\_\_\_  
Signature

KENNETH W. GORDON  
Name (typed)

RETURN NOTICE WITHIN 5 BUSINESS DAYS OF [date form is created].

This form was received in the mail on 11/5/03 enclosed in an envelope postmarked 11/3/03. Accordingly it should be considered timely.

C

**Gordon & Schaal, LLP**  
**Attorneys at Law**

100 Meridian Centre Blvd., Suite 120  
Rochester, New York 14618

Telephone (585) 244-1070  
Facsimile (585) 244-1085

November 20, 2003

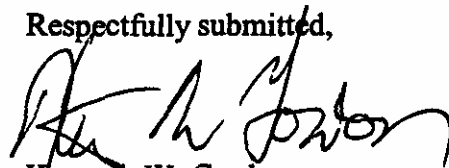
United States Court of Appeals  
Second Circuit  
Office of the Clerk  
Attn: Anna Vargas  
40 Foley Square  
New York, NY 10007

Re: In Re: Premier Van v. Palmer  
Docket Number No. 03-5023  
Date of Hearing: December 11, 2003

Dear Ms. Vargas:

This letter will serve to confirm the granting by the Court of my request to waive my oral argument in the above appeal. Accordingly, I will not be appearing on December 11, 2003.

Respectfully submitted,



Kenneth W. Gordon

KWG/kkg  
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

January 4, 2004

Mr. Todd Stickle  
Deputy Court of Clerk  
United States Bankruptcy Court  
1220 US Court House  
100 State Street  
Rochester, NY 14614

Dear Mr. Stickle,

As we discussed in our phone conversation on December 10, I would like to receive copies of certain financial and payment documents concerning the Premier Van Lines case, docket number 01-20692. I am asking for them precisely because most are not listed in the docket, which explains why it is impossible for me to give you their entry numbers. However, they must exist since they concern the accounts of the debtor and the payment of fees out of estate funds.

To avoid any room for confusion, let me clearly state that where I want a document entered with a corresponding docket number, I simply state, 'I would like a copy of document A entered as entry no. X', as in number 1 below. Where I also want a document that has been entered but whose entry bears no number, I describe the position of its entry in the docket, as in the case of documents 2 and 3. Those documents appear in list A below.

By contrast, other documents –in list B below- are only mentioned in some entries but are not entered themselves anywhere in the docket. Hence, I use entry numbers only as an aid in identifying the requested document because it is mentioned in an entered document, whose docket number appears after the cf. reference. I am interested in the former, not in the latter.

For example, I want a copy of the financial statements concerning Premier that the accounting firm Bonadio & Co. prepared after auditing it and which Bonadio submitted to the court. Such statements are not entered in the docket. However, they must exist since there is an entry for the court order authorizing the appointment of Bonadio to audit Premier and another order authorizing the payment of fees for the work that Bonadio did. I have indicated the entry numbers of those orders as well as similar documents only as an aid in identifying my request. Hence, I am not requesting Bonadio's invoice itemizing the time that it spent and the services that it performed, which invoice it submitted to the court to justify the payment to it of a fee; rather, I want the statements resulting from the audit itself, which were submitted to the court, and that shed light on Premier's financial condition at the time.

## **A. Documents entered in the docket and which I want themselves**

1. I would like a copy of the monthly reports of operation for March through June 2001, entered as **entries no. 34, 35, 36, and 47**. Where are the reports for the following months?
2. The court order closing the case, which is the last but one docket entry, but bears no number.

3. The court order authorizing the payment of a fee to Trustee Kenneth Gordon and indicating the amount thereof; which is the last docket entry, but bears no number

**B. Documents that I want that are only mentioned in other documents but not entered themselves anywhere**

4. The court **order authorizing** payment of fees to **Trustee Gordon's attorney, William Brueckner**, Esq., and stating the amount thereof; cf. docket entry no. 72.
5. The court **order authorizing** payment of fees to **Auctioneer Roy Teitsworth** and stating the amount thereof; cf. docket entry no. 97.
6. The **financial statements concerning Premier prepared by Bonadio & Co.**, for which Bonadio was paid fees; cf. docket entries no. 90, 83, 82, 79, 78, 49, 30, 29, 27, 26, 22, and 16.
7. The statement of **M&T Bank** of the proceeds of its auction of estate assets on which it held a lien as security for its loan to Premier; the application of the proceeds to set off that loan; and the proceeds' remaining balance and disposition; cf. docket entry no. 89.
8. The **information provided to comply with the order** described in entry no. 71 and with the minutes described in entry no. 70.
9. The **Final report and account** referred to in entry no. 67 and ordered to be filed in entry no. 62.

As agreed, kindly let me know in advance the cost of each document. If any of them is or can be made available electronically through Pacer, kindly let me know.

Sincerely,

*Dr. Richard Cordero*

CERTIFICATE OF SERVICE

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Rochester, New York 14614  
tel. (585) 263-5706; fax (585) 263-5862

OFFICE OF THE CLERK  
UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

1220 U.S. Courthouse, 100 State Street  
Rochester, NY 14614 (585) 613-4200  
<http://www.nywb.uscourts.gov>

Paul R. Warren  
Clerk of Court

Todd M. Stickle  
Deputy Clerk in Charge

January 28, 2004

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

RE: Search Request - Dr. Cordero Letter of January 4, 2004

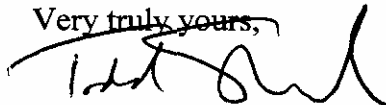
Dear Dr. Cordero:

I am writing in response to your letter of January 4, 2004 wherein you request copies of "certain financial and payment documents concerning the Premier Van Lines case, docket number 01-20692." The total cost to search and copy the items listed under Section A of your letter is \$41.00. Documents #34, #35, #36, and #47 contain 30 pages. Copy costs are \$.50 per page. The search fee to count the pages is \$26.00. Thus, the total is \$41.00.

I cannot proceed with fulfilling the second half of your request (Section B of your letter) until you tell me the exact documents you want us to copy. Please indicate the document number that you would like us to copy and we will proceed with your request, accordingly.

If you are interested in receiving copies of the items you list under Section A of your letter, please provide us with a \$41.00 check or money order payable to "Clerk of the United States Bankruptcy Court". We will copy and send the documents upon receipt of your payment.

Very truly yours,



TODD M. STICKLE  
Deputy Clerk in Charge

cc: Paul R. Warren, Clerk of Court - WDNY

# UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

**In re Premier Van et al.**

**case no. 03-5023**

OUTLINE  
of the oral argument delivered by

**Dr. Richard Cordero**

Appellant pro se

on December 11, 2003

## **I. One issue determines all the others**

1. Whether **the integrity of the judicial process** was injured when the district and bankruptcy judges and their staff of administrative officers so **repeatedly disregarded the law, rules, and facts** pertaining to this case as to reveal their participation in a **pattern of** non-coincidental, intentional, and coordinated **acts of wrongdoing**.
2. Those acts are **all to Dr. Cordero's detriment**, the only non-local and pro se party, and to the benefit of the local parties, whose attorneys and trustees are well known to the judges and their staffs.
3. Those acts of wrongdoing have **materialized in decisions on appeal** here. Because of the courts' and their staffs' **disregard of legality**, their decisions are **unlawful** as a matter of law. Because they are **tainted by bias and prejudice**, they are **contrary to due process**.
4. The decisions should be **rescinded** and the case should be **remanded** to a court unfamiliar with the case for an impartial **trial by jury**.

**II. The appealed decisions resulted from such unlawfulness and bias**

**A. Timeliness of appeal** from dismissal of cross-claims against Trs. Gordon:

- 5. his negligent and recklessness liquidation of Premier, the storage company
- 6. his defamatory and false statements about Dr. Cordero

**B. Denial** of Dr. Cordero’s application for **default judgment** against Palmer

**III. Summary statement of facts**

- 7. Dr. Cordero paid storage and insurance fees since 1993
- 8. Defendants lied to him about his property’s location and safety
- 9. Dr. Cordero applied to J. Ninfo for review of Trustee Gordon’s performance
- 10. The Trustee defamed Dr. Cordero to dissuade Judge from review
- 11. Pfuntner refused to release property, sued for administrative & storage fees

**IV. Injury to the integrity of the judicial system & this Court as its steward**

**A. Judicial officers & parties carved fiefdom out of circuit’s territory**

- 12. they apply the law of the locals, not based on cases or law, but on
  - a) personal relations and b) fear of retaliation

**B. Circumstances for close personal relations to emerge and rule**

<ul style="list-style-type: none"> <li>1. proximity &amp; frequent contacts           <ul style="list-style-type: none"> <li>a. only three judges in NYWBkr</li> <li>b. same lawyers appear frequently</li> <li>c. Pacer: Trs Gordon’s 3,000+ cases</li> <li>d. AUST’s office in court building, and Trs. Gordon has mail box there</li> <li>e. floor above J. Ninfo is J. Larimer</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>f. friendship replaces law           <ul style="list-style-type: none"> <li>1) no need for disclosure/discovery</li> <li>2) no legal basis for motions/decisions</li> <li>3) if case cited, no textual analysis</li> </ul> </li> <li>2. fear of retaliation in next case           <ul style="list-style-type: none"> <li>a. in 9 hearings other parties never raised objection</li> </ul> </li> </ul>
---	---

<p>b. take without challenge what judge assigns to preserve his goodwill</p> <p>c. interdependency breeds wrongdoing</p>	<p><b>3. fiefdom doesn't take seriously CA2:</b></p> <p>a. trump card in their pocket: they will prevail if case remains in their court with no jury</p>
--	--

**V. Indicia of wrongdoing should prompt this Court to investigate**

**A. Where are the accounts of Premier's assets and professionals?**

- 13. Trustee Gordon: in docket 01-20692 [A-565]
  - a. **listed assets** on July 23, 2002 [entry 94]
  - b. **declared Asset Case** July 24 [entry 95]
  - c. moved August 28 to appoint Roy **Teitsworth as auctioneer** [entry 96]
  - d. **notice** of September 26 [entry 98] to **abandon known and newly discovered assets...Why!?**
  
- 14. Whatever Trustee Gordon did with storage containers:
  - a. **affected their contents** belonging to Premier's clients
  - b. if **containers removed**, the contents' **whereabouts** became **indeterminate**
  - c. altered storage conditions could **void insurance contracts**
  - d. he had duty **to give notice** to clients but failed to: Why?
    - 1) was any gain to be derived & shared with others?
    - 2) does he **care only for** profitable cases in his huge pool? [A-238-9]
    - 3) was he reckless and negligent? All issues of fact preventing dismissal.
  
- 15. Storage **contracts with monthly fees** were assets of Premier estate
  - a. who valued their stream of future income and how?
  - b. what did M&T Bank do with proceeds of storage containers auction?
  
- 16. Why did J. Ninfo **refuse to default** David Palmer **but discharge** his company?

**B. CA2 needs to investigate to uncover & eliminate wrongdoing**

- 17. scope of suspect activity exceeds what litigant can investigate or discover;



18. **benefits for judicial system & public at large from investigation:**
  - a. respect for legality in court and decisions and for ethical behavior
  - b. integrity of judicial proceedings dispensing justice, not pursuing own gain
  - c. clients represented by lawyers zealously advocating their interests
  - d. just and fair trials that earn the **public's confidence** in the courts

**C. Joint investigation with FBI guided by *Follow the money!***

19. CA2 can't merely ask judges for report and expect them to send mea culpa
20. should review hearings transcripts checked against their stenographic tapes
21. conduct statistical comparison of outcome of cases in fiefdom and inter-districts
22. interrogate **judges, clerks, accountants, auctioneers & buyers, creditors, etc.**
23. **obtain accounts they were supposed to submit and do** forensic accounting
24. CA2 needs experience & resources of FBI to undertake this investigation & follow the money from estate assets to financial institutions and elsewhere

**VI. Relief**

**A. In light of the participation by officers of the court in**

25. a pattern of **non-coincidental, intentional, and coordinated acts of** disregard of laws, rules, and facts, and
26. **their bias and prejudice toward Dr. Cordero,**
  - a. it **cannot reasonably be expected** that Dr. Cordero will receive a **fair trial** at the hands of **Judges Ninfo and Larimer** with the assistance of their staffs and the support of their friendly trustees and lawyers.

**B. Therefore, Dr. Cordero respectfully requests that this Court:**

- 1) **rescind** all decisions taken by them& disqualify Judge Ninfo;

- 2) **remove** this case in the interest of justice under 28 USC §1412 to a court:
  - a) unfamiliar with the case, unrelated to the parties, and roughly equidistant from all the parties, which can be
  - b) expected to conduct a fair and impartial **jury trial**, such as
  - c) the federal court for the **Northern District** of New York in **Albany**;
- 3) that **this Court with** the assistance of the **FBI launch** a full **investigation** of the members of the **field** of Rochester to follow the money to the source of the motive that led these parties into wrongdoing and bring them **back into the fold of legality** so as to restore the integrity of the judicial system under this Court's stewardship;
- 4) that for all the painstaking work of **legal research and writing** that Dr. Cordero, a non-practicing lawyer, has done for well over a year he be **awarded attorney's fees**, for it should offend justice that those who lost his property, took him for a fool, wasted his time, effort, and money and showed so little respect in what they submitted to this Court or by submitting nothing should also take his tremendous amount of conscientious legal work for free as their ultimate mocking windfall. **The equities in this case should not allow that to happen.**

Respectfully submitted under penalty of perjury,

on December 11, 2003  
59 Crescent Street  
Brooklyn, NY 11208

*Dr. Richard Cordero*

Dr. Richard Cordero  
tel. (718) 827-9521

**Main Papers in *In re Premier Van et al.*, dkt. no. 03-5023, CA2  
with the numbers of the pages (#=A:#) where they appear in  
the Appendix to the opening brief of July 9, 2003  
by Dr. Richard Cordero**

	Dr. Cordero's <b>Cross-claims</b> against Trustee Gordon, November 20, 2002		Dr. Cordero's Motion to <b>Extend time</b> to file notice of appeal, January 27, 2003		Dr. Cordero's Application for <b>Default Judgment</b> against David Palmer, Dec. 26, 2003	
1.	Dr. Cordero	70, 83, 88	Dr. Cordero	214	Dr. Cordero	290
2.	Trustee Gordon	Motion to Dismiss 135	Trustee Gordon	Memo in opposition to extend time, 234	Dr. Cordero	Letters to J. Ninfo, 299, 302
3.	Dr. Cordero	Brief in Opposition, 143	J. Ninfo	Decision denying motion to extend, 240	Clerk of Court Warren	Entry of default, 303
4.	J. Ninfo	Dismissal Decision, 151	Dr. Cordero	Motion for relief of denial, 246	J. Ninfo	Recommendation denying default, 304
5.	Dr. Cordero	Notice of Appeal 153	Trustee Gordon	Referral to previous submission, 257	Dr. Cordero	Letter and motion to enter default, 311, 314
6.	Trustee Gordon	Motion to Dismiss appeal, 156	J. Ninfo	Decision denying motion for relief, 259	J. Larimer	Decision denying entry of default, 339
7.	Dr. Cordero	Opposition to dismissal of notice 158	Dr. Cordero	Notice of Appeal to CA2, 429	Dr. Cordero	Motion for rehearing of denial, 342
8.	Trustee Gordon	Submitting in Dis. Ct. memo opposing motion to extend in Bkr. Ct., 199			J. Larimer	Decision denying rehearing motion, 350
9.	J. Larimer	Decision dismissing appeal, 200			Dr. Cordero	Notice of Appeal to CA2, 429
10.	Dr. Cordero	Brief for rehearing 205				
11.	Trustee Gordon	Letter relying on previous submission, 210				
12.	J. Larimer	Decision denying rehearing motion, 211				
13.	Dr. Cordero	Notice of Appeal to CA2, 429				

## Proof of Service

I, Dr. Richard Cordero, hereby certify under penalty of perjury that I served by fax or United States Postal Service copies of my outline of oral argument on the following parties:

---

Kenneth W. Gordon, Esq.  
Chapter 7 Trustee  
Gordon & Schaal, LLP  
100 Meridian Centre Blvd., Suite 120  
Rochester, New York 14618  
tel. (585) 244-1070  
fax (585) 244-1085

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Rush, New York 14543

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130 East Main Street  
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New Federal Office Building  
Assistant U.S. Trustee  
100 State Street, Room 6090  
Rochester, New York 14614  
tel. (585) 263-5812  
fax (585) 263-5862

on December 11, 2003  
59 Crescent Street  
Brooklyn, NY 11208

*Dr. Richard Cordero*

---

Dr. Richard Cordero  
tel. (718) 827-9521

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

**Docket Number(s):** 03-5023 **In re:** Premier Van et al.

**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 ordersvacate 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:**

**Has service been effected?** Yes; proof is attached

Dr. Richard Cordero

**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 et al.

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

Chapter 7 bankruptcy  
case no. 01-20692, Ninfo, WBNY

---

JAMES PFUNTNER,  
Plaintiff

Adversary proceeding  
no. 02-2230, Ninfo, WBNY

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  
no. 03cv6021, Larimer, WDNY

v.

KENNETH W. GORDON, Trustee  
Cross-defendant

---

RICHARD CORDERO  
Third-party-plaintiff

Appeal  
no. 03mbk6001, Larimer, WDNY

v.

DAVID PALMER  
Third-party defendant

---

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.

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**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 Proceeding 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:

- a) 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);
- b) 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 circumstances 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, conducting 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 Octo-

ber 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:290-295), 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:306-307) 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 delimited 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 disposed 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 provide 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 (A158, 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 jurisdiction 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 participated 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

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*Dr. Richard Cordero*

Dr. Richard Cordero  
Petitioner Pro Se  
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**1**      **DISMISSED**      [docket as of May 15, 2006, at A:1561]

**U.S. Bankruptcy Court  
Western District of New York (Rochester)  
Adversary Proceeding #: 2-02-02230-JCN**

*Assigned to:* Hon. John C. Ninfo II

*Related BK Case:* 01-20692

*Related BK Title:* Premier Van Lines, Inc., a Corporation    *Date Filed:* 09/27/02

*Demand:* \$20000

*Nature of Suit:* 456

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-----

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V.

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(See above for address)  
*LEAD ATTORNEY*

**U.S. Trustee**  
-----

**U.S. Trustee's Office,**  
100 State St.  
Room 6090  
Rochester, NY 14614  
(585) 263-5812

<b>Filing Date</b>	<b>#</b>	<b>Docket Text</b>
07/31/2003		Clerk's Note: Pursuant to telephone conversation with Dr. Cordero this date: Advised Dr. Cordero that his motion to appear by telephone on August 6, 2003 at 9:30 is denied, but he can appear in person or obtain consent to adj. this matter to 10/16/03 at 9:30 a.m. Dr. Cordero advised that he will withdraw this motion, and make another motion for 10/16/03 at 9:30 a.m. Advised Dr. Cordero to write a letter to the Court and the parties involved confirming his intent. (RE: related document(s) <a href="#">105</a> Motion for Sanctions filed by 3rd Party Plaintiff Richard Cordero, Defendant Richard Cordero) (Tacy, K.) (Entered: 07/31/2003)
08/04/2003	<a href="#">108</a>	ReNotice of Motion and Notice of Withdrawal Filed by Defendant

		Richard Cordero (Tacy, K.) (Entered: 08/06/2003)
08/04/2003	109	Hearing Set (RE: related document(s) <a href="#">108</a> Generic Motion filed by 3rd Party Plaintiff Richard Cordero, Defendant Richard Cordero) Hearing to be held on 10/16/2003 at 09:30 AM Rochester Courtroom for <a href="#">108</a> , (Tacy, K.) (Entered: 08/06/2003)
08/06/2003	110	Hearing Continued (RE: related document(s) <a href="#">105</a> Motion for Sanctions filed by 3rd Party Plaintiff Richard Cordero, Defendant Richard Cordero, <a href="#">108</a> Generic Motion filed by 3rd Party Plaintiff Richard Cordero, Defendant Richard Cordero) Hearing to be held on 10/16/2003 at 09:30 AM Rochester Courtroom for <a href="#">105</a> and for <a href="#">108</a> , Appearing in opposition: David MacKnight, Atty. for James Pfuntner, Plaintiff (Parkhurst, L.) (Entered: 08/07/2003)
08/11/2003	<a href="#">111</a>	Motion to Recuse. Filed by Defendant Richard Cordero , 3rd Party Plaintiff (Attachments: # <a href="#">1</a> Exhibit # <a href="#">2</a> Exhibit) (Tacy, K.) (Entered: 08/11/2003)
08/11/2003	112	Hearing Set (RE: related document(s) <a href="#">111</a> Generic Application filed by 3rd Party Plaintiff Richard Cordero, Defendant Richard Cordero) Hearing to be held on 8/20/2003 at 09:30 AM Rochester Courtroom for <a href="#">111</a> , (Tacy, K.) (Entered: 08/11/2003)
08/14/2003	<a href="#">113</a>	Letter to Dr. Richard Cordero, Defendant and Third Party Plaintiff. Copies sent to Kenneth Gordon, Esq., David Palmer, David MacKnight, Atty., Michael Beyma, Atty., Karl Essler, Atty., U.S. Trustee. (RE: related document(s) <a href="#">111</a> Application). (Tacy, K.) (Entered: 08/14/2003)
08/20/2003	114	Hearing Continued (RE: related document(s) <a href="#">111</a> Generic Application filed by 3rd Party Plaintiff Richard Cordero, Defendant Richard Cordero) Hearing to be held on 10/16/2003 at 09:30 AM Rochester Courtroom for <a href="#">111</a> , Dr. Cordero will renote the motion for 10/16/03. No appearances. (Parkhurst, L.) (Entered: 08/20/2003)
08/21/2003	<a href="#">115</a>	Renote of Motion for Recusal and Removal. Filed by Defendant Richard Cordero , 3rd Party Plaintiff Richard Cordero (Tacy, K.) (Entered: 08/29/2003)
08/21/2003	116	Hearing Set (RE: related document(s) <a href="#">115</a> Generic Motion filed by 3rd Party Plaintiff Richard Cordero, Defendant Richard Cordero) Hearing to be held on 10/16/2003 at 09:30 AM Rochester Courtroom for <a href="#">115</a> , (Tacy, K.) (Entered: 08/29/2003)

