

**[Proposed Order of Production of Documents
containing useful contact information to obtain key documents for
the *Follow the money!* investigation of the bankruptcy fraud scheme
<http://Judicial-Discipline-Reform.org/> /.pdf]**

Case no. 08-8382

**IN THE
SUPREME COURT OF THE UNITED STATES**

Having considered the petition for a writ of certiorari to the Court of Appeals for the Second Circuit in *Dr. Richard Cordero v. David DeLano et ux.*, 08-8382, SCt, made by Petitioner Dr. Richard Cordero, Esq., and 28 U.S.C. §§1651 and 2101 and Rule 23 of the Rules of the Supreme Court of the United States, the Court orders as follows:

A. Persons concerned by this order and its execution

1. Any person or entity, whether a corporation, company, firm, association, unincorporated group, branch of government or subdivision thereof, is concerned by this order (hereinafter concerned person) who:
 - a. has actual knowledge of it;
 - b. would have knowledge of it by proceeding as a reasonable person would acting in good faith, or with due diligence, or competently, or in the official or fiduciary capacity or with the training or experience that is the same as, or equivalent to, that of such person or entity.
2. Among the concerned persons are those identified in ¶¶3-18 below:
3. David DeLano and Mary Ann DeLano (hereinafter the DeLanos), formerly resident at 1262 Shoecraft Road, Webster, NY 14580, and debtors in *In re David and Mary Ann DeLano*, 04-20280, WBNY; *Cordero v. DeLano*, 05-cv-6190L, WDNY; *Dr. Richard Cordero v. David and Mary Ann DeLano*, 06-4780-bk, CA2, and *Dr. Richard Cordero v. David and Mary Ann DeLano*,

08-8382, SCt (hereinafter *DeLano*);

Combined docket: http://Judicial-Discipline-Reform.org/dockets/11DeLano_Bk-SCt_28jan9.pdf

4. Devin L. Palmer, Esq., dpalmer@BoylanBrown.com, and Christopher K. Werner, Esq., cwerner@BoylanBrown.com, attorneys for the DeLanos, Boylan, Brown, Code, Vigdor & Wilson, LLP, 2400 Chase Square, Rochester, NY 14604, tel. (585)232-5300, fax (585)232-3528; and any and all members of their law firm; <http://www.boylanbrown.com/index.php>

Docket: http://Judicial-Discipline-Reform.org/dockets/1Premier_01-20692_27jan5.pdf

5. Michael J. Beyma, Esq., attorney for Mr. DeLano and M&T Bank, 300 Bausch & Lomb Place, Rochester, NY 14604, tel (585)258-2800, fax (585)258-2821; and any and all members of their law firm, including, but not limited to, Paralegal Brenda G. Reed, breed@underbergkessler.com; Paralegal Sandy Mattle, and Administrative Assistance Rene Reale, tel. (585)258-2843, RReale@underbergkessler.com; <http://www.underberg-kessler.com>;

6. James Pfuntner, at the address of his attorney, David MacKnight, Esq., dmacknight@lacykatzen.com, or successor, at Lacy, Katzen, Ryen & Mittlemann, LLP, 130 East Main St., Rochester, NY 14604; tel. (585)454-5650, fax (585)269-3077, plaintiff in *Pfuntner v. Trustee Gordon et al.*, 02-2230, WBNY (hereinafter *Pfuntner*); <http://www.lacykatzen.com/>;

Combined docket: http://Judicial-Discipline-Reform.org/dockets/6Pfuntner_Bkr-SCt_28mar5.pdf

7. 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, fax (585) 263-5862, and any and all members of her staff, including, but not limited to, Ms. Christine Kyler, Ms. Jill Wood, and Ms. Stephanie Becker; <http://www.usdoj.gov/ust/r02/rochester.htm>;
8. Ms. Diana G. Adams, U.S. Trustee for Region 2, and Deirdre A. Martini, former U.S. Trustee for Region 2, Office of the United States Trustee, 33 Whitehall Street, 21st Floor, New York, NY 10004, tel. (212)510-0500, fax (212) 668-2255; and any and all members of their staff;

<http://www.usdoj.gov/ust/r02/>;

