



**BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP**

ATTORNEYS AT LAW

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

July 12, 2004

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

Dear Mr. Reiber:

We have received the first responses to our requests for documentation relating to Mr. and Mrs. DeLano's charge account in excess of \$5,000.00. Enclosed please find account statements relating to two (2) MBNA America accounts (#'s ...1928 and ...9530).

We continue to await response on the other requests for documents made to Discover, Chase Manhattan, HSBC and Bank One. We previously inquired by email of your ability to issue a Subpoena to HSBC, as this appears to be necessary for their compliance and also to minimize the cost of their copying charges. Please advise in this regard.

Chase Manhattan. The Beckett & Lee firm indicates that Chase is commonly slow to respond and though they indicate that a Subpoena might not move things any faster, you may wish to consider issuing a Subpoena to them.

Discover. Unfortunately, we have been unable to make further contact, as the "hotline for attorneys" at (224) 405-2885 refers us to the subpoena mailbox, which is full and we were not even able to leave a message.

Bank One of Delaware. We have again spoken with Nate Tench, who indicates that he will send a second request and he is hopeful that they will comply. Here, as well though, Mr. Tench questions if a Subpoena will necessarily move the request forward any faster, but you may wish to do so. He indicates that they have no record of the third Bank One of Delaware account for which a claim has not, as yet, been filed.

This is all to say that we continue with our efforts to comply with your requests, but are wholly dependent upon the responses of these creditors. Please give us your advice regarding issuance of Subpoenas which you previously indicated you stood ready to issue. Please advise what, if any, information or authorization you require.

Very truly yours,

BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP


Christopher K. Werner

CKW/trm
Enclosures

cc: Richard Cordero

2400 Chase Square • Rochester, New York 14604 • 585-232-5300 • FAX: 585-232-3528
7 South Broadway, Suite 300 • White Plains, New York 10601 • 914-682-4006 • FAX: 914-682-8273
60-70 South Main Street, Suite 250 • Canandaigua, New York 14424 • 585-396-0400 • FAX: 585-232-3528
<http://www.boylanbrown.com>

July 13, 2004

VIA MESSENGER

United States Bankruptcy Court
100 State Street
Rochester, New York 14614

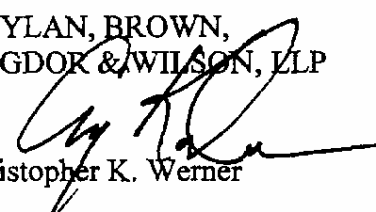
Re: David G. and Mary Ann DeLano, Case No. 04-20280

Dear Sir or Madam:

Enclosed please find our Statement in Opposition to Trustee's Motion to Dismiss for your consideration.

Very truly yours,

BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP


Christopher K. Werner

CKW/trm
Enclosure

cc: David G. and Mary Ann DeLano (*w/ enclosure*)
George M. Reiber, Esq. (*w/ enclosure*)
Richard Cordero (*w/ enclosure*)

In re:

**DAVID G. DELANO and
MARY ANN DELANO,**

Debtors.


**DEBTORS' STATEMENT
IN OPPOSITION TO
TRUSTEE'S MOTION
TO DISMISS**

Case No. 04-20280

CHRISTOPHER K. WERNER, ESQ., of counsel to Boylan, Brown, Code, Vigdor & Wilson, LLP, states in opposition to the Trustee's Motion to Dismiss as follows:

1. I am the attorney for the Debtors, David G. DeLano and Mary Ann DeLano, herein.
2. The Trustee has moved this Court for dismissal for failure to provide documents to the Trustee as requested by his previous correspondence.
3. We believe that we have complied in all respects to the Trustee's requests, with the exception only of the three (3) years of account statements for creditors with claims in excess of \$5,000.00.
4. We have conscientiously pursued this information from the creditors, first by written inquiry to all such creditors by the Debtors on April 29, 2004, followed by my personal telephone inquiries to the claimants using information shown on the claims filed and, further, by written inquiry of June 16 and 17, 2004.
5. To date, only MBNA America has responded through the law firm of Beckett & Lee LLP, which provided the three (3) years of accounts for the two (2) MBNA America accounts which we have supplied to the Trustee and to Mr. Cordero.
6. I note the fact that these MBNA America account statements fully reflect Debtors' contention that their financial difficulties long pre-date their bankruptcy filing. These statements show no charges and only payments during the three (3) years reflected in the statements.
7. We have requested that the Trustee issue Subpoenas in the hopes that the Trustee in his official capacity can prompt more ready compliance than we have been able to obtain to date.
8. The Debtors are actively engaged in an effort to comply with the Trustee's requests and ask that the Motion to Dismiss be in all respects denied.

Dated: July 13, 2004



Christopher K. Werner, Esq.
Boylan, Brown, Code, Vigdor & Wilson, LLP
Attorneys for Debtors
2400 Chase Square
Rochester, New York 14604
Telephone: (585) 232-5300

David G. DeLano and Mary Ann DeLano
1262 Shoecraft Road
Webster, New York 14580

April 29, 2004

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

Re: Chapter 13 Bankruptcy - Western District of New York
Case No. 04-20280

Bank One Account: 44262 519 982 211 (Visa)

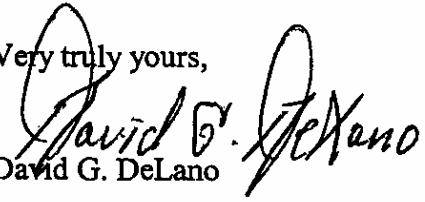
To Whom it May Concern:

I have recently filed a Chapter 13 Petition for Bankruptcy in the United States Bankruptcy Court in the Western District of New York. The Chapter 13 Trustee has requested that I provide him with copies of the monthly statements for the above referenced account for the three years prior to the filing of my bankruptcy petition.

Please provide me with copies of the monthly statements for my account for the period beginning April 2001 through April 2004 as soon as possible so that I may submit the same to the Bankruptcy Court.

Thank you for your assistance in this matter.

Very truly yours,


David G. DeLano

cc: George M. Reiber, Chapter 13 Trustee
Kathleen Dunivin Schmitt, Esq.

Dr. Richard Cordero

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

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

July 19, 2004

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

faxed to (585)613-3299

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

Dear Judge Ninfo,

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

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

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

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

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

Sincerely,

Dr. Richard Cordero

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re: David G. DeLano and Mary Ann DeLano

Chapter 13
Case no: 04-20280

Order
For Production of Documents

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

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

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

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

(1) **types of documents:**

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

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

(c) [see ¶a) above]

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

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

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

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

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

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

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

(5) **deadline for submission:**

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

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

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

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

(B) each signature confirmation slip¹ affixed to the envelope in which each subpoena is to be mailed or any equivalent mailing confirmation concerning the subpoenas already mailed;

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

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

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

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

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

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

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

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

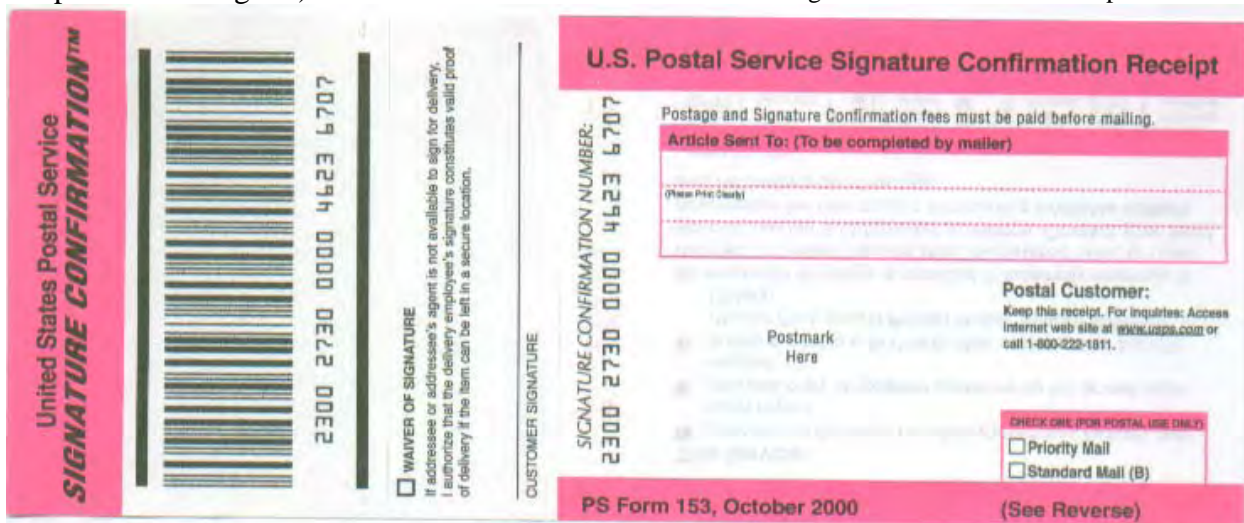
(5) An affidavit by the DeLanos attesting to the following:

- (a) disbursement of the loan to their son,
- (b) amount of the loan,
- (c) description of the lending instrument used and its date or, if such instrument was not used, the terms and date of the verbal agreement concerning the loan,
- (d) date of payment,
- (e) intended purpose of the loan and the actual use of the funds lent,
- (f) date and amount of any repayment installment,
- (g) outstanding balance, and
- (h) current arrangement for repayment;
- (6) affidavit by their son attesting to:
 - (a) his receipt of a loan from the DeLanos; and
 - (b) the information as in ¶(c)(5)(b)-(h) above;
- (7) dateline for submission:
 - (a) the documents themselves for all such documents in the DeLanos' possession;
 - (b) the DeLanos' affidavit; and
 - (c) as provided for in ¶(b)(5)(b) above, for documents not in their possession;
- d) All documents proving Att. Werner's statement that the DeLanos' financial problems began 10 years ago when Mr. DeLano lost his job at First National Bank and had to accept a lower-paying job elsewhere while incurring debts for the their children's education and evidence of such educational debts.

SO ORDERED
THIS DAY OF _____

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

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



↑ ↑bar code and tracking number↑ ↑PS Form 153, October 2000↑
↑United States Postal Service *Signature Confirmation*™

July 20, 2004

FILED
04 JUL 21 AM 10:53
U.S. BANKRUPTCY COURT
W.D.N.Y. - ROCHESTER

VIA MESSENGER

Hon. John C. Ninfo, II
United States Bankruptcy Court
100 State Street
Rochester, New York 14614

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

Dear Judge Ninfo:

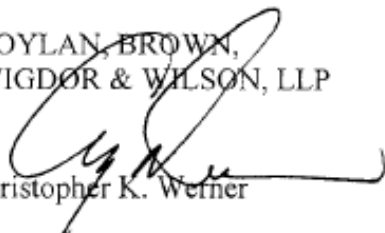
We are in receipt of Mr. Cordero's proposed Order which we believe far exceeds the direction of the Court. Enclosed please find a copy of the proposed Order with our notations. Based both upon our recollection of your direction in Court and the summary trial, the following is to be performed:

1. By July 21, 2004 close of business, we are to supply copies of all pages of the credit reports in our possession to Mr. Cordero;
2. By August 11, 2004 close of business:
 - a. Mr. and Mrs. DeLano are to submit copies of any and all account statements and/or records relating to their credit card accounts currently in their possession; and
 - b. Mr. and Mrs. DeLano are to request credit reports from Equifax, Experion and TransUnion and, upon receipt, provide copies of the complete reports with all cover letters, recitations of federal rights and all other contents supplied to Mr. Cordero and the Trustee.

We have already forwarded copies of all of the Equifax report pages in our possession. We have also forwarded copies of the subpoenas we have issued to Bank One (three accounts), Discover, HSBC and Chase, though this was not required by the Court.

Very truly yours,

BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP


Christopher K. Werner

CKW/trm
Enclosure

2400 Chase Square • Rochester, New York 14604 • 585-232-5300 • FAX: 585-232-3528
7 South Broadway, Suite 300 • White Plains, New York 10601 • 914-682-4006 • FAX: 914-682-8273
60-70 South Main Street, Suite 250 • Canandaigua, New York 14424 • 585-396-0400 • FAX: 585-232-3528
<http://www.boylanbrown.com>

c.c. Mr. Richard Cordero

July 20, 2004

Mr. Richard Cordero
59 Crescent Street
Brooklyn, New York 11208

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

Dear Mr. Cordero:

In accordance with the Court's instructions, we enclose herewith pages 1-14 of the Equifax credit report dated April 26, 2004 for David G. DeLano. This is the complete report as supplied to us. Apparently, the Trustee did not copy the even numbered pages on the reverse side of the report we previously forwarded to him and we had not forwarded the cover letter and blank page comprising pages 1 and 2.

We also enclose pages 3-7 of the Mary Ann DeLano Equifax credit report dated May 8, 2004. We do not have pages 1 and 2 or 8-12, which were not forwarded to us. We assume these few pages contain nothing substantive and the report clearly concludes on page 7. We expect that pages 1 and 2 are the cover letter and blank reverse side and pages 8-12 are the recitation of federal rights and dispute forms. However, in accordance with the Court's direction, we have requested that our client forward these pages.

These are all the pages of the credit report in our file. We have directed our clients to comply with the Court's direction to obtain credit reports from Equifax, Experion and TransUnion which are to be ordered by August 11, 2004. In addition, we have directed them to supply copies of any and all credit card account statements in their possession.

We enclose our objections to your proposed Order as submitted to the Court, which extends far beyond any direction of the Court. We also enclose an objection to your claim in the bankruptcy, returnable August 25, 2004, together with copies of the subpoenas issued on the Bank One (3 accounts), Discover, HSBC and Chase accounts.

BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP


Christopher K. Werner

CKW/trm
Enclosures

cc: David G. and Mary Ann DeLano
Michael Beyma, Esq.
George M. Reiber, Esq.
Hon. John C. Ninfo, II

2400 Chase Square • Rochester, New York 14604 • 585-232-5300 • FAX: 585-232-3528
7 South Broadway, Suite 300 • White Plains, New York 10601 • 914-682-4006 • FAX: 914-682-8273
60-70 South Main Street, Suite 250 • Canandaigua, New York 14424 • 585-396-0400 • FAX: 585-232-3528
<http://www.boylanbrown.com>

July 19, 2004

Chase Manhattan
c/o eCast Settlement
Post Office Box 35480
Newark, New Jersey 07193-5480

**Re: David G. and Mary Ann DeLano Chapter 13 #04-20280
Account No. 4102-0082-4002-1537**

Gentlemen:

We are attorneys for the above debtors in bankruptcy in which case your firm filed a claim on the above account. The Chapter 13 Trustee has asked us to obtain copies of the debtors' account statements for the three (3) years (2001, 2002 and 2003) prior to the bankruptcy filing on January 27, 2003. We have previously written and called to obtain this information but, as yet, have not received these documents.

It is imperative that these documents be produced. We, therefore, enclose a subpoena to formally request this information.

Please immediately comply with this subpoena by forwarding this information at once so that we can comply with the Trustee's request.

Very truly yours,

**BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP**


Christopher K. Werner

CKW

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re: David G. DeLano and Mary Ann DeLano

Chapter 13

Case no: 04-20280

ORDER
FOR PRODUCTION OF DOCUMENTS

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

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

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

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

(1) types of documents: *to the extent in debtors' possession*

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

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

~~(c) [see (a) above]~~

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

(2001, 2002 and 2003 already submitted to trustee)

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

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

Statements already supplied

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

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

~~(4) holder of account or interest: whether in both or either of the DeLanos' names; or entities whom they control, such as their children, relatives, friends, tenants, their~~

~~attorney or representative, or holders of trusts for them;~~

(5) **deadline for submission:** *August 11, 2004*

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

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

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

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

~~(B) each signature confirmation slip¹ affixed to the envelope in which each subpoena is to be mailed or any equivalent mailing confirmation concerning the subpoenas already mailed;~~

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

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

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

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

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

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

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

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

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

~~(a) disbursement of the loan to their son,~~

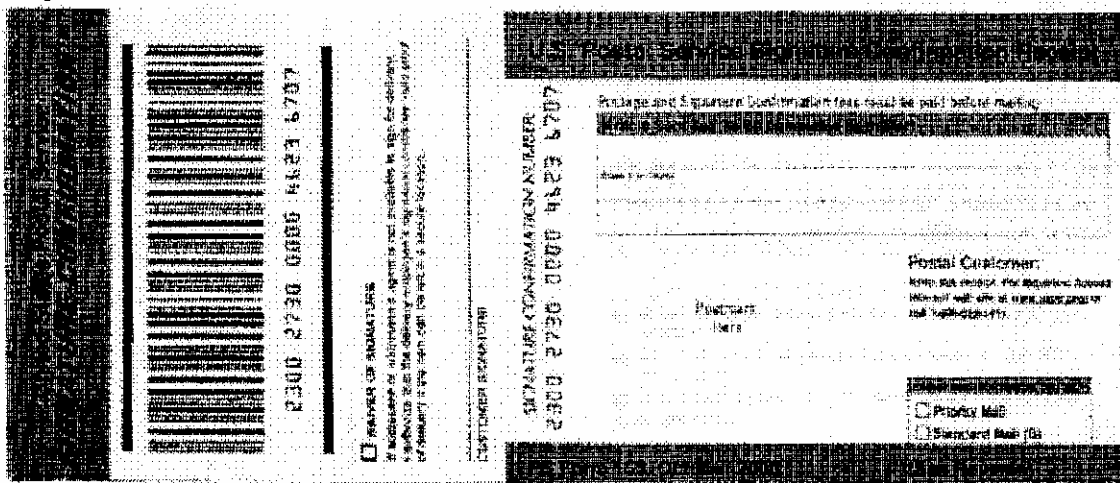
- ~~(b) amount of the loan,~~
- ~~(c) description of the lending instrument used and its date or, if such instrument was not used, the terms and date of the verbal agreement concerning the loan,~~
- ~~(d) date of payment,~~
- ~~(e) intended purpose of the loan and the actual use of the funds lent,~~
- ~~(f) date and amount of any repayment installment,~~
- ~~(g) outstanding balance, and~~
- ~~(h) current arrangement for repayment;~~
- (6) affidavit by their son attesting to:
 - (a) his receipt of a loan from the DeLanos; and
 - (b) the information as in ¶(c)(5)(b)-(h) above;
- (7) dateline for submission:
 - (a) the documents themselves for all such documents in the DeLanos' possession;
 - (b) the DeLanos' affidavit; and
 - (c) as provided for in ¶(b)(5)(b) above, for documents not in their possession;
- d) All documents proving Att. Werner's statement that the DeLanos' financial problems began 10 years ago when Mr. DeLano lost his job at First National Bank and had to accept a lower-paying job elsewhere while incurring debts for the their children's education and evidence of such educational debts.

SO ORDERED
THIS DAY OF _____

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

¹ Sample U.S.P.S. signature confirmation slip, with receipt on the right (the dark areas on the fax are pink in the original)

↓ U.S. Postal Service Signature Confirmation Receipt ↓



↑ bar code and tracking number ↑ ↑ PS Form 153, October 2000 ↑
↑ United States Postal Service Signature Confirmation™

Dr. Richard Cordero

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

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

July 21, 2004

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

faxed to (585)613-4299

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

Dear Judge Ninfo,

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

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

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

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

Sincerely,

Dr. Richard Cordero

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

David G. DeLano
Mary Ann DeLano

Chapter 13
Case No. 04-20280

**OBJECTION TO CLAIM
NOTICE OF HEARING AND ORDER**

Debtor(s)

NOTICE

NOTICE is hereby given of the objection by Debtors, by their attorney, Christopher K. Werner, Esq.
[Trustee, Debtor or other party]

to your claim in the Western District of New York. A hearing on the objection will be held at the United States
Bankruptcy Court,
US Courthouse, 100 State Street, Rochester, NY 14614

New York, on August 25, 2004 at 11:30 A.M. only if a written request for a
hearing is filed by the claimant as outlined below.

**"PURSUANT TO FRBP 9014 AND THE STANDING ORDERS IMPLEMENTING DEFAULT PROCEDURES
IN ROCHESTER AND WATKINS GLEN; IF YOU INTEND TO OPPOSE THE MOTION, AT A MINIMUM,
YOU MUST SERVE: (1) THE MOVANT AND MOVANT'S COUNSEL, AND (2) IF NOT THE MOVING
PARTY (A) THE DEBTOR AND DEBTOR'S COUNSEL; (B) IN A CHAPTER 11 CASE, THE CREDITORS'
COMMITTEE AND ITS ATTORNEY, OR IF THERE IS NO COMMITTEE, THE 20 LARGEST
CREDITORS; AND (C) ANY TRUSTEE. IN ADDITION, YOU MUST FILE WITH THE CLERK OF THE
BANKRUPTCY COURT WRITTEN OPPOSITION TO THE MOTION NO LATER THAN THREE (3)
BUSINESS DAYS PRIOR TO THE RETURN DATE OF THE MOTION PURSUANT TO FRBP 9006(a). IN
THE EVENT NO WRITTEN OPPOSITION IS SERVED AND FILED, NO HEARING ON THE MOTION
WILL BE HELD ON THE RETURN DATE AND THE COURT WILL CONSIDER THE MOTION AS
UNOPPOSED."**

**IF YOU OPPOSE THE OBJECTION TO YOUR CLAIM, YOU MAY WANT TO ATTEMPT TO RESOLVE
AND SETTLE THE CLAIM OBJECTION PRIOR TO FILING WRITTEN OPPOSITION AND AVOID THE
NEED FOR AN ATTORNEY AND/OR A COURT APPEARANCE.**

OBJECTION TO CLAIM

The objecting party objects to the following claim in this case:

Claimant's Name: Richard Cordero

Claim #: 19 Amount \$ 14,000 + "increments"

**DETAILED BASIS OF OBJECTION INCLUDING GROUNDS FOR OVERCOMING ANY PRESUMPTION UNDER
RULE 3001(f)** Claimant sets forth no legal basis or facts substantiating any obligation of Debtors. Claimant apparently asserts a claim relating to
a pending Adversary Proceeding in Premier Van Lines (01-20692) relating to M & T Bank, for whom David DeLano acted only as employee and has no individual liability.
Further, no liability exists as against M & T Bank. No basis for claim against Debtor, Mary Ann Delano, is set forth, whatsoever.