09/17/2003	<a href="#">117</a>	Copy of Writ of Mandamus. Filed by Defendant Richard Cordero (Finucane, P.) (Entered: 09/18/2003)
09/20/2003	<a href="#">118</a>	BNC Certificate of Mailing. Service Date 09/20/2003. (Related Doc # <a href="#">117</a> ) (Admin.) (Entered: 09/21/2003)
10/07/2003	<a href="#">119</a>	Notice of objections to Hearings and Withdrawal of Motions Except For Recusal and Removal. Filed by Defendant Richard Cordero , 3rd Party Plaintiff Richard Cordero . (Tacy, K.) (Entered: 10/07/2003)
10/07/2003	<a href="#">120</a>	Objection Filed by David Dworkin, Jefferson Henrietta Associates , Notice of Objectons to Hearings and Withdrawal of Motions Except for Recusal and Removal. (Tacy, K.) (Entered: 10/07/2003)
10/07/2003	<a href="#">121</a>	Copy of Letter to the Pro Se Unit for Second Circuit. Filed by Karl Essler, Atty., for David Dworkin , and Jefferson Henrietta Associates . (Tacy, K.) (Entered: 10/07/2003)
10/07/2003	<a href="#">122</a>	Notice of Motion and Motion to Determine Matters Admitted. Filed by David MacKnight, Atty. for Plaintiff James Pfuntner (Tacy, K.) (Entered: 10/07/2003)
10/07/2003	123	Hearing Set (RE: related document(s) <a href="#">122</a> Motion filed by Plaintiff James Pfuntner) Hearing to be held on 11/25/2003 at 09:30 AM Rochester Courtroom. <a href="#">122</a> , at the time of the Trial. Clerk's Note: D. MacKnight is to amend the motion papers from 9:00 a.m. to 9:30 a.m. (Tacy, K.) Modified on 11/7/2003. Corrective Entry for purpose of correcting docket text as follows: the return date is to read 10/16/03, and not 11/25/03. The wrong date was inadvertently typed in. (Tacy, K.). (Entered: 10/07/2003)
10/08/2003	<a href="#">124</a>	Amended Motion (related document(s): <a href="#">122</a> to reflect correct time. Motion filed by Plaintiff James Pfuntner) Filed by Plaintiff James Pfuntner (Tacy, K.) (Entered: 10/09/2003)
10/14/2003	<a href="#">125</a>	Reply to Motion to determine Matters Admitted (related document(s): <a href="#">122</a> Motion filed by Plaintiff James Pfuntner) Filed by Defendant Richard Cordero (Attachments: # <a href="#">1</a> Certificate of Service) (Finucane, P.) (Entered: 10/14/2003)
10/15/2003	<a href="#">126</a>	Addendum to the Motion for Sanctions and Compensation for Failure to Comply with Discovery Orders. Filed by Defendant Richard Cordero , 3rd Party Plaintiff Richard Cordero . (Tacy, K.) (Entered: 10/15/2003)

10/15/2003	<a href="#">127</a>	Hearing Set (RE: related document(s) <a href="#">124</a> Amended Motion filed by Plaintiff James Pfuntner) Hearing to be held on 10/16/2003 at 09:30 AM Rochester Courtroom. This matter will be heard at the Trial. <a href="#">124</a> , (Tacy, K.) (Entered: 10/15/2003)
10/16/2003	<a href="#">128</a>	Hearing Held. RE: Motion for Recusal and Removal; Complaint to Determine Right of Property; third-party plaintiff's request for jury trial. Notice of Entry be issued. (Finucane, P.) (Entered: 10/17/2003)
10/16/2003	<a href="#">129</a>	Order Denying Recusal and Removal Motions and Objection of Richard Cordero to Proceedng with any Hearings and a Trial on 10/16/03 (Related Doc # <a href="#">111</a> ) Signed on 10/16/2003. (Finucane, P.) (Entered: 10/17/2003)
10/16/2003	<a href="#">130</a>	Order Disposing of Causes of Action. Signed on 10/16/2003. (Finucane, P.) (Entered: 10/17/2003)
10/17/2003	<a href="#">131</a>	Reply to Motion to determine Matters Admitted. (related document(s): <a href="#">122</a> Motion filed by atty for Plaintiff James Pfuntner) Filed by Defendant Richard Cordero (Finucane, P.) (Entered: 10/17/2003)
10/17/2003	<a href="#">132</a>	Reply to Atty Essler's Motion letter to the Court. Filed by Defendant Richard Cordero . (Finucane, P.) (Entered: 10/17/2003)
10/19/2003	<a href="#">133</a>	BNC Certificate of Mailing. Service Date 10/19/2003. (Related Doc # <a href="#">129</a> ) (Admin.) (Entered: 10/20/2003)
10/19/2003	<a href="#">134</a>	BNC Certificate of Mailing. Service Date 10/19/2003. (Related Doc # <a href="#">130</a> ) (Admin.) (Entered: 10/20/2003)
10/19/2003	<a href="#">135</a>	BNC Certificate of Mailing. Service Date 10/19/2003. (Related Doc # <a href="#">129</a> ) (Admin.) (Entered: 10/20/2003)
10/19/2003	<a href="#">136</a>	BNC Certificate of Mailing. Service Date 10/19/2003. (Related Doc # <a href="#">130</a> ) (Admin.) (Entered: 10/20/2003)
10/22/2003	<a href="#">139</a>	Amended Reply. Filed by Defendant Richard Cordero . (Tacy, K.) (Entered: 10/24/2003)
10/23/2003	<a href="#">137</a>	Order Re:Finding A Waiver of A Trial By Jury. Signed on 10/23/2003. (Attachments: # <a href="#">1</a> Appendix # <a href="#">2</a> Appendix # <a href="#">3</a> Appendix) (Tacy, K.) (Entered: 10/23/2003)
10/23/2003	<a href="#">138</a>	Order Re:Scheduling Order in Connection with the Remaining Claims

		of the Plaintiff, James Pfunter, and the Cross-Claims, Counterclaims and Third-Party Plaintiff, Richard Cordero. Signed on 10/23/2003. (Attachments: # <a href="#">1</a> Appendix # <a href="#">2</a> Appendix # <a href="#">3</a> Appendix) (Tacy, K.) Modified on 10/23/2003 (Tacy, K.). (Entered: 10/23/2003)
10/23/2003		Clerk's Note : The Orders of 10/23/03 were paper mailed to Raymond Stilwell, Atty., on behalf of David Palmer, Defendant, with a Notice of Entry re: the 2 Orders. (RE: related document(s) <a href="#">137</a> Order <a href="#">138</a> Order (Tacy, K.) (Entered: 10/24/2003)
10/25/2003	<a href="#">140</a>	BNC Certificate of Mailing. Service Date 10/25/2003. (Related Doc # <a href="#">137</a> ) (Admin.) (Entered: 10/26/2003)
10/25/2003	<a href="#">141</a>	BNC Certificate of Mailing. Service Date 10/25/2003. (Related Doc # <a href="#">138</a> ) (Admin.) (Entered: 10/26/2003)
10/25/2003	<a href="#">142</a>	BNC Certificate of Mailing. Service Date 10/25/2003. (Related Doc # <a href="#">137</a> ) (Admin.) (Entered: 10/26/2003)
10/25/2003	<a href="#">143</a>	BNC Certificate of Mailing. Service Date 10/25/2003. (Related Doc # <a href="#">138</a> ) (Admin.) (Entered: 10/26/2003)
10/27/2003	<a href="#">144</a>	Motion Filed by Defendant Richard Cordero (Tacy, K.) (Entered: 10/27/2003)
10/28/2003	<a href="#">145</a>	Order Signed on 10/28/2003 (RE: related document(s) <a href="#">144</a> The Motion of Richard Cordero for a More Definite Statement of the Court's Order and Decision, is in all respects denied. (Tacy, K.) (Entered: 10/28/2003)
10/30/2003	<a href="#">146</a>	BNC Certificate of Mailing. Service Date 10/30/2003. (Related Doc # <a href="#">145</a> ) (Admin.) (Entered: 10/31/2003)
11/07/2003	<a href="#">147</a>	Letter filed by Richard Cordero, Defendant Corrective Entry for purpose of correcting docket text as follows: the return date is to read 10/16/03, and not 11/25/03. The wrong date was inadvertently typed in. (Tacy, K.). (RE: related document(s) <a href="#">122</a> (Tacy, K.) (Entered: 11/07/2003)
11/19/2003	<a href="#">148</a>	Letter to United States Court of Appeals for the Second Circuit, enclosing the Court's 10/23/03 Scheduling Order, together with the 10/16/03 Order Denying Recusal and Removal Motions; the 10/16/03 Order Disposing of causes of Action; and the 10/23/03 Decision and Order Finding a Waiver of a Trial by Jury: (Attachments: # <a href="#">1</a> Appendix # <a href="#">2</a> Appendix # <a href="#">3</a> Appendix # <a href="#">4</a> Appendix) (Tacy, K.) (Entered: 11/19/2003)

11/19/2003	Clerk's Note: (RE: related document(s) <a href="#">148</a> Letter: mailed letter to Roseann B. MacKechnie Clerk of Court, U.S. Court of Appeals for the Second Circuit, and to Richard Cordero, Defendant. (Tacy, K.) (Entered: 11/19/2003)
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<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
12/09/2003 00:42:01			
<b>PACER Login:</b>		<b>Client Code:</b>	
<b>Description:</b>	Docket Report	<b>Case Number:</b>	2-02-02230-JCN
<b>Billable Pages:</b>	10	<b>Cost:</b>	0.70

## Proof of Service

I, Dr. Richard Cordero, hereby certify under penalty of perjury that I served by United States Postal Service on the following parties copies of my motion for leave to brief the issue of the Court of Appeal's jurisdiction:

Kenneth W. Gordon, Esq.  
Chapter 7 Trustee  
Gordon & Schaal, LLP  
100 Meridian Centre Blvd., Suite 120  
Rochester, New York 14618  
tel. (585) 244-1070; fax (585) 244-1085

Mr. David Palmer  
1829 Middle Road  
Rush, New York 14543

David D. MacKnight, Esq.  
Lacy, Katzen, Ryen & Mittleman, LLP  
130 East Main Street  
Rochester, New York 14604-1686  
tel. (585) 454-5650; fax (585) 454-6525

Michael J. Beyma, Esq.  
Underberg & Kessler, LLP  
1800 Chase Square  
Rochester, NY 14604  
tel. (585) 258-2890; fax (585) 258-2821

Karl S. Essler, Esq.  
Fix Spindelman Brovitz & Goldman, P.C.  
2 State Street, Suite 1400  
Rochester, NY 14614  
tel. (585) 232-1660; fax (585) 232-4791

Kathleen Dunivin Schmitt, Esq.  
New Federal Office Building  
Assistant U.S. Trustee  
100 State Street, Room 6090  
Rochester, New York 14614  
tel. (585) 263-5812; fax (585) 263-5862



## 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

April 13, 2004

Mr. Paul R. Warren  
Clerk of the Bankruptcy Court  
United States Bankruptcy Court  
1220 US Court House  
100 State Street  
Rochester, NY 14614

Dear Mr. Warren,

I recently filed with the court for docket no. 04-20280 and served on the parties the following 3 documents:

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 this morning, the docket reads like this in pertinent part:

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

Please note that those three documents were sent separately stapled because by their own nature they constitute separate documents. Thus, the Memorandum (1, above) is neither an attachment nor an appendix to the Objection to a Claim of Exemptions. It should be entered in the docket as a separate document with its full title, which appears in the reference clearly marked as Re:...; otherwise, the title used in 1, above, can be used. Moreover, when the hyperlink in # [1](#) Appendix is opened, that memorandum appears truncated of its first five pages, which appear in the document opened by the hyperlink for entry 19, which in turn is truncated of the following 18 pages.

Please note too the mistakes in entry 20:

- 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 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.

In the same vein, my letter to Mr. Todd Stickle of January 4, 2004, was never entered although I served it with a Certificate of Service, thereby making clear my intent to file it. Likewise, his response to me of January 28, 2004, was not filed. There is no reason for keeping these letters out of the file, or for not making their whole text available through a hyperlink.

I am also formally submitting to you that letter of January 4 and requesting that you inform me about the availability of the documents mentioned therein. As to those requested under heading B. of that letter, Mr. Stickle’s reply in his January 28 letter is totally unacceptable. It ignores the material impossibility which I myself pointed out to him for giving him the entry numbers of those documents: They have no numbers of their own because 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.

Therefore, I kindly request that you:

1. in docket no. 04-20280:
  - a) enter the Memorandum in 1, above, as a separate document with its full title;
  - b) ensure that its 23 pages appear in one single document rather than piecemeal in two documents;
  - c) correct the typos;
2. in docket no. 02-2230:
  - a) enter the letters of January 4 and 28, 2004, copies of which are attached hereto for the sake of facilitating the task;
  - b) state whether the documents requested under heading A. are available electronically and whether those under heading B. are available at all; if the latter are unavailable, state the reason why they are neither in your possession nor in the docket.

I thank you in advance and look forward to hearing from you soon.

Sincerely,

*Dr. Richard Cordero*

# Certificate of Service

I certify that I sent the accompanying letter of April 13, 2004, addressed to Mr. Paul R. Warren, Clerk of the Bankruptcy Court, to the following parties:

Kenneth W. Gordon, Esq.  
Chapter 7 Trustee  
Gordon & Schaal, LLP  
100 Meridian Centre Blvd., Suite 120  
Rochester, New York 14618  
tel. (585) 244-1070  
fax (585) 244-1085

David D. MacKnight, Esq.  
Lacy, Katzen, Ryen & Mittleman, LLP  
130 East Main Street  
Rochester, New York 14604-1686  
tel. (585) 454-5650  
fax (585) 454-6525

Michael J. Beyma, Esq.  
Underberg & Kessler, LLP  
1800 Chase Square  
Rochester, NY 14604  
tel. (585) 258-2890  
fax (585) 258-2821

Karl S. Essler, Esq.  
Fix Spindelman Brovitz & Goldman, P.C.  
2 State Street, Suite 1400  
Rochester, NY 14614  
tel. (585) 232-1660  
fax (585) 232-4791

Kathleen Dunivin Schmitt, Esq.  
Assistant U.S. Trustee  
100 State Street, Room 6090  
Rochester, New York 14614  
tel. (585) 263-5706  
fax (585) 263-5862

Dated: April 13, 2004  
59 Crescent Street  
Brooklyn, NY 11208-1515

*Dr. Richard Cordero*

Dr. Richard Cordero  
tel. (718)827-9521

## ATTACHMENTS:

1. Dr. Cordero's letter of January 4, 2004, to Mr. Todd Stickle, Deputy Clerk of Court, WBNY, .....[A:834]
2. Mr. Stickle's letter of January 28, 2004, to Dr. Cordero.....[A:836]

# United States Court of Appeals

FOR THE  
SECOND CIRCUIT

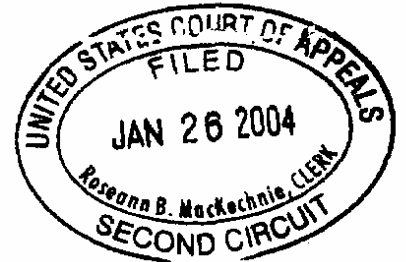
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At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, at Foley Square, in the City of New York, on the 26<sup>th</sup> day of January, two thousand and four.

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

Docket No. 03-5023

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IN RE: PREMIER VAN LINES, INC.,

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IT IS HEREBY ORDERED that appellant Cordero's motion for leave to file a brief on issue raised at oral argument be and it hereby is GRANTED.

FOR THE COURT:  
ROSEANN B. MACKECHNIE, Clerk

A handwritten signature in cursive script that reads "Arthur M. Heller".

Arthur M. Heller  
Motions Staff Attorney

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

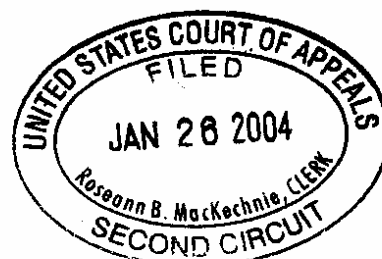
SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 26th day of January, two thousand and four.

PRESENT:

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



-----X

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

-----X

RICHARD CORDERO,  
Third-Party-Plaintiff-Appellant,

v.

No. 03-5023

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

DAVID PALMER,  
Third-Party-Defendant-Appellee.

-----X

APPEARING FOR APPELLANT: Richard Cordero, Brooklyn, NY

APPEARING FOR APPELLEES: Kenneth W. Gordon, Esq., Gordon & Schaal, LLP, Rochester, New York

Appeal from orders of the United States District Court for the Western District of New York (David G. Larimer, District Judge).

**ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the appeal from orders of the District Court is **DISMISSED**.

Third-party-plaintiff-appellant Richard Cordero appeals from two interlocutory orders issued by the district court. In one of the orders, the district court (1) denied Cordero's motion for default judgment against appellee David Palmer, whom Cordero had joined as a third party in an adversary proceeding within the bankruptcy proceedings commenced by Premier Van Lines, and (2) remanded to the bankruptcy court for further proceedings. In the second order, the district court affirmed the bankruptcy court's dismissal of a cross-claim asserted by Cordero against bankruptcy trustee Kenneth Gordon. The adversary proceedings remain pending before the bankruptcy court at the present time.

Having carefully considered all of Cordero's arguments on appeal, including those raised in the supplemental brief he filed following oral argument, we conclude that we lack jurisdiction to consider the merits of Cordero's claims because the orders he seeks to appeal are non-final and non-appealable.

Pursuant to § 158(d) of the Bankruptcy Act, 28 U.S.C. § 158(d), this court has jurisdiction to review a district court's order in a bankruptcy case only if that order is "final." See In re Prudential Lines, Inc., 59 F.3d 327, 331 (2d Cir. 1995). The first order Cordero seeks to appeal is not final within the meaning of § 158(d) because the district court remanded Cordero's motion for a default judgment to the bankruptcy court for further proceedings. See In re Prudential Lines, 59 F.3d at 331 ("This court has adopted the prevailing view that courts of appeals lack jurisdiction over appeals from orders of district courts remanding for significant further proceedings in bankruptcy courts.") (internal quotation marks omitted). The second order Cordero seeks to appeal is also not final because, in the bankruptcy context, the dismissal of a single cross-claim asserted within a larger adversary proceeding is not a final, appealable order. Id. at 332.

Finally, insofar as Cordero seeks the bankruptcy judge's recusal, to move the proceedings to a different judicial district, or to appeal the bankruptcy court's orders denying Cordero's recusal and removal motions and his belated motion for an extension

of time in which to file a notice of appeal, these claims challenge decisions issued by the bankruptcy court that have not been reviewed by the district court. Pursuant to § 158(d), the jurisdiction of the court of appeals in bankruptcy actions is limited to review of final decisions emanating from the district court. See In re Fugazy Express, Inc., 982 F.2d 769, 774-75 (2d Cir. 1992) (this court lacks jurisdiction over appeals taken from non-final orders originating in the bankruptcy court). Contrary to Cordero's assertions in his supplemental brief, this limitation is unaffected by the provisions of 28 U.S.C. § 455(a). Cf. In re Smith, 317 F.3d 918, 923 (9th Cir. 2002) (reviewing district court's affirmance of bankruptcy judge's denial of motion to recuse). Accordingly, we lack jurisdiction over these claims as well.

For the reasons set forth above, Cordero's appeal is **DISMISSED** for lack of jurisdiction.

FOR THE COURT:  
Roseann B. MacKechnie, Clerk

By: Lucille Carr  
Lucille Carr, Deputy Clerk

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

**Docket Number(s):** 03-5023 **In re:** Premier Van et al.

**Motion:** For extension of time to file a petition for rehearing and for stay of mandate

1. FRAP Rule 40(a)(1) allows the extension of time to file a petition for rehearing. Likewise, Rule 26(b) provides that "For good cause shown, the court may extend the time prescribed by these rules...to perform any act". There is good cause for such extension:
2. The case docket states that it was the district court's decisions that were dismissed, thereby giving Dr. Cordero the mistaken or false impression that he had prevailed and did not have to take any action;
3. Despite Rule 26(b), the decision was not mailed to Dr. Cordero on the date of issuance, January 26, so that on January 30 Dr. Cordero had to call his case manager and her supervisor to request that it be mailed to him; it was postmarked February 2; as a result, it was a week after issuance when he could read the tenor of the decision;
4. Since in cases involving the United States, its officers or agency the United States, despite its armies of lawyers, is allowed 45 days in which to seek rehearing, it is within reason that a pro se party who has never sought it before should have more time to do so;
5. Indeed, Dr. Cordero is a pro se appellant and cannot perform in just a week the legal research and writing necessary to determine conscientiously whether he has meritorious grounds for a rehearing petition before considering a petition for a writ of certiorari;
6. While this motion is being determined, the mandate should be stayed under Rule 41(d)

**Statement of relief sought:** That the time for petitioning for a rehearing be extended by 30 days and that the mandate be stayed until disposition of this motion and according to it.

