

612 S. Lincoln Road
East Rochester, N.Y. 14445
November 4, 2005

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

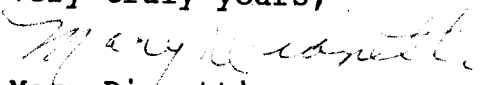
Dear Dr. Cordero:

I received on November 2, 2005 your letter dated October 24, 2005, together with your bank money order for \$650.00 sent by certified mail, wherein you request the transcript of the evidentiary hearing which was held on March 1, 2005.

I am filing the transcript in the Bankruptcy Clerk's office this date and forwarding to you by first-class mail a copy with a PDF copy of the transcript on a CD-Rom and also a money order in the amount of \$26.30.

I am providing a copy of this letter together with your letter of October 24, 2005, to the U.S. Bankruptcy Court and U.S. District Court so that their file may be complete.

Very truly yours,


Mary Dianetti
Bankruptcy Court Reporter

cc: Clerk, U.S. Bankruptcy Court
cc: U.S. District Court

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

05 NOV -4 PM 3:02

FILED

1 UNITED STATES BANKRUPTCY COURT
2 WESTERN DISTRICT OF NEW YORK
3 -----X
4 In re: :
5 David & Mary Ann DeLano :
6 Debtors. :
7 -----X

8
9 BK No. 04-20280

10
11 Transcript of Proceedings
12 Before The Honorable John C. Ninfo, II
13 United States Bankruptcy Court Judge

14
15 Tuesday
16 March 1, 2005
17 Rochester, New York

18
19
20
21 Reported by:
22 Mary Dianetti
23 Bankruptcy Court Reporter
24 612 South Lincoln Road
25 East Rochester, New York 14445 (585) 586-6392

Cordero

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APPEARANCES:

BOYLAN, BROWN, CODE, VI GDOR & WILSON, LLP
Of counsel: Christopher K. Werner, Esq.
2400 Chase Square
Rochester, New York 14604

UNDERBERG & KESSLER, LLP
Of counsel: Michael J. Beyma, Esq.
1800 Chase Square
Rochester, New York 14604

Dr. Richard Cordero Pro se
24 Crescent Street
Brooklyn, New York 11208-1515

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1 THE COURT: Good afternoon. Please be
2 seated.

3 All right. We're here this afternoon for a
4 hearing on the Debtors' July 19th - filed July 22nd -

5 objection to Proof of Claim No. 19 of Richard Cordero
6 in the David and Mary Ann DeLano Chapter 13 case,
7 04-20280. So the first thing I will do is I'll take
8 appearances. It's your claim objection - first of
9 all, let me put your appearance on first.

10 MR. WERNER: Chris Werner, Boylan, Brown
11 attorney for the Debtors.

12 THE COURT: You can remain seated as the
13 microphones work well.

14 MR. BEYMA: Mike Beyma, Underberg & Kessler
15 and M&T Bank.

16 DR. CORDERO: Dr. Richard Cordero, Creditor.

17 THE COURT: Okay, with regard to your
18 appearance Dr. Cordero, are you in fact a licensed
19 attorney in the state of New York?

20 DR. CORDERO: Yes, your Honor, but I'm not,
21 not appearing as attorney. I'm appearing as Creditor.

22 THE COURT: That may be the case, but are
23 you, in fact, a lawyer, No. 2269389?

24 DR. CORDERO: I do not know, your Honor.

25 THE COURT: Admitted in the 2nd Department?

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1 DR. CORDERO: Yes, but I'm not a practicing
2 attorney.

3 THE COURT: But you're currently registered,
4 aren't you?

5 DR. CORDERO: Yes.

6 THE COURT: Were you formerly a practicing
7 attorney in New York State?

8 DR. CORDERO: May I ask your Honor a - this
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9 case I'm appearing pro se, I do not have to be an
10 attorney.

11 THE COURT: No, I think - but to be quite
12 frank with you, Attorney Cordero, I think throughout
13 these various proceedings, including your petition to
14 several - to the United States Supreme Court, although
15 it may be somewhat carefully crafted I think, many
16 times already almost purposely misleading with respect
17 to your status as a pro se litigant. Yes, you can be
18 a pro se litigant but constantly seem to talk about
19 being a pro se litigant as if you're disadvantaged, as
20 if you don't have the same advantages as a practicing
21 attorney, don't have the same knowing knowledge as an
22 attorney, and so forth.

23 So I think when you take the totality
24 of the circumstances, something you used in your
25 motion for recusal, I would think that you clearly

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1 have given this Court, the District Court, the 2nd
2 Circuit and even now the Supreme Court the impression
3 that you're not an attorney, that you just a private
4 citizen, not with any legal training and without, in
5 fact, being registered in New York State as an
6 attorney. That's the relevance.

7 DR. CORDERO: Well, your Honor, I think -
8 at the beginning I stated I was an attorney back in
9 2002. Because I was not a practicing attorney I made
10 the statement that I was a pro se. I am not being held
11 as attorney in doing this and I have never stated

Cordero

12 that because I am a pro se litigant that I am - had
13 a - and had a disadvantage in terms of knowledge. I am
14 not disadvantaged in terms of not being a member of
15 your local practice of not being a local party, and
16 in terms of why it is that you have shown some bias,
17 because as a pro se litigant it would be easier for you
18 to show that bias and that is the reason why I have
19 said that --

20 THE COURT: Are you now or were you formerly
21 ever associated with the law firm of Heller, Jacobs &
22 Kamlet, LLP?

23 DR. CORDERO: Again, your Honor, I ask what
24 is the relevance of that you are interrogating, you are
25 asking me?

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1 THE COURT: I'm asking you questions.

2 DR. CORDERO: Well, I would like to know
3 the basis for those questions.

4 THE COURT: I'd like to have you answer the
5 the question. Are you now or have you ever been
6 associated with Heller, Jacobs & Kamlet?

7 DR. CORDERO: Please, your Honor, since
8 this is a U.S. Court that must proceed according to
9 the rules of law, I request that you state the basis
10 for your interrogating me, asking me these questions.

11 THE COURT: First of all, I'm not
12 interrogating. I'm simply asking you a question so we
13 can clarify that, in fact, you're not a practicing
14 attorney and that you never have been practicing for
15 some period of time, so we can verify the representa-

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16 tion you just made to this federal court that you're
17 not a practicing attorney and you haven't been a
18 practicing attorney since you first appeared here in
19 2002. Is that, in fact, the case?

20 DR. CORDERO: That is, in fact, the case.

21 THE COURT: So that you are not now and
22 have not been associated with Heller Jacobs & Kamlet
23 even though the Westlaw lists you as being associated
24 with that firm?

25 DR. CORDERO: I have never been a

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1 practicing attorney at - I have never been associated
2 with that firm and I state my objection to your
3 examination.

4 THE COURT: Okay, good. With that said,
5 I do have a recusal motion under 28 U.S.C. 455(a), that
6 was I believe filed with the Court on February 22nd.
7 I can't always tell when things are actually filed.
8 With the ECMF I have the statements that day, so it
9 must have been roughly around that date, although it
10 was dated February 17th, and I don't have all of the
11 papers with respect to it.

12 But did you see a copy of this, Mr. Werner?

13 MR. WERNER: Yes, I did, at least thirty
14 pages.

15 THE COURT: I have read it in detail and
16 so I am thoroughly familiar, Attorney Cordero, with
17 your allegations and your motion.

18 So do you have anything that you would

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23 anything I've said on record or will say now with
24 respect to this, because I read the motion and there
25 are a number of items that seem to be covered. One

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1 is a concern that you have with regard to the
2 Section 341 meeting in the DeLano case, and my
3 discussion with you later that day about your practice,
4 and the reality, of course, Attorney Cordero, as you
5 very well know as an attorney, Section 341's are not
6 conducted by the Bankruptcy Court, strictly conducted
7 by the Department of Justice, so how they proceed, how
8 they're managed is not the Court's responsibility.

9 The discussion I had with you in regard to
10 the local practice was nothing more than that, trying
11 to help you, so that you would understand that in the
12 future kinds of situations like that, it's always
13 important, as you know as an attorney, to understand
14 the best, so I was only trying to help you. The
15 reality, local practice are not local practice with
16 regard to Section 341 meetings. It's not the Court's
17 responsibility. It's the Department of Justice's
18 responsibility.

19 With regard to the Discovery Order that
20 you've raised some concerns with, I think I have said
21 this in other decisions that I have written in this
22 case, the Discovery Order that I signed tracked
23 perfectly the July 19 - I believe it was hearing
24 decision that I made. I made a determination as to
25 the breath of discovery I thought you were entitled

1 to that at that time, and even attached a copy of the
2 docket. So with respect to that discovery issue, I
3 had basically ruled on it at the hearing and the order
4 you submitted did not reflect the Court's instruction
5 and discovery after the hearing and the Court did
6 order - didn't reflect that with respect to the claim,
7 and timeliness of the claim objection.

8 Once again, I already addressed that in one
9 of the Court's prior decisions in the case, but
10 certainly the claim objection roughly within seven
11 months of the filing of the case is not in any way
12 untimely, and the Court had previously found there was
13 no laches or waiver with respect to that, with
14 respect to the claim objection, especially when as the
15 Court said in its prior decision there were no
16 indication in the filing of the Proof of Claim that
17 you had any factual or legal basis for a claim against
18 Mr. DeLano.

19 With regard to the severance issue on
20 discovery, the Court once again addressed that in a
21 previous decision on the prior Discovery Order of
22 October 16, 2003, Premier Van Lines case, and entered,
23 and at the time Mr. DeLano had not filed chapter 13
24 and there was no indication he wouldn't file Chapter 13
25 at any point in the future, but once he did file that,

1 he became entitled to have his case proceed into the
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2 extent there was something on that prior order in his
3 right to go forward and have his claim objection heard
4 and decided. That claim objection and to have it
5 decided, superseded, and the Court is again to make a
6 written decision on that, because the Court had
7 ruled that what we were going to go forward with, with
8 the claim objection only.

9 The concerns you had about the discovery
10 documents that weren't provided by Mr. Werner or
11 Mr. DeLano because of they're alleging bankruptcy fraud
12 of the Debtors is really irrelevant to the claim
13 objection hearing.

14 As I said, there is no evidence whatsoever
15 that I've seen to date to either the Premier Van Lines
16 case or this case, would indicate that we would have a
17 valid claim.

18 You do have the ultimate burden of proof to
19 prove your claim. Under the Bankruptcy Code even
20 though there is an initial presumption of litany in
21 that in the Court's opinion has been rebutted by, by
22 the sparsity of any facts and circumstances the proof
23 of claim would indicate that you have a claim, so for
24 those various reasons and any other included in my
25 decision, which I will give a written decision on your

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1 motion to recuse myself.

2 So with that said, with that said do you
3 want to go forward Attorney Cordero with meeting your
4 burden to prove that you have a valid allowable claim

5 Cordero
in the DeLano Chapter 13 case?

6 DR. CORDERO: If - first of all, your Honor,
7 I would - Attorney Cordero - that is the way I have
8 always presented me --

9 THE COURT: Your name is Dr. Cordero?

10 DR. CORDERO: Yes, please.

11 THE COURT: How is that you're on your
12 birth certificate?

13 DR. CORDERO: That is the name that I have
14 now since I obtained my degree, my PhD degree. Yes.
15 And Ms. Dianetti, I was going to state that I'm going
16 to speak very slowly so that if you do not understand
17 me, to ask me, because in that way we can eliminate the
18 need for you to state unintelligible, and I would like
19 you to ask also any other party that may say something
20 that you do not understand to repeat himself or herself
21 so that we can keep an accurate record of these, and
22 if you were kind enough to state, whether there is any
23 marking on your stenographic tape for the beginning of
24 this time. Is there any marking in way of referencing
25 where this hearing?

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1 (Response was negative.)

2 DR. CORDERO: And thank you very much.

3 And I'm going - beginning now, 1:47, by the
4 clock on the wall of the courtroom.

5 Your Honor, I would like to respond to your
6 decision upon the motion to recuse.

7 THE COURT: I don't think you have a right to
8 respond to the Court's decision. The Court has made

Cordero

9 its decision. I'll give you a written decision. If
10 you wish to deal with it, you can deal with. We don't
11 have time today for you to respond to the Court's
12 decision. We need to move forward with the claim
13 objection.

14 DR. CORDERO: Very well. At this time I
15 would like to ask a - questions of Mr. DeLano on
16 record.

17 THE COURT: Call him as your witness.

18 Mr. DeLano, take the stand.

19 D A V I D D E L A N O, called herein as a witness, first
20 being duly sworn, testified as follows:

21 THE COURT: You can adjust that microphone.

22 You don't have to reach like into, you can adjust so we
23 can all hear you.

24 DIRECT EXAMINATION

25 BY DR. CORDERO:

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1 Q. Mr. DeLano, please state again your name.

2 A. David DeLano.

3 Q. And can you state your current address?

4 A. 1226 Shoecraft Road, Webster, New York.

5 Q. Is that also where you live?

6 A. Yes.

7 Q. You just took an oath to state the truth. Do you
8 regard yourself as a truthful person?

9 A. Very much so.

10 Q. Do you intend to tell the truth and the whole
11 truth in response to any questions?

Cordero

12 A. Yes.

13 Q. Would you tell the truth if unfavorable to you or
14 to your wife or to your children? Would you tell the truth
15 even if it is unfavorable, it is against your interests or
16 the interests of your wife, of your children?

17 A. Yes, I would.

18 Q. In many oaths that people take they say so help me
19 God.

20 THE COURT: Are you making a statement or
21 asking a question?

22 DR. CORDERO: I'm going to ask a question,
23 your Honor.

24 BY DR. CORDERO:

25 Q. Do you - will abide by that statement, so help me

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1 God in telling the truth?

2 A. Yes.

3 Q. Very well. So we understand that you take the
4 oath so seriously that you are telling the truth in the
5 presence of God?

6 A. Yes.

7 Q. Very well. Thank you.

8 What is your current job?

9 A. I am a Relationship Manager at M&T Bank in credit
10 administration.

11 Q. Are you also known as a loan officer?

12 A. No.

13 Q. Did you not state in any of the papers that you a
14 bank officer and also a loan officer?

15 A. I - I'm a bank officer. I'm a loan servicing

Cordero

16 offi cer.

17 Q. And when did you begi n to work at M&T?

18 A. 1989.

19 Q. 1989?

20 A. That' s correct.

21 Q. And for how long have you held your current job
22 there?

23 A. Fi fteen years.

24 Q. For how long have you worked as a bank' s --

25 A. Thi rty-two years.

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1 Q. Have you always been a loan servi ci ng offi cer at
2 M&T?

3 A. Yes.

4 Q. And what prepared you to be a loan servi ci ng
5 offi cer?

6 A. My background i n fi nance i n lendi ng.

7 Q. And will you please state what thi s background i s?

8 A. Worked wi th fi nanci ng companies for l i ke seven
9 years before I went i nto banki ng and was a lendi ng offi cer
10 i n banki ng for probabl y seventeen years.

11 Q. Wi th what company?

12 A. Mari ne Mi dl and Fi rst National Bank.

13 Q. And did you work at that bank for the seventeen
14 years before movi ng on to M&T?

15 A. Yes.

16 Q. Di d you have any academi c qual i fi cations for
17 worki ng i n banks?

18 A. No.

Cordero

19 Q. Could you please then state what is your highest
20 academic degree?

21 A. High school.

22 Q. So you have obtained all your knowledge through
23 experience rather than through education?

24 A. Yes.

25 Q. And what is the maximum amount of money that you

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1 could approve on say loan servicing officer?

2 MR. WERNER: Your Honor, I object to that
3 line of questioning. I do not see the relevance to
4 the claim of Dr. Cordero.

5 THE COURT: His answer was he had none, so
6 we'll see where we go from here. At some point you
7 will have to tell us where you're going.

8 BY DR. CORDERO:

9 Q. And what is the maximum amount of --

10 THE COURT: He said none.

11 THE WITNESS: As a loan servicing officer,
12 none.

13 BY DR. CORDERO:

14 Q. So as a loan servicing officer what do you do?

15 A. If there's a loan which is - seems to be having a
16 problem in the commercial loan department or any reason it's
17 sent down to my group and credit administration and we
18 service the loan. Do - we either collect the money,
19 liquidate the company, or whatever.

20 Q. When you say you approve, are you saying that
21 there are other people that work for you or that you work
22 for a group?

Cordero

23 A. I work for a group.
24 Q. You work for a group but you're not head of the
25 group?

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1 A. I am not.
2 Q. So you did not have any people that work for you?
3 A. Correct.
4 Q. And how many clients do you deal with at any point
5 in time?
6 A. Maybe seventy-five.
7 Q. And you're in charge of servicing those loans in
8 trouble?
9 A. They don't necessarily have to be in trouble, but,
10 yes, I'm in charge of servicing those loans.
11 Q. And when one of those loans is in trouble, was
12 this of what happens that to David Palmer?
13 A. What institution is associated with?
14 Q. Well, I was going to ask you the question. Did
15 you do - you know David Palmer?
16 A. I met him once.
17 Q. When did you meet him?
18 A. 2002. Probably 2002/2001.
19 Q. But you cannot be more specific than that?
20 A. No.
21 Q. And under what circumstances did you meet David
22 Palmer?
23 A. I went to the meeting because of a collection
24 problem related to his company loan with the bank.
25 Q. And do you know when that took place?

1 A. I can't tell you exactly.

2 Q. Did you know the name of his company?

3 A. Premier Van Lines.

4 Q. If you know the name of the company, may I ask
5 of - why did you ask me to state the name of the company?
6 Do you know the name of the company?

7 A. Because I normally relate companies with
8 individuals.

9 Q. Thank you. Do you know when the loan was made to
10 Mr. Palmer?

11 A. I do not.

12 Q. So if you do not know the amount of that you were
13 trying to collect, why do you say you were trying to
14 collect?

15 A. I wouldn't necessarily know the original amount of
16 the loan. When a loan got to our group it was for ex-amount
17 of dollars that were remaining on debt.

18 Q. So by the time the loan went to your group and to
19 you there was a certain amount that was outstanding?

20 A. A certain amount outstanding, that's correct.

21 Q. Would you, please, what that amount was?

22 A. I can't tell exactly what. I can't tell you
23 exactly, but approximately thirty thousand.

24 Q. And over what period of time was this debt
25 supposed to be paid?

1 A. I can't remember.

Cordero

2 Q. Wouldn't that be a factor in determining how much
3 pressure you would put on the borrower, to know - does it
4 make any difference whether the loan was supposed to be paid
5 within three years as opposed to thirty years?

6 A. Sometimes.

7 Q. And this, in this case would it make any
8 difference?

9 A. I would say actually I don't remember.

10 Q. So in this case what were you trying to do with
11 Mr. Palmer?

12 A. Collect the debt.

13 Q. And you say that the debt at that time was thirty
14 thousand dollars?

15 A. Correct.

16 Q. How did you go about trying to collect the debt?

17 A. In the normal situations and in most situations we
18 would ask for financial statements, to give us a concept of
19 what, what the cash flow of the company is to see what they
20 can afford to pay.

21 Q. And did you regard them yourself competent to do
22 that type of work?

23 A. Myself, very competent.

24 Q. Very competent. Does it mean that you are never
25 negligent?

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1 A. I'm never what?

2 Q. Never negligent.

3 MR. WERNER: I object, your Honor, I don't
4 see the relevance of this line of questioning. I'd

5 Cordero
appreciate some background.

6 THE COURT: I sustain your objection. I
7 think the question never, never negligent, about his
8 personal life, job, about what? That is much too broad
9 of a question for any witness to give an answer.

10 DR. CORDERO: Very well.

11 BY DR. CORDERO:

12 Q. I'm asking, you already stated that you regard
13 yourself as a competent bank officer?

14 A. Correct.

15 Q. I'm asking if as a bank officer have you ever been
16 negligent?

17 MR. WERNER: Your Honor, again renew my
18 objection as to relevance. The focus here is
19 Dr. Cordero's -- objection to claim.

20 THE COURT: He can answer the question.

21 THE WITNESS: I'm not going to respond
22 to the word negligent. You make a mistake
23 occasionally. I made a mistake.

24 BY DR. CORDERO:

25 Q. Well, Mr. DeLano --

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1 THE COURT: Counselor, why don't you define
2 for the witness what negligent means.

3 DR. CORDERO: Yes.

4 THE COURT: With respect to the term that
5 you're using.

6 DR. CORDERO: Very well.

7 THE COURT: It will help him answer the
8 question.

Cordero

9 BY DR. CORDERO:

10 Q. The term of negligent, a person - when a
11 defendant's conduct imposes a reasonable risk upon another,
12 resulting in injury to that or and whatever you were
13 thinking at that time is completely irrelevant so --

14 A. Can you repeat the last part of it because I don't
15 think I got it?

16 Q. Yes. The mental state of the defendant is
17 irrelevant. It is irrelevant whether you wanted to be
18 negligent or you knew that you were being negligent. The
19 only form that, the term of negligence takes into account is
20 that you, your conduct imposes a reasonable risk upon
21 another person. So can you either answer as a bank officer
22 a conduct imposed a reasonable risk on other people?

23 A. No.

24 Q. Very well. And in your - in the rest of - apart
25 from your capacity as a bank officer have you been --

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1 MR. WERNER: Objection, your Honor.

2 THE COURT: It's irrelevant.

3 BY DR. CORDERO:

4 Q. Actually, the claim that has been made against
5 you by me, Mr. DeLano, does it have to do with negligence?

6 THE COURT: Why don't you tell him what the
7 claim is, because I'm not sure he knows what it is,
8 Counselor.

9 WITNESS: What was - what is the claim?

10 DR. CORDERO: Your Honor, it seems to me that
11 your statement is out of line.

Cordero

12 THE COURT: Normally, Counselor, in a hearing
13 like this, if you wanted to refer to the claim, I would
14 expect someone to have a - copies of your proof of
15 claim that you would then show to the witness so that
16 he would know what you're talking about. I don't know
17 exactly what you're talking about. If you're talking
18 as of a claim assertion and allegation, a proof of
19 claim. If you're talking about your 5/14/04 proof of
20 claim. Why don't you show the witness a copy so he can
21 answer questions with respect to that. This is a very
22 broad term, Counselor. You know that.

23 DR. CORDERO: Again, your Honor, I requested
24 that address me as Dr. Cordero, not as Counselor.

25 BY DR. CORDER:

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24

1 Q. Mr. DeLano --

2 THE COURT: Counselor, this is my court and I
3 will address you as I see fit.

4 DR. CORDERO: Actually, your Honor, this is
5 not your court. This is a court of the United States
6 and what applies here is not your local practice of
7 laws and rules of the United States and I do not see --

8 THE COURT: There - was there a law of - or
9 rules that tells a judicial officer how he's supposed
10 to address a lady? If I intend to - refer to
11 Mr. Werner as Counselor also today.

12 DR. CORDERO: But you know that I have always
13 presented myself as Dr. Richard Cordero, pro se. So
14 now --

15 THE COURT: But quite frankly, was the first
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16 time it had been brought to my attention that you were
17 a licensed attorney, that you were registered and
18 licensed in the 2nd Department. I didn't know that.

19 Now you've made an allegation that you said
20 that back in 2002, and I'm not disputing you said it,
21 but quite frankly I didn't keep up on it and so it was
22 only yesterday that I became aware of it. So until
23 then, I do note that did not know that you were an
24 attorney or - so I intend to refer to you and intend
25 to refer to Mr. Werner as Counselor. That is the way

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25

1 we work it.

2 DR. CORDERO: I'm not appearing here as a
3 practicing attorney, I'm appearing here as pro se.

4 THE COURT: You're still an officer of the
5 Court, aren't you? You're registered in the state of
6 New York, Aren't you an officer of the Court? Aren't
7 you a registered attorney licensed in the state of
8 New York? Doesn't that make you an officer of the
9 Court?

10 DR. CORDERO: I resigned that position,
11 which means that right now, I am not a practicing
12 attorney. I have filed claims for several years, with
13 the state officer whenever they can to renew the
14 license that I have retired from that position, so I
15 do have a degree.

16 THE COURT: But you're licensed up to
17 April of 2005 according to information. Is that
18 information incorrect that you are, in fact, currently

19 Cordero
registered through April of 2005? The last registra-
20 tion was in 2003. Well, after 2002, when you first
21 started litigating.