Dated: July 19, 2004

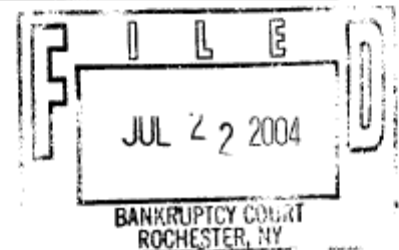
Christopher K. Werner, Esq. Attorney for Debtors

Objecting Party

Address 2400 Chase Square

City/State/Zip Rochester, NY 14604

(PLEASE SEE REVERSE)



IN RE:

DAVID G. DeLANO and
MARY ANN DeLANO,

CASE NO. 04-20280
Chapter 13

Debtors.

ORDER

On July 19, 2004 the Court conducted a hearing on the Chapter 13 Trustee's Motion to Dismiss the Debtors' case, as well as on the Statement in Opposition filed by Richard Cordero on July 12, 2004; and

WHEREAS, at the July 19, 2004 hearing, the Court required the Debtors and their attorney, Christopher K. Werner, Esq. ("Attorney Werner"), to do certain things, as more fully set forth in the Case Docket Report highlighted as follows:

Hearing Continued (RE: related document(s) 42 Chapter 13 Trustee's Motion to Dismiss Case) Hearing to be held on 8/23/2004 at 03:30 PM Rochester Courtroom for 42, The debtors are to produce any documents in their possession, regarding their credit card accounts, and provide copies to the Trustee and Dr. Cordero by the close of business on 8/11/04. The debtors are to give Mr. Werner any pages of the Equifax report that they have and that he does not have. By the close of business on 7/21/04, Mr. Werner is to send complete copies of the Equifax report to the Trustee and Dr. Cordero. By 8/11/04, the Debtors are to have ordered their credit reports from Equifax, Trans Union and Experian. Within two days of their receipt, copies are to be provided to the Trustee and Dr. Cordero. The Court will adj. Dr. Cordero's request to remove Mr. Reiber as Trustee to 8/23/04. Order to be submitted by Dr. Cordero. NOTICE OF ENTRY TO BE ISSUED. Appearances: George Reiber, Trustee. Appearing in opposition: Christopher Werner, Atty. for Debtors; Dr. Richard Cordero (By phone). (Parkhurst, L.) (Entered: 07/20/2004); and

DeLano Order

Page Two

WHEREAS, Richard Cordero submitted a proposed Order, a copy of which is attached, to which Attorney Werner expressed concerns in a July 20, 2004 letter, a copy of which is also attached; and

WHEREAS, the Court has reviewed this matter and believes that the Case Docket Report properly reflects what the Court ordered at the hearing on July 19, 2004.

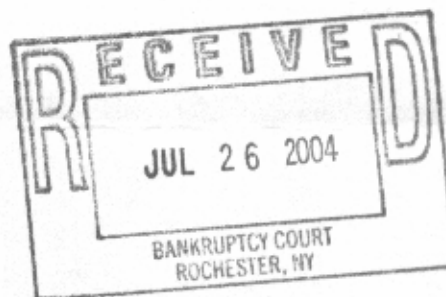
It is therefore, **ORDERED**, that the Debtors and Attorney Werner comply with the highlighted Case Docket Report provisions, and Richard Cordero's request to remove the Chapter 13 Trustee, and other matters in the Chapter 13 case are adjourned to August 23, 2004.

SO ORDERED.

DATED: July 26, 2004



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





**BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP**
ATTORNEYS AT LAW

July 28, 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:

With respect to the above-referenced Debtors, we are pleased to enclose copies of the statements we received from Discover Card for your review and consideration. By copy of this letter, we are also forwarding copies of the statements to Mr. Cordero for his review.

We continue to await response on the other requests for documents made by Subpoena to Chase Manhattan, HSBC and Bank One, but hope to receive those account statements in the near future.

I will be out of the office on vacation until August 17, 2004. If you should need anything during my absence, please contact my assistant, Tracy Miller, at 232-5300 x220. Should any of the above account statements arrive while I'm out of the office, Tracy will forward those statements to you for your review.

Please let me know what, if anything, further you require. Best regards.

Very truly yours,

BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP


Christopher K. Werner

CKW/trm
Enclosures

cc: Richard Cordero (w/ enclosures)
David G. and Mary Ann DeLano

2400 Chase Square • Rochester, New York 14604 • 585-232-5300 • FAX: 585-232-3528
60-70 South Main Street, Suite 250 • Canandaigua, New York 14424 • 585-396-0400 • FAX: 585-232-3528
<http://www.boylanbrown.com>



July 23, 2004

Christopher Werner
Boylan Brown Code
Vigdor & Wilson LLP
2400 Chase Square
Rochester NY 14604

**Re: David G and Mary Ann DeLano
Discover® Card Account ending 6645**

Dear Mr. Wermer:

Enclosed is the information provided by Discover Bank and Discover Financial Services, Inc., at your request.

Should you have questions regarding the documents, please contact Discover at the following address or phone number:

Discover Financial Services, Inc.
P. O. Box 15083
Wilmington Delaware 19850-5083
(224) 405-2885

Respectfully,

Discover Financial Services

Discover Financial Services, Inc.
P.O. Box 15083 Wilmington, DE 19850-5083

A Morgan Stanley Company



**BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP**
ATTORNEYS AT LAW

August 5, 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:

With respect to the above-referenced Debtors, we are pleased to enclose copies of the statements we received from Bank One for your review and consideration. By copy of this letter, we are also forwarding copies of these statements to Mr. Cordero for his review. We also enclose copies of the credit reports that you requested for us to provide and are forwarding copies of those to Mr. Cordero as well.

Please let me know if you need anything else while we await receipt of the account statements from Chase and HSBC. Thank you.

Very truly yours,

BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP


Tracy R. Miller

Legal Assistant to Christopher K. Werner

/trm
Enclosures

cc: Richard Cordero (w/ enclosures)
David G. and Mary Ann DeLano

Bank One Card Services
Legal Processing OH1-0503
800 Brooksedge Blvd
Westerville OH 43081



July 29, 2004

Our File # FR20040728014221

Christopher K. Werner
Boylan, Brown, Code, Vigdor & Wilson LLP
2400 Chase Square
Rochester, New York 14604

RE: Bank Card Bankruptcy Subpoena
04-20280

Dear Mr. Werner:

In response to your request, enclosed please find copies of the account records regarding the above referenced. See attached listing:

I certify that these records are true and exact copies of the originals as held in the ordinary course of business.

If you have any questions, please call me at (614) 776-7193.

Very truly yours,

A handwritten signature in black ink, appearing to read "Teri Richardson", with a long horizontal flourish extending to the right.

Teri Richardson
Unit Leader

Cardmember Statement

Free & Convenient ON-LINE ACCESS to your Account. View your statement on-line, make payments, see daily transactions and account balance. Register today at www.FirstUSA.com.

New Address or E-mail? Please see reverse side of form.

ACCOUNT NUMBER	PAST DUE AMOUNT	NEW BALANCE	MINIMUM PAYMENT DUE	PAYMENT DUE DATE	WRITE AMOUNT OF PAYMENT
4262 519 982 211	386.00	9,747.92	2,527.92	02/06/01	

426686995018413400232792009747920

cc, ma S

!145808954628!

30

FIRST USA BANK, NA
P.O. BOX 15153
WILMINGTON DE 19886-5153
!1988651534!

DAVID G DELANO
1262 SHOECRAFT RD
WEBSTER NY 14580-8954

00000000

*00016028*00599501841347*



CUSTOMER SERVICE
1-800-945-2008 (INSIDE US)
1-614-248-3673 (OUTSIDE US) call collect
1-888-446-3308 (on E-gasol)
www.bankone.com

BILLING INQUIRY
P.O. BOX 8864
WILMINGTON, DE 19899-8864

PAYMENT ADDRESS
P.O. BOX 15153
WILMINGTON DE 19886-5153

ACCOUNT NUMBER	TOTAL CREDIT LINE	CASH ADVANCE CREDIT LINE	AVAILABLE CREDIT	AVAILABLE PORTION FOR CASH ADVANCES	PAYMENT DUE DATE	CLOSING DATE
4262 519 982 211	8,000	8,000	0	0	02/06/01	01/12/01

CARDMEMBER ACTIVITY SUMMARY

TRANS DATE	POST DATE	REFERENCE NUMBER	MERCHANT NAME OR TRANSACTION DESCRIPTION	AMOUNT
01/04	01/04	7426683040140ZWBL	PAYMENT - THANK YOU	190.00CR
01/12	01/12		OVERLIMIT FEE	25.00
01/12	01/12		LATE FEE	25.00
01/12	01/12		PERIODIC RATE *FINANCE CHARGE*	170.63

OUR RECORDS SHOW YOUR ACCOUNT IS PAST DUE.
PLEASE CALL 1-800-935-8030

PREVIOUS BALANCE	+ PURCHASES, FEES AND ADJUSTMENTS	+ CASH ADVANCES	+ FINANCE CHARGES	- PAYMENTS AND CREDITS	NEW BALANCE
9,717.29	50.00	0.00	170.63	190.00	9,747.92

This Statement is a Facsimile - Not an Original

Thank you for continuing to use your Bank One Credit Card. The value and relationship we have built with you and your continued business is important to us. Please let us know if there is anything we can do to service your account.

VOID VOID VOID



**BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP**
ATTORNEYS AT LAW

August 11, 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:

Enclosed please find a copy of a letter we received in today's mail (although the letter is dated July 26, 2004) from the attorneys for eCAST Settlement Corporation regarding the Chase Manhattan account statements for the above-referenced Debtors. We hope to receive copies of the Chase account statements sometime in the near future, but wished to advise you of the status of our progress with respect to the same.

Thank you for your continuing patience in this matter.

Very truly yours,

BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP

Tracy R. Miller
Legal Assistant to Christopher K. Werner

/trm
Enclosure

cc: Richard Cordero (*w/ enclosure*)
David G. and Mary Ann DeLano (*w/ enclosure*)

BECKET & LEE LLP
ATTORNEYS AT LAW

MILTON BECKET
ALANE A. BECKET*
JOHN D. SHEEHAN*
GILBERT B. WEISMAN*, □

KENNETH W. KLEPPINGER*
EMILY A. ABBOTT*
NATALIE M. MC GHEE*
SARAH E. PUGH
RHONDA E. ROSENBLUM

THOMAS A. LEE, III* □
SANDRA K. CURTIN*
WILLIAM J. BECKET

MARGARET E. NOONE
JOHN A. ZURZOLA*
MICHELLE L. JANICK*
BARBARA K. HAMILTON

16 GENERAL WARREN BOULEVARD
P.O. BOX 3001
MALVERN, PA 19355

(610) 644-7800
FACSIMILE: (610) 993-8493

SENDER'S EXT. _____

* ALSO MEMBER NJ BAR
□ ALSO MEMBER FL BAR
* ALSO MEMBER CA BAR

July 26, 2004

Christopher K. Werner, Esquire
2400 Chase Square
Rochester, NY 14604

**Re: David G. and Mary Ann Delano
Bankruptcy Case Number: 04-20280
eCAST Settlement Corporation, successor to Chase Manhattan Bank USA, NA
Account Number: 4102008240021537**

Dear Mr. Werner:

Please be advised that Becket & Lee LLP serves as legal counsel to eCAST Settlement Corporation, for the above referenced account.

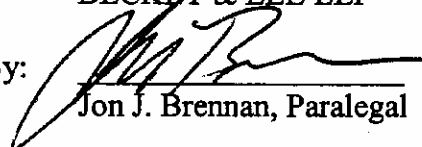
Our office recently received your subpoena for documentation related to this account. Please be aware, neither this office nor our client is the custodian of records for Chase Manhattan Bank, and we do not hold these documents. As a courtesy, we have requested the documents and will forward them to you once we receive them.

Should you have any questions, please contact our office.

Very truly yours,

BECKET & LEE LLP

By:


Jon J. Brennan, Paralegal

/jjb



**BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP**
ATTORNEYS AT LAW

August 13, 2004

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

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

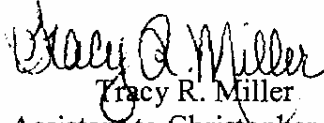
Dear Mr. Reiber:

Enclosed please find copies of statements we received from the Weinstein, Treiger & Riley law firm with respect to two (2) Bank One accounts. To clarify what Ms. Jones-Kabalo wrote in her letter, I asked her to send me the statements she had in her possession, assuming that you would find this documentation to be sufficient for the time being, but to continue to attempt to obtain the other years' worth of account statements. We hope that she will be able to successfully obtain these documents and we will stay in contact with her to track her progress.

As always, thank you for your continuing patience in this matter.

Very truly yours,

BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP


Tracy R. Miller

Legal Assistant to Christopher K. Werner

/trm

Enclosures

cc: Richard Cordero (w/ enclosures)
David G. and Mary Ann DeLano



Weinstein, Treiger & Riley, P.S.
2101 Fourth Avenue, Suite 900 ■ Seattle, Washington 98121 ■ Telephone: 877-332-3543 ■ Facsimile: 800-799-3739

Jennifer Jones-Kabalo
E-mail jenniferj@wtrlaw.com

August 12, 2004

Christopher K. Werner
Boylan, Brown, Code, Vigsor & Wilson, LLP
2400 Chase Square
Rochester, NY 14604

Re: David G. and Mary Ann DeLano BK #04-20289 Chapter 13
Account Numbers 4266-8699-5018-4134 and 4712-0207-0151-3292

Dear Mr. Werner,

We are in receipt of your letter dated July 19, 2004. In the letter, you requested copies of the debtor's account statements for the three (3) years (2001, 2002 and 2003) prior to the bankruptcy filing on January 27, 2003.

Enclosed you will find statements from 2001 through 2002 on account number 4712-0207-0151-3292 and statements for 2001 on account number 4266-8699-5018-4134.

Per my conversation today with Tracy Miller, your secretary, this will be sufficient for the Trustee's request and your subpoena for records. We will, however, continue to work with the creditor, Bank One Delaware, N.A., to obtain the rest of the statements.

Do not hesitate to contact me if there are any further questions or clarifications needed.

Sincerely,

Jennifer Jones-Kabalo

Operations Supervisor
B-Line, LLC
206-239-1971 - phone
1800-799-3739 - fax

Enclosures

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re: David G. DeLano and Mary Ann DeLano

Chapter 13
Case no: 04-20280

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

Madam or Sir,

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

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

TABLE OF CONTENTS

I. At a hearing on July 19, 2004, Judge Ninfo asked Dr. Cordero to fax to him a proposed order to sign and make it effective for the Debtors to produce documents immediately; Dr. Cordero did so, but Judge Ninfo neither signed it nor had it docketed, and Dr. Cordero's letter of protest of July 21, though acknowledged by a clerk as received and in chambers, weeks later had still not been docketed, and when Dr. Cordero protested, it was claimed never to have been received..... 232

II. A series of inexcusable instances of docket manipulation form a pattern of non-coincidental, intentional, and coordinated wrongful acts, which now include the non-docketing and non-issue of letters and the proposed order for document production by the delanos that Judge Ninfo requested Dr. Cordero to submit..... 234

III. Judge Ninfo's requests on other occasions of documents, whose contents

he knew, to be submitted by Dr. Cordero only to do nothing upon their being submitted show that Judge Ninfo never intended to issue the proposed order for document production by the Delanos that he requested of Dr. Cordero on July 19, 2004 238

IV. Judge Ninfo’s denial of Dr. Cordero’s proposed order on the grounds, despite their untimeliness, of attorney for the Delanos’ “expressed concerns” about it shows Judge Ninfo’s bias toward the local parties and renders suspect his own order, which fails to require production by the Delanos of financial documents that in all likelihood will reveal bankruptcy fraud..... 240

V. Since Judge Ninfo has failed to order production by the Delanos of necessary documents and to replace Trustee Reiber, who has moved to dismiss the petition rather than investigate it, this case must be referred to or investigated by an independent agency willing and able to pursue the evidence of bankruptcy fraud241

VI. Relief requested..... 243

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

1. Trustee George Reiber filed a motion of June 15, 2004, to dismiss this case and I filed a statement of July 9, 2004, to oppose it. My statement contained a detailed request for the issue of an order for production of documents by the Debtors and their attorney, Christopher Werner, Esq. The request specified which documents were to be produced as well as when, how, and by whom.
2. At the hearing of Trustee Reiber’s motion on Monday, July 19, I moved for this Court, in the person of the Hon. John C. Ninfo, II, to issue that requested order. Since I had filed it and served it on the other parties, you, Judge Ninfo, as well as they knew its contents. You told me that the Court does not prepare orders and that I should convert my requested order into a proposed order. Because some documents were to be produced in just two days, on July 21, you authorized me in open court to fax my proposed order to you and gave me the number of your fax machine in chambers. That way you would receive and sign it right away so that it could become effective timely.
3. On Tuesday, July 20, 2004, I faxed to you my requested order formatted as a proposed order and modified only to take into account the dates that you had decided upon for initial and subsequent production of documents. It was accompanied by a cover letter and both were dated

July 19, 2004. It should be noted that the fax number that you gave me in open court and for the record, namely, (585)613-3299, was wrong. When my fax did not go through, I had to call the Court and Case Manager Paula Finucane checked and told me that the correct number is (585)613-4299. Hence, after faxing the, I called back to make sure that the fax had gone through and Clerk Finucane acknowledged that my letter and proposed order had been received in chambers. Each page was numbered at the bottom right corner with the number format “page # of 5”. I faxed them also to Trustee Reiber, Att. Werner, and Assistant U.S. Trustee Kathleen Dunivin Schmitt. But you failed to sign the proposed order.

4. Hence, on July 21, 2004, I wrote to you to protest that you had not signed the proposed order as agreed, or for that matter issued any production order at all. Yet, by then PACER¹ already contained the description of the hearing on July 19, which included the statement in capital letters:

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

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

07/20/2004	<u>53</u>	Letter dated 7/19/04 Filed by Dr. Richard Cordero regarding Proposed Order . (Finucane, P.) (Entered: 07/26/2004)
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When one clicks on the hyperlink 53, only the letter –page 1 of 5- downloads as an Adobe PDF (Portable Document Format) document, but not the order! Why?!

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

07/22/2004	<u>51</u>	Motion Objecting to Claim No.(s) 19 for claimant: Richard Cordero, Filed by Christopher Werner, atty for Debtor David G. DeLano , Joint Debtor Mary Ann DeLano (Attachments: # <u>1</u> Proposed Order # <u>2</u> Certificate of Service) (Finucane, P.) (Entered: 07/23/2004)
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8. When one clicks on the hyperlinks 51>2 his proposed order disallowing my claim downloads! This is blatant discriminatory treatment.
9. What is more, on July 27 my letter of July 21 to you, Judge Ninfo, protesting your failure to issue the proposed order that you had asked me to fax to you was not docketed.
10. Still by Friday, August 6, neither the proposed order nor the July 21 letter had been docketed. On that day I inquired about it of Deputy Clerk of Court Todd Stickle. He told me that his clerks had not received it for docketing and that he would look into it and consult with Clerk of

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

Court Paul Warren into the possibility of discriminatory treatment.

11. On Monday, August 9, Mr. Stickle informed me that upon asking you and your Assistant, Ms. Andrea Siderakis, he had been told that my July 21 fax never arrived.
12. That explanation for its not being docketed is definitely unacceptable: My fax went through on July 22 and the copy attached hereto of my telephone bill shows that I did fax the letters and proposed order on July 20 and 22 to (585)613-4299. In addition, the receipt of my July 21 letter was acknowledged by Clerk Finucane, as was the place where it was withheld: your chambers.

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

13. This is by no means the first time that I send a paper to the court, but it is not docketed. I have pointed this out to Messrs. Warren and Stickle because it defeats the docket's important purpose and service. The docket is supposed to give notice to the whole world of the events in a case. Through PACER, the docket serves as a document distribution center. Other parties, such as creditors, as well as non-party entities anywhere can have access to not only the official dates and description of those events, but also to the documents themselves that have been filed and can now be downloaded. But if events are not docketed and documents are not uploaded, they are not available through PACER; and if wrongly entered, they give the wrong idea of what has occurred in the case.
14. In my experience as a non-local party dragged before you, Judge Ninfo, by local parties that appear before you frequently, docket manipulation is a common occurrence and always works to my detriment. Whether the same biased treatment is given to other non-local parties or only to those who, like me, have dare challenge your rulings has yet to be determined, for example, in a multi-non-local party case like this. But the following occurrences already show how docket manipulation has had significant adverse consequences on me:
 - a. The most egregious instance of failure to docket concerns case 02-2230, *Pfuntner v. Gordon et al*, where Debtor David DeLano is a defendant and the bank *loan* officer who made a loan to the original Debtor, David Palmer, another defendant and the one who, after filing for voluntary bankruptcy, as the DeLanos did, just "disappeared" to 1829 Middle Road, Rush, New York 14543, from where you would not bring him back into court. I mailed my application for default judgment against Debtor Palmer on December 26, 2002, but it was not docketed for over 40 days! I had to inquire about it; found out from Case Manager Karen Tacy that it was in chambers; and had to write to you concerning it on January 30, 2003.
 - b. Even a paper concerning me but filed by another person has been withheld without docketing: The transcript that I first requested from Court Reporter Mary Dianetti on January 8, 2003, and that in violation of 28 U.S.C. §753(b) she did not deliver directly to me, was filed by her only on March 12, 2003, in violation of FRBkrP Rule 8007(a), and was not entered in docket 02-2230 until March 28, 2003, in violation of FRBkrP Rule 8007(b). Much worse yet, it was not mailed to me until March 26! Who withheld it from

me, with whose authorization, and for what purpose?