**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:**

**Has service been effected?** Yes; proof is attached

Dr. Richard Cordero

**Date:** February 7, 2004

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**ORDER**

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

**FOR THE COURT:**

ROSEANN B. MacKECHNIE, Clerk of Court

**Date:** \_\_\_\_\_

**By:** \_\_\_\_\_



## 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 motion for extension of time to file a petition for rehearing and for stay of mandate:

---

Kenneth W. Gordon, Esq.  
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Rochester, New York 14618  
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fax (585) 244-1085

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Kathleen Dunivin Schmitt, Esq.  
New Federal Office Building  
Assistant U.S. Trustee  
100 State Street, Room 6090  
Rochester, New York 14614  
tel. (585) 263-5812  
fax (585) 263-5862

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February 7, 2004

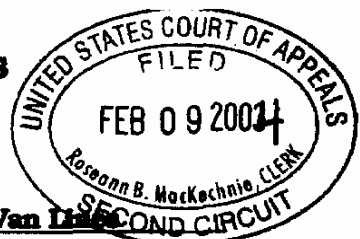
59 Crescent Street  
Brooklyn, NY 11208

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*Dr. Richard Cordero*

Dr. Richard Cordero  
Petitioner Pro Se  
tel. (718) 827-9521

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



Docket Number(s): 03-5023

In re: Premier Van Lines

**Motion:** For extension of time to file a petition for rehearing and for stay of mandate

1. FRAP Rule 40(a)(1) allows the extension of time to file a petition for rehearing. Likewise, Rule 26(b) provides that "For good cause shown, the court may extend the time prescribed by these rules...to perform any act". There is good cause for such extension:
2. The case docket states that it was the district court's decisions that were dismissed, thereby giving Dr. Cordero the mistaken or false impression that he had prevailed and did not have to take any action;
3. Despite Rule 26(b), the decision was not mailed to Dr. Cordero on the date of issuance, January 26, so that on January 30 Dr. Cordero had to call his case manager and her supervisor to request that it be mailed to him; it was postmarked February 2; as a result, it was a week after issuance when he could read the tenor of the decision;
4. Since in cases involving the United States, its officers or agency the United States, despite its armies of lawyers, is allowed 45 days in which to seek rehearing, it is within reason that a pro se party who has never sought it before should have more time to do so;
5. Indeed, Dr. Cordero is a pro se appellant and cannot perform in just a week the legal research and writing necessary to determine conscientiously whether he has meritorious grounds for a rehearing petition before considering a petition for a writ of certiorari;
6. While this motion is being determined, the mandate should be stayed under Rule 41(d)

**Statement of relief sought:** That the time for petitioning for a rehearing be extended by 30 days and that the mandate be stayed until disposition of this motion and according to it.

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

**OPPOSING 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**

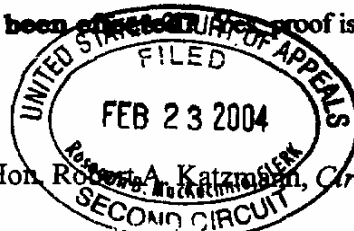
**Is oral argument requested?** Yes

**Argument date of appeal:** December 11, 2003

**Signature of Moving Petitioner Pro Se:**

**Has service been effected?** Proof is attached

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 for an extension of time to file a petition for rehearing and to stay the mandate is GRANTED. The petition shall be filed by March 10, 2004.

FOR THE COURT  
Roseann B. MacKechnie, Clerk  
by

Arthur M. Heller  
Arthur M. Heller, Motions Staff Attorney

\_\_\_\_\_  
Date

Blank

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

MOTION INFORMATION STATEMENT

Docket Number(s): 03-5023

In re: Premier Van et al.

**Motion for:** Leave to attach some entries of the Appendix to the petition for a panel rehearing and hearing en banc

**Statement of relief sought:** That this Court:

1. Grant leave to attach said items
2. Take them into consideration when deciding the petition.

<b>MOVING PARTY:</b> Dr. Richard Cordero Petitioner Pro Se 59 Crescent Street Brooklyn, NY 11208-1515 tel. (718) 827-9521; corderoric@yahoo.com	<b>OPPOSING PARTY:</b> See caption on first page of brief
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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

**Is oral argument requested?** Not applicable

**Signature of Moving Petitioner Pro Se:**

Dr. Richard Cordero

**FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL**

**Argument date of appeal:** December 11, 2003

**Has service been effected?** Yes; proof is attached

**Date:** March 10, 2004

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**ORDER**

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

**FOR THE COURT:**

ROSEANN B. MacKECHNIE, Clerk of Court

**Date:** \_\_\_\_\_

**By:** \_\_\_\_\_

## 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 motion for leave to attach some entries of the Appendix to the petition for a panel rehearing and hearing en banc:

---

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March 10, 2004

59 Crescent Street  
Brooklyn, NY 11208

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*Dr. Richard Cordero*

Dr. Richard Cordero  
Petitioner Pro Se  
tel. (718) 827-9521

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

PETITION

**In re Premier Van et al.**

FOR PANEL REHEARING  
AND  
HEARING EN BANC

\_\_\_\_\_  
RICHARD CORDERO,

Cross and Third party plaintiff-Appellant

v.

KENNETH GORDON,

Cross defendant-Appellee,

and

no. 03cv6021L, WDNY

DAVID PALMER,

Third party defendant-Appellee

no. 03mbk6001L, WDNY

Dr. Richard Cordero respectfully petitions that this Court’s order of January 26, 2004, (Appendix 876=A:876) 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:

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**TABLE OF EXHIBITS ..... A:901**

**I. Why this Court should hear this petition en banc**

1. This petition should be heard an banc because it is the collective responsibility of the members of this Court to safeguard the integrity of judicial process in this

circuit and ensure that justice is not only done, but is also seen to be done. The threshold for their intervention has been met more than enough since there is so much more than “the appearance of impropriety” *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, at 859-60, 108 S. Ct. 2194; 100 L. Ed. 2d 855 (1988): 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).

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:847§I). 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 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 dismissing 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.

### **III. 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

demonstrate 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:813§E), 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).

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 Pfunter 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. Pfuntnner and his attorney, it ordered at a hearing on April 23, 2003, that Dr. Cordero travel to Rochester to inspect his property, which Mr. Pfuntnner said had been left in his warehouse by his former lessee, Mr. Palmer, the owner of the storage company Premier. Although this inspection 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. Pfuntnner, 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. Pfuntnner’s attorney, Dr. Cordero reported on the inspection. It had to be concluded that some of his property was damaged 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 proceedings will undo the consequences and cancel the implications of the district and bankruptcy rulings. Both must be considered final and appealable (A:851§II).

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.

**IV. 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). 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, intentional, 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 (9<sup>th</sup> 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.

## V. 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:840§C), 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

59 Crescent Street  
Brooklyn, NY 11208

*Dr. Richard Cordero*

Dr. Richard Cordero, Petitioner Pro Se  
tel. (718) 827-9521

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## 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 et al.

**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  
59 Crescent Street  
Brooklyn, NY 11208-1515  
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

**Is oral argument requested?** Yes

**Signature of Moving Petitioner Pro Se:**

Dr. Richard Cordero

**FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL**

**Argument date of appeal:** December 11, 2003

**Has service been effected?** Yes; proof is attached

**Date:** March 22, 2004

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**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 et al.

case no. 03-5023

---

RICHARD CORDERO

Third party plaintiff-appellant

v.

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.

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**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 his superior knowledge of judicial wrongdoing and its consequences on a person, and 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 extrajudicial 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 et al.*, docket no. 03-5023, beginning with the pending petition for panel rehearing and hearing en banc.

Respectfully submitted on,

March 22, 2004

59 Crescent Street  
Brooklyn, NY 11208

*Dr. Richard Cordero*

Dr. Richard Cordero, Petitioner Pro S  
tel. (718) 827-9521

### Proof of Service

I, Dr. Richard Cordero, hereby certify under penalty of perjury that I have served by fax or United States Postal Service on the following parties copies of my motion for the Chief Judge of the Court of Appeals of the Second Circuit to recuse himself from *In re Premier Van Lines*:

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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

MOTION INFORMATION STATEMENT

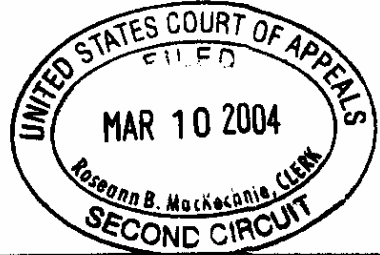
Docket Number(s): 03-5023

In re: Premier Van Lines

**Motion for:** Leave to attach some entries of the Appendix to the petition for a panel rehearing and hearing en banc

**Statement of relief sought:** That this Court:

1. Grant leave to attach said items
2. Take them into consideration when deciding the petition.



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

**Is oral argument requested?** Not applicable

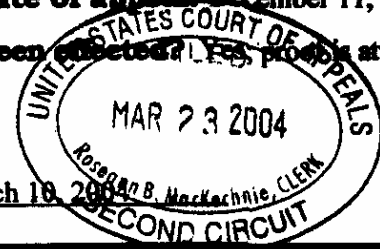
**Signature of Moving Petitioner Pro Se:**

Dr. Richard Cordero

**FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL**

**Argument date of appeal:** December 11, 2003

**Has service been effected?** Yes, proofs attached



**Date:** March 10, 2004

**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 GRANTED.

For the Court,  
Roseann B. MacKechnie, Clerk

by

Arthur M. Heller  
Arthur M. Heller, Motions Staff Attorney

MAR 23 2004

Date

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

**Docket Number(s):** 03-5023 **In re Premier Van et al.**

**Motion for:** Leave to Update the Motion For the Hon. Chief Judge John M. Walker, Jr., to Recuse Himself from this Case With Recent Evidence of a Tolerated Pattern of Disregard for Law and Rules Further Calling Into Question the Chief Judge's Objectivity and Impartiality to Judge Similar Conduct on Appeal

**Statement of relief sought:** That this Court:

- I. Chief Judge Walker recuse himself from this case and have nothing to do, whether directly or indirectly, with the pending petition for panel rehearing and hearing en banc or any future proceeding in this case;
- II. the Court declare that Clerks MacKechnie and Allen violated FRAP Rule 25(4) to Dr. Cordero's detriment and determine whether they and other officers did so in concert and following the instructions of their superiors;
- III. the Court determine with respect to Dr. Cordero's complaints of March 2004 and of August 2003, whether the clerks and/or their superiors:
  1. delayed their submission and tried to dissuade Dr. Cordero from resubmitting, thereby hindering the exercise of his right under 11 U.S.C. §351;
  2. caused him to waste his time, effort, and money, and inflicted on him emotional distress;
  3. engaged in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing;
- IV. launch an investigation to ascertain the facts, including the possibility of wrongful coordination between officers in the bankruptcy and district courts in Rochester and in this Court, and disclose the result of such investigation;
- V. order that the TOC and pages 1-25 (below) that were attached to the complaint's Statement of Facts but removed by Clerks MacKechnie and Allen be copied and attached to the Statement's original, its three copies, and any other copy that the clerks may make of such Statement.

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

**OPPOSING PARTY:** N/A

Court-Judge/Agency appealed from: Bankruptcy J. Ninfo, District J. Larimer, and Chief J. Walker

**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:** N/A

**Signature of Moving Petitioner Pro Se:**

**Has service been effected?** Yes; proof is attached

Dr. Richard Cordero

**Date:** April 18, 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

**In re Premier Van et al.**

**case no. 03-5023**

MOTION FOR Leave to Update the Motion  
For the Hon. Chief Judge John M. Walker, Jr.,  
to Recuse Himself from this Case  
With Recent Evidence of a Tolerated Pattern of  
Disregard for Law and Rules Further Calling Into  
Question the Chief Judge's Objectivity and  
Impartiality to Judge Similar Conduct on Appeal

---

1. "The bucket stops with me" is short for taking responsibility for what subordinates do. Herein is evidence of how clerks all the way to the top have made so many mistakes and repeatedly disregarded the law and rules with the consistent effect of hindering the submission of a complaint about the Hon. John M. Walker, Chief Judge. Their conduct forms a pattern of non-coincidental, intentional, and coordinated wrongful activity that is being engaged in under the Chief Judge's stewardship of this Court. He must take responsibility for having at the very least tolerated the formation of such pattern and its injurious effect on the Court's business and claim on public trust. Disregard for legality and facts by the lower courts is precisely the attitude that has determined their orders on appeal. Thus, by his own tolerance of disregard for legality among his subordinates, the Chief Judge can reasonably be expected to lack objectivity and impartiality to assess the facts and eventually find and condemn the same conduct that the lower courts have tolerated, encouraged, and participated in. Hence, he should recuse himself.

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### **I. Statement of Facts describing a repeated effort by clerks to hinder the submission of Dr. Cordero’s complaint about the Chief Judge**

2. Last March 22, Dr. Cordero showed the receiving clerk in In-Take Room 1803 a misconduct complaint about Chief Judge Walker under 28 U.S.C. §351 and this Circuit’s Rules Governing Complaints thereunder (referred to hereinafter as Rule #); (i-25, below; see the Table of Contents, M:22, below). He also submitted a

separate volume titled “Evidentiary Documents” (26, below). He asked to speak with Deputy Clerk Patricia Chin Allen. After the clerk phoned her, she told him that Clerk Allen was unavailable. He filed the complaint.

**A. This Court bottlenecks the processing of all misconduct complaints through Clerk Allen, thus disregarding the ‘promptness’ requirement**

3. Dr. Cordero asked for Clerk Allen because when on August 11, 2003, he filed the original complaint about the Hon. John C. Ninfo, II, and other officers in the bankruptcy and district courts in Rochester, he was told that Clerk Allen is the only clerk in the whole of this Court to handle such filings. Since on that occasion she was said to be on vacation for two weeks, nothing happened with the complaint until her return. Likewise on this occasion, Clerk Allen subsequently told Dr. Cordero that she would be on medical leave on March 25 and 26 and that nobody else in the Court could examine for conformity or process his complaint until she came back on Monday 29.

4. As these facts show in two consecutive occasions, limiting to a single clerk the processing of misconduct complaints is not an arrangement reasonably calculated to respond to the requirement under 28 U.S.C. §351 and this Circuit’s Governing Rules that such complaints be handled “expeditiously” and “promptly”. Even in the absence of such requirement, it should be obvious that since judicial misconduct impairs the courts’ integrity in their performance of their duty to dispense justice through just and fair process, a misconduct complaint should as a matter of



principle be treated in that way: “expeditiously” and “promptly”. Hence, intentionally bottlenecking the handling of complaints to a single clerk constitutes prima facie evidence of disregard for the statutory and regulatory promptness requirement. It reveals the Court’s attitude toward misconduct complaints, in general, and provides the context in which to interpret the clerks’ handling of Dr. Cordero’s complaint, in particular.

**B. Dr. Cordero also filed a motion and the clerks misplaced the complaint with it, thus delaying the complaint’s handling**

5. So it happened that on Monday 22, Dr. Cordero also tendered to the clerk for filing five individually bound copies of a motion for something else in his appeal from the Rochester courts’ decisions, docket no. 03-5023. Each copy was clearly identified as a motion by an Information Sheet bound with and on top of it.
6. Two days later, on Wednesday 24, that docket still did not show any entry for the motion. That got Dr. Cordero concerned about the complaint too, although he knows that complaints are not entered on the same docket. So he called Clerk Allen to find out whether she had reviewed and accepted the complaint. He found her, but she did not know anything about his misconduct complaint because none had been transmitted to her! At his request, she called the In-takers. However, none knew anything about it either. He asked that she have them search for it while he waited on the phone. Eventually, everything that he had filed on Monday was found on another floor with the case manager for the motion’s case. The

explanation offered was that the complaint's Statement of Facts and separate volume of "Evidentiary Documents" were thought to belong to the motion!

7. That explanation presupposes that all the clerks in the In-Take Room forgot Dr. Cordero's conversation with them about his wanting to file a complaint, his request that they call Clerk Allen to review it while he was there, and his asking whether anybody else could review it since she was unavailable. Moreover, it presupposes that all those who handled it from the In-Take Room to the motions team failed to read the *second* line of the complaint's heading laid out thus (i, below):

**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**

8. For her part, Clerk Allen herself found that heading most confusing and said that 'it would of course be interpreted as a statement of facts in support of the motion', never mind how ridiculous that statement is in the context of motion practice. As to the cover page (26, below) of the separate volume titled "Evidentiary Documents"...forget'a 'bout it! Dr. Cordero had to engage in advanced comparative exegesis to establish the identity between the text below those two words and the heading of the complaint. Clerk Allen found it so objectionable that he had not titled it "Exhibits" that she said that she would return it to him for correction.

Eventually, he managed to persuade her to just write in that word and keep it. But

she found the Statement so incurably unacceptable that she refused to transmit it to the next eligible chief judge and instead would return to Dr. Cordero the four copies for him to reformat and resubmit them. Her objections were the following:

- a) The misconduct form was not on top, ‘so how do you expect one to know that this is a misconduct complaint and not a Statement of Facts?’ Dr. Cordero’s suggestion that one might read the heading got him nowhere.
- b) The complaint form was the wrong one, for its title refers to §372 rather than §351. Dr. Cordero said that was the form that he had received in connection with the original August 11 complaint; that the heading of the Statement of Facts cites §351; that from this and the rest of the heading the intention of filing a misconduct complaint becomes apparent; all to no avail. Both forms appear at M-23 and v-a, below, so that the Court may try to find any difference, let alone one significant enough to justify refusal of the complaint.
- c) The complaint had a table of contents, but ‘complaints have no such thing!’.
- d) A major issue was Dr. Cordero’s inclusion of documents with the Statement of Facts and with the separate bound volume, ‘What for?! You can’t do that!’ He explained that those are documents created since his August complaint and are clearly distinguished by a plain page number, while documents accompanying the August complaint are referred to by either A:# (A as used with the page numbers of the documents in the Appendix accompanying the opening brief) or E:# (E as in Exhibit, which was the title of a separate volume

containing an extended statement of facts accompanying the August complaint, so that to distinguish from it the separate volume accompanying the March complaint the different title “Evidentiary Documents” was used). Subtleties of no significance to Clerk Allen.

e) An ‘obvious’ defect was that Dr. Cordero had bound the complaint, but ‘a complaint must not be bound; rather, it must be stapled or clipped!’ He indicated to Clerk Allen that Rule 2 does not prohibit binding. Moreover, FRAP 32(a)(3) provides that “The brief must be bound in any manner that is secure...and permits the brief to lie reasonably flat when open.” However, Dr. Cordero’s reasoning by analogy was lost on Clerk Allen. So he went for the practical and said that he could hardly imagine that a circuit judge would prefer to run the risk of having the sheets of a clipped complaint scatter all over the floor or to have to flip back and forth stapled sheets, if so many can be stapled at all. ‘No!, Dr. Cordero, if the Rules do not say that you can do something, then you can’t do it! It is that simple’.

9. These are the ‘unacceptable’ features on account of which Clerk Allen refused to send the complaint on to the next eligible chief judge. Instead, she would return the original and three copies of the Statement for Dr. Cordero to reformat and resubmit them to her review. They agreed that to save time he would bring them to her on Monday 29. To her it was of no concern the extra time, effort, and money that she would cause him to waste, let alone the aggravation, upon forcing him to

comply with her unwritten arbitrary demands to implement ‘the way things are done with complaints’, which he had to discover the hard way after complying with the written Rules, whether on point or applied by analogy.

### **C. Clerk Allen’s March 24 letter imposes meaningless arbitrary requirements**

10. On Saturday, March 27, Dr. Cordero received a cloth bag mailed by Clerk Allen. It contained not only the original and three copies of his Statement of Facts, but also the separate volume titled “Evidentiary Documents” as well as a cover letter dated March 24, 2004. (M:26, below)

#### **1. Clerk Allen requires the separate volume to be marked “Exhibits”**

11. Although Clerk Allen had told Dr. Cordero that she would write in the word “Exhibits”, she wrote in her cover letter that “Exhibits should clearly be marked exhibits”. As a result, Dr. Cordero had to unbind the volume of 85 documents, reformat the cover page to include the word “Exhibits” prominently enough so that she would see it, reprint it, and rebind the volume of several hundred pages.

12. However, this Circuit does not require anywhere that the documents accompanying a misconduct complaint be marked “Exhibits”. Rule 2(d) reads thus:

**(d) Submission of Documents.** Documents such as excerpts from transcripts may be submitted as evidence of the behavior complained about; if they are, the statement of facts should refer to the specific pages in the documents on which relevant material appears.

13. So where does Clerk Allen get it to impose on a complainant a form requirement

that this Court’s judges never deemed appropriate to impose? Why should a clerk be allowed to in the Court’s name abuse her position by causing a complainant so much waste and aggravation in order to satisfy her arbitrary requirements? Judges, as educated persons, should feel offended that a clerk considers that if the word “Exhibits” is missing from the cover page, they will be ‘confused’ because they too are incapable, as the clerks allegedly were, to read past the first line and see:

EVIDENTIARY DOCUMENTS  
supporting a complaint  
UNDER 28 U.S.C. §351 ABOUT  
**The Hon. John M. Walker, Jr.,  
Chief Judge**

of...

14. Did Clerk Allen show that she lacks the capacity even to read and apply the Rules literary, let alone in an enlightened way given their underlying objective within their context, or was she following instructions to give Dr. Cordero a hard time to dissuade him from resubmitting the complaint or at least delay its acceptance?