9. Chapter 13 Trustee George Reiber, South Winton Court, 3136 S. Winton Road, Rochester, NY 14623, tel. (585)427-7225, fax (585)427-7804, and any and all members of his staff, including, but not limited to, James Weidman, Esq., attorney for Trustee Reiber; trustee13@roch13.com;
10. Trustee Kenneth W. Gordon, Gordon & Schall, LLP, 1099 Monroe Ave., Ste. 2, Rochester, NY 14620-1730; tel. (585)244-1070, and any and all members of his staff;
11. M&T Bank, 255 East Avenue, Rochester, NY, tel. (800)724-8472, 585-546-0501, fax: 585-546-0550, (585)546-7584; <http://www.mandtbank.com/>;
12. David Palmer, 1829 Middle Road, Rush, NY 14543, and his company, Premier Van Lines, debtor in *In re Premier Van Lines*, 01-20692, WBNY (hereinafter Mr. Palmer/Premier and *Premier*);
13. David M. Dworkin & Jefferson Henrietta Associates, at the address of their attorney, Karl S. Essler, Esq., Fix Spindelman Brovitz & Goldman, P.C., 295 Woodcliff Drive, Suite 200, Fairport, NY 14450, tel. (585) 641-8000; fax (585)641-8080; kessler@fixspin.com;
14. Mary Dianetti, Bankruptcy Court Reporter, 612 South Lincoln Road, East Rochester, NY 14445, tel. (585)586-6392;
15. Ms. Melissa L. Frieday, Contracting Officer for court reporters, US. Bankruptcy Court, WDNY, Olympic Towers, 300 Pearl Street, Suite 250, Buffalo, NY 14242, tel. (716) 362-3200, fax (716)551-5103;
16. Bankruptcy Judge John C. Ninfo, II, WBNY, and Paul R. Warren, Esq., Clerk of Court, U.S. Bankruptcy Court, 1220 U.S. Courthouse, 100 State Street, Rochester, NY 14614, tel. (585)613-4200, and any and all members of their staff, including, but not limited to, Andrea Siderakis, Assistant to Judge Ninfo, courtroom tel. (585)613-4281, fax (585)613-4299; Deputy Clerk in Charge Todd M. Stickle, tel. (585)613-4223, fax (585)613-4242; Case Administrators Karen S. Tacy and Paula Finucane; <http://www.nywb.uscourts.gov/>;

17. U.S. District Judge David G. Larimer and Rodney C. Early, Clerk of Court, U.S. 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; <http://www.nywd.uscourts.gov/mambo/>; and
18. Former Chief Judge John M. Walker, Jr., of the Court of Appeals for the Second Circuit and former Clerk of Court Roseann B. MacKechnie, Daniel Patrick Moynihan U.S. Courthouse, 500 Pearl Street, NY, 1007, tel. (212)857-8500, and any all members of their staff; <http://www.ca2.uscourts.gov/>.
19. The officer with authority to execute this order is hereinafter referred to as executer.
20. Without prejudice to the duty to comply with this order and lend all assistance to its complete, efficient, and timely execution, as such assistance is requested by any executer, no person shall be an executer who is an investigation-related person, that is, a person who is or was:
 - a. an agent or employee in the offices of the U.S. Department of Justice or the Federal Bureau of Investigation in Rochester or Buffalo, NY; or
 - b. familiar or acquainted with any person of interest.
21. A person of interest is one who is or was:
 - a. a party to either *DeLano* or *Pfuntner* and their progeny;
 - b. a court officer, whether judicial or administrative, a lawyer, a private or U.S. trustee, a bankruptcy professional, or a member of their respective staff, directly or indirectly involved in, concerned with, or affected by either of those cases or the investigation concerning this order; or
 - c. employed by, or otherwise a worker in, any of the U.S. courts in Rochester or Buffalo or anywhere else where their judges hold or held court; or
 - d. investigated or is likely to be investigated in connection with those cases or with this order.

B. Duties of a concerned person

22. A concerned person shall:
- a. understand a reference to a named concerned person to include any and all members of such person's staff or membership;
 - b. comply with the instructions stated herein and complete such compliance within seven days of the issue of this order unless a different deadline for compliance is stated in ¶24 below;
 - c. 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, under pain of being named the subject of a contempt proceeding.
23. A concerned person shall provide upon request of, and volunteer to, an executor information:
- a. that such person has concerning a document herein identified, including, but not limited to, its author, existence, nature, condition, use, actual or likely whereabouts, person in possession of or who controls it;
 - b. without passing judgment on the degree of relevance or lack thereof for the order in recognition of the fact that the relevance of a piece of information may only become apparent in the broader context of information already gathered or to be gathered by an executor; and
 - c. in application of the principle "If in doubt, communicate the information to an executor".
24. A concerned person shall with respect to a document herein identified provide information about it, produce it, and issue a certificate, as defined in ¶28 below,
- a. whenever a reasonable person would who is:
 - 1) acting in good faith, or with due diligence, or competently, or in the official or fiduciary capacity or with the training or experience that is the same as, or equivalent to, that of such person or entity, and

2) applying the principle “If in doubt, produce the document to an executor”, and

- b. believes that at least one part of such document is a document herein identified;
- c. has doubts as to whether any or no part of the document is herein identified; or
- d. believes that another person with an adversarial interest would want such information, production, or certificate or find it of interest to the end of ascertaining whether an individual or entity:
 - 1) is a holder or an identifier, as defined in ¶25; or
 - 2) has committed, covered up, or tolerated an offense, including, but not limited to, bankruptcy fraud, concealment of assets, destruction of documents, money laundering, perjury, and bribery.