- c. Moreover, the dates of docketing have been altered: I timely mailed a notice of appeal from your dismissal of my claims against Trustee Kenneth Gordon in case 02-2230, Pfuntner v. Gordon et al, on January 9, 2003. Trustee Gordon moved to dismiss it as untimely filed and I timely mailed a motion to extend time to file the notice. Although Trustee Gordon himself acknowledged on page 2 of his brief in opposition of February 5, 2003, that my motion had been timely filed on January 29, you surprisingly found at its hearing on February 12, 2003, that it had been untimely filed on January 30! So you denied my motion. You did not want to consider the fact that Trustee Gordon had checked the docket and the filing date of my notice of appeal and had claimed with your approval in disregard of FRBkrP Rules 8001, 8002, and 9006(e) and (f) that my notice, though timely mailed, had been untimely filed. Likewise, Trustee Gordon checked the filing date of my motion to extend for the same purpose of escaping through a technicality accountability for his recklessness and negligence as a trustee. He would hardly have made a mistake in such a critical matter. For your part, you would not investigate the discrepancy. Shedding light on why you would protect him so, PACER replied on page <https://ecf.nywb.uscourts.gov/cgi-bin/login.pl> to a query on June 26, 2004, of Trustee Gordon as trustee thus: "This person is a party in 3,383 cases". More revealing yet, in all but one of those 3,383 cases you, Judge Ninfo, have been the judge. You and Trustee Gordon go back a long way. When it came time for you to choose between protecting him and ascertaining the facts, I did not stand a chance. No wonder now the docket appears as if I had untimely filed my motion to extend on January 30, 2003.
- d. What is more, docketed papers have been withheld: To perfect my appeal to the Court of Appeals in case 02-2230, I had to comply with F.R.A.P Rule 6(b)(2)(B)(i) by submitting my Redesignation of Items on the Record and Statement of Issues on Appeal. Suspicious of another docket manipulation, I sent originals of that critical paper to both your Court and the District Court on May 5, 2003...only to be utterly shocked upon finding out on May 24 that although the District Court had transferred the record on May 19, to the Court of Appeals, the latter's docket for my appeal, no. 03-5023, showed no entry for my Redesignation and Statement. Worse still, I checked the dockets of both the Bankruptcy and the District Court and neither had entered it! The absence of this paper from the docket could have derailed my appeal, for it would have been assumed that I had failed to comply with F.R.A.P requirements. I had to scramble to send a copy of my Redesignation and Statement to Appeals Court Clerk Roseann MacKechnie. Even as late as June 2, 2003, her Deputy, Mr. Robert Rodriguez, confirmed to me that the Court of Appeals had received no Redesignation and Statement or docket entry for it from either of the lower courts. The Bankruptcy and the District Court had gone as far as physically withholding my paper from the Court of Appeals!
- e. Documents filed by me are not docketed although they are clearly intended to be entered and documents produced by others are not entered despite the fact that their existence and importance result from implication: My letter to Deputy Clerk of Court Todd Stickle of January 4, 2004, was not entered in docket 02-2230 although I served it with a Certificate of Service, thereby making clear my intention to file it. Likewise, Mr. Stickle's response to me of January 28, 2004, was not filed. There was no reason for

keeping these letters out of that docket. This is especially so since in my letter I had requested information about documents that I described with particularity because they have no entry numbers of their own since they were not entered. However, their existence is confirmed by references to them in other entries as well as by their own nature, i.e., an order authorizing payment to a party and stating the amount thereof must exist. Nevertheless, Mr. Stickle's letter ignored that fact and required that I provide entry numbers before he could process my request for information.

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

- 1) Memorandum of March 30, 2004, on the facts, implications, and requests concerning the DeLano Chapter 13 bankruptcy petition, docket no. 04-20280 WDNY
- 2) Objection of March 29, 2004, to a Claim of Exemptions
- 3) Notice of March 31, 2004, of Motion for a Declaration of the Mode of Computing the Timeliness of an Objection to a Claim of Exemptions and for a Written Statement on and of Local Practice

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

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

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

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

- 5) Moreover, clicking the hyperlink in # 1 Appendix opened a Memorandum that was truncated of its first five pages; the missing pages there appeared in the document opened by the hyperlink for entry 19, which in turn was truncated of the following 18 pages.
- 6) For its part, entry 20 contains jarring mistakes:
 - a) it is not “timeless”, but rather “timeliness”;
 - b) it is not “exemptions”, but rather “exemptions”;
 - c) it is not “a written statements”, but rather “a written statement”.

I wrote to Mr. Warren: “I trust you and your colleagues care about how so many mistakes reflect on you and them. I certainly care about how they reflect on me and how much more difficult they render the understanding and consultation of the documents that I filed.” Mr. Warren had the mistakes corrected. But the fact remains that there is no possible justification for truncating my documents and garbling their description, except that they were quite critical of:

- 7) how you, Judge Ninfo, had defended Trustee Reiber and his attorney, Mr. Weidman, from my complaint in open court on March 8 for their failure to review the DeLano’s petition even cursorily;
- 8) how Trustee Reiber and Att. Weidman had nevertheless readied that petition for submission to you for confirmation of its repayment plan;
- 9) how Att. Weidman, with the endorsement of Trustee Reiber, had prevented me from examining the DeLanos at the meeting of creditors;
- 10) how they had brushed aside the need for investigating the DeLanos as I had requested in light of the specific suspiciously incongruous declarations in the petition and my citations to the Bankruptcy Code and Rules contained in my written objections to confirmation; and how they had prejudged any investigation that they might conduct by reaffirming in open court that the DeLanos had filed their petition in good faith; and of course,
- 11) how you had blatantly disregarded my right under 11 U.S.C. §341, that is, under federal law, to examine the DeLanos, and instead told me in open court that I should have asked around in advance to find out how meetings of creditors are conducted under “local practice” and how I should have had the courtesy to submit to Trustee Reiber and Att. Weidman my questions for the DeLanos in advance...*mindboggling statements indeed!*
- 12) and so critical are those truncated and misdescribed documents that more than four months later you still have not decided my Objection to the Claim of Exemptions by the DeLanos or declared the mode of computing the timeliness of such objection, let alone stated:
 - a) how “local practice” can invalidate federal law,
 - b) how a non-local finds out reliably what “local practice” is, and

c) why I should waste any more time, effort, and money doing legal research that will be trumped by whatever “local practice” is said to be.

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

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

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

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

18. However, if you, Judge Ninfo, ever intended for my fax to go through, although the fax number that you gave me was wrong, you never intended to issue the proposed order that at the July 19 hearing you asked me to fax to you. Yet, you knew the contents of that order since I had requested it from you in my July 9 statement in opposition to Trustee George Reiber’s motion to dismiss the DeLanos’ petition; whether your knowledge was actual or constructive is indifferent. There can be no doubt that it was to issue because, as already pointed out above, the docket itself states in capital letters: “Order to be submitted by Dr. Cordero. NOTICE OF ENTRY TO BE ISSUED.” But doing dishonor to your word and undermining once more the trust that a litigant should be able to put in a federal judge, and a chief judge at that, you did not issue it, actually you would not even transmit it to the clerks for docketing!
19. This is not the first time either that you ask me to prepare and submit a document that you never intended to act upon. Here are the most blatant instances:
 - a. At the pre-trial conference on January 10, 2003, in case 02-2230, you directed me to submit to you and the other parties three dates on which I could travel from New York City, where I live, to Avon, outside the suburbs of Rochester, to conduct an inspection. You stated that within two days of receiving those dates you would determine the most convenient date for all the parties and inform me thereof. By letter of January 29, 2003, I informed you and all the parties, including Mr. DeLano’s attorney in that case, of not just three, but rather six proposed dates. Yet you never acted on them, not even after I

brought the issue to your attention at the hearing on February 12, 2003. So at your instigation, I cleared those dates in my schedule and kept them open to travel but through your failure to keep your word it all redounded to my detriment.

- b. At a hearing on May 21, 2003, in case 02-2230, I reported on the damage to and loss of my property caused at the outset by Mr. David Palmer and ascertained through physical inspection, which was attended by a representative of Mr. DeLano's attorney in that case. Thereupon you took the initiative to request that I resubmit my application for default judgment against Mr. Palmer. I resubmitted the same application that I had submitted on December 26, 2002. Nevertheless, at the hearing on June 25, 2003, to argue it, you denied it on the pretext that I had not proved how I had arrived at the sum claimed. Yet, that was the exact sum certain that I had claimed back in December! Why ask me to resubmit and get my hopes high if you were going to deny the application on the basis of an element that you had known for six months? Mr. Palmer too had known it for that long, for I had served him with the application. He could have opposed the application if he had only wanted and had complied with his obligation to appear in court as a defendant after he had invoked his right to protection in court as a voluntary bankruptcy petitioner. But you took up voluntarily his defense, preferring to protect a local party already defaulted by Clerk of Court Warren on February 4, 2003, rather than uphold the rights of a non-local party, me, who had complied with every requirement of FRBkrP Rule 7055 and FRCivP Rule 55 and had relied on your word to his detriment.
 - c. Likewise, at a hearing on May 21, 2003 in case 02-2230, you asked that I submit a separate motion for sanctions on, and compensation from, the plaintiff and his attorney for their disobedience of two orders of yours, including their failure to attend the very inspection of property that they had applied to you for. I submitted the motion on June 6, 2003, meticulously discussing the facts and the applicable law and supported by more than 125 pages documenting my bill for compensation. Yet, that plaintiff and his attorney were so certain that you would not ask them to pay anything at all that they did not even bother to submit a brief in opposition. What is more, that attorney did not even object to my motion at its hearing on June 25. You did it for him and his client by faulting me for not having included a copy of the air ticket, which represented a miniscule portion of the requested compensation. Not only that, but you did not impose even non-monetary sanctions on them, who had shown contempt for your two orders, thereby undermining the integrity of the court that you are sworn to uphold.
20. By your conduct on those occasions you revealed your true intentions, for as you know, the law deems a man to intend the reasonable consequences of his actions: You, Judge Ninfo, intended to wear me down by causing me more waste of effort, time, and money as well as an enormous amount of aggravation to protect the local parties that appear before you so often and teach a lesson to a non-local, me, who thinks that just because he is dragged as a defendant into court before you he can rely on federal law and ignore "local practice" (see para. 14.f.11) and 12)) and challenge your rulings on appeal.
21. Wearing me down was also your intention in requesting that I submit the proposed order. Indeed, if as you stated in your order entered on July 27, "the Case Docket Report properly reflects what the Court ordered at the hearing on July 19, 2004", why did you ask me to convert my requested order into a proposed order at all and fax it to you? You never intended to issue my proposed order!

22. The circumstances of issue and contents of that order of yours entered on July 27 are worth commenting. Since I kept inquiring about your failure to issue my proposed order, you issued your own, but not before a week had gone by, long after the first date had come and gone for the DeLanos and their attorney, Christopher Werner, Esq., to begin producing documents. An objective observer must wonder what would have happened if I had not pursued the matter and, as a result, you had not issued any order. Would you have upheld a claim that Att. Werner and his clients did not have to produce any documents because no order compelled them to do so?

IV. Judge Ninfo's denial of Dr. Cordero's proposed order on the grounds, despite their untimeliness, of Attorney for the DeLanos' "expressed concerns" about it shows Judge Ninfo's bias toward the local parties and renders suspect his own order, which fails to require production by the DeLanos of financial documents that in all likelihood will reveal bankruptcy fraud

23. Att. Werner too knew the contents of the proposed order even before I submitted it given that I had also served him with my July 9 statement, which contained it in the form of a requested order. Yet, at the July 19 hearing he failed to object to it. Only after I served it on him by fax, did he object to it, stating in a letter to you solely that "we believe [it] far exceeds the direction of the Court". That is why your own order states that "to [my proposed order] Attorney Werner expressed concerns in a July 20, 2004, letter". This is an unfortunate hybrid between 'objections to' and 'concerns about'. It is indicative of your awareness that due to untimeliness, he could not have raised valid objections for the first time after the hearing was over.
24. How could untimely "concerns" be anything but a pretext not to issue my proposed order? Evidently, untimeliness is a tool that you only use to dismiss my notice of appeal and my motion to extend the time to appeal (para. 14.c, supra).
25. By contrast, you did not dismiss as untimely Att. Werner's objection to my status as a creditor of Mr. David DeLano, his client, although:
- a. Mr. DeLano has known for almost two years the nature of my claim since I served him with my complaint of November 21, 2002, in case 02-2230;
 - b. Att. Werner himself included me among the creditors in the petition for bankruptcy of January 26, 2004;
 - c. Att. Werner knew that I was the only creditor to show up at the meeting of creditors on March 8 and that I was determined to pursue my claim as stated in my March 4 Objection to Confirmation of the DeLanos' Plan of Repayment;
 - d. Att. Werner objected to my status as creditor in his statement to you, Judge Ninfo, of April 16, which I refuted in my timely reply of April 25, after which he dropped the issue and went on for months treating me as a creditor; and
 - e. Att. Werner continued to treat me as a creditor for more than two months after I filed my proof of claim on May 15.
26. It is only now, when my relentless insistence on the production of documents by the DeLanos can provide evidence of bankruptcy fraud, that Att. Werner tries to dismiss me by disallowing

my claim. By now, however, Att. Werner's objection to my creditor status is untimely; he is barred by laches. Consequently, I will contest his motion, set for August 25, to disallow my claim...but is there any point in doing so?

27. Will you give my arguments a fair hearing or have you already made up your mind to get rid of me? The foundation for this question is not only the pattern of biased conduct against me, the only non-local party, and toward the locals in case 02-2230, described in the previous sections. There is also the decision made by somebody to denominate me in this case as an "Interested Party" rather than a creditor (see para. 14.f, supra).
28. Moreover, that order of yours is an inexcusably watered down version of mine. Despite the evidence of concealment of assets by the DeLanos presented in my July 9 statement, among other filings of mine, and discussed at the July 19 hearing, your order fails to require them to produce bank or *debit* account statements; documents concerning their undated "loan" to their son; instruments attesting to any interest of ownership in fixed or movable property, such as the caravan admittedly bought with that "loan"; etc. Why? What motive could justify preventing the facts to be ascertained through production of those documents? Dismissing me from this case will be the crowning act in the pattern of bias and disregard of legality that we so hope you undertake!²

V. Since Judge Ninfo has failed to order production by the DeLanos of necessary documents and to replace Trustee Reiber, who has moved to dismiss the petition rather than investigate it, this case must be referred to or investigated by an independent agency willing and able to pursue the evidence of bankruptcy fraud

29. Trustee George Reiber has tried to dismiss the DeLanos petition. In so doing, he is motivated by self-preservation, for if he were to investigate it effectively, he would uncover evidence of fraud that would also incriminate him for his approval of a patently suspicious petition. In addition, the longer he keeps this case in his hands, the more he risks exposure for violating his duties as trustee. This statement is based on factual evidence:
 - a. Trustee Reiber violated his legal obligation to conduct personally the meeting of creditors held last March 8 in Rochester; cf. 28 CFR §58.6.
 - b. He supported his attorney, James Weidman, Esq., who conducted that meeting and who violated 11 U.S.C. §341 by preventing me from examining the DeLano Debtors, putting an end to the meeting after I had asked only two questions of the DeLanos and would not reveal what I knew when he asked me –as if I were under examination!- what evidence I had that the DeLanos had committed fraud.
 - c. He pretended to be investigating the DeLanos, as I had requested that he do in my Objection to Confirmation of March 4, 2004. But when by letter of April 15 I requested that he state in concrete what investigative steps he had taken, he then for the first time

² For other instances of your bias against me and toward the local parties and the description of other acts of disregard of the law, the rules, and the facts that form part of a pattern of non-coincidental, intentional, and coordinated wrongdoing to my detriment, see in docket 02-2230, entry 111, my motion of August 8, 2003, for you to remove that case to a presumably impartial court, such as the U.S. Bankruptcy Court in Albany, and recuse yourself from that case.

asked the DeLanos to provide some financial documents in his letter to Att. Werner of April 20.

- d. His request for documents relating to only 8 out of 18 declared credit cards, only if the debt exceeded \$5,000, and for only the last three years out of the 15 put in play by the Debtors themselves, who claimed in Schedule F that their financial problems related to “1990 and prior credit card purchases”, reveals either his unwillingness to uncover evidence of bankruptcy fraud or his appalling lack of understanding of how credit card fraud works.
- e. He waited for months without asking for or receiving any financial documents from the Debtors while at the same time refusing to issue subpoenas to them or their attorney. Then he moved on June 15 to dismiss the petition for their’ “unreasonable delay” in producing documents precisely after they had produced some documents on June 14, which he so indisputably failed to even glance at that he did not notice how obviously incomplete and old they were. His conduct demonstrates utter unwillingness to investigate the Debtors and analyze any of their documents.
- f. He admitted in our phone conversation on July 6 that he does not even know whether he has the power to issue subpoenas –if so, what does he know?!- and that he has never issued them...yet he has \$3,909 *open* cases, according to PACER. Was there never a case in such a huge number that required him to subpoena documents to determine whether the debtor had filed a petition in good faith? Or given such tremendous workload, did he routinely just dismiss any case likely to consume too much of his time?
- g. Whether such tremendous workload caused him to operate by dismissing cases that required investigation, or his failure to give petitions even a cursory review allowed him to rubberstamp such a huge number of cases, the fact is that he failed to detect the glaring indicia that something was wrong with the DeLanos’ petition, such as these:
 - 1) Mr. DeLano has been a bank loan officer for 15 years and still is such at Manufactures & Traders Trust Bank. Thus, he is an expert in detecting and maintaining creditworthiness and ability to repay loans. He is also an insider of the lending industry and must know which credit card issuers assert their bankruptcy claims more or less aggressively and above what threshold of loss.
 - 2) While a bank officer would be expected to carry the bank’s credit card, perhaps even at a preferential rate, the DeLanos did not declare possessing any M&T Bank card, not to mention ‘sticking’ their employer with a bankruptcy debt.
 - 3) Mr. DeLano and his working wife declared earnings of \$291,470 in only the three years from 2001-2003.
 - 4) Nevertheless, they declared having only \$535.50 in cash or in bank accounts...with M&T and in credit, of course;
 - 5) two cars worth together merely \$6,500;
 - 6) equity in their house of only \$21,415, although people in their 60s, as the DeLanos are, have already paid or are about to finish paying their mortgage, on which by contrast they owe \$78,084;

- 7) household goods worth only \$2,910...that's all they have accumulated throughout their work lives!, although they have earned over a hundred times that amount in only the last three years...unbelievable!
 - 8) Yet, they have accumulated \$98,092 in credit card debt, conveniently spread over 18 issuers so that none has a stake high enough to find it cost-effective to get involved in this case only to receive 22¢ on the dollar; etc., etc.,...
 - 9) Wait a moment! Where did their \$291,470 go?
30. Trustee Reiber did not ask that question and when I asked it, he did not want to subpoena, or even just ask for, documents apt to answer it, such as bank accounts that can reveal a trail of money into other assets. He appears not to understand that so long as there is no explanation for the whereabouts of the DeLanos' earnings for at least the 15 years that they have put in play, there is reasonable suspicion of concealment of assets.
 31. But if Trustee Reiber did review the DeLanos' documents and did understand the reasonable grounds for believing that a violation of laws of the United States relating to insolvent debtors had been committed, he had a legal duty under 18 U.S.C. §3057(a) to report it to the U.S. Attorney. Yet he failed to do so. Instead, he reported to the Court and the parties his wish to wash his hands of this case through its dismissal before somebody else, like me, uncovers enough to indict his competency or working methods for having approved such a patently suspicious petition.
 32. Indisputably, Trustee Reiber has a conflict of interests that disqualifies him as an impartial and potentially effective investigator. Do you, Judge Ninfo, have a conflict of interests that explains why you too would not ask for those documents by signing my proposed order?
 33. It follows that Trustee Reiber must be removed and this case referred to the appropriate law enforcement and investigative authorities.

