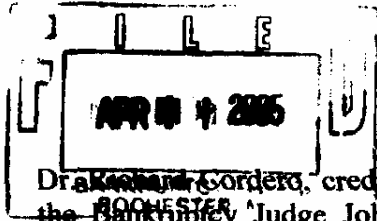


**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**

Form B17 (Official Form 17)
(9/97)

In re: David G. DeLano and Mary Ann DeLano

Chapter 13 case, dkt. no: 04-20280



NOTICE OF APPEAL

Dr. Richard Cordero, creditor, appeals under 28 U.S.C. § 158(b) from the decision and order of the Bankruptcy Judge John C. Ninfo, II, entered on April 4, 2005, in the above captioned Chapter 13 voluntary bankruptcy petition under 11 U.S.C.

The names of all parties to the decision and order appealed from and the names, addresses, and telephone numbers of their respective attorneys are as follows:

David G. DeLano and Mary Ann DeLano, represented by
Christopher K. Werner, Esq.
Boylan, Brown, Code, Vigdor & Wilson, LLP
2400 Chase Square
Rochester, NY 14604; tel. (585)232-5300; fax (585)232-3528

Other creditors and parties in interest are the following:

Trustee George M. Reiber
South Winton Court
3136 S. Winton Road
Rochester, NY 14623
tel. (585) 427-7225; fax (585)427-7804

Kathleen Dunivin Schmitt, Esq.
Assistant U.S. Trustee
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Rochester, New York 14614
tel. (585) 263-5812; fax (585)263-5862

Ms. Deirdre A. Martini
U.S. Trustee for Region 2
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Discover Financial Services
Bankruptcy Department
P.O. Box 15083
Wilmington, DE 19850-5083
tel. (800)347-5515; fax(614)771-7839

Dated: April 9, 2005
59 Crescent Street
Brooklyn, NY 11208


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

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

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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

IN RE:

DAVID G. DeLANO and
MARY ANN DeLANO,

CASE NO. 04-20280

Chapter 13

Debtors.

DECISION & ORDER

BACKGROUND

On January 27, 2004, David G. DeLano ("DeLano") and Mary Ann DeLano (collectively, the "Debtors") filed a petition initiating a Chapter 13 case (the "DeLano Case").

On May 19, 2004, Richard Cordero ("Cordero") filed a proof of claim in the DeLano Case (the "Cordero Claim"). The Claim asserted that Cordero was a creditor of DeLano by reason of a cross-claim that Cordero had asserted against DeLano, individually and in his capacity as an officer of M&T Bank, in an Adversary Proceeding (the "Premier AP") filed and pending in this Court in the Premier Van Lines, Inc. ("Premier") Chapter 7 case #01-20692 (the "Premier Case").

On October 23, 2003, the Court entered a Scheduling Order (the "Premier Scheduling Order") in the Premier AP in Connection with: (1) the Remaining Claims of the Plaintiff, James Pfuntner ("Pfuntner"); and (2) Cordero's Cross-Claims, Counterclaims and Third-Party Claims (the "Cordero Premier Claims"), a copy of which

is attached in order to provide a detailed background of the Premier Case from the beginning of Cordero's involvement, including the decisions made by the Court and the current status of the Case.

On July 22, 2004, the Debtors commenced a Claim Objection Proceeding by filing an Objection to the Cordero Claim.

On August 30, 2004, the Court entered an Interlocutory Order in the DeLano Case (the "August 2004 Interlocutory Order"),¹ a copy of which, without the Premier Scheduling Order and its attachments, is attached in order to provide a detailed background of the DeLano Case from the beginning of Cordero's involvement, including the decisions made by the Court through that date. The August 2004 Interlocutory Order: (1) gave the Debtors and Cordero until December 15, 2004 to complete any and all discovery that they wished to conduct in connection with the Claim Objection Proceeding; and (2) Ordered that the Claim Objection Proceeding would be called on the Court's December 15, 2004 Evidentiary Hearing Calendar when it would be scheduled for an evidentiary hearing.

On November 8, 2004, Cordero filed a motion to enforce the August 2004 Interlocutory Order and for discovery (the "Cordero Discovery Motion").

¹ The terms defined in the August 2004 Interlocutory Order shall have the same meaning when used in this Decision & Order.

On November 10, 2004, the Court entered a further Interlocutory Order (the "November 2004 Discovery Order"), a copy of which is attached, that denied the relief requested in the Cordero Discovery Motion to the extent that Cordero made demands of DeLano for documents that: (1) were unrelated to the Claim Objection Proceeding; (2) DeLano did not have in his possession and were not his documents, but were the documents of M&T Bank or other parties to the Premier AP; and (3) Cordero had the ability to obtain directly from those parties.

On December 15, 2004, the Court scheduled the Claim Objection Proceeding for an Evidentiary Hearing (the "Trial") on March 1, 2005, and a Scheduling Order to that effect was signed and entered on December 21, 2004.

On February 23, 2005, Cordero filed a Notice of Motion which requested that Judge John C. Ninfo, II, Recuse Himself Under 28 U.S.C. § 455(a) Due To His Lack Of Impartiality (the "Recusal Motion"), which was made returnable on the date and time of the Trial.

At the commencement of the Trial, the Court questioned Cordero in connection with the attached New York State Attorney Directory Westlaw Search (the "Search"), which indicated that he was a licensed (No. 2269389) attorney currently registered with the New York State Office of Court Administration, having: (1) graduated

from the University of Cambridge, England; and (2) been admitted in the Appellate Division Second Department in 1989. The Search also indicated that, at least as of the date of his last registration, Cordero was associated with the law firm of Heller, Jacobs & Kamlet, LLP, doing business at 261 Madison Avenue, New York, New York, a firm that the Search described as having ninety-eight percent (98%) of its practice devoted to litigation.

At the Trial, Cordero confirmed that he was a licensed and currently registered attorney, but denied that he had ever been associated in any way with the firm of Heller, Jacobs & Kamlet, LLP. Cordero further asserted that he had advised the Court that he was an attorney in one of his initial appearances in the Premier Case.²

At the Trial, which lasted nearly six hours, the Court first addressed the Recusal Motion and then proceeded with the Claim Objection Proceeding.

² Although Cordero asserted that he advised the Court that he was an attorney in one of his initial appearances in the Premier Case, neither the Court nor any of the courtroom staff recalls such an admission. The Search was made by the Court's Confidential Law Clerk after Cordero had a discussion with a Deputy Clerk about obtaining a CM/ECF password during which he indicated that he was an attorney. Many of the pleadings, statements, actions and inactions of Cordero in and in connection with the Premier and DeLano Cases, in which he makes much of his *pro se* litigant status, can be seen in a far different light when one is aware that he is a licensed, experienced and registered attorney.

DISCUSSION

I. The Recusal Motion

At the Trial, the Court denied the Recusal Motion, for the reasons that were set forth on the record, and indicated that it reserved the right to further detail and supplement the reasons in this Decision & Order.

The Court denied and hereby denies the Recusal Motion in all respects for the following reasons:

1. As determined in its October 16, 2003 Order that Denied Cordero's Recusal and Removal Motions in the Premier Case, the Court does not believe that any reasonable person, fully familiar with the facts and circumstances of the DeLano Case and the related pleadings, proceedings and correspondence, including any statements and decisions made by the Court in the DeLano or Premier Cases, would or could question the Court's impartiality, or believe that it was biased or prejudiced toward Cordero. Although Cordero may believe that the Court is biased against him, based upon various decisions and statements it made in the Premier and DeLano Cases, whether orally or in writing, the Court does not believe that any reasonable person would conclude that any of

them demonstrate any actual bias, prejudice or impartiality, or even the appearance of such.

2. Like so many *pro se* litigants, Cordero has filed a great number of motions and made numerous requests for relief that had very little to do with the merits of the Cordero Premier Claims, including those against DeLano. As every Court knows, many of these typical *pro se* procedural and tangential motions and requests would never be made if the *pro se* litigant was represented by and required to pay counsel for pursuing them. As a result, the Court often is required to make many more decisions in a case where there is a litigious *pro se* litigant than if all of the parties were represented. When the Court fails to grant that litigious *pro se* litigant the relief they have requested, rather than fully analyzing the merits of the request and the actual decision of the Court, they often attribute their lack of success to the Court being biased or prejudiced. This appears to be exactly what Cordero has done. However, knowing that Cordero is a licensed, experienced and registered attorney in the State of New York, and given the facts, circumstances and events that have taken place in the Premier AP and the DeLano Case,

it is difficult to believe that his allegations of bias, prejudice and impartiality are genuine.

3. If one looks objectively at the involvement of Cordero in the Premier and DeLano Cases, it becomes clear that the focus of Cordero and the Court have been very different. On the one hand, the Court has consistently attempted to focus Cordero on what it considers to be the critical issues relating to his involvement with these Cases. These issues are the status of Cordero's stored personal property (the "Cordero Property"), his need to take possession and control of the Property in order to assure that there is no damage or further damage to it, his need to determine if there has in fact been any damage to it, and, if there has been damage, the nature and extent of any damage, when the damage occurred and who may have been responsible for it. The Court has tried to focus on these issues so that Cordero could have his "Day in Court" and have these issues tried and determined by the Court. On the other hand, Cordero appears to have had a very different focus; one that is primarily on collateral and tangential issues, form over substance, and the desire to litigate for the sake of litigating without ever addressing these critical issues that would

establish the merits, if any, of the alleged Cordero Premier Claims and move these Cases forward. Once again, Cordero interprets this fundamental difference in focus as an expression of bias, prejudice and impartiality on the part of the Court. However, as a Court of Equity, this Court is not about litigating for the sake of litigating. It is about providing litigants, whether they are *pro se* litigants or those represented by counsel, their "Day in Court" so that their issues can be justly, speedily and inexpensively determined.

II. The Claim Objection Proceeding

Section 502(a)³ provides that once a proof of claim is filed, it is deemed allowed unless a party in interest objects, and Rule 3001(f) provides that a correctly filed proof of claim is *prima facie* evidence of the validity and amount of the claim.⁴ Case law

³ Section 502(a) provides that:

(a) A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a general partner in a partnership that is a debtor in a case under chapter 7 of this title, objects.

11 U.S.C. § 502 (2005).

⁴ Rule 3001(f) provides that:

A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.

Federal Rules of Bankruptcy Procedure, Rule 3001 (2005).

in the United States Court of Appeals for the Second Circuit (the "Second Circuit") makes it clear that the ultimate burden to prove a valid and allowable claim rests with the creditor.⁵

In its August 2004 Interlocutory Order, the Court stated that:

The Claim objection on its face is compelling, because the Cordero Claim and its attachments set forth no legal or factual basis that demonstrates that DeLano has any legal responsibility or liability to Cordero, and the Court is not otherwise aware of any factual basis for such a claim from the proceedings in the Premier AP or the DeLano Case.

Since Cordero failed to attach to the Cordero Claim those pages of the Cordero Premier Claims that specifically dealt with his alleged claims against DeLano, the Court made this statement only after it had reviewed in detail the Cordero Claim, DeLano's Objection to the Claim and the Cordero Premier Claims.

⁵ *In re Yourovetz Home & Foreign Trade Co. Inc.*, 2 Cir., 297 F. 723 (1924); *In re George R. Burrows, Inc.* 155 F.2d 640 (2d Cir. 1946). The Second Circuit has clearly ruled that once the objecting party introduces substantial evidence in opposition, the burden shifts to the claimant to establish by a preponderance of the evidence that their claims are allowed under the law. Furthermore, it is well established by case law in a host of jurisdictions that after the objecting party introduces evidence sufficient to rebut the presumption of validity, the burden of proof shifts to the claimant. See Alan N. Resnick and Henry J. Sommer, 9 *Collier on Bankruptcy* § 3001.09[2] at 3001-27 - 3001-28; Joseph M. Bassano, et al, 9C *Am. Jur. 2d Bankruptcy* § 2368; and William L. Norton, Jr., 2 *Norton Bankr. L & Prac. 2d* § 41:7. Most significantly, the Supreme Court has held in *Raleigh v. Illinois Dept. Of Revenue*, 530 U.S. 15 (2000), that the burden of proof in bankruptcy cases should be applied in the same manner as in non-bankruptcy law in a non-bankruptcy forum, since the burden is a substantive aspect of the claim.

Paragraphs 70, 71 and 72 of the Cordero Claims that were not attached to his filed Proof of Claim, read as follows:

70. Mr. DeLano was reckless or negligent when on June 18, 2002, he stated to Dr. Cordero that he had seen storage containers bearing the label 'Cordero' in the Jefferson-Henrietta warehouse, if he did not actually see any such containers there.
71. Mr. DeLano, as the M&T Bank officer in charge of the Premier Case, was reckless or negligent when he failed to inventory Premier's assets and equipment on which his Bank held a lien and which were stored in the Jefferson-Henrietta warehouse, although he knew that some or all of Premier's storage containers held third-parties' property, such as that of Dr. Cordero; failed to give them notice of M&T Bank's intended sale of such containers to Champion Moving & Storage and to obtain the consent of those parties, such as Dr. Cordero, for their removal to Champion's warehouse; and failed to monitor such removal so that now Champion can plausibly claim that it never took possession or delivery of Dr. Cordero's property.
72. By proceeding so recklessly or negligently, Mr. DeLano has caused the loss of some or all of Dr. Cordero's property, has for months caused Dr. Cordero an enormous waste of time, effort, and money as well as an enormous amount of aggravation in his as yet unsuccessful search for his property, has deprived him of the enjoyment of his property, and has caused him to be dragged into these most confusing adversary proceedings among multiple parties with a welter of claims.

Having reviewed the relevant portions of the Cordero Premier Claims, the Court made the foregoing statements in the August 2004 Interlocutory Order for the following reasons:

1. Although paragraphs 70, 71 and 72 of the Cordero Cross-Claims may have been sufficient for basic pleading purposes in the Premier AP, for the purpose of determining the validity and allowability of the Cordero Claim in the DeLano Case, there was nothing in the allegations which demonstrated that: (1) either M&T or DeLano had any legal duty to Cordero with respect to the Cordero Property; (2) DeLano was at any time acting other than as an employee of M&T Bank and within the scope of his employment; (3) M&T Bank or DeLano, as an officer and employee of M&T Bank, ever took possession of or exercised control over the Cordero Property, whether at the former Premier Jefferson-Henrietta Warehouse (the "Warehouse") or at any other location; (4) M&T Bank or DeLano, as an officer and employee of M&T Bank, had any obligation to inventory the contents of the containers at the Warehouse that might contain the stored personal property of third parties, including Cordero; (5) anything that DeLano did, individually or as an officer and employee of M&T Bank, caused the loss of or damage to some or all of the Cordero Property; or (6) there was any loss of or damage to the Cordero Property.

By reason of the August 2004 Interlocutory Order, it was clear to Cordero, or it should have been clear to him as a licensed, experienced and registered attorney, that at the Trial he would be required to meet his ultimate burden of proof as an alleged creditor to demonstrate, by a preponderance of the evidence, that he had a valid claim against DeLano individually that was allowable in the DeLano Case.

At the Trial, Cordero called DeLano as his only witness and he did not offer any documents for admission into evidence. Further, Cordero did not file a Pretrial Memorandum of Law or make any other written submission regarding the merits of the Cordero Claim.

At the conclusion of the Trial, it was clear that Cordero completely failed to meet his burden of proof by a preponderance of the evidence. In fact, Cordero failed to introduce any credible evidence which demonstrated that he held a valid claim against DeLano individually that could be allowed in the DeLano Case.

At the Trial, DeLano testified, in part, as follows: (1) after the conversion of the Premier Case from a Chapter 11 case to a Chapter 7 case, the Premier Chapter 7 Trustee, Kenneth Gordon (the "Trustee"), when he felt that he could no longer assist Cordero in locating the Cordero Property, referred Cordero to DeLano, in his capacity as relationship manager for M&T Bank that held a security interest in the Premier assets; (2) DeLano, while at all times

acting in his capacity as an officer and employee of M&T Bank, advised Cordero, by telephone, that he had seen one or more storage containers at the Warehouse which bore Cordero's name; (3) after: (a) the Premier loans to M&T Bank went in default; (b) the Premier Case converted to a Chapter 7 case; and (c) the Trustee abandoned any interest that he had in the property of Premier that was subject to the M&T Bank lien, M&T Bank sold the Premier assets located at the Warehouse, including ten storage containers, at a private sale, pursuant to its rights under the New York Uniform Commercial Code to a buyer arranged for by Reynolds Auction Company; (4) although DeLano could not remember the name of the purchaser of the containers (the "Purchaser"), he knew that it was a reputable storage company; (5) although DeLano and M&T Bank believed that one or more of the containers sold to the Purchaser contained the Cordero Property, it turned out that at the time of the sale by M&T Bank the containers with the Cordero Property were at a storage facility in Avon, New York maintained by Pfuntner (the "Avon Storage Facility"), a location where they had been previously stored by Premier; (6) M&T Bank, as a secured creditor, never took possession of or exercised any control over any of the Premier storage containers at the Avon Storage Facility, including those in which Premier had stored the Cordero Property, rather, M&T Bank abandoned any interest that it had in those containers; (7) he

believed that, at all times when he dealt with the Premier Case, the Premier assets and Cordero, he acted within the scope of his employment as an officer and employee of M&T Bank, and that he was not really certain as to why Cordero believed that he had a claim against him individually in connection with the Cordero Property stored at the Avon Storage Facility which M&T had abandoned any interest in and had never exercised possession or control over.

Although, as an experienced attorney, Cordero was successful in confusing DeLano during his testimony and in eliciting from DeLano some most interesting statements as the result of that confusion, and even though DeLano insisted that he was not confused, what is clear from the Trial and DeLano's testimony at the Trial is that: (1) DeLano consistently asserted that: (a) in his interaction with Cordero, he was at all times acting within the scope of his employment as an officer and employee of M&T Bank; and (b) Cordero had no claim against him individually; and (2) there was nothing in DeLano's testimony at the Trial that demonstrated that Cordero had any valid claim or cause of action against him individually for negligence, recklessness or otherwise.

The Court finds that Cordero has no valid Claim against DeLano individually that it could allow in the DeLano Case, by reason of negligence, recklessness or otherwise, for the following reasons: (1) although M&T Bank had a security interest in the assets of

Premier, including the containers in which the personal property of a number of its customers was stored, including the Cordero Property, M&T Bank never took possession of or asserted control over the containers at the Avon Storage Facility where the Cordero Property was stored; (2) since M&T Bank never took possession of or asserted control over the containers in which the Cordero Property was stored, neither M&T Bank nor DeLano, as an officer and employee of M&T Bank, had any duty to Cordero with respect to the Cordero Property; the duty to properly store and care for the Cordero Property at all times remained with Premier, or perhaps Pfuntner; (3) Cordero has produced no credible evidence to demonstrate that DeLano was not acting at all times in question within the scope of his employment as an officer and employee of M&T Bank; (4) there is nothing in DeLano's testimony at Trial which indicates that there were not one or more storage containers at the Warehouse that bore Cordero's name, so there is no evidence that the statements DeLano made to Cordero, in his capacity as an officer and employee of M&T Bank, were not true; (5) at Trial, Cordero indicated that David Dworkin, the landlord of the Warehouse, had also indicated to him that there were one or more containers at the Warehouse that bore Cordero's name; (6) Cordero did not demonstrate at Trial that there is any requirement, under New York State or Federal Law, that imposes upon a secured creditor that sells a storage container,

such as those sold by M&T Bank at its private sale, a duty to inventory the contents of the containers or confirm the ownership of the contents and notify the owner of the contents, prior to a private sale of the containers under the Uniform Commercial Code to an otherwise reputable local storage company; (7) any confusion as to where the containers that contained the Cordero Property were actually located was the result of the actions or inactions of Premier, not DeLano, individually or as an officer and employee of M&T Bank, and to the extent that Cordero expended time, energy or funds in attempting to determine the actual location of his stored personal property, that is not the legal responsibility of M&T Bank or DeLano, even if they innocently and mistakenly believed that some or all of the Cordero Property was at the Warehouse; (8) the Court is aware from its involvement in the Premier AP that even when Cordero learned of the actual location of the Cordero Property at the Avon Storage Facility, he did not take immediate steps to: (a) arrange for the Property to be removed; or (b) inspect the Property in order to determine if there had been any damage to it, and if there had been damage, to determine the nature and extent of the damage, when the damage occurred, and who might be responsible for it; (9) Cordero has failed to produce any evidence to demonstrate that there has been any damage to the Cordero Property; and (10) to the extent that there may be any damage to the Cordero

Property at the Avon Storage Facility, Cordero produced no evidence at Trial to indicate that DeLano was in any way responsible for such damage, in whole or in part.