22 DR. CORDERO: Yes, but not as a practicing
23 attorney.

24 THE COURT: What are you registered as?

25 DR. CORDERO: I registered --

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1 THE COURT: What are you registered as?
2 You have a number, registration number, what are you
3 registered as, a PhD?

4 DR. CORDERO: I'm registered, yes, as Phd
5 Dr. Richard Cordero.

6 THE COURT: With the Unified Court System as
7 a Phd. They take registration from non-attorneys? I
8 never heard that.

9 DR. CORDERO: I do not say that --

10 THE COURT: Let's move on.

11 BY DR. CORDERO:

12 Q. Mr. DeLano, did I serve you with a third-party
13 complaint on November the 1st, 2002?

14 MR. WERNER: Objection, your Honor, as to
15 form. Might we have a little better identification,
16 what manner claim was filed in, for Mr. DeLano, for
17 M&T Bank or otherwise? The Debtor counsel has
18 copy to me.

19 DR. CORDERO: You're so predictable.

20 MR. WERNER: I object, your Honor.

21 DR. CORDERO: Yes, Attorney Werner, I pointed
22 to you in meeting of February the 1st that I had served

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23 on Mr. DeLano with a claim. At that time I have stated
24 in my papers, in papers that I have filed that you
25 yourself could --

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1 THE COURT: Counselor, Counselor, you
2 shouldn't be pointing fingers.

3 DR. CORDERO: I'm sorry.

4 THE COURT: We don't do that here.

5 DR. CORDERO: I'm sorry. I did not intend to
6 offend Mr. DeLano or the Court. I was just making -
7 I'm sorry.

8 BY DR. CORDERO:

9 Q. What I'm saying, Mr. DeLano, is that I did serve
10 you with a claim in 2002, as third party in the Pfunter
11 versus Gordon, and docket number is 02-2230. In that
12 Pfunter case I served you, Mr. DeLano, with a claim, on
13 November 21st of 2002.

14 A. As an officer of the M&T Bank?

15 Q. That is yes, as an officer and personal, and - and
16 it was because of that it - that wasn't the only reason,
17 Mr. DeLano. Did you put my name on your bankruptcy
18 petition? Did you list me as the creditor in your
19 bankruptcy petition?

20 A. That's correct, and by law --

21 The COURT: Just answer the question.

22 Just answer the question. Don't --

23 BY DR. CORDERO:

24 Q. So you had by law do that and you were aware that
25 I made a claim against you, were you not?

1 A. Yes, but what's the claim?

2 Q. Well, Mr. DeLano, it seems to me - it's not for
3 you to ask questions, it's for you to answer questions.
4 Okay?

5 Q. Did the claim voluntarily in your bankruptcy
6 petition assert you were aware of what claim was - you can
7 not just put my name and said, well, I want more creditors
8 on my bankruptcy petition, did you, Mr. DeLano, you were
9 aware of my claim? Don't look at Mr. Werner, he cannot --

10 A. I'm not looking at him.

11 Q. Very well.

12 A. I'm confused with you.

13 Q. Very well, I will explain myself. You - were you,
14 Mr. DeLano, - this is an improper - I saw a sign from the
15 part of my - Michael Beyma, who is in the audience who - who
16 is now instructing Mr. DeLano. Do not look at any of your
17 two counsels here.

18 A. I can't take my eyes off you.

19 Q. Very well. In that case --

20 DR. CORDERO: Otherwise, your Honor, if I
21 have to, I will stand in front of him and then I
22 will --

23 THE COURT: You're entitled to ask your
24 questions either from where you're sitting, Counselor,
25 or from the podium. The Court allows attorneys to

1 ask questions from either place. So that is up to you.
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2 DR. CORDERO: Very well, I will stay here so
3 that you can focus on me and I will ask you,
4 Mr. DeLano, not to look at your counsel.

5 BY DR. CORDERO:

6 Q. The question is very clear. Did I serve you with
7 a third-party claim on November --

8 THE COURT: I'm going to interject. You did
9 not serve with a third-party claim, you served him with
10 a third-party complaint which alleged that he had
11 implied liability to you. That is in fact what you,
12 you served him.

13 And I think it's important today that we
14 make a distinction between a bankruptcy proof
15 of claim and a claim in a general sense, so I wouldn't
16 use the word claim unless you're talking about your
17 proof of claim.

18 If you want to talk about assertions
19 of liability, causes of action, any of these kinds of
20 things, but not confuse the whole record and every-
21 thing today by using the word claim in a interchange-
22 able way. Let's use in terms of proof of claim and
23 everything else you can use in terms of causes of
24 action, allegation of liability, whatever you're
25 familiar with, all these different things.

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1 BY DR. CORDERO:

2 Q. The complaint establishes the claim. The
3 complaint based on claim. The distinction between claim and
4 complaint is irrelevant. The complaint brings to the

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5 attention of the defendant a claim made by a claimant. In
6 that case I wasn't a third-party plaintiff. I served you
7 with a complaint that made a claim. It was only from that
8 basis, was it not that, Mr. DeLano, that you put your name
9 in - in the bankruptcy petition that you filed on January 15
10 - January 27, 2004, was it on that basis that you put my
11 name on your petition?

12 A. That's correct.

13 Q. Very well. So you knew, you knew what my claim
14 was at that time?

15 A. No.

16 Q. So did Mr. Beyma on - upon whom I - I served my
17 claim, did he bring to your attention that I was making a
18 claim upon you at that time?

19 A. No.

20 Q. So how did you learn of my claim so that you could
21 put it on your bankruptcy petition?

22 A. Your claim was made before my bankruptcy petition.

23 Q. Mr. Beyma, that is not - I'm sorry. Mr. DeLano,
24 that's not the question put before you. The question is
25 very clear, you were aware of the claim that I made against

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1 you in the Pfuntner case.

2 MR. WERNER: Objection. Objection as to
3 form, your Honor. Again --

4 THE COURT: First of all, it's not a
5 question.

6 BY DR. CORDERO:

7 Q. Were you aware --

8 THE COURT: Put this way. Did you ever read
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9 the complaint he filed in the Premier Van Lines case
10 that made the allegations against both M&T and you and
11 a number of others?

12 WITNESS: Yes, sir.

13 THE COURT: So he read the complaint, so he
14 knew there was some allegations against him in the
15 complaint. So the answer is yes.

16 BY DR. CORDERO:

17 Q. And it was on that basis you put my name as a
18 creditor in your bankruptcy petition, is it not?

19 THE COURT: He already answered.

20 DR. CORDERO: I would like him to state it
21 clearly so there is no doubt.

22 BY DR. CORDERO:

23 Q. So you put my name on your bankruptcy petition.

24 MR. WERNER: Your Honor, as to form. I
25 believe the petition states for itself and that again

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1 styling himself as a creditor I think would be
2 misleading that, in fact, he asserted a cause of action
3 against Mr. DeLano on that basis. Clearly his name is
4 on the petition and petition also specifically
5 indicates that the claim or complaint is contingent -
6 excuse me, is unliquidated and disputed. The petition
7 speaks for itself, your Honor.

8 BY DR. CORDERO:

9 Q. Does that mean that you put my name as a creditor
10 because of the claim that I had made against you in the
11 Pfuntner case?

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12 A. I used - is as because of the bank I was named as
13 a third-party defendant by - now in the bankruptcy petition
14 it says if there are any outstanding judgments, etc.,
15 against you, you will have to name the individuals or
16 corporations, etc.. That's the reason you were named in the
17 bankruptcy petition. It has nothing to do with the known
18 claim.

19 Q. Well, Mr. DeLano, what you're saying is that even
20 though you knew that there was a claim against you that you
21 did not worry about finding out what the claim was in more
22 than two years.

23 MR. WERNER: Objection, your Honor. Worried
24 about it or not, that is a very inappropriate --

25 THE COURT: Sustained.

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1 BY DR. CORDERO:

2 Q. The question goes, to negligence. You put my name
3 in that bankruptcy petition and you did not care to find out
4 what the claim was; is that true?

5 A. Right.

6 Q. So you did not care to find out what the claim was
7 that you put in the bankruptcy petition.

8 MR. WERNER: Objection, your Honor, as to
9 relevance, whether Mr. DeLano made any effort or not to
10 discern or investigate the nature this - with about the
11 claim.

12 THE COURT: I'll overrule.

13 DR. CORDERO: Was it overruled? So you may
14 answer.

15 WITNESS: As far as I'm concerned the
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16 judgment against me by you in a third party sense is as
17 an officer of M&T Bank, not as an individual.

18 BY DR. CORDERO:

19 Q. I'm sorry, Mr. DeLano, that is not the question
20 put before you. The question is whether you were aware of
21 the claim?

22 THE COURT: No, now you're asking something
23 different. That is not the question you asked. I can
24 have it read back. He's been through - he was aware of
25 the claim, that is why he scheduled, and we know from

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1 Counselor, his attorney, that it was listed as
2 disputed and liquidated. You've asked him whether he
3 was worried, okay, that he didn't know all the details
4 of your claim. That is the question that he should
5 answer. Was he worried about the fact when you
6 filed your petition that he didn't know all the details
7 of the allegations made against you by Mr. Cordero?

8 WITNESS: No.

9 THE COURT: Fine. Now you've answered the
10 question.

11 BY DR. CORDERO:

12 Q. So I'm asking you, do you think that a competent
13 person writes the name of a creditor in a bankruptcy
14 petition knowing that that creditor may assert --

15 MR. WERNER: Objection again, your Honor. A
16 competent person does I find --

17 THE COURT: Sustained. He's not qualified to
18 answer that.

Cordero

19 BY DR. CORDERO:

20 Q. Mr. DeLano, is it your testimony here that you did
21 not know what basis was of the claim that I made upon you,
22 you drew to the March 8, 2004, section 341 meeting of
23 creditors, your attorney in the case of Pfuntner versus
24 Gordon, that is Mr. Michael Beyma who is also here today, so
25 by his presence there you knew that there was a link between

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1 you and the claim that I had asserted against you in the
2 Pfuntner case.

3 THE COURT: Are you asking a question?

4 DR. CORDERO: Yes.

5 BY DR. CORDERO:

6 Q. Were you aware of the link between the Pfuntner
7 case and the claim that you made in the bankruptcy petition?

8 A. No.

9 Q. So how did you know my name and put in the
10 bankruptcy petition? You can't have it both ways,
11 Mr. DeLano, you have to have it one way. Either you knew
12 that the claim arose in the Pfuntner case or you didn't
13 know, which is it?

14 A. I would say no. Certainly Mr. Beyma was there
15 representing M&T Bank that day, not representing me.

16 Q. Mr. DeLano, I never served Mr. Beyma in this case
17 at that point in time that I went to the March 8th meeting
18 of creditors. The only way that Mr. Beyma could possibly
19 have known about this is if you had informed him.

20 MR. WERNER: Your Honor, I object. all of
21 this line of questions. Simply the reason why
22 Mr. DeLano listed Dr. Cordero as a - with creditor

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23 in this case because he was served in the Premier
24 Van Lines case and his answer was yes.

25 He's asking about three or four different

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1 ways. I think confusing Mr. DeLano asking about
2 Mr. Beyma's presence and so forth. What I believe
3 he's trying to answer regarding Mr. Beyma's presence,
4 but the link and so forth, this is all reflective of
5 the fact that Mr. DeLano included Mr. Cordero in his
6 petition because he had been sued in the Premier Van
7 Lines case.

8 THE COURT: I agree.

9 MR. WERNER: Otherwise, I object to this
10 continued --

11 THE COURT: Let's move on.

12 DR. CORDERO: It's important Mr. DeLano is
13 claiming now that he's not aware of the nature of the
14 claim against him and the nature of the claim which
15 Mr. DeLano is, is only reason why you put my name on
16 your bankruptcy petition.

17 THE COURT: I disagree with you. Because in
18 the reality is, is someone could file papers against
19 you, that are totally spurious and claim any kind of
20 things that they want to, okay, and file a lawsuit in
21 state court, and if the next day you filed bankruptcy,
22 you would be obligated to list that lawsuit and you
23 would have a right to list it as disputed, spurious,
24 and whatever you want. You still have an obligation,
25 as you know, Counsel, to list all claims made against

1 you, whether they're valid or not valid. So I think
2 that is all we're talking about here, quite frankly.

3 You know, the point is that, yes, you had
4 listed, said that, because you had filed this cross-
5 claim against him, for a third-party complaint
6 against him, and that is why you listed.

7 What else do you want to ask him?

8 BY DR. CORDERO:

9 Q. Mr. DeLano, did you include in your bankruptcy
10 petition that you disputed my claim?

11 A. No.

12 MR. WERNER: If I might clarify that?

13 THE COURT: He answered the question.

14 MR. WERNER: I believe the petition speaks
15 for itself.

16 THE COURT: You have the right to cross
17 examine.

18 MR. WERNER: Thank you.

19 BY DR. CORDERO:

20 Q. Well, after having been improperly given the
21 answer to that question, Mr. DeLano, do you want to refresh
22 your memory or do you want to restate your answer? Did you
23 write in your bankruptcy petition that you were disputing my
24 claim?

25 WITNESS: May I respond to that, your Honor?

1 You're - now I will respond. You asked the question,
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2 I will respond. My response is basically that your
3 claim against me as a third party in your judgment, I
4 take that to be as an officer of M&T Bank. I do not
5 take it to be as an individual, so I'm - am I going to
6 dispute your claim? I dispute it only because of the
7 fact that that claim against me is as an officer of
8 M&T and not personally.

9 BY DR. CORDERO:

10 Q. So how did you know it was against you as a person
11 and not as an M&T officer if you did not read the claim?

12 MR. WERNER: Objection again. This is
13 repeating the same question again. Only reason
14 Dr. Cordero --

15 THE COURT: Overruled. You can question him
16 in cross examination.

17 BY DR. CORDERO:

18 Q. Mr. DeLano, the question is: Why, at the bottom
19 of the page, were you aware of the claim, that is the bottom
20 question? Since you're reluctant to answer is because you
21 know you're going to commit yourself to this answer may -
22 that we have all these series of questions to try to make it
23 clear to you that you have to answer the question, and I
24 have here, your bankruptcy petition where you stated some
25 things about my claim, the claim that you listed

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1 voluntarily, on your petition. I'm asking you what the
2 claim, if you knew what the claim was?

3 A. And I told you my feeling was it had to be listed
4 according to the bankruptcy petition because I was named

Cordero

5 personally as a third-party defendant, however, and that's
6 it.

7 Q. Very well. How did you know that I listed you
8 personally?

9 A. I did not. My feeling is that you did not, as I
10 was listed as an officer of M&T Bank.

11 Q. Very well. How did you know I listed you as an
12 officer of M&T Bank?

13 A. I cannot read your mind. If you did, you did.

14 THE COURT: Just answer the question.

15 WITNESS: I didn't know.

16 BY DR. CORDERO:

17 Q. You didn't know?

18 A. Right.

19 Q. So does that mean that you assumed that I had
20 listed you as a bank officer and not personally?

21 A. Yes.

22 Q. And on what basis did you assume that?

23 A. There was no other reason that you would list me,
24 because I owe you no money, and you are not a creditor.

25 Q. Mr. DeLano, so that means that on the basis of an

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1 assumption you disputed the claim that you voluntarily
2 listed on your petition?

3 A. Yes.

4 Q. On basis of an assumption?

5 A. Uh-huh.

6 Q. Do you think that is what a competent person does?

7 MR. WERNER: Objection, your Honor.

8 THE COURT: Sustained.

Cordero

9 BY DR. CORDERO:

10 Q. What you're saying, Mr. DeLano, is that on the
11 basis of an assumption you disputed my claim, without
12 finding out exactly?

13 A. Yes.

14 Q. Okay. Is that the way you proceed as a bank
15 officer, on assumptions?

16 A. No.

17 MR. WERNER: Objection, your Honor,
18 relevance. Objection, your Honor.

19 BY DR. CORDERO:

20 Q. So how do you proceed when a matter comes to your
21 attention and you have to make a decision as to whether a
22 client owes money to the bank, do you proceed on
23 assumptions?

24 A. No, I do not. What I do is, I get the documents
25 and make sure that the notes were signed with the bank, we

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1 have collateral for the loans, and then I move forward. And
2 on your claim I moved forward the same way, Dr. Cordero.
3 You show me the notes, you show me the collateral and you
4 are a creditor.

5 Q. Is that the way the other nineteen creditors,
6 showed you their claim?

7 A. I'm sorry?

8 Q. You - did you indicate that is the way for you to
9 put my name --

10 A. That's the only way I can enforce a claim.

11 Q. Exactly. Okay, that that is to the clients of

12 M&T.

13 A. The client of any bank or any court.

14 Q. So that means that, what you do before making a
15 decision is to ask for the documents and review them?

16 A. That's correct.

17 Q. Why did you know - not ask for documents that were
18 served upon you upon which you found out that there was a
19 claim that you should make on your petition? Why?

20 A. It is not a claim. What it is, I was named as a
21 judgment, in a judgment. It's not a claim, understand this.

22 Q. Please, Mr. DeLano, there is no judgment. In that
23 case, the case has not come to trial. There was only a
24 complaint that stated a claim against you. That is all
25 there was. There was no judgment. There is no judgment,

1 so, so the question that we're trying to find out the answer
2 to is whether you were aware that you had to find out the
3 documents that stated the basis for the claim. Did you do
4 so?

5 A. That is what we're doing here today. Where is the
6 document for the claim against me?

7 Q. So how did you know that I have a claim against
8 you?

9 MR. WERNER: Objection, your Honor, asked
10 and answered.

11 DR. CORDERO: No, it's not answered.

12 THE COURT: It has been. He said he knew
13 that you had asserted a claim against him because you
14 filed a third-party complaint against him. He has
15 answered that at least three times, if not more.

Cordero

16 DR. CORDERO: And he is pretending not to
17 know the basis of the claim and what I am trying to
18 ascertain is, ascertain is that the - that is only way
19 for to dispute the claim and to label it the way you
20 did in your own petition. Should not have to remind
21 you of the statement that you made in your own petition
22 is that you knew the claim, that is --

23 MR. WERNER: He asked a question?

24 BY DR. CORDERO:

25 Q. The question is: Did you know the content of the

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1 claim?

2 A. No, I did not.

3 Q. So how did you dispute it? That means you
4 disputed the claim without knowing the content. Can you --

5 A. What claim are you relating to, yours?

6 Q. The proof of claim that was --

7 A. That I dispute?

8 Q. Mr. DeLano, we're way past that question now. We
9 have already established that the claim that you made that
10 basically that you stated in your bankruptcy petition
11 concerns me, related to the claim that I made in 2003, 2, in
12 the Pfuntner versus Gordon case. We have already
13 established that. It was the judgment or broader issue of
14 the proof of claim which is completely irrelevant at this
15 point in time when we're only trying to ascertain whether --

16 THE COURT: I don't think it's completely
17 irrelevant, Counsel, because your proof of claim
18 actually had attached to it some of the pages from the

19 Cordero
complaint that we're talking about, so I take issue
20 with you saying it's irrelevant. Your proof of claim
21 had, in fact, attached to it some of the pages from the
22 third-party complaint.

23 DR. CORDERO: You're completely correct. The
24 point in time is crucial here. Mr. DeLano did not
25 learn of my claim because I filed a proof of claim.

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1 Mr. DeLano knew about my claim because he had been
2 served a - in 2002, with a claim from the Pfuntner
3 versus Gordon case.

4 THE COURT: I agree with that.

5 DR. CORDERO: Exactly.

6 BY DR. CORDERO:

7 Q. And you had more than a year and a half to learn
8 the content of that claim, that is the only reason for you
9 disputed it, is it not?

10 A. Yes.

11 Q. Very well. Did you read the claim?

12 A. Some of it.

13 MR. WERNER: Objection. I wonder if I could
14 be - if he's asking about the claim or the complaint.

15 DR. CORDERO: The claim was in the complaint.
16 That is the only way he filed a legal claim. You make
17 a complaint and serve it with a summons.

18 THE COURT: The answer. Did you ever read
19 the third-party complaint?

20 WITNESS: Not all of it, your Honor.

21 BY DR. CORDERO:

22 Q. Did you read the part that concerned me?

Cordero

23 A. Yes, I think I did.

24 Q. Very well. So, what did you learn about it?

25 A. What did I - I'm sorry?

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1 Q. What did you learn about my claim when you
2 read --

3 A. This is in reference to Pfuntner?

4 Q. Yes.

5 A. Only that supposedly the reason for me being named
6 in that claim was that I had said that I had seen your
7 cartons, possibly at Jefferson Road, possibly.

8 Q. Very well. So --

9 A. And that's it.

10 Q. And that's it. That's at - so where did you get
11 this idea between - of this difference between me suing you
12 as a bank officer as opposed to me suing you personally?

13 A. Because I was the servicing officer for Premier
14 Van Lines.

15 Q. Very well. So after all these back and forth
16 questions and answers, you were aware of my claim?

17 A. What claim, the claim in court today? As far as
18 your proof of claim in my bankruptcy, no. The reason for
19 it, if I recall, your cartons were involved in the
20 bankruptcy two years ago were stored in Avon. M&T Bank
21 showed you where they were. You went to see them. I don't
22 think they have ever been removed from that location, so as
23 far as I'm concerned, what claim did you have? You had your
24 cartons. There is no dollar amount and no claim.

25 Q. I'm going to ask you so that you did not continue

1 going back and forth as to which claim we're talking about.
2 We're talking about at this point only about the claim that
3 I brought to your attention Michael, my claim of
4 November 21, 2002. Please forget for the time being any
5 proof of claim, judgment brought up, forget about that.
6 We're not talking about that. Can we do that, Mr. DeLano?

7 A. For about five minutes.

8 Q. If you're going to bring - keep bringing it up
9 when there is no point in bringing it up, only if I bring it
10 up, because I'm the one questioning. We're going to get
11 involved in this muddle all the time so you have to make a
12 decision whether you're going to --

13 MR. WERNER: Objection, your Honor. I don't
14 think it's for counsel to instruct the witness.

15 THE COURT: What counsel wants to talk about
16 is the allegations listed in his third-party complaint
17 against you individually. He also made allegations
18 against M&T Bank that were very similar, but he made
19 allegations directly against you individually in that
20 complaint, and he's correct in saying that when you
21 filed your bankruptcy, that's the only basis you could
22 have scheduled him as a contingent creditor and a
23 disputed creditor, so he wants to talk about those
24 allegations and the best of your recollection of them.

25 And forget about the proof of claim issue,

1 because he's right, we're beyond that, because that
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2 proof of claim wasn't filed for another seven months or
3 so or six months after you filed your Chapter 13. So
4 just get your thinking cap on for the complaint that
5 you read. At least in part, as you testified, that
6 deals with at least that allegation that you just
7 talked about, about identifying the container.

8 Now we can continue on for the next three
9 minutes for the - whatever questions he has, and then
10 I'm going to take a break for the court reporter.
11 About fifteen minutes.

12 BY DR. CORDERO:

13 Q. What was the content of that claim?

14 A. With reference to me only that it was mentioned
15 that your goods were at the Jefferson Road location, I
16 believe, of where Premier Van Lines stored their goods, or
17 we thought they were, based only on your name being on a box
18 at that time. We found out later they were not there, that
19 they were located in Avon.

20 Q. Very well. And --

21 A. And that's it. That was the whole thing.

22 Q. Thank you Mr. DeLano. Did you know then the
23 nature of the legal claim, those are facts that you are
24 stating and then I made a claim on a legal basis, do you
25 know what that legal basis was?

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1 A. No.

2 Q. So - so you filed a bankruptcy claim with my name
3 only as a creditor and you had no idea of what the legal
4 basis was for the claim?

Cordero

5 A. No.

6 Q. So how could you dispute it?

7 A. Why would you be a creditor?

8 Q. Please don't ask me the questions.

9 A. I would dispute it just as I said before, because
10 as far as I'm concerned, a creditor with me is an individual
11 who I either owe money to, services, or goods, etc., and in
12 your particular case, Dr. Cordero, I owe nothing to you as
13 an individual. The only way I could be named in the Premier
14 Van Lines deal was that I was the loan servicing officer on
15 a deal M&T Bank was also named on that. Were they not, yes?