2. Clerk Allen requires that the Complaint Form not be attached to the Statement of Facts, thereby flatly contradicting Rule 2(b)

15. In her March 24 letter Clerk Allen also wrote thus:

The Complaint Form is a document separate from the Statement of Facts. They **should not be attached** to each other. *The Statement of Facts must be on the same sized paper as the Official Complaint Form.* (emphasis added)

16. However, Rule 2(b) expressly provide the opposite:

(b) Statement of Facts. A statement **should be attached** to the complaint form, setting forth with particularity the facts upon which the claim of misconduct or disability is based. *The statement should not be longer than five pages (fives*

*sides), and the paper size should not be larger than the paper the form is printed on. (emphasis added)*

17. The phrase in bold letters shows how Clerk Allen, by contradicting precisely what the Rules provide, faulted Dr. Cordero, who had bound a Complaint Form to each of the original and three copies of his Statement of Facts.
18. Yet, Clerk Allen followed her Rules-contradicting sentence with an accurate restatement of the next sentence of the Rules regarding paper size for the Statement of Facts; both sentences are in italics here. The contiguity of this pair of sentences in Clerk Allen's letter indicates that when she quoted them she was reading the Rules, which sets forth these sentences successively. It cannot be said realistically that Clerk Allen just read the first sentence incorrectly but the next one correctly. This follows from the fact that she is the only clerk in the whole Court through whom all misconduct complaints are bottlenecked. Thus, when Dr. Cordero submitted his about the Chief Judge, Clerk Allen's top boss, she did not have to consult the Rules for the first time ever. She must know them by heart.
19. To say Clerk Allen made a mistake the first time she read the Rules to apply them to the first complaint she ever handled and has carried on that mistake ever since would be to indict her competence and that of her supervisor. But if that were the case, then the track record of all the misconduct complaints that she has ever handled must show that every time a complainant correctly submitted a Statement of Facts with the Complaint Form attached to it, she refused acceptance and required that the complainant detach them and resubmit them detached.

20. If so, what for!? If she keeps the original Form for the Court's record, what does she do with the copies if it is not to send them to the judges to whom she sends the Statement? If so, why bother if the complainant attaches one to each copy of the Statement? If she does not send the Form, why does she ask for copies of it at all?

**D. Clerk Allen requires that no table of contents (TOC) be attached to the Statement of Facts**

21. Rule 2(h) reads thus "(h) No Fee Required. There is no filing fee for complaints of misconduct or disability". That provision has the purpose and effect of facilitating the submission of such complaints by removing the hurdle of a fee. Hence, on whose authority does Clerk Allen, in handling such complaints, raise hurdles in blatant disregard for the letter as well as the spirit of the law and its Rules?

22. Clerk Allen raised another such hurdle when she wrote, "Please do not [sic] a table of contents to the Statement of Facts"? There is no provision whatsoever entitling her to make such requirement. And a requirement it was, for when Dr. Cordero resubmitted the original and three copies of the Statement each with a TOC, Clerk Allen removed and mailed the TOCs back to him! (para. 30 below)

23. For those who can reason by analogy, the justification for a TOC has its legal basis in Local Rule 32(b)(1)(B). It requires that the Appendix to an appeal brief contain "A detailed table of contents referring to the sequential page numbers".

24. For its part, Rule 2 provides as follows:

(b) Statement of Facts....Normally, the statement of facts will include-

...

(3) Any other information that would assist an investigator



in checking the facts, such as the presence of a court reporter or other witness and their names and addresses.

(c) Submission of Documents. Documents such as excerpts from transcripts may be submitted as evidence of the behavior complained about; if they are, the statement of facts should refer to the specific pages in the documents on which relevant material appears.

25. The justification for a TOC also has a practical basis. The complaint about the Chief Judge is predicated on his failure to deal with the complaint about Judge Ninfo. Between them they refer to 85 documents and use three formats of page numbers to identify the specific pages of those documents where relevant material appears, to wit, a simple number #, E:#, or A:#. Under those circumstances, it is reasonable to assume that the next eligible chief judge and the investigators will find a TOC a most useful research device. This is particularly so because there is only one copy of the separate volume of documents. Hence, a TOC attached to each of the four copies of the Statement of Facts and providing the ‘names and addresses’ of 85 ‘witnessing’ documents allows those readers to read the titles of the documents to get an overview of the kind of supporting evidence available and then decide whether they want to request the separate volume for consultation.
26. It should be noted that Clerk Allen quoted verbatim Rule 2(d). This means that she understands the concept of authority for what she requires. So on whose authority does she require that for which she lacks any written authority in law or rule?

**E. Clerk Allen fails to meet with Dr. Cordero as agreed to review the reformatted complaint**

27. As agreed with Clerk Allen on Wednesday, March 24, Dr. Cordero went to the Court before opening time on Monday, March 29, to submit to her review the reformatted complaint and separate volume of documents. At 8:50a.m., he had the officer in the security office in the lobby call her. She said to send him upstairs to the 18<sup>th</sup> floor. So he went up there. But she was not there. He waited until the In-Take Room 1803 opened. He asked the clerk behind the counter to call Clerk Allen and tell her that he was there waiting for her. The clerk called her and then relayed to him that Clerk Allen was tied up with the telephone –for the rest of the day?- and could not meet him and that he should just file the complaint. So he did.
28. It is part of the character of people who make arbitrary decisions to be unreliable and not keep their word. Clerk Allen once more wasted Dr. Cordero's time by making him come to meet her in the Court so early in the morning for nothing. Except that from her point of view, it was not for nothing. By avoiding meeting him and reviewing the complaint while he was there, Clerk Allen gave herself another opportunity to delay the acceptance.
29. And so she did, for when Dr. Cordero returned home late in the afternoon, there was a message recorded by Clerk Allen asking that he call her. By that time it was too late. They spoke on the phone the following morning. She said that he had left blank the question of whether there was an appeal in that Court. He explained to her that the appeal did not relate to the complaint about the Chief Judge. She said that there was an appeal anyway, but that she would write it in.

30. However, she said that she had to send back to him the original and three copies of the Statement of Facts because he had added to each a table of contents (TOC) and 25 pages that were duplicative of the first 25 pages in the separate volume of documents (vi and 1-25, below). He told her that not only had she not written in her March 24 letter anything about not attaching documents to the Statement, but also those pages contain documents created since the original complaint of August 11. It was to no avail. She would return the Statement copies so that he could remove the TOC and pages 1-25 from each because otherwise she would have to make copies also of the TOC and those pages when she copied the Statement for all the judges. Dr. Cordero asked her not to send them back once more, but rather remove whatever she wanted and file the complaint without any more delay. She said that she would have to cut the plastic ring combs (like the one binding these pages). He gave her permission to do so. A couple of days later four sets of TOCs and pages 1-25 were delivered by mail to Dr. Cordero. A cover letter signed by Clerk of Court Roseann B. MacKechnie stated that pages 1-25 were being returned because they were duplicates of those in the Exhibits. (M:27, below)

31. So Clerk Allen, with Clerk MacKechnie's approval, forced Dr. Cordero to agree to the removal of those two parts of his complaint, lest she refuse and return the whole, for her convenience of not having to copy them. Where does a clerk get it that in order to spare herself some work, she can strip of some of its parts a judicial misconduct complaint authorized by an act of Congress and governed by

the Rules adopted by this Court's judges?! Moreover, why does Clerk Allen have to make any copies in addition to those that Rule 2(e) requires the complainant to submit? Normally, it is the person filing that makes the required number of copies.

## **II. Legal provisions violated by Clerk Allen and her superiors who approved or ordered her conduct**

32. Clerk Allen sent Dr. Cordero a letter dated March 30, 2004, stating that "We hereby acknowledge receipt of your complaint, received and filed in this office on March 29, 2004". (M:28, below) This means that the complaint was not filed on March 22 when he first submitted the Statement of Facts and "Evidentiary Documents" volume and had them time stamped. So if he had not given in to the clerks' arbitrary form requirements, they would not have filed it. Yet, clerks not only lack authority to refuse to file a paper due to noncompliance with such requirements, they are expressly prohibited from doing so by FRAP Rule 25(4):

The clerk **must not refuse** to accept for filing **any paper** presented for that purpose solely because it is not presented in proper form as required by these rules or by **any local rule or practice**. (emphasis added)

33. Likewise, the Local Rules were adopted by a majority of the circuit judges as provided under FRAP Rule 47(a)(1)) and the clerks are there simply to apply them, not to add to or subtract from them on their whims. People that rely on those rules and make a good faith effort to comply with them, have a legal right to expect and require that clerks respect and apply them. That expectation is reasonable for it arises from the specific legal basis referred to above as well as

others that determine the general working of the rules of procedure.

34. Thus, FRAP 32(e) provides that “Every court of appeals must accept documents that comply with the form requirements of this rule,” whereby it prohibits those courts from refusing acceptance due to non-compliance with its local rules. On the contrary, FRAP goes on to provide that “By local rule or order in a particular case a court of appeals may accept documents that do not meet all of the form requirements of this rule”, whereby it states a policy choice in favor of acceptance of documents even if non-complying, as opposed to a policy of non-acceptance due to non-compliance. The logic of that policy makes it inadmissible for clerks to impose unwritten form requirements that they come up with arbitrarily, let alone to refuse acceptance due to non-compliance with such requirements. Consequently, for clerks to refuse acceptance of a complaint because its Statement of Facts has attached to it a TOC and some documents, regardless of whether they duplicate those in the separate volume of Exhibits, constitutes a per se violation of the Rules’ policy to facilitate rather than hinder the filing of documents.

35. What is more, when the clerks refused to file unless Dr. Cordero complied with their arbitrary form requirements, they hindered his exercise of a substantive right under 28 U.S.C. §351, which Congress created to provide redress to people similarly situated to Dr. Cordero who are aggrieved by judicial misconduct, which includes acts undertaken by judges themselves and those that they order, encourage, or tolerate to be undertaken under their protection. Judges have no

authority to disregard the law or the rules, but rather the obligation to show the utmost respect for their application. They cannot authorize clerks to disregard the rules to the detriment of people who have relied on, and complied with, them.

36. Hence, when clerks disregard the law or rules, whether on a folly of their own or on their superiors' orders, they render themselves liable for all the waste of effort, time, and money and all the emotional distress that they intentionally inflict on others. Indeed, the infliction is intentional because a person is presumed to intend the reasonable consequences of her acts. When clerks force filers to redo what they have done correctly to begin with and to correct proper-form mistakes, which do not provide grounds for refusal to file, they can undeniably foresee the waste and distress that they will inflict on those filers. Here they have inflicted plenty.

**A. A long series of acts of disregard for legality reveals a pattern of wrongdoing that has become intolerable**

37. Enough is enough! The clerks' tampering with Dr. Cordero's right to file a misconduct complaint is only the latest act of disregard for rights and procedure by judges and other court officers to Dr. Cordero's detriment. Here is a sampler:

a) The January 26 order on Dr. Cordero's appeal, docket no. 03-5023, stated, and stills does, that it was the district court's decisions that were dismissed, thus giving him the misleading or false impression that he had prevailed and did not have to start preparing his petition for rehearing.

b) FRAP Rule 36(b) provides that "**on the date** when judgment is entered, the

clerk **must** serve on all parties a copy of the opinion...”, (emphasis added).

Yet, that order was not mailed to Dr. Cordero on that date of entry, so that on January 30, he had to call Case Manager Siomara Martinez and her supervisor, Mr. Robert Rodriguez, to request that it be mailed to him. It was postmarked February 2; as a result, it was a week after entry when he could read that in reality it was his appeal that had been dismissed, not the district court decisions appealed from. They would not correct the mistake.

- c) The motion for an extension to file a petition for rehearing due to the hardship of doing pro se all the necessary legal research and writing within 10 days was granted on February 23, but was not docketed until February 26, and Dr. Cordero did not receive it until March 1, so that he ended up having the same little amount of time in which to scramble to prepare, as a pro se litigant, the petition by the new deadline of March 10.
- d) The motion for panel rehearing and hearing en banc that he filed on March 10 was not docketed until he called on March 15 and spoke with Case Manager Martinez and Supervisor Rodriguez. Do these incidents reflect the clerks’ normal level of performance or did somebody not want Dr. Cordero to file the petition?
- e) Dr. Cordero’s original letter and four copies, dated February 2, 2004, to Chief Judge Walker asking for the status of his August 11 complaint about Judge Ninfo, was refused by Clerk Allen and returned to him immediately with her letter of February 4, 2004. (1 and 4, below)

- f) Cf. Instances of disregard for law, rules, and facts in the Rochester courts.  
(Opening Brief, 9.C, 54.D; Petition for a Writ of Mandamus 7.B-25.K)
- g) Cf. Rochester court officers' disregard for even their obligations toward this Court. (Petition for a Writ of Mandamus, 26.L);
- h) Cf. Motion of August 8, 2003, for recusal of Judge Ninfo and removal of the case to the U.S. District Court in Albany. (A:674 in the Exhibits)
- i) Cf. Motion of November 3, 2003, for leave by this Court to file updating supplement of evidence of bias. (A:801 in the Exhibits)
- j) Cf. Statement of Facts setting forth a complaint about the Hon. John Walker, Chief Judge, and describing the egregious disregard of legality by Judge Ninfo and the trustees in Rochester on March 8, 2004 (i-v, below).

38. How many acts of disregard of legality are needed to detect a pattern of wrongdoing? How much commonality of interests and conduct permit to infer coordination between officers of this Court and those of the Rochester courts? When will so much frustration of reasonable expectations, legal uncertainty, and abuse *ever stop and I get just and fair process under the law!?* The line is drawn here!

### **III. Relief sought**

39. Is there any circuit judge who cares and will do the right thing no matter who gets in the way? In that hope, Dr. Cordero respectfully requests that:
- a) Chief Judge Walker recuse himself from this case and have nothing to do,



whether directly or indirectly, with the pending petition for panel rehearing and hearing en banc or any future proceeding in this case;

- b) the Court declare that Clerks MacKechnie and Allen violated FRAP Rule 25(4) to Dr. Cordero's detriment and determine whether they and other officers did so in concert and following the instructions of their superiors;
- c) the Court determine with respect to Dr. Cordero's complaints of March 2004 and of August 2003, whether the clerks and/or their superiors:
  - 1. delayed their submission and tried to dissuade Dr. Cordero from resubmitting, thereby hindering the exercise of his right under 11 U.S.C. §351;
  - 2. caused Dr. Cordero to waste his time, effort, and money, and inflicted on him emotional distress;
  - 3. engaged in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing;
- d) launch an investigation to ascertain the facts, including the possibility of wrongful coordination between officers in the bankruptcy and district courts in Rochester and in this Court, and disclose the result of such investigation;
- e) order that the TOC and pages 1-25 (vi and 1-25, below) that were attached to the complaint's Statement of Facts but removed by Clerks MacKechnie and Allen be copied and attached to the Statement's original, its three copies, and any other copy that the clerks may make of such Statement.

Respectfully submitted on

April 18, 2004

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

*Dr. Richard Cordero*

Dr. Richard Cordero  
Movant Pro Se

Table of Exhibits  
of the motion of April 18, 2004  
for leave to update the March 22 motion  
for CA2 Chief Judge John M. Walker, Jr., to recuse himself from  
*In re Premier Van et al.*, 03-5023, CA2

by  
**Dr. Richard Cordero**

1. Motion Information Sheet.....	[A:917]
2. Motion of April 18, 2004.....	M-1 [A:918]
3. This Table of Exhibits .....	M-22 [A:938]
4. Complaint Form accompanying the judicial misconduct complaint of March 19, 2004, indicating its basis as §372(c), and removed as required by Clerk Allen (cf. entry 8.b, below) .....	M-23 [A:940]
5. Letter of Clerk Patricia Chin Allen of March 24, 2004, to Dr. Cordero .....	M-26 [A:943]
6. Letter of Clerk of Court Roseann B. MacKechnie of March 29, 2004, to Dr. Cordero .....	M-27 [A:944]
7. Letter of Clerk Patricia Chin Allen of March 30, 2004, to Dr. Cordero .....	M-28 [A:945]
8. Judicial misconduct complaint about the Hon. John M. Walker, Jr., Chief Judge of the Court of Appeals for the Second Circuit, of March 19, 2004	
a. Statement of Facts .....	i- [A:946]
b. Complaint Form indicating its basis as §351 (cf. entry 4, above).....	v-a [A:951]
c. Table of Documents .....	vi [A:954]
d. 1-25 pages of documents created since the original complaint about the Hon. John C. Ninfo, II, of August 11, 2003 .....	1 [A:966-990]
e. Cover page of the separate volume of documents accompanying the March complaint and titled "Evidentiary Documents" .....	26 [A:992]
f. Reformatted cover page containing the word "Exhibits" as required by Clerk Allen.....	27 [A:993]

## Proof of Service

I, Dr. Richard Cordero, hereby certify under penalty of perjury that I served by United States Postal Service on the following parties copies of my motion for leave to update my motion for Chief Judge John M. Walker, Jr., to recuse himself:

---

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Respectfully submitted on  
April 18, 2004

59 Crescent Street  
Brooklyn, NY 11208



---

Dr. Richard Cordero  
Movant Pro Se  
tel. (718) 827-9521

**APPENDIX: COMPLAINT FORM**

**JUDICIAL COUNCIL OF THE SECOND CIRCUIT**

**COMPLAINT AGAINST JUDICIAL OFFICER UNDER 28 U.S.C. § 372(e)**

**INSTRUCTIONS:**

- (a) All questions on this form must be answered.
- (b) A separate complaint form must be filled out for each judicial officer complained against.
- (c) Submit the correct number of copies of this form and the statement of facts. For a complaint against:

a court of appeals judge -- original and 3 copies  
a district court judge or magistrate judge -- original and 4 copies  
a bankruptcy judge -- original and 5 copies

(For further information see Rule 2(e)).

- (d) Service on the judicial officer will be made by the Clerk's office. (For further information See Rule 3(a)(1)).
- (e) Mail this form, the statement of facts and the appropriate number of copies to the Clerk, United States Court of Appeals, United States Courthouse, 40 Foley Square, New York, New York 10007.

1. Complainant's name: Dr. Richard Cordero  
Address: 59 Crescent Street  
Brooklyn, NY 11208

Daytime telephone (with area code): ( ) (718) 827-9521

2. Judge or magistrate judge complained about:  
Name: Hon. John M. Walker, Jr, Chief Judge  
Court: Court of Appeals for the Second Circuit

3. Does this complaint concern the behavior of the judge or magistrate judge in a particular lawsuit or lawsuits?

Yes     No

If "yes," give the following information about each lawsuit (use the reverse side if there is more than one):

Court: Court of Appeals for the Second Circuit

Docket number: 03-8547

Docket numbers of any appeals to the Second Circuit:

Did a lawyer represent you?

Yes     No

If "yes" give the name, address, and telephone number of your lawyer:

4. Have you previously filed any complaints of judicial misconduct or disability against any judge or magistrate judge?

Yes     No

If "Yes," give the docket number of each complaint.

docket no. 02-2230 in the U.S. Bankruptcy Court for the Western District of NY

Its appeal to the Court of Appeals for the Second Circuit bears docket no. 03-5023

5. You should attach a statement of facts on which your complaint is based, see rule 2(b), and

An original and three copies of my statement of facts, dated March 19, 2004,  
and addressed to the Circuit Judge eligible to become the next chief judge of  
the circuit, accompanies this form together with one separate volume of supporting  
evidentiary documents.

**EITHER**

- (1) check the box and sign the form. You do not need a notary public if you check this box.

I declare under penalty of perjury that:

- (i) I have read rules 1 and 2 of the Rules of the Judicial Council of the Second Circuit Governing Complaints of Judicial Misconduct or Disability, and
- (2) The statements made in this complaint and attached statement of facts are true and correct to the best of my knowledge.

Dr. Richard Cordero  
(signature)

Executed on March 19, 2004  
(date)

**OR**

- (2) check the box below and sign this form in the presence of a notary public;

I swear (affirm) that--

- (i) I have read rules 1 and 2 of the Rules of the Judicial Council of the Second Circuit Governing Complaints of Judicial Misconduct or Disability, and

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT  
THURGOOD MARSHALL UNITED STATES COURTHOUSE  
40 CENTRE STREET  
New York, New York 10007  
212-857-8500

JOHN M. WALKER, JR.  
CHIEF JUDGE

ROSEANN B. MACKECHNIE  
CLERK OF COURT

March 24, 2004

Mr. Richard Cordero  
59 Crescent Street  
Brooklyn, NY 11208-1515

Re: *Judicial Conduct Complaint*

Dear Dr. Cordero:

This letter is to acknowledge receipt of your complaint.

Please use the Official Complaint Forms enclosed. The Complaint Form is a document separate from the Statement of Facts. They should not be attached to each other. The Statement of Facts must be no more than five pages (five sides). The Statement of Facts must be on the same sized paper as the Official Complaint Form.

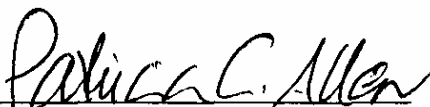
Please do not a table of contents to the Statement of Facts.

The exhibits must be mentioned in the Statement of Facts. Rule 2(d) states that "Documents such as excerpts from transcripts may be submitted as evidence of the behavior complained about; if they are, the statement of facts should refer to the specific pages in the documents on which relevant material appears."

The exhibits should clearly be marked exhibits.

Please keep in mind that non-compliance with the rules will delay the filing and processing of your submission.

