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

GEORGE M. REIBER
JAMES W. WEIDMAN

585-427-7225
FAX 585-427-7804

October 13, 2004

Dr. Richard Cordero
59 Crescent St.
Brooklyn, NY 11208

Dear Dr. Cordero,

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

This is in reply to your letter faxed to me dated October 12, 2004.

1. I must advise you that to date I have not been served, either in writing or electronically, with the Court's Order dated August 30, 2004. It is for that reason that I replied to your letter and motion in the previous manner.
2. My notes of the August 23, 2004 Hearing, specifically state that "all Delano Chapter 13 Court Proceedings except for the Objection to the Proof of Claim are suspended." The Court further stated that the Objection to your claim changed the entire approach to the procedures "dramatically" and that the primary question now is whether you are a creditor and whether you have standing in the Delano case.
3. I did in fact receive a copy of your motion as part of the mailing you sent to me previously. I would note that the Motion that you made is in the "Premier Van Lines Case;" however, as an attorney, I am sure you are aware that the Judge's Order of August 30, 2004, has nothing to do with the appeal which you have pending in the Second Circuit. It is not a final Order, and it is not appealable until a final decision is made regarding your claim in Premier Van Line. If you have a dispute with my legal analysis, then that is best left to the Appellate Court at the appropriate time.

At this point in time, I am awaiting a final determination as to your status as a creditor with standing in the Delano matter.

Very truly yours,

GEORGE M. REIBER

GMR/mb

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 20, 2004

George M. Reiber, Esq.
Chapter 13 Trustee
South Winton Court
3136 S. Winton Road, Suite 206 faxed to (585)427-7804
Rochester, NY 14623

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

Dear Mr. Reiber,

In your reply of October 13 to my fax of October 12, you stated in your first point that:

> I must advise you that to date I have not been served, either in writing or electronically, with the Court's Order dated August 30, 2004. It is for that reason that I replied to your letter and motion in the previous manner.

However, I sent you a copy of my motion to quash of September 9, which clearly states in its front page, at the top, just in 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

That motion alerted you to the fact that Judge Ninfo had issued a written order following what you call his "Bench Order", which you must have heard at one of the two August hearings. With due diligence and the professional interest in knowing the contents of a written order that, as you put it, "changed the entire approach to the procedures [in the DeLano case] "dramatically"", you could have asked for a copy of it, had you not obtained one already. Indeed, it would have been extremely easy for you to do so since you go to the courthouse and appear before Judge Ninfo very often; this follows from the fact that as of last April 2, you had 3,909[1] *open* cases, and of them 3,907 were reported to be before Judge Ninfo.

What is more, there is evidence that you were served with Judge Ninfo's August 30 Order. The certificate from the Clerk of Court joined hereto and which I received together with a copy of that Order states as follows:

Case No.: 2-04-20280-JCN

PLEASE TAKE NOTICE of the entry of an Order, duly entered in the within action in the Clerk's Office of the United States Bankruptcy Court, Western District of New York on August 30, 2004. The undersigned deputy clerk of the United States Bankruptcy Court, Western District of New York, hereby certifies that a copy of the subject Order was sent to all parties in interest herein as required by the Bankruptcy Code, The Federal Rules of Bankruptcy Procedure.

Dated: August 30, 2004

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

By: P. Finucane
Deputy Clerk

029674 Form ntcentry Doc 62

[1] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1 on 4/2,/4.

There is additional evidence to believe that official certificate's statement that you were served with the August 30 Order over your allegation that you were not. At stake are your credibility and motives.

Thus, for weeks you pretended to have served me with a letter that you had sent to the Debtors' attorney, Christopher Werner, Esq. In his letter to you of March 19 he stated:

> As discussed, of the dates you proposed, the following are available on my schedule for an adjourned 341 Hearing with respect to the above Debtors:…

Thereby he attested to a communication between you and him, which you did not extend to me so that you failed to propose any such dates to me. I protested against this lack of evenhandedness to you and to Assistant U.S. Trustee Kathleen Dunivin Schmitt. Rather than send me the letter as you said you would do, you tried to pass off for copies of that letter copies of letters that I had expressly stated to you in writing that I had already received. Only because I kept pointing this out to you and asking you for the letter(s) that you had not sent me did you send me as late as May 18 a copy of your letter to Mr. Werner of March 12, 2004.

That letter comes back, once more, to haunt you, for there you stated:

> I have decided to conduct an adjourned §341 hearing at my office. At the regularly scheduled §341 hearing, Mr. Cordero indicated a desire to ask more questions than the constraints of time would permit. I have reviewed [Mr. 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.
>
> To that end, I would request that each of you provide me with dates when you will be available for the hearing.
>
> 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 hearing.

This letter impugns your credibility. The fact is that lack of time was not the reason why I could not ask my questions at the meeting of creditors last March 8. The reason was that your attorney, James Weidman, Esq., whom you unlawfully had preside over the meeting, repeatedly asked me how much I knew about the DeLanos having committed fraud and when I did not reveal anything, he prevented me from examining them although I had asked only two questions and was the only creditor at the meeting so that there was ample time for me to keep asking questions. You know this because I protested against his action in open court and for the record and you ratified your attorney's action, although it was also unlawful and highly suspicious.

In line with your ratification, you have held no §341 hearing of the DeLanos. Even though I proposed dates, you now pretend that the court prevents you from holding it. But the August 30 Order that you alleged not to have received does not prevent you from doing so at all. Moreover, for the legal reasons that I stated in my October 12 letter, the court cannot prevent you from holding it. Among those reasons is the obvious one implied in what the Bankruptcy Code (11 U.S.C.) provides under:

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

The court cannot prevent a meeting from taking place which by law it is forbidden even to attend.

But even your own "notes", stated in your second point of your October 13 letter, attest to this:

> My notes of the August 23, 2004 Hearing specifically state that "all Delano Chapter 13 Court Proceedings except for the Objection to the Proof of Claim are suspended."

Without my implying the truth of your "notes", what it states is that "Court Proceedings" were suspended, but a §341 meeting is definitely not a court proceeding, as shown by the above-quoted text of §341(c). Rather, it is a meeting for the creditors to examine the debtors, one at which you must preside and do so in person, not by delegation to anybody else, including your attorney, cf. C.F.R. §58.6(a)(10). Consequently, by your own "notes" you know that you are not prohibited by any "Bench Order" from holding a §341 meeting for the DeLanos to be examined.

What is more, you may have known that from the August 30 Order itself, for in the third point of your letter of October 13 you wrote:

> I would note that the Motion [to quash] that you made is in the "Premier Van Lines Case;" however, as an attorney, I am sure you are aware that the Judge's Order of August 30, 2004, has nothing to do with the appeal which you have pending in the Second Circuit. It is not a final Order, and it is not appealable until a final decision is made regarding your claim in Premier Van Lines. If you have a dispute with my legal analysis, then it is best left to the Appellate Court at the appropriate time.

How can you make such a categorical statement when you stated in the first point in that same letter that

> I must advise you that to date I have not been served, either in writing or electronically, with the Court's Order dated August 30, 2004. It is for that reason that I replied to your letter and motion in the previous manner.

Either you had received the August 30 Order and had even engaged in its "legal analysis" to reach that categorical conclusion in your letters to me and the Court of Appeals of October 1, or you have not received it "to date" and then you lacked any basis to 'reply to my letter and motion in the previous manner'. You cannot have it both ways. You have impeached yourself in a single letter of one page!

One day this case will come to trial and I will call you to the witness stand. Do you get a feeling of what it will be like when I examine you as a hostile witness? If you cannot manage in merely one letter your versions of facts about your own actions, how can you possibly handle, let alone do so effectively, 3,909 cases?!

How many other statements have you made that are liable to impeachment? I have already pointed out how you pretended in the letter of yours that I received on April 15 –which was undated either out of carelessness or by design– to be investigating the DeLanos, as I had requested in my Objection to Confirmation of March 4, the Memorandum of March 30, and conversations on March 8 and 12. In my letter to you of April 15, I asked that you either state what it was that you were investigating and its scope or let me know that you were not investigating anything and stop making me wait in vain. It was only thereafter, in your letter of April 20, that you for the first time asked for the DeLanos to produce documents relating to their bankruptcy petition. You had been investigating nothing! So much so that you had received no documents before that letter and received none after it to the point that on June 15 you moved to dismiss the DeLano case "for unreasonable delay" in the production of documents.

You had misled me into thinking that you were investigating the DeLanos. No wonder you did not want to send me a copy of your letter of March 12 to Att. Werner, for you soon realized that what you did not want to ask the DeLanos to produce and they did not want to produce either, neither wanted me to be able to ask directly Att. Werner to produce.

Do you sense how it is possible, even likely, that you may have already provided other issues on which I will impeach you?…to your surprise, of course. What about the risk of what may come out through an examination of the DeLanos? Can you want me to examine Att. Weidman in his capacity as the presiding officer at the March 8 meeting and as a §327 professional person? Attorney-client privilege is not a bar to his disclosing what he learned and did while rendering services or unlawfully substituting for you at that meeting. In other cases too?

This brings us to your motives. As I have pointed out before, you have a conflict of interests: If through a diligent and effective investigation of the DeLanos or through my examination of them at a §341 meeting evidence were to come out showing that their bankruptcy petition was meritless, let alone fraudulent, then you would be investigated in turn for having readied their plan of debt repayment for confirmation by Judge Ninfo. That is why you now allege in your self-contradictory way that neither the "Bench Order" nor the August 30 Order of Judge Ninfo allows you to hold that meeting: You do not want me to examine the DeLanos anymore than your attorney, Mr. Weidman, wanted me to do so as early as after my second question on March 8. Actually, your risk from what I may ask and the DeLanos may answer is greater, for now you know that I have shown on the basis of the few documents belatedly produced by them that they have engaged in concealment of assets and that you could have determined that had you only reviewed their petition. Hence, my examination would now be much more focused and incisive.

It follows from these facts that you have so impaired your credibility and have revealed such improper motives that you are unfit to continue as trustee in this case. If instead of cutting your losses by recusing yourself from this case you persist in staying on, you will only keep digging yourself into a deeper hole from which you will not be able to extricate yourself. It would be wishful thinking to expect the other parties to come to your rescue, for the time is approaching when it will be every man for himself. Take this as a hint: After several of my motions in the Court of Appeals for the Second Circuit in the context of my appeal there, i.e., In re Premier Van Lines, docket no. 03-5023, requesting his recusal, the Chief Judge of that Court, the Hon. John M. Walker, Jr., has recused himself from further consideration of that case.

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:

Wednesday, November 3, 2004; Thursday, November 4, 2004

or 3. present to U.S. Trustee for Region 2 Deirdre A. Martini, to Assistant U.S. Trustee 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

UNITED STATES BANKRUPTCY COURT
Western District of New York
100 State Street
Rochester, NY 14614
www.nywb.uscourts.gov

In Re:
David G. DeLano
Mary Ann DeLano
Debtor(s)

SSN/Tax ID: xxx-xx-3894
xxx-xx-0517

Case No.: 2-04-20280-JCN
Chapter: 13

NOTICE OF ENTRY

PLEASE TAKE NOTICE of the entry of an Order, duly entered in the within action in the Clerk's Office of the United States Bankruptcy Court, Western District of New York on August 30, 2004 . The undersigned deputy clerk of the United States Bankruptcy Court, Western District of New York, hereby certifies that a copy of the subject Order was sent to all parties in interest herein as required by the Bankruptcy Code, The Federal Rules of Bankruptcy Procedure.

Dated: August 30, 2004

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

By: P. Finucane
Deputy Clerk

Form ntcentry
Doc 62

029674

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 21, 2004

Ms. Deirdre A. Martini
U.S. Trustee for Region 2
Office of the United States Trustee — faxed to (212) 668-2255
55 Whitehall Street, 21st Floor
New York, NY 10004

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

Dear Ms. Martini,

Please find herewith the letters of 13 and 20 instant of Trustee George Reiber and mine, respectively, concerning his untenable refusal to hold a §341 examination of the DeLanos.

To begin with, it was Trustee Reiber's attorney, James Weidman, Esq., unlawfully presiding at the meeting of creditors last March 8, who prevented me from examining the DeLanos by terminating the meeting although I was the only creditor present, had asked only two questions, but would not answer Att. Weidman's improper questions of how much I knew about the DeLanos having committed fraud. Later that day the Trustee ratified his attorney's action. This in itself constituted sufficient grounds for both to be investigated.

Moreover, Trustee Reiber has avoided investigating the DeLanos. As you know, I had to ask of him repeatedly to investigate the nature and timeline of the DeLanos' debt accumulation. This was a pertinent request since Mr. David DeLano has been for 15 years and still is a bank *loan* officer, whose professional expertise is precisely in ascertaining the creditworthiness and ability to repay loans of his borrowing clients at his bank, M&T. Hence, Mr. DeLano's bankruptcy is as a matter of common sense immediately suspect. Yet, when Trustee Reiber finally requested documents from them, his request was unjustifiable limited in the type of documents requested and time period covered: He asked for **1)** statements of only 8 of the 18 credit card issuers listed as creditors, **2)** for only the last three years although the DeLanos themselves stated in their petition that their credit card debts had accumulated for more than 15 years, and **3)** asked for no bank account statements at all, although the DeLanos declared their cash on account and in hand to be only $535, but their earnings for the last three years alone was $291,470, which renders Trustee Reiber's refusal to ask for that money's whereabouts suspect.

What is more, at the root of Trustee Reiber's refusal to hold an examination of the DeLanos is their effort to remove me from the case as a creditor by moving before Judge John C. Ninfo, II, to disallow my claim. Yet, for six months they treated me as a creditor. Actually, the DeLanos included me as a creditor in their petition, for Mr. DeLano has known since November *2002* the nature of my claim against him in Pfuntner v. [Trustee K.] Gordon et al., dkt. no. 02-2230 WBNY. Instead of Trustee Reiber recognizing the motion as an abuse of process artifice to get rid of me after I presented evidence of their concealment of assets, he has latched on to it to avoid my examining them and thereby protect himself: It the DeLanos' fraud were established, he and his attorney would come under investigation together with his other 3,909 open cases!

Therefore, I respectfully request that you **1)** disqualify Trustee Reiber from this case and investigate him and Att. Weidman; **2)** appoint a trustee unrelated to the parties and the court as well as willing and able to investigate this case zealously and efficiently; **3)** otherwise, order him to hold a §341 examination of the DeLanos on November 3 and 4 as requested in my September 22 letter. I look forward to hearing from you as soon as possible.

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

585-427-7225
FAX 585-427-7804

October 27, 2004

Dr. Richard Cordero
59 Crescent St.
Brooklyn, NY 11208

Dear Dr. Cordero,

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

In your fax to me dated October 20, 2004, you reference the fact that Chief Judge John M. Walker of the Second Circuit has recused himself in the Premier Van Lines case. Could you please send me a copy of the Order by which Judge Walker recused himself.

Thank you for your consideration.

Very truly yours,

GEORGE M. REIBER

GMR/mb

NATURE SAVER™ FAX MEMO 01616	Date 10/28/04	#of pages ▶ 1
To Dr. Richard Cordero	From Marion	
Co./Dept.	Co. George Reiber, Esq.	
Phone #	Phone # (585) 427-7225	
Fax # 718-827-9521	Fax # (585) 427-7804	

file

D:308 Tr. Reiber's letter of 10/27/04 to Dr. Cordero requesting copy of CA2 Chief Judge's recusal from *Premier*

U.S. Department of Justice

Office of the United States Trustee

Western District of New York

New Federal Office Building
100 State Street, Room 6090
Rochester, New York 14614

(585) 263-5812
FAX (585) 263-5862

To: Richard Cordero

From: Christine Kyler

Re: §341 Meeting Delano, 04-20280

Date: October 27, 2004

I just spoke with Ms. Schmitt. Instead of having you wait until Friday for her response, I'm sending you this memo.

Ms. Schmitt is aware of your request and is planning to contact George Reiber, Esq. so they can coordinate setting up an adjourned meeting of creditors in the above-referenced case.

Ms. Schmitt will be returning to the office on November 17 to handle court appearances. She will contact you on that date or prior to it to let you know the outcome of her and Mr. Reiber's discussion.

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 27, 2004

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

CA2 dkt. no. 03-5023

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

Dear Mr. Werner,

I faxed to you my request of September 29, 2004, for discovery from Mr. David DeLano pursuant to the Order of August 30, 2004, of Judge John C. Ninfo, II. Beginning on October 14, I called you several times and left messages on you answering machine and with Receptionist Patricia Casilo requesting that you let me know by when you would respond to my request and the extent to which you would do so. Finally, on Friday, October 22, you returned my call.

In our phone conversation on that occasion, you indicated that Mr. DeLano intended not to produce the items requested in my September 29 letter except for item 15, considering that all 'the other items are not relevant and have nothing to do with my claim against him'.

Given that Judge Ninfo asked you at the hearing on August 25 how much time would be needed for discovery and upon your response set the limit on December 15, you must be aware that proceeding with due diligence is necessary. Thus, in my request I anticipated certain objections to complying with it and presented legal arguments to overcome them, particularly as to:

a) the scope of discovery under FRCivP 26(b)(1) and its explanation by the Advisory Committee;

b) the previous 14 documents in which since March 4, 2004, I or, at my instigation, Trustee George Reiber, have requested the same or similar documents. They point up the fact that Mr. DeLano has had more than enough time –not to mention the experience of a bank loan officer for 15 years- to collect and produce those documents or already made up his mind not to produce them. If follows that there would be no need or justification for him to wait until the very last day of the 30 days that he is allowed under FRCivP 34(b) to state that he will not produce any documents except for those in one single item, that is, item no. 15. As to this item you stated that the file is so thin that you can fax it to me. If Mr. DeLano had already gathered the documents for that item and knew that he would not comply with the request in the other items, there is no justification either for him or you not to have produced them. (Concerning faxing documents, I indicated that I only accept them if the sender calls me and we agree what and when to send; and that documents with fine print are not appropriate for faxing because such print is hard to read or illegible after being faxed.); and

c) the relevance of the requested documents, for they go not only to establish my claim against Mr. DeLano, but also to support my defense against the motion to disallow my claim against him, so that the documents come within the scope of what is "relevant to the claim or defense of any party".

Thus, my efforts to contact you, my statements when we finally talked, and this letter are part of my good faith effort under FRCivP 37(a)(2) to obtain discovery before moving for an order to compel such and for sanctions. As stated in my recorded message, please call me soonest.

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

October 28, 2004

George M. Reiber, Esq.
Chapter 13 Trustee
South Winton Court
3136 S. Winton Road, Suite 206 faxed to (585)427-7804
Rochester, NY 14623

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

Dear Mr. Reiber,

Thank you for the fax that you sent me a few minutes ago requesting confirmation that the Chief Judge of the Court of Appeals for the Second Circuit, the Hon. John M. Walker, Jr., recused himself from my appeal in the Premier Van Lines case, CA2 docket no. 03-5023. Please find herewith a copy of the official statement to that effect dated October 13, 2004.

Should you need further confirmation, you can contact Arthur Heller, Esq., Staff Attorney at the Court of Appeals, at (212) 857-8532. The phone number of the Court, from where you can access the In-Take Room, which keeps a record of all filings, is (212) 857-8500.

I would appreciate it if upon receipt of this confirmation you would state your position with respect to the requests in my letter to you of October 20, as modified below, namely, 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, **November 9**, and Wednesday, **November 10**, 2004; or

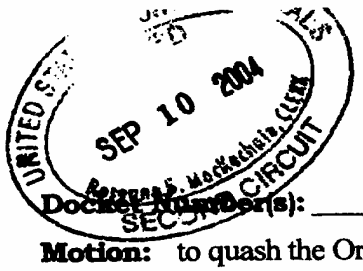
Tuesday, **November 16**, and Wednesday, **November 17**, 2004

or 3. present to U.S. Trustee for Region 2 Deirdre A. Martini, to Assistant U.S. Trustee 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.

Please note that it is of the essence that you let me know as soon as possible whether the examination will be held and on what dates. To that end, I request that you call me.

Sincerely,

Dr. Richard Cordero



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

ORIGINAL

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

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

Statement of relief sought:

1. Judge Ninfo stated at the hearing on August 25 that no motion or paper submitted by Dr. Cordero would be acted upon, so that for Dr. Cordero to request that he stay his Order would be futile; hence, it is requested that the Order be stayed until this motion has been decided and that the period to comply with it, should the Order be upheld, be correspondingly extended; otherwise, that this motion be treated on an emergency basis since the period to comply has started and ends on December 15, 2004;
2. the Order, attached as Exhibit E-149, infra, be quashed;
3. the Premier, the Pfuntner v. Gordon et al., and the DeLano (WBNY dkt. no. 04-20280) cases be referred under 18 U.S.C. §3057(a) to the U.S. Attorney General and the FBI Director so that they may appoint officers unacquainted with those in Rochester that they would investigate for bankruptcy fraud;
4. Judge Ninfo be disqualified from the Premier, Pfuntner, and DeLano cases and, in the interest of justice, order under 28 U.S.C. §1412 the removal of those cases to an impartial court unrelated to the parties, unfamiliar with the officers in the WDNY U.S. Bankruptcy and District Courts, and roughly equidistant from all parties, such as the U.S. District Court in Albany;
5. Dr. Cordero be granted any other relief that is just and fair.

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

OPPOSSING PARTY: See next

Court-Judge/Agency appealed from: Bankruptcy Judge John C. Ninfo, II, of the Western District of N.Y.

Has consent of opposing counsel been sought? Not applicable

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL
See 1. above

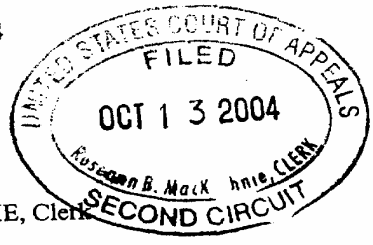
Is oral argument requested? Yes

Argument date of appeal: December 11, 2003

Signature of Moving Petitioner Pro Se: Dr. Richard Cordero

Has service been effected? Yes; proof is attached

Date: September 9. 2004



ORDER

Before: Hon. James L. Oakes, Hon. Robert A. Katzmann, *Circuit Judges**

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

FOR THE COURT:
ROSEANN B. MACKECHNIE, Clerk
by
Arthur M. Heller, Motions Staff Attorney

OCT 13 2004

* Hon. John M. Walker, Jr., Chief Judge, has recused himself from further consideration of this case. In accordance with Local Rule 0.14(b), the instant motion has been decided by the two remaining panel members.