16 THE COURT: Don't ask him questions.

17 BY DR. CORDERO:

18 Q. So, Mr. DeLano, that means - are you a lawyer?

19 A. Am I a lawyer?

20 Q. Yes.

21 A. No, I'm not.

22 Q. Very well. So how did you reach that conclusion
23 that you in your lay person judgment thought that you did
24 not have to be responsible to another person and you did not
25 have to find out the basis of that other person to make a

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1 claim against him?

2 A. Based on my experience, and it's a lot of
3 experience. I'll be honest with you, I've never had
4 anything like this occur before in thirty-two years, and I
5 dealt with a lot of people and in a lot of counties.

6 THE COURT: Okay, we're going to take a break
7 and we'll come back.

8 (Recess taken.)

Cordero

9 (Court reconvened.)

10 THE COURT: We'll return to the stand.

11 You're still under oath Mr. DeLano.

12 All right, proceed.

13 DR. CORDERO: It is one minute before 3, and
14 Judge Ni nfo, I would like to bring to your attention
15 that during the recess Attorney Werner came into the
16 courtroom with Mr. DeLano and asked the assistance
17 whether they had a copy of the complaint. Then he
18 turned around whether I had the copy of the complaint
19 and I said yes, and he asked me to - that he let me see
20 it and I said no that - thank you, and he asked the
21 assistance again to provide that. I told him that that
22 it was improper in the middle of the hearing to supply
23 Mr. DeLano with the answers that were answers to the
24 questions that I had asked before. It is most improper
25 in the middle of a hearing to take advantage of a

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1 recess for the attorney to provide answers to the
2 witness that is on the witness stand.

3 THE COURT: I don't know. Are you saying
4 that in a recess an attorney and a witness who is also
5 the debtor in the case can't be helped with each
6 other?

7 DR. CORDERO: No, that cannot provide
8 answers to specific questions that he knows I have
9 been asking to - of Mr. DeLano.

10 THE COURT: I don't know anything about that.

11 DR. CORDERO: But you're bringing - I'm

12 bringing to your attention. Cordero
13 THE COURT: That he gave him answers?
14 DR. CORDERO: That he was intending to do
15 that. He claimed I should not be lecturing him because
16 he had been practicing for a very long time.
17 THE COURT: Let's move on and start asking
18 questions.
19 DR. CORDERO: Judge Ninfo, I will assign
20 those as a violation of bankruptcy, Rule 9011. This
21 is improper conduct on Attorney Werner to supply
22 answers to the witness who he knows has some
23 difficulty precisely of those questions. This is not
24 the time for Mr. Werner, or Attorney Werner or for
25 Mr. DeLano to find the answers to my questions.

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1 THE COURT: So he will answer your questions.
2 Ask the questions and we'll see what and --
3 MR. WERNER: I asked for a copy of the
4 complaint filed by Mr. Cordero.
5 THE COURT: You should have brought --
6 MR. WERNER: Quite so, your Honor.
7 BY DR. CORDERO:
8 Q. Actually, Mr. DeLano, do you think you should have
9 read that complaint before disputing my claim?
10 A. I guess.
11 Q. Are you prepared to do that?
12 THE COURT: Look, we have got to move this
13 on. He already answered that he read the complaint.
14 He didn't read all of it but he read the parts that
15 were privy to him, or most of it. He already testified

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16 to that. I don't want to be repetitive. If we're not
17 going to get anywhere today in terms of moving this
18 along - he testified he did read the complaint as
19 pertaining to him.

20 DR. CORDERO: No, that is not what said. He
21 said he read the statements of fact, that he in his
22 judgment, he decided that the - that the only way for
23 me to bring a claim against him was if I was bringing
24 that claim in his capacity as a bank officer.

25 THE COURT: He also said that, but he also

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1 said he read the complaint. Let's move on. The record
2 will reflect what Mr. DeLano said.

3 BY DR. CORDERO:

4 Q. Mr. DeLano, were you not aware that of the legal
5 basis for the complaint?

6 MR. WERNER: Objection, your Honor. I
7 believe it, on part of the conclusion on part of the
8 legal basis.

9 THE COURT: He can answer the question. He
10 can say yes or no.

11 WITNESS: Yes, I was being sued certainly as
12 a third-party defendant.

13 BY DR. CORDERO:

14 Q. My question is not that - my question is that you
15 said the only way I could bring a claim against you was in
16 your capacity as a bank officer, and not personally, and I
17 asked whether you were a lawyer and you said no, and then I
18 asked you whether you had read the legal basis that I had

Cordero

19 stated in my complaint for bringing a claim against you. Is
20 your answer no?

21 A. My answer against me personally would be no.

22 Q. That is not my question, Mr. DeLano. That is not
23 my question. My question is very clear. My question is
24 whether you read the legal basis that I stated in the claim?

25 THE COURT: Do you know what he's talking

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1 about, about a legal basis?

2 WITNESS: No.

3 THE COURT: Then why don't you explain to him
4 what you mean by legal basis, because the witness,
5 obviously, doesn't understand what you're saying.

6 DR. CORDERO: Well, why don't you allow him
7 to do - to say so. You're standing in for him.

8 THE COURT: Because it's not his job to ask
9 questions, but it's obvious to anybody in the courtroom
10 that he's confused about the terminology that you're
11 using.

12 DR. CORDERO: Well, don't you think that he
13 can say I'm confused about that instead of you
14 providing him with an escape to the question? I'm
15 trying to pin him down on an answer to a specific
16 question and now, and now you're testifying for
17 Mr. DeLano. I would appreciate it if Mr. DeLano has
18 any confusion --

19 THE COURT: We'll take that as your
20 permission for him to get into argument with you about
21 your question and ask you follow-up questions. If that
22 is the way you prefer it, Counselor, that is the way

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23 we'll do it. So proceed.

24 DR. CORDERO: Judge Ninfo, that is not what
25 I have said. What I have said is that you're confused

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1 as clarifying the question, that's all.

2 THE COURT: Yes, I am.

3 DR. CORDERO: Well, I will explain to
4 myself.

5 BY DR. CORDERO:

6 Q. My question is: You were aware of the statement
7 of fact that I included in my claim?

8 A. Yes.

9 Q. Very well. Did you read in the - did you read on?

10 A. I did not read the total complaint.

11 Q. Very well. So that means by necessity that you
12 did not reach the section which I - where I stated legal
13 basis for my claim?

14 A. No.

15 Q. Very well. We're clear about that. We won't
16 come - have to come back to that. You read the statement
17 of fact but you did not read on?

18 A. Correct.

19 Q. Very good. So how did you dispute the fact
20 that I made a claim to you on whether you were a bank
21 officer or whether you were sued personally, did - if you
22 did not read on?

23 A. Because personally I have no obligation. The
24 only way that I could value it was to say that the bank -
25 I had to look at it as being myself as, as a bank officer,

1 not as an individual.

2 Q. So, without knowing whether I was in dispute and
3 thereafter alleging that, you wrote my name in the
4 bankruptcy petition that you filed in January of 2004?

5 A. That's correct. That's correct.

6 Q. Very well. What did you say about my claim in
7 that bankruptcy petition?

8 A. I said nothing about your claim, only that I had
9 been named as a third-party defendant in a lawsuit.

10 Q. So did you not qualify that at all?

11 A. I'm sorry?

12 Q. So you did not qualify that, the claim?

13 A. No.

14 Q. You did not qualify that at all, no?

15 A. No.

16 Q. So you just put my name there as another creditor?

17 A. Not as a creditor, as an outstanding judgment.
18 There's a difference.

19 Q. Please, Mr. DeLano, I have already explained that
20 there is no judgment there. There is no - there has not
21 been a trial. There is no judgment. The only thing that is
22 there was my claim stated in the complaint of November 2002.
23 That is all there is.

24 A. Okay. Well, as - as a complainant. You were
25 listed as a complainant. You were not listed as a claimant

1 in my bankruptcy.

Cordero

2 Q. Yes, Mr. DeLano. Did you include my name under
3 schedule (f), creditors only unsecured on priority claims?

4 A. I did not. Possibly my bankruptcy attorney did.

5 Q. That is very interesting. That is a very
6 interesting answer. Mr. DeLano, did you sign your petition?

7 A. Did I sign it? Yes.

8 Q. So you are responsible for everything that is in
9 that petition?

10 A. Yes.

11 Q. Does that mean that you signed a bankruptcy
12 petition without knowing why, that you were stating there?

13 A. No.

14 Q. So why do you not know about whether you wrote
15 anything concerning me in your petition?

16 A. The only thing that was in the petition, and I
17 have no idea what schedule it's under your - you were named
18 in the petition as a complainant, but there was a zero
19 balance as to monies owed.

20 Q. Actually, Mr. DeLano, there is no way of stating
21 in the petition that a person is a complainant. That that
22 is not one of the options in your petition. Would be fair
23 to say that you're not familiar with your own bankruptcy
24 petition?

25 A. Probably true.

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1 Q. But you signed it?

2 A. When I signed it but I read it.

3 Q. I'm sorry?

4 A. I signed it.

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5 Q. And you read it?

6 A. Yes, I did.

7 Q. Very well. So you should know what is the debt
8 listed concerning me?

9 A. Again?

10 Q. You should know then if you signed your petition,
11 you read your petition, you should know what it said, that
12 you said about me?

13 A. Very little was said about you in the petition.

14 Q. What was said about me?

15 A. The only thing that was said in the petition to
16 begin was under outstanding judgments or complaints. You
17 were named there. You were named I believe in the - another
18 schedule, and I don't remember the letter of the other
19 schedule, and that's it.

20 DR. CORDERO: Your Honor, I believe
21 Mr. DeLano indicated he doesn't remember. I believe it
22 would be appropriate to refresh his recollection to
23 simply show him the copy of the petition. Perhaps that
24 would refresh his recollection that --

25 THE COURT: Usually that is the case but --

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1 DR. CORDERO: The point is here --

2 MR. WERNER: They're conducting a guessing
3 game.

4 THE COURT: -- it's not necessary.

5 BY DR. CORDERO:

6 Q. The point is that you have known now for more than
7 a year that you had a claim listed in your petition under my
8 name. We had a whole day of examination of you and your

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9 wife on February the 1st at 2005. You knew about it,
10 today's hearing since December 15, 2004, when Judge Ni nfo
11 set the date for this hearing, and you are so unprepared
12 that you do not even know what it is that you said in your
13 own petition. That, let alone what I said in my claim
14 against - does that strike you as the conduct of a competent
15 person?

16 MR. WERNER: Objection, your Honor, that is
17 hardly necessary.

18 THE COURT: Sustained.

19 BY DR. CORDERO:

20 Q. Why did you not prepare for this?

21 THE COURT: His competency is not at issue in
22 this claim objection here and standing objection it's -
23 it's irrelevant.

24 DR. CORDERO: I am not asking - I'm sorry,
25 your Honor.

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1 THE COURT: I thought you were looking for
2 clarification.

3 DR. CORDERO: Yes. I'm not asking whether
4 Mr. DeLano is competent in terms of that. I'm asking
5 that is not - I apologize if I gave you that
6 impression.

7 BY DR. CORDERO:

8 Q. That is the - of competency is whether you were a
9 competent bank officer. That is what I - your attention to
10 at the beginning. That is the only way in which I use the
11 word competent, whether you were a competent bank officer.

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12 And you in your own appearance, let alone in the appearance
13 of other parties, you dispute a claim that you yourself
14 voluntarily list in your bankruptcy petition. You treat me
15 as a creditor for six months and then on July 19, 2004, you
16 came up with the idea that I actually was not a creditor.
17 And I have now reason to repeat again that your motion to
18 disallow there is in bad faith, Mr. DeLano. If you did not
19 not know what claim I have brought to your attention, why
20 did you file a motion to disallow?

21 A. No. I, as far as I'm concerned personally, I owe
22 you nothing. Personally you are not a creditor. You are
23 only listed in the bankruptcy I will say for the last time
24 because I was named as a third-party defendant in an old
25 bankruptcy case two years ago.

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1 Q. And that means that you don't know anything about
2 the claim that I have made against you or why you are
3 disputing?

4 THE COURT: No, he actually told you why he
5 has objected to your claim, because he owes you
6 nothing.

7 DR. CORDERO: Your Honor, you are --

8 THE COURT: No, I'm repeating what testified.

9 DR. CORDERO: I can hear it a hundred times.

10 THE COURT: But if you don't get the answer
11 to questions, ask the question again. It's been asked
12 and answered. He answered your question. Now you're
13 being argumentative. He answered your direct question.
14 He said I owe you nothing and I was listed, so you were
15 listed solely because he was a third party in an old

Cordero

16 bankruptcy. I mean, he's answered the question. Move
17 on.

18 BY DR. CORDERO:

19 Q. The question is whether you took the trouble as a
20 competent bank officer trained for two years in examining
21 documents from your clients, you said that you asked for
22 documents from your clients in a case that concerns you to
23 find out what was it that was being claimed against you, did
24 not - did you?

25 A. I did not.

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1 Q. Very well. Thanks again, sir. Now we now find
2 out that you moved to disallow my claim without having the
3 faintest idea of what was the basis for my claim.

4 A. What is it?

5 Q. Very good. Mr. DeLano, very good, you are asking
6 me what is it. That means you didn't know. It is that what
7 establishes the bad faith of your motion to disallow. It
8 was a subterfuge to eliminate me from the claim. You have
9 no good faith here to file that motion. You did not even
10 know what it is that you were disputing there, because you
11 did not know what it is that I was claiming against you or
12 the basis of it; is that so?

13 A. That's true.

14 Q. Very well. Very well. So, at this point in time
15 why are we here, just because you want to get rid of me,
16 from the case?

17 A. I have no idea why I'm here, because I owe you
18 personally nothing. As an officer - I'm not done, I'm not

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19 done. And as an officer of M&T Bank, M&T Bank owes you
20 nothing.

21 Q. You are saying that - you are stating that M&T
22 Bank does not owe me anything, you are stating that as a
23 lawyer?

24 A. I'm stating that as a - as a bank officer.

25 Q. Okay. And what is the basis for you - for your

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1 statement?

2 A. We have abandoned any interest we ever had in any
3 of your personal goods with which were collateral for the
4 old loan from 2002, on Premier Van Lines. We have abandoned
5 them three years ago and as such we have no interest, in
6 your goods or - or you personally.

7 DR. CORDERO: Your Honor, I at this point in
8 time I move for a dismissal of the motion to disallow
9 on the basis that in bad faith without knowing what
10 legal basis there was whatsoever.

11 THE COURT: The interesting thing, that may
12 be some question that you had - of course, the
13 objection to the proof of claim was filed by Counsel,
14 on behalf of Mr. DeLano, and Counsel prepared this.

15 Mr. Werner clearly set forth the basis and
16 you knew exactly what was going on, and Mr. DeLano has
17 every right to rely on. His counsel filed this for
18 him, so I'm going to deny your motion.

19 I don't believe it's a bad faith objection.
20 In fact, the objection is quite clear and extensive
21 with respect to the basis, and I'm looking at it right
22 now, and so it may be as very frequently the case in

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23 this court, that individual debtors don't always
24 understand all of the legalities and procedures,
25 and he believes that he use - unfortunately, far too

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1 much in the court system, and that is why they rely on
2 their attorney. And, obviously, from listening to
3 Mr. DeLano, he relied on his Counsel, Mr. Werner, with
4 respect to this objection to claim and that's what I'm
5 going to deal with.

6 So I'm going to deny your motion. I don't
7 think it was a bad faith objection.

8 DR. CORDERO: You're providing an argument
9 for Mr. DeLano.

10 THE COURT: I'm making a decision and I'm
11 justifying my decision. I have explained my decision
12 to you. I believe there was one time in some of your
13 paper work that you allege that I didn't fully explain
14 to you my ruling, so I'm trying to make sure I explain
15 to you my ruling.

16 DR. CORDERO: What I said in my papers, I
17 said that you never - what I said in my papers is that
18 you did not invoke the law or the rules to make your
19 ruling. You just make the ruling because you have the
20 power to make them and you make all the rules.

21 THE COURT: Careful, Counsel, you're a
22 licensed attorney. Okay, you're registered. You're
23 responsible for the lawyer's code of ethics.

24 DR. CORDERO: I talk about 9011 --

25 THE COURT: You can start talking about it.

1 I made my ruling. Move on, unless you're finished.

2 DR. CORDERO: No, by no means, I'm not

3 finished.

4 BY DR. CORDERO:

5 Q. Let me - on Mr. DeLano's confusion to his counsel

6 because his counsel came in here asking for a copy of the

7 complaint. Your - or counsel did not know --

8 THE COURT: You're not asking a question.

9 BY DR. CORDERO:

10 Q. Did your own counsel come into this room during

11 recess asking for a copy of the complaint?

12 A. Yes.

13 Q. Did he ask me to provide him with a copy of the

14 complaint?

15 A. If you had it.

16 Q. Did he ask me?

17 A. I would say yes.

18 MR. WERNER: I object to this line of

19 questioning and relevance.

20 THE COURT: Overruled.

21 BY DR. CORDERO:

22 Q. He did, Mr. Attorney Werner came into the room

23 during the recess and asked me for a copy of the complaint?

24 THE COURT: You already asked that and he

25 answered.

1 BY DR. CORDERO:

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2 Q. What is your answer?

3 A. Yes.

4 Q. Very well. So how could Attorney Werner have
5 known the legal basis that you have already stated you did
6 not know, and if he did not know the complaint, the facts
7 show that the statement made by Judge Ninfo that, that the
8 motion to disallow was based not on your knowledge of the
9 petition, but on the knowledge of the petition of Attorney
10 Werner, is disproved by the fact that Attorney Werner comes
11 to these evidentiary hearing totally unprepared, without
12 even having knowledge, that alone a copy of the complaint,
13 on the basis of which he knew moved to disallow my claim,
14 he said, isn't that correct, he did not know?

15 MR. WERNER: Objection.

16 THE COURT: What's the nature of your
17 objection?

18 MR. WERNER: Objection to what Mr. DeLano -
19 or didn't know about any knowledge. He's not
20 competent to answer that.

21 THE COURT: Sustained.

22 BY DR. CORDERO:

23 Q. Judge Ninfo, the judge brought that up. The judge
24 said that Mr. DeLano does not know the basis of the motion
25 to disallow because he relied on his attorney. Is your

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1 attorney Christopher Werner?

2 A. I'm sorry?

3 Q. Is your attorney Christopher Werner, is that your
4 attorney?

Cordero

5 A. Is he what, is he my attorney?

6 Q. Yes.

7 A. Yes.

8 Q. Very well. So Judge Ninfo in your defense stated
9 that you did not know about the motion to disallow because
10 had relied on your attorney, but that is disproved by the
11 fact that Judge Ninfo, knew because I brought to the - his
12 attorney that your own attorney comes into this courtroom
13 for this precise evidentiary hearing, which he has now seen
14 way back in almost 2, 3, 2004, there would be a dispute, he
15 comes here without a copy of the complaint, without knowing
16 what it says, how could you possibly rely on the knowledge
17 of Mr. Werner when Mr. Werner himself does not have that
18 knowledge?

19 THE COURT: I'm going to translate that
20 for you. All he's asking, whether you relied in part
21 or in whole on Mr. Werner. Your answer is, knew it
22 to prepare the claim objection after consultation of
23 him. That is the long and short of the question.

24 DR. CORDERO: Your Honor, I'm more than
25 capable to state and rephrase any answer. It's very

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1 improper for you to provide answers.

2 THE COURT: I didn't provide the answer and
3 I just asked him the same question in a way that I
4 think he can probably understand it.

5 DR. CORDERO: Well, you can ask me to
6 rephrase or he can ask himself, please rephrase. He
7 can ask --

8 WITNESS: The answer is yes, Mr. Werner is
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9 my counsel and I relied upon him in - in this, in this
10 matter.

11 BY DR. CORDERO:

12 Q. Very well. But since he already showed that he
13 did not have that knowledge, you could not possibly have
14 relied on his knowledge?

15 A. Well, possibly I change attorneys but I'm not
16 going to.

17 Q. But you're saying that - please look at me, Mr.
18 DeLano, please look at me. In fact, what you're saying is
19 that even not Attorney Werner knew the basis on which he
20 moved to disallow my claim, is that so?

21 A. Yes.

22 Q. Very well. So I move again to dismiss that.
23 Your Honor Judge Ninfo stated that the reason why
24 Mr. DeLano did not know about the basis of my claim was
25 that he relied on his attorney, but Mr. DeLano has already

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1 stated that even his attorney did not know the basis.

2 The motion to disallow was in fact, was in bad
3 faith. You did not have - or you, attorney knowledge why
4 you were moving to disallow.

5 The reason why you were moving to disallow was
6 because I was asking persistently for documents that could
7 show your commission of bankruptcy fraud and you did not
8 want me to keep asking that, and as a subterfuge, as I
9 have stated among others in my August 17, 2004 motion. You
10 used the motion to disallow as a subterfuge. You filed a
11 motion together with your attorney in bad faith.

12 Cordero
THE COURT: Is that a question?
13 DR. CORDERO: That is a question.
14 THE COURT: Why don't you ask a question.
15 I think that was more a statement.
16 BY DR. CORDERO:
17 Q. Mr. DeLano said --
18 A. I said I would be careful. That is what I said.
19 Q. That you will be careful or that I should be
20 careful?
21 A. I'm going to respond to your - to your question.
22 Q. Please, I ask you questions now.
23 A. No, that you've asked a question, I'll respond to
24 that.
25 Q. My question, I was going to repeat my question.

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1 A. Okay, fine.
2 Q. Did you say that you should be careful or that I
3 should be careful?
4 A. You should be careful.
5 Q. Why?
6 A. Because of the nature of the question. I answered
7 you before. Go ahead.
8 Q. There is no question put before you. Let me ask
9 you a question. Why should I be careful, is that like a
10 threat?
11 A. The response to subterfuge and bankruptcy fraud,
12 etc.. I have spent probably over a year in a three - in
13 actually total 341. I spent a total day with you at a 341.
14 You know, if you don't know everything about the DeLanos,
15 per se, no one does. Now I'm not done. My response to you

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16 will be the same response as before. Personally I owe you
17 nothing. In - I have no obligation to you and as a bank
18 officer of M&T Bank, M&T Bank has no --

19 DR. CORDERO: Unresponsive, your Honor. I
20 ask you to ask the witness --

21 THE COURT: Ask a question that is relative.

22 BY DR. CORDERO:

23 Q. That is not responsive. The question before you,
24 why should I be careful? That is the question.

25 MR. WERNER: Objection, your Honor. I see no

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1 relevance to Dr. Cordero --

2 THE COURT: Move on.

3 BY DR. CORDERO:

4 Q. You're allowing what sounds to be a threat to be
5 stated.

6 MR. WERNER: Objection, your Honor. Again I
7 see no relevance on Dr. Cordero's statement, any
8 relevance.

9 BY DR. CORDERO:

10 Q. The very relevancy is that you ask I be careful.
11 I ask whether, whether that is a threat?

12 MR. WERNER: Objection, your Honor.

13 THE COURT: Was it a threat?

14 WITNESS: No.

15 THE COURT: Fine. Let's move on.

16 BY DR. CORDERO:

17 Q. In what way should I be careful?

18 THE COURT: He doesn't have to answer that.

Cordero

19 That was - that is irrelevant. He now has said that
20 was not a threat. Let's move on.

21 BY DR. CORDERO:

22 Q. So the question, that I put to you, you said that
23 I should be careful is - I was asking you that whether your
24 motion to disallow was a subterfuge to eliminate me from the
25 case. You did not know anything about it. You did not know

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1 anything about it. Your attorney did not know anything
2 about it. Was your motion to disallow as a subterfuge to
3 eliminate me from your case?

4 A. No.

5 Q. Why was it filed if you did not know?

6 A. I will answer that. It was filed because you had
7 filed a proof of claim. It was to find out what the proof
8 of claim was, what your actual claim was when I owe you
9 nothing, personally. That's the reason.

10 Q. Excellent, Mr. DeLano. That is an excellent
11 question because you have just stated that you moved to
12 disallow a claim that you had to find out what the basis for
13 it was, because --

14 THE COURT: No, you've got to do it all, not
15 part of it.

16 DR. CORDERO: Judge Ninfo, that is most
17 inappropriate, you are supplying answer for questions.
18 You should allow the witness to hang himself by his
19 own statements.