Sincerely,  
Roseann B. MacKechnie, Clerk of Court

By:   
Patricia C. Allen  
Deputy Clerk

Enclosures

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT  
THURGOOD MARSHALL UNITED STATES COURTHOUSE  
40 CENTRE STREET  
New York, New York 10007  
212-857-8500

JOHN M. WALKER, JR.  
CHIEF JUDGE

ROSEANN B. MACKECHNIE  
CLERK OF COURT

March 29, 2004

Mr. Richard Cordero  
59 Crescent Street  
Brooklyn, NY 11208-1515

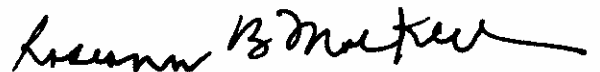
*Re: Judicial Conduct Complaint*

Dear Mr. Cordero:

I am returning the attachment to the revised Statement of Facts which we received today. These pages are duplicates of pages 1-25 of your Exhibits ("Evidentiary documents supporting a complaint Under 28 U.S.C. § 351 About the Hon. , . . .").

Please note that your newest Complaint will be filed as expeditiously as possible. When we file the complaint, we will send you a letter of confirmation which will include the docket number assigned to that case.

Very truly yours,



Roseann B. MacKechnie

Enclosures



UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT  
THURGOOD MARSHALL UNITED STATES COURTHOUSE  
40 CENTRE STREET  
New York, New York 10007  
212-857-8500

JOHN M. WALKER, JR.  
CHIEF JUDGE

ROSEANN B. MACKECHNIE  
CLERK OF COURT

March 30, 2004

Mr. Richard Cordero  
59 Crescent Street  
Brooklyn, NY 11208-1515

Re: *Judicial Conduct Complaint*, 04-8510

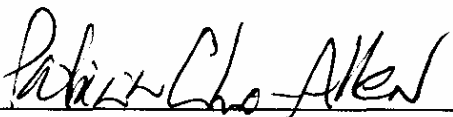
Dear Mr. Cordero:

We hereby acknowledge receipt of your complaint, received and filed in this office on March 29, 2004.

The complaint has been filed under the above-captioned number and will be processed pursuant to the *Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 USC § 351*.

You will be notified by letter once a decision has been filed.

Very truly yours,  
Roseann B. MacKechnie, Clerk of Court

By:   
Patricia Chin-Allen, Deputy Clerk

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*)<sup>1</sup>.

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-

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<sup>1</sup> Evidentiary documents in a separate volume support this complaint. Reference to their page number # appears as (E-#) or (A-#); if (#, *infra*), a copy of the document is there and here too.

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. Pfunter, 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 Pfunter 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<sup>2</sup>, time<sup>3</sup>, and money<sup>4</sup>, and inflicting upon him tremendous emotional distress<sup>5</sup> 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<sup>6</sup> and dismiss the facts<sup>7</sup> 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<sup>8</sup>, Judge Larimer<sup>9</sup>, court personnel<sup>10</sup>, trustees<sup>11</sup>, and local attorneys and their clients<sup>12</sup>, 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.

March 19, 2004

59 Crescent Street  
Brooklyn, NY 11208

*Dr. Richard Cordero*

Dr. Richard Cordero  
tel. (718)827-9521

<sup>2</sup> **effort**: Mandamus Brief=MandBr-55.2; ■59.5; ■ =documents separator-E-26.2, ■33.5; ■ A-694.6.

<sup>3</sup> **time**: MandBr-60.6; ■ 68.6; ■ E-29.1, ■=page numbers separator-34.6, ■47.6; ■ A-695.E.

<sup>4</sup> **money**: MandBr-8.C; ■ E-37.E; ■ A-695.E.

<sup>5</sup> **emotional distress**: MandBr-56.3; ■61.E; ■ E-28.3, ■36.7; ■ A-690.3, ■695.7.

<sup>6</sup> **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.

<sup>7</sup> **disregard for facts**: OpBr-10.2; ■13.5; MandBr-51.2; ■53.4; ■65.4; ■ E-13.3, ■20.2, ■22.4.

<sup>8</sup> **J. Ninfo**: OpBr-11.3; ■ A-771.I, ■786.III.

<sup>9</sup> **J. Larimer**: OpBr-16.7; Reply Brief-19.1; MandBr-10.D; ■53.D; ■ E-23.C; ■ A-687.C.

<sup>10</sup> **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.

<sup>11</sup> **trustees**: OpBr-9.1; ■38.B; ■ E-9; ■ A-679.A

<sup>12</sup> **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.

**COMPLAINT FORM**  
**JUDICIAL COUNCIL OF THE SECOND CIRCUIT**  
**COMPLAINT AGAINST JUDICIAL OFFICER**  
**UNDER 28 U.S.C. § 351 et. seq.**

**INSTRUCTIONS:**

- (a) All questions on this form must be answered.
- (b) A separate complaint form must be filled out for each judicial officer complained against.
- (c) Submit the correct number of copies of this form and the statement of facts. For a complaint against:

a court of appeals judge -- original and 3 copies  
a district court judge or magistrate judge -- original and 4 copies  
a bankruptcy judge -- original and 5 copies

(For further information see Rule 2(e)).

- (d) Service on the judicial officer will be made by the Clerk's Office. (For further information See Rule 3(a)(1)).
- (e) Mail this form, the statement of facts and the appropriate number of copies to the Clerk, United States Court of Appeals, Thurgood Marshall U.S. Courthouse, 40 Foley Square, New York, NY 10007.

1. **Complainant's Name:** Dr. Richard Cordero  
**Address:** 59 Crescent Street  
Brooklyn, NY 11208-1515  
**Daytime Telephone No. (include area code):** (718) 827-9521

**2. Judge or magistrate judge complained about:**

**Name:** Hon. John M. Walker, Jr., Chief Judge

**Court:** Court of Appeals for the Second Circuit

**3. Does this complaint concern the behavior of the judge or magistrate judge in a particular lawsuit or lawsuits?**

Yes       No

**If "yes," give the following information about each lawsuit (use the reverse side if there is more than one):**

**Court:** Court of Appeals for the Second Circuit

**Docket number:** 03-8547

**Docket numbers of any appeals to the Second Circuit:**

\_\_\_\_\_

**Did a lawyer represent you?**

Yes       No

**If "yes" give the name, address, and telephone number of your lawyer:**

**4. Have you previously filed any complaints of judicial misconduct or disability against any judge or magistrate judge?**

Yes       No

**If "Yes," give the docket number of each complaint.**

docket no. 02-2230 in the U.S. Bankruptcy Court for the Western District of NY

Its appeal to the Court of Appeals for the Second Circuit bears docket no. 03-5023



5. You should attach a statement of facts on which your complaint is based, see rule 2(b), and

An original and three copies of my statement of facts, dated March 19, 2004,

**EITHER** and addressed to the Circuit Judge eligible to become the next chief judge of the circuit, accompanies this form together with one separate volume of exhibits.

(1) **check the box and sign the form. You do not need a notary public if you check this box.**

I declare under penalty of perjury that:

(i) I have read rules 1 and 2 of the Rules of the Judicial Council of the Second Circuit Governing Complaints of Judicial Misconduct or Disability, and

(2) The statements made in this complaint and attached statement facts are true and correct to the best of my knowledge.

Dr. Richard Cordero

(signature)

on March 19, 2004, on the section 372 form

(date)

and on March 28, 2004, on the section 351 form

**OR**

(2) **check the box below and sign this form in the presence of a notary public;**

I swear (affirm) that--

(i) I have read rules 1 and 2 of the Rules of the Judicial Council of the Second Circuit Governing Complaints of Judicial Misconduct or Disability, and

**TABLE OF DOCUMENTS**  
**SUPPORTING THE COMPLAINT UNDER 28 U.S.C. §351**  
of March 19, 2004  
**AGAINST CA2 CHIEF JUDGE JOHN M. WALKER, JR.,**  
by  
**Dr. Richard Cordero**

**CONSISTING OF DOCUMENTS GROUPED IN THREE SETS  
AND REFERRED TO BY:**

plain number  
E-number  
or A-number

**I. ATTACHED TO THE COMPLAINT**

1. **Dr. Richard Cordero’s letter of February 2, 2004, to the Hon. John M. Walker, Jr., Chief Judge** of the Court of Appeals for the Second Circuit, inquiring about the status of his complaint of August 11, 2003, against Judge John C. Ninfo, II, WBNY, and providing **updating evidence** of the latter’s bias .....1 [A:966]
2. **Acknowledgment** by Deputy Clerk Patricia C. Allen of September 2, 2003, of receipt **of** Dr. Cordero’s judicial **complaint** against Judge Ninfo and of docketing it as no. **03-8547** .....3 [A:968]
3. Precedent for updating bias evidence: Court of Appeals’ order of **November 13, 2003**, granting Dr. Cordero leave to file an updating **supplement** of evidence of **bias** in Judge Ninfo’s denial of Dr. Cordero’s request for a trial by jury in *Pfuntner v. Trustee Gordon et al.*, no. 02-2230, WBNY .....5 [A:969]
4. **Chief Judge** Walker’s reply of **February 4, 2004**, by Deputy Clerk Allen returning Dr. Cordero’s February 2 letter .....4 [A:970]
5. **Dr. Cordero’s 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, of August 11, 2003, **as reformatted and resubmitted on August 27, 2003**.....6 [A:971]

6. Deputy Clerk <b>Allen</b> 's letter of August 25, 2003, <b>acknowledging</b> Dr. Cordero's judicial conduct <b>complaint of August 11, 2003</b> , and requesting resubmission with complaint form and shorter statement of facts.....	11	[A:976]
7. <b>Notice</b> of Chapter 13 Bankruptcy Case, <b>Meeting of Creditors</b> and Deadlines .....	12	[A:977]
8. Dr. Cordero's <b>Objections</b> of March 3, 2004, <b>to Confirmation</b> of the Plan of Debt Repayment submitted by Debtors David and Mary Ann DeLano.....	14	[A:979]
9. Dr. <b>Cordero's</b> Outline of his <b>Oral Argument</b> delivered to the Court of Appeals on <b>December 11, 2003</b> .....	19	[A:984]
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## Dr. Richard Cordero

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August 11, 2003

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

Re: Lodging a complaint under 28 U.S.C. §372(c)(1)

Dear Ms. MacKechnie,

I hereby respectfully submit to you a complaint under 28 U.S.C. §372(c)(1) concerning the Hon. John C. Ninfo, II, United States Bankruptcy Judge at the Bankruptcy Court for the Western District of New York. Judge Ninfo has engaged in conduct prejudicial to the effective and expeditious administration of the business of the court. This is manifest in his mismanagement of a case in which I am a defendant pro se, namely, In re Premier Van Lines, Inc., docket no. 02-2230. The facts speak for themselves, for although this case 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, issued orally at a pre-trial conference held last January 10 at the instigation of an assistant U.S. trustee, by not requiring the plaintiff or his attorney as little as to choose, as required by his order, one of the six dates that, pursuant to the order, I proposed for carrying out his order that I travel to Rochester to conduct an inspection at the plaintiff's warehouse in Avon; and
7. failed to insure execution by the plaintiff and his attorney of its second and last discovery order issued orally at a hearing last April 23, while I was required to travel and did travel to Rochester and then to Avon on May 19 to conduct the inspection.

As a result of Judge Ninfo's inexcusable inaction, this case has made no progress since it was filed. Nor will it make any 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 I will have to travel to Rochester a day in October and another in November to attend a hearing with the other parties – all of whom are locals- where we will deal with the motions that I have filed -including an application that I made as far back as last December 26 and that at his instigation I resubmitted on June 7- but that the Judge failed to decide at the hearings on May 21, June 25, and July 2. Then, after the hearings in October and November, I will be required to travel to Rochester for further hearings to be held once a months for seven to eight months!

The confirmation that this case has gone nowhere since it was filed last September comes from Judge Ninfo himself. In his order of July 15 he states that when we meet in October for the

first “discrete hearing” –a designation that I have failed to find in the F.R.Bankruptcy P. or the F.R.Civ.P.- we will begin by examining the plaintiff’s complaint, thereby acknowledging that we will not have inched beyond the first pleading by the time the case will be in its 13<sup>th</sup> month.

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 meeting. 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 the plaintiff any sanctions, even after I had complied with his orders to my detriment and requested those sanctions and even when Judge Ninfo himself requested that I write a separate motion for sanctions and submit it to him.

Nor has the Judge imposed any adverse consequences on a party defaulted by his own Clerk of Court or on the trustee that submitted false statements to him. 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 from me. By contrast, Judge Ninfo has let everybody know, particularly me, that he would impose dire sanctions on me if I failed to comply. Thus, at the April 23 hearing, when the plaintiff 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 me to travel to Rochester to conduct the inspection within the following four weeks or he would order the property said to belong to me removed at my expense to any other warehouse in Ontario, that is, whether in another county or another country, it did not matter to him.

By now it may have appeared to you too that Judge Ninfo is not impartial. Indeed, underlying the Judge’s inaction is the graver problem of his bias and prejudice against me. 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 my appeals from decisions that the Judge has taken for the protection of the local parties and to the detriment of my legal rights. There are too many of those acts and they are too precisely targeted on me alone for them to be coincidental. Rather, they form a pattern of intentional and coordinated wrongful activity.

Hence, the even graver issue that needs to be addressed is whether Judge Ninfo’s conduct has been prejudicial to the effective and expeditious administration of court business because it forms part of a pattern of intentional and coordinated conduct engaged in by both the Judge and other court officers to achieve an unlawful objective for their benefit and that of third parties and consistently to my detriment. The evidence that justifies this query is set forth in detail in the accompanying Statement of Facts, which is followed with a copy of Judge Ninfo’s July 15 order. To expedite the determination of this complaint, I am providing in triplicate them, this letter, as well as an appendix with most items in the record, to which I refer frequently in the Statement.

I trust that you sense the serious implications of this matter and, pursuant to §(c)(2), will promptly transmit this complaint to the chief judge of this circuit, the Hon. John M. Walker, Jr. Meantime, I look forward to receiving your acknowledgment of receipt of this complaint and, thanking you in advance, remain,

yours sincerely,

*Dr. Richard Cordero*

## Dr. Richard Cordero

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February 2, 2004

Hon. John M. Walker, Jr.  
Chief Judge  
United States Court of Appeals for the Second Circuit  
Thurgood Marshall United States Courthouse  
40 Foley Square, Room 1802  
New York, NY 10007

Re: Judicial conduct complaint 03-8547

Dear Chief Judge,

In August 2003, I filed a judicial conduct complaint under 28 U.S.C. §§372 and 351 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. Your Clerk of Court, Ms. Roseann B. MacKechnie, through her Deputy, Ms. Patricia Chin-Allen, acknowledged the filing of it by letter of September 2, 2003. To date I have not been notified of any decision that you may have taken in this matter.

I respectfully point out that 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 is that action will be taken expeditiously.

Indeed, this follows from the provisions of the law itself. Thus, 28 U.S.C. 372(c)(1) 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).

Despite these provisions in law and rules requiring prompt and expeditious action, this is the seventh month since the filing of my complaint but no notice of any action taken has been given to me or perhaps not action has been taken at all. Therefore, with all due respect I request that you let me know whether any action has been taken concerning my complaint and, if so, which, in order that I may proceed according to the pertinent legal provisions.

In the context of the misconduct complained about, I hereby update the evidence thereof through incorporation by reference of my brief of November 3, 2003, case 03-5023, supplementing the evidence of bias against me on the part of Judge Ninfo. This Court granted leave to file this brief by order of November 13, 2004.

Similarly, in that complaint I submitted that the special committee should investigate 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 my detriment, the only non-local pro se party. To buttress the need for that investigation, I point out that since December 10, 2003, I have requested from the clerk's office of Judge Ninfo's court copies of key financial and payment documents relating Premier Van Lines, which must exist since they concern the accounts of the debtor and the payment of fees out of estate funds and are mentioned in entries of docket no. 01-20692. Yet, till this day the clerk has not found them and has certainly not made them available to me.

1. The court order authorizing payment of fees to Trustee Kenneth Gordon's attorney, William Brueckner, Esq., and stating the amount thereof; cf. docket entry no. 72.
2. The court order authorizing payment of fees to Auctioneer Roy Teitsworth and stating the amount thereof; cf. docket entry no. 97.
3. The financial statements concerning Premier prepared by Bonadio & Co., accountants, for which Bonadio was paid fees; cf. docket entries no. 90, 83, 82, 79, 78, 49, 30, 29, 27, 26, 22, and 16.
4. The statement of M&T Bank of the proceeds of its auction of assets of Premier's estate on which it held a lien as security for its loan to Premier; the application of the proceeds to set off that loan; and the proceeds' remaining balance and disposition; cf. docket entry no. 89.
5. The information provided to comply with the order described in entry no. 71 and with the minutes described in entry no. 70.
6. The Final report and account referred to in entry no. 67 and ordered to be filed in entry no. 62.

A court that cannot account for the way it handles money to compensate its appointees and make key decisions concerning the estate calls for an investigation guided by the principle of "follow the money" in order to determine whether it "has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts".

Sincerely,

*Dr. Richard Cordero*

Cc: Letter of acknowledgment from Clerks MacKechnie and Chin-Allen; and CA2 order granting the motion to update evidence of bias.

Sept 10, 2003

**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**  
Thurgood Marshall United States Courthouse  
40 Centre Street  
New York, N.Y. 10007

**John M. Walker, Jr.**  
**Chief Judge**

**Roseann B. MacKechnie**  
**Clerk of Court**

September 2, 2003

Richard Cordero, Ph.D.  
59 Crescent Street  
Brooklyn, NY 11208-1515

Re: Judicial Conduct Complaint, 03-8547

Dear Dr. Cordero:

We hereby acknowledge receipt of your complaint, dated August 27, 2003, received in this office on August 28, 2003.

The complaint has been filed under the above-captioned number and will be processed pursuant to the *Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 USC § 351*.

You will be notified by letter once a decision has been filed.

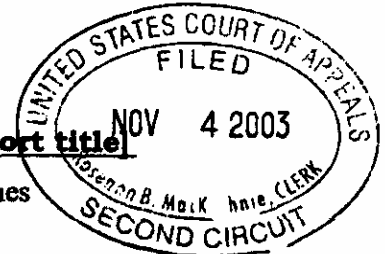
Sincerely,

Roseann B. MacKechnie, Clerk

By:   
Patricia Chin-Allen, Deputy Clerk



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



Caption [use short title]

In re: Premier Van Lines

Docket Number(s): 03-5023

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

**OPPOSING PARTY:** Hon. John C. Ninfo, II  
US Court House  
100 State Street  
Rochester, NY 14614  
tel. (585) 263-3148

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:**

**Has service been effected?** Yes; proof is attached

Dr. Richard Cordero

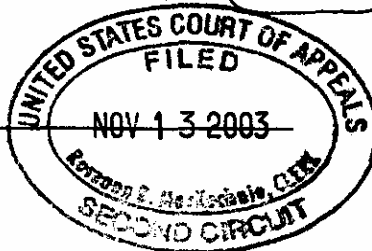
**Date:** October 31, 2003

**ORDER**

**IT IS HEREBY ORDERED** that the motion is **GRANTED** ~~denied~~.

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

**Date:** 11-13-03



**By:** [Signature]  
By: Ana Vargas  
Calendar Deputy Clerk

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT  
THURGOOD MARSHALL UNITED STATES COURTHOUSE  
40 CENTRE STREET  
New York, New York 10007  
212-857-8500

JOHN M. WALKER, JR.  
CHIEF JUDGE

ROSEANN B. MACKECHNIE  
CLERK OF COURT

February 4, 2004

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


Re: *Judicial Conduct Complaint, 03-8547*

Dear Dr. Cordero:

This letter is to acknowledge receipt of your letter, with attachments, dated February 2, 2004, addressed to Chief Judge John M. Walker, Jr.

I am returning your documents to you. A decision has not been made in the above-reference matter. You will be notified by letter when a decision has been made.

Sincerely,  
Roseann B. MacKechnie, Clerk

By:   
Patricia C. Allen, Deputy Clerk

Enclosures

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 [docket no. 03-8547] 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<sup>1</sup>)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 last December 26 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. At those hearings Dr. Cordero

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<sup>1</sup> This Statement is supported by an Exhibit of more detailed facts, which is below and referred to as E-#, where # stands for the page number, and by documents excerpted from the Appendix in the appeal to this Court, that is, *In re Premier Van Lines et al.*, docket no. 03-5023, referred to as A-#.

will be required to prove his evidence beyond a reasonable doubt. Thereafter he will be 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 13<sup>th</sup> 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 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 Pfunter 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, ftns-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 Pfunter'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. Pfunter 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*

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT  
THURGOOD MARSHALL UNITED STATES COURTHOUSE  
40 CENTRE STREET  
New York, New York 10007  
212-857-8500

JOHN M. WALKER, JR.  
CHIEF JUDGE

ROSEANN B. MACKECHNIE  
CLERK OF COURT

August 25, 2003

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

RE: Judicial Conduct Complaint

Dear Dr. Cordero:

This letter is to acknowledge receipt of your correspondence dated August 11, 2003, received in the Office of the Clerk.

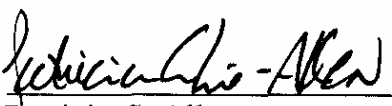
To the extent that your correspondence is intended to be a judicial conduct complaint, it is being returned to you because of the following reasons: (i) no complaint form and (ii) statement of facts exceeds allowable length ( limited to five (5) pages [see Rule 2(b)];

For your convenience, I enclose a copy of the *Official Complaint Form* and a copy of the *Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 U.S.C. § 351 (formerly known as § 372(e))*.

Please keep in mind that non-compliance with the rules will delay the filing and processing of your submission since documents that fail to comply will be returned.