III. Renewed Cordero Discovery Motion

As a licensed, experienced and registered attorney, Cordero knew that March 1, 2005 was his "Day in Court" and his only opportunity to prove that he had a valid claim against DeLano individually that could be deemed allowed in the DeLano Case. At the end of the Trial when asked if he had any further evidence to present, Cordero renewed the Cordero Discovery Motion, which the Court once again denied and indicated that it would set forth its reasons for denying the renewed motion in this Decision & Order.

The Court hereby in all respects denies the renewed Cordero Discovery Motion for the following reasons: (1) as a licensed, experienced and registered attorney, Cordero knew that he had been afforded sufficient time between the August 2004 Interlocutory Order and December 15, 2004, to do any discovery that he required, including obtaining, voluntarily or through the subpoena process, any and all documents that he deemed to be relevant to the Claim Objection Proceeding from M&T Bank or other parties to the Premier AP, yet he apparently took no steps to: (a) obtain those documents other than to request them from DeLano; or (b) otherwise conduct

discovery of any of the parties in the Premier AP prior to November 8, 2004, when he filed the Cordero Discovery Motion; (2) even after November 10, 2004 when the Court entered the November 2004 Discovery Order denying his Discovery Motion with respect to documents that: (a) were unrelated to the Claim Objection Proceeding; (b) DeLano did not have in his possession and were not his documents, but were the documents of M&T Bank or other parties to the Premier AP, there is no indication that Cordero made any attempt to obtain those documents from M&T Bank or other parties to the Premier AP, or to otherwise conduct discovery of those parties for the three and a half months between the November 2004 Discovery Order and the Trial; (3) Cordero at all times had the ability to obtain the requested documents directly from the parties in the Premier AP other than DeLano; (4) although the August 2004 Interlocutory Order cut off discovery on December 15, 2004, that was between Cordero and DeLano, and, as a licensed, experienced and registered attorney, Cordero knew that nothing in that Order prevented him from obtaining relevant discovery from M&T Bank or other parties to the Premier AP as part of the Premier AP.

IV. Cordero's Involvement in the DeLano Case Going Forward

Having determined that Cordero has no valid claim against DeLano individually that is allowable in the DeLano Case, Cordero

shall have no further standing in that Case, including participating in any further hearings conducted by the Court in the DeLano Case. Cordero indicated that he would appeal the Court's Decision & Order in the Claim Objection Proceeding if it determined that he had no valid and allowable claim in DeLano Case. In view of that anticipated appeal, and in the interests of judicial economy, in accordance with Rule 8005, the Court hereby denies Cordero any stay of the effectiveness of this Decision & Order pending any appeal that he may take of the Decision & Order. The Court denies such a stay because: (1) it does not believe that there is any possibility that Cordero could prevail on the merits of any such appeal; (2) there is no public interest involved in this matter; and (3) the detriment and prejudice to the DeLanos and their creditors from any further delay in their being able to present a final Chapter 13 Plan and have the Court determine whether it is confirmable, having already been in Chapter 13 for more than one year, far outweighs any possible prejudice to Cordero, who has no valid and allowable claim and who has yet to even address the critical issues that the Court has previously outlined in this Decision & Order and in numerous prior orders and decisions.

CONCLUSION

The Court finds that Cordero: (1) has no valid claim against DeLano individually which can be allowed in the DeLano Case; (2) has no standing to participate in any further Court proceedings in the DeLano Case; and (3) is denied any stay of the provisions of this Decision & Order pending any appeal.

IT IS SO ORDERED.

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

Dated: April 4, 2005

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 AKA: Joint: MARY ANN DELANO 1262 SHOECRAFT ROAD WEBSTER, NY 14580	Date Case Filed(or Converted): January 27, 2004	Soc Sec/Tax Id Nos: XXX-XX-3894 XXX-XX-0517
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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, ESQ 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
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See Reverse Side For Important Explanations.

Meeting of Creditors:

DATE: March 08, 2004
TIME: 01:00 PM

Location: U.S. Trustees Office
6080 U.S. Courthouse
100 State Street
Rochester, NY 14614

Deadlines:

Papers must be received by the bankruptcy clerk's office by the following deadlines.

Deadline to File a Proof of Claim:

For all creditors (except a governmental unit): June 07, 2004

For governmental units: July 26, 2004

Deadline to Object to Exemptions:

Thirty (30) days after the conclusion of the meeting of creditors.

Filing of Plan, Hearing on Confirmation of Plan

The debtor has filed a plan. The plan or a summary of the plan is enclosed. The hearing on confirmation will be held:

DATE: March 08, 2004
TIME: 03:30 PM

Location: U. S. Bankruptcy Court
1400 U.S. Courthouse
100 State Street
Rochester, NY 14614

Creditors May Not Take Certain Actions:

The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor, debtor's property, and certain codebtors. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.

The plan proposes payments to the Trustee of \$1,940.00 MO
With unsecured claims to be paid 22 cents on the dollar.

PLEASE TAKE FURTHER NOTICE THAT ALL CLAIMS, INCLUDING THOSE CLAIMS PURPORTING TO BE A LIEN UPON REAL PROPERTY, MAY BE DEEMED TO BE UNSECURED UNLESS PROOF OF THE DEBT, THE PERFECTION OF THE LIEN AND THE VALUE OF THE SECURITY IS FILED WITH THE COURT AT OR BEFORE THE ABOVE MEETING OF CREDITORS.

A HEARING TO DETERMINE THE VALIDITY AND THE VALUE OF ANY CLAIMED SECURITY INTEREST IN PROPERTY OF THE DEBTOR, AND A HEARING TO DETERMINE VALIDITY OF ANY LIEN OR SECURITY INTEREST CLAIMED AGAINST EXEMPT PROPERTY COVERED BY SEC. 522 F, 11 USC WILL BE HELD AT THE HEARING ON CONFIRMATION.

WRITTEN OBJECTIONS TO CONFIRMATION MAY BE FILED WITH THE COURT AT ANY TIME PRIOR TO CONFIRMATION.

Address of the Bankruptcy Clerk's Office: U.S. Bankruptcy Court 100 State St. Rochester, NY 14614	Website: http://www.nywb.uscourts.gov Clerk of the Bankruptcy Court: PAUL R. WARREN DATED: February 03, 2004
--	--

Case filing information and deadline dates can be obtained free of charge by calling our Voice Case Information System: (716) 551-5311 or (800) 776-9578. Hours Open 8:00am to 4:30pm

Filing of Chapter 13 Bankruptcy Case	A bankruptcy case under Chapter 13 of the Bankruptcy Code (Title 11, United States Code) has been filed in this court by the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 13 allows an individual with regular income and debts below a 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.
Creditors May Not Take Certain Actions	Prohibited collection actions against the debtor and certain codebtors are listed in the Bankruptcy Code §362 and §1301. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. <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.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you may not be paid any money on your claim against the debtor in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. Do not file voluminous attachments to your proof of claim. Include only relevant excerpts which are clearly labeled as such. Full versions of excerpted documents must be made available upon request.
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors; even if the debtor's case is converted to Chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side unless otherwise noted. You may inspect all papers filed, including the list of the debtor's property and debts and the list of property claimed as exempt, at the bankruptcy clerk's office.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.
Return Mail	The address of the debtor's attorney will be used as the return address for the Notice of Meeting of Creditors. For returned or undeliverable mailings, debtor's must obtain the intended recipient's correct address, resend the notice and file an affidavit of service with the Clerk's office. The Clerk's office will then update its records for future mailings. Failure to serve all parties with a copy of this notice may adversely affect the debtor.
---Refer To Other Side For Important Deadlines and Notices---	

CERTIFICATE OF MAILING

CASE: 0420280 TRUSTEE: 63 COURT: 146
 TASK: 02-02-2004.00111358.N13N02 DATED: 02/03/2004

Court	U.S. Bankruptcy Court	100 State St. Rochester, NY 14614
Trustee	George M. Reiber Suite 206	3136 South Winton Road Rochester, NY 14623
Debtor	DAVID G DELANO	1262 SHOECRAFT ROAD WEBSTER, NY 14580
Joint	MARY ANN DELANO	1262 SHOECRAFT ROAD WEBSTER, NY 14580
799	000001 CHRISTOPHER K WERNER, ESQ 2400 CHASE SQUARE	BOYLAN, BROWN, ET AL ROCHESTER, NY 14604-0000
001	000005 AT & T UNIVERSAL CARD	P O BOX 8217 S HACKENSACK, NJ 07606
014	000016 CITICARDS	P O BOX 8116 S HACKENSACK, NJ 07606
015	000018 CITICARDS	P O BOX 8116 S HACKENSACK, NJ 07606
018	000021 DR RICHARD CORDERO	59 CRESCENT STREET BROOKLYN, NY 11208-1515
011	000014 CHASE	P O BOX 1010 HICKSVILLE, NY 11802-0000
021	000023 HSBC BANK USA	SUITE 0627 BUFFALO, NY 14270-0627
020	000004 GENESEE REGIONAL BANK	3670 MT READ BLVD ROCHESTER, NY 14616
003	000007 BANK ONE	P O BOX 15153 WILMINGTON, DE 19886
004	000009 BANK ONE	P O BOX 15153 WILMINGTON, DE 19886
005	000010 BANK ONE	P O BOX 15153 WILMINGTON, DE 19886
022	000024 MBNA AMERICA	P O BOX 15137 WILMINGTON, DE 19886
023	000025 MBNA AMERICA	P O BOX 15137 WILMINGTON, DE 19886
024	000026 MBNA AMERICA	P O BOX 15102 WILMINGTON, DE 19886-0000
016	000019 DISCOVER CARD	P O BOX 15251 WILMINGTON, DE 19886-5251
019	000022 FLEET CREDIT CARD SERVICES	P O BOX 15368 WILMINGTON, DE 19886-5368
006	000008 BANK ONE/FIRST USA BANK RECOVERY DEPT	PO BOX 517 FREDERICK, MD 21705-0517
007	000011 CAPITAL ONE	P O BOX 85147 RICHMOND, VA 23285
008	000013 CAPITAL ONE	P O BOX 85147 RICHMOND, VA 23285
010	000012 CAPITAL ONE BANK	P O BOX 85167 RICHMOND, VA 23285-0000
017	000020 DISCOVER FINANCIAL SERVICES	P.O. BOX 8003 HILLIARD, OH 43026

AFFA

CERTIFICATE OF MAILING

CASE: 0420280 TRUSTEE: 63
TASK: 02-02-2004.00111358.N13N02

COURT: 146
DATED: 02/03/2004

025	000027	SEARS P O BOX 182149	PAYMENT CENTER COLUMBUS, OH 43218
026	000028	SEARS ATTN: BK DEPT	PO BOX 3671 DES MOINES, IA 50322- 000
002	000006	BANK OF AMERICA	P O BOX 531323 PHOENIX, AZ 85072-3132
012	000015	CHASE MANHATTAN BANK USA ATTN: PAYMENT PROCESSING	150 WEST UNIVERSITY DRIVE TEMPE, AZ 85281
013	000017	CITIBANK/CHOICE EXCEPTION PYMT PROCESSING	P O BOX 6305 THE LAKES, NV 88901-6305
027	000029	WELLS FARGO FINANCIAL	P O BOX 98784 LAS VEGAS, NV 89193
009	000003	CAPITAL ONE AUTO FINANCE	P O BOX 93016 LONG BEACH, CA 90809-3016

32 NOTICES

THE ABOVE REFERENCED NOTICE WAS MAILED TO EACH OF THE ABOVE ON 02/03/2004.
I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.
EXECUTED ON 02/03/2004 BY *T. Martini*

RCM - Indicates notice served via Certified Mail

FORM B1		United States Bankruptcy Court Western District of New York		Voluntary Petition																
Name of Debtor (if individual, enter Last, First, Middle): DeLano, David G.		Name of Joint Debtor (Spouse) (Last, First, Middle): DeLano, Mary Ann																		
All Other Names used by the Debtor in the last 6 years (include married, maiden, and trade names):		All Other Names used by the Joint Debtor in the last 6 years (include married, maiden, and trade names):																		
Last four digits of Soc. Sec. No. / Complete EIN or other Tax I.D. No. (if more than one, state all): xxx-xx-3894		Last four digits of Soc. Sec. No. / Complete EIN or other Tax I.D. No. (if more than one, state all): xxx-xx-0517																		
Street Address of Debtor (No. & Street, City, State & Zip Code): 1262 Shoecraft Road Webster, NY 14580		Street Address of Joint Debtor (No. & Street, City, State & Zip Code): 1262 Shoecraft Road Webster, NY 14580																		
County of Residence or of the Principal Place of Business: Monroe		County of Residence or of the Principal Place of Business: Monroe																		
Mailing Address of Debtor (if different from street address):		Mailing Address of Joint Debtor (if different from street address):																		
Location of Principal Assets of Business Debtor (if different from street address above):																				
Information Regarding the Debtor (Check the Applicable Boxes)																				
Venue (Check any applicable box) <input checked="" type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District. <input type="checkbox"/> There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.																				
Type of Debtor (Check all boxes that apply) <input checked="" type="checkbox"/> Individual(s) <input type="checkbox"/> Railroad <input type="checkbox"/> Corporation <input type="checkbox"/> Stockbroker <input type="checkbox"/> Partnership <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Other _____ <input type="checkbox"/> Clearing Bank			Chapter or Section of Bankruptcy Code Under Which the Petition is Filed (Check one box) <input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 11 <input checked="" type="checkbox"/> Chapter 13 <input type="checkbox"/> Chapter 9 <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Sec. 304 - Case ancillary to foreign proceeding																	
Nature of Debts (Check one box) <input checked="" type="checkbox"/> Consumer/Non-Business <input type="checkbox"/> Business			Filing Fee (Check one box) <input checked="" type="checkbox"/> Full Filing Fee attached <input type="checkbox"/> Filing Fee to be paid in installments (Applicable to individuals only.) Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form No. 3.																	
Chapter 11 Small Business (Check all boxes that apply) <input type="checkbox"/> Debtor is a small business as defined in 11 U.S.C. § 101 <input type="checkbox"/> Debtor is and elects to be considered a small business under 11 U.S.C. § 1121(e) (Optional)																				
Statistical/Administrative Information (Estimates only) <input checked="" type="checkbox"/> Debtor estimates that funds will be available for distribution to unsecured creditors. <input type="checkbox"/> Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.					THIS SPACE IS FOR COURT USE ONLY															
Estimated Number of Creditors																				
<table style="width:100%; border: none;"> <tr> <td style="text-align: center;">1-15</td> <td style="text-align: center;">16-49</td> <td style="text-align: center;">50-99</td> <td style="text-align: center;">100-199</td> <td style="text-align: center;">200-999</td> <td style="text-align: center;">1000-over</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>						1-15	16-49	50-99	100-199	200-999	1000-over	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
1-15	16-49	50-99	100-199	200-999		1000-over														
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>															
Estimated Assets																				
<table style="width:100%; border: none;"> <tr> <td style="text-align: center;">\$0 to \$50,000</td> <td style="text-align: center;">\$50,001 to \$100,000</td> <td style="text-align: center;">\$100,001 to \$500,000</td> <td style="text-align: center;">\$500,001 to \$1 million</td> <td style="text-align: center;">\$1,000,001 to \$10 million</td> <td style="text-align: center;">\$10,000,001 to \$50 million</td> <td style="text-align: center;">\$50,000,001 to \$100 million</td> <td style="text-align: center;">More than \$100 million</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>					\$0 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,001 to \$50 million	\$50,000,001 to \$100 million	More than \$100 million	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
\$0 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,001 to \$50 million	\$50,000,001 to \$100 million	More than \$100 million													
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<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>													

Voluntary Petition <i>(This page must be completed and filed in every case)</i>	Name of Debtor(s): FORM B1, Page 2 DeLano, David G. DeLano, Mary Ann
---	--

Prior Bankruptcy Case Filed Within Last 6 Years (If more than one, attach additional sheet)		
Location Where Filed: - None -	Case Number:	Date Filed:

Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor (If more than one, attach additional sheet)		
Name of Debtor: - None -	Case Number:	Date Filed:
District:	Relationship:	Judge:

Signatures

Signature(s) of Debtor(s) (Individual/Joint)

I declare under penalty of perjury that the information provided in this petition is true and correct.
[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.
I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

/s/ David G. DeLano
Signature of Debtor David G. DeLano

/s/ Mary Ann DeLano
Signature of Joint Debtor Mary Ann DeLano

Telephone Number (If not represented by attorney)

January 26, 2004
Date

Exhibit A

(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11)

Exhibit A is attached and made a part of this petition.

Exhibit B

(To be completed if debtor is an individual whose debts are primarily consumer debts)

I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter.

/s/ Christopher K. Werner, Esq. January 26, 2004
Signature of Attorney for Debtor(s) Date
Christopher K. Werner, Esq.

Exhibit C

Does the debtor own or have possession of any property that poses a threat of imminent and identifiable harm to public health or safety?

Yes, and Exhibit C is attached and made a part of this petition.
 No

Signature of Attorney

/s/ Christopher K. Werner, Esq.
Signature of Attorney for Debtor(s)
Christopher K. Werner, Esq.
Printed Name of Attorney for Debtor(s)
Boylan, Brown, Code, Vigdor & Wilson, LLP
Firm Name
2400 Chase Square
Rochester, NY 14604
Address
585-232-5300
Telephone Number
January 26, 2004
Date

Signature of Non-Attorney Petition Preparer

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.

Printed Name of Bankruptcy Petition Preparer

Social Security Number (Required by 11 U.S.C. § 110(c).)

Address

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

Signature of Bankruptcy Petition Preparer

Date

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.
The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

Signature of Authorized Individual

Printed Name of Authorized Individual

Title of Authorized Individual

Date

**United States Bankruptcy Court
Western District of New York**

In re David G. DeLano,
Mary Ann DeLano

Debtors

Case No. _____

Chapter 13

SUMMARY OF SCHEDULES

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts from Schedules D, E, and F to determine the total amount of the debtor's liabilities.

NAME OF SCHEDULE	ATTACHED (YES/NO)	NO. OF SHEETS	AMOUNTS SCHEDULED		
			ASSETS	LIABILITIES	OTHER
A - Real Property	Yes	1	98,500.00		
B - Personal Property	Yes	4	164,956.57		
C - Property Claimed as Exempt	Yes	1			
D - Creditors Holding Secured Claims	Yes	1		87,369.49	
E - Creditors Holding Unsecured Priority Claims	Yes	1		0.00	
F - Creditors Holding Unsecured Nonpriority Claims	Yes	4		98,092.91	
G - Executory Contracts and Unexpired Leases	Yes	1			
H - Codebtors	Yes	1			
I - Current Income of Individual Debtor(s)	Yes	1			4,886.50
J - Current Expenditures of Individual Debtor(s)	Yes	1			2,946.50
Total Number of Sheets of ALL Schedules		16			
Total Assets			263,456.57		
			Total Liabilities	185,462.40	

In re David G. DeLano,
Mary Ann DeLano

Case No. _____

Debtors

SCHEDULE A. REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a cotenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. (See Schedule D.) If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

Description and Location of Property	Nature of Debtor's Interest in Property	Husband, Wife, Joint, or Community	Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption	Amount of Secured Claim
1262 Shoecraft Road, Webster (value per appraisal 11/23/03)	Fee Simple	J	98,500.00	77,084.49

Sub-Total > 98,500.00 (Total of this page)

Total > 98,500.00

0 continuation sheets attached to the Schedule of Real Property

(Report also on Summary of Schedules)

In re David G. DeLano,
Mary Ann DeLano

Case No. _____

Debtors

SCHEDULE B. PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property."