20 THE COURT: I think that the role of the
21 Court - do you believe that is the role of the Court?
22 As an officer of the Court do you believe that you

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23 should allow a witness to hang himself by his own
24 statements, is that your statement?

25 DR. CORDERO: That is the purpose of an

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1 evidentiary hearing conducted with an adversary to
2 allow me to make statements that - that the way
3 impeachment proceeds and that is what I'm doing with
4 this, with this witness. The witness has impeached
5 himself because you filed a claim to move to disallow
6 my claim. I'm sorry. You filed a motion to disallow
7 my claim in order to find out what the claim was.
8 Isn't that what you just said?

9 WITNESS: I did, but --

10 BY DR. CORDERO:

11 Q. Isn't that not --

12 A. Wait a minute, I'm not done. I'm not done. Is
13 that part of what this hearing is all about?

14 THE COURT: Just answer the question.

15 BY DR. CORDERO:

16 Q. So, you had an opportunity to find out what my
17 claim by reading the complaint that I filed with you and
18 your attorney and Michael Beyma on November 21, 2002. You
19 had an opportunity to find out what my claim was when you
20 were preparing your bankruptcy petition which you filed on
21 January 27, 2004. You had an opportunity to find out what
22 my claim was during the - the month during which you treated
23 me as a creditor. You had an opportunity to find out what
24 my claim was when I filed a proof of claim and asked, as
25 Judge Ninfo stated, I had had paper stating what that claim

1 was. That happened on May 15, 2004. All right, you had an
2 opportunity.

3 THE COURT: Let me just interrupt, because I
4 did not say you attached paper that demonstrate you
5 did not have a claim. I said very specifically that
6 you had some of the pages from your complaint and if
7 you look carefully at what pages you filed, you will
8 see that it does not have those parts of the complaint
9 that deal with the specific cause of action against
10 Mr. DeLano, so let's be clear on that.

11 DR. CORDERO: On the contrary, your Honor.
12 on the contrary. First of all, I already stated, that
13 is only proof of claim form states that it is felonious
14 that you can state the claim in abrogated form. That
15 is what the form states. Second of all, what I
16 attached to that form were precisely the legal basis
17 that you did not read. What you read was in the part
18 of the complaint that I did not attached - did not
19 attach to the proof of form. Had you read that proof
20 of form, you would have read the part that you have
21 already stated that you have not read.

22 BY DR. CORDERO:

23 Q. So you had so many opportunities, to find out
24 exactly what it was that I was alleging against you, so many
25 opportunities. You would have had a duty to do so and you

1 failed to do that. Is it not true on July the 9th I filed a
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2 statement, I filed a statement with the Court and gave a
3 copy of it to your attorney stating that you had concealed
4 assets through your bankruptcy petition, did I not do that?

5 MR. WERNER: Objection as to relevance to
6 this proceeding.

7 DR. CORDERO: It's very relevant to this
8 proceeding because that is the basis that I have
9 already stated here in all my papers is that statement
10 of July 9th, that the only reason for you to file a
11 motion to disallow ten days later, that is on
12 July 19, 2004, was to eliminate me from your case,
13 because I had stated in writing --

14 THE COURT: You're making a statement.
15 Can you answer that question? When he said no, it's
16 not a subterfuge, it was not to get you out of the
17 case, he answered that. Now we can't keep going over
18 this, Counsel. We can't keep going over the same
19 ground over and over and over. We need to move on to
20 something new.

21 BY DR. CORDERO:

22 Q. Mr. DeLano, did you file your motion to disallow
23 in order to eliminate me from your case?

24 MR. WERNER: Objection. Again asked and
25 answered a million times.

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1 THE COURT: It's been asked a number of
2 times and answered a number of times.

3 BY DR. CORDERO:

4 Q. How did you answer it, you said yes?

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5 THE COURT: No, he said no. He said no.

6 DR. CORDERO: Why don't you allow the witness
7 to repeat himself.

8 THE COURT: Because we can't allow him to
9 repeat himself four times or we'll be here forever.
10 He's answered that question on his own. Don't --

11 DR. CORDERO: I'm sorry, but I just saw
12 again Mr. DeLano looking at Mr. Beyma and Mr. Beyma
13 making a sign to the witness. That is completely
14 wrong. You are in front of --

15 THE COURT: See, I was looking at you, which
16 I should be when even addressing, so I wasn't looking
17 at the witness or Mr. Beyma and I have no way of
18 knowing what you're saying is true or not.

19 Do you want me to look at Mr. Beyma and
20 Mr. DeLano in the future instead of looking at - from
21 you when he addresses or anything else? How would
22 you like me to --

23 DR. CORDERO: I would like you to conduct a
24 fair and impartial process, herewith when you answer
25 for the witness and you provide ways of the witness

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1 to escape the position in which he has boxed himself.
2 You're being unfair, you're being impartial.

3 THE COURT: Move on.

4 BY DR. CORDERO:

5 Q. Mr. DeLano, so you are not wishy-washy, will you
6 state clearly you filed a motion to disallow ten days after
7 I had stated that you had committed bankruptcy fraud by
8 concealing assets; is that so?

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9 MR. WERNER: Objection, your Honor.

10 DR. CORDERO: That is a question of fact.

11 THE COURT: That is a legitimate question.

12 MR. WERNER: Your Honor, that relates only
13 again to the issue of subterfuge and bad faith which
14 we have gone through.

15 THE COURT: That is just a factual question.
16 He just asked him a factual question.

17 WITNESS: I don't know when that motion was
18 filed.

19 THE COURT: All right.

20 BY DR. CORDERO:

21 Q. You did not know. Do you know that I made in my
22 statement of July the 9th a claim that you were committing
23 bankruptcy fraud?

24 A. Yes.

25 Q. So, you know that, you know that is what I am - I

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1 am claiming against you the day when you tried to find out
2 what it is that you are going to do, you don't know what
3 happened; isn't that so? You know that the claim is that
4 you committed bankruptcy fraud by concealing assets and then
5 you don't know anything else that happens afterwards?

6 A. And how --

7 Q. No, don't ask me a question.

8 THE COURT: He's asking - you told me he
9 could ask for clarification.

10 DR. CORDERO: You're providing him with - for
11 answers. He was not going to ask for clarification.

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12 He was going to provide an answer. This is most
13 unfair. You are on the side of Mr. DeLano and you are
14 testifying for him. I did notice - I wouldn't do it to
15 you. On the witness list to testify, I would put you
16 on the witness list to testify because you're acting as
17 a witness.

18 BY DR. CORDERO:

19 Q. So, Mr. DeLano, my question is clear. Did you
20 know that I had filed against you a motion on July the 9th
21 stating that you had committed bankruptcy fraud and that --

22 A. No.

23 Q. And you had proof - but you just said yes.

24 A. No, wait a minute. Let me refer to your last
25 question.

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1 Q. I will rephrase my last question. Thank you very
2 much. Yes, my question is: You already stated that you
3 were aware that I had filed a motion indicating that you had
4 committed bankruptcy fraud and that you had concealed
5 assets. You said yes. My question, then, was whether ten
6 days later I had - you had filed a motion to dismiss,
7 disallow my claim?

8 A. The answer is no.

9 Q. Exactly. Your answer was no?

10 A. Right.

11 Q. So my question now is that you were aware of my
12 claim against you of bankruptcy fraud, did you take that
13 seriously?

14 A. No.

15 Q. Excellent. You did not take that seriously. You
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16 - so why should Attorney Werner take it so seriously as to
17 move to disallow my claim?

18 A. Your claim is not viable.

19 Q. So, you're saying that even though there was a
20 claim of bankruptcy fraud you did not take it seriously,
21 then, Mr. Werner and you, because everything that Mr. Werner
22 does is imputed to you is move to disallow; is that your
23 testimony?

24 A. You didn't have - you did not have a viable claim
25 and we wanted to move to disallow your claim so we can move

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1 forward with the 341 and on confirmation.

2 Q. Actually, Mr. DeLano, what you said before was
3 that, that you did not know I had a claim and that you had
4 filed to find out. So what I said was that in order to find
5 out, you had so many opportunities, that you had missed,
6 the only time when you filed the motion to disallow was when
7 I filed my statement of July 9th indicating on the basis of
8 your petition and documents that had proof that you had
9 committed bankruptcy fraud. Ten days later you and your
10 attorney filed a motion to disallow and now you're claiming
11 that you filed that motion to disallow to find out what the
12 claim was.

13 A. Yes.

14 Q. Okay. You already answered the question,
15 Mr. DeLano. You already answered it yes. So that motion
16 was in bad faith. If you wanted --

17 MR. WERNER: Your Honor, objection. Once
18 more we're going into the issue bad faith and

19 Cordero
subterfuge with objection to claim.

20 THE COURT: Let's go forward.

21 MR. WERNER: Your Honor, the proof of claim
22 has yet to be - I'm sorry - no facts have yet to be
23 offered as to the existence of the claim itself, nor is
24 any of these lines of questions.

25 THE COURT: Maybe we'll get to that today.

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1 That is what I'm waiting for.

2 MR. WERNER: Thank you.

3 DR. CORDERO: Did Mr. DeLano file a motion
4 to disallow in bad faith? That is a critical issue.
5 That is - that is the issue.

6 THE COURT: Quite frankly, Counsel, if he
7 filed a motion in bad faith but you have no legal claim
8 against him, it's irrelevant.

9 DR. CORDERO: No, because I'm an interested
10 party and he named me as a creditor.

11 THE COURT: But the point is it is not
12 mutually exclusive for one - and I'm not suggesting
13 that there - there was a claim objection filed in bad
14 faith - but a claim objection can be filed in bad faith
15 with respect to somebody who has no claim and that is
16 not usually exclusive. It doesn't give you a claim
17 because somebody filed a bad faith claim objection
18 against you when you don't have a claim.

19 Now, I will - I don't know if you have a
20 claim or not, but you haven't gotten to actually prove
21 that today, but in a metaphysically sense those
22 things are not exclusively exclusive.

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23 DR. CORDERO: Will you allow a person to use
24 a motion to disallow in order to avoid that party
25 find the documents that prove that he committed

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1 bankruptcy fraud? You are giving assistance to the
2 commission of fraud upon the court.

3 THE COURT: That is - that is an issue I
4 think we have already gone - been through this and the
5 Court has already made a decision and the Court made a
6 decision previously and an Interlocutory Order with
7 respect to these issues, continues to rely on the
8 Trustee's office and U.S. Trustee's office to
9 investigate these matters, to determine whether there
10 was, in fact, bankruptcy fraud or any of these things
11 that you're alleging, and to the best of my knowledge
12 there - there was a lengthy section 341 meeting that
13 you alluded to sometime in February. You mentioned
14 that today, that is everybody is talking about took
15 a whole day or something like that, to talk about these
16 very same issues.

17 So as I've said in the previous ruling, the
18 question of whether there has been bankruptcy fraud
19 here or the concealment of assets appears to the Court
20 to be going forward under the administration of the
21 Chapter 13 Trustee's office, so I don't know exactly
22 why you think I'm participating in anything when
23 there are these parallel activities going on and the
24 Court made it clearly in its decision that until the
25 question of this bankruptcy fraud is resolved by the

1 Trustee, the Court not going to get to the plan of
2 confirmation, any plan, so I don't know what you're
3 alluding to.

4 DR. CORDERO: I will explain. You are so
5 mixed up to this case that you are alluding to the 341
6 examination of DeLano that took place on February 1,
7 2005. Well, while on your order of August 30, 2004,
8 you had already decided by order that the DeLanos had
9 not moved to disallow my claim as to eliminate my
10 case. Without ever having heard Mr. DeLano, without
11 ever having his petition put forward to you, you made
12 a decision on the question of fact that shows you're -
13 particularly since now you're saying that you were
14 relying on Mr. Reiber or the office of the U.S.
15 Trustee - that precisely on that motion of July the
16 9th, 2004, I had stated that Mr. Reiber had not
17 investigated anything, to the point where Mr. Trustee
18 Reiber on June 15, 2004 moved to disallow. That wasn't
19 the lack of interest that he had, precisely because he
20 alleged unreasonable delay on the part of the DeLanos
21 introducing documents.

22 There is no way, in fact, that Mr. - that
23 Trustee Reiber was first investigating anything, and
24 second, that he could have reached a decision on
25 whether the DeLanos had committed fraud because

1 the DeLanos had not produced any documents, even though
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2 Trustee Reiber had asked for them, and there is no --

3 THE COURT: We're just covering the same
4 matters that were laid out in the Court's August 30,
5 2004 decision, so let's move on. We have already been
6 through --

7 DR. CORDERO: So you won't admit the fact
8 that on August 30th you made a decision that the
9 DeLanos were not involved?

10 THE COURT: The Court's August 30, 2004
11 Decision speaks for itself.

12 DR. CORDERO: And I am bringing to the
13 issue here because it is very relevant to your bias and
14 impartiality. You made a decision on an issue of fact
15 without ever even having heard of Mr. DeLano. In fact,
16 what you did was that you took an allegation of three
17 lines he made, by Attorney Werner in his July 19 motion
18 to disallow the complaint and took that as fact,
19 violated every conceivable rule of due process.

20 THE COURT: On August 30, 2004 - I'm sorry.
21 The Court's August 30, 2004 Interlocutory Order and
22 Decision speak for itself. That covers a lot of
23 ground. It gives the Court, a decision I made and I
24 explained in fair detail. Given the nature of the
25 motion it speaks for itself. Let's move on.

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1 DR. CORDERO: So you're admitting that --

2 THE COURT: No, the Court's order speaks for
3 itself. Let's move on.

4 DR. CORDERO: And what I'm saying, that --

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5 THE COURT: You can make these arguments at
6 a later point, okay, to the Appeal Court, what - which
7 you're undoubtedly going to do. I'm telling the order
8 speaks for itself.

9 BY DR. CORDERO:

10 Q. So, Mr. DeLano, you were aware of my claim to you,
11 concerning concealment of assets?

12 A. Yes.

13 Q. Mr. DeLano, do you remember that you're still
14 under oath?

15 A. Yes.

16 Q. Mr. DeLano, do you know whether the prisoner
17 dilemma is?

18 A. The what?

19 Q. The prisoner's dilemma.

20 MR. WERNER: Objection, it seems
21 irrelevant. You cannot ask that.

22 DR. CORDERO: You do not even know what I
23 am --

24 THE COURT: We don't know whether it's
25 relevant or not.

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1 WITNESS: I - no, I don't.

2 DR. CORDERO: Very well. I will explain to
3 you very shortly, and if you have any questions, ask
4 me. Prisoner's dilemma is a situation where you take
5 two people accused of something, you put them in
6 separate rooms, and you tell them whichever speaks
7 up first will get immunity. The situation that you
8 there, would you say that it is that each one of the

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9 two prisoners would have an interest in speaking
10 first?

11 MR. WERNER: Objection, your Honor, I see
12 no relevance to Dr. Cordero's --

13 THE COURT: Sustained. This is really - this
14 is metaphysical and irrelevant. Move on.

15 DR. CORDERO: Judge Ni nfo, Judge Ni nfo, you
16 did not even know what I am saying.

17 THE COURT: Prisoner, not something that is
18 relevant to a proof of claim with - and we're
19 not going to do this forever, Counsel. There is going
20 to come a point in time where when this hearing is
21 going to terminate because you haven't gotten to
22 anything yet in terms of being your burden to demon-
23 strate that you have a valid claim against Mr. DeLano.

24 In this Court's opinion you had a lot of
25 interesting questions, a lot of tricky questions, a

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1 lot of interesting stuff that is going on today, but
2 quite frankly it has nothing to do with you meeting
3 your burden to prove that you have a valid and
4 allowable claim in Mr. DeLano's Chapter 13.

5 I'm hopeful you're going to get to that
6 point.

7 DR. CORDERO: You're asking me to bear my
8 burden of proof, but you never - Attorney Werner to
9 bear his burden of proof, that the presumption that
10 I --

11 THE COURT: In the Court's August 30, 2004

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12 Decision the Court made a determination that the
13 burden shifted by the nature of the objection, and
14 the Court's own view based upon all of the proceed-
15 ings, in the DeLano case and in Premier Van Lines
16 case, that you hadn't demonstrated any fact or legal
17 basis for a claim against Mr. DeLano.

18 The Court has made a ruling that the burden
19 has shifted and the burden has shifted back to you
20 under the Code to make your ultimate proof that you
21 have a valid claim. That is the Court's ruling in
22 its August 30, 2004 Decision. That is my ruling now,
23 the burden has shifted. The presumption of an
24 allowable under the Code is no longer to your benefit.
25 You must prove - you must meet your ultimate burden to

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1 prove that you have a valid proof of claim.

2 DR. CORDERO: First of all, being
3 August 30, 2004 order, you didn't even mention any -
4 explaining or as so many of your orders you only made -
5 you just edict. It was by fear, there was no
6 discussion. You just concluded by making a conclusory
7 statement that Mr. Werner could - Attorney Werner could
8 put forward.

9 THE COURT: That is - that is what the Court
10 has ruled then and now. If you want to close the
11 hearing, if you're satisfied that you have a valid
12 proof of claim and that you - in other words; met your
13 burden with respect to this, we can close your hearing
14 right now. Is that what you want to do, Counsel?

15 DR. CORDERO: No.
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16 THE COURT: Well, then move on.

17 DR. CORDERO: What you're doing is simply,
18 escape, be it usual of your personality, you put the
19 burden on me that you did not put --

20 THE COURT: You have the burden to prove
21 that you have an allowable claim. I told you that
22 today is the day for you to do that. We've talked
23 about all of the time. Mr. DeLano had to do various
24 things. You had an awful long time to know that
25 ultimately you were going to have to come here and

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1 prove your claim today. That is what this was all
2 about. In fact, if you didn't know before August 30th,
3 you certainly knew in the Court's ruling on August 30th
4 that your burden today was to come here and prove that
5 you have a valid and allowable proof of claim. So I
6 would suggest to you that you take that opportunity,
7 your only opportunity today to do that.

8 DR. CORDERO: And what I have stated in my
9 papers is that it is a foregone conclusion that you
10 will find --

11 THE COURT: You have - haven't put any
12 proof in yet. You haven't put any proof in that you
13 have a valid and allowable claim. You haven't proved
14 any of the elements of even your allegations that
15 somehow he was reckless that resulted in an injury
16 to you, any of these things. You haven't put any
17 proof. You have bald-face allegations in your
18 complaint, in your third-party complaint.

Cordero

19 Are you going to prove on that today or
20 rely on your bald-face allegations in your complaint?
21 Do that, fine, we can do that. We can close the
22 hearing, but is that all you have got is allegations
23 in your complaint, then fine, we don't need to be here
24 anymore. You can get on your plane and go back before
25 the snow storm that was supposed to get to us.

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1 DR. CORDERO: It is very interesting that you
2 say that I rely on what you call bold-face allega-
3 tions, but you do not even take into account that
4 Mr. DeLano doesn't even know that. But - so what you
5 are doing now is ignoring the fact that Mr. DeLano had
6 no idea of even what you said was the basis for my
7 claim.

8 THE COURT: I disagree with you and I'll put
9 all that in a written decision so you will - it
10 will all come together. You may not agree with it but
11 ultimately will all come together for you. I
12 guarantee.

13 DR. CORDERO: The threshold of every
14 bankruptcy petition is whether it was filed in good
15 faith. You even stated that on March the 8th, 2004.

16 THE COURT: Have we closed the proof or did
17 you want to make a legal argument or are we going to
18 have any more testimony?

19 DR. CORDERO: We are going to have a lot of
20 testimony.

21 THE COURT: Let's get on with the testimony,
22 then you can make whatever legal arguments.

Cordero

23 BY DR. CORDERO:

24 Q. Mr. DeLano, already stated that M&T thought that
25 my containers were my property within the Jefferson

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1 warehouse because they had seen a label with my name there?

2 A. Yes.

3 Q. Very well. And it turned out that my containers
4 were not there?

5 A. Yes.

6 Q. It turned out that my containers were in the Avon
7 warehouse of Mr. Pfuntner?

8 A. Yes.

9 Q. And you have stated that you had the David Palmer
10 case assigned to you?

11 A. Yes.

12 Q. So you told me exactly what you just said here
13 that my containers were in the Jefferson Henrietta
14 warehouse.

15 A. We thought.

16 THE COURT: Is that a question or a
17 statement?

18 WITNESS: We thought they were.

19 BY DR. CORDERO:

20 Q. But they were not?

21 A. They were not.

22 Q. Okay. So doesn't that establish clear negligence
23 that you made a statement, you made a statement of a fact
24 that misled me because I thought that my property was
25 safely in the Jefferson Henrietta warehouse and actually

1 they were not there?

2 A. No, the bank is - that the boxes or a box had name
3 of Cordero on it that was at Jefferson Road. That does not
4 mean that box was full, because it wasn't.

5 Q. So there were no - you have already stated that
6 there were no containers there. So I relied on your word.
7 I was dealing with you concerning the search of my
8 containers with my property. I relied on - you did say
9 DeLano that --

10 A. Yes, you did, and you asked me. M&T went out and
11 found them for you.

12 Q. Really?

13 A. Yes, really.

14 Q. How? Tell me.

15 A. I went out with the guy that worked - or one of
16 the supervisors that worked for the fellow who owned Avon
17 organization, and we went in there. We saw your cabinets
18 right there as well as some other cabinets. We came back to
19 Rochester. We were informed by our attorneys where they
20 were and, in fact, our attorneys even set up a situation
21 where you could travel - when you came to Rochester, go to
22 the location and see these cabinets. But - or what you did,
23 what you did I believe -

24 THE COURT; What did you mean by cabinet?

25 WITNESS: Or containers there. There were

1 two containers involved.

Cordero

2 THE COURT: I don't know what cabinets --

3 WITNESS: I'm sorry.

4 BY DR. CORDERO:

5 Q. So Mr. DeLano, what you're saying is that you
6 found my containers?

7 A. Yes.

8 Q. Mr. DeLano, did you have the opportunity to - now
9 what did you do in order to have Mr. Palmer pay his loan to
10 M&T?

11 A. He never did.

12 Q. He never did. What did you do in order to collect?

13 A. Legally we filed a judgment against him
14 personally.

15 Q. A judgment? Do you mean a judgment or a claim?

16 A. A judgment.

17 Q. Okay. did you have opportunity to get in touch
18 with Mr. Palmer?

19 A. I'm sorry?

20 Q. Did you have opportunity to get in touch with Mr.
21 Palmer?

22 A. No.

23 Q. Did you take security for the containers?

24 A. No.

25 Q. Very well. You didn't take security for the

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1 containers?

2 A. The receipt?

3 Q. No, security?

4 A. Security, yes. The containers were security, or

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5 part of the security for our loan. However, under the
6 personal property law the bank only gets the containers, not
7 the personal contents. Those two containers were worth
8 approximately sixty dollars to the bank if we sold them. So
9 in turn the bank abandoned our interest in the collateral,
10 being your containers, and those containers certainly were
11 yours to begin with and could have gone back to you if you
12 wished to pick them up or whatever.

13 Q. So, did you conduct an auction of the containers?

14 A. Not of yours.

15 Q. Did you conduct an auction of containers?

16 THE COURT: What containers?

17 WITNESS; Not your containers.

18 BY DR. CORDERO:

19 Q. What containers did you conduct an auction?

20 A. We conducted an auction of containers that were at
21 Jefferson Road plus the business assets that were at
22 Jefferson Road.

23 Q. I'm sorry, would you repeat that?

24 A. The business assets and the containers at
25 Jefferson Road, Rochester. None of their containers at Avon

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1 were ever sold by M&T Bank.

2 Q. Exactly. But you had told me that my containers
3 were in the Jefferson Road warehouse.

4 A. I told that, that a container with your name on it
5 was at Jefferson Road.

6 Q. Exactly. But that wasn't the case?

7 A. That was not the case, no.

8 Q. So you told me something that was wrong. Did you

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9 think --

10 A. I told you something that was erroneous, yes.

11 Q. Did you know that I was relying on your word
12 because I was searching for my property?

13 A. I would say you weren't totally relying on my word
14 because you were in touch with everybody in Rochester
15 looking for those containers. But, apparently, you were
16 relying on my word, yes.