Sincerely,

Roseann B. MacKechnie, Clerk

By:   
Patricia C. Allen  
Deputy Clerk

Enclosures



## 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):  DAVID G DELANO 1262 SHOECRAFT ROAD  WEBSTER, NY 14580	Date Case Filed(or Converted):  January 27, 2004	Soc Sec/Tax Id Nos:  077-32-3894 091-36-0517
AKA:  Joint: MARY ANN DELANO 1262 SHOECRAFT ROAD  WEBSTER, NY 14580		

Individual debtors must provide picture identification 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 address): CHRISTOPHER K WERNER, <del>ESQ</del> BOYLAN, BROWN, ET AL 2400 CHASE SQUARE ROCHESTER, NY 14604-0000 Telephone Number: (716) 232-5300	Bankruptcy Trustee (name and address): George M. Reiber 3136 South Winton Road Suite 206 Rochester, NY 14623 Telephone Number: (585) 427-7225
---	--

See Reverse Side For Important Explanations.

<b>Meeting of Creditors:</b>	
DATE: March 08, 2004 TIME: 01:00 PM	Location: U.S. Trustees Office 6080 U.S. Courthouse 100 State Street Rochester, NY 14614

<b>Deadlines:</b>	
Papers must be received by the bankruptcy clerk's office by the following deadlines.	

<b>Deadline to File a Proof of Claim:</b>	
For all creditors (except a governmental unit): June 07, 2004	For governmental units: July 26, 2004

<b>Deadline to Object to Exemptions:</b>	
Thirty (30) days after the conclusion of the meeting of creditors.	

<b>Filing of Plan, Hearing on Confirmation of Plan</b>	
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

<b>Creditors May Not Take Certain Actions:</b>	
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: U.S. Bankruptcy Court 100 State St.  Rochester, NY 14614	Website: <a href="http://www.nywb.uscourts.gov">http://www.nywb.uscourts.gov</a>  Clerk of the Bankruptcy Court: PAUL R. WARREN  DATED: February 03, 2004
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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
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<b>Filing of Chapter 13 Bankruptcy Case</b>	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 specified 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.
<b>Creditors May Not Take Certain Actions</b>	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.
<b>Meeting of Creditors</b>	A meeting of creditors is scheduled for the date, time, and location listed on the front side. <i>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.</i> 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.
<b>Claims</b>	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.
<b>Discharge of Debts</b>	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.
<b>Exempt Property</b>	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.
<b>Bankruptcy Clerk's Office</b>	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.
<b>Legal Advice</b>	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.
<b>Return Mail</b>	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---**

# UNITED STATES BANKRUPTCY COURT WESTERN DISTRICT OF NEW YORK

In re David G. DeLano and Mary Ann DeLano

Chapter 13 bankruptcy  
case no. 04-20280

## Objection to Confirmation of the Chapter 13 Plan of Debt Repayment

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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
<u>-2,946.50</u>	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, have 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 officer. 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

59 Crescent Street  
Brooklyn, NY 11208

*Dr. Richard Cordero*

Dr. Richard Cordero  
tel. (718) 827-9521

## CERTIFICATE OF SERVICE

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# UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

**In re Premier Van et al.**

**case no. 03-5023**

OUTLINE  
of the oral argument delivered by

**Dr. Richard Cordero**

Appellant pro se

on December 11, 2003

## **I. One issue determines all the others**

1. Whether **the integrity of the judicial process** was injured when the district and bankruptcy judges and their staff of administrative officers so **repeatedly disregarded the law, rules, and facts** pertaining to this case as to reveal their participation in a **pattern of non-coincidental, intentional, and coordinated acts of wrongdoing**.
2. Those acts are **all to Dr. Cordero's detriment**, the only non-local and pro se party, and to the benefit of the local parties, whose attorneys and trustees are well known to the judges and their staffs.
3. Those acts of wrongdoing have **materialized in decisions on appeal** here. Because of the courts' and their staffs' **disregard of legality**, their decisions are **unlawful** as a matter of law. Because they are **tainted by bias and prejudice**, they are **contrary to due process**.
4. The decisions should be **rescinded** and the case should be **remanded** to a court unfamiliar with the case for an impartial **trial by jury**.



**II. The appealed decisions resulted from such unlawfulness and bias**

**A. Timeliness of appeal** from dismissal of cross-claims against Trs. Gordon:

- 5. his negligent and recklessness liquidation of Premier, the storage company
- 6. his defamatory and false statements about Dr. Cordero

**B. Denial** of Dr. Cordero’s application for **default judgment** against Palmer

**III. Summary statement of facts**

- 7. Dr. Cordero paid storage and insurance fees since 1993
- 8. Defendants lied to him about his property’s location and safety
- 9. Dr. Cordero applied to J. Ninfo for review of Trustee Gordon’s performance
- 10. The Trustee defamed Dr. Cordero to dissuade Judge from review
- 11. Pfuntner refused to release property, sued for administrative & storage fees

**IV. Injury to the integrity of the judicial system & this Court as its steward**

**A. Judicial officers & parties carved fiefdom out of circuit’s territory**

- 12. they apply the law of the locals, not based on cases or law, but on
  - a) personal relations and b) fear of retaliation

**B. Circumstances for close personal relations to emerge and rule**

1. <b>proximity &amp; frequent contacts</b> <ul style="list-style-type: none"><li>a. only three judges in NYWBkr</li><li>b. same lawyers appear frequently</li><li>c. Pacer: Trs Gordon’s 3,000+ cases</li><li>d. AUST’s office in court building, and Trs. Gordon has mail box there</li><li>e. floor above J. Ninfo is J. Larimer</li></ul>	f. friendship replaces law <ul style="list-style-type: none"><li>1) no need for disclosure/discovery</li><li>2) no legal basis for motions/decisions</li><li>3) if case cited, no textual analysis</li></ul> 2. <b>fear of retaliation</b> in next case <ul style="list-style-type: none"><li>a. in 9 hearings other parties never raised objection</li></ul>
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<p>b. take without challenge what judge assigns to preserve his goodwill</p> <p>c. interdependency breeds wrongdoing</p>	<p><b>3. Fiefdom doesn't take seriously CA2:</b></p> <p>a. trump card in their pocket: they will prevail if case remains in their court with no jury</p>
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**V. Indicia of wrongdoing should prompt this Court to investigate**

**A. Where are the accounts of Premier's assets and professionals?**

- 13. Trustee Gordon: in docket 01-20692 [A-565]
  - a. **listed assets** on July 23, 2002 [entry 94]
  - b. **declared Asset Case** July 24 [entry 95]
  - c. moved August 28 to appoint Roy **Teitsworth as auctioneer** [entry 96]
  - d. **notice** of September 26 [entry 98] to **abandon known and newly discovered assets...Why!?**
  
- 14. Whatever Trustee Gordon did with storage containers:
  - a. **affected their contents** belonging to Premier's clients
  - b. if **containers removed**, the contents' **whereabouts** became **indeterminate**
  - c. altered storage conditions could **void insurance contracts**
  - d. he had duty **to give notice** to clients but failed to: Why?
    - 1) was any gain to be derived & shared with others?
    - 2) does he **care only for** profitable cases in his huge pool? [A-238-9]
    - 3) was he reckless and negligent? All issues of fact preventing dismissal.
  
- 15. Storage **contracts with monthly fees** were assets of Premier estate
  - a. who valued their stream of future income and how?
  - b. what did M&T Bank do with proceeds of storage containers auction?
  
- 16. Why did J. Ninfo **refuse to default** David Palmer **but discharge** his company?

**B. CA2 needs to investigate to uncover & eliminate wrongdoing**

- 17. scope of suspect activity exceeds what litigant can investigate or discover;

18. **benefits for judicial system & public at large from investigation:**
  - a. respect for legality in court and decisions and for ethical behavior
  - b. integrity of judicial proceedings dispensing justice, not pursuing own gain
  - c. clients represented by lawyers zealously advocating their interests
  - d. just and fair trials that earn the **public's confidence** in the courts

**C. Joint investigation with FBI guided by *Follow the money!***

19. CA2 can't merely ask judges for report and expect them to send mea culpa
20. should review hearings transcripts checked against their stenographic tapes
21. conduct statistical comparison of outcome of cases in fiefdom and inter-districts
22. interrogate **judges, clerks, accountants, auctioneers & buyers, creditors, etc.**
23. **obtain accounts they were supposed to submit and do** forensic accounting
24. CA2 needs experience & resources of FBI to undertake this investigation & follow the money from estate assets to financial institutions and elsewhere

## **VI. Relief**

**A. In light of the participation by officers of the court in**

25. a pattern of **non-coincidental, intentional, and coordinated acts of** disregard of laws, rules, and facts, and
26. **their bias and prejudice toward Dr. Cordero,**
  - a. it **cannot reasonably be expected** that Dr. Cordero will receive a **fair trial** at the hands of **Judges Ninfo and Larimer** with the assistance of their staffs and the support of their friendly trustees and lawyers.

**B. Therefore, Dr. Cordero respectfully requests that this Court:**

- 1) **rescind** all decisions taken by them& disqualify Judge Ninfo;

- 2) **remove** this case in the interest of justice under 28 USC §1412 to a court:
  - a) unfamiliar with the case, unrelated to the parties, and roughly equidistant from all the parties, which can be
  - b) expected to conduct a fair and impartial **jury trial**, such as
  - c) the federal court for the **Northern District** of New York in **Albany**;
- 3) that **this Court with** the assistance of the **FBI launch** a full **investigation** of the members of the **fiefdom** of Rochester to follow the money to the source of the motive that led these parties into wrongdoing and bring them **back into the fold of legality** so as to restore the integrity of the judicial system under this Court's stewardship;
- 4) that for all the painstaking work of **legal research and writing** that Dr. Cordero, a non-practicing lawyer, has done for well over a year he be **awarded attorney's fees**, for it should offend justice that those who lost his property, took him for a fool, wasted his time, effort, and money and showed so little respect in what they submitted to this Court or by submitting nothing should also take his tremendous amount of conscientious legal work for free as their ultimate mocking windfall. **The equities in this case should not allow that to happen.**

Respectfully submitted under penalty of perjury,

on December 11, 2003  
59 Crescent Street  
Brooklyn, NY 11208

Dr. Richard Cordero

Dr. Richard Cordero  
tel. (718) 827-9521

**Main Papers in *In re Premier Van et al.*, dkt. no. 03-5023, CA2  
with the numbers of the pages (#=A:#) where they appear in  
the Appendix to the opening brief of July 9, 2003  
by Dr. Richard Cordero**

	Dr. Cordero's <b>Cross-claims</b> against Trustee Gordon, November 20, 2002		Dr. Cordero's Motion to <b>Extend time</b> to file notice of appeal, January 27, 2003		Dr. Cordero's Application for <b>Default Judgment</b> against David Palmer, Dec. 26, 2003	
1.	Dr. Cordero	70, 83, 88	Dr. Cordero	214	Dr. Cordero	290
2.	Trustee Gordon	Motion to Dismiss 135	Trustee Gordon	Memo in opposition to extend time, 234	Dr. Cordero	Letters to J. Ninfo, 299, 302
3.	Dr. Cordero	Brief in Opposition, 143	J. Ninfo	Decision denying motion to extend, 240	Clerk of Court Warren	Entry of default, 303
4.	J. Ninfo	Dismissal Decision, 151	Dr. Cordero	Motion for relief of denial, 246	J. Ninfo	Recommendation denying default, 304
5.	Dr. Cordero	Notice of Appeal 153	Trustee Gordon	Referral to previous submission, 257	Dr. Cordero	Letter and motion to enter default, 311, 314
6.	Trustee Gordon	Motion to Dismiss appeal, 156	J. Ninfo	Decision denying motion for relief, 259	J. Larimer	Decision denying entry of default, 339
7.	Dr. Cordero	Opposition to dismissal of notice 158	Dr. Cordero	Notice of Appeal to CA2, 429	Dr. Cordero	Motion for rehearing of denial, 342
8.	Trustee Gordon	Submitting in Dis. Ct. memo opposing motion to extend in Bkr. Ct., 199			J. Larimer	Decision denying rehearing motion, 350
9.	J. Larimer	Decision dismissing appeal, 200			Dr. Cordero	Notice of Appeal to CA2, 429
10.	Dr. Cordero	Brief for rehearing 205				
11.	Trustee Gordon	Letter relying on previous submission, 210				
12.	J. Larimer	Decision denying rehearing motion, 211				
13.	Dr. Cordero	Notice of Appeal to CA2, 429				

# Dr. Richard Cordero

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[Sample of letters to members of the Judicial Council, 2<sup>nd</sup> Cir.]

February 13, 2004

The Hon. Dennis Jacobs  
U.S. Court of Appeals for the Second Circuit  
40 Foley Square, Room 1802  
New York, NY 10007

Dear Judge Jacobs,

On August 11, 2003, I submitted to the Court of Appeals for the Second Circuit a complaint based on detailed evidence of judicial misconduct on the part of U.S. Bankruptcy Judge John C. Ninfo and other court officers in the Bankruptcy and District Courts for the Western District of New York. The specific instances of disregard of the law, rules, and facts were so numerous, so protective of the local parties and injurious to me alone, the only non-local and pro se party, as to form a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing. Receipt of the complaint was acknowledged on September 2; it was assigned docket no. 03-8547. Although the provisions of law governing such complaints, that is, 28 U.S.C. §§372 and 351, and the implementing rules of this Circuit require 'prompt and expeditious' action on the part of the chief judge and its notification to the complainant, it is the seventh month since submission but I have yet to be informed of what action, if any, has been taken.

What is more, on February 2, I wrote to the Hon. Chief Judge John M. Walker, Jr., to inquire about the status of the complaint and to update it with a description of subsequent events further evidencing wrongdoing. To my astonishment, the original and all the copies that I submitted were returned to me immediately on February 4. One can hardly fathom the reason for the inapplicability to a judicial misconduct complaint already in its seventh month after submission of the basic principles of our legal system of the right to petition and the obligation to update information, which is incorporated in the federal rules of procedure. 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.

There is still more. The pattern of wrongdoing has materialized in more than 10 decisions adopted by the bankruptcy and district courts, which I challenged in an appeal bearing docket no. 03-5023. One of the appeal's three separate grounds is that such misconduct has tainted those decisions with bias and prejudice against me and denied me due process. Yet, the order dismissing my appeal, adopted by a panel including the Chief Judge, does not even discuss that pattern, let alone protect me on remand from further targeted misconduct and systemic wrongdoing that have already caused me enormous expenditure of time, effort, and money as well as unbearable aggravation. Where the procedural mechanics of jurisdiction are allowed to defeat the courts' reason for existence, namely, to dispense justice through fair and impartial process, then there is every justification for escalating the misconduct complaint to the next body authorized to entertain it. It is not reasonable to expect that a complainant should wait sine die just to find out the status of his complaint despite the evidence that it is not being dealt with and that he is being left to fend for himself at the wrongful hands of those that treat him with disregard for law, rules, and facts.

Therefore, I am respectfully addressing myself to you as member of the Judicial Council of this Circuit and to Justice Ginsburg, as the justice with supervisory responsibilities for this Circuit, to request that you consider the documents attached hereto and bring my complaint and its handling so far to the attention of the Council so that it may launch an investigation of the judges complained-about and I be notified thereof. Meantime, I look forward to hearing from you and remain,

sincerely yours,

*Dr. Richard Cordero*

List of Members of the Judicial Council of the Second Circuit  
to whom the letters of February 11 and 13, 2004, were individually addressed  
requesting that they cause the Council to investigate  
the misconduct complaint against Judge John C. Ninfo, II, WBNY  
and its mishandling by Chief Judge John M. Walker, Jr., CA2

by  
**Dr. Richard Cordero**

---

Madam Justice **Ginsburg**  
Circuit Justice for the Second Circuit  
The **Supreme Court** of the United States  
1 First Street, N.E.  
Washington, D.C. 20543  
tel. (202) 479-3000

Circuit Judges

Judge Jose A. Cabranes, CA2  
Judge Guido Calabresi, CA2  
Judge Dennis Jacobs, CA2  
Judge Rosemary S. Pooler, CA2  
Judge Chester J. Straub, CA2  
Judge Robert D. Sack., CA2

U.S. Court of Appeals  
for the Second Circuit  
Member of the Judicial Council  
40 Foley Square  
New York, NY 10007-1561  
tel. (212) 857-8500

District judges

The Hon. Frederick J. **Scullin**, Jr.  
U.S. District Court, NDNY  
Member of the Judicial Council  
445 Broadway, Suite 330  
Albany, NY 12207  
tel. (518) 257-1661

The Hon. Edward R. **Korman**  
U.S. District Court, EDNY  
Member of the Judicial Council  
75 Clinton Street  
Brooklyn, NY 11201  
tel. (718) 330-2188

The Hon. Michael B. **Mukasey**  
U.S. District Court, SDNY  
Alexander Hamilton Custom House  
Member of the Judicial Council  
One Bowling Green  
New York, NY 10004-1408  
tel. (212) 805-0136

The Hon. Robert N. **Chatigny**  
U.S. District Court, District of  
**Connecticut**  
Richard C. Lee U.S. Courthouse  
Member of the Judicial Council  
141 Church Street  
New Haven, Ct 06510  
tel. (203) 773-2140

The Hon. William **Sessions**, III  
U.S. District Court, District of **Vermont**  
Member of the Judicial Council  
P.O. Box 928  
Burlington, VT 05402-0928  
tel. (802) 951-6350

# **Court of Appeals**

## **for the Second Circuit**

### **EVIDENTIARY DOCUMENTS**

supporting 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**

submitted on  
**March 19, 2004**  
by

**Dr. Richard Cordero**

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



# **Court of Appeals** **for the Second Circuit**

## **EXHIBITS**

Evidentiary documents supporting 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**

submitted on

**March 19, 2004**

by

**Dr. Richard Cordero**

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

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PUBLIC DOCKET FOR  
Second Circuit Court of Appeals

INDIV  
DISPOSED

Court of Appeals Docket #: 03-5023-bk  
Nsuit: 422 STATUTES-Bkrup Appeals 801  
In Re: Premier Van v. Palmer  
Appeal from: WDNY (ROCHESTER)

Filed: 5/2/03

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**Case type information:**

Bankruptcy  
District Court  
None

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**Lower court information:**

District: 03-cv-6021  
Trial Judge: David G. Larimer  
MagJudge:  
Date Filed: 01/15/03  
Date order/judgement: 3/27/2003  
Date NOA filed: 4/25/2003

**Fee status:** Paid

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**Panel Assignment:**

Panel: CJS BDP LLS RJC SS F 89-90 Hempstead Str

**Date of decision:** 1/26/04

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**Prior cases:** NONE

**Current cases:** NONE



Official Caption 1/  
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Docket No. [s] : 03-5023

IN RE: PREMIER VAN LINES, INC.,

Debtor.

-----  
RICHARD CORDERO,

Third-Party-Plaintiff - Appellant

v.

KENNETH W. GORDON, Esq.,

Trustee - Appellee,

DAVID PALMER

Third-Party-Defendant - Appellee.

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Authorized Abbreviated Caption 2/  
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Docket No. [s] : 03-5023

In Re: Premier Van Lines, Inc.,  
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Docket as of March 15, 2004 4:34 pm

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

3

**Clerk,Bank Ct,RONY**

None

Clerk,Bank Ct,RONY  
n/a

68 Court St. U.S. Courthouse  
Buffalo , NY , 14202  
716-846-4130

**David Palmer**

Defendant-Appellee

David Palmer  
n/a

1829 Middle Rd.  
Rush , NY , 14543  
585-244-1070

**Kenneth W. Gordon**

Trustee-Appellee

Kenneth W. Gordon  
n/a  
Gordon & Schaal, LLP  
100 Meridian Centre Blvd.  
Rochester , NY , 14618  
585-244-1070

**Richard Cordero**

Third-Party-Plaintiff-Appellant

Richard Cordero  
n/a

59 Crescent Street  
Brooklyn , NY , 112081515  
718-827-9521

Docket as of March 15, 2004 4:34 pm





- 5/2/03 Note: This appeal was PRO SE when filed.
- 5/2/03 Copy of decision and order dated March 11, 2003 (03-MBK-6001L), endorsed by Hon. David G. Larimer, United States District Judge, RECEIVED. [03-5023]
- 5/2/03 Copy of decision and order dated March 12, 2003, endorsed by Hon. David G. Larimer, United States District Judge, RECEIVED. (03-cv-6021L). [03-5023]
- 5/2/03 Copy of notice of appeal and district court docket entries on behalf of Appellant Richard Cordero filed. [03-5023] "FeePaid #64514".
- 5/2/03 Copy of judgment dated March 12, 2003, endorsed by Deputy Clerk, RECEIVED. [03-5023]
- 5/22/03 Record on appeal filed. (Original papers of district court.) Number of volumes: 1. Also included is the record from the bankruptcy court which is a separate volume.
- 5/28/03 Scheduling order #1 filed. Record on appeal due on 6/9/03. Appellant's brief and appendix due on 7/9/03. Appellee's brief due on 8/8/03. Argument as early as week of 9/22/03.
- 5/28/03 Notice to counsel regarding scheduling order #1 filed on 5/28/03.
- 5/28/03 Notice of appeal acknowledgment letter from Richard Cordero for Appellant Richard Cordero received.
- 5/28/03 Letter dated 5-5-03 from appellant pro se Dr. Cordero to the district court requesting that the district court correct the mistake listed on the district court docket received
- 5/28/03 Notice of appearance form on behalf of Richard Cordero, Esq., filed. (Orig in acco, copy to Calendar)
- 5/28/03 Resignation of items in the record and statement of issues on appeal from Appellant Richard Cordero received.
- 6/2/03 Notice of appeal acknowledgment letter from Kenneth W. Gordon for Appellee Kenneth W. Gordon received.
- 6/5/03 Record on appeal received in records room from team.