VI. Relief requested

34. Therefore, I respectfully request that the Court, in the person of Judge Ninfo:
 - a. enter with the date of July 20, 2004, in entry 53 of docket 04-2230 and upload into that entry of the docket's electronic version the proposed order of July 19, 2004, that with knowledge of its contents you asked me to fax to you and I did fax;
 - b. issue that order, modified by the remark that insofar compliance therewith is still owing, the dates of July 21 and August 11, 2004, therein contained are to be understood as two and 10 days, respectively, from the date on which it becomes effective;
 - c. enter with the date of July 22, 2004, my letter of July 21, 2004, faxed to you on July 22 and reproduced below;
 - d. remove Trustee George Reiber from this case under 11 U.S.C. §324; terminate any and all relation of Att. James Weidman to this case, whether as a professional person employed under §327 or otherwise; and prohibit any payment to them or disbursement by them of funds until otherwise ordered by a competent authority;

- e. report such removal to the following officers for appointment, after the review, investigation, and reconstruction of this case is completed, of a successor trustee that is unrelated to the parties, unfamiliar with the case, beholden to nobody, and willing and able to conduct a competent, thorough, and zealous investigation of the DeLanos:
- 1) Mr. Lawrence A. Friedman, Director
 - 2) Donald F. Walton, Acting General Counsel
 - 3) Ms. Debera F. Conlon, Acting Assistant Director for Review & Oversight
- Executive Office of the United States Trustees
20 Massachusetts Ave., N.W., Room 8000F
Washington, D.C. 20530
- f. report this case to the U.S. Attorney under 18 U.S.C. §3057(a) and the FBI for investigation under 28 U.S.C. §526(a)(1) and into suspected concealment of assets and other indicia of bankruptcy fraud under 18 U.S.C. §152 et seq.;
- g. order the following persons to produce and make themselves available for examination by me, whether as creditor or party in interest, and for the official record, in a designated room at the United States Courthouse on 100 State Street, Rochester, New York, 14614, beginning at 9:30 a.m. until 5:00 p.m., with a one hour lunch break, on September 20, and, if necessary for further examination, on September 21, 2004, and in any event, on contiguous dates in September when the examination of each examinee will not be constrained by any other time limitations:
- 1) the Debtors under 11 U.S.C. §341; and
 - 2) Trustee Reiber and Att. Weidman under FRBkrP Rule 2004(a);
- h. enter my opposition to Att. Werner's motion to disallow my claim, against which I will argue on August 25;
- i. allow me to present my arguments by phone at the two upcoming hearings; not cut off the phone connection to me until after you declare the hearing concluded; and not allow thereafter any other oral communication between you and any parties to this case until the next scheduled public event;
- j. reply to my motion of March 31, 2004, for a declaration of the mode of computing the timeliness of an objection to a claim of exemptions and for a written statement on and of local practice.

August 14, 2004

Dr. Richard Cordero

Dr. Richard Cordero
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COPY of August 14, 2004, for docketing

July 21, 2004

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

faxed to (585)613-4299

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

Dear Judge Ninfo,

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

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

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

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

Sincerely,

Dr. Richard Cordero

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re: David G. DeLano and Mary Ann DeLano

Chapter 13
Case no: 04-20280

Order
FOR DOCKETING and ISSUE,
REMOVAL, REFERRAL, and EXAMINATION

Having reviewed the history of the above-captioned case and the papers submitted by the several parties, and in light of the provisions of the United States Code and Rules applicable to it, the Court orders as follows:

- a. the proposed order of July 19, 2004, submitted by Dr. Richard Cordero to the Court, is to be entered with the date of July 20, 2004, in entry 53 of docket 04-20280 and uploaded into the docket's electronic version to make it publicly available through it, forthwith by the clerk;
- b. said order is incorporated herein and effective immediately; and insofar compliance therewith is still owing, the dates of July 21 and August 11, 2004, therein contained are to be understood as two and 10 days, respectively, from the date of this order;
- c. the letter of July 21, 2004, submitted by Dr. Richard Cordero to the Court, is to be entered with the date of July 22, 2004, in docket 04-20280 and uploaded into its electronic version to make it publicly available through it, forthwith by the clerk
- d. Trustee George Reiber is removed under 11 U.S.C. §324 forthwith from this case; James Weidman, Esq., is to terminate forthwith any and all relation to this case, whether as a professional person employed under §327 or otherwise; and any payment to them or disbursement by them of funds in connection with this case is forthwith prohibited until otherwise ordered by a competent authority;
- e. the clerk will forthwith send a copy of both this order and the above-described order of July 19, 2004, with a pertinent report by this Court to follow shortly, to the following officers:
 - 1) for review, investigation, and reconstruction of this case as appropriate, and the subsequent appointment of a successor trustee that is unrelated to the parties, unfamiliar with the case, beholden to nobody, and willing and able to conduct a competent, thorough, and zealous investigation of the Debtors:
 - a) Mr. Lawrence A. Friedman, Director
 - b) Donald F. Walton, Acting General Counsel
 - c) Ms. Debera F. Conlon, Acting Assistant Director for Review & Oversight
Executive Office of the United States Trustees
20 Massachusetts Ave., N.W., Room 8000F

Washington, D.C. 20530

2) under 18 U.S.C. §3057(a) for investigation under 28 U.S.C. §526(a)(1) and into suspected concealment of assets and other indicia of bankruptcy fraud under 18 U.S.C. §152 et seq.:

- a) Mr. John Ashcroft
Attorney General
U.S. Department of Justice
950 Pennsylvania Av., NW
Washington, DC 20530-0001
- b) Bradley E. Tyler, Esq.
Attorney in Charge
620 Federal Building
100 State Street
Rochester, NY 14614
- c) Rochester Resident Agent
Federal Bureau of Investigations
300 Federal Building
100 State Street
Rochester NY 14614

f. the following persons are to produce and make themselves available for examination under FRBkrP Rule 2004 by Dr. Richard Cordero, whether as creditor or party in interest, and for the official record, in room _____ at the United States Courthouse on 100 State Street, Rochester, New York, 14614, beginning at 9:30 a.m. until 5:00 p.m., with a one hour lunch break, on September _____, 2004, and, if necessary for further examination, the following day:

- 1) the Debtors, Mr. David DeLano and Mrs. Mary Ann DeLano; and
- 2) Trustee George Reiber and James Weidman, Esq.

SO ORDERED

THIS DAY OF _____

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

Today is Sun, 1 Aug 2004



Long Distance Home

Products & Services

Customer Support

About Verizon Long Distance

Directory ✉ Contact us

Online Activity Statement for all your SmartTouchSM calls and purchases

Account: **718-827-9521**
 Statement Period: **Jul1, 2004 - Aug1, 2004**

Important Numbers

If you have any questions about the long distance service provided by Verizon Long Distance, please call 1-888-599-0107.
 Thank you for using SmartTouch from Verizon.

New for SmartTouch customers! Make your account even smarter with our new Rapid Recharge feature. We'll automatically "recharge" your account for you from your check card or credit card account .
 International calls that terminate to wireless phones may incur [additional charges](#)

Summary of SmartTouch Account Activity

Starting Balance	14.80cr
Purchases Activity	20.00cr
Direct Dialed Calls	20.48
Ending Balance	\$14.32cr

Purchases Activity

no.	date	Description	amount
1.	07/19/2004	SmartTouch Purchases	20.00cr

Total Purchase Activity **\$20.00cr**

Direct Dialed Calls

In-State Calls: 718-827-9521

no	date	time	place	number	min.	amount
2.	07/06/2004	15:14 PM	ROCHESTER NY	585-263-5706	23.0	1.84
3.	07/10/2004	12:53 PM	ROCHESTER NY	585-427-7804	9.0	0.72
4.	07/10/2004	13:02 PM	ROCHESTER NY	585-232-3528	9.0	0.72
5.	07/10/2004	13:12 PM	ROCHESTER NY	585-263-5862	9.0	0.72
6.	07/15/2004	11:54 AM	ROCHESTER NY	585-613-4200	6.0	0.48
7.	07/19/2004	14:25 PM	BUFFALO NY	716-841-4506	1.0	0.08
8.	07/19/2004	15:39 PM	ROCHESTER NY	585-613-4281	1.0	0.08
9.	07/20/2004	09:41 AM	ROCHESTER NY	585-613-4200	2.0	0.16
10.	07/20/2004	09:46 AM	ROCHESTER NY	585-613-4299	5.0	0.40
11.	07/20/2004	10:06 AM	ROCHESTER NY	585-427-7804	5.0	0.40
12.	07/20/2004	10:10 AM	ROCHESTER NY	585-263-5862	5.0	0.40
13.	07/20/2004	10:15 AM	ROCHESTER NY	585-232-3528	5.0	0.40
14.	07/20/2004	13:15 PM	ROCHESTER NY	585-613-4200	3.0	0.24
15.	07/21/2004	07:46 AM	BUFFALO NY	716-841-1207	13.0	1.04
16.	07/21/2004	09:47 AM	BUFFALO NY	716-841-6813	3.0	0.24
17.	07/21/2004	11:55 AM	ROCHESTER NY	585-546-1980	56.0	4.48
18.	07/21/2004	16:14 PM	ROCHESTER NY	585-613-4200	5.0	0.40
19.	07/22/2004	08:41 AM	ROCHESTER NY	585-613-4299	2.0	0.16
20.	07/22/2004	11:25 AM	BUFFALO NY	716-	4.0	0.32
21.	07/26/2004	12:02 PM	ROCHESTER NY	585-613-4200	8.0	0.64

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re: David G. DeLano and Mary Ann DeLano

Chapter 13
Case no: 04-20280

**Reply in Opposition
to Debtors' Objection to Claim
and Motion to Disallow it**

Dr. Richard Cordero, Creditor, states under penalty of perjury as follows:

TABLE OF CONTENTS

I. The Delanos Were So Aware Of Dr. Cordero's Legal Claim Against Them That They And Their Attorney Themselves Included It In The Original Bankruptcy Petition.....	250
II. The Debtors Cannot Contest A Bankruptcy Claim On Grounds That They May Not Be Liable In Another Case	251
III. The Debtor's Attorney Cannot Possibly Have A Good Basis Belief In That He Has Standing To Assert That A Third Party, Namely, M&T Bank, In Another Case Is Not Liable To A Creditor In This Case	252
IV. A Creditor May Assert A Claim Against Only One Of Two Debtors Jointly Filing A Bankruptcy Petition.....	253
V. The Delanos' Objection Is A Desperate Attempt To Remove Belatedly Dr. Cordero, The Only Creditor That Objected To The Confirmation Of Their Chapter 13 Plan And That Is Relentlessly Insisting On Their Production Of Financial Documents That Can Show The Bad Faith Of Their Petition.....	253
VI. The Delanos Already Objected To Dr. Cordero's Creditor Status And Claim In Their Statement To The Court On April 16, To Which Dr. Cordero Timely Replied On April 25, And The Delanos Did Not Pursue The Issue, Whereby They Are Now Barred By Laches From Raising It Again Two Months Later	255
VII. The Debtors Cannot Overcome The Legal Presumption Of Validity That Rule 3001(F) Attaches To Dr. Cordero's Proof Of Claim By Merely Repeating An Abbreviated Version Of Their April 16 Objection, Which Was Merely An Allegation Devoid Of Any Legal Support	256
VIII. Relief Requested.....	257

1. By their attorney, Christopher Werner, Esq., the Debtors object as follows to Dr. Cordero's claim:

Claimant sets forth no legal basis substantiating any obligation of Debtors. Claimant apparently asserts a claim relating to a pending Adversary Proceeding in Premier Van Lines (01-20692) relating to M & T Bank, for whom David DeLano acted only as employee and has no individual liability. Further, no liability exists as against M & T Bank. No basis for claim against Debtor Mary Ann DeLano, is set forth, whatsoever.

I. The DeLanos were so aware of Dr. Cordero's legal claim against them that they and their attorney themselves included it in the original bankruptcy petition

2. To begin with, it escapes Att. Werner's attention the inconsistency of affirming in the first sentence that Dr. Cordero provides "no legal basis" for "any obligation" of the Debtors to him, only to follow it up in the next sentence with the statement that the basis of the claim is "a pending Adversary Proceeding". That Adversary Proceeding, pending in the U.S. Bankruptcy Court in Rochester, docket no. 02-2230, is a lawsuit with opposing claims at law. Regardless of how those claims will be finally decided, the Adversary Proceeding does provide the legal basis for Dr. Cordero's claim!
3. Likewise, it escapes Att. Werner's recollection that it was he and the Debtors who in the very first document in the instant case, that is, the bankruptcy petition that they signed last January 26, 2004, listed Dr. Cordero's claim, describing it as "2002 Alleged liability re: stored merchandise as employee of M&T Bank –suit pending US BK Ct.". Therefore, it is disingenuous to insinuate that Dr. Cordero only "apparently asserts a claim" given that they were the first to recognize the DeLanos' potential liability to him and were the first to state so in the petition before Dr. Cordero could even suspect, let alone know, that they would file for bankruptcy.
4. In the same vein, it escapes Att. Werner's candor when he states that Dr. Cordero provided "no legal basis" and only "apparently asserts a claim" despite the fact that Dr. Cordero served him with a copy of his proof of claim with an attached copy of his November 21, 2002 pleading in the Adversary Proceeding containing his claim against Mr. DeLano. Consequently, Att. Werner knows full well not only the legal nature of Dr. Cordero's claim against Mr. DeLano, but also its precise substance.
5. Moreover, it escapes Att. Werner's capacity to spot legally significant facts that the Adversary Proceeding is *Pfuntner v. Gordon et al*, docket no. 02-2230, which is only derivatively related to the case that he cited in his above-quoted Objection, namely, "Premier Van Lines (01-20692)". It is to be hoped that Att. Werner's mistaken reference to only the Premier case is only a reflection on his lack of accuracy when raising an allegation against another party, rather than an intentional effort to mislead the Court and other parties by drawing their attention to a case where Mr. DeLano is not a named party.
6. In addition, it escapes Att. Werner's knowledge of first year law school Torts that a person is not insulated from "individual liability" just because he alleges that he "acted only as

employee” of his employer. Debtor David DeLano is a named third-party defendant in that Adversary Proceeding just as M&T Bank is a named defendant as well as a cross-defendant therein. They can be jointly and severally liable because or in spite of their employer-employee relationship.

II. The Debtors cannot contest a bankruptcy claim on grounds that they may not be liable in another case

7. As a matter of law and common sense, Mr. DeLano’s liability in another pending case, that is, the Adversary Proceeding *Pfuntner v. Gordon et al.*, is not a matter that can be denied in this case as the basis to object to a creditor’s claim against them. This is all the more so given that in his responsive pleading to Dr. Cordero’s third-party claim against him in that other case Mr. DeLano did not even deny his liability in that case on the grounds now asserted for the first time in this case that “David DeLano acted only as employee and has no individual liability”. It is not in the instant case where Att. Werner can announce the defense theory of Mr. DeLano’s to claims in another case. What kind of lawyering is this on the part of Att. Werner, who is not even Mr. DeLano’s attorney of record in the other case?!
8. Moreover, the Court in this case has no jurisdiction to decide the legal question whether Mr. DeLano is liable in another case. Not only has the trial in that other case not begun, but also no motion in that case has been raised, let alone heard, contesting Mr. DeLano’s liability, whether on the ground now asserted here or on any other ground. That other case is so much in its ‘infancy’ that discovery has not even started! But even if a motion had been raised, the issue whether Mr. DeLano is liable as an employee or in his personal capacity is one of fact that cannot be decided on the pleadings on the mere assertion that Mr. DeLano was M&T Bank’s employee at the time. Consequently, even if the Court in the instant case were to arrogate to itself power to pick out an issue of fact from another case and decide it in isolation, it has absolutely nothing to go by except a specific, 31-page complaint with exhibits and a general 2-page denial in that other case.
9. Mr. DeLano’s liability in another case is a matter to be decided by the court in that case through litigation in the context of all the parties, issues, and facts of the other case. As long as a decision in that case has not been reached and it has become final after exhaustion of all avenues of appeal, the claim against Mr. DeLano in that other case is viable. Hence, the claim in the other case provides a legally valid basis for a claim in the instant case.
10. Indeed, a claim can be asserted by a creditor regardless of whether it is reduced to judgment, whether the claim is liquidated, unliquidated, fixed, contingent, mature, unmatured, disputed, undisputed, legal, equitable, secured or unsecured. *United States v. Connery*, 867 F.2d 929, 934 (reh'g denied)(6th Cir. 1989), appeal after remand 911 F.2d 734 (1990).
11. Hence, the Debtors’ objection to Dr. Cordero’s claim because they dispute his claim in another case falls due to its own lack of legal basis and the court’s lack of jurisdiction.

III. The Debtor's attorney cannot possibly have a good basis belief in that he has standing to assert that a third party, namely, M&T Bank, in another case is not liable to a creditor in this case

12. Att. Werner claimed at the hearing on July 19, 2004, that 'he has been in this business for 28 years', presumably meaning that he has been practicing law for that length of time. If so, he should know better than to pretend that the legally ridiculous allegation that "Further, no liability exists as against M&T Bank", a third-party in another case that has neither a claim nor standing in this case, provides grounds for the Debtors' objection to the claim of a creditor, Dr. Cordero, in the instant case.
13. Nor does Att. Werner have any standing to make such an allegation, for he is not M&T Bank's attorney in that other case. Therefore, he has no standing to represent M&T's legal position in that case, let alone in this case.
14. It should be noted that it is bad lawyering for Att. Werner to assert on behalf of the Debtors that M&T is not liable at all to Dr. Cordero in the other case, that is, the Adversary Proceeding Pfuntner v. Gordon et al, docket no. 02-2230. That only means that Mr. DeLano does not hold M&T liable for his acts as its employee. By contrast, Mr. DeLano's denial of liability to Dr. Cordero carries no weight until finally established in the Adversary Proceeding. What an unintended 'unthought of' consequence if M&T Bank were to argue successfully that Mr. DeLano is estopped from arguing respondeat superior in that Proceeding as a way to shift liability from him to his employer. Would Att. Werner be liable to Mr. DeLano for malpractice for hanging him up out there to bear alone the liability that he may be found to have to Dr. Cordero by a court with jurisdiction?
15. But even if Att. Werner were the attorney for M&T Bank, his biased opinion on his client's lack of liability is absolutely irrelevant to the issue whether Dr. Cordero has a valid claim against a different client of Att. Werner in different case. Att. Werner's opinion on any party or issue whatsoever is not evidence of anything. Since the facts in the other case have not even been the subject of discovery yet, let alone found by a court with jurisdiction, much less been given anything even remotely sounding like collateral estoppel effect, not to mention anything about res judicata for issues, Att. Werner cannot rely on any facts in that case to argue anything in this case. He is left with nothing but that: an opinion, his biased opinion expressed at the wrong time in the wrong context for the wrong purpose.
16. Indeed, Att. Werner's purpose of defending the DeLanos by disallowing Dr. Cordero's claim in this case is not advanced a bit by his allegation that "Further, no liability exists as against M&T Bank". Even if M&T were found not to be liable to Dr. Cordero in the other case, such finding would not preclude the finding that Debtor David DeLano was personally liable to Dr. Cordero. This is so because in law the fact that an employer is not vicariously liable to a third party by application of the doctrine of respondeat superior, is not incompatible with the fact that his employee may be personally liable by application, among others, of the doctrine of ultra vires due to the employee having acted on a folly of his own outside the scope of his employment. The only thing accomplished by that ridiculous allegation is the undermining of Att. Werner's credibility as a lawyer, for he failed to do his legal research homework before coming to court to advocate his client's interests.

IV. A creditor may assert a claim against only one of two debtors jointly filing a bankruptcy petition

17. Att. Werner also alleges in his objection to Dr. Cordero's claim that "No basis for claim against Debtor Mary Ann DeLano, is set forth, whatsoever". What an absolutely meaningless allegation! Who ever said that creditors lose their claims against a debtor if the latter and his spouse file a joint petition for bankruptcy? Whose head ever conceived of the idea that a bankruptcy system, let alone a national economy, could be predicated on the principle that debtors can escape their financial responsibility to those holding claims against them by the simple subterfuge of filing for bankruptcy jointly with their spouses?
18. Assuming that Att. Werner understands the concept of consistency, would he dare argue in court that Mr. DeLano is not liable to either AT&T Universal, Bank of America, Bank One, or Capital One, etc., because these creditors, whom the Debtors listed in Schedule F of their petition, hold claims against Mr. DeLano alone, but not against Mrs. DeLano?
19. Look! There, in the petition! It instructs the debtors to:

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".
20. The DeLanos and Att. Werner even marked their claims with either H, W, or J. As revealed by their own acts, they knew that the fact that a creditor holds a claim against one but not the other of the debtors was of absolutely no consequence. Yet, they went ahead and asserted the bogus objection to Dr. Cordero's claim by stating that he has "no basis for claim against Debtor Mary Ann DeLano". They knowingly raised a spurious objection. They acted in bad faith!
21. Att. Werner has cited not a single case or Bankruptcy Code section or Rule to object to Dr. Cordero's claim. He does not have even a legally cogent argument, only his opinion, one so perfunctorily cobbled together that it would have shocked his professors of Torts and Civil Procedure in his first year of law school to the point of denying him a passing grade. Thus, what could possibly have possessed Att. Werner to think that those utterly untenable allegations would pass muster with the chief judge of a federal bankruptcy court? Desperation.

V. The DeLanos' objection is a desperate attempt to remove belatedly Dr. Cordero, the only creditor that objected to the confirmation of their Chapter 13 plan and that is relentlessly insisting on their production of financial documents that can show the bad faith of their petition

22. For well over a year before filing their petition on January 26, the DeLanos have known the exact nature of Dr. Cordero's claim against Mr. DeLano, contained in his complaint of November 21, 2002, in another case. So much so that they and Att. Werner took the initiative to include it in their petition opening this case. They even marked it as unliquidated and

disputed. From that moment on they could have filed an objection to that claim because they already knew all the factual and legal elements supporting their dispute. Since then those elements have neither been strengthened nor added to. So what has changed? Only their level of desperation.