17 A. Exactly. And the reason for that was that Trustee
18 Kenneth Gordon referred me to you. He would not take any
19 more of my phone calls even though I had only spoken to him
20 only once. He referred me to you, so I was relying on you
21 to find out my containers were my property.

22 MR. WERNER: Objection, your Honor,
23 Dr. Cordero didn't take the stand.

24 THE COURT: Do ask him a question.

25 BY DR. CORDERO:

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1 Q. He already said that. What I'm asking you now is
2 that you auctioned the containers that were in the Jefferson
3 Henrietta warehouse?

4 A. Yes.

5 Q. And how did you conduct that auction?

6 A. By Section Article 9 sale.

7 Q. How many people? How did you get the number of
8 that section?

9 A. It was an Article 9 sale. We sent out - well, in
10 an Article 9 sale in a bankruptcy it works differently. We
11 did not give notice to all of the people in the auction

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12 because we did not have, No. 1, a copy of all the account
13 slips, a billing slip for all containers.

14 Q. How did you give notice? I mean, how did you make
15 it known?

16 A. There was no notice of a public auction. It was
17 an Article 9 sale. Bank sold it directly, to another party.

18 Q. And what was that party, the name of that party?

19 A. I can't tell you, I don't remember the name of the
20 party.

21 Q. So, Mr. DeLano, once again, you came here to this
22 evidentiary hearing knowing what is at stake is whether I
23 have a claim against you; isn't that so?

24 A. Correct.

25 Q. So even though you come here knowing that, you

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1 didn't know any of the facts attending to this claim, and to
2 Mr. Palmer.

3 THE COURT: Are you asking a question or are
4 you making a statement?

5 BY DR. CORDERO:

6 Q. Do you know the facts of the claim against you
7 that I raised, for in the Palmer case so that you can be a
8 competent witness to their witness of - so that you can bear
9 witness on what you yourself did?

10 A. I just told you entirely what I know about the
11 Palmer case, No. 1. No. 2, as I said before, I don't feel
12 you have any claim against me for anything.

13 Q. You say - you see, it's very interesting that
14 Judge Ninfo allows you to repeat that over and over and over
15 and over, but if I tried to pin you down on one answer, he

Cordero

16 claims that I am repeating myself.

17 MR. WERNER: Objection, your Honor, that is

18 - the question --

19 DR. CORDERO: That is the fact that --

20 BY DR. CORDERO:

21 Q. That Mr. DeLano - so that you made an auction that
22 was not published; is that so?

23 A. That is correct.

24 Q. How did you contact the person, to whom --

25 THE COURT: Is this relevant to your claim?

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1 DR. CORDERO: Yes, your Honor. It's relevant
2 because is what determines what happened to my
3 property. He doesn't know.

4 THE COURT: But he said all the - all they
5 auctioned off at Jefferson Road, that your property in
6 fact was at Avon, so how can the auction at Jefferson
7 Road be relevant to the fact that your property was at
8 Avon? And why would anybody - I mean, told you the
9 fact of the notice?

10 DR. CORDERO: Well, your Honor, I will ask
11 these questions of the witness.

12 BY DR. CORDERO:

13 Q. How did you contact the person to whom you sold
14 the containers in which you had said that my property was?

15 A. We did that through an auctioneer. We had an
16 auctioneer that works for us.

17 Q. And what's the name of that auctioneer?

18 A. John Reynolds.

Cordero

19 Q. I'm sorry?

20 A. John Reynolds.

21 Q. And how did you go about conducting the auction in
22 which - at the time you thought that my property was - how
23 did you go about it?

24 MR. WERNER: Objection, your Honor. I
25 believe this is not something that has been

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1 established, we knew the property was at - we were
2 referring to Jefferson. I'm confused as to what --

3 DR. CORDERO: Yes, I'm sure I know your
4 confusion because you did not even know my complaint.

5 MR. WERNER: Your Honor, I ask that you
6 direct Dr. Cordero to refrain from what - from such
7 comments. He has no need to address me.

8 THE COURT: Quite frankly, Mr. DeLano, you
9 have to focus on questions.

10 WITNESS: Okay.

11 THE COURT: To analyze the question and think
12 about the answer.

13 BY DR. CORDERO:

14 Q. So, Mr. DeLano, I'm asking you, John Reynolds
15 conducted the auction of the containers?

16 A. That's correct.

17 Q. How was John Reynolds contacted?

18 A. Why is that relevant?

19 Q. Because it determines where my belongings ended
20 up.

21 THE COURT: It's quarter after, we'll take
22 our break now.

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Cordero

23 DR. CORDERO: Your Honor, I ask that you
24 i nstruct Attorney Werner not to supply --

25 THE COURT: Answers to questions that you

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1 haven' t asked yet.

2 DR. CORDERO: Your Honor, that is a most
3 i mproper --

4 THE COURT: Mr. DeLano has answered
5 questions that you have asked. As far as I know, I
6 have no idea what, what questions you are going to ask
7 i n the future.

8 DR. CORDERO: Judge Ni nfo, you al ready know
9 the fact that I had a --

10 THE COURT: You' re not suggesting that
11 Mr. Werner and Mr. DeLano not consult during recess,
12 are you?

13 DR. CORDERO: And the witness established
14 that I had asked questions about the complaint.
15 Nei ther Mr. DeLano nor Attorney Werner know about that.
16 They came i n here to find out.

17 THE COURT: That is on record. What' s that
18 got to do with what happens i n the recess? Do you want
19 me to not talk about the complaint? They don' t know
20 about the complaint. They don' t have a copy of i t.

21 DR. CORDERO: Judge Ni nfo, i t' s common sense.
22 What I' m asking, there is no repeat of what Mr. DeLano
23 and Attorney Werner did, try to find out, find answers
24 to questions that I al ready put to Mr --

25 THE COURT: Ri ght, and he' s al ready answered

1 those. You're not going to ask them again, I hope?

2 DR. CORDERO: The point that I trust that you
3 are capable of understanding my concern. My concern is
4 that I have asked questions of Mr. DeLano, he doesn't
5 know the answers, and what I'm saying --

6 THE COURT: He's not going to ask the
7 questions again?

8 DR. CORDERO: Yes, I'm going to ask.

9 THE COURT: You're going to ask them again,
10 doesn't happen to be repetitive?

11 DR. CORDERO: No.

12 THE COURT: Or are you just going to ask him
13 again in a different way?

14 DR. CORDERO: Yes, in a different way. I'm
15 going to ask him in the context of trying to find out
16 what he knew and what he did not know because it is
17 evident that Mr. DeLano is not, has not, not the
18 faintest idea if what his case, that my claim is. Why
19 he would move to disallow, he doesn't know what he did.

20 THE COURT: So what do you want me to
21 instruct Mr. Werner not to do?

22 DR. CORDERO: Not to find the answers to the
23 questions that I have put to Mr. DeLano.

24 THE COURT: And Mr. Werner, I don't want you
25 to find the answers to questions that Dr. Cordero has

1 asked Mr. DeLano in the recess.

Cordero

2 We'll see you at quarter --

3 (Recess taken.)

4 (Court reconvened.)

5 THE COURT: Want to step up. You're still
6 under oath.

7 Are you all set?

8 DR. CORDERO: Yes.

9 BY DR. CORDERO:

10 Q. I'm going to determine, Mr. DeLano, what is it
11 that you know about my claim and neither you or your lawyer
12 knew about that claim. We are now trying to find out what
13 it is that you know about your deals with Mr. David Palmer.
14 You stated that you dealt with the failure of Mr. Palmer to
15 pay the loan to the bank.

16 A. Yes.

17 Q. And did you already state that you thought that my
18 containers were at the Jefferson Henrietta?

19 A. Yes, we did. Originally we did.

20 Q. And you auctioneered those containers, did you
21 not?

22 A. We auctioned all the business assets, and about -
23 I think about ten containers were included when we auctioned
24 them off. Yours was not among those containers.

25 Q. Mine was not among those containers?

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1 A. That's correct.

2 Q. And who did you contact to auction those
3 containers?

4 A. John Reynolds.

Cordero

5 Q. What did he do in going about the auction?

6 A. Mr. Reynolds an appraiser auctioneer and he looked
7 around for a buyer and we had a public sale - or a private
8 sale, I'm sorry, of all the containers and business assets.

9 Q. So Mr. Reynolds had a private sale?

10 A. He conducted it on our behalf, yes.

11 Q. Do you know how he conducted that sale?

12 A. It was a private sale to a carting company.

13 Q. To a carting company?

14 A. Yes.

15 Q. Okay. Which carting company?

16 A. I don't know which one. I don't remember which
17 one.

18 Q. Okay. Is it fair to say that once again you do
19 not know?

20 MR. WERNER: Objection, your Honor.

21 THE COURT: Sustained.

22 DR. CORDERO: Objection. You said that for
23 months that I had to prove my claim for. For years
24 Mr. DeLano --

25 THE COURT: I believe that the sale of

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1 containers, which do not include your containers, and
2 business assets at Jefferson Road after the witness
3 testified that your property was not among the
4 containers was sold is irrelevant and if you're going
5 down the line trying to prove, once again in your own
6 theory that somehow Mr. DeLano is incompetent because
7 three years today he can't remember the name of the
8 carting company he sold to, I don't think it's

Cordero

9 a sign of incompetence. If he had his files here
10 with respect to the Premier Van Lines loan, I'm
11 sure he could tell who the carting company is and - but
12 he doesn't. But - and there is no reason to believe
13 three years later with the seventy-five cases that he
14 has that somehow he would remember the name of the
15 carting company.

16 DR. CORDERO: You do not hold him to
17 standard of the company person to bring those documents
18 to court when he --

19 THE COURT: No, I don't hold him to the
20 standard, bringing documents to court that - that are
21 irrelevant to your claim.

22 MR. WERNER: Your Honor, I believe --

23 THE COURT: I don't need to hear from you
24 either, so sit down, we're going to move along here.

25 BY DR. CORDERO:

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1 Q. The essence of the claim is as Judge Niño
2 advocates your case, has stated that my containers were not
3 among those that you auctioned; is that so?

4 A. Yes.

5 Q. Excellent. We have established that my containers
6 were not among those that were auctioned.

7 A. Yes.

8 Q. Very well. Mr. DeLano, to whom did Mr. Reynolds
9 auction the containers?

10 THE COURT: Asked and answered. Move on.

11 BY DR. CORDERO:

Cordero

12 Q. Okay. You do not know, when was the company that
13 actually took possession of the containers?

14 A. I don't know. You mean the ones that were
15 auctioned?

16 Q. The ones that were auctioned.

17 A. I don't know.

18 Q. So at that point in time you thought that my
19 belongings were in those containers I was relying --

20 THE COURT: At what point of time?

21 DR. CORDERO: At the point of the auction.

22 BY DR. CORDERO:

23 Q. At the point of the auction did you believe my
24 containers were in the containers? You didn't say that?

25 A. No.

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1 Q. Excellent. You didn't think so, is that so?

2 A. That's correct.

3 Q. Very well. So, we know both your advocates know
4 that you did not know.

5 MR. WERNER: Objection, your Honor.

6 THE COURT: Sustained.

7 BY DR. CORDERO:

8 Q. You did not know that my belongings were among
9 those containers that you auctioned?

10 THE COURT: No, that is not what he
11 testified. Said he knew your property was not among
12 the containers.

13 BY DR. CORDERO:

14 Q. Exactly that. So you thought my belongings were
15 not where - not among the containers that were auctioned?

Cordero

16 THE COURT: Correct, they were, Counsel,
17 they were elsewhere.

18 DR. CORDERO: They were elsewhere.

19 BY DR. CORDERO:

20 Q. Do you think that the people that stored
21 belongings in those containers regarded them as viable?

22 MR. WERNER: Objection, your Honor,
23 relevance.

24 BY DR. CORDERO:

25 Q. They paid, common sense, Mr. DeLano, common sense

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1 if people paid to store things in containers?

2 A. Yes.

3 Q. Yes. So, I had an interest in finding out where
4 my belongings were?

5 A. That's correct.

6 Q. And I asked you and eventually you auctioned the
7 containers that were at the Jefferson Henrietta warehouse?

8 A. Yes.

9 Q. Yes. So do you think that you - did you make an
10 inventory of what it is that was auctioned?

11 A. Yes.

12 Q. Where is it?

13 A. It's on a bill of sale that we gave to the carting
14 company.

15 Q. And what was the name of the carting company?

16 A. You asked that before and I don't remember.

17 Q. Okay. But that bill of sale is kept where now?

18 A. In the bank records.

Cordero

19 Q. In the bank records. And you're a bank officer?
20 A. That's correct.
21 Q. And you have access to those records?
22 A. If you want to subpoena them.
23 Q. You are not a lawyer, no?
24 A. I can tell you how it works. If you want bank
25 records, you subpoena bank records.

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1 Q. Even though M&T is a party to the Pfuntner case I
2 would not have to subpoena them.
3 A. Yes, sir, you would.
4 Q. Actually, I don't. As the party, yes. Okay.
5 So, so you have a record of what it is that you
6 auctioned?

7 THE COURT: No, he doesn't have a record. He
8 says M&T.

9 M&T has a record?

10 WITNESS: Yes.

11 DR. CORDERO: I do not understand why you,
12 Judge Ni nfo, have to correct. He is capable. He is a
13 thirty-two --

14 THE COURT: I'm not correcting him. I'm
15 correcting you.

16 DR. CORDERO: He can do that himself if I
17 say something that he thinks is not correct. He can
18 do that. If he allows that to go through, that means
19 something that I confuse later on.

20 BY DR. CORDERO:

21 Q. You are a thirty-two year bank officer, are you
22 not?

Cordero

23 THE COURT: We have been through - let's
24 move on to issue --
25 BY DR. CORDERO:

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1 Q. Okay. So when you think I'm saying something that
2 is not right, just say it.

3 A. All right.

4 Q. Okay. You auctioned those containers through Mr.
5 Reynolds?

6 MR. WERNER: Asked and answered, your Honor,
7 objection.

8 DR. CORDERO: I have not even stated my
9 question.

10 BY DR. CORDERO:

11 Q. So, you do not know to whom those containers were
12 sold?

13 A. I don't remember.

14 Q. You don't remember?

15 A. Yes.

16 Q. Exactly. Okay. And even though you were supposed
17 to be prepared --

18 MR. WERNER: Objection, your Honor, this
19 presupposes there is any obligation on the part of my
20 witness.

21 THE COURT: He didn't ask the question.

22 MR. WERNER: Your Honor, I believe he's out
23 of line.

24 THE COURT: Let him ask the question, then
25 I'll address it.

1 MR. WERNER: Thank you, your Honor.

2 BY DR. CORDERO:

3 Q. Mr. DeLano, if you sold the containers with
4 property of other third parties, is that not so?

5 A. That's correct.

6 Q. That's correct. The containers that you sold had
7 other property in it?

8 A. Yes, it did. I'll explain that.

9 Q. And did you give notice to the parties that you
10 were giving those containers to other people?

11 A. There is a law with reference to personal
12 property, that states that once the container is sold,
13 removed from carting company to carting company within
14 thirty days, they have to give you a notice that they now
15 have possession of your personal goods and you have thirty
16 days to either remove the personal goods and the container
17 or to leave that personal container with them and rent from
18 them.

19 Q. Before moving the containers did you give notice
20 to the parties?

21 A. No, no, no, they were given notice immediately
22 within the same day.

23 Q. Within the same day of what?

24 A. Within the same day, day of the sale.

25 Q. And when was the sale held?

1 A. Before August. I can't remember the exact date.

Cordero

2 Q. So you're saying that on the same day that Mr.
3 Reynolds sold the containers to a third party he gave
4 notice?

5 A. That's the law.

6 Q. And did you know whether in fact that he gave
7 notice?

8 A. No.

9 Q. Did you care to find out?

10 A. We would know within thirty days whether notice
11 had been given. They had to provide us with copies.

12 Q. And did they provide you with those copies?

13 A. Yes, they did.

14 Q. And so where are those properties - copies now?

15 A. In M&T records.

16 Q. Okay. So did you think that it was reasonable for
17 you not to give notice to the parties that had their
18 property in those containers when not even you were in
19 charge of the sale to another carting company?

20 A. Yes.

21 Q. It was reasonable for you?

22 A. Yes.

23 Q. Very well. So that means that people that have
24 paid for many years as oneself for the storage of their
25 belongings in a certain place had to rely on your judgment -

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1 no, no, not your judgment, Mr. Reynolds' judgment that the
2 property was going to be carted away, is that so?

3 A. That would - that wasn't - be true, would be true
4 in your case --

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Cordero

5 Q. No, the question --

6 A. Yes, you would have to go with our judgment
7 because the landlord was throwing out the property.

8 Q. What landlord?

9 A. The landlord at Jefferson Avenue. He had not been
10 paid, he wanted everything out of there.

11 Q. So had you had the pressure of the landlord of
12 Jefferson Henrietta?

13 A. That's correct.

14 Q. Yes. And since you were on the - under pressure
15 to remove the containers from the Jefferson Henrietta, you
16 did not investigate who was there? You told me that my
17 containers were there because you were under pressure to get
18 the containers out of the Jefferson Henrietta warehouse.

19 A. I told that - that I thought your container was
20 there.

21 Q. Okay. And you were under pressure to remove the
22 containers from the warehouse?

23 A. Or we would have a warehouse lien on all the
24 containers and all the business equipment.

25 Q. Yes. So, in the rush to move the containers out

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1 of the Jefferson Henrietta warehouse, is it possible that
2 you were negligent in the way you handled the containers?

3 A. No.

4 Q. So what measures did you take in order to ensure
5 that the property that was in those containers would be
6 stored in the safe place?

7 A. We sold it to a warehouse unit in the city of
8 Rochester. You always sell it to - when we get involved

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Cordero

9 with these types of credit we always sell it to a legitimate
10 warehouse company.

11 Q. And what was the name of that company?

12 A. I don't - I told you before I don't - do not
13 remember the name of the company.

14 Q. I thought you had mentioned a carting company, not
15 a warehouse.

16 A. A carting company, but I do not remember the name
17 of the carting company.

18 Q. Well, isn't it strange that you would have said
19 that you always sell it to that company, but nevertheless,
20 you did not know the name of it?

21 A. I do not always sell to that same company. There
22 are different carting companies in the city of Rochester.

23 Q. And you said that it was a reputable company?

24 A. Yes.

25 Q. But you don't know the name?

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1 A. No, I don't.

2 Q. So, actually, you did not sell the containers, it
3 was Mr. Reynolds who sold the containers?

4 A. No. Mr. Reynolds set up a deal. He has to have
5 it approved by M&T Bank.

6 Q. And you were in charge of approving that?

7 A. That's correct.

8 Q. So you had to make sure that the containers were
9 sold to a reputable company?

10 A. That's correct.

11 Q. And how did you come about making that judgment?

Cordero

12 A. We have knowledge in Rochester. After you have
13 been in business as long as - you have a who is reputable in
14 this town and who is not.

15 Q. And who is reputable in this town?

16 A. I can't name all the carting companies. I do not
17 have a telephone book in front of me or I would.

18 Q. And - but can you name - at least you said --

19 MR. WERNER: Objection, your Honor. What
20 difference does it make? I see no relevance to this
21 line of questioning.

22 THE COURT: Okay.

23 DR. CORDERO: I can explain it very easily.

24 THE COURT: Sustained.

25 DR. CORDERO: You disposed. Judge Ni nfo,

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1 you're making a statement you disposed of --

2 THE COURT: Ask a question.

3 BY DR. CORDERO:

4 Q. The question is: How did you know that the
5 containers were gone to a reputable company?

6 MR. WERNER: Objection. We're talking about
7 Jefferson Road. It's been established, apparently,
8 that --

9 THE COURT: You know what the problem is
10 here, folks? If Mr. DeLano would just listen to the
11 questions, he could answer them very quickly and very
12 easily and very truthfully and we can just move on.
13 Part of the problem is Mr. DeLano is not listening
14 to the questions and he's not answering them in
15 just, you know, he's just not listening, okay?

Cordero

16 Now I know that that is difficult, but that
17 is part of the problem here. It's not so much the
18 questions as Mr. DeLano is not listening to them.
19 That's the problem. Because, you know, many of them
20 are irrelevant but we can move a long a lot faster than
21 making objections and rulings on them. If you
22 just answer the question simply, that is all I'm
23 looking for. The time issue, it's just quicker to
24 answer some of these questions and move on than to
25 object and then get overruled and sustained. That is

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1 what the problem is. So you know, you need to under-
2 stand that.

3 Go ahead, Counselor.

4 BY DR. CORDERO:

5 Q. So what you're trying to establish is that you
6 entrusted containers that are third parties' viable
7 property, available property to Mr. Reynolds, is that so?

8 A. Yes.

9 Q. And in doing so you relied on the judgment of
10 Mr. Reynolds?

11 A. Yes.

12 Q. Mr. Reynolds is not an employee of M&T?

13 A. No.

14 Q. So he conducted a private auction, and how many
15 bidders came to the auction?

16 A. It was a private sale.

17 Q. So it may have been only one?

18 THE COURT: Now, Counselor, you must know

Cordero

19 this with all your background in education that is an
20 Article 9 private sale under 503 or whatever it is,
21 it's not a public auction. It's one of the alterna-
22 tives for the disposition of secured property and you
23 know as well as the rest of us in this room that it's
24 an Article 9 private sale, if you can look that up, so
25 don't ask questions that are irrelevant to the kind of

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1 sale it is. It's just a private sale, 503.

2 DR. CORDERO: Actually, it's very interesting
3 that you are the first person to mention that here. In
4 none of the papers that Mr. Werner has filed, in none
5 of the statements that M&T has filed, did it ever
6 mention that there was a sale that was under that
7 Article.

8 THE COURT: He said it was right. He said
9 all day that it was an Article 9 private sale. That is
10 the first thing he said when he talked about it and
11 it's in my notes he called it an Article 9 private
12 sale. That is what he was referring to. You know what
13 Article 9 is about and you know what he's talking
14 about, so let's move on.

15 DR. CORDERO: I do not have to know but I
16 think he never mentioned that.

17 THE COURT: He has no obligation to mention
18 that. You didn't, as far as I know, take any deposi-
19 tion of them, you didn't send him any interrogatories,
20 you didn't do any discovery by September 15, cut off
21 day, so they didn't have any obligation to put any of
22 that in the papers. So move on.

Cordero

23 DR. CORDERO: The statement that you have
24 just made, Judge Ni nfo, is not correct, is not in
25 keeping with the facts. I told - asked him for

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1 discovery, that I said in this documents in
2 September 29.

3 THE COURT: And the Court ruled on that.

4 DR. CORDERO: Exactly.

5 THE COURT: So move on.

6 DR. CORDERO: You deny me all of the
7 documents that I had required and now you require --

8 THE COURT: I didn't deny you documents.

9 You made a request for documents, Counsel, for
10 Mr. DeLano responded to you that they didn't have those
11 documents, that they were documents of M&T Bank and
12 that if you wanted them, you needed to get them from
13 M&T Bank.

14 DR. CORDERO: No, that is not what they said.
15 They said they were there, is point they made and I
16 made, they have no obligation to produce documents,
17 they have no obligation.

18 THE COURT: I've already ruled on that. I'm
19 not arguing anything. I already made a ruling. I
20 already signed an order with respect to this. This is
21 not something new. We're rehashing hollow ground.
22 Move on. Let's go.

23 DR. CORDERO: Yes. You are asking me to know
24 about Article 9.

25 THE COURT: Are you talking to me or the

1 witness?

2 DR. CORDERO: I'm talking to you.

3 THE COURT: I want you to talk to the
4 witness and start asking questions.

5 BY DR. CORDERO:

6 Q. Mr. DeLano, did you ever tell me in writing that
7 you had made a private sale to anybody under Article 9?

8 A. No.

9 Q. Did Mr. Werner make any such statement to me?

10 A. I don't know.

11 Q. But in the papers that he signs he must let you
12 know before. Did you know whether he made any such
13 statement?