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

October 28, 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:

As we discussed, we enclose Mr. and Mrs. DeLano's response to your discovery demands contained in your letter dated September 29, 2004 faxed to our office on September 30, 2004.

Your impatience for our response seems misplaced – first, as we do not recognize service by fax and only recognize service in accordance with FRCP §6. Further, we note that you delayed your demand to precisely coincide with my first day of absence from the office on a two week vacation of which you were well aware. Lastly, our response is timely under the Federal Rules – even had your demand been properly served.

Nonetheless, we have no intention of impeding discovery and respond accordingly.

We note, however, that your demands are largely irrelevant to your alleged claim and our objection, which is the only active matter before the Court. As indicated, we have not responded to your demands with respect to Mr. and Mrs. Delano's finances etc. generally, which have no relevance to your claim which supposedly emanates from the Premier Van Lines matter in some fashion.

Contrary to your suggestion, we expect the Court will consider and determine your application to obtain discovery of such items as we have declined.

BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP

Christopher K. Werner

CKW/trm
Enclosure

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

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UNITED STATES BANKRUPTCY COURT
COUNTY OF MONROE STATE OF NEW YORK

In re:

DAVID G. DELANO and
MARY ANN DELANO,

Debtors.

RESPONSE TO DISCOVERY DEMAND OF RICHARD CORDERO – OBJECTION TO CLAIM OF RICHARD CORDERO

Case No. 04-20280

DAVID. DELANO and **MARY ANN DELANO**, by their attorneys, Christopher K. Werner, Esq., of counsel to Boylan, Brown, Code, Vigdor & Wilson, LLP, state in response to Richard Cordero's discovery request dated September 29, 2004, as follows:

1. With respect to Paragraphs A and B (1-6) of Cordero's discovery request, such items do not contain specific discovery requests and, therefore, no response is given. Moreover, all of the correspondence in previous demands or inquiries listed have no relation or relevance to the claim of Cordero against the Debtors, and any demand contained therein is not properly relevant. Therefore, response is declined.

2. With respect to Paragraph C (7-14) of Cordero's discovery request, all of such demands are not relevant to the claim of Richard Cordero against the Debtors, which is the sole subject of the pending Objection to Claim and, therefore, discovery demand in this regard is declined.

3. With respect to Paragraph C (15) of Cordero's discovery requests, the Debtors hold no documents personally relating to David Palmer, any business associates or Mr. Palmer's personal bankruptcy, or otherwise as requested. Any such documents are held by M&T Bank and Mr. DeLano's involvement with respect to the same is only as an employee of M&T Bank and is not in his personal possession or control.

4. With respect to Paragraph C (16) of Cordero's discovery requests, the Debtors are not aware of any insurance with respect to the alleged claim by Cordero, but do expect that if there is any liability to Cordero, which liability is strongly disputed by all parties, that M&T Bank will satisfy the same, as in all respects, Mr. DeLano acted with respect to Premier Van Lines as an employee of M&T Bank.

5. With respect to Paragraph C (17) of Cordero's discovery requests, there are no subpoenas issued in connection with this request, other than previous subpoenas to the Debtors' creditors pursuant to the Chapter 13 Trustee's request, which are not relevant to Cordero's claim or the Debtors' objection to the same.

6. With respect to Paragraph C (18) of Cordero's discovery requests, the Debtors have no other documents or information relating to Cordero's claim.

Dated: October 28, 2004

Christopher K. Werner, Esq.
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GEORGE M. REIBER
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GEORGE M. REIBER
JAMES W. WEIDMAN

585-427-7225
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November 2, 2004

Dr. Richard Cordero
59 Crescent St.
Brooklyn, NY 11208

Dear Dr. Cordero,

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

This is in response to your fax to me dated October 28, 2004. Thank you for sending me a copy of the Order which I requested. Regarding the other points which you raised, these appear to repeat the assertions made in your prior letters to me. I have replied to those and my position is not changed by anything you have sent me.

Very truly yours,

GEORGE M. REIBER

GMR/mb

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

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

Notice of Motion
To enforce Judge Ninfo's Order of August 30, 2004
For Discovery from David DeLano
And to obtain a declaration
that it does not exempt the Trustee
from his obligations under B.C. §341

Madam or Sir,

PLEASE TAKE NOTICE, that Dr. Richard Cordero, Creditor, will move this Court at the U.S. Courthouse on 100 State Street, Rochester, New York, 14614, at 9:30 a.m. on November 17, 2004, or as soon thereafter as he can be heard, to request enforcement of the Court's Order of August 30, 2004, requiring Debtor David DeLano to provide discovery to Dr. Cordero.

In his Response of October 28, 2004, by his attorney, Christopher Werner, Esq., Mr. DeLano declines discovery of all items requested by Dr. Cordero in his request of September 29 either as irrelevant or not in his possession. Thereby Mr. DeLano disregards the Court's Order of August 30, just as he and Mrs. DeLano disobeyed the Court's Order of July 26 for production of documents and ignored Trustee George Reiber's requests for documents and those of Dr. Cordero's, and contravenes the provisions of the Bankruptcy Code, the FRBkrP, and the FRCivP. Such repeated contempt for his legal obligations reveals that his real motive behind his motion to disallow Dr. Cordero's claim is precisely to avoid producing the documents that can reveal whether the bankruptcy petition filed by Mr. DeLano, who for 15 years has been and still is a bank *loan* officer and as such knowledgeable about abusive bankruptcies to avoid repayment of loans to his bank, is itself a vehicle of fraud to avoid payment of claims and conceal assets.

Therefore, Mr. DeLano should be ordered to produce all the documents listed in Dr. Cordero's September 29 request or the motion to disallow Dr. Cordero's claim should be dismissed and this case referred to the U.S. Attorney and the FBI for investigation.

Dr. Richard Cordero

Dated: November 4, 2004

59 Crescent Street
Brooklyn, NY 11208

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

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

COPY for CA2, dkt. no. 03-5023

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

Brief in Support of the Motion
To enforce Judge Ninfo's Order of August 30, 2004 For Discovery from David DeLano

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

I. A gratuitous implication of bad faith is not to be left unanswered

1. After the Court in Rochester, U.S. Bankruptcy Judge John C. Ninfo, II, presiding, issued its Order of August 30, 2004, and a copy of it was received in New York City by Dr. Cordero, the latter took steps, among others, in connection with it to research and write the following papers:

    a. Dr. Cordero's motion of September 9, 2004, to quash the order of Bankruptcy Judge John C. Ninfo, II, of August 30, 2004, to sever a claim from the case on appeal in the Court of Appeals for the Second Circuit, dkt. no. 03-5023, so as to try it in the DeLano bankruptcy case; 21 pages with references to the accompanying 157 pages of exhibits;

    b. Dr. Cordero's letter of September 22, 2004, to Trustee George Reiber proposing dates to examine the DeLanos under 11 U.S.C. §341 and describing the broad scope of the examination as provided under FRBkrP Rule 2004(b); 2 pages;

    c. Dr. Cordero's letter of September 29, 2004, to the attorney for the DeLanos, Christopher Werner, Esq., requesting production of documents pursuant to Judge Ninfo's order of August 30, and without prejudice to Dr. Cordero's motion of September 9 to quash it in the Court of Appeals; 9 pages setting out the scope of discovery under the Federal Rules of Bankruptcy Procedure and the Federal Rules of Civil Procedure and including 8 tables with many columns setting out in organized fashion the documents and information requested.

2. Thus, Dr. Cordero sent the September 29 discovery request to the attorney for the DeLanos, Christopher Werner, Esq., as soon as he finished working on matters that a) would have rendered legally unnecessary to request discovery from Mr. DeLano, as party to another case, or b) would have allowed Dr. Cordero to obtain discovery through the legal provisions that require the DeLanos, as Debtors, to provide it. He faxed that request to Att. Werner just as he had faxed

other papers to him for months and the Attorney has accepted service of them, for which Dr. Cordero used the fax number stated on the Attorney's letterhead, whereby was created the reasonable presumption that service by fax is accepted.

3. Contrary to Att. Werner's gratuitous assertion in his letter of October 28 to Dr. Cordero, the latter did not 'delay his demand precisely to coincide with Att. Werner's first day of absence from the office on a two week vacation of which he was well aware'. That is not in keeping with the standards of professional behavior that Dr. Cordero has demonstrated in all his dealings in this case in well over half a year.

4. Moreover, Dr. Cordero is also well aware that Att. Werner has a secretary who in his absence forwards any correspondence to the respective principal, in this instance, Mr. DeLano.

5. In addition, Dr. Cordero diligently called Att. Werner on October 14, the second day after the Attorney's return, to alert him to the September 29 request and ask him by when he would reply to it. Not finding Att. Werner in his office, Dr. Cordero recorded a message for him on his voice mail.

6. Since that first call, which was not returned, Dr. Cordero had to call Att. Werner several times and both record messages on his voice mail and leave messages for him with the receptionist of his office, Ms. Patricia Casilo.

7. It was not until Friday, October 22, when Dr. Cordero informed Ms. Casilo that he wanted to speak with the Managing Partner of Att. Werner's Office, Patrick Malgeri, Esq., that Att. Werner returned Dr. Cordero's call within the hour. In their conversation, Att. Werner informed him that Mr. DeLano would not produce the items requested, except for item 15, because 'the other items are not relevant and have nothing to do with Dr. Cordero's claim against him'. As to item 15, Att. Werner stated that the file was so thin that he could fax it to Dr. Cordero, who does not make his fax number available for service.

8. Therefore, by October 22, over 3 weeks after the request was faxed and within a week and a half after Att. Werner's return, Mr. DeLano already knew that he was not going to produce any of the same or similar documents which he had previously decided not to produce, for they had been *requested in 14 previous documents* by Dr. Cordero or, at his instigation, by Trustee Reiber, and even Judge Ninfo himself (see ¶16 below). As to item 15, why did Att. Werner indicate that there were documents in that file that could be faxed only to write in paragraph 3 of Mr. DeLano's Response to Discovery Demand thus?:

> 3. With respect to Paragraph C (15) of Cordero's discovery requests, the Debtors hold no documents personally relating to David Palmer, any business associates or Mr. Palmer's personal bankruptcy, or otherwise as requested. Any such documents are held by M&T Bank and Mr. DeLano's involvement with respect to the same is only as an employee of M&T Bank and is not in his personal possession or control.

9. Mr. DeLano's Response is one side of one page and two lines long. Yet, it took Att. Werner another week until October 28 to write it and more than two weeks since his arrival from vacation. So, why was it so difficult for Att. Werner to realize that Dr. Cordero, a pro se litigant and a non-local one, should have taken about three and a half weeks to write 32 pages and compile 157 more to prepare three documents each of which was served on him by Dr. Cordero? The question is all the more pertinent since Mr. DeLano needed barely any time,

certainly not 28 days, to produce nothing and simply repeat once more his wholesale denial of document requests.

10. Att. Werner's statement implying bad faith on Dr. Cordero because his September 29 request arrived when Att. Werner was on vacation is indeed gratuitous and contradicted by Att. Werner's own work time requirements. Hence, Att. Werner should withdraw his statement.

II. A wholesale denial of production of documents contravenes the FRBkrP and the FRCivP

11. In his September 29 request of documents, Dr. Cordero cited and discussed the legal basis for it (see an excerpt from it in subsection A below). By contrast, in his Response, Mr. DeLano denies production wholesale, without offering any legal support, just the lazy allegation that:

> 2. With respect to Paragraph C (7-14) of Cordero's discovery request, all of such demands are not relevant to the claim of Richard Cordero against the Debtors, which is the sole subject of the pending Objection to Claim and, therefore, discovery demand in this regard is declined.

12. Nor does Mr. DeLano even take cognizance of the fact that discovery is allowed under the Federal Rules not only to establish a claim, but also to set up a defense.

13. In fact, it was the DeLanos' belated and unjustified motion to disallow Dr. Cordero's claim that led to the Order of August 30, which requires Dr. Cordero to take discovery from Mr. DeLano. Hence, Dr. Cordero is entitled to discovery that will allow him to establish, among other things, that the DeLanos' motion is a desperate attempt in contravention of FRBkrP 9011(b) to remove from their January 26 bankruptcy case Dr. Cordero, the only creditor that objected to the confirmation of their Chapter 13 repayment plan and that has relentlessly insisted on their production of financial documents that can show the bad faith of their petition in violation of 11 U.S.C. §1325(a)(3) and whether they are engaged in debt underreporting, account unreporting, and concealment of assets.

A. Scope of discovery and notice and opportunity for production

14. In determining the scope of discovery, Dr. Cordero relies 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)

15. 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).

16. 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.
17. 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 Dr. Cordero's claim against both the DeLanos, against Mr. DeLano in particular, and his defense against the motion to disallow his claim. Hence, they are within the scope of Rule 26.

III. The §341 examination of the DeLanos is not prohibited by any court order

18. As a matter of fact, the August 30 Order does not prevent Trustee Reiber from examining the DeLanos under 11 U.S.C. §341, which in any event would have been a contradiction in terms since the Order requires Mr. DeLano to provide discovery to Dr. Cordero.
19. As a matter of law, the court does not have the authority to order the trustee not to hold such examination, in particular, or not to discharge any of his other duties as trustee, in general.
20. It is Congress that imposed on the trustee the duty to hold that examination by providing that:

> §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)

21. 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.

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

23. 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 a panel or standing trustee. So, if the trustee is allowed to preside over such meetings, it can only be by delegation from the United States trustee. What the court does not have the authority to forbid the principal, that is, the United States trustee, to do, it cannot prevent the latter's agent, such as a Chapter 13 trustee, from doing. The trustee does not take his marching orders from the court. Rather, he follows the United States trustee as she goes about executing an order from Congress.

24. By the same token, a §341 examination is not a court proceeding and consequently, does not fall within the court proceedings suspended by the August 30 Order. Hardly could that examination be encompassed by a suspension that is in itself:

    a. unlawful as unsupported by any provision of law since none was cited therefor;

    b. contrary to §1325(a)(3) requiring the Court to determine whether the repayment plan has been proposed "by any means forbidden by law";

    c. unjustified in its imposition on Dr. Cordero of the burden to proof his claim despite its presumption of validity under Rule 3001(f); and

    d. inimical to the other 20 creditors of the DeLanos, who have an interest in the case moving forward so they can start receiving payment of their debts.

25. Instead, a §341 examination is a specific means for the trustee to fulfill his general duty under 11 U.S.C. §§1302(b)(1) and 704(4), which require the trustee "to investigate the financial affairs of the debtor". Additionally, §§1302(b)(1) and 704(7) require the trustee 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)

26. The trustee does not have the option to investigate at the will of the court; he has the duty to investigate and do so specifically at the request of a party in interest, which Dr. Cordero certainly is.

27. Consequently, it was unlawful for Trustee Reiber not to conduct personally the §341 meeting of creditors in the DeLano case on March 8, 2004, when he instead appointed his attorney, James Weidman, Esq., to conduct it in violation of C.F.R. §58.6(a)(10).

28. What is more, it was not only unlawful, but also highly suspicious, for Att. Weidman to ask Dr. Cordero at that meeting how much he knew about the DeLanos having committed fraud and when he did not reveal anything, to prevent him from examining the DeLanos although he had asked only two questions! The suspicion was only heightened by the fact that Dr. Cordero was the only creditor present so that there was more than ample time for him to keep asking questions in order to do precisely what the purpose of the meeting is, namely, to examine the debtors under oath. Yet, Trustee Reiber ratified in open court and for the record that very same day and has ever since defended Att. Weidman's unlawful termination of the meeting.

29. To compound that disregard for his duty, Trustee Reiber has decided not to hold the adjourned §341 examination of the DeLanos on the allegation that the August 30 Order prevents him from so doing, as stated in his letters to Dr. Cordero of October 1 and 13 and November 2. In light of the above considerations, that decision is a thinly veiled excuse to avoid exposing himself to the same risk that his attorney felt he must avoid, that is, the risk of having the DeLanos' answer questions under oath from a creditor. But…

    a. What could Trustee Reiber and Att. Weidman fear that the DeLanos might say?

    b. Why would Trustee Reiber not want to find out how an insider of the lending industry, such a Mr. DeLano, could possibly have gone bankrupt without even having consolidated his debt of $98,092 on 18 credit cards?

    c. What holds Trustee Reiber back from finding out the whereabouts of the $291,470 that the DeLanos declared on their 1040 IRS forms to have earned in just the 2001-03 fiscal years while declaring in their petition only $535 in hand and on account?!

IV. Request for relief

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

    a. order Mr. David DeLano to comply with the rules of discovery as well as the Court's own August 30 Order and produce the documents requested in the September 29 request; otherwise, that the DeLanos' motion to disallow Dr. Cordero's claim be dismissed; if not,…

    b. extend the deadline of December 15 by 45 days after Mr. DeLano actually produces all the documents requested, an extension necessary for Dr. Cordero to be able to examine the documents and prepare to depose Mr. DeLano and then double-check the information provided;

    c. declare that the August 30 Order does not and cannot prevent Trustee Reiber from holding a §341 examination of the DeLanos;

    d. refer this case under 18 U.S.C. 3057(a) to United States Attorney General John Ashcroft for appointment of investigators that are neither friends of nor acquainted with the DeLanos, Trustee Reiber, or the Office of the U.S. Trustee in Rochester or the Office of the Region 2 Trustee in New York City so that such investigators may determine with all impartiality, zealously, and exhaustively whether there has been fraud in connection with

the DeLanos' bankruptcy petition and, if so, who is involved and to what extent;

e. allow Dr. Cordero to present his arguments by phone and that the Court not cut off the phone connection to him until after it declares the hearing concluded and that thereafter no other oral communication between the Court and a party be allowed on this case until the next scheduled event for all the parties, including Dr. Cordero.

CERTIFICATE OF SERVICE

I, Dr. Richard Cordero, certify that I served on the following parties my motion dated November 4, 2004, to enforce the Order of August 30, 2004, for discovery from David DeLano:

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November 4, 2004

Dr. Richard Cordero

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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.

DEBTORS' STATEMENT IN OPPOSITION TO CORDERO MOTION REGARDING DISCOVERY

Case No. 04-20280

The Debtors, **DAVID G. DELANO** and **MARY ANN DELANO**, by their attorney, Christopher K. Werner, Esq., of counsel to Boylan, Brown, Code, Vigdor & Wilson, LLP, state in opposition to the Motion of Richard Cordero dated November 4, 2004, as follows:

1. Mr. Cordero's discovery demand is nothing more than a recitation of the same itemss that he has been pursuing in Debtors' Chapter 13 proceeding, which is currently held in suspense pending determination of Cordero's Motion.

2. All of the Debtors' financial documents sought by Cordero in his demand relate to the Debtors' finances and have nothing to do with the matter at hand, which is Cordero's claim.

3. The only item demanded which has even a passing relevance to Cordero's claim is paragraph C 15, requesting documents associated in some fashion with David Palmer, who apparently was one of the former principals of Premier Van Lines.

4. As indicated in Debtors' response, such documents, if any exist, are not in Debtors' individual possession, but rather belong to M&T Bank, by whom the Debtor, David G. DeLano, is employed and are not in debtor's individual control other than as employee of M & T Bank.

5. If Mr. Cordero wishes to make a demand and subpoena M&T Bank, he is free to do so as the proper source of such documents.

6. Moreover, such documents will likely bear little relevance to Cordero's claims, as there is no basis for claim against David G. DeLano and, clearly, no claim against Mary Ann DeLano.

7. The Debtors' response to Mr. Cordero's discovery demands were in all respects timely under the federal rules.

WHEREFORE, Debtors request that Cordero's Motion be denied in all respects.

Dated: November 9, 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

TO: U.S. Bankruptcy Court
George M. Reiber, Chapter 13 Trustee
David G. and Mary Ann DeLano
Mr. Richard Cordero

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

IN RE:

DAVID G. DeLANO and
MARY ANN DeLANO,

CASE NO. 04-20280
Chapter 13

Debtors.

INTERLOCUTORY ORDER

WHEREAS, on August 30, 2004, the Court entered the attached Interlocutory Order, without the Exhibits attached to that Order (the "August 30, 2004 Interlocutory Order"); and

WHEREAS, the terms defined and used in the August 30, 2004 Interlocutory Order shall have the same meaning when used in this Interlocutory Order; and

WHEREAS, on November 8, 2004, Cordero filed a November 4, 2004 motion entitled "Notice of Motion to Enforce Judge Ninfo's Order of August 30, 2004, For Discovery from David DeLano and to Obtain a Declaration that it does not exempt the Trustee from his Obligations Under B.C. § 341" (the "Cordero Discovery Motion"); and

WHEREAS, the Court has reviewed the Cordero Discovery Motion, and, in its discretion, does not believe that it requires any oral argument to decide the detailed Motion.

It is therefore **ORDERED**, that:

1. The Cordero Discovery Motion is in all respects denied; and

2. The request for relief in Paragraph 30.a. of the Cordero Discovery Motion is denied because: (a) after reading Cordero's September 29, 2004 documentary discovery demand (the "Demand"), Cordero's October 27, 2004 follow-up letter, and the October 28, 2004 Response to the Demand (the "Response"), it appears that DeLano has complied with all of the documentary discovery requests made by Cordero that are relevant to the Claim Objection Proceeding; and (b) the August 30, 2004 Interlocutory Order clearly states that the Court will only hear those matters in the DeLano Case that are related to the Claim Objection Proceeding until the Court has made its final determination in that Proceeding; and

3. The request for relief in Paragraph 30.b. of the Cordero Discovery Motion is denied because DeLano has indicated in the Response that he had produced all documents which he has in his possession that are relevant to the Claim Objection Proceeding. Therefore, there is no need for an extension of the discovery deadline set forth in the August 30, 2004 Interlocutory Order; and

4. The request for relief in Paragraph 30.c. of the Cordero Discovery Motion is denied because the August 30, 2004 Interlocutory Order and the Bankruptcy Code and Rules as they relate to the Order are clear, so the Court is not required to interpret them for Cordero; and

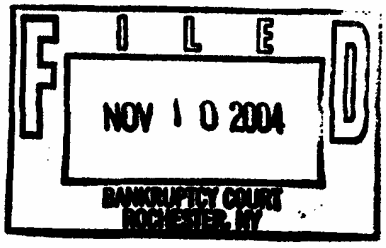
5. The request for relief in Paragraph 30.d. of the Cordero Discovery Motion is denied for the reasons set forth in the August 30, 2004 Interlocutory Order; and

6. The request for relief in Paragraph 30.e. of the Cordero Discovery Motion is moot as a result of the entry of this Interlocutory Order.