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
1. Cash on hand		misc cash on hand	J	35.00
2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.		M & T Checking account	J	300.00
		M & T Savings	W	200.00
		M & T Bank Checking	W	0.50
3. Security deposits with public utilities, telephone companies, landlords, and others.	X			
4. Household goods and furnishings, including audio, video, and computer equipment.		Furniture: sofa, loveseat, 2 chairs, 2 lamps, 2 tv's 2 radios, end tables, basement sofa, kitchen table and chairs, misc kitchen appliances, refrigerator, stove, microwave, place settings; Bedroom furniture - bed, dresser, nightstand, lamps, 2 foutons, 2 lamps, table 4 chairs on porch; desk, misc garden tools, misc hand tools.	J	2,000.00
		computer (2000); washer/dryer, riding mower (5 yrs), dehumidifier, gas grill,	J	350.00
5. Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.		misc books, misc wall decorations, family photos, family bible	J	100.00
6. Wearing apparel.		misc wearing apparel	J	50.00
7. Furs and jewelry.		wedding rings, wrist watches	J	100.00
		misc costume jewelry, string of pearls	W	200.00

Sub-Total > 3,335.50
(Total of this page)

3 continuation sheets attached to the Schedule of Personal Property

In re David G. DeLano,
Mary Ann DeLano

Case No. _____

Debtors

SCHEDULE B. PERSONAL PROPERTY
(Continuation Sheet)

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
8. Firearms and sports, photographic, and other hobby equipment.		camera - 35mm snapshot cameras ((2) purchased for \$19.95 each new	J	10.00
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	X			
10. Annuities. Itemize and name each issuer.	X			
11. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Itemize.		Xerox 401-K \$38,000; stock options \$4,000; retirement account \$17,000 - all in retirement account	W	59,000.00
		401-k (net of outstanding loan \$9,642.56)	H	96,111.07
12. Stock and interests in incorporated and unincorporated businesses. Itemize.	X			
13. Interests in partnerships or joint ventures. Itemize.	X			
14. Government and corporate bonds and other negotiable and nonnegotiable instruments.	X			
15. Accounts receivable.		Debt due from son (\$10,000) - uncertain collectibility - unpaid even when employed but now laid off from Heidelberg/Nexpress	J	Unknown
16. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			
17. Other liquidated debts owing debtor including tax refunds. Give particulars.		2003 tax liability expected	J	0.00
18. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule of Real Property.	X			

Sub-Total > 155,121.07
(Total of this page)

Sheet 1 of 3 continuation sheets attached to the Schedule of Personal Property

In re David G. DeLano,
Mary Ann DeLano

Case No. _____

Debtors

SCHEDULE B. PERSONAL PROPERTY
(Continuation Sheet)

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
19. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	X			
20. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	X			
21. Patents, copyrights, and other intellectual property. Give particulars.	X			
22. Licenses, franchises, and other general intangibles. Give particulars.	X			
23. Automobiles, trucks, trailers, and other vehicles and accessories.		1993 Chevrolet Cavalier 70,000 miles	W	1,000.00
		1998 Chevrolet Blazer 56,000 miles (value Kelly Blue Book average of retail and trade-in - good condition)	H	5,500.00
24. Boats, motors, and accessories.	X			
25. Aircraft and accessories.	X			
26. Office equipment, furnishings, and supplies.	X			
27. Machinery, fixtures, equipment, and supplies used in business.	X			
28. Inventory.	X			
29. Animals.	X			
30. Crops - growing or harvested. Give particulars.	X			
31. Farming equipment and implements.	X			

Sub-Total > 6,500.00
(Total of this page)

Sheet 2 of 3 continuation sheets attached
to the Schedule of Personal Property

In re David G. DeLano,
Mary Ann DeLano

Case No. _____

Debtors

SCHEDULE B. PERSONAL PROPERTY
(Continuation Sheet)

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
32. Farm supplies, chemicals, and feed.	X			
33. Other personal property of any kind not already listed.	X			

Sub-Total > 0.00
(Total of this page)
Total > 164,956.57

Sheet 3 of 3 continuation sheets attached
to the Schedule of Personal Property

(Report also on Summary of Schedules)

In re David G. DeLano,
Mary Ann DeLano

Case No. _____

Debtors

SCHEDULE C. PROPERTY CLAIMED AS EXEMPT

Debtor elects the exemptions to which debtor is entitled under:

[Check one box]

- 11 U.S.C. §522(b)(1): Exemptions provided in 11 U.S.C. §522(d). Note: These exemptions are available only in certain states.
- 11 U.S.C. §522(b)(2): Exemptions available under applicable nonbankruptcy federal laws, state or local law where the debtor's domicile has been located for the 180 days immediately preceding the filing of the petition, or for a longer portion of the 180-day period than in any other place, and the debtor's interest as a tenant by the entirety or joint tenant to the extent the interest is exempt from process under applicable nonbankruptcy law.

Description of Property	Specify Law Providing Each Exemption	Value of Claimed Exemption	Current Market Value of Property Without Deducting Exemption
<u>Real Property</u>			
1262 Shoecraft Road, Webster (value per appraisal 11/23/03)	NYCPLR § 5206(a)	20,000.00	98,500.00
<u>Household Goods and Furnishings</u>			
Furniture: sofa, loveseat, 2 chairs, 2 lamps, 2 tv's 2 radios, end tables, basement sofa, kitchen table and chairs, misc kitchen appliances, refrigerator, stove, microwave, place settings; Bedroom furniture - bed, dresser, nightstand, lamps, 2 foutons, 2 lamps, table 4 chairs on porch; desk, misc garden tools, misc hand tools.	NYCPLR § 5205(a)(5)	2,000.00	2,000.00
<u>Books, Pictures and Other Art Objects; Collectibles</u>			
misc books, misc wall decorations, family photos, family bible	NYCPLR § 5205(a)(2)	100.00	100.00
<u>Wearing Apparel</u>			
misc wearing apparel	NYCPLR § 5205(a)(5)	50.00	50.00
<u>Furs and Jewelry</u>			
wedding rings, wrist watches	NYCPLR § 5205(a)(6)	100.00	100.00
<u>Interests in IRA, ERISA, Keogh, or Other Pension or Profit Sharing Plans</u>			
Xerox 401-K \$38,000; stock options \$4,000; retirement account \$17,000 - all in retirement account	Debtor & Creditor Law § 282(2)(e)	59,000.00	59,000.00
401-k (net of outstanding loan \$9,642.56)	Debtor & Creditor Law § 282(2)(e)	96,111.07	96,111.07
<u>Automobiles, Trucks, Trailers, and Other Vehicles</u>			
1993 Chevrolet Cavalier 70,000 miles	Debtor & Creditor Law § 282(1)	1,000.00	1,000.00

0 continuation sheets attached to Schedule of Property Claimed as Exempt

In re David G. DeLano,
Mary Ann DeLano

Case No. _____

Debtors

SCHEDULE D. CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests. List creditors in alphabetical order to the extent practicable. If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor", include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated". If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B T O R	Husband, Wife, Joint, or Community		C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION IF ANY
		H W J C	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN					
Account No. 5687652			2001					
Capitol One Auto Finance PO Box 93016 Long Beach, CA 90809-3016		J	auto lien 1998 Chevrolet Blazer 56,000 miles (value Kelly Blue Book average of retail and trade-in - good condition)				10,285.00	4,785.00
			Value \$ 5,500.00					
Account No.			fist mortgage					
Genesee Regional Bank 3670 Mt Read Blvd Rochester, NY 14616		J	1262 Shoecraft Road, Webster (value per appraisal 11/23/03)				77,084.49	0.00
			Value \$ 98,500.00					
Account No.								
			Value \$					
Account No.								
			Value \$					

0 continuation sheets attached

Subtotal
(Total of this page) **87,369.49**

Total
(Report on Summary of Schedules) **87,369.49**

In re David G. DeLano,
Mary Ann DeLano

Case No. _____

Debtors

SCHEDULE E. CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor", include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether husband, wife, both of them or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated". If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotal" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Repeat this total also on the Summary of Schedules.

Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets.)

Extensions of credit in an involuntary case

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(2).

Wages, salaries, and commissions

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to \$4,650* per person earned within 90 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507 (a)(3).

Contributions to employee benefit plans

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

Certain farmers and fishermen

Claims of certain farmers and fishermen, up to \$4,650* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(5).

Deposits by individuals

Claims of individuals up to \$2,100* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(6).

Alimony, Maintenance, or Support

Claims of a spouse, former spouse, or child of the debtor for alimony, maintenance, or support, to the extent provided in 11 U.S.C. § 507(a)(7).

Taxes and Certain Other Debts Owed to Governmental Units

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C § 507(a)(8).

Commitments to Maintain the Capital of an Insured Depository Institution

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507(a)(9).

*Amounts are subject to adjustment on April 1, 2004, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

0 continuation sheets attached

In re David G. DeLano,
Mary Ann DeLano

Case No. _____

Debtors

SCHEDULE F. CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor", include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated". If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B T O R	Husband, Wife, Joint, or Community	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
		H W J C					DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.
Account No. 5398-8090-0311-9990 AT&T Universal P.O. Box 8217 South Hackensack, NJ 07606-8217		H	1990 and prior Credit card purchases			1,912.63
Account No. 4024-0807-6136-1712 Bank Of America P.O. Box 53132 Phoenix, AZ 85072-3132		H	1990 and prior Credit card purchases			3,296.83
Account No. 4266-8699-5018-4134 Bank One Cardmember Services P.O. Box 15153 Wilmington, DE 19886-5153		H	1990 prior Credit card purchases			9,846.80
Account No. 4712-0207-0151-3292 Bank One Cardmember Services P.O. Box 15153 Wilmington, DE 19886-5153		H	1990 and prior Credit card purchases			5,130.80
Subtotal (Total of this page)						20,187.06

3 continuation sheets attached

In re David G. DeLano,
Mary Ann DeLano

Case No. _____

Debtors

SCHEDULE F. CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	C O D E B T O R	Husband, Wife, Joint, or Community	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
		H W J C					DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.
Account No. 4262 519 982 211 Bank One Cardmember Services P.O. Box 15153 Wilmington, DE 19886-5153	H					9,876.49
Account No. 4388-6413-4765-8994 Capital One P.O. Box 85147 Richmond, VA 23276	H					449.35
Account No. 4862-3621-5719-3502 Capital One P.O. Box 85147 Richmond, VA 23276	H					460.26
Account No. 4102-0082-4002-1537 Chase P.O. Box 1010 Hicksville, NY 11802	W					10,909.01
Account No. 5457-1500-2197-7384 Citi Cards P.O. Box 8116 South Hackensack, NJ 07606-8116	W					2,127.08
Sheet no. <u>1</u> of <u>3</u> sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims					Subtotal (Total of this page)	23,822.19

In re David G. DeLano,
Mary Ann DeLano

Case No. _____

Debtors

SCHEDULE F. CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	C O D E B O R	Husband, Wife, Joint, or Community	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
		H W J C					DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.
Account No. 5466-5360-6017-7176 Citi Cards P.O. Box 8115 South Hackensack, NJ 07606-8115	H					4,043.94
Account No. 6011-0020-4000-6645 Discover Card P.O. Box 15251 Wilmington, DE 19886-5251	J					5,219.03
Account No. Dr. Richard Cordero 59 Crescent Street Brooklyn, NY 11208-1515	H	2002 Alleged liability re: stored merchandise as employee of M&T Bank - suit pending US BK Ct.		X	X	Unknown
Account No. 5487-8900-2018-8012 Fleet Credit Card Service P.O. Box 15368 Wilmington, DE 19886-5368	W					2,126.92
Account No. 5215-3125-0126-4385 HSBC MasterCard/Visa HSBC Bank USA Suite 0627 Buffalo, NY 14270-0627	H					9,065.01
Sheet no. <u>2</u> of <u>3</u> sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims					Subtotal (Total of this page)	20,454.90

In re David G. DeLano,
Mary Ann DeLano

Case No. _____

Debtors

SCHEDULE F. CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	C O D E B O R	Husband, Wife, Joint, or Community	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM	
		H W J C					DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.
Account No. 4313-0228-5801-9530 MBNA America P.O. Box 15137 Wilmington, DE 19886-5137		W	1990 and prior Credit card purchases			6,422.47	
Account No. 5329-0315-0992-1928 MBNA America P.O. Box 15137 Wilmington, DE 19886-5137		H	1990 and prior Credit card purchases			18,498.21	
Account No. 749 90063 031 903 MBNA America P.O. Box 15102 Wilmington, DE 19886-5102		H	1990 and prior Credit card purchases			3,823.74	
Account No. 34 80074 30593 0 Sears Card Payment Center P.O. Box 182149 Columbus, OH 43218-2149		H	1990 - 10/99 Credit card purchases			3,554.34	
Account No. 17720544 Wells Fargo Financial P.O. Box 98784 Las Vegas, NV 89193-8784		H	8/03 Credit card purchases			1,330.00	
Sheet no. <u>3</u> of <u>3</u> sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims						Subtotal (Total of this page)	33,628.76
						Total (Report on Summary of Schedules)	98,092.91

In re David G. DeLano,
Mary Ann DeLano

Case No. _____

Debtors

SCHEDULE G. EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser," "Agent," etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described.

NOTE: A party listed on this schedule will not receive notice of the filing of this case unless the party is also scheduled in the appropriate schedule of creditors.

Check this box if debtor has no executory contracts or unexpired leases.

Name and Mailing Address, Including Zip Code,
of Other Parties to Lease or Contract

Description of Contract or Lease and Nature of Debtor's Interest.
State whether lease is for nonresidential real property.
State contract number of any government contract.

0 continuation sheets attached to Schedule of Executory Contracts and Unexpired Leases

In re David G. DeLano,
Mary Ann DeLano

Case No. _____

Debtors

SCHEDULE H. CODEBTORS

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by debtor in the schedules of creditors. Include all guarantors and co-signers. In community property states, a married debtor not filing a joint case should report the name and address of the nondebtor spouse on this schedule. Include all names used by the nondebtor spouse during the six years immediately preceding the commencement of this case.

Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR

NAME AND ADDRESS OF CREDITOR

0 continuation sheets attached to Schedule of Codebtors

In re David G. DeLano,
Mary Ann DeLano

Case No. _____

Debtors

SCHEDULE I. CURRENT INCOME OF INDIVIDUAL DEBTOR(S)

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by a married debtor in a chapter 12 or 13 case whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.

Debtor's Marital Status: Married	DEPENDENTS OF DEBTOR AND SPOUSE	
	RELATIONSHIP None.	AGE
EMPLOYMENT:	DEBTOR	SPOUSE
Occupation	Loan officer	
Name of Employer	M & T Bank	unemployed - Xerox
How long employed		
Address of Employer	PO Box 427 Buffalo, NY 14240	

	DEBTOR	SPOUSE
INCOME: (Estimate of average monthly income)		
Current monthly gross wages, salary, and commissions (pro rate if not paid monthly)	\$ 5,760.00	\$ 1,741.00
Estimated monthly overtime	\$ 0.00	\$ 0.00
SUBTOTAL	\$ 5,760.00	\$ 1,741.00
LESS PAYROLL DEDUCTIONS		
a. Payroll taxes and social security	\$ 1,440.00	\$ 435.25
b. Insurance	\$ 414.95	\$ 0.00
c. Union dues	\$ 0.00	\$ 0.00
d. Other (Specify) Retirement Loan (to 10/05)	\$ 324.30	\$ 0.00
	\$ 0.00	\$ 0.00
SUBTOTAL OF PAYROLL DEDUCTIONS	\$ 2,179.25	\$ 435.25
TOTAL NET MONTHLY TAKE HOME PAY	\$ 3,580.75	\$ 1,305.75
Regular income from operation of business or profession or farm (attach detailed statement)	\$ 0.00	\$ 0.00
Income from real property	\$ 0.00	\$ 0.00
Interest and dividends	\$ 0.00	\$ 0.00
Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above	\$ 0.00	\$ 0.00
Social security or other government assistance (Specify)	\$ 0.00	\$ 0.00
	\$ 0.00	\$ 0.00
Pension or retirement income	\$ 0.00	\$ 0.00
Other monthly income (Specify)	\$ 0.00	\$ 0.00
	\$ 0.00	\$ 0.00
TOTAL MONTHLY INCOME	\$ 3,580.75	\$ 1,305.75
TOTAL COMBINED MONTHLY INCOME	\$ 4,886.50	

(Report also on Summary of Schedules)

Describe any increase or decrease of more than 10% in any of the above categories anticipated to occur within the year following the filing of this document:

Wife currently on unemployment thru 6/04. Age 59 - re-employment not expected. Reduces net income by \$1,129/month.

Retirement Loan was made to son, who was to re-pay @\$200/mon. but has been unable to do so as employed at \$10/hr. Potentially uncollectible - due to recent Kodak acquisition of Heidelberg - Nexpress.

Husband will retire in three years at end of plan (extended beyond age 65 to complete three year plan).

In re David G. DeLano,
Mary Ann DeLano

Case No. _____

Debtors

SCHEDULE J. CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)

Complete this schedule by estimating the average monthly expenses of the debtor and the debtor's family. Pro rate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate.

Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse."

Rent or home mortgage payment (include lot rented for mobile home)	.....	\$	<u>1,167.00</u>
Are real estate taxes included?	Yes <u>X</u> No _____		
Is property insurance included?	Yes _____ No <u>X</u>		
Utilities: Electricity and heating fuel	.....	\$	<u>168.00</u>
Water and sewer	.....	\$	<u>30.00</u>
Telephone	.....	\$	<u>40.00</u>
Other <u>Cell Phone \$62 (req. for work); cable \$55; Internet \$23.95</u>	.....	\$	<u>140.95</u>
Home maintenance (repairs and upkeep)	.....	\$	<u>50.00</u>
Food	.....	\$	<u>430.00</u>
Clothing	.....	\$	<u>60.00</u>
Laundry and dry cleaning	.....	\$	<u>5.00</u>
Medical and dental expenses	.....	\$	<u>120.00</u>
Transportation (not including car payments)	.....	\$	<u>295.00</u>
Recreation, clubs and entertainment, newspapers, magazines, etc.	.....	\$	<u>107.50</u>
Charitable contributions	.....	\$	<u>50.00</u>
Insurance (not deducted from wages or included in home mortgage payments)			
Homeowner's or renter's	.....	\$	<u>0.00</u>
Life	.....	\$	<u>0.00</u>
Health	.....	\$	<u>0.00</u>
Auto	.....	\$	<u>110.00</u>
Other	.....	\$	<u>0.00</u>
Taxes (not deducted from wages or included in home mortgage payments)			
(Specify) _____	.....	\$	<u>0.00</u>
Installment payments: (In chapter 12 and 13 cases, do not list payments to be included in the plan.)			
Auto	.....	\$	<u>0.00</u>
Other <u>reserve for auto</u>	.....	\$	<u>50.00</u>
Other <u>Parking</u>	.....	\$	<u>58.05</u>
Other _____	.....	\$	<u>0.00</u>
Alimony, maintenance, and support paid to others	.....	\$	<u>0.00</u>
Payments for support of additional dependents not living at your home	.....	\$	<u>0.00</u>
Regular expenses from operation of business, profession, or farm (attach detailed statement)	.....	\$	<u>0.00</u>
Other <u>family gifts - Christmas/Birthdays</u>	.....	\$	<u>20.00</u>
Other <u>Haircuts and personal hygiene</u>	.....	\$	<u>45.00</u>
TOTAL MONTHLY EXPENSES (Report also on Summary of Schedules)	.....	\$	<u>2,946.50</u>

[FOR CHAPTER 12 AND 13 DEBTORSONLY]

Provide the information requested below, including whether plan payments are to be made bi-weekly, monthly, annually, or at some other regular interval.

