06-4780-bk

United States Court of Appeals
for the Second Circuit

Dr. Richard Cordero
Appellant and creditor

APPEAL

v. **from *Cordero v. DeLano*, 05-6190L, WDNY**

David DeLano and Mary Ann DeLano
Respondents and debtors in bankruptcy

APPELLANT's PRINCIPAL BRIEF

with references to the Appendix in separate volumes

Volume I **Designated Items in the Record in Bkr. Ct.** (D:1-508q)
Transcript of the Evidentiary Hearing in Bkr. Ct. (Tr:1-190)

Volume II **Addendum to the Designated Items, with the brief in Dis. Ct.** (Add:509-1170)
Post-Addendum, with the reply in Dis. Ct. (Pst:1171-1500)
SPECIAL APPENDIX in CA2 (SApp:1501-1700)

March 17, 2007

by

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Dr. Richard Cordero,
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v. **APPELLANT's PRINCIPAL BRIEF**

David and Mary Ann DeLano
Appellees and debtors in bankruptcy

I. PRELIMINARY STATEMENT

1. U.S. District Judge David G. Larimer, WDNY, entered the decision in *Cordero v DeLano*, 05-6190, WDNY, that is on appeal before this Court (Special Appendix, page 1=SApp:1=SApp:1501 in volume II). Underlying his decision was a decision entered by U.S. Bankruptcy Judge John C. Ninfo, II, WBNY (Designated Items, page 3=D:3, this volume) in *In re David and Mary Ann DeLano*, 04-20280, WBNY (hereinafter *DeLano*).

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IV. JURISDICTIONAL STATEMENT

A. Jurisdiction of the District Court

2. The appeal from the Bankruptcy to the District Court was filed under 28 U.S.C. §158.

B. Basis of Appellate Jurisdiction

3. This appeal from the order of the U.S. District Court, is founded on 28 U.S.C. §§158(d) and 1291, both of which apply to bankruptcy appeals, *Connecticut National Bank v. Germain*, 112 S.Ct. 1146, 503 U.S. 249, 117 L.Ed.2d 391 (1992).
4. The issues presented herein all concern the fundamental legal matter of due process of law denied through judicial corruption and thus, should be reviewed de novo, *In re Bell*, 225 F.3d 203, 209 (2d Cir. 2000).

C. Filing Dates and Timeliness of the Appeal

5. The decision on appeal was entered in the District Court, WDNY, on August 21, 2006. (SApp:1501) On September 12, an extension of time to appeal was requested (SApp:1505); as a result, leave was granted to file the notice of appeal by October 20 (SApp:1506). Such notice was filed on October 16, 2006. (SApp:1507)

D. Appeal from Final Orders

6. The decision of the Bankruptcy Court (D:3), was "in all respects affirmed" (SApp:1502, 1504) by the District Court, before which there remains no pending proceeding in *Cordero v. DeLano*. Its decision was final.

V. STATEMENT OF ISSUES PRESENTED FOR REVIEW

7. The unifying issue before this Court in this bankruptcy case is whether it too, like the judges below, will deny due process of law to one litigant and impair the integrity of judicial process to the detriment of the public at large in order to avoid that a conscientious review of this case, rather than its cover up through a summary order, may raise the embarrassing questions, and all the more so the incriminating evidence, of what it knows about the bankruptcy fraud scheme involving its WDNY peers and others; since when the Court has known it; and for what motive it tolerates the scheme by refusing, as its peers below did, to order the Appellee Debtors to produce financial documents that will answer the smoking-gun question: Where and for whose benefit is at least $673,657 of the Debtors' known concealed assets? (SApp:1608) So long as the Court refuses to obtain the facts to answer that question, it aids and abets the cover up of a bankruptcy fraud scheme. The constituent issues are the following:

   a) Judge Larimer so disregarded the law, the rules, and the facts in the proceedings leading up to and in his interlocutory and final decisions and

showed such bias as to deny Appellant due process of law and render his decisions unlawful and a nullity.

b) Whether the Appellee Debtors' motion to disallow Creditor Dr. Cordero's claim was an artifice and the evidentiary hearing was a sham that the Debtors and Bankruptcy Judge Ninfo employed to justify the predetermined disallowance decision by denying Dr. Cordero *every single document* that he requested from them, even the Debtors' bank account statements, as well as the testimony establishing Dr. Cordero's claim given by Mr. DeLano at the hearing, in order to eliminate him from the Debtors' bankruptcy case before he could prove their involvement in a bankruptcy fraud scheme.

c) Whether WDNY Local Rule of Civil Procedure 5.1(h) (Add:633), which requires for filing a claim under RICO, 18 U.S.C. §1961 et seq., such detailed evidence before discovery has even started as to make such filing impossible in practice, is thereby void as inconsistent with the notice pleading and enabling provisions of the FRCivP, as a deprivation of a right of action granted by an act of Congress, and as a subterfuge crafted in self-interest through the abuse of judicial power to prevent the exposure of judicial involvement in a bankruptcy fraud scheme.

d) Whether 28 U.S.C. §158(b) allowing judges, circuits, and parties to choose whether to establish or resort to bankruptcy appellate panels impairs due process

of law, provides for forum shopping, and denies equal protection under law so that it is unconstitutional and has been abused to terminate the BAP in the Second Circuit and allow local operation of a bankruptcy fraud scheme.

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by

Dr. Richard Cordero

B. letters to the members of the Judicial Council of:

i. February 11 and 13, 2004;

ii. March 22, 2004;

iii. July 30, 2004;

C. appeal of the dismissal to the Judicial Council, of July 13, 2004.

III. Judicial misconduct complaint against Former Chief Judge John M. Walker, Jr., no. 04-8510, CA2:

A. of March 19 2004;

B. letter to then next chief Judge Dennis Jacobs, of March 24, 2004;

C. letter to Circuit Judge Robert Sack, of March 25, 2004;

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F. letter to each member of the Council requesting that each make a report under 18 U.S.C. §3057(a) to the Acting U.S. Attorney General that an investigation should be had in connection with offenses against U.S. bankruptcy laws.

IV. Appeal of both complaints to the Judicial Conference of the United States:

A. letter to Circuit Justice Ruth Ginsburg, of November 26, 2004;

B. letter to Circuit Judge Ralph K. Winter, Chair of the Committee to Review Circuit Council Conduct and Disability Orders:

i. of January 8, 2005;

ii. of February 7, 2005;

iii. of March 24, 2005.

iv. of March 25, 2005;

V. Comments in response to CA2's invitation for public comments on the reappointment of Judge Ninfo to a second term as bankruptcy judge:

A. of March 17, 2005;

B. of August 4, 2005;

C. letter to each of the members of the CA2 and of the Judicial Council:

i. of March 18, 2005;

ii. of August 4 and 5, 2005;

iii. of September 6, 2005.

VI. Request to the Judicial Council to abrogate WDNY Local Rule 5.1(h) and 83.5 (Add:633) that make it practically impossible to file a RICO claim and to record events that occur in the court and 'its environs':

A. to now Chief Judge Jacobs and to members of the Judicial Council, of January 8, 2006;

B. to the Judicial Council, of January 7, 2006.

VI. STATEMENT OF THE CASE

8. **In Bankruptcy Court, WBNY**, Appellee DeLanos filed as debtors a voluntary bankruptcy petition with its schedules under 11 U.S.C. Chapter 13 on January 27, 2004. (D:27-60) Therein they named Appellant Dr. Cordero among their creditors. (D:40). For six months the Debtors and Chapter 13 Trustee George Reiber treated Dr. Cordero as a creditor. (D:151, 73, 74, 103, 111, 116, 117, 120, 122, 123, 128, 138, 149, 153, 159, 160, 162, 165, 189, 203)

9. However, their attitude changed when he showed that the Debtors had concealed assets and that Trustee Reiber had failed to investigate them and should be removed. (D:193) Then the Debtors moved to disallow his claim (D:218) and Judge Ninfo scheduled an evidentiary hearing (D:279, 332) only for the Debtors (D:313-315, 325) and the Judge (D: D:278¶1, 327) to deny *every single document* that Dr. Cordero requested (D:287, 317; Tr:188/2-189/18) to establish his claim

and determine the good faith of the Debtors' petition as well as the whereabouts of the known concealed assets that could reveal their participation in a bankruptcy fraud scheme (cf. SApp:1608).

10. At the evidentiary hearing held on March 1, 2005, Judge Ninfo dismissed Mr. DeLano's testimony that established the claim of Dr. Cordero so as to disallow his claim and deny him standing to participate further in the case. (Pst:1281§§c-d) After his decision of April 4, 2005, was filed (D:3), Dr. Cordero appealed to the District Court, WDNY (D:1). Then upon the recommendation of the trustee (Add:937-939; cf. 953§I), Judge Ninfo confirmed the Debtors' repayment plan that discharged 78% of their debt (Add:941; cf. 962§II). The Debtors were discharged by Judge Ninfo's order of February 2, 2007. (D:508o)

11. **In District Court, WDNY**, Judge Larimer repeatedly tried to prevent Appellant Dr. Cordero from obtaining the transcript of the evidentiary hearing by setting a brief-filing deadline (Add:692, 695, 831, 836, 839) before the court reporter had had time even to respond to his request for the transcript (Add:681).
12. Likewise, the Judge denied *every single document* (Add:1022) that Dr. Cordero requested (Add:951), including the Debtors' bank account statements that could establish the whereabouts of known concealed assets worth at least $673,657 (SApp:1608), just as he denied (Add:1019, 1155) every substantive motion (Add:853, 881, 911, 993, 1097) aimed at exposing the participation of the

Debtors, court officials, and trustees in a bankruptcy fraud scheme.

13. Judge Larimer disposed of the appeal in a decision (SApp:1501) without stating any legal principle, let alone a controlling one, and without discussing any of the four issues presented by Appellant or even a single one of his brief's 15 headings dealing with their factual and legal elements (Pst:1254). Instead, he discussed two issues "preserved" by the Appellees, who had filed no cross-appeal and, as a result, could present no issues on appeal.

14. Appellant timely filed a notice of appeal (SApp:1505-1507) and on October 21, 2006, mailed his list of issues to be presented and designation of items in the record on appeal (SApp:1508). The 10 days provided under FRAP 6(b)(2)(B)(ii) for Appellees to designate other parts of the record that they believed necessary expired without their making any such designation or filing any other paper. Therefore, to the extent that this Court feels like showing respect for the rules of procedure any more than it allows the WDNY court not to do so, it must consider only and all issues presented by Appellant.

VII. Statement of Facts

A. In Bankruptcy Court, the Debtors filed a bankruptcy petition with schedules where they made incongruous, implausible, and outright suspicious declarations about their financial affairs and since then have refused to account for the whereabouts of known concealed assets worth at least $673,657

15. Mr. David DeLano, a 39-year veteran of the financing and banking industries still employed in the bankruptcy department of M&T Bank, and Mrs. Mary DeLano, a Xerox technician, filed a voluntary bankruptcy petition on January 27, 2004, in Bankruptcy Court, WBNY. It included their debt repayment plan to have 78% of their debt discharged in three years (D:59), just in time to travel light into their retirement. They invoked 11 U.S.C. Chapter 13, thereby avoiding the liquidation of any of their assets that would have resulted from filing under Chapter 7. Their petition was accompanied by Schedules A-J (D:29-45), signed by them under penalty of perjury (D:46) and verified by Christopher K. Werner, Esq., their bankruptcy attorney with 28 years' experience (D:28). Therein they listed 21 creditors, 19 as unsecured (D:38), including 18 credit cards and Dr. Cordero (D:40). The latter's claim against Mr. DeLano had arisen in the still pending adversary proceeding under FRBkrP 7001 et seq. *Pfuntner v. Trustee Gordon et al.*, no. 02-2230, WBNY (Add:712).