SO ORDERED.

DATED: November 10, 2004

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



Dr. Richard Cordero

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

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

November 14, 2004

Ms. Deirdre A. Martini
U.S. Trustee for Region 2
Office of the United States Trustee — faxed to (212) 668-2255
55 Whitehall Street, 21st Floor
New York, NY 10004

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

Dear Ms. Martini,

Last November 1, we finally spoke on the phone concerning my repeated request that you remove Trustee George Reiber from the case of David and Mary Ann DeLano, among other things, for his unwillingness and incapacity to investigate them and his refusal to hold a §341 examination of them, who filed their Chapter 13 petition back in January.

I indicated that Trustee Reiber has a conflict of interests because he approved their petition and was about to submit it for confirmation by the court of its repayment plan when I objected to it by pointing to its meritless and questionable basis for bankruptcy relief. So now Trustee Reiber does not want to investigate them only to find out that in fact their petition is fraudulent and that the DeLanos have engaged in concealment of assets, which Trustee Reiber could have realized if only he had done his job and reviewed the petition's schedules and statements. By way of example, the DeLanos declared that they had only $535 on cash and in hand at the time of filing. Yet, their 1040 IRS forms for just the 2001-03 years show that they earned $291,470. Not only are those earnings unaccounted for, but Trustee Reiber does not even want to request that the DeLanos produce their bank and debit card statements, nor has he pursued their production of credit card statements.

Trustee Reiber's conflict of interests is compounded by the fact that if the DeLanos' petition were proved fraudulent, then his other cases could also come under investigation, for if he could not handle properly a petition as glaringly suspicious as the DeLanos', he may not have been able to handle properly many of his other 3,909 *open* cases. You snapped "According to you!", thus casting doubt on my assertion that such a huge number of cases constitutes an unmanageable workload for a trustee -particularly one so prone to making mistakes as Trustee Reiber- who must not only review initially all petitions, but also must request and confront them with supporting documents, hold meetings of creditors, not to mention deal with creditors thereafter, and monitor the debtors' compliance with repayment plans *every month*.

At the end of our conversation you said that you had made your decision not to remove Trustee Reiber, but you did not state your reasons. I asked that you put them in writing and you said that you would as soon as you could. However, you have not sent me any such statement in two weeks, which shows how difficult it must be for a person with 3,909 *open* cases to take care of business in a timely fashion, if at all. Hence, I kindly request that you send me your statement.

In this vein, I am sending you my motion to have the court declare that Trustee Reiber must hold the §341 examination of the DeLanos regardless of the court's suspension of its own proceedings in this case. I respectfully request that you take a stand on this matter and if it is your opinion that Trustee Reiber has the obligation to hold such examination, that you require him to schedule it without further delay. Meantime, I look forward to hearing from you.

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

585-427-7225
FAX 585-427-7804

November 17, 2004

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

Dear Mr. Werner,

Re: David & Mary Ann Delano BK #04-20280

I am writing you this letter concerning an issue which will present itself again at the point in time that this matter comes before Judge Ninfo at a Confirmation hearing. Namely, I am concerned that Mrs. Delano may be considering retiring from her position in December, 2004. As you know, I have taken the position that should she retire, their IRA would become at that point a legitimate source of disposable income. I want to make sure that the Delanos are clear on my position so that Mrs. Delano will be fully aware of the consequences of her decision should she retire and the Judge uphold my position on this matter.

Very truly yours,

GEORGE M. REIBER

GMR/mb
XC: Kathleen Dunivin Schmitt, Esq., Assistant US Trustee
David & Mary Ann Delano
Dr. Richard Cordero

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

DAVID G. DeLANO — **CASE NO. 04-20280**
MARY ANN DeLANO — **Chapter 13**

Debtor(s)

ORDER

BEFORE HON. JOHN C. NINFO, II:

The above matter having been scheduled for the Evidentiary Hearing Calendar for an objection to the claim of Dr. Richard Cordero on December 15, 2004 and the following attorney(s) having appeared:

Christopher K. Werner, Attorney for the Debtors
Dr. Richard Cordero, Pro Se
James W. Weidman of counsel to George M. Reiber, Trustee

it is **ORDERED** that:

1. This case is scheduled for an Evidentiary Hearing on **March 1, 2005 at 1:30 p.m.**.

2. This case is adjourned to the Evidentiary Hearing Calendar on _____.

3. A pre-hearing memorandum shall be filed and served by the parties on or before _____.

4. Stipulations shall be submitted by the parties on or before _____.

5. OTHER: _____.

IF A PARTY FAILS TO APPEAR, THE COURT RESERVES THE RIGHT TO ISSUE AN ORDER OF CONTEMPT AND APPROPRIATE SANCTIONS.

BY THE COURT,

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

Dated: December 21 2004
Rochester, New York

FILED
DEC 21 2004

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

December 30, 2004

GEORGE M. REIBER
JAMES W. WEIDMAN

585-427-7225
FAX 585-427-7804

Dr. Richard Cordero
59 Crescent St.
Brooklyn, NY 11208

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

To whom it may concern,

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

This will confirm that I will conduct a Section 341 Hearing on February 1, 2005. The meeting will commence at 9:30 a.m. at my offices at 3136 Winton Road South, Rochester, NY, Suite 206. At the request of Dr. Cordero, I will have court reporter available as well as having a tape recording made of the meeting. I have advised Dr. Cordero that he might appear by telephone; however he has indicated that he wishes to personally appear.

In a phone conversation which I had with Dr. Cordero, he indicated concern about time limits on the length of the 341 Hearing as well as its breadth in light of the fact that he is incurring cost to travel to Rochester for the Section 341 Hearing. In addition to having advised him that he could appear by telephone, I would add that I do not regard there being any time limits on the 341 Hearing. The Hearing will continue, subject to any physical limits, so long as I believe that there are relevant and meaningful questions being asked and answered which will assist the Court in determining whether or not to confirm the Plan. In this regard I would state that having reviewed the testimony by the Delano's at the previous Section 341 Hearings as well as the documents produced by them, I at this moment only have questions regarding the loan that was made to their son and its collectability. This is not to say that something may not develop during the questioning at the next Hearing that I may want to pursue; I am merely indicating where I am at this time.

Very truly yours,

GEORGE M. REIBER

GMR/mb
Xc: Kathleen Dunivin Schmitt, Esq., Assistant US Trustee
David & Mary Ann Delano
Clerk, US Bankruptcy Court

CLOSING MEMORANDUM - STATEMENT OF SALE

PROPERTY:	2438 West Walworth Road, Lot 918 (Arrowhead)	1986 Caravan
SELLER:	Michael DeLano	Trailer Park 70 long 12 long
PURCHASER:	John and Veronica Harmon	900 sq. ft.
ATTORNEY:	Cynthia M. Kukuvka, Esq.	- belonged to Mr. D's mother
CLOSING PLACE:	330 East Main Street, Palmyra	
CLOSING DATE:	12/24/04	**CLOSING TIME:** 10:00 AM

Purchase Price			**$ 7,500.00**
CREDITS TO SELLER(S):			
Rent Adjustment	*Total =*	*$ 353.00*	
	$ 11.77 per day for *8.00* days =	$ 94.16	
	TOTAL CREDITS	**$ 94.16**	
PURCHASE PRICE + CREDITS			**$ 7,594.16**
CREDITS TO PUCHASERS			
Deposit		$ 100.00	
	TOTAL CREDITS	**$ 100.00**	
PURCHASE PRICE - CREDITS			**$ 7,494.16**
DISBURSEMENTS OF PURCHASERS			
Attorney Fee		$ 100.00	
	TOTAL CREDITS	**$ 100.00**	
DISBURSEMENTS OF DELLERS			
UCC Search		$ 37.50	
Commissions (less $100 deposit)		$ 650.00	
Attorney Fee		$ 100.00	
TOTAL DISBURSEMENTS		**$ 787.50**	
TOTAL DUE SELLER			**$ 6,706.66**

2 60786 New York State Department of Motor Vehicles 04276 5607652 091201 Recvd 1Feb

NOTICE OF RECORDED LIEN

I.D. Number	Year	Make
1GNCT18W9WK158957	1998	CHEVR

Wgt./Lgth.	Fuel	Cyl/Prop.	Body/Hull.	Color
3874	GAS	6	SUBN	BK

SUMMIT ACCEPTANCE
CORPORATION
3939 BELTLINE RD 400
DALLAS TX 75244

Owner: If you have moved and have not yet notified this Department of your new address, cross out the address shown and print your new address in its place.

OWNER

DELANO,DAVID,G
1262 SHOECRAFT RD
WEBSTER NY 14580

ADDITIONAL LIENHOLDERS

The following information applies only to the lienholder shown in the box above.

☐ Our security interest in the vehicle or boat described in this notice has been satisfied.

☐ We have assumed ownership of this vehicle or boat. We are transferring ownership to:

_____

☐ We have assigned our security interest in this vehicle or boat to:

_____
Lien Filing Code

_____
Name Date of Assignment

_____
No. and Street

_____
City State Zip

_____
Authorized Signature Date

If you are the owner named on this notice, you can keep this notice with the Certificate of Title and when you sell the vehicle or boat, give the transferred Title AND this notice to the new owner. If you should choose a lien free title before then, return your current title, this lien notice, and a $10 processing fee to the DMV Title Bureau, Empire State Plaza, Albany NY 12228-0330. (Check or money order should be made payable to the Commissioner of Motor Vehicles.)

If you cannot locate the title for the vehicle or boat, you must apply for a duplicate. You may apply for a duplicate title by completing form MV-902 (available at DMV office) and mailing it with a $10 check or money order, along with the lien release, to the DMV Title Bureau at the above address.

MV-901 (7/00)

RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT

No.
Date 06/19/200

Seller AUTOSOLUTIONS
938 BAILEY RD.
WEST HENRIETTA, NY 14586
"We" and "us" mean the Seller above, its successors and assigns.

Buyer DAVID G DELANO
1262 SHOECRAFT RD
WEBSTER NY 14580
"You" and "your" mean each Buyer above, and guarantor, jointly and individually.

SALE: You agree to purchase from us, on a time basis, subject to the terms and conditions of this contract and security agreement (Contract), the Motor Vehicle (Vehicle) and services described below. The Vehicle is sold in its present condition, together with the usual accessories and attachments.

Description of Motor Vehicle Purchased	Year	1998	VIN 1GNCT18W9WK158957	Other: ORIGINAL
	Make	CHEVROLET	Lic. No./Year 351887299	
	Model	BLAZER	☐ New ☒ Used	

Description of Trade-In: 95 CHEV LUMIA

SECURITY: To secure your payment and performance under the terms of this Contract, you give us a security interest in the Vehicle, all accessions, attachments, accessories, and equipment placed in or on the Vehicle, together called Property, and proceeds of the Property. You also assign to us and give us a security interest in proceeds and premium refunds of any insurance and service contracts purchased with this Contract.

PROMISE TO PAY AND PAYMENT TERMS: You promise to pay us the principal amount of $ 14658.20, plus credit service charges accruing on the unpaid balance at the rate of 19.45 % per year from today's date until maturity. Credit service charges accrue on a ACTUAL/365 day basis. After maturity, or after you default and we demand payment, we will earn finance charges on the unpaid balance at 19.45 % per year. You agree to pay this Contract according to the payment schedule and late charge provisions shown in the TRUTH IN LENDING DISCLOSURES. You also agree to pay any additional amounts according to the terms and conditions of this Contract.

☐ If checked, you agree to our charging you/deducting the acquisition cost of $15.00 before you prepay this Contract in full without penalty. The acquisition fee of $15.00 may be considered a prepayment penalty for purposes of Federal Truth in Lending Law disclosures even though New York law does not label it as a penalty.

TRUTH IN LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	AMOUNT FINANCED The amount of credit provided to you or on your behalf.	TOTAL OF PAYMENTS The amount you will have paid when you have made all scheduled payments.	TOTAL SALE PRICE The total cost of your purchase on credit, including your down payment of $ 3500.00
19.45%	$ 10463.32	$ 14658.20	$ 25121.52	$ 29621.52

Payment Schedule: Your payment schedule will be

Number of Payments	Amount of Payments	When Payments Are Due
72	348.91	MONTHLY BEGINNING 08/02/2001

Security: You are giving a security interest in the Motor Vehicle purchased.

☒ **Late Charge:** If a payment is more than 10 days late, you will be charged 5% OF PAST DUE INSTALLMENT

Prepayment: If you pay off this Contract early, you ☐ may ☒ will not have to pay a penalty.

Contract Provisions: You can see the terms of this Contract for any additional information about nonpayment, default, any required repayment before the scheduled date, and prepayment refunds and penalties.

CREDIT INSURANCE: Credit life, credit disability (accident and health), and any other insurance coverage quoted below, are not required to obtain credit and we will not provide them unless you sign and agree to pay the additional premium. If you want such insurance, we will obtain it for you (if you qualify for coverage). We are quoting below ONLY the coverage you have chosen to purchase.

Credit Life: Insured ____
☐ Single ☐ Joint Prem. $ N/A Term ____

Credit Disability: Insured ____
☐ Single ☐ Joint Prem. $ N/A Term ____

Your signature below means you want (only) the insurance coverage(s) quoted above. If none are quoted, you have declined any coverages we offered.

Buyer ____ d/o/b ____ Buyer ____ d/o/b ____

PROPERTY INSURANCE: You must insure the Property securing this Contract. You may purchase or provide the insurance through any insurance company reasonably acceptable to us. The collision coverage deductible may not exceed $ N/A. If you get insurance from or through us you will pay $ N/A for ____ of coverage.

This premium is calculated as follows:
☒ $ 250.00 Deductible, Collision Coverage $ ____
☒ $ 250.00 Deductible, Comprehensive Cov. $ ____
☐ Fire-Theft and Combined Additional Coverage $ N/A
☐ ____ $ N/A

Liability insurance coverage for bodily injury and motor vehicle damage caused to others is not included in this Contract unless checked and indicated.

ITEMIZATION OF AMOUNT FINANCED

Vehicle Price (incl. sales tax of $ 1079.29)		$ 18069.20
Service Contract, Paid to: ____ *		$ N/A
Amount to Finance line a. (if a. is negative)		$ N/A
Cash Sale Price		$ 18069.20
Manufacturer's Rebate	$ N/A	
Cash Down Payment	$ N/A	
Deferred Down Payment	$ N/A	
a. Total Cash/Rebate Down		$ N/A
b. Trade-In Allowance	$ 3500.00	
c. Less: Amount owing	$ N/A	
Paid to: ____		
d. Net Trade-In (b. minus c.)		$ 3500.00
e. Net Cash/Trade-In (a. plus d.)		$ 3500.00
Down Payment (e.; disclose as $0 if negative)		$ 3500.00
Unpaid Balance of Cash Sale Price		$ 14569.20
Paid to Public Officials - Filing Fees		$ 69.00
Insurance Premiums*		$ N/A
GAP Waiver Paid to Seller		$ N/A
To: DOC FEE		$ 20.00
To: ____		$ N/A
To: ____		$ N/A
To: ____		$ N/A
Total Other Charges/Amounts Pd. to Others		$ 89.00
Less: Prepaid Finance Charges		$ N/A
Amount Financed		$ 14658.20

*We may retain or receive a portion of this amount.

Document produced by the DeLanos at the §341 examination on February 1, 2005

☐ **GAP AMOUNT:** In the event of a total loss of the Property due to its theft, confiscation, or physical damage, you agree that you will pay the difference between the amount of insurance proceeds and the amount you still owe us (GAP Amount). We are required by state law to offer you a waiver of our right to hold you responsible for the GAP Amount in the event of a total loss of the Property caused by theft or physical damage. We are allowed to charge a fee for this GAP Waiver. You may also be able to, on your own and at your expense, purchase insurance covering the GAP Amount. See the GAP Liability Notice provided to you separately.

FEDERAL GAP DISCLOSURE: A GAP Waiver is not required to obtain credit and we will not provide it unless you sign and agree to pay the additional cost. If you purchase a GAP Waiver from us you will pay $ N/A for the term of this Contract.

I want the optional GAP Waiver at the stated cost.

Buyer _____ Buyer _____

☐ **SERVICE CONTRACT:** With your purchase of the Vehicle, you agree to purchase a Service Contract to cover _____.

This Service Contract will be in effect for _____.

ASSIGNMENT: This Contract and Security Agreement is assigned to CAPITAL ONE AUTO FINANCE, the Assignee, phone _____. This assignment is made ☑ under the terms of a separate agreement. ☐ under the terms of the ASSIGNMENT BY SELLER on page 2. ☐ This assignment is made without recourse.

Seller: By AUTOSOLUTIONS Date 06/19/2001

NEW YORK RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT
© 1992, 1999 Harbors Systems, St. Cloud, MN Form RS-SI-NY-NY 7/17/99

NOTICE TO BUYER

(1) Do not sign this agreement before you read it or if it contains any blank spaces. (2) You are entitled to a completely filled-in copy of this agreement. (3) Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the credit service charge. (4) According to law you have the privilege of purchasing the insurance on the motor vehicle provided for in this contract from an agent or broker of your own selection.

BY SIGNING BELOW BUYER AGREES TO THE TERMS ON PAGES 1 AND 2 OF THIS CONTRACT AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS RETAIL INSTALLMENT CONTRACT.

Buyer: David DeLano 06/19/2001
Signature Date

_____
Signature Date

Seller: By AUTOSOLUTIONS

MOTOR VEHICLE – NOT FOR MANUFACTURED HOMES

ADDITIONAL TERMS OF THIS CONTRACT AND SECURITY AGREEMENT

GENERAL TERMS: You have been given the opportunity to purchase the Vehicle and described services for the Cash Sale Price or the Total Sale Price. The Total Sale Price is the total price of the Vehicle and any services if you buy them over time. You agreed to purchase the items over time. The Total Sale Price shown in the TRUTH IN LENDING DISCLOSURES assumes that all payments will be made as scheduled. The actual amount you will pay may be more or less depending on your payment record.

We do not intend to charge or collect, and you do not agree to pay, any credit service charge or fee, that is more than the maximum amount permitted for this sale by state or federal law. If you pay a credit service charge or fee that is contrary to this provision, we will, instead, apply it first to reduce the principal balance, and when the principal has been paid in full, refund it to you.

You understand and agree that some payments to third parties as a part of this contract may involve money retained by us or paid back to us as commissions or other remuneration.

If any section or provision of this Contract is not enforceable, the other terms will remain part of this Contract.

DOWN PAYMENT: You agree to pay, or apply to the Cash Sale price, on or before today's date, any Cash Down Payment, Manufacturer's Rebate and Net Trade-In value described in the Itemization of Amount Financed on page 1. You agree to pay any Deferred Down Payment described in the Itemization of Amount Financed according to the Payment Schedule shown on page 1.

PREPAYMENT: You may prepay this Contract in full or in part at any time. If you prepay in full or if you default and we demand payment of the unpaid balance, you may be entitled to a refund credit of the unearned portion of the credit service charge. Any partial prepayment will not excuse any later scheduled payments until you pay in full.

A refund of any prepaid, unearned insurance premiums may be obtained from us or from the insurance company named in your policy or certificate of insurance.

OWNERSHIP AND DUTIES TOWARD PROPERTY: By giving us a security interest in the Property, you represent and agree to the following:

A. Our security interest will not extend to consumer goods unless you acquire rights to them within 10 days after we enter into this Contract, or they are installed in or affixed to the Vehicle.

B. You will defend our interests in the Property against claims made by anyone else. You will do whatever is necessary to keep our claim to the Property ahead of the claim of anyone else.

C. The security interest you are giving us in the Property comes ahead of the claim of any other of your general or secured creditors. You agree to sign any additional documents or provide us with any additional information we may require to keep our claim to the Property ahead of the claim of anyone else. You will not do anything to change our interest in the Property.

D. You will keep the Property in your possession in good condition and repair. You will use the Property for its intended and lawful purposes. Unless otherwise agreed in writing, the Property will be located at your address listed on page 1 of this Contract.

E. You will not attempt to sell the Property (unless it is property identified inventory) or otherwise transfer any rights in the Property to anyone else, without our prior written consent.

F. You will pay all taxes and assessments on the Property as they become due.

G. You will notify us of any loss or damage to the Property. You will provide us reasonable access to the Property for the purpose of inspection. Our entry and inspection must be accomplished lawfully, and without breaching the peace.

DEFAULT: You will be in default on this Contract if any one of the following occurs (except as prohibited by law):

A. You fail to perform any obligation that you have undertaken in this Contract.

B. We, in good faith, believe that you cannot, or will not, pay or perform the obligations you have agreed to in this Contract.

If you default, you agree to pay our costs for collecting amounts owing. If we refer this Contract to an attorney that is not a salaried employee of ours, this amount includes reasonable attorneys' fees awarded by a court up to 15% of the unpaid balance, plus the court costs.

If an event of default occurs as to any one of you, we may exercise our remedies against any or all of you.

REMEDIES: If you are in default on this Contract, we have all of the remedies provided by law and this Contract:

A. We may require you to immediately pay us, subject to any refund required by law, the remaining unpaid balance of the amount financed, credit service charges and all other agreed charges. If your default is due solely to your failure to make timely installment payments and we have repossessed the Property, our right to accelerate is subject to your right to redeem the Property as provided by law.

B. We may pay taxes, assessments, or other liens or make repairs to the Property if you have not done so. We are not required to do so. Any amount we pay will be added to the amount you owe us and will be due immediately. This amount will earn finance charges from the date paid at the post-maturity rate described in the PROMISE TO PAY AND PAYMENT TERMS section until paid in full.

C. We may require you to make the Property available to us at a place we designate that is reasonably convenient to you and us.

D. We may immediately take possession of the Property by legal process or self-help, but in doing so we may not breach the peace or unlawfully enter onto your premises. We may then sell the Property and apply what we receive as provided by law to our reasonable expenses and then toward your obligations.

E. Except when prohibited by law, we may sue you for additional amounts if the proceeds of a sale do not pay all of the amounts you owe us.

By choosing any one or more of these remedies, we do not waive our right to later use another remedy. By deciding not to use any remedy, we do not give up our right to consider the event a default if it happens again.

You agree that if any notice is required to be given to you of an intended sale or transfer of the Property, notice is reasonable if mailed to your last known address, as reflected in our records, at least 10 days before the date of the intended sale or transfer (or such other period of time as is required by law).

You agree that, subject to your right to recover such property, we may take possession of personal property left in or on the Property securing this Contract and taken into possession as provided above.