A. Total projected monthly income	.....	\$	<u>4,886.50</u>
B. Total projected monthly expenses	.....	\$	<u>2,946.50</u>
C. Excess income (A minus B)	.....	\$	<u>1,940.00</u>
D. Total amount to be paid into plan each <u>Monthly</u>	.....	\$	<u>1,940.00</u>

(interval)

**United States Bankruptcy Court
Western District of New York**

In re David G. DeLano
Mary Ann DeLano
Debtor(s)

Case No. _____
Chapter 13

DECLARATION CONCERNING DEBTOR'S SCHEDULES

DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of 17 sheets [total shown on summary page plus 1], and that they are true and correct to the best of my knowledge, information, and belief.

Date January 26, 2004

Signature /s/ David G. DeLano
David G. DeLano
Debtor

Date January 26, 2004

Signature /s/ Mary Ann DeLano
Mary Ann DeLano
Joint Debtor

Penalty for making a false statement or concealing property: Fine of up to \$500,000 or imprisonment for up to 5 years or both.
18 U.S.C. §§ 152 and 3571.

**United States Bankruptcy Court
Western District of New York**

In re David G. DeLano
Mary Ann DeLano
Debtor(s)

Case No. _____
Chapter 13

STATEMENT OF FINANCIAL AFFAIRS

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs.

Questions 1 - 18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19 - 25. **If the answer to an applicable question is "None," mark the box labeled "None."** If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

DEFINITIONS

"In business." A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within the six years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed.

"Insider." The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any owner of 5 percent or more of the voting or equity securities of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101.

1. Income from employment or operation of business

None State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the **two years** immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT	SOURCE (if more than one)
\$91,655.00	2002 joint income
\$108,586.00	2003 Income (H) \$67,118; (W) \$41,468

2. Income other than from employment or operation of business

None State the amount of income received by the debtor other than from employment, trade, profession, or operation of the debtor's business during the **two years** immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT	SOURCE
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3. Payments to creditors

- None a. List all payments on loans, installment purchases of goods or services, and other debts, aggregating more than \$600 to any creditor, made within **90 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS	AMOUNT PAID	AMOUNT STILL OWING
Genesee Regional Bank 3670 Mt Read Blvd Rochester, NY 14616	monthly mortgage \$1,167/mon with taxes and insurance	\$5,000.00	\$77,082.49
Capitol One Auto Finance PO Box 93016 Long Beach, CA 90809-3016	monthly auto payment \$348/mon	\$1,044.00	\$10,000.00

- None b. List all payments made within **one year** immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR AND RELATIONSHIP TO DEBTOR	DATE OF PAYMENT	AMOUNT PAID	AMOUNT STILL OWING
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4. Suits and administrative proceedings, executions, garnishments and attachments

- None a. List all suits and administrative proceedings to which the debtor is or was a party within **one year** immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

CAPTION OF SUIT AND CASE NUMBER	NATURE OF PROCEEDING	COURT OR AGENCY AND LOCATION	STATUS OR DISPOSITION
In re Premier Van Lines, Inc; James Pfuntner / Ken Gordon Trustee v. Richard Cordero, M & T Bank et al v. Palmer, Dworkin, Hefferson Henrietta Assoc and Delano	(As against debtor) damages for inability of Cordero to recover property held in storage	US Bankruptcy Court, Western District of NY	pending

- None b. Describe all property that has been attached, garnished or seized under any legal or equitable process within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON FOR WHOSE BENEFIT PROPERTY WAS SEIZED	DATE OF SEIZURE	DESCRIPTION AND VALUE OF PROPERTY
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5. Repossessions, foreclosures and returns

- None List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR OR SELLER	DATE OF REPOSSESSION, FORECLOSURE SALE, TRANSFER OR RETURN	DESCRIPTION AND VALUE OF PROPERTY
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6. Assignments and receiverships

- None a. Describe any assignment of property for the benefit of creditors made within **120 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF ASSIGNEE	DATE OF ASSIGNMENT	TERMS OF ASSIGNMENT OR SETTLEMENT
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- None b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CUSTODIAN	NAME AND LOCATION OF COURT CASE TITLE & NUMBER	DATE OF ORDER	DESCRIPTION AND VALUE OF PROPERTY
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7. Gifts

- None List all gifts or charitable contributions made within **one year** immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than \$200 in value per individual family member and charitable contributions aggregating less than \$100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON OR ORGANIZATION	RELATIONSHIP TO DEBTOR, IF ANY	DATE OF GIFT	DESCRIPTION AND VALUE OF GIFT
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8. Losses

- None List all losses from fire, theft, other casualty or gambling within **one year** immediately preceding the commencement of this case **or since the commencement of this case**. (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

DESCRIPTION AND VALUE OF PROPERTY	DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS	DATE OF LOSS
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9. Payments related to debt counseling or bankruptcy

- None List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of the petition in bankruptcy within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYOR IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
Christopher K. Werner 2400 Chase Square Rochester, NY 14604	Nov - Dec 2003	\$1,350 plus filing fee

10. Other transfers

- None List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR	DATE	DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED
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11. Closed financial accounts

- None List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within **one year** immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF INSTITUTION	TYPE OF ACCOUNT, LAST FOUR DIGITS OF ACCOUNT NUMBER, AND AMOUNT OF FINAL BALANCE	AMOUNT AND DATE OF SALE OR CLOSING
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12. Safe deposit boxes

- None List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF BANK OR OTHER DEPOSITORY	NAMES AND ADDRESSES OF THOSE WITH ACCESS TO BOX OR DEPOSITORY	DESCRIPTION OF CONTENTS	DATE OF TRANSFER OR SURRENDER, IF ANY
M & T Bank Webster Branch	debtors	Personal papers	

13. Setoffs

- None List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within **90 days** preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATE OF SETOFF	AMOUNT OF SETOFF
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14. Property held for another person

- None List all property owned by another person that the debtor holds or controls.

NAME AND ADDRESS OF OWNER	DESCRIPTION AND VALUE OF PROPERTY	LOCATION OF PROPERTY
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15. Prior address of debtor

- None If the debtor has moved within the **two years** immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

ADDRESS	NAME USED	DATES OF OCCUPANCY
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16. Spouses and Former Spouses

- None If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the **six-year period** immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state.

NAME

17. Environmental Information.

For the purpose of this question, the following definitions apply:

"Environmental Law" means any federal, state, or local statute or regulation regulating pollution, contamination, releases of hazardous or toxic substances, wastes or material into the air, land, soil, surface water, groundwater, or other medium, including, but not limited to, statutes or regulations regulating the cleanup of these substances, wastes, or material.

"Site" means any location, facility, or property as defined under any Environmental Law, whether or not presently or formerly owned or operated by the debtor, including, but not limited to, disposal sites.

"Hazardous Material" means anything defined as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, or contaminant or similar term under an Environmental Law

- None a. List the name and address of every site for which the debtor has received notice in writing by a governmental unit that it may be liable or potentially liable under or in violation of an Environmental Law. Indicate the governmental unit, the date of the notice, and, if known, the Environmental Law:

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
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- None b. List the name and address of every site for which the debtor provided notice to a governmental unit of a release of Hazardous Material. Indicate the governmental unit to which the notice was sent and the date of the notice.

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
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- None c. List all judicial or administrative proceedings, including settlements or orders, under any Environmental Law with respect to which the debtor is or was a party. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.

NAME AND ADDRESS OF GOVERNMENTAL UNIT	DOCKET NUMBER	STATUS OR DISPOSITION
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18 . Nature, location and name of business

- None a. If the debtor is an individual, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partnership, sole proprietorship, or was a self-employed professional within the **six years** immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within the **six years** immediately preceding the commencement of this case.

If the debtor is a partnership, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within the **six years** immediately preceding the commencement of this case.

If the debtor is a corporation, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within the **six years** immediately preceding the commencement of this case.

NAME	TAXPAYER ID. NO. (EIN)	ADDRESS	NATURE OF BUSINESS	BEGINNING AND ENDING DATES
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- None b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. § 101.

NAME	ADDRESS
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The following questions are to be completed by every debtor that is a corporation or partnership and by any individual debtor who is or has been, within the **six years** immediately preceding the commencement of this case, any of the following: an officer, director, managing executive, or owner of more than 5 percent of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or otherwise self-employed.

*(An individual or joint debtor should complete this portion of the statement **only** if the debtor is or has been in business, as defined above, within the six years immediately preceding the commencement of this case. A debtor who has not been in business within those six years should go directly to the signature page.)*

19. Books, records and financial statements

None a. List all bookkeepers and accountants who within the **two years** immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

NAME AND ADDRESS DATES SERVICES RENDERED

None b. List all firms or individuals who within the **two years** immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

NAME ADDRESS DATES SERVICES RENDERED

None c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain.

NAME ADDRESS

None d. List all financial institutions, creditors and other parties, including mercantile and trade agencies, to whom a financial statement was issued within the **two years** immediately preceding the commencement of this case by the debtor.

NAME AND ADDRESS DATE ISSUED

20. Inventories

None a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

DATE OF INVENTORY INVENTORY SUPERVISOR DOLLAR AMOUNT OF INVENTORY
(Specify cost, market or other basis)

None b. List the name and address of the person having possession of the records of each of the two inventories reported in a., above.

DATE OF INVENTORY NAME AND ADDRESSES OF CUSTODIAN OF INVENTORY
RECORDS

21 . Current Partners, Officers, Directors and Shareholders

None a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

NAME AND ADDRESS NATURE OF INTEREST PERCENTAGE OF INTEREST

None b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting or equity securities of the corporation.

NAME AND ADDRESS TITLE NATURE AND PERCENTAGE
OF STOCK OWNERSHIP

22 . Former partners, officers, directors and shareholders

- None a. If the debtor is a partnership, list each member who withdrew from the partnership within **one year** immediately preceding the commencement of this case.

NAME	ADDRESS	DATE OF WITHDRAWAL
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- None b. If the debtor is a corporation, list all officers, or directors whose relationship with the corporation terminated within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS	TITLE	DATE OF TERMINATION
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23 . Withdrawals from a partnership or distributions by a corporation

- None If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other perquisite during **one year** immediately preceding the commencement of this case.

NAME & ADDRESS OF RECIPIENT, RELATIONSHIP TO DEBTOR	DATE AND PURPOSE OF WITHDRAWAL	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
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24. Tax Consolidation Group.

- None If the debtor is a corporation, list the name and federal taxpayer identification number of the parent corporation of any consolidated group for tax purposes of which the debtor has been a member at any time within the **six-year period** immediately preceding the commencement of the case.

NAME OF PARENT CORPORATION	TAXPAYER IDENTIFICATION NUMBER
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25. Pension Funds.

- None If the debtor is not an individual, list the name and federal taxpayer identification number of any pension fund to which the debtor, as an employer, has been responsible for contributing at any time within the **six-year period** immediately preceding the commencement of the case.

NAME OF PENSION FUND	TAXPAYER IDENTIFICATION NUMBER
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DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct.

Date <u>January 26, 2004</u>	Signature <u>/s/ David G. DeLano</u> David G. DeLano Debtor
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Date <u>January 26, 2004</u>	Signature <u>/s/ Mary Ann DeLano</u> Mary Ann DeLano Joint Debtor
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Penalty for making a false statement: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571

**United States Bankruptcy Court
Western District of New York**

In re David G. DeLano
Mary Ann DeLano

Debtor(s)

Case No. _____
Chapter 13

DISCLOSURE OF COMPENSATION OF ATTORNEY FOR DEBTOR(S)

1. Pursuant to 11 U.S.C. § 329(a) and Bankruptcy Rule 2016(b), I certify that I am the attorney for the above-named debtor and that compensation paid to me within one year before the filing of the petition in bankruptcy, or agreed to be paid to me, for services rendered or to be rendered on behalf of the debtor(s) in contemplation of or in connection with the bankruptcy case is as follows:

For legal services, I have agreed to accept.....	\$	<u>1,350.00</u>
Prior to the filing of this statement I have received.....	\$	<u>1,350.00</u>
Balance Due.....	\$	<u>0.00</u>

2. The source of the compensation paid to me was:

Debtor Other (specify):

3. The source of compensation to be paid to me is:

Debtor Other (specify):

4. I have not agreed to share the above-disclosed compensation with any other person unless they are members and associates of my law firm.

I have agreed to share the above-disclosed compensation with a person or persons who are not members or associates of my law firm. A copy of the agreement, together with a list of the names of the people sharing in the compensation is attached.

5. In return for the above-disclosed fee, I have agreed to render legal service for all aspects of the bankruptcy case, including:

- a. Analysis of the debtor's financial situation, and rendering advice to the debtor in determining whether to file a petition in bankruptcy;
- b. Preparation and filing of any petition, schedules, statement of affairs and plan which may be required;
- c. Representation of the debtor at the meeting of creditors and confirmation hearing, and any adjourned hearings thereof;
- d. [Other provisions as needed]

Negotiations with secured creditors to reduce to market value; exemption planning; preparation and filing of reaffirmation agreements and applications as needed; preparation and filing of motions pursuant to 11 USC 522(f)(2)(A) for avoidance of liens on household goods.

6. By agreement with the debtor(s), the above-disclosed fee does not include the following service:

Representation of the debtors in any dischargeability actions, judicial lien avoidances, relief from stay actions or any other adversary proceeding.

CERTIFICATION

I certify that the foregoing is a complete statement of any agreement or arrangement for payment to me for representation of the debtor(s) in this bankruptcy proceeding.

Dated: January 26, 2004

/s/ Christopher K. Werner, Esq.

Christopher K. Werner, Esq.
Boylan, Brown, Code, Vigdor & Wilson, LLP
2400 Chase Square
Rochester, NY 14604
585-232-5300

**United States Bankruptcy Court
Western District of New York**

In re David G. DeLano
Mary Ann DeLano
Debtor(s)

Case No. _____
Chapter 13

VERIFICATION OF CREDITOR MATRIX

The above-named Debtors hereby verify that the attached list of creditors is true and correct to the best of their knowledge.

Date: January 26, 2004

/s/ David G. DeLano
David G. DeLano
Signature of Debtor

Date: January 26, 2004

/s/ Mary Ann DeLano
Mary Ann DeLano
Signature of Debtor

AT&T Universal
P.O. Box 8217
South Hackensack, NJ 07606-8217

Bank Of America
P.O. Box 53132
Phoenix, AZ 85072-3132

Bank One
Cardmember Services
P.O. Box 15153
Wilmington, DE 19886-5153

Capital One
P.O. Box 85147
Richmond, VA 23276

Capitol One Auto Finance
PO Box 93016
Long Beach, CA 90809-3016

Chase
P.O. Box 1010
Hicksville, NY 11802

Citi Cards
P.O. Box 8116
South Hackensack, NJ 07606-8116

Citi Cards
P.O. Box 8115
South Hackensack, NJ 07606-8115

Citibank USA
45 Congress Street
Salem, MA 01970

Discover Card
P.O. Box 15251
Wilmington, DE 19886-5251

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

Fleet Credit Card Service
P.O. Box 15368
Wilmington, DE 19886-5368

Genesee Regional Bank
3670 Mt Read Blvd
Rochester, NY 14616

HSBC MasterCard/Visa
HSBC Bank USA
Suite 0627
Buffalo, NY 14270-0627

MBNA America
P.O. Box 15137
Wilmington, DE 19886-5137

MBNA America
P.O. Box 15102
Wilmington, DE 19886-5102

Sears Card
Payment Center
P.O. Box 182149
Columbus, OH 43218-2149

Wells Fargo Financial
P.O. Box 98784
Las Vegas, NV 89193-8784

Blank

**United States Bankruptcy Court
Western District of New York**

In re David G. DeLano
Mary Ann DeLano

Debtor(s)

Case No.

Chapter 13

CHAPTER 13 PLAN

1. **Payments to the Trustee:** The future earnings or other future income of the Debtor is submitted to the supervision and control of the trustee. The Debtor (or the Debtor's employer) shall pay to the trustee the sum of \$1,940.00 per month for 5 months, then \$635.00 per month for 25 months, then \$960.00 per month for 6 months.
Total of plan payments: \$31,335.00
2. **Plan Length:** This plan is estimated to be for 36 months.
3. Allowed claims against the Debtor shall be paid in accordance with the provisions of the Bankruptcy Code and this Plan.
 - a. Secured creditors shall retain their mortgage, lien or security interest in collateral until the amount of their allowed secured claims have been fully paid or until the Debtor has been discharged. Upon payment of the amount allowed by the Court as a secured claim in the Plan, the secured creditors included in the Plan shall be deemed to have their full claims satisfied and shall terminate any mortgage, lien or security interest on the Debtor's property which was in existence at the time of the filing of the Plan, or the Court may order termination of such mortgage, lien or security interest.
 - b. Creditors who have co-signers, co-makers, or guarantors ("Co-Obligors") from whom they are enjoined from collection under 11 U.S.C. § 1301, and which are separately classified and shall file their claims, including all of the contractual interest which is due or will become due during the consummation of the Plan, and payment of the amount specified in the proof of claim to the creditor shall constitute full payment of the debt as to the Debtor and any Co-Obligor.
 - c. All priority creditors under 11 U.S.C. § 507 shall be paid in full in deferred cash payments.
4. From the payments received under the plan, the trustee shall make disbursements as follows:

- a. Administrative Expenses
 - (1) Trustee's Fee: 10.00%
 - (2) Attorney's Fee (unpaid portion): NONE
 - (3) Filing Fee (unpaid portion): NONE

- b. Priority Claims under 11 U.S.C. § 507

Name	Amount of Claim	Interest Rate (If specified)
-NONE-		

- c. Secured Claims

- (1) Secured Debts Which Will Not Extend Beyond the Length of the Plan

Name	Proposed Amount of Allowed Secured Claim	Monthly Payment (If fixed) Prorata	Interest Rate (If specified)
Capitol One Auto Finance	5,500.00		6.00%

- (2) Secured Debts Which Will Extend Beyond the Length of the Plan

Name	Amount of Claim	Monthly Payment	Interest Rate (If specified)
-NONE-			

- d. Unsecured Claims

- (1) Special Nonpriority Unsecured: Debts which are co-signed or are non-dischargeable shall be paid in full (100%).

Name	Amount of Claim	Interest Rate (If specified)
-NONE-		

- (2) General Nonpriority Unsecured: Other unsecured debts shall be paid 22 cents on the dollar and paid pro rata, with no interest if the creditor has no Co-obligors, provided that where the amount or balance of any unsecured claim is less than \$10.00 it may be paid in full.

5. The Debtor proposes to cure defaults to the following creditors by means of monthly payments by the trustee:

Creditor	Amount of Default to be Cured	Interest Rate (If specified)
-NONE-		

6. The Debtor shall make regular payments directly to the following creditors:

Name	Amount of Claim	Monthly Payment	Interest Rate (If specified)
Genesee Regional Bank	77,084.49	0.00	0.00%

7. The employer on whom the Court will be requested to order payment withheld from earnings is:
NONE. Payments to be made directly by debtor without wage deduction.