16. The DeLanos' sworn declarations in their Schedules are most suspicious even for a lay person. Indeed, they declared that:

17. a)They only had $535 in cash and bank accounts. (D:31) Yet their 1040 IRS forms for 2001-03 show that they earned $291,470 in just the three years preceding their filing. (D:47; 186-188; SApp:1608) Since they petitioned for debt discharge due to inability to pay, it would appear reasonable to ask that they

account for the whereabouts of their earnings by producing supporting documents, such as bank account statements, so obviously apt to establish the good faith of any petition. This is precisely what Dr. Cordero wanted to have them do when he made repeated requests of the Debtors (D:288¶3), the trustees, and the courts (Pst:1261)

17. b) Nevertheless, to date Trustee Reiber (D:193§I), Judge Ninfo (D:278¶1, 327; Tr:189/11-22), Judge Larimer (Add:1022; SApp:1504), and this Court (SApp:1623, 1678) have refused to require the Debtors to provide their bank account statements to ascertain the whereabouts of $291,470 in earnings unaccounted for. As to the Debtors, to avoid producing such statements, they have incurred attorneys' fees, and their attorneys have been willing to provide them with legal services, worth at last count $27,953 (Add:938, Pst:1174), and Judge Ninfo has approved their payment (Add:942). What is more, according to their appellate attorney, Devin Lawton Palmer, Esq., the DeLanos "continue to incur unnecessary attorneys' fees" (SApp:1628¶¶4, 9, 10) to defend against Dr. Cordero's motions and appeals.

17. c) Given that under their plan the DeLanos had to commit all their disposable earnings to debt repayment and that they have not needed to request a modification of that plan, where did they come up and "continue" to come up with that kind of money and how did Att. Werner and Palmer, members of

the same firm, know that the Delano Debtors could pay them despite their declaration that they only had $535 in cash and *on account*?

18. Even more suspiciously incongruous, the DeLanos declared only one piece of real property (D:30), to wit, the home that is presently their address at 1262 Shoecraft Road, Webster (Town of Penfield), NY 14580. They bought it in 1975, when they took out on it a $26,000 mortgage. (D:342) However, in their petition they claimed that their equity in it is only $21,416 and the mortgage that they carry on it is $77,084…after making mortgage payments for 30 years! *Mind-boggling!* (Add:1058¶54) Worse still, during that same period the DeLanos received a total of $382,187 through a string of mortgages! (SApp:1608; D:341-354) Where did that money go, for whose benefit, and where is it now?

19. Moreover, the Debtors declared credit card borrowings totaling $98,092 (D:41), while they set the value of their household goods at only $2,810! (D:5/4-8; Add:888§§c-e) *Implausible!* Couples in the Third World end up with household possessions of greater value after having accumulated them in their homes over their worklives of more than 30 years. This is particularly so if they are two professionals and have not experienced a home disaster or long-term catastrophic illness. Such are the DeLanos, who did not incur either or similar loss or expense, as shown in Trustee Reiber's shockingly unprofessional Findings Report (Add:937-939), which was approved by Judge Ninfo (Add:941) and Judge

Larimer (Add:1022) despite Dr. Cordero's analytical objections (Add:951, 1038).

1. The efforts of the trustees and Judge Ninfo to protect the Debtors from being examined at the meeting of creditors and having to produce incriminating documents reveal coordination pointing to a bankruptcy fraud scheme

20. From the very beginning, it became evident that nobody was going to question whatever declarations the DeLanos had made in their January 2004 petition and schedules…or allow anybody else to do so. Thus, the meeting of the DeLanos' creditors was held on March 8, 2004, pursuant to 11 U.S.C. §341. (D:23) Mr. DeLano and Trustee Reiber could have expected that no creditor would attend, for creditors hardly ever show up at these meetings unless the amount of their claims is high enough to make travel and representation expenses cost-effective in light of what they can expect to receive on the dollar of debt owed them. Nor could they have expected that the only individual, as oppose to institutional, creditor that they had named in their schedules, namely, Dr. Cordero (D:40), would travel hundreds of miles from New York City to Rochester to attend.

21. Consequently, they were expecting a pro forma §341meeting that would merely rubberstamp the DeLanos' debt repayment plan and get it ready for confirmation later that afternoon by Bankruptcy Judge Ninfo. So much so that in violation of his duty under C.F.R. §58.6(a)(10) to conduct the meeting personally, Trustee Reiber had his attorney, James W. Weidman, Esq., conduct it right there in a room

of the office of his supervisor, Assistant U.S. Trustee Kathleen Dunivin Schmitt. She knew and tolerated that violation…and how many others?

22. But the unexpected did happen: Creditor Dr. Cordero showed up and was the only one in attendance. (D:68) Hardly had he finished identifying himself and handing out a copy to Attorneys Werner and Weidman of his written objections to the confirmation of the DeLanos' plan (D:63), when Att. Weidman unjustifiably asked him whether and, if so, how much he knew about the DeLanos' having committed fraud. Dr. Cordero would not reveal what he knew. Rather than risk allowing the DeLanos to incriminate themselves or commit perjury while being examined under oath, as §343 requires, and having their answers officially tape recorded, Mr. Weidman protected them by putting an end to the meeting after Dr. Cordero had asked only two questions! (D:79§§I-III; Add:889§II) At the confirmation hearing before Judge Ninfo, Dr. Cordero objected to the conduct of both Att. Weidman and Trustee Reiber, who ratified his attorney's conduct, but the Judge excused them as merely engaging in "local practice", thus disregarding what the law of the land of Congress provided. (D:98§II; SApp:1659 4th para. et seq.; D:362§2; Add:891§III)

23. This blatant conduct revealed confidence born of coordination. Its objective was twofold: To protect the DeLanos from being exposed as bankruptcy fraudsters, and thereby protect themselves from being incriminated as their supporters

(D:379§3) in its enabling mechanism: a bankruptcy fraud scheme. (D:458§V; Add:621§1).

24. Dr. Cordero requested and kept requesting the trustees that the DeLanos be required to produce documents supporting their petition's incongruous, implausible, and suspicious declarations. For six months they had treated and went on treating him as a creditor while stonewalling on his request for those incriminating documents. (D:151, 73, 74, 103, 111, 116, 117, 120, 122, 123, 128, 138, 149, 153, 159, 160, 162, 165, 189, 203)

25. What is more, they tried to avoid holding an adjourned meeting of creditors (D:111, 112, 141) and then to limit it unlawfully to one hour (D:74), although 11 U.S.C. §341(c) contemplates an indefinite series of meetings and FRBkrP 2004(b) provides for a very broad scope of examination (D:283; Pst:1262¶13 et seq.).

26. Meantime, they produced a few documents (D165-188) and Dr. Cordero analyzed them in light of their petition and its schedules. This resulted in his Statement of July 9, 2004 (D:193), which he sent to Judge Ninfo. It charged the Debtors with bankruptcy fraud, specifically concealment of assets, and requested that the Judge order them to produce all the other documents that Dr. Cordero had requested but that they had failed to produce with the connivance of Trustee Reiber, whose removal he requested. (D:196§§IV-V; 207, 208) Everything changed after that, as

the schemers coordinated how to eliminate Dr. Cordero.

2. The timing and handling of the motion to disallow the claim of Dr. Cordero reveal it as an artifice resulting from coordination among the schemers intended to force him into a sham evidentiary hearing where he would be deprived of standing in *DeLano* and thereby of the right to request documents proving the Debtors' bankruptcy fraud and the involvement of all of them in its enabling mechanism: a bankruptcy fraud scheme

27. Filed on July 22, 2004 (D:218), the motion to disallow was heard on August 25 by Judge Ninfo. He manipulated Dr. Cordero's request for documents (D:234§§II & IV) and disregarded his arguments showing the motion's defects of untimeliness, laches, and bad faith (¶79 below; D:253§§V & VI) as well as the presumption of validity in favor of the claim (D:256§VII). Then the Judge ordered that Dr. Cordero take discovery of Mr. DeLano until December 15, 2004, in *Pfuntner*, that is, the case that gave rise to his claim against Mr. DeLano (Add:534/after entry 13) and that the parties introduce their evidence at an evidentiary hearing (D:278¶¶3 & 4).

28. However, when Dr. Cordero requested evidentiary documents (D:287, 310, 317), the DeLanos (D:313, 325) and Judge Ninfo (D:327) denied him *every single document* that he requested. Dr Cordero was being set up to walk empty-handed into the evidentiary hearing! where he would fall victim of their divide and conquer stratagem that would force him to prove his claim against Mr. DeLano out of context due to the absence of all the other parties and issues. (D:444§§I-II)

On December 15, 2004, Judge Ninfo set its date. (D:332)

29. The evidentiary hearing was held on March 1, 2005. On that occasion, Judge Ninfo abandoned his duty impartially to take in evidence and instead behaved as Chief Advocate for Mr. DeLano, who is represented in *Pfuntner* by Michael Beyma, Esq., a partner at Underberg & Kessler (Add:532), the law firm of which Judge Ninfo was a partner at the time of taking the bench (Add:636).

30. Att. Beyma was present at the hearing together with Att. Werner, who at the time had appeared before Judge Ninfo in over 525 cases, according to PACER. (Add:891¶12; Pst:1281§c) Actually, that number pales by comparison to the 3,909 *open* cases that Trustee Reiber had on April 2, 2004 (D:92§C, 302), of which 3,907 were before Judge Ninfo! (Add:1107§24) Such abnormally high frequency of appearances engenders close personal relationships, the blurring of inhibitions, and the sense of friendship betrayed unless everybody tells the others what he or she is doing, i.e., unless they coordinate their acts. (D:361¶¶13-16, 431§C)

31. It follows that the evidentiary hearing in *DeLano* was for the schemers an organizational affair where they had to protect one of their own from an ‘out-of-town citizen’ whose inquiries in defense of his claim threatened to expose their participation in the scheme. (Add:603¶¶32-33) Defensively, they predetermined that the hearing would end with the disallowance of his claim. This explains why

they did not bring either a copy of the motion to disallow that Att. Werner himself had raised or of Dr. Cordero's claim that they were challenging. (Pst:1288§e) They only needed to rely on their coordination, which included Attorneys Beyma and Werner signaling answers on three occasions to Mr. DeLano as he was on the stand under examination by Dr. Cordero, and Judge Ninfo preposterously pretending that he had not seen them do so in front of his eyes in the courtroom. (Pst:1289§f) Would those attorneys have ever dare so to attempt to suborn perjury had they been before a judge they knew not to be a participant of the scheme after the case had been transferred to a U.S. court in Albany, NY? Of course not!