14 A. No.

15 Q. So how could I possibly know why - how did you
16 proceed in selling the containers if you did not inform me?

17 A. I don't know.

18 Q. Exactly. So it's totally fair for Judge Niño to
19 request that I know that?

20 THE COURT: Okay, I'm sold.

21 BY DR. CORDERO:

22 Q. You sold those containers, that had viable
23 property third parties, through a person that wasn't an
24 employee of you, who sold through a private sale to perhaps
25 one bidder, because you didn't even know that, and in doing

Cordero

2 warehouse, so you actually allowed --

3 THE COURT: Are you asking a question?

4 BY DR. CORDERO:

5 Q. Did you actually allow Mr. Reynolds to go with the
6 auctioneer or the containers, the carting company that he
7 proposed without making any other investigation of the
8 other?

9 THE COURT: Investigation of what?

10 DR. CORDERO: Why didn't you let him answer
11 that? You were providing a way of escape. He could
12 have said that's true and then he would have to -
13 you're just testifying for him because from the
14 beginning --

15 THE COURT: To move this hearing along,
16 Counsel. Okay, because you know you've got to stick to
17 the relevant issues here. The sale of the containers
18 that did not include your property that you've asked
19 fifteen questions about the auctioneer John Reynolds
20 about is really not relevant and I don't know what
21 you're - what you're trying to do, confiscate that
22 bidder, delay it, wear everybody down. I don't know
23 what you're doing but you're not proceeding to get to
24 what we really need to get to, which is what he may or
25 may not have done as a bank officer or individual with

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1 respect to your property.

2 The only relevant question you've asked so
3 far and he answered the question three or four times,
4 did he tell you there was a container at Jefferson

Cordero

5 Road that had your name on it? One container as far
6 as I can - that is the only really relevant question
7 you've asked about it, so I would appreciate for
8 everyone's sake if you would start asking relevant
9 questions about your claim, and It's all very nice, you
10 know, about this Article 9 private sale, but you
11 haven't demonstrated any relevance yet. You may do
12 that if you would just move on.

13 DR. CORDERO: Well, so far what I have done
14 is establish through Mr. DeLano's testimony and your
15 testimony that my containers were not in that auction.

16 THE COURT: Correct.

17 DR. CORDERO: Which is a very important
18 issue.

19 THE COURT: Good, I'm glad we established
20 that. Now can we move on?

21 DR. CORDERO: Thank you.

22 BY DR. CORDERO:

23 Q. So you did not not - any major to find out whether
24 the property of third parties contained in those containers
25 were being sold to a person that would take proper care of

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1 them.

2 THE COURT: That's not a question.

3 DR. CORDERO: That is a question.

4 THE COURT: No, it was a statement.

5 "Did you"?

6

7 DR. CORDERO: Thank you.

8 BY DR. CORDERO:

Cordero

9 Q. Did you make any - did you take any action to
10 ensure that the property of third parties contained in those
11 containers?

12 A. We said it was sold to a reputable carting company
13 in the eyes of the bank.

14 Q. The eyes of Mr. Reynolds because if it were in the
15 eyes of the bank, you would know - you would have to know
16 how - this is a question - how can you know, that a person
17 is a reliable person when you do not even know who it was?

18 A. You know, these goods were sold almost three years
19 ago and we're talking about ten cases or cartons here.
20 We're not talking about a hundred thousand. We're not
21 talking about yesterday.

22 Q. But you knew that we were going to discuss that
23 precise issue, issue of whether you had handled those
24 containers properly, or did you not know that?

25 A. I did not know that.

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1 Q. So did you know that my claim is based on this
2 precise issue?

3 A. What is?

4 Q. The issue of whether you had taken care of
5 containers with third party property.

6 A. I normally do, but these have nothing to do with
7 your containers which are still in Avon, correct?

8 Q. Mr. DeLano, you know that you cannot ask me
9 questions and you have not answered my question. I said to
10 indicate that you do not know what claims that you're trying
11 to disallow, you do not know what facts are concerning my

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12 property.

13 MR. WERNER: Objection, your Honor, this is
14 argumentative and also presupposes that Mr. DeLano is
15 under any obligation --

16 THE COURT: I think I can sum it up best this
17 way because the claim objection, the claim set up
18 no legal basis or fact to substantiate obligation of
19 the Debtors. So, yes, he didn't know what you were
20 going to talk about today. Quite frankly, I didn't
21 know what you were going to talk about today. I don't
22 know what the basis of your claim is either and I don't
23 know why I'm not - I don't know why he would know
24 because I have had no clue what you were going to talk
25 about today, Counselor.

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1 DR. CORDERO: You would know if what it is
2 that you - if you read my complaint, because I stated
3 that quite clearly. You would know in legal terms.

4 THE COURT: All your complaint talking about,
5 that he notified you at one point that he thought that
6 one of your containers was at Jefferson Road, correct?

7 DR. CORDERO: You would know the basis that
8 the legal basis of my complaint and my claim against
9 Mr. DeLano, if you, Mr. DeLano or Attorney Werner had
10 just read the proof of claims. You did not even know
11 that either.

12 THE COURT: I didn't actually know what the
13 basis of it was, which is --

14 DR. CORDERO: No, don't say that, don't say
15 that.

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16 THE COURT: You just asked me if I knew what
17 it was.

18 DR. CORDERO: Don't say that.

19 THE COURT: I wanted to prove if I knew what
20 it was because I reviewed it for this hearing. Didn't
21 you want me to tell you what it was?

22 DR. CORDERO: Already said that you did not
23 know.

24 THE COURT: I didn't know what you were going
25 to talk about. I knew what your complaint was but I

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1 didn't know what you were going to talk about.

2 DR. CORDERO: Please do not say it.

3 THE COURT: Let's move along.

4 BY DR. CORDERO:

5 Q. The point is, which is at the basis of the claim,
6 and the claim is you went to find out, Mr. DeLano, what the
7 claim was, you're going - yes or no? You can wait because
8 you don't know.

9 A. I would like to know.

10 Q. You would like to know?

11 A. Sure.

12 Q. Exactly, and that is basis of my defense against
13 your motion to disallow. You have already stated that
14 filed a motion to disallow my claim without knowing what
15 claim it was. The Court has a legal obligation under 511,
16 section 1325(A)(3) to find out, whether a petition has been
17 filed in accordance with the law or by means or reason by
18 the law. The Court has not done that, because it doesn't

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19 want to find out. The Court cannot have known about that
20 and Mr. Reiber did not want to find out. Mr. Reiber --

21 THE COURT: Are you asking a question or just
22 making a statement?

23 DR. CORDERO: I'm just stating --

24 THE COURT: Because we're not asking - we're
25 not making statements, or asking questions, so do you

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1 want to rely on that, that the basis of your defense,
2 the claim objection that he doesn't know what your
3 claim is all about, so we can end this hearing?

4 DR. CORDERO: No, because I'm just eliciting
5 evidence from him and from you, which - because you do
6 not know. That is the point I'm trying to establish,
7 some information that is going to bring both of - to
8 the fact that you have taken the defense of Mr. DeLano,
9 the fact that with the facts --

10 THE COURT: Let's do it. Get going. Let's
11 do it.

12 BY DR. CORDERO:

13 Q. Mr. DeLano, you already stated that you're a
14 truthful person?

15 A. Yes.

16 Q. Ask you a question. I want you to think very hard
17 before you answer it, and you would know why you would have
18 to, depart the answer to me or think hard before answering
19 it. If the Court had allowed you to hear what I have to say
20 about the Prisoner's Dilemma, but the Court did not give you
21 that option and now you're on your own.

22 Mr. DeLano, did you have knowledge that any of the
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23 parties, whether it be Attorney Werner, Trustee Reiber,
24 Attorney James Weidman, attorney for Mr. Reiber, Ms. Schmitt
25 or any other parties has contacted Judge Ninfo in this

1 matter?

2 A. I do not. I do not.

3 Q. Okay. And on March the 8th, what happened on
4 March the 8th, after Mr. James Weidman prevented me from
5 asking you, after I had asked only two questions and he had
6 repeatedly asking me how much I knew about a - how you
7 committed the fraud, what happened afterwards?

8 A. I believe he - the 34I was stopped, and called for
9 another date.

10 Q. What happened afterwards after that?

11 A. After that, we left.

12 Q. Where?

13 A. Downstairs.

14 Q. Where?

15 A. Downstairs here in this building and then when
16 came up later for confirmation hearing, and that was it.

17 Q. Do you have - was Mr. Weidman with you all the
18 time?

19 A. Mr. who?

20 Q. Mr. Weidman, the person who unluckily conducted
21 the examination.

22 MR. WERNER: Objecti on.

23 THE COURT: Sustai ned.

24 WITNESS: He was not.

25 BY DR. CORDERO:

1 Q. I have already stated --

2 A. He was not?

3 Q. Did you know where he goes?

4 A. No.

5 Q. Was Attorney Werner with you all the time?

6 A. No.

7 Q. Do you know where he went?

8 A. No.

9 Q. Very well. So you did not know whether any party
10 has had contact on this case with Judge Ninfo?

11 A. No.

12 Q. Very well.

13 DR. CORDERO: This is a threshold question.
14 This is a question based on the fifth amendment due
15 process law. I'm entitled to know that these
16 proceedings fair and impartial and that it has not been
17 conducted in any way in violation of due process or
18 specifically of Federal Rules of the Bankruptcy
19 Proceeding, Rule 9003. I'd ask Judge Ninfo, have you
20 had any contact by any of the parties concerning these
21 particular case and - and in asking this question --

22 THE COURT: Absolutely. We had a number of
23 hearings. We had a number of telephonic hearings.
24 The Court has made a number of rules, parties have
25 appeared, made after the argument in writing and

1 otherwise. Obviously, I have been contacted by
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2 parties.

3 DR. CORDERO: I understand in violation of
4 Rule 9003.

5 THE COURT: None of the parties have
6 contacted me.

7 DR. CORDERO: None of the parties have
8 contacted you?

9 THE COURT: Other than this, the proceedings
10 that we have had.

11 DR. CORDERO: And when you have used your
12 power to press the telephone button when I have
13 appeared by phone, have you continued talking to the
14 parties in the courtroom?

15 THE COURT: No, not to the best of my
16 knowledge.

17 DR. CORDERO: But it's a possibility, that
18 is what you're saying?

19 THE COURT: I really don't know as we looking
20 back. I mean, I could be, to talk to parties because
21 parties have other matters for me. For example, you
22 may have a hearing, on this case, and then, those
23 parties are appearing in other cases that were - are
24 on the calendar. If that is what you're talking about.

25 DR. CORDERO: Your Honor, I think that you

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1 really know that I am referring to my case because I
2 said that. You know I'm not concerned whether
3 Mr. Reiber, for example --

4 THE COURT: Quite frankly, since as long as

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5 I can remember, you've started off your appearances
6 with this pre-cant speech thing you have about making
7 sure that the hearing was closed and nothing has
8 happened before and nothing has happened after. We
9 tried to honor that all the time, so if that is what
10 you're referring to? So you made a statement every
11 time you have appeared telephonically. You made it
12 right at the beginning of your appearance and we have
13 always honored that statement.

14 DR. CORDERO: Actually, what happened was on
15 the meeting of the parties in the Pfuntner case on
16 January 10, 2003, there were all the other parties in
17 the room and then all of a sudden you just pressed
18 the button and disconnected me, without giving me
19 any --

20 THE COURT: That is probably because, you
21 weren't listening what we were talking and that the
22 Court had indicated to you, and probably didn't hear
23 it because you were talking over the Court, that the
24 hearing was closed as far as - and that happens
25 sometimes in this court. Not just because of you,

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1 because attorneys and other parties just keep talking
2 and talking and the Court says fine, we're done, and
3 I instruct Ms. Parkhurst that the hearing is completed.
4 That, actually. that hearing on January 10, 2003 did
5 not occur in the room. It was in - it was a meeting of
6 the parties relatedly. Some of the parties because
7 you weren't here.

8 DR. CORDERO: Exactly.
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9 THE COURT: Right.

10 DR. CORDERO: The other parties were in the
11 room. There was no other party and it was after that,
12 that I realized that without any - even without even
13 putting an end to the meeting, you would disconnect me
14 and you would do that as recently, as the hearing on
15 December 15, 2004.

16 THE COURT: So you were - you weren't here
17 for that.

18 DR. CORDERO: Exactly. I was on the phone.
19 Did you do that again? You have, even though you
20 already stated in your line I have already asked
21 you not do that from the beginning, so the last
22 time --

23 THE COURT: You asked me not to talk about
24 this afterward but you did not tell me I can't end the
25 hearing in my discretion when I heard all I want to

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1 hear from you or any other party or all that I need to
2 be hearing because this Court spends a lot of time, as
3 you're aware of, going over things ahead of time and
4 pretty much knows everything that it needs to know and
5 at that point, and has answers to questions that it's
6 asked or the Court ends the hearing that way, which
7 operate --

8 DR. CORDERO: That would be local practice,
9 but --

10 THE COURT: It's not local practice. I
11 don't know what that has to do with local practice.

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12 You don't get to speak as long as you want to, you
13 get to speak as long as you need to.

14 DR. CORDERO: No, I get to speak as long as
15 the hearing is in process.

16 THE COURT: Right, and when I end the
17 hearing, it's over.

18 DR. CORDERO: The point, you did not end the
19 hearing, you ended me. You did not state --

20 THE COURT: When we set this hearing on
21 December 15 - when we set that hearing on December 15 -
22 one we set for today, March 1st. That's all. I have
23 other cases that we're setting hearings for on that
24 day on our Evidentiary and Trial calendar. We have to
25 get on to. It's very simple. It's not the only case

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1 that we have.

2 DR. CORDERO: That allows you to breach the
3 right of a litigant to turn the key while you have not
4 even terminated the hearing? Due process requires --

5 THE COURT: All we did was set this down
6 for a hearing today. What else was there to do?
7 You may have wished to talk about other things but that
8 wasn't the subject of the Evidentiary Hearing Calendar.

9 DR. CORDERO: Your Honor, the only - it
10 speak about was this case. The point is you put an
11 end to hearings whenever you want, even though I have
12 stated that I have a right to hear and to be heard.
13 You do --

14 THE COURT: You have a right to be heard
15 until I have heard enough, so let's move on.

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16 DR. CORDERO: Yes, but you have to give me
17 the same opportunity as other people.

18 THE COURT: You do. You always do, so let's
19 move on, until you start being repetitive like you have
20 so many times. Until you start talking about things
21 that the Court has already made rules on, which you
22 have already done today, too, and so on. We need to
23 move these things on. You know what I'm talking about.

24 DR. CORDERO: What is that you stated?

25 THE COURT: That you can't be repetitive.

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1 Okay? That when you just repeating yourself, when
2 you're rearguing something the Court has already made
3 a rule on, the Court has the right, and that is what
4 we're talking about. So when we set the hearing, we
5 moved on. We need to move on right now.

6 DR. CORDERO: Yes. It's - isn't it
7 interesting I'm the only one that repeats himself and
8 Mr. DeLano has repeated himself.

9 THE COURT: Mr. DeLano isn't an attorney.
10 I don't have the same expectation that I have for
11 Mr. DeLano as an attorney, especially a very bright
12 and intelligent attorney like yourself.

13 DR. CORDERO: Any person would come in and
14 understand don't repeat yourself, by saying --

15 THE COURT: You're just being reargumenta-
16 tive. We're not advancing the ball here, Counsel.
17 We need to advance the ball. I'm going to take away
18 from you if you make any more noise. Notice I just

19 pressed the button.

20 BY MR. DeLano:

21 Q. So, Mr. DeLano, you sold the containers through
22 Mr. Reynolds and on that same day there was notice given to
23 the owners of the containers?

24 A. That's correct, notice was given afterwards.

25 Q. And you know when that notice was issued on the

1 same date?

2 A. It was given either the same day or the next day.

3 Q. And do you know what day that was?

4 A. No, sir.

5 Q. Okay. So, the Court allows you to say that you
6 don't know the date. I hope that the Court would also allow
7 me to - to provide you with the date that the document I'm
8 going to mention, because if you sold those containers to a
9 certain - I don't want to - want to provide you with the
10 name because we have - I'm here to find that out - and in
11 the - in doing that it - did you contact that party
12 afterwards?

13 A. Yes.

14 Q. Yes. And did the Bank represented you on your
15 behalf contacted that party afterwards?

16 A. I'm sorry? Ask the question again.

17 Q. Very well. Did your bank also contact that party
18 that had received the containers after taking possession of
19 the containers?

20 A. Yes.

21 Q. What was the content of the letter that you sent
22 to that party?

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23 A. I don't recall.

24 Q. That would be very important, no, to find out why
25 you would contact that parties after the party took

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1 possession of the containers?

2 A. Why?

3 Q. The question is, would it be important?

4 DR. CORDERO: Did you want to say something?
5 You can say it aloud so we all know.

6 MR. WERNER: What?

7 DR. CORDERO: You wanted to say to
8 to Mr. DeLano?

9 MR. WERNER: No, I wasn't trying to say
10 anything, your Honor. I must object once more. Again
11 this seems to be some sort of mere test on the part
12 of Mr. DeLano. We're under no obligation to bring
13 any proof. As far as I know, no obligation to bring
14 Mr. DeLano. In fairness to the Court and fairness to
15 the - we brought Plaintiff DeLano to court. It is not
16 our burden of proof, it's his burden of proof. If he
17 hasn't brought anything, it's not to be held against
18 - it was not subpoenaed and not pursued. For to him
19 ask me I should not - should know. The point the
20 whole - and what Mr. DeLano and doesn't know and if
21 it isn't appropriate or isn't appropriate is that in
22 basis of law nor basis of procedure, nor is even
23 relevant to his claim.

24 We haven't even got to anything about his
25 claim other than the fact that somehow it's in Avon as

1 opposed to Jefferson Road.

2 THE COURT: Thank you.

3 MR. WERNER: Thank you for letting me
4 express that and, your Honor, I might ask one
5 question. Is Mr. Cordero taping this on his computer?
6 Is the record on anything on his computer, because
7 that would be inappropriate, because it's against the
8 law. Recording devices are not permitted in the court
9 and when there is a stenographer.

10 THE COURT: That is so.

11 DR. CORDERO: First, I am not recording it.
12 But second, what is the basis for your claim,
13 Attorney Werner? If you're stating that no --

14 THE COURT: I believe it says no - whatsoever
15 in - I'm allowing him to have that but they're signs
16 in there that say - really put there - it's outside
17 the courtroom and outside the entrance to the courtroom
18 that was put there at the insistence of the Chief of
19 the District, who is in charge of this courthouse. So
20 there are no electronic devices allowed, but I'll
21 allow to have your computer, which is very unusual.
22 But if you're, in fact, recording that hearing, that
23 would be inappropriate.

24 DR. CORDERO: Because I come from New York
25 City and I can't bring all the files here so I'm

1 trying to have some - just as you could have brought
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2 your files to refresh your memory, and --

3 THE COURT: Witness never said this, so let's
4 move on.

5 DR. CORDERO: The attorney for Werner said
6 that - that he had brought his files, and all the
7 issues as I stated before.

8 BY DR. CORDERO:

9 Q. Do you know the legal basis that I stated in my
10 proof of claim against you, you would understand the key
11 that would solve all my questions?

12 THE COURT: But he doesn't, so let's move on.

13 DR. CORDERO: Exactly.

14 BY DR. CORDERO:

15 Q. So it only shows in fact he is negligent. Mr.
16 DeLano, when you came here, did you think that I was going
17 to ask you questions about Mr. Palmer?

18 A. No.

19 Q. You don't. So he read the statement. You already
20 said that you read the statement of my claim against you and
21 that it was the issue of the containers that Mr. Palmer had
22 brought with your bank, bought with your bank's money. You
23 knew that Mr. Palmer and everything that happened to those
24 containers was that you were going to discuss here to
25 establish, to establish your responsibilities, did you not?

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1 A. No.

2 Q. So what did you think you were going to discuss
3 here?

4 MR. WERNER: Objection, your Honor, as to

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5 relevance.

6 THE COURT: He can answer that question.

7 BY DR. CORDERO:

8 Q. What did you think you were going to discuss here?

9 A. What your actual claim is, and I don't feel you
10 have any, but we haven't done that in three hours.

11 Q. Exactly. That is right. So you're saying that in
12 three hours I should have told you what the claim was, is
13 that true?

14 A. I think you could do it in five minutes.

15 Q. Exactly. That is very good, Mr. DeLano. I
16 understand because you had three years to find that out.
17 You already stated that you read my claims in the statement
18 of facts, did you not?

19 A. Yes.

20 Q. Okay. So, that is the claim that you yourself put
21 in the petition in your bankruptcy.

22 THE COURT: To be perfectly honest, he didn't
23 really put in the petition. Petition is a one or two
24 page document. It's really - it's really just a one or
25 two page document. It's the schedule that we're

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1 talking about, it's schedules of creditors that you're
2 talking about. That is not technically the petition.
3 So if you want to get it right, you know, let's
4 start talking about in putting in the schedules,
5 because that is where --

6 DR. CORDERO: Like I say, everything is a
7 package. He has thirty pages. He has thirty pages.

8 THE COURT: I'm just trying to help you out,
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9 Counsel or.

10 DR. CORDERO: I appreciate it very much. It
11 would be the first time.

12 THE COURT: That is not true. I tried to
13 help you out for several years now and as I have said
14 on a number of occasions, I tried to ask you to focus
15 on real issues in this case, like your property, and
16 when you're going to get it, maybe determine whether
17 there actually has been damages, maybe if there were
18 damages, but we didn't even know whether they were,
19 whether they were caused by anybody that was involved
20 in this proceeding, that you can secure the property
21 so that it wouldn't be further damaged. In fact, had
22 there been any damage, and get down to those issues and
23 get down to the issue of your claim.

24 I have been trying to help you to get to the
25 bottom instead of focusing on all these collateral and

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1 procedural issues, but it didn't seem to be something
2 that you really have been doing. But to say I haven't
3 helped, I would say I have tried to help you to focus
4 on everything that is important, so I take issue with
5 it and so let's move on.

6 DR. CORDERO: Judge Ninfo, if you had read
7 my last motion of February 17, you would know that I
8 complied with you saying that I didn't do it.

9 THE COURT: So you have taken control of
10 your property.

11 DR. CORDERO: You impose to me obligation

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12 contrary to Rule 55, to inspect my property in - and I
13 did that exactly, and you do see here on May 21st of
14 2003, acknowledge that there was loss or damage to my
15 property. So much so that you invested me to my
16 application for default judgment precisely against
17 David Palmer, but you do not, not what you have done.
18 The only guiding point that you have is always to my
19 detriment, so please do not say that you have helped
20 me.

21 BY DR. CORDERO:

22 Q. Mr. DeLano, did you then did you know what it was
23 that you were going to discuss here?

24 A. I thought what we were going to discuss here is
25 what your claim was against me, and I feel --

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1 Q. Are there --

2 A. And I feel that you have no claim against me.

3 Q. Okay.

4 A. And I'm convinced after I - what I hear of that
5 this afternoon.

6 Q. And how did you form that opinion that I did not
7 have a claim against you?

8 A. If your only claim against me is because I
9 erroneously told you where I thought your container was
10 three years ago, to me that claim has no validity, and I
11 apologize for telling you that, however, we did find your
12 containers for you.

13 Q. Actually, that is not true.

14 A. To this day to my knowledge are still alive and
15 well, so I feel the claim is unjustified.

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16 Q. You just heard me that even Judge Ninfo on that
17 matter of May 21st on 2003, acknowledge there had been loss,
18 and because of that he requested to know the application for
19 the default judgment against Mr. Palmer.

20 Now, coming to you, did you take - and take a look
21 at my claim, before denying it, because this goes to the
22 issue that your motion to disallow was in bad faith and the
23 Court does not want to rule. The Court does not want a rule
24 of that issue because if the Court ruled on that issue - I'm
25 sorry?

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1 MR. WERNER: The Court has already ruled on
2 that issue, sir.

3 DR. CORDERO: What did you have to --

4 THE COURT: Let's address everything to the
5 Court or the witness, not to each other. It goes for
6 both of you.

7 MR. WERNER: I'm sorry.

8 DR. CORDERO: I really think that that whole
9 proceeding a sham.

10 THE COURT: Let's finish it up so we can
11 move on.

12 DR. CORDERO: You allowed the attorneys --

13 THE COURT: Are you making an argument or are
14 you going to continue to put your proof in?

15 DR. CORDERO: I'm going to establish the
16 record for appeal. I'm raising an objection. I'm -
17 the objection I'm raising to your bias and --

18 THE COURT: You preserved it, let's move on.

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19 DR. CORDERO: And contend specifically again
20 that you allowed the attorneys for Mr. DeLano to
21 either signed to him or mouth to him.