INSURANCE: You agree to buy property insurance on the Property protecting against loss and physical damage and subject to a maximum deductible amount indicated in the PROPERTY INSURANCE section, or as we will otherwise require. You will name us as loss payee on any such policy. In the event of loss or damage to the Property, we may require additional security or assurances of payment before we allow insurance proceeds to be used to repair or replace the Property. You may purchase or provide the insurance through any insurance company reasonably acceptable to us. You will keep the insurance in full force and effect until this Contract is paid in full.

If you fail to obtain or maintain this insurance, or name us as a loss payee, we may obtain insurance to protect our interest in the Property. This insurance may include coverages not required of you. This insurance may be written by a company other than one you would choose. It may be written at a rate higher than a rate you could obtain if you purchased the property insurance required by this Contract. We will add the premium for this insurance to the amount you owe us. Any amount we pay will be due within 10 days, or it will be added to the amount financed. This amount will earn finance charges from the date paid at the post-maturity rate described in the PROMISE TO PAY AND PAYMENT TERMS section until paid in full.

OBLIGATIONS INDEPENDENT: Each person who signs this Contract agrees to pay this Contract according to its terms. This means the following:

A. You must pay this Contract even if someone else has also signed it.

B. We may release any co-buyer or guarantor and you will still be obligated to pay this Contract.

C. We may release any security and you will still be obligated to pay this Contract.

D. If we give up any of our rights, it will not affect your duty to pay this Contract.

E. If we extend new credit or renew this Contract, it will not affect your duty to pay this Contract.

WARRANTY: Warranty information is provided to you separately.

WAIVER: To the extent permitted by law, you agree to give up your rights to require us to do certain things. We are not required to: (1) demand payment of amounts due; (2) give notice that amounts due have not been paid, or have not been paid in the appropriate amount, time or manner; or, (3) give notice that we intend to make, or are making, this Contract immediately due.

THIRD PARTY AGREEMENT

By signing below you agree to give us a security interest in the Property described in the SALE section. You also agree to the terms of this Contract, including the WAIVER section above, except that you will not be liable for the payments it requires. Your interest in the Property may be used to satisfy the Buyer's obligation. You agree that we may renew, extend, change this Contract, or release any party or property without releasing you from this Contract. We may take these steps without notice or demand upon you.

You acknowledge receipt of a completed copy of this Contract.

Signature _____ Date _____

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

IF YOU ARE BUYING A USED VEHICLE, THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

ASSIGNMENT BY SELLER

Seller sells and assigns this Retail Installment Contract and Security Agreement, (Contract), to the Assignee, its successors and assigns, including all its rights, title and interest in this Contract, and any guarantees executed in connection with this Contract. Seller gives Assignee full power, either in its own name or in Seller's name, to take all legal or other actions which Seller could have taken under this Contract. (SEPARATE AGREEMENT: If this Assignment is made "under the terms of a separate agreement" as indicated on page 1, the terms of this assignment are described in a separate writing(s) and not as provided below.)

Seller warrants:

A. This Contract represents a sale by Seller to Buyer on a time price basis and not on a cash basis.
B. The statements contained in this Contract are true and correct.
C. The down payment was made by the Buyer in the manner stated on page 1 of this Contract and, except for the application of any manufacturer's rebate, no part of the down payment was loaned or paid to the Buyer by Seller or Seller's representatives.
D. This sale was completed in accordance with all applicable federal and state laws and regulations.
E. This Contract is valid and enforceable in accordance with its terms.
F. The names and signatures on this Contract are not forged, fictitious or assumed, and are true and correct.
G. This Contract is vested in the Seller free of all liens, is not subject to any claims or defenses of the Buyer, and may be sold or assigned by the Seller.
H. A completely filled-in copy of this Contract was delivered to the Buyer at the time of execution.
I. The Vehicle has been delivered to the Buyer in good condition and has been accepted by Buyer.
J. Seller has or will perfect a security interest in the Property in favor of the Assignee.

If any of these warranties is breached or untrue, Seller will, upon Assignee's demand, purchase this Contract from Assignee. The purchase shall be in cash in the amount of the unpaid balance (including finance charges) plus the costs and expenses of Assignee, including attorneys' fees.

Seller will indemnify Assignee for any loss sustained by it because of judicial set-off or as the result of a recovery made against Assignee as a result of a claim or defense Buyer has against Seller.

Seller waives notice of the acceptance of this Assignment, notice of non-payment or non-performance and notice of any other remedies available to Assignee.

Assignee may, without notice to Seller, and without affecting the liability of Seller under this Assignment, compound or release any rights against, and grant extensions of time for payment to be made, to Buyer and any other person obligated under this Contract.

UNLESS OTHERWISE INDICATED ON PAGE 1, THIS ASSIGNMENT IS WITHOUT RECOURSE.

WITH RECOURSE: If this Assignment is made "with recourse" as indicated on page 1, Assignee takes this Assignment with certain rights of recourse against Seller. Seller agrees that if the Buyer defaults on any obligation of payment or performance under this Contract, Seller will, upon demand, repurchase this Contract for the amount of the unpaid balance, including finance charges, due at that time.

© 1992, 1995 Bankers Systems, Inc., St. Cloud, MN Form RS-SI-MV-MY 7/1/95

*9

10(Official Form 10)
Rev. 4/01)

101-0000140725
227

UNITED STATES BANKRUPTCY COURT for the Western District of New York

PROOF OF CLAIM

In re (Name of Debtor)
David G Delano

Case Number
04-20280-JCN-13

13

Note: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" of payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Name of Creditor (The person or other entity to whom the debtor owes money or property)
Capital One Auto Finance

Name and Addresses Where Notices Should be Sent
Capital One Auto Finance
P.O. Box 260848
Plano, TX 75026

Telephone No. (817) 277-2011

☐ Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check box if you have never received any notices from the bankruptcy court in this case.

☒ Check box if the address differs from the address on the envelope sent to you by the court

THIS SPACE IS FOR COURT USE ONLY

ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR:
5687652/140725

Check here if this claim: ☐ replaces ☐ amends a previously filed claim, dated: _____

1. BASIS FOR CLAIM:

- ☐ Goods sold
- ☐ Services performed
- ☒ Money loaned
- ☐ Personal injury/wrongful death
- ☐ Taxes
- ☐ Other (Describe briefly)
- ☐ Retiree benefits as defined in 11 U.S.C § 1114(a)
- ☐ Wages, salaries, and compensations (Fill out below)

  Your social security number _____

  Unpaid compensations for services performed from _____ (date) to _____ (date)

2. DATE DEBT WAS INCURRED:
06/19/2001

3. IF COURT JUDGMENT, DATE OBTAINED:

4. **Total Amount of Claim at Time Case Filed:** $ 10753.28
If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below.
☐ Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.

5. **Secured Claim**
☒ Check this box if your claim is secured by collateral (including a right of setoff).
Brief Description of Collateral:
☐ Real Estate ☒ Motor Vehicle
☐ Other _____
Value of Collateral: $ 7725.00
1998 CHEVROLET TRUCK BLAZER-V6 TAILGATE 2D
Amount of arrearage and other charges at time case filed included in secured claim above, if any $ _____
Contractual Interest Rate: 19.45 %

6. **Unsecured Priority Claim**
☐ Check this box if you have an unsecured priority claim
Amount entitled to priority $ _____
Specify the priority of the claim:
- ☐ Wages, salaries, or commissions (up to $4,650),* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier)-11 U.S.C. § 507(a)(3)
- ☐ Contributions to an employee benefit plan-U.S.C. § 507(a)(4)
- ☐ Up to $2,100 * of deposits toward purchase, lease, or rental of property or services for personal, family, or household use-11 U.S.C. § 507(a)(6)
- ☐ Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7).
- ☐ Taxes or penalties owed to governmental units-11 U.S.C. § 507(a)(8)
- ☐ Other-Specify applicable paragraph of 11 U.S.C. § 507(a)(_).

Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

7. **Credits:** The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

8. **Supporting Documents:** *Attach copies of supporting documents,* such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.

9. **Necessary Copies For Filing:** You are required to file, with the Clerk's Office only, the original plus one copy of this proof of claim form.

10. **Date-Stamped Copy:** To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy (in addition to the copy required in item 9) of this proof of claim.

THIS SPACE IS FOR COURT USE ONLY

MAR - 8 2004

Date
03/03/2004

Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any)

/s/ Erich M. Ramsey

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Document produced by the DeLanos at the §341 examination on February 1, 2005

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

February 16, 2005

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:

Pursuant to your request at the adjourned 341 Hearing, enclosed please find a copy of the relevant portion of Mr. and Mrs. DeLano's Abstract of Title for the period of the purchase of their home at 1262 Shoecraft Road, Penfield, New York in 1975, through their Lyndon Guaranty refinance of April 23, 1999. We also enclose the HUD-1 Settlement Statement, together with their attorney's Closing Statement.

It appears that the 1999 refinance paid off the existing M&T first mortgage and home equity mortgage and provided cash proceeds of $18,746.69 to Mr. and Mrs. DeLano. Of this cash, $11,000.00 was used for the purchase of an automobile, as indicated. Mr. DeLano indicates that the balance of the cash proceeds was used for payment of outstanding debts, debt service and miscellaneous personal expenses. He does not believe that he has any details in this regard, as this transaction occurred almost six (6) years ago.

Please advise what, if anything, further you require.

Very truly yours,

BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP

Christopher K. Werner

CKW/trm
Enclosures

cc: Richard Cordero *(w/ enclosures)*

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

4. Church of the Holy Spirit of Penfield New York

-To-

David G. DeLano and Mary Ann DeLano, his wife (2nd parties not certified)

Warranty Deed

Dated July 16, 1975
Ack. same day
Rec. same day at 12:18 P.M.

Liber 4865 of Deeds, page ~~188~~ 122

Conveys same as #1 with same interest in and to Shoecraft Road and subject to same easements, covenants and restrictions.

Being the same premises conveyed to first party by Liber 3679 of Deeds, page 489.

This deed executes pursuant to a court order signed by Hon. Joseph G. Fritsel, Justice of the Supreme Court on July 15, 1975 and filed in Monroe County Clerk's Office July 16, 1975.

Contains Lien Fund Clause.

Revenue Stamps for $35.75 affixed.

Note: Order of the Supreme Court dated July 15, 1975 is recorded herewith.

PUBLIC ABSTRACT CORPORATION

---

5. David G. DeLano and Mary Ann DeLano, his wife

CORRECTLY DISCHARGED OF RECORD
6-13-88 148 Dis 320
BY Mitsel
COUNTY ABSTRACT CORP
PER

-To-

Columbia Banking and Loan Association

Mortgage to secure $26,000.00 Part Purchase Price

Dated July 16, 1975
Ack. same day
Rec. same day at 12:18 P.M.

Liber 4000 of Mortgages, page 196

mca 3/10/88

Conveys same as #1 together with same interest in Shoecraft Road and subject to same easements, covenants and restrictions.

Mortgage documents produced by the DeLanos on 2/16/5 at Trustee Reiber's request

6. David G. DeLano
Mary Ann DeLano

-To-

Columbia Banking, Saving and Loan Association

Mortgage to secure $7,467.18

CORRECTLY DISCHARGED OF RECORD
6-14-88 1419 Dis 143
BY
COLONY ABSTRACT CORP
PER

Dated November 30, 1977
Ack. same day
Rec. December 1, 1977 at 10:39 AM

Liber 4488 of Mortgages, page 152

Conveys same premises as No. 1.

Subject to all covenants, easements and restrictions of record, if any, affecting said premises.

Being the same premises conveyed to the first parties by deed recorded in Monroe County Clerk's Office in Liber 4865 of Deeds, page 122.

OKA 3/10/88

- -

PUBLIC ABSTRACT CORPORATION

PUBLIC ABSTRACT CORPORATION

A corporation duly established under the Laws of the State of New York, in consideration of one or more dollars to it paid, hereby Certifies to the record owners of an interest in or specific lien upon the premises hereinafter referred to or described that it has examined the Grantor and Mortgagor Indexes to the Records in the office of the Clerk of the County of Monroe, in the State of New York, for Deeds of Conveyance, Wills, Powers of Attorney and Revocations thereof, Mortgages, Indexes for General Assignments, Affidavits of Foreclosure, assignments of Mortgages, Sheriff's Certificates of Sales, Homestead Exemptions, Lien Book of Welfare Commissioners, Miscellaneous Records, Orders Appointing Receivers, Mortgage Book of Loan Commissioners of the United States Deposit Fund, Leases, Contracts, Notices of Pendency of Action, State Criminal Surety Bond Liens, Individual Surety Bond Lien Docket and Index of Incompetencies, and also the indexes to estates in the office of the Surrogate of of said County, against the names of the parties appearing in the foregoing Abstract of Title as owning or having an interest in the premieses hereinafter described, during the record period

of such ownership respectively from and including the date ...October 5, 1965.....

.....

to the date hereof.

And that it finds the items set forth in the foregoing Abstract of Title, and nothing more, and that said items are correctly set forth, and that there is nothing more in said indexes which appears to affect the premises or any part thereof, described in Liber ....3679.... of ....Deeds...., at page ....489.... in said Clerk's Office, set forth in said Abstract of Title in No. ....1.... on the margin hereof (except liens or incumbrances correctly discharged of record.)

....3.... NUMBERS.

And **PUBLIC ABSTRACT CORPORATION** further Certifies that no judgment appears upon the docket books to have been docketed during the last 10 years, and no Collector's Bond filed and indexed during the last 20 years, and no Financing Statements affixed to Real Property indexed during the last 5 years, and no Federal Tax Lien filed and indexed during the last six years and one month, Lien or Lien Bond filed and indexed during the last year, in said Clerk's Office, against any of the persons who appear from the foregoing Abstract of Title to have held any title to said premises during said periods, which is a lien on said premises, except as correctly set forth in said Abstract of Title; that the items set forth in the foregoing Abstract of Title, including those taken from the records and files of the office of the Surrogate of Monroe County, are correctly abstracted.

and also Certified for Mechanic's Liens indexed during the past year.

In Witness Whereof, the Corporation has caused these presents to be signed by an Authorized Officer, this ..10th.. day of ...June..... 19..75.. at ..8:59.. o'clock ..A.. M.

PUBLIC ABSTRACT CORPORATION

No. ....13735....

By ....D. Nastasi.... *Authorized Officer*

Abstracted by ....D. Nastasi....

Contined by ....B.J. Fischette.... for premises at

..No. 1 with Nos. 4 and 5 added.....

.....

.....

and redated ..July 16,..... 19..75..., at ....12:18P.M..... and re-issued.

....B.J. Fischette.... *Authorized Officer*

(over)

Mortgage documents produced by the DeLanos on 2/16/5 at Trustee Reiber's request

#12,802

ABSTRACT OF TITLE

-TO-

PART LOT #45

TOWNSHIP 13, RANGE 4

EAST SIDE SHOECRAFT ROAD

TOWN OF PENFIELD

COLONY ABSTRACT CORPORATION

MAPS:

Hopkins Atlas, Volume 5, Plate 13

1. David G. DeLano and Mortgage to secure $7,467.18
Mary Ann DeLano
CORRECTLY DISCHARGED OF RECORD
6-14-88 1419Pg 142
BY
COLONY ABSTRACT CORP
PER
Dated November 30, 1977
-To- ~~Ack.~~ same day
Rec. December 1, 1977
Columbia Banking Saving
and Loan Association Liber 4488 of Mortgages, page 152

Conveys ~~All that tract or parcel~~ of land situate in the Town of Penfield, County of Monroe and State of New York, being a part of Lot No. 45, Township 13, Range 4, commencing at a point on the east street line of Shoecraft Road a distance of 1085.36 feet northerly from a point where the north street line of State Road intersects the east street line of Shoecraft Road; thence in an easterly direction making an interior angle of 90° with the east street line of Shoecraft Road, a distance of 200 feet; thence in a southerly direction making an interior angle of 90° with the last described course, a distance of 100 feet; thence in a westerly direction making an interior angle of 90° with the last described course a distance of 200 feet to the east line of Shoecraft Road; thence in a northerly direction along the east street line of Shoecraft Road a distance of 100 feet to the point and place of beginning.

Also hereby intending to mortgage any and all interest that the mortgagor may have in and to the bed of Shoecraft Road.

Subject to all covenants, easements and restrictions of record if any affecting said premises.

Being the same premises conveyed to the mortgagors herein by Deed dated July 16, 1975 and recorded in Monroe County Clerk's Office on July 16, 1975 in Liber 4865, page 122.

2.

COLONY ABSTRACT CORPORATION

David G. DeLano
Mary Ann DeLano, his wife

to

Columbia Banking Federal
Savings and Loan Association

Mortgage to secure $59,000.00

Dated: March 29,1988
Ack: same day
Rec: same day @ 4:14 PM

Liber 8682 of Mortgages, page 81

open 3-30-99

Conveys same premises as #1.

Subject to covenants, easements and restrictions of record.

Being same premises conveyed by deed recorded in Monroe County Clerk's Office in Liber 4865 of Deeds, page 122.

#33516

ABSTRACT OF TITLE

- TO -

LOT #9

ROMAN CREST SUBDIVISION

1262 SHOECRAFT ROAD

TOWN OF PENFIELD

MAPS: HOPKINS ATLAS, VOLUME 5, PLATE 13

FOUR CORNERS ABSTRACT CORPORATION

1.

David G. DeLano
Mary Ann DeLano,
husband and wife

- TO -

Columbia Banking Federal
Savings and Loan Association

Mortgage
To Secure: $59,000.00
Dated: March 29, 1988
Ack: Same Date
Rec: March 29, 1988
Liber 8682 of Mortgages, page 81
Mortgage#: CE033444

Covers **ALL THAT TRACT OR PARCEL OF LAND**, situate in the Town of Penfield, County of Monroe, and State of New York, being a part of Lot No. 45, Township 13, Range 4, commencing at a point on the east street line of Shoecraft Road a distance of 1085.36 feet northerly from a point where the north street line of State Road intersects the east street line of Shoecraft Road; thence in an easterly direction making an interior angle of 90° with the east street line of Shoecraft Road, a distance of 200 feet; thence in a southerly direction making an interior angle of 90° with the last described course, a distance of 100 feet; thence in a westerly direction making an interior angle of 90° with the last described course a distance of 200 feet to the east line of Shoecraft Road; thence in a northerly direction along the east street line of Shoecraft Road a distance of 100 feet to the point and place of beginning.

Subject to all covenants, easements and restrictions of record, if any, affecting said premises.

Being the same premises conveyed to the Mortgagors herein by Deed dated July 16, 1975 and recorded in the Monroe County Clerk's Office in Liber 4865 of Deeds, page 122.

2.

David G. DeLano
Mary Ann DeLano

- TO -

Central Trust Company

Mortgage
To Secure: $29,800.00
Dated: September 13, 1990
Ack: Same Date
Rec: September 14, 1990
Liber 10363 of Mortgages, page 38
Mortgage#: CH016334

DISCHARGED OF RECORD
4/28/99 BY
FOUR CORNERS ABSTRACT
BY

Covers same as #1.

3.

Columbia Banking Federal Savings and Loan Association

- TO -

Federal Home Loan Mortgage Corporation

Assignment of Mortgage
Dated: November 26, 1991
Ack: Same Date
Rec: December 27, 1991
Liber 893 of Assignments of Mortgages, page 402
Mortgage#: N/A

Assigns mortgage at #1.

FOUR CORNERS ABSTRACT CORPORATION

4.

David G. DeLano
Mary Ann DeLano

- TO -

Manufacturers and Traders Trust Company

Mortgage
To Secure: $46,920.60
Dated: December 13, 1993
Ack: Same Date
Rec: December 27, 1993
Liber 12003 of Mortgages, page 507
Mortgage#: CK039604

Covers same as #1.

FOUR CORNERS ABSTRACT CORPORATION

5.	David G. Delano and Mary Ann Delano - TO - Lyndon Guaranty Bank of New York	Mortgage To Secure: $95,000.00 Dated: April 23, 1999 Ack: Same Date Rec: April 28, 1999 @ 10:31 a.m. Liber 14410 of Mortgages, page 132 Mortgage#: CQ002917

Covers same as #1.