32. At the evidentiary hearing, Mr. DeLano was the only witness examined and Dr. Cordero the only one to introduce evidence. Mr. DeLano made consistent admissions against self-interest to the effect that as the M&T Bank bankruptcy officer in charge of liquidating the assets of a bankrupt client in the business of storing third parties' property, including Dr. Cordero's, he had injured Dr. Cordero. (Pst:1281§d) Thereby Mr. DeLano established Dr. Cordero's claim against him. So clear and understandable was his testimony that Att. Werner, with 28 years' experience, felt no need to rehabilitate him or correct it, but on the contrary, validated his testimony at the end of the hearing thus:

> I believe Mr. DeLano has given a fair statement of his position and facts, your Honor. I have no questions. (Tr:187/23-25)

33. Nevertheless, Judge Ninfo arbitrarily disregarded Mr. DeLano's testimony as

"confused" in order to reach at the evidentiary hearing the predetermined decision of disallowance. (Tr:182/14-183/18; Pst:1281§§c-d) He confirmed it in his written decision, where he repeated that Dr. Cordero had not proved his claim in *Pfuntner* against Mr. DeLano and had no standing to further participate in *DeLano*; and restated his denial to stay his decision (D:20). Dr. Cordero challenged that decision, dated April 4, 2005, on appeal to the District Court, WDNY, on April 11, 2005 (D:1).

B. In District Court, Judge Larimer made repeated attempts to deprive Dr. Cordero of the incriminating transcript of the evidentiary hearing before Judge Ninfo, denied him *every single document* that he requested, and avoided even mentioning the evidence of the Debtors' concealment of at least $673,657 and its enabling bankruptcy fraud scheme

1. To prevent the incriminating transcript of the evidentiary hearing from becoming part of the record, Judge Larimer repeatedly scheduled the brief of Dr. Cordero before he and the Reporter had even made arrangements for its preparation

34. The Bankruptcy Court filed Appellant Dr. Cordero's Designation of Items in the Record and Statement of Issues on Appeal (Add:690) on April 22, 2005, and on that very same day the Court sent it upstairs to District Judge David G. Larimer, who on that very same day dropped everything else he was doing and rushed to schedule Dr. Cordero's appellate brief for filing within 20 days (Add:692). The Judge knew that the record should not have been transmitted to him because it

was incomplete and, thus, not in compliance with FRBkrP 8007: There had not been time under FRBkrP 8006 for the Appellees to have their 10 days to file their additional issues and items, which they filed only on May 2, 2005. (Add:711)

35. Nor had there been time for Court Reporter Mary Dianetti even to respond to Dr. Cordero's transcript request made in his letter to her of April 18 (Add:681), as provided for under FRBkrP 8006. Also pursuant to it, he sent a copy of that letter to the Bankruptcy Court together with his Designation and Statement, which bore the same date of April 18, 2005. The Bankruptcy Court selectively docketed the latter, but failed to docket the transcript-requesting letter to Reporter Dianetti…just as Judge Larimer failed to wait until the transcript had been filed, thus making the record complete, before scheduling Dr. Cordero's brief. It was pitcher-catcher coordination to deprive an appellant of an incriminating transcript!, which showed his Downstairs Peer, Bankruptcy Judge Ninfo, engaging in bias, arbitrariness, and denial of due process, and Mr. DeLano establishing the claim by admitting that his handling of Dr. Cordero's property could have injured Dr. Cordero. (Pst:1281§d)

36. Such non-docketing once more of incriminating documents (D:231, 234¶¶14-17; 106, 108, 217; Add:1081) is evidence itself of an unlawful practice by courts that have no respect for the rules, such as FRBkrP 5003, 5005(a)(1), and FRCivP 79, or for the purpose of the docket, that is, to give public notice of every event in a

case and thereby contribute to the administration of justice in public. (cf. FRBkrP 5001(b); FRCivP 77(b))

37. Dr. Cordero filed an objection and requested that the brief be scheduled for filing only after the transcript had been filed (Add:695). Judge Larimer, pretending that Dr. Cordero had requested a time extension, rescheduled the brief for filing by June 13. (Add:831) Dr. Cordero had to write a motion to request the Judge to comply with the law. (Add:836) Only then did Judge Larimer order that "Appellant shall file and serve his brief within twenty days of the date that the transcript of the bankruptcy court proceedings is filed with the Clerk of the Bankruptcy Court". (Add:839) It took 10 letters to and from Court Reporter Mary Dianetti (Add:912) and several motions to Judge Larimer (Add:911, 951, 993, 1031) for the transcript to be filed seven months later! (Add:1071)

38. What trust can you have that a judge is going to decide a case according to law, let alone impartially, when from the outset he disregards it so blatantly?…and for the second time! Indeed, in January 2003, Judge Larimer, acting likewise in coordination with the Bankruptcy Court, disregarded the rules to schedule Dr. Cordero's brief despite the incompleteness of the record and before even an arrangement with Reporter Dianetti had been reached, and months before the transcript was finally filed. (Add:1086¶16) This occurred precisely in the case underlying the instant one, namely, *Pfuntner v Trustee Gordon et al*, 02-2230 in

Bankruptcy Court, from where it was appealed, sub nom. *Dr. Cordero v. Trustee Gordon*, 03cv6021L, WDNY. (Add:1011§A)

2. Parties who need not bother to oppose motions that can spell the end of their careers or incriminate them in a bankruptcy fraud scheme reveal a pattern of conduct born of coordination with judges they know have as much to lose if they granted them

a) Judges Larimer and Ninfo accepted work of dismal quality but in furtherance of the bankruptcy fraud scheme by Reporter Dianetti and Trustee Reiber so they denied motions for their removal

39. While making arrangements for the transcript, Reporter Dianetti refused to certify that the transcript of the evidentiary hearing would be complete, accurate, and free from tampering influence. (Add:867, 869) Dr. Cordero moved before Judge Larimer for her to be referred to the supervising authority of reporters under 28 U.S.C. §753, to wit, the Judicial Conference of the United States (Add:911), for it to investigate her refusal to certify the transcript's reliability. The Judge denied the motion as concerning a "tempest in a teapot" and ordered Dr. Cordero to obtain the transcript from Reporter Dianetti. He also added that "Cordero has no right to "condition" his request in any manner" (Add:991), mindless of the obvious fact that Reporter Dianetti was asking for $650 in advance and that as a matter of basic contract law Dr. Cordero did have the right to "make satisfactory arrangements" (FRBkrP 8006) at arms length for the product that he would receive in exchange.

40. Dr. Cordero moved for reconsideration (Add:993), but Judge Larimer denied the

motion, likewise without discussing a single one of Dr. Cordero's factual and legal arguments. Instead, the Judge warned him that if he did not request the transcript within 14 days, his case could be dismissed (Add:1019). Thereby he revealed that it did not matter to him whether he or Dr. Cordero received a transcript that was inaccurate, incomplete, or tampered-with, for he did not need to rely on it to know how he would decide the appeal from Peer Ninfo's decision.

41. The transcript that Reporter Dianetti filed was of shockingly substandard quality. In it everybody appears speaking Pidgin English, babbling in broken sentences, uttering barbarisms, and sputtering so much solecistic fragments in each line that to recompose them into the whole of a meaningful statement is toil. As a result, the participants at the hearing, though professionals, come across in the transcript as a bunch of speech impaired illiterates. Why would Judge Larimer keep such Reporter on her job? Consider this.

42. Reporter Dianetti received Dr. Cordero's payment on November 2 and already on November 4, 2005, she filed it and sent a copy to him. She neither could have transcribed 192 pages in little over a day nor would have transcribed them while still making payment arrangements with Dr. Cordero on the off chance that he would pay for the transcript despite her refusal to agree that she would certify its accuracy, completeness, and tamper-free condition. This means that she had already transcribed it on somebody else's instructions, somebody who wanted to

know what had happened at the evidentiary hearing before Judge Ninfo on March 1, 2005, in order to decide how to handle it, and who upon learning about its incriminating contents tried to keep it from the record, even by violating the rules and Dr. Cordero's right to it.

43. Hence, Judge Larimer must have known that Reporter Dianetti's transcript was of substandard quality, just as he knew her transcript was that she certified as of March 12, but mailed to Dr. Cordero only on March 26, 2003, in the appeal to his Court from Judge Ninfo's decision in *Pfuntner*. (¶38 above; D:234¶14.b; Add:559¶4, 920¶26)

44. Likewise, Judge Larimer was informed (Add:953§I) of the shockingly unprofessional Findings Report that Trustee Reiber (Add:937-939) submitted to Judge Ninfo (Add:1041§I) to recommend the approval of the DeLanos' debt repayment plan (D:59).

45. Nevertheless, he refused to take any corrective action against either of them (Add:991, 1019, 1021, 1155), just as Judge Ninfo did (Add:1094). This shows that what matters to them is not the quality of their work, but rather their willingness to follow instructions as participants in, or to work in line with, the bankruptcy fraud scheme. In exchange, they could count on the Judges' protective bias toward them. This explains why none of Dr. Cordero's motions requesting the replacement and investigation of Reporter Dianetti (Add:911, 973¶¶60.1.c, 3;

993) and Trustee Reiber (D:243¶34.d; Add:882§II, 973¶¶60.1.d-e, 4; 1121¶61.e, 1062¶66.b) caused them to bother to file even a Stick-it note of objection. Yet, each of those motions put their careers at risk. But they knew why the motions would not be granted.

b) Neither Trustee Schmitt nor the DeLanos need oppose motions that, if raised before an impartial judge, could have been granted if only because of their being unopposed, but that they knew the judges here would deny as they did *every single document* that Dr. Cordero requested

46. Similarly, there was no opposition to Dr. Cordero's motions requesting either production of documents by Assistant U.S. Trustee Schmitt (D:244¶e; Add:973¶60.1.a-b) and the DeLanos (SApp:1606, 1637), or nullification of the confirmation of the DeLanos' plan (Add:1121¶61.a-c). Yet, if any of those motions had been granted by default, these non-movants would have risked the penalties of bankruptcy fraud: up to 20 years' imprisonment and devastating fines of up to $250,000 (18 U.S.C. §§152-157, 1519,and 3571)…but they *are* schemers! They too did not have to bother to respond, for they knew that if ever Judges Larimer or Ninfo had granted any of those motions, they would have incriminated themselves in the bankruptcy fraud scheme.

47. Consequently, Judges Larimer and Ninfo denied Dr. Cordero *every single document* that he requested. (Add:951, 1022; Table on Pst:1261) Neither was interested in obtaining those documents in order to render decisions based on

facts, for both already knew that the DeLanos had committed bankruptcy fraud. Their interest was in preventing Dr. Cordero from obtaining the documentary evidence that would expose such fraud. To secure their interest, they had no qualms about disregarding FRBkrP 7026 et seq. and FRCivP 26 et seq. (D:278§2) so that Dr. Cordero could not discover the whereabouts of the Debtors' known concealed assets worth at least $673,657 (SApp:1608) and end up incriminating all of them in the scheme. Therefore, they engaged in a cover up.

48. In the same vein, this Court refused twice and with no comments (SApp:1623, 1678) to order any of these parties to produce any of the documents requested by Dr. Cordero (SApp:1606, 1637). If this Court ordered those documents produced, they would lead to the DeLanos' known concealed assets and the DeLanos would be but the first dominoes to fall.

49. Hence, pattern evidence shows that Judge Larimer, Judge Ninfo, other court officers, the trustees, the Court Reporter, and the Debtors coordinated their conduct to deprive Dr. Cordero of the transcript and discoverable incriminating documents. In so doing, the judges denied Dr. Cordero due process of law.