23. Their first manifestation of desperation took place at the meeting of creditors on March 8. As Mr. DeLano, a bank loan officer for 15 years must have expected, none of the 18 credit card issuers that they listed in Schedule F showed up. Far from taking advantage of consolidating and refinancing his and his wife's debt with a loan at a lower rate secured by property, Mr. DeLano took care to split their debt among so many unsecured nonpriority creditors so as not to give any of them a stake high enough to make it cost-effective to pursue their claims in bankruptcy court.
24. But something happened that was most unnerving: Dr. Cordero showed up in person, having traveled all the way from New York City to Rochester, and not only did he hand out written objections to confirmation, but also wanted to examine the DeLanos under oath! Swift to realize the danger was the Trustee's attorney, James Weidman, Esq., who was unlawfully presiding over the meeting, which the Trustee had the duty to conduct himself as provided under C.F.R. §58.6(a)(10). Att. 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 the bankruptcy petition, an issue that is properly raised as to any petition. (cf. 11 U.S.C. §1325(a)(3))
25. The exchange alerted Att. Werner to danger. He contested on that very occasion that Dr. Cordero had a claim against the DeLanos and thus, his status as creditor. Dr. Cordero stated grounds supporting such status. Att. Werner relented. Dr. Cordero went ahead to ask questions of the DeLanos. However, in rapid succession, Att. Weidman asked Dr. Cordero more times to state his evidence of fraud. Dr. Cordero had even to insist that Mr. Weidman take notice that he was not alleging fraud. With that answer, Dr. Cordero failed to reveal how much he had already found out about the DeLanos, their petition, and their financial affairs. Att. Weidman panicked and put an end to the meeting after Dr. Cordero had asked only two questions of the DeLanos!
26. Later on in the courtroom before the Hon. John C. Ninfo, II, Trustee Reiber and Att. Weidman stated that the DeLanos' petition had been filed in good faith. Thus, Dr. Cordero impugned their capacity to conduct an impartial investigation of the DeLanos without any bias toward finding of good faith filing, the only one that can exonerate them of any charge of having approved, whether negligently or knowingly, a meritless petition filed in bad faith. Consequently, Dr. Cordero called for the replacement of the Trustee and the exclusion from the case of Att. Weidman.
27. All this gave notice to the DeLanos and Att. Werner that Dr. Cordero was serious about asserting his creditor status and claim. By then they had all the elements of law and fact concerning not only his claim, but also his determination to pursue it. If they had entertained a good faith belief that Dr. Cordero had no legal basis for asserting a claim against the DeLanos, they had to raise that objection timely on grounds of judicial economy and fairness. Nor did they do so after Dr. Cordero served Att. Werner with different papers in the course of the following months. Therefore, by their failure to raise that objection in a timely fashion, they created for Dr. Cordero a reliance interest in the reasonable assumption that they had given up any such objection and had accepted the legal validity of his claim. In reliance thereon, Dr.

Cordero has invested his time, effort, and money pursuing his claim.

28. Therefore, more than four months later and only after Dr. Cordero's relentless request for financial documents threatens to prove that their petition was filed in bad faith, it is untimely for Att. Werner and the DeLanos to raise their objections to his claim...for the third time.

VI. The DeLanos already objected to Dr. Cordero's creditor status and claim in their Statement to the court on April 16, to which Dr. Cordero timely replied on April 25, and the DeLanos did not pursue the issue, whereby they are now barred by laches from raising it again two months later

29. On April 16, the DeLanos raised the already untimely objection that Dr. Cordero "is not a proper creditor in this matter". To this Dr. Cordero timely replied less than 10 days later thus:

- a) This is what the Bankruptcy Code has to say as to who is a proper "creditor":

B.C. §101. Definitions

(10) "creditor" means (A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;...

[(15) "entity" includes person...]

In turn, it defines "claim" thus:

(5) "claim" means (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured;

- b) The Code's definition of who is a creditor is more than broad enough to include Dr. Cordero and his pre-petition claim against Mr. DeLano.

30. Not only did Att. Werner fail to provide any legal argument for their April 16 contention that Dr. Cordero was not a proper creditor, but they did not even counter with an objection, let alone a legal argument, to Dr. Cordero's legal basis for asserting his creditor status, not within the following 10 days, not within the next 30 days, not in the next two months. Far from it, to their repetition of their objection devoid of any legal argument they add an abundance of legally ridiculous, spurious, and thoughtless allegations. Hence, now they are barred from raising the objection not only by untimeliness and laches, but also by bad faith.
31. Furthermore, at the hearing on July 19, 2004, Att. Werner brought up the subject of raising a motion to challenge Dr. Cordero's status as a creditor of the DeLanos. Judge Ninfo himself pointed out to Att. Werner that Mr. DeLano's liability in the Adversary Proceeding could not be decided in this case. Dr. Cordero too mentioned many of the issues discussed here. Yet, Att. Werner went ahead and raised the motion without taking into account any of those issues and without presenting any legal argument that one would expect of a lawyer, particularly one 'in this business for 28 years'. He could not have reasonably have thought that he was acting

responsibly when he disregarded the legal difficulties of his position pointed out by the court itself as well as by the opposing party for the record at a hearing.

32. Does Att. Werner expect the court and Dr. Cordero to rehash the same issues at the August 25 hearing of his motion? By his conduct, he shows that he wants simply to have another go at it while sparing himself the effort, time, and money required to do legal research, think through the legal issues, and write down an argument worthy of a lawyer. But in the process, he has irresponsibly caused Dr. Cordero, who holds himself to the standards of a professional, to invest a lot of effort, time, and money to research and write this response. Att. Werner will also cause the court to revisit the same issue, compounded by the ridiculous and spurious statements that Att. Werner has added in his motion. For such irresponsible conduct and the waste that he has already caused and will still cause shortly, Att. Werner will be asked to compensate Dr. Cordero and to bear sanctions imposed by the court.

VII. The Debtors cannot overcome the legal presumption of validity that Rule 3001(f) attaches to Dr. Cordero's proof of claim by merely repeating an abbreviated version of their April 16 objection, which was merely an allegation devoid of any legal support

33. Rule 3001(a) provides thus:

(a) Proof of Claim

A proof of claim is a written statement setting forth a creditor's claim. A proof of claim shall conform substantially to the appropriate Official Form.

34. Dr. Cordero's proof of claim of May 15 not only conforms substantially to the appropriate form, but it was also contained in the official one provided to him with the notice of the meeting of creditors. Moreover, it was so formally correct, that it was filed by the clerk of court and entered in the register of claims.

35. FRBkrP Rule 3001(f) provides as follows:

(f) Evidentiary effect

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

36. Dr. Cordero's claim is now legally entitled to the presumption of validity. As a result, it is legally stronger than when the DeLanos and Att. Werner took the initiative to include it in the January 26 petition. It follows that by summarizing their April 16 objection, as to which they made no effort to support with law or precedent, and weakening it with the addition of legally ridiculous and spurious allegations made in bad faith, they cannot possibly overcome a claim now strengthened with prima facie evidence of validity as a result of the filing of Dr. Cordero's proof of claim.

VIII. Relief Requested

37. Therefore, Dr. Cordero respectfully request that the Court:

- a) hold a hearing on the motion;
- b) reject the motion to disallow his claim against the DeLanos;
- c) award Dr. Cordero costs and any other proper and just relief.

August 17, 2004

Dr. Richard Cordero

Dr. Richard Cordero
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CERTIFICATE OF SERVICE

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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 Sanctions and compensation
for violation of FRBkrP Rule 9011(b)**

Madam or Sir,

PLEASE TAKE NOTICE, that Dr. Richard Cordero, Creditor, intends to seek under FRBkrP Rule 9011(c)(1)(A) and (2) sanctions to be imposed on, and compensation to be obtained from, Christopher Werner, Esq., attorney for Debtors David and Mary Ann DeLano, and his law firm of Boylan, Brown, Code, Vigdor & Wilson, LLP. for violation of subsection (b) thereof, as evidenced in the grounds adduced by Att. Werner in his motion of July 19, 2004, to object to Dr. Cordero's claim in this case and have it disallowed.

If as provided under 9011(c)(1)(A), Att. Werner does not timely withdraw or correct his motion to disallow Dr. Cordero's claim after service of the instant motion, Dr. Cordero will move this Court at the United States Courthouse on 100 State Street, Rochester, New York, 14614, at 9:30 a.m. on October 6, 2004, or as soon thereafter as he can be heard, for such sanctions and compensation. If the motion to disallow is withdrawn before its hearing next August 25 is held, Dr. Cordero asks that Att. Werner and his law firm jointly and severally compensate him in the nominal amount of \$2,500, for some of the expenses and attorneys' fees incurred in conducting legal research and writing to oppose Att. Werner's motion; otherwise, Dr. Cordero will move on October 6, for any reasonable additional compensation.

Dated: August 20, 2004

Dr. Richard Cordero

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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re: David G. DeLano and Mary Ann DeLano

Chapter 13
Case no: 04-20280

**Brief in Support of the Motion
for Sanctions and compensation
for violation of FRBkrP Rule 9011(b)**

Dr. Richard Cordero, Creditor, states under penalty of perjury as follows:

1. On July 19, Christopher Werner, Esq., attorney for Debtors David and Mary Ann DeLano, filed a motion to object to Dr. Cordero's claim in the Debtors' case and disallow it. He limited himself in his motion to stating the following grounds, which he did not support with any citation to law, rule, or case:

Claimant sets forth no legal basis substantiating any obligation of Debtors. Claimant apparently asserts a claim relating to a pending Adversary Proceeding in Premier Van Lines (01-20692) relating to M & T Bank, for whom David DeLano acted only as employee and has no individual liability. Further, no liability exists as against M & T Bank. No basis for claim against Debtor Mary Ann DeLano, is set forth, whatsoever.

Table of Contents

I. Att. Werner has rendered himself liable to sanctions and for compensation by presenting in order to disallow Dr. Cordero's claim frivolous arguments incapable of being supported by evidence in this case	260
II. Although Att. Werner knew even before signing and filing the DeLanos' petition what the nature of Dr. Cordero's claim was, he treated for months Dr. Cordero as a creditor, thereby creating in him a reliance interest in that Att. Werner deemed the claim valid so that defeating that interest now by having the claim declared invalid renders Att. Werner liable to Dr. Cordero for compensation.....	261
A. If Att. Werner believed in good faith that he had valid legal grounds to disallow Dr. Cordero's claim, he had to submit them to the Court and Dr. Cordero as soon as possible for the sake of judicial economy and out of fairness to Dr. Cordero, but he failed to do so.....	261
B. By Att. Werner not moving to disallow and just making in passing frivolous statements about Dr. Cordero's status as creditor while dealing with other matters, he revealed that he did not believe that he had a legally cognizable objection to the validity of Dr. Cordero's claim	262

C. Att. Werner deemed Dr. Cordero a creditor with the right to examined the DeLanos and provided Trustee Reiber with dates for such examination.....	263
D. Att. Werner also considered Dr. Cordero a creditor entitled to disclosure of financial documents of the DeLanos and thus, produced documents to him.....	264
E. If Att. Werner is to be assessed by the standard of a reasonable man, his conduct created in Dr. Cordero a reliance interest and his defeat of it gives rise to a right to compensation in Dr. Cordero	265
III. Att. Werner’s motion to disallow Dr. Cordero’s claim is motivated, not by a nonfrivolous argument, but rather by self-interest in casting from the case Dr. Cordero, the only creditor who insists on obtaining documents that threaten to expose bankruptcy fraud in the DeLanos’ petition.....	265
IV. Request for relief.....	269

- I. Att. Werner has rendered himself liable to sanctions and for compensation by presenting in order to disallow Dr. Cordero’s claim frivolous arguments incapable of being supported by evidence in this case**
2. At a hearing on July 19, 2004, which was noticed for a different matter, Att. Werner brought up the issue of objecting to Dr. Cordero’s status as creditor to disallow his claim. He alleged that neither Mr. DeLano nor his employer, M&T Bank, are liable in another case to Dr. Cordero so that the latter’s claim in this case based on liability to him in that other case is not valid. The Court pointed out, as did subsequently Dr Cordero, that Mr. DeLano’s liability to Dr. Cordero in another case cannot be determined in this case.
3. As shown in the quote in ¶1 above, Att. Werner included the same allegations in his motion to disallow Dr. Cordero’s claim. Such allegations concerning Mr. DeLano’s liability to Dr. Cordero in another case –whose correct name is not the one given by Att. Werner, but rather Adversary Proceeding Pfuntner v. Gordon et al, docket no. 02-2230– which is even at its pre-discovery stage as far as M&T and Mr. DeLano goes, and involves a third party, the Bank, that is not even a party to this case, cannot possibly be supported by any evidence in this case.
4. Consequently, by presenting such allegations in his motion to disallow, Att. Werner violated FRBkrP Rule 9011(b)(3), which provides thus:
 - (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery;
5. Att. Werner had a duty to review his position because an attorney operates under a “continuous obligation to make inquiries”, so that an attorney that advocates a position that has become untenable is sanctionable; Battles v. City of Ft. Myers, 127 F.3d 1298, 1300 (11th Cir., 1997).

6. By failing to ameliorate, whether before or after filing, the weaknesses inherent in his position, Att. Werner violated FRBkrP Rule 9011(b)(2); cf. *Sprewell v. Golden State Warriors*, 231 F.3d 520, 530 (9th Cir., 2000). That rule provides as follows:

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

7. Far from correcting or supporting such untenable allegations, Att. Werner further undermined his position by adding other legally ridiculous and spurious allegations, discussed by Dr. Cordero in his Reply of August 17 in opposition to Debtors' Objection to Claim and Motion to Disallow it, which is incorporated herein by reference,

8. Att. Werner's violation of Rule 9011 is all the more obvious because it is measured against a burden of proof that is heavier than the one that he had to bear when he signed and filed the Delanos' petition back in January. Indeed, once Dr. Cordero executed his proof of claim last May 15 in substantial accordance with the Official Form, as required under FRBkrP Rule 3001(a) and filed it, his claim constitutes prima facie evidence of validity under subsection (f). As a result, the form for objecting to a claim sets out in capital letters that the objecting party must provide:

DETAILED BASIS OF OBJECTION INCLUDING GROUNDS FOR
OVERCOMING ANY PRESUMPTION UNDER RULE 3001(F)

9. Att. Werner's opinion as to who is liable in another case that is still at a pre-discovery stage is legally incapable of overcoming that presumption. Nor did Att. Werner make any attempt to argue why Dr. Cordero or his claim falls outside the scope of the applicable definitions of "creditor", "entity", and "claim" contained in 11 U.S.C. §101. His assertion in blatant disregard of existing law violates Rule 9011(b)(2).

10. By presenting his motion, Att. Werner certified that his arguments in it are either justified by existing law or are nonfrivolous arguments for modification of existing law. Nevertheless, the grounds adduced by Att. Werner 'have absolutely no chance of success under the existing precedent'. Hence, his motion to disallow based on such frivolous arguments violates Rule 9011; cf. *In re Sargent*, 136 F.3d 349, 352 (4th Cir, 1998), cert. denied, 525 U.S. 854, 119 S.Ct. 133, 142 L.Ed.2d 108 (1998).

II. Although Att. Werner knew even before signing and filing the DeLanos' petition what the nature of Dr. Cordero's claim was, he treated for months Dr. Cordero as a cre-ditor, thereby creating in him a reliance interest in that Att. Werner deemed the claim valid so that defeating that interest now by having the claim declared invalid renders Att. Werner liable to Dr. Cordero for compensation

A. If Att. Werner believed in good faith that he had valid legal grounds to disallow Dr. Cordero's claim, he had to submit them to the Court and Dr. Cordero as soon as possible for the sake of judicial economy and out of fairness to Dr. Cordero, but he failed to do so

11. Att. Werner was so aware of the grounds for disputing Dr. Cordero's claim, that he qualified his claim as "disputed" when he listed it in Schedule F of the DeLanos' Chapter 13 bankruptcy petition of January 26, 2004. However, that qualification does not give notice that the claim is invalid given that the Bankruptcy Code at 11 U.S.C. §101(5)(A) expressly includes a disputed claim among valid claims for bankruptcy purposes.
12. Convinced of the validity of his claim, Dr. Cordero engaged in legal research and writing to compose his written objections to the DeLanos' plan of debt repayment. Then he traveled from New York City to Rochester to attend the meeting of creditors held on March 8, 2004.
13. At that meeting, when Dr. Cordero tried to exercise his right to examine the DeLanos under oath, Att. Werner objected alleging that Dr. Cordero was not even a creditor. However, he did not state any legal basis in support of his allegation, just as he would fail to do later on in his motion to disallow. Dr. Cordero stated the legal basis for his claim, Att. Werner relented, and Dr. Cordero asked his first question of the DeLanos.
14. On that occasion, Dr. Cordero handed out his written objections to the DeLanos' plan. Therein he requested that Trustee George Reiber investigate their financial affairs, obtain therefor certain financial documents from them, and inform him of the result of the investigation.
15. By producing such objections and undertaking that trip, Dr. Cordero gave Att. Werner clear evidence that he believed that he had a valid claim and was making a considerable investment of effort, time, and money to pursue it. By not moving to disallow the claim, Att. Werner gave rise to the reasonable assumption that he had dropped his pro-forma objection to Dr. Cordero's claim, and thereby implicitly encouraged Dr. Cordero to continue making such investment.

B. By Att. Werner not moving to disallow and just making in passing frivolous statements about Dr. Cordero's status as creditor while dealing with other matters, he revealed that he did not believe that he had a legally cognizable objection to the validity of Dr. Cordero's claim

16. On March 29, Dr. Cordero filed with the court his Objection to a claim of exemption. Att. Werner did not counter with a motion to disallow, but rather with his "DEBTORS' STATEMENT IN OPPOSITION TO CORDERO [SIC] OBJECTION TO CLAIM OF EXEMPTIONS" of April 16. Therein he stated that Dr. Cordero "is not a proper creditor in this matter". However, he failed to provide a single legal reference or argument of what a "creditor" is, or a "proper" as opposed to an 'improper creditor' is or how this "matter" made a difference in the properness of a creditor.
17. More than a month after Dr. Cordero had stated at the March 8 meeting the legal basis for his claim, and months after first learning from the DeLanos the nature of Dr. Cordero's claim, Att. Werner could still not come up with a single legal argument or citation to law, rule, or case supporting his objection to that claim. On the contrary, in that April 16 statement Att. Werner showed how devoid of legal support his objection was and how his failure to think through even basic legal notions revealed that his objection was merely pro-forma. He wrote thus:

12. Should Cordero wish to obtain such records, he is free to Subpoena them from the Bank should a proper proceeding be pending against the Debtors, after it is established that he is someone of proper standing with some substantial basis for process against the Debtors –none of which criteria are satisfied by Cordero.

18. To begin with, whatever “proper” means in Att. Werner’s particular notion of “proper proceeding”, the fact remains that a case *is* pending against Mr. DeLano: It is Adversary Proceeding Pfuntner v. Gordon et al., which has not been finally decided so that it is still open. Moreover, Mr. DeLano by his attorneys in that proceeding never disputed the legal sufficiency of Dr. Cordero’ claim against him and M&T Bank contained in his complaint of November 21, 2002. They never moved to dismiss on the pleadings, for example, on a motion based by reference on FRCivP Rule 12(b)(6). In addition, the fact that a defendant contests liability –as all do, otherwise there would be no controversy before the court– does not mean that the proceeding is ‘improper’.
19. Att. Werner also shows ignorance of the difference between having standing to sue an entity in a case, and prevailing on the merits. Successfully contesting liability is not what determines whether a person can be sued as a defendant in a cause of action cognizable at law.
20. And what about establishing that a person “is someone of proper standing with some substantial basis for process against the Debtors”?, which upon translation most likely means whether a person has standing to bring a cause of action against the debtor? Where is that supposed to be established? Can Att. Werner be trying to say the nonsense that Dr. Cordero’s standing to sue Mr. DeLano in another case be established in this case? Or is he saying that before he can maintain his claim against Debtor DeLano in this case, he must first establish his standing to sue Mr. DeLano in the other case? Who ever said that!?! Where did Att. Werner get these things?, for he certainly did not cite any law, rule, or case. These points are so frivolous that by raising them Mr. Werner undermines his credibility as a lawyer and renders himself liable under Rule 9011 to sanctions and for compensation.
21. Indeed, Dr. Cordero had to invest further effort, time, and money to preserve his objection to Att. Werner’s statements about his creditor status. In his reply of April 25, Dr. Cordero quoted and argued the definition under 11 U.S.C. §101 of what a creditor for purposes of the Bankruptcy Code is. After that 10 days went by, 30 days went by, months went by without Att. Werner presenting any legal support for his position or moving to disallow Dr. Cordero’s claim. His conduct gave rise to the reasonable assumption that he had dropped his pro-forma objection to Dr. Cordero’s claim. Dr. Cordero continued his efforts to have the DeLanos investigated.
22. Att. Werner did not even object when Dr. Cordero filed his proof of claim on May 15 and the clerk of court filed it on May 19. By failing to do so, the reasonable assumption that he had dropped his objection to Dr. Cordero’s claim became a reasonable conclusion because the filing of the claim entitled it to a legal presumption of validity that increased the burden of proof that Att. Werner had to bear to prove its invalidity. Yet, Att. Werner had been unable for months to bear the lesser, pre-filing burden of proof. He who cannot do the lesser cannot do the most.

C. Att. Werner deemed Dr. Cordero a creditor with the right to examined the DeLanos and provided Trustee Reiber with dates for such examination

23. Nor did Att. Werner object to Trustee Reiber’s holding Dr. Cordero up as a creditor with the right to demand an investigation of the DeLanos’ financial affairs. In a letter of March 12, 2004, Trustee Reiber wrote to Att. Werner thus:

I have reviewed [Dr. Cordero’s] written objections which were filed with the Court on or about March 8, 2004. I believe there are

some points within those objections which it is proper for him to question the debtors about.

24. Att. Werner confirmed his acknowledgment that Dr. Cordero was a “proper creditor” by writing in his letter of June 14 to Trustee Reiber:

We plan to appear for the scheduled June 21, 2004 §341 Meeting and Confirmation unless we are advised otherwise by your office.

25. Not only did Att. Werner fail to object to Dr. Cordero’s right to ask questions of the DeLanos, but he even proposed dates when he would produce the DeLanos for such questioning! Such conduct is inconsistent with that of a competent lawyer who in good faith believes that a person is not a “proper creditor” with a valid claim against the lawyer’s client, the debtor.