8. The following executory contracts of the debtor are rejected:

Other Party	Description of Contract or Lease
-NONE-	

9. Property to Be Surrendered to Secured Creditor

Name	Amount of Claim	Description of Property
-NONE-		

10. The following liens shall be avoided pursuant to 11 U.S.C. § 522(f), or other applicable sections of the Bankruptcy Code:

Name	Amount of Claim	Description of Property
-NONE-		

11. Title to the Debtor's property shall revert in debtor on confirmation of a plan.

12. As used herein, the term "Debtor" shall include both debtors in a joint case.

13. Other Provisions:

Date January 26, 2004

Signature /s/ David G. DeLano
David G. DeLano
Debtor

Date January 26, 2004

Signature /s/ Mary Ann DeLano
Mary Ann DeLano
Joint Debtor



IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NEW YORK

IN RE: David G Delano

Case Number: 04-20280-JCN-13

Debtor(s)

Chapter: 13

**REQUEST FOR NOTICE
PURSUANT TO BANKRUPTCY RULE 2002 AND 9010**

PLEASE TAKE NOTICE THAT Capital One Auto Finance hereby gives notice as follows:

Pursuant to Bankruptcy Rule 2002 and 9010, The Ramsey Law Firm, P.C.
hereby requests that:

- (i) all notices given or required to be given in the case; and
- (ii) all pleadings and correspondence served or required to be served in this case,

regarding Capital One Auto Finance should be directed to The Ramsey Law Firm, P.C. at the following mailing address effective immediately:

The Ramsey Law Firm, P.C.
Attn: Capital One Auto Finance Department
Account : 5687652
P.O. Box 201347
Arlington, TX 76006

This request encompasses all notices, copies and pleadings referred to in Rules 2002, 9007 or 9010 of the Bankruptcy Rules, including, without limitation, notices of any Orders, Motions, Demands, Complaints, Petitions, Pleadings, Requests, Applications Schedules, Statements, Plans, and any other documents brought before this court in this case, whether formal or informal, written or oral, or transmitted or conveyed by mail, delivery, telephone, telecopier, telex, or otherwise which effects or seeks to effect the above case.

Respectfully submitted,

/s/ Erich M. Ramsey
The Ramsey Law Firm, P.C.

P.O. Box 201347
Arlington, TX 76006
(817) 277-2011

File #: 140725
Attorney(s) for Capital One Auto Finance

CERTIFICATE OF SERVICE

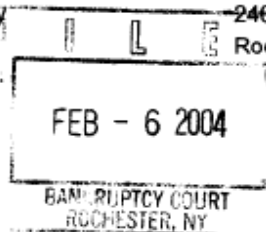
I, the undersigned, do hereby certify that a true and correct copy of the above and foregoing Request for Notice was forwarded to all parties of interest as listed below or attached hereto via First Class, U.S. Mail, postage prepaid (unless otherwise indicated) on this 3rd day of February, 2004.

/s/ Erich M. Ramsey

Trustee:
George Reiber
Trustee of the U.S. Bankruptcy Court
3136 S. Winton Road Suite 206
Rochester, NY 14623

Company:
Capital One Auto Finance
3901 Dallas Parkway
Plano, TX 75093

Attorney for Debtor:
Christopher K Werner
2400 Chase Square
Rochester, NY 14604



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

IN RE:

DAVID G and MARY ANN DELANO
Debtors.
Debtor S.S. #077-32-3894
Joint Debtor S.S. #091-36-0517

**ORDER TO DEBTOR
TO PAY TRUSTEE**

BK #04-20280

Upon representation of the Trustee or other interested party, the Court finds that:

The above-named debtor has pending in this Court a proceeding for the repayment of debts by an individual with regular income under Chapter 13 of the Bankruptcy Code (Title 11 U.S.C.) and pursuant to the provisions of said statute and the debtor's repayment plan the debtor has submitted all future earnings and wages to the exclusive jurisdiction of this Court for the execution of debtor's plan; and

That under the provisions of 11 U.S.C. §1306 this Court has exclusive jurisdiction of the earnings from service performed by the debtor during the pendency of this case and may require the debtor, upon the order of this Court, to pay over such portion of the wages or earnings of the debtor as may be needed to effectuate said plan, and that such an order is necessary and proper, now therefore,

IT IS ORDERED, that until further order of this Court debtor pay from the his/her earnings the sum of **\$1,940.00 monthly** to begin on the next payday following the receipt of this order and pay a similar amount for each pay period thereafter, including any period for which the debtor receives periodic or lump sum payment for or on account of vacation, termination, or other benefits arising out of present or past employment of the debtor, to: **GEORGE M. REIBER, TRUSTEE, South Winton Court, 3136 S. Winton Road, Rochester, New York 14623; (585)427-7225; (PLEASE INCLUDE THE DEBTORS' FULL NAME AND CASE NUMBER ON THE CHECK REMITTED)**; and

IT IS FURTHER ORDERED, that said debtor notify said Trustee if the employment of said debtor be terminated and the reason for such termination; and

IT IS FURTHER ORDERED, that all earnings and wages of the debtor, except the amount required to be withheld by the provisions of any laws of the United States or laws of any State or political subdivision, or by an insurance, pension current maintenance or support payments or by the order of this Court, be paid to the aforesaid debtor in accordance with the employer's usual payroll procedures; and

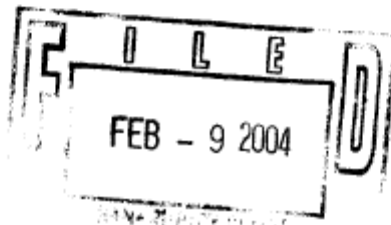
IT IS FURTHER ORDERED, that no deductions for or on account of any garnishment, wage assignment, credit union or other purpose not specifically authorized by the Court be made from the earnings of said debtor; and

IT IS FURTHER ORDERED, that this order supersedes previous orders, if any, made to the debtor or employer in this cause.

Dated: FEB - 9 2004



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



UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re: David G. DeLano and Mary Ann DeLano

Chapter 13
Case no: 04-20280

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

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

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

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

be strictly scrutinized to determine whether it has been made in good faith and free of fraud. Cf. B.C. §1325(a)(3).

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

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

7. But that is not enough for them.

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

8. Yet, the Delanos plan to pay creditors only \$635.00 per month for 25 months, the great bulk of the 36 months of the repayment period. By keeping the balance of \$176 per month = \$811 – 635, they withhold from creditors an extra \$4,400 = \$176 x 25. Is there a reason for this?
9. Without any further explanation, the plan provides that for the last 6 months \$960 will be paid monthly. This shows that the current expenditures can be reduced or that the DeLanos can project an increase in income 31 months ahead of time.
10. The bottom line is that all the DeLanos will pay under the plan is \$31,335 despite their debt to unsecured creditors of \$98,092.91 (Schedule F). However, this does not mean that unsecured creditors will receive roughly 1/3 of their claims and forgo interest, but barely above 1/5, for "unsecured debts shall be paid 22 cents on the dollar and paid pro rata, with no interest if the creditor has no Co-obligors" (Chapter 13 Plan 4d(2)).
11. It is fair to say that this plan makes the unsecured creditors bear the brunt of the DeLanos' bankruptcy while they continue living on their comfortable current expenditures. What is more, or rather, less, is that the plan does not make any provision whatsoever to fund Dr. Cordero's contingent claim. If Dr. Cordero should prevail in court against Mr. DeLano, where would the money come from to pay the judgment? Is Mr. DeLano making himself judgment proof?
12. By contrast, the DeLanos make proof of their goodwill toward their son. They made him a loan of \$10,000, which he has not begun to pay and which they declare of "uncertain collectibility" (Schedule B, item 15). There is no information as to when the loan was made, whether it was applied to buy an asset or the son has any other assets which the trustee can put a lien on or

take possession of, or whether there is any other way to collect it. Nor is there any hint of where the DeLanos, who have in cash and in their bank accounts the whole of \$535.50, got \$10,000 to lend to their son. To allow the son not to repay the loan amounts to a preferential transfer. This is all the more so because their son is an insider. Cf. B.C. §101(31)(A)(i). Therefore, the DeLanos' dealings with him must be examined with strict scrutiny for good faith and fairness.

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

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

14. It is reasonable to assume that Mr. DeLano, as a loan officer, has access to the reports of credit reporting bureaus and, more importantly, that he knows how to examine them to determine the risk factor and solvability of a current or potential borrower. Likewise, bank lenders, including the 18 credit card issuers to whom the DeLanos still owe more than \$98,000, regularly report to the credit reporting bureaus their cardholders' borrowing balances. They also check their cardholders' reports to assess their total debt burden and repayment patterns in order to determine whether to allow their continued use of their cards or to cancel them.
15. Thus, it is important to find out whether any or all of these 18 credit card issuers requested and examined the DeLanos' credit reports, such as those produced by Equifax, TransUnion, and Experian, and raised any concerns with the DeLanos about their total debt burden. This investigation is warranted because the DeLanos have described 14 credit card claims as "1990 and prior Credit card purchases" (Schedule F). Consequently, there has been ample time for them to have been warned about their total debt burden, not to mention for Loan Officer DeLano to have on his own realized its risks. Otherwise, how does he deal with his Bank's customers in similar situations? These facts beg the question: Is there a history of credit card issuers' announced bankruptcy and of a bankruptcy that the DeLanos were waiting to announce shortly before retirement (bottom of Schedule I)? The answer to this question affects directly the determination of the good faith of the DeLanos' bankruptcy petition.
16. In the same vein, for years the credit card issuers have had the duty and the means to find out, and must have been aware, that the DeLanos' credit card borrowing gave cause for concern. If they took no steps or took only inappropriate ones to secure repayment and even failed to stop the DeLanos from accumulating still more credit card debt, then they must bear some responsibility for this bankruptcy. As parties contributing to the DeLanos' indebtedness, they should be placed in a class of unsecured creditors different from and junior to that of Dr. Cordero, who has nothing whatsoever to do with the DeLanos' bankruptcy. Cf. B.C. §1322(b)(1)-(2). Yet, Dr. Cordero stands the risk of being deprived of any payment at all on a judgment that he may eventually recover against Mr. DeLano for his wrongful conduct precisely as a loan officer. Cf. *Pfuntner v. Gordon et al*, docket no. 02-2230.
17. In addition to drawing up the DeLanos' timeline of credit card debt accumulation, it is necessary to examine the DeLano's monthly credit card statements for the period in question to

establish on what goods and services they spent what amount of money of which more than \$98,000 still remains outstanding...plus they carry a mortgage of \$77,084.49 on a house in which their equity is only \$21,415.51. (Schedule A) This is particularly justified since the DeLanos claim that they have barely anything of any value, a mere \$9,945.50 worth of goods. (Schedule B). Where did all that borrowed money go?!

18. The timeline and nature of the DeLanos' credit card use will make it possible to figure out whether there must be other assets and the repayment plan is not in the best interest of creditors so that consideration must be given to:
 - a. a conversion of the case to one under Chapter 7; Cf. B.C. §§1307(c) and 1325(a)(4);
 - b. an extension of the plan from three to five years; Cf. B.C. §§1322(d); or
 - c. dismissal for substantial abuse and bad faith under the equitable powers of the court to consider the motives of debtors in filing their petitions; Cf. B.C. §§1307(c) and 1325(a)(3).

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

19. Under B.C. §§1302(b)(1) and 704(4), the Trustee has the duty "to investigate the financial affairs of the debtor". Additionally, B.C. §§1302(b)(1) and 704(7) require him to "furnish such information concerning the estate and the estate's administration as is requested by a party in interest". To discharge these duties so that the interested parties may be able to make an informed decision as to what is in the best interest of creditors and the estate, the Trustee should investigate the matters discussed above, which in brief include the following:
20. Conduct an accounting based on the DeLanos' monthly credit card statements covering the period of debt accumulation. Find out how, when, and who became aware of the DeLanos' risky indebtedness and alerted them to it and with what results.
21. Determine the items and value of the DeLanos' personal property and the whereabouts and value of the goods purchased on credit cards.
22. Find out whether the DeLanos applied to M&T Bank or any other bank for a consolidation loan; if so, what was the response and, if not, why.
23. Determine what expenses are not reasonably necessary to maintain or support the DeLanos. Cf. B.C. §§1325(b)(2) and 584(d)(3).
24. State whether the DeLanos commenced making payments within 30 days of filing the plan. Cf. B.C. §§1302(b)(5) and 1326(a)(1).
25. Establish the circumstances of the DeLanos' \$10,000 loan to their son and its alleged uncertain collectibility.

V. Provisions that any modified plan should contain

26. The DeLanos have shown that they do not know how to manage money in spite of the fact that Mr. Delano is a bank loan 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

Dr. Richard Cordero

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

CERTIFICATE OF SERVICE

Christopher K. Werner, Esq.
Boylan, Brown, Code, Vigdor & Wilson, LLP
2400 Chase Square
Rochester, NY 14604
tel. (716)232-5300

Trustee George M. Reiber
South Winton Court
3136 S. Winton Road
Rochester, NY 14623
tel. (585) 427-7225

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

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

Debtor(s).

CREDITORS' APPEARANCES
FOR §341 MEETING

Chapter 13

Case No. 04-20280

Meeting Date March 8, 2004

PLEASE PRINT ALL INFORMATION REQUESTED BELOW

Attorney's name with address
and phone number. (If not
represented by an attorney,
creditor's address and phone
number.):

1. Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

Area Code (718) 827-9521

2. _____

Area Code () -

3. _____

Area Code () -

4. _____

Area Code () -

04 MAR -9 AM 10:11
U.S. BANKRUPTCY COURT
W.D.N.Y. ROCHESTER

FILED

PROCEEDING MEMO-CHAPTER 13 341A MEETING OF CREDITORS

DATE OF MEETING: 03/08/04

TIME OF MEETING: 1:00 PM

IN RE: DELANO, DAVID G
DELANO, MARY ANN

CASE NO.: 04-20280

1. NAME OF ATTORNEY FOR DEBTOR(S): CHRISTOPHER K WERNER, ESQ

2. APPEARANCES:

- DEBTOR(S) APPEARED AND EXAMINED
- ATTORNEY FOR DEBTOR(S)
- CREDITORS:

Dr Richard Cordero

3. HEARING CLOSED YES _____ NO _____

OR

 HEARING ADJOURNED TO: _____
 _____ AT _____
 (Date) (Time)

7/24 *1 30+*

REASON: _____

NOTES OF PRESIDING OFFICER: _____

[Signature]

GEORGE M REIBER, TRUSTEE

GAB 30804 A 2
 TAPE # _____, SIDE _____
 BEG *395*, ENDING *AB* *Side 4 223*

U.S. BANKRUPTCY COURT
W.D.N.Y.-ROCHESTER

04 MAR - 9 AM 10: 11

FILED

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

March 11, 2004

Re: In Re DeLano
Chapter 13, No. 04-20280

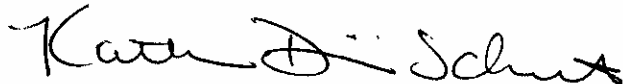
Dear Dr. Cordero:

Thank you for phone call of March 23, 2004. I have had an opportunity to review your concerns with the United States Trustee for Region 2, Deirdre A. Martini, and she concurs with me that this case should be handled by the Chapter 13 trustee, George Reiber, personally. I also have conferred with Mr. Reiber regarding the need for a continued meeting of creditors, and he has assured me that a meeting will be arranged whereby you will have one hour to ask questions of the debtor. It is important to note that this would not be a Rule 2004 examination, and as a result, your questions would need to be directed to the debtor's plan, schedules, statement of financial affairs etc . . . as opposed to issues relating to your state court matter.

I also have directed my legal clerk to send a copy of the 341 meeting tape to you. Please let me know if this is not received in the next two weeks.

Again, we appreciate you bringing these matters to our attention and trust that this information may be of service.

Sincerely,

A handwritten signature in black ink that reads "Kathleen Schmitt". The signature is written in a cursive style with a large initial "K" and a stylized "S".

Kathleen Schmitt
Assistant United States Trustee for Rochester

cc: George Reiber, chapter 13 trustee



Search Results

Case Number: 2-04-20280-JCN

1.	Capitol One Auto Finance Department c/o The Ramsey Law Firm PC PO Box 201347 Arlington, TX 76006	11.	Capital One Auto Finance P.O. Box 260848 Plano, TX 75026
2.	Fleet Bank (RI) N.A. and its assigns by eCast Settlement Corporation PO Box 35480 Newark, NJ 07193-5480	12.	Capitol One Auto Finance PO Box 93016 Long Beach, CA 90809-3016
3.	Genesee Regional Bank fka Lyndon Guaranty Bank c/o Gullace & Weld LLP 500 First Federal Plaza Rochester, NY 14614	13.	Chase Card Member Services PO Box 15650 Wilmington, Delaware 19886-5650
4.	MBNA America Bank NA by eCast Settlement Corporation PO Box 35480 Newark, NJ 07193-5480	14.	Chase Manhattan Bank USA, NA by eCast Settlement Corporation, as agent P.O. Box 35480 Newark, NJ 07193-5480
5.	U.S. Bankruptcy Court 100 State Street Rochester, NY 14614	15.	Citi Cards P.O. Box 3671 Urbandale, IA 50323
6.	AT&T Universal P.O. Box 8217 South Hackensack, NJ 07606-8217	16.	Citi Cards P.O. Box 8115 South Hackensack, NJ 07606-8115
7.	Bank Of America P.O. Box 53132 Phoenix, AZ 85072-3132	17.	Citi Cards P.O. Box 8116 South Hackensack, NJ 07606-8116
8.	Bank One Cardmember Services P.O. Box 15153 Wilmington, DE 19886-5153	18.	Citibank USA 45 Congress Street Salem, MA 01970
9.	Bank of America N.A. PO Box 2278 Norfolk, VA 23501-2278	19.	Discover Bank Discover Financial Services PO Box 8003 Hilliard, OH 43026
10.	Capital One P.O. Box 85147 Richmond, VA 23276	20.	Discover Card P.O. Box 15251 Wilmington, DE 19886-5251
		21.	Dr. Richard Cordero 59 Crescent Street Brooklyn, NY 11208-1515

22.	Fleet Credit Card Service P.O. Box 15368 Wilmington, DE 19886-5368		Rochester, NY 14614
23.	Genesee Regional Bank 3670 Mt Read Blvd Rochester, NY 14616	31.	Wells Fargo Financial P.O. Box 98784 Las Vegas, NV 89193-8784
24.	HSBC Bank USA PO Box 4215 Buffalo, NY 14273-4215	32.	Wells Fargo Financial New York, Inc. 4137 121st Street Urbandale, IA 50323
25.	HSBC MasterCard/Visa HSBC Bank USA Suite 0627 Buffalo, NY 14270-0627	33.	Christopher K. Werner Boylan, Brown, Code, Vigdor & Wilson LLP 2400 Chase Square Rochester, NY 14604
26.	MBNA America P.O. Box 15102 Wilmington, DE 19886-5102	34.	David G. DeLano 1262 Shoecraft Road Webster, NY 14580
27.	MBNA America P.O. Box 15137 Wilmington, DE 19886-5137	35.	George M. Reiber 3136 S. Winton Road, Suite 206 Rochester, NY 14623
28.	MBNA America Bank NA eCast Settlement Corporation PO Box 35480 Newark, NJ 07193-5480	36.	Mary Ann DeLano 1262 Shoecraft Road Webster, NY 14580
29.	Sears Card Payment Center P.O. Box 182149 Columbus, OH 43218-2149	37.	Richard Cordero 59 Crescent Street Brooklyn, NY 11208
30.	U.S. Trustee's Office 100 State St. Room 6090	38.	as its agent Chase Manhattan Bank USA, NA by eCast Settlement Corp PO Box 35480 Newark, NJ 07193-5480

Total Labels 38

PACER Service Center			
Transaction Receipt			
03/14/2004 15:39:24			
PACER Login:		Client Code:	
Description:	CredMatrixCase	Case Number:	2-04-20280-JCN
Billable Pages:	2	Cost:	0.14

March 19, 2004

George M. Reiber, Esq.
3136 South Winton Road
Rochester, New York 14623

Re: David G. and Mary Ann DeLano, Case No. 04-20280

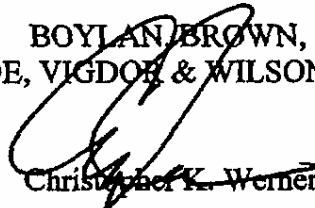
Dear Mr. Reiber:

As discussed, of the dates you proposed, the following are available on my schedule for an adjourned §341 Hearing with respect to the above Debtors: March 31st p.m., April 1st p.m., April 7th a.m. and April 8th all day. Please advise of the date you would prefer and I will appear at your offices with my clients.