50. Interestingly enough, under RICO, 18 U.S.C. §1961(5), two acts of racketeering activity within ten years form a pattern. Not coincidentally, the District Court has resorted to the subterfuge of WDNY Local Rule 5.1(h) (Add:633) to make filing a RICO claim all but impossible by demanding exceedingly numerous and

detailed pre-discovery factual assertions. (§IX.C below) Judge Larimer did not even mention that issue presented by Appellant Dr. Cordero. Nor did he show awareness of Appellant's three other issues, including how the elimination by the judges of three-judge bankruptcy appellate panels in the Second Circuit facilitates the running of a bankruptcy fraud scheme. (§IX.D below) As a result, Judge Larimer left the appeal undecided.

VIII. SUMMARY OF THE ARGUMENT

51. Judges and trustees are expected to suspect the good faith of bankruptcy petition, and consequently to examine them critically, for they are presumed to know about rampant fraud in bankruptcy It forced Congress to adopt the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, 119 Stat. 23, due "to the absence of effective oversight". (Pst:1395) To provide such oversight is their duty, which they must discharge by examining bankruptcy petitions for the consistency and plausibility of their financial affairs declarations and by requiring that such declarations be supported with documentary and testimonial evidence and through physical inspections of assets and locations.

52. Far from it, Judge Larimer repeatedly tried from the inception of this appeal to prevent the incriminating transcript of the evidentiary hearing before his Peer, Bankruptcy Judge Ninfo, from becoming part of the record. Just as the Debtors and Judge Ninfo had done, he too denied *every single document* that Appellant

Dr. Cordero, to ensure meaningful appellate review on the basis of facts, had requested. (Add:951) He disregarded the four issues presented by Dr. Cordero (Pst:1257¶2a-d), the one who took the appeal. Instead, in his decision (SApp:1501) the Judge discussed the "issues preserved" for the first time in their response brief by the Appellee Debtors, the ones who did not want the appeal, did not file a cross-appeal, and thus could not have "preserved" any issue. While he discussed their untimely issues, he did not even mention the issue that ran through Appellant's four issues, namely, the Debtors' bankruptcy fraud made possible by a bankruptcy fraud scheme. Thereby he showed gross partiality toward the Debtors and against Dr. Cordero and committed dereliction of duty by failing to do precisely what he was supposed to do, to wit, to give a fair hearing to both in order to weigh their competing contentions against the facts in evidence on the scale of the applicable law.

53. Because of such bias Judge Larimer denied Dr. Cordero due process of law, which he only compounded through his prejudice. Revealing his attitude, he started off with his outcome to "affirm that decision [of Peer Ninfo] in all respects" (SApp:1502), spared his Peer's assertions any critical analysis in light of the Appellant's contentions of fact and discussion of applicable law, moved on to a slavish recapitulation of those assertions (SApp:1503,), and ended up with the predetermined conclusion that his Peer's decision "is in all respects affirmed"

(SApp:1504) Instead of testing whether Peer Ninfo could have erred, Judge Larimer prejudged the validity of his assertions, thus defeating the very purpose of the appeal.

54. By so proceeding, Judge Larimer managed to accomplish the only objective that he pursued during the appeal: to protect himself, Judge Ninfo, the trustees, and others from being exposed as participants in a bankruptcy fraud scheme. Consequently, he issued a decision conceived in self-interest rather than in the interest of justice and born of unlawful coordination between schemers rather than the application of law to the facts in evidence. His decision materializes the abusive exercise of judicial power that denied Dr. Cordero due process of law.

55. That bankruptcy fraud scheme is a corrupt enterprise. To protect it, the District Court abused its judicial power to issue Local Rule 5.1.(h), which requires so many and detailed factual allegations just to file a RICO claim and before discovery has even started as to make its filing impossible. Hence it disregards the notice pleading provisions of the FRCivP as well as its rulemaking enabling provision. Moreover, it obstructs the exercise by any person of a right of action conferred upon the people by an act of Congress.

56. For its part, the BAP provisions of 28 U.S.C. §158(b) are unconstitutional because they provide for unequal judicial process under law at the discretion of the several circuits and their districts. However, a three-judge bankruptcy

appellate panel from a district different from that of the bankruptcy judge appealed from offers a higher degree of impartiality, objectivity, and integrity than a single district judge to whom a decision must be appealed from his colleague bankruptcy judge in the same district. In the latter instance, the bankruptcy and the district judge may even have their chambers in the same small federal building, so propitious for them to meet daily, become buddies, and develop more deference for their friendship and its terms of coordination than for any abstract rights of unknown, one-time, far away appellants. Such in-house review engenders the same danger of bias and collusion that warranted diversity of citizenship jurisdiction. Unlike in the latter matter, in that of bankruptcy appellate review Congress provided for the home team advantage at the expense of equal protection.

57. This Court's application of §158(b) ensures such inequality, first by eliminating the BAP in the Second Circuit and then allowing bankruptcy-district judicial buddies to manipulate appeals in pursuit of a bankruptcy fraud scheme.

IX. THE ARGUMENT

A. Judge Larimer so disregarded the law, the rules, and the facts in the proceedings leading up to and in his interlocutory and final decisions and showed such bias as to deny Appellant due process of law and render his decisions unlawful and a nullity

1. Judge Larimer based his decision on the **"preserved, appellate issues"** of

the Appellees, who never filed a cross appeal and thereby could not present any issues on appeal

58. Judge Larimer stated the issues that he set out to decide thus:

> The preserved, appellate issues, are rather straightforward, although Cordero has expended considerable energy to make it otherwise. The DeLanos, appellees here and debtors in bankruptcy, by their attorneys, set forth whether Chief Judge Ninfo should have recused himself and whether Cordero had a valid claim. (SApp:1502 2nd para.)

59. One need not be a lawyer to realize how counterintuitive it is for a judge to say that the issues on appeal, which is filed by the appellant, the one who lost in the court below, are "preserved" by the appellee, the one who won and who obviously has no interest in disturbing the decision below, which was favorable to him. So in Judge Larimer's mind the winning party below is the one that determines what issues the losing party considers so wrongly decided below as to bring them up on appeal. This is nonsense!

60. And very revealing too, for it betrays Judge Larimer's ignorance of the FRBkrP and the record in the instant case…as well as the appalling sloppiness with which the Judge cobbled together his decision. To begin with, he must be deemed to know the proper terminology, to wit, what is "preserved" is objections at trial, whereas issues are presented on appeal. Then he should have read the applicable rules, which in pertinent part provide thus:

> **FRBkrP 8002. Time for Filing Notice of Appeal**
>
> **(a) Ten-day period**
>
> …The notice of appeal shall be filed with the clerk within 10

> days of the date of the entry of the judgment, order, or decree appealed from. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 10 days of the date on which the first notice of appeal was filed…

61. Dr. Cordero's notice of appeal to the District Court was filed in the Bankruptcy Court on April 11, 2005. (D:1; Add:679) Within the next 10 days the Appellees filed no notice of appeal, which would have constituted a cross appeal, and thus "preserved" no issue on appeal.

> **FRBkrP 8006. Record and Issues on Appeal**
>
> …Within 10 days after the service of the appellant's statement the appellee may file and serve on the appellant a designation of additional items to be included in the record on appeal and, ***if the appellee has filed a cross appeal*****,** the appellee as cross appellant shall file and serve a statement of the issues to be presented on the cross appeal and a designation of additional items to be included in the record. (emphasis added)

62. Likewise, as a matter of law, their failure to file a cross appeal barred them from raising any untimely issue of their own when filing even a timely response brief, which they did on January 20, 2006 (Pst:1361), nine months after the appeal was filed by Dr. Cordero on April 11, 2005 (D:1)

> **Rule 8009. Briefs and Appendix; Filing and Service**
>
> **(a) Briefs**
>
> …
>
> (1) The appellant shall serve and file a brief within 15 days after entry of the appeal on the docket pursuant to Rule 8007.
>
> (2) The appellee shall serve and file a brief within 15 days after service of the brief of appellant. ***If the appellee has filed a cross appeal, the brief*** of the appellee shall ***contain the issues*** and argument ***pertinent to the cross appeal***, denominated as such, and the response to the brief of the appellant. (emphasis added)

63. Thus, the only issues on appeal were those that Dr. Cordero presented (§V above) since he was the only one who filed an appeal. However, none of the four issues that he presented were even acknowledged, let alone discussed and much less decided, by Judge Larimer. Thereby he avoided even mentioning the subject matter unifying them, that is, the DeLanos' bankruptcy fraud made possible by a bankruptcy fraud scheme tolerated or supported by judges that denied Appellant due process of law. Since he left the issues presented on appeal undecided, this Court owes no deference to his decision. It can decide them not just de novo, that is, anew, but rather for the first time.

2. Judge Larimer failed to read the issues presented by Appellant and wrote his decision on those **"preserved"** in Appellees' response without noticing the objection thereto in Appellant's reply that they had filed no cross appeal and could not untimely raise issues nine months after the appeal's filing

64. The four issues presented by Appellant (Add:690) were in brief whether:

a) Judge Ninfo denied Dr. Cordero due process of law;

b) the motion to disallow was an artifice to protect the bankruptcy fraud scheme;

c) WDNY Local Rule 5.1(h) unlawfully prevents the filing of RICO claims;

d) 28 U.S.C. §158(b) is unconstitutional and its bankruptcy appellate panel provisions have been applied to allow the operation of the scheme.

65. The Appellees and Judge Larimer were intent on not drawing attention to these embarrassing issues and their incriminating evidence. Thus, when it was their

turn, they discussed something else. That is how the Appellees, in their response to Appellant Dr. Cordero's principal brief, replaced (Pst:1398§II) the issues presented there (Pst:1257¶2a-d) with their own, namely, whether Judge Ninfo's should have recused himself and whether Appellant Dr. Cordero had a valid claim (Pst:1365; §IX.B.1, below) That was exactly what Judge Ninfo had done in his decision (D:3), where he did not once mention the unifying outcome-determining issue of bankruptcy fraud, which had been repeatedly brought to his attention by Dr. Cordero through the course of the proceedings. (D:65§III, 75¶¶4-7, 132¶6, 196§IV, 207, 217, 240§IV, 253§V, 320¶13, 370§C; cf. Pst:1402§III)

66. Judge Larimer did likewise, writing his decision on the basis of what he referred to as the Appellees' "preserved, appellate issues". (¶58 above; SApp:1502) He did not even notice the objection in Dr. Cordero's reply (Pst:1398§II) that as a matter of fact, the Appellee Debtors had brought up the recusal and claim validity issues, not as a cross appeal within 10 days of Appellant Dr. Cordero's notice of appeal (D:1), but rather nine months later in their response (Pst:1369§A) to his principal brief (Pst:1231).

67. Therefore, Judge Larimer would have this Court believe that the issues on appeal and on which he had to render a decision were those that the Appellees had "preserved". But did you see among the issues actually presented by Appellant anything about Judge Ninfo's recusal or the validity of Dr. Cordero's claim?

Neither could Judge Larimer have seen them, had he read section "C. Issues Presented" in Appellant's brief. (Pst:1257¶2.a-d) Hence, he read about those two issues in the response of the Debtors, who in turn had picked them up from Judge Ninfo's decision! (D:7§I, 10§II) Never mind how counterintuitive or contrary to basic knowledge of the law it is to write a response or an appellate decision in terms of the issues chosen by the appealed-from judge rather than the appellant. The Appellees and Judge Larimer's conduct show that they wrote their respective pieces pro forma and without intending to meet any generally accepted standard of common sense or legal sufficiency.