FOUR CORNERS ABSTRACT CORPORATION

MORTGAGE CLOSING STATEMENT

Date: April 23, 1999 File No: LYN05-0125

Property: 1262 Shoecraft Road, Town of Penfield

Mortgagors: David G. Delano and Mary Ann Delano

Amount of Mortgage: $95,000.00 Rate: 8.5%

LOAN CLOSING EXPENSES

To: Lyndon Guaranty Bank of New York

Interest for 4/28/99 - 4/30/99	$ 67.29	
Flood Certification Fee	22.50	
Tax Service Fee	75.00	
Tax and Insurance Escrow	1,527.24	
		$1,692.03

To: Monroe County Clerk

Mortgage Tax	$ 687.50*	
Record Mortgage	55.00	
Record Discharge of Mortgages (3)	49.50	
		$ 792.00

To: Four Corners Abstract

Title Insurance	$ 485.00	
Redate Abstract	75.00	
		$ 560.00

To: Gullace & Weld

Attorney fees	$ 400.00

To:	M&T Bank		
	Payoff Home Equity #23764242001		$20,032.14
To:	M&T Mortgage Corp.		
	Mortgage Payoff #920182-3		$52,777.14
		TOTAL	$76,253.31

We Acknowledge Receipt of the Proceeds of said Loan and direct that they be disbursed as follows:

As above	$76,253.31
David G. Delano and Mary Ann Delano	18,746.69
TOTAL	$95,000.00

David G. Delano

Mary Ann Delano

***Mortgagee Tax** $237.50

U.S. Department of Housing and Urban Development

Optional Form for Transactions without Sellers

Name & Address of Borrower:	Name & Address of Lender:
DAVID G. DELANO MARY ANN DELANO 1262 SHOECRAFT ROAD WEBSTER, NY 14580	LYNDON GUARANTY BANK OF NEW YORK 3670 MT. READ BOULEVARD ROCHESTER NY 14616
Property Location: (if different from above) 1262 SHOECRAFT ROAD PENFIELD, NY 14580	Settlement Agent: GULLACE & WELD Place of Settlement: 1800 MAR MDLND PLZ ROCHESTER, NY 14604
Loan Number:	Settlement Date: APRIL 23, 1999

L. Settlement Charges		M. Disbursement to Others	
800. Items Payable In Connection with Loan		1501. M&T BANK - PAYOFF MO	52,777.14
801. Loan Origination Fee 0.000%		1502. M&T BANK - HOME EQUI	20,032.14
802. Loan Discount 0.000 %		1503.	
803. Appraisal Fee to $ (POC)		1504.	
804. Credit Report to $ (POC)		1505.	
805. Lender's Inspection Fee to:		1506.	
806. Mortgage Insurance Application Fee to:		1507.	
807. Assumption Fee		1508.	
808. Tax Service Contract to:	75.00	1509.	
809. Underwriting Fee		1510.	
810. Administration Fee		1511.	
811. Application Fee	0.00	1512.	
812. Commitment Fee		1513.	
813. Warehouse Fee/Interest Differential		1514.	
814. Yield Spread Premium $ (POC)		1515.	
815. Service Release Premium $ 0.00 (POC)		1520. TOTAL DISBURSED (enter on line 1603)	72,809.28
816. Origination Fee Due Broker	0.00		
817. FHA Upfront MIP/VA Funding Fee			
818. FLOOD CERTIFICATION FEE	22.50		
819.			
820.			
821.			
822.			
823.			
824.			
825.			
900. Items Required by Lender to be Paid in Advance			
901. Interest from 4/28/9 to 4/30/99 @ $ 22.43 per day	67.29		
902. Mortgage Ins. Premium for months to			
903. Hazard Ins. Premiun for year(s) to			
904. Flood Ins. Premium for year(s) to			
905.			
1000. Reserves Deposited with Lender			
1001. Hazard Insurance 2 months @ $ 29.92 per month	59.84		
1002. Mortgage Insurance months @ $ per month			
1003. City Property Taxes months @ $ per month			
1004. County Property Taxes 7 months @ $ 77.88 per month	545.16		
1005. Annual Assessments months @ $ per month			
1006. Flood Insurance months @ $ 0.00 per month	0.00		
1007. SCHOOL 10 months @ $ 138.38 per month	1,383.80		
1008. months @ $ per month			
1009. Aggregate Analysis Adjustment	-461.56		
1100. Title Charges			
1101. Settlement or Closing Fee to			
1102. Abstract or Title Search to FOUR CORNERS ABST	75.00		
1103. Title Examination to			
1104. Title Insurance Binder to			
1105. Document Preparation to			
1106. Notary Fees to			
1107. Attorney's Fees to GULLACE & WELD	400.00		
1108. Title Insurance to FOUR CORNERS ABSTRACT	485.00		
1109. Lender's Coverage $			
1110. Owner's Coverage $			
1111.			
1112.			
1200. Government Recording and Transfer Charges			
1201. Recording Fees; Deed $;Mtg $ 55.00;Rel$ 49.50	104.50	N. NET SETTLEMENT	
1202. City/County Tax/Stamps: Deed $;Mtg $			

818. FLOOD CERTIFICATION FEE	22.50	1510.	
819.		1511.	
820.		1512.	
821.		1513.	
822.		1514.	
823.		1515.	
824.		1520. TOTAL DISBURSED (enter on line 1603)	72,809.28
825.			
900. Items Required by Lender to be Paid in Advance			
901. Interest from 4/28/9 to 4/30/99 @ $ 22.43 per day	67.29		
902. Mortgage Ins. Premium for months to			
903. Hazard Ins. Premiun for year(s) to			
904. Flood Ins. Premium for year(s) to			
905.			
1000. Reserves Deposited with Lender			
1001. Hazard Insurance 2 months @ $ 29.92 per month	59.84		
1002. Mortgage Insurance months @ $ per month			
1003. City Property Taxes months @ $ per month			
1004. County Property Taxes 7 months @ $ 77.88 per month	545.16		
1005. Annual Assessments months @ $ per month			
1006. Flood Insurance months @ $ 0.00 per month	0.00		
1007. SCHOOL 10 months @ $ 138.38 per month	1,383.80		
1008. months @ $ per month			
1009. Aggregate Analysis Adjustment	-461.56		
1100. Title Charges			
1101. Settlement or Closing Fee to			
1102. Abstract or Title Search to FOUR CORNERS ABST	75.00		
1103. Title Examination to			
1104. Title Insurance Binder to			
1105. Document Preparation to			
1106. Notary Fees to			
1107. Attorney's Fees to GULLACE & WELD	400.00		
1108. Title Insurance to FOUR CORNERS ABSTRACT	485.00		
1109. Lender's Coverage $			
1110. Owner's Coverage $			
1111.			
1112.			
1200. Government Recording and Transfer Charges			
1201. Recording Fees; Deed $;Mtg $ 55.00 ;Rel$ 49.50	104.50	N. NET SETTLEMENT	
1202. City/County Tax/Stamps: Deed $;Mtg $		1600. Loan Amount	95,000.00
1203. State Tax/Stamps: Deed $;Mtg $ 687.50	687.50	1601. Plus Cash/Check from Borrower	$ 0.00
1204.		1602. Minus Total Settlement Charges (line 1400)	$ 3,444.03
1300. Additional Settlement Charges		1603. Minus Total Disbursements to Others (line 1520)	72,809.28
1301. Survey to		1604. Equals Disbursements to Borrower (after expiration of any applicable rescission period required by law)	$ 18,746.69
1302. Pest Inspection to			
1303. Architectural/engineering services to			
1304. Building Permit to			
1305.			
1306.	0.00		
1307.			
1308 WEBSTER	0.00		
1400. Total Settlement Charges (enter on line 1602)	3,444.03		

Borrower(s) Signature(s)

x David B. DeLano x Mary Gwendolyn DeLano

CDS-253 (05/94)

Form HUD-1A (2/95)
ref. RESPA

Mortgage documents produced by the DeLanos on 2/16/5 at Trustee Reiber's request

UNITED STATES BANKRUPTCY COURT

WESTERN DISTRICT OF NEW YORK

In re: David G. DeLano and Mary Ann DeLano

Chapter 13 case, dkt. no: 04-20280

Notice of Motion to request that Judge John C. Ninfo, II recuse himself under 28 U.S.C. §455(a) due to his lack of impartiality

Madam or Sir,

PLEASE TAKE NOTICE, that Dr. Richard Cordero, Creditor, will move this Court at the U.S. Courthouse on 100 State Street, Rochester, New York, 14614, at 1:30 p.m. on March 1, 2005, or as soon thereafter as he can be heard, to request that Judge John C. Ninfo, II, recuse himself under 28 U.S.C. §455 from the DeLano case above-captioned and the related case Pfuntner v. Gordon et al., docket no. 02-2230, WBNY, due to his lack of impartiality and remove them to another district where fair and impartial process for all parties can be had.

Dated: February 17, 2005

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

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

UNITED STATES BANKRUPTCY COURT

WESTERN DISTRICT OF NEW YORK

In re: David G. DeLano and Mary Ann DeLano

Chapter 13 case, docket no: 04-20280

Motion
to request that
Judge John C. Ninfo, II
recuse himself under 28 U.S.C. §455(a)
due to his lack of impartiality

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

I. The standard for recusal under 28 U.S.C. § 455(a) is the appearance, not the reality, of bias and prejudice

1. Section 455(a) of 28 U.S.C. provides as follows:

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

2. The Supreme Court recently reaffirmed in *Microsoft Corp. v. United States, 530 U. S. 1301, 1302 (2000) (REHNQUIST, C. J.)* the standard for interpreting and applying this section thus:

> As this Court has stated, what matters under §455(a) "is not the reality of bias or prejudice but its appearance." *Liteky v. United States, 510 U. S. 540, 548 (1994).* This inquiry is an objective one, made from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances. *See ibid.; In re Drexel Burnham Lambert Inc., 861 F. 2d 1307, 1309 (CA2 1988).*

3. Those surrounding facts and circumstances are to be assessed by "the "reasonable person" standard which [§455(a)] embraces", *Microsoft Corp.* at 1303.

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II. The facts and circumstances surrounding Judge Ninfo's handling of the DeLano case have the appearance of bias and prejudice

A. Judge Ninfo has given precedence to what he calls "local practice" over the law and rules, to protect the local parties to the detriment of non-local Dr. Cordero

4. On January 27, 2004, Mr. David DeLano and Mrs. Mary Ann DeLano filed for bankruptcy under Chapter 13. Mr. DeLano is far from an average debtor: Interestingly enough, he has worked as a bank officer at different banks for 32 year! Actually, he is not only a veteran bank officer, still working for a large bank, namely, Manufacturers & Traders Trust Bank (M&T), but rather he is a bank *loan* officer. As such, he qualifies as an expert in how to assess creditworthiness and remain solvent to be able to repay bank loans. Thus, he is a member of a

class of people who should know better than to go bankrupt and that because of their experience with borrowers that use or abuse the bankruptcy system know how to petition successfully for bankruptcy relief. Consequently, his petition warranted to be examined with the equivalent of strict scrutiny. But Judge Ninfo would have none of such common sense approach.

5. On the contrary, Judge Ninfo excused the Standing Chapter 13 Trustee George Reiber and his attorney, James Weidman, Esq., who unlawfully prevented any examination of the DeLanos even by the only creditor, Dr. Cordero, who showed up at the meeting of creditors held on March 8, 2004. Convened under 11 U.S.C. §341, that meeting had the purpose, as provided under §343, of enabling the creditors to meet the "debtor [who] shall appear and submit to examination under oath…". What is more, FRBkrP Rule 2004(b) includes no fewer than 12 areas appropriate for creditors to examine the debtor at the §341 meeting, even one worded in the catchall terms of "any other matter relevant to the case". Consequently, given the breath of questioning, §341(c) makes allowance, not just for a few questions, but rather for an indefinite series of meetings until "the final meeting of creditors".
6. It should be noted that none of the other 20 creditors of the DeLanos, all institutional, attended the meeting, of which notice is officially given by the court. This is the normal occurrence, as Mr. DeLano must know and have counted on for an unobjected, smooth sailing of his petition. This imputed intention is reasonably supported by the fact that he distributed his unsecured credit card debt of $98,092 over 18 credit cards so that none of the issuers would have a stake high enough to make it cost-effective to send an attorney to examine the DeLanos.
7. Their examination was not conducted by Trustee Reiber because contrary to the Code -11 U.S.C. §341(a)- the rules –FRBkrP Rule 2003(b)(1)- and regulations -C.F.R. §58.6(a)(10)-, he had Att. Weidman do so. At the meeting, Dr. Cordero submitted his written objections to the DeLanos' debt repayment plan. But no sooner had he asked Mr. DeLano to state his occupation than Att. Weidman asked Dr. Cordero in rapid succession some three times to state his evidence that the DeLanos had committed fraud. Dr. Cordero had to insist that Mr. Weidman take notice that he was not accusing them of fraud. To no avail. Mr. Weidman alleged that there was no time for such questions and put an end to the examination despite the fact that there was more than ample time to continue it since Dr. Cordero was only at his second question! In so doing, he violated Dr. Cordero's statutory right to examine the DeLanos. Why could Att. Weidman not risk exposing the DeLanos to have to answer under oath Dr. Cordero's question before finding

out how much Dr. Cordero already knew about fraud committed by them?

8. Later on that day, March 8, 2004, at the confirmation hearing of debtors' repayment plans before Judge Ninfo, Dr. Cordero protested Att. Weidman's unlawful act, but Trustee Reiber ratified the actions of his attorney and vouched for the good faith of the petition.
9. For his part, Judge Ninfo started off his response in open court and for the record by saying that Dr. Cordero would not like what he had to say; that he had read Dr. Cordero's objections; that Dr. Cordero interpreted the law very strictly, as he had the right to do, but he had again missed the local practice; that he should have called to find out what that practice was and, if he had done so, he would have learned that the trustee would not allow a creditor to go on asking questions until 8 in the evening, particularly when he had a room full of people.
10. Dr. Cordero protested because he had the right to rely on the law and the notice of the meeting of creditors stating that the meeting's purpose was for the creditors to examine the debtors. He also protested the Judge not keeping his comments within the bounds of the facts since Dr. Cordero had not asked questions for hours, but had been cut off by Mr. Weidman after two questions in a room with only two other persons.
11. Judge Ninfo said that Dr. Cordero should have done Mr. Weidman the courtesy of giving him his written objections in advance so that Mr. Weidman could determine how long he would need. Dr. Cordero protested because he was not legally required to do so, but instead had the right to file his objections at any time before confirmation of the plan and could not be expected to disclose his objections beforehand, which would allow the debtors to craft their answers with their attorney. He added that Mr. Weidman's conduct was suspicious because he kept asking Dr. Cordero what evidence he had that the DeLanos had committed fraud despite Dr. Cordero having answered the first time that he was not accusing the DeLanos of fraud, whereby Mr. Weidman showed an interest in finding out how much Dr. Cordero already knew about fraud committed by the DeLanos before he, Mr. Weidman, would let them answer any further questions. Dr. Cordero said that Mr. Weidman had put him under examination although he was certainly not the one to be examined at the meeting, but rather the DeLanos were; and added that Mr. Weidman had caused him irreparable damage by depriving him of his right to examine the Debtors before they knew his objections and could rehearse their answers.
12. Yet, Judge Ninfo came to Mr. Weidman's defense and once more said that Dr. Cordero applied the law too strictly and ignored the local practice…

13. That is precisely what Dr. Cordero has complained about! Judge Ninfo together with other court officers engages in "local practice", which consists in the disregard of the law, the rules, and the facts and the systematic application of the law of the locals. That law is based on both personal relationships among people that work in the same small federal building and with people who appear before Judge Ninfo frequently and who must fear antagonizing him by challenging his rulings, for he distributes favorable and unfavorable decisions as he sees fit without regard for legal rights and the available facts . Such local practice of disregard of legality has resulted in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing and bias in which Judge Ninfo together with others have participated to the benefit of local parties and the detriment of Dr. Cordero. (Cf. §II.C-E of Dr. Cordero's motion of November 3, 2003, in the Court of Appeals for the Second Circuit, herein incorporated by reference.)

1. Frequency of appearance by local parties before Judge Ninfo

14. The evidence that such personal relationships has developed is indisputable. Indeed, a PACER query about Trustee Reiber ran on April 2, 2004, returned the statement that he was trustee in 3,909 *open* cases!, 3,907 before Judge Ninfo; cf. Chapter 7 Trustee Kenneth Gordon was the trustee before Judge Ninfo in 3,382 out of his 3,383 cases, as of June 26, 2004. Likewise, the statistics on Pacer as of November 3, 2003, showed that in the other case to which both Mr. DeLano and Dr. Cordero are parties, namely, Pfuntner v. Gordon et al., docket no. 02-2230, which is of course also before Judge Ninfo, Plaintiff James Pfuntner's attorney, David D. MacKnight, Esq., had appeared before Judge Ninfo 427 times out of 479 times. Similarly, Raymond C. Stilwell, Esq., had so appeared 132 times out 248 times; he is the attorney for another party, David Palmer, the owner of Premier Van Lines, the company to which M&T Loan Officer DeLano lent money and which went bankrupt.
15. If those local parties know what is good for them, they take what they are given by Judge Ninfo and hope for something as good or better next time, which can be fifteen minutes later when they appear in their next case before him. In so doing, they make the Judge's life so much easier. A non-local party like Dr. Cordero, who comes into his court with no other relation than that to the law, the rules, and the facts, and who tries to confine the Judge's rulings to the provisions of such relation and even dare appeal from his rulings, can only upset the Judge's relationship to the local parties and the modus operandi that they have developed. That Judge

Ninfo will not tolerate.

16. Hardly did the Judge have to tolerate it, for Dr. Cordero not only was a non-local appearing merely through the written word or over the phone in only one case, that is, the Pfuntner one, but he was also a pro se litigant, as he still is in the DeLano case. Thus, Dr. Cordero neither stood nor stands any chance of making Judge Ninfo apply the law and the rules or respect the constraint of the facts. He was and is supposed merely to take whatever is left that the Judge throws at him. As a result of such disregard for legality and of bias, Judge Ninfo has for the last three years caused this non-local pro se party the loss of an enormous amount of effort, time, and money and inflicted upon him tremendous emotional distress. It should not continue any longer.

2. Judge Ninfo's disregard for the law, the rules, and the facts led him to make the ludicrous statement that "local practice" can be found out by making a phone call

17. The facts demonstrate Judge Ninfo's disregard for legality. In his orders in the Pfuntner and the DeLano cases, whether they be written or issued from the bench , he makes no mention of, let alone discusses, the law of Congress or the procedural rules approved by it, much less any court decision, not even decisions of the Supreme Court, and that in spite of Dr. Cordero's numerous citations, after painstaking research, of both statutory and case law as well as the rules and the facts, in support of the arguments in his briefs and motions, and at hearings. Judge Ninfo's decisions have no more basis than 'because-I-say-so-and-what-I-say-goes-here'. Why should he bother with the law to provide for the impartiality required by due process when he is accustomed to receiving the whole of due respect that comes with exercising unchallenged judicial power?
18. Only a person used to making rulings with the expectation that they be accepted uncritically by those depending on his good will rather than be examined under the criteria of the law and logic could make in the presence of a stenographer who is supposed to be keeping a record of his every word Judge Ninfo's comment on March 8, 2004, that Dr. Cordero should have called to find out what the local practice for the meeting of creditors was and, if he had done so, he would have learned that the trustee would not allow a creditor to go on asking questions. In addition to being flatly contradicted by the law (para. 5, supra), that comment is ludicrous!
19. A person reflexively expecting to be challenged by the participants in truly adversary proceedings would hardly even think that a non-local who lives hundreds of miles from

Rochester can phone somebody there to find out what the "local practice" is and such somebody would have the time, selfless motivation, and capacity to explain accurately and comprehensively the details of the "local practice" and its divergencies from the law and rules of the land of Congress. How could the details of such somebody place the non-local at arms length with his local adversaries, let alone with the judges and other court officers? By contrast, the details of how to implement such comment will readily reveal how impracticable it is and how impaired by bias and prejudice the judgment of he who made it is:

a) Whom was Dr. Cordero supposed to call to obtain all the details of "local practice"? Had he called a clerk of court and asked that she tell him all there is about "local practice", would she not have jumped and said, "Ah!, you mean the local rules. You can download them from the Internet or I can send you a hardcopy in the m…" "No! no! I mean "local practice", you know, the unpublished, unwritten local tricks that lawyers in Rochester know can invalidate national law." Would the baffled clerk not think that Dr. Cordero was being facetious or conspiratorial and try to get rid of him by repeating once more that clerks are not allowed to give legal advice and that he should hire local counsel to find out whatever he meant by "local practice"?
b) Should Dr. Cordero call opposing counsel and ask that he be fair with him and level the field by spending his time sharing with him the winning secrets of "local practice"?
c) Or should Dr. Cordero call the trustee and ask him the seemingly ridiculous question whether "local practice" would allow him to ask more than two questions at the officially convened meeting of creditors if he was the only creditor present?
d) Should so much futile effort have justified Dr. Cordero in calling Tony Soprocal, the notorious Rochester attorney, whom the media calls "the master of local practice"? Dr. Cordero would come clean –Tony requires that from those he deals with- and admit that although he can read law books and in fact he is said to read the law, no wrongly, but just strictly, he is still missing what really matters in a Rochester court, not the law, but rather the knowledge of the initiated in unwritten "local practice". Tony would smirk, for in his line of work a euphemism is more expressive than any long speech. "Sure! You can retain me for the unwritable dirty secrets of how things get done in our local court. You can't get more 'local' than through a chat with me…unless you also want 'practice', but that will cost them an arm and a leg…you too, but you pay me in money."

"For…forgeta'bout it, Tony," would babble a shaky Dr. Cordero, "the chat will be enough."

e) Then what? Could it be reasonable for Dr. Cordero to state at the next meeting or hearing what he expects Judge Ninfo to do because Tony said that's the way it is done in "local practice"? Will Judge Ninfo say, "Now you are talking, Dr. Cordero! If Tony told you what the "local practice" is and you relied on it, then that's the end of it. I have no choice but to enforce it, you know, I am not one to disappoint your reasonable reliance on the basis of my conduct as a judge."

20. What nonsense! But the description of such scenes is not meaningless at all, for it shows starkly how uneven the field is when Judge Ninfo gives precedence to whatever it is that he calls "local practice" over both the written and published laws of Congress and official notices of the court, such as the notice of the meeting of creditors (para. 6, supra). The practical consequences of such abrogation by him of the law are very serious, for in addition to frustrating Dr. Cordero's reasonable expectations that the proceedings will be held according to law, it renders for naught all his enormous effort to educate himself about the Bankruptcy Code, procedural rules, and case law as well as the time and money that he spends whenever he travels all the way to Rochester to appear in person in his court. By unfairly surprising him with his trump card of "local practice", Judge Ninfo has created an untenable situation of legal uncertainty and arbitrariness. That is antithetical to the very essence of a system of justice that in order to curb abuse of power is based on notice of the law given in advance and opportunity to be heard without bias or prejudice, not tidbits about "local practice" that one must ferret out on a hit and miss basis and rely on at one's own risk.

21. That risk is all the more real and constant because Judge Ninfo's bias and prejudice lead him to break faith even with his own statement of that "local practice", whether stated orally or in a written order.

B. Judge Ninfo said in open court that he would issue Dr. Cordero's written requested order for the DeLanos to produce documents that can prove their bankruptcy fraud if, in accordance with local practice, he resubmitted it as a proposed order; however, after it was so resubmitted, the Judge not only did not issue it, but at Dr. Cordero's instigation issued pro forma his own watered down version that he then allowed the DeLanos to disobey with impunity

22. On July 9, 2004, Dr. Cordero submitted to Judge Ninfo a Statement analyzing the DeLanos'

bankruptcy petition and other few documents, which they belatedly produced upon request of Trustee Reiber after Dr. Cordero's repeated demands under 11 U.S.C. §§1302(b)(1) and 704(4) and (7) that the Trustee request them. The statement showed, among other things, how the DeLanos had engaged in bankruptcy fraud and how Trustee Reiber had failed to review the initial petition, to request documents for months, to subpoena documents when the DeLanos would not produce any, and how the Trustee had instead moved to dismiss the case due to the DeLanos' "unreasonable delay" in producing documents. Included in that Statement Opposing the Motion to Dismiss was Dr. Cordero's request for an order for the production of a specific list of documents.