Thank you for your courtesy. Best regards.

Very truly yours,

BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP



Christopher K. Werner

CKW/trm
cc: David G. and Mary Ann DeLano

RECEIVED
MAR 22
George M. Reiber

GEORGE M. REIBER
CHAPTER 13 TRUSTEE
SOUTH WINTON COURT
3138 SOUTH WINTON ROAD
ROCHESTER, NEW YORK 14823

GEORGE M. REIBER
JAMES W. WEIDMAN

718-457-7225
FAX 718-427-7804

March 24, 2004

Richard Cordero
59 Crescent St.
Brooklyn, NY 11208

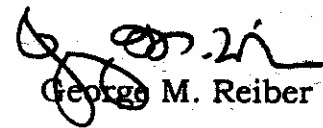
Dear Dr. Cordero,

RE: David & Mary Ann DeLano; BK#04-20280

Enclosed please find a copy of a letter dated March 19, 2004, which I received from the debtors' attorney, Christopher Werner. The attorney indicates four different dates when he and the debtors will be available for examination. Please indicate to me which of these dates and times you will be available. As you know, Ms. Schmitt has limited your examination for this continued hearing to one hour.

I look forward to hearing from you as soon as possible.

Very truly yours,


George M. Reiber

Gmr/vr

Xc:

Kathleen Dunivin Schmitt, Esq.
100 State Street
Rochester, NY 14614

Christopher Werner, Esq.
2400 Chase Sq.
Rochester, NY 14604

David & Mary Ann DeLano
1262 Shoecraft Road
Webster, NY 14580

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re: David G. DeLano and Mary Ann DeLano

Chapter 13
Case no: 04-20280

**OBJECTION TO
A CLAIM OF EXEMPTIONS**

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

1. Dr. Cordero objects under Rule 4003(b) FRBkrP to the claim of exemptions listed by Debtors David G. DeLano and Mary Ann DeLano in the above-captioned petition for bankruptcy.
2. The basic reason for the objection is that it has not yet been established whether the precondition of good faith of the petition has been satisfied so that granting any claim of exemptions should not even come into question.
3. Indeed, at the meeting of creditors held on March 8, 2004, James Weidman, Esq., attorney for the Chapter 13 Trustee George Reiber, unlawfully prevented Dr. Cordero from examining the Debtors by cutting him off after Dr. Cordero's second question and adjourning the meeting to April 26, as described in section I. of Dr. Cordero's memorandum of March 30, 2004, titled The facts, implications, and requests concerning the DeLano chapter 13 bankruptcy petition, docket no. 04-20280 WDNY, incorporated herein by reference.
4. Since Dr. Cordero was not allowed to examine the DeLanos, he could not obtain information from them relating to the issues raised in his Objection of March 4, 2004, to Confirmation of the Chapter 13 Plan of Debt Repayment. As a result, it is not possible at this time, either for Dr. Cordero, the trustee, or the court, to determine whether the petition was even filed in good faith. Without that threshold determination having been made, it is premature to move on to the question whether the DeLanos are entitled to any exemptions at all.
5. The good faith of the petition is cast into question by Mr. DeLano's professional qualifications and the figures that he and his wife provided in the schedules: Amazingly enough, 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. What did a veteran loan officer still on the job, and as such an expert in good standing with his employer, do with all that income that he now claims to have so little to show for it as to warrant a discharge of his debts in bankruptcy? These circumstances and figures require that the petition be strictly scrutinized.
6. However, the trustee has not provided any information or supporting documents requested by

Dr. Cordero in section IV. of his Objections pursuant to B.C. §§1302(b)(1) and 704(7), which requires the trustee to “furnish such information concerning the estate and the estate’s administration as is requested by a party in interest”. Dr. Cordero, as a creditor, is a party in interest. Obtaining the requested information and documents is part of the trustee’s duty under 11 U.S.C. §1302(b)(1), which by reference makes applicable §704(4) imposing on the trustee the duty “to investigate the financial affairs of the debtor”.

7. Without having examined the Debtors or having obtained that information, the good faith of their petition is yet to be determined. Obviously, if the personal circumstances of the debtors and the fundamental figures provided to claim such an imbalance among assets, income, and debts as to justify discharge in bankruptcy are suspicious, then any claim to further relief through exemptions also raises suspicion. Granting such exemptions should not even be considered for the time being.

March 29, 2004

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March 30, 2004

Re: The facts, implications, and requests concerning the DeLano chapter 13 bankruptcy petition, docket no. 04-20280 WDNY

To: U.S. Trustee for Region 2 Deirdre A. Martini
Assistant U.S. Trustee Kathleen Dunivin Schmitt, Esq.
Chapter 13 Trustee George M. Reiber
James Weidman, Esq., attorney for the Chapter 13 Trustee
Christopher K. Werner, Esq., attorney for the Debtors

From: Dr. Richard Cordero, creditor

On March 8, 2004, the meeting of creditors concerning the Chapter 13 bankruptcy petition filed by David G. DeLano and Mary Ann DeLano took place in Rochester, NY. It was followed by the hearing on confirmation of plans. I traveled from New York City to Rochester and attended both. This memorandum contains a statement of facts describing what occurred at those two events, their legal implications, and the requests that I am making based on them.

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I. The meeting of creditors and the hearing on confirmation of plans on March 8 in Rochester

A. Attorney Weidman adjourned the meeting of creditors unlawfully, arbitrarily, and suspiciously

1. After being named a defendant in *James Pfuntner v. Trustee Kenneth Gordon et al.*, filed in the U.S. Bankruptcy Court for the Western District of New York –docket no. 02-2230-, Dr. Richard 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 to have acquired and possess superior knowledge about 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. What did a veteran loan officer still on the job, and as such an expert in good standing with his employer, do with all that income so that now he claims to have so little to show for it as to warrant a discharge of his debts in bankruptcy? Both these circumstances and figures beg examination under strict scrutiny.
2. Dr. Cordero received notice of the meeting of creditors required under 11 U.S.C. §341. 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, Esq., 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.
3. Then Mr. Weidman called and dealt at his table with Mr. DeLano, his wife, and their attorney, Christopher Werner, Esq. The attorney for both Mr. DeLano and M&T Bank in the *Pfuntner v. Trustee Gordon* case, Michael Beyma, Esq., remained in the audience. For some eight minutes Mr. Weidman asked questions of the DeLanos. Then he asked whether there was any creditor in the audience. 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 copies to him and Mr. Werner of his Objection of March 4, 2004, to Confirmation of the Chapter 13 Plan of Debt Repayment (hereinafter referred to as his written objections). 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; rather, he was interested in establishing the good faith of a bankruptcy petition by a bank loan officer. Dr. Cordero asked Mr. DeLano how long he had worked in that capacity. He said 15 years.
4. 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

petition 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 on confirmation of plans before the Hon. John C. Ninfo, II, was not scheduled to begin until 3:30. To no avail Dr. Cordero objected that he had a statutory right to examine the DeLanos and had traveled to Rochester from New York City for that sole purpose. After the five participants in the DeLano case left, only Mr. Weidman and three other persons, including an attorney, remained in the room.

5. After going to the Office of the U.S. Trustee (para. 32, below), 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.

B. At the hearing, Mr. Weidman showed that he had made up his mind about the DeLanos' good faith without regard for the objections of Dr. Cordero, who asked for his recusal

6. 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 a 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.
7. 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.
8. 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.
9. 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.

10. Dr. Cordero added that Mr. Weidman's conduct raised questions because Mr. Weidman kept asking him what evidence he had that the DeLanos had committed fraud despite his 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.
11. Yet, Judge Ninfo came to Mr. Weidman's defense and once more said that Dr. Cordero applied the law too strictly and ignored the local practice.

II. Mr. Weidman has become the target of an investigation and rendered himself liable to Dr. Cordero

12. Mr. Weidman cut off Dr. Cordero after the latter had asked only two questions of Mr. DeLano and none of Ms. DeLano. Thereby Mr. Weidman frustrated the very purpose for which the Code provides for a meeting of creditors, which is the examination of the debtor by the creditors. Thus, he acted unlawfully as contrary to the law. Since he neither invoked nor had any legal rule or principle as justification for his conduct, he acted arbitrarily. Likewise, by putting an end to the meeting right after cutting off Dr. Cordero even though there was no other creditor and thus, nobody else was asking for time to examine the DeLanos so that there was no need to allocate time among creditors, but instead there was ample time for the meeting to continue, Mr. Weidman acted capriciously for there was no need in practice for his conduct.
13. Mr. Weidman knew that the adverse impact of his conduct on Dr. Cordero was all the more severe because Dr. Cordero made him aware at the meeting that he had come all the way to Rochester from New York City to participate in the examination of the DeLanos pursuant to the official notice of meeting of creditors that Dr. Cordero had received. Therefore, Mr. Weidman knowingly wasted Dr. Cordero's effort, time, and money. Now he must compensate Dr. Cordero therefor.
14. Moreover, since Mr. Weidman asked Dr. Cordero to state his objections and adjourned the meeting after the latter had answered and provided him and the DeLanos with copies of his written objections, he caused Dr. Cordero the irretrievable loss of the opportunity to obtain from the DeLanos spontaneous answers before knowing his objections and having time to prepare their statements and take other measures in light of the objections. By so doing, Mr. Weidman has caused Dr. Cordero irreparable harm, for which he is now liable to Dr. Cordero.
15. By the same token, Mr. Weidman has rendered the task of obtaining candid and truthful information all the more difficult because now other steps are required to compensate for the lack of spontaneity in the DeLanos' answers at any future examination. Dr. Cordero holds Mr. Weidman liable to compensate him for his extra work in taking those steps.
16. Mr. Weidman is the attorney for the trustee and one who vetted the DeLano's petition. As such, he is knowledgeable about the purpose of a meeting of creditors under the Bankruptcy Code and about the petition's details and merits. He should have known that he could not so flagrant-

ly impede the examination of the DeLanos and get away with it without raising suspicion.

17. To be sure, he has raised suspicion. Why was he so insistent in finding out how much Dr. Cordero already knew about the DeLanos having committed fraud in submitting their bankruptcy petition? Why did he not believe Dr. Cordero's answer that he, Dr. Cordero, was not accusing the DeLanos of any fraud, but rather assume that Dr. Cordero nevertheless knew something about fraud committed by the DeLanos which he, Mr. Weidman, needed to know before allowing the DeLanos to answer Dr. Cordero's questions? Whom was Mr. Weidman protecting, the DeLanos or himself, from what and why?
18. Having raised suspicion, Mr. Weidman must now be investigated. Only thus can the integrity of the U.S. Trustee Program be safeguarded and any doubts about the legality and truthfulness of any future proceeding or information provided in this case be put to rest.

III. Trustee Reiber's vested interest in his attorney being found blameless requires his recusal from this case

19. Mr. Weidman works for Trustee Reiber as his attorney. But he is not just outside counsel retained by the Trustee to assist him only in the specific case of the DeLanos. Rather, Mr. Weidman's name appears on the Trustee's letterhead and in a subordinate position. This indicates an organic and continuous relationship between them as members of the same office and in a principal-agent relation. What one knows is imputed to the other. By the same token, access by one to the files of the other is presumed, for why would there be any need for secrecy between members of the same office, especially where their relation is protected by attorney-client privilege? Moreover, Mr. Weidman is Trustee Reiber's supervisee whenever he substitutes for the Trustee, as when he replaces the latter as the presiding officer at a meeting of creditors.
20. Therefore, Trustee Reiber has a vested interest in Mr. Weidman not being found to have engaged in any unlawful, arbitrary, and capricious conduct or to have entered into an improper relation with the DeLanos. Indeed, if Mr. Weidman were to be found at fault, it would have a negative impact on Trustee Reiber, for they are in a principal-agent relation. Worse still, it could call into question any case in which both have worked together. That could put Trustee Reiber's continued standing in the Trustee Program in jeopardy. (cf. 11 U.S.C. §324(b))
21. The fact is that on March 8 Trustee Reiber jumped to Mr. Weidman's defense, saying, without first having investigated his conduct, that Mr. Weidman had acted properly in putting an end to the meeting of creditors as he did. Yet, Mr. Weidman cutting off a creditor after the latter had asked his second question and then adjourning the meeting altogether upon the objectively untenable allegation of lack of time constituted prima facie evidence that something was amiss. It should have given Trustee Reiber pause, even cause for concern, and yes, the urge to investigate. Dr. Cordero protested and Trustee Reiber responded that he knew Mr. Weidman and trusted him.
22. That is precisely a disqualifying response because it means that Trustee Reiber implicitly trusts his attorney. Any investigation that he may conduct would start off with the assumption that Mr. Weidman did nothing wrong and competently reviewed and handled the DeLanos' petition. Thus, from the beginning, the Trustee would be investigating his attorney while having a

preconceived idea of his conclusion at the end of the investigation. What is more, the assumption could in the Trustee's eyes render the investigation of Mr. Weidman so pointless, for what is there to investigate if one already knows what happened?, as to dissuade the Trustee from conducting any investigation at all.

23. Thus, to avoid investigating his attorney-supervisee or to investigate him without repercussions, Trustee Reiber would be more likely than not to confirm the statement that Mr. Weidman made in open court during the hearing on confirmation of plans, to wit, that he, Mr. Weidman, had spoken with the DeLanos and their attorney and had found that they had filed their petition in good faith. Dr. Cordero protested immediately in open court by pointing out that Mr. Weidman -who neither mentioned Dr. Cordero nor the written objections that he had tendered to Mr. Weidman earlier at the meeting of creditors- had already reached a conclusion precisely on what in any petition constitutes a key issue, which had been put in controversy by the objections: Whether the petition had been submitted in good faith. (cf. 11 U.S.C. §1325(a)(3))
24. Could Trustee Reiber now conclude that the DeLanos did not act in good faith without thereby indicting his attorney-supervisee's rush to judgment and his competency in vetting the debtors' petition? No, he could not. Consequently, the Trustee has a vested interest in not finding fault with his attorney so as to avoid calling into question their relation and making himself a target of an investigation. This will compromise his objectivity, prevent him from being thorough, and impair the validity of his conclusions and process of investigation of both Mr. Weidman and the DeLanos, that is, if the Trustee investigates any of them at all.
25. If the DeLano's attorney works for the DeLanos, and Mr. Weidman protects the DeLanos, and Trustee Reiber defends Mr. Weidman, and both dismiss out of hand a creditor's objections, and the U.S. Trustee keeps in place her trustee even though linked to suspicious circumstances, who looks after the creditor as the representative of the estate (cf. 11 U.S.C. §323(a))?
26. Just as Dr. Cordero called for Mr. Weidman to recuse himself for jumping to a conclusion in favor of the DeLanos, he calls for Trustee Reiber to recuse himself for jumping to a conclusion in favor of his attorney-supervisee.

A. Trustee Reiber's legal duty to come forward with any information about bankruptcy fraud or abuse and the risk of failing to do so

27. If Trustee Reiber refuses to recuse himself and is allowed to remain in the case, Dr. Cordero gives notice that he may challenge the Trustee's every act and omission at any step of the way.
28. In this context, Trustee Reiber must consider that he is a lawyer and a trustee in the U.S. Trustee Program and, as such, an officer of the court and a federal appointee. He has a duty to report bankruptcy fraud or abuse to, among others, the FBI; and he himself said in his introduction at the March 8 meeting of creditors that he does report it, whereby he intended to create a reliance interest in his honesty. Every time he appears in court, files a paper in the case, or conducts business as usual with a party in interest, he is representing that he is acting truthfully and conducting the case in good faith and according to law.
29. By contrast, imagine a person similarly situated who knew that bankruptcy fraud or abuse had been committed in a case or had a reasonable basis to suspect that it had. It could also be that

she, through the exercise of due diligence and care as such court officer and federal appointee, would have found out but for her decision to engage in willful ignorance to preserve plausible denial. Imagine further that she failed to come forward and report what she knew or should have known to, among others, the FBI. Under those circumstances, if she continued to appear in court, file papers in the case, or conduct business as usual with a party in interest, she would render herself liable to criminal charges for the continuing commission, in addition to dereliction of duty, of perjury, obstruction of justice, and engaging in a cover up; and would also lay herself open to civil suits for fraud in the inducement to continue dealing with her and for the intentional infliction of material loss and emotion distress since a person is deemed to intend the reasonable consequences of her acts.

30. One thing is clear: Doing nothing when one has a duty to take a certain action, and doing as usual when one has a duty to do otherwise, compound an initial offense and breed a host of dire consequences, which could be avoided if that offense were timely pled down or negotiated away.
31. Dr. Cordero relies on Trustee Reiber's bid for trust in his honesty and expects him to do what is his legal and moral duty: recuse himself and report what he knows.

IV. Trustee Schmitt's decision to keep Trustee Reiber on the DeLano case leaves the pall of suspicion hanging over the case and, given her questionable handling of the complaint about Trustee Kenneth Gordon, raises more questions about her conduct

32. After Mr. Weidman's unlawful adjournment of the meeting of creditors on March 8, Dr. Cordero went to see Assistant U.S. Trustee Kathleen Dunivin Schmitt in the Office of the U.S. Trustee on the same floor. Nobody was there and he waited. When Paralegal Stephanie Becker arrived, he asked to speak with Trustee Schmitt, but Ms. Becker said that she was not available. Dr. Cordero told her what had happened and left with her a copy of his written objections for Trustee Schmitt.
33. The following day, Trustee Schmitt and Dr. Cordero spoke on the phone. He related the events of the previous day. He also said that Trustee Reiber had told him after the hearing that he would ask the DeLanos' attorney, Mr. Werner, whether he would allow his clients and, if so, under what conditions, to meet with Dr. Cordero for the latter to question them. Dr. Cordero indicated that Mr. Werner is in no position to grant or deny permission for his clients to meet with Dr. Cordero, let alone set conditions for the meeting, since the examination of the debtor by the creditors is a step in the bankruptcy process provided for by law. Trustee Schmitt agreed with Dr. Cordero and said that it was unfortunate for Trustee Reiber to have put it in those terms.
34. Dr. Cordero requested that she disqualify both Mr. Weidman and Trustee Reiber from the DeLano case and appoint a trustee unrelated to them, unfamiliar with case, and capable of conducting an independent investigation of their conduct in this case and of the financial affairs of the DeLanos. Trustee Schmitt indicated that she could appoint a trustee from Buffalo.

35. However, in her letter of March 11 to Dr. Cordero, Trustee Schmitt wrote that “I have had an opportunity to review your concerns with the United States Trustee for Region 2, Deirdre A. Martini, and she concurs with me that this case should be handled by the Chapter 13 trustee, George Reiber, personally”. The word “concur” means that Trustee Schmitt proposed to Trustee Martini to keep Trustee Reiber on the case.
36. For Trustee Schmitt to agree with Dr. Cordero in principle to do something but then propose the opposite to her boss is certainly not the way to build trust. Moreover, stating that Trustee Reiber will handle the case “personally” does not mean that Mr. Weidman will not continue helping him with it, much less that he has been prohibited from having further contact with the DeLanos and their attorney. Nor does the statement “that this case should be handled by...trustee...Reiber” contain any implicit obligation for him to investigate anybody or anything.
37. Even if it did, it would not mean much. The foundation for this statement is the way Trustee Schmitt handled an investigation when she was officially asked to investigate another of her trustees.

A. Trustee Schmitt’s quick-job inquiry of Trustee Kenneth Gordon is precedent for what little, if anything, she would now ask Trustee Reiber to investigate and how low her standards of acceptable performance would be.