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

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

7/14/03 Appellant Richard Cordero brief FILED with proof of service.

7/14/03 Appellant Richard Cordero appendix filed w/pfs. Number of volumes; 1.

8/11/03 Notice of appearance form on behalf of Kenneth W. Gordon, Esq., filed. (Orig in acco, copy to Calendar)

8/11/03 Appellee Kenneth W. Gordon MEMORANDUM BRIEF filed with proof of service. Satisfy appellee's brief due.

8/19/03 Proposed for argument the week of 10/27/03.

8/25/03 Appellant Richard Cordero reply brief filed with proof of service.

9/16/03 Argument as early as week of 9/22/03.

9/30/03 Proposed for argument the week of 12/8/03.

10/20/03 Set for argument on 12/11/03 . [03-5023]

11/4/03 Appellant Richard Cordero motion to allow leave to introduce an updating supplement on the issue of the (WDNY) Bankruptcy Court's bias against Petitioner Dr. Richard Cordero evidenced in it's order of October 23, 2003, denyig Dr. Cordero's request for a jury trial, which Dr. Cordero submitted to and is under consideration by this Court of Appeals FILED (w/pfs). [2471688-1]

11/6/03 Notice of Hearing Date from Appellant Richard Cordero received.

11/13/03 Notice to counsel re:order dated 12/11/03.

11/13/03 Letter dated 11-5-03 from Kenneth W. Gordon, Esq. requesting permission from the Court to waive oral argument. received

- 11/13/03 Order FILED GRANTING motion to allow leave to introduce an updating supplement on the issue of the Bankrupt Court's bias against petition's evidenced in it's order of 10/23/03" [2471688-1] by Appellant Richard Cordero, endorsed on motion form dated 11/4/03(FOR THE COURT-AV).
- 11/24/03 Copy of Bankruptcy Court order dated 10-23-03 scheduling order in connection with the remaining claims of the plaintiff, James Pfunter, and the cross-claims, counter-claims and third-party claims of the third-party plaintiff, which has attached to it the following additional orders: 1) an October 16, 2003 order denying and recusal and removal motions and objection of Richard Cordero to proceeding with any hearings and trial on 10-16-03; 2) An October 16, 2003 order disposing of cause of action; and an October 23, 2003 decision & order finding a waiver of a trial by jury from Hon. John C. Ninfo, II, Chief U.S. U.S. Bankruptcy Judge. received.
- 12/11/03 Case heard before WALKER, CH.J; OAKES, KATZMANN, C.JJ . (TAPE: CD date: 12/11/03)
- 12/11/03 Outline of the oral argument from Appellant Richard Cordero received.
- 12/29/03 Appellant Richard Cordero motion to allow leave to brief the issue raised by this Court at oral argument concerning its jurisdiction to entertain this appeal, FILED (w/pfs). [2509028-1]
- 1/26/04 Order FILED GRANTING motion to allow by endorsed on motion dated 12/29/2003. "IT IS HEREBY ORDERED that appellant Cordero's motion for leave to file a brief on issue raised at oral argument be and it hereby is Granted". Before Hon. JMW, JLO, RAK, CJS. Endorsed by Arthur M. Heller, Motions Staff Attorney.
- 1/26/04 Notice to counsel and pro se re: order dated 01/26/04 Granting motion for leave to file a brief on issue raised at oral argument.
- 1/26/04 Judgment filed; judgment of the district court is Dismissed by detailed order of the court without opinion filed. (JMW)
- 1/26/04 Notice to counsel and pro se re: summary order dated 1/26/04.
- 2/9/04 Appellant Richard Cordero motion for extended time to file a petition for rehearing, filed with proof of service.
- 2/9/04 Appellant Richard Cordero motion for stay of mandate, filed with proof of service.
- 2/13/04 Order FILED REFERRING motion for extended time by Appellant Richard Cordero, endorsed on motion dated 2/9/2004. As per Arthur M. Heller motion for extension of time to file petition for rehearing to Hon. JMW, JLO, RAK.

- 2/13/04 Order FILED REFERRING motion for stay by Appellant Richard Cordero, endorsed on motion dated 2/9/2004. As per Arthur M. Heller motion for stay mandate to Hon. JMW, JLO, RAK.
- 2/23/04 IT IS HEREBY ORDERED that the motion for an extension of time to file a petition for rehearing and to stay the mandate is GRANTED. The petition shall be filed by March 10, 2004. Before Hon. JMW, JLO, RAK, CJ. Endorsed by Arthur M. Heller, Motions Staff Attorney.
- 2/26/04 Notice to counsel and pro se re: order dated 02/23/04.
- 3/10/04 Appellant Richard Cordero motion for leave to attach some entries of the Appendix to the petition for panel rehearing and hearing en banc, filed with proof of service.
- 3/10/04 APPELLANT Richard Cordero, petition for rehearing and rehearing en banc, received.

**OFFICE OF THE CLERK  
UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK**

*1220 U.S. Courthouse, 100 State Street  
Rochester, NY 14614 (585)613-4200  
www.nywb.uscourts.gov*

Paul R. Warren  
Clerk of Court

Todd M. Stickle  
Deputy Clerk in Charge

April 16, 2004

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

Re: Deficiency Notice of 4/9/04  
Case Number 04-20280- David G. & Mary Ann DeLano

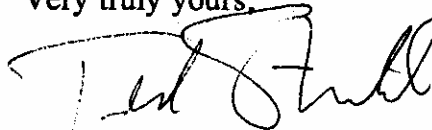
Dear Dr. Cordero:

Please be advised that the deficiency notice of 4/9/04 is being withdrawn and the docket will reflect this withdrawal. The Notice 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 is being done by submission. Therefore, it will not be placed on the Courts calendar.

Pursuant to George M. Reiber's Trustee letter filed with the Court on 4/13/04, please be advised that the Confirmation hearing scheduled for 4/26/04 will be adjourned to a date in June.

If you have any questions regarding this, please do not hesitate to contact me.

Very truly yours,



Todd M. Stickle  
Deputy Clerk in Charge

cc: George M. Reiber, Esq. Chapter 13, Trustee

## 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

April 26, 2004

Mr. Paul R. Warren  
Clerk of the Bankruptcy Court  
United States Bankruptcy Court  
1220 US Court House  
100 State Street  
Rochester, NY 14614

[tel. 585-263-3148]

Dear Mr. Warren,

In my recent letter to you of April 13, I pointed out that my letter to your deputy, Mr. Todd Stickle, of January 4, 2004, was never entered on docket no. 02-2230 although I served it with a Certificate of Service, thereby making clear my intent to file it. Likewise, his response to me of January 28, 2004, was not filed. There is no reason for keeping these letters out of the file, or for not making their whole text available electronically through a hyperlink on Pacer.

I am also formally submitting to you that letter of January 4 and requesting that you inform me about the availability of the documents mentioned therein. As to those requested under heading B. of that letter, Mr. Stickle's reply in his January 28 letter is totally unacceptable. It ignores the material impossibility which I myself pointed out to him for giving him the entry numbers of those documents: They have no numbers of their own because 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 by force exist.

Therefore, I kindly request that you:

1. enter on docket no. 02-2230 the letters of January 4 and 28, 2004, which as of today have not yet been entered, and of which copies are attached hereto for the sake of facilitating the task;
2. state whether the documents requested under heading A. are available electronically and whether those under heading B. are available at all; if the latter are unavailable, state the reason why they are neither in your possession nor on the docket.

I thank you in advance and look forward to hearing from you soon.

Sincerely,

*Dr. Richard Cordero*

## Certificate of Service

I certify that I sent the accompanying letter of April 26, 2004, addressed to Mr. Paul R. Warren, Clerk of the Bankruptcy Court, to the following parties:

Kenneth W. Gordon, Esq.  
Chapter 7 Trustee  
Gordon & Schaal, LLP  
100 Meridian Centre Blvd., Suite 120  
Rochester, New York 14618  
tel. (585) 244-1070  
fax (585) 244-1085

David D. MacKnight, Esq.  
Lacy, Katzen, Ryen & Mittleman, LLP  
130 East Main Street  
Rochester, New York 14604-1686  
tel. (585) 454-5650  
fax (585) 454-6525

Michael J. Beyma, Esq.  
Underberg & Kessler, LLP  
1800 Chase Square  
Rochester, NY 14604  
tel. (585) 258-2890  
fax (585) 258-2821

Karl S. Essler, Esq.  
Fix Spindelman Brovitz & Goldman, P.C.  
2 State Street, Suite 1400  
Rochester, NY 14614  
tel. (585) 232-1660  
fax (585) 232-4791

Kathleen Dunivin Schmitt, Esq.  
Assistant U.S. Trustee  
100 State Street, Room 6090  
Rochester, New York 14614  
tel. (585) 263-5706  
fax (585) 263-5862

Dated: April 26, 2004  
59 Crescent Street  
Brooklyn, NY 11208-1515

*Dr. Richard Cordero*

Dr. Richard Cordero  
tel. (718)827-9521

[Attachments: Dr. Cordero's letter of January 4, 2004, to Mr. Stickle.....A:834  
Mr. Stickle's letter of January 28, 2004, to Dr. Cordero.....A:836]

**OFFICE OF THE CLERK  
UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK**

*1220 U.S. Courthouse, 100 State Street  
Rochester, New York 14614  
(585)613-4200  
www.nywb.uscourts.gov*

Paul R. Warren  
Clerk of Court

Michelle A. Pierce  
Chief Deputy

Todd M. Stickle  
Deputy Clerk in Charge

May 4, 2004

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

**Re: Case No. 01-20692 and A.P. No. 02-2230--Search Request**

Dear Dr. Cordero:

I am in receipt of your letter of April 26, 2004, attached to which was a copy of your earlier letter of January 4, 2004 and a letter from Todd Stickle, Deputy-in-Charge of the Rochester Office, dated January 28, 2004 in response to that letter. I will address the many issues raised by you in the order in which they have been raised. The search fee due and payable to the Bankruptcy Court for researching your requests of January 4, 2004 and April 26, 2004 is \$26.00, which sum is due whether you elect to obtain copies of the requested documents or not. Given the fact that the search requested in both letters is the same, only a single search fee of \$26.00 is due at this time. Please send a check payable to "United States Bankruptcy Court" in the amount of \$26.00 promptly.

Your letters of January 4, 2004 and April 26, 2004, together with Mr. Stickle's letter of January 28, 2004 have been noted on the Docket. Please be advised that the Court does not typically docket search requests or requests for documents. However, in order to appease you those letters have been added to the Docket.

**Category "A" Documents:**

(1). The documents listed in your letter of January 4, 2004 ("document request") under category "A" are not available in electronic format. The Court did not begin to electronically image documents until after June 16, 2003 when the Court began using the Federal Judiciary's new case management/electronic case files (CM/ECF) software.

(2). The monthly operating reports listed in your document request in Paragraph (A)(1) [identified as documents 34, 35, 36 and 47] consist of 30 pages. The fee to obtain copies of those documents totals \$15.00 (30 pages @ \$.50 per-page). No operating statements were filed with the Court after the month-ending June 2001 operating statement was filed in September 2001.



(3). The Order closing the case listed in your document request in Paragraph (A)(2) is a "virtual document" generated by the new CM/ECF system. The "Docket Text" dated October 24, 2003 replaces the use of a stand-alone Order and is permitted by the Court's "Administrative Procedures for Electronic Case Filing" Those Procedures are posted on the Court's web site.

(4). Paragraph (A)(3) of your document request represents an apparent misunderstanding by you of the entry on the Docket dated November 12, 2003. The entry dated November 12, 2003 reflects the docketing of the payment of the Trustee's "statutory fee" in the amount of \$60.00 pursuant to 11 U.S.C. §330(b)(1) and (b)(2). There is no stand-alone Order directing the payment of that statutory Trustee fee as you suggest. The statutory Trustee's fee is payable upon the filing of a No Asset Report or a Final Report in each Chapter 7 case.

**Category "B" Documents:**

(1). Document #72, referred to in your document request in Paragraph (B)(4), is titled "Order Approving Employment of Attorney." The terms of compensation are set forth in the Application that accompanies that Order. However, no request for the payment of attorney fees was filed by Mr. Brueckner and the Court did not order the payment of fees to Mr. Brueckner. The cost of Document #72 is \$2.00 (4 pages @ \$.50 per-page).

(2). Document #97, referred to in your document request in Paragraph (B)(5), is titled "Order Approving Employment of Auctioneer". The terms of compensation are set forth in the Application that accompanies that Order. However, no request for the payment of auctioneer fees was filed by Auctioneer Teitsworth and the Court did not order the payment of fees to Mr. Teitsworth. The cost of Document #97 is \$2.50 (5 pages @ \$.50 per-page). I would note that Document #98 "Notice of Trustee's Intent to Abandon Property" may server to explain why neither the attorney nor the auctioneer services were the subject of a fee application. The cost of Document #98 is \$.50 (1 page @ \$.50 per-page).

(3). In Paragraph (B)(6) of your document request, you demand financial statements prepared by Bonadio & Co. However, I understand your request to mean that you are not requesting copies of the documents listed in Paragraph (B)(6). In your document request, you assert that "I want the statements resulting from the audit itself, which were submitted to the court..."(emphasis added). Your assertion that financial statements were submitted to the Court for filing is incorrect. The Court did not receive financial statements or other work product from the debtor's accountants for filing.

(4). The statement from M&T Bank to which you refer in Paragraph (B)(7) of your document request, referred to in the Order Lifting Stay (Document #89) was not filed with the Court by M&T Bank. I would note that the items listed in the "Notice to Creditors of Trustee's Intent to Abandon" (Document #98) seem to address the items of property set out in the Order Lifting Stay. You should contact counsel to M&T Bank if you require further information concerning the liquidation of its collateral (Timothy Johnson, Esq., Underberg-Kessler, 1800 Chase Square, Rochester, New York 14604).

(5). Your document request refers in Paragraph (B)(8) to an "order" requiring certain information. Your assertion that such an Order exists is incorrect. Documents #70 and 71 are "341 Minutes" made by the Chapter 7 Trustee during the Meeting(s) of Creditors. In the "Comments" portion of the Minutes, the Trustee listed various documents that the Trustee wished to have turned-over to the Trustee or made

available for the Trustee's review, presumably to assist the Trustee administer the case. Those items do not appear to have been filed with the Court by the Trustee.

(6). The Final Report and Account of the Chapter 11 debtor upon conversion of the case to Chapter 7, referred to in your document request in Paragraph (B)(9), was required to be filed pursuant to an Order identified as Document #62. The time for filing that Final Report and Account was extended by Order dated January 18, 2002 (Document #66). The Final Report is identified as Document #67. The cost of Document #67 is \$5.50 (11 pages @ \$.50 per-page).

Please promptly remit a check in the amount of \$26.00 payable to the "United States Bankruptcy Court" for the search fee required by the United States Courts fee schedule. If you wish to receive photocopies of any of the documents listed above, please send a separate check for the photocopy fee of \$.50 per-page, together with a listing of the specific documents you wish to have copied. The number of pages of the documents that you listed are noted above.

Very truly yours,

A handwritten signature in black ink, appearing to read "Paul R. Warren", with a long horizontal flourish extending to the right.

Paul R. Warren  
Clerk of Court

# Dr. Richard Cordero

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

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

May 16, 2004

Paul R. Warren, Esq.  
Clerk of the Bankruptcy Court  
United States Bankruptcy Court  
1220 US Court House  
100 State Street  
Rochester, NY 14614

Dear Mr. Warren,

Thank you for your letter of 4 instant.

There you request payment of a charge of \$26 for researching my request for documents. Please note that neither in my phone conversation with Mr. Todd Stickle on December 10, 2003 nor in that on January 16, 2004, was it even mentioned by your Deputy that there would be any charge just to determine whether the documents were in the court's possession. Indeed, my letter to Mr. Stickle of January 4, 2004, states the scope of our agreement thus in its opening and closing sentences:

As we discussed in our phone conversation on December 10,...

As agreed, kindly let me know in advance the cost of each document. If any of them is or can be made available electronically through Pacer, kindly let me know.

My understanding of the agreement with Mr. Stickle is confirmed by him in his letter to me of January 28, 2004, where he states the following:

...Copy costs are \$.50 per page. The search fee to count the pages is \$26.00. Thus, the total is \$41.00.

If you are interested in receiving copies of the items you list under Section A of your letter, please provide us with a \$41.00 check or money order payable to "Clerk of the United States Bankruptcy Court". We will copy and send the documents upon receipt of your payment.

That quote shows that the \$26 search fee was included in the \$41.00 total, which was payable only if I was interested in receiving those copies and asked for them. I am entitled to rely on the fee arrangement as stated to me by Mr. Stickle, the Deputy in Charge, who is deemed knowledgeable enough to make such statement and has apparent authority to enter with me into an agreement concerning court record matters, which are within the reasonable scope of his functions. I am equally entitled not to be unfairly surprised by an after-the-act fee that was never mentioned before. Mr. Stickle, as your agent, binds you.

Actually, when I wrote to you last April 13, I sent you a copy of both my letter of January 4 and Mr. Stickle's of January 28, and asked you the following:

- b) state whether the documents requested under heading A. are available electronically and whether those under heading B. are available at all; if the latter are unavailable, state the reason why they are neither in your possession nor in the docket.

This shows that I was asking you to determine the availability of the documents. As explained to me by, and agreed with, Mr. Stickle, that request does not attract a fee. My latest letter to you of April 26 also carried attached to it copies of those letters of January 4 and 28, and referred you to them to identify the specific documents that I was inquiring about. Hence, I made my request to you pursuant to those letters and the agreement described in them; for your part, you acted on my request with notice of our agreement. That agreement does not require the payment of the \$26 fee until I ask for copies.

It should be noted that you requested twice in your May 4 letter that I remit payment of the fee "promptly". Given that my first request for those documents goes back to December 10, 2003, and that I had to talk on the phone and write several times, including twice to you on April 13 and 26, in order to obtain a letter responsive to mine, the request that I be the one to act promptly is very much out of place. And yet, I am replying to you promptly.

Thank you for entering on docket no. 02-2230 the letters of January 4 and 28, 2004. Since I served them on the parties and sent them to the Court with a certificate of service to signal my intent to have them docketed, it was appropriate to do so. Moreover, since the docket is supposed to keep track of all activity in the case and give notice thereof to the world, it was also a required act.

Please find herewith my proof of claim in case 04-20280, together with a copy and a stamped, self-addressed envelope so that you may provide me with an acknowledgment of the filing of my claim.

Sincerely,

*Dr. Richard Cordero*

## Certificate of Service

I certify that I sent the accompanying letter of May 16, 2004, addressed to Paul R. Warren, Esq., Clerk of the Bankruptcy Court, to the following parties:

Kenneth W. Gordon, Esq.  
Chapter 7 Trustee  
Gordon & Schaal, LLP  
100 Meridian Centre Blvd., Suite 120  
Rochester, New York 14618  
tel. (585) 244-1070  
fax (585) 244-1085

Kathleen Dunivin Schmitt, Esq.  
Assistant U.S. Trustee  
100 State Street, Room 6090  
Rochester, New York 14614  
tel. (585) 263-5706  
fax (585) 263-5862

David D. MacKnight, Esq.  
Lacy, Katzen, Ryen & Mittleman, LLP  
130 East Main Street  
Rochester, New York 14604-1686  
tel. (585) 454-5650  
fax (585) 454-6525

Michael J. Beyma, Esq.  
Underberg & Kessler, LLP  
1800 Chase Square  
Rochester, NY 14604  
tel. (585) 258-2890  
fax (585) 258-2821

Karl S. Essler, Esq.  
Fix Spindelman Brovitz & Goldman, P.C.  
2 State Street, Suite 1400  
Rochester, NY 14614  
tel. (585) 232-1660  
fax (585) 232-4791

Dated: May 17, 2004  
59 Crescent Street  
Brooklyn, NY 11208-1515

*Dr. Richard Cordero*

Dr. Richard Cordero  
tel. (718)827-9521

**OFFICE OF THE CLERK  
UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK**

*1220 U.S. Courthouse, 100 State Street  
Rochester, New York 14614  
(585)613-4200  
www.nywb.uscourts.gov*

Paul R. Warren  
Clerk of Court

Michelle A. Pierce  
Chief Deputy

Todd M. Stickle  
Deputy Clerk in Charge

May 20, 2004

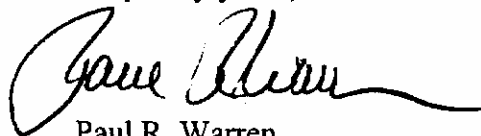
Dr. Richard Cordero  
59 Crescent Street  
Brooklyn, New York 11208-1515

**Re: Case No. 01-20692 and A.P. No. 02-2230--Search Fee**

Dear Dr. Cordero:

I am in receipt of your letter of May 16, 2004, by which you apparently refuse to pay the "records search fee" of \$26.00 required by the Bankruptcy Fee Compendium ("Compendium") established by the United States Judicial Conference. For your convenience, relevant portions of the Compendium are enclosed. The entire Compendium is available on the Court's web site. A strict reading of the Compendium would support the imposition of a record search fee for each "item searched" as a result of your request. In light of your *pro se* status, the Court did not strictly apply the Compendium in this instance. The records search fee is due regardless of whether photocopies of documents are requested. The records search fee is mandated by the Judicial Conference, your arguments concerning principals of agency and estoppel notwithstanding. Please send a check payable to "United States Bankruptcy Court" in the amount of \$26.00 immediately.