23. At the hearing on July 19, 2004, of the Trustee's motion to dismiss, Dr. Cordero asked Judge Ninfo to grant his request for the order described in his July 9 Statement. The Judge stated that the Court does not prepare orders, but rather issues them on proposal from a party. Dr. Cordero proposed to reformat the text of his requested order into a proposed order. Having already had the opportunity to read that text, Judge Ninfo decided that Dr. Cordero could do so and gave him his fax number to make it possible for him to receive and issue it immediately so that the parties would have formal notice of their obligation to begin producing certain documents right away.
24. Dr. Cordero reformatted into a proposed order the same text of the requested order, with the changes necessary to take into account what had occurred at the hearing, and faxed it to Judge Ninfo the following day, July 20. To do so, he had to call the clerks and find out why his fax would not go through, whereupon he was told that the fax number that the Judge had given him was incorrect; he was then given the correct one.
25. But Judge Ninfo did not issue it. Instead, he gave precedence to the untimely objections of a local party, the DeLanos' attorney, Christopher Werner, Esq. In a letter addressed to Judge Ninfo delivered via messenger that day, July 20, he stated: "We are in receipt of Mr. Cordero's proposed Order which we believe far exceeds the direction of the Court." That was it. But that was enough for the Judge to take the hint. Att. Werner's letter was docketed immediately and made available through PACER. By contrast, Judge Ninfo not only failed to issue the proposed order; but he also did not even have it docketed forthwith, whereby he violated FRBkrP Rule 7005 and FRCivP Rule 5(e) and showed bias toward Att. Werner and the DeLanos.
26. In so doing, Judge Ninfo disregarded Dr. Cordero's statement in his letter accompanying the

proposed order that Att. Werner had had ten days since Dr. Cordero faxed his July 9 Statement to him to learn the breath of his requested order, yet he had failed to object to the Judge's decision at the hearing that Dr. Cordero should convert it into a proposed order and fax it to him. If, as the Attorney stated at the July 19 hearing, he has been in this business for 28 years, then he had to know his obligation to raise timely objections, particularly since:

a) Att. Werner and the Judge knew what documents had been requested, many for months since Dr. Cordero's written Objections of March 4, 2004!;
b) the Judge agreed to its production; and
c) FRCivP Rule 26(b)(1) favors broad discovery (made applicable by FRBkrP Rule 7026).

27. It was simply too late for Att. Werner to object for the first time after the hearing was over; cf. FRCivP Rule 26(a)(1)(E) last paragraph, providing for disclosure "unless the party objects during the conference"; and FRCivP Rule 46, requiring exceptions to be made "at the time the ruling or order of the court is made or sought". Att. Werner's objection was untimely and constituted an unfair surprise. Dr Cordero protested. To no avail. Judge Ninfo, showing bias once more, did not even acknowledge Dr. Cordero's objection.

28. Nor did Judge Ninfo issue the faxed proposed order as agreed at the July 19 hearing, or for that matter any production order at all. Yet, by July 21 PACER[1] already contained the minutes of that hearing, which included the statement in capital letters:

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

29. So Judge Ninfo made Dr. Cordero waste his time and effort once more (cf. §III of Dr. Cordero's motion of August 14, 2004, for docketing and other relief, herein incorporated by reference) in preparing and submitting a document that the Judge knew he was not going to act upon at all. Did he ask for it for leverage? Having broken faith with his own word officially recorded and electronically published, Judge Ninfo cannot be taken seriously because his word cannot justifiably be relied on.

30. Even as late as July 26, the Judge had not caused Dr. Cordero's faxed letters and proposed order of July 19 and 21 to be docketed. Dr. Cordero called the Court and asked Clerk Paula Finucane specifically why. She said that they were in chambers and that she had not received any order to be docketed.

[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.

31. Only the following day, July 27, was the July 19 letter docketed, but only it. Indeed, the entry in the docket accessible through PACER read thus:

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

When Dr. Cordero clicked on the hyperlink 53, only the letter –page 1 of 5- downloaded as an Adobe PDF (Portable Document Format), but not the order! Why?!

32. By contrast, the entry for Att. Werner's objection of July 19, 2004, to Dr. Cordero's claim as creditor of the DeLano Debtors read thus.

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

33. When Dr. Cordero clicked on the hyperlinks 51>2 an order proposed by Att. Werner to disallow Dr. Cordero's claim downloaded! This was blatant discriminatory treatment that showed Judge Ninfo's bias (cf. §II of Dr. Cordero's motion of August 14, 2004, for other instances of a pattern of docket manipulation).

    1. Judge Ninfo broke faith with his word that he would issue Dr. Cordero's proposed order for document production by the DeLanos just because their attorney, despite his untimeliness, "expressed concerns", thereby protecting the DeLanos from discovery that could show their bankruptcy fraud

34. As late as July 27, there had been no docketing of Dr. Cordero's letter of July 21 to Judge Ninfo protesting his failure to issue the proposed order that the Judge had asked Dr. Cordero to fax to him.

35. Instead, the Judge had an order of his own entered, which bore the date of July 26, 2004, rather than Dr. Cordero's proposed order that he had agreed to enter and the minutes of the July 19 hearing recorded its intended entry.

36. In his order, Judge Ninfo stated what it took to deny in effect Dr. Cordero's proposed order:

> 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;

37. This is an unfortunate hybrid between 'objections to' and 'concerns about'. It is indicative of Judge Ninfo's awareness that due to untimeliness, Att. Werner could not have raised valid objections for the first time after the hearing was over. Nevertheless, it shows how little it took for the Judge to break faith with his word given in open court: "concerns" expressed untimely by the debtors' attorney. On such "concerns", the Judge protected the DeLanos from having to produce documents that could prove their bankruptcy fraud, such as:
    a) the bank account and debit card statements that could show the whereabouts of the DeLanos' declared earnings of $291,470 in only the three fiscal years 2001-2003, while they declared having:
    b) only $535 in cash or in bank accounts…with Mr. DeLano's bank, M&T, which may have issued a bank officer like him with its credit card, perhaps even at a preferential rate, or its debit card, although the DeLanos did not declare possessing any such M&T Bank card, not to mention 'sticking' his employer with a bankruptcy debt, as they did other credit card issuers –most likely those that Veteran Banking Industry Mr. DeLano would know have a higher threshold of loss to trigger their participation in bankruptcy proceedings- on whose 18 credit cards they owe a whopping $98,092;
    c) two cars worth together merely $6,500;
    d) equity in their home 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;
    e) household goods worth only $2,910…that's all they have accumulated throughout their work lives!, despite the fact that they have earned over a hundred times that amount in only the last three years…unbelievable! Where did the money go or is?
38. But that common sense question Judge Ninfo would not ask, much less let Dr. Cordero find the answer to, never mind that the Judge has a duty under 11 U.S.C. §1325(a)(3) to ascertain whether "the [debtor's debt repayment] plan has been proposed in good faith and not by means forbidden by law". In fact, the Judge too had the duty to presume that the DeLanos had submitted their plan in bad faith, for that is what the Code entitles the creditors and the trustee to do. Thus, the Revision Notes and Legislative Reports, 1978 Acts, accompanying §343 provides that:

> The purpose of the examination [at the meeting of creditors] is to enable

creditors and the trustee to determine if assets have improperly been disposed of or concealed or if there are grounds for objection to discharge.

39. Far from pursuing this statutory line of inquiry, Judge Ninfo entered his July 26 Order, which was an inexcusably watered down version of Dr. Cordero's proposed order that he had agreed to enter. Despite the evidence of concealment of assets by the DeLanos, the Judge failed to require them to produce bank or *debit* account statements; documents concerning their undated "loan" of $10,000 to their son; instruments attesting to any interest of ownership in fixed or movable property, such as the mobile home admittedly bought with that "loan"; etc. Why? What motive could justify preventing the facts to be ascertained through production of those documents?
40. Consequently, Judge Ninfo's failure even to do his job under the Code, in addition to failing to keep his word, provides the foundation for the question whether he in effect denied Dr. Cordero's proposed order for document production by the DeLanos merely because of the undefined "concerns" expressed by Att. Werner or because of his own concerns and, if the latter, what are his concerns. Is the Judge protecting them because they are local parties and in general he has developed relationships with local parties that make him biased toward them, or because in particular Mr. DeLano is a 32-year veteran of the lending industry and knows too much about how abusive bankruptcies, even those to avoid repayment of loans to his bank, are handled? There is solid basis for the latter part of this question (§C, infra).

2. Judge Ninfo denied having received the proposed order despite the fact that Dr. Cordero faxed it to him, Dr. Cordero's phone bill reflects that, and his clerks acknowledged that it was in his chambers, just as in Pfuntner v. Gordon et al. he denied that Dr. Cordero's motion to extend time to file notice of appeal from his decision had arrived timely although Trustee Gordon had in writing admitted against his interest that it had arrived at a timely date, whereby trust in the Judge's word has been shattered

41. Still by Friday, August 6, neither Dr. Cordero's proposed order of July 19 nor his letter of July 21 had been docketed. On that day, Dr. Cordero inquired about it of Deputy Clerk of Court Todd Stickle. The latter told him that his clerks had not received it for docketing and that he would look into it and consult with Clerk of Court Paul Warren into the possibility of discriminatory treatment.
42. On Monday, August 9, Mr. Stickle informed Dr. Cordero that upon asking Judge Ninfo and his Assistant, Ms. Andrea Siderakis, he had been told that Dr. Cordero's July 21 fax never arrived.
43. That explanation for its not being docketed was definitely unacceptable: The fax went through

on July 22 and a copy sent to the Judge of Dr. Cordero's telephone bill showed that he did fax the letters and proposed order on July 20 and 22 to (585)613-4299. In addition, the receipt of his July 21 letter was acknowledged by Clerk Finucane, as was the place where it was withheld: Judge Ninfo's chambers.

44. This was by no means the first time that Judge Ninfo sprung on Dr. Cordero such a surprise: In the Pfuntner v. Gordon et al., docket no. 02-2230, in which both Mr. DeLano and Dr. Cordero are parties, the Judge dismissed Dr. Cordero's claims against Chapter 7 Trustee Kenneth Gordon, a local that so very frequently appears in his court (cf. ¶14, supra). Dr. Cordero timely mailed a notice of appeal on January 9, 2003. Trustee Gordon moved to dismiss it as untimely filed and Dr. Cordero 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 Dr. Cordero's motion had been timely filed on January 29, Judge Ninfo surprisingly found at its hearing on February 12, 2003, that it had been untimely filed on January 30! By such expedient allegation contrary to fact, Judge Ninfo denied Dr. Cordero's motion. Moreover, the Judge would not even look into how that discrepancy could have arisen between his alleged date of January 30 for the filing and Trustee Gordon's admission against legal interest that the filing occurred on January 29. Thereby the Judge insured that Dr. Cordero's appeal against his dismissal was doomed. (cf. §I.A.1. of Dr. Cordero's motion of August 8, 2003, for Judge Ninfo to recuse himself from the Pfuntner case, which is herein incorporated by reference).

45. The trust that a party must have in the integrity of a judge and that a judge must earn by his irreproachable conduct was thus shattered; subsequent events have only replaced it with distrust. Under these circumstances, it is not just the appearance of lack of impartiality that warrants the recusal of Judge Ninfo, but also of lack of integrity. Alas, there is even further factual basis for such assertion.

C. Judge Ninfo is protecting the DeLanos by reaching the biased conclusion, before they ever took the stand, or complied with his order of document production, or were examined by the creditors, that Dr. Cordero is wrong in his contention that the DeLanos moved untimely to disallow his claim for the single purpose of eliminating the only creditor that has examined their petition, found evidence of fraud, and is objecting to the confirmation of their debt repayment plan

46. The DeLanos commenced this case by their bankruptcy petition of January 26, 2004. Had they

wanted to object to Dr. Cordero's claim, they could and should have done so at that time. The reasons for this are that:

a) It was they who in Schedule F therein named Dr. Cordero among their creditors;
b) Mr. DeLano knew the nature and basis of Dr. Cordero's claim against him since he was served with his complaint of November 21, 2002, in Pfuntner v. Gordon et al.;
c) Att. Werner signed that petition and, therefore, also knew of Dr. Cordero's claim against the DeLanos;
d) both the DeLanos and Att. Werner knew that Dr. Cordero was determined to pursue his claim as stated in his Objection of March 4, 2004, to the Confirmation of the DeLanos' Plan of Debt Repayment, so determined that he traveled all the way from New York City, and in fact was the only creditor, to attend the meeting of creditors on March 8, 2004, at which, interestingly enough, Mr. DeLano was accompanied also by his attorney in the Pfuntner case, Michael Beyma, Esq., of Underberg & Kessler, LLP;
e) Att. Werner objected to Dr. Cordero's status as creditor in his statement to Judge Ninfo of April 16, 2004, which Dr. Cordero refuted in his timely reply of April 25, after which Att. Werner dropped the issue and went on for months treating Dr. Cordero as a creditor; and
f) Att. Werner continued to treat Dr. Cordero as a creditor for more than two months even after he filed his proof of claim on May 15, 2004.

47. But then only after Dr. Cordero faxed to Att. Werner his Statement of July 9, 2004 –in which he opposed Trustee Reiber's motion to dismiss and presented the evidence pointing to the DeLanos' having engaged in bankruptcy fraud, particularly concealment of assets- and after the hearing on July 19, 2004, did the DeLanos and Att. Werner come up with the idea of moving to disallow Dr. Cordero's claim.

48. It should be noted that for months Dr. Cordero had repeatedly requested under 11 U.S.C. §§1302(b)(1) and 704(4) and (7) that Trustee Reiber investigate the DeLanos and require them to produce specific types of documents. His requests were met only with Trustee Reiber's avoidance of his duty to investigate, his ineffectiveness in obtaining documents when, at Dr. Cordero's insistence, he appeared to request them, and the DeLanos' effort to produce as few documents and as late as possible. Hence, in his July 9 Statement Dr. Cordero presented Judge Ninfo for the first time with a requested order for specific documents. How the Judge dealt with

that request has been described above (para. 23, supra). In addition, how he dealt in his Orders of August 30 and November 10, 2004, with the DeLanos' motion to disallow is no less revealing of his bias and disregard for the law, the rules, and the facts.

49. To begin with, the DeLanos' motion to disallow was untimely and barred by laches, coming as it did almost two years after Mr. DeLano had known of Dr. Cordero's claim and six months after they had acknowledged in their petition his status as a creditor and during which they dealt with him as a creditor. Mr. DeLano, with his career long experience as a bank *loan* officer, had reason to expect that during that time Dr. Cordero, a non-local, non-institutional, and pro se creditor, would be worn down, for he Mr. DeLano knew that even institutional lenders simply stay away from the overwhelming majority of bankruptcies and write off what is owed them. However, Dr. Cordero not only continued pursuing his claim, but also requesting documents that could show the DeLanos' bankruptcy fraud and even pointed to the evidence of their concealment of assets. Then they came up with the subterfuge of moving to disallow Dr. Cordero's claim. And Judge Ninfo played along with them!

50. Thus, the Judge stated in his August 30 Order, without providing any reasons in accordance with law or in light of the facts, as judges are supposed to do, but in another "local practice" this-is-so-because-I-say-so fiat that:

> …the Claim Objection [the motion to disallow] 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;

51. Through such fiat, without any citation of any authority, Judge Ninfo disregarded the Bankruptcy Code, which considers untimeliness such a grave fault that it provides under §1307(c)(1) that "unreasonable delay by the debtor that is prejudicial to creditors" is grounds for a party in interest, who need not even be a creditor, to request the dismissal of the case or even the liquidation of the estate. There can be no doubt that it is prejudicial to Dr. Cordero to have been treated as a creditor by the DeLanos for six months, during which he spent a lot of effort, time, and money researching and writing numerous papers, preparing for hearings, and even traveling to Rochester, only to be challenged, after he presented evidence of their bankruptcy fraud, on the threshold question whether he is a creditor at all.

52. Then Judge Ninfo severed Dr. Cordero's claim against Mr. DeLano from the Pfuntner case and required Dr. Cordero to take discovery of Mr. DeLano to prove his claim, the one that the DeLanos themselves had taken the initiative to acknowledge in their petition. In so doing, he

severed that claim from the Pfuntner case to try it out of the context of all the other parties and issues in that case, to the benefit of Mr. DeLano and the detriment of Dr. Cordero. Thereby he disregarded his own order entered at the hearing on October 16, 2003, where he suspended all proceedings in the Pfuntner case until Dr. Cordero had appealed his decisions all the way to the Court of Appeals for the Second Circuit, where they had been since May 2, 2003, docket no. 03-5023, and from there to the Supreme Court. (Cf. §I of Dr. Cordero's motion of September 9, 2004, in the Court of Appeals, hereby incorporated by reference.) Once more the Judge had sprung another surprise on Dr. Cordero, frustrating his reasonable expectations, and further proving that the Judge's word cannot be relied on.

53. Likewise, in asking Dr. Cordero to prove his claim, the Judge disregarded FRBkrP Rule 3001(f) and the presumption of validity that had attached thereunder since May 15, 2004, to Dr. Cordero's properly filed claim (id., §II).

54. Moreover, Judge Ninfo suspended every other aspect of the case, to the detriment of all the other creditors, and without citing any authority or giving any reason for taking a step that so unnecessarily redounds to the detriment of all the other 20 creditors, whose interest it is to have the case move along so that they can start receiving payment under the plan or see it denied and be free to collect from the DeLanos. Thereby, however, the Judge protected the DeLanos by not having to deal with the issue under 11 U.S.C. §1325(a)(3) whether "the plan has been proposed in good faith and not by means forbidden by law" (cf. ¶38, supra). Moreover, by so doing, he provided the DeLanos a subterfuge for not providing to Dr. Cordero the documents that could prove their bankruptcy fraud, so that they claimed in the Statement by Att. Werner of November 9, 2004, "All of the Debtors' financial documents sought by Cordero in his demand relate to the Debtor's finances and have nothing to do with the matter at hand, which is Cordero's claim", targeted by the DeLanos' motion to disallow. Perfect pitcher-catcher coordination, but severely defective by its disregard of the rules (§C.2, infra).

1. Judge Ninfo disregarded the incontrovertible evidence that the DeLanos had documents that they had been requested to produce by Trustee Reiber, by Dr. Cordero, and even by his own Order of July 26; which he allowed them to disobey with impunity

55. To comply with the Order to prove his claim, Dr. Cordero requested the DeLanos on September 29, to produce a specific list of documents very similar to those on his proposed request of July 19, as well as other documents relating specifically to his claim against Mr. DeLano stemming

from the Pfuntner case.

56. In his Response of October 28, 2004, by Att. Werner, Mr. DeLano declined discovery of every item requested by Dr. Cordero either as irrelevant or not in the DeLanos' possession. However, that statement is irreconcilable with the facts and the legal obligations of the DeLanos.
57. Let's begin with the pretense that the DeLanos did not have in their possessions the requested documents. At of Dr. Cordero's instigation, Trustee Reiber requested on April 20 and May 18, 2004, that the DeLanos produce documents to support their petition. Although his request was unjustifiably insufficient in its scope given the claims and statements that the DeLanos had made in their petition, the Trustee requested the statements for the last three years of each of 8 of the 18 credit cards that they had listed in Schedule F. Even so, what the DeLanos produced on June 14, 2004, was a single statement for each of those 8 cards and they were between 8 and 11 months old! That fell indisputably short of what they had been requested to produce and showed their effort to avoid producing any documents at all, so much so that the Trustee moved to dismiss their case for "unreasonable delay". Nevertheless, by producing them the DeLanos also showed that they did keep such statements for many months and presumably for all their cards, for it is implausible that they just happened to have one single statement of each of the cards that happened to be included in the request.
58. Dr. Cordero brought to Trustee Reiber's attention the gross insufficiency of what they had produced. Eventually, on July 28, 2004, the DeLanos produced some of the statements that Att. Werner had subpoenaed from issuers of those credit cards. Among them was the set produced by Discover Card for Mr. DeLano's account 6011 0020 4000 6645. It included the statements since April 16, 2001, until the one with the payment due date of May 29, 2004. All of them were addressed to him at the DeLanos' home on 1262 Shoecraft Road, Webster, NY 14580-8954. This shows that as late as May 2004, months after filing their petition, the DeLanos kept receiving monthly credit card statements. It is also all but certain that they kept receiving the monthly statements for the other credit card that they had. The evidence for this is found in the credit bureau reports for each of the DeLanos, which show credit cards with activity well into 2004.

	Credit reporting agency	Date of report	Person reported on	Credit card issuer	Credit card account no.	Date of: last activity=a; balance=b; update=u; payment=p & amount; or items as of date reported=i
1.	Equifax	July 23, 04	David D.=D	Capital One	4388 6413 4765*	**i: July 2004** **p: January 2004**
2.			D	Capital One Bank	4862 3621 5719*	**i: July 2004** **p: February 2004**
3.			D	Cbusa sears	3480 0743 0*	**i: July 2004**
4.			D	Genesee Regional Bank		**i: July 2004** **p: June 2004**
5.			D	MBNA Amer	4313 0229 9975*	i: May 2004
6.			D	Wells Fargo Financial	674-1772	**i: February 2004**
7.	Equifax	July 23,04	Mary D.=M	Capital One	4862 3622 6671*	p: February 2004
8.	Experian	July 26, 04	D	Bank of America	4024 0807 6136…	b: May 2004
9.			D	Bank of Ohio	4266 86 99 5018	**p: May 2004: $197**
10			D	Bk I TX	4712 0207 0151…	**p: May 2004: $205**
11			D	Capital One Auto Finance	6206 2156 8765 2	b: June 2004
12			D	Fleet M/C	5487 8900 2018…	**p: May 2004: $172**
13			D	HSBC Bank USA	5215 3170 0105…	**p: February 04: $160**
14			D	MBGA/JC Penney	80246…	**p: *July* 2004: $57**
15			D	MBNA America Bank NA	7499 0999 89…	b: May 2004
16			D	MBNA America Bank NA	5329 0319 9996…	b: May 2004
17			D	W F Finance	1070 9031 772…	b: June 2004
18			D	First Premier Bank	4610 0780 0310…	**p: *July* 2004: $48**
19			D	Kaufmanns	R25243	b: April 2004
20			D	The Bon Ton	8601…	b: June 2004
21	Experian	July 26, 04	M	Capital One Bank	4862 3622 6671…	b: February 2004
22			M	Fleet M/C	5487 8900 2018…	**p: May 2004: $172**
23			M	MBGA/JC Penney	80246…	**p: *July* 2004: $57**
24			M	MBNA America Bank NA	4313 0229 9975…	b: May 2004
25			M	Kaufmanns	R25243	b: April 2004
26			M	The Bon Ton	8601…	b: June 2004
27	TransUnion	July 26, 04	D	Norwest Finance	1070 9031 7720 544	u: June 2004
28			D	First USA Bank.	4712 0207 0151 3292	u: April 2004
29			D	First USA Bank	4266 8699 5018 4134	u: April 2004
30			D	Summit Acceptance Corp	6206 2156 8765 2100 1	u: June 2004

	Credit reporting agency	Date of report	Person reported on	Credit card issuer	Credit card account no.	Date of: last activity=a; balance=b; update=u; payment=p & amount; or items as of date reported=i
31			D	Citi Cards	3480 0743 0593 0	u: July 2004
32			D	MBNA America	4313 0228 5801 9530	u: April 2004
33	TransUnion	July 26, 04	M	Discover Financial Svc	6011 0020 4000 6645	u: June 2004
34			M	Chase NA	4102 0082 4002 1537	u: May 2004
35			M	Citi Cards	3480 0743 0593 0	u: July 2004
36			M	JC Penney/MBGA	1069 9076 5	**p: July 2004**

59. These 36 accounts are by no means all those that the DeLanos have, just those for which those particular credit bureau reports as of July of last year provide a date under any of the categories of the last column of the table above and for which that date is in 2004. Nevertheless, they are enough to show that only an utterly biased person toward the DeLanos could even imagine that they did not receive any credit card statements so that they could no produce them to comply with the requests for those statements. They had no shortage of such requests: of April 20 and May 18 by Trustee Reiber; of August 14, September 29, and November 4 by Dr. Cordero; and the Order of July 26 of Judge Ninfo. Only a person utterly biased could disregard the fact that the DeLanos not only were billed, but also paid credit card charges as late as July 2004, the month when they requested those credit bureau reports. In fact, at the meeting of creditors held on February 1, 2005, at Trustee Reiber's office, Mr. DeLano admitted for the record that he currently uses and makes payments on his credit card issued by First Premier, no. 4610 0780 0310 8156.
60. Likewise, only a person utterly biased toward the DeLanos could assume that they no longer have any checking or savings accounts despite their reference in Schedule B to their having them with M&T Bank, where Mr. DeLano still works. Therefore, they must have received monthly statements of those accounts, which they could also have produced.
61. Consequently, they must be presumed to have concealed those statements. But if they did not have them in their possession, that would only mean that they systematically destroyed them. In so doing, they could have followed the example of their advisor, Att. Werner. He stated for the record at their examination that he destroyed documents that the DeLanos had provided him for the preparation of the petition and that he engages in that practice routinely. That constitutes a

flagrant violation of 18 U.S.C. §1519, found in Chapter 73-Obstruction of Justice and providing as follows:

> Whoever knowingly alters, destroys, mutilates, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of…any case filed under title 11, or in relation to or contemplation of any such…case, shall be fined under this title, imprisoned not more than 20 years, or both.