38. Indeed, two years ago Dr. Cordero was looking for his property in storage with Premier Van Lines, and was given the round-around by its owner, David Palmer, and others who were doing business with Mr. Palmer. After the latter disappeared, the others eventually disclosed to Dr. Cordero that Mr. Palmer had filed under Chapter 11 for bankruptcy on behalf of Premier and that the company was already in Chapter 7 liquidation. They referred Dr. Cordero to the Chapter 7 trustee in the case, Kenneth Gordon, Esq., for information on how to locate and retrieve his property. However, Trustee Gordon refused to provide such information, instead made false and defamatory statements about Dr. Cordero, and merely referred him back to the same people that had referred him to Trustee Gordon.
39. Dr. Cordero complained to Judge Ninfo, before whom Mr. Palmer’s petition was pending, and requested a review of Trustee Gordon’s performance and fitness to serve as trustee. The judge referred the matter to Trustee Schmitt for a “thorough inquiry”. However, what she actually conducted was only a quick ‘contact’: a communication exercise limited in its scope to two people and in its depth to uncritically accepting at face value what she was told.
40. Dr. Cordero appealed Trustee Schmitt’s supervisory opinion of October 22, 2002, to her hierarchical superior at the time, Carolyn S. Schwartz, U.S. Trustee for Region 2, to whom he sent a detailed critical analysis of the opinion against the background of facts supported by documentary evidence. It is dated November 25, 2002. It must be in the files now under the supervision of Trustee Schwartz’s successor, Ms. Deirdre A. Martini, who is referred to it by its incorporation herein. It is also available as entry no. 19 in docket no. 02-2230, Pfuntner v. Trustee Gordon et al.
41. On that occasion, a complaint about one of her trustees was officially and spontaneously referred by a federal judge for a “thorough inquiry” to Trustee Schmitt. Nevertheless, she

conducted instead a “substandard investigation...infirm with mistakes of fact and inadequate coverage of the issues raised”, as stated in Dr. Cordero’s accompanying letter to Trustee Schwartz. Consequently, it is counterintuitive to think that this time, at the instigation of just a creditor, particularly one who complained about her, Trustee Schmitt will ask a third party, Trustee Reiber, to investigate yet another party, Mr. Weidman, in his relation to still others, the DeLano Debtors, and that she will see to it that her trustee’s investigation rises to the level of a “thorough inquiry”. Hence the need to entrust this investigation to a trustee unrelated to them, unfamiliar with the case, and capable of proceeding independently to whatever results a thorough inquiry may lead. What did Trustee Schmitt tell Trustee Martini to get her to “concur” with her that there was no need to replace Trustee Reiber at all?

V. Trustee Reiber failed to be evenhanded by proposing dates for the adjourned meeting to Mr. Werner but not to Dr. Cordero, although he was going to send a letter to Dr. Cordero and Trustee Schmitt was going to request him to do so

42. On Friday, March 12, Trustee Reiber called Dr. Cordero to let him know that he had spoken with Mr. Werner and that the latter had agreed to a meeting where Dr. Cordero could examine the DeLanos. Dr. Cordero told the Trustee that the meeting had to be just as the meeting of creditors which was to have been held on March 8. The Trustee just said that he would send Dr. Cordero a letter on the subject.
43. Dr. Cordero received no letter from the Trustee in the following week. When Trustee Schmitt and Dr. Cordero spoke again on Tuesday, March 23, upon her return from training, she mentioned that Trustee Reiber had sent Dr. Cordero a letter. When Dr. Cordero said that he had received none, she said that she would ask him to send or resend the letter in question.
44. On Saturday, March 27, Dr. Cordero received a letter from Trustee Reiber together with a copy of a letter from Mr. Werner to the Trustee dated March 19. Mr. Werner wanted to let the Trustee know the dates that were agreeable to him from among those that the Trustee had proposed to him for the adjourned meeting of creditors.
45. How come Trustee Reiber did not propose them at the same time to Dr. Cordero? Proceeding this way does not show evenhandedness in Trustee Reiber’s treatment of Mr. Werner and Dr. Cordero. The latter is put at a disadvantage by having to play catch up or, to avoid being put in that position, he is forced to second-guess the Trustee all the time.
46. Nor is it reassuring if Trustee Schmitt failed to ask Trustee Reiber to send or resend that letter to Dr. Cordero, or if she did ask him to do so, but failed to prevail upon him to do so, for if Trustee Reiber can disregard such a request, what other requests or advice from Trustee Schmitt can he disregard too?
47. In addition to that procedural impropriety, there are substantive reasons why the adjourned meeting cannot take place on any of the dates agreeable to Mr. Werner. Nor can it be limited to an hour given the circumstances.

VI. Why the adjourned meeting to examine the DeLanos can neither be limited to an hour nor take place until financial statements for “the covered period” have been sought, obtained, and analyzed

48. There is no justification in law or in fact to further protect the DeLanos from examination by limiting the time therefor, let alone limiting it to less than the time available at the initial meeting. On the contrary, there are solid grounds for providing for an examination without any limit on its duration:
- a) The bankruptcy of a 15 year bank loan officer is in itself highly suspicious and warrants strict scrutiny.
 - b) Such suspicion is heightened by the incongruous information that the DeLanos provided in their Schedules. (cf. para. 1 above)
 - c) Written objections have been filed that lay out detailed reasons, supported by numerical computations, for examining the DeLanos in depth.
 - d) The DeLanos have benefited from Mr. Weidman unlawfully preventing Dr. Cordero from examining them at the March 8 meeting. As a result, they have unduly had the opportunity to examine his written objections for weeks and prepare their answers accordingly.
 - e) Since the spontaneity of the DeLanos' answers to specific objections has been lost irretrievably, the loss must at least be partially compensated for by an examination that in addition to eliciting their answers, tests their candor and accuracy.
49. Just as the DeLanos have had extra time to prepare their answers to the written objections, it is necessary that Dr. Cordero obtain relevant financial documents to prepare his testing questions. Among those documents are the monthly credit card statements referred to in his written objections. Those statements are indispensable to construct the timeline of debt accumulation and the nature of its composition, as explained in the objections. Hence, the DeLanos must make the statements available to Dr. Cordero, particularly since they received them and, given their nature of financial documents, have had a legal obligation to save them for a certain number of years.
50. To begin with, the DeLanos must provide the monthly statements that the 18 credit card issuers to whom they owe money have furnished them for the period during which they have accumulated their debt to them. The DeLanos describe the beginning of that period in their Schedule F thus: “1990 and prior card purchases”. This period, stretching from whenever the first of those “prior card purchases” took place to date, is referred to hereinafter as “the covered period”.
51. If those statements are not provided by the DeLanos because they refuse to provide those that they have or request those that they are missing, then they should be obtained by the trustee, whether it is one assigned by Trustee Schmitt to conduct a thorough independent investigation, or failing that and Trustee Reiber's recusal, then Trustee Reiber.

A. The trustee has the obligation to obtain financial documents

52. Obtaining those statements and other financial documents is the trustee's legal obligation under 11 U.S.C. §1302(b)(1). By reference, that section makes applicable §704(4), which provides that 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".
53. Before investigating anything, Mr. Weidman and Trustee Reiber had a due diligence duty to examine carefully the DeLanos' bankruptcy petition itself. Had they vetted their Schedules, they would have detected the suspicious figures therein and raised objections of their own (cf. para. 1 above, and Dr. Cordero's written objections). If so, Mr. Weidman would hardly have been so "flustered" –as Trustee Schmitt put it- by Dr. Cordero's questions, for he would already have asked them of the DeLanos and heard their answers. He and Trustee Reiber failed to do so. That failure does not recommend them to conduct any investigation of the DeLanos, much less justifies letting Trustee Reiber investigate Mr. Weidman.
54. Moreover, if Trustee Reiber does remain on the case, then at the very least he must perform his legal duty to investigate the DeLanos; otherwise, he would provide another reason to be replaced by a trustee that is more careful in vetting bankruptcy petitions that fall on his lap and that is willing to stand up and go out to search for pertinent documents. No trustee can earn his or her percentage fee by just rubberstamping a petition.

B. Mr. DeLano, with his 15 year experience as a loan officer, is better equipped to search for documents pertaining to his financial affairs

55. In the same vein, Mr. DeLano has no reason whatsoever for refusing to obtain pertinent documents and thereby force Dr. Cordero to do his work. As a bank loan officer for 15 years, Mr. DeLano knows that he has a legal obligation to keep financial documents for a certain number of years. In so far as he does not have documents for the period not covered by that obligation, Mr. DeLano:
 - a) has a veteran's experience in obtaining financial documents;
 - b) must be assumed to have knowledge of how to operate the mechanisms for obtaining statements from banks; and
 - c) must be assumed to have what can prove a most valuable resource, namely, personal contacts in those banks who can help him to approve and expedite the retrieval of those statements.
56. Mr. DeLano is in no position to complain about the amount of work involved in obtaining those statements. He is presumed to have known, not only as a prospective debtor assisted by an attorney in the decision whether to file, but also as a bank loan officer involved with debtors who have filed for bankruptcy, what would be required of him to support his petition. Indeed, Mr. DeLano was the M&T Bank loan officer handling the account of Mr. David Palmer, to whom M&T extended a loan to run his company, Premier Van Lines, Inc., and who filed for bankruptcy, leaving Mr. DeLano with the task, among others, to recover and liquidate the assets in which M&T had a security interest. M&T was another of the defendants named in Pfuntner

v. Trustee Gordon et al. In addition, if Mr. DeLano was capable of juggling 18 credit cards at present and who knows how many others in covered the period since before 1990, then he must juggle the tasks of retrieving their statements. The magnitude of the problem and the degree of its difficulty are of his own making.

57. Consequently, the DeLanos' financial documents, starting with the credit card statements, must be obtained in order to check their petition and prepare for their examination. If Mr. DeLano or the trustee place the work of obtaining them on the shoulders of Dr. Cordero, he will do it because the statements are necessary. But he gives notice that he will seek compensation from them therefor because to his detriment they would have failed to fulfill their obligation and failed despite their being superbly better qualified to do the work involved.

C. Dr. Cordero must not be burdened with the document search so as to hinder his examination of the DeLanos or deprive him of evidence

58. Neither law nor rule lays on creditors the obligation to investigate the debtor's financial affairs or search for documents. Thus, the work of obtaining them in this case cannot arbitrarily be offloaded on Dr. Cordero.
59. This is particularly so here because the DeLanos have provided only the institutional names of the 18 credit card issuers and their respective addresses and account numbers, but not the names of any persons in the departments handling the accounts. Therefore, if a subpoena were sent to, let's say, Bank of America, it could take weeks before it was processed and then landed in the hands of the person, or series of persons, or committee that could find out whether the statements were available and, if so, how many the Bank would release, whether it would charge a special fee for statements older than a certain number of years, etc. Searching for the phone numbers of those 18 issuers, where none has been provided, and tracking down whomever is dealing with the subpoena or with the retrieval and reproduction of the statements at that point in time will require a lot of time-consuming work.
60. Yet, that work must be done and it must be a trustee, not Dr. Cordero, who does it. If the trustee were to fail to do that too, on what basis would he or the bankruptcy judge decide whether the DeLano's bankruptcy petition had been submitted in good faith and, if so, whether it provided for the just and fair allocation of benefits and burdens among debtors and creditors? The mere self-serving information provided by debtors in their Schedules can hardly have been the only basis on which Congress intended trustees to apply its Bankruptcy Code, run the Trustee Program, or allow debtors to extricate themselves from their debts. Nor did Congress intend creditors to be left to fend for themselves when searching for financial documents on which to determine whether irresponsible debtors had taken their money or incur liability to them and were now seeking to leave them holding a bag of worthless IOUs and enforcement proof judgments.

D. The time necessary to obtain financial statements requires the adjournment of the meeting

61. In any event, whether it is the trustee, the DeLanos, Dr. Cordero, or anybody else who search for just those statements, let alone for any other financial documents that checking the former

may reveal as necessary, that work will take time. When Dr. Cordero discussed this issue with Trustee Schmitt, she agreed that it was necessary to obtain those statements and indicated that at the very least it would take 20 days to begin receiving them. Hence, that calls for the meeting of creditors adjourned to April 26 to be postponed until the documents have been obtained and analyzed, and of necessity discards any date in between proposed by Trustee Reiber and agreed to by Mr. Werner.

VII. Trustee Martini is given notice of the facts and high stakes in this case so that she may be held fully accountable for the decisions that she makes

A. Trustee Martini's mind was bent on "closure" from the moment Dr. Cordero tried to open a conversation with her

62. Dr. Cordero called Trustee Martini on March 16, and was told that she was not in her office, so he left a message on her voice mail explaining the situation and asking that she call him. Having failed to receive a return call, he called her the next day and was told again that she was not in her office. He left another voice mail for her and recorded a message for her assistant, Ms. Desire Crawford. About 10 minutes later Trustee Martini called him back.
63. After Dr. Cordero explained the situation, Trustee Martini said right away that she had already made up her mind and was not going to change her decision by bringing in another trustee to replace Trustee Reiber. Dr. Cordero asked why and she replied that she was the Trustee for Region 2 covering New York, Connecticut, and Vermont and did not have to give any explanation for her actions and that if I Dr. Cordero did not like it, he could consult an attorney and pursue his remedies. Dr. Cordero asked whether he was right in feeling antagonism toward him on her part. She denied it and said that she wanted him to stop calling her office.
64. Dr. Cordero said that he had called her office only twice. She said that he had spoken with Ms. Crawford, to which he replied that he had only left one message on Ms. Crawford's voice mail. Dr. Cordero asked again why she had that antagonist attitude toward him. She said that she wanted closure for this matter. Dr. Cordero pointed out that their current conversation was the first time ever that they had spoke. She said that she wanted "closure" for this matter and repeated that she had made her decision and that if Dr. Cordero did not like it, he could get himself a lawyer and take it from there.
65. Trustee Martini wanted "closure" on a matter that she had never before discussed with Dr. Cordero. She had already closed her mind on the matter and also made up her mind as to Dr. Cordero. What or who was the source of her decidedly antagonistic attitude toward him or whether she needed any external source whatsoever to trigger such attitude, is not known. But one thing is certain: from a public servant, not to mention a professional, one presumably educated, a member of the public is entitled to expect an open-minded and serviceable attitude. Instead, Trustee Martini decided an important matter without any input from that member of the public and was not even interested in listening to, let alone finding out, his account of the facts or his opinion thereon.
66. A person in a position of authority, to whom power has been entrusted to make decisions that

affect other people's interests, owes it to the public whom she is appointed to serve, and all the more so to a party in interest, not to be easily swayed to any position by her own prejudices or anybody else's talk, but rather to be temperamentally capable of dispassionate and unbiased approach; sufficiently curious and energetic to ask herself questions and go out to find the answers; and intellectually disciplined enough to wait until all the facts have been gathered before taking the next step of engaging in their objective analysis, evaluation, and selection as the basis for forming a reasoned and balanced judgment. By these standards, Trustee Martini's attitude was shockingly disappointing.

67. Therefore, let this detailed memorandum provide Trustee Martini with Dr. Cordero's statement of facts and position on the issues. It deprives her of the argument that she did not know about this case anything more than what Trustee Schmitt chose to tell her so that she simply 'concurred', as Trustee Schmitt put it, with what the latter suggested she do.

B. The stakes are high because the attorney of a trustee has acted unlawfully, arbitrarily, and suspiciously, yet the U.S. Trustee has allowed them to remain on the case, thus condoning their conduct

68. In any event, Trustee Martini should have recognized that at stake in this case is the integrity of the Trustee Program in the Western District of New York and should have wanted to know what is going on in this case and in that District. That the stakes are quite high should become obvious from the fact that a trustee's attorney, Mr. Weidman, one described as "experienced" by Trustee Schmitt herself in her March 23 conversation with Dr. Cordero, has made an unlawful and arbitrary decision while engaging in suspicious conduct.
69. As a matter of fact Trustee Schmitt has not asked Trustee Reiber to investigate Mr. Weidman. Even if she had, he could as a practical matter not do so because just as it is elemental that a person cannot investigate himself objectively and zealously, Principal Reiber cannot investigate Agent Weidman impartially and thoroughly. He has an inherent bias toward exonerating his agent rather than render himself liable for his acts and omissions through respondeat superior.
70. By leaving Trustee Reiber in charge of the DeLano case, Trustee Schmitt has ensured that nobody will have to know the true motives and objectives for Mr. Weidman acting unlawfully and arbitrarily: Was he on a folly of his own on March 8 or in line with his particular relation to the DeLanos? Has he acted the same way on other occasions when in the same mood or in similar relation to other debtors? Was he performing a task normally assigned to him or engaging in a routine practice of both office members? If Trustee Schmitt is not interested in asking these and many others questions, Trustee Martini should be because the integrity of the Trustee Program rides on their answers.
71. Nor has Trustee Schmitt required Trustee Reiber to investigate anybody or anything else. He only has to conduct personally the next examination of the DeLanos. In a two-person office where he is the principal this is a meaningless requirement, unless it means that now he has an excuse for protecting personally his vested interest in nothing coming out of Mr. Weidman's unlawful and arbitrary conduct at the first meeting. Since Trustee Schmitt has allowed him to continue with the case as if nothing had happened, she has in practice condoned such unlawful and arbitrary conduct.

72. This lax approach to the law is not an exception made for Trustee Reiber by Trustee Schmitt, for she does not enforce on her other trustees either the legal requirement that they “investigate the financial affairs of the debtor” or ‘furnish creditors with the documents that they request’. In this vein, Trustee Schmitt stated to Dr. Cordero that in her experience, trustees do not investigate debtors’ financial affairs. Although Dr. Cordero protested that such omission is in clear violation of the duties that Congress imposed on trustees, she was not willing to require of Trustee Reiber to investigate the DeLanos. Far from it, her position is that if Dr. Cordero wants to investigate them, he has to do it himself, whether by asking the DeLanos to cooperate and voluntarily provide financial statements, or by using subpoenas. Not even she will provide anything but token cooperation given that out of the 18 credit card issuers to whom the DeLanos owe money, she would look up in her files the addresses of only five of them. Why does Trustee Schmitt not only not have the DeLanos, let alone her trustee or his attorney, investigated, and not investigate the DeLanos herself, but also not want even to cooperate except pro forma in Dr. Cordero’s investigation of them?

C. Trustee Reiber’s 3,909 open cases point to why he could find it difficult to investigate the financial affairs of debtors or furnish requested information to a party in interest and beg the question why he has been allowed to take on so many

73. Pacer, the court electronic document retrieval service, sheds light on why trustees may be quite unwilling and unable to spend time investigating anything. When queried with the name George Reiber, Trustee, it returns this message at <https://ecf.nywb.uscourts.gov/cgi-bin/login.pl>: “This person is a party in 13250 cases.” When queried again about open cases, Pacer comes back at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1 with 119 billable pages that end thus:

2-04-21295-JCN	bk	13	William J. Hastings and Carolyn M. Hastings	Ninfo Reiber	Filed: 04/01/2004	Office: Rochester Asset: Yes Fee: Paid County: 2-Monroe
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Total number of cases: 3909

Open cases only

PACER Service Center

74. Trustee Reiber has 3,909 open cases at present! This is not just a huge abstract figure. Right there are the real cases, in flesh and blood, as it were, for Pacer personalizes each one of them with the debtors’ names; and each has a throbbing heart: a hyperlink that can call that case to step up to the window for examination. What is more, they are in good health since Pacer indicates that, with the exception of fewer than 44, they are asset cases. This means that Trustee Reiber has taken care to “consider whether sufficient funds will be generated to make a meaningful distribution to creditors, prior to administering the case as **an asset case**” (emphasis

added), as provided under §2-2.1. of the Trustee Manual. “Meaningful” under the DeLanos’ plan is 22 cents on the dollar with no interest accruing during the repayment period. No doubt, avoiding 78 cents on the dollar as well as interest is even more meaningful to the DeLanos. By the same token, that means that the Trustee has taken care of his fee, which is paid as a percentage of what the debtor pays (28 U.S.C. §586(e)(1)(B)).