68. Since it was in their interest to avoid discussing the incriminating issues and evidence in Appellant's briefs, why would the Appellees (Pst:1409§V; cf. D:130¶3) and Judge Larimer waste time reading them? When by means of coordination debtors, judges, and trustees have at their disposal the power to disregard the law, the rules, and the facts in support of a bankruptcy fraud scheme, why would they waste time with what the opposing party has: mere written words?

69. All of Judge Larimer's mistaken assertions show that they are consistently, and thus non-coincidentally, in line with Judge Ninfo and the Appellees' position:

    a) "Cordero had filed a claim in the Chapter 13 Bankruptcy case relating to David and Mary Ann DeLano", (SApp:1501).

It was the DeLanos who in Schedule F named Dr. Cordero among their creditors. (D:40; 250§I, 371¶a); Tr:80/9-10; Add:600¶24, 853¶1, 884¶10, 1118§IV, 1148§IV; Pst:1407¶29, 1409¶34)

b) "Chief Judge Ninfo determined, after trial and other proceedings, that Cordero had no valid claim…", (SApp:1501)

There was never a trial because what Judge Ninfo himself ordered and held was an evidentiary hearing. (D:279, 332; Pst:1290§g)

c) "That decision and the attachments to it, and the rest of the file, indicate clearly that Cordero was given every opportunity to conduct discovery", (SApp:1503)

The DeLanos (D:313-315, 325) and Judge Ninfo (D:278¶1, 327) denied Dr. Cordero *every single document* that he requested (D:287, 317; Tr:188/2-189/18) in preparation for the evidentiary hearing, as subsequently did Judge Larimer himself (Add:1022; SApp:1504), and even this Court (SApp:1623, 1678); as for the trustees, see Table on Pst:1261.

3. Judge Larimer showed gross partiality and irresponsibility by uncritically accepting the validity of Peer Ninfo's decision and deciding an appeal without knowing the issues presented by Appellant, whom he thus denied a fair hearing and due process of law and whose appeal he left undecided for this Court to decide

70. Judge Larimer dismissed Appellant's brief in bulk with the conclusory statement that "Cordero has done virtually nothing to point out in what manner Chief Judge Ninfo

erred finding no valid claim" (SApp:1503). However, he had constructive knowledge, since he was supposed to read that brief, and would have had actual knowledge, had he read it, that his statement was false and misleading given that the brief contains 15 summarizing headings (Pst:1254§D.4-E) under each of which Appellant Dr. Cordero analyzed a factual or legal point in support of the four issues that he had presented on his appeal. Had Judge Larimer read the four issues even he would have realized that the validity of Appellant's claim was not an issue before him. Nonetheless, Dr. Cordero did address it squarely at Pst:1281§d and in the references contained therein.

71. To no avail, for Judge Larimer made the damning admission followed by a pretended claim that "although it was difficult to determine the precise nature of the arguments advanced, I have considered them all and find that none warrant relief". (SApp:1504) Talk is cheap, particularly when it is done in the very last sentence of his decision as an afterthought. Indeed, to "consider them all" without discussing any of them, Judge Larimer need not have bothered to read anything…and he did not, unless he affirms the opposite and thereby indicts his capacity to understand the simple issue that runs through and unifies the four "Issues Presented" in Appellant's brief (¶64 above; Pst:1257¶2a-d): Whether bankruptcy fraud enabled by a bankruptcy fraud scheme so corrupted the proceedings as to deny Appellant due process of law.

72. Similarly, even Judge Larimer should have been able to understand the coherent argument threaded through the 15 headings of Appellant's brief if he had only read them:

    a) The DeLanos filed a bankruptcy petition, but unable to bear their burden to prove its good faith, coordinated with the trustees and the judges to use the artifice of a motion to disallow to shift the burden onto Creditor Dr. Cordero to require that he prove his claim, only to deny him *every single document* that he requested to do so, as did Judge Ninfo, who then at a sham evidentiary hearing deprived him also of the testimony of Mr. DeLano, who admitted Dr. Cordero's claim against him, in order to disallow his claim and eliminate him from the case before he could expose their involvement in a bankruptcy fraud scheme, which is also protected by 28 U.S.C. §158 as applied and Local Rule 5.1.(h) preventing the filing of RICO claims.

73. By his own damning admission, Judge Larimer found this argument too difficult to understand. So much so that he further admitted that "I can add nothing to what Chief Judge Ninfo has set forth in his detailed decision and order". (SApp:1503) So he took the easy way out of having to engage in his own critical analysis of a decision before him for his appellate review and simply stated that "for the reasons stated in Chief Judge Ninfo's Decision and Order, which I adopt, there is no basis whatsoever to overturn Chief Judge Ninfo's decision". In that sentence, Judge

Larimer glaringly demonstrated his incapacity to engage in critical analysis of even his own statements, let alone someone else's: Judge Larimer was expecting to find among the reasons stated by Judge Ninfo to support his own decision the reasons to overturn Judge Ninfo's own decision!

74. A legally trained person would have had the conditioned reflex to examine the brief of the appellant, who challenged the appealed-from decision, for the reasons to overturn the decision. Not so Judge Larimer, who in addition once again betrayed his failure to read Appellant's brief. (¶69 above) By contrast, an attentive analysis of his decision reveals that it is not only another perfunctory and lazy one in line with the pattern of his previous scribbles (Add:991, 1019, 1021, 1092, 1155, 1214). This one begins with the non-sense that the appeal was framed by the Appellees' "preserved" issues and ends with a statement that is outright dumb!

75. One can only be outraged that one's legal rights were disposed of by a judge who showed so little care with his own work and the image that it would cast of him as a person, let alone a professional. Worse still, his decision shows that Judge Larimer:

    a) started off with the prejudgment that his Peer Judge Ninfo's decision was correct "in all respects" (SApp:1502);

    b) was put off by the fact that Appellant's file was too "substantial" "prolix" (id.)

"voluminous" and "lengthy" (SApp:1503) to read as well as too difficult to understand, so he

c) skipped over it to Appellees' "preserved, appellate issues, [that] are rather straightforward" (SApp:1502), thanks to which he

d) avoided even mentioning Appellant's embarrassing issues and incriminating evidence of the involvement of himself, his Peer Ninfo, the Debtors, the trustees, and others in a bankruptcy fraud scheme, and made it easy for him to

e) cut to the foregone conclusion that Judge Ninfo's decision was valid because Judge Ninfo said so, thus sparing his Peer's decision the independent critical analysis that he was supposed to perform on it, whereby he

f) turned the appellate review into a rubberstamping mockery of justice.

4. Judge Larimer failed to engage in any legal analysis and reached no conclusions of law, thereby providing no valid basis on which a court of appeals can review his decision

76. Our system of law, and certainly the federal judiciary, operates under the fundamental principle of "Equal Justice Under Law". Decisions must be taken by application of the rule of law to the facts of the case. This requires that a law or a legal principle be stated as the standard for deciding the legal issues in their factual context presented to a court for it to determine the relative rights and duties of the parties to the controversy submitted for resolution through judicial process. For that process to be in keeping with our Constitution, it must conform

to the substantive and procedural requirements of the law, which must be applied after giving the parties a fair hearing. Only thus is it due process of law. The objective of that process is a concrete, practical one, namely, to ensure that in settling the controversy between the parties that resorted to, or were brought within, the court's jurisdiction justice is done and is seen to be done. *Ex parte McCarthy*, [1924] 1 K. B. 256, 259 (1923), "Justice should not only be done, but should manifestly and undoubtedly be seen to be done".

77. Judge Larimer set forth no legal principles for evaluating the competing contentions of the parties, described no operative facts in evidence on which he based his decision, and provided no legal discussion leading to any conclusions of law. (SApp:1501). His decision did not even decide Appellant's issues actually presented on appeal, of which he did not take cognizance (¶64 et seq. above). Rather, it was a raw exercise of judicial power to impose a prejudgment or a factually and legally unconstrained, personal, and thus arbitrary view of the case: It was an unlawful fiat.

78. Judge Larimer issued his fiat in self- and the other schemers' interest in preventing the exposure of their involvement in the Appellees' bankruptcy fraud and in its enabling mechanism, that is, the bankruptcy fraud scheme. As an act of abuse of power not in conformity with procedural requirements and intended to deprive Appellant of substantive rights, including to his claim as a creditor, to discovery of evidence, to protection from bankruptcy fraud, to a fair hearing

before an impartial judge applying the rule of law, Judge Larimer's fiat constituted an unconstitutional denial to Appellant of due process of law.

B. The Debtors' artifice of the motion to disallow the claim of Dr. Cordero and the sham evidentiary hearing were coordinated process-abusive means to eliminate him from their case before he could obtain documents incriminating them and others in a bankruptcy fraud scheme

1. The claim that the DeLanos included in their petition as held by Dr. Cordero became entitled to the presumption of validity that FRBkrP 3001(f) attaches to a creditor's proof of claim upon its filing

79. For well over a year before filing their petition on January 27, 2004, the DeLanos knew the exact nature of Dr. Cordero's claim against Mr. DeLano, contained in his complaint of November 21, 2002, in *Pfuntner*. (Add:785) So much so that it was they who included Dr. Cordero among their creditors. (D:40) They even marked it as unliquidated and disputed. From that moment on they could have filed an objection to that claim because they already knew all the factual and legal elements supporting their dispute. Instead, for the following six months they treated Dr. Cordero as a creditor. (D:151, 73, 74, 103, 111, 116, 117, 120, 122, 123, 128, 138, 149, 153, 159, 160, 162, 165, 189, 203)

80. Only after Dr. Cordero showed that they had concealed assets, thus committing bankruptcy fraud, (D:193) did they move to disallow his claim (D:218) By then it was too late, for they were barred by laches. They had an obligation on grounds of judicial economy and fairness to raise their objection in a timely fashion.

(D:448¶20) By their failure so to raise it, they created for Dr. Cordero a reliance interest in the reasonable assumption that they had given up any such objection and had accepted the legal validity of his claim. In reliance thereon, Dr. Cordero invested his time, effort, and money pursuing his claim.

81. What is more, by the time they moved to disallow Dr. Cordero's claim, the DeLanos had allowed it to become protected by the presumption of validity. Indeed, their official notice of the meeting of creditors that was sent to Dr. Cordero (D:23) was accompanied by the Proof of Claim form.

> **FRBkrP 3001(a) Proof of Claim**
>
> A proof of claim is a written statement setting forth a creditor's claim. A proof of claim shall conform substantially to the appropriate Official Form.

82. Dr. Cordero filled it out and sent it back to the Bankruptcy Court, WBNY, on May 15, 2004. (D:142-146) It was so formally correct that it was filed by the clerk of court and entered in the register of claims. Thereafter, his claim was legally entitled to the presumption of validity.

> **FRBkrP 3001 (f) Evidentiary effect**
>
> A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.

83. Dr. Cordero's claim thus became legally stronger than when the DeLanos and Att. Werner took the initiative to include it in their petition. If at that point they wanted to object to it in order to disallow it, they not only had to proceed in a timely fashion, but also had to overcome the additional hurdle of its presumptive

validity. On the contrary, they just went on treating Dr. Cordero as their creditor. This was the third time they did so.