22 THE COURT: I?

23 DR. CORDERO: That you allowed the counsel
24 for Mr. DeLano to make signs to Mr. DeLano or to
25 mouth responses to Mr. DeLano.

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1 THE COURT: I really don't know whether
2 that's true or not but I'm going to direct Mr. Werner
3 not to do that. But, quite frankly, my attention has
4 been on you and your asking questions. I'm listening
5 and focusing on you. If so, if there is something
6 going on outside of my sight, I don't know what it is
7 I'm supposed to do. I always thought that the most
8 important thing was to listen to the person who is
9 speaking and to focus on that, but if you want me to,
10 if you want me to take my attention off of you and
11 focus on what Mr. Werner is doing all the time, I would
12 be glad to do that.

13 DR. CORDERO: I'm looking at Mr. DeLano and
14 I can also keep an eye on what is happening just --

15 THE COURT: I guess you're a better man than
16 I, so can you move on, please.

17 BY DR. CORDERO:

18 Q. So you did not know what we were going to say here
19 and because of that you did not know what it is that you
20 could possibly have done negligent, do you?

21 A. No.

22 Q. So, how can you contest that I have a claim for
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23 you when you do not even know what that claim is?

24 A. You don't have a claim. I --

25 Q. You said yourself, again with the permission of

1 the Court, my question is very clear, you do not know what
2 my claim is?

3 A. Correct.

4 Q. Now, how can you possibly know whether the claim
5 that I have is by against you viable or not when you do not
6 even know what it is?

7 A. Have - I don't know the word to have you talk
8 about viable - viable, I'm sorry, I don't, but I don't feel
9 that you have any claim against me.

10 Q. How. What do you feel about it?

11 A. What claim do you have, what claim have you spoken
12 of directly to me? Again, it would take five minutes.

13 Q. You know why I can't say.

14 THE COURT: Okay, I'm going to put an end to
15 this, this line of questioning. He does not know what
16 your claim is against him, and that to you, you
17 interpret as somehow that is something I don't know,
18 but you know I think what he's trying to tell you, I
19 don't think you have a claim against me. If you have,
20 tell me what it is and then he can address, but I don't
21 think you have got any claim.

22 The mere fact that you assert that you have
23 a claim doesn't make any difference. We have now done
24 this for about fifteen times. You made your record
25 with respect to that. We all confirm that he has said

1 he doesn't know the nature of your claim against the -
2 against him and that you established. Can we now do
3 something different?

4 And we also know that your assertion, if you
5 don't know the nature of the claim against me, how can
6 you possibly move against it. And he is saying I can
7 move against it because you don't have any claim
8 against me and that is where we are after four hours or
9 whatever. That is a summary of where we are, so that
10 is the record now. You can deal with that whenever you
11 want to. Let's move on to something beyond that. You
12 have established that. We all know that. We've heard
13 it ad nauseam.

14 BY DR. CORDERO:

15 Q. Mr. DeLano, did you contact somebody or your bank
16 after you sold the containers?

17 THE COURT: You need to ask a more
18 specific question, they've got thousands of customers.

19 DR. CORDERO: Why did you --

20 THE COURT: Because we have to move that
21 along.

22 DR. CORDERO: That is the reason?

23 THE COURT: Yes.

24 DR. CORDERO: I would appreciate - it seems
25 he also thinks in five minutes I could have stated my

1 claim.

Cordero

2 THE COURT: The reason I'm asking, Counsel,
3 you have an obligation to ask questions, okay, that are
4 specific, okay, and you're not. "Did your bank contact
5 anybody after the sale?" Well, they contacted millions
6 of people every day when they send bills and things
7 like that. So that question, obviously, isn't a
8 well-framed question. You ask well-framed and specific
9 questions, we could move on and I don't have to rely on
10 the witness to tell - your questions in some regards
11 are not adequate that in result is - when you're not
12 moving the hearing along because you're not asking
13 proper questions. You're asking general questions.
14 "Did M&T ever contact anybody after the sale?" The
15 answer is absolutely yes. They could - contacting
16 millions, so let's ask direct and specific questions
17 that will move the hearing along as to whether you have
18 a valid claim.

19 BY DR. CORDERO:

20 Q. Mr. DeLano, do you think I really was asking about
21 whether M&T or you ever asked any other questions of any
22 other party after your bank sold my containers or did you
23 think, the common sense that I was asking about my
24 containers?

25 MR. WERNER: Objection, relevance.

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1 DR. CORDERO: Question is very valid. The
2 question goes to the issue of common sense.
3 Judge Ni nfo has said --

4 THE COURT: Move on.

Cordero

5 BY DR. CORDERO:

6 Q. Did you think that the question related to any -
7 anybody?

8 THE COURT: I've already sustained the
9 objection with respect to that. Move on.

10 BY DR. CORDERO:

11 Q. Did you ask anybody concerning the containers that
12 you sold from the Jefferson Henrietta warehouse after they
13 were sold by your auctioneer Mr. Reynolds?

14 A. Yes.

15 Q. What did you say, though, in that - in that
16 contact?

17 A. We asked if they had contacted the people that of
18 course these containers belonged to, to see if they were
19 going to continue service with them and they said they were,
20 and we also talked about the possibility if there were any
21 other containers involved, and there being those containers
22 from us.

23 Now after three months or whatever, we did locate
24 the containers in Avon, however, there are - there were very
25 few. I think there were five containers of yours were among

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1 them two containers there. We elected not to sell those
2 containers because the bag where the containers was very
3 small and the M&T Bank - our interest in those containers.
4 However, we did contact all parties who had the containers
5 in Avon and said your containers are here, come and get them
6 or make arrangements to get them, and that was it. And that
7 was the end of the story regarding the containers.

8 Q. And did you ever send me a letter that my

9 containers --
10 A. Yes.
11 Q. Can you state the date or any reference?
12 A. No, but I believe that our law firm is - made
13 arrangement for you to come to Rochester, to go to Avon, to
14 look at those containers, and that was probably in October
15 or something of 2003 - 2, and, and that after that nothing
16 was heard.
17 Q. But you do not know the date?
18 A. No, I don't remember the date.
19 Q. I see. And at that point in time why did you have
20 to rely on the bank - excuse me, on the - who represents you
21 in this case to contact all other parties who had containers?
22 A. I'm sorry, I don't think I understand the
23 question.
24 Q. Very well. Why did you have to make your law firm
25 that was representing you in my claim against you contact

1 all the other parties, people that have containers in the
2 case, it was their responsibility of M&T to do that, wasn't
3 it? Was it not?
4 A. M&T was represented by a law firm, because of your
5 action in the case against M&T.
6 Q. Exactly. But the other parties that have
7 containers in Avon had nothing to do with my claim against
8 you, did they?
9 A. Correct.
10 Q. So why did you have the firm that was representing
11 you in my claim against you upon the other parties contact

Cordero

12 the other parties?

13 A. Strictly and as a good-will scenario.

14 Q. Okay. So that means, actually, you didn't feel
15 the need to contact the parties to let them know where their
16 property was, you didn't - did it all out of the good heart?

17 A. Correct.

18 Q. Very well. When you contact that firm that bought
19 the containers, my containers were not there, my containers
20 were not among the containers that were carted away?

21 A. I don't know.

22 Q. But you already said that they weren't there, is
23 it --

24 A. Who's there?

25 Q. My containers were not in the Jefferson Henrietta

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1 warehouse. My containers were not in the Jefferson
2 Henrietta - you said you thought they were, did you not?

3 A. I thought your name was on one of the cases in the
4 other warehouse.

5 Q. In the Jefferson warehouse?

6 A. In the Jefferson warehouse, but it was not.

7 Q. It was not, and when you sold the containers to
8 this other carting firm, whose name you don't know, by that
9 time my containers could not possibly have been among those
10 sold to that firm?

11 A. Whatever we sold to that person had to be done by
12 a bill of sale.

13 Q. Okay.

14 A. Since it was done by a bill of sale we could be -
15 would be contacted under the personal property law.

Cordero

16 Q. No, question is that since my containers were not
17 in Jefferson Henrietta warehouse, they were not sold to that
18 other --

19 A. Correct.

20 Q. Exactly. So, did you send a letter - you're
21 saying now that your bank has sent that letter, stating that
22 my name was among the owners of the containers sold to - to
23 that - to that other party?

24 A. I don't believe so, no.

25 Q. But that is the way - that is what he says you

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1 said to that party and it is an attachment to the complaint
2 that you should have reviewed in preparation for this
3 meeting, that you asked that party - you asked that party,
4 to sign a statement that my containers were, and that party
5 among those that that party had received that was fact and
6 you would have known that, but you - if you only read the
7 complaint, had you only prepared for this meeting you would
8 have known that.

9 MR. WERNER: Objection, presumes there any -
10 is any obligation to prepare that.

11 DR. CORDERO: There is an obligation to
12 prepare for this meeting. There is an obligation for
13 you. You are filing a good faith filing, good faith
14 motion to disallow my claim to know what my claim is
15 all about. There is an obligation to prepare for
16 an Evidentiary Hearing that you had known and that you
17 requested by July the 19th. By moving to disallow my
18 claim --

Cordero

19 THE COURT: Now you have made statements,
20 Mr. Werner disagrees with you that there is an
21 obligation. You believe there is an obligation. The
22 record reflects that. Let's go.

23 BY DR. CORDERO:

24 Q. So that the case of Mr. DeLano, you --

25 A. How do I know? There is no case. The case is you

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1 believe one thing and Mr. Werner believes another thing, so
2 it isn't the case.

3 Q. The case is that you included my name among the
4 containers that that other carting company received and you
5 asked that company sign that statement. That is what
6 happened, and I am telling you that you would know that if
7 you had only read the complaint where I took - put a copy of
8 that letter there, and you know what happened, it was not
9 you who found out where my containers were, what happened
10 when - or let's put it this way. Did any person contact you
11 from that carting company?

12 A. I really don't remember. You did receive a letter
13 that said it was in the sale and it wasn't in the sale,
14 which it wasn't. It was still just a matter of error, and
15 it could be erroneous because of the fact that because of
16 the number of slips that they had in their drawers for the
17 number of people that Premier Van Lines had as far as who
18 they rented to, and your rental slip could have been in
19 those drawers involving - so that is how it could have
20 happened. But regardless, your goods were found in Avon and
21 you still have your goods.

22 Q. And do you know what it took to find out, that the

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23 goods were in Avon?

24 A. How --

25 Q. You know, you and me?

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1 A. I even went there August 2nd of 2002, myself
2 personally, and found them in the store - and found them in
3 the warehouse.

4 Q. Did you know - you already said that on the basis
5 of those slips, none of the basis of the inventory that you
6 made, you found out that my containers were among those to
7 be sold. You said, well, the slip was in the drawers, we
8 thought that the containers contained your property was on
9 them, isn't that what you said?

10 A. That could be.

11 Q. Okay. So in reliance of that, I relied on the
12 fact that the owner company had my containers.

13 MR. WERNER: Your Honor, this is

14 Dr. Cordero's testimony. We move that he be sworn and
15 take the stand.

16 BY DR. CORDERO:

17 Q. So, Mr. DeLano, if you yourself made two mistakes,
18 think that my containers were in the warehouse, did you not?
19 You already said that. Now you're stating that you made -
20 have made a second mistake, did you not, that you may have
21 relied on the slips in the drawers of Mr. Palmer, in the
22 Jefferson Henrietta warehouse?

23 A. Possibly.

24 Q. Two mistakes.

25 A. If so, it was done erroneously and you didn't lose

1 by it.

2 Q. Mr. DeLano, when I relied on both of these
3 mistakes - actually, when I relied on the first and you
4 referred me through your attorney and your conversations
5 that we had to that other party, whose name you would know
6 if you only read the complaint, I relied on that, do you
7 know how long it took me to find out that my containers were
8 there?

9 A. Well, time, I imagine.

10 Q. Do you think that I had to spend my time, my
11 money, I living in New York City, my airport, trying to find
12 out where in fact my containers were because of mistakes
13 that you made?

14 A. I imagine it took you time to do it.

15 Q. Thank you Mr. DeLano. But that is a response with
16 a lot of candor and I appreciate that because that is the
17 basis of the complaint against you. I realize you and your
18 bank made mistakes and took me enormous amount of time
19 trying to find out where those containers were. Mr. DeLano,
20 can you imagine my confusion when you told me that my
21 containers had been sold to that other party? I called that
22 party and he said we don't have anything belonging to you,
23 can you imagine my confusion?

24 A. I will comment that we went to great lengths to
25 ensure that your containers where - where they ended up in

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2 assets of this company, Premier Van Lines, was in two
3 different places, not in one, it would have been a lot
4 easier and, however, we don't know that and we weren't told
5 that.

6 Q. Exactly. That's very good, Mr. DeLano. You have
7 stated that because you stated that you also relied on the
8 slips that were in the drawers of Mr. Palmer, when at the
9 Jefferson warehouse, is that so?

10 A. What of Mr. Palmer?

11 Q. You relied on slips?

12 A. On slips, that is correct. They were in the
13 Jefferson Avenue warehouse.

14 Q. Exactly. Do you know how it was, that that other
15 party was, whose name you don't know, found out that my
16 containers may have been elsewhere?

17 A. No.

18 Q. Do you know how much effort I had to spend, how
19 much time, how much money I had to spend trying to find that
20 out?

21 A. No.

22 Q. Okay. Do you know how much confusion I got when
23 by that time, seven months, I have been damaged by Mr.
24 Palmer to Mr. Dworkin - do you know Mr. Dworkin?

25 A. I met him once.

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1 Q. Who is Mr. Dworkin?

2 A. Landlord Jefferson Av.

3 Q. Exactly. So he would - in a position to know,
4 would he not?

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5 A. I assume.

6 Q. You assume. He also told me that my containers
7 were in that warehouse just as you did. I relied on you. I
8 relied on Mr. Dworkin. I relied on Mr. Gordon to say he
9 would not deal with me, that I have to deal with you. I
10 dealt with you. You made at least three mistakes, that cost
11 me a lot of confusion, a lot of money that I spent trying to
12 find out where you packed my containers, where a lot of
13 money and a lot of time. Do you think that my time is
14 valuable?

15 MR. WERNER: Objection, your Honor,
16 argumentative.

17 BY DR. CORDERO:

18 Q. No, I'm a professional. Judge Ninfo now wants to
19 characterize me as Counsel, as an attorney, so it would be
20 reasonable for you to say that on the basis of my capacity
21 as a professional, that you caused me to waste my time, do
22 you think that that time is valuable?

23 A. To a degree.

24 Q. Thank you. That is the degree that we have to
25 determine at trial. That is basis of my complaint.

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1 A. But the claim --

2 Q. There is no question before you, Mr. DeLano. My
3 second question is: Did you know how it was found out that
4 my containers were not by that other party, how that other
5 parties found out that my containers were not in that
6 warehouse?

7 THE COURT: Who was the other party that
8 you're referring to? Is there another party?

Cordero

9 DR. CORDERO: Yes.

10 THE COURT: The carting company that it was
11 sold to or some other party?

12 DR. CORDERO: Mr. DeLano would know that
13 because he sold it to him.

14 THE COURT: Are you referring to buyer of the
15 containers?

16 DR. CORDERO: Yes.

17 THE COURT: I just didn't know.

18 DR. CORDERO: But you would know if you read
19 the complaint, because I stated the name, just as
20 Mr. DeLano would know and Attorney Werner would know,
21 because care to know what the claim was.

22 BY DR. CORDERO:

23 Q. Do you know, Mr. DeLano, how that other party
24 found out that my containers were not in his warehouse?

25 A. I would assume he had to take an inventory of

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1 containers.

2 Q. Do you know if he charged me for that?

3 A. No.

4 Q. Does it matter to you, for a statement you made?

5 A. I don't - wouldn't know.

6 MR. WERNER: Argumentative, your Honor.

7 THE COURT: It's argumentative.

8 DR. CORDERO: Did you say it was argumenta-
9 tive? Did you say it was argumentative?

10 THE COURT: Well, I think it is, from my
11 point of view.

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12 BY DR. CORDERO:

13 Q. I'm going to ask you a question just point blank.
14 Do you think, that that other parties charged me?

15 MR. WERNER: Objection. What he thinks is
16 irrelevant. What he knows, would be relevant.

17 THE COURT: Sustained.

18 BY DR. CORDERO:

19 Q. There is question, then, that would have been an
20 attorney that it wouldn't be fact, but the point is if you,
21 cause me to lose money, to lose time, to lose waste of money
22 and trying to find out why my containers were not at that
23 warehouse, do you think that then I would have a - at least
24 a reasonable basis to claim against you because of the
25 mistakes that caused me all that waste?

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1 MR. WERNER: Objection, your Honor, what he
2 thinks is not --

3 DR. CORDERO: That is the essence of the
4 question here, whether Mr. DeLano is liable to me.
5 That is the basis here. He knew of me, to waste my
6 time.

7 THE COURT: I think it's an improper
8 question because, quite frankly, if you're talking
9 about a cause of action --

10 DR. CORDERO: No. Let me rephrase my
11 question.

12 THE COURT: He can answer it any way he wants
13 to, but it's a legal question and I'm the one who has
14 to make that, so you can ask questions but I'm telling
15 you that his answer as a lay person to that question

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16 doesn't necessarily resolve anything, because I'm the
17 one who has to look at all the facts and circumstances
18 and the evidence to determine the legal questions.

19 You're asking him a legal question and I
20 don't really think it's proper for you to ask him a
21 legal question. You may disagree with that but let's
22 establish if you're going to answer that question.
23 That is really a question of law and his opinion of it
24 one way or another is really irrelevant. If you want
25 to ask it, go ahead.

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1 BY DR. CORDERO:

2 Q. So right now, we come to the crux of the matter.
3 He has already stated, and because of his, his mistake,
4 several of them, I had to waste my time trying to find out
5 where, in fact, my containers were; isn't that --

6 THE COURT: With all due respect, you have
7 also elicited - you have also made a statement in your
8 own, in the record that Mr. Dworkin also told that
9 your property --

10 DR. CORDERO: Going now to argue the case?
11 This is so improper. Always when you intervene, it is
12 not to find fault with the witness or with Mr. Werner.
13 Every time you intervene here it is to advocate your
14 case against me. You're not impartial. These
15 proceedings is a sham. That is why it is a former
16 conclusion. It doesn't matter what I prove here on
17 the basis of Mr. DeLano's statement, you're going to
18 find that I do not have a claim against him because

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23 (Court recessed.)

24 (Court reconvened.)

25 BY DR. CORDERO:

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1 Q. I asked you before the last recess, whether you
2 thought that your mistake cost me confusion, waste of money,
3 and therefore - and time in trying to find out where my
4 containers were and my property, is that so?

5 A. I would assume so, yes.

6 Q. And then I asked you when a person that, let's say
7 a client causes your bank to lose money, waste time or
8 airport, what does your bank do?

9 A. When a client - please clarify.

10 Q. Thank you. When a client causes your bank to lose
11 money, waste time or airport, what does your bank do?

12 A. Normally talk to the client first, see if we can
13 encourage him to come around our way of thinking. If it
14 ends up being a legal matter, we'll send the matter to our
15 attorneys for handling.

16 Q. With the purpose of recovering from the client for
17 the loss?

18 A. That is correct.

19 Q. We have already established that your negligence,
20 your mistakes caused me confusion and waste, so is it
21 reasonable then that I ask you and your bank to compensate
22 me just as you've learned to do to the client that caused
23 your bank loss?

24 A. I would say I would suppose so.

25 Q. Thank you, Mr. DeLano. That is a very frank

1 answer and I appreciate that, because if that is the crux of
2 this case with my claim --

3 A. With the claim --

4 Q. I'm not, Mr. DeLano --

5 THE COURT: Stop making statements and start
6 asking questions.

7 BY DR. CORDERO:

8 Q. Well, that is the basis, you caused me to do a lot
9 of waste, and I claim about you, I claim compensation from
10 you. Do you think that that is so difficult to understand,
11 that you, a thirty-two year veteran of the lending
12 institution industry would not understand why I would claim?

13 A. If a claim was reasonable, that is one thing. If
14 the claim were against me personally, that that's another
15 thing. Everything you related to has to do with the bank.
16 Again, as I said before, when I look at your original claim
17 to me is as a third party defendant and as a loan officer
18 than the way my bankruptcy, as an employee of M&T Bank and
19 not as an individual that may have some stature.
20 Personally, no, you have no claim against me personally.
21 Everything I did, I did on behalf of M&T Bank.

22 Q. Mr. DeLano, we have a - you have already stated
23 that you did not know what you stated in your petition. Did
24 you use the opportunity of the recess --

25 THE COURT: No, we have to move on. This is

1 just argument. It's not really evidence. If you have
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2 established what you said about that, it's so clearly
3 in the record and now let's move on.

4 DR. CORDERO: Judge Ni nfo, now Mr. DeLano
5 claims to know what before he said he did not know.

6 THE COURT: He is giving - he now giving an
7 independent assessment. He's not giving an assessment
8 of what was in his schedule, he's giving an independent
9 assessment. He just testified what his view is.

10 BY DR. CORDERO:

11 Q. What is that your petition says. He just said now
12 that you know what it says. Say what it says.

13 A. It says your name in the petition with a claim
14 against me as an employee of M&T Bank.

15 Q. Your - can you find if I represented to you a -
16 presented to you a copy of your petition with schedules?

17 A. I just read it.

18 Q. Would you find out where it says that?

19 A. Yes.

20 DR. CORDERO: May I approach?

21 THE COURT: Why certainly.

22 (Pause.)

23 A. Right here, number twelve. "Dr. Richard Cordero
24 allege --

25 THE COURT: When you're reading it's

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1 important that you read slow because when people when
2 they're reading things tend to go very fast and the
3 court reporter --

4 WITNESS: Dr. Richard Cordero, 2002,

5 Cordero
alleged liable, references stored merchandise as
6 an employee of M&T Bank, suit pending. Item number
7 twelve.

8 BY DR. CORDERO:

9 Q. So, Mr. DeLano, please keep it for the time being.
10 Where did you say that I had sued you personally?

11 A. I didn't, you did.

12 Q. Where?

13 A. You had said before I was sued personally.

14 Q. I'm sorry?

15 A. Named a third party defendant. This is Number
16 four. It says suit and administrative proceedings. Caption
17 of suit and case number. In reference Premier Van Lines,
18 Inc., James Pfunter, Ken Gordon Trustee, Richard Cordero,
19 M&T Bank, et al. Reference Palmer, Dworkin, Jefferson
20 Henrietta Associates and DeLano. That is suit, nature of
21 proceeding as against Debtor. Damages for inability of
22 Cordero to be covered, property held in storage. Former
23 agency and location status pending.

24 Q. Thank you Mr. DeLano. Do you still want to find
25 out where I claim against you personally?

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1 A. As I said, I don't think there is a personal
2 claim. It's in reference.

3 THE COURT: So, take the document.

4 DR. CORDERO: I'm sorry.

5 BY DR. CORDERO:

6 Q. So now you recognize --

7 THE COURT: You can go to the podium and ask
8 questions or go back to your seat. Either one is fine,
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9 and I told you --

10 BY DR. CORDERO:

11 Q. So now you recognize that even in your own
12 petition there was never a distinction between whether I was
13 filing a claim against you personally or as an officer of
14 M&T. It only said that I had a claim against you, all it
15 says. The point is had we already established --

16 MR. WERNER: Objection, your Honor, we've
17 established nothing.

18 THE COURT: He needs to ask questions.

19 BY DR. CORDERO:

20 Q. Have we already established that because of your
21 mistakes I was caused to suffer confusion and waste? We
22 have already established that before we recessed, did we not?

23 MR. WERNER: Objection again, your Honor,
24 for purposes of this hearing.

25 THE COURT: He can answer.

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1 WITNESS: I would say an error was made.

2 BY DR. CORDERO:

3 Q. Okay. And did I in any way saying that it was
4 relevant to that confusion and waste that you caused me
5 whether I was suing you as a person or as an M&T employee?