25. A concerned person who with respect to any document herein identified:

- a. has possession or custody of it (hereinafter holder) shall produce a true and correct copy thereof and a certificate, as defined in ¶28 below;
- b. controls or knows the actual or likely whereabouts of any such document (hereinafter identifier) shall certify what document the identifier controls or knows the actual or likely whereabouts of, and state such whereabouts and the name and address of the known or likely holder of, such document.

26. A holder or identifier 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 upon order of an executor.

27. A concerned person shall produce those parts of each document herein identified that state as to each transaction covered by such document:

- a. The time and amount of each such transaction;
- b. the rates, including but not limited to normal and delinquent rates, applied to the

transaction;

- c. the opening and closing dates of the transactions reported in the document, such as a statement of account;
- d. the description of the goods or service concerned by the transaction;
- e. the source or recipient of funds or who made any charge or claim for funds;
- f. the opening date of, the payment due date of the amount owing on, and the good or delinquent standing of, the account, agreement, or contract dealt with in the document;
- g. the beneficiary of any payment;
- h. the surety, codebtor, or collateral; and
- i. any other matter concerning the formulation of the terms and conditions of the transaction or relationship dealt with in the document;

28. A concerned person shall certify individually as a 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:

- a. it has not been the subject of any addition, deletion, correction, or modification of any type whatsoever; and
- b. 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
- c. such certification cannot be made with respect to any part or the whole of such document and the reason therefor and attach the whole document to the certificate;

29. A concerned person shall produce documents pursuant to the following timeframes measured from the time the order is served on such person or the latter has actual knowledge or would have knowledge of it, as provided for in ¶1 above, whichever is earlier:

- a. within seven days with respect to documents that a concerned person has possession of at

- home or other permanent or temporary dwelling, in the office or vehicle, or equivalent place;
- b. with respect to documents that are kept, stored or archived elsewhere than in a. above;
- 1) within two weeks with respect to documents dated January 1, 2000, or since, to date;
- and
- 2) within 30 days with respect documents dated since January 1, 1975, to December 31, 1999, including the first and last dates of such period.

C. Documents in general, production, and certification

30. A document identified with particularity or in general in this order (hereinafter document(s)) is to be understood broadly to mean ‘an object that holds information or data in any form’, whether the form be handwritten, print, digital, electronic, or otherwise; and the object be any of the following or similar objects:
- a. paper, including any type of graphic or photographic paper, film, and equivalent;
 - b. a removable storage device, such as a floppy, CD, DVD, Blue Ray disk, external hard disk; memory flash, stick, or card; electronic memory strip, such as found on plastic cards; and audio or video tape;
 - c. fixed storage device, such as an internal hard disk of a computer, server, mainframe, or recorder box;
 - d. an audio or video cassette, such as used in a tape recorder or camcorder;
 - e. a wireless handheld digital device, such as an iPod, Blackberry, or smartphone.
31. A reference herein to a specific type of document includes any other type of document in which the information referred to or derived therefrom, such as through addition, deletion, modification, correction, transformation from one form to another, or rearrangement for inclusion in a database, is available.

D. Particular documents to be produced

32. A concerned person that has any of the following documents shall produce them to an executor:
33. The financial documents in either or both of the names of:
- a. the DeLanos,
 - b. Mr. Palmer and/or Premier; and
 - c. third parties but concerning a financial matter under the total or partial control of either or both of them, respectively, whether either or both exercised or still exercise such control directly or indirectly through a third person or entity, and whether for their benefit or somebody else's;
34. The dates of the documents referred to in ¶33 above are:
- a. in the case of the DeLanos, since January 1, 1975, to date; and
 - b. in the case of Mr. Palmer, since he began to work for, or do business as, or acquired partially or totally, or otherwise controlled, Premier to date.
35. The financial documents referred to in ¶33 above include the following:
- 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 any other entity, whether banking, financial, investment, commercial, or otherwise, in the world;
 - b. the unbroken series of documents relating to the 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, by either or both of the DeLanos and Mr. Palmer/Premier, respectively, including, but not limited to:
 - 1) real estate, including but not limited to the home and surrounding lot at 1262