Very truly yours,



Paul R. Warren  
Clerk of Court

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

May 22, 2004

Paul R. Warren, Esq.  
Clerk of the Bankruptcy Court  
United States Bankruptcy Court  
1220 US Court House  
100 State Street  
Rochester, NY 14614

Dear Mr. Warren,

I received your letter of 20 instant and the pages excerpted from the Bankruptcy Fee Compendium.

I responsibly and promptly presented to you in my letter of May 16, the facts and reasons for my belief that I owe no fee and that you cannot unfairly surprise me with the imposition of a search fee despite your knowledge of my written agreement with your deputy, Mr. Todd Stickle, that there would be no fee unless I actually requested documents.

In the pages that you chose to send me out of that Compendium I see nothing that argues against the facts and reasons that I presented to you. I trust that if you know that the excerpted pages or others of the Compendium contain provisions that support your charging me that fee, you will be able to apply those provisions to the facts and reasons with which you are confronted. Ignoring the facts and dismissing the reasons with an offhand "your arguments concerning principals [sic] of agency and estoppel [sic] notwithstanding" are neither appropriate nor persuasive means to assert your claim.

I respectfully request that you enter on the docket this and all other letters concerning this matter since they provide useful evidence of how the Court's administrative personnel operates.

Sincerely,

*Dr. Richard Cordero*

## Certificate of Service

I certify that I sent the accompanying letter of May 22, 2004, addressed to Paul R. Warren, Esq., Clerk of the Bankruptcy Court, to the following parties:

---

Kenneth W. Gordon, Esq.  
Chapter 7 Trustee  
Gordon & Schaal, LLP  
100 Meridian Centre Blvd., Suite 120  
Rochester, New York 14618  
tel. (585) 244-1070  
fax (585) 244-1085

Kathleen Dunivin Schmitt, Esq.  
Assistant U.S. Trustee  
100 State Street, Room 6090  
Rochester, New York 14614  
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David D. MacKnight, Esq.  
Lacy, Katzen, Ryen & Mittleman, LLP  
130 East Main Street  
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---

Michael J. Beyma, Esq.  
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1800 Chase Square  
Rochester, NY 14604  
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Karl S. Essler, Esq.  
Fix Spindelman Brovitz & Goldman, P.C.  
2 State Street, Suite 1400  
Rochester, NY 14614  
tel. (585) 232-1660  
fax (585) 232-4791

Dated: May 24, 2004  
59 Crescent Street  
Brooklyn, NY 11208-1515

*Dr. Richard Cordero*

---

Dr. Richard Cordero  
tel. (718)827-952



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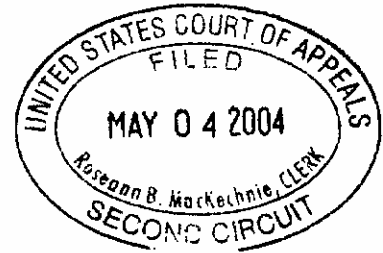
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

MOTION INFORMATION FORM

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

Docket No. 03-5023

In re: Premier Van Lines



Movant:

Richard Cordero  
50 Crescent Street  
Brooklyn, NY 11208-1515

	Yes	No
Consent sought from adversary (ies)?	<input type="checkbox"/>	<input type="checkbox"/>
Consent obtained from adversary (ies)?	<input type="checkbox"/>	<input type="checkbox"/>
Is oral argument desired?	<input type="checkbox"/>	<input type="checkbox"/>

**ORDER**

Before: Hon. John M. Walker, Jr., Chief Judge, Hon. James L. Oakes,  
Hon. Richard C. Wesley, Circuit Judges

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

FOR THE COURT:  
ROSEANN B. MACKECHNIE, Clerk  
by

A handwritten signature in black ink, appearing to read "Arthur M. Heller".

Arthur M. Heller  
Motions Staff Attorney

MAY - 4 2004

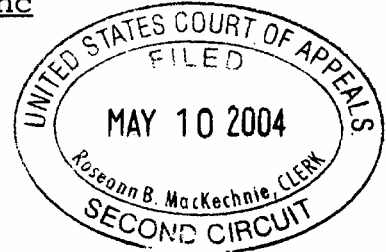
Date

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)?	<input type="checkbox"/>	<input type="checkbox"/>
Consent obtained from adversary (ies)?	<input type="checkbox"/>	<input type="checkbox"/>
Is oral argument desired?	<input type="checkbox"/>	<input type="checkbox"/>

ORDER

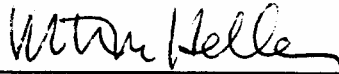
Before: Hon. John M. Walker, Jr., *Chief Judge*, Hon. James L. Oakes,  
Hon. Robert A. Katzmann, *Circuit Judges*

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

MAY 10 2004

\_\_\_\_\_  
Date

FOR THE COURT:  
ROSEANN B. MACKECHNIE, Clerk  
by

  
\_\_\_\_\_  
Arthur M. Heller  
Motions Staff Attorney

# UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

In re Premier Van et al.

case no. 03-5023

## MOTION FOR DECLARATORY JUDGMENT

that the legal grounds for updating opening and reply appeal briefs and expanding upon their issues also apply to similar papers under 28 U.S.C. Chapter 16

---

I, Dr. Richard Cordero, affirm under penalty of perjury the following:

1. Dr. Cordero took the above captioned appeal from orders issued by the U.S. district and bankruptcy courts in Rochester, NY. He submitted his legal grounds for the appeal in his opening and reply briefs as well as in two motions, namely:
  - a) Motion for leave to file **updating supplement** of evidence of **bias** in Judge Ninfo's denial of Dr. Cordero's request for a trial by jury; and
  - b) Motion for leave to brief the issue of jurisdiction **raised at oral argument by the Court.** (emphasis added)
2. Both motions were granted by this Court (17 and 18, infra). The judge referred to in the former is the Hon. John C. Ninfo, II, U.S. Bankruptcy Judge. He took decisions that Dr. Cordero appealed on the legal and equitable grounds discussed in those appeal briefs and subsequent motions.
3. In addition, Judge Ninfo "engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts". Thus, Dr. Cordero filed

about him a judicial misconduct complaint on August 11, 2003, under 28 U.S.C. Chapter 16 and the Rules of the Judicial Council of the Second Circuit Governing Complaints against Judicial Officers (hereinafter referred to as the Complaint Rules). That complaint bears docket no. 03-8547. As required, it was transmitted to the Chief Judge, the Hon. John M. Walker, Jr.

4. The predicate offense of such a complaint is that the complained-about judge has “engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts”, (emphasis added). Consequently, both Chapter 16, which encompass §§351 through 364, and the Complaint Rules impose upon the chief judge the legal obligation to handle such a complaint “expeditiously” and “promptly”. The underlying principle of this obligation is the legal axiom that justice delayed is justice denied, which in the context of a judicial misconduct complaint takes on added urgency precisely because it is a judge who is causing the delay, and thereby abusing his power to dispense or deny justice. Likewise, since the business of the courts is to administer justice, courts whose administration denies justice can be nothing but ineffective.

5. Yet, disregarding his legal obligation to act “expeditiously” and “promptly”, seven months after the submission of Dr. Cordero’s complaint Chief Judge Walker had neither dismissed nor referred it to a special committee for investigation. Hence, Dr. Cordero filed on March 19, 2004, a misconduct complaint about Chief Judge Walker for having himself “engaged in conduct prejudicial to the effective and

expeditious administration of the business of the courts”, (emphasis added). That complaint carries docket no. 04-8510. It was addressed to the next eligible chief judge pursuant to Complaint Rule 18(e).

6. Just as in connection with his appeal Dr. Cordero filed motions for leave to update his opening and reply briefs and to argue pertinent issues later raised by the Court itself, which leave the Court granted, he also tried to do so in several papers in connection with the misconduct complaints. However, the Court never had the opportunity to grant or deny them, let alone pass judgment on their merits, because the clerks refused even to file them. The papers in questions are these:

- a) Dr. Cordero’s letter of February 2, 2004, to Chief Judge Walker (19, cf. 21, *infra*);
- b) Dr. Cordero’s motion of April 11, 2004, for declaratory judgment that officers of this Court intentionally violated law and rules as part of a pattern of wrongdoing to complainant’s detriment and for this Court to launch an investigation (22, *infra*); and
- c) Dr. Cordero’s request of April 18, 2004, to Roseann MacKechnie, Clerk of Court, to review her decisions concerning Dr. Richard Cordero’s motion and Statement of Facts under 28 U.S.C. §351, which presents other arguments, not contained in the instant motion, to demonstrate that federal law, FRAP, the local rules and the Complaint Rules of the Second Circuit allow motions in the context of misconduct complaints (44, *infra*).

7. The instant motion argues that the legal grounds that allow opening and reply briefs to be updated and specific issues to be expanded upon after filing those briefs also apply to misconduct complaints; hence, subsequent to their filing,

papers can be submitted in connection with the complaints. The determination of that legal question has a direct bearing on this appeal, which is still pending before this Court on a motion for panel rehearing and hearing en banc. Indeed, if the Court declares that the same grounds apply, then the updating and issue-expanding papers that would be allowed to be filed could trigger action on the complaints and lead to a finding that in fact Judge Ninfo and Chief Judge Walker have engaged in misconduct that have tainted the orders issued by the former and the participation of the latter in the dismissal of the appeal, so that such orders and dismissal must be quashed. Consequently, the question of the commonality of legal grounds for motion practice in the context of appeals and misconduct complaints is properly presented as part of this appeal.

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\*\*\*\*\*

**I. Chapter 16 of 28 U.S.C. -§§351 through 364- and the Complaint Rules allow the submission of papers subsequent to the filing of a judicial misconduct complaint**

8. The basic principle that speaks in favor of allowing the submission of papers, including letters, motions, and evidentiary documents, subsequent to filing a §351 complaint is twofold: Nowhere in chapter 16 is it prohibited to do so; on the contrary, that chapter explicitly provides as follows:

**§362. Other provisions and rules not affected**

Except as expressly provided in this chapter, nothing in this chapter shall be construed to affect any other provision of this title, the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Federal Rules of Appellate Procedure, or the Federal Rules of Evidence.

9. The Federal Rules of Civil Procedure, such as Rules 7, 11, and 50, and those of Appellate Procedure, such as Rules 27, 29(b), and 32(c)(2), provide for the filing of motions and other papers after plaintiff has filed his complaint and a party its appeal, respectively.

10. The applicability of those Rules to misconduct complaints is recognized implicitly in the very first paragraph of the Complaint Rules, where it is stated that:

Section 351 et seq. of Title 28 of the United States Code provides a way for any person to complain about a federal judge...These rules have been adopted under that authority.

11. Therefore, the Complaint Rules adopted by this Circuit to implement section 351

et seq. cannot legally overstep that enabling authority in order to prohibit the subsequent filing of motions or other papers allowed by the Federal Rules. “Other paper” under Appellate Rule 32(c)(2) is a term more than broad enough to include a letter inquiring about complaint status, an updating statement of intervening events, and a motion expanding on an issue.

12. Complaint Rule 13(c) applies this principle by providing that:

(c) **Presentation of Argument.** The complainant may submit written argument to the special committee. In the discretion of the special committee, the complainant may be permitted to offer oral argument.

13. As far as written argument goes, the complainant can submit any at any time without the need to cause the special committee to exercise its discretion to permit him to offer such. Similarly, subsequent to the complaint, the complainant can submit other documents also to the chief judge, as indicated in the following provisions of the Complaint Rules.

**II. Evenhandedness under the Complaint Rules and avoidance of partiality toward his peer judge complained about require the chief judge to accept and consider not only exonerating papers and statements of intervening events, but also incriminating ones submitted by the complainant subsequent to his complaint**

14. Complaint Rule 4(a) provides that:

...the chief judge will review the complaint to determine whether it should be (1) dismissed, (2) concluded on the ground that corrective action has been taken, (3) concluded because intervening events have made action

on the complaint no longer necessary, or (4) referred to a special committee.

15. If the chief judge can take into consideration intervening events, such as corrective action, as the basis for dismissing the complaint, then he must also be required to take intervening events, such as further evidence supporting the complaint, as the basis for referring it to a special committee. For the chief judge to agree to consider intervening events with an exonerating effect but not those further incriminating the complained about judge would mean that he has a bias toward finding a way to let his peer judge “off the hook” while avoiding any further evidence that could aggravate his peer’s situation and force him to have a committee investigate his peer. To avoid even the appearance of such partiality toward one of his own, the chief judge must accept and consider subsequent papers submitted by the complainant.

16. Similarly, if under Complaint Rule 4(d)

The complaint proceeding will be concluded if the chief judge determines that appropriate action has been taken to remedy the problem raised by the complaint...

then the chief judge must also accept and consider evidence submitted by the complainant subsequent to his complaint that shows that the problem has not been remedied or has even worsened.

17. The likelihood that there will be intervening events in line with those that gave rise to the complaint in the first place can only increase as the chief judge,

disregarding his legal obligation to handle the complaint with promptness and expeditiousness, allows months to go by without taking any action on the complaint. His disregard may be interpreted by his complained about peer as a condonation of the complained about conduct and, thus, as an exoneration or even a condonation, which may well encourage the peer judge to continue engaging in the same conduct. This perverse result of the chief judge's disregard of his promptness obligation provides additional reason for the chief to accept and consider subsequent documents stating facts that support the initial complaint or even provide the basis in their own right for a second misconduct complaint.

18. Moreover, if under Rule 4(c), the chief judge may dismiss the complaint by finding that the complained about conduct is not "conduct prejudicial to the effective and expeditious administration of the business of the courts", then after allowing time to slip by without acquitting himself of his promptness obligation the chief judge must accept and consider the complainant's subsequent evidence showing that the complained about conduct was neither effective nor expeditious. Proceeding in this way preserves the appearance of evenhandedness. In addition, it conserves judicial resources and spares the complainant any further waste of effort, time, and money by not forcing either the complainant to submit or the chief judge to deal with a second, third, or more complaints based on intervening events.

19. Taking into account intervening events in the context of the original complaint also works toward reducing the objective chances of a Catch-22 situation arising

to the detriment of the complainant: He submits his complaint and the chief judge dismisses it because the conduct of his complained about peer does not sufficiently lack in effectiveness or expeditiousness as a result of the chief judge's refusal to accept and consider the complainant's subsequently submitted statement of intervening events showing such lack. So the complainant submits a new complaint that comprises statements of both the original conduct and of intervening events; but the chief judge dismisses it under Rule 4(c)(3) allowing for dismissal of "charges that have been ruled on in previous complaints by the same complainant". However, if the complainant includes in his new complaint only the intervening events, it is dismissed too by the chief judge invoking the former grounds once more, that is, that the conduct does not sufficiently lack in effectiveness or expeditiousness.

20. Avoiding this 'damn if you do and damn if you don't' unfairness toward the complainant calls for taking the totality of circumstances described originally in the complaint as well as in other papers subsequently submitted until the moment that the chief judge either dismisses the complaint or refers it to a special committee. If the chief judge, disregarding his obligation to act promptly, unlawfully postpones sine die acting on the complaint, he should not also be allowed to disregard the explicit and implicit provisions of the Rules so as to arbitrarily restrict the complainant to his original statement of the complained about conduct regardless of any additional conduct in which the complained about

judge has engaged since.

21. Likewise, under Complaint Rule 4(c)(4) the chief judge can dismiss the complaint because “under the statute, the complaint is otherwise not appropriate for consideration”. Such unfettered discretion allows bias toward the peer judge complained about and is the antithesis of procedure based on rules that lay out applicable criteria and lists types of facts to guide, limit, or mandate appropriate or required action. A semblance of evenhandedness can be approached by requiring the chief judge to accept and consider the complainant’s subsequently submitted papers and statements of intervening events, which may set forth facts and arguments establishing that the complaint is appropriate for consideration under the statute.

22. In the same vein, Rule 4(b) provides that the chief judge:

...may conduct a limited inquiry for the purpose of determining (1) whether appropriate corrective action has been or can be taken without the necessity for a formal investigation, and (2) whether the facts stated in the complaint are either plainly untrue or are incapable of being established through investigation...The chief judge will not undertake to make findings of fact about any material matter that is reasonably in dispute.

23. If on the one hand, the chief judge can conduct an inquiry that can lead him to find for his complained about peer a quick and easy way out of the complaint, then on the other hand, he must also accept and consider subsequently submitted papers and statements of intervening events that show ‘the absence of any corrective action, the plain truth of the stated facts, and their capacity to be established

through investigation’. If he conducts his ‘inquiry to determine whether the stated facts are untrue’, then he must also accept and consider facts that can help him determine that those facts are at least “reasonably in dispute” and should be ascertained by his referring them to a special committee. Only by doing so can the chief judge be evenhanded in dealing with his peer and the complainant.

24. Complaint Rule 4(b) also provides that for the purpose of conducting his inquiry:

(b)...the chief judge may [1] request the judge...to file a written response to the complaint...[2] communicate orally or in writing with the complainant, the judge...and other people who may have knowledge of the matter, and [3] review any transcripts or other relevant documents.

25. If the chief judge can communicate with the parties and others, there is no reason, whether in law or in fact, why the complaining party cannot take the initiative subsequent to submitting his complaint to communicate with the chief judge to submit “other relevant documents”. If the chief judge may communicate with even people other than the parties because such people “may have knowledge of the matter”, then he has every reason to accept and consider “other relevant documents” subsequently submitted by the complainant, who by definition is supposed to “have knowledge of the matter”. Either the chief judge is motivated by an honest interest in gaining “knowledge of the matter” regardless of who takes the initiative to submit “other relevant documents” or he is just going through the motions of an inquiry and his real interest is in avoiding knowledge that could require him to take action against his peer by referring the matter to a special

committee. Not even the chief judge can have it both ways.

**III. The broad categories of materials to be sent to the judicial council indicates that far from the Complaint Rules requiring or authorizing the chief judge or any clerk to return unfiled to the complainant any documents that he submits subsequent to his complaint, such documents must be accepted and considered ‘in connection with the complaint’**

26. Complaint Rule 7 sets out the “Action of clerk of court of appeals upon receipt of a petition for review”, which provides that among the copies that...

(a)...The clerk will promptly cause to be sent to each member of the judicial council...[are] (3) any record of information received by the chief judge in connection with the chief judge's consideration of the complaint,...(7) any other documents in the files of the clerk that appear to the circuit executive to be relevant and material to the petition or a list of such documents, [and] (8) a list of any documents in the clerk's files that are not being sent because they are not considered by the circuit executive relevant and material...

27. These are very broad categories of materials. While (3) concerns information, whether recorded on a letter, a motion, an audio or video cassette, etc., and received in connection with the complaint, documents in (7) do not even have to be so connected, but merely to “appear” to be relevant and material to the complainant’s review petition to the judicial council. What is more, category (8) requires that even those documents not considered to be “relevant and material” be included on a list to be sent to the council. There can be no doubt that complainant’s papers and statements of intervening events submitted to the chief



judge in connection with and subsequent to the original complaint fall squarely within categories (3), (7), or (8). Logically, if the chief judge or any clerk receives them but refuses to file them and instead sends them back to the complainant, neither of them would have those documents when it came time upon receipt of the review petition to make copies thereof and send or include them on a list to be sent to the council members. Therefore, who came up with the idea and took the unjustified decision to return to Dr. Cordero his letter of February 2, 2004, to Chief Walker, his subsequent motion of April 11, and his request of April 18, described in para. 6, above? Is there anybody who reads the law and the rules and is sufficiently respectful of them to conform his or her acts to their requirements, his or her personal preferences notwithstanding?

#### **IV. Relief requested**

28. Dr. Cordero respectfully requests that the Court:

a) declare that

- 1) neither §351 et seq. nor the Complaint Rules require even implicitly, let alone explicitly, that the chief judge refuse to consider, not to mention refuse even to take possession of, papers submitted subsequent to the complaint, whether they be letters, motions, statements, or evidentiary documents, and regardless of their purpose to inquire, expand on issues, or update the complaint with intervening events;

2) neither those sections nor the Rules authorize the clerk of court or even the circuit executive to return unfiled to the complainant any such papers that he submits "in connection with the chief judge's consideration of the complaint";

b) accept and consider:

3) the letter of February 2, 2004; that inquires about the status of the misconduct complaint of August 11, 2003, (19, *infra*), and reply thereto;

4) the attached motion of April 11, 2004, for declaratory judgment that officers of this Court intentionally violated law and rules as part of a pattern of wrongdoing to complainant's detriment and for this Court to launch an investigation (22, *infra*), and grant it; and

5) the attached request of April 18, 2004, to review the decisions of the Clerk of Court concerning Dr. Cordero's motion and Statement of Facts under 28 U.S.C. §351, which presents other arguments, not contained in the instant motion, to demonstrate that federal law, FRAP, the local rules and the Complaint Rules of the Second Circuit allow motions in the context of misconduct complaints (44, *infra*), and grant it;

c) grant any other relief that to the Court may appear just and fair.

Respectfully submitted on

May 15, 2004

59 Crescent Street  
Brooklyn, NY 11208

*Dr. Richard Cordero*

Dr. Richard Cordero  
tel. (718) 827-9521

## Proof of Service

I, Dr. Richard Cordero, certify that I served by United States Postal Service on the following parties copies of my motion for declaratory judgment of May 15, 2004:

---

Kenneth W. Gordon, Esq.  
Chapter 7 Trustee  
Gordon & Schaal, LLP  
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