84. Indeed, at the meeting of creditors on March 8, 2004, Dr. Cordero was the sole creditor in attendance. Att. Werner contested that Dr. Cordero had a claim against the DeLanos and thus, his status as creditor. Dr. Cordero stated grounds supporting such status. Att. Werner relented. Dr. Cordero went ahead to ask two questions of the DeLanos before Trustee Reiber's attorney, James Weidman, Esq., came to the rescue and unlawfully put an end to the meeting. (D:253§V) However, the DeLanos went on treating Dr. Cordero as their creditor.

85. Then on April 16, 2004, in response to Dr. Cordero's objection (D:75) to their claim of exemptions (D:35), the DeLanos mentioned in passing his creditor status when stating that "Debtors oppose any objection by Cordero, to the extent that he is not a proper creditor in this matter" (D:118). To this Dr. Cordero timely replied less than 10 days later (D:128) to argue that within the definitional scope of "claim" and "creditor" of 11 U.S.C. §101(5) and (10), respectively, he held a claim as a creditor. The DeLanos dropped their objection and went on treating Dr. Cordero as their creditor for months.

86. Consequently, by July 22, 2004, when the DeLanos filed to disallow the claim of Dr. Cordero, their motion (D:218) was untimely, barred by laches, and raised in bad faith as an artifice coordinated with the other schemers to eliminate him

before he could prove their bankruptcy fraud in the context of a bankruptcy fraud scheme. In addition, it was legally deficient, for they did not even try, whether on that motion or afterwards, to overcome the presumption of validity that by then already protected his claim. (D:370§C)

2. Unable to bear the burden of proving their petition's good faith, the DeLanos coordinated with other schemers to use the artifice of a motion to disallow and a sham evidentiary hearing to switch it onto Dr. Cordero for him to prove his claim and then deprived him of the available evidence to do so

87. The Debtors had no right to object to any claim until they had first borne their burden to prove that their bankruptcy petition was "in good faith and not by any means forbidden by law". (11 U.S.C. §1325(a)(3)) This follows necessarily from the legal principles that a conditional right does not vest until satisfaction of the condition and that a criminal is not allowed to benefit from his crime. Since the DeLanos could not prove the good faith of their petition because they did not meet the requirements under 11 U.S.C. for obtaining bankruptcy relief from their debts since they had concealed assets, they could not use their petition either as a shield to protect themselves from their creditors or as a sword to kill the validity of their claims through a motion to disallow. Only after they had borne their burden of proof that they were entitled to be considered for bankruptcy relief could they have used a motion to disallow to determine the extent of such relief.

88. This means that as for their burden of proof, they were spared having to bear it by

judges and trustees who refused to require them to produce financial documents in support of their petition. Thereby the DeLanos were placed in the undeserved legal position of apparently being entitled to move to disallow Dr. Cordero's claim. Consequently, even now they still have to carry their burden before they can benefit from the disallowance of his claim or, for that matter, of any of their creditors'.

89. As for the burden of proof that the DeLanos offloaded onto Dr. Cordero, their right to do so had not yet vested. Therefore, the disallowance that they obtained by exercising a right that they lacked is invalid because they were not yet in a position to inflict such legal detriment on any of their creditors. Moreover, they obtained such disallowance "not in good faith and by the means forbidden by law" of unlawful coordination with officers who under color of law aided and abetted their fraud, furthered their interests in a bankruptcy fraud scheme, and denied Dr. Cordero due process of law.

C. WDNY Local Rule 5.1(h) requires exceedingly detailed facts to file a RICO claim, thus violating notice pleading under FRCivP, impeding in practice its filing, and protecting bankruptcy fraud schemers, the secrecy of which is protected by Local Rule 83.5 banning cameras and recording devices from the Court and its 'environs'

90. The General Rules of Pleading of FRCivP 8(a)(2) ask only for "a short and plain statement of the claim showing that the pleader is entitled to relief"; and 8(e) adds that

"each averment of a pleading shall be simple, concise, and direct". For its part, FRCivP 83(a)(1) provides that "A local rule shall be consistent with –but not duplicative of- Acts of Congress and rules adopted under 28 U.S.C. §2072 and 28 U.S.C. §2075"". As stated in the Advisory Committee Notes on the 1985 Amendment to Rule 83, local rules shall "not undermine the basic objective of the Federal Rules", which FRCivP 84 sets forth as "the simplicity and brevity of statement which the rules contemplate". Thereby the national Rules aim at preventing that a local rule with "the sheer volume of directives may impose an unreasonable barrier". (Advisory Committee Notes on the 1995 Amendments to Rule 83)In that vein, the court in *Stern v. U.S. District Court for the District of Massachusetts*, 214 F.3d 4 (s 1st Cir. 2000) stated that "Even if a local rule does not contravene the text of a national rule, the former cannot survive if it subverts the latter's purpose".

91. Yet such barrier is precisely what the District Court, WDNY, erects with its Local Rule 5.1(h) (Add:633), which requires a party to provide over 40 discrete pieces of factual information to plead a claim under RICO, 18 U.S.C. §1961. This contravenes the statement of the Supreme Court that to provide notice, a claimant need not set out all of the relevant facts in the complaint (*Atchison, Topeka & Santa Fe Ry. v. Buell*, 480 U.S. 557, 568 n.15, 107 S. Ct. 1410, 94 L. Ed. 2d 563 (1987)). On top of this quantitative barrier a qualitative one is erected because the required information is not only about criminal, but also fraudulent conduct. The

latter, by its very nature, is concealed or disguised, so that it is all the harder to uncover it before even disclosure, not to mention discovery, has started under FRCivP 26-37 and 45.

92. Even the requirement of FRCivP 9(b) that fraud be pled with particularity is "relaxed in situations where requisite factual information is peculiarly within defendant's knowledge or control", *In re Rockefeller Ctr. Props., Inc. Secs. Litig.*, 311 F.3d 198, 216 (3d Cir. 2002). This means that even in fraud cases the purpose of the complaint is to put defendants on notice of the claim, not to allow the court to prevent the filing of the case or enable it to dismiss the claim on the pleadings.

93. Local Rule 5.1(h) refers to FRCivP 11 only to improperly replace its relative and nuanced standard of "to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances", by the absolute and strict standard of "facts [that the party] shall state in detail and with specificity us[ing] the numbers and letters as set forth below in a separate RICO Case Statement filed contemporaneously with those papers first asserting the party's RICO claim". To require "facts…in detail and with specificity" is inconsistent with FRBkrP 9011(b)(3), which allows the pleading of "allegations and other factual contentions…likely to have evidentiary support after a reasonable opportunity for further investigation or discovery". Hence, the Court in *Devaney v. Chester*, 813 F2d 566, 569 (2d Cir. 1987) stated that "We recognize that the degree of particularity should be determined in light of such circumstances as whether the plaintiff has had

an opportunity to take discovery of those who may possess knowledge of the pertinent facts". By contrast, Local Rule 5.1(h) provides no opportunity for discovery, but instead requires such "detail and specificity" in the pleadings as to make it easier to spot any "failure" to comply and "result in dismissal". This is the type of result unacceptable under the 1995 Amendments to FRCivP 83 where "counsel or litigants may be unfairly sanctioned for failing to comply with a directive".

94. It is suspicious that Local Rule 5.1(h) singles out RICO and blatantly hinders the filing, let alone the prosecution, of a claim under it. It is particularly suspicious that it does so by erecting at the outset an evidentiary barrier that so starkly disregards and defeats the Congressional Statement of Findings and Purpose that "organized crime continues to grow because of defects in the evidence-gathering process of the law inhibiting the development of the legally admissible evidence necessary to bring criminal and other sanctions or remedies to bear the unlawful activities of those engaged in organized crime". Hence, Pub.L. 91-451 §904 provided that RICO "shall be liberally construed to effectuate its remedial purpose".

95. Given the bankruptcy fraud scheme supported by people doing business in the same small federal building housing the bankruptcy and district courts and the Offices of the U.S. Trustees, the U.S. Attorneys, and the FBI, why would a Local Rule be adopted that forestalls any RICO claim? It smacks of a pre-emptive strike carried out against any potential RICO claim through the abusive exercise of the local rulemaking power. In so doing, that Rule contravenes its enabling provision

and is void. Moreover, it causes injury in fact to Dr. Cordero inasmuch as it erects an insurmountable barrier at the outset to his bringing a RICO count against the schemers, thus depriving him of the protection and vindication of his rights under that federal law

96. The pre-emptiveness of Local Rule 5.1(h) is strengthened by its companion Rule 83.5 which bans all cameras and recording devices from the court and its "environs". (SApp:1695) This defeats the public policy expressed by the Judicial Conference "to promote public access to information", which provides the rationale for setting up the systems for electronic public access to case information and court records, such as PACER and CM/ECF (28 U.S.C. §1914). Defying logic, such devices may be allowed "for non−judicial hearings or gatherings", that is, for inconsequential activities in terms of the business of the Court as well as for the "informal procedures" of arbitration, where the District Court by Local Rule 16.2(a) and (g)(7) permits "a transcript or recording to be made" as a matter of course. However, a litigant is forbidden to bring a recording device to make a transcript of a 'formal proceeding' where matters that could support a RICO claim would be formally discussed.

97. In the context of the totality of circumstances surrounding the bankruptcy fraud scheme, Local Rule 83.5 reveals its insidious purpose of as a means to ensure secrecy and concealment of evidence of the scheme and the identify the schemers. Indeed, it is tailor-made to prevent the recording of prohibited ex-parte

communications (D:433§D, 434¶¶22-24); conduct, such as lawyers signaling answers to their client on the stand before a complicit judge (Pst:1289§f); and items, such as documents, including the exposure of the inaccuracy, incompleteness, and tampered-with condition of a transcript by comparing it with the recording of an evidentiary hearing (¶¶39-45 above).

D. Section 158 of title 28 U.S.C. provides for bankruptcy appellate review by judges of unequal degree of impartiality in violation of the equal protection requirements of the Due Process Clause of the Fifth Amendment of the Constitution and is unconstitutional

98. Section 158(b) of 28 U.S.C. (Add:630) allows different majorities of judges in individual districts or circuits to decide whether they want to set up or keep a bankruptcy appellate panel (BAP). Likewise, it allows individual litigants to choose whether to let an appeal go to the BAP, if available, or to "elect to have such appeal heard by the district court" rather than the BAP initially chosen by appellant. It also allows judges and some parties to keep the appeal in district court for the time being by refusing to agree to a direct appeal to the court of appeals.

99. Section 158 prohibits any BAP judge to hear any appeal originating in his own district. The degree of independence that this provision is intended to provide is nevertheless defeated by allowing a majority of bankruptcy judges in a district to vote against the creation or retention of a BAP. Thereby they can keep appeals

from their decisions in their own district and choose as their reviewer their friendly district judge, whom they may see and talk with every day. (¶56 above)

100. There is the reasonable presumption that bankruptcy judges will prefer to have one friend decide those appeals rather than three judges from other districts whom they may not even know. Hence, allowing judges to decide whether to set up a BAP goes against the protection from prejudgment and self-interest that 28 U.S.C. §47. "Disqualification of trial judge to hear appeal" intends to afford by providing that "No judge shall hear or determine an appeal from the decision of a case or issue tried by him." The presumption of favoritism by district judges toward the judges in the "adjunct" bankruptcy court to which they refer cases under 28 U.S.C. §157(a) and with whom they may be "so connected" finds support, mutatis mutandis, as follows:

> **Advisory Committee Notes to FRBkrP 5002. Restrictions on Appointments** …The rule prohibits the appointment or employment of a relative of a bankruptcy judge in a case pending before that bankruptcy judge or before other bankruptcy judges sitting within the district.…
>
> **FRBkrP 5004(b) Disqualification of judge from allowing compensation.** A bankruptcy judge shall be disqualified from allowing compensation to **a person** who is a relative of the bankruptcy judge or **with whom the judge is so connected** as to render it improper for the judge to authorize such compensation. (emphasis added) (cf. 5004(a) requiring disqualification as provided under 28 U.S.C. §455 of a bankruptcy judge where a relative is involved)

104. This presumption of favoritism also supports a challenge to the appointment of bankruptcy judges by the court of appeals rather than Congress. Indeed, after the

appeals court for the circuit appoints a bankruptcy judge under 28 U.S.C. §152(a)(1), that judge becomes their appointee. When a decision by that judge comes on appeal to that court of appeals, one, two, or three circuit judges who may have been among the appointing judges must then decide, not only whether the bankruptcy judge's decision was legally correct, but also whether they were right in voting for him. The circuit judges are not so much reviewing a case on appeal as they are examining the work of their appointee under attack. Voting to reverse his decision amounts to voting against the wisdom of their own vote to appoint him. How many circuit judges would willingly admit that they made a mistake in making an appointment to office…or for that matter, any mistake?

105. Likewise, §158 allows local litigants, who may have developed a very friendly relation with the bankruptcy judge, to elect the district judge to hear an appeal as oppose to three judges in the available BAP, on the spurious consideration that "the friend of my friend is my friend". The cases at hand illustrate how likely it is for local litigants to develop a close relationship, even friendship, with the local judges to the detriment of non-local ones: According to PACER, Att. Werner has appeared before Judge Ninfo in over 525 cases; and Trustee Reiber in more than 3,900! Would local attorneys similarly situated ever think of allowing an appeal from their judicial friends to go to an available BAP where their friendship would not play a role and they would have to engage in legal research and writing and

present legal arguments to defend their clients? Hardly.

106. The importance of providing a level field where locals and non-locals argue and decide appeals on legal considerations rather than personal relationships (D:431§C) grows ever more as does "an increasingly national bar". If in recognition of the latter the Judicial Conference provides for uniformity among judicial districts in connection with setting up standards governing the technological aspects of electronic filing, then providing for equal protection under the law when local and non-local counsel clash on appeal should assume even more importance (cf. Advisory Committee Notes on the 1996 Amendments to FRBkrP 5005, Filing and Transmittal of Papers).

107. Hence, §158(b), provides for a two-stages of inequality appellate system: First judges choose to handle among insiders the review of their own judicial process dealing with one of the most insidious corruptors, money!, that to be made by not having to pay it to creditors; and then the parties with the stronger connection with them choose for each appeal how to deal ad hoc with the weaker, 'out-of-the-loop citizen' involved. (Add:603¶¶32-33) That is the antithesis of a uniform nationwide system that provides independent appellate review of bankruptcy decisions on terms settled in advance and apt to ensure equal protection under law.

108. This Court has through the elimination of BAPs in the Circuit facilitated the

operation of a bankruptcy fraud scheme. It even reappointed Judge Ninfo to a second term as bankruptcy judge despite the evidence of his bias and involvement in the scheme (Table after ¶7 above, §V). It denied (SApp:1623, 1678) Dr. Cordero's motions (SApp:1606, 1637) for it to order the Debtors to produce financial documents required in every bankruptcy case, such as bank account statements, and denied by everybody in the instant one. Not coincidentally, they will lead first to the Debtors' known concealed assets worth at least $673,657 and then to the incrimination of Appointee Ninfo and Peer Judge Larimer for covering up the Debtors' fraud.

X. CONCLUSION AND RELIEF SOUGHT

109. The Court is still confronted with a conflict of interests: to protect itself from being found tolerating or supporting the scheme or to uphold Appellant's constitutional right to due process of law based on facts in evidence before judges that give the appearance of honesty above suspicion (cf. *Liteky v. United States*, 510 U.S. 540, 548 (1994)). So far, however, the Court denied the two document production motions. (SApp:1637, 1678) It is justified to wonder for what motive it disregarded J. Brandeis' dictum, "Sunshine is the best disinfectant" and failed to apply the legal principle 'When in doubt, disclose'. Yet, it cannot honestly doubt that something is wrong here when no official with the duty to provide "effective oversight" wants to find out where at least $673,657 of the Debtors' known

concealed assets went and for whose benefit.

110. Therefore, Dr. Cordero respectfully requests that the Court now let the sunshine in by ordering disclosure in the following several ways:

a) All the decisions of:

1) Judge Larimer in

(a) *Cordero v. DeLano*, 05-6190, ,

(b) *Cordero v. Trustee Gordon*, 03cv6021L,

(c) *Cordero v. Palmer*, 03mbk6001L; and

2) Judge Ninfo in

(a) *In re DeLano*, 04-20280, and

(b) *Pfuntner v. Trustee Gordon et al.*, 02-2230, WBNY,,

which have been linked by the Judges and the Appellees themselves (D:3; Add:711; SApp:1503 2nd full para.; cf.Add:853) be declared null and void as tainted by bias and illegality resulting in denial of due process;

b) in the interest of justice those cases not be remanded to WDNY and WBNY, where Dr. Cordero would suffer as much bias and unlawfulness as he has in the past five years and the enormous waste of effort, time, and money and emotional distress already inflicted upon him would only be increased, but rather be transferred to the U.S. District Court in Albany, NY, for trial by jury before a visiting judge from a circuit other than the Second Circuit who

is unfamiliar with all of those cases and unrelated to any of their parties and court officers;

c) Judges Ninfo and Larimer be disqualified from those cases;

d) Dr. Cordero's disallowed claim in *DeLano* be reinstated;

e) The record of those cases and in *In re Premier Van et al.*, 03-5023, CA2, be referred under 18 U.S.C. §3057(a) to the U.S. Attorney General Alberto Gonzales, with the recommendation that to provide for an impartial, zealous, and efficient investigation, these cases be investigated by U.S. attorneys and FBI agents in Washington, D.C. or Chicago who are not and have never been related to their colleagues in the U.S. Attorney's and FBI offices in Rochester or Buffalo or the judges, trustees, and other court officers that may come within the scope of the investigation;

f) Trustee George Reiber be removed from *DeLano* and an independent, competent trustee unrelated to any of the officers and parties in the case be appointed to:

    i) determine the conformity of the DeLanos' petition to the requirements of Titles 11 and 18;

    ii) establish the whereabouts of, and recover, the DeLanos' known concealed assets worth at least $673,657, and all other assets of theirs that, directly or indirectly, are in their, their relatives', or agents'

possession, names, or under their control; and

iii) produce a public report on all the DeLanos' financial affairs, including all of their properties, mortgages, and their proceeds;

g) Court Reporter Dianetti be referred for investigation under 28 U.S.C. §753 to the Judicial Conference as requested in Dr. Cordero's motions of July 18 and September 20, 2005 (Add:911, 993);

h) District Court Local Rules 5.1(h) and 83.5 be stricken down as inconsistent with the FRCivP and federal law;

i) 28 U.S.C. §158(b) be held unconstitutional as denying equal protection and due process of law; otherwise, BAPs be reestablished throughout the Second Circuit;

j) the proposed order accompanying Appellant's brief in District Court, as updated and attached hereto, be issued;

k) Dr. Cordero be granted all other fair and just relief.

XI. CERTIFICATES OF COMPLIANCE

A. Type-volume Limitation

111. This brief complies with the type-volume limitation of FRAP 32(a)(7)(B) because it contains 13,959 words, excluding the parts of the brief exempted by FRAP 32(a)(7)(B)(iii).

B. Typeface and Type Style Requirements

112. This brief complies with the typeface requirements of FRAP 32(a)(5) and the type style requirements of FRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2002 in 14 point normal Times New Roman with quotes in 14 point normal Bookman.

C. Anti-virus Protection

113. The brief in digital, PDF format was scanned for viruses and no virus was detected before it was e-mailed as an attachment to briefs@ca2.uscourts.gov with the subject line "06-4780-bk; Dr. Richard Cordero, Appellant's brief; March 16, 2007".

D. Oral Argument Request

114. Appellant respectfully restates his statement of November 2, 2006, on the Notice of Appearance form that he desires oral argument and that he requests 20 minutes therefor.

Respectfully submitted on:

March 17, 2007

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Brooklyn, NY 11208

Dr. Richard Cordero

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

Certificate of Service

In re Dr. Richard Cordero v. David and Mary Ann DeLano

dkt. no. 06-4780-bk, CA2

I, Dr. Richard Cordero, certify that I sent by USPS or e-mail to the parties listed below a copy of my principal brief in the above-captioned appeal.

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United States Court of Appeals
for the Second Circuit

06-4780-bk

Dr. Richard Cordero,
Appellant and creditor

v.

David and Mary Ann DeLano
Appellees and debtors in bankruptcy

ORDER

Having considered the briefs filed in his appeal, IT IS HEREBY ORDERED AS FOLLOWS:

A. Persons and entities concerned by this Order

1. David DeLano and Mary Ann DeLano (hereinafter the DeLanos), Debtors and Appellees in the above-captioned case, hereinafter *DeLano*, which shall be understood to include the cases below, namely, *In re David and Mary Ann DeLano*, 04-20280, WBNY, and *Cordero v. DeLano*, 05-6190, WDNY;
2. Chapter 13 Trustee George Reiber, South Winton Court, 3136 S. Winton Road, Rochester, NY 14623, tel. (585) 427-7225, and any and all members of his staff, including but not limited to, James Weidman, Esq., attorney for Trustee Reiber;
3. Devin L. Palmer, Esq. and Christopher K. Werner, Esq., attorneys for the DeLanos, Boylan, Brown, Code, Vigdor & Wilson, LLP, 2400 Chase Square, Rochester, NY 14604, tel. (585) 232-5300; and any and all members of their firm;

4. Mary Dianetti, Bankruptcy Court Reporter, 612 South Lincoln Road, East Rochester, NY 14445, tel. (585) 586-6392;
5. Kathleen Dunivin Schmitt, Esq., Assistant U.S. Trustee for Rochester, Office of the U.S. Trustee, U.S. Courthouse, 100 State Street, Rochester, NY, 14614, tel. (585) 263-5812, and any and all members of her staff, including but not limited to, Ms. Christine Kyler, Ms. Jill Wood, and Ms. Stephanie Becker;
6. Ms. Diana G. Adams, Acting U.S. Trustee for Region 2, and Deirdre A. Martini, former U.S. Trustee for Region 2, and Office of the United States Trustee, 33 Whitehall Street, 21st Floor, New York, New York 10004, tel. (212) 510-0500;
7. Manufacturers & Traders Trust Bank (M&T Bank), 255 East Avenue, Rochester, NY, tel. (800) 724-8472;
8. U.S. Bankruptcy Judge John C. Ninfo, II, and Paul R. Warren, Esq., Clerk of Court, United States Bankruptcy Court, 1400 U.S. Courthouse, 100 State Street, Rochester, NY 14614, tel. (585) 613-4200, and any and all members of their staff;
9. U.S. District Judge David G. Larimer and Rodney C. Early, Clerk of Court, United States District Court, 2120 U.S. Courthouse, 100 State Street, Rochester, N.Y. 14614, tel. (585)613-4000, fax (585)613-4035, and any and all members of their staff; and
10. Any and all persons or entities that are in possession or know the whereabouts of, or control, the documents or items requested hereinafter.

B. Procedural provisions applicable to all persons and entities concerned by this Order, who shall:

11. Understand a reference to a named person or entity to include any and all members of such person's or entity's staff or firm;
12. Comply with the instructions stated below and complete such compliance within seven days

of the issue of this Order unless a different deadline for compliance is stated below;

13. Be held responsible for any non-compliance and subject to the continuing duty to comply with this Order within the day each day after the applicable deadline is missed;
14. Produce of each document within the scope of this Order those parts stating as to each transaction covered by such document:
    a. the source or recipient of funds or who made any charge or claim for funds;
    b. the time and amount of each such transaction;
    c. the description of the goods or service concerned by the transaction;
    d. the document closing date;
    e. the payment due date;
    f. the applicable rates;
    g. the opening date and the good or delinquent standing of the account, agreement, or contract concerned by the document;
    h. the beneficiary of any payment;
    i. the surety, codebtor, or collateral; and
    j. any other matter relevant to this Order or to the formulation of the terms and conditions of such document;
15. Certify individually as such person, or if an entity, by its representative, in an affidavit or an unsworn declaration subscribed as provided for under 28 U.S.C. §1746 (hereinafter collectively referred to as a certificate), with respect to each document produced that such document has not been the subject of any addition, omission, modification, or correction of any type whatsoever and that it is the whole of the document without regard to the degree of relevance or lack thereof of any part of such document other than any part requiring its production; or certify why such certification cannot be made with respect to any part or the

whole of such document and attach such document;

16. Produce any document within the scope of this Order by producing a true and correct copy of such document;

17. Produce a document and/or a certificate concerning it whenever a reasonable person acting in good faith would:

    a. believe that at least one part of such document comes within the scope of this Order;

    b. be in doubt as to whether any or no part of a document comes within that scope; or

    c. think that another person with an adversarial interest would want such production or certificate made or find it of interest in the context of ascertaining whether, in particular, the DeLanos have committed bankruptcy fraud, or, in general, there is a bankruptcy fraud scheme involving the DeLanos and/or any other individual; and

18. File with the Court and serve on Appellant Dr. Richard Cordero at 59 Crescent Street, Brooklyn, NY 11028, tel. (718) 827-9521), and the trustee succeeding Trustee George Reiber when appointed (hereinafter the successor trustee) any document produced or certificate made pursuant to this Order.

C. Substantive provisions

19. Any person or entity concerned by this Order who with respect to any of the following documents **i)** holds such document (hereinafter holder) shall produce a true and correct copy thereof and a certificate; **ii)** controls or knows the whereabouts or likely whereabouts of any such document (hereinafter identifier) shall certify what document the identifier controls or knows the whereabouts or likely whereabouts of, and state such whereabouts and the name and address of the known or likely holder of such document:

    a. The audio tape of the meeting of creditors of the DeLanos held on March 8, 2004, at the

Office of the U.S. Trustee in Rochester, room 6080, and conducted by Att. Weidman, shall be produced by Trustee Schmitt, who shall within 10 days of this Order arrange for, and produce, its transcription on paper and on a floppy disc or CD; and produce also the video tape shown at the beginning of such meeting and in which Trustee Reiber was seen providing the introduction to it;

b. The transcript of the meeting of creditors of the DeLanos held on February 1, 2005, at Trustee Reiber's office, which transcript has already been prepared and is in possession of Trustee Reiber, who shall produce it on paper and on a floppy disc or CD;

c. The original stenographic packs and folds on which Reporter Dianetti recorded the evidentiary hearing of the DeLanos' motion to disallow Dr. Cordero's claim, held on March 1, 2005, in the Bankruptcy Court, shall be kept in the custody of the Bankruptcy Clerk of Court and made available to this Court or the Judicial Conference of the United States upon the request of either of them;

d. The documents that Trustee Reiber obtained from any source prior to the confirmation hearing for the DeLanos' plan on July 25, 2005, in the Bankruptcy Court, whether such documents relate generally to the DeLanos' bankruptcy petition or particularly to the investigation of whether they have committed fraud, regardless of whether such documents point to their joint or several commission of fraud or do not point to such commission but were obtained in the context of such investigation;

e. The statement reported in *DeLano,* WBNY docket 04-20280, entry 134, to have been read by Trustee Reiber into the record at the July 25 confirmation hearing before Judge Ninfo of the DeLanos' plan, of which there shall be produced a copy of the written version, if any, of such statement as well as a transcription of such statement exactly as read;

f. The financial documents in either or both of the DeLanos' names, or otherwise concerning a financial matter under the total or partial control of either or both of them, regardless of whether either or both exercise such control directly or indirectly through a third person or entity, and whether for their benefit or somebody else's, since January 1, 1975, to date,

1) Such as:

(a) the ordinary, whether the interval of issue is a month or a longer or shorter interval, and extraordinary statements of account of each and all checking, savings, investment, retirement, pension, credit card, and debit card accounts at or issued by M&T Bank and/or any other entity in the world;

(b) the unbroken series of documents relating to the DeLanos' purchase, sale, or rental of any property or share thereof or right to its use, wherever in the world such property may have been, is, or may be located, including but not limited to:

(i) real estate, including but not limited to the home and surrounding lot at 1262 Shoecraft Road, Webster (and Penfield, if different), NY; and

(ii) personal property, including any vehicle, mobile home, or water vessel;

(c) mortgage documents;

(d) loan documents;

(e) title documents and other documents reviewing title, such as abstracts of title;

(f) prize documents, such as lottery and gambling documents;

(g) service documents, wherever in the world such service was, is being, or may be received or given; and

(h) documents concerning the college expenses of each of the DeLanos' children,

including but not limited to tuition, books, transportation, room and board, and any loan extended by a government or a private entity for the purpose of such education, regardless of whose name appears as the borrower on the loan documents;

2) the production of such documents shall be made pursuant to the following timeframes:

(a) within two weeks of the date of this Order, such documents dated since January 1, 2000, to date;

(b) within 30 days from the date of this Order, such documents dated since January 1, 1975, to December 31, 1999.

20. The holder of the original of any of the documents within the scope of this Order shall certify that he or she holds such original and acknowledges the duty under this Order to hold it in a secure place, ensure its chain of custody, and produce it only upon order of this Court, the court to which *DeLano* may be transferred, the Supreme Court of the United States, or the Judicial Conference of the United States.

21. *DeLano* and *Pfuntner v. Gordon et al.*, docket no. 02-2230, WBNY, (hereinafter *Pfuntner*), are withdrawn from the District and Bankruptcy Courts to this Court pursuant to 28 U.S.C. §157(d).and the inherent power of this Court over lower courts in the Second Circuit.

22. The orders of Judge Ninfo, II, of August 9, 2005, confirming the DeLanos' Chapter 13 plan and of February 7, 2007, discharging the DeLanos after completion of their plan are hereby revoked; his order of August 8, 2005, to M&T Bank shall continue in force and the Bank shall continue making payments to Trustee Reiber until the appointment of a trustee to succeed him and from then on to the successor trustee, to the custody of whom all funds held by Trustee Reiber in connection with *DeLano* shall be transferred.

23. The notice signed by Clerk Warren, dated January 24, 2007, releasing employer from making further payments to Trustee Reiber is hereby withdrawn and the situation preceding it is reinstated as if the notice had never been given or acted upon.

24. Trustee George Reiber is removed pursuant to 11 U.S.C. §324(a) as trustee in *DeLano*, but shall continue subject to the jurisdiction of this Court and this Order, and such jurisdiction shall continue after appointment of a successor trustee or transfer of *DeLano* to any other court;

25. The Court recommends that:

    a. the successor trustee be an experienced trustee from a district other than WDNY, such as a trustee based in Albany, NY, who shall:

    b. certify that he or she:

        1) is unfamiliar with any aspect of *DeLano*,

        2) is unrelated and unknown to any party or officer in WDNY and WBNY;

        3) will faithfully represent pursuant to law the DeLanos' unsecured creditors;

    c. exhaustively investigate the DeLanos' financial affairs on the basis of the documents described herein and similar documents, such as those already produced by the DeLanos to both Trustee Reiber and Dr. Cordero, to determine whether they have committed bankruptcy fraud, particularly concealment of assets,

    d. produce a report of the inflow, outflow, and current whereabouts of the DeLanos' assets - whether such assets be earnings, real or personal property, rights, or otherwise, or be held jointly or severally by them directly or indirectly under their control anywhere in the world- since January 1, 1975, to date; and

    e. file in the court under whose jurisdiction this case shall be at the time, and serve upon the DeLanos and Dr. Cordero a copy of, such report together with a copy of its related

documents, which shall include all documents obtained during the course of such investigation and any previous investigation conducted while the case was in the Bankruptcy Court or the District Court.

26. The Court recommends that the successor trustee employ under 11 U.S.C. §327 a reputable, independent, and certified accounting and title firm, such as one based in Albany, to conduct the investigation and produce the report referred to in ¶25 above; and such firm shall produce a certificate equivalent to that required therein.

27. Court Reporter Mary Dianetti, who shall have no part in the transcription of any document within the scope of this Order, is referred to the Judicial Conference of the United States for investigation of her refusal to certify that the transcript of her recording of the evidentiary hearing held in the Bankruptcy Court, WBNY, on March 1, 2005, of the DeLanos' motion to disallow Dr. Cordero's claim would be complete, accurate, and tamper-free; Dr. Cordero's motion of July 18, 2005, for the District Court, WDNY, to make such referral under 28 U.S.C. §753 and all its exhibits are referred to the Judicial Conference as his statement on the matter; and the Conference is hereby requested to designate an individual other than Reporter Dianetti to make such transcript and produce it for review and evaluation to the Conference, this Court, and Dr. Cordero.

28. Notwithstanding the above and without detriment to any party's duty to it carry out, *DeLano* and *Pfuntner* are reported under 18 U.S.C. §3057(a) to U.S. Attorney General Alberto Gonzales, with the recommendation that they be investigated by U.S. attorneys and FBI agents, such as those from the U.S. Department of Justice and FBI offices in Washington, D.C., or Chicago, who are unfamiliar with either of those cases and unacquainted with any of the parties to either of them, or court officers, whether judicial or administrative, or trustees, directly or indirectly involved in, concerned with, or affected by either of those cases or that

may be investigated, and that no staff from the offices of the Department or the FBI in either Rochester or Buffalo participate in any way in such investigation.

29. *DeLano* and *Pfuntner* are transferred in the interest of justice and judicial economy under 28 U.S.C. §1412 to the U.S. District Court for the Northern District in Albany, NY, for a trial by jury before a visiting judge from a circuit other than the Second Circuit who is unfamiliar with either of those cases and unrelated and unacquainted with any of the parties to either of those case, or any court officers, whether judicial or administrative, or trustees, directly or indirectly involved in, concerned with, or affected by either of those cases or that may be investigated in connection therewith.

30. All proceedings concerning this matter shall be recorded by the Court using, in addition to stenographic means, electronic sound recording, and any party shall be allowed to make its own electronic sound or video recording of any and all such proceedings.

FOR THE COURT:

_____ _____

Date

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(as of April 17, 2007)

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