62. In the same vein, the few credit card statements that they produced, and more so the credit bureau reports, show that the DeLanos were systematically engaged in a skip and pay pattern for juggling their astonishingly high number of credit cards. This follows from the Equifax reports of July 23, 2004, which show that the DeLanos failed to make the minimum monthly payment a staggering 279 times!

63. It follows that Att. Werner's assertion in that April 16 Statement to the Court that "The Debtors have maintained the minimum payments on those obligations for more than ten (10) years" was plainly untrue. If Att. Werner had conducted even a cursory inquiry, let alone a reasonable one under the suspicious circumstances of a bank loan officer that goes bankrupt owing $98,092 on unsecured credit cards, he would have readily realized that such a statement was untrue. Therefore, Att. Werner violated FRBkrP Rule 9011(b). As to the DeLanos, to the extent that they gave him that information, they intentionally misled him, the Court, and all the creditors and parties in interest.

64. Consequently, the DeLanos' 1) scores of credit card accounts; 2) their charging since "1990 and prior credit card purchase" (Schedule F) tens of thousands of dollars for "living expenses" (Att. Werner's written statement to the Court dated April 16, 2004) and for the two-year educational expenses of their two children at a low in-state tuition, near-home community college; 3) their systematic failure to make even the minimum payments, 4) their expert knowledge about the lending industry's handling of delinquencies and bankruptcies; and 5) their concealment of account statements that they indisputably received and were legally bound to keep, show that the DeLanos made the life-style choice to live it up on credit cards without ever intending to pay their unsecured issuers while concealing the whereabouts of the $291,470 that they earned in just the 2001-03 fiscal years according to their petition and their 1040 IRS forms.

65. Consequently, only a disingenuous person could pretend that the DeLanos did not produce the

requested documents because they did not have them in their possession. Moreover, only a person utterly biased toward them could disregard these facts about the conduct of the DeLanos for more than 15 years, since '1990 and prior years', and still refer to them, as Judge Ninfo did in his August 30 Order, as "honest but unfortunate debtors who are entitled to a bankruptcy discharge, because they have filed a good faith Chapter 13 case". How impartial can he appear to a reasonable observer?

2. Judge Ninfo has protected the DeLanos by requiring Dr. Cordero to prove his claim against Mr. DeLano and then allowing the latter, in disregard of the broad scope of discovery under FRCivP Rule 26, to allege self-servingly the irrelevancy of the requested documents to deny Dr. Cordero every single one, whereby the evidentiary hearing for Dr. Cordero to prove his claim will be a sham!

66. Confirming this favorable prejudgment of the DeLanos before they had ever taken the stand or even had their petition formally submitted to him by Trustee Reiber, Judge Ninfo stated in his Order of November 10, 2004, that he "in all respects denied…the Cordero Discovery Motion" of November 4, "because DeLano indicated in the Response [to Dr. Cordero's discovery request of September 29] that he had produced all documents which he has in his possession that are relevant to the Claim Objection Proceeding". This the Judge stated although Mr. DeLano did not provide a single document requested by Dr. Cordero! He just took Mr. DeLano's self-serving assertion at face value and purely and simply disregarded the facts and common sense.

67. Judge Ninfo made that decision by disregarding once more the rules. He did not even mention, let alone discuss, as judges do who apply the law, Dr. Cordero's argument in his November 4 motion about the broad scope of discovery under FRBkrP Rule 7026 and FRCivP Rule 26(b)(1), providing that "Parties may obtain discovery regarding **any matter**, not privileged, that is relevant to the claim or **defense** of any party" (emphasis added). Based thereon, Dr. Cordero argued that he was entitled to defend against the DeLanos' untimely motion to disallow his claim, which led to Judge Ninfo's August 30 Order requiring him to take discovery from Mr. DeLano. His defense is dependent precisely on taking discovery that will allow him to establish, among other things, that the DeLanos' motion is a desperate attempt in contravention of FRBkrP 9011(b) to eliminate him from their case because he is the only creditor that objected to the confirmation of their Chapter 13 repayment plan and that has relentlessly insisted on their production of documents that can show whether they submitted their petition in bad faith in violation of 11 U.S.C. §1325(a)(3) and are engaged in bankruptcy fraud, particularly

concealment of assets.

68. Had Judge Ninfo had any regard for the rules, he would not have uncritically sustained Att. Werner's wholesale denial in his October 28 Response to Dr. Cordero's discovery request on the pretense that "all of such demands are not relevant to the claim of Richard Cordero against the Debtors." Instead, he would have complied, as judges respectful of the legality do, with FRCivP Rule 26(b)(1), which provides that:

> …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)

69. Moreover, had Judge Ninfo not been so blind by his bias, he would have put two and two together to conclude that the DeLanos' avoidance for months of their duty to comply under 11 U.S.C. §521(3) and (4) with Trustee Reiber's document production requests to the point that the Trustee moved to dismiss for "unreasonable delay" constituted reasonable evidence that in refusing to provide even one single document requested by Dr. Cordero Mr. DeLano was engaging in the same conduct aimed at the same objective, namely, concealing documents to prevent the discovery of his bankruptcy fraud.

70. By Judge Ninfo forcing Dr. Cordero to take discovery of Mr. DeLano to prove his claim against Mr. DeLano without requiring the latter to overcome the presumption of validity attached to a properly filed claim under FRBkrP Rule 3001(f), only to deny him every single document requested, the Judge has made sure that Dr. Cordero is deprived of the means of examining effectively Mr. DeLano at the upcoming evidentiary hearing. Judge Ninfo has set up Dr. Cordero to fail at a hearing that will be a sham!

3. Judge Ninfo has protected from Dr. Cordero's discovery requests Mr. DeLano, who was the lender to David Palmer, whom the Judge also protected from Dr. Cordero's application for default judgment, thus raising the question whether Mr. DeLano is protected because the Judge's bias or because a 32-year veteran bank loan officer knows too much not to be protected

71. Mr. DeLano was the M&T Bank Officer who lent money for Mr. David Palmer to run his moving and storage company Premier Van Lines, which went bankrupt and gave rise to Pfuntner v. Gordon et al., in which both Mr. DeLano and Dr. Cordero are parties. Mr. Palmer too is a party in that case. He was supposed to store Dr. Cordero's property, but in fact abandoned it while he kept taking in his storage and insurance fees. Dr. Cordero served him

with a summons and complaint, which Mr. Palmer never answered. Consequently, Dr. Cordero served him with an application dated December 26, 2002, for default judgment for a sum certain under FRCivP Rule 55, made applicable by FRBkrP Rule 7055, and applied to Judge Ninfo for the entry of such judgment.

72. However, even after Mr. Palmer was defaulted by the Clerk of Court Paul Warren on February 4, 2003, the Judge would not enter such judgment. Instead, flatly contradicting the requirements of Rule 55, Judge Ninfo imposed on Dr. Cordero the obligation to conduct an "inquest" to establish loss or damage of his property. Dr. Cordero participated in such an "inquest" on May 19, 2003. At the hearing on May 21, it was established that there had been loss or damage of Dr. Cordero's property to the point that Judge Ninfo himself asked Dr. Cordero to resubmit his application for default judgment. Dr. Cordero did resubmit the same application on June 7. Nevertheless, at the hearing on June 25, 2003, Judge Ninfo would not enter it! He denied it by raising for the first time the pretext that Dr. Cordero had not proved how he had arrived at the sum claimed. Yet, that was the exact sum certain that he had claimed back in December 2002 and that the Judge had had six months to examine! (Cf. §§I.B. and C. of Dr. Cordero's motion of August 8, 2003.)
73. Why would Judge Ninfo ask him to resubmit the application, make him spend his effort, time, and money to do so while getting his hopes high if the Judge was going to deny it on the basis of an element that he had known for six months? Why did Judge Ninfo feel the need to become the advocate of defaulted Mr. Palmer and keep him away from his court rather than protect Dr. Cordero, whose property Mr. Palmer had lost or damaged through negligence, recklessness, and fraud? These questions are particularly pertinent because it was Mr. Palmer who had invoked the protection of the law by applying for voluntary bankruptcy on March 5, 2001, and thereby submitted himself to the jurisdiction of Judge Ninfo, under which he still was. Why did the Judge not hold Mr. Palmer to his obligation under the law to answer a summons or let him contest for himself a default judgment, as he could do under FRCivP Rules 55(c) and 60(b)?
74. Therefore, how inconsistent for Judge Ninfo to state in his Order of August 30, 2004, that "…the Court is not aware of any evidence whatsoever, produced either in the Premier A[dversary]P[roceeding] 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…". How can the Judge cast doubt on the fact of such loss or damage since

he so much acknowledged that there had been such that he asked Dr. Cordero to resubmit the application for default judgment?…only to deny it again! What this shows is that Judge Ninfo does not know what he has done and only knows that he will do and say anything so long as it is to protect the local parties and injure Dr. Cordero. (Cf. §II of Dr. Cordero's motion of November 3, 2003, in the Court of Appeals.)

75. This background provides the foundation for asking how much Mr. DeLano, as a party in the Pfuntner case and the lender to Mr. Palmer, knows that could incriminate others in bankruptcy fraud. In turn, this begs the question in how many other cases during his 32-year long career as a bank officer Mr. DeLano has been involved one way or another so that now he knows too much not to be protected. The same motives for Judge Ninfo to protect Mr. Palmer from Dr. Cordero's application for default judgment may explain why he is now protecting Mr. DeLano from Dr. Cordero's effort to obtain the documents showing his involvement in bankruptcy fraud. None of those motives, however, can legally justify Judge Ninfo's bias and prejudice against Dr. Cordero.

III. The totality of circumstances assessed by a reasonable person gives rise to the appearance of bias and prejudice on the part of Judge Ninfo that requires his recusal

76. Every assertion that Dr. Cordero has made in this motion or in his other papers referred to here has been supported either by citations and discussion of the applicable law and rules or facts established by other documents in the dockets of the cases under consideration (Table of References, infra). Moreover, in our system of justice a person can lose his property, his freedom, and even his life on the basis of circumstantial evidence. Hence, the approach taken by fair and impartial persons, whether they be judges, jurors, or observers, when examining evidence is, not to chip away at it by discarding its elements one by one out of context, but rather to take into consideration "the totality of circumstances" and analyze it from the point of view of the reasonable persons that the law requires people to be. Such persons would proceed on the sound principle that two similar events can be explained away as a coincidence, but three form a pattern.

77. In the DeLano case, just as in the Pfuntner case, Judge Ninfo, without citing a single law or rule, let alone discussing any, but rather disregarding their provisions as well as the surrounding facts and instead engaging in his very own "local practice" (§§9 et seq., supra), has made a series of

decisions that so consistently benefit the local parties and injure Non-local Pro se Dr. Cordero as to form a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing and bias. This is the antithesis of process in accordance with law and constitutes a denial of due process (cf. §III of Dr. Cordero's motion of November 3, 2003, in the Court of Appeals).

78. In light thereof, would it appear to a reasonable person informed of all the surrounding facts and circumstances of these cases that in the DeLano case generally, and at the upcoming evidentiary hearing in particular, Mr. DeLano or Dr. Cordero could say anything that would cause Judge Ninfo to reach any other but the forgone conclusion that Dr. Cordero has no claim against Mr. DeLano, that his claim should be disallowed, and that he has no standing to oppose the confirmation of the DeLanos' plan?…and good riddance! If so, the appearance of partiality has been reasonably questioned and Judge Ninfo has a statutory duty to recuse himself from the DeLano case. (Cf. §II of Dr. Cordero's motion of August 8, 2003.)

IV. Relief Requested

79. Therefore, Dr. Cordero respectfully requests that:
    1) in the interest of justice the DeLano case and the Pfuntner case, and at any rate the former, be removed under 28 U.S.C. §1412 to another district where a court unrelated to any of the parties or Judge Ninfo can give rise to the expectation that it will afford all parties a fair and impartial process, as presumably will do the U.S. court for the Northern District of New York in Albany (cf. §III of Dr. Cordero's motion of August 8, 2003);
    2) a report be made under 18 U.S.C. §3057(a) of these cases to U.S. Attorney General Alberto Gonzales for investigation into bankruptcy fraud; into concealment of assets and other bankruptcy offenses under 18 U.S.C. §152 et seq.; and of the trustees pursuant to 28 U.S.C. §526(a)(1); and that it be recommended that the investigation be conducted by neither the U.S. Attorney's Office nor the FBI Office in Rochester or Buffalo, NY, but rather by such Offices whose personnel is not related to or familiar with any party in these cases, as presumably are the Offices in Washington, D.C., and Chicago;
    3) Judge Ninfo recuse himself from both cases, and at any rate from the DeLano case.

February 17, 2005

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

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

TABLE OF REFERENCES

papers and documents referred to in the motion for Judge Ninfo to recuse himself of February 17, 2005, by Dr. Richard Cordero

1. ***Dr. Cordero**'s motion of **August 8**, 2003, **for** Judge **Ninfo** to remove the Pfuntner case and **recuse himself**
2. ***Dr. Cordero**'s motion of **November 3**, 2003, **to** the **Court of Appeals** for the Second Circuit for leave to file updating supplement of evidence of **bias** in Judge **Ninfo**'s denial of Dr. Cordero's request for a trial by jury
3. Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, Deadlines
4. Voluntary Petition of January 26, 2004, under Chapter 13 of the Bankruptcy Code, with Schedules, of David DeLano and Mary Ann DeLano
5. Chapter 13 Plan of January 26, 2004
6. Dr. Cordero's Objections of March 4, 2004, to the confirmation of the DeLanos' Chapter 13 debt repayment plan
7. "Debtors' statement of April 16, 2004, in opposition to Cordero objection [sic] to claim of exemptions", submitted and filed with the court by Att. Werner
8. Dr. Cordero's Statement of July 9, 2004, in opposition to Trustee Reiber's motion to dismiss the DeLano petition and containing in the relief the text of a requested order
9. Dr. Cordero's letter of July 19, 2004, faxed to Judge Ninfo together with his:

   Proposed order for production of documents by the DeLanos and Att. Werner, obtained through conversion of the requested order contained in Dr. Cordero's Statement of July 9, 2004, to the court
10. Att. Werner's notice of hearing and order of July 19, 2004, objecting to Dr. Cordero's claim and moving to disallow it
11. Dr. Cordero's letter of July 19, 2004, faxed to Judge Ninfo together with his:
12. Proposed order for production of documents by the DeLanos and Att. Werner, obtained through conversion of the requested order contained in Dr. Cordero's Statement of July 9, 2004

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* Incorporated by reference.

13. Att. Werner's letter of July 20, 2004, to Judge Ninfo, delivered via messenger, objecting to Dr. Cordero's proposed order for document production

14. Att. Werner's letter of July 20, 2004, to Dr. Cordero accompanying the following document:

    Dr. Cordero's letter of July 21, 2004, faxed to Judge Ninfo, requesting that he issue the proposed order as agreed at the hearing on July 19, 2004

15. Judge Ninfo's order of July 26, 2004, providing for the production of only some documents but not issuing Dr. Cordero's proposed order because "to [it] Attorney Werner expressed concerns in a July 20, 2004 letter"

16. *Dr. **Cordero**'s motion of **August 14**, 2004, for **docketing** and issue, **removal**, referral, examination, and other relief, noticed for August 23 and 25, 2004

17. Judge Ninfo's Interlocutory Order of August 30, 2004, requiring Dr. Cordero to take discovery of his claim against Debtor DeLano arising from the Pfuntner v. Gordon et al. case on appeal in the Court of Appeals for the Second Circuit

18. ***Dr. Cordero**'s motion of **September 9**, 2004, in the **Court of Appeals** for the Second Circuit to **quash** the **order** of Bankruptcy Judge John C. **Ninfo**, II, of August 30, 2004, to sever a claim from the case on appeal in the **Court of Appeals** to try it in the DeLano bankruptcy case, docket no. 04-20280

19. Dr. Cordero's letter of September 29, 2004, to Att. Werner requesting production of documents pursuant to Judge Ninfo's order of August 30, and without prejudice to Dr. Cordero's motion of September 9, to quash it in the Court of Appeals

20. Att. Werner's letter of October 28, 2004, to Dr. Cordero accompanying Mr. DeLano's Response to discovery demand of Richard Cordero-Objection to Claim of Richard Cordero, where discovery of every item requested is denied as not relevant and the item concerning Mr. Palmer is said not to be in Mr. DeLano's possession

21. Dr. Cordero's motion of November 4, 2004, to enforce Judge Ninfo's Order of August 30, 2004, by ordering Mr. DeLano to produce the requested documents and declaring that the Order does not and cannot prevent Trustee Reiber from holding a §341 examination of the DeLanos

22. Att. Werner's statement of November 9, 2004, to the court on behalf of the DeLanos to oppose Cordero [sic] motion regarding discovery and request that it be denied in all respects

23. Judge Ninfo's Order of November 10, 2004, denying in all respects Dr. Cordero's motion of November 4 and holding the hearing, noticed for November 17, to be moot

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* Incorporated by reference.

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

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

JAMES PFUNTER, Adversary Proceeding
Plaintiff Case no: 02-2230

-vs-

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

Defendants

NOTICE OF MOTION FOR REMOVAL OF CASE AND RECUSAL OF JUDGE NINFO

RICHARD CORDERO
Third party plaintiff

-vs-

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

Third party defendants

Madam or Sir,

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

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

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

Dated: August 8, 2003

Dr. Richard Cordero

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

CERTIFICATE OF SERVICE

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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

PREMIER VAN LINES, INC., Chapter 7
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Defendants

MOTION FOR REMOVAL OF CASE AND RECUSAL OF JUDGE NINFO

RICHARD CORDERO
Third party plaintiff

-vs-

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

Third party defendants

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

1. This court, the Hon. John C. Ninfo, II, presiding, and court officers have participated in a series of events of disregard of facts, rules, and law so consistently injurious to Dr. Cordero as to form a pattern of non-coincidental, intentional, and coordinated acts from which a reasonable person can infer their bias and prejudice against Dr. Cordero.

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

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

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

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

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

TABLE OF CONTENTS

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

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

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

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

7. In search of his property in storage with Premier Van Lines, Dr. Cordero was referred to Kenneth Gordon, Esq., the trustee appointed for its liquidation. The Trustee had failed to give Dr. Cordero notice of the liquidation although the storage contract was an income-producing asset of the Debtor. Worse still, the Trustee did not provide Dr. Cordero with any information about his property and merely bounced him back to the same parties that had referred Dr. Cordero to him.

8. Eventually Dr. Cordero found out from third parties that Mr. Palmer had left Dr. Cordero's property at a warehouse in Avon, NY, owned by Mr. James Pfuntner. However, the latter refused to release his property lest Trustee Gordon sue him and he too referred Dr. Cordero to

the Trustee. This time not only did the Trustee fail to provide any information or assistance in retrieving his property, but in a letter of September 23, 2002, improper in its tone and unjustified in its content, he also enjoined Dr. Cordero not to contact him or his office anymore.

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

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

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

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

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

13. Dr. Cordero, appearing pro se, cross-claimed against the Trustee, who moved to dismiss. Before discovery had even begun or any initial disclosure had been provided by the other parties –only Dr. Cordero had disclosed numerous documents with his pleadings- and before any conference of parties or pre-trial conference under Rules 26(f) and 16 F.R.Civ.P., respectively, had taken place, the court summarily dismissed the cross-claims at the hearing on December 18, 2002. To

do so, it disregarded the genuine issues of material fact at stake as well as the other standards applicable to motions under Rule 12(b)(6) F.R.Civ.P., both of which Dr. Cordero had brought to its attention.

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

14. At the December 18 hearing, the court excused the Trustee in open court when it stated that:

> "I'm going to grant the Trustee's motion and I'm going to dismiss your cross claims. First of all, with respect to the defamation, quite frankly, these are the kind of things that happen all the time, Dr. Cordero, in Bankruptcy court…it's all part of the Trustee just trying to resolve these issues." (Transcript, pp.10-11)

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

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

16. The order dismissing Dr. Cordero's crossclaims was entered on December 30, 2002, and mailed from Rochester. Upon its arrival in New York City after the New Year's holiday, Dr. Cordero timely mailed the notice of appeal on Thursday, January 9, 2003. It was filed in the bankruptcy court the following Monday, January 13. The Trustee moved in district court to dismiss it as untimely filed. it.