75. Given that a trustee’s fee compensation is computed as a percentage of a base, it is in his interest to increase the base by having debtors pay more so that his percentage fee may in turn be a proportionally higher amount. Increasing the base could require ascertaining the veracity of the figures in the schedules of the debtors as well as investigating any indicia that they have squirreled away assets for a rainbow post-discharge life. Such investigation, however, takes time, effort, and money. Worse yet from the perspective of the trustee’s economic interest, an investigation can result in a debtor’s debt repayment plan not being confirmed and, thus, in no stream of percentage fees flowing to the trustee. (11 U.S.C. §§1326(a)(2) and (b)(2))
76. The alternative is obvious: Never mind investigating, not even patently suspicious cases, just take in as many cases as you can and make up in the total of small easy fees from a huge number of cases what you could have made by taking your percentage fee of the assets that you sweated to recover. Of necessity, such a scheme redounds to the creditors’ detriment since fewer assets are brought into the estate and distributed to them. When the trustee takes it easy, the creditors take a heavy loss, whether by receiving less on the dollar or by spending a lot of money, effort, and time investigating the debtor just to get what was owed them to begin with. Could U.S. Trustees have contributed to the development of such an income maximizing mentality and implementing scheme by failing to demand that trustees perform their duty under the law, which requires them “to investigate the financial affairs of the debtor” and to “furnish such information concerning the estate and the estate’s administration as is requested by a party in interest”? (para. 52 above)
77. This income maximizing scheme has a natural and perverse consequence: As it becomes known that trustees have no time but rather an economic disincentive to investigate the financial affairs of debtors, ever more debtors with ever less deserving cases for relief under the Bankruptcy Code go ahead and file their petitions. What is worse, as people not even with debt problems yet catch on to how easy it is to get a petition rubberstamped, they have every incentive to live it up by binging on their credit as if there were no repayment day, for they know there is none, just a bankruptcy petition waiting to be filed.
78. These dynamics could appear to explain why Mr. Weidman said in open court that he had met with the DeLanos and their lawyer and found their petition to be in good faith and why the DeLanos filed it at all, despite Mr. DeLano being a 15-year loan officer, who carries more than \$98,000 in debt on 18 credit cards at the national average of 16% interest rate, unless it is at the more than 23% delinquent rate, and does not even consolidate and refinance his household debt despite some currently available loan rates at historically low levels. Instead, he and his wife take \$10,000 out of their pension fund and lend it to their son, who becomes unable to repay it, and the date of the loan is not stated anywhere in the petition. What were they thinking!?
79. Trustee Martini is in a position to find out. Moreover, if she wants to be seen to be a zealous steward of the integrity of the Trustee Program, she must find out. She has been provided herein with enough credible evidence that something is amiss in the Western District of New York to warrant her conduct of an investigation of the WDNY trustees in general and of this case in

particular. She can no longer limit herself to ‘concurring’ with one of her assistants in the target area, but must make her own decision. Whatever Trustee Martini decides to do, she will be held publicly accountable for it.

VIII. Dr. Cordero’s requests

80. Therefore, Dr. Cordero requests as follows:

- a) That Trustee Schmitt and Trustee Reiber (or the trustee replacing him):
 - 1) postpone setting the date for Dr. Cordero to examine the DeLanos until after the necessary financial documents have been sought, obtained and analyzed;
 - 2) suspend the meeting of creditors adjourned to April 26 until after 1) above and Dr. Cordero has examined the DeLanos;
 - 3) with respect to each of the 18 credit card issuers listed as creditors by the DeLanos in Schedule F, provide Dr. Cordero with the name, address, and phone number of a contact person with the necessary authority and knowledge to handle a request for documents concerning the pertinent account whose number the DeLanos also listed;
- b) That the DeLanos provide the trustees and Dr. Cordero with copies of:
 - 1) the monthly statements of the credit cards listed in Schedule F since their date of issuance to date;
 - 2) the monthly statements of each other card issued to the DeLanos, whether by a bank or any retailer of goods or services, during the covered period;
 - 3) current credit bureau reports issued by Equifax, Trans Union, and Experian, and copies of any other such report that the DeLanos have received during the covered period;
 - 4) all the documents supporting the statement that Mr. DeLano made under oath to Mr. Weidman at the March 8 meeting of creditors to the effect that the DeLanos had incurred most of their credit card debts when Mr. DeLano lost his job in 1989 and had to take a deep pay cut subsequently;
 - 5) each of the DeLanos’ annual income during the covered period;
 - 6) all the documents pertaining to the loan to the DeLanos’ son;
 - 7) the information requested in a)3), above
- c) That Trustee Reiber and Mr. Weidman recuse themselves from this case and ceased having any further contact, whether directly or indirectly and regardless of at whose initiative, with the DeLanos, their son, or their current or future attorneys;
- d) That Trustee Reiber:
 - 1) if he remains in charge of this case, whether alone or with Mr. Weidman, perform his duty “to investigate the financial affairs of the [DeLano] debtor” and ‘furnish such information as is requested by Dr. Cordero’ in a)3) above;
 - 2) take note that Dr. Cordero makes the request in d)1), above:

- i. without giving up his request that Trustee Reiber and Mr. Weidman recuse themselves from this case or be disqualified, and hence,
 - ii. without prejudice to his right to challenge either or both remaining on this case and their performance of any aspect of their work in that capacity, including their desinterestedness and objectivity in such performance;
- 3) send Dr. Cordero the letter that he told him on Friday, March 12, he was going to send him; that, according to Trustee Schmitt, he told her he had sent Dr. Cordero; and that Trustee Schmitt told Dr. Cordero she would ask him to send or resend;
- 4) send Dr. Cordero originals of any letters that he, Trustee Reiber, addresses to him and copies of any letters that he sends other parties in interest, and of any notice or documents that he is required to send creditors under Rule 2002(g) FRBkrP, as Dr. Cordero already requested in paragraph 30 of his written objections, which he personally served on Trustee Reiber and Mr. Weidman on March 8;
- e) That Mr. Weidman jointly and severally with Trustee Reiber as his principal compensate Dr. Cordero in the amount of \$1,500 for having wasted his time, effort, and money on March 8 when Mr. Weidman prevented him from examining the DeLanos at the meeting of creditors although he knew that was the sole purpose of Dr. Cordero traveling from New York City to Rochester; and that this amount be without prejudice to Dr. Cordero's right to compensation from Mr. Weidman and/or Trustee Reiber on other grounds;
- f) That Trustee Schmitt:
 - 1) recuse both Trustee Reiber and Mr. Weidman from this case;
 - 2) require that they immediately transfer to her all their files, records, and notes on the case and have no more contacts with the DeLanos, their son, or their current or future attorneys, and have nothing else to do with this case except to be subject to examination on it;
 - 3) appoint a trustee for the DeLano case who is:
 - i. unrelated professionally, financially, socially, and in any other compromising way to the DeLanos, their son, their attorneys, Trustee Reiber, and Mr. Weidman;
 - ii. unfamiliar with the case; and
 - iii. capable of conducting an independent and thorough investigation of the DeLanos' financial affairs, of the DeLanos' relation with Mr. Weidman and Trustee Reiber; and of Mr. Weidman's motives and objectives in conducting the March 8 meeting as he did;
 - 4) require whomever is in charge of the case "to investigate the financial affairs of" the Delano Debtors and make the documents obtained as well as his or her findings and conclusions available to Dr. Cordero; and 'furnish Dr. Cordero with the information requested' in a)3) and b), above;
 - 5) take the initiative in obtaining the DeLanos' financial documents listed in b)1-6), above, and make them available to the trustee and Dr. Cordero;

6) require Mr. Weidman and Trustee Reiber to compensate Dr. Cordero as requested in e), above;

g) That Trustee Martini:

1) rescind the decision to keep Trustee Reiber on the DeLano case and appoint a replacement as described in f)3), above;

2) launch an investigation of the trustees of the Western District of New York, in general, and of this case, in particular, to be guided by the principle *Follow the money!* from the estates and the debtors to wherever it goes and whomever it ends up with, to determine:

i. whether and, if so, with what consequences for the integrity of the Trustee Program and respect for the law, trustees pursue an income maximizing scheme whereby they take in as many cases as possible with disregard for ascertaining through investigation of the debtors' financial affairs the good faith of their petitions and the fairness of their repayment plans;

ii. if so, why trustees are allowed to give priority to the pursuit of their economic interests instead of being required to perform their duty to "investigate the financial affairs of the debtor" and "furnish such information concerning the estate and the estate's administration as is requested by a party in interest";

3) notify the appropriate United States attorney as provided under 28 U.S.C. §586(a)(3)(F), of the matters described in this memorandum in general and in g)2)i2)ii., above, in particular, so that such United States attorney may conduct his or her own investigation and contribute to ensuring the total independence of action and judgment of any officer called upon to replace Trustee Reiber.

81. Dr. Cordero intends to find the answers to those queries. His track record for more than two years now in defending his rights in and outside court shows that he has the necessary staying power to attain that objective. Bit by bit a picture of what is going on in Rochester and elsewhere is being puzzled together. Eventually that picture will become explicit enough to shock the sense of fair play and legality of public officers in high positions and private personalities that shape public opinion. They will bring their power and pressure to bear down on anybody that has engaged in wrongdoing, in covering it up, and in injuring a person who initially just wanted to find his property in storage. When that breakthrough comes to happen, that person, Dr. Cordero, will hold liable each and every individual and institution that have trampled on his rights and caused him such an enormous waste of effort, time, and money and inflicted on him such a tremendous amount of emotional distress to the point of effectively disrupting his life. When that day comes, will you be seen in the picture or indicting it from the outside?

March 30, 2004

Dr. Richard Cordero

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

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re: David G. DeLano and Mary Ann DeLano

Chapter 13
Case no: 04-20280

**NOTICE OF MOTION
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**

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 declaratory judgment to be issued on April 21, 2004, or as soon as the next possible motion date, establishing unambiguously I. the mode under Rule 4003(b) FRBkrP for computing the timeliness of an objection to a claim of exemptions and II. what authoritative value the court accords to “local practice” relative to that of laws and rules, and for a written statement of such “local practice”.

I. The period for filing objections to a claim of exemptions under Rule 4003(b) runs from the conclusion of the meeting of creditors after taking into account all adjournments

1. Rule 4003(b) FRBkrP provides that objections to a claim of exemptions can be filed within 30 days after the conclusion of the meeting of creditors. Such meeting in the above-captioned DeLano case was held on March 8, 2004, in Rochester, NY., and presided by James Weidman, Esq., attorney for Chapter 13 Trustee George Reiber. However, although the meeting’s very purpose was to examine the DeLanos, it was frustrated when Mr. Weidman cut off Dr. Richard Cordero, the only creditor present, after the latter had asked only two questions of the DeLanos. Therefore, far from the meeting having concluded on that occasion, it can hardly be said to have started yet.
2. In any event, the meeting was adjourned to April 26 by both Mr. Weidman at the meeting of creditors and Trustee Reiber at the hearing on confirmation of plans held in this court later that day. Consequently, the meeting did not conclude on March 8 and, as a result, the 30-day period for filing objections to a claim of exemptions has not begun to run.
3. Nevertheless, Dr. Cordero files now his objection to the DeLanos’ claim to exemptions in order

to be on the safe side of timeliness. While indisputably on that side, he seeks a ruling establishing explicitly that the point in time under Rule 4003(b) from which the 30-day period begins to run is the conclusion of the meeting as extended by any adjournment and that the conclusion must be expressly announced by the trustee or the court giving notice thereof.

II. Recent statements of the court undermine the reasonable expectation that it will give effect to even clear statutory language rather than disregard it in favor of “local practice”

A. Dr. Cordero’s uncontradicted statement of facts to the court in Mr. Weidman’s presence

4. Although the language of Rule 4003(b) is clear and case law has confirmed its clarity beyond doubt, the explicit expression of its construction in a ruling by this court is necessary because the court has recently given additional evidence that it will disregard even clear, unambiguous statutory language in favor of what it calls “local practice”.
5. Indeed, on March 8, Dr. Cordero stated in open court, the Hon. John C. Ninfo, II, presiding, that after he had asked only two questions of the DeLanos at the meeting of creditors earlier that afternoon, Mr. Weidman, who presided it, cut him off and immediately thereafter adjourned it. Mr. Weidman alleged to justify his action that there was no more time to continue the meeting.
6. However, Mr. Weidman’s allegation was objectively untenable:
 - a) He ended the meeting of the DeLanos at around 1:59p.m.;
 - b) Dr. Cordero was the only creditor of the DeLanos present;
 - c) the hearing on confirmation of plans would not start until 3:30p.m. in the courtroom downstairs in the same building;
 - d) after those on the DeLano case left the meeting of creditors room, Mr. Weidman was left with just one lawyer and two other persons;
 - e) judging by the amount of time that he spent on the two previous cases, he could have disposed of that third one in 10 to 15 minutes and there would still have been plenty of time for the DeLano meeting to continue.
7. When Dr. Cordero related these facts to the court, Mr. Weidman was in the courtroom at Trustee Reiber’s table and did not contradict Dr. Cordero’s account. The latter can be easily corroborated, of course, since the meeting of creditors was taped recorded.
8. However, the court opened its response by saying that Dr. Cordero would not like what it had to say; that it 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.
9. 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.

10. 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.
11. Dr. Cordero added that Mr. Weidman's conduct raised questions because Mr. Weidman kept asking him what evidence he had that the DeLanos had committed fraud despite his 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.
12. 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.

B. The court impermissibly gave precedence to “local practice” over law and rule

13. At no point did the court recognize that the unambiguous purpose of 11 U.S.C. §§341 and 343 is precisely to examine the creditors. Two questions asked by the sole creditor present, particularly one that traveled all the way from New York City to Rochester in order to examine the debtors and who specifically pointed that fact to Mr. Weidman, do not constitute an examination. There can be no doubt that Mr. Weidman conducted himself unlawfully, arbitrarily, and suspiciously.
14. Yet, the court came to Mr. Weidman's defense and raised “local practice” as his shield. In so doing, the court also wielded “local practice” as a sword to cut down the law of Congress. With the same swing of “local practice” it defeated Dr. Cordero's reasonable expectation that an act of Congress constitutes the law of the land. As such, federal laws and rules must be applied the same way and to the same full extent in New York City, Rochester, Los Angeles, Miami, and Alaska, without suffering any diminution through any unsuspectingly unsheathed and treacherously stabbing unwritten inconsistent “local practice”.

C. The court's advice that Dr. Cordero should call to find out what the “local practice” provides is unlawful, impracticable, and meaningless in practice

15. Fortunately, the court understood how such “local practice” in the hands of an arbitrary officer could make short shrift of Non-local Dr. Cordero's reliance interest, and after thinking quickly, provided the necessary advice: Dr. Cordero should call to find out what the “local practice” is

rather than just read the law and rely on it strictly.

16. What an astonishing statement for a federal judge to make!, for it is antithetical to the very essence of a system of justice that in order to curb abuse of power is based on notice given in advance and opportunity to be heard, not tidbits of local knowledge that to forestall unfair surprise one must ferret out on a hit and miss basis. Ironically, the setting in which Judge Ninfo expressly confirmed the supremacy in his court of “local practice” over legality was a hearing; and the occasion on which such “local practice” had trampled underfoot the law was a meeting of creditors convened through judicial notice.
17. Moreover, Judge Ninfo’s advice to a non-local party to call to find out what the “local practice” is detracts from the reflection of analytical capacity that a judge must demonstrate to be effective and respected in his position, for how impracticable and meaningless in practice it is!
 - a) Whom was Dr. Cordero supposed to call to obtain all the details of “local practice”? Had he called a clerk of court and asked that she tell him all there is about “local practice”, would she not have jumped and said, “Ah!, you mean the local rules. You can download them from the Internet or I can send you a hardcopy in the m...” “No! no! I mean “local practice”, you know, the unpublished, unwritten local tricks that lawyers in Rochester know can invalidate national law.” Would the baffled clerk not think that Dr. Cordero was low on something in the head and try to get rid of him by repeating once more that clerks are not allowed to give legal advice and that he should hire local counsel to find out whatever he meant by “local practice”?
 - b) Should Dr. Cordero call opposing counsel and ask that he be fair with him and level the field by spending his time sharing with Dr. Cordero the secrets of “local practice”?
 - c) Or should Dr. Cordero call the trustee and ask him the seemingly ridiculous question whether “local practice” would allow him to ask more than two questions at the meeting of creditors if he was the only creditor present?
 - d) So finally Dr. Cordero resigns himself and calls a Rochester attorney, Jimmy, who advertises his specialty as “local practice”, and tells him that although he can read law books and in fact he is said to read the law, no wrongly, but just strictly, he is still missing what really matters in a Rochester court, not the law, but rather the knowledge of the initiated in unwritten “local practice”. Jimmy’s eyes roll up and down wondering what this self-styled doctor, most likely a sheep veterinarian, can possibly mean until he blushes a little and tells Dr. Cordero, “You had me going with that euphemism. Sure!, You can hire me to teach you real good the unwritable dirty secrets of how things get cookin’ in our local court. You can’t get closer ‘local’ than that...unless you also want ‘practice’, but that gonna cost you an arm and a leg too.”
 - e) And it comes to happen that one day Dr. Cordero is in court and hears it said that Rule 4003(b) provides that...but Dr. Cordero jauntily springs to his feet, “Forget’a ‘bout it!, Judge, ‘cause Jimmy told me whats tis meaning in “local practice”: that the 30 day period begins to run from the date stated in the notice of meeting of creditors, no matter what happens on that occasion.” Will the court say, “Now you are talking, Dr. Cordero! If Jimmy told you what the “local practice” is and you relied on it, then that’s the end of it. I have no choice but to enforce it, you know, I am not one to disappoint your reasonable reliance. What else did Jimmy tell you?”

18. Oh! stop this nonsense! This is a memorandum of law, not a five cent skitch! Yet, the above statements lay out the implications of what a federal judge said in open court and for the record. And it was no joke then either, for on the basis of that “local practice” all the enormous effort that Dr. Cordero made to educate himself about the law and rules of bankruptcy in order to analyze a petition and write a five-page statement of objections meticulously supported by cited legal provisions and all the time and effort that he spent traveling to Rochester were rendered meaningless because the judge said that it was perfectly OK in “local practice” for the trustee’s attorney to put an end to the debtors’ examination after the second question by the sole creditor present if the attorney had no time to lose before the debtors might blurt out something.
19. No doubt, this is a very serious matter. Its logical and grave consequence is that if §§341 and 343 do not mean what they say because “local practice” says that they mean something else, then one must wonder what Rule 4003(b) really means. When must a non-local file his objection to a claim of exemptions in order to have a chance at its being considered timely? What does the rest of the Code and the Rules mean? Why bother at all researching the law when in the end the court will not hesitate to unfairly surprise a non-local by doing whatever it says “local practice” is? By proceeding thus, the court has created an untenable situation of legal uncertainty and arbitrariness.
20. But it has confirmed with certainty how it proceeds: Judge Ninfo conducts the court’s business, not as a federal judicial officer sworn to uphold the Constitution and apply the laws of the United States, but rather as the Lord of the Fiefdom of Rochester, one carved out of the territory of applicability of the acts of Congress, whose laws and rules he disregards just as he stretches the facts out of proportion. For how much longer?

III. Relief requested:

21. Therefore, Dr. Cordero respectfully request that:
 - a) the DeLanos’ claim of exemptions not be granted;
 - b) the grant of such claim not be considered, if at all, until the issue of the good faith of their bankruptcy petition has been conclusively established;
 - c) the court expressly state that under Rule 4003(b) the 30-day period within which to object to a claim of exemptions does not begin to run until the meeting of creditors, after all its adjournments, is formally announced as concluded by the trustee or the court and notice thereof is timely given to the parties in interest;
 - d) the court explicitly recognize that:
 - 1) “local practice” is absolutely powerless to invalidate a provision of law or a rule, whether it be an act of Congress or a rule of any of the Federal Rules of Procedure or Evidence or a state law or rule;
 - 2) it will never give such “local practice” precedence over any such act or rule in any proceeding before it;
 - 3) it will not allow “local practice” to be used to confer on a local party an advantage over a non-local party;

- e) send Dr. Cordero a written statement of “local practice” not inconsistent with any law or rule and which it suggests that if at all possible and cost-effective Dr. Cordero observe when participating in proceedings before it.

March 31, 2004

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