6 A. Yes, but your proof of claim was related --

7 Q. No, the question is - the proof of claim doesn't
8 even come into this matter.

9 A. Yes, it does.

10 Q. No, I ask the questions. The matter is that
11 whether it makes a difference, for you caused me waste and

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12 confusion whether I was suing you as a person or as an
13 employee, does it make any difference?

14 A. Yes.

15 Q. In what way did I suffer less confusion or less
16 waste because you were acting in the capacity of an employee
17 as opposed to the capacity of a person did I suffer less
18 confusion and less waste?

19 A. A person - as a person the bankruptcy is filed on
20 myself and my wife's name and the claim is against the
21 bankruptcy and you placed a claim against the personal
22 bankruptcy. As far as being an officer of the bank, that is
23 another issue all together.

24 Now the bank at this point in time does not feel
25 that there's any money that is owed to you on this deal

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1 because, in fact, you don't have your goods. You never had
2 a loss on your goods and the bank did help to try and put
3 you in touch with those goods, get you up to here to
4 Rochester to look at them, etc.. Now, after that, it's up
5 to you, the bank can't do everything for you.

6 Q. Mr. DeLano, how did your bank know that my
7 containers were not in the possession of that - possession
8 of that person to whom you sold it? You sent a letter to
9 him asking to acknowledge receipt of my containers. It was
10 me, Mr. DeLano. You have records you have already. Also my
11 complaint. I provided the documents there. You would know
12 that it was because I called that other person, asked for my
13 containers there and that person said we only received a
14 statement from the bank asking to acknowledge receipt of -
15 my of your containers.

Cordero

16 A. That could be.

17 Q. Exactly. That is the point. It is at that point
18 in time when you caused me the loss of and confusion and
19 waste because it was me who had to undertake from New York
20 City, take all the effort to find out where my containers
21 were. I have already asked you, to question how do you
22 think that it was determined where my containers were?

23 A. You already told it before.

24 Q. I am asking you.

25 A. I would assume by company that the containers were

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1 sold to.

2 Q. But the company said they - it did not have them.
3 You asked that company to acknowledge receipt of my
4 containers, they said we don't have anything here.

5 A. That's true.

6 Q. Okay. So how do you think that that company found
7 out where my containers were?

8 A. I don't know.

9 Q. Was it even their responsibility of that company
10 to find out where my containers were?

11 A. No.

12 Q. Whose responsibility was it, you sold it?

13 A. I'm sorry?

14 Q. You sold my containers. You thought that you were
15 selling my containers to that person. You acknowledge that
16 you did require acknowledgment of receipt of that person.
17 When that person said, he was not among the containers that
18 we bought, whose responsibility do you think it was to find

19 out where my containers were? Cordero

20 A. Ours, M&T.

21 Q. Exactly.

22 A. And we found them.

23 Q. No, you did not find them.

24 A. Yes, we did.

25 Q. How?

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1 A. We went back to the old landlord.

2 Q. How did you know who the old landlord was?

3 A. Because we knew where the previous location was.

4 Q. How did you know that.

5 A. We had been there once before. In fact, we had
6 been there more than once before.

7 Q. In where?

8 A. When Palmer owned the business.

9 Q. Where did you go?

10 A. Avon, and that is where we used to have his
11 company.

12 Q. And when did you go there?

13 A. August, 2002, and obtain a list of all the
14 containers.

15 Q. Excellent. I appreciate your statement because it
16 was by letter of July that you asked that person to
17 acknowledge receipt of my containers. It was because I had
18 to invest a lot of time, effort and money to that person to
19 try to find out where it was and it was because of that,
20 that that person found out where the containers were and
21 they - and they contacted you and you would know all that,
22 if you had only read the complaint.

Cordero

23 A. We're wasting time here, we're --

24 Q. If we are, it is simply because you're --

25 MR. WERNER: Objection, your Honor.

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1 THE COURT: Sustained, you're just being
2 argumentative.

3 DR. CORDERO: It's a statement of fact.

4 BY DR. CORDERO:

5 A. So, Mr. DeLano --

6 THE COURT: It's an opinion, it's not a
7 statement of fact as to what kind of unpreparedness
8 or unprepared or what his obligation to be prepared was
9 as a witness that you called. He's your witness,
10 Counsel.

11 MR. CORDERO: No, no.

12 THE COURT: No, he's your witness, you called
13 him. In fact, he's your witness, and now you're
14 characterizing his preparedness. He had no right to be
15 called as a witness, as Mr. Werner said, you chose to
16 call him. He could have sat here all day and never
17 been called as a witness. He didn't know he was
18 supposed to be prepared for anything. Did you notify
19 him? Did you subpoena him and notify him that you
20 were going to call him to testify today? So your
21 characterization of how prepared he was or should have
22 been I think is not correct, and not fair, so I'm
23 sustaining the objection. Go ahead.

24 DR. CORDERO: If you deny all your documents
25 and you thought that Mr. DeLano was not supposed to be

1 here, what were we going to --

2 THE COURT: Who are you talking to now?

3 DR. CORDERO: I was talking to you because
4 you deny all thirty, all the documents that I had
5 requested of Mr. Attorney Werner from Mr. DeLano. Then
6 we had the hearing on December 15. Since you had
7 denied my - all the documents, what do you think that
8 we were going to do today?

9 THE COURT: I don't know. You perhaps were
10 going to, based on what I heard today, because I
11 didn't know what you were going to do today, you might
12 have called a witness from the carting companies, you
13 might have subpoenaed other witnesses to testify on
14 behalf of M&T Bank, you might have contacted
15 Mr. Dworkin and contact - I had no idea what exactly
16 you were going to do and what evidence you were going
17 to put in. I don't know if anybody else would have
18 known what you were going to do. You didn't supply
19 a witness list. You didn't tell me or specify any-
20 thing, so how was I supposed to know, Counsel?

21 DR. CORDERO: Did you hear any objection to
22 my calling Mr. DeLano to testify on the part of
23 Mr. Werner?

24 THE COURT: No.

25 DR. CORDERO: Exactly. Not because he knew

1 for a fact --

Cordero

2 THE COURT: All about your characterization
3 about how prepared he was supposed to be, so we have
4 been there. Let's move on.

5 BY DR. CORDERO:

6 Q. You, Mr. DeLano, are not my witness. You are an
7 opposing party. You are the Debtor, and I am Creditor.

8 MR. WERNER: Is this a question?

9 THE COURT: You're an alleged creditor.

10 DR. CORDERO: Thank you, your Honor, for
11 your hypothesize of the case, but that is not proper.
12 It was for Attorney Werner who is here if he wants
13 to challenge my characterization of myself to do
14 that. In every case, as I have stated, whenever you
15 make comments, it is always to my detriment and
16 always - and you provide answers on behalf of
17 Mr. DeLano.

18 BY DR. CORDERO:

19 Q. Mr. DeLano, it is already established that you
20 caused me confusion and waste. Did you or did you not?

21 MR. WERNER: Objection, leading question,
22 is established. It's not established. It's not a
23 question.

24 BY DR. CORDERO:

25 Q. Mr. DeLano, if you continue to say at one point in

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1 time yes to a fact and that fact is not true, so it is not
2 established, how do you think that we're ever going to
3 trust - you say one thing --

4 THE COURT: You're here to ask questions.

Cordero

5 BY DR. CORDERO:

6 Q. Mr. DeLano, did you cause me confusion and waste
7 because of the mistakes that the bank and you had made
8 concerning the containers that contained my property?

9 A. Yes.

10 Q. Thank you. Did you think that that is an
11 established fact or do you think that later on as on other
12 occasions, you - not you, but some other occasion, other
13 people - that means Judge Ninfo, are going to contest
14 something that is stated here, unequivocally who --

15 MR. WERNER: Objection, this is not a
16 question, it's an argument.

17 BY DR. CORDERO:

18 Q. Are you going to confess to your own statements
19 repeated several times? That is why I want that, I want no
20 doubt that you acknowledge and have said, and I appreciate
21 your candor, that you caused me confusion and waste.

22 MR. WERNER: Objection, your Honor, as to
23 the form of the question. There has been quite a bit
24 of discussion.

25 THE COURT: I'll let him answer for the fifth

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1 time, sixth, seventh time.

2 DR. CORDERO: Yes.

3 THE WITNESS: I would say to a degree, yes.

4 BY DR. CORDERO:

5 Q. Okay. That is a - at the point. It is on that
6 basis that I made my claim against you, and that claim forms
7 part, as you stated against M&T, does it not, my claim also
8 against M&T?

Cordero

9 A. Your claim is against - if your claim is at all -
10 your claim is against M&T and not me personally because
11 everything - now, wait a minute, let me finish - because
12 everything that was involved in that transaction that you
13 continue to talk about involves M&T Bank and myself as the
14 servicing officer for that file. It has nothing to do with
15 me personally personally.

16 Q. But, Mr. DeLano --

17 THE COURT: Stop everything. He's just
18 expressing his view of this. You have been asking him
19 of his view for a lot of things. You have been asking
20 him to make conclusions all afternoon about these
21 things, about causing you confusion and so forth. Now
22 he's expressed an opinion that you don't like, but he's
23 got a right to express that also.

24 BY DR. CORDERO:

25 Q. What is that opinion, Mr. DeLano, what is that

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1 opinion that you're expressing? I thought you had expressed
2 a fact that you did cause me confusion.

3 A. If you're going to look at any - I'm sorry. I'm
4 sorry, you asking a question?

5 Q. Mr. DeLano, I'm the one who asked questions.

6 A. Ask the question.

7 Q. The question is: You already stated that you
8 caused me confusion and waste. That is a fact. You say
9 yes, that is not an opinion, is it?

10 A. As an officer, yes, of M&T.

11 Q. Okay, Mr. DeLano, did you find the part in your

Cordero

12 petition, that loan, my claim where I say that I am claiming
13 against you personally, did you find that in the petition
14 that I brought to your attention?

15 A. No.

16 Q. No. In the claim that I brought to your
17 attention, can you find that?

18 A. In the claim?

19 Q. Yes.

20 A. I would say no.

21 Q. Exactly. So why, is it relevant, whether it was
22 personally that I sued you when I never sued you personally
23 according to your own statements?

24 A. Because my bankruptcy is personal. My bankruptcy
25 is not corporate.

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1 Q. Mr. DeLano, I'm not filing a claim against you.
2 because of your bankruptcy. You have a claim against you
3 from me since November, 2002. It was on that basis that I
4 did not make any statement afterward whether it was personal
5 or whether it was as a bank officer that in any way could
6 have determined whether you put my claim in the petition or
7 not has no relevancy because I never made the difference,
8 does it?

9 MR. WERNER: Objection, your Honor. This is,
10 one, I can't follow the question and the other, I
11 believe it calls for a legal conclusion in some
12 fashion.

13 DR. CORDERO: Can you say the fashion?

14 MR. WERNER: No, I can't, because I can't
15 understand the question.

Cordero

16 DR. CORDERO: Well, that is very generous of
17 you.

18 BY DR. CORDERO:

19 Q. Mr. DeLano, what I'm asking you is very easy. I
20 never made a distinction, so how could you have made --

21 A. How could I have made it? Because I was acting as
22 an officer of M&T Bank at the time this all took place, not
23 as an individual or personally.

24 Q. Exactly. So now, I can name the person that was
25 responsible for that, for bad handling of the Palmer case.

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1 That is what I did. It is when M&T and all the other
2 partners together come to a trial that then we'll determine
3 who's responsible for what. It is at that point in time.
4 What you and Judge Ninfo want to do is to extract you from
5 the Pfuntner case, then when I - when the Pfuntner case
6 comes to trial, then M&T will say, well, it wasn't us as an
7 institution, it was a person, it was Mr. DeLano who was
8 being - sue him, but by that time you will be out of the
9 case.

10 THE COURT: When is that going to happen, by
11 the way?

12 DR. CORDERO: I'm sorry?

13 THE COURT: When is that going to happen?

14 DR. CORDERO: It depends on you whenever the
15 trial comes, the Pfuntner case comes to trial.

16 THE COURT: But you had that, the five days
17 and you were supposed to - when is that going to
18 happen?

Cordero

19 DR. CORDERO: Whenever the Supreme Court
20 decides the case, you know. That is two-punch
21 strategy here. Without you knowing what the claim
22 was, you look to disprove, to disallow so that I
23 cannot claim from you production of documents that can
24 show --

25 THE COURT: Have you established everything

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1 you want to establish with this witness with respect
2 to your claim against him?

3 I don't - you seem to be just going in the
4 same direction. Is there something more that you're
5 going to establish?

6 DR. CORDERO: Yes, your Honor.

7 THE COURT: Will you do that now?

8 DR. CORDERO: I'm sorry?

9 THE COURT: Could you please do that?

10 DR. CORDERO: With the promptness of
11 Judge Ninfo I think I have got to - as to statement
12 of fact, and then, Attorney Werner claims that it is
13 not established so I just want to --

14 THE COURT: He did answer your question the
15 same, which a number of times, and then he also
16 answered your same question by saying that he believes
17 that everything he did was as an employee of M&T Bank
18 and not personally, and those two are not usually
19 exclusive. Why can't we accept that? It's in the
20 record, everybody can read it, and move on. What more
21 is there?

22 DR. CORDERO: Because I'm going to establish
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23 that he could not possibly made its decision whether it
24 was as an employee or it was personally because I never
25 made that distinction and because he even read --

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1 THE COURT: He doesn't have to, he's telling
2 you now what his view is of what he did.

3 DR. CORDERO: Attorney Werner to argue this
4 case. Why did you argue his case?

5 THE COURT: Because you continue to ask the
6 same questions over and over, elicit the same answers,
7 make arguments instead of asking questions and I'm
8 simply trying to move this hearing to a conclusion.
9 I don't know how many times you want to ask the same
10 questions and make the same statements, but I think it
11 would be nice now if we started to move into something
12 new that we haven't covered five times, okay?

13 DR. CORDERO: Judge Niño, the point is, as
14 I have stated, I ask a question and then Mr. DeLano
15 says yes and then Mr. Werner puts in the doubt and I
16 want to know who is testifying here, whether it is the
17 witness, Mr. DeLano --

18 THE COURT: Does that mean you want to ask
19 the same question again?

20 DR. CORDERO: Why did you allow Mr. Attorney
21 Werner to continue --

22 THE COURT: Quite frankly, I'm trying to
23 handle the hearing the best way I know how. I'm
24 trying to expedite it. I'm trying to give everybody
25 their opportunity to make their record, and that's

1 simply what I'm doing.

2 Again, very often you may disagree with
3 what it is that I do or with my rules and so forth,
4 but you know we have to move this on to a conclusion
5 and that is all I'm trying to do and I believe you
6 know I'm trying to give everybody their day in court,
7 an opportunity to make a record, but I don't
8 need to sit here and listen to you asking the same
9 questions over and over, and make the same arguments
10 over and over when you should be making - you should
11 be asking questions and eliciting evidence, not making
12 statements, okay, and that is clear, so let's move on
13 and elicit some evidence.

14 DR. CORDERO: I wish you had told Mr. DeLano
15 not to volunteer again the same statement that he was
16 personally or as an employee that I sued him when you
17 asked me not to repeat himself every time that you
18 ask --

19 THE COURT: Let me give you my opinion of
20 what is going on here, for right or for wrong, and I'll
21 put it on record, okay?

22 You've asked Mr. DeLano a lot of very
23 difficult, not always factual but sometimes legal
24 questions that require kind of conclusion that quite
25 frankly when somebody even reads that record they will

1 come to the conclusion that half the time he hadn't a
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2 clue of what it is that you're asking. And, yes, he's
3 answering the questions and sometimes giving you the
4 answer that you're looking for, but if you read the
5 whole record you can see that he's very confused about
6 a number of things that you said, and to the point if
7 you asked him his wife's name, he might tell you it's
8 Sally, okay? That is the kind of level of some of the
9 answers that he has been giving you with regard to the
10 questions you're asking. So, you can continue to pound
11 on him to get him to say the thing that you want,
12 okay, but it doesn't - when you look at the whole
13 record, that is all that is happening here, just being
14 successful at confusing him. But anybody who is going
15 to look --

16 DR. CORDERO: You're providing now an escape
17 again.

18 THE COURT: No, I'm simply telling what
19 my observations of what is going on here.

20 BY DR. CORDERO:

21 Q. Very well. Mr. DeLano, please state --

22 THE COURT: And it's partly because I let you
23 ask him questions that are not always factual but are
24 sometimes legal in nature, which you really should not
25 be asking him.

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1 DR. CORDERO: He has an attorney, he can
2 raise that objection. He didn't.

3 BY DR. CORDERO:

4 Q. Are you claiming, Mr. DeLano, that your attorney

5 is incompetent because he did not raise --
6 MR. WERNER: Objection, your Honor, this is
7 totally irrelevant to the facts of this case.
8 THE COURT: Let's move on.
9 BY DR. CORDERO:
10 Q. Judge Ninfo said that --
11 MR. WERNER: Objection, your Honor, Counsel
12 is not asking a question.
13 BY DR. CORDERO:
14 Q. Mr. DeLano, what is stated is that you're confused
15 about?
16 A. I'm not.
17 Q. Thank you very much. Thank you very much. That
18 takes a lot to say that and I do appreciate it.
19 MR. WERNER: Objection, it's not a question.
20 BY DR. CORDERO:
21 Q. Now, Mr. DeLano, we have come to this point. You
22 caused me confusion and waste and I sued you. When the
23 Pfuntner case comes to trial it will be determined --
24 THE COURT: Is this a question?
25 DR. CORDERO: Yes.

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1 BY DR. CORDERO:
2 Q. When the Pfuntner case comes to trial will M&T be
3 there?
4 A. Yes.
5 Q. Do you think that M&T will ask you as the person
6 who handled the case to give testimony?
7 A. We'll look at it.
8 Q. Yes. So even M&T are - your own statement will

Cordero

9 call you because it is reasonable, is it not, if you were
10 handling the case that M&T will call you, is it reasonable
11 or not?

12 A. I assume they will. They'll discuss it with
13 counsel.

14 Q. Exactly. So at that point in time I want to
15 determine, and the Court I hope an impartial Court, will
16 want to determine whether what you did - you went what is
17 called on a folly of your own. That means you took a course
18 of action, that was so removed from what an employee of M&T
19 in charge of something, a loan would do, that it was your
20 responsibility and not M&T.

21 Do you know the principle here, divide and
22 conquer? If you are out of the picture, M&T would blame you
23 and since by that time you will be out of the case, then M&T
24 will claim there's nothing to be paid from us to you because
25 it was Mr. DeLano. That is the reason why you have to be

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1 there, because your own bank, by your own statement will
2 call you as a person who was in charge of the Palmer case.

3 MR. WERNER: Your Honor, if I may?

4 THE COURT: No, you may not.

5 MR. WERNER: I'm trying to shorten because
6 maybe it will solve all the would be problems. If
7 Dr. Cordero is proceeding against Mr. DeLano simply
8 because he suspects some sort of bushwhack in the
9 M&T lawsuit, we can resolve this matter right now.
10 M&T will indemnify Mr. DeLano for any obligation that
11 he may have personally, with respect to any dealings

12 with Mr. Cordero.
13 THE COURT: How do you know that?
14 MR. WERNER: I talked to Mr. Beyma and he was
15 here earlier to make that statement to the Court.
16 Unfortunately the matter has gone on for hours, but I
17 believe Mr. Cordero is here on a much larger mission
18 than that.
19 DR. CORDERO: What is that, my mission?
20 MR. WERNER: I frankly --
21 MR. CORDERO: I will clarify that mission.
22 I do not want my claim against you to be dismissed, so
23 that I be taken for, for a fool. I do not want M&T to
24 benefit from the fact that you are eliminated from the
25 case and then, they will blame you and I will be out of

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1 all the claim for compensation based on confusion and
2 waste that you caused me. It is so easy.
3 MR. WERNER: I repeat my statement, your
4 Honor.
5 DR. CORDERO: It is so easy, that I even
6 wrote that in my paper. If you and your counsel had
7 read my paper, you would know what my mission was
8 because I stated that in writing.
9 BY DR. CORDERO:
10 Q. So, Mr. DeLano, we have already asked and you have
11 already answered, that there was - there was confusion you
12 caused in the Pfuntner case. It is most likely that M&T
13 will call you as a witness and it is at that point in time
14 when all issues are brought to trial, when all parties are
15 brought to trial that an impartial Court can determine who

Cordero

16 is responsible.

17 In isolation, without you, that issue cannot be
18 taken because we have to take into account the totality of
19 circumstances, which means that you as a bank officer in
20 charge of this case, of the Pfuntner case, you must be there
21 to determine what is your liability. That is the reason,
22 Mr. DeLano, that you must be there, and whether I sue you
23 personally or as an employee, it is irrelevant, because you
24 never even mentioned that what you're mentioning here, and
25 you read the schedule F, the entry number 12, allege the

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1 liability, where stored merchandise and employee
2 of M&T Bank, take it as that you wrote it. When the case
3 Pfuntner comes into play, you will be there, and your own
4 words, an employee of M&T. That is why I want you there.

5 DR. CORDERO: Your Honor, if you think that
6 that is a confusing, please, before we finish, while
7 I'm still here, we can clarify any points.

8 THE COURT: I'm just waiting for you. Are
9 you finished now?

10 DR. CORDERO: I asked whether you think there
11 is any confusion in what I have stated so I can
12 provide --

13 THE COURT: Confused about what?

14 DR. CORDERO: I don't know. You said there
15 was confusion. Mr. DeLano was frank, he wasn't
16 confused.

17 THE COURT: That is what the record reflects.

18 DR. CORDERO: Very well, if you have any

19 Cordero
confusion, please let me know so I can sit here --
20 THE COURT: I don't have any.
21 DR. CORDERO: Very well, I have completed.
22 THE COURT: Mr. Werner?
23 MR. WERNER: I believe Mr. DeLano has given
24 a fair statement of his position and facts, your Honor,
25 I have no questions.

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1 THE COURT: Any other witnesses that you
2 have, or any others that you want to --
3 DR. CORDERO: Yes, I have a lot of witnesses
4 that I want to introduce all the documents that I have
5 asked of Mr. DeLano. Mr. DeLano himself stated --
6 THE COURT: You can step down.
7 DR. CORDERO: That I - what claim be against
8 him as an employee of M&T Bank, as such he could have
9 provided - as such he could have provided documents.
10 It is not possible that every single document that I
11 asked of him was to be relevant and it is not possible
12 because I asked for many of those documents in my
13 statement of July 9, 2004.
14 I submitted that as a proposal request for
15 an order at the hearing of July 19th. You told me that
16 local practice was that I should ask for a proposed
17 order to be signed by you and that I should turn to my
18 request to be a proposed order. I did so, in full
19 knowledge of everything that was there.
20 The record reflects that that order was
21 going to be entered. That is what the record that you
22 yourself included in the order of July 26, 2004

Cordero

23 reflects.

24 So at that point in time you thought that
25 he, being case of Mr. DeLano's bankruptcy, and thought

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1 the documents were relevant, but then only because
2 untimely, the following day after Werner, according to
3 you, expressed concern about whatever that may be, you
4 refused even to docket the order, let alone to issue
5 it, but the fact stands that you had already acknow-
6 ledged of everything that was asked of Mr. DeLano.
7 You approved that it would be ordered. You even gave
8 me your fax number, and then, on the basis of
9 Mr. Attorney Werner's expressed concerns, you denied
10 that.

11 I had my request. Now I put a motion for
12 those documents to be produced, and then we can
13 continue that.

14 If that is the case, that you still think
15 that I do not have a claim against Mr. DeLano, because
16 you, you yourself denied me access to documents after
17 you had acknowledged that you would enter my proposed
18 order for them. I move for those documents.

19 THE COURT: I'm going to deny your motion
20 and I'll give you a written decision with respect to
21 that, too.

22 Okay. anything else?

23 (No response.)

24 THE COURT: Thank you for everyone's
25 cooperation today. We stand adjourned.

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REPORTER CERTIFICATE

I, Mary Dianetti, do hereby certify that I did report in stenotype machine shorthand the proceedings held in the above-entitled matter;

Further, that the foregoing transcript is a true and accurate transcription of my said stenographic notes taken at the time and place hereinbefore set forth.

Dated:
At Rochester, New York

Mary Dianetti