Shoecraft Road, Webster (and Penfield, if different), NY 14580;

- 2) Premier, any similar moving or storage company, or other business, whether incorporated or not incorporated;
- 3) Premier's warehousing space at the warehouse at 2130 Sackett Road, Avon, NY, 14414, owned by Mr. James Pfuntner;
- 4) moving and storage equipment, including, but not limited to, vehicles, forklifts, crates, padding and packaging material; and
- 5) 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, Jennifer and Michael, including, but not limited to, tuition, books, transportation, room and board, and any loan extended or grant made by a government or a private entity or a parent or relative for the purpose of such education, regardless of whose name appears on the documents as the loan borrower or grant recipient;

36. The minutes, transcript, stenographic packs and folds, audio tape, and any other recording of the status conference and pretrial hearing in *Pfuntner* requested by Trustee Schmitt on December 10, 2002, and held before Judge Ninfo on January 10, 2003.

37. The transcript and stenographic packs and folds of the hearings held before Judge Ninfo:

- a. in *Pfuntner* on: http://Judicial-Discipline-Reform.org/dockets/6Pfuntner_Bkr-SCT_28mar5.pdf

- a. December 18, 2002
- b. February 12, 2003
- c. March 26, 2003
- d. April 23, 2003
- e. May 21, 2003
- f. June 25, 2003
- g. July 2, 2003
- h. October 16, 2003

b. in *DeLano* on: http://Judicial-Discipline-Reform.org/dockets/11DeLano_Bk-SCt_28jan9.pdf

- a. March 8, 2008
- b. July 19, 2004
- c. August 23, 2004
- d. August 25, 2004
- e. December 15, 2004
- f. July 25, 2005
- g. November 16, 2005

38. Trustee Schmitt and Trustee Reiber or their respective successors shall within 10 days of this order arrange for, and produce:

- 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;
- b. its transcription on paper and as a PDF file on a floppy disc or CD; and
- c. the video tape shown at the beginning of such meeting and in which Trustee Reiber was seen providing the introduction to it.

39. The transcript of the meeting of creditors of the DeLanos held on February 1, 2005, at Trustee Reiber's office and made by Court Reporter Ms. Bonsignor at Alliance Shorthand 183 East Main Street, Suite 1500 Rochester, NY 14604 (585) 546-4920, and is in possession of Trustee Reiber, who shall produce it on paper and as a PDF file on a floppy disc or CD;

40. 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 upon request to an executer;

41. The documents obtained by Trustee Reiber in connection with *DeLano* and by Trustee Gordon in connection with *Pfuntner*, regardless of the source, up to the date of compliance with this order,

whether such documents relate generally to the DeLanos' or Mr. Palmer/Premier's bankruptcy petition or particularly to the investigation of whether either or both of them 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;

42. The statement reported in entry 134 of the docket of *DeLano* to have been read by Trustee Reiber into the record at the confirmation hearing on July 25, 2005, of the DeLanos' plan of debt repayment, 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 and the stenographic packs and folds used by the reporter to record it;
43. The Clerk of the Bankruptcy Court shall produce certified copies of all the orders in *DeLano* and *Pfuntner*, including the following:
 - a. in *DeLano*: http://Judicial-Discipline-Reform.org/dockets/11DeLano_Bk-SCT_28jan9.pdf
 - 1) July 26, 2004, for production of some documents by the DeLanos;
 - 2) August 30, 2004, severing Dr. Cordero's claim against Mr. DeLano from *Pfuntner*, and requiring Dr. Cordero to take discovery from Mr. DeLano to prove his claim against him while suspending all other proceedings until the DeLanos' motion to disallow Dr. Cordero's claim was finally determined;
 - 3) November 10, 2004, denying Dr. Cordero all his requests for discovery from Mr. DeLano;
 - 4) December 21, 2004, scheduling *DeLano* for an evidentiary hearing on March 1, 2005;
 - 5) April 4, 2005, holding that Dr. Cordero has no claim against Mr. DeLano and depriving him of standing to participate in any future proceedings in *DeLano*;
 - 6) August 8, 2005, ordering M&T Bank to pay part of Mr. DeLano's salary to Trustee

Reiber;