26. In this context, it is “proper” to notice that:

- a) the only creditor that showed up at the March 8 meeting of creditors was Dr. Cordero;
- b) the only creditor who objected to the confirmation of the DeLanos’ repayment plan was Dr. Cordero;
- c) the only creditor who has ever expressed an interest in examining the DeLanos under oath is Dr. Cordero;
- d) the only creditor who caused Trustee Reiber to assert for the record in open court on March 8 that he deemed the DeLanos’ petition to have been filed in good faith but that nevertheless he could not ask the court to confirm the plan because the filing of objections to it was Dr. Cordero;
- e) therefore, the only creditor that Att. Werner could reasonably expect to show up at that “scheduled June 21, 2004 §341 Meeting” and examine the DeLanos was Dr. Cordero, a creditor, as attested to by Att. Werner’s own conduct.

D. Att. Werner also considered Dr. Cordero a creditor entitled to disclosure of financial documents of the DeLanos and thus, produced documents to him

27. Moreover, Trustee Reiber considered that Dr. Cordero’s standing as creditor was “proper” enough not only to ask questions of the DeLanos, but also to ask for documents of Att. Werner himself. In that same letter of March 12 sent to Mr. Werner, the Trustee wrote:

It would also be helpful if Mr. Cordero could transmit to Mr. Werner a list of any documents which he may desire prior to the [adjourned §341] hearing.

28. As soon as Dr. Cordero received a copy of that letter, which the Trustee had failed to send to him and in which he entitled Dr. Cordero as a “proper creditor” to communicate directly with Att. Werner to ask for documents, Dr. Cordero wrote to Att. Werner on May 23, 2004, thus:

I ask that you let me know whether you object to providing the Trustee or me any documents or, if only some, which. Please note that the DeLanos have a duty under B.C. §521(3) and (4) to cooperate with the trustee and provide him with information. If they refuse to provide any financial documents, then pursuant to B.C. §§1307(c) they risk a request of a party in interest or the U.S. trustee for conversion of their

case to a case under Chapter 7.

29. Far from objecting to Dr. Cordero's claim and the right deriving therefrom to request documents, Att. Werner provided some of the requested documents to Trustee Reiber on June 14. Then he provided some more documents directly to Dr. Cordero on July 13, 20, and 28, and August 5 and 13. However this trickling production of documents is late, incomplete, and falls utterly short of what Dr. Cordero requested and even the Court ordered, it is nevertheless a fact that Att. Werner provided them to Dr. Cordero, thereby treating him as a "proper creditor" entitled to know the financial affairs of Att. Werner's clients, the DeLanos.

E. If Att. Werner is to be assessed by the standard of a reasonable man, his conduct created in Dr. Cordero a reliance interest and his defeat of it gives rise to a right to compensation in Dr. Cordero

30. If Att. Werner holds himself out as a reasonable person, then his conduct must be assessed by the standard of a reasonable person. He cannot conduct himself in a way that leads to a reasonable conclusion, while concealing all along that there was no reason for him to conduct himself in that way and that whenever it suited him, he would change course 180 degrees to conduct himself in the diametrically opposite direction...and that therefrom would flow no adverse consequences for him at all, but rather that the adverse consequences would be borne by the people that he led to such reasonable conclusion, such as Dr. Cordero. Such conduct is deceitful, unreasonable, and willfully irresponsible.

31. Therefore, applying the standard of a reasonable man to Att. Werner's conduct of treating Dr. Cordero as a creditor leads to the reasonable conclusion that Att. Werner created in Dr. Cordero a reliance interest, namely, that Att. Werner had dropped his threshold objection to Dr. Cordero's claim and that Dr. Cordero could proceed to invest the enormous amount of effort, time, and money that he, and that Att. Werner had reason to know that Dr. Cordero, has invested in opposing the confirmation of the DeLanos' plan of repayment and investigating whether their petition was filed in good faith.

32. If it were to be held that Dr. Cordero is not a "proper creditor", then it would follow that Att. Werner engaged in conduct that was deceitful, unreasonable, and irresponsible and that misled Dr. Cordero into further investing his effort, time, and money in uselessly and wastefully pursuing an invalid claim. Thereby Att. Werner rendered himself liable to Dr. Cordero.

33. If, on the other hand, it were to be held that Dr. Cordero is indeed a "proper creditor", then in moving now on frivolous grounds to have Dr. Cordero's claim disallowed Att. Werner has engaged in legally unjustifiable conduct motivated by bad faith that renders him liable to sanctions by the court and for compensation to Dr. Cordero.

III. Att. Werner's motion to disallow Dr. Cordero's claim is motivated, not by a nonfrivolous argument, but rather by self-interest in casting from the case Dr. Cordero, the only creditor who insists on obtaining documents that threaten to expose bankruptcy fraud in the DeLanos' petition

34. Since the complaint of November 21, 2002, that gave Mr. DeLano notice of Dr. Cordero's claim against him, Mr. DeLano has known the nature of such claim. That knowledge is imputed

to Att. Werner because under FRBkrP Rule 9011(b) he had the obligation to conduct:

...an inquiry reasonable under the circumstances [before] presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper...

35. Att. Werner signed and filed the DeLanos' petition of January 26, 2004. By that time and at the initiative of the DeLanos' and with his approval, he had already listed in Schedule F Dr. Cordero's claim and marked it as "disputed". At that very point in time, he had all the elements of information that he needed to raise a motion to disallow the claim...except the one that would provide him the motive to do so.
36. By taking the initiative to list Dr. Cordero's claim and giving him notice of the DeLanos' bankruptcy, Att. Werner provided for the inclusion of that claim among the dischargeable debts if discharge was granted. By contrast, if he had not included Dr. Cordero's claim, then despite any discharge, Dr. Cordero could still have been entitled to pursue his claim against the DeLanos.
37. As he stated at the July 19 hearing, Att. Werner 'has been in this business for 28 years', and Mr. DeLano is an insider of the lending industry who has been a bank *loan* officer for 15 years. Hence, they both knew from experience that in all likelihood no creditor would show up at the meeting of creditors. And that is exactly what happened: out of 21 creditors, 20 did not show up. Yet, these are institutional creditors with the resources to pay for a representative to travel to the meeting. What is more, not even those institutional creditors that did not have to incur any appreciable travel expense because they are located right there in Rochester or Buffalo showed up! All the more likely then that a non-institutional, unsecured, non-priority creditor that lived hundreds of miles away in New York City, such as Dr. Cordero, would not travel either all the way to Rochester to attend the meeting.
38. Moreover, what would Dr. Cordero do if he attended the meeting? The petition was submitted to Trustee Reiber, who according to PACER has 3,909 open cases, and thus, hardly the time or the incentive to examine any petition carefully. In fact, Trustee Reiber had readied it for submission to the court for it to approve its plan of repayment. Given that none of the creditors had filed an objection to the plan, not even Dr. Cordero, there was every reason for Experienced Insiders Werner and DeLano to assume that the meeting of creditors would be nothing but a pre-confirmation chat between friendly people. So Att. Werner had no incentive to file a motion to disallow Dr. Cordero's claim and thereby alert him more than the indispensable minimum to the petition and the DeLano's financial affairs.
39. But the unimaginable happened: Dr. Cordero showed up and filed an objection! However, the imaginable came to the rescue: Trustee Reiber, willing to violate his duty to preside personally over the meeting of creditors, had assigned his attorney, James Weidman, Esq., to preside over it. For his part, Att. Weidman was willing to violate the law by preventing Dr. Cordero from examining the DeLanos, thereby frustrating the only purpose under the law for holding that meeting! Then Trustee Reiber and Att. Weidman vouched in open court for the good faith of the DeLanos' petition. With such advocates for his position, Att. Werner did not have to have a worry in the world.
40. The subsequent events comforted Att. Werner in that assurance, for despite complaining to the Court in his April 16 letter about the so many "pages of single-space text" that Dr. Cordero wrote asking Trustee Reiber to investigate the DeLanos or to be removed,

- a) Trustee Reiber had not intention to investigate the DeLanos;
- b) had asked not for a single document from them;
- c) when he did ask for documents, his request was just another pro-forma exercise in its scope and nature since he asked for:
 - 1) just eight out of 18 credit cards listed in Schedule F,
 - 2) for only 3 years out of 15 put in play by the DeLanos, and
 - 3) did not include any bank account statements or titles of interest in property;
- d) when the Trustee received some documents from Att. Werner on June 14, he did not even notice that they:
 - 1) were incomplete due to missing pages;
 - 2) did not consist of the statements of accounts covering from the present to three years back, instead there was inexplicably only one single statement between eight and 11 months old for each of only eight credit cards; and
 - 3) they were not examined at all so that the 232 times that, according to even incomplete Equifax credit reports, the DeLanos had been late in paying their credit cards belied Att. Werner's key statement in his April 16 letter on behalf of the DeLanos' good faith that "The Debtors have maintained the minimum payments on those obligations for more than ten (10) years".

41. Best of all, such a trustee that would not notice the obvious, let alone investigate the suspicious, would remain in his position given that both Assistant U.S. Trustee Kathleen Dunivin Schmitt and U.S. Trustee for Region 2 Deirdre A. Martini had rejected Dr. Cordero's request that he be replaced.

42. Att. Werner did not have a worry in the world...until Dr. Cordero pointed out to the Court in his Statement of July 9 that:

- 7. A closer check of those documents against the figures in the petition and the court-developed register of claims and creditors matrix points to debt underreporting, account unreporting, and unaccountability of assets in the petition. These grave defects call into question the good faith of the DeLanos' petition. They also support the reasonable inference that the DeLanos have been and are reluctant to submit more documents, let alone the complete set of requested documents, due to their awareness that more documents would only further deny such good faith and warrant an investigation into whether their petition was motivated by a fraudulent intent as part of a bankruptcy fraud scheme.

43. *The horror of it!* Dr. Cordero, who at the March 8 meeting had emphatically stated that he was not raising any charge that the DeLanos had committed fraud, was now pointing to evidence of a bankruptcy fraud scheme! Worse still, he requested the Court a detailed order directing the DeLanos to submit bank as well as debit account statements, titles to interest in specific types of property, and documents evidencing the money transfer and use concerning the loan to the son. Much worse still, he asked the Court to remove his advocate Trustee Reiber and

- 33. the court make a simultaneous referral of this case to the FBI for a

concurrent investigation aimed at determining whether there has been fraud in connection with the DeLanos' bankruptcy petition and, if so, who is involved and to what extent;

44. And at the July 19 hearing the Court did not flatly reject that request, but rather adjourned it to another hearing on August 23...and for Att. Werner it was *PANIC TIME BIG TIME!*
45. That very same day Att. Werner moved the Court to disallow the claim of such threatening a creditor as Dr. Cordero and thereby remove him from the case. He did it by cobbling together the legally untenable, ridiculous, and spurious grounds quoted in ¶1 above and discussed in Dr. Cordero's Reply of August 17 to his motion to disallow, which Reply is already incorporated herein by reference.
46. In such unseemly irresponsible haste did Att. Werner scribble his perfunctory objection that in his one single little rushed paragraph he challenged Dr. Cordero's claim by denying the liability of his client Mr. DeLano and his non-client M&T Bank to Dr. Cordero in "Premier Van Lines (01-20692)", a voluntary Chapter 11 bankruptcy petition in which neither of the three is a named party and liability among them is not an issue at all. Att. Werner got the Adversary Proceeding wrong!, which means that he did not check it with sufficient due diligence to know what he was talking about.
47. Why on earth Att. Werner, who 'has been in this business for 28 years', thought for a nanosecond that the 'grounds' that he so perfunctorily threw together in his motion could conceivably persuade the Court to disallow Dr. Cordero's claim is baffling, unless the explanation is only this: sheer Desperation!
48. After having for months treated Dr. Cordero as a "proper creditor", Att. Werner needed to have him declared 'improper' and cast out before Dr. Cordero could force the production of incriminating documents. Evidence of this is that Att. Werner and the DeLanos have disobeyed the Court's order of July 26 which required that:

The debtors are to produce any documents in their possession, regarding their credit card accounts, and provide copies to the Trustee and Dr. Cordero by the close of business on 8/11/04.

49. As of the close of business on August 20, 2004, no such documents had been produced. The debtors prefer to violate a Court order rather than to produce documents that could incriminate them in bankruptcy fraud, particularly through concealment of assets. So much for their pretense that it is Dr. Cordero's claim that is 'improper': It is their petition!
50. Att. Werner's untimely motion, already barred by laches, had nothing to do with bona fide legal considerations, and everything to do with Att. Werner's protection of his clients and his own professional survival. The motion is a thinly veiled subterfuge to eliminate the one creditor that by now they know will keep pushing for production of documents that they must keep undisclosed. Att. Werner raised that motion in bad faith! In so doing, he violated FRBkrP Rule 9011(b)(1), which provides thus:

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

51. Consequently, Att. Werner's conduct warrants that this Court impose on him, jointly and severally with his law firm, sanctions as well as the obligation to compensate Dr. Cordero for

the detriment that Att. Werner has caused him through such conduct.

IV. Request for relief

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

- a) Take judicial notice that Rule 9011 can be invoked by a pro se litigant just as sanctions can be invoked against him; cf. Moore v. Time, Inc., 180 F.3d 463, 463 (2d Cir.), cert. denied, 528 U.S. 932, 120 S.Ct. 331, 145 L.Ed.2d 258 (1999) ; and Warren v. Guelker, 29 F.3d 1386, 1390 (9th Cir., 1994).
- b) Order that Att. Werner and Boylan, Brown, Code, Vigdor & Wilson, LLP. jointly and severally compensate Dr. Cordero based on the hourly rate of \$250, which under the lodestar method to calculate attorney’s fees is applicable in the Rochester market;
- c) Take judicial notice of the reasonableness of such fee given that the Court routinely awards fees to professional persons, including attorneys, under 11 U.S.C. §330, and given the “level and skill reasonably required to prepare the application”, as provided under subsection (a)(6) thereof;
- d) Arrive at the compensation for work and expenses, including attorney’s fees, as follows:

	Description of Work Done	# of pages @ 2hrs/pg and \$250/pg	# of hours at \$250/hr	Amount
1.	(a) legal research and writing involved in preparing the following documents			
2.	Dr. Cordero’s reply of August 17, 2004, to Att. Werner’s motion of July 19, 2004	9 pages		\$4,500
3.	Dr. Cordero’s application for sanctions and compensation of August 20, 2004	13		6,250
4.	(b) Dr. Cordero’s preparation for and defense at the following hearings at the rate of \$250 per hour:			0
5.	hearing on August 25, 2004, to argue Att. Werner’s motion to dismiss Dr. Cordero’s claim		3	750
6.	hearing on October 6, 2004, to argue this motion for sanctions and compensation		3	750
7.	TOTAL			\$12,250

- e) allow Dr. Cordero to present his arguments by phone at the upcoming hearing and not cut off the phone connection to him until after the Court has declared the hearing

concluded; and not allow thereafter any other oral communication between any of the parties to this case and the Court until the next scheduled public event.

August 20, 2004

59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero

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

CERTIFICATE OF SERVICE

I, Dr. Richard Cordero, state under penalty of perjury, that I served the following above motion on the following parties:

Christopher K. Werner, Esq.
Boylan, Brown, Code, Vigdor &
Wilson, LLP
2400 Chase Square
Rochester, NY 14604
tel. (585)232-5300
fax (585)232-3528

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
New Federal Office Building
100 State Street, Room 6090
Rochester, New York 14614
tel. (585) 263-5812
fax (585) 263-5862

Ms. Deirdre A. Martini
U.S. Trustee for Region 2
Office of the United States Trustee

33 Whitehall Street, 21st Floor
New York, NY 10004
tel. (212) 510-0500
fax (212) 668-2255

Mr. George Schwergel
Gullace & Weld LLP
Attorney for Genesee Regional Bank
500 First Federal Plaza
Rochester, NY 14614
tel. (585)546-1980
fax (585)546-4241

Scott Miller, Esq.
HSBC, Legal Department
P.O. Box 2103
Buffalo, NY 14240
tel. (716)841-1349
fax (716)841-7651

Tom Lee, Esq.
Becket and Lee LLP
Agents for eCast Settlement &
Associates National. Bank
P.O. Box 35480
Newark, NJ 07193-5480

tel. (610)644-7800
fax (610)993-8493

Mr. Steven Kane
Weistein, Treiger & Riley P.S
2101 4th Avenue, Suite 900
Seattle, WA 98121
tel. (877)332-3543
fax (206)269-3489

Ms. Vicky Hamilton
The Ramsey Law Firm, P.C.
Att.: Capital One Auto Fin. Dept.
acc: 5687652
P.O. Box 201347
Arlington, TX 76008
tel. (817) 277-2011
fax (817)461-8070

Ms. Judy Landis
Discover Financial Services
P.O. Box 15083
Wilmington, DE 19850-5083
tel. (800)347-5515
fax (614)771-7839

August 20, 2004

59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero

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

UNITED STATES BANKRUPTCY COURT
COUNTY OF MONROE STATE OF NEW YORK

In re:

**DAVID G. DELANO and
MARY ANN DELANO,**

Debtors.

**RESPONSE TO CORDERO
REPLY TO OBJECTION
TO CLAIM**

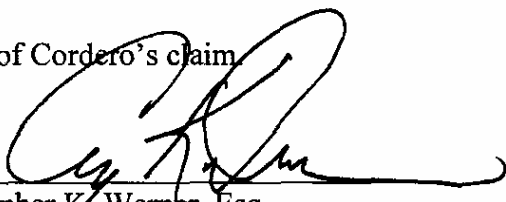
Case No. 04-20280

CHRISTOPHER K. WERNER, ESQ., of counsel to Boylan, Brown, Code, Vigdor & Wilson, LLP, in response to the Reply of Richard Cordero to Debtors' Objection to Cordero Claim states as follows:

1. Debtors have objected to the claim of Richard Cordero insofar as Cordero has set forth no basis for liability whatsoever on the part of Mr. DeLano in his Proof of Claim or attachment.
2. That Cordero has sued Mr. DeLano is clear. The basis for his action or claim against Mr. DeLano is totally lacking from his Proof of Claim, nor is there any substantive allegations of the basis for any claim against Mr. DeLano set forth in Cordero's Reply dated August 17, 2004.
3. Cordero fails to set forth any factual basis for any liability on the part of Mr. DeLano, because there is none.

WHEREFORE, Debtors pray for dismissal of Cordero's claim

Dated: August 20, 2004



Christopher K. Werner, Esq.
Boylan, Brown, Code, Vigdor & Wilson, LLP
Attorneys for Debtors
2400 Chase Square
Rochester, New York 14604
Telephone: (585) 232-5300

IN RE:

DAVID G. DeLANO and
MARY ANN DeLANO,

CASE NO. 04-20280
Chapter 13

Debtors.

INTERLOCUTORY ORDER

WHEREAS, 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"); and

WHEREAS, on May 19, 2004, Richard Cordero ("Cordero") filed a proof of claim in the DeLano Case (the "Cordero Claim"), a copy of which is attached. The Claim asserted that Cordero was a creditor of DeLano by reason of a crossclaim that Cordero had asserted against DeLano, 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"); and

WHEREAS, prior to Premier filing a Chapter 11 case, which was later converted to a Chapter 7 case, Cordero had stored various items of personal property with Premier (the "Cordero Property"); and

WHEREAS, M&T Bank held a perfected security interest in various assets of Premier, and it appears that DeLano was the M&T Bank officer in charge of the Bank's loans to Premier when the loans went into default and Premier filed for bankruptcy; and

WHEREAS, Cordero has asserted in the Premier AP that some of the Cordero Property had been lost or damaged, and he filed counterclaims and crossclaims which alleged that various defendants, including DeLano, were legally responsible and liable for all or a portion of the loss or damage; and

WHEREAS, the Court is not aware of any evidence whatsoever, produced either in the Premier AP or in the DeLano Case, that demonstrates that DeLano is legally responsible or liable for any loss or damage to the Cordero Property, if there in fact has been any loss or damage, and DeLano, through his attorney, has adamantly denied: (1) any knowledge as to whether there has been any loss or damage to the Cordero Property; and (2) any legal responsibility or liability if there has been any loss or damage; and

WHEREAS, on October 23, 2003, the Court entered an Order (the "Scheduling Order") in the Premier AP, a copy of which is attached. The Scheduling Order provides a timetable for completing discovery in the AP once all of Cordero's pending appeals of orders in the AP are finalized. However, the Order: (1) never did and does not now prevent Cordero from otherwise conducting discovery in the AP to determine: (a) whether there has been any loss or damage to the Cordero Property; (b) if there has been any loss or damage, when it occurred and under what circumstances; and (c) if there has been any loss or damage, were any of the defendants named in the AP, including DeLano, legally responsible or liable; (2) was entered before the Debtors filed their bankruptcy petition and without any indication in the AP that such a petition might be filed; and (3) never did and does not now prevent Cordero from taking any and all reasonable and necessary steps to take possession of and secure the Cordero

Property and insure that there is no further loss or damage to the Property that Cordero might be deemed to be at least in part responsible for; and

WHEREAS, Cordero has elected to be an active participant in the DeLano Case, even though he has never taken the necessary and reasonable steps to have the Court determine, either in the Premier AP or the DeLano Case, that he has a claim against DeLano, and he has asserted, among numerous other allegations, that the Debtors have committed bankruptcy fraud. In addition, Cordero has requested that the Court remove the Chapter 13 Trustee, George M. Reiber (the "Trustee"), for various reasons, including an alleged conflict of interest; and

WHEREAS, at this time the Court believes that there is insufficient evidence to demonstrate that there has been any bankruptcy fraud committed by the Debtors, but notes that the Trustee is continuing to investigate all aspects of the Debtors' relevant actions and inactions, both pre- and post-petition; and

WHEREAS, at this time the Court believes that there are no valid grounds for it to order the removal of the Trustee, and notes that the Office of the United States Trustee, which Cordero has been in frequent contact with and has served with copies of all of his pleadings, has not taken any steps to remove the Trustee; and

WHEREAS, at a July 19, 2004 hearing, in connection with: (1) the Trustee's Motion to Dismiss the DeLano Case (the "Trustee Motion to Dismiss"); and (2) Cordero's Statement in Opposition to the Motion (the "Statement in Opposition"), in which Cordero included requests for various items of relief, including the

removal of the Trustee, the Court continued the hearing on the Trustee Motion to Dismiss, the requests for relief in the Statement in Opposition and all related matters in the DeLano Case to August 23, 2004; and

WHEREAS, on July 26, 2004, the Court entered an Order, a copy of which is attached, that required the Debtors and their attorney to comply with the various directives that the Court issued from the bench at the July 19, 2004 hearing, including the production of various documents; and

WHEREAS, on July 22, 2004, the Debtors filed an Objection to the Cordero Claim (the "Claim Objection"), a copy of which is attached, that was made returnable on August 25, 2004; and

WHEREAS, on August 16, 2004, Cordero filed a Motion (the "Cordero Motion") for Removal of the Trustee and other relief that was made returnable on August 23, 2004; and

WHEREAS, at the August 23, 2004 hearing on the Cordero Motion, the Court: (1) denied the Cordero Motion without prejudice to it being renewed in the event that the Court, in the contested matter proceeding commenced by the Claim Objection (the "Claim Objection Proceeding"), determined that Cordero had an allowable claim in the DeLano Case; (2) suspended any and all Court involvement in the DeLano Case until the Claim Objection was finally determined, including ruling on the Trustee Motion to Dismiss and the relief requested in the Statement in Opposition, for the following reasons: (a) DeLano is entitled to have it expeditiously and finally determined whether Cordero has an allowable claim in the DeLano Case; (b) 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; (c) Cordero's pro se litigation in this Bankruptcy Court, both in the Premier AP and the DeLano Case, appears to have now become totally focused on collateral and tangential issues, rather than the central issues and the taking of actions that could finally resolve both the Premier AP and the question of whether Cordero has an allowable claim in the DeLano case, those being, Cordero taking the reasonable and necessary steps to: (i) take possession of and secure the Cordero Property, which no party in the Premier Case is preventing him from doing; (ii) determine whether any of the Cordero Property has been lost or damaged, and if it has, under what circumstances and the full nature, extent and monetary value of any loss and damage; and (iii) determine whether any of the defendants in the Premier AP are legally responsible or liable to Cordero for any loss or damage to the Cordero Property; (3) prosecuting and having the Court finally determine the Claim Objection will allow the Court and Cordero to focus on these critical and central issues and actions, which should be the most important issues to Cordero, who the Court believes should welcome the opportunity to take the necessary steps to take possession of and secure the Cordero Property before there is any loss or damage to it, or, if in fact there has been loss or damage, any further unnecessary loss or damage, determine whether there has been any loss or damage to the Property, and determine whether any of the defendants in the Premier Case are legally responsible and liable for any such loss or damage, which Cordero has always had the ability to do, rather than to exclusively pursue his many collateral and tangential issues; and (4) the questions of whether the Debtors are honest but unfortunate debtors who are entitled to

a bankruptcy discharge, because they have filed a good faith Chapter 13 case, is to this Court much more important to finally determine than is the Premier AP, which is fundamentally only about personal property which Cordero himself has indicated has a maximum value of \$15,000.00, especially when it is Cordero who is delaying and preventing the final resolution and determination of the issues in the Premier AP; and

WHEREAS, at the August 25, 2004 initial hearing on the Claim Objection and the Reply in Opposition filed by Cordero on August 19, 2004 (the "Reply") and a Response on behalf of the Debtors, the Court: (1) heard and rejected all of the oral arguments made by Cordero and those contained in his Reply; (2) denied the Debtors' request for an immediate determination that the Cordero Claim is disallowed; (3) determined that the parties should have until December 15, 2004 to complete any and all discovery that they deemed appropriate in connection with the Claim Objection Proceeding; (4) ordered that the Claim Objection Proceeding would be called on the Court's Evidentiary Hearing Calendar on December 15, 2004 so that an evidentiary hearing could be scheduled on that date with a day certain in January, February or March of 2005; and (5) indicated that this Order would supercede the provisions of the Scheduling Order with respect to any discovery that Cordero might feel that he needed to conduct in connection with the issue of whether DeLano had any legal responsibility or liability for any loss or damage to the Cordero Property; and

WHEREAS, in making its decisions on August 26, 2004, the Court determined that: (1) the Claim Objection was timely, there having been no waivers or laches on the part of the Debtors that would prevent the filing and Court's determination of the Claim Objection; (2) the purpose of filing the Claim Objection was not

to remove Cordero from the DeLano Case, but rather it was to have the Court determine that an individual, who the Debtors honestly believe is not a creditor, did or did not have an allowable claim in their Chapter 13 case; (3) the Trustee, as he indicated once again on August 26, 2004, would do a thorough investigation of the DeLano Case, including whether there was any bad faith or bankruptcy fraud; (4) the Court would ultimately only confirm a Chapter 13 plan in the DeLano Case, as it does in all Chapter 13 cases, if it could make and did make all of the required findings under Section 1325; (5) the Court had no animosity towards Cordero; and (6) proceeding in this fashion in the DeLano Case was within the sound discretion of the Court and in the interests of equity, justice and judicial economy in the Premier AP and the DeLano Case.

It is therefore **ORDERED**, that:

1. The Trustee Motion to Dismiss, the relief requested in the Statement in Opposition and the Cordero Motion are all denied without prejudice to being renewed in the event that the Court determines in the Claim Objection Proceeding that Cordero has an allowable claim in the DeLano Case;

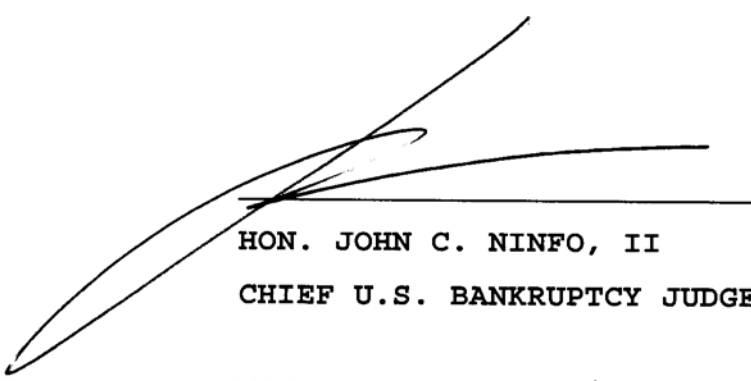
2. The Court's involvement in the DeLano Case is in all respects suspended, except for determining the Claim Objection, until the Court has made its final determination in the Claim Objection Proceeding, and any and all appeals of its final determination are finalized;

3. The Debtors and Cordero shall have until December 15, 2004 to complete any and all discovery that they may wish to conduct in connection with the Claim Objection Proceeding; and

4. The Claim Objection Proceeding shall be called on the Court's December 15, 2004 Evidentiary Hearing Calendar at 9:00 a.m. so that an evidentiary hearing could be scheduled on that day with a day certain in January, February or March of 2005, depending upon the Court's schedule and its availability.

SO ORDERED.

DATED: August 30, 2004



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





**BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP**
ATTORNEYS AT LAW

September 1, 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:

Enclosed please find copies of statements we received from the Discover Financial Services with respect to the above Debtors. As always, thank you for your continuing patience in this matter.

Very truly yours,

BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP

Tracy R. Miller

Legal Assistant to Christopher K. Werner

/trm
Enclosures

cc: Richard Cordero (*w/ enclosures*)
David G. and Mary Ann DeLano

September 9, 2004

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

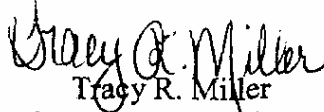
Re: David G. and Mary Ann DeLano, Case No. 04-20280

Dear Mr. Reiber:

Enclosed please find copies of statements we received from the Chase Manhattan Bank with respect to the above Debtors. As always, thank you for your continuing patience in this matter.

Very truly yours,

BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP


Tracy R. Miller

Legal Assistant to Christopher K. Werner

/trm
Enclosures

cc: Richard Cordero (*w/ enclosures*)
David G. and Mary Ann DeLano

BECKET & LEE LLP
ATTORNEYS AT LAW

MILTON BECKET*
ALANE A. BECKET*
JOHN D. SHEEHAN*
GILBERT B. WEISMAN* □

KENNETH W. KLEPPINGER*
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SARAH E. PUGH
RHONDA E. ROSENBLUM

THOMAS A. LEE "II" □
SANDRA K. CURTIN*
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16 GENERAL WARREN BOULEVARD
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MALVERN, PA 19355

(610) 644-7800
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SENDER'S EXT. _____

* A.S.O MEMBER N. BAR
□ A.S.O MEMBER FL BAR
- A.S.O MEMBER CA BAR

September 7, 2004

Christopher K. Werner, Esquire
2400 Chase Square
Rochester, NY 14604

**Re: David G. and Mary Ann DeLano
eCAST Settlement Corporation, successor to Chase Manhattan Bank USA, NA
Account Number: 4102008240021537**

Dear Mr. Werner:

As you know, Becket & Lee LLP serves as legal counsel to eCAST Settlement Corporation who has purchased the above-referenced account from Chase Manhattan Bank. Pursuant to your request, enclosed, please find documentation related to this account.

Should you have any questions, do not hesitate to contact our office.

Very truly yours,

BECKET & LEE LLP

By:


Jon J. Brennan, Paralegal

Enclosure:

/jjb

Dr. Richard Cordero

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

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

September 22, 2004

George M. Reiber, Esq.
Chapter 13 Trustee
South Winton Court
3136 S. Winton Road, Suite 206
Rochester, NY 14623

faxed to 585-427-7804

Re: Section 341 examination of the DeLanos, dkt. no. 04-20280

Dear Mr. Reiber,

Further to your request that I propose dates on which to examine the DeLanos, kindly note the following that I propose:

I. Preferred	II. Acceptable	III. If otherwise necessary
Tuesday, October 19, 2004	Tuesday, October 26, 2004	Wednesday, November 3, 2004
Wednesday, October 20, 2004	Wednesday, October 27, 2004	Thursday, November 4, 2004
Thursday, October 21, 2004	Thursday, October 28, 2004	

Please note that I must receive actual notice of the date agreed upon at least 15 days before the day of examination. To that end, you can call me to let me know and then mail the letter of confirmation unless there is ample time for such letter to arrive.

As discussed in my Memorandum of March 30, 2004, there is no basis in law or in fact to further protect the DeLanos from examination by limiting the time therefor. Indeed, your attorney, James Weidman, Esq., already protected them by unlawfully terminating the meeting of creditors on March 8, after I, the only creditor present, had asked only two questions. On the contrary, there are solid grounds for providing for an examination without any limit on its duration:

- a) Section 341(c) of 11 U.S.C. provides for “any final meeting of creditors”, thereby allowing for a series of any number of such meetings, which makes it inconsistent to limit any one of them arbitrarily to any fixed amount of time; this is particularly so given that...
- b) The scope of examination, as provided under F.R.Bkr.P. Rule 2004(b), is very ample:

Rule 2004(b) The examination of an entity under this rule or of the debtor under §343 of the Code may relate only to

- [1] the acts,
- [2] conduct, or
- [3] property or to
- [4] the liabilities and
- [5] financial condition of the debtor, or to
- [6] **any matter which may affect** the administration of the debtor’s estate, or to
- [7] the debtor’s right to a discharge. In...an individual’s debt adjustment case under chapter 13...the examination may also relate to
- [8] the operation of any business and the desirability of its continuance,
- [9] the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and
- [10] the consideration given or offered therefor, and
- [11] **any other matter relevant to** the case or to
- [12] the formulation of a plan. [format and emphasis added]

- c) The bankruptcy of a 15 year bank loan officer is in itself highly suspicious and warrants strict scrutiny.
- d) Such suspicion is heightened by the incongruous information that the DeLanos provided in their Schedules.
- e) My written objections of March 4 laid out detailed reasons, supported by numerical computations, for examining the DeLanos in depth.
- f) As a result of Mr. Weidman unlawfully preventing me from examining them at the March 8 meeting, the DeLanos have unduly had the opportunity to examine my written objections for months and prepare their answers accordingly.
- g) 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.

Therefore, I request that the meeting begin at 9:30 a.m. and run until 5:00 p.m., with a one hour lunch break, and that, if necessary for further examination, the meeting may be continued the following day.

In this context, it may be noted that the court's order of August 30 does not prevent you, as the trustee in this case, from further examining the DeLanos, in particular, or discharging any of your other duties as trustee, in general. On the one hand, the court does not have the power to do so and, on the other hand, §341(c) expressly provides that

§341(c) The court may not preside at, and may not attend, any meeting under this section including any final meeting of creditors

It follows that if the court is forbidden to attend such meeting, it lacks authority to prevent it from being held at all.

I look forward to hearing from you at your earliest convenience. Hence, I would appreciate it if you would call me to let me know your initial reaction.

Sincerely,

Dr. Richard Cordero

Dr. Richard Cordero

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

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

September 27, 2004

Att.: Arthur Heller, Esq.
Ms. Roseann B. MacKechnie
Clerk of Court
U.S. Court of Appeals for the Second Circuit
40 Foley Square
New York, NY 10007

faxed to (212)857-8684

In re Premier, docket no. 03-5023
[In re DeLano, docket no. 04-20280, WBNY]

Dear Ms. MacKechnie,

Last September 9, I filed a motion to quash the Order of August 30, 2004, issued by U.S. Bankruptcy Judge John C. Ninfo, II, to sever a claim from the Premier case on appeal in this Court to try it in another bankruptcy case, namely, In re DeLano, docket no. 04-20280, WBNY.

That Order requires me to undertake and complete by next December 15, discovery from Mr. DeLano, a party in the Premier case who resides in Rochester, NY, for the purpose of determining the DeLanos' motion to disallow my bankruptcy claim against them. Apart from the issues raised in my motion concerning the Order's unlawfulness and bad faith, there is the practical issue of the enormous amount of effort, time, and money as well as tremendous aggravation that compliance will cause me. Compounding the disregard for legality is the fact that the Order suspends all proceedings in the DeLano case until the motion to disallow is determined. Moreover, Judge Ninfo stated at the hearing on August 25, that no motion or paper that I may submit would be acted upon. Thus, it would be futile for me to apply to Judge Ninfo to stay his Order only to wait for months for a decision that the Judge already stated will not be forthcoming.

Consequently, I requested this Court to either stay the Order or treated my motion to quash it on an emergency basis so that I may not be forced to comply with the Order as a matter of precaution only to find out that the Order is quashed and my toil was unnecessary. To date, no action has been taken on my motion other than to file it.

Therefore, I respectfully request that the Court stay the Order or treat my motion on an emergency basis and that in either case if the motion is denied the Court provide for the 107 days for compliance under the Order –from August 30 to December 15- to run from the date of denial.

I also reiterate my request that the Premier case and the case from which it derives, namely, Pfuntner v. Gordon et al., docket no. 02-2230, WBNY, together with the DeLano case be referred under 18 U.S.C. §3057(a) to the U.S. Attorney General and the FBI Director so that they may appoint officers unacquainted with those in Rochester to investigate into the judicial misconduct and bankruptcy fraud scheme evinced by those cases, as shown in my briefs and motions on appeal. I submit that the result of such investigation could provide valuable insight into the workings of the court in Rochester and its relation to the local parties that can enlighten this Court, in particular, in deciding the motion to quash and, in general, in restoring not only the appearance of justice to the proceedings in that court, but also respect for the rule of law.

Sincerely,

Dr. Richard Cordero



**BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP**
ATTORNEYS AT LAW

September 28, 2004

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

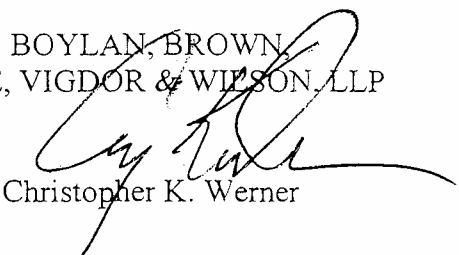
Re: David G. and Mary Ann DeLano, Case No. 04-20280

Dear Mr. Reiber:

We are in receipt of Mr. Cordero's letter of September 22, 2004, suggesting various examination dates for Mr. and Mrs. DeLano. This appears to relate only to examination in the context of a continued 341 Hearing. Our understanding of the Court's current Order is that all such proceedings whatsoever are suspended in this matter. Therefore, we are not submitting a response to the dates suggested by Mr. Cordero unless and until you direct us to do so.

Very truly yours,

BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP



Christopher K. Werner

CKW/trm
cc: Richard Cordero

2400 Chase Square • Rochester, New York 14604 • 585-232-5300 • FAX: 585-232-3528
60-70 South Main Street, Suite 250 • Canandaigua, New York 14424 • 585-396-0400 • FAX: 585-232-3528
<http://www.boylandbrown.com>

D:286

Att. Werner' letter of 9/28/04 to Trustee Reiber re no submitting dates for DeLanos' §341 examination

Dr. Richard Cordero

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

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

September 29, 2004

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

Premier, **docket no. 03-5023**

faxed to (585) 232-3528

Re: David and Mary Ann DeLano, Bkr. dkt. no. 04-20280

Dear Mr. Werner,

Without prejudice to my motion of September 9, in the Court of Appeals for the Second Circuit to quash the order of Judge John C. Ninfo, II, of August 30, requiring me to take discovery of Mr. David DeLano as part of the proceedings to determine your motion of July 19, 2004, to disallow my claim against the DeLanos; **without prejudice** to my motion of August 17, in opposition to your July 19 motion to disallow my claim; and **without prejudice** to my motion of August 20, for sanctions on, and compensation from, you and your law firm for violation of FRBkrP Rule 9011(b), but mindful of the requirements of Judge Ninfo's August 30 order, I am hereby requesting discovery as follows.

As to the sanctions and compensation motion, which I indicated that I would notice for October 6, 2004, please also note the following. Judge Ninfo stated in his August 30 order that all proceedings in the DeLano case are suspended until the final determination of your motion to disallow my claim, thereby confirming what he said at the August 25 hearing that until that motion has been determined he will not act upon any motion or other paper that I file. Therefore, I give notice hereby that I will submit that motion, not now, but rather when it can be acted upon, particularly if the time comes when it can be decided by another judge who is not biased against me and has due regard for the law, the rules, and the facts.

A. Scope of discovery and notice and opportunity for production

1. In determining the scope of discovery, I rely on FRBkrP Rule 7026 and FRCivP Rule 26(b)(1), which provides that

Parties may obtain discovery regarding **any matter**, not privileged, that is relevant to the claim or defense of any party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information **need not be admissible** at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. (emphasis added)

2. This description of the broad scope of discovery is enhanced by the Advisory Committee Explanatory Statement on the mechanics of discovery that:

A showing of good cause is no longer required for discovery of documents and things and entry upon land (Rule 34).

3. The documents requested below have already been requested but for the most part not produced in the following documents:

- 1) Dr. Cordero's Objection of March 4, 2004, to Confirmation of the DeLanos' Plan
- 2) Dr. Cordero's Memorandum of March 30, 2004, ¶¶80.b)
- 3) Dr. Cordero's letter of April 15, 2004, to Trustee Reiber, ¶¶6, with copy to Att. Werner
- 4) Trustee George Reiber's letter of April 20, 2004, to Att. Werner
- 5) Dr. Cordero's letter of April 23, 2004, to Trustee Reiber with copy to Att. Werner
- 6) Dr. Cordero's letter of May 16, 2004, to Trustee Reiber, ¶¶2&7, with copy to Att. Werner
- 7) Trustee Reiber's letter of May 18, 2004, to Att. Werner
- 8) Dr. Cordero's letter of May 23, 2004, to Att. Werner
- 9) Dr. Cordero's letter of June 8, 2004, to Trustee Reiber with copy to Att. Werner
- 10) Trustee Reiber's motion to dismiss of June 15, 2004, for the DeLanos' "unreasonable delay" in producing the requested documents
- 11) Dr. Cordero's requested order for document production in his Statement of July 9, 2004
- 12) Dr. Cordero's document production order proposed on July 19, at Judge Ninfo's request at the hearing on July 19, 2004
- 13) Judge Ninfo's order of July 26, 2004
- 14) Dr. Cordero's motion of August 14, 2004, for docketing, issue of production order, etc.

4. It follows that the DeLanos have had enough notice and opportunity to produce the requested documents. Likewise, these are documents "regarding any matter, not privileged, that is relevant to the claim or defense of any party", such as my claim against both the DeLanos, against Mr. DeLano in particular, and my defense against your motion to disallow my claim. Hence, they are within the scope of Rule 26.

B. General remarks

5. The DeLanos must be presumed, especially in light of Mr. DeLano's career as a bank loan officer for 15 years, to have systematically saved and archived financial documents rather than systematically destroyed or otherwise disposed of them. Indeed, given Mr. DeLano's long professional experience in doing due diligence to request from his borrowing clients documents and analyze those produced and statements made by them, it should be a matter of routine for him to provide the documents and information requested below. As for Mrs. DeLano, whose professional career has been as a specialist in Xerox machines, she can be expected to show a high degree of attention to technical details and accuracy in following a series of steps. Moreover, in providing what is here requested, they can count on Att. Werner's '28 years' experience in this business'. For my part, I will rely on the reasonable presumption of the DeLanos' competence to meet this request and on Att. Werner's duty to comply with the requirement under FRBkrP Rule 9011(b) that

by signing, filing, submitting, or later advocating...[any] paper [he] is certifying that to the best of [his] knowledge, information, and belief,

formed after an inquiry reasonable under the circumstances...the allegations and other factual contentions have evidentiary support.

6. Hence, it is requested that they:

- a. produce within the response period of 30 days and without waiting to receive any documents that they may have to request;
- b. all the documents that they have **in their possession**, whether in their principal or secondary residence, a storage facility, a safe box, or the place of an entity under their control, and
- c. all the information available to them;
- d. show due diligence in requesting by subpoena from any entities, whether natural persons or institutions, any documents that they may not have so that within the response period they can reasonably expect to receive and produce either the requested documents or reply letters from such entities;
- e. provide the information requested, for the sake of clarity of presentation, complete-ness, and ease of use, in the tabular form in which it is requested, or identify the information by using the column and row identifiers provided in the tables;
- f. mark on the appropriate cells in the tables or indicate using their identifiers whether the documents requested;
- g. have already been produced to either Trustee Reiber (TrR), Dr. Cordero (DrC), or both (R&C) so that their production need not have to be duplicated;
- h. are being produced in reply to this request; or
- i. if they are not being produced, explain why.

C. Documents and information requested

7. The monthly statements of the 18 unsecured institutional creditors listed in Schedule F and the two secured creditors listed in Scheduled D since the dates of account opening or credit extension to date.
8. The current balance of those 20 accounts.
9. It should be noted how few of those statements have been produced despite their having been requested so long ago and so many times since, as shown in ¶3 above. In addition, the period covered by those produced is significantly shorter than the period that the DeLanos themselves invoke in Schedule F, where they state 15 times that their debts trace back to “1990 and prior Credit card purchases”. “Prior”, of course, allows for the possibility that those purchases have been made since 1989 as well as since 1980 or since 1970 or earlier.¹

¹ Consequently, the covered period referred to hereinafter is the period during which the DeLanos have accumulated their debts. Thus, it stretches from the opening of any account in question, whether in both or either of their names, to date.

Table I. The DeLanos' Creditors in Schedules F (1-19) and D (20-21) and the Statements so far Produced (on given dates) and Not Produced (with cells in blank)

iden.	I.a	I.b	I.c	I.d	I.e	I.f
	Creditors' names (in the order in which they appear in their respective Schedules)	Account numbers	Bill or closing dates covered by statements	Date of cover letter from Att. Werner to Trustee Reiber	Date of receipt by Dr. Cordero	Current balance
1.	AT&T Universal	5398-8090-0311-9990				
2.	Bank of America	4024-0807-6136-1712				
3.	Bank One Cardmember Services	4266-8699-5018-4134	09/13/03 12/12/03	August 5, 04	August 04	
4.	Bank One Cardmember Services	4712-0207-0151-3292	01/17/01 12/17/02	August 13, 04	August 16, 04	
5.	Bank One Cardmember Services	4262-519-982-211	01/12/01 09/12/03 01//12/01 12/10/01	August 5, 04 August 13, 04	August 04 August 16, 04	
6.	Capital One	4388-6413-4765-8994				
7.	Capital One	4862-3621-5719-3502				
8.	Chase	4102-0082-4002-1537	5/10/01 3/11/04	September 9, 04	September 13, 04	
9.	Citi Cards	5457-1500-2197-7384				
10.	Citi Cards	5466-5360-6017-7176				
11.	Discover Card	6011-0020-4000-6645	04/16/01 04/30/04 01/16/01 12/16/03	July 28, 04 September 1, 04	August 04 September 3,04	
12.	Dr. Richard Cordero	n/a				
13.	Fleet Credit Card Service	5487-8900-2018-8012				
14.	HSBC Master Card/Visa	5215-3125-0126-4385				
15.	MBNA America	4313-0228-5801-9530	04/13/01 04/14/04	July 12, 04	July 16, 04	
16.	MBNA America	5329-0315-0992-1928	04/09/01 04/08/04	July 12, 04	July 16, 04	
17.	MBNA America	749-90063-031-903				
18.	Sears Card	34-80074-3-0593 0				

iden.	I.a	I.b	I.c	I.d	I.e	I.f
	Creditors' names (in the order in which they appear in their respective Schedules)	Account numbers	Bill or closing dates covered by statements	Date of cover letter from Att. Werner to Trustee Reiber	Date of receipt by Dr. Cordero	Current balance
19.	Wells Fargo Financial	1772-0544				
20.	Capital One Auto Finance	568 7652				
21.	Genesee Regional Bank					

10. All credit reports issued by Equifax, Experian, TransUnion, or any other similar reports that the DeLanos have received during the covered period aside from those already produced.

Table II. Credit Bureau Reports for the DeLanos so far Produced

iden.	II.a	II.b	II.c	II.d
	Credit bureau	Date of issue	Date of cover letter from Att. Werner to Trustee Reiber	Date of receipt by Dr. Cordero
1.	Equifax	April 26, 04 Mr.D ² May 8, 04 Mrs.M incomplete reports April 26, 04 Mr.D May 8, 04 Mrs.M May 8, 04 Mrs.M July 23, 04 Mr.D July 23, 04 Mrs.M	June 14, 04 July 20, 04 July 20, 04 August 5, 04 August 5, 04 August 5, 04	June 04 July 04 July 04 August 04 August 04 August 04
2.	Experian	July 26, 04Mr.D July 26, 04 Mrs.M	August 5, 04 August 5, 04	August 04 August 04
3.	TransUnion	July 26, 04Mr.D July 26, 04 Mrs.M	August 5, 04 August 5, 04	August 04 August 04

11. The monthly statements of each other account or asset, including an interest in either of them, held by the DeLanos, whether opened at a financial institution or a retailer of goods or services, during the covered period, and whether held by both or either of the DeLanos or by entities whom they control, such as their children, relatives, friends, tenants, their attorney or representative, or holders of trusts for them.

² Mr.D= credit report for Mr. David DeLano; Mrs.M=credit report for Mrs. Mary Ann DeLano.

**Table III. Accounts and Assets Held by the DeLanos
During the Covered Period but not Listed in their Bankruptcy Petition**

iden.	III.a	III.b	III.c	III.d	III.e	III.f	III.g	III.h	III.i
	Types of accounts	Account numbers	Names of account-holder(s)	Names and addresses of the institutions issuing the accounts	Dates of account opening	Balances as of date of replying to this request	If closed, dates of account closing	Titles, Deeds, Other instruments ³	Account statements ⁴ since opening date and cancelled checks
1.a	Credit card accounts								
1.b									
2.a	Debit card accounts								
2.b									
3.a	Checking accounts								
3.b									
4.a	Savings accounts								
4.b									
5.a	Brokerage accounts								
5.b									

12. State the name, address, and phone number of the appraiser of the property at 1262 Shoecraft Road, Webster, NY, and produce a copy of the documents referred to in Schedule D concerning:
 - a. the appraisal of such property;
 - b. the mortgage of such property; and
 - c. the auto lien(s).

13. The documents supporting the statement that Mr. DeLano made under oath to James Weidman, Esq., attorney for Trustee George Reiber, at the meeting of creditors held on March 8, 2004, to the effect that the DeLanos had incurred most of their credit card debts when Mr. DeLano lost his job and had to take a deep pay cut subsequently; and reiterated by Att. Werner in his Statement to the court of April 16, 2004, that:

³ The instruments to be **listed and produced** here are those attesting to an interest in ownership or the right to the enjoyment, whether full or part time, of real estate, mobile homes, caravans, other vehicles, etc., whether in the State of New York or elsewhere.

⁴ The statements must have the sections, without redaction, that state the names of the entities from whom purchases of goods or services were made and the amounts and dates of the purchases.

6. As indicated in the Debtors' petition, the Debtors' financial difficulties stem from over ten (10) years ago, relating to a time when Mr. DeLano lost his job at First National Bank and had to take a subsequent position at less than half of his original salary. As a result, the Debtors were unable to keep pace on various credit card obligations which they had incurred in their children's educations [sic] and other living expenses. The Debtors have maintained the minimum payments on those obligations for more than ten (10) years. Less than \$4,000 of Debtors' total obligations relate to any current period.

Table IV. Mr. DeLano's Employment History

iden.	IV.a	IV.b	IV.c	IV.d	IV.e	IV.f	IV.g	IV.h	IV.i
	Jobs (by order or place of work)	Periods of employment	Titles of positions and salaries and bonuses	Addresses and phone numbers of the sites worked at and headquarters	Names of Mr. DeLano's supervisors for each of the three levels above him	Names of Mr. DeLano's subordinates, including secretaries and assistants	Reasons for leaving or losing jobs	Produce job performance evaluations, including any reprimands, admonitions, censures, commendations, and promotions	Pay stubs; Bank statements where pay checks were deposited; And 1040 IRS forms
1.	First job								
2.	Each other job								
3.	First National Bank								
4.	Each other job								
5.	M & T Bank								
6.	Current job								

Table V. The DeLanos' Expenses for their Children's Education

iden.	V.a	V.b	V.c	V.d	V.e	V.f	V.g	V.h	V.i	V.j
	Names of the DeLano's children and years of birth	Names and addresses of educational institutions	Academic years	Grades, faculties, or departments where enrolled	Course of study	Cost of tuition	Cost of books	Cost of room and board	Cost of transportation	Produce bills or receipts, and credit card statements with description of charge, or cancelled checks

1.										
2.										
etc.										

Table VI. The DeLanos' Loans to their Children

iden.	VI.a	VI.b	VI.c	VI.d	VI.e	VI.f	VI.g	VI.h	VI.i
	Names of children	Dates of loans And amounts of loans	Instruments of loans; or if such instruments <i>never</i> existed Terms of verbal agreements And Acknow- ledgment of receipt of money	Purposes of loans	Names of institutions from which lent money was withdrawn And Copy of both sides of Order of withdrawal, Cancelled check, or Instrument of transfer to child or his or her account	Names of institutions where lent money was deposited	Amounts of installments And Amounts and dates of installment payments actually made	Outstanding balances And Current arrangement for repayment	Documents confirming that money was used for stated purposes, e.g. Title , Deed , Other instruments ⁵ Or Statement that it was used for what other purpose
1.									
2.									
etc.									

14. State the whereabouts or disposition of the following earnings and produce supporting documents:

Table VII. The DeLanos' Earnings for the 2001-03 Years

iden.	VII.a	VII.b	VII.c	VII.d
1.	2001	2002	2003	Total
2.	\$91,229	91,655	108,585	\$291,470
3.	In the 1040 IRS form	In the petition's Statement of Financial Affairs		

15. Copy of all files held by Mr. DeLano or an institution, such as Manufacturers & Traders Trust Bank (M&T Bank), on or relating to:

- a. Mr. David Palmer;

⁵ See footnote 3, supra.

- b. any business in which Mr. Palmer or an associate, employer, or relative of his had or has an interest, such as Premier Van Lines, Inc.; and
- c. any personal bankruptcy of Mr. Palmer or of an associate, employer, or relative of his or of a business in which any of them had or has an interest.

Table VIII. Mr. DeLanos' Borrowing Clients since January 1, 1999

iden.	VIII.a	VIII.b	VIII.c	VIII.d	VIII.e	VIII.f	VIII.g
	Names, addresses, and phone numbers of clients	Names and addresses of lending institutions	Amounts of borrowing	If voluntary or involuntary bankruptcy filed by or against client: filing date and provision of law invoked	Federal or state courts where filed and case numbers	Amounts owed at filing time	Disposition of cases
1.							
2.							
etc.							

- 16. State whether the DeLanos have any insurance, surety, or indemnifier that may be called upon to pay any judgment against both or either of them and, if so, provide supporting documents.
- 17. Copies of all subpoenas issued in connection with this request and of all replies from the entities to whom they were issued.
- 18. Any other document or information reasonably related to the subject matter of this request or the cases or motions concerning it; if in doubt, produce it or disclose its existence or subject matter.

Sincerely,

Dr. Richard Cordero

GEORGE M. REIBER
CHAPTER 13 TRUSTEE
SOUTH WINTON COURT
3136 SOUTH WINTON ROAD
ROCHESTER, NEW YORK 14623

GEORGE M. REIBER
JAMES W. WEIDMAN

716-427-7225
FAX 716-427-7804

October 1, 2004

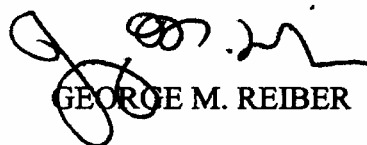
Dr. Richard Cordero
~~59 Crescent Street~~
Brooklyn, NY 11208

Dear Dr. Cordero,

Re: David & Mary Ann Delano BK 04-20280

This is in response to your fax dated September 22, 2004. Pursuant to Judge Ninfo's Bench Order, I do not believe I am authorized to conduct any further proceedings in this matter until the allowability of your claim is determined by the Court. Therefore I do not propose to schedule any examinations until the Court advised me to continue.

Very truly yours,


GEORGE M. REIBER

GMR/mb
XC: Kathleen Dunivin Schmitt, Esq.
Christopher Werner, Esq.

GEORGE M. REIBER
CHAPTER 13 TRUSTEE
SOUTH WINTON COURT
3138 SOUTH WINTON ROAD
ROCHESTER, NEW YORK 14623

GEORGE M. REIBER
JAMES W. WEIDMAN

585-427-7225
FAX 585-427-7804

October 1, 2004

Arthur Heller, Esq.
Attn: Ms. Roseann B. MacKechnie
Clerk of Court
US Court of Appeals for the Second Circuit
40 Foley Square
New York, NY 10007

Dear Ms. MacKechnie,

Re: David & Mary Ann Delano BK 04-20280, WDNY

I am in receipt of a fax copy of a letter sent to you dated September 27, 2004, by Dr. Richard Cordero regarding the above-entitled matter. I am not aware that any Notice of Appeal has been filed with the Second Circuit yet. Nevertheless, commenting on his letter to you, I would state that I do not believe that Judge Ninfo's Bench Order is appealable because it is not a final Order of the Court.

Very truly yours,

GEORGE M. REIBER

GMR/mb

XC: Honorable John C. Ninfo II, Bankruptcy Judge
Kathleen Dunivin Schmitt, Esq., Assistant US Trustee
Christopher Werner, Esq.
Dr. Richard Cordero ✓

Dr. Richard Cordero

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

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

October 12, 2004

George M. Reiber, Esq.
Chapter 13 Trustee
South Winton Court
3136 S. Winton Road, Suite 206
Rochester, NY 14623

Docket no. 03-5023

Re: Section 341 examination of the DeLanos, dkt. no. 04-20280

Dear Mr. Reiber,

I am in receipt of your letters of October 1 to the Court of Appeals for the Second Circuit and to me.

I. On your October 1 letter to the Court of Appeals

In that letter, addressed to Clerk of Court Roseann B. MacKechnie, you state that:

I am in receipt of a fax copy of a letter sent to you dated September 27, 2004, by Dr. Richard Cordero regarding the above-entitled matter. I am not aware that any Notice of Appeal has been filed with the Second Circuit yet. Nevertheless, commenting on his letter to you, I would state that I do not believe that Judge Ninfo's Bench Order is appealable because it is not a final Order of the Court.

You have not received a Notice of Appeal because there was no need to file any, so none has been filed. By contrast, you must be aware because you attended the hearings in the DeLano case on August 23 and 25 before Bankruptcy Judge John C. Ninfo, II, that I stated that Debtor David DeLano is a third party defendant in *Pfuntner v. Gordon et al.*, docket no. 02-2230, and that I appealed that case in **April of last year** to the Court of Appeals, where that case is still pending sub nome *In re Premier*, docket no. 03-5023.

What I did recently, on September 9, was file a **motion** with the Court of Appeals to quash the Order of Judge Ninfo of August 30, 2004. That Order arbitrarily disrupts the appellate process by arrogating the power to sever Mr. DeLano from the *Pfuntner* case and to require me to take discovery of him so that he can remove me as a creditor from his case by disallowing my claim –included by the DeLanos themselves in their petition of January 26, 2004– through his motion to disallow of July 19, which is untimely and barred by laches, among other defects.

Moreover, you should have noticed that we are not dealing with a “Bench Order”, as you referred to in both your October 1 letters, but rather with the written order of August 30, by Judge Ninfo, which was filed in the DeLano docket. One must assume that you were served with a copy of it and read it. By contrast, I am certain and even certified that I served you with a copy of my motion to quash. It clearly states in its front page, at the top, just its second line:

Motion: to quash the Order of August 30, 2004, of WBNY J. John C. Ninfo, II, to sever claim from this case

Once more you show inattention to detail. It must have confused anybody in the Court of Appeals and elsewhere who read your letter. In addition, it drags my name into your confusion and makes me appear as if I had failed to serve my motion on you. I resent that.

II. On your October 1 letter to me

You state in your other letter of October 1, that:

This is in response to your fax dated September 22, 2004. Pursuant to Judge Ninfo's Bench Order, I do not believe I am authorized to conduct any further proceedings in this matter until the allowability of your claim is determined by the Court. Therefore I do not propose to schedule any examination until the Court advised [sic] me to continue.

That is a most extraordinary statement. To begin with, my letter was not pursuant to any "Bench Order". It clearly states:

In this context, it may be noted that **the court's order of August 30** does not prevent you, as the trustee in this case, from further examining the DeLanos, in particular, or discharging any of your other duties as trustee, in general. (emphasis added)

Furthermore, your authority to perform your duties as a trustee does not emanate from the court, but rather from the Bankruptcy Code. Indeed, under 11 U.S.C. §§1302(b)(1) and 704(4), you, as the trustee, have the duty "to investigate the financial affairs of the debtor". Additionally, §§1302(b)(1) and 704(7) require you to "furnish such information concerning the estate and the estate's administration as is requested by a party in interest". Those duties do not depend on any grant of authority from the court. They are imposed on the trustee by the law of Congress, which provided as follows:

§704. Duties of trustee

The trustee **shall**- (emphasis added)

You do not have the option to investigate at the will of the court; you have the duty to investigate and do so specifically at the request of a party in interest, which I certainly am. As I already noted in my letter of September 22, the court's Order of August 30 does not prevent you, as the trustee in this case, from discharging any of your duties as trustee. If anything, it requires me to engage in discovery.

Hence, the court's August 30 Order does not prevent you from examining the DeLanos. What is more, the court does not even have the authority to do so had it tried to. Once again, it is Congress that imposed the duty to provide for that examination by providing as follows:

§341. Meetings of creditors and equity security holders

(a) Within a reasonable time after the order for relief in a case under this title, **the United States trustee shall** convene and preside at a meeting of creditors. (emphasis added)

The duty to hold a §341 meeting is imposed by the Legislative Branch of government directly on the United States trustee, who is a member of the Executive Branch. The judge, as a member of the Judicial Branch, cannot roughride his way into those branches to invalidate a mandate from the legislator and prevent a member of the Executive from carrying out his duty. On the contrary, §341(c) expressly provides that

§341(c) The court may not preside at, and may not attend, any meeting under this section including any final meeting of creditors.

It follows that if Congress forbade the court to attend such meeting, the court lacks authority to prevent it from being held at all. As a matter of fact supporting that reasoning, Congress did not give the court authority to prevent a §341 meeting of creditors.

On the contrary, Congress considered such meetings so important for the operation of its bankruptcy mechanism that it imposed the duty to hold them directly on the United States trustee, not just on the trustee. So, if you are allowed to preside over such meetings, it can only be by delegation. What the court does not have the authority to forbid the principal to do, it cannot prevent his agent from doing. You do not take your marching orders from the court. Instead, you follow the United States trustee as she goes about executing an order from Congress.

At least, that is what you are supposed to do. But you already violated your orders under C.F.R. §58.6(a)(10) by not conducting personally the §341 meeting held on March 8, 2004, to which the DeLanos were summoned to be examined by the creditors, including me. You off-loaded your duty on your attorney, James Weidman, Esq. He repeatedly asked *me* how much I knew about the DeLanos having committed fraud and when I did not reveal anything, prevented me from examining the DeLanos. That was an unlawful act for Att. Weidman to do, yet you ratified it in open court and for the record that very same day and have ever since defended that act.

It is reasonable to assume that the same reason that motivated both of you not to allow me, the only creditor present at that meeting, to examine the DeLanos, motivates you now to grab the court's Order of October 30 as an excuse not to hold that meeting. The phrase 'grab the order as an excuse' is justified by the fact that you refuse to hold that meeting simply because you "believe" that you lack authority to hold it, whereby you do not quote what passage of the Order you are referring to, you disregard the legal citations and arguments that I presented to you in my September 22 letter, and you certainly present no argument to support your 'belief'.

As I pointed out before, you have a conflict of interest: If through a diligent and effective investigation of the DeLanos or at their §341 meeting evidence were to come out showing that the DeLanos' petition was meritless, let alone fraudulent, then you would be investigated in turn for having readied its plan of debt repayment for confirmation by Judge Ninfo.

Therefore, I respectfully request that:

1. you disqualify yourself from the DeLano case; otherwise,
2. take the necessary steps to hold a §341 meeting of the DeLanos on the following dates:

Tuesday, October 26, 2004	Wednesday, November 3, 2004
Wednesday, October 27, 2004	Thursday, November 4, 2004
Thursday, October 28, 2004	

- or 3. present to U.S. Trustee for Region 2 Deirdre A. Martini, Assistant U.S. Trustee Kathleen Dunivin Schmitt, and to me your legal authority and arguments to refuse to hold such meeting and request that they take a position on the issue.

I look forward to hearing from you at your earliest convenience.

Sincerely,

Dr. Richard Cordero