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

18. Trustee Gordon checked the filing date of the motion to extend just as he had checked that of the notice of appeal: to escape accountability through a timely-mailed/untimely-filed technical gap. He would hardly have made a mistake on such a critical matter. Nevertheless, the court disregarded the factual discrepancy without even so much as wondering how it could have come about, let alone ordering an investigation into whether somebody and, if so, who, had changed the filing date and on whose order. The foundation for this query is provided by evidence of how court officers mishandled docket entries and the record for Dr. Cordero's cases (paras. 32 belowand 97 below). Instead, the court rushed to deny the motion to extend, which could have led to the review of its dismissal of Dr. Cordero's cross-claims.

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

19. To appeal from the court's dismissal of his cross-claims, Dr. Cordero contacted Court Reporter Mary Dianetti on January 8, 2003, to request the transcript of the December 18 hearing. After checking her notes, she called back and told Dr. Cordero that there could be some 27 pages and take 10 days to be ready. Dr. Cordero agreed and requested the transcript.

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

21. There is further evidence supporting the implication of Reporter Dianetti's comment and giving rise to the concern that at hearings and meetings where Dr. Cordero is a participant the court engages in exchanges with parties in Dr. Cordero's absence. Thus, on many occasions the court

has cut off abruptly the phone communication with Dr. Cordero, in contravention of the norms of civility and of its duty to afford all parties the same opportunity to be heard and hear it.

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

23. The confirmation that Reporter Dianetti was not acting on her own in avoiding the submission of the transcript was provided by the fact that the transcript was not sent on March 12, the date on her certificate. Indeed, it was filed two weeks later on March 26, a significant date, namely, that of the hearing of one of Dr. Cordero's motions concerning Trustee Gordon. Somebody wanted to know what Dr. Cordero had to say before allowing the transcript to be sent to him. Thus, the transcript reached him only on March 28.

24. The Court Reporter never explained why she failed to comply with her obligations under either 28 U.S.C. §753(b) (SPA-86) on "promptly" delivering the transcript "to the party or judge" –was she even the one who sent it to the party?- or Rule 8007(a) F.R.Bkr.P. (SPA-65) on asking for an extension.

25. Reporter Dianetti also claims that because Dr. Cordero was on speakerphone, she had difficulty understanding what he said. As a result, the transcription of his speech has many "unintelligible" notations and passages so that it is difficult to make out what he said. If she or the court speakerphone regularly garbled what the person on speakerphone said, it is hard to imagine that either would last long in use. But no imagination is needed, only an objective assessment of the facts and the applicable legal provisions, to ask whether the Reporter was told to disregard Dr. Cordero's request for the transcript; and when she could no longer do so, to garble his speech and submit her transcript to a higher-up court officer to be vetted before

mailing a final version to Dr. Cordero. When a court officer or officers so handle a transcript, which is a critical paper for a party to ask on appeal for review of a court's decision, an objective observer can reasonably question in what other wrongful conduct that denies a party's right to fair and impartial proceedings they would engage to protect themselves.

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

26. Dr. Cordero joined as third party defendant Mr. Palmer, who lied to him about his property's safety and whereabouts while taking in his storage and insurance fees for years. Mr. Palmer, as president of the Debtor, was already under the bankruptcy court's jurisdiction. Nonetheless, he failed to answer Dr. Cordero's summons and complaint. Hence, Dr. Cordero timely applied under Rule 55 F.R.Civ.P. for default judgment for a sum certain on December 26, 2002. But nothing happened for over a month during which Dr. Cordero had no oral or written response from the court to his application.

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

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

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

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

30. Clerk Paul Warren had an unconditional obligation under Rule 55 F.R.Civ.P.: "**the clerk shall enter** the party's default," (emphasis added) upon receiving Dr. Cordero's application of December 26, 2002. Yet, it was only on February 4, 41 days later and only at Dr.

Cordero's instigation), that the clerk entered default, that is, certified a fact that was such when he received the application, namely, that Mr. Palmer had been served but had failed to answer. The Clerk lacked any legal justification for his delay. He had to certify the fact of default to the court so that the latter could take further action on the application. It was certainly not for the Clerk to wait until the court took action.

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

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

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

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

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

> …within the next month the Avon Containers will be opened in the presence of Cordero, at which point it may be determined that Cordero has incurred no loss or damages, because all of the Cordero Property is accounted for and in the same condition as when delivered for storage in 1993.

35. The court wrote that on February 4, but the inspection did not take place until more than 3 three months later on May 19; it was not even possible to open all containers; the failure to enable the opening of another container led to the assumption that other property had been lost; and

the single container that was opened showed that property had been damaged. (paras. 63 below).

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

37. What is more, for its biased prejudgment, the court not only totally lacked evidentiary support, but it also disregarded contradicting evidence available. Indeed, the storage containers with Dr. Cordero's property were said to have been left behind by Mr. Palmer in the warehouse of Mr. Pfuntner. The latter had written in his complaint that property had been removed from his warehouse premises without his authorization and at night. Moreover, the warehouse had been closed down and remained out of business for about a year. Nobody was there paying to control temperature, humidity, pests, or thieves. Thus, Dr. Cordero' property could also have been stolen or damaged.

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

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

39. In the same vein, the court cast doubt on the recoverability of "moving, storage, and insurance fees…especially since a portion of [those] fees were [sic] paid prior to when Premier became responsible for the storage of the Cordero Property." On what evidence did the court make up its mind on the issue of responsibility, which is at the heart of the liability of other parties to Dr. Cordero? The court has never requested disclosure of, not to mention scheduled discovery or held an evidentiary hearing on, the storage contract, or the

terms of succession or acquisition between storage companies, or storage industry practices, or regulatory requirements on that industry.

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

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

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

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

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

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

43. The district court, the Hon. David G. Larimer presiding, accepted the bankruptcy court's February 4 Recommendation and in its order of March 11, 2003, denied entry of default judgment. Its stated ground therefor was that:

> [Dr. Cordero] must still establish his entitlement to damages since the matter **does not involve a sum certain** [so that] it may be necessary for [sic] an inquest concerning damages before judgment is appropriate…the Bankruptcy Court is the proper forum for conducting [that] inquest. (emphasis added)

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

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

    2) the Order to Transmit Record and Recommendation; ;

    3) the Attachment to the Recommendation; ;

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

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

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

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

47. Also with no discussion, the district court disregarded Dr. Cordero's contention that when Mr. Palmer failed to appear and Dr. Cordero applied for default judgment for a sum certain his entitlement to it became perfect pursuant to the plain language of Rule 55.

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

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

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

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

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

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

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

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

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

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

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

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

for a fool! Would a reasonable person trust this court at all, let alone trust it to be fair and impartial in subsequent judicial proceedings?

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

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

56. At the only meeting ever held in the adversary proceeding, the pre-trial conference on January 10, 2003, the court orally issued only one onerous discovery order: Dr. Cordero must travel from New York City to Rochester and to Avon to inspect the storage containers that bear labels with his name at Plaintiff Pfuntner's warehouse. Dr. Cordero had to submit three dates therefor. The court stated that within two days of receiving them, it would inform him of the most convenient date for the other parties. Dr. Cordero submitted not three, but rather six by letter of January 29 to the court and the parties. Nonetheless, the court neither answered it nor informed Dr. Cordero of the most convenient date.

57. Dr. Cordero asked why at a hearing on February 12, 2003. The court said that it was waiting to hear from Mr. Pfuntner's attorney, Mr. MacKnight, who had attended the pre-trial conference and agreed to the inspection. The court took no action and the six dates elapsed. But Dr. Cordero had to keep those six dates open on his calendar for no good at all and to his detriment.

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

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

59. Thereupon, Mr. MacKnight contacted the court on March 25 or 26 ex parte –in violation of Rule 9003(a) F.R.Bkr.P.. Reportedly the court stated that it would not be available for the

inspection and that setting it up was a matter for Dr. Cordero and Mr. Pfuntner to agree mutually.

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

60. Dr. Cordero raised a motion on April 3 to ascertain this change of the terms of the court's first order and insure that the necessary transportation and inspection measures were taken beforehand. The court received the motion on April 7, and on that very same day, thus, without even waiting for a responsive brief from Mr. MacKnight, the court wrote to Dr. Cordero denying his request to appear by telephone at the hearing –as he had on four previous occasions- and requiring that Dr. Cordero travel to Rochester to attend a hearing in person to discuss measures to travel to Rochester, That this was an illogical pretext is obvious and that it was arbitrary is shown by the fact that after that the court allowed Dr. Cordero to appear four more times by phone. Unable to travel to Rochester shortly after that surprising requirement, Dr. Cordero had to withdraw his motion.

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

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

burden of an enormous waste of time, effort, and aggravation. . Dr. Cordero analyzed in detail for the court Mr. MacKnight's mendacity and lack of candor, to no avail.

62. Although the court has an obligation under Rule 56(g) to sanction a party proceeding in bad faith, it disregarded Mr. MacKnight's disingenuousness, just as it had shown no concern for Trustee Gordon's false statements submitted to it. How much commitment to fairness and impartiality would a reasonable person expect from a court that exhibits such 'anything goes' standard for the admission of dishonest statements? If that is what it allows outside officers of the court to get away with, what will it allow or ask in-house court officers to engage in?

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

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

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

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

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

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

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

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

69. Yet, Mr. Pfuntner and Mr. MacKnight had nothing to worry about. So much so that they did not even care to submit a brief in opposition to Dr. Cordero's motion for sanctions and compensation. Mr. MacKnight did not even object to it at its hearing on June 25. The court did

it for them at the outset, volunteering to advocate their interests just as it had advocated Mr. Palmer's to deny Dr. Cordero's application for default judgment.

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

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

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

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

72. The June 25 hearing was noticed by Dr. Cordero to consider his motion for sanctions and compensation as well as his default judgment application. However, the court had its own agenda and did not allow Dr. Cordero to discuss them first. Instead, it alleged, for the first time, that it could hardly understand Dr. Cordero on speakerphone, that the court reporter also had problems understanding him, and that he would have to come to Rochester to attend hearings in person; that the piecemeal approach and series of motions were not getting the case anywhere and that it had to set a day in October and another in November for all the parties to meet and discuss all claims and motions, and then it would meet with the parties once a month for 7 or 8 months until this matter could be solved.

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

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

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

    a) failed to require even initial disclosure under Rule 26(a);
    b) failed to order the parties to hold a Rule 26(f) conference;
    c) failed to demand a Rule 26(f) report;
    d) failed to hold a Rule 16(f) scheduling conference;
    e)failed to issue a Rule 16(f) scheduling order;

f) failed to demand compliance with its first discovery order by not requiring Mr. MacKnight as little as to choose one of Dr. Cordero's six proposed dates for the Rochester trip and inspection;

g) failed to insure execution by Mr. Pfuntner and Mr. MacKnight of its second and last discovery order.

76. It is only now that the court wants to 'start building a record'…what a damning admission that it has not built anything for almost a year! However, it wants to build it at Dr. Cordero's expense by requiring him to travel monthly to Rochester for an unjustifiably long period of seven to eight months after the initial hearings next October and November. This is not so much an admission of incompetence as it is an attempt to further rattle Dr. Cordero and maximize the transactional cost to him in terms of money and inconvenience, just as the court put Dr. Cordero through the extra work of resubmitting the default judgment application (paras. et seq. 50 above) and writing a separate sanctions and compensation motion (paras. 66 above) only to deny both of them on already known or newly concocted grounds.

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

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

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

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

80. In any event, the point is this: There is no trial, just the series of hearings announced by the court at the June 25 hearing, which will be dragged out for seven to eight months after those in

October and November. There is every reason to believe that the court will in fact drag out this series that long, for it stated in the order that at the "discrete hearings" it will begin with Plaintiff Pfuntner's complaint. Thereby it admitted by implication that after more than a year of mismanagement the court has not gotten this case past the opening pleading. Given the totality of circumstances relating to the way the court has treated Dr. Cordero, would an objective observer reasonably fear that by beginning at that elemental stage of the case, the court will certainly have enough time to teach Dr. Cordero a few lessons of what it entails for a non-local pro se to come into its court and question the way it does business with Trustee Gordon or the other locals?

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

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

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

83. But the shock was even greater when Dr. Cordero, a pro se litigant, realized that he could not be required to play the role of a prosecutor, that this is an adversary proceeding and as such a civil matter, not a criminal case. Upon further research and analysis, Dr. Cordero became aware of the fact that to prove something beyond a reasonable doubt is the highest of three standards of proof, and that there are two lower ones applied to civil matters, namely proof by a preponderance of the evidence and the one requiring clear and convincing evidence. Moreover,

there is not compelling reason why Dr. Cordero should not be allowed to prove his claims against Mr. Palmer, Mr. Pfuntner, and Mr. MacKnight by a preponderance of the evidence, the lowest standard. The court's warning was just intended to further rattle Dr. Cordero and intentionally inflict on him even more emotional distress. There is further evidence supporting this statement.

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

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

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

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

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

4. The court blames Dr. Cordero for being required now to travel to Rochester monthly because he chose to sue and to do so in

federal rather than state court, whereby the court disregards the law and the facts and penalizes Dr. Cordero for exercising his rights

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

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

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

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

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

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

92. This set of facts warrants the question whether a court that reduces a party's claim to a minimal expression even before a trial date is anywhere in the horizon and loses sight altogether of other claims can give the appearance of either impartiality or knowing what it is talking about. Would an objective observer reasonably question whether the court twists the facts because due to incompetence it ignores even the basic facts of a case that has been before it for almost a year or rather because its bias and prejudice against Dr. Cordero prompts it to make any

statement, however ill-considered or contrary to the facts, so long as it is to Dr. Cordero's detriment? Is it not quite illogical for the court, on the one hand, to blame Dr. Cordero for having run up excessive costs for the court and the parties given that his claim is only for $14,000, and on the other hand, to drag out this case for the next 9 to 10 months?

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

93. There must be no doubt that the court intends to maximize Dr. Cordero's transactional cost of prosecuting this case: On June 5 Mr. MacKnight submitted representations to the court concerning Dr. Cordero's conduct at the inspection. Whereas Mr. MacKnight did not attend, Dr. Cordero did and he knows those representations to be objectively false. After the appropriate request for Mr. MacKnight to correct them and the lapse of the safe heaven period under Rule 9011 F.R.Bkr.P., Dr. Cordero moved for sanctions on July 20. Mr. MacKnight must have received from the court such an unambiguous signal that he need not be afraid of the court imposing any sanctions requested by Dr. Cordero that again he did not even bother to oppose the motion.

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

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

96. To appear in person would have cost Dr. Cordero an enormous amount of money, for he would have had to buy flight and hotel tickets at the highest, spot price and cut to pieces two weekdays on very short notice. And what for? To be in court at 9:30 a.m. for a 15 to 20 minutes

hearing. Would an objective person who knew about the court's indifference to the submission of falsehood to it have expected the court to give more importance to imposing sanctions for the sake of the court's integrity than to denying them to make Dr. Cordero's trip for naught in order to keep wearing him down financially and emotionally?

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

97. Dr. Cordero knew that to perfect his appeal to the Court of Appeals he had to comply with Rule 6(b)(2)(B)(i) F.R.A.P. by submitting his Redesignation of Items on the Record and Statement of Issues on Appeal. He was also aware of the suspected manipulation of the filing date of his motion to extend time to file the notice of appeal, which so surprisingly prevented him from refiling his notice of appeal to the district court (paras. 16 above). Therefore, he wanted to make sure of mailing his Redesignation and Statement to the right court. To that end, he phoned both Bankruptcy Case Administrator Karen Tacy and District Appeals Clerk Margaret (Peggy) Ghysel. Both told him that his original Designation and Statement submitted in January 2003 was back in bankruptcy court; hence, he was supposed to send his Redesignation and Statement to the bankruptcy court, which would combine both for transmission to the district court, upstairs in the same building.

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

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

100. The district court transferred the record on May 19 to the Court of Appeals. The latter, in turn, acknowledged the filing of the appeal by letter to Dr. Cordero. When he received it on May 24,

imagine his shock when he found out that the Court's docket showed no entry for his Redesignation and Statement! Worse still, he checked the bankruptcy and the district courts' dockets and neither had entered it or even the letter to Clerk Early! Dr. Cordero scrambled to send a copy of his Redesignation and Statement to Appeals Court Clerk Roseann MacKechnie. Even as late as June 2, her Deputy, Mr. Robert Rodriguez, confirmed to Dr. Cordero that the Court had received no Redesignation and Statement or docket entry for it from either the bankruptcy or the district court. Dr. Cordero had to call both lower courts to make sure that they would enter this paper on their respective dockets. His May 5 letter to Clerk Early was entered only on May 28.

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

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

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

103. Rules 4(a)(1)(A) and 28(a)(C) F.R.A.P. consider jurisdictionally important that the dates of the orders appealed from and the notice of appeal establish the appeal's timeliness. This justifies the question whether the following omissions could have derailed Dr. Cordero's appeal to the Court and, if so, whether they were intentional.

104. Indeed, as of last May 19, the bankruptcy court docket no. 02-2230 for the adversary proceeding Pfuntner v. Gordon et al did not carry an entry for the district court's March 27

denial "in all respects" of Dr. Cordero's motion for reconsideration in Cordero v. Gordon. By contrast, it did carry such an entry for the district court's denial, also of March 27, of Dr. Cordero's motion for reconsideration in Cordero v. Palmer.

105. Also on May 19, the district court certified the record on appeal to the Court of Appeals, but it failed to send to the Court copies of either of the March 27 decisions that Dr. Cordero is appealing from and which determine his appeal's timeliness. The fact is that the Court's docket for this case as of July 7, 2003, did not have entries for copies of either of the March 27 decisions, although it carried entries for the earlier decisions of March 11 and 12 that Dr. Cordero had moved the district court to reconsider. However, Dr. Cordero's notice of appeal to the Court made it clear that the March 27 orders were the main orders from which he was appealing since it is from them that the timeliness of his notice of appeal would be determined.

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

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

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

108. As the Supreme Court has put it, "[t]he goal of section 455(a) is to avoid even the appearance of partiality…to a reasonable person…even though no actual partiality exists because the judge…is pure in heart and incorruptible," *Liljeberg v. Health Servs. Acquisition Corp., 486 U.S. 847, 860 (1988).*

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

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

111. The test is reasonably easy to meet because more important than keeping the judge in question on the bench is preserving the trust of the public in the system of justice. Thus, the petitioner of recusal need not prove that the judge is aware of his bias or prejudice given that "[s]cienter is not an element of a violation of §455(a)," since the "advancement of the purpose of the provision -- to promote public confidence in the integrity of the judicial process -- does not depend upon whether or not the judge actually knew of facts creating an appearance of impropriety, so long as the public might reasonably believe that he or she knew;" *Liljeberg,* at 859-60. All is needed is that the petitioner be "a reasonable person, [who] knowing all the circumstances, would believe that the judge's impartiality could be questioned;" In re: International Business Machines, 618 F.2d 923, at 929 (2d Cir.1980).

112. The facts stated in Part I (paras. 5 et seq. above) are apt to raise the inference of lack of impartiality and fairness, both of which are critical characteristics of justice. Moreover, a reasonable person can well doubt the coincidental nature of such a long series of instances of

disregard of facts, law, and rules of procedure, all of which consistently harm Dr. Cordero and spare the other parties of the consequences of their wrongful acts. If these court officers had through mere incompetence failed to proceed according to fact and law, then all the parties would have shared and shared alike the negative and positive impact of their mistakes. However, the sharing here has been in the bias and prejudice shown by this court, the court reporter, the clerk of court, the district judge, and assistant clerks. The facts bear this out and provide the basis for their impartiality to be questioned. That is more than is required for recusal; for "what matters is not the reality of bias or prejudice but its appearance"; Liteky v. United States, 510 U.S. 540, 549, 127 L. Ed. 2d 474, 114 S. Ct. 1147 (1994).

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

113. Even in the absence of actual bias, disqualification of a judge is required to ensure that "justice must satisfy the appearance of justice", In re Murchison, 349 U.S. 133, 136 (1955). How much more strongly recusal is required in the presence of evidence of bias!

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

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

officers have allowed their conduct to give the appearance of bias and prejudice against Dr. Cordero.

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

117. "Justice should not only be done, but should manifestly and undoubtedly be seen to be done;" Ex parte McCarthy, [1924] 1K. B. 256, 259 (1923). However, what Dr. Cordero has seen is acts and omissions done by the court and court officers that have so consistently worked to his detriment and the others parties' benefit that they cannot reasonably be explained away as a coincidental series of mistakes of incompetence. Rather, to an "objective, disinterested observer," In re: Certain Underwriter Defendants, In re Initial Public Offering Securities Litigation, 294 F.3d 297 (2d Cir. 2002), those acts and omissions would look like a pattern of intentional and coordinated wrongs targeted on him, a pro se party living hundreds of miles away whom these court and officers have deemed weak enough to treat as expendable. Dr. Cordero should not be subjected to the same abuse at their hands for the many months that the court has already stated it will drag out this case. Equity should not tolerate that to happen. Enough is enough! From now on, "Justice must satisfy the appearance of justice," as the Supreme Court reaffirmed recently in Aetna Life Insurance Co. v. Lavoie et al., 475 U.S. 813; 106 S. Ct. 1580; 89 L. Ed. 2d 823 (1986).

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

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

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

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

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

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

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

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

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

IV. Relief Sought

123. Dr. Cordero respectfully requests that:

1) the Hon. John C. Ninfo, II, recuse himself from this adversarial proceeding, namely, Pfuntner v. Gordon et al., dkt. no. 02-2230;
2) this adversarial proceeding be transferred in its entirety to the District Court for the Northern District of New York, held at Albany;
3) the court ask the Director of the Administrative Office of the United States Courts and the judicial council of the second circuit to conduct an investigation into the pattern of wrongful acts complained about here and of the court and court officers that so far appear to have participated in it;
4) Dr. Cordero be allowed to present his arguments by phone given that requiring that he appear in person at the hearing of this motion would cause him unjustifiable hardship in terms of cost and time;
5) the court not cut abruptly the phone communication with Dr. Cordero, but instead allow him to raise his objections for the record and participate in the hearing until it is definitely concluded for all the parties so that Dr. Cordero may be afforded the same opportunity that it affords to the other parties to be heard and hear its comments;
6) the court grant Dr. Cordero any other relief that is just and fair.

Dated: August 8, 2003

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