- 7) August 9, 2005, confirming the DeLanos' debt repayment plan after hearing Trustee Reiber's statement and obtaining his "Trustee's Report", that is, his undated "Findings of Fact and Summary of 341 Hearing" and his undated and unsigned sheet titled "I/We filed Chapter 13 for one or more of the following reasons";
 - 8) November 10, 2005, letter denying Dr. Cordero his request to appear by phone to argue his motion of November 5, 2005, to revoke the order of confirmation of the DeLanos' debt repayment plan;
 - 9) November 22, 2005, denying Dr. Cordero's motion to revoke the confirmation of the DeLanos' debt repayment plan;
 - 10) Notice of January 24, 2007, releasing Mr. DeLano's employer, M&T Bank, from making further payments to Trustee Reiber.
 - 11) February 7, 2007, discharging the DeLanos after completion of their plan;
 - 12) June 29, 2007, providing, among other things, for the allowance of the final account and the discharge of Trustee Reiber, the enjoinder of creditors, the closing of the DeLanos' estate, and the release of their employer from the order to pay the Trustee;
- b. in *Pfuntner*: http://Judicial-Discipline-Reform.org/dockets/6Pfuntner_Bkr-SCt_28mar5.pdf
- 1) December 30, 2002, dismissing Dr. Cordero's cross-claims for defamation as well as negligent and reckless performance as trustee against Trustee Gordon;
 - 2) February 4, 2003, transmitting to District Judge David Larimer, WDNY, the record in a non-core proceeding and findings of fact, conclusions of law, and the Recommendation not to grant Dr. Cordero's request for entry of default judgment;
 - 3) Attachment of February 4, 2003, to the Recommendation of the Bankruptcy Court that the default judgment not be entered by the District Court;

- 4) February 18, 2003, denying Dr. Cordero's motion to extend time to file notice of appeal;
- 5) July 15, 2003, ordering that a "discrete hearing" be held in Rochester on October 23, 2003, followed by further monthly hearings;
- 6) October 16, 2003, Disposing of Causes of Action;
- 7) October 16, 2003, denying Recusal and Removal Motions and Objection of Richard Cordero to Proceeding with Any Hearings and a Trial;
- 8) October 23, 2003, Finding a Waiver by Dr. Cordero of a Trial by Jury;
- 9) October 23, 2003, setting forth a Schedule in Connection with the Remaining Claims of the Plaintiff, James Pfuntner, and the Cross-Claims, Counterclaims and Third-Party Claims of the Third-Party Plaintiff, Richard Cordero;
- 10) October 28, 2003, denying Dr. Cordero's Motion for a More Definitive Statement of the Court's Order and Decision.

44. The Bankruptcy Clerk shall produce certified copies of the following documents referred to in the docket of *Premier*, 01-20692, WBNY, or connected to that case:

Docket: http://Judicial-Discipline-Reform.org/dockets/1Premier_01-20692_27jan5.pdf

a. Documents entered in the docket:

- 1) the monthly reports of operation for March through June 2001, entered as entries no. 34, 35, 36, and 47;
- 2) the reports for the following months until the completion of the liquidation of Premier;
- 3) the court order closing that case, which is the last but one docket entry, but bears no number;
- 4) the court order authorizing the payment of a fee to Trustee Gordon and indicating the amount thereof, which is the last docket entry, but bears no number.

b. Documents that are only mentioned in other documents in *Premier*, 01-20692, WBNY, but not entered themselves anywhere:

- 1) the court order authorizing payment of fees to Trustee Gordon's attorney, William Brueckner, Esq., and stating the amount thereof; cf. docket entry no. 72;
- 2) the court order authorizing payment of fees to Auctioneer Roy Teitsworth and stating the amount thereof; cf. docket entry no. 97;
- 3) the financial statements concerning Premier prepared by Bonadio & Co., for which Bonadio was paid fees; cf. docket entries no. 90, 83, 82, 79, 78, 49, 30, 29, 27, 26, 22, and 16;
- 4) the statement of M&T Bank of the proceeds of its auction of estate assets on which it held a lien as security for its loan to Premier; the application of the proceeds to set off that loan; and the proceeds' remaining balance and disposition; cf. docket entry no. 89;
- 5) the information provided to comply with the order described in entry no. 71 and with the minutes described in entry no. 70;
- 6) the Final report and account referred to in entry no. 67 and ordered filed in entry no. 62.

45. Judge Ninfo's annual financial disclosure reports since 1992, required to be filed under the Ethics in Government Act of 1978, 5 U.S.C. Appendix (identified in West publications as App. 4) shall be produced by Judge Ninfo and by the Administrative Office of the U.S. Courts, One Columbus Circle, NE, Washington, D.C. 20544, tel. (202)502-2600.

for the Supreme Court of the